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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 88-8]

Rules, Policies, and Procedures for Corporate Activities; Organization of an Interim National Bank, Fiduciary Powers, Mergers, Consolidations, Purchase and Assumptions, Capital Changes, CBCT's

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is making technical amendments to its interim bank charter and merger procedures in 12 CFR 5.21 and 12 CFR 5.33, respectively. These changes are needed to make the rules consistent with the Office's new streamlined procedures. These technical changes complement the streamlined procedures, which reduce the paperwork burden on the applicants and the Office, and reduce the time required for applicants to receive a decision on an application. The Office also is eliminating references to specific forms, clarifying the filing requirements for fiduciary powers, addressing the policy regarding the extension of a CBCT approval, and simplifying the process for a bank seeking approval to declare a stock dividend or to reduce par value without changing the sum of capital and capital surplus. These changes will eliminate unnecessary regulatory requirements, and provide a better understanding of Office policy by eliminating possible confusion.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sheila G. Ogilvie, Senior Licensing Policy and Systems Analyst, Bank Organization and Structure, (202) 447-1184, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

This final rule is part of the Office's Corporate Activities Review and Evaluation (CARE) program. That program is described in 45 FR 68598, dated October 15, 1980, involves a comprehensive review of the Office's rules, policies, procedures and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE program are to minimize costs and burdens on applicants, the Office, and the public; to provide a better understanding of Office policies; to modify or eliminate rules, policies, procedures and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Discussion

The Office has streamlined its procedures for processing mergers, consolidations, and purchase and assumptions, including those which involve the chartering of an interim national bank. The changes reduce the paperwork burden on the applicants and the Office, and reduce the time required for applicants to receive a decision on an application.

Under the old procedures for organizing an interim national bank, applicants had to submit two separate applications, one to the district office for the interim bank charter, and one to the Washington office for the subsequent merger or consolidation. Under the revised procedure, a single application is submitted to the district office for the interim bank charter and for the merger or consolidation. In most cases, the entire transaction is handled in the district office.

The new procedures for mergers, consolidations, and purchase and assumptions ("mergers") provide merger applicants the option of submitting a streamlined analysis of competitive effects ("Quick Check Merger Screen") that enables the bank and the Office to quickly test to determine if a proposed merger clearly raises no antitrust concerns. When the Quick Check Merger Screen is used, the Office anticipates that a decision on a merger generally will be reached in 60 days or less, if there are no supervisory concerns. If applicants do not use the Quick Check Merger Screen or do not meet the screen's tests, they generally will have to submit more detailed information on the competitive effects of the proposed merger. Accordingly, this final rule amends 12 CFR 5.33(b)(2) to indicate the possibility that applicants in many cases will be able to use the Quick Check Merger Screen.

Office approval is necessary to consummate a merger. However, the Office is not required by law to memorialize its approval in any particular way. Therefore, § 5.33(h), which deals with various methods of Office certification of approval of a merger, consolidation, or purchase and assumption, is deleted. Under the new merger procedures, the Office simply will issue a letter to the applicants evidencing approval.

Other Amendments

The Office has chosen to streamline the procedures for stock dividends and for par value reductions which do not change the sum of capital and capital surplus. Under these streamlined procedures, the amount of information that the bank is required to submit is reduced, and the Office will authorize the changes without a review for supervisory concerns. The Office has also clarified its policy regarding common stock by indicating that the streamlined procedure under 12 CFR 5.46 (f)(2) is only applicable to cash sales of common stock.

A copy of each Office form is now available in the *Comptroller's Manual for Corporate Activities* (Manual). References to specific forms in the regulations are replaced by one general reference under new § 5.14—Forms.

This final rule amends § 5.26 to address Office policy regarding the approval of fiduciary powers when a state bank with trust powers converts to a national bank or a state bank with trust powers merges into a national bank without trust powers. It also amends § 5.31 to address Office policy regarding the extension of a CBCT approval. Upon request, the Office may allow the extension of a preliminary approval beyond the expiration period.

Reasons for Not Allowing Notice and Comment Procedure

This is a nonsubstantive rule to advise the public of Office policy and procedures. This final rule eliminates possible confusion and conveys a benefit to the public. Therefore, notice and comment procedure is unnecessary and contrary to public interest.

Regulatory Flexibility Act

The effects of this final rule are expected to be beneficial rather than adverse, and both small and large entities are expected to benefit equally.

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget for its review under the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 5

Banking, National Banks, Interim National Bank, Conversions, Fiduciary Powers, Branches, Seasonal Agencies, Operating Subsidiaries, Relocations, Title Changes, Equity Capital, Subordinated Debt, Voluntary Liquidation, Mergers, Consolidations, Purchase and Assumptions, Changes in Bank Control, CBCT's.

Authority and Issuance

For the reasons set out in the preamble, Part 5 of Chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 5—[AMENDED]

1. The authority citation for Part 5—*Rules, Policies, and Procedures for Corporate Activities* continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93(a).

2. In § 5.11, paragraph (g) is removed.

3. Section 5.14 was reserved. A new § 5.14 is added to read as follows:

§ 5.14 Forms

Sample forms are provided in the *Comptroller's Manual for Corporate Activities.*

4. In § 5.20, paragraph (d)(1)(iii) is revised, and paragraph (h) is removed to read as follows:

§ 5.20 Organization of a national bank.

* * * * *

(d) * * *

(1) * * *

(iii) When an application is disapproved, the Office sends a letter containing the basis for the disapproval to the spokesperson (a member of the organizing group and a director of the proposed bank who is designated to correspond with the Office on matters relating to the application) and other interested parties to the application. When an application is satisfactory, the Office sends a preliminary approval letter to the spokesperson. The preliminary approval letter contains the conditions and procedural requirements (see § 5.20(f)) that the organizing group must fulfill before the Office grants final approval for the bank to open for business.

* * * * *

5. In § 5.21, paragraphs (c), (d), and (f) are revised, paragraphs (g) and (j) are removed and paragraphs (h) and (i) are redesignated as (g) and (h), respectively, and newly designated (g) is revised. As amended, § 5.21 reads as follows:

§ 5.21 Organization of an interim national bank.

* * * * *

(c) *Rules of general applicability.* Sections 5.8(a), 5.10, and 5.11 do not apply to applications to organize an interim national bank. The application for an interim national bank and the merger or consolidation will be handled as a single process requiring one opportunity for public comment after notice is published by the applicant in accordance with § 5.33(e).

(d) *Prefiling meeting.* The organizers of an interim national bank, the district Director for Analysis or the Director for Multinational and Regional Bank Supervision may request a prefiling meeting. A prefiling meeting should be requested before the application is filed. The meeting will be conducted in the district where the application will be filed.

* * * * *

(f) *Preliminary approval.* The Office's preliminary approval of an interim national bank is conditioned on approval of the subsequent merger or consolidation or bank holding company acquisition by the appropriate regulatory authority. Preliminary approval is rescinded automatically if the merger or consolidation or bank holding company acquisition is not approved and consummated.

(g) *Subsequent merger or consolidation.* When the interim national bank's duly executed articles of association and organization certificate are filed with and accepted by the district office, the interim national bank becomes a body corporate, and may then legally enter into the merger or consolidation agreement.

* * * * *

§ 5.22 [Amended]

6. In § 5.22 paragraph (e) is removed.

§ 5.24 [Amended]

7. In § 5.24 paragraph (e) is removed.

8. In § 5.26, paragraph (d) is revised and paragraph (i) is removed to read as follows:

§ 5.26 Fiduciary powers.

* * * * *

(d) *Policy.* The exercise of fiduciary powers is primarily a management decision of the bank. Federal law (12 U.S.C. 92a), however, requires a national bank to seek the prior approval of the Office before offering such services to the public. Prior Office approval is also required for the exercise of trust powers by a resulting national bank when a state bank with trust powers converts to a national bank or a state bank with trust powers merges into a national bank without trust powers. The Office will grant a permit to exercise fiduciary powers to a national bank operating in a satisfactory manner provided that the proposed activities will comply with applicable statutes and regulations and the bank will retain qualified trust management. Generally, the Office will issue a permit only for full fiduciary powers. However, the Office may issue a permit for limited powers in an exceptional case. A permit may be withheld, conditionally approved, or denied if it does not meet the above conditions. A permit may be delayed if the Office needs further information.

* * * * *

§ 5.27 [Amended]

9. In § 5.27, paragraph (f) is removed.

§ 5.30 [Amended]

10. In § 5.30, paragraph (h) is removed.

11. In § 5.31, paragraph (i) is revised and paragraph (k) is removed to read as follows:

§ 5.31 Establishment of customer-bank communication terminal (CBCT) branches.

* * * * *

(i) *Expiration of preliminary approval.* CBCT branch preliminary approvals expire if the CBCT is not in operation within nine months after the date of preliminary approval. Extensions generally are not granted; however, in the event of extraordinary circumstances, a request for extension may be submitted to the district office or Multinational Banking in Washington.

* * * * *

12. In § 5.33, (b)(3), (b)(4), (b)(5) and (b)(6) are redesignated as (b)(4), (b)(5), (b)(6) and (b)(7), (b)(2) concluding text is redesignated and revised as (b)(3), and paragraphs (h) and (i) are removed to read as follows:

§ 5.33 Mergers, consolidation, purchase and assumption.

* * * * *

(3) *Competition.* In order to determine the effect of a proposed merger upon competition, it is necessary to identify the relevant geographic market. The delineation of such a market can seldom be precise. Applicants have two options for delineating the relevant market.

(i) Under the first option, the applicant may use standardized market definitions specified by the Office in its Quick Check Merger Screen (a sample screen is included in section 20 of the *Comptroller's Manual for Corporate Activities*). The use of the Quick Check Merger Screen enables the Office to assess quickly whether the proposed merger meets the Office's standards for mergers which clearly have no anticompetitive effects. The Quick Check Merger Screen is merely a procedural device for expediting merger application processing. The OCC does not subscribe to either the market definitions or the market structure analyses that underlie the tests, except as a method which has been shown by experience to be a reliable basis for identifying mergers that clearly have minimal or no adverse competitive effects. Therefore, failure to meet these standards does not indicate that a merger raises competitive concerns. However, the Office generally will require additional information in applications that do not meet the standards and will perform a more in-depth competitive analysis of those applications.

(ii) If the applicants find that the markets specified in the Office's Quick Check Merger Screen are not applicable, they may apply under the second option. Under the second option, the applicant defines the geographic market using realistic limits so that the effect of the merger upon competition can be analyzed. The applicant should define the market to encompass an area where the effect upon competition will be direct and immediate. The Office recognizes that different banking services may have different relevant geographic markets. Although the largest borrowers and depositors may find it convenient and practical to conduct part of their banking business outside the relevant geographic market, the applicant should not define the market so expansively as because the competitive effect of the merger to seem insignificant because only the largest customers are considered. Conversely, the applicant should not define the market so narrowly as to place competitors in different markets because only the smallest customers are considered. A fair definition of the relevant geographic market should take into account the demands of most customers for the bank's services. After the relevant geographic market has been defined, the competitive effects of the proposed merger can be analyzed. The Office will consider both the definition of the market and the intensity of competition within the market. In measuring intensity of competition, the Office will consider the number of competitors in the market (including nonbank and nonlocal competitors, where applicable), services offered, pricing of services, advertising, office hours and banking innovations.

* * * * *

§ 5.34 [Amended]

13. In § 5.34, paragraph (e) is removed.

§ 5.35 [Amended]

14. In § 5.35, paragraph (g) is removed.

§ 5.40 [Amended]

15. In § 5.40, paragraph (j) is removed.

§ 5.42 [Amended]

16. In § 5.42, paragraph (f) is removed.

17. In § 5.46, paragraphs (f)(1)(ii), (f)(2), (f)(3), (f)(5), (f)(6), and (g)(1) are revised, a new paragraph (g)(3) is added, and paragraph (i) is removed to read as follows:

§ 5.46 Changes in equity capital.

* * * * *

(f) * * *

(1) * * *

(ii) The Office will grant final approval or certification after receipt of written notice as described in paragraphs (g)(2) and (g)(3) of this section, provided all the conditions required by the Office have been met. A bank may consider the proposed change approved and certified seven days after the date on which the Office receives the letter of notification, unless the bank is advised otherwise.

(2) *Common stock.* The Office will always approve cash sales of common stock after a bank has notified the Office of its compliance with the requirements of 12 U.S.C. 57 and paragraph (g)(2) of this section. No letter of intent or 30-day review period is required for cash sales of common stock.

(3) *Stock dividends.* The Office will approve a bank's request for a declaration of stock dividends in accordance with 12 U.S.C. 51 and 57. No letter of intent or 30-day review period is required for stock dividends. Fractional shares created by stock dividends should be treated in accordance with 7.6040 of this chapter.

* * * * *

(5) *Changes in par value.* Changes in par value of common stock which do not change the aggregate amount in a bank's common stock account do not require Office approval. Other reductions in par value of common stock and changes in par value of preferred stock do require Office approval.

(6) *Reduction in capital.* The Office will consider a bank's request for a reduction of the common or preferred stock account through a change in par value or otherwise, in accordance with the requirements of 12 U.S.C. 59.

(i) With the exception of reductions in par value of common stock that do not change the sum of capital and capital surplus, a letter of intent to reduce capital must be submitted to the Office pursuant to paragraph (g)(1) of this section and must include a schedule detailing the present and proposed capital structure, explain the reasons for the request and give details on any cash or asset distribution. Distributions resulting from the proposed reduction of capital must also be approved by the Office.

(ii) For reductions in par value of common stock that reduce the common stock account but do not change the sum of capital and capital surplus, the bank, prior to consummation, must submit a letter of notification pursuant to paragraph (g)(3) of this section describing the proposed transaction and the scheduled effective date. The Office will approve the transaction provided there is evidence of shareholder approval, the articles of association have been amended, if required, and the bank is in compliance with all related laws, regulations and conditions imposed by the Office.

(g) *Procedures.* (1) A bank must submit to the appropriate district office by hand or by mail, return receipt requested, a letter of intent to change capital. The bank must receive preliminary approval for any change in capital except for a stock dividend, cash sale of common stock, or a reduction in par value of common stock that does not change the sum of capital and capital surplus. Stock dividends, cash sales of common stock, or reductions in par value of common stock that do not change the sum of capital and capital surplus are subject only to the notification process described in paragraphs (g)(2) and (g)(3) of this

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section. For other changes in equity capital, the bank must describe in its letter of intent the type and amount of the proposed change, and state if it is subject to a capital plan with the Office. If it is subject to a capital plan or if a capital plan is required in connection with the proposed change in equity capital, the bank must state how the proposed change conforms to the plan. The bank may consider its proposed change preliminarily approved 30 days after the day in which the Office receives the letter of intent, unless the bank is notified that preliminary approval is delayed, conditioned or denied. The bank should submit the letter of intent and receive preliminary approval prior to seeking shareholder approval. The bank may proceed with an increase in capital after preliminary approval is received; however, it may not reduce its capital or make a distribution until the Office has given final approval as specified in paragraphs (g)(2) and (g)(3) of this section.

* * * * *

(3) For reductions in par value of common stock that reduce the common stock account but do not change the sum of capital and capital surplus, the bank must submit a notification of the proposed change in par value to the district office prior to completing the reduction in par value. The notification must be acknowledged by the bank's president, vice president or cashier and contain:

(i) A description of the transaction;

(ii) The scheduled effective date of the change;

(iii) Certification of shareholder approval;

(iv) A certified copy of the amendment to the Articles of Association, if required; and

(v) A statement that the bank has complied with all laws, regulations and conditions imposed by the Office.

* * * * *

§ 5.47 [Amended]

18. In § 5.47, paragraph (i) is removed.

§ 5.48 [Amended]

19. In § 5.48, paragraph (g) is removed.

20. In § 5.50, paragraph (f)(5) is revised and paragraph (i) is removed to read as follows:

§ 5.50 Change in bank control.

* * * * *

(f) * * *

(5) Any transaction described in sections 2(a)(5) or 3(a)(A) or (B) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), and 1842(a)(A) and (B)) by a person described in those provisions.

* * * * *

Date: March 4, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-11616 Filed 5-23-88; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-03; Amdt. 39-5933]

Airworthiness Directives; General Electric (GE) CF6-6 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes new (lower) low cycle fatigue (LCF) retirement lives for certain high pressure compressor (HPC) rear shafts and certain compressor discharge pressure (CDP) seal supports installed in GE CF6-6 model turbofan engines. This AD is needed to prevent LCF failure of the subject parts and subsequent engine failure.

DATES: *Effective:* June 6, 1988.

Compliance Schedule: As prescribed in the body of the AD. Comments for inclusion in the docket must be received on or before July 6, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 88-ANE-03, 12 New England Executive Park, Burlington, Massachusetts 01803.

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 88-ANE-03."

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 06103; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: The FAA has determined that the published LCF life limit for certain HPC rear shafts and certain CDP seal supports must be reduced from 27,000 flight cycles to 18,000 cycles, and from 30,000 flight cycles to 18,000 cycles, respectively. This determination is based on updated stress, temperature, and mission analyses. The AD would require affected parts to be retired from service at or prior to reaching the new (lower) LCF life limit, except for affected parts which are close to or higher than the new life limits, for which a removal from service schedule is specified.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD, and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 88-ANE-03." The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation if filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

General Electric Applies to General Electric (GE) CF6-6 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of high pressure compressor (HPC) rear shafts, and/or compressor discharge pressure (CDP) seal supports, accomplish the following:

(a) Remove from service, HPC rear shafts, Part Numbers 9021M68G02 through 9021M68G04 inclusive; 9021M68G07 through 9021M68G09 inclusive; 9021M68G12; and 9021M68G13, as follows:

(1) Remove from service HPC rear shafts which have accumulated 17,600 or more cycles since new on the effective date of this AD, within the next 400 cycles in service.

(2) Remove from service HPC rear shafts which have accumulated less than 17,600 cycles since new on the effective date of this AD, at or prior to accumulating 18,000 cycles since new.

(b) Remove from service, CDP seal supports, Part Numbers 9088M62P02 through 9088M62P08 inclusive; and 9088M62P10, as follows:

(1) Remove from service CDP seal supports which have accumulated 17,600 or more cycles since new on the effective date of this AD, within the next 400 cycles in service.

(2) Remove from service CDP seal supports which have accumulated less than 17,600 cycles since new on the effective date of this AD, at or prior to accumulating 18,000 cycles since new.

Note: This action establishes new life limits of 18,000 service cycles for the parts noted in (a) and (b) above. The new limits are published in Chapter 5 of the CF6-6 Maintenance and Shop manuals.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA airworthiness inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance schedules specified in the AD.

Issued in Burlington, Massachusetts, on May 12, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-11550 Filed 5-23-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 373

[Docket No. 80345-8045]

Revisions in Dollar Value Limits on Certain Exports Under General License GLR and the Service Supply Procedure

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration is increasing the dollar value limits on shipments of replacement parts under General License GLR from $8,000 to $25,000 for Country Groups Q, W, Y, and Z and Afghanistan. The dollar value limit for shipments of replacement parts under the service supply procedure is also being raised from $8,000 to $25,000 for Country Groups Q, W, and Y and Afghanistan. These changes are the result of a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM).

EFFECTIVE DATE: This rule is effective May 24, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0625-0041 and 0625-0068.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 371 and 373

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 371 and 373 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for 15 CFR Parts 371 and 373 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 371—[AMENDED]

§ 371.17 [Amended]

2. In § 371.17, the first sentence of paragraph (e)(4)(i) is revised to read "No shipment of replacement parts under this license to Country Groups Q, W, Y, or Z or to Afghanistan may exceed $25,000 in value."

PART 373—[AMENDED]

§ 373.7 [Amended]

3. In § 373.7, the figure of "$8,000" that appears in the first sentence of paragraph (i)(4) is revised to read "$25,000".

Dated: May 18, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–11562 Filed 5–23–88; 8:45 am]

BILLING CODE 3510–DT–M

15 CFR Part 376

[Docket No. 80343–8043]

Qualifications for Exporters of Communications Intercepting Devices

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Section 376.13 of the Export Administration Regulations (EAR) describes export licensing requirements for communications intercepting devices. These requirements are based upon the restrictions of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2512, as amended by Pub. L. 99–508. Amendments to this Act under Pub. L. 99–508 have necessitated changes in the regulatory text of § 376.13(b). The changes address the question of who is eligible to export communications intercepting devices.

EFFECTIVE DATE: This rule is effective May 24, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federealism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 376

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 376 of the Export Administration Regulations is amended as follows:

PART 376—[AMENDED]

1. The authority citation for 15 CFR Part 376 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. In § 376.13, paragraph (b)(1) is revised to read as follows:

§ 376.13 Communications intercepting devices.

* * * * *

(b) * * *

(1) A provider of wire or electronic communication service or an officer, agent, or employee of, or person under contract with, such a provider in the normal course of the business of providing that wire or electronic communication service; or

* * * * *

Dated: May 18, 1988.

Vincent F. Decain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–11563 Filed 5–23–88; 8:45 am]

BILLING CODE 3510–DT–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Clothes Washers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for clothes washers.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on clothes washers manufactured on and after August 22, 1988, and in advertising of clothes washers beginning August 22, 1988. Properly labeled clothes washers manufactured prior to the effective date need not be relabeled.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, or Ruth Sacks, Research Analyst, 202–326–3033, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Before these labeling requirements may be prescribed, the statute requries DOE to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule[2] covering seven of the thirteen appliance categories: Refrigerators and refrigerator-freezer, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending coverage to include central air conditioners and heat pumps.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels and fact sheets and in retail sales catalogs for all covered products (except central air conditioners and heat pumps) manufactured on or after May 19, 1980. For central air conditioners and heat pumps, the effective date is June 7, 1988. Certain point-of-sale promotional materials must disclose the availability of energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers originally submitted reports to the Commission by January 21, 1980. Manufacturers of central air conditioners and heat pumps made their first submission on February 8, 1988. These reprots contained information on the estimated annual cost or energy efficiency rating for the eight categories of appliances derived from tests performed pursuant to the DOE test procedures. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From that information, the Commission compiled and published[3] ranges of comparability for each product (except, to date, central air conditioners and heat pumps), as required by § 305.10 of the rule. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule.

Section 305.8(b) of the rule requires manufacturers, after filing this initial report, to report annually by specified dates for each product type.[4] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to § 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually), if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for clothes washers, which were calculated using the 1988 representative average energy costs published by DOE on December 23, 1987,[5] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of clothes washers beginning August 22, 1988.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 is revised to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), and as amended by the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

[1] Public Law 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (Nov. 19, 1979).

[3] 45 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3629 (Jan. 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for central air conditioners and heat pumps are due by July 1 (the initial report for these products was filed on February 8, 1988) and reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[5] 52 FR 48563.

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2. In Appendix F, Paragraph 1 and the introductory text in Paragraph 2 are revised to read as follows:

Appendices to Part 305

* * * * *

Appendix F—Clothes Washers

1. Range Information: "Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Range of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	$53.00	$86.00	$22.00	$32.00
Standard	52.00	144.00	21.00	51.00

2. Yearly Cost Information: Estimates on the scales are based on a national average electric rate of 6.04¢ per kilowatt hour, a national average natural gas rate of 56.2¢ per therm, and eight loads of clothes per week.

* * * * *

Emily H. Rock,

Secretary.

[FR Doc. 88-11586 Filed 5-23-88; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6776; 34-25709; 35-24645; 39-2167; IC-16403; IA-1122]

Revision of Rule Concerning Members' and Employees' Securities Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Rule 5 of the Commission's Conduct Regulation, 17 CFR 200.735–5, contains the restrictions on securities ownership and transactions applicable to Commission members and employees. The restrictions are intended to prevent: (1) The utilization of non-public information for personal benefit; and (2) transactions which are most likely to raise an appearance of impropriety. Since these rules were last amended in 1980, changes have occurred in the securities industry such as the acquisition of broker-dealer subsidiaries and affiliates by entities not regulated by the Commission, and the streamlining of the registration process to permit certain issuers to file short form registration statements which reference other publicly available documents. The Commission is amending its rules to reflect such changes in the restrictions which govern the securities transactions of Commission members and employees.

EFFECTIVE DATE: May 24, 1988, except for § 200.735–5, paragraphs (e), (f) and (l) which become effective August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Myrna Siegel, Ethics Counsel, Office of the General Counsel, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2430.

SUPPLEMENTARY INFORMATION: In 1953, the Commission first adopted regulations restricting the securities transactions of its members and employees. The regulations were refined in 1966 and again in 1980. They reflect a determination that members and employees should not be barred from engaging in securities transactions, but rather that such transactions should be restricted to the degree necessary to prevent both actual and apparent conflicts of interest.

In 1953, the restrictions drew a bright line between entities regulated by the Commission, i.e., broker-dealers, investment companies and public utility holding companies and those merely registered with the Commission. While transactions in the securities of the regulated entities were prohibited, transactions in the securities of registered entities were permitted except if there was activity at the Commission involving those securities. However, over the years changes in the industry and other circumstances have required refinement of the rules when the Commission determined that the burden of the regulations far outweighed their necessity to effectuate their purpose.

Accordingly, the bright line distinction between regulated and registered entities was relaxed in 1980 when most employees were permitted, for the first time, to purchase securities of investment companies. Among other things, the prohibition on employees' ownership of money market funds was thought to have an unduly burdensome effect on employees in an era of high interest rates and regulatory limitations on bank deposit yields. Balancing that effect against the need to prevent real or apparent conflicts of interest, the Commission determined that a narrower restriction on purchasing investment company securities was appropriate. Accordingly, the rule was amended to retain the absolute prohibition on purchases of investment company securities only for Commissioners and for Senior Executive Service members in the Division of Investment Management.

Since 1980 changes have occurred which have raised questions as to the application of the rules to altered situations and the necessity for retaining certain restrictions. For example, in the last few years, the acquisition or formation of broker-dealer subsidiaries by public companies, not previously involved in the securities industry, has raised questions as to the application of the Commission prohibition against members and employees having a beneficial interest in any broker, dealer or investment adviser. On its face the rule appears to prohibit Commission members and employees from holding securities in companies which acquire or form broker-dealer subsidiaries. Therefore, a member or employee could not retain holdings in any company which acquired or formed a broker-dealer subsidiary. As the influence of such subsidiary or affiliate on the parent is sometimes small, this broad prohibition was believed to unduly restrict the investment opportunities of Commission employees.

The Commission has determined that the following significant changes to Rule 5 were necessary to appropriately prevent real and apparent conflicts of interest without unnecessarily retricting the financial interests of its members and employees.

1. Shares of a non-regulated issuer with a broker or dealer subsidiary or affiliate may be purchased so long as less than 10% of the gross revenues of the issuer and its subsidiaries arises from broker-dealer activities.

2. The Commission requires its employees to hold securities for 11 months after purchase. Since 1953, when the holding period was established at one year (it was reduced to 11 months in 1980), the turnover of shares in the market has increased significantly. The holding period will be reduced to six months. The switching of funds within a "family" of mutual funds will be permitted during the six month period. Sales within the six month period for less than the purchase price are permitted if they are pursuant to a stop-loss order entered at the time of purchase.

3. Commissioners and Senior Executive Service employees in the Division of Investment Management are prohibited, after entering on duty, from purchasing shares in a company registered under the Investment Company Act. These persons are permitted to retain mutual funds shares owned at the time they join the Commission. The change will permit them to reinvest dividends on such shares.

4. Members and employees are currently required to report any change in securities holdings within five days. The rule change will require only annual reporting of changes in money market fund holdings or changes which do not occur as a result of an immediately preceding investment decision such as automatic dividend reinvestments and stock splits.

5. Trading in commodity futures (other than stock index futures) will no longer be prohibited.

6. The prohibition on purchasing securities of an issuer with a pending registration statement is eliminated if the filing is made on a short form registration statement or on a registration statement which became effective without review by the staff.

7. The applicability of certain Rule 5 restrictions to qualified blind trusts has been eliminated at the request of the Office of Government Ethics.

Regulatory Flexibility Act

No regulatory flexibility analysis (or certification that one is not required) is necessary because the rules are procedural, and thus not within the definition of "rule" for purposes of Chapter 6, Title 5, U.S.C.

The Commission finds that the foregoing action relates solely to rules of agency procedures or practice and, accordingly, that notice and prior publication for comments under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, are unnecessary. *See* 5 U.S.C. 553(b).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Conflicts of interest, Freedom of Information, Privacy, Securities.

Text of Amendment

In consideration of the foregoing, the Commission hereby amends Part 200 of Chapter II, Title 17, Code of Federal Regulations as follows:

PART 200—ORGANIZATION, CONDUCT AND ETHICS, AND INFORMATION AND REQUESTS

1. The authority citation for Subpart M of Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11; E.O. 11222; 3 CFR, 1964–1965 Comp. 5 CFR 735.104.

2. Section 200.735–5 is revised as follows:

§ 200.735–5 Securities transactions.

(a)(1) This section applies to all transactions effected by or on behalf of a member or employee. This includes transactions for the accounts of other persons effected by the member or employee, directly or indirectly, under a power of attorney or otherwise. In addition, a member or employee is considered to have sufficient interest in the securities transactions of his or her spouse or unemancipated minor child or other member of his or her immediate household so that transactions effected by or on behalf of such persons must be reported and are subject to all the terms of this section.

(i) Except, this section shall not apply to securities transactions of a legally separated spouse living apart from the member or employee, including transactions for the benefit of a minor child, if the member or employee has no power to control and does not, in fact, advise or control with regard to such transactions. If the member or employee has knowledge of securities held by a separated spouse or for the benefit of a minor child, the disqualification provisions of Rule 6, 17 CFR 200.735–6, and 18 U.S.C. 208 are applicable.

(ii) For purposes of this section "member of his or her immediate household" means a resident of the member's or employee's household who is related to the employee by blood or marriage or who is in the legal care and/or custody of the employee by reason of adoption, prospective adoption or guardianship.

(2) Members and employees are prohibited from recommending or suggesting the purchase or sale of securities:

(i) Based on non-public information gained in the course of employment; or

(ii) Which a member or employee could not purchase because of the restrictions of this rule, in any circumstance in which the member or employee could reasonably expect to benefit from the recommendation, or to anyone over whom the member or employee has or may have control or substantial influence.

(b)(1) No member or employee shall effect or cause to be effected any transaction in a security except for bona fide investment purposes. Therefore, all securities purchased by a member or employee must be held for a minimum of six months. Except, this holding period is not applicable to

(i) Securities sold for less than the purchase price pursuant to a stop-loss order entered at the time of purchase and submitted to the Office of Personnel with the report of purchase;

(ii) Money market fund shares; [1]

(iii) Securities purchased by a member or employee prior to entrance on duty with the Commission;

(iv) Debt securities with an initial term of less than six months which are held to term;

(v) Shares of a unit investment trust having a term of less than six months; or

(vi) The transferring of funds within a "family" of registered investment companies.

(2) For purposes of this provision a "family" means any two or more registered investment companies which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services.

(c) No member or employee shall effect any purchase or sale of an option, future contract, or option on a future contract involving a security or group of securities.

(d) No member or employee shall

(1) Carry securities on margin;

(2) Borrow funds or securities, with or without collateral, for the purpose of purchasing or carrying securities with the proceeds, unless the prior approval of the Commission has been secured; or

(3) Sell a security which he or she does not own, or consummate a sale by the delivery of a security borrowed by or for such member's or employee's account.

(e)(1) Except as provided in this paragraph (e) or paragraph (f) below, members and employees are prohibited from purchasing or selling any security which is the subject of a registration statement filed under the Security Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or a letter of notification filed under Regulation A, or any security of the same issuer while such a registration statement or letter of notification is pending or during the first 60 days after its effective date. This prohibition shall not apply to:

(i) A security which is the subject of a pending registration statement filed on Forms S–2, S–3, S–8, F–2, F–3, 8–A, or 8–B; or

(ii) Offerings, except initial public offerings, of shares by an investment company, other than a closed-end investment company, or to offerings by

[1] For purposes of this rule a "money market fund" is defined as an open end investment company whose investment policy calls for investment of at least 80% of its assets in debt securities maturing in 13 months or less.

a registered separate account (as defined in section 1(a)(37) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(37)) which become effective pursuant to 17 CFR 230.486(b).

(2) Securities of a unit investment trust whose registration statements become effective pursuant to 17 CFR 230.487 may be purchased immediately upon effectiveness of the registration statement.

(3) Securities which are registered for delayed distribution pursuant to 17 CFR 230.415 may be purchased 60 days after the registration becomes effective. The subsequent filing of a pricing amendment or sticker does not revive the prohibition on purchase.

(f) A member or employee may sell a security which is referred to in paragraph (e) of this section only if:

(1) The member or employee certifies that he or she has no information which is not publicly available concerning or relating to the issuer; and

(2) The employee's Division Director, Office Head or Regional Administrator certifies that the employee has not participated in the registration processing. Members, Division Directors, Office Heads, and Regional Administrators are required to submit such certification on their own behalf to the Director of the Office of Personnel.

(g) No member or employee shall purchase any security which to his or her knowledge is involved in any pending investigation by the Commission, or in any proceeding before the Commission, or to which the Commission is a party.

(h) No member or employee shall purchase any security of any company which is in a receivership or bankruptcy proceeding in which the Commission has filed a notice of appearance.

(i) No member or employee shall purchase securities of:

(1) Any holding company registered under section 5 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79e), or any subsidiary thereof, or

(2) Any company, if its status under such Act, or the applicability of any provision of the Act to it, is known by the employee to be under consideration.

(j) The restrictions imposed in paragraphs (e), (g), (h), and (i) of this section do not apply:

(1) To the exercise of a privilege to convert or exchange securities;

(2) To the exercise of rights accruing unconditionally by virtue of ownership of other securities (as distinguished from a contingent right to acquire securities not subscribed for by others);

(3) To the acquisition and exercise of rights in order to round out fractional shares;

(4) To the acceptance of stock dividends on securities already owned; to the reinvestment, under a reinvestment program, of cash dividends on a security already owned; or the participation in a periodic investment plan for the purchase of a security when the original purchase was consistent with the provisions of this rule; or

(5) Investments in funds established pursuant to the Federal Employees Retirement System.

(k) No member or employee holding a Senior Executive Service position in the Division of Investment Management shall purchase any securities issued by any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*). Except, capital or income dividends received by persons subject to this rule from securities acquired prior to entrance on duty, may be reinvested, but no optional investments may be made.

(l) No member or employee shall have a beneficial interest in any broker, dealer or investment adviser through ownership of securities or otherwise. However, if a corporation acquires or establishes a subsidiary or affiliate subject to regulation by the Commission ("regulated entity"),

(1) A member or employee may retain his or her existing holdings in the corporation, provided the security was originally acquired in compliance with the provisions of this rule or prior to entry on duty with the Commission.

(2) Purchases of the corporation's shares will be permitted so long as the regulated entity subsidiary or affiliate provides less than 10% of the corporation's gross revenue. Except for reinvestment of cash dividends, additional purchases are prohibited when the regulated entity provides 10% or more of the corporation's gross revenues.

(3) A member or employee who owns shares in a corporation with a regulated entity subsidiary or affiliate is disqualified from participating in any matter including rulemaking which affects the regulated entity unless the disqualification is waived in accordance with the provisions of Rule 6, of this section, 17 CFR 200.735–6, and 18 U.S.C. 208(b).

(m)(1) Annually, in accordance with the procedures adopted by the Director of Personnel, every member and employee shall furnish the Director of Personnel with a complete list of all securities in which he or she has an interest. Employees having no interests in securities and required to so state.

(2) Except as provided in paragraphs (m)(3) and (m)(4) of this section, members and employees shall report every acquisition or sale of any security within five business days of the transaction date or date confirmation is received. (Reports submitted by employees in field offices must be placed in the mails within five business days of the transaction date or date the confirmation is received for each transaction.)

(3) After the initial purchase of shares in a mutual fund, employees shall report holdings in that mutual fund only on the annual statement.

(4) Changes in holdings, other than by purchase, which do not affect disqualification, such as those resulting from the automatic reinvestment of dividends, stock splits, stock dividends or reclassifications, may be reported on the annual statement rather than when notification of the transaction is received. But, the acquisition of holdings by, for example, gifts, inheritance or spin-offs, which may result in additional disqualifications pursuant to Rule 6 of this section, 17 CFR 200.735–6, and 18 U.S.C. 208 shall be reported within five days of the receipt of the notice of the change in holdings.

(n) At the time of taking the oath of office, or prior thereto if requested by the Director of Personnel, a new member or employee shall provide to the Office of Personnel, as requested, information relating to—

(1) Securities owned by or held for the benefit of him or her, or his or her spouse or unemancipated minor child, or a member of his or her immediate household, or by any trust or estate of which he or she is a trustee or other fiduciary or beneficiary, or by any person for whom he or she effects transactions under a power of attorney or otherwise;

(2) Accounts with securities firms;

(3) Close relatives (i.e. children, parents, grandparents, siblings, aunts, uncles, or like relations of a spouse), who are partners or officers of securities firms, investment advisers, or registered public utility holding companies or their affiliates;

(4) The holding of office in or being a director of any company which has public security holders; and

(5) Such other information as may be required by the Director of Personnel. Employees are required to advise the Office of Personnel of changes in the foregoing information within ten business days of the time the new information is learned.

(o) Paragraphs (b), (m), and (n) of this section do not apply to personal notes, individual real estate mortgages, securities issued by the U.S. Government or its agencies, and securities issued by building and loan associations or cooperatives.

(p) Any member or employee who is a trustee or other fiduciary or a beneficiary of a trust or estate holding securities not exempted by paragraph (o) of this section, shall report the existence and nature of such trust or estate to the Director of Personnel. The transactions of such trust or estate, which is not a qualified blind trust, shall be subject to all the provisions of this section except if the member or employee did not create the trust, is solely a beneficiary, has no power to control, and does not in fact control or advise with respect to the investments of the trust or estate, unless the Commission shall otherwise direct in view of the circumstances of the particular case.

(q) The Director of Personnel, or his designee, is authorized to require the disposition of securities acquired as a result of a violation of the provisions of this section, whether unintentional or not. Repeated violations shall be reported to the Commission for appropriate action.

(r) Any member or employee who believes that the application of any of the provisions of this rule will result in undue hardship in a particular case may make a written application to the Commission (through the Director of Personnel) setting out, in detail, the reasons for that belief and requesting a waiver. However, as a matter of policy the Commission favors a strict interpretation of the provisions of this rule.

By the Commission.
Dated: May 17, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–11629 Filed 5–23–88; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 88–022]

National Sweepstakes Regatta, Redbank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule; notification of effectiveness of regulations.

SUMMARY: This document puts into effect the permanent regulations, 33 CFR 100.307, for the annual National Sweepstakes Regatta to provide safety for both the public and participants in speed boat races.

EFFECTIVE DATE: 6:00 am and 6:00 pm on both August 20 and August 21, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223–8311.

Drafting Information

The drafters of this notice are LT L. BROWN, project officer, First Coast Guard District Boating Safety Division, and CDR M.A. LEONE, project attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulations governing the 1988 running of the National Sweepstakes Regatta on the Navesink River in Redbank, New Jersey. The regulations, 33 CFR 100.307, will be in effect from 6:00 am to 6:00 pm on August 20, 1988 and again from 6:00 am to 6:00 pm on August 21, 1988. The event consists of several speedboat races, of about 50 minutes each, each day during the effective period of regulation. The regulated area is that portion of the Navesink River in Redbank, NJ between the New Jersey Route 35 bridge and a line running across the Navesink River connecting Guyon and Lewis Points. Further public notification of these regulations will be accomplished through publication of the regulations in the First Coast Guard District Local Notice to Mariners.

Dated: May 10, 1988.

R.L. Johanson,
Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 88–11567 Filed 5–23–88; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Buffalo Regulation 88–001]

Safety Zone Regulations; Bethlehem Steel, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the south end of Buffalo, N.Y. Outer Harbor. The zone is needed to protect salvage vessels in the area around Barge 45 from a safety hazard associated with vessel traffic into the area.

Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 27 April 1988. It terminates on 01 June 1988 unless sooner terminated by the COTP.

FOR FURTHER INFORMATION CONTACT: LT Cumming (716) 846–4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent the interference and potential damage which could be caused if vessels not involved in the salvage operations entered the area.

Drafting Information

The drafters of this regulation are LT Cumming, project officer for the Captain of the Port, and LCDR Mosebach project attorney, 09th Coast Guard District Legal Officer.

Discussion of Regulation

The incident requiring this regulation resulted from Barge 45 striking the Peace Bridge in August 1986. The barge was temporarily moved to the shoreline at Bethlehem Steel. Now the barge is to be cut in half, lifted one piece at a time, and placed entirely on the beach in preparation for public auction.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0901 is added to read as follows:

§ 165.T0901 Safety Zone: South end of Buffalo, NY Outer Harbor

(a) *Location.* The following area is a safety zone: Northern boundary formed by a line extending from South Side Light (Light List NR 2895) on a bearing of 065 degrees true for 700 feet to position 42–50′ 06″ N, 78–51′ 54″ W. An eastern boundary formed by the line extending

from 42–50' 06" N. 78–51' 54" on a bearing of 148 degrees true to its intersection with the shoreline at Bethlehem Steel. The southern and western boundaries of the zone are the shoreline at Bethlehem Steel and Stony Pt., respectively.

(b) *Effective date.* This regulation becomes effective on 27 April 1988. It terminates on 01 June 1988 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 4, 1988.

J.H. Johnson,

CDR, U.S. Coast Guard, Captain of the Port.

[FR Doc. 88–11569 Filed 5–23–88; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 26 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the regulations implementing the new rates, fees, and mail classifications, the revised regulations on unauthorized use of postage meters, and the revised regulations on forwarding of fourth-class mail, have previously been published in the Federal Register.

EFFECTIVE DATE: April 3, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268–2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 26, dated April 3, 1988. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal for issue 26 covers the minor changes not previously described in interim or final rules published in the Federal Register.

Summary of Changes

* * * * *

Section 115.3, *Permissible Detention of Mail,* is revised to conform with the rules of practice issued by the Judicial Officer on October 1, 1987, for cases involving mail withheld from delivery pursuant to 39 U.S.C. 3004 (mail addressed to a place or business not the regular address of the addressee) by joining them with the existing rules of practice for cases involving mail withheld from delivery under 39 U.S.C. 3003 (mail bearing a fictitious name or address). The changes bring the DMM, *Administrative Support Manual* (ASM) and the **Federal Register** into conformity with the changed rules of practice.

Exhibit 122.63a, *Optional Multi-ZIP Coded Post Office,* is revised to reflect ZIP Code changes in Florida. **Exhibits 122.63c, 122.63d, 122.63e, 122.63f, 122.63g, 122.63i and 122.63j** are also revised. The new or changed listings appear in bold type. (PB 21650. 12–17–87; PB 21654, 1–14–88). Changes to 122.63c and 122.63d effective 3–20–88, (PB 21657, 2–4–88). Changes to 122.63e, 122.63f, 122.63g, 122.63i, and 122.63j appear in PB 21660, 2–25–88. The mandatory compliance date for those changes is April 9, 1988.

Exhibits 122.63p, 122.63q, and 122.63r (Mixed States Labeling Lists) are revised to require mailers to use a new pressure-sensitive Mixed States package label. It is tan, with "MS" printed on it. This rule became effective and mandatory on 3–20–88 (PB 21654, 1–14–88).

Section 135, *Free Matter for the Blind or Handicapped Persons,* is revised for clarity and to include provisions for postmasters to establish and maintain listings of individuals eligible to mail matter under these conditions. The listing provisions are in accordance with the records system, USPS 010.060 (*Administrative Support Manual,* Appendix). (PB 21659, 2–25–88).

Section 137.15, *Forwarding Mailing Records for Franked Mail,* is revised to alter label printing requirements in 137.155b, to comply with the label printing restriction of 26 characters per line. (This change became effective January 18, 1988 (PB 21647, 11–16–87).

* * * * *

Section 145.3, *Preparation of Permit Imprints,* is revised. That part of the text in 145.31 pertaining to the placement of permit imprints is relocated in new section 145.32 along with instructions on the placement of imprints on letter-sized mailpieces, address labels, and flat-sized mailpieces. Former 145.32 is renumbered 146.33.

Section 145.44, *Company Permit Imprints for Any Class of Mail,* is revised to require a complete domestic return address on all mailpieces with a company style permit imprint. A complete return address enables the Postal Service to contact the mailer promptly when it is necessary to inspect or audit a mailer's records in accordance with 145.44. The term, *domestic,* is added as a requirement to ensure that use of an international or foreign address does not impede the Postal Service's ability to contact mailers who use the company style permit imprint.

* * * * *

Section 158, *Mail Claim Check System,* is revised to improve this service and achieve significant cost reductions. The major change involves using only one form, PS Form 3849, *Delivery Notice/Reminder/Receipt,* to provide initial, second, and final notification of undelivered articles. It also will be used as a delivery receipt and a claim check. This change also provides for a system of filing by address rather than article number. The new form replaces Forms 3849–A and 3849–B which will be obsoleted, but which may be used until supplies are exhausted. The new form is similar to 3849–B. Form 3849–C and Form 3849–D remain unchanged and are not affected by this revision.

* * * * *

Section 159.5, *Dead Letter Branches and Service Areas,* is revised to show that the St. Paul (MN) Dead Letter Branch will serve all of Illinois and Michigan. The change became effective 03–20–88; however, the Chicago Dead Letter Branch is closed effective 4–1–88 (PB 21651, 12–24–87).

Chapter 2, *Express Mail,* section 224.222b is revised to reflect adoption of PS Form 3849–C, *Express Mail Notice of Attempted Delivery Card.*

Sections 230, 251, 252.1, 263.1, 263.3, 263.4, 293.1 and 296.11 are revised. Sections 211.3, 221.12d, 221.4, 226, 273.35, and 273.43 are added and section 211.3 renumbered. These changes provide for Express Mail Military Service, a two-day expedited mail service now available between selected post offices in the United States and certain APOs and FPOs overseas.

* * * * *

Sections 382.3 *Presort Rate Postage on Residual Pieces,* and **661.21,** *Identical Weight Pieces,* are revised to incorporate the provisions of Handbook F–1, *Post Office Accounting Procedures,* which allow mailers to pay the difference between the postage affixed to mailpieces and the applicable postage through an advance deposit account for pieces bearing metered postage. The provisions are applicable for pieces mailed as part of mailings presented at the ZIP + 4, carrier-route and presorted First-Class rates and for pieces mailed as part of mailings presented at the carrier-route and 5-digit third-class rates. The advance deposit account may also be used for the payment of additional postage required when a metered mailing is not acceptable at the requested bulk rate (disqualified) and the mailer elects to pay the higher applicable rate (PB 21661, 3–3–88).

Sections 411.2, 411.3, 411.4, 422.2, 426, 482, 621.1 and 721.1, are revised to reorganize and clarify the regulations governing the mailing of nonsubscriber and nonrequester copies of second-class publications (PB 21664, 3–24–88).

Section 442, *Additional Entry Applications,* is revised to recommend that publishers of second-class publications request additional entry points at least 40 days prior to the desired effective date. This will give the Postal Service time to review the transportation, processing and distribution systems at the additional offices. Since it is much more efficient to evaluate staffing and equipment requirement prior to deposit of the mail than it is to do so afterward, this will enable the Postal Service to provide any resources needed for additional volumes. Further, in instances where the Postal Service has already established transportation service contracts according to a publication's previous distribution plan, advance notice will allow the Postal Service to amend or, if necessary cancel, those contracts more economically. This ruling became effective 3–20–88 (PB 21654, 1–14–88)

Section 452.1d, *General Addressing,* (of second-class mail), is revised to give mailers the option of placing a pink vertical identification stripe on their second-class address labels. If used, it must be placed along the left-hand edge of the label and may consist of either a strip of solid pink or a strip of pink "2C" characters printed vertically on the address label. Because this is authorized on an optional basis, employees are reminded that all second-class mail whether or not identified with a pink stripe, must receive surface preferential handling.

Sections 463.241, 464.21, 667.121, and 667.123 which concern package labels are revised to include a new pressure sensitive Mixed States package label for use on all packages of letters or flats containing mail made up according to the Mixed States Labeling Lists found in Exhibits 122.63p, 122.63q, and 122.63r. Mixed states packages must be labeled with the tan label MS or the mixed states optional endorsement line on the top copy of each package. This ruling became mandatory on 3–20–88 (PB 21654, 1–14–88).

Chapter 6, *Third Class Mail, Section 623.6, Identification,* (of third class mail sent at special bulk third-class rates) is revised to clarify that all matter sent at these rates must identify the *authorized nonprofit organization.* This change avoids the incorrect interpretation that such mail must identify the permit holder of the permit imprint used on the mail, even when the permit imprint belongs to an independent mail house serving the authorized nonprofit organization. The change makes it absolutely clear that the intent of the regulation is, and always has been, that the name and address of the organization authorized to mail at the special rates must be identified on the mailpiece.

Section 642, *Application to Mail at Special Bulk Rates,* is revised to reflect the adoption of a national application, PS Form 3623, *Application for Special Bulk Third-Class Rates at Additional Mailing Office.* A copy of the new form appeared in Postal Bulletin 21655, 1–21–88, page 7. This change became effective 3–20–88.

Exhibit 722.1, *Within BMC (Intra-BMC/ASF) Rate ZIP Code Service Areas,* is revised to show Dallas 679, 706, 710–712, 718, 733, 739, 747, 750–799, 885; Des Moines 500–516, 520–528, 612, 680–689. This became effective 01–01–88 (PB 21651, 12–24–87).

Section 914, *Collect on Delivery (COD) Mail,* is revised to simplify COD regulations and to ensure that all post offices follow the same procedures. No longer will post offices of different sizes use different forms and procedures to record the receipt and delivery of COD mail. Highlights of the COD change follow:

a. Basic delivery instructions have been deleted from section 914. Reference is now made to 911.4, which covers the delivery of accountable mail.

b. Form 3814, *Record of COD Parcels Held for Delivery,* has been eliminated. Form 3849, *Delivery Notice/Reminder/Receipt,* will be used in its place.

c. Form 3814–C, *Recording and Checking COD Parcels and Funds at Offices with 190–949 Revenue Units,* has been eliminated. Form 3867, *Registered, Express Mail, COD, and Certified Matter Received for Delivery,* will be used in its place.

d. Form 3818, *Authorization to Change COD Charges or Addressee,* has been eliminated. Mailers must now send a written request to the postmaster at the office of address in order to change the amount of COD charges or the name of the addressee. No form will be provided for this purpose.

e. Form 3850, *Record of Delivered Registered, Numbered Insured, Certified and COD Mail,* has been eliminated. Form 3849 will be used to record the delivery of all accountable mail.

f. Form 3868, *Carrier's Clearance Receipt,* has been eliminated. Form 3821, *Bulk Receipt for COD Mail and Funds,* has been renamed *Clearance Receipt.* It has also been revised to include the information on Form 3868.

Section 942.2, *United States Savings Stamps,* is revised to comply with the updating of Handbook F–1, *Post Office Accounting Procedures,* recognizing that post offices no longer redeem U.S. savings stamps posted in albums and referring holders to a Federal Reserve Bank or branch or the Bureau of Public Debt, Parkersburg, WV 26106–1328.

Minor, nonsubstantive changes include: 367.24 (title), 642.3, 667.221 (title), 667.322 (title), 667.422 (title), 911.41, 912.2.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
26	April 3, 1988	53 FR 10557

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–11606 Filed 5–23–88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3318/R957; FRL-3384-3]

[1 Alpha-(S),3 Alpha(Z)]-(±)-Cyano-(3-Phenoxyphenyl)Methyl 3-(2-Chloro-3,3,3-Trifluoro-1-Propenyl)-2,2-Dimethylcyclopropanecarboxylate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the synthetic pyrethrin [1 alpha-(S),3 alpha(Z)]-(±)-cyano-(3-phenoxylphenyl)methyl 3-(2-chloro-3,3-3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate (also known as PP321 and under the trade name, Karate) in or on various raw agricultural commodities. This regulation to establish maximum permissible levels for the combined residues of the chemical was requested pursuant to a petition by ICI Americas, Inc.

EFFECTIVE DATE: May 24, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of January 15, 1986 (51 FR 1840), which announced that ICI Americas, Inc., Agricultural Chemicals Division, Wilmington, DE 19897, had submitted a pesticide petition, PP 6F3318, proposing to establish tolerances in or on the raw agricultural commodities cottonseed at 0.01 part per million (ppm); meat, fat, and meat byproducts of cattle, goats, horses, sheep, and hogs at 0.01 ppm; and milk at 0.01 ppm for the combined residues of the insecticide [1 alpha-(S),3 alpha(Z)]-(±)-cyano-(3-phenoxyphenyl) methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate.

EPA issued a notice in the Federal Register of March 30, 1988 (53 FR 10288) which amended the petition by increasing the proposed tolerance on cottonseed to 0.05 ppm.

No comments were received in response to the notices of filing.

On May 13, 1988, the Agency issued a conditional registration for [1 alpha-(S),3 alpha(Z)]-(±)-cyano-(3-phenoxyphenyl) methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate on cottonseed with a final expiration date of August 30, 1990. One of the conditions for registration is the submission of a fish life-cycle test (72–5) to determine the effect of the insecticide on aquatic organisms. This study must be submitted to the Agency by August 30, 1990. Another condition of the registration is the submission of an avian reproduction test (71–4) to determine the effect of the insecticide on birds. Owing to the lack of these studies, the Agency is establishing the tolerance for this pesticide on cottonseed; meat, fat, and meat byproducts of cattle, goats, horses, sheep, and hogs; and milk with an expiration date of August 30, 1991, to cover residues expected to be present during the period of conditional registration.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a 12–month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 0.5 mg/kg/day; 24-month rat and mouse chronic feeding/oncogenicity studies with systemic NOELs of 2.5 mg/kg/day and 15 mg/kg/day with no oncogenic effects observed at dose levels up to and including 12.5 mg/kg/day and 75 mg/kg/day, the highest dose levels tested for rats and mice, respectively. No teratogenic effects were observed in rats at dose levels up to and including 30 mg/kg/day (the highest dose levels tested). The following genotoxicity tests were negative: a gene mutation assay (Ames), a chromosomal aberration study in rodents, an *in vitro* cytogenetics assay, and a gene mutation study in Lymphoma cells.

The acceptable daily intake (ADI), based on a NOEL of 0.5 mg/kg body weight/day from a 3-generation reproduction study and a safety factor of 100, is 0.005 mg/kg body weight/day. The theoretical maximum residue contribution from the proposed tolerances is 0.000129 mg/kg body weight/day; this is equivalent to about 2.60 percent of the ADI.

The metabolism of the chemical in plants for this cottonseed use is adequately understood. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the Pesticide Analytical Manual Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from:

By mail: Information Service Section (TS–767C), Program Management and Support Division, Office of Festicide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–3262.

The tolerances established by amending 40 CFR Part 180 will be adequate to cover residues in or on cottonseed and the other commodities included in this rule.

There are currently no actions pending against the registration of this product. This pesticide is considered useful for the purpose for which the tolerances are sought.

Based on the above information and data considered, the Agency concludes that the tolerances would protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: May 16, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.438 is added, to read as follows:

§ 180.438 [1.alpha-(s),3 alpha (Z)]-(+)-cyano (3-phenoxyphenyl) methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

(a) Tolerances, to expire August 30, 1991, are established for the combined residues of the insecticide [1 alpha–(S),3. alpha (Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane in or on the following raw agricultural commodities:

Commodities:	Parts per million
Cattle, fat	0.01
Cattle, meat	.01
Cattle, mbyp	.01
Cottonseed	.05
Goats, fat	.01
Goats, meat	.01
Goats, mbyp	.01
Hogs, fat	.01
Hogs, meat	.01
Hogs, mbyp	.01
Horses, fat	.01
Horses, meat	.01
Horses, mbyp	.01
Milk	.01
Sheep, fat	.01
Sheep, meat	.01
Sheep, mbyp	.01

[FR Doc. 88–11576 Filed 5–23–88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 87–017]

Assistance Towing Licenses

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations for the licensing of maritime personnel to include specific licensing and manning requirements for all vessels, regardless of size, which engage in towing a disabled vessel for consideration. This regulation was developed in response to a statutory change requiring such licenses. This action is intended to provide assurance to all involved parties that persons who provide assistance towing services have met minimum established standards for knowledge and experience.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT: LCDR Gary R. Kaminski, Merchant Vessel Personnel Division, Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0221.

SUPPLEMENTARY INFORMATION: On August 20, 1987, the Coast Guard published a Notice of Proposed Rulemaking (52 FR 31429). The comment period ended on October 19, 1987. Seven hundred and sixteen written comments were received before this date. Numerous comments were also received after the comment period closed. In addition, this rulemaking was discussed at public meetings of the National Towing Safety Advisory Committee and the National Boating Safety Advisory Council on October 29, 1987, and November 10 and 11, 1987, respectively. All late comments and summaries of the discussions at these public meetings were read and filed in the docket. However, because they did not present any new information or substantive issues which had not been previously raised, the comment period was not reopened to provide an opportunity for rebuttal by other interested parties.

Drafting Information

The principal persons involved in drafting this rule are Lieutenant Commander Gary R. Kaminski, Project Manager, and Commander Gerald A. Gallion, Office of the Chief Counsel, Project Attorney.

Discussion of Comments

Many commenters felt that boaters had a right to free assistance from the government, particularly the Coast Guard Auxiliary, because of the various taxes they pay. They objected to their calls for assistance being referred to commercial towers in lieu of a Coast Guard or Coast Guard Auxiliary response. Other commenters, primarily towers, objected to having to compete with the free assistance offered by the Coast Guard Auxiliary.

These concerns are not specifically applicable to assistance towing licenses but rather are comments on the Coast Guard's towing and assistance policy. The legislation passed by Congress amending 46 U.S.C. 8904 clearly requires that licensing standards be established. This rulemaking implements the provisions of that statute. The Coast Guard is currently studying the effectiveness of its policy and the long term effect it may have on the safety of the boating public as a related but separate issue.

Many commenters recommended that vessel and equipment inspections, specific vessel and equipment requirements, and specific manning and crew requirements be established.

The vessel inspection laws in Title 46, U.S. Code, and the implementing regulations do not subject most towing vessels, including those engaged in assistance towing, to Coast Guard inspection. All uninspected vessels are, however, subject to the requirements of Chapter 41 of Title 46, U.S. Code and the regulations in 46 CFR Parts 24 through 26 for vessel operations and lifesaving and firefighting equipment.

Although the Coast Guard does not have the authority to specify an exact manning scale for an uninspected vessel, 46 CFR Part 15 contains manning requirements for licensed and unlicensed personnel on uninspected vessels. The vessel's owner and/or master must ensure that these requirements are complied with.

Many commenters also recommended other regulatory controls including bonding or liability insurance, and vessel operating restrictions based on size and/or route. The view was also expressed that the fees charged by commercial towers were too high and that some form of consumer protection should be required, possibly by regulating fees or requiring fees to be posted or published.

Like the comments directed to the towing assistance policy and those recommending vessel inspections, these recommendations are not directly related to the specific licensing requirements which were proposed. More importantly, the Coast Guard has no statutory authority to implement these recommendations. As an alternative, the Coast Guard would support and encourage self-regulation through voluntary compliance with industry-developed standards. In other areas of the marine industry, standards promulgated by associations of private entities and adhered to by the members have served as satisfactory alternatives to new federal laws and regulations. One such association, the Committee for Private Offshore Rescue and Towing (C–PORT), is organized as "* * * a self regulating body * * *". Their August, 1987 newsletter reported that C–PORT was in the process of developing a draft of ethical standards to be presented to the membership. Continued efforts in

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this regard by C-PORT and other assistance towers are encouraged by the Coast Guard.

Substantial comment was received which also recommended a practical as well as the proposed written examination, "more extensive training or qualifications" which were unspecified, and periodic recertification of licensed towers.

The Coast Guard's licensing program, which was previously administered by the Bureau of Marine Inspection and Navigation and the U.S. Steamboat Inspection Service, dates from the mid 1800's and has historically relied solely on prerequisite experience and a written examination for determining eligibility for a license. This system has proved to be adequate for licenses for all sizes and classes of vessels from the smallest passenger charter to the largest supertanker. For this reason no provision for a practical demonstration of skills was incorporated in the final rule. The experience required to qualify for a license coupled with a comprehensive written examination is considered to be a sufficient measure of an applicant's minimum qualifications.

All licenses must be renewed every 5 years, and the requirements for renewal are specified in 46 CFR 10.209. In order to renew a license an applicant must have either 1 year of sea service or 3 years of employment in a closely related position during the past 5 years, or must either pass a comprehensive renewal exercise or complete an approved refresher training course. These requirements for all licenses are considered to be sufficient to ensure an applicant's skills and knowledge are current without instituting additional recertification criteria for assistance towing licenses.

Various comments were also received regarding which licenses the assistance towing endorsement and examination would be applicable to. As proposed, the additional endorsement would be required on all licenses except a license as operator of uninspected towing vessels and licenses as master or mate authorizing service on inspected steam or motor vessels of more than 1600 gross tons. Under the proposal, holders of licenses as operator of uninspected passenger vessels with the assistance towing endorsement would be authorized to engage in assistance towing only with vessels of less than 26 feet in length.

Several commenters recommended that the endorsement be required even on the "upper level" or "unlimited" licenses for vessels over 1600 gross tons, because the holders of these licenses were likely to have little or no experience in small vessel towing. The Coast Guard agrees that, although the holders of these licenses have broad experience and knowledge, some may have limited experience in small boat handling. This is not considered to be a detriment to safety however. These individuals are seasoned mariners who, if entering the assistance towing business, will exercise prudence and judgment commensurate with the level of their license by thoroughly familiarizing themselves with the operation before undertaking it. The traditional authority of these licenses has always included all lesser service and routes, and this authority has been retained in the final rule.

It was also recommended that licenses as master or mate of freight and towing vessels and licenses as master or mate of vessels engaged in the mineral and oil industry not be required to be endorsed for assistance towing because towing is already authorized by these licenses or is a routine part of the business for which they were issued. The comments also noted that these licenses have traditionally been considered superior to licenses as operator of uninspected towing vessels and have always authorized the holder to serve as an operator of uninspected towing vessels.

The Coast Guard agrees with these comments. The requirement for an additional endorsement to authorize the license holder to engage in assistance towing services has been changed to apply only to those licenses as master, mate, and operator of vessels of 200 gross tons and under. The experience required to obtain a license as master or mate of inspected vessels of over 200 gross tons is equivalent to that required for a license as operator of uninspected towing vessels. This experience is considered sufficient to develop the basic seamanship skill necessary to engage in assistance towing. Also, the current scope of towing questions in the examinations for these licenses is considered equivalent to the examination for operator of uninspected towing vessels.

Four commenters suggested that the Coast Guard simply maintain the same towing authority for all grades of licenses that was in place before the statute was amended. The authority to engage in towing has been maintained for all licenses for which the qualifications are equal to or greater than those for operator of uninspected towing vessels. The additional towing endorsement and examination is considered appropriate and necessary for all other licenses with lesser qualifications. The statute clearly requires standards be established for persons operating assistance towing vessels. Because Congress has required all persons who operate assistance towing vessels to be licensed by the Secretary, the Coast Guard must ensure that the license holder can not only operate his or her own vessel safely but also possesses sufficient knowledge of towing procedures.

For the same reasons discussed above, no provision has been made to "grandfather" persons who are already engaged in providing assistance towing services.

Four commenters suggested that operators of uninspected passenger vessels (OUPV) be allowed to engage in assistance towing within the full scope of their license, that is, with vessels under 100 gross tons instead of under 26 feet in length. Three commenters recommended that these licenses not be authorized to be used for assistance towing and one commenter suggested that no assistance towing be allowed to be performed with a vessel of less than 26 feet in length. The prerequisite experience requirements for a license as operator of uninspected passenger vessels, while less than that for master upon near coastal waters, is the same as is required for master of vessels of not more than 100 gross tons on inland waters. Also, the OUPV examination includes questions on all but a few of the same subjects as the inspected vessel license examinations, although it is somewhat less difficult. Therefore, the holder of a license as operator of uninspected passenger vessels endorsed for assistance towing will not be limited to vessels of less than 26 feet in length. He or she may engage in assistance towing with any vessel within the scope of the license.

Three commenters suggested that some towing experience be required in order to qualify for the assistance towing endorsement on a license. They, and the 287 commenters who recommended a practical demonstration considered a written examination alone to be insufficient. The Coast Guard does not concur with this recommendation. Towing assistance under the authority of these licenses will be rendered primarily to disabled pleasure craft by vessels of similar size. It is estimated that 90 per cent of the persons engaging in this trade already hold or will hold licenses as master, mate or operator of vessels of not more than 100 gross tons. The qualifying experience for these licenses is usually obtained on pleasure craft, passenger charter boats, fishing vessels, and other small craft. This experience is considered sufficient to develop the specific small vessel seamanship and boat handling familiarity and skills necessary to engage in assistance towing, particularly when coupled with the written examination covering towing subjects. Additionally, the regulations in 46 CFR 15.405 require every licensed individual to become familiar with all relevant characteristics of the vessel on which engaged prior to assuming his or her duties. For these reasons, no additional experience other than that necessary to obtain the original license will be required.

Two commenters recommended that the licensing requirements not apply to vessels operated by public entities such as municipal harbor patrols which charge recipients a fee for the towing assistance services they render. Because the statute makes no distinction between public and private vessels that tow a disabled vessel for consideration, this recommendation cannot be accepted.

Three commenters suggested that a license be required for all persons who operate any vessel which tows another vessel. The applicable statute, 46 U.S.C. 8904, does not require a license for volunteers or "good Samaritans" who assist a disabled vessel and do not do so for consideration. Nor does it require a license for other persons who operate a towing vessel of under 26 feet in length for purposes other than assisting a disabled vessel, for example, towing vessels between berths at a marina or boat yard.

One commenter recommended that simple salvage be excluded from these licensing requirements. For the purposes of these regulations, a disabled vessel is one which, while being operated, has been rendered incapable of proceeding under its own power and is in need of assistance. A vessel which has sunk or has been abandoned and is no longer in distress is not considered to be a disabled vessel. A license is not required to salvage or raise a sunken vessel. If the salvaged vessel is towed, however, and the towing vessel is 26 feet in length or over, the operator of the towing vessel must hold a license which authorizes operation of an uninspected towing vessel.

One commenter suggested that licensed operators not be allowed to operate for more than 12 hours a day. This is already specified in 46 U.S.C. 8104 and 46 CFR 15.710.

One commenter recommended drug testing for license holders. This is outside the scope of this rulemaking and is being considered as the subject of separate rulemaking.

One commenter noted that licensed first class pilots were not authorized to tow or to have their licenses endorsed for assistance towing. 46 CFR 15.910 does not include licenses as first class pilot with those authorized to operate uninspected towing vessels. A first class pilot who wishes to engage in assistance towing must also hold an appropriate license as master, mate or operator.

Four commenters requested that public hearings be held. There was no indication that the opportunity to make oral presentations at public hearings would aid the rulemaking process by addressing issues and viewpoints which were not already adequately addressed in the written comments.

Another commenter recommended specific license suspension or revocation criteria be promulgated for assistance towing licenses. The regulations in 46 CFR Part 5 already provide for the suspension or revocation of licenses for negligence, misconduct, or incompetence on the part of the license holder.

One commenter requested that a bibliography of references for the assistance towing endorsement examination be published. Such a bibliography will be made available through the Coast Guard's Regional Examination Centers.

One commenter recommended that assistance towers be certified by the cognizant Coast Guard Group Commander. The licensing and certification of personnel falls within the purview of and will be administered by the Coast Guard's Marine Licensing Program. Therefore, the licenses will be issued by the Regional Examination Centers.

Six commenters felt the proposed regulation would be too costly or would put them out of business. As noted in the regulatory evaluation, the direct out-of-pocket expenses associated with obtaining an original license would be the cost of a physical exam and first aid and CPR training for an applicant. Some persons affected by this rule will also have to take time off from work in order to take the license examination, resulting in the loss of wages or business for ½ to 1 day. The total expense would not be so great as to put any individual out of business.

It is also recognized that should this rule take effect on short notice, many affected persons would not be able to comply immediately and would be forced to cease operating. For this reason, this rule will not become effective until September 15, 1988 in order to allow applicants sufficient time to conduct the necessary licensing transactions with the Coast Guard.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. The rulemaking will affect the approximately 400 persons presently engaged in providing assistance towing services. Approximately 10%, or 40, of these individuals hold an appropriate license as master or mate or a license as operator of uninspected towing vessels and would need no additional endorsement to continue operating under these regulations. Approximately 40%, or 160 persons, hold a small passenger vessel operator license or a limited master or mate license and would need to obtain the assistance towing endorsement. Approximately 50%, or 200 persons, presently do not hold any license and are operating vessels of less than 26 feet in length. These persons would be required to obtain at least a license as operator of uninspected passenger vessels, with the assistance towing endorsement.

There are no direct costs such as application, examination, or filing fees for a person to take the examination. The examination for an original operator's license with the assistance towing endorsement requires 1 full day (5 to 7 hours) to complete. The assistance towing addendum for an endorsement on an existing license would require approximately ½ day (2–3 hours) of an applicant's time. Of the estimated 400 persons presently providing assistance towing services, approximately 220 are full time and 180 are part time operators. It is assumed that the part time operators will be able to arrange their examination appointments so as not to lose a day of work. Of the full time operators, 40% or 88 will lose ½ day of work and 50% or 110 will lose a full day of work while taking the license examination. If an average salary of $25,000/year or $100/day is assumed, these 220 persons will lose $15,400 in wages (88 × $50 + 110 × $100 = $15,400). Additional expenses an applicant for an original license would incur include the cost of a physical exam (approximately $75), and a First Aid and CPR class (approximately $50). Approximately 200 persons would be required to obtain an original license, so the total cost for these items would be 200 persons × $125 or $25,000. Thus, the total economic impact on the persons affected by this rule will be $40,400.

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There are no casualty statistics or other data available to specifically support or refute the need for this action. It was developed in response to a statutory change requiring assistance towing licenses. The primary effect of this final rule will be to prevent unqualified persons from engaging in the growing field of commercial assistance towing. It is not a reaction to current unsafe conditions.

An additional benefit of this rulemaking is the intangible assurances provided by the establishment of minimum qualifications for persons engaging in assistance towing. Persons licensed to provide assistance towing could display evidence of their credentials to potential clients, and would assure the boating public that they are receiving assistance from persons with demonstrated knowledge and capabilities.

This final rule applies to licenses for individuals only. The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule contains no new information collection requirements. The information collection requirements for the issuance of marine licenses have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The OMB approval numbers are listed in 46 CFR 10.01–6.

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

In consideration of the foregoing, Part 10 and Part 15 of Title 46 of the Code of Federal Regulations are amended as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for Part 10 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101; 43 U.S.C. 1333(d); 49 CFR 1.46(b) and (z).

2. The table of contents for Part 10 is amended by adding a new entry to read as follows:

* * * * *

10.482 Assistance towing.

* * * * *

3. Section 10.103 is revised by adding the definition of "Assistance Towing", to read as follows:

§ 10.103 Definitions of terms used in this part.

"Assistance towing" means towing a disabled vessel for consideration.

* * * * *

4. A new § 10.482 is added, to read as follows:

§ 10.482 Assistance towing.

(a) This section contains the requirements to qualify for an endorsement authorizing an individual to engage in assistance towing. The endorsement is applicable to all licenses except operator of uninspected towing vessels and master or mate licenses authorizing service on inspected vessels over 200 gross tons. Holders of these licenses are authorized to engage in assistance towing without endorsement on any vessel within the scope of the license.

(b) An applicant for an assistance towing endorsement shall pass a written examination demonstrating his or her knowledge of assistance towing safety, equipment, and procedures.

(c) An assistance towing endorsement on a license as master, mate, or operator authorizes the holder to engage in assistance towing on any vessel within the scope of the license.

(d) The period of validity of the endorsement is the same as the license on which it is endorsed, and it may be renewed with the license.

PART 15—MANNING REQUIREMENTS

1. The authority citation for Part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105, 8901, 8902, 8903, 8904, 9102; 50 U.S.C. 198; 49 CFR 1.46(b)

2. The table of contents for Part 15 is amended by adding a new entry to read as follows:

* * * * *

15.410 Licensed individuals for assistance towing vessels.

* * * * *

3. Section 15.301 is amended by adding the definition of "Assistance Towing" to paragraph (a), revising the second sentence of paragraph (b), and by adding a paragraph (b)(6) to read as follows:

§ 15.301 Definition of terms used in this subpart.

(a) * * *

"Assistance Towing" means towing a disabled vessel for consideration.

* * * * *

(b) * * * When used in this part, the following terms mean an individual holding a valid license and/or endorsement to serve in that capacity issued under Part 10 of this chapter.

* * * * *

(6) Individual authorized to engage in assistance towing.

* * * * *

4. A new § 15.410 is added, to read as follows:

§ 15.410 Licensed individuals for assistance towing vessels.

Every assistance towing vessel must be under the direction and control of a licensed individual authorized to engage in assistance towing under the provisions of 46 CFR 10.482.

Dated: May 17, 1988.

P. A. Yost,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 88–11570 Filed 5–23–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 22

[General Docket No. 85–388; [RM 5167]; FCC 88–156]

Amendment; Public Mobile Service; Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: In this Further Order on Reconsideration, (*Further Order*), the FCC considered for a third time the boundaries for Rural Service Areas (RSAs). In the original order, the FCC adopted a set of RSA boundaries based on a plan submitted by United Telespectrum. When the Commission considered these issues for a second time it modified those boundaries in areas where all parties agreed to the change but it did not modify those boundaries that were the subject of disputes. The changes that the FCC has made in this *Further Order* are prompted by disputes regarding boundaries that were unresolved at the time of the last FCC action and requests seeking clarification of procedures and requirements for RSA applications. The intended effect of this *Further Order* is to align as closely as possible the modified RSA boundaries with the economic boundaries of the areas involved. The FCC also clarified several aspects regarding procedures and rule requirements for RSA applications.

EFFECTIVE DATE: June 23, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anne Moebes, Andy Nachby, Mobile Services Division, Common Carrier Bureau; tele: 202–632–6450.

This is a summary of the commission's further order on reconsideration adopted April 21, 1988, and released May 18, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Further Order on Reconsideration

1. In the *First Report and Order*, Amendment of the Commission's Ruling For Rural Cellular Service, CC Docket No. 85–388, 51 FR 26885 (1986) (*First Report and Order*), the FCC adopted defined boundaries for Rural Service Areas (RSAs) to eliminate confusion among applicants and to avoid the administrative difficulties that would occur in processing applications for undefined geographic areas. In the *Order on Reconsideration*, Amendment of the Commission's Rules for Rural Cellular Radio Service, CC Docket 85–388, 52 FR 22461 (1987) (*Order on Reconsideration*), (Erratum, 52 FR 29186 (1987), the FCC rejected requests seeking definitions of RSAs based upon criteria other than county boundaries, and modified the First Report and Order by splitting RSAs that contained non-contiguous counties into distinct RSAs and creating 423 RSAs. In this *Further Order*, the FCC addressed the following issues raised by petitions for reconsideration of the *Order on Reconsideration*:

(1) Fill-in Policy

Under the MSA "fill-in policy" MSA licensees or permittees may amend their application to serve areas outside their Cellular Geographic Service Area (CGSA), but with the Metropolitan Statistical Area, for a period up to five years from the date of the initial construction permit in the market, without being subject to competing applications. In the *Further Order* the FCC has determined that there is not an adequate record before it to consider the proposal of many petitioners to apply to RSA grantees the MSA fill-in policy that it adopted in the *Second Report and Order*, CC Docket 85–388, 52 FR 10647 (1987), *pending recon*. Therefore, the FCC is inviting comments on this issue in a *Notice of Proposed Rulemaking*, CC Docket No. 85–388, adopted concurrently, April 21, 1988 (Notice) to be published in the **Federal Register** at a later date.

(2) CGSA Requirements

In the *Order on Reconsideration*, at para 15, the FCC removed the former RSA coverage percentage requirements for CGSA. In the *Further Order* the FCC has decided not to modify the existing rules. Rather than adopt a proposal to require applicants to file only skeletal applications, the FCC has adopted requirements for applicants to file a complete application with all the necessary information required by its rules, including their proposed CGSAs.

(3) Multiple Licensees For Each RSA

In response to proposals recommending that there should be multiple licenses for each RSA, the FCC is not deciding now whether it will grant more than one application per frequency block in each RSA or what is "fill-in" policy should be. In the *Notice* adopted concurrently with the *Further Order*, the FCC is requesting comment on its tentative conclusions to grant only one authorization per frequency block and to adopt a five year "fill-in" policy. The FCC intends to accept applications before reaching a conclusion in this companion rulemaking proceeding. The FCC states that applicants should file for the areas within the RSA they intend to serve, and should not make any assumptions as to what fill-in and mutual exclusivity rules the FCC will adopt after receipt of comments. For any lotteries held prior to the conclusion of the rulemaking proceeding, the FCC will initially grant only one authorization per frequency block, unless there has been a full market settlement. In this regard, the FCC will waive § 22.31(a) of its rules and any other rules or policies defining mutual exclusivity in terms of CGSAs. Losing applications will not be dismissed until after the FCC concludes the rulemaking proceeding.

(4) Contour Extensions

To avoid confusion concerning extensions of the 39 dBu contour or CGSA, § 22.903(a) has been revised to establish that no extensions of any nature will be permitted at the application stage. The FCC determined that RSA applications that have extensions will be returned as defective.

(5) Boundaries

In response to requests for boundary changes of certain RSAs, the FCC modified those boundaries when sufficient demonstrations were made consistent with the public interest. The changes are listed in Appendix B, "Modification of RSA Boundaries", to the *Further Order*. The FCC also determined not to add RSAs to existing MSAs or NECMAs.

(6) Other Issues

In response to requests for clarification on procedural aspects for RSA cellular applications and on specific aspects of the rules, the FCC noted the following:

a. When more than one CGSA is proposed, the applicant must provide a minimum of 75% coverage for each CGSA. Service must commence in each CGSA within 18 months of construction permit grant, with the entire proposed system constructed within three years. *See* § 22.903.

b. Under § 22.903(a) and (b) of the Rules, the FCC permits MSA licensees to have *de minimis* CGSA extensions into areas that are now defined as RSAs. RSA licensees must provide interference free protection to these MSA licensees, unless the MSA license was conditioned to require some other resolution. At the application stage, the FCC will not require applicants to demonstrate that their facility will not interfere with MSA licensees that have such authorized *de minimis* extensions. However, once the applicant is the tentative selectee, it must demonstrate that it will provide interference free protection to these MSA licensees. Of course, MSA licensees must provide interference free protection to the RSA licensee's CGSA.

c. Applicants are required to serve 75% of the CGSA. This coverage requirement is based upon total geographic area, including water areas, such as lakes and rivers. *Order on Reconsideration* at n.17. However, this was not meant to include large bodies of water, such as oceans and the Great Lakes, in making this calculation. This clarification modifies the language in the *Order on Reconsideration*, at n.17.

d. Each licensee in an RSA will operate under its own call sign. If the operator has adjacent CGSAs in neighboring RSAs or MSAs, there will be no consolidation of call signs. If the operator has multiple CGSAs within an RSA, it will have one call sign.

e. The FCC assesses filing fees per application. Therefore, if one application has multiple CGSAs, the FCC will require only one filing fee.

Ordering Clauses

2. Authority for this rulemaking is contained in sections 1, 4(i) and 301, 303 and 309 of the Communications Act of 1934, as amended.

3. Accordingly *it is ordered*, that the Petitions for Reconsideration and the Petitions for Clarification filed in this proceeding are *granted* to the extent set forth herein, and are otherwise *denied*.

4. *It is further ordered*, that Part 0 and Part 22 of the Rules *are amended* as specified in Rules Section appended to this Order. These amendments and other policies adopted in this Order will become effective June 23, 1988.

List of Subjects

47 CFR Part 0

Organization and functions;

47 CFR Part 22

Communications common carriers, Radio, Rural areas.

Federal Communications Commission.

H. Walker Feaster,
Acting Secretary.

Rules Section

Final Rules

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended (47 U.S.C. 154, 303).

2. Section 0.401 is amended by revising paragraphs (b)(2)(i) and (b)(2)(ii) and adding paragraphs (b)(2)(iii) and (b)(2)(iv) to read as follows:

§ 0.401 Location of Commission Offices.

* * * * *

(b) * * *

(2) * * *

(i) Applications (other than those for initial rounds of rural cellular) and filings submitted by mail shall be addressed to: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554–1600.

(ii) Hand-carried applications (other than those for initial rounds of rural cellular) and filings shall be delivered to the Federal Communications Commission, 1919 M Street, NW., Room L–18, Washington, DC 20554–1600.

(iii) Applications for initial rounds of rural cellular filed by mail shall be addressed to: Federal Communications Commission, Cellular Telephone-Market No. (Enter RSA Market Number), P.O. Box 371995M, Pittsburgh, PA 15250-7995.

(iv) Hand-carried applications for initial rounds of rural cellular shall be delivered to the Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222 between the hours of 8:30 a.m. and 5:00 p.m. local time.

* * * * *

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.2 is amended by adding the following definition:

§ 22.2 Definitions.

* * * * *

Archival quality. The silver halide master microfiche or a copy made on silver halide film (such as Kodak Direct Film).

* * * * *

3. Section 22.903 is amended by revising paragraph (a) to read as follows:

§ 22.903 Cellular System Service Areas.

(a) The Cellular Geographic Service Area (CGSA) of the cellular system shall be defined by the applicant as the area intended to be served. No CGSA, which includes areas within a Metropolitan Statistical Area (MSA), or in New England, a New England County Metropolitan Area (NECMA), as modified in paragraph (e) of this section, below, may extend beyond the boundaries of the MSA or NECMA, except where any such extensions are *de minimus* and do not include areas within another central MSA or NECMA. For MSAs and NECMAs below the top 90, the boundaries of the CGSA must include at least 75% of either the land area or population of the MSA or NECMA. The CGSA(s) must be drawn on one or more U.S. Geological survey map(s) with a scale of 1:250,000. Within the CGSA, the applicant must depict each base station site and its respective 39 dBu contour as determined by the methods described in paragraph (c) of this section. An applicant must state that the combined 39 dBu contours of all base stations will cover at least 75% of the total CGSA.

(1) *Rural Service Areas.* At the time of initial application filing, no CGSA or 39 dBu contour may extend beyond the boundaries of the Rural Service Area (RSA). Any such initial application that has a CGSA or a 39 dBu contour that exceeds the boundary of the RSA will be returned as defective. An applicant may propose multiple CGSAs within the RSA. The 75% coverage of either the land area or population of the MSA or NECMA does not apply to RSAs. The CGSA must be drawn on one or more U.S. Geological survey map(s) with a scale of 1:250,000. For RSAs the CGSA map need only depict the area(s) encompassed by any CGSA(s) within the RSA (and that portion of the RSA visible on the map) and must clearly depict on the face of the map the longitude, latitude and scale pursuant to § 22.2. Within the CGSA, the applicant must depict each base station site and its respective 39 dBu contour as determined by the methods described in paragraph (c) below. An applicant must state that the combined 39 dBu contours of all base stations will cover at least 75% of the total CGSA.

* * * * *

4. Section 22.913 is amended by revising the section heading; removing paragraph (a)(1), and redesignating paragraphs (a)(2) through (a)(10) as (a)(1) through (a)(9); amending newly redesignated paragraph (a)(9) by removing the last sentence; amending paragraph (b) introductory text by removing the words "and for Rural Service Areas"; revising paragraph (b)(2); and amending paragraph (c) by removing the sixth sentence. The revisions read as follows:

§ 22.913 Content and form of MSA and NECMA applications.

* * * * *

(b) * * *

(2) The applicant's name and the market, market number and frequency block applied for must appear on the cover of the application.

* * * * *

5. A new § 22.923 is added to read as follows:

§ 22.923 Content and form of Rural Service Area applications.

(a) Applications for new stations or for modified facilities increasing the Cellular Geographic Service Area of existing stations shall be filed on FCC Form 401. The following exhibits shall be attached to any such application:

(1) An exhibit including a map or maps of the cellular system's existing Cellular Geographic Service Area, if any, and the Cellular Geographic Service Area proposed in the application. This exhibit shall contain all the information specified in § 22.903 (a). In addition, this shall include an 8½ by 11 inch reduced copy of the 1:250,000 scale map required by § 22.903(a). The full-size map need not be included in the microfiche copies of the application, but must be present in the original application from which the microfiche is made. For microfiching purposes, the reduced map is sufficient.

(2) An exhibit containing the engineering data and calculations used to derive the service contours shown. See § 22.903(c).

(3) An exhibit stating how the proposal complies with the Commission's cellular design concepts, and indicating the applicant's projected method for coordinated expansion of the system in response to changing service demands.

(4) An exhibit indicating the basis which the applicant will use to determine whether sufficient congestion exists to warrant cell-splitting.

(5) An exhibit indicating the frequency plan to be used if the application is granted.

(6) An exhibit indicating the applicant's service proposals for local subscribers and roamers, including its method of handling complaints. If no change is made in service proposals previously authorized, this exhibit may be omitted.

(7) For new stations only, an exhibit including full particulars regarding the cost of construction of the proposed facilities and demonstrating how the applicant intends to finance construction. See § 22.917.

(8) Where the applicant is a wireline carrier, an exhibit indicating exactly how its proposed system would interconnect with the landline network. This information must be of sufficient specificity to enable a potential competitor to design its system to connect with the landline system in exactly the same manner if the competitor so chooses.

(9) An exhibit setting forth the information required by § 22.13(a)(1). Individual applicants holding less than 5% interest in a publicly held company must disclose the fact that the corporation and the applicant both have filed applications in the same RSA, its disclosure must include its percentage interest held in the company.

(10) An exhibit indicating the state and counties included in the applicant's CGSA.

(b) Applications for construction permits for initial cellular systems for Rural Service Areas shall be filed as set forth below:

(1) Two microfiche copies of each application must be submitted and enclosed in microfiche jackets and be placed in a sealed 5 inch x 7½ inch microfiche envelope. One microfiche jacket shall be labeled "Original" and the other jacket labeled "Copy". The microfiche must be reproduced only in negative form and in black and white (blue/black film which appears black to the naked eye is acceptable). The original microfiche must be of archival quality as defined in § 22.2 of these Rules. Applicants are required to submit a Transmittal Sheet For Cellular Applications, copies of which may be obtained by contacting the Consumer Assistance Office, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

(2) Within seven (7) days of the release date of the public notice announcing the lottery results, the applicant selected first in the lottery shall submit the original and two hard copies of the application which must be enclosed in stiff covers and fastened securely along the left edge without exposed sharp edges (e.g., looseleaf binders, plastic binding strips, covered metal clasps).

(3) For initial RSA applications, FAA notification should not be made at the time of filing. Upon release of the public notice designating the tentative selectee, the applicant so designated must file Notice of Proposed Construction or Alteration (FAA Form 7460–1) with the FAA for any antenna or tower sites requiring FAA notification. Block 3A of FAA Form 7460–1 must contain the RSA number after the phone number so that the completed form can be associated with the proper application.

(4) FCC Form 401, Schedule B, Page 3, must contain the RSA number after the applicant's name so that the form may be reassociated with the application after proper clearances have been obtained.

(5) The applicant's name and the market, market number and frequency block applied for must appear at top right hand corner of each microfiche application. In addition the applicant's name and the market, market number and frequency block must also appear on a 5 inch x 7½ inch microfiche envelope, which shall contain the microfiche applications. This information must be clearly labeled in print or mechanically reproduced. In addition, information on the transmittal sheet and on the microfiche envelope must be identical.

(6) The completed transmittal sheet, the filing fee, and the microfiche envelope shall be placed in a 9 inch x 12 inch sealed enveloped. The applicants name and RSA market number must prominently be displayed in the center of the envelope for all applications sent by mail and placed in the lower left hand corner for applications delivered to the Strip Commerce Center Facility.

(7) All applicants must certify to the following on the Transmittal Sheet:

Certification

I hereby certify, under penalties of perjury, this application for an initial cellular authorization is complete in every respect and contains all of the information required by FCC Form 401 and the Commission's cellular application rules. I acknowledge that if, upon Commission inspection, this certification is shown to be incorrect, this application shall be dismissed without further consideration.

I also certify the applicant is the real party in interest in this application and there are no agreements or understandings, other than those specified in this application, which provide that someone other than the applicant shall have an indirect or direct ownership interest. It is also certified that the application intends to construct and operate the station as proposed and that there are no agreements or understandings that are inconsistent with that intent.

I declare, under penalties of perjury, that I am the authorized representative of the above-named applicant in the above entitled matter, that I have read the foregoing certification; and the matter and things therein stated are true and correct.

Executed on
—[date] _____
—Signature _____
Type/Print Name _____
Type/Print Title _____

All persons signing the Certification must do so using ink. No mechanical reproduction of signatures may be used.

(c) Applications proposing modifications to existing stations which do not involve new facilities, an increase in height or power of existing facilities, or an increase of any CGSA boundary, may be filed on FCC Form 489.

(1) Applications to extend the 39 dBu contours beyond the borders of the RSA once the original RSA application is granted must be accompanied by a detailed engineering justification demonstrating the necessity for such extensions.

[FR Doc. 88–11366 Filed 5–23–88; 8:45 am]
BILLING CODE 8712-01-M

VOL 53 ISS 100 MAY 24 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 100
Tuesday, May 24, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 5569S]

General Administrative Regulations; Standards for Approval; Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Administrative Regulations; Standards for Approval; Standard Reinsurance Agreement (7 CFR Part 400, Subpart L), effective for the 1988 and succeeding crop years, by providing a time frame in which to file a request for a reconsideration of any dispute arising under this subpart and the Standard Reinsurance Agreement entered into by the Reinsured Company and FCIC prior to a final decision on such dispute, and by delegating the authority for such decisions to the Deputy Manager, FCIC. The intent of this rule is to: (1) Provide forty five days in which a Company may file a request for reconsideration of an initial determination by FCIC which the Company disputes, before a final decision is made in the matter; and (2) delegating authority for decisions in these matters to the Deputy Manager, FCIC.

COMMENT DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than June 23, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

John Marshall, Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect or the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expectd to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, May 11, 1987, FCIC published a Final Rule in the **Federal Register** at 52 FR 17540, to provide the Standards for Approval; Standard Reinsurance Agreement, (7 CFR 400.141–400.157), effective for the 1988 contract year.

Under the provisions of 7 CFR 400.149, any dispute arising between the company and the Corporation under the provisions of the Standards for Approval of the Reinsurance Agreement of the Agreement itself, must be submitted for decision to the Manager, Federal Corp Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. The Manager's decision in matters of dispute is final unless the Company requests reconsideration in writing within forty five days of the receipt of the decision.

This provision makes no allowance for the Company to review a determination by FCIC which the Company dispute *prior* to the decision by the Manager. Disputes should be resolved in a timely fashion following review and reconsideration. Under the present provision, excessive delays are being experienced prior to the decision made by the Manager.

In order for the Company to be able to review any finding by FCIC which has the potential of becoming a dispute, FCIC has determined that this provision should be amended to provide the Company forty five days from the date of notification to the Company of the finding being disputed in which to file a request for reconsideration. Further, when FCIC advises the Company of its final determination, the letter of advice will state that the Company has forty five days in which to file such a request, and to whom the request should be addressed. If the Company fails to file a request for reconsideration within forty five days, FCIC will presume the Company agrees with the determination and does not seek review.

In addition, FCIC has determined that, under the authority of the Manager to redelegate authority, such requests for reconsideration will be addressed to the Deputy Manager, FCIC, and that the decision of the Deputy Manager in these matters will be final.

Written comments are solicited by FCIC for 30 days following publication of this rule in the **Federal Register**. Written comments, data, and opinions on the rule should be sent to Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All comments received pursuant to this notice will be available for public inspection and copying in the Office of the Manager at the above address, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop insurance, Reinsurance agreement, Standards for approval.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Administrative Regulations (7 CFR Part 400), proposed to be effective for the 1988 and succeeding contract years, in the following instances:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for 7 CFR Part 400 continues to read as follows:

Authority: Secs. 501–520, Pub. L. 75–430, 52 Stat. 72–77 (7 U.S.C. 1501–1520), as amended.

2. 7 CFR Part 400, Subpart L, is amended by revising 7 CFR 400.149 to read as follows:

Subpart L—Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

* * * * *

§ 400.149 Disputes

Initial findings under this subpart and the Reinsurance Agreement will be made by the Corporation. The Corporation will advise the Company of those findings and request their input within 45 days of the determination. This time may be extended at the request of the Company if the Corporation agrees to the extension. At the expiration of the time period or, after receipt of the Company's input, the Corporation will issue a final determination denominated as "the determination of the Corporation." That determination will advise the Company of its rights under this section. The Company, if it disputes the Corporation's determination, must appeal that determination in writing, within forty-five days of the receipt of the determination, to the Deputy Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. The decision of the Deputy Manager will be final. Any hearing provided by the Corporation will be of an informal nature and the rules of evidence will not apply. Pending final decision of the dispute, the company will proceed diligently with the performance of the Agreement, as required by the Corporation. Failure to appeal the Corporation determination within the time allowed, may result in Corporation offset of any amount found to be due the Corporation from funds which may otherwise be due the Company.

Done in Washington, DC, on April 20, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-11534 Filed 5-23-88; 8:45 am]

BILLING CODE 3410-01-M

Packers and Stockyards Administration

9 CFR Part 203

Statements of General Policy

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Notice of intent to institute proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture is concerned about the continuing occurrence of antibiotic and sulfa residues at concentrations above the tolerances established by the Food and Drug Administration for hogs, young calves and cull dairy cows. Violative residues are generally caused by producers who medicate animals and sell them for slaughter without proper withdrawal. Currently, the economic burden caused by violative residues is borne by the packer. This Notice of Intent to Institute a Proposed Rulemaking sets forth a proposed policy which would provide a "bill back" mechanism designed to shift economic responsibility for violative residues from the packer to the producer. It should also deter producers from selling medicated animals without proper withdrawal.

This proposal will have a significant impact on producers, selling agencies, dealers and packers; therefore advance notice is being given to permit those affected to comment and offer other suggestions before proposed rulemaking is published. Alternative suggestions should meet the objectives of deterring the sale of medicated animals for slaughter without proper withdrawal and shifting economic responsibility for drug residue violations to the person who causes the violation.

DATE: Comments must be received on or before July 25, 1988.

ADDRESS: Written comments may be mailed to: Packers and Stockyards Administration, Room 3039–South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3408–South Building, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–0951.

SUPPLEMENTARY INFORMATION: The tolerance, or maximum allowable level, of animal drug residue in edible products of food producing animals is established by the Food and Drug Administration which, under section 512 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360(b)), is responsible for approving new animal drugs and enforcing their proper use. Food containing above-tolerance residues is deemed adulterated under section 402(a)(2)(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 342(a)(2)(d)) and meat and poultry containing such residues are deemed adulterated under the Federal Meat and Inspection Act (21 U.S.C. 601(m)) and the Poultry Products Inspection Act (21 U.S.C. 453(g)).

Illegal antibiotic and sulfa drug residues continue to be a significant problem for the livestock and meat industries. The problem classes are swine, cull dairy cows and young calves (up to 3 weeks of age or 150 lbs.). Four percent of the swine sampled and tested in 1987 as part of the Food Safety and Inspection Service's National Residue Monitoring Program had violative sulfa residues and 1.8 percent of all cows sampled and tested had violative antibiotic residues. In the Calf Antibiotic and Sulfonamide Test (CAST) program, 1.7 percent of the young calves sampled and tested had violative drug residues. Although it is obvious a very small percentage of livestock producers are creating the problem, these violation rates are unacceptable.

A voluntary certification program and extensive cooperative education efforts by USDA and the industry were successful in lowering the violation rate in young calves from over 5 percent to the 1987 rate of 1.7 percent. However, the current violation rate has remained relatively constant the last 2 years and it does not appear the number of violations can be reduced further with education and voluntary certification programs.

Because of competitive forces and the economic realities of obtaining restitution, the slaughtering meat packers generally stand the loss for most carcasses condemned due to violative drug residues. These losses, caused by only a few producers, are either absorbed by the packer or passed back to all producers in the form of lower prices. The inability of the industry to shift economic responsibility to the source of illegal residues is believed to be a major reason residue violations in young calves and hogs remain at unacceptably high rates.

Historically, slaughter livestock sold on a live weight basis has been sold "as is" with no guarantees concerning merchantability of the carcass. However, a meat packer is free to independently negotiate the most favorable terms it can obtain, including "subject to" provisions. Likewise, the seller is free to negotiate the most favorable terms he can obtain and may insist on selling an animal "as is". If the buyer or seller does not agree to the other's terms, there is simply no purchase or sale. At posted stockyards, the market operator has the responsibility under the provisions of section 307 (7 U.S.C. 208) of the Packers and Stockyards Act (P&S Act to fix and uniformly enforce the terms of sale. This responsibility does not preclude buyers or sellers from seeking more favorable terms, or the market operator from granting different or more favorable terms as long as the same terms are provided to all buyers and sellers.

USDA has not advocated any particular conditions or terms of sale and believes, under normal circumstances, that the competitive forces operating in the marketplace should continue to establish the terms and conditions of sale, including "as is" or "subject to" terms. Illegal drug residues in slaughter livestock caused by the seller, however, are not normal circumstances and the packer is entitled to assume that the seller has not done anything to cause a carcass to be adulterated. Visual inspection of the livestock by a buyer will not disclose the illegal act of a person who sells livestock for slaughter containing illegal residues.

USDA believes the people who medicate animals and sell them for slaughter without proper withdrawal or notification to the buyer should bear the economic responsibility. In order to accomplish this goal, it is evident that some form of regulatory action is required. This Notice of Intent to Institute a Proposed Rulemaking is being issued to set forth a proposed policy which would allow "bill backs" with deductions from subsequent purchases permitted if the seller does not make restitution. The proposal is intended to deter producers from marketing animals with violative drug residues and to shift economic responsibility to the violator.

USDA recognizes that any regulatory action which encourages or establishes economic responsibility for illegal residues with the seller will require animal identification sufficient to trace individual animals back to the producer. Each buyer and selling agency in the marketing chain will need to obtain or apply animal identification sufficient to identify the seller or risk having to bear the economic responsibility for any violative drug residues.

USDA's Food Safety and Inspection Service (FSIS) is committed to the development of practical live animal tests for drug residues. A "Sulfa-on-site" (SOS) test for detecting sulfamethazine in swine is approved and commercially available and FSIS is currently developing a proposed rule which will provide for pre-slaughter testing and certification using the SOS test. To the extent pre-slaughter tests are available, producers and others in the marketing chain will be encouraged to use these tests as a means of avoiding illegal residue violations. Livestock pre-slaughter tested and certified as residue free by an individual approved by FSIS would not be subject to the "bill back" provisions set forth herein. Also, such livestock will be subject to less intense sampling and testing at the slaughter facility compared with non pre-slaughter tested livestock.

Further, the "bill back" provisions will be applicable only for those drug residues for which there are rapid diagnostic tests readily available in the slaughtering plant. For purposes of this proposal, a "rapid test" is one which provides results within 24 hours whether the test provides the basis for official condemnation or provides the basis for retaining a carcass pending laboratory confirmation.

Proposed "Bill Back" Procedures

It is the custom and practice in the livestock industry that livestock transactions are on an "as is" basis except where there is a specific agreement or understanding to the contrary. Competitive forces, not Government regulations, should continue to govern such customs and practices except where a seller has committed an act which causes the animal to be unfit for human consumption.

Under this proposal, a Statement of General Policy would be issued under the Packers and Stockyards Act (P&S Act) advising the industry of circumstances and procedures under which packers and others in the marketing chain could "bill back" and deduct from subsequent purchases for carcasses condemned because of violative drug residues if restitution is not made. The "bill back" would be permitted only if adequate animal identification is obtained and the seller is provided prompt notification of the condemnation with an official condemnation certificate. Furthermore, a "bill back" would not be permitted if the livestock has been pre-tested and certified.

The P&SA believes the person who sells medicated animals without proper withdrawal should be financially responsible for the condemned carcasses and that packers should have a viable means for obtaining restitution. Since a substantial portion of the livestock sold for slaughter is marketed through intermediate channels, such as selling agencies and dealers, any effective "bill back" system would have to provide for the involvement of each participant in the marketing chain. This would be accomplished by permitting each purchaser or selling agent to bill back the appropriate seller. In this way, each seller would be held financially responsible and each buyer or selling agent would have to obtain identification from the seller and documentation of the identification and condemnation from the subsequent buyers.

This proposal would not alter the prompt payment requirements of section 409 of the P&S Act (7 U.S.C. 228b) in any manner.

Specifically, a Statement of General Policy would be issued providing that: (1) Illegal drug residues are caused by sellers who treat and fail to follow proper withdrawal procedures; (2) packers should be permitted, on a non-discriminatory basis, to "bill back" the person from whom they purchased animals condemned because of violative drug residues whether or not the seller has agreed to such "bill back", provided:

(a) The Packer has obtain sufficient animal identification to identify the seller and also maintains and furnishes to the seller any individual animal identification received which will permit trace back to prior sellers;

(b) The packer obtains and furnishes to the seller an official FSIS condemnation certificate which includes the kill date, kill lot, individual animal identification and either the drug or type of positive drug test responsible for the condemnation; and

(c) The packer notifies the seller the carcass has been officially retained or condemned within 3 business days from the date of purchase and transmits a bill or invoice with full documentation by the close of the next business day following receipt of the official condemnation certificate.

(3) If a seller (including a selling agency representing consignors) fails to reimburse the packer for a properly documented condemnation within 10 days, the packer would be permitted to deduct the cost of the condemned animal, including a reasonable kill charge, from any subsequent purchase from the seller and such deduction would not be considered an unfair or deceptive practice under the provisions of the P&S Act; (4) if the seller is a dealer who purchased the condemned animal or selling agency who sold the animal for a consignor, then the dealer or selling agency would have the same rights as the packer to "bill back" to the previous seller, *provided*, sufficient identification was obtained and maintained to identify the prior seller and the prior seller is notified promptly and furnished full documentation concerning the carcass identity and condemnation, *provided however*, that any prior seller who has not received notice within 2 weeks shall not be held liable; (5) if a prior seller fails to reimburse the dealer or selling agency within 7 days after notice is received, the dealer or selling agency would be permitted to deduct the amount paid to the packer from any subsequent shipment from the same seller and such deduction would not be considered an unfair or deceptive practice under the P&S Act; (6) if an animal condemned due to a violative drug residue moved through more than one intermediate person, then each preceding person in the marketing channel would accrue the same responsibilities and rights as the person they preceded; (7) the failure of any person subject to the P&S Act to reimburse a purchaser or selling agent for a properly documented condemnation would be considered an unfair practice under the provisions of the P&S Act; and (8) sellers who sell animals for slaughter which have been pre-tested and certified by an FSIS approved individual, disclose their animals have been medicated, or designate their animals are not to be sold for slaughter shall be exempt from the "bill back" provisions set forth herein.

Done at Washington, DC, this 19th day of May 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88-11628 Filed 5-23-88; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 658]

Label Disclosure for Brandy and Whisky Treated with Wood

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations in 27 CFR Part 5 concerning the wording, and placement, of the disclosure statement for brandy and whisky treated with wood. ATF believes that this action will afford industry members additional flexibility in designing their labels while still providing the consumer with adequate information as to the identity of the product.

DATE: Written comments must be received on or before August 22, 1988.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 385; Washington, DC 20044-0385; Attn: Notice No. 658.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

Section 5(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product.

Regulations which implement the provisions of section 5(e), as they relate to distilled spirits, are set forth in Title 27, Code of Federal Regulations (CFR), Part 5, Section 5.39(c) requires label disclosure for brandy and whisky treated with wood. Specifically, § 5.39(c) reads as follows:

> *Treatment with wood.* The words "colored and flavored with wood (insert chips, slabs, etc., as appropriate)" shall be stated as a part of the class and type designation for whisky and brandy treated, in whole or in part, with wood through percolation, or otherwise, during distillation or storage, other than through contact with the oak container.

Since § 5.39(c) is included as mandatory information under § 5.32 (§ 5.32(b)(4)), the statement "colored and flavored with wood _____" must comply with the requirements of § 5.33 as to location, size of type, etc.

Recently, it was brought to the Bureau's attention that confusion existed among some brandy producers, both domestic and foreign, as to when the provisions of § 5.39(c) apply. The Bureau was asked whether brandy treated with wood, in forms other than chips or slabs, such as extracts, powders, infusions (Boise), etc., at any time during the production process, is subject to the requirements of § 5.39(c). The Bureau was also asked whether brandy produced with an ingredient that was treated with wood (e.g., wine) is subject to the provisions of § 5.39(c), and whether Cognac, in particular, treated with wood is subject to the provisions of § 5.39(c).

In response to industry's concerns, ATF issued ATF Rul. 87-3, A.T.F. Q.B. 1987-3, 12, and corresponding Industry Circular 87-6 (dated September 4, 1987). In essence, the Bureau held that brandy (including Cognac, Armagnac, etc.) treated with wood in any manner or form, either directly or indirectly, at any point in the production process, up to and including the time of bottling, must comply with the requirements of 27 CFR 5.39(c). Further, the Bureau apprised industry members that existing certificates of lable approval for brandies which did not meet the requirements of the ruling would expire at midnight, December 31, 1987. As a result of ATF Rul. 87-4, A.T.F. Q.B. 1987-4, 33, and corresponding Industry Circular 87-8 (dated November 13, 1987), the use-up period has been extended until December 31, 1988.

Petition

Subsequent to the issuance of ATF Rul. 87-3, the Bureau received a petition, dated October 8, 1987, filed jointly by the Federation des Exportateurs de Vins et Spiritueux (FEVS) and the National Association of Beverage Importers, Inc. (NABI). The petition was filed on behalf of certain French brandy, Cognac, Armagnac and Calvados producers who are members of the FEVS, and on behalf of certain U.S. importers who are members of NABI. It was generated, "because of the use for centuries by some producers of brandies, Cognacs, Armagnacs or Calvados of a traditional practice in the production of these spirits. This practice sometimes referred

to as the 'Boise method,' relates to the use of an infusion of oak chips for the purpose of ensuring consistency of the final product."

As discussed in ATF Rul. 87-3, brandy (Cognac, etc.) treated with wood in forms other than chips or slabs, such as the Boise method, is subject to the provisions of § 5.39(c). Thus, the petitioners requested a change in the provisions of both §§ 5.23(a) and 5.39(c), concerning the usage and label disclosure for brandy treated with an infusion of oak chips, i.e., the Boise method. Basically, these changes would allow the Boise method to be used in brandies expressly for the purpose of ensuring consistency of the final product, without having to disclose that usage on the label. The petitioners stress that the petition is not intended to permit the use of the Boise method in lieu of, or as a part of, the aging process.

In their petition, the FEVS noted that French regulations have authorized the addition of caramel, infusion of oak chips, and sugar to spirits since 1921. Further, the FEVS opined that because of this historical and customary usage, French regulations do not require label disclosure when any of these ingredients are utilized. Similarly, the petitioners have requested amendments to the regulations in 27 CFR Part 5 allowing for the Boise method to be used without label disclosure, as currently required under § 5.39(c).

Subsequent to the filing of the FEVS/NABI petition, the Bureau received a letter (dated November 9, 1987) written on behalf of several U.S. brandy producers, supporting the FEVS/NABI petition. In addition, it was requested that the regulations be further amended to allow for the Boise method to be used, not only by foreign brandy producers, but by domestic brandy producers as well.

History of § 5.39(c)

FA-133 (February 28, 1938) amended section 34 of Article III, Regulations No. 5, by adding a subsection (d), as follows:

> In the case of whiskey * * * and in the case of American type whiskey, which in whole or in part, is treated * * * with wood chips through percolation or otherwise, during distillation, rectification or storage, there shall be stated in direct conjunction with the class and type designation the phrase 'Colored and flavored with wood chips.'

Subsequently, on March 17, 1939, a proposal was made in FA-169 to extend the provisions of Article III, section 34(d) to *all* distilled spirits treated with wood chips. Hearings were held the following month in Washington, DC, to discuss the proposals made in FA-169 and FA-170 (March 30, 1939). At the hearings discussion focused, in part, around the role of wood (oak) chips in the production of brandy. One comment in particular, that of the Growers Grape Products Association of California, is noteworthy and ATF believes the excerpt is as valid today as it was over 40 years ago, for brandy (and whisky) treated with wood chips, slabs, extracts, powders, infusions, etc.:

> [T]he use of oak chips serves no purpose other than to simulate the effect of age by artificial means. No actual ageing effect occurs, but certain woody tastes are imparted to the brandy which might lead the consumer to believe that the treated brandy is older than it is. In our opinion, the interests of the industry would be best served by natural ageing methods which produce those characteristics *flavors* and *aromas* that are typical of grape brandy at its best. [emphases added]

Consequently, T.D. 5050 (1941-1 C.B. 482), effective July 1, 1941, amended section 34(d) [27 CFR 5.34(d)] by requiring label disclosure of wood chips not only for whisky and American whisky so treated, but also for brandy.

On June 5, 1946, T.D. 5617 (1946-1 C.B. 194) was issued clarifying § 5.34(d) by specifying that "corn whisky" could *not* be treated with charred wood chips. Section 5.34(d) was later revised by T.D. 7029 (1970-1 C.B. 335), issued on December 30, 1969, and redesignated as 27 CFR 5.39(c). Thereafter, the word "rectification" was deleted from § 5.39(c) by T.D. ATF-66 (45 FR 40538; June 13, 1980). This deletion was made in light of the repeal of section 5062 of the Internal Revenue Code of 1954 by the all-in-bond legislation. In 1979, Pub. L. 96-39 repealed the rectification tax imposed under section 5082, and conforming amendments to the regulations were necessary to remove all references to rectification.

Addition of Coloring, Flavoring, etc. (§ 5.23(a))

Section 5.23(a)(2) permits the addition of harmless coloring, flavoring, or blending materials, such as caramel, sugar, wine, etc. (without label disclosure), provided those materials do not total more than 2½ percent by volume of the finished product. In addition to their request to amend § 5.39(c), the petitioners have requested that § 5.23(a)(2) be amended to include the infusion of oak chips (Boise) as a harmless coloring, flavoring, or blending material.

ATF does not agree with the petitioners that Boise is a "harmless" coloring or flavoring material which should be included in § 5.23(a)(2) along with caramel, sugar, and wine. As it relates to caramel, FA-143 (June 9, 1938) stated that caramel was considered to be "harmless" coloring, since it did not "contribute a character (i.e., flavor, aroma, etc.) to the product that should be derived from its basic ingredients and not from such added ingredient[s]." Although caramel is added subsequent to distillation, the record indicates that this coloring agent did (does) not impart any character to the product.

In conjunction with § 5.23(a), the Bureau believes that it is necessary to refer to § 5.39(b)(3), which stated that label disclosure (e.g., "colored with caramel") is *not* required in the case of brandy, rum, tequila, or in any type of whisky, other than straight whisky. It is clear from the above regulations, and the record leading up to them, that caramel coloring does *not* contribute any character to the product and, therefore, its disclosure on the label is unnecessary and unwarranted.

However, such is not the case with brandy or whisky treated with wood. Long aging in oak barrels extracts, among other congeners, tannins from the wood. This process can be emulated by the use of chips, slabs, powders, extracts, or Boise. As stated in the FEVS/NABI petition, "[I]n order to balance the tannin content it may be necessary for the brandy masters to adjust, during the aging cycle of the spirits and whenever necessary, the content of the tannin by using an oak chip infusion [Boise] prepared in the traditional way."

Thus, unlike caramel, the Bureau believes that the Boise method *does* impart character to the brandy, and its disclosure on the label is appropriate. ATF further believes that such disclosure is in line with its statutory responsibility of providing the consumer with adequate information as to the identity and quality of the product. That is, to inform the consumer that not all of the brandy's (whisky's) character, i.e., flavor, aroma, etc., was derived solely from aging in the barrel.

Proposals

Based on the preceding discussion, the Bureau believes that label disclosure for whisky and brandy treated with wood, in any manner or form (including Boise), is justified and warranted. Therefore, the amendments to §§ 5.39(c) and 5.23(a), as requested in the FEVS/NABI petition, are not being proposed in this notice. However, the Bureau still wishes to solicit comments on the petition.

As an alternative to the proposals made in the petition, the Bureau is proposing that the wording in § 5.39(c) be amended to read, "treated with

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wood," in lieu of the present statement, "colored and flavored with wood _____." Further, the proposed new wording need not appear on the brand (front) label in direct conjunction with the class and type designation. Rather, it may appear on a front or back label. However, the statement must comply with the requirements of § 5.33 as to location, size of type, etc.

It should be noted that the Bureau believes any proposed changes to § 5.39(c) should apply to brandy, as well as to whisky.

ATF believes that the modified statement mentioned above adequately protects and alerts the consumer to the fact that the product has been treated with wood. The Bureau also believes that the modified statement, and its placement on a front or back label, will provide industry members additional flexibility in designing their labels.

Although the Bureau is proposing specific wording for the disclosure statement, comments are being solicited on other possible statements. Comments are also being solicited on the placement issue, as proposed in this notice.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice, the petition(s), and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority and Issuance

27 CFR Part 5—*Labeling and Advertising of Distilled Spirits* is amended as follows:

PART 5—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Section 5.32(b)(4) is revised to read as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(4) Coloring, flavoring, or treatment, in accordance with § 5.39.

* * * * *

Par. 3. Section 5.39(c) and the informational cite following § 5.39(c) are revised to read as follows:

§ 5.39 Presence of neutral spirits and coloring, flavoring, and blending materials.

* * * * *

(c) *Treatment with wood.* The words "treated with wood" shall be stated for whisky and brandy treated, in whole or in part, with wood (chips, slabs, extracts, infusions, etc.) through percolation, or otherwise, during distillation or storage, other than through contact with the oak container.

Signed: April 8, 1988.

W. T. Drake,
Acting Director.

Approved: April 25, 1988.

Francis A. Keating, II,
Assistant Secretary (Enforcement).

[FR Doc. 88–11613 Filed 5–23–88; 8:45 am]
BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing and Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments address the following subjects: Required amendments at 30 CFR 946.16 (d) and (e) specifying that certain decisions of the State Director are appealable under the Virginia Administrative Process Act; and other amendments that establish a process to allow persons who have forfeited performance bonds and as a result are not eligible to obtain new permits to become eligible to obtain new permits, to address the protection of historic resources in response to revised Federal regulations, modify the standards for success for forestland and classify commercial forestry as a post mining land use for which a variance from the requirement to restore to approximate original contour may be sought.

This notice sets forth the times and locations that the Virginia program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on June 23, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on June 20, 1988; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. June 8, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. William R. Thomas, Director, Big Stone Gap Field Office at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours Monday though Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office:

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 628, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, NW., Washington, DC 20240, Telephone (202) 343–5492

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–2925

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior granted conditional approval of the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

By letter dated April 6, 1988, (Administrative Record No. VA 680) Virginia submitted the following proposed amendments to its permanent regulatory program.

1. In response to OSMRE's regulatory reform effort Virginia submitted, on November 8, 1985, proposed regulations to replace those then found in the approved Virginia program (Administrative Record No. VA 571). The Director of OSMRE approved these regulations, in part, on November 25, 1986, but required that seven additional amendments be placed on the Virginia program. On September 1, 1987, Virginia submitted the seven required amendments (Administrative Record No. 646). Five of the seven amendments were approved by the Director on March 7, 1988 (53 FR 7180–7183). The two remaining amendments required by the Director are addressed by this proposed amendment.

OSMRE's March 7, 1988 approval required Virginia to amend Section 480–03–19.842.15 or otherwise amend its program, to provide that the Director's decisions on citizen requests for review of an inspector's decision not to inspect or take enforcement action with respect to any violation alleged by that citizen are appealable in accordance with section 9–6.14:12 of the Virginia Administrative Process Act.

OSMRE's March 7, 1988 approval also required Virginia to amend Section 480–03–19.843.12 or otherwise amend its program, to specify that the Director's decisions on whether to allow the extension of the abatement period for a violation beyond 90 days is formally appealable in accordance with the Virginia Administrative Process Act.

Virginia's September 1, 1987, submittal provided for an administrative appeal of these decisions but referenced section 480–03–19.843.16 of the Virginia regulations and section 45.1–249 of the Virginia Act. The referenced sections are highly specific to appeals of Notices of Violation and Cessation Orders and do not apply to other types of appeals. On November 3, 1987, the Director, Big Stone Gap Field Office, informed DMLR by letter (Administrative Record No. VA 657) that proposed section 480–03–19.842.15(d) and 480–03–19.843.12(j) could not be approved. DMLR responded by letter dated November 13, 1987, (Administrative Record No. 661) that further revisions of these two sections would be submitted. Section 30 CFR 946.16(d) and (e) were amended on March 7, 1988, (53 FR 7180–7183) allowing Virginia until April 6, 1988, to submit further revisions. This proposed amendment replaces the references to section 45.1–249 of the Virginia Act and/or section 480–03–19.843.16 of the Virginia regulations with references to the Virginia Administrative Process Act Section 9–1.14:1 et seq. of the Code of Virginia.

2. The current approved Virginia program prohibits any person who has forfeited a performance bond provided to guarantee minesite reclamation from obtaining additional coal surface mining and reclamation permits. Section 480–03–19.773.15(b) of Virginia's program does provide that additional permits may be obtained if an applicant demonstrates that all violations have been corrected or are in the process of being corrected. However, no procedures for reinstatement are provided in Virginia's program. Virginia proposes to add sections 480–03–19.773.15(b)(12), 480–03–19.800.52(a) and (b), and 480–03–19.843.13(f) to establish reinstatement procedures.

Under this proposal, persons who have forfeited performance bonds may petition the Director, DMME, for reinstatement of eligibility to obtain new permits. To be eligible for reinstatement, the person must, at a minimum: abate any outstanding violations existing on each site for which a bond has been forfeited or a permit revoked; pay all outstanding civil penalties, fees, and taxes (both State and Federal); reclaim

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each forfeited site to the standards applicable at the time of forfeiture; pay to the Director, DMME, any monies in excess of the forfeited bond amount expended by the Commonwealth to accomplish reclamation of the forfeited sites; and pay a civil penalty of $500 assessed by the Director, DMME, on each site forfeited. The proposal also provides that reinstatement shall be a prerequisite to the filing of new permit applications.

3. OSMRE, on two separate occasions during 1987, revised the Federal regulations pertaining to the protection of historic resources. On February 10, 1987, (52 FR 4244–4263), rules were adopted which provided permitting requirements pertaining to information on historic and archeological resources within proposed exploration sites; findings which must be made as to the effect of proposed mining operations on properties listed on, or eligible for listing on, the National Register of Historic Places; minimum permitting requirements pertaining to historic and archeological resources and cemeteries on or near proposed surfce coal mining and reclamation operations; operation and reclamation plans describing the measures to be used to prevent adverse impacts to any places listed on the National Register of Historic Places; and mitigation and treatment measures that may be required to protect historic and archeological resources listed on, or eligible for listing on, the Natinal Register of Historic Places. On May 19, 1987, (52 FR 18792–18795), OSMRE adopted regulations defining "historic lands" and "fragile lands" to be applied during the lands unsuitable petition process.

These changes were adopted in response to a settlement agreement resulting from litigation involved in Round III of *In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1984).

Virginia proposes to amend its program to conform to the Federal rule changes described above.

4. As provided by 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i), States shall specify stocking rates for woody species on lands reclaimed as forest land based upon consultation with the State agencies responsible for the administration of forestry programs. Based upon recommendations of the State Forester, Virginia Department of Forestry, Virginia proposes to amend sections 480–03–19.816.116(b)(3)(v)(c) and 480–03–19.817.116(b)(3)(v)(c) to lower its standard for revegetation success for areas planted to herbaceous and woody species on steep slopes from 600 plants per acre to 400 plants per acre.

5. Sections 480–03–19.785.13 (Experimental Practices Mining), 480–03–19.785.14 (Mountaintop Removal Mining), and 480–03–19.785.15 (Steep Slope Mining) of the Virginia program contain provisions for approval of a variance from backfilling and regrading to approximate original contour for an industrial, commercial, residential, or public postmining land use (including recreational facilities). Virginia proposes to amend these sections to add commercial forestry as a postmining land use for which a variance from approximate original contour may be approved.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on June 8, 1988.

If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendmetns may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES." A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,
Assistant Director, Eastern Field Operations.

Date: May 10, 1988.

[FR Doc. 88–11614 Filed 5–23–88; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 88–01]

Regatta; Annual Clarkston, WA, Limited Hydroplane Races

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Thunder Promotions, Inc., the Coast Guard is considering a change to the regulations governing the annual Clarkston, Washington, Limited Hydroplane Races which would allow the event to be held on the 15th, 16th and 17th of July in 1988 and on any weekend during the month of July in subsequent years. This proposal is being made to allow Thunder Promotions, Inc., to attract nationwide competition by holding its annual event on varying dates in the month of July.

DATES: Comments must be received on or before July 8, 1988.

ADDRESSES: Comments should be mailed to Commander, U.S. Coast Guard Group, 6767 N. Basin Avenue, Portland, Oregon 97217. The comments and other materials referenced in this notice will be available for inspection and copying at U.S. Coast Guard Group, 6767 N. Basin Avenue, Portland, Oregon 97217, Mount Saint Helens Building, Room 1108. Normal office hours are between 7:15 a.m. and 3:45 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG Guy R. Theriault, Chief, Port Management Branch, U.S. Coast Guard Group, 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–9319.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD13 88–01 and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG Guy R. Theriault, Project Officer, U.S. Coast Guard Group, Portland, Oregon, and LCDR Lawrence Kiern, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations

Prior to 1987, the annual Clarkston, Washington, Limited Hydroplane Races were conducted on the first weekend in July. In 1987, Thunder Promotions rescheduled the races to mid-July to help attract more nationwide competition. The Coast Guard permitted this change and issued Temporary Local Regulations to help ensure the safety of all waterway users during the race period. Environmental and economic assessments were conducted in conjunction with those regulations and no significant impacts were identified. The races were subsequently held as rescheduled and no problems were encountered. Thunder Promotions is now seeking to make permanent their desire to hold the annual race on whichever weekend in July they believe will attract the most competition and spectators. The Coast Guard is proposing to incorporate this desire into regulation by amending 33 CFR 100.1302(a) to allow the races to be held on the 15th, 16th and 17th of July in 1988 and on any weekend in July in subsequent years.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations will continue to affect a short section of the Snake River which experiences only light commercial traffic. The regulations are in effect for only three days each year and two of those days are Saturday and Sunday. The Patrol Commander will continue to allow commercial traffic to transit the area between races.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1302(a) is revised to read as follows:

§ 100.1302 Annual Clarkston, Washington, Limited Hydroplane Races.

(a) On Friday and Saturday, 15 and 16, July 1988, this regulation will be in effect from 8:00 a.m. to 6:00 p.m. On Sunday, 17 July 1988, this regulation will be in effect from 8:00 a.m. until one hour after the conclusion of the last race. This section will be effective thereafter annually on a Friday, Saturday, and Sunday in July as published in the Local Notice to Mariners.

* * * * *

Dated: April 22, 1988.

G.A. Penington,
Acting Commander, 13th Coast Guard District.

[FR Doc. 88–11568 Filed 5–23–88; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3384–4]

Ocean Dumping; Proposed Designation of a Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today proposes to designate four dredged material disposal sites located offshore of Arecibo, Mayaguez, Ponce, and Yabucoa, Puerto Rico, for the disposal of dredged material removed from the Arecibo, Mayaguez, Ponce and Yabucoa harbors, respectively. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material. These proposed site designations do not authorize any actual disposal of dredged material. Authorization to ocean dump dredged material at the sites is granted only by permit and other administrative proceedings conducted by the U.S. Army Corps of Engineers (COE).

DATE: Comments must be received on or before July 8, 1988.

ADDRESSES: Send comments to: Mario P. Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA, Region II, 26 Federal Plaza, Room 837, New York, New York 10278–0090.

The file supporting this proposed designation is available for public inspection at the above address.

The Draft and Final Environmental Impact Statements (EIS) for the designation of the Arecibo, Mayaguez, Ponce, and Yabucoa dredged material disposal sites evaluate the environmental impacts associated with the proposed designations. These documents are available for public review at the following locations:

U.S. Environmental Protection Agency, Environmental Impacts Branch, 26 Federal Plaza, Room 500, New York, New York, 10278–0090

U.S. Environmental Protection Agency, Caribbean Field Office, 1413 Avenida Fernandez Juncos—Stop 20, Santurce, Puerto Rico

U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2904 (Rear), 401 M Street, SW., Washington, DC 20460

U.S. Army Corps of Engineers, Jacksonville District Office, 400 W. Bay Street, Jacksonville, Florida 32202

U.S. Army Corps of Engineers, San Juan Area Office, 400 Avenida Fernandez Juncos, San Juan, Puerto Rico
Puerto Rico Department of Natural Resources, Oficina 204, Centro Gubernamental, Avenida Rotarios, Arecibo, Puerto Rico
Puerto Rico Department of Natural Resources, Oficina A, Centro Commercial, 2 Alturas de Mayaguez Carr., Mayaguez, Puerto Rico
Puerto Rico Department of Natural Resources, 5 Calle Celenia, Humacao, Puerto Rico
Puerto Rico Department of Natural Resources, Hospital Sub-Regional, Ponce, Puerto Rico

FOR FURTHER INFORMATION CONTACT:
Mario P. Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA, Region II, 26 Federal Plaza, Room 837, New York, New York 10278–0090, (212) 264–5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 24, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the EPA Region in which the site is located. This site designation is being made pursuant to that authority.

Section 103 of the Act gives authority to the Secretary of the Army to issue dredged material disposal permits. Such permits are evaluated according to criteria promulgated in the EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Part 227) and are reviewed by EPA for concurrence before issuance. In all cases, a need for ocean disposal must be established before issuance of a disposal permit. Section 103 of the Act also requires the Secretary to use recommended sites designated by EPA to the maximum extent feasible.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites", including the interim sites for Arecibo, Mayaguez, and Ponce, was published on January 11, 1977 (42 FR 2461 *et seq.*). The interim site for Yabucoa was added to the list on May 11, 1979 (44 FR 27862).

EPA generally is not required to designate ocean disposal sites for dredged material but does so when it believes ocean disposal may be a reasonable disposal alternative. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into Agency decision-making processes careful consideration of all environmental aspects of proposed actions. Although NEPA does not apply to EPA activities of this type, EPA has voluntarily made a commitment to prepare EISs in connection with ocean dumping site designations (39 FR 16186; May 7, 1974).

On September 3, 1986, EPA issued a draft EIS entitled *Draft Environmental Impact Statement for the Designation of Ocean Dredged Material Disposal Sites for Arecibo, Mayaguez, Ponce, and Yabucoa, Puerto Rico.* On October 17, 1986, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** (51 FR 37068). The public comment period on this draft EIS closed December 15, 1986. The final EIS is being issued concurrently with this proposed rule.

Comment letters were received on the Draft EIS and are summarized below.

The National Science Foundation (NSF) indicated that there would be no impact on the operation of the NSF-sponsored Natural Astronomy and Ionosphere Center in Arecibo.

The Environmental Quality Board, Commonwealth of Puerto Rico, commented that the EIS should be translated into Spanish in accordance with the Environmental Public Policy Act (EPPA). EPA's Office of Regional Counsel has determined that the provisions of EPPA apply to the actions of departments, agencies, government corporations, municipalities, and instrumentalities of the Commonwealth. The actions of federal agencies are subject to the provisions of the National Environmental Policy Act (NEPA) which do not require the translation of documents into Spanish. EPA has prepared versions of documents in Spanish when public interest has warranted that action. However, in this case, minimal public interest was expressed so no version appeared in Spanish.

The Center for Environmental Health requested information regarding the identification of human disease organisms that may be present in the dredged material. The DEIS did not identify any human disease organisms in the dredged material, because such organisms are not generally associated with dredged material. Tests for human disease organisms are not conducted on dredged material unless there is reason to suspect their presence (e.g., proximity to sewage outfall).

Several comments were made regarding alternate uses of the dredged material, such as beach nourishment or wetland creation, in place of ocean disposal. The purpose of this action is to locate and designate environmentally acceptable and economically feasible ocean disposal sites for each coastal project area where a continuing need for ocean disposal has been identified by the U.S. Army Corps of Engineers. The use of land-based alternative sites and the need for ocean disposal are assessed on a case-by-case basis during the permitting process. Site designation does not imply that permits will be issued to dispose of dredged material at these sites. The need for ocean disposal will continue to be assessed on a case-by-case basis.

The draft EIS recommended relocation of three of the interim sites to new areas considered less environmentally sensitive. The Corps of Engineers requested that the economic impact of relocating the sites further offshore should be addressed. The proposed new locations for the Mayaguez, Ponce, and Yabucoa sites are 1.5, 1.5, and 2.75 nautical miles (respectively) further offshore than the existing interim locations. EPA considers the incremental cost associated with the transport of dredged material to an environmentally preferrable site to be acceptable and consistent with the intent of the designation process.

The action discussed in the EIS is the designation for continuing use of four ocean disposal sites for dredged material. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of dredged material. Ocean disposal at the sites will only be allowed on a case-by-case basis after the U.S. Army Corps of Engineers (COE), Jacksonville District, has issued a permit authorizing disposal. EPA reviews the public notice announcing a complete permit application and provdes comments on the proposed action prior to permit issuance.

The EIS discusses the need for site designation and examines ocean disposal sites and alternatives to the proposed action. Three sites were examined for Arecibo (the interim site and two alternate sites); at all other locations, four sites were evaluated (the interim sites and three alternate sites). Land-based disposal alternatives were examined in some detail in the draft EIS and will be re-examined during decision-making on individual permit applications for the ocean dumping of dredged material.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and includes the results of a disposal site environmental study completed in 1984. All activities associated with these final site designations were, or are, being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designations

The first proposed site is located approximately 1.5 nautical miles north of Arecibo harbor, Puerto Rico, and occupies an area of approximately 1 square nautical mile. Water depths within the site range from 101 to 417 meters. The corner coordinates of the site are as follows:

18°31'00" N, 66°43'47" W
18°31'00" N, 66°42'45" W
18°30'00" N, 66°42'45" W
18°30'00" N, 66°43'47" W.

The second proposed site is located approximately 6 nautical miles west of Mayaguez harbor, Puerto Rico, and occupies an area of approximately 1 square nautical mile. Water depths within the site range from 351 to 384 meters. The corner coordinates of the site are as follows:

18°15'30" N, 67°16'13" W
18°15'30" N, 67°15'11" W
18°14'30" N, 67°15'11" W
18°14'30" N, 67°16'13" W.

The third proposed site is located approximately 4.5 nautical miles south of Ponce harbor, Puerto Rico, and occupies an area of approximately 1 square nautical mile. Water depths within the site range from 329 to 457 meters. The corner coordinates of the site are as follows:

17°54'00" N, 66°37'43" W
17°54'00" N, 66°36'41" W
17°53'00" N, 66°36'41" W
17°53'00" N, 66°37'43" W.

The fourth proposed site is located approximately 6 nautical miles east of Yabucoa harbor, Puerto Rico, and occupies an area of approximately 1 square nautical mile. Water depths within the site range from 549 to 914 meters. The corner coordinates of the site are as follows:

18°03'42" N, 65°42'40" W
18°03'42" N, 65°41'47" W
18°02'42" N, 65°41'47" W
18°02'42" N, 65°42'40" W.

Use of the sites will be restricted to the disposal of dredged material associated with maintenance dredging projects originating within Arecibo, Mayaguez, Ponce and Yabucos harbors. Continued use of a site will be restricted or terminated if disposal operations at the site at any time cause unacceptable adverse impacts.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep temporary perturbations associated with the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal opeations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as a suitable alternate disposal site can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, while § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to ensure that the general criteria are met.

Normally, EPA chooses sites where the dredged material can be contained within the site after disposal. This is generally feasible in shallow water (10 to 50 meters) environments where valuable natural resources will not be placed at risk. In Puerto Rico, however, shallow water environments typically are inhabited by corals. To avoid direct disposal on coral, deeper water sites are selected. As a consequence of selecting deeper water sites, a portion of the dredged material may be transported outside of the site boundaries; however, the effects of such transport is preferable to disposal on coral reefs.

The four proposed sites are acceptable under the five general criteria. The characteristics of the proposed sites are discussed below in terms of the eleven factors.

D.1 ARECIBO

D.1.1 Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast. [40 CFR 228.6(a)(1)]

The proposed Arecibo site is located within the coordinates listed in the previous section of this proposed rule and is approximately 1 nautical mile north of the nearest coastline. The bottom of the site slopes sharply to the north, with depths ranging from 101 to 417 meters.

D.1.2 Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult of Juvenile Phases. [40 CFR 228.6(a)(2)]

The proposed Arecibo site is 1 to 2 nautical miles from the nearest significant breeding, spawning, or nursery area of nearshore living resources. Because the site is typical of nearby well-flushed open ocean locations, there is no evidence to suggest that the proposed site has any unique importance as feeding or passage areas for biota.

Endangered sea turtles and the brown pelican inhabit coastal Puerto Rico. Available information indicates that these species are most active in the nearshore coastal environment and are only transients in oceanic environments. Consequently, ocean disposal of dredged material is not expected to adversely affect these species.

D.1.3 Location in Relation To Beaches and Other Amenity Areas. [40 CFR 228.6(a)(3)]

The proposed Arecibo site is about 6 nautical miles from the nearest recreational beach. Because of the decreasing water depth in the westerly direction, dredged material deposited at the site is expected to settle within the confines of the designated site, or a short distance to the west within minimal time subsequent to disposal. Since virtually all dredged material will settle to the bottom near the release point, it is not anticipated that any released material will adversely affect the nearby shoreline. Due to ambient ocean currents, no dredged material is expected to be transported to the beach area.

D.1.4 Types and Quantitites of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any. [40 CFR 228.6(a)(4)]

The Arecibo site is expected to receive approximately 150,000 cubic yards of sandy dredged material once

every 3 to 5 years. The material will be obtained through maintenance dredging of navigational channels and berthing areas in Arecibo harbor. Dumping would occur from hopper dredges or barges, depending on the availability of equipment at the time of dredging.

D.1.5. Feasibility of Surveillance and Monitoring. [40 CFR 228.6(a)(5)]

Surveillance is the responsibility of the U.S. Coast Guard, while monitoring activities are the responsibility of EPA and the COE. Because of its proximity to the shore, surveillance by shipriders, helicopters, or other vessels would be feasible at the proposed Arecibo site. Water depths are not sufficient to impede either water quality sampling or benthic sampling during monitoring activities. The site could be monitored by ocean-going vessels. The EPA has conducted monitoring and research activities in, and near, the proposed site.

D.1.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any. [40 CFR 228.6(a)(6)]

The waters near the proposed Arecibo site are characterized by weak (3 to 5 cm/s) westerly subsurface currents. Because of the decreasing water depth in the westerly direction, dredged materials are expected to settle out within the dump site or a short distance to the west within a short time following disposal. Dispersal and horizontal mixing of the water column are weak because of the low current speeds. The dispersal, horizontal transport, and vertical mixing characteristics of the site are such that dumped dredged material is likely to remain within the confines of the site.

D.1.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects). [40 CFR 228.6(a)(7)]

A total of 584,477 cubic yards of dredged material has been previously disposed of at the Arecibo interim site. In 1984, a survey cruise detected a higher percentage of silty sand at the Arecibo site than in nearby sediments. Because the proposed site has historically been used for dumping, it is presumed that the difference in sediment types is the result of previous dumping activities. Historical disposal of dredged material at the interim Arecibo site has not resulted in substantial adverse effects to biotic resources of the ocean or to other uses of the marine environment. The fauna of the site are more typcial of those inhabiting sandy sediments than those inhabiting silty sediments (see D.1.9).

Dredged material deposited at the proposed Arecibo site will bury benthic organisms. The effect of burial is expected to be temporary, because the site is inhabited by species that have either survived previous disposal or have recolonized the site after disposal. The deposited material will accumulate on the sea floor, but is not likely to interfere with other uses of the ocean. Impacts of dredged material disposal will be primarily limited to the sea floor.

D.1.8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean. [40 CFR 228.6(a)(8)]

There are no expected impacts on any of these factors. There are no designated shipping lanes within the coordinates of the proposed site. Fishing areas are located east and south of the proposed site. Fishing areas are located east and south of the proposed site, but ocean currents would transport dredged material away from these areas. No dredged materials are expected to be transported towards shore-based recreational areas. No mineral extraction or desalinaton operations would be impacted. No fish or shellfish culture operations exist or are planned near the dumpsite. The proposed site does not contain any known areas of special scientific importance.

D.1.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or By Trend Assessment or Baseline Surveys. [40 CFR 228.6(a)(9)]

Water quality at the proposed Arecibo site is good, typical of the well-flushed open ocean conditions in Puerto Rican coastal areas. The water is optically clear with little suspended material, and there is no evidence of organic enrichment or eutrophication. Oxygen concentrations are high and nutrient concentrations are low.

Species composition of benthic organisms at the proposed site reflects the increased sand content found in the sediments at the disposal site. Among polychaete worms and crustaceans inhabiting the site, the percentage of species and individuals of ecological types suited to sandy environments is higher at the proposed site than at nearby locations. The fauna at the proposed site are well-adapted to recolonize after future disposal operations.

D.1.10 Potential For the Development or Recruitment of Nuisance Species in the Disposal Site. [40 CFR 228.6(a)(10)]

Previous disposal at the proposed Arecibo site has not caused development of nuisance species at the site. There are no known components in the dredged material which would attract or recruit nuisance species at the site. In the unlikely event that pathogens were contained in the dredged material, it is considered improbable that they could survive and reproduce in the cold, 100- to 400-meter depth environment of the sea floor at the site.

D.1.11 Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance. [40 CFR 228.6(a)(11)]

No such areas have been identified at the proposed Arecibo site or in areas likely to be affected by dredged material disposal at the site.

D.2 MAYAGUEZ

D.2.1 Geographical Position, Dept of Water, Bottom Topography, and Distance from Coast. [40 CFR 228.6(a)(1)]

The proposed site is located at the coordinates listed in the previous section of this proposed rule and is approximately 3.5 nautical miles west of the nearest coastline. The bottom of the site slopes slightly in a westerly direction from 351 to 384 meters.

D.2.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases. [40 CFR 228.6(a)(2)]

The proposed Mayaguez site is at least 3 nautical miles from the nearest significant breeding, spawning, or nursery area of nearshore living resources. Because the site is typical of nearby well-flushed open ocean locations, there is no evidence to suggest that the proposed site has any unique importance as feeding or passage areas for biota.

Endangered sea turtles and the brown pelican inhabit coastal Puerto Rico. Available information indicates that these species are most active in the nearshore coastal environment and are only transients in oceanic environments. Consequently, disposal of dredged material is not expected to adversely affect these species.

D.2.3. Location in Relation to Beaches and Other Amenity Areas. [40 CFR 228.6(a)(3)]

The proposed Mayaguez site is approximately 4 nautical miles from the nearest recreational beach. Modeling of the movement of the dredged material disposed of at the proposed Mayaguez site indicates that the material would not be transported to the shoreline.

D.2.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any. [40 CFR 228.6(a)(4)]

Approximately 53,500 cubic yards of mixed sand, silt, and clay dredged material is expected to be disposed of at the Mayaguez site once every 2 years. The material will be obtained through maintenance dredging of navigational channels and berthing areas in Mayaguez harbor. The dumping would occur primarily from hopper dredges.

D.2.5 Feasibility of Surveillance and Monitoring. [40 CFR 228.6(a)(5)]

Surveillance is the responsibility of the U.S. Coast Guard, while monitoring activities are the responsibility of EPA and the COE. Because of its proximity to the shore, surveillance by shipriders, helicopters, or other vessels would be feasible at the proposed Mayaguez site. Water depths are not sufficient to impede either water quality sampling or benthic sampling during monitoring activities. The site could be monitored by ocean-going vessels. The EPA has conducted monitoring and research activities in, and near, the proposed site.

D.2.6 Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any. [40 CFR 228.6(a)(6)]

The waters near the proposed Mayaguez site are characterized by moderate (15 cm/s) southwesterly subsurface currents. The dredged materials are expected to be deposited within the dumpsite or within 1.5 nautical miles southwest of the dumpsite within a short time following disposal. Horizontal mixing of the water column is not sufficient to cause significant dispersal of the dredged material.

D.2.7 Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects). [40 CFR 228.6(a)(7)]

Previous dredged material disposal has occurred at a nearby interim disposal site. There are no other current or previous discharges at or near the site. There has been no known dumping of dredged material at the proposed Mayaguez site. A 1984 survey cruise detected no difference in species composition of bottom fauna between the proposed site and nearby areas, including the interim site.

Dredged material disposed of at the Mayaguez site will be deposited on the sea floor at and near the site. Benthic organisms will be buried by this action. However, due to the relatively fine nature of the dredged material, recolonization of the site subsequent to disposal will likely be accomplished in a short time period. Impacts of dredged material disposal will be primarily limited to the sea floor.

D.2.8 Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of The Ocean. [40 CFR 228.6(a)(8)]

There are no designated shipping lanes within the coordinates of the proposed site. Fishing will not be impacted since the disposal of dredged materials at the proposed site would not damage coral reefs or their associated fish or shellfish assemblages. No dredged materials are expected to be transported towards shore-based recreational areas. No mineral extraction proposals, or desalination plants would be impacted. There are no fish or shellfish culture operations near the proposed Mayaguez site. The proposed site does not contain any known areas of special scientific importance.

D.2.9 The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys. [40 CFR 228.6(a)(9)]

Water quality at the proposed Mayaguez site is good, typical of well-flushed open water conditions in Puerto Rican coastal areas. The water is optically clear with little suspended material, and there is no evidence of organic enrichment or eutrophication. Oxygen concentrations are high, nutrient concentrations are low.

Benthic organisms at the proposed site are primarily deposit feeders, an ecological type well-adapted to living in the high turbidity that might be caused by dredged material disposal.

D.2.10 Potential for the Development or Recruitment of Nuisance Species in the Disposal Site. [40 CFR 228.6(a)(10)]

There are no known components in the dredged material which would attract or recruit nuisance species at the site. In the unlikely event that pathogens were contained in the dredged material, it is considered improbable that they could survive and reproduce in the deep ocean waters. The dredged material to be disposed of would be similar in nature to that existing at the site, and would result in a similar fauna at the site.

D.2.11 Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance. [40 CFR 228.6(a)(11)]

Although there is a shipwreck within 1 nautical mile of the proposed Mayaguez site, predominant currents are expected to carry dredged material away from this location. Other known shipwrecks in the area are unlikely to be affected by dredged material disposal.

D.3 PONCE

D.3.1 Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast. [40 CFR 228.6(a)(1)]

The proposed Ponce site is located within the coordinates listed in the previous section of this proposed rule and is approximately 4 nautical miles south of the nearest coastline. The bottom of the site slopes from 329 to 457 meters in a southwesterly direction.

D.3.2 Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases. [40 CFR 228.6(a)(2)]

The proposed Ponce site is at least 4 nautical miles from the nearest significant breeding, spawning, or nursery area of nearshore living resources. Because the site is typical of nearby well-flushed open ocean locations, there is no evidence to suggest that the proposed site has any unique importance as feeding or passage areas for biota.

Endangered sea turtles and the brown pelican inhabit coastal Puerto Rico. Available information indicates that these species are most active in the nearshore coastal environment and are only transient in oceanic environments. Consequently, oceanic dredged material disposal is not expected to adversely affect these species.

D.3.3 Location in Relation to Beaches and Other Amenity Areas. [40 CFR 228.6(a)(3)]

The proposed Ponce site is several nautical miles from the nearest recreational beach. Modeling of the movement of dredged material at the proposed Ponce site indicates that the

prevailing ocean currents would not transport dredged material to the shore.

D.3.4 Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any. [40 CFR 228.6(a)(4)]

Between 250,000 and 290,000 cubic yards of silty dredged material is expected to be disposed of at the Ponce site once every 2 years. The material will be obtained through maintenance dredging of navigational channels and berthing areas in Ponce harbor. The disposal would occur primarily from clamshell unloading of scows, but hopper dredges might be used if available.

D.3.5 Feasibility of Surveillance and Monitoring. [40 CFR 228.6(a)(5)]

Surveillance is the responsibility of the U.S Coast Guard, while monitoring activities are the responsibility of EPA and the COE. Because of its proximity to the shore, surveillance by shipriders, helicopters, or other vessels would be feasible at the proposed Ponce site. Water depths are not sufficient to impede either water quality sampling or monitoring activities. Benthic sampling at deep water sites presents logistic difficulties. However, techniques have been devised to resolve these problems, and previous sampling activities at the site have been successful. The site could be monitored by ocean-going vessels. The EPA has conducted monitoring and research activities in, and near, the proposed site.

D.3.6 Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any. [40 CFR 228.6(a)(6)]

The waters near the proposed Ponce site are characterized by weak (5 to 10 cm/s) west-northwesterly subsurface currents. Because of the fine nature of the dredged materials, transport over considerable distances, potentially up to 10 nautical miles, may occur before the material settles to the sea floor. However, significant transport occurs only at depths in excess of 300 meters. Any transport in the direction of the coastline would be limited since dredged material would settle out as shallower water is encountered.

Of the alternatives considered, the proposed site has the least potential for dispersion to affect nearshore areas that may contain coral reefs. Fine dredged materials may be transported great distances over a long period of time. However, although the water column is not dispersive in nature, the material is laterally dispersed over a wide area as well. Consequently, deposition at any one location will be minimal.

D.3.7 Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects). [40 CFR 228.6(a)(7)]

Previous dredged material disposal has occurred at a nearby interim disposal site. There are no other current or previous discharges at or near the site.

There has been no known dumping of dredged material at the proposed Ponce site. A 1984 survey cruise detected no difference in botton fauna or sediments between the proposed site and nearby areas, including the interim site.

Dredged material disposal at the proposed Ponce site will be widely distributed over the sea floor. Thus, only thin layers of dredged material will be deposited at any given location. Deposition of this material is therefore expected to have only minimal impacts on the benthic biota and physical environment at the site.

D.3.8 Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean. [40 CFR 228.6(a)(8)]

There are no designated shipping lanes within the coordinates of the proposed site. Although dispersal will occur over a wide area, it is not expected that disposal of dredged material at the proposed site would damage coral reefs or their associated fish or shellfish assemblages. No mineral extraction or desalination operations would be impacted. There are no fish or shellfish culture operations near the proposed Ponce site. No known areas of scientific importance are near the site.

D.3.9 The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys. [40 CFR 229.6(a)(9)]

Water quality at the proposed Ponce site is good, typical of the well-flushed open water conditions in Puerto Rican coastal areas. The water is optically clear with little suspended material, and there is not evidence or organic enrichment or eutrophication. Oxygen concentrations are high and nutrient concentrations are low.

Benthic organisms at the proposed site are primarily deposit feeders, an ecological type well-adapted to living in the high turbidity that might be caused by dredged material disposal. It is not likely that use of the proposed site will have a detrimental effect on benthic communities because of the wide dispersal of the material.

D.3.10 Potential for the Development or Recruitment of Nuisance Species in the Disposal Site. [40 CFR 228.6(a)(10) [40 CFR 228.6(a)(10)]

There are no known components in the dredged material which would attract or recruit nuisance species at the site. In the unlikely event that pathogens were contained in the dredged material, it is considered improbable that they could survive and reproduce in the deep ocean waters. The dredged material to be disposed of would be similar in nature to that existing at the site, and would result in a similar fauna at the site.

D.3.11 Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance. [40 CFR 228.6(a)(11)]

No such features have been identified at the proposed Ponce site or in areas that will be affected by disposal at the site.

D.4 YABUCOA

D.4.1 Geographical Position, Depth of Water, Bottom Topography, and Distance from Coast. [40 CFR 228.6(a)(1)]

The proposed site is located at the coordinates listed in the previous section of this proposed rule and is approximately 4.5 nautical miles east of the nearest coastline. The bottom of the site slopes sharply to the southeast, with depths ranging from 548 to 914 meters.

D.4.2 Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases. [40 CFR 228.6(2)(2)]

The proposed Yabucoa site is at least 4 nautical miles from the nearest significant breeding, spawning, or nursery area of nearshore living resources. Because the site is typical of nearby well-flushed open ocean locations, there is no evidence to suggest that the proposed site has any unique importance as feeding or passage areas for biota.

Endangered sea turtles and the brown pelican inhabit coastal Puerto Rico. Available information indicates that these species are most active in the nearshore coastal environment and are only transient in oceanic environments. Consequently, oceanic dredged material disposal is not expected to adversely affect these species.

D.4.3 Location in Relation to Beaches and Other Amenity Areas. [40 CFR 228.6(a)(3)]

The proposed Yabucoa site is 4 to 5 nautical miles from the nearest recreational beach. Modeling of dispersion of the dredged material at the proposed Yabucoa site indicated that the material would not be transported to the shoreline.

D.4.4 Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any. [40 CFR 228.6(a)(4)]

Approximately 150,000 cubic yards of predominantly silty dredged material mixed with some sand is expected to be disposed of at the Yabucoa site once every 3 to 5 years. The material will be obtained through maintenance dredging of navigational channels and berthing areas in Yabucoa harbor. The dumping would occur primarily from clamshell unloading of scows, but hopper dredges might be used if available.

D.4.5 Feasibility of Surveillance and Monitoring. [40 CFR 228.6(a)(5)]

Surveillance is the responsibility of the U.S. Coast Guard, while monitoring activities are the responsibility of EPA and the COE. Because of its proximity to the shore, surveillance by shipriders, helicopters, or other vessels would be feasible at the proposed Yabucoa site. Water depths are not sufficient to impede either water quality sampling or monitoring activities. Benthic sampling at deep water sites presents logistic difficulties. However, techniques have been devised to resolve these problems, and previous sampling activities at the site have been successful. The site could be monitored by ocean-going vessels. EPA has conducted monitoring and research activities in, and near, the proposed site.

D.4.6 Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity if any. [40 CFR 228.6(a)(6)]

The waters near the proposed Yabucoa site are characterized by moderate (15 cm/s) west-southwesterly subsurface currents. Because of the fine nature of the dredged materials, transport over considerable distances, potentially up to 10 nautical miles, may be expected before settling occurs. Significant transport only occurs at depths in excess of 300 meters. Any transport in the direction of the coastline would be limited since dredged material would settle out as shallower water is encountered. Fine dredged material may be transported great distances over a long period of time. However, although the water column is not dispersive in nature, the material is laterally dispersed over a wide area as well. Consequently, deposition at any one location will be minimal.

D.4.7 Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects). [40 CFR 228.6(a)(7)]

Previous dredged material disposal has occurred at a nearby interim site. There are no other current or previous discharges at or near the site. There has been no known dumping of dredged material at the proposed Yabucoa site. A 1984 survey cruise detected no difference in bottom fauna or sediments between the proposed site and nearby areas, including the interim site.

Dredged material disposal at the proposed Yabucoa site will be widely distributed over the sea floor. Thus, only thin layers of dredged material will be deposited at any given location. Deposition of this material is therefore expected to have only minimal impacts on the benthic biota and physical environment at the site. Impacts of dredged material will be primarily limited to the sea floor.

D.4.8 Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean. [40 CFR 228.6(a)(8)]

There are no designated shipping lanes within the coordinates of the proposed site. Although dredged material will be dispersed over a wide area, it is not expected that disposal of dredged material at the proposed site would damage coral reefs or their associated fish or shellfish assemblages. No mineral extraction or desalination operations would be impacted. There are no fish or shellfish culture operations near the proposed site. The site contains no known areas of scientific importance.

D.4.9 The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys. [40 CFR 228.6(a)(9)]

Water quality at the proposed Yabucoa site is good, typical of the well-flushed open water conditions in Puerto Rican coastal areas. The water is optically clear with little suspended material, and there is no evidence of organic enrichment or eutrophication. Oxygen concentrations are high and nutrient concentrations are low.

Benthic organisms at the proposed site are primarily deposit feeders, an ecological type well-adapted to living in the high turbidity that might be caused by dredged material disposal. It is not likely that use of the proposed site will have a detrimental effect on benthic communities because of the wide dispersal of the material.

D.4.10 Potential for the Development or Recruitment of Nuisance Species in the Disposal Site. [40 CFR 228.6(a)(10)]

There are no known components in the dredged material which would attract or recruit nuisance species at the site. In the unlikely event that pathogens were contained in the dredged material, it is considered improbable that they could survive and reproduce in the deep ocean waters. The dredged material to be disposed of would be similar in nature to that existing at the site, and would result in a similar fauna at the site.

D.4.11 Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance. [40 CFR 228.6(a)(11)]

One shipwreck has been identified near the interim site for Yabucoa. Due to prevailing currents, use of the proposed site will have no effect on this feature.

E. Proposed Action

The EIS concludes that the proposed sites may appropriately be designated for use. The proposed sites are compatible with the general criteria and specific factors used for site evaluation.

The designation of the Arecibo, Mayaguez, Ponce, and Yabucoa sites as EPA approved Ocean Dumping Sites is being published as proposed rulemaking. Management of these sites will be delegated to the Regional Administrator, EPA Region II.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at a site may commence, the COE must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory

Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities, because the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects that would result in its classification as a major rule under the Executive Order. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: May 4, 1988.

Christopher J. Daggett,

Regional Administrator for Region II.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. secs. 1412 and 1418.

2. Section 228.12 is amended by removing the following entries from the "Dredged Material Sites" list in paragraph (a)(3): Arecibo Harbor, PR; Mayaguez Harbor, PR; and Ponce Harbor, PR; and by adding paragraph (b)(56), (57), (58), and (59) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(56) Arecibo Harbor, PR Dredged Material Disposal Site Region II.

Location: 18°31'00" N, 66°43'47" W; 18°31'00" N, 66°42'45" W; 18°30'00" N, 66°42'45" W; 18°30'00" N, 66°43'47" W.

Size: Approximately 1 square nautical mile.

Depth: Ranges from 101 to 417 meters.

Primary Use: Dredged material disposal.

Period of Use: Continuing Use.

Restrictions: Disposal shall be limited to dredged material from Arecibo Harbor, PR.

(57) Mayaguez Harbor, PR Dredged Material Disposal Site Region II.

Location: 18°15'30" N, 67°16'13" W; 18°15'30" N, 67°15'11" W; 18°14'30" N, 67°15'11" W; 18°14'30" W, 67°16'13" N.

Size: Approximately 1 square nautical mile.

Depth: Ranges from 351 to 384 meters.

Primary Use: Dredged material disposal.

Period of Use: Continuing Use.

Restrictions: Disposal shall be limited to dredged material from Mayaguez Harbor, PR.

(58) Ponce Harbor, PR Dredged Material Disposal Site Region II.

Location: 17°54'00" N, 66°37'43" W; 17°54'00" N, 66°36'41" W; 17°53'00" N, 66°36'41" W; 17°53'00" N, 66°37'43" W.

Size: Approximately 1 square nautical mile.

Depth: Ranges from 329 to 457 meters.

Primary Use: Dredged material disposal.

Period of Use: Continuing Use.

Restrictions: Disposal shall be limited to dredged material from Ponce Harbor, PR.

(59) Yabucoa Harbor, PR Dredged Material Disposal Site Region II.

Location: 18°03'42" N, 65°42'49" W; 18°03'42" N, 65°41'47" W; 18°02'42" N, 65°41'47" W; 18°02'42" N, 65°42'49" W.

Size: Approximately 1 square nautical mile.

Depth: Ranges from 549 to 914 meters.

Primary Use: Dredged material disposal.

Period of Use: Continuing Use.

Restrictions: Disposal shall be limited to dredged material from Yabucoa Harbor, PR.

[FR Doc. 88-11574 Filed 5-23-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88-135; RM-5555; FCC 88-116]

Public Land Mobile Radio Service (PLMRS); Height and Power Increases in the PLMRS

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend Part 22 to allow base stations in the PLMRS to operate with increased height above average terrain (HAAT) and higher effective radiated power (ERP). Currently, under § 22.505, most PLMRS stations are restricted to 500 Watts at an average HAAT of 500 feet. The Commission believes that allowing increased height and power will enhance the efficiency of PLMRS operations because fewer transmitters would be needed to cover the same geographic area. In certain situations, the Commission is concerned about the kind of interference that would occur if increases in height and power are allowed. In such instances, this action invites comments on the maximum height and power that should be permitted. This proceeding was initiated as a result of a Petition for Rule Making filed by the Radio Common Carrier Division of Telocator Network of America (Telocator).

DATES: Interested parties may file comments on or before June 23, 1988, and reply comments on or before July 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John O'Connor, Mobile Services Division, Common Carrier Bureau, (202) 653-5560.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making adopted March 18, 1988, and released March 23, 1988. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. This notice proposes the elimination of, or an increase in, the existing height and power standards. The Commission is aware that many licensees operate large regional systems and, because of the current limitations, must use several transmitters. If the height and power limitations were relaxed, those licensees would be able to serve the same geographic areas with fewer transmitters, and, thus, at a reduced cost. However, relaxation of the height and power restrictions creates the potential for an increase in interference and a deterioration in service. Therefore, the notice solicits comments on the advantages and disadvantages of the proposal as it would affect the various frequency bands utilized by PLMRS licensees.

2. The Commission is concerned about the interference to low band private radio stations that may result from an increase in power. Specifically, interference may occur when the sidebands of paging transmissions degrade the performance of base station receivers in adjacent channels. Our current rules do not incorporate specific technical requirements for protection of these adjacent channels. Because of the increased interference potential to existing and potential stations in the Special Industrial Radio Service and Business Radio Service, we believe that the adjacent-channel stations to these services should not be allowed to increase height or power beyond that currently authorized. Increases in either height or power may increase the separation distances necessary between private radio and PLMRS stations on adjacent channels. Although the Commission does not believe that increasing the power for these adjacent channels is prudent, we solicit comments on the maximum power that can be tolerated, the interference standards to be adopted, and the benefits or problems to be expected if the ERP is increased.

3. Our current rules do not provide for protection of low band paging from skip interference because the maximum permissible ERP does not create significant interference problems. However, the Commission believes that allowing PLMRS stations to operate with unlimited power would result in additional interference to low band paging systems. Such a result would not be in the public interest since service to customers would be impaired. We have made a study of skip interference to paging systems consisting of a single transmitter in the 35 MHz band. The notice invites comments on our skip interference analysis, our rationale for imposing these limitations, and the proposed limits.

4. Currently, all 43 MHz paging system licenses are approved on a two-year developmental basis because of the potential for interference to broadcast television. The existing allowable power, and not the height, is the main cause of interference. Given this finding, an increase in power may result in additional interference to broadcast reception. Because of the severe nature of the interference caused and the large number of complaints already received by the Commission, we do not believe it is in the public interest to allow an increase in power for stations in the 43 MHz band.

5. An increase in power for 158 MHz band paging transmitters may cause interference to two-way 158 MHz band base receivers. The Commission is concerned about interference from the sidebands of paging transmissions degrading the performance of base station receivers in adjacent channels. Our current rules do not incorporate requirements for protection of these adjacent channels. The notice invites comments on the maximum permissible ERP for the 158 MHz band paging transmitters.

6. The Commission is concerned about the potential interference to adjacent-channel private radio systems from PLMRS stations operating at higher powers. Table 5 of the notice gives the frequency relationship and use for private radio systems operating adjacent to PLMRS stations. Comments are solicited on the maximum power that should be allowed for the PLMRS frequencies listed in Table 5.

7. For the 150 and 450 MHz PLMRS frequencies, an increase in the ERP results in an increase in existing interference distances when adjacent-channel mobile or paging units are near base station transmitters. Moreover, an increase in height and/or power will have an effect on the 450 MHz frequencies used for control and repeater stations. The notice invites comments on the height and power limitations for the 150 and 450 MHz frequencies.

8. In its Petition for Rule Making, Telocator requested that § 22.505 be amended to permit PLMRS stations to operate without height limitations as long as the proposed station's interference contour does not exceed the existing co-channel interference contours. The notice invites comments on the height proposal, and requests suggestions on implementing these changes while minimizing the potential for interference.

9. For PLMRS paging stations in the 900 MHz band, the Commission does not have any rules governing the methods of calculating service and interference contours. The notice solicits suggestions for a method of calculating service and interference contours, and invites comments on whether changes in the height/power rules would be appropriate for this band. In addition, 900 MHz band paging base station transmitters will cause interference to adjacent-channel pagers in close proximity to these base stations. We invite comments on the maximum HAAT and ERP that should be authorized for base station transmitters in light of this potential interference.

10. The Commission believes it would be appropriate to allow unlimited height for nationwide paging. The notice invites comments on this issue.

11. In the Notice of Proposed Rulemaking, General Docket No. 87-390, 2 FCC Rcd 6244, at para. 22 (1987), the Commission is considering the question of whether to allow increased height and power in the cellular mobile radio service. In light of this fact, this notice does not address the issue of height and power in the cellular radio service.

12. *Ex Parte:* This is a non-restricted notice and comment rule making proceeding. *See* §§ 1.1202, 1.1203 and 1.1206 of the Commission's Rules, 47 CFR 1.1202, 1.1203 and 1.1206 for rules governing permissible *ex parte* contacts.

13. *Initial Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission notes that adoption of these proposals will enhance the efficiency of PLMRS operations because fewer transmitters would be needed to cover the same geographic area. In addition, building penetration will be increased, and the PLMRS systems' ability to overcome man-made noise will be improved. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete action.

14. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 23, 1988, and reply comments on or before July 8, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

15. *Service List.* A copy of this Notice shall be sent to the Chief, Counsel of Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 22

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Rural areas.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Proposed Rules

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.117 is proposed to be amended by revising paragraph (b)(1) introductory text to read as follows:

§ 22.117 Transmitters.

* * * * *

(b) * * *

(1) The Commission is notified of the new transmitter(s) through the filing of a Form 489 along with a completed

Schedule B from Form 401. The Form 401 shall include a certification that the reliable service area contour and predicted interference contour of the proposed station are entirely encompassed within the reliable service area contour(s) and predicted interference contour(s) of the existing co-channel station(s), which are operated under the control of the same licensee. Requests that comply with this section and are filed under the height-power limits of § 22.505(c) and the power limits of § 22.506(f) must be filed on Form 401 and will be placed on public notice. If petitions to deny are not filed against the application within 30 days of public notice, the licensee may operate the station without further Commission action. Cellular licensees certify that the 39 dBu contours of each cell remain within the CGSA.

3. Section 22.505 is proposed to be amended by adding paragraph (c) to read as follows:

§ 22.505 Antenna height-power limit.

* * * * *

(c) Proposed base stations, other than in the air-ground radio service and in the 470–512 MHz band, whose interference contours do not exceed the interference contour(s) of existing co-channel station(s), which are operated under the control of the same licensee, do not have to comply with the height-power limits of this section.

4. Section 22.506 is proposed to be amended by adding paragraph (f) to read as follows:

§ 22.506 Power.

* * * * *

(f) Proposed base stations, other than in the air-ground radio service, the 43 MHz band, and the 470–512 MHz band, whose interference contours do not exceed the interference contour(s) of existing co-channel station(s), which are operated under the control of the same licensee, do not have to comply with the power restrictions of this section.

[FR Doc. 88–11610 Filed 5–23–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–194, RM–6315]

Radio Broadcasting Services; Hertford, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Maranatha Broadcasting Company, Inc. proposing the substitution of Channel 285C2 for Channel 285A at Hertford, North Carolina, and the modification of its permit for Station WELQ(FM) to specify operation on the higher powered channel. Channel 285C2 can be allocated to Hertford in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.0 kilometers (3.1 miles) south to avoid a short-spacing to Station WXRI, Channel 287B, Norfolk, Virginia. The coordinates for this allotment are North Latitude 36–08–42 and West Longitude 76–28–20. In addition, this allocation is contingent upon Station WMSQ at Havelock, North Carolina, modifying its facilities to specify Channel 286C2, pursuant to the Commission's Report and Order in MM Docket 86–85.

DATES: Comments must be filed on or before July 1, 1988, and reply comments on or before July 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Geoffrey Bentley, Esq., Geraldine M. Carr, Esq., Birch, Horton, Bittner, Pestinger, and Anderson, 1155 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–194, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11523 Filed 5–23–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket 88–138; FCC 88–129]

Availability of TV Signals on Cable Systems

AGENCY: Federal Communications Commission.

ACTION: Notice in inquiry.

SUMMARY: The Commission requests data, empirical studies, and other information concerning the availability of broadcast signals on cable television systems. This information is needed to suport the development of policy with respect to cable carriage of broadcast television signals.

DATE: Interested parties may file comments on or before July 8, 1988 and reply comments on or before.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 623–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry, MM Docket 88–138, FCC 88–129, adopted March 24, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of Notice of Inquiry

1. By this Notice of Inquiry, the Commission seeks empirical data, information, and studies relating to the carriage of broadcast television stations by cable systems and any adverse effects on broadcast stations' audiences and revenues that may result from lack of carriage on local cable systems or from repositioning of broadcast signals by such cable systems. The signal carriage practices portion of the inquiry focuses on two major areas: (1) Whether television stations that would have been entitled to signal carriage rights on cable systems under the must carry rules in effect prior to *Quincy* (*i.e.* July 19, 1985) are not carried now on those cable systems; and, (2) whether cable systems now carry former must carry signals on channels other than the channel that they are available on over-the-air. The Commission requests information to determine whether signals that were carried under the must carry rules are no longer available on cable systems and the extent to which consumers have taken steps to acquire the capability to receive broadcast signals that are available off-the-air in their area independent of their cable service. The Commission also is interested in whether cable systems have begun carriage of additional off-the-air signals and, if so, the extent to which they have substituted various alternatives for former must carry signals. The Commission asks for information on the reasons why cable systems have dropped, added, or repositioned signals. It further seeks information on the extent to which broadcast stations now pay for carriage or channel position or have been dropped or denied carriage for refusal to pay.

2. The Commission seeks information regarding any specific adverse effects broadcast stations may have experienced as a result of cable system signal carriage practices. Generally, such effects would be expected to occur through diminished audiences and associated losses in revenues. The Commission asks that parties commenting in this regard provide specific information on the percentage of stations' total audience lost as a result of the dropping, refusing to carry, or repositioning of their signal by individual cable systems and the effects of this audiences losses on their revenues. It also invites the submission of generalized studies examining patterns of effects of cable systems' actual broadcast signal carriage practices on the economics of broadcast station operation.

3. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 8, 1988, and reply comments on or before August 8, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. This Notice of Inquiry is issued pursuant to authority contained in section 4(i), 303, and 521 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88–11611 Filed 5–23–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217 and 219

[FRA Docket No. RSOR–6, Notice No. 19]

Random Drug Testing Program; Announcement of Public Hearings on Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Announcement of public hearings on notice of proposed rulemaking.

SUMMARY: FRA will hold public hearings on its Notice of Proposed Rulemaking to mandate random drug testing on the dates and at the locations specified below. The hearings will permit FRA to gather information and views on the regulatory proposal.

DATES: (1) FRA will hold informal hearings on this proposal on June 14, 15, 23, and 28–29, 1988, at the times and places set forth below. Any person who desires to make an oral statement at the hearings should notify the Docket Clerk at least 5 working days prior to the hearing, submitting five (5) copies of the prepared statement.

(2) As previously announced, written comments must be received no later than August 8, 1988. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. Three copies of written comments are requested.

ADDRESSES: (1) The hearings will be held at the following locations:

Chicago, Illinois (Tuesday, June 14, 1988 at 9:30 a.m.)—Midland Hotel, 172 West Adams Street.

Atlanta, Georgia (Wednesday, June 15, 1988 at 12:00 noon)—Georgia International Convention and Trade Center, 1902 Sullivan Road, College Park, Georgia.

Los Angeles, California (Thursday, June 23, 1988, at 9:30 a.m.)—Hyatt at the Airport, 6228 West Century Blvd.

Washington, DC (Tuesday, June 28, 1988, at 9:30 a.m. and Wednesday, June 29, at 9:30 a.m.)—FAA Auditorium, FOB–10A, 800 Independence Avenue, SW.

(2) Prepared statements (five copies) and written comments (three copies) should be submitted to the Docket Clerk, Office of the Chief Counsel (RCC–30), FRA, Room 8201, 400 7th Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by the FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Rockey, Executive Assistant to the Associate Administrator for Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Grady Cothen, Special Counsel (Telephone: (202) 366–0628).

SUPPLEMENTARY INFORMATION: On May 10, 1988 (53 FR 16640), FRA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) to mandate random drug testing of certain railroad employees (Docket No. RSOR–6, Notice No. 18). In that notice it was stated that times and places for public hearings would be announced in a subsequent notice.

FRA will conduct four public hearings on the NPRM in order to gather information and views from a broad range of affected railroads, employees and public witnesses. The hearings will be conducted in accordance with FRA's rules of practice (49 CFR Part 211). Each hearing is scheduled for a single day of testimony, with the exception of the Washington, DC, hearing on June 28–29, 1988, which is scheduled for two days.

In order to facilitate orderly planning of the hearings and permit appropriate questioning of witnesses by the FRA panel, witnesses are asked to notify the Docket Clerk at the above-stated address, providing five copies of the prepared statement and a telephone number at which the person can be

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contacted. Statements should be submitted in such a manner as to be received by the Docket Clerk not less than five (5) working days prior to the date of the hearing. Although FRA will make every reasonable effort to accommodate the taking of testimony from interested persons, FRA reserves the right to limit the time allotted to witnesses and to give preference in order of presentation to witnesses who comply with the requested notification and pre-submission of prepared statements.

Authority: Secs. 202, 208 and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 437, 438), and § 1.49 of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.49).

Issued in Washington, DC, on May 20, 1988.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 88-11661 Filed 5-20-88; 12:05 pm]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Extension of comment period concerning notice of receipt of request for rulemaking and request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) will extend for 30 days the comment period on the request from 6 exploration companies to allow the harassment of bowhead whales and gray whales incidental to oil and gas exploratory activities in the Beaufort and Chukchi Seas off the Alaska Coast. The first notice was published in the **Federal Register** on April 13, 1988 (53 FR 12170). The extension was requested by several organizations interested in submitting comments.

DATE: Comments and information should be received by July 13, 1988.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Office of Protected Resources, NMFS, Washington, DC 20235 (tel. 202/673-5349) or Ted Meyers, Habitat Conservation Division, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK, 99802 (tel. 907/586-7235).

Date: May 19, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-11644 Filed 5-23-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 100
Tuesday, May 24, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of The Secretary

[Docket No. 88-014N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on Wednesday and Thursday, June 22 and 23, 1988, from 8:00 a.m. to 5:00 p.m., at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether food has been produced using good manufacturing practices.

The agenda for the meeting follows:

(1) Approval of the April 5 and 6, 1988, Meeting Minutes;
(2) Working Group Assignments;
(3) Working Group Comments to the Full Committee;
(4) Future Activities; and
(5) Public Comments.

The Committee and working group meetings are open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3175 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC, on May 18, 1988.

Kenneth A. Gilles,

Chairman.

[FR Doc. 88-11625 Filed 5-23-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held June 22 and 23, 1988, in the Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC.

The June 22 meeting will convene in Room 1092 at 9:00 a.m. On June 23, the meeting will reconvene at 9:00 a.m. and continue to its conclusion in Room 4830 of the Herbert C. Hoover Building. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

General Session:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments are especially invited on Commodity Control List entry 1522A-Lasers.
4. Public discussion on any other matters related to activities of the Electronic Instrumentation Technical Advisory Committee.

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

Executive Session

5. Discussion on matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, (202) 377-2583.

Date: May 18, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-11564 Filed 5-23-88; 8:45 am]

BILLING CODE 3510-61-M

Minority Business Development Agency

Business Development Center Applications; Augusta, GA

May 18, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *10/01/88* to *09/30/89*. The MBDC will operate in the *Augusta, Georgia* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal

funds (which can be a combination of cash, in-kind contribution and fees for services). The Project number is *04–10–88017–01* for the *Augusta, Georgia* SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is June 24, 1988. Applications must be postmarked on or before June 24, 1988.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Date: May 18, 1988.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, June 14, 1988, at 9:00 a.m.

[FR Doc. 88–11590 Filed 5–23–88; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Columbus, GA

May 18, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *10/01/88* to *09/30/89*. The MBDC will operate in the *Columbus, Georgia* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04/10/88018–01* for the *Columbus, Georgia* SMSA.

The funding instrument for the MBDC will be a cooperate agreement and competition is open to indivduals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities

CLOSING DATE: The closing date for applications is June 24, 1988. Applications must be postmarked on or before June 24, 1988.

ADDRESS: Atlanta Regional Office 1371 Peachtree Street NE., Suite 505 Atlanta, Georgia 30309 (404) 347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

Carlton L. Eccles.

Regional Director, Atlanta Regional Office.

Date: May 18, 1988.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia, Tuesday, June 14, 1988, at 9:00 a.m.

[FR Doc. 88–11617 Filed 5–23–88; 8:45 am]

BILLING CODE 3510–21–M

[Transmittal No. 06–10–88017–01; Project I.D. No. 06–10–88017–01]

Shreveport Minority Business Development Center (MBDC); Louisiana

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of October 1, 1988 to September 30, 1989. The MBDC will operate in the Shreveport Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name: Shreveport SMSA:	
Federal	$165,000
Non-Federal	[1] 29,118
Total	194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is June 24, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION, CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on June 10, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B.—Project Specification

Program Number and Title: 11.800 Minority Business Development.
Project Name: Shreveport MBDC (Geographic Area or SMSA).
Project Identification Number: 06–10–88017–01.
Project Start and End Dates:10/01/88 to 09/30/89.
Project Duration: 12 months.
Total *Federal Funding* (85%): $165,000.
Minimum *Non-Federal Share* (15%): $29,118.
Total Project Cost (100%): $194,118.
Closing Date for Submission of this Application: *June 24, 1988.*
Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Shreveport, Louisiana* SMSA.
Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.
Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.
MBDA's minimum level of effort:
Financial packages: $2,747,000.
Billable M&TA: $84,000.
Number of Professional Staff: 3.
Procurements: $5,493,000.
M&TA Hours: 1,680.
Number of Clients: 76.

[FR Doc. 88–11672 Filed 5–23–88; 8:45 am]

BILLING CODE 3510–21–M

[Transmittal No. 06–10–88015–01; Project I.D. No. 06–10–88015–01]

Tulsa Minority Business Development Center (MBDC); Oklahoma

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of October 1, 1988 to September 30, 1989. The MBDC will operate in the Tulsa Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name: Tulsa SMSA:	
Federal	$165,000
Non-Federal [1]	29,118
Total	194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the

application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is June 24, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on June 10, 1988 at 1:00 PM. Conference site information may be obtained by contacting the individual designated above.

Nelda Cabrera,

Regional Director, Dallas Regional Office.

Section B—Project Specification

Program Number and Title: 11.800 Minority Business Development.
Project Name: Tulsa MBDC (Geographic Area or SMSA).
Project Identification Number: 06–10–50015–01.
Project Start and End Dates: 10/01/88 to 09/30/90.
Project Duration: 12 months.
Total *Federal Funding* (85%): $165,000.
Minimum *Non-Federal Share* (15%): $29,118.
Total Project Cost (100%): $194,118.
Closing Date for Submission of this Application: *June 24, 1988.*
Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Tulsa, Oklahoma* SMSA.
Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.
Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.
MBDA's minimum level of effort:
Financial packages: $2,747,000.
Billable M&TA: $84,000.
Number of Professional Staff: 3.
Procurements: $5,493,000.
M&TA Hours: 1,680.
Number of Clients: 76.

[FR Doc. 88–11673 Filed 5–23–88; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Nashville, TN

May 18, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$104,118* for the project performance of *10/01/88* to *09/30/89*. The MBDC will operate in the *Nashville, Tennessee* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal Funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–88019–01 for the *Nashville, Tennessee* SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is *June 24, 1988.* Applications must be postmarked on or before *June 24, 1988.*

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Date: May 18, 1988.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Tuesday, June 14, 1988, at 9:00 a.m.

[FR Doc. 88–11591 Filed 5–23–88; 8:45 am]

BILLING CODE 3510–21–M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

DATES AND TIMES: Monday, May 23, 1988, Beginning 9:00 a.m.; Tuesday, May 24, 1988, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302–0268.

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence. Public meetings to be held on May 23 and May 24 have been announced separately.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–11594 Filed 5–23–88; 8:45 am]

BILLING CODE 3820–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on June 28, 1988 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

May 19, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–11615 Filed 5–23–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF88–360–000, et al.]

Oakland County, MI, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Oakland County, Michigan

[Docket No. QF88–360–000]

May 17, 1988.

On April 29, 1988, Oakland County, Michigan (Applicant), of 1200 North Telegraph Road, Pontiac, Michigan 48053, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Pontiac, Michigan and will consist of three mass-burn waterwall combustion units with boilers and a steam turbine generator. The net electric power production capacity of the facility will be 24 MW. The primary source of energy will be biomass in the form of municipal solid waste. Natural gas will be used for start up and flame stabilization but will not exceed one percent of the total energy input to the facility in any calendar year.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Dynamis Inc.

[Docket No. QF88–362–001]

May 18, 1988.

On May 4, 1988, Dynamis Inc. (Applicant), of 20883 Stevens Creek Blvd., Suite 220, Cupertino, California 95014 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of Sanger, California. The electric power production capacity will be 10.0 megawatts. The primary energy source will be biomass. The facility will be owned as a limited partnership. Dynamis Inc. will be the general partner and will have a majority of the partnership interest in the facility. The facility will be a part of an integrated system that will also include a 26.6 MW cogeneration facility, for which a separate application for certification as a qualifying facility has been filed (Commission Docket No. QF88–362–000).

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Gamma Mariah, Inc.

[Docket No. QF88–364–000]

May 20, 1988.

On May 4, 1988, Gamma Mariah, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 15 megawatt wind facility will consist of 88 wind turbine generators, each with a name plate capacity of 170 kilowatts and 9.17 undivided interest in a 46 mile, 230 KV transmission line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Alpha Mariah, Inc.

[Docket No. QF88-368-000]

May 19, 1988.

On May 4, 1988, Alpha Mariah, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 25 megawatt wind facility will consist of 50 wind turbine generators, each with a name plate capacity of 500 kilowatts and 15.29% undivided interest in a 46 mile, 230 KV transmission line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard paragraph E at the end of this notice.

5. E.F. Chellas, Inc.

[Docket No. QF88-376-000]

May 19, 1988.

On May 10, 1988, E. F. Chellas, Inc. (Applicant) of 401 B Street, San Diego, California 92101 submitted for filing an application for certification of a facility as a qualifying cogeneration facilty pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the corner of 28th Street and Harbor Boulevard, adjacent to the San Diego Bay, in San Diego, California. The facility will consist of a combustion turbine generator and three-drum heat recovery steam generator capable of producing three pressure levels of steam. The primary energy source of the facility will be natural gas. The useful thermal energy output of the facility will be sold through arms-length contracts to Arrowhead Industrial Water, Inc. to produce distilled water and to National Steel and Shipbuilding Company to treat bilge water removed during shipbuilding and repair. The net electric power production capacity of the facility will be 48 megawatts.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Landfill Power Company

[Docket No. QF88-350-000]

May 19, 1988.

On April 28, 1988, Northeast Landfill Power Company c/o Palmer Capital, 672 Jerusalem Road, Cohasset, Massachusetts 02025 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Johnston, Rhode Island. The facility will consist of combustion engine-generators. The net electric power production capacity will be approximately 12 megawatts. The primary energy source will be Biomass in the form of methane gas. The facility has no planned usage of natural gas, coal or oil.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Landfill Power Company

[Docket No. QF88-357-000]

May 19, 1988.

On April 28, 1988, Northeast Landfill Power Company c/o Palmer Capital, 672 Jerusalem Road, Cohasset, Massachusetts 02025 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Billerica, Massachusetts. The facility will consist of combustion engine-generators. The net electric power production capacity will be approximately 3 megawatts. The primary energy source will be Biomass in the form of methane gas. The facility has no planned usage of natural gas, coal or oil.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

8. Alpha Willow, Inc.

[Docket No. QF88-371-000]

May 19, 1988.

On May 4, 1988, Alpha Willow, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 30 megawatt wind facility will consist of 120 wind turbine generators, each with a name plate capacity of 250 kilowatts and 18.35% undivided interest in a 46 mile, 230 KV transmission line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Landfill Power Company

[Docket No. QF88-358-000]

May 19, 1988.

On April 28, 1988, Northeast Landfill Power Company c/o Palmer Capital, 672 Jerusalem Road, Cohasset, Massachusetts 02025 submitted for filing an application for certification of a facility as a qualifying small power production pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Worcester, Massachusetts. The facility will consist of combustion engine-generators. The net electric power production capacity will be approximately 4 megawatts. The primary energy source will be Biomass in the form of methane gas. The facility has no planned usage of natural gas, coal or oil.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

10. Alpha Joshua, Inc.

[Docket No. QF88-365-000]

May 20, 1988.

On May 4, 1988, Alpha Josha, Inc. (Applicant) of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 30 megawatt wind facility will consist of 120 wind turbine generators, each with a name plate capacity of 250 kilowatts and 18.35% undivided interest in a 46 mile, 230 KV transmission line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

11. Beta Joshua, Inc.

[Docket No. QF88-370-000]

May 20, 1988.

On May 4, 1988, Beta Joshua, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an aplication for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 18 megawatt wind facility will consist of 72 wind turbine generators, each with a name plate capacity of 250 kilowatts and 11.01% undivided interest in a 46 mile, 230 KV transmision line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

12. Beta Mariah, Inc.

[Docket No. QF88-369-000]

May 20, 1988.

On May 4, 1988, Beta Mariah, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 25 megawatt wind facility will consist of 100 wind turbine generators, each with a name plate capacity of 250 kilowatts and 15.29% undivided interest in a 46 mile, 230 KV transmision line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

13. Delta Mariah, Inc.

[Docket No. QF88-367-000]

May 20, 1988.

On May 4, 1988, Delta Mariah, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 10 megawatt wind facility will consist of 20 wind turbine generators, each with a name plate capacity of 500 kilowatts and 6.12% undivided interest in a 46 mile, 230 KV transmission line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

14. Beta Willow, Inc.

[Docket No. QF88-366-000]

May 20, 1988.

On May 4, 1988, Beta Willow, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The 22.5 megawatt wind facility will consist of 90 wind turbine generators, each with a name plate capacity of 250 kilowatts and 13.76% undivided interest in a 46 mile, 230 KV transmission line needed to interconnect the facility with the Southern California Edison Company at its Vincent substation. The installation of the facility is scheduled to commence in January 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

15. Dynamis, Inc.

[Docket No. QF88-362-000]

May 16, 1988.

On May 4, 1988, Dynamis Inc. (Applicant), of 20883 Stevens Creek Blvd., Suite 220, Cupertino, California 95014 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in the City of Sanger, California. The major equipment will include a combustion turbine-generator, a waste heat recovery boiler, and a steam condensing turbine-generator. The facility will provide useful thermal energy to an industrial process. The maximum net electric power production capacity will be 26.8 megawatts. The primary energy source will be natural gas. The facility will be a part of an integrated system that will also include a 10.0 MW small power production facility, for which a separate application for certification as a qualifying facility has been filed (Commission Docket No. QF88-362-001).

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11635 Filed 5-23-88; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket Nos. CP88-379-000, et al.]

Tennessee Gas Pipeline Company et al.; Natural Gas Certificate Filings

May 19, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88-379-000]

Take notice that on May 6, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-379-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authorization to provide a transportation service for Woodward Marketing, Inc. (Woodward), a marketer, under the certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated March 23, 1988, it proposes to transport natural gas for Woodward from various receipt points located Offshore Texas and Offshore Louisiana, and in the States of Louisiana, Texas, Mississippi, Pennsylvania and West Virginia, to various delivery points off Tennessee's system, points located in multiple states.

Tennessee indicates that the peak day quantities would be 200,000 dekatherms, the average daily quantities would be 150 dekatherms and that the annual quantities would be 54,750 dekatherms. Tennessee further indicates that service under § 284.223(a) commenced April 2, 1988, as reported in Docket No. ST88-3224 (filed April 18, 1988).

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-381-000]

Take notice that on May 6, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-381-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Exxon Corporation (Exxon), a producer, under Applicant's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection

Applicant states that pursuant to a transportation agreement dated March 17, 1988, it proposes to transport natural gas for plant volume reduction (PVR) make-up on behalf of various interstate pipeline companies from Exxon's "E" platform located in West Delta Block 31, offshore Louisiana, to delivery points located at the Ysclosky Plant in St. Bernard Parish, Louisiana, and the Bluewater Plant in Acadia Parish, Louisiana.

The Applicant further states that the peak day quantities would be 20,000 dt, that average daily quantities would be 930 dt, and that annual quantities would be 339,450 dt. Tennessee states that the transportation of natural gas for Exxon commenced on April 2, 1988, as reported in Docket No. ST88-3285, for a 120-day period, pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87-115-000.

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Williston Basin Interstate Pipeline Company

[Docket No. CP88-380-000]

Take notice that on April 25, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP88-380-000 for authorization to transport, on an interruptible basis, natural gas through existing facilities for Western Gas Processors Ltd. (Western) for ultimate delivery to an industrial customer pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williston Basin would receive no more than 36,000 Mcf per day of natural gas from Western at the Teddy Roosevelt Plant, Billings County, North Dakota and the Temple Plant, Williams County, North Dakota it is explained. The gas would ultimately be delivered for Western's account to Holly Sugar, it is asserted.

Williston Basin indicates that the service would be for a term of two years and would be provided at the base rates equivalent to the rates made effective May 2, 1988, in Docket No. RP86-10-000 under Rate Schedule T-4, which are 94.3 and 23.00 cents per Dt, plus fuel.

Comment date: June 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Ken Gas Companies

[Docket No. CP88-387-000]

Take notice that on May 3, 1988, Ken Gas Companies (Ken Gas) Rt. 3, Box 66, Albany, Kentucky 42602, filed in Docket No. CP88-387-000, an application pursuant to section 7(f) of the Natural Gas Act for a determination by the Commission of a service area in the City of Jellico, Campbell County, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that the City of Jellico, Tennessee, has awarded Ken Gas a franchise for the installation and operation of a natural gas distribution system within the City and its environs. Ken Gas states the only available source of natural gas is in the State of Kentucky from the Delta Gas Company which necessitates the construction of approximately 1,000 feet of 4 inch transmission pipeline across the state line to interconnect the distribution system that will be installed by Ken Gas.

Comment date: June 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP88-361-000]

Take notice that on April 25, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-361-000, as supplemented May 10, 1988, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate additional points of delivery for Washington Gas Light Company (WGL) and Mountaineer Gas Company (MGC) in Hancock County, West Virginia, under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia requests authorization to add as delivery points under its Rate Schedule CDS, such points that have been used solely for transportation service under section 311(a) of the Natural Gas Policy Act.

Columbia states that approximately 30,000 dt per day and approximately 900,000 dt annual volumes of natural gas would be provided through the new delivery point to WGL and 32,200 dt per day and about 4,128,000 dt annually

would be provided through the new delivery point at MGC. It is stated that these volumes are within Columbia's currently authorized level of service. Columbia additionally states that such volumes would not affect the peak day and annual deliveries to which these existing wholesale customers are entitled.

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Midwestern Gas Transmission Company

[Docket No. CP88-336-000]

Take notice that on April 15, 1988, as supplemented on May 4, 1988, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-336-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for (1) authority to abandon a total of the dekatherm equivalent of 17,848 Mcf per day of firm natural gas sales service to ANR Pipeline Company (ANR); (2) a certificate of public convenience and necessity authorizing firm transportation of a dekatherm equivalent of 17,848 Mcf per day and interruptible transportation of 20,918 Dth per day for Wisconsin Public Service Corporation, Wisconsin Power and Light Company, Iowa Southern Utilities Company, Iowa Public Service Company, and Northern Minnesota Utilities (NMU); and (3) the upgrading of certain facilities necessary to effectuate the transportation by Midwestern to NMU, all as more fully set forth in the application, as supplemented, which is on file with the Commission and open to public inspection.

Midwestern states that in order to provide the proposed transportation service to the shippers listed above, Midwestern requests authority to abandon a total of the dekatherm equivalent of 17,848 Mcf per day of existing firm sales service to ANR. Midwestern further states that its request for abandonment is conditioned on the receipt of acceptable authorization to provide firm transportation service to the shippers listed above, with the effective date of the abandonment to be on the date on which Midwestern commences service to all of the shippers after the construction of all necessary facilities by Midwestern.

To provide this firm transportation service, Midwestern states that existing facilities would be utilized except that one of the interconnections between Midwestern and NMU would have to be upgraded in order to receive full contract volumes at that point.[1] In particular, Midwestern indicates that its interconnection with NMU near Wadena, Minnesota would need to be upgraded whereby two (2) 2-inch meter tubes at the interconnection would have to be replaced with two (2) 3-inch meter tubes. This would enable Midwestern to deliver the dekatherm equivalent of 4,000 Mcf per day in addition to the currently certificated quantities at the Wadena interconnection. Midwestern estimates that the total costs of this proposed upgrade, including filing fees, would be approximately $60,000. NMU has agreed to reimburse Midwestern for all construction costs incurred by Midwestern, not to exceed $50,000.

Midwestern states that the initial rate to be paid by each shipper for the firm transportation service would be a Monthly Demand-1 Charge (D-1) of $1.19 per dekatherm multiplied by the Firm Transportation Quantity, a Monthly Demand-2 Charge (D-2) of $0.0417 per dekatherm multiplied by the monthly component of each shipper's annual quantity entitlement and a commodity rate of 2.37¢ per dekatherm of natural gas actually delivered by Midwestern to each shipper at their designated delivery point(s). Midwestern further states that the Firm Transportation Quantity, stated in dekatherms, is defined as the quantity obtained by multiplying each customer's firm transportation quantity stated in Mcf by the number of dekatherms per Mcf upon which Midwestern's rates are based. It is stated that each shipper's contract contains a minimum monthly bill which provides for a Minimum Monthly Commodity charge at a 75% load factor but grants credits for volumes transported on an interruptible basis. The rate to be paid by each shipper receiving interruptible transportation service would be equal to the rate set forth in Midwestern's Rate Schedule IT-2. Each shipper shall deliver quantities of natural gas at Emerson, Manitoba on each day for Midwestern's system fuel and use requirements associated with the scheduled firm transportation quantity and the scheduled interruptible transportation quantity for each shipper, it is stated.

[1] The need for the installation of these facilities is dependent upon whether NMU finalizes gas sales arrangements with certain prospective industrial customers. To the extent these arrangements are completed, these facilities would be required. To the extent these arrangements are not consummated, these facilities would not be required and Midwestern would supplement the application, eliminating its request for authorization of the proposed facilities.

Midwestern states that the initial rate for firm service specified in the transportation contracts is equivalent to the rate provided by Midwestern's presently effective T-2 Rate Schedule, which is applicable to the firm transportation service of 50,000 Mcf per day presently rendered by Midwestern for ANR. Midwestern further states that the initial rate is also equivalent to the rate provided by Midwestern's CD-2 Rate Schedule which is applicable to Midwestern's firm sale of gas to ANR at Marshfield. The initial rate is equivalent to the rate in Midwestern's IT-2 Rate Schedule, it is stated.

Comment date: June 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. LL&E Gas Marketing, Inc.

[Docket No. CI87-816-001]

Take notice that on May 11, 1988, LL&E Gas Marketing, Inc. (LGM) of 909 Poydras Street, New Orleans, Louisiana 70112, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term which expired March 31, 1988, to extend such authorization for an unlimited term, as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: June 3, 1988, in accordance with Standard Paragraph J at the end of the notice.

8. ALG Gas Supply Company, ALG Gas Supply Company of Arkansas, ALG Gas Supply Company of Kansas, ALG Gas Supply Company of Louisiana, ALG Gas Supply Company of Oklahoma and ALG Gas Supply Company of Texas

[Docket No. CI88-452-000]

Take notice that on May 9, 1988, ALG Gas Supply Company, ALG Gas Supply Company of Arkansas, ALG Gas Supply Company of Kansas, ALG Gas Supply Company of Louisiana, ALG Gas Supply Company of Oklahoma and ALG Gas Supply Company of Texas (Applicant), of 400 East Capitol Street, Little Rock, Arkansas 72202, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: June 3, 1988, in accordance with Standard Paragraph J at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest, if a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall b. treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois. D. Cashell,

Acting Secretary.

[FR Doc. 88–11636 Filed 5–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88- 169-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 19, 1988.

Take notice that CNG Transmission Corporation ("Transmission"), on May 12, 1988, filed: (1) First Revised Sheet Nos. 124 and 125 of First Revised Volume No. 1 of its currently effective FERC Gas Tariff; and (2) First Revised Sheet No. 125 to First Revised Volume No. 1 of its new FERC Gas Tariff, filed on April 26, 1988 and effective June 1, 1988. The proposed effective dates are: (1) May 1, 1988 for the tariff sheets revising Transmission's currently effective tariff, and (2) June 1, 1988 for the tariff sheet revising Transmission's new tariff.

Transmission states that its filing contains a new tariff provision in its General Terms and Conditions. Under this section, when Transmission receives nominations for TSC service on Texas Gas Transmission Corporation ("Texas Gas") in excess of Transmission's ability to receive such gas, Transmission will schedule volumes that it can receive, and will then forward nominations to Texas Gas. Transmission further proposes to schedule two-thirds of its available TSC capacity to shippers that were qualified for TSC service prior to April 11, 1988, and one-third to shippers that became qualified for such service on or after April 1, 1988. The filing also corrects an error on Sheet No. 125 of Volume No. 1 of Transmission's new tariff.

Copies of the filing were served upon Transmission's sales, storage and transportation customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before May 26, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11637 Filed 5–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85-206-038]

Northern Natural Gas Co., Division of Enron Corp; Filing

May 19, 1988.

Take Notice that on May 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1,

Thirteenth Revised Sheet N. 21
Seventh Revised Sheet No. 22
Eighth Revised Sheet No. 23

Northern states that these tariff sheets reflect administrative revisions to its PL–1 Rate Schedule to combine two separately authorized modifications previously approved by the Commission on March 2, 1988 and April 14, 1988 to allow group billing and incorporate the settlement provisions of Docket No. RP85–206, respectively, into Northern's PL–1 Rate Schedule. The tariff sheets will also reflect proper pagination

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 26, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11639 Filed 5–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–164–001]

West Texas Gas, Inc.;

May 20, 1988.

Take notice that on May 13, 1988, West Texas Gas, Inc. (WTG) tendered for filing Substitute Third Revised Sheet No. 21b, Substitute Original Sheet No. 21f, and Substitute Original Sheet No. 21i to its FERC Gas Tariff, Original Volume No. 1.

WTG states that it is making this filing after Commission Staff reviewed its May 3, 1988 filing and requested that WTG make certain minor corrections to several of its tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11640 Filed 5–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos RP88–149–001 and TQ88–1–41–001]

Southwest Gas Corporation; Filing

May 19, 1988.

Take notice that on May 12, 1988, Southwest Gas Corporation (Southwest) tendered for filing Substitute Thirty-ninth Revised Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 1. In addition Southwest submitted computations and schedules supporting a change in its purchased gas costs. Southwest states that the rates previously submitted in its May 2, 1988 filing were developed utilizing the currently effective rates (April 1, 1988) from Northwest Pipeline Corporation (Northwest) and that Northwest has since filed a change in rates.

Southwest respectfully requests that the tariff sheet mentioned above be substituted for its counterpart originally filed and become effective June 1, 1988, concurrent with Northwest's proposed rate change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 26, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11639 Filed 5–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–170–000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

May 19, 1988.

Take notice that Western Gas Interstate Company ("Western"), on May 13, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Revised Volume No. 1, to be effective June 1, 1988.

Western states that the tariff sheets reflect changes to Western Purchased Gas Adjustment Clause to its FERC Gas Tariff which, Western submits, comply with the provisions of the Commission's Order Nos. 483 and 483–A, thereby permitting Western to continue recover changes in its cost of purchased gas.

Western requests the grant of the following waivers:

1. Waiver of the requirements to report information for its annual and quarterly filings on magnetic computer tape;

2. Waiver of the 30 day notice period for the instant filing;

3. Waiver of the requirements under § 154.310(a)(2)(iv) of the Regulations to file rates and information.

Copies of Western's filing were served on its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commisison, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 26, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11641 Filed 5–23–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3384–9]

Science Advisory Board; Clean Air Scientific Advisory Committee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Acid Aerosol Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 9:00 a.m. to 4:00 p.m. on June 14, and 8:30 a.m. to 4:00 p.m. on June 15 in Conference Room North 3, U.S. Environmental Protection Agency, Mall Level, 401 M Street SW., Washington, DC 20460.

PURPOSE: The purpose of the meeting is to allow the Subcommittee to review and provide its advice to the Agency on the February 1988 draft "Acid Aerosols Issue Paper". This document was drafted as a result of the January 1986 recommendation of CASAC that an issue paper be prepared to evaluate newly emerging literature concerning health effects directly associated with acid aerosols and to address the issue of

possible listing of acid aerosols as a separate criteria pollutant for potential regulation by means of National Ambient Air Quality Standards. The Subcommittee will also evaluate research needs relative to acid aerosols.

SUPPLEMENTARY INFORMATION: The following information is summarized from the March 29, 1988 **Federal Register** notice (53 FR 10150) which announced availability of the issue paper: Copies of the draft issue paper may be obtained by writing or calling the Office of Research and Development Publications Center, CERI–FRN, U.S. EPA, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569–7562. Please ask for the "Acid Aerosols Issue Paper", report number EPA/600/8–88/005A.

WRITTEN COMMENTS: Written comments concerning the issue paper may be submitted to Dr. Dennis Kotchmar, U.S. EPA, Office of Research and Development (MD–52), Research Triangle Park, NC 27711, (919) 541–4158, (FTS) 629–4158, through July 15, 1988.

FOR FURTHER INFORMATION: For further information concerning the issue paper, please contact Dr. Kotchmar at the above address. Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101F), U.S. EPA, Washington, DC 20460, (202) 382–2552, (FTS) 382–2552. Seating at the meeting will be on a first come basis. Persons wishing to make a brief presentation (8–10 minutes) at the meeting must contact Mr. Flaak no later than June 8, 1988, to reserve space on the agenda. It is requested that 15 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentations should supplement the written statement.

Date: May 17, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–11573 Filed 5–23–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Offer To Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of offer to assist insurers in underwriting flood insurance using the Standard Flood Insurance Policy.

SUMMARY: The Federal Insurance Administration is publishing in this Notice the Financial Assistance/Subsidy Arrangement for 1988–1989 governing the duties and obligations of insurers participating in the Write-Your-Own Program (WYO) of the National Flood Insurance Program (NFIP). The Financial Assistance, Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers. It is verbatim with what is set out as Appendix A to 44 CFR Part 62 and is republished for information and convenience.

This Notice relates to the final rule which was published in the **Federal Register** on April 25, 1985, page 16236, as amended by the final rule which was published in the **Federal Register** on April 28, 1986, page 15206, regarding changes in the National Flood Insurance Program's regulations dealing with the issuance of flood insurance policies and the adjustment of claims and the establishment of a program of assistance to private sector property insurance companies in underwriting flood insurance using the Standard Flood Insurance Policy. In 1985, a copy of the offer to participate in the Arrangement was incorporated in a final rule and, this year, as in the years since, a copy of the offer is being published as a Notice.

DATE: The offer is effective May 24, 1988. The Financial Assistance/Subsidy Arrangement is effective with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1988, and later.

SUPPLEMENTARY INFORMATION: By way of background, the Federal Insurance Administration, working with insurance company executives, FEMA's Comptroller's Office and FEMA's Office of the Inspector General, addressed the operating and financial control procedures. The Statistical Plan, Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, as amended, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final rule, as amended, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, Rollover Procedures and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

(1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Food Insurance Policies written by private sector insurers;

(2) To provide a method by which the offer may be accepted; and

(3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1988–89.

Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight EDT September 30, 1988.

2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance must be on file with the Administrator by November 16, 1988.

4. If (1), (2) or (3) above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptances of this offer to:
FEMA
Attn: Federal Insurance Administrator
WYO Program
Washington, DC 20472

Offer to Provide Financial Assistance

Pursuant to the provisions of the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128, Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp., p. 329), E.O. 12127, dated March 31, 1979 (3 CFR 1979 Comp., p. 376), Delegation of Authority to Federal Insurance Administrator, subject to all regulations promulgated thereunder and, to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, hereinafter referred to as the "Administrator", offers to enter into the Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a state in which such private sector insurance company is licensed to engage in the business of property insurance.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

Financial Assistance/Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the standard flood insurance policy

Accounting Data: Pursuant to section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1988.

Issued by: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including:

1.1 Community Eligibility/Rating Criteria.

1.2 Policyholder Eligibility Determination.

1.3 Policy Issuance.

1.4 Policy Endorsements.

1.5 Policy Cancellations.

1.6 Policy Correspondence.

1.7 Payment of Agents Commissions.

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards. The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with the National Flood Insurance Program (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answers Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports.

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self-audit acceptable to the FIA or comply with the self-audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;

1.2 Endorsement Processing—7 days;

1.3 Cancellation Processing—15 days;

1.4 Correspondence, Simple and/or Status Inquiries—7 days;

1.5 Correspondence, Complex Inquiries—20 days;

1.6 Supply, Materials, and Manual Requests—7 days;

1.7 Claims Draft Processing—7 days from completion of file examination;

1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination; and

1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance.

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangment in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. (Reference: Article IV, Section A). All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, seattle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Retirement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expenses or whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangemnet in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement Year) "Best's Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbrusement (net premium income) shall be deposited in a special account for the payment of losses and los adjustment expenses (see Article II, Section E).

The Company shall be entitled to 14.0% of the Company's written premium on the policies covered by this Arrangemnet as the basic commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

Additionally, the Company shall be entitled to 0.1% of the Company's written premium on the policies covered by this Arrangment for each 1% growth in the Company's policies in force on September 30 of this Arrangement Year, reduced y 80% of the number of policies scheduled for transfer to the Company during this Arrangment Year pursuant to the Company's request under the NFIP Rollover Procedures, over the policies in force on September 30 of the prior Arrangement Year; the additional commission allowance calculated under this provision is limited to a maximum of 3%. The Company may withhold 15% of the Company's written premium during this Arrangement Year with an adjustment up or down, depending upon policy growth, being made at the end of this Arrangement Year.

In the case where the Company had no policies in force on September 30 of the prior Arrangement Year, the Company shall be entitled to withhold 15% of the Company's written premium on the policies covered by this Arrangement as the commission allowance, with no adjustment at the end of this Arrangement Year.

Nothing in Article III, Section B, can be used as a means of increasing a Company's commission allowance by transferring business from one company to another company within a company group or by the merger or acquisition of another company. Payments of any additional commission allowance or refund of any excess commission allowance will be in accordance with the WYO Accounting Procedures Manual.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payment will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, Section A, 2.0 of this Arrangment. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services, along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel, FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangment as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wises to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or juddgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letter of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D; and

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claim questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangment shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the Federal Register and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performence of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) require the transfer of the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Agreement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company

expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within the three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination, shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this ___ day of ___, 1988.

Company _____

The United States of America
Federal Emergency Management Agency

By _____

(Title) _____

By _____

(Title) _____

Notice of Acceptance for Federal Emergency Management Agency

Federal Insurance Administration

Financial Assistance/Subsidy Arrangement (Arrangement)

Whereas, in 1988, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter, the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the **Federal Register,** does not provide sufficient space to type in the name of the company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the **Federal Register** does not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the **Federal Register** under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company(ies) listed below is (are) duly licensed to engage in the business of property insurance:

_____

_____

_____

_____

In witness, whereof, the parties hereto have accepted the Arrangement on this ___ day of ___, ___.

The United States of America
Federal Emergency Management Agency

By: _____

Title: _____

By: _____

Title: _____

Exhibit A

FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment	$40.00
CWP	70.00
$0.01 to $200.00	70.00
$200.01 to $400.00	90.00
$400.01 to $500.00	110.00
$500.01 to $800.00	130.00
$800.01 to $1,000.00	150.00
$1,000.01 to $1,500.00	180.00
$1,500.01 to $2,000.00	200.00
$2,000.01 to $2,500.00	220.00
$2,500.01 to $3,000.00	240.00
$3,000.01 to $3,500.00	260.00
$3,500.01 to $4,000.00	280.00
$4,000.01 to $4,500.00	300.00
$4,500.01 to $5,000.00	320.00
$5,000.01 to $6,000.00	350.00
$6,000.01 to $7,000.00	370.00
$7,000.01 to $8,000.00	380.00
$8,000.01 to $9,000.00	400.00
$9,000.01 to $10,000.00	420.00
$10,000.01 to $15,000.00	460.00
$15,000.01 to $20,000.00	490.00
$20,000.01 to $25,000.00	520.00
$25,000.01 to $30,000.00	550.00
$30,000.01 to $35,000.00	580.00
$35,000.01 to $40,000.00	610.00
$40,000.01 to $45,000.00	640.00
$45,000.01 to $50,000.00	670.00
$50,000.01 to $75,000.00	800.00
$75,000.01 to $100,000.00	950.00
$100,000.01 to $125,000.00	1,100.00
$125,000.01 to $150,000.00	1,250.00
$150,000.01 to $175,000.00	1,400.00
$175,000.01 to $200,000.00	1,550.00
$200,000.01 to limits	1,700.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amount of insurance purchased.

Dated: May 15, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-11606 Filed 5-23-88; 8:45 am]

BILLING CODE 6718-05-M.

FEDERAL HOME LOAN BANK BOARD

[No. 88-357]

April Calculation of the Median Return of Assets of All Insured Institutions by the Federal Savings and Loan Insurance Corp.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is hereby publishing its April calculation of the 1987 median return on assets of all insured institutions the accounts of which are insured by the FSLIC ("insured institutions"). This April calculation and notice are required by the regulatory capital regulation ("capital regulation") adopted on August 15, 1986, Board Res. No. 86-857, 12 CFR 563.13(b)(2)(iv), as amended by Board Res. No. 88-222, adopted on March 30, 1988, 53 FR 11243 (April 6, 1988) ("amended April calculation provision").

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Donald J. Bisenius, Senior Financial Economist, Office of Policy and Economic Research, (202) 377-6759, Jerilyn Rogin, Staff Attorney, Regulations and Legislation Division, Office of General Counsel, (202) 377-7018, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The amended April calculation provision of the capital regulation requires the Board to compute and publish in April of each year the median return on assets of all insured institutions for the prior calendar year, as well as the revised liability factors for institutions with initial liability factors of 3 per cent (standard group) or less than 3 per cent (lower group). In general, an insured institution's liability factor is the percentage rate applied at the end of each quarter to its January 1, 1987 total liabilities to determine the captial required for such liabilities.

The median return on assets earned by all insured institutions during calendar year 1987 was 0.50 per cent of assets. Accordingly, insured institutions in the standard group must increase their liability factors by 75 per cent of this rate (0.375 of one per cent). The regulation requires one-half of this increase (0.19 of one per cent after rounding) on July 1 of the calendar year in which the calculation is made, and one-half on January 1 of the following year. The standard group's liability factor will be 3.25 per cent on July 1, 1988 and 3.44 per cent on January 1, 1989.

Institutions in the lower group must increase their liability factors by the higher of (1) 90 per cent of 0.50 per cent (0.45 of aone per cent) or (2) 90 per cent of the institution's own return on assets. Accordingly, lower group institutions that had a return on assets in 1987 of less than or equal to 0.50 per cent would increase their liability factors by 0.23 of one per cent (after rounding) on July 1, 1988 and January 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-11609 Filed 5-23-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 18, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before June 15, 1988.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the revision of the following report

Report Title: Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 Million or More or with More than One Subsidiary Bank
Agency Form Number: FR Y-9C
OMB Docket Number: 7100-0128
Frequency: Quarterly
Reporters: Bank Holding Companies
Annual Reporting Hours: 144,280

Significant effect on small businesses is not expected.

General description of report

This report is required by law (12 U.S.C. 1844). Certain portions may occasionally be given confidential treatment (5 U.S.C. 552(b)(4) and (b)(6).

This report is the primary source of information for the Federal Reserve System's bank holding company surveillance function in its ongoing monitoring of the financial condition of these instutitions. One revision is proposed, to collect separate data on federal funds and securities repurchase transactions.

Board of Governors of the Federal Reserve System, May 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11552 Filed 5-23-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to reinstate expired information collection 3090-0040, Application for Shipping Instructions and Notice of Availability, which is used for routing cargoes to shipping points as space becomes available.

AGENCY: Federal Supply Service, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 9,000; responses, 1 per year; hours per response, .33 on average; burden hours, 3,012.

For Further Information Telephone: Robert E. Murphy, 703-557-7550.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: May 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-11547 Filed 5-23-88; 8:45 am]

BILLING CODE 6820-24-M

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to reinstate expired information collection 3090-0007, Contractor's Qualifications and Financial Information, which is used to determine whether prospective contractors are financially responsible.

AGENCY: Office of Finance, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to May L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 6,042; responses, 1.2 per year; 2.2 hours per response, on average; burden hours, 15,950.

For Further Information Telephone: Edgar K. Davis, 202-566-0208.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washinton, DC 20405, or by telephoning 202-535-7074.

Dated: May 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-11548 Filed 5-23-88; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Management and Budget; Office of Administrative and Management Services; and Office of Information Resources Management; Statement of Organization, Functions and Delegations of Authority

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect the transfer of the Department-wide responsibilities for the Paperwork Reduction Act of 1980 from Chapter AMS, the Office of Administrative and Management Services, as last amended at 52 FR 37016, 10/2/87 to Chapter AMM, the Office of Information Resources Management, as last amended at 52 FR 46417 December 7, 1987. Specifically, Chapter AMS and AMM are revised as follows:

1. In Chapter AMS, Section AMS.20 Functions, Paragraph "F. Office of Management Programs,:"

(a) Delete items (4), (5), (6) and (7) and replace with the following:

(4) Manages, in accordance with the Paperwork Reduction Act of 1980, the Office of the Secretary's activities related to the review and approval of all public-use reports and recordkeeping requirements which impose paperwork burden on the public.

(5) Develops policies for, and manages, the Office of the Secretary's Information Collection Budget and the Information Collection Budget process.

(6) Coordinates the establishment of Departmental statistical policies.

(b) Renumber Item (8) as Item (7).

2. In Chapter AMM, Section AMM.00 Mission, delete the word "and" before Item (7) and the period (.) at the end of the paragraph; and add the following:

(a) ; and (8) directs and oversees the Department's activities to implement the Paperwork Reduction Act of 1980 as it relates to the reporting and recordkeeping requirements imposed on the public.

(b) In Section AMM.20 Functions, Paragraph "B(a) Division of Information Management," insert new items (6) thru (8) as follows:

(6) Manages, in accordance with the Paperwork Reduction Act of 1980, the Department's activities related to the review and approval of all public-use reports and recordkeeping requirements that are new or significant which impose paperwork burden on the public.

(7) Develops policies for, and manages the Department's Information Collection Budget and the Information Collection Budget process.

(8) Develops policies and procedures for, and carries out analytical and oversight activities related to the Department's paperwork reports clearance and reduction efforts.

Date: May 17, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88-11566 Filed 5-23-88; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Meetings; Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee; Changes in Time

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration; HMS.

ACTION: Correction notices.

SUMMARY: Public notice was given in the **Federal Register** on May 11, 1988, Volume 53, No. 91, on page 16783 that the Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH, would start at 9:00 a.m. and that its open session would be from 9:00-10:00 a.m. on June 2. The meeting has been moved up one-half hour to 8:30 a.m. The notice is being corrected to read as follows:

Date and Time: June 2-3: 8:30 a.m.
Status of Meeting: OPEN—June 2: 8:30-9:30 a.m.

SUMMARY: Public notice was given in the **Federal Register** on May 11, 1988, Volume 53, No. 91, on page 16784 that the Criminal and Violent Behavior Research Review Committee, NIMH, would meet June 8-10 (3 days). The committee has changed its schedule and will now meet June 8-9 (2 days). The

notice is being corrected to read as follows:

Date and Time: June 8–9: 9:15 a.m.

All other information for these committees remains the same.

Date: May 19, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–11603 Filed 5–23–88; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88F–0140]

E.I. du Pont de Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours & Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a Nylon 6I/6T polymer, manufactured by the condensation of hexamethylenediamine, terephthalic acid and isophthalic acid, for contact with all types of food except beverages containing more than 8 percent alcohol. The Nylon 6I/6T polymer would not have any thickness limitation.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4078) has been filed by E.I. du Pont de Nemours & Co., Wilmington, DE 19898, proposing that § 177.1500 *Nylon resins* (21 CFR 177.1500) be amended to provide for the safe use of a Nylon 6I/6T polymer, manufactured by the condensation of hexamethylenediamine, terephthalic acid and isophthalic acid, for contact with all types of food except beverages containing more than 8 percent alcohol. The Nylon 6I/6T polymer would not have any thickness limitation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 19, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–11553 Filed 5–23–88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F–0112]

Riken Vitamin Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Riken Vitamin Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of castor oil, hydrogenated as a component of olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–355), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4060) has been filed by Riken Vitamin Co., Ltd., c/o CFR Services, 2347 Paddock Lane, Reston, VA 22091, proposing that § 178.3280 *Castor oil, hydrogenated* (21 CFR 178.3280) be amended to provide for the safe use of castor oil, hydrogenated as a component of olefin polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–11004 Filed 5–23–88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F–0123]

Velsicol Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Velsicol Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of Glyceryl tribenzoate as a component of a coating for paper and paperboard in contact with dry foods.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4069) has been filed by Velsicol Chemical Corp., 5600 North River Rd., Rosemont, IL 60018–5119, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of glyceryl tribenzoate as a component of a coating for paper and paperboard in contact with dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–11554 Filed 5–23–88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Acquired Immunodeficiency Syndrome (AIDS); Regional Education and Training Centers Program; Availability of Funds

AGENCY: Health Resources and Services Administration, Public Health Service, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1988 funds are available for training grants to develop two AIDS regional Education and Training Centers (ETCs). These centers will provide training for health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV). The goal of the training is to prepare community primary care providers to be able to counsel, diagnose, and manage such patients and to prepare selected trainees to act as instructors in their local areas. The centers will operate in collaboration with health professions schools, community hospitals, local health departments, and other organizations involved in the provision of care to people with HIV related conditions.

DATE: To receive consideration, applications must be received by the close of business July 25, 1988, by the Grants Management Officer at the address below.

Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mrs. June Horner, Chief, Education and Training Centers Branch, Room 9–12, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443–6745. Training grant applications (PHS form #6025–1, approved under OMB number 0915–0060) and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this notice may be requested from Ms. Glenna Wilcom, Grants Management Officer, Bureau of Maternal and Child Health and Resources Development, Parklawn Building, Room 9–13, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443–6745.

SUPPLEMENTARY INFORMATION:

Program Objectives

The purpose of the training grant program is to support the development of regional ETCs for the health provider community. The program objectives for each center are to: (1) Provide (in collaboration with health professions schools, local hospitals, health departments, and other health related organizations) education and training to primary health care providers in the treatment and prevention of HIV infection; (2) provide updates of new and timely information about HIV infection to primary and secondary health care providers; and (3) serve as the support system for area health professionals through such means as AIDS hotlines, clearinghouses, and referral activities.

Availability of Funds

Funds were appropriated for this purpose by Pub. L. 100–202. Approximately $1.6 million remains available in Fiscal Year (FY) 1988 for competitive grants. The project period will be for 3 years. This requires submission of a budget for each of the 3 years. Funds will be awarded in FY 1988 for the first year. Funds for the next 2 years are subject to the availability of future appropriations.

Service Areas

Applications will be accepted for the development of two ETCs. Each ETC will serve the health care providers of a specific service area. These two service areas are:

1. The area comprising the States of Texas and Oklahoma.

2. The area comprising the States of Pennsylvania and New York (excluding New York City and Long Island), New York City for this purpose is defined as the boroughs of Manhattan, Brooklyn, Queens, Staten Island and the Bronx. Long Island is defined as Nassau and Suffolk Counties.

Service areas are being specified in this notice to ensure that ETCs are developed for areas of the country not currently within an existing ETC service area.

Eligible Applicants

All public and private entities, non-profit and for-profit within the two service areas stated above, are eligible to apply. Eligible entities may include, but are not limited to, schools in academic health science centers; professional associations; consortia of health care and community organizations; e.g., Area Health Education Centers (AHECs); public or private hospitals and local health departments which could develop coordinated AIDS regional education and training programs.

Review Criteria

Applications for training grants will be reviewed and rated according to the applicant's ability to meet the program objectives. Specific criteria will be included in the application package. Preference will be given to applicants who propose a strategy for including a broad variety of health professions disciplines, i.e., physicians, dentists, physician assistants, social workers, psychologists, counselors, nurse practitioners, nurses, etc., both in the program development process, and in the proposed composition of trainee groups.

The ability of health departments, hospitals, and other health care providers and institutions to assure confidentiality of patient information is critical to efforts to see that HIV infected persons receive adequate health care. Therefore, every reasonable effort should be made by the ETC to provide for confidentiality of the patients and patients' records for the portion of the training which is clinical in nature.

Technical Assistance (T.A.) Workshops

ETC program staff will be available at a Technical Assistance (T.A.) Workshop to respond to any questions potential applicants may have. The T.A. workshop will be held in Rockville, Maryland. The exact location, date and time of the workshop will be provided to potential applicants in their program application package.

Allowable Costs

A successful applicant under this notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the award; the regulations of the Department and the PHS applicable to grants; the cost principles specified in 45 CFR Part 74, Subpart Q; the applicable Office of Management and Budget (OMB) circular for non-profit grantees; and for for-profit commercial organizations, cost will be determined in accordance with 48 CFR Chapter 1, Subpart 31.2 for organizations other than hospitals. Indirect costs for training grants other than those awarded to State or local government agencies shall be reimbursed at 8 percent of total allowable direct costs exclusive of tuition and related fees and expenditures for equipment, or at the actual indirect cost rate, whichever results in a lesser dollar amount. State

and local government agencies shall receive reimbursement at their full indirect cost rates.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

Executive Order 12372

The ETC Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State Single Point of Contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number is 13.145.

Date: April 27, 1988.

David N. Sundwall,

Administrator, HSRA.

[FR Doc. 88-11606 Filed 5-23-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-08-4212-14; A-21355]

Conveyance of Public Land; La Paz County, AZ

May 16, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the direct sale of 20 acres of public land to La Paz County for a sanitary landfill.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), La Paz County has purchased by non-competitive direct sale, at the fair market value of $8,500, plus $50.00 for the purchase of the mineral estate, except oil and gas, the following described land:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 23 W.,
Sec. 5, lots 6 and 7.

The area described contains 20 acres in La Paz County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-11549 Filed 5-23-88; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-08-4212-11; N-47832]

Realty Action; Lease for Recreation and Public Purposes; Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purposes; lease/conveyance.

SUMMARY: The following described lands have been examined and found suitable for classification and lease, with the option of purchase after development, under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et. seq.*). The lands would not be offered for lease until at least 60 days after the date of publication of this Notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 33 N., R. 70 E.,
Sec. 9, S½SW¼NW¼SE¼, NW¼SW¼SE¼.

Containing 15 acres.

These lands are hereby classified for public purpose use as a highway maintenance station site. The Nevada Department of Transportation (NDOT) has made application for, and intends to use the site to construct a highway maintenance station facility near West Wendover, Nevada.

The lease/patent, when issued, would be subject to the provisions of the Recreation and Public Purposes Act, applicable regulations of the Secretary of the Interior, and would contain the following reservations to the United States:

1. All minerals.
2. A right-of-way thereon for ditches and canals.

The lease/patent would be issued subject to:

1. Those rights for powerline purposes granted to Wells Rural Electric Company, its successors or assigns, by right-of-way No. Nev-058475, pursuant to the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

2. Those rights for powerline purposes granted to Wells Rural Electric Company, its successors or assigns, by right-of-way No. Nev-066049 pursuant to the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

3. Those rights for highway purposes granted to the Nevada Department of Transportation, its successors or assigns, by right-of-way No. Nev.-065585, pursuant to the Act of August 27, 1958 (72 Stat. 916; 23 U.S.C. 317).

4. An easement of 30 feet in width along the north, east and west boundaries of the tract in favor of Elko County for road and public utilities purposes to insure continued ingress and egress to adjacent lands.

The lease, when issued, would contain the following special lease conditions:

1. The lessee agrees to indemnify the United States against any liability arising from the release or threatened release of any toxic substances on the subject lands or resulting from activity on the subject lands. This agreement applies without regard to whether a release is caused by the lessee, its agent or unrelated third parties.

2. Upon abandonment of the site, the Nevada Department of Transportation will remove the buried fuel storage tanks from the site.

Initially the lands would be leased and after substantial development of the parcel, may be purchased under the special pricing program afforded to State government entities.

The land is not required for any Federal purpose. The classification and the lands subsequent lease/conveyance are consistent with the Bureau's planning for the area.

Upon publication of this Notice of Realty Action in the Federal Register, the subject lands will be segregated from appropriation under any other public land law, including locations under the mining laws. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the Federal Register, whichever occurs first.

Detailed information concerning this action is available for review at the Elko District Office, Bureau of Land Management. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Elko District Office, 3900 E. Idaho St., Elko, Nevada 89801. Any objections will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of timely objections, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Date: May 13, 1988.

Rodney Harris,

District Manager.

[FR Doc. 88-11580 Filed 5-23-88; 8:45 am]

BILLING CODE 4310-HC-M

[WY-930-08-4220-10; W-108330]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 32.56 acres of public land for recreational facilities to be constructed in connection with the Buffalo Bill Dam and Reservoir Modification Project near Cody, Wyoming. This notice segregates the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by August 22, 1988.

ADDRESS: Comments and meeting requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: On May 5, 1988, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 52 N., R. 104 W.,
Sec. 14, lots 10, 11, 26, 27;
Sec. 15, lots 21, 22, 23.

The area described contains 32.56 acres in Park County.

The purpose of the proposed withdrawal is to protect the capital investments expended for recreational facilities to be administered by the Wyoming Recreation Commission for the Bureau of Reclamation. This recreational area is part of a Master Plan for the Buffalo Bill State Park and the Buffalo Bill Dam and Reservoir Modification Project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those specifically approved by the authorized officer of the Bureau of Land Management.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Bureau of Reclamation.

Hillary A. Oden,

State Director.

May 13, 1988.

[FR Doc. 88-11581 Filed 5-23-88; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-07-4212-13; AZA-22844]

Realty Action, Exchange of Mineral Estate; Arizona

The following described federal mineral estate has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Apache County, Arizona

T. 20 N., R. 28 E.,
Sec. 28, NE¼SW¼, SE¼NW¼, SW¼NE¼.
T. 19 N., R. 25 E.,
Sec. 30, lots 1 to 4, incl., E½, E½NW¼, SE¼SW¼.
T. 17 N., R. 29 E.,
Sec. 20, SE¼SW¼, W½SE¼, SW¼NE¼.
T. 17 N., R. 31 E.,
Sec. 20, N½, N½S½;
Sec. 30, lot 1.
T. 16 N., R. 25 E.,
Sec. 20, All.
T. 16 N., R. 29 E.,
Sec. 26, N½, SW¼.
T. 16 N., R. 30 E.,
Sec. 14, All;
Sec. 30, lots 1 to 4, incl., E½W½.
T. 14 N., R. 24 E.,
Sec. 6 lots 3 to 6, incl., SE¼, SE¼NW¼, E½SW¼;
Sec. 14, All;
Sec. 34, All.
T. 14 N., R. 26 E.,
Sec. 28, All.
T. 14 N., R. 27 E.,
Sec. 12, All.
T. 14 N., R. 28 E.,
Sec. 20, All.
T. 13 N., R. 25 E.,
Sec. 4, SW¼;
Sec. 6, lots 1 to 7, incl., SE¼NW¼, E½SW¼, S½NE¼, N½SE¼;
Sec. 8, All;
Sec. 10, All;
Sec. 24, All.
T. 13 N., R. 26 E.,
Sec. 28, SE¼, E½NE¼.
T. 13 N., R. 29 E.,
Sec. 6, lots 1, 2 and 4 to 7, incl., SE¼NW¼, E½SW¼, S½NE¼, SE¼.
T. 13 N., R. 30 E.,
Sec. 28, S½NE¼, SE¼, S½SW¼.
T. 13 N., R. 31 E.,
Sec. 19, lots 3 and 4, E½SW¼, SE¼;
Sec. 21, S½SE¼;
Sec. 22, lot 4;
Sec. 27, lots 1 to 3, incl.;
Sec. 28, N½, N½S½.
T. 12 N., R. 24 E.,
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 20, N½;
Sec. 24, N½NE¼, W½.
T. 12 N., R. 25 E.,
Sec. 18, lots 1 to 4, incl., E½;
Sec. 28, SE¼.
T. 12 N., R. 26 E.,
Sec. 20, All;
Sec. 28, S½.
T. 12 N., R. 27 E.,
Sec. 18, SE¼.
T. 12 N., R. 28 E.,
Sec. 10, W½W½, E½SW¼, SE¼NW¼, SW¼SE¼.
T. 12 N., R. 29 E.,
Sec. 20, E½NE¼, SE¼NW¼, SW¼NE¼, W½SE¼, NE¼SE¼, SW¼SW¼;
Sec. 21, SW¼NW¼.
T. 12 N., R. 30 E.,
Sec. 1, SE¼;
Sec. 12, NE¼, S½;
Sec. 26, SE¼, S½NW¼, N½SW¼;
Sec. 27, NE¼;
Sec. 35, NE¼.
T. 12 N., R. 31 E.,
Sec. 6, lots 10 and 11;
Sec. 7, NE¼, N½SE¼, SW¼SE¼, SE¼SW¼.

T. 11 N., R. 25 E.,
Sec. 10, All.
T. 11 N., R. 27 E.,
Sec. 22, SE¼SE¼;
Sec. 23, SW¼SE¼, SE¼SE¼;
Sec. 25, N½SE¼;
Sec. 28, N½N½, SW¼NE¼.
T. 11 N., R. 28 E.,
Sec. 3, lots 3 and 4, S½NW¼, SW¼, W½SE¼;
Sec. 4, E½SE¼;
Sec. 8, All;
Sec. 23, E½SE¼;
Sec. 25, E½W½, W½E½, SE¼SE¼, SW¼SW¼, W½NW¼;
Sec. 26, E½NE¼;
Sec. 30, lot 4, SE¼SW¼, SW¼SE¼;
Sec. 31, lot 1, NE¼NW¼, NW¼NE¼.
T. 11 N., R. 29 E.,
Sec. 4, SW¼SW¼;
Sec. 5, lot 2, S½NE¼, SE¼.
T. 11 N., R. 30 E.,
Sec. 15, N½.
T. 11 N., R. 31 E.,
Sec. 27, lots 2 to 4, incl., SE¼NW¼, SW¼NE¼;
Sec. 31, lots 3 and 4, E½SW¼, SE¼;
Sec. 34, lots 1 to 4, incl., W½E½, E½W½
T. 10 N., R. 25 E.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 10, N½NW¼, NW¼NE¼;
Sec. 18, N½N½NE¼;
Sec. 19, NW¼NE¼;
Sec. 22, N½SE¼, NE¼SW¼;
Sec. 23, S½, NE¼;
Sec. 25, W½;
Sec. 26, SW¼, S½NW¼, N½NE¼, SW¼NE¼;
Sec. 27, SE¼, S½NE¼.
T. 10 N., R. 26 E.,
Sec. 22, S½;
Sec. 23, N½SW¼, NE¼NE¼, S½NE¼, SE¼;
Sec. 24, NW¼, NW¼SW¼;
Sec. 25, SE¼NW¼, SW¼NE¼, NE¼SW¼, NW¼SE¼, S½S½;
Sec. 26, S½NW¼, W½NE¼, W½SW¼, SE¼SW¼, S½SE¼;
Sec. 27, N½NW¼, W½NE¼, S½;
Sec. 34, E½NE¼, NE¼SE¼;
Sec. 35, NE¼NW¼, S½NW¼, N½SW¼.
T. 10 N., R. 28 E.,
Sec. 14, E½E½, W½SE¼, NE¼SW¼.
T. 10 N., R. 30 E.,
Sec. 26, E½SE¼;
Sec. 27, S½SW¼, SW¼SE¼;
Sec. 28, SE¼SE¼;
Sec. 33, E½NE¼, NE¼SE¼;
Sec. 34, W½, NW¼NE¼, SE¼NE¼, NE¼SE¼;
Sec. 35, NE¼NE¼, S½N½, N½SW¼, NW¼SE¼.
T. 10 N., R. 31 E.,
Sec. 6, lots 1 to 4, incl.
T. 9 N., R. 27 E.,
Sec. 3, lots 1 to 4, incl., S½N½;
Sec. 14, All;
Sec. 23, NE¼NW¼, S½NW¼, NE¼, SW¼, N½SE¼;
Sec. 24, S½;
Sec. 25, N½NW¼, SE¼;
Sec. 26, NE¼, N½SE¼.
T. 9 N., R. 28 E.,
Sec. 30, lots 3 and 4, E½SW¼, W½SE¼, NE¼SE¼;
Sec. 31, lots 1 and 2, NE¼NW¼.
T. 9 N., R. 29 E.,
Sec. 23, SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 24, SW¼NW¼, W½SW¼;
Sec. 25, NW¼NW¼;
Sec. 26, NE¼, N½SE¼, SW¼.
T. 9 N., R. 30 E.,
Sec. 26, SE¼;
Sec. 34, N½, SE¼;
Sec. 35, All.
T. 8 N., R. 31 E.,
Sec. 5, SW¼;
Sec. 6, SE¼SW¼, S½SE¼, NE¼SE¼;
Sec. 7, NE¼.

Total 33,348.94 acres.

Gila and Salt River Meridian, Navajo County, Arizona

T. 20 N., R. 16 E.,
Sec. 28, All.
T. 19 N., R. 16 E.,
Sec. 4, lot 1, SE¼NE¼, SE¼;
Sec. 8, NW¼, W½SE¼.
T. 19 N., R. 20 E.,
Sec. 10, SW¼;
Sec. 30, NE¼.
T. 19 N., R. 21 E.,
Sec. 20, N½, SE¼;
Sec. 22, All;
Sec. 28, All;
Sec. 30, lots 1 and 2, E½NW¼.
T. 18 N., R. 16 E.,
Sec. 10, E½, E½W½;
Sec. 12, All.
T. 18 N., R. 20 E.,
Sec. 12, E½NW¼, SW¼NW¼, NW¼SW¼;
Sec. 30, lots 1 to 4, incl., E½W½, E½.
T. 18 N., R. 21 E.,
Sec. 6, lots 1 to 7, incl. SE¼NW¼, E½SW¼, S½NE¼, SE¼;
Sec. 14, All;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 22, N½, NW¼SW¼;
Sec. 26, N½, SW¼;
Sec. 28, W½, NW¼NE¼.
T. 18 N., R. 23 E.,
Sec. 10, N½N½, SW¼NE¼, S½NW¼, NW¼SW¼.
T. 17 N., R. 19 E.,
Sec. 12, All;
Sec. 14, All;
Sec. 18, lots 1 to 4, incl., E½W½, W½E½.
T. 17 N., R. 20 E.,
Sec. 6, lots 6 and 7, E½SW¼, SE¼;
Sec. 8, All;
Sec. 12, S½S½, N½SE¼, S½NE¼, NE¼SW¼, SE¼NW¼.
T. 17 N., R. 21 E.,
Sec. 10, NE¼, S½;
Sec. 14, NW¼.
T. 17 N., R. 23 E.,
Sec. 10, All;
Sec. 30, E½.
T. 15 N., R. 15 E.,
Sec. 12, W½;
Sec. 14, W½.
T. 15 N., R. 16 E.,
Sec. 6, lots 5 to 7, incl., and 9 to 14, incl., E½SW¼, SE¼.
T. 15 N., R. 17 E.,
Sec. 34, All.
T. 14 N., R. 17 E.,
Sec. 4, lot 1;
Sec. 20, S½, NW¼;
Sec. 24, S½, NW¼;
Sec. 28, N½, SE¼.
T. 14 N., R. 18 E.,
Sec. 10, S½;
Sec. 20, All;
Sec. 24, NE¼;
Sec. 28, W½.
T. 14 N., R. 19 E.,
Sec. 6, lots 1 to 7, incl., SE¼NW¼, S½NE¼, E½SW¼, SE¼;
Sec. 8, E½;
Sec. 10, W½;
Sec. 12, S½;
Sec. 26, All;
Sec. 28, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 34, All.
T. 13 N., R. 18 E.,
Sec. 6, lots 1, 2, 6 and 7, S½NE¼, E½SW¼, SE¼;
Sec. 12, W½, W½E½.
T. 13 N., R. 19 E.,
Sec. 18, lots 1 to 4, incl., E½W½, E½.
T. 13 N., R. 20 E.,
Sec. 8, All.
T. 13 N., R. 21 E.,
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 22, W½, SW¼NE¼, NW¼SE¼, S½SE¼.
T. 12 N., R. 21 E.,
Sec. 8, E½;
Sec. 14, All;
Sec. 22, All.
T. 12 N., R. 22 E.,
Sec. 10, N½, SW¼;
Sec. 20, W½W½, SE¼SW¼, S½SE¼;
Sec. 28, E½E½.
T. 12 N., R. 23 E.,
Sec. 4, lots 3 and 4, SW¼.
T. 11 N., R. 22 E.,
Sec. 4, lots 1, 2 and 3, S½NE¼.

Total 28,142.12 acres.

Gila and Salt River Meridian, Coconino County, Arizona

T. 24 N., R. 10 E.,
Sec. 28, E½SW¼, W½SE¼.
T. 23 N., R. 10 E.,
Sec. 24, E½NW¼, W½NE¼.
T. 20 N., R. 11 E.,
Sec. 20, All.
T. 19 N., R. 11 E.,
Sec. 10, All;
Sec. 12, E½W½, E½;
Sec. 18, lots 2 to 4, incl., E½W½, W½E½;
Sec. 20, N½, N½S½, SW¼SW¼;
Sec. 22, All;
Sec. 24, All;
Sec. 30, lots 3 and 4, E½W½, E½;
Sec. 34, lots 1 to 4, incl., N½S½, N½.
T. 19 N., R. 12 E.,
Sec. 18, lots 1 to 4, incl., E½W½, E½.
T. 18 N., R. 12 E.,
Sec. 14, All.
T. 17 N., R. 12 E.,
Sec. 18, SE¼SE¼;
Sec. 20, All;
Sec. 28, All;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 34, lots 1 to 7, incl., 11 and 12, N½.
T. 16 N., R. 13 E.,
Sec. 34, All.
T. 16 N., R. 15 E.,
Sec. 18, lots 2 to 4, incl., E½W½, E½.
T. 15 N., R. 14 E.,
Sec. 4, lots 1, 3 and 4, S½NW¼, W½SW¼, SE¼NE¼;
Sec. 8, E½;
Sec. 10, All;
Sec. 28, N½.
T. 15 N., R. 15 E.,
Sec. 18, lots 1 to 4, incl., E½W½, W½E½, SE¼NE¼, E½SE¼;
Sec. 20, All;
Sec. 30, lot 1.

Total 75,591.17 acres.

In exchange for the Federal mineral estate described above, the United States will acquire the following privately owned mineral estate from Santa Fe Pacific Railroad Company:

Gila and Salt River Meridian, Apache County, Arizona

T. 19 N., r. 31 E.,
Sec. 17, All;
Sec. 20, All;
Sec. 21, All;
Sec. 28, All;
Sec. 29, All;
Sec. 30, E½;
Sec. 31, E½;
Sec. 33, All.
T. 20 N., R. 31 E.,
Sec. 3, lots 1 to 4, incl.;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., E½SW¼, SE¼ NW¼, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, All;
Sec. 9, All;
Sec. 10, lots 1 to 4, incl.;
Sec. 15, lots 1 to 4, incl.;
Sec. 17, All;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, All;
Sec. 21, All;
Sec. 22, lots 1 to 4, incl.;
Sec. 27, lots 1 to 4, incl.;
Sec. 28, E½;
Sec. 29, All;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Sec. 33, All;
Sec. 34, lots 1 to 4, incl.
T. 20 N., R. 30 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., E½SW¼, S½NE¼, SE¼NW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, All;
Sec. 9, All;
Sec. 10, All;
Sec. 11, All;
Sec. 12, All;
Sec. 13, All;
Sec. 14, All;
Sec. 15, All;
Sec. 17, All;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, All;
Sec. 21, All;
Sec. 22, All;
Sec. 23, All;
Sec. 24, All;
Sec. 25, All;
Sec. 26, All;
Sec. 27, All;
Sec. 28, All;
Sec. 29, All;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Sec. 33, All;
Sec. 34, All;
Sec. 35, All;
T. 20 N., R. 29 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, All;
Sec. 9, All;
Sec. 10, All;
Sec. 11, All;
Sec. 12, All;
Sec. 13, All;
Sec. 14, All;
Sec. 15, All;
Sec. 17, All;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, All;
Sec. 21, All;
Sec. 22, All;
Sec. 23, All;
Sec. 24, All;
Sec. 25, All;
Sec. 26, All;
Sec. 27, All;
Sec. 28, All;
Sec. 29, All;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4 incl., E½W½, E½;
Sec. 33, All;
Sec. 34, All;
Sec. 35, All.
T. 18 N., R. 27 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 9, All;
Sec. 11, All.

Total 75,695.65 acres.

Based on leasable and locatable mineral potential reports, it has been determined that the overall potential mineral value of the private and Federal mineral estates are approximately equal.

Lands transferred from the United States will be conveyed subject to the following oil and gas leases:
AZA–23078
AZA–22988
AZA–22989
AZA–17548
AZA–21953
AZA–22987

Publication of this notice shall segregate the Federal minerals, as described in this notice, from appropriation under the mining laws. This segregative effect shall terminate upon the issuance of a patent or two years from the date of this notice, or upon publication of a Notice of Termination.

Detailed information concerning the exchange, including the locatable mineral potential and the leasable mineral potential reports, can be obtained from the Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. For a period of forty-five (45) days, from the date of this notice, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Herman L. Kast,
Acting District Manager.
Date: May 19, 1988.

[FR Doc. 88–11593 Filed 5–23–88; 8:45 am]
BILLING CODE 4310–32–M

National Park Service

National Register of Historic Places; Pending Nominations; Alaska et al

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 14, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by June 8, 1988.

Carol D. Shull,
Chief of Registration, National Register.

ALASKA

Anchorage Borough

Anchorage, *Wendler Building*, 400 D St.

Kenai Peninsula Borough

Seward, *Brown & Hawkins Store*, 205, 207, 209 Fourth Ave.

COLORADO

Grand County

Fraser, *Cozens Ranch House*, CO 40 1½ mi. S of Fraser.

CONNECTICUT

Hartford County

Granby, *Cossitt, Frederick H., Library*, 368 N. Granby Rd.

Litchfield County

New Milford, *Wildman, E. A. & Co. Tobacco Warehouse*, 34 Bridge St.

FLORIDA

Broward County

Oakland Park, *Oakland Park Elementary School*, 936 N.E. Thirty-third St.

MARYLAND

Frederick County

Frederick, *Frederick Historic District (Boundary Increase)*, Roughly bounded by Thirteenth, East and Wisner, South and Madison Sts., W. College Terr. and Rosemont and Trial Aves.

MASSACHUSETTS

Bristol County

Dartmouth, *Tucker Farm Historic District*, 1178 Tucker Rd.

Essex County

Amesbury, *Lowell's Boat Shop*, 459 Main St.
Peabody, *Moor-Hill House*, 82 Franklin St.

Hampden County

Palmer, *Union Station*, Depot St.

Middlesex County

Medford, *Manning, Joseph K., House*, 35–37 Forest St.

Suffolk County

Chelsea, *Downtown Chelsea Residential Historic District*, Roughly bounded by Shurtleff, Marginal, and Division Sts., and Bellingham Sq.

Worcester County

Barre, *No. 4 Schoolhouse*, Farrington Rd.
Grafton, *Grafton Common Historic District*, Roughly Worcester, Oak, Millbury, Church, South Upton, and North Sts.
Leominster, *Whitney, F. A., Carriage Company Complex Historic District*, Off 124 Water St.
Worcester, *Holy Name of Jesus Complex (Worcester MRA)*, Illinois St.

NEW JERSEY

Atlantic County

Atlantic City, *Barclay Court*, 9–11 S. Pennsylvania Ave.
Ventnor, *Stafford, John, Historic District*, Roughly boundedby Atlantic Ave., Vassar Ave., Boardwalk, and Austin Ave.

Mercer County

Eldridge Park vicinity, *Smith-Ribsam House*, 45 Pine Knoll Dr.

NEW YORK

Oswego County

Fulton vicinity, *Van Buren, David, House*, Van Buren Dr., W end at the Oswego River

Rensselaer County

Eagle Mills, *Garfield School*, NY 2 and Moonlawn Rd.

Suffolk County

Stony Brook vicinity, *Hawkins Homestead*, 165 Christian Ave.

NORTH CAROLINA

Haywood County

Waynesville, *Masonic Hall*, 114 Church St.

Person County

Roxboro Vicinity, *Holloway-Jones-Day House*, US 501 and SR 1322

OHIO

Franklin County

Hilliard, *Winterringer Building and House*, 5344 Center St.

Scioto County

South Webster, *Tripp-Bauer Building*, 51–53 N. Jackson St.

OREGON

Lane County

Springfield vicinity, *Dorris Ranch*, S. Second St. at Dorris Ave.

PENNSYLVANIA

Adams County

Bermudian vicinity, *Pond Mill Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 01009 over Bermudian Creek
Greenmount vicinity, *Bridge in Cumberland Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 01002 over Marsh Creek

Allegheny County

Cochrans Mill vicinity, *Bridge in Jefferson Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Cochran Mill Rd. over Lick Run
Glassport and McKeesport, *Jerome Street Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Fifth Ave. over Youghiogheny River
Glenshaw vicinity, *Bridge in Shaler Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Birchfield Rd. over Pine Creek
Millvale and Pittsburgh, *Fortieth Street Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Fortieth St. over Allegheny River
Pittsburgh, *Liberty Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Over the Monongahela River

Armstrong County

Deanville vicinity, *Bridge between Madison and Mahoning Townships (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 03178 over Mahoning Creek
Seminole vicinity, *Colwell Cut Viaduct (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 66 over Pittsburgh & Shawmut RR

Beaver County

Cannelton vicinity, *Bridge in South Beaver Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Walts Mill Rd. over Little Beaver

Bedford County

Bedford, *Bridge in Snake Spring Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, TR 30 over Raystown branch of Juniata River

Berks County

Barto vicinity, *Barto Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 284 over trib. to Perkiomen Creek
Dauberville, *Dauberville Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Belleman's Church Rd. over Schuylkill River
Morysville vicinity, *Ironstone Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Farmington Ave. over Ironstone Creek
Reading, *Lindbergh Viaduct (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, US 422/Mineral Spring Rd. over Mineral Spring Creek
Sheridan vicinity, *S Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 06024 over Tulpehocken Creek
Steinsville vicinity, *Bridge in Albany Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 06173 over Maiden Creek

Bradford County

Athens vicinity, *Bridge in Athens Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 08081 over Susquehanna River

Bucks County

Carversville vicinity, *Bridge in Solebury Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Carversville Rd. over Paunacussing Creek
Milford Square vicinity, *Campbell's Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Allentown Rd. over Unami Creek
Newtown vicinity, *Newtown Creek Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Richoro Rd. over Newtown Creek
Point Pleasant, *Bridge in Tinicum Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 920 over Pennsylvania Canal
Scammells Corner vicinity, *Bridge in Yardley Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Reading Ave. over VanHorn Creek
Wycombe vicinity, *Bridge in Buckingham Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Forest Grove Rd. over Mill Creek

Cambria County

Johnstown, *Bridge in Johnstown City (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 525 spur over Stoney Creek
Lilly, *Lilly Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, PA 53 over Burgoon Run
Oil City vicinity, *Bridge in Cassandra Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, PA 53 over Bens Creek.

Chester County (also in Montgomery County)

Mont Clare vicinity, *Black Rock Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, TR 113 over Schuylkill River

Chester County

Downington vicinity, *County Bridge No. 124 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Edge Hill Rd. over Beaver Creek
Landenberg, *Bridge in New Garden Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Landenberg Rd. over White Clay Creek
Lenape vicinity, *Lenape Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, PA 52 over parking lot
Little Washington vicinity, *Marshall's Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Marshall Rd. over Culbertson Run
Malvern vicinity, *County Bridge No. 171 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Cedar Hollow Rd. over Valley Creek
Mortonville, *Bridge in East Fallowfield Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Strasburg Rd. over Mill Race
Port Kennedy vicinity, *Bridge in Tredyffrin Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Gulph Rd. over Trout Run
Rock Run vicinity, *County Bridge No. 101 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Wagontown Rd. over Brandywine Creek
Steelville vicinity, *Bridge in West Fallowfield Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Ross Fording Rd. over Octoraro Creek
Warwick vicinity, *Brower's Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Mansion Rd. over French Creek
Westtown, *County Bridge No. 148 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, PA 926 over branch of Chester Creek

Clearfield County

Bells Landing vicinity, *Bridge in Greenwood Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 17026 over W branch of Susquehanna River
Curwensville vicinity, *Hogback Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 869 over W branch of Susquehanna River
Westover, *Bridge in Westover Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 17003/TR 185 over Chest Creek

Columbia County

Bendertown vicinity, *Bridge in Fishing Creek Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 19078 over Little Pine Creek

Crawford County

Atlantic vicinity, *Bridge in East Fallowfield Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 20012 over Unger Run
Cambridge Springs, *Cambridge Springs Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 84 spur B over French Creek
Center Road Corners vicinity, *Bridge in West Mead Township (Highwdy Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 20027 over French Creek
Millers Station vicinity, *Bridge in Rockdale Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 20076 over French Creek
Titusville vicinity, *Bridge in Oil Creek Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 20132 over Oil Creek

Cumberland County (also in Dauphin County)

Harrisburg, *Market Street Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 34/Market St. over Susquehanna River

Dauphin County

Edman vicinity, *Bridge in Lykens Township No. 1 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 22001 over Pine Creek
Fearnot vicinity, *Bridge in Lykens Township No. 2 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 22033 over trib. to Pine Creek
Harrisburg, *Soldiers and Sailors Memorial Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 140/State St. over LR 139 Spur and Paxton Creek
Inglenook vicinity, *Bridge in Reed Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 1/TR–147 over Powell's Creek

Delaware County

Broomall vicinity, *Bridge in Radnor Township No. 1 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Goshen Rd. over Darby Creek
Chester, *Second Street Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, PA 291/Second St. over Chester Creek
Ridley Park, *Bridge in Ridley Park Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, W. Ridley Ave. over Little Crum Creek
Villanova vicinity, *Bridge in Radnor Township No. 2 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Bryn Mawr Ave. over Meadow Brook Creek

Fayette County (also in Washington County)

Brownsville and West Brownsville, *Brownsville Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 288 over Monongahela River

Fayette County

Layton vicinity, *Layton Bridge (Highway Bridges Owned by the Commonwealth of*

BEST COPY AVAILABLE

Pennsylvania, Department of Transportation TR), LR 26191 over Youghiogheny River

Forest County

West Hickory vicinity, *West Hickory Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 598 over Allegheny River

Franklin County

Middle Spring vicinity, *McClay's Twin Bridge (East) (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 28010 over trib. to Conodoguinet Creek

Middle Spring vicinity, *McClay's Twin Bridge (West) (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 28010 over Conodoguinet Creek

Social Island vicinity, *Bridge between Guilford and Hamilton Townships (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 28033 over Conococheque Creek

Upper Strasburg vicinity, *Horse Valley Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 28093 over Conodoguinet Creek

Willow Hill vicinity, *Bridge in Metal Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 45 Spur E over W branch of Conococheaque Creek

Greene County (also in Fayette County)

Pt. Marion, *Marion Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 451 over Mon River

Greene County

Morrisville vicinity, *Bridge in Franklin Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 268 over Ten Mile Creek

Indiana County

Robinson vicinity, *Bridge in West Wheatfield Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 32008 over Richards Run

Lackawanna County

Scranton, *Harrison Avenue Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 5 over LR 35009 Par-Roaring Brook and RR

Lancaster County (also in York County)

Columbia and Wrightsville, *Old Columbia-Wrightsville Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 128 over Susquehanna River and RR

Lancaster County

Brownstown, *Bridge in West Earl Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 36032 over Conestoga Creek

Brunnerville vicinity, *Hammer Creek Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 36011 over Hammer Creek

Lehigh County

Allentown, *Meyers, Albertus L., Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Eighth St. over Little Lehigh and Railroad Sts.

Center Valley, *Centennial Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Station Ave. over Saucon Creek

Germansville, *Bridge in Heidelberg Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 39110 over branch of Jordan Creek

North Hampton vicinity, *Cold Spring Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Second St. over Spring Creek

Steinsville vicinity, *Bridge in Lynn Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 39112 over Ontelaunee Creek

Weidasville vicinity, *Frantz's Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Tranaportation TR)*, LR 39060 over Jordan Creek

Luzerne County

Kingston and Wilkes Barre, *Market Street Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 11/ Market St. over Susquehanna River

Wilkes-Barre, *Bridge in City of Wilkes-Barre (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 8 over Mill Creek

Lycoming County

Bodines vicinity, *Bridge in Lewis Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 41051 over Lycoming Creek

Hillborn, *Bridge in Brown Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 41022 over Pine Creek

Jersey Shore vicinity, *Bridge in Porter Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 41017

Proctor, *Bridge in Plunkett's Creek Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 41053 over Plunkett's Creek

Mercer County

Carlton vicinity, *Bridge in French Creek Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 43074 over French Creek

Greenville vicinity, *Quaker Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 43135 over Little Shenango River

Montgomery County

Collegeville vicinity, *Perkiomen Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Ridge Pike over Perkiomen Creek

Elvoy vicinity, *Bridge in Franconia Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Allentown Rd. over Skippack Creek

Fagleysville vicinity, *Bridge in Upper Fredrick Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Fagleysville Rd. over Swamp Creek

Ft. Washington vicinity, *Horsham—Montgomery Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Lower State Rd. over Little Neshaminy Creek

Gulph Mills, *Bridge in Upper Merion Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, S. Gulph Rd. over Gulph Creek

Lower Moreland vicinity, *Bryn Athyn—Lower Moreland Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Byberry Rd. over branch of Pennypack Creek

Milford vicinity, *Sutch Road Bridge in Marlborough Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Sutch Rd. over Unami Creek

Prospectville vicinity, *County Bridge No. 54 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Morris Rd. over branch of Wissahickon Creek

Sumneytown vicinity, *Swamp Creek Road Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Swamp Creek Rd. over Unami Creek

Unionville vicinity, *Bridge in Hotfield Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Orvilla Rd. over W branch of Neshaminy Creek

Zieglersville vicinity, *Bridge in Upper Frederick Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Gerloff Rd. over Swamp Creek

Northampton County

Bangor, *Bridge in Bangor Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Pennsylvania St. over Martins Creek

Portland, *County Bridge No. 36 (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, TR 611 over Jacoby Creek

Stouts vicinity, *Bridge in Williams Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 48007 over Frey's Run

Northumberland County (also in Union County)

Allenwood and Dewart, *Allenwood River Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 460 over W branch of Susquehanna River

Watsontown and White Deer, *Watsontown River Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Tranaportation TR)*, LR 240 spur over W branch of Susquehanna River

Perry County

Newport, *Bridge in Newport Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 31 over Little Buffalo Creek

Philadelphia County

Philadelphia, *Adams Avenue Bridge in Philadelphia (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Adams Ave. over Tacony Creek

Philadelphia, *Belmont Avenue Bridge in Philadelphia (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Belmont Ave. over Ramp B

Philadelphia, *City Line Avenue Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, City Ave. over E branch of Indian Creek

Philadelphia, *Frankford Avenue Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Frankford Ave. over Pennypack Creek

Philadelphia, *Frankford Avenue Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Frankford Ave. over Poquessing Creek

Philadelphia, *Holme Avenue Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Holme Ave. over Wooden Bridge Run

Philadelphia, *Ridge Avenue Bridge in Philadelphia (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Ridge Ave. over Wissahickon Creek

Philadelphia, *Thirty-third Street Bridge in Philadelphia (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Thirty-third St. over Master St.

Philadelphia, *Walnut Lane Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Walnut Ln. over Lincoln Dr.

Philadelphia, *Wissahickon Memorial Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, Henry Ave. over Wissahickon Dr.

Snyder County

Selinsgrove vicinity, *Bridge between Monroe and Penn Townships (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 54013 over Penn's Creek

Somerset County

Pilltown, *Bridge in Jenner Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 55125 over Roaring Run

Susquehanna County

South Gibson vicinity, *Bridge in Gibson Borough (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 57045 over Tunkhannock Creek

Venango County

Kennerdell vicinity, *Bridge in Clinton Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 60010 over Scrubgrass Creek

Kennerdell vicinity, *Witherup Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 60007 over Scrubgrass Creek

Oleopolis vicinity, *Pithole Stone Arch (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 60046 over Pithole Creek

Titusville vicinity, *Bridge in Cherrytree Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 60052 over Oil Creek

Washington County (also in Westmoreland County)

Donora and Webster, *Webster Donora Birdge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, A 143 over Monongahela River

Monessen and North Charleroi, *Charleroi—Monessen Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 247 over Monongahela River

Wayne County

Haags Mill, *Bridge in Dreher Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 171 over Haags Mill Creek

Wyoming County

Starkville vicinity, *Bridge in Nicholson Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 65021 over Tunkhannock Creek

York County

Cond Wago Heights vicinity, *Bridge between East Manchester and Newberry Townships (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 250 over Conewago Creek

Krailtown vicinity, *Bridge in Washington Township (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 66150 over Bermudian Creek

Woodside vicinity, *Kise Mill Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR)*, LR 66003 over Bennett Run

SOUTH DAKOTA

Stanley County

Ft. Pierre II (39ST217) (19th Centrury South Dakota Trading Posts MPS)

TEXAS

Travis County

East Austin, *Rogers—Bell House (East Austin MRA)*, 1001 E. Eighth St.

WASHINGTON

Thurston County

Lacey vicinity, *Long Lake Recreation Hall (Thurston County MRA)*, 3054 Carpenter Rd., SE

Olympia vicinity, *Union Mills Superintendent's House (Thurston County MRA)*, 7716 Union Mills Rd.

Rochester vicinity, *Jaaska House and Warehouse (Thurston County MRA)*, 11300 Independence Rd.

Rochester vicinity, *Miller—Brewer House (Thurston County MRA)*, 17915 Guava

Rochester vicinity, *State Training School for Girls Administration Building (Thurston County MRA)*, 20311 S.W. Old Hwy. 99

Tenino vicinity, *Colvin House (Thurston County MRA)*, 16828 Old Hwy. 99

Yelm vicinity, *Johnson House (Thurston County MRA)*, 19540 Johnson Rd.

Yelm vicinity, *Rice, L. N., House (Thurston County MRA)*, 12247 Vail Rd., SE.

Yelm vicinity, *Salsich Lumber Company Superintendent's House (Thurston County MRA)*, 10808 Vail Rd.

WISCONSIN

Dane County

Middleton, *First Lutheran Church*, Pleasant View Rd. at Old Sauk Rd.

[FR Doc. 88-11624 Filed 5-23-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31286]

Amador Central Railroad Co. and Georgia-Pacific Corp.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343(a)(3), Georgia-Pacific Corporation's acquisition of control of Amador Central Railroad Company, subject to standard labor protective conditions.

DATES: The exemption will be effective on May 29, 1988. Petitions for reconsideration must be filed by June 13, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31286 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: David H. Baker, 888 17th Street NW., Suite 900, Washington, DC 2006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area) (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: May 17, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11598 Filed 5-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31252]

Consolidated Rail Corp.; Exemption; Trackage Rights; CSX Transportation, Inc.

CSX Transportation, Inc. (CSX) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) over CSX's Jefferson Branch and Louisville Subdivision, between Jefferson, IN, and Charleston, IN, described as follows: (a) Beginning at the ownership point on the connection of Conrail's Louisville Secondary Track and CSX's former Louisville Subdivision at "Boyd" Interlocking (X Tower), at CSX Milepost 7.53, and continuing over that line to Milepost 16.6, including the sidetrack at approximately Milepost 16, serving the Indiana Arsenal, in the vicinity of Charleston, a distance of 9.07 miles; (b) Over CSX's Jeffersonville Branch beginning at the connection of this Branch with the former Louisville Subdivision at Milepost 0.0 on the Jeffersonville Branch to Milepost 1.08, ownership point on new sidetrack connection to Indiana Port Commission, a distance of 1.08 miles; and (c) Over wye connection, Track SD 47(1), from Milepost 10.59 on former Louisville Subdivision to Milepost 0.72 on Jefferson Branch, a distance of 0.34 miles. The total distance is 10.49 miles. The trackage rights became effective on May 11, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 18, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11642 Filed 5-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Decision No. 12; Finance Docket Nos. 32000 et al (Sub-Nos. 3 et al.)]

Kansas City Southern Industries, Inc. et al; Exemptions

In the matter of Kansas City Southern Industries, Inc., Southern Pacific Acquisition Company, The Kansas City Southern Railway Company, and Louisiana and Arkansas Railway Company—Control—Southern Pacific Transportation Company; Finance Docket No. 32000 (Sub-No. 3);

Kansas City Southern Industries, Inc., Southern Pacific Acquisition Company, The Kansas City Southern Railway Company, and Louisiana and Arkansas Railway Company—Control—Pacific Motor Trucking Company, Pacific Motor Transport Company, and PMT of The Southwest, Inc.; Finance Docket No. 32000 (Sub-No. 6);

The Kansas City Southern Railway Company, Louisiana and Arkansas Railway Company, Southern Pacific Transportation Company, and St. Louis Southwestern Railway Company—Abandonment and Discontinuance—Certain Lines in Texas, Louisiana and Arkansas; Finance Docket No. 32000 (Sub-No. 7).

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 12.

SUMMARY: The Commission is accepting for consideration the application filed May 9, 1988, by Kansas City Southern Industries, Inc., Southern Pacific Acquisition Company, The Kansas City Southern Railway Company, and Louisiana and Arkansas Railway Company, seeking authority to control Southern Pacific Transportation Company. Applicants also petition to exempt under 49 U.S.C. 10505: (a) Their acquisition of indirect control of Pacific Motor Trucking Company, Pacific Motor Transport Company, and PMT of the Southwest, Inc.; and (b) the abandonment of or discontinuance of service over certain rail lines in Texas, Arkansas and Louisiana.

DATES: Written comments and responsive applications must be filed no later than June 1, 1988. Rebuttals are due June 27, 1988. Briefs from all parties are due July 11, 1988. Oral argument will be held on July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]; or Thomas Shick (202) 275-7972; or Ellen Goldstein (202) 275-7969.

ADDRESSES: An original and 20 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Attn.: Finance Docket No. 32000, Interstate Commerce Commission, Washington, DC 20423.

Five copies of all documents in this proceeding must be sent to: Room 2118, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of each document in this proceeding must be sent to each active party of record (as indicated on the Commission's service list).

SUPPLEMENTARY INFORMATION: We are accepting for consideration the inconsistent application, and the directly related exemption petitions, filed in these proceedings.

On February 22, 1988, Rio Grande Industries, Inc. (Rio Grande), SPTC Holding, Inc. (SPTC Holding), and The Denver and Rio Grande Western Railroad Company (DRGW) (collectively, the RGI parties) filed an application (the primary application) under 49 U.S.C. 11343 and 11344, for approval of the acquisition of control of the Southern Pacific Transportation Company (SPT) and its transportation subsidiaries by Rio Grande and SPTC Holding, non-carrier holding companies, and by DRGW, a wholly-owned carrier subsidiary of Rio Grande. Because SPT controls three motor carriers—Pacific Motor Trucking Company, Pacific Motor Transport Company, and PMT of the Southwest, Inc.—the RGI parties also filed, concurrently with the primary application, a petition for exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343 and 11344 to permit their acquisition of indirect control of the three motor carriers.

On March 8, 1988, notice of our decision accepting for consideration the primary application, and the ancillary petition, and establishing a procedural schedule was published in the Federal Register at 53 FR 7406.

On May 9, 1988, Kansas City Southern Industries, Inc. (KCSI), Southern Pacific Acquisition Company (SPAC), The Kansas City Southern Railway Company, (KCSR), and Louisiana and Arkansas Railway Company (L&A) (collectively, the KCS parties) filed an application (the inconsistent application) under 49 U.S.C. 11343 and 11344, for approval of the acquisition of control of SPT and its transportation subsidiaries by KCSI and SPAC, non-carrier holding companies, by KCSR (a 9.2% subsidiary of KCSI), and by L&A (a wholly-owned subsidiary of KCSR). The KCS parties also filed, concurrently with the inconsistent application, a petition for exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343 and 11344 for acquisition of indirect control of SPT's three motor carrier subsidiaries. Furthermore, the KCS parties also filed, also concurrently with the inconsistent application, a petition for exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10903-10906 to permit the abandonment of certain rail lines, and the discontinuance of certain trackage rights, of L&A and SPT.

If the inconsistent application is approved, the KCS parties intend that KCSI will acquire, through its wholly-owned subsidiary SPAC, all of the issued and outstanding shares of SPT common stock beneficially owned by Southern Pacific Company (SPC), a wholly-owned subsidiary of Santa Fe Southern Pacific Corporation (SFSP). The SPT stock is currently held in a voting trust created in connection with Finance Docket No. 30400, under which the LaSalle National Bank of Chicago, IL, serves as trustee. The acquisition by the KCS parties would permit the voting trust to be terminated and would satisfy SFSP's obligation to divest itself of its interest in SPT. If acquisition of SPT is approved, the KCS parties plan to continue SPT's separate corporate existence, but they expect that the rail operations of SPT and KCSR/L&A will be coordinated.

KCSR and L&A operate over 1,090 miles of mainline and branch line track, a total of 2,543 track miles, in the States of Kansas, Missouri, Oklahoma, Arkansas, Texas, and Lousiana. KCSR's principal routes run north-south between Kansas City and the Gulf ports of Lake Charles, LA, and Beaumont/Port Arthur, TX, via Shreveport, LA. The principal route of L&A extends between Dallas, TX, and New Orleans, LA, via Shreveport. KCSR's major terminals are located at Kansas City, Shreveport, Lake Charles, Beaumont, and Port Arthur. L&A's major terminals are located at Dallas, Shreveport, Baton Rouge, and New Orleans, LA.

SPT, including its subsidiaries the St. Louis Southwestern Railway Company and the Norhtwestern Pacific Railroad Company, operates 11,699 miles of railroad throughout the western and southwestern United States. This system serves 14 States, over 7,767 miles of mainline and 3,932 miles of branch line.

Principal routes of SPT include: the Overland Route, serving the Center Corridor between points in Northern California and Oregon and the intermountain gateway of Ogden; the West Coast Route, covering the territory from the Los Angeles Basin to Portland, OR, via San Francisco/Oakland and Sacramento, CA; the Sunset Route, serving the Southern Corridor between West Coast ports and the principal Gulf ports and terminals of New Orleans and Lake Charles, LA, and Houston, Galveston, Beaumont, and Corpus Christi, TX; the Golden State Route, connecting the major midwestern gateways of St. Louis, MO/IL and Kansas City, through grain shipping communities at Hutchinson and Liberal, KS, to El Paso, TX, and then to southern California via the Sunset Route; and the Cotton Belt Route, extending from the Missouri River gateways of St. Louis and Memphis, TN, to Shreveport, LA, and Texas cities including Dallas, Ft. Worth, and San Antonio.

Other principal yards and interchange points of SPT include Eugene, OR; Roseville, ICTF/Long Beach, and West Colton, CA; Herington, KS; Pine Bluff, AR; Eagle Pass, TX; and Deming, NM, and Nogales, AZ.

The KCS parties propose to acquire SPT for a purchase price assertedly in excess of $2 billion: An assumption of SPT's outstanding indebtedness; $1 billion in cash; and $250 million in SPT subordinated debentures to be issued directly to SFSP.

The KCS parties' proposed $1 billion cash payment will be financed as follows: SPAC, which will acquire SPT's stock will borrow $800 million from Chemical Bank, which has committed to provide these funds; KCSI will provide $100 million of its own funds in cash in exchange for equity in SPAC; and KCS will borrow an additional $100 million wich it will provide to SPAC in exchange for equity.

The KCS parties state that they do not contemplate that KCSR, L&A, or SPT will issue any new securities as part of the financing of the proposed transaction. However, as noted above, it appears that $250 million in subordinated debentures will be issued by SPT. We seek clarification of this matter.

In the Sub-No. 6 exemption petition, the same parties seek to exempt the acquisition of indirect control of the three motor carrier subsidiaries of SPT. In the Sub-No. 7 exemption petition, the KCS parties seek to exempt the following (1) Abandonment of L&A's line between MP 23.3, at Stamps, AR, and MP 49, at Cullen, LA, a distance of approximately 25.70 miles; (2)(a) abandonment of L&A's line between MP 172.5, near Greenville, TX, and MP T185.3, at Farmersville, TX, a distance of approximately 12.8 miles; (2)(b) discontinuance of L&A trackage rights over a line of The Atchison, Topeka and Santa Fe Railway Company (ATSF) between MP 91.1 near Farmersville, TX, and MP 53.3, near Dallas, TX, a distance of approximately 38 miles; and (3) abandonment of SPT's line between MP 15, at Port Arthur, TX, and MP 21 at a point south of Chaison, TX, a distance of approximately 6 miles. The KCS parties indicate that, following their acquisition of control of SPT, these lines will no longer be needed for through service. They also indicate—with regard to lines numbered (1), (2)(b), and (3)—that no local shippers are served on these lines.

The application substantially complies with the applicable regulations. The application and exhibits are available for inspection in the Public Docket Room at the Offices of

the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained, upon request, from the KCS representatives named below.

The application is consolidated for disposition with the applications in Finance Docket No. 32000, *et al.* Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345.

The inconsistent application was filed under 49 U.S.C. 11343 *et seq.* and 49 CFR Part 1180, and the directly related petitions were filed under 49 U.S.C. 10505. We are accepting them for consideration because they substantially comply with the applicable regulations, waivers, and statutory requirements for completeness.

The Commission's Section of Energy and Environment (SEE) has reviewed the energy and environmental reports submitted by the KCS parties and found them generally to comport with our reporting requirements. The KCS parties have identified areas of possible environmental and energy impacts. SEE intends to prepare an Environmental Assessment in accordance with 49 CFR 1105.6(b)(2). The KCS parties must cooperate with SEE and provide information it requests.

Participation in the Proceedings: Comments, and Responsive Applications

Interested persons may participate formally by submitting written comments regarding the inconsistent application. Comments should indicate the exact proceeding designation, and should be filed in the numbers and with the Commission offices specified above no later than June 1, 1988. Comments shall include the following: the person's position in support of or in protest to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. *See* 49 CFR 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeing but who desire to comment may file statements, subject to the filing and service requirements specified below. Persons must state specifically whether they intend actively to participate in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Written comments shall be concurrently served by first class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on representatives of the KCS parties:

Morris Raker Sullivan & Worcester, One Post Office Square, Boston, MA 02109, and

Robert L. Calhoun Sullivan & Worcester, 1025 Connecticut Ave. NW, Washington, DC 20036 and

Robert K. Dreiling, 114 West 11th St. Kansas City, MO 64105.

Comments must also be served, by first class mail, on all persons designated active parties of record on the Commission's service list, served May 16, 1988.

Rebuttals in support of the inconsistent application are due June 27, 1988. Briefs from all parties are due July 11, 1988.

Written comments and responsive applications to the inconsistent application and related petitions are due on or before June 1, 1988. We note, for informational purposes, that one such responsive application has already been filed by ATSF. We note, too, that ATSF intends to supplement its responsive application. Any supplemental evidence must be filed on or before June 1. Any party desiring to file a responsive application should contact Ellen Goldstein, (202) 275–7989, to obtain a docket number.

In our Decision No. 4, *supra*, we directed all parties to begin discovery immediately. The Commission will not tolerate dilatory tactics in response to discovery requests designed to elicit relevant evidence. A refusal voluntarily to supply information will be treated as an objection to the request for discovery. Responses must be served upon all parties of record, and five copies of those responses must be concurrently filed with the Commission.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The inconsistent application in Finance Docket No. 32000 (Sub-No. 3), and the related petitions in Finance Docket No. 32000 (Sub-Nos. 6 and 7), are accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on the date served.

Decided: May 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate.

Noreta R. McGee

Secretary

[FR Doc. 88–11597 Filed 5–23–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31233]

Stone Container Corp.; Control Exemption, Abbeville-Grimes Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts Stone Container Corporation (Stone) from the requirements of 49 U.S.C. 11343 to acquire control of the Abbeville-Grimes Railway Company. Stone currently controls two Class III rail carriers, the Atlanta & St. Andrews Bay Railway Company, and Apache Railway Company, and a motor carrier, Cousins Leasing Corporation. Stone is also affiliated with another motor carrier, Orangeburg Trucking Company. The exemption is subject to historic and employee protective conditions.

DATES: This exemption is effective on June 3, 1988.

Petitions for reconsideration must be filed by June 13, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31233 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Ronald S. Flagg, Sidley & Austin, 1722 I Street NW, Washington, DC 20026.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: May 17, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–11598 Filed 5–23–88; 8:45 am]

BILLING CODE 7035–01–M

[Decision No. 13; Finance Docket No. 32000 (Sub-No. 2)]

Union Pacific Railroad Co. and Missouri Pacific Railroad Co.; Haulage and Rate-Setting Condition Certain Points Served by Southern Pacific Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 13.

SUMMARY: The Commission is accepting for consideration the application of the Union Pacific Railroad Company (UP) and Missouri Pacific Railroad Company (MP) for the establishment of a haulage and rate-setting condition over certain points served by the Southern Pacific Transportation Company (SPT) in California, Oregon, Utah, and Nevada. This application is responsive to the proposed acquisition of control of SPT by SPTC Holding, Inc., and its parent, Rio Grande Industries, Inc.

DATES: Written comments and all evidence must be filed with the Interstate Commerce Commission by June 1, 1988. Rebuttals are due June 27, 1988. Briefs from all parties are due July 11, 1988. Oral argument will be held on July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721]; Ellen A. Goldstein, (202) 275–7989; or Tom Shick, (202) 275–7972.

ADDRESSES: An original and 20 copies of all comments referring to Finance Docket No. 32000 (Sub-No. 2) should be filed with: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32000, Interstate Commerce Commission, Washington, DC 20423

Five copies of all comments should also be sent to: Room 2118, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTAL INFORMATION: UP/MP, Class I rail carriers, currently operate over 22,000 miles of track in the States of AR, CA, CO, ID, IL, IA, KS, MO, MT, MS, NB, NV, NM, OR, OK, TN, TX, WA, and WY.

On May 9, 1988, UP-MP filed this responsive application to the application in Finance Docket No. 32000 and embraced cases, where Rio Grande Industries, Inc. (Rio Grande) seeks to acquire control of SPT, and related transactions. Notice of acceptance of the Rio Grande application was published in the **Federal Register** on March 8, 1988, at 53 FR 7408.

By this application, UP/MP seeks a haulage and rate-setting condition over certain points served solely by SPT in California, Oregon, Utah, and Nevada that are not served by UP/MP. Briefly, UP/MP would have the right to quote through rates for Central Corridor traffic to, from, and via SPT points in the West, and the combined SPT-DRGW system would be required to haul the traffic between the SPT origin or destination and specified UP/MP pick-up/set-out points. Compensation would be based upon SPT-DRGW's fully allocated Rail Form A costs. In support of its application, UP/MP claim that unconditioned approval of the primary application will result in DRGW/SPT monopoly power over Central Corridor traffic.

The application substantially complies with the applicable regulations. The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicant's representatives named below.

The application is consolidated for disposition with the applications in Finance Docket No. 32000, *et al.* Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345.

Participation in the Proceedings: Comments

Interested persons may participate formally by submitting written comments regarding the responsive application. Comments should indicate the exact proceeding designation, and should be filed in the numbers and with the Commission offices specified above no later than June 1, 1988. Comments shall include the following: the person's position in support of or in protest to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. *See* 49 CFR 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified below. Persons must state specifically whether they intend actively to participate in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Written comments shall be concurrently served by first class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on:

(1) Applicant's representatives:

Charles A. Miller, Covington & Burling, 1201 Pennsylvania Avenue NW., P.O. Box 7566, Washington, DC 20044, and

James V. Dolan, Law Department, Union Pacific Railroad Company, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179 and

(2) Representatives of the primary applicants:

Samuel R. Freeman, Vice President and General Counsel, The Denver & Rio Grande Western Railroad Co., P.O. Box 5482, Denver, CO 80217, and

E. Barrett Prettyman, Jr., Hogan and Hartson, 555 Thirteenth Street NW., Washington, DC 20004–1109.

Comments must also be served, by first class mail, on all persons designated active parties of record on the Commission's service list, served May 16, 1988.

Rebuttals in support of this responsive application are due June 27, 1988. Briefs from all parties are due July 11, 1988.

Responsive Applications

Because this application contains proposed conditions to approval of the application in Finance Docket No. 32000, the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to UP/MP's application as filed.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The application in Finance Docket No. 32000 (Sub-No. 2) is accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on the date served.

Decided: May 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners

Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11599 Filed 5-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Decision No. 14; Finance Docket No. 32000 (Sub-Nos. 4 and 5)]

Utah Railway Co.; Trackage Rights; Points and Places in Utah, Trackage Rights Between Provo, UT and Cobre, NV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 14.

SUMMARY: The Commission is accepting for consideration the applications of the Utah Railway Company (UR) for: (1) Direct access trackage rights over the Denver and Rio Grande Western Railroad Company (DRGW) between Mounds and Geneva, UT; and (2) bridge trackage rights over DRGW between Provo and Ogden, UT, and over the Southern Pacific Transportation Company (SPT) between Ogden, UT, and Cobre, NV. These applications are responsive to the proposed acquisition of control of SPT by SPTC Holding, Inc., and its parent, Rio Grande Industries, Inc.

DATES: Written comments and all evidence must be filed with the Interstate Commerce Commission by June 1, 1988. Rebuttals are due June 27, 1988. Briefs from all parties are due July 11, 1988. Oral argument will be held on July 27, 1988.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]

or Ellen A. Goldstein (202) 275-7969.

or Tom Shick (202) 275-7972.

ADDRESSES: An original and 20 copies of all comments referring to Finance Docket No. 32000 (Sub-Nos. 4 and 5) should be filed with:

Office of the Secretary Case Control Branch Attn: Finance Docket No. 32000 Interstate Commerce Commission, Washington, DC 20423.

Five copies of all comments should also be sent to:

Office of Proceedings, Room 2118, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: Utah Railway (UR) is a class III regional railroad operating solely within the State of Utah. The Principal commodity it transports is coal.

On May 6, 1988, UR filed these responsive applications to the application in Finance Docket No. 32000 and embraced cases, where Rio Grande Industries, Inc. (Rio Grande) seeks authority to acquire control of SPT, and related transactions. Notice of acceptance of the primary application was published in the Federal Register on March 8, 1988, at 53 FR 7408.

By these applications, UR seeks: (1) Direct access trackage rights to operate over and serve shippers located on some 73 miles of DRGW track—main line as well as branch line—between Mounds, UT (MP-602.9) and Geneva, UT (MP 707.1); and (2) bridge trackage rights[1] between Provo, UT, and Cobre, NV, encompassing some 80.9 miles of DRGW track in Utah (Provo to Ogden), and 136.2 miles of SPT track between Ogden and Cobre. In support of its applications, UR claims that unconditioned approval of the primary application will result in DRGW/SPT monopoly power over Central Corridor coal traffic moving via Ogden.

The applications substantially comply with the applicable regulations. The applications and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicant's representatives named below.

The applications are consolidated for disposition with the applications in Finance Docket No. 32000, *et al.* Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345

Participation in the Proceedings: Comments

Interested persons may participate formally by submitting written comments regarding the responsive applications. Comments should indicate the exact proceeding designation, and should be filed in the numbers and with the Commission offices specified above no later than June 1, 1988. Comments shall include the following: The person's position in support of or in protest to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. *See* 49 CFR 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified below. Persons must state specifically whether they intend actively to participate in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Written comments shall be concurrently served by first class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on:

(1) Applicant's representatives:

Charles H. White, Jr., Pepper, Martin, Jensen, Maichel and Hetlage, Suite 400, 1730 Pennsylvania Avenue NW., Washington, DC 20006

and (2) Representatives of the primary applicants:

Samuel R. Freeman, Vice President and General Counsel, The Denver and Rio Grande Western Railroad Company, P.O. Box 5482, Denver, CO 80217,

and E. Barrett Prettyman, Jr., Hogan and Hartson, 555 Thirteenth Street NW., Washington, DC 20004-1109.

Comments must also be served, by first class mail, on all persons designated active parties of record on the Commission's service list, served May 16, 1988.

Rebuttals in support of these responsive applications are due June 27, 1988. Briefs from all parties are due July 11, 1988.

Responsive Applications

Because these applications contain proposed conditions to approval of the application in Finance Docket No. 32000, the Commission will entertain no requests for affirmative relief to these proposals. Parties may participate only in direct support of or direct opposition to UR's applications as filed.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The applications in Finance Docket No. 32000 (Sub-Nos. 4 and 5) are accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on the date served.

Decided: May 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners

[1] The bride rights are intended to become effective only if and when a new power generating plant is constructed in the vicinity of Cobre, NV.

Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11600 Filed 5-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 209X)]

Chicago and North Western Transportation Co.; Abandonment in Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Chicago and North Western Transportation Company of approximately 0.8 miles of track in Cook County, IL subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 23, 1988. Petitions to stay must be filed by June 8, 1988, and petitions for reconsideration must be filed by June 20, 1988. Formal expressions of an intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by June 3, 1988. Requests for a public use condition must be filed by June 3, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-No. 209X) to:

(1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Robert T. Opal, Commerce Counsel Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area). (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

[1] *See Exemption or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d (1987), and final rules published at 52 FR 46440 (1987).

Decided: May 17, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11601 Filed 5-23-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-23]

Zarina Z. Bandukwala, M.D., Park Ridge, IL; Hearing

Notice is hereby given that on February 8, 1988, the Drug Enforcement Administration, Department of Justice, issued to Zarina Z. Bandukwala, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AB1134799, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, May 24, 1988, at the Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, Illinois.

Dated: May 18, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-11555 Filed 5-23-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-15]

Hyland Pharmacy, Salt Lake City, UT; Hearing

Notice is hereby given that on February 8, 1988, the Drug Enforcement Administration, Department of Justice, issued to Hyland Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke the Pharmacy's DEA Certificate of Registration, AH8610764 and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, June 22, 1988, commencing at 10:30 a.m., in the State Court, 240 E. 400 South, Salt Lake City, Utah.

Dated: May 18, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-11556 Filed 5-23-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-5]

Thomas H. McCarthy, D.O., Dayton, OH; Hearing

Notice is hereby given that on February 8, 1987, the Drug Enforcement Administration, Department of Justice, issued to Thomas H. McCarthy, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AM2801492, and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held Tuesday, June 14, 1988, commencing at 10:00 a.m. in the United States Magistrate Court, 200 West 2nd Street, Courtroom #2, 9th Floor, Dayton, Ohio.

Dated: May 18, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-11557 Filed 5-23-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-10]

Scott Pyper Wallace, M.D., Provo, UT; Hearing

Notice is hereby given that on December 22, 1987, the Drug Enforcement Administration, Department of Justice, issued to Scott Pyper Wallace, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AW1642431, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 21, 1988, commencing at 10:00 a.m., in the State Court, 240 E. 400 South, Salt Lake City, Utah.

Dated: May 16, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-11558 Filed 5-23-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:00 p.m., Monday, June 13, 1988 in Room S-4215C, U.S. Department of Labor Building, Third and Constitution Ave. NW., Washington, DC 20210.

This seven member work group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee welfare plans covered by ERISA.

The purpose of the June 13 meeting is to revew the proceedings of the April 18 and May 16 work group meetings; and to examine options available for recommendation to the Advisory Council with respect to reporting and disclosure forms under review. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before June 9, 1988 to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW, Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 9, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits Administration.

Signed at Washington, DC, this 19th day of May, 1988.

[FR Doc. 88-11577 Filed 5-23-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Open Meeting; Equal opportunities in Science and Engineering Committee

Name: Committee on Equal Opportunities in Science and Engineering.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dates: June 8, 9, and 10, 1988.

Times:

June 8: Subcommittee on Minorities—9:00 a.m.–12:00 p.m.

June 8: Subcommittee on Women—1:30 p.m.–4:30 p.m.

June 9: Full Committee Meeting—9:00 a.m.–4:30 p.m.

June 10: Subcommittee on the Disabled—8:00 a.m.–12:00 p.m.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, Room 635. Telephone: 202–357–7066.

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Agenda: To review progress by the subcommittees, become familiar with successful intervention programs, and to meet with the Director and other NSF staff.

May 19, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-11616 Filed 5-23-88; 8:45 am]

BILLING CODE 7555-01-M

Open Meeting; Microelectronic Information Processing Systems Advisory Committee

The National Science Foundation announces the following meeting:

Name: Microelectronic Information Processing Systems Advisory Committee.

Date and time:

June 16, 1988—8:30 am–5:00 pm.

June 17, 1988—8:30 am–3:00 pm.

Place: University of California, Information Sciences Institute, Marina Del Rey, CA, 11th Floor Conference Room.

Type of meeting: Open.

Contact person: Stephanie Gorman, Administrative Officer, National Science Foundation, (202) 357–7373.

Minutes: May be obtained from contact person listed above.

Purpose of meeting: To discuss the content of the Division's program goals and objectives and to advise on areas and priorities, new initiatives and other topics of interest to the Division.

Agenda: Overview of MIPS since last meeting. Continuation of Strategic Planning for initiatives.

May 19, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-11619 Filed 5-23-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Plant Science Centers Advisory Panel

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Plant Science Centers.

Date and time: June 10, 1988—8:30 am to 5:00 pm.

Place: Room 540, 1800 G Street NW., Washington, DC 20550.

Contact person: Dr. Robert Rabin, Senior Advisor for Biotechnology, Directorate for Biological, Behavioral and Social Sciences, (202) 357–9894, Room 312, National Science Foundation, Washington, DC 20550.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for the establishment of Plant Science Centers and the research to be conducted in each.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act.

May 19, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-11620 Filed 5-23-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325/324]

Carolina Power & Light Company et al., Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from the requirements of 10 CFR 20.103(c)(2), regarding the administration of physical examinations for users of respiratory equipment, to the Carolina Power & Light Company (CP&L or the licensee), for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental assessment

Identification of Proposed Action

The proposed exemption would permit the licensee to administer physical examinations for users of respiratory equipment at an interval of every 9 to 15 months, as opposed to the 12 month interval required by 10 CFR 20.103(c)(2). These examinations verify the physical capability of individuals to use respiratory protective equipment in an environment containing airborne radioactive material.

The Need for the Proposed Action

Currently, the licensee schedules physical examinations every 6 to 12 months to assure compliance with the 12-month requirement. Consequently, there are calendar years in which two examinations are scheduled. Because of the number of licensee employees requiring examinations, a two month period (e.g. June 1 to July 31) is set aside for the administration of all physical examinations. To assure compliance with the 12-month requirement, all examinations in the following year must be completed before June 1. Approval of this proposed exemption would provide greater flexibility in scheduling of examinations and preclude the need for administration of two examinations in the same calendar year.

Environmental Impacts of the Proposed Action

We have evaluated the environmental impacts related to granting the requested exemption. The proposed exemption would not, in any way, reduce the integrity of any safety system. Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed schedule for physical examinations otherwise affect radiological plant effluents, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves the use of systems located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no signficant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable environemtal impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption will be to deny the requested exemption. Such action would not reduce environmental impacts of the Brunswick Steam Electric Plant, Units 1 and 2, operations and would not enhance the protection of the environment.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (operating license) for the Brunswick Steam Electric Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated January 30, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 17th day of May, 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Director II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11584 Filed 5-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co.; The Cleveland Electric Illuminating Co.

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to Safety System Instrumentation and Containment Isolation Valves in accordance with Toledo Edison Company's application dated October 27, 1987. Specifically, the proposed amendment would:

(1) Revise TS Section 3/4.3/2, Table 3.3–5 to delete reference to the Makeup System as containing valves which receive a Safety Features Actuation Signal (SFAS) and,

(2) Revise TS Section 3/4.6.3, Table 3.6–2 to delete containment isolation valve MU 33 (Penetration 19) from Section A of the table and add valves MU 6422 (Penetration 19) and MU 6421 (Penetration 50) to Section C of the table. (Valve MU 33 is redesignated as MU 6422).

The Need for the Proposed Action

The proposed changes are needed to support facility modifications which are planned to enhance the capability for feed and bleed cooling of the Davis-Besse Nuclear Power Station. The enhancement would involve using the high discharge-head makeup pumps to provide redundant trains of feed to the reactor core form the Borated Water Storage Tank, through the High Pressure Injection HPI) lines.

Environmental Impacts of the Proposed Action

The Davis-Besse containment vessel isolation system is designed in accordance to the requirements of General Design Criteria (GDC) 54, 55, 56, and 57 of Appendix A to 10 CFR Part 50. Isolation valves are provided in lines penetrating the containment vessel to ensure that an uncontrolled release of radioactive material cannot occur in the event of a design basis accident. Valves in those lines which do not serve accident consequence limiting systems are closed automatically or maintained locked closed. The specific line penetrations involved in the proposed amendment provide a flowpath for and engineered safety feature, i.e., HPI, and do not have isloation valve closure requirements since their design function would be to open in the event of a Loss-of-Coolant-Accident (LOCA) to provide for reactor core cooling or containment depressurization.

The makeup system is not designated an engineered safety feature as its present functions are to maintain Reactor Coolant System inventory during operation, to provide reactor coolant pump seal injection, and to continuously purify the reactor coolant. Therefore, an automatic isolation valve is provided upstream of a check valve in the makeup line before it joins with one HPI line. In the event of a LOCA, the Safety Features Actuation System (SFAS) will isolate certain lines including the makeup line. The planned system modification would delete this SFAS signal to the valve in the makeup line, but would retain remove manual capability in the event isolation is required. A second path from the makeup system to a different HPI line would also be installed to provide a redundant flow path. This new line also would be provided with a remote manual isolation valve.

Containment isolation capability is maintained through manual action by the operators, and the arrangement of the system is such that failure of the makeup system does not affect the operation of the HPI system. Normal operation of the systems is unaffected by the proposed changes.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. Therefore, the Commission concludes that there are no signifcant radiological environmental impacts associated with this proposed amendment.

With regard to potential non-radiological impacts, the porposed amendment involves a change in surveillance requirements. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in reduced reliability of feed and bleed cooling capability in the event of off-design basis complete loss of feedwater event.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 27, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of May 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11563 Filed 5–23–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on May 27, 1988, Room 1046, 1717 H Street NW., Washington, DC.

Most of this meeting will be closed to protect privileged commercial information.

The agenda for the subject meeting shall be as follows:

Friday, May 27, 1988—8:00 a.m. until the conclusion of business

The Subcommittee will review the *W* revised ECCS Model for 2-Loop Upper Plenum Injection (UPI) plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, Westinghouse, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 17, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–11607 Filed 5–23–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-289]

GPU Nuclear Corp. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission [the Commission] is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1) located in Dauphin County, Pennsylvania.

The amendment would revise the Facility Operation License and the Technical Specifications to allow an increase in the rated power level for TMI–1 from 2535 MWt to 2568 MWt, a 1.3% increase. This amendment was requested in a GPU Nuclear Corporation letter dated April 18, 1988. The licensee's submittal included discussion of the results of supporting analyses and systems reviews for operation at this slightly higher power level and states that the evaluation identified no adverse nuclear safety effects. Most of the original safety analyses for TMI–1 performed prior to issuance of its operating license used the higher power level (2568 MWt) as their basis.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulation.

By June 23, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the basis for each conte: tion set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearings will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 18, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 10th day of May 1988.

For the Nuclear Regulatory Commission.
John F. Stolz,
Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 88–11586 Filed 5–23–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the number of pressure switches used to initiate the Steam and Feedwater Rupture Control System (SFRCS).

The proposed amendment, specifically, would revise Technical Specification 3.3.2.2, Table 3.3–11, "Steam and Feedwater Rupture Control System," by reducing the number of pressure switches used to initiate the SFRCS from 16 to 8. Currently, two pressure switches per steam line provide input to each logic channel. Actuation of either of these pressure switches will trip the logic channel. There are two redundant logic channels for each independent SFRCS actuation channel. The amendment would reduce the number of pressure switches so that only one pressure switch per steam line would provide input to each logic channel. The total number of channels, channels to trip, minimum channels operable, and required action would remain unchanged.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 23, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 28, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of May 1988.

For the Nuclear Regulatory Commission,
Albert W. De Agazio,
Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.
[FR Doc. 88–11587 Filed 5–23–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the main steam safety valve relief capacity/high flux trip setpoint. Also, the ASME Code requirements for the main steam safety valves would be restated.

Specifically, the proposed amendment would incorporate into Technical Specification 3.7.1.1 a redefinition of the relationship between the total operable main steam safety valve relief capacity per steam generator and the reduction in the Reactor Protection System High Flux Trip setpoint. This redefinition would allow the reduction in high flux trip setpoint, due to inoperable safety valves, to directly reflect the actual loss of steam relief capacity instead of the more conservative relationship presently employed by the Technical Specifications. The proposed amendment would alter Technical Specifications Bases 3/4.7.1.1 to restate the ASME Code requirements for the main steam safety valves as well as to reflect the redefinition of the relationship between the main steam safety valve relief capacity per steam generator and the reduction in the Reactor Protection System High Flux Trip setpoint. Finally, the proposed amendment would delete Technical Specification 3.7.1.1, Table 3.7–1, "Maximum Allowable High Flux Trip Setpoint With Inoperable Steam Line Safety Valves," and Technical Specification 4.7.1.1, Table 4.7–1, "Steam Line Safety Valves per Steam Generator," as this information would be incorporated in the changes noted above.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 23, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes a participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioners wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: Petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no

significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 4, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of May 1988.

For the Nuclear Regulatory Commission,

Albert W. De Agazio,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-11586 Filed 5-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-433]

Public Service Company of New Hampshire; Notice of Granting of Exemption

The U.S. Nuclear Regulatory Commission (the Commission) has granted a schedular exemption from certain requirements of 10 CFR 50.54(w) to the Public Service Company of New Hampshire (the licensee) for its Seabrook Station. This action exempts the licensee from the requirement to obtain on-site property damage insurance in excess of $620 million until such time as the Commission may issue a low power (5%) operating license for Seabrook Station. The basis for this action is set forth in the Commission's Exemption dated May 11, 1988.

The Commission has determined that granting this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the licensee's request dated October 1, 1987 and supplement dated February 29, 1988 and (2) the Commission's Exemption dated May 11, 1988. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Copies of these items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555, Attention, Victor Nerses, Senior Project Manager—Seabrook Station or Robert Wood, Financial Policy Analyst.

Dated at Rockville, Maryland, this 11th day of May 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11589 Filed 5-23-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 of March 29, 1988 (53 FR 14877). Individual authorities established or revoked under Schedule A, B, of C between April 1, 1988, and April 30, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or an soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Woodrow Wilson International Center for Scholars

One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, and one West European Program Administrator. Effective April 28, 1988.

The following exception was revoked:

Smithsonian Institution

One Russian Studies Program Administrator, one East Asian Studies Program Administrator, one International Security Studies Program Administrator, and one Latin American Program Administrator in the Woodrow Wilson International Center for Scholars. Effective April 28, 1988.

Schedule B

No Schedule B authorities were established or revoked during April.

Schedule C

Department of Agriculture

One Private Secretary to the Administrator for Farmers Home Administration. Effective April 1, 1988.

One Confidential Assistant to the Deputy Secretary. Effective April 18, 1988.

One Confidential Assistant (Speechwriter) to the Secretary. Effective April 25, 1988.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective April 25, 1988.

Department of Commerce

One Confidential Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Services. Effective April 4, 1988.

One Special Assistant to the Director for Office of Public Affairs. Effective April 4, 1988.

One Confidential Assistant/Chief of Protocol to the Chief of Staff. Effective April 7, 1988.

One Director of Congressional Affairs to the Under Secretary for International Trade Administration. Effective April 13, 1988.

One Confidential Assistant to the Secretary of Commerce. Effective April 22, 1988.

Department of Defense

One Personal and Confidential Assistant to the Assistant Secretary of Defense. Effective April 6, 1988.

One Private Secretary to the Deputy Under Secretary of Defense for Policy. Effective April 6, 1988.

One Staff Assistant to the Assistant Secretary of Defense for Legislative Affairs. Effective April 7, 1988.

One Archives Technician to the Director for White House Television Office. Effective April 13, 1988.

Department of Education

One Special Assistant to the Under Secretary. Effective April 4, 1988.

One Special Assistant to the Commissioner for Rehabilitation Services Administration. Effective April 4, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Legislation. Effective April 7, 1988.

One Confidential Assistant to the Executive Secretary. Effective April 8, 1988.

One Special Assistant to the Secretary to the Senior Special Assistant. Effective April 8, 1988.

One Special Assistant to the Under Secretary. Effective April 25, 1988.

Department of Energy

One Staff Assistant, Special Studies to the Chairman for Federal Energy Regulatory Commission. Effective April 14, 1988.

One Special Assistant to the Assistant Secretary for Nuclear Energy. Effective April 18, 1988.

One Staff Assistant to the Assistant Secretary for Environment, Safety and Health. Effective April 20, 1988.

One Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective April 25, 1988.

Department of Health and Human Services

One Special Assistant to the Assistant Secretary for Human Development Services. Effective April 4, 1988.

One Director, Youth 2000 Program to the Assistant Secretary for Human Development Services. Effective April 4, 1988.

One Deputy Director to the Director for Office of Public Liaison. Effective April 7, 1988.

One Director, Office of Public Liaison to the Associate Administrator for Communications. Effective April 18, 1988.

One Special Assistant to the Commissioner for Head Start Bureau. Effective April 18, 1988.

One Director, Office of Congressional/External Affairs to the Associate Commissioner for Office of Governmental Affairs. Effective April 18, 1988.

Department of Housing and Urban Development

One Special Assistant to the Regional Administrator for Regional Housing Commissioner. Effective April 4, 1988.

One Special Assistant to the Secretary. Effective April 6, 1988.

One Executive Assistant to the Deputy Assistant Secretary for Multi-family Housing. Effective April 18, 1988.

One Executive Assistant to the Regional Administrator for the Regional Housing Commissioner. Effective April 25, 1988.

One Special Assistant to the Deputy Assistant Secretary for Single Family Housing. Effective April 25, 1988.

Department of the Interior

One Special Assistant to the Assistant to the Secretary and Director for External Affairs. Effective April 7, 1988.

One Special Assistant to the Assistant to the Secretary and Director for Office of Public Affairs. Effective April 18, 1988.

One Congressional Liaison Specialist to the Director for Office of Surface Mining Reclamation and Enforcement. Effective April 20, 1988.

Department of Justice

One Staff Assistant to the Chief of Staff to the Attorney General. Effective April 20, 1988.

One Senior Liaison Officer to the Director for Office of Liaison Services. Effective April 25, 1988.

One Staff Assistant to the Director for Bureau of Justice Statistics. Effective April 29, 1988.

Department of Labor

One Assistant to the Secretary's Representative for Office of Public and Intergovernmental Affair. Effective April 1, 1988.

One Associate Assistant Secretary to the Assistant Secretary for Congressional Affairs. Effective April 18, 1988.

One Staff Assistant to the Director for Office of the Federal Contract Compliance Programs. Effective April 25, 1988.

One Special Assistant to the Director for the Office of Federal Contract Compliance Programs. Effective April 25, 1988.

One Staff Assistant to the Director for the Women's Bureau. Effective April 29, 1988.

One Associate Deputy Under Secretary to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. Effective April 29, 1988.

Department of the Navy

One Private Secretary to the Under Secretary of the Navy. Effective April 15, 1988.

Department of State

One Legislative Management Officer to the Assistant Secretary for Office of Legislative and Intergovernmental Affairs. Effective April 1, 1988.

One Director/Coordinator of Intergovernmental Affairs to the Assistant Secretary. Effective April 8, 1988.

One Secretary (Typing) to the Assistant Secretary. Effective April 13, 1988.

One Staff Assistant to the Under Secretary for Management. Effective April 22, 1988.

One Public Affairs Specialist to the Assistant Secretary for the Bureau of Inter-American Affairs. Effective April 22, 1988.

Department of Transportation

One Special Assistant to the Administrator for Federeal Aviation Administration. Effective April 1, 1988.

One Public Affairs Officer to the Administration for Federal Railroad Asministration. Effective April 1, 1988.

One Staff Assistant to the Federal Highway Administrator. Effective April 11, 1988.

One Staff Assistant to the Deputy Secretary. Effective April 13, 1988.

One Public Information Specialist to the Deputy Administrator for Urban Mass Transportation Administration. Effective April 18, 1988.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective April 29, 1988.

Department of Treasury

One Travel Clerk to the Deputy Assistant Secretary. Effective April 1, 1988.

Agency for International Development

One Public Affairs Specialist to the Director for Public Liaison. Effective April 7, 1988.

Arms Control and Disarmament Agency

One Secretary (Typing) to the Director. Effective April 13, 1988.

Environmetal Protection Agency

One Special Assistant to the Deputy Administrator. Effective April 28, 1988.

Federal Home Loan Bank Board

One Secretary (Typing) to the Executive Director for Federal Savings and Loan Insurance Corporation. Effective April 4, 1988.

Federal Trade Commission

One Staff Assistant to the Chairman. Effective April 25, 1988.

General Services Administration

One Special Assistant, Media Relations to the Associate Administrator for Public Affairs. Effective April 1, 1988.

One Confidential Assistant to the Regional Administrator for Region 8 Denver. Effective April 4, 1988.

International Trade Commission

One Staff Assistant (Legal) to the Commissioner. Effective April 7, 1988.

National Credit Union Administration

One Writer-Editor to the Executive Director. Effective April 18, 1988.

Office of Personnel Management

One Special Assistant to the Director for Office of Public Affairs. Effective April 25, 1988.

One Special Assistant to the Associate Director for Administration Group. Effective April 25, 1988.

United States Information Agency

One Special Assistant to the Director for Private Sector Committees. Effective April 25, 1988.

Veterans Administration

One Director, Congressional Affairs to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs. Effective April 6, 1988.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

[FR Doc. 88–11211 Filed 5–23–88; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25703; File No. SR–Amex–88–11]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to the Trading of Options on U.S. Treasury Notes and Bonds

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. (the "Exchange") proposes to add certain new rules relating to the trading of options on U.S. Treasury notes and bonds. These rules are to be included in new section 13 of Part V of its rules applicable to options trading. Pursuant to such rule change, the Exchange plans to initiate trading of "European" style options on each of the regularly auctioned U.S. Treasury notes and bonds having maturity ranges from three years to thirty years. The Exchange's rules have previously been approved for trading options on Treasury securities[1] and it will retain its present rules appliciable to the trading of "American" style Treasury options. In addition, the Exchange is proposing to implement a new electronic limit order system for the trading of these new Treasury note and bond options. All bids and offers will be entered into the electronic system and displayed in a limit order book. Executions will result from the entering of orders at prices equal to or better than the bids and offers being displayed in the limit order book. The Exchange proposes to use a member board broker for the entering of all orders into the system and to supervise trading therein. It is also planning to use market makers rather than specialists to provide market making support for such new Treasury options.

All existing rules of the Exchange, including the other Sections of Part V, will also be applicable to the new "European" style Treasury options to the extent that they are not inconsistent with or have not been superseded by the rules in the proposed new section 13.

The text of the proposed rule change is found in Appendix A to this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to establish a new Exchange program for the trading of standardized options on Treasury notes and bonds to supplement its existing programs involving options on Treasury securities. The program has been specifically designed to meet the needs of, and to closely parallel the trading procedures followed by, the Primary Dealers in the cash market for U.S. Treasury securities.

The Treasury options covered by this rule change are very similar in most respects to the options on Treasury notes and bonds which have previously been approved and are presently traded on the Exchange, with one principal exception; the Treasury note and bond options involved in this filing are "European" style as opposed to the "American" style options presently traded. The minimum fractional change in bids and offers is also being reduced from 1/32nd to 1/64th of a percent as this is the normal price variation in the underlying cash market for Treasuries. Otherwise the contract terms for the new options are substantially the same as for the existing options—the unit of trading is $100,000 principal amount; the exercise price will be established as a percent of principal amount of the underlying Treasury securities, with 1% intervals being used for the longer maturities and ½% for the shorter maturities; position limits will remain the same; reporting requirements will be the same; margin requirements will be the same; and settlement of exercises will require delivery of the specific note or bond covered by the options contract.

The Exchange is proposing to introduce new series of option contracts on each of the regularly auctioned Treasury notes and bonds in the maturity ranges from three years to thirty years. It is planning to open series with expiration dates in each of the three or four successive months following the month in which the Treasury note or bond is auctioned. If only three months are opened, then on the expiration of the first of such successive months, series in the next successive month will be opened. Thus, it is anticipated that four successive months will be traded with respect to each newly auctioned Treasury note or bond and, since these Treasury securities are regularly aunctioned each quarter, the result will be that the last expiration month with respect to each specific note or bond will overlap the first expiration month for options on the next note or bond in the same maturity range. The Exchange does not expect to open more than four successive expiration months with respect to each note or bond unless the particular note or bond is reopened by the Treasury Department and is the subject of a new auction; in that case, the Exchange will open new expiration months on the reissued Treasury note or bond in the same manner as if it were a new issue.

[1] *See* Securities Exchange Act Release No. 19126 (October 14, 1982), 47 FR 46929 (File No. SR–Amex–82–15).

The Exchange has determined that most of the trading by the Primary Dealers and their customers is concentrated in the newly auctioned Treasury securities (referred to as "on-the-run" Treasury securities); therefore, the Exchange plans to confine trading to those series of options in which it anticipates the most trading interest.

The most significant changes being proposed by the Exchange in its filing relate to the system which it is developing for the trading of options on the Treasury securities. As indicated above, the cash market, especially in on-the-run Treasury securities, is conducted mainly among forty or so Primary Dealers and several aspiring Primary Dealers who make markets and trade in these issues among themselves and also trade as principal in filling the orders of their customers such as banks, insurance companies, pension funds, mutual funds and other financial institutions. Most of the trading among the Primary Dealers is done through a few brokers who have developed and own proprietary screen networks showing current bids and offers and other price information. The Dealers place most of their orders through these brokers as a means of maintaining anonymity and because of the services that are provided by the proprietary screen networks. The brokers do not do any proprietary trading; however, to maintain the anonymity of their customers they normally take the opposite side of each trade, becoming the seller to the purchaser and the purchaser from the seller. In the clearance and settlement process the positions of the broker net out, with deliveries and payments flowing directly between the principals to the transactions. It is these market participants whom the Exchange primarily is seeking to provide with facilities for the trading of options on underlying Treasury securities.

With the above structure in mind, the Exchange has developed a trading system that will provide, with certain limited exceptions noted below, for the entry of all bids and offers and the execution of all orders in an electronic limit order system. A key element of the plan involves utilizing a Board Broker on the floor of the Exchange who will have responsibility for receiving bids and offers and entering them into the system as well as monitoring the trading activity and furnishing information to brokers when requested. In order to provide an appropriate linkage with the cash market structure described above, the Exchange is proposing to utilize as a Board Broker, one of the existing Primary Dealer Brokers which has its own proprietary screen network that will be utilized for displaying Exchange options quotations to its customers.

The functions of the Board Broker would be very similar to those of board brokers that have been utilized in the past on other options exchanges. Members of the Exchange would be permitted to install dedicated telephone lines from their "upstairs" trading and order processing facilities directly to Board Broker personnel on the Exchange floor for the purpose of entering orders.[2] A number of the Exchange's members are already Primary Dealers and it is anticipated that other Primary Dealers may elect to become members to take advantage of these facilities. While the Exchange anticipates having only one Board Broker (who is affiliated with a Primary Dealer Broker) other Primary Dealer Brokers will be encouraged to become members so that they can route orders directly to the Exchange floor and act as vendors in disseminating Exchange market data over their screen networks. Members will not be required to install dedicated telephone lines in order to trade through this system; they may continue to send their orders to their booths on the floor and utilize brokers to deliver the orders to the Board Broker for entry into the system. The Exchange is also planning to use its present automated order switching system to deliver orders to the Board Broker, but perhaps not at start up.

The electronic limit order system will receive all bids and offers (with certain exceptions described below), store such orders and execute them against matching orders entering the system, display the best current bid and offer together with size and furnish printed reports of all executions. Unexecuted orders in the system will be assigned priority, first on the basis of price and then in accordance with time of entry and such orders will constitute the limit order book for options contracts on each Treasury note or bond.

Registered options traders could be permitted to enter orders with the Board Broker and could be accorded the same priority as proprietary orders of member firms and public customer orders. However, options traders could also effect trades with each other at the post if such transactions are at prices between the current displayed bid and offer; in that event, both sides of the transaction would be reported to the Board Broker who would enter it into the system, thus causing an execution report to be generated.

Spread trading would also be effected at the trading post with the Board Broker maintaining a separate display of all spread orders at specified differentials. Once a spread transaction is effected, both legs of the transaction would be entered into the system by the Board Broker, with one leg being permitted to "touch" the current bid or offer and the other leg to be entered at the net differential.

Since all orders would be required to be entered with a specific price, the Board Broker would be permitted to accept only limit orders or "immediate or cancel" orders. At the commencement of trading in this new system it is anticipated that all orders will be confined to day orders, and at the close of trading each day all unexecuted orders will be purged. The Exchange is not planning to use trading rotations or single price openings with this trading system. Therefore, members will not be permitted to give orders to the Board Broker prior to the opening. Members holding both buy and sell orders of customers must cause such orders to be entered into the system and executed against the best bid or offer displayed in the limit order book unless the orders can be crossed at a price between the best bid and offer. In the latter event, one side of the transaction must first be exposed by display in the limit order book, before completing the transaction by entering the other side. Similarly, members may take or supply options as principal to fill customer orders only if the customer order has first been entered and displayed in the limit order book.

To provide market making support for these new Treasury options, the Exchange is proposing to permit members to become market makers in the Exchange's electronic limit order system. In order for such market making capability to be effective, it will be necessary to permit the market makers to enter bids and offers into the system via a direct computer-to-computer interface. It is recognized that such an arrangement could give the market maker a substantial advantage over customer orders in the system in the event of a sudden change in market conditions warranting an adjustment in price. The market makers, through the use of the computer-to-computer interface, could "sweep" the limit order book before members with orders stored in the system could get to such orders through the Board Broker and change

[2] Because of space limitations on the Exchange floor, some portion of the Board Broker's input operations may be located at a place remote from the trading post where the Treasury options are traded. But even though separated from the main trading floor, these facilities will be deemed to be included within the Exchange's floor operations.

their prices. Therefore, it is proposed that the market makers' bids and offers entered through the computer-to-computer interface cannot be executed against any bids or offers currently in the system (such bids and offers can, however, be hit by orders entered through the Board Broker). As a result, they can only impove the current bid or offer or provide added depth to existing orders on the book. If the market maker wishes to execute against currently displayed bids and offers in the limit order book, such orders must be entered individually either through the Board Broker or via individual input terminals provided to such market makers by the Exchange. In order to encourage market maker support, the Exchange believes it is necessary to distinguish between Primary market makers and Secondary market makers. It is therefore proposing to permit a Primary market maker who is willing to undertake to provide at all times a current bid and offer in each series of options to which his appointment extends, to also have a direct input terminal into the system for executing individual transactions. Only one Primary market maker would be assigned to the option contracts covering a particular maturity range of Treasury notes and bonds (*e.g.*, the five-year note, or the thirty-year bond). However, a particular Primary market maker might receive an appointment for more than one maturity range. Secondary market makers, not being subject to such an undertaking, could enter their quotes by computer-to-computer interface, but in order to initiate the execution of transactions they would have to give their orders to the Board Broker for entry into the system.

One final proposal is being made by the Exchange in this filing relating to the capital requirements of traders and market makers. The Exchange's subsidiary, the Amex Commodities Corporation, has made application to the Commodity Futures Trading Commission for designation as a contract market for futures contracts covering the same Treasury note and bond issues which the Exchange will be trading options on. It is anticipated that the same electronic limit order system will be used for trading both the options and the futures and that many individual members who are eligible to trade both contracts will be doing so simultaneously. The Exchange is therefore proposing that such members may meet the capital requirements of both the Exchange and the Amex Commodities Corporation if the sum of the combined capital in such members' commodities and securities accounts is equal to the sum of the minimum capital requirements for the two accounts taken together, and the member has approved the transfer of funds from one account to the other as needed to cover the trading activity conducted in both accounts.

(2) Basis

The proposed rule change is consistent with section 6(b)(5) of the Act which provides in part that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. The Exchange believes that its proposal to expand its Treasury options program will be consistent with these objectives of the Act in that it has been designed to meet the needs and to be consistent with the trading practices of that body or market professionals and institutions who are largely instrumental in enabling the Federal Government to meet its capital raising requirements and who provide the public with a liquid secondary market in Treasury securities.

In addition, the Exchange believes its newly developed electronic limit order trading system is an innovative and effective approach to the trading of options in an area where extremely large size transactions are the norm and where close coordination of trading in both the cash markets and the derivative markets is essential. By linking its market data system which carries options quotations and prices, with the proprietary screen networks of the Primary Dealer Brokers, and facilitating the placement of orders via direct telephone lines to the Board Broker for entry into the trade execution system, the Exchange feels it will be significantly enhancing the ability of the market in Treasury securities to operate efficiently.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition; rather, it will bring more competition to the existing options markets for Treasury securities, will provide alternatives to the futures markets for hedging positions in Treasury securities and will better enable Primary Dealers and their customers to compete in the purchase and sale of Treasury securities in the cash market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 14, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: May 17, 1988.

Appendix A—Proposed Section 13 of Part V of the Rules of the American Stock Exchange, Inc.

Section 13. Treasury Note and Bond Options ("European" Style)

Applicability and Definitions

Rule 900E. The Rules in this Section are applicable solely to Treasury note and bond options which, under the rules of The Options Clearing Corporation, may be exercised only on or about their expiration dates ("European style Treasury note and bond options"). Treasury note and bond options traded on the Exchange under the Rules set forth in sections 1 through 9 of this Part V, which may be exercised at any time during their lives pursuant to the rules of The Options Clearing Corporation, are referred to herein as "American style Treasury note and bond options."

Except to the extent that specific rules in this section govern or unless the context otherwise requires, the provisions of the Constitution and of all other rules and policies of the Board of Governors (including the rules applicable to "American" style Treasury note and bond options set forth in sections 1 through 9 of this part) shall be applicable to the trading on the Exchange of "European" style Treasury note and bond options. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, "European" style Treasury note and bond options are included within the definition of "security" or "securities" as such terms are used in the Constitution and the Rules of the Exchange.

The following terms, as used in the Rules in this Section, and as applied to "European" style Treasury note and bond options when used in other Rules of the Exchange, shall have the meanings set forth below:

(1) The term "regularly issued Treasury notes and bonds" means those notes and bonds which the United States Treasury Department regularly auctions and issues in specific time to maturity ranges (i.e., 10-year notes, 30-year bonds, etc.) at regular periodic intervals, usually every three months.

(2) The term "on-the-run" Treasury securities means those regularly issued Treasury notes and bonds which are the most recently issued in their specific time to maturity ranges.

(3) The term "underlying security" or "underlying Treasury note and bond" means, with respect to an option contract, the specific Treasury note or bond which the Options Clearing Corporation shall be obligated to sell (in the case of a call) or purchase (in the case of a put) upon the valid exercise of such option contract.

Designation of Option Contracts

Rule 901E. All "European" style Treasury note and bond option contracts approved for trading on the Exchange shall be designated in accordance with the requirements of Rule 901, and shall further be designated so as to distinguish them from any "American" style Treasury note and bond options traded on the Exchange.

Rights and Obligations of Holders and Writers

Rule 902E. Subject to the provisions of Rule 907 and 909, the rights and obligations of holders and writers of "European" style Treasury note and bond option contracts dealt in on the Exchange shall be as set forth in the rules of the Options Clearing Corporation.

Unit of Trading

Rule 903E. The unit of trading in "European" style Treasury note and bond option contracts shall be $100,000 principal amount of the respective underlying Treasury note or bond, or multiples thereof.

Premium Bids and Offers

Rule 904E. Premiums for "European" style Treasury note and bond option contracts shall be quoted as a percentage of par, with par equal to 100 points. Minimum price fluctuations in the prices of such Treasury note an bond option contracts shall be in increments of one sixty-fourth of one percent of the unit of trading (1/64 of 1% of $100,000 or $15.625 per contract).

Series of Options Open for Trading

Rule 905E. Following the auction by the Treasury Department of a new Treasury note or bond in a particular maturity range (3-year, 4-year, 5-year, 7-year and 10-year notes and 30-year bonds), the Exchange may open for trading series of options on that underlying Treasury note or bond expiring in each of the three or four successive months following the month in which the Treasury note or bond is auctioned. If only three such months are opened for trading then on the business day following the last day of trading in those series of option contracts expiring during the first of such successive expiration months, series of options expiring in the next successive month may be opened for trading. Thereafter, no series of options covering that Treasury note or bond shall be opened for trading having expiration dates in more distant months unless the Treasury Department, at the time at which a new Treasury note or bond of that maturity range would normally be scheduled to be auctioned, shall, in lieu thereof, offer for sale additional principal amounts of the previously auctioned note or bond in that maturity range. In that event, additional series of options expiring in the next three successive months may be opened for that note or bond as if the note or bond to be reissued were a newly issued Treasury note or bond.

In the event that at the time normally scheduled for the auction of a new Treasury note or bond in a specific maturity range, no such note or bond is auctioned and additional principal amounts of the previously issued note or bond in that maturity range are not sold by the Treasury Department, then additional series of options for successive expiration months covering the Treasury note or bond in that maturity range that was most recently issued or reissued may be opened for trading (as series for prior months expire), at the discretion of the Exchange, until the next issue or reissue of a Treasury note or bond in that specific maturity range occurs.

The exercise price of each series of "European" style Treasury note and bond option contracts shall be established as a percent of principal amount of the underlying note or bond which is reasonably close to the percent of principal amount at which the underlying Treasury note or bond was auctioned or is being traded in the Government securities market. Intervals between exercise prices shall be a percentage of principal amount of the underlying Treasury note or bond, as follows:

30-year bonds—1.0 percent
10-year notes—1.0 percent
7-year notes—1.0 percent
5-year notes—1.0 percent
4-year notes—0.5 percent
3-year notes—0.5 percent

Position Limits

Rule 906E. Position limits relating to "European" style Treasury note and bond options shall be governed by the provisions of Rule 904. In determining compliance with the position limits set forth herein, positions in "European" and "American" style Treasury note and bond options shall not be aggregated.

Exercise Limits

Rule 907E. "European" style Treasury note and bond options are not subject to any excercise limits.

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Reporting of Options Positions

Rule 906E. Positions in "European" style Treasury note and bond options shall be reported pursuant to Rule 906. In computing reportable options positions and in reporting options positions under Rule 906 and under this Rule, positions in "European" and "American" style Treasury note and bond options shall not be aggregated.

Exercise of Option Contracts

Rule 909E. An outstanding "European" style Treasury note or bond option contract may be exercised on its expiration date by the tender to The Option Clearing Corporation of an exercise notice in accordance with procedures specified in the rules of The Options Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the option contract is carried.

Subject to compliance with rules of The Options Clearing Corporation, a clearing member may accept exercise instructions from its customers with respect to an expiring option at any time of day.

Exercise Settlement

Rule 910E. Exercises of "European" style Treasury note and bond options shall be settled in accordance with the procedures set forth in Rule 982, except that, to the extent not inconsistent with Rule 982 and the Rules of the Options Clearing Corporation, delivery of Treasury notes and bonds in settlement of exercised contracts and payment therefore between clearing members shall be effected in accordance with the Regulations of the Treasury Department implementing the Government Securities Act of 1986 and the procedures conforming therewith adopted by the Public Securities Association.

Margin Requirements

Rule 911E. The minimum customer margin requirements applicable to "European" style Treasury note and bond options shall be the same as the minimum margin requirements set forth in subparagraph (d)(2)(D)(v) of Rule 462 with respect to "American" style Treasury note and bond options.

Trading Rule Modifications

The following Rules apply specifically to the trading of "European" style Treasury note and bond options. Except ot the extent that these rules are applicable, or unless the context otherwise requires, all other rules and policies of the Board of Governors governing the trading of option contracts shall be applicable to the trading on the Exchange of "European" style Treasury note and bond options.

Trading System Definitions

Rule 920E. For purposes of the trading system to be used for trading on the Exchange in treasury note and bond options, the following definitions shall apply:

(a) The term "Exchange electronic limit order system" or "limit order system" means that electronic system maintained by the Exchange for the receipt, entry, storage, display, matching and cancellation of quotations and orders in Treasury note and bond options and the execution and reporting thereof, including all terminals, screens, wire connections and peripheral equipment used in conjunction therewith.

(b) The term "electronic limit order book" means that part of the Exchange's electronic limit order system which stores and displays limit price orders for options until they are executed or cancelled.

(c) The term "market data system" means that electronic system maintained by the Exchange for the receipt from its floor of quotations and reports of transactions in Treasury note and bond options and the transmission of such information to vendors and other interested subscribers.

(d) The term "floor" or "trading floor" shall, in addition to the regular trading floor where all trading posts and member booths are maintained, include any areas remote from the trading area, under the control and supervision of the Exchange, at which facilities are maintained for the receipt of quotations and orders from members for entry into the Exchange's electronic limit order system.

Execution of Trades

Rule 921E. (a) All transactions in Treasury note and bond option contracts shall be executed through the Exchange's electronic limit order system. Except as provided below in paragraphs (b) and (c), all bids and offers constituting firm offers to trade, and all orders to execute against displayed bids and offers, shall be given to the designated Board Broker who shall promptly enter such bids, offers and orders into the electronic limit order system for display in the electronic limit order book or for execution against displayed bids or offers in the electronic limit order book. All such bids, offers and orders must be entered for the account of a clearing member and must specify the price and number of option contracts to be bought or sold. Bids, offers and orders will be timed upon entry into the electronic limit order system. Priority for the execution of displayed bids and offers shall be based on the highest bid and lowest offer and then on earliest time of entry into the system. The electronic limit order book will display the aggregate number of contracts bid for at the highest bid price and the aggregate number of contracts offered at the lowest offering price. Orders to sell at a price equal to or below the highest bid will be executed, to the extent possible, at such bid price. Orders to buy at a price equal to or above the lowest offer will be executed, to the extent possible, at such offering price. All bids and offers entered into the system shall be firm until executed as a result of another order entered into the system at the same or a better price, or until cancelled.

(b) A transaction in Treasury note or bond option contracts may be effected at the trading post by two registered options traders trading with each other as principals provided such transaction is effect at a price between the highest bid and lowest offer then currently displayed in the Exchange's electronic limit order book for that specific option series, and is promptly reported to the Board Broker for entry into the electronic limit order system. Such trade shall be entered with an "s" symbol indicating a special trade.

(c) Spread trades may be transacted at the trading post at a net differential between the prices for the options series involved provided the following conditions are met:

(i) Such net differential is less than that which could be obtained from executing the spread order against the highest bid and lowest offer then currently displayed in the electronic limit order book for the respective option series involved;

(ii) Such trade is promptly reported to the Board Broker for entry into the electronic limit order system; and

(iii) Such trade is priced so that one leg of the spread is equal to the price then currently displayed for that option series in the limit order book and the other leg is priced on the basis of the differential at which the spread order is executed. If there are no bids or offers currently being displayed for either of the options series involved in the spread order at the time it is entered into the electronic limit order system, the spread trade may be priced within the price range of the day for the two option series constituting the legs of the spread.

Spread orders may be effected in accordance with the provisions of this Rule by floor brokers and registered optionstraders or may be given to the Board Broker for execution. The Board Broker shall maintain a separate display (not within the electronic limit order system) for spread orders based on the net differential between the two legs constituting the spread. Priority shall be assigned to such spread orders on the basis first of the lowest differential and then on time of entry. When spread transactions are entered into the electronic limit order system reflecting execution of both legs of the spread, they shall be accompanied with an "s" symbol indicating a special trade.

Communications To and From Floor

Rule 922E. Members may arrange for dedicated telephone lines directly from their offices to the Board Broker for the purpose of entering bids, offers and orders for execution against displayed bids and offers in the electronic limit order book. To the extent of available capacity, members may also arrange for dedicated lines connected to the Exchange's electronic limit order system for purposes of receiving verification of orders entered in the system and reports of execution of orders. Members installing such dedicated lines shall assume all responsibility for messages transmitted over such lines including all orders sent to the Board Broker and the accuracy of all execution reports resulting therefrom.

Bids and Offers

Rule 923E. Except as provided in paragraphs (b) and (c) of Rule 921E, all bids and offers in Treasury note and bond option contracts to be effective must be made by entry into the Exchange's electronic limit order system and display thereof in the electronic limit order book. As provided in Rule 921E, all such bids and offers must specify the price and the number of option contracts bid for or offered. A bid or offer for more than one contract shall be deemed to be for the amount thereof or a smaller number of contracts, except that "immediate or cancel" orders or "fill or kill" orders (see Rule 608(g)) may be accepted by the Board Broker for execution. All bids and offers shall be general ones and shall not be specified for acceptance by particular members. All bids and offers entered into the electronic limit order system for display in the limit order book shall be firm until executed as a result of another order entered into the system at the same or a better price, or until cancelled. The Exchange shall determine from time to time when orders entered in the electronic limit order book must be renewed or automatically cancelled.

* * * Commentary.

.01 At the commencement of trading in Treasury note and bond option contracts, it is anticipated that all open orders in the system at the close of trading each day will be purged, and members will be required to reenter such orders the following business day if they are to be renewed.

Priority of Bids and Offers

Rule 924E. Priority of bids and offers in Treasury note and bond option contracts shall be as prescribed in Rule 921E and the provisions of that Rule shall supersede Rule 126. Bids and offers from all sources shall be accorded equal priority in accordance with the Rules.

Opening of Trading

Rule 925E. Rules 108 and 917 shall not apply to the trading of Treasury note and bond option contracts. Trading in all series shall be opened simultaneously, without trading rotations. Priority at the opening will be based on best bid and offer and time of entry into the electronic limit order system. The Board Broker shall not accept any orders prior to the opening of trading.

Priority of Orders Received by Members

Rule 926E. Priority among market orders held by a floor member shall be established in accordance with the times such market orders are received by the floor member and shall be given to the Board broker for entry into the Exchange's electronic limit order system in such sequence. Priority among limit orders received by a floor member shall be established by price, and, in the event a floor member receives more than one limit order at the same price, in accordance with the times such limit orders are received. The sequence of timing of orders when entered into the Exchange's electronic limit order system shall be *prima facie* evidence of the sequence in which such orders were received by a floor member.

Quotations and Reports Binding

Rule 927E. Members shall be responsible for verifying quotations and orders given to the Board Broker and displayed through the Exchange's electronic limit order system. Any erroneous quotations or order information not corrected by the member entering the same shall be binding on such member. Reports of executed trades effected through the system shall be furnished to members on the floor and shall be binding unless both members to the transaction promptly agree to a correction. In the event a correction is necessary, the members shall immediately notify a Floor Official of that fact and with the approval of such Floor Official shall take the appropriate steps, in accordance with Exchange procedures, to cause the correction to be made and given to the Board Broker for entry into the electronic limit order system. A corrected transaction shall be reported with a "s" symbol indicating that it is being reported out of sequence.

Simultaneous Execution of Buy and Sell Orders

Rule 928E. Rule 151 shall not apply to the trading of Treasury note and bond option contracts and in lieu thereof the following procedures shall be followed. When a member holds a customer's order to buy and a customer's order to sell Treasury note or bond option contracts of the same series, he must give each order to the Board Broker for entry into the Exchange's electronic limit order system in accordance with the provisions of Rule 921E and applicable Exchange procedures. If one of such orders is a limit order which would better the quotation currently displayed in the electronic limit order book and the other is a market order, the member should enter the limit order first and should price the market order at the same price as such limit order. If both such orders are market orders and the spread in the quoted market is greater than the minimum price increment for such contract, both orders should be price between the current bid and offer.

Taking or Supplying Options to Fill Customers Order

Rule 929E. For purposes of complying with Rules 152(a)(2) (i) and (ii), when a member holds a customer order to buy or to sell a Treasury note or bond option contract which cannot be executed against an order or orders displayed in the limit order book and the member wishes to fill such order in a principal transaction, the member shall first cause the customer order to be entered in the Exchange's electronic limit order system at a price better than the current quotation displayed in the limit order book; thereafter, the member may enter his own order acting as principal to fill his customer's order. As promptly as possible following the execution of the order, the member shall disclose to the customer that the option contracts involved in the order were taken or supplied from an account in which the member or his member organization has an interest.

Board Broker—Eligibility and Functions

For purposes of trading "European" style Treasury note and bond option contracts, the Exchange shall utilize the services of a Board Broker to receive and enter all bids, offers and orders into the Exchange's electronic limit order system.

(a) *Eligibility.* The Board Broker shall be a regular member who is registered with the Exchange for the purposes of: (i) Maintaining the book with respect to orders left with him for execution in the securities assigned to him, (ii) supervising trading in such securities and (iii) maintaining orderliness in the trading crowd. A member who does business with the public as a registered broker-dealer or a registered futures commission merchant, or who is affiliated with a member organization which is so doing business, shall be ineligible to become designate as a Board Broker in Treasury note and bond option contracts, except that a member shall not be so disqualified solely because such member is affiliated with a member organization whose business:

(i) Is principally that of acting as a broker in Treasury securities on behalf of Primary Dealers and aspiring Primary Dealers;

(ii) Does not involve proprietary trading in Treasury securities or the taking of principal positions in Treasury securities other than: (A) As an intermediary between Primary or aspiring Primary Dealer customers as a means of providing anonymity in connection with its brokerage business, (B) as a result of the resolution of errors in connection with its brokerage business, or (C) the incidental investment of firm capital; and

(iii) Does not involve doing business with the public.

A regular member who has been designated as a Board Broker may have affiliated with him, for the purpose of performing the functions and fulfilling the duties of a Board Broker, one or more fixed income trading permit holders ("FIPs") authorized pursuant to Article IV, Section 1(h) of the Constitution.

(b) *Registration of Board Broker.* An applicant for registration as a Board Broker shall file an application in writing with the Exchange on such form or forms as the Exchange may prescribe. In reviewing such applications the Exchange shall consider the applicant's ability as demonstrated by his experience, knowledge of trading rules and floor procedures and such other factors as the Exchange deems appropriate. Before a registration shall become effective, the applicant must demonstrate his familiarity with the applicable rules and regulations to the Exchange's satisfaction. The registration of any person as a Board Broker may be suspended or terminated by the Exchange upon a demonstration that such person has failed to properly perform as a Board Broker.

(c) *Appointment.* From among those registered as Board Brokers, the Exchange may appoint one or more Board Brokers to act as such in Treasury note and bond option contracts for each maturity range that is approved for trading on the Exchange. A member may be appointed as a Board Broker for Treasury note and bond option contracts in more than one maturity range. If a Board Broker is affiliated with a member organization or with other members in a joint account arrangement, or has one or more qualified FIPs affiliated with him, the appointment may extend to all of the qualified floor members or FIPs in such member organization or all of the qualified members in such joint account arrangement. A person designated as a Board Broker, and any other person affiliated with him in such capacity, may act only on the floor of the Exchange as a Board Broker and in no other capacity whatsoever. The appointment of a Board Broker may be suspended or terminated by the Exchange at any time if any of the following occur:

(i) The Exchange summarily suspends the Board Broker or his member organization pursuant to Section 3 of Article V of the Constitution;

(ii) The Exchange deems that the Board Broker has failed in a material way to perform the functions or to carry out the responsibilities of a Board Broker under these Rules; or

(iii) The goodstanding of the Board Broker or the member organization has been suspended, terminated or otherwise withdrawn as a result of a disciplinary proceeding pursuant to Sections 1 or 2 of Article V of the Constitution.

(d) *Functions.* A designated Board Broker in Treasury note and bond options is expected to accept limit orders for all option contracts to which his appointment extends and to enter the same into the Exchange's electronic limit order system. Such orders may be day orders, G.T.C. orders, immediate or cancel or fill or kill orders. A Board Broker shall not accept orders of any other type or from any source other than a member. The Exchange may specify the manner in which orders are to be routed to the Board Broker. In addition to supervising the trading of Treasury note and bond options through the electronic limit order system the Board Broker shall also be responsible for the receipt, display and execution of spread orders entrusted to him, as prescribed in Rule 921E.

(e) *Liability of Exchange.* The Exchange shall not be liable to its members and member organizations, or any successors or representatives thereof or any persons associated therewith, for any claims arising out of any errors or omissions of a Board Broker or persons associated with a Board Broker and no assets of the Exchange shall be applied or shall be subject to any such liability.

Disclosure of Orders

Rule 941E. With respect to bids and offers in Treasury note and bond option contracts, the aggregate number of such contracts offered for sale at the lowest offering price and the aggregate number of such contracts bid for at the highest bid price shall be displayed at all times during trading hours in the limit order book. The Board Broker may also disclose to any member, upon request, the aggregate number of option contracts offered at each price increment above the lowest offering price and the aggregate number of option contracts bid for at each price increment below the highest bid price, but shall not disclose the names of members entering such orders or any other information with respect thereto.

Non-Discrimination

Rule 942E. A Board Broker shall not discriminate in any way among members in the acceptance and handling of orders or in charging for his services.

Primary Market Maker

Rule 950E—(a) *Appointment.* The Exchange may appoint one or more members as Primary Market Makers to provide support for Treasury note and bond options approved for trading on the Exchange. Such appointment shall extend to all series of option contracts on Treasury notes or bonds of a specified maturity range. A member may, however, be appointed as a Primary Market Maker for option contracts in more than one maturity range.

(b) *Obligations.* A Primary Market Maker shall be obligated to maintain at all times a current bid and offer in each series of Treasury note and bond option contracts to which his appointment extends, and he shall use due diligence to update his bids and offers as price changes occur in the underlying Treasury market. A Primary Market Maker shall be permitted to enter current bids and offers into the Exchange's electronic limit order system via a direct computer-to-computer interface, provided that bids and offers so entered: (i) May not be executed against any bids or offers currently in the system and displayed in the limit order book, but (ii) will be subject to execution by any orders entered by the Board Broker. Such Primary Market Maker may, however, directly enter orders for execution against bids and offers in the limit order book via his own input terminal on the floor of the Exchange without placing such orders through the Board Broker.

(c) *Separation of Functions.* All bids and offers entered by a Primary Market Maker must be for his own account or the account of his member organization. A Primary Market Maker may not during the same trading session act as a Primary Market Maker and also handle orders as a broker.

* * * Commentary

.01 All transactions for the account of a Primary Market Maker in Treasury note and bond option contracts shall be deemed on-Floor transactions for purposes of Commentary .01 of Rule 958, even though the bids and offers entered by such member originate from a computer remote from the trading post where such Treasury note or bond option is traded.

Secondary Market Maker

Rule 951E.—(a) *Appointment.* The Exchange may appoint one or more members as Secondary Market Makers to provide additional marketmaking support for Treasury note and bond options approved for trading on the Exchange. Such appointment shall extend to all series of option contracts on Treasury notes or bonds of a specified maturity range. A member may, however, be appointed as a Secondary Market Maker for option contracts in more than one maturity range.

(b) *Obligations.* A Secondary Market Maker shall be permitted to enter current bids and offers into the Exchange's electronic limit order system via a direct computer-to-computer interface, provided that bids and offers so entered: (i) May not be executed against any bids or offers currently in the system and displayed in the limit order book, but (ii) will be subject to execution by any orders entered by the Board Broker. A Secondary Market Maker wishing to execute agains bids and offers displayed in the limit order book must give such orders to the Board Broker.

(c) *Separation of Functions.* All bids and offers entered by a Secondary Market Maker must be for his own account or the account of his member organization. A Secondary Market Maker may not during the same trading session act as a Secondary Market Maker and also handle orders as a broker.

* * * Commentary

.01 All transactions for the account of Secondary Market Maker in Treasury note and bond option contracts shall be deemed on-Floor transactions for purposes of Commentary .01 of Rule 958, even though the bids and offers entered by such member originates from a computer remote from the trading post where such Treasury note or bond opton is traded.

Rule 960E. A member who is both a registered options trader on the Exchange and registered commodities trader on a commodities exchange maintaining both a commodities and securiites account with a single clearing organization, or a commodities account with a futures commission merchant and a securities account with a broker-dealer who are affiliated with each other, shall be deemed to be in compliance with the capital requirements of Exchange Rule 110 if the sum of the combined capital in the trader's commodity and securities accounts is equal to the sum of the minimum capital requirements for the two accounts taken together and the registered options trader has approved the transfer of funds from one account to the other as needed to cover the trading activity conducted in the two accounts.

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[Release No. 34-25713; File No. SR-MBS-88-12]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corp. Relating to the Depository Division Fee Schedule; Filing and Immediate Effectivness

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1988, the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the following changes to MBS Clearing Corporation's (MBSCC) Depository Division Fee Schedule:

Service	Current fee	New fee
Account maintenance.	$2,200 per mo.	$5,000 per mo.
Safekeeping	$1.25/pool/mo.	0
Principal and interest.	$1.50/pool/mo.	$2.50/pool/mo.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise certain Depository Division fees to more accurately reflect the cost of providing the services to Depository Participants.

The revised fee schedule is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other changes among MBSCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBS Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–12 and should be submitted by June 14, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11631 Filed 5–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25712; File No. SR–MCC–88–5]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation Relating to Fees for the Bond Comparison System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the fees for the Bond Comparison System (BCS) input as follows:

Effective May 2, 1988, fees for original submissions of municipal market BCS input will be increased from $0.30/side to $0.50/side. Fees for municipal market supplemental input shall remain at $0.30/side. Fees for other bond markets (i.e. New York listed, American listed, OTC, Corporate and UIT) shall remain at $0.30/side for all input.

II. Self-Regulatory Organization's Statement on the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed fee change was deemed necessary due to lower than expected volumes of municipal bond transactions resulting in an imbalance of operating costs versus reveneus. The revised fees more accurately reflect the costs of providing the service.

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(C) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph(e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulation organization. All submissions should refer to File No. SR–MCC–88–5 and should be submitted by June 14, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated May 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11632 Filed 5–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25704; File No. SR–NASD–88–1]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Amended Rule Change Relating to Amendments to the Rules of Practice and Procedures for the Small Order Execution System and Part VI, Schedule D to the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 4, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission an amendment to SR–NASD–88–1 as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

The NASD is herewith filing Amendment No. 1 to File No. SR–NASD–88–1, filed with the Commission on February 2, 1988, to amend paragraphs seven and nine under section (a) of the Rules of Practice and Procedures for the Small Order Execution System ("SOES"). The amendments to the proposed rule change include a definition for the term "maximum order size," provide guidelines for establishing maximum order size levels in SOES, and define the term "minimum exposure limit" as it pertains to maximum order size. The proposed amendment also revises section (c) under the SOES rules to set forth appropriate levels of execution and exposure limits for SOES market makers and SOES Order Entry Firms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Amendment

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed amendment and discussed any comments it received on the proposed amendment. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Admendment

In File No. SR–NASD–88–1, 53 FR 9391 (March 22, 1988), the NASD discussed establishing tiered order size limits for different securities traded on SOES. In its rule filing, the NASD indicated that it may seek to improve the efficiency and liquidity of SOES by refining order size limits so that different categories of securities having certain trading characteristics would be subject to different size limits. After studying the trading, volume and price patterns of all NASDAQ/NMS securities, the NASD has determined to amend File No. SR–NASD–88–1 to provide, in pertinent part, for a definition of the term "maximum order size" for a security traded on SOES. By its terms, the proposed definition of maximum order size provides that in establishing the maximum order size for a security traded on SOES, the NASD will consider the average daily non-block volume, bid price, and number of market makers for each security. The NASD believes that by setting forth general market parameters (instead of exact market criteria) in the provisions of the proposed amendment, the NASD will be provided with the flexibility necessary to adequately address the volatile swings exhibited by the marketplace in recent months. The exact number of tier levels and the characteristics of each tier will be set forth in the NASD manual as a footnote to the text of the rule. The footnote will indicate that the maximum order size for NASDAQ/NMS securities traded on SOES shall be 1,000, 500, or 200 shares and that the applicable maximum order for each NASDAQ/NMS security will be established in the following manner. A 1,000 share maximum order size will be applied to those NASDAQ/NMS securities that have an average daily non-block volume of 3,000 shares per day or more, a bid price that is less than or equal to $100, and three or more market makers; a maximum order size of 500 shares will be applied to those NASDAQ/NMS securities with an average daily non-block volume of 1,000 shares a day or more, but not more than 2,999, a bid price that is over $100 but not more than $150, and two market makers. Finally, a 200 share maximum order size will be applied to those NASDAQ/NMS securities with an average daily non-block volume of less than, 1,000 shares a day, a bid price that is more than $150 but not more than $250, and less than two market makers.[1]

In addition, the NASD is also proposing to amend section (c) under the SOES rules regarding the obligations of SOES Market Makers and SOES Order Entry Firms. In pertinent part, the proposed amendments regarding SOES market makers obligate the market maker to execute individual orders in sizes equal to or smaller than the maximum order size and provide that the SOES market maker for any NASDAQ/NMS security must execute individual orders equal in the aggregate to the minimum exposure limit. The amendment to proposed paragraph (B) under this section is aimed at clarifying that the exposure limit for a NASDAQ/NMS security is the amount equal to or larger than the minimum exposure limit, while the exposure limit for a non-NMS security is any amount the market maker may choose to enter as the exposure limit.

Finally, the NASD is proposing to amend the provisions regarding SOES Order Entry Firms to provide that agency orders no larger than the maximum order size received from public customers may be entered by a SOES Order Entry Firm and that those agency orders in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements.

The proposed amendments are consistent with the provisions of sections 11A(a)(2) and 15(A)(b)(6) under the Act as the NASD believes the amendments to SOES would result in the fair and orderly handling of customer orders and, in general, would promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe the proposed amendment imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Amendment Received From Members, Participants, or Others

No change.

[1] If a security has trading characteristics of more than one tier, then the security falls into the lowest tier that corresponds to any of its trading characteristics. For example, if a security has an average daily non-block volume that is characteristic of the top tier (3,000 shares), and a number of market makers characteristic of the lowest tier (one market maker), then that security falls into the lowest tier.

III. Date of Effectiveness of the Proposed Amendment and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change as amended, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–1 Amendment No. 1, and should be submitted by June 14, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11633 Filed 5–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25702; File No. SR–NYSE–88–10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On April 5, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change that extends the pilot program allowing "monthly expirations" for stock options.

The proposed rule change was noticed in Securities Exchange Act Release No. 25590 (April 14, 1988), 53 FR 13041 (April 20, 1988). No comments were received on the proposed rule change.

The purpose of the rule change is to extend for seven months the pilot program set out in Rule 703, Supplementary Material .20(b), which provides for the listing of series in stock options covering a maximum of four expiration months, including two near-term months, at any one time. Accordingly, the new termination date for the pilot program is December 16, 1988.

In January 1987, the Commission approved a proposal by the NYSE, retroactive from July, to extend for six months the Exchange's pilot program allowing monthly expirations of stock options.[1] Subsequently, in order to give the Exchange more time to evaluate the effect of the pilot program on its stock option marketplace, the Commission approved additional proposals extending the pilot for four months to May 16, 1987,[2] and for one year to May 21, 1988.[3] This proposal extends the pilot program for an additional seven months at the request of Commission staff.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange. Specifically, the Commission believes that extending the pilot program, which is tailored to meet investors' preferences for stock options with near-term expiration cycles, will give the Commission additional time to study the effect of the program on the market in light of the October market break before it considers permanent approval. In additional, the Commission has not received any negative comments on the pilot's operations. Therefore, the Commission believes the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–88–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 17, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11634 Filed 5–23–88; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Rel. No. 23986 (January 7, 1987), 52 FR 1570. This proposal was substantively similar to proposals filed previously by the Chicago Board Options Exchange, Inc., the Philadelphia Stock Exchange and the American Stock Exchange, and approved by the Commission in Securities Exchange Act Rel. No. 23401 (July 23, 1986), 51 FR 22290.

[2] Securities Exchange Act Rel. No. 24199 (March 9, 1987), 52 FR 8123.

[3] Securities Exchange Act Rel. No 24850 (June 26, 1987), 52 FR 23506. Other options exchanges also received one-year extensions to their pilot programs in 1987 and added February and March cycle series to their programs.

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms which will be used only in the event that induction into the armed services is resumed have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–350

Title: Registrant Travel Reimbursement Request.

Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per request.

SSS–254

Title: Application for Voluntary Induction.

Purpose: Is used to apply for voluntary induction into the Armed Services.

Respondents: Registrants or nonregistrants who are seventeen years of age.

Frequency: One-time

Burden: The reporting burden is twelve minutes or less per individual.

SSS–130

Title: Request for Relief from Training and Service in the Armed Forces of the United States.

Purpose: Is used to request relief from training and service based on being a national of a country with which an applicable treaty is in efect, i.e. "Treaty Alien."

Respondents: Those registrants who are "Treaty Aliens" and desire not to serve in the Armed Forces of the United States.

Frequency: One-time.

Burden: The reporting burden is five minutes or less per individual.

SSS–109H

Title: High School Certificate.

Purpose: Is used to substantiate a claim for postponement of induction because the subject registrant is a high school student.

Respondents: Registrants who are attending high school but have not graduated or reached age 20.

Frequency: This certificate is normally used one-time.

Burden: The reporting burden is six minutes or less per individual.

SSS–109D

Title: Divinity Student Certificate.

Purpose: Is used to substantiate a claim for deferment as a divinity student.

Respondents: Registrants who are either pre-enrolled, enrolled, graduate students or interns in a Theological or Divinity School.

Frequency: This certificate is normally used one-time.

Burden: The reporting burden is six minutes or less per individual.

SSS–109C

Title: College Student Certificate.

Purpose: Is used to substantiate a claim for postponement or deferment as a college student or as an applicant accepted for admission.

Respondents: Registrants who are attending college or have been accepted as full-time students.

Frequency: This certificate is normally submitted one-time.

Burden: The reporting burden is eight minutes or less per individual.

SSS–26

Title: Claim Documentation Form—Alien or Dual National.

Purpose: Is used to document a registrant's claim for classification as a Alien, Dual National or Treaty Alien.

Respondents: Registrants who wish to be classified as an Alien, Dual National or Treaty Alien.

Fequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–25

Title: Claim Documentation Form—Minister.

Purpose: Is used to document claims for classification as a regular or duly ordained minister.

Respondents: Registrants who are regular or duly ordained ministers.

Frequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–24

Title: Claim Documentation Form—Hardship

Purpose: Is used to document a claim for classification on the basis of the hardship induction will cause a registrant's dependent(s).

Respondents: Registrants whose induction will cause hardship on their dependent(s).

Frequency: This form is normally used one-time.

Burden: The reporting burden is 30 minutes or less per individual.

SSS–21

Title: Claim Documentation Form—Administrative.

Purpose: Is used to document those claims for reclassification which can be approved by an Area Office upon the presentation of documentary proof.

Respondents: Registrants whose past or present status is reason for reclassification.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per individual.

SSS–23

Title: Claim Documentation Form—Divinity Student.

Purpose: Is used to document a claim for classification as a divinity student.

Respondents: Registrants who are divinity students.

Frequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–27

Title: Claim Documentation Form—Postponement

Purpose: Is used to document a claim for the postponement of induction.

Respondents: Registrants whose present status warrants postponement of induction.

Frequency: This form is normally used one-time.

Burden: The reporting burden is ten minutes or less per individual.

SSS–9

Title: Claim for Postponement or Reclassification.

Purpose: Is used to submit a claim for postponement of induction or a different classification.

Respondents: Registrants filing claims for either postponement or reclassification.

Frequency: One-time.

Burden: The reporting burden is five minutes or less per individual.

SSS–22

Title: Claim Documentation Form—Conscientious Objector.

Purpose: Is used to document a claim for classification as a conscientious objector.

Respondents: Registrants who are conscientious objectors.

Frequency: One-time.

Burden: The reporting burden is one hour per individual.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–402

Title: Uncompensated Registrar Appointment.

Purpose: Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

Respondents: United States citizens over the age of 18.

Frequency: One-time.

Burden: The reporting burden is three minutes or less.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Office, Washington, DC 20435.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, Washington, DC 20435.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: May 17, 1988.

Samuel K. Lessey, Jr.,

Director.

[FR Doc. 88–11579 Filed 5–23–88; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1061]

Certain Foreign Passports Validity

Poland is added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport. This notice amends Public Notice 954 of February 26, 1986 (51 FR 6853).

Date: May 12, 1988.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 88-11582 Filed 5-23-88; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Application for Amended Type Certificate to Include the McDonnell Douglas Model MD-11 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed type certification basis.

SUMMARY: This notice provides information and invites comments concerning the proposed type certification basis for the new McDonnell Douglas Model MD-11 airplane. The publication of this nonrulemaking document is done in the interest of keeping the public informed. Public comment concerning the approriateness of the proposed certification basis will be considered in determining the airworthinese standards applicable to the Model MD-11.

DATE: Comments on this notice must be received on or before July 25, 1988.

ADDRESS: Comments must be mailed in duplicate to the Federal Aviation Administration, Los Angeles Aircraft Certification Office, ANM-100L, 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Frederick Lee, Manager, Los Angeles Aircraft Certification Office, ANM-100L, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 514-6330.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice of the proposed type certification basis of the Model MD-11 is part of the FAA's continuing efforts to keep the public informed of the type certification programs conducted by the FAA. It is in addition to the rulemaking process which provides the public an opportunity to participate directly in the establishment of regulatory standards. Interested parties are invited to provide comments, written data, views, or arguments relevant to the proposed type certification basis of the McDonnell Douglas Model MD-11 as contained in this notice. Communications should be submitted in duplicate to the address specified above. All communications received on or before the closing date specified will be considered by the Administrator before the amended type certification basis is established.

Availability of Additional Copies of Notice

Any person may obtain a copy of this notice by submitting a request to the address noted in the "ADDRESS" paragraph above or by calling (213) 514-6330.

Background

McDonnell Douglas applied on October 9, 1985, for a change to Type Certificate No. A22WE to include the new Model MD-11 airplane. The Model MD-11 is a long-range derivative of the currently certificated DC-10 that will be able to operate at heavier gross weights. It will incorporate three high-bypass ratio turbofan engines, such as the Pratt & Whitney PW4000 Series, General Electric CF6-80C2, or Rolls Royce RB211-524, with digital electronically-controlled engine and thrust management systems. The Model MD-11 will incorporate simplified and automated cockpit controls, and electronic cockpit displays to facilitate operation by two flight crewmembers. A fuel tank is being installed in the horizontal tail section.

A kickoff meeting with McDonnell Douglas was held on May 2, 1986. Following this meeting, several meetings of FAA and McDonnell Douglas specialists have been convened for further discussion and deliberation. The design has not been finalized by McDonnell Douglas, and complete substantiating data are yet to be submitted to the FAA.

The FAA considered whether the Model MD-11 should be considered a new or an amended type design. The provisions of Part 21 of the Federal Aviation Regulations (FAR) address general and specific design changes that require an application for a new type certificate. Several meetings were held with the applicant in early 1987 to review the extent of the MD-11 differences from the DC-10 design for the purpose of determining if the applicant should be required to make a new application for a type certificate. Based on those reviews, the FAA determined that the proposed changes are not so extensive that a substantially complete investigation of compliance with the applicable regulations is required, and that the Model MD-11 need not be considered a new type design. Therefore, the provisions of Part 21, Subpart D, which address the regulatory provisions for changes to type designs, were used to establish the certification basis for the Model MD-11.

Under the provisions of § 21.101(a) of the FAR, an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (sometimes referred to as the "original certification basis") or with the applicable regulations in effect on the date of the application for the change. Section 21.101(b) further provides that if the proposed change consists of a new design of a component, equipment installation, or system installation, and the regulations incorporated by reference in the type certificate do not provide adequate standards with respect to the proposed change, the applicant must comply with certain additional requirements in order to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate. These additional requirements are applicable regulations in effect on the date of application for the change and any special conditions established to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate. Special conditions contain the safety standards found necessary to establish a level of safety for novel and unique design features, and are issued after public comment in accordance with the rulemaking procedures of Part 11 of the FAR. Lastly, the applicant may elect to voluntarily comply with the provisions of any later amendment than that specified above, provided the applicant also complies with other later amendments that are directly related.

Exemptions from the applicable airworthiness standards prescribed by § 21.101, if granted, also become part of the certification basis incorporated by reference. Petitions for exemptions are granted or denied after public comment in accordance with the procedures of Part 11.

Notwithstanding compliance with the type certification basis established under the provisions of § 21.101, an applicant is entitled to a type certificate only if the Administrator finds that no feature or characteristic of the airplane makes it unsafe as outlined in § 21.21(b)(2).

Type Certification Process

The statutory prerequisite for the issuance of a new or amended type certificate is a finding by the Administrator that the aircraft is of proper design, material, specification, construction, and performance for safe operation and meets the prescribed standards, rules, and regulations (section 603(a) of the Federal Aviation Act of 1958 (Act), 49 U.S.C. 1423(e)). Pursuant to section 603(a) and Part 21, a type certificate is issued after:

1. All applicable airworthiness, noise, and engine emission regulations have been met, including the completion of the required functional and reliability tests to ensure that the airplane is considered safe in its operational environment; and

2. The Administrator has found no feature or characteristic that makes the airplane unsafe for the category in which certification is desired.

Proposed Type Certification Basis

The proposed type certification basis presented herein represents the type certification basis required by Part 21 that was established at the time of original application for DC-10 type design approval (December 28, 1967), and additional regulations based on exemptions, special conditions, and later regulatory amendments, pursuant to Part 21, which were either established by the FAA or elected by the applicant. The date of original application for the DC-10 established the original airworthiness certification basis to be Part 25 as amended by Amendments 25-1 through 25-16. At a later time, McDonnell Douglas elected to also comply with the provisions of Amendments 25-17 through 25-22, and § 25.471 as amended by Amendment 25-23.

For those new design features of the Model MD-11 where the requirements of the original certification basis are judged to be inadequate, the applicable airworthiness provisions in effect on the date of the application for an amended type certificate must be used (Part 25 as amended by Amendments 25-1 through 25-59). Therefore, for the Model MD-11, the FAA has determined that the provisions of certain later amendments should be made applicable. Furthermore, the applicant has elected to comply with many recent airworthiness standards which, with certain exceptions noted below, bring the certification basis to that specified by Part 25 as amended by Amendments 25-1 through 25-61.

In determining the certification basis, the FAA has considered the operating experience of the current DC-10 fleet and has not specified later amendments for design features which are the same as current models and for which satisfactory service experience has been demonstrated.

Certain design requirements provided for in later amendments to Part 25 are made applicable by the regulatory provisions of Part 121 to air carrier operations covered by that part. Even though some of those design requirements are not, and need not be, part of the type certification basis, they will apply to Part 121 operators. Those airplanes not in compliance with these requirements, indicated by four asterisks in the following table, will be modified after delivery to the operator, prior to being put into service. This has been done to accommodate those operators who prefer to take delivery of the airplane(s) and comply with those requirements made applicable by Part 121 before putting the airplane(s) into operation.

Based on the date of application and pursuant to § 21.101, the type certification basis of the McDonnell Douglas Model MD-11 is:

Part 25 of the FAR, "Airworthiness Standards: Transport Category Airplanes" effective February 1, 1965, as amended by Amendments 25-1 through 25-61, except as noted below:

FAR section No.	Title	Thru amendment 25-
Performance:		
25.109	Accelerate-stop distance	41
Controllability and maneuverability:		
25.143	Control and maneuver: General.	41
25.149	Minimum control speed	41
Miscellaneous flight requirements:		
25.251(d)	Vibration and buffeting	22
Structure—general:		
25.305	Strength and deformation	53
Flight maneuver and gust conditions:		
25.331	Flight maneuver and gust conditions, General.	[4]5
25.345(c)	High lift devices	[4]5
Design and construction—general		
25.607	Fasteners	22
25.629(b)	Flutter, deformation and fail-safe criteria.	22
25.631	Bird strike damage	[1]22
Control systems:		
25.701(a) & (d).	Flap interconnection	23
Personnel and cargo accommodations:		
25.772	Pilot compartment doors	[2](NA)
25.783	Doors	53
Emergency provisions:		
25.803(d)	Emergency evacuation	[4]5
25.812	Emergency lighting	[3]57
Ventilation and heating:		
25.832	Cabin ozone concentration.	[3](NA)
Fire protection:		
25.858(a)	Cargo compartment fire detection systems.	[3](NA)
Equipment—general:		
25.1309	Equipment, systems, and installations.	[4]22
Lights:		
25.1401(b)	Anticollision light system	40
25.1401(f)		26
Operating limitations and information:		
25.1529	Instructions for continued airworthiness.	53

[1] New structure will comply with § 25.631 as amended by Amendment 25-61.

[2] Not applicable—Since the original certification basis, which did not include this section, has been determined to be adequate, the requirements of this section do not apply to this type design.

[3] Compliance with a later amendment to this section is required for Part 121 operators.

[4] New systems, and systems with major changes, their installation, and equipment will comply with § 25.1309 as amended by Amendment 25-61.

Part 36 of the FAR, as amended by Amendments 36-1 through 36-13, and any later amendments in existence at the time of certification. McDonnell Douglas has elected to comply with the Stage 3 noise level requirements.

Special Federal Aviation Regulation (SFAR) 27, as amended by Amendments 27-1 through 27-6, and any later amendments in existence at the time of certification.

The following special conditions and exemptions are part of the DC-10 certification basis and will also be part

of the MD–11 certification basis (Ref. Type Certificate Data Sheet No. A22WE):

1. Special Conditions No. 25–18–WE–7, dated January 7, 1970, and Special Conditions No. 25–18–WE–7, Amendment No. 1, dated July 9, 1971.

2. Special Condition No. 25–46–WE–14, dated October 28, 1972.

Exemptions from FAR Part 25

1. Number 1573 issued April 28, 1972—exemption from § 25.807(c)(5) to permit evacuation with a seating capacity of 80 for a pair of oversize Type I exits.

2. Number 2453 issued September 26, 1977—exemption from § 25.807(c)(1) to permit evacuation of passengers with either of the following exit-seat configurations: (a) One oversize Type I emergency exit meeting the conditions specified in Exemption No. 1573 on each side of the fuselage and a passenger seating capacity of 50; or (b) one Type A emergency exit on each side of the fuselage and a passenger seating capacity of 70.

The following optional requirements are part of the DC–10 certification basis and will apply to the MD–11:

Ditching Provisions—§ 25.801.

Ice Protection Provisions—§ 25.1419.

Additional Exemptions

As of the date of this notice, McDonnell Douglas has not petitioned the FAA for any exemptions relative to the type certification of the Model MD–11 airplane.

Additional Special Conditions

At this time, the FAA has identified several additional novel design features that may require the promulgation of special conditions in order to provide appropriate safety standards. The McDonnell Douglas Model MD–11 airplane will have several digital electronic systems controlling essential and critical functions. Under the provisions of §§ 21.101(b)(2) and 21.16, the FAA is proposing to draft special conditions concerning the following items:

1. Functional reliability of digital electronic systems.

2. Lightning protection of digital electronic systems.

3. Protection from the effects of unwanted radio frequency (RF) energy.

These Special Conditions, and any others deemed necessary, will be proposed in a subsequent notice(s) of proposed special conditions pursuant to § 11.28 of Part 11; and all public comments received on that notice(s) will be considered before the special conditions are issued.

Post Certification Activity

Finally, design evaluation does not end with the issuance of the type certificate. Regulations require aircraft owners and operators to submit various reports and data on the aircraft's service experience. The FAA continues to monitor the safety performance of the design after the type design is approved and the product is introduced into service. This is accomplished through the various reports and data the FAA receives daily, as well as through post certification design reviews. The airworthiness standards such as Part 25, as well as the operational standards such as Parts 91, 121, and 125, are amended from time-to-time to consider new technologies and to upgrade the existing level of safety. If, during an evaluation, an unsafe condition is found as a result of service experience and that condition is likely to exist or develop in other products of the same type, the FAA issues an Airworthiness Directive (AD) under Part 39 to require a change to the type design or to define special inspection or operational limitations. In effect, these are also retroactive applications of required type design changes.

Issued in Seattle, Washington, on May 11, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–11551 Filed 5–23–88; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket No. S–830]

Puerto Rico Maritime Shipping Authority; Application for Permission Under Section 506 of the Merchant Marine Act, 1936, as Amended To Operate in the Domestic Trade

Notice is hereby given that Puerto Rico Maritime Shipping Authority (PRMSA) by application dated May 16, 1988, has applied for written permission under section 506 of the Merchant Marine Act, 1936, as amended (Act), for the temporary transfer of three of the five Lancer-class vessels which PRMSA recently acquired in an admiralty court auction to a purely domestic service between Puerto Rico and ports along the U.S. Atlantic and Gulf Coasts. Section 506 permits the temporary transfer for up to six months of construction-differential subsidy (CDS) built vessels "whenever the Secretary determines that such transfer is necessary or appropriate to carry out the purposes of the Act." Consent by MARAD is to be conditioned upon payment to MARAD, upon such terms as MARAD may prescribe, of "an amount which bears the same proportion to the CDS paid by the Secretary as such temporary period bears to the entire economic life of the vessel."

PRMSA states that the Lancer vessels will upgrade its existing fleet and expand its presence in U.S.-foreign trade operations serving the Caribbean. They will also enable it to consider expansion of services to Central and/or South America. In order to facilitate accomplishment of these goals, PRMSA requests authorization to use the three vessels the NUEVO SAN JUAN (ex-AMERICAN APOLLO), the GUAYAMA (ex-AMERICAN ASTRONAUT), and the MAYAGUEZ (ex-AMERICAN LANCER) from July 1, 1988 to December 31, 1988 in the domestic trades.

PRMSA's present fleet consists of eight U.S.-flag line-haul vessels in service between Puerto Rico and mainland United States Atlantic and Gulf Coast ports. Of these vessels, four Ro/Ro's, the BAYAMON, the PONCE, the PUERTO RICO, and the CAGUAS, and two Lo/Lo's, the BORINQUEN and the SAN JUAN, would be replaced by the five Lancers. Two Ro/Ro line-haul vessels, the ATLANTIC SPIRIT and the FORTALEZA, would be unaffected. In addition, PRMSA operates three foreign-flag feeder vessels to link Puerto Rico with ports in Haiti, the Dominican Republic, and Trinidad. Under PRMSA's replacement program, in addition to substituting for the six specified U.S.-flag vessels along PRMSA's domestic routes, the Lancers would simultaneously offer direct service to Haiti and the Dominican Republic in lieu of the existing foreign-flag relays.

Utilization of the Lancers, PRMSA avers, will substantially upgrade its fleet, providing it with more "suitable vessels," in keeping with the Merchant Marine Act's express policy goals. The Lancers offer marked improvements over the two Lo/Lo's to be replaced. The Lancers are a generation more advanced in design.

The Lancers also have important operating advantages over the Ro/Ro's, according to PRMSA. They are faster, larger, and, unlike the Ro/Ro's, able to handle today's generation of rolling stock. With one theoretical alternative for fleet revitalization, replacement construction, foreclosed by today's prohibitive costs, and another requiring a shift to tugs and barges, PRMSA believes its use of the Lancer vessels fulfills the Act's purposes of using the best equipped and most suitable vessels in U.S. domestic and foreign trades.

PRMSA's view is that its vessel replacement plans will enhance U.S.-flag service in foreign trade. Because of their greater speed, the five Lancers can substitute for six line-haul vessels plus much of the existing foreign-flag feeder service. Instead of transshipping through San Juan, PRMSA will be able to provide direct, one-vessel service between mainland U.S. ports and both Haiti and the Dominican Republic. PRMSA's redeployment will immediately introduce new, direct, Caribbean service in New Orleans and Baltimore and a non-stop northbound service into the Port of New York. This will increase U.S.-flag participation and contribute to development of a merchant marine sufficient for carrying a substantial part of U.S. waterborne foreign commerce.

Finally, PRMSA believes that its vessel replacement plans are consistent with the goal of maintaining a functioning merchant marine capable of serving as a military auxiliary in time of war or national emergency. PRMSA's present fleet is no longer the most suitable for the Puerto Rican trade. The Lo/Lo's are old, slow and inefficiently designed, and are probably now ready for scrapping. While the Ro/Ro's continue to have substantial utility for the military, they are no longer commercially desirable for Puerto Rican operations.

Although publication of a Notice with respect to PRMSA's request for permission under section 506 is not required, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on PRMSA's application.

Any person, firm, or corporation having any interest in the application for section 506 permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on June 6, 1988. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS))

By Order of the Maritime Administrator.

Dated: May 20, 1988.

James E. Saari,

Secretary.

[FR Doc. 88–11717 Filed 5–23–88; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 18, 1988.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0284.

Form Number: 5309.

Type of Review: Resubmission.

Title: Application for Determination of Employee Stock Ownership Plan.

Description: Form 5309 is filed with Form 5301, 5303, or 5307, when applying for a determination letter as to a deferred compensation plan's qualification status under sections 409 and 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.

Respondents: Businesses or other for-profit.

Estimated Burden: 245 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Review: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–11622 Filed 5–23–88; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted on OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable , (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C2), Veterans Administration, 810 Vermont Avenue N.W., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 17, 1988.

By direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.

2. Transfer of Ownership Data—Portfolio Loan.

3. VA Form 26–8792.

4. This form is completed by assumers of VA portfolio loans in order to provide information needed for servicing of such loans. Information is used to update protfolio loan records with names and related data on current obligors.

5. On occasion.

6. Individuals or households.

7. 2,400.
8. 200.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Claim for One Sum Payment and Claim for Monthly Payment.
3. VA Form 29-4125, 29-4125a and b.
4. These forms are used by beneficiaries applying for the proceeds of National Service Life Insurance and United States Government Life Insurance and United States Government Life Insurance policies.
5. On occasion.
6. Individuals or households.
7. 87,821.
8. 8,782.
9. Not applicable.

[FR Doc. 88-11565 Filed 5-23-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 100
Tuesday, May 24, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 10:00 a.m., June 6, 1988.

PLACE: Room 3501-South Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475-5490.

Date: May 19, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88-11627 Filed 5-19-88; 4:44 pm]
BILLING CODE 3410-05-M

FEDERAL ENERGY REGULATORY COMMISSION

May 18, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552B:

TIME AND DATE: May 25, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice. The items at this meeting will be considered only for discussion purposes.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 878th Meeting—May 25, 1988, Regular Meeting (10 a.m.)

CAP-1.
Project No. 5146-005, The City of Allentown, Pennsylvania
CAP-2.
Project No. 2756-008, City of Burlington Electric Department
Project No. 3101-002, City of Winooski
Project No. 9413-002, Winooski One Partnership
CAP-3.
Project No. 8864-005, Weyerhaeuser Company
CAP-4.
Project No. 10477-001, Burke Dam Hydro Associates
CAP-5.
Project No. 3239-007, Puget Sound Power and Light Company and McMaster and Schroder
CAP-6.
Project Nos. 7791-003, 8235-003 and 8915-002, Hydroelectric Development, Inc.
CAP-7.
Project No. 9688-002, Chocorua Forestlands Limited Partnership
CAP-8.
Project No. 9997-001, Carol A. Sever
CAP-9.
Project No. 2744-005, Menominee Company
CAP-10.
Project No. 5376-010, Horseshoe Bend Hydroelectric Company
CAP-11.
Project No. 5223-004, International Falls Power Company
CAP-12.
Project Nos. 2219-003, and 2642-003, Garkane Power Association, Inc.
CAP-13.
Project No. 400-013, Colorado-Ute Electric Association, Inc.
CAP-14.
Project No. 8610-002, Niagara Mohawk Power Corporation
CAP-15.
Project No. 7267-004, Joseph Martin Keating
CAP-16.
Project No. 10418-001, City of Harrisburg, Pennsylvania
CAP-17.
Docket No. ER88-329-000, Ohio Edison Company
CAP-18.
Docket No. ER88-316-000, Commonwealth Edison Company
CAP-19.
Docket No. ER88-300-000, Southern California Edison Company
CAP-20.
Docket No. ER88-296-000, Southern California Edison Company
CAP-21.
Docket No. ER88-264-001, Consolidated Edison Company of New York, Inc.
CAP-22.
Docket No. ER88-61-002, West Texas Utilities Company
CAP-23.
Docket No. ER88-109-002, Commonwealth Edison Company
CAP-24.
Docket No. ER83-657-003, Houston Lighting & Power Company
CAP-25.
Docket No. ER84-705-009, Boston Edison Company
CAP-26.
Docket No. ER88-224-001, Carolina Power & Light Company
CAP-27.
Docket No. EL86-53-003, Southern Company Services, Inc.
Docket No. EL86-57-003, Gulf States Utilities Company v. Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company
CAP-28.
Docket No. ER88-219-001, Pacific Gas and Electric Company
CAP-29.
Docket No. ER88-202-001, Maine Yankee Atomic Power Company
CAP-30.
Docket No. QF88-33-001, LUZ Solar Partners VI, Ltd.
Docket No. QF88-34-001, LUZ Solar Partners VII, Ltd.
CAP-31.
Docket Nos. ER80-259-007, ER80-793-000, ER80-355-000, ER80-358-000 and ER80-357-000, Kansas Gas & Electric Company
CAP-32.
Docket No. EL87-11-002, North Carolina Municipal Power Agency No. 1 v. Duke Power Company
Docket No. EL87-18-002, Piedmont Municipal Power Agency v. Duke Power Company
Docket No. EL87-20-002, North Carolina Electric Membership Corporation v. Duke Power Company
CAP-33.
Docket No. ER87-450-000, Interstate Power Company
CAP-34.
Docket Nos. ER82-705-002, ER82-705-003, ER83-66-004, ER83-230-002, ER83-297-007, ER88-94-000 and ER88-94-001, Arkansas Power & Light Company
CAP-35.
Docket No. QF88-36-001, Bechtel Civil Inc.
CAP-36.
Docket No. RE80-2-002, Cliffs Electric Service Company
Docket No. RE80-21-002, Orlando Utilities Commission
Docket No. RE80-36-003, Idaho Power Company
Docket No. RE80-37-001, Jacksonville Electric Authority
Docket No. RE80-60-004, Central Maine Power Company
Docket No. RE81-74-005, Sierra Pacific Power Company
Docket No. RE84-11-003, Appalachian Power Company

Consent Miscellaneous Agenda

CAM-1.

Docket No. FA87-66-000, Western Massachusetts Electric Company
CAM-2.
Docket No. FA87-62-000, Boston Edison Company
CAM-3.
Docket No. RM88-18-000, Statement of Cash Flows to Replace Statement of Changes in Financial Position in FERC Annual Report Forms
CAM-4.
Omitted
CAM-5.
Docket No. RM88-14-001, Interpretation of Section 5 of the Outer Continental Shelf Lands Act (OCSLA)
CAM-6.
Omitted
CAM-7.
Docket Nos. GP83-35-001 and GP83-35-002, Southern Natural Gas Company
CAM-8.
Docket No. RO85-13-001, South Central Terminal Co., Inc.

Consent Gas Agenda

CAG-1.
Docket No. RP88-118-000, Louisiana-Nevada Transit Company
CAG-2.
Docket No. RP88-120-000, Chandeleur Pipe Line Company
CAG-3.
Docket No. RP88-17-007, Southern Natural Gas Company
CAG-4.
Docket No. RP88-106-000, Northern Natural Gas Company, a Division of Enron Corp.
CAG-5.
Docket No. RP88-115-000, Texas Gas Transmission Corporation
CAG-6.
Docket No. RP88-131-000, Carnegie Natural Gas Company
CAG-7.
Docket Nos. TQ88-1-27-000 and RP88-151-000, North Penn Gas Company
CAG-8.
Docket Nos. TQ88-1-21-000 and RP88-119-000, Columbia Gas Transmission Corporation
CAG-9.
Docket No. TA88-3-4-000, Granite State Gas Transmission, Inc.
CAG-10.
Docket No. TA88-2-23-000, Eastern Shore Natural Gas Company
CAG-11.
Docket Nos. TA88-2-55-000, RP88-122-000 and TA87-3-55-004, Questar Pipeline Company
CAG-12.
Docket Nos. TQ88-1-16-000 and RP88-129-000, National Fuel Gas Supply Corporation
CAG-13.
Docket Nos. TQ88-1-37-000 and RP88-154-000, Northwest Pipeline Corporation
CAG-14.
Docket No. TA88-5-5-000, Midwestern Gas Transmission Corporation
CAG-15.
Docket Nos. RP88-138-000 and TQ88-1-9-000, Sea Robin Pipeline Company
CAG-16
Docket No. RP88-152-000, Alabama-Tennessee Natural Gas Company
Docket No. RP88-159-000, Algonquin Gas Transmission Company
Docket No. RP88-147-000, Arkla Energy Resources
Docket Nos. RP88-111-000 and RP88-157-000, Bayou Interstate Pipeline System
Docket No. RP88-141-000, East Tennessee Natural Gas Company
Docket No. RP88-136-000, El Paso Natural Gas Company
Docket No. RP88-146-000, Equitrans, Inc.
Docket No. RP88-132-000, Florida Gas Transmission Company
Docket No. RP88-105-000, Granite State Gas Transmission, Inc.
Docket No. RP88-158-000, Great Lakes Gas Transmission Company
Docket No. RP88-153-000, KN Energy, Inc.
Docket No. RP88-137-000, Kentucky West Virginia Gas Company
Docket Nos. RP88-118-000 and 001, Mid Louisiana Gas Company
Docket No. RP88-140-000, Midwestern Gas Transmission Company
Docket No. RP88-143-000, MIGC, Inc.
Docket No. RP88-121-000, Natural Gas Pipeline Company of America
Docket No. RP88-117-000, Northern Natural Gas Company, a Division of Enron Corp.
Docket No. RP88-133-000, Panhandle Eastern Pipe Line Company
Docket No. RP88-163-000, South Georgia Natural Gas Company
Docket No. RP88-149-000, Southwest Gas Corporation
Docket No. RP88-142-000, Tennessee Gas Pipe Line Company
Docket No. RP88-161-000, Texas Eastern Transmission Corporation
Docket No. RP88-145-000 and 001, Texas Gas Pipe Line Corporation
Docket No. RP88-114-000, Texas Gas Transmission Corporation
Docket No. RP88-160-000 and 001, Transcontinental Gas Pipe Line Corporation
Docket No. RP88-134-000, Trunkline Gas Company
Docket No. RP88-164-000, West Texas Gas, Inc.
Docket No. RP88-139-000, Williams Natural Gas Company
Docket No. RP88-156-000, Williston Basin Interstate Pipeline Company
Docket No. RP88-144-000, ANR Pipeline Company
Docket No. RP88-120-000, Colorado Interstate Gas Company
Docket No. RP88-162-000, Ringwood Gathering Company
Docket No. RP88-155-000, Southern Natural Gas Company
Docket Nos. RP88-150-000 and 001, Transwestern Pipeline Corporation
Docket No. RP88-135-000, Valley Gas Transmission, Inc.
CAG-17.
Docket No. RP88-128-000, National Fuel Gas Supply Corporation
CAG-18.
Docket Nos. RP88-127-000 and TQ88-1-63-000, Carnegie Natural Gas Company
CAG-19.
Docket Nos. TA88-2-58-000 and RP88-123-000, Valero Interstate Transmission Company
CAG-20.
Docket Nos. TQ88-1-22-000, RP88-125-000 and TA87-3-22-000, CNG Transmission Corporation
CAG-21.
Docket Nos. TA88-3-25-000 and RP88-146-000, Mississippi River Transmission Corporation
CAG-22.
Docket Nos. RP88-124-000, TQ88-1-11-000, and TM88-1-11-000, United Gas Pipe Line Company
CAG-23.
Docket No. RP88-113-000, El Paso Natural Gas Company
CAG-24.
Docket Nos. RP87-88-000, RP86-11-000 and RP85-11-000 (Phase II), KN Energy, Inc.
CAG-25.
Docket No. RP83-58-014, Southern Natural Gas Company
CAG-26.
Docket No. RP88-71-001, El Paso Natural Gas Company
CAG-27.
Docket No. RP88-78-001, Transwestern Pipeline Company
CAG-28.
Docket No. RP88-76-001, Tennessee Gas Pipeline Company
CAG-29.
Docket Nos. RP86-105-012 and CP86-485-001, ANR Pipeline Company
Docket Nos. RP86-15-038 and RP86-168-014, Columbia Gas Transmission Company
Docket No. RP86-14-036, Columbia Gulf Transmission Company
Docket No. RP85-169-037, Consolidated Gas Transmission Corporation
Docket No. CP86-582-020, Natural Gas Pipeline Company of America
Docket No. RP85-206-037, Northern Natural Gas Company, a Division of Enron Corp.
Docket No. RP87-103-009, Panhandle Eastern Pipe Line Company
Docket No. RP88-17-008, Southern Natural Gas Company
Docket No. RP87-26-027, Tennessee Gas Pipe Line Company
Docket No. RP85-177-052, Texas Eastern Transmission Corporation
Docket Nos. CP86-426-001, CP86-552-002, CP86-586-005, CP87-334-002, CP87-457-003, RP86-115-013, and RP87-15-022, Trunkline Gas Company
Docket Nos. CP79-22-005, CP88-9-001, CP88-196-001, CP88-210-001, and RP88-8-007, United Gas Pipe Line Company
CAG-30.
Docket No. RP88-63-003, Northwest Pipeline Corporation
CAG-31.
Docket No. RP86-69-001, Stingray Pipeline Company
CAG-32.
Docket No. RP85-178-026, Tennessee Gas Pipeline Company
CAG-33.

Docket Nos. RP88-68-003 and RP87-7-039, Transcontinental Gas Pipe Line Corporation
CAG-34.
Docket Nos. CP86-589-005, RP86-104-006, and RP87-30-012, Colorado Interstate Gas Company
CAG-35.
Docket No. CP86-582-019, Natural Gas Pipeline Company of America
CAG-36.
Docket No. TA88-3-12-001, Distrigas Corporation and Distrigas of Massachusetts Corporation
CAG-37.
Docket No. TA88-1-9-003, Tennessee Gas Pipeline Company
CAG-38.
Docket No. TA88-4-42-001, Transwestern Pipeline Company
CAG-39.
Omitted
CAG-40.
Docket No. ST84-773-001, Delhi Gas Pipeline Corporation
CAG-41.
Docket No. TA88-2-26-002, Natural Gas Pipeline Company of America
CAG-42.
Docket No. RP82-55-033, Transcontinental Gas Pipe Line Corporation
CAG-43.
Docket No. RP84-42-002, United Gas Pipe Line Company
CAG-44.
Docket Nos. RP86-44-001 and CP86-203-001, El Paso Natural Gas Company
CAG-45.
Docket No. CP86-578-014, Northwest Pipeline Corporation
CAG-46.
Docket No. ST85-1307-001, Kansas Power and Light Company
CAG-47.
Docket No. RP88-65-000, Panhandle Eastern Pipe Line Company
CAG-48.
Docket No. RP88-17-000, Southern Natural Gas Company
CAG-49.
Docket Nos. TA88-1-33-000 and TA86-3-33-000, El Paso Natural Gas Company
CAG-50.
Omitted
CAG-51.
Docket Nos. ST81-6-000, ST82-232-000, ST82-448-000 and ST83-283-000, Cabot Corporation
CAG-52.
Docket Nos. RP86-63-000 and RP86-114-000, Southern Natural Gas Company
CAG-53.
Docket No. ST88-1543-000, Red River Pipeline Corporation
CAG-54.
Docket Nos. ST86-2102-000, ST86-2307-000, ST86-28-000, ST86-2803-000, ST87-6-000, ST87-1425-000, ST87-2279-000, ST87-2365-000, ST87-2366-000, ST87-2367-000, ST87-2863-000, ST87-3539-000, ST87-3973-000, ST87-3974-000, and ST88-1309-000
CAG-55.
Docket No. RI87-2-001, Plains Petroleum Company
Docket No. RP87-40-001, Plains Petroleum Operating Company and KN Energy, Inc.
CAG-56.
Docket Nos. CI88-157-001 and CI88-154-001, Conoco Inc.
CAG-57.
Docket Nos. CI86-377-002 and CI86-378-002, Arkla Energy Marketing Company
CAG-58.
Docket No. CI85-685-004, Exxon Corporation
Docket No. CI86-22-003, Fina Oil and Chemical Company, Petrofina Delaware Incorporated, Fina Oil & Gas, Inc. and Fina Exploration, Inc.
Docket No. CI87-240-001, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
Docket No. CI87-385-002, Phillips 66 Natural Gas Company
Docket No. CI87-666-001, Texaco, Inc., Texaco Producing, Inc. and Getty Oil Company
Docket No. CI88-229-000, Phillips Petroleum Company
Docket No. CI86-33-003, Sun Exploration and Production Company
Docket No. CI87-308-002, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI87-360-001, Coastal Oil & Gas Corporation
Docket No. CI87-361-001, ANR Production Company
Docket No. CI85-695-004, TXP Operating Company
Docket No. CI86-46-003, Chevron U.S.A. Inc.
Docket No. CI87-531-001, FMP Operating Company
Docket No. CI87-767-001, Ensource Inc.
Docket No. CI87-310-001, Shell Offshore Inc., Shell Western E & P Inc. and Orlando-SOI Partnership
Docket No. CI85-29-010, Odeco Oil & Gas Company
Docket Nos. CI87-301-001 and 002, Marathon Oil Company
Docket No. CI85-633-005, Tenneco Oil Company, Houston Oil & Minerals Corporation and Tenneco West, Inc.
Docket No. CI88-535-002, Zapata Exploration Company
Docket No. CI85-692-004, Cities Service Oil and Gas Corporation, CanadianOxy Offshore Production Co. and Oxy Cities Service NGL Inc.
Docket No. CI87-292-001, Mobil Oil Corporation, Mobil Oil Exploration & Producing Southeast Inc., Mobil Producing Texas & New Mexico Inc. and Mobil Exploration and Producing North American Inc.
Docket No. CI87-375-001, The Louisiana Land and Exploration Company and LLOXY Holdings, Inc.
Docket No. CI86-19-005, Amoco Production Company
Docket No. CI87-337-001, Pelto Oil Company
Docket No. CI86-9-001, Amerada Hess Corporation
Docket No. CI87-130-001, Grace Petroleum Corporation
Docket No. CI87-399-001, Union Oil Company of California and Union Exploration Partners, Ltd.
Docket No. CI86-39-003, Conoco Inc.
Docket No. CI88-386-000, Seagull Energy E & P Inc.
Docket No. CI87-348-001, Anadarko Petroleum Corporation, APX Corporation, Matagorda Island Development Corporation, Matagorda Island Exploration Corporation and APX Western Corporation
Docket No. CI87-295-001, Mesa Operating Limited Partnership
CAG-59.
Docket No. CS71-520-000, Jack J. Grynberg
CAG-60.
Docket No. CI87-702-001, KOGAS, Inc.
CAG-61.
Docket Nos. GP84-55-000, CI88-119-000, and CI88-140-000, Sunterra Gas Gathering Company
CAG-62.
Docket No. CI87-290-000, El Paso Production Company
Docket No. CP87-553-000, El Paso Natural Gas Company
CAG-63.
Docket No. TA82-21-001, *et al.*, Columbia Gas Transmission Corporation
Docket No. CI64-28-023, Chevron U.S.A., Inc.
CAG-64.
Omitted
CAG-65.
Docket No. CP88-55-001, Northwest Pipeline Corporation
CAG-66.
Docket No. CP75-104-053, High Island Offshore System
Docket No. CP76-118-015, U-T Offshore System
CAG-67.
Docket Nos. CP61-462-005, CP84-49-002, CP85-586-001, CP86-398-002, CP86-536-001, CP86-537-001, CP86-647-002, CP86-662-001, CP86-736-001, CP86-741-001, CP87-47-001, CP87-71-001, CP87-81-001 and CP87-87-001, Tennessee Gas Pipeline Company
Docket No. CP83-364-003, Columbia Gas Transmission Corporation
CAG-68.
Docket No. CP83-211-002, Columbia Gulf Transmission Company
CAG-69.
Docket Nos. CP83-254-307, CP83-335-222, CP83-254-308 and CP83-335-223, Williston Basin Interstate Pipeline Company
CAG-70.
Docket No. GP88-6-001, Volkswagen of America, Inc.
CAG-71.
Docket No. CP86-732-001, Tennessee Gas Pipeline Company
CAG-72.
Docket No. CP87-405-002, Phillips Petroleum Company
CAG-73.
Docket No. CP86-627-001, Tri-Energy Pipeline Company
CAG-74.
Docket No. CP84-183-004, Transcontinental Gas Pipe Line Corporation
CAG-75.

Docket No. CP87-298-002, Northern Natural Gas Company, Division of Enron Corp.

CAG-76.
Docket No. CP88-53-000 and CP88-74-000, Transcontinental Gas Pipe Line Corporation

CAG-77.
Docket No. CP87-236-000, Ozark Gas Transmission System

CAG-78.
Docket No. CP88-254-000, Texas Eastern Transmission Corporation

CAG-79.
Docket No. CP84-441-022, CP80-65-001 and CP82-358-002, Tennessee Gas Pipeline Company

CAG-80.
Docket No. CP88-106-000, Transcontinental Gas Pipe Line Corporation

CAG-81.
Docket Nos. CP87-548-000, CP87-552-000 and CP88-65-000, United Gas Pipe Line Company

CAG-82.
Docket No. CI87-288-000, El Paso Natural Gas Company and El Paso Production Company
Docket No. CP88-72-000, El Paso Natural Gas Company

CAG-83.
Docket No. CP87-177-000, Southern Natural Gas Company

CAG-84.
Docket No. CP87-106-002, Midwestern Gas Transmission Company

CAG-85.
Docket No. CP81-82-019, El Paso Natural Gas Company
Docket No. CP81-139-016, Northern Natural Gas Company, Division of Enron Corp.

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. ER84-177-000, Duke Power Company. Opinion and order determining whether the company's proposed stand-by charge to wholesale customers is just and reasonable.

ER-2.
Docket No. ER83-24-000, Seminole Electric Cooperative, Inc.
Docket No. ER84-379-000, Florida Power and Light Company. Opinion and order on initial decision concerning allocation of costs.

ER-3.
Docket No. ER88-10-000, Industrial Cogenerators v. Florida Public Service Commission. Order on complaint concerning right to receive interruptible back-up, maintenance and supplemental power under section 210(h) of the Public Utility Regulatory Policies Act of 1978.

Miscellaneous Agenda

M-1.
Reserved

M-2.
Reserved

I. Pipeline Rate Matters

RP-1.
(A) Docket Nos. RP86-119-007, TA84-2-9-009 and TA85-1-9-006, Tennessee Gas Pipeline Company. Order concerning take-or-pay, prudence, and cost allocation.
(B) Docket Nos. TA86-1-27-001, RP86-57-000 and RP88-110-000, North Penn Gas Company. Order on direct billing proposal.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Reserved

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-11680 Filed 5-20-88; 11:09 am]
BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., May 24, 1988.

PLACE: Hearing Room One, 1100 L Street NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Automated Tariff Filing and Information System (ATFI).
2. Trans-Atlantic Amnesty Agreement and Modification of the U.S. Atlantic-North Europe Conference Agreement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.
[FR Doc. 88-11733 Filed 5-20-88; 3:49 pm]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, May 31, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 20, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-11731 Filed 5-20-88; 3:44 pm]
BILLING CODE 6210-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Wednesday, June 1, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated: Washington, DC, May 20, 1988.
By direction of the Board.

John C. Truesdale,
Executive Secretary, National Labor Relations Board.
[FR Doc. 88-11713 Filed 5-20-88; 3:44 pm]
BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 23, 30, June 6, and 13, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 23

Friday, May 27

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Backfit Rule

Week of May 30—Tentative

Tuesday, May 31

2:00 p.m.
Briefing on Human Factors Program and NRC Views of NAS Recommendations (Public Meeting)

Wednesday, June 1

2:00 p.m.
Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting)
3:30 p.m.
Affirmation/Discussion and vote (Public Meeting) (if needed)

Friday, June 3

10:00 a.m.
DOE Briefing on LLW Program, West Valley Demonstration Project and Uranium Mill Tailings Remedial Action Project (Public Meeting)

Week of June 6—Tentative

Thursday, June 9

10:00 a.m.
Briefing on Status of Pilgrim (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 13—Tentative

Thursday, June 16

2:00 p.m.
Briefing on Advanced Light Water Reactors by EPRI (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Annual Briefing by INPO (Public Meeting) scheduled for May 18, *postponed.*

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.
May 19, 1988.

[FR Doc. 88-11715 Filed 5-20-88; 3:44 pm]
BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:00 p.m. (open portion), Tuesday, June 7, 1988.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commence at 3:00 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:00 p.m.):

1. Finance Project in South American Country
2. Finance Project in South American Country
3. Proposed Budget for FY 1990 and Proposed Amendments to Budget for FY 1989
4. Worker Rights Determinations
5. Claims Report
6. Country Concentration
7. Report on Debt-to-Equity Conversion Funds
8. Legislative Update
9. Finance Report
10. Finance and Insurance Reports

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:00 p.m.)

1. Approval of the Minutes of the Previous Board Meeting
2. Approval of Proposed Regular Meetings of the Board
3. Treasurer's Report
4. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457-7079.

Margaret A. Kolo,
OPIC Corporate Secretary.
May 20, 1988.

[FR Doc. 88-11682 Filed 5-20-88; 11:00 am]
BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 23, 1988:

Closed meetings will be held on Tuesday, May 24, 1988, at 2:30 p.m. and on Wednesday, May 25, 1988, at 2:30 p.m. Open meetings will be held on Wednesday, May 25, 1988, at 9:30 a.m. and on Thursday, May 26, 1988, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10) permit consideration of the scheduled matters at closed meetings.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 24, 1988, at 2:30 p.m., will be:

Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Formal order of investigation.
Institution of injunctive actions.
Settlement of injunctive actions.

Opinion.

The subject matter of the open meeting scheduled for Wednesday, May 25, 1988, at 9:30 a.m., will be:

The Commission will meet with the Public Oversight Board (POB) of the American Institute of Certified Public Accountants to discuss oversight of accounting firms which practice before the Commission. The POB is an independent board of prominent individuals established by the AICPA to oversee the activities of the SEC Practice Section of the AICPA's Division for CPA Firms and to represent the public interest in the performance of its oversight function. Topics of discussion are expected to include POB and Commission oversight of the peer review and special investigations processes and developments in the profession's quality control program since the last joint meeting in July 1986. For further information, please call Mike Kigin at (202) 272-2165 or Bob Burns at (202) 272-2130.

The subject matter of the closed meeting scheduled for Wednesday, May 25, 1988, at 2:30 p.m., will be:

Institution of injunctive action.

The subject matter of the open meeting scheduled for Thursday, May 26, 1988, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment amendments to Forms N-3 and N-4, the registration forms for insurance company separate accounts issuing variable annuities, under the Investment Company Act of 1940 and the Securities Act of 1933 and published related staff guidelines for the forms. The amendments would require a tabular presentation of fees and expenses near the front of variable annuity prospectuses. For further information, please contact John McGoire at (202) 272-2107.
2. Consideration of a proposal by the New York Stock Exchange (SR-NYSE-87-10) to amend its Rules 342, 351 and 476 to make explicit certain supervisory and compliance obligations of NYSE members and member organizations. For further information, please contact Stephen Luparello at (202) 272-2828.
3. Consideration of whether to submit to Congress proposed legislation in response to the October, 1987, market break. The legislative proposals to be discussed will concern a number of topics related to the market break, including the Commission's emergency authority, clearance and

settlement, large trader reports, and margin authority. For further information, please contact John Kincaid at (202) 272-7519.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bradley D. Belt at (202) 272-2467.

Jonathan G. Katz,
Secretary.
May 17, 1988.

[FR Doc. 88-11628 Filed 5-19-88; 4:44 pm]
BILLING CODE 8010-01-M

VOL 53 ISS 100 MAY 24 1988 UMI

federal register

Tuesday
May 24, 1988

Part II

Department of the Interior

National Park Service

National Register of Historic Places; Annual Listing of Historic Properties for Fiscal Years 1986 and 1987; Notice

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Annual Listing of Historic Properties for Fiscal Years 1986 and 1987

The National Historic Preservation Act of 1966, as amended (80 Stat. 915, 16 U.S.C. 470 et seq.), authorizes the Secretary of the Interior to expand and to maintain a National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture. The National Park Service expands the National Register of Historic Places for the Secretary.

It is the purpose of this notice, through publication of the information included herein, to apprise the public, as well as governmental agencies, associations, and all other organizations and individuals interested in historic preservation, of the properties added to the National Register between October 1, 1985, and September 30, 1987.

For a cumulative list comprising all properties on the National Register, we recommend that users obtain the **Federal Register** listings from February 6, 1979 (Vol. 44, No. 26, Part II); March 18, 1980 (Vol. 45, No. 54, Part II); February 3, 1981 (Vol. 45, No. 54, Part II); February 2, 1982 (Vol. 47, No. 22, Part III); March 1, 1983 (Vol. 48, No. 41, Part II); February 7, 1984 (Vol. 49, No. 26, Part IV); March 5, 1985 (Vol. 50, No. 43, Part III); and February 25, 1986 (Vol. 51, No. 37, Part III). Together these listings provide information for all National Register properties and for properties determined eligible for inclusion on the National Register through September 1986. A limited number of copies of the 1979, 1980, 1981, 1982, 1983, 1984, 1985, and 1986 issues of the **Federal Register** are available from the Department of the Interior, National Park Service, National Register of Historic Places, P.O. Box 37127, Washington, DC 20013–37127.

The National Park Service hopes to publish in the near future a revised cumulative list comprising all properties on the National Register. In the meantime, print-outs of specific listings of states or counties can be obtained by calling on (202) 343–9559 or writing to the National Register Reference Desk at the above address.

Denis P. Galvin,
Acting Director.

January 29, 1988.

PROPERTIES LISTED IN THE NATIONAL REGISTER

The following properties were listed in the National Register of Historic Places in fiscal years 1986 and 1987.

Properties Listed in The National Register in Fiscal Year 1986

ALABAMA

Barbour County

Eufaula, *Lore, Seth and Irwinton Historic District (Boundary Increase)*, Roughly bounded by Browder St., Van Buren Ave., Washington St., and Sanford Ave. [8/14/86]

Butler County

Greenville, *Blackwell, W. S., House [Greenville MRA]*, 211 Ft. Dale St. [9/04/86]

Greenville, *Buell—Stallings—Stewart House [Greenville MRA]*, 205 Ft. Dale St. [9/04/86]

Greenville, *Butler Chapel A.M.E. Zion Church [Greenville MRA]*, 407 Oglesby [9/04/86]

Greenville, *Commerce Street Residential Historic District [Greenville MRA]*, W. Commerce and Pine Sts. [8/28/86]

Greenville, *Confederate Park [Greenville MRA]*, E. Commerce St. [9/04/86]

Greenville, *Dickenson House [Greenville MRA]*, 537 S. Conecuh St. [9/04/86]

Greenville, *Evens—McMullen House [Greenville MRA]*, 301 Bolling St. [9/04/86]

Greenville, *First Baptist Church [Greenville MRA]*, 707 South St. [9/04/86]

Greenville, *First Presbyterian Church [Greenville MRA]*, 215 E. Commerce St. [9/04/86]

Greenville, *Ft. Dale—College Street Historic District [Greenville MRA]*, Roughly bounded by Fort Dale, Hamilton, and N. College Sts. [8/28/86]

Greenville, *Gaston—Perdue House [Greenville MRA]*, 111 Cedar St. [9/04/86]

Greenville, *Graydon House [Greenville MRA]*, 507 Cedar St. [9/04/86]

Greenville, *Greenville Public School Complex [Greenville MRA]*, 101 Butler Circle [9/04/86]

Greenville, *Hawthorne—Cowart House [Greenville MRA]*, 319 Bolling St. [9/04/86]

Greenville, *Hinson House [Greenville MRA]*, 208 Oliver St. [9/04/86]

Greenville, *House at 308 South Street [Greenville MRA]*, 308 South St. [9/04/86]

Greenville, *King Street Historic District [Greenville MRA]*, Roughly bounded by W. Commerce, Oliver, Milner, and King Sts. [8/28/86]

Greenville, *Lane—Kendrick—Sherling House [Greenville MRA]*, 109 Ft. Dale St. [9/04/86]

Greenville, *McMullan—Skinner House [Greenville MRA]*, 204 Oliver St. [9/04/86]

Greenville, *South Street Historic District [Greenville MRA]*, Roughly bounded by South, Oliver, and McKenzie Sts. [8/28/86]

Greenville, *South Greenville Historic District [Greenville MRA]*, Roughly bounded by Walnut, S. Conecuh, Parmer, and Church and Harrison and Caldwell Sts. [8/28/86]

Greenville, *Theological Building—AME Zion Theological Institute [Greenville MRA]*, E. Conecuh St. [9/04/86]

Greenville, *West Commerce Street Historic District [Greenville MRA]*, Roughly bounded by W. Commerce, Bolling, and Milner Sts., and L & N RR [8/28/86]

Greenville, *Wright—Kilgore House [Greenville MRA]*, 808 Walnut St. [9/04/86]

Calhoun County

Anniston, *Anniston Cottan Manufacturing Company [Anniston MRA]*, 215 W. Eleventh St. [10/03/85]

Anniston, *Anniston Transfer Company [Anniston MRA]*, 911 Wilmer Ave. [10/03/85]

Anniston, *Bagley—Cater Building [Anniston MRA]*, 15 E. Tenth St. [10/03/85]

Anniston, *Bank of Anniston [Anniston MRA]*, 1005 Noble St. [10/03/85]

Anniston, *Calhoun County Courthouse [Anniston MRA]*, 25 W. Eleventh St. [10/03/85]

Anniston, *Glen Addie Volunteer Hose Company Fire Hall [Anniston MRA]*, Fourth St. and Pine Ave. [10/03/85]

Anniston, *Glenwood Terrace Residential Historic District [Anniston MRA]*, Roughly bounded by Oak St., jefferson Ave., lots on S side of Glenwood Terr. and N side of Orchard St., and Highland Ave. [10/03/85]

Anniston, *Glover, Henry Burt, House [Anniston MRA]*, 1119 Leighton Ave. [10/03/85]

Anniston, *Grace Episcopal Church [Anniston MRA]*, 1000 Leighton Ave. [10/03/85]

Anniston, *Hillside Cemetery [Anniston MRA]*, Highland Ave. between Tenth and Eleventh Sts. [10/03/85]

Anniston, *Huger, Richard P., House [Anniston MRA]*, 1901 Wilmer Ave. [10/03/85]

Anniston, *Kilby House [Anniston MRA]*, 1301 Woodstock Ave. [10/03/85]

Anniston, *Kress Building [Anniston MRA]*, 1106 Noble St. [10/03/85]

Anniston, *Montgomery Ward—Alabama Power Company Building [Anniston MRA]*, 1201 Noble St. [10/03/85]

Anniston, *Mount Zion Baptist Church [Anniston MRA]*, 212 Second St. [10/03/85]

Anniston, *Noble—McCoo—Butler House [Anniston MRA]*, 1025 Fairmont Ave. [10/03/85]

Anniston, *Noble, Samuel, Monument [Anniston MRA]*, Eleventh St. and Quintard Ave. [10/03/85]

Anniston, *Nonnenmacher Bakery [Anniston MRA]*, 36 W. Eleventh St. [10/03/85]

Anniston, *Nonnenmacher House [Anniston MRA]*, 1311 Gurnee Ave. [10/03/85]

Anniston, *Oak Tree Cottage [Anniston MRA]*, 721 Oak St. [10/03/85]

Anniston, *Parker Memorial Baptist Church [Anniston MRA]*, 1205 Quintard Ave. [10/03/85]

Anniston, *Peerless Saloon [Anniston MRA]*, 13 W. Tenth St. [10/03/85]

ALABAMA—Continued

Anniston, *Rollstone Machinery Company [Anniston MRA]*, 300 W. Fifteenth St. [10/03/85]

Anniston, *Saint Paul's Methodist Episcopal Church [Anniston MRA]*, 1327 Leighton Ave. [10/03/85]

Anniston, *Security Bank Building [Anniston MRA]*, 1030 Noble St. [10/03/85]

Anniston, *Smith, Lansing T., House [Anniston MRA]*, 531 Keith Ave. [10/03/85]

Anniston, *Temple Beth-El [Anniston MRA]*, 301 E. Thirteenth St. [10/03/85]

Anniston, *Tyler Hill Residential Historic District [Anniston MRA]*, Roughly bounded by E. Seventh, Knox and Goodwin and Lapsley Aves., E. Sixth St., and Leighton Ave. [10/03/85]

Anniston, *Union Depot and Freight House [Anniston MRA]*, 1300 Walnut Ave. [10/03/85]

Anniston, *Wikle Drug Company [Anniston MRA]*, 1010 Noble St. [10/03/85]

Anniston, *Downtown Jacksonville Historic District*, Roughly bounded by College, Thomas, Coffee, and Spring Sts. [5/13/86]

Choctaw County

Mount Sterling, *Mount Sterling Methodist Church*, Near jct. of CR 43 and CR 27 [5/06/86]

Colbert County

Leighton vicinity, *Johnson, John, House [Tidewater Cottages in the Tennessee Valley TR]*, Near jct. of Fosters Mill and River Rds. [7/09/86]

Leighton, *Preult Oaks*, Cotton Town Rd. [5/06/86]

Dallas County

Cahaba vicinity, *Adams Grove Presbyterian Church*, S side of Cahaba-Greenville Rd. [6/05/86]

De Kalb County

Fort Payne, *Alabama Builders' Hardware Manufacturing Company*, 204 Eighth St. NE [5/06/86]

Escambia County

Flomaton, *Commercial Hotel—Hart Hotel*, 120 Palafox St. [5/22/86]

Etowah County

Gadsden, *Hood, Colonel O. R., House*, 862 Chestnut St. [5/06/86]

Jefferson County

Birmingham (also in Mountain Brook), *Red Mountain Suburbs Historic District*, Roughly bounded by Crest and Argyle and Altamont, Country Club, Salisbury, and Lanark Rds. [10/03/85]

Birmingham, *Agee House*, 1804 Twelfth Ave. S [8/28/86]

Birmingham, *Anderson Place Historic District*, Roughly bounded by Fourteenth Ave. S, Eighteenth St. S, Sixteenth Ave. S, and Fifteenth St. S [8/28/86]

Birmingham, *Bottega Favorita*, 2200–2244 Highland Ave. [8/28/86]

Birmingham, *Cullom Street—Twelfth Street South Historic District*, Roughly bounded by Eleventh Ave., Twelfth St. S, Cullom St., and Thirteenth St. S [8/21/86]

Birmingham, *Five Points South Historic District (Boundary Increase)*, Roughly bounded by Twelfth Ave., Nineteenth St., Thirteenth Ave., and Seventeenth St. [8/28/86]

Birmingham, *Morris Avenue-First Avenue North Historic District*, 2000–2400 blks. of Morris Ave. and 2100–2500 blks. of First Ave. N [1/09/86]

Birmingham, *Saint Andrew's Episcopal Church*, 1164 Eleventh Ave. S [8/28/86]

Birmingham, *Second Presbyterian Church*, Tenth Ave. and Twelfth St. S [9/11/86]

Birmingham, *Smithfield Historic District*, Between Eighth Ave. N, Fourth Terr., and Sixth St. N to First St. N [10/15/85]

Birmingham, *Smith, Joseph Riley, Historic District*, 300–400 blks. of Tenth Ave., 100–400 blks. of Ninth Ct., 944 Fourth St. W, and 948 Third St. W [10/10/85]

Birmingham, *Wimberly-Thomas Warehouse*, 1809 First Ave. S [10/03/85]

Lauderdale County

Florence vicinity, *Armistead, Peter F., Sr., House [Tidewater Cottages in the Tennessee Valley TR]*, Waterloo Rd. [7/09/86]

Smithsonia vicinity, *Kager, William, House [Tidewater Cottages in the Tennessee Valley TR]*, Smithsonia-Rhodesville Rd. [7/09/86]

Lawrence County

Haleyville vicinity, *Archeological Site No. 1LA102*, Address Restricted [12/14/85]

Wheeler vicinity, *Bride's Hill [Tidewater Cottages in the Tennessee Valley TR]*, Lock Rd. [7/09/86]

Limestone County

Athens, *Houston, Governor George Smith, House*, 101 N. Houston St. [5/15/86]

Macon County

Tuskeegee vicinity, *Archeological Site No. 1MC110*, Address Restricted [12/14/85]

Madison County

Huntsville, *Neutral Buoyancy Space Simulator*, George C. Marshall Space Flight Center [10/03/85]

Huntsville, *Propulsion and Structural Test Facility*, George C. Marshall Space Flight Center [10/03/85]

Huntsville, *Saturn V Dynamic Test Stand*, George C. Marshall Space Flight Center [10/03/85]

Marshall County

Arab, *Hotel Thompson*, 104 First Ave. NE [5/06/86]

Mobile County

Mobile, *Magnolia Cemetery including Mobile National Cemetery*, Ann and Virginia Sts. [6/13/86]

Mobile, *Paterson House*, 1673 Government St. [5/15/86]

Mobile, *USS ALABAMA (battleship)*, Battleship Pkwy. [1/14/86]

Mobile, *USS DRUM (submarine)*, Battleship Pkwy. [1/14/86]

Montgomery County

Montgomery, *Shepherd Building*, 312 Montgomery St. [5/22/86]

Morgan County

Decatur, *Cotaco Opera House*, 115 Johnson St. SE [4/29/86]

Somerville vicinity, *Rice, Green Pryor, House [Tidewater Cottages in the Tennessee Valley TR]*, Jct. of Madison and Monroe Sts. [7/09/86]

Trinity vicinity, *Murphey, Dr. William E., House [Tidewater Cottages in the Tennessee Valley TR]*, Off US 72 [7/09/86]

Perry County

Marion, *Henry House*, S. Washington St. [9/25/86]

Sumter County

Gainesville, *Coffin Shop [Gainesville MRA]*, McKee and Monroe Sts. [10/29/85]

Gainesville, *Colgin Hill [Gainesville MRA]*, Off AL 39 [10/03/85]

Gainesville, *Gainesville Historic District [Gainesville MRA]*, Roughly bounded by North Carolina, Church and School and Lafayette Sts., and of town grid, and Webster St. [10/03/85]

Gainesville, *Gibbs House [Gainesville MRA]*, SW of Spruce and Webster Sts. [10/03/85]

Gainesville, *Main—Yankee Street Historic District [Gainesville MRA]*, Roughly bounded by Main, Washington, and School Sts. [10/03/85]

Gainesville, *Park and Bandstand [Gainesville MRA]*, State and McKee Sts. [10/29/85]

Gainesville, *Watson, Laura, House [Gainesville MRA]*, Epes Rd. [10/03/85]

Talladega County

Talladega, *Averiett, Benjamin H., House [Benjamin H. Averiett Houses TR]*, AL 8 [8/28/86]

Talladega, *Averiett, William, House [Benjamin H. Averiett Houses TR]*, Off AL 8 [8/28/86]

Talladega, *Goodwin—Hamilton House [Benjamin H. Averiett Houses TR]*, Marble Valley Rd. [8/28/86]

Talladega, *Lawler—Whiting House*, AL 21 S of Talladega [5/22/86]

Talladega, *Welch—Averiett House [Benjamin H. Averiett Houses TR]*, AL 8 [8/28/86]

Tuscaloosa County

Tuscaloosa, *Downtown Tuscaloosa Historic District*, Roughly bounded by Fourth St., Twenty-second Ave., Seventh St., and Greensboro Ave. [5/15/86]

Tuscaloosa, *Pinehurst Historic District*, 215 and 305 Seventeenth Ave., 1–28 Pinehurst Dr., and 6–9 N. Pinehurst Dr. [6/05/86]

Winston County

Haleyville vicinity, *Archeological Site No. 1WI50*, Address Restricted [12/14/85]

ALASKA

Anchorage Borough-Census Area

Anchorage, *David, Leopold, House*, 605 W. Second Ave. [7/24/86]

Anchorage, *Kimball's Store*, 500 and 504 W. Fifth Ave. [7/24/86]

Anchorage, *Potter Section House*, Off AK 1 [12/05/85]

ALASKA—Continued

Fairbanks North Star Borough

Fairbanks, *Fairbanks Historic District*, Roughly bounded by Cushman St., Barnette St., Illinois St., and Chena River [12/05/85]

Fairbanks, *Polaris Building*, 542 4th Ave. [12/05/85]

Fairbanks, *Presbyterian Church Parsonage*, 1416 Cowles St. [12/05/85]

Fairbanks, *Wickersham House at 1729 Peger*, 1729 Peger Rd. [12/05/85]

Juneau Borough-Census Area

Juneau, *Alaska Steam Laundry*, 134 Front St. [12/05/85]

Juneau, *Alaska Theatre of Science*, 101 Egan Dr. [12/05/85]

Juneau, *Alaska-Juneau Mine Historic District*, Roughly bounded by Gastineau Channel, Sherman St., Mine Rd., and Glacier Ave. [12/05/85]

Juneau, *Alaska-Juneau Mine Historic District (Boundary Increase)

ALASKA—Continued

Dillingham Borough-Census Area

Dillingham, *Pilgrim 100B Aircraft*, Dillingham Municipal Airport [8/07/86]

Kenai Peninsula Borough-Census Area

Cooper Landing, *Cooper Landing Historic District*, AK 1 [8/21/86]

Sitka Borough-Census Area

Sitka vicinity, *Sitka Naval Operating Base and US Army Coastal Defenses*, Japonski Island [8/11/86]

Valdez-Cordova Borough-Census Area

Chisana, *Chisana Historic District*, Extending W ¼ mi. from SE end of Chisana Airstrip and parallel to Johnson Creek [11/29/85]

ARIZONA

Cochise County

Douglas, *Douglas Residential Historic District*, Roughly bounded by Twelfth St., Carmelita Ave., Seventh St., and East Ave. [7/31/86]

Douglas, *El Paso and Southwestern Railroad Passenger Depot—Douglas*, Fourteenth St. and H Ave. [4/16/86]

Douglas, *US Post Office and Customs House—Douglas Main [Historic US Post Offices in Arizona, 1900–1941, TR]*, 601 Tenth St. [12/03/85]

Coconino County

Cameron vicinity, *Cameron Suspension Bridge*, US 89 [8/05/86]

Flagstaff, *Arizona Lumber and Timber Company Office [Flagstaff MRA]*, 1 Riordan Rd. [4/30/86]

Flagstaff, *Brannen—Devine House [Flagstaff MRA]*, 209 E. Cottage [4/30/86]

Flagstaff, *C & M Garage [Flagstaff MRA]*, 204 S. Milton Rd. [4/30/86]

Flagstaff, *Campbell, H. E., House [Flagstaff MRA]*, 215 Leroux [4/30/86]

Flagstaff, *Coconino County Hospital Complex [Flagstaff MRA]*, Ft. Valley Rd. [4/30/86]

Flagstaff, *Flagstaff Armory [Flagstaff MRA]*, 503 S. Milton [4/30/86]

Flagstaff, *Flagstaff Townsite Historic Residential District [Flagstaff MRA]*, Roughly bounded by Cherry, Humphreys and Sitgreaves Sts., Railroad Ave., and Toltec and Aztec Sts. [4/30/86]

Flagstaff, *Francis, D. M., House [Flagstaff MRA]*, 1436 Meade Ln. [4/30/86]

Flagstaff, *House at 720 Grand Canyon Avenue [Flagstaff MRA]*, 720 Grand Canyon Ave. [4/30/86]

Flagstaff, *House at 310 South Beaver [Flagstaff MRA]*, 310 S. Beaver [4/30/86]

Flagstaff, *Koch, I. B., House [Flagstaff MRA]*, 7 Riordan Rd. [4/30/86]

Flagstaff, *La Cuidad de Mexico Grocery [Flagstaff MRA]*, 217 S. San Francisco [4/30/86]

Flagstaff, *North End Historic Residential District [Flagstaff MRA]*, Roughly bounded by Hunt, San Francisco and Verde, Elm and Cherry, and Beaver and Humphreys Sts. [4/30/86]

Flagstaff, *Northern Arizona Normal School Historic District*, Northern Arizona University, US 89 [5/22/86]

Flagstaff, *Our Lady of Guadalupe Church [Flagstaff MRA]*, 302 S. Kendrick [4/30/86]

Flagstaff, *Presbyterian Church Parsonage [Flagstaff MRA]*, 15 E. Cherry [4/30/86]

Flagstaff, *Prochnow House [Flagstaff MRA]*, 304 S. Elden [4/30/86]

Flagstaff, *Railroad Addition Historic District (Boundary Increase) [Flagstaff MRA]*, Roughly bounded by Santa Fe RR tracks, San Francisco St., alley S of Phoenix Ave., and Beaver St. [8/17/86]

Flagstaff, *Wilson, Charles, Jr., House [Flagstaff MRA]*, 100 Wilson Dr. [4/30/86]

Grand Canyon South Rim vicinity, *Hull Cabin Historic District*, 1¼ mi. S of Grand Canyon South Rim, Kaibab National Forest [10/23/85]

Grand Canyon vicinity, *Trans-Canyon Telephone Line, Grand Canyon National Park*, Grand Canyon along Bright Angel and North Kaibab Trails from South Rim to Roaring Springs and South Kaibab Trail to Tipoff [5/13/86]

Gila County

Globe, *US Post Office and Courthouse—Globe Main [Historic US Post Offices in Arizona, 1900–1941, TR; Globe Commercial and Civic MRA (AD)]*, Hill and Sycamore Sts. [12/03/85]

Payson vicinity, *Houston Mesa Ruins*, Address Restricted [9/04/86]

Payson vicinity, *Natural Bridge Lodge*, Off AZ 87 [8/21/86]

Maricopa County

Phoenix, *Blount Addition Historic District [Roosevelt Neighborhood MRA]*, N side of W. Culver St. between Central and Third Aves. [2/27/86]

Phoenix, *Coronado Neighborhood Historic District*, Roughly bounded by Virginia Ave., Fourteenth St., McDowell Rd., and Seventh St. [2/13/86]

Phoenix, *Durand Grocery [Phoenix Commercial TR]*, 901 Grand Ave. [10/01/85]

Phoenix, *Firestone [Phoenix Commercial TR]*, 302 W. Van Buren [10/01/85]

Phoenix, *Gates, Neil H., House*, 4602 N. Elsie Ave. [8/11/86]

Phoenix, *Higuera Grocery [Phoenix Commercial TR]*, 923 S. Second Ave. [10/01/85]

Phoenix, *Overland Arizona Company [Phoenix Commercial TR]*, 12 N. Fourth Ave. [10/01/85]

Phoenix, *Rohbein Grocery [Phoenix Commercial TR]*, 1231 Grand Ave. [10/01/85]

Phoenix, *Steinegger Lodging House [Phoenix Commercial MRA]*, 27 E. Monroe [6/19/86]

Phoenix, *Union Station [Phoenix Commercial MRA]*, Fourth Ave. and Southern Pacific RR tracks [11/25/85]

Phoenix, *Valley Plumbing & Sheet Metal [Phoenix Commercial TR]*, 530 W. Adams [10/01/85]

Phoenix, *West End Hotel [Phoenix Commercial TR]*, 701 W. Washington [10/01/85]

Phoenix, *Yaun Ah Gim Groceries [Phoenix Commercial MRA]*, 1002 S. Fourth Ave. [7/08/86]

Wickenburg, *Cactus Inn [Wickenburg MRA]*, 158 Yavapai [7/10/86]

Wickenburg, *City Hall and Jail [Wickenburg MRA]*, 117 Yavapai [7/10/86]

Wickenburg, *House at 160 Apache [Wickenburg MRA]*, 160 Apache [7/10/86]

Wickenburg, *House at 170 Center [Wickenburg MRA]*, 170 Center [7/10/86]

Wickenburg, *House at 185 Washington [Wickenburg MRA]*, 185 Washington [7/10/86]

Wickenburg, *Jacobs House [Wickenburg MRA]*, 355 N. Jefferson [7/10/86]

Wickenburg, *MacLennan House [Wickenburg MRA]*, 338 Jefferson [7/10/86]

Wickenburg, *Masonic Hall [Wickenburg MRA]*, 108 Tegner [7/10/86]

Wickenburg, *Municipal Light Plant [Wickenburg MRA]*, 245 N. Washington [7/10/86]

Wickenburg, *Old Barber Shop [Wickenburg MRA]*, 68 Frontier [7/10/86]

Wickenburg, *Old Brick Post Office [Wickenburg MRA]*, 144 N. Frontier [7/10/86]

Wickenburg, *Safeway Pay 'n Takit [Wickenburg MRA]*, 42 N. Tegner [7/10/86]

Wickenburg, *Santa Fe Railroad Depot [Wickenburg MRA]*, 215 N. Frontier [7/10/86]

Wickenburg, *Shaide House [Wickenburg MRA]*, 57 Tegner [7/21/86]

Wickenburg, *Storms House [Wickenburg MRA]*, 130 Center [7/10/86]

Wickenburg, *Thompson, P. J., House [Wickenburg MRA]*, 141 N. Washington [7/10/86]

Wickenburg, *Upton, George E., House [Wickenburg MRA]*, 171 Washington [7/10/86]

Wickenburg, *Vernetta Hotel [Wickenburg MRA]*, 1 Apache St. [7/10/86]

Wickenburg, *Wickenburg High School Gymnasium [Wickenburg MRA]*, 252 S. Tegner [7/10/86]

Wickenburg, *Wickenburg Ice and Cold Storage [Wickenburg MRA]*, 46 S. Cocanino [7/10/86]

Wickenburg, *Wickenburg High School and Annex [Wickenburg MRA]*, 250 S. Tegner [7/10/86]

Mohave County

Kingman, *AT & T Building [Kingman MRA]*, Pine and Third Sts. [5/14/86]

Kingman, *AT & SF Locomotive [Kingman MRA]*, City Park [5/14/86]

Kingman, *Anderson, Max J., House [Kingman MRA]*, 523 Pine St. [5/14/86]

Kingman, *Armour and Jacobsen Building [Kingman MRA]*, 426–430 Beale St. [5/14/86]

Kingman, *Blakeley, William C., House [Kingman MRA]*, 503 Spring St. [5/14/86]

Kingman, *Brown, Duff T., House [Kingman MRA]*, 524 E. Oak St. [5/14/86]

Kingman, *Building at 218 Spring Street [Kingman MRA]*, 228 Spring St. [5/14/86]

Kingman, *Carr, Raymond, House [Kingman MRA]*, 620 E. Oak St. [5/14/86]

Kingman, *Dennis, Foster S., House [Kingman MRA]*, Second and Park [5/14/86]

Kingman, *Desert Power & Water Co., Electric Power Plant [Kingman MRA]*, Bounded by AT & SF RR tracks, Spillway Ln., Park and First Sts. [5/14/86]

Kingman, *Elk's Lodge No. 488 [Kingman MRA]*, Fourth and Oak Sts. [5/14/86]

ARIZONA—Continued

Kingman, *Elliott, S. T., House [Kingman MRA]*, 537 Spring St. [5/14/86]

Kingman, *Gates, J. M., House [Kingman MRA]*, 714 E. Oak St. [5/14/86]

Kingman, *Gruninger, W. A., Building [Kingman MRA]*, 424 Beale St. [5/14/86]

Kingman, *Gymnasium [Kingman MRA]*, First St. [5/14/86]

Kingman, *House at 105 Spring Street [Kingman MRA]*, 105 Spring St. [5/14/86]

Kingman, *House at 536 Park [Kingman MRA]*, 536 Park [5/14/86]

Kingman, *House at 519 Golconda [Kingman MRA]*, 519 Golconda [5/14/86]

Kingman, *House at 527 Pine Street [Kingman MRA]*, 527 Pine St. [5/14/86]

Kingman, *Householder, Ross E., House [Kingman MRA]*, 431 Spring St. [5/14/86]

Kingman, *House at 809 Grand View [Kingman MRA]*, 809 Grand View [5/14/86]

Kingman, *IOOF Building [Kingman MRA]*, 206 N. Fifth St. [5/14/86]

Kingman, *Kayser, George R., House [Kingman MRA]*, 604 E. Oak St. [5/14/86]

Kingman, *Kingman Grammar School [Kingman MRA]*, Pine St. [5/14/86]

Kingman, *Kingman Commercial Historic District [Kingman MRA]*, 300 and 400 blks. of Andy Devine Ave. [5/14/86]

Kingman, *Lefever House [Kingman MRA]*, 525 E. Oak St. [5/14/86]

Kingman, *Little Red School [Kingman MRA]*, 219 N. Fourth St. [5/14/86]

Kingman, *Livingston, Dr. David S., House [Kingman MRA]*, 222 Topeka [5/14/86]

Kingman, *Lovin and Withers Cottages [Kingman MRA]*, Eighth and Topeka [5/14/86]

Kingman, *Lovin & Withers Investment House [Kingman MRA]*, 722 E. Beale St. [5/14/86]

Kingman, *Mahoney, W. P., House [Kingman MRA]*, 155 E. Walnut [5/14/86]

Kingman, *Masonic Temple [Kingman MRA]*, 212 N. Fourth St. [5/19/86]

Kingman, *Mohave County Hospital [Kingman MRA]*, W. Beale between Grand View and First St. [5/14/86]

Kingman, *Saint Mary's Catholic Church [Kingman MRA]*, Third and Spring Sts. [5/14/86]

Kingman, *Saint John's Methodist Episcopal Church [Kingman MRA]*, Spring and Fifth Sts. [5/14/86]

Kingman, *Sargent, Mrs. M. P., House [Kingman MRA]*, 426 Topeka [5/14/86]

Kingman, *Sullivan, G. H., Lodging House [Kingman MRA]*, 218 E. Oak [5/14/86]

Kingman, *Tyrell House [Kingman MRA]*, 133 Beale St. [5/14/86]

Kingman, *US Post Office [Kingman MRA]*, 310 N. Fourth St. [5/14/86]

Kingman, *Van Marter Building [Kingman MRA]*, 423–427 Beale St. [5/14/86]

Kingman, *Walker, O. E., House [Kingman MRA]*, 906 Madison [5/14/86]

Kingman, *White, Dr. Toler R., House [Kingman MRA]*, 509 Spring St. [5/14/86]

Kingman, *Williams, E. B., House [Kingman MRA]*, 513 E. Oak St. [5/14/86]

Kingman, *Wright, J. B., House [Kingman MRA]*, 317 Spring St. [5/14/86]

Kingman, *Ziemer, Charles, House [Kingman MRA]*, 507 E. Oak St. [5/14/86]

Willow Beach vicinity, *Willow Beach Gauging Station*, Lake Mead National Recreation Area [3/21/86]

Navajo County

Black Mesa vicinity, *Standing Fall House*, Address Restricted [11/01/85]

Halbrook, *Sapp, Sidney, House*, 215 W. Hopi [3/13/86]

Winslow vicinity, *Homolovi Four (IV)*, Address Restricted [6/04/86]

Pima County

Tucson, *Iron Horse Expansion Historic District*, Roughly bounded by Eighth St., Euclid Ave., Hughes and Tenth Sts., and N. Fourth and Hoff Aves. [6/19/86]

Tucson, *Rillito Racetrack—Chute*, 4502 N. First Ave. [6/12/86]

Tucson, *University of Arizona Campus Historic District*, Roughly bounded by E. Second St., N. Cherry Ave., E. Fourth St., and Park Ave. [6/13/86]

Pinal County

Casa Grande, *Casa Grande Union High School and Gymnasium [Casa Grande MRA]*, 420 E. Florence Blvd. [2/03/86]

Florence, *Arbolio, Ramon, House [Florence MRA]*, 405 Park St. [8/01/86]

Florence, *Carminatti—Perham House [Florence MRA]*, Sixth and Florence Sts. [8/01/86]

Florence, *Colton, Albert and Freeman, H. H., House [Florence MRA]*, 1500 Willow St. [8/01/86]

Florence, *Devine, Ed and Lottie, House [Florence MRA]*, 1200 Central St. [8/01/86]

Florence, *Harvey—Niemeyer House [Florence MRA]*, 1613 Main St. [8/01/86]

Florence, *Henry, C. D., House [Florence MRA]*, 1520 Willow St. [8/01/86]

Florence, *Huffman, Dr. George, House [Florence MRA]*, 507 E. Butte St. [8/01/86]

Florence, *Littlefield, Inez and Davis, Bea, House [Florence MRA]*, 1913 Elizabeth St. [8/01/86]

Florence, *Lorono, Andronico, Second House [Florence MRA]*, 704 Silver St. [8/01/86]

Florence, *Price, W. Y., House [Florence MRA]*, 1612 Willow St. [8/01/86]

Florence, *Warner, P. C., First House [Florence MRA]*, 310 Third St. [8/01/86]

Santa Cruz County

Nogales, *US Post Office and Immigration Station—Nogales Main [Historic US Post Offices in Arizona, 1900–1941, TR]*, Hudgin St. and Morley Ave. [12/3/85]

Nogales, *Marsh Heights Historic District [Nogales MRA]*, Roughly bounded by Court St., Summit Ave., S. Court St., and Morley Ave. [10/29/85]

Yavapai County

Camp Verde vicinity, *Wingfield, Robert W., House*, Montezuma Castle Hwy. [2/03/86]

Cottonwood, *Building at 828 North Main Street [Cottonwood MRA]*, 828 N. Main St. [9/19/86]

Cottonwood, *Clemenceau Public School [Cottonwood MRA]*, 1 N. Willard St. [9/19/86]

Cottonwood, *Edens House [Cottonwood MRA]*, 1015 N. Cactus St. [9/19/86]

Cottonwood, *Master Mechanic's House [Cottonwood MRA]*, 333 S. Willard St. [9/19/86]

Cottonwood, *Smelter Machine Shop [Cottonwood MRA]*, 360 S. Sixth St. [9/19/86]

Cottonwood, *Strahan House [Cottonwood MRA]*, 725 E. Main St. [9/19/86]

Cottonwood, *Thompson Ranch [Cottonwood MRA]*, 2874 US Alt. 89 [9/19/86]

Cottonwood, *UVX Smelter Operations Complex [Cottonwood MRA]*, 361 S. Willard [9/19/86]

Cottonwood, *Willard House [Cottonwood MRA]*, 114 W. Main [9/19/86]

Prescott, *US Post Office and Courthouse—Prescott Main [Historic US Post Offices in Arizona, 1900–1941, TR]*, 101 W. Goodwin Ave. [12/03/85]

Yuma County

Gila Bend vicinity, *Sears Point Archaeological District*, Address Restricted [10/16/85]

Yuma, *US Post Office—Yuma Main [Historic US Post Offices in Arizona, 1900–1941, TR]*, 370 W. Third St. [12/03/85]

ARKANSAS

Arkansas County

Nady vicinity, *Menard—Hodges Mounds (3AR4)*, Address Restricted [10/31/85]

Stuttgart, *Riceland Hotel*, Third and Main Sts. [5/21/86]

Benton County

Siloam Springs vicinity, *Goforth—Saindon Mound Group*, Address Restricted [1/23/86]

War Eagle, *War Eagle Bridge*, CR 98 [11/19/85]

Clark County

Arkadelphia, *Habicht—Cohn—Crow House*, Eighth and Pine [10/03/85]

Whelen Springs vicinity, *Ross Site (3CL401)*, Address Restricted [10/10/85]

Conway County

Morrilton, *Saint Anthony's Hospital*, 202 E. Green St. [3/28/86]

Craighead County

Jonesboro, *Berger–Graham House*, 1327 S. Main St. [10/10/85]

Crittenden County

Earle, *Missouri Pacific Depot*, Main and Commerce Sts. [3/06/86]

Garland County

Hot Springs, *Martin, William H., House*, 815 Quapaw Ave. [6/11/86]

Izard County

Calico Rock, *Calico Rock Historic District*, Roughly bounded by Main, Rodman, and Walnut Sts., and Peppersauce Alley [11/19/85]

Jefferson County

Pine Bluff, *Prigmore House*, 1104 W. Fifth Ave. [4/10/86]

Pine Bluff, *Sorrells, Walter B., Cottage*, Off AR 104 [8/04/86]

Logan County

Ratcliff, *Saint Anthony's Catholic Church*, N of AR 22 [8/21/86]

ARKANSAS—Continued
Monroe County
Brinkley, *Rusher Hotel*, 127 W. Cedar [7/18/86]

Montgomery County
Bonnerdale vicinity, *Reeves–Nelson House*, SE of Montgomery adjacent to branch of Mazarn Creek [12/05/85]

Pike County
Murfreesboro, *Conway Hotel*, 108 Courthouse Sq. [3/06/86]

Pulaski County
Little Rock, *Frank, Joseph M., House*, 912 W. Fourth [10/03/85]
Little Rock, *Van Frank Cottages*, 515–519 E. Fifteenth St. and 1510 Park Ln. [10/21/85]

Saline County
Benton vicinity, *Hughes Mound Site (3SA11)*, Address Restricted [10/10/85]

Scott County
Waldron vicinity, *Mount Pleasant Methodist Church*, AR 248 [6/05/86]

Searcy County
St. Joe vicinity, *Henley, Benjamin Franklin, House*, Off US 65 [12/05/85]

Stone County
Marcella, *Martin, Owen, House [Stone County MRA]*, AR 14 [10/25/85]
Mountain View, *Brewer, John F., House [Stone County MRA]*, AR 9 [10/25/85]
Mountain View, *Brewer, A. B., Building [Stone County MRA]*, AR 66 [10/25/85]
Turkey Creek, *Turkey Creek School [Stone County MRA]*, AR 9 [10/25/85]

Union County
El Dorado, *Rialto Theatre*, 117 E. Cedar St. [8/21/86]

Washington County
Fayetteville, *Happy Hollow Farm*, CR 10 [8/08/86]
Springdale, *Rabbits Foot Lodge*, 3600 Silent Grove Rd. [9/11/86]

CALIFORNIA

Alameda County
Fremont, *Patterson, George Washington, Ranch—Ardenwood*, 34600 Newark Blvd. [11/29/85]
Oakland, *Pacific Gas & Electric Company Building*, 1625 Clay and 551 Seventeenth Sts. [7/17/86]

Amador County
Ione vicinity, *Five Mile Drive—Sutter Creek Bridge*, Five Mile Drive [4/11/86]
Jackson, *Butterfield, John A., House*, 115 Broadway [9/11/86]
Jackson, *Saint Sava Serbian Orthodox Church*, 724 N. Main [3/06/86]

El Dorado County
Placerville, *Hottie (Gold Bug), Priest and Silver Pine Mines and Stampmill*, 2501 Bedford Ave. [11/15/85]
Placerville, *Pearson, John, Soda Works*, 594 Main St. [12/12/85]

Fresno County
Fresno, *Holy Trinity Armenian Apostolic Church*, 2226 Ventura St. [7/31/86]
Sanger vicinity, *Stoner House*, 21143 E. Welson Ave. [10/17/85]

Humboldt County
Arcata, *Phillips House*, 71 E. Seventh St. [10/24/85]
Arcata, *Pythian Castle*, 1100 H St. [2/20/86]
Arcata, *Stone House*, 902 Fourteenth St. [2/27/86]
Eureka, *Carnegie Free Library*, 636 F St. [1/23/86]
Eureka, *Simpson—Vance House*, 904 G St. [7/17/86]
Ferndale, *Alford—Nielson House*, 1299 Main St. [1/23/86]
Orick vicinity, *Bald Hills Archeological District Extension (Boundary Increase)*, Address Restricted [11/04/85]

Imperial County
Winterhaven Anthropomorph and Bowknot, L–9 [Earth Figures of California-Arizona Colorado River Basin TR], Address Restricted [10/25/85]

Kern County
Mojave Desert, *Rogers Dry Lake*, Edwards Air Force Base [10/03/85]

Los Angeles County
Claremont, *Pitzer House*, 4353 N. Towne [9/04/86]
Downey, *Casa de Parley Johnson*, 7749 Florence Ave. [3/20/86]
Hollywood, *Villa Bonita*, 1817 Hillcrest Rd. [9/12/86]
Los Angeles vicinity, *500 Varas Square—Government Reserve*, Address Restricted [3/12/86]
Los Angeles, *Little Tokyo Historic District*, 301–369 First and 106–120 San Pedro Sts. [8/22/86]
Los Angeles, *Rindge, Frederick Hastings, House*, 2263 Harvard Blvd. [1/23/86]
Los Angeles, *San Fernando Building, The*, 400–410 S. Main St. [7/31/86]
Pasadena, *Blacker, Robert R., House*, 1177 Hillcrest Ave. [2/06/86]
Pasadena, *Bryan Court [Bungalow Courts of Pasadena TR]*, 427 S. Morengo Ave. [4/16/86]
Pasadena, *Hale Solar Laboratory*, 740 Holladay Rd. [1/23/86]
Pasadena, *Space Flight Operations Facility*, Jet Propulsion Laboratory [10/03/85]
Pasadena, *Twenty-Five Foot Space Simulator*, Jet Propulsion Laboratory [10/03/85]
Pomona, *Edison Historic District*, 611, 637, and 500 blk. of W. Second St. [8/13/86]
Pomona, *Pomona YMCA Building*, 350 N. Geary Ave. [3/06/86]
Venice, *Wilson, Warren, Beach House*, 15 Thirtieth St. [7/17/86]
West Hollywood, *Patio del Moro*, 8225–8237 Fountain Ave. [9/11/86]

Marin County
Inverness vicinity, *Pierce Ranch*, Point Reyes National Seashore [12/06/85]
Inverness vicinity, *Point Reyes Lifeboat Rescue Station, 1927*, Drake's Bay, Point Reyes National Seashore [11/07/85]

Monterey County
Pacific Grove, *Buck, Frank LaVerne, House*, 581 Pine Ave. [9/11/86]

Napa County
Napa, *Henessey, Dr. Edwin, House*, 1727 Main St. [6/26/86]

Orange County
Anaheim, *Melrose–Backs Neighborhood Houses*, 226 and 228 E. Adele and 303, 307, 317, 321 N. Philadelphia [4/03/86]
Huntington Beach, *Newland House*, 19820 Beach Blvd. [10/24/85]
Irvine, *Irvine Bean and Growers Association Building*, 14972 Sand Canyon Ave. [1/13/86]
Irvine, *Irvine Blacksmith Shop*, 14962 Sand Canyon Ave. [3/20/86]
Newport Beach, *Balboa Inn*, 105 Main St. [4/11/86]
Newport Beach, *Bank of Balboa—Bank of America*, 611 E. Balboa Blvd. [7/24/86]
Orange, *Culver, C. Z., House*, 206 E. Palmyra [3/20/86]
San Juan Capistrano, *Forster, Frank A., House*, 27182 Ortega Hwy. [9/11/86]
Santa Ana, *Harmon–McNeil House*, 322 E. Chestnut St. [11/07/85]
Santa Ana, *Santa Ana Fire Station Headquarters No. 1*, 1322 N. Sycamore St. [7/10/86]
Santa Ana, *Yost Theater—Ritz Hotel*, 301–307 N. Spurgeon St. [1/23/86]

Riverside County
Riverside, *Sutherland Fruit Company*, 3191 Seventh St. [4/11/86]

San Bernardino County
Fort Irwin, *Pioneer Deep Space Station*, Goldstone Deep Space Communications Complex [10/03/85]
Needles vicinity, *Archeological Site No. D–4 [Earth Figures of California–Arizona Colorado River Basin TR]*, Address Restricted [10/25/85]
Parker vicinity, *Archeological Site No. E–21 [Earth Figures of California–Arizona Colorado River Basin TR]*, Address Restricted [10/25/85]

San Diego County
Borrego Springs vicinity, *Anza Borrego–Palo Verde Site, S–2 [Anza Borrego–Palo Verde Site, S–21]*, Address Restricted [10/25/85]
Borrego Springs vicinity, *Anza Borrego–Sin Nombre, S–4 [Earth Figures of California–Arizona Colorado River Basin TR]*, Address Restricted [10/25/85]
Borrego Springs vicinity, *Anza Borrego–Spit Mountain Site, S–3 [Earth Figures of California–Arizona Colorado River Basin TR]*, Address Restricted [10/25/85]
San Diego, *Burnham—Marston House*, 3563 Seventh Ave. [9/22/86]
San Diego, *Eagles Hall*, 733 Eighth Ave. [10/4/85]
Vista, *Braun, Charles A., House*, 790 Vale View Dr. [1/05/86]

San Francisco County
San Francisco, *Belt Railroad Engine House and Sandhouse*, Block bounded by Lombard, Sansome, and the Embarcadero [2/13/86]

CALIFORNIA—Continued
San Francisco, *KING PHILIP (ship) and REPORTER (schooner) Shipwreck Site*, Foot of Ortega St. [5/5/88]
San Francisco, *Market Street Theatre and Loft District*, 962–1112 Market, 973–1105 Market, 1 Jones, and 1–35 Taylor Sts. [4/10/86]
San Francisco, *USS PAMPANITO (submarine)*, Fisherman's Wharf–Pier 45 [1/14/88]
San Francisco, *YMCA Hotel*, 351 Turk St. [2/06/86]

San Joaquin County
Lodi, *Morse—Skinner Ranch House*, 13063 N. CA 99 [6/21/88]

San Mateo County
Menlo Park, *Barron—Latham—Hopkins Gate Lodge*, 555 Ravenswood Ave. [6/23/88]
Woodside, *Green Gables—Fleischhacker, Mortimer, Country House*, 329 Albin Ave. [9/25/86]

Santa Barbara County
Lompoc, *Space Launch Complex 10*, Vandenberg Air Force Base [6/23/86]
Santa Barbara, *Hill–Carrillo Adobe*, 11 E. Carrillo St. [1/14/86]

Santa Clara County
Los Altos Hills, *Lanternam Hall*, 12355 Stonebrook Dr. [12/19/85]
Moffett Field, *Unitary Plan Wind Tunnel*, Ames Research Center [10/3/85]
Palo Alto, *Ramona Street Architectural District*, 518–581 Ramona St. and 255–267 Hamilton Ave. [3/27/86]
San Jose, *Dohrmann Building*, 325 S. First St. [2/20/86]
Stanford, *Palo Alto Stock Farm Horse Barn*, Fremont Rd. [12/12/85]

Santa Cruz County
Santa Cruz, *Carmelita Court*, 315–321 Main St. [3/20/86]

Shasta County
French Gulch vicinity, *Tower House-Soo-Yeh-Choo-Pus*, Address Restricted [11/04/85]

Solano County
Vacaville, *Buck, Will H., House*, 301 Buck Ave. [10/24/85]

Sonoma County
Petaluma, *Petaluma Silk Mill*, 420 Jefferson St. [3/06/86]
Sonoma, *Buena Vista Vineyards—Buena Vista Viniculture Society*, 18000 Old Winery Rd. [7/24/86]

Tulare County
Porterville vicinity, *Tenalu*, Address Restricted [9/04/86]

Ventura County
Fillmore, *Bardsdale Methodist Episcopal Church*, 1418 Bardsdale Ave. [8/28/86]
Santa Paula, *Santa Paula Hardware Company Block—Union Oil Company*, 1003 E. Main St. [8/14/86]
Ventura, *Feraud General Merchandise Store*, 2 and 12 Main St. [1/23/86]

Yolo County
Davis, *Animal Science Building*, University of California, West Quad and Peter J. Shields Ave. [6/17/86]

COLORADO

Arapahoe County
Aurora, *Gully Homestead*, 200 S. Chambers Rd. [1/09/86]

Boulder County
Allenspark, *Bunce School*, CO 7 S of Allenspark [5/22/86]
Boulder, *Northern Colorado Power Company Substation*, 1800 Broadway [5/22/86]
Boulder, *US Post Office—Boulder Main [US Post Offices in Colorado, 1900–1941, TR]*, 1905 Fifteenth St. [1/22/86]
Louisville, *Denver Elevator—Grain Elevator [Louisville MRA]*, Tract 712 near CO 42 [2/14/86]
Louisville, *Ginacci House [Louisville MRA]*, 1116 LaFarge St. [2/14/86]
Louisville, *Jacoe Store [Louisville MRA]*, 1001 Main St. [2/14/86]
Louisville, *LaSalla House [Louisville MRA]*, 1124 Main St. [2/14/86]
Louisville, *Lockner's Tavern [Louisville MRA]*, 1006 Pine [2/14/86]
Louisville, *National Fuel Company Store [Louisville MRA]*, 801 Main St. [2/14/86]
Louisville, *Petrelli-DelPizzo House [Louisville MRA]*, 1018 Main St. [2/14/86]
Louisville, *Rhoades House [Louisville MRA]*, 1024 Grant [2/14/86]
Louisville, *Robinson House [Louisville MRA]*, 301 Spruce [2/14/86]
Louisville, *Stolmes House [Louisville MRA]*, 616 Front St. [2/14/86]
Louisville, *Tego Brothers Drugstore—State National Bank of Louisville [Louisville MRA]*, 700 Main St. [2/14/86]
Louisville, *Thomas House [Louisville MRA]*, 700 Lincoln [2/14/86]

Delta County
Delta, *US Post Office and Federal Building—Delta Main [US Post Offices in Colorado, 1900–1941, TR]*, 360 Meeker St. [1/24/86]

Denver County
Denver, *Alamo Placita Park [Denver Park and Parkway System TR]*, Roughly bounded by Speer Blvd., First Ave., and Clarkson St. [9/17/86]
Denver, *Berkeley Lake Park [Denver Park and Parkway System TR]*, Roughly bounded by N side of Berkeley Lake, Tennyson St., W. Forty-sixth Ave., and Sheridan Blvd. [9/17/86]
Denver, *Cheesman Park Esplanade [Denver Park and Parkway System TR]*, Roughly bounded by Eighth Ave., High St., Seventh Ave. Pkwy., and Williams St. [9/17/86]
Denver, *Cheesman Park [Denver Park and Parkway System TR]*, Roughly bounded by E. Thirteenth Ave., High St., E. Eighth Ave., and Franklin St. [9/17/86]
Denver, *City Park [Denver Park and Parkway System TR]*, Roughly bounded by E. Twenty-third Ave., Colorado Blvd., E. Seventeenth Ave., and York St. [9/17/86]
Denver, *City Park Esplanade [Denver Park and Parkway System TR]*, City Park Esplanade from E. Colfax Ave. to E. Seventeenth Ave. [9/17/86]
Denver, *City Park Golf [Denver Park and Parkway System TR]*, Roughly bounded by E. Twenty-sixth Ave., Colorado Blvd., E. Twenty-third Ave., and York St. [9/17/86]
Denver, *Clermont Street Parkway [Denver Park and Parkway System TR]*, Clermont St. Pkwy. from E. Third Ave. to E. Sixth Ave. [9/17/86]
Denver, *Cranmer Park [Denver Park and Parkway System TR]*, Roughly bounded by E. Third Ave., Cherry St., E. First Ave., and Bellaire St. [9/17/86]
Denver, *Downing Street Parkway [Denver Park and Parkway System TR]*, Downing St. Pkwy. from E. Bayaud Ave. to E. Third Ave. [9/17/86]
Denver, *East Fourth Avenue Parkway [Denver Park and Parkway System TR]*, E. Fourth Ave. Pkwy from Gilpin St. to Williams St. [9/17/86]
Denver, *East Seventeenth Avenue Parkway [Denver Park and Parkway System TR]*, E. Seventeenth Ave. Pkwy. from Colorado Blvd. to Monaco St. Pkwy. [9/17/86]
Denver, *East Seventh Avenue Parkway [Denver Park and Parkway System TR]*, E. Seventh Ave. Pkwy. from Williams St. to Colorado Blvd. [9/17/86]
Denver, *East Sixth Avenue Parkway [Denver Park and Parkway System TR]*, E. Sixth Ave. Pkwy. from Colorado Blvd. to Quebec St. [9/17/86]
Denver, *Forest Street Parkway [Denver Park and Parkway System TR]*, Forest St. Pkwy. from Seventeenth Ave. to Montview Blvd. [9/17/86]
Denver, *Highland Park [Denver Park and Parkway System TR]*, Roughly bounded by Highland Park Pl., Federal Blvd., and Fairview Pl. [9/17/86]
Denver, *Hungarian Freedom Park [Denver Park and Parkway System TR]*, Roughly bounded by Speer Blvd., First Ave., and Clarkson St. [9/17/86]
Denver, *Inspiration Point [Denver Park and Parkway System TR]*, Roughly bounded by W. Fiftieth Ave., Sheridan Blvd., W. Forty-ninth Ave., and Fenton St. [9/17/86]
Denver, *Monaco Street Parkway [Denver Park and Parkway System TR]*, Monaco St. Pkwy. from E. First Ave. to Montview Blvd. [9/17/86]
Denver, *Montclair Park [Denver Park and Parkway System TR]*, Roughly bounded by E. Twelfth Ave., Oneida St., and Richthofen Pkwy. [9/17/86]
Denver, *Niblock-Yocovetta Terrace*, 1301–1319 W. Thirty-fifth Ave. [9/27/86]
Denver, *Potter Highlands Historic District*, Roughly bounded by W. Thirty-eighth, Zuni, and W. Thirty-second Sts., and Federal Blvd. [1/22/86]
Denver, *Richthofen Place Parkway [Denver Park and Parkway System TR]*, Richthofen Pl. Pkwy. from Monaco St. Pkwy. to Oneida St. [9/17/86]
Denver, *Richthofen Monument [Denver Park and Parkway System TR]*, Richthofen Pkwy. at Oneida St. [9/17/86]
Denver, *Rocky Mountain Lake Park [Denver Park and Parkway System TR]*, Roughly bounded by I–70, Federal Blvd., W. Forty-sixth Ave., and Lowell Blvd. [9/17/86]
Denver, *San Rafael Historic District*, Roughly bounded by E. Twenty-sixth Ave., Downing

COLORADO—Continued
St., E. Twentieth Ave., and Washington St. [5/20/86]
Denver, *South Marion Street Parkway [Denver Park and Parkway System TR]*, S. Marion St. Pkwy. from E. Virginia Ave. to E. Bayaud Ave. at Downing St. [9/17/86]
Denver, *South Side-Baker Historic District*, Roughly bounded by W. Fifth Ave., Broadway, W. Alameda Ave., and W. Fox St. [10/03/85]
Denver, *Speer Boulevard [Denver Park and Parkway System TR]*, Speer Blvd. from W. Colfax Ave. to Downing St. [9/17/86]
Denver, *Spratlen-Anderson Wholesale Grocery Company—Davis Brothers Warehouse*, 1450 Wynkoop St. [12/03/85]
Denver, *Sunken Gardens [Denver Park and Parkway System TR]*, Roughly bounded by Speer Blvd., W. Eighth Ave., Delaware, and Kiati Sts. [9/17/86]
Denver, *University Boulevard [Denver Park and Parkway System TR]*, University Blvd. from E. Iowa Ave. to E. Alameda Ave. [9/17/86]
Denver, *Washington Park [Denver Park and Parkway System TR]*, Roughly bounded by E. Virginia Ave., S. Franklin St., E. Louisiana Ave., and S. Downing St. [9/17/86]
Denver, *West Forty-sixth Avenue Parkway [Denver Park and Parkway System TR]*, W. Forty-sixth Ave. Pkwy. from Stuart St. to Grove St. [9/17/86]
Denver, *Williams Street Parkway [Denver Park and Parkway System TR]*, Williams St. Pkwy. from E. Fourth Ave. to E. Eighth Ave. [9/17/86]

El Paso County

Colorado Springs, *Colorado Springs Fine Arts Center*, 30 W. Dale St. [07/03/86]
Colorado Springs, *Cutler Hall [Colorado College TR]*, 912 N. Cascade Ave. [7/03/86]
Colorado Springs, *Palmer Hall [Colorado College TR]*, 116 E. San Rafael [7/03/86]
Colorado Springs, *US Post Office and Federal Courthouse—Colorado Springs Main [US Post Offices in Colorado, 1900–1941, TR]*, 210 Pikes Peak Ave. [1/22/86]
Manitou Springs, *US Post Office—Manitou Springs Main [US Post Offices in Colorado, 1900–1941, TR]*, 307 Canon Ave. [1/24/86]

Fremont County

Canon City, *Canon City Downtown Historic District (Boundary Increase)*, 602 Macon Ave. [2/06/86]
Canon City, *US Post Office and Federal Building—Canon City Main [US Post Offices in Colorado, 1900–1941, TR]*, Fifth St. and Macon Ave. [1/22/86]
Florence, *US Post Office—Florence Main [US Post Offices in Colorado, 1900–1941, TR]*, 121 N. Pikes Peak St. [1/22/86]

Garfield County

Glenwood Springs, *Starr Manor*, 901 Palmer Ave. [6/20/86]
Rifle, *US Post Office—Rifle Main [US Post Offices in Colorado, 1900–1941, TR]*, Railroad Ave. and Fourth St. [1/24/86]

Kit Carson County

Burlington, *Wineger Building*, 494–498 Fourteenth St. [5/22/86]

Las Animas County

Trinidad, *US Post Office—Trinidad Main [US Post Offices in Colorado, 1900–1941, TR]*, 301 E. Main St. [1/22/86]

Logan County

Sterling, *Sterling Union Pacific Railroad Depot*, 113 N. Front St. [2/06/86]
Sterling, *US Post Office, Federal Building, and Federal Courthouse—Sterling Main [US Post Offices in Colorado, 1900–1941, TR]*, Third and Popular Sts. [1/22/86]

Montrose County

Montrose, *US Post Office—Montrose Main [US Post Offices in Colorado, 1900–1941, TR]*, 321 S. First St. [1/22/86]

Morgan County

Fort Morgan, *US Post Office—Fort Morgan Main [US Post Offices in Colorado, 1900–1941, TR]*, 300 State St. [1/22/86]

Phillips County

Haxtun, *First National Bank of Haxtun*, 145 S. Colorado Ave. [7/01/86]

Pitkin County

Aspen, *Hotel Jerome*, 330 E. Main St. [3/20/86]

Prowers County

Lamar, *US Post Office—Lamar Main [US Post Offices in Colorado, 1900–1941, TR]*, 300 S. Fifth St. [1/22/86]

Pueblo County

Pueblo, *Barndollar—Gann House*, 1006 Court St. [11/07/85]
Pueblo, *Black, Dr. John A., House Complex*, 102 W. Pitkin Ave. [11/07/85]
Pueblo, *Farris Hotel*, 315 N. Union Ave. [11/13/85]
Pueblo, *McCarthy, T. G., House*, 617 N. Grand Ave. [5/22/86]
Pueblo, *Rice, Ward, House*, 1825 Grand Ave. [11/07/85]
Pueblo, *Tooke—Nuckolls House*, 38 Carille Pl. [11/07/85]
Pueblo, *Woodcroft Sanatorium*, 1300 W. Abriendo Ave. [12/03/85]

Rio Grande County

Monte Vista, *US Post Office and Federal Building—Monte Vista Main [US Post Offices in Colorado, 1900–1941, TR]*, Washington and Second Ave. [1/22/86]

Saguache County

Creststone, *Creststone School*, Cottonwood St. and Carbonate Ave. [1/09/86]

CONNECTICUT

Fairfield County

Bridgeport, *US Post Office—Bridgeport Main*, 120 Middle St. [3/17/86]
Danbury, *Union Station*, White St. and Patriot Dr. [9/25/86]
Greenwich, *US Post Office—Greenwich Main*, 310 Greenwich Ave. [1/16/86]
Norwalk, *South Main and Washington Streets Historic District (Boundary Increase)*, 11–15 through 54–60 S. Main St. [11/08/85]
Norwalk, *US Post Office—South Norwalk Main*, 16 Washington St. [1/21/86]
Stamford, *Revonah Manor Historic District*, Roughly bounded by Urban St., East Ave., Fifth, and Bedford Sts. [7/31/86]
Stamford, *South End Historic District*, Roughly bounded by Penn Central RR tracks, Stamford Canal, Woodland Cemetery, and Washington Blvd. [3/19/86]
Stamford, *US Post Office—Stamford Main*, 421 Atlantic St. [12/12/85]
Trumbull, *Mallett, David, Jr., House*, 420 Tashua Rd. [2/20/86]

Hartford County

Bristol, *Federal Hill Historic District*, Roughly bounded by Summer, Maple, Woodland, Goodwin, and High Sts. [6/26/86]
Farmington, *Shode Swamp Shelter [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, US 6 E of New Britain Ave. [9/04/86]
Granby, *Granby Center Historic District*, 3–8 E. Granby Rd., 2 Park Pl., and 207–265 Salmon Brook St. S [10/17/85]
Hartford, *Upper Albany Historic District*, Roughly bounded by Holcomb St., Vine St., Homestead Ave., and Woodland and Ridgefield Sts. [9/29/86]
Hartford/West Hartford, *Hartford Golf Club Historic District*, Roughly bounded by Simsbury Rd. and Bloomfield Ave., Northmoor Rd., Albany Ave., and Mohegan Dr. [6/26/86]
Hartland, *Tunxis Forest Ski Cabin [Cognecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, W end of Balance Rock Rd. [9/05/86]
Hartland, *Tunxis Forest Headquarters House [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, W side of Pell Rd., 2 mi. N of Town Rd. [9/04/86]
Manchester, *US Post Office—Manchester Main*, 479 Main St. at Center St. [1/21/86]
Simsbury, *Massacoe Forest Pavilion [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, Off Old Farms Rd., Stratton Brook State Park [9/04/86]
South Windsor, *East Windsor Hill Historic District*, Roughly bounded by the Scantic River, John Fitch Blvd., Sullivan Ave., and the Connecticut River [5/30/86]
South Windsor, *Windsor Farms Historic District*, Roughly bounded by Strong Rd., US 5, I–291, and the Connecticut River [4/11/86]
West Hartford, *Beardsley—Mix House [Eighteenth-Century Houses of West Hartford TR]*, 81 Rockledge Dr. [9/10/86]
West Hartford, *Bruce, Moses—Cadwell, Uriah, House [Eighteenth-Century Houses of West Hartford TR]*, 11 Flagg Rd. [9/10/86]
West Hartford, *Butler House [Eighteenth-Century Houses of West Hartford TR]*, 253 N. Main St. [9/10/86]
West Hartford, *Butler, James, House [Eighteenth-Century Houses of West Hartford TR]*, 239 N. Main St. [9/10/86]
West Hartford, *Colton, Benjamin, House [Eighteenth-Century Houses of West Hartford TR]*, 25 Sedgewick Rd. [9/10/86]

CONNECTICUT—Continued
West Hartford, *Farnsworth, Samuel, House [Eighteenth-Century Houses of West Hartford TR]*, 537 Mountain Rd. [9/10/86]
West Hartford, *Gillett, Asa, House [Eighteenth-Century Houses of West Hartford TR]*, 202 S. Main St. [9/10/86]
West Hartford, *Goodman, Timothy, House [Eighteenth-Century Houses of West Hartford TR]*, 567 Quaker Ln. S [9/10/86]
West Hartford, *House at 847 Main Street, North [Eighteenth-Century Houses of West Hartford TR]*, 847 Main St. N [9/10/86]
West Hartford, *Revolutionary War Campsite*, US 44 [4/24/86]
West Hartford, *Seymour, Elisha, Jr., House [Eighteenth-Century Houses of West Hartford TR]*, 410 and 412 Park Rd. [9/10/86]
West Hartford, *Stanley-Woodruff-Allen House [Eighteenth-Century Houses of West Hartford TR]*, 37 Buena Vista Rd. [9/10/86]
West Hartford, *Steele, Allyn, House [Eighteenth-Century Houses of West Hartford TR]*, 114 N. Main St. [9/10/86]
West Hartford, *Wells, John, Jr., House [Eighteenth-Century Houses of West Hartford TR]*, 505 Mountain Rd. [9/10/86]
West Hartford, *Whitman House [Eighteenth-Century Houses of West Hartford TR]*, 206 N. Main St. [9/10/86]

Litchfield County

Barkhamsted, *American Legion Forest CCC Shelter [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, W side of West River Rd., American Legion State Forest [9/04/86]
Barkhamsted, *Peoples Forest Museum [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, Greenwood Rd., Peoples State Forest [9/04/86]
Cornwall, *Red Mountain Shelter [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, N side of CT 4 adjacent to Appalachian Trail [9/04/86]
New Milford, *Merryall Union Evangelical Society Chapel*, Chapel Hill Rd. [6/05/86]
New Milford, *New Milford Center Historic District*, Bennett and Elm Sts., Center Cemetery, East, S. Main, Mill, and Railroad Sts. [6/13/86]
Sharon, *Cream Hill Shelter [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, Wickwire Rd. [9/04/86]
Torrington, *Paugnut Forest Administration Building [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, 385 Burr Mountain Rd. [9/05/86]
Torrington, *South School*, 362 S. Main St. [3/27/86]

Middlesex County

Cromwell, *Main Street Historic District*, Roughly bounded by Nooks Hill Rd., Prospect Hill Rd., Wall and West Sts. and New Ln., and Stevens Ln. and Main St. [10/24/85]
Durham, *Main Street Historic District*, Roughly Mapple Ave. and Main St. between Talcott Ln. and Higganum Rd. [9/04/86]
East Haddam, *Seventh Sister*, 67 River Rd. [7/31/86]
East Hampton, *Belltown Historic District*, Roughly Main St. between W. High St. and CT 16, and portions of cross sts. W. High, Barton Hill-Summit, and Skinner [10/28/85]
East Hampton, *Rapallo Viaduct*, Flat Brook and former Air Line RR right-of-way [6/21/86]
Killingworth, *Oak Lodge [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, W side of Schreeder Pond, Chatfield Hollow State Park [9/04/86]
Middlefield, *Lyman, David, II, House*, 5 Lyman Rd. [2/06/86]
Middletown, *Russell Company Upper Mill*, 475 E. Main St. [2/06/86]
Middletown, *Sanseer Mill*, 215 E. Main St. [7/31/86]
Middletown, *Woodrow Wilson High School*, Hunting Hill Ave. and Russell St. [8/06/86]

New Haven County

Ansonia, *US Post Office—Ansonia Main*, 237 Main St. [12/12/85]
Cheshire, *Cheshire Historic District*, Roughly bounded by Main St., Highland Ave., Wallingford Rd., S. Main, Cornwall, and Spring Sts. [8/29/86]
Derby, *Osbornedale*, 500 Hawthorne Ave. [6/13/86]
Guilford, *Eliot, Jared, House*, 86 Old Chaffinch Island Rd. [11/14/85]
Hamden, *Sleeping Giant Tower [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, 200 Mt. Carmel Ave. at Mt. Carmel summit, Sleeping Giant State Park [9/04/86]
Madison, *State Park Supply Yard [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, 51 Mill Rd. [9/04/86]
Meriden, *US Post Office—Meriden Main*, 39 N. Colony St. [1/21/86]
Milford, *River Park Historic District*, Roughly bounded by Boston Post Rd., Cherry St. and Amtrak, and High St. [8/14/86]
Milford, *US Post Office—Milford Main*, 6 W. River St. [9/25/85]
Naugatuck, *US Post Office—Naugatuck Main*, Church and Cedar Sts. [1/21/86]
New Haven, *Beaver Hills Historic District*, Roughly bounded by Crescent St., Goffe Terr., and Boulevard [7/31/86]
New Haven, *Edgewood Park Historic District*, Roughly bounded by Whalley Ave. and Elm St., Sherman Ave. and Boulevard, Edgewood and Derby, and Vale Aves. [9/09/86]
New Haven, *Hall-Benedict Drug Company Building*, 763–767 Orange St. [6/05/86]
New Haven, *Imperial Granum-Joseph Parker Buildings*, 47 and 49–51 Elm St. [3/06/86]
Wallingford, *Simpson, Samuel, House*, 216 N. Main St. [6/16/86]
West Haven, *Old West Haven High School*, 278 Main St. [10/24/85]

New London County

Colchester, *Blackledge River Railroad Bridge*, Former Air Line RR right-of-way and the Blackledge River [7/31/86]
Colchester, *Lyman Viaduct*, Dickinson Creek and former Air Line RR right-of-way [6/21/86]
Colchester, *River Road Stone Arch Railroad Bridge*, River Rd. and former Air Line RR right-of-way [8/21/86]
East Lyme, *Rocky Neck Pavilion [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, Lands End Point, Rocky Neck State Park [9/04/86]
Griswold, *Avery House [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, NE corner of Park and Roode Rds. [9/04/86]
Hadlyme, *Seventh Sister*, 67 River Rd. [7/31/86]
Ledyard vicinity, *Mashantucket Pequot Reservation*, Address Restricted [6/11/86]
Montville vicinity, *Fort Shantok*, Address Restricted [3/20/86]
New London, *Hempstead Historic District*, Roughly bounded by Franklin St., Jay St., and Mountain Ave. [7/31/86]
New London, *Prospect Street Historic District*, Roughly bounded by Bulkeley Pl., Huntington, Federal, and Hempstead Sts. [7/31/86]
New London, *US Post Office—New London Main*, 27 Masonic St. [1/21/86]
Norwich, *Perkins-Rockwell House*, 42 Rockwell St. [10/17/85]
Norwich, *US Post Office—Norwich Main*, 340 Main St. [7/17/86]

Windham County

Eastford, *Natchaug Forest Lumber Shed [Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR]*, Kingsbury Rd., Natchaug State Forest [9/04/86]
Plainfield, *First Congregational Church of Plainfield*, CT 12 [7/31/86]
Pomfret, *Brayton Grist Mill*, US 44 [6/13/86]
Sterling/Plainfield, *Sterling Hill Historic District*, Green Ln. and CT 14A [2/06/86]

DELAWARE

Kent County

Wyoming vicinity, *Lewis Family Tenant Agricultural Complex*, CR 227 [6/13/86]

New Castle County

Glascow vicinity, *Stewart, James, House*, CR 401 [6/11/86]
Middletown vicinity, *Okolona [Rebuilding St. Georges Hundred, 1850–1880, TR]*, Rt. 429 [11/19/85]
Middletown vicinity, *Weston [Rebuilding St. Georges Hundred, 1850–1880, TR]*, Off DE 71 [11/19/85]
Middletown, *Choptank-Upon-The-Hill [Rebuilding St. Georges Hundred, 1850–1880, TR]*, Rt. 435 [11/19/85]
Newark vicinity, *Ott's Chapel*, CR 397 [6/13/86]
Odessa vicinity, *Fairview [Rebuilding St. Georges Hundred, 1850–1880, TR]*, Rt. 412 [11/19/85]
Odessa vicinity, *Mondamon Farm [Rebuilding St. Georges Hundred, 1850–1880, TR]*, Rt. 2 [11/19/85]
Odessa vicinity, *Riverdale [Rebuilding St. Georges Hundred, 1850–1880, TR]*, Off Bay View and Silver Run Rds. [11/19/85]

GEORGIA—Continued

DELAWARE—Continued
Townsend, *Townsend Historic District*, Roughly bounded by Gray, Ginn and South, Lattamus and Main Sts., and Commerce St. and Cannery Ln. and Railroad Ave. [5/08/86]
Wilmington, *Braunstein's Building (Market Street MRA)*, 704–708 N. Market St. [12/19/85]
Wilmington, *East Brandywine Historic District*, Roughly bounded by Sixteenth St., Brandywine Creek, Twelfth St., and US 13 [12/19/85]
Wilmington, *Main Office of the New Castle Leather Company*, Eleventh and Poplar Sts. [12/19/85]
Wilmington, *Quaker Hill Historic District (Boundary Increase)* Roughly bounded by Eighth, Catawba and Washington, Sixth and Seventh, and Wollaston Sts. [12/19/85]
Wilmington, *Wawaset Park Historic District*, Bounded by Pennsylvania Ave., Woodlawn Ave., Seventh St., and Greenhill Ave. [1/03/86]

DISTRICT OF COLUMBIA

District of Columbia
Washington, *Banneker Recreation Center*, 2500 Georgia Ave. NW [4/28/86]
Washington, *Plymouth, The*, 1236 Eleventh St. NW [6/02/86]
Washington, *Twin Oaks*, 3225 Woodley Rd. [2/05/86]

FLORIDA

Alachua County
Gainesville vicinity, *Kanapaha*, 8500 FL 24 [5/02/86]
Gainesville, *Baird Hardware Company Warehouse*, 619 S. Main St. [11/25/85]
Gainesville, *Rolfs Hall*, University of Florida, Buckman Dr. [9/11/86]
Gainesville, *Star Garage*, 119 S.E. First Ave. [12/17/85]

Baker County
Macclenny, *Old Baker County Courthouse*, 14 W. McIver St. [8/21/86]

Bay County
Panama City, *McKenzie, Robert L., House*, 17 E. Third Ct. [8/21/86]

Bradford County
Starke, *Call Street Historic District*, Bounded by Jefferson, Cherry, Madison, and Temple Sts. [12/12/85]

Brevard County
Cocoa, *Porcher House*, 434 Delannoy Ave. [1/06/86]

Citrus County
Crystal River vicinity, *Mullet Key*, 4½ km S of Crystal River mouth [7/03/86]

Collier County
Ochopee vicinity, *Burns Lake Site (8CR259)*, Address Restricted [5/27/86]
Ochopee vicinity, *Plaza Site (8CR303)*, Address Restricted [5/28/86]

Dade County
Cutler, *Deering, Charles, Estate*, S.W. One Hundred Sixty-seventh St. and Old Cutler Rd. [3/11/86]
Homestead, *Homestead Public School-Neva King Cooper School*, 520 N.W. First St. [12/04/85]
Miami Shores, *Grand Concourse Apartments*, 421 Grand Concourse [12/02/85]
Miami Springs, *Adams, Carl G., House (Country Club Estates TR)*, 31 Hunting Lodge Ct. [11/01/85]
Miami Springs, *Clune Building (Country Club Estates TR)*, 45 Curtiss Pkwy. [11/01/85]
Miami Springs, *Curtiss, Lua, House I (Country Club Estates TR)*, 85 Deer Run [11/01/85]
Miami Springs, *Curtiss, Lua, House II (Country Club Estates TR)*, 150 Hunting Lodge [11/01/85]
Miami Springs, *Hequembourg House (Country Club Estates TR)*, 851 Hunting Lodge [11/01/85]
Miami Springs, *Millard-McCarty House (Country Club Estates TR)*, 434 Hunting Lodge [4/22/86]
Miami Springs, *Osceola Apartment Hotel (Country Club Estates TR)*, 200 Azure Way [11/01/85]
Miami, *Miami Edison Senior High School*, 6101 N.W. Second Ave. [6/05/86]
North Miami, *Arch Creek Historic and Archeological Site*, 1855 N.E. One Hundred Thirty-fifth St. and Biscayne Blvd. [7/15/86]

Duval County
Jacksonville vicinity, *Mission of San Juan del Puerto Archeological Site*, Address Restricted [3/25/86]

Flagler County
Marineland vicinity, *Marine Studios*, CT A1A, Box 122 [4/14/86]

Hillsborough County
Tampa vicinity, *Upper Tampo Bay Archeological District*, Address Restricted [12/10/85]
Tampa, *Masonic Temple No. 25*, 506 E. Kennedy Blvd. [9/11/86]

Jefferson County
Monticello, *Palmer—Perkins House (Boundary Increase)*, Walnut St. [3/18/86]

Leon County
Tallahassee, *Martin, Gov. John W., House*, 1001 Governor's Dr. [1/06/86]

Manatee County
Palmetto, *Woman's Club of Palmetto*, 910 Sixth St. W [3/06/86]

Marion County
Ocala, *Ritz Apartment, The*, 1205 E. Silver Springs Blvd. [8/21/86]

Nassau County
Fernandina Beach, *Palmer, John Denham, House*, 1305 Atlantic Ave. [7/03/86]

Palm Beach County
Delray Beach, *Seaboard Airline Railroad Station*, 1525 W. Atlantic Ave. [9/04/86]
Jupiter vicinity, *Jupiter Inlet Historic and Archeological Site*, Address Restricted [11/05/85]
Palm Beach, *Palm Beach Daily News Building*, 204 Brazilian Ave. [12/24/85]
Palm Beach, *Vineta Hotel*, 383 Cocoanut Row [8/21/86]
West Palm Beach, *Dixie Court Hotel*, 301 N. Dixie Hwy. [8/21/86]

Pinellas County
St. Petersburg, *Boone House*, 601 Fifth Ave. N [7/03/86]
St. Petersburg, *Dennis Hotel*, 326 First Ave. N [4/17/86]
St. Petersburg, *Potter House*, 577 Second St. S [6/13/86]
St. Petersburg, *St. Petersburg Public Library*, 280 Fifth St. N [6/13/86]

Polk County
Lake Wales vicinity, *El Retiro*, Mountain Lake off FL 17 [12/12/85]
Lakeland, *South Lake Morton Historic District*, Bounded by Lake Morton Dr. and Palmetto St., Ingraham and Johnson Aves., McDonald and Balmar Sts., and Tennessee Ave. [11/20/85]

Santa Rosa County
Chamuckla vicinity, *Thomas Creek Archeological District*, Address Restricted [11/04/85]

Sarasota County
Miakka vicinity, *Miakka School House*, Miakka and Wilson Rds. [7/3/86]
Sarasota vicinity, *Field Estate*, Field Rd. and Camino Real [6/05/86]

Suwannee County
Live Oak, *Old Live Oak City Hall*, 212 N. Ohio Ave. [4/24/86]
Live Oak, *Union Depot and Atlantic Coast Line Freight Station*, 200 blk. of N. Ohio Ave. [4/24/86]

Volusia County
Daytona Beach, *Merchants Bank Building*, 252 S. Beach St. [1/06/86]
Daytona Beach, *Rogers House*, 436 N. Beach St. [9/11/86]

GEORGIA

Baldwin County
Milledgeville vicinity, *Roe-Harper House*, Off US 441 [3/06/86]

Banks County
Homer, *Homer Historic District*, Along Main St. and Silver Shoals Rd. [12/03/85]

Barrow County
Winder, *Athens-Candler-Church Street Historic District*, Roughly Candler St. between Melrose and Woodlawn Sts., Church St., and Athens St. between Horton and Center Sts. [4/17/86]

Bibb County
Macon, *Pleasant Hill Historic District*, Roughly bounded by Sheridan Ave. and Schofield St., Madison, Jefferson and Ferguson, and Gallaud Sts. [5/22/86]

Camden County
St. Marys vicinity, *Crooked River Site (9CAM118)*, Address Restricted [12/23/85]

Chattahoochee County
Cusseta, *Chattahoochee County Jail*, Mt. Olive and Boyd Sts. [3/13/86]

GEORGIA—Continued
Cobb County
Marietta, *Church Street—Cherokee Street Historic District*, Roughly bounded by Margaret Ave. and Chicopee Dr., DeSoto Ave., Montgomery and Brumby, and Campbell Hill Sts. [12/03/85]

Coweta County
Moreland, *Brannon, W. A., Store—Moreland Knitting Mills*, Main St. [12/12/85]
Newnan vicinity, *Crowder, William Leonard, Home Place*, 1615 Handy Rd. [3/17/86]

De Kalb County
Atlanta, *Brookhaven Historic District*, E of Peachtree-Dunwoody and N and E of Peachtree Rds. [1/24/86]
Atlanta, *Inman Park—Moreland Historic District*, Roughly bounded by N. Highland, Seminole and Euclid, DeKalb, and Degress and Nashita Aves. [6/05/86]

Effingham County
Guyton, *New Hope AME Church*, Alexander St. [3/13/86]

Elbert County
Elberton, *Elberton Depot*, N. Oliver and Deadwyler Sts. [9/11/86]

Franklin County
Royston vicinity, *Bond—Baker—Carter House*, Address Restricted [9/11/86]

Fulton County
Atlanta, *Brookhaven Historic District*, E of Peachtree-Dunwoody and N and E of Peachtree Rds. [1/24/86]
Atlanta, *Central Presbyterian Church*, 201 Washington St. SW [3/13/86]
Atlanta, *Grant Park North*, Roughly bounded by Woodward Ave., Boulevard, I–20, and Hill St. [3/17/86]
Atlanta, *Inman Park—Moreland Historic District*, Roughly bounded by N. Highland, Seminole and Euclid, DeKalb, and Degress and Nashita Aves. [6/05/86]
Atlanta, *Peachtree Highlands Historic District*, Roughly bounded by Highland Dr., Martina Dr., E. Pace Ferry, and Piedmont Rds. [6/05/86]
Atlanta, *St. Andrews Apartments*, 1041 W. Peachtree St. [6/13/86]
Atlanta, *Washington, Booker T., High School*, 45 Whitehouse Dr. SW [3/18/86]

Harris County
Pine Mountain, *Chipley—Pine Mountain Town Hall*, McDougal Ave. [4/17/86]

Hart County
Hartwell, *Adams—Matheson House (Hartwell MRA)*, 116 Athens St. [9/11/86]
Hartwell, *Benson Street—Forest Avenue Residential Historic District (Hartwell MRA)*, Roughly along Benson St. from Forest Ave. to Adams St. and along Forest Ave. from Railroad St. to Garrison Rd. [9/11/86]
Hartwell, *Best, Allie M., House (Hartwell MRA)*, 122 Athens St. [9/11/86]
Hartwell, *Chandler—Linder House (Hartwell MRA)*, Johnson St. [9/11/86]
Hartwell, *Fortson, H. E., House (Hartwell MRA)*, 221 Richardson St. [9/11/86]
Hartwell, *Franklin Street—College Avenue Residential Historic District (Hartwell MRA)*, Roughly bounded by Johnson, Maple, Franklin and First, and Carter Sts. [9/11/86]
Hartwell, *Franklin Light and Power Company Steam Generating Station (Hartwell MRA)*, Leard St. at RR track [9/11/86]
Hartwell, *Gulley—Vickery—Blackwell House (Hartwell MRA)*, 115 Franklin St. [9/11/86]
Hartwell, *Hartwell City School (Hartwell MRA)*, College Ave. [9/11/86]
Hartwell, *Hartwell Methodist Episcopal Church, South (Hartwell MRA)*, Howell St. [9/11/86]
Hartwell, *Hartwell Commercial Historic District (Hartwell MRA)*, Roughly bounded by Franklin St., Forest Ave., Railroad St., and Jackson and Carolina Sts. [9/11/86]
Hartwell, *Horton—Vickery House (Hartwell MRA)*, 101 Vickery St. [9/11/86]
Hartwell, *Jones, Pearl J., House (Hartwell MRA)*, 401 Athens St. [9/11/86]
Hartwell, *Kendrick—Matheson House (Hartwell MRA)*, 212 Athens St. [9/11/86]
Hartwell, *Kidd, Charles L., House (Hartwell MRA)*, 304 W. Howell St. [9/11/86]
Hartwell, *Linder, Roscoe Conklin, House (Hartwell MRA)*, 118 Athens St. [9/11/86]
Hartwell, *McCurry—Kidd House (Hartwell MRA)*, 602 W. Howell St. [9/11/86]
Hartwell, *McMullan—Vickery Farm (Hartwell MRA)*, 602 Forest Ave. [9/11/86]
Hartwell, *Meredith, Dr. Owen, House (Hartwell MRA)*, 605 Benson St. [9/11/86]
Hartwell, *Morrison, Jackson, House (Hartwell MRA)*, 430 Rome St. [9/11/86]
Hartwell, *Pure Oil Service Station (Hartwell MRA)*, Howell St. at Jackson St. [9/11/86]
Hartwell, *Satterfield, Emory Edward, House (Hartwell MRA)*, 504 W. Howell St. [9/11/86]
Hartwell, *Saul, Meyer, House (Hartwell MRA)*, 304 W. Johnson St. [9/11/86]
Hartwell, *Skelton, Alexander Stephens, House (Hartwell MRA)*, 214 Athens St. [9/11/86]
Hartwell, *Teasley—Holland House (Hartwell MRA)*, 416 W. Howell St. [9/11/86]
Hartwell, *Teasley, Thomas William, House (Hartwell MRA)*, 417 W. Howell St. [9/11/86]
Hartwell, *Teasley, Ralph, House (Hartwell MRA)*, 421 W. Howell St. [9/11/86]
Hartwell, *Temple—Skelton House (Hartwell MRA)*, 201 Athens St. [9/11/86]
Hartwell, *Temple, John Roland, House (Hartwell MRA)*, 129 Athens St. [9/11/86]
Hartwell, *Underwood, John, House (Hartwell MRA)*, 825 S. Jackson St. [9/11/86]
Hartwell, *Witham Cotton Mills Village Historic District (Hartwell MRA)*, Along Liberty Circle, Jackson, and Webb Sts. [9/11/86]

Henry County
Hampton vicinity, *Griffin, Smith, House*, Off Wynn Dr. NE of GA 20 [12/19/85]
Locust Grove, *Locust Grove Institute Academic Building*, 3644 GA 42 [9/04/86]

Lamar County
Barnesville, *Barnesville Depot*, Plaza Way and Main St. [4/30/86]

Lanier County
Lakeland, *Lanier County Auditorium and Grammar School*, E. Church Ave. [4/10/86]

Liberty County
Midway vicinity, *Dorchester Academy Boys' Dormitory*, GA 38/US 82 [6/23/86]

Murray County
Chatsworth vicinity, *Carter's Quarters*, Old US 411 9 mi. S of Chatsworth [3/17/86]

Stewart County
Louvale, *Louvale Church Row Historic District*, US 27 [4/11/86]
Richland, *Richland Historic District*, Roughly bounded by Ponder, Harmony, Broad and Olemen, and Wali Sts. [5/05/86]

Thomas County
Thomasville, *Birdwood*, Millpond Rd. and Pinetree Blvd. [5/02/86]

Tift County
Tifton, *Tifton Commercial Historic District*, Roughly bounded by Second and Third Sts., Love, and Central Aves. [3/04/86]

Troup County
Hogansville, *Phillips—Sims House*, GA 54 [4/17/86]

Walker County
Rossville, *US Post Office—Rossville Main*, 301 Chickamauga Ave. [6/06/86]

Walton County
Between, *Upshaw, James Berrien, House*, US 78/GA 11 [3/06/86]

Ware County
Waycross, *Phoenix Hotel*, 201–222 Pendleton St. [4/17/86]

White County
Sautee, *Sautee Valley Historic District*, GA 255 and Lynch Mountain Rd. [8/20/86]

Wilkes County
Washington, *Washington Commercial Historic District*, Roughly bounded by Court St., Jefferson St., Robert Toombs Ave., and Allison St. [3/06/86]

HAWAII

Hawaii County
Kamuela vicinity, *Brown, Francis E., II, House*, Keawaiki Bay [8/21/86]
Pohakuluoa vicinity, *Bobcat Trail Habitation Cave (50–10–30–3004)*, Address Restricted [5/15/86]

Honolulu County
Honolulu, *Coke, James L., House*, 3649 Nuuanu Pali Dr. [8/20/86]
Honolulu, *Cooke, Charles Montague, Jr., House*, 2859 Manoa Rd. [10/31/85]
Honolulu, *Cooke, Clarence H., House*, 3660 Old Pali Rd. [8/20/86]
Honolulu, *Eyman, Jessie—Judson, Wilma, House*, 3114 Paty Dr. [8/20/86]
Honolulu, *Linn, R.M., House*, 2013 Kakela Dr. [8/20/86]

Maui County
Haiku, *Haiku Mill*, Haiku Rd. [2/06/86]

HAWAII—Continued
Hana vicinity, *Honokalani Village*, Hana Hwy. [11/25/85]
Paia vicinity, *Makawao Union Church*, Baldwin Ave. [12/17/85]
Wailuku, *Halekii-Pihana Heiau*, Hea Pl. off Kuhio Pl. from Waiehu Beach Rd. [11/25/85]
Wailuku, *Wailuku Civic Center Historic District*, S. High St. between Wells and Kaohu Sts. [6/20/86]

IDAHO

Ada County
Boise, *Goreczky, Anton, House*, 1601 N. Seventh St. [3/20/86]

Bannock County
Pocatello, *Woolley Apartments*, 303 N. Hayes Ave. [10/31/85]

Bonner County
Sandpoint, *Sandpoint Community Hall*, 204 S. First Ave. [9/11/86]

Canyon County
Nampa, *Wiley, Orton H., House*, 524 E. Dewey [9/11/86]

Cassia County
Albion, *Albion Methodist Church*, 102 North St. [9/04/86]

Custer County
Stanley vicinity, *Day, Ivan W., House*, Boise Meridian [4/09/86]

Fremont County
Island Park vicinity, *Bishop Mountain Lookout*, Forest Rd. [5/23/86]

Idaho County
Cottonwood vicinity, *Lower Salmon River Archeological District*, Address Restricted [9/04/86]

Jerome County
Milner Butte vicinity, *Milner Dam and the Twin Falls Main Canal*, Twin Falls Main Canal between Murtaugh and Milner Lakes [7/10/86]

Latah County
Potlatch, *American Legion Cabin [Potlatch MRA]*, US Alt. 95 [9/11/86]
Potlatch, *Boarding House [Potlatch MRA]*, 850 Pine St. [9/11/86]
Potlatch, *Commercial Historic District [Potlatch MRA]*, Roughly Pine St. between Seventh and Fifth Sts. [9/11/86]
Potlatch, *Four-Room House [Potlatch MRA]*, 1015 Pine St. [9/11/86]
Potlatch, *Nob Hill Historic District [Potlatch MRA]*, Roughly bounded by Fourth, Spruce, Third, and Cedar Sts. [9/11/86]
Potlatch, *Terteling, Joseph A., House [Potlatch MRA]*, 1015 Fir St. [9/11/86]
Potlatch, *Three-Room House [Potlatch MRA]*, 940 Cedar St. [9/11/86]
Potlatch, *Workers' Neighborhood Historic District [Potlatch MRA]*, Roughly Spruce St. between Eighth and Fifth [9/11/86]

Lewis County
Winchester vicinity, *Lower Salmon River Archeological District*, Address Restricted [9/04/86]

Nez Perce County
Lewiston, *Breier Building*, 631–633 Main St. [6/13/86]
Peck, *American Women's League Chapter House*, 217 N. Main St. [9/04/86]
Waha vicinity, *Lower Salmon River Archeological District*, Address Restricted [9/04/86]

Owyhee County
Wagon Box Basin vicinity, *Camas and Pole Creeks Archeological District*, Address Restricted [5/28/86]

Shoshone County
Avery vicinity, *Red Ives Ranger Station*, SE of Avery on Forest Service Rd. 216 [9/13/86]

Twin Falls County
Murtaugh vicinity, *Milner Dam and the Twin Falls Main Canal*, Twin Falls Main Canal between Murtaugh and Milner Lakes [7/10/86]
Twin Falls, *Twin Falls Bank and Trust Company Building*, 102 Main Ave. S [9/04/86]

Washington County
Weiser, *Fisher, James M., House*, 598 Pioneer Rd. [9/04/86]

ILLINOIS

Adams County
Quincy, *Quincy East End Historic District*, Roughly bounded by Hampshire, Twenty-fourth, State, and Twelfth Sts. [11/14/85]

Christian County
Taylorville, *Taylorville Courthouse Square Historic District*, Roughly bounded by Vine, Walnut, Adams, and Webster Sts. [12/02/85]

Clay County
Xenia, *Paine House*, Rt. 1, Box 19 A [11/14/85]

Coles County
Mattoon, *Cleveland, Cincinnati, Chicago and St. Louis Railroad Station*, 1632 Broadway St. [1/30/86]

Cook County
Barrington, *Barrington Historic District*, Roughly bounded by Chicago & Northwestern RR, S. Spring and Grove Sts., E. Hillside and W. Coolidge, and Dundee Aves. [5/16/86]
Chicago, *Blackstone Hotel*, 80 E. Balbo Dr. [5/09/86]
Chicago, *Chicago Bee Building [Black Metropolis TR]*, 3647–3655 S. State Ave. [4/30/86]
Chicago, *Chicago Beach Hotel [Hyde Park Apartment Hotels TR]*, 5100–5110 S. Cornell Ave. [5/14/86]
Chicago, *East Park Towers [Hyde Park Apartment Hotels TR]*, 5230–5252 S. Hyde Park Blvd. [5/14/86]
Chicago, *Eighth Regiment Armory [Black Metropolis TR]*, 3533 S. Giles Ave. [4/30/86]
Chicago, *Flamingo-On-The-Lake Apartments [Hyde Park Apartment Hotels TR]*, 5500–5520 S. Shore Dr. [5/14/86]
Chicago, *Gage Group—Ascher, Keith, and Gage Buildings*, 18–30 S. Michigan Ave. [11/14/85]
Chicago, *Hotel Del Prado [Hyde Park Apartment Hotels TR]*, 5307 S. Hyde Park Blvd. [5/14/86]
Chicago, *Hyde Park-Kenwood Historic District (Boundary Increase II)*, 825–833 and 837–849 E. Fifty-second St. [5/16/86]
Chicago, *Jeffrey—Cyril Historic District*, 7146–7148, 7128–7138 Cyril Ave., 7144–7148, 7147 and 7130 S. Jeffrey Blvd., and 1966–1974 E. Seventy-first Pl. [5/05/86]
Chicago, *Lakeview Historic District (Boundary Increase)*, 701, 705, 711, 715–717, 721, 733–735, 737, and 739 Belmont Ave., 3162 and 3164 N. Orchard, and 3171 Halsted Sts. [5/16/86]
Chicago, *Logan Square Boulevards Historic District*, W. Logan Blvd., Logan Sq., N. Kedzie Blvd., Palmer Sq., and N. Humbolt Blvd. [11/20/85]
Chicago, *Mayfair Apartments [Hyde Park Apartment Hotels TR]*, 1650–1666 E. Fifty-sixth St. [5/14/86]
Chicago, *Overton Hygienic Building [Black Metropolis TR]*, 3619–3627 S. State St. [4/30/86]
Chicago, *Poinsetta Apartments [Hyde Park Apartment Hotels TR]*, 5528 S. Hyde Park Blvd. [5/14/86]
Chicago, *Sheffield Historic District (Boundary Increase III)*, Roughly bounded by W. Wisconsin St. and Armitage Ave., N. Howe and N. Halsted Sts., N. Willow St., and N. Kemore Ave. [8/22/86]
Chicago, *Sheridan Park Historic District*, Roughly bounded by Lawrence, Racine, and Montrose Aves., and Clark St. [12/27/85]
Chicago, *Shoreland Hotel [Hyde Park Apartment Hotels TR]*, 5450–5484 S. Shore Dr. [5/14/86]
Chicago, *Smith, J. P., Shoe Company Plant*, 671–699 N. Sangamon Ave. and 801–821 W. Huron St. [11/14/85]
Chicago, *Swedish Club of Chicago*, 1258 N. LaSalle St. [12/02/85]
Chicago, *Unity Hall [Black Metropolis TR]*, 3140 S. Indiana Ave. [4/30/86]
Chicago, *Victory Sculpture [Black Metropolis TR]*, Thirty-fifth St. at King Dr. [4/30/86]
Chicago, *Wabash Avenue YMCA [Black Metropolis TR]*, 3763 S. Wabash Ave. [4/30/86]
Evanston, *Buildings at 1104–1110 Seward [Suburban Apartment Buildings in Evanston TR]*, 1104–1110 Seward [9/02/86]
Evanston, *Warren, Edward Kirk, House and Garage*, 2829 and 2831 Sheridan Pl. [1/30/86]
Lemont, *Lemont Methodist Episcopal Church*, 308 Lemont St. [5/05/86]

Du Page County
Villa Park, *Villa Avenue Train Station*, 220 S. Villa Ave. [8/22/86]

Effingham County
Altamont, *Wright, Dr. Charles M., House*, 3 W. Jackson St. [5/08/86]

Hancock County
Carthage, *Carthage Courthouse Square Historic District*, Roughly bounded by

ILLINOIS—Continued
Main, Adams, Wabash, and Madison Sts. [5/13/86]

Jackson County
Carbondale, *Reef House*, 411 S. Poplar St. [11/14/85]
Carbondale, *Woodlawn Cemetary*, 405 E. Main St. [12/19/85]

Jersey County
Danville, *Stone Arch Bridge*, 700–800 E. Main St. [5/16/86]
Jerseyville, *Jersey County Courthouse*, Public Sq. [5/08/86]

Kane County
Aurora, *Aurora Watch Factory*, 603–621 LaSalle St. [5/08/86]
Aurora, *Stolp Island Historic District*, Stolp Island [9/10/86]
Aurora, *West Side Historic District*, Roughly bounded by W. Downer Pl., Lake St., Garfield Ave., and S. Highland St. [8/13/86]

Kankakee County
Kankakee, *Riverview Historic District*, Roughly bounded by River and Eagle Sts., Wildwood Ave., and the Kankakee River [9/22/86]

Lake County
Barrington, *Barrington Historic District*, Roughly bounded by Chicago & Northwestern RR, S. Spring and Grove Sts., E. Hillside and W. Coolidge, and Dundee Aves. [5/16/86]
Waukegan vicinity, *Great Lakes Naval Training Station*, Bounded by Cluverius Ave., Lake Michigan, G St., and Sheridan Rd. [9/15/86]

Logan County
Lincoln, *Lincoln Courthouse Square Historic District*, Roughly bounded by Sangamon, Pekin, Chicago, Delaware, Broadway, and Pulaski Sts. [12/24/86]

Macon County
Metropolis, *McCartney, R. W., Music Hall*, 116–120 E. Fourth St. [9/13/86]

McLean County
Bloomington, *Cox, George H., House*, 701 E. Grove St. [11/14/85]
Lexington, *Potion, John, Log Cabin*, Lexington Park District Park [8/01/86]
Normal, *Cook, John W., Hall*, Illinois State University, US 51 [2/20/86]

Menard County
Petersburg, *Petersburg Historic District (Boundary Increase)*, Smoot Hotel, corner of Sixth and Douglas [7/21/86]

Mercer County
Keithsburg, *Keithsburg Historic District*, Roughly bounded by Jackson, Fifth, Washington, and Third Sts. [5/08/86]

Ogle County
Mount Morris, *Hitt, Samuel M., House*, 7782 IL 64 W [11/14/85]

Sangamon County
Springfield vicinity, *Tiger—Anderson House*, CR 3 N [6/11/86]
Springfield, *Illinois State Capitol*, Capitol Ave. and Second St. [11/23/85]

Tazewell County
Pekin, *Tazewell County Courthouse*, Court St. between Capitol and Fourth Sts. [11/14/86]

Winnebago County
Rockford, *Limestones, The*, 118—122 S. Main [8/22/86]

INDIANA

Blackford County
Hartford City, *First Presbyterian Church*, 220 N. High St. [5/13/86]

Bonus County
Lebanon, *Boone County Courthouse*, Courthouse Sq. [9/22/86]
Thorntown, *Thorntown Public Library*, 124 N. Market St. [9/22/86]

Brown County
Nashville vicinity, *Axsom Branch Archeological Site (12BR12)*, Address Restricted [3/25/86]
Nashville vicinity, *Refuge No. 2 Archeological Site (12BR11)*, Address Restricted [3/21/86]

Cass County
Logansport vicinity, *Barnett, Thompson, House*, IN 25 [8/14/86]

Clay County
Harmony, *Coal Company Store*, S. Harmony Rd. [5/12/86]

De Kalb County
Auburn, *Downtown Auburn Historic District*, Roughly bounded by E. and W. Fourth, N. and S. Cedar, E. Twelfth, and N. and S. Jackson Sts. [8/10/86]

Delaware County
Bethel vicinity, *Garner, Job—Miller, Jacob W., House*, Bethel Pike at CR 700 W [6/13/86]
Muncie, *Old West End Historic District*, Roughly bounded by the White River and Washington St., Liberty St., Howard St. and Orchard Pl., and Kilgore Ave. [9/22/86]

Elkhart County
Elkhart, *Buescher Band Instrument Company Building*, 225 E. Jackson Ave. [9/22/86]
Elkhart, *Monteith, Mark L. and Harriet E., House*, 871 E. Beardsley Ave. [12/26/85]

Gibson County
Skelton vicinity, *Mussell Knoll Archeological Site (12GI11)*, Address Restricted [3/18/86]

Grant County
Gas City, *West Ward School*, 210 W. North A St. [12/19/85]

Hamilton County
Carmel vicinity, *Newby, Micah, House*, 1149 W. One Hundred Sixteenth St. [6/20/86]

Henry County
Knightstown, *Knightstown Historic District*, Roughly bounded by Morgan, Adams, Third, and McCullum Sts. [5/22/86]

Huntington County
Huntington, *Purviance, Samuel, House*, 328 S. Jefferson [6/13/86]
Huntington, *William Street School*, 521 William St. [6/26/86]

Marion County
Indianapolis, *Aston Inn*, 6020 N. Michigan Rd. [12/26/85]
Indianapolis, *Coburn, Henry P., Public School No. 60*, 604 E. Thirty-eighth St. [6/13/86]
Indianapolis, *Haverstick, Hiram A., Farmstead*, 7045 Westfield Blvd. [12/26/85]
Indianapolis, *Heier's Hotel*, 10—18 S. New Jersey St. [9/22/86]
Indianapolis, *Holy Rosary—Danish Church Historic District*, Roughly bounded by Virginia Ave., I–65/70, and S. East St. [3/13/86]
Indianapolis, *Mann Horace, Public School No. 13*, 714 E. Buchanan St. [6/26/86]
Indianapolis, *Julian—Clark House*, 115 S. Audubon Rd. [8/20/86]
Indianapolis, *North Meridian Street Historic District*, 4000—5694 and 4001—5747 N. Meridian St. [9/22/86]

Monroe County
Bloomington vicinity, *Epsilon II Archeological Site (12MO133)*, Address Restricted [3/25/86]
Bloomington vicinity, *Kappa V Archeological Site (12MO92)*, Address Restricted [3/31/86]
Smithville vicinity, *Mitchell, Joseph, House*, 7088 Kesshen Rd. [9/13/86]

Parke County
Marshall, *Arch in the Town of Marshall*, Main and Guion Sts. [12/26/85]

Perry County
Derby vicinity, *Rockhouse Cliffs Rock Shelters (12PE96; 12PE100)*, Address Restricted [4/25/86]

Porter County
Beverly Shores, *Beverly Shores—Century of Progress Architectural District*, 208, 210, 212, 214, and 215 Lake Front Dr. [6/30/86]

Posey County
Mt. Vernon, *Gonnerman, William, House*, 521 W. Second St. [12/19/85]

Ripley County
Versailles, *Taylor, Fernando G., House*, NE corner of Main and Tyson Sts. [9/22/86]

Sullivan County
Sullivan, *Sherman Building*, 3—4 S. Court St. [9/22/86]

Tippecanoe County
Lafayette, *Farmers Institute*, 4626 W. CR 600 S [8/27/86]

Vigo County
Terre Haute, *Farington's Grove Historic District*, Roughly bounded by Poplar, S. Seventh, Hulman, and S. Fourth Sts. [2/27/86]

INDIANA—Continued
Wabash County
Wabash, *Downtown Wabash Historic District*, Roughly bounded by Hill, Wabash, Canal, and Miami Sts. [7/18/86]

Warren County
Carbondale, *Brier, Andrew, House*, Old Hwy. 41 [8/14/86]

Wayne County
Richmond, *East Main Street—Glen Miller Park Historic District*, Both sides of E. Main St. from N. Eighteenth to N. Thirtieth Sts. and Glen Miller Pk. E of Thirtieth St. [5/27/88]

IOWA

Allamakee County
Ludlow vicinity, *Meier, Fred W., Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 9 [6/30/88]
New Albin vicinity, *Reburn, Thomas, Polygonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 26 [6/30/88]

Benton County
Eagle Center vicinity, *McQuillkin, James Greer, Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CR D56 [6/30/88]
Eagle Center vicinity, *Round Barn, Bruce Township Section 3 [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 218 [6/30/88]
La Porte vicinity, *Round Barn, Bruce Township Section 8 [Iowa Round Barns: The Sixty Year Experiment TR]*, W of US 218 [6/30/88]

Black Hawk County
Janesville vicinity, *Round Barn, Washington Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 218 [6/30/88]

Bremer County
Plainfield vicinity, *Octagon Barn, Polk Township [Iowa Round Barns: The Sixty Year Experiment TR]*, E of US 218 [6/30/88]

Buchanan County
Hazleton vicinity, *McKenzie, Erza, Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 150 [6/30/88]

Carroll County
Lanesboro vicinity, *Fobes Octagon Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, IA 226 [6/30/88]

Chickasaw County
Alta Vista vicinity, *Darrow, George, Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CR T76 [6/30/88]

Clay County
Gillet Grove vicinity, *Ross, Seymour, Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 374 [6/30/88]

Clayton County
Millville vicinity, *Round Barn, Millville Township [Iowa Round Barns: The Sixty Year Experiment TR]*, US 52 [6/30/88]

Clinton County
Clinton, *First National Bank*, 226 Fifth Ave. S [10/10/85]

Davis County
Bloomfield vicinity, *Tarrence Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 2 [6/30/88]

Des Moines County
Burlington, *Forney, James M., House*, 401 Cedar [9/22/86]

Dubuque County
Dubuque, *Hancock, Charles T., House*, 1105 Grove Terr. [4/10/86]
Dubuque, *Holland, Ora, House*, 1206 Mt. Pleasant St. [8/14/86]
Dubuque, *Jackson Park Historic District*, Roughly bounded by Seventeenth, Iowa, Tenth and Ninth, and Bluff and Montrose Sts. [7/31/86]
Dubuque, *Round Barn, Dubuque Township [Iowa Round Barns: The Sixty Year Experiment TR]*, 2810 Cascade Rd. [6/30/88]

Emmet County
Armstrong vicinity *Thomsen Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 15 [6/30/88]

Fayette County
Arlington vicinity, *Nus, August, Polygonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CR C2 W [6/30/88]
West Union vicinity, *Grimes Octagon Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 56 [6/30/88]

Floyd County
Charles City vicinity, *Brooks Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, W of US 218 [6/30/88]
Charles City vicinity, *Spotts Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, IA 14 [6/30/88]

Franklin County
Iowa Falls vicinity, *Wood, Herman, Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, US 65 [6/30/88]

Greene County
Grand Junction vicinity, *Frantz Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 30 [6/30/88]

Guthrie County
Jamaica vicinity, *Octagon Barn, Richland Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 141 [6/30/88]

Hamilton County
Blairsburg vicinity, *Oakland, William, Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 69 [6/30/88]

Harrison County
Pisgah vicinity, *Haner, William, Polygonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CR L16 [6/30/88]

Henry County
Mt. Pleasant, *Ambler, Henry, House*, 405 Broadway [4/10/86]
Mt. Pleasant, Brazelton House Hotel, 100 N. Main St. [9/22/86]
Salem vicinity, *Holtkamp Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 218 [6/30/88]

Howard County
Cresco, *Polygonal Barn, New Oregon Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 39 [6/30/88]

Ida County
Cushing vicinity, *Waveland Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 20 [6/30/88]

Iowa County
Conroy vicinity, *Plagmann Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 220 [6/30/88]

Jackson County
Bellevue vicinity, *Dyas Hexagonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, US 52 [6/30/88]
Maquoketa, *Anderson, D. H., Building*, 129 S. Main St. [4/10/86]
Van Buren vicinity, *Polygonal Barn, Van Buren Township [Iowa Round Barns: The Sixty Year Experiment TR]*, IA 84 [6/30/88]

Jefferson County
Fairfield, *Old Settlers' Association Park and Rhodham Bonnifield House*, B St. [8/14/86]
Fairfield, *Wells—Stubbs House*, 505 E. Burlington Ave. [10/10/85]

Johnson County
Iowa City, *Economy Advertising Company*, 119–123 N. Linn [4/28/86]
Iowa City, *Ford, Arthur Hillyer, House*, 226 Brown St. [4/10/86]
Iowa City, *Franklin Printing House*, 115 S. Dubuque [4/10/86]
Iowa City, *Paul—Helen Building*, 207–215 E. Washington [4/10/86]
Iowa City, *Union Brewery*, 127–131 N. Linn and 221–227 E. Market [4/10/86]
Sharon Center vicinity, *Miller Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CFR F62 [6/30/88]
Sharon Center vicinity, *Roberts Octagon Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CR W62 [6/30/88]
West Liberty vicinity, *Polygonal Barn, Lincoln Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 6 [6/30/88]

Keokuk County
Harper vicinity, *Saints Peter and Paul Roman Catholic Church*, SE of Harper [8/06/86]

Kossuth County
Titonka vicinity, *Longbottom Polygonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 223 [6/30/88]

Lee County
Montrose, *Saint Barnabas Episcopal Church*, Chestnut St. [4/11/86]

Linn County
Cedar Rapids, *Taylor-Van Ness*, 4928 Blairs Ferry Rd. [10/10/85]

IOWA—Continued
Troy Mills, *Odd Fellows Hall*, Troy Mills Rd. [10/10/85]

Mahaska County
Oskaloosa, *Oskaloosa City Square Commercial Historic District*, Roughly bounded by A Ave. E. N. and S. Second St., Second Ave. E. and N. and S. A St. [4/10/86]

Marshall County
State Center vicinity, *Dobbin Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off CR S52 [6/30/88]

Monona County
Mapleton vicinity, *Round Barn, Cooper Township [Iowa Round Barns: The Sixty Year Experiment TR]*, IA 141 [6/30/88]

Monroe County
Tyrone vicinity, *Clark Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CR T7H [6/30/88]

Montgomery County
Sciola vicinity, *Round Barn, Washington Township [Iowa Round Barns: The Sixty Year Experiment TR]*, US 71 [6/30/88]
Sennett vicinity, *Round Barn, Pilot Grove Township [Iowa Round Barns: The Sixty Year Experiment TR]*, CR H20 [6/30/88]

Page County
Hepburn vicinity, *McCoy Polygonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 71 [6/30/88]

Polk County
Des Moines, *Hawkeye Insurance Company Building*, 209 Fourth St. [4/28/86]

Pottawattamie County
Avoca, *Graceland Cemetery Chapel*, Graceland Cemetery, US 59 [4/28/86]
Shelby vicinity, *Eckle Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 166 [6/30/88]

Ringgold County
Diagonal vicinity, *Buck, W. J., Polygonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 169 [6/30/88]

Scott County
Blue Grass vicinity, *Nebergall "Knoll Crest" Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Telegraph Rd. [6/30/88]
Davenport, *Chicago, Milwaukee, St. Paul and Pacific Freight House [Davenport MRA]*, 102 S. Ripley St. [11/14/85]
Davenport, *Sainte Genevieve (dredge) [Davenport MRA]*, Antoine LeClaire Park, off US 67 [8/04/86]

Story County
Iowa Center vicinity, *Octagon Round Barn, Indian Creek Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off CR S14 [6/30/88]
Story City, *Herschel—Spillman Two-Row Portable Menagerie Carousel*, North Park, Story St. and Grove Ave. [6/03/86]

Tama County
Buckingham vicinity, *Round Barn, Buckingham Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 63 [6/30/88]
Traer vicinity, *Young, John W., Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 63 [6/30/88]

Van Buren County
Cantril vicinity, *Wickfield Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 2 [6/30/88]

Warren County
Milo vicinity, *Octagon Barn, Otter Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 205 [6/30/88]

Washington County
Wellman vicinity, *Jordan, Thomas, Polygonal Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 114 [6/30/88]

Woodbury County
Sioux City, *Lexington Block*, 815 Fourth St. [4/11/86]

KANSAS

Dickinson County
Abilene, *Seelye, A. B., House*, 1105 N. Buckeye [4/25/86]

Douglas County
Baldwin City, *Case Library*, Baker University, Eighth and Grove [6/05/86]
Lawrence, *Duncan, Charles, House*, 933 Tennessee St. [6/05/86]

Leavenworth County
Leavenworth, *Atchison, Topeka and Santa Fe Railroad Passenger Depot*, 781 Shawnee St. [6/11/86]
Leavenworth, *Leavenworth Public Library*, 601 S. Fifth St. [7/30/86]

Lyon County
Emporia, *Howe, Richard, House*, 315 E. Logan Ave. [7/17/86]

Marshall County
Marysville, *Pusch—Randell House*, 1000 Elm St. [9/22/86]

Mitchell County
Cawker City, *Wisconsin Street Historic District*, 700 blk. of Wisconsin St. [6/11/86]

Sherman County
Ruleton vicinity, *Veselik, John Ludwig, House*, CR FAS 861 [10/24/85]

Woodson County
Yates Center, *Stockbrands and Kemmerer Department Store*, 100 E. Rutledge [10/17/85]
Yates Center, *Woodson County Courthouse*, Courthouse Sq. between Main, Rutledge, State, and Butler Sts. [10/10/85]
Yates Center, *Yates Center Courthouse Square Historic District*, Courthouse Sq. [5/20/86]

Wyandotte County
Kansas City, *Argentine Carnegie Library*, Twenty-eighth St. and Metropolitan Ave. [4/30/86]
Kansas City, *Kansas City, Kansas City Hall and Fire Headquarters*, 805 and 815 N. Sixth St. [4/25/86]
Kansas City, *Wyandotte High School*, 2500 Minnesota [4/30/86]

KENTUCKY

Bourbon County
Millersburg, *Millersburg Historic District*, Roughly bounded by College Ave., Miller, Second, and Trigg Sts. [4/10/86]

Boyle County
Danville vicinity, *Melrose*, US 127 [4/03/86]
Danville, *Carnegie Library [Danville MRA]*, Center College Campus [3/28/86]
Danville, *Danville Commercial District [Danville MRA]*, W. Main between N. Fifth and N. First, and area bounded by S. Third, W. Walnut, and S. Fourth [3/31/86]
Danville, *East Main Street Historic District [Danville MRA]*, 419–619 E. Main St. [3/31/86]
Danville, *First Presbyterian Church [Danville MRA]*, W. Main between N. Fifth and N. Sixth Sts. [3/31/86]
Danville, *Haskins, W. H., House [Danville MRA]*, 420 Lexington Ave. [3/31/86]
Danville, *Roselawn*, US 127 [3/13/86]
Danville, *Warehouse District [Danville MRA]*, Intersection of Harding and W. Walnut Sts. [3/31/86]

Bracken County
Augusta vicinity, *Turtle Creek Site (15BK13)*, Address Restricted [11/14/85]
Willow Grove vicinity, *Snag Creek Site (15BK2)*, Address Restricted [11/14/85]

Breathitt County
Jackson, *Breathitt County Jail [Jackson MRA]*, 1027 College St. [2/21/86]
Jackson, *Crain's Wholesale and Retail Store [Jackson MRA]*, College and Broadway Sts. [2/21/86]
Jackson, *Jackson Commercial District [Jackson MRA]*, Main St. between Court W to Broadway St. [2/21/86]
Jackson, *L&N Railroad Depot [Jackson MRA]*, Armory Dr. [2/21/86]
Jackson, *M. E. Church South [Jackson MRA]*, 1022 College St. [2/21/86]
Jackson, *Stacey Hotel [Jackson MRA]*, Broadway and College Sts. [2/21/86]

Butler County
Highview vicinity, *DeWeese Shell Mound (15BT8) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
Logansport vicinity, *Annis Mound and Village Site (15BT2, 15BT20, 15BT21)*, Address Restricted [12/21/85]
Logansport vicinity, *Russell Shell Mound (15BT11) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
Monticello vicinity, *Read Shell Mound (15BT10) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
Prentiss vicinity, *Rayburn Johnson Shell Mound (15BT41) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]

KENTUCKY—Continued
Schulztown, *Carlston Annis Shell Mound (15BT8) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Woodbury vicinity, *Woodbury Shell Midden (15BT67) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]

Calloway County
Murray, *Calloway County Courthouse [Murray Kentucky MRA]*, Town Sq. [2/19/88]
Murray, *First Baptist Church [Murray Kentucky MRA]*, 203 S. Fourth St. [2/19/88]
Murray, *First Christian Church [Murray Kentucky MRA]*, 111 N. Fifth St. [2/19/88]
Murray, *Main Street Historic District [Murray Kentucky MRA]*, 700 and 800 blks. of W. Main St. [2/19/88]
Murray, *National Hotel [Murray Kentucky MRA]*, N. Sixth and Main Sts. [2/19/88]
Murray, *US Post Office—Murray [Murray Kentucky MRA]*, Maple and S. Fourth St. [2/19/88]

Campbell County
Bellevue, *Bellevue High School*, Washington and Center Sts. [1/09/88]
Bellevue, *Seiter, Joseph, House*, 307–309 Berry Ave. [4/08/88]
Fort Thomas, *Fort Thomas Military Reservation District*, Roughly bounded by Pearson, Alexander and Cochran Aves., River Rd., and S. Fort Thomas Ave. [5/15/88]
Newport, *Salem Methodist Episcopal Church and Parsonage*, 618 York St. [3/27/88]

Carlisle County
Bardwell vicinity, *Marshall Site (15CE27)*, Address Restricted [11/14/85]
Bardwell vicinity, *Turk Site (15CE8)*, Address Restricted [11/14/85]

Clark County
Goffs Corners vicinity, *Indian Fort Earthworks (15CK7)*, Address Restricted [11/14/85]

Daviess County
Owensboro, *Ames Building [Owensboro MRA]*, 401 W. Third St. [3/28/88]
Owensboro, *Breidenbach Building [Owensboro MRA]*, 208 W. Third St. [3/28/88]
Owensboro, *Callas Sweet Shop [Owensboro MRA]*, 420 Frederica Ave. [3/28/88]
Owensboro, *Carnegie Free Public Library (DAOB 41) [Owensboro MRA]*, 901 Frederica Ave. [6/08/88]
Owensboro, *Clements, Le Vega, House [Owensboro MRA]*, 1500 N. Highland Ave. [3/28/88]
Owensboro, *Doctors' Row Historic District [Owensboro MRA]*, W. Fourth St. between Frederica and Saint Ann Sts. [3/28/88]
Owensboro, *Gillim House [Owensboro MRA]*, 517 Frederica St. [3/28/88]
Owensboro, *Mischel, George and Sons, Building [Owensboro MRA]*, 412 E. Second St. [3/28/88]
Owensboro, *Monarch-Payne House [Owensboro MRA]*, 1432 E. Fourth St. [3/28/88]
Owensboro, *Moore, J. Z., Historic District [Owensboro MRA]*, Roughly bounded by W. and E. Twelfth, Daviess, E. and W. Fourteenth, and Saint Ann Sts. [3/28/88]
Owensboro, *Odd Fellows Building [Owensboro MRA]*, 200–204 W. Third St. [3/28/88]
Owensboro, *Phillip's Court District [Owensboro MRA]*, Roughly bounded by Technical High School, Cruze Dr., W. Eighteenth St., and Frederica Ave. [3/28/88]
Owensboro, *Riley, Camden, House [Owensboro MRA]*, 112 E. Fourth St. [3/28/88]
Owensboro, *Temple Adath Israel [Owensboro MRA]*, 429 Daviess St. [3/28/88]
Owensboro, *Yewell House [Owensboro MRA]*, 630 Clay St. [3/28/88]

Elliott County
Lytten vicinity, *Conley-Greene Rockshelter (15EL4)*, Address Restricted [5/06/88]

Fayette County
Athens vicinity, *Guilfoil Village Site (15FA178)*, Address Restricted [12/05/85]
Lexington, *Ashland Park Historic District*, Roughly bounded by S. Hanover Ave., Richmond Rd., Woodspoint Rd., and Fontaine Rd. and E. High St. [3/31/88]
Lexington, *First African Baptist Church*, 264–272 E. Short St. [4/24/88]
Lexington, *Keeneland—Keeneland Racetrack*, Off Versailles and Rice Rds. [9/24/88]
Lexington, *Mentelle Park*, Mentelle Pk. [11/27/85]
Lexington, *Northeast Residential Historic District*, Roughly bounded by E. Fifth St., Kleiser Ave. and Campsie Pl., E. Fourth St., and Humbard Alley [10/17/85]

Fulton County
Hickman vicinity, *Amburg Mounds Site (15FU15)*, Address Restricted [12/31/85]
Hickman vicinity, *Running Slough Site (15FU67)*, Address Restricted [12/05/85]

Graves County
Hicksville vicinity, *Youngblood Site (15GU26)*, Address Restricted [4/04/88]

Greenup County
South Portsmouth vicinity, *Lower Shawneetown Archeological District*, Address Restricted [11/29/85]

Harlan County
Harlan, *Harlan Commercial District*, Roughly bounded by Mound, Second, Clover, and Main Sts. [3/20/88]

Harrison County
Lair vicinity, *Archeological Site No. 15HR4*, Address Restricted [2/20/88]

Henderson County
Hebbardsville vicinity, *Archeological Site KHC–3 (15HE635) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Hebbardsville vicinity, *Archeological Site KHC–4 (15HE580) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Hebbardsville vicinity, *Bluff City Shell Mound (15HE160) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Rumsey vicinity, *James Giles Shell Midden (15HE580) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]

Jefferson County
Jeffersontown vicinity, *Tucker, Hazael, Farm (Boundary Increase) [Jefferson County MRA]*, 2406 Tucker Station Rd. [5/01/88]
Jeffersontown vicinity, *Tyler Settlement Rural Historic District [Jefferson County MRA]*, Roughly bounded by Southern RR, Taylorsville Rd., and Jeffersontown City [5/01/88]
Louisville, *Humphrey—McMeekin House*, 2240 Douglass Blvd. [3/20/88]
Louisville, *Schneikert, Valentine, House*, 1234 Lexington Rd. [4/17/88]

Kenton County
Covington, *Emery Row*, 610–628 Scott Blvd. [11/14/85]
Covington, *Holy Cross Church and School Complex—Latonia*, 3000 blk. of Church St. [4/17/88]

Knox County
Corbin, *East Main Street Bridge [Corbin MRA]*, Engineers St. and Lynn Camp [3/28/88]
Corbin, *Saint Camillus Academy [Corbin MRA]*, Center St. [3/28/88]
Rockhold vicinity, *Croley—Evans Site (15KX24)*, Address Restricted [11/30/85]

Lewis County
Kirkville vicinity, *Lower Shawneetown Archeological District*, Address Restricted [11/29/85]

Logan County
Lewisburg vicinity, *Page Site (15LO1)*, Address Restricted [11/14/85]
South Union vicinity, *Watkins Site (15LO12)*, Address Restricted [12/05/85]

Marshall County
Benton, *Stilley House*, 925 Birch St. [9/04/88]

Mason County
Mays Lick vicinity, *Gillespie Site (15MS50)*, Address Restricted [12/21/85]
Mays Lick vicinity, *Van Meter Site*, Address Restricted [12/05/85]

McLean County
Ashbyburg vicinity, *R. D. Ford Shell Midden (15McL2) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Calhoun vicinity, *Austin Site (15McL15) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Kirtley vicinity, *Crowe Shell Midden (15McL109) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Livermore vicinity, *Archeological Site No. 15McL17 [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Livermore vicinity, *Butterfield Site (15McL7) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]

KENTUCKY—Continued
Rumsey vicinity, *Archeological Site No. 15McL16 [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]

Meade County
Brandenburg, *Brandenburg Commercial District*, Main St. [3/27/88]

Muhlenberg County
Skilesville vicinity, *Baker Site (15MU12) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]

Ohio County
Central City vicinity, *J. T. Barnard Shell Midden (KHC–1) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Kirtley vicinity, *Archeological Site KHC–6 (15OH97) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Kirtley vicinity, *Jimtown Site (15OH19) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Knightsburg vicinity, *Chiggerville Site (15OH1) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Rochester vicinity, *Bowles Site (15OH13) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Rockport vicinity, *Jackson Bluff Site (15OH12) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]
Smallhouse vicinity, *Smallhouse Shell Mound (15OH10) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/88]

Oldham County
Pewee Valley vicinity, *Saint James' Episcopal Church*, 401 Old LaGrange Rd. [12/05/85]

Scott County
Georgetown, vicinity, *Dry Run Site*, Address Restricted [12/05/85]
Georgetown *West Main Street Historic District*, 217–600 W. Main St. [11/05/85]

Shelby County
Shelbyville vicinity, *Helmwood Hall*, KY 55 at Moody Pike [3/20/88]

Todd County
Elkton vicinity, *Hadden Site (15TO1)*, Address Restricted [12/19/85]

Warren County
Hadley vicinity, *Dunklau Site (15WA374; 15WA380)*, Address Restricted [12/05/85]

Whitley County
Corbin, *Carnegie Library [Corbin MRA]*, E. Center St. [3/28/88]
Corbin, *Corbin Bank Building [Corbin MRA]*, 101 Center St. [3/28/88]
Corbin, *East Main Street Bridge [Corbin MRA]*, Engineers St. and Lynn Camp [3/28/88]
Corbin, *First Christian Church [Corbin MRA]*, S. Kentucky and W. First St. [3/28/88]
Corbin, *Gordon Hill Road Historic District [Corbin MRA]*, 309–501 Gordon Hill Rd. [3/28/88]
Corbin, *Mershon Building [Corbin MRA]*, E. Center St. [3/28/88]
Lot vicinity, *Bowman Site (15WH14)*, Address Restricted [11/30/85]

Woodford County
Midway vicinity, *Blackburn, Edward M., House*, Spring Station Rd. [12/05/85]

LOUISIANA

Caddo Parish
Oil City, *Trees City Office and Bank Building*, 207 Land Ave. [8/13/88]
Shreveport, *Taylor Wholesale Grocers and Cotton Factors Warehouse—Lee Hardware Building*, 719, 723, and 729 Edwards St. [2/13/88]

Calcasieu Parish
DeQuincy vicinity, *Jackson House*, Off LA 27 [2/13/88]

Caldwell Parish
Columbia, *Shepis Building*, Main St. [1/16/88]

Claiborne Parish
Homer, *Homer Historic District*, Roughly bounded by N. Second, E. Main, S. Third, and W. Main Sts. [8/28/88]

Concordia Parish
Ferriday vicinity, *Roseland*, 500 Fisherman Dr. [10/10/85]

East Baton Rouge Parish
Baton Rouge vicinity, *Kleinpeter House*, Perkins Road. [8/13/88]
Baton Rouge, *Main Street Historic District*, 442—660 Main St. [11/07/85]
Baton Rouge, *Petitpierre—Kleinpeter, Joseph, House*, 5544 Highland Rd. [1/28/88]

East Feliciana Parish
Clinton, *Hope Terrace*, Church and Silliman Sts. [8/13/88]

Iberia Parish
New Iberia, *Lamperez, Santiago, House*, 203 Front St. [10/17/85]
New Iberia, *Pascal Building*, 223 E. Main St. [11/21/85]

Jefferson Parish
Kenner, *Kenner Town Hall*, 1903 Short St. [1/23/88]
Westwego vicinity, *Magnolia Lane Plantation House*, LA 541 at Nine Mile Pt. [2/13/88]

Lafourche Parish
Thibodaux, *Bank of Lafourche Building [Thibodaux MRA]*, 208 Green St. [3/05/88]
Thibodaux, *Breaux House [Thibodaux MRA]*, 401 Patriot [3/05/88]
Thibodaux, *Building at 108 Green Street [Thibodaux MRA]*, 108 Green St. [3/05/88]
Thibodaux, *Chanticleer Gift Shop [Thibodaux MRA]*, 103 W. Third [4/29/88]
Thibodaux, *Citizens Bank of Lafourche [Thibodaux MRA]*, 413 W. Fourth St. [3/05/88]
Thibodaux, *Grand Theatre [Thibodaux MRA]*, 401 Green St. [3/05/88]
Thibodaux, *Lamartine Building [Thibodaux MRA]*, 700–704 W. Third [3/05/88]
Thibodaux, *McCulla House [Thibodaux MRA]*, 422 E. First [3/05/88]
Thibodaux, *Peltier House [Thibodaux MRA]*, 403 Canal Blvd. [4/29/88]
Thibodaux, *Percy—Lobdell Building [Thibodaux MRA]*, 314 Saint Mary St. [3/05/88]
Thibodaux, *Riviere Building [Thibodaux MRA]*, 405 W. Third [3/05/88]
Thibodaux, *Riviere House [Thibodaux MRA]*, 208 Canal Blvd. [3/05/88]
Thibodaux, *Robichaux House [Thibodaux MRA]*, 322 E. Second St. [3/05/88]
Thibodaux, *Saint Joseph's Co-Cathedral and Rectory [Thibodaux MRA]*, 721 Canal Blvd. [3/05/88]

Orleans Parish
New Orleans, *Bywater Historic District*, Roughly bounded by the N. Claiborne Ave. and Urquhart St., Kentucky St., Mississippi River, and Montegut and Press Sts. [1/23/88]
New Orleans, *Hennen Building*, 203 Carondelet [7/31/88]
New Orleans, *Holy Cross Historic District*, Roughly bounded by Burgundy and Dauphine Sts., Delery St., the Mississippi River, and the Industrial Canal [7/31/88]
New Orleans, *National American Bank Building*, 200 Carondelet [5/15/88]
New Orleans, *New Canal Lighthouse*, West End Blvd. and Lakeshore Dr. [12/30/85]
New Orleans, *New Orleans City Park Carousel and Pavilion*, City Park, off City Park Ave. [2/31/88]
New Orleans, *Walker House*, 1912 Saint Charles Ave. [5/15/88]

Ouachita Parish
Monroe, *Bright—Lamkin—Easterling House*, 918 Jackson St. [5/15/88]
Monroe, *Cooley, G. B., House*, 1011 S. Grand St. [5/15/88]
Monroe, *Downtown Monroe Historic District*, Roughly bounded by Desiard, Jackson, Telemaque, and S. Grand Sts. [9/04/88]

Rapides Parish
Alexandria, *Bland House*, 330 Saint James St. [10/17/85]
Alexandria, *Masonic Building*, Fourth and Johnston Sts. [1/16/88]
Alexandria, *Veterans Administration Medical Center*, US 167/71 [9/29/88]
Pineville, *Alexandria Hall—Louisiana College*, Louisiana College [5/15/88]
Pineville, *Central Louisiana State Hospital Dairy Barn*, US 165 [5/15/88]

Richland Parish
Alto, *Vickers House*, LA 15 [5/15/88]

St. Bernard Parish
New Orleans vicinity, *Chandeleur Light*, Breton National Wildlife Refuge [6/25/88]
St. Bernard vicinity, *Sebastopol Plantation House*, LA 46 [8/13/88]

St. James Parish
Vacherie vicinity, *Desire Plantation House*, LA 644 [5/15/88]

LOUISIANA—Continued
St. Mary Parish

Morgan City, *Morgan City Historic District*, Roughly bounded by Greenwood St., Arkansas St., Railroad Ave., and Front St. [1/09/86]

St. Tammany Parish

Madisonville vicinity, *Tchefuncte River Range Rear Light*, N side of Lake Pontchartrain [7/14/86]

Tangipahoa Parish

Kentwood, *Kent, Charles Adolph, Sr., House*, 701 Ave. E [10/10/85]
Ponchatoula vicinity, *Pass Machac Light*, W end of Lake Pontchartrain [7/09/86]

Terrebonne Parish

Gibson, *Gibson Methodist Episcopal Church*, S. Bayou Black Dr. [5/08/86]
Thibodaux vicinity, *Ducros Plantation House*, LA 20 [11/07/85]

Webster Parish

Minden, *McDonald House*, 328 Lewisville Rd. [8/13/86]

MAINE

Androscoggin County

Auburn, *Briggs, William, Homestead*, 1470 Turner St. [3/20/86]
Auburn, *Garcelon, A. A., House*, 223 Main St. [6/13/86]
Lewiston, *Bergin Block [Lewiston Commercial District MRA]*, 330 Lisbon St. [4/25/86]
Lewiston, *College Block—Lisbon Block [Lewiston Commercial District MRA]*, 248–274 Lisbon St. [4/25/86]
Lewiston, *First Callahan Building [Lewiston Commercial District MRA]*, 276 Lisbon St. [4/25/86]
Lewiston, *First National Bank [Lewiston Commercial District MRA]*, 157–163 Main St. [4/25/86]
Lewiston, *First McGillicuddy Block [Lewiston Commercial District MRA]*, 133 Lisbon St. [4/25/86]
Lewiston, *Lewiston Trust and Safe Deposit Company [Lewiston Commercial District MRA]*, 46 Lisbon St. [4/25/86]
Lewiston, *Lord Block [Lewiston Commercial District MRA]*, 379 Lisbon St. [4/25/86]
Lewiston, *Lyceum Hall [Lewiston Commercial District MRA]*, 49 Lisbon St. [4/25/86]
Lewiston, *Maine Supply Company Building [Lewiston Commercial District MRA]*, 415–417 Lisbon St. [4/25/86]
Lewiston, *Manufacturer's National Bank [Lewiston Commercial District MRA]*, 145 Lisbon St. [4/25/86]
Lewiston, *Marcotte Nursing Home*, 100 Campus Ave. [12/26/85]
Lewiston, *Odd Fellows Block [Lewiston Commercial District MRA]*, 182–190 Lisbon St. [4/25/86]
Lewiston, *Osgood Building [Lewiston Commercial District MRA]*, 129 Lisbon St. [4/25/86]
Lewiston, *Second Callahan Block [Lewiston Commercial District MRA]*, 282 Lisbon St. [4/25/86]
Lewiston, *US Post Office—Lewiston Main*, 49 Ash St. [5/02/86]
Lewiston, *Union Block [Lewiston Commercial District MRA]*, 21–29 Lisbon St. [4/25/86]
Lewiston, *Wedgewood, Dr. Milton, House*, 101 Pine St. [1/10/86]

Aroostock County

Fort Fairfield, *Reed, Philo, House*, 38 Main St. [4/04/86]
Houlton, *Amazeen House*, 16 Weeks St. [9/11/86]
Presque Isle, *Elmbrook Farm Barn*, Parson's Rd. [1/10/86]
Presque Isle, *Presque Isle National Bank*, 422 Main St. [7/31/86]
Presque Isle, *US Post Office—Presque Isle Main*, 23 Second St. [5/09/86]
Sherman, *Leavitt, A.B., House*, ME 158 [6/20/86]

Cumberland County

Brunswick, *Pennellville Historic District*, Roughly bounded by Pennellville Rd., Middle Bay Cove, and Pennell Way [10/10/85]
Falmouth, *Baxter Summer House*, Mackworth Island [12/26/85]
Portland, *Maine Eye and Ear Infirmary*, 794–800 Congress St. [9/25/86]
Portland, *US Post Office—Portland Main*, 125 Forest Ave. [5/09/86]
South Portland, *Seavey-Robinson House*, 580 Ocean St. [9/11/86]

Hancock County

Bar Harbor, *US Post Office—Bar Harbor Main*, Cottage St. [5/02/86]
Brooklin, *White, E.B., House*, ME 175 [9/22/86]
Bucksport, *Prouty, Jed, Tavern and Inn*, 52–54 Main St. [1/10/86]
Castine, *Off-the-Neck Historic District*, ME 166 [9/25/86]
Ellsworth, *Ellsworth City Hall*, City Hall Plaza [1/10/86]
Seal Harbor, *Saint Jude's Episcopal Church*, ME 3 [7/24/86]

Kennebec County

Augusta, *Adams, D.V., Co.-Bussell and Weston [Augusta Central Business District MRA]*, 190 Water St. [5/02/86]
Augusta, *Crosby Street Historic District*, Crosby St. and Crosby Ln. [9/11/86]
Augusta, *Doughty Block [Augusta Central Business District MRA]*, 265 Water St. [5/02/86]
Augusta, *Journal Building [Augusta Central Business District MRA]*, 325–331 Water St. [5/02/86]
Augusta, *Kresge Building [Augusta Central Business District MRA]*, 241–249 Water St. [5/02/86]
Augusta, *Libby-Hill Block [Augusta Central Business District MRA]*, 227–233 Water St. [5/02/86]
Augusta, *Masonic Hall [Augusta Central Business District MRA]*, 313–321 Water St. [5/02/86]
Augusta, *Noble Block [Augusta Central Business District MRA]*, 188 Water St. [5/02/86]
Augusta, *Sturgis and Haskell Building [Augusta Central Business District MRA]*, 160–162 Water St. [5/02/86]
Augusta, *Whitehouse Block [Augusta Central Business District MRA]*, 186 Water St. [5/02/86]
Augusta, *Williams Block [Augusta Central Business District MRA]*, 183–187 Water St. [5/02/86]

Knox County

Camden, *US Post Office—Camden Main*, Chestnut St. [9/25/86]

Lincoln County

Dresden, *Dresden Brick School House*, ME 128 [6/13/86]
Dresden, *Lithgow House*, Blinn Hill Rd. [12/26/85]
Waldoboro, *Waldo Theatre*, Main St. [9/11/86]

Oxford County

Freyburg, *Church of the New Jerusalem*, 4 Oxford St. [6/12/86]
Lovell, *Lovell Village Church*, Church St. [6/20/86]
North Waterford, *North Waterford Congregational Church*, Off ME 35 [6/13/86]

Penobscot County

Bangor, *Bryant, Charles G., Double House*, 16–18 Division St. [6/20/86]
Burlington, *Old Tavern*, ME 168 and Old Dam Rd. [4/04/86]
Old Town, *US Post Office—Old Town Main*, Center St. [9/25/86]
Orono, *US Post Office—Orono Main*, Forest and Bennoch Sts. [5/02/86]

Piscataquis County

Chesuncook vicinity, *Archeological Site No. 133.7*, Address Restricted [4/25/86]
Chesuncook vicinity, *Archeological Site No. 133.8*, Address Restricted [4/25/86]
Chisuncook vicinity, *Williard Brook Quarry*, Address Restricted [9/26/86]
Guilford, *Guilford Memorial Library*, Library and Water Sts. [7/31/86]

Sagadahoc County

Richmond, *Peacock Tavern*, US 201 [4/04/86]

Somerset County

Solon vicinity, *Caratunk Falls Archeological District*, Address Restricted [5/30/86]

Waldo County

Belfast, *Belfast Historic District*, Roughly bounded by High, Grove and Elm, Congress, Main and Market and Imrose [6/21/86]
Searsport, *Union Hall*, 3 Reservoir St. [3/20/86]

York County

Parsonsfield, *Parsonsfield Seminary*, ME 160 [6/20/86]
Sanford, *US Post Office*, 28 School St. [5/02/86]

MARYLAND

Allegany County

Cumberland, *Truog, George, House*, 230 Baltimore Ave. [9/11/86]

MARYLAND—Continued
Anne Arundel County

Davidsonville vicinity, *Rock Hall Creek Site (18AN36)*, Address Restricted [1/22/86]
Davidsonville, *Indian Range*, 1052 Mt. Airy Rd. [2/13/86]
Linthicum Heights, *Twin Oaks*, 421 Twin Oaks Rd. [3/21/86]
Millersville, *Childs Residence*, 1033 Cecil Ave. [3/06/86]

Baltimore County

Catonsville, *Mount de Sales Academy*, 700 Academy Rd. [5/30/86]
Parkton, *Hill House*, 19301 York Rd. [3/13/86]

Baltimore Independent City

Baltimore (Independent City), *Lyric Theatre*, 124 W. Mt. Royal Ave. [7/29/86]
Baltimore (Independent City), *USS TORSK (submarine)*, Pier IV, Pratt St. [2/14/86]
Baltimore (Independent City), *Young Men's and Young Women's Hebrew Association Building*, 305–317 W. Monument St. [12/24/85]
Baltimore, *Fells Point Historic District (Boundary Increase)*, Roughly bounded by Cough St., Chester St. and Fells Pt., N.W. Harbor, and Wills and Dallas and Edens Sts. [7/14/86]
Baltimore, *School No. 27 (Commodore John Rodgers Elementary School)*, 2502 E. Fayette St. [3/21/86]

Carroll County

Sykesville, *Springfield Presbyterian Church*, 7300 Spout Hill Rd. [7/31/86]
Uniontown, *Uniontown Historic District*, Uniontown and Trevanion Rds. [1/08/86]
Westminster vicinity, *Rockland Farm*, 201 Rockland Rd. [8/21/86]
Westminster, *Frizzell, Andrew F., House and Farm Complex*, 3601 Salem Bottom Rd. [9/11/86]

Cecil County

Calvert vicinity, *Churchman, John, House*, 215 Churchman Ln. [9/11/86]

Frederick County

Frederick vicinity, *Gambrill House, Monocacy National Battlefield—MD 355* [11/14/85]
Middletown, *Shafer's Mill*, 3018 Bennies Hill Rd. [6/26/86]
Tuscarora vicinity, *Nolands Ferry I Archeological Site (18FR17)*, Address Restricted [10/18/85]

Harford County

Churchville, *Churchville Presbyterian Church*, Intersection of MD 22 and MD 136 [6/21/86]
Darlington vicinity, *Gray Gables*, 4528 Conowingo Rd. [3/27/86]

Howard County

Ellicott City vicinity, *Ranleswrthy*, 3412 Folly Quarter Rd. [5/08/86]

Kent County

Kennedyville vicinity, *Shrewsbury Church*, Shrewsbury Ln. [9/04/86]

Montgomery County

Bethesda, *Taylor, David W., Model Basin*, Bounded by MacArthur Blvd. and George Washington Memorial Pkwy. [10/17/85]
Bethesda, *Wright, Robert Llewellyn, House*, 7827 Deepwell Dr. [9/12/86]
Boyds, *Drury—Austin House*, 19112 Barnesville Rd. [9/23/86]
Rockville, *Montgomery County Courthouse Historic District*, Courthouse Sq. and S. Washington St. [9/03/86]

Prince George's County

Accokeek, *Bellevue*, 200 Manning Rd. E. [9/21/86]
Greenbelt, *Spacecraft Magnetic Test Facility*, Goddard Space Flight Center [10/06/86]
Hyattsville, *US Post Office—Hyattsville Main*, 4325 Gallatin St. [7/24/86]

Queen Anne's County

Centreville vicinity, *Content*, MD 305 near Tuyard Rd. [3/13/86]
Stevensville, *Stevensville Historic District*, MD 18 and Love Point Rd. [9/11/86]

Somerset County

Allen vicinity, *Brentwood Farm*, Allen Rd. [9/04/86]
Princess Anne vicinity, *Somerset Academy*, Address Restricted [9/11/86]
Princess Anne vicinity, *Waterloo*, Mt. Vernon Rd. [2/13/86]

Talbot County

St. Michaels, *EDNA E. LOCKWOOD—Chesapeake Bay Bugeye (boat)*, Navy Pt., foot of Mill St. [3/13/86]
St. Michaels, *St. Michaels Historic District*, Roughly bounded by North Ave., Mill St., the Miles River, Seymour, Baltimore & Eastern RR tracks, and Glory Ave. [9/11/86]

Washington County

Sharpsburg vicinity, *Mount Airy*, MD 34 [7/10/86]

MASSACHUSETTS

Barnstable County

Brewster, *Nickerson Mansion*, 2077 Main St. [2/20/86]
Harwich, *Berry, Captain James, House*, 37 Main St. [9/26/86]
Harwich, *South Harwich Methodist Church*, 276 Chatham Rd. [8/25/86]

Berkshire County

Cheshire, *Stafford Hill Memorial*, Stafford Hill Rd. [2/14/86]
Great Barrington, *US Post Office—Great Barrington Main*, 222 Main St. [1/10/86]
Lenox/Stockbridge, *Elm Court*, Stockbridge St. [12/30/85]
North Adams, *Armstrong House [North Adams MRA]*, 80 Brooklyn St. [10/25/85]
North Adams, *Arnold Print Works [North Adams MRA]*, 87 Marshall St. [10/25/85]
North Adams, *Blackinton Historic District [North Adams MRA]*, Roughly Massachusetts Ave. between Ashton and Dunnes Aves. and Church Hill and Boston & Maine RR [10/25/85]
North Adams, *Boardman, The [North Adams MRA]*, 30–33 Montana St. [10/25/85]
North Adams, *Browne, Charles, House [North Adams MRA]*, 932 S. Church St. [10/25/85]
North Adams, *Church Street—Caddy Hill Historic District (Boundary Increase)*, [North Adams MRA], Roughly bounded by E. Main and Holbrook Ter., Wall and Meadow Sts., Elmwood Ave., and Perry, South, and Ashland Sts. [10/25/85]
North Adams, *Crowley House [North Adams MRA]*, 365 W. Main St. [10/25/85]
North Adams, *Freeman's Grove Historic District [North Adams MRA]*, Roughly bounded by Liberty St., Eagle St., Bracewell Ave., and Houghton St. [10/25/85]
North Adams, *Hathaway Tenement [North Adams MRA]*, 311–321 River St. [10/25/85]
North Adams, *Johnson School [North Adams MRA]*, School St. [10/25/85]
North Adams, *Johnson Manufacturing Company [North Adams MRA]* 65 Brown St. [10/25/85]
North Adams, *Norcel Mill [North Adams MRA]*, 60 Roberts Dr. [10/25/85]
North Adams, *Normal School Historic District [North Adams MRA]*, Roughly Church and Blackinton Sts. [10/25/85]
North Adams, *Sherman, William B., Farm [North Adams MRA]*, 1672 State Rd. [10/25/85]
North Adams, *Sykes House [North Adams MRA]*, 527 W. Main St. [10/25/85]
North Adams, *Wells House [North Adams MRA]* 869 W. Main St. [10/25/85]
Pittsfield, *Berkshire Life Insurance Company Building*, 5–7 North St. [3/27/86]
Washington, *Clark—Eames House [Washington MRA]*, Middlefield Rd. [9/12/86]
Washington, *Eames, Philip, House [Washington MRA]*, Stone House Rd. [9/12/86]
Washington, *Lower Historic District [Washington MRA]*, Washington Mountain Rd. [9/12/86]
Washington, *Saint Andrew's Chapel [Washington MRA]*, Washington Mountain Rd. [9/12/86]
Washington, *Sibley—Corcoran House [Washington MRA]*, Valley Rd. [9/12/86]
Washington, *South Center School House [Washington MRA]*, Washington Mountain Rd. [9/12/86]
Williamstown, *US Post Office—Williamstown Main*, 68 Spring St. [7/17/86]

Bristol County

Acushnet, *Long Plain Friends Meetinghouse*, 1341 N. Main St. [6/26/86]
Fairhaven, *Millicent Library*, 45 Center St. [5/15/86]
Fall River, *Manley, William M., House [Fall River MRA]*, 610 Cherry St. [6/26/86]
Fall River, *PT BOAT 796 (torpedo boat)*, Battleship Cove [1/14/86]
Fall River, *Truesdale Hospital [Fall River MRA]*, 1820 Highland Ave. [4/15/86]
North Attleborough, *North Attleborough Town Center Historic District*, Roughly N. and S. Washington St. between Fisher and Bank Sts. [12/20/85]

Essex County

Beverly, *Fish Flake Hill Historic District (Boundary Increase)*, Roughly bounded by Cabot, Bartlett, and Water Sts. [6/26/86]
Beverly, *Hose House No. 2*, 30 Rantoul St. [7/03/86]
Beverly, *US Post Office—Beverly Main*, 161 Rantoul St. [6/04/86]

MASSACHUSETTS—Continued

Lawrence, *Buildings at 24–30 Summer St.*, 24–30 Summer St. [12/05/85]

Lynn, *Central Square Historic District*, Central Sq., Monroe, Union, and Willow Sts. [12/10/85]

Lynn, *English High School*, Essex and James Sts. [9/11/85]

Lynn, *US Post Office—Lynn Main*, 51 Willow St. [9/20/85]

Marblehead, *Story Grammar School*, 140 Elm St. [3/13/86]

Newburyport, *US Post Office—Newburyport Main*, 61 Pleasant St. [6/18/86]

Salem, *US Post Office—Salem Main*, 2 Margin St. [5/04/86]

Franklin County

Greenfield, *US Post Office—Greenfield Main*, 442 Main St. [12/20/85]

Hampden County

Blandford, *First Congregational Church of Blandford*, North St. [10/28/85]

Holyoke, *North High Street Historic District*, High St. between Dwight and Lyman Sts. [6/26/86]

Holyoke, *US Post Office—Holyoke Main*, 650 Dwight St. [1/21/86]

Palmer, *US Post Office—Palmer Main*, Park and Central Sts. [12/12/85]

Springfield, *McKnight District (Boundary Increase)*, Roughly bounded by New England RR, Pease, and Sherman and Harvard Sts. and Saint James Ave., Florida, and Bay Sts. [9/26/85]

Springfield, *Mills—Hale—Owen Blocks*, 950–991 Main St. [10/31/85]

Westfield, *Westfield Whip Manufacturing Company*, 300 Elm St. [10/17/85]

Hampshire County

Amherst, *East Village Historic District*, Main, N. and S. East Sts. [7/08/86]

Easthampton, *Main Street Historic Distict*, Main St. between Northampton and Center Sts. [3/17/86]

Easthampton, *US Post Office—Easthampton Main*, 19 Union St. [4/01/86]

Northampton, *Building at 8–22 Graves Avenue*, 8–22 Graves Ave. [11/07/85]

South Hadley, *US Post Office—South Hadley Main*, 1 Hadley St. [5/23/86]

Ware, *Church Street Historic District*, Church St. between Park Ave. and Highland St. [5/23/86]

Ware, *Ware Town Hall*, Main and West Sts. [6/25/86]

Ware, *Ware Center Historic District*, MA 9 and Greenwich Plains Rd. [5/08/86]

Ware, *Ware—Hardwick Covered Bridge*, Old Gilbertville Rd. and Bridge St. [5/08/86]

Middlesex County

Acton, *Exchange Hall*, Quimby Sq. on School St. [8/13/86]

Acton, *Jones Tavern*, 128 Main St. [8/13/86]

Arlington, *US Post Office—Arlington Main*, 10 Court St. [6/18/86]

Ayer, *Pleasant Street School*, Pleasant St. [1/23/86]

Cambridge, *Bennink—Douglas Cottages [Cambridge MRA]*, 35–51 Walker St. [8/19/86]

Cambridge, *Berkeley Street Historic District (Boundary Increase) [Cambridge MRA]*, 1–6 Berkeley Pl. [5/19/86]

Cambridge, *Bertram Hall at Radcliffe College [Cambridge MRA]*, 33 Shepard St. [5/19/86]

Cambridge, *Brimbrook, E. H., House [Cambridge MRA]*, 42–44 Avon St. [5/19/86]

Cambridge, *Brooks, Luther, House [Cambridge MRA]*, 34 Kirkland St. [9/12/86]

Cambridge, *Craigie Arms*, 2–6 University Rd., 122 Mt. Auburn, and 6 Bennett Sts. [7/10/86]

Cambridge, *Dana—Palmer House [Cambridge MRA]*, 12–16 Quincy St. [5/19/86]

Cambridge, *Divinity Hall [Cambridge MRA]*, 12 Divinity Ave. [9/12/86]

Cambridge, *Dunvegan, The [Cambridge MRA]*, 1684 Massachusetts Ave. [5/19/86]

Cambridge, *Eliot Hall at Radcliffe College [Cambridge MRA]*, 51 Shepard St. [5/19/86]

Cambridge, *Fogg Art Museum [Cambridge MRA]*, 25–32 Quincy St. [5/19/86]

Cambridge, *Follen Street Historic District [Cambridge MRA]*, 1–44 and 5–20 Follen St. [5/19/86]

Cambridge, *Gray Gardens East and West Historic District [Cambridge MRA]*, 1–37 Gray Gardens E, 3–34 Gray Gardens W, 91 Gerden and 60 Raymond Sts. [5/19/86]

Cambridge, *Hapgood, Richard, House [Cambridge MRA]*, 352–362 Harvard St. [5/19/86]

Cambridge, *Harvard Houses Historic District [Cambridge MRA]*, Roughly bounded by Mt. Auburn and Grant and Cowperwaite Sts., Banks St. and Putnan Ave., the Memorial River, and Boyleston St. [9/12/86]

Cambridge, *Jarvis, The [Cambridge MRA]*, 27 Everett St. [5/19/86]

Cambridge, *Kirkland Place Historic District [Cambridge MRA]*, Kirkland Pl. [5/19/86]

Cambridge, *Littlefield—Roberts House [Cambridge MRA]*, 16 Prescott St. [9/12/86]

Cambridge, *Lovering, Joseph, House [Cambridge MRA]*, 36 Kirkland St. [9/12/86]

Cambridge, *Memorial Drive Apartments Historic District [Cambridge MRA]*, 963–984, 985–989, 987–989, and 903–993 Memorial Dr. [5/19/86]

Cambridge, *Montrose, The [Cambridge MRA]*, 1640 Massachusetts Ave. [5/19/86]

Cambridge, *Peabody Court Apartments [Cambridge MRA]*, 41–43 Linnaean St. [5/19/86]

Cambridge, *Shady Hill Historic District [Cambridge MRA]*, Roughly bounded by Museum, Beacon and Holden, and Kirkland Sts., and Francis Ave. [5/19/86]

Cambridge, *Stanstead, The [Cambridge MRA]*, 19 Ware St. [5/19/86]

Cambridge, *Stickney—Shepard House [Cambridge MRA]*, 11–13 Remington St. [5/19/86]

Cambridge, *Treadwell—Sparks House [Cambridge MRA]*, 21 Kirkland St. [9/12/86]

Cambridge, *US Post Office—Central Square*, 770 Massachusetts Ave. [6/18/86]

Cambridge, *University Museum [Cambridge MRA]*, 11–23 Divinity Ave. [9/12/86]

Cambridge, *Warren, Langford H., House [Cambridge MRA]*, 6 Garden Terr. [5/19/86]

Cambridge, *Withey, S. B., House [Cambridge MRA]*, 10 Appian Way [5/19/86]

Cambridge, *Wood, J. A., House, [Cambridge MRA]*, 3 Sacramento St. [5/19/86]

Lexington, *US Post Office—Lexington Main*, 1605 Massachusetts Ave. [3/26/86]

Lincoln vicinity, *McCune Site*, Address Restricted [1/23/86]

Lowell, *Brown—Maynard House*, 84 Tenth St. [7/02/86]

Lowell, *Flagg—Coburn House*, 722 E. Merrimack St. [5/15/86]

Lowell, *US Post Office*, 50 Kearny Sq. [3/10/86]

Medford, *US Post Office—Medford Main*, 20 Forest St. [6/18/86]

Needham/Newton, *Needham Street Bridge [Newton MRA]*, Needham St. at Charles River [9/04/86]

Newton, *Adams, Amos, House [Newton MRA]*, 37 Park Ave. [9/04/86]

Newton, *Adams, Seth, House [Newton MRA]*, 73 Jewett St. [9/04/86]

Newton, *Auburndale Congregational Church [Newton MRA]*, 64 Hancock St. [9/04/86]

Newton, *Bartlett—Hawkes Farm [Newton MRA]*, 15 Winnetaska Rd. [9/04/86]

Newton, *Bayley House [Newton MRA]*, 18 Fairmont Ave. [9/04/86]

Newton, *Bemis Mill [Newton MRA]*, 1–3 Bridge St. [9/04/86]

Newton, *Bigelow, Henry, House [Newton MRA]*, 15 Bigelow Terr. [9/04/86]

Newton, *Blodgett, William, House [Newton MRA]*, 943 Centre St. [9/04/86]

Newton, *Bracket House [Newton MRA]*, 831 Centre St. [9/04/86]

Newton, *Buckingham, John, House [Newton MRA]*, 32–35 Walnut St. [9/04/86]

Newton, *Building at 1–8 Walnut Terrace [Newton MRA]*, 1–8 Walnut Terr. [9/04/86]

Newton, *Central Congregational Church [Newton MRA]*, 318 Walnut St. [9/04/86]

Newton, *Chestnut Hill, The [Newton MRA]*, 219 Commonwealth Ave. [9/04/86]

Newton, *Claflin, Adams, House [Newton MRA]*, 158 Grant Ave. [9/04/86]

Newton, *Clark House [Newton MRA]*, 379 Central St. [9/04/86]

Newton, *Collins, Frederick House [Newton MRA]*, 1736 Beacon St. [9/04/86]

Newton, *Crystal Lake and Pleasant Street Historic District [Newton MRA]*, Roughly bounded by Sudbury Aqueduct, Pleasant Ave., Lake Ave., and Crystal St. and Webster Ct. [9/04/86]

Newton, *Curtis, Allen Crocker, House—Pillar House [Newton MRA]*, 28 Quinobequin Rd. [9/04/86]

Newton, *Curtis, William, House [Newton MRA]*, 2330 Washington St. [9/04/86]

Newton, *Davis, Seth, House [Newton MRA]*, 32 Eden Ave. [9/04/86]

Newton, *Dupee Estate [Newton MRA]*, 400 Beacon St. [9/04/86]

Newton, *Elliott, Charles D., House [Newton MRA]*, 7 Colmen St. [9/04/86]

Newton, *Eminence, The [Newton MRA]*, 122 Islington Rd. [9/04/86]

Newton, *Estabrook, Rufus, House [Newton MRA]*, 33 Woodland Rd. [9/04/86]

Newton, *Evangelical Baptist Church [Newton MRA]*, 23 Chapel St. [9/04/86]

Newton, *Farlow and Kendrick Parks Historic District (Boundary Increase) [Newton MRA]*, 223, 226, 234, 237, 242, 263, 268, and 286 Park St. [9/04/86]

MASSACHUSETTS—Continued

Newton, *Farquhar, Samuel, House [Newton MRA]*, 7 Channing St. [9/04/86]

Newton, *Fenno, John A., House [Newton MRA]*, 171 Lowell Ave. [9/04/86]

Newton, *First Unitarian Church [Newton MRA]*, 1326 Washington St. [9/04/86]

Newton, *Fuller, Capt. Edward, Farm [Newton MRA]*, 59–71 North St. [9/04/86]

Newton, *Gane, Henry, House [Newton MRA]*, 121 Adena Rd. [9/04/86]

Newton, *Gray Cliff Historic District [Newton MRA]*, 35, 39, 43, 53, 54, 64, 65, and 70 Gray Cliff Rd. [9/04/86]

Newton, *Gunderson, Jos., House [Newton MRA]*, 983 Centre St. [9/04/86]

Newton, *Harbach, John, House [Newton MRA]*, 303 Ward St. [9/04/86]

Newton, *Harding House—Walker Missionary Home [Newton MRA]*, 161–163 Grove St. [9/04/86]

Newton, *Haskell, Charles, House [Newton MRA]*, 27 Sargent St. [9/04/86]

Newton, *House at 1008 Beacon Street [Newton MRA]*, 1008 Beacon St. [9/04/86]

Newton, *House at 107 Waban Hill Road [Newtoin MRA]*, 107 Waban Hill Rd. [9/04/86]

Newton, *House at 115–117 Jewett Street [Newton MRA]*, 115–117 Jewett St. [9/04/86]

Newton, *House at 15 Davis Avenue [Newton MRA]*, 15 Davis Ave. [9/04/86]

Newton, *House at 152 Suffolk Road [Newton MRA]*, 152 Suffolk Rd. [9/04/86]

Newton, *House at 170 Otis Street [Newton MRA]*, 170 Otis St. [9/04/86]

Newton, *House at 173–175 Ward Street [Newton MRA]*, 173–175 Ward St. [9/04/86]

Newton, *House at 215 Brookline Street [Newton MRA]*, 215 Brookline St. [9/04/86]

Newton, *House at 2212 Commonwealth Avenue [Newton MRA]*, 2212 Commonwealth Ave. [9/04/86]

Newton, *House at 230 Melrose Street [Newton MRA]*, 230 Melrose St. [9/04/86]

Newton, *House at 230 Winchester Street [Newton MRA]*, 230 Winchester St. [9/04/86]

Newton, *House at 3 Davis Avenue [Newton MRA]*, 3 Davis Ave. [9/04/86]

Newton, *House at 307 Lexington Street [Newton MRA]*, 307 Lexington St. [9/04/86]

Newton, *House at 309 Waltham Street [Newton MRA]*, 309 Waltham St. [9/04/86]

Newton, *House at 31 Woodbine Street [Newton MRA]*, 31 Woodbine St. [9/04/86]

Newton, *House at 47 Sargent Street [Newton MRA]*, 47 Sargent St. [9/04/86]

Newton, *House at 511 Watertown Street [Newton MRA]*, 511 Watertown St. [9/04/86]

Newton, *House at 60 William Street [Newton MRA]*, 60 William St. [9/04/86]

Newton, *House at 66 Maple Street [Newton MRA]*, 66 Maple St. [9/04/86]

Newton, *House at 729 Dedham Street [Newton MRA]*, 729 Dedham St. [9/04/86]

Newton, *House at 81–83 Gardner Street [Newton MRA]*, 81–83 Gardner St. [9/04/86]

Newton, *House at 102 Staniford Street [Newton MRA]*, 102 Staniford St. [9/04/86]

Newton, *House at 203 Islington Road [Newton MRA]*, 203 Islington Rd. [9/04/86]

Newton, *House at 41 Middlesex Road [Newton MRA]*, 41 Middlesex Rd. [9/04/86]

Newton, *Hyde House [Newton MRA]*, 27 George St. [9/04/86]

Newton, *Hyde, Eleazer, House [Newton MRA]*, 401 Woodward St. [9/04/86]

Newton, *Hyde, Gershom, House [Newton MRA]*, 29 Greenwood St. [9/04/86]

Newton, *Jackson, Samuel, Jr., House [Newton MRA]*, 137 Washington St. [9/04/86]

Newton, *Jackson House [Newton MRA]*, 125 Jackson St. [9/04/86]

Newton, *Jennison, Joshua, House [Newton MRA]*, 11 Thornton St. [9/04/86]

Newton, *Judkins, Amos, House [Newton MRA]*, 8 Central Ave. [9/04/86]

Newton, *King House [Newton MRA]*, 328 Brookline St. [9/04/86]

Newton, *Kingsbury House [Newton MRA]*, 137 Suffolk St. [9/04/86]

Newton, *Kistler House [Newton MRA]*, 945 Beacon St. [9/04/86]

Newton, *Lasell Neighborhood Historic District [Newton MRA]*, Roughly bounded by Woodland and Studio Rds., Aspen and Seminary Aves., and Grove St. [9/04/86]

Newton, *Merriam, Galen, House [Newton MRA]*, 102 Highland St. 9/04/86]

Newton, *Mount Pleasant [Newton MRA]*, 15 Bracebridge Rd. [9/04/86]

Newton, *Newton Street Railway Carbarn [Newton MRA]*, 1121 Washington St. [9/04/86]

Newton, *Newton Highlands Historic District [Newton MRA]*, Roughly bounded by Lincoln and Hartford Sts., Erie Ave., and Woodward St. [9/04/86]

Newton, *Newton Lower Falls Historic District [Newton MRA]*, Roughly bounded by Hagar, Grove, Washington, and Concord Sts. [9/04/86]

Newton, *Newton Theological Institution Historic District [Newton MRA]*, Roughly bounded by Braeland Ave., Ripley St. and Langley Rd., Bowdoin School Access Rd., and Cypress St. [9/04/86]

Newton, *Newton Upper Falls Historic District [Newton MRA]*, Roughly bounded by Boylston, Elliot, and Oak Sts., and the Charles River [9/04/86]

Newton, *Newtonville Historic District [Newton MRA]*, Roughly bounded by Highland Ave., Walnut Mill St., Otis St., and Lowell Ave. [9/04/86]

Newton, *Nichols House [Newton MRA]*, 140 Sargent St. [9/04/86]

Newton, *Old Chestnut Hill Historic District [Newton MRA]*, Along Hammond St. and Chestnut Hill Rd. roughly bounded by Beacon St. and Essex Rd., and Suffolk Rd. [9/04/86]

Newton, *Old Shephard Farm [Newton MRA]*, 1832 Washington St. [9/04/86]

Newton, *Our Lady Help of Christians Historic District [Newton MRA]*, Adams and Washington Sts. [9/04/86]

Newton, *Page, H. P., House [Newton MRA]*, 110 Jewett St. [9/04/86]

Newton, *Parsons, Edward, House [Newton MRA]*, 58 Cedar St. [9/04/86]

Newton, *Peabody—Williams House [Newton MRA]*, 7 Norman Rd. [9/04/86]

Newton, *Prescott Estate [Newton MRA]*, 770 Centre St. [9/04/86]

Newton, *Putnam Street Historic District [Newton MRA]*, Roughly bounded by Winthrop, Putnam, Temple, and Shaw Sts. [9/04/86]

Newton, *Railroad Hotel [Newton MRA]*, 1273—1279 Washington St. [9/04/86]

Newton, *Rawson Estate [Newton MRA]*, 41 Vernon St. [9/04/86]

Newton, *Richards, James Lorin, House [Newton MRA]*, 47 Kirkstall and 22 Oakwood Rds. [9/04/86]

Newton, *Riley, Charles, House [Newton MRA]*, 93 Bellevue St. [9/04/86]

Newton, *Salisbury, Jonas, House [Newton MRA]*, 85 Langley Rd. [9/04/86]

Newton, *Salisbury, Jonas, House [Newton MRA]*, 62 Walnut Pk. [9/04/86]

Newton, *Simpson House [Newton MRA]*, 57 Hunnewell Ave. [9/04/86]

Newton, *Smith-Peterson House [Newton MRA]*, 32 Farlow Rd. [9/04/86]

Newton, *Smith, Curtis S., House [Newton MRA]*, 56 Fairmount Ave. [9/04/86]

Newton, *Souther, John, House [Newton MRA]*, 43 Fairmont St. [9/04/86]

Newton, *Staples—Crafts—Wiswall Farm [Newton MRA]*, 1615 Beacon St. [9/04/86]

Newton, *Stone, Joseph L., House [Newton MRA]*, 77—85 Temple St. [9/04/86]

Newton, *Strong's Block [Newton MRA]*, 1637—1651 Beacon St. [9/04/86]

Newton, *Sumner and Gibbe Streets Historic District [Newton MRA]*, Roughly Sumner St. between Willow St. and Cotswold Terr. and 184 Gibbs St. [9/04/86]

Newton, *Thaxter, Celia, House [Newton MRA]*, 524 California St. [9/04/86]

Newton, *Thayer House [Newton MRA]*, 17 Channing St. [9/04/86]

Newton, *Union Street Historic District [Newton MRA]*, Roughly Union St. between Langley Rd. and Herrick St., and 17—31 Herrick St. [9/04/86]

Newton, *Ward, Ephraim, House [Newton MRA]*, 121 Ward St. [9/04/86]

Newton, *Webster Park Historic District [Newton MRA]*, Along Webster Pk. and Webster St. between Westwood St. and Oak Ave. [9/04/86]

Newton, *West Newton Hill Historic District [Newton MRA]*, Roughly bounded by Highland Ave., Lenox, Hampshire, and Chestnut Sts. [9/04/86]

Newton, *Wheat, Samuel, House [Newton MRA]*, 399 Waltham St. [9/04/86]

Newton, *Whittemore's Tavern [Newton MRA]*, 473 Auburn St. [9/04/86]

Newton, *Woodward, John, House [Newton MRA]*, 50 Fairlee Rd. [9/04/86]

Newton, *Working Boys Home [Newton MRA]*, 333 Nahanton St. [9/04/86]

Sherborn, *Assington [Sherborn MRA]*, 172 Forest St. [1/03/86]

Sherborn, *Bullen—Stratton—Cozzen House [Sherborn MRA]*, 52 Brush Hill Rd. [1/03/86]

Sherborn, *Clark—Northrup House [Sherborn MRA]*, 93 Maple St. [1/03/86]

Sherborn, *Cleale, Joseph, House [Sherborn MRA]*, 147 Western Ave. [1/03/86]

Sherborn, *Dowse, Rev. Edmund, House [Sherborn MRA]*, 25 Farm Rd. [1/03/86]

Sherborn, *Edward's Plain—Dowse's Corner Historic District [Sherborn MRA]*, N. Main St. between Eliot and Everett Sts. [1/03/86]

Sherborn, *Fleming, Thomas, House [Sherborn MRA]*, 18 Maple St. [1/03/86]

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MASSACHUSETTS—Continued
Sherborn, *Goulding, Eleazer, House [Sherborn MRA]*, 137 Western Ave. [1/03/86]
Sherborn, *Holbrook, Charles, House [Sherborn MRA]*, 137 S. Main St. [1/03/86]
Sherborn, *Leland, Deacon William, House [Sherborn MRA]*, 27 Hollis St. [1/03/86]
Sherborn, *Lewis, Charles D., House [Sherborn MRA]*, 81 Hunting Ln. [1/03/86]
Sherborn, *Morse—Barber House [Sherborn MRA]*, 46 Forest St. [1/03/86]
Sherborn, *Morse, Daniel, III, House [Sherborn MRA]*, 210 Farm Rd. [1/03/86]
Sherborn, *Morse—Tay—Leland—Howes House [Sherborn MRA]*, 236 Western Ave. [1/03/86]
Sherborn, *Sanger, Asa, House [Sherborn MRA]*, 70 Washington St. [1/03/86]
Sherborn, *Sanger, Richard, III, House [Sherborn MRA]*, 60 Washington St. [1/03/86]
Sherborn, *Sawin—Butler—Bullard House [Sherborn MRA]*, 60 Brush Hill Rd. [1/09/86]
Sherborn, *Sewall—Ware House [Sherborn MRA]*, 100 S. Main St. [1/03/86]
Sherborn, *Sherborn Center Historic District [Sherborn MRA]*, Roughly bounded by Zion's Ln., Central RR tracks, Farm and Sawin Sts., and Washington and N. Main Sts. [1/03/86]
Sherborn, *Twitchell, Joseph, House [Sherborn MRA]*, 32 Pleasant St. [1/03/86]
Sherborn, *Vaughn, H. C., House [Sherborn MRA]*, 5 Sparhawk Rd. [1/03/86]
Sherborn, *Ware's Tavern [Sherborn MRA]*, 113 S. Main St. [1/03/86]
Sherborn, *Woodland Farm—Leland House [Sherborn MRA]*, 106 Woodland St. [1/03/86]
Somerville, *US Post Office—Somerville Main*, 237 Washington St. [5/30/86]
Waltham, *US Post Office—Waltham Main*, 774 Main St. [5/29/86]

Norfolk County
Brookline, *Anderson, Larz, Park Historic District [Brookline MRA]*, Bounded by Goddard and Avon Sts. [10/17/85]
Brookline, *Arcade Building [Brookline MRA]*, 314–320A Harvard St. [10/17/85]
Brookline, *Beacon Street Historic District [Brookline MRA]*, Roughly on Beacon St. from Saint Mary's to Aye Rd. [10/17/85]
Brookline, *Beaconsfield Terraces Historic District [Brookline MRA]*, 11–25, 23–43, and 44–55 Garrison Rd. and 315–329, 312–344, and 350–368 Tappan St. [10/17/85]
Brookline, *Bowditch, William Ingersoll, House [Brookline MRA]*, 9 Toxteth St. [10/17/85]
Brookline, *Brandegee Estate [Brookline MRA]*, 280 Newton St. [10/17/85]
Brookline, *Building at 30–34 Station Street [Brookline MRA]*, 30–34 Station St. [10/17/85]
Brookline, *Cabot, Lewis, Estate [Brookline MRA]*, 244 Warren St. [10/17/85]
Brookline, *Candler Cottage [Brookline MRA]*, 447 Washington St. [10/17/85]
Brookline, *Chestnut Hill Historic District [Brookline MRA]*, Roughly bounded by Middlesex Rd., Reservoir Ln., Dunny Rd., Boylston St. and Dunster Rd. [10/17/85]
Brookline, *Child, Isaac, House [Brookline MRA]*, 209 Newton St. [10/17/85]
Brookline, *Corey, Timothy, House No. 1 [Brookline MRA]*, 808 Washington St. [10/17/85]
Brookline, *Corey, Timothy, House No. 2 [Brookline MRA]*, 786–798 Washington St. [10/17/85]
Brookline, *Cypress—Emerson Historic District [Brookline MRA]*, Roughly bounded by Waverly, Emerson, and Cypress Sts. [10/17/85]
Brookline, *Davis, Robert E., House [Brookline MRA]*, 50 Stanton Rd. [10/17/85]
Brookline, *Davis, Thomas Aspinwall, House [Brookline MRA]*, 29 Linden Pl. [10/17/85]
Brookline, *Douglass, Alfred, House [Brookline MRA]*, 157 Clyde St. [10/17/85]
Brookline, *Dutch House, The [Brookline MRA]*, 20 Netherlands Rd. [1/24/86]
Brookline, *Elliot, General Simon, House [Brookline MRA]*, 61 Heath St. [10/17/85]
Brookline, *Emmett Cottage [Brookline MRA]*, 217 Freeman St. [10/17/85]
Brookline, *Fernwood [Brookline MRA]*, 155 Clyde St. [10/17/85]
Brookline, *Fire Station No. 7 [Brookline MRA]*, 965 Washington St. [10/17/85]
Brookline, *Fisher Hill Historic District [Brookline MRA]*, Roughly bounded by Clinton and Sumner Rds., Boylston St. and Chestnut Hill Ave. [10/17/85]
Brookline, *Francis, Dr. Tappan Eustis, House [Brookline MRA]*, 35 Davis Ave. [10/17/85]
Brookline, *Fuller, Peter, Building [Brookline MRA]*, 808 Commonwealth Ave. [10/17/85]
Brookline, *Goddard, John, House [Brookline MRA]*, 235 Goddard Ave. [10/17/85]
Brookline, *Graffam Development Historic District [Brookline MRA]*, Roughly bounded by Abbottsford Rd., Babcock St., Manchester, and Naples Rds. [10/17/85]
Brookline, *Green Hill Historic District [Brookline MRA]*, Roughly Warren St., Sargent Rd., and Cottage St. [10/17/85]
Brookline, *Harris, John, House and Farm [Brookline MRA]*, 284 Newton St. [10/17/85]
Brookline, *Heath, Charles, House [Brookline MRA]*, 12 Heath Hill [10/17/85]
Brookline, *Heath, Ebenezer, House [Brookline MRA]*, 99 Heath St. [10/17/85]
Brookline, *Holyhood Cemetery [Brookline MRA]*, Heath St. [10/17/85]
Brookline, *Hotel Adelaide [Brookline MRA]*, 13–23 High St. [10/17/85]
Brookline, *Hotel Kempsford [Brookline MRA]*, 72 Walnut St. [10/17/85]
Brookline, *House at 12–16 Carey Road [Brookline MRA]*, 12–16 Carey Rd. [10/17/85]
Brookline, *House at 105 Marion Street [Brookline MRA]*, 105 Marion St. [10/17/85]
Brookline, *House at 12 Linden Street [Brookline MRA]*, 12 Linden St. [10/17/85]
Brookline, *House at 12 Vernon Street [Brookline MRA]*, 12 Vernon St. [10/17/85]
Brookline, *House at 195 Reservoir [Brookline MRA]*, 155 Reservoir Rd. [10/17/85]
Brookline, *House at 225 Monmouth Terrace [Brookline MRA]*, 225 Mason Terr. [10/17/85]
Brookline, *House at 39 Linden Street [Brookline MRA]*, 39 Linden St. [10/17/85]
Brookline, *House at 25 Stanton Road [Brookline MRA]*, 25 Stanton Rd. [10/17/85]
Brookline, *House at 36–40 Webster Place [Brookline MRA]*, 36–40 Webster Pl. [10/17/85]
Brookline, *House at 4 Perry Street [Brookline MRA]*, 4 Perry St. [10/17/85]
Brookline, *House at 44 Linden Street [Brookline MRA]*, 44 Linden St. [10/17/85]
Brookline, *House at 44 Stanton Road [Brookline MRA]*, 44 Stanton Rd. [10/17/85]
Brookline, *House at 5 Lincoln Road [Brookline MRA]*, 5 Lincoln Rd. [10/17/85]
Brookline, *House at 53 Linden Street [Brookline MRA]*, 53 Linden St. [10/17/85]
Brookline, *House at 83 Penniman Place [Brookline MRA]*, 83 Penniman Pl. [10/17/85]
Brookline, *House at 9 Linden Street [Brookline MRA]*, 9 Linden St. [10/17/85]
Brookline, *Houses at 78–86 Harvard Avenue [Brookline MRA]*, 78–86 Harvard Ave. [10/17/85]
Brookline, *House at 89 Rawson Road and 86 Colburne Crescent [Brookline MRA]*, 89 Rawson Rd. and 86 Colburne Crescent [10/17/85]
Brookline, *Jackson, Thaddeus, House [Brookline MRA]*, 16 Alberta Rd. [10/17/85]
Brookline, *Kilsyth Terrace [Brookline MRA]*, 15–27 Kilsyth Rd. [10/17/85]
Brookline, *Linden Square [Brookline MRA]*, Linden Pl. [10/17/85]
Brookline, *Linden Park [Brookline MRA]*, Linden Pl. and Linden St. [10/17/85]
Brookline, *Lynch—O'Connor House [Brookline MRA]*, 41 Mason Terr. [10/17/85]
Brookline, *Milestone [Brookline MRA]*, Boylston St. [10/17/85]
Brookline, *Milestone [Brookline MRA]*, Harvard St. [10/17/85]
Brookline, *Murphy, William, House [Brookline MRA]*, 97 Sewall Ave. [10/17/85]
Brookline, *Orrock, Rev. John, House [Brookline MRA]*, 68 Winchester St. [10/17/85]
Brookline, *Paine Estate [Brookline MRA]*, 325 Heath St. [10/17/85]
Brookline, *Perkins Estate [Brookline MRA]*, 450 Warren St. [10/17/85]
Brookline, *Reservoir Park [Brookline MRA]*, Boylston St. [10/17/85]
Brookline, *Ritchie Building [Brookline MRA]*, 112 Cypress St. [10/17/85]
Brookline, *Boughwood [Brookline MRA]*, 400 Heath St. [10/17/85]
Brookline, *Saint Aidan's Church and Rectory [Brookline MRA]*, 207 Freeman and 158 Pleasant Sts. [10/17/85]
Brookline, *Saint Mary of the Assumption Church, Rectory, School and Convent [Brookline MRA]*, 67 Harvard St. and 3 and 5 Linden Pl. [10/17/85]
Brookline, *Saint Paul's Church, Chapel, and Parish House [Brookline MRA]*, 15 and 27 Saint Paul St. and 184 Aspinwall Ave. [10/17/85]
Brookline, *Saint Paul's Rectory [Brookline MRA]*, 130 Aspinwall Ave. [10/17/85]
Brookline, *Sargent's Pond [Brookline MRA]*, Sargent Rd. [10/17/85]
Brookline, *Second Unitarian Church [Brookline MRA]*, 11 Charles St. [10/17/85]
Brookline, *Spurr, Ehphalet, House [Brookline MRA]*, 108 Walnut St. [10/17/85]
Brookline, *Standish, James H., House [Brookline MRA]*, 54 Francis St. [10/17/85]

MASSACHUSETTS—Continued
Brookline, *Strathmore Road Historic District [Brookline MRA]*, Strathmore Rd. and Clinton Path [10/17/85]
Brookline, *Toussaint, Winand, House [Brookline MRA]*, 203 Aspinwall Ave. [10/17/85]
Brookline, *Town Stable [Brookline MRA]*, 237 Cypress St. [10/17/85]
Brookline, *Tuckerman, William F., House [Brookline MRA]*, 63 Harvard Ave. [10/17/85]
Brookline, *Twitchell, Ginery, House [Brookline MRA]*, 17 Kent St. [10/17/85]
Brookline, *Walnut Hills Cemetery [Brookline MRA]*, Grove St. and Allandale Rd. [10/17/85]
Brookline, *White, Benjamin, House [Brookline MRA]*, 203 Heath St. [10/17/85]
Brookline, *White Place Historic District [Brookline MRA]*, White Pl. between Washington St. and Davis Path [10/17/85]
Foxboro, *Cary, Otis, House*, 242 South St. [3/13/86]
Foxboro, *Morse, Amos, House*, 77 North St. [1/09/86]
Milton, *US Post Office—Milton Main*, 499 Adams St. [5/30/86]
Needham, *Smith, James, House*, 706 Great Plain Ave. [8/21/86]
Quincy vicinity, *Boston Harbor Islands Archeological District*, Address Restricted [12/21/85]
Quincy, *US Post Office—Quincy Main*, 47 Washington St. [5/23/86]
Wellesley, *Wellesley Farms Railroad Station*, Croton St. extension [12/14/86]
Weymouth, *Adams, John, School*, 16 Church St. [12/05/85]
Weymouth, *US Post Office—Weymouth Landing*, 103 Washington St. [5/27/86]
Weymouth, *Washington School*, 8 School St. [6/05/86]
Wrentham, *Plimpton—Winter House*, 127 South St. [12/05/85]

Plymouth County
Duxbury, *Bradford, Captain Daniel, House*, 251 Harrison St. [2/20/86]
Duxbury, *Old Shipbuilder's Historic District*, Both sides of Washington St. from Rowder Ave. to N of South Duxbury [6/21/86]
Hingham vicinity, *Boston Harbor Islands Archeological District*, Address Restricted [12/21/85]
Wareham, *Tobey Homestead*, Main St. and Sandwich Rd. [6/05/86]

Suffolk County
Boston vicinity, *Boston Harbor Islands Archeological District*, Address Restricted [12/21/85]
Boston, *Anderson, Larz, Park Historic District [Brookline MRA]*, Bounded by Goddard and Avon Sts. [10/17/85]
Boston, *Brandegee Estate [Brookline MRA]*, 280 Newton St. [10/17/85]
Boston, *Bulfinch Triangle Historic District*, Roughly bounded by Canal, Market, Merrimac, and Causeway Sts. [2/27/86]
Boston, *Christ Church*, 1220 River Rd. [1/30/86]
Boston, *Dudley Station Historic District*, Washington, Warren, and Dudley Sts. [12/05/85]
Boston, *Engine House No. 34*, 444 Western Ave. [10/24/85]
Boston, *Filene's Department Store*, 426 Washington St. [7/24/86]
Boston, *Harris, John, House and Farm [Brookline MRA]*, 284 Newton St. [10/17/85]
Boston, *Harriswood Crescent*, 60–86 Harold St. [3/13/86]
Boston, *Locke—Ober Restaurant*, 3–4 Winter Pl. [7/24/86]
Boston, *Richardson Block*, 113–151 Pearl and 108–119 High Sts. [8/09/86]
Boston, *Sears' Crescent and Sears' Block*, 38–66 and 70–72 Cornhill [8/09/86]
Boston, *Second Brazer Building*, 25–29 State St. [7/24/86]
Boston, *USS CASSIN YOUNG (destroyer)*, Charlestown Navy Yard [1/14/86]
South Boston, *US Post Office Garage*, 135 A St. [8/26/86]

Worcester County
Auburn, *Stone, Joseph, House*, 35 Stone St. [1/09/86]
Gardner, *West Gardner Square Historic District*, Roughly bounded by City Hall Ave., Pleasant, Connors, Parker, and Central Sts., and Providence & Worcester RR tracks. [12/30/85]
Hardwick, *Ware—Hardwick Covered Bridge*, Old Gilbertville Rd. and Bridge St. [5/06/86]
Hudson, *Felton Street School*, 20 Felton St. [2/27/86]
Spencer, *Spencer Town Center Historic District*, Main between High and North Sts. [6/26/86]
Templeton, *Baldwinville Village Historic District*, Roughly Elm and S. Main Sts. between Pleasant St. and Mt. View [2/27/86]
Worcester, *Richmond, Willard, Apartment Block [Worcester MRA]*, 43 Austin St. [11/07/85]
Worcester, *Russell, The [Worcester, MRA]*, 49 Austin St. [11/07/85]

MICHIGAN

Allegan County
Fillmore, *Old Wing Mission*, 5298 E. One hundred Forty-seventh Ave. [6/13/86]

Berrien County
Three Oaks, *Warren Featherbone Company Office Building*, 3 N. Elm St. [1/23/86]

Branch County
Coldwater, *First Presbyterian Church*, 52 Marshall St. [7/31/86]

Charlevoix County
Boyne City, *Wolverine Hotel*, 300 Water St. [2/13/86]

Cheboygan County
Cheboygan, *Cheboygan County Courthouse*, 229 Court St. [5/06/86]

Emmet County
Petoskey, *Allen, J. B., House [Petoskey MRA]*, 822 Grove St. [9/10/86]
Petoskey, *Bartram, Isaac, House [Petoskey MRA]*, 506 Wachtel Ave. [9/10/86]
Petoskey, *Carmichael, W. S., House [Petoskey MRA]*, 301 Jackson St. [9/10/86]
Petoskey, *Debenham, I. N., House [Petoskey MRA]*, 1101 Emmet St. [9/10/86]
Petoskey, *Fochtman, Gerhard, House [Petoskey MRA]*, 1004 Waukazoo Ave. [9/10/86]
Petoskey, *Fourth Ward Polling Place [Petoskey MRA]*, 209 Washington St. [9/10/86]
Petoskey, *Fryman, Meyer, House [Petoskey MRA]*, 211 Michigan St. [9/10/86]
Petoskey, *Grace Methodist Episcopal Church [Petoskey MRA]*, 625 Connable St. [9/10/86]
Petoskey, *Hobbins, Bert and John, House [Petoskey MRA]*, 1024 Emmet St. [9/10/86]
Petoskey, *Hosman and Wheeler Meat Market [Petoskey MRA]*, 621 Ingalls Ave. [9/10/86]
Petoskey, *Kabler, John, House [Petoskey MRA]*, 415 Jackson St. [9/10/86]
Petoskey, *Lesher, Frank, House [Petoskey MRA]*, 122 Sheridan St. [9/10/86]
Petoskey, *Malin, A., House [Petoskey MRA]*, 54 Bridge St. [9/10/86]
Petoskey, *Markle, George and Eugene, House [Petoskey MRA]*, 701 Kalamazoo St. [9/10/86]
Petoskey, *McManus, George, House [Petoskey MRA]*, 121 State St. [9/10/86]
Petoskey, *Meyers, Elias, House [Petoskey MRA]*, 912 Baxter St. [9/10/86]
Petoskey, *Miller, Jacob, House [Petoskey MRA]*, 307 Jackson St. [9/10/86]
Petoskey, *Nyman, John, House [Petoskey MRA]*, 915 Emmet St. [9/10/86]
Petoskey, *Olin, G. W., House [Petoskey MRA]*, 610 Kalamazoo St. [9/10/86]
Petoskey, *Pennington, Sarah, House [Petoskey MRA]*, 719 Maple St. [9/10/86]
Petoskey, *Petoskey Grocery Company Building [Petoskey MRA]*, 616 Petoskey St. [9/10/86]
Petoskey, *Petoskey Public Works Utility Building [Petoskey MRA]*, 106 W. Lake St. [9/13/86]
Petoskey, *Rehkopf, Phillip, House [Petoskey MRA]*, 918 Howard St. [9/10/86]
Petoskey, *Schantz, George, House and Store [Petoskey MRA]*, 534 Wachtel Ave. [9/10/86]
Petoskey, *Schapler, Frank, House [Petoskey MRA]*, 106 E. Lake St. [9/10/86]
Petoskey, *Seventh Day Adventist Church [Petoskey MRA]*, 224 Michigan St. [9/10/86]
Petoskey, *Shafer's Grocery and Residence [Petoskey MRA]*, 1018 Emmet St. [9/10/86]
Petoskey, *Stout House [Petoskey MRA]*, 606 Grove St. [9/10/86]
Petoskey, *Trinity Evangelical Church [Petoskey MRA]*, 219 State St. [9/10/86]
Petoskey, *VanZolenburg, Jacob, House [Petoskey MRA]*, 209 State St. [9/10/86]
Petoskey, *Wells, J. M., House [Petoskey MRA]*, 203 W. Lake St. [9/10/86]
Petoskey, *West Mitchell Street Bridge [Petoskey MRA]*, W. Mitchell St. at Bear River [9/10/86]
Petoskey, *Zion Evangelical Lutheran Church [Petoskey MRA]*, 610 Petoskey St. [9/10/86]

Gratiot County
Alma vicinity, *Holiday Park Site (20GR91)*, Address Restricted [12/06/85]

Ingham County
East Lansing, *Central School*, 325 W. Grand River Ave. [4/10/86]

MICHIGAN—Continued
Kalamazoo County

Kalamazoo, *Lilienfeld, David, House [Kalamazoo MRA]*, 447 W. South St. [1/23/86]

Lapeer County

Almont, *West Saint Clair Street Historic District*, 124–228 W. Saint Clair St. [5/09/85]

Dryden, *Dryden Community Country Club—General Squier Historic Park Complex*, 4725 S. Mill Rd. [6/05/86]

Hadley Township, *Hadley Flour and Feed Mill*, 3833 Hadley Rd. [9/25/86]

Lenawee County

Adrian, *Downtown Adrian Commercial Historic District*, Roughly bounded by Toledo, N. Broad, E. Church and W. Maumee Sts., and S. Winter St. and the Raisin River [4/17/86]

Tecumseh, *Brookside Cemetery [Tecumseh MRA]*, N. Union St. [6/13/86]

Tecumseh, *Catlin, Dr. Samuel, House [Tecumseh MRA]*, 213 E. Chicago Blvd. [6/13/86]

Tecumseh, *Hall, Joseph E., House [Tecumseh MRA]*, 210 S. Oneida St. [6/13/86]

Tecumseh, *Hayden, William, House [Tecumseh MRA]*, 106 W. Pottawatamie [6/13/86]

Tecumseh, *Kampf, George J., House [Tecumseh MRA]*, 212 E. Kilbuck [6/13/86]

Tecumseh, *Saint Elizabeth's Church [Tecumseh MRA]*, 302 E. Chicago Blvd. [6/13/86]

Tecumseh, *Sparks, G. P., House [Tecumseh MRA]*, 509 E. Logan St. [6/13/86]

Tecumseh, *Tecumseh Downtown Historic District*, E. and W. Chicago Blvd. and S. Evans St. [4/17/86]

Tecumseh, *Temple, Samuel H., House [Tecumseh MRA]*, 115 W. Shawnee St. [6/13/86]

Livingston County

Brighton, *Western House*, 500 W. Main St. [4/17/86]

Macomb County

Sterling Heights, *Upton, William, House*, 42433 Utica Rd. [7/31/86]

Manistee County

Onekama vicinity, *Portage Point Inn Complex*, 6313 S. Portage Point Dr. [10/09/85]

Midland County

Midland, *Midland County Courthouse*, 301 W. Main St. [3/13/86]

Oakland County

Bloomfield Hills, *Affleck, Gregor S. and Elizabeth B., House*, 1925 N. Woodward Ave. [10/03/85]

Holly, *Downtown Holly Commercial District*, Roughly bounded by Mapple St., S. Broad St., Grand Trunk RR. and First St. [4/25/86]

Oceana County

Mears vicinity, *Mears, Charles, Silver Lake Boardinghouse*, Corner of Lighthouse and Silver Lake Channel Rds. [7/31/86]

Shiawassee County

Morrice vicinity, *Horton, William, Farmhouse*, 1647 W. Miller Rd. [4/10/86]

Washtenaw County

Saline, *Annin, Joseph, House [Saline MRA]*, 218 Monroe St. [10/10/85]

Saline, *Church, Zalmon, House [Saline MRA]*, 113 N. Ann Arbor [10/10/85]

Saline, *East Michigan Avenue Historic District [Saline MRA]*, 300–321 E. Michigan Ave., 99–103 Maple St., and 217, 300 and 302 E. Henry [10/10/85]

Saline, *Forbes, Jortin, House [Saline MRA]*, 211 N. Ann Arbor St. [10/10/85]

Saline, *Guthard, Charles, House [Saline MRA]*, 211 E. Michigan Ave. [10/10/85]

Saline, *Lutz, George R., House [Saline MRA]*, 103 W. Henry St. [10/10/85]

Saline, *Miller—Walker House [Saline MRA]*, 117 McKay St. [10/10/85]

Saline, *North Ann Arbor Street Historic District [Saline MRA]*, 301, 303, and 305–327 N. Ann Arbor St. [10/10/85]

Saline, *Oakwood Cemetery Mausoleum [Saline MRA]*, Off Monroe St. [10/10/85]

Saline, *Saline First Presbyterian Church [Saline MRA]*, 143 E. Michigan Ave. [10/10/85]

Saline, *Sturm, Louis, House [Saline MRA]*, 100 Russell [10/10/85]

Saline, *Union Block [Saline MRA]*, 100–110 E. Michigan Ave. [10/10/85]

Saline, *Van Duzer, Samuel D., House [Saline MRA]*, 205 S. Ann Arbor St. [10/10/85]

Saline, *Wallace Block—Old Saline Village Hall [Saline MRA]*, 101–113 S. Ann Arbor St. [10/10/85]

Saline, *Watson, Henry R., House [Saline MRA]*, 7215 N. Ann Arbor-Saline Rd. [10/10/85]

Wayne County

Detroit, *Alden Park Towers [East Jefferson Avenue Residential TR]*, 6100 E. Jefferson Ave. [10/09/85]

Detroit, *Bagley, John N., House [East Jefferson Avenue Residential TR]*, 2921 E. Jefferson Ave. [10/09/85]

Detroit, *Campau, Joseph, House [East Jefferson Avenue Residential TR]*, 2910 E. Jefferson Ave. [10/09/85]

Detroit, *Cass Motor Sales [University—Cultural Center Phase I MRA]*, 5800 Cass Ave. [4/29/86]

Detroit, *Chatsworth Apartments [University—Cultural Center Phase II MRA]*, 630 Merrick [3/01/86]

Detroit, *Chene, Alexander, House [East Jefferson Avenue Residential TR]*, 2681 E. Jefferson Ave. [10/09/85]

Detroit, *GAR Building*, 1942 Grand River Ave. [2/13/86]

Detroit, *Garden Court Apartments [East Jefferson Avenue Residential TR]*, 2300 E. Jefferson Ave. [10/09/85]

Detroit, *Hibbard Apartment Building [East Jefferson Avenue Residential TR]*, 8906 E. Jefferson Ave. [10/09/85]

Detroit, *Jefferson Hall [East Jefferson Avenue Residential TR]*, 1405 E. Jefferson Ave. [10/09/85]

Detroit, *Keen, The [East Jefferson Avenue Residential TR]*, 8925 E. Jefferson Ave. [10/09/85]

Detroit, *Manchester Apartments [East Jefferson Avenue Residential TR]*, 2018 E. Jefferson Ave. [10/09/85]

Detroit, *Palms, The [East Jefferson Avenue Residential TR]*, 1091 E. Jefferson Ave. [10/09/85]

Detroit, *Parker, Arthur M., House [East Jefferson Avenue Residential TR]*, 2115 E. Jefferson Ave. [10/09/85]

Detroit, *Pasadena Apartments [East Jefferson Avenue Residential TR]*, 2170 E. Jefferson Ave. [10/09/85]

Detroit, *Pontchartrain Apartments [East Jefferson Avenue Residential TR]*, 1350 E. Jefferson Ave. [10/09/85]

Detroit, *Saint Andrew's Memorial Episcopal Church [University—Cultural Center Phase II MRA]*, 5105 Anthony Wayne Dr. [5/15/86]

Detroit, *Santa Fe Apartments [University—Cultural Center Phase II MRA]*, 661 Merrick [5/01/86]

Detroit, *Smith, Samuel L., House [University—Cultural Center Phase I MRA]*, 5035 Woodward [4/29/86]

Detroit, *Somerset Apartments [East Jefferson Avenue Residential TR]*, 1523 E. Jefferson Ave. [10/09/85]

Detroit, *Sprague, Thomas S., House [University—Cultural Center Phase I MRA]*, 80 W. Palmer [4/29/86]

Detroit, *Stearns, Frederick K., House [East Jefferson Avenue Residential TR]*, 5109 E. Jefferson Ave. [10/09/85]

Detroit, *Strasburg, Herman, House [University—Cultural Center Phase I MRA]*, 5415 Cass [4/29/86]

Detroit, *Verona Apartments [University—Cultural Center Phase I MRA]*, 92 W. Ferry [4/29/86]

Detroit, *Walker, Franklin H., House [East Jefferson Avenue Residential TR]*, 2730 E. Jefferson Ave. [10/09/85]

Detroit, *Wells, William H., House [East Jefferson Avenue Residential TR]*, 2931 E. Jefferson Ave. [10/09/85]

Detroit, *Whittier Hotel [East Jefferson Avenue Residential TR]*, 415 Burns Dr. [10/09/85]

Highland Park, *Highland Park General Hospital*, 357 Glendale Ave. [10/31/85]

Wexford County

Cadillac, *Old Cadillac City Hall*, 201 Mitchell St. [6/20/86]

MINNESOTA

Big Stone County

Clinton, *Chicago, Milwaukee, and St. Paul Depot*, Main and Center Sts. [7/31/86]

Odessa, *Odessa Jail*, Main and Second Sts. [7/24/86]

Chippewa County

Granite Falls, *Weavar, Julian A., House*, 837 Minnesota Ave. [6/20/86]

Cook County

Grand Marais vicinity, *Clearwater Lodge*, Off CR 66 [12/02/85]

Grand Marais vicinity, *Saint Francis Xavier Church*, US 61 [7/31/86]

Schroeder vicinity, *Schroeder Lumber Company Bunkhouse*, US 61 [7/31/86]

MINNESOTA—Continued
Cottonwood County

Mountain Lake, *Bargen, Isaac, House*, 1215 Mountain Lake Rd. [6/13/86]

Westbrook, *Chicago, St. Paul, Minneapolis, and Omaha Depot*, Fourth St. at First Ave. [6/13/86]

Douglas County

Osakis, *Osakis Milling Company*, Lake St. and Central Ave. [7/03/86]

Fillmore County

Rushford, *Southern Minnesota Depot*, Elm St. and Pickle Alley [6/20/86]

Freeborn County

Albert Lea, *Paine, H. A., House*, 609 W. Fountain St. [3/20/86]

Albert Lea, *Wedge, Dr. Albert C., House*, 216 W. Fountain St. [6/13/86]

Clarks Grove, *Clarks Grove Cooperative Creamery*, Main St. E and Independence Ave. [3/20/86]

Hayward Township, *Lodge Zore Zapadu No. 44*, CH 30 [3/20/86]

Mansfield Township, *Niebuhr, John, Farmhouse*, Off CR 2 [3/20/86]

Hennepin County

Minneapolis, *First Church of Christ Scientist*, 614–628 E. Fifteenth St. [6/20/86]

Itasca County

Calumet vicinity, *Hill Annex Mine*, Off US 169 [7/29/86]

Kandiyohi County

Atwater, *Hotel Atwater*, 322 Atlantic Ave. [6/13/86]

Spicer vicinity, *Spicer, John M., Summer House and Farm*, 600 S. Lake Ave. [8/06/86]

Willmar vicinity, *Knudreson, Lars and Guri, House*, Off CR 5 [7/24/86]

Willmar, *Spicer, John M., House*, 515 Seventh St. NW [6/13/86]

Willmar, *Willmar Hospital Farm for Inebriates Historic District*, Off US 71 [6/13/86]

Lac Qui Parle County

Louisburg, *District School No. 92*, First St. at Third Ave. [6/20/86]

Lake County

Two Harbors, *Two Harbors Carnegie Library*, Fourth Ave. and Waterfront Dr. [7/31/86]

Morrison County

Little Falls, *Burton—Rosenmeier House*, 609 First St. SE [3/13/86]

Motley, *White, Almond A., House*, Cleveland and Beaulieu Sts. [3/13/86]

Mower County

Adams, *First National Bank of Adams*, 322 Main St. [3/20/86]

Austin, *Wright, Arthur W., House*, 309 Fourth Ave. NW [3/20/86]

Grand Meadow, *Booth Post No. 130—Grand Army of the Republic Hall*, S. Main St. between First and Second Sts. [6/13/86]

Johnsburg, *Freund Store*, CR 7 [4/24/86]

LeRoy, *First State Bank of LeRoy*, Main St. and Broadway [3/20/86]

LeRoy, *LeRoy Public Library*, Luela St. and Broadway [3/20/86]

Nicollet County

St. Peter, *Center Building—Minnesota Hospital for the Insane*, Freeman Dr. [7/31/86]

Norman County

Hendrum vicinity, *Canning Site (21NR9)*, Address Restricted [6/19/86]

Otter Tail County

Fergus Falls, *Barnard Mortuary*, 119 N. Union Ave. [6/13/86]

Fergus Falls, *Clement, C. C., House*, 608 N. Burlington Ave. [6/13/86]

Fergus Falls, *Fergus Falls State Hospital Complex*, MN 297 [6/26/86]

Fergus Falls, *Mason, John W., House*, 205 W. Vernon Ave. [6/13/86]

Fergus Falls, *Webber, E. J., House*, 508 W. Lincoln Ave. [6/13/86]

Perham, *Perham City Hall and Fire Station*, 153 E. Main [7/31/86]

Ramsey County

St. Paul, *College of St. Catherine—Derham Hall and Our Lady of Victory Chapel*, 2004 Randolph Ave. [10/31/85]

St. Paul, *Highland Park Tower*, 1570 Highland Pkwy. [7/17/86]

St. Paul, *United Church Seminary*, 2401 Como Ave. [10/31/85]

Renville County

Fairfax, *Minneapolis and St. Louis Depot*, Park St. and Second Ave. S [7/24/86]

Olivia, *Renville County Courthouse and Jail*, DePue Ave. E and Fifth St. S [6/13/86]

Sacred Heart vicinity, *Brown, Joseph, House Ruins*, CR 15 [8/03/86]

Sacred Heart vicinity, *Rudi, Lars, House*, CR 15 [7/24/86]

Sherburne County

Elk River, *Sherburne County Courthouse*, 326 Lowell Ave. [1/23/86]

St. Cloud, *Minnesota State Reformatory for Men Historic District*, Off MN 301 [7/17/86]

St. Louis County

Duluth, *Duluth State Normal School Historic District*, E. Fifth St. [11/08/85]

Duluth, *Sacred Heart Cathedral and Cathedral School*, 206 and 211 W. Fourth St. [6/26/86]

Hibbing, *Androy Hotel*, 592 E. Howard St. [6/13/86]

Meadowlands vicinity, *Western Bohemian Fraternal Union Hall*, CR 29 [7/31/86]

Stearns County

St. Cloud, *Carter Block*, 601–611 First St. N [6/13/86]

Steele County

Medford, *Clinton Falls Mill and Dam*, Off CR 9 [7/03/86]

Owatonna, *Adair, Dr. John H., House*, 322 E. Vine St. [7/03/86]

Owatonna, *Kaplan Apartments*, 115 W. Rose St. [7/03/86]

Owatonna, *Owatonna High School*, 333 E. School St. [7/31/86]

Owatonna, *Owatonna Water Works Pumping Station*, W. School St. and Mosher Ave. [6/13/86]

Traverse County

Browns Valley, *Fort Wadsworth Agency and Scout Headquarters Building*, Broadway and Dakota Aves. [7/17/86]

Washington County

Bayport, *Stillwater State Prison Historic District*, 5500 Pickett Ave. [7/10/86]

Yellow Medicine County

Canby, *Lundring Service Station*, 201 First St. E [6/20/86]

Clarkfield vicinity, *Swede Prairie Progressive Farmers' Club*, CR 9 [6/13/86]

MISSISSIPPI

Adams County

Natchez vicinity, *Carmel Presbyterian Church*, Carmel Church Rd. [10/31/85]

Washington, *Washington Methodist Church*, Main and Church Sts. [9/04/86]

Attala County

Goodman vicinity, *Shrock House*, Shrock Rd. [12/10/85]

Kosciusko, *Johnson—Sullivant House*, 709 S. Wells St. [6/26/86]

Coahoma County

Friars Point vicinity, *Dickerson Site (22C0502)*, Address Restricted [9/11/86]

Mattson vicinity, *Spendthrift Site (22C0520)*, Address Restricted [9/11/86]

Copiah County

Gallman, *Gallman Historic District*, Roughly US 51 and Church St. [3/31/86]

Hancock County

Bay St. Louis, *Rocket Propulsion Test Complex*, National Space Technology Laboratories (NSTL) [10/03/85]

Harrison County

Biloxi, *House at 407 East Howard Avenue*, 407 E. Howard Ave. [7/17/86]

Hinds County

Jackson, *Galloway—Williams House*, 427 E. Fortification St. [10/10/85]

Jackson, *Green, Garner Wynn, House*, 647 N. State St. [10/31/85]

Jackson, *Hinds County Courthouse*, Pascagoula St. [7/31/86]

Raymond vicinity, *Porter Family Homestead [Raymond and Vicinity MRA]*, Off MS 18 [7/15/86]

Raymond, *Botelar, Lillian, House [Raymond and Vicinity MRA]*, 214 Port Gibson Rd. [7/15/86]

Raymond, *Dupree—Ratliff House [Raymond and Vicinity MRA]*, 101 Dupree St. [7/15/86]

Raymond, *Gibbs—Von Seutter House [Raymond and Vicinity MRA]*, S side of Dupree St. [7/15/86]

Raymond, *Hinds County Courthouse [Raymond and Vicinity MRA]*, E. Main and N. Oak Sts. [7/15/86]

Raymond, *Illinois Central Railroad Depot [Raymond and Vicinity MRA]*, E. Main and Railroad Sts. [7/15/86]

MISSISSIPPI—Continued
Raymond, *Keith Press Building [Raymond and Vicinity MRA]*, 234 Town Sq. [7/15/88]
Raymond, *Main Hall [Raymond and Vicinity MRA]*, NW of Cain Hall [7/15/88]
Raymond, *Phoenix Hall—Johnson-Harper House [Raymond and Vicinity MRA]*, 527 E. Palestine St. [7/15/88]
Raymond, *Saint Mark's Episcopal Church [Raymond and Vicinity MRA]*, W. Main and N. Oak Sts. [7/15/88]
Raymond, *Shelton House [Raymond and Vicinity MRA]*, 561 W. Main St. [7/15/88]

Holmes County

Howard vicinity, *Clifton Plantation House*, Off MS 12 [10/03/85]

Humphreys County

Midnight vicinity, *Midnight Mound Site (22HU509)*, Address Restricted [4/25/86]

Kemper County

Moscow vicinity, *Oliver House*, 1 mi. SW of Moscow off MS 493 [10/31/85]

Lauderdale County

Causeyville, *Causeyville Historic District*, Meridian-Causeyville Rd. [1/02/86]

Lee County

Tupelo, *North Broadway Historic District*, 300 blk. of N. Broadway St. [10/31/85]

Leflore County

Greenwood, *Boulevard Subdivision Historic District [Greenwood MRA]*, Roughly bounded by Jeff Davis Ave., Poplar St., President Ave., and Grand Boulevard [3/02/88]
Greenwood, *Building at 710 South Boulevard [Greenwood MRA]*, 710 South Blvd. [11/04/85]
Greenwood, *Building at 308 Lamar Street [Greenwood MRA]*, 308 Lamar St. [11/04/85]
Greenwood, *Building at 312 George Street [Greenwood MRA]*, 312 George St. [11/04/85]
Greenwood, *Central Commercial and Railroad Historic District [Greenwood MRA]*, Roughly bounded by Washington St., Main and Lamar Sts. and Ave. F, Wardaman and Johnson Sts., and Cotton and Fulton Sts. [11/04/85]
Greenwood, *First Methodist Church of Greenwood [Greenwood MRA]*, 310 W. Washington St. [11/04/85]
Greenwood, *Greenwood High School [Greenwood MRA]*, 400 Cotton St. [11/04/85]
Greenwood, *River Road and Western Downtown Residential Historic District [Greenwood MRA]*, Roughly bounded by River Rd., Dewey and Gillespie, Washington and Johnson, and First Sts. [3/02/88]
Greenwood, *Rosemary—Humphreys House [Greenwood MRA]*, 1440 Grand Blvd. [11/04/85]
Greenwood, *Southworth House [Greenwood MRA]*, 1108 Mississippi Ave. [11/04/85]
Greenwood, *Wesley Memorial Methodist Episcopal [Greenwood MRA]*, 800 Howard St. [11/04/85]
Greenwood, *Williams Landing and Eastern Downtown Residential Historic District [Greenwood MRA]*, Roughly bounded by Front, McLemore and Lamar, Market, and George Sts. [3/02/88]
Greenwood, *Wright House [Greenwood MRA]*, 414 Fulton Ave. [11/04/85]
Minter City vicinity, *Falls Site (22LF507)*, Address Restricted [5/01/86]

Lowndes County

Columbus, *Jones—Banks—Leigh House*, 824 Seventh St. N [10/31/85]
Columbus, *Old Fort House*, 510 Seventh St. N [10/31/85]

Madison County

Madison, *Curran, John, House [Madison MRA]*, Main St. [3/02/88]
Madison, *Dorrah Street Historic District [Madison MRA]*, 103, 105, and 115 Dorroh St. [3/02/88]
Madison, *Farr Mercantile Co.—R.B. Price Mercantile Co. [Madison MRA]*, Main and Railroad [3/02/88]
Madison, *Madison—Ridgeland Public School [Madison MRA]*, Montgomery St. [3/02/88]
Madison, *Strawberry Patch—McKay House [Madison MRA]*, Old Canton Rd. [3/02/88]

Oktibbeha County

Starkville, *Cedars, The*, Old W. Point Rd. [10/10/85]

Pontotoc County

Pontotoc vicinity, *Lochinvar*, MS 15 S of Pontotoc [3/13/86]

Quitman County

Marks vicinity, *Posey Site (22QU500)*, Address Restricted [9/11/86]
Marks vicinity, *Shady Grove Site (22QU525)*, Address Restricted [9/11/86]

Warren County

Vicksburg, *Harding, P. M., House*, 1402 Chambers St. [7/17/86]
Vicksburg, *South Vicksburg Public School No. 200*, 900 Speed St. [3/20/86]

Washington County

Leland vicinity, *Hollyknowe*, SE of jct. of US 82 and CR 299 [10/10/85]

Wilkinson County

Woodville vicinity, *Anderson Mound*, Address Restricted [5/01/86]

Yazoo County

Lake City vicinity, *Shellwood Site (22YZ800)*, Address Restricted [4/25/86]

MISSOURI

Buchanan County

St. Joseph, *Christian Sachau Saloon [Frederick Avenue MRA]*, 1615 Frederick Ave. [10/25/85]
St. Joseph, *City Hose Company No. 9 [Frederick Avenue MRA]*, 2217 Frederick Ave. [10/25/85]
St. Joseph, *Geiger, Dr. Jacob, House—Maud Wyeth Painter House [Frederick Avenue MRA]*, 2501 Frederick Ave. [3/12/86]
St. Joseph, *St. Joseph City Hall [Frederick Avenue MRA]*, Frederick Ave. at Eleventh St. [10/25/85]
St. Joseph, *Wyeth Flats [Frederick Avenue MRA]*, 1015–1031 Faraon St. [10/25/85]

Butler County

Poplar Bluff vicinity, *Hargrove Pivot Bridge*, CR 159 [10/15/85]

Clark County

Kahoka, *Hiller, Colonel Hiram M., House*, 520 N. Washington [7/21/86]

Cooper County

Pilot Grove, *Mount Nebo Baptist Church*, MO 135/E [5/23/86]

Howard County

Fayette, *Coleman Hall*, 502 N. Linn [6/11/86]

Jackson County

Independence, *Lewis—Webb House*, 302 W. Mill [2/06/86]
Independence, *Woodson—Sawyer House*, 1604 W. Lexington [3/20/86]
Kansas City, *Firestone Building*, 2001 Grand Ave. [1/03/86]
Kansas City, *Santa Fe Place Historic District*, Roughly bounded by Twenty-seventh St., Indiana Ave., Thirtieth St., and Prospect Ave. [5/30/86]
Kansas City, *WILLIAM S. MITCHELL (dredge)*, Army Corps of Engineers Harbor [10/09/85]
Lee's Summit, *Longview Farm*, 11700 and 650 S.W. Longview Rd. [10/24/85]
Lee's Summit, *Saint Paul's Episcopal Church*, Fifth and S. Green Sts. [10/03/85]

Jasper County

Carthage, *Cassill Place Historic District [City of Carthage MRA]*, W. Central [1/02/86]

Macon County

Macon, *Wardell House*, 1 Wardell Rd. [3/12/86]

Marion County

Hannibal, *Broadway District [Hannibal Central Business District MRA]*, Roughly bounded by S. Main, Broadway, and S. Third Sts. [8/01/86]
Hannibal, *Buildings at 207–209 South Main St. [Hannibal Central Business District MRA]*, 207–209 S. Main St. [8/01/86]
Hannibal, *Davidson Building [Hannibal Central Business District MRA]*, 108 S. Main St. [8/01/86]
Hannibal, *Digel Block [Hannibal Central Business District MRA]*, 216–222 S. Main St. [8/01/86]
Hannibal, *Elliott's, Robert, Wholesale Grocery [Hannibal Central Business District MRA]*, 116–120 S. Third St. [8/01/86]
Hannibal, *Green Double House [Hannibal Central Business District MRA]*, 113–115 S. Third St. [8/01/86]
Hannibal, *Hafner Grocery Warehouse [Hannibal Central Business District MRA]*, 101 E. Church St. [8/01/86]
Hannibal, *Holmes-Dakin Building [Hannibal Central Business District MRA]*, 120–122 S. Main St. [8/01/86]
Hannibal, *Mark Twain Hotel [Hannibal Central Business District MRA]*, 200 S. Main St. [8/01/86]

MISSOURI—Continued
Hannibal, *North Main Street Historic District [Hannibal Central Business District MRA]*, Roughly bounded by Bird, N. Main, and Hill Sts. [8/01/86]
Hannibal, *Standard Printing Company [Hannibal Central Business District MRA]*, 301 N. Third St. [8/01/86]

Saline County

Marshall, *Baity Hall*, Missouri Valley College, 500 E. College [6/25/86]

St. Louis County

University City, *Parkview Historic District*, Roughly bounded by Delmar Ave., Skinker, Millbrook Blvds., and Mellville Ave. [3/14/86]
Webster Groves, *Central Webster Historic District*, Roughly bounded by E. and S. Cedar, Plant and W. Maple Aves., E. and W. Jackson Rd., and Gray Ave. [8/11/86]

St. Louis Independent City

St. Louis (Independent City), *Chopin, Kate, House*, 4232 McPherson Ave. [2/14/86]
St. Louis (Independent City), *Clemens House—Columbia Brewery District (Boundary Increase)*, Roughly bounded by St. Louis Ave., N. Florisant Ave., Maiden La., and N. Twenty-first and N. Twentieth Sts. [7/22/86]
St. Louis (Independent City), *Dorris Motor Car Company*, 4100 Laclede [5/01/86]
St. Louis (Independent City), *Fashion Square Building*, 1307 Washington Ave. [10/09/85]
St. Louis (Independent City), *Lafayette Square Historic District (Boundary Increase)*, Roughly bounded by Chouteau Ave., Dolman, Lafayette Ave., and S. Eighteenth St. and Vail Pl. and McKay Pl. [7/24/86]
St. Louis (Independent City), *Neighborhood Gardens Apartments*, 1285 N. Seventh St. [1/31/86]
St. Louis (Independent City), *Olive Street Terra Cotta District*, 600–622 Olive St. [1/02/86]
St. Louis (Independent City), *Olympia, The*, 3863 W. Pine and 200 N. Vandeventer [8/01/86]
St. Louis (Independent City), *Parkview Historic District*, Roughly bounded by Delmar Ave., Skinker, Millbrook Blvds., and Melliville Ave. [3/14/86]
St. Louis (Independent City), *Saint Matthew's Parish Complex*, Sarah and Kennerly [8/06/86]
St. Louis (Independent City), *Sonitol Building*, 4252–4264 Laclede Ave. [10/21/85]
St. Louis, *Forest Park Headquarters Building*, 115 Union, Forest Park [6/11/86]
St. Louis, *USS INAUGURAL (fleet minesweeper)*, 300 N. Wharf St. [1/14/86]
St. Louis (Independent City), *Benton Park District*, Bounded by Gravois Ave., I–55, S. Broadway, and Jefferson St. [12/30/85]

MONTANA

Beaverhead County

Dillon, *US Post Office—Dillon Main [US Post Offices in Montana, 1900–1941, TR]*, 117 S. Idaho St. [3/14/86]

Carbon County

Joliet, *Baker and Lovering Store [Joliet Montana MRA]*, Main St. [5/02/86]
Joliet, *Fire Hall [Joliet Montana MRA]*, Main St. [5/02/86]
Joliet, *House on Railroad Avenue [Joliet Montana MRA]*, Railroad Ave. [5/02/86]
Joliet, *Joliet Bridge [Joliet Montana MRA]*, Main St. S of Joliet over Rock Creek [5/02/86]
Joliet, *Joliet Residential Historic District [Joliet Montana MRA]*, Roughly bounded by Northern Pacific RR and US 12, State St., Carbon Ave., and Second St. [5/02/86]
Joliet, *Joliet High School [Joliet Montana MRA]*, Main St. [5/02/86]
Joliet, *Rock Creek State Bank [Joliet Montana MRA]*, Main St. [5/02/86]
Joliet, *Smith, T. W., House [Joliet Montana]*, Front St. [5/02/86]
Joliet, *Southern Hotel [Joliet Montana MRA]*, Main St. [5/02/86]
Red Lodge, *Hi Bug Historic District*, Roughly bounded by W. Third St., N. Villard Ave., W. Eighth St., and N. Word Ave. [7/23/86]
Red Lodge, *Red Lodge Commercial Historic District (Boundary Increase)*, S. Broadway between Eighth and Fifteenth Sts. [6/26/86]
Red Lodge, *Warila Boarding House and Sauna*, 20 N. Haggin [10/24/85]

Cascade County

Great Falls, *Randall, Harry E., House*, 1003 Fourth Ave. N [3/27/86]
Great Falls, *US Post Office and Courthouse—Great Falls [US Post Offices in Montana, 1900–1941, TR]*, 215 First Ave. N [3/14/86]

Custer County

Miles City, *Harmon, William, House*, 1005 Palmer [9/25/86]
Miles City, *US Post Office—Miles City Main [US Post Offices in Montana, 1900–1941, TR]*, 108 N. Seventh St. [3/14/86]

Deer Lodge County

Anaconda, *Club Moderne*, 611 E. Park [6/14/86]
Anaconda, *US Post Office—Anaconda Main [US Post Offices in Montana, 1900–1941, TR]*, 218 Main St. [3/14/86]

Fergus County

Lewistown, *Ayers House [Lewistown MRA]*, 316 Eighth Ave. S [1/10/86]
Lewistown, *Clark-Cordwell House [Lewistown MRA]*, 523 W. Watson [1/10/86]
Lewistown, *First Presbyterian Church [Lewistown MRA]*, 215 Fifth Ave. S [1/10/86]
Lewistown, *House at 618 West Janeaux [Lewistown MRA]*, 618 W. Janeaux [1/10/86]
Lewistown, *House at 301 Eighth Avenue, South [Lewistown MRA]*, 301 Eighth Ave. S [1/10/86]
Lewistown, *Lewistown Mercantile Company [Lewistown MRA]*, 220 E. Main [2/03/86]
Lewistown, *US Post Office and Federal Building—Lewistown [US Post Offices in Montana, 1900–1941, TR]*, 204 Third Ave. N [3/14/86]

Flathead County

Essex, *Izaak Walton Inn*, Off US 2 adjacent to RR in Essex [10/18/85]
Polebridge, *Adair, W. L., General Mercantile Historic District*, Polebridge Loop Rd. ¼ mi. E of N. Fork Rd. [2/06/86]
West Glacier vicinity, *Belly River Ranger Station Historic District [Glacier National Park MRA]*, Head of Belly River Valley [2/14/86]
West Glacier vicinity, *Bowman Lake Patrol Cabin [Glacier National Park MRA]*, Lower end of Bowman Lake ⅛ mi. E of Bowman Lake Ranger Station [2/14/86]
West Glacier vicinity, *Ford Creek Patrol Cabin [Glacier National Park MRA]*, Rt. 7 [2/14/86]
West Glacier vicinity, *Gunsight Pass Shelter [Glacier National Park MRA]*, Jct. of Gunsight Pass Trail and the Continental Divide [2/14/86]
West Glacier vicinity, *Huckleberry Fire Outlook [Glacier National Park MRA]*, Summit of Huckleberry Mtn. [2/14/86]
West Glacier vicinity, *Kintla Lake Ranger Station [Glacier National Park MRA]*, S shore of Kintla Lake [2/14/86]
West Glacier vicinity, *Kishenehn Ranger Station Historic District [Glacier National Park MRA]*, 3 mi. S of Canadian-US border near Kishenehn Creek and the North Fork River [2/14/86]
West Glacier vicinity, *Logan Creek Patrol Cabin [Glacier National Park MRA]*, E side of Going-to-the-Sun Hwy. at Logan Creek crossing [2/14/86]
West Glacier vicinity, *Loneman Fire Lookout [Glacier National Park MRA]*, Access via Loneman Mountain Trail [2/14/86]
West Glacier vicinity, *Lower Nyack Snowshoe Cabin [Glacier National Park MRA]*, W side of Nyack Creek Trail [2/14/86]
West Glacier vicinity, *Numa Ridge Fire Lookout [Glacier National Park MRA]*, Near Bowman Lake [2/14/86]
West Glacier vicinity, *Nyack Ranger Station Barn and Fire Cache [Glacier National Park MRA]*, Nyack Ranger Station [2/14/86]
West Glacier vicinity, *Polebridge Ranger Station Historic District [Glacier National Park MRA]*, Rt. 7 and W bank of N. Fork Rd. [2/14/86]
West Glacier vicinity, *Ptarmigan Tunnel [Glacier National Park MRA]*, N of Ptarmigan Lake [2/14/86]
West Glacier vicinity, *Quartz Lake Patrol Cabin [Glacier National Park MRA]*, Foot of Quartz Lake [2/14/86]
West Glacier vicinity, *Saint Mary Ranger Station [Glacier National Park MRA]*, E end of Upper Saint Mary Lake [2/14/86]
West Glacier vicinity, *Scalplock Mountain Fire Lookout [Glacier National Park MRA]*, Accessible by trail connecting to Boundary Trail near Walton Ranger Station [2/14/86]
West Glacier vicinity, *Skyland Camp—Bowman Lake Ranger Station [Glacier National Park MRA]*, SW shore of Bowman Lake [2/14/86]
West Glacier vicinity, *Slide Lake-Otatso Creek Patrol Cabin and Woodshed [Glacier National Park MRA]*, N side of Otatso Creek [2/14/86]
West Glacier vicinity, *Two Medicine General Store [Glacier National Park MRA]*, E shore of Two Medicine Lake [2/14/86]
West Glacier vicinity, *Upper Kintla Lake Patrol Cabin [Glacier National Park MRA]*, Head of Kintla Lake [2/14/86]

MONTANA—Continued
West Glacier vicinity, *Upper Logging Lake Snowshoe Cabin [Glacier National Park MRA]*, Near head of Logging Lake [2/14/88]
West Glacier vicinity, *Upper Nyack Snowshoe Cabin [Glacier National Park MRA]*, N side of Nyack Creek [2/14/88]
West Glacier, *Fielding Snowshoe Patrol Cabin [Glacier National Park MRA]*, Off US 2 [2/14/88]

Granite County
Philipsburg, *Philipsburg Historic District [Philipsburg Montana MRA]*, Roughly bounded by Gamma St. and Cleveland Ave., Montgomery, Madison and Duffy, and Cedar and McDonald Sts. [9/30/86]

Hill County
Havre, *Carnegie Public Library*, 447 Fourth Ave. [7/24/86]
Havre, *Clack, H. Earl, House*, 532 Second Ave. [10/24/85]
Havre, *US Post Office and Courthouse—Havre Main [US Post Offices in Montana, 1900–1941, TR]*, 306 Third Ave. [3/14/86]

Jefferson County
Montana City vicinity, *MacHaffie Site (24JF4)*, Address Restricted [4/03/86]

Lewis and Clark County
Helena, *Helena South-Central Historic District*, Roughly bounded by Broadway, S. Davis St., city limits, and S. Warren St. [7/28/80]

Lincoln County
Eureka, *Eureka Community Hall*, Cliff St. [10/18/85]

Madison County
Laurin, *Saint Mary of the Assumption*, Off MT 287 [10/24/85]

Missoula County
Frenchtown, *Saint John the Baptist Catholic Church*, Mullan Rd. [3/27/86]
Lolo National Forest, *Camp Paxson Boy Scout Camp (24MO77)*, Seeley Lake [3/21/86]

Park County
Cooke City, *Cooke City Store*, Main St. [3/27/86]
Livingston, *US Post Office—Livingston Main [US Post Offices in Montana, 1900–1941, TR]*, 105 N. Second St. [3/14/86]

Rosebud County
Forsyth, *Rosebud County Courthouse*, 1250 Main St. [4/17/86]

Valley County
Fort Peck, *Administration Building [Fort Peck MRA]*, E. Kansas Ave. [8/13/86]
Fort Peck, *Employee's Hotel and Garage [Fort Peck MRA]*, S. Missouri Ave. [8/13/86]
Fort Peck, *Fort Peck Original Houses Historic District [Fort Peck MRA]*, 1101–1112 E. Kansas Ave. [8/13/86]
Fort Peck, *Fort Peck Dam [Fort Peck MRA]*, On the Missouri River [8/13/86]
Fort Peck, *Garage and Fire Station [Fort Peck MRA]*, Gasconade St. [8/13/86]
Fort Peck, *Hospital [Fort Peck MRA]*, S. Platte St. [8/13/86]
Fort Peck, *Recreation Hall [Fort Peck MRA]*, Missouri Ave. [8/13/86]
Glasgow, *US Post Office and Courthouse—Glasgow Main [US Post Offices in Montana, 1900–1941, TR]*, 605 Second Ave. S [3/21/86]

Yellowstone County
Billings, *Masonic Temple*, 2806 Third Ave. N [4/17/86]
Billings, *US Post Office and Courthouse—Billings [US Post Offices in Montana, 1900–1941, TR]*, 2602 First Ave. N [3/14/86]

N. MARIANA ISLANDS

Saipan Municipality
San Jose (Saipan) vicinity, *Tachoqnya*, Address Restricted [2/13/86]

Tinian Municipality
Tinian Village (Tinian), *Tinian Landing Beaches, Ushi Point Field, Tinian Island*, Address unknown at this time [12/30/85]

NEBRASKA

Burt County
Tekamah, *Houston, E. C., House*, 319 N. Thirteenth St. [3/13/86]
Tekamah, *Spielman, H. M. S., House*, 1103 I St. [7/17/86]

Cass County
Weeping Water, *Gibson House*, 107 Clinton [3/20/86]

Cedar County
Laurel vicinity, *Couser Barn*, Address Restricted [7/17/86]

Dakota County
South Sioux City, *Meisch House*, 213 Seventeenth St. [3/13/86]

Douglas County
Omaha, *Ford Hospital*, 121–129 S. Twenty-fifth St. [3/20/86]
Omaha, *Holy Family Church*, 915 N. Eighteenth St. [7/17/86]
Omaha, *Mason School*, 1012 S. Twenty-fourth St. [3/13/86]
Omaha, *North Presbyterian Church*, 3105 N. Twenty-fourth St. [3/20/86]
Omaha, *Saint Joseph Parish Complex*, 1730 S. Sixteenth St. [7/17/86]
Omaha, *Saunders School*, 415 N. Forty-first Ave. [3/13/86]
Omaha, *The Sherman*, 2501 N. Sixteenth St. [3/13/86]

Fillmore County
Geneva, *Smith, George W., House*, Twelfth St. between I and J Sts. [5/08/86]

Hall County
Grand Island, *Hamilton—Donald House*, 820 W. Second St. [3/13/86]

Lancaster County
Lincoln vicinity, *Nine-Mile Prairie*, NW of Huskerville [7/30/86]
Lincoln, *First State Bank of Bethany*, 1551 N. Cotner Blvd. [7/24/86]
Lincoln, *Municipal Lighting and Waterworks Plant*, 2901 A St. [7/24/86]
Lincoln, *Phi Delta Theta Fraternity House*, 1545 R St. [5/28/86]
Lincoln, *South Bottoms Historic District*, Roughly bounded by M and J and H and G Sts., Second and Ninth Sts., and W. B Sts., and Salt Creek [7/17/86]

Lincoln County
Wallace, *Johnston Memorial Building*, Off NE 25 [3/20/86]

Platte County
Columbus, *Snyder, H. E., House*, 2522 Sixteenth St. [7/10/86]

Saline County
Dorchester vicinity, *Pisar, Frank, Farmstead*, Address Restricted [9/06/86]

Saunders County
Morse Bluff, *Rad Plzen cis. 9 Z.C.B.J. (SD10-6)*, Off NE 79 [3/20/86]

Scotts Bluff County
Scottsbluff, *Marquis Opera House*, 1601–1603 Broadway [10/10/85]

NEVADA

Clark County
Boulder City vicinity, *Willow Beach Gauging Station*, Lake Mead National Recreation Area [3/21/86]
Las Vegas, *Las Vegas High School Academic Building and Gymnasium*, 315 S. Seventh St. [9/24/86]

Douglas County
Minden, *Douglas County Courthouse [Architecture of Frederick J. DeLongchamps TR]*, 1616 Eighth St. [8/06/86]
Minden, *Farmers Bank of Carson Valley [Architecture of Frederick J. DeLongchamps TR]*, 1597 Esmeralda Ave. [8/06/86]
Minden, *Minden Wool Warehouse [Architecture of Frederick J. DeLongchamps TR]*, 1615 Railroad Ave. [8/06/86]
Minden, *Minden Inn [Architecture of Frederick J. DeLongchamps TR]*, 1594 Esmeralda Ave. [8/06/86]
Minden, *Minden Butter Manufacturing Company [Architecture of Frederick J. DeLongchamps TR]*, 1617 Water St. [8/06/86]

Pershing County
Lovelock, *Pershing County Courthouse*, 400 Main St. [5/13/86]

Washoe County
Reno, *Bell Telephone of Nevada [Architecture of Frederick J. DeLongchamps TR]*, 100 N. Center [8/06/86]
Reno, *Reno National Bank—First Interstate Bank [Architecture of Frederick J. DeLongchamps TR]*, 204 N. Virginia St. [8/06/86]
Reno, *Riverside Hotel [Architecture of Frederick J. DeLongchamps TR]*, 17 S. Virginia St. [8/06/86]
Reno, *Vachina Apartments—California Apartments [Architecture of Frederick J. DeLongchamps TR]*, 45 California Ave. [8/06/86]

NEVADA—Continued
Reno, *Washoe County Courthouse [Architecture of Frederick J. DeLongchamps TR]*, 117 S. Virginia St. [8/06/86]

White Pine County
Ely, *White Pine County Courthouse*, Campton St. [9/11/86]

NEW HAMPSHIRE

Belknap County
Barnstead, *Foss, Oscar, Memorial Library*, Main St. [11/07/85]
Laconia, *Goss, Ossian Wilbur, Reading Room*, 186 Elm St. [9/04/86]
Laconia, *US Post Office—Laconia Main*, 33 Church St. [7/18/86]

Carroll County
Sandwich vicinity, *North Sandwich Meeting House*, Quaker-Whiteface Rd. [8/05/86]
Sandwich, *Jewell, Bradbury, House*, Perncroft Rd. [8/27/86]

Cheshire County
Richmond, *Veterans' Memorial Hall*, NH 32 [9/04/85]

Coos County
Lancaster, *US Post Office—Lancaster Main*, 120 Main St. [7/17/86]

Grafton County
Bath, *Brick Store*, Main St. [11/07/85]
Enfield, *Hewitt House*, US 4 [11/07/85]
Holderness, *North Holderness Freewill Baptist Church—Holderness Historical Society Building*, Owl Brook Rd. [9/04/86]
Lebanon, *Colburn Park Historic District*, N., S., E., and W. Park Sts., 3 Campbell St., 1 School St., 1 Bank St., and 9–10 Lebanon Mall [1/10/86]
Littleton, *US Post Office and Courthouse—Littleton Main*, 105 Main St. [7/17/86]
Plymouth, *Plymouth Historic District*, Bounded by Court, Main, and Highland Sts. [3/14/86]

Hillsborough County
Hillsboro, *Contoocook Mills Industrial District (Boundary Increase)*, Mill St. [12/12/86]
Hudson, *Sanders, G. O., House*, 10 Derry St. [2/27/86]
Manchester, *Hill-Lassonde House*, 269 Hanover St. [12/02/85]
Manchester, *Hoyt Shoe Factory*, 477 Silver and 170 Lincoln Sts. [11/07/85]
Manchester, *Kimball Brothers Shoe Factory*, 335 Cypress St. [11/07/85]
Peterborough, *US Post Office—Peterborough Main*, 23 Grove St. [7/17/86]
Weare, *Weare Town House*, NH 114 [12/02/85]

Merrimack County
Concord, *Millville School*, 2 Fiske Rd. [11/07/85]
Suncook, *Noyes, Jacob, Block*, 48 Glass St. [2/27/86]

Rockingham County
Chester, *Chester Congregational Church*, 4 Chester St. [8/05/86]
Londonderry, *Young, Gen. Mason J., House*, 4 Young Rd. [2/27/86]
Portsmouth, *Porter, General, House*, 32–34 Livermore St. [10/11/85]
Sandown, *Sandown Depot, Boston and Maine Railroad, Depot Rd.* [9/04/86]

Strafford County
Dover, *US Post Office—Dover Main*, 133–137 Washington St. [7/17/86]
Rochester, *Hayes, Richard, House*, 184 Gonic Rd. [2/27/86]
Somersworth, *US Post Office—Somersworth Main*, 2 Elm St. [7/17/86]

Sullivan County
Springfield, *Springfield Town Hall and Howard Memorial Methodist Church*, Four Corners Rd. SE of New London Rd. [9/05/86]
Washington, *Washington Common Historic District*, Jct. of Half Moon Pond and Millen Pond Rds. [3/14/86]

NEW JERSEY

Atlantic County
Atlantic City, *Church of the Ascension*, 1601 Pacific Ave. [7/24/86]

Bergen County
Lyndhurst, *Yearsance, Jeremiah J., House*, 410 Riverdale Dr. [4/03/86]
New Milford, *Demarest-Bloomer House*, 147 River Edge Ave. [11/07/85]
Saddle River, *Ackerman, Garret and Maria, House [Saddle River MRA]*, 150 E. Saddle River Rd. [8/29/86]
Saddle River, *Ackerman-Dewsnap House [Saddle River MRA]*, 176 E. Saddle River Rd. [8/29/86]
Saddle River, *Ackerman-Smith House [Saddle River MRA]*, 171 E. Allendale Rd. [8/29/86]
Saddle River, *Ackerman, Garret Augustus, House [Saddle River MRA]*, 212 E. Saddle River Rd. [8/29/86]
Saddle River, *Carlock, J. J., House [Saddle River MRA]*, 2 Chestnut Ridge Rd. [8/29/86]
Saddle River, *Evangelical Lutheran Church of Saddle River and Rampough Building [Saddle River MRA]*, 90 E. Allendale Rd. [8/29/86]
Saddle River, *Foringer, Alonzo, House and Studio [Saddle River MRA]*, 107 and 107B E. Saddle River Rd. [8/29/86]
Saddle River, *Jefferson, Joe, Clubhouse [Saddle River MRA]*, 29 E. Saddle River Rd. [8/29/86]
Saddle River, *O'Blenis House [Saddle River MRA]*, 220 E. Saddle River Rd. [8/29/86]
Saddle River, *Osborn, Garret K., House and Barn [Saddle River MRA]*, 86 and 90 E. Allendale Rd. [8/29/86]
Saddle River, *Roy, Dr. E. G., House [Saddle River MRA]*, 229 E. Saddle River Rd. [8/29/86]
Saddle River, *Saddle River Center Historic District [Saddle River MRA]*, Along W. Saddle River Rd. at jct. of E. Allendale Rd. [8/29/86]
Saddle River, *Stillwell-Preston House [Saddle River MRA]*, 9 E. Saddle River Rd. [8/29/86]
Saddle River, *Wandell, B. C., House—The Cedars [Saddle River MRA]*, 214, 222, and 224 W. Saddle River Rd. [8/29/86]
Saddle River, *Ware, Dr. John Christie, Bungalow [Saddle River MRA]*, 266 E. Saddle River Rd. [8/29/86]

Burlington County
Lumberton, *Bayres Plantation and Mill Site*, Bayrestown—Red Lion and E. Bella Bridge Rds. [6/13/86]
Mt. Holly, *Burlington County Prison*, High St. [6/24/86]

Essex County
Montclair, *Belleville Avenue Congregational Church*, 151 Broadway [8/13/86]
Newark, *Passaic Machine Works—Watts, Campbell & Company*, 1270 McCarter Hwy. [8/13/86]
Newark, *Protestant Foster Home*, 272–284 Broadway [2/13/86]
Newark, *Stanley Theater*, 985 S. Orange Ave. [8/28/86]
West Orange, *Llewellyn Park Historic District*, Roughly bounded by Eagle Rock Ave., Main St., Pleasant Ave., and NJ 280 [2/28/86]

Hudson County
Hoboken, *Jefferson Trust Company*, 313–315 First St. [2/13/86]
Jersey City, *Jersey City Medical Center*, Roughly bounded by Montgomery St., Cornelison Ave., Dupont St. and Clifton Pl., and Baldwin Ave. [11/27/85]
Union, *Monastery and Church of Saint Michael the Archangel*, 2019 West St. [3/06/86]

Mercer County
Lawrenceville, *Lawrenceville School*, Main St. [2/24/86]
Princeton, *Kingston Mill Historic District*, Roughly bounded by Herrontown, River, Princeton-Kingston Rds., and lots W of Princeton Twp. [4/10/86]
Trenton vicinity, *Archeological Site No. 1—16th Century Vessel (28ME196)*, Address Restricted [6/14/86]
Trenton, *Mott School and Second Street School*, Centre and 643–645 Second Sts. [4/15/86]

Middlesex County
Milltown, *Milltown India Rubber Company*, 40 Washington Ave. [2/13/86]
South Brunswick, *Kingston Mill Historic District*, Roughly bounded by Herrontown, River, Princeton-Kingston Rds., and lots W of Princeton Twp. [4/10/86]

Morris County
Florham Park, *Little Red Schoolhouse*, 203 Ridgedale Ave. [6/06/86]

Passaic County
Paterson, *Great Falls of the Passaic and Society for Useful Manufactures Historic District (Boundary Increase)*, 6 Mill St. [6/14/86]

Somerset County
Basking Ridge, *Alward Farmhouse*, 40 Mt. Airy Rd. [3/13/86]
Bridgewater, *Vosseller's-Castner's-Allen's Tavern*, 664 Foothill Rd. [1/23/86]
Franklin, *Kingston Mill Historic District*, Roughly bounded by Herrontown, River,

NEW JERSEY—Continued
Princeton-Kingston Rds., and lots W of Princeton Twp. [4/10/86]

Union County

Elizabeth, *Belcher-Ogden Mansion-Price, Benjamin-Price-Britton Houses District*, Corner of E. Jersey and Catherine Sts. [8/28/86]
Elizabeth, *Fowler, Charles N., House*, 518 Salem Ave. [3/13/86]
Elizabeth, *Union County Park Commission Administration Buildings*, Acme and Canton Sts. [11/25/85]
Elizabeth, *Wyman House*, 705 Newark Ave. [4/10/86]
Plainfield, *Van Wyck Brooks Historic District*, Roughly bounded by Plainfield Ave., W. Eighth St., Park Ave., W. Ninth St. and Madison Ave., and Randolph Rd. [12/19/85]
Rahway, *Rahway Theatre*, 1601 Irving St. [8/13/86]

NEW MEXICO

Bernalillo County

Albuquerque, *Castle Apartments*, 1418 Central SW [2/13/86]
Albuquerque, *Leverett, William J., House*, 301 Dartmouth NE [2/13/86]
Albuquerque, *Milne, John, House*, 804 Park Ave. SW [2/13/86]
Albuquerque, *National Humane Alliance Animal Fountain*, 815 Virginia Ave. SE [9/20/85]
Albuquerque, *Silver Hill Historic District*, Roughly bounded by Central Ave., Yale Blvd., Lead Ave., and Sycamore St. [9/19/85]

Dona Ana County

White Sands Missile Range, *Launch Complex 33*, White Sands Missile Range [10/09/85]

Guadalupe County

Anton Chico, *Anton Chico de Abajo Historic District [Anton Chico Land Grant MRA]*, Roughly village limits of Anton Chico [9/23/85]
Colonias vicinity, *Colonias de San Jose Historic District [Anton Chico Land Grant MRA]*, Roughly village limits of Colonias [9/23/85]
Colonias vicinity, *La Plazita de Abajo District [Anton Chico Land Grant MRA]*, Address Restricted [9/23/85]

McKinley County

Pueblo Pintado vicinity, *Archeological Site No. LA 80,035 [Chaco Mesa Pueblo III TR]*, Address Restricted [10/09/85]

Rio Arriba County

Chama, *Foster Hotel*, Fourth and Terrace [2/13/86]
Encenada vicinity, *El Porvenir Community Ditch [La Tierra Amarilla MRA]*, Extending from 4½ mi. E of Encenada to ½ mi. N of Encenada [9/20/85]
Encenada vicinity, *Encenada Community Ditch [La Tierra Amarilla MRA]*, Extending from 4½ mi. E of Encenada to ⅞ mi. W of US 85 ½ mi. NE of State Fish Hatchery [9/20/85]
Encenada, *Jaramillo, Antonio, House and Barn [La Tierra Amarilla MRA]*, Encenada Rd. [9/20/85]
Encenada, *San Joaquin Church [La Tierra Amarilla MRA]*, NM 112 [9/20/85]
Encenada, *Valdez, Miguel, Barn [La Tierra Amarilla MRA]*, San Joaquin Church loop Rd. [9/20/85]
La Puente vicinity, *La Puente Community Ditch [La Tierra Amarilla MRA]*, Extending from Rushview discharge pt. to ⅛ mi. SW of La Puente on the Chama River [9/20/85]
Los Brazos vicinity, *Sanchez, Samuel, Barns [La Tierra Amarilla MRA]*, Off US 64 [9/20/85]
Los Brazos vicinity, *Sanchez, Samuel, House [La Tierra Amarilla MRA]*, Off US 64 [9/20/85]
Los Brazos, *El Barranco Community Ditch [La Tierra Amarilla MRA]*, Extending from the Chama River at Chama Division to Upper Brazos Ditch [9/20/85]
Los Ojos vicinity, *Parkview Community Ditch [La Tierra Amarilla MRA]*, Extending from 4½ mi. E of Encenada to 1 mi. SW of State Fish Hatchery [9/20/85]
Plaza Blanca vicinity, *Plaza Blanca Community Ditch [La Tierra Amarilla MRA]*, Extending from 2 mi. WSW of State Fish Hatchery to 1 mi. SSW of Plaza Blanca [9/20/85]
Plaza Blanca, *Plaza Blanca Historic District [La Tierra Amarilla MRA]*, Roughly Plaza Blanca and Old Puente Ford Rds. adjacent to Plaza Blanca Ditch [9/20/85]
Tierra Amarilla vicinity, *Tierra Amarilla Community Ditch [La Tierra Amarilla MRA]*, Extending from 2 mi. ESE of Tierra Amarilla to ⅞ mi. N of La Corridera Rd. [9/20/85]
Tierra Amarilla, *Tierra Amarilla Historic District [La Tierra Amarilla MRA]*, Roughly along La Puente Rd. on both sides of US 64 and along Old Highway and Creek Rd. [9/20/85]

San Juan County

Farmington vicinity, *East Side Rincon Site*, Address Restricted [12/13/85]

Santa Fe County

Jacona, *Roybal, Ignacio, House*, CR 84 W of NM 4 and US-84/285 [2/13/86]

Taos County

Carson, *Carson School*, NM 68 [2/13/86]
Ojo Caliente, *Ojo Caliente Mineral Springs*, NM 414 [11/17/85]

NEW YORK

Albany County

Colonie, *Bacon—Stickney House [Colonie Town MRA]*, 625 Loudon Rd. [10/03/85]
Colonie, *Byrne, Senator William T., House [Colonie Town MRA]*, 465 Loudon Rd. [10/03/85]
Colonie, *Cramer, Frederick, House [Colonie Town MRA]*, 410 Albany-Shaker Rd. [10/03/85]
Colonie, *Dunsbach, Martin, House [Colonie Town MRA]*, 168 Dunsbach Ferry Rd. [10/03/85]
Colonie, *Fuller, Royal K., House [Colonie Town MRA]*, 294 Loudon Rd. [10/03/85]
Colonie, *Haswell, Isaac M., House [Colonie Town MRA]*, 63 Haswell Rd. [10/03/85]
Colonie, *Hedge Lawn [Colonie Town MRA]*, 892 Broadway [10/03/85]
Colonie, *Henry—Ramsey House [Colonie Town MRA]*, 36 Spring St. [10/03/85]
Colonie, *Hills, Ebenezer, Jr., Farmhouse [Colonie Town MRA]*, 1019 Troy-Schenectady Rd. [10/03/85]
Colonie, *Humphrey, Friend, House [Colonie Town MRA]*, 372 Albany-Shaker Rd. [10/03/85]
Colonie, *Kemp, John Wolf, House [Colonie Town MRA]*, 216 Wolf Rd. [10/03/85]
Colonie, *Lansing, John V.A., Farmhouse and Bilisen Cemetery and Archeological Site [Colonie Town MRA]*, 213, 225, and 237 Consaul Rd. [10/03/85]
Colonie, *Lawton, George H., House [Colonie Town MRA]*, 27 Maxwell Rd. [10/03/85]
Colonie, *Menand, Louis, House [Colonie Town MRA]*, 40 Cemetery Ave. [10/03/85]
Colonie, *Menands Manor [Colonie Town MRA]*, 272 Broadway [10/03/85]
Colonie, *Menand Park Historic District [Colonie Town MRA]*, Roughly bounded by Menand Rd., Broadway, and Tillinghast Ave. [10/03/85]
Colonie, *Pruyn, Casparus F., House [Colonie Town MRA]*, 357 Old Niskayuna Rd. [10/03/85]
Colonie, *Reformed Dutch Church of Rensselaer in Watervliet [Colonie Town MRA]*, 219 Old Loudon Rd. [10/03/85]
Colonie, *Renshaw, Alfred H., House [Colonie Town MRA]*, 33 Fiddlers Ln. [10/03/85]
Colonie, *Simmons Stone House [Colonie Town MRA]*, 554 Route 9R [10/03/85]
Colonie, *Strong, Jedediah, House [Colonie Town MRA]*, 570 Vly Rd. [10/03/85]
Colonie, *Treanor Manor [Colonie Town MRA]*, 71 Old Niskayuna Rd. [10/03/85]
Colonie, *Trimble, George, House [Colonie Town MRA]*, 148 Spring Street Rd. [10/03/85]
Colonie, *Van Denbergh—Simmons House [Colonie Town MRA]*, 597 Route 9R [10/03/85]
Colonie, *Verdoy School [Colonie Town MRA]*, 957 Troy-Schenectady Rd. [10/03/85]

Bronx County

New York, *United Workers Cooperatives*, 2700–2870 Bronx Park E [9/11/86]

Broome County

Binghamton, *Railroad Terminal Historic District*, Intersection of Chenango St. and Erie-Lackawanna R.R. tracks [3/20/86]
Binghamton, *State Street—Henry Street Historic District*, Roughly bounded by Lewis St., Prospect Ave., Henry St., and Water and Washington Sts. [9/25/86]
Binghamton, *Whittemore, John T., House*, 111 Murray St. [9/16/86]

Cattaraugus County

Franklinville, *Park Square Historic District*, Park Square roughly bounded by N. Main, Pine, Chestnut, S. Main, Elm, and Church Sts. [9/22/86].
Gowanda, *Gowanda Village Historic District*, 37, 39, 41–45, 47–49, and 53 W. Main St. [9/22/86]

Chenango County

Columbus, *Columbus Community Church*, NY 80 [3/20/86]

NEW YORK—Continued
Columbia County

Hudson, *Hudson Historic District [Hudson MRA]*, Roughly bounded by Warren and State Sts., Eighth and Seventh Sts., S. Allen and Allen St., and Penn Central RR [10/21/85]
Hudson, *Rossman—Prospect Avenue Historic District [Hudson MRA]*, Prospect and Rossman Aves. [10/21/85]

Cortland County

McGraw, *Main Street Historic District*, Roughly on Main St. between South and Washington Sts. [9/25/86]
McGraw, *Presbyterian Church of McGraw*, 3 W. Main St. [9/11/86]

Erie County

Buffalo, *17–21 Emerson Place Row [Masten Neighborhood Rows TR]*, 17–21 Emerson Pl. [3/19/86]
Buffalo, *33–61 Emerson Place Row [Masten Neighborhood Rows TR]*, 33–61 Emerson Pl. [3/19/86]
Buffalo, *Buffalo State Asylum for the Insane*, 400 Forest Ave. [6/24/86]
Buffalo, *Laurel and Michigan Avenues Row [Masten Neighborhood Rows TR]*, 1335–1345 Michigan Ave. [3/19/86]
Buffalo, *Martin, Darwin D., House*, 125 Jewett Pkwy. [2/24/86]
Buffalo, *USS THE SULLIVANS (destroyer)*, 1 Naval Cove Pk. [1/14/86]
Buffalo, *Woodlawn Avenue Row [Masten Neighborhood Rows TR]*, 75–81 Woodlawn Ave. [3/19/86]

Greene County

Lexington, *Lexington House*, NY 42 [9/04/86]
Prattsville, *Pratt, Zadock, House*, Main St. [6/14/86]
West Coxsackie, *Houghtaling, Peter, Farm and Lime Kiln*, Lime Kiln Rd. [3/20/86]

Kings County

Brooklyn, *Clinton Hill South Historic District*, Roughly Lefferts and Brevoort Pl. between Washington Ave. and Bedford Pl. [7/17/86]
Brooklyn, *Feuchtwanger Stable*, 159 Carlton Ave. [3/20/86]

Madison County

Cazenovia, *Cazenovia Village Historic District [Cazenovia Town MRA]*, Roughly bounded by Union, Lincklean and Chenango Sts., and Rippleton Rd. and Foreman St. [6/19/86]
Lenox, *Canal Town Museum [Canastota Village MRA]*, 122 Canal St. [5/23/86]
Lenox, *Canastota Methodist Church [Canastota Village MRA]*, Main and New Boston Sts. [5/23/86]
Lenox, *Canastota Public Library [Canastota Village MRA]*, 102 W. Center St. [5/23/86]
Lenox, *House at 115 South Main Street [Canastota Village MRA]*, 115 S. Main St. [5/23/86]
Lenox, *House at 233 James Street [Canastota Village MRA]*, 233 James St. [5/23/86]
Lenox, *House at 205 North Main Street [Canastota Village MRA]*, 205 N. Main St. [5/23/86]
Lenox, *House at 313 North Main Street [Canastota Village MRA]*, 313 N. Main St. [5/23/86]
Lenox, *House at 326 North Peterboro Street [Canastota Village MRA]*, 326 N. Peterboro St. [5/23/86]
Lenox, *House at 328 North Peterboro Street [Canastota Village MRA]*, 328 N. Peterboro St. [5/23/86]
Lenox, *House at 107 Stroud Street [Canastota Village MRA]*, 107 Stroud St. [5/23/86]
Lenox, *Peterboro Street Elementary School [Canastota Village MRA]*, 220 N. Peterboro St. [5/23/86]
Lenox, *Roberts, Judge Nathan S., House [Canastota Village MRA]*, W. Seneca Ave. [5/23/86]
Lenox, *South Peterboro Street Commercial Historic District [Canastota Village MRA]*, Roughly bounded by NY 76, Diamond St., Penn Central RR tracks, and Commerce Ave. [5/23/86]
Lenox, *South Peterboro Street Residential Historic District [Canastota Village MRA]*, S. Peterboro St. between Terrace and Rasbach Sts. [5/23/86]
Lenox, *United Church of Canastota [Canastota Village MRA]*, 144 W. Center St. [5/23/86]

Monroe County

Rochester, *Brown, Adam, Block [Inner Loop MRA]*, 480 E. Main St. [10/04/85]
Rochester, *Building at 551—555 North Goodman Street, 551—555 N. Goodman St.* [3/20/86]
Rochester, *Chamber of Commerce [Inner Loop MRA]*, 55 Saint Paul St. [10/04/85]
Rochester, *Cohen, H. C., Company Building—Andrews Building [Inner Loop MRA]*, 216 Andrews St. [10/04/85]
Rochester, *Court Exchange Building—National Casket Company [Inner Loop MRA]*, 142 Exchange St. [10/04/85]
Rochester, *Dewey, Chester, School No. 14 [Inner Loop MRA]*, 200 University Ave. [10/04/85]
Rochester, *First National Bank of Rochester—Old Monroe County Savings Bank Building [Inner Loop MRA]*, 35 State St. [10/04/85]
Rochester, *Gannett Building [Inner Loop MRA]*, 55 Exchange St. [10/04/85]
Rochester, *Jewish Young Men's and Women's Association [Inner Loop MRA]*, 400 Andrews St. [10/04/85]
Rochester, *Kirstein Building [Inner Loop MRA]*, 242 Andrews St. [10/04/85]
Rochester, *Lehigh Valley Railroad Station [Inner Loop MRA]*, 99 Court St. [10/04/85]
Rochester, *Little Theatre [Inner Loop MRA]*, 240 East Ave. [10/04/85]
Rochester, *Michaels—Stern Building [Inner Loop MRA]*, 87 N. Clinton Ave. [10/04/85]
Rochester, *Naval Armory—Convention Hall [Inner Loop MRA]*, 75 Woodbury Blvd. [10/04/85]
Rochester, *Reynolds Arcade [Inner Loop MRA]*, 16 E. Main St. [10/04/85]
Rochester, *Rochester Fire Department Headquarters and Shops [Inner Loop MRA]*, 185 North St. [10/21/85]
Rochester, *Rundel Memorial Library [Inner Loop MRA]*, 115 South Ave. [10/04/85]
Rochester, *Sibley Triangle Building [Inner Loop MRA]*, 20–30 East Ave. [10/04/85]
Rochester, *University Club [Inner Loop MRA]*, 25 Broadway [10/04/85]
Rochester, *Warner, H. H., Building [Inner Loop MRA]*, 72–82 Saint Paul St. [10/04/85]
Rochester, *Washington Street Rowhouses [Inner Loop MRA]*, 30–32 N. Washington St. [10/04/85]
Rochester, *Wilder Building [Inner Loop MRA]*, 1 E. Main St. [10/04/85]

Nassau County

Port Washington, *Dodge, Thomas, Homestead*, 58 Harbor Rd. [6/26/86]
Roslyn Harbor, *Cedarmere—Clayton Estates*, Bryant Ave. and Northern Blvd. [9/29/86]

New York County

New York, *Christodora House*, 147 Ave. B [3/20/86]
New York, *City and Suburban Homes Company's First Avenue Estate Historic District*, 1168–1200 First Ave., 401–429 E. Sixty-fourth, and 402–430 E. Sixty-fifth Sts. [8/01/86]
New York, *Hopper, Isaac T., House*, 110 Second Ave. [5/22/86]
New York, *Metropolitan Museum of Art*, Fifth Ave. at Eighty-second St. [6/24/86]
New York, *R & S Building*, 402 First Ave. [9/22/86]
New York, *Tudor City Historic District*, Roughly bounded by Forty-third St., First Ave., Forty-first St., and Second Ave. [9/11/86]
New York, *USS INTREPID (aircraft carrier)*, Intrepid Sq. [1/14/86]
New York, *University Settlement House*, 184 Eldridge St. [9/11/86]
New York, *Westchester House*, 541–551 Broome St. [3/20/86]

Onondaga County

Delphi Falls, *Delphi Village School*, East Rd. [5/22/86]
Syracuse, *South Salina Street Historic District*, 111 W. Kennedy St. and 1555–1829 and 1606–1830 S. Salina St. [3/27/86]

Orange County

Montgomery vicinity, *Bull, William, III, House*, Bart Bull Rd. [9/25/86]

Queens County

Far Rockaway, *Russell Sage Memorial Church*, 1324 Beach Twelfth St. [9/22/86]
New York City, *Fort Totten Officers' Club*, Totten and Murray Aves. [3/17/86]

Rensselaer County

Troy, *Central Troy Historic District*, Roughly bounded by Grand St., Fifth Ave. and Third, Adams, and First and River Sts. [9/13/86]

Rockland County

Pearl River, *Salyer, Edward, House*, 241 S. Middletown Rd. [9/04/86]

Saratoga County

Waterford, *Ornsby—Laughlin Textile Companies Mill*, 31 Mohawk Ave. [3/20/86]

Schoharie County

Central Bridge, *Westinghouse, George Jr., Birthplace and Boyhood Home*, Westinghouse Rd. [3/20/86]

NEW YORK—Continued
Seneca County

Seneca Falls, Fourth Ward School, 8 Washington St. [3/19/86]

St. Lawrence County

Hannawa Falls, *Cox, Gardner, House*, Main St. [3/20/86]
Ogdenburg, *Fine, Judge John House*, 422 State St. [1/09/86]

Suffolk County

Branch, *Village of Branch Historic District*, Along N side of Middle Country Rd. [9/11/86]
Center Moriches, *Masury Estate Ballroom*, Old Neck Rd. S. [9/11/86]
Centerport, *LITTLE JENNIE (Chesapeake Bay bugeye)*, Centerport Harbor [5/12/86]
Flanders, *Benjamin, James, Homestead*, 1182 Flanders Rd. [8/13/86]
Huntington, *Kennan, A. P. W., House [Huntington Town MRA]*, Sydney Rd. [11/06/85]
Huntington, *Oakley, John, House [Huntington Town MRA]*, Sweet Hollow Rd. [11/06/85]
Huntington, *Old First Church [Huntington Town MRA]*, 126 Main St. [11/06/85]
Mattituck, *Cox, Richard, House*, Mill Rd. [8/21/86]
Shelter Island, *Havens, James, Homestead*, NY 114 [4/10/86]
Yaphank, *Hawkins, Robert, Homestead*, Yaphank Ave. [4/10/86]
Yaphank, *Suffolk County Almshouse Barn*, Yaphank Ave. [9/11/86]

Tompkins County

Ithaca, *East Hill Historic District*, Roughly bounded by Cascadilla Creek, Eddy St., Six Mile Creek, and Aurora St. [8/14/86]

Ulster County

Rosendale, *All Saints' Chapel*, Main St. [9/11/86]

Warren County

Glens Falls, *Glens Falls Feeder Canal [Glens Falls City MRA]*, Roughly between Richardson St. and the Old Champlain Canal [10/25/85]

Washington County

Hudson Falls, *Glens Falls Feeder Canal [Glens Falls City MRA]*, Roughly between Richardson St. and the Old Champlain Canal [10/25/85]

Wayne County

Macedon, *Bullis, Charles, House*, 1727 Canandaigua Rd. [3/20/86]

Westchester County

Armonk, *Bedford Road Historic District*, Bedford Rd. [11/21/85]
New Rochelle, *Lispenard—Rodman—Davenport House*, 180 Davenport Ave. [9/22/86]
North Salem, *Union Hall*, NY 116 and Keeler Ln. [8/28/86]
Pelham Manor, *Edgewood House*, 908 Edgewood Ave. [6/26/86]
Pound Ridge, *Pound Ridge Historic District*, Roughly between Pound Ridge, Old Stone Hill, and Salem Rds., Trinity Pass and Westchester Ave. [12/30/85]
Yonkers, *Public Bath House No. 2 [Yonkers Public Bath House TR]*, 27 Vineyard Ave. [10/21/85]
Yonkers, *Public Bath House No. 3 [Yonkers Public Bath House TR]*, 48 Yonkers Ave. [10/21/85]
Yonkers, *Public Bath House No. 4 [Yonkers Public Bath House TR]*, 138 Linden St. [10/21/85]

NORTH CAROLINA

Alamance County

Thompson, *Kerr—Patton House*, NC 2133 [12/05/85]

Bertie County

Hamilton vicinity, *Rhodes Site (31BR90)*, Address Restricted [8/28/86]

Brunswick County

Holden Beach vicinity, *Cape Fear Civil War Shipwreck Discontiguous District*, Address Restricted [12/23/85]

Buncombe County

Ashville, *Oteen Veterans Administration Hospital Historic District*, N side of US 70 [11/20/85]

Burke County

Morganton, *Tate, Franklin Pierce, House*, 410 W. Union St. [5/21/86]

Cabarrus County

Bethpage vicinity, *Pressley, Rev. John E., House*, N side of SR 1613 3/10 mi. E of SR 1612 [1/06/86]
Concord, *North Union Street Historic District*, Roughly bounded by Peachtree Ave. NW, Church St., N, Cobran Ave. SW, and Georgia St. NW and Spring St. N [4/15/86]
Concord, *South Union Street Historic District*, Roughly bounded by Corban Ave. SW, S. Union St., Blume Ave. SE, and Spring St. SW [4/10/86]
Georgeville vicinity, *Bost Mill Historic District*, N and S sides of NC 200 off US 601 [1/13/86]
Mount Pleasant, *First Congregational Church*, Corner of Wade and C Sts. [1/09/86]
Mount Pleasant, *Mount Pleasant Historic District*, Roughly W. and E. Franklin between N. Halifax and C and N. and S. Main Sts. between Boston and Broad Sts. [5/12/86]
Poplar Tent vicinity, *Favoni—Harris, Dr. Charles and William Shakespeare House*, SR 1445 [3/06/86]
Rocky River vicinity, *Rocky River Presbyterian Church*, Jct. of NC 1139 and NC 1158 [3/06/86]

Caswell County

Frogsboro vicinity, *Griers Presbyterian Church and Cemetery*, SR 1710 [12/30/85]
Milton vicinity, *Woodside*, NC 57 [3/06/86]

Catawba County

Catawba, *Catawba Historic District*, Roughly bounded by Second Ave. NE, Third and Second Sts. SE, Second Ave. SW and NC 10, and Second St. SW [4/28/86]
Hickory, *Oakwood Historic District [Hickory MRA]*, Roughly bounded by Oakwood Cemetery and Fourth Ave. NW, Fourth St. NW, Second Ave. NW, and Sixth St. NW [3/25/86]
Newton, *North Main Avenue Historic District*, Roughly bounded by W. Ninth St., N. Main Ave., W. Fourth and W. Sixth Sts., N. Deal Ave., and W. Eighth St. [5/22/86]
Terrell, *Terrell Historic District*, NC 150 and SR 1848 [7/15/86]

Chatham County

Pittsboro vicinity, *Baldwin's Mill*, SR 1520 [1/02/86]

Craven County

Trent Woods, *Sloan, Dr. Earl S., House*, 3701 Country Club Rd. [6/14/86]

Durham County

Durham, *Durham Hosiery Mills No. 2—Service Printing Company Building [Durham MRA]*, 504 E. Pettigrew St. [11/27/85]
Durham, *North Carolina Central University [Durham MRA]*, Bounded by Lawson St., Alston Ave., Nelson, and Fayette Sts. [3/28/86]
Durham, *West Durham Historic District [Durham MRA]*, Roughly bounded by Knox, Ninth, W. Main Sts., and Rutherford St. and Carolina Ave. [3/28/86]

Edgecombe County

Durham, *Trinity Historic District [Durham MRA]*, Roughly bounded by Green, Duke, Morgan and W. Main Sts. and Markham Ave., and Clarendon St. [3/28/86]
Wilson vicinity, *Upper Town Creek Rural Historic District [Wilson MRA]*, Roughly bounded by NC 1003, NC 1411, NC 1414, and Town Creek [6/29/86]

Franklin County

Louisburg vicinity, *Cascine (Boundary Increase)*, N side of NC 1702 [12/04/85]

Gaston County

Gastonia, *First National Bank Building*, 168–170 W. Main Ave. [2/20/86]
Gastonia, *Third National Bank Building*, 185 W. Main Ave. [2/20/86]

Gates County

Buckland, *Buckland*, NC 37 at SR 1220 [3/05/86]

Granville County

Bullock vicinity, *Red Hill*, NC 1501 [6/14/86]

Guilford County

Greensboro, *Fields, William, House*, 447 Arlington St. [12/06/85]
Greensboro, *Martin, Harden Thomas, House*, 204 N. Mendenhall St. [12/19/85]
Greensboro, *West Market Street Methodist Episcopal Church—South*, 302 W. Market St. [12/19/85]

Halifax County

Halifax vicinity, *Halifax County Home and Tubercular Hospital*, NC 903 [12/10/85]

Harnett County

Bunn Level vicinity, *Thorbiskope*, Off SR 2049 at SR 2050 [1/23/86]
Dunn, *McKay, John A., House and Manufacturing Company*, 100 E. Divine St. [4/10/86]

NORTH CAROLINA—Continued
Haywood County

Crabtree vicinity, *Mount Zion United Methodist Church*, SR 1503 [2/5/86]

Hyde County

Lake Landing vicinity, *Lake Landing Historic District*, Roughly bounded by Mattamuskeet Refuge Boundary, Middletown, Nebraska, SR 1110, and US 264 [3/10/86]
Swindell Fork, *Swindell, Albin B., House and Store*, US 264 [8/14/86]

Jackson County

Cashiers, *Church of the Good Shepherd*, NC 107 at SR 1118 [2/20/86]

Johnston County

Smithfield, *Hood Brothers Building*, 100–104 S. Third St. [8/14/86]

Lenoir County

LaGrange, *LaGrange Presbyterian Church*, 201 S. Caswell St. [6/14/86]

Lincoln County

Lincolnton, *Caldwell—Cobb—Love House*, 218 E. Congress St. [2/06/86]

Madison County

Hot Springs vicinity, *Ottinger, Henry, House*, 301 Boys Home Rd. [3/06/86]
Hot Springs, *Dorland Memorial Presbyterian Church*, Bridge St. at Meadow Ln. [7/24/86]

Mecklenburg County

Charlotte, *Carolina Theater*, 224–232 N. Tryon St. [6/14/86]

Moore County

High Falls vicinity, *Gordon Payne Site (31MR15)*, Address Restricted [9/24/86]

Nash County

Spring Hope, *Brantley, Dr. Hassell, House*, 301 Branch St. [6/14/85]

New Hanover County

Wrightsville, Kure & Wilmington vicinity, *Cape Fear Civil War Shipwreck Discontiguous District*, Address Restricted [12/23/86]

Orange County

Carrboro, *Lloyd, Thomas F., Historic District*, Roughly bounded by E. Carr St., Maple Ave., and S. Greensboro St. [6/14/86]

Pender County

Burgaw, *Burgaw Depot*, 102 E. Fremont [7/24/86]
Ivanhoe vicinity, *Beatty—Corbett House [Sampson County MRA]*, SR 701 at SR 1200 [3/17/86]
Topsail Beach vicinity, *Cape Fear Civil War Shipwreck Discontiguous District*, Address Restricted [12/23/85]

Pitt County

Greenville, *US Post Office*, 215 S. Evans St. [2/06/86]

Randolph County

Asheboro vicinity, *Thayer Farm Site (31RD10)*, Address Restricted [6/26/86]

Rockingham County

Wentworth vicinity, *Wentworth Methodist Episcopal Church and Cemetery*, NC 65 W of SR 2124 [3/13/86]

Rowan County

Salisbury, *Mount Zion Baptist Church*, 413 N. Church St. [12/30/85]

Rutherford County

Rutherfordton vicinity, *Logan, George W., House*, SR 1555 at US 64 [2/20/86]

Sampson County

Clear Run, *Clear Run [Sampson County MRA]*, NC 411 at Black River [3/17/86]
Clinton vicinity, *Boykin, General Thomas, House [Sampson County MRA]*, SR 1214 SW of SR 1222 [3/17/86]
Clinton vicinity, *Killett, Marcheston, Farm [Sampson County MRA]*, SR 1222 N of US 701 [3/17/86]
Clinton vicinity, *Oates, Livingston, Farm [Sampson County MRA]*, SR 1748 W of NC 403 [3/17/86]
Clinton vicinity, *Pigford House [Sampson County MRA]*, SR 1751 S of US 701 [3/17/86]
Clinton vicinity, *Pope House [Sampson County MRA]*, SR 1146 N of SR 1145 [3/17/86]
Clinton vicinity, *Pugh, Francis, House [Sampson County MRA]*, SR 1751 at NC 403 [3/17/86]
Clinton, *Bethune—Powell Buildings [Sampson County MRA]*, 118–120 E. Main St. [3/17/86]
Clinton, *Clinton Depot [Sampson County MRA]*, W. Elizabeth St. [3/17/86]
Clinton, *College Street Historic District [Sampson County MRA]*, 600–602 College St. [3/17/86]
Clinton, *Herring, Robert, House [Sampson County MRA]*, 216 Sampson St. [3/17/86]
Clinton, *Pugh—Boykin House [Sampson County MRA]*, 306 Elizabeth St. [3/17/86]
Clinton, *Royal—Crumpler—Parker House [Sampson County MRA]*, 512 Sunset Ave. [3/17/86]
Clinton, *West Main—North Chesnutt Streets Historic District [Sampson County MRA]*, Roughly N. Chesnutt, Fayetteville, and Williams Sts. between W. Main and Margaret Sts. [3/17/86]
Delway, *Dell School Campus [Sampson County MRA]*, US 421 and SR 1003 [5/21/86]
Dunn vicinity, *Wilson, John E., House [Sampson County MRA]*, SR 1631 at SR 1630 [3/17/86]
Garland vicinity, *Lamb, James H., House [Sampson County MRA]*, SR 1135 N of NC 411 [3/17/86]
Garland vicinity, *Murphy—Lamb House and Cemetery [Sampson County MRA]*, SR 1135 S of US 701 [3/17/86]
Garland vicinity, *Sloan, Dr. David Dickson, Farm [Sampson County MRA]*, US 701 N of South River [3/17/86]
Giddensville vicinity, *Lee, Lovett, House [Sampson County MRA]*, SR 1725 and SR 1730 [3/17/86]
Harrells vicinity, *Highsmith, Lewis, Farm [Sampson County MRA]*, US 421 S of NC 41 [3/17/86]
Harrells vicinity, *Seavey, Dr. John B., House and Cemetery [Sampson County MRA]*, SR 1100 S of SR 1007 [5/21/86]
Ingold vicinity, *Johnson, Samuel, House and Cemetery [Sampson County MRA]*, SR 1157 S of SR 1004 [3/17/86]
Ivanhoe vicinity, *Beatty—Corbett House [Sampson County MRA]*, SR 701 at SR 1200 [3/17/86]
Ivanhoe vicinity, *Delta Farm [Sampson County MRA]*, SR 1100 N of SR 1105 [3/17/86]
Ivanhoe, *Black River Presbyterian and Ivanhoe Baptist Churches [Sampson County MRA]*, SR 1102 E of SR 1100 [3/17/86]
Kerr vicinity, *Kerr, James, House [Sampson County MRA]*, SR 1005 S of SR 1007 [3/17/86]
McDaniels vicinity, *Owen Family House and Cemetery [Sampson County MRA]*, SR 1212 N of SR 1214 [3/17/86]
Roseboro, *Caison, Dan E., Sr., House [Sampson County MRA]*, Broad St. [5/21/86]
Roseboro, *Herring, Troy, House [Sampson County MRA]*, Broad St. S of NC 24 [3/17/86]
Roseboro, *Howell—Butler House [Sampson County MRA]*, Broad and McLamb Sts. [3/17/86]
Rosin, *Bizzell, Asher W., House [Sampson County MRA]*, US 13 and SR 1845 [5/21/86]
Rosin, *McPhail, Jonas, House and McPhail, Annie, Store [Sampson County MRA]*, US 13 E of SR 1845 [3/17/86]
Salemburg vicinity, *Butler, Marion, Birthplace [Sampson County MRA]*, NC 242 at SR 1414 [3/17/86]
Salemburg, *Howard—Royal House [Sampson County MRA]*, 202 N. Main St. [3/17/86]
Suttontown, *Kornegay, Marshall, House and Cemetery [Sampson County MRA]*, SR 1725 and SR 1720 [3/17/86]
Taylors Bridge vicinity, *Matthews, Dr. James O., Office [Sampson County MRA]*, SR 1960 S of SR 1004 [3/17/86]
Taylors Bridge vicinity, *Matthis, Fleet, Farm [Sampson County MRA]*, US 421 S of SR 1146 [3/17/86]
Turkey vicinity, *Cherrydale [Sampson County MRA]*, SR 1919 at SR 1952 [3/17/86]
Turkey vicinity, *Hollingsworth—Hines Farm [Sampson County MRA]*, SR 1928 S of SR 1004 [3/17/86]
Waycross vicinity, *Oak Plain Presbyterian Church [Sampson County MRA]*, SR 1943 S of SR 1945 [5/21/86]

Stokes County

Danbury, *Danbury Historic District*, Main St. between Danbury Cemetery Rd. and NC 89 [7/15/86]

Surry County

Mount Airy, *Hennis, Edgar Harvey, House*, 1056 N. Main St. [2/20/86]
Mount Airy, *Moore, William Alfred, House*, 202 Moore Ave. [3/05/86]
Mount Airy, *Mount Airy Historic District*, Main, Brown, Market, Franklin, W. Pine, Rockford, Worth, Cherry, and Gilmer Sts., Moore, and Hines Aves. [10/03/85]
Mount Airy, *Trinity Episcopal Church*, 472 N Main St. [1/09/86]

NORTH CAROLINA—Continued
Wake County

Apex, *Apex City Hall*, N. Salem St. [12/05/85]
Knightdale vicinity, *Walnut Hill Cotton Gin*, NC 2509 [8/14/86]
Raleigh, *Capital Club Building*, 16 W. Martin St. [12/05/85]
Raleigh, *Marshall—Harris—Richardson House*, 116 N. Person St. [3/05/86]
Zebulon vicinity, *Bunn, Bennett, Plantation*, NC 97 [2/04/86]

Warren County

Vaughan vicinity, *Browne, Mary Ann, House*, NC 1530 [7/24/86]

Wayne County

Mount Olive, *Perry—Cherry House*, 306 W. Main St. [3/13/86]

Wilson County

Black Creek, *Aycock, Manalcus, House [Wilson MRA]*, Center St. [2/13/86]
Black Creek, *Lucas, Dr. H. D., House [Wilson MRA]*, Center St. [2/13/86]
Elm City vicinity, *Langley, W. H., House [Wilson MRA]*, N side of SR 1003 [2/13/86]
Elm City vicinity, *Webb-Barron-Wells House [Wilson MRA]*, E side SR 1512 [2/13/86]
Elm City, *Elm City Municipal Historic District [Wilson MRA]*, Roughly bounded by North, Pender and Branch, Wilson, and Anderson Sts. [2/13/86]
Lucama, *Lucama Municipal Historic District [Wilson MRA]*, Roughly bounded by US 301 and Railroad St., Main St., Black Creek Rd., and Goldsboro St. [2/13/86]
Sims vicinity, *Bullock—Dew House [Wilson MRA]*, NC 581 [2/13/86]
Stantonsburg vicinity, *Applewhite, W. H., House [Wilson MRA]*, Off NC 58 [2/13/86]
Stantonsburg vicinity, *Edmondson—Woodward House [Wilson MRA]*, NC 58 and SR 1542 [2/13/86]
Stantonsburg, *Ward—Applewhite—Thompson House [Wilson MRA]*, S side of SR 1539 [2/13/86]
Wilson vicinity, *Barnes, General Joshua, House [Wilson MRA]*, W side of SR 1326 at SR 1327 [2/13/86]
Wilson vicinity, *Pender, Joseph John, House [Wilson MRA]*, SR 1418 and SR 1002 [2/13/86]
Wilson vicinity, *Upper Town Creek Rural Historic District [Wilson MRA]*, Roughly bounded by NC 1003, NC 1411, NC 1414, and Town Creek [8/29/86]
Wilson vicinity, *Woodward Family Rural Historic District [Wilson MRA]*, Along US 264 [8/29/86]

NORTH DAKOTA

Adams County

Hettinger, *Adams County Courthouse [North Dakota County Courthouses TR]*, 600 Adams Ave. [11/14/85]

Barnes County

Valley City, *Barnes County Courthouse [North Dakota County Courthouses TR]*, 491 Second Ave. NW [11/14/85]

Burke County

Bowbells, *Burke County Courthouse [North Dakota County Courthouses TR]*, Main St. [11/14/85]

Burleigh County

Bismarck, *Burleigh County Courthouse [North Dakota County Courthouses TR]*, E. Thayer Ave. [11/14/85]

Dunn County

Manning, *Dunn County Courthouse [North Dakota County Courthouses TR]*, Owens St. [3/26/86]
New Hradec, *Saints Peter and Paul Church*, N/A [2/03/86]

Eddy County

New Rockford, *Eddy County Courthouse [North Dakota County Courthouses TR]*, 524 Central Ave. [11/14/85]

Emmons County

Linton, *Emmons County Courthouse [North Dakota County Courthouses TR]*, Fifth St. [11/14/85]
Strasburg, *Saints Peter and Paul Catholic Church Complex*, First Ave. [9/25/86]

Golden Valley County

Beach, *Golden Valley County Courthouse [North Dakota County Courthouses TR]*, First Ave. SE [11/14/85]

Grand Forks County

Grand Forks, *Clifford, George B., House*, 406 Reeves Dr. [9/30/86]
Grand Forks, *Wheeler, Dr. Henry, House*, 420 Franklin St. [1/16/86]

Grant County

Heil vicinity, *Medicine Rock State Historic Site*, Address Restricted [9/25/86]

Hettinger County

Mott, *Mettinger County Courthouse [North Dakota County Courthouses TR]*, 336 Pacific St. [11/14/85]

Kidder County

Steele, *Kidder County Courthouse [North Dakota County Courthouses TR]*, Broadway Ave. [11/14/85]

Logan County

Napoleon, *Logan County Courthouse [North Dakota County Courthouses TR]*, 301 Broadway [11/14/85]

McLean County

Washburn, *Former McLean County Courthouse [North Dakota County Courthouses TR]*, Main St. [11/14/85]
Washburn, *McLean County Courthouse [North Dakota County Courthouses TR]*, Fifth Ave. [11/14/85]

Oliver County

Hensler vicinity, *Cross Ranch Archeological District*, Address Restricted [11/04/85]

Ramsey County

Devils Lake, *Bangs-Wineman Block*, 402–408 Fourth St. [11/14/85]
Devils Lake, *Locke Block*, 405 Fifth St. [7/24/86]

Ransom County

Lisbon, *Ransom County Courthouse [North Dakota County Courthouses TR]*, Fifth Ave. W [11/25/85]

Renville County

Mohall, *Renville County Courthouse [North Dakota County Courthouses TR]*, Main St. [11/25/85]

Richland County

Mooreton vicinity, *Bagg Bonanza Farm District*, Off ND 13 on Section Rd. [11/14/85]

Sheridan County

McClusky, *Sheridan County Courthouse [North Dakota County Courthouses TR]*, 215 E. Second St. [11/25/85]

Sioux County

Fort Yates, *Former Sioux County Courthouse [North Dakota County Courthouses TR]*, Belden St. [11/14/85]

Slope County

Amidon, *Original Slope County Courthouse [North Dakota County Courthouses TR]*, Second St. [11/14/85]

Stark County

Dickinson, *Stark County Courthouse [North Dakota County Courthouses TR]*, Third St. N [11/25/85]

Steele County

Finley, *Steele County Courthouse [North Dakota County Courthouses TR]*, Washington Ave. [11/14/85]

Stutsman County

Jamestown, *Elizabeth Apartments*, 402 Second Ave. NW [4/21/86]
Jamestown, *Seiler Building*, 110 First St. E [1/16/86]

Towner County

Cando, *Towner County Courthouse [North Dakota County Courthouses TR]*, Second St. S [11/14/85]

Traill County

Mayville, *Delchar Theater*, 20 W. Main St. [11/14/85]
Mayville, *First National Bank*, 22 W. Main St. [11/20/85]
Mayville, *Goose River Bank*, 45 Main St. E [11/14/85]
Mayville, *Grandins' Mayville Farm District*, 2 Brunsdale W [11/19/85]
Mayville, *Grinager Mercantile Building*, 37 Main St. E [11/20/85]
Mayville, *Lura Building*, 29 W. Main St. [11/14/85]
Mayville, *Mayville Historic District*, Roughly bounded by Third St. NE, Fifth St. NE, Fifth Ave. NE, Main St. E, and Third Ave. NE and Second Ave. NE [11/19/85]
Mayville, *Union Block* 21–25 Main St. W [11/20/85]
Portland vicinity, *Lucken Farm*, N of Portland [5/14/86]

Walsh County

Grafton, *Walsh County Courthouse [North Dakota County Courthouses TR]*, 638 Cooper Ave. [11/25/85]

NORTH DAKOTA—Continued
Ward County

Minot, *Ward County Courthouse [North Dakota County Courthouses TR]*, 315 Third St. SE [11/4/85]

OHIO

Allen County

Lima, *Barr Hotel*, 201–209 E. High and 200–216 N. Union Sts. [5/15/86]

Belmont County

Bridgeport, *Kirkwood, Joseph, House*, 329 Bennett St. [2/13/86]

Butler County

Hamilton, *Hamilton Catholic High School*, 533 Dayton St. [7/24/86]

Clark County

Springfield, *Shawnee Hotel*, Main and Limestone Sts. [12/05/85]

Columbiana County

East Liverpool, *City Hall [East Liverpool Central Business District MRA]*, Sixth St. [11/14/85]
East Liverpool, *Diamond Historic District [East Liverpool Central Business District MRA]*, Market and E. Sixth Sts. [11/14/85]
East Liverpool, *East Fifth Street Historic District [East Liverpool Central Business District MRA]*, Along E. Fifth St. between Market St. and Broadway [11/14/85]
East Liverpool, *Elks Club [East Liverpool Central Business District MRA]*, 139 W. Fifth St. [11/14/85]
East Liverpool, *Godwin—Knowles House [East Liverpool Central Business District MRA]*, 422 Broadway [11/14/85]
East Liverpool, *Laughlin, Homer, House [East Liverpool Central Business District MRA]*, 414 Broadway [11/14/85]
East Liverpool, *Odd Fellows Temple [East Liverpool Central Business District MRA]*, 120 W. Sixth St. [11/14/85]
East Liverpool, *Patterson, Mary A., Memorial [East Liverpool Central Business District MRA]*, E. Fourth St. [11/14/85]
East Liverpool, *Potters Savings and Loan [East Liverpool Central Business District MRA]*, Washington and Broadway [11/14/85]
East Liverpool, *Potters National Bank [East Liverpool Central Business District MRA]*, Broadway and Fourth St. [11/14/85]
East Liverpool, *Travelers Hotel [East Liverpool Central Business District MRA]*, 115 E. Fourth St. [7/15/86]
East Liverpool, *YMCA [East Liverpool Central Business District MRA]*, Washington and Fourth St. [11/14/85]
Wellsville, *Episcopal Church of the Ascension and Manse*, 1101 and 1109 Eleventh St. [5/15/86]

Coshocton County

Warsaw, *Walhounding Canal Lock No. 8*, OH 715 [2/24/86]

Cuyahoga County

Beachwood, *Hangar, The*, 24400 Cedar Rd. [1/09/86]
Bratenahl, *Taylor Mansion—Lakehurst*, 198 Bratenahl Rd. [7/10/86]
Brecksville, *Brecksville—Northfield High Level Bridge*, OH 82 and the Cuyahoga River (also in Summit County, Northfield) [1/16/86]
Cleveland Heights, *Heights Rockefeller Building*, 3091 Mayfield Rd. [5/15/86]
Cleveland, *Krause Building—Otto Moser's Cafe*, 2042–2044 E. Fourth St. [11/14/85]
Cleveland, *Rocket Engine Test Facility*, Lewis Research Center [10/03/85]
Cleveland, *USS COD (submarine)*, N. Marginal Dr. [1/14/86]
Cleveland, *Woodland Cemetery*, 6901 Woodland Ave. [6/04/86]
Cleveland, *Zero Gravity Research Facility (B–2)*, Lewis Research Center [10/03/85]
Cleveland/Cleveland Heights, *Forest Hill Historic District*, Roughly bounded by Glynn Rd., Northdale Blvd. and Cleviden Rd., Mt. Vernon Blvd. and Wyatt Rd., and Lee Blvd. [8/14/86]
Lakewood, *Detroit—Warren Building*, 14801–14813 Detroit Ave. [5/15/86]

Defiance County

Defiance, *Defiance Public Library*, 320 Fort St. [10/31/85]
Lorain, *Eagles Building*, 575 Broadway [4/24/86]

Delaware County

Delaware vicinity, *High House*, 2360 Panhandle Rd. [2/13/86]

Erie County

Sandusky, *Exchange Hotel*, 202–204 E. Water St. [10/29/85]
Sandusky, *Spacecraft Propulsion Research Facility*, Lewis Research Center, Plum Brook Station [10/03/85]

Fayette County

Washington Courthouse vicinity, *Woodlawn Farm*, 3789 OH 41 NW [2/13/86]

Franklin County

Columbus, *Central Ohio Lunatic Asylum*, 1960 W. Broad St. [4/24/86]
Columbus, *Iuka Ravine Historic District*, Roughly bounded by E. Lane and E. Northwood, N. Fourth, Twentieth and E. Nineteenth, and Indianola Aves. [5/06/86]
Columbus, *Trinity German Evangelical Lutheran Church*, 404 S. Third St. [10/10/85]

Greene County

Spring Valley, *Barrett, George, Concrete House*, 4 E. Main St. [4/10/86]

Guernsey County

Buffalo vicinity, *Finley, Ebenezer, House*, E of Buffalo on OH 313 [2/28/86]

Hamilton County

Cincinnati, *Cincinnati Enquirer Building*, 617 Vine St. [11/13/85]
Cincinnati, *Cummins School [Samuel Hannaford and Sons TR in Hamilton County]*, 824 William H. Taft Rd. [1/09/86]
Cincinnati, *Peeble's Corner Historic District*, Roughly E. McMillan St. and Gilbert Ave. [11/14/85]
Wyoming, *Baldwin, Joseph W., House [Wyoming MRA]*, 217 Springfield Pike [8/25/86]
Wyoming, *Bromwell, Jacob, House [Wyoming MRA]*, 69 Mt. Pleasant Ave. [8/25/86]
Wyoming, *Fay, Charles, House [Wyoming MRA]*, 325 Reily Rd. [8/25/86]
Wyoming, *Hess, Elmer, House [Wyoming MRA]*, 333 Springfield Pike [8/25/86]
Wyoming, *Kirby, Josiah, House [Wyoming MRA]*, 66 Oliver Rd. [8/25/86]
Wyoming, *Luethstrom-Hurin House [Wyoming MRA]*, 30 Reily Rd. [8/25/86]
Wyoming, *Moore, Charles H., House [Wyoming MRA]*, 749 Stout Ave. [8/25/86]
Wyoming, *Pabodie, Professor William, House [Wyoming MRA]*, 731 Brooks Ave. [8/25/86]
Wyoming, *Pollock, John C., House [Wyoming MRA]*, 88 Reily Rd. [8/25/86]
Wyoming, *Reily, Robert, House [Wyoming MRA]*, 829 Liddle Ln. [8/25/86]
Wyoming, *Retesch, W.C., House [Wyoming MRA]*, 129 Springfield Pike [8/25/86]
Wyoming, *Riddle-Friend House [Wyoming MRA]*, 507 Springfield Pike [8/25/86]
Wyoming, *Sawyer, Louis, House [Wyoming MRA]*, 315 Reily Rd. [8/25/86]
Wyoming, *Stearns, William, House [Wyoming MRA]*, 320 Reily Rd. [8/25/86]
Wyoming, *Stearns, Edward R., House [Wyoming MRA]*, 333 Oliver Rd. [8/25/86]
Wyoming, *Tangeman, John, House [Wyoming MRA]*, 550 Larchmont [8/25/86]
Wyoming, *Village Historic District [Wyoming MRA]*, Roughly bounded by Wentworth Ave., B & O RR tracks, E. Mill Ave., and Springfield Pike [8/25/86]
Wyoming, *Woodruff, Charles, House [Wyoming MRA]*, 411 Springfield Pike [8/25/86]

Jackson County

Jackson, *Gibson House*, 187 Main St. [12/05/85]

Jefferson County

Steubenville vicinity, *Independent School District No. 2 Building*, 84520 OH 213 [7/10/86]
Steubenville, *Steubenville Commercial Historic District*, Roughly bounded by Washington, Court and Third, Market, and Eighth and Commercial Sts. [8/21/86]

Knox County

Mount Vernon vicinity, *Knox County Infirmary*, 7516 Johnstown Rd. [7/10/86]

Logan County

Zanesfield vicinity, *Marmon, Martin, House*, CR 153 [2/20/86]

Lorain County

Lorain, *Broadway Building*, SE corner of W. Erie Ave. and Broadway [11/14/85]

Lucas County

Toledo, *Westmoreland Historic District*, Roughly bounded by Parkside Blvd., Bancroft St., Upton Ave., and Oakwood Ave. and Allenby Rd. [2/03/86]

Madison County

London, *London Commercial Business Historic District*, Roughly bounded by Adams, Superior and Clair Sts., Madison Ave., and Huron St. [12/17/85]

Mahoning County

Boardman, *Southern Park Stable*, 126 Washington Blvd. [7/10/86]

OHIO—Continued
Youngstown, *Baltimore & Ohio Railroad Terminal*, 530 Mahoning Ave. [7/10/86]
Youngstown, *City Hall Annex [Downtown Youngstown MRA]*, 9 W. Front St. [7/23/86]
Youngstown, *Erie Terminal Building—Commerce Plaza Building [Downtown Youngstown MRA]*, 112 W. Commerce St. [7/23/86]
Youngstown, *Helan Chapel [Downtown Youngstown MRA]*, NW corner of E. Wood and Champion Sts. [7/23/86]
Youngstown, *Jay's Lunch [Downtown Youngstown MRA]*, 258 Federal Plaza W [7/23/86]
Youngstown, *Kress Building [Downtown Youngstown MRA]*, 111–121 Federal Plaza W [7/23/86]
Youngstown, *McCrory Building [Downtown Youngstown MRA]*, 9–13 Federal Plaza W and 17–19 Central Sq. [7/23/86]
Youngstown, *McKelvey—Higbee Company Buildings [Downtown Youngstown MRA]*, 215–223 Federal Plaza W and 19–28 N. Hazel St. [7/23/86]
Youngstown, *McMillan, Reuben, Free Library*, 305 Wick Ave. [5/27/86]
Youngstown, *Ohio One—Ohio Edison [Downtown Youngstown MRA]*, 25 E. Boardman and 162–172 S. Champion [7/23/86]
Youngstown, *Peggy Ann Building [Downtown Youngstown MRA]*, 101 Federal Plaza W and 2–10 S. Phelps [7/23/86]
Youngstown, *Republic Iron and Steel Office Building [Downtown Youngstown MRA]*, 415 S. Market St. [7/23/86]
Youngstown, *State Theater [Downtown Youngstown MRA]*, 213 Federal Plaza W [7/23/86]
Youngstown, *Strouss—Hirschberg Company [Downtown Youngstown MRA]*, 14–28 Federal Plaza W [7/23/86]
Youngstown, *Wells Building [Downtown Youngstown MRA]*, 201–205 Federal Plaza W [7/23/86]
Youngstown, *Welsh Congregational Church [Downtown Youngstown MRA]*, 220 N. Elm St. [7/23/86]
Youngstown, *YWCA Building [Downtown Youngstown MRA]*, 25 W. Rayen Ave. [7/23/86]

Meigs County
Middleport, *Middleport Public Library*, 178 S. Third St. [1/09/86]

Miami County
Piqua, *Rial, York, House*, McFarland St. [8/11/87]

Montgomery County
Dayton, *Saint Anne's Hill Historic District*, Roughly bounded by Fourth, McClure, Josie, and High and Detoit Sts. [8/05/86]
Dayton, *Steele's Hill-Crafton Hill Historic District*, Roughly bounded by Grand, Plymouth, Forest, and Salem [8/05/86]
Dayton, *Wright Cycle Company—Wright and Wright Printing Offices*, 22 S. Williams St. [2/13/86]

Muskingum County
Dresden, *Crescent Hill*, 44 W. Fifth St. [1/09/86]
Zanesville, *Zanesville YMCA*, 34 S. Fifth St. [10/29/85]

Ottawa County
Middle Bass Island, *Golden Eagle Wine Cellar*, Fox and Lonz Rds. [4/24/86]

Perry County
Somerset vicinity, *Saint Joseph's Catholic Church*, 5757 OH 356 [5/07/86]

Pickaway County
Circleville vicinity, *Gill—Morris Farm*, 18304 OH 56 [8/14/86]
Circleville, *Saint Philip's Episcopal Church*, 122 W. Mound St. [5/15/86]

Portage County
Aurora, *Aurora Train Station*, 13 New Hudson Rd. [5/22/86]
Ravenna vicinity, *Crystal Lake Stock Farm*, 4655 Hayes Rd. [4/10/86]
Ravenna, *East Main Street Historic District*, E. Main St. between Clinton and Linden Sts. [10/10/85]
Ravenna, *Reed, C.A., House*, 299 W. Riddle St. [10/10/85]

Richland County
Bethlehem, *Sacred Heart of Jesus Churches*, OH 61 [1/09/86]

Ross County
Bainbridge vicinity, *Baum, Howard, Site (33R0270)*, Address Restricted [8/14/86]

Sandusky County
Woodville, *Layman, Christopher C., Law Office*, 212 W. First St. [8/15/86]

Seneca County
Tiffin, *Bogby—Hoosier House*, 536 Sycamore St. [7/10/86]

Summit County
Akron, *Akron Jewish Center*, 229 S. Balch St. [7/24/86]
Akron, *Smith, Dr. Robert, House*, 858 Ardmore Ave. [10/31/85]
Northfield, *Brecksville-Northfield High Level Bridge*, OH 82 and the Cuyahoga River (also in Summit County, Northfield) [1/13/86]

Trumbull County
Brookfield, *Brookfield Center Historic District*, Roughly W side of OH 7 from Sharon-Warren Rd. to N. Wood St. and Brookfield Village Green [10/10/85]
Fowler, *Fowler Center Historic District*, Roughly area around Fowler Twp. Village Green at OH 305 and OH 193 [10/10/85]
Warren, *Packard, James Ward, House*, 319 Oak Knoll Ave. NE [10/31/85]

Warren County
Kings Mills, *Peters Cartridge Company*, 1915 Grandin Rd. [10/10/85]
Morrow vicinity, *Trevey Mound (33WA152)*, Address Restricted [8/20/86]
Oregonia vicinity, *Kern Effigy (33WA372)*, Address Restricted [7/21/86]

Washington County
Watertown, *Watertown Historic District*, N of OH 339 and N of OH 676 [4/18/86]

Wayne County
West Salem vicinity, *Doerlick Farm*, 7481 Britton Rd. [9/20/86]

Wooster, *Gartensleger Carriage and Wagon Company*, 572 E. Liberty [2/13/86]

Wyandot County
Upper Sandusky vicinity, *Armstrong Farm*, 13708 OH 199 [1/17/86]

OKLAHOMA

Canadian County
El Reno, *Canadian County Jail*, 300 S. Evans [11/14/85]

Caster County
Ardmore, *Galt—Franklin House [Historic Homes of Ardmore Petroleum Executives TR]*, 450 Country Club Rd. [5/22/86]
Ardmore, *Johnson House [Historic Homes of Ardmore Petroleum Executives TR]*, 400 Country Club Rd. [5/22/86]

Cleveland County
Norman, *Moore-Lindsay House*, 508 N. Peters [11/14/85]

Custer County
Custer, *First National Bank of Custer City [Custer City Commercial Buildings TR]*, Off OK 33 [10/31/85]

Garfield County
Covington vicinity, *Hoy R. E., No. 1 Oil Well*, Off US 64 [8/20/86]
Enid, *Broadway Tower*, 114 E. Broadway St. [11/14/85]
Enid, *Kaufman, H. L., House*, 1708 W. Maine [12/12/85]

Garvin County
Lindsay, *Santa Fe Depot of Lindsay [Territorial Era Santa Fe Depots in South Central Oklahoma TR]*, 120 N. Main [4/25/86]
Paula Valley, *Garvin County Courthouse [County Courthouses of Oklahoma TR]*, Courthouse Sq. and Grant Ave. [11/26/85]

Lincoln County
Stroud, *Ben Tom House*, 404 E. Fourth St. [8/28/86]
Stroud, *Carpenter, Joseph, House*, 324 W. Sixth St. [9/26/86]
Stroud, *Hadley, Walter, House*, 220 W. Seventh St. [9/26/86]
Stroud, *Hughes, George, House*, 209 E. Fifth St. [9/26/86]
Stroud, *Southwestern Bell Telephone Building*, 301 W. Seventh St. [5/14/86]

Muskogee County
Fort Gibson, *Administration Building—Post Hospital [Fort Gibson Post-Civil War Military Buildings TR]*, 903 Garrison Ave. [11/14/85]
Fort Gibson, *Commandant's Quarters [Fort Gibson Post-Civil War Military Buildings TR]*, 905 Copplinger Ave. [11/14/85]
Fort Gibson, *Officer's Quarters [Fort Gibson Post-Civil War Military Buildings TR]*, 907 Copplinger Ave. [11/14/85]
Fort Gibson, *Post Adjutant's Office [Fort Gibson Post-Civil War Military Buildings TR]*, 905 Garrison Ave. [11/14/85]
Fort Gibson, *Post Blacksmith Shop [Fort Gibson Post-Civil War Military Buildings TR]*, 905 Garrison Ave. [11/14/85]

OKLAHOMA—Continued
Muskogee, *Sunset Building [Pre-Depression Muskogee Skyscrapers TR]*, 117 N. Third [8/04/86]

Payne County
Stillwater, *Murphy House*, 419 S. Monroe [9/18/86]

Seminole County
Seminole, *Home Stake Oil and Gas Company Building*, 315 E. Broadway [5/14/86]
Wewoka, *Hotel Aldridge*, Third and Wewoka Sts. [5/14/86]

Stephens County
Duncan, *Johnson Hotel and Boarding House*, 314 W. Mulberry [5/14/86]

Tulsa County
Tulsa, *Philcade Building*, 611 S. Boston Ave. [8/28/86]

Wagoner County
Wagoner, *Newport Hotel and Restaurant*, 202 S. Main [12/04/85]

OREGON

Baker County
Unity, *Unity Ranger Station [Depression-Era Buildings TR]*, Wallowa-Whitman National Forest [4/11/86]

Benton County
Corvallis, *Kline, Lewis G., Building*, 148 S.W. Second St. [2/27/86]

Clackamas County
Oregon City, *Petzold, Richard, House*, 504 Sixth St. [10/31/85]
Zigzag vicinity, *Zigzag Ranger Station [Depression-Era Buildings TR]*, Mt. Hood National Forest [4/08/86]

Clatsop County
Astoria, *Bardell, Robert Rasmussen, House*, 1215 Fifteenth St. [5/05/86]
Astoria, *Flavel, Captain George Conrad, House*, 627 Fifteenth St. [5/05/86]
Astoria, *Foard, Martin, House*, 500 Seventeenth St. [5/05/86]
Astoria, *Warren Investment Company Housing Group*, 656, 674, and 690 Eleventh St. [5/05/86]
Astoria, *Young, Andrew, House*, 3739 Duane Ave. [5/25/86]

Coos County
Coos Bay, *Coos Bay Carnegie Library*, 515 Market St. [2/27/86]
Coos Bay, *Myrtle Arms Apartment Building*, Sixth and Central Sts. [10/31/85]
Coos Bay, *Nosberg-Lockhart House*, 697 N. Third St. [12/02/85]
Coos Bay, *Tower, Major Marion, House*, 488 Schetter Ave. [10/31/85]
Powers, *Powers Hotel*, 310 Second Ave. [6/05/86]

Crook County
Prineville, *Lamonta Compound—Prineville Supervisor's Warehouse [Depression-Era Buildings TR]*, Ochoco National Forest [4/08/86]
Prineville, *Old First National Bank of Prineville, and Foster and Hyde Store*, 247 N. Main St. [12/02/85]

Curry County
Gold Beach, *Gold Beach Ranger Station [Depression-Era Buildings TR]*, Siskiyou National Forest [4/08/86]

Deschutes County
Bend vicinity, *Paulina Lake Guard Station [Depression-Era Buildings TR]*, Deschutes National Park [4/11/86]

Douglas County
Glide, *Glide Ranger Station [Depression-Era Buildings TR]*, Umpqua National Forest [4/08/86]
Lookingglass, *Wimer, James, Octagonal Barn*, 1101 Coos Bay Wagon Rd. [12/02/85]

Grant County
John Day, *John Day Compound, Supervisor's Warehouse [Depression-Era Buildings TR]*, Malheur National Forest [4/11/86]
John Day, *Supervisor's House No. 1001 [Depression-Era Buildings TR]*, Malheur National Forest [4/11/86]

Hood River County
Cascade Locks, *Cascade Locks Work Center [Depression-Era Buildings TR]*, Mt. Hood National Forest [4/11/86]
Parkdale, *Parkdale Ranger Station [Depression-Era Buildings TR]*, Mt. Hood National Forest [4/11/86]

Jackson County
Ashland, *Roper, Fordyce, House—Southern Oregon Hospital*, 36 S. Second St. [12/02/85]
Butte Falls vicinity, *Imnaha Guard Station [Depression-Era Buildings TR]*, Rogue River National Forest [4/11/86]
Butte Falls, *Butte Falls Ranger Station, [Depression-Era Buildings TR]*, Rogue River National Forest [4/11/86]

Jefferson County
Metolius, *Oregon Truck Passenger and Freight Station*, Washington St. at the foot of Sixth St. [2/27/86]

Josephine County
Cave Junction vicinity, *Store-Gulch Guard Station No. 1020 [Depression-Era Buildings TR]*, Illinois Valley Rd., Siskiyou National Forest [4/08/86]
Cave Junction, *Cedar Guard Station No. 1019 [Depression-Era Buildings TR]*, Illinois Valley Rd., Siskiyou National Forest [4/08/86]
Grants Pass vicinity, *Christie-Eismann House*, 8971 Upper River Rd. [12/02/85]
Grants Pass, *Clark—Norton House*, 127 N.W. D St. [2/27/86]

Klamath County
Klamath Falls vicinity, *Lake of the Woods Ranger Station—Work Center [Depression-Era Buildings TR]*, Winema National Forest [4/08/86]

Lake County
Bend vicinity, *Cabin Lake Guard Station [Depression-Era Buildings TR]*, Deschutes National Forest [4/11/86]

Lane County
Coburg, *Coburg Historic District*, Roughly bounded by Van Duyn Rd., Diamond and Miller Sts., Dixon St. and tax lots 1700 and 201, and Bottom Loop Rd. [1/07/86]
Eugene, *University of Oregon Museum of Art*, University of Oregon, off OR 99 [4/08/86]

Marion County
Detroit, *Breitenbush Guard Station [Depression-Era Buildings TR]*, Willamette National Forest [4/08/86]

Multnomah County
Bonneville, *Bonneville Dam Historic District*, Columbia River between Bradford and Cascade Islands off I-80 in Multnomah County, Oregon to WA 14 in Skamania County, WA [4/08/86]
Gresham, *Zimmerman, Jacob, House*, 17111 N.E. Sandy Blvd. [6/05/86]
Portland vicinity, *Rockey, Dr. A. E. and Phila Jane, House*, 10888 S. W. Riverside Dr. [12/02/85]
Portland, *Ainsworth, Mead and Belle, House*, 2542 S.W. Hillcrest Dr. [12/27/85]
Portland, *Coleman—Scott House*, 2110 N.E. Sixteenth Ave. [11/08/85]
Portland, *Camelias Hotel*, 525 S.W. Park Ave. [2/27/86]
Portland, *Franklin Hotel*, 1337 S.W. Washington St. [10/31/85]
Portland, *Fruit and Flower Mission*, 1869 S.W. Twelfth Ave. [4/05/86]
Portland, *Honeyman, John S., House*, 1618 S.W. Twelfth Ave. [10/31/85]
Portland, *Imperial Hotel*, 422–426 S.W. Broadway [12/02/85]
Portland, *Pallay Building*, 231–239 N.W. Third Ave. [11/08/85]
Portland, *Portland General Electric Company Station "L" Group*, 1041 S.E. Water St. [12/02/85]
Portland, *Powers, Ira F., Building*, 804–810 S.W. Third Ave. [12/02/85]
Portland, *Reinhart, Jacques and Amelia, House*, 7821 S.E. Thirtieth Ave. [12/02/85]

Umatilla County
Milton-Freewater, *Frazier, Williams, Farmstead*, 1403 Chestnut St. [4/05/86]
Pendleton, *Johnson Ellis House*, 226 S.E. Second St. [3/14/86]
Pendleton, *Vey, Joseph, House*, 1304 S.E. Court Pl. [2/27/86]

Union County
La Grande, *Foley Building*, 206 Chestnut St. [12/02/85]

Wallowa County
Enterprise, *Lick Creek Guard Station [Depression-Era Buildings TR]*, Wallowa-Whitman National Forest [4/08/86]

Wasco County
The Dalles, *Bennett-Williams House*, 608 W. Sixth St. [2/27/86]

Washington County
Beaverton, *Beaverton Downtown Historic District*, Roughly bounded by S.W. Canyon Blvd., S.W. East end S.W. Washington Sts., S.W. Second, and S.W. Watson Sts. [1/07/86]
Forest Grove, *Woods and Caples General Store*, 2020 Main St. [12/02/85]
Hillsboro, *Washington County Jail*, 672 N.E. Twenty-eighth Ave. [7/31/86]

OREGON—Continued
Portland, *Schanen-Zolling House*, 6750 S.W. Oleson Rd. [12/10/85]

Yamhill County
Dundee, *Dundee Woman's Club Hall*, US 99 W[6/05/86]
McMinnville, *Spence, Jack, House*, 530 E. Fifth St. [2/27/86]

PENNSYLVANIA

Adams County
Cashtown vicinity, *Carbaugh Run Rhyolite Quarry Site (36AD30)*, Address Restricted [1/15/88]

Allegheny County
Corapolis, *Coraopolis Bridge [Allegheny County Owned River Bridges TR]*, Ohio River Back Channel at Ferree St. and Grand Ave. [1/07/86]
Elizabeth, *Hutchinson Farm*, Round Hill Rd. at PA 51 [2/19/86]
Elizabeth, *Van Kirk Farm*, Round Hill Rd. at Scenery Dr. [2/19/86]
Homestead, *Homestead Pennsylvania Railroad Station*, Amity St. [12/26/85]
Pittsburgh, *Allegheny High School [Pittsburgh Public Schools TR]*, 810 Arch St. [9/30/86]
Pittsburgh, *Allerdice, Taylor, High School [Pittsburgh Public Schools TR]*, 2409 Shady Ave. [9/30/86]
Pittsburgh, *Armstrong Tunnel*, Between Forbes and Second Aves. at S. Tenth St. [1/27/86]
Pittsburgh, *Arsenal Junior High School [Pittsburgh Public Schools TR]*, Butler and Fortieth Sts. [9/30/86]
Pittsburgh, *Baxter High School [Pittsburgh Public Schools TR]*, Baxter St. and Brushton Ave. [9/30/86]
Pittsburgh, *Bayard School [Pittsburgh Public Schools TR]*, 4830 Hatfield St. [9/30/86]
Pittsburgh, *Bedford School [Pittsburgh Public Schools TR]*, 910–918 Bingham St. [9/30/86]
Pittsburgh, *Beechwood Elemeintary School [Pittsburgh Public Schools TR]*, Rockland Ave. near Sebring Ave. [9/30/86]
Pittsburgh, *Beltzhoover Elementary School [Pittsburgh Public Schools TR]*, Cedarhurst and Estrella Sts. [9/30/86]
Pittsburgh, *Birmingham Public School [Pittsburgh Public Schools TR]*, 118–128 S. Fifteenth St. [9/30/86]
Pittsburgh, *Colfax Elementary School [Pittsburgh Public Schools TR]*, Beechwood Blvd. and Phillips Ave. [9/30/86]
Pittsburgh, *Connelly Clifford B., Trade School [Pittsburgh Public Schools TR]*, 1501 Bedford Ave. [9/30/86]
Pittsburgh, *Conroy Junior High School [Pittsburgh Public Schools TR]*, Page and Fulton Sts. [9/30/86]
Pittsburgh, *Dilworth Elementary School [Pittsburgh Public Schools TR]*, Saint Marie and Collins Sts. [9/30/86]
Pittsburgh, *Fort Pitt Elementary School [Pittsburgh Public Schools TR]*, 8101 Hillcrest St. [9/30/86]
Pittsburgh, *Foster School [Pittsburgh Public Schools TR]*, 286 Main St. [9/30/86]
Pittsburgh, *Frick, Henry Clay, Training School for Teachers [Pittsburgh Public Schools TR]*, 107 Thackeray St. [9/30/86]
Pittsburgh, *Fulton Elementary School [Pittsburgh Public Schools TR]*, Hampton and N. Saint Clair Sts. [9/30/86]
Pittsburgh, *Greenfield Elementary School [Pittsburgh Public Schools TR]*, N of Greenfield Ave. at E end of Algar St. [9/30/86]
Pittsburgh, *Homestead High-Level Bridge [Allegheny County Owned River Bridges TR]*, Monongahela River at West St. [1/07/86]
Pittsburgh, *House at 200 W. North Ave.*, 200 W. North Ave. [2/27/86]
Pittsburgh, *Langley High School [Pittsburgh Public Schools TR]*, Sheraden Blvd. and Chartiers Ave. [9/30/86]
Pittsburgh, *Larimer School [Pittsburgh Public Schools TR]*, Larimer Ave. at Winslow St. [9/30/86]
Pittsburgh, *Latimer School [Pittsburgh Public Schools TR]*, Tripoli and James Sts. [9/30/86]
Pittsburgh, *Lawrence Public School [Pittsburgh Public Schools TR]*, 2701 Charlotte St. [9/30/86]
Pittsburgh, *Lemington Elementary School [Pittsburgh Public Schools TR]*, 7060 Lemington Ave. [9/30/86]
Pittsburgh, *Letsche Elementary School [Pittsburgh Public Schools TR]*, 1530 Cliff St. [9/30/86]
Pittsburgh, *Liberty School No. 4, Friendship Building [Pittsburgh Public Schools TR]*, 5501 Friendship Ave. [9/30/86]
Pittsburgh, *Lincoln Elementary School [Pittsburgh Public Schools TR]*, Lincoln and Frankstown Aves. [9/30/86]
Pittsburgh, *Linden Avenue School [Pittsburgh Public Schools TR]*, 739 S. Linden Ave. [9/30/86]
Pittsburgh, *Madison Elementary School [Pittsburgh Public Schools TR]*, Milwaukee and Orion Sts. [9/30/86]
Pittsburgh, *McCleary Elementary School [Pittsburgh Public Schools TR]*, Holmes St. and McCandless Ave. [9/30/86]
Pittsburgh, *Mifflin Elementary School [Pittsburgh Public Schools TR]*, Mifflin Rd. at Lincoln Pl. [9/30/86]
Pittsburgh, *Morrow, John, Elementary School [Pittsburgh Public Schools TR]*, 1611 Davis Ave. [9/30/86]
Pittsburgh, *Morse, Samuel F. B., School [Pittsburgh Public Schools TR]*, 2418 Sarah St. [9/30/86]
Pittsburgh, *Ninth Street Bridge [Allegheny County Owned River Bridges TR]*, Allegheny River at Ninth St. [1/07/86]
Pittsburgh, *Park Place School [Pittsburgh Public Schools TR]*, S. Braddock and Brashear Aves. [9/30/86]
Pittsburgh, *Perry High School [Pittsburgh Public Schools TR]*, Perrysville Ave. and Semicle St. [9/30/86]
Pittsburgh, *Pittsburgh Central Downtown Historic District*, Roughly bounded by Liberty Ave., Grant St., Forbes Ave., and Wood St. [12/17/85]
Pittsburgh, *Prospect Junior High and Elementary School [Pittsburgh Public Schools TR]*, Prospect Ave. near Southern Ave. [9/30/86]
Pittsburgh, *Schenley High School [Pittsburgh Public Schools TR]*, Bigelow Blvd. and Centre Ave. [9/30/86]
Pittsburgh, *Schenley Park*, Schenley Dr. and Panther Hollow Rd. [11/13/85]
Pittsburgh, *Schiller Elementary School [Pittsburgh Public Schools TR]*, 1016 Peralta St. [9/30/86]
Pittsburgh, *Seventh Street Bridge [Allegheny County Owned River Bridges TR]*, Allegheny River at Seventh St. [1/07/86]
Pittsburgh, *Sixth Street Bridge [Allegheny County Owned River Bridges TR]*, Allegheny River at Sixth St. [1/07/86]
Pittsburgh, *South Tenth Street Bridge [Allegheny County Owned River Bridges TR]*, Monongahela River at S. Tenth St. [1/07/86]
Pittsburgh, *South Side High School [Pittsburgh Public Schools TR]*, 900 E. Carson St. [9/30/86]
Pittsburgh, *Springfield Public School [Pittsburgh Public Schools TR]*, Smallman and Thirty-first Sts. [9/30/86]
Pittsburgh, *Stanley Theater and Clark Building*, 207 Seventh and 701–717 Liberty Ave. [2/27/86]
Pittsburgh, *Sterrett Sub-District School [Pittsburgh Public Schools TR]*, 399 Lang Ave. [9/30/86]
Pittsburgh, *Washington Vocational School [Pittsburgh Public Schools TR]*, 169 Fortieth St. [9/30/86]
Pittsburgh, *Westinghouse High School [Pittsburgh Public Schools TR]*, 1101 N. Murtland St. [9/30/86]
Pittsburgh, *Wightman School [Pittsburgh Public Schools TR]*, 5604 Solway St. [9/30/86]
Pittsburgh, *Woolslair Elemeintary School [Pittsburgh Public Schools TR]*, Fortieth St. and Liberty Ave. [9/30/86]

Berks County
Reading, *Cotton and Maple Streets School*, Cotton and Maple Sts. [7/17/86]

Blair County
Hollidaysburg, *Hollidaysburg Historic District*, Roughly bounded by Spruce, Bella, Blair, and Juniata Sts. [12/26/85]

Bradford County
Rome, *Bliss, Phillip Paul, House*, Main St. [4/24/86]

Bucks County
Bristol, *Grundy Mill Complex*, W corner of Jefferson Ave. and Canal St. [1/09/86]
Hulmeville, *Hulmeville Historic District*, 2–4 Beaver St., 946–1101 Bellevue Ave., 1–111 Green, 4 Hulme, 3–342 Main Sts., 1–131 Trenton Ave., and 2–6 Water St. [7/17/86]
Langhorne, *Langhorne Library*, 169 W. Maple Ave. [1/09/86]
Langhorne, *Richardson, Joseph, House*, Bellevue and Maple Aves. [12/26/85]
Newtown, *Newtown Historic District (Boundary Increase)*, E side of Sycamore St. from Frost Ln. to Saint Andrew's Catholic Church [2/25/86]
Quakertown, *Roberts, Enoch, House*, 1226 W. Broad St. [4/24/86]
Wrightstown, *Penns Park Historic District*, Intersection of Second St. Pike and Penns Park Rd. [3/13/86]

Cambria County
St. Michael, *South Fork Fishing and Hunting Club Historic District*, Roughly bounded by Fortieth, Main, and Lake Sts. [7/31/86]

PENNSYLVANIA—Continued
Centre County
Centre vicinity, *Rhone, Leonard, House*, Off PA 45 [10/21/85]
Millheim, *Millheim Historic District*, PA 45 and PA 445 [9/25/86]
State College vicinity, *Housersville Site (36CE62)*, Address Restricted [1/26/86]

Chester County
Chester Springs, *Rice—Pennebacker Farm*, Gower Mill Rd. [2/21/86]
Londonderry Township, *Ferree, John, House (West Branch Brandywine Creek MRA)*, Saint Malachi Rd. [11/26/85]
Marshallton, *Marshallton Historic District*, Strasburg Rd. [1/08/86]
W. Marlborough Township, *Hoopes, Cyrus, House and Barn (West Branch Brandywine Creek MRA)*, Springdell Rd. [11/26/85]

Clearfield County
Dubois, *Commercial Hotel*, Long and Brady Axes. [11/13/85]

Cumberland County
Lower Allen Township, *Ettacs Bridge*, Green Lane Dr. and Yellow Breeches Creek [2/27/86]

Dauphin County
Harrisburg, *Cameron, Simon, School*, 1230 Green St. [4/24/86]
Harrisburg, *Pennsylvania State Lunatic Hospital*, Cameron St. [1/08/86]
Jackson/Wayne vicinity, *Shoop Site (36DA29)*, Address Restricted [2/13/86]

Delaware County
Cheyney, *Address*, Hill Dr. [6/24/86]
Concordville vicinity, *High Mill Farm*, 180 Thornton Rd. [6/27/86]

Erie County
Erie, *Thayer—Thompson House*, 605 W. Eighth St. [10/21/85]
Mill Creek Township vicinity, *Somersheim Park Archeological District*, Address Restricted [1/03/86]

Franklin County
St. Thomas Township, *White House Inn*, 10111 Lincoln Way W [2/27/86]

Greene County
Monongahela Township vicinity, *Sugar Grove Petroglyph Site (36GR5)*, Address Restricted [3/20/86]

Huntingdon County
Huntingdon, *Huntingdon Borough Historic District*, Roughly bounded by Moore, Second, Allegheny, and Ninth Sts. [4/24/86]

Juniata County
Beale vicinity, *Book Site (36 Ju)*, Address Restricted [1/03/86]

Lancaster County
Conestoga vicinity, *Roberts Farm Site (36LA5)*, Address Restricted [4/03/86]
Ephrata vicinity, *Keller, Jacob, Farm*, 900 Rettew Mill Rd. [7/17/86]
Lancaster Township, *Northeast Lancaster Township Historic District*, Roughly bounded by Marietta, Race, and Wheatland Aves., and Wilson Dr. [3/20/86]
Lancaster, *Fulmer, Clogg and Company Umbrella Factory*, 254–260 W. King St. [6/27/86]
Lititz, *Lititz Moravian Historic District*, Roughly bounded by E. Main, Willow and Locust, Marion and Orange, and S. Cedar and S. and N. Broad Sts. [5/09/86]
Washington Boro vicinity, *Frey—Riverstick Site (36LA69)*, Address Restricted [1/05/86]

Lehigh County
Whitehall, *Dent Hardware Company Factory Complex*, 1101 Third St. [2/27/86]

McKean County
Kane, *Anoatak*, 230 Clay St. [1/07/86]

Montgomery County
LaMott, *Camptown Historic District*, Roughly bounded by Penrose Ave., Graham Ln., Dennis St., and Cheltenham Ave. [10/31/85]
Red Hill, *Red Hill Historic District*, 148, 152, and 200–608 Main St., 98–226 and 21–231 W. Sixth St., and 532–550 Adams St. [10/31/85]
Royersford, *Continental Stove Works*, First St. above Main [1/09/86]
Villanova, *Hazelton*, 3801–3415 Old Guelph Rd. [10/31/85]

Northampton County
Bangor, *Real Estate Building*, 2–8 N. Main St. [2/20/86]

Northumberland County
Milton, *Milton Historic District*, Roughly bounded by Eighth and Upper Market Sts., Spruce Ave. and Stanton, High and Apple Sts., and the Susquehanna River [7/24/86]
Shamokin, *Victoria Theatre*, 46 W. Independence St. [11/21/85]

Perry County
Blaine, *O'Donel House and Farm*, W of New Germantown on PA 274 [7/17/86]

Philadelphia County
Philadelphia, *Burk Brothers and Company*, 913–916 N. Third St. [11/14/85]
Philadelphia, *Equitable Trust Building*, 1405 Locust St. [7/03/86]
Philadelphia, *Garden Court Historic District (Boundary Increase)*, 4528–4534 and 4537–4539 Osage Ave. [2/25/86]
Philadelphia, *General Electric Switchgear Plant*, Seventh and Willow Sts. [10/31/85]
Philadelphia, *Gilbert Building*, 1315–1329 Cherry St. [7/17/86]
Philadelphia, *Girard Avenue Historic District*, 1415–3028 Girard Ave. and 1700 blk. of Thompson St. [10/31/85]
Philadelphia, *Hogue, Robert M., House*, 100 Pelham Rd. [1/16/86]
Philadelphia, *Northern Liberties Historic District*, Roughly bounded by Brown, Boone and Galloway, Green and Wallace, and Fifth and Sixth Sts. [10/31/85]
Philadelphia, *Ramcat Historic District*, Roughly bounded by Market, Twenty-third and Bainbridge Sts., and ER yards [1/08/86]
Philadelphia, *Ryan, John, House*, 4278–4280 Griscom St. [10/31/85]
Philadelphia, *Scherer, Frank C., Wagon Works*, 801 N. Twenty-seventh St. [12/26/85]
Philadelphia, *Snellenburg's Clothing Factory*, 342 N. Broad St. [2/02/86]
Philadelphia, *Tulpehocken Station Historic District*, Roughly bounded by McCallum St., W. Walnut Ln., Penn Central RR tracks, and W. Tulpehocken [11/26/85]
Philadelphia, *WFIL Studio*, 4548 Market St. [7/28/86]
Reading, *Keystone Hook and Ladder Company*, Second and Penn Sts. [10/21/85]

Pike County
Milford, *Gordon, Jervis, Grist Mill Historic District*, Water, Mill, and Seventh Sts. [12/26/85]

Schuylkill County
Tamaqua, *Reading Railroad Passenger Station—Tamaqua*, Off W. Broad St. [12/26/85]

Sullivan County
Fairview Township, *Etters Bridge*, Green Lane Dr. and Yellow Breeches Creek [2/27/86]

Washington County
Canonsburg, *Hawthorne School*, Hawthorne and Bluff Sts. [5/06/86]

Westmoreland County
Latrobe, *Pennsylvania Railroad Station—Latrobe*, Depot St. [7/17/86]
Rostraver Township vicinity, *Household No. 1 Site (36WM61)*, Address Restricted [3/20/86]

York County
Fawn Township, *Payne's Folly*, Watters Rd. [3/06/86]

PUERTO RICO

Aguadilla Municipality
Aguadilla, *Casa de Piedra*, 14 Progreso St. [4/03/86]
Aguadilla, *El Farierre—Ojo De Agua*, Bounded by Munoz Rivera, Gonzalo Firpo, De Diego, and Mango Sts. [1/13/86]
Aguadilla, *Fuerte de la Concepcion*, Stahl St. [4/03/86]

Arecibo Municipality
Arecibo, *Casa Alcaldia de Arecibo*, Jose de Diego Ave. [9/29/86]
Arecibo, *Cerragimiento Plaza Theater*, Llaguerry and Toribio Pagan Sts. [1/06/86]

Coamo Municipality
Coamo, *Hermitage Church of Nuestra Senora de Valvanera of Coamo*, Quinton and Cerrion Maduro Sts. [3/31/86]

Mayaguez Municipality
Mayaguez, *Asilo De Pobres*, Post St. [12/02/85]
Mayaguez, *Casa Consistorial De Mayaguez*, Peral St. [12/02/85]
Mayaguez, *La Casa Solariega de Jose De Diego*, 82 Lloeu St. [4/03/86]
Mayaguez, *Logia Adelphia*, 94 E. Sol St. [2/19/86]
Mayaguez, *Plaza Publica*, McKinley St. [12/03/85]
Mayaguez, *Teatro Yaguez*, McKinley and Basora Sts. [12/02/85]

PUERTO RICO—Continued
Mayaguez, *US Post Office and Courthouse*, McKinley and Pilar DeFillo Sts. [5/21/88]

Ponce Municipality
Ponce, *Godreau, Miguel C., Case*, 146 Calle Reina [4/20/88]
Ponce, *Iglesia de la Santisima Trinidad*, Marina St. at jct. of Mayor and Abolicion Sts. [9/29/85]
Ponce, *Rosaly—Botis House*, 125 Villa St. [9/25/85]
Ponce, *Toro, Fernando Luis, Casa*, Calle Obispado No. 3, La Alhambra [3/05/88]

San Juan Municipality
San Juan vicinity, *Church, School, Convent and Parish House of San Agustin*, 285 Ponce de Leon Ave. [12/30/85]
San Juan, *Colegio de las Madres del Sagrado Corazon*, Ponce de Leon Ave. [11/21/85]

RHODE ISLAND

Kent County
East Greenwich, *Fry's Hamlet Historic District*, 2088, 2153, 2196, and 2253 S. County Trail [12/20/85]

Providence County
Glocester, *Manton—Hunt—Farnum Farm*, Putnam Pike [10/03/85]
Johnston, *Eddy Homestead*, 2543 Hartford Ave. [8/13/86]
Providence, *Providence Lying-In Hospital*, 50 Maude St. [8/13/86]
Providence, *Providence Jewelry Manufacturing Historic District*, Bounded by Ship St., Ashcroft and Elbow and Hospital Sts., Point and South Sts., Imperial and Claverick Sts. and US 195 [12/05/85]
Smithfield vicinity, *Georgiaville Historic Distict*, Roughly bounded by Stillwater Rd., Cross St., Whipple Ave., and Farnum Pike [10/03/85]

Washington County
South Kingston, *Shadow Farm*, Kingstown Rd. [2/07/86]

SOUTH CAROLINA

Bamberg County
Bamberg vicinity, *Cal Smoak Site*, Address Restricted [1/08/86]

Beaufort County
Hilton Head Island, *Rear Lighthouse of Hilton Head Range Light Station*, Arthur Hill Golf Course, Palmetto Dunes Resort off US 278 [12/12/85]

Berkeley County
Huger vicinity, *Quinby Plantation House—Halidon Hill Plantation*, 3 mi. W of Huger [10/10/85]

Charleston County
Charleston, *Charleston Old and Historic District (Boundary Increase)*, 280 E. Bay St. [3/27/86]
Mt. Pleasant vicinity, *Long Point Plantation (38CH321)*, Address Restricted [3/20/86]

Cherokee County
Gaffney, *Gaffney Residential Historic District [Gaffney MRA]*, Roughly bounded by Floyd Baker Blvd., Johnson and Thompson Sts., Rutledge and Fairview Aves., and Limestone St. [3/27/86]
Gaffney, *Gaffney Commercial Historic District [Gaffney MRA]*, Roughly N. Limestone St. between Cherokee Ave. and E. Meadow St. [3/27/86]
Gaffney, *Irene Mill Finishing Plant [Gaffney MRA]*, W side of Buford St. between Liberty and Logan Sts. [3/27/86]
Gaffney, *Jefferies House, [Gaffney MRA]*, 308 S. Granard St. [3/27/86]
Gaffney, *Limestone Springs Historic District [Gaffney MRA]*, O'Neal St. extension and Limestone College campus [3/27/86]
Gaffney, *Robbs House, [Gaffney MRA]*, O'Neal St. extension and Limestone College campus [3/27/86]
Gaffney, *Robbs House [Gaffney MRA]*, 310 W. Burford St. [3/27/86]
Gaffney, *Sarratt House [Gaffney MRA]*, 217 Marion St. [3/27/86]
Gaffney, *Settlemyer House [Gaffney MRA]*, 915 N. Limehouse St. [3/27/86]
Gaffney, *Victor Cotton Oil Company Complex [Gaffney MRA]*, W side of Frederick St. between Hill and Johnson St. [3/27/86]
Gaffney, *West End Elementary School [Gaffney MRA]*, Floyd Baker Blvd. and Broad St. [3/27/86]

Darlington County
Springville, *Goodson, Arthur, House [Springville MRA]*, W of CR 133 [10/10/85]
Springville, *Hart, John L., House [Springville MRA]*, E of CR 133 [10/10/85]
Springville, *Lide, Evan J., House [Springville MRA]*, W of CR 228 NW of SC 34 [10/10/85]
Springville, *Lide, John W., House [Springville MRA]*, W of CR 133 [10/10/85]
Springville, *White Plains [Springville MRA]*, N of CR 177 and NE of CF 389 [10/10/85]
Springville, *Wilds Hall [Springville MRA]*, W of CR 228 off SC 34 [10/10/85]

Fairfield County
Winnsboro vicinity, *Mount Olivet Presbyterian Church*, Off SC 200 [8/13/86]

Greenwood County
Greenwood, *Old Greenwood High School*, 857 S. Main St. [10/10/85]
Kirksey vicinity, *Trapp and Chandler Pottery Site (38GN169)*, Address Restricted [1/08/86]

Hampton County
Crocketville vicinity, Cohasset, *US*, 601 [7/24/86]

Horry County
Conway, *Ambrose, H. W., House [Conway MRA]*, 1503 Elm St. [8/05/86]
Conway, *Beaty—Little House [Conway MRA]*, 507 Main St. [8/05/86]
Conway, *Beaty—Spivey House [Conway MRA]*, 428 Kingston St. [8/05/86]
Conway, *Burroughs, Authur M., House [Conway MRA]*, 500 Lakeside Dr. [8/05/86]
Conway, *Conway Methodist Church 1898 and 1910 Sanctuaries [Conway MRA]*, Fifth Ave. [8/05/86]
Conway, *Holliday, J. H., Jr., House [Conway MRA]*, 701 Laurel St. [8/05/86]
Conway, *Kingston Presbyterian Church Cemetery [Conway MRA]*, 600 Third Ave. [8/05/86]
Conway, *Quattlebaum, Paul, House [Conway MRA]*, 225 Kingston St. [8/05/86]
Conway, *Quattlebaum, C. P., House [Conway MRA]*, 219 Kingston St. [8/05/86]
Conway, *Quattlebaum, C. P., Office [Conway MRA]*, 908 Third Ave. [8/05/86]
Conway, *Waccamaw River Warehouse Historic District [Conway MRA]*, Roughly Main St. between the Waccamaw River and Laurel St. [8/05/86]
Conway, *Winborne, W. H., House [Conway MRA]*, 1300 Sixth Ave. [8/05/86]

Lancaster County
Lancaster, *Springs, Leroy, House*, Catawba and Gay Sts. [3/20/86]

Lee County
Bishopville, *Bishopville Commercial Historic District [Bishopville MRA]*, N. Main St. between W. Church and Cedar Ln. and along Cedar Ln. [1/09/86]
Bishopville, *Carnes, James, House [Bishopville MRA]*, 200 S. Main St. [1/09/86]
Bishopville, *Fraser, Thomas, House [Bishopville MRA]*, US 15 [1/09/86]
Bishopville, *Manor, The [Bishopville MRA]*, 529 N. Main St. [1/09/86]
Bishopville, *Rogers, William, House [Bishopville MRA]*, 531 W. Church St. [1/09/86]
Bishopville, *South Main Historic District [Bishopville MRA]*, S. Main between E. Harris and W. Ridge Sts. [1/09/86]
Bishopville, *Spencer House [Bishopville MRA]*, 617 N. Main St. [1/09/86]
Bishopville, *Tall Oaks [Bishopville MRA]*, SC 341 [1/09/86]

McCormick County
McCormick vicinity, *Dorn Gold Mine [McCormick MRA]*, Address Restricted [12/12/85]
McCormick, *Dorn, Joseph Jennings, House [McCormick MRA]*, Gold and Oak Sts. [12/12/85]
McCormick, *Farmer's Bank [McCormick MRA]*, Main St. [12/12/85]
McCormick, *Henderson, Otway, House [McCormick MRA]*, Augusta St. [12/12/85]
McCormick, *Hotel Keturah [McCormick MRA]*, Main St. [12/12/85]
McCormick, *McCormick County Courthouse [McCormick MRA]*, Hwy. 28 [12/12/85]
McCormick, *McCormick Train Station [McCormick MRA]*, Main St. [12/12/85]
McCormick, *Sturkey, M. L. B., House [McCormick MRA]*, Main and Washington Sts. [12/12/85]

Orangeburg County
Orangeburg vicinity, *Mack, Alan, Site (38OR67)*, Address Restricted [1/08/86]

Richland County
Ballentine vicinity, *Koon, John Jacob Calhoun, Farmstead*, CR 27 off US 76/178 [3/27/86]
Blythewood, *Hoffman, George P., House*, N of CR 54 [3/27/86]
Cedar Creek vicinity, *Chappell House*, Address Restricted [3/27/86]

SOUTH CAROLINA—Continued
Columbia vicinity, *Brevard, Keziah Goodwyn Hopkins, House [Lower Richland County MRA]*, Address Restricted [3/27/86]
Columbia vicinity, *Laurelwood [Lower Richland County MRA]*, Address Restricted [3/27/86]
Columbia, *Palmetto Compress and Warehouse Company Building [Columbia MRA]*, 617 Devine St. [10/17/85]
Congaree, *Grovewood [Lower Richland County MRA]*, SC 769 [3/27/86]
Eastover vicinity, *Farmers and Merchants Bank Building [Lower Richland County MRA]*, Main St. [3/27/86]
Eastover vicinity, *Good Hope Baptist Church [Lower Richland County MRA]*, SC 378 near Sandhill Rd. [3/27/86]
Eastover vicinity, *Goodwill Plantation [Lower Richland County MRA]*, Off US 378 [3/27/86]
Eastover vicinity, *Saint Thomas' Protestant Episcopal Church [Lower Richland County MRA]*, Near jct. of US 601 and SC 263 [3/27/86]
Eastover vicinity, *Scott, Claudius, Cottage [Lower Richland County MRA]*, CR 1162 [3/27/86]
Eastover, *Byrd, J.A., Mercantile Store [Lower Richland County MRA]*, Main St. [3/27/86]
Eastover, *Zion Protestant Episcopal Church [Lower Richland County MRA]*, SC 263 [3/27/86]
Gadsden vicinity, *Magnolia [Lower Richland County MRA]*, Address Restricted [3/27/86].
Gadsden vicinity, *Oakwood [Lower Richland County MRA]*, SC 48 [3/27/86]
Gadsden vicinity, *Richland Presbyterian Church [Lower Richland County MRA]*, CR 1313 [3/27/86]
Gadsden, *Kaminer, John J., House [Lower Richland County MRA]*, Near jct. of SC 48 and SC 769 [3/27/86]
Hopkins vicinity, *Barber House [Lower Richland County MRA]*, Off CR 37 [3/27/86]
Hopkins, *Hopkins Presbyterian Church [Lower Richland County MRA]*, Near jct. of CR 66 and CR 66 [3/27/86]
Hopkins, *Hopkins Graded School [Lower Richland County MRA]*, Jct. of CR 37 and CR 1412 [3/27/86]

SOUTH DAKOTA

Brown County
Frederick vicinity, *Geranen, Paul and Fredriika, Farm [Architecture of Finnish Settlement TR]*, E of Frederick [11/13/85]
Frederick, *Martilla-Pettingel and Gorder General Merchandise Store [Architecture of Finnish Settlement TR]*, 515–516 Main St. [11/13/85]
Groton, *McKenzie-Cassels House*, 506 N. Third St. [2/13/86]
Savo Township, *Savo Hall-Finnish National Society Hall [Architecture of Finnish Settlement TR]*, NE of Savo [11/13/85]

Brule County
Chamberlin, *Taft Hotel*, 200 S. Main [3/13/86]

Buffalo County
Fort Thompson vicinity, *Fort Thompson Archeological District [Big Bend Area MRA]*, Address Restricted [8/14/86]

Butte County
Belle Fourche vicinity, *Belle Fourche River Bridge [Rural Butte and Meade Counties MRA]*, NE of Belle Fourche off US 212 [4/30/86]
Belle Fourche vicinity, *Fishel Ranch [Rural Butte and Meade Counties MRA]*, SD 34 [6/06/86]
Belle Fourche vicinity, *Olson Bridge [Rural Butte and Meade Counties MRA]*, NE of Belle Fourche [4/30/86]
Belle Fourche, *Vale Cut Off Belle Fourche River Bridge [Rural Butte and Meade Counties MRA]*, 7 mi. SW of Newell [4/30/86]
Fruitdale vicinity, *Fruitdale Bridge [Rural Butte and Meade Counties MRA]*, ¼ mi. S of Fruitdale [4/30/86]
Fruitdale vicinity, *Snoma Finnish Cemetery [Architecture of Finnish Settlement TR]*, 3½ mi. SE of Fruitdale [11/13/85]
Fruitdale, *Fruitdale School [Rural Butte and Meade Counties MRA]*, High St. [4/30/86]
Fruitdale, *Fruitdale Store [Rural Butte and Meade Counties MRA]*, Water and Main Sts. [4/30/86]
Fruitdale, *Johnson, William, House [Rural Butte and Meade Counties MRA]*, High St. [4/30/86]
Hoover, *Hoover, Alexander, House [Rural Butte and Meade Counties MRA]*, SD 79 [4/30/86]
Hoover, *Hoover Store [Rural Butte and Meade Counties MRA]*, SD 79 [4/30/86]
Newell vicinity, *Gartner, Carl Friedrick, Homestead [Rural Butte and Meade Counties MRA]*, W of SD 79 [4/30/86]
Newell vicinity, *Stonelake Bridge [Rural Butte and Meade Counties MRA]*, Winkler Rd. [4/30/86]
Newell vicinity, *Viken, Nicholas Augustus, Homestead [Rural Butte and Meade Counties MRA]*, N of Hope Cemetery Rd. [4/30/86]
Newell, *Newell High School [Rural Butte and Meade Counties MRA]*, Dartmouth St. [5/01/86]
Nisland vicinity, *Butte—Lawrence County Fairgrounds [Rural Butte and Meade Counties MRA]*, SW of Nisland [4/30/86]
Nisland vicinity, *Langdon School [Rural Butte and Meade Counties MRA]*, Snoma Rd. [4/30/86]
Nisland vicinity, *Nisland Bridge [Rural Butte and Meade Counties MRA]*, S of Nisland on Section Rd. [4/30/86]

Clay County
Vermillion, *First National Bank Building of Vermillion*, 1 E. Main St. [2/13/86]

Codington County
Kranzburg, *Holy Rosary Church*, Minnesota Ave. [6/06/86]
Watertown, *Minneapolis and St. Louis Railroad Depot*, 168 N. Broadway [10/31/85]
Watertown, *Mount Hope Cemetery Mausolaum*, Mt. Hope Cemetery off US 81 [8/13/86]

Faulk County
Faulkton, *Turner, Frank and Clara, House*, 1008 Main [2/13/86]

Haakon County
Midland, *Bank of Midland Building*, Main St. [8/13/86]

Hamlin County
Bryant vicinity, *Kant Hotel*, N of SD 28 [10/31/85]
Lake Norden vicinity, *Hendrickson, Hendrick and Waldur, Farm [Architecture of Finnish Settlement TR]*, Hwy. 28 [11/13/85]
Lake Norden vicinity, *Tuohino, Jacob and Amelia, Farm [Architecture of Finnish Settlement TR]*, S of Hwy. 28 [11/13/85]

Hughes County
Lower Brule vicinity, *Medicine Creek Archeological District [Big Bend Area MRA]*, Address Restricted [8/14/86]
Pierre vicinity, *Cedar Islands Archeological District [Big Bend Area MRA]*, Address Restricted [8/14/86]
Pierre vicinity, *Fort George Creek Archeological District [Big Bend Area MRA]*, Address Restricted [8/14/86]
Pierre vicinity, *McClure Site (39HU7) [Big Bend Area MRA]*, Address Restricted [8/14/86]
Pierre vicinity, *Old Fort Sully Site (39HU52) [Big Bend Area MRA]*, Address Restricted [8/14/86]

Jackson County
Kadoka, *Chicago, Milwaukee, and St. Paul Railrood Depot*, South end of Kadoka adjacent to Chicago, Milwaukee, St. Paul, and Pacific RR [8/13/86]

Lawrence County
Brownsville vicinity, *Hill, John, Ranch—Keltomaki [Architecture of Finnish Settlement TR]*, NE of Brownsville [11/13/85]
Dumont vicinity, *Buskala, Henry, Ranch [Architecture of Finnish Settlement TR]*, FDR 206 [11/13/85]
Lead, *Old Finnish Lutheran Church [Architecture of Finnish Settlement TR]*, Sinking Gardens, E. Main St. [11/13/85]

Lincoln County
Canton, *Old Main, Augustana Academy*, Lawler and Second Sts. [12/02/85]

Lyman County
Lower Brule vicinity, *Burnt Prairie Site (39LM207) [Big Bend Area MRA]*, Address Restricted [8/14/86]
Lower Brule vicinity, *Jiggs Thompson Site (39LM208) [Big Bend Area MRA]*, Address Restricted [8/14/86]
Lower Brule vicinity, *Medicine Creek Archeological District [Big Bend Area MRA]*, Address Restricted [8/14/86]

McPherson County
Leola, *Hoffman, Amos, House*, SD 10 [6/13/86]

Meade County
Black Hawk vicinity, *Johnson, Ole and Carrie, Ranch [Rural Butte and Meade Counties MRA]*, CR 7 [4/30/86]
Black Hawk, *Black Hawk Elementary School [Rural Butte and Meade Counties MRA]*, Main and Elm Sts. [4/30/86]

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SOUTH DAKOTA—Continued

Elm Springs vicinity, *Olsen, Elias B., Ranch [Rural Butte and Meade Counties MRA]*, CR 6 [4/30/88]

Faith, *Bethel Lutheran Church [Rural Butte and Meade Counties MRA]*, Main and Fifth Sts. [4/30/88]

Hereford vicinity, *Baker, Joseph, House [Rural Butte and Meade Counties MRA]*, CR 19A [4/30/88]

Piedmont vicinity, *Evans, John and Coralia, Ranch [Rural Butte and Meade Counties MRA]*, CR 4 [4/30/88]

Piedmont vicinity, *Stevens Ranch [Rural Butte and Meade Counties MRA]*, CR 4 [4/30/88]

Stoneville vicinity, *Bartlett, L. L., House [Rural Butte and Meade Counties MRA]*, CR 23 [4/30/88]

Sturgis vicinity, *Reakoh, Jacob and Elizabeth, Ranch [Rural Butte and Meade Counties MRA]*, SD 34 [4/30/88]

Minnehaha County

Dell Rapids, *Campbell, Gina Smith, Bathhouse*, City Park, Beach Ave. extension [2/13/86]

Dell Rapids, *Carnegie Public Library*, 513 N. Orleans [2/13/86]

Sioux Falls, *Carpenter Hotel*, 221 S. Phillips Ave. [8/13/86]

Sioux Falls, *Thomas, Charles A., House*, 538 S. Dakota Ave. [10/31/85]

Sioux Falls, *Washington High School*, 315 S. Main [2/13/86]

Pennington County

Mystic vicinity, *Mystic Townsite Historic District*, Address Restricted [8/31/88]

Potter County

Seneca, *North Canton School—District No. 12*, Off SD 47 [5/08/88]

Stanley County

Fort Pierre vicinity, *Antelope Creek Site (39ST55) [Big Bend Area MRA]*, Address Restricted [8/14/86]

Fort Pierre vicinity, *Bloody Hand Site (39ST230) [Big Bend Area MRA]*, Address Restricted [8/14/86]

Union County

Beresford, *Bulow, Governor William J., House*, 207 W. Hemlock St. [5/08/88]

Beresford, *Larsen, John August, House*, 407 W. Hemlock [10/31/85]

Walworth County

Mobridge vicinity, *Gravel Pit Site (39WW203)*, Address Restricted [4/06/88]

Mobridge, *Mobridge Auditorium*, 212 Main St. [5/23/88]

TENNESSEE

Bedford County

Normandy, *Normandy Historic District*, Roughly bounded by Maple and Poplar Sts., Tullahoma Rd., College St., and Old Manchester Rd. [11/07/85]

Bradley County

Cleveland, *First Presbyterian Church*, 433 Ocoee St. NW [3/13/86]

Carter County

Roan Mountain, *Wilder, John T., House*, 202 Main St. [3/13/86]

Crockett County

Alamo, *Bank of Alamo*, 103 S. Bells St. [8/20/86]

Dickson County

Dickson, *First National Bank of Dickson*, 106 N. Main St. [2/13/86]

Fayette County

Macon vicinity, *Mobane—Nuckolls House, Macon-Collierville Rd.* [11/20/85]

Petersburg, *Petersburg Historic District*, Roughly bounded by Church, Railroad, Gaunt Sts., and TN 50 [11/07/85]

Giles County

Pulaski, *South Pulaski Historic District*, Roughly bounded by W. College, First, Cemetery, and S. Third Sts. [7/30/86]

Grundy County

Monteagle, *Vivenn's Nest [Grundy County MRA (AD)]*, Eagle Cliff Rd. [2/13/86]

Hamilton County

Chattanooga vicinity, *Maccoasis Bend Archaeological District*, Address Restricted [9/06/85]

Chattanooga, *Lookout Mountain Caverns and Cavern Castle*, Scenic Hwy. [11/28/85]

Chattanooga, *Trigg—Smartt Building*, 701–707 Broad St. [8/28/86]

Hawkins County

Pressmen's Home, *Pressmen's Home Historic District*, TN 94 [11/29/85]

Humphreys County

Waverly, *Nolan, James N., House*, Hwy. 13 N [3/13/86]

Knox County

Knoxville vicinity, *Boyd-Harvey House*, Harvey Rd. [11/07/85]

Knoxville, *Southern Terminal and Warehouse Historic District*, Roughly bounded by Depot Ave., N. Central Ave. and Sullivan St. and S. Central Ave., Vine Ave., and N. and S. Gay St. [11/18/85]

Lincoln County

Petersburg, *Petersburg Historic District*, Roughly bounded by Church, Railroad, Gaunt Sts., and TN 50 [11/07/85]

Macon County

Red Boiling Springs, *Cloyd Hotel [Early Twentieth Century Resort Buildings of Red Boiling Springs TR]*, Market St. [6/11/86]

Red Boiling Springs, *Cosmic Hotel [Early Twentieth Century Resort Buildings of Red Boiling Springs TR]*, Market St. [6/11/86]

Red Boiling Springs, *Dennis Hotel Historic District [Early Twentieth Century Resort Buildings of Red Boiling Springs TR]*, Market St. [6/11/86]

Marshall County

Verona, *Verona Methodist Episcopal Church South*, Verona-Berlin Rd. [11/07/85]

Maury County

Columbia vicinity, *Elm Springs*, Mooresville Pike [3/13/86]

Columbia, *Columbia West End Historic District*, Roughly along W. Seventh St. between Primrose St. and the Seaboard System RR [3/13/86]

Culleoka, *Culleoka Methodist Episcopal Church South*, Quality St. [5/12/86]

McMinn County

Athens, *Keith, Alexander H., House*, 119 Keith Ln. [6/26/86]

Montgomery County

Rossview, *White Chapel*, Rossview Rd. [6/26/86]

Overton County

Livingston vicinity, *Standing Stone Rustic Park Historic District [State Parks in Tennessee Built by the CCC and the WPA, 1934–1942, TR]*, Standing Stone State Park [7/06/88]

Pickett County

Jamestown vicinity, *Pickett State Rustic Park Historic District [State Parks in Tennessee Built by the CCC and the WPA, 1934–1942, TR]*, Pickett State Park and Forest [7/06/88]

Polk County

Reliance, *Reliance Historic District*, Roughly bounded by New Reliance and Power House Rds., TN 30, and the Hiwassee River [3/13/86]

Putnam County

Cookeville, *Cookeville Railroad Depot*, Broad and Cedar Sts. [11/07/85]

Cookeville, *Henderson Hall*, Tennessee Technological University, Dixie Ave. [11/07/85]

Rutherford County

Lascassas vicinity, *Dement House*, Cainsville Pike [6/26/86]

Shelby County

Memphis, *Anderson-Coward House*, 919 Coward Pl. [3/13/86]

Sullivan County

Bristol, *US Post Office—Shelby Street Station*, 620 Shelby St. [11/07/85]

Sumner County

Gallatin vicinity, *Jameson, James B., House*, TN 25 [11/25/85]

Gallatin, *Gallatin Commercial Historic District*, Roughly bounded by Town Creek, N. Water Ave. and Boyer and College Sts., E. Main St. and S. Water Ave. and Trimble St. [10/23/85]

Warren County

McMinnville, *US Post Office—Main*, Morford St. and Court Sq. [12/03/85]

Washington County

Johnson City, *Knob Creek Historic District*, Gray Station, Knob Creek, and Fair Ridge Rds. [7/10/86]

Williamson County

Brentwood vicinity, *Oak Hall*, 1704 Wilson Pike [2/12/86]

TEXAS

Anderson County

Palestine, *Palestine High School*, 400 Micheaux Ave. [9/24/86]

Austin County

Bellville, *Old Masonic Hall*, 15 N. Masonic St. [8/14/86]

Bexar County

San Antonio, *Franklin, Thomas H., House*, 105 E. French Pl. [5/22/86]

San Antonio, *Haiff, A. H., House*, 801 Howard St. [9/04/86]

San Antonio, *Havana, The*, 1015 Navarro St. [4/10/86]

San Antonio, *Prospect Hill Missionary Baptist Church*, 1601 Buena Vista [9/18/86]

San Antonio, *Saint Anthony Hotel*, 300 Travis St. [9/19/86]

Cameron County

Brownsville, *Celaya, Augustine, House*, 504 E. Saint Francis St. [4/11/86]

Comal County

New Braunfels, *Comal Hotel and Klein-Kuse House*, 295 E. San Antonio and 165 Market St. [6/26/86]

Dallas County

Dallas, *Hilton Hotel*, 1933 Main St. [12/05/85]

Dallas, *Spake, Jacob and Eliza, House*, 2600 State St. [11/21/85]

Dallas, *Texas Centennial Exposition Buildings (1936–1937)*, Bounded by Texas and Pacific RR, Pennsylvania, Second, and Parry Aves. [9/24/86]

Denton County

Roanoke, *Old Continental State Bank*, 312 Oak St. [7/22/86]

Donley County

Clarendon, *Martin—Lowe House*, 507 W. Fifth [11/21/85]

El Paso County

El Paso, *Silver Dollar Cafe*, 1021 S. Mesa [8/14/86]

Ellis County

Ennis, *Allen, I. R., House [Ennis MRA]*, 601 N. Dallas [9/25/86]

Ennis, *Atwood, E. K., House [Ennis MRA]*, 605 N. Preston [9/25/86]

Ennis, *Barkley—Floyd House [Ennis MRA]*, 709 N. Dallas [9/25/86]

Ennis, *Barrington House [Ennis MRA]*, 206 W. Belknap [9/25/86]

Ennis, *Boren, E. T., House [Ennis MRA]*, 616 W. Denton [9/25/86]

Ennis, *Dunkerly, G. G., House [Ennis MRA]*, 607 W. Baylor [9/25/86]

Ennis, *Ennis High School [Ennis MRA]*, 501 N. Gaines [9/25/86]

Ennis, *Ennis Cotton Compress [Ennis MRA]*, 111 E. Lampasas [9/25/86]

Ennis, *Ennis Commercial Historic District [Ennis MRA]*, Roughly bounded by W. Baylor, N. Main, W. Crockett, and McKinney Sts. [9/25/86]

Ennis, *Fain House [Ennis MRA]*, 403 N. Preston [9/25/86]

Ennis, *Farrar House [Ennis MRA]*, 601 S. Main W [9/25/86]

Ennis, *House at 610 North Preston [Ennis MRA]*, 610 N. Preston [9/25/86]

Ennis, *House at 807 North Preston [Ennis MRA]*, 807 N. Preston [9/25/86]

Ennis, *House at 806 South Dallas [Ennis MRA]*, 806 S. Dallas [9/25/86]

Ennis, *House at 802 East Ennis [Ennis MRA]*, 802 E. Ennis [9/25/86]

Ennis, *House at 722 West Madison [Ennis MRA]*, 722 W. Madison [9/25/86]

Ennis, *House at 708 East Brown [Ennis MRA]*, 708 E. Brown [9/25/86]

Ennis, *House at 509 West Brown [Ennis MRA]*, 509 W. Brown [9/25/86]

Ennis, *House at 508 North Dallas [Ennis MRA]*, 508 N. Dallas [9/25/86]

Ennis, *House at 404 East Crockett [Ennis MRA]*, 404 E. Crockett [9/25/86]

Ennis, *House at 106 East Denton [Ennis MRA]*, 106 E. Denton [9/25/86]

Ennis, *House at 500 North Main, East [Ennis MRA]*, 500 N. Main E. [9/25/86]

Ennis, *Jolesch House [Ennis MRA]*, 504 W. Knox [9/25/86]

Ennis, *Matthews—Templeton House [Ennis MRA]*, 606 W. Denton [9/25/86]

Ennis, *Matthews—Atwood House [Ennis MRA]*, 307 N. Sherman [9/25/86]

Ennis, *McCanless—Williams House [Ennis MRA]*, 402 W. Tyler [9/25/86]

Ennis, *Meredith—McDowal House [Ennis MRA]*, 701 N. Gaines [9/25/86]

Ennis, *Moore House [Ennis MRA]*, 400 W. Denton [9/25/86]

Ennis, *Morton House [Ennis MRA]*, 1007 N. McKinney [9/25/86]

Ennis, *Neal House [Ennis MRA]*, 704 N. Preston [9/25/86]

Ennis, *Novy, Joe, House [Ennis MRA]*, 401 N. Clay [9/25/86]

Ennis, *Old City Mills [Ennis MRA]*, 212 E. Ennis and 108 E. Brown [9/25/86]

Ennis, *Ransom House [Ennis MRA]*, 501 N. McKinney [9/25/86]

Ennis, *Raphael House [Ennis MRA]*, 500 W. Ennis [9/25/86]

Ennis, *Sanderson, James S., House [Ennis MRA]*, 201 N. Gaines [9/25/86]

Ennis, *Sharp House [Ennis MRA]*, 208 N. Gaines [9/25/86]

Ennis, *Story, Jesse and Mary, House [Ennis MRA]*, 510 W. Brown [9/25/86]

Ennis, *Telfair House [Ennis MRA]*, 209 N. Preston [9/25/86]

Ennis, *Weatherford House [Ennis MRA]*, 501 N. Preston [9/25/86]

Ennis, *Weekley, John M., House [Ennis MRA]*, 510 W. Denton [9/25/86]

Waxahachie, *Adamson, F. R., House [Waxahachie MRA]*, 309 University [9/24/86]

Waxahachie, *Alderman, G. H., House [Waxahachie MRA]*, 317 E. Marvin [9/24/86]

Waxahachie, *Alderdice, J. M., House [Waxahachie MRA]*, 1500 W. Main [9/24/86]

Waxahachie, *Berry, J. S., House [Waxahachie MRA]*, 201 E. University [9/24/86]

Waxahachie, *Building at 500–502 East Main [Waxahachie MRA]*, 500–502 E. Main [9/24/86]

Waxahachie, *Building at 441 East Main [Waxahachie MRA]*, 441 E. Main [9/24/86]

Waxahachie, *Bullard, T. J., House [Waxahachie MRA]*, 221 Patrick [9/24/86]

Waxahachie, *Chapman, Oscar H., House [Waxahachie MRA]*, 201 Overhill [9/24/86]

Waxahachie, *Cohn, Joe, House [Waxahachie MRA]*, 501 Sycamore [9/24/86]

Waxahachie, *Cole—Hipp House [Waxahachie MRA]*, 309 E. Marvin [9/24/86]

Waxahachie, *Coleman—Cole House [Waxahachie MRA]*, 1219 E. Marvin [9/24/86]

Waxahachie, *Connally, Roy, House [Waxahachie MRA]*, 205 E. University [9/24/86]

Waxahachie, *Dillon, George C., House [Waxahachie MRA]*, 123 E. University [9/24/86]

Waxahachie, *Eastham, D. D., House [Waxahachie MRA]*, 401 E. Marvin [9/24/86]

Waxahachie, *Erwin, J. R., House [Waxahachie MRA]*, 414 W. Marvin [9/24/86]

Waxahachie, *Forrest, W. B., House [Waxahachie MRA]*, 500 Royal [9/24/86]

Waxahachie, *Graham, Dr. L. H., House [Waxahachie MRA]*, 909 W. Marvin [9/24/86]

Waxahachie, *Hines, E. M., House [Waxahachie MRA]*, 124 Kaufman [9/24/86]

Waxahachie, *House at 901 Cantrell [Waxahachie MRA]*, 901 Cantrell [9/24/86]

Waxahachie, *House at 803 Cantrell [Waxahachie MRA]*, 803 Cantrell [9/24/86]

Waxahachie, *House at 712 East Marvin [Waxahachie MRA]*, 712 E. Marvin [9/24/86]

Waxahachie, *House at 703 South College [Waxahachie MRA]*, 703 S. College [9/24/86]

Waxahachie, *House at 700 South Rogers [Waxahachie MRA]*, 700 S. Rogers [9/24/86]

Waxahachie, *House at 523 Highland [Waxahachie MRA]*, 523 Highland [9/24/86]

Waxahachie, *House at 512 North Grand [Waxahachie MRA]*, 512 N. Grand [9/24/86]

Waxahachie, *House at 501 North Grand [Waxahachie MRA]*, 501 N. Grand [9/24/86]

Waxahachie, *House at 418 North College [Waxahachie MRA]*, 418 N. College [9/24/86]

Waxahachie, *House at 320 East Marvin [Waxahachie MRA]*, 320 E. Marvin [9/24/86]

Waxahachie, *House at 301 Turner [Waxahachie MRA]*, 301 Turner [9/24/86]

Waxahachie, *House at 113 East Ross [Waxahachie MRA]*, 113 E. Ross [9/24/86]

Waxahachie, *House at 111 Williams [Waxahachie MRA]*, 111 Williams [9/24/86]

Waxahachie, *House at 111 Brown [Waxahachie MRA]*, 111 Brown [9/24/86]

Waxahachie, *House at 108 Kaufman [Waxahachie MRA]*, 108 Kaufman [9/24/86]

Waxahachie, *House at 104 Kaufman [Waxahachie MRA]*, 104 Kaufman [9/24/86]

TEXAS—Continued

Waxahachie, *House at 1423 Sycamore [Waxahachie MRA]*, 1423 Sycamore [9/24/88]

Waxahachie, *House at 625 Cantrell [Waxahachie MRA]*, 625 Cantrell [9/24/88]

Waxahachie, *House at 816 West Water [Waxahachie MRA]*, 816 W. Water [9/24/88]

Waxahachie, *House at 1301 East Marvin [Waxahachie MRA]*, 1301 E. Marvin [9/24/88]

Waxahachie, *House at 816 Cantrell [Waxahachie MRA]*, 816 Cantrell [9/24/88]

Waxahachie, *Joshua Chapel AME Church [Waxahachie MRA]*, 110 Allen [9/24/88]

Waxahachie, *Kirven, J. D., House [Waxahachie MRA]*, 601 Sycamore [9/24/88]

Waxahachie, *Koger, William, House [Waxahachie MRA]*, 409 Kaufman [9/24/88]

Waxahachie, *Langsford, Samuel, House [Waxahachie MRA]*, 1208 E. Marvin [9/24/88]

Waxahachie, *Lewis, William, House [Waxahachie MRA]*, 1201 E. Marvin [9/24/88]

Waxahachie, *McCartney House [Waxahachie MRA]*, 993 W. Marvin [9/24/88]

Waxahachie, *Moore, W. B., House [Waxahachie MRA]*, 912 E. Marvin [9/24/88]

Waxahachie, *North Rogers Street Historic District [Waxahachie MRA]*, 500–600 blks. of N. Rogers, 500–600 blks. of N. Monroe, and 700–709 blks. of W. Marvin Sts. [9/24/88]

Waxahachie, *Odom, Frank, House [Waxahachie MRA]*, 910 W. Marvin [9/24/88]

Waxahachie, *Oldham Avenue Historic District [Waxahachie MRA]*, Oldham Ave. between N. Jackson and Bethel Sts. [9/24/88]

Waxahachie, *Paillet House [Waxahachie MRA]*, 800 S. College [9/24/88]

Waxahachie, *Patrick, Marshall T., House [Waxahachie MRA]*, 233 Patrick [9/24/88]

Waxahachie, *Payne, M. S., House [Waxahachie MRA]*, 521 N. Grand [9/24/88]

Waxahachie, *Phillips, E. F., House [Waxahachie MRA]*, 902 W. Marvin [9/24/88]

Waxahachie, *Plumhoff House [Waxahachie MRA]*, 612 S. Rogers [9/24/88]

Waxahachie, *Ralston, Mary, House [Waxahachie MRA]*, 110 E. University [9/24/88]

Waxahachie, *Ray, M. B., House [Waxahachie MRA]*, 401 N. Monroe [9/24/88]

Waxahachie, *Reinmiller, W. B., House [Waxahachie MRA]*, 208 E. Marvin [9/24/88]

Waxahachie, *Rockett, Paris Q., House [Waxahachie MRA]*, 321 E. University [9/24/88]

Waxahachie, *Saint Paul's Episcopal Church [Waxahachie MRA]*, 308 N. Monroe [9/24/88]

Waxahachie, *Sims, O. B., House [Waxahachie MRA]*, 1408 W. Main [9/24/88]

Waxahachie, *Templeton, Judge M. B., House [Waxahachie MRA]*, 203 N. Grand [9/24/88]

Waxahachie, *Thompson, D. H., House [Waxahachie MRA]*, 312 Kaufman [9/24/88]

Waxahachie, *Trippet-Shive House [Waxahachie MRA]*, 209 N. Grand [9/24/88]

Waxahachie, *Vickery, Richard, House [Waxahachie MRA]*, 1104 E. Marvin [9/25/88]

Waxahachie, *West End Historic District [Waxahachie MRA]*, Roughly bounded by Central, W. Water, Monroe, Madison and W. Jefferson [9/24/88]

Waxahachie, *Williams, Porter L., House [Waxahachie MRA]*, 200 E. University [9/24/88]

Waxahachie, *Witten, Pat, House [Waxahachie MRA]*, 204 Brown [9/24/88]

Waxahachie, *Wyatt Street Shotgun House Historic District [Waxahachie MRA]*, E side 300 blk. of Wyatt St. [9/24/88]

Erath County

Stephenville vicinity, *Wyatt—Hickie Ranch Complex*, Off US 281 NW of TX 913 [12/29/87]

Gray County

Pampa, *Schneider Hotel*, 120 S. Russell [12/19/87]

Grayson County

Denison, *Clifton House Hotel*, 229 W. Gandy [4/24/88]

Sherman, *Birge, Capt. Noble Allen, House*, 727 W. Birge [9/16/88]

Van Alstyne, *Umphress—Taylor House*, 301 Paris St. [9/12/88]

Harris County

Houston, *Apollo Mission Control Center*, Lyndon B. Johnson Space Flight Center [10/03/85]

Houston, *Cohn, Arthur B., House*, 1711 Rusk Ave. [11/07/85]

Houston, *Fire Engine House No. 9*, 1810–1812 Keene St. [10/17/85]

Houston, *Houston Fire Station No. 7*, 2304 Milam St. [4/17/88]

Houston, *Space Environment Simulation Laboratory*, Lyndon B. Johnson Space Center [10/03/85]

Jefferson County

Port Arthur, *US Post Office and Federal Building*, 550 Austin Ave. [5/12/88]

Jones County

Stamford, *Astin, J. P., House [Stamford MRA]*, 111 E. Campbell [9/24/88]

Stamford, *Buena Vista Hotel [Stamford MRA]*, 123 N. Wetherbee [9/24/88]

Stamford, *Bunkley, Dr. E. P., House and Garage [Stamford MRA]*, 1034 E. Reynolds [9/24/88]

Stamford, *First Baptist Church [Stamford MRA]*, E. Oliver and N. Swenson [9/24/88]

Stamford, *House at 501 North Swenson [Stamford MRA]*, 501 N. Swenson [9/24/88]

Stamford, *House at 502 South Orient [Stamford MRA]*, 502 S. Orient [9/24/88]

Stamford, *House at 610 East Oliver [Stamford MRA]*, 610 E. Oliver [9/24/88]

Stamford, *House at 709 East Reynolds [Stamford MRA]*, 709 E. Reynolds [9/24/88]

Stamford, *House at 719 East Reynolds [Stamford MRA]*, 719 E. Reynolds [9/24/88]

Stamford, *House at 815 East Campbell [Stamford MRA]*, 815 E. Campbell [9/24/88]

Stamford, *Jackson, A. J., House [Stamford MRA]*, 305 S. Ferguson [9/24/88]

Stamford, *Old Bryant—Link Building [Stamford MRA]*, 120 S. Swenson [9/24/88]

Stamford, *Old Penick—Hughes Company [Stamford MRA]*, 100–108 E. Hamilton [9/24/88]

Stamford, *Old West Texas Utilities Company [Stamford MRA]*, 127 E. McHarg [9/24/88]

Stamford, *Old Wooten, H. O., Grocery [Stamford MRA]*, 128 E. Rotan [9/24/88]

Stamford, *SMS Building [Stamford MRA]*, 101 S. Wetherbee and 230 E. McHarg [9/24/88]

Stamford, *Saint John's Methodist Church [Stamford MRA]*, S. Ferguson St. [9/24/88]

Stamford, *Stamford City Hall [Stamford MRA]*, 201 E. McHarg [9/24/88]

Stamford, *Swenson, A. J., House [Stamford MRA]*, 305 E. Oliver [9/24/88]

Stamford, *US Post Office [Stamford MRA]*, Town Sq. [9/24/88]

Potter County

Amarillo, *Atchison, Topeka and Santa Fe Railway Company Depot and Locomotive No. 5000*, 307 S. Grant [9/16/88]

Travis County

Austin vicinity, *Barton Springs Archeological and Historical District*, Address Restricted [11/27/85]

Austin, *Schultze, Walter, House and Industrial Structure [East Austin MRA]*, 102 Chicon St. [4/25/88]

Austin, *State Cemetery of Texas [East Austin MRA]*, 901 Navasota St. [5/12/88]

Austin, *Swedish Hill Historic District [East Austin MRA]*, 900–1000 blks. of E. Fourteenth St. and 900 blk. of E. Fifteenth St. [5/12/88]

Austin, *Texas Federation of Women's Clubs Headquarters*, 2312 San Gabriel St. [10/24/85]

Val Verde County

Comstock vicinity, *Seminole Canyon District (Boundary Increase)*, Address Restricted [12/21/85]

Del Rio, *Cassinelli Gin House*, Corner of Pecan and Academy Sts. [9/04/88]

Victoria County

Victoria, *South Bridge Street Historic District [Victoria MRA]*, W side 700 blk. of S. Bridge and N side 709 blk. of W. Water Sts. [9/24/88]

Willacy County

Lyford, *Old Lyford High School*, High School Circle [11/07/85]

Williamson County

Georgetown, *Amos, Martin C., House [Georgetown MRA]*, 1408 Olive [4/29/88]

Georgetown, *Arnold-Torbet House [Georgetown MRA]*, 908 Pine [4/29/88]

Georgetown, *Atkinson House [Georgetown MRA]*, 911 Walnut [4/29/88]

Georgetown, *Belford Historic District [Georgetown MRA]*, Roughly bounded by University Ave., Main, E. Eighteenth, and Austin [4/29/88]

TEXAS—Continued

Georgetown, *Bowlen House [Georgetown MRA]*, 1405 Forest [1/14/88]

Georgetown, *Burcham House [Georgetown MRA]*, 1310 College [4/29/88]

Georgetown, *Casey House [Georgetown MRA]*, 705 E. Third [1/14/88]

Georgetown, *Caswell House [Georgetown MRA]*, 207 E. Ninth [4/29/88]

Georgetown, *Chesser-Morgan House [Georgetown MRA]*, 1202 E. Fifteenth [1/14/88]

Georgetown, *Daughtrey, E. M., House [Georgetown MRA]*, 1316 E. University [4/29/88]

Georgetown, *Easley, S. A., House [Georgetown MRA]*, 1310 Olive [4/29/88]

Georgetown, *First Methodist Church [Georgetown MRA]*, 410 E. University [8/17/88]

Georgetown, *Fowler, D. D., House [Georgetown MRA]*, 1531 Ash [4/29/88]

Georgetown, *Grace Episcopal Church [Georgetown MRA]*, 1314 E. University [4/29/88]

Georgetown, *Harper-Chesser House [Georgetown MRA]*, 1309 College [4/29/88]

Georgetown, *Harrell, Moses, House [Georgetown MRA]*, 1001 Church [1/14/88]

Georgetown, *Harris, E. M., House [Georgetown MRA]*, 404 E. Seventh [1/14/88]

Georgetown, *Hawnen, A. W., House [Georgetown MRA]*, 1409 Olive [4/29/88]

Georgetown, *House at 907 Pine [Georgetown MRA]*, 907 Pine [1/14/88]

Georgetown, *House at 801 West [Georgetown MRA]*, 801 West [1/14/88]

Georgetown, *House at 214 W. University [Georgetown MRA]*, 214 W. University [4/29/88]

Georgetown, *Hyer, Dr. Robert, House [Georgetown MRA]*, 904 Ash [1/14/88]

Georgetown, *Inhoff House [Georgetown MRA]*, 208 Austin [1/14/88]

Georgetown, *Irvine, George, House [Georgetown MRA]*, 409 E. University [4/29/88]

Georgetown, *Johnson, J. J., Farm [Georgetown MRA]*, Rabbitt Hill Rd. [1/14/88]

Georgetown, *Lane-Riley House [Georgetown MRA]*, 1302 College [4/29/88]

Georgetown, *Leake, Will and Mary, House [Georgetown MRA]*, 213 E. Seventh [4/29/88]

Georgetown, *Leavell, John, House [Georgetown MRA]*, 803 College [4/29/88]

Georgetown, *Lockett, M. B. and Annie, House [Georgetown MRA]*, 911 E. University [4/29/88]

Georgetown, *Love, Frank and Nellie, House [Georgetown MRA]*, 1415 Ash [4/29/88]

Georgetown, *Makemson, W. K. and Kate, House [Georgetown MRA]*, 1002 Ash [1/14/88]

Georgetown, *McKnight-Ebb House [Georgetown MRA]*, 502 W. Eighteenth [1/14/88]

Georgetown, *McMurray House [Georgetown MRA]*, 611 Church [1/14/88]

Georgetown, *Miller-Ellyson House [Georgetown MRA]*, 303 E. Ninth [1/14/88]

Georgetown, *Old Georgetown High School [Georgetown MRA]*, 307 E. University [1/14/88]

Georgetown, *Paige-DeCrow-Weir House [Georgetown MRA]*, I–35 and SR 2243 [1/14/88]

Georgetown, *Patrick, Woodson and Margaret, House [Georgetown MRA]*, 211 E. Fifth [1/14/88]

Georgetown, *Paques House [Georgetown MRA]*, 904 E. University [1/14/88]

Georgetown, *Price, S. H. and Martha, House [Georgetown MRA]*, 209 E. Tenth [4/29/88]

Georgetown, *Ready, J. H., House [Georgetown MRA]*, 808 E. University [4/29/88]

Georgetown, *Rouser House [Georgetown MRA]*, 602 Myrtle [1/14/88]

Georgetown, *Saint John's Methodist Church [Georgetown MRA]*, 301 E. University [4/29/88]

Georgetown, *Sansom-Schmalenbeck House [Georgetown MRA]*, 813 Church [1/14/88]

Georgetown, *Saxon Motor Car Store [Georgetown MRA]*, 316 E. Sixth St. [6/17/88]

Georgetown, *Sillers, A. W., House [Georgetown MRA]*, 1414 Ash [4/29/88]

Georgetown, *Stone, Robert and Lela, House [Georgetown MRA]*, 1102 Ash [11/14/88]

Georgetown, *Taylor-Cooper House [Georgetown MRA]*, 105 E. Fifth [1/14/88]

Georgetown, *Vaden, W.C. and Kate, House [Georgetown MRA]*, 711 E. University [4/29/88]

Georgetown, *Wesley Chapel AME Church [Georgetown MRA]*, 508 W. Fourth [1/14/88]

Georgetown, *Wilcox-Graves House [Georgetown MRA]*, 1403 Olive [4/29/88]

Georgetown, *Wilcox, D. K. and Inez, House [Georgetown MRA]*, 1307 Olive [4/29/88]

Georgetown, *Williamson County Courthouse Historic District (Boundary Increase) [Georgetown MRA]*, 114–124 and 113 E. Eighth St. [4/29/88]

UTAH

Box Elder County

Brigham City vicinity, *Lower Bear River Archaeological Discontiguous District*, Address Restricted [2/13/88]

Park Valley vicinity, *Hogup Cave (42Bo38)*, Address Restricted [5/06/88]

Plymouth, *Plymouth School [Public Works Buildings TR]*, 135 S. Main [4/09/88]

Cache County

Hyrum, *Holley—Globe Grain and Milling Company Elevator*, 100 North and Center St. [10/24/85]

Logan, *Logan Temple Barn*, 368 E. Two Hundred N [12/19/85]

Logan, *Women's Residence Hall [Public Works Buildings TR]*, Utah State University [4/09/88]

Richmond, *Richmond Community Building [Public Works Buildings TR]*, 6 W. Main [4/09/88]

Carbon County

Price, *Loofbourow, James W. and Mary K., House*, 167 N. One Hundred E [4/10/88]

Daggett County

Brown's Park, *John Jarvie Historic Ranch District*, Green River and Indian Crossing Bridge, SW of Jarvis [1/14/88]

Davis County

Farmington, *Wilcox, James D., House*, 99 E. One Hundred N [11/26/85]

Iron County

Summit vicinity, *Evans Mound (42IN40)*, Address Restricted [10/24/85]

Morgan County

Morgan, *Morgan Elementary School [Public Works Buildings TR]*, 75 N. One Hundred E [4/09/88]

Morgan, *Morgan High School Mechanical Arts Building [Public Works Buildings TR]*, 20 N. One Hundred E [4/09/88]

Rich County

Randolph, *Randolph Tabernacle*, Off UT 16 [4/10/88]

Salt Lake County

Copperton, *Copperton Historic District*, Roughly bounded by SR 48, Fifth E, Hillcrest, and Second West Sts. [8/14/88]

Copperton, *Utah Copper Company Mine Superintendent's House*, 104 E. State Hwy. [10/31/85]

Magna, *Magna Community Baptist Church*, 2908 S. Eight Thousand Nine Hundred W [6/05/88]

San Juan County

Bluff, *Adams, Joseph Frederick, House*, Off US 163 [10/24/85]

Sanpete County

Fairview, *Fairview City Hall [Public Works Buildings TR]*, 85 S. State [4/09/88]

Manti, *Manti National Guard Armory [Public Works Buildings TR]*, 50 E. One Hundred N [4/09/88]

Mount Pleasant, *Mount Pleasant National Guard Armory [Public Works Buildings TR]*, 10 N. State [4/09/88]

Sevier County

Salina, *Salina Municipal Building and Library [Public Works Buildings TR]*, 90 W. Main [4/09/88]

Summit County

Park City, *Doyle, John, House [Mining Boom Era Houses TR]*, 339 Park [2/08/88]

Synderville vicinity, *Echer Hill Ski Jump*, Off I–80 [6/04/88]

Utah County

Payson, *Payson Presbyterian Church*, 160 S. Main [3/27/88]

Pleasant Grove, *Fugal Dugout House*, 650 N. Four Hundred E [3/27/88]

Provo, *Bullock, Benjamin Kimball, Farmhouse*, 1705 S. State [12/04/85]

Provo, *Provo Canyon Guard Quarters*, Off US 189 [6/12/88]

Provo, *Recreation Center for the Utah State Hospital [Public Works Buildings TR]*, 1300 E. Center [4/09/88]

Provo, *Superintendent's Residence at the Utah State Hospital [Public Works Buildings TR]*, 1070 E. Center [4/09/88]

Spanish Fork, *Jones, David H., House*, 143 S. Main [10/24/85]

Spanish Fork, *Spanish Fork National Guard Armory [Public Works Buildings TR]*, 260 N. Main [4/09/88]

UTAH—Continued

Springville, *Springville High School Art Gallery [Public Works Buildings TR]*, 126 E. Four Hundred S [4/09/88]

Wasatch County

Brighton vicinity, *Cloud Rim Girl Scout Lodge [Public Works Buildings TR]*, Lake Brimhall [4/09/88]

Midway, *Bonner, William, House [Architecture of John Watkins TR]*, 110 E. Main [8/17/88]

Midway, *Bonner, George, Jr., House [Architecture of John Watkins TR]*, 90 E. Main [8/17/88]

Midway, *Bonner, George, Sr., House [Architecture of John Watkins TR]*, 103 E. Main [8/17/88]

Midway, *Coleman, William, House [Architecture of John Watkins TR]*, 180 N. Center [8/17/88]

Midway, *Watkins, John and Margaret, House [Architecture of John Watkins TR]*, 22 W. Hundred S [8/17/88]

Washington County

Hurricane, *Hurricane High School [Public Works Buildings TR]*, 34 S. One Hundred W [4/09/88]

Wayne County

Grover, *Grover School [Public Works Buildings TR]*, Off UT 117 [4/09/88]

Weber County

Ogden, *Browning Apartments*, 2708 Washington Blvd. [12/19/85]

VERMONT

Addison County

Cornwall, *Cornwall Town Hall*, VT 30 [5/09/88]

Starksboro Village, *Starksboro Village Meeting House*, UT 116 [11/07/85]

Starksboro, *South Starksboro Friends Meeting House and Cemetery*, Dan Sargent Rd. [11/07/85]

Chittenden County

Burlington, *Allen, Ethan, Homestead*, Off Van Patten Pkwy. [7/24/86]

Grand Isle County

Grand Isle, *Gordon—Center House*, West Shore Rd. [4/17/86]

Rutland County

Middletown Springs, *Middletown Springs Historic District*, East, North, South, and West Sts., Montvert Ave., and Schoolhouse Rd. [10/17/85]

Windham County

Dover, *West Dover Village Historic District*, Rt. 100, Valley View, Cross Town, Personage, Dorr Pitch, and Bogle Rds. [10/24/85]

Putney, *Putney Village Historic District*, Westminster W Rd., US 5, Christian Sq., Old US 5, and Depot Rd. [2/20/86]

South Londonderry, *South Londonderry Village Historic District*, Church, Main, River, School, and Farnum Sts., and Melody Hill Rd. [7/24/86]

Townshend vicinity, *Wheelock House*, CR 30 [5/09/88]

West Townshend, *West Townshend Village Historic District*, Roughly Main St. from Old Rt. 30 to VT 30 and Town Rds. 7, 23, 47, 49, and 50 [9/11/86]

Windsor County

Chester, *Greenwood House*, VT 103 [10/31/85]

Springfield, *Springfield Downtown Historic District (Boundary Increase)*, Roughly Brookline Apts. on Wall St., Park St., and along the Black River [9/11/86]

VIRGINIA

Accomack County

Assawoman, *Arbuckle Place*, Seaside Rd./VA 679 [5/22/86]

Albemarle County

Scottsville vicinity, *High Meadows*, Off VA 20 [5/30/86]

Alexandria Independent City

Alexandria (Independent City), *Ford, President Gerald R., Jr., House*, 514 Crown View Dr. [12/17/85]

Alexandria (Independent City), *Lee, Robert E., Boyhood Home*, 607 Oronoco St. [8/05/86]

Alleghany County

Millboro vicinity, *Douthat State Park Historic District*, VA 629 [9/20/86]

Arlington County

Arlington, *US Post Office—Arlington*, 3118 N. Washington Blvd. [2/07/86]

Augusta County

Cedar Green, *Augusta County Training School [Public Schools in Augusta County, Virginia, 1870–1940, TR]*, VA 693 [6/19/86]

Deerfield, *Deerfield School [Public Schools in Augusta County, Virginia, 1870–1940, TR]*, VA 600 [6/19/86]

Luray vicinity, *Archeological Site No. AU–154*, Address Restricted [12/13/85]

Luray vicinity, *Blackrock Springs Site*, Address Restricted [12/13/85]

Luray vicinity, *Paine Run Rockshelter*, Address Restricted [12/13/85]

Swoope vicinity, *Glebe Burying Ground*, S of Swoope on VA 876 [10/01/85]

Bath County

Millboro vicinity, *Douthat State Park Historic District*, VA 629 [9/20/86]

Warm Springs vicinity, *Hidden Valley Rock Shelter (44BA31)*, Address Restricted [7/22/86]

Bedford County

Forest vicinity, *Saint Stephen's Episcopal Church*, VA 663 [11/07/85]

Bedford Independent City

Bedford (Independent City), *Burks—Guy—Hagen House*, 320 Peaks St. [12/19/85]

Botetourt County

Fincastle vicinity, *Wiloma*, Off US 220 [11/22/85]

Charles City County

Holdcroft vicinity, *Piney Grove*, VA 615 [11/29/85]

Culpeper County

Culpeper vicinity, *Elmwood*, US 522 W [1/16/86]

Culpeper, *Greenwood*, 1931 Orange Rd. [11/22/85]

Rapidan, *Locust Grove*, Locust Grove Farm, VA 736 [10/10/85]

Greensville County

Emporia vicinity, *Spring Hill*, VA 730 [12/02/85]

Hampton Independent County

Hampton (Independent City), *Eight-Foot High Speed Tunnel*, Langley Research Center [10/03/85]

Hampton (Independent City), *Full Scale Tunnel*, Langley Research Center [10/03/85]

Hampton (Independent City), *Lunar Landing Research Facility*, Langley Research Center [10/03/85]

Hampton (Independent City), *Rendesvous Docking Simulator*, Langley Research Center [10/03/85]

Hampton (Independent City), *Variable Density Tunnel*, Langley Research Center [10/03/85]

Hanover County

Studley vicinity, *Williamsville*, Off VA 615 [11/18/85]

Lynchburg Independent City

Lynchburg (Independent City), *Allied Arts Building*, 725 Church St. [12/19/85]

Madison County

Luray vicinity, *Big Meadows Site*, Address Restricted [12/13/85]

Luray vicinity, *Cliff Kill Site*, Address Restricted [12/15/85]

Luray vicinity, *Gentle Site*, Address Restricted [12/13/85]

Luray vicinity, *Robertson Mountain Site*, Address Restricted [12/13/85]

Orange vicinity, *Brampton*, VA 671 [12/12/85]

Montgomery County

Christiansburg, *Cambria Freight Station*, 630 Depot St. [12/12/85]

Newport News Independent City

Newport News (Independent City), *North End Historic District*, Roughly bounded by Sixty-eighth St., Warwick Blvd., Fiftieth St., and Huntington Ave. [8/28/86]

Page County

Luray vicinity, *Jeremey's Run Site*, Address Restricted [12/13/85]

Petersburg Independent City

Petersburg (Independent City), *Centre Hill Historic District*, Henry, N. Adams, N. Jefferson, Franklin, and E. Washington Sts., Centre Hill Ct., and Centre Hill Ave. [8/13/86]

Petersburg (Independent City), *Saint Paul's Church*, 108 N. Union St. [5/30/86]

Portsmouth Independent City

Portsmouth (Independent City), *Seaboard Coastline Building*, 1 High St. [10/10/85]

VIRGINIA—Continued

Pulaski County

Dublin vicinity, *Harvey, Nathaniel Burwell, House*, Off VA 812 [2/13/86]

Pulaski, *Pulaski Historic Commercial District*, Roughly bounded by Third St., Madison Ave., Norfolk & Western RR tracks, and Randolph Ave. [2/13/86]

Richmond Independent City

Richmond (Independent City), *Boulevard Historic District*, 10–300 S. Boulevard and 10–300 N. Blvd. [9/18/86]

Richmond (Independent City), *Gloster Park Historic District*, Roughly bounded by North Ave., Moss Side and Hawthorne and Chamberlayne Aves., Brookland Park Blvd., and Brook Rd. [9/22/86]

Richmond (Independent City), *Home For Confederate Women*, 301 N. Sheppard St. [11/07/85]

Richmond, *Fan Area Historic District (Boundary Increase)*, Roughly bounded by W. Main St., S. Harrison St., Richmond Metropolitan Expressway, and S. Boulevard [5/30/86]

Rockbridge County

Mechanicsville vicinity, *Locust Hill*, VA 608 [5/12/86]

Rockingham County

Luray vicinity, *Big Run Quarry Site*, Address Restricted [12/13/85]

South Boston Independent City

South Boston (Independent City), *South Boston Historic District*, Along Railroad Ave., Ferry, Factory, and Main Sts., Wilborn Ave., N. Main St., Washington and Peach Aves., and Jeffress [9/26/86]

Suffolk Independent City

Suffolk (Independent City), *Building at 216 Bank Street*, 216 Bank St. [11/07/85]

Surry County

Bacon's Castle vicinity, *Old Brick Church*, VA 10 [1/02/86]

Surry, *Surry County Courthouse Complex*, VA 10 [4/10/86]

Tazewell County

Tazewell vicinity, *Burke's Garden Rural Historic District*, Valley encircled by Garden Mountain [2/25/86]

Warren County

Front Royal vicinity, *Fairview Farm*, VA 658 [5/05/86]

Luray vicinity, *Compton Gap Site*, Address Restricted [12/13/85]

Washington County

Abingdon, *Abingdon Historic District (Boundary Increase)*, Roughly bounded by Russell Rd. and Jackson St., Whites Mill Rd., E. Main and E. Park and W. Main Sts., and Academy Dr. [9/17/86]

Westmoreland County

Mt. Holly vicinity, *Spring Grove*, VA 202 [10/10/85]

WASHINGTON

Asotin County

Cloverland, *Cloverland Garage*, CR 01050 [5/02/86]

Chelan County

Leavenworth, *Chatter Creek Guard Station [Depression-Era Buildings TR]*, Wenatchee National Forest [4/08/86]

Leavenworth, *Leavenworth Ranger Station [Depression-Era Buildings TR]*, Wenatchee National Forest [4/11/86]

Clallam County

Port Angeles, *Naval Lodge Elks Building*, 131 E. First St. [5/02/86]

Clark County

Battle Ground vicinity, *Lewisville Park*, 28411 N.E. Lewisville Hwy. [5/23/86]

Vancouver, *Anderson—Bolotski Prune Farm*, 4119 N.W. McCann Rd. [5/15/86]

Columbia County

Dayton vicinity, *Weinhard, Jacob, House [Historic Houses of Dayton TR]*, NW of Dayton [8/13/86]

Dayton, *Bishop, A. H., House [Historic Houses of Dayton TR]*, 822 E. Richmond [8/13/86]

Dayton, *Brining, John, House [Historic Houses of Dayton TR]*, 410 N. First [8/13/86]

Dayton, *Dexter House No. 2 [Historic Houses of Dayton TR]*, 507 N. Third [8/13/86]

Dayton, *Dexter House No. 1 [Historic Houses of Dayton TR]*, 515 S. Fourth [8/13/86]

Dayton, *Flintner, Frank, House [Historic Houses of Dayton TR]*, 214 S. Sixth [8/13/86]

Dayton, *Israel, Grover J., House [Historic Houses of Dayton TR]*, 305 S. Sixth [8/13/86]

Dayton, *Kelley, Mancel, House [Historic Houses of Dayton TR]*, 1301 S. Fifth [8/13/86]

Dayton, *Mill House [Historic Houses of Dayton TR]*, 504 N. First [8/13/86]

Dayton, *Nilsson, Andrew, House [Historic Houses of Dayton TR]*, 312 E. Patit [8/13/86]

Dayton, *Pietrzycki, Dr. Marcel, House [Historic Houses of Dayton TR]*, 415 E. Clay [8/13/86]

Dayton, *South Side Historic District [Historic Houses of Dayton TR]*, Roughly bounded by Clay, Third, Park, and First Sts. [8/13/86]

Dayton, *Thronson, J. A., House [Historic Houses of Dayton TR]*, 510 S. Fourth [8/13/86]

Dayton, *Washington Street Historic District [Historic Houses of Dayton TR]*, Roughly Washington St. between Patit Creek and Third St. [8/13/86]

Cowlitz County

Castle Rock vicinity, *Loughlin Round Barn*, 8249 Barnes Dr. [5/15/86]

Longview, *Big Four Furniture Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1329 Commerce Ave. [12/05/85]

Longview, *Columbia Theater [Civic, Cultural, and Commercial Resources of Longview TR]*, 1225 Vandercook Way [12/05/85]

Longview, *First Christian Church [Civic, Cultural, and Commercial Resources of Longview TR]*, 2000 E. Kessler Blvd. [12/05/85]

Longview, *Lake Sacajawea Park [Civic, Cultural, and Commercial Resources of Longview TR]*, Bounded by Nichols and Kessler Blvds. [12/05/85]

Longview, *Long, Robert Alexander, High School [Civic, Cultural, and Commercial Resources of Longview TR]*, 2903 Nichols Blvd. [12/05/85]

Longview, *Longview Community Church [Civic, Cultural, and Commercial Resources of Longview TR]*, 2323 Washington Way [12/05/85]

Longview, *Longview Community Church—Saint Helen's Addition [Civic, Cultural, and Commercial Resources of Longview TR]*, 416 Twentieth Ave. [12/05/85]

Longview, *Longview Community Store [Civic, Cultural, and Commercial Resources of Longview TR]*, 421 Twentieth Ave. [12/05/85]

Longview, *Longview Women's Clubhouse [Civic, Cultural, and Commercial Resources of Longview TR]*, 835 Twenty-first Ave. [12/05/85]

Longview, *Longview Civic Center Historic District [Civic, Cultural, and Commercial Resources of Longview TR]*, Bounded by Maple St., Sixteenth Ave., Hemlock St., and Eighteenth Ave. [12/05/85]

Longview, *Mills Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1239 Commerce Ave. [12/05/85]

Longview, *Pacific Telephone and Telegraph Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1304 Vandercook Way [12/05/85]

Longview, *Pounder Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1208 Commerce Ave. [12/05/85]

Longview, *Schumann Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1233 Commerce Ave. [12/05/85]

Longview, *Sevier and Weed Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1286 Twelfth Ave. [12/05/85]

Longview, *Tyni Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1106 Commerce Ave. [12/05/85]

Longview, *Washington Gas and Electric Building [Civic, Cultural, and Commercial Resources of Longview TR]*, 1346 Fourteenth Ave. [12/05/85]

Longview, *Willard Building [Civic, Cultural, and Commercial Buildings of Longview TR]*, 1403 Twelfth Ave. [12/05/85]

Stella, *Stella Blacksmith Shop*, 8530 Ocean Beach Hwy. [12/19/85]

King County

Seattle, *Chinese Baptist Church*, 925 S. King St. [7/31/86]

Seattle, *Queen Anne High School*, 215 Galer St. [11/21/86]

Seattle, *Showboat Theatre*, University of Washington, 1705 N.E. Pacific St. [4/25/86]

Kittitas County

Ellensburg, *Ramsey House*, 215 E. Ninth [5/02/86]

WASHINGTON—Continued

Skamania County

Stevenson, *Stevenson Historic District*, Roughly bounded by Rock Cove Creek, Columbia River, Kanaka Creek, and Second St. [12/05/85]

Spokane County

Spokane, *Spokane Public Library*, 906 W. Main [5/02/86]

Spokane, *Spokane Public Library*, 906 W. Main [5/02/86]

Thurston County

Olympia, *Olympia Downtown Historic District*, Roughly bounded by Water St., Union Ave., Capitol Way, and Legion Way [12/05/85]

Olympia, *Olympia Public Library*, 8th Ave. and Franklin St. [5/02/86]

Whatcom County

Bellingham, *Bellingham Public Library*, 210 Central Ave. [5/02/86]

Bellingham, *Bellingham Public Library*, 210 Central Ave. [5/02/86]

Yakima County

Yakima, *Yakima Public Library*, 102 N. Third St. [5/02/86]

Yakima, *Yakima Public Library*, 102 N. Third St. [5/02/86]

WEST VIRGINIA

Berkeley County

Martinsburg, *Martinsburg Historic District*, Roughly bounded by Queen, Race, Burke, Martin, Pearl, Stephen, Tuscarora Creek, Foundry, Mill, Water, Spring, Pitt, Boyd, Lafayette, Liberty, Lawrence, Lincoln, Lilly, Lewis, Wilson, Wall, Hunter, Hill, Hillcrest, Hillcrest Cemetery, Cherry, Cherry Alley, Cherry Run, Cherry Run Cemetery, Cherry Run Creek, Cherry Run Creek Cemetery, Cherry Run Creek Cemetery, Cherry Run Creek Cemetery

WASHINGTON—Continued

Lewis County

Chehalis, *Palmer, O. K., House*, 673 N.W. Pennsylvania [5/15/86]

Packwood vicinity, *La Wis Wis Guard Station No. 1165 [Depression-Era Buildings TR]*, Gifford Pinchot National Forest [4/08/86]

Randle vicinity, *North Fork Guard Station No. 1142 [Depression-Era Buildings TR]*, Randle Ranger Station, Gifford Pinchot National Forest [4/11/86]

Randle, *Randle Ranger Station—Work Center [Depression-Era Buildings TR]*, Gifford Pinchot National Forest [4/08/86]

Okanogan County

Tonasket, *Lost Lake Guard Station [Depression-Era Buildings TR]*, Okanogan National Forest [4/11/86]

Winthrop vicinity, *Early Winters Ranger Station Work Center [Depression-Era Buildings TR]*, Okanogan National Forest [4/11/86]

Pacific County

Tokeland, *Willapa Bay Boathouse*, US Coast Guard Station, Willapa Bay [3/13/86]

Pierce County

Tacoma, *Engine House No. 13 [Historic Fire Stations of Tacoma, Washington TR]*, 3625 N. Twenty-fifth St. [5/02/86]

Tacoma, *Engine House No. 11 [Historic Fire Stations of Tacoma, Washington TR]*, 3802 McKinley Ave. [5/02/86]

Tacoma, *Engine House No. 8 [Historic Fire Stations of Tacoma, Washington TR]*, 4301 S. I. St. [5/02/86]

Tacoma, *Fire Station No. 15 [Historic Fire Stations of Tacoma, Washington TR]*, 3510 E. Eleventh St. [5/02/86]

Tacoma, *Fire Station No. 14 [Historic Fire Stations of Tacoma, Washington TR]*, 4701 N. Forty-first St. [5/02/86]

Tacoma, *Fire Station No. 10 [Historic Fire Stations of Tacoma, Washington TR]*, 7247 S. Park Ave. [5/02/86]

Tacoma, *Fire Station No. 5 [Historic Fire Stations of Tacoma, Washington TR]*, 1453 S. Twelfth St. [5/02/86]

Tacoma, *Fire Station No. 2 [Historic Fire Stations of Tacoma, Washington TR]*, 2701 S. Tacoma Ave. [5/02/86]

Tacoma, *Fire Station No. 1 [Historic Fire Stations of Tacoma, Washington TR]*, 415 S. Tacoma Ave. [5/02/86]

Tacoma, *Fire Alarm Station [Historic Fire Stations of Tacoma, Washington TR]*, 315 S. Tacoma Ave. [5/02/86]

Tacoma, *Fireboat Station [Historic Fire Stations of Tacoma, Washington TR]*, 302 E. Eleventh St. [5/02/86]

Tacoma, *South J Street Historic District*, W Side of S. J St. between S. Seventh and S. Eighth Sts. [5/09/86]

Tacoma, *Sprague Building*, 1501–1505 Pacific Ave. [11/21/85]

San Juan County

Doe Bay vicinity, *Alderbrook Farmhouse*, Point Lawrence Rd. [11/21/85]

Doe Bay, Orcas Island, *Doe Bay General Store and Post Office*, End of County Rd. [5/02/86]

Richardson, *Richardson General Store and Warehouse*, Richardson Rd. [11/21/85]

Skamania County

N. Bonneville vicinity, *Bonneville Dam Historic District*, Columbia River between Bradford and Cascade Islands off I-80 in Multnomah County, Oregon, to WA 14 in Skamania County, WA [4/08/86]

Snohomish County

Everett, *Hartley, Roland, House*, 2320 Rucker Ave. [5/02/86]

Granite Falls, *Verlot Ranger Station—Public Service Center [Depression-Era Buildings TR]*, Mt. Baker, Snoqualmie National Forest [4/08/86]

Spokane County

Spokane, *Benewah Milk Bottle*, S. 321 Cedar [5/13/86]

Spokane, *Holy Names Academy Building*, 1216 N. Superior St. [5/02/86]

Spokane, *Mission Avenue Historic District*, E. 220–824 Mission Ave. [5/14/86]

Whitman County

Oakesdale vicinity, *Hanford, Edwin H., House*, N of WA 217 [5/15/86]

Pullman vicinity, *Leonard, T. A., Barn*, S side of Old Moscow Hwy. [5/02/86]

Yakima County

Mabton, *Mabton High School*, High School Rd. [11/21/85]

Yakima, *Old North Yakima Historic District*, Roughly bounded by E. A St., S. First St., E. Yakima Ave., and the Northern Pacific RR tracks [5/02/86]

WEST VIRGINIA

Barbour County

Philippi, *Philippi B & O Railroad Station*, 146 N. Main St. [5/16/86]

Berkeley County

Inwood vicinity, *Brown, Thomas, House*, CR 30 [1/16/86]

Brooke County

Wellsburg vicinity, *Vancroft*, Brinker Rd. [9/15/86]

Wellsburg, *Beallmore [Pleasant Avenue MRA]*, 1500 Pleasant Ave. [5/16/86]

Wellsburg, *Brooke Cemetery [Pleasant Avenue MRA]*, 2200 Pleasant Ave. 5/16/86]

Wellsburg, *Duval, General I. H., Mansion [Pleasant Avenue MRA]*, 1222 Pleasant Ave. [5/16/86]

Wellsburg, *Elmhurst [Pleasant Avenue MRA]*, 1808 Pleasant Ave. [5/16/86]

Wellsburg, *Fleming, David and Lucy Tarr, Mansion [Pleasant Avenue MRA]*, 2000 Pleasant Ave. [5/16/86]

Wellsburg, *Hall, Lewis, Mansion [Pleasant Avenue MRA]*, 1300 Pleasant Ave. [5/16/86]

Wellsburg, *Kirker House [Pleasant Avenue MRA]*, 1520 Grand Ave. [9/15/86]

Wellsburg, *Paull, Harry and Louisiana Beall, Mansion [Pleasant Avenue MRA]*, 1312 Pleasant Ave. [5/16/86]

Wellsburg, *Tarr, Lucy, Mansion [Pleasant Avenue MRA]*, 1456 Pleasant Ave. [5/16/86]

Cabell County

Huntington, *Douglass Junior and Senior High School*, Tenth Ave. and Bruce St. [12/06/85]

Huntington, *Huntington Downtown Historic District*, Roughly bounded by Third Ave., Tenth St., Fifth Ave., Seventh and Eighth Sts. [2/26/86]

Doddridge County

St. Clara, *Gamsjager—Wysong Farm*, CR 66 [9/04/86]

Fayette County

Prince, *Prince Brothers General Store—Berry Store*, WV 41 [4/17/86]

Grant County

Petersburg, *Hermitage Motor Inn [South Branch Valley MRA]*, Virginia Ave. [1/14/86]

Hardy County

Moorefield vicinity, *Meadows, The [South Branch Valley MRA]*, US 220 [1/14/86]

Moorefield, *Moorefield Historic District [South Branch Valley MRA]*, Portions of Main, Elm, Washington, and Winchester Sts. [1/15/86]

Jackson County

Ravenswood, *Lemley—Wood—Sayer House*, 301 Walnut St. [10/30/85]

Jefferson County

Charles Town vicinity, *Hillside*, Old Cave Rd. [12/12/85]

Kanawha County

Charleston, *Loewenstein and Sons Hardware Building*, 223–225 Capitol St. [11/01/85]

Charleston, *Plaza Theater*, 123 Summers St. [10/30/85]

Charleston, *Spring Hill Cemetery Historic District*, 1584 Farnsworth Dr. [10/16/85]

Monongalia County

Everett, *Weyerhouser Office Building*, 1710 W. Marina View Dr. [5/14/86]

Morgantown, *Moore, Elizabeth, Hall [West Virginia University Neo-Classical Revival Buildings TR]*, University Ave. [12/19/85]

Morgantown, *Oglebay Hall [West Virginia University Neo-Classical Revival Buildings TR]*, University Ave. [12/19/85]

Morgantown, *Purinton House [West Virginia University Neo-Classical Revival Buildings TR]*, University Ave. [12/19/85]

Morgantown, *Seneca Glass Company Building*, 700 Beechurst Ave. [12/19/85]

Morgantown, *Stalnaker Hall [West Virginia University Neo-Classical Revival Buildings TR]*, Maiden Ln. [12/19/85]

Morgantown, *Women's Christian Temperance Union Community Building*, 160 Fayette St. [10/30/85]

Monroe County

Union vicinity, *Salt Sulphur Springs Historic District*, US 219 [10/31/85]

Morgan County

Berkeley Springs, *Wright, Judge John W., Cottage*, 305 S. Green St. [4/28/86]

Pendleton County

Brandywine vicinity, *Old Probst Church [South Branch Valley MRA]*, CR 21/9 [1/14/86]

Franklin vicinity, *McCoy Mill [South Branch Valley MRA]*, Johnstown Rd. [1/14/86]

WEST VIRGINIA—Continued

Franklin, *Franklin Historic District [South Branch Valley MRA]*, Roughly bounded by US 33, Main St., the Potomac River, and High St. [1/15/86]

Upper Tract, *Pendleton County Poor Farm [South Branch Valley MRA]*, US 220 [1/14/86]

Pocahontas County

Palouse, *Palouse Main Street Historic District*, Main St. between K and Mary Sts. [5/08/86]

Preston County

Masontown vicinity, *Ralphsynder Decagonal Barn [Round and Polygonal Barns of West Virginia TR]*, CR 52/2 [12/02/85]

Randolph County

Huttonsville, *Tygarts Valley Church*, US 219 [4/15/86]

Tyler County

Sistersville, *Wells—Schaff House*, 500 S. Wells [1/07/86]

Webster County

Webster Springs, *Morton House*, Union St. [4/15/86]

Wood County

Parkersburg, *Avery Street Historic District*, Roughly bounded by Nineteenth, Spring and Quincy, Eighth, and Market Sts. [4/15/86]

Parkersburg, *Cooper, Henry, House*, Park Ave. [2/06/86]

Williamstown vicinity, *Henderson Hall Historic District*, CR 21/2 off WV 14 [4/17/86]

WISCONSIN

Calumet County

Chilton vicinity, *Aebischer Site (47CT30)*, Address Restricted [10/10/85]

Chippewa County

Stanley, *Moon, D. R., Memorial Library*, E. Fourth Ave. [12/02/85]

Columbia County

Wisconsin Dells, *Bowman House*, 714 Broadway St. [4/03/86]

Dane County

Madison, *East Wilson Street Historic District*, 402–524 E. Wilson and 133 S. Blair Sts. [4/03/86]

Madison, *Grimm Book Bindery*, 454 W. Gilman St. [4/03/86]

Madison, *Langdon Street Historic District*, Roughly bounded by Lake Mendota, Wisconsin Ave., Langdon, and N. Lake Sts. [6/26/86]

Mount Horeb, *Lie, Aslak, Cabin*, 3022 County Trunk P [4/03/86]

Door County

Sister Bay, *Jischke's Meat Market*, 414 Maple Dr. [9/11/86]

Dunn County

Menomonie, *Menomonie Downtown Historic District*, Roughly bounded by Main and Crescent Sts., Fifth St., Wilson, and Second St. and Broadway [7/14/86]

Eau Claire County

Eau Claire, *Chicago, St. Paul, Minneapolis & Omaha Railroad Depot [Eau Claire MRA]*, 324 Putnam Ave. [10/24/85]

Florence County

Florence, *Florence County Courthouse and Jail [County Courthouses of Wisconsin TR]*, 501 Lake St. [12/02/85]

Fond Du Lac County

New Fane, *Saint John Evangelical Lutheran Church*, 670 County Trunk Hwy. S [4/15/86]

Grant County

Platteville, *Rountree, J. H., Mansion*, 150 Rountree Ave. [6/13/86]

Iowa County

Barneveld, *Cassidy Farmhouse [Barneveld MRA]*, Off WI K N of US 18/151 [9/29/86]

Barneveld, *Grove Street Historic District [Barneveld MRA]*, 304–316 Grove St. [9/29/86]

Barneveld, *Harris House [Barneveld MRA]*, 202 W. Wood St. [9/29/86]

Barneveld, *Ihm House [Barneveld MRA]*, 203 N. Garfield St. [9/29/86]

Barneveld, *Kittleson House [Barneveld MRA]*, 104 W. Wood St. [9/29/86]

Barneveld, *Roethlisberger House [Barneveld MRA]*, 205 N. Grove St. [9/29/86]

Jefferson County

Fort Atkinson, *Merchants Avenue Historic District*, Roughly bounded by S. Third St. E and S. Milwaukee Ave. E. Foster St., Whitewater, and Merchant Aves. [6/13/86]

Kenosha County

Wheatland vicinity, *Wehmhoff Mound (47KN15)*, Address Restricted [11/21/85]

La Crosse County

La Crosse, *Our Lady of Sorrows Chapel*, 519 Losey Blvd. S [9/11/86]

Manitowoc County

Manitowoc, *USS COBIA (submarine)*, 809 S. Eighth St. [1/14/86]

Marquette County

Briggsville vicinity, *Bonnie Oaks Historic District*, Grouse Dr. [4/03/86]

Milwaukee County

Milwaukee, *Abresch, Charles, House [West Side Area MRA]*, 2126 W. Juneau Ave. [1/16/86]

Milwaukee, *Blatz Brewery Complex*, 1101–1147 N. Broadway [4/15/86]

Milwaukee, *Calvary Presbyterian Church [West Side Area MRA]*, 935 W. Wisconsin Ave. [3/10/86]

Milwaukee, *Carpenter, Michael, House [West Side Area MRA]*, 1115 Thirty-fifth St. [1/16/86]

Milwaukee, *Cass-Wells Street Historic District*, 712, 718, and 724 E. Wells St. and 801, 809, 815, 819, and 823 N. Cass St. [6/13/86]

Milwaukee, *Clark Row House [West Side Area MRA]*, 2103–2109 W. Kilbourn Ave. [1/16/86]

Milwaukee, *Cook, Thomas, House [West Side Area MRA]*, 853 N. Seventeenth St. [1/16/86]

Milwaukee, *Dahinden, Edward J., House [West Side Area MRA]*, 3316 W. Wisconsin Ave. [2/25/86]

Milwaukee, *Eagles Club [West Side Area MRA]*, 2401 W. Wisconsin Ave. [7/29/86]

Milwaukee, *East Side Commercial Historic District*, Roughly bounded by E. Wells St., N. Jefferson St. and N. Broadway, Michigan and E. Clybourn, and N. Water Sts. [9/23/86]

Milwaukee, *Esbenshade, Abraham H., House [West Side Area MRA]*, 3119 W. Wells St. [1/16/86]

Milwaukee, *Gesu Church [West Side Area MRA]*, 1145 W. Wisconsin Ave. [1/16/86]

Milwaukee, *Grand Avenue Congregational Church [West Side Area MRA]*, 2133 W. Wisconsin Ave. [1/16/86]

Milwaukee, *Highland Avenue Methodist Church [West Side Area MRA]*, 2024 W. Highland Ave. [1/16/86]

Milwaukee, *Howie, David W., House [West Side Area MRA]*, 3026 W. Wells St. [1/16/86]

Milwaukee, *Johnston Hall [West Side Area MRA]*, 1121 W. Wisconsin Ave. [1/16/86]

Milwaukee, *Kilbourn Masonic Temple [West Side Area MRA]*, 827 N. Eleventh St. [1/16/86]

Milwaukee, *Kilbourn Avenue Row House Historic District [West Side Area MRA]*, Roughly bounded by N. Fourteenth St., W. Kilbourn Ave., and N. Fifteenth St. [2/25/86]

Milwaukee, *Milwaukee Normal School—Milwaukee Girls' Trade and Technical High School [West Side Area MRA]*, 1620 W. Wells St. [1/16/86]

Milwaukee, *Pabst Brewery Saloon [West Side Area MRA]* 1338–1340 W. Juneau Ave. [1/16/86]

Milwaukee, *Plankinton—Wells—Water Street Historic District*, Roughly bounded by Wells, Bridge, N. Water, E. Mason, W. Wells, and N. Second Sts. [6/13/86]

Milwaukee, *Saint George Melkite Catholic Church [West Side Area MRA]*, 1617 W. State St. [1/16/86]

Milwaukee, *Schlitz, Victor, House [West Side Area MRA]*, 2004 W. Highland Ave. [1/16/86]

Milwaukee, *Schuster, George, House and Carriage Shed [West Side Area MRA]*, 3209 W. Wells St. [1/16/86]

Milwaukee, *Second Church of Christ Scientist [West Side Area MRA]*, 2722 W. Highland Blvd. [1/16/86]

Milwaukee, *Sivyer, Fred, House [West Side Area MRA]*, 761 N. Twenty-fifth St. [1/16/86]

Milwaukee, *Tripoli Temple [West Side Area MRA]*, 3000 W. Wisconsin Ave. [1/16/86]

Milwaukee, *Walker, Harry B., House [West Side Area MRA]*, 3130 W. Wells St. [1/16/86]

Wauwatosa, *Hart, Thomas B., House*, 1909 Church St. [10/10/85]

Outagamie County

Appleton, *Tompkins, James, House*, 523 S. State St. [4/03/86]

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WISCONSIN—Continued
Appleton, *Zion Lutheran Church*, 912 N. Oneida St. [6/13/88]

Ozaukee County
Cedarburg, *Washington Avenue Historic District*, Roughly bounded by Elm St., Cedar Creek, Hamilton Rd., and Washington Ave. [1/17/86]

Pierce County
River Falls, *North Hall—River Falls State Normal School*, University of Wisconsin [4/03/86]

Polk County
Osceola, *Geiger Building—Old Polk County Courthouse*, 201 Cascade St. [12/02/85]
Osceola, *Heald, Alvah A., House*, 302 Sixth Ave. [12/02/85]

Portage County
Stevens Point, *Mathias Mitchell Public Square—Main Street Historic District*, Roughly Main St. from Strongs Ave. to Second St. [8/13/86]

Racine County
Racine, *Johnson, Peter, House*, 1001 State St. [1/08/85]

Rock County
Janesville, *Courthouse Hill Historic District*, Roughly bounded by E. Milwaukee St., Garfield and Oakland Aves., S. Main St., and E. Court St. and Milton Ave. [1/17/86]

Sheboygan County
Plymouth *Hotel Laack*, 52 Stafford St. [12/02/85]

Vernon County
Westby vicinity, *Norwegian Evangelic Lutheran Church and Cemetery*, Coon Prairie and E. Coon Prairie Rds. [7/14/86]

Walworth County
Fontana, *Douglass—Stevenson House*, Main and Mill Sts. [4/03/86]
Lake Geneva, *Riviera, (The)*, 810 Wrigley Dr. [4/03/86]
Linn, *Bonnie Brae*, 78 Snake Rd. [4/03/86]

Waukesha County
Hartland, *East Capitol Drive Historic District (Hartland MRA)*, 337–702 E. Capitol Dr. [9/11/86]
Oconomowoc, *Peck, Walter L., House*, 36928 Islandale Dr. [4/10/86]

Winnebago County
Menasha, *Augustin, Gustav, Block*, 66 Racine St. [5/30/86]
Menasha, *Brin Building*, 1 Main St. [7/10/86]
Menasha, *Koch, Carl, Block*, 3 Tayco St. [7/10/86]
Menasha, *Tayco Street Bridge*, Tayco and Water Sts. [5/30/86]
Menasha, *US Post Office—Menasha*, 64 Racine St. [5/21/86]
Menasha, *Washington Street Historic District*, 214—216 Washington St. [5/30/86]
Oshkosh, *Paine Lumber Company Historic District*, Off Congress Ave., roughly between High, New York, and Summit Aves., and Paine Lumber Access Rd. [5/28/86]
Oshkosh, *Washington Avenue Historic District*, Roughly bounded by Merritt Ave., Linde and Lampert Sts., Washington Ave., Bowen and Evan Sts. [5/22/86]

WYOMING

Albany County
Ames Monument vicinity, *Dale Creek Crossing (48AB145)*, 4 mi. W of Sherman [5/09/86]
Laramie Peak vicinity, *Parker Ranch House*, Address Restricted [12/13/85]
Laramie vicinity, *Barn at Oxford Horse Ranch*, 866 US Hwy. 287 [6/25/86]
Laramie vicinity, *Bath Ranch*, Herrick Lane Rd. [12/13/85]
Laramie, *Bath Row*, 155, 157, and 159 N. Sixth St. and 611 University Ave. [5/08/86]
Laramie, *Old Main*, University of Wyoming campus, Ninth St. and Ivinson Ave. [7/11/86]
Laramie, *Vee Bar Ranch Lodge*, 2087 WY 130 [8/30/85]
Woods Landing, *Woods Landing Dance Hall*, 2731 WY 230 [12/13/85]

Campbell County
Piney vicinity, *Basin Oil Field Tipi Rings (48CA1867)*, Address Restricted [12/13/85]
Piney vicinity, *Bishop Road Site (48CA1812)*, Address Restricted [12/13/85]

Carbon County
Dixon, *Stockgrowers Bank*, Third St. [6/25/86]
Saratoga vicinity, *Jack Creek Guard Station*, Off FDR 482 [5/15/86]
Savery vicinity, *Stone Wall Ranch*, Star Rt., Box 1300 [9/29/86]

Crook County
Sundance, *Sundance School*, 108 N. Fourth St. [12/02/85]

Fremont County
Honeycomb Buttes vicinity, *Decker, Dean, Site (48FR918; 48SW541)*, Address Restricted [3/12/86]
Stratton Rim vicinity, *Green Mountain Arrow Site (48FR96)*, Address Restricted [3/12/86]

Lincoln County
Auburn, *Rock Church*, Second W and First S Sts. [12/13/85]
Kemmerer, *Kemmerer Hotel*, Pine and Sapphire [12/02/85]

Park County
Ralston vicinity, *Heart Mountain Relocation Center*, Off US Alt. 14 [12/19/85]

Sweetwater County
Hadsell Cabin vicinity, *Araphoe and Lost Creek Site (48SW4382)*, Address Restricted [3/12/86]
Honeycomb Buttes vicinity, *Decker, Dean, Site (48FR918; 48SW541)*, Address Restricted [3/12/86]
Rock Springs, *Gras House*, 610 W. Elias [3/13/86]
Westvaco vicinity, *Eldon—Wall Terrace Site (48SW4328)*, Address Restricted [12/13/85]

Uinta County
Verne vicinity, *Triangulation Point Draw Site District (48UT114, 48UT207, 48UT262, 48UT440)*, Address Restricted [9/19/86]

Washakie County
Big Trails, *Ainsworth House*, Spring Creek Rd. [9/11/86].
Ten Sleep, *Ten Sleep Mercantile*, Second and Pine Sts. [9/11/86]
Worland, *Worland House*, 520 Culbertson [2/27/86]

Properties Listed in The National Register in Fiscal Year 1987

ALABAMA

Butler County
Greenville, *East Commerce Street Historic District (Greenville MRA)*, Roughly bounded by Cedar, Chestnut, Commerce, and Hickory Sts. [11/04/86]
Greenville, *Greenville City Hall (Greenville MRA)*, E. Commerce St. [11/04/86]
Greenville, *Little—Stabler House (Greenville MRA)*, 710 Fort Dale St. [11/04/86]
Greenville, *Post Office Historic District (Greenville MRA)*, 100–115 W. Commerce and 101 E. Commerce Sts. [11/04/86]
Greenville, *Ward Nicholson Corner Store (Greenville MRA)*, 219 W. Parmer [11/04/86]

Dallas County
Plantersville, *Antique Store (Plantersville MRA)*, Off AL 22 [1/29/87]
Plantersville, *Christian Church and Parsonage (Plantersville MRA)*, Off AL 22 [1/29/87]
Plantersville, *Doctor's Office (Plantersville MRA)*, jct. of First Ave. N of Oak St. and First Ave. [1/29/87]
Plantersville, *Driskell—Martin House (Plantersville MRA)*, NW jct. of Cherry St. and First Ave. [1/29/87]
Plantersville, *Todd House (Plantersville MRA)*, S side of Oak St. W of First Ave. [1/29/87]
Selma, *Skinner, Marcus Meyer, House*, 2012 Summerfield Rd. [8/27/87]

De Kalb County
Valley Head, *Winston Place*, Off AL 117 [3/19/87]

Jefferson County
Birmingham, *Chestnut Hill Historic District*, Roughly bounded by Highland Ave. and Thirty-first St. [6/12/87]
Birmingham, *West End Masonic Temple*, 1346 Tuscaloosa Ave. [8/27/87]

Lee County
Opelika, *Geneva Street Historic District*, Roughly bounded by S. Seventh, Glenn, Stowe, Geneva, and S. Tenth Sts., and Ave. C [9/15/87]

Mobile County
Mobile, *Ashland Place Historic District*, Roughly bounded by Springhill and Ryan Aves., Old Shell Rd., and Levert Ave. [6/23/87]
Mobile, *Emanuel AME Church*, 656 Saint Michael St. [8/29/87]
Mobile, *Leinkauf Historic District*, Roughly bounded by Government, S. Monterey, Ralves, Lamar, and S. Monterey Sts. [6/24/87]
Mobile, *Patton, Dora, House*, 1253 Martin Luther King, Jr. Ave. [8/12/87]

ALABAMA—Continued
Monroe County
Beatrice, *Robbins Hotel*, AL 265 [8/26/87]

Montgomery County
Montgomery, *Lower Commerce Street Historic District (Boundary Increase)*, Roughly bounded by Central of Georgia RR tracks, N. Lawrence St., Madison Ave., and Commerce St. [1/15/87]

Sumter County
Emelle, *Oakhurst*, Gainesville—Lacy's Ford Rd. approx. 3 mi. SW of AL 116 [1/06/87]

Talladega County
Sylacauga, *Watters, William, House*, Co. Hwy. 8 [9/25/87]

Tuscaloosa County
Tuscaloosa, *Fitch House*, 3404 Sixth St. [7/22/87]

Winston County
Double Springs, *Winston County Courthouse*, Addison Rd. [8/27/87]

ALASKA

Aleutian Islands Borough—Census Area
Adak Station, *Adak Army Base and Adak Naval Operating Station*, Roughly bounded by Cape Adagdak, Scabbard Bay and Shagak Bay [2/27/87]
Fort Glenn, *Cape Field at Fort Glenn (Umnak Island)*, NE section of Umnak Island [5/28/87]

Fairbanks North Star Borough—Census Area
Ester, *Ester Camp Historic District*, Off AK3 [5/06/87]

Kenai Peninsula Borough—Census Area
Seward, *Seward Depot*, 501 Railway Ave. [7/16/87]

Ketchikan Gateway Borough—Census Area
Ketchikan, *Ayson Hotel*, 301–301 Stedman St. [6/17/87]
Ketchikan, *First Lutheran Church*, 1200 Tongass Ave. [5/18/87]
Ketchikan, *Ketchikan Ranger House*, 300 Gorge St. [7/16/87]

Nome Borough—Census Area
Deering vicinity, *Fairhaven Ditch*, Address Restricted [9/23/87]

Sitka Borough—Census Area
Sitka, *Russian-American Building No. 29*, 202–204 Lincoln St., [5/28/87]
Sitka, *US Coast Guard and Geodetic Servey Seismological and Geomagnetic House*, 210 Seward St. [11/25/86]

Wrangell-Peterburg Borough-Census Area
Wrangell, *Saint Philip's Episcopal Church*, 446 Church St. [5/06/87]

Yukon-Koyukuk Borough-Census Area
Denali National Part & Preserve, *Ewe Creek Ranger Cabin No. 8 [Patrol Cabins, Mount McKinley National Park TR]*, 5 mi. downstream on the Savage River from Park Hwy. near Ewe Creek [11/25/86]
Denali National Park & Preserve, *Igloo Creek Cabin No. 25 [Patrol Cabins, Mount McKinley National Park TR]*, Near Igloo Creek at Mile 34.1 N of Park Rd. [11/25/86]
Denali National Park & Preserve, *Lower Windy Creek Ranger Cabin No. 15 [Patrol Cabins, Mount McKinley National Park TR]*, E of Mile 324 on Alaska Railroad [11/25/86]
Denali National Park & Preserve, *Lower Toklat River Ranger Cabin No. 18 [Patrol Cabins, Mount McKinley National Park TR]*, 30 mi. N. on Toklat River from Park Rd. [11/25/86]
Denali National Park & Preserve, *Lower East Fork Ranger Cabin No. 9 [Patrol Cabins, Mount McKinley National Park TR]*, 25 mi. downstram on the E fork of the Toklat River from Park Rd. [11/25/86]
Denali National Park & Preserve, *Moose Creek Ranger Cabin No. 19 [Patrol Cabins, Mount McKinley National Park TR]*, 5 mi. N of Mile 73.8 on Park Rd. [11/25/86]
Denali National Park & Preserve, *Riley Creek Ranger Cabin No. 20 [Patrol Cabins, Mount McKinley National Park TR]*, 5 mi. cross-country and W of Mile 336 on Alaska RR [11/25/86]
Denali National Park & Preserve, *Sanctuary River Cabin No. 31 [Patrol Cabins, Mount McKinley National Park TR]*, On Sanctuary River at Mile 22.7 S of Park Rd. [11/25/86]
Denali National Park & Preserve, *Sushana River Ranger Cabin No. 17 [Patrol Cabins, Mount McKinley National Park TR]*, 10 mi. cross-country and N of Mile 25 on Park Rd. [11/25/86]
Denali National Park & Preserve, *Toklat Ranger Station—Pearson Cabin No. 4 [Patrol Cabins, Mount McKinley National Park TR]*, Near the main branch of the Toklat River at Mile 53.8 W of Park Rd. [11/25/86]
Denali National Park & Preserve, *Upper Toklat River Cabin No. 24 [Patrol Cabins, Mount McKinley National Park TR]*, Near main branch of Toklat River at Mile 53.7, W of Park Rd. [11/25/86]
Denali National Park & Preserve, *Upper East Fork Cabin No. 29 [Patrol Cabins, Mount McKinley National Park TR]*, Near the E fork of the Toklat River at Mile 43 S of Park Rd. [11/25/86]
Denali National Park & Preserve, *Upper Windy Creek Ranger Cabin No. 7 [Patrol Cabins, Mount McKinley National Park TR]*, 6 mi W of Cantwell S of Windy Creek [11/25/86]
Eagle vicinity, *Beiderman, Ed, Fish Camp [Yukon River Lifeways TR]*, Left bank of the Yukon River ½ mi. down across from the Kandick River [7/20/87]
Eagle vicinity, *McGregor, George, Cabin [Yukon River Lifeways TR]*, Left bank of the Yukon River 2 mi. down from Coal Creek [7/21/87]
Eagle vicinity, *Slaven Frank, Roadhouse [Yukon River Lifeways TR]*, Left bank of the Yukon River ½ mi. from the mouth of Coal Creek [7/20/87]
Eagle vicinity, *Woodchopper Roadhouse [Yukon River Lifeways TR]*, Left bank of the Yukon River 1 mi. up from Woodchopper Creek [7/20/87]

ARIZONA

Apache County
McNary vicinity, *Los Burros Ranger Station*, Forest Rd. 20 [10/23/86]

Cochise County
Douglas, *Douglas Sonoran Historic District*, Roughly bounded by the W side of H Ave. between Sixth and Ninth Sts. [8/26/87]
St. David vicinity, *Council Rocks Archaeological District*, Address Restricted [1/16/87]
Willcox, *Briscoe, Benjamin E., House [Willcox MRA]*, 358 N. Bowie [5/27/87]
Willcox, *Crowley House [Willcox MRA]*, 175 S. Railroad Ave. [8/06/87]
Willcox, *Gung'l, John, House [Willcox MRA]*, 210 S. El Paso Ave. [5/27/87]
Willcox, *Hooker Town House [Willcox MRA]*, 235 E. Stewart [5/27/87]
Willcox, *Johnson—Tillotson House [Willcox MRA]*, 124 N. Curtis [8/06/87]
Willcox, *Mee, Joe, House [Willcox MRA]*, 265 W. Stewart [8/06/87]
Willcox, *Morgan House [Willcox MRA]*, 2442 E. Maley [8/18/87]
Willcox, *Railroad Avenue Historic District [Willcox MRA]*, Roughly bounded by Curtis Ave., Stewart St., Southern Pacific RR tracks, and Grant St. [5/27/87]
Willcox, *Saxon, Harry, House [Willcox MRA]*, 308 S. Haskell [5/27/87]
Willcox, *Soto, Pablo, House [Willcox MRA]*, 108 E. Stewart [8/18/87]
Willcox, *Willcox Women's Club [Willcox MRA]*, 312 W. Stewart [5/27/87]
Willcox, *Wilson, J. C., House [Willcox MRA]*, 258 E. Maley [8/18/87]

Coconino County
Big Springs vicinity, *Brow Monument*, N. Kaibab Ranger District, Kaibab National Forest [7/13/87]
Cameron vicinity, *Tutuveni*, Address Restricted [12/03/86]
Cameron vicinity, *Willow Springs*, Address Restricted [12/03/86]
Flagstaff vicinity, *Elden Pueblo*, Address Restricted [10/24/86]
Flagstaff, *South Beaver School*, 506 S. Beaver St. [8/06/87]
Grand Canyon National Park, *Grand Canyon Power House*, Off West Rim Dr. [5/28/87]
Grand Canyon National Park, *Grand Canyon Park Operations Building*, Off West Rim Dr. [5/28/87]
Grand Canyon National Park, *Mary Jane Colter Buildings (Hopi House, The Lookout, Hermit's Rest, and the Desert View Watchtower)*, Several locations along the South Rim [5/28/87]
Jacob Lake vicinity, *Jacob Lake Ranger Station*, N. Kaibab Ranger District off AZ 67, Kaibab National Forest [7/13/87]

Gila County
Globe, *Elks Building [Globe Commercial and Civic MRA]*, 155 W. Mesquite [8/06/87]
Globe, *Gila Valley Bank and Trust Building [Globe Commercial and Civic MRA]*, 202 N Broad St. [8/06/87]
Globe, *Globe Downtown Historic District [Globe Commercial and Civic MRA]*, Broad St. between Cedar and Tebbs [5/28/87]

ARIZONA—Continued

Maricopa County

Phoenix, *King's Rest Hotel Motor Court [Phoenix Commercial MRA]*, 801 S. Seventeenth Ave. [5/26/87]
Phoenix, *Medical Arts Building [Phoenix Commercial MRA]*, 545 E. McDowell Rd. [9/18/87]
Phoenix, *Tweed, Judge Charles Austin, House*, 1611 W. Fillmore Ave. [5/14/87]
Wickenburg, *Wisdom House [Wickenburg MRA]*, 48 Kerkes [5/08/87]

Mohave County

Kingman, *Anderson, R. L., House [Kingman MRA]*, 703 E. Beale [5/28/87]

Navajo County

Petrified Forest National Park, *Painted Desert Inn*, Off US 40 [5/26/87]

Pinal County

Florence, *Avenenti, Encarnacion, House [Florence MRA]*, 286 Butte St. [7/13/87]
Florence, *Florence Union High School [Florence MRA]*, S. Main St. [6/22/87]
Florence, *Manjares House [Florence MRA]*, 203 Silver St. [8/06/87]
Florence, *Pierson, Adrian, House, [Florence MRA]*, E. Sixth St. and US 89 [7/13/87]
Florence, *Truman-Randall House [Florence MRA]*, 2810 S. Main St. [7/13/87]

Santa Cruz County

Nogales, *US Custom House [Nogales MRA]*, Jct. of International and Terrace Sts. [6/06/87]
Tumacacori, *Tumacacori Museum*, Tumacacori National Monument [5/22/87]

Yavapai County

Cottonwood, *Superintendent's Residence [Cottonwood MRA]*, 315 S. Willard [10/14/86]

Yuma County

Fisher's Landing vicinity, *Martinez Lake Site (AZ-O50-0210)*, Address Restricted [9/10/87]
Roll, *Mohawk Valley School*, 5151 South Ave. 39 East [12/29/86]
Yuma, *Cactus Press—Plaza Paint Building [Yuma MRA]*, 30-54 E. Third St. [4/24/87]
Yuma, *Southern Pacific Freight Depot [Yuma MRA]*, Main St. [4/24/87]

ARKANSAS

Columbia County

Magnolia vicinity, *Ozmer House*, Southern Arkansas University farm, US 82 Bypass [11/20/86]

Dallas County

Fordyce, *Charlotte Street Historic District [Dallas County MRA]*, Roughly bounded by Holmes, Charlotte, Broadway, and E. College Sts. [9/14/87]

Fulton County

Mammoth Spring, *Saint Andrew's Episcopal Church*, AR 9 [11/26/86]

Garland County

Hot Springs, *Brown, W.C. House*, 2330 Central Ave. [10/16/86]
Shorewood Hills vicinity, *Cowchwood [Arkansas Sculptures of Dionicio Rodriguez TR]*, Address Restricted [12/04/86]
Shorewood Hills vicinity, *Little Switzerland [Arkansas Sculptures of Dionicio Rodriguez TR]*, Address Restricted [12/04/86]

Grant County

Sheridan, *Butler, Dr. John L., House*, 313 Oak St. [10/09/86]

Hempstead County

Hope, *Greening, E. S., House*, 707 E. Division St. [7/09/87]

Hot Spring County

Malvern, *Bank of Malvern*, 212 S. Main St. [3/13/87]
Shorewood Hills vicinity, *Couchwood [Arkansas Sculptures of Dionicio Rodriguez TR]*, Address Restricted [12/04/86]

Independence County

Batesville, *Bethel African Methodist Episcopal Church*, 895 Oak St. [10/16/86]
Batesville, *Dickinson, Edward, House*, 672 E. Boswell St. [11/26/86]
Desha, *Desha, Franklin, House*, Address Restricted [10/09/86]

Jackson County

Newport, *Arkansas Bank & Trust Company*, 103 Walnut St. [10/16/86]

Marion County

Yellville vicinity, *Rush Historic District*, Rush Rd. [2/27/87]
Yellville, *Carter—Jones House*, 30 Carter St. [7/21/87]

Mississippi County

Blytheville, *Blytheville Greyhound Bus Station*, 109 N. Fifth St. [8/17/87]
Osceola, *Bank of Osceola [Osceola MRA]*, 207 E. Hale St. [8/06/87]
Osceola, *City Hall [Osceola MRA]*, 316 W. Hale St. [8/06/87]
Osceola, *Florida Brothers Building [Osceola MRA]*, 319 W. Hale St. [8/06/87]
Osceola, *Hale Avenue Historic District [Osceola MRA]*, Roughly bounded by Hale Ave., Poplar St., Ford Ave., and Walnut St. [9/14/87]
Osceola, *Mississippi County Jail [Osceola MRA]*, 300 S. Poplar St. [8/06/87]
Osceola, *Old Bell Telephone Building [Osceola MRA]*, 100 blk. of Ash St. [8/06/87]
Osceola, *Osceola Times Building [Osceola MRA]*, 112 N. Poplar St. [8/06/87]
Osceola, *Planters Bank Building [Osceola MRA]*, 200 E. Hale St. [8/06/87]

Monroe County

Brinkley, *Mount Zion Missionary Baptist Church*, 409 S. Main St. [11/06/86]

Newton County

Erbie vicinity, *Parker—Hickman Farm Historic District*, Buffalo National River [8/11/87]
Ponca vicinity, *Big Buffalo Valley Historic District*, Buffalo National River [7/20/87]

Ouachita County

Stephens vicinity, *Holt-Poindexter Store Building*, Ouachita County Rd. [10/23/86]

Phillips County

Helena, *Beech Street Historic District*, Roughly bounded by McDonough, Columbia, Beech, Elm, Perry and College [1/30/87]
Helena, *Centennial Baptist Church*, York and Columbia Sts. [3/26/87]
Helena, *Cherry Street Historic District*, Along Cherry St. between Porter and Elm Sts. [8/17/87]
Helena, *Perry Street Historic District*, Perry St. between Pecan and Franklin and Pecan St. from Porter to Perry [11/26/86]

Pike County

Murfreesboro, *Pike County Courthouse*, Courthouse Sq. [10/16/86]

Poinsett County

Trumann, *Poinsett Community Club*, Main and Poinsett Sts. [10/09/86]

Pulaski County

Little Rock, *Albert Pike Memorial Temple [Little Rock Main Street MRA]*, 760-724 Scott St. [11/13/86]
Little Rock, *Blass, Gus, Department Store [Little Rock Main Street MRA]*, 318-324 Main St. [11/13/86]
Little Rock, *Exchange Bank Building [Thompson, Charles L., Design Collection TR]*, 423 Main St. [10/23/86]
Little Rock, *Federal Reserve Bank Building [Thompson, Charles L., Design Collection TR]*, 123 W. Third St. [10/23/86]
Little Rock, *First United Methodist Church*, 723 Center St. [10/09/86]
Little Rock, *First Presbyterian Church [Little Rock Main Street MRA]*, 123 E. Eighth St. [11/13/86]
Little Rock, *Folk Building [Little Rock Main Street MRA]*, 300 Main St. [11/13/86]
Little Rock, *Moore Building [Thompson, Charles L., Design Collection TR]*, 519-523 Center St. [10/23/86]
Little Rock, *Mount Zion Baptist Church*, 900 Cross St. [3/27/87]
Little Rock, *Rose Building [Little Rock Main Street MRA]*, 307 Main St. [11/13/86]
Little Rock, *Saint Andrews Catholic Cathedral [Little Rock Main Street MRA]*, 617 Louisiana St. [11/13/86]
Little Rock, *Taylor Building [Little Rock Main Street MRA]*, 304 Main St. [11/13/86]
Little Rock, *Turner-Ledbetter House*, 1700 S. Louisiana St. [6/18/87]
Little Rock, *Worthen Bank Building [Little Rock Main Street MRA]*, 401 Main St. [11/13/86]
North Little Rock, *Crestview Park [Arkansas Sculptures of Dionicio Rodriguez TR]*, Address Restricted [12/04/86]
North Little Rock, *Hempfling, Barth, House*, 807 Main St. [10/16/86]
North Little Rock, *Lakewood Park [Arkansas Sculptures of Dionicio Rodriguez TR]*, Address Restricted [12/04/86]
North Little Rock, *Pugh, T. R., Memorial Park [Arkansas Sculptures of Dionicio*

ARKANSAS—Continued

Rodriguez TR], Address Restricted [12/04/86]

Union County

El Dorado, *Exchange Bank*, Washington and Oak Sts. [12/16/86]
Lisbon, *Mount Moriah Masonic Lodge No. 18*, Off AR 172 [3/13/87]

Washington County

Fayetteville, *Lewis Brothers Building*, 1 S. Block [8/17/87]
Woolsey vicinity, *Brown Bluff (3WA10)*, Address Restricted [6/24/87]

White County

Judsonia, *Henson, Alfred W., House*, 111 Main St. [10/23/86]

Woodruff County

Augusta, *Augusta Presbyterian Church*, Third and Walnut Sts. [10/16/86]

Yell County

Dardanelle, *First Presbyterian Church*, Second and Quay Sts. [7/09/87]

CALIFORNIA

Alameda County

Berkeley, *Church of the Good Shepherd-Episcopal*, 1301 Hearst St. at Ninth St. [12/01/86]
Oakland, *USS POTOMAC (yacht)*, 1060 Embarcadero [2/20/87]

Butte County

Chico, *Southern Pacific Depot*, 430 Orange St. [1/29/87]

Contra Costa County

Antioch, *Shannon—Williamson Ranch*, RR 1/Lone Tree Way [1/29/87]

El Dorado County

Placerville, *Eddy Tree Breeding Station*, 2480 and 2500 Carson Rd. [3/31/87]
South Lake Tahoe, *Baldwin Estate*, NW of US 50 and CA 89 jct. on N side of CA 89 [4/01/87]
South Lake Tahoe, *Heller Estate*, NW of US 50 and CA 89 jct. on N side of CA 89 [4/01/87]
South Lake Tahoe, *Pope Estate*, NW of US 50 and CA 89 jct. on N side of CA 89 [4/01/87]

Humboldt County

Fernbridge, *Fernbridge*, CA 211 [4/02/87]

Imperial County

Yuma vicinity, *Stonehead (L-7) [Earth Figures of California-Arizona Colorado River Basin TR]*, Address Restricted [5/01/87]
Yuma vicinity, *Winterhaven Anthropomorph (L-8) [Earth Figures of California-Arizona Colorado River Basin TR]*, Address Restricted [5/01/87]

Kern County

Tehachapi vicinity, *Gross, Courtlandt, House*, 18600 Courtlandt Ct. [3/22/87]

Los Angeles County

Beverly Hills, *Beverly Wilshire Hotel*, 9526 Wilshire Blvd. [6/12/87]
Culver City, *Citizens Publishing Company Building*, 9353 Culver Blvd. [2/12/87]
Lancaster, *Antelope Valley Indian Museum*, 15701 East Ave. [2/26/87]
Los Angeles, *Al Malaikah Temple*, 655 W. Jefferson Blvd. [4/02/87]
Los Angeles, *Angelus Mesa Branch [Los Angeles Branch Library System TR]*, 2700 W. Fifty-second St. [5/19/87]
Los Angeles, *Cahuenga Branch [Los Angeles Branch Library System TR]*, 4591 W. Santa Monica Blvd. [5/19/87]
Los Angeles, *Dana, Richard Henry, Branch [Los Angeles Branch Library System TR]*, 3320 Pepper St. [5/19/87]
Los Angeles, *De Neve, Felipe, Branch [Los Angeles Branch Library System TR]*, 2820 W. Sixth St. [5/19/87]
Los Angeles, *Eagle Rock Branch Library [Los Angeles Branch Library System TR]*, 2224 Colorado Blvd. [5/19/87]
Los Angeles, *Fremont, John C., Branch [Los Angeles Branch Library System TR]*, 6121 Melrose Ave. [5/19/87]
Los Angeles, *Garbutt House*, 1809 Apex Ave. [7/22/87]
Los Angeles, *Granada Shoppes and Studios*, 672 S. Lafayette Park Pl. [11/20/86]
Los Angeles, *Irving, Washington, Branch [Los Angeles Branch Library System TR]*, 1803 S. Arlington Ave. [5/19/87]
Los Angeles, *Jackson, Helen Hunt, Branch [Los Angeles Branch Library System TR]*, 2330 Naomi St. [5/19/87]
Los Angeles, *Jardinette Apartments*, 5128 Marathon St. [12/29/86]
Los Angeles, *Jefferson Branch [Los Angeles Branch Library System TR]*, 2211 W. Jefferson Blvd. [5/19/87]
Los Angeles, *Lincoln Heights Branch [Los Angeles Branch Library System TR]*, 2530 Workman St. [5/19/87]
Los Angeles, *Malabar Branch [Los Angeles Branch Library System TR]*, 2801 Wabash Ave. [5/19/87]
Los Angeles, *Memorial Branch [Los Angeles Branch Library System TR]*, 4645 W. Olympic Blvd. [5/19/87]
Los Angeles, *Menlo Avenue—West Twenty-ninth Street Historic District*, Bounded by Adams Blvd., Ellendale, Thirtieth Ave., and Vermont [2/12/87]
Los Angeles, *Moneta Branch [Los Angeles Branch Library System TR]*, 4255 S. Olive St. [5/19/87]
Los Angeles, *Muir, John, Branch [Los Angeles Branch Library System TR]*, 1005 W. Sixty-fourth St. [5/19/87]
Los Angeles, *North Hollywood Branch [Los Angeles Branch Library System TR]*, 5211 N. Tujunga Ave. [5/19/87]
Los Angeles, *Second Church of Christ, Scientist*, 946 W. Adams Blvd. [4/02/87]
Los Angeles, *Stevenson, Robert Louis, Branch [Los Angeles Branch Library System TR]*, 803 Spence St. [5/19/87]
Los Angeles, *Van Nuys Branch [Los Angeles Branch Library System TR]*, 14553 Sylvan Way [5/19/87]
Los Angeles, *Venice Branch [Los Angeles Branch Library System TR]*, 610 California Ave. [5/19/87]
Los Angeles, *Vermont Square Branch [Los Angeles Branch Library System TR]*, 1201 W. Forty-eighth St. [5/19/87]
Los Angeles, *Wilmington Branch [Los Angeles Branch Library System TR]*, 300 W. Opp St. [5/19/87]
Los Angeles, *Wilshire Branch [Los Angeles Branch Library System TR]*, 149 N. Saint Andrews Pl. [5/19/87]
Pasadena, *First Trust Building and Garage*, 567-611 E. Colorado Blvd. and 30-44 N. Madison Ave. [6/12/87]
Pasadena, *Home Laundry*, 432 S. Arroyo Pkwy. [6/18/87]
Pasadena, *Rose Bowl, The*, 991 Rosemont Ave., Brookside Park [2/27/87]
Rancho Palos Verdes, *Villa Francesca*, 1 Peppertree Dr. [10/02/87]
Santa Monica, *Santa Monica Looff Hippodrome*, 276 Santa Monica Pier [2/27/87]
West Hollywood, *Wright, Lloyd, Home and Studio*, 858 N. Doheny Dr. [4/06/87]

Mariposa County

Yosemite National Park, *Rangers' Club*, Yosemite Valley [5/28/87]

Monterey County

Gonzales, *Gabilan Lodge No. 373—Independent Order of Odd Fellows*, 117 Fourth St. [10/02/86]
Pacific Grove, *Asilomar Conference Grounds*, Asilomar Blvd. [2/27/87]

Napa County

Napa, *Eshcol Winery*, 1160 Oak Knoll Ave. [7/16/87]
Pope Valley, *Aetna Springs Resort*, 1600 Aetna Springs Rd. [3/09/87]
St. Helena, *Chateau Chevalier*, 3101 Spring Mountain Rd. [6/12/87]

Sacramento County

Wilton vicinity, *Alta Mesa Farm Bureau Hall*, 10195 Alta Mesa Rd. [1/07/87]

San Diego County

San Diego, *Sweet, A.H., Residence and Adjacent Small House*, 435 W. Spruce and 3141 Curlew Sts. [4/16/87]

San Francisco County

San Francisco, *Hale Brothers Department Store*, 901 Market St. [12/18/86]
San Francisco, *Pacific Gas and Electric Company Substation J*, 565 Commercial and 568 Sacramento Sts. [12/29/86]
San Francisco, *Pioneer Trunk Factory—C. A. Malm & Co.*, 2185-2199 Folsom and 3180 Eighteenth Sts. [3/05/87]

Santa Barbara County

Montecito, *Steedman Estate*, 1387 E. Valley Rd. [1/29/87]
Santa Barbara, *Janssens-Orello-Birk Building*, 1029-1031 State St. [7/16/87]

Santa Cruz County

Capitola, *Six Sisters-Lawn Way Historic District*, Roughly bounded by San Jose Ave., Capitola Ave., and Esplanade [5/01/87]
Capitola, *Venetian Court Apartments*, 1500 Wharf Rd. [4/02/87]
Santa Cruz, *Looff Carousel and Roller Coaster on the Santa Cruz Beach Boardwalk*, Along Beach St. [2/27/87]
Santa Cruz, *Pacific Avenue Historic District*, Roughly bounded by Pacific Ave., Water, Front, and Cathcart Sts. [2/05/87]

CALIFORNIA—Continued
Sonoma County
Graton, *Hicks House*, 3160 Hicks Rd. [7/21/87]
Healdsburg, *Madrona Knoll Rancho District*, 1001 Westside Rd. [4/02/87]
Sea Ranch, *Knipp and Stengel Ranch Barn*, CA 1 [1/29/87]

Tulare County
Porterville, *Zalud House*, 393 N. Hockett St. [3/31/87]

Ventura County
Ventura, *Ventura Theatre*, 26 S. Chestnut [12/29/86]

COLORADO

Bent County
Las Animas, *Boggsville*, S of Las Animas on CO 101 [10/24/86]

Boulder County
Longmont, *Dickens Opera House*, 300 Main St. [7/28/87]
Longmont, *Longmont College*, 546 Atwood St. [8/12/87]
Longmont, *West Side Historic District*, Roughly bounded by Fifth, Terry, Third, and Grant [1/07/87]
Lyons vicinity, *Longmont Power Plant*, Old Apple Valley Rd. [9/10/87]

Denver County
Denver, *Arno Apartments*, 325 E. Eighteenth Ave. [2/05/87]
Denver, *Montgomery Court*, 215 E. Eleventh Ave. [10/02/86]
Denver, *Montview Boulevard, [Denver Park and Parkway System TR]*, Montview Blvd. from Colorado Blvd. to Monaco St. Pkwy. [10/01/86]
Denver, *New Terrace*, 900–914 E. Twentieth Ave. [2/05/87]

Dolores County
Dolores vicinity, *Beaver Creek Massacre Site*, Beaver Creek and Trail Canyon Rd. [10/02/86]

El Paso County
Colorado Springs, *Boulder Crescent Place Historic District*, 9 and 11 W. Boulder St. and 312, 318, and 320 N. Cascade [9/10/87]
Colorado Springs, *Gwynne—Love House*, 730 N. Cascade Ave. [2/05/87]

Garfield County
Glenwood Springs, *Taylor, Edward T., House*, 903 Bennett Ave. [11/14/86]

Grand County
Estes Park vicinity, *Milner Pass Road Camp Mess Hall and House [Rocky Mountain National Park MRA]*, Milner Pass Rd. [7/20/87]
Estes Park vicinity, *Timber Creek Road Camp Barn [Rocky Mountain National Park MRA]*, Timber Creek Rd. [7/30/87]

Huerfano County
La Veta, *Francisco Plaza*, 312 S. Main St. [10/23/86]

Jefferson County
Denver, *Tower of Memories*, 8500 W. Twenty-ninth Ave. [9/25/87]

Kit Carson County
Burlington, *Philadelphia Toboggan Company Carousel No. 6*, Kit Carson County Fairgrounds [2/27/87]

Larimer County
Estes Park vicinity, *Fall River Road [Rocky Mountain National Park MRA]*, Fall River Rd. [7/20/87]
Estes Park vicinity, *Glacier Basin Campground Ranger Station [Rocky Mountain National Park MRA]*, Glacier Basin [7/20/87]
Estes Park vicinity, *Willow Park Patrol Cabin [Rocky Mountain National Park MRA]*, Fall River Rd. [7/20/87]
Estes Park vicinity, *Willow Park Stable [Rocky Mountain National Park MRA]*, Fall River Pass [7/20/87]

Moffat County
Dinosaur, *Julien, Denis, Inscription [Dinosaur National Monument MRA]*, US 40 [12/19/86]
Dinosaur, *Upper Wade and Curtis Cabin [Dinosaur National Monument MRA]*, US 40 [12/19/86]

Montezuma County
Mesa Verde National Park, *Mesa Verde Administrative District*, Area at head of Spruce Canyon off park service road [5/28/87]

Morgan County
Fort Morgan, *Sherman Street Historic Residential District*, 400 and 500 blks. of Sherman St. [9/10/87]

Pitkin County
Aspen, *Bowles—Cooley House [Aspen MRA]*, 201 W. Francis St. [3/06/87]
Aspen, *Callahan, Matthew, Log Cabin [Aspen MRA]*, 205 S. Third St. [3/06/87]
Aspen, *Collins Block—Aspen Lumber and Supply [Aspen MRA]*, 204 S. Mill St. [3/06/87]
Aspen, *Dixon—Markle House [Aspen MRA]*, 135 E. Cooper Ave. [3/06/87]
Aspen, *Frantz, D. E., House [Aspen MRA]*, 333 W. Bleeker St. [3/06/87]
Aspen, *Hallett, Samuel I., House [Aspen MRA]*, 432 W. Francis St. [3/06/87]
Aspen, *Hynes, Thomas, House [Aspen MRA]*, 303 E. Main St. [3/06/87]
Aspen, *La Fave Block [Aspen MRA]*, 405 S. Hunter St. [3/06/87]
Aspen, *New Brick—The Brick Saloon [Aspen MRA]*, 420 E. Cooper Ave. [3/06/87]
Aspen, *Newberry House [Aspen MRA]*, 208 Lake Ave. [3/06/87]
Aspen, *Riede's City Bakery [Aspen MRA]*, 413 E. Hyman Ave. [3/06/87]
Aspen, *Shilling—Lamb House [Aspen MRA]*, 525 N. Fifth St. [3/06/87]
Aspen, *Smuggler Mine [Aspen MRA]*, Smuggler Mountain [5/18/87]
Aspen, *Waite, Davis, House [Aspen MRA]*, 234 W. Francis St. [3/06/87]
Aspen, *Webber, Henry, House—Pioneer Park [Aspen MRA]*, 442 W. Bleeker St. [3/06/87]

Pueblo County
Pueblo, *Fitch Terrace*, 401,403, 405, 407, 409, and 411 W. Eleventh St. [10/02/86]

CONNECTICUT

Fairfield County
Bridgeport, *Bassickville Historic District*, 20–122 Bassick, 667–777 Howard, and 1521–1523 Fairview Aves., and 50–1380 State St. [9/08/87]
Bridgeport, *Bishop, Peyton Randolph, House*, 135 Washington Ave. [8/25/87]
Bridgeport, *Bridgeport Downtown South Historic District [Downtown Bridgeport MRA]*, Roughly bounded by Elm, Cannon, Main, Gilbert, and Broad Sts. [9/03/87]
Bridgeport, *Golden Hill Historic District [Downtown Bridgeport MRA]*, Roughly bounded by Congress St., Lyon Terr., Elm, and Harrison Sts. [9/03/87]
Bridgeport, *Pequonnock River Railroad Bridge [Movable Railroad Bridges on the NE Corridor in Connecticut TR]*, AMTRAK right-of-way at Pequonnock River [6/12/87]
Fairfield, *Osborne, John, House*, 909 King's Hwy. W [2/12/87]
Greenwich, *Greenwich Town Hall*, 229 Greenwich Ave. [5/21/87]
Greenwich, *Mianus River Railroad Bridge [Movable Railroad Bridges on the NE Corridor in Connecticut TR]*, AMTRAK right-of-way at Mianus River [6/12/87]
Milford-Stratford vicinity, *Housatonic River Railroad Bridge [Movable Railroad Bridges on the NE Corridor in Connecticut TR]*, AMTRAK right-of-way at Housatonic River [6/12/87]
Redding (also in Wilton), *Georgetown Historic District*, Roughly bounded by US 7, Portland Ave., CT 107, and the Norwalk River [3/09/87]
South Norwalk vicinity, *Norwalk River Railroad Bridge [Movable Railroad Bridges on the NE Corridor in Connecticut TR]*, AMTRAK right-of-way at Norwalk River [6/12/87]
Stamford, *Long Ridge Village Historic District*, Old Long Ridge Rd. bounded by the New York State Line, Rock Rimmon Rd., and Long Ridge Rd./CT 104 [6/02/87]
Stamford, *Main Street Bridge*, Carries Main St. over the Rippowam River [5/21/87]
Stamford, *Turn-of-River Bridge*, Old N. Stamford Rd. at Rippowam River [7/31/87]
Trumbull, *Nichols Farms Historic District*, Center Rd., 1661–1944 Huntington Turnpike, 5–34 Priscilla Pl., and 30–172 Shelton Rd. [8/20/87]
Westport, *Saugatuck River Bridge*, CT 136 [2/12/87]
Westport, *Saugatuck River Railroad Bridge [Movable Railroad Bridges on the NE Corridor in Connecticut TR]*, AMTRAK right-of-way at Saugatuck River [6/12/87]

Hartford County
Bristol, *Bristol Girls' Club*, 47 Upson St. [6/03/87]
Bristol, *Jerome, William I., House*, 367 Jerome Ave. [6/02/87]
Bristol, *Rockwell Park*, Dutton Ave. and Jacobs St. [5/21/87]
Burlington, *Hart's Corner Historic District*, 247 Monca Rd. and 102 and 105 Stafford Rd. [7/09/87]
Newington, *Newington Junction North Historic District [Newington Junction MRA]*, 55–106 Willard Ave. [6/02/87]

CONNECTICUT—Continued
Newington, *Newington Junction South Historic District [Newington Junction MRA]*, 269–319 Willard Ave. [6/02/87]
Newington, *Newington Junction Railroad Depot [Newington Junction MRA]*, 160 Willard and 200 Francis Aves. [12/22/86]
Newington, *Newington Junction West Historic District [Newington Junction MRA]*, 175 and 181–183 Willard Ave. and 269–363 W. Hill Rd. [6/02/87]
Newington, *Willard Homestead [Newington Junction MRA]*, 372 Willard Ave. [12/22/86]
Simsbury, *Simsbury Bank and Trust Company Building*, 760–762 Hopmeadow St. [11/20/86]
West Hartford, *Whiting Homestead [Eighteenth Century Houses of West Hartford TR (AD)]*, 221 N. Main St. [4/03/87]
Windsor Locks, *Memorial Hall*, [ct. of S. Main and Elm Sts. [6/02/87]
Windsor, *Fitch, John, School*, 158 Bloomfield Ave. [12/02/86]
Windsor, *Palisado Avenue Historic District*, Palisado Ave. between the Farmington River and Bissell Ferry Rd. [9/25/87]

Litchfield County
Milton, *Milton Center Historic District*, Roughly bounded by Milton, Shearshop, Headquarters, Sawmill, and Blue Swamp Rds. [2/23/86]
Torrington, *Fyler—Hotchkiss Estate*, 192 Main St. [2/12/87]
Torrington, *Warrenton Woolen Mill*, 899 Main St. [2/12/87]

Middlesex County
East Haddam vicinity, *Roaring Brook II Site [Lower Connecticut River Valley Woodland Period Archeological TR]*, Address Restricted [7/31/87]
East Haddam vicinity, *Roaring Brook I Site [Lower Connecticut River Valley Woodland Period Archeological TR]*, Address Restricted [7/31/87]
East Haddam, *Warner House*, 307 Town St. [2/19/87]
Essex, *Centerbrook Congregational Church*, Main St. [2/12/87]
Middletown, *Wilcox, Crittenden Mill*, 234–315 S. Main St., Pameacha, and Highlands Aves. [12/03/86]

New Haven County
Branford, *Branford Center Historic District*, Roughly bounded by US 1, Branford River on the East and South, Monroe, and Kirkham Sts. [5/08/87]
Derby, *Kraus Corset Factory*, Roosevelt Dr. and Third St. [2/12/87]
Meriden, *Colony Street—West Main Street Historic District*, 1–62 Colony, 55 Grove, 1–119 and 82–110 W. Main Sts. [9/04/87]
Meriden, *Meriden Curtain Fixture Company Factory*, 122 Charles St. [12/04/86]
New Haven, *Yale Bowl*, SW of intersection of Chapel St. and Yale Ave. [2/27/87]
Southbury, *South Britain Historic District*, E. Flat Hill, Hawkins, Library, and Middle Rds., and 497–864 S. Britain Rd. [2/12/87]
Waterbury, *Hillside Historic District*, Roughly bounded by Woodlawn Terr., W. Main, and Willow [8/20/87]

New London County
Norwich, *Little Plain Historic District (Boundary Increase)*, 120–156 Broadway and 10–86 Union St. [1/12/87]
Old Lyme vicinity, *Bennett Rockshelter [Lower Connecticut River Valley Woodland Period Archeological TR]*, Address Restricted [7/31/87]
Old Lyme vicinity, *Lieutenant River No. 2 [Lower Connecticut River Valley Woodland Period Archeological TR]*, Address Restricted [7/31/87]
Old Lyme vicinity, *Lieutenant River III Site [Lower Connecticut River Valley Woodland Period Archeological TR]*, Address Restricted [7/31/87]
Old Lyme vicinity, *Lieutenant River IV Site [Lower Connecticut River Valley Woodland Period Archeological TR]*, Address Restricted [7/31/87]
Old Lyme vicinity, *Nelson Site [Lower Connecticut River Valley Woodland Period Archeological TR]*, Address Restricted [7/31/87]
Preston, *Preston City Historic District*, Amos and Old Shetucket Rds., Northwest Corner Rd., and CT 164 [7/31/87]
Sprague, *Baltic Historic District*, Roughly bounded by Fifth Ave., River, High, Main, W. Main, and the Shetucket River [6/09/87]
Waterford, *Bolio—Harkness Estate*, Great Neck Rd. [11/20/86]

Tolland County
Coventry, *Coventry Glass Factory Historic District*, US 44 and N. River Rd. [6/27/87]

Windham County
Brooklyn, *Bush Hill Historic District*, Parts of Bush Hill Rd., CT 169, and Wolf Den Rd. [2/10/87]
Woodstock, *Bowen, Mathew, Homestead*, Plaine Hill Rd. [9/10/87]

DELAWARE

Kent County
Clayton, *Clayton Railroad Station*, Bassett St. [11/06/86]
Wyoming, *Wyoming Historic District*, Roughly bounded by Front St., Rodney Ave., Southern Blvd., and Mechanic St. [2/18/87]

New Castle County
Marshallton, *Marshallton United Methodist Church*, 1105 Stanton Rd. [2/18/87]
Middletown vicinity, *Biggs, Gov. Benjamin T., Farm*, CR 435, Choptank Rd. [9/11/87]
Middletown vicinity, *Cornucopia*, CR 433, Bethel Rd. [9/08/87]
Middletown vicinity, *Fairview*, CR 433, Bethel Church Rd. [9/08/87]
Newark vicinity, *Armstrong, A., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Old Wilmington Rd. W of Brackenville Rd. [11/13/86]
Newark vicinity, *Bartley—Tweed Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Foxden Rd. E of Polly Drummond Rd. [11/13/86]
Newark vicinity, *Dixon, S. P., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Wooddale and Brackenville Rds. [11/13/86]
Newark vicinity, *Eastburn, Davis, Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Corner Ketch Rd. SE of Wilmington-Landenberg Rd. [11/13/86]
Newark vicinity, *Eastburn, J., Barn [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Pleasant Hill Rd. SW of Corner Ketch Rd. [11/13/86]
Newark vicinity, *Lindsay, J., Barn [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Middleton Rd. near Marmaid-Stoney Batter Rd. [11/13/86]
Newark vicinity, *Mason, J., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, DE 82 S of Way Rd. [11/13/86]
Newark vicinity, *McCormack, J., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Newport Gap Turnpike N of Mill Creek Rd. [11/13/86]
Newark vicinity, *McDaniel, J., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Paper Mill Rd. E of Pike Creek Rd. [11/13/86]
Newark vicinity, *McIntyre, J., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Limestone Rd. N of Valley Rd. [11/13/86]
Newark vicinity, *Morgan, William, Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Wilmington-Landenberg Rd. N of Corner Ketch Rd. [11/13/86]
Newark vicinity, *Pierson, T., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Southwood Rd. [11/13/86]
Newark vicinity, *Springer Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Limestone Rd. [11/13/86]
Newark vicinity, *Stinson, J., Farm [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, 750 Corner Ketch Rd. [11/13/86]
Newark vicinity, *Walker, R., Barn [Agricultural Buildings and Complexes in Mill Creek Hundred, 1800–1840 TR]*, Near corner of Skyline and Foxcroft Drs. [11/13/86]
Odessa vicinity, *Old Ford Dairy (Boundary Increase) [Rebuilding St. George Hundred, 1680–1880 TR]*, US 13 [12/11/86]
Wilmington, *Church Street Historic District*, Bounded by Eighth, Locust, Seventh, and Church Sts. [6/12/87]
Wilmington, *Woolworth, F. W., Company Building [Market Street MRA]*, 839 N. Market St. [1/02/87]
Wilmington, *Dupont, P. S., High School*, Thirty-fourth St. between N. Monroe and N. Franklin Sts. [10/23/86]

Sussex County
Georgetown, *Messick, Dr. John W., House and Office*, 144 E. Market St. [9/09/87]
Milford vicinity, *Mispillion Lighthouse and Beacon Tower*, NE end of CR 203 [2/18/87]
Portsville, *Portsville Lighthouse*, N side of CR 493 [9/09/87]

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DELAWARE—Continued

Seaford, *Building at 200–202A High Street [Seaford Commercial Buildings TR]*, 200–202A High St. [2/18/87]

Seaford, *Building at High and Cannon Streets [Seaford Commercial Buildings TR]*, SE corner of High and Cannon Sts. [2/18/87]

Seaford, *Building at 218 High Street [Seaford Commercial Buildings TR]*, 218 High St. [2/18/87]

Seaford, *Cox, J. W., Dry Goods Store [Seaford Commercial Buildings TR]*, 214 High St. [2/18/87]

Seaford, *First National Bank of Seaford [Seaford Commercial Buildings TR]*, 118 Pine St. [2/18/87]

Seaford, *Sussex National Bank of Seaford [Seaford Commercial Buildings TR]*, 130 High St. [2/18/87]

DISTRICT OF COLUMBIA

District of Columbia

Washington, *Asbury United Methodist Church*, Eleventh and K Sts. NW [11/01/86]

Washington, *Buildings at 1644–1666 Park Road NW*, 1644–1666 Park Rd. NW [11/06/86]

Washington, *Cleveland Park Historic District*, Roughly bounded by Tilden St., Connecticut Ave., Klingle Rd., and Wisconsin Ave., NW [4/27/87]

Washington, *Embassy Building No. 10*, 3140 Sixteenth St. NW [11/06/86]

Washington, *Evans—Tibbs House*, 1910 Vermont Ave. NW [9/08/87]

Washington, *Ingleside*, 1818 Newton St. NW [1/08/87]

Washington, *Interior Department Offices*, Eighteenth and F Sts. NW [11/23/86]

Washington, *Kalorama Triangle Historic District*, Roughly bounded by Connecticut Ave., Columbia Rd., and Calvert St., NW [5/04/87]

Washington, *M Street High School*, 128 M St. NW [10/23/86]

Washington, *Masonic Temple*, 801 Thirteenth St., NW [2/18/87]

Washington, *McLachlen Building*, 1001 G St. NW [11/06/86]

Washington, *Riggs—Tompkins Building*, 1403–1405 and 1413 Park Rd. NW and 3300, 3306–3316, 3328, and 3336 Fourteenth St. NW [1/05/87]

Washington, *Southern Aid Society—Dunbar Theater Building*, 1901–1903 Seventh St. NW [11/06/86]

Washington, *Supreme Court Building*, First and E. Capitol Sts. NE [5/04/87]

Washington, *Tenth Precinct Station House*, 750 Park Rd. NW [11/10/86]

Washington, *Thomas, Almo, House*, 1530 Fifteenth St. NW [7/28/87]

Washington, *US Department of the Interior Building*, Eighteenth and C Sts. NW [11/10/86]

Washington, *Walsh Stable*, 1511 (rear) Twenty-second St. NW [11/06/86]

FLORIDA

Brevard County

Titusville vicinity, *Windover Archeological Site (8BR246)*, Address Restricted [4/20/87]

Charlotte County

Punta Gorda, *Freeman, A. C., House*, 639 E. Hargreaves Ave. [1/07/87]

Dade County

Goulds vicinity, *Silver Palm Schoolhouse*, Silver Palm Dr. and Newton Rd. [7/02/87]

Miami, *Greenwald, I. and E., Steam Engine No. 1058*, 3696 Shipping Ave. [3/12/87]

Miami, *South River Drive Historic District*, 428, 438 SW First St., 437 SW Second St., 104, 109, 118 SW South River Dr. [6/10/87]

Opa-Locka, *Baird House [Opa-Locka TR]*, 401 Dunad Ave. [6/17/87]

Opa-Locka, *Cravero House [Opa-Locka TR]*, 1011 Sharar Ave. [6/17/87]

Opa-Locka, *Crouse House [Opa-Locka TR]*, 1150 Peri St. [6/17/87]

Opa-Locka, *Etheredge House [Opa-Locka TR]*, 915 Sharar Ave. [6/17/87]

Opa-Locka, *Griffiths House [Opa-Locka TR]*, 828 Superior St. [6/17/87]

Opa-Locka, *Haislip House [Opa-Locka TR]*, 1141 Jann Ave. [6/17/87]

Opa-Locka, *Helm Stores and Apartments [Opa-Locka TR]*, 1217 Sharazad Blvd. [6/17/87]

Opa-Locka, *Helms House [Opa-Locka TR]*, 721 Sharar Ave. [6/17/87]

Opa-Locka, *Higgins Duplex [Opa-Locka TR]*, 1210–1212 Sesame St. [6/17/87]

Opa-Locka, *King Trunk Factory and Showroom [Opa-Locka TR]*, 951 Superior St. [6/17/87]

Opa-Locka, *Long House [Opa-Locka TR]*, 613 Sharar Ave. [6/17/87]

Opa-Locka, *Opa-Locka Railroad Station [Opa-Locka TR]*, 490 Ali Baba Ave. [6/25/87]

Opa-Locka, *Root Building [Opa-Locka TR]*, 111 Perviz Ave. [6/17/87]

Opa-Locka, *Taber Duplex [Opa-Locka TR]*, 1214–1216 Sesame St. [6/17/87]

Opa-Locka, *Tinsman House [Opa-Locka TR]*, 1110 Peri St. [6/17/87]

Opa-Locka, *Tooker House [Opa-Locka TR]*, 811 Dunad Ave. [6/17/87]

Opa-Locka, *Wheeler House [Opa-Locka TR]*, 1035 Dunad Ave. [6/17/87]

Duval County

Jacksonville, *Old Jacksonville Free Public Library*, 101 E. Adams St. [1/22/87]

Jacksonville, *Springfield Historic District*, Roughly bounded by Twelfth, Clark, and First Sts., Hogans Creek and Boulevard [1/22/87]

Hillsborough County

Tampa, *Curtis, William E., House*, 808 E. Curtis St. [6/27/87]

Indian River County

Vero Beach, *Vero Railroad Station*, 2336 Fourteenth St. [1/06/87]

Lake County

Mount Dora, *Lakeside Inn*, 100 N. Alexander St. [3/19/87]

Leon County

Tallahassee, *Johnson—Carter House*, 800 N. Calhoun St. [9/17/87]

Manatee County

Bradenton, *Bradenton Carnegie Library*, 1405 Fourth Ave. W [4/09/87]

Palmetto, *Palmetto Historic District*, Roughly bounded by Twenty-first Ave., Seventh St., Fifth Ave., and the Manatee River [11/06/86]

Nassau County

Fernandina Beach, *Fernandina Beach Historic District (Boundary Increase)*, Roughly bounded by Sixth, Broome, N. Third, and Escambia Sts.; Seventh and Date Sts., and Ash [4/20/87]

Orange County

Ocoee, *Withers—Maguire House*, 16 E. Oakland Ave. [4/02/87]

Santa Rosa County

Milton vicinity, *Arcadia Sawmill and Arcadia Cotton Mill*, Address Restricted [6/03/87]

Sarasota County

Sarasota, *Burns Realty Company—Karl Bickel House [Sarasota MRA]*, 101 N. Tamiami Trail [3/05/87]

Sarasota, *El Vernona Hotel—John Ringling Hotel [Sarasota MRA]*, 111 N. Tamiami Trail [3/05/87]

Seminole County

Sanford, *Old Fernald-Laughton Memorial Hospital*, 500 S. Oak Ave. [5/21/87]

St. Johns County

St. Augustine, *Old St. Johns County Jail*, 167 San Marco Ave. [6/27/87]

Volusia County

Daytona Beach, *Abbey, The*, 426 S. Beach St. [4/09/87]

GEORGIA

Bacon County

Alma, *Rabinowitz Building*, 203–205 W. Eleventh St. [6/27/87]

Baldwin County

Milledge vicinity, *Westover*, 151 Meriwether Rd. NW [2/12/87]

Bartow County

Cassville vicinity, *Noble Hill School*, Gaddis Rd. [7/02/87]

Bibb County

Macon, *Macon Railroad Industrial District*, Roughly bounded by Fifth, Sixth, and Seventh Sts., Central of Georgia, Southern, and Seaboard RR tracks [6/12/87]

Bulloch County

Statesboro, *Raines, William G., House*, 106 S. Main St. [6/31/87]

Chatham County

Savannah vicinity, *CSS GEORGIA (ironclad)*, Address Restricted [2/10/87]

Chattooga County

Cloudland vicinity, *Camp Juliette Low*, GA 157 [9/01/87]

Clarke County

Athens, *Young Women's Christian Association Complex*, 345–347 W. Hancock St. [5/12/87]

Cobb County

Powder Springs, *Midway Presbyterian Church and Cemetery*, 4035 Dallas Hwy./GA 120 SW [12/29/86]

GEORGIA—Continued

DeKalb County

Avondale Estates, *Avondale Estates Historic District*, Roughly bounded by Avondale Rd., Lakeshore Dr., Kingstone, Clarendon, and Fairchild Dr., also Lake Avondale [12/08/86]

Decatur County

Brinson, *Brinson Family Historic District*, Bainbridge, Wainhurst and Leon Sts. [10/02/86]

Elbert County

Elberton, *Dove Creek Baptist Church*, GA 72 [7/09/87]

Fulton County

Atlanta, *Atlanta Stockade*, 760 Glenwood Ave. [6/25/87]

Atlanta, *Garden Hills Historic District*, Roughly bounded by Delmont and Brentwood and N. Hills Drs., Piemont, E. Wesley, and Peachtree Rds. [6/17/87]

Atlanta, *Raoul, William G., House*, 848 Peachtree St. [12/15/86]

Greene County

Greensboro, *Church of the Redeemer [Greensboro MRA]*, Jct. of Main and North Sts. [9/09/87]

Greensboro, *Greensboro Depot [Greensboro MRA]*, West St. [9/09/87]

Greensboro, *King—Knowles—Gheesling House [Greensboro MRA]*, North St. [9/09/87]

Greensboro, *Leila, Mary, Cotton Mill and Village [Greensboro MRA]*, Roughly bounded by Cherry and Buffalo Sts. and Richland Ave., GA RR, Spring and Mill, and Mapple Sts. [9/09/87]

Greensboro, *North Street-East Street Historic District [Greensboro MRA]*, North, East, Greene, and Walnut Sts. [9/09/87]

Greensboro, *Poullain, Phillip, House [Greensboro MRA]*, Penfield Rd. [9/09/87]

Greensboro, *South Street—Broad Street—Main Street—Laurel Street Historic District [Greensboro MRA]*, South, Broad, Main, and Laurel Sts. [9/09/87]

Greensboro, *South Walnut Street Historic District [Greensboro MRA]*, S. Walnut, E. South, and E. Broad Sts. [9/09/87]

Greensboro, *Springfield Baptist Church [Greensboro MRA]*, Canaan Circle [9/09/87]

Lamar County

Barnesville, *Carnegie Library of Barnesville*, Library St. [2/03/87]

Long County

Walthourville, *Walthourville Presbyterian Church*, Allenhurst Antioch Rd. [6/05/87]

Morgan County

Buckhead vicinity, *Zachry—Kingston House*, 6030 Bethany Rd. [5/15/87]

Oconee County

Watkinsville, *Farmers and Citizens Supply Company Block*, US 129 [7/02/87]

Rabun County

Dillard vicinity, *Hoojah Branch Site (9RA34)*, Address Restricted [1/24/87]

Talbot County

Prattsburg, *Mathews, John Frank, Plantation*, US 80 at George Smith Rd. [12/04/86]

Thomas County

Thomasville, *Church of the Good Shepherd*, 511–519 Oak St. [2/05/87]

Walker County

Kensington, *Millar Brothers Farm*, GA 912 [6/08/87]

Washington County

Sandersville, *City Cemetery*, W. Church, Cemetery, and Haynes Sts. [6/03/87]

Worth County

Sylvester, *Sylvester Commercial Historic District*, Bounded by E. Kelly, N. Main, E. Front, and N. Isabella Sts. [7/09/87]

HAWAII

Hawaii County

Holualoa vicinity, *Pua' a–3 Agricultural Fields Archeological District (50HA10220)*, Address Restricted [10/14/86]

Kailua-Kona, *Hale Halawai O Holualoa*, Alii Dr. [6/05/87]

Na'Alehu vicinity, *Mahana Archeological District (50HA10230)*, Address Restricted [10/14/86]

South Kohala, *Ala Loa*, Off HI 19 from Kiholo Bay to Kalahuipaua'a [6/05/87]

Honolulu County

Honolulu, *Case, Lloyd, House [Honolulu Tudor—French Norman Cottages TR]*, 3581 Woodlawn Dr. [6/05/87]

Honolulu, *Cooper, Bartlett, House [Honolulu Tudor—French Norman Cottages TR]*, 4850 Kahala Ave. [6/05/87]

Honolulu, *Duhrsen, Carl H., House [Honolulu Tudor—French Norman Cottages TR]*, 3029 Felix St. [6/05/87]

Honolulu, *Faus, Dr. Robert, House [Honolulu Tudor—French Norman Cottages TR]*, 2311 Ferdinand Ave. [6/05/87]

Honolulu, *House at 3023 Kalakaua Avenue [Honolulu Tudor—French Norman Cottages TR]*, 3023 Kalakaua Ave. [6/05/87]

Honolulu, *House at 3027 Kalakaua Avenue [Honolulu Tudor—French Norman Cottages TR]*, 3027 Kalakaua Ave. [6/05/87]

Honolulu, *House at 3023B Kalakaua Avenue [Honolulu Tudor—French Norman Cottages TR]*, 3023B Kalakaua Ave. [6/05/87]

Honolulu, *House at 3023A Kalakaua Avenue [Honolulu Tudor—French Norman Cottages TR]*, 3023A Kalakaua Ave. [6/05/87]

Honolulu, *House at 3033 Kalakaua Avenue [Honolulu Tudor—French Norman Cottages TR]*, 3033 Kalakaua Ave. [6/05/87]

Honolulu, *House at 3033B Kalakaua Avenue [Honolulu Tudor—French Norman Cottages TR]*, 3033B Kalakaua Ave. [6/05/87]

Honolulu, *House at 4109 Black Point Road [Honolulu Tudor—French Norman Cottages TR]*, 4109 Black Point Rd. [6/05/87]

Honolulu, *Lihiwai (Boundary Increase)*, 41C Kepola Pl. [6/05/87]

Honolulu, *Mendonca, J.P., House*, 1942 Judd Hillside Rd. [10/07/86]

Honolulu, *Ohrt, Frederick, House [Honolulu Tudor—French Norman Cottages TR]*, 2958 Pali Hwy. [6/05/87]

Honolulu, *Shadinger, J. Alvin, House [Honolulu Tudor—French Norman Cottages TR]*, 4584 Kahala Ave. [6/05/87]

Honolulu, *Simpson, Charles A., House [Honolulu Tudor—French Norman Cottages TR]*, 4354 Kahala Ave. [6/05/87]

Honolulu, *Tavares, Frank, House [Honolulu Tudor—French Norman Cottages TR]*, 2828 Coconut Ave. [6/05/87]

Kailua vicinity, *Kanehoe Ranch Building*, Castle jct. [6/05/87]

Kailua vicinity, *Kanehoe Naval Air Station*, Area between First St. and Kanehoe Bay [5/28/87]

Nu'Uanu vicinity, *Kaniakapupu*, Address Restricted [10/15/86]

Pearl Harbor, *CINCPAC Headquarters*, Pearl Harbor Naval Base [5/28/87]

Schofield Barracks vicinity, *Wheeler Field*, Area around Wright Ave. and the flight line [5/28/87]

Wai'anae vicinity, *Koa'au Talus Sites Archeological District*, Address Restricted [5/04/87]

Kauai County

Wailua vicinity, *Kukui Heiau*, Address Restricted [5/18/87]

Maui County

Lana'i, *Pu'upehe Platform (50La19)*, Address Restricted [10/06/86]

Maunaloa vicinity, *Southwest Moloka'i Archeological District*, Address Restricted [10/15/86]

IDAHO

Adams County

Council, *Adams County Courthouse [County Courthouses in Idaho MPS]*, Michigan St. [9/22/87]

Benewah County

St. Maries, *Benewah County Courthouse [County Courthouses in Idaho MPS]*, College Ave. and Seventh St. [9/22/87]

Boundary County

Bonners Ferry, *Boundary County Courthouse [County Courthouses in Idaho MPS]*, Kootenai St. [9/27/87]

Caribou County

Soda Springs, *Caribou County Courthouse [County Courthouses in Idaho MPS]*, 159 S. Main [9/22/87]

Cassia County

Burley, *Cassia County Courthouse [County Courthouses in Idaho MPS]*, Fifteenth St. and Overland Ave. [9/27/87]

Elmore County

Mountain Home, *Elmore County Courthouse [County Courthouses in Idaho]*, 150 S. Fourth E [9/22/87]

Franklin County

Preston, *Franklin County Courthouse [County Courthouses in Idaho MPS]*, 39 W. Oneida [9/27/87]

IDAHO—Continued
Idaho County

Elk City vicinity, *Meinert Ranch Cabin*, 1½ mi. SW of Red River Hot Springs on Red River-Beargrass Rd. No. 234 [9/23/87]

Jefferson County

Rigby, *Jefferson County Courthouse [County Courthouses in Idaho MPS]*, 134 N. Clark [9/27/87]

Jerome County

Jerome, *Jerome County Courthouse [County Courthouses in Idaho MPS]*, N. Lincoln [9/23/87]

Kootenai County

Hayden Lake, *Finch, John A., Caretaker's House*, 2180 Finch Rd. [9/14/87]

Madison County

Rexburg, *Madison County Courthouse [County Courthouses in Idaho MPS]*, E. Main St. [9/22/87]

Power County

American Falls, *Power County Courthouse [County Courthouses in Idaho MPS]*, Bannock Ave. [9/22/87]

Shoshone County

Murray, *Murray Masonic Hall*, Main St. between Second and Third [5/19/87]

Teton County

Briggs, *Teton County Courthouse [County Courthouses in Idaho MPS]*, Main St. [9/22/87]

Valley County

Yellow Pine vicinity, *Stibnite Historic District*, US Forest Rd. 412 [7/19/87]

Washington County

Weiser, *Washington County Courthouse [County Courthouses in Idaho MPS]*, E. Court St. [9/23/87]

ILLINOIS

Adams County

Golden, *Exchange Bank*, Quincy St. [2/12/87]

Alexander County

Tamms, *Chicago and Eastern Illinois Railroad Depot*, Front St. [11/06/86]

Brown County

Mount Sterling, *Mount Sterling Commercial Historic District*, Roughly bounded by Brown Co. Courthouse, alley E of Capitol, South St., and alley W of Capitol [5/06/87]

Champaign County

Urbana, *Chemical Laboratory [University of Illinois Buildings by Nathan Clifford Ricker TR]*, 1205 W. Green St. [11/19/86]
Urbana, *Metal Shop [University of Illinois Buildings by Nathan Clifford Ricker TR]*, 102 S. Burrill Ave. [11/19/86]
Urbana, *Military Drill Hall and Men's Gymnasium [University of Illinois Buildings by Nathan Clifford Ricker TR]*, 1402–1406 W. Springfield [11/19/86]
Urbana, *University of Illinois Astronomical Observatory*, 926 S. Mathews Ave. [11/06/86]

Clark County

Clarksville, *Millhouse Blacksmith Shop*, Main and Poplar Sts. [5/12/87]

Cook County

Chicago, *Adler Planetarium*, 1300 S. Lake Shore Dr. [2/27/87]
Chicago, *Balaban & Katz Uptown Theatre*, 4814–4816 N. Broadway [11/20/86]
Chicago, *Best Brewing Company of Chicago Building*, 1315–1317 W. Fletcher [7/30/87]
Chicago, *Building at 257 East Delaware*, 257 E. Delaware [6/25/87]
Chicago, *Legler, Henry E., Regional Branch of the Chicago Public Library*, 115 S. Pulaski Rd. [11/06/86]
Chicago, *Lincoln Park, South Pond Refectory*, 2021 N. Stockton Dr. [11/20/86]
Chicago, *Manor House*, 1021–1029 W. Bryn Mawr Ave. [6/12/87]
Chicago, *Shedd, John G., Aquarium*, 1200 S. Lake Shore Dr. [2/27/87]
Chicago, *Uptown Broadway Building*, 4703–4715 N. Broadway [11/06/86]
Evanston, *Roycemore School*, 60 Lincoln St. [8/03/87]
Schaumburg, *Schweikher, Paul, House and Studio*, 645 S. Meacham Rd. [2/17/87]

Edgar County

Paris, *France Hotel*, 118 E. Court St. [6/03/87]
Paris, *Paris Elks Lodge No. 812 Building*, 111 E. Washington St. [6/03/87]

Fulton County

Table Grove, *Carithers Store Building*, Table Grove Village Sq., W of US 136 [6/03/87]

Greene County

Carrollton vicinity, *Rainey, Henry T., Farm*, RR 1, N side of IL 108 [5/12/87]
White Hall, *White Hall Historic District*, Roughly bounded by Bridgeport, Jacksonville, Ayers, and Main Sts. [5/20/87]

Hancock County

LaHarpe, *LaHarpe Historic District*, 100–124 W. Main St., 100–122 and 101–129 E. Main Sts., 101–121 S. Center St., and City Pk. [4/30/87]

Jersey County

Jerseyville, *Jerseyville Downtown Historic District*, Roughly bounded by Exchange, Lafayette, Prairie and Jefferson Sts. [12/29/86]

Kendall County

Plano, *Sears, Albert H., House*, 808 E. North St. [1/29/87]

Lake County

Barrington Hills, *Grigsby Estate*, 125 Buckley Rd. [5/12/87]

Livingston County

Pontiac, *Livingston County Courthouse*, 112 W. Madison [11/19/86]

McLean County

Bloomington, *East Grove Street District-Bloomington*, 400–702 E. Grove St. [2/26/87]

Montgomery County

Hillsboro, *Blackmore, George, House*, 804 S. Main St. [11/06/86]

Morgan County

Jacksonville, *Ayers Bank Building*, 200 W. State St. [11/20/86]
Jacksonville, *Morgan County Courthouse*, 300 W. State St. [12/19/86]

Ogle County

Ashton vicinity, *Moats, William, Farm*, Wood Rd. [2/12/87]

Sangamon County

Springfield, *Central Springfield Historic District (Boundary Increase)*, Sixth St. from Capitol to Monroe St. [11/19/86]

Stark County

Wyoming, *Chicago, Burlington & Quincy Railroad Depot*, Williams St. [4/30/87]

Warren County

Alexis, *Alexis Opera House*, 101–105 N. Main St. [7/30/87]

White County

Carmi, *Williams, James Robert, House*, 310 E. Main St. [1/29/87]

Williamson County

Marion, *Goddard Chapel, Rose Hill Cemetery*, S. 37 N [11/06/86]

INDIANA

Cass County

Logansport, *Spencer Park Dentzel Carousel*, Riverside Park [2/27/87]

Crawford County

St. Croix vicinity, *Potts Creek Rockshelter Archeological Site (12CR110)*, Address Restricted [2/04/87]

Harrison County

Corydon, *Kintner House Hotel*, 201 S. Capital [1/12/87]
New Amsterdam vicinity, *Swan's Landing Archeological Site (12HR304)*, Address Restricted [4/02/87]

Jackson County

Seymour vicinity, *Low Spur Archeological Site (12JS27)* Address Restricted [5/01/87]

Johnson County

Franklin, *Martin Place Historic District*, N and S sides of Martin Pl. between Graham Ave. and Water St., 500, 498, and 450 N. Main Sts. [6/12/87]
Hopewell, *Van Nuys Farm*, IN 144 [2/12/87]

Lake County

Whiting, *Hoosier Theater Building*, 1329–1335 One Hundred-nineteenth St. [2/18/87]

Marion County

Indianapolis, *Anderson—Thompson House*, 6551 Shelbyville Rd. [3/26/87]
Indianapolis, *Broad Ripple Park Carousel*, Meridian and Thirtieth Sts. [2/27/87]
Indianapolis, *Indiana Oxygen Company*, 435 S. Delaware St. [3/26/87]
Indianapolis, *Indiana Avenue Historic District*, 500 blk. of Indiana Ave. between North St., Central Canal, Michigan, and West Sts. [6/12/87]
Indianapolis, *Irvington Historic District*, Roughly bounded by Ellenberger Pk.,

INDIANA—Continued
Pleasant Run Creek, Arlington Ave., B & O RR tracks, and Emerson Ave. [5/29/87]
Indianapolis, *Lockerbie Square Historic District Amendment (Boundary Increase)*, Bounded by Michigan and Davidson Sts., New York Ave., and New Jersey St. [7/28/87]
Indianapolis, *Minor House*, 2034 N. Capitol Ave. [4/07/87]
Indianapolis, *Saint James Court*, 2102–2106 N. Meridian St. [2/18/87]
Indianapolis, *Seville, The*, 1701 N. Illinois St. [5/12/87]
Indianapolis, *Tee Pee Restaurant*, 3820 Fall Creek Blvd. [12/11/86]

Miami County

Peru vicinity, *Wallace Circus and American Circus Corporation Winter Quarters*, 2½ mi. SE of Peru [2/27/87]

Noble County

Kendallville, *Iddings—Gilbert—Leader—Anderson Block*, 105–113 N. Main St. [7/21/87]

Parke County

Mecca, *Wabash Township Graded School*, S. Montezuma St. [6/22/87]

Perry County

Cannelton, *Cannelton Historic District*, Roughly bounded by Richardson, Taylor, First, and Madison Sts. [2/12/87]

Starke County

Knox, *Starke County Courthouse*, Courthouse Sq. [11/12/86]

Tippecanoe County

Lafayette, *Ellsworth Historic District*, Roughly bounded by Columbia, Norfolk & Western RR tracks, Alabama, Seventh, South and Sixth Sts. [12/30/86]

Union County

Liberty, *Union County Courthouse*, Courthouse Sq. [7/21/87]

Warrick County

Boonville, *Boonville Public Square Historic District*, Bounded roughly by First, Sycamore, Fourth, and Walnut [1/23/87]

Whitley County

Columbia City, *Columbia City Historic District*, Roughly bounded by Jefferson, Walnut, Ellsworth, Wayne, and N. Chauncy Sts. [6/22/87]

IOWA

Black Hawk County

Cedar Falls, *Rownd, C. A., Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, [11/19/86]

Calhoun County

Jolley vicinity, *Knapp, Dr. Charles, Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off CR D26 [12/23/86]

Cedar County

West Branch, *West Branch Commercial Historic District*, W. Main and N. Downey Sts. [4/07/87]

Dallas County

Woodward, *McColl, Anthony M., House*, 502 S. Main St. [2/05/87]

Franklin County

Hampton, *Harriman, Dr. O. B., House*, 26 Tenth St. NW [2/05/87]

Harrison County

Dunlap, *Wheeler, John R., Jr., House*, 407 S. Third St. [11/04/86]

Henry County

Mt. Pleasant vicinity, *Pleasant Lawn School Historic District*, Off IA 218 [3/25/87]

Lee County

Kookuk, *Hotel Iowa*, 401 Main St. [2/05/87]

Madison County

Earlham vicinity, *Allen, James, Stone Barn [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 2½ mi. SE of Earlham [9/29/87]
Earlham vicinity *Ford, W. T., House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 2½ mi. S of Earlham on P57 [9/29/87]
Earlham vicinity, *Henderson, Daniel and Nancy Swaford House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 3 mi. S of Earlham on P57 [9/29/87]
Earlham vicinity, *McQuie, Peter and Isobelle McCulloch, Milkhouse [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, SW of Earlham [9/29/87]
Earlham vicinity, *Wilson, Seth and Elizabeth, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 1¾ mi. E of P57 on G14 [9/29/87]
East Peru vicinity, *Ogburn, William, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 1½ mi. N of East Peru [9/29/87]
St. Charles vicinity, *Holmes, John S. and Elizabeth Beem, Barn [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, CR G50 [9/29/87]
St. Charles vicinity, *Queen, Hogan and Martha A. Runkle, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 5 mi. W of St. Charles on CR G50 [9/29/87]
Winterset vicinity, *Armstrong, George and Susan Guiberson, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 2⅛ mi. N of Winterset on G4R [9/29/87]
Winterset vicinity, *Bevington, C.D. and Eliza Heath, Privy [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 806 S. Second Ave. [9/29/87]
Winterset vicinity, *Church, Seymour, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, US 169 [9/29/87]
Winterset vicinity, *Drake, John and Amanda Bigler, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 11 mi. W of Winterset on IA 92 [9/29/87]
Winterset vicinity, *Duncan, John M., House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, ⅛ mi. S of Winterset on P99 [9/29/87]
Winterset vicinity, *Evans, Henry and Elizabeth Adkinson, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, ½ mi. E of US 169 on CR C50 [9/29/87]
Winterset vicinity, *Nichols, William Auzi, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 1 mi. E of Winterset on IA 92 [9/29/87]
Winterset vicinity, *Schnellbacher, John and Fredericka Meyer, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, On G47 1¼ mi. E of jct. with P53 [9/29/87]
Winterset vicinity, *Smith, Hiram C., House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 6 mi. W of Winterset on IA 92 [9/29/87]
Winterset vicinity, *Smith, Hiram C., Milking Shed [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 6 mi. W of Winterset on IA 92 [9/29/87]
Winterset, *Hornback, Emily, House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 805 N. First St. [9/29/87]
Winterset, *Sprague, Brown, and Knowlton Store [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, First and Court [9/29/87]
Winterset, *Vawter, J. G. and Elizabeth S., House [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 223 S. First St. [9/29/87]
Winterset, *White, Munger and Company, Store [Legacy in Stone: The Settlement Era of Madison County, Iowa TR]*, 102 W. Court [9/29/87]

Monroe County

Albia, *Jenkins, Dr. George A., House*, 223 S. C St. [2/05/87]

Plymouth County

LeMars, *Tonsfeldt Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Plymouth County Fairgrounds [11/19/86]

Polk County

Des Moines, *Iowa State Fair and Exposition Grounds Historic District*, E. Thirtieth St. and Grand Ave. [9/14/87]
Des Moines, *Saint John's Roman Catholic Church*, 1915 University Ave. [9/03/87]

Ringgold County

Maloy vicinity, *Shay, Lee, Farmhouse*, Off CR P27 [11/06/86]

Scott County

Eldridge, *Eldridge Turn—Halle*, 102 W. LeClaire St. [2/05/87]

Story County

Ames, *Christian Petersen Courtyard Sculptures, and Dairy Industry Building*, Union Dr. and Wallace Rd., Iowa State University campus [4/07/87]

Wayne County

Allerton vicinity, *Nelson Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, CR J48 [11/19/86]

IOWA—Continued
Winneshiek County
Scarville vicinity, *Round Barn, Norway Township [Iowa Round Barns: The Sixty Year Experiment TR]*, Off CR B20 [2/27/87]
Winneshiek County
Burr Oak vicinity, *Kinsey Octagon Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off US 63 [11/19/86]

KANSAS
Bourbon County
Fort Scott, *Fort Scott Public Carnegie Library [Carnegie Libraries of Kansas TR]*, 201 S. National [3/18/87]
Brown County
Rulo vicinity, *Site No. JF00-052 [Nebraska-Kansas Public Land Survey TR]*, 6¼ mi. SE of Rulo; 200 ft. W of rd. between Rulo, NE and White Cloud, KS [6/19/87]
Butler County
El Dorado, *El Dorado Carnegie Library [Carnegie Libraries of Kansas TR]*, 101 S. Star [6/26/87]
Cherokee County
Columbus, *Columbus Public Carnegie Library [Carnegie Libraries of Kansas TR]*, 205 N. Kansas [6/25/87]
Clay County
Clay Center, *Clay Center Carnegie Library [Carnegie Libraries of Kansas TR]*, 706 Sixth St. [6/25/87]
Coffey County
Burlington, *Burlington Carnegie Free Library [Carnegie Libraries of Kansas TR]*, 201 N. Third [6/25/87]
Cowley County
Winfield vicinity, *Silver Creek Bridge [Masonry Arch Bridges of Kansas TR]*, E of Winfield [1/30/87]
Crawford County
Girard, *Girard Carnegie Library [Carnegie Libraries of Kansas TR]*, 128 W. Prairie [6/25/87]
Dickinson County
Abilene, *Lander Park Carousel*, 412 S. Campbell St. [2/27/87]
Chapman vicinity, *Saint Patrick's Mission Church and School*, NE of Chapman [6/26/87]
Herington, *Herington Carnegie Public Library [Carnegie Libraries of Kansas TR]*, 102 S. Broadway [6/25/87]
Doniphan County
Bendena vicinity, *Albers, Albert, Barn [Byre and Bluff Barns of Doniphan County TR]*, S of Bendena [5/07/87]
Bendena vicinity, *Symns, J. A., Barn [Byre and Bluff Barns of Doniphan County TR]*, KS 7 [5/07/87]
Bendena vicinity, *White, T. L., Barn [Byre and Bluff Barns of Doniphan County TR]*, KS 7 [5/07/87]
Bendena vicinity, *Williams, M. D. L., Barn [Byre and Bluff Barns of Doniphan County TR]*, 3 mi. S of KS 20 [5/07/87]
Denton vicinity, *Eylar, Mathew, Barn No. 1 [Byre and Bluff Barns of Doniphan County TR]*, S of Denton off KS 20 [5/07/87]
Denton vicinity, *Eylar, Mathew, Barn No. 2 [Byre and Bluff Barns of Doniphan County TR]*, SE of Denton off KS 20 [5/07/87]
Highland vicinity, *Hale, John R., Barn [Byre and Bluff Barns of Doniphan County TR]*, KS 120 [5/07/87]
Highland vicinity, *Mission—Herring Barn [Byre and Bluff Barns of Doniphan County TR]*, US 36 [5/07/87]
Leona vicinity, *Hanson, George, Barn [Byre and Bluff Barns of Doniphan County TR]*, S of Leona [5/07/87]
Leona vicinity, *Streib, John, Barn [Byre and Bluff Barns of Doniphan County TR]*, N of Leona [5/07/87]
Rulo vicinity, *Site No. JF00-052 [Nebraska-Kansas Public Land Survey TR]*, 6½ mi. SE of Rulo; 300 ft. W of rd. between Rulo, NE and White Cloud, KS [6/19/87]
Sparkes vicinity, *Nuzum, Godfrey, Barn [Byre and Bluff Barns of Doniphan County TR]*, KS 7 [5/07/87]
Troy vicinity, *Bohr, Nicholas, Barn [Byre and Bluff Barns of Doniphan County TR]*, SE of Troy [5/07/87]
Troy, *Kinkhead, George, Barn [Byre and Bluff Barns of Doniphan County TR]*, Off US 36 [5/07/87]
Wathena vicinity, *Chrystal, Herman, Barn [Byre and Bluff Barns of Doniphan County TR]*, W of Wathena [5/07/87]
Wathena vicinity, *Kienhoff, Fred W., Barn [Byre and Bluff Barns of Doniphan County TR]*, W of Wathena [5/07/87]
Wathena vicinity, *Silvers, John, Barn [Byre and Bluff Barns of Doniphan County TR]*, N of Wathena [5/07/87]
Douglas County
Lawrence, *Achning, Ralph and Cloyd, House*, 843 Missouri St. [9/15/87]
Lawrence, *Eldridge House Hotel*, Seventh and Massachusetts [12/01/86]
Harper County
Anthony, *Anthony Public Carnegie Library [Carnegie Libraries of Kansas TR]*, 104 N. Springfield [9/25/87]
Kingman County
Kingman, *Kingman Carnegie Library [Carnegie Libraries of Kansas TR]*, 455 N. Main [6/25/87]
Kiowa County
Mullinville vicinity, *Fromme-Birney Round Barn*, SW of Mullinville [7/16/87]
Labette County
Oswego, *Oswego Public Carnegie Library [Carnegie Libraries of Kansas TR]*, 704 Fourth St. [6/25/87]
Leavenworth County
Leavenworth vicinity, *Zacharias Site (14LV369)*, Address Restricted [1/08/87]
Leavenworth, *Carroll, Edward, House*, 334 Fifth Ave. [10/02/86]
Lincoln County
Lincoln, *Lincoln Carnegie Library [Carnegie Libraries of Kansas TR]*, 223 S. Third [6/25/87]
Lyon County
Emporia, *Anderson Carnegie Memorial Library, [Carnegie Libraries of Kansas TR]*, The Way College of Emporia, 1300 W. Twelfth Ave. [6/25/87]
Marion County
Peabody, *Peabody Township Carnegie Library [Carnegie Libraries of Kansas TR]*, 214 Walnut [6/25/87]
McPherson County
Canton, *Canton Township Carnegie Library [Carnegie Libraries of Kansas TR]*, 300 N. Main [6/25/87]
Miami County
Osawatomie, *Mills, William, House*, 212 First St. [11/20/86]
Montgomery County
Cherryvale, *Cherryvale Carnegie Free Library [Carnegie Libraries of Kansas TR]*, 329 E. Main [6/18/87]
Coffeyville, *Coffeyville Carnegie Public Library Building [Carnegie Libraries of Kansas TR]*, 415 W. Eighth [6/25/87]
Morris County
Council Grove, *Council Grove Carnegie Library [Carnegie Libraries of Kansas TR]*, 303 W. Main [6/25/87]
Morton County
Richfield vicinity, *Morton County WPA Bridge [Masonry Arch Bridges of Kansas TR]*, 6 mi. W and 4 mi. N of Richfield [10/22/86]
Osage County
Lyndon, *Lyndon Carnegie Library [Carnegie Libraries of Kansas TR]*, 127 E. Sixth [6/25/87]
Osborne County
Downs Carnegie Library [Carnegie Libraries of Kansas TR], 506 S. Morgan [6/25/87]
Osborne, *Osborne Public Carnegie Library [Carnegie Libraries of Kansas TR]*, Third and Main [6/25/87]
Pottawatomie County
Onaga vicinity, *Vermillion Creek Tributary Stone Arch Bridge [Masonry Arch Bridges of Kansas TR]*, 5 mi. S and 1 mi. E of Onaga [10/22/86]
Pratt County
Pratt, *Gebhart, S. P., House*, 105 N. Iuka St. [2/12/87]
Reno County
Hutchinson, *Hutchinson Public Carnegie Library [Carnegie Libraries of Kansas TR]*, 427 N. Main [6/25/87]
Hutchinson, *Reno County Courthouse*, 206 W. First [4/13/87]
Republic County
Mahaska vicinity, *Site No. JF00-072 [Nebraska—Kansas Public Land Survey TR]*, jct. of Thayer, Jefferson, Washington and Republic Co. lines [6/19/87]

KANSAS—Continued
Rice County
Sterling, *Sterling Free Public Carnegie Library [Carnegie Libraries of Kansas TR]*, 132 N. Broadway [6/25/87]
Riley County
Manhattan, *Manhattan Carnegie Library Building [Carnegie Libraries of Kansas TR]*, Fifth and Poyntz [6/25/87]
Rush County
Otis vicinity, *Rush County Line Bridge [Masonry Arch Bridges of Kansas TR]*, 11 mi. N of Otis [11/04/86]
Saline County
Salina, *Flanders—Lee House and Carriage House*, 200 S. Seventh St. [6/26/87]
Sedgwick County
Wichita, *Wichita City Carnegie Library Building [Carnegie Libraries of Kansas TR]*, 220 S. Main [6/25/87]
Shawnee County
Topeka, *Sumner Elementary School*, 330 Western Ave. [5/04/87]
Topeka, *Washburn University Carnegie Library Building [Carnegie Libraries of Kansas TR]*, Off Seventeenth St. and Washburn Ave. [6/25/87]
Sumner County
Wellington, *Wellington Carnegie Library [Carnegie Libraries of Kansas TR]*, 121 W. Seventh [6/25/87]
Washington County
Mahaska vicinity, *Site No. JF00-072 [Nebraska—Kansas Public Land Survey TR]*, jct. of Thayer, Jefferson, Washington and Republic Co. lines [6/19/87]
Woodson County
Yates Center, *Yates Center Carnegie Library [Carnegie Libraries of Kansas TR]*, 218 N. Main [6/25/87]

KENTUCKY
Anderson County
Lawrenceburg vicinity, *Old Prentice Distillery*, KY 513 [3/19/87]
Barren County
Park City, *Belle's Tavern [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, KY 255 [1/08/87]
Boone County
Bullittsville vicinity, *Watts House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Williams Rd. [1/08/87]
Francisville vicinity, *Souther, Abe, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 237 [1/08/87]
Petersburg, *Tanner, John, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, KY 20 [1/08/87]
Boyle County
Danville, *Lexington Avenue—Broadway Historic District [Danville MRA]*, W. and E. Lexington between N. Fifth and Old Wilderness Rd. and area bounded by N. Larrimore, W. Broadway, and N. Fifth [1/12/87]
Danville, *Maple Avenue District [Danville MRA]*, Both sides of Maple Ave. between W. Main and High [6/15/87]
Bracken County
Augusta vicinity, *Chalfant, Mordecai, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, KY 8 [1/08/87]
Augusta vicinity, *Stone House on Bracken Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 435 [1/08/87]
Augusta vicinity, *Stroube House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, KY 435 [1/08/87]
Wellsburg, *Rock Spring Warehouse [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, KY 8 [1/08/87]
Bullitt County
Brownington, *Crist, Henry, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Maraman Ln. off KY 1994 [1/08/87]
Shepherdsville, *Bank of the Commonwealth [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Buckman St. [1/08/87]
Butler County
Morgantown vicinity, *Ice House on Little Muddy Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, US 231 [1/08/87]
Campbell County
Newport, *Posey Flats*, 101–103 E. Third St. [1/29/87]
Carroll County
Carrollton, *Ogburn, Henry, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off US 42 [1/08/87]
Prestonville, *Stone House on Kentucky River [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, KY 55 [1/08/87]
Christian County
Hopkinsville vicinity, *Smokehouse on Riverside Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Petsch Ln. off KY 272 [1/08/87]
Edmonson County
Brownsville, *Reed—Dorsey House*, Upper Main Cross and Jefferson Sts. [10/16/86]
Windyville vicinity, *Willis, Mathias, Store House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Cummins Rd. [1/08/87]
Fayette County
Lexington, *Hartland*, 2230 Armstrong Mill Rd. [4/02/87]
Lexington, *Southern Railway Passenger Depot*, 701 S. Broadway [6/13/87]
Green County
Greensburg, *Allen's, James, Inn [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, 103 E. Court St. [1/08/87]
Greensburg, *Court Clerk's Office—County & Circuit [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, East Court St. [1/08/87]
Harrison County
Cynthiana, *Spur Gasoline Station*, 201 E. Bridge St. [4/27/87]
Henry County
Eminence vicinity, *Thompson House*, KY 22 and Old Giltner Rd. [5/05/87]
New Castle, *Henderson, Isham, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Main Cross Rd. [1/08/87]
Jefferson County
Louisville, *German Evangelical Church of Christ Complex*, 1236 E. Breckinridge St. [5/21/87]
Louisville, *Saint Francis of Rome School*, 2105–2117 Payne St. [3/26/87]
Louisville, *Saint Francis of Assisi Complex*, 1960 Bardstown Rd. [5/28/87]
Louisville, *Wilson, David, House*, 2215 Carolina Ave. [3/26/87]
Kenton County
Bromley vicinity, *Pleasant Run Stone House I [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Bromley Rd. off KY 8 [1/08/87]
Bromley vicinity, *Pleasant Run Stone House II [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Bromley Rd. off KY 8 [1/08/87]
Bromley, *Merry, Prettyman, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Shelby St. [1/08/87]
Covington, *Austinberg Historic District [Eastside MRA]*, Roughly bounded by Chesapeake & Ohio RR, Licking River floodwall, rear lot lines N side of Wallace Ave., and Madison Ave. [2/18/87]
Covington, *Emery—Price Historic District [Eastside MRA]*, Roughly bounded by Eighth, Greenup, and Eleventh Sts., and alley behind W side of Scott Blvd. [2/18/87]
Covington, *Helentown Historic District [Eastside MRA]*, Roughly bounded by Eleventh and Wheeler Sts., Chesapeake & Ohio RR, and Madison Blvd. [2/18/87]
Covington, *Ohio Riverside Historic District (Boundary Increase)*, Along sections of Greenup St., Court Ave., Third, and Fourth Sts. [4/09/87]
Covington, *Ritte's Corner Historic District, Latonia*, Roughly bounded by DeCoursey, Southern, Inez, and Winston Aves. [5/21/87]
Covington, *West Fifteenth Street Historic District [Eastside MRA]*, 1445–1451 and 1501–1513 Madison Ave., 1421–1423 Neave St., and 10–32 W. Fifteenth St. [2/18/87]
Laurel County
London, *Pennington Infirmary*, 411 Main St. [6/11/87]
Lewis County
Kirkville vicinity, *Ohio River Lock and Dam No. 31—Grounds and Buildings*, Rt. 1, Box 18 [5/12/87]

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KENTUCKY—Continued

Tollesboro vicinity, *Stone Cellar on Cabin Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Cabin Creek Rd. [1/08/87]

Lincoln County

Stanford, *Stanford Commercial District*, Main St. from Somerset St. to Third St. [11/17/86]

Logan County

Chandler's Chapel vicinity, *Sawyer, David, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 103 [1/08/87]

Mason County

Mays Lick vicinity, *Poague House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Parker Ln. [1/08/87]

Mays Lick vicinity, *Stone Barn on Lee's Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, US 68 [1/08/87]

Moranburg vicinity, *Moran, Ben, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Intersection of KY 8 and KY 10 [1/08/87]

Orangeburg vicinity, *Pelham, Charles, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Taylor Mill Rd. [1/08/87]

Washington vicinity, *Forman, Tom, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off US 62 [1/08/87]

McCracken County

Paducah, *Saint Mary Academy Complex*, Bounded by Fourth, Fifth, Monroe and Jefferson Sts. [3/17/87]

Nelson County

Bardstown vicinity, *Mattingly House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off US 150 [1/08/87]

Bardstown, *Nelson County Jail [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, 111 W. Stephen Foster [1/08/87]

Howardstown, *Howard Brothers' Store*, [10/16/86]

Oldham County

Anchorage vicinity, *Wesley Methodist Church [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Haunz Ln. [1/08/87]

Brownsboro vicinity, *McMakin, William, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 1817 [1/08/87]

Floydsburg, *Ritter, John, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Old Floydsburg Rd. off KY 1408 [1/08/87]

Goshen vicinity, *Bate, John Leslie, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, E. of Buckeye Ln. off KY 42 [1/08/87]

La Grange vicinity, *Woolfolk, William, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off US 42 [1/08/87]

Owen County

New Liberty vicinity, *Hunter, Jacob, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 325 near Big South Fork of KY River [1/08/87]

Pendleton County

Falmouth vicinity, *Aluck, Dolph, Smokehouse [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Milford Rd. [1/08/87]

Kentucky vicinity, *Colvin, Henry, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Colvin Bend Rd. [1/08/87]

Peach Grove vicinity, *Immaculate Conception Catholic Church and Cemetery*, Stepstone Rd. [1/20/87]

Pike County

Pikeville, *Chesapeake & Ohio Passenger Depot [Pikeville MRA]*, Hellier Ave. [4/23/87]

Robertson County

Mt. Olivet vicinity, *Metcalf, Thomas, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off US 62 [1/08/87]

Shelby County

Shelbyville vicinity, *Cross Keys Tavern Kitchen and Quarters [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, US 60 [1/08/87]

Shelbyville vicinity, *Dependency on Mulberry Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 1873 [1/08/87]

Shelbyville vicinity, *Fullenwielder, Peter, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off Aikens-Anderson Ln. W of Hebron-Scotts Station Rd. [1/08/87]

Shelbyville vicinity, *Stone House on Clear Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 55 W of Bellview Rd. [1/08/87]

Spencer County

Rivals vicinity, *Van Dyke House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Buck Henry Foster Ln. [1/08/87]

Whitfield vicinity, *Stone House on Plum Creek [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile]*, Intersection of KY 1060 and KY 1319 [1/08/87]

Taylor County

Campbellsville vicinity, *Chandler, John, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off KY 210, [1/08/87]

Todd County

Elkton, *Gray, John Springhouse [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, US 68 [1/08/87]

Trigg County

Cadiz vicinity, *McCaughan, John, House [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, KY 276 [1/08/87]

Warren County

Bowling Green vicinity, *Kirby, Jesse, Springhouse [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, Off US 231 on Love Howell Rd. [1/08/87]

Smiths Grove, *Smiths Grove Historic District (Boundary Increase) [Warren County MRA]*, NW corner of Second and Main Sts. [5/20/87]

Washington County

Fredericktown vicinity, *Round Stone Smokehouse [Early Stone Buildings of Kentucky Outer Bluegrass and Pennyrile TR]*, US 150 [1/08/87]

Woodford County

Versailles, *Margaret Hall*, 117 Elm St. [5/03/87]

Versailles, *Scearce House*, McCracken Pike [4/09/87]

Versailles, *South Main Street Historic District*, 298–321 S. Main St. [7/02/87]

LOUISIANA

Avoyelles Parish

Bunkie vicinity, *Oak Hall*, LA 29 [11/06/86]

Marksville, *Bordelon, Alfred H., House*, 511 N. Washington [11/06/86]

Beauregard Parish

Merryville, *Burks House*, Jct. of Railroad Ave. and Main St. [9/08/87]

Caddo Parish

Greenwood, *Trosper House*, 304 Magnolia St. [5/14/87]

Shreveport, *Fairfield Historic District*, Fairfield Ave. and adjacent sts. roughly bounded by Olive and Dalzell Sts., Line Ave., and Kings Hwy. [2/19/87]

Shreveport, *Highland Historic District*, Roughly bounded by Vine, Gilbert, and Topeka Sts., and Irving Pl. [2/19/87]

Shreveport, *Scottish Rite Cathedral*, 725 Cotton St. [11/06/86]

Shreveport, *Thrasher House*, 8515 Youree Dr., Pioneer Heritage Center, LA State University [9/10/87]

Claiborne Parish

Haynesville vicinity, *Burnham, J.W., House*, Off US 79 [1/22/87]

Homer, *Todd, Dr. John W., House*, 306 Pine St. [1/22/87]

Lisbon, *Killgore House*, Jct. of LA 2 and LA 518 [5/14/87]

Marsalis vicinity, *Tulip Methodist Church*, Off LA 518 [6/13/87]

De Soto Parish

Gloster vicinity, *Scott, Thomas, House*, LA 5, 4 mi. E of Gloster [11/06/86]

Mansfield, *De Soto Parish Courthouse*, Jct. of Adams and Texas Sts. [1/22/87]

East Baton Rouge Parish

Baton Rouge vicinity, *Audubon Plantation House*, 21371 Hoo Shoo Too Rd. [5/14/87]

Baton Rouge, *Baton Rouge High School*, 2825 Government St. [11/06/86]

Baton Rouge, *Capital City Press Building*, 340 Florida [10/16/87]

LOUISIANA—Continued

Evangeline Parish

Ville Platte, *LaTour, Alexis, House*, 247 E. Main [9/24/87]

Iberia Parish

Jeanerette vicinity, *Bayside*, LA 87 [1/22/87]

Iberville Parish

Plaquemine vicinity, *Homestead Plantation Complex*, LA 3066, 3 mi. SW of Plaquemine [11/06/86]

Plaquemine, *Desobry Building*, Court and Marshall Sts. [11/06/86]

Lafourche Parish

Thibodaux vicinity, *Acadia Plantation*, Address Restricted [5/29/87]

Morehouse Parish

Bastrop, *Rose Theatre*, US 165 [6/03/87]

Natchitoches Parish

Natchitoches, *Texas and Pacific Railroad Depot*, Sixth St. [5/14/87]

Ouachita Parish

Monroe vicinity, *Whitehall Plantation House*, Duckhorn Bend Rd. [9/08/87]

Rapides Parish

Alexandria, *Walker, Morgan, House*, 2400 Horseshoe Dr. [1/22/87]

Meeker, *Jones, Wade H., Sr., House*, Meeker Rd. [9/27/87]

Pineville, *Cottingham House*, 1400 College Dr. [9/08/87]

Tioga, *Tioga Commissary*, Tioga Rd. [10/16/86]

Woodworth, *Alexander State Forest Headquarters Building*, Alexander State Forest [5/21/87]

St. Landry Parish

Eunice, *Liberty Theatre*, 200 W. Park Ave. [2/19/87]

Opelousas, *Opelousas City Hall*, Jct. of Market and Bellevue Sts., Courthouse Sq. [9/08/87]

St. Mary Parish

Franklin vicinity, *Dixie Plantation House*, LA 182, 1 mi. SE of Franklin [5/29/87]

Vermilion Parish

Abbeville, *Abbeville Commercial Historic District*, Roughly bounded by Concord, State, Lafayette, and Jefferson Sts. [5/21/87]

Abbeville, *Abbeville Residential Historic District*, Roughly bounded by W. Oak, W. State, and Cherry Sts., and the Vermilion River [9/08/87]

Vernon Parish

Fullerton, *Fullerton Mill and Town*, Forest Service Rd. 427 [10/24/86]

Webster Parish

Minden, *Bank of Webster*, 704 Main St. [9/16/87]

MAINE

Aroostook County

Houlton, *Cary Library*, 107 Main St. [6/25/87]

Houlton, *Cleveland, Edward L., House*, 87 Court St. [6/12/87]

Houlton, *Unitarian Church of Houlton*, Military St. [6/25/87]

Oakfield, *Oakfield Station*, Station St. [6/25/87]

Washburn, *Wilder, Benjamin C., House*, Main St. [6/12/87]

Cumberland County

Portland, *Dyer, Nathaniel, House*, 108 York St. [4/15/87]

South Bridgton, *South Bridgton Congregational Church*, Fosterville Rd. [6/23/87]

Franklin County

Kingfield, *Hutchins, Frank, House*, High St. [12/29/86]

North Jay, *Jay—Niles Memorial Library*, US 6 [3/13/87]

Hancock County

Sullivan vicinity, *Gavin Watson Site*, Address Restricted [5/12/87]

Kennebec County

Augusta, *St. Mary's Church*, 20 Western Ave. [6/12/87]

Knox County

Camden, *Camden Opera House Block*, Off US 1 [12/29/86]

Rockland, *Rockland Residential Historic District*, Roughly bounded by Granite, Union, Masonic, Broad, Limerock, and Broadway Sts. [4/15/87]

Lincoln County

Boothbay vicinity, *Damariscove Lifesaving Station*, Damariscove Island [6/25/87]

Damariscotta, *Coffin, Stephen, House*, Main St. [4/15/87]

Dresden, *Bridge Academy*, ME 127 and ME 197 [1/08/87]

North Edgecomb, *Congregational Church of Edgecomb*, Cross Point Rd. [5/12/87]

Oxford County

Fryeburg, *Parsons, Marion, House*, 99 Main St. [1/23/87]

Otisfield vicinity, *Sargent, Levi, House*, Otisfield Gore Rd. [3/13/87]

Waterford vicinity, *McWain—Hall House*, McWain Hill Rd. [3/25/87]

Penobscot County

Bangor, *Bangor Mental Health Institute*, 656 State St. [7/16/87]

Hampden, *Hampden Congregational Church*, Main Rd. N [6/25/87]

Piscataquis County

Milo vicinity, *Brockway Site (ME 80.3)*, Address Restricted [7/27/87]

Milo vicinity, *Sebec-Piscataquis River Confluence Prehistoric Archeological District*, Address Restricted [12/24/86]

Sagadahoc County

Pejepscot vicinity, *Pejepscot Site*, Address Restricted [6/12/87]

Phippsburg vicinity, *Ingraham, Charles H., Cottage*, Off ME 209 [12/29/86]

Somerset County

Hinckley, *Hinckley Good Will Home Historic District*, US 201 [1/09/87]

Waldo County

Islesboro, *Grindle Point Light Station*, Ferry Rd. [3/13/87]

Washington County

Cherryfield, *Archibald—Adams House*, ME 193 [3/13/87]

Danforth, *Union Hall*, Near Jct. of US 1 and ME 169 [6/25/87]

York County

East Limington vicinity, *Chase, Capt. Josiah S., Octagon House*, Chase's Mill Rd. [3/25/87]

Old Orchard Beach, *Staples Inn*, 8 Portland Ave. [6/26/87]

MARYLAND

Anne Arundel County

Bristol vicinity, *Owens, James, Farm*, 5862 Greenock Rd. [9/21/87]

Gambrills vicinity, *Rosehill*, 2403 Bell Branch Rd. [5/29/87]

Baltimore County

Catonsville, *Old Catonsville High School*, 20 Winters La. [9/10/87]

Baltimore Independent City

Baltimore (Independent City), *Baltimore College of Dental Surgery*, 429–433 N. Eutaw St. [5/08/87]

Baltimore (Independent City), *Cathedral Hill Historic District*, Roughly bounded by Hamilton, Saint Paul, Charles, Saratoga and Cathedral Sts. [4/27/87]

Baltimore (Independent City), *Pratt Street Power Plant*, 601 E. Pratt St. [4/09/87]

Carroll County

New Windsor vicinity, *Avalon*, MD 31 [5/03/87]

Taneytown, *Taneytown Historic District*, MD 140 and 194 [10/09/86]

Union Mills vicinity, *Arter, Solomon, House*, 4029 Gesting Rd. [9/10/87]

Cecil County

Rising Sun vicinity, *Brown, Mercer, House*, 1270 England Creamery Rd. [5/29/87]

Frederick County

Frederick, *Linden Grove*, Solarex Ct. [9/10/87]

New Market vicinity, *Drummine Farm*, 6801 Green Valley Rd. [1/08/87]

Sabillasville, *Cullen, Victor, School Power House*, MD 61 [1/07/87]

Harford County

Darlington, *Darlington Historic District*, Main St., Shuresville Rd., Quaker Ln., Richmond Ave., and Trappe Church Rd. [9/10/87]

Jerusalem, *Jerusalem Mill Village*, Jerusalem and Jericho Rds. [8/20/87]

Joppa, *Olney*, 1001 Old Joppa Rd. [7/09/87]

Whiteford, *Slate Ridge School*, Old Pylesville Rd. [7/16/87]

Prince George's County

Aquasco, *Saint Mary's Society*, 16305 Saint Mary's Church Rd. [9/10/87]

Aquasco, *Sunnyside*, 16005 Dr. Bowen Rd. [5/29/87]

Berwyn Heights, *O'Dea House*, 7804 Ruatan St. [6/04/87]

MARYLAND—Continued
Croom vicinity, *Brookfield of the Berrys*, 12510 Molly Berry Rd. [6/25/87]
Croom vicinity, *Waverly*, 8901 Duvall Rd. [6/02/87]
Croom, *Coffren, John W., House and Store*, 10007 Croom Rd. [6/02/87]
Largo, *Mount Lubentia*, 603 Largo Rd. [7/09/87]
Upper Marlboro vicinity, *Woodstock*, 8705 SE Crain Hwy. [9/21/87]

Washington County

Hagerstown, *Oak Hill Historic District*, Roughly bounded by W. Irvin, Potomac, and Prospect Aves. and Forest Dr. [9/18/87]

Wicomico County

Hebron vicinity, *Western Fields*, Porter Mill Rd. [6/12/87]

MASSACHUSETTS

Barnstable County

Barnstable, *Adams—Crocker—Fish House [Barnstable MRA]*, 449 Willow St. [3/13/87]
Barnstable, *Ames, Josiah A., House [Barnstable MRA]*, 145 Bridge St. [9/18/87]
Barnstable, *Ancient Burying Ground [Barnstable MRA]*, Phinney's Ln. [3/13/87]
Barnstable, *Baker, Nathaniel, House [Barnstable MRA]*, 1606 Hyannis Rd. [3/13/87]
Barnstable, *Baker, Capt. Seth, Jr., House [Barnstable MRA]*, 35 Main St. [9/18/87]
Barnstable, *Baxter, Capt. Sylvester, House [Barnstable MRA]*, 156 Main St. [3/13/87]
Barnstable, *Baxter, Capt. Rodney J., House [Barnstable MRA]*, South and Pearl Sts. [3/13/87]
Barnstable, *Baxter, Charles L., House [Barnstable MRA]*, 77 Main St. [3/13/87]
Barnstable, *Baxter, Shubael, House [Barnstable MRA]*, 9 E. Bay Rd. [9/18/87]
Barnstable, *Bearse, Capt. Allen H., House [Barnstable]*, 48 Camp St. [3/13/87]
Barnstable, *Bearse, Capt. Oliver, House [Barnstable MRA]*, 31 Pearl St. [3/13/87]
Barnstable, *Blish—Garret House [Barnstable MRA]*, 350 Plum St. [3/13/87]
Barnstable, *Building at 614 Main Street [Barnstable MRA]*, 614 Main St. [3/13/87]
Barnstable, *Building at 606 Main Street [Barnstable MRA]*, 606 Main St. [3/13/87]
Barnstable, *Building at 600 Main Street [Barnstable MRA]*, 600 Main St. [3/13/87]
Barnstable, *Building at 237–239* Main Street [Barnstable MRA], 237–239 Main St. [3/13/87]
Barnstable, *Campbell, Collen C., House [Barnstable MRA]*, 589 Main St. [3/13/87]
Barnstable, *Canary—Hartnett House [Barnstable MRA]*, 113 Winter St. [3/13/87]
Barnstable, *Chase, Lemuel B., House [Barnstable MRA]*, 340 Scudder Ave. [3/13/87]
Barnstable, *Codman, Col. Charles, Estate [Barnstable MRA]*, 43 Ocean View Ave. [3/13/87]
Barnstable, *Crocker, Benomi and Barnabas, House [Barnstable MRA]*, 325 Willow St. [3/13/87]
Barnstable, *Crocker, Lot, House [Barnstable MRA]*, 284 Gosnold St. [3/13/87]
Barnstable, *Crosby House [Barnstable MRA]*, 33 Pine St. [3/13/87]
Barnstable, *Crosby, Daniel, House [Barnstable MRA]*, 18 Bay St. [9/18/87]
Barnstable, *Fuller House [Barnstable MRA]*, Parker Rd. [3/13/87]
Barnstable, *Gifford Farm [Barnstable MRA]*, 261 Cotuit Rd. [3/13/87]
Barnstable, *Gleason, Dr. Edward Francis, House [Barnstable MRA]*, 86 Lewis Bay Rd. [9/18/87]
Barnstable, *Goodspeed House [Barnstable MRA]*, 271 River Rd. [3/13/87]
Barnstable, *Gray, Capt. Thomas, House [Barnstable MRA]*, 14 Main St. [3/13/87]
Barnstable, *Hallett, Capt. William, House [Barnstable MRA]*, 570 Main St. [9/18/87]
Barnstable, *Hallett, Seth, House [Barnstable MRA]*, 110 Main St. [9/18/87]
Barnstable, *Harlow Homestead [Barnstable MRA]*, 391 Main St. [9/18/87]
Barnstable, *Hawley, Gideon, House [Barnstable MRA]*, 4766 Falmouth Rd. [3/13/87]
Barnstable, *Hinckley, Nymphus, House [Barnstable MRA]*, 38 Bay St. [3/13/87]
Barnstable, *Hinckley, Capt. Joseph, House [Barnstable MRA]*, 142 Old Stage Rd. [3/13/87]
Barnstable, *Hinckley, S. Alexander, House [Barnstable MRA]*, 151 Pine St. [9/18/87]
Barnstable, *Hinckley Homestead [Barnstable MRA]*, 1740 S. County Rd. [9/18/87]
Barnstable, *Hyannis Road Historic District [Barnstable MRA]*, Bounded by Old King's Hwy., Bow Ln., Cape Cod Branch RR tracks, and Hyannis Rd. [3/13/87]
Barnstable, *Isham, Herman, House [Barnstable MRA]*, 1322 Main St. [3/13/87]
Barnstable, *Jenkins—Whelden Farmstead [Barnstable MRA]*, 221 Pine St. [3/13/87]
Barnstable, *Jenkins, John, Homestead [Barnstable MRA]*, Church St. [3/13/87]
Barnstable, *Jenkins, Joseph, House [Barnstable MRA]*, 310 Pine St. [3/13/87]
Barnstable, *Liberty Hall [Barnstable MRA]*, Main St. [3/13/87]
Barnstable, *Lincoln House Club [Barnstable MRA]*, 135 Bridge St. [3/13/87]
Barnstable, *Lovell, Nehemiah, House [Barnstable MRA]*, 691 Main St. [9/18/87]
Barnstable, *Marstons Mills Hearse House and Cemetery [Barnstable MRA]*, MA 149 [3/13/87]
Barnstable, *Marston, William, House [Barnstable MRA]*, 71 Cotuit Rd. [3/13/87]
Barnstable, *Merrill Estate [Barnstable MRA]*, 1874 S. County Rd. [9/18/87]
Barnstable, *Methodist Church [Barnstable MRA]*, Main St. [3/13/87]
Barnstable, *Old King's Highway Historic District [Barnstable MRA]*, Old King's Highway between Sandwich town line on the West to Yarmouth town line on the East [3/12/87]
Barnstable, *Osterville Baptist Church [Barnstable MRA]*, Main St. [9/18/87]
Barnstable, *Phinney, William and Jane, House [Barnstable MRA]*, 555 Phinney's Ln. [3/13/87]
Barnstable, *Rhodehouse, Nelson, House [Barnstable MRA]*, 131 Main St. [3/13/87]
Barnstable, *Richardson, John, House [Barnstable MRA]*, 242 Phinney's Ln. [9/18/87]
Barnstable, *Round House [Barnstable MRA]*, 971 W. Main St. [3/13/87]
Barnstable, *Sampson's Folly—Josiah Sampson House [Barnstable MRA]*, 40 Old King's Rd. [9/18/87]
Barnstable, *Smith, Matthias, House [Barnstable MRA]*, 375 Cedar St. [3/13/87]
Barnstable, *Town Line Boundary Marker [Barnstable MRA]*, 410 High St. [9/18/87]
Barnstable, *Town Line Boundary Marker [Barnstable MRA]*, Great Hill Rd. [9/18/87]
Barnstable, *Town Boundary Marker [Barnstable MRA]*, Race Ln. at Sandwich town line [9/18/87]
Barnstable, *Weeks, Barzillai, House [Barnstable MRA]*, 313 High St. [3/13/87]
Barnstable, *Whitman, Josiah B., House [Barnstable MRA]*, 210 Maple St. [3/13/87]
Bourne vicinity, *Cleveland Ledge Light Station [Lighthouses of Massachusetts TR]*, Cape Cod Canal [6/15/87]
Bourne, *Wing's Neck Light [Lighthouses of Massachusetts TR]*, Wing's Neck Rd. [6/15/87]
Chatham, *Chatham Light Station [Lighthouses of Massachusetts TR]*, Main St. [6/15/87]
Eastham, *Beacon, The [Lighthouses of Massachusetts TR]*, Nauset Beach [6/15/87]
Eastham, *Nauset Beach Light [Lighthouses of Massachusetts TR]*, Nauset Beach [6/15/87]
Eastham, *Three Sisters of Nauset (Twin Lights) [Lighthouses of Massachusetts TR]*, Off Cable Rd. [6/15/87]
Falmouth, *Nobska Point Light Station [Lighthouses of Massachusetts TR]*, Nobska Rd. [6/15/87]
Provincetown, *Long Point Light Station [Lighthouses of Massachusetts TR]*, Herring Cove Beach [9/28/87]
Provincetown, *Race Point Light Station [Lighthouses of Massachusetts TR]*, Race Point Beach [6/15/87]
Provincetown, *Wood End Light Lookout Station [Lighthouses of Massachusetts TR]*, Long Pt. [6/15/87]
Truro, *Highland Light Station [Lighthouses of Massachusetts TR]*, Off SR 6 [6/15/87]

Berkshire County

Richmond, *Nichols—Sterner House*, Swamp Rd. [9/17/87]
Washington, *Upper Historic District [Washington MRA]*, Roughly between Branch and Frost Rds. on Washington Mountain Rd. [9/02/87]

Bristol County

Fall River, *Borden Flats Light Station [Lighthouses of Massachusetts TR]* Taunton River [6/15/87]
Fall River, *Sacred Heart School [Fall River MRA]*, 90 Linden St. [3/09/87]
New Bedford, *Butler Flats Light Station [Lighthouses of Massachusetts TR]*, New Bedford Channel [6/15/87]

Dukes County

Edgartown, *Cape Poge Light [Lighthouses of Massachusetts TR]*, Chappaquiddick Island [6/25/87]
Edgartown, *Edgartown Harbor Light [Lighthouses of Massachusetts TR]*, Off N. Water St. [6/15/87]

MASSACHUSETTS—Continued
Gay Head, *Gay Head Light [Lighthouses of Massachusetts TR]*, Lighthouse Rd. [6/15/87]
Gosnold, *Tarpaulin Cove Light [Lighthouses of Massachusetts TR]*, Naushon Island [6/15/87]
Oak Bluffs, *East Chop Light [Lighthouses of Massachusetts TR]*, Lighthouse Rd. [6/15/87]
Tisbury, *West Chop Light Station [Lighthouses of Massachusetts TR]*, W. Chop Rd. [6/15/87]

Essex County

Beverly, *Hospital Point Light Station [Lighthouses of Massachusetts TR]*, Bayview Ave. [9/28/87]
Danvers, *Sprague House*, 59 Endicott St. [7/02/87]
Gloucester, *Annisquam Harbor Light Station [Lighthouses of Massachusetts TR]*, Wigwam Pt. [6/15/87]
Gloucester, *Eastern Point Light Station [Lighthouses of Massachusetts TR]*, Eastern Pt. [9/30/87]
Haverhill, *Peabody School*, 170 Salem St. [10/23/86]
Haverhill, *School Street School*, 40 School St. [10/23/86]
Marblehead, *Marblehead Light [Lighthouses of Massachusetts TR]*, Marblehead Neck [6/15/87]
Newburyport, *Newburyport Harbor Light [Lighthouses of Massachusetts TR]*, Northern Blvd. [6/15/87]
Newburyport, *Newburyport Harbor Front Range Light [Lighthouses of Massachusetts TR]*, Merrimac River Coast Guard Station [6/15/87]
Newburyport, *Newburyport Harbor Rear Range Light [Lighthouses of Massachusetts TR]*, Water St. near Merrimac River [6/15/87]
Rockport, *Straightsmouth Island Light [Lighthouses of Massachusetts TR]*, Straightsmouth Island [6/15/87]
Salem, *Derby Wharf Light Station [Lighthouses of Massachusetts TR]*, Derby Wharf [6/15/87]

Hampden County

Springfield, *Ethel Apartment House*, 70 Patton St. [3/06/87]
Springfield, *Laurel Hall*, 72–74 Patton St. [3/06/87]
Westfield, *Van Deusen H. M., Whip Company*, 42 Arnold St. [2/18/87]

Hampshire County

Ware, *Ware Millyard Historic District* Roughly bounded by South St., the Ware River, Upper Dam Complex, Park St., Otis Ave. and Church St. [11/21/86]

Middlesex County

Cambridge, *Cambridge Common Historic District (Boundary Increase and Decrease) [Cambridge MRA]*, Roughly NW of Waterhouse St. on Concord Ave. between Garden and Follen Sts. [1/28/87]
Cambridge, *Harvard Union [Cambridge MRA]*, Quincy and Harvard Sts. [1/28/87]
Cambridge, *Sears Tower—Harvard Observatory [Cambridge MRA]*, 60 Garden St. [2/26/87]
Malden, *Daniels, Charles A., School*, Daniels St. [1/08/87]
Newton, *Hyde Avenue Historic District [Newton MRA]*, 36, 42, 52, 59, and 62 Hyde Ave. [12/23/86]
Newton, *Potter Estate [Newton MRA]*, 65–71 Walnut Pk. [12/23/86]
Newton, *Socco—Pettee Machine Shops [Newton MRA]*, 156 Oak St. [12/23/86]
Waltham, *Lawrence, Phineas, House*, 257 Trapelo Rd. [6/20/87]
Winchester, *Winchester Center Historic District*, Roughly bounded by Mt. Vernon and Washington Sts., Waterfield Rd., Church and Main Sts. [11/21/86]

Nantucket County

Nantucket, *Brant Point Light Station [Lighthouses of Massachusetts TR]*, Brant Pt. [9/28/87]

Norfolk County

Dover, *Elm Bank*, Bounded by the Charles River to the W, N, and E, and the carriage path to the S, off 900 Washington St. [7/10/87]
Needham, *Fuller, Robert, House*, 3 Burrill Ln. [9/08/87]
Needham, *Grover, Emery, Building*, 1330 Highland Ave. [8/20/87]

Plymouth County

Brockton, *Brockton Edison Electric Illuminating Company Power Station*, 70 School St. [9/17/87]
Hull vicinity, *Graves Light Station [Lighthouses of Massachusetts TR]*, N of Hull in the Massachusetts Bay [9/28/87]
Marion, *Bird Island Light [Lighthouses of Massachusetts TR]*, Sippican Harbor [9/28/87]
Mattpoisett, *Ned Point Light [Lighthouses of Massachusetts TR]*, Ned Point Rd. [6/15/87]
Plymouth, *Plymouth Post Office Building*, 5 Main St. [10/23/86]
Scituate, *Minot's Ledge Light [Lighthouses of Massachusetts TR]*, Minot's Ledge [6/15/87]
Scituate, *Scituate Light [Lighthouses of Massachusetts TR]*, Cedar Pt. [6/15/87]

Suffolk County

Boston, *Abbotsford*, 300 Walnut Ave. [9/16/87]
Boston, *Boston Common*, Beacon, Park, Tremont, Boylston, and Charles St. [2/27/87]
Boston, *Boston Public Garden*, Beacon, Charles, Boylston, and Arlington Sts. [2/27/87]
Boston, *Congress Street Fire Station*, 344 Congress St. [9/03/87]
Boston, *Harvard Stadium*, 60 N. Harvard St. [2/27/87]
Boston, *Long Island Head Light [Lighthouses of Massachusetts TR]*, Long Island [6/15/87]
Boston, *Monument Square Historic District*, Monument Sq. [6/02/87]
Boston, *New Riding Club*, 52 Hemenway St. [8/20/87]
Boston, *Saint Augustine Chapel and Cemetery*, Dorchester St. between W. Sixth and Tudor Sts. [9/16/87]

Worcester County

Athol, *Old Town Hall*, 1307 Main St. [6/17/87]
Westborough, *West Main Street Historic District*, Roughly bounded by Milk, Main, Blake, and Fay Sts. [9/16/87]
Westminster, *Wood, Nathan, House*, 164 Worcester Rd. [9/16/87]
Westminster, *Wood, Abijah, House*, 174 Worcestar Rd. [9/17/87]
Winchendon, *Old Centre Historic District*, Roughly Old County and Baldwinsville Rds., Hale St., and Teal Rd. [9/16/87]

MICHIGAN

Allegan County

Allegan, *Born, Engelbert B., House [Allegan MRA]*, 128 Hill St. [3/12/87]
Allegan, *Born, Edward D., House [Allegan MRA]*, 158 Hill St. [3/12/87]
Allegan, *Brown, William H., House [Allegan MRA]*, 800 Ely St. [7/06/87]
Allegan, *Downtown Allegan Historic District [Allegan MRA]*, Roughly bounded by Trowbridge, Locust, Hubbard, Brady, and Water Sts. [3/12/87]
Allegan, *Franks, Henry, House [Allegan MRA]*, 536 Ely St. [3/12/87]
Allegan, *Griswold Civic Center Historic District [Allegan MRA]*, Roughly bounded by Hubbard, Walnut, and Trowbridge Sts. [3/12/87]
Allegan, *Lilly, Augustus, House [Allegan MRA]*, 132 Cora St. [3/12/87]
Allegan, *Marshall Street Historic District [Allegan MRA]*, 231–237, 335–705, 233–630 Marshall St. [3/12/87]
Allegan, *Messenger, William C., House [Allegan MRA]*, 310 River St. [3/12/87]
Allegan, *Oakwood Cemetery Chapel [Allegan MRA]*, Arbor St. [3/12/87]
Allegan, *Pritchard's Outlook Historic District [Allegan MRA]*, Roughly bounded by Park Dr., Walnut, Crescent, and Davis Sts. [7/06/87]
Allegan, *Stedman, Sarah Lowe, House [Allegan MRA]*, 632 Grand St. [3/12/87]

Barry County

Hastings, *Shriner—Ketcham House*, 327 Shriner St. [3/17/87]

Eaton County

Grand Ledge, *River Ledge Historic District*, Jefferson, Scott, and Lincoln Sts. between Franklin and Maple Sts. [9/24/87]

Emmet County

Petoskey, *East Mitchell Street Historic District [Petoskey MRA]*, Roughly bounded by Rose, Kalamazoo, State, Howard, Michigan, and Division [11/12/86]
Petoskey, *Mineral Well Park [Petoskey MRA]*, W. Lake St. [3/25/87]
Petoskey, *Petoskey Downtown Historic District [Petoskey MRA]*, Roughly bounded by Rose, Division, Michigan, and Petoskey [11/12/86]

Genesee County

Flint, *Johnson, Abner C., House*, 625 East St. [2/19/87]

MICHIGAN—Continued
Grand Traverse County
Fife Lake vicinity, *Fife Lake—Union District No. 1 Schoolhouse*, 5020 Fife Lake Rd. [5/27/87]

Houghton County
Houghton, *Saint Ignatius Loyola Church*, 703 E. Houghton Ave. [5/03/87]

Huron County
Port Austin, *Winsor and Snover Bank Building*, 8643 Lake St. [3/19/87]

Kent County
Grand Rapids, *Villa Maria*, 1315 Walker NW [3/27/87]

Lapeer County
Imlay City, *Palmer, Charles, House*, 240 N. Main St. [6/12/87]

Livingston County
Howell, *Howell Downtown Historic District*, Roughly bounded by Clinton, Barnard, Sibley, and Chestnut Sts. [2/27/87]

Manistee County
Kaleva, *Mckinnes, John J., Bottle House*, 14551 Wuoksi Ave. [7/09/87]

Mecosta County
Big Rapids, *Fairman Building*, 102–106 S. Michigan Ave. [2/12/87]
Big Rapids, *Nisbett Building*, 101 S. Michigan Ave. [12/04/86]

Montcalm County
Stanton, *Gilbert, Giles, House*, 306 N. Camburn St. [2/12/87]

Oakland County
Commerce vicinity, *Andrews—Leggett House*, 722 Farr St. [6/12/87]

Shiawassee County
Durand vicinity, *Williams—Cole House*, 6810 Newburg Rd. [12/04/86]

Washtenaw County
Ann Arbor, *Nickels Arcade*, 328–330 S. State St. [7/09/87]
Chelsea, *Michigan Central Railroad Chelsea Depot*, 150 Jackson St. [6/12/87]

Wayne County
Detroit, *King, L. B. and Co. Building*, 1274 Library [6/12/87]
Detroit, *Players, The*, 3321 E. Jefferson Ave. [6/12/87]
Grosse Pointe Farms, *Academy of the Sacred Heart*, 171 Lake Shore Dr. [6/25/87]

Wexford County
Cadillac, *Mitchell, Charles T., House*, 118 N. Shelby St. [12/01/86]

MINNESOTA

Cook County
Grand Marais, *Scott, Jim, Fishhouse*, US 61 at Fifth Ave. [10/23/86]

Freeborn County
Albert Lea, *Albert Lea Commercial Historic District*, N. Broadway Ave. between Water and E. Main Sts. [7/16/87]

Hennepin County
Minneapolis, *White Castle Building No. 4*, 3252 Lyndale Ave. S [10/16/86]

Jackson County
Jackson vicinity, *Moore, George M., Farmstead*, CR 4 [1/07/87]

Kandiyohi County
Lake Lillian vicinity, *Bosch, John, Farmstead*, CR 4 [4/23/87]
Willmar vicinity, *District School No. 55*, CR 9 and US 71 [4/16/87]

Martin County
Sherburn, *Sherburn Commercial Historic District*, Main St. N between Front and Second Sts. [3/03/87]

Mower County
Austin, *Paramount Theater*, 125 Fourth Ave. NE [10/23/86]

Rice County
Faribault, *Administration Building—Girls' Dormitory, Minnesota School for the Deaf*, MN 299 [11/06/86]

St. Louis County
Duluth, *Duluth Civic Center Historic District*, Fifth Ave. W and First St. [11/06/86]

Steele County
Owatonna, *Pillsbury Academy Campus Historic District*, 315 S. Grove St. [1/22/87]

Watonwan County
LaSalle vicinity, *Nelson and Albin Cooperative Mercantile Association Store*, CR 6 [1/07/87]
St. James, *Watonwan County Courthouse*, Seventh St. S. and Second Ave., S. [1/07/87]

Winona County
Elba vicinity, *Hemmelberg, William, House*, CRs 26 and 37 [10/23/86]

MISSISSIPPI

Adams County
Natchez vicinity, *Hillside*, Hutchins Landing Rd. [9/15/87]
Natchez vicinity, *Smithland*, 1 mi. S of Kingston-Hutchins Rd. [4/02/87]

Alcorn County
Corinth vicinity, *Union Battery F, Battle of Corinth*, Rabbitt Ranch Rd. [9/10/87]

Attala County
Kosciusko, *Anderson, Col. Chap, House [Johnson, Andrew, Architecture in North Mississippi TR]*, 402 N. Jackson St. [2/26/87]
Kosciusko, *Jackson—Brown House*, 107 N. Wells St. [2/05/87]

Carroll County
Oklahoma vicinity, *French Site (22HO565)*, Address Restricted [11/06/86]

Chickasaw County
Okolona, *Merchants and Farmers Bank Building*, 423 Main St. [5/14/87]

Clay County
Palo Alto vicinity, *Town of Palo Alto*, Address Restricted [3/20/87]

Forrest County
Hattiesburg, *Old Hattiesburg High School*, 949 Main St. [5/29/87]

Hancock County
Bay St. Louis, *Glen Oak—Kimbrough House [Bay St. Louis MRA]*, 808 N. Beach Blvd. [11/21/86]
Bay St. Louis, *Taylor House [Bay St. Louis MRA]*, 808 N. Beach Blvd. [11/21/86]
Bay St. Louis, *Taylor School [Bay St. Louis MRA]*, 116 Leonard St. [1/15/87]
Bay St. Louis, *Webb School/Gulf Coast Community Action Agency [Bay St. Louis MRA]*, 300 Third St. [11/21/86]

Harrison County
Biloxi, *Bass, Raymond, Site (22HR636)*, Address Restricted [2/26/87]

Holmes County
Cruger vicinity, *French Site (22HO585)*, Address Restricted [11/06/86]
Goodman vicinity, *Cowsert, Joe, Place Site (22HO507)*, Address Restricted [2/27/87]
Lexington vicinity, *Providence Mound (22HO599)*, Address Restricted [3/01/87]
Pickens vicinity, *Old Hoover Place Site (22HO502)*, Address Restricted [3/01/87]

Jackson County
Gautier vicinity, *Gravelline Mound Site (22JK509)*, Address Restricted [7/02/87]
Moss Point, *Dantzler, A. F., House*, 5005 Griffin St. [3/26/87]
Ocean Springs, *Bertuccini House and Barbershop [Ocean Springs MRA]*, 619–619A Washington Ave. [6/09/87]
Ocean Springs, *Carter—Calloway House [Ocean Springs MRA]*, 916 State St. [4/20/87]
Ocean Springs, *Cochran—Casanova House [Ocean Springs MRA]*, 3000 Robinson St. [4/20/87]
Ocean Springs, *Halstead Place [Ocean Springs]*, E. Beach Dr. [4/20/87]
Ocean Springs, *Hansen—Dickey House [Ocean Springs MRA]*, 108 Shearwater Dr. [4/20/87]
Ocean Springs, *House at 1112 Bowen Avenue [Ocean Springs MRA]*, 1112 Bowen Ave. [4/20/87]
Ocean Springs, *House at 1410 Bowen Avenue [Ocean Springs MRA]*, 1410 Bowen Ave. [4/20/87]
Ocean Springs, *Indian Springs Historic District [Ocean Springs MRA]*, Iberville St., Church St., and Washington Ave. N [4/20/87]
Ocean Springs, *Keys, Thomas Isaac, House [Ocean Springs MRA]*, 1017 DeSoto Ave. [4/20/87]
Ocean Springs, *Lover's Lane Historic District [Ocean Springs MRA]*, Lover's Ln. [5/09/87]
Ocean Springs, *Marble Springs Historic District [Ocean Springs MRA]*, Along Iberville Ave., between Washington Ave. N and Sunset Ave. [4/20/87]
Ocean Springs, *O'Keefe—Clark Boarding House [Ocean Springs MRA]*, 2122 Government St. [4/20/87]

MISSISSIPPI—Continued
Ocean Springs, *Old Farmers and Merchants State Bank [Ocean Springs MRA]*, 998 Washington Ave. [4/20/87]
Ocean Springs, *Saint John's Episcopal Church [Ocean Springs MRA]*, NW corner of Rayburn and Porter Ave. [4/20/87]
Ocean Springs, *Sullivan—Charnley Historic District [Ocean Springs MRA]*, Shearwater Dr. and Holcomb Blvd. [4/20/87]
Ocean Springs, *Vancleave Cottage [Ocean Springs MRA]*, 1302 Government St. [4/20/87]
Pascagoula vicinity, *Round Island Lighthouse*, SW corner of Round Island [10/09/86]

Jefferson County
Fayette, *Hughes—Clark House*, 221 Poindexter St. [8/03/87]

Jones County
Laurel, *Laurel Central Historic District*, Roughly bounded by Tenth and Thirteenth Sts., First Ave., Seventh and Fifth Sts., and Eighth Ave. [9/04/87]
Laurel, *Rogers, Newell, House*, 706 N. Sixth Ave. [4/20/87]

Lauderdale County
Meridian, *East End Historic District [Meridian MRA]*, Roughly bounded by Eighteenth St., Eleventh Ave., Fourteenth St., Fourteenth Ave., Fifth St., and Seventeenth Ave. [8/21/87]
Meridian, *Highlands Historic District [Meridian MRA]*, Roughly bounded by Fifteenth St., Thirty-fourth Ave., Fifth St., Nineteenth St., and Thirty-sixth Ave. [8/21/87]
Meridian, *Highland Park Dentzel Carousel and Shelter Building*, Highland Park [2/27/87]
Meridian, *Mid-Town Historic District [Meridian MRA]*, Roughly bounded by Twenty-third Ave., Fifteenth St., Twenty-eighth Ave., and Twenty-second St. [8/21/87]
Meridian, *Poplar Springs Road Historic District [Meridian MRA]*, Roughly bounded by Twenty-ninth St., Twenty-third Ave., Twenty-second St., and Twenty-ninth Ave. [8/21/87]
Meridian, *West End Historic District [Meridian MRA]*, Roughly bounded by Seventh St., Twenty-eighth Ave., Shearer's Branch, and Fifth St. [8/21/87]

Lawrence County
Monticello vicinity, *Lowe—Steen Site (22LW511)*, Address Restricted [3/01/87]
Oma vicinity, *George Mound (22LW501)*, Address Restricted [3/01/87]

Leake County
Carthage vicinity, *Steep Mound Site (22LK26)*, Address Restricted [1/14/87]

Lowndes County
Columbus vicinity, *Bethel Presbyterian Church*, 12 mi. off US 45 [12/19/86]

Madison County
Goshen Springs vicinity, *White Perch Paradise Site (22MD941)*, Address Restricted [2/27/87]

Oktibbeha County
Starkville, *Gillespie—Jackson House*, SE corner MS 12 and MS 25 [11/06/86]

Pike County
Jackson, *Lane College Historic District*, Lane Ave. [7/02/87]

Rankin County
Brandon vicinity, *Turcotte House*, SE of Brandon on MS 12 [6/04/87]
Goshen Springs vicinity, *Armstrong Site (22RA578)*, Address Restricted [2/02/87]
Richland, *Misterfeldt Home Place*, 1101 Old Hwy. 49S [12/18/86]

Simpson County
Pearl vicinity, *Lewis, L'Dora, Mound (22SI512)*, Address Restricted [3/01/87]

Smith County
Taylorsville, *Taylorsville Signal Office and Watkins General Store*, 326 Bureka St. [11/06/86]

Tallahatchie County
Sumner vicinity, *Buford Site (22TI501)*, Address Restricted [10/15/86]

Tunica County
Crenshaw vicinity, *Canon Site (22TU523)*, Address Restricted [1/07/87]
Dundee vicinity, *Dundee Site (22TU501)*, Address Restricted [1/07/87]
Evansville vicinity, *Evansville Mounds (22TU502)*, Address Restricted [1/07/87]
Evansville vicinity, *Owens Site (22TU512)*, Address Restricted [1/07/87]
Hollywood vicinity, *Johnson Cemetery Site (22TU518)*, Address Restricted [1/07/87]

Warren County
Vicksburg, *Fitz-Hugh Hall*, 1322 Chambers St. [11/06/86]
Vicksburg, *Magnolias, The*, 1017 Monroe St. [2/26/87]

Washington County
Greenville, *Bank of Washington*, 120 S. Poplar St. [7/16/87]

Wilkinson County
Woodville vicinity, *Desert Plantation*, E of Pinckneyville-Woodville Rd. [4/01/87]

MISSOURI

Cape Girardeau County
Cape Girardeau, *Hanover Lutheran Church*, 2949 Perryville Rd. [9/14/87]
Jackson vicinity, *McKendree Chapel*, Off I–55 [4/13/87]

Clay County
Liberty, *Odd Fellows Home District*, MO 291 [9/15/87]

Greene County
Fair Grove, *Boegel and Hine Flour Mill—Wommack Mill*, E side of N. Main St., S of intersection with MO 125 [11/06/86]
Springfield vicinity, *Christ Episcopal Church*, Address Restricted [3/26/87]

Jackson County
Kansas City, *Dorson Apartment Building*, 913–915 Benton Blvd. [5/05/87]
Kansas City, *Van Noy, Ira C. and Charles S., Houses*, 6700 and 6800 Elmwood [7/09/87]

Lafayette County
Higginsville, *Chicago and Alton Railroad Depot at Higginsville*, 2109 Main St. [3/25/87]

Marion County
Hannibal, *Hock Building [Hannibal Central Business District MRA]*, 312 Center St. [12/02/86]
Hannibal, *Horr, Benjamin, House [Hannibal Central Business District MRA]*, 308 Center St. [12/02/86]

Pike County
Louisiana, *Georgia Street Historic District*, Roughly Georgia St. between Main and Seventh Sts. [5/05/87]

St. Charles County
St. Charles, *St. Charles Odd Fellows Hall*, 117 S. Main [4/13/87]
St. Charles, *St. Charles Historic District (Boundary Increase)*, 1000 S. Main St. [6/04/87]

St. Louis County
Glendale, *Cori House*, 1060 N. Berry Rd. [10/02/86]
Jennings, *Seed, Miles A., Carriage House*, 2456 Hord Ave., rear [3/25/87]

St. Louis Independent City
St. Louis (Independent City), *Emerson Electric Company Building*, 2012–2018 Washington Ave. [11/06/86]
St. Louis (Independent City), *Gateway Arch*, Memorial Dr. between Poplar St. and Eads bridges [5/28/87]
St. Louis (Independent City), *Goodfellow—Julian Concrete Block District*, Roughly bounded by Julian Ave., Blackstone, and Goodfellow Blvd. [6/13/87]
St. Louis (Independent City), *Hager, C., and Sons Hinge Co.*, 139 Victor St. [2/26/87]
St. Louis (Independent City), *Lambskin Temple*, 1054 S. Kingshighway Blvd. [6/12/87]
St. Louis (Independent City), *Lesan—Gould Building*, 1320–1324 Washington Ave. [11/06/86]
St. Louis (Independent City), *Oakhurst Place Concrete Block District*, Roughly bounded by Julian, Oakley, Plymouth and Oakhurst [5/05/87]
St. Louis (Independent City), *St. Augustine's Roman Catholic Church*, 3114 Lismore [10/02/86]
St. Louis (Independent City), *Tiffany Neighborhood District (Boundary Increase-Decrease—Dundee Place)*, Roughly bounded by Park Ave., S. Grand Blvd., Lafayette, Vandeventer, Tower Grove, and Folsome Aves. [2/26/87]
St. Louis (Independent City), *Washington Avenue Historic District*, Roughly bounded by Delmar, Tucker, St. Charles, N. Fifteenth, Olive, N. Eighteenth, Washington Ave., and Lucas St. [2/12/87]
St. Louis (Independent City), *Washington Avenue: East of Tucker District*, Roughly bounded by Lucas, N. Ninth, St. Charles, Locust, and Tucker Blvd. [3/24/87]

MISSOURI—Continued
St. Louis (Independent City), *Vesper-Buick Auto Company Building*, 3900–3912 W. Pine [10/02/86]

Washington County
Caledonia, *Caledonia Historic District*, Roughly bounded by Patrick, College, and Alexander Sts., and MO 21 [10/27/86]

MONTANA

Beaverhead County
Dillon, *Barrett, Martin, House*, 733 S. Pacific [1/28/87]

Big Horn County
Lodge Grass, *Baldwin House (Lodge Grass MRA)*, 25 Third Ave. [6/03/87]
Lodge Grass, *Cammock's Hotel (Lodge Grass MRA)*, 23 N. Main St. [6/03/87]
Lodge Grass, *Chivers Memorial Church (Lodge Grass MRA)*, E of Chicago Burlington RR tracks, W side of US 87 [6/03/87]
Lodge Grass, *Drew, J. W., Grain Elevator (Lodge Grass MRA)*, E side of Main St. [6/03/87]
Lodge Grass, *Lodge Grass City Jail (Lodge Grass MRA)*, Alley S of Third Ave. [6/03/87]
Lodge Grass, *Lodge Grass Merchandise Company Store (Lodge Grass MRA)*, First Ave. [6/03/87]
Lodge Grass, *Pease's, George, Second Store (Lodge Grass MRA)*, 8 N. Main St. [6/03/87]
Lodge Grass, *Ryan's, John, House (Lodge Grass MRA)*, 15 N. Helen St. [6/03/87]
Lodge Grass, *Sharp's, Joy, Store (Lodge Grass MRA)*, 18 Helen St. [6/03/87]
Lodge Grass, *Simmonsen's House (Lodge Grass MRA)*, 4 S. George St. [6/03/87]
Lodge Grass, *Steven's, Dominic, House (Lodge Grass MRA)*, 10 W. Hosier Ave. [6/03/87]
Lodge Grass, *Trytten, J. M., House (Lodge Grass MRA)*, George St. [6/03/87]

Carbon County
Bridger, *Bridger Opera House (Bridger MRA)*, E. Broadway [9/15/87]
Bridger, *Bridger Coal Company House (Bridger MRA)*, 307 W. Broadway [9/15/87]
Bridger, *Corey House (Bridger MRA)*, 106 N. E St. [7/21/87]
Bridger, *Foreman House (Bridger MRA)*, 408 E. Carbon Ave. [7/21/87]
Bridger, *Gabo, Henry, House (Bridger MRA)*, E of Bridger [7/21/87]
Bridger, *Glidden House (Bridger MRA)*, 112 N. E St. [7/21/87]
Bridger, *Glidden Mercantile (Bridger MRA)*, 102 N. Main [9/15/87]
Bridger, *Heatherington Boarding House (Bridger MRA)*, 200 E. Broadway [9/15/87]
Bridger, *Hough, Raymond, House (Bridger MRA)*, 312 S. Second [9/15/87]
Bridger, *Marcus, Dr. Carl, House (Bridger MRA)*, 210 S. Second [9/15/87]
Bridger, *Methodist Episcopal Church and Parsonage (Bridger MRA)*, 220 W. Broadway [9/15/87]
Bridger, *Netting Rental (Bridger MRA)*, Carbon Ave. [9/15/87]
Bridger, *Wool Warehouse (Bridger MRA)*, E. Bridger [7/21/87]
Red Lodge, *Calvary Episcopal Church*, 9 N. Villard Ave. [10/23/86]

Deer Lodge County
Anaconda, *Anaconda Copper Mining Company Smoke Stack*, Anaconda Copper Smelter [4/09/87]

Flathead County
Glacier National Park, *Great Northern Railway Buildings*, Glacier National Park [5/28/87]
Kalispell, *Keith, Harry C., House*, 936 Fifth Ave. E [7/16/87]
Kalispell, *Ringleberg, Cornelius, House*, 1935 Third Ave. W [1/22/87]
West Glacier vicinity, *Apgar Fire Lookout (Glacier National Park MRA)*, Near Lake McDonald [12/16/86]
West Glacier vicinity, *East Glacier Ranger Station Historic District (Glacier National Park MRA)*, ¾ mi. N of East Glacier Park on MT 49 [12/16/86]
West Glacier vicinity, *Heaven's Peak Fire Lookout (Glacier National Park MRA)*, Mount Cannon [12/19/86]
West Glacier vicinity, *Logging Creek Ranger Station Historic District (Glacier National Park MRA)*, Glacier Rt. 7 near Logging Creek [12/16/86]
West Glacier vicinity, *Lower Logging Lake Snowshoe Cabin (Glacier National Park MRA)*, Near foot of Logging Lake [12/16/86]
West Glacier vicinity, *Lower Park Creek Patrol Cabin (Glacier National Park MRA)*, E side of Park Creek Trail past crossing of Fielding-Coal Creek Trail [12/16/86]
West Glacier vicinity, *McCarthy Homestead Cabin (Glacier National Park MRA)*, On the N fork of the Flathead River [12/16/86]
West Glacier vicinity, *Mount Brown Fire Lookout (Glacier National Park MRA)*, Off Rte. 1 near Snyder Lake [12/16/86]
West Glacier vicinity, *Pass Creek Snowshoe Cabin (Glacier National Park MRA)*, Confluence of Waterton River and Pass Creek [12/19/86]
West Glacier vicinity, *Sherburne Ranger Station Historic District (Glacier National Park MRA)*, Glacier Rt. 3 near Glacier Entrance [12/16/86]
West Glacier vicinity, *Swiftcurrent Ranger Station Historic District (Glacier National Park MRA)*, Off Rt. 3 near Swiftcurrent Lake [12/19/86]
West Glacier vicinity, *Swiftcurrent Fire Lookout (Glacier National Park MRA)*, Near the Continental Garden Wall in vicinity of Swiftcurrent Mountain [12/16/86]
West Glacier vicinity, *Upper Park Creek Patrol Cabin (Glacier National Park MRA)*, Jct. of Park Creek and Two Medicine Pass Trails [12/16/86]
West Glacier vicinity, *Upper Lake McDonald Ranger Station Historic District (Glacier National Park MRA)*, N shore Lake McDonald [12/16/86]
West Glacier vicinity, *Walton Ranger Station Historic District (Glacier National Park MRA)*, US 2 near Essex [12/16/86]
West Glacier, *Lake McDonald Lodge*, Off Going to the Sun Rd. [5/28/87]

Gallatin County
West Yellowstone, *Eagle's Store (West Yellowstone MRA)*, 3 Canyon St. [11/06/86]

Glacier County
Glacier National Park, *Great Northern Railway Buildings*, Glacier National Park [5/28/87]

Granite County
Philipsburg, *Anderson Lumber Company (Philipsburg Montana MRA)*, Roughly bounded by Brown, First, and Holland Sts. [12/03/86]
Philipsburg, *Doe, M. E., House (Philipsburg Montana MRA)*, Dearborn and Montgomery Sts. [12/03/86]
Philipsburg, *Philipsburg Grade School (Philipsburg Montana MRA)*, W of Schnepel St. [12/03/86]
Philipsburg, *Ringeling House (Philipsburg Montana MRA)*, Caledonian Mining Claim, E of Doe and Morse Addition [12/03/86]

Lewis and Clark County
Lincoln, *Lincoln Lodge*, Stemple Pass Rd. [10/23/86]
Lincoln, *Lincoln Community Hall*, MT 200 [1/22/87]

Madison County
Pony vicinity, *Strawberry Mine Historic District (Pony MRA)*, Roughly bounded by Strawberry Ridge, Posy Rd., and Posy Creek [8/04/87]
Pony, *Pony Historic District (Pony MRA)*, Town of Pony, SW of Harrison [8/04/87]
Pony, *Powder House (Pony MRA)*, ¼ mi. SE of Posy on Potosi Rd. [8/03/87]
Sheridan, *Christ Episcopal Church and Rectory*, SW jct. of Poppleton and Main Sts. [1/22/87]
Sheridan, *O'Brien, William, House*, 114 E. Poppleton [10/23/86]

Missoula County
Missoula, *Fort Missoula Historic District*, Reserve St. and South Ave. [4/29/87]
Missoula, *Knowles Building*, 200–210 S. Third St. W [4/09/87]
Missoula, *Parsons, Edgar, House*, 611 Stephens Ave. [11/06/86]

Park County
Yellowstone National Park, *Northeast Entrance Station*, US 212 [5/28/87]

Ravalli County
Hamilton, *Riverside*, Eastside Hwy. [7/16/87]
Stevensville vicinity, *Cramer, Martin, House*, 326 Groff La. [8/03/87]

Sanders County
Thompson Falls, *Ainsworth House (Thompson Falls MRA)*, 911 Maiden Ln. [10/07/86]
Thompson Falls, *Bedard House (Thompson Falls MRA)*, 207 Spruce St. [10/07/86]
Thompson Falls, *Gem Saloon (Thompson Falls MRA)*, 888 Main St. [10/07/86]
Thompson Falls, *Gumdelsheng House (Thompson Falls MRA)*, 1012 Preston Ave. [10/07/86]
Thompson Falls, *Griffen House (Thompson Falls MRA)*, 886 Gallatin St. [10/07/86]
Thompson Falls, *House at 916 Preston Avenue (Thompson Falls MRA)*, 916 Preston Ave. [10/07/86]
Thompson Falls, *House at 112 Park Street (Thompson Falls MRA)*, 112 Park St.

MONTANA—Continued
[10/07/86]
Thompson Falls, *Hoyt House (Thompson Falls MRA)*, 204 Gallatin St. [10/07/86]
Thompson Falls, *IOOF Lodge (Thompson Falls MRA)*, 520 Main St. [10/07/86]
Thompson Falls, *Norby House (Thompson Falls MRA)*, 13 Pond St. [10/07/86]
Thompson Falls, *Northern Pacific Warehouse (Thompson Falls MRA)*, Bounded by Preston Ave. and Main St. along Burlington Northern Right-of-Way [10/07/86]
Thompson Falls, *Preston House (Thompson Falls MRA)*, 205 Ferry St. [10/07/86]
Thompson Falls, *Rinard House (Thompson Falls MRA)*, 210 Jefferson St. [10/07/86]
Thompson Falls, *Sanders County Jail (Thompson Falls MRA)*, Madison and Maiden Lane [10/07/86]
Thompson Falls, *Thayer House (Thompson Falls MRA)*, 109 Jefferson St. [12/22/86]
Thompson Falls, *Thompson Falls Hydroelectric Dam Historic District (Thompson Falls MRA)*, US ALT 10 at Clark Fork River within NW part of Thompson Falls [10/07/86]
Thompson Falls, *Tourist Hotel (Thompson Falls MRA)*, 101 Main St. [10/07/86]
Thompson Falls, *Ward Hotel (Thompson Falls MRA)*, 919 Main St. [12/22/86]
Thompson Falls, *Weber's Store (Thompson Falls MRA)*, 510 Main St. [10/07/86]

Stillwater County
Absarokee, *Sandstone and Cobblestone Schools*, Main St. [1/15/87]
Columbus, *Jacobs, Michael, House*, 4 W. First Avenue N [1/28/87]
Columbus, *Mountain View Cemetery*, US 10 and Repelje Rd. [7/16/87]

NEBRASKA

Adams County
Hastings, *Victory Building*, Second at Saint Joseph Ave. [3/31/87]

Buffalo County
Kearney, *Saint Luke's Protestant Episcopal Church*, 2304 Second Ave. [12/01/86]

Custer County
Comstock vicinity, *Dowse, William R., House*, Address Restricted [12/01/86]

Dawson County
Gothenburg, *Carnegie Public Library*, 1104 Lake Ave. [12/19/86]

Douglas County
Omaha, *Jobbers' Canyon Historic District*, Roughly bounded by Farnum, Eighth, Jackson, and Tenth Sts. [12/04/86]
Omaha, *Pregne Hotel*, 1402 S. Thirteenth St. [7/09/87]
Omaha, *Strehlow Terrace*, 2024 and 2107 N. Sixteenth St. [12/23/86]

Hall County
Grand Island, *Bartenbach, H. J., House*, 720 W. Division [12/08/86]
Grand Island, *Evangelische Lutherische Dreienigkeit Kirche*, 512 E. Second St. [12/01/86]

Jefferson County
Fairbury, *IOOF Temple Building*, 523 E St. [6/15/87]

Mahaska vicinity, *Site No. JF00-072 (Nebraska—Kansas Public Land Survey TR)*, Jct. of Thayer, Jefferson, Washington and Republic Co. lines [6/19/87]

Keya Paha County
Springview, *Keya Paha County High School*, Off NE 12 [12/01/86]

Lancaster County
Lincoln, *Christian Record Building*, 3705 S. Forty-eighth St. [12/01/86]
Lincoln, *Scottish Rite Temple*, 332 Centennial Mall S [12/01/86]
Lincoln, *Terminal Building*, 947 O St. [12/29/86]

Richardson County
Rulo vicinity, *Site No. JF00-062 (Nebraska-Kansas Public Land Survey TR)*, 6½ mi. SE of Rulo; 200 ft. W of rd. between Rulo, NE and White Cloud, KS [6/19/87]

Thayer County
Mahaska vicinity, *Site No. JF00-072 (Nebraska-Kansas Public Land Survey TR)*, Jct. of Thayer, Jefferson, Washington and Republic Co. lines [6/19/87]

NEVADA

Carson City Independent City
Carson City (Independent City), *Curry, Abraham, House*, 406 N. Nevada St. [3/30/87]
Carson City (Independent City), *Kitzmeyer Furniture Factory*, 319 N. Carson St. [6/22/87]

Clark County
Las Vegas, *Smith, Jay Dayton, House*, 624 S. Sixth St. [2/20/87]
Las Vegas, *Whitehead, Stephen R., House*, 333 N. Seventh St. [8/06/87]

Douglas County
Carson City, *Cavell, Dr. William Henry, House*, 402 W. Robinson St. [6/22/87]
Stateline, *Friday's Station*, US 50 between Kingsbury Grade and Loop Rd. [10/09/86]

Washoe County
Reno, *University of Nevada Reno Historic District*, Virginia St. [2/25/87]

NEW HAMPSHIRE

Belknap County
Meredith, *First Free Will Baptist Church in Meredith*, Winona Rd. [12/01/86]

Carroll County
Albany, *Russell—Colbath House*, Kancamagus Hwy. [4/23/87]
Sandwich, *Lower Corner Historic District*, NH 109 [12/01/86]

Cheshire County
Harrisville, *Chesham Village District (Harrisville MRA)*, Roughly bounded by Yellow Wings, Seaver, Chesham, and Marienfield Rds. [12/29/86]
Harrisville, *Harrisville Rural District (Harrisville MRA)*, Roughly along Venable, Old Harrisville, New Harrisville, and Bonds Corner Rds. [2/18/87]
Harrisville, *Pottersville District (Harrisville MRA)*, Roughly intersection of Roxbury and Meadow Rds.; and along Brown Rd. NE of Chesham Rd. [12/29/86]
Harrisville, *Silver Lake District (Harrisville MRA)*, Roughly along Old Nelson, Eastside, and Westside Rds. [12/29/86]
Winchester, *Conant Public Library*, Main St. [8/27/87]
Winchester, *Winchester Town Hall*, Main St. [8/27/87]

Grafton County
Haverhill, *Haverhill Corner Historic District*, NH 10 from N. Piedmont to bisection of NH 25 and Court St. [8/27/87]
North Branford, *Howd—Linsley House*, 1795 Middletown Ave. [12/10/86]

Hillsborough County
Manchester, *Harrington—Smith Block*, 18–52 Hanover St. [1/28/87]
Manchester, *Old Post Office Block*, 54–72 Hanover St. [12/01/86]
Nashua, *Nashua Manufacturing Company Historic District*, Factory and Pine Sts. [9/11/87]

Merrimack County
Concord, *Downing, Lewis, Jr., House*, 33 Pleasant St. [9/11/87]
Concord, *Endicott Hotel*, 1–3 S. Main St. [5/20/87]

Rockingham County
Exeter, *Exeter Waterfront Commercial Historic District (Boundary Increase)*, Chestnut St. [12/29/86]

Strafford County
Dover, *Garrison Hill Park and Tower*, Abbie Sawyer Memorial Dr. [9/11/87]
Somersworth, *Queensbury Mill*, 1 Market St. [4/10/87]

Sullivan County
Charlestown, *Charlestown Main Street Historic District*, Main St. [6/10/87]

NEW JERSEY

Atlantic County
Atlantic City, *Atlantic City Convention Hall*, Georgia and Mississippi Aves. and the Boardwalk [2/27/87]

Camden County
Collingswood, *Collings—Knight Homestead*, 500 Collings Ave. [9/10/87]
Collingswood, *Stokes—Lee House*, 615–617 Lees Ave. [9/10/87]
West Collingswood, *Thackara House*, 912 Eldridge Ave. [9/10/87]

Cumberland County
Maurice town, *Hoskins, Caesar, Log Cabin*, Jct. of South and Second Sts. [9/10/87]

Essex County
Montclair, *Central Presbyterian Church (Montclair MRA)*, 46 Park St. [11/14/86]
Montclair, *House at 7 South Mountain Terrace (Montclair MRA)*, 7 S. Mountain Terr. [11/15/86]
Montclair, *Montclair Art Museum (Montclair MRA)*, 3 S. Mountain Ave. [11/14/86]

NEW JERSEY—Continued
Hudson County
Hoboken, *Buildings at 1200–1206 Washington Street*, 1200–1206 Washington St. [3/09/87]
Hoboken, *Firemen's Monument [Hoboken Firehouses and Firemen's Monument TR]* Church Square Pk. [10/30/86]
Kearny, *Highland Hose No. 4*, 72–74 Halstead St. [5/29/87]

Mercer County
Princeton Borough, *Jugtown Historic District*, Nassau and Harrison Sts., Harrison St. N, and Evelyn Pl. [1/22/87]
Trenton, *In and Out Social Club*, 714–716 S. Clinton Ave. [3/26/87]
Trenton, *Trenton and Mercer County War Memorial—Soldiers' and Sailors' Memorial Building*, W. Lafayette St. [12/11/86]

Middlesex County
Edison, *Shotwell, Benjamin, House*, 26 Runyon's Ln. [6/04/87]

Morris County
Morristown vicinity, *Glynallen*, Canfield Rd. [3/09/87]
Morristown, *Glanville Blacksmith Shop [Morristown MRA]*, 47 Bank St. [3/25/87]
Morristown, *Lindenwold [Morristown MRA]*, 247 South St. [11/13/86]
Morristown, *Morristown Historic District (Boundary Increase) [Morristown MRA]*, Irregularly bounded by Lackawanna, Franklin Pl., James, Ogden Pl., Doughty, Mt. Kemble, Western, and Speedwell [11/13/86]
Morristown, *Mount Kemble Home [Morristown MRA]*, 1 Mt. Kemble Ave. [11/13/86]
Morristown, *Oak Dell [Morristown MRA]*, Franklin St. and Madison Ave. [11/13/86]
Morristown, *Spring Brook House [Morristown MRA]*, 167 James St. [11/13/86]

Somerset County
Bedminster vicinity, *McDonald's—Kline's Mill*, Address Restricted [3/09/87]
North Plainfield, *Washington Park Historic District*, Roughly bounded by Green Brook Rd., Grove Ave., E. Front St., and Geraud Ave. [4/09/87]

NEW MEXICO

Bernalillo County
Albuquerque, *Monte Vista Fire Station*, 3201 Centra Ave. NE [3/19/87]
Albuquerque vicinity, *Las Imagines Archeological District—Albuquerque West Mesa Escarpment*, Address Restricted [11/19/86]

Catron County
Mogollon vicinity, *Socorro Mines Mining Company Mill, Fannie Hill*, Fannie Hill and W to Fannie Hill Mill [9/10/87]
Mogollon, *Mogollon Historic District*, NM 78/Bursum Rd. [9/10/87]

Chaves County
Roswell, *New Mexico Military Institute Historic District [Roswell New Mexico MRA]*, Roughly bounded by Ninteenth and N. Main Sts., College Blvd. and Kentucky Ave. [5/07/87]

Colfax County
Raton, *Colfax County Courthouse [County Courthouses of New Mexico TR]*, Third and Savage [6/18/87]

Curry County
Clovis, *1906 Clovis City Hall and Fire Station*, 308 Pile St. [7/16/87]
Clovis, *Clovis Central Fire Station*, 320 Mitchell St. [7/02/87]
Clovis, *Curry County Courthouse [County Courthouses of New Mexico TR]*, 700 blk. of Main St. [6/18/87]
Clovis, *First Methodist Church of Clovis*, 622 Main St. [7/02/87]

Los Alamos County
Bandelier National Monument, *Bandelier CCC Historic District*, Off NM 4 [5/28/87]

Rio Arriba County
Los Ojos, *Our Lady of Lourdes Grotto [La Tierra Amarilla MRA]*, Old Highway [3/27/87]
Tierra Amarilla vicinity, *Adolfo Canyon Site (LA 5665) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Boulder Fortress (LA 55828) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Cabresto Mesa Tower Complex (LA 2138) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Cagle's Site (LA 55826) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Canyon View Ruin (LA 55827) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Casa Mesa Diablo (LA 11100) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Citadel, The (LA 55828) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Compressor Station Ruin [LA 5656] [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Crevice Ruin (LA 13218) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Crow Canyon Site (LA 20219) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Delgadito Pueblito (LA 5649) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Foothold Ruin (LA 9073) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Frances Canyon (LA 2135) (Boundary Increase) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Gomez Canyon Ruin (LA 55831) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Gomez Point Site (LA 55832) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Gould Pass Ruin (LA 5659) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Hill Road Ruin (LA 55833) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Hooded Fireplace Ruin (LA 5662) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Kin Naa daa (Maize House) (LA 1872) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Largo School Ruin (LA 5657) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Old Fort (LA 1869) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Overlook Site (LA 10732) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Pointed Butte Ruin (LA 10733) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Pork Chop Pass Site (LA 5661) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Pueblito Canyon Ruin (LA 1684) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Pueblito East Ruin (LA 55834) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Ridge Top House (LA 6287) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Rincon Rockshelter (LA 55835) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Rincon Largo Ruin (LA 2436 and LA 2435) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Romine Canyon Ruin (LA 55836) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Romine Ranch Site (LA 55837) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Shaft House (LA 5660) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Shaft House (LA 5660) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Split Rock Ruin (LA 5664) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Tapicito Ruin (LA 2296) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Three Corn Ruin (LA 1671) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Tower of the Standing God (LA 55839) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Truby's Tower (LA 2434) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Unreachable Rockshelter (LA 55841) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Wall, The (LA 55840) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Adams Canyon Site (LA 55824) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Tierra Amarilla vicinity, *Garcia Canyon Pueblito (LA 36808) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]

NEW MEXICO—Continued
San Juan County
Aztec, *Lower Animas Ditch [Aztec New Mexico Historic MRA]*, Lower Animas Ditch from Church Ave. to Lovers Lane Historic District [3/19/87]
Farmington vicinity, *Christmas Tree Ruin (LA 11097) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Farmington vicinity, *Cottonwood Divide Site (LA 55829) [Navajo—Refugee Pueblo TR]* Address Restricted [1/21/87]
Farmington vicinity, *Hadlock's Crow Canyon No. 1 (LA 55830 [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Farmington vicinity, *Prieta Mesa Site (LA 11251) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Farmington vicinity, *Simon Canyon (LA 5047) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]
Farmington vicinity, *Star Rock Refuge (LA 55838) [Navajo—Refugee Pueblo TR]*, Address Restricted [1/21/87]

San Miguel County
Las Vegas, *Acequia Madre [Las Vegas New Mexico MRA]*, Roughly from Gallinas River to intersection of S. Pacific and US 85 [3/19/87]
Las Vegas, *Lincoln Park Historic District (Boundary Increase) [Las Vegas New Mexico MRA]*, Roughly bounded by Douglas and Grand Aves. and Gallinas and Twelfth Sts. [3/19/87]

Sandoval County
Bandelier National Monument, *Bandelier CCC Historic District*, Off NM 4 [5/28/87]

Santa Fe County
Lamy, *Pflueger General Merchandise Store and Annex Saloon*, MN 41 [6/21/87]
Santa Fe, *Scottish Rite Cathedral*, 463 Paseo de Peralta [3/13/87]

Torrance County
Mountainair, *Mountainair Municipal Auditorium*, SW corner of Roosevelt Ave. and Beal St. [4/30/87]

Union County
Folsom, *Folsom Hotel*, SW Jct. of Grand Ave. and Wall St. [5/14/87]

Valencia County
Los Lunas, *Wittwer, Dr. William Frederick, House*, NM 6, W of US 85 [2/27/87]

NEW YORK

Allegany County
Wellsville, *Wellsville Erie Depot*, Depot St. [6/27/87]

Bronx County
New York, *Grand Concourse Historic District*, 730–1000, 1100–1520, 1560, and 851–1675 Grand Concourse [6/24/87]

Dutchess County
Chelsea, *Chelsea Grammar School [Chelsea MRA]*, Liberty St. [6/25/87]
Chelsea, *Collyer, Capt. Moses W., House [Chelsea MRA]*, River Rd. S [6/25/87]
Chelsea, *Saint Mark's Episcopal Church [Chelsea MRA]*, Liberty St. [6/25/87]
New Hamburg, *Brower, Abraham, House [New Hamburg MRA]*, 2 Water St. [2/27/87]
New Hamburg, *Brower, Adolph, House [New Hamburg MRA]*, 1 Water St. [2/27/87]
New Hamburg, *Main Street Historic District [New Hamburg MRA]*, Main St. roughly bounded by Stone and Bridge Sts. [2/27/87]
New Hamburg, *Shay's Warehouse and Stable [New Hamburg MRA]*, Rear of 32 Point St. [2/27/87]
New Hamburg, *Shay, William, Double House [New Hamburg MRA]*, 18 Point St. [2/27/87]
New Hamburg, *Stone Street Historic District [New Hamburg MRA]*, Stone St. from Division St. to Bridge St. [2/27/87]
New Hamburg, *Union Free School [New Hamburg MRA]*, Academy St. [2/27/87]
New Hamburg, *Zion Memorial Chapel [New Hamburg MRA]*, 37 Point St. [2/27/87]
Poughkeepsie, *Mill Street-North Clover Street Historic District (Boundary Increase)*, 101–115 Main and 25, 27, 29, and 32 N. Bridge Sts. [5/21/87]
Rhinebeck, *Astor Home for Children [Rhinebeck Town MRA]*, 36 Mill St. [7/09/87]
Rhinebeck, *Barringer Farmhouse [Rhinebeck Town MRA]*, US 9 [7/09/87]
Rhinebeck, *Benner House [Rhinebeck Town MRA]*, 77 Mill St. [7/09/87]
Rhinebeck, *Cox Farmhouse [Rhinebeck MRA]*, Old Post Rd. N [7/09/87]
Rhinebeck, *Evergreen Lands [Rhinebeck Town MRA]*, Delano Dr. [7/09/87]
Rhinebeck, *Fredenburg House [Rhinebeck MRA]*, Old Post Rd. [7/09/87]
Rhinebeck, *Free Church Parsonage [Rhinebeck Town MRA]*, Jct. of William and Grinnell Sts. [7/09/87]
Rhinebeck, *Grasmere [Rhinebeck Town MRA]*, Mill Rd. [7/09/87]
Rhinebeck, *Grove, The [Rhinebeck Town MRA]*, Jct. of Miller Rd. and NY 308 [7/09/87]
Rhinebeck, *Heermance House and Law Office [Rhinebeck Town MRA]*, Jct. of Rhinecliff and Long Dock Rds. [7/09/87]
Rhinebeck, *Hillside Methodist Church [Rhinebeck Town MRA]*, US 9 [7/09/87]
Rhinebeck, *Mansakenning [Rhinebeck Town MRA]*, Ackert Hook Rd. [7/09/87]
Rhinebeck, *Maples, The [Rhinebeck Town MRA]*, 108 Montgomery St. [7/09/87]
Rhinebeck, *Marquardt Farm [Rhinebeck Town MRA]*, Wurtemburg Rd. [7/09/87]
Rhinebeck, *Moore, J. W., House [Rhinebeck Town MRA]*, Mill Rd. [7/09/87]
Rhinebeck, *Morton Memorial Library [Rhinebeck Town MRA]*, Keily St. [7/09/87]
Rhinebeck, *O'Brien General Store and Post Office [Rhinebeck Town MRA]*, Jct. of Schatzell Ave. and Charles St. [7/09/87]
Rhinebeck, *Pier, Jan, House [Rhinebeck Town MRA]*, NY 308 [7/09/87]
Rhinebeck, *Pilgrim's Progress Road Bridge [Rhinebeck Town MRA]*, Miller Rd. S of NY 308 [7/09/87]
Rhinebeck, *Prague House [Rhinebeck Town MRA]*, Primrose Hill Rd. [7/09/87]
Rhinebeck, *Pultz Farmhouse [Rhinebeck Town MRA]*, Wurtemburg Rd. [7/09/87]
Rhinebeck, *Rhinecliff Hotel [Rhinebeck Town MRA]*, Schatzell Ave. [7/09/87]
Rhinebeck, *Riverside Methodist Church and Parsonage [Rhinebeck Town MRA]*, Charles and Orchard Sts. [7/09/87]
Rhinebeck, *Saint Paul's Lutheran Church, Parsonage and Cemetery [Rhinebeck Town MRA]*, Wurtemburg Rd. [7/09/87]
Rhinebeck, *Sipperly Lown Farmhouse [Rhinebeck Town MRA]*, US 9 [7/09/87]
Rhinebeck, *Slate Quarry Road Dutch Barn [Rhinebeck Town MRA]*, Slate Quarry Rd. [7/09/87]
Rhinebeck, *Steenburg Tavern [Rhinebeck Town MRA]*, US 9 [7/09/87]
Rhinebeck, *Stonecrest [Rhinebeck Town MRA]*, Old Post Rd. [7/09/87]
Rhinebeck, *Strawberry Hill [Rhinebeck Town MRA]*, Ackert Hook Rd. [7/09/87]
Rhinebeck, *Traver, J. E., Farm [Rhinebeck Town MRA]*, Violet Hill Rd. [7/09/87]
Rhinebeck, *Traver, John, H., Farm [Rhinebeck Town MRA]*, Wurtemburg Rd. [7/09/87]
Rhinebeck, *Traver House [Rhinebeck Town MRA]*, Wynkoop Ln. [7/09/87]
Rhinebeck, *Van Vredenburg Farm [Rhinebeck Town MRA]*, Cedar Heights Rd. [7/09/87]
Rhinebeck, *Williams Farm [Rhinebeck Town MRA]*, Enterprise Rd. [7/09/87]
Washington, *Lynfeld*, South Rd. [3/19/87]

Erie County
Buffalo, *Parkside East Historic District [Olmsted Parks and Parkways TR]*, Roughly bounded by Parkside Ave., Amherst St., Colvin Ave., NY Central RR tracks, Main St., and Humboldt Ave. [10/17/86]
Buffalo, *Parkside West Historic District [Olmsted Parks and Parkways TR]*, Roughly bounded by Amherst St., Nottingham Terr., Middlesex Rd., and Delaware Ave. [12/10/86]
Rhinebeck, *Salisbury Turnpike Bridge [Rhinebeck Town MRA]*, Old Turnpike Rd. [7/09/87]

Essex County
Newcomb vicinity, *Camp Santanoni [Great Camps of the Adirondacks TR]*, N of NY 28N [4/03/87]
Schroon vicinity, *Fried, Samson, Estate*, NY 74 [2/26/87]

Franklin County
Keese Hill vicinity, *Camp Topridge [Great Camps of the Adirondacks TR]*, S of Keese Mills Rd., Upper St. Regis Lake [11/07/86]
Saranac Inn vicinity, *Eagle Island Camp [Great Camps of the Adirondacks TR]*, Eagle Island, Upper Saranac Lake [4/03/87]
Saranac Inn vicinity, *Moss Ledge [Great Lakes of the Adirondacks TR]*, Off NY 30, Upper Saranac Lake [11/07/86]
Saranac Inn vicinity, *Prospect Point Camp [Great Camps of the Adirondacks TR]*, E of NY 30 [11/07/86]
Upper St. Regis, *Camp Wild Air [Great Camps of the Adirondacks TR]*, Upper St. Regis Lake [11/07/86]

Hamilton County
Raquette Lake vicinity, *Camp Pine Knot [Great Camps of the Adirondacks TR]*, Long Point, Raquette Lake [11/07/86]

NEW YORK—Continued

Raquette Lake vicinity, *Camp Uncas [Great Camps of the Adirondacks TR]*, Mohegan Lake [4/03/87]

Raquette Lake vicinity, *Echo Camp [Great Camps of the Adirondacks TR]*, Long Point, Raquette Lake [11/07/86]

Raquette Lake, *Sagamore Lodge (Boundary Increase) [Great Camps of the Adirondacks TR]*, Sagamore Rd. [11/07/86]

Nassau County

Roslyn, *Eastman Cottage [Roslyn Village MRA]*, 130 Mott Ave. [10/02/86]

Roslyn, *Hicks Lumber Company Store [Roslyn Village MRA]*, 1345 Old Northern Blvd. [10/02/86]

Roslyn, *Roslyn, Savings Bank Building [Roslyn Village MRA]*, 1400 Old Northern Blvd. [10/02/86]

Roslyn, *Roslyn Grist Mill [Roslyn Village MRA]*, 1347 Old Northern Blvd. [10/02/86]

Roslyn, *Roslyn National Bank and Trust Company Building [Roslyn Village MRA]*, 1432 Old Northern Blvd. [10/02/86]

Roslyn, *Roslyn Village Historic District [Roslyn Village Historic District]*, Roughly bounded by Old Northern Blvd., Vernon and E. Broadway Sts., Main, Glen Ave., and Tower St. [4/15/87]

Roslyn, *Titus, Willet, House [Roslyn Village MRA]*, 1441 Old Northern Blvd. [10/02/86]

Roslyn, *Trinity Church Complex [Roslyn Village MRA]*, Northern Blvd. [10/02/86]

Roslyn, *Warner, Samuel Adams, House [Roslyn Village MRA]*, 1 Railroad Ave. [10/02/86]

New York County

New York, *Public School 9*, 466 W. End Ave. [8/03/87]

New York, *United States Courthouse*, 40 Foley Sq. [9/02/87]

Onondaga County

Fayetteville, *Snell, Levi, House*, 416 Brooklea Dr. [8/20/87]

Ontario County

Geneva, *Belhurst Castle*, Lochland Rd. [1/29/87]

Otsego County

Cooperstown vicinity, *Middlefield District No. 1 School*, CR 35 [8/13/87]

Rockland County

Palisades, *Concklin, Abner, House*, Closter Rd. [8/06/87]

Saratoga County

Saratoga Springs, *Canfield Casino and Congress Park*, Roughly bounded by Spring and Circular Sts., Park Pl., and Broadway [2/27/87]

Schenectady County

Duanesburg, *Braman, Joseph, House [Duanesburg, MRA]*, Braman's Corners [4/24/87]

Duanesburg, *Christ Episcopal Church [Duanesburg MRA]*, NY 20 [4/24/87]

Duanesburg, *Duane Mansion [Duanesburg MRA]*, NY 20 [4/24/87]

Duanesburg, *Ferguson Farm Complex [Duanesburg MRA]*, NY 20 [4/24/87]

Duanesburg, *North Mansion and Tenant House [Duanesburg MRA]*, North Mansion Rd. [4/24/87]

Suffolk County

Southampton, *Balcastle [Southampton Village MRA]*, NW corner of Herrick and Little Plains Rds. [10/02/86]

Southampton, *Beach Road Historic District [Southampton Village MRA]*, Between Shinnecock and Halsely Neck Rds. on Beach Rd. at Barrier Beach [10/02/86]

Southampton, *Bowers, Dr. Wesley, House [Southampton Village MRA]*, Beach Rd. [10/02/86]

Southampton, *Goodale, Capt. C., House [Southampton Village MRA]*, 300 Hampton Rd. [10/02/86]

Southampton, *North Main Street Historic District [Southampton Village MRA]*, N. Main St. near CR 39 and Railroad Station Plaza [10/02/86]

Southampton, *Wickapogue Road Historic District [Southampton Village MRA]*, Wickapogue Rd. between Narrow Ln. and Cobb Rd. [10/02/86]

Westchester County

Croton-on-Hudson, *Croton North Railroad Station*, Senasqua Rd. [8/27/87]

Ossining, *Washington School*, 83 Croton Ave. [2/12/87]

Tarrytown, *Christ Episcopal Church*, Broadway and Elizabeth Sts. [4/23/87]

NORTH CAROLINA

Alamance County

Bellemont vicinity, *Kernodle—Pickett House*, Jct. of NC 1136 and NC 1131 [3/23/87]

Bellemont, *Bellemont Mill Village Historic District*, E and W side of NC 49, S of jct. with Great Alamance Creek [7/01/87]

Burlington vicinity, *McCray School*, NW side of NC 62, S of jct. with SR 1757 [12/04/86]

Burlington vicinity, *Sunny Side*, NC 1136, 3 mi. E of jct. with NC 62 [3/23/87]

Graham vicinity, *Cedarock Park Historic District*, SR 2409 [12/04/86]

Mebane vicinity, *Cooper School*, S side of SR 2143, E of jct. with SR 2142 [12/15/86]

Mebane vicinity, *Henderson Scott Farm Historic District*, Jct. of NC 119 and SR 2135 [9/16/87]

Snow Camp vicinity, *Friends Spring Meeting House*, Jct. of SR 1005 and SR 2338 [3/19/87]

Anson County

Wadesboro, *US Post Office*, 105—111 Martin St. [7/06/87]

Bladen County

Clarkton, *Clark, John Hector, House*, SE corner jct. of S. Grove and E. Green Sts. [5/20/87]

Clarkton, *Clarkton Depot*, Elm and Hester Sts. [12/23/86]

Elizabethtown vicinity, *Mt. Horeb Presbyterian Church and Cemetery*, SW corner of NC 87 and SR 1712 jct. [5/13/87]

Buncombe County

Asheville, *Ellington, Douglas, House*, 583 Chunns Cove Rd. [10/16/86]

Asheville, *Ottari Sanitarium*, 401 Kimberly Ave. [10/16/86]

Democrat vicinity, *Carter-Swain House*, E side SR 2162, N of jct. with SR 2163 [7/02/87]

Caswell County

Franklin, *Saint Agnes Church*, 27 Franklin St. [6/04/87]

Catawba County

Hickory, *Claremont High School Historic District [Hickory MRA]*, Roughly bounded by Fifth and Third Aves., Third St., Second Ave. and N. Center St. [10/23/86]

Cumberland County

Fayetteville, *Orange Street School*, 500 blk. of Orange St., jct. of Orange and Chance Sts. [9/22/87]

Forsyth County

Winston-Salem, *West End Historic District*, Roughly bounded by W. End Blvd., Sixth, Broad, and Fourth Sts., I-40, Sunset Dr., and Peters Creek [12/04/86]

Franklin County

Louisburg, *Louisburg Historic District*, Roughly bounded by Allen Lane, Main and Cedar Sts., Franklin, Elm, and King St. [2/18/87]

Henderson County

Fletcher vicinity, *Rugby Grange*, Address Restricted [5/05/87]

Hendersonville vicinity, *Moss–Johnson Farm*, 3346 Haywood Rd. [2/10/87]

Macon County

Franklin, *Franklin Presbyterian Church*, 45 Church St. [2/05/87]

Mecklenburg County

Charlotte, *Dilworth Historic District*, Roughly bounded by Myrtle, Morehead, Berkeley, Dilworth Rd. W, Charlotte, Park, Tremont, Cleveland and Rensselaer [4/09/87]

Charlotte, *Myers Park Historic District*, Roughly bounded by NC 16, E and W Queens Rd., and Lillington Ave. [9/10/87]

Nash County

Nashville, *Nashville Historic District*, Roughly 100–400 W. Washington and 100–300 E. Washington Sts. [7/22/87]

New Hanover County

Wrightsville Beach, *Bradley—Latimer Summer House*, S side SR 1411 E of jct. with US 76 [7/20/87]

Wrightsville Beach, *Mount Lebanon Chapel and Cemetery*, SR 1411 [10/16/86]

Onslow County

Richlands vicinity, *Venters Farm Historic District*, US 258 and NC 1229 [5/07/87]

Pender County

Wilmington vicinity, *Moore's Creek National Military Park (Boundary Increase)*, NW of Wilmington on NC 210 [2/13/87]

Pitt County

St. John's, *St. John's Episcopal Church*, SE corner of SR 1917 and SR 1753 [12/02/86]

NORTH CAROLINA—Continued

Richmond County

Rockingham vicinity, *Dockery, Alfred, House*, E side SR 1005, ½ mile S of jct. with SR 1143 [11/20/86]

Rockingham County

Eden, *Boone Road Historic District*, Roughly 400 and 500 blks. of Boone Rd., 400 blk. of Chestnut and 500 blk. Glovenia Sts., and 200 blk. of Highland Dr. [8/31/87]

Eden, *Central Leaksville Historic District*, Roughly bounded by Lindsay, Monroe, Jay, Washington, and Kemp Sts. [12/09/86]

Eden, *Mt. Sinai Baptist Church*, 512 Henry St. [6/25/87]

Eden, *Spray Industrial Historic District*, Roughly bounded by Warehouse, Rhode Island, River Dr., Washburn Rd., the Smith River, E. Early Ave., and Church [12/09/86]

Reidsville, *First Baptist Church [Reidsville MRA]*, 401 S. Scales St. [12/11/86]

Reidsville, *Jennings—Baker House [Reidsville MRA]*, 608 Vance St. [3/12/87]

Reidsville, *North Washington Avenue Workers' House [Reidsville MRA]*, E side of 300 blk. of N. Washington Ave. [12/11/86]

Reidsville, *Reidsville Historic District [Reidsville MRA]*, Roughly bounded by W. Morehead, Southern Railway tracks, Lawson Ave, Main, Piedmont, Vance and Lindsey Sts. [3/12/87]

Reidsville, *Richardson Houses Historic District [Reidsville MRA]*, NW side of Richardson Dr. between Coach Rd. and Woodland Dr. [12/11/86]

Rowan County

Salisbury, *Salisbury Railroad Corridor Historic District*, Roughly East Council, Liberty, Kerr, Cemetery, Franklin, Lee, and Depot Sts. [5/13/87]

Transylvania County

Lake Toxaway, *Hillmont*, W side of Lake Toxaway 3 mi. N of US 64 [10/16/86]

Vance County

Henderson, *Henderson Central Business Historic District*, Garnett St. from Church to Young Sts. [8/24/87]

Wake County

Fuquay-Varina, *Fuquay Mineral Spring*, NE corner of Main and W. Spring Sts. [12/04/86]

Knightdale, *Beaver Dam*, SR 2049 at SR 2233 [1/06/87]

Raleigh, *North Carolina State Fair Commercial & Education Buildings*, NW corner jct. of Blue Ridge Rd. and Hillsborough St. [6/05/87]

Watauga County

Boone, *Jones House*, 124 E. King St. [3/25/87]

Wilson County

Black Creek vicinity, *Black Creek Rural Historic District [Wilson MRA]*, Along NC 1628 [10/14/86]

NORTH DAKOTA

Cass County

Fargo, *Fargo City Detention Hospital [North Side Fargo MRA]*, 57 Eleventh Ave. N [4/07/87]

Fargo, *Holes, James, House [North Side Fargo MRA]*, 1230 Fifth St. N [4/07/87]

Fargo, *North Dakota State University District*, Roughly bounded by N. University Dr., Twelfth Ave. N, Service Dr., and Campus Ave. [10/06/86]

Fargo, *North Side Fargo Builder's Residential Historic District [North Side Fargo MRA]*, Roughly bounded by Benjamin Franklin School area and Golf Course, First St., Twelfth Ave. N, and Fourth St. [4/07/87]

Fargo, *North Side High Style Residential Historic District [North Side Fargo MRA]*, Roughly bounded by Twelfth Ave. N, Fourth St., Eleventh Ave. N, and Seventh St. [4/07/87]

Fargo, *Smith, Chesebro, House [North Side Fargo MRA]*, 1337 Broadway [4/07/87]

Divide County

Noonan vicinity, *Nielsen, Niels, Fourteen-Side Barn Farm [North Dakota Round Barns TR]*, ND 38 [10/07/86]

Eddy County

New Rockford vicinity, *Marriage, Sylvanus, Octagonal Barn [North Dakota Round Barns TR]*, ND 38 [10/07/86]

New Rockford vicinity, *Myhre, Jens, Round Barn [North Dakota Round Barns TR]*, ND 30 [10/01/86]

Foster County

McHenry vicinity, *McHenry Railroad Loop*, E side of ND 20 [10/02/86]

Grand Forks County

Grand Forks, *Campbell, Thomas D., House*, 2405 Belmont Rd. [9/29/87]

Kempton vicinity, *Funseth, Carlott, Round Barn [North Dakota Round Barns TR]*, ND 38 [10/07/86]

La Moure County

Edgeley vicinity, *Rodman Octagonal Barn [North Dakota Round Barns TR]*, ND 30 [10/07/86]

Logan County

Burnstad vicinity, *Abell, Robert, Round Barn [North Dakota Round Barns TR]*, ND 38 [10/07/86]

Mercer County

Stanton vicinity, *Fort Clark Archeological District*, ND 200 Alt. [10/19/86]

Stark County

Gladstone vicinity, *Gerhardt Octagonal Pig House [North Dakota Round Barns TR]*, ND 38 [10/07/86]

Stutsman County

Kensal vicinity, *Baker, Cecil, Round Barn [North Dakota Round Barns, TR]*, ND 38 [10/07/86]

Ward County

Minot, *Eastwood Park Historic District [Minot MRA]*, Bounded by Old Souris Oxbow [10/16/86]

Minot, *Minot Industrial Historic District [Minot MRA]*, Roughly bounded by Souris River, Fifth St. NE., First Ave. SE, First St. NE., Soo Line RR tracks, and Broadway [10/16/86]

Minot, *Westland Oil Filling Station [Minot MRA]*, 510 E. Central Ave. [2/27/87]

Surrey vicinity, *Glick, Levi, Round Barn [North Dakota Round Barns TR]*, ND 38 [3/25/87]

OHIO

Belmont County

Belmont, *Belmont Historic District*, Roughly bounded by Barrister, John, Jefferson, Sycamore, and Bridge Sts. [3/13/87]

Butler County

Oxford, *Alexander, Dr. William S., House*, 22 N. College Ave. [3/16/87]

Carroll County

Carrollton, *Van Horn Building*, Public Sq., jct. of W. Main and N. Lisbon Sts. [9/03/87]

Crawford County

Bucyrus, *Monnett Memorial M. E. Chapel*, 999 OH 98 [12/29/86]

Cuyahoga County

Beachwood, *Blossom, Elizabeth B., Subdivision Historic District*, Jct. of Richmond and Cedar Rds. [9/22/87]

Cleveland, *Archwood Avenue Historic District [Brooklyn Centre MRA]*, Archwood Ave. roughly bounded by W. Thirty-first Pl. and W. Thirty-seventh St. [3/19/87]

Cleveland, *Bell, Dr. James, House*, 1822 E. Eighty-ninth St. [10/16/86]

Cleveland, *Bomonte House [Brooklyn Centre MRA]*, 3000 Mapledale Ave. [3/19/87]

Cleveland, *Colonial and Euclid Arcades*, 508 and 600 Euclid Ave. [5/08/87]

Cleveland, *East Fourth Street Historic District*, Roughly on E. Fourth St. between Euclid and Prospect Aves. [7/09/87]

Cleveland, *Hilliard Apartment Building*, 2804–2906 Sackett Ave. [3/17/87]

Cleveland, *Kindra, W. H., Apartments [Brooklyn Centre MRA]*, 3802—3812 Mapledale Ave. [3/19/87]

Cleveland, *Malio House [Brooklyn Centre MRA]*, 3781 W. Twenty-fifth St. [3/19/87]

Cleveland, *Panek Block*, 3154 E. Fourty-ninth St. [12/16/86]

Cleveland, *Riverside Cemetery Building [Brooklyn Centre MRA]*, 3607 W. Twenty-fifth St. [3/19/87]

Cleveland, *Riverside Cemetery Chapel [Brooklyn Centre MRA]*, 3607 Pearl Rd. [3/19/87]

Cleveland, *Third Church of Christ Scientist [Brooklyn Centre MRA]*, 3648 W. Twenty-fifth St. [3/19/87]

Cleveland, *Townes, Clayton, House [Brooklyn Centre MRA]*, 3800 W. Thirty-third St. [3/19/87]

Erie County

Sandusky, *Doerzbach, George J., House*, 1208–1210 Central Ave. [4/23/87]

Fairfield County

Lancaster vicinity, *Artz, John, Farmhouse*, 5125 Duffy Rd. [4/23/87]

Lancaster, *Lancaster Methodist Episcopal Camp Ground Historic District*, Roughly bounded by Hocking River, W. Fair Ave., and Ety Rd. [9/10/87]

OHIO—Continued
Fayette County
Mt. Sterling vicinity, *McCafferty, William, Farmhouse*, 7099 OH 207 NE [4/23/87]
Washington Court House, *Robinson—Pavey House*, 421 W. Court St. [4/23/87]

Franklin County
Columbus, *Broad Street Apartments [East Broad Street MRA]*, 880–886 E. Broad St. [12/16/86]
Columbus, *Broad Street Christian Church [East Broad Street MRA]*, 1051 E. Broad St. [12/16/86]
Columbus, *Central Assurance Company [East Broad Street MRA]*, 741 E. Broad St. [12/19/86]
Columbus, *East Broad Street Commercial Building [East Broad Street MRA]*, 747, 749, 751 E. Broad St. [12/16/86]
Columbus, *East Broad Street Historic District [East Broad Street MRA]*, Along E. Broad St. between Monypenny and Ohio Aves. [3/17/87]
Columbus, *East Broad Street Presbytesian Church [East Broad Street MRA]*, 760 E. Broad St. [3/17/87]
Columbus, *Garfield—Broad Apartments [East Broad Street MRA]*, 775 E. Broad St. [12/16/87]
Columbus, *Heyne—Zimmerman House [East Broad Street MRA]*, 973 E. Broad St. [3/17/87]
Columbus, *House at 753 East Broad Street [East Broad Street MRA]*, 753 E. Broad St. [12/17/86]
Columbus, *Jacobs, Felix A., House*, 1421 Hamlet St. [12/19/86]
Columbus, *Johnson—Campbell House [East Broad Street MRA]*, 1203 E. Broad St. [12/17/86]
Columbus, *Joseph—Cherrington House [East Broad Street MRA]*, 785 E. Broad St. [12/17/86]
Columbus, *Kauffman, Linus B., House [East Broad Street MRA]*, 906 E. Broad St. [12/17/86]
Columbus, *Kaufman, Frank J., House [East Broad Street MRA]*, 1231 E. Broad St. [12/17/86]
Columbus, *Levy, Soloman, House [East Broad Street MRA]*, 929 E. Broad St. [12/17/86]
Columbus, *Lovejoy, Carrie, House [East Broad Street MRA]*, 807 E. Broad St. [12/17/86]
Columbus, *Morris, C. E., House [East Broad Street MRA]*, 875 E. Broad St. [12/17/86]
Columbus, *North High School*, 100 Arcadia Ave. [7/02/87]
Columbus, *Ohio Farm Bureau Federation Offices*, 620 and 630 E. Broad St. [3/13/87]
Columbus, *Old Beechwold Historic District*, Roughly bounded by W. Jeffrey Pl., N. High, River Park Dr., and Olentangy Blvd. [9/22/87]
Columbus, *Prentiss, Frederick, House [East Broad Street MRA]*, 706 E. Broad St. [12/17/86]
Columbus, *Prentiss—Tulford House [East Broad Street MRA]*, 1074 E. Broad St. [12/17/86]
Columbus, *Saint Paul's Episcopal Church [East Broad Street MRA]*, 787 E. Broad St. [12/17/86]
Columbus, *Schueller, Erwin W., House [East Broad Street MRA]*, 904 E. Broad St. [12/17/86]
Columbus, *Scofield—Sanor House [East Broad Street MRA]*, 1031 E. Broad St. [12/17/86]
Columbus, *Sharp—Page House [East Broad Street MRA]*, 935 E. Broad St. [12/17/86]
Columbus, *Shedd—Dunn House [East Broad Street MRA]*, 965 E. Broad St. [12/17/86]
Gahanna, *Old Peace Lutheran Church*, 78–82 N. High St. [4/23/87]
Lockbourne vicinity, *Landes, Samuel, House*, 590 Hibbs Rd. [5/06/87]
Worthington, *Niles Car & Manufacturing Company Electric Railway Interurban Combine No. 21*, 990 Proprietor's Rd. [6/19/87]

Fulton County
Wauseon, *Jones—Read—Touvelle House*, 435 E. Park St. [5/06/87]

Gallia County
Gallipolis, *Gatewood*, 78 State St. [10/16/86]

Geauga County
Middlefield, *Batavia House*, 14979 S. State St. [7/16/87]

Greene County
Xenia, *Conner, Alexander, House*, 99 E. Second St. [7/23/87]

Guernsey County
Cambridge, *Sarchet-Burgess House*, 145 W. Eighth St. [5/21/87]
Cambridge, *Wheeling Avenue Historic District*, Roughly bounded by Steubenville, Tenth, Wheeling, and Fourth Aves. [5/11/87]

Hamilton County
Cincinnati, *B & O Freight Terminal*, 700 Pete Rose Way [12/29/86]
Cincinnati, *Cincinnati Zoo Historic Structures*, 3400 Vine St. [2/27/87]
Cincinnati, *Coca-Cola Bottling Corporation*, 1507 Dana Ave. [7/02/87]
Cincinnati, *Doctors' Building*, 19 Garfield Pl. [12/04/86]
Cincinnati, *Laurel Homes Historic District*, Roughly bounded by Liberty and John Sts., Ezzard Charles Dr., and Linn St. [5/19/87]
Montgomery, *Montgomery Saltbox Houses*, 7789 and 7795 Cooper Rd. [7/28/87]

Hancock County
Findlay vicinity, *Powell, Andrew, Homestead*, 9821 CR 313 [12/19/86]

Harrison County
New Athens, *Franklin College Building No. 5*, Main St. [5/06/87]

Jefferson County
Mingo Junction, *Central High School [Mingo Junction MRA]*, 110 Steuben Ave. [3/17/87]
Mingo Junction, *Central Public School [Mingo Junction MRA]*, 109 Saint Clair Ave. [3/17/87]
Mingo Junction, *Commercial Street Historic District [Mingo Junction MRA]*, Roughly Commercial St. between McLister and Highland Aves., May, and RR tracks [3/17/87]
Mingo Junction, *North Hill Historic District [Mingo Junction MRA]*, Bounded by Logan, George, Western, and Alley W of Logan Ave. [3/17/87]
Steubenville, *Union Cemetery—Beatty Park*, 1720 W. Market St. and Lincoln Ave. [2/27/87]

Knox County
Mount Vernon, *East High Street Historic District*, Roughly bounded by E. Chestnut St., S. Catherine St., E. Vine St., and S. Gay St. [3/16/87]

Licking County
Newark, *Evans—Holton—Owens House*, 162 W. Locust St. [10/16/86]
Newark, *Hudson Avenue Historic District*, Hudson Ave. between Stevens St. and OH 37 [3/16/87]

Lorain County
Elyria, *Washington Avenue Historic District [Elyria MRA]*, Roughly Ohio, Columbus, Harrison, and Saint Clair Sts. between Washington Ave. and Glenwood St. [6/20/87]
Lorain, *Duane Block*, 387—401 Broadway [7/16/87]
Lorain, *Lorain Fire Station No. 1*, 605 W. Fourth St. [6/20/87]

Lucas County
Toledo, *Saint Peter and Saint Paul Historic District—Oliver's Second Addition*, 600 and 700 blks. of S. Saint Clair St. [3/13/87]
Toledo, *Valentine Theater Building*, 405—419 Saint Clair and 402–412 Adams [5/19/87]

Miami County
Troy vicinity, *Weddle, Callahill and Priscilla, House*, 5710 LeFevre Rd. [6/18/87]

Montgomery County
Kettering, *Long—Mueller House*, 986 Laurelwood Rd. [4/23/87]

Ottawa County
Marblehead, *Clemons, Alexander, House*, 133 Clemons St. [9/17/87]

Pickaway County
Orient vicinity, *Scioto Township District No. 2 Schoolhouse*, 6143 Snyder Rd. [5/06/87]

Portage County
Ravenna, *Griffin, Alexander B., House*, 417 S. Walnut St. [7/02/87]

Richland County
Mansfield, *Bissman Block*, 193 N. Main St. [10/16/86]
Mansfield, *City Mills Building*, 160 N. Main St. [12/18/86]
Mansfield, *Hancock and Dow Building*, 21 E. Fourth St. [2/26/87]
Mansfield, *Mansfield Savings Bank*, 4 W. Fourth St. [10/16/86]
Mansfield, *May Realty Building*, 22—32 S. Park St. [10/16/86]
Shelby, *Marvin Memorial Library*, 94 N. Gamble St. [6/13/87]

Stark County
Canton, *Bender's Restaurant—Belmont Buffet [Architecture of Guy Tilden in Canton, 1885–1905, TR]* 137 Court Ave. SW [7/21/87]

OHIO—Continued
Canton, *Case Mansion [Architecture of Guy Tilden in Canton, 1885–1905, TR]*, 1717 N. Market Ave. [7/21/87]
Canton, *Fife, Harry E., House [Architecture of Guy Tilden in Canton, 1885–1905, TR]*, 606 McKinley Ave. SW [7/21/87]
Canton, *Harvard Company—Weber Dental Manufacturing Company [Architecture of Guy Tilden in Canton, 1885–1905, TR]*, 2206 Thirteenth St. NE [7/21/87]
Canton, *Hotel Courtland [Architecture of Guy Tilden in Canton, 1885–1905, TR]*, 209 W. Tuscarawas Ave. [7/21/87]
East Canton, *Werner Inn*, 131 E. Nassau St. [9/17/87]
Massillon, *First National Bank Building*, 11 Lincoln Way W [5/06/87]

Summit County
Akron, *Barder, Byron R., House*, 1041 W. Market St. [9/17/87]
Hudson vicinity, *Ward House*, 1410 Hines Hill Rd. [3/17/87]

Washington County
Marietta, *Becker Lumber and Manufacturing Company*, 121 Pike St. [6/16/87]

Wood County
Bowling Green, *Boom Town Historic District*, Roughly bounded by W. Wooster, S. Church, N. Grove, N. Maple, and Buttonwood [5/06/87]

OKLAHOMA

Cleveland County
Norman, *Jacobson, Oscar B., House*, 609 S. Chatauqua Ave. [12/23/86]

Garfield County
Enid, *Eason, T. T., Mansion*, 1305 W. Broadway [3/24/87]
Enid, *McCristy—Knox Mansion*, 1323 W. Broadway [3/24/87]

Logan County
Guthrie, *Scottish Rite Temple*, 900 E. Oklahoma [4/09/87]

Osage County
Pawhuska, *Pawhuska Downtown Historic District*, Roughly bounded by Grand View Ave., E. Eighth St., Leahy Ave., and E. Fifth St. [11/26/86]

Pawnee County
Ralston, *Ralston Opera House*, 501—503 Main St. [7/28/87]

Pontotoc County
Ada, *East Central State Normal School*, East Central University campus [12/23/86]

Pottawatomie County
Harjo vicinity, *Rose—Fast Site (34PT26)*, Address Restricted [12/24/86]

OREGON

Baker County
Haines vicinity, *Maxwell, James O., Farmstead*, Rt. 2, Box 62 on N side Muddy Creek Rd. [11/06/86]
Sumpter, *Sumpter Valley Railway Historic District*, Roughly between Baker and Prairie City starting near the McEwen station site and W to the Dixie Pass area [6/03/87]

Benton County
Corvallis, *Corvallis Hotel*, 201–211 S.W. Second St. [9/10/87]
Corvallis, *Schuster, Charles L., House*, 228 N.W. Twenty-eighth [10/09/86]
Monroe, *Starr, Edwin and Anna, House*, 28845 McFarland Rd. [10/09/86]

Clackamas County
Canby, *Knight, William, House*, 525 S.W. Fourth Ave. [11/05/86]
Oak Grove, *Broetje, John F. and John H., House*, 3101 S.E. Courtney Rd. [9/15/87]
Portland, *Bell Station Store*, 9300 S.E. Bell Ave. [9/10/87]

Clatsop County
Astoria, *Fisher, Ferdinand, House*, 667 Twelfth St. [5/06/87]
Astoria, *Svenson Blacksmith Shop*, 1769 Exchange St. [11/06/86]
Seaside, *Herschell, Allan, Two-Abreast Carousel [Oregon Historic Wooden Carousel TR]*, 300 Broadway [6/26/87]

Coos County
Coos Bay, *Olson, Captain Bror W., House*, 631 S. Tenth St. [11/02/86]

Crook County
Prineville, *Baldwin, Thomas M., House*, 126 W. First St. [9/10/87]

Deschutes County
Bend, *O'Kane Building*, 115 NW Oregon Ave. [11/06/86]

Douglas County
Riddle, *Brown, Will Q., House and Wash House*, 274 S. Main St. [9/10/87]
Winston, *Winston, William C. and Agnes, House*, Winston Section Rd. [9/10/87]

Grant County
Bates vicinity, *Sumpter Valley Railway Historic District*, Roughly between Baker and Prairie City starting near the McEwen station site and W to the Dixie Pass area [6/03/87]
Bates vicinity, *Sumpter Valley Railway, Middle Fork-John Day River*, Sumpter Valley Railway's Middle Fork Spur between Bates and Susanville [6/03/87]

Hood River County
Hood River, *Copple, Simpson, House*, 911 Montello Ave. [3/06/87]
Mt. Hood, *Mt. Hood School House*, OR 35 [4/30/87]

Jackson County
Ashland, *Ashland Municipal Powerhouse*, Ashland Creek Canyon [9/10/87]
Ashland, *Ashland Oregon National Guard Armory*, 208 Oak St. [9/10/87]
Ashland, *Enders Building*, 250—300 E. Main St. [10/23/86]
Ashland, *Kane, E. C., House*, 386 B St. [11/06/86]
Medford, *Jackson County Courthouse*, S. Oakdale Ave. at Eighth St. [10/23/86]
Medford, *Reddy, Dr. John F. and Mary, House*, 122 Oregon Terr. [9/10/87]
Phoenix vicinity, *Glenview Orchard Ensemble*, 1395 Carpenter Hill Rd. [10/23/86]

Josephine County
Grants Pass, *Lundburg, George H., House*, 404 N.W., A St. [3/06/87]
Oregon Caves National Monument, *Oregon Caves Chateau*, Off SR 46 [5/28/87]

Klamath County
Crater Lake National Park, *Crater Lake Superintendent's Residence*, Munson Valley [5/28/87]
Klamath Falls, *Oregon Bank Building*, 905 Main St. [9/10/87]

Lane County
Eugene, *Chambers Frank L. and Ida H., House*, 1008 Taylor St. [9/14/87]
Springfield, *Washburne Historic District*, Roughly bounded by G, N. Tenth, A, and N. Second Sts. [2/10/87]

Lincoln County
Newport, *New Cliff House*, 267 N.W. Cliff St. [11/06/86]

Linn County
Crabtree vicinity, *Thomas Creek—Gilkey Covered Bridge [Oregon Covered Bridges TR]*, Goar Rd., 3 mi. N of Crabtree [2/19/87]
Crabtree, *Crabtree Creek—Hoffman Covered Bridge [Oregon Covered Bridges TR]*, Hungry Hill Dr., 1 9/10 mi. N of Crabtree [2/17/87]
Scio vicinity, *Thomas Creek—Shimanek Covered Bridge [Oregon Covered Bridges TR]*, Richardson Gap Rd., 2 mi. E of Scio [2/19/87]
Scio, *Wesely, Joseph, House and Barn*, 38712 OR 226 [10/23/86]

Marion County
Salem, *Court Street—Chemeketa Street Historic District*, Roughly bounded by Chemeketa St., Mill Creek Court, and Fourteenth St. [6/26/87]
Salem, *Gaiety Hill—Bush's Posture Park Historic District*, Roughly bounded by Pringle Creek, Mission St., Bush's Pasture Pk., Cross High, and Liberty Sts. [10/10/86]
Salem, *Manning, S. A., Building*, 200 State St. [2/10/87]
Salem, *Old First National Bank Building*, 386 State St. NE [10/09/86]
Salem, *Pleasant Grove Presbyterian Church*, 1313 Mill St. SE [2/10/87]
Silverton, *Silverton Commercial Historic District*, Roughly bounded by High, and Oak Sts., Silver Creek, Lewis, Water, and First Sts. [7/29/87]
St. Paul vicinity, *Kirk, John W., and Thomas F., House*, 4666 Saint Paul Hwy. NE [6/17/87]

Multnomah County
Bonneville, *Bonneville Dam Historic District (Boundary Increase)*, Roughly bounded by Mitchell Creek Bypass, SW District boundary, Union Pacific right-of-way, and Hatchery Service Rd. [3/26/87]
Gresham, *Louise Home Hospital and Residence Hall*, 722 N.E. One Hundred and Sixty-second Ave. [9/10/87]

OREGON—Continued
Multnomah County—Continued
Portland, *Bell Station Store*, 9300 S.E. Bell Ave. [9/10/87]

OREGON—Continued
Multnomah, *Prince, Thomas, House*, 2003 N.E. Alameda St. [10/23/86]
Portland, *Ballou & Wright Company Building*, 327 N.W. Tenth Ave. [4/30/87]
Portland, *Belle Court Apartments*, 120 N.W. Trinity Pl. [11/06/86]
Portland, *Benson Hotel*, 309 S.W. Broadway [11/20/86]
Portland, *Canterbury Castle*, 2910 S.W. Canterbury Ln. [9/08/87]
Portland, *Dosch, Henry E., Investment Property*, 425 N.W. Eighteenth Ave. [6/04/87]
Portland, *Durham—Jacobs House*, 2138 S.W. Salmon St. [3/06/87]
Portland, *East Portland Branch, Public Library of Multnomah County*, 1110 S.E. Alder [9/08/87]
Portland, *Herschell—Spillman Noah's Ark Carousel [Oregon Historic Wooden Carousel TR]*, E end of Sellwood Bridge [8/26/87]
Portland, *Honeyman, David T. and Nan Wood, House*, 1728 S.W. Prospect Dr. [5/07/87]
Portland, *Jeppsen, Peter, House*, 4107 N. Albina Ave. [9/10/87]
Portland, *King, Samuel W., House*, 1060 S.W. King Ave. [9/08/87]
Portland, *Kistner, Dr. Frank B., House*, 5400 S.W. Hewett Blvd. [4/30/87]
Portland, *Looff, Charles, 20-Sweep Menagerie, Carousel [Oregon Historic Wooden Carousel TR]*, 25 S.W. Salmon St. [8/26/87]
Portland, *Mangels, William F., Four-Row Carousel [Oregon Historic Wooden Carousel TR]*, 4033 S.W. Canyon Rd. [8/26/87]
Portland, *Medical Arts Building*, 1020 S.W. Taylor [11/06/86]
Portland, *Ormonde Apartment Building*, 2046—2048 N.W. Flanders [9/08/87]
Portland, *Parker, C. W., Four-Row Park Carousel [Oregon Historic Wooden Carousel TR]*, 1402 Jantzen Beach Center [8/26/87]
Portland, *Pipes, Martin Luther, House*, 2875 S.W. Vista Ave. [3/06/87]
Portland, *Pittock Block*, 921 S.W. Washington St. [9/08/87]
Portland, *Portland Fire Station No. 17*, 824 N.W. Twenty-fourth Ave. [3/12/87]
Portland, *Portland Thirteenth Avenue Historic District*, N.W. Thirteenth Ave. between N.W. Davis and N.W. Johnson Sts. [6/15/87]
Portland, *Schnabel, Charles J. and Elsa, House*, 2375 S.W. Park Pl. [9/08/87]
Portland, *Town Club, The*, 2115 S.W. Salmon St. [3/06/87]
Portland, *US National Bank Building*, 321 S.W. Sixth Ave. [10/09/86]
Portland, *Wells Fargo Building*, 309 S.W. Sixth Ave. [10/09/86]

Polk County
Independence, *Independence National Bank*, 302 S. Main St. [11/06/86]
Independence, *Saint Patrick's Roman Catholic Church*, 330 Monmouth St. [2/05/87]
Independence, *Wheeler, J. A., House*, 306 Monmouth St. [11/06/86]
Monmouth, *Howell, John W., House*, 212 N. Knox St. [9/10/87]
Monmouth, *Polk County Bank*, 295 E. Main St. [11/06/86]

Umatilla County
Pendleton, *Ellis—Hampton House*, 711 S.E. Byers Ave. [10/23/86]
Pendleton, *South Main Street Commercial Historic District*, Roughly bounded by Dorion Ave., S.E. First St., Union Pacific RR, and S.W. Second St. [10/10/86]

Wasco County
Dufur, *Balch Hotel*, 40 S. Main [9/08/87]
The Dalles, *Dalles Commercial Historic District, The*, Roughly bounded by Columbia River, Laughlin, Fifth, and Union Sts. [11/04/86]

Yamhill County
Dayton, *Avery House [Dayton MRA]*, 403 Church St. [3/16/87]
Dayton, *Baxter House [Dayton MRA]*, 407 Church St. [3/16/87]
Dayton, *Berry-Sigler Investment Property [Dayton MRA]*, 700 Church St. [8/03/87]
Dayton, *Cain House [Dayton MRA]*, 208 Alder St. [3/16/87]
Dayton, *Carter-Goodrich House [Dayton MRA]*, 521 Church St. [3/16/87]
Dayton, *Commercial Club-Stuckey, S.C. Building [Dayton MRA]*, 304 Ferry St. [3/16/87]
Dayton, *Courthouse Square [Dayton MRA]*, bounded by Third, Fourth, Ferry, and Main Sts. [3/16/87]
Dayton, *Dayton Auto and Transfer Company Building [Dayton MRA]*, 411 Ferry St. [3/16/87]
Dayton, *Dayton Common School [Dayton MRA]*, 504 Fourth St. [3/16/87]
Dayton, *Dayton High School [Dayton MRA]*, 801 Ferry St. [3/16/87]
Dayton, *Dayton Opera House [Dayton MRA]*, 318 Ferry St. [3/16/87]
Dayton, *Dayton Methodist Episcopal Church [Dayton MRA]*, 302 Fourth St. [3/16/87]
Dayton, *Diehl-Seitters House [Dayton MRA]*, 527 Church St. [3/16/87]
Dayton, *Evangelical United Brethren Church [Dayton MRA]*, 302 Fifth St. [8/03/87]
Dayton, *Fischer, Carl, Meats [Dayton MRA]*, 400 Ferry St. [3/16/87]
Dayton, *Fletcher-Stretch House [Dayton MRA]*, 401 Oak St. [3/16/87]
Dayton, *Foster Oil Company [Dayton MRA]*, 218 Ferry St. [3/16/87]
Dayton, *Free Methodist Church [Dayton MRA]*, 411 Oak St. [3/16/87]
Dayton, *Gabriel-Will House [Dayton MRA]*, 401 Third St. [3/16/87]
Dayton, *Gabriel-Filer House [Dayton MRA]*, 525 Church St. [3/16/87]
Dayton, *Harrington House [Dayton MRA]*, 212 Mill St. [3/16/87]
Dayton, *Harris Building [Dayton MRA]*, 302 Ferry St. [3/16/87]
Dayton, *Hale House [Dayton MRA]*, 623 Ferry St. [3/16/87]
Dayton, *Jessen-Goodrich House [Dayton MRA]*, 324 Sixth St. [3/16/87]
Dayton, *Krietz House [Dayton MRA]*, 627 Church St. [3/16/87]
Dayton, *Lewis-Shippy House [Dayton MRA]*, 421 Sixth St. [3/16/87]
Dayton, *Londershausen House [Dayton MRA]*, 402 Main St. [3/16/87]
Dayton, *Londershausen House [Dayton MRA]*, 309 Main St. [3/16/87]
Dayton, *Mabee-Mayberry House [Dayton MRA]*, 309 Seventh St. [3/16/87]
Dayton, *McNamar Building [Dayton MRA]*, 310–312 Ferry St. [3/16/87]
Dayton, *McNish House [Daytan MRA]*, 1005 Ferry St. [3/16/87]
Dayton, *Mellinger House [Dayton MRA]*, 414 Fifth [3/16/87]
Dayton, *Mellinger-Ponnay House [Dayton MRA]*, 603 Palmer Ln. [8/03/87]
Dayton, *Methodist Episcopal Parsonage [Dayton MRA]*, 202 Fourth St. [8/03/87]
Dayton, *Monahan House [Dayton MRA]*, 120 Fifth St. [3/16/87]
Dayton, *Morse House [Dayton MRA]*, 409 Oak St. [3/16/87]
Dayton, *Morse House [Dayton MRA]*, 101 Fifth St. [3/16/87]
Dayton, *Nichols House [Dayton MRA]*, 303 Main St. [3/16/87]
Dayton, *Oregon Mutual Merchant Fire Insurance Association Office [Dayton MRA]*, 308 Ferry St. [3/16/87]
Dayton, *Palmer House [Dayton MRA]*, 000 Ferry St. [3/16/87]
Dayton, *Powell, Curtis W., House [Dayton MRA]*, 524 Ash St. [3/16/87]
Dayton, *Rippey House [Dayton MRA]*, 533 Ash St. [3/16/87]
Dayton, *Sigler House [Dayton MRA]*, 521 Ferry St. [3/16/87]
Dayton, *Stuart Dr., House [Dayton MRA]*, 103 Ferry St. [3/16/87]
McMinnville *McMinnville Downtown Historic District [Dayton MRA]*, bounded by Fifth St., Southern Pacific RR tracks, Second, and N. Adams Sts. [9/14/87]

PENNSYLVANIA

Allegheny County
Pittsburgh, *Boggs Avenue Elementary School [Pittsburgh Public Schools TR]*, Boggs and Southern Aves. [2/03/87]
Pittsburgh, *Fifth Avenue High School [Pittsburgh Public Schools TR]*, 1800 Fifth Ave. [10/23/86]
Pittsburgh, *Knoxville Junior High School [Pittsburgh Public Schools TR]*, Charles and Grimes Aves. [2/03/87]
Pittsburgh, *Oakland Public School [Pittsburgh Public Schools TR]*, Dawson St. near Edith Pl. [2/03/87]
Pittsburgh, *Oliver, David P., High School [Pittsburgh Public Schools TR]*, Brighton Rd. and Island Ave. [2/03/87]
West Mifflin, *Kennywood Park*, 4800 Kennywood Blvd. [2/27/87]
Wilmerding, *Westinghouse Air Brake Company General Office Building*, Marguerite and Bluff Sts. [3/06/87]

Beaver County
Hookstown vicinity, *Littell, David, House*, PA 18 [10/31/86]
Rochester vicinity, *Racoon Creek RDA [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 20 mi. S. of Rochester on PA 18 [5/18/87]

Berks County
Morgantown vicinity, *French Creek State Park Six Penny Day Use District*

PENNSYLVANIA—Continued
[Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR], 7 mi. NE of Morgantown on PA 345 [2/11/87]
Reading vicinity, *French Creek State Park: Organized Group Camp 4 District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 7 mi. NE of Morgantown on PA 345 [2/12/87]

Bradford County
Towanda, *Bradford County Courthouse*, 301 Main St. [1/06/87]

Bucks County
Bristol, *Bristol Carpet Mills*, Beaver Dam and Canal Sts. [10/16/86]
Bristol, *Bristol Historic District*, roughly bounded by Pond, Cedar, E. Lincoln Sts., the Delaware River, and E. Mill St. [4/30/87]
Bristol, *Dorrance Mansion*, 300 Radcliffe St. [10/16/86]
Bristol, *Harriman Historic District*, roughly bounded by Trenton Ave., Cleveland and McKinley Sts., Farragut Ave., and West Circle [4/30/87]
Doylestown, *Fordhook Farm*, 105 New Britain Rd. [4/30/87]
Doylestown, *Tabor Home for Needy and Destitute Children*, 603 New Britain Rd. [7/10/87]
Morrisville, *Graft, Gershom, House*, 105 Barnsley Ave. [10/16/86]
Newtown vicinity, *Newtown Presbyterian Church*, Sycamore St. [7/16/87]
Newtown, *Newtown Historic District (Boundary Increase: North and South Extensions)*, Parts of Congress, Chancellor and Liberty Sts. N of Washington Ave. and Chancellor St. S of Penn St. to S. State St. [10/29/86]
Newtown, *Tyler, George F., Mansion*, W side of Swamp Rd./PA 313 [7/16/87]
Plumstead Township, *Dyerstown Historic District*, Along Old Easton Rd. near jct. of Stony Ln. [1/15/87]
Riegelsville, *Riegel, Benjamin, House*, 29 Delaware Rd. [1/06/87]
Sellersville, *Teller Cigar Factory*, 340 N. Main St. [1/06/87]
Solebury, *Upper Aquetong Valley Historic District*, Meeting House and Aquetong Rds., between US 202 and Sugan Rd. [7/30/87]

Centre County
Philipsburg vicinity, *Black Moshannon State Park Day Use District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 9 mi. E of Philipsburg on PA 504 [2/12/87]
Philipsburg vicinity, *Black Moshannon State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 9 mi. E of Philipsburg on PA 504 [2/12/87]
Philipsburg vicinity, *Black Moshannon State Maintenance District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 9 mi. E of Philipsburg on PA 504 [2/12/87]

Chester County
Coatesville, *Coatesville Historic District*, Roughly bounded by Chestnut St., Sixth Ave., Oak St., Fifth Ave., Harmony St., and First Ave. [5/14/87]
Kennett Square vicinity, *Harlan Log House*, Fairville Rd. [7/16/87]
Kimberton, *Kimberton Historic District (Boundary Increase)*, Hare's Hill, Prizer, and Kimberton Rds. [7/30/87]
Marshallton vicinity, *Taylor—Cope Historic District*, 800–1100 blk. of Strasburg Rd./PA 162 [7/16/87]
Phoenixville vicinity, *White Horse Farm*, 54 S. Whitehorse Rd. [7/29/87]
Phoenixville, *Phoenixville Historic District*, Roughly bounded by Penn St., RR tracks, Fourth Ave., and Wheatland St. [3/17/87]
Tredyffrin Township, *Walker, Joseph, House*, 274 Anthony Wayne Dr. [1/06/87]
Warwick vicinity, *Reading Furnace Historic District*, Mansion Rd. [7/30/87]

Clarion County
Cooksburg, *Cook Forest State Park Indian Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, Off PA 36 at Cooksburg [2/12/87]

Clearfield County
Clearfield vicinity, *Elliott, S. B., State Park Day Use District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 9 mi. N of Clearfield on PA 153 [2/11/87]
Clearfield vicinity, *Elliott, S. B., State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 9 mi. N of Clearfield on PA 153 [2/11/87]
Penfield vicinity, *Parker Dam State Park—Parker Dam District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 5 mi. S of Penfield off PA 153 [2/11/87]
Penfield vicinity, *Parker Dam State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 5 mi. S of Penfield off PA 153 [2/11/87]
Penfield vicinity, *Parker Dam State Park—Octagonal Lodge [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 5 mi. S of Penfield off PA 153 [5/11/87]

Clinton County
Loganton vicinity, *Ravensburg State Park [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 8 mi. SE of Jersey Shore on PA 880 [5/18/87]

Dauphin County
Lykens, *GAR Building*, 626–628 N. Second St. [11/06/86]

Delaware County
Lansdowne, *Lansdowne Theatre*, 29 N. Lansdowne Ave. [1/06/87]

Erie County
Erie, *Modern Tool Company*, NE jct. of State and Fourth Sts. [3/06/87]
Erie, *Qhandlery Corner*, 1 and 3 E. Fourth St., and 401–403, and 405 State St. [2/05/87]
Erie, *SS NIAGARA (freighter)*, Erie Sand and Gravel Co., foot of Sassafrass St. [8/03/87]

Fayette County
Brownsville vicinity, *Laughlin, Hugh, House*, TR 422 [4/30/87]

Forest County
Cooksburg, *Cook Forest State Park Indian Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, Off PA 36 at Cooksburg [2/12/87]
Cooksburg, *Cook Forest State Park River District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, Off PA 36 at Cooksburg [2/12/87]

Fulton County
Chambersburg vicinity, *Cowans Gap State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 18 mi. N of PA 75 and Chambersburg on Richmond Rd. [2/11/87]

Huntingdon County
Belleville vicinity, *Greenwood Lake Dam [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 5 mi. N of Belleville off PA 305 [5/11/87]
Huntingdon, *Whipple Dam State Park Day Use District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 10 mi. S of State College, E of PA 26 [2/12/87]

Indiana County
Indiana vicinity, *Diehl, George, Homestead*, E of US 422 on Diehl Rd. [4/30/87]

Jefferson County
Sigel vicinity, *Clear Creek State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 4 mi. N of Sigel on PA 949 [2/12/87]
Sigel vicinity, *Clear Creek State Park Day Use District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 4 mi. N of Sigel on PA 949 [2/11/87]

Lancaster County
Blue Ball vicinity, *Bangor Episcopal Church*, NW corner of Main and Water Sts. [4/30/87]
Columbia, *Manor Street Elementary School*, Tenth and Manor Sts. [4/02/87]
Lancaster, *Farmer's Southern Market*, 106 S. Queen St. [11/10/86]
Lancaster, *Stauffer, Christian, House*, Millcross Rd. [10/16/86]
New Holland, *Stoever, John Casper, Log House*, 200 W. Main St. [1/06/87]

Monroe County
Henryville, *Henryville House*, Jct. of PA 191 and 715 [1/06/87]

Montgomery County
Haverford, *Merion Cricket Club*, Montgomery Ave. and Grays Ln. [2/27/87]

PENNSYLVANIA—Continued
Philadelphia vicinity, *Wyncote Historic District*, Roughly bounded by Glenview Ave., SEPTA RR, Webster Ave., and Church Rd. [10/16/86]

Montour County

Danville, *Beaver, Thomas, Free Library and Danville YMCA*, E. Market and Ferry Sts. [1/15/87]

Northampton County

Hellertown vicinity, *Ehrhart's Mill Historic District*, Old Mill Rd. [4/30/87]

Philadelphia County

Philadelphia, *Bache, Alexander Dallas, School [Philadelphia Public Schools TR]*, 801 N. Twenty-second St. [12/04/86]
Philadelphia, *Bartlett School [Philadelphia Public Schools TR]*, 1100 Catharine St. [12/04/86]
Philadelphia, *Bartram, John, High School [Philadelphia Public Schools TR]*, Sixty-seventh and Elmwood Sts. [12/04/86]
Philadelphia, *Bok, Edward, Vocational School [Philadelphia Public Schools TR]*, 1909 S. Ninth St. [12/04/86]
Philadelphia, *Boone, Daniel, School [Philadelphia Public Schools TR]*, Hancock and Wildey Sts. [12/04/86]
Philadelphia, *Brooks, George L., School [Philadelphia Public Schools TR]*, 5629–5643 Haverford Ave. [12/04/86]
Philadelphia, *Central High School [Philadelphia Public Schools TR]*, Olney and Ogontz Aves. [12/04/86]
Philadelphia, *Colonial Germantown Historic District (Boundary Increase)*, 6500–7600 blks. of Germantown Ave. from Ft. Washington branch of PA RR to Sharpnack St. [7/30/87]
Philadelphia, *Darrah, Lydia, School [Philadelphia Public Schools TR]*, 706–732 N. Seventeenth St. [12/04/86]
Philadelphia, *Drexel, Francis M., School [Philadelphia Public Schools TR]*, 1800 S. Sixteenth St. [12/04/86]
Philadelphia, *Dunbar, Paul Lawrence, School [Philadelphia Public Schools TR]*, Twelfth above Columbia Ave. [12/04/86]
Philadelphia, *Dunlap, Thomas, School [Philadelphia Public Schools TR]*, 5031 Race St. [12/04/86]
Philadelphia, *Farragut, David, School [Philadelphia Public Schools TR]*, Hancock and Cumberland [12/04/86]
Philadelphia, *Fayette School [Philadelphia Public Schools TR]*, Old Bustleton and Welsh Rds. [12/04/86]
Philadelphia, *Federal Street School [Philadelphia Public Schools TR]*, 1130–1148 Federal St. [12/01/86]
Philadelphia, *First Bank of the United States*, 116 S. Third St. [5/04/87]
Philadelphia, *Fitler School [Philadelphia Public Schools TR]*, SE Seymour and Knox Sts. [12/04/86]
Philadelphia, *Fleischer, Helen, Vocational School [Philadelphia Public Schools TR]*, Thirteenth and Brandywine Sts. [12/04/86]
Philadelphia, *Fulton, Robert, School [Philadelphia Public Schools TR]*, 60–68 E. Haines St. [12/04/86]
Philadelphia, *Furness, Horace, Junior High School [Philadelphia Public Schools TR]*, 1900 S. Third St. [12/01/86]
Philadelphia, *Germantown Grammar School [Philadelphia Public Schools TR]*, McCallum and Haines Sts. [12/01/86]
Philadelphia, *Germantown Cricket Club*, 5140 Morris St. [2/27/87]
Philadelphia, *Hanna, William B., School [Philadelphia Public Schools TR]*, 5720–5738 Media St. [12/04/86]
Philadelphia, *Hawthorne, Nathaniel, School [Philadelphia Public Schools TR]*, 712 S. Twelfth St. [12/04/86]
Philadelphia, *Horn, George L., School [Philadelphia Public Schools TR]*, Frankford and Castor Aves. [12/04/86]
Philadelphia, *Institute for Colored Youth [Philadelphia Public Schools TR]*, Tenth and Bainbridge Sts. [12/04/86]
Philadelphia, *Jayne Estate Building*, 2–16 Vine St. [4/30/87]
Philadelphia, *Key, Francis Scott, School [Philadelphia Public Schools TR]*, 2220–2250 S. Eighth St. [12/01/86]
Philadelphia, *Kinsey, John L., School [Philadelphia Public Schools TR]*, Sixty-fifth Ave. and Limekiln Pike [12/04/86]
Philadelphia, *Landreth, David, School [Philadelphia Public Schools TR]*, 1201 S. Twenty-third St. [12/04/86]
Philadelphia, *Martin Orthopedic School [Philadelphia Public Schools TR]*, 800 N. Twenty-second St. [12/04/86]
Philadelphia, *McDaniel, Delaplaine, School [Philadelphia Public Schools TR]*, 2100 Moore St. [12/04/86]
Philadelphia, *Meade, George, School [Philadelphia Public Schools TR]*, 1801 Oxford St. [12/04/86]
Philadelphia, *Mechanicsville School [Philadelphia Public Schools TR]*, Mechanicsville Rd. [12/01/86]
Philadelphia, *Meredith, William M., School [Philadelphia Public Schools TR]*, Fifth and Fitzwater Sts. [12/04/86]
Philadelphia, *Middishade Clothing Factory*, 1600 Callowhill St. [1/08/87]
Philadelphia, *Mifflin School [Philadelphia Public Schools TR]*, 800–818 N. Third St. [12/04/86]
Philadelphia, *Mitchell, S. Weir, School [Philadelphia Public Schools TR]*, Fifty-sixth and Kingsessing St. [12/04/86]
Philadelphia, *Muhr, Simon, Work Training School [Philadelphia Public Schools TR]*, Twelfth and Allegheny [12/01/86]
Philadelphia, *Northeast Manual Training School [Philadelphia Public Schools TR]*, 701 Lehigh St. [12/04/86]
Philadelphia, *Olney High School [Philadelphia Public Schools TR]*, Duncannon and Front Sts. [12/04/86]
Philadelphia, *Olney Elementary School [Philadelphia Public Schools TR]*, Tabor Rd. and Water St. [12/04/86]
Philadelphia, *Overbrook High School [Philadelphia Public Schools TR]*, Fifty-ninth and Lancaster Ave. [12/04/86]
Philadelphia, *Penn, William, High School for Girls [Philadelphia Public Schools TR]*, 1501 Wallace St. [12/01/86]
Philadelphia, *Philadelphia High School for Girls [Philadelphia Public Schools TR]*, Seventeenth and Spring Garden Sts. [12/04/86]
Philadelphia, *Pinehurst Apartments*, 4511–4523 Pine and 324–334 S. Forty-fifth Sts. [1/06/87]
Philadelphia, *Poe, Edgar Allen, School [Philadelphia Public Schools TR]*, 2136 Ritner St. [12/04/86]
Philadelphia, *Powers, Thomas, School [Philadelphia Public Schools TR]*, Frankford Ave. and Somerset St. [12/04/86]
Philadelphia, *Ralston, Robert, School [Philadelphia Public Schools TR]*, 221 Bainbridge St. [12/04/86]
Philadelphia, *Ramsey, J. Sylvester, School [Philadelphia Public Schools TR]*, Pine and Quince Sts. [12/01/86]
Philadelphia, *Read, Thomas Buchanan, School [Philadelphia Public Schools TR]*, Seventy-eighth and Buist Ave. [12/04/86]
Philadelphia, *Schaeffer, Charles, School [Philadelphia Public Schools TR]*, Germantown Ave. and Abbottsford Rd. [12/04/86]
Philadelphia, *Second Bank of the United States*, 420 Chestnut St. [5/04/87]
Philadelphia, *Shoemaker, William, Junior High School [Philadelphia Public Schools TR]*, 1464–1488 N. Fifty-third St. [12/04/86]
Philadelphia, *Smith, Walter George, School [Philadelphia Public Schools TR]*, 1300 S. Fourteenth St. [12/04/86]
Philadelphia, *Southwark School [Philadelphia Public Schools TR]*, Eighth and Mifflin Sts. [12/01/86]
Philadelphia, *Spring Garden School No. 1 [Philadelphia Public Schools TR]*, Twelfth and Ogden Sts. [12/04/86]
Philadelphia, *Spring Garden School No. 2 [Philadelphia Public Schools TR]*, Melon St. S of Twelfth St. [12/04/86]
Philadelphia, *Stevens, Thaddeus, School of Observation [Philadelphia Public Schools TR]*, 1301 Spring St. [12/04/86]
Philadelphia, *Stokely, William J., School [Philadelphia Public Schools TR]*, 1044–1060 N. Thirty-second St. [12/04/86]
Philadelphia, *Tilden, William J., Junior High School [Philadelphia Public Schools TR]*, Sixty-sixth St. and Elmwood Ave. [12/01/86]
Philadelphia, *Vare, Abigail, School [Philadelphia Public Schools TR]*, Morris St. and Moyamensing Ave. [12/04/86]
Philadelphia, *Wagner, General Louis, Junior High School [Philadelphia Public Schools TR]*, Seventeenth and Chelton Sts. [12/04/86]
Philadelphia, *Walton, Rudolph, School [Philadelphia Public Schools TR]*, 2801–2831 N. Twenty-eighth St. [12/04/86]
Philadelphia, *Washington, George, School [Philadelphia Public Schools TR]*, Fifth and Federal Sts. [12/04/86]
Philadelphia, *Wayne, Anthony, School [Philadelphia Public Schools TR]*, 2700 Morris St. [12/01/86]
Philadelphia, *West Philadelphia High School [Philadelphia Public Schools TR]*, 4700 Walnut St. [12/04/86]
Philadelphia, *Willard, Francis E., School [Philadelphia Public Schools TR]*, Emerald and Orleans Sts. [12/04/86]
Philadelphia, *Wilson, Woodrow, Junior High School [Philadelphia Public Schools TR]*, Cottman Ave. and Loretta St. [12/04/86]
Philadelphia, *Wright, Richardson L., School [Philadelphia Public Schools TR]*, 1101 Venango St. [12/04/86]

PENNSYLVANIA—Continued
Pike County

Canadensis vicinity, *Promised Land State Park–Bear Wallow Cabins [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 10 mi. N of Canadensis on PA 390 [2/11/87]
Canadensis vicinity, *Promised Land State Park Whittaker Lodge District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 10 mi. N of Canadensis on PA 390 [2/11/87]

Potter County

Austin, *Austin Dam*, PA 872 [1/15/87]
Philadelphia, *Boat House Row*, 1–15 E. River Dr. [2/27/897]
West Branch Township, *Cherry Springs Picnic Pavilion [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 8 mi. N of Carter Camp off PA 44 [5/11/87]

Somerset County

Jefferson vicinity, *Kooser State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 10 mi. N of PA Turnpike Exit 10 on PA 31 [2/12/87]
Somerset, *Laurel Hill RDA [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 4 mi. W of New Centerville and PA 281 [5/18/87]

Sullivan County

Forksville vicinity, *Worlds End State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 2 mi. SE of Forksville on PA 154 [5/18/87]

Tioga County

Ansonia vicinity, *Colton Point State Park [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 5 mi. S of US 6 at Ansonia [2/12/87]

Union County

Lewisburg vicinity, *Halfway Lake Dam [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 16 mi. W of Lewisburg on PA 191 [5/11/87]

Washington County

Deemston, *Kinder's Mill*, LR 62194 at Piper Rd. [10/16/86]

Westmoreland County

Rector vicinity, *Linn Run State Park Family Cabin District [Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks, 1933–1942, TR]*, 2 mi. SE of Rector on Linn Run Rd. [2/12/87]
Westmoreland City vicinity, *Brush Creek Salems Church*, SE of Westmoreland City on Brush Creek Rd. [5/11/87]

PUERTO RICO

Aguadilla Municipality

Aguadilla, *Silva—Benejan House*, 15 Munoz Rivera St. [5/20/87]

Aibonito Municipality

Aibonito, *Villa Julita*, 401 San Jose Ave. [12/19/86]

Arecibo Municipality

Arecibo, *Casa Cordova*, 14 Gonzalo Marin St. [11/17/86]
Arecibo, *Edificio Oliver*, 64 Jose de Diego Ave. [10/01/86]
Arecibo, *Gonzalo Marin 101*, 101 Gonzalo Marin St. [11/19/86]
Arecibo, *Paseo Victor Rojas*, Calle Gonzalo Marin at Avenida De Diego [11/19/86]
Ponce, *Mercado de las Carnes*, Alley connecting Mayor and Leon Sts. [11/17/86]

Caguas Municipality

Caguas, *Aquayo Aldea Vocational High School [Early Twentieth Century Schools in Puerto Rico TR]*, Jct. of San Juan and Principal Sts. [6/04/87]

Guayama Municipality

Guayama, *Eleuterio Derkas Grammar School [Early Twentieth Century Schools in Puerto Rico TR]*, Jose Marie Angueli St. [6/04/87]

Mayaguez Municipality

Mayaguez, *Antiguo Residencia de la Familia Nadal*, 13 Dr. Barbosa S [12/19/86]
Mayaguez, *Residencia Ramirez De Arellano en Guanajibo*, PR 102 [2/05/87]

Moca Municipality

Aceituna, *Hacienda Iruena Manor House*, Km. 115.7 PR Rd. No. 2 [6/14/87]

Ponce Municipality

Ponce, *Alberque Caritativo Tricoche [19th Century Civil Architecture in Ponce TR]*, Tricoche St. [5/14/87]
Ponce, *Antiguo Hospital Militar Espanol de Ponce [19th Century Civil Architecture in Ponce TR]*, Leon, Atocha and Bondad Sts. [5/14/87]
Ponce, Antiguo Cuartel Militar Espanol de Ponce [19th Century Civil Architecture in Ponce TR], Calle Castillo Final [5/14/87]
Ponce, *Banco de Ponce*, Amor and Comercio Sts. [6/25/87]
Ponce, *Banco Credito y Ahorro Ponceno, Marina and Amor Sts.* 6/25/87]
Ponce, *Casa Alcaldia de Ponce—City Hall [19th Century Civil Architecture in Ponce TR (AD)]*, South, Las Delicias Square [11/19/86]
Ponce, *Ponce High School [Early Twentieth Century Schools in Puerto Rico TR]*, Christina St. [6/04/87]

San Juan Municipality

Santurce, *Central High School [Early Twentieth Century Schools in Puerto Rico TR]*, Ponce de Leon Ave. [6/04/87]
Santurce, *Rafael M. Labra High School [Early Twentieth Century Schools in Puerto Rico TR]*, Jct. of Ponce de Leon and Roberto H. Todd Aves. [6/04/87]

Yauco Municipality

Yauco, *Residencia Gonzalez Vivaldi, 26 Mattei Lluberas St.* [2/05/87]

RHODE ISLAND

Kent County

Coventry, *Briggs, Joseph, House—Coventry Town Farm*, Town Farm Rd. [6/18/87]
Coventry, *South Main Street Historic District*, Cady, S. Main, and Wood Sts. [7/10/87]
Warwick, *Cowesett Pound*, Cowesett Rd. [9/04/87]

Newport County

Newport, *Rose Island Lighthouse*, SW pt. of Rose Island [4/10/87]

Providence County

Burrillville, *Oakland Historic District*, Victory Hwy. [9/09/87]
North Smithfield, *Smithfield Road Historic District*, Smithfield Rd. [2/18/87]
Providence, *America Street School*, 22 America St. [6/18/87]
Smithfield, *Saint Thomas Episcopal Church and Rectory*, Putnam Pike [7/02/87]

SOUTH CAROLINA

Charleston County

Edisto Island vicinity, *Brooklands Plantation [Edisto Island MRA]*, Off Laurel Hill Rd. on Scanawah Island [5/05/87]
Edisto Island vicinity, *Grimball, Paul, House Ruins [Edisto Island MRA]*, Address Restricted [11/28/86]
Edisto Island vicinity, *Old House Plantation and Commissary (Boundary Increase) [Edisto Island MRA]*, ½ mi. E of jct. of SC 174 and Oak Island Rd., then right on dirt rd. [5/05/87]
Edisto Island, *Bailey's Store [Edisto Island MRA]*, On Store Creek at jct. of SC 174 and Point of Pines Rd. [11/28/86]
Edisto Island, *Cassina Point [Edisto Island MRA]*, Cassina Point Rd. [11/28/86]
Edisto Island, *Frogmore [Edisto Island MRA]*, S of Pine Landing Rd. near intersection of SC 174 and Laurel Hill Rd. [5/05/87]
Edisto Island, *Hutchinson House [Edisto Island MRA]*, N side of Point of Pines Rd. [5/05/87]
Edisto Island, *Oak Island [Edisto Island MRA]*, 1 mi. off Oak Island Rd. on Westbank Creek [11/28/86]
Edisto Island, *Point of Pines Plantation Slave Cabin [Edisto Island MRA]*, Point of Pines Rd. [11/28/86]
Edisto Island, *Prospect Hill [Edisto Island MRA]*, Off Laurel Hill Rd. [11/28/86]
Edisto Island, *Sunnyside [Edisto Island MRA]*, Off N side of Peter's Point Rd. [11/28/86]
Edisto Island, *Townsend's, Hephzibah Jenkins, Tabby Oven Ruins [Edisto Island MRA]*, Address Restricted [5/05/87]
Edisto Island, *Wescott Road [Edisto Island MRA]*, W of SC 174 [11/28/86]

Cherokee County

Gaffney vicinity, *Cowpens Furnace Site (38CK73) [Early Ironworks of Northwestern South Carolina TR]*, Address Restricted [5/08/87]
Gaffney vicinity, *Ellen Furnace Site (38CK66) [Early Ironworks of Northwestern South Carolina TR]*, Address Restricted [5/08/87]

SOUTH CAROLINA—Continued

Gaffney vicinity, *Nesbitt's Limestone Quarry (38CK69) [Early Ironworks of Northwestern South Carolina TR]*, Address Restricted [5/06/87]

Kings Creek vicinity, *King's Creek Furnace Site (38CK71) [Early Ironworks of Northwestern South Carolina TR]*, Address Restricted [5/06/87]

Shady Grove Church vicinity, *Thicketty Mountain Ore Pits (38CK74) [Early Ironworks of Northwestern South Carolina TR]*, Address Restricted [5/06/87]

Chester County

Landsford Township, *Landsford Plantation House*, CR 595 ½ mi. E of US 21 [2/04/87]

Darlington County

Hartsville, *Arcade Hotel*, 204 N. Fifth St. [12/19/86]

Greenville County

Greer, *Greer Depot*, 311 Trade St. [3/06/87]

Woodside, *Woodside Cotton Mill Village Historic District*, Woodside Ave. and E. Main St. [4/03/87]

Laurens County

Laurens, *Albright—Dukes House [City of Laurens MRA]*, 127 Academy St. [11/19/86]

Laurens, *Darlington, Lyde Irby, House [City of Laurens MRA]*, 110 Irby Ave. [11/19/86]

Laurens, *Duckett, Charles H., House [City of Laurens MRA]*, 105 Downs St. [11/19/86]

Laurens, *Irby, Dr. William Claudius, House [City of Laurens MRA]*, 132 Irby Ave. [11/19/86]

Laurens, *Laurens Historic District (Boundary Increase) [City of Laurens MRA]*, Both sides of W. Main St. from 742 to 984 [11/19/86]

Laurens, *Sitgreaves House [City of Laurens MRA]*, 428 W. Farley Ave. [11/19/86]

Laurens, *South Harper Historic District [City of Laurens MRA]*, Both sides of S. Harper St. from 320 to 1037 [11/19/86]

Laurens, *Williams—Ball—Copeland House [City of Laurens MRA]*, 544 Ball Dr. [11/19/86]

Laurens, *Wilson—Clary House [City of Laurens MRA]*, 120 Irby Ave. [12/11/86]

Oconee County

Seneca, *Seneca Historic District (Boundary Increase)*, 300 S. Fairplay St. [4/23/87]

Richland County

Columbia vicinity, *Nipper Creek (38RD18)*, *Address Restricted [12/24/86]*

Columbia, *Benedict College Historic District*, Roughly bounded by Laurel, Oak, Taylor and Harden Sts. on Benedict College campus [4/20/87]

Columbia, *Claussen's Bakery [Columbia MRA: Supplement IX]*, 2001—2003 Green St. [3/09/87]

York County

Fort Mill vicinity, *White, William Elliott, House*, N. White St. [3/22/87]

Rock Hill, *Winthrop College Historic District*, Along Oakland Ave. between Cherry Rd. and Stewart Ave. on the Winthrop College campus [4/23/87]

Smyrna vicinity, *Jackson's Furnace Site (38YK217) [Early Ironworks of Northwestern South Carolina TR]*, *Address Restricted [5/08/87]*

SOUTH DAKOTA

Bon Homme County

Tabor vicinity, *Hakl, John, Chalkrock House [Czech Folk Architecture in Southeastern South Dakota MRA]*, SW of Tabor off SD 50 [6/07/87]

Tabor vicinity, *Herman, Joseph, Chalkrock House [Czech Folk Architecture in Southeastern South Dakota MRA]*, W side of SD 25 [7/06/87]

Tabor vicinity, *Herman, Joseph, Log Stable [Czech Folk Architecture in Southeastern South Dakota MRA]*, W side of SD 25 [7/06/87]

Tabor vicinity, *Herman, Joseph, Rubblestone Barn [Czech Folk Architecture in Southeastern South Dakota MRA]*, W side of SD 25 [7/06/87]

Tabor vicinity, *Honner, Martin, Chalkrock House [Czech Folk Architecture in Southeastern South Dakota MRA]*, NW of Tabor off SD 50 [7/06/87]

Tabor vicinity, *Merkwan, John and Kate, Log and Rubblestone House [Czech Folk Architecture in Southeastern South Dakota MRA]*, E side of SD 25 [7/06/87]

Tabor vicinity, *Merkwan, John Jr., Rubblestone House [Czech Folk Architecture in Southeastern South Dakota MRA]*, W side of SD 25 [7/06/87]

Tabor vicinity, *Merkwan, John and Kate, Rubblestone House-Barn [Czech Folk Architecture in Southeastern South Dakota MRA]*, E side of SD 25 [7/06/87]

Tabor vicinity, *Noll, Joseph, Chalkrock Barn [Czech Folk Architecture in Southeastern South Dakota MRA]*, S of Tabor off SD 50 [7/06/87]

Tabor vicinity, *Sedlacek, Jacob, Chalkrock House [Czech Folk Architecture in Southeastern South Dakota MRA]*, SW of Tabor off SD 50 [7/06/87]

Tabor vicinity, *Teibel-Sykora Rubblestone Barn [Czech Folk Architecture in Southeastern South Dakota MRA]*, W side of SD 25 [7/06/87]

Tabor vicinity, *Travnicek, John, Chalkrock House [Czech Folk Architecture of Southeastern South Dakota MRA]*, W side of jct. of SD 50 and SD 25 [7/06/87]

Tabor vicinity, *Walker, Albion, Chalkrock House [Czech Folk Architecture of Southeastern South Dakota MRA]*, S of SD 52 [7/06/87]

Tyndall vicinity, *Frydrych, John, Farmstead [Czech Folk Architecture in Southeastern South Dakota MRA]*, N side of SD 50 [7/06/87]

Brookings County

Brookings, *Caldwell, W. A., House*, 604 Sixth Ave. [11/03/86]

Brookings, *Coolidge Sylvan Theatre*, Medary Ave. [2/26/87]

Brookings, *Coughlin Campanile*, Medary Ave. [2/26/87]

Brookings, *Fishback House (Boundary Increase)*, 501 Eighth St. [3/09/87]

Brookings, *Nick's Hamburger Shop*, 427 Main Ave. [11/06/86]

Codington County

Watertown, *Sheafe, General Mark W., House*, 57 Fourth Ave. NW [2/26/87]

Fall River County

Hot Spring, *Jensen, Governor Leslie, House*, 309 S. Fifth St. [9/25/87]

Grant County

Revillo, *First State Bank Building*, Main Street [2/26/87]

Harding County

Buffalo vicinity, *Ashcroft, Thomas, Ranch [Harding and Perkins Counties MRA]*, Floodplain of South Fork of Grand River, ENE of Buffalo [4/10/87]

Camp Crook, *Little Missouri Bank Building [Harding and Perkins Counties MRA]*, Main St. [4/10/87]

Gustave vicinity, *Blake Ranch House [Harding and Perkins Counties MRA]*, 1 mi. W of Camp Crook Rd. [4/10/87]

Haley vicinity, *Vessey School [Harding and Perkins Counties MRA]*, CR 859 [4/10/87]

Harding, *Sheving, L. W., Ranch [Harding and Perkins Counties MRA]*, E of Harding in the West Short Pine Hills area [4/10/87]

Harding, *Stokes, Oliver O., House [Harding and Perkins Counties MRA]*, W side of N–S Section Rd. [4/10/87]

Ludlow vicinity, *Giannonatti Ranch [Harding and Perkins Counties MRA]*, S Side of an E–W Section Rd. [4/10/87]

Ralph vicinity, *Emmanuel Lutheran Church and Cemetery [Harding and Perkins Counties MRA]*, CR 858 [4/10/87]

Ralph vicinity, *Golden Valley Norwegian Lutheran Church [Harding and Perkins Counties MRA]*, N–S Section Rd. E of SD 79 [4/10/87]

Ralph vicinity, *Peace Valley Evangelical Church and Cemetery [Harding and Perkins Counties MRA]*, E side of SD 79 [4/10/87]

Reva vicinity, *Johnson, Axel, Ranch [Harding and Perkins Counties MRA]*, E of SD 79 on Sorum Rd. [5/19/87]

Sorum vicinity, *Livingston, John and Daisy May, Ranch [Harding and Perkins Counties MRA]*, E of SD 79 on S side of Sorum Rd. [4/10/87]

Hutchinson County

Menno, *Schmitt, Gottlieb, House*, 150 W. Poplar [11/06/86]

Kingsbury County

Oldham, *Oldham Methodist Church*, Main St. and Epton Ave. [9/25/87]

Lawrence County

Whitewood, *Selbie Building*, 1101 Meade [11/06/86]

Lincoln County

Sioux Falls, *Penmarch Place*, Penmarch Pl., RD 1, Box 142 [2/26/87]

McPherson County

Leola, *McPherson County Courthouse*, SD 10 [11/03/86]

Minnehaha County

Sioux Falls, *Glidden, Josephine Martin, Memorial Chapel*, 2121 E. Twelfth St. [9/25/87]

Sioux Falls, *Pettigrew, R.F., and Tate, S. L. Building*, 121–123 S. Main Ave. [11/06/86]

SOUTH DAKOTA—Continued

Perkins County

Bison vicinity, *Rockford No. 40 School [Harding and Perkins Counties MRA]*, 15 mi. NE of Bison [4/10/87]

Chance vicinity, *Foster Ranch House [Harding and Perkins Counties MRA]*, 4 mi. E of SD 79 [4/10/87]

Chance vicinity, *Veal, Thomas J., Ranch [Harding and Perkins Counties MRA]*, 7 mi. SE of jct. of SD 20 and SD 73 [4/10/87]

Lodgepole vicinity, *Bethany United Methodist Church [Harding and Perkins Counties MRA]*, 9½ mi. W of Lodgepole [4/10/87]

Lodgepole vicinity, *Carr No. 60 School [Harding and Perkins Counties MRA]*, 12 mi. SE of Lodgepole [4/10/87]

Lodgepole vicinity, *Duck Creek Lutheran Church and Cemetery [Harding and Perkins Counties MRA]*, 7 mi. SW of Lodgepole along Duck Creek [4/10/87]

Sorum, *Sorum Hotel [Harding and Perkins Counties MRA]*, Main St. [4/10/87]

Sorum, *Sorum Cooperative Store [Harding and Perkins Counties MRA]*, Main St. [4/10/87]

Zeona vicinity, *Beckon, Donald, Ranch [Harding and Perkins Counties MRA]*, 6 mi. SE of Zeona [4/10/87]

Zeona vicinity, *Immanuel Lutheran Church [Harding and Perkins Counties MRA]*, 15 mi. N of Mud Butte and US 212 on gravel CR [4/10/87]

Zeona vicinity, *Spring Creek School [Harding and Perkins Counties MRA]*, 1 mi. E of Zeona [4/10/87]

Sanborn County

Brookings, *Mathews, G. A., House*, 423 Eighth St. [11/26/86]

Walworth County

Selby, *Selby Opera House*, 3409 Main St. [9/25/87]

Yankton County

Tabor vicinity, *Merkwan, Mathias, Rubblestone Barn [Czech Folk Architecture in Southeastern South Dakota MRA]*, E of Tabor [7/06/87]

Tabor vicinity, *Pechan, Frantisek, Log House [Czech Folk Architecture in Southeastern South Dakota MRA]*, N of SD 50 and SD 52 [7/06/87]

Tabor vicinity, *Svatos, Frank, Rubblestone Barn [Czech Folk Architecture in Southeastern South Dakota MRA]*, SE of Tabor off SD 50 [7/06/87]

TENNESSEE

Bedford County

Normandy vicinity, *Landis, Absalom Lowe, House*, Thompson's Creek Rd. [6/25/87]

Cannon County

Woodbury, *Baptist Female College—Adams House*, 210 S. College St. [6/25/87]

Davidson County

Nashville, *Davidson County Courthouse*, Public Sq. [3/23/87]

Nashville, *Lebanon Road Stone Arch Bridge [Omohundro Waterworks System TR]*, Over Brown's Creek at Lebanon Rd. [5/13/87]

Nashville, *Omohundro Water Filtration Complex District [Omohundro Waterworks System TR]*, NE of Omohundro Dr. [5/13/87]

Nashville, *Shelby Street Bridge*, Over Cumberland River at Shelby St. [11/20/86]

De Kalb County

Liberty, *Liberty Historic District*, Roughly along Main and N. Main Sts. [6/25/87]

Fentress County

Allardt, *Gernt, Bruno, House*, Base Line Rd. [3/06/87]

Franklin County

Huntland vicinity, *Falls Mills Historic District*, Old Salem-Lexie and Falls Mill Rds. [7/09/87]

Gibson County

Milan, *US Post Office*, 302 S. Main St. [7/09/87]

Giles County

Wales vicinity, *Wilkerson Place*, Miller Hollow Rd. [10/23/86]

Grundy County

Altamont vicinity, *Firescald Creek Stone Arch Bridge [Grundy County MRA]*, Northcutts Cove Rd. over Firescald Creek [4/01/87]

Altamont, *Woodlee, L. V., House [Grundy County MRA]*, Cumberland St. [4/02/87]

Beersheba Springs vicinity, *Stagecoach Road [Grundy County MRA]*, Savage Gulf State Natural Area NW of TM 108 [4/01/87]

Coalmont vicinity, *Patton, John E., House [Grundy County MRA]*, Roddy Creek Rd. [4/01/87]

Coalmont vicinity, *Scott Creek Stone Arch Bridge [Grundy County MRA]*, Over Scott Creek at Flat Branch Rd. [4/01/87]

Gruetli, *Stagecoach Inn [Grundy County MRA]*, Colony Rd. [4/02/87]

Gruetli, *Stoker—Stampfli Farm [Grundy County MRA]*, Colony Cemetery Rd. [4/02/87]

Marvin Chapel vicinity, *Hickory Creek Stone Arch Bridge [Grundy County MRA]*, Sherwood Rd. over Hickory Creek [4/10/87]

Monteagle vicinity, *Wonder Cave Historic District [Grundy County MRA]*, Wonder Cave Rd. [4/01/87]

Tracy City vicinity, *Grundy Lakes Historic District [Grundy County MRA]*, Grundy Lakes State Pk. E of TN 56 [4/01/87]

Tracy City, *Hampton, E. L., House [Grundy County MRA]*, Depot and Oak St. [4/01/87]

Tracy City, *Marugg Company [Grundy County MRA]*, 35 Depot St. [4/01/87]

Tracy City, *Miner's Hall [Grundy County MRA]*, Jasper Rd. [4/01/87]

Tracy City, *Shook, Colonel A.M., House [Grundy County MRA]*, Jct. of Depot and Montgomery Sts. [4/01/87]

Tracy City, *Tracy City Coke Ovens [Grundy County MRA]*, W of Hobbs Hill Rd. [4/01/87]

Tracy City, *White, Frank, House [Grundy County MRA]*, Tenth St. [4/01/87]

Hamilton County

Chattanooga, *East Side Junior High School*, 2200 E. Main St. [3/06/87]

Chattanooga, *Miller Brothers Department Store*, 629 Market St. [9/17/87]

Chattanooga, *Wyatt Hall [Hunt, Reuben H., Buildings in Hamilton County TR]*, 805 E. Third St. [10/23/86]

Hardeman County

Bolivar, *Western State Hospital Historic District*, US 64 [6/25/87]

Hawkins County

Bulls Gap, *Bulls Gap Historic District*, S. Main, Church, McGregor, Price and Mill Sts. [7/30/87]

Knox County

Knoxville vicinity, *Ebenezer Mill*, Ebenezer Rd. [6/25/87]

Knoxville vicinity, *Riverdale Mill*, Wayland Rd. and Thorngrove Pike [3/13/87]

Knoxville, *Gay Street Commercial Historic District*, Roughly along Gay St. from Summit Hill Dr. to Church Ave. [11/04/86]

Lewis County

Hohenwald, *Hohenwald Railroad Depot*, TN 99 [5/14/87]

Maury County

Columbia, *Union Station*, Depot St. [10/23/86]

Mt. Pleasant vicinity, *Watkins, William, House*, Canaan Rd. [10/23/86]

Perry County

Linden vicinity, *Hufstedler Gravehouse*, Hurricane Creek Rd. [6/25/87]

Rutherford County

Lascassas vicinity, *Jarman Farm*, Cainsville Pike [7/06/87]

Scott County

Huntsville, *Huntsville High School*, 220 E. Main St. [7/02/87]

Sevier County

Sevierville, *Sevierville Commercial Historic District*, Sections of Bruce St., Court Ave., and Commerce St. [10/23/86]

Shelby County

Collierville vicinity, *Greenlevel*, 853 Collierville-Arlington Rd. S [3/06/87]

Germantown, *Nelson—Kirby House*, 6792 Poplar Pike [10/23/86]

Memphis, *South Bluffs Warehouse Historic District*, Roughly S. Front St., Wagner Pl., and Tennessee St. from Beale St. to Calhoun Ave. [6/04/87]

Memphis, *Union Avenue Methodist Episcopal Church, South*, 2117 Union Ave. [3/06/87]

Smith County

Rome, *Rome Ferry*, US 70 at Cumberland River [12/24/86]

Sullivan County

Bristol, *Bristol Municipal Stadium*, 1112 Edgemont Ave. [5/25/87]

Sumner County

Castilian Springs vicinity, *Parker—Bryson Historic District*, Greenfield Lane [6/25/87]

Gallatin, *Williamson and Adams Carriage Factory*, 326 E. Main St. [5/12/87]

BEST COPY AVAILABLE

TENNESSEE—Continued
Williamson County

Brentwood, *Mountview*, 913 Franklin Rd. [11/20/86]
Brentwood, *Owen Chapel Church of Christ*, 1101 Franklin Rd. [10/23/86]

TEXAS

Bexar County

Randolph AFB, *Base Administration Building*, Randolph AFB [8/27/87]

Bowie County

Texarkana vicinity, *Tilson Mounds—Summerhill Lake Place (41BW14)*, Address Restricted [1/16/87]

Brazos County

Bryan, *Allen, R. O., House-Allen Academy [Bryan MRA]*, 1120 Ursuline [9/25/87]
Bryan, *Allen Block [Bryan MRA]*, 400—422 N. Main [9/25/87]
Bryan, *Allen Academy Memorial Hall [Bryan MRA]*, 1100 blk. of Ursuline [9/25/87]
Bryan, *Armstrong House-Allen Academy [Bryan MRA]*, 1200 Ursuline [9/25/87]
Bryan, *Astin, R. Q., House [Bryan MRA]*, 508 W. Twenty-sixth [9/25/87]
Bryan, *Blazek, E. J., House [Bryan MRA]*, 409 W. Thirtieth [9/25/87]
Bryan, *Bryan Ice House [Bryan MRA]*, 107 E. Martin Luther King [9/25/87]
Bryan, *Bryan Compress and Warehouse [Bryan MRA]*, 911 N. Bryan [9/25/87]
Bryan, *CSPS Lodge—Griesser Bakery [Bryan MRA]*, 304 N. Logan [9/25/87]
Bryan, *Chance, James O., House [Bryan MRA]*, 102 S. Parker [9/25/87]
Bryan, *East Side Historic District [Bryan MRA]*, Roughly bounded by Houston, Twenty-ninth, Haswell, and E. Thirtieth Sts. [9/25/87]
Bryan, *Edge, Eugene, House [Bryan MRA]*, 609 S. Ennis [9/25/87]
Bryan, *English—Poindexter House [Bryan MRA]*, 206 W. Twenty-eighth [9/25/87]
Bryan, *English—Dansby House [Bryan MRA]*, 224 W. Twenty-eighth [9/25/87]
Bryan, *First State Bank and Trust Building [Bryan MRA]*, 100 W. Twenty-fifth [9/25/87]
Bryan, *First National Bank and Trust Building [Bryan MRA]*, 120 N. Main [9/25/87]
Bryan, *First Baptist Church [Bryan MRA]*, 201 S. Washington [9/25/87]
Bryan, *Higgs, Walter J., House [Bryan MRA]*, 609 N. Tabor [9/25/87]
Bryan, *House at 604 E. Twenty-seventh [Bryan MRA]*, 604 E. Twenty-seventh [9/25/87]
Bryan, *House at 603 E. Thirty-first [Bryan MRA]*, 603 E. Thirty-first [9/25/87]
Bryan, *House at 609 N. Washington [Bryan MRA]*, 609 N. Washington [9/25/87]
Bryan, *House at 407 N. Parker [Bryan MRA]*, 407 N. Parker [9/25/87]
Bryan, *House at 309 N. Sterling [Bryan MRA]*, 309 N. Sterling [9/25/87]
Bryan, *House at 1401 Baker [Bryan MRA]*, 1401 Baker [9/25/87]
Bryan, *Humpty Dumpty Store [Bryan MRA]*, 218 N. Bryan [9/25/87]
Bryan, *Jenkins, Edward J., House [Bryan MRA]*, 607 E. Twenty-seventh [9/25/87]
Bryan, *Jones, J. M., House [Bryan MRA]*, 812 S. Ennis [9/25/87]
Bryan, *Kemp, E. A., House [Bryan MRA]*, 606 W. Seventeenth [9/25/87]
Bryan, *McDougal—Jones House [Bryan MRA]*, 600 E. Twenty-seventh [9/25/87]
Bryan, *Moore House [Bryan MRA]*, 500 E. Twenty-fifth [9/25/87]
Bryan, *Noto House [Bryan MRA]*, 900 N. Parker [9/25/87]
Bryan, *Oliver, Dr. William Holt, House [Bryan MRA]*, 602 W. Twenty-sixth [9/25/87]
Bryan, *Parker, Milton, House [Bryan MRA]*, 200 S. Congress [9/25/87]
Bryan, *Parker Lumber Company Complex [Bryan MRA]*, 419 N. Main [9/25/87]
Bryan, *Saint Anthony's Catholic Church [Bryan MRA]*, 308 S. Parker [9/25/87]
Bryan, *Saint Andrew's Episcopal Church [Bryan MRA]*, 217 W. Twenty-sixth [9/25/87]
Bryan, *Sausley House [Bryan MRA]*, 700 N. Washington [9/25/87]
Bryan, *Sinclair Station, (Old) [Bryan MRA]*, 507 S. Texas [9/25/87]
Bryan, *Stone, Roy C., House [Bryan MRA]*, 715 E. Thirty-first [9/25/87]
Bryan, *Zimmerman, Minnie Zulch, House [Bryan MRA]*, 309 N. Washington [9/25/87]

Crane County

Leavenworth, *Insley, Merritt, House and Outbuildings*, 602 Seneca St. [10/02/86]

El Paso County

El Paso, *Plaza Theatre*, 125 Pioneer Plaza [6/04/87]
Fort Bliss, *Quarters No. 1*, 228 Sheridan Rd. [04/09/87]

Ellis County

Waxahachie, *Central Presbyterian Church [Waxahachie MRA]*, 402 N. College [9/11/87]
Waxahachie, *National Compress Company Building [Waxahachie MRA]*, 503 S. Flat [9/11/87]
Waxahachie, *Second Trinity University Campus [Waxahachie MRA]*, 1200 blk. of Sycamore [9/11/87]
Waxahachie, *Solon, John, House [Waxahachie MRA]*, 617 Solon Rd. [9/11/87]
Waxahachie, *Waxahachie Lumber Company [Waxahachie MRA]*, 123 Kaufman [9/11/87]

Gray County

Pampa, *US Post Office—Pampa Main*, 120 E. Foster [11/17/86]

Grayson County

Sherman, *Old Sherman Public Library*, 301 S. Walnut [10/23/86]

Lampasas County

Lampasas, *Phillips and Trosper Buildings*, 408 and 410 E. Third St., [4/30/87]

Navarro County

Corsicana, *Temple Beth-El*, 208 S. Fifteenth St. [2/03/87]

Tarrant County

Westworth, *Buck Oaks Farm*, 6212 White Settlement Rd. [7/09/87]

Travis County

Austin, *Newton House, [East Austin MRA]*, 1013 E. Ninth St. [4/02/87]

Victoria County

City of Victoria, *City of Victoria Pumping Plant—Waterworks, [Victoria MRA]*, 105 W. Juan Linn [12/09/86]
Victoria, *Alden, C.R., Building [Victoria MRA]*, 108–110 W. Juan Linn [12/09/86]
Victoria, *Alonso, Frank, House [Victoria MRA]*, 401 S. Cameron [12/09/86]
Victoria, *B'nai Israel [Victoria MRA]*, 604 N. Main [12/09/86]
Victoria, *Bardes—O'Connor House [Victoria MRA]*, 305 N. Moody [12/09/86]
Victoria, *Barnes, W. C., House [Victoria MRA]*, 106 W. Stayton [12/09/86]
Victoria, *Beadt, E. N. D., House [Victoria MRA]*, 407 S. DeLeon [12/09/86]
Victoria, *Bettin, Max, House [Victoria MRA]*, 602 E. Santa Rosa [12/09/86]
Victoria, *Brannon House [Victoria MRA]*, 206 W. Stayton [12/09/86]
Victoria, *Buhler, Theodore, House [Victoria MRA]*, 202 W. Stayton [12/09/86]
Victoria, *Building at 205 East Constitution [Victoria MRA]*, 205 E. Constitution [12/09/86]
Victoria, *Burrough—Daniel House [Victoria MRA]*, 502 W. North [12/09/86]
Victoria, *Calhoun Bakery [Victoria MRA]*, 209 N. Wheeler [12/09/86]
Victoria, *Clark House [Victoria MRA]*, 606 S. Liberty [12/09/86]
Victoria, *Clark, Robert, House [Victoria MRA]*, 317 N. Main [12/09/86]
Victoria, *Clegg, John H., House [Victoria MRA]*, 507 N. Vine [12/09/86]
Victoria, *Crain, F. H., House [Victoria MRA]*, 307 N. Vine [12/09/86]
Victoria, *DeLeon Plaza and Bandstand [Victoria MRA]*, 100 blk. W. Constitution [3/24/87]
Victoria, *Diebel—Hyak House [Victoria MRA]*, 501 S. Cameron [12/12/86]
Victoria, *Farmers and Merchants Cotton Gin Warehouse [Victoria MRA]*, 402 S. East [12/09/86]
Victoria, *Fleming—Welder House [Victoria MRA]*, 607 N. Craig [12/09/86]
Victoria, *Fossati, E. J., House [Victoria MRA]*, 607 S. DeLeon [12/09/86]
Victoria, *Fox, Jacob, House [Victoria MRA]*, 708 W. Power [12/09/86]
Victoria, *Gaylord—Levy House [Victoria MRA]*, 402 N. Bridge [12/09/86]
Victoria, *Goldman, A., Building [Victoria MRA]*, 207 E. Constitution [12/09/86]
Victoria, *Goldman's Cotton Gin Warehouse [Victoria MRA]*, 901 E. Murray [12/09/86]
Victoria, *Guzmans House [Victoria MRA]*, 302 E. Goodwin [12/09/86]
Victoria, *Hauschild, George H., Building [Victoria MRA]*, 208 N. Liberty [12/09/86]
Victoria, *Hauschild, George and Adele, House [Victoria MRA]*, 208 N. Liberty [12/09/86]
Victoria, *Hill—Howard House [Victoria MRA]*, 802 W. Power [12/09/86]
Victoria, *Hiller House [Victoria MRA]*, 3003 N. Vine [12/09/86]
Victoria, *Hiller House [Victoria MRA]*, 501 E. Church [12/09/86]

TEXAS—Continued
Victoria, *House at 1602 North Moody [Victoria MRA]*, 1602 N. Moody [12/09/86]
Victoria, *House at 304 West Stayton [Victoria MRA]*, 304 W. Stayton [12/09/86]
Victoria, *House at 306 East Forrest [Victoria MRA]*, 306 E. Forrest [12/09/86]
Victoria, *House at 401 East Stayton [Victoria MRA]*, 401 E. Stayton [12/09/86]
Victoria, *House at 407 East Convent [Victoria MRA]*, 407 E. Convent [12/09/86]
Victoria, *House at 4402 East Juan Linn [Victoria MRA]*, 4402 E. Juan Linn [12/09/86]
Victoria, *House at 604 East Santa Rosa [Victoria MRA]*, 604 E. Santa Rosa [12/09/86]
Victoria, *House at 702 Siegfried [Victoria MRA]*, 702 Siegfried [12/09/86]
Victoria, *House at 706 Siegfried [Victoria MRA]*, 706 Siegfried [12/09/86]
Victoria, *House at 804 Siegfried [Victoria MRA]*, 804 Siegfried [12/09/86]
Victoria, *House at 1907 Southwest Ben Jordan [Victoria MRA]*, 1907 S.W. Ben Jordan [12/09/86]
Victoria, *Hull House [Victoria MRA]*, 1002 N.E. Water [12/09/86]
Victoria, *Jecker, E. J., House [Victoria MRA]*, 201 N. Wheeler [12/09/86]
Victoria, *Jecker, J. T., House [Victoria MRA]*, 104 N. Liberty [3/24/87]
Victoria, *Jordan—Koch House [Victoria MRA]*, 307 N. DeLeon [12/09/86]
Victoria, *Kaufman, E. C., House [Victoria MRA]*, 502 S. DeLeon [12/09/86]
Victoria, *Keef—Filley Building [Victoria MRA]*, 214 S. Main [3/24/87]
Victoria, *Krenek House [Victoria MRA]*, 607 N. Main [12/09/86]
Victoria, *Lander—Hopkins House [Victoria MRA]*, 202 W. Power at N. Bridge [12/09/86]
Victoria, *Lane—Tarkington House [Victoria MRA]*, 1207 N. Bridge [12/09/86]
Victoria, *Lawrence House [Victoria MRA]*, 1203 N. Bridge [12/09/86]
Victoria, *Levi—Welder House [Victoria MRA]*, 403 N. Main [12/09/86]
Victoria, *Little House [Victoria MRA]*, 502 N. Victoria [12/09/86]
Victoria, *Martin—Fiek-Thumford, Vera, House [Victoria MRA]*, 507 N. William [12/09/86]
Victoria, *McCabe Building [Victoria MRA]*, 508 N. Wheeler [12/19/86]
Victoria, *McCan—Nave House [Victoria MRA]*, 401 N. Glass [12/09/86]
Victoria, *McDonald House [Victoria MRA]*, 406 E. Constitution [12/09/86]
Victoria, *McFaddin, James, House [Victoria MRA]*, 207 W. Commercial [3/24/87]
Victoria, *McNamara—O'Conner House [Victoria MRA]*, 502 N. Liberty [12/09/86]
Victoria, *Mitchell, Guy, House [Victoria MRA]*, 402 W. Goodwin [12/09/86]
Victoria, *Moeller House [Victoria MRA]*, 901 S. East [12/09/86]
Victoria, *Mohris—Abechler House [Victoria MRA]*, 101 N. DeLeon [12/09/86]
Victoria, *Murphy, Mrs. J. V., House [Victoria MRA]*, 204 E. Santa Rosa [12/09/86]
Victoria, *Nave, Royston, Memorial [Victoria MRA]*, 308 W. Commercial [12/09/86]
Victoria, *O'Connor, Thomas M., House [Victoria MRA]*, 303 S. Bridge [12/09/86]
Victoria, *O'Connor—Proctor Building [Victoria MRA]*, 202 N. Main [12/09/86]
Victoria, *Old Brownson School [Victoria MRA]*, 500 blk. of W. Power [12/09/86]
Victoria, *Old Federal Building and Post Office [Victoria MRA]*, 210 E. Constitution [12/09/86]
Victoria, *Old Municipal Assembly Hall [Victoria MRA]*, 800 E. Pine [12/09/86]
Victoria, *Old Nazareth Academy [Victoria MRA]*, 105 W. Church [12/09/86]
Victoria, *Our Lady of Lourdes Church [Victoria MRA]*, 105 N. William [12/09/86]
Victoria, *Pela House [Victoria MRA]*, 309 E. Santa Rosa [12/09/86]
Victoria, *Pickering House [Victoria MRA]*, 403 N. Glass [12/09/86]
Victoria, *Pippert House [Victoria MRA]*, 207 E. Third [12/09/86]
Victoria, *Proctor House [Victoria MRA]*, 507 N. Glass [12/06/86]
Victoria, *Proctor—Vandenberge House [Victoria MRA]*, 604 N. Craig [12/09/86]
Victoria, *Randall Building [Victoria MRA]*, 103–105 W. Santa Rosa [12/09/86]
Victoria, *Regan, D. H., House [Victoria MRA]*, 507 S. DeLeon [12/09/86]
Victoria, *Saint Mary's Catholic Church [Victoria MRA]*, 101 W. Church [12/09/86]
Victoria, *Schroeder House [Victoria MRA]*, 1507 N. Vine [12/09/86]
Victoria, *Schummacker Company Building [Victoria MRA]*, 402 E. Power [12/09/86]
Victoria, *Shrader, Henry, House [Victoria MRA]*, 607 S. Cameron [12/09/86]
Victoria, *Sigmund House [Victoria MRA]*, 506 E. Santa Rosa [12/09/86]
Victoria, *Stuart House [Victoria MRA]*, 506 S. Bridge [12/09/86]
Victoria, *Tasin House [Victoria MRA]*, 202 N. Wheeler [12/09/86]
Victoria, *Texas Company Filling Station [Victoria MRA]*, 102 S. Williams St. [12/09/86]
Victoria, *Townsend—Wilkins House [Victoria MRA]*, 106 N. Navarro [12/09/86]
Victoria, *Trinity Lutheran Church [Victoria MRA]*, 402 E. Constitution [12/09/86]
Victoria, *Vandenberge, J. V., House [Victoria MRA]*, 301 N. Vine [12/09/86]
Victoria, *Victoria Colored School [Victoria MRA]*, 702 E. Convent [12/09/86]
Victoria, *Weber—Schuchert House [Victoria MRA]*, 302 E. Constitution [12/09/86]
Victoria, *Webster Chapel United Methodist Church [Victoria MRA]*, 405 S. Wheeler [12/09/86]
Victoria, *Wheeler, William, House [Victoria MRA]*, 303 N. William St. [12/09/86]
Victoria, *Williams, B. F., House [Victoria MRA]*, 401 E. Murray [12/09/86]
Victoria, *Woodhouse House [Victoria MRA]*, 609 N. Wheeler [12/09/86]
Victoria, *Zahn, Herman and Alvina, House [Victoria MRA]*, 107 S. DeLeon [12/09/86]

Williamson County

Round Rock vicinity, *Kenney's Fort Site (41WM465)*, Address Restricted [4/20/87]

U.S. MINOR ISLANDS

Midway Islands Territory

Midway Islands, *World War II Facilities at Midway*, Sand and Eastern Islands [5/25/87]

UTAH

Box Elder County

Park Valley vicinity, *Central Pacific Railroad Grade Historic District*, 87 mi. segment between Umbria jct. 9 mi E. of NV border around N end of Great Salt Lake to Golden Spike NHS [5/15/87]

Garfield County

Bryce Canyon National Park, *Bryce Canyon Lodge and Deluxe Cabins*, SR 63 [5/28/87]

Salt Lake County

Sandy, *Kuhre, William D., House*, 8586 S. One Hundred and Fiftieth E [7/06/87]

Sanpete County

Manti, *Ottesen, Hans, House [Scandinavian-American Pair-houses TR]*, 202 S. 200 W [6/06/87]

Utah County

American Fork, *Goode, Charles T.H., House [Pleasant Grove Soft-Rock Buildings TR]*, 1215 E. Main [6/09/87]
Fairfield, *Fairfield District School*, 59 N. Church St. [6/06/87]
Lindon, *Harper, Alfred William, House [Pleasant Grove Soft-Rock Buildings TR]*, 125 W. Four Hundred N [6/09/87]
Pleasant Grove, *Adams, John Alma, House [Pleasant Grove Soft-Rock Buildings TR]*, 625 E. Two Hundred S [6/09/87]
Pleasant Grove, *Green, Samuel, House [Pleasant Grove Soft-Rock Buildings TR]*, 284 E. Two Hundred S [6/09/87]
Pleasant Grove, *Larsen, Neils Peter, House [Pleasant Grove Soft-Rock Buildings TR]*, 1146 N. One Hundred E [6/09/87]
Pleasant Grove, *Larsen, Christen, House [Scandinavian-American Pair-houses TR]*, 990 N. Four-hundred E [7/13/87]
Pleasant Grove, *Richins, Thomas A., House [Pleasant-Grove Soft-Rock Buildings TR]*, 405 N. Five Hundred E [6/09/87]
Pleasant Grove, *Wadley, Edward, House [Pleasant Grove Soft-Rock Buildings TR]*, 2445 N. Canyon Rd. [6/09/87]
Pleasant Grove, *White, Jacob Hanmer, House [Pleasant Grove Soft-Rock Buildings TR]*, 599 E. One Hundred S [6/09/87]
Pleasant Grove, *Young, William Friend, House [Pleasant Grove Soft-Rock Buildings TR]*, 550 E. Five Hundred N [6/09/87]
Uintah City, *Douglass, Earl, Workshop—Laboratory [Dinosaur National Monument MRA]*, US 40 [12/19/86]
Uintah City, *Morris, Josie Bassett, Ranch Complex [Dinosaur National Monument MRA]*, US 40 [12/19/86]
Uintah City, *Quarry Visitor Center [Dinosaur National Monument MRA]*, US 40 [12/19/86]

Wasatch County

Heber City, *Murdock, Joseph S., House*, 115 E. Three-hundred N [5/01/87]

Washington County

Springdale vicinity, *Zion Lodge—Birch Creek Historic District (Boundary Increase) [Zion National Park MRA]*, W of UT 9 on the W and E sides of The Zion Canyon Scenic Drive near Birch Creek [7/07/87]

UTAH—Continued
Springdale, *Angels Landing Trail—West Rim Trail [Zion National Park MRA]*, S of Scout Lookout across the Virgin River and Refrigerator Canyon [2/14/87]
Springdale, *Canyon Overlook Trail [Zion National Park MRA]*, Across hwy. from parking area at E end of Zion-Mt. Carmel Tunnel to a point directly above the Great Arch of Zion [2/14/87]
Springdale, *Crawford Irrigation Canal [Zion National Park MRA]*, W bank of Virgin River from 1 mi. N of Virgin River Bridge to base of Virgin River Formation and ⅛ mi up Oak Creek [7/07/87]
Springdale, *East Entrance Checking Station [Zion National Park MRA]*, Island in middle of UT 9 [2/14/87]
Springdale, *East Entrance Sign [Zion National Park MRA]*, East Entrance Checking Station on N and S sides of UT 9 [7/07/87]
Springdale, *East Entrance Residence [Zion National Park MRA]*, E Entrance 150 ft. N of UT9 [2/14/87]
Springdale, *East Rim Trail [Zion National Park MRA]*, between Weeping Rock Parking Area and Observation Pt. [7/07/87]
Springdale, *Emerald Pools Trail [Zion National Park MRA]*, Foot Bridge across hwy. from Utah Parks Lodge proceeding W to the Lower Emerald Pool [2/14/87]
Springdale, *Gateway to the Narrows Trail [Zion National Park MRA]*, Temple of Sinawava at the end of Zion Canyon Scenic Dr. to a pt. 1 mi. N on Virgin River [7/07/87]
Springdale, *Grotto Camping Ground South Comfort Station [Zion National Park MRA]*, Grotto Picnic Area near Grotto Residence, E of Scenic Dr. [2/14/87]
Springdale, *Grotto Camping Ground North Comfort Station [Zion National Park MRA]*, Grotto Picnic Area near Grotto Residence, E of Scenic Dr. [2/14/87]
Springdale, *Hidden Canyon Trail [Zion National Park MRA]*, Hidden Canyon jct. on the E Rim Trail to the mouth of Hidden Canyon [2/14/87]
Springdale, *Museum—Grotto Residence [Zion National Park MRA]*, SE of Grotto Picnic Area [2/14/87]
Springdale, *Oak Creek Historic District [Zion National Park MRA]*, Off US 9 along bank of Oak Creek [7/07/87]
Springdale, *Oak Creek Irrigation Canal [Zion National Park MRA]*, W side of the N. Fork of Virgin River ¼ mi. N of Virgin River Bridge to the N side of Watchman Campground Entrance Rd [7/07/87]
Springdale, *Pine Creek Residential Historic Distric [Zion National Park MRA]*, W side of UT 9 500 ft. S of Virgin River Bridge [7/07/87]
Springdale, *Pine Creek Irrigation Canal [Zion National Park MRA]*, E bank of the Virgin River ¼ mi. N of Virgin River Bridge to the SW end of Watchman Residential Loop [7/07/87]
Springdale, *South Campground Amphitheater [Zion National Park MRA]*, South Campground [2/14/87]
Springdale, *South Entrance Sign [Zion National Park MRA]*, South Entrance [2/14/87]
Springdale, *South Campground Comfort Station [Zion National Park MRA]*, South Campground at N end of campsite loop [2/14/87]
Springdale, *Zion Nature Center—Zion Inn [Zion National Park MRA]*, N of South Campground facilities [2/14/87]
Springdale, *Zion-Mount Carmel Highway [Zion National Park MRA]*, Between US 9 and US 89 [7/07/87]

Weber County
Ogden, *Dalton, John L. and Elizabeth, House*, 2622 Madison Ave. [3/11/87]

VERMONT

Bennington County
Bennington, *Ritchie Block*, 465–473 Main St. [11/06/86]

Lamoille County
Cambridge, *Jeffersun Historic District*, Church, Main, Maple, and School Sts., Carlton Ave., UT 108, and Brewster Ave. [4/10/87]

Orleans County
Holland, *Holland Congregational Church*, W. Holland Rd. [12/04/86]

Rutland County
Wallingford, *Fox—Cook Farm [Rural Otter Creek Valley MRA]*, Off US 7 on Cook Rd. [11/26/86]
Wallingford, *Hager Farm [Rural Otter Creek Valley MRA]*, US 7 [11/26/86]
Wallingford, *Hall, Gen. Robinson, House [Rural Otter Creek Valley MRA]*, US 7 [11/26/86]
Wallingford, *Hulett Farm [Rural Otter Creek Valley MRA]*, US 7 [11/26/86]
Wallingford, *Rural Otter Creek Valley Historic District [Rural Otter Creek Valley MRA]*, Roughly US 7 W of Otter Creek [3/31/87]
Wallingford, *Waldo, Homer, Farm [Rural Otter Creek Valley MRA]*, Waldo Ln. [11/26/86]

VIRGIN ISLANDS

St. Croix Island
Frederiksted vicinity, *Saint George Estate Historic District*, Prince Quarter [10/24/86]

VIRGINIA

Albemarle County
Ivy vicinity, *Woodstock Hall Tavern*, VA 637 [1/29/87]

Alexandria Independent City
Alexandria (Independent City), *Bayne—Fowle House*, 611 Prince St. [11/06/86]

Amelia County
Chula vicinity, *Dykeland*, VA 632 [5/08/87]

Buckingham County
New Canton vicinity, *Mount Ida*, VA 610 [4/27/87]

Culpeper County
Rapidan, *Rapidan Historic District*, Jct. of VA 614, VA 615, and VA 673 [5/08/87]

Fairfax Independent City
Fairfax (Independent City), *City of Fairfax Historic District*, Jct. of VA 236 and VA 123 [6/27/87]

Grayson County
Snowville, *Snowville Historic District*, VA 693 [1/07/87]

Greene County
Amicus vicinity, *Locust Grove*, VA 641 [9/25/87]

Halifax County
Omega vicinity, *Buckshoal Farm*, VA 737 [9/16/87]

Henrico County
Laurel vicinity, *Laurel Industrial School Historic District*, N and S sides of Hungary Rd. W of Old Staples Mill Rd. [6/12/87]

James City County
Croaker vicinity, *Croaker Landing Archaeological Site (44JC70)*, Address Restricted [5/14/87]

King George County
Port Conway, *Emmanuel Church*, US 301 [1/07/87]
Weedonville vicinity, *Claydael*, Off VA 206 [12/18/86]

Lancaster County
Merry Point vicinity, *Verville*, VA 611 [4/24/87]

Loudoun County
Ashburn vicinity, *Janelia*, N side of VA 7, 6 mi. E of Leesburg [3/20/87]
Leesburg vicinity, *Rockland*, E side of US 15, N of Leesburg [5/14/87]

Lynchburg Independent City
Lynchburg (Independent City), *Kentucky Hotel*, 900 Fifth St. [12/11/86]
Lynchburg (Independent City), *Lower Basin Historic District*, 700–1300 blks. of Jefferson St., 600–1300 blks. of Commerce St., and 1200–1300 Blks. of Main St. [4/24/87]
Lynchburg (Independent City), *Montview*, Liberty University campus between VA 670 and US 29 [6/05/87]

Norfolk Independent City
Norfolk (Independent City), *Downtown Norfolk Historic District*, Granby, Main, and Plume Sts., City Hall Ave., and Bank St. [3/20/87]
Norfolk (Independent City), *St. John's African Methodist Episcopal Church*, 539—545 E. Bute St. [12/04/86]

Northumberland County
Wicomico Church vicinity, *Shalango*, VA 606 [11/06/86]

Orange County
Rapidan, *Rapidan Historic District*, Jct. of VA 614, VA 615, and VA 673 [5/08/87]

Powhatan County
Ballsville vicinity, *Blenheim*, 6177 Blenheim Rd. [12/11/86]
Michaux vicinity, *Beaumont*, VA 313 [4/02/87]

Prince William County
Nokesville, *Park Gate*, 11308 Park Gate Dr. [4/09/87]

VIRGINIA—Continued
Pulaski County
Snowville, *Snowville Christian Church*, VA 693 [4/02/87]

Richmond Independent City
Richmond (Independent City), *Broad Street Commercial Historic District*, Along Broad St. area roughly bounded by Belvidere, Marshall, Fourth and Grace [4/09/87]
Richmond (Independent City), *Trinity Methodist Church*, 2000 E. Broad St. [4/16/87]

Roanoke County
Salem, *Old Roanoke County Courthouse*, 301 E. Main St. [5/14/87]

Rockbridge County
Lexington vicinity, *Maple Hall*, Jct. of US 11 and I–81 and I–64 [1/29/87]
Natural Bridge vicinity, *Virginia Manor*, VA 130 [9/10/87]

Suffolk Independent City
Suffolk (Independent City), *Suffolk Historic District*, Roughly bounded by RR tracks, Hill St., Central Ave., Holladay, Washington, N. Saratoga and Pine Sts. [6/22/87]

Tazewell County
Tazewell vicinity, *Bull Thistle Cave Archeological Site (44TZ92)*, Address Restricted [9/10/87]

Warren County
Front Royal, *Sonner Hall*, Third St. [1/29/87]

Westmoreland County
Colonial Beach, *Bell House*, 621 Irving Ave. [9/21/87]

Winchester Independent City
Winchester (Independent City), *Hexagon House*, 530 Amherst St. [9/10/87]

WASHINGTON

Clallam County
Port Angeles, *Clallan County Courthouse*, 319 Lincoln St. [9/02/87]

Clark County
Vancouver, *Vancouver Telephone Building*, 112 W. Eleventh [11/06/86]
Vacolt vicinity, *Pomeroy Farm*, 20902 N.E. Lucia Falls Rd. [3/13/87]

Grays Harbor County
Hoquiam, *Seventy Street Theater*, 313 Seventh St. [6/08/87]

Jefferson County
Discovery, *Uncas School [Eastern Jefferson County MRA]*, E. Uncas [2/05/87]

King County
Kent vicinity, *Sanders, Erick Gustave, Mansion*, 5518 S. Two Hundred and Seventy-seventh St. [11/06/86]
Lester, *Lester Depot*, US Forest Service Rd. 212, Green River Watershed [9/10/87]
Medina, *Eddy, James G., House and Grounds (Boundary Increase)*, 1006 Evergreen Point Rd. [11/06/86]
Seattle, *Bowles, Jesse C., House*, 2540 Shoreland Dr. S [11/06/86]
Seattle, *Lacey V. Murrow Floating Bridge [Historic Bridges/Tunnels in WA State TR]*, Lake Washington [4/29/87]
Seattle, *Seattle Chinatown Historic District*, Roughly bounded by Main, Jackson, I–5, Waller, and Fifth [11/06/86]
Seattle, *US Immigration Building*, 84 Union St. [9/14/87]

Kittitas County
Ellensburg, *First Railroad Addition Historic District*, Roughly bounded by Tenth Ave., D St., Ninth Ave., and A St. [5/08/87]

Lewis County
Centralia, *Birge, George E., House*, 715 E St. [12/01/86]
Curtis, *Boistfort High School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, 993 Boistfort Rd. [8/06/87]
Pe Ell, *Holy Cross Polish National Catholic Church*, Third and Queen [9/02/87]

Pierce County
Alderton, *Alderton School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, 9512 Orting Hwy., E. [7/15/87]
Anderson Island, *Anderson Island School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, Eckenstam-Johnson Rd. [7/15/87]
DuPont, *DuPont Village Historic District*, Roughly bounded by Santa Cruz, Brandywine, DuPont, and Pennman [9/10/87]
Enumclaw, *Suntop Lookout [USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR]*, White River Ranger District on Suntop Mountain, 15 mi. NE of Mt. Rainier [7/14/87]
Fox Island, *Fox Island School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, Gway Dr. and Ninth St. [7/15/87]
Gig Harbor vicinity, *Arletta School [Rural Public Schools in Washington From Early Settlement to 1945 MRA]*, Jct. Ninety-sixth Ave. and Thirty-sixth St. NW [9/28/87]
Gig Harbor vicinity, *Midway School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, 5115 Thirty-eighth Ave. NW [7/15/87]
Gig Harbor vicinity, *Wollochet—Point Fosdick School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, 3409 E. Bay Dr. [7/15/87]
Lakebay vicinity, *Longbranch School Gymnasium [Rural Public Schools in Washington From Early Settlement to 1945 MRA]*, Gig Harbor-Longbranch Rd. [9/28/87]
McMillin, *McMillin School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, WA 162 [7/15/87]
Mount Rainier National Park, *Longmire Buildings*, Longmire [5/28/87]
Mount Rainier National Park, *Paradise Inn*, Paradise [5/28/87]
Mount Rainier National Park, *Yakima Park Stockade Group*, Sunrise (Yakima Park) [5/28/87]
Tacoma, *Custer School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, 7700 Steilacoom Blvd. SW [7/15/87]

San Juan County
Eastsound vicinity, *Crow Valley School [Rural Public Schools in Washington From Early Settlement to 1945 MPS]*, Crow Valley Rd. [6/27/87]

Skagit County
Marblemount, *Hidden Lake Peak Lookout [USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR]*, Mt. Baker Ranger District, Southernmost peak of Hidden Lake Peaks near North Cascades National Park boundary [7/14/87]
Sedro Wooley, *Park Butte Lookout [USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR]*, Mt. Baker Ranger District, SW of the Easton Glacier of Mt. Baker [7/14/87]

Skamania County
North Bonneville vicinity, *North Bonneville Archeological District*, Address Restricted [2/02/87]

Snohomish County
Darrington, *Miners Ridge Lookout [USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR]*, Darrington Ranger District in Glacier Peak Wilderness area 5 mi. W of Pacific Crest trail [7/19/87]
Darrington, *Three Fingers Lookout [USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR]*, Darrington Ranger District on the southernmost peak [7/14/87]
Skykomish, *Evergreen Mountain Lookout [USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR]*, Skykomish Ranger District on SW ridgecrest of Evergreen Mountain [7/14/87]

Spokane County
Spokane, *Amman [Apartment Buildings by Albert Held]*, W. 1516 Riverside [2/12/87]
Spokane, *Breslin [Apartment Buildings by Albert Held TR]*, S. 729 Bernard [2/12/87]
Spokane, *Knickerbocker [Apartment Buildings by Albert Held TR]*, S. 501–507 Howard [2/12/87]
Spokane, *San Marco [Apartment Buildings by Albert Held TR]*, W. 1229 Riverside [2/12/87]

Thurston County
Olympia, *Allen House Hotel [Downtown Olympia MRA]*, 114–118 N. Jefferson [6/17/87]
Olympia, *Funk House*, 1202 E. Olympia Ave. [5/08/87]
Olympia, *Jeffers Studio [Downtown Olympia MRA]*, 500 and 502 S. Washington [6/17/87]
Olympia, *LOTUS (motor vessel)*, Fiddlehead Marina, B Dock [5/18/87]
Olympia, *Olympia National Bank [Downtown Olympia MRA]*, 422 S. Capitol Way [6/17/87]
Olympia, *Reinhart—Young House*, 1108 E. Olympia Ave. [5/08/87]
Olympia, *Rudkin, Frank, House*, 1005 E. Olympia Ave. [5/08/87]
Olympia, *Town Square [Downtown Olympia MRA]*, Bounded by Seventh, Legion, Capitol Way, and S. Washington [6/17/87]

WASHINGTON—Continued
Whatcom County

Sedro Wooley, *Winchester Mountain Lookout [USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR]*, Mt. Baker Wilderness Area overlooking the N fork of Nooksack River and W fork of Silesia Creek [7/14/87]

Whitman County

Farmington, *Masonic Hall*, Corner of Main and Second Sts. [2/12/87]

Yakima County

Grandview vicinity, *Cornell Farmstead [Grandview MRA]*, Pleasant Rd. and Old Prosser Rd. [2/17/87]
Grandview, *Grandview High School [Grandview MRA]*, 913 W. Second St. [2/17/87]
Grandview, *Grandview State Bank [Grandview MRA]*, 100 W. Second St. [2/17/87]
Grandview, *Grandview Herald Building [Grandview MRA]*, 107 Division St. [2/17/87]
Grandview, *Howay—Dykstra House [Grandview MRA]*, 114 Birch St. [2/17/87]
Grandview, *Morse House [Grandview MRA]*, 404 E. Main St. [2/17/87]
Yakima, *Brooker—Taylor House [Yakima TR]*, 203 S. Naches Ave. [2/18/87]
Yakima, *Card, Rupert House [Yakima TR]*, 1105 W. A St. [2/18/87]
Yakima, *Carmichael—Loudon House [Yakima TR]*, 2 Chicago Ave. [2/18/87]
Yakima, *Dills, Harrison, House [Yakima TR]*, 4 N. Sixteenth Ave. [2/18/87]
Yakima, *Greene, James, House [Yakima TR]*, 203 N. Ninth St. [5/06/87]
Yakima, *Howard, A. E., House [Yakima TR]*, 602 N. First St. [2/18/87]
Yakima, *Knuppenburg, James, House [Yakima TR]*, 111 S. Ninth St. [2/18/87]
Yakima, *Larson—Hellieson House [Yakima TR]*, 208 N. Naches Ave. [5/06/87]
Yakima, *Lindsey, William, House [Yakima TR]*, 301 N. Eighth St. [2/18/87]
Yakima, *Miller, John J., House [Yakima TR]*, 9 S. Tenth Ave. [2/18/87]
Yakima, *Mineau, Francis, House [Yakima TR]*, 216 N. Seventh St. [2/18/87]
Yakima, *Moore, Edward B., House [Yakima TR]*, 222 N. Second St. [2/18/87]
Yakima, *Perrin, Winfield, House [Yakima TR]*, 12 S. Eleventh Ave. [2/18/87]
Yakima, *Pottar, H. W., House [Yakima TR]*, 306 S. Fourth St. [2/18/87]
Yakima, *Powell House [Yakima TR]*, 207 S. Ninth St. [2/18/87]
Yakima, *Richey, James, House [Yakima TR]*, 206 N. Naches Ave. [5/06/87]
Yakima, *Sharp, James, House [Yakima TR]*, 111 N. Ninth St. [2/18/87]
Yakima, *Sweet, Reuben, House [Yakima TR]*, 6 Chicago Ave. [2/18/87]
Yakima, *Watt, William, House [Yakima TR]*, 1511 W. Chestnut Ave. [2/18/87]
Yakima, *West, Dr. Edmond, House [Yakima TR]*, 202 S. Sixteenth Ave. [2/18/87]
Yakima, *Wilcox, Charles, House [Yakima TR]*, 220 N. Sixteenth Ave. [2/18/87]

WEST VIRGINIA

Braxton County

Sutton, *Sutton Downtown Historic District*, Roughly bounded by Main St., River View Dr., and First St. [7/10/87]

Harrison County

Bridgeport, *Johnson, Governor Joseph, House*, 424 Oakdale Ave. [3/19/87]

Jefferson County

Charles Town vicinity, *Beverley*, US 340 [3/20/87]
Shepherdstown, *Shepherdstown Historic District (Boundary Increase)*, Jct. of High and German Sts. E to Ray and High Sts. and the Potomac River S to Fairmont Ave. [7/22/87]

Lewis County

Walkersville vicinity, *Annamede*, RD 1, Box 126, US 19 [3/11/87]

Marshall County

Moundsville, *Ferrell-Holt House*, 609 Jefferson Ave. [2/03/87]

Mercer County

Bluefield, *Bluefield Downtown Commercial Historic District*, Roughly bounded by Princeton Ave., Scott, High, and Russell Sts. [3/18/87]

Mineral County

Burlington vicinity, *Carskadon House*, Rt. 1, Box 93A, Beaver Run Rd. [3/20/87]

Ohio County

Wheeling, *Centre Market Square Historic District (Boundary Increase)*, S side of Main from Alley Nineteen to Twentieth St., and Chapline, Eoff and Charles Sts. bounded by Lane C, Twenty-second, and Twenty-fourth Sts. [2/25/87]

Randolph County

Harmon vicinity, *Day-Vandevander Mill*, WV 32 [7/21/87]

Tyler County

Tyler City, *Wells, William, House, WV 18 [7/21/87]*

Wirt County

Elizabeth, *Kanawha Hotel*, 111 Court St. [11/25/86]

WISCONSIN

Dane County

Madison, *Bellevue Apartment Building*, 29 E. Wilson St. [3/13/87]
Madison, *Mills, Simeon, House*, 2709 Sommers Ave. [6/13/87]
Madison, *Simeon Mills Historic District*, 102–118 King and 115–123 E. Main Sts. [6/25/87]
Madison, *Wiedenbeck—Dobelin Warehouse*, 619 W. Mifflin St. [12/23/86]
Stoughton vicinity, *Ingebretson, Gaute, Loft House*, 1212 Pleasant Hill Rd. [3/13/87]

Fond du Lac County

Fond du Lac, *First Baptist Church of Fond du Lac*, 90 S. Macy St. [12/29/86]

Grant County

Boscobel, *Boscobel High School*, 207 Buchanan St. [12/30/86]

La Crosse County

Onalaska, *La Crosse County School of Agriculture and Domestic Economy*, 700 Wilson Ave. [3/13/87]

Manitowoc County

Two Rivers, *Frenchside Fishing Village*, Twenty-first, Jackson, East, Sixteenth, Harbor, and Rogers Sts. [1/06/87]

Milwaukee County

Glendale, *Town of Milwaukee Town Hall*, 5909 N. Milwaukee River Pkwy. [10/09/86]
Milwaukee, *Christ Evangelical Lutheran Church*, 2235 W. Greenfield Ave. [9/25/87]
Milwaukee, *First Ward Triangle Historic District*, Roughly Franklin Pl., N. Prospect and E. Juneau Aves., and E. Knapp St. [3/19/87]
Milwaukee, *Old World Third Street Historic District*, N. Old World Third St., W. Highland Ave., and W. State St. [3/19/87]
Milwaukee, *Saint Peter's Evangelical Lutheran Church*, 1204, 1213, 1214, and 1215 S. Eighth St. [9/25/87]
Milwaukee, *Saint Vincent's Infant Asylum*, 809 W. Greenfield Ave. [9/25/87]
Milwaukee, *St. Martini Evangelical Lutheran Church*, 1557 W. Orchard St. [9/25/87]
Whitefish Bay, *Ullius, Fred W., Jr., House [Ernest Flagg Stone Masonry Houses of Milwaukee County TR]*, 5775 N. Santa Monica Blvd. [1/07/87]

Monroe County

Sparta, *Sparta Masonic Temple*, 200 W. Main St. [9/25/87]

Outagamie County

Black Creek, *Peters, George, House*, 305 N. Maple St. [6/18/87]

Racine County

Racine, *Old Main Street Historic District*, Roughly bounded by Second St., Lake Ave., Fifth St., and Wisconsin Ave. [8/11/87]

Richland County

Muscoda vicinity, *Fiedler, Henry, House*, Putnam and Washington Sts. [12/29/86]

Rock County

Edgerton, *Edgerton Public Grade Schools*, 116 N. Swift St. [1/14/87]
Janesville, *Look West Historic District*, Roughly bounded by Mineral Point Ave. N. Franklin and Race Sts., Laurel Ave., and N. Chatham St. [3/26/87]
Janesville, *Payne—Craig House*, 2200 W. Memorial Dr. [7/02/87]
Janesville, *Wisconsin School for the Blind-Music Building*, 1700 W. State St. [3/13/87]

St. Croix County

Hudson, *Phipps, William H., House*, 1005 Third St. [6/18/87]

Walworth County

Delavan, *Phoenix Hall—Wisconsin Institute for the Education of the Deaf and Dumb*, 309 W. Walworth St. [3/19/87]
Lake Geneva, *Davidson Hall*, 550 S. Shore Dr. [7/02/87]

WEST VIRGINIA—Continued
Waukesha County

Hartland, *Bailie, Ralph C., House [Hartland MRA]*, 530 North Ave. [12/08/86]
Hartland, *First Congregational Church [Hartland MRA]*, 214 E. Capitol Dr. [12/08/86]
Hartland, *Hornburg, Harold, House [Hartland MRA]*, 213 Warren Ave. [12/08/86]
Hartland, *Jackson House [Hartland MRA]*, 235 North Ave. [12/08/86]
Hartland, *Sign of the Willows [Hartland MRA]*, 122 E. Capitol Dr. [12/08/86]
Hartland, *Trapp Filling Station, [Hartland, MRA]*, 252–256 W. Capitol Dr. [12/08/86]
Hartland, *Van Buren, Sarah Belle, House [Hartland MRA]*, 128 Hill St. [12/08/86]
Hartland, *Warren, Stephen, House [Hartland MRA]*, 235 E. Capitol Dr. [12/08/86]
Hartland, *Zion Evangelical Lutheran Church [Hartland MRA]*, 403 W. Capitol Dr., [12/08/86]
Oconomowoc, *Schuttler, Henry and Mary, House*, 371 E. Lisbon Rd. [7/16/87]
Waukesha, *Arlington Apartments [Waukesha MRA]*, 309 Arlington St. [1/21/87]
Waukesha, *Wisconsin Industrial School for Boys [Waukesha MRA]*, 621 and 627 W. College Ave. [1/21/87]

Winnebago County

Neenah, *Gram, Hans, House*, 345 E. Wisconsin Ave. [7/02/87]
Neenah, *Paepke, Henry, House*, 251 E. Doty Ave. [3/13/87]
Nekimi, *Black Oak School*, 5028 S. Green Bay Rd. [6/25/87]

WYOMING

Big Horn County

Basin, *US Post Office—Basin Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 402 W. C St. [5/19/87]
Greybull vicinity, *Bear Creek Ranch Medicine Wheel (48BH48)*, Address Restricted [5/04/87]
Greybull, *US Post Office—Greybull Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 401 Greybull Ave. [5/22/87]
Shell vicinity, *Black Mountain Archeological District (48BH900/902/1064/1067/1126/1127/1128/1129)*, Address Restricted [7/02/87]

Carbon County

Elk Mountain, *Elk Mountain Hotel*, Bridge St., and CR 402 [10/10/86]
Sinclair, *Parco Historic District*, Roughly bounded by Monroe Ave., N. Fourth St., Union and Lincoln Aves., and N. Ninth St. [5/06/87]

Converse County

Douglas, *US Post Office—Douglas Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 129 N. Third St. [5/19/87]

Crook County

Moorcroft vicinity, *Arch Creek Petroglyphs (48CK41)*, Address Restricted [12/04/86]

Fremont County

Lander, *Lander Downtown Historic District*, Main St. between Second and Fourth Sts. [5/05/87]
Lander, *US Post Office and Courthouse—Lander Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 177 N. Third St. [5/19/87]
Split Rock Ranch vicinity, *Split Rock Prehistoric Site (48FR1484)*, Address Restricted [5/04/87]

Goshen County

Torrington, *US Post Office—Torrington Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 2145 Main St. [5/19/87]

Hot Springs County

Thermopolis, *US Post Office—Thermopolis Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 440 Arapahoe St. [5/19/87]

Johnson County

Buffalo, *US Post Office—Buffalo Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 193 S. Main St. [5/19/87]

Laramie County

Chugwater vicinity, *McDonald Ranch*, 14 mi. SW of Chugwater on S side Laramie City, line [5/14/87]

Lincoln County

Kemmerer, *US Post Office—Kemmerer Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, Sapphire Ave. and Cedar St. [5/19/87]

Park County

Meeteetse, *Anderson Lodge*, Greybull Ranger District, Shoshone National Forest [9/14/87]
Powell, *US Post Office—Powell Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 270 N. Bent St. [5/22/87]
Yellowstone National Park, *Norris, Madison, and Fishing Bridge Museums*, Norris Geyser Basin, Madison Junction, and Fishing Bridge [5/28/87]
Yellowstone, *US Post Office—Yellowstone Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, Mammoth, off Grand Loop Rd. [5/19/87]

Sublette County

Big Piney vicinity, *Circle Ranch*, 4 mi. SW of Big Piney off WY 350 [5/14/87]
Boulder vicinity, *New Fork*, 3 mi. S of Boulder on US 187 [7/16/87]

Sweetwater County

South Superior vicinity, *Natural Corrals, Archeological Site (48SW336)*, Address Restricted [6/17/87]

Teton County

Yellowstone National Park, *Norris, Madison, and Fishing Bridge Museums*, Norris Geyser Basin, Madison Junction, and Fishing Bridge [5/28/87]

Uinta County

Evanston, *US Post Office—Evanston Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, 221 Tenth St. [5/19/87]

Weston County

Newcastle, *US Post Office—Newcastle Main, [Historic US Post Offices in Wyoming, 1900–1941, TR]*, W. Main St. and Sumner Ave. [5/19/87]

PROPERTIES REMOVED FROM THE NATIONAL REGISTER

The following properties were demolished and/or removed from the National Register of Historic Places in fiscal years 1986 and 1987.

Properties Removed From the National Register in Fiscal Year 1986

ALASKA

Sitka Borough—Census Area

Sitka, *Government School*, Katlian Way [3/12/86]

ARIZONA

Cocosino County

Flagstaff, *Railroad Addition Historic District (Boundary Decrease)*, 15 W. Aspen [10/23/85]

ARKANSAS

Benton County

Rogers, *St. Louis-San Francisco Passenger Depot*, First and Cherry Sts. [6/03/86]

Cleveland County

Rison vicinity, *Mount Carmel Methodist Church*, N of Rison off US 79 [6/03/86]

Faulkner County

Conway, *Main Hall, Central College*, 1509 College Ave. [6/03/86]

Independence County

Batesville, *Maxfield, Uriah, House*, 410 E. Harrison St. [6/03/86]

Newton County

Parthenon, *Newton County Academy*, Gum Springs Rd. [6/03/86]

Pulaski County

Little Rock, *Al-Amin Temple [Thompson, Charles L., Design Collection TR]*, 2100 Main St. [6/03/86]
Little Rock, *Forrey-Smith Apartments [Thompson, Charles L., Design Collection TR]*, 1017 W. Fourth St. [6/03/86]

Union County

El Dorado, *Garrett House*, 210 Peach St. [6/03/86]

DELAWARE

Kent County

Smyrna vicinity, *Cook, Gov. John, House*, S of Smyrna [6/06/86]

GEORGIA

Clay County

Fort Gaines, *George, Walter F., Dam Mound*, SE of Walter F. George Lock and Dam [6/01/86]

IDAHO

Adams County

Council, *Pomona Hotel*, Main and Moser Sts. [1/31/86]

Bear Lake County

Paris, *Dance Pavilion*, Main and E. First S [1/31/86]

Blaine County

Hailey, *Hiawatha Hotel*, First Ave. and Croy St. [1/31/86]

Canyon County

Caldwell, *Academy Building, College of Idaho*, 1015 Albany St. [1/31/86]

Valley County

McCall, *Brown Tie and Lumber Company Mill and Burner*, Off ID 55 at Payette Lake [1/31/86]

ILLINOIS

Cook County

Chicago, *Jordan Building [Black Metropolis TR]*, 3529–3549 S. State St. [9/05/86]

Rock Island County

Moline, *Huntoon, Joseph, Homestead*, 821 16th St. [9/05/86]

INDIANA

Clark County

Borden, *Borden Institute*, West St. [7/10/86]

Hancock County

Greenfield, *Greenfield High School*, North and Pennsylvania Sts. [6/18/86]

Lagrange County

Howe, *Lima Township School*, Market and Broad Sts. [6/18/86]

Marion County

Indianapolis, *Indianapolis Chair Manufacturing Company*, 330 W. New York St. [7/10/86]

Vanderburgh County

Evansville, *Richardt, Patrick Henry, House [Downtown Evansville MRA]*, 213 N.W. Fifth St. [7/10/86]

KANSAS

Doniphan County

White Cloud, *Dorland Building*, Main St. [4/03/86]

Shawnee County

Topeka, *Grand Opera House*, 615 Jackson St. [4/03/86]

KENTUCKY

Hardin County

Elizabethtown vicinity, *Hart, John, House*, 6 mi. E of Elizabethtown [12/30/85]

Harlan County

Harlan, *Louisville and Nashville Railroad Depot*, River St. [12/30/85]

MAINE

Androscoggin County

Auburn, *High Street Congregational Church*, High St. [2/06/86]

Hancock County

East Sullivan vicinity, *Wickyup*, 8 mi. NE of East Sullivan at the S end of Tunk Lake [3/05/86]

MARYLAND

Baltimore County

Timonium, *Belle Field*, Timonium Rd. [5/12/86]

Baltimore Independent City

Baltimore (Independent City), *Building at 100 Hopkins Place*, 100 Hopkins Pl. [5/19/86]

MICHIGAN

Ingham County

Lansing, *Reo Motor Car Company Plant*, 2100 S. Washington St. [3/05/86]

Oakland County

Pontiac, *Eastern Michigan Asylum Historic District (Boundary Decrease)*, 140 Elizabeth Lake Rd. [6/18/86]

MINNESOTA

Brown County

New Ulm, *New Ulm Roller Mill Complex [Brown County MRA]*, 222 S. First St. [6/25/86]

Hennepin County

Minneapolis, *Prescott House*, 4458–4460 Snelling Ave. S [6/25/86]

Winona County

Winona, *JAMES P. PEARSON (steamboat)*, Levee Park, foot of Main St. [6/25/86]

MISSISSIPPI

Hinds County

Jackson, *Welty House*, 741 N. Congress St. [3/06/86]

MONTANA

Cascade County

Great Falls, *YMCA Building*, 101 First Ave. N [6/03/86]

Chouteau County

Fort Benton, *Chouteau County Jail*, Washington and Fourteenth Sts. [6/03/86]

Deer Lodge County

Anaconda, *Durston Block and Annex*, 201–205½ Main St. [6/03/86]

Wheatland County

Harlowton vicinity, *McQuitty Building*, 121 N. Central Ave. [6/03/86]

NEW YORK

Columbia County

Hudson, *Front Street—Parade Hill—Lower Warren Street Historic District (Boundary Decrease)*, Roughly N. Front St. between W. Columbia and Prison Alley and S. Front St. between Cherry Alley and Ferry St. [7/03/86]

Steuben County

Riverside, *Erwin, William, House*, 508 Water St. [10/24/85]

Westchester County

Yonkers, *Armstrong, Edwin H., House*, 1032 Warburton Ave. [3/05/86]

NORTH CAROLINA

Catawba County

Hickory, *Second Street Place Southwest Historic District [Hickory MRA]*, Roughly bounded by Main Ave. Pl., Second Ave. Pl and First Ave. SW [5/05/86]

Cumberland County

Fayetteville, *Mallett House [Fayetteville MRA]*, 2720 Florence Dr. [7/09/86]

OHIO

Clinton County

Wilmington, *Smith Place*, N. South St. [10/29/85]

Cuyahoga County

Cleveland, *Newburgh Town Hall*, 9213 Miles Rd. [10/29/85]

Erie County

Sandusky, *Ohio Theatre [Sandusky MRA]*, 205–211 W. Market St. [10/29/85]

Fairfield County

Canal Winchester, *Loucks Covered Bridge*, SE of Canal Winchester on SR 207 (Diley Rd.) [10/29/85]

Pickerington vicinity, *Stemen Road Covered Bridge*, NE of Pickerington over Sycamore Creek [10/29/85]

Hamilton County

Cincinnati, *Salway, William, House [Samuel Hannaford and Sons Thematic Resources in Hamilton County]*, Gray and Winton Rds. [10/29/85]

Lucas County

Toledo, *Wheeler Block*, 402 Monroe St. [10/29/85]

Mahoning County

Youngstown, *Idora Park Merry-Go-Round*, Idora Park on Canfield Rd. [10/29/85]

Muskingum County

Zanesville, *Achauer-Linser House and Brewery Complex*, 976–988 E. Main St. [10/29/85]

Richland County

Mansfield, *Spreng, Wilfred J., House [Park Avenue West MRA]*, 414 Park Ave., W. [10/29/85]

OHIO—Continued

Shelby County

New Bern vicinity, *Turtle Creek Culvert and Embankment*, W of New Bern [10/29/85]

Summit County

Peninsula, *Everett Road Covered Bridge*, SW of Peninsula on Everett Rd. over Furnace Creek [10/29/85]

PENNSYLVANIA

Adams County

McSherrystown vicinity, *Conewago Chapel Covered Bridge [Covered Bridges of Adams, Cumberland, and Perry Counties TR]*, Address Restricted [6/27/86]

Bucks County

Springtown vicinity, *Haupt's Mill Covered Bridge [Covered Bridges of the Delaware River Watershed TR]*, Cooks Creek [6/27/86]

Centre County

Centre Hall vicinity, *Beck, James, Round Barn*, 3⅗o mi. (5.1 km) E of Centre Hall on PA 192 [6/27/86]

Columbia County

Grassmere Park vicinity, *Welle Hess Covered Bridge No. S1 [Covered Bridges of Columbia and Montour Counties TR]*, SR 19074 [6/27/86]

Dauphin County

Harrisburg, *Telegraph Building*, 214–216 Locust St. [6/27/86]

Lackawanna County

Scranton, *Watkins-Maxey House*, 520 Monroe Ave. [6/27/86]

Lancaster County

Kirkwood vicinity, *Jackson's Mill Covered Bridge [Covered Bridges of Lancaster County TR]*, N of Kirkwood [6/27/86]

Philadelphia County

Philadelphia, *Harrison Building*, 1001–1023 Filbert St. [6/27/86]

Philadelphia, *Widener, P.A.B., Mansion*, 1200 N. Broad St [6/27/86]

Venango County

Franklin, *Plumer Block*, 1205 Liberty St. [6/27/86]

Warren County

Warren, *Pennsylvania Railroad Passenger Station*, 310 Chestnut St. [5/08/86]

SOUTH CAROLINA

Greenville County

Piedmont, *Piedmont Manufacturing Company*, S end of Main St. [3/06/86]

TENNESSEE

Grundy County

Pelham vicinity, *Elkhead Stone Arch Bridge*, N of Pelham [6/01/86]

Hardeman County

Bolivar, *Campbell House*, 607 W. Market St. [5/21/86]

Knox County

Knoxville, *Caswell-Taylor House*, 803 N. Fourth St. [6/01/86]

Knoxville, *Zeigler, Isaac, House*, 712 N. Fourth Ave. [6/01/86]

Monroe County

Vonore vicinity, *McGhee Mansion*, E of Vonore on Fort Loudoun Rd. [1/25/86]

Sullivan County

Blountville, *Fain Squire John, Barn*, Lone Oak Estates, TN 128 [12/30/85]

TEXAS

Tarrant County

Fort Worth, *M.G. Ellis School (1914)*, 213 N.E. Fourteenth St. [5/28/86]

Webb County

Laredo vicinity, *San Jose de Palafox Historic/Archeological District (Boundary Decrease II)*, N of Laredo, NE section of original district [3/14/86]

UTAH

Cache County

Logan, *Lindquist Hall*, 201 N. First E [4/17/86]

Salt Lake County

Salt Lake City, *Amussen's Jewelry*, 60–62 S. Main St. [4/17/86]

Salt Lake City, *Constitution Building*, 34 S. Main [4/17/86]

Wasatch County

Midway, *Midway School*, First N and First W [4/17/86]

WASHINGTON

Kitsap County

Port Orchard, *Hotel Sidney*, 700 Prospect St. [10/07/85]

WEST VIRGINIA

Hancock County

New Manchester, *Old Courthouse*, High and Elm Sts. [6/04/86]

WISCONSIN

Barron County

Rice Lake, *Rice Lake Carnegie Library*, 16 S. Main St. [3/20/86]

Eau Claire County

Eau Claire, *Phoenix Manufacturing Company, [Eau Claire MRA]*, Forest and Wisconsin Sts. [12/06/85]

Walworth County

Lake Geneva vicinity, *Loramoor*, S of Lake Geneva at 774 S. Lake Shore Dr. [5/30/86]

Properties Removed From the National Register in Fiscal Year 1987

COLORADO

Grand County

Grand Lake vicinity, *North Inlet Shelter Cabin*, 6 mi. E of Grand Lake in Rocky Mountain National Park [2/27/87]

IDAHO

Ada County

Boise, *Overland Building*, Eighth and Main Sts. [2/09/87]

Madison County

Rexburg, *Brenner, Jacob, House*, 51 S. First, W. [7/28/87]

ILLINOIS

Jackson County

Makanda vicinity, *Agnew, Dr. Frank M., House*, SE of Makanda on SR 12 [9/15/87]

Rock Island County

Rock Island, *Rodman, Gen. Thomas, House*, 2532 Eight and one-half Ave. [3/16/87]

Tazewell County

Pekin, *Pekin Theatre*, 21–29 S. Capitol St. [7/30/87]

INDIANA

Elkhart County

Elkhart, *Bucklen Theatre*, S. Main and Harrison Sts. [11/21/86]

IOWA

Allamakee County

Postville, *Postville Public School*, Ogden and Post Sts. [9/23/87]

Clayton County

McGregor vicinity, *Hartwick House*, W of McGregor on US 18 [9/23/87]

Des Moines County

Burlington, *Mason, Charles, House*, 931 N. Sixth St. [9/23/87]

Dubuque County

Dubuque, *Central High School*, 1500 Locust St. [9/23/87]

Madison County

Winterset vicinity, *McBride Covered Bridge*, About 2 mi. NE of Winterset [9/23/87]

Wright County

Dows, *Exchange Building*, Ellsworth St. [9/23/87]

MAINE

Kennebec County

Gardiner, *Christian Science Church*, 17 Lincoln Ave. [8/05/87]

Oxford County

Lovell, *Knight's Country Store*, ME 5A [8/05/87]

Penobscot County

Bangor, *Pond, Charles H., House*, 175 State St. [12/22/86]

MAINE—Continued
Bradley vicinity, *Collins Bridge Site*, ME 178 [3/00/87]

Piscataquis County
Sangerville vicinity, *Low's Bridge*, Over Piscataquis River between Guilford and Sangerville [5/12/87]

MINNESOTA

Blue Earth County
St. Clair vicinity, *Winnebago Agency House [Blue Earth County MRA (AD)]*, 1 mi. S of St. Clair on CR 138 [5/15/87]

Brown County
Hanska vicinity, *Twente Farm Elevator and Granary [Brown County MRA]*, Off SR 10 [9/25/87]
New Ulm, *Tivoli Gardens Building [Brown County MRA]*, 313 N. First St. [5/15/87]

Cass County
Walker, *Sixth Street Commercial Building*, 525 Sixth St. [5/15/87]

Chisago County
Rush City, *Johnson Block [Chisago County MRA]*, Fourth St. and Ave. D [5/15/87]

Dakota County
Farmington, *Chicago, Milwaukee, St. Paul and Pacific Railroad Depot*, 400 Second St. [5/15/87]

Hennepin County
Minneapolis, *Forum Cafeteria*, 36–40 S. Seventh St. [5/04/87]

Jackson County
Heron Lake, *Heron Lake Public School*, Sixth Ave. and Tenth St. [5/15/87]

Olmsted County
Rochester, *Mayo, Charles H., House*, 419 Fourth St., SW [9/25/87]

Scott County
Shakopee, *Merchants Hotel [Scott County MRA]*, 211 E. Second St. [9/25/87]
Shakopee, *Reis Block [Scott County MRA]*, First and Holmes Sts. [5/15/87]

Stearns County
St. Cloud, *St. Cloud Post Office/City Hall*, 314 St. Germain St. [5/15/87]

Washington County
Stillwater vicinity, *Heath Summer Home [Washington County MRA (AD)]*, N of Stillwater [1/14/87]

MISSISSIPPI

Adams County
Natchez, *U.S. Marine Hospital*, 801 Maple St. [5/15/87]

Copiah County
Wesson, *Wesson Hotel*, Railroad Ave. and Spring St. [5/15/87]

Hinds County
Jackson, *Watkins, Will, House*, 1423 N. State St. [5/15/87]

Lauderdale County
Meridian, *Scottish Rite Cathedral [Meridian MRA]*, 1101 Twenty-third Ave. [5/15/87]

Rankin County
Pelahatchie, *Lessel House*, Railroad St. and Brooks Ave. [6/19/87]

Warren County
Vicksburg, *SPRAGUE*, Vicksburg Harbor [5/15/87]

Washington County
Greenville, *Atterbury House*, 146 N. Broadway [6/19/87]

NEBRASKA

Sarpy County
Bellevue, *Burlington Depot*, Haworth Park [4/13/87]

NEW YORK

Suffolk County
Southampton, *Copper, Capt. Mecator, House [Southampton Village MRA]*, 81 Windmill Ln. [1/15/87]

NORTH DAKOTA

Burke County
Flaxton, *Flaxton Hotel*, Davis St. [6/30/87]

OHIO

Franklin County
Columbus, *Cambridge Arms [East Broad Street MRA]*, 926 E. Broad St. [2/09/87]

OREGON

Lane County
Eugene, *Williams, Charles S., House*, 228 E. Twelfth [6/16/87]
Walden vicinity, *Brumbaugh Bridge [Oregon Covered Bridges TR]*, SE of Walden [11/25/86]

Lincoln County
Elk City, *Elk City Bridge [Oregon Covered Bridges TR]*, Cherry St. [11/25/86]
Siletz vicinity, *Sam's Creek Bridge [Oregon Covered Bridges TR]*, E of Siletz [11/25/86]

Polk County
Ellendale vicinity, *Pumping Station Bridge [Oregon Covered Bridges TR]*, SW of Ellendale [5/18/87]

Union County
La Grande, *Union County Alliance Flouring Mill*, Willow St. and E. M Ave. [11/25/86]

PENNSYLVANIA

Lackawanna County
Carbondale, *Delaware and Hudson Canal Gravity Railroad Shops*, 91 N. Main St. [9/15/87]

Monroe County
Shawnee-on-the-Delaware, *Worthington Hall*, Worthington Ave. [12/18/86]

Northampton County
Bethlehem, *Fountain Hill Opera House*, 405 Wyandotte St. [5/11/87]

Philadelphia County
Philadelphia, *Society Hill Historic District (Boundary Decrease)*, Front St. to Eighth St. between Walnut and Pine Sts. [7/28/87]

SOUTH DAKOTA

Codington County
Florence vicinity, *Holve Halfway House*, 6 mi. N of Florence [6/09/87]

TENNESSEE

Blount County
Townsend, *Little River Lumber Company Office*, TN 73 [11/10/86]

Davidson County
Nashville, *Turner-Cole House*, 2122 West End Ave. [12/05/86]

Knox County
Knoxville, *Old Knoxville City Hall*, Summit Hill Dr. [9/01/87]

Shelby County
Memphis, *Vance-Pontotoc Historic District*, An irregular pattern along Vance and Pontotoc Aves. [3/18/87]

Williamson County
College Grove vicinity, *Cannon, Newton, House*, Taliaferro Rd. [2/09/87]

TEXAS

Bastrop County
Bastrop, *Higgins, Jacob C., House [Bastrop Historic and Architectural MRA]*, 1204 Church [9/28/87]

Ellis County
Ennis, *H & TC Railroad Division Yard Shop [Ennis MRA]*, 1311 N. Maine W [9/28/87]

Hays County
San Marcos, *Negro School [San Marcos MRA]*, Comal and Endicott Sts. [9/28/87]

WISCONSIN

Clark County
Neillsville, *Grand Avenue Bridge*, Grand Ave. [2/18/87]

Rock County
Janesville, *Belle Cottage*, 1837 Center Ave. [5/18/87]

Trempealeau County
Galesville, *Second Street Bridge [Galesville MRA]*, Second St. [5/18/87]

Walworth County
Lake Geneva, *Lake Geneva Depot*, Broad St. [2/18/87]

PROPERTIES DETERMINED ELIGIBLE FOR THE NATIONAL REGISTER

The following properties were determined to be eligible in fiscal years 1986 and 1987 for inclusion in the National Register of Historic Places. Determinations of eligibility are made at the request of the concerned federal agency under the authority in section 2(b) and 1(3) of Executive Order 11593, and the National Historic Preservation Act of 1966, as amended. Determinations of eligibility are also made on nominations for privately owned property when the owner, or in the case of properties with multiple owners, a majority of owners, object to listing.

Historic properties that are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Before an agency of the federal government may undertake any project that may have an effect on such an eligible property, the Advisory Council on Historic Preservation will be given an opportunity to comment on the proposal.

Properties Determined Eligible for the National Register in Fiscal Year 1986

ALABAMA

Calhoun County
Anniston, *Kaplan Block [Anniston MRA]*, [10/03/85]

Etowah County
Gadsden, *Gadsden Masonic Temple*, 120 S. Sixth St. [5/15/86]

Jefferson County
Bessemer, *Grand Hotel*, 200 Nineteenth St. N [10/12/85]
Birmingham, *Venetian Village*, Eleventh St. and Twelfth St. S [9/10/86]

Madison County
City unavailable, *Archeological Site No. 1MA50*, Address Restricted [4/07/86]
City unavailable, *Archeological Site No. 1MA141*, Address Restricted [4/07/86]

Perry County
Marion, *Henry House*, S. Washington St. [3/31/86]

Tuscaloosa County
Tuscaloosa, *Capitol Park Historic District*, Roughly bounded by RR tracks, S. Lurleen Wallace Blvd., Ninth and Eighth Sts., and RR tracks [5/15/86]

ARIZONA

Maricopa County
Phoenix, *Old Emerson School*, 1817 N. Seventh St. [12/30/85]
Wickenburg, *Santa Fe Section House [Wickenburg MRA]*, 278 Railroad [7/10/86]
Wickenburg, *Santa Fe Bunk House [Wickenburg MRA]*, 20 Santa Cruz [7/10/86]

Mohave County
Kingman, *Blakely, Ross H., House [Kingman MRA]*, 519 Spring [5/14/86]
Kingman, *Lovin Investment House [Kingman MRA]*, 631 E. Beale [5/14/86]

Navajo County
City unavailable, *Archeological Site No. CE44*, Address Restricted [4/01/86]

Santa Cruz County
Nogales, *Woolworth, F. W. & Co., Building [Nogales MRA]*, 115–117 Morley [2/03/86]

ARKANSAS

Ashley County
City unavailable, *Johnson, Les, Site (3AS159)*, Address Restricted [1/02/86]

Mississippi County
City unavailable, *Archeological Site No. 3MS81*, Address Restricted [2/11/86]
City unavailable, *Archeological Site No. 3MS96*, Address Restricted [2/11/86]
City unavailable, *Archeological Site No. 3MS432*, Address Restricted [2/11/86]
City unavailable, *Archeological Site No. 3MS434*, Address Restricted [2/11/86]
City unavailable, *Archeological Site No. 3MS464*, Address Restricted [2/11/86]
City unavailable, *Archeological Site No. 3MS447*, Address Restricted [2/11/86]

CALIFORNIA

Alameda County
City unavailable, *Carrol Overhead Bridge*, Altamont Pass Rd. [7/16/86]
Oakland, *Downtown Oakland Historic District*, [3/19/86]
Oakland, *San Francisco—Oakland Bay Bridge [Historic Truss Bridges in California TR]*, Carries I–80 across the San Francisco Bay [12/24/85]

Alpine County
Sonora vicinity, *Archeological Site No. CAALP109*, Address Restricted [1/02/86]
Sonora vicinity, *Archeological Site No. CAALP152*, Address Restricted [1/02/86]
Sonora vicinity, *Archeological Site No. CAALP149–150*, Address Restricted [1/02/86]
Sonora vicinity, *Archeological Site No. CAALP192*, Address Restricted [1/02/86]

Amador County
Ione vicinity, *Bridge No. 28C–11 [Historic Truss Bridges in California TR]*, Carries Cook Rd. over Dry Creek [12/24/85]
Jackson, *Bridge No. 28C–8 [Historic Truss Bridges in California TR]*, Carries Pitt St. over the middle fork of Jackson Creek [12/24/85]
Storrie vicinity, *Bridge No. 9–9 [Historic Truss Bridges in California TR]*, Carries CA 70 over the N fork of the Feather River [12/24/85]

Butte County
City unavailable, *Archeological Site No. CABUT882*, Address Restricted [5/15/86]
City unavailable, *Archeological Site No. CABUT612*, Address Restricted [5/15/86]
Paradise vicinity, *Bridge No. 12C–8 [Historic Truss Bridges in California TR]*, Carries Honey Run Rd. over Butte Creek [12/24/85]
Pulga vicinity, *Bridge No. 12–38 [Historic Truss Bridges in California TR]*, Carries CA 70 over the N fork of the Feather River [12/24/85]

Calaveras County
Paloma, *Bridge No. 30C–16 [Historic Truss Bridges in California TR]*, Carries Middle Bar Rd. over the Mokelumne River [12/24/85]

Colusa County
Wilbur Springs vicinity, *Bridge No. 15C–8 [Historic Truss Bridges in California TR]*, Carries Wilbur Springs Rd. over Bear Creek [12/24/85]

Contra Costa County
San Pablo, *Lower San Pablo Creek Archeological District*, Address Restricted [1/29/86]

Del Norte County
Crescent City vicinity, *Bridge No. 1–6 [Historic Truss Bridges in California TR]*, Carries US 199 over the Smith River [12/24/85]

El Dorado County
Coloma vicinity, *Bridge No. 25C–4 [Historic Truss Bridges in California TR]*, Carries Mt. Murphy's Rd. over the S fork of the American River [12/24/85]
Somerset vicinity, *Bridge No. 25C–25 [Truss Bridges in California TR]*, Carries Happy Valley Cut Off Rd. over Camp Creek [12/24/85]

Fresno County
Five Points, *Bridge No. 42C–551 [Historic Truss Bridges in California TR]*, Carries Elkhorn Rd. over Murphy Slough [12/24/85]

Inyo County
City unavailable, *Archeological Site No. CAINY30*, Address Restricted [11/12/85]

Lassen County
Susanville vicinity, *Gallatin House (CALAS1206)*, Lassen National Forest [3/13/86]

Los Angeles County
Glendale, *Bridge No. 53C–735 [Historic Truss Bridges in California TR]*, Carries Gleanoaks Blvd. over Verdugo Wash [1/13/86]
Glendale, *Bridge No. 53C–741 [Historic Truss Bridges in California TR]*, Carries Kenilworth Ave. across Verdugo Wash [1/13/86]
Glendale, *Bridge No. 53C–738 [Historic Truss Bridges in California TR]*, Carries Brand Ave. over Verdugo Wash [1/13/86]
Glendale, *Bridge No. 53C–736 [Historic Truss Bridges in California TR]*, Carries Geneva Blvd. across Verdugo Wash [1/13/86]
Long Beach, *Bridge No. 53C–61 [Historic Truss Bridges in California TR]*, Carries

CALIFORNIA—Continued
Henry Ford Ave. over the Carritos Channel [12/24/85]
Long Beach, *Jergins Trust Building, 120 E. Ocean Blvd.* [4/09/86]
Los Angeles, *House at 526 South Hudson Avenue*, 526 S. Hudson Ave. [6/13/86]
Los Angeles, *Masonic Temple*, 200 S. Euclid Ave. [4/09/86]
Los Angeles, *Whiting, George M., House*, 602 S. Hudson Ave. [8/13/86]
Paramount, *Kleppel, Mark, Building*, 16402–16408 Paramount Blvd. [1/13/86]
Pasadena, *Huntington Hotel Historic District*, Roughly bounded by Oak Knoll Ave., Huntington Garden Dr., and Cottage Rd. and Wentworth Ave. [4/09/86]
San Gabriel, *San Gabriel Mission Playhouse Complex*, 320 and 324 S. Mission Dr., Grapevine Pk., and the old Grapevine [1/13/86]

Mendocino County
Dos Rios vicinity, *Bridge No. 10C–109 [Historic Truss Bridges in California TR]*, Carries Laytonville-Dos Rios Rd. over Burger Creek [12/24/85]
Gualala vicinity, *Bridge No. 10C–46 [Historic Truss Bridges in California TR]*, Carries Gualala Rd. over the N fork of the Gualala River [12/24/85]

Merced County
Gustine, *Bridge No. 39C–3 [Historic Truss Bridges in California TR]*, Carries River Rd. over Merced River [12/24/85]
Winton, *Bridge No. 39C–13 [Historic Truss Bridges in California TR]*, Carries Oakdale Rd. over the Merced River [12/24/85]

Monterey County
San Lucas, *Bridge No. 44C–7 [Historic Truss Bridges in California TR]*, Carries Lickwood-San Lucas Rd. over the Salinas River [12/24/85]

Nevada County
Grass Valley vicinity, *Bridge No. 17C–20 [Historic Truss Bridges in California TR]*, Carries Auburn Rd. over Wolf Creek [12/24/85]
Nevada City vicinity, *Bridge No. 17C–1 [Historic Truss Bridges in California TR]* Carries S. Pine St. over Deer Creek [12/24/85]
Nevada City vicinity, *Bridge No. 17C–24 [Historic Truss Bridges in California TR]*, Carries Purdon Rd. over the S fork of the Yuba River [12/24/85]
Nevada City vicinity, *Bridge No. 17C–6 [Historic Truss Bridges in California TR]*, Carries Bloomfield Rd. over the S fork of the Yuba River [12/24/85]
Washington vicinity, *Bridge No. 17C–30 [Historic Truss Bridges in California TR]*, Carries Maybert Rd. over Canyon Creek [12/24/85]

Plumas County
Beckwourth vicinity, *Bridge No. 9C–1 [Historic Truss Bridges in California TR]*, Carries Dyson Ln. over the middle fork of the Feather River overflow [12/24/85]
Belden, *Bridge No. 9C–42 [Historic Truss Bridges in California TR]*, Carries Belden Town Rd. over the N fork of the Feather River [12/24/85]
Mohawk vicinity, *Bridge No. 9C–9 [Historic Truss Bridges in California TR]*, Carries Mohawk Rd. over the middle fork of the Feather River [12/24/85]
Quincy vicinity, *Bridge No. 9–15 [Historic Truss Bridges in California TR]*, Carries CA 70 over Spanish Creek [12/24/85]
Storrie vicinity, *Bridge No. 9–3 [Historic Truss Bridges in California TR]*, Carries CA 70 over the N fork of the Feather River [1/09/86]
Storrie vicinity, *Bridge No. 9–2 [Historic Truss Bridge in California TR]*, Carries CA 70 over Rock Creek [1/09/86]
Tobin vicinity, *Bridge No. 9–4 [Historic Truss Bridges in California TR]*, Carries CA 70 over N fork of the Feather River [12/24/85]

Riverside County
Riverside, *Weber, Peter J., House*, 1510 University Ave. [6/19/86]

Sacramento County
Bridgehouse, *Bridge No. 24C–60 [Historic Truss Bridges in California TR]*, Carries a pedestrian walk over the Conumnes River [12/24/85]
Courtland vicinity, *Bridge No. 24–53 [Historic Truss Bridges in California TR]*, Carries CA 160 over the Sacramento River [12/24/85]
Fair Oaks vicinity, *Bridge No. 24C–8 [Historic Truss Bridges in California TR]*, Carries a pedestrian rd. over the American River [12/24/85]
Freeport vicinity, *Bridge No. 24C–1 [Historic Truss Bridges in California TR]*, Carries Freeport Rd. over the Sacramento River [12/24/85]
Isleton vicinity, *Bridge No. 24–51 [Historic Truss Bridges in California TR]*, Carries CA 160 over the Sacramento River [12/24/85]
Sacramento vicinity, *Bridge No. 24C–22 [Historic Truss Bridges in California TR]*, Over the American River [12/24/85]
Slough House vicinity, *Bridge No. 24C–38 [Historic Truss Bridges in California TR]*, Carries Meise Rd. over the Conumnes River [12/24/85]

San Bernardino County
City unavailable, *Archeological Site No. D–6*, Address Restricted [10/25/85]
Redlands vicinity, *Bridge No. 54C–308 [Historic Truss Bridges in California TR]*, Carries Greenspot Rd. over the Santa Ana River [12/24/85]
Victorville vicinity, *Bridge No. 54C–68 [Historic Truss Bridges in California TR]*, Carries National Trails Hwy. over the Mojave River [12/24/85]

San Diego County
San Diego, *Bridge No. 57C–416 [Historic Truss Bridges in California TR]*, Carries First Avenue over Maple Canyon [12/24/85]

San Francisco County
San Francisco, *Bridge No. 34C–27 [Historic Truss Bridges in California TR]*, Carries Fourth St. over Mission Channel [12/24/85]
San Francisco, *Bridge No. 34C–25 [Historic Truss Bridges in California TR]*, Carries Third St. over the Mission Channel [12/24/85]
San Francisco, *Hale Brothers Department Store*, 901 Market St. [4/23/86]

San Joaquin County
Stockton vicinity, *Bridge No. 29–48 [Historic Truss Bridges in California TR]*, Carries CA 4 over the Middle River [12/24/85]
Stockton vicinity, *Bridge No. 29–45 [Historic Truss Bridges in California TR]*, Carries CA 4 over the Old River [12/24/85]
Stockton vicinity, *Bridge No. 29C–108 [Historic Truss Bridges in California TR]*, Carries Bacon Island Rd. over the Middle River [12/24/85]
Stockton, *Lindley, Albert, House*, On the eastern tip of Rough and Ready Island bounded by the Stockton Deep Water Channel and the San Joaquin River [10/17/85]

San Luis Obispo County
Arroyo Grande, *Bridge No. 49C–198 [Historic Truss Bridges in California TR]*, Carries Bridge St. over Arroyo Grande Creek [12/24/85]
Santa Margarita, *Bridge No. 49C–199 [Historic Truss Bridges in California TR]*, Carries Rinconada-Las Pilitas Rd. over the Salinas River [12/24/85]
Santa Margarita, *Bridge No. 49–108 [Historic Truss Bridges in California TR]*, Carries CA 58 over the Salinas River [12/24/85]

Santa Barbara County
Santa Barbara, *Scaglione Prune Processing Plant*, 8430 Pacheco Pass Hwy. [4/14/86]

Santa Cruz County
Santa Cruz, *Bridge No. 36C–61 [Historic Truss Bridges in California TR]*, Crosses the San Lorenzo River [12/24/85]
Santa Cruz, *Bridge No. 36C–127 [Historic Truss Bridges in California TR]*, Carries W. Cliff Dr. over the SP EC Line tracks and Santa Cruz Beach [12/24/85]

Shasta County
City unavailable, *Archeological Site No. CASHA479*, Address Restricted [10/01/85]
City unavailable, *Archeological Site No. CASHA192*, Address Restricted [10/01/85]

Siskiyou County
Greenview, *Bridge No. 2C–65 [Historic Truss Bridges in California TR]*, Carries Cory Ln. extension over the Scott River [12/24/85]
Hamburg, *Bridge No. 2C–21 [Historic Truss Bridges in California TR]*, Carries Roxbury Dr. over the Scott River [12/24/85]
Hawkinsville vicinity, *Bridge No. 2–13 [Historic Truss Bridges in California TR]*, Carries CA 263 over the Shasta River [12/24/85]
Klamath River, *Bridge No. 2C–41 [Historic Truss Bridges in California TR]*, Carries Klamath River Rd. over the Klamath River [12/25/85]
Walker, *Bridge No. 2C–80 [Historic Truss Bridges in California TR]*, Carries Walker Rd. over the Klamath River [12/24/85]

Solano County
Crockett vicinity, *Bridge No. 23–15L [Historic Truss Bridges in California TR]*, Carries US 80 over the Carquinez Straits [12/24/85]

CALIFORNIA—Continued
Sonoma County
City unavailable, *Archeological Site No. CASON120*, Address Restricted [7/23/86]
Forestville vicinity, *Bridge No. 20C–155 [Historic Truss Bridges in California TR]*, Carries Westside Rd. over the Russian River [12/24/85]
Healdsburg vicinity, *Bridge No. 20C–65 [Historic Truss Bridges in California TR]*, Carries Healdsburg Ave. over the Russian River [12/24/85]
Preston vicinity, *Bridge No. 20C–5 [Historic Truss Bridges in California TR]*, Carries Geysers Rd. over Big Sulphur Creek [12/24/85]
Stewarts Point vicinity, *Bridge No. 20C–224 [Historic Truss Bridges in California TR]*, Carries Stewarts Point-Skaggs Rd. over Haupt Creek [12/24/85

Stanislaus County
Crows Landing vicinity, *Bridge No. 38C–9999 [Historic Truss Bridges in California TR]*, Carries Private Rd. off River Rd. over Orestimba Creek [12/24/85]
Crows Landing, *Bridge No. 38C–168 [Historic Truss Bridges in California TR]*, Carries Kilburn Rd. over Orestimba Creek [12/24/85]
LaGrange, *Bridge No. 38C–5 [Historic Truss Bridges in California TR]*, Carries Robert Ferry Rd. over the Tuolumne River [12/24/85]

Tehama County
City unavailable, *Archeological Site No. CATEH1433/PLU619*, Address Restricted [12/16/85]
Corning vicinity, *Bridge No. 8C–47 [Historic Truss Bridges in California TR]*, Carries Rawson Rd. over Thomes Creek [12/24/85]
Tehama vicinity *Bridge No. 8C–14 [Historic Truss Bridges in California TR]*, Carries Rawson Rd. over Red Banks Creek [12/24/85]

Trinity County
Lewiston vicinity, *Bridge No. 5C–32 [Historic Truss Bridges in California TR]*, Carries Turnpike Rd. over the Trinity River [12/24/85]

Tuolumne County
City unavailable, *West Side Discontiguous District*, Stanislaus National Forest [9/16/86]
Sonora vicinity, *Archeological Site No. CATUO675*, Address Restricted [1/02/86]
Sonora vicinity, *Archeological Site No. CATUO1269*, Address Restricted [1/02/86]

Ventura County
Santa Paula vicinity, *Bridge No. 52C–53 [Historic Truss Bridges in California TR]*, Carries Bridge Rd. over Santa Paula Creek [12/24/85]
Saticoy, *Saticoy Agricultural Warehouse*, Azahar St. and Wells Rd. [1/14/86]
Saticoy *TLC Gun Shop*, 1203 Los Angeles Ave. [1/14/86]

Yuba County
Wheatland vicinity, *Bridge No. 16C–6 [Historic Truss Bridges in California TR]*, Carries Waldo Rd. over Dry Creek [12/24/85]

COLORADO

Delta County
Olathe vicinity, *East Canal [Historic Canals TR]* Begins approximately 1⅝₁₀ mi. S of Ohathe and ⅛ mi. W of US 50 and ends about 3½ mi. E of US 50 and 2 mi. S of Delta [1/31/86]

Montrose County
Montrose vicinity, *Montrose and Delta Canal [Historic Canals TR]*, Approximately 8 mi. SE of Montrose and ⅘₁₀ mi. E of US 550 [1/31/86]
Montrose vicinity, *South Canal [Historic Canals TR]*, About ½ mi. W of the intersection of US 50 and CR 348 [1/31/86]

CONNECTICUT

Fairfield County
Bridgeport, *American Chain Company Plant*, 929 Connecticut Ave. [2/21/86]
Bridgeport, *Peet-Dewhirst House*, 2500 Madison Ave. [2/21/86]
Danbury, *Patch Street Stone Arch Bridge*, Carries Patch St. over the Kohanza Brook [12/05/85]
Stamford, *Dolsen Place Historic District*, Roughly bounded by Dolsen Pl., Bedford, and North Sts. [6/18/86]
Stamford, *Forest Street Historic District*, Roughly bounded by Greyrock Pl. and Forest St., Lindale, Broad, and Prospect Sts. [11/25/85]
Westport, *East Bank Historic District*, Post Rd. E at Taylor Pl. and Main St. [8/14/86]
Westport, *Myrtle Avenue Historic District*, Roughly Myrtle Ave. between Saint John's Pl. and Post Rd. E [2/21/86]

Hartford County
West Hartford, *Stanly, Samuel, House [Eighteenth Century Houses of West Hartford TR]*, 1168 New Britain Ave. [9/13/86]

Middlesex Country
Middletown vicinity, *Beverly Heights Bridge*, Carries CT 157 over the Coginchaug River [11/21/85]
Middletown, *Starr Mill*, Beverly Heights at CT 157 and the Coginchaug River [11/21/85]

New Haven County
City unavailable, *Winchester Repeating Arms Company* [10/11/85]

DELAWARE

New Castle County
City unavailable, *Archeological Site No. 7NCE9*, Address Restricted [5/23/86]
City unavailable, *Archeological Site No. 7NCE76*, Address Restricted [5/23/86]
City unavailable, *Archeological Site No. 7NCE78*, Address Restricted [5/23/86]

FLORIDA

Alachua County
City unavailable, *House at 307 S.E. Second Street*, 307 S.E. Second St. [11/13/85]
Gainesville, *Brick Streets*, Portions of S.E. First St., S.E. First Ave., and S.E. Second St. [11/13/85]
Gainesville, *House at 311 S.E. Second Street*, 311 S.E. Second St. [11/13/85]
Gainesville, *House at 317 S.E. Third Street*, 317 S.E. Third St [11/13/85]
Gainesville, *House at 303 S.E. Second Street*, 303 S.E. Second St. [11/13/85]
Gainesville, *House at 231 S.E. Second Street*, 231 S.E. Second St. [11/13/85]
Gainesville, *House at 317 S.E. Second Street*, 317 S.E. Second St. [11/13/85]

Broward County
Ft. Lauderdale, *Dixie Water Plant*, 1500 S. US 441 [5/14/86]

Dade County
Miami, *Curtiss, Glenn, House [Country Club Estates TR]*, 500 Deer Run [11/01/85]
Miami, *Neermance, Andrew, House [Country Club Estates TR]*, 111 Fairview Dr. [11/01/85]

GEORGIA

Appling County
Baxley, *First Baptist Church of Baxley*, 301 N. Main St. [11/19/85]
Baxley, *Kettere, Phillip, House*, 208 N. Main St. [11/19/85]

Atkinson County
Honolulu, *Ala Wai Canal*, Oahu Island [10/28/85]

Brantley County
Rising Fawn vicinity, *GDOT Bridge No. 063/00130/X/00225.5.S*, Carries CR 130 over Gulf Creek [12/06/85]

Cobb County
Smyrna, *Browner Institute*, 3180 Atlanta Rd. [7/28/86]

Colquitt County
Norman Park, *Norman, M.D., House*, Bryant St. [1/27/86]

De Kalb County
Atlanta, *Oglethorpe University Historic District*, Located approx. 1½ mi. NE of the city limits of Atlanta on the W side of Peachtree Rd. [7/25/86]

Floyd County
City unavailable, *Archeological Site No. 9FL(DOT)6*, Address Restricted [4/07/86]

Gilmer County
City unavailable, *Archeological Site No. 9GI*, Address Restricted [4/03/86]

Gordon County
Calhoun, *Bridge No. 129/00024/X/00152.N*, Carries CR 24 over New Town Creek [3/25/86]
Fairmont vicinity, *Bridge No. 129/00220/X/00420.N*, Carries CR 220 over Pine Log Creek [2/24/86]
Ranger vicinity, *Bridge No. 129/00228/X/00074.E*, Carries CR 228 over Pine Log Creek [9/16/86]

Greene County
City unavailable, *Archeological Site No. 9GE(SAS)1*, Address Restricted [2/18/86]
City unavailable, *Archeological Site No. 9GE(SAS)15*, Address Restricted [2/18/86]
City unavailable, *Archeological Site No. 9GE(GAS)8*, Address Restricted [2/18/86]

GEORGIA—Continued
Jackson County
Jefferson, *Bridge No. 157/00015/012.80N*, Carries GA 15 over Curry Creek [9/04/86]
Richmond County
Augusta, *Augusta-Waynesboro Depot*, 500 Walton Way [8/06/86]
Augusta, *Ward House*, 533 Walton House [8/06/86]

HAWAII
Honolulu County
City Unavailable, *Archeological Site No. 50-OA-2912*, Address Restricted [11/06/85]
City unavailable, *Archeological Site No. 50-OA-2911*, Address Restricted [11/06/85]
City unavailable, *Archeological Site No. 50-OA-2899*, Address Restricted [11/06/85]
City unavailable, *Luluku Discontiguous Archeological District*, Address Restricted [3/04/86]
Honolulu, *Kalakaua Bridge*, Crosses the Ala Wai Canal [10/28/85]
Oahu, *One'Ula Archeological District*, Address Restricted [9/29/86]

IDAHO
Fremont County
Island Park vicinity, *Burland Summer Home*, Big Springs [4/15/86]
Kootenai County
City unavailable, *Lower Carlin Bay School II [Kootenai County Rural Schools TR]*, N side of Carlin Creek Rd. about 1/4 mi. E of ID 97 [7/24/86]

ILLINOIS
Champaign County
Champaign, *Illinois Traction Building*, 41 E. University Ave. [2/06/86]
Cook County
Chicago, *East Lake Shore Drive Historic District*, Roughly bounded by Lake Shore Dr., Michigan Ave., and Walton St. [6/20/86]
Crawford County
City unavailable, *Archeological Site No. 11CW237*, Address Restricted [5/12/86]
Du Page County
Villa Park, *Ovaltine Factory*, 1 Ovaltine Ct. [1/10/86]
Henderson County
City unavailable, *Archeological Site No. 11HE3*, Address Restricted [12/24/85]
Madison County
City unavailable, *Wood River Site No. 5 (11MS266)*, Address Restricted [4/17/86]

INDIANA
Lagrange County
Mongo, *Greek Revival House in Mongo*, IN 3 [9/04/86]
Marion County
Indianapolis, *Heier's Hotel*, 10–16 S. New Jersey [6/11/86]
Monroe County
City unavailable, *Stafford House and Barn*, [11/21/85]
Spencer County
City unavailable, *Archeological Site No. 12SP29*, Address Restricted [4/28/86]

IOWA
Clayton County
Guttenburg, *Lock and Dam No. 10 [Mississippi River Locks and Dams TR]*, [2/25/86]
Dubuque County
City unavailable, *Palmer House (13DB299)*, Address Restricted [1/10/86]
Lee County
City unavailable, *Archeological Site No. 13LE183*, Address Restricted [2/13/86]
City unavailable, *Archeological Site No. 13LE184*, Address Restricted [2/13/86]
Louisa County
City unavailable, *Archeological Sites No. 13LA30 and 13LA38*, Address Restricted [11/14/85]
Marion County
Dallas, *James Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 181 [6/30/86]
Marshall County
State Center, *Yordy Round Barn [Iowa Round Barns: The Sixty Year Experiment TR]*, Off IA 234 [6/30/86]
Polk County
City unavailable, *Archeological Site No. 13PK61*, Address Restricted [4/09/86]

KANSAS
Anderson County
Greeley vicinity, *Greeley Bridge*, 1 mi. N and ⅘ mi. W of Greeley [7/23/86]
Barton County
Heizer vicinity, *Walnut Creek Bridge*, Located ½ mi. N and ¼ mi. W of Heizer [7/23/86]
Chautauqua County
Peru vicinity, *Powers Site (14CT347)*, Address Restricted [9/05/86]
Montgomery County
Coffeyville vicinity, *Parker Bridge*, 1½ mi. SE of Coffeyville [7/23/86]

KENTUCKY
Boyle County
Danville, *Russel, E. B., House [Danville MRA]*, 432 W. Main [3/31/86]
Butler County
City unavailable, *Archeological Site No. 15BT13 [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
Campbell County
Fort Thomas vicinity, *Fort Thomas*, E of S. Ft. Thomas Ave./SR 1120 and N of River Rd./KY 445 [10/28/85]
Henderson County
City unavailable, *Archeological Site No. 15HE637 [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
City unavailable, *Archeological Site No. 15HE638 [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
Knox County
City unavailable, *Andy Cobb Mound (15KX17)*, Address Restricted [11/29/85]
McLean County
City unavailable, *Barrett Site (15McL4) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
City unavailable, *Hollins Site (15McL24) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]
City unavailable, *Yankee Site (15McL13) [Green River Shell Middens of Kentucky TR]*, Address Restricted [4/01/86]

LOUISIANA
La Salle Parish
City unavailable, *"Miss Emmas" (16LA138)*, Address Restricted [12/05/85]
Lafourche Parish
Thibodaux, *House at 914 Jackson Street [Thibodaux MRA]*, 914 Jackson St. [3/05/86]
Orleans Parish
New Orleans, *Charity Hospital Cemetery*, Begins at intersection of Carol Blvd. and City Park Ave. and runs N to intersection of Carol Blvd. and Roosevelt Dr. [10/04/85]

MARYLAND
Allegany County
City unavailable, *Pleasant Grove United Methodist Church (AL–III–C–062)*, US 40 [3/03/86]
Cumberland vicinity, *Clover Hill Farm (AL–III–C–068)*, Rocky Gap State Park [3/03/86]
Flintstone vicinity, *Boy's Forestry Camp Residence (AL–I–055)*, S side of US 40 at Fifteenmile Creek [3/03/86]
Flintstone vicinity, *Hardsock Houses (AL–II–A–098)*, Located NW of Flintstone at the fork of Hardsock and Dickenson Rds. [3/03/86]
Flintstone vicinity, *Howard Robinette Farm (AL–II–A099)*, US 40 [3/03/86]
Flintstone, *Robosson Log House (AL–II–A060)*, N side of US 40 [3/03/86]
Gilpin, *Ricker House (AL–II–A067)*, Located S of the old National Pike [3/03/86]
Pleasant Grove vicinity, *Beall Log House (AL–III–C–061)*, Off US 40 [3/03/86]
Pleasant Grove vicinity, *Miller Brothers Garage and Station (AL–III–C–067)*, Located NE of Pleasant Grove off National Pike [3/03/86]
Pratts Hollow, *Toll Gate Property (AL–II–A–016)*, Located on the Cumberland Turn Pike W of the Sulphur Run River [3/03/86]
Anne Arundel County
Annapolis, *Howard's Inheritance*, 340 Bestgate Ave. [7/30/86]

MARYLAND—Continued
Frederick County
City unavailable, *Prosperity Farm*, [10/23/85]
Harford County
Boston, *Appleton, Samuel, Building*, 110–114 Milk St., 1–11 Batterymarch, and 70–72 Kilby [8/07/86]
Harford, *Harford Furnace Complex*, Located SW of Harford Furnace [11/12/85]
Montgomery County
Germantown, *Grusendorf Log House*, 13315 Clopper Rd. [1/07/86]

MASSACHUSETTS
Berkshire County
Washington, *Deming-Root-Messenger-Schultz House [Washington MRA]*, Lovers Lane Rd. [9/12/86]
Middlesex County
Cambridge, *Cambridge Armory [Cambridge MRA]*, 120 Massachusetts Ave. [5/19/86]
Cambridge, *Davenport, Allen and Endicott, Factory [Cambridge MRA]*, 706 Main St. [11/27/85]
Cambridge, *Harvard Yard Historic District [Cambridge MRA]*, [5/19/86]
Cambridge, *House at 203 S. Main Street [Canastota Village MRA]*, 203 S. Main St. [5/23/86]
Cambridge, *Metropolitan Storage Warehouse [Cambridge MRA]*, 134 Massachusetts Ave. [5/19/86]
Cambridge, *Riverbank Court Hotel [Cambridge MRA]*, 305 Memorial Dr. [5/19/86]
Newton, *Marcy, Willard, House [Newton MRA]*, 1173 Chestnut St. [9/04/86]
Newton, *Masonic Building [Newton MRA]*, 286–304 Walnut St. [9/04/86]
Newton, *Silver Lake Cordage Company [Newton MRA]*, 468–471 Watertown St. [9/04/86]
Newton, *Stone, Ebenezer, House [Newton MRA]*, 391 Dedham St. [9/04/86]
Newton, *Ward, John, House [Newton MRA]*, 184 Ward St. [9/04/86]
Sherborn, *Buttonballs [Sherborn MRA]*, 90 Maple St. [1/03/86]
Sherborn, *Stannox Farm [Sherborn MRA]*, 11 Nason Hill Rd. [1/03/86]
Norfolk County
Brookline, *Stoddard, Bela, House [Brookline MRA]*, 30–32 Webster St. [10/17/85]
Suffolk County
Boston, *Hemenway Building*, 2–16 Tremont St. [8/07/86]
Boston, *National Shawmut Bank*, 20–42 Water, 70–94 Devonshire, and 33–50 Congress Sts. [8/07/86]
Boston, *Parker House*, 58–62 School and 60–66 Tremont Sts. [8/07/86]
Boston, *US Post Office and Courthouse Building*, Post Office Sq. [11/14/85]
Boston, *Veterans Administration Outpatient Clinic*, 17 Court St. [5/13/86]
Brookline, *United Parish-Harvard Church [Brookline MRA]*, 210 Harvard St. [10/17/85]
Worcester County
City unavailable, *Adena Burial Site (19WR83)*, Address Restricted [7/23/86]

MICHIGAN
Alger County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Saari Rd. over the Whitefish River [4/01/86]
Allegan County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Fifty-seventh St. over the Kalamazoo River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Thirty-sixth St. over the Rabbit River [6/06/86]
Alpena County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Second Ave. over the Thunder Bay River [6/06/86]
Baraga County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Kyro Rd. over the Sturgeon River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Old MI 28 over the Rock River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Sturgeon River Rd. over the Sturgeon River [6/06/86]
Bay County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries S. Euclid Rd. over Squaconning Creek [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Marquette Ave. over Penn Central RR [6/06/86]
Berrien County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 139 over Conrail and Ox Creek [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Glassman Rd. over the Galien River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Britain Ave. over Valley Dr., C & O RR, and Ox Creek [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Deffielf Rd./Park St. over the Paw Paw River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries US 12BR/Main St. over the St. Joseph River [6/06/86]
Branch County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Gorbell Rd. over Hog Creek [6/06/86]
Calhoun County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Twenty-two and a Half Mile Rd. over the St. Joseph River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Twenty-one Mile Rd. over the St. Joseph River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Fourteen Mile Rd. over the St. Joseph River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries E. Cass St. over the Kalamazoo River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Michigan Ave. over the Battle Creek River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries E. Erie St. over the S branch of the Kalamazoo River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Thirteen Mile Rd. over the St. Joseph River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Twelve Mile Road over the St. Joseph River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries McCamly St. over the Battle Creek River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Marshall Ave. over the Kalamazoo River [6/06/86]
Charlevoix County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Holy Island Rd. over the S arm of Lake Charlevoix [6/06/86]
Cheboygan County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Canterline Rd./Barclay Ave./N. Tower Rd. over the Black River [6/06/86]
Chippewa County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries I–75 over the St. Mary's River and Canals [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Glegg Rd. over the E branch of the Munuscong River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Grange Rd. over Stoney Creek [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries I–75 BS/Ashmun St. over the Power Canal [6/06/86]
Sault Ste. Marie, *Merchant Marine Library Building*, Located on the N side of Portage Ave. between Portage and McArthur Lock [10/15/85]
Clinton County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Jones Rd. over the Grand River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries

MICHIGAN—Continued
Tallman Rd. over the Looking Glass River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Maple Rapid Rd. over the Maple River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Upton Rd. over the Maple River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Bauer Rd. over the Looking Glass River [6/06/88]

Delta County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Rt. 497 over the Sturgeon River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries CR I 39 over the Rapid River [6/06/88]

Dickinson County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries CR 569 over the Rapid River [6/06/88]

Eaton County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Shaytown Rd. over the Thornapple River [6/06/88]

Emmet County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries US 31 and MI 68/W. Mitchell St. over Bear Creek [6/06/88]
City unavailable, *Mackinac Straits Bridge [Michigan's Historic Highway Bridges TR]*, Carries I–75 over the Straits of Mackinac [6/06/88]
Petoskey, *Curtis, T. Chalmers, House [Petoskey MRA]*, 1004 Lockwood Ave. [9/13/88]

Gladwin County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Glidden Rd. over the Tobacco River [6/06/88]

Gogebic County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Manafield St. over the C & NW RR [6/06/88]

Grand Traverse County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Front St. over the Boardman River [6/06/88]

Gratiot County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Cheeseman Rd. over the Pine River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Ferry St. over the Pine River [6/06/88]

Hillsdale County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Burt Rd. over the W branch of the St. Joseph River of the Maumee [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Cambria Rd. over the W branch of the St. Joseph River of the Maumee [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Cronk Rd. over the St. Joseph River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Sterling Rd. over the St. Joseph River [6/06/88]

Houghton County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries US 41 and Soo RR over Portage Lake [6/06/88]

Huron County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Moeller Rd. over the Willow River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Anton St. over the Sebewaing River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Limerick Rd. over the Pigeon River [6/06/88]

Ingham County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries River St. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Shiawassee St. over the Grand River and M. C. RR [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Okemos Rd. NB over the Red Cedar River [6/06/88]

Ionia County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Charlotte Hwy. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Turner Rd. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Welch Rd. over Prairie Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Wagar Rd. over Stoney Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Ingalls Rd. over the Flat River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Washington Rd. over Fish Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Kent St. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Goodwin Rd. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries White's Bridge Rd. over the Flat River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries E. Main St. over Prairie Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Bridge St. over the Grand River [6/06/88]
City unavailable, *Mill Race Waterville Dam [Michigan's Historic Highway Bridges TR]*, Carries MacArthur Rd. over Lake Creek [6/06/88]

Iosco County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 65 over the AuSable River [6/06/88]

Iron County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 69 over the Paint River [6/06/88]

Isabella County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Sheppard Rd. over the Chippewa River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Beal City Rd. over the S branch of the Salt River [6/06/88]

Kalamazoo County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries E. Michigan Ave. over the Kalamazoo River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Mosel Ave. over Lower Riverview Dr. [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries O Ave. over the Amtrak/Conrail RR [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Mosel Ave. over the Kalamazoo River [6/06/88]

Kent County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 45/Fulton St. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Thornapple River Dr. over the Thornapple River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries N. Park St. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Alaska Ave. over the Thornapple River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Bridge St. over the Grand River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Pine Island Dr. over the Rogue River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries

MICHIGAN—Continued
Interurban Walk over the Grand River [6/06/88]

Lapeer County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Genesee Rd. over GIW RR [6/06/88]

Lenawee County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Knight Hwy. over Black Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Ridgeville Rd. over Bean Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Sorby Hwy. over Fitts Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Merrick St. over the S branch of the Raisin River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Scott Hwy. over Black Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Teachout Rd. over Wolf Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Horton Rd. over Black Creek [6/06/88]
Tecumseh, *Adams, Peter R., House [Tecumseh MRA]* 314 E. Pottawatamie St. [6/13/88]

Livingston County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Smith Rd. over the Red Cedar River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Amos Rd. over the Red Cedar River [6/06/88]

Mackinac County
City unavailable, *Archeological Site No. 20MK169*, Address Restricted [7/28/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Rutledge Rd. over the Munuscong River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Hiawatha Trail over the Millecoquins River [6/06/88]

Macomb County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 3 SB over the Clinton River [6/06/88]

Manistee County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 55 over the Pine River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries US 31 over the Manistee River [6/06/88]

Marquette County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries HD Rd. over the Dead River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries CR 510 over the Dead River [6/06/88]

Mecosta County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries One Hundred Ninetieth Ave. over the Little Muskegon River [6/06/88]

Menominee County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Koss Rd. over the Menominee River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Banat to Amberg Rd. over the Menominee River [6/06/88]

Midland County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Smiths Crossing over the Tittabawassee River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Gordonville Rd./Four Three Quarter Mile Rd. over the Pine River [6/06/88]

Missaukee County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Kelly Rd. over the Muskegon River [6/06/88]

Monroe County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 50/MI 125 over the Raisin River [6/06/88]

Montmorency County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 32 over the Thunder Bay River [6/06/88]

Muskegon County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Ottawa St. over the Muskegon River [6/06/88]
City unavailable, *William S. Antisdale Memorial State Reward Bridge [Michigan's Historic Highway Bridges TR]*, Carries Henry St. over Mona Lake [6/06/88]

Oakland County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Grand River Ave. over C & O RR [6/06/88]

Ontonagon County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 28 over the middle branch of the Ontonagon River [6/06/88]

Presque Isle County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries US 23 over the Ocqueoc River [6/06/88]

Saginaw County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries E. Burt Rd. over the Flint River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries E. Sheridan Rd. over the Flint River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Crosses Verne Rd. over Misteguay Creek [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Ditch Rd. over the Shiawassee River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Hemlock Rd. over the N branch of the Bad River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Portsmouth Rd. over Cheboyganing Dr. [6/06/88]

Sanilac County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Crosses Marlette Rd. over the Elk River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Custer Rd. over the Black River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Fargo Rd. over the Black River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Germania Rd. over the Cass River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Downington Rd. over the S branch of the Cass River [6/06/88]

Schoolcraft County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 94 over the Manistique River [6/06/88]

Shiawassee County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Cole Rd. over the Shiawassee River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Six Mile Creek Rd. over the Shiawassee River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Martin Rd. over the Shiawassee River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Oakwood Ave. over the Shiawassee River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Goodall Rd. over the Shiawassee River [6/06/88]

St. Clair County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries MI 25 over the Black River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Griswold Rd. over the Pine River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Speaker Rd. over the S branch of Mill Creek Dr. [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Indian Trail Rd. over the Belle River [6/06/88]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Yale Rd. over Eves Dr. [6/06/88]

MICHIGAN—Continued
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Meakill Rd. over the Belle River [6/06/86]

St. Joseph County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Crosses Balk Rd. over the Fawn River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Big Hill Rd. over the Fawn River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Buckner Rd. over the St. Joseph River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Covered Bridge Rd. over the St. Joseph River [6/06/86]

Van Buren County
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Seventy-second Ave. over White Creek [6/06/86]

Washtenaw County
City unavailable, *Adams, Henry Carter, House*, 1421 Hill St. [4/28/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Mapple Rd. over the Huron River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Bell Rd. over the Huron River [6/06/86]
Saline, *Aldrich, Edgar, House [Saline MRA]*, 422 E. Michigan Ave. [10/10/85]
Saline, *Saline Methodist Episcopal Church [Saline MRA]*, 117 S. Ann Arbor St. [10/10/85]

Wayne County
City unavailable, *Ambassador Bridge [Michigan's Historic Highway Bridges TR]*, Crosses the Detroit River [6/06/86]
City unavailable, *Grosse Ile Toll Bridge [Michigan's Historic Highway Bridges TR]*, Carries Bridge St. over the Trenton Channel [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Old US 25/Fort St. over the Rouge River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Grosse Ile Pkwy. over the Trenton Channel [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Dix Ave. over the Rouge River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Elizabeth Park Dr. over the Elizabeth Park Canal [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Ridge Rd. over the Rouge River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Belleville Rd. over the Huron River [6/06/86]
City unavailable, *Historic Bridge [Michigan's Historic Highway Bridges TR]*, Carries Elm Circle Dr. over the Lower Rouge River [6/06/86]
Detroit, *Berman Apartments [East Jefferson Avenue Residential TR]*, 8120 E. Jefferson Ave. [10/09/85]
Detroit, *Chalfonte Apartments [East Jefferson Avenue Residential TR]*, 8643–8655 E. Jefferson Ave. and 915 Fisher [10/09/85]
Detroit, *Detroit Citizen Street Railway Company*, 1401–1469 Atwater [9/09/86]
Detroit, *Detroit Towers [East Jefferson Avenue Residential TR]*, 8162 E. Jefferson Ave. [10/09/85]
Detroit, *Double House [East Jefferson Avenue Residential TR]*, 547–549 E. Jefferson Ave. [10/09/85]
Detroit, *Gleaner's Temple [University Cultural Center Phase I MRA]*, 5705 Woodward [4/29/86]
Detroit, *McMillan, Philip, House [East Jefferson Avenue Residential TR]*, 2201 E. Jefferson Ave. [10/09/85]
Detroit, *Osborn, Frank A., House [East Jefferson Avenue Residential TR]*, 2920 E. Jefferson Ave. [10/09/85]
Detroit, *Thayer, Ella, House [East Jefferson Avenue Residential TR]*, 1380 E. Jefferson Ave. [10/09/85]

MINNESOTA

Beltrami County
Blackduck, *Blackduck Fire Tower [Federally Owned Fire Lookout Towers on the Chippewa National Forest TR]*, N of Benjamin Lake [4/29/86]

Carlton County
Moose Lake, *Minneapolis, St. Paul and Sault Ste. Marie Depot*, 840 Pelz Blvd. [6/06/86]

Cass County
Walker vicinity, *Walker Fire Lookout Tower [Federally Owned Fire Lookout Towers on the Chippewa National Forest TR]*, S of Walker [4/29/86]

Crow Wing County
City unavailable, *Black Bear Site (21CW59)*, Address Restricted [10/21/85]

Freeborn County
Glenville, *Shell Rock District School No. 49—Glenville Commercial Building*, W. Main St. and Second Ave. SW [4/09/86]

Goodhue County
Red Wing vicinity, *Lock and Dam No. 3 [Mississippi River Locks and Dams TR]*, 6½ mi. above Red Wing [2/25/86]

Hennepin County
Minnetonka, *Minnetonka, Town Hall*, 13231 Minnetonka Dr. [6/06/86]

Itasca County
Squaw Lake vicinity, *Farley Hill Fire Lookout Tower [Federally Owned Fire Lookout Towers on the Chippewa National Forest TR]*, S of Squaw Lake and N of Winnibigoshish [4/29/86]

Lac Qui Parle County
Madison vicinity, *Lac Qui Parle County Poor Farm*, 1 mi. E of Madison off MN 40 [7/18/85]

Ramsey County
St. Paul, *St. Paul Seminary Historic District*, 2260 Summit Ave. [3/11/86]

St. Louis County
Duluth, *Duluth Ship Canal*, On Minnesota Pt. between Monroe and Marvin Sts. [11/05/85]

Steele County
Owatonna, *Burlington Cedar Rapids and Northern Depot*, Riverside Ave. at S. Dale St. [7/16/86]

Wabasha County
Minneiska, *Lock and Dam No. 5 [Mississippi River Locks and Dams TR]*, Fountain City [2/25/86]

Washington County
Hastings vicinity, *Point Douglas Historic District*, Adjacent to US 10 [9/16/86]

Winona County
Dresbach, *Lock and Dam No. 7 [Mississippi River Locks and Dams TR]* [2/25/86]
Winona vicinity, *Lock and Dam No. 5A [Mississippi River Locks and Dams TR]*, 3 mi. above Winona [2/25/86]

MISSISSIPPI

Hinds County
Raymond, *Church of the Nativity of the Blessed Virgin Mary [Raymond and Vicinity MRA]*, W corner of Elm and Main Sts. [7/15/86]

MISSOURI

Clay County
Liberty, *Colonial Hotel*, 112 E. Franklin [7/10/85]
Liberty, *Saint James, Church*, 338 N. Water St. [7/10/86]

Franklin County
Gerald vicinity, *Tegeler, John, Barn*, Located on the S side of US 50 approx. 1 mi. E of Gerald [4/03/86]

Greene County
City unavailable *James River Bridge*, Carries FR 141 over the James River [8/28/86]

Jackson County
City unavailable, *Archeological Site No. 23JA269*, Address Restricted [4/28/86]

Ozark County
City unavailable, *Archeological Site No. 23OZ101*, Address Restricted [4/14/86]
City unavailable, *Archeological Site No. 23OZ100*, [4/14/86]

Polk County
City unavailable, *Bridge No. 368001.2*, Crosses the Pomme de Terre River [4/07/86]

Pulaski County
St. Robert vicinity, *Riddle Bridge*, CR 98 [8/30/86]

St. Charles County
City unavailable, *Archeological Site No. 23SC806*, Address Restricted [10/17/85]

St. Louis County
City unavailable, *Archeological Site No. 23SL461*, *Address Restricted [6/12/86]*

MISSOURI—Continued
St. Louis, *Building at 3022–3024 Kossuth*, 3022–3024 Kossuth [2/18/86]
St. Louis, *Building at 2340 Louisiana*, 2340 Louisiana [2/28/86]
St. Louis, *Buildings at 1300–1314 Euclid Avenue*, 1300–1314 Euclid Ave. [10/15/85]
St. Louis, *Building at 1253 Aubert Avenue*, 1253 Aubert Ave. [10/15/85]
St. Louis, *Building at 1314 Aubert Avenue*, 1314 Aubert Ave. [10/15/85]
St. Louis, *Building at 1316 Aubert Avenue*, 1316 Aubert Ave. [10/15/85]
St. Louis, *Building at 1413 Euclid Avenue*, 1413 Euclid Ave. [10/15/85]
St. Louis, *Building 1405 Euclid Avenue*, 1405 Euclid Ave., [10/15/85]
St. Louis, *Building at 1401 Euclid Avenue*, 1401 Euclid Ave. [10/15/85]
St. Louis, *Building at 1347 Euclid Avenue*, 1347 Euclid Ave. [10/15/85]
St. Louis, *Building at 1345 Euclid Avenue*, 1345 Euclid Ave. [10/15/85]
St. Louis, *Building at 1337 Euclid Avenue*, 1337 Euclid Ave. [10/15/85]
St. Louis, *Building at 1331 Euclid Avenue*, 1331 Euclid Ave. [10/15/85]
St. Louis, *Buildings at 1239–1247 Aubert Avenue*, 1239–1247 Aubert Ave. [10/15/85]
St. Louis, *Building and adjacent structure at 1317 Euclid Avenue*, 1317 Euclid Ave. [10/15/85]
St. Louis, *Building at 1307–1309 Euclid Avenue*, 1307–1309 Euclid Ave., [10/15/85]
St. Louis, *Building at 4878 Martin Luther King Drive*, 4878 Martin Luther King Dr. [10/15/85]
St. Louis, *Building at 4870 Martin Luther King Drive*, 4879 Martin Luther King Dr. [10/15/85]
St. Louis, *Building at 4868 Martin Luther King Drive*, 4868 Martin Luther King Dr. [10/15/85]
St. Louis, *Building at 4868 Martin Luther King Drive*, 4868 Martin Luther King Dr. [10/15/85]
St. Louis, *Building at 4917 Page Avenue*, 4917 Page Ave. [10/15/85]
St. Louis, *Building at 4921 Page Avenue*, 4921 Page Ave. [10/15/85]
St. Louis, *Building at 4942 Page Avenue*, 4921 Page Ave. [10/15/85]
St. Louis, *Building at 4923 Page Avenue*, 4923 Page Ave. [10/15/85]
St. Louis, *Building at 4929 Page Avenue* 4929 Page Ave. [10/15/85]
St. Louis, *Building at 4935 Page Avenue*, 4935 Page Ave. [10/15/85]
St. Louis, *Building at 4920 Page Avenue*, 4920 Page Ave. [10/15/85]
St. Louis, *Buildings at 4913–4915 Page Avenue*, 4913–4915 Page Ave. [10/15/85]
St. Louis, *Building at 4916 Page Avenue*, 4916 Page Ave. [10/15/85]
St. Louis, *Building at 4914 Page Avenue*, 4914 Page Ave. [10/15/85]
St. Louis, *Building at 4900–4904 Page Avenue* 4900–4904 Page Ave. [10/15/85]
St. Louis, *Building at 4910–4912 Page Avenue*, 4910–4912 Page Ave. [10/15/85]
St. Louis, *Buildings at 1260–1262 Aubert Avenue*, 1260–1262 Aubert Ave. [10/15/85]
St. Louis, *Building at 1409 Euclid Avenue*, 1409 Euclid Ave., [10/15/85]
St. Louis, *Building at 1261 Euclid Avenue*, 1261 Euclid Ave. [10/15/85]
St. Louis, *Building at 1333 Euclid Avenue*, 1333 Euclid Ave. [10/15/85]
St. Louis, *Cupples Warehouse District*, Spruce St. between Eleventh and Eight Sts. [10/17/85]

Stoddard County
City unavailable, *Archeological Site No. 23SO496*, Address Restricted [7/24/86]

Washington County
Potosi, *Washington County Jail*, 116 W. High St. [10/04/85]

MONTANA

Lincoln County
City unavailable, *Dahlberg Residence (24LN749)*, Located SW of Kootenai National Forest on US 93 [1/10/86]

Mineral County
City unavailable, *Fish Creek Bridge*, Carries Forest Service Rd. No. 344 over Fish Creek 2¼ mi. W of Fish Creek Rd. exit from I–90 [1/10/86]

Silver Bow County
Butte, *Silver Bow Creek—WPA Ditch*, Located between Texas Ave. and Montana St. [11/08/85]

Valley County
Vandalia vicinity, *Vandalia Ranch Headquarters (24VL1185)*, [5/29/86]
Vandalia, *Vandalia Bridge*, Over the Milk River [5/29/86]

Yellowstone County
Billings vicinity, *Mayer Residence and Barn*, Bounded on the N and W by the Yellowstone River [1/02/86]
Billings, *Billings Sugar Plant/Great Western Sugar Plant*, 3020 State Ave. [12/20/85]

NEW HAMPSHIRE

Belknap County
Laconia, *Morgan House*, 27 Pleasant St. [10/23/85]
Laconia, *Saint James Episcopal Church*, 53 Pleasant St. [10/23/85]

Cheshire County
Keene, *Beaver Mills*, 93 and 101 Railroad St. [9/05/86]
Keene, *Beaver/Spring St. Historic District*, Roughly bounded by Beaver, Franklin, Spring, Town Sts., and E side of Washington St. [9/15/86]
Keene, *House at 18 Spring Street*, 18 Spring St. [9/15/86]
Keene, *Justis Perry House*, 27 Roxbury Ct. [9/15/86]
Keene, *Rust, J. P., Storehouse and Cole, D., Grain Store*, 24–36 Dunbar St. [9/15/86]
Keene, *Washington Street Historic District*, Washington St. between High and Vernon Sts. [9/05/86]

Coos County
Lancaster, *Lancaster Commercial Historic District*, [8/13/86]

Grafton County
Campton, *Low Warren Truss Bridge No. 153/092*, Carries Perch Pond Rd. over the Beebe River [12/02/85]
Franconia vicinity, *Franconia Bridge [Four Bridges in New Hampshire TR]*, carries US 3 over the Lafayette Brook ¾ mi. N of Echo Lake [1/24/86]
Littleton, *Salomon Block*, Main St. [10/17/85]
Piermont vicinity, *Piermont Bridge [Four Bridges in New Hampshire TR]*, Carries NH 10 over the Bean Brook ⅝ mi. N of Piermont-Orford town line [1/24/86]

Hillsborough County
Bennington, *Monadnock Paper Mills Complex*, Antrim Rd. [4/24/86]
Keene, *William Brook's Blacksmith Shop*, 18 Ninety-third St. [9/05/86]
Manchester, *Comfort Station on Merrimack Common*, Located on the westerly edge of the Merrimack Common adjacent to Elm St. between Merrimack and Central Sts. [1/10/86]
Manchester, *Crystal Lake Municipal Bathhouse*, Bodwell Rd. at Crystal Lake between Corning and W. Shore Rds. [5/28/86]

Merrimack County
Concord, *Concord-Pembroke Bridge [Four Bridges in New Hampshire TR]*, Carries US 4/202/NH 9 over the Soucook River at town line between Concord and Pembroke [1/24/86]
Loudon vicinity, *Loudon Bridge [Four Bridges in New Hampshire TR]*, Carries Old NH 106 over the Soucook River 1⅜o mi. N of Loudon-Concord town line [12/24/85]

NEW JERSEY

Gloucester County
City unavailable, *Archeological Site No. 28GL160*, Address Restricted [1/06/86]
City unavailable, *Archeological Site No. 28GL170*, Address Restricted [3/10/86]
City unavailable, *Archeological Site No. 28GL162*, Address Restricted [3/10/86]
City unavailable, *Archeological Site No. 28GL164*, Address Restricted [1/06/86]
City unavailable, *Archeological Site No. 28GL171*, Address Restricted [3/10/86]
City unavailable, *Archeological Site No. 28GL163*, Address Restricted [3/10/86]
City unavailable, *Whitall, Charles, House Site*, Address Restricted [1/02/86]

Hudson County
Bayonne, *Pier 2*, [1/24/86]
Bayonne, *Port Johnson Historic Sailing Vessels*, S and W of Pier 1 at Port Johnson [1/24/86]
Jersey City, *Loew's Jersey Theatre*, 54 Journal Sq. [10/17/85]

Hunterdon County
Allerton, *Allerton Village Historic District*, Intersection of NJ 31 with Allerton and Hoffman Rds. [10/04/85]
City unavailable, *Hoagland, J. Q. and Brittin, N., Farmstead*, NJ 31 [10/04/85]
City unavailable, *Huffman, P. and Runkle, J., Farmstead*, NJ 31 [10/04/85]
City unavailable, *Kenney, J. R., Farmstead*, Stanton Rd. [10/04/85]
City unavailable, *Rowland's Mills Historic Archeological District*, Address Restricted [10/04/85]

NEW JERSEY—Continued

Somerset County

City unavailable, *Bunn, J. and Reading, J., House*, Burgess Rd. [10/04/85]
City unavailable, *Copner, George and Risler, G. W., House*, Burgess Rd. [10/04/85]
City unavailable, *Flemington Fairgrounds*, NJ 31 [10/04/85]
City unavailable, *Garabrant, G. J., Farmstead*, Bartles Corner Rd. [10/04/85]
City unavailable, *Hoffman, Abraham, Farmstead*, Old Clinton Rd. [10/04/85]

NEW MEXICO

Bernalillo County

City unavailable, *Mann Site (LA–280)*, Address Restricted [10/07/85]

NEW YORK

Albany County

Colonie, *Cohoes Company Head Gatehouse, Dam and Headrace [Colonie Town MRA]*, E side of Cohoes Crescent Rd. [12/11/85]
Colonie, *Peck, Charles, House [Colonie Town MRA]*, 8 N. Lyons Ave. [10/03/85]
Colonie, *Schairer Dutch Barn [Colonie Town MRA]*, 216 Vly Rd. [10/03/85]

Erie County

Clarence, *Clarence Hollow Archeological District*, Address Restricted [10/01/85]

Kings County

Brooklyn, *Bush Terminal*, Gowanus Bay at Twenty-ninth St. [3/21/86]
Brooklyn, *Gowanus Flushing System*, Douglass St. between Bond and Nevins [12/09/85]
Brooklyn, *Twenty-ninth Street Bridge*, Twenty-ninth St. [3/21/86]

Monroe County

Rochester, *Arcade Mill [Inner Loop MRA]*, 28–32 Aqueduct St. [10/04/85]
Rochester, *Baptist Temple Building [Inner Loop MRA]*, 14 Franklin St. [10/04/85]
Rochester, *Central Downtown YMCA [Inner Loop MRA]*, 180 Gibbs St. [10/04/85]
Rochester, *Salmon-Nusbaum Building [Inner Loop MRA]*, 148 Clinton Ave. [10/04/85]
Rochester, *Watts, Ebenezer, House [Inner Loop MRA]*, 47 S. Fitzhugh St. [10/04/85]
Rochester, *Yawman and Erbe Building [Inner Loop MRA]*, 41 Chestnut St. [10/04/85]

New York County

New York, *City and Suburban Homes Company's York Avenue Estate and Shively Sanitary Tenements Historic District*, 1470–1492 York Ave., 507–523 E. 77th, 506–522 and 501–541 E. 78th, and 503–542 E. 79th Sts. [9/02/86]
New York, *Racquet Court Club Building*, 776–782 Sixth Ave. and 55–57 Twenty-sixth St. [8/11/86]
New York, *Whitney Museum of American Art*, 945–952 Madison Ave. [9/24/86]

Richmond County

Staten Island, *Fountain-Mouquin House Site (A085–01–0007)*, Address Restricted [1/31/86]

Warren County

Glen Falls, *Morgan Lumber Company Dry Dock Site [Glen Falls MRA]*, W of Murray St. bridge in a cove on the N side of the Glen Falls Feeder Canal [10/25/85]
Glen Falls, *Sherman Lime Company Kilns Ruins [Glen Falls MRA]*, E of Shermantown Rd. Bridge [10/25/85]

Washington County

Fort Edward, *Ruggi Site (A115–05–0004)*, Address Restricted [5/20/86]

Westchester County

Mamaroneck, *Mamaroneck Project Building*, Located at W. Boston Post Rd. and Mamaroneck Ave. [10/17/85]

NORTH CAROLINA

Brunswick County

Southport vicinity, *US Coast Guard Station*, Located SW of Southport on Oak Island [10/07/85]

Transylvania County

Brevard vicinity, *Old Pisgah Inn and Cottages*, S side of Blue Ridge Pkwy 3 mi. W of intersection with NC 151 [4/14/86]

OHIO

Cuyahoga County

Cleveland Heights, *Cleveland Heights City Hall*, 2953 Mayfield Rd. [6/26/86]
Cleveland, *Forest City Bank Building*, 1403 W. Twenty-fifth St. [6/02/86]

Delaware County

Galena, *Galena Municipal Building*, 9 W. Columbus St. [6/16/86]

Geauga County

Chardon, *US Post Office—Chardon Main*, 121 South St. [2/03/86]

Hamilton County

Cincinnati, *Lower Price Hill Historic District*, Roughly bounded by W. Eighth St., Burns St., Sixth St. Viaduct, and Price Hill [7/16/86]
Wyoming, *Rychen, John, House [Wyoming MRA]*, 224 W. Hill Ln. [6/25/86]

Jefferson County

Steubenville, *North End Fire Station*, 417 North St. [11/12/85]

Lorain County

Lorain, *Erie Avenue Bridge*, Carries US 6 over the Black River and B & O RR [3/18/86]

Lucas County

Toledo, *House at 1929 Franklin Avenue*, 1929 Franklin Ave. [5/22/86]

Mahoning County

Youngstown, *Masonic Temple [Downtown Youngstown MRA]*, 223–227 Wick Ave. [7/23/86]
Youngstown, *Youngstown Vindicator Building [Downtown Youngstown MRA]*, 107 Vindicator Sq. [7/23/86]

Miami County

Covington, *Steinhibler Residence*, 402 S. High St. [4/08/86]

OKLAHOMA

Garfield County

Covington vicinity, *Sinclair Production Camp Machine Shop* [9/26/86]

OREGON

Harney County

City unavailable, *Archeological Site No. 35HA1261*, Address Restricted [1/27/86]
City unavailable, *Archeological Site No. 35HA1263*, Address Restricted [1/27/86]

Marion County

City unavailable, *Little North Santiam Mining District*, Willamette National Forest [11/27/85]

Wasco County

City unavailable, *Archeological Site No. 35JA59*, Address Restricted [3/27/86]

PENNSYLVANIA

Delaware County

E. Landsdowne, *Landsdowne Theatre*, 29 N. Landsdowne [9/18/86]
Upper Providence Township, *Leedom Farmhouse*, Rose Tree Pk. [11/06/85]

Franklin County

Mercersburg, *Mercersburg Inn*, Intersection of PA 16 and PA 75 [9/15/86]

Lancaster County

Lancaster, *Rose Brothers & Company Umbrella Factory*, 221–223 E. Chestnut St. [11/12/85]

Luzerne County

Hazleton, *Pennsylvania Federal Building*, 145 E. Broad St. [6/11/86]

Philadelphia County

City unavailable, *Archeological Area "A"*, Address Restricted [4/25/86]
City unavailable, *Archeological Area "B"*, Address Restricted [4/25/86]
Philadelphia, *Buildings on the E side of S. Front Street between Pemberton and Catherine Streets*, E side of S. Front St. between Pemberton and Catherine Sts. [4/25/86]
Philadelphia, *Engine House No. 46*, Located at the SE corner of S. Water and Reed Sts. on Lot 59 [4/25/86]
Philadelphia, *Pier 34* [4/25/86]
Philadelphia, *Pier 30* [4/25/86]

PUERTO RICO

Arecibo Municipality

Arecibo, *Residencia Coll y Toste*, 60 de Diego Ave. [8/29/86]

Mayaguez Municipality

City unavailable, *Residencia Bravo*, Mendez Vigo St. No. 79 [7/09/86]
Mayaguez, *Residencia Huyliger (II)* [2/10/86]

San German Municipality

San German, *Perichi, Juan Ortiz, Casa*, Calle Luna No. 94 [7/14/86]

RHODE ISLAND

Kent County

Coventry, *South Main Street Historic District*, S. Main St. [6/25/86]

Newport County

Jamestown vicinity, *Buckingham II (RI1259)*, Address Restricted [1/16/86]
Jamestown vicinity, *Keeler II Site (RI1258)*, Address Restricted [1/16/86]
Jamestown, *Jamestown Town Pound*, N. Main Rd. [1/16/86]

Providence County

City Unavailable, *Austin Avenue, Industrial Complex (RI246)*, [5/22/86]
City unavailable, *Cutler Farm Complex and Tavern Site (RI424)*, [5/22/86]
Glocester, *Barnes Barn and Acid Works Complex (RI423)*, Address Restricted [6/10/86]
N. Smithfield and Lincoln, *Blackstone Canal and Canal Archeological, Site (RI532)*, Address Restricted [9/16/86]
North Smithfield, *Smithfield Road Historic District*, Smithfield Rd. [5/15/86]
Smithfield, *Long House (RI1344)*, [5/22/86]
Smithfield, *Saint Thomas Episcopal Church and Rectory*, Putnam Pike [6/17/86]
Smithfield, *Steere's Beach Club Site (RI270)*, Address Restricted [5/22/86]

SOUTH CAROLINA

Aiken County

North Augusta, *North Augusta Dispensary*, Georgia Ave. [8/28/86]

Horry County

Conway, *Atlantic Coast Line Railroad Depot [Conway MRA]*, Across from Kingston Lake on the N side of US 701 [8/05/86]

SOUTH DAKOTA

Custer County

City unavailable, *Archeological Site No. 39CU728*, Address Restricted [2/18/86]

Hamlin County

Frederick vicinity, *West, Abram and Anna, Farm [Architecture of Finnish Settlement TR]*, 3 mi. E of US 14 [11/13/85]
Lake Norden vicinity, *Matson, Henry and Marie, Farm [Architecture of Finnish Settlement TR]*, 3 mi. W of Lake Norden [11/13/85]

TENNESSEE

Grainger County

Powder Springs, *Powder Springs Bridge*, Over Flat Creek in community of Powder Springs [3/05/86]

Lincoln County

Coldwater vicinity, *Hobbs Bridge*, Over the Elk River [3/04/86]

Rutherford County

Lascassas vicinity, *Dement House*, Cainsville Pike [2/07/86]
Lascassas vicinity, *Jarman Farm*, Rte. 2, Cainsville Pike [2/07/86]

Unicoi County

Chestoe, *Chestoa Bridge*, S of Erwin over the Nolichucky River [3/05/86]

TEXAS

Harrison County

City unavailable, *Archeological Site No. 41HS74*, Address Restricted [4/30/86]
Marshall, *Orsak, Victor M. and Kay, Sharon, House*, 108 S. Edwards St. [3/12/86]

Jones County

Stamford, *House at 710 E. McHarg [Stamford MRA]*, 710 E. McHarg [9/24/86]

Leon County

City unavailable, *Old Alley Road Archeological Site (41LN1498)*, Address Restricted [4/22/86]
Jewett vicinity, *Archeological Site No. 41LN52 [Evansville Mine Sites MRA]*, Miller Cemetery [4/29/86]
Jewett vicinity, *Archeological Site No. 41LN111 [Evansville Mine Sites MRA]*, [4/29/86]
Jewett vicinity, *Archeological Site No. 41LN208 [Evansville Mine Sites MRA]*, [4/29/86]

Limestone County

City unavailable, *Archeological Site No. 41LN106*, Address Restricted [5/01/86]
City unavailable, *Archeological Site No. 41LN29A*, Address Restricted [5/01/86]

Travis County

Austin vicinity, *Archeological Site No. 41TV675 [Canyon Creek MRA]*, Address Restricted [4/04/86]
Austin vicinity, *Archeological Site No. 41TV747 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV748 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV755 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV757 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV759 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV779 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV793 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV794 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV795 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV796 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV800 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV804 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV822 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV823 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV824 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV825 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV826 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV833 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV834 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV835 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV836 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV837 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV839 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV841 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV842 [Canyon Creek MRA]*, [1/31/86]
Austin vicinity, *Archeological Site No. 41TV723 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV735 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV737 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV738 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV741 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV742 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV743 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV749 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV760 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV763 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV766 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV772 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV797 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV805 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV807 [Canyon Creek MRA]*, [5/02/86]
Austin vicinity, *Archeological Site No. 41TV809 [Canyon Creek MRA]*, [5/02/86]
East Austin, *Administration Building [East Austin MRA]*, 1820 E. Eighth St. [5/12/86]

Williamson County

City unavailable, *Blockhouse Creek Archeological District*, Address Restricted [4/14/86]

VERMONT

Ducheene County

Alburg Springs, *Alburg Springs Border Station [US Border Stations in Vermont TR]*, [9/22/86]

Essex County

Beecher Falls, *Beecher Falls Border Station [US Border Stations in Vermont TR]*, [9/12/86]
Canaan, *Canaan Border Station [US Border Stations in Vermont TR]*, [9/12/86]
Norton, *Norton Border Station [US Border Stations in Vermont TR]*, [9/12/86]

Franklin County

East Richford, *East Richford Border Station [US Border Stations in Vermont TR]*, [9/12/86]
Highgate Springs, *Highgate Springs Border Station [US Border Stations in Vermont TR]*, [9/12/86]

BEST COPY AVAILABLE

VERMONT—Continued
Morses Line, *Morses Line Border Station [US Border Stations in Vermont TR]*, [9/12/86]
Richford, *Richford Border Station [US Border Stations in Vermont TR]*, [9/12/86]
West Berkshire, *West Berkshire Border Station [US Border Stations in Vermont TR]*, [9/12/86]

Grand County
Beebee Plain, *Beebee Plain Border Station [US Border Stations in Vermont TR]*, [9/22/86]

Grand Isle County
Alburg, *Alburg Border Station [US Border Stations in Vermont TR]*, [9/12/86]

Orleans County
Derby Line, *Derby Line Border Station [US Border Stations in Vermont TR]*, [9/12/86]
North Troy, *North Troy Border Station [US Border Stations in Vermont TR]*, [9/22/86]

Washington County
Northfield, *Vine Street Bridge*, [10/24/85]

WASHINGTON

Clark County
Vancouver, *Saint James Cathedral*, 204 W. Twelfth St. [5/16/86]

Columbia County
Dayton, *Robinette, Joseph, House [Historic Houses of Dayton TR]*, 1201 S. Fourth [8/13/86]

Grays Harbor County
Montesano, *US Post Office—Montesano Main*, 211 Pioneer Ave. [5/02/86]

Skamania County
City unavailable, *Archeological Site No. 45SA113*, Address Restricted [7/22/86]

Spokane County
City unavailable, *Waikiki*, [10/11/85]

WEST VIRGINIA

Ohio County
Wheeling, *Bridgeport Bridge [West Virginia's Historic Bridges TR S335–40–0.01]*, Carries US 40 over the back channel of the Ohio River between Wheeling Island, WV and Bridgeport, OH [6/30/86]

Tyler County
City unavailable, *Shirley Bridge*, Carries Rt. 62 over McElroy Creek [6/26/86]

WISCONSIN

Buffalo County
Alma, *Lock and Dam No. 4 [Mississippi River Locks and Dams TR]*, [2/25/86]

Crawford County
Bridgeport, *Bridgeport Historic District*, Junction of US 18 and WI 60 [1/07/86]
Lynxville, *Lock and Dam No. 9 [Mississippi River Locks and Dams TR]*, [2/25/86]

Dane County
Madison, *Main-King Historic District*, Roughly bounded by E. Doty, King, E. Main, Pinckney and E. Wilson Sts. [6/25/86]

Grant County
Platteville, *Main Street Commercial District*, Main St. between N. and S. Bonson and N. and S. Oak [5/15/86]

Iowa County
Spring Green, *Wyoming Methodist Church and Meeting Hall*, WI 3 [7/11/86]

La Crosse County
City unavailable, *North Shore Site (LC185)*, Address Restricted [11/01/85]
City unavailable, *Van Aelstyne Site (LC189)*, Address Restricted [11/01/85]
La Crosse, *WAR EAGLE (47LC83)*, Address Restricted [12/06/85]
Onalaska, *Richards-Hauser Farmstead*, N4980 Sank Lake Coulee Rd. [6/30/86]

Marinette County
Marinette, *Lauerman, Joseph, House*, 1975 Riverside Ave. [11/14/85]

Milwaukee County
Milwaukee, *Harley-Davidson Motorcycle Factory Buildings [West Side Area MRA]*, 3700 W. Juneau and 1147 N. Thirty-eighth Aves. [7/29/86]
Milwaukee, *Harnischferger, Henry, House*, 3424 W. Wisconsin Ave. [1/16/86]
Milwaukee, *Mitchell, Alexander, House, [West Side Area MRA]*, 900 W. Wisconsin Ave. [1/16/86]
Milwaukee, *Mitchell Street Historic District*, Includes all of the properties with frontage on Mitchell St. and Forest Home Ave. and Pedestrian Mall [8/28/86]
Milwaukee, *Sovereign Apartments [West Side Area MRA]*, 1810 W. Wisconsin Ave. [1/16/86]
West Allis, *Garfield School Building*, 8495 W. National Ave. [1/03/86]

Ozaukee County
Saukville, *Payne Hotel*, 310 E. Green Bay Ave. [3/03/86]
Thiensville Commercial Historic District, Main St. [4/10/86]

Pierce County
City unavailable, *Cedar Street Bridge*, Carries Cedar St. over the Kinnickinnic River [12/05/85]

Price County
Keenan, *Jump River Bridge (P–50–090)*, [5/23/86]

Rock County
Edgerton, *Edgerton Public Grade Schools*, 116 N. Swift St. [4/28/86]

Sheboygan County
Sheboygan vicinity, *Bachman Site (47SB202)*, Address Restricted [4/24/86]

Taylor County
Aurora, *Polley Lane Bridge*, Carries Polley Ln. over the Yellow River [11/06/85]

Trempealeau County
Trempealeau, *Lock and Dam No. 6 [Mississippi River Locks and Dams TR]* [2/25/86]

Vernon County
Genoa, *Lock and Dam No. 8 [Mississippi River Locks and Dams TR]*, [2/25/86]

Washington County
Milwaukee, *West Side Commercial Historic District*, [6/25/86]

Winnebago County
Omro, *Hanson House*, Oshkosh Rd. [12/05/85]

WYOMING

Big Horn County
Greybull, *U.S. Post Office—Greybull Main*, 401 Greybull Ave. [4/15/86]

Fremont County
City unavailable, *Archeological Site No. 48FR2043*, Address Restricted [12/30/85]

Park County
Powell, *U.S. Post Office—Powell Main*, 270 N. Bent St. [4/15/86]

Uinta County
City unavailable, *Hilliard Station Site (49UT253)*, Address Restricted [12/19/85]

Properties Determined Eligible for the National Register in Fiscal Year 1987

ALASKA

Sitka Borough-Census Area
Petersburg, *Petersburg Office and Garage*, 107 Fram St. [10/09/86]

Valdez-Cordova Borough-Census Area
Cordova vicinity, *Boswell Bay White Alice Site (49COR312)*, Address Restricted [6/26/87]

ARIZONA

Cochise County
Willcox, *Angle, Joseph, House, [Willcox MRA]*, [5/27/87]

ARKANSAS

Pulaski County
City unavailable, *Beal-Burrow Dry Goods Building [Charles L. Thompson Design Collection TR]*, 107 E. Markham St. [3/27/87]
Little Rock, *Back Brothers Department Store [Little Rock Main Street MRA]*, 505–507 Main St. [8/17/87]

CALIFORNIA

Del Norte County
City unavailable, *Redwood School*, Hwy. 197 between Sultan and Peacock Sts. [2/18/87]

El Dorado County
City unavailable, *State Road 89 Masonry Features (FMA–PO–89–40)*, Located btwn. post miles 16.5/16 and 180 on SR 89 [4/10/87]

Lake County
Lower Lake vicinity, *Anderson Ranch Complex*, Rte. 53 [10/07/86]

Los Angeles County
Los Angeles, *Franklin Avenue Bridge*, Saint George St. and Myra Ave. [10/02/86]
Los Angeles, *University Branch [Los Angeles Branch Library TR]*, 3420 University Avenue [5/19/87]

CALIFORNIA—Continued
Vista, *Red Barn*, 139 N. Santa Fe [12/26/87]

COLORADO

Larimer County
Estes Park vicinity, *Homestead Meadows*, [7/02/87]

Pitkin County
City unavailable, *Aspen Block, The [Aspen MRA]*, [3/06/87]
City unavailable, *Cowenhoven Block [Aspen MRA]*, [3/06/87]
City unavailable, *Smith-Elisha House [Aspen MRA]*, [3/16/87]

CONNECTICUT

Middlesex County
East Haddan vicinity, *Bishop Rockshelter [Lower Connecticut River Valley Woodland Period Archeology TR]*, Address Restricted [7/31/87]

New Haven County
New Haven, *Elm Street Historic District*, Roughly bounded by Wall, Church, Elm and College Sts. [7/31/87]

New London County
Groton, *Thames River Railroad Bridge [Movable Railroad Bridges on the Northeast Corridor in Connecticut TR]*, Address restricted [6/12/87]
Lyme vicinity, *Coudert Ledge No. 2 Site [Lower Connecticut River Valley Woodland Period Archeology TR]*, Address Restricted [7/31/87]

DELAWARE

New Castle County
Hockessin, *Dennison, Samuel, House*, Limestone Rd. [5/11/87]
Hockessin, *Gutherie-Dennison Farmstead*, Limestone Rd. [5/11/87]
Hockessin, *Gutherie, Hannah, House and Farmstead*, NW corner, Limestone and Little Baltimore Rds. [5/11/87]
Wilmington, *Aquila Derrickson House*, Limestone Rd. [5/11/87]
Wilmington, *Gordon, George Building [Market Street MRA]*, [12/30/86]
Wilmington, *McKennan-Klair House*, 3401 Limestone Rd. [5/11/87]

Sussex County
Seaford, *Building at 328 High Street [Seaford's Commercial Buildings TR]*, 328 High St. [2/18/87]

FLORIDA

Polk County
Lakeland, *Oates Building*, 230 S. Florida Ave. [4/08/87]

GEORGIA

Barrow County
Statham vicinity, *Vincent, Rev. Harrison, House*, Barber Creek Rd. [10/03/86]

Bartow County
Adairsville, *Bridge No. 015/00318/X/00051 N*, Carries CR 316 over Oothkalooga Creek [10/07/86]

Dougherty County
City unavailable, *Flint River Bridge/GDOT Bridge No. 095/00133/012.39 N*, GA 133 [11/14/86]

Fayette County
Fayetteville, *American Legion Post 105*, Glynn St./GA 85SR85 [12/22/86]

INDIANA

Allen County
Fort Wayne, *US Post Office/Federal Building—Fort Wayne Main*, [6/10/87]

Clark County
Borden vicinity, *Muddy Fork of Silver Creek Watershed (12CL199)*, [2/11/87]

Gibson County
City unavailable, *Moore Rockshelter (12GI280)*, [1/16/87]

Huntington County
Huntington, *Huntington County Bridge No. 127*, 1½ mi. S of the center of the city of Huntington [11/26/86]

Posey County
City unavailable, *Welborn Village (12PO10)*, Address Restricted [1/15/87]

Sullivan County
Hutsonville vicinity, *Hutsonville Bridge*, Carries IN 154 over the Wabash River [7/16/87]

KANSAS

Dickinson County
Herington, *Chicago, Rock Island, and Pacific Railroad Herington Passenger Depot*, N. Sixth St. [7/28/87]

Doniphan County
Highland vicinity, *Long, Dr. John S., Barn [Byre and Bluff Barns of Doniphan County TR]*, [1/09/87]
Leona, *Ritenour, William, Barn [Byre and Bluff Barns of Doniphan County TR]*, [5/07/87]

Miami County
Osawatomie vicinity, *Carey's Ford Bridge*, Marais des Cygnes River [5/21/87]

Sedgwick County
Wichita, *East Douglas Avenue Historic District*, Extends along Douglas from near the middle of the 400 blk. E through the 800 blk. of Rock Island St. [2/12/87]

KENTUCKY

Boone County
City unavailable, *Stone House on Garrison Creek [Early Stone Buildings of Kentucky TR]*, [1/08/87]

Clark County
City unavailable, *Archeological Site (15CK363)*, Address Restricted [7/17/87]

Muhlenberg County
Rockport vicinity, *Airdrie Ironworks [Early Stone Buildings of Kentucky TR]*, Mouth [1/08/87]

Nelson County
City unavailable, *Old L & N Station [Early Stone Buildings of Kentucky TR]*, [1/08/87]

Warren County
City unavailable, *Old Quarry Office [Early Stone Buildings of Kentucky TR]*, [1/08/87]

LOUISIANA

Cameron Parish
Grand Chenier vicinity, *Archeological Site No. 16CM61*, Address Restricted [10/10/86]

Plaquemines Parish
New Orleans vicinity, *Fort St. Leon (16PL35)*, Address Restricted [9/29/87]

St. Landry Parish
City unavailable, *Wartelle (16SL75), Burleigh (16SL82) and Nezat (16SL87)*, Address Restricted [5/28/87]

MARYLAND

Baltimore County
Baltimore, *Bayview Asylum: Baltimore City Hospital*, Johns Hopkins University [4/07/87]

Prince George's County
Avondale, *Avondale Research Center*, 4900 La Salle Rd. [9/16/87]

St. Mary's County
Leonardtown vicinity, *Abell's Wharf Archeological Site*, [10/31/86]

MASSACHUSETTS

Barnstable County
Osterville, *Swift, E. E. C., Store [Barnstable MRA]*, 699 Main St. [9/18/87]
W. Barnstable, *Phinney—Smith House [Barnstable MRA]*, 315 Plum St. [3/13/87]

Bristol County
City unavailable, *Bridge Village Historic District*, Extends E to W along Elm St. and includes the Berkley-Dighton Bridge over the Taunton River [4/16/87]

Middlesex County
Cambridge, *Baker House [Cambridge MRA]*, 362 Memorial Dr. [1/23/87]
Cambridge, *Biological Laboratory [Cambridge MRA]*, 16 Divinity Ave. [1/23/87]
Cambridge, *Kennedy, The [Cambridge MRA]*, 430–442 Massachusetts Ave. [1/23/87]
Cambridge, *Kresge Auditorium [Cambridge MRA]*, Massachusetts Ave. at Amherst St. [1/23/87]
Cambridge, *MIT Chapel [Cambridge MRA]*, Massachusetts Ave. at Amherst St. [1/23/87]
Cambridge, *Massachusetts Institute of Technology Historic District [Cambridge MRA]*, [1/23/87]

MICHIGAN

Wayne County
Detroit, *Preston, David, School*, 1251 Seventeenth St. [11/12/86]

MINNESOTA

Lake County

Two Harbors, *Duluth & Iron Range Railway Ore Dock No. 6*, Agate Bay [10/22/86]

MISSISSIPPI

Hancock County

City unavailable, *Elwood Manor [Bay Street St. Louis MRA]*, 902 N. Beach Blvd. [11/21/86]

Harrison County

City unavailable, *Richard Archeological Site (11HR635)*, Address Restricted [5/28/87]

Jackson County

Ocean Springs, *Delcastle (The Lee House) [Ocean Springs MRA]*, 4010 Government St. [4/20/87]

Ocean Springs, *Miss-La-Bama [Ocean Springs MRA]*, 243 Front Beach Dr. [4/20/87]

Sunflower County

City unavailable, *Shields Archeological Site (11SU527)*, Address Restricted [5/28/87]

MISSOURI

Adair County

Brashear vicinity, *Salt River Bridge (No. 285007)*, Salt River [5/24/87]

Buchanan County

St. Joseph, *American Apartments*, 425 N. Eleventh St. [11/25/86]

Franklin County

City unavailable vicinity, *Bridge over Berger Creek, Route B*, Berger Creek [9/03/87]

St. Charles County

Machens, *ICC AB-102 (Sub No. 13)*, [1/30/87]

MONTANA

Big Horn County

Lodge Grass, *Lodge Grass Railroad Depot [Lodge Grass MRA]*, [8/03/87]

Carbon County

Bridger, *Hughes, Stephen and Anna, House [Bridger MRA]*, 104 S. E St. [9/15/87]

Bridger, *McLean, Archie, Bungalow [Bridger MRA]*, [7/21/87]

NEW JERSEY

Atlantic County

Atlantic, *US Post Office—Atlantic City*, S/E/C Pacific and Pennsylvania Ave. [10/07/86]

NEW MEXICO

Bernalillo County

Albuquerque, *Saint Anthony's Orphanage—Albuquerque Jobs Corps Center*, 1500 Indian School Rd. NW [6/04/87]

NEW YORK

Essex County

Ticonderoga, *Building at 111, 113, and 115 Montcalm Street*, 111–115 Montcalm St. [7/30/87]

Suffolk County

City unavailable, *Hubbs-Burr House*, 303 Burr Rd. [2/05/87]

NORTH DAKOTA

Cass County

Fargo, *Elliot-Powers House and Garage [North Fargo MRA]*, 702–704 Broadway [4/07/87]

Fargo, *Monticello-Mount Vernon-Arlington Apartments [North Side MRA]*, 711–719 Broadway [4/07/87]

Dickey County

Oakes vicinity, *Patterson Octagonal Barn [North Dakota Round Barns TR]*, SR 38 [10/01/86]

OHIO

Cuyahoga County

Cleveland, *Bing Building*, 510–512 Prospect Ave. [6/10/87]

Cleveland, *Jones Home for Children [Brooklyn Centre MRA]*, 3518 W. Twenty-fifth St. [3/19/87]

Franklin County

Columbus, *Cambridge Arms [East Broad Street MRA]*, 926 E. Broad St. [3/09/87]

Hamilton County

Cincinnati, *Garfield Place Housing*, Roughly bounded by Elm St. on the W and Walnut St. on the E [2/25/87]

Jefferson County

Mingo Junction, *Saint Agnes Roman Catholic Church [Mingo Junction MRA]*, 230 Saint Clair Ave. [3/17/87]

Lucas County

Toledo, *Madison Avenue Historic District*, Madison, Adams and Huron Sts. [12/02/86]

Toledo, *Osterman's—Kresge*, 407 Adams St. [10/09/86]

Toledo, *Valentine*, 401 N. Saint Clair St. [10/09/86]

Montgomery County

Madison, *Weaver House*, On a ln. off Wolf Creek Pike 320 meters E of R. J. Nolan Rd. [12/15/86]

PENNSYLVANIA

Berks County

Reading, *Pomeroy's Department Store Complex*, 600–620 Penn and 1–25 S. Sixth Sts. [10/22/86]

Lancaster County

City unavailable, *Conestoga Steam Cotton Mill Complex*, [1/15/87]

Philadelphia County

Philadelphia, *Atwater Kent Manufacturing Company*, 4700 Wissahickon Ave. [1/15/87]

Philadelphia, *Ogontz Hall*, 7165–7181 Ogontz Ave. [7/09/87]

PUERTO RICO

Arecibo Municipality

Arecibo, *La Casa de los Soles Truncos*, 56 Avenida Jose de Diego [10/01/86]

Barceloneta Municipality

City unavailable, *Ensenada Archeological Site*, Address Restricted [2/17/87]

Salinas Municipality

City unavailable, *Casa Jaime Acosta y Fores*, Calle Doctor Veve No. 70 [11/19/86]

SOUTH DAKOTA

Bon Homme County

Tabor Township vicinity, *Hruska, John, Rubblestone Barn [Czech Folk Architecture of Southeastern South Dakota MRA]*, [7/06/87]

Tabor Township vicinity, *Hruska, John, Log House [Czech Folk Architecture of Southeastern South Dakota MRA]*, [7/06/87]

Harding County

Reva vicinity, *Battle of Slim Buttes Historic Site [Harding and Perkins Counties MRA]*, Reva Gap, S side of SD 20 about 1¼ mi. W of Reva [5/19/87]

Jackson County

Camp Cook, *Saint Ann's Catholic Church [Harding and Perkins Counties MRA]*, First St. [4/10/87]

Pennington County

City unavailable, Archeological Site No. 39PN359, Black Hills National Forest [1/07/87]

Perkins County

White Butte vicinity, *Liberty No. 70 School [Harding and Perkins Counties MRA]*, 5½ mi. SW of White Butte [4/10/87]

TENNESSEE

Grundy County

Coalmont, *Coalmont Coke Ovens [Grundy County MRA]*, W of Sweeton Hill Rd. [4/01/87]

TEXAS

Bastrop County

Bastrop, *Osborn, T. C. Tenant House*, [10/31/86]

Bexar County

San Antonio, *Rogers Site (41BX22)*, [1/12/87]

Brazos County

Bryan, *Archeological Site No. 41BZ86*, Address Restricted [1/08/87]

El Paso County

El Paso, *El Paso Engine Servicing Yard Historic District (See Also: Broadway Yard Freighthouse)*, El Paso Engine Servicing Yard [2/13/87]

Robertson County

Calvert Mine vicinity, *Archeological Site No. 41RT260*, Address Restricted [9/18/87]

Tarrant County

Fort Worth, *Broadway Yard Freighthouse (See Also: El Paso Servicing Yard Historic District)*, Broadway Yard [2/13/87]

Travis County

Austin vicinity, *Archeological Site No. 41TV1106 [Canyon Creek MRA*, Address Restricted [10.31/86]

Austin vicinity, *Archeological Site No. 41TV778 [Canyon Creek MRA]*, [1/31/87]

TEXAS—Continued

Victoria County

Victoria, *Buhler, F. S., House*, 210 E. Juan Linn [12/09/86]

Victoria, *Magnolia Service Station No. 122 [Victoria Multiple Resource Area]*, 108 S. William St. [12/09/86]

Victoria, *O'Connor, Thomas, House [Victoria Multiple Resource Area]*, 501 N. Vine [12/09/86]

Victoria, *Southern Pacific RR Guadalupe Bridge [Victoria Multiple Resource Area]*, [12/09/86]

UTAH

Summit County

Kamas, *High Mountain Dams*, Bonneville Unit [1/09/87]

WASHINGTON

King County

Duval vicinity, *Dougherty Farmstead*, NE Cherry Valley Rd. [11/19/86]

Thurston County

Olympia, *Donald Building [Downtown Olympia MRA]*, 205—213 E. Fifth [6/17/87]

Olympia, *Elks Building [Downtown Olympia MRA]*, 607—613 S. Capitol Way [6/17/87]

Olympia, *Hotel Olympian [Downtown Olympia MRA]*, 519 S. Washington [6/17/87]

Olympia, *Olympia Knitting Mills [Downtown Olympia MRA]*, 514—524 S. Jefferson [6/17/87]

Olympia, *Security Building [Downtown Olympia MRA]*, 203 E. Fourth [6/17/87]

WISCONSIN

Waukesha County

Hartland, *White Elm Nursery [Hartland Multiple Resource Area]*, 621 W. Capitol Dr. [12/08/86]

PROPERTIES REMOVED FROM THE DETERMINED ELIGIBLE LIST

The following properties have been demolished and/or removed from the Determination of Eligibility List

Properties Removed From the Determined Eligible List in Fiscal Year 1987

ALABAMA

Lowndes County

Burkville, *Fillmore Tithing Office [Tithing Office and Granaries of the Mormon Church Thematic Resource]*, [5/01/87]

Burkville, *Heath, Charles, House [Mining Boom Era Houses Thematic Resources]*, 364 Park [5/01/87]

Burkville, *Hill Street Bridge*, Carries Hill St. [6/26/87]

Burkville, *Provo Train Station*, [5/01/87]

Burkville, *Snelgrove, Charles R., House*, 744 South W. Temple St. [5/01/87]

[FR Doc. 88-6107 Filed 5-23-88; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 440

Ore Mining and Dressing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 440

[FRL-3361-7]

Ore Mining and Dressing; Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes effluent limitations guidelines and standards limiting the discharge of pollutants into navigable waters by existing and new sources that conduct gold placer mining operations. The Clean Water Act and a consent decree require EPA to issue this regulation.

This regulation establishes effluent limitations guidelines based on "best practicable technology" (BPT) and "best available technology" (BAT), and new source performance standards (NSPS) based on "best demonstrated technology".

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on June 7, 1988. This regulation shall become effective July 7, 1988.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The compliance date for new source performance standards (NSPS) is the date the new source begins operations.

ADDRESSES: Address questions on the final rule to: Mr. Willis Umholtz, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Gold Placer Mine Rules. The basis for this regulation is detailed in four major documents. See Supplementary Information (under "XV. Availability of Technical Information") for a description of each document. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-6000). Technical information may be obtained by writing Mr. Willis Umholtz, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by calling 202/382-7126. Additional economic information may be obtained by writing Mr. Mitchell Dubensky, Economic Analysis Branch (WH-586), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or by calling 202/382-5388.

The record for the final rule will be available for public review not later than July 28, 1988, at the EPA Public Information Reference Unit, Room 2904 (Rear) (EPA Library).

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall, 202/382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Scope of this Rulemaking
  A. Overview of the Subcategory
  B. Prior EPA Regulations
III. Summary of Legal Background
  A. Best Practicable Control Technology (BPT)
  B. Best Available Technology (BAT)
  C. Best Conventional Pollutant Control Technology (BCT)
  D. New Source Performance Standards (NSPS)
IV. Summary of Data Gathering, Analysis Methodology, Proposed Regulation and Notices of New Information
  A. Notice of Proposed Rulemaking
    1. Data Gathering Efforts Before Proposal
    2. Proposed Regulation
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I. Legal Authority

This regulation is being promulgated under the authority of sections 301, 304 (b), (c) and (e), 306, 307, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987) (the Act), 33 U.S.C. 1311, 1314 (b), (c) and (e), 1315, 1317, and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217; 101 Stat. 7, Pub. L. 100-4 ("the Act"). This regulation is also being promulgated in response to the Consent Decree in *Trustees For Alaska v. Thomas*, No. A85-440 (D. Alaska, May 7, 1986) as modified February 1, 1988.

II. Scope of this Rulemaking

This final regulation, which was proposed on November 20, 1985 (50 FR 47982), establishes effluent limitations guidelines and standards for existing and new source gold placer mine facilities.

This preamble describes the legal authority and background, the technical and economic bases, and other aspects of the final regulations. The abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

This final regulation is supported by four major documents, three of which are available from the National Technical Information Service. Analytical methods are discussed in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants." EPA's technical conclusions are detailed in the "Development Document for Effluent Limitations Guidelines and Standards for the Gold Placer Mine Subcategory of the Ore Mining and Dressing Point Source Category." The Agency's economic analysis is found in "Economic Impact Analysis of Effluent Limitations Guidelines and Standards for the Gold Placer Mine Subcategory."

A. Overview of the Subcategory

The gold placer mine subcategory is comprised of facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore. A placer is a superficial gravel or alluvial deposit often deposited by flowing water. These deposits can be mined by open cut or dredge methods and the gold containing placer material processed to separate the gold from the remaining materials (gangue). Water is used as a hydraulic media to allow gravity separation of the metallic gold particles from the gangue using any of a variety of processing equipment such as sluices, jigs spirals, tables, etc. The water after use as a separation media carries large amounts of suspended soil materials including metals characteristics of the gangue being removed. A more complex discussion of gold placer mining is found in the preamble to the proposed regulation (50 FR 47982).

There were a total of 457 open cut gold placer mines operating in 1986 in the United States. Of this total 192 operated in Alaska and 265 operated in the 48 conterminous states (lower 48). In addition to the open cut placer mines there were five dredges operating on shore in Alaska and one in the lower 48. EPA estimates that nationwide 1,750 persons were employed in open cut mines and about 170 persons were employed in dredge operations. In Alaska 850 persons were employed in open cut mines and about 100 persons were employed in dredge operations. EPA also estimates that nationwide, the open cut mines processed 17.75 million cubic meters (23.22 million cubic yards) of ore to produce about 284,000 troy ounces of fine gold. In Alaska, mines processed an estimated 8.24 million cubic meters (10.78 million cubic yards) of ore to produce 172,300 troy ounces of fine gold. Nationwide, the raw wastes from open cut mines include 2,005,000 metric tons (kkg) (2,206,000 tons) total suspended solids (TSS) and 467,400 kilograms (kg) (1,208,300 lbs) toxic metals. In Alaska the raw wastes from these operations included 970,400 kkg (1,067,400 tons) TSS and 213,500 kg (469,700 lbs) toxic metals. All of the gold placer mines and dredges are direct dischargers and there are no known indirect dischargers.

B. Prior EPA Regulations

EPA already has promulgated effluent limitations guidelines and standards for twelve subcategories in the Ore Mining and Dressing Point Source Category. This regulation for gold placer mines is an additional subcategory of the Ore Mining and Dressing Point Source Category. A more complete history of the EPA regulations of ore mining and dressing is contained in the preamble to the proposed regulation (50 FR 47982).

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," section 101(a). To implement the Act, EPA was to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the District Court. This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants for 21 major industries. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979), modified by additional orders of October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984, January 7, 1985, April 24, 1986 and January 8, 1987. Promulgation of the Ore Mining and Dressing Point Source Category regulation 40 CFR Part 440 (49 FR 54598, December 3, 1982), satisfied the requirements of the 1976 Consent Decree with regard to the ore mining and dressing category. Therefore, today's regulation is not issued pursuant to that agreement.

Many of the basic elements of the Settlement Agreement were incorporated into the Clean Water Act of 1977. Like the agreement, the Act stressed control of toxic pollutants, including the 65 priority pollutants. In addition, to strengthen the toxics control program, section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMP") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

On August 5, 1985, the Trustees for Alaska sued EPA in Federal District Court in the District of Alaska seeking an injunction requiring the Agency to complete this rulemaking. In a consent decree entered into by the parties and approved by the Court, EPA agreed to promulgate this regulation by October 30, 1987. *Trustees for Alaska v. EPA*, No. A85-440 Civ. (D. Alaska, May 7, 1986). In October of 1987, EPA filed with the Court a motion to modify the Consent Decree to provide the Agency until May 9, 1988, to complete the rulemaking on the grounds that the Agency needed more time to conduct additional data gathering and analysis activities that had not been contemplated in the previous schedule. The Court granted the Agency's motion on February 1, 1988.

Under the Act, the EPA is to establish a number of different kinds of effluent limitations guidelines and standards. These are discussed in detail in the preamble to the proposed regulations and in the Development Document. They are summarized briefly below. The Act directs EPA to promulgate Pretreatment Standards for Existing and New Sources (PSES and PSNS) to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of a publicly-owned treatment works (POTW). EPA is not promulgating pretreatment standards because there are no indirect discharging gold placer mines and, in light of the nature of this industry, none are anticipated.

A. Best Practicable Control Technology (BPT)

BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory.

In establishing BPT limitations, EPA considers the total cost in relation to the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, and nonwater

quality environmental impacts (including energy requirements). The total cost of applying the technology is balanced against the effluent reduction.

B. Best Available Technology (BAT)

BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the costs and economic impact of achieving such effluent reduction, and nonwater quality environmental impacts. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

C. Best Conventional Pollutant Control Technology (BCT)

The 1977 Amendments added section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: Biochemical oxygen demanding pollutants (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be established in light of a two part "cost-reasonableness" test, *American Paper Institute v. EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works to achieve similar reduction of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA first published its methodology for carrying out the BCT analysis on August 19, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

A revised methodology for the general development of BCT limitations was proposed on October 29, 1982 (47 FR 49176), and promulgated August 22, 1986 (51 FR 24974).

D. New Source Performance Standards (NSPS)

NSPS are based on the best available demonstrated technology (BDT). New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

IV. Summary of Data Gathering, Analysis Methodology, Proposed Regulation and Notices of New Information

The data gathering efforts and data analysis methodology used in developing this regulation have been described in detail in the proposal for this regulation and the two notices of new data (See 50 FR 47982, 51 FR 5536 and 52 FR 9414). The following is a brief summary of those efforts.

The Agency's collection of data on gold placer mines began in 1974 when work was initiated on the regulation of ore mining. Gold placer mines were not regulated when the ore mining regulation was promulgated in 1977 due to an insufficient data base on gold placer mining. Data collection was accelerated through field expeditions until proposal of this regulation in 1985. The need for further information was demonstrated by the comments on that proposal and additional data was collected during the 1986 mining season. Data has been collected directly by the Agency personnel and contractors from state and other agency publications, from public and private statements by the industry and other groups, and from comments on the proposed regulation and notices of new information.

A. Notice of Proposed Rulemaking

1. Data Gathering Efforts Before Proposal

Prior to proposing this regulation in 1985, EPA collected technical and financial data during the 1983, 1984 and 1985 Alaska mining seasons. The 1983 data collection effort consisted of site visits to 60 gold placer mines where EPA conducted detailed sampling and engineering surveys. In 1984, personnel from EPA Region X studied seven gold placer mines (the Trend Study), and EPA headquarters staff and Agency contractors visited 20 additional mines in Alaska. Of these 20 gold placer mines, 10 were selected for detailed study. EPA contractor personnel also visited six gold placer mines in the lower 48 during the summer of 1984 to obtain operational, economic and water quality data. EPA conducted treatability (settling tube) tests at 11 Alaska gold placer mines in 1983 and at 10 mines in 1984. These tests evaluated simple settling and chemically-aided settling on gold placer mine wastewater. At 10 of the sites visited in 1984, the tests included the analyses of settleable solids ("SS"), total suspended solids ("TSS"), turbidity, and 124 toxic pollutants measured in the effluent from treatment.

EPA evaluated the capital and total annual costs for placer mines to install pollution control technologies based on engineering estimates of capital requirements and costs of constructing and operating the technologies. To assess the impact of these regulatory expenditures and the economic viability of placer gold operations, EPA developed a model mine analysis which considered the economic impacts of these compliance costs on various size operations.

2. Proposed Regulation

EPA evaluated three technologies for the proposed regulation: Settling ponds, recycle of process water, and chemically-assisted settling. EPA considered various configurations which combined the use of these technologies. (See 50 FR 47982).

EPA proposed not to establish effluent limitations guidelines and standards for open-cut mines processing less than 20 cu yd per day. The intermittent nature of these operations and the small size of these mines made it likely these mines were not a major source of pollution and made it more appropriate to develop limitations on a case by case basis.

For open-cut mines processing greater than 20 cu yd of ore (or pay dirt) per day, EPA proposed that BPT limitations be based upon the use of simple settling technology, since the use of ponds for settling was a demonstrated and familiar technology in the industry and all NPDES permits issued by EPA to placer mines contain limitations based on the use of settling pond technology. EPA rejected the use of chemical flocculants to assist settling on the grounds that flocculants had not been used under full-scale conditions and more study of this treatment technology was needed. EPA did not propose total recycle of process wastewater as the basis for BPT since recycle is an in-process as opposed to end-of-pipe technology. EPA proposed BPT

limitations of 0.2 ml/l of SS and 2,000 mg/l of TSS. The field data collected by the Agency and data from discharge monitoring reports submitted by placer miners to EPA indicated that properly designed settling ponds were capable of reducing SS levels in placer mine wastewater to below 0.2 ml/l. The Agency proposed a BPT limitation of 2,000 mg/l TSS on the basis of an analysis of settling data collected by the Agency.

For large dredges processing greater than 4,000 cu yd of pay dirt or ore per day, the proposed regulation would have required no discharge of process wastewater based on 100 percent recycle of process wastewater from the beneficiation process. The model technology used as the basis for the proposed standard was recycling of process water from the pond in which the dredge floats; information available to the Agency at that time indicated that at least 2 dredges recycled their process wastewater and discharged excess infiltration water from the dredge pond.

For open-cut mines processing between 20 and 500 cu yd of ore per day and for large dredges, EPA proposed BCT limitations based on the same technologies proposed as the basis for BPT for these subcategories. For open-cut mines processing greater than 500 cu yd of ore per day, EPA proposed BCT limitations more stringent than BPT by requiring no discharge of process wastewater. At the time of proposal, EPA had not yet finalized its BCT cost test methodology and the Agency planned to apply the final cost methodology in evaluating options for the final regulation.

For open-cut mines processing between 20 and 500 cu yd of ore per day, EPA proposed BAT limitations equal to BPT. The Agency declined to propose BAT limitations based on more stringent control technologies since the Agency's economic analysis indicated that recycling of process water was not economically achievable for these mine sizes. For open-cut mines processing greater than 500 cu yd of ore per day and large dredges, EPA proposed BAT limitations based on total recycle of process water.

In the proposal, EPA indicated that the Agency was not setting limitations for arsenic and mercury and other toxic pollutants since EPA data indicated that these pollutants are in particulate form and would be removed by the proposed limitations on solids.

EPA proposed NSPS equal to BAT and BCT. EPA was unable to identify any more stringent technologies that could control process wastewater pollutants from open-cut mines processing greater than 500 cu yd of ore per day, or from large dredges. For open-cut mines processing between 20 and 500 cu yd of ore per day EPA declined to propose NSPS more stringent than BPT and BAT because the Agency believed that more stringent limitations may have been a barrier to entry into the industry.

The 1985 proposal also contained specialized provisions relating to storm exemptions and combined waste streams. The proposed storm exemption would have provided an affirmative defense in an enforcement action for violations which occur during and immediately after any precipitation as long as the treatment system was designed, constructed and maintained to contain or treat the maximum volume which would be discharged or recycled (depending on the applicable limitations) by the beneficiation process during a 6-hour period plus the maximum volume of wastewater resulting from a 5-year, 6-hour precipitation event.

For those mines subject to effluent limitations prohibiting the discharge of process wastewater, the proposed definition of "combined waste streams" would have allowed the discharge of a volume of wastewater that was equal to the quantity of mine drainage or ground water which is commingled with process wastewater as long as the discharge met limitations of 0.2 ml/l SS and 2000 mg/l TSS. In effect, for mines required to meet limitations based on recycling of process wastewater, the proposed combined wastestreams provision would have allowed discharges of "excess water", due to ground water infiltration, or other non-process sources, so long as the discharge met limitations based on simple settling technology.

B. First Notice of New Information (First NOA)

During the 1985 mining season, EPA conducted data gathering and analysis activities the results of which were presented for public comment in a notice of availability of new information on February 14, 1986 (51 FR 5563) ("First NOA"). EPA conducted a study to determine the Method Detection Limit (MDL) for the measurement of settleable solids. The Agency determined that the MDL was 0.2 ml/l, based on tests performed at 10 mine sites. (See discussion in Section V of this notice). The Agency also presented additional technical and economic data collected during the 1985 mining season.

C. Second Notice of New Information (Second NOA)

On March 24, 1987 (52 FR 9414), EPA published a Second NOA which solicited public comment on data gathering activities conducted during the 1986 mining season, new methodologies being employed by the Agency to estimate the costs and economic impacts of the regulation, and new regulatory alternatives being considered by the Agency in light of this new information.

1. Data Gathering Efforts in 1986

The studies conducted by the Agency during the 1986 mining season included the following: A field testing program conducted at eight mines in Alaska, studies on the performance of simple settling and chemically-aided settling to treat placer mine wastewater, analysis of the presence and removal by simple settling and chemically aided settling of 68 metals in mining effluent, and a study on the effect of high levels of TSS (simulated recycling conditions) on fine gold recovery.

2. New Regulatory Alternatives

In response to comments received regarding costs and impact methodologies presented in the November 1985 proposal, EPA made substantial revisions to its methodologies to better reflect actual conditions in the industry. Most of the changes were designed to make the impact analysis reflect the great variability among placer mining operations. The revised economic methodology applied variable cost factors which adjusted baseline operating costs according to site specific factors which are likely to affect the costs of operating at a particular site. The Agency also revised the economic impact models to reflect variability in parameters such as ore grade and fineness which vary from site to site and which have a significant impact on the revenues of mine operations. A complete discussion of the Agency's revised methodologies and impact analysis is contained in the Second NOA (See 52 FR 9428–9433).

In light of new data and revised methodologies, the Second NOA presented new regulatory alternatives being considered by the Agency. EPA stated that it was considering basing BCT and BAT limitations and NSPS for all sizes of open cut mines on total recycle of process wastewater. Furthermore, the Agency stated that it was considering adopting BCT and BAT limitations and NSPS for dredges, and medium and large open-cut mines based

on recycle of process wastewater and chemically aided settling of any excess wastewater that needed to be discharged.

The Agency also stated in the Second NOA that it was considering deleting the 2,000 mg/l TSS effluent limitation proposed for BPT, BCT and NSPS. After considering comments on the proposal, examining new data and reconsidering data available at proposal, the Agency determined that settling characteristics of solids as measured by TSS vary dramatically depending on the soil type at a particular site. Suspended particulate matter may settle qquickly, or conversely, remain suspended for extended periods depending on the soil characteristics of a specific mine site. The data collected by the Agency confirmed that simple settling did not consistently control TSS in placer mining effluent. Therefore, for those limitations based on simple settling, the Agency was considering adopting limitations on settleable solids only.

Furthermore, the data collected on metals in raw and treated effluent from gold placer mines indicated that metals in placer mining discharges are associated with solids and are removed along with the solids to varying degrees depending on site-specific soil characteristics. Because of this variability, the Agency found that it was not possible to set nationally applicable, uniform effluent limitations guidelines and standards for metals based on simple settling technology. Nonetheless, the Agency concluded that metals were adequately controlled by the proposed treatment technologies.

V. Control and Treatment Technology Options and Basis for Final Regulation

A. Control and Treatment Technologies

The BPT and BAT limitations and new source performance standards in this regulation were determined after an evaluation of several technologies that reduce solids and toxic metals found in gold placer mine wastewater. Those technologies are described in detail in the proposal, the two NOAs and the final development document.

1. Simple Settling Technology

Simple settling is allowing the suspended solids in gold placer mine wastewaters to fall out of suspension under the force of gravity in a quiescent environment. The Agency examined a variety of technical issues related to this technology, which are discussed below.

Method Detection Limit. The data base for determining the Method Detection Limit (MDL) of settleable solids was gathered by EPA using protocol sampling and analysis of inffluent and effluent wastewater samples at ten gold placer mines during the 1985 mining season. Standard EPA sampling and analysis procedures for determining an MDL were employed. These procedures require seven replicate measurements on each sample. For each replicate measurement, the mine owner, the EPA contractor and an EPA engineer read and recorded the settleable solids measurement. The samples thus analyzed in the field were sent to the EPA lab in Cincinnati for an additional analysis. These SS measurements were then compared statistically using an analysis of variance methodology. The results of the analysis comparing the three separate measurements provided additional support and validation for the settleable solids MDL of 0.2 ml/l. Notice of the MDL and the methodology used to obtain it was provided in the First NOA.

Raw Waste—Total Suspended Solids Content (TSS). The concentration of total suspended solids contained in raw or untreated wastewater from gold placer mines was determined based on data from 31 mines sampled in 1983, 1984, 1985, and 1986. A total of 153 samples were taken and analyzed during this period.

Some of the mines were sampled more than once during the four-year sampling period. The data from each individual mine were averaged into one data point for that mine so as to not give more weight in the analysis to mines with a large number of samples. Then the data from the 31 mines were statistically combined to determine the average raw waste. Using this data and analysis procedure, the average level of suspended solids in the untreated placer mine wastewater was determined to be 20,000 mg/l.

Treatment Effectiveness. The treatment effectiveness of simple settling has been evaluated by observing in-place treatment and performing settling tests on-site operating gold placer mines. During the mining seasons of 1983 through 1986, EPA sampled 52 gold placer mines. These data were analyzed and used to determine the Method Detection Limit for settleable solids (SS), the mean level of solids in raw wastewaters from gold placer mines, the solids levels in gold placer mine wastewaters after treatment, the metals levels before treatment and metals removals achieved in treatment of these wastewaters. The record of this rulemaking contains the complete reports of the studies and analysis referred to below.

The Agency conducted settling tests at 8 gold placer mines in 1986. However, only five of these mines were suitable for further analysis of the effect of treatment on TSS and metals (one mine was using thaw-field water in its gold recovery circuit and the process wastewater generated by this practice is not characteristic of process wastewater generated solely through the gold recovery process, one was not operating the gold recovery process and one was operating intermittently during the sampling period). The effluent from these five gold placer mines was placed in settling tubes and allowed to settle under quiescent conditions. The level of settleable solids for all five mines was reduced to the MDL within three hours of quiescent settling. One of the three mines sampled and found not suitable for further analysis in 1986 was a dredge operation. As noted above, because this dredge operation was allowing thaw-field wastewater to enter the treatment system and the resulting TSS and metals levels were not characteristic of the levels generated solely through the gold recovery process, EPA did not include the data from this dredge in calculating TSS and metals removals achieved with the modern technologies. However, EPA has relied on the data from this operation in assessing the removals of settleable solids that can be achieved with simnple settling applied to dredge operations. The data indicate that, even with the inclusion of thaw-field wastewater, settleable solids in the effluent were reduced to below 0.2 ml/l in less than 4 hours of quiescent settling. The additional time needed to reach this level may be attributable to the high organic solids levels usually encountered in the thaw-field effluent, which may have impeded settling.

The Agency is relying on the data from 1986 as a basis for the treatment effectiveness of simple settling. The results of the settling data collected durign 1984 confirm that 0.2 ml/l can be achieved with quiescent settling but these tests do not define the actual settling time required. The Agency has not relied on data collected in the 1983 tests since mosts measurements were taken after only 2 hours of settling.

During the 1983 through 1986 mining seasons, EPA collected 73 samples at 39 Alaska gold placer mines measuring the effectiveness of in-place settling ponds. These data indicate that properly designed and operated ponds reduce SS levels to below 0.2 ml/l prior to discharge. Ponds which did not achieve this level had discernable design or operating deficiencies. These in-place treatment data confirm that the level of settleable solids in gold placer mine wastewater can be reduced to below the

MDL of 0.2 ml/l with the use of settling ponds.

The data collected by EPA are supported by discharge monitoring reports (DMRs) submitted by placer miners operating during the 1984 season. In fully completed DMRs from 107 mines, 26 reported 0.2 ml/l or less of SS in over 2,600 individual samples. These data show that about 25 percent of the mines consistently achieve the MDL; however, there is no information relating these SS levels to retention time. Since data collected directly by EPA indicate that 0.2 ml/l settleable solids is achievable where ponds are designed and maintained to achieve the required settling time, EPA believes that those mines which reported 0.2 ml/l or less in their DMRs are representative of the average of the best treatment systems; i.e., those which are properly designed and operated.

Simple settling did not perform reliably in achieving a consistent removal of TSS. Data from the 15 mines sampled in 1985 and 1986 showed wide variations in the residual TSS (after simple settling) ranging from 20 mg/l to 2,400 mg/l. Even allowing the samples to settle for 24 hours did not achieve a consistent level of TSS. EPA believes this wide variations is related to the soil being processed at the various mines and the particle size of the fine suspended materials. A statistical analysis of data showing this wide range of values would not produce a meaningful performance standard for the technology. Because of this variability, TSS has not been used as a measure of the performance of simple settling for gold placer mines. (See discussion in Section V. C., below.)

EPA relied on the data gathered on the performance of simple settling in removing SS in order to estimate the costs of constructing settling ponds necessary for wastewater treatment and water recirculation. Since the technology has been show to remove all SS in open cut mine wastewater to the MDL in three hours or less, this becomes the apparent retention time required for the technology to function properly. However, since ponds are rarely perfect settling devices because of the tendency of water to channel in the entrance and exist areas of the ponds (called end effects), a pond volume equivalent to four hours of water flow has been used in the Agency's estimate of baseline costs. EPA believes the additional settling time will adequately compensate for any effects that may occur.

As noted above, the settling data for a dredge operation studied by the Agency indicated that 0.2 ml/l SS was achieved within four hours, and the slightly longer time may have been due to the influx of thawfield wastewater to the treatment facility. EPA believes that dredges not conducting thawfield operations generate wastewater that is similar to that generated by open-cut mines, since both dredges and open-cut mines use the same methods for gold recovery. Therefore, the costing analysis performed by the Agency has evaluated the costs for dredges, like open-cut mines, to build four-hour settling ponds. However, in recognition of the fact that wastewater from dredges conducting thawfield operations may require a slightly longer settling period, EPA has estimated the increased costs for dredges to build ponds capable of retaining wastewater for six hours. That analysis indicates that the cost of building six-hour ponds would only be less than one percent more than the cost of building four-hour ponds. This slight cost increase is not significant and would not alter the Agency's conclusions (described in Section V. C., below), regarding BPT and BAT technologies applicable to dredges.

Metals removal. In the 1986 mining season the Agency conducted extensive analysis of metals in raw untreated wastewater and treated wastewater discharged at eight gold placer mines in Alaska. As explained above, three of these mines were unsuited for metals analysis and data from those mines, therefore, were not included in the Agency's analysis. At the time of the analysis two of the remaining five mines were recycling some water while three were not recycling. Total suspended solids, settleable solids and metals were analyzed in the raw wastewater and after simple settling. These data were used to estimate the metals removal and treatment effectiveness for simple settling and recirculation followed by simple settling. As discussed below, these data also verify the indicator relationship between solids removal and metals removal achieved by simple settling.

The chemical analysis data and the mathematical analysis of that data are included in the administrative record of this rulemaking. They show that the average raw waste level for TSS was 20,000 mg/l; after simple settling, the average TSS level was 1,670 mg/l and the SS level was less than 0.2 ml/l. The sum of the average concentrations of the thirteen toxic metals present (Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Selenium, Nickel, Thallium, Silver and Zinc) in the raw waste was 7.494 mg/l. After simple settling the level of the sum of these toxic metal concentrations had been reduced to 1.283 mg/l. Many of the individual values of the toxic metals after settling were below the detection limit of the analytical method for the metals. For purposes of estimating the average removals, EPA assumed that levels below the detection limit were equal to one-half of the detection level. EPA made this assumption because the precise level of the pollutant below the detection limit could not be ascertained. Since the range of possible values is between zero and just below the detection limit, EPA believed it was reasonable to assume the residual levels were in the mid-point of this range, i.e., one-half of the MDL. As discussed further below, the metals removal is incidental to and is related to the removal of suspended solids.

Indicator Pollutants. In some cases, it may not be feasible to limit directly each toxic pollutant present in a wastewater stream. In such cases EPA may establish limitations on other pollutants which have a surrogate or indicator relationship to toxic pollutants. A surrogate relationship occurs between a toxic pollutant and a set of commonly regulated parameters when the concentration of the regulated parameter is used to predict the concentration of the toxic pollutant. When the concentration of the regulated parameter is used to predict whether or not the toxic pollutant level will be reduced, it is an indicator relationship. In the first instance the regulated parameter is called a surrogate and in the second, it is called an indicator.

A statistical analysis of the TSS and SS and metals concentration data collected during the 1986 mining season in Alaska indicates that the removal of solids, when measured either as SS or TSS, is associated with substantial reduction of the concentration of all of the toxic metals in the treated wastewater. However, the strong mathematical relationship between solids removal and metals removal necessary for prediction was not established. Therefore, the data indicate that both SS and TSS are indicators of, but are not surrogates for, toxic metals removal.

2. Wastewater Reduction

Reduction of the quantity of wastewater discharged from the gold recovery process represents one significant means of reducing the pollutants discharged to the waters of the United States. The model technology selected to achieve this reduction is recirculation of all process water used in the gold recovery process. Recirculation of process water is achieved by

withdrawing all of the process water from the settling ponds and returning the process water to the same settling ponds after use in the beneficiation process. The term recirculation is being used because it more correctly describes the in-process change necessary to reduce process water discharges than the term recycle used in previous notices. The water used for beneficiation is an integral part of the gold recovery process since the hydraulic flow is the means by which the gold is separated from other solid particles. Altering the source and solids content of the process water, therefore, entails a basic change in the gold recovery process itself.

Under most mine conditions, water incidentally enters a mine through rainfall, snow melt, surface runoff and subsurface incursion. While properly designed and constructed water diversion structures will reduce the amount of water which will accumulate in a mine, the incidental influx of water cannot be completely stopped. Since the gold recovery process is inherently a water consuming process due to the wetting of the soils in the ore, the incidental water which accumulates in a mine may be used as make up water for the gold recovery process. Water which incidentally enters the mine in excess of the amount of water needed for make up water must be collected and discharged. Because this excess incidental water usually mixes with the process water, this regulation allows the excess water from this mixture which is not used for gold recovery to be discharged after treatment. Under this regulation, the addition of new water is allowed only when the recirculated water is insufficient to operate the gold recovery process, and then only to the extent necessary to make up for any water deficit in the gold recovery process.

During the 1986 mining season, the Agency observed five gold placer mines in Alaska that were recirculating process water. Information provided by the state of Alaska indicates that about 30 percent of the gold placer mines in Alaska expected to operate in the recycle mode during at least some part of the 1984, 1985 or 1986 mining seasons; however, the data do not indicate whether these mines discharged (blowdown) water from their recirculation system. Another 30 percent of the gold placer mines indicated they expected to recycle some portion of their wastewater. In the lower 48 states, about one fourth of the gold placer mines for which EPA has data report that they have no discharge of gold recovery process wastewater.

During the 1985 and 1986 mining seasons the Agency studied the effect of high suspended solids in the sluice water on the recovery of gold. Comments had alleged that complete recirculation of gold recovery process water was not feasible because the high level of solids suspended in the recirculated water would have serious deleterious effects on the recovery of gold. This study demonstrated that the recovery of gold in a sluice operation is essentially unaffected by levels of suspended solids substantially higher than normally encountered in the process water that is recirculated through the gold recovery process.

3. Chemically Assisted Settling

The Agency conducted a study of the effectiveness of adding polymers to aid in the removal of suspended solids by settling. This procedure was tested using settling tubes and in field tests. The results were promising, indicating that chemically aided settling might achieve long term average TSS levels below 100 mg/l.

However, as discussed further in Section V. C., below, these tests were not sufficiently detailed and extensive to demonstrate the full applicability of this technology to the placer gold mines generally. Further testing and demonstration are necessary before this technology could reasonably be selected as the basis for BAT limitations.

A. Other Technologies Considered

The Agency also considered but rejected the establishment of mass-based production-related limitations for all gold placer mines based on water use control technology. EPA could not obtain adequate data on the quantity of water actually needed to process the gold ore through the gold separation device (usually a sluice box). The amount of water actually used seems to vary with the number of poorly defined conditions such as the amount and types of clay in the ore and the mining which previously may have been done at the present mine site (much of the present gold placer mining in Alaska is re-mining once or twice mined gold sands). In this regard, the Agency considered requiring greater water use efficiency by specifying water use rates which could only be achieved with specific types of gold recovery equipment. This option, which would have allowed a discharge of pollutants related to the quantity of ore mined, was rejected for lack of adequate data and because it was less stringent than the option of complete process water recirculation which in effect requires no discharge of pollutants except those resulting from the influx of excess water.

Filter dams were evaluated under the Alaska Department of Environmental Control (ADEC) grant program and found to reduce solids discharge from mine wastewaters but their applicability and effectiveness are site specific. Hence, they are not suitable as the basis for nationally applicable effluent limitations guidelines and standards.

Tundra filtration allows the filtering action of the vegetative cover of the tundra to strain out solids as a thin layer of mine wastewaters is allowed to flow over the surface vegetation. This technology raises serious and unresolved questions about the possible long term effect on the fragile tundra. This solids removal technology also appears to be highly site specific and therefore it is judged to be unsuitable as a basis for this regulation.

5. Innovative Technologies

EPA is encouraging the use of innovative technology through the application of the innovative technology provision of the CWA contained in section 301(k). Many comments pointed out the need for site-specific latitude to employ innovative technology and to promote development of new technologies. The CWA allows such latitude for development and application in section 301(k), which authorizes the Agency to grant an extension of up to two years for compliance with BAT if a facility uses an innovative technology which provides a significantly greater level of effluent reduction than that achieved at BAT, or equivalent reduction at lower cost, and which has the potential for industry-wide application.

B. Subcategorization

In developing this regulation, it was necessary to determine whether different effluent limitations guidelines and standards were appropriate for different segments of the subcategory. The major factors considered in assessing the need for further segmentation and in identifying such segments included: Waste characteristics, types of water use, water pollution control technology, treatment costs, solid waste generation, size of mine, age of equipment, number of employees, total energy requirements, nonwater quality characteristics, and unique plant and site characteristics. These factors are discussed more fully in Section IV of the development document for this subcategory.

In the November 1985 proposal, EPA divided the placer mining industry into several subcategories according to mine size and type for purposes of establishing effluent limitations guidelines and standards. First, EPA proposed distinguishing between dredges and other types of mining operations, since dredges represent a physically different means of mining placer deposits compared with separate earth-moving and sluicing equipment. (See 50 FR 47988.) The final regulation also addresses dredges and other types of mining operations separately, in light of the clear operational distinctions. However, the BPT, BAT limitations and NSPS are the same for dredges and other mine types.

In November 1985, EPA proposed not to regulate mines processing less than 20 cubic yards of ore per day under this regulation and dredges operating in open waters. As explained in Section IX. B., below, the final rule does not cover these operations. Furthermore, the final rule does not establish effluent limitations guidelines and standards for dredges processing less than 50,000 cubic yards of ore per year, for the reasons described in Section IX. B. EPA emphasizes, however, that the exclusion of these facilities from the coverage of this regulation does not alter their duty to obtain NPDES permits for their discharges.

The proposal divided the open-cut mines processing greater than 20 cubic yards of ore per day into two subcategories: those processing less than 500 cubic yards of ore per day and those processing more than this amount. Data available at that time indicated that mines processing less than 500 cubic yards of ore per day were not profitable in the baseline (i.e., prior to imposing costs of pollution control), whereas mines processing in excess of this amount were generally profitable. On the basis of this distinction, EPA proposed more stringent requirements at BCT, BAT, and NSPS for the larger size mines.

In the Second NOA, EPA stated that it was considering subcategorizing open-cut mines and dredges on the basis of yearly, as opposed to daily production volumes. The Agency also indicated it was considering dividing open-cut mines into 4 subcategories. With regard to BAT limitations and NSPS, the Agency stated that it was considering adopting limitations based on recycling as the model technology for all mines, regardless of size.

The final regulation contains identical limitations for all open-cut mines processing more than 1,500 cubic yards of ore per year which corresponds to approximately 20 cubic yards of ore per day. At BPT, all regulated mines are required to meet limitations based on simple settling. BAT limitations and NSPS require all regulated mines to meet limitations based on recirculation of process water and simple settling of excess water, since the Agency's economic data and analysis indicate that these model technologies are economically achievable for all regulated mine sizes. (See discussion in Section VI, below.)

In the proposal, EPA also discussed other factors which it considered but rejected as possible bases for subcategorization. These included factors affecting the cost of doing business such as climate, remote location, and age of equipment. The Agency declined to propose subcategories on these bases, since they do not affect wastewater characteristics. The Agency's economic analysis methodology expressly takes these factors into account in estimating placer mine baseline operating costs. EPA continues to believe that these would not be appropriate bases for subcategorization.

In the proposal, the Agency also mentioned geological characteristics as a possible basis for characterization. EPA believes that subcategorization on this basis is not necessary, since all mines can meet these regulations with properly designed and operated treatment facilities, regardless of soil type at a particular mine. As discussed below, because of soil-type variability, the Agency is not able to set effluent limitations guidelines and standards for TSS or metals based on settling technology. However, it would not be possible to subcategorize in order to account for this variability, since one mine can encounter many different soil types during the course of its normal operations. (See 52 FR 9422.)

In the proposal, EPA stated that it had not taken into account the possible costs to mines operating in steep canyons of constructing settling ponds where there is limited space. The Agency solicited comment on whether alternate limitations should be promulgated for these mines. Since proposal, EPA has incorporated into its cost methodology the possible increased costs to install ponds that may be incurred by mines in steep canyons by assuming that mines would only have sufficient space to install a small pond capable of treating wastewater from one quarter of the operating season. EPA therefore included in its cost estimates the expense of constructing four such small ponds per season. Because the Agency believes that all mines can install settling ponds of the size costed by the Agency, this regulation does not create a separate subcategory for mines operating in steep canyons.

C. Technology Basis and Rationale for Final Regulation

To determine the effluent limitations guidelines and standards promulgated with this notice, EPA evaluated the ability of the above treatment technologies to reduce the discharges of pollutants from placer mining wastewater, the costs to the industry of installing and maintaining pollution control equipment, and resulting economic impacts. The final development document for this subcategory presents a more complete discussion of the model technologies, and the economic impact analysis document discusses fully the economic aspects of this rule. Below is a description of the Agency's rationale for the BPT and BAT limitations and new source performance standards promulgated today.

BPT

EPA proposed BPT limitations, based on simple settling technology, of 0.2 ml/l SS and 2,000 mg/l TSS for all open-cut mines processing greater than 20 cubic yards of ore per day. For dredges processing greater than 4,000 cubic yards of ore per day, EPA proposed limitations prohibiting the discharge of process wastewater.

The BPT limitations for all gold placer mines and dredges in the final regulations are based on simple settling technology. This technology has been observed in widespread use by gold placer mines in all areas of the country. In Alaska, virtually all of the mines observed by the Agency staff and contractors in 1985 and 1986 had some level of simple settling technology installed and operating. As demonstrated in field studies, and discussed above in this preamble, simple settling technology achieves substantial removals of pollutants in gold placer mine wastewater.

EPA proposed BPT limitations for dredges processing greater than 4,000 cubic yards of ore per day based on 100 percent recycle of process wastewater from the dredge pond itself. The Agency proposed more stringent BPT requirements for dredges because available information indicated that all of these operations were recycling process water at a high rate, with two dredges recycling 100 percent of their process water. The Agency also believed that the very nature of the dredge operation made recycle necessary.

Since proposal, EPA has received additional information indicating that, while dredges withdraw water from the dredge pond for gold processing operations, they also discharge water from the dredge pond to control the suspended solids level of the pond. As a result, dredges usually have some discharge (blow down) of water and then introduce new water into the pond in order to maintain a proper level in the dredge pond.

On the basis of this new information, the Agency has modified the model technology from that described in the proposal. The technical support documents presented for public comment with the Second NOA evaluated settling technology for the dredges based on the use of a separate settling pond which treats wastewater to 0.2 ml/l prior to discharge. EPA data indicate that wastewater from dredges can achieve this level. BPT limitations for dredges, like other mines, are based upon this model technology. The final regulation does not require recirculation of process water at BPT, because dredges do not recirculate all process water, as originally believed. However, as discussed below, recirculation of process water is required at BAT, based on recirculation of water from the settling pond into the dredge pond.

As described above, EPA has collected data on the performance of simple settling technology which confirms that a settleable solids level of 0.2 ml/l can be reliably achieved with three hours of quiescent settling (four hours for dredges using thaw-field overflow water). The BPT limitation of 0.2 ml/l is that level which, based on data collected by EPA, is achievable with a settling pond that is properly designed and operated.

While the Agency proposed BPT limitations of 2,000 mg/l of TSS based on simple settling technology, the Agency stated in the Second NOA that is was considering deleting this limitation. The final rule does not contain a BPT limitation for TSS. As noted in Section V above, data collected from 15 mines in 1985 and 1986 show wide variations in residual TSS, even after 24 hours of settling. EPA believes that this wide variation is related to the characteristics of the soil being processed at the various mines and the particle size of the fine suspended solids. Because of this wide variation, the Agency does not believe analysis of the TSS data would yield a meaningful standard of performance for simple-setting technology. That is, there is not a particular level of TSS reduction that EPA believes is associated with the proper functioning of simple-settling technology. Rather, as its name suggests, settleable solids is a pollutant parameter which measures the effectiveness of simple-setting technology. Therefore, the final rule sets BPT limitations for settleable solids only.

As pointed out above, the removals of TSS achieved with simple settling technology vary depending on site-specific conditions such that EPA could not establish nationally applicable, uniform limitations for these pollutants based on simple settling technology. Nonetheless, the data indicate that the use of settling ponds does result in substantial reductions in the discharge of these pollutants, and EPA was able to analyze the data in order to determine the average removals achieved with settling ponds. On the basis of available data, EPA calculated the pollutant removal achieved at BPT. Implementation of the BPT limitations nationwide for mines will remove annually from estimated raw waste 387,600 kilograms (kg) (852,700 lbs) of toxic metals and 1,838,000 metric tons (kkg) (2,021,300 tons) of TSS; for the Alaska gold placer mines 177,000 kg (389,500 lbs) of toxic metals and 889,400 kkg (978,300 tons) of TSS will be removed. As discussed in Section VI of this preamble, EPA has calculated the costs of achieving these pollutant removals at BPT. The total annual cost of achieving BPT at gold placer mines nationwide is $2.42 million; for the Alaska gold placer mines the annual cost is $1.25 million. There is no projected capital cost for achieving BPT.

The Agency has determined that the pollutant reduction benefits associated with compliance justify the costs for this subcategory.

BAT

EPA has selected recirculation of process wastewater as the best available technology for all regulated mine sizes and types.

As discussed previously in this preamble, under most mine conditions, water incidentally enters a mine through precipitation, snow melt, surface runoff and subsurface incursion due to ground water infiltration and the melting of permafrost. While properly designed and constructed water diversion structures will reduce the amount of water which will accumulate in a mine, EPA field demonstrations, flow data, and comments from the industry indicate that in most cases, the incidental influx of water cannot be completely prevented. Because of this problem, the model BAT technology requires recirculation of process wastewater, but allows the discharge of commingled process and excess water after treatment in settling ponds. However, the discharge may not include the flow or volume of water that is used for the beneficiation process. Therefore the model BAT technology is actually a combination of two technologies: recirculation of process wastewater and simple settling of commingled water corresponding in volume to excess, non-process water. The effect of this limitation is to prohibit the discharge of any process wastewater during periods when new water is allowed to enter the plant site.

Water recirculation is a demonstrated and available technology in gold placer mines. As discussed earlier in this preamble it is common practice for some miners to recirculate process water during periods of water shortage. EPA has observed mines practicing recirculation, and data received from Alaska and states in the lower 48 indicate that recycling is practiced in the industry.

The addition of recirculation technology to simple settling technology requires substantial in-process changes. These changes constitute a change in the gold recovery process in that the water circuit is revised to return water containing substantial suspended solids to the gravity separation system instead of applying water that is relatively free of suspended solids to the gold recovery process. The Agency considered this to be a sufficiently significant process change to require confirmation that the change could be accomplished without serious consequences in the gold recovery rate. Also, comments had indicated that high levels of solids in recirculation water would have deleterious effects on gold recovery. Therefore, as described in Section V. A. above, EPA conducted a study during the 1985 and 1986 mining seasons on the effect of high suspended solids levels on the recovery of fine gold. The results of the study indicated that the recovery of gold in a sluice operation is essentially unaffected by levels of suspended solids substantially higher than those normally encountered in recirculated process water.

As stated in the Second NOA, the Agency considered adopting as BAT chemical treatment of wastewater, which involves the addition of polymers to aid in the removal of pollutants. The Agency has not adopted chemically aided settling in establishing BAT limitations because EPA believes that the technology is not a demonstrated, available technology at this time. At present, no placer mine is utilizing chemical treatment technology on a

season-long commercial basis. Furthermore, the tests conducted by EPA were not sufficiently detailed and extensive to demonstrate the full applicability of this technology to placer gold mines. As discussed in section VII of the development document, technical issues which have yet to be resolved include the effectiveness and cost of applying this treatment to the wide range of soils encountered in placer gold mines. Therefore, further testing and study are necessary before this technology could reasonably be selected as the basis for BAT effluent limitations guidelines.

Based on water recirculation and simple settling technologies, the BAT effluent limitations guidelines for all mines state that the volume of water which may be discharged from a plant site shall not exceed the volume that is due to commingling of infiltration and drainage water with process water which is in excess of the amount of make up water needed for operation of the beneficiation process. While the wording of the final rule is different from the proposed regulation, which stated that there shall be no discharge of process wastewater, the meaning of the proposed and the final regulation is identical. Both are based on the recirculation of all water that is needed for gold recovery. EPA believed that the language of the proposed rule could have been somewhat confusing, since the BAT limitations had to be read in conjunction with the specialized provisions defining "combined waste streams" in order to understand that excess, nonprocess water could be discharged after treatment. The final rule deletes the combined waste stream provision but inserts the substance of that provision into the language in the BAT section. The BAT limitations in the final rule are expressed in terms of the flow reduction that is achievable through the application of BAT to gold placer mine wastewater. Meeting this flow limitation will prevent the discharge of a significant portion of the process wastewater pollutants generated by the beneficiation of gold placer deposits. The BAT limitations also specify that the flow of commingled process and excess water which can be discharged must meet effluent limitations of 0.2 mg/l SS, derived on the basis of simple settling technology.

The final rule also contains several new terms that were not included in the proposed rule. These terms have been added for the sake of clarity, and do not alter the substance of the rule. These terms include "new water," "plant site," and "drainage water." Furthermore, the proposed rule would have applied the definitions for the ore mining and dressing category contained in Part 440, Subpart L, to the gold placer mine subcategory, except as superseded by definitions contained in the proposed rule. For the sake of clarity and simplicity, the final rule provides that Subpart L of Part 440 does not apply to this subcategory, and defines these terms from Subpart L which are relevant to gold placer mining. These terms are "mine," "mine area," and "mine drainage." The definitions are equivalent or similar to those contained in Subpart L. Where the definitions in this rule differ slightly from those contained in Subpart L, the changes were made for the sake of clarity and are not intended to reflect any substantive differences from the proposed rule.

Other minor definitional changes from proposal include the definition of "process wastewater," which at proposal only included water used and resulting from the beneficiation process. The definition of process wastewater in the final rule also includes mine drainage, drainage and infiltration water which commingle with water from the beneficiation process. This definition essentially inserts the substance of the combined waste streams into the process wastewater definition.

Also, the definition of "infiltration" in the final rule has simplified the definition of groundwater infiltration contained in the proposed rule. Finally, the definition of ore in the final rule combines the definitions of "gold placer deposit" and "ore pay dirt" contained in the proposed rule. The substance of the proposed rule have not been altered by any of these changes. Also, the term "opencut mine" is defined in the final rule to eliminate any possible confusion about the meaning of the term as used in this rule.

The final rule does not contain limitations for metals which have been found in placer mine wastewater. As stated in the preamble to the proposal, EPA's data indicate that metals which are discharged from placer mine operations appear to be associated with the solids. EPA reached this conclusion on the basis of a statistical analysis of the correlation between removals of TSS, arsenic and mercury. During the 1986 mining season, EPA conducted an extensive analysis of metals in treated and untreated wastewater. Settling tube tests conducted with polymer addition indicated that when TSS levels were reduced to low levels, the metals were, by and large, reduced to levels below their detection limits. These polymer settling tests demonstrated that metals in placer mines wastewater are in the particulate form and particulate metals are removed through treatment technologies that are designed to remove solids.

Even though there are no BAT limitations which control metals directly, the BAT limitations in this rule will adequately control the discharge of metals. By requiring recirculation of process water and thereby reducing significantly the volume of wastewater discharged, the BAT limitations will result in a corresponding substantial reduction of metals discharged to the receiving stream.

As described in the Second NOA, the actual levels of metals that are achieved at mines using settling ponds will vary depending upon the settling characteristics and metals content of the soil at a particular mine site. For this reason, it is not feasible to ascertain a precise level that is achievable with settling technology and which could thereby serve as a nationally applicable, uniform effluent limitation guideline. Settling ponds are designed to control solids and the Agency has not identified a treatment technology which has been demonstrated to control directly the metals content of placer mine wastewater. Nonetheless, because the metals have been demonstrated to be in particulate form and removed through solids removal, the BAT limitation of 0.2 ml/l of SS will result in substantial removals of metals in placer mine wastewater, in addition to the metals that are prevented from discharge through recirculation of process wastewater. EPA has not identified a more stringent demonstrated technology which could reduce metals levels below those achieved with the BAT limitations promulgated in this regulation.

Implementation of the BAT limitations nationwide for mines will remove annually from estimated raw waste 467,300 kilograms (kg) (1,028,000 lbs) of toxic metals and 1,977,000 metric tons (kkg) (2,174,800 tons) of TSS. From the Alaska gold placer mines 207,400 kg (456,300 lbs) of toxic metals and 956,900 kkg (1,052,690 tons) of TSS will be removed. As discussed in further detail in Section VI of this preamble, EPA has calculated the costs of achieving these pollutant removals. The total annual cost of achieving BAT nationwide at gold placer mines is $5.32 million and the projected capital costs for achieving BAT are $4.0 million. These costs are total and not incremental above BPT costs. For Alaska mines only, these costs are $2.77 million and $2.1 million respectively.

The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

BCT

As stated in Section III above, BCT limitations control the discharge of conventional pollutants, including TSS. The Final rule, however, establishes limitations solely for settleable solids, a non-conventional pollutant. While solids in the form of TSS are present in placer mine wastewater, the Agency has determined that settling technology does not consistently control the levels of TSS such that the Agency can promulgate effluent limitations guideline and standards for this pollutant. Since the Agency has not established limitations for the control of any conventional pollutants, the final rule does not establish BCT limitations.

NSPS

EPA is promulgating NSPS for the gold placer mining subcategory based on the same wastewater treatment as BAT, which consists of simple settling plus recirculation of all process wastewater. There is no generally applicable, demonstrated technology which can be applied beyond BAT to further reduce the discharge of pollutants from gold placer mines. As discussed above, chemically aided settling is not at this time a demonstrated technology in gold placer mining. The other technologies examined by the Agency, including filter dams and tundra filters, are available only on a site-specific basis and therefore are not appropriate as the basis of nationally applicable, uniform effluent limitations guidelines and standards.

Since NSPS are equivalent to the BAT requirements, the Agency has determined that there will be no barrier to entry for new source gold placer mines. In fact, the new sources can design for efficient process water use and maximize wastewater reduction, thereby reducing the size (and in turn the cost) of pollution control facilities. Therefore, such facilities may actually be less costly to install and operate in comparison to existing mining operations.

EPA's NPDES regulations define a "new source" as a source which is constructed after the date of promulgation of applicable new source performance standards, unless those standards are promulgated within 120 days of their proposal, in which case a source is a new source if it is constructed after the date of proposal. 40 CFR 122.2. The new source performance standards contained in this rule were proposed in November 1985. Since more than 120 days have passed since proposal, NSPS will apply to those mines determined to be new sources by virtue of their activities occurring after promulgation of this rule. In the Second NOA, the Agency mentioned that the definition of new source in 40 CFR 122.2 was the subject of petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit. The Court has since ruled upon this issue and upheld § 122.2 as being consistent with the Clean Water Act. *NRDC* v. *EPA*, 822 F2d 104, 113–114 (D.C. Cir., 1987).

As stated above, the NSPS promulgated by EPA for the gold placer mine subcategory are equal to BAT limitations, since BAT is based on the most stringent demonstrated technology that is available for treating gold placer mine wastewater. Therefore, those mines which are new sources will not be subject to controls any more stringent than those applicable to existing sources.

However, section 511(c) of the CWA provides that the issuance by EPA of NPDES permits to new sources is subject to the provisions of the National Environmental Policy Act (NEPA). Therefore, to the extent issuance of such permits might constitute major Federal actions significantly affecting the environment, NEPA requires the preparation of an environmental assessment and, if appropriate, an environmental impact statement prior to permit issuance. (see 40 CFR 122.29(c)).

In the preamble to the proposed regulation, EPA solicited comment on whether the new source criteria contained in EPA's NPDES regulations (40 CFR 122.2 and 122.29) would be appropriate for gold placer mining. In the Second NOA, EPA stated that it was considering adopting a list of factors for the Regional Administrator to use in determining, on a case-by-case basis, whether a gold placer mine is a new source under the Act. The Agency stated that case-by-case designation of new source placer mines on the basis of relevant factors was appropriate given the variety of possible events that may reasonably affect whether a gold placer mine is a new source.

After considering public comments on this issue, the Agency has concluded that the approach presented in the Second NOA is consistent with section 306 of the Act and provides the best approach to determining new source placer mines. EPA does not believe that the criteria contained in the NPDES regulations could reasonably be applied to determine new source placer mines, since they do not adequately address several unique features of gold placer mining, as discussed below. The adoption of industry-specific criteria for designation of new sources is consistent with the new source criteria contained in the NPDES regulations, since 40 CFR 122.29(b)(1) states that the NPDES provisions apply "except as otherwise provided in an applicable new source performance standard." Furthermore, EPA has adopted a similar approach to determining the existence of new source mining operations where the characteristics of the industry warranted specialized treatment. (See new source criteria for the coal mining category, 40 CFR 434.11(j)).

Under section 306 of the Act, whether a facility is considered a new source depends on the date construction of the facility was commenced. Section 306(a)(5) defines "construction" as "any placement, assembly, installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including site preparation work at such premises." Applying the term, "construction", to the placer mining industry, however, is problematic in light of several features of gold placer mines. First, gold placer mines, by their nature, are mobile operations. They continually move up or down a stream as they mine a pay streak, and they often relocate their mining activities within a claim or among different claims in search of pay dirt (i.e., ore containing recoverable gold). Second, due to climatic conditions, Alaskan placer mines can only operate during the summer months.

Applying the term, "construction," literally, it is arguable that a placer mine becomes a new source every time that it moves to a new location, since the mine is, in a sense, installing facilities and equipment at a different "premises". However, EPA believes that such an interpretation would not be consistent with the purposes of section 306. In placer mining, the continuous movement of mining operations represents the standard practice of an ongoing, existing operation. Designating all mines to be new sources by virtue of this movement would ignore that this is standard practice among existing placer mine operations.

The mobile nature of placer mines also demonstrates why the new source criteria contained in § 122.29(b) of the NPDES regulations are not appropriate for the determination of new source placer mines. If § 122.29(b)(1) were interpreted literally, any movement by a mine would make it a new source since, arguably, a mine that moves to a new location is being "constructed at a site at which no other source is located." However, when EPA adopted the new source criteria, it acknowledged that they were not designed to address mobile operations. Commenters on the proposed NPDES criteria noted that they did not adequately address the question of whether relocated mobile oil and gas drilling rigs were new sources. In response, the Agency acknowledged that the regulation did not interpret section 306 of the Act for purposes of such mobile operations, and stated that this would be addressed when the Agency adopted new source performance standards for that industry. (44 FR 32871, June 9, 1979). Similarly, in this rulemaking, EPA is adopting criteria which address the unique aspects of gold placer mines.

EPA also considered whether gold placer mines should be defined as new sources when they recommence their operations every spring after being shut down for the winter season. Again, while this interpretation might be consistent with a literal reading of section 306, EPA believes that such an approach would ignore a unique aspect of gold placer mines operating in cold climates. Climatic conditions require gold placer mines to cease operations in Alaska during the colder months. It is an operating characteristic of such mines that some or all of their equipment is removed from the mining site each fall and replaced in the spring. This activity, however, is characteristic of all continuous, ongoing gold placer mine operations in such climates and therefore does not necessarily indicate the commencement of new mining activities. EPA therefore does not believe that it would be appropriate to consider the entire Alaskan gold placer mining industry to be new sources every spring. EPA does not believe that Congress intended in section 306 to designate large numbers of facilities in an entire subcategory as new sources every spring solely because climatic conditions dictated the routine yearly dismantling and installation of their operations.

Furthermore, defining all placer mines as new sources every spring would not advance the purposes of section 306. Congress adopted that provision in order to insure that new facilities which could institute production process changes met the most stringent pollution control requirements. (See Conf. Rep. 1236, 92nd Cong., 2d Sess. 127–129). However, the BAT limitations contained in this regulation already require existing sources to meet limitations based on the most stringent currently demonstrated pollution control technology that is available to gold placer mines, and NSPS are therefore equal to BAT limitations. Thus, designating every placer mine as a new source each season would not result in any more stringent levels of control than those already established for existing sources.

Instead of categorically classifying all mines as new sources because of the mobile and seasonal nature of their operations, the new source criteria in the regulation are to be considered by the Regional Administrator (RA) or Director of a state agency administering an NPDES program (Director) as the basis for determining when a mine has sufficiently altered location or discharges that the mine is to be treated as a new source. As described above, the designation of new source mines will not change the applicable effluent limitations, but may require the conduct of an environmental review by EPA in accordance with NEPA.

One of the criteria presented in the Second NOA is not included in the final rule. That criterion would have considered whether the mine moves to a vicinity which is not contiguous with the area in which the mine was previously operating. In light of comments stating that movement among claims along a stream is characteristic of on-going mining operations and pointing out the vagueness of the terms "contiguous" and "vicinity," EPA decided not to adopt this criterion in the final rule.

The criteria in § 440.144(c)(1), (3) and (4) relate to locational changes that the RA or Director is to consider which may be sufficiently significant to make a mine a new source. The criterion in § 440.144(c)(1) states that the RA or Director shall consider whether the mine will operate in a permit area which is outside of the permit area covered by a currently valid NPDES permit. This criterion is based on concern that mining activity in a new area that is not covered by a current NPDES permit may reflect significant new construction activities. Furthermore such a locational change could also have new and unknown deleterious effects on the environment. Commenters criticized the term, area, as being too vague. Section 440.141(a)(14) of the final rule therefore defines "permit area" as the area delineated in the NPDES permit, permit application, or other relevant documents. EPA believes this definition will minimize confusion as to the application of this criterion. EPA has slightly altered the language from that presented in the Second NOA by referring to whether the mine operates outside the permit area, instead of whether it operates in an area not covered by an NPDES permit. This change was made merely for the sake of clarity and no substantial change is intended.

Because the Agency has included the new term, "permit area," in this criterion, EPA believes it is more appropriate to tie this criterion to whether the mine operates outside an area covered by a currently valid NPDES permit. (The criterion in the Second NOA referred to whether the mine operates in an area which has previously been covered by a NPDES permit). The focus of this criterion on the area actually delineated in miners' NPDES permits (or other relevant documents such as the NPDES or state-Agency permit application) means that, in applying this criterion, the RA or Director will review the NPDES permits, applications and other documents that have been issued to or submitted by gold placer mining operations. Reviewing all the permits which have "previously" been covered by NPDES permits may well prove to be an administratively impossible task, since all the previous permits or applications may not be available. On the other hand, it will be administratively feasible to focus on the area delineated in the currently valid NPDES permit which is about to expire, since those permits and relevant permit applications should be readily accessible. Finally, the Agency also believes this modified criterion is appropriate because the operation of a mine outside an area currently covered by an NPDES permit can reflect significant new construction activities, even though the area may have been covered by a permit at some previous time.

The criterion in § 440.144(c)(4) refers to whether the mine will operate in a permit area that has not been mined during the term of the current permit, whereas the criterion presented in the Second NOA referred to whether mining has occurred within the past five years. Commenters questioned the Agency's basis for the five-year period. The final rule clarifies that the time period of concern should correspond to the term of the current permit. EPA believes that the term of the current permit, rather than some fixed period, is the appropriate time horizon, since the RA or Director will normally focus on the new source question, along with other permit issues, at the time of permit reissuance. Since the new source question may have last been addressed during the previous permit reissuance

proceeding, EPA believes that focusing on mining activity that has occurred since that time will provide an administratively workable means of applying this new source criterion.

The purpose of this criterion is to focus on those mines which wish to operate in areas that have not been mined for some period of time. EPA believes that the placement of facilities or conduct of mining operations in such an area is an appropriate criterion to be considered by the RA or Director in determining whether the mine is a new source, since such activities could reflect significant construction activities. Furthermore the effects of introducing pollutants in an area which has not recently been mined may be significant.

Section 440.144(c)(3) refers to whether the mine discharges into a stream into which it has not previously discharged. In the Second NOA, the Agency proposed that this criterion refer to whether the mine discharged into a new drainage basin. EPA has narrowed this criterion somewhat because the movement of a mine to a new stream can represent significant new construction activities. Furthermore, such a change could pose new environmental impacts.

The criterion contained in § 440.144(c)(2) refers to whether the mine significantly alters the nature or quantity of pollutants discharged. The reference to increasing gold recovery capacity that was included in the criterion presented in the Second NOA has been deleted. Commenters expressed confusion as to whether the criterion would apply to a mine that increased gold recovery capacity but did not alter the nature or quantity of pollutants discharged. EPA decided to delete the reference to gold recovery capacity in order to clarify that this criterion is intended to apply to changes in discharges, and not increases in gold recovery capacity per se.

Also, in light of the fact that BAT limitations and NSPS prohibit mines from discharging the volume of water used in the beneficiation process, increases in gold recovery processing capacity will not necessarily result in increased discharges to the receiving stream. Rather, under this regulation, the volume of discharges will depend upon the volume of excess drainage and infiltration water that enters into the treatment system and needs to be discharged. Therefore, the unique circumstance that may lead to significant changes in the nature and quantity of pollutants discharged would be where the plant site is significantly increased causing it to collect more drainage water than collected by the previously existing plant site. Since such excavation may involve significant construction activities, EPA believes that it is appropriate that the RA or Director consider whether the alteration in discharge resulting from such construction is sufficiently significant to designate the mine a new source. Taking into account the unique characteristics of this subcategory, as well as the particular limitations guidelines and standards promulgated in this rule, EPA believes that this criterion is an appropriate factor for the RA or Director to consider in designating new source gold placer mines.

The occurrence of any one of these events is not intended to be conclusive in making a new source determination. Rather, the criteria are to be considered and taken into account by the RA or Director in assessing all of the circumstances of a particular mine. EPA recognizes that the characteristics of placer mining operations may vary widely and EPA therefore may not have anticipated all the circumstances relevant to a new source determination. The rule therefore allows the RA or state Director to consider such other factors as he deems relevant in determining whether a placer mine is a new source. For example, the RA or Director may consider whether a mine has to rebuild completely the retaining berms or wastewater treatment ponds of the mine that have been destroyed by storms or snow melt.

VI. Economic Considerations

A. Costs and Economic Impacts

EPA's economic impact assessment is set forth in the report entitled "Economic Impact Analysis of Effluent Limitations Guidelines and Standards for the Placer Gold Mining Industry". This report presents the investment and annualized compliance costs for the plants covered by this regulation. The report also estimates the economic effect of compliance costs in terms of mine closures, employment losses, profitability impacts, and regulatory costs as a percent of sales and as a percent of operating costs. Except for a few large open cut and dredge operations included in the economic impact analysis, the report is a detailed analysis of small business impacts since most placer mines are owner-operated businesses with from one to three employees.

The number of active mines fluctuates from year to year, in response to changes in the price of gold and other factors. The EPA mine count of 457 active mines in 1986 is based largely on state supplied data. EPA estimates there are 192 mines covered by this regulation in Alaska and 265 mines in the lower 48 States. The costs of implementing the regulations are estimated on a model mine basis. Total capital costs for BPT and BAT are projected to be $4.0 million with annualized compliance costs (including capital and operating expenses) of $5.3 million (in 1986 dollars). These compliance costs are based on the assumption that mines rebuild settling ponds every year; however, the costs reflect the fact that some mines currently have other treatment equipment (primarily water recirculation equipment) in place.

The compliance costs calculated by EPA were based on engineering estimates of the capital requirements and operating expenses of each technology option for each open cut model mines sized at 18,000, 35,000, 150,000, and 340,000 cu yd of ore per year annual production and for dredges at 216,000 and 810,000 cu yd of ore per year annual production. Total compliance costs were derived by multiplying the cost for each option times the number of mines in each size category. As stated above, the Agency recognizes that the number of mines fluctuates based on many factors and thus total compliance costs for the industry would change as the number of mines fluctuates. However, EPA believes this will not alter or change the conclusions with respect to economic impacts at individual mines or for the industry as a whole. The purpose of the impact analysis is to characterize the impact of these regulations for the industry as a whole and analyze the impact on representative mining operations.

EPA believes that these model mines represent the range of various sized operations in the placer mining industry; that is, they indicate the impacts on very small, small, medium, and large open cut mining operations, and dredges processing greater than 50,000 cu yd of ore per year. Because placer mines vary in terms of the precise configuration of equipment, personnel, and value of ore processed, it is not possible for the Agency to develop models that represent the unique circumstances that may be found in every mining operation. Rather, the model mines developed by the Agency represent, to the maximum extent possible, the range of mining operations in the industry.

B. Economic Methodology

The Economic Impact Analysis (EIA) focuses on five primary impact measures: Closure, profitability, the ratio of compliance cost-to-sales,

percent increase in operating costs due to compliance, and job losses. The values are estimated for representative mines using a combination of survey data collected in the field, published literature, and other sources related to the placer gold mining industry.

The closure analysis compares cash flow to total operating costs (including expenses for mine operation and wastewater treatment) in a single year. A closure is projected if operating costs exceed revenues. The economic impact analysis indicates a number of baseline closures, with the number varying as the price of gold varies. That is, prior to imposing regulatory controls or compliance costs, these mines are expected to close due to total operating costs exceeding revenues. This situation is characteristic of an industry where prices are beyond the control of individual producers.

The profitability impact measure indicates the extent to which placer mining compliance costs reduce mine profitability. The cost-to-sales impact measure compares compliance costs to mine revenues. The fourth impact measure indicates the extent to which compliance costs increase total operating costs on a percentage basis, giving a sense of the relative magnitude of the cost of complying with this regulation. Job losses measure the extent to which mine closures caused by the regulation create unemployment.

C. Changes in the Economic Methodology

Major, substantive revisions to the economic analysis methodology and model mines were presented for public comment in the Second NOA. In response to information and data supplied by commenters regarding the revised methodology, EPA made certain changes which are described fully in the economic impact analysis and in the Comment and Response document contained in the public docket. Some of the comments and resulting changes are described below.

Commenters stated that EPA's model mines did not represent a large percentage of mines smaller than the mine utilized by EPA to determine impacts on small open cut mines (35,000 cu yd of ore per year). Commenters claimed that, since almost half of the gold placer mining industry consists of mines processing less than 35,000 cu yd of ore per year, EPA should model the costs and impacts for mines operating below this level. In response to these comments EPA developed a fourth open cut model mine to represent a very small mine processing 18,000 cu yd of ore per year, to better consider the impacts of this regulation on mines in this size range.

Another set of comments indicated that there are a few (3 to 4) very small dredges operating in Alaska, each processing approximately 25–50 thousand cu yd of ore per year. Since data and models utilized by EPA to examine impacts on dredges were based on much larger operations (i.e., 210,000 and 800,000 cu yd of ore per year), EPA does not believe that these models necessarily reflect the likely impacts on very small dredge operations. Since EPA has little data with which to measure these impacts, EPA has decided not to promulgate effluent limitations guidelines and standards applicable to dredges processing less than 50,000 cu yd of ore per year. These dredges will continue to be regulated under NPDES permits based on the best professional judgment of the permit writer.

Other commenters suggested incorporating data published by Alaska state agencies into EPA's economic analysis, including state figures on the number of mines, gold production, ore grades, and fineness. EPA reviewed all information and comments submitted by state and regional offices. EPA has adopted the State of Alaska figure on the number of active mines in each region in 1986. On the basis of the state's data, EPA has revised its estimate of total compliance costs and the amount of gold production in Alaska.

EPA has modified the assumptions regarding gold fineness that were presented in the Second NOA. Commenters correctly pointed out that the data relied upon by EPA were for "true fineness", the ratio of gold to the gold and silver content of the ore. However, the more relevant measure is the ratio of gold to the total ore. The Agency has therefore revised the fineness assumptions in the model mine analysis based on survey data collected by EPA from 50 commercial mines over a period of three years. EPA has decided to rely on the survey data collected directly by the Agency because the Agency is familiar with the data collection methodology and is confident that the information reflects conditions in the industry. Furthermore, EPA's fineness estimates are supported by the State of Alaska's figures of total gold production in 1986, since use of the Agency's fineness assumptions in its model mine analysis yields an estimate of total gold production that is consistent with the State's figures. (See response to comment No. 9, in Section X below).

EPA has not modified its assumptions about ore grade that were presented in the Second NOA. The Agency's ore grade estimates, which vary by region in Alaska from 0.013 to 0.029 ounces per cu yd, are based on a literature search of historic grades. The average of the values used by the Agency (.02 ounces per cubic yard of ore) is supported by survey data collected by the Agency and by the U.S. Bureau of Mines and Minerals Yearbook for 1985, which stated that the average ore grade in the United States was 0.02 ounches per cu yd of ore. Again, the Agency's ore grade assumptions are further corroborated by the fact that they yield an estimate of total gold production that is consistent with State of Alaska figures.

Additional comments received during the comment periods on the proposal and notices of new information suggested that EPA should investigate the frequency with which recycling technology is currently being practiced in the placer mining industry. The Alaska Department of Environmental Conservation submitted data on gold placer mining operations in Alaska for 1985, 1986 and 1987 containing information submitted by Alaskan placer miners in their applications for state-issued, Tri-agency permits. Included in the information submitted by permit applicants was whether they expected to practice recycling at their operation. The data indicate that approximately 30 percent of the mines in Alaska expected to recycle 100 percent of their water and another 30 percent indicated they would operate under partial recycle conditions. While these data do not demonstrate whether mines actually practiced recycling, EPA believes that they indicate the proportion of mines which already have recycling equipment on site. Since miners indicated in the permit applications that they would be practicing recycling, the Agency believes it is reasonable to conclude that the applicants had the equipment to carry out their stated intentions. The economic impact analysis contained in the record for this rulemaking describes the method by which the Agency incorporated these data into its analysis of baseline model mine operating costs and compliance costs.

D. Baseline Analysis

The baseline economic analysis establishes the economic health of gold placer mines prior to incurring costs to comply with this regulation. As discussed above, if a mine's pre-compliance total operating costs exceed its cash flow, the mine is projected to close and is considered a baseline closure. Baseline total operating costs consist of direct and indirect operating

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expenses. The direct operating expenses include labor, labor support, energy, supplies, transportation, maintenance services and smelter and refining charges. The indirect operating expenses include debt service, depreciation, and amortization. The sum of these costs are the estimated total annual cost of a placer gold mining operation.

The economic impact analysis indicates a number of baseline closures. EPA estimates that there are 67 baseline closures when gold is valued at $377 per ounce (the average gold price during the 1986 mining season in Alaska) and two baseline closures when gold is valued at $455 per ounce (the average gold price during the 1987 mining season). Since these mines are projected to close even without the imposition of regulatory controls they are removed from the analysis determining the incremental impacts on the industry of complying with this regulation.

E. Economic Impacts

The following economic impacts are estimated given a gold price of $455 per ounce, which represents the season average reported price from May to September of 1987.

BPT: Simple Settling

The estimated 192 Alaskan mines covered by this rule will incur annualized compliance costs for BPT of $1.25 million; the estimated 265 mines in the lower 48 will incur annual BPT costs of $1.17 million. The total annual cost of BPT is $2.42 million. No capital expenditures are expected to be incurred in order to comply with BPT limitations. These total annual costs represent construction and maintenance of four settling ponds at each mine during the season using heavy machinery, equipment and labor already available at the mine site.

Compliance with BPT limitations results in no significant adverse impacts. Five Alaska and two lower 48 mine closures are projected in the very small (18,000 cu yd of ore per year) model group (out of 198 mines in the group) with an associated fourteen job losses. One Alaska mine closure and three job losses are expected in the small (35,000 cu yd of ore per year) model group (out of 189 mines in the group). For Alaska mines the ratio of compliance cost to sales for all groups ranges from 1 to 3.6 percent; the increase in operating costs due to compliance ranges from 1 to 5.1 percent for all groups. The impact values for cost-to-sales and increase in operating costs are virtually the same in the lower 48.

For dredges, the compliance cost to sales ratio is 1.9 to 2.3 percent and the increase in operating costs due to compliance is 2.6 to 3.1 percent.

In both Alaska and the lower 48, the decline in rate of return on investment for open cut mines and dredges ranges from zero to 2 percent for all mines under BPT.

EPA has concluded that these financial impacts represent an acceptable level of impact. The eight mine closures projected under BPT represent less than two percent of U.S. placer gold mines.

BAT: Water Recirculation with Simple Settling

The Alaskan mines will incur capital and annualized compliance costs for BPT and BAT of $2.1 million and $2.77 million; mines in the lower 48 will incur costs of $1.93 million and $2.55 million, respectively. The Total capital and total annual costs for BPT and BAT are $4.0 million and $5.32 million, respectively, after taking the treatment in place into account. The incremental capital and annual costs to go from BPT to BAT are $4.0 million and $2.91 million, respectively.

Eight Alaska mine closures (three incremental to BPT) are projected in the very small (18,000 cu yd of ore per year) mine group, with an associated sixteen job losses (six incremental to BPT). Five mine closures (four incremental to BPT) are projected in the small (35,000 cu yd of ore per year) mine group with an associated 15 job losses. For Alaska mines the ratio of compliance cost to sales under BAT ranges from 1.4 to 6.5 percent; the increase in operating costs due to compliance ranges from 2 to 9.4 percent.

For dredges, the compliance cost to sales ratio is 1.0 to 1.3 percent and the increase in operating costs due to compliance ranges from 1.0 to 1.3 percent under BAT. The return on investment for Alaska open cut and dredge mines drops in the range of from zero to 2.0 percent. These impact values are cumulative.

Four lower 48 mine closures (two incremental to BPT) are projected in the very small (18,000 cu yd of ore per year) mine group with an associated eight job losses (four incremental to BPT). One closure and an associated two job losses are projected in the small (35,000 cu yd of ore per year) mine group. Recirculation costs for mines in the lower 48 are projected to be about 27 percent less than in Alaska. Return on investment drops from between one and four percent at mines in the lower 48 under BAT.

On the basis of these projected economic impacts EPA has concluded that the BAT limitations are economically achievable for all mine sizes and types. The ten mine closures associated with BAT (incremental to BPT) represent only about three percent of active mines.

As previously mentioned, information submitted by Alaskan placer mines indicates that about 30 percent of the mines in Alaska expected to use full recycle and another 30 percent expected to operate under partial recycle conditions. Thus, for a large portion of mines, recirculation is currently an economically viable practice which may be undertaken to conserve water or for other reasons. In EPA's view, this fact supports the Agency's conclusion that BAT limitations based on recirculation of process water are economically achievable.

Impacts With Gold Price of $377 Per Ounce

EPA also examined the economic impacts of these technologies if the gold price were $377 per ounce. The price of gold and the grade of ore are the most significant and variable parameters in determining the profitability of a mining operation. The economic impact of meeting any option is obviously greater at $377 per ounce than at $455 per ounce. However, after analyzing and comparing the economic results under these two gold prices, the Agency has concluded that BAT is economically achievable even at the lower gold price. Though total mine closures increase from 12 to 19 in the very small mine size as the gold price drops from $455 to $377 per ounce, EPA has concluded that the impacts associated with BAT at the lower gold price are not significant.

F. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* Pub . L. 96–354) requires EPA to assess whether its regulations create a significant impact on a substantial number of small entities and to consider alternatives that minimize any such significant impacts. EPA previously defined "small" operations as those commercial gold placer mines processing more than 1,500 and less than 70,000 cu yd of ore per year (mines processing less than 1,500 cu yd per year are not covered by this regulation). These mines represent approximately 80 percent of the gold placer mines in Alaska and about 90 percent of the mines in the lower 48. In Alaska, these mines typically have revenues of approximately $300,000 (from mining several months each year) and employ less than ten people. In the lower 48 states, these mines have annual revenues below $200,000 and also employ a small number of people per mine.

Gold placer mines are primarily small, independently owned operations. The economic analysis estimated the aggregate impacts which would occur if water recirculation was required for all mines (BAT). The Agency also considered a less stringent limitation for very small mines (i.e., those processing less than 18,000 cu yd of ore per season) by setting BAT equal to BPT (simple settling). The Agency rejected setting BAT equal to BPT for very small mines for several reasons. First, the incremental economic impacts of going from BPT to a more stringent BAT for very small mines were not significantly different from the incremental impacts for the other mine sizes. Second, the economic impacts do not include widespread significant adverse economic effects on small businesses.

Like actual mining operations, the Agency's economic model is sensitive to gold price. Although very small mine closures might increase in the long run at the lower gold price of $377 per ounce, EPA's economic analysis indicates that the majority of gold placer mines in Alaska and the lower 48 would continue to be productive and profitable entities. Additionally, information submitted by the Alaska Department of Environmental Conservation supports the Agency's position that all mines, regardless of mine size, can afford to recirculate process water. These data indicate that very small mines operating in regions where water is scarce have instituted recirculation to conserve water. EPA concludes that there is no economic justification for not requiring small gold placer mining operations to achieve the BAT effluent limitations based on recirculation of process water.

EPA is promulgating this final rule based on currently available information. The Department of the Interior, as well as other commenters have expressed concerns about EPA's assumptions and resulting economic impacts that these regulations may impose on small placer mines (mines processing between 1,500 and 35,000 cubic yards per year). Based on all available information, EPA has determined that the limitations imposed by this rule are technically feasible and economically achievable. However, EPA is requesting comment for 60 days concerning the economic impacts imposed on small placer mines by this regulation. Should significant additional data be presented to the Agency on small placer mines during this comment period demonstrating that different effluent guidelines limitations and standards are warranted on a national basis, the Agency will modify the rule.

G. Cost-Effectiveness

EPA has conducted an analysis of the incremental cost per pound equivalent for removal of the pollutants controlled by the placer gold mining regulation. A pound equivalent is calculated by multiplying the number of pounds of a pollutant by the toxic weighting factor for that pollutant. The weighting factors give relatively more weight to more highly toxic pollutants. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if less toxic polllutants are removed.

The cost effectiveness values for BPT is less than $1 per pound and the incremental cost effectiveness of BAT is $3 per pound equivalent. The cost effectiveness report is included in the public record of this rulemaking.

H. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses (RIA's) for major regulations. Major regulations are those that impose an annual cost to the economy of $100 million or more, or meet other criteria. This regulation is not considered a major regulation. The costs expected to be incurred by this industry ($5.3 million annually) are significantly less than $100 million. Therefore, a formal Regulatory Impact Analysis is not required. The Agency's regulation for this industry considered both the cost and economic impact of the regulation.

I. SBA Loans

The Agency continues to encourage small concerns to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Pollution Control Finance Guarantee Program, (2) the section 503 Program and (3) the Regular Business Loan Program (section 7(a)). Eligibility for SBA programs varies by industry.

For further information and specifics on the Pollution Control Finance Guarantee Program, contact the U.S. Small Business Administration, Office of Pollution Control Financing, 1441 L Street, NW., Washington, DC, 20416, (202) 653–2540.

The section 503 Program, as amended in July 1980, allows long-term loans to small and medium size businesses. These loans are made by SBA-approved local development companies.

Through SBA's Regular Business Loan Program (section 7(a)), loans made available by commercial banks are guaranteed by SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan (Section 7(a)) and Section 503 Programs, contact the appropriate district or local SBA office. The coordinator at EPA Headquarters is Ms. Karen V. Brown, Small Business Ombudsman (A–149C), Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460; (703) 557–7015.

VII. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may cause other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is promulgating regulations which it believes best serve often competing national goals.

The following nonwater quality environmental impacts (including energy requirements) are associated with the final regulation. The impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

Imposition of BPT may cause a minor increase in the emissions of dust from the movement of earth to build the settling ponds recommended for the gold placer mining subcategory. These emissions are not expected to create a substantial air pollution problem. BAT and NSPS will not result in any increase in air pollution above BPT. The Agency does not consider this to be a significant impact.

B. Solid Waste

EPA estimates that the promulgated BPT limitation for gold placer mines nationwide will generate 1,836,000 kkg (2,021,300 tons) per year of solid wastes (sludge) (wet basis—1986 production levels) as a result of wastewater treatment; BAT will generate 1,977,000 kkg (2,174,800 tons) per year solid waste from raw waste. These sludges will be comprised of soil solids containing very

small concentrations of toxic metals, including arsenic, antimony, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, and zinc. Because these sludges are characteristic of the soils indigenous to the particular mine and contain no additives, it is the Agency's view that solid wastes generated as a result of these guidelines will not be considered as hazardous under RCRA. Furthermore an analysis was made of the toxic metals data collected for raw and treated wastewaters at five mines in 1986. This analysis showed that even if all of the toxic metals taken out of the water in the sludge were extracted by the RCRA EP test, the sludge would not be classified as a hazardous (toxic) waste under RCRA.

C. Energy Requirements

EPA estimates that the achievement of BPT effluent limitations will result in the consumption of approximately 155,800 gallons of additional diesel fuel per year. The BAT technology should increase the energy requirements above BPT by 485,200 gallons per year. NSPS will not add any additional energy requirements. To achieve the BAT effluent limitations, a typical direct discharger will increase total energy consumption by 14.2 percent of the energy consumed for production purposes. This increase in energy consumption is not considered to be of national significance.

D. Consumptive Water Loss

Treatment and control technologies that require extensive recirculation and reuse of water often result in the substantial consumption of water because the water is used as a cooling mechanism. Because the gold recovery processes do not generate heat or require cooling the water, loss through evaporative cooling is negligible. The Agency concludes that the consumptive water loss is negligible and that the pollution reduction benefits or recirculation outweigh the impact on consumptive water loss.

VIII. Permits for Dredged or Fill Material

Section 404 of the CWA requires that permits be obtained from the Army Corps of Engineers for most discharges of dredged or fill materials into navigable waters. To the extent individual placer mines conduct activities regulated under this provision, they must obtain individual permits or general permits, if applicable, under section 404 of the CWA.

IX. Pollutants and Facilities Not Regulated

A. Pollutants Not Regulated

In the preamble to the proposed regulation, EPA stated that it intended to apply criteria contained in paragraph 8 of the NRDC settlement agreement for excluding individual toxic pollutants from regulation. One commenter objected to reliance on those criteria since this regulation, as EPA has stated, is not being issued pursuant to that agreement. These criteria have been a consideration in the issuance of effluent limitations guidelines and standards for many industry categories, including ore mining and dressing. Since gold placer mining is a subcategory of ore mining and dressing and does not appear to have unique conditions which would justify a different approach from that used in ore mining and dressing EPA believes that it is appropriate to apply the concepts of these criteria to this subcategory.

As indicated in the preamble to the proposed regulation, the Agency examined effluent waters from gold placer mining for the presence of toxic pollutants. Only two toxic organic pollutants were identified in these wastewaters and neither of these two could be associated with placer gold mining but rather appear to be contaminants from the handling or analysis of samples. Therefore the toxic organic pollutants are excluded from regulation because they were not found to be present in the wastewaters of this subcategory.

Thirteen toxic metals were found to be present at varying levels in different mines sampled. These metals are present in the solid (undissolved) state and are removed at the same time that other solids are removed from the wastewaters. Similarly, asbestos is a solid material which when present will be removed along with other solids from the wastewaters. Therefore these thirteen toxic metals and asbestos are believed to be adequately controlled by the regulation of settleable solids in the wastewaters which are treated and discharged.

B. Facilities Not Regulated

This regulation applies to all open cut and mechanical dredge gold placer mines except those open cut mines that mine less than 1,500 cubic yards of placer ore per mining season, dredges that remove less than 50,000 cubic yards of placer ore per mining season and dredges operating in open waters.

The exclusion of small open cut gold placer mines was proposed (50 FR 47982) and comments received on the exclusion. Generally, these comments supported the exclusion of these extremely small or exploratory mines from this regulation. For the reasons stated in the preamble to the proposal, the Agency continues to believe that these extremely small mines are below the level of production that can be effectively regulated by this national regulation and are more appropriately regulated under BPJ permits. Therefore this regulation establishes limitations only for open cut mines with production levels greater than 1,500 cubic yards of ore per year. Operations processing less than this amount must meet effluent limits contained in NPDES permits based on the best professional judgment of the permit writer.

The Agency proposed to regulate mechanical dredges processing greater than 4,000 cubic yards of ore per day. As presented in the Second NOA, EPA thereafter developed economic models based on production rates of 810,000 cubic yards of ore per year and 216,000 cubic yards per year. Based on these models, EPA considered applying this regulation to dredges of all sizes. Comments on the Second NOA described extremely small dredges which had production rates at or below 50,000 cubic yards of ore per year. The Agency examined all of the available data for these dredges and determined that there was not sufficient data with which to promulgate effluent limitations guidelines and standards for these operations. Therefore, this regulation only applies to dredges which mine more than 50,000 cubic yards of ore per year. However all dredges not covered by this regulation remain subject to regulation by the NPDES permit issuing authority under section 402 of the CWA. The Agency believes that there are only three or four of the extremely small dredges and that they can be effectively regulated in this manner.

EPA proposed to exclude from coverage of this regulation dredges operating in open waters because the Agency had no information as to the number, location, or applicable technologies for these facilities. One commenter suggested we clarify what is intended by the term open waters. For the purpose of this regulation open waters are the open gays, marine waters and major rivers in which a dredge can operate freely and without the use of artificial water impoundments. The final rule maintains this exclusion for these facilities for the reasons stated in the proposal. These facilities will continue to be regulated based on the best professional judgment of the permit writer.

X. Public Participation and Response to Major Comments

Industry, government, individual citizens, and environmental groups have participated during the development of these effluent limitations guidelines and standards. Before proposal (November 20, 1983), EPA released a draft development document and a draft economic impact document, and held a public workshop (April 25, 1984). Public comments from this workshop were discussed when this regulation was proposed on November 20, 1985, (50 FR 47982). The comment period was scheduled to end on March 20, 1986. However a notice of new data was published February 14, 1986, (51 FR 5563) and the comment period on the proposal was extended to close on April 10, 1986. Additionally, EPA published a second notice of new data and request for comments on March 24, 1987, (52 FR 9414). Following a public workshop held March 26, 1987, in Fairbanks, Alaska, the comment period closed June 26, 1987.

Since proposal, the following 112 commenters have made 130 submissions containing approximately 1300 individual comments on the proposed regulation and notices of new data: Northwest Exploration, Inc.; Earl H. Beistline; Howard Bayless; Stephen G. Olson; Warren E. Magnuson; Lloyd Magnuson; Edward O. Strandberg, Jr.; Nelson N. Angapak, Calista Corporation; L. A. Peterson & Associates, Inc.; Little Creek Mine; Consolidated Placer Dredging, Inc.; Kako Mine; Douglas B. Tweet, N. B. Tweet & Sons; G. M. Zemansky; Innoko Area Miners, Neece, Cator & Associates, Inc.; Spruce Creek Mining Company; Bureau of Water Quality, Department of Health and Welfare, Division of Environment, State of Idaho; Robert L. Magnuson, Mayor, City of McGrath, Alaska; Alaska Gold Company; J. Moore Laboratory; Office of the Governor, State of Alaska; Flat Creek Placers; Eric Smith, Trustees for Alaska and Randy Rogers, Northern Alaska Environmental Center; Howard F. McWilliams; Keith Tryck, Alaska Miners Association; Nyac Mining Company; Tanana Chiefs Conference, Inc; Fish and Wildlife Service, U.S. Department of the Interior; Office of the Secretary, U.S. Department of the Interior; Robert Aumiller; Jacqueline D. LaPerriere, University of Alaska; Department of Fish and Game, State of Alaska; Jack La Cross; St. Joe Minerals Corporation; Roger C. Burggraf, Alaska Miners Association, Inc.; Tulkisarmute IRA Council; Donald Stein, Alaska Miners Association; Rural Alaska Resources Assoc.; Curt McVee, Alaska Miners Association; Flat Creek Placers; Richard L. Wright; Leo Mark Anthony, University of Alaska; Mike R. Mark Anthony; Office of Management and Budget, State of Alaska; Department of Natural Resources, State of Alaska; Calista Corporation; C & R Enterprises; Hawley Resource Group, Inc.; Engstrom Dredging Co.; Howard F. McWilliams; Mark B. Ringstad; Western Alaska Tribal Council; Stanley C. Rybachek and Rosalie A. Rybachek; Ralph and Irene Anderson; Rosander Mining; Donald E. Mullikin; Spruce Creek Mining Company; Birch Creek Village Council; Harold Gillam; On-Line Exploration Services, Inc.; Cenaliulriit; Martinson Gravel & Crane Inc.; Roy E. Traxler; Richard B. Stough; Lyman Resources in Alaska; L. E. Wyrick; Eagle Creek Mining; Department of Natural Resources, Division of Mining, State of Alaska; Division of Geological & Geophysical Surveys, Department of Natural Resources, State of Alaska; Lyman Resources in Alaska; Frank Demantle, Mayor, City of Akink, Alaska; Mark Ringstad; John W. Harding; Rural Alaska Community Action Program, Inc., Bering Sea Fishermen's Association and Tanana Chiefs Conference; Trinity Mining; Muriel A. Tweet; Richard A. Hughes; Granite Investment Inc.; Tom Van Ostrand; Jim Frey, Sr.; Paul Manuel; Bruce W. Campbell; Clyde B. McMahon; Al Hopen; Fred D. Wilkinson; GHD Resources Partners, Ltd.; Miners Rights Action Group; Placer Mining Advisory Group for the State of Alaska; John B. Goghill, Senator, Alaska State Legislature; Russell Roberts; Richard A. Hughes; Tim Roberts; S & H Enterprises; Campbell Enterprises; Director, Office of the Governor, State of Alaska; Brooke Cacy; P. J. Cacy, Jr.; Patti J. Saunders, Trustees for Alaska and Randy Rogers, N. Alaska Environmental Center; J. S. Masterman; Karl Hanneman; Chief, Department of Lands, Bureau of Minerals, State of Idaho; John Korobko, Placer Miners of Alaska; Citizens' Advisory Commission on Federal Areas; Kevin P. Adler; Jerry Birch and Kevin Greenfield, Nyac Mining Company; Campbell Enterprises; Tulkisarmute IRA Council; Frank Demantle, Sr., Mayor, City of Akiak; Leslie F. Simmons, Alaska Dept. of Environmental Conservation; Ted Stevens, U.S. Senator, and James H. Cole.

The comments from these commenters have been responded to in a document entitled "Response to Comments for the Gold Placer Mining Subcategory" which is available in the public record for this rulemaking. The following is the Agency's response to selected significant comments.

1. Adequacy of the Data Base

Comment: Many commenters questioned the adequacy of the data base collected by the Agency, and the reliability of the methods used to collect and obtain the economic and technical data supporting the proposed effluent limitations guidelines and standards. Some commenters stated the data base is not representative of the industry.

Response: The Agency believes it has an adequate data base supporting this regulation and that this data base is representative of mines in the industry.

The development document lists nineteen data gathering efforts conducted by the Agency, the Agency's contractor, a state environmental agency, and the Canadian Department of Environmental Resources. These reports contain data and information collected since 1975 for over 175 individual gold placer mines located in 15 mining districts in Alaska, in six other states, and in Canada where gold placer mines are operated. However, in developing the effluent limitations guidelines and standards, the Agency has relied primarily upon the information and data gathered from 1983 through 1986, since these data reflect current practices in the industry. During this period, wastewater samples were obtained and analyzed from over 120 mine sites (some mines in this group sampled several times and no samples were obtained if the mine was not operating or sluicing). Profile and fact sheets were completed at over 80 mines and treatability studies were conducted at 21 mine sites. (Two mine sites were studied twice during different years.) These data were supplemented by NPDES permit files from EPA Regional Offices, contacts with state pollution control offices, and demonstration projects sponsored by EPA.

The ten mines visited and sampled in detail in 1984 represented seven mining districts where two-thirds of the existing mines in Alaska were located. Mines were selected after requesting recommendations from EPA Region X, ADEC, the Alaska Miners Association, and the Placer Mining Advisory Group (an ad hoc group composed of representatives from government, industry, and academic and environmental groups) regarding mines representing a cross-section of the industry in the following respects: geographical locations, type of mining, size, rate of recycle (0 to 100 percent), depth and type of overburden and method of removal, type of ore (amount of clay and whether it was semi-frozen), topography, age, processing method

(including classification), climate (rainfall and period of breakup or freeze up), and treatment technology. Furthermore, the eight mines visited and sampled in 1986 were selected in four mining districts not previously represented by technical and economic data collected by EPA or EPA contractors. In light of EPA's efforts to collect data from operations representing the variety of practices and conditions in the industry, the Agency believes that its data base is representative of the industry.

Sampling and analysis data were collected according to established EPA procedures. The data and fact sheets were completed by either EPA personnel or EPA contractors. In both cases, the fact sheets were completed by professionals who were experienced at collecting data and information in support of effluent limitations guidelines and standards. Information was collected from the industry through direct industry submissions, and submissions of data from Federal and state agencies. With the placer mining industry, as with any industry which EPA has studied to develop effluent limitations guidelines and standards, the Agency considers fully the information submitted by private individuals and representatives of the industry.

Some commenters claimed that the cost and economic data collected by EPA from the industry were not verified by the Agency and therefore provided a questionable basis for evaluating the economic impact of this regulation. EPA disagrees with this comment and believes that the data collected from the industry are reliable. First, the information submitted by different miners was generally corroborative; that is, the reported values for parameters such as average ore grade fell within a reasonably narrow range. In addition, whenever possible, the Agency attempted to substantiate industry-submitted data by reviewing other published sources of data and inquiring with relevant state or federal agencies. The Agency considered to totality of all available information in evaluating the technical and economic aspects of this rule.

2. Subcategorization Based on Mine Size

Comment: Many commenters indicated that BAT more stringent than BPT should only be established for large mines while other commenters stated that there was no basis to subdivide the subcategory by mine size.

Response: In this regulation, the gold placer mine subcategory is subdivided according to the mining method employed, i.e., open cut mines and bucket line dredges. EPA has divided the industry in this manner because of basic difference in these two mining methods. Furthermore, as discussed in the development document, open-cut mines and dredges will employ slightly different methods in order to implement recirculation model technologies. As discussed in Section IX of this preamble, all mines processing less than 1500 cu yd of ore per year and bucket line dredges producing less than 50,000 cu yd of ore per year are not subject to this regulation and will receive NPDES permits based on the permit writer's best professional judgment. BPT and BAT effluent limitations and NSPS are the same for all mines and dredges of all sizes covered by this regulation.

The proposed rule would have subdivided the subcategory by mine size, establishing BCT, BAT limitations and NSPS equal to BPT for mines processing less than 500 cu yd of ore per day because the Agency's economic impact analysis indicated that more stringent controls were not achievable for these small mines. However, based upon comments received and data and information obtained after the proposal, the Second NOA announced that the Agency was considering water recirculation as a requirement for all mines covered by this rule.

On the basis of the methodologies and impacts presented in the Second NOA, as well as modifications made in light of public comments, the Agency finds no justification based on technical or economic bases to further subdivide the gold placer mine subcategory. The technology selected at BAT and NSPS, recirculation of process water and simple settling of excess water, is technically feasible for all open-cut mines and dredges. Furthermore, the Agency's economic impact analysis indicates that recirculation of process water is economically achievable for existing and new sources, regardless of mine size, as discussed in Sections V and VI of this preamble and in greater detail in the Development Document and Economic Analysis Document.

3. Small Dredges

Comment: Commenters pointed out that some operating dredges are much smaller than the dredges discussed in the Second NOA.

Response: The Second NOA stated that the Agency was considering regulating mechanical dredges of all sizes with the same effluent limitations based on the assessment of costs and impacts with two dredge models of 216,000 cu yd of ore per year and 810,000 cu yd of ore per year. From comments and the little technical information the Agency was able to obtain following the notice, EPA has identified three dredges smaller than 50,000 cu yd of ore per year. Due to an insufficient data base on these operations, EPA did not develop an economic model to evaluate the economic impact of this rule on these dredges. The Agency has therefore excluded bucket line dredges processing less than 50,000 cu yd of ore per year from the regulation. These operations will receive NPDES permits establishing appropriate effluent limitations based on the best professional judgment of the permit writer.

4. Settleable Solids Measurement and Limitation

Comment: Some commenters questioned the Agency's derivation of the method detection limit for settleable solids (SS) while others questioned the achievability of 0.2 ml/l SS with simple settling technology.

Response: The method detection limit for settleable solids is discussed in some detail in the First NOA. The method detection limit determined for placer mine wastewater is the lowest level of settleable solids that can be read accurately. The MDL determination described in Section V of this preamble resulted in a MDL for settleable solids in wastewaters from gold placer mines of 0.2 ml/l. This determination of the MDL was done in accordance with published Agency procedures for establishing MDL's. In addition, statistical analysis of multiple measurements of replicate settleable solids samples provided additional support and validation of the settleable solids MDL.

The available data indicate that the effluent limitation for settleable solids is achievable with a properly designed, constructed, and maintained pond which, when filled with its designed capacity of settled sludge and wastewater, the pond will provide a minimum of four hours retention of the wastewater entering the pond. Four (or more) hours of simple settling in this model treatment system will reduce settleable solids in the wastewater to a level at or below the MDL of 0.2 ml/l. As described in Section V of this preamble, EPA determined this limitation based on data from settling tests conducted with gold placer mine wastewater from 5 mines sampled in 1986. The limitation was verified by sampling and analysis of existing treatment at 17 miles, and by discharge monitoring reports (DMR) submitted by placer mines reporting individual samples of 0.2 ml/l or less (See discussion in section V, above).

5. Solids removal as an indicator of toxic metals removal.

Comment: Commenters questioned EPA's conclusions about the relationship between solids removal and metals removal, and some stated that direct numerical control of the metals is required by the Clean Water Act.

Response: The Agency takes the position that it may control pollutants either directly through specific limitations on the pollutants itself or indirectly through limitations on other pollutants. As described in Section III of this preamble, the NRDC Settlement Agreement which has applied to the issuance of effluent limitations guidelines and standards for many industry categories provides that pollutants may be excluded from regulation at BAT and NSPS if they are effectively controlled by the technologies upon which other effluent limitations guidelines and standards are based. While this regulation is not issued pursuant to that Settlement Agreement, EPA believes it is consistent with the Clean Water Act to apply the principles of the settlement agreement. EPA has determined that toxic metals are effectively controlled by the removals of solids that are achieved by the limitations established in this regulation. Simple settling specifically removes settleable solids from the wastewater, including metals and metallic minerals that are in the solid form. All data available to the Agency indicate that metals detected in the raw wastewater from gold placer mines are predominantly in the solid form and are removed along with other solids when settleable solids are removed from the raw wastewater.

Furthermore, as described previously in this preamble, the Agency's data indicate that it is not feasible to establish effluent limitations guidelines and standards for the metals in placer mine wastewater. While settling data indicate that metals are removed through the removal of solids, the data also indicate that those metals are not consistently removed to levels that could serve as appropriate effluent limitations guidelines. Rather, the metals are removed to varying degrees at different sites. This result is not surprising since settling technology is specifically designed to remove solids, not metals. Nonetheless, the Agency's data indicate that metals in placer mine wastewater are by and large removed through solids removal. Thus, even though metals removals through simple settling are not sufficiently consistent that the Agency could establish effluent limitations guidelines and standards for these pollutants, the available data also indicate that removal of metals achieved through the control of solids will be substantial.

In addition, the BAT limitations and NSPS are based on recirculation of process water and the treatment of excess water to 0.2 ml/l settleable solids before discharge. The Agency estimates that over 90 percent of the toxic metals in the raw wastewater will be removed by BAT and NSPS, including 90 percent of the arsenic and 95 percent of the mercury. The data collected by the Agency indicate that the total concentration of toxic metals found in wastewater treated to 0.2 ml/l settleable solids is below the limitations promulgated for the metals in other subcategories of ore mining based on treatment specifically designed for metals removal. Similarly the metal concentrations found in treated effluent from good placer mines are below the concentrations achievable with model technologies (pH adjustment, settling, and filters) used as the basis for metals limitations in many other industrial categories. The Agency concludes that the concentrations of metals in treated effluent discharged from gold placer mines are at concentrations below those to which metals are required to be treated by available technologies applied in other industrial situations.

6. Water Reuse and Recirculation

Comment: Some comments claimed that the Agency should establish limitations based on recycling which prohibit the discharge of any water, since infiltration and runoff can be completely eliminated. Other commenters contended that water recirculation was not feasible because it interferes with the recovery of fine gold.

Response: The Agency disagrees with the comments. Public comments, substantiated by Agency observations, demonstrate that excess water cannot always be eliminated from settling or wastewater holding facilities whether the water is in the form of subsurface infiltration or mine drainage to the settling facility. In this regulation, the Agency requires mines to use certain Best Management Practices (BMP) in locating and constructing settling facilities, controlling mine drainage, and controlling run-off from outside of the mine area. These BMPs will result in the reduction of the volume of excess wastewater to the lowest feasible level. However, these practices will not eliminate excess water at some mines.

The Agency investigated the volume of excess water at a number of mines and was able to obtain limited data on flow and the pollutant loads of incidental excess water. Incidental excess water, after commingling with process water, is used as makeup water in a water recirculation system to run the gold recovery process. To the extent the volume of excess water exceeds the amount required for gold recovery, that volume may be discharged after treatment.

Comments also stated and the Agency observed that some dredge operations have excess incidental water due to a water inflow to the dredge pond itself. This excess water in a dredge pond must be treated and discharged in order for the dredge pond to be maintained at its proper level to enable the dredge's buckets to reach to the bottom of the ore being mined. In light of these comments from the industry and EPA field observations, EPA concludes that incidental and infiltration water can not always be eliminated and this rule provides for that contingency.

Gold placer mine operators qualify their demonstrated practice of recirculating wastewater by stating that high suspended solids caused by recirculating water reduces gold recovery in a sluice. However, no conclusive data have ever been offered by the industry to establish or quantify the loss or, if there is a loss, indicate what concentration level of solids initiates such a loss. The Agency, the Alaska Department of Environmental Conservation, and the University of Alaska have conducted pilot studies to determine if total recirculation of water (buildup of total suspended solids in the recycle water) affects the recovery of gold. All of the studies conducted indicate that there is no appreciable loss of gold due to suspended solids in the process water. Test runs have included wash water with TSS levels approaching 200,000 mg/l levels which far exceed those encountered under full-scale recirculation conditions. The Agency has no reason to believe that a scale-up in size would alter the conclusions obtained from the pilot field studies.

7. Chemically Assisted Settling

Comment: Commenters stated that the use of chemically assisted settling was not sufficiently proven to form a proper basis for BAT.

Response: The Agency agrees with this comment. Chemically assisted settling is documented as a proven and effective technology in other subcategories of the ore mining category as well as in other industrial categories, for the control and removal of TSS in wastewater. The Agency conducted pilot field tests over three mining

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seasons in Alaska that indicated polymers used in chemically aided settling would effectively control TSS to low levels. However, upon further examination by the Agency following numerous comments from the public, EPA has concluded that this technology has not been adequately examined in gold placer mining under full scale mine conditions nor have seasonal effects or variations in geology or mineralogy been examined sufficiently for the Agency to regulate TSS based on chemically assisted settling as a model technology.

Chemically assisted settling can however be used at the discretion of a permittee to meet effluent limitations for SS in a NPDES permit based on this regulation or other more stringent limitations, i.e., based on state water quality standards. Also, section 301(k) of the Clean Water Act, as implemented in 40 CFR 125.20–125.27, provides that facilities may obtain a 2-year extension for compliance with BAT if the facility can demonstrate that it will use an innovative technology that achieves a significantly greater effluent reduction than that required by BAT limitations or an equivalent effluent reduction at significantly less cost than BAT if the technology can be applied at two or more facilities in the industry. While the NPDES regulations provide that the Administrator may grant such extensions to no later than July 1, 1987, that language was based upon language in section 301(k) of the Act prior to its amendment in 1987. That amendment deleted reference to July 1, 1987 and provides that extensions may be granted for up to two years from the date of compliance with BAT. Until such time as EPA amends its regulations to conform to the 1987 amendments, the Act's language on this point is controlling Chemically aided settling, alone or in conjunction with other technologies such as those demonstrated through the Alaska Grants Project, could under certain circumstances provide a significantly greater level of effluent reduction than that provided at BAT by recirculation of process water and simple settling of the excess water to achieve 0.2 ml/l settleable solids. Recycle of any portion of the process wastewater would reduce even further the solids discharged to the environment. The mine operator (permittee) could under section 301(k) apply to the Regional Administrator for a 2-year extension for compliance with BAT, at which time the permittee would have to meet alternative BAT effluent limitations reflecting significantly greater pollutant removals than those achieved by BAT limitations.

As noted above, 40 CFR 125.20–125.27 also applies to an innovative technology that results in the same effluent reduction as BAT at significantly lower costs than BAT systems. Section VIII of the Development Document contains a more complete discussion of the implementation of section 301(k) and 40 CFR 125.20–125.27.

8. Baseline Model Mines

Comment: Commenters indicated that placer gold mining operations are affected by many factors including soil condition, mine location, weather conditions and other site specific characteristics which the models did not take into account.

Response: EPA could not model every existing or new placer gold mining operation. However, in light of comments received on the proposal, EPA revised its economic methodology to reflect site-specific conditions such as transportation costs, water availability, weather, topography, geology, geography, etc. The Agency derived numerical cost factors to modify or adjust baseline cost estimates according to those conditions prevalent in six regions in Alaska and in the lower 48 states. The Agency differentiated the models to reflect conditions such as climate, geology, and water availability according to the region in Alaska where mines are located. EPA then assigned cost factors which reflected the different costs associated with these conditions. The application of these variable cost factors resulted in the development of "representative" mines for each region. In this way, the Agency developed a systematic method of comparing mining costs under the variety of site-specific conditions found in gold placer mines.

9. Gold Production in Alaska

Comment: Several commenters pointed out that EPA's estimate of total Alaska gold production in 1986 presented in the second NOA was higher than figures published by the State of Alaska. Commenters contended that this discrepancy indicated that the Agency's assumptions about ore grade values were inflated, and that EPA estimates of mine revenue were therefore too high.

Response: In response to these comments the Agency revised its estimate of 1986 total cumulative gold production by summing all gold produced from the estimated 192 active placer mining operations. EPA's revised estimate of 1986 Alaska gold production is 172,200 ounces (compared with state figures of 160,000). This revised estimate was derived by adjusting the Agency's assumptions about the number of mines located in each region of Alaska to be consistent with the geographic distribution reported in *Alaska's Mineral Industry 1986 Special Report 40.* However, EPA has maintained in its economic methodology the same assumptions about ore grades that were reported in the March 1987 notice. As described in that notice, EPA has assumed that ore grade varies in different regions in Alaska. Adjusting the location of mines consistent with the State's information resulted in more mines being located in regions with lower ore grades. EPA's estimate of total gold production was thereby reduced to a value comparable to the State's figure, even though the Agency did not make any changes about ore grade contained in the economic analysis. The EPA estimate is approximately 8 percent greater than the State of Alaska figures. There could be several reasons for this discrepancy, including unreported gold production by miners retained for price speculation purposes or for trading or bartering purposes, or gold transported and smelted out of the state of Alaska and thus not reported in state figures. In any case the difference between EPA's estimate and State's figures is small, which confirms the accuracy of the Agency's assumptions about parameters such as ore grade and fineness which were utilized in calculating EPA's estimate of mine revenues.

10. Small Businesses

Comment: Commenters stated almost all mines in Alaska should be classified as small businesses, and contended that EPA should examine the small business impacts of this regulation.

Response: As described in Section VI. F., above, the Agency has focused on the impacts of this regulation on small business. The Agency considers all placer gold mining operations processing between 1,500 and 70,000 cu yd of ore per year to be a small business (operations smaller than 1,500 cu yd of ore per year are not covered by this rule). Mines of this size generally employ one to four people full time during the mining season. The economic impact analysis presents a detailed study of the estimated effects compliance costs will have on these operations. The Agency has developed two model open cut mines, with processing rates of 18,000 and 35,000 cu yd of ore per year, to reflect the impact on small mining operations. These model mines have equipment schedules and operating characteristics that incorporate the data reported by small miners. EPA developed the model representing a very small mine (18,000 cu yd of ore per year) in response to comments from the industry requesting more analysis of the impacts on small operations. Thus, EPA has focused specifically on the impacts of this regulation on very small mining operations.

11. General Assumptions Used to Derive Mine Revenue

Comment: Commenters questioned the values used to determine mine revenue including ore grade, fineness, nugget bonus and gold price.

Response: Ore grades for the revised model open cut mines range from 0.013 to 0.029 ounces per cu yd of ore. These grades are based upon a literature search of historic grades which is documented in the public record of this rulemaking. Questionnaires (also included in the record) returned by active placer mines in Alaska show a current average recovered ore grade of 0.022 ounces per cu yd of ore. The average ore grade used by EPA is 0.02 ounces per cu yd of ore. This figure is thus supported by values reported to EPA by placer mines and available literature.

Commenters questioned the validity of using MIRL Report 45, Mining Industry Research Laboratory, University of Alaska, to derive assumptions about gold fineness because it reports "true fineness" which exclusively compares the ratio of gold and silver in the bullion and does not take other impurities into account. EPA agrees with these comments. As a result, EPA reviewed all surveys submitted by mine operators in 1984, 1985 and 1986. Those mines surveyed reported an average fineness of 858, and this figure was applied to all regions in the final economic impact analysis report.

Commenters also objected to the Agency's assumptions about the percentage of gold recovered in nugget form and the premium obtained for nuggets above the spot price. Other commenters supported the Agency's position. EPA reviewed this issue and concludes premiums are paid to miners for a portion of their gold production. EPA bases this conclusion on information obtained from gold buyers in both the lower 48 and Alaska about the premium paid for gold of certain mesh sizes.

This information indicates that varying premiums are paid for those portions of gold production that exceed certain size classifications. On the basis of available data, a premium of 23 percent over the spot gold price was assigned to that portion of production that exceeds 14 mesh. No premium was assigned to gold less than 14 mesh.

The percentage of production that qualified for the premium was determined from data developed by the State of Alaska Innovative Grants Program. These percentages are 19 percent for the very small end small open cut mines, 15 percent for medium and 5 percent for the large open cut mines. No premium was assigned to the dredge model.

XI. Best Management Practices (BMP)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage associated with or ancillary to the manufacturing or treatment process. In gold placer mines, infiltration, surface drainage and mine drainage are associated with mining and beneficiation operations and may contribute significant amounts of pollutants to navigable waters. The November 1985 proposal solicited comments on possible BMP being considered by the Agency. The five BMP explained below and included in the regulation are necessary for control and treatment of the drainage and infiltration water at gold placer mines and to prevent solids and toxic metals from being released to the receiving streams under various types of climatic and seasonal conditions. These BMP represent good mining practices which are commonly practiced in well operated mining operations. This rule requires the inclusion of BMP in gold placer mine permits, unless it can be demonstrated to the satisfaction of the RA or Director that one or more of the BMP are not applicable for a particular operation.

(a) Surface Water Diversion

The free flow of surface waters into the plant site shall be interrupted and these waters diverted around and away from incursion into the plant site.

Such diversion may be accomplished by appropriate means such as the construction of dikes, berms or ditches to convey the water away from or around the plant site. For the purpose of this requirement, the plant site is defined in § 440.14(a)(15) as the area occupied by the mine, necessary haulage ways from the mine to the ore processing equipment, the area occupied by the ore processing equipment, the areas occupied by the wastewater treatment facilities and the storage areas for waste materials and solids removed from the wastewaters during treatment.

This BMP requirement applies both during the active mining season and at all other times. It applies for the plant site in active use and to plant site areas no longer in active use after active operations have ceased.

(b) Berm Construction

Berms, including any pond walls, dikes, low dams and similar water retention structures shall be constructed in a manner such that they are reasonably expected to reject the passage of water.

This may be achieved by utilizing on-site materials in a manner that the fine sealing materials such as clays are mixed in the berms with coarser materials. Berms should be toed into the underlying earth, constructed in layers or lifts, and each layer thoroughly compacted to ensure mechanical and water tight integrity of the berms. Other impermeable materials such as plastic sheets or membranes may be used inside the berms when sealing fines are unavailable or in short supply. The side slope of berms should be not greater than the natural angle of repose of the materials used in the berms or a slope of 2:1 whichever is lower.

(c) Pollutant Materials Storage

Measures shall be taken to assure that pollutant materials removed from the process water and wastewater streams will be retained in storage areas and not discharged or released to the waters of the United States.

These measures may include location of the storage ponds and storage areas to assure that they will not be washed out by predictable flooding or by the return of a relocated stream to its original stream bed. The overflows from ponds and storage areas should be protected from erosion by rip rap or rock plating. Submerged discharges or constant level discharge pipes through retention dikes should be used where practicable.

This requirement applies both during the active mining season and at all other times as well as after active mining operations have moved to new locations.

(d) New Water Control

The amount of new water allowed to enter the plant site for use in ore processing shall be limited to the minimum amount required as make-up water for processing operations.

New water is defined in § 440.141(a)(11) as water from any discrete source such as a river, creek, lake or well which is deliberately allowed or brought into the plant site.

Control mechanisms should limit the flow of new water to the minimum amount needed to supplement other waters for gold ore processing make-up requirements and should shut off the flow or exclude new water when the ore processing segment of the facility is not being operated.

(e) Maintenance of Water Control and Solids Retention Devices

All water control devices such as diversion structures and berms and all solids retention structures such as berms, dikes, pond structures and dams shall be maintained to continue their effectiveness and to protect from unexpected and catastrophic failure.

The structures should be inspected on a regular basis for any signs of structural weakness or incipient failure. Whenever such weakness or incipient failure becomes evident, repair or augmentation of the structure to reasonably assure against catastrophic failure shall be made immediately.

This BMP requirement shall apply both during the active mining season and at all other times as well as after active mining operations have moved to new locations.

XII. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations require only what technology can achieve, many claim that liability for upsets is improper. When confronted with this issue, courts have been divided on whether an explicit upset or excursion exemption is necessary, or whether upset or excusion incidents may be handled through exercise of EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra*, and *Corn Refiners Association, et. al.* v. *Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of international noncompliance during which waste treatment facilities are circumvented in emergency situations. The Agency has, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated permit regulations that include upset and bypass permit provisions (see 40 CFR 122.41 (m) and (n), 48 FR 14146 (April 1, 1983)). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage.

Although permittees in the gold placer mine subcategory will be entitled to upset and bypass provisions specified in NPDES permits, this regulation establishes the specific conditions which must be met in order to be eligible for the storm exemption established as part of the technology-based requirements of this regulation. As discussed in the preamble to the proposed regulation and in the development document for this regulation, the Agency recognizes that mines, in particular surface mines, should not be required to construct treatment for the maximum precipitation event, or series of precipitation events, that could occur with resulting effects on wastewater and mine drainage discharge flows. The storm exemption provides a limited exception to the requirements applicable under normal operating conditions. If the operator complies with this provision, the operator has an affirmative defense against an enforcement action for any violation that occurs as a result of precipitation if he complies with the notification requirements of § 122.41 (m) and (n) of the general permit regulation. The final rule therefore, establishes for gold placer mines criteria to be used in designing, constructing and maintaining wastewater treatment facilities, in order to be eligible for the storm exemption i.e., the facilities must be able to contain and treat the maximum volume of wastewater resulting from processing ore during a 4-hour period plus the volume that would be discharged from a five-year, six-hour precipitation event § 440.141(b). The proposed storm exemption would have required that ponds be designed to retain the volume of wastewater generated during a 6-hour processing period. The final rule is based on the retention of process water that would be generated during a four hour period, since, as discussed in Section V above, the Agency bases the limitations in this regulation on a four hour retention period. Furthermore, the final rule also provides that in order to be eligible for the storm exemption, the permittee must be in compliance with the BMP contained in this rule. The storm exemption supersedes the general upset and bypass provisions of the general NPDES permit regulations only with respect to precipitation events. The upset and bypass provisions in the general permit regulations are available in all other applicable situations. The storm exemption and its application are discussed further in the Development Document.

XIII. Variances and Modifications

Upon promulgation of this final regulation, the appropriate effluent limitations must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the gold placer mine subcategory.

For BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E.I. duPont deNemours Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was originally set forth in EPA's 1973 to 1976 industry regulations, it is now included in the general NPDES regulations and is cross-referenced in this regulation as well as other specific industry regulations. See the general NPDES regulations at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. However, section 306 of the Water Quality Act of 1987 added a new section 301(n) to the Act which somewhat limits the availability of FDF variance from BAT effluent limitations guidelines. An FDF application must be based solely on information and supporting data submitted to EPA during the rulemaking establishing the limitations that discussed the fundamentally different factors, or on information and supporting data that the applicant did not have a reasonable opportunity to submit during the rulemaking. The alternative requirement must be no less stringent than justified by the fundamental difference and must not result in markedly more adverse non-water quality environmental impacts than those considered by EPA in establishing these BAT limitations.

Readers should note that EPA has not yet amended its FDF variance regulation to conform to the provisions of the Water Quality Act of 1987. However, EPA recognizes that the new section 301(n) of the Act overrides the existing FDF regulation to the extent of any inconsistency, and EPA does intend to modify the FDF regulation to conform to the new statutory requirements.

In addition, BAT limitations for nonconventional pollutants are subject to modifications under section 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. Since BAT limitations on the discharge of settleable solids serve as indicators for the discharge of toxic pollutants, gold placer mine operators will not be able to obtain variances under these provisions of the Act.

New sources subject to NSPS are not eligible for any statutory or regulatory modifications. See, *E.I. duPont deNemours & Co.* v. *Train supra*.

XIV. Implementation of Limitations and Standards

A. Relationship to NPDES Permits

The BPT and BAT limitations, NSPS and BMP in this regulation will be applied to individual gold placer mines through NPDES permits issued by EPA or approved state agencies, under section 402 of the Act. These requirements do not apply to individual dischargers until incorporated into NPDES permits. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit issuing authorities. EPA has developed the limitations, standards and BMP in this regulation to cover the typical facilities in each subcategory of this point source category. However the promulgation of this regulation will not restrict the power of any permitting authority to act in any manner consistent with law of these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, such as total suspended solids (TSS), the permit issuer may still limit the pollutant on a case-by-case basis when such actions are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards, e.g., for turbidity, or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), the permit issuing authority must apply those limitations.

These guidelines will not assure compliance with receiving water quality standards in all cases. As stated above, the permit issuing authority may have to impose additional controls (such as turbidity limits) to ensure compliance with the water quality standards. However, because of the BAT limitations based on recirculation of process water, application of the guidelines will result in compliance with water quality standards at a large percentage of the mines. At other sites, discharges will be greatly reduced, with the result that the costs of any additional treatment needed to meet water quality standards will be reduced accordingly.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, the Agency may elect to use any of the enforcement responses available under the CWA. *Sierra Club v. Train*, 557 F.2d 485 (5th Cir. 1977).

XV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants." EPA's technical conclusions are detailed in the "Development Document for Effluent Limitations Guidelines, and New Source Performance Standards for the Ore Mining and Dressing Category, Gold Placer Mine Subcategory". The Agency's economic analysis is presented in "Economic Impact Analysis of Effluent Limitations Guidelines and Standards for the Gold Placer Mine Subcategory". A detailed response to the public comments received on the proposed regulation is presented in a report "Responses to Public Comments on the Effluent Limitations Guidelines and Standards for the Proposed Gold Placer Mine Subcategory", which is a part of the public record for this regulation. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487–4600. Additional information concerning the economic impact analysis may be obtained from Mr. Mitchell Dubensky, Economic Analysis Staff (WH–586), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by calling (202) 382–5388. Technical information may be obtained from Mr. Willis Umholtz, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by calling (202) 382–7126.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 *et seq.*

XVI. List of Subjects in 40 CFR Part 440

Metals, Mines, Water pollution control, Waste treatment and disposal.

Dated: May 9, 1988.

Lee M. Thomas,

Administrator.

XVII. Appendices

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

ADEC—Alaska Department of Environmental Conservation.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under section 304(b)(2) of the Act.

BCT—The best conventional pollutant control technology under section 304(b)(4) of the Act.

BDT—Best available demonstrated technology under section 306(b)(1) of the Act.

BMP—Best management practice under section 304(e) of the Act.

BPJ—Best Professional Judgment.

BPT—The best practicable control technology currently available, under section 304(b)(1) of the Act.

CWA—Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as subsequently amended.

MSHA—The Mine Safety and Health Administration, U.S. Department of Labor.

NEPA—National Environmental Policy Act of 1969.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NSPS—New source performance standards under section 306 of the Act.

OMB—Office of Management and Budget.

POTW—Publicly owned treatment works.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94–580) of 1976, Amendments to Solid Waste Disposal Act, as subsequently amended.

SBA—Small Business Administration.

SS—Settleable Solids.

TSS—Total Suspended Solids.

For the reasons discussed above, 40 CFR Part 440 is amended as follows:

PART 440—[AMENDED]

1. The authority citation for Part 440 is revised to read as follows:

Authority: Secs. 301, 304(b), (c) and (e), 306, 307, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), (the Act), 33 U.S.C. 1311, 1314(b), (c) and (e), 1316, 1317, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 101 Stat. 7, Pub. L. 100–4.

2. In § 440.100 paragraph (a) is revised to read as follows, paragraph (b) is redesignated as paragraph (d), and new paragraphs (b) and (c) are added to read as follows:

§ 440.100 Applicability; description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.

(a) The provisions of this Subpart J are applicable to discharges from—

(1) Mines that produce copper, lead, zinc, gold, silver, or molybdenum bearing ores, or any combination of these ores from open-pit or underground operations other than placer deposits;

(2) Mills that use the froth-flotation process alone or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores, or any combination of these ores;

(3) Mines and mills that use dump, heap, in-situ leach, or vat-leach processes to extract copper from ores or ore waste materials; and

(4) Mills that use the cyanidation process to extract gold or silver.

(b) Discharge from mines or mines and mills that use gravity separation methods (including placer or dredge mining or concentrating operations, and hydraulic mining operations) to extract gold ores are regulated under Subpart M.

(c) Discharge from mines (including placer or dredge mining, and hydraulic mining operations) or mines and mills that use gravity separation methods to extract silver from placer ores are not covered under this part.

* * * * *

§ 440.102 [Amended]

3. Section 440.102 is amended by removing paragraph (e) and redesignating paragraphs (f) through (i) as (e) through (h) respectively.

§ 440.103 [Amended]

4. Section 440.103 is amended by removing paragraph (e).

§ 440.104 [Amended]

5. Section 440.104 is amended by removing paragraph (e).

6. Part 440 is amended to add a new Subpart M, consisting of §§ 440.140 through 440.148, to read as follows:

Subpart M—Gold Placer Mine Subcategory

Sec.

440.140 Applicability; description of the gold placer mine subcategory.

440.141 Specialized definitions and provisions.

440.142 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.144 New Source Performance Standards (NSPS).

440.145—440.147 [Reserved]

440.148 Best Management Practices (BMP).

Subpart M—Gold Placer Mine Subcategory

§ 440.140 Applicability; description of the gold placer mine subcategory.

(a) The provisions of this Subpart M are applicable to discharges from—

(1) Mines and dredges that produce gold or gold bearing ores from placer deposits; and

(2) The beneficiation processes which use gravity separation methods for recovering gold from placer deposits.

(b) The provisions of this Subpart M are not applicable to any mines or beneficiation processes which process less than 1500 cubic yards (cu yd) of ore per year, or to dredges which process less than 50,000 cu yd of ore per year, or to dredges located in open waters (i.e., open bays, marine waters, or major rivers).

§ 440.141 Specialized definitions and provisions.

For the purpose of this Subpart M, the general definitions, abbreviations, methods of analysis, and general provisions set forth in 40 CFR Part 401 shall apply except as superseded by those below. The general provisions and definitions set forth in 40 CFR Part 440 Subpart L, shall not apply to this subpart.

(a) *Specialized Definitions.* The following specialized definitions apply to this subpart only.

(1) "Beneficiation area" means the area of land used to stockpile ore immediately before the beneficiation process, the area of land used for the beneficiation process, the area of land used to stockpile the tailings immediately after the beneficiation process, and the area of land from the stockpiled tailings to the treatment system (e.g., holding pond or settling pond, and the area of the treatment system).

(2) "Beneficiation process" means the dressing or processing of gold bearing ores for the purpose of—

(i) Regulating the size of, or recovering, the ore or product,

(ii) Removing unwanted constituents from the ore, and

(iii) Improving the quality, purity, or assay grade of a desired product.

(3) "Drainage water" means incidental surface waters from diverse sources such as rainfall, snow melt or permafrost melt.

(4) "Dredge" means a self-contained combination of an elevating excavator (e.g., bucket line dredge), the beneficiation or gold-concentrating plant, and a tailings disposal plant, all mounted on a floating barge.

(5) "Five (5) year, 6-hour precipitation event" means the maximum 6-hour precipitation event with a probable recurrence interval of once in 5 years as established by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, or equivalent regional or rainfall probability information.

(6) "Gravity separation methods" means the treatment of mineral particles which exploits differences between their specific gravities. The separation is usually performed by means of sluices, jigs, classifiers, spirals, hydrocyclones, or shaking tables.

(7) "Infiltration water" means that water which permeates through the earth into the plant site.

(8) "Mine" means a place where work or other activity related to the extraction or recovery of ore is performed.

(9) "Mine area" means the land area from which overburden is stripped and ore is removed prior to moving the ore to the beneficiation area.

(10) "Mine drainage" means any water drained, pumped or siphoned from a mine.

(11) "New water" means water from any discrete source such as a river, creek, lake or well which is deliberately allowed or brought into the plant site.

(12) "Open cut mine" means any form of recovery of ore from the earth except by a dredge.

(13) "Ore" means gold placer deposit consisting of metallic gold-bearing gravels, which may be: residual, from weathering of rocks in-situ; river gravels in active streams; river gravels in abandoned and often buried channels; alluvial fans; sea-beaches; and sea-beaches now elevated and inland. Ore is the raw "bank run" material measured in place, before being moved by mechanical or hydraulic means to a beneficiation process.

(14) "Permit Area" means the area of land specified or referred to in an NPDES permit in which active mining and related activities may occur that result in the discharge regulated under the terms of the permit. Usually this is specifically delineated in an NPDES permit or permit application, but in other cases may be ascertainable from an Alaska Tri-agency permit application or similar document specifying the mine location, mining plan and similar data.

(15) "Plant site" means the area occupied by the mine, necessary haulage ways from the mine to the beneficiation process, the beneficiation area, the area occupied by the wastewater treatment facilities and the storage areas for waste materials and solids removed from the wastewaters during treatment.

(16) "Process wastewater" means all water used in and resulting from the beneficiation process, including but not limited to the water used to move the ore to and through the beneficiation process, the water used to aid in classification, and the water used in gravity separation, mine drainage, and infiltration and drainage waters which commingle with mine drainage or waters resulting from the beneficiation process.

(17) "Settleable solids" means the particulate material (both organic or inorganic) which will settle in one hour expressed in milliliters per liter (ml/l) as determined using an Imhoff cone and the method described for Residue—Settleable in 40 CFR Part 136.

(b) *Specialized Provisions—Storm Exemption.* This specialized provision applies to this Subpart M only. If, as a result of precipitation (rainfall or snowmelt), a source subject to this subpart has an overflow or discharge of effluent which does not meet the limitations or standards of this subpart, the source may qualify for an exemption from such limitations and standards with respect to such discharge if the following conditions are met:

(1) The treatment system is designed, constructed, and maintained to contain the maximum volume of untreated process wastewater which would be discharged, stored, contained and used or recycled by the beneficiation process into the treatment system during a 4-hour operating period without an increase in volume from precipitation or infiltration, plus the maximum volume of water runoff resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of water which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which would result from the plant site contributing runoff to the individual treatment facility.

(2) The operator takes all reasonable steps to maintain treatment of the wastewater and minimize the amount of overflow.

(3) The source is in compliance with the BMP in § 140.148 and related provisions of its NPDES permit.

(4) The operator complies with the notification requirements of § 122.41 (m) and (n) of this title. The storm exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

§ 440.142 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in process wastewater from an open-cut mine plant site shall not exceed:

Effluent limitations	
Effluent characteristics	Instantaneous maximum
Settleable solids	0.2 ml/l

(b) The concentration of pollutants discharged in process wastewater from a dredge plant site shall not exceed:

Effluent characteristics	Effluent limitations—Instantaneous maximum
Settleable solids	0.2 ml/l

§ 440.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The volume of process wastewater which may be discharged from an open-cut mine plant site shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make up water required for operation of the beneficiation process. The concentration of pollutants in process wastewaters discharged from an open-cut mine plant site shall not exceed:

Effluent characteristics	Effluent limitations—Instantaneous maximum
Settleable solids	0.2 ml/l

(b) The volume of process wastewater which may be discharged from a dredge plant site shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make up water required for operation of the beneficiation process. The concentration of pollutants in process wastewater discharged from a dredge plant site shall not exceed:

Effluent characteristics	Effluent limitations—Instantaneous maximum
Settleable solids	0.2 ml/l

§ 440.144 New Source Performance Standards (NSPS).

Any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology:

(a) The volume of process wastewater which may be discharged from an open-cut mine plant site shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make up water required for operation of the beneficiation process. The concentration of pollutants in process wastewaters discharged from an open-cut mine plant site shall not exceed:

Effluent characteristics	Effluent limitations—Instantaneous maximum
Settleable solids	0.2 ml/l

(b) The volume of process wastewater which may be discharged from a dredge plant site shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make up water required for operation of the beneficiation process. The concentration of pollutants in process wastewater discharged from a dredge plant site shall not exceed:

Effluent characteristics	Effluent limitations—Instantaneous maximum
Settleable solids	0.2 ml/l

(c) Notwithstanding any other provision of this chapter, the Regional Administrator or Director of a State agency with authority to administer the NPDES program shall in designating new source gold placer mines, take into account and base the decision on whether one or more of the following factors has occurred after May 24, 1988.

(1) The mine will operate outside of the permit area which is covered by a currently valid NPDES Permit.

(2) The mine significantly alters the nature or quantity of pollutants discharged.

(3) The mine discharges into a stream into which it has not discharged under its currently valid NPDES permit.

(4) The mine will operate in a permit area that has not been mined during the term of the currently valid NPDES permit.

(5) Such other factors as the Regional Administrator or state Director deems relevant.

§§ 440.145—440.147 [Reserved]

§ 440.148 Best Management Practices (BMP).

The following best management practices are specific requirements which shall be included in each NPDES permit for all mining operations regulated under this subpart to the greatest extent applicable in each such mining operation.

(a) *Surface Water Diversion:* The flow of surface waters into the plant site shall be interrupted and these waters diverted around and away from incursion into the plant site.

(b) *Berm Construction:* Berms, including any pond walls, dikes, low dams and similar water retention structures shall be constructed in a manner such that they are reasonably expected to reject the passage of water.

(c) *Pollutant materials storage:* Measures shall be taken to assure that pollutant materials removed from the process water and wastewater streams will be retained in storge areas and not discharged or released to the waters of the United States.

(d) *New Water Control:* The amount of new water allowed to enter the plant site for use in ore processing shall be limited to the minimum amount required as make-up water for processing operations.

(e) *Maintenance of water control and solids retention devices:* All water control devices such as diversion structures and berms and all solids retention structures such as berms, dikes, pond structures and dams shall be maintained to continue their effectiveness and to protect from unexpected and catastrophic failure.

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Tuesday
May 24, 1988

Part IV

Environmental Protection Agency

40 CFR Part 268
Land Disposal Restrictions; Proposed Rule

VOL 53 ISS 100 MAY 24 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-3329-9]

Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to revise the Toxicity Characteristic Leaching Procedure (TCLP), "Method 1311," as proposed on June 13, 1986 as part of the Toxicity Characteristic (TC) and as promulgated on November 7, 1986 as part of the Land Disposal Restrictions Program under the Resource Conservation and Recovery Act (RCRA). The changes to Method 1311 involve the use of a stainless steel cage in the bottle extractor, the addition of new suppliers of equipment, and the addition of a more detailed method flow chart and diagram of the stainless steel cage. The cage modification would allow the elimination of the size reduction step for certain materials.

DATES: Comments on this proposed rule to modify Method 1311 must be submitted on or before June 23, 1988.

ADDRESSES: One original and two copies of all comments on this proposed rule, identified by the Docket number F–88–TCA–FFFFF, should be sent to the following address: EPA RCRA Docket, WH–562, (LC–100), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please place the Docket number on all comments. The EPA RCRA Docket is located in the sub-basement at the above address and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review Docket materials, the public must make an appointment by calling (202) 475–8327. A maximum of 50 pages of material may be copied from any one regulatory docket at no cost. Additional copies cost $0.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or (202) 382–3000.

For information on the technical aspects of this proposed rule contact Gail Hansen, Office of Solid Waste, WH–562B, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4761.

SUPPLEMENTARY INFORMATION:

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I. Background

On January 14, 1986 (51 FR 1602), EPA proposed the framework for implementing the Congressionally-mandated Land Disposal Restrictions Program (LDR) under the Resource Conservation and Recovery Act (RCRA). This action, among other things, proposed to establish treatment standards that had to be met before wastes could be land disposed. To determine whether the applicable treatment standards had been met, the Agency proposed to employ the Toxicity Characteristic Leaching Procedure (TCLP), or Method 1311. On June 13, 1986 EPA also proposed the use of Method 1311 as part of a new Toxicity Characteristic (TC) for determining whether a waste is hazardous. (51 FR 21648). The TC proposal would expand the existing Extraction Procedure Toxicity Characteristic (EPTC) by requiring that additional chemicals be considered in determining the hazardousness of a waste, and by using Method 1311 to determine the presence of such chemicals in, and their potential to leach from, a waste. In both these proposals, Method 1311 was developed to simulate the mobility of both organic and inorganic compounds. In the TC rule, EPA proposed that Method 1311 would replace the Extraction Procedure (EP) in the EPTC.

In response to these proposals, the Agency received numerous public comments regarding the test protocol. As a result of these comments, several changes and clarifications were incorporated into Method 1311 when it was promulgated as part of the Land Disposal Restrictions Program (LDR) on November 7, 1986 (51 FR 40543). These modifications included (1) specifying that the percent solids determination be performed on a separate sample to prevent problems when volatile species are important, (2) clarifying that multiple extractions might be required for samples of low solids content in order to obtain sufficient extract to conduct the needed analyses, (3) specifying particular quality assurance information which should be maintained and available for inspection, (4) specifying storage periods for the leachate, (5) recommending the use of borosilicate glass bottles over the use of flint glass, and (6) clarifying that, in the bottle protocol, centrifugation may be used as an aid to filtration of either the initial liquid phase of the waste or the extract of the solid phase.

Although these changes were not incorporated into Method 1311 when it was proposed as part of the Toxicity Characteristic (TC), when the TC is finally promulgated, these changes will be added. In addition, EPA is today proposing to make additional changes to Method 1311 (as used both in the LDR program and the TC) in response to comments received from the TC and LDR rules and recent studies conducted by the Agency. These changes consist of incorporating a stainless steel cage in the bottle extractor, which allows the elimination of the particle size reduction step for certain materials; the addition of new equipment suppliers; and the addition of a more detailed method flow chart and diagram of the cage.

The cage modification would respond to those commenters who argued that requiring all wastes to be milled/ground before extraction (as currently required in Method 1311) would penalize those persons who solidify their wastes into a monolithic mass or those persons whose wastes are in a monolithic form. The addition of new equipment suppliers is in response to new information on the availability of suitable testing equipment and would address commenters' concerns that equipment shortages will prevent timely waste testing. The addition of a more detailed method flow chart would address comments that the current method flow chart needs to be explained and clarified. The addition of a diagram of the stainless steel cage is for clarification.

II. Incorporation of Cage and Other Modifications

Method 1311 (as proposed on June 13, 1986 as part of the TC and promulgated on November 7, 1986 as part of the LDR) requires that the waste undergo particle size reduction in those cases where the waste cannot pass through a 9.5 mm sieve or has a surface area of less than 3.1 cm^2/g. This particle size reduction is achieved through milling the waste. The Agency believed, given the uncertainties concerning the long-term environmental stability of solidified wastes, that milling these wastes was an environmentally conservative approach.

However, EPA received numerous comments on the issue of particle size reduction, particularly as it would apply for monolithic and stabilized wastes. In particular, these commenters indicated that wastes are sometimes solidified by stabilization or fixation processes to intentionally prevent contact (and subsequent leaching) between water present in the disposal unit and the toxic species present in the waste.

Additionally, certain wastes may exist as rugged, monolithic materials. These commenters argued that since rugged monolithic solids and well-solidified wastes are not likely to be physically degraded in a landfill, such waste samples should not have to be milled into small particles (to pass through a 9.5 mm sieve) before extraction. The commenters suggested that as a replacement for the milling requirement for monolithic wastes, the structural integrity procedure (SIP), from the Extraction Procedure (EP), be reinstated and improved to simulate the effects of weathering processes (such as wet/dry and freeze/thaw cycles) and vehicular traffic on a landfill.

The Agency has reviewed the use of the SIP, which uses a drop-hammer to test the integrity of the waste and to reduce its size if it fractures. The Agency found that, although it may simulate the potential of a monolithic waste to be degraded by vehicular traffic on a landfill, it cannot address certain other stresses acting on the waste (e.g., wet/dry and freeze/thaw cycles). While evaluating the use of the SIP, the Agency found that, when certain monolithic materials were tested using the SIP, the materials retained their monolithic structure. When these materials were subsequently placed in the glass extractor bottle and rotated, the bottle would break. Consequently, in order to prevent breakage of the bottles, the Agency developed a cage insert for the extractor bottle. The cage, which is designed not to move within the bottle, is constructed of 0.25-inch stainless steel woven mesh. Experiments have shown that the use of the cage prevents bottle breakage (Ref. 7).

While evaluating the utility of the cage, the Agency noticed that wastes which were believed to be well-solidified retained their monolithic nature in the cage during extraction, whereas wastes which were believed to be less well-stabilized (even though some of them had passed the SIP) were broken into small pieces during the extraction.

To further examine this apparent correlation, the Agency obtained a select group of stabilized wastes which had been tested for their apparent resistance to environmental stresses, such as wet/dry (W/D) and freeze/thaw (F/T) cycles. These included wastes which were unlikely to undergo degradation due to F/T or W/D type stresses after placement in a landfill as well as wastes which did not appear to be resistant to such stresses. Resistance was measured by subjecting the wastes to repeated cycles of water submersion and oven drying and freezing and defrosting using draft ASTM methods "Wetting and Drying Test of Solid Wastes" (Ref. 7) and "Freezing and Thawing Test of Solid Wastes" (Ref. 7), respectively. Wastes that did not fall apart or lose 30% of their original weight after 28 cycles of F/T and W/D were assumed to be resistant to environmental stresses. The 30% or more cut-off was based on data from both an EPA/Environment Canada/Industry study and from studies conducted by the Alberta Environment Center (Ref. 7). These studies showed that there was a natural break point between those wastes that were stress resistant and lost less than 30% of their original weight and those wastes that were poorly resistant and lost more than 30% of their original weight.

Those wastes that had been previously characterized using the W/D and F/T resistance tests were then subjected to the extractor using the cage insert (Ref. 7). The cage was considered to correlate the behavior of the W/D and F/T resistance tests if the samples that were degraded in the F/T and W/D tests were degraded after tumbling. The results are shown in Table 1. This study confirmed that those wastes that are resistant to environmental stresses were resistant to degradation using the cage-modified extractor. Those that were not deemed resistant to the environmental stresses were degraded by the extractor. For instance, both the wet/dry and freeze/thaw tests completely degraded the poorly stabilized pozzolonic (lime/fly ash) material and the poorly stabilized K028 concrete mixture, but neither test caused significant degradation of the vitrified, polymer encapsulated, or well-stabilized F024 concrete wastes. In addition, experience with the SIP in the laboratory has shown that stabilized solids that were not degraded by the SIP, yet that failed the freeze/thaw and wet/dry procedures, also were degraded by the cage extractor. These preliminary results suggest to the Agency that the cage tumbling procedure may better correlate with the environmental stability of the waste than the SIP. Although these data are scant, the Agency feels that there is sufficient basis to propose this procedure. Commenters should understand that the Agency will continue evaluation of the procedure during the comment period; we encourage submission of data and suggestions of additional sources of useful information.

TABLE 1.—COMPARISON OF WET/DRY, FREEZE/THAW AND TUMBLING WITH CAGE INSERT

Sample	Percent of weight remaining (number of cycles)		Average percent of weight remaining after tumbling
	Wet/dry	Freeze/thaw	
F024 [a] 2:1	73 (28)	77 (28)	[c] 71
F024 5:1	84 (28)	91 (28)	[c] 89
K028 [a] 1:1	0 (3)	0 (17)	[b] 0
K028 5:1	70 (17)	90 (28)	[b] 72
Lime/fly ash 1:1	0 (3)	0 (1)	[b] 0
Lime/fly ash 2:1	0 (5)	0 (2)	[b] 0
Polymer encapsulated	100 (28)	100 (28)	[c] 100
Vitrified [f]	97 (28)	89 (28)	[c] 86

[a] = Tested in duplicate, result is average of 2 experiments.
[b] = Tested in triplicate, result is average of 3 experiments.
[c] = Only a single specimen was tested.
[d] = Includes chlorinated solvents (40CFR, Part 261, App. VII).
[e] = Includes 1,1,1-trichloroethane, vinyl chloride
[f] = 1-L jar used due to small quantity of waste available.

Based on these results, the Agency is proposing that most waste materials are not to be milled to pass the 9.5 mm sieve before testing if (1) the bottle extractor equipped with the cage is employed and (2) an appropriate size representative sample can be taken and analyzed. The exceptions would be wastes which are rendered monolithic by being encapsulated and wastes which are tested for volatiles. The Agency believes that some encapsulated wastes may be well-solidified but is concerned about encapsulants which will corrode (e. g., metal battery cases) or otherwise degrade in the environment, thereby permitting contact between the waste material and landfill leachate. Therefore, the Agency is continuing to require that all encapsulated wastes be milled. The Agency, however, invites comments on how to define stable, non-corrodable, encapsulated wastes. Studies and data are needed of encapsulants that will not be readily breachable. Based on data and comments obtained, the Agency may consider different testing requirements for encapsulated wastes. The Agency also requires that wastes which are tested for volatiles be milled. The extraction of volatiles requires the use of a special extraction device, the Zero Headspace Extractor (ZHE), which is made of Type 316 stainless steel. The Agency does not know how to adapt the ZHE to incorporate a cage insert and therefore, still requires that wastes that are tested for volatiles go through particle size reduction, preferably as the sample is being taken in the field to

minimize volatile loss. The EPA invites comment on how to reduce the particle size of volatile-containing wastes to minimize volatile loss and, based on comments obtained, may consider other alternatives to milling of volatile-containing wastes.

The other modifications, the addition of new equipment suppliers, the addition of a more detailed method flow chart, and the addition of a diagram of the stainless steel cage, are being added primarily to further clarify the method. The new equipment suppliers include two manufacturers of rotary agitation devices, Environmental Machine and Design, Inc. of Lynchburg, VA, and Millipore Corp. of Bedford, MA; one manufacturer of a Zero Headspace Extractor vessel (ZHE), Lars Lande of Whitmore Lake, MI; and two manufacturers of filter media, Millipore Corp. of Bedford, MA, and Nucleopore Corp. of Pleasanton, CA. These manufacturers are listed in Tables 2, 3, and 5, respectively, along with company telephone numbers and equipment model numbers.

III. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Executive Order 12291 requires regulatory agencies to conduct a Regulatory Impact Analysis (RIA) for any major rule. A major rule is one likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete in domestic or export markets.

The Administrator has determined that today's proposal is not a major rule. In fact, we believe the proposed changes to Method 1311 will result in savings to persons performing the tests using this method. In particular, the time and, therefore, labor costs are lower when using the proposed modification because solid materials will not have to be milled to pass a 9.5 mm sieve but rather only be reduced to a size to fit the extraction cage in the bottle. Therefore, because this proposal is not a major regulation, no Regulatory Impact Analysis was conducted.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612 whenever an agency is required to issue for publication in the Federal Register any proposed or final rule, it must prepare and make available for comment a Regulatory Flexibility Analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency has examined the potential impact of the proposed rule on small business and has concluded that this regulation will have no adverse impact on small entities since the modification to Method 1311 does not significantly affect the cost of testing. In fact, because the modification reduces labor costs, this proposal may reduce testing costs. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The proposed rule contains no recordkeeping or information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Because information collection or recordkeeping requirements are not required by this proposal, the Agency has not prepared documentation pursuant to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 268

Hazardous waste, Reporting and Recordkeeping requirements.

Dated: April 8, 1988.

Lee M. Thomas,

Administrator.

IV. References

(1) Research Triangle Institute. "Toxicity Characteristic Leaching Procedure." Draft Background Document. U.S. EPA, OSW, Washington, DC, 1987.

(2) S-Cubed. "Modification to the Toxicity Characteristic Leaching Procedure." U.S. EPA, Contract No. 68-01-7286, 1987.

(3) Research Triangle Institute. "Evaluation of Analytical Procedures Supporting the Toxicity Characteristic Leaching Procedure (TCLP): Modifications to Protocols." U.S. EPA, Contract No. 68-01-7286, 1987.

(4) S-Cubed. "Modification of the TCLP for Problem Matrices." U.S. EPA, OSW, Washington, DC, 1987.

(5) U.S. EPA. "Toxicity Characteristic Leaching Procedure." Background Document, U.S. EPA, OSW, Washington, DC, 1986.

(6) "EPA TCLP Changes." Internal Document. U.S. EPA, OSW, 1986.

(7) S-Cubed. "Modification of TCLP to Accommodate Solidified Wastes." Draft Final Report, U.S. EPA, OSW, Washington, DC, September, 1987.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. The heading, Steps 4.2.2, 7.0, 7.3, 8.9, 8.10, Table 2, Table 3, Table 5, and Figure 1 of Appendix I are revised and a new Figure 4 is added, to read as follows:

Appendix I to Part 268—Method 1311

* * * * *

4.2.2 *Extraction Bottle with Cage.* When the waste is being evaluated for other than volatile contaminants, a 2-liter jar fitted with a stainless steel cage is used for most samples (see below for exceptions). Headspace is allowed in this vessel. The jar is fitted with a type 316 stainless steel (or equivalent material) cage that will contain all of the solids in the sample. The cage is constructed of 6.25 inch (6.3 mm) woven wire mesh with an inside diameter of 3.0 ± 0.1 in. and a free fall length of 9.9 ± 0.1 in. The cage shall be supported in the extractor bottle in such a manner that it does not move as the bottle is rotated. See Figure 4 for details of construction.

The extraction bottles may be constructed from various materials, depending on the contaminants to be analyzed and the nature of the waste (see Step 4.3.3). It is recommended that borosilicate glass bottles be used instead of other types of glass, especially when inorganics are of concern. Plastic bottles shall not be used if organics are to be investigated. Bottles are available from a number of laboratory suppliers, but the bottle size must be appropriate to contain the cage. When this type of extraction vessel is used, the filtration device discussed in Step 4.3.2 is used for initial liquid/solid separation and final extract filtration.

For the wastes that *must* be reduced to granules in Step 7.3, the cage is not used in the extraction bottle. The cage is used in all other cases, even if the solids are present as small particles.

* * * * *

7.0 PRELIMINARY EVALUATIONS

Preliminary evaluations are performed on a minimum 100 gram representative sample of waste that will not actually undergo extraction (designated as the first sample in Step 8.2). These evaluations include: (1) preliminary determination of the percent solids of the waste; (2) determination of whether the waste contains insignificant solids, and is therefore, its own extract after filtration; (3) determination of whether the waste is encapsulated; and (4) determination of which of the two extraction fluids are to be

used for the non-volatile leaching extraction of the waste.

* * * * *

7.3 *Determination of whether the waste requires size-reduction (particle-size is reduced during this Step):* If an extraction for volatile organics (Step 9.0) is to be performed on the wastes that contain more than 0.5% solids, the solids must be reduced to the particle size prescribed in Step 7.3.3. For the extraction of other analytes (Step 8.0) the solid is reduced to small particles only if it is encapsulated.

7.3.1 The solid portion of the waste is carefully examined to determine if it is encapsulated. If the solid is found to be en capsulated, it must be crushed, cut, or milled to pass a 9.5 mm sieve. If a liquid phase results in this step, the resulting mixture shall be evaluated by Step 7.1.

Note.—This size reduction is meant both for wastes encapsulated with surface coatings and wastes that may naturally be in sealed capsules (e.g., dry cell batteries, electrical parts).

7.3.2 If the solid portion of the waste is not encapsulated and volatile organics are not of concern, representative solid pieces are used in the extraction procedure (Step 8.0), as obtained.

Note.—For wastes that are to be fixated or stabilized before extraction the sample may be cast (or otherwise stabilized) in the form of a cylinder or block that will fit in the cage of the extraction apparatus (see Steps 8.0–8.11). The casting may be allowed to cure for 30 days before the leaching procedure is performed.

7.3.3 For solids that are to be extracted for volatile organics (Step 9.0) or solids that are encapsulated (Steps 8.0 and 9.0), a particle-size reduction is required, if the solid has a surface area per gram of material equal to or greater than 3.1 cm^2, or is smaller than 1 cm in its narrowest diagonal (i.e., is capable of passing through a 9.5-mm (0.375 inch) standard sieve). Such solids are prepared for extraction by crushing, cutting, or grinding the waste to a surface area or particle-size as described above. If the solids are prepared for organic volatiles extraction, special precautions must be taken, see Step 9.6.

Note.—Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not required, nor is it recommended.

* * * * *

8.9 If the waste contains <0.5% dry solids (see Step 7.2), proceed to Step 8.13. If the waste contains >0.5% dry solids (see Step 7.1 or 7.2), and if particle-size reduction of the solid is needed in Step 7.3 (i.e., the solid is encapsulated), proceed to Step 8.10. If particle-size reduction was not required in Step 7.3, quantitatively transfer the solid material into the stainless steel cage of the extractor vessel, and include the filter used to separate the initial liquid from the solid phase, if used. Proceed to Step 8.11.

8.10 If the waste is encapsulated the solid portion is prepared for extraction by crushing, cutting, or grinding the waste to a surface area or particle size as described in Step 7.3. When the surface area or particle-size has been appropriately altered, quantitatively transfer the solid material into an extractor bottle, without a stainless steel cage. The filter used to separate the initial liquid from the solid phase is also put into the extractor bottle.

Note.—Sieving of the waste through a sieve is not normally required. If sieving is needed a Teflon-coated sieve should be used to avoid contamination of the sample. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended.

* * * * *

TABLE 2.—SUITABLE ROTARY AGITATION APPARATUS [1]

Company	Location	Model
Analytical Testing and Consulting Services, Inc	Warrington, PA, (215) 343–4490	4-vessel ZHE device or 8-bottle extractor device.
Associated Design and Manufacturing Co	Alexandria, VA, (703) 549–5999	4-vessel device, 6-vessel device.
Environmental Machine & Design, Inc	Lynchburg, VA, (804) 845–6424	4-vessel device, 8-vessel device.
IRA Machine Shop and Laboratory	Santurce, PR, (809) 752–4004	16-vessel device.
Lars Lande Mfg	Whitmore Lake, MI, (313) 449–4116	10-vessel device, 5-vessel device.
Millipore Corp	Bedford, MA, (800) 225–3384	4-vessel ZHE device or 4-one liter bottle extractor device.
REXNORD	Milwaukee, WI, (414) 643–2850	8-vessel device.

[1] Any device that rotates the extraction vessel in an end-over-end fashion at 30 ± 2 rpm is acceptable.

TABLE 3.—SUITABLE ZERO-HEADSPACE EXTRACTOR VESSELS

Company	Location	Model
Analytical Testing and Consulting Services, Inc	Warrington, PA, (215) 343–4490	C102, Mechanical Pressure Device.
Associated Design & Manufacturing Co	Alexandria, VA, (703) 549–5999	3740–ZHB, Gas Pressure Device.
Lars Lande Mfg	Whitmore Lake, MI, (313) 449–4116	Gas Pressure Device.
Millipore Corp	Bedford, MA (800) 225–3384	SDI P581 C5, Gas Pressure Device

TABLE 5.—SUITABLE FILTER MEDIAL

Company	Location	Model	Size [1]
Millipore Corp	Bedford, MA, (800) 225–3384	AP40	0.7
Nucleopore Corp	Pleasanton, CA, (415) 463–2530	211625	.7
Whatman Laboratory Products, Inc	Clifton, NJ, (201) 773–5800	GFF	.7

[1] Nominal pore size (um).

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Figure 1 Method 1311 Flowchart

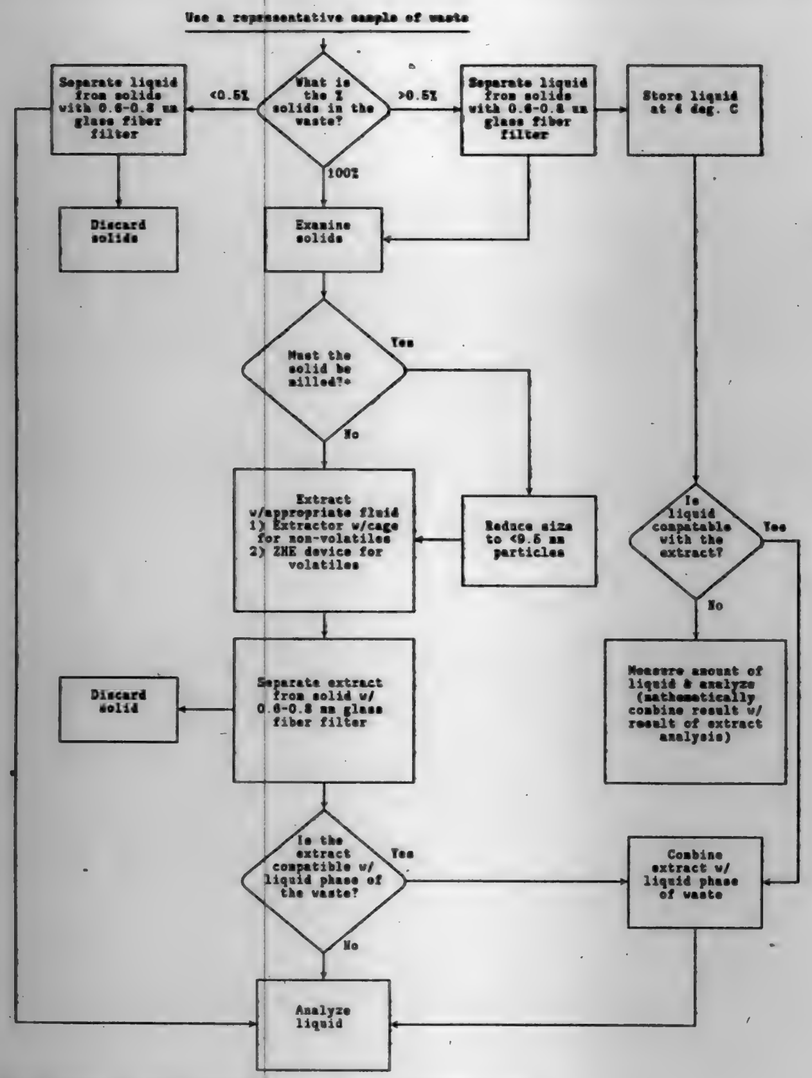

*If the solids are large pieces(>9.5 mm) and will be extracted in the ZHE device, or they are encapsulated, they must be milled.

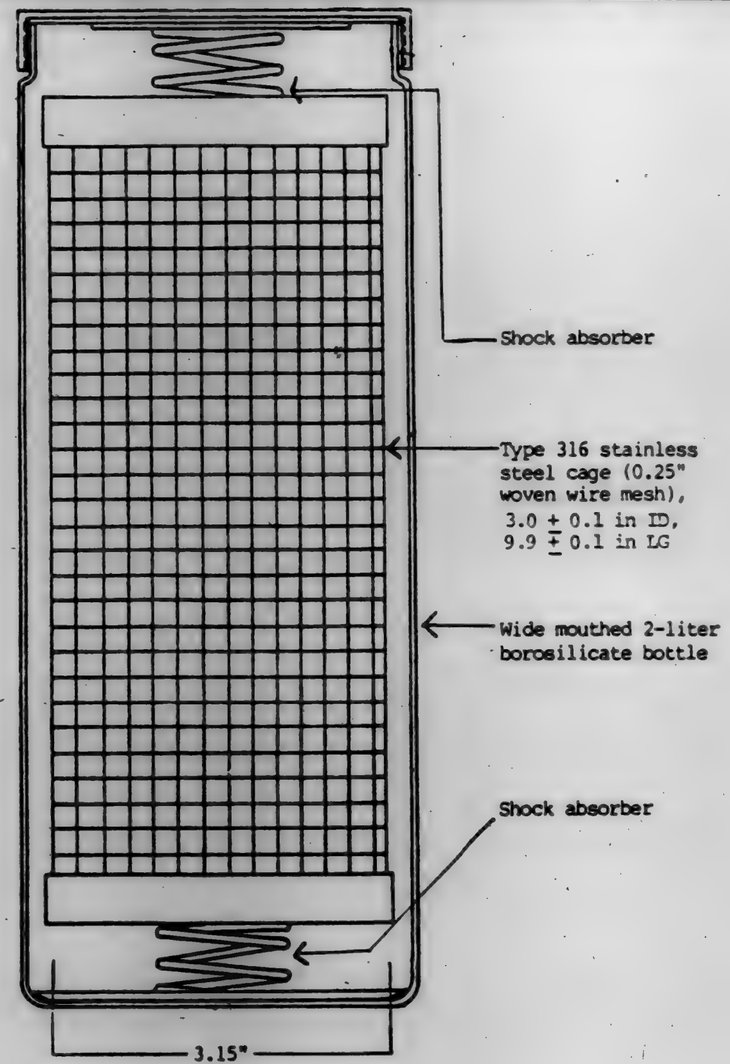

Figure 4. Stainless steel cage used in the tumbling of solid samples

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Part V

Environmental Protection Agency

40 CFR Part 82
Stratospheric Ozone Protection; Apportionment of Baseline Consumption and Production Rights; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL 3378-4]

Stratospheric Ozone Protection; Apportionment of Baseline Consumption and Production Rights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 14, 1987, EPA published in the **Federal Register** two notices related to stratospheric ozone protection. One notice (52 FR 47489) proposed regulations to implement the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol), which requires ratifying nations to limit their production and consumption of certain ozone-depleting substances according to a specified schedule. The proposal set forth a number of regulatory options for implementing the Protocol's limits, and stated that EPA's preferred option was to allocate "rights" equal to the quantity of allowable production and consumption for firms that produced and imported these substances in 1986, the baseline year specified by the Protocol. It also described the use of auctions, regulatory fees and technology controls as alternative approaches to implementing the Protocol.

The other notice (52 FR 47486) promulgated a final rule (40 CFR 82.20) requiring firms to report to the Agency the amount of certain ozone-depleting substances they had produced, imported or exported in 1986. EPA needed this information to establish a baseline against which United States compliance with the Protocol would be measured and to apportion to firms baseline production and consumption rights, should the Agency decide to employ that approach to implementing the Protocol.

EPA is required by court order to take final action on its proposed rule by August 1, 1988. It is not considering the public comments received on its December 14 notice. While no final decision on a regulatory approach has yet been reached, this notice proposes apportionments of baseline rights which would be issued if the Agency's final regulation employs the proposed allocated quota approach.

DATES: A public hearing on the proposed rule published today will be held on June 7, 1988, if any interested party notifies EPA before that date that it wishes to present oral testimony. To request a public hearing or to learn whether and where a public hearing will occur, call the contact person listed below.

Written comments on this proposed rule must be submitted to the location listed below by June 23, 1988. If a public hearing is held, information necessary to rebut or supplement oral testimony may be submitted until June 23, 1988.

ADDRESS: Written comments should be sent to Docket A-87-20, Central Docket Section, South Conference Room 4, EPA, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to David Lee at the address listed below.

FOR FURTHER INFORMATION CONTACT: David Lee, Office of Program Development, Office of Air and Radiation (ANR-445), EPA, 401 M Street, SW., Washington, DC 20460. Telephone (202) 475-7497.

SUPPLEMENTARY INFORMATION:

A. Background

This proposal supplements EPA's December 14, 1987 notice proposing to implement the Montreal Protocol's limits on production and consumption of certain ozone-depleting substances. As noted above, the December 14 notice proposed to implement the Protocol's limits by apportioning baseline production and consumption "rights" to producers and importers of the controlled substances and by freezing or reducing these rights according to the schedule specified in the Protocol. By means of the final rule also published on December 14, 1987, EPA obtained the data it needed to determine firms' baseline apportionments. This notice proposes those apportionments so that if the Agency decides to adopt its proposed allocated quota approach, the apportionments may be included in the final rule due on August 1, 1988.

As the December 14 proposal describes in detail, the Montreal Protocol is an international agreement which 24 nations, including the United States, signed last September. Since then, five more nations have signed the Protocol, and the United States and Mexico have ratified it. The Protocol will enter into force on January 1, 1989, if by that date 11 nations or regional economic integration organizations representing at least two-thirds of estimated 1986 global consumption of the controlled chemicals have ratified it and the Vienna Convention for the Protection of the Ozone Layer has entered into force. If these conditions have not been fulfilled by January 1, 1989, the Protocol will enter into force on the ninetieth day following the date on which the conditions have been fulfilled.

The Montreal Protocol limits the production and consumption (defined as production plus imports minus exports) of certain chlorofluorocarbons (CFCs) ("Group I chemicals") and halons ("Group II chemicals"). Assuming the Protocol enters into force on January 1, 1989, production and consumption of Group I chemicals would be frozen at 1986 levels beginning July 1, 1989, and would be reduced from 1986 levels by 20 and 50 percent beginning July 1, 1993, and July 1, 1998, respectively. Group II chemicals would be frozen at 1986 levels beginning on January 1, 1992. (The Protocol's regulatory schedule is described in detail in the December 14 notice.)

To establish the United States' 1986 baseline production and consumption levels, EPA promulgated under sections 114 and 157(b) of the Clean Air Act, 42 U.S.C. 7414 and 7457(b), the final rule requiring companies to report their 1986 production, imports and exports of Group I and Group II chemicals in 1986. EPA has reviewed and aggregated this information and forwarded a preliminary estimate of the United States' 1986 production of Group I chemicals combined and Group II chemicals combined to the United Nations Environment Programme (UNEP), under whose auspices the Montreal Protocol was negotiated. United States compliance with the Protocol's control requirements will be measured against these baseline levels. After this rulemaking is completed, the Agency will provide UNEP with a final estimate of United States 1986 production and consumption of each of the groups of controlled substances.

The December 14 notice of proposed rulemaking outlined several options for implementing the Protocol's control requirements. The first option described was the allocated quota system. As noted above, under that system producers and importers would be allocated production and consumption "rights" based on their 1986 production, import and/or export levels. Exporters would not require, and thus not receive, rights to continue exporting, since the Protocol does not limit exports of these chemicals. (However, exporters would be required to report to EPA the amount of controlled substances they export.)

The other implementing schemes outlined in the notice required EPA to either auction production and consumption rights, set a production/import fee on the chemicals, or impose bans and controls on their use or emissions. Another option combined an allocated quota system with a select set of command and control requirements.

Although EPA presented five possible options, the Agency stated in the notice its belief that the allocated quota option is the most viable scheme for implementing the Montreal Protocol. It also announced its plans to propose apportionments of baseline rights in time for final apportionments to be included in the August 1, 1988 final rule in the event that the allocated quota system is the approach employed.

B. Proposed Apportionment of Rights

1. Apportionment Formulas

Except as noted below, EPA calculated the proposed baseline production and consumption rights in the manner outlined in the December 14 proposal. (*See* proposed 40 CFR 82.5 and 82.6.) Since the Protocol uses 1986 production as a baseline, EPA apportioned *production rights* to United States producers based on their 1986 production levels. Each producer's rights were calculated in three steps. First, consistent with EPA's proposed definition of production as *excluding* "the manufacture of controlled substances that are used and entirely consumed in the production of other chemicals" (proposed 40 CFR 82.3(q)), the producer's production level of each controlled chemical was reduced by the amount of that chemical so consumed. Second, the producer's adjusted production of each controlled chemical was multiplied by that chemical's proposed ozone depletion weight as set forth in Appendix A of the December 14 proposal to arrive at a "calculated level" of production. Finally, the resulting calculated levels were added together for Group I chemicals and for Group II chemicals. Firms that produced chemicals in both Group I and Group II were thus apportioned separate production rights for Group I and Group II chemicals. In addition, the rights were apportioned in terms of "calculated levels," or total allowable ozone depletion potential, so that a producer could alter the mix of chemicals it produced within each group, as long as the total ozone depletion potential of its production did not exceed that allowed by the rights it held.

EPA calculated the proposed baseline *consumption rights* in a similar manner. As noted above, the Protocol uses 1986 consumption as a baseline and defines consumption as production plus imports minus exports. In its December 14 notice, EPA proposed to implement the Protocol's consumption limit by apportioning consumption rights equal to the United States' 1986 level of production and imports, less its 1986 level of exports. Specifically, EPA proposed to apportion to importers consumption rights equal to the calculated level of their 1986 imports, and to producers rights equal to the calculated level of their 1986 production multiplied by the following correction factor to account for exports:

$$\frac{\text{[(U.S. 1986 production)—(U.S. 1986 exports)]}}{\text{(U.S. 1986 production)}}$$

The Agency stated its belief that producers' consumption rights should be reduced to reflect exports because producers generally have been the major exporters of controlled substances.

In their comments on the December 14 proposal, several firms took issue with EPA's apportionment formula for consumption rights. Some stated that the calculation of consumption rights for importers, as well as for producers, should take account of exports, since producers were not responsible for all 1986 exports. They also objected to EPA's use of a correction factor to reduce every producer's consumption rights to account for exports. Use of the correction factor would effectively attribute to each producer a share of total exports proportional to its share of the production market, regardless of whether and how much that producer had actually exported. The commenters suggested that EPA instead calculate each firm's consumption rights by subtracting each firm's 1986 exports from its 1986 production or imports.

EPA's proposed formula for apportioning consumption rights was based in part on assumptions that importers did not also export and that the information needed to trace exports to a specific exporter would not be available. However, EPA learned from the responses to its December 14 final rule both that some importers also exported, and the amount each producer and importer directly exported in 1986. Since the Agency agrees that consumption rights are more fairly calculated by attributing to both producers *and* importers the amount they *actually* exported in 1986, EPA has revised its apportionment formula along the lines suggested above and calculated proposed consumption rights in the following manner.

Each importer's consumption rights were determined by subtracting from the volume of each controlled chemical it imported in 1986 the amount of that chemical it exported in 1986 (EPA's records indicate that importers exported only the chemical(s) they imported); multiplying the adjusted import level for each chemical by that chemical's ozone depletion weight; and adding together the resulting calculated levels for Group I chemicals and for Group II chemicals.

Each producer's consumption rights were determined in much the same manner, with production levels substituted for import levels, but another step was required. While producers and importers were responsible for most of the United States' 1986 exports, independent exporters made up roughly 35 percent of the CFC market and five percent of the halon market. Taken together, these firms purchased from every United States producer, but they did not, and in many cases could not, provide precise, documented information as to what quantity of their 1986 exports was supplied by which producer. EPA, in turn, had neither the resources nor time under the court-ordered rulemaking schedule to track down and substantiate the source of every export. Indeed, that task may not be possible, since some firms purchased from middlemen instead of producers, and firms purchasing from more than one source may not be able to tell how much of which producer's chemicals it exported in 1986. In any event, with the available information EPA could not accurately or verifiably attribute to specific producers the chemicals shipped abroad by independent exporters.

Given this situation, the Agency found it reasonable to attribute these exports to the producers in proportion to their respective levels of 1986 production. EPA accomplished this by multiplying each producer's 1986 production by—

$$\frac{\text{(U.S. 1986 production—unattributed portion of U.S. 1986 exports)}}{\text{U.S. 1986 production}}$$

and then subtracting that producer's 1986 direct exports. EPA developed separate correction factors for Group I and Group II chemicals, and each variable in the correction factors was expressed in terms of a calculated level, or total ozone depletion potential. The net effect of the correction factors was

to reduce each producer's consumption rights by a share of the unattributed exports in proportion to its 1986 production. For producers that were also importers in 1986, EPA calculated their consumption rights using a single equation that combined the equations applicable to importers and producers.

The December 14 proposal included regulatory language describing how EPA would calculate baseline production and consumption rights. This notice proposes not only a somewhat different approach to calculating baseline consumption rights, but also the specific apportionments to be inserted at proposed §§ 82.5(a)–(b) and 82.6(a)–(b). If EPA adopts the allocated quota approach and thus takes final action on these proposed apportionments, there will be no need to include revised regulatory language describing how the Agency arrived at the apportionments. Thus, EPA proposes to simply delete the regulatory language in §§ 82.5 and 82.6 describing how EPA determined the apportionments in the event the Agency promulgates the apportionments.

2. Definitions

Several other issues relevant to apportioning baseline production and consumption rights have been raised in response to the December 14 final rule and comments on the December 14 proposed rule, and at an international meeting to develop a harmonized system for reporting data on production, imports and exports of substances controlled by the Protocol. The latter meeting was attended by technical experts from the United States and other signatories to the Protocol and took place in March of this year in Nairobi, Kenya. EPA has considered the responses to its rule and the recommendations of the technical experts in analyzing these issues and has based its proposed apportionments on the resolutions of those issues that it proposes here.

a. Definition of "Controlled Substance"

The Montreal Protocol and EPA's proposed rule implementing the Protocol limit the production and consumption of "controlled substances." Consistent with the Protocol, § 82.3(g) of the proposed rule defines a controlled substance as "any substance listed in Appendix A to this part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance listed." The intent of the Protocol drafters and EPA was to define controlled substance to include only listed substances in bulk form and to exclude listed substances contained in products such as refrigerators and air conditioners. While the definition above would clearly include large tank car shipments of listed substances, several firms questioned whether and which small containers of listed substances would also be included.

In discussing what should count as a controlled substance for export purposes, one commenter suggested that controlled substance be defined to include only listed substances that had not been used or prepared for a specific use, and to exclude raw chemicals to which any value had been added. EPA does not believe, however, that this definition adequately distinguishes bulk substances from substances in products; simply transferring a listed substance from one big storage container to many smaller storage containers may add value to the substance, but the substance may still be considered in bulk form as opposed to contained in a product.

The group of technical experts that met in Nairobi recommended that the definition of controlled substances be clarified as follows: "Any amount of a [listed] substance or a mixture of [listed] substances which is not part of a use system containing the substance is a controlled substance and not a product containing a controlled substance for the purpose of the Protocol. If a [listed] substance or mixture must first be transferred from a bulk container to another container, vessel or piece of equipment in order to realize its intended use, the first container is in fact utilized only for storage and/or transport and the [listed] substance or mixture is considered [in] bulk [form or a controlled substance] and not a product."

So clarified, the definition of controlled substances would encompass listed substances in tanks on board ships, rail tank cars, road tankers, cylinders and drums, since chemicals are generally transferred from these types of containers to other containers or into machines which utilize them. In such cases the eventual use of the chemicals is independent of the container.

Conversely, if the mere dispensing of the listed substance from or circulation of the substance in a container constitutes the intended use of the substance, then the listed substance in that container is itself part of a use system and therefore would not be a controlled substance for Protocol purposes. For example, listed substances in refrigerators, air conditioners or fire extinguishers would not be covered by the clarified definition of controlled substances.

Listed substances in an installed or to-be-installed container from which the substance is or would be used directly would also fall outside the clarified definition of a controlled substance. However, listed substances in dispensing containers that are not and will not be installed or used as part of a use system or application would be considered controlled substances, because their use is independent of the dispensing container. To illustrate this distinction, listed substances in containers used to recharge refrigerators or air conditioners are not ordinarily installed in the refrigerator or air conditioner and, unless they are installed, would be covered by the clarified definition of controlled substance. Listed substances transported in containers that serve as reservoirs for electronics equipment, on the other hand, are installed as part of the product, and therefore would be excluded from the definition of controlled substance.

EPA believes that the clarification recommended by the technical experts group captures the distinction between listed substances in bulk form and listed substances in products that the Protocol's drafters sought to make. The Agency also believes that clarifying the definition of controlled substances as the technical experts suggest would facilitate implementation of the Protocol and EPA's proposed regulations. EPA therefore proposes that the definition of controlled substance in its proposed regulations at § 82.3(g) be revised to reflect the clarification stated above.

EPA applied this proposed clarification in determining the 1986 levels of firms' imports and exports of controlled substances. However, in the case of small ounce containers of CFC–113, EPA was not always able to determine whether or not the chemical was part of a use system. Small containers of CFC–113 are mostly used for direct cleaning of electronics, and so would be considered a use system and not a controlled substance. Where EPA could not determine the use to which containers were put, it assumed that containers less than a gallon in size were used for direct cleaning and that containers of a gallon or more were used for storage, making the chemical they contained a "controlled substance." This assumption appeared reasonable in light of the information EPA had collected on the typical use of these containers.

As the foregoing discussion illustrates, determining whether a listed substance is a controlled substance can be difficult in certain cases, even using the definition as clarified above. EPA has spent much time and effort making those determinations for the purpose of apportioning rights; however, the Agency is concerned about having to make these determinations on an ongoing basis in order to implement the rule, if promulgated. EPA is thus considering developing some "rules of thumb" (e.g., the CFC–113 "one gallon rule") to distinguish for compliance monitoring purposes controlled substances from listed substances in products.

EPA requests comment on the suggested clarification of the definition of controlled substance and invites suggestions for alternative definitions. It also requests comments on its proposed approach to applying the clarified definition to small containers of CFC–113, and suggestions for appropriate means of simplifying the application of the definition for compliance monitoring purposes.

b. Definition of Importer and Exporter

(1) *Importer.* Comments accompanying the 1986 import reports that EPA received in response to its December 14 final rule raised the issue of who is an importer.

As explained above, EPA's December 14 proposed rule called for consumption rights to be apportioned to importers as well as producers, based on the formulas previously discussed. In the final rule, EPA defined importers as persons "who transported the chemicals listed as § 82.20(b) from outside the United States or its territories to persons within the United States or its territories[,]" and required importers to report their 1986 import volumes.

For the most part, imports reported by firms in response to the December 14 rule, and thus consumption rights claimed by firms, did not overlap. In several cases, however, the same shipments of chemicals were reported by both their United States purchaser and the United States subsidiary of the foreign company that produced them. The United States purchaser in some instances had negotiated the sale of the chemicals with the foreign company, although it purchased them from the United States subsidiary. In addition, at least one firm had supplied the tanks in which the chemicals were transported. However, in every case, the United States subsidiary of the foreign producer was the shipment's "importer of record," a United States Customs Service term meaning the firm responsible for import duties and guaranteeing that the imported good meets all federal laws and regulations.

On its face, EPA's definition of importer does not resolve who should be apportioned consumption rights for imports claimed by both the United States purchaser and the United States subsidiary of the foreign producers. The United States subsidiary could be said to have transported the chemicals into the United States because it was legally responsible for passing them through Customs; the United States purchaser, on the other hand, caused them to be transported by purchasing them and in at least one case assisted in their transport by supplying the containers.

Most of the imports reported to EPA were claimed by the shipments' "importer of record." Indeed, at least one of the United States purchasers involved in the competing claims was the importer of record for other shipments that it directly purchased from foreign producers, and at least one of the United States subsidiaries was also an importer of record with respect to shipments purchased by other companies that did *not* claim the imports themselves. In a few cases, however, the imports were claimed not by their importer of record, but by their United States purchaser. The importers or record in these cases were apparently merely shipping agents or customs brokers that were neither suppliers to, nor members of, the United States user industry; in any event, they neither reported the imports nor claimed rights for them.

One commenter suggested that EPA define importer to be the first United States owner who is a supplier to or a member of the domestic industry that uses the controlled chemicals. According to the reports and records EPA received in response to the final rule, the importer of record in most cases fits the suggested definition; that is, the importer of record was the first United States owner who was either a supplier to or a member of the domestic user industry. The importer of record does not fit the definition in only two situations. One involves a United States producer who purchased imports from its foreign-based sister corporation; the importer of record for the transactions was a shipping company that could not be considered a supplier to or a member of the domestic user industry. The other situation involves a United States purchaser who received imports from a foreign producer; the importer of record was again a shipping company that could not be considered a supplier to or member of the domestic user industry. In both cases, the United States purchaser meets the suggested definition of importer.

EPA believes that the suggested definition appropriately resolves the competing claims at issue here for several reasons. First, as applied it is consistent with the definition set forth in the final rule. Application of the suggested definition would result in the importer of record or the United States purchaser of the shipment being considered the importer; it was noted earlier that both entities could be considered to have "transported" the chemicals into the United States as the originally proposed definition required. Second, the suggested definition is consistent with EPA's proposed regulatory strategy of allocating quotas to the controlled chemical industry. Under the suggested definition only members of that industry would receive rights.

Third, the suggested definition provides an objective, reasonable basis for deciding the few cases where imports are claimed by both the United States purchaser that is not the importer of record and the foreign producer's United States subsidiary that is the importer of record. Under the definition, the *first* United States owner gets credit for the import and is thus apportioned consumption rights. As noted above, the first United States owner in these cases is the importer of record. It makes sense to consider as the importer of chemical shipments the first United States owner of that shipment, particularly when that owner was responsible for obtaining the shipments' legal entry into the United States. Moreover, in most cases, shipments claimed by importers of record who were different from the United States purchasers were *not* also claimed by the United States purchasers. This suggests that it is reasonable to resolve the competing claims described above in favor of the importers of record. For these reasons, EPA proposes to supplement it definition of importer as suggested above, and apportion consumption rights accordingly. The Agency requests comments on this issue.

A related issue is whether this revised definition of importer should also be used in the context of enforcing the proposed rule's prohibition against importing controlled chemicals without consumption rights (*see* § 82.4(b)). EPA is concerned that as an ongoing matter, it may be administratively difficult to determine who is the first United States owner and who is a supplier. A requirement that a shipment's importer of record hold the consumption rights authorizing the shipment would be easier to implement. A possible drawback to this approach is that the

requirement would apply to shipping agents that are importers of record, even though shipping agents would be unlikely to be independently aware of the requirement. However, the buyer or seller of the controlled chemicals being shipped would probably know of the requirement and would have an incentive to inform the shipper to ensure that the import gains legal entry into the United States. The Agency welcomes suggestions on how to resolve this issue, and comment on whether "importer" for the purpose of apportioning consumption rights must be defined consistently with "importer" for the purpose of enforcing the import prohibition.

(2) *Exporter.* EPA required exporters to report their 1986 exports so that the Agency could determine 1986 United States consumption and calculate consumption rights on that basis. Since the proposed rule does not require, and thus does not apportion, rights to ship controlled substances abroad, the issue of how to define exporter is not raised in the context of apportioning baseline rights. However, under the proposed rule, exporters will be required to report their exports to EPA (*see* § 82.13) and will obtain consumption rights and authorization to convert potential production rights to production rights for those exports (*see* §§ 82.10 and 82.11). Three commentors stated that the proposed rule did not make clear who EPA would consider to be the exporter.

Two of the commentors suggested that the firm responsible for the export prior to shipping be considered the exporter. The other commentor suggested that the firm that enters into the contract with a foreign company for sale of the controlled chemicals be considered the exporter.

EPA agrees with the premise of these comments that an agent who merely processes the necessary export forms and/or transports the chemicals on behalf of the manufacturer or repackager not be considered the exporter. A shipping agent in unlikely to be aware of the requirement that exports be reported to EPA, and is unlikely to have an interest in the consumption rights that may be obtained upon proof of export and thus the incentive to report. The Agency proposes that the exporter be defined for purposes of the proposed rule as the person or company that enters into a contract to sell controlled chemicals to a person or company located outside the United States for use outside the United States. EPA believes persons or firms meeting this definition would be likely to know of the reporting requirements and respond to the incentive to earn consumption rights that the proposed rule was supposed to create. The Agency requests comment on this issue.

c. When a Shipment Becomes an Export

In the December 14 proposal, EPA took the position that an export must arrive in the recipient country before it would be counted as an export and additional consumption rights awarded. EPA was concerned that exports shipped toward the end of a control period could still be "at sea" when the control period ended, so that no Protocol party would have to count the receipt of the shipment against its consumption limit.

Several commenters disagreed with this position, stating that it would seriously hamstring industry's ability to export late in a control period. They also pointed out that while no party might have to account for the end-of-control-period exports in the control period they were shipped, some party would have to count them against its consumption limit for the following control period when they arrived. As a result, to the extent the parties' combined production was above the total limit set by the Protocol in one control period (with enough production exported at the end of the control period to stay within each party's consumption limit), the parties' combined production would have to be below the limit set by the Protocol in the following control period.

The group of technical advisors agreed that a shipment becomes an export upon departure from one country and an import upon arrival in another country. However, it recommended that issue be further examined at the next working session in the fall.

EPA proposes that at least for purposes of apportioning consumption rights, a shipment should be considered an export upon its departure from the country. No firm reporting to EPA had sufficient documentation of when 1986 exports arrived in the receiving country, and some commenters stated that it is in fact difficult to ascertain when shipments arrive. Since exports reduce a party's consumption baseline, if all parties report all of their exports for 1986, total consumption by all parties will be, if anything, lower than if parties did not report exports unless they arrived in the receiving country in 1986. EPA thus believes that it is reasonable in calculating consumption rights to count all 1986 exports.

Also raised was the issue of whether shipments to United States military bases on foreign soil and to ships at sea should be counted as exports. EPA believes that both types of shipments should *not* be counted as exports. The idea behind the Protocol's consumption cap is to limit every nation's total use of controlled substances; use by the United States military even when stationed abroad should thus count as part of the United States' consumption. Shipments to ships at sea, if claimed as exports by the shipping country, are unlikely to be claimed as imports by any country; unless some country counts then against their consumption limit, the determination of global consumption would be inflated. Since it is easier to determine the country from which the chemicals were shipped than the country which benefits from their use abroad ship, EPA proposes *not* to claim as exports United States shipments to ships at sea.

d. Definition of Production

(1) *Treatment of Recycled Substances.* The Protocol defines production of controlled substances as "the amount of controlled substances produce minus the amount destroyed by technologies to be approved by the Parties." At the Nairobi meeting of technical experts, several countries voiced concern that the Protocol's definition could be read to cover production that mixes recycled with virgin controlled substances. Some countries that do not produce controlled substances (and, under the Protocol, will not be permitted to produce controlled substances except under limited circumstances) are interested in establishing recycling programs with producing countries. Under such a program, nonproducing countries would ship their used controlled substances to producing countries for recycling. However, the recycling process entails mixing recycled controlled substances with virgin substances. The nonproducing countries are concerned that if the final mixture of recycled and virgin controlled substances counts against the producing countries' production limit, producing countries would not be interested in participating in large-scale recycling programs.

To address these countries' concerns, the technical experts group recommended that the Protocol's definition of production be amended to include the following concept: Production for purposes of the Montreal Protocol equals total production, including reprocessed and virgin chemicals, minus purchases of controlled substances for purposes of recycling. Exports and imports of used or recycled controlled chemicals, on the other hand, would be treated in the same way as trade in virgin or new controlled chemicals.

EPA believes that the definition of production in its December 14 proposed rule accomplishes what the technical experts group recommended. Proposed § 82.3(q) defines production of controlled substances as "the manufacture of a controlled substance from a raw material or feedstock chemical; however, production does not include the manufacture of controlled substances that are used and entirely consumed in the production of other chemicals." The latter half of the definition does *not* cover the case of recycled controlled substances. It addresses the situation where controlled substances are used *only* to make other chemicals, not where controlled substances are first used for some other purpose and then recovered for recycling.

The first half of the definition, however, effectively excludes recycled controlled substances from production. Use of the terms "raw material" and "feedstock chemical" denotes that only virgin production or the virgin portion of a mixture of virgin and recycled controlled substances counts as production. Consequently, United States producers could mix used controlled substances from any source with their virgin production without the used substances counting against their production limits.

Further, EPA's proposed system of consumption rights would make participation in recycling programs with other countries potentially attractive, even if recycled mixtures of controlled substances are counted as virgin controlled substances in measuring imports and exports, as the technical experts group recommends. Were that recommendation adopted by the Protocol parties, under EPA's proposed rule United States producers would have to expend consumption rights to import and used controlled substances, but they would earn additional consumption rights upon exporting the mixture of recycled and virgin production. Since both the used and virgin portions of the recycled mixture would be counted as exports, the consumption rights producers earned would be equal to the calculated level of the total mixture. Thus, United States producers could replace the consumption rights they would expend participating in a recycling program with other countries.

EPA believes that the definition of production and the system of production and consumption rights that it has proposed adequately address the concerns of the nonproducing nations. The Agency therefore does not believe its definition of production requires revision to exclude recycled controlled substances, as suggested by the technical experts group. Comment on this issue is requested.

(2) *Transformation of Chemical Intermediaries.* Another issue concerning the definition of production was raised at the Nairobi meeting of technical experts and by a commenter on EPA's proposed rule. The technical experts group proposed that reported production exclude controlled substances used as intermediaries in the production of other controlled substances or entirely transformed into non-controlled substances. However, the group did not extend the exclusion to controlled substances that are exported from one Party to another before they are transformed, because verifying the fate of these exports and adjusting both nations' production, import and export levels to reflect the transformation would be administratively difficult.

As noted above, EPA's proposed definition of production excludes "the manufacture of controlled substances that are used and entirely consumed in the production of other chemicals." Although this exclusion uses the term "consume," it has the same meaning as that proposed by the technical experts group. The Agency agrees that verification and accounting problems make it unwise to extend the exclusion to controlled substances that are exported before they are transformed.

The above definition of production would also allow a producer to subtract from its production the quantity of controlled substances it produced that was used (by it or other U.S. companies) for feedstock purposes. Producers could only take credit for controlled substances that are used as feedstocks within the same control period that they are produced. However, tracking of controlled substances between producers, including the date and source of production and feedstock consumption, could be complex and would require producers to keep records and reports not included in the December 14 proposal. Therefore, EPA is proposing to amend the definition of production so as to restrict the use of credit for feedstock controlled substances to feedstocks used and produced by the same producer. EPA requests comment on this issue.

3. Veracity of Data

The December 14 final rule required firms to submit documentation to verify the production, import and export levels they reported. Producers were required to submit 1986 internal reports that recorded production volumes. EPA used these reports to verify the 1986 production levels reported. Importers were requested to submit United States Customs Entry Summary Forms, which list the item and quantity being imported, for each shipment reported. EPA apportioned consumption rights only for those imports documented by an Entry Summary Form.

Exporters were asked to submit United States Census Export Declaration Forms, invoices or bills of lading. Since under the proposed rule exporters are not required to hold, and thus are not allocated, rights to export, documentation sufficient to attribute each shipment to a single exporter (e.g., the exporter of record) was not required. Rather, EPA believed that documentation was needed only to determine whether and how much of the controlled substance was exported and whether there was duplicative reporting of exports; proof of sale to a foreign entity was sufficient to make those determinations.

4. Confidentiality Issues

Most firms that submitted their 1986 production, import and export levels to EPA in response to the December 14 final rule claimed the data as confidential business information (CBI). EPA has not yet ruled on those claims, but production, import and export levels are the type of information that may be entitled to confidential treatment. The Agency has treated the information claimed CBI as confidential in accordance with its business confidentiality regulations at 40 CFR Part 2, Subpart B, and so has not placed it in the public docket for this rulemaking.

In the case of some firms, publication of the firm's proposed and final apportionments may itself arguably release information claimed CBI. However, EPA believes that publication of company-specific apportionments is necessary for any final allocations to have legal effect and for EPA's proposed regulatory scheme for protecting stratospheric ozone to be legally sufficient. The Agency therefore considers that publication of the allocations, even if that discloses CBI, is authorized by the Clean Air Act and EPA regulations governing the release of CBI, and has so notified affected companies.

Section 114(c) of the Clean Air Act provides that CBI obtained under the Act may be disclosed "when relevant in any proceeding under this Act." EPA's procedural rule governing release of CBI under the Clean Air Act defines "proceeding" to include "any

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rulemaking * * * conducted by EPA under the Act * * *." 40 CFR 2.301(a)(4). The regulations at 40 CFR 2.301(g)(2) further provide that EPA may release CBI in connection with a proceeding after affected businesses have been informed that the Agency is considering making the information available to the public and have been afforded a reasonable opportunity to comment. If, after considering any comments received, the Agency decides to release the information, affected businesses are given at least five days notice prior to the information being made public.

EPA believes that the proposed apportionments are clearly relevant, and indeed essential, to the stratospheric ozone rulemaking. Under section 157(b) of the Act, EPA must promulgate controls of ozone-depleting substances *by regulation*. EPA's proposed rule would use the apportioned production and consumption rights as the mechanism for controlling the ozone-depleting substances specified by the Montreal Protocol; under the rule, companies would be prohibited from producing or importing more of the specified chemicals than they have production or consumption rights to cover. The rule would allow companies to market their allocated rights and obtain additional production and consumption rights under certain circumstances, but the allocations would remain the starting point in determining the limit of any company's allowable production and import of these substances.

Section 307(d)(1)(H) of the Act in turn requires EPA to promulgate regulations under section 157(b) in accordance with the procedural requirements set forth at section 307(d)(2)–(6). Those requirements include publication of a notice in the **Federal Register** setting out the proposed rule and providing a statement of the proposal's basis and purpose. The statement of basis and purpose must itself include "a summary of the factual data on which the proposed rule is based." The final rule must also be published in the **Federal Register**, accompanied by a statement of basis and purpose.

Publication of company-specific proposed and final apportionments, then, is centrally relevant to the stratospheric ozone rulemaking and in fact required to assure that the rulemaking is binding on that issue. The apportionments are the cornerstone of EPA's proposed regulatory strategy for protecting stratospheric ozone. As they are allocated by the proposed rule in keeping with the Protocol's control schedule, the apportionments defined for each 1986 producer and importer the limits of production and/or import within which that firm must stay, unless the firm buys, sells or otherwise obtains additional production or consumption rights in accordance with the regulations. Those apportionments must be made binding by their promulgation as regulations, so that the limits they define are enforceable.

As required by its regulations, EPA gave producers and importers to whom production and/or consumption rights would be apportioned notice of its intent to publish proposed apportionments. A number of firms protested the planned publication, but after reviewing their comments EPA still concluded that publication of the allocations was relevant and necessary to the stratospheric ozone rulemaking. EPA thus gave all of the affected firms the required five days notice before publishing this **Federal Register** notice.

EPA's decision to publish the company-specific allocations is not intended to set broad precedent for the release of a regulated industry's production data. The proposed stratospheric ozone rule is virtually unique in its approach to controlling emissions by directly capping production of the pollutant and thus in the attendant need to make public company-specific production information. If in future rulemakings EPA is presented with a comparable regulatory situation, the Agency will consider whether such information must be disclosed on a case-by-case basis.

It should be noted that CBI issues will also arise in relation to the regulation to the records and reports that EPA will require firms to keep to monitor compliance with the rule, if adopted. Those records and exports will necessarily reflect production, import and export data, as well as business transactions, all of which firms will likely claim as CBI. However, if none of those reports or records is publicly accessible, no public oversight of EPA's enforcement efforts, nor citizen suits to enforce the regulation's requirements (as permitted by section 304(a) of the Act), will be possible.

The Agency questions whether it is authorized to make publicly available the records and reports that may be required for compliance monitoring purposes. EPA regulations implementing section 114 of the Clean Air Act permit CBI to be released only if relevant to a "proceeding," which is defined to include "any rulemaking, adjudication or licensing conducted by EPA under the Act * * *." The stratospheric ozone rulemaking obviously meets the regulations' definition of "proceeding," but public monitoring of EPA's enforcement efforts or industry's compliance with the promulgated rule may not. A citizen suit is clearly "an adjudication," but it is doubtful citizens could bring suit without prior access to the monitoring data, since Rule 11 of the Federal Rules of Civil Procedure requires that the person bringing suit have a reasonable basis in fact and law for his claim. Yet until the suit is commenced, there is arguably no proceeding for which release of CBI is authorized. EPA is continuing to assess whether it has legal authority to release any of the monitoring records or reports that may be required and seeks comment on this issue.

5. Apportionments

Based on the formulas and definitions discussed above and the data received in response to the December 14 final rule, EPA arrived at apportionments for United States producers and importers of controlled chemicals. The proposed apportionments are listed in the appendix to this notice.

Already public information substantially corroborates the *sum* of the production and consumption rights EPA has proposed to apportion for Group I chemicals, or CFCs. The International Trade Commission (ITC) collects data on CFC–11 and –12, which according to EPA's data together represented 77 percent of the United States total CFC production in 1986. Because these two CFCs have ozone depletion weights of 1.0, which is as high or higher than the other controlled CFCs, they represent a similar or somewhat higher proportion of the total apportioned rights for Group I chemicals. For CFC–11, ITC reported that United States 1986 production was 91,580,000 kilograms (Kg), which is less than one percent below the combined volume of this chemical reported to EPA by all producers. For CFC–12, the ITC reported United States 1986 production of 146,168,000 Kg, which is approximately 0.5 percent lower than the combined production reported to EPA. These insignificant differences in reported production volumes may be attributable to differing reporting periods; the ITC figures are for the company fiscal year, while EPA's figures are for the calendar year. In any event, the virtual agreement between EPA's and ITC's figures confirm the production volumes of CFC–11 and –12 reported to EPA, and largely corroborates the sum of the apportionments proposed for Group I chemical production rights.

The import component of the sum of the consumption rights apportioned for Group I chemicals is similarly corroborated by United States Census bureau data. CFC–11 and –12 are together 72 percent of total United States imports of CFCs. For 1986, the Census Bureau figures for combined imports of CFC–11 and –12 are 600,000 kilograms or 3 percent greater than the combined imports of those chemicals reported to EPA. The small difference in the two sets of figures is again probably attributable to differences in reporting periods, and in any event works to the desadvantage of those receiving consumption rights, since the Census Bureau's higher figures would support the apportionment of *more* consumption rights than EPA's figures support.

The data reported to EPA on halon production and import was also consistent with ITC and Census Bureau information. For reporting purposes, ITC and the Census Bureau group the halons controlled by the Montreal Protocol with other brominated and halogenated hydrocarbons. Their figures on production and import of this category of chemicals should be and are larger than that reported to EPA.

C. Additional Information

1. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA determined that its December 14 proposal met the definition of a major rule under E.O. 12291, and therefore prepared a regulatory impact analysis (RIA). Since this proposal only supplements the December 14 proposed rule and does not impose any additional burdens, the RIA prepared for the December 14 proposal fulfills the executive order's requirement for this proposal.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its proposed rule, and no additional RFA need be prepared for this supplemental proposal.

Dated: May 19, 1988.

Lee M. Thomas,
Administrator.

Appendix

Person	Calculated level (kilograms)
Apportionment of Baseline Production Rights	
Group I—Controlled Substances:	
Racon, Inc.	13,785,068
Kaiser Chemicals	28,187,273
Pennwalt Corporation	39,126,239
Allied Signal, Inc	77,701,820
E.I. du Pont de Nemours & Company, Inc	152,213,200
Group II—Controlled Substances:	
E.I. du Pont De Nemours & Company, Inc	32,200,000
Great lakes Chemical Corporation	20,147,961
ICI Americas, Inc	6,406,452
Apportionment of Baseline consumption Rights	
Group I—Controlled Substances:	
Racon, Inc	13,479,111
Kaiser Chemicals	27,561,662
Pennwalt Corporation	38,257,840
Allied-Signal, Inc	74,063,621
E.I. Du Pont de Nemours & Company, Inc	139,510,355
Atochem, Inc	1,479,968
IGLOO Products, Inc	183,270
Pharmachem, Inc	28,602
Sumitomo Corporation of America	229,930
Hoechst Celanese Corporation	329,597
Refricentro, Inc	420,931
Kali-Chemie Corporation	437,940
National Refrigerants, Inc	3,069,091
ICI Americas, Inc	6,310,917
Holchem, Inc	212,159
Group II—Controlled Substances:	
E.I. du Pont Nemours & Company, Inc	27,731,067
Great Lakes Chemical Corporation	19,759,868
ICI Americas, Inc	6,347,800
Ausimont USA, Inc	206,400
Atochem, Inc	2,126,427
Kali-Chemie Corporation	1,533,800

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Part VI

Farm Credit Administration

12 CFR Part 611

Organization; Appointment of Receiver; Federal Land Bank of Jackson; Federal Land Bank Association of Jackson; Interim Rule With Request for Comments and Notice

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization

AGENCY: Farm Credit Administration.

ACTION: Interim rule with request for comments.

SUMMARY: @The Farm Credit Administration (FCA) Board adopts interim regulations and requests comments thereon, relating to the operation of receiverships of Farm Credit System (System) institutions. The interim regulations implement provisions of the Agricultural Credit Act of 1987 (1987 Act), by providing for the protection of equitites owned by System borrowers during a receivership, permitting receivers to issue preferred stock to the Farm Credit System Financial Assistance Corporation, and making certain technical changes which eliminate any confusion regarding the implementation of joint and several liability on Systemwide and consolidated obligations.

DATES: This regulation is effective May 20, 1988. Written comments must be received on or before June 23, 1988.

ADDRESSES: Submit comments (in triplicate) in writing to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On February 16, 1988, the FCA published an Advance Notice of Proposed Rulemaking (53 FR 4416) seeking public comments on the implementation of the provisions of the 1987 Act relating to the reorganization of Farm Credit System (System) institutions. On April 5, 1988, the FCA Board approved proposed regulations which implemented the new reorganization authorities of System institutions. The proposed regulations were provided to the appropriate committees of the House of Representatives and the Senate for a 30-day review period in accordance with section 5.17 of the Farm Credit Act of 1971, as amended (1971 Act) and were published in the **Federal Register** on May 12, 1988. (53 FR 16934).

Among the proposed regulations published on May 12, 1988 were proposed amendments to 12 CFR 611.1162(c), 611.1167(d), 611.1172(c) and 611.1174(f), which provide the authority under which receivers of System institutions can retire "eligible borrower stock" of an institution in receivership, in accordance with the provision in the section 4.9A(c) of the Farm Credit Act of 1971, as amended. The proposed regulations would also delete the provisions of § 611.1174(c) relating to the procedures for the assignment of joint and several liability on consolidated and systemwide notes and bonds when a System bank is placed in receivership. The FCA Board determined that these procedures were superseded by the provisions of section 4.4 of the 1971 Act, as amended by the 1987 Act. The proposed regulations also clarified the authority of a receiver to issue preferred stock to the Financial Assistance Corporation in accordance with Title VI of the 1971 Act.

The FCA Board has recently taken the action of placing a Federal land bank and a Federal land bank association in receivership. In light of this action the FCA Board determined that it is necessary to adopt these amendments as an interim regulation in order to avoid any confusion or uncertainty as to the legal requirements applicable to receiverships. The interim regulations implement express requirements of amendments made by the 1987 Act and neither expand nor restrict those requirements. Accordingly, the FCA Board adopts these amendments as an interim regulation with an effective date of May 20, 1988 and a 30-day comment period.

In accordance with 5 U.S.C. 553(b) and (c), the FCA Board finds that additional public comments prior to the effective date of this interim regulation would be impracticable and contrary to the public interest. The FCA Board considered all of the comments received in response to the Advance Notice of Proposed Rulemaking relating to the implementation of the new reorganization authorities contained in the 1987 Act. In light of the statutory requirements relating to joint and several liability and the requirement that borrower stock be protected in accordance with section 4.9A of the 1971 Act, as amended, and the appointment of a receiver for two institutions, the FCA Board determined that any delay in the effective date of this regulation could create uncertainty as to the exact scope and effect of these statutory rights and procedures which could be detrimental to the operations of System institutions and the confidence of their member/borrowers. For the same reasons, the FCA Board finds that, in accordance with section 5.17(c)(2) of the 1971 Act, an emergency exists which requires that these regulations be effective prior to the expiration of the 30-day congressional review period.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies) Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 4.12, 5.9, 5.10, 5.17; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2183, 2243, 2244, 2252; sec. 412 of Pub. L. 100-233.

Subpart L—Liquidation of Associations

2. Section 611.1162 is amended by adding new paragraph (c) to read as follows:

§ 611.1162 Preservation of Equity.

* * * * *

(c) Notwithstanding (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

3. Section 611.1166 is amended by adding a new paragraph (d) to read as follows:

§ 611.1166 Priority of Claims.

* * * * *

(d) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

Subpart M—Liquidation of Banks

4. Section 611.1172 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 611.1172 Preservation of Equity.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing in this section shall affect the authority of a bank in receivership to issue preferred stock in accordance with Title VI of the Act.

5. Section 611.1174 is amended by removing paragraph (c); by redesignating paragraphs (d), (e) and (f) as paragraphs (c), (d), and (e), respectively; newly redesignated paragraph (d) is amended by removing

references to "(d)" and adding in their place, "(c)"; by revising paragraph (c)(5); and by adding new paragraph (f) to read as follows:

§ 611.1174 Creditors Claims and Priority of Claims.

* * * * *

(c) * * *

(5) All claims of holders of consolidated and Systemwide bonds and claims of the other System banks arising from their payments pursuant to section 4.4 of the Act.

* * * * *

(f) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

Date: May 20, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-11761 Filed 5-23-88; 9:24 am]

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VOL 53 ISS 100 MAY 24 1988 UMI

FARM CREDIT ADMINISTRATION

Appointment of Receiver; Federal Land Bank of Jackson; Federal Land Bank Association of Jackson

ACTION: Notice.

SUMMARY: On May 20, 1988, the Farm Credit Administration (FCA) Board, pursuant to § 4.12(b) of the Farm Credit Act of 1971 (1971 Act), determined that the statutory grounds for the appointment of a receiver existed in the Federal Land Bank of Jackson and the Federal Land Bank Association of Jackson (together, Institutions) and issued an Order Appointing Receiver. The Order appointed REW Enterprises, Inc. as receiver to wind up the Institution's business operations, liquidate their property and assets, pay their creditors, and distribute the remaining proceeds to stockholders, in accordance with the 1971 Act, FCA regulations, the FCA Receivership Manual, and the Order and any amendments thereto.

In its capacity as receiver, REW Enterprises, Inc., as agent of the FCA, is granted possession of all the assets of the Institutions and is empowered to execute, acknowledge, and deliver any instrument necessary for any authorized purpose and such instruments are valid and effectual as if they had been executed by the Institution's officers by authority of their boards of directors. The Order authorizes Ronald E. Watkins to sign any and all documents on behalf of the Receiver and to delegate signatory authority to any employee of the Institutions-in-receivership.

Date: May 20, 1988.

David A. Hill,

Secretary Farm Credit Administration Board.

[FR Doc. 88-11760 Filed 5-23-88; 9:24 am]

[BILLING CODE 6705-01-M]

federal register

Tuesday
May 24, 1988

Part VII

The President

Proclamation 5826—Prayer for Peace, Memorial Day, 1988

Executive Order 12641—Designating Certain Facilities of the National Aeronautics and Space Administration in the State of Mississippi as the John C. Stennis Space Center

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Title 3—

The President

Proclamation 5826 of May 20, 1988

Prayer for Peace, Memorial Day, 1988

By the President of the United States of America

A Proclamation

Once each May, amid the quiet hills and rolling lanes and breeze-brushed trees of Arlington National Cemetery, far above the majestic Potomac and the monuments and memorials of our Nation's Capital just beyond, the graves of America's military dead are decorated with the beautiful flag that in life these brave souls followed and loved. This scene is repeated across our land and around the world, wherever our defenders rest. Let us hold it our sacred duty and our inestimable privilege on this day to decorate these graves ourselves—with a fervent prayer and a pledge of true allegiance to the cause of liberty, peace, and country for which America's own have ever served and sacrificed.

During our observance of Memorial Day this year we have fresh reason to call to mind the service and sacrifices of the members of our merchant marine during World War II—these gallant seafarers have now deservedly received veteran status. More than 6,000 of them gave their lives in the dangerous and vital duty of transporting materiel to our forces around the globe. We will never forget them as we honor our war dead.

Our pledge and our prayer this day are those of free men and free women who know that all we hold dear must constantly be built up, fostered, revered, and guarded vigilantly from those in every age who seek its destruction. We know, as have our Nation's defenders down through the years, that there can never be peace without its essential elements of liberty, justice, and independence.

Those true and only building blocks of peace were the lone and lasting cause and hope and prayer that lighted the way of those whom we honor and remember this Memorial Day. To keep faith with our hallowed dead, let us be sure, and very sure, today and every day of our lives, that we keep their cause, their hope, their prayer, forever our country's own.

In recognition of those brave Americans to whom we pay tribute today, the Congress, by joint resolution approved May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period when the people of the United States might unite in prayer.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Memorial Day, Monday, May 30, 1988, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at eleven o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also direct all appropriate Federal officials and request the Governors of the several States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes on this day for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-11605
Filed 5-23-88; 11:04 am]
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Executive Order 12641 of May 20, 1988

Designating Certain Facilities of the National Aeronautics and Space Administration in the State of Mississippi as the John C. Stennis Space Center

Senator John C. Stennis has served his country as a United States Senator for over 40 years and has steadfastly supported the Nation's space program since its inception. He has demonstrated visionary leadership and has consistently worked to assure United States world leadership and preeminence in space.

The installation now to be renamed has played and will continue to play a major role in the United States space program and has been the recipient of the Senator's unwavering support from the moment the decision was made to establish that installation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby direct the Administrator of General Services to designate the facilities of the National Space Technology Laboratories of the National Aeronautics and Space Administration in the State of Mississippi as the John C. Stennis Space Center; and such facilities shall be thereafter known and referred to by that name.

Ronald Reagan

THE WHITE HOUSE,
May 20, 1988.

[FR Doc. 88-11800
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The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3025/Pub. L. 100-319

Appalachian States Low-Level Radioactive Waste Compact Consent Act. (May 19, 1988; 102 Stat. 471; 12 pages) Price: $1.00

S.J. Res. 254/Pub. L. 100-320

To designate the period commencing on May 15, 1988, and ending on May 21, 1988, as "National Rural Health Awareness Week." (May 19, 1988; 102 Stat. 483; 2 pages) Price: $1.00

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

Fresh Pears, Plums, and Peaches Grown in the State of California; Direct Sales Exemption for Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the direct home use sales exemption regulations established under the pear, plum, and peach marketing order. The change will bring the quantity of pears that can be handled free of certain program requirements under that exemption more in line with the quantity that would normally be used for home use.

EFFECTIVE DATE: May 25, 1988.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION:

This rule is issued under Marketing Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 45 handlers of pears subject to regulations under the marketing order, and approximately 2,600 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

Notice of this action was published in the **Federal Register** on March 24, 1988 (53 FR 9635). The comment period ended April 25, 1988. No comments were received.

Section 917.143 of the regulations for pears, plums, and peaches specifies conditions which must be followed to handle pears, plums, and peaches exempt from certain requirements, including grade, size, inspection, container, marking, and assessment regulations. Among other things, maximum weight limitations are specified. For pears the quantity shipped cannot exceed 200 pounds to any one person during any one day. For plums and peaches, the poundage limitation was changed on April 28, 1988, to 200 pounds of plums, and 200 pounds of peaches to any one vehicle during any one day (53 FR 15193, April 28, 1988). These purchases also must be for home use and cannot be resold.

Under these exemption requirements, a handler could sell a family of four 800 pounds of pears in any one day. The Pear Commodity Committee asserts that that amount of pears is excessive for home use sales in view of the intent of these exemption provisions. The intent is to help small growers by permitting them to sell such fruit directly to the consumers at the premises where the fruit is grown, at a nearby packing house, retail stand, or at certified farmers' markets.

Under this final rule, the poundage limitation will be determined on a per vehicle basis rather than on a per person basis. Hence, a family of four using the family car could purchase only 200 pounds of pears in a day, rather than 800 pounds under the current exemption requirements.

For perspective concerning the adequacy of the recommended poundage limitation, it should be noted that the annual per capita consumption in 1985 of fresh pears was 2.84 pounds. Hence, according to the committee, the regulations will still provide more than enough fruit to meet the home use needs of local consumers and will not have an adverse impact on those growers who find handling fruit for home use under this exemption attractive. The change to a poundage limitation of 200 pounds based on one vehicle per day is consistent with the intent of the minimum quantity exemption authority.

Therefore, the Department's view is that the quantity limitation for pears is more than adequate for home usage, it will not lessen the use of the roadside sales exemption by local consumers and growers, and that the change will have little, if any, impact on industry operations. Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C., it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The harvest and shipment of pears are anticipated to begin in early June, and it is important that the changes hereinafter set forth be in effect at the time of harvest and shipment so that all shipments are regulated similarly.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums, Peaches, California

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.143 is amended by revising paragraph (b)(3) to read as follows:

Note: This action is to be published in the Code of Federal Regulations.

§ 917.143 Exemption.

* * * * *

(b) * * *

(3) The shipment does not exceed 200 pounds of pears, 200 pounds of plums, and 200 pounds of peaches to any one vehicle during any one day.

* * * * *

Dated: May 19, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–11685 Filed 5–24–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 985

Expenses and Assessment Rate for Far West Spearmint Oil

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 985 for the 1988–89 marketing year established for the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1988, through May 31, 1989, (§ 985.308).

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brough about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 9 handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 producers of Far West spearmint oil in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Spearmint Oil Administrative Committee (SOAC) met on March 30, 1988, and unanimously recommended 1988–89 marketing order expenditures of $182,500 and recommended, by a 6–1 vote, an assessment rate of $0.09 per pound of Far West spearmint oil. In comparison, 1987–88 marketing year budgeted expenditures were $166,000 and the assessment rate was $0.08 per pound. Expenditure categories in the 1988–89 budget are $77,925 for program administration, $78,575 for salaries, and $26,000 for expenses, which includes travel and compensation. Assessment income for 1988–89 is expected to total $145,785.15 based on shipments of $1,619,835 pounds of spearmint oil. Interest and incidental income is estimated at $7,000. The SOAC may expend operational reserve funds of $29,714 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This action adds new § 985.308 and is based on a Committee recommendation and other information. A proposed rule was published in the April 27, 1988, issue of the **Federal Register** [53 FR 15048]. Comments on the proposed rule were invited from interested persons until May 9, 1988. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Part 985

Marketing agreements and orders, Far West, Spearmint oil.

For the reasons set forth in the preamble, a new § 985.308 is added as follows:

Note: This section will not appear in the Code of Federal Regulations.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 985.308 is added to read as follows:

§ 985.308 Expenses and assessment rate.

Expenses of $182,500 by the Spearmint Oil Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 985.41 is fixed at $0.09 per pound of salable spearmint oil for the 1988–89 marketing year ending May 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 19, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–11686 Filed 5–24–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 88–031]

Cattle From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation into the United States of cattle from Canada by designating Yukon Territory and Northwest Territories as brucellosis certified free territories. We are relieving restrictions on the importation of certain cattle from Canada since we have determined that all provinces and territories of Canada are free of brucellosis.

EFFECTIVE DATE: June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Bowen, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including brucellosis.

On August 28, 1987, we published in the **Federal Register** (52 FR 32561–32562, Docket Number 87–006), a document proposing to amend §§ 92.1 and 92.20 by designating Yukon Territory and Northwest Territories as brucellosis certified free territories. Our proposal invited the submission of written comments, which were required to be postmarked or received on or before October 27, 1987. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million, will not cause a major increase in costs or prices for consumers, individuals industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are recognizing all provinces and territories of Canada as brucellosis certified free. We anticipate that there will be no significant change in the number of cattle imported into the United States from Canada and that there will be no significant change with respect to the cost of importing cattle into the United States from Canada. This amendment will directly affect very few, if any, cattlemen since the cattle population in Yukon Territory and Northwest Territories is small, and few cattle are exported to the United States from those territories.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMALS AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.1, the definition of "Brucellosis certified free provinces of Canada" is revised to read as follows:

§ 92.1 Definitions.

* * * * *

Brucellosis certified free provinces and territories of Canada. Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, (including Labrador), Northwest Territories, Nova Scotia, Ontario, Quebec, Prince Edward Island, Saskatchewan, and Yukon Territory.

* * * * *

§ 92.20 [Amended]

3. Section 92.20, paragraph (c) is amended by changing "brucellosis certified free provinces" to read "brucellosis certified free provinces and territories" wherever it appears in the paragraph and by changing "brucellosis

certified free province" to read "brucellosis certified free province or territory" wherever it appears in the paragraph.

Done in Washington, DC, on this 20th day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-11765 Filed 5-24-88; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Definition of Small Business Travel Agencies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its size standards regulations for the "Travel Agencies Industry," SIC code 4724. The new standard will be $500,000 in annual receipts. This represents a change from the current $3.5 million size standard, and would be a modification of the size standard proposed by the Agency on July 30, 1986, 51 FR 27192, of $500,000 in commissions. SBA's definition of annual receipts is also being clarified to recognize the industry practice of remitting funds to third parties. The funds which are remitted to third parties (e.g., airlines) by travel agents are excluded from annual receipts. This exclusion is based on a decision by SBA's Office of Hearings and Appeals. Exclusion of such remittances will operate to limit the actual size standard to commissions plus income earned from noncommissioned sources. This rule is intended to more precisely define the size of firms which would be eligible for small business procurement set-asides and other SBA assistance.

EFFECTIVE DATE: June 24, 1988.

FOR FURTHER INFORMATION CONTACT: John Klein, U.S. Small Business Administration, Size Standards Staff (202) 653-6373.

SUPPLEMENTARY INFORMATION: On July 30, 1986, the SBA published in the **Federal Register** 51 FR 27192), a proposal to revise this size standard to $500,000 in commissions. The reasons for the proposal were detailed in the notice, and the public was asked to comment by September 29, 1986.

Because of the change in the Standard Industrial Classification (SIC) System put into effect on January 1, 1987, by the U.S. Office of Management and Budget (see 51 FR 35180), the SIC designation for this industry, formerly SIC code 4722, was divided into three parts: SIC code 4724, Travel Agencies; SIC code 4725, Tour Operators; and SIC code 4729, Arrangement of Passenger Transportation, N.E.C. Since the purpose, research, and public comments on the proposed rule were based on the Travel Agencies industry, this final rule applies to the Travel Agencies industry only. The other newly created segments—SIC code 4725 and SIC code 4729—revert to the general size standard for services, $3.5 million, as no special study was made of these two new industries.

The purpose of the proposed change was to clarify that the size standard should refer to receipts based on commissions rather than gross bookings, and that the size standard should reflect the structure of the industry. Commissions were selected as the measure of firm size to conform to industry accounting practice. Various size standards were discussed with $500,000 in commissions selected as the proposed size standard.

SBA received 15 comments in response to the proposed rule, with nine comments in favor of the proposed rule, five opposed, and one unclear. Those respondents which opposed the proposal indicated that firms within a $500,000 size standard serve leisure travelers, as contrasted to business-oriented travelers and are not competent to make travel arrangements for Government employees. Some predicted that the General Services Administration (GSA), which awards travel contracts for the Government, would not be able to set aside contracts for small business under the proposed size standard. They claimed that firms within the standard would be too small to fulfill the GSA's requirements. GSA stated that the new rule would eliminate the confusion as to whether the size standard referred to commissions or gross bookings. The industry's leading trade group, the American Society of Travel Agents, also commented favorably on the proposal.

Upon further deliberation, SBA has recognized that a size standard for the travel agencies industry based only on commissions would ignore noncommissioned sources of income earned by a travel agent. Therefore, pursuant to this final rule, the size of a concern in the travel agencies industry will be measured in terms of annual receipts, excluding amounts received by a travel agent for remittance to third parties. This exclusion is based on a decision of SBA's Office of Hearings and Appeals (Size Appeal of Morris Travel Corp., No. 2228 (1985)), which concluded that proceeds received by a travel agent from sales of tickets on behalf of a third party (e.g., an airline) "represent amounts remittable to the airline as the cost of travel [and] are not includable as receipts to the agency (within the agency's average annual receipts)." The exclusion will limit the actual size standard for the travel agencies industry to commissions plus income earned from noncommissioned sources.

SBA did not intend to exclude income earned from other sources when it proposed a size standard of $500,000 in commissions. This final rule will set forth the same $500,000 size standard, but will measure it in terms of annual receipts instead of commissions. As previously noted, the effect such a language change would have is to include as annual receipts income earned by the travel agent from noncommissioned sources. This would include income earned by the travel agency which is not commissioned income and income earned from outside the travel agency from whatever source.

For example, assume a size standard of $500,000 in annual receipts and a 10 percent commission rate, and that a travel agency makes $4.5 million in bookings and averages $100,000 in fees from its own tours. In determining whether the travel agency qualifies as "small," those funds which the concern receives and temporarily holds for remittance to third parties (e.g., airlines) are excluded from the firm's gross revenue as funds for remittance to third parties (leaving the $450,000 commission as gross revenue).

In addition, all income earned from noncommissioned sources (in this case from the travel agency's own tour operations) are added dollar for dollar to the concern's gross revenue to determine the firm's size.

The travel agency in this example would have $550,000 in gross revenue. Since this amount is greater than the $500,000 size standard, the concern would be considered other than small. The difference between this final rule and the proposed rule is that under a rule based solely on commissions (the proposed rule), the $100,000 earned from the travel agency's tour operations could not have been included within the concern's gross revenue when determining the concern's size. Such a result was not intended by SBA and would be contrary the SBA's longstanding policies of including revenues from all sources in determining a firm's size status.

As previously noted, the current size standard for the travel agencies industry is $3.5 million in annual receipts. This standard has been in effect since 1984. SBA intended the $3.5 million size standard to be measured in terms of gross value of bookings. Assuming a 10 percent commission rate, this size standard was intended to approximate $350,000 in commissions. However, since the decision of SBA's Office of Hearings and Appeals excluded amounts remittable by travel agents to third parties (e.g., airlines) from the determination of gross receipts, while applying the $3.5 million size standard, it effectively made the size standard $35 million in gross bookings (or $3.5 million in commissions and income from noncommissioned sources). SBA believes that such a standard is unreasonably large and attempted in the proposed rule to correct this standard. However, in setting the size standard in terms of only commissions, SBA overlooked other sources of income.

Also, SBA was specifically aware of the competency question before making the July 30, 1986, proposal. Size standards, however, generally reflect the economic structure of the industry for which the standard is established; they are not intended to guarantee competency to perform certain projects or Government contracts. The SBA has a Certificate of Competency program to address these questions. Nonetheless, as pointed out in the proposal on page 51 FR 27193, the majority of GSA's travel contracts have been below $500,000 in gross bookings, with the average around $1 million. Firms with annual receipts of up to $5 million in gross bookings (approximately equivalent to $500,000 in commissions and noncommission income) will generally meet the small business size standard. Since most GSA travel contracts, and the average size travel contracts do not appear to be disproportionate to the size standard, then there could exist many firms within the size standard competent to handle Government travel contracts.

SBA certifies that this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C., Section 601 *et seq.* SBA estimates that a size standard of $500,000 compared to the present one of $3.5 million would result in about 885 firms out of 14,958 in the industry losing small business status. Under the $500,000 size standard, 93 percent of the firms in the industry would be eligible as small firms and these account for 65 percent of the total industry revenues.

The SBA also certifies that this regulation is a nonmajor rule as defined by Executive Order No. 12291, in that, it is not expected to have an impact of over $100 million per year. In addition, this regulation is not likely to result in a major increase in costs or prices, or have a significant adverse impact on the economy.

The annual amount of Government contracts in the travel agencies industry was $188 million as of early 1986. Most of these contracts have been set aside for small business. Set-aside contracts will continue to be awarded at levels currently experienced after the adoption of this rule. The change from $3.5 million in annual receipts to $500,000 in annual reciepts, excluding third party remittances, is not likely to have a $100 million annual effect, or to increase costs or prices in any way.

The SBA certifies that this regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule defines the maximum size firm in the industry which may be eligible for the SBA's assistance. The legal basis for this is section 5(b) of the Small Business Act, 15 U.S.C. 634(b). There are no Federal rules which duplicate, overlap, or conflict with the final rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small business.

PART 121—[AMENDED]

Accordingly, Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: 15 U.S.C. 632(a) and 634(b)(6).

§ 121.2 [Amended]

2. In Section 121.2(c)(2), Major Group 47, Transportation Services, SIC-4724 is revised as follows:

MAJOR GROUP 47—TRANSPORTATION SERVICES

SIC	Description	Size standard in number of employees or millions of dollars
4724	Travel agencies.....	$5.05

James Abdnor,

Administrator, U.S. Small Business Administration.

Dated: December 16, 1987.

[FR Doc. 88-11693 Filed 5-24-88; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 121

Small Business Size Standards; Modification of Size Standards To Make Existing Size Standards Compatible With 1987 Standard Industrial Classification System

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is modifying its size standards to conform with the Standard Industrial Classification (SIC) System revised by the Office of Management and Budget (OMB), effective January 1, 1987. This is necessary so that SBA officials, Federal procurement personnel, and other users of size standards will have size standards which correspond to the 1987 SIC system and thus be able to determine which firms are small businesses. SBA's intent is to make its size standards compatible with the 1987 SIC system, not to initiate any size standard changes.

EFFECTIVE DATE: July 1, 1987.

Address Comments to: Gary M. Jackson, Director, Size Standards Staff, 1441 "L" Street, NW, Room 601, U.S. Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Economist, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On January 6, 1987, SBA issued an emergency interim final rule in the **Federal Register** (52 FR 397) which modified its size standards to conform with the revision of the Standard Industrial Classification (SIC) System which went into effect on January 1, 1987. The Office of Management and Budget, Executive Office of the President, extensively modified the industrial classification system in use since 1972 (see 51 FR 35170, October 1, 1986) effective January 1, 1987.

The interim final rule also requested public comments on the suitability of the emergency interim standards becoming final size standards. The comments were to be limited to industries or part of industries which experienced changes in classification under OMB's SIC revision.

As indicated in the January 6, 1987, notice, the economic statistics which SBA usually relies upon for setting size standards will not be available under the 1987 SIC system for some years. In place of statistics on the size

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distribution of firms in transferred industries or segments of industries, SBA relied on the size of the industry (or portion of industry) transferred or retained, as measured by former dollar-value of sales or Government procurement. (In those industries where Federal procurement is an important consideration, procurement took precedence over sales.) Accordingly, three decision rules were applied.

(1) If a 1987 SIC code was created from all or any components of a *single* former SIC code, the size standard associated with the former SIC code is carried over to the new code. (This includes unchanged industries merely renumbered with a new code.)

(2) A new or revised SIC code may be formed from all or component parts of *two* former SIC codes. If both former codes have the same size standard, that standard is used. If the size standards differ, the standard of the industry component having the larger dollar-value of sales (or the larger dollar-value of procurement, if procurement is important) is adopted.

(3) A new or revised SIC code may have been formed from *three or more* former SIC codes, or components of SIC codes. If all of the former industries have a common size standard, that standard is applied to the new SIC code. Otherwise, the size standard of the component or combination of components which accounts for the largest dollar-value of sales (or dollar-value of Government procurement, if significant) is used.

Although 299 4-digit SIC industries in the 1987 SIC system represent either new codes or changes in coverage due to transferred components, there are only 33 components of these new codes which received a different size standard in the January 6, 1987, emergency interim rule. All of these represented transferred or retained components which had a smaller dollar-value of sales or procurement in their new SIC industries than another component or combination of components which carried a different size standard.

All the other components making up the 299 new SIC code either followed Decision Rule 1 above in carrying over the former size standard, had a common size standard with other components, or represented the larger dollar-value share of sales or Federal procurement when compared with other combinations of components.

Detailed descriptions of the 1987 SIC codes and all components comprising them can be found in the *1987 SIC Manual*, which was published by the Office of Management and Budget in September 1987. (It may be ordered from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; Accession No. PB 87-100912 ($30.00).)

Separately, since the Interim Final Rule was published, the size standard for Agricultural Production—Livestock, SICs 0212–0291, except 0211 and 0252, was changed to $500,000 to comply with Public Law 99–272, approved April 7, 1986. (A final rule stating this correction was published in the Federal Register on June 8, 1987—52 FR 21497.) Finally, the second sentence of footnote 9 (previously footnote 8) in the table of size standards was deleted pursuant to an opinion of SBA's General Counsel dated July 3, 1986, that this sentence "can have no legal application."

Public Comments

Only two comments addressed the subject of the January 6, 1987, notice. One comment called attention to a typographical error designating a $500 size standard for SIC–8731 rather than 500 employees. This error has been corrected. The other recommended a clarifying footnote to SIC–6531. Such a footnote appears in this regulation as footnote 15 to the table of size standards.

Although seven others sent letters pertaining to the January 6, 1987, notice, none of the seven addressed the subject matter of the notice. Four engineering firms were unaware of the current size standard for engineering services and thought SBA was proposing a change. One firm opposed any mass change of size standards on the basis of the cost to revise lists of eligible firms. One association and one Federal agency presented their position on a particular size standard not affected by this regulation.

Compliance With Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

The final rule defines which firms are eligible to receive SBA's assistance, including eligibility to bid on Federal contracts set aside for exclusive small business bidding. SBA has determined that this regulation is not a major rule as defined by Executive Order 12291, because it is not expected to have an economic impact of $100 million or more.

The rule modifies the existing SBA's standards to make them compatible with the 1987 Standard Industrial Classification (SIC) System established by the Office of Management and Budget. The intent was not to initiate any size standard changes, but to assign existing size standards to similar industries as developed in OMB's SIC change. For most industries there was no SIC change or the only change was in the SIC descriptive number and/or title. In only 33 industries was a size standard actually changed.

For approximately 7.7 million businesses subject to SBA's size standards, it is estimated that only 55 businesses would lose small business eligibility due to this rule, while 382 firms would gain eligibility. Among those losing eligibility are 25 retail firms. Among those gaining eligibility are 352 Freight Forwarding Arrangement (SIC–4731) firms.

A small percentage (about 2 percent) of small firms avail themselves of SBA's financial assistance, and overwhelmingly these are firms far below SBA's size standards. Thus it is doubtful if this rule change will have any impact on firms seeking SBA's financial assistance.

Set-aside procurements are 9.7 percent of the total dollar value of Federal procurements. It is estimated that no more than five firms would incur some degree of negative impact by losing their small business status for set-aside contracts. For those gaining eligibility, we estimate that approximately 10 such firms will seek to bid in competition with other small firms for set-aside contracts totaling not more than $15 million.

SBA certifies that this rule would not be likely to result in a major increase in costs or prices to the Federal Government or the firms involved, nor would it have a significant adverse effect on the United States economy.

SBA certifies that this rule will not have significant adverse impact on a substantial number of small entities within the meaning of the Regulatory FlexibilityAct, 5 U.S.C. 601, *et seq.*

The legal basis for this final rule is sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6). There are no Federal rules which will duplicate, overlap or conflict with this final rule.

SBA certifies that this rule contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Lists of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Recording and recordkeeping requirement, Small business.

Accordingly, 13 CFR Part 121 is amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6), Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

2. Table 2 in § 121.2(d)(2) is revised as follows:

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
DIVISION A—AGRICULTURE		
Major Group 01—Agricultural Production—Crops		
0111–0191		[1] $0.5
Major Group 02—Agricultural Production—Livestock and Animal Specialties		
0211	Beef Cattle Feedlots (Custom).	$1.0
0212–0291	Livestock and Animal Specialties, Except 0211 and 0252.	$0.5
0252	Chicken Eggs	$1.0
Major Group 07—Agricultural Services		
All SICs		$3.5
Major Group 08—Forestry		
All SICs		$3.5
Major Group 09—Fishing, Hunting, and Trapping		
All SICs		$2.0
Division B—Mining		
Major Group 10—Metal Mining		
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium.	500
1081	Metal Mining Services	$3.5
1094	Uranium-Radium-Vanadium Ores.	500
1099	Miscellaneous Metal Ores, N.E.C.	500
Major Group 12—Coal Mining		
1221*	Bituminous Coal and Lignite Surface Mining.	500
1222*	Bituminous Coal Underground Mining.	500
1231*	Anthracite Mining	500
1241*	Coal Mining Services	$3.5
Major Group 13—Oil and Gas Extraction		
1311	Crude Petroleum and Natural Gas.	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells.	500
1382	Oil and Gas Field Exploration Services.	$3.5
1389	Oil and Gas Field Services, N.E.C.	$3.5
Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels		
1411	Dimension Stone	500
1422	Crushed and Broken Limestone.	500
1423	Crushed and Broken Granite.	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel.	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals.	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels.	$3.5
1499	Miscellaneous Nonmetallic Minerals, Except Fuels.	500
DIVISION C—CONSTRUCTION		
Major Group 15—Building Construction—General Contractors and Operative Builders		
1521	General Contractors—Single-Family Houses.	$17.0
1522	General Contractors—Residential Buildings, Other Than Single-Family.	$17.0
1531	Operative Builders	$17.0
1541	General Contractors—Industrial Buildings and Warehouses.	$17.0
1542	General Contractors—Nonresidential Buildings, Other Than Industrial Buildings and Warehouses.	$17.0
Major Group 16—Heavy Construction Other Than Building Construction—Contractors		
1611	Highway and Street Construction, Except Elevated Highways.	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction.	$17.0
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction.	$17.0
1629	Heavy Construction, Except Dredging, N.E.C.	$17.0
1629	Dredging and Surface Cleanup Activities [2].	$9.5
Major Group 17—Construction—Special Trade Contractors		
1711	Plumbing, Heating, and Air-Conditioning.	$7.0
1721	Painting and Paper Hanging.	$7.0
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stone Work.	$7.0
1742	Plastering, Drywall, Acoustical and Insulation Work.	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work.	$7.0
1751	Carpentry Work	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing, Siding, and Sheet Metal Work.	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection.	$7.0
1793	Glass and Glazing Work.	$7.0
1794	Excavation Work	$7.0
1795	Wrecking and Demolition Work.	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
	Base Housing Maintenance [11]	$7.0
DIVISION D—MANUFACTURING [3]		
Major Group 20—Food and Kindred Products		
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products.	500
2015*	Poultry Slaughtering and Processing.	500
2021	Creamery Butter	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2022	Natural, Processed, and Imitation Cheese.	500
2023	Dry, Condensed, and Evaporated Dairy Products.	500
2024	Ice Cream and Frozen Desserts.	500
2026	Fluid Milk.	500
2032	Canned Specialties.	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies.*	500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes.	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings.	500
2037	Frozen Fruits, Fruit Juices, and Vegetables.	500
2038	Frozen Specialties, N.E.C.	500
2041	Flour and Other Grain Mill Products.	500
2043	Cereal Breakfast Foods.	1,000
2044	Rice Milling.	500
2045	Prepared Flour Mixes and Doughs.	500
2046	Wet Corn Milling.	750
2047	Dog and Cat Food.	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats.	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers.	500
2052	Cookies and Crackers.	750
2053*	Frozen Bakery Products, Except Bread.	500
2061	Cane Sugar, Except Refining.	500
2062	Cane Sugar Refining.	750
2063	Beet Sugar.	750
2064*	Candy and Other Confectionery Products.	500
2066	Chocolate and Cocoa Products.	500
2067	Chewing Gum.	500
2068*	Salted and Roasted Nuts and Seeds.	500
2074	Cottonseed Oil Mills.	500
2075	Soybean Oil Mills.	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean.	1,000
2077	Animal and Marine Fats and Oils.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages.	500
2083	Malt.	500
2084	Wines, Brandy, and Brandy Spirits.	500
2085	Distilled and Blended Liquors.	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters.	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500
2091	Canned and Cured Fish and Seafoods.	500
2092	Prepared Fresh or Frozen Fish and Seafoods.	500
2095	Roasted Coffee.	500
2096*	Potato Chips, Corn Chips, and Similar Snacks.	500
2097	Manufactured Ice.	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles.	500
2099	Food Preparations, N.E.C.	500

Major Group 21—Tobacco Products

2111	Cigarettes.	1,000
2121	Cigars.	500
2131	Chewing and Smoking Tobacco and Snuff.	500
2141	Tobacco Stemming and Redrying.	500

Major Group 22—Textile Mill Products

2211	Broadwoven Fabric Mills, Cotton.	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk.	500
2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing).	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber.	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks.	500
2252	Hosiery, N.E.C.	500
2253	Knit Outerwear Mills.	500
2254	Knit Underwear and Nightwear Mills.	500
2257	Weft Knit Fabric Mills.	500
2258	Lace and Warp Knit Fabric Mills.	500
2259	Knitting Mills, N.E.C.	500
2261	Finishers of Broadwoven Fabrics of Cotton.	1,000

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk.	500
2269	Finishers of Textiles, N.E.C.	500
2273*	Carpets and Rugs.	500
2281	Yarn Spinning Mills.	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills.	500
2284	Thread Mills.	500
2295	Coated Fabrics, Not Rubberized.	1,000
2296	Tire Cord and Fabrics.	1,000
2297	Nonwoven Fabrics.	500
2298	Cordage and Twine.	500
2299	Textile Goods, N.E.C.	500

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

2311	Men's and Boys' Suits, Coats and Overcoats.	500
2321	Men's and Boys' Shirts, Except Work Shirts.	500
2322	Men's and Boys' Underwear and Nightwear.	500
2323	Men's and Boys' Neckwear.	500
2325*	Men's and Boys' Separate Trousers and Slacks.	500
2326*	Men's and Boys' Work Clothing.	500
2329	Men's and Boys' Clothing, N.E.C.	500
2331	Women's, Misses', and Junior's Blouses and Shirts.	500
2335	Women's, Misses', and Juniors' Dresses.	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats.	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear.	500
2342	Brassieres, Girdles, and Allied Garments.	500
2353*	Hats, Caps, and Millinery.	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts.	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods.	500
2381	Dress and Work Gloves, Except Knit and All-Leather.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2384	Robes and Dressing Gowns.	500
2385	Waterproof Outerwear.	500
2386	Leather and Sheep-Lined Clothing.	500
2387	Apparel Belts.	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains and Draperies.	500
2392	Housefurnishings, Except Curtains and Draperies.	500
2393	Textile Bags.	500
2394	Canvas and Related Products.	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking, for the Trade.	500
2396	Automotive Trimmings, Apparel Findings, and Related Products.	500
2397	Schiffli Machine Embroideries.	500
2399	Fabricated Textile Products, N.E.C.	500

Major Group 24—Lumber and Wood Products, Except Furniture

2411	Logging.	500
2421	Sawmills and Planing Mills, General.	500
2426	Hardwood Dimension and Flooring Mills.	500
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork.	500
2434	Wood Kitchen Cabinets.	500
2435	Hardwood Veneer and Plywood.	500
2436	Softwood Veneer and Plywood.	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook.	500
2448	Wood Pallets and Skids.	500
2449	Wood Containers, N.E.C.	500
2451	Mobile Homes.	500
2452	Prefabricated Wood Buildings and Components.	500
2491	Wood Preserving.	500
2493*	Reconstituted Wood Products.	500
2499	Wood Products, N.E.C.	500

Major Group 25—Furniture and Fixtures

2511	Wood Household Furniture, Except Upholstered.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2512	Wood Household Furniture, Upholstered.	500
2514	Metal Household Furniture.	500
2515	Mattresses, Foundations, and Convertible Beds.	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets.	500
2519	Household Furniture, N.E.C.	500
2521	Wood Office Furniture.	500
2522	Office Furniture, Except Wood.	500
2531	Public Building and Related Furniture.	500
2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers.	500
2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood.	500
2591	Drapery Hardware and Window Blinds and Shades.	500
2599	Furniture and Fixtures, N.E.C.	500

Major Group 26—Paper and Allied Products

2611	Pulp Mills.	750
2621	Paper Mills.	750
2631	Paperboard Mills.	750
2652	Setup Paperboard Boxes.	500
2653	Corrugated and Solid Fiber Boxes.	500
2655	Fiber Cans, Tubes, Drums, and Similar Products.	500
2656*	Sanitary Food Containers, Except Folding.	750
2657*	Folding Paperboard Boxes, Including Sanitary.	750
2671*	Packaging Paper and Plastics Film, Coated and Laminated.	500
2672*	Coated and Laminated Paper, N.E.C.	500
2673*	Plastics, Foil, and Coated Paper Bags.	500
2674*	Uncoated Paper and Multiwall Bags.	500
2675*	Die-Cut Paper and Paperboard and Cardboard.	500
2676*	Sanitary Paper Products.	500
2677*	Envelopes.	500
2678*	Stationery, Tablets, and Related Products.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2679*	Converted Paper and Paperboard Products, N.E.C.	500

Major Group 27—Printing, Publishing, and Allied Industries

2711	Newspapers: Publishing, or Publishing and Printing.	500
2721	Periodicals: Publishing, or Publishing and Printing.	500
2731	Books: Publishing, or Publishing and Printing.	500
2732	Book Printing.	500
2741	Miscellaneous Publishing.	500
2752	Commercial Printing, Lithographic.	500
2754	Commercial Printing, Gravure.	500
2759*	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms.	500
2771	Greeting Cards.	500
2782	Blankbooks, Looseleaf Binders and Devices.	500
2789	Bookbinding and Related Work.	500
2791	Typesetting.	500
2796*	Platemaking and Related Services.	500

Major Group 28—Chemicals and Allied Products

2812	Alkalies and Chlorine.	1,000
2813	Industrial Gases.	1,000
2816	Inorganic Pigments.	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers.	750
2822	Synthetic Rubber (Vulcanizable Elastomers).	1,000
2823	Cellulosic Manmade Fibers.	1,000
2824	Manmade Organic Fibers, Except Cellulosic.	1,000
2833	Medicinal Chemicals and Botanical Products.	750
2834	Pharmaceutical Preparations.	750
2835*	In Vitro and In Vivo Diagnostic Substances.	500
2836*	Biological Products, Except Diagnostic Substances.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2841	Soap and Other Detergents, Except Specialty Cleaners.	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations.	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants.	750
2844	Perfumes, Cosmetics, and Other Toilet Preparations.	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.	500
2861	Gum and Wood Chemicals.	750
2865	Cyclic Crudes and Intermediates.	1,000
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers.	1,000
2874	Phosphatic Fertilizers.	1,000
2875	Fertilizers, Mixing Only.	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants.	500
2892	Explosives.	500
2893	Printing Ink.	500
2895	Carbon Black.	1,000
2899	Chemical Preparations, N.E.C.	500

Major Group 29—Petroleum Refining and Related Industries

2911	Petroleum Refining.	1,500
2951	Asphalt Paving Mixtures and Blocks.	500
2952	Asphalt Felts and Coatings.	500
2992	Lubricating Oils and Greases.	500
2999	Products of Petroleum and Coal, N.E.C.	500

Major Group 30—Rubber and Miscellaneous Plastics Products

3011	Tires and Inner Tubes.	1,000
3021	Rubber and Plastics Footwear.	500
3052	Rubber and Plastics Hose and Belting.	500
3053	Gaskets, Packing, and Sealing Devices.	500
3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods.	500
3069	Fabricated Rubber Products, N.E.C.	500
3081	Unsupported Plastics Film and Sheet.	500
3082	Unsupported Plastics Profile Shapes.	500
3083	Laminated Plastics Plate, Sheet, and Profile Shapes.	500
3084	Plastics Pipe.	500
3085	Plastics Bottles.	500
3086	Plastics Foam Products.	500
3087	Custom Compounding of Purchased Plastics Resins.	500
3088	Plastics Plumbing Fixtures.	500
3089	Plastics Products, N.E.C.	500

Major Group 31—Leather and Leather Products

3111	Leather Tanning and Finishing.	500
3131	Boot and Shoe Cut Stock and Findings.	500
3142	House Slippers.	500
3143	Men's Footwear, Except Athletic.	500
3144	Women's Footwear, Except Athletic.	500
3149	Footwear, Except Rubber and Plastics, N.E.C.	500
3151	Leather Gloves and Mittens.	500
3161	Luggage.	500
3171	Women's Handbags and Purses.	500
3172	Personal Leather Goods, Except Handbags and Purses.	500
3199	Leather Goods, N.E.C.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified; * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
3211	Flat Glass.	1,000
3221	Glass Containers.	1,000
3229	Pressed and Blown Glass and Glassware, N.E.C.	500
3231	Products of Purchased Glass.	500
3241	Cement, Hydraulic.	1,000
3251	Brick and Structural Clay Tile.	500
3253	Ceramic Wall and Floor Tile.	500
3255	Clay Refractories.	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous Plumbing Fixtures.	500
3262	Vitreous China Table and Kitchen Articles.	500
3263	Semivitreous Table and Kitchen Articles.	500
3264	Porcelain Electrical Supplies.	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick.	500
3272	Concrete Products, Except Block and Brick.	500
3273	Ready-Mixed Concrete.	500
3274	Lime.	500
3275	Gypsum Products.	500
3281	Cut Stone and Stone Products.	500
3291	Abrasive Products.	500
3292	Asbestos Products.	500
3295	Minerals and Earths, Ground or Otherwise Treated.	500
3296	Mineral Wool.	500
3297	Nonclay Refractories.	500
3299	Nonmetallic Mineral Products, N.E.C.	500

Major Group 33—Primary Metal Industries

3312	Blast Furnaces and Steel Mills.	1,000
3313	Electrometallurgical Products.	1,000
3315	Steel Wire Drawing and Steel Nails and Spikes.	500
3316	Cold Finishing of Steel Shapes.	500
3317	Steel Pipe and Tubes.	500
3321	Gray and Ductile Iron Foundries.	500
3322	Malleable Iron Foundries.	500
3324	Steel Investment Foundries.	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper.	1,000
3334	Primary Production of Aluminum.	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	1,000
3341	Secondary Smelting and Refining of Nonferrous Metals.	500
3351	Copper Rolling and Drawing.	500
3353	Aluminum Sheet, Plate, and Foil.	500
3354	Aluminum Extruded Products.	500
3355	Aluminum Rolling and Drawing, N.E.C.	500
3356	Nonferrous Rolling and Drawing, Except Copper and Aluminum.	500
3357	Nonferrous Wiredrawing and Insulating.	500
3363	Aluminum Die-Castings.	500
3364	Nonferrous Die-Castings, Except Aluminum.	500
3365	Aluminum Foundries.	500
3366	Copper Foundries.	500
3369	Nonferrous Foundries, Except Aluminum and Copper.	500
3398	Metal Heat Treating.	500
3399	Primary Metal Products, N.E.C.	500

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

3411	Metal Cans.	750
3412	Metal Shipping Barrels, Drums, Kegs, and Pails.	500
3421	Cutlery.	500
3423	Hand and Edge Tools, Except Machine Tools and Handsaws.	500
3425	Saw Blades and Handsaws.	500
3429	Hardware, N.E.C.	500
3431	Metal Sanitary Ware.	500
3432	Plumbing Fixture Fittings and Trim.	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces.	500
3441	Fabricated Structural Metal.	500
3442	Metal Doors, Sash, Frames, Molding, and Trim.	500
3443	Fabricated Plate Work (Boiler Shops).	500
3444	Sheet Metal Work.	500
3446	Architectural and Ornamental Metal Work.	500
3448	Prefabricated Metal Buildings and Components.	500
3449	Miscellaneous Structural Metal Work.	500
3451	Screw Machine Products.	500
3452	Bolts, Nuts, Screws, Rivets, and Washers.	500
3462	Iron and Steel Forgings.	500
3463	Nonferrous Forgings.	500
3465	Automotive Stampings.	500
3466	Crowns and Closures.	500
3469	Metal Stampings, N.E.C.	500
3471	Plating and Polishing.	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition.	500
3483	Ammunition, Except for Small Arms.	500
3484	Small Arms.	500
3489	Ordnance and Accessories, N.E.C.	500
3491	Industrial Valves.	500
3492	Fluid Power Valves and Hose Fittings.	500
3493	Steel Springs, Except Wire.	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs.	500
3496	Miscellaneous Fabricated Wire Products.	500
3497	Metal Foil and Leaf.	500
3498	Fabricated Pipe and Fittings.	500
3499	Fabricated Metal Products, N.E.C.	500

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TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
2841	Soap and Other Detergents, Except Specialty Cleaners.	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations.	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants.	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations.	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.	500
2861	Gum and Wood Chemicals.	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments.	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only.	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants.	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	Major Group 29—Petroleum Refining and Related Industries	
2911	Petroleum Refining [5]	1,500
2951	Asphalt Paving Mixtures and Blocks.	500
2952	Asphalt Felts and Coatings.	750
2992	Lubricating Oils and Greases.	500
2999	Products of Petroleum and Coal, N.E.C.	500
	Major Group 30—Rubber and Miscellaneous Plastics Products	
3011	Tires and Inner Tubes. [6]	1,000
3021	Rubber and Plastics Footwear.	1,000
3052*	Rubber and Plastics Hose and Belting.	500
3053*	Gaskets, Packing, and Sealing Devices.	500
3061*	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods.	500
3069	Fabricated Rubber Products, N.E.C.	500
3081*	Unsupported Plastics Film and Sheet.	500
3082*	Unsupported Plastics Profile Shapes.	500
3083*	Laminated Plastics Plate, Sheet, and Profile Shapes.	500
3084*	Plastics Pipe	500
3085*	Plastics Bottles	500
3086*	Plastics Foam Products.	500
3087*	Custom Compounding of Purchased Plastics Resins.	500
3088*	Plastics Plumbing Fixtures.	500
3089*	Plastics Products, N.E.C.	500
	Major Group 31—Leather and Leather Products	
3111	Leather Tanning and Finishing.	500
3131	Boot and Shoe Cut Stock and Findings.	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic.	500
3144	Women's Footwear, Except Athletic.	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens.	500
3161	Luggage	500
3171	Women's Handbags and Purses.	500
3172	Personal Leather Goods, Except Women's Handbags and Purses.	500
3199	Leather Goods, N.E.C.	500
	Major Group 32—Stone, Clay, Glass, and Concrete Products	
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass.	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile.	500
3253	Ceramic Wall and Floor Tile.	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	750
3262	Vitreous China Table and Kitchen Articles.	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles.	500
3264	Porcelain Electrical Supplies.	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick.	500
3272	Concrete Products, Except Block and Brick.	500
3273	Ready Mixed Concrete.	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products.	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated.	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
	Major Group 33—Primary Metal Industries	
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills.	1,000
3313	Electrometallurgical Products, Except Steel.	750
3315	Steel Wiredrawing and Steel Nails and Spikes.	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars.	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries.	500
3322	Malleable Iron Foundries.	500
3324	Steel Investment Foundries.	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper.	1,000
3334	Primary Production of Aluminum.	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	750
3341	Secondary Smelting and Refining of Nonferrous Metals.	500
3351	Rolling, Drawing, and Extruding of Copper.	750
3353	Aluminum Sheet, Plate, and Foil.	750
3354	Aluminum Extruded Products.	750
3355	Aluminum Rolling and Drawing, N.E.C.	750

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.	750
3357	Drawing and Insulating of Nonferrous Wire.	1,000
3363*	Aluminum Die-Castings.	500
3364*	Nonferrous Die-Castings, Except Aluminum.	500
3365*	Aluminum Foundries	500
3366*	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper.	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750
	Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment	
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails.	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools and Handsaws.	500
3425	Saw Blades and Handsaws.	500
3429	Hardware, N.E.C.	500
3431	Enameled Iron and Metal Sanitary Ware.	750
3432	Plumbing Fixture Fittings and Trim.	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces.	500
3441	Fabricated Structural Metal.	500
3442	Metal Doors, Sash, Frames, Molding, and Trim.	500
3443	Fabricated Plate Work (Boiler Shops).	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work.	500
3448	Prefabricated Metal Buildings and Components.	500
3449	Miscellaneous Structural Metal Work.	500
3451	Screw Machine Products.	500
3452	Bolts, Nuts, Screws, Rivets, and Washers.	500
3462	Iron and Steel Forgings.	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C.	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring.	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition.	1,000
3483	Ammunition, Except for Small Arms.	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3491*	Industrial Valves	500
3492*	Fluid Power Valves and Hose Fittings.	500
3493	Steel Springs, Except Wire.	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products.	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Pipe Fittings.	500
3499	Fabricated Metal Products, N.E.C.	500
	Major Group 35—Industrial and Commercial Machinery and Computer Equipment	
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units.	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment.	500
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment.	500
3531	Construction Machinery and Equipment.	750
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment.	500
3533	Oil and Gas Field Machinery and Equipment.	500
3534	Elevators and Moving Stairways.	500
3535	Conveyors and Conveying Equipment.	500
3536	Overhead Traveling Cranes, Hoists, and Monorail Systems.	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers.	750
3541	Machine Tools, Metal Cutting Types.	500
3542	Machine Tools, Metal Forming Types	500
3543*	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds.	500
3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices.	500
3546	Power-Driven Handtools.	500
3547	Rolling Mill Machinery and Equipment.	500
3548*	Electric and Gas Welding and Soldering Equipment.	500
3549	Metalworking Machinery, N.E.C.	500
3552	Textile Machinery	500
3553	Woodworking Machinery.	500
3554	Paper Industries Machinery.	500
3555	Printing Trades Machinery and Equipment.	500
3556*	Food Products Machinery.	500
3559	Special Industry Machinery, N.E.C.	500
3561	Pumps and Pumping Equipment.	500
3562	Ball and Roller Bearings.	750
3563	Air and Gas Compressors.	500
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment.	500
3565*	Packaging Machinery	500
3566	Speed Changers, Industrial High-Speed Drives, and Gears.	500
3567	Industrial Process Furnaces and Ovens.	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery and Equipment, N.E.C.	500
3571*	Electronic Computers	1,000
3572*	Computer Storage Devices.	1,000
3575*	Computer Terminals	1,000
3577*	Computer Peripheral Equipment, N.E.C.	1,000
3578*	Calculating and Accounting Machines, Except Electronic Computers.	1,000

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TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
3579	Office Machines, N.E.C.	500
3581	Automatic Vending Machines.	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines.	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment.	750
3586	Measuring and Dispensing Pumps.	500
3589	Service Industry Machinery, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves.	500
3593*	Fluid Power Cylinders and Actuators.	500
3594*	Fluid Power Pumps and Motors.	500
3596*	Scales and Balances, Except Laboratory.	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C.	500
Major Group 36—Electronic and Other Electrical Equipment and Components, Except Computer Equipment		
3612	Power, Distribution, and Specialty Transformers.	750
3613	Switchgear and Switchboard Apparatus.	750
3621	Motors and Generators.	1,000
3624	Carbon and Graphite Products.	750
3625*	Relays and Industrial Controls.	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment.	750
3632	Household Refrigerators and Home and Farm Freezers.	1,000
3633	Household Laundry Equipment.	1,000
3634	Electric Housewares and Fans.	750
3635	Household Vacuum Cleaners.	750
3639	Household Appliances, N.E.C.	500
3641	Electric Lamp Bulbs and Tubes.	1,000
3643	Current-Carrying Wiring Devices.	500
3644	Noncurrent-Carrying Wiring Devices.	500
3645	Residential Electric Lighting Fixtures.	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures.	500
3647	Vehicular Lighting Equipment.	500
3648	Lighting Equipment, N.E.C.	500
3651	Household Audio and Video Equipment.	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks.	750
3661	Telephone and Telegraph Apparatus.	1,000
3663*	Radio and Television Broadcasting and Communications Equipment.	750
3669*	Communications Equipment, N.E.C.	750
3671	Electron Tubes	750
3672*	Printed Circuit Boards	500
3674	Semiconductors and Related Devices.	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors.	500
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet.	1,000
3694	Electrical Equipment for Internal Combustion Engines.	750
3695*	Magnetic and Optical Recording Media.	1,000
3699	Electrical Machinery, Equipment, and Supplies, N.E.C.	750
Major Group 37—Transportation		
3711	Motor Vehicles and Passenger Car Bodies.	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories.	500
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts.	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C.	1,000
3731	Ship Building and Repairing.	1,000
3732	Boat Building and Repairing.	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts.	500
3761	Guided Missiles and Space Vehicles.	1,000
3764	Guided Missiles and Space Vehicle Propulsion Units and Propulsion Unit Parts.	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792	Travel Trailers and Campers.	500
3795	Tanks and Tank Components.	1,000
3799	Transportation Equipment, N.E.C.	500
Major Group 38—Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks		
3812*	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.	750
3821*	Laboratory Apparatus and Furniture.	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.	500
3824	Totalizing Fluid Meters and Counting Devices.	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals.	500
3826*	Laboratory Analytical Instruments.	500
3827*	Optical Instruments and Lenses.	500
3829	Measuring and Controlling Devices, N.E.C.	500
3841	Surgical and Medical Instruments and Apparatus.	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies.	500
3843	Dental Equipment and Supplies.	500
3844*	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	500
3845*	Electromedical and Electrotherapeutic Apparatus.	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies.	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts.	500
Major Group 39—Miscellaneous Manufacturing Industries		
3911	Jewelry, Precious Metal.	500
3914	Silverware, Plated Ware, and Stainless Steel Ware.	500
3915	Jewelers' Findings and Materials, and Lapidary Work.	500
3931	Musical Instruments	500
3942	Dolls and Stuffed Toys.	500
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles.	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical.	500
3952	Pencils, and Parts. Lead Pencils, Crayons, and Artists' Materials.	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons.	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal.	500
3965*	Fasteners, Buttons, Needles, and Pins.	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Specialties.	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999	Manufacturing Industries, N.E.C.	500

DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES

Major Group 40—Railroad Transportation		
4011	Railroads, Line-Haul Operating.	1,500
4013	Railroad Switching and Terminal Establishments.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation		
4111	Local and Suburban Transit.	$3.5
4119	Local Passenger Transportation, N.E.C.	$3.5
4121	Taxicabs	$3.5
4131	Intercity and Rural Bus Transportation.	$3.5
4141	Local Bus Charter Service.	$3.5
4142	Bus Charter Service, Except Local.	$3.5
4151	School Buses	$3.5
4173*	Terminal and Service Facilities for Motor Vehicle Passenger Transportation.	$3.5
Major Group 42—Motor Freight Transportation and Warehousing		
4212	Local Trucking Without Storage.[7]	$12.5
4213	Trucking, Except Local.	$12.5
4214	Local Trucking With Storage.	$12.5
4215*	Courier Services, Except by Air.	$12.5
4221	Farm Product Warehousing and Storage.	$12.5
4222	Refrigerated Warehousing and Storage.	$12.5
4225	General Warehousing and Storage.	$12.5
4226	Special Warehousing and Storage, N.E.C.	$12.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.	$3.5
Major Group 44—Water Transportation [8]		
4412	Deep Sea Foreign Transportation of Freight.	500
4424*	Deep Sea Domestic Transportation of Freight.	500
4432*	Freight Transportation on the Great Lakes—St. Lawrence Seaway.	500
4449*	Water Transportation of Freight, N.E.C.	500
4481*	Deep Sea Transportation of Passengers, Except by Ferry.	500
4482*	Ferries	500
4489*	Water Transportation of Passengers, N.E.C.	500
4491*	Marine Cargo Handling.	$12.5
4492*	Towing and Tugboat Services.	$3.5
4493*	Marinas	$3.5
4499*	Water Transportation Services, N.E.C.	$3.5
Major Group 45—Transportation by Air [8]		
4512*	Air Transportation, Scheduled.	[9] 1,500
4513*	Air Courier Services	[9] 1,500
4522*	Air Transportation, Nonscheduled.	[9] 1,500
4581*	Airports, Flying Fields, and Airport Terminal Services.	$3.5
Major Group 46—Pipelines, Except Natural Gas		
4612	Crude Petroleum Pipelines.	1,500
4613	Refined Petroleum Pipelines.	1,500
4619	Pipelines, N.E.C.	$17.0
Major Group 47—Transportation Services		
4724*	Travel Agencies	$0.5
4725*	Tour Operators	$3.5
4729*	Arrangement of Passenger Transportation, N.E.C.	$3.5
4731*	Arrangement of Transportation of Freight and Cargo.	$12.5
4741*	Rental of Railroad Cars.	$3.5
4783	Packing and Crating	$12.5
4785*	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation.	$3.5
4789	Transportation Services, N.E.C.	$3.5
Major Group 48—Communications		
4812*	Radiotelephone Communications.	1,500
4813*	Telephone Communications, Except Radiotelephone.	1,500
4832	Radio Broadcasting Stations.	$3.5
4833	Television Broadcasting Stations.	$7.0
4841*	Cable and Other Pay Television Services.	$7.5
4899	Communications Services, N.E.C.	$7.5
Major Group 49—Electric, Gas, and Sanitary Services		
4911	Electric Services	4 million megawatt hrs.

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TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
4941	Water Supply	$3.5
4952	Sewerage Systems	$3.5
4953	Refuse Systems [13]	$6.0
4959	Sanitary Services, N.E.C.	$3.5
4961	Steam and Air-Conditioning Supply.	$6.0
4971	Irrigation Systems	$3.5
	DIVISION F—WHOLESALE TRADE	
	Major Group 50—Wholesale Trade—Durable Goods	
5012	Automobiles and Other Motor Vehicles.	100
5013	Motor Vehicle Supplies and New Parts.	100
5014	Tires and Tubes	100
5015*	Motor Vehicle Parts, Used.	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels.	100
5032*	Brick, Stone, and Related Construction Materials.	100
5033*	Roofing, Siding, and Insulation Materials.	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies.	100
5044*	Office Equipment	100
5045*	Computers and Computer Peripheral Equipment and Software.	100
5046*	Commercial Equipment, N.E.C.	100
5047*	Medical, Dental, and Hospital Equipment and Supplies.	100
5048*	Ophthalmic Goods	100
5049*	Professional Equipment and Supplies, N.E.C.	100
5051	Metals Service Centers and Offices.	100
5052	Coal and Other Minerals and Ores.	100
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials.	100
5064	Electrical Appliances, Television and Radio Sets.	100
5065	Electronic Parts and Equipment, N.E.C.	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics).	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies.	100
5078	Refrigeration Equipment and Supplies.	100
5082	Construction and Mining (Except Petroleum) Machinery and Equipment.	100
5083	Farm and Garden Machinery and Equipment.	100
5084	Industrial Machinery and Equipment.	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies.	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles.	100
5091*	Sporting and Recreational Goods and Supplies.	100
5092*	Toys and Hobby Goods and Supplies.	100
5093	Scrap and Waste Materials.	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals.	100
5099	Durable Goods, N.E.C.	100
	Major Group 51—Wholesale Trade—Nondurable Goods	
5111	Printing and Writing Paper.	100
5112	Stationery and Office Supplies.	100
5113	Industrial and Personal Service Paper.	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries.	100
5131*	Piece Goods, Notions, and Other Dry Goods.	100
5136	Men's and Boys' Clothing and Furnishings.	100
5137	Women's, Children's, and Infants' Clothing and Accessories.	100
5139	Footwear	100
5141	Groceries, General Line.	100
5142	Packaged Frozen Foods.	100
5143	Dairy Products, Except Dried or Canned.	100
5144	Poultry and Poultry Products.	100
5145	Confectionery	100
5146	Fish and Seafoods	100
5147	Meats and Meat Products.	100
5148	Fresh Fruits and Vegetables.	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain and Field Beans	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5162*	Plastics Materials and Basic Forms and Shapes.	100
5169*	Chemicals and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals.	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages.	100
5191	Farm Supplies	100
5192*	Books, Periodicals, and Newspapers.	100
5193*	Flowers, Nursery Stock, and Florists' Supplies.	100
5194	Tobacco and Tobacco Products.	100
5198	Paints, Varnishes, and Supplies.	100
5199	Nondurable Goods, N.E.C.	100
	DIVISION G—RETAIL TRADE	
	Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers.	$3.5
5231	Paint, Glass, and Wallpaper Stores.	$3.5
5251	Hardware Stores	$3.5
5261	Retail Nurseries, Lawn and Garden Supply Stores.	$3.5
5271	Mobile Home Dealers	$6.5
	Major Group 53—General Merchandise Stores	
5311	Department Stores	$13.5
5331	Variety Stores	$5.5
5399	Miscellaneous General Merchandise Stores.	$3.5
	Major Group 54—Food Stores	
5411	Grocery Stores	$13.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
5421*	Meat and Fish (Seafood) Markets, Including Freezer Provisioners.	$3.5
5431	Fruit and Vegetable Markets.	$3.5
5441	Candy, Nut, and Confectionery Stores.	$3.5
5451	Dairy Products Stores	$3.5
5461*	Retail Bakeries	$3.5
5499	Miscellaneous Food Stores.	$3.5
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used).	$11.5
5521	Motor Vehicle Dealers (Used Only).	$11.5
5531	Auto and Home Supply Stores.	$3.5
5541	Gasoline Service Stations.	$4.5
5551	Boat Dealers	$3.5
5561	Recreational Vehicle Dealers.	$3.5
5571	Motorcycle Dealers	$3.5
5599	Automotive Dealers, N.E.C. [12]	$3.5
	Major Group 56—Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Accessory Stores.	$4.5
5621	Women's Clothing Stores.	$4.5
5632*	Women's Accessory and Specialty Stores.	$3.5
5641	Children's and Infants' Wear Stores.	$3.5
5651	Family Clothing Stores.	$4.5
5661	Shoe Stores	$4.5
5699	Miscellaneous Apparel and Accessory Stores.	$3.5
	Major Group 57—Home Furniture, Furnishings, and Equipment Stores	
5712	Furniture Stores	$3.5
5713	Floor Covering Stores	$3.5
5714	Drapery, Curtain, and Upholstery Stores.	$3.5
5719	Miscellaneous Homefurnishings Stores.	$3.5
5722	Household Appliance Stores.	$4.5
5731*	Radio, Television, and Consumer Electronics Stores.	$4.5
5734*	Computer and Computer Software Stores.	$4.5
5735*	Record and Prerecorded Tape Stores.	$3.5
5736*	Musical Instrument Stores.	$3.5
	Major Group 58—Eating and Drinking Places	
5812	Eating Places, Except Food Service, Institutional.	$3.5
5812	Food Service, Institutional.	$10.0
5813	Drinking Places (Alcoholic Beverages).	$3.5
	Major Group 59—Miscellaneous Retail	
5912	Drug Stores and Proprietary Stores.	$3.5
5921	Liquor Stores	$3.5
5932*	Used Merchandise Stores.	$3.5
5941	Sporting Goods Stores and Bicycle Shops.	$3.5
5942	Book Stores	$3.5
5943	Stationery Stores	$3.5
5944	Jewelry Stores	$3.5
5945	Hobby, Toy, and Game Shops.	$3.5
5946	Camera and Photographic Supply Stores.	$3.5
5947	Gift, Novelty, and Souvenir Shops.	$3.5
5948	Luggage and Leather Goods Stores.	$3.5
5949	Sewing, Needlework, and Piece Goods Stores.	$3.5
5961	Catalog and Mail-Order Houses.	$12.5
5962	Automatic Merchandising Machine Operators.	$3.5
5963	Direct Selling Establishments.	$3.5
5983	Fuel Oil Dealers	$6.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers.	$3.5
5989*	Fuel Dealers, N.E.C.	$3.5
5992	Florists	$3.5
5993	Tobacco Stores and Stands.	$3.5
5994	News Dealers and Newsstands.	$3.5
5995*	Optical Goods Stores	$3.5
5999	Miscellaneous Retail Stores, N.E.C.	$3.5
	DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE [15]	
	Major Group 60—Depository Institutions	
6021*	National Commercial Banks.	[14] $100 Million
6022	State Commercial Banks.	[14] $100 Million
6029*	Commercial Banks, N.E.C.	[14] $100 Million
6035*	Savings Institutions, Federally Chartered.	[14] $100 Million
6036*	Savings Institutions, Not Federally Chartered.	$100 Million [14]
	Major Group 63—Insurance Carriers	
6331	Fire, Marine, and Casualty Insurance.	1,500
	Major Group 64—Insurance Agents, Brokers, and Service	
6411	Insurance Agents, Brokers, and Service.	$3.5
	Major group 65—Real Estate	
6515	Operators of Residential Mobile Home Sites.	$3.5
	Leasing of Building Space to Federal Government by Owners. [16]	$10.0
6531	Real Estate Agents and Managers.	[16] $1.0
	DIVISION I—SERVICES [16]	
	Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels and Motels	$3.5
7021	Rooming and Boarding Houses.	$3.5
7032	Sporting and Recreational Camps.	$3.5
7033	Recreational Vehicle Parks and Campsites.	$3.5
7041	Organization Hotels and Lodging Houses, on Membership Basis.	$3.5
	Major Group 72—Personal Services	
7211	Power Laundries, Family and Commercial.	$7.0
7212	Garment Pressing, and Agents for Laundries and Drycleaners.	$3.5
7213	Linen Supply	$7.0
7215	Coin-Operated Laundries and Drycleaning.	$3.5
7216	Drycleaning Plants, Except Rug Cleaning.	$2.5
7217	Carpet and Upholstery Cleaning.	$2.5
7218	Industrial Launderers	$7.0
7219	Laundry and Garment Services, N.E.C.	$3.5
7221	Photographic Studios, Portrait.	$3.5
7231	Beauty Shops	$3.5
7241	Barber Shops	$3.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC	Description—(N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars: Final Rule
7251	Shoe Repair Shops and Shoeshine Parlors.	$3.5
7261	Funeral Service and Crematories.	$3.5
7291*	Tax Return Preparation Services.	$3.5
7299	Miscellaneous Personal Services, N.E.C.	$3.5
	Major Group 73—Business Services	
7311	Advertising Agencies	$3.5
7312	Outdoor Advertising Services.	$3.5
7313	Radio, Television, and Publishers' Advertising Representatives.	$3.5
7319	Advertising, N.E.C.	$3.5
7322*	Adjustment and Collection Services.	$3.5
7323*	Credit Reporting Services.	$3.5
7331	Direct Mail Advertising Services.	$3.5
7334*	Photocopying and Duplicating Services.	$3.5
7335*	Commercial Photography.	$3.5
7336*	Commercial Art and Graphic Design.	$3.5
7338*	Stenographic and Court Reporting Services.	$3.5
7342	Disinfecting and Pest Control Services.	$3.5
7349	Building Cleaning and Maintenance Services, N.E.C.	$8.0
7352*	Medical Equipment Rental and Leasing.	$3.5
7353*	Heavy Construction Equipment Rental and Leasing.	$3.5
7359*	Equipment Rental and Leasing, N.E.C.	$3.5
7361	Employment Agencies	$3.5
7363*	Help Supply Services	$3.5
7371*	Computer Programming Services.	$7.0
7372	Prepackaged Software.	$7.0
7373*	Computer Integrated Systems Design.	$7.0
7374	Computer Processing and Data Preparation and Processing Services.	$7.0
7375*	Information Retrieval Services.	$7.0.
7376*	Computer Facilities Management Services.	$7.0
7377*	Computer Rental and Leasing.	$12.5
7378*	Computer Maintenance and Repair.	$12.5
7379	Computer Related Services, N.E.C.	$12.5
7381*	Detective, Guard, and Armored Car Services.	$6.0
7382*	Security Systems Services.	$6.0
7383*	News Syndicates	$3.5
7384*	Photofinishing Laboratories.	$3.5
7389*	Business Services, N.E.C.	$3.5
	Major Group 75—Automotive Repair, Services, and Parking	
7513	Truck Rental and Leasing, Without Drivers.	$12.5
7514*	Passenger Car Rental	$12.5
7515*	Passenger Car Leasing.	$12.5
7519	Utility Trailer and Recreational Vehicle Rental.	$3.5
7521*	Automobile Parking	$3.5
7532*	Top, Body, and Upholstery Repair Shops and Paint Shops.	$3.5
7533*	Automotive Exhaust System Repair Shops.	$3.5
7534	Tire Retreading and Repair Shops.	$7.0
7536*	Automotive Glass Replacement Shops.	$3.5
7537*	Automotive Transmission Repair Shops.	$3.5
7538	General Automotive Repair Shops.	$3.5
7539	Automotive Repair Shops, N.E.C.	$3.5
7542	Carwashes	$3.5
7549	Automotive Services, Except Repair and Carwashes.	$5.5
	Major Group 76—Miscellaneous Repair Services	
7622	Radio and Television Repair Shops.	$3.5
7623	Refrigeration and Air-Conditioning Service and Repair Shops.	$3.5
7629	Electrical and Electronic Repair Shops, N.E.C.	$3.5
7631	Watch, Clock, and Jewelry Repair.	$3.5
7641	Reupholstery and Furniture Repair.	$3.5
7692	Welding Repair	$3.5
7694	Armature Rewinding Shops.	$3.5
7699	Repair Shops and Related Services, N.E.C.[16].	$3.5
7812*	Motion Picture and Video Tape Production.	$14.5
7819	Services Allied to Motion Picture Production.	$14.5
7822*	Motion Picture and Video Tape Distribution.	$14.5
7829	Services Allied to Motion Picture Distribution.	$3.5
7832	Motion Picture Theaters, Except Drive-In.	$3.5
7833	Drive-In Motion Picture Theaters.	$3.5
7841*	Video Tape Rental	$3.5
	Major Group 79—Amusement and Recreation Services	
7911	Dance Studios, Schools, and Halls.	$3.5
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.	$3.5
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups.	$3.5
7933	Bowling Centers	$3.5
7941	Professional Sports Clubs and Promoters.	$3.5
7991*	Physical Fitness Facilities.	$3.5
7993	Coin-Operated Amusement Devices.	$3.5
7996	Amusement Parks	$3.5
7997	Membership Sports and Recreation Clubs.	$3.5
7999	Amusement and Recreation Services, N.E.C.	$3.5
	Major Group 80—Health Services	
8011	Offices and Clinics of Doctors of Medicine.	$3.5
8021	Offices and Clinics of Dentists.	$3.5
8031	Offices and Clinics of Doctors of Osteopathy.	$3.5
8041	Offices and Clinics of Chiropractors.	$3.5
8042	Offices and Clinics of Optometrists.	$3.5
8043*	Offices and Clinics of Podiatrists.	$3.5
8049	Offices and Clinics of Health Practitioners, N.E.C.	$3.5
8051	Skilled Nursing Care Facilities.	$3.5
8052*	Intermediate Care Facilities.	$3.5
8059	Nursing and Personal Care Facilities, N.E.C.	$3.5
8062	General Medical and Surgical Hospitals.	$3.5
8063	Psychiatric Hospitals.	$3.5
8069	Specialty Hospitals, Except Psychiatric.	$3.5
8071	Medical Laboratories	$3.5
8072	Dental Laboratories	$3.5
8082*	Home Health Care Services.	$3.5
8092*	Kidney Dialysis Centers.	$3.5
8093*	Specialty Outpatient Facilities, N.E.C.	$3.5
8099*	Health and Allied Services, N.E.C.	$3.5
	Major Group 81—Legal Services	
8111	Legal Services	$3.5
	Major Group 82—Educational Services	
8211	Elementary and Secondary Schools.	$3.5
8221	Colleges, Universities, and Professional Schools.	$3.5
8222	Junior Colleges and Technical Institutes.	$3.5
8231	Libraries	$3.5
8243	Data Processing Schools.	$3.5
8244	Business and Secretarial Schools.	$3.5
8249	Vocational Schools, N.E.C.	$3.5
8299	Schools and Educational Services, N.E.C.	$3.5
8299	Flight Training Services.	$12.5
	Major Group 83—Social Services	
8322*	Individual and Family Social Services.	$3.5
8331	Job Training and Vocational Rehabilitation Services.	$3.5
8351	Child Day Care Services.	$3.5
8361	Residential Care	$3.5
8399	Social Services, N.E.C.	$3.5
	Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens	
8412*	Museums and Art Galleries.	$3.5
8422*	Arboreta and Botanical or Zoological Gardens.	$3.5
	Major Group 86—Membership Organizations	
8611	Business Associations.	$3.5
8621	Professional Membership Organizations.	$3.5
8631	Labor Unions and Similar Labor Organizations.	$3.5
8641	Civic, Social, and Fraternal Associations.	$3.5
8651*	Political Organizations	$3.5
8661*	Religious Organizations.	$3.5
8699	Membership Organizations, N.E.C.	$3.5
	Major Group 87—Engineering, Accounting, Research, Management, and Related Services	
8711*	Engineering Services: Military and Aerospace Equipment and Military Weapons.	$13.5
	Marine Engineering and Naval Architecture.	$9.0
	Other Engineering Services.	$2.5
8712*	Architectural Services (Other Than Naval).	$2.5
8713*	Surveying Services	$2.5
8721*	Accounting, Auditing, and Bookkeeping Services.	$4.0
8731*	Commercial Physical and Biological Research.	[18] 500
8732*	Commercial Economic, Sociological and Educational Research.	$3.5
8733*	Noncommercial Research Organizations.	$3.5
8734*	Testing Laboratories	$3.5
8741*	Management Services	$3.5
8742*	Management Consulting Services.	$3.5
8743*	Public Relations Services.	$3.5
8744*	Facilities Support Management Services.	[20] $3.5
——	Base Maintenance [17]	$13.5
8748*	Business Consulting Services, N.E.C.	$3.5
	Major Group 89—Services Not Elsewhere Classified	
8999	Services, N.E.C.	$3.5

[1] Size standards preceded by a dollar sign ($) are in millions of dollars of annual receipts. All others are in number of employees unless specified otherwise.

[2] To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

* *SIC Division D—Manufacturing:* "Rebuilding on a factory basis or equivalent." For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

* *SIC-2093:* For purposes of Government procurement for food canning and preserving under SIC-2093, the standard of 500 employees shall be exclusive of agricultural labor as defined in section (lr) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

* *SIC-2911:* For purposes of Government procurement, the firm may not have more than 1,500 employees, nor may it have more than 50,000 barrels per day capacity. The capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs into the process may not exceed 50,000 barrels. In addition to the direct owned capacity of the concern in question, coowned capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput or other form, or processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this would have to be included in the concern's own capacity. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

* *SIC-3011:* For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112, provided that: (1) The value of tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calender year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

[7] *SIC-4212:* The components "Garbage and Refuse, Collecting and Transporting, Without Disposal" shall have a size standard of $6.0 million. This is the same size standard as SIC-4953, Refuse Systems.

[8] *Offshore Marine Services:* The applicable size standard shall be $14 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

[9] *SICs 4512, 4513, and 4522:* Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. This does not include offshore marine transportation services as defined in footnote 8.

[10] As measured by total revenues, normally consisting primarily of commissions, in millions of dollars.

[11] *SIC-4953:* "Garbage and Refuse, Collecting and Transporting, Without Disposal," a component of SIC-4212, has the same size standard as SIC-4953.

[12] *SIC-5599:* For retail firms whose principal line of business is the retail sale of aircraft, a $5 million size standard shall apply.

[13] *Most industries in Division H:* —Finance, Insurance, and Real Estate—are excluded from SBA assistance.

[14] As measured by total assets.

[15] *Leasing of building space to the Federal Government by owners*—For the purpose of Government procurement, a size standard of $10 million in gross receipts is established for owners of building space that is leased to the Federal Government. The

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standard for these procurements shall apply to the owner of the property and not to those acting as an agent for the owner. There is no size standard concerning the agent.

[16] For all industries not specifically listed in this division, the size standard is $3.5 million.

[17] *If one of the activities of base maintenance, as defined in SIC-8744,* can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

[18] Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis will be classified under SIC-3728.

[19] *SIC-8731:* For research and development contracts requiring the delivery of a manufactured product, the size standard to use is that of the manufacturing industry in which the specific products are classified.

Research and Development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.7 of these regulations.

For research and development for aircraft, a size standard of 1,500 employees shall apply.

For research and development for guided missiles and space vehicles; aircraft engines; aircraft parts; guided missiles and space vehicle propulsion units and propulsion unit parts; guided missile and space vehicle parts and auxiliary equipment, not elsewhere classified, a size standard of 1,000 employees shall apply. Research and development for guided missiles and space vehicles includes evaluation and simulation and other services requiring thorough knowledge of complete guided missiles and space craft.

[20] *Facilities Management, a component of SIC-8744,* has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

James Abdnor,

Administrator, U.S. Small Business Administration.

Date: December 16, 1987

[FR Doc. 88-11694 Filed 5-24-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-50-AD; Amdt. 39-6039]

Airworthiness Directives; Boeing Model 747-200 and 747-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747-200 and 747-300 series airplanes, and supersedes telegraphic Airworthiness Directive T88-08-51 issued on April 8, 1988, which currently requires inspection of the center wing fuel tank for fuel leakage into the forward cargo compartment. That AD was prompted by reports of fuel leaking into the forward cargo compartment. This amendment is prompted by a determination that additional airplanes may be subject to similar fuel leakage. This condition, if not corrected, could create a potential fire hazard in the forward cargo compartment.

EFFECTIVE DATE: June 13, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kanji K. Patel, Propulsion Branch, ANM-140S; telephone (206) 431-1973. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On April 8, 1988, the FAA issued telegraphic AD T88-08-51, applicable to certain Boeing Model 747-200 series airplanes, which requires visual inspections of the wing center section front spar lower chord area for fuel leaking from the center wing fuel tank into the forward cargo compartment, and repair of any leaks that are discovered. That action was prompted by reports of fuel leaks, due to either loose or broken bolts which connect the body station (BS) 1,000 bulkhead chord to the wing center section front spar lower chord through an internal drag splice fitting and a bathtub fitting at body stringer S-38 on both sides of the airplane. Fuel leaking into the forward cargo compartment, which is not a flammable fluid leakage zone, creates a potential fire hazard.

Since issuance of that telegraphic AD, which was applicable only to Boeing Model 747-200 series airplanes through line number 592, further investigation has revealed that a required secondary fuel barrier (CAT-A-LAC coating), may not have been applied to cover the bolt areas described above on Model 747-200 and Model 747-300 series airplanes through line number 699. Without this coating, failure of the bolt would allow fuel to leak into the cargo compartment area causing a fire hazard. Therefore, the FAA has determined that these additional airplanes must also be inspected for fuel leakage.

The cause of the loose or broken bolts is still under investigation. However, the manufacturer is developing a design change, as well as applicable service instructions, that will address the problems associated with the bolt. Once this modification is available, the FAA may consider additional rulemaking action to require its installation.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD supersedes telegraphic AD T88-08-51 with a new AD, applicable to Model 747-200 and Model 747-300 series airplanes through line number 699. This AD requires visual inspection for fuel leaks at Body Station (BS) 1,000 pressure bulkhead on either side of the airplane between fuselage stringers S-37 and S-39, with specific attention to the bathtub fitting attaching bolt located at stringer S-38. If fuel leakage is detected, it must be repaired prior to further flight.

Since a situation exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39 [AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding telegraphic AD T88-08-51, issued April 8, 1988, with the following new airworthiness directive:

Boeing: Applies to Model 747-200 and 747-300 series airplanes, through line number 699, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect a fuel leak from the center wing fuel tank front spar into the forward cargo compartment accomplish the following:

A. Within the next 50 flight hours after the effective date of this AD, unless previously accomplished within the last 350 flight hours, and thereafter at intervals not to exceed 400 flight hours, conduct a visual inspection for fuel leaks at the forward side of the forward wall of the center wing fuel tank (body station 1000 pressure bulkhead) between fuselage stringers S-37 and S-39, left and right side of the airplane with specific attention to the bathtub fittings at fuselage stringer S-38 (Body Buttline 78.5, left and right).

B. If fuel leakage or fuel staining is detected, prior to further flight, repair the fuel leak in accordance with Boeing Model 747 Structural Repair Manual and reseal in accordance with Boeing Model 747 Maintenance Manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective June 13, 1988.

This supersedes Telegraphic AD T88-08-51, issued April 8, 1988.

Issued in Seattle, Washington, on May 17, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11659 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21, 25, and 36

[Docket No. 23340 Amendment Nos. 21-62, 25-63, and 36-15]

Standards Governing the Noise Certification of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In the May 6, 1988, issue of the **Federal Register** (53 FR 16369), the FAA published a final rule revising 14 CFR Parts 21, 25, and 36. The final rule contained three errors: A comma was omitted, a wrong word was used, and one equation had a lower case letter when an upper case letter should have been used. This document serves to correct these errors.

FOR FURTHER INFORMATION CONTACT: Harvey VanWyen, (202) 267-3558.

Correction to the Rule

1. Page 16368, first column, under Section A36.5(d)(5), second line, insert a comma after the word "procedures".

2. Page 16368, third column, under Section A36.11(e)(3) *Sideline flight path.*, third line, "during" should read "using; and in the next line, change the lower case "x" in the equation to an upper case "X".

Dated: May 20, 1988

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division, Office of the Chief Counsel.

Note: An additional correction to this document is published elsewhere in the corrections section of this issue of the **Federal Register**

[FR Doc. 88-11711 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-23]

Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of the Roanoke Regional/Woodrum Field, VA, Airport Radar Service Area (ARSA). In the final rule errors were made in the bearings which described the divisions of the 5-10-mile area.

EFFECTIVE DATE: 0901 UTC, July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87-28081 published December 8, 1987, established ARSA's at Roanoke, VA, and four other locations (52 FR 46556). Errors were made in the bearings which described the subareas of the 5-10-mile area for the Roanoke ARSA. The bearings inadvertently were described as magnetic rather than true as they should have been. This action corrects that oversight.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

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Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 87–28081, is published in the **Federal Register** on December 8, 1987, (52 FR 46556) is corrected as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Roanoke Regional/Woodrum Field, VA [New]

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Roanoke Regional Airport (lat. 37°19'29" N., long. 79°56'35" W.); and that airspace extending upward from 3,800 feet MSL to and including 5,200 feet MSL within a 10-mile radius of the airport from the 004° bearing from the airport clockwise to the 104° bearing from the airport; and that airspace extending upward from 3,400 feet MSL to and including 5,200 feet MSL from the 104° bearing from the airport clockwise to a line formed by a point at the 274° bearing from the airport at 5 miles direct to a point at the 257° bearing from the airport at 10 miles.

Issued in Washington, DC, on May 18, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–11658 Filed 5–24–88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 6H5515/R943; FRL-3385-1]

Pesticide Tolerance for Cyano(4-Fluoro-3-Phenoxyphenyl)Methyl-3-(2,2-Dichloroethenyl)-2,2-Dimethycyclopropanecarboxylate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food/feed additive regulation to permit residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on foods/feeds processed in food/feed handling establishments where the insecticide is used for pest control purposes. This regulation to establish the maximum permissible level for residues of the insecticide in or on food/feed commodities was requested by the Mobay Corp.

EFFECTIVE DATE: May 25, 1988.

ADDRESS: Written objections, identified by the document control number [FAP 6H5515/R943] may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 3, 1986 (51 FR 43663), which announced that Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120, had filed a food additive petition (FAP 6H5515), proposing that 21 CFR Part 193 be amended by establishing a regulation permitting tolerances for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) with a tolerance limitation of 0.05 part per million in foods processed (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where the insecticide is used for pest control.

The food additive petition was amended on August 11, 1987, to include a proposed feed additive tolerance (21 CFR Part 561).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 4.0 milligrams/kilogram/day (mg/kg/day); 24-month rat and mouse chronic feeding studies with systemic NOEL's of 2.5 and <7.5 mg/kg/day, respectively, with no oncogenic effects observed at dose levels up to and including 22.5 and 120 mg/kg/day, the highest dose levels tested (HDT) for rats and mice, respectively. No teratogenic effects were observed in rats at dose levels up to and including 30 mg/kg/day, or in rabbits at dose levels up to and including 45 mg/kg/day, HDT. In a 3-generation reproduction study in rats, the NOEL for reproductive effects was 2.5 mg/kg/day.

The following genotoxicity tests were negative: a gene mutation assay (CHO/HGPRT), a sister chromatid exchange assay, and an unscheduled DNA synthesis assay.

The acceptable daily intake (ADI), based on a NOEL of 2.5 (mg/kg) body weight (bwt)/day for a 2-year rat feeding study and a safety factor of 100, is 0.025 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from established and pending tolerances is 0.000549 mg/kg (bwt)/day. Approval of the tolerances for food/feed handling establishments where food and feed products are processed or prepared would increase the percentage of the ADI used up by 2.3 percent (from 2.2 to 4.5 percent) and increase the TMRC to 0.001134 mg/kg (bwt)/day.

The metabolism of the chemical in plants for this food-handling establishment use is adequately understood. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. The methodology is being made available to anyone who is interested in pesticide enforcement when requested from:

By mail:

Information Service (TS–767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–3262.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 751, 7 U.S.C. 135(a) et seq.). Accordingly, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from the OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601–612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from the tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: May 16, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 193.98, paragraph (c) is added to read as follows:

§ 193.98 Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate.

* * * * *

(c) A tolerance of 0.05 ppm is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in food commodities exposed to the insecticide during treatment of food-handling establishments where food and food products are held, processed, prepared, or served. Treatments may be made by general surface, spot, and/or crack and crevice applications.

(1) General surface treatments shall be limited to a maximum of 3.8 grams of active ingredient per 1,000 square feet, applying to walls, floors, and ceilings with a low-pressure system. Cover or remove all food processing and/or handling equipment during application. Do not apply directly to food products. Reapplications may be made at 10-day intervals.

(2) Crack and crevice or spot treatments shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied with a low-pressure system with a pinpoint or variable pattern nozzle. Cover exposed food or remove from premises. Do not apply directly to food. Reapplications may be made at 10-day intervals.

(3) To ensure safe use of the insecticide, its label and labeling shall conform to that registered by the Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 561.96, new paragraph (c) is added, to read as follows:

§ 561.96 Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate.

* * * * *

(c) A tolerance of 0.05 part per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in feed commodities exposed to the insecticide during treatment of feed-handling establishments where feed and feed products are held, processed, prepared, or served. Treatments may be made by general surface, spot, and/or crack and crevice applications.

(1) General surface treatments shall be limited to a maximum of 3.8 grams of active ingredient per 1,000 square feet, applying to walls, floors, and ceilings with a low-pressure system. Cover or remove all feed processing and/or handling equipment during application. Do not apply directly to feed products. Reapplications may be made at 10-day intervals.

(2) Crack and crevice or spot treatments shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied with a low-pressure system with a pinpoint or variable pattern nozzle. Cover exposed food or remove from premises. Do not apply directly to feed. Reapplications may be made at 10-day intervals.

(3) To ensure safe use of the insecticide, its label and labeling shall conform to that registered by EPA, and it shall be used in accordance with such label and labeling.

[FR Doc. 88–11571 Filed 5–24–88; 8:45 am]

BILLING CODE 4560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 444

[Docket No. 88N–0096]

Antibiotic Drug Products; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the monograph in 21 CFR Part 333 that establishes conditions under which over-the-counter (OTC) first aid antibiotic drug products are generally recognized as safe and effective and not misbranded. FDA is concurrently amending the antibiotic regulations in 21 CFR Part 444 to be consistent with the monograph for OTC first aid antibiotic drug products. These amendments involve noncontroversial technical changes to clarify that neomycin sulfate as a single ingredient in a cream base is included in the final monograph and in 21 CFR 444.542b.

DATES: 21 CFR 333.110(e) and 333.120(a)(10) are effective December 12, 1988. 21 CFR 444.542b(a)(1) and (2) are effective May 25, 1988; comments on the amendment to 21 CFR 333.110 and 333.120 by June 24, 1988; comments, notice of participation, and request for hearing on the amendment to 21 CFR 444.542b by June 24, 1988; data, information, and analyses to justify a hearing on the amendment to 21 CFR 444.542b by July 25, 1988.

ADDRESS: Written comments, notice of participation, requests for hearing, data, information, and analyses to justify a hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: This document revises the final monograph for OTC first aid antibiotic drug products in 21 CFR Part 333 (December

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11, 1987; 52 FR 47312) and the regulations for antibiotic drug products in 21 CFR Part 444. The final monograph for OTC first aid antibiotic drug products does not specifically list single ingredient neomycin sulfate cream products nor do the oligosaccharide antibiotic drug regulations in 21 CFR Part 444. The agency had intended that both regulations include single ingredient neomycin sulfate in a cream base. Accordingly, the amendments set forth in this document clarify that neomycin sulfate in a cream base is acceptable in OTC first aid antibiotic drug products. In addition, the amendment revises the labeling in § 444.542b(a)(2) to provide for single ingredient neomycin sulfate cream products and revises the OTC first aid antibiotic monograph in § 333.120(a)(10) to more clearly state that the only other neomycin sulfate cream formulation in the monograph must also meet certain requirements for tests, methods of assay, and potency.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

These amendments institute changes that are of a minor substantive nature. Because the amendments are not controversial and because, when effective, they provide clarification of the final monograph for OTC first aid antibiotic drug products and the antibiotic regulations in 21 CFR Part 444, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. However, for consistency with the effective date for the final monograph for OTC first aid antibiotic drug products (21 CFR Part 333), the amendments to § 333.110 and § 333.120 will become effective on December 12, 1988. The amendment to 21 CFR 444.542b will become effective on May 25, 1988. However, interested persons may, on or before June 24, 1988, submit written comments on the amendment to 21 CFR Part 333 to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. Regarding the amendment to 21 CFR Part 444, interested persons may, on or before June 24, 1988, submit written comments to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by the amendment to 21 CFR Part 444 may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 24, 1988, a written notice of participation and request for hearing, and (2) on or before July 25, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 333

First aid antibiotic drug products, over-the-counter drugs.

21 CFR Part 444

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 333 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 333.110 is amended by redesignating paragraph (e) as paragraph (f) and by adding new paragraph (e) to read as follows:

§ 333.110 First aid antibiotic active ingredients.

* * * * *

(e) Neomycin sulfate cream containing, in each gram, 3.5 milligrams of neomycin in a suitable cream base: *Provided*, that it meets the tests and methods of assay in § 444.542b(b).

* * * * *

3. Section 333.120 is amended by revising paragraph (a)(10) to read as follows:

§ 333.120 Permitted combinations of active ingredients.

* * * * *

(a) * * *

(10) Neomycin sulfate-polymyxin B sulfate cream containing, in each gram, 3.5 milligrams of neomycin and 10,000 units of polymyxin B in a suitable vehicle: *Provided*, that it meets the tests, methods of assay, and potency in § 444.5421(b).

* * * * *

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

4. The authority citation for 21 CFR Part 444 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

5. Section 444.542b is amended by revising the section heading, the introductory text of paragraph (a)(1), and paragraph (a)(2), to read as follows:

§ 444.542b Neomycin sulfate cream; neomycin sulfate cream (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Neomycin sulfate cream contains, in each gram, 3.5 milligrams of neomycin in a suitable cream base, with or without one or more suitable and harmless emollients, perfumes, dispersants, and preservatives. The following other drugs may be combined with neomycin sulfate cream in the indicated amounts per gram:

* * * * *

(2) *Labeling.* If it contains a corticosteroid, it shall be labeled in accordance with the requirements prescribed by § 432.5 of this chapter, and its expiration date is 12 months. If it does not contain a corticosteriod, each package shall bear on its label or labeling, as hereinafter indicated, the following:

(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark.

(*b*) The name and quantity of each active ingredient contained in the drug.

(*c*) An expiration date that is 12 months after the month during which the batch was certified.

(ii) On the label of the immediate container or other labeling attached to or within the package, adequate directions under which the layman can use the drug safely and efficaciously.

* * * * *

Dated: May 17, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-11716 Filed 5-24-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26, 26A, and 602

[T.D. 8187]

Estate and Gift Taxes; Effective Date; Rules and Return Requirements; Relating to the Generation-Skipping Transfer Tax; and OMB Control Numbers Under the Paperwork Reduction Act; Corrections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8187, which was published in the Federal Register for Tuesday, March 15, 1988 (53 FR 8441). T.D. 8187 issued temporary regulations relating to the effective date provisions, return requirements, and certain special rules for the tax on generation-skipping transfers. This action was necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986. These regulations affect all persons making or receiving a generation-skipping transfer.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley, 202-566-4336 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections relate to generation-skipping transfer taxes under Chapter 3 of the Internal Revenue Code of 1986, as added by section 1431 of the Tax Reform Act of 1986, concerning the effective date, return requirements, and certain special rules.

Need For Corrections

As published, Treasury Decision 8187 contains a number of errors that, if not corrected, would cause confusion to taxpayers and practitioners.

Corrections of Publication

Accordingly, the publication of temporary regulations (T.D. 8187), which was the subject of FR Doc. 88-5502, is corrected as follows:

PART 26—[AMENDED]

§ 26.2600-1 [Corrected]

Paragraph 1. In § 26.2600-1(b), under the heading of Table of contents, page 8443, second column, in d. 2. ii., the language "25, 1985, and before January 1, 1987." should be removed and the language "25, 1985, and before January 1, 1988." added in its place.

§ 26.2601-1 [Amended]

Par. 2. In § 26.2601-1(b)(1)(v)(A), page 8445, first column, the sixth line of the paragraph headed "Constructive additions", the language "that portion of the trust, the value of the" should be removed and the language "that portion of the trust, and the release, exercise or lapse is treated to any extent as a taxable transfer under Chapter 11 or Chapter 12, the value of the" added in its place.

Par. 3. In § 26.2601-1(b)(1)(vi), page 8446, second column the third line of the paragraph headed "Appreciation and income", the language "paragraphs (b)(2)(i) and (ii) of this" should be removed and the language "paragraphs (b)(iv) and (v) of this" added in its place.

Par. 4. In § 26.2601-1(b)(2)(v), page 8446, third column, fourteenth line of the paragraph headed "Additions to revocable trusts", the language "§ 26.2601-1(b)(1)(V)(B) for rules" should be removed and the language "26.2601-1(b)(1)(V)(B) for rules" added in its place.

Par. 5. In § 26.2601-1(b)(2)(vi), Example (6), page 8447, first column, seventh line of the example, the language "C (none of whom were skip persons) in equal" should be removed and the language "C in equal" added in its place.

Par. 6. In § 26.2601-1(b)(3)(v), page 8447, third column, the twelfth line of paragraph (v), the language "transfer. See paragraph (b)(3)(i) of this" should be removed and the language "transfer. See paragraph (b)(2)(iv) of this" added in its place.

Par. 7 In § 26.2662-1(d)(2)(i), page 8450, third column, last line of paragraph (d)(2)(i), the language "or before May 2, 1988." should be removed and the language "or before June 13, 1988." added in its place.

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 88-11718 Filed 5-24-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 167

[OPP-250079; FRL-3383-7]

Notification to the Secretary of Agriculture of a Final Regulation on the Registration of Pesticide and Active Ingredient Producing Establishments and Submission of Pesticide Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a final regulation that requires producers of pesticide active ingredients to register their establishments and submit reports to EPA. This action is required by section 25(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: David Hannemann, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Rm. E-701, 401 M Street SW., Washington, DC 20460, (202-382-7825).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving

it, the Administrator shall issue for publication in the Federal Register, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the Federal Register anytime after the 15-day period.

As required by FIFRA section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Authority: 7 U.S.C. 136 et seq.

Dated: May 13, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Pesticides and Toxic Substances.

[FR Doc. 88-11446 Filed 5-24-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80349-8098]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). NOAA is modifying for 1988 the area off Texas closed to trawl fishing. This action will enable fishermen to harvest marketable-sized shrimp from an area that would otherwise be closed. The intended effect is efficient management of the shrimp fishery.

EFFECTIVE DATES: Section 658.25(a) is suspended, and § 658.25(c) is effective, from May 24, 1988 through July 31, 1988.

ADDRESSES: Requests for copies of the environmental assessment, regulatory impact review, and regulatory flexibility analysis should be sent to Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for reporting forms, sea turtle identification guides, and resuscitation techniques should be sent to the Director, Galveston Laboratory, NMFS, Avenue U, Galveston, TX 77550.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery is regulated under the FMP and its implementing regulations at 50 CFR Part 658, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 658.25 of the regulations provides for a 45- to 60-day closure to shrimping in the exclusive economic zone (EEZ) off Texas in conjunction with that State's closure of its waters.

This rule provides the mechanism for NMFS to close only the portion of the EEZ off Texas from 9 nautical miles (nm) (the limit of Texas' jurisdiction) to 15 nm off shore, during the 45- to 60-day closure period specified by Texas. The dates and duration of the closure are based on sampling by the Texas Parks and Wildlife Department of larval and migrating young shrimp. This cooperative closure is designed to delay harvest of juvenile brown shrimp, migrating from coastal estuaries to the deeper waters of the Gulf, until they reach a larger size, thus producing more pounds of more valuable shrimp.

Under the FMP, as amended, the Director, Southeast Region, NMFS, may modify the geographical scope of the seasonal closure of the EEZ off Texas after consultation with the Gulf of Mexico Fishery Management Council (Council), consideration of specified criteria, and a determination that benefits may be increased or adverse impacts decreased by the action.

In 1986 the Council requested and NOAA issued emergency regulations to reduce the 200-nm EEZ closure to 15 nm to provide relief to the economically troubled fishery while still protecting the majority of small shrimp. The intent was (1) to relieve the economic hardship of the shrimp fleet in the western Gulf by allowing fishing in areas where larger shrimp occur and (2) to obtain more current baseline data to analyze the effects of the closure.

In 1987 the Council again requested and NOAA issued regulations to reduce the closure to 15 nm. The intent was (1) to obtain additional information to evaluate the closure and (2) to allow fishing for larger shrimp offshore without jeopardizing the FMP's objective of optimizing yield by deferring harvest of small shrimp located near shore.

In 1988 the Council again requested that closure of the EEZ off Texas extend 15 nm rather than 200 nm to provide relief to the economically troubled fishery while still protecting the majority of small shrimp until they reach a larger, more valuable size. The proposed rule to reduce the closure to 15 nm in 1988 (53 FR 12046, April 12, 1988) contained an analysis and justification which is not repeated here.

One comment was received on the proposed rule. The Texas Shrimp Association expressed support for the proposed geographic extent of the closure.

Additional Notices

Persons operating shrimp trawlers are reminded that regulations at 50 CFR 227.72(e)(1), concerning the handling and resuscitation of incidentally taken threatened marine reptiles (sea turtles), continue to apply. Sea turtle identification guides, resuscitation techniques, and reporting forms are available upon request (see ADDRESSES).

Attention is directed to the specification of the closed area in terms of 15 nm from the baseline from which the territorial sea is measured (in contrast to measurement from the physical shore). For the purpose of delimiting the territorial sea, the outermost permanent harbor works which form an integral part of the Harbor system are regarded as forming part of the coast. The 15 nm closure line is 3 nm seaward of the line labeled on Coast Charts (1:80,000 scale) as "Contiguous Zone."

The regulations implementing the closures in 1986 and 1987 contained a reporting requirement for shrimp fishermen whenever an endangered or threatened sea turtle was incidentally taken while trawling off Texas outside the closed area. NOAA intended that these regulations contain the same reporting requirement but by an oversight did not include it in the proposed rule. Therefore, NOAA intends to publish a separate reporting requirement with OMB approval.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this rule is consistent with the National Standards and other provisions of the Magnuson Act and other applicable law.

A regulatory impact review was prepared for this rule and the Under Secretary, NOAA, determined that the rule is not major under Executive Order 12291.

The Council prepared a regulatory flexibility analysis as part of the regulatory impact review which concludes that this rule will have significant effects on small entities. A copy of this analysis is available (see ADDRESSES).

The Council prepared an environmental assessment for this rule and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment is available (see ADDRESSES).

The Assistant Administrator determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

By reducing the geographical area subject to closure, this rule relieves a restriction. Accordingly, the Administrative Procedure Act does not require that the effective date of the rule be delayed for 30 days (5 U.S.C. 553(d)(1)).

List of Subjects in 50 CFR Part 658

Fisheries, Fishing.

Dated: May 20, 1988

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.25, paragraph (a) is suspended from May 24, 1988 through July 31, 1988, and a new paragraph (c) is added, to be effective from May 24, 1988 through July 31, 1988, to read as follows:

§ 658.25 Texas closure.

* * * * *

(c) *Area and season restrictions.* From June 1 through July 15, 1988, the area described in this paragraph is closed to all trawl fishing. The area is that part of the EEZ within 15 nautical miles of the baseline from which the territorial sea is measured off Texas west of a line connecting point A (29°31.1' N. latitude, 93°47.7' W. longitude) to point B (26°11.4' N. latitude, 92°53.0' W. longitude) as shown in Figure 3.

[FR Doc. 88-11741 Filed 5-24-88; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) and domestic annual processing (DAP) portions of the domestic annual harvest (DAH) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing domestic fisheries to proceed without interruption.

DATES: May 20, 1988. Comments will be accepted through June 6, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catch (TAC) for various groundfish species are apportioned initially among DAH, reserves, and the total allowable level of foreign fishing (TALFF). The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(c) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce apportions to DAH and/or TALFF all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

The initial specifications of DAP for 1988 were based on the projected needs of the U.S. processing industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in October 1987. After 15 percent of the Bering Sea and Aleutian Islands (BSA) TAC was placed in the nonspecific reserve, as required at 50 CFR 675.20(a)(3), the initial specifications for DAP were determined, and the remaining amounts were provided to JVP (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because DAH requirements exceeded the TAC.

On January 14, JVP was supplemented by 804 mt of the nonspecific reserve to provide necessary bycatch of Greenland turbot, Pacific ocean perch, rockfish, sablefish, and squid. On April 14, (53 FR 12772, April 19, 1988), JVP was supplemented by 24,000 mt of the non-specific reserve to provide additional amounts of yellowfin sole, "other flatfish", and Pacific cod in order to allow joint venture operations to continue without interruption. At its April meeting, the Council recommended that the Regional Director supplement the JVP for pollock in the Bering Sea by 100,000 mt. On May 5, (53 FR 16552, May 10, 1988), JVP was supplemented by 135,030 mt of the nonspecific reserve to provide the recommended amount of pollock and necessary bycatch amounts of Greenland turbot, "other flatfish", Pacific cod, and "other species".

In early April, the Regional Director sent another survey to DAP processors to determine whether the responses to the initial survey were still valid. That survey was completed on May 6. Respondents indicated actual production for the first quarter of 1988 and changes, if any, to amounts requested for the second, third, and fourth quarters. A thorough evaluation of survey returns by NMFS Regional Office staff indicated amounts excess to DAP needs in 1988, as well as DAP amounts that could require supplementation.

Reapportionment (Table 1)

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

		Current	This action	Revised
Pollock (Bering Sea subarea)				
TAC=1,300,000; ABC=1,500,000	DAP	614,162		614,162
	JVP	590,838	+95,000	685,838
Arrowtooth flounder				
TAC=5,531; ABC=99,500	DAP	3,808		3,808
	JVP	893	+1,000	1,893
Other flatfish				
TAC=131,369; ABC=331,900	DAP	28,403	+10,000	38,403
	JVP	113,251		113,251
Total (TAC=2,000,000)	DAP	792,520	+10,000	802,520
	JVP	1,067,314	+96,000	1,163,314
	Reserves	140,166	−106,000	34,166

The following actions are taken by this notice to reapportion groundfish from the nonspecific reserve to BSA fisheries.

To the BSA JVP

In the Bering Sea, about 80 U.S. catcher boats delivering fish to 44 foreign processors are conducting directed fisheries on pollock; another 47 U.S. catcher boats delivering fish to 46 foreign processors are continuing directed fisheries on yellowfin sole and "other flatfish". Based on recent catches, the current pollock JVP is expected to last until May 28, while the yellowfin sole fishery may last through June.

The Regional Director has found, based on returns from the second April 1988 DAP survey, that the current DAP for Bering Sea subarea pollock (614,162 mt) is sufficient for 1988 and will not require supplementation by reserves. Therefore, 95,000 mt of the nonspecific reserve is transferred to the JVP for Bering Sea subarea pollock.

Joint venture fisheries have encountered unexpectedly high bycatches of arrowtooth flounder. In order to provide bycatch for the ongoing joint venture fisheries, 1,000 mt of the nonspecific reserve is transferred to the JVP for arrowtooth flounder.

To the BSA DAP

Catch-to-date of "other flatfish" by DAP fisheries has reached 95 percent of the current quota. Also, the April 1988 DAP survey shows an additional DAP requirement of 10,000 mt of "other flatfish." To provided further directed fishing for "other flatfish" and bycatch in the yellowfin sole fisheries, 10,000 mt is transferred from the nonspecific reserve to the DAP for "other flatfish".

These apportionments do not result in overfishing of the Bering Sea pollock, arrowtooth flounder, or "other flatfish" stocks, as in each case the resulting species TAC is less than its acceptable biological catch (ABC).

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVP or DAP amounts. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 20, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-11756 Filed 5-20-88; 4:53 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 101
Wednesday, May 25, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Offices; Jurisdictional Changes

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Proposed amendment of rules and regulations.

SUMMARY: This document proposes to amend Appendix A, paragraph (f) of the rules and regulations of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority published at 5 CFR Part 2400 *et seq.* (1987) to provide for changes in the geographical jurisdictions of the Washington, DC and Atlanta Regional Offices concerning unfair labor practice charges and representation petitions arising in Virginia.

Comment Date: Written comments will be considered if received no later than June 20, 1988.

ADDRESS: Send written comments to David L. Feder, Federal Labor Regulations Authority, Office of the General Counsel, 500 C Street SW., Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel, (202) 382-0834.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1987).

Appendix A, paragraph (f) of the foregoing rules and regulations sets forth geographic jurisdictions of the Regional Directors of the Authority. Under paragraph (f), Appendix A, all counties within Virginia, except for Alexandria, Arlington, Fairfax, Fauquier, Loudoun and Prince William, are listed within the geographic jurisdiction of the Authority's Atlanta Regional Office. The above listed counties are within the geographic jurisdiction of the Washington, DC Regional Office. In the best interest of efficient and cost-effective case processing by the Office of the General Counsel, it is proposed that all cases arising in Virginia should be within the geographic jurisdiction of the Authority's Washington, DC Regional Office. The address of the Washington, DC Regional Office, as set forth in Appendix A, paragraph (d)(3) of the rules and regulations is as follows:

(3) *Washington Regional Office:* 1111—18th Street NW., 7th Floor, Washington, DC 20033-0758, Telephone FTS-653-8500, Commercial: 202-653-8500; Mailing Address: P.O. Box 33758, Washington, DC 20033-0758.

For the reasons set out in the preamble, Appendix A to 5 CFR Chapter XIV is proposed to be amended by revising the entry for the state of Virginia in paragraph (f) to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Addresses and Geographic Jurisdictions

(f) The geographic jurisdictions of the Regional Directors of the Authority are as follows:

State or other locality	Regional office
Virginia	Washington, DC

(5 U.S.C. 7134)

Dated: May 20, 1988.

For the Authority.

Jerry L. Calhoun,

Chairman.

Jean McKee,

Member.

Dennis M. Devaney,

Acting General Counsel.

[FR Doc. 88-11706 Filed 5-24-88; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 947 for the 1988-89 fiscal period. Authorization of this budget would allow the Oregon-California Potato Committee to incur expenses reasonable and necessary for it to administer the program. Funds to cover these expenses would be derived from assessments on handlers.

DATE: Comments must be received by June 18, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 947 [7 CFR Part 947] regulating the handling of potatoes grown in designated counties in Oregon and California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Oregon-California potatoes under this marketing order, and approximately 470 potato producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The recommended assessment rate is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Oregon-California Potato Committee's proposed budget for the 1988–89 fiscal period totals $37,175, and an assessment rate of $0.004 per hundredweight of potatoes has been proposed. In comparison to the 1987–88 budget of $36,800, the proposed budget is $375 more than last year with minor increases in expenditures for insurance and bonds, office supplies, and postage. At the proposed assessment rate of $0.004, anticipated fresh market shipments of 7,750,000 tons would yield $31,000 in assessment income. This along with about $16,000 from the reserve would be adequate for budgeted expenses. At the end of the fiscal period, the reserve fund is expected to total $10,000.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes (Oregon and California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 947 be amended as follows:

PART 947—POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 947.241 is added to read as follows:

§ 947.241 Expenses and assessment rate.

Expenses of $37,175 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated May 19, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–11687 Filed 5–24–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1002

[Docket No. AO–71–A76]

Milk in the New York-New Jersey Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider a proposal to increase from four cents to five cents the maximum allowable rate of payment for expense of administration under the New York-New Jersey order. Proponents contend that the modification is needed to provide sufficient funds to cover the cost of administering the order.

DATE: The hearing will convene at 1:30 p.m. local time, on June 6, 1988.

ADDRESS: The hearing will be held at the Hotel Syracuse, 500 South Warren Street, Syracuse, New York 13202, (315) 422–5121.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Hotel Syracuse, 500 South Warren Street, Syracuse, New York 13202, beginning at 1:30 p.m. local time, on June 6, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1002

Milk marketing orders, Milk, Dairy products.

PART 1002—[AMENDED]

The authority citation for 7 CFR Part 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Agri-Mark, Inc., Dairylea Cooperative, Inc. and Eastern Milk Producers Cooperative Association

Proposal No. 1

Revise § 1002.90 Payment by handlers, by changing "4" cents per hundredweight to read "5" cents per hundredweight.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Thomas A. Wilson, 708 Third Avenue, 6th Floor, New York, New York 10017–4104 or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular procceding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, New York-New Jersey Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on May 19, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–11686 Filed 5–24–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Medical Use of Byproduct Material; Training and Experience Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is requesting comments on training and experience criteria for all individuals who use byproduct material for clinical procedures in the practice of medicine. The training and experience criteria that NRC will require must reflect the realities of the evolution of medical practice, without compromising public health and safety. The comments submitted will help the Commission ensure that its training and experience criteria are appropriate to the clinical procedures in which an individual participates.

DATE: Comment period expires August 24, 1988. Comments received after this date will be considered only if it is practical to do so but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Copies of other **Federal Register** notices referenced in this document and the comments received on those notices may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies of other **Federal Register** notices referenced in this document are available from Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3417.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3417.

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I. Background Discussion of Physician Training and Experience Criteria

For several years, the NRC has had training and experience criteria for physicians who want to use byproduct materials in the practice of medicine. The criteria are comprised of the training generally believed necessary for a physician to use byproduct materials safely and to protect workers, patients, and the public from unnecessary

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radiation exposure. The evolution of the training and experience criteria is more fully described in a Federal Register Notice (FRN) published on December 2, 1982 (47 FR 54376).

Generally, physicians demonstrate their training and experience by being certified by an appropriate medical specialty board or by completing a program that integrates basic classroom training, supervised handling experience, and supervised clinical experience. Such a program is usually completed as a part of the physician's residency program that is spent learning a medical specialty.

The NRC evaluates case-by-case the training and experience of physicians who have not completed integrated programs.

At various meetings of NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI), several experts from the medical community indicated that, because of the increase in the complexity of the diagnostic interpretation of nuclear medicine studies, the training time devoted to basic classroom and laboratory training and supervised handling experience had decreased. In response, in the previously referenced December 1982 FRN, the NRC increased the requisite duration of integrated training programs for diagnostic medical use.

In December 1983, the American College of Cardiology proposed alternative criteria for physicians who wanted to perform only cardiovascular imaging procedures. Representatives of several organizations whose members use byproduct materials met in June 1984 to discuss the proposal. No consensus recommendation was reached; the representatives submitted three sets of alternative criteria.

There appeared to be general agreement on what topics should be included in basic classroom training, work expereince, and clinical experience. There was a difference of opinion concerning the minimum acceptable duration of an integrated training program and on the operational wording of the handling and clinical experience criteria.

The NRC held a meeting of the ACMUI to discuss the alternative criteria (for a discussion, see 50 FR 6291, published February 14, 1985). NRC received almost 200 comment letters. In addition, about 20 individuals spoke at the meeting. There were several important points raised:

1. There is no clear safety basis for applying different training program duration criteria to applicants from different medical specialties in which diagnostic radiopharmaceuticals are used. Radiation safety problems and procedures are similar in all cases.

2. Radiation safety cannot be completely separated from the quality of clinical practice. Simple examples of this point include performing imaging procedures that are of no clinical value, doing procedures poorly so that they must be repeated, or misinterpreting the images. Each of these practices results in unnecessary patient exposure.

3. The length of a training program is not nearly as important as the quality of the training, if the essential topics are adequately covered.

4. Methods of reimbursement for health care are resulting in a trend toward conducting diagnostic imaging procedures in private practice offices and clinics rather than in hospitals. In that setting, there is less peer review of both physician credentials and quality of clinical practice than there usually is in the hospital setting. There may also be new nuclear medicine diagnostic and therapeutic clinical procedures on the horizon. NRC's policy should anticipate the future course of nuclear medicine to the extent possible.

5. Some individuals may support longer training program duration criteria in order to disenfranchise others for economic reasons rather than public health and safety reasons.

II. Bases for Considerations

Introduction

The NRC must review issues and develop resolutions based on the NRC's statutory jurisdiction, public health and safety considerations, and considerations of reasonableness. Furthermore, issues cannot be examined in a void. Rather than simply examining training and experience criteria for diagnostic use of radiopharmaceuticals, the NRC takes this opportunity to request public comment on training and experience criteria for all individuals who participate in any type of medical use of byproduct material. NRC's general considerations are discussed below.

NRC's General Policy on the Medical Use of Byproduct Material

The NRC regulates the medical use of byproduct material to protect the public health and safety; the public includes patients, physicians, other licensee employees, visitors, and the general public. This role was discussed at length in "Regulation of the Medical Uses of Radioisotopes; Statement of General Policy" (the Medical Use Policy Statement; see 44 FR 8242, published February 9, 1979).

In the Medical Use Policy Statement, the Commission said it would use the following general policy to guide its regulation of the medical use of radioisotopes:

"1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be the practice of medicine."

The NRC uses the Medical Use Policy Statement as a guide when examining training and experience criteria.

Misadministrations

During the same time the NRC was examining the issue of physician training and experience for the diagnostic use of radiopharmaceuticals, a series of misadministrations occurred that lead the Commission to believe that its public health and safety responsibilities required that rulemaking begin on quality assurance in the medical use of byproduct material (see 52 FR 36942 and 52 FR 36949; October 2, 1987). These published notices dealt with assurance of quality through procedural and physical measurement requirements. Neither notice dealt with the training of physicians, physicists, technologists, and dosimetrists who participate in the medical use of byproduct material.

The Commission now believes that the training of all individuals who participate in the medical use of byproduct material deserves more rigorous attention. The NRC believes it is important to review not just the training and duties of each group, but that it should be also address the interactions of these individuals in the clinical environment.

The Regulatory Problem

In dealing with this matter, the NRC is confronted with the difficult problem of fulfilling its statutory responsibility to regulate the medical use of byproduct material while avoiding the regulation of the practice of medicine—a matter that is the responsibility of the States. The NRC's goal is to regulate the use of byproduct material in order to protect the public health and safety without intruding into the delivery of medical care. Protection of the public includes protection of the patient. The NRC believes that the patient's best radiation protection comes from individuals who deliver the highest quality nuclear medicine service. For example, if a nuclear medicine physician is not adequately trained, and, therefore, not capable of offering quality service, the patients, a member of the public, may be subjected to unnecessary radiation. Thus, the NRC expects that better quality training leads to improved protection from radiation hazards.

Unfortunately, the only well-defined dimensions available for measuring the amount of training are, for the medical setting, duration of training and number of cases performed under supervision. Neither dimension provides a truly acceptable substitute for measuring quality of training and quality of day-to-day clinical performance.

Before deciding the seek public comment, the NRC staff carefully considered many alternatives:

1. Take no action in response to requests for change;

2. For diagnostic physicians, return to the three-month program that was used for several years and appeared to provided for adequate assurance of public health and safety;

3. Administer a test to applicants that includes only radiation safety questions, or radiation safety and clinical questions;

4. Encourage other organizations to administer such tests; or

5. Completely eliminate the examination of clinical training and experience and examine applicants solely on radiation safety procedure training and experience. (In this construction, the word examination means a comparison of the applicant's curriculum vitae to established criteria, not a test in which the applicant is asked questions and graded according to the number of correct responses.)

III. General Considerations

Safety Technology

The NRC believes that the radiation safety skills needed to ensure worker and public safety in conventional medical use are straightforward and easily taught to most individuals with a scientific background in a few weeks. Neither the equipment nor the radiation safety procedures for the safe receipt and storage of materials, handling, safety surveys, waste processing, and spill cleanup have changed significantly in the last twenty years, and do not appear likely to change. There is a clear indication that a few weeks of training are necessary and sufficient to learn the skills needed to safely handle byproduct material used in medicine. This assertion is based on an analysis of the safety problems that can be encountered when using byproduct materials for clinical procedures, coupled with many years of licensing and inspection experience and the NRC staff's participation in training programs. Therefore, this review of training and experience criteria is not undertaken to respond to safety technology development.

Rather, the issues addressed by this notice are patient safety and sensitivity to the risks inherent in the medical use of radiation.

Risk to Patients

The NRC has considered the risk to patients from medical use of byproduct material, and licensees' compliance with voluntary risk reduction standards, such as standards published by the Joint Commission on the Accreditation of Hospitals, radiopharmaceutical package insert recommendations regarding precautions, dosage and administration, and instructions for preparation, and a report of the Inter-Society Council for Radiation Oncology.

The NRC has also considered for many years the difficulty of regulating the intentional application of radiation to patients, who are members of the public. The NRC said in the "Rationale" section of the Medical Use Policy Statement that "the diagnostic use of radioactive drugs is, in most cases, clearly an area of low radiation risk to patients." This is still the case. However, it is appropriate for NRC to take steps to ensure that physicians and technologists have the training needed to assure that diagnostic radiopharmaceuticals are used properly so that this low risk feature is maintained. Similar considerations apply to diagnostic devices.

The NRC cannot so easily dismiss the risk to patients from byproduct material intended for therapy use as well as therapy levels of materials for diagnostic use. There have been events in which patients have been harmed by the incorrect use of radiopharmaceuticals, brachytherapy sources, and teletherapy. Although these events appear to be infrequent, the NRC is sensitive to its regulatory responsibility to take prudent measures to minimize recurrence of these events.

Developments in Clinical Procedures and Technologies

Clinical procedures of choice for diagnosing and treating illnesses change from year to year as medical science evolves.

The NRC believes that, to assure public health and safety, licensees should use up-to-date clinical procedures. However, specifying the necessary clinical training and experience criteria is difficult because the greater question is whether a clinical procedure, with its attendant radiation dose, is indicated for a particular patient. This question must be answered before the secondary question, whether the practitioner is able to interpret the information that comes from a diagnostic clinical procedure or monitor the patient's reaction to a therapy clinical procedure, can be addressed.

When planning the examination of an individual patient, experts do not always arrive at the same plan, given the same clinical history, and do not always interpret the results of a clinical procedure identically. Thus, it is apparent that there is not a single standard which the NRC, or any regulatory agency, could reference when specifying clinical training and experience criteria for the medical use of byproduct material.

It is appropriate, however, that the NRC have criteria that assure that completely unnecessary clinical procedures are not performed, and that when performed, clinical procedures used in caring for the patient will be in accord with accepted standards of care. When specifying these criteria, the NRC should consider the expert advice that comes from the medical community.

A similar analysis applies to the training and experience of other individuals who participate in the medical use of byproduct material. New clinical procedures and equipment continue to be developed. The application of computers to image processing and treatment planning is a prime example. To provide assurance of safe use of byproduct material in the medical setting, the NRC should have criteria that address the quality of training for these other individuals.

Setting the Requisite Level of Training and Experience

Common sense, as well as the NRC's statute, dictate that the NRC should set the criteria for clinical training and experience at a level that establishes the basic skills necessary to assure reasonable protection of the public health and safety in accordance with the Medical Use Policy Statement. Control of the quality of clinical practice, however, rests in the final analysis with the medical community. The NRC notes that, in accordance with its Medical Use Policy Statement, it does not regulate the interpretation of the results of a diagnostic clinical procedure, or prescribe methods or amounts of

radiation therapy. Usually, the authorized physician-user and other individuals working under supervision provide radiation clinical procedures in consultation with the referring physician. It is the responsibility of the NRC, however, to ensure that prescribed procedures are carried out accurately, with no undue risk to the patient or other members of the public.

Future Actions

Setting the requisite levels of training and experience for various individuals who participate in the medical use of byproduct material will require public comment and study.

The NRC notes that the 1984 increase in duration of integrated training programs for diagnostic use of byproduct material was based almost entirely on recommendations from the ACMUI and medical specialty organizations. To make another change in criteria without a solid technical foundation could open the Commission to criticism of using an arbitrary and capricious rulemaking process. A change at this time, without a well-documented, technical basis for action and with a lack of consensus within the medical community, seems imprudent.

After analyzing the public comments submitted in response to this notice, the NRC plans to study the adequacy of training received by physician authorized users, nuclear medicine technologists, and radiation therapy physicists, technologists, and dosimetrists. The NRC recognizes that there may be special training needs for those individuals working in certain medical specialties. The NRC believes that a comprehensive study will likely culminate in the development of a solid technical basis from which the Commission can proceed to develop training and experience criteria for all individuals who participate in the medical use of byproduct material, if such action is necessary.

The NRC believes its final position on the training and experience criteria issue must be one wich avoids intrusion into medical judgments affecting patients. The NRC's training and experience criteria must also satisfy the strictures of the Atomic Energy Act of 1954, as amended, and as implemented by the 1979 Medical Use Policy Statement.

IV. List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health devices, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

V. Authority Citation

The authority citation for this document is: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201).

VI. Request for Information For Regulatory Analysis

If a change of requirements is needed, the Commission will have to prepare a regulatory analysis. The analysis will examine the costs and benefits of regulatory alternatives available to the Commission.

The Commisson requests public comment on costs and benefits, normal business practices, new trends, and other information that should be considered in the regulatory analysis. Comments may be submitted as indicated in the "ADDRESSES" heading.

VII. Request for Comment on General Considerations

The NRC has examined its training and experience criteria and has prepared for comment the following general considerations. The purpose of stating the early considerations and posing certain questions is to demonstrate the range of NRC's considerations to date on this matter, and to request public comment on the completeness of these considerations.

Certification

The NRC has considered whether it should accept certification by certain medical specialty boards and technologist boards as demonstration of adequate training and experience to use byproduct materials for medical use. The NRC believes that the diplomates of those boards are recognized by medical providers as experts in the practice of the specialty or technology. The cost of examining those diplomates' credentials outweighs any possible public health and safety benefit that would accrue.

The NRC has considered whether it should require that authorized users, physicists, and technologists be certified. The NRC believes that certification should not be the only way to demonstrate adequate training and experience because, based on years of licensing, inspection, and enforcement history, the NRC has clear evidence that many non-diplomates are capable of using byproduct materials safely in medical use.

Integrated Training Programs

The NRC has considered whether it should continue to accept a physician's or technologist's successful completion of an integrated training program in the medical use of byproduct material if it includes classroom training, supervised handling experience, and supervised clinical experience. The principal purpose of an integrated training program is to provide for quality clinical care; radiation safety tasks can be easily included in these programs. However, there are difficulties in accepting certificates of successful completion as evidence of adequate training and experience. The NRC recognizes that some programs may not be sufficiently stringent, or may not provide the necessary balance between classroom training, supervised handling, and supervised clinical experience. Some programs also may not balance the importance of safety instruction with other clinical topics. The NRC would like comments on the following questions:

- How can the NRC regulate the quality of integrated training programs?
- What balance between classroom and supervised handling experience is deemed appropriate?
- What balance should be struck between safety instruction and other clinical topics?
- What benefits or detriments could accrue by requiring that training programs be accredited by an independent medical accrediting organization? Would the benefits outweight additional costs?
- How can the NRC ensure that the training was provided?

Alternatives for Individuals in Practice.

The NRC has considered whether it should provide an alternative mechanism by which physician specialists who are in practice can obtain a license. Physicians in residencies cannot always foresee their need to use byproduct material for medical use. Once they have entered full-time practice, they cannot leave their patients to attend a lengthy integrated training program because they would likely lose some of their facility with the specialty while learning byproduct material science and technology. For example, cardiovascular clinical procedures were not performed frequently 10 years ago. There was little opportunity to learn these clinical procedures because they were neither fully developed nor widely available. Now, however, they are considered in many cases to be essential for proper care. A protracted training and experience requirement that effectively denies a physician the opportunity to offer a service could arguably have an adverse impact on public health. On the other hand, offering such services without appropriate training also may pose a risk to the public health. The NRC would appreciate comments on what would constitute appropriate training in such circumstances.

Individuals with Special Training and Experience

The NRC has considered whether it should continue to allow applicants who do not meet any of the criteria to submit their training and experience credentials to the NRC. There have been cases in which physicians appear to be qualified, yet do not clearly meet the applicable criteria. The NRC's current practice is to review the credentials of these applicants with the assistance of the ACMUI.

The NRC has considered how it should develop training and experience criteria for individuals for whom there are no formal training programs or examining organizations. For example, in radiation therapy, many dosimetrists who calculate radiation dose distributions for individual patients are trained by the licensee under close supervision of the teletherapy physicist. Many teletherapy physicists are also trained in this manner. The NRC would like comments on the following question:

- Are there other groups of health care individuals who are usually trained in some sort of apprenticeship program?

Technologists and Technicians

The NRC has considered how it should develop training and experience criteria for technologists and technicians. Nuclear medicine and radiation therapy technologists are individuals who generally have completed an acredited two-year training program that includes classroom, laboratory, and clinical training in the theory, science, and application of radiation. One the other hand, techicians are generally trained by the licenses to do only certain tasks. Some licensees, usually large hospitals, have trained individuals to be nuclear medicine technicians who do only simple clinical procedures. Some hospitals have trained individuals to be radiation therapy technicians who assist radiation therapy technologists who administer the radiation therapy. There practices reduce the cost of medical care and also reflect the dearth of fully trained technologists. The NRC would particularly appreciate comments on the training and experience criteria that would be most appropriate for these technicians.

Continuing Education

The NRC has considered whether it should develop continuing education requirements for physicians, physicists, technologists, technicans, and dosimetrists. Some medical specialty boards that provide certificates require evidence of continuing education, and a few even administer periodic re-qualifying examinations. The NRC takes this opportunity to invite comments on this continuing education, particularly in light of the misadministrations that could perhaps be avoided by continuing education. The NRC would like comments on the following questions:

- Should the NRC require a demonstration of continuing education for individuals identified on medical use licenses?
- Should the contiuing education be a review of new developments, a review of the basics, or a combination?
- How could the NRC monitor the quality of the continuing education?
- Who should provide it?

VIII. Interpretation of Criteria

The NRC's medical use training criteria are usually defined in terms of classroom and laboratory training, supervised handling experience, and supervised clinical experience. The NRC would like comments on the following questions:

- To ensure clarity, should the following definitions be added to the definitions currently set out in § 35.2?
- How should they be revised?
- What other definitions should be added?

1. "Clinical procedure" means a method of using byproduct material for patient care in which the material or its radiation is administered to the patient.

A specific clinical procedure identifies, either explicitly or in context, the indication for the procedure, the purpose (diagnosis or therapy), the radionuclide and its chemical and physical form, the dosage or dose and method of administration, and patient followup. Diagnostic clinical procedures also include the method of collectiong raw data, manipulating the data, and interpreting the final results, which may be images, graphs, or numbers.

2. "Case" means the performance of a clinical procedure on a patient.

3. "Classroom and laboratory training" means planned instruction outlined in a syllabus and offered by an individual or organization that has teaching as a primary responsibility.

It is comprised of lectures, demonstrations, hands-on laboratory exerices, quizzes, and tests. Additional time would probably be necessary for homework. Although training may be given in a room normally used as a clinic, there should be no distractions from the learning process as would ocur in a clinic or laboratory during the working day.

4. "Supervised handling experince" means doing specified tasks in the clinical setting during the work day.

It is required so that the student will develop facility in performing those tasks in the work setting, as contrasted to the classroom and laboratory setting. This is usually accomplished during the "clinical experience" period.

5. "Supervised clinical experience" means doing specified tasks in the clinical setting during the work day.

It is required to provide the student with the medical knowledge and facility needed to provide assurance that the clinical procedure will be of benefit to the patient. It is provided in the clinic, as contracted to the classroom, because that appears to be the most efficient way to provide the instruction. Continuing education courses, seminars, journal clubs, and other methods of clinical instruction may comprise a portion of this training and experience.

6. "Personal participation in a complete case" means performing or observing all the steps required to perform a clinical procedure on a patient.

For a diagnostic technologist, this means selection and preparation of the radiopharmaceutical, calculation, measurement, and administration of the dosage, operation of all the equipment used during the clinical procedure, and collection and manipulation of the raw data. For a physician, it also means performing or observing the patient examination, case history review, determination of suitability for radioisotope diagnosis, interpretation of the results, and followup for a case. Mere interpretation of the results does not constitute personal participation in a case.

7. "Personally performing a complete case" means performing all the steps required to perform a clinical procedure on a patient.

For a diagnositic technologist, this means selection and preparation of the radiopharmaceutical, calculation, measurement and administration of the dosage, operation of all the equipment used during the clinical procedure, and collection and manipulation of the raw data. For a physician it means, in addition to those tasks, performing the patient examination, case history review, determination of suitability for radioisotope diagnosis, interpretation of the results, and followup for a case.

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8. "A period of full-time training and experience" must be comprised of full-time, 40-hour work weeks.

It may be gained in one block of time, or may be divided into shorter blocks of time, taken with breaks in between. It should not be broken into blocks shorter than a few weeks each.

9. "Integrated training program" means full-time training and experience for the indicated duration that includes relevant policy, management, theoretical, scientific, technical, and regulatory information.

IX. Specific Examples of Criteria

Physicians

1. There have been no proposals for changes in the physician training and experience criteria for uptake, dilution, and excretion clinical procedures, which currently appear in 10 CFR 35.910. The text of this section has been duplicated below for the convenience of the reader. The NRC asks for comments on the following questions:

• Should this section be revised? How? Why?

Section 35.910 Training for uptake, dilution, and excretion studies.

Except as provided in §§ 35.970 and 35.971, the licensee shall require the authorized user of a radiopharmaceutical in § 35.100(a) to be a physician who:

(a) Is certified in:

(1) Nuclear medicine by the American Board of Nuclear Medicine;

(2) Diagnostic radiology by the American Board of Radiology; or

(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:

(1) 40 hours of classroom and laboratory training that include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Radiation biology; and

(v) Radiopharmaceutical chemistry; and

(2) 20 hours of supervised clinical experience under the supervision of an authorized user and that includes:

(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) Administering dosages to patients and using syringe radiation shields;

(iv) Collaborating with the authorized user in the interpretation of radioisotope test results; and

(v) Patient followup; or

(c) Has successfully completed a six-month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

2. The NRC's deliberations on the matter of training and experience were initiated by requests for changes in physician training and experience criteria for imaging and localization (§ 35.920).

The NRC notes that the purpose of classroom and laboratory training is to provide the basic science underlying the technology being practiced. The handling and clinical experience provide the opportunity to apply, in the clinical setting, what was learned in the classroom and laboratory. Some have argued that this is unnecessary because, in many instances, technologists do many of the tasks listed in the criteria. The NRC believes that performance of the tasks should also be required of physicians and physicists who are in training so they may properly instruct and supervise technologists with whom they will work in the future. The NRC asks for comments on the following questions:

• Should NRC's physician training and experience criteria for imaging and localization be revised as follows by: (a) Changing the title to clearly reflect the fact that this training and experience requirement applies to physicians providing a variety of diagnostic clinical procedures; and (b) revising the operational course content requirement?

• How should the NRC determine the necessary duration of an integrated training program?

The duration requirement has been purposefully left vague in the following draft section; the NRC would appreciate comments on what particular duration of integrated training should be required and the rationale for any comments.

The draft section for comment, which reflects the changes discussed in the previous paragraph, reads as follows:

Physician Training for All Imaging and Localization Studies

Except as provided in §§ 35.921, 35.970 or 35.971, the licensee shall require the authorized user of all radiopharmaceuticals, generators, and reagent kits listed in § 35.200(a) for all clinical procedures to be a physician who:

(a) Is certified in:

(1) Nuclear medicine by the American Board of Nuclear Medicine;

(2) Diagnostic radiology by the American Board of Radiology; or

(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(b) Has completed an integrated program of full-time training and experience that includes classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised handling experience, and supervised clinical experience as follows:

(1) 200 hours of classroom and laboratory training that includes:

(i) Radiation physics and instrumentation;

(ii) Radiation protection policy, management, procedures, and regulations;

(iii) Mathematics of radiation and radioactivity;

(iv) Radiopharmaceutical chemistry;

(v) Imaging technology; and

(vi) Radiation biology.

(2) Supervised handling experience under the supervision of an authorized user that includes:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(iii) Calculating and safely preparing stock radiopharmaceuticals and individual patient dosages;

(iv) Implementing administrative controls to prevent the misadministration of byproduct material;

(v) Containing spilled byproduct material and decontaminating; and

(vi) Eluting technetium-99m from generator systems, assaying and testing the eluate for molybdenum-99 and alumina contamination, processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals, and assaying radiopharmaceuticals to determine the

portion of radioactivity bound to the radiopharmaceutical.

(3) Supervised clinical experience under the supervision of an authorized user that includes:

(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) Administering dosages to patients and using syringe radiation shields;

(iv) Collaborating with the authorized user in the interpretation of radioisotope test results;

(v) Patient followup; and

(vi) Personally performing ten cases.

3. As noted above in Item 2, and earlier in the preamble, the NRC's deliberations in this matter were initiated by requests for preparation of training and experience criteria that apply specifically to physicians performing only cardiovascular clinical procedures. The NRC would like comments on the following questions:

• Should a new section be added, such as the draft set out below, that deals specifically with training and experience for cardiovascular clinical procedures?

• How should the NRC determine the necessary duration of an integrated training program for single organ imaging?

The draft section for comment reads as follows:

Physician training for cardiovascular clinical procedures

Except as provided in § 35.970 or § 35.971, the licensee shall require the authorized user of radiopharmaceuticals, generators, or reagent kits (listed in § 35.200(a)) for cardiovascular clinical procedures to be a physician who:

(a) Has completed a program as described in § 35.920(b) that, emphasizes cardiovascular clinical procedures in the classroom and laboratory training and supervised clinical experience; or

(b) Is certified in cardiovascular disease by the American Board of Internal Medicine and has completed:

(1) 200 hours of classroom and laboratory training, as described in § 35.920(b)(1) of this part, that emphasizes cardiovascular clinical procedures;

(2) Two weeks of supervised handling experience, as described in § 35.920(b)(2) of this part, which may be obtained concurrently with the supervised clinical experience required in paragraph (b)(3) of this section; and

(3) Supervised clinical experience, as described in § 35.920(b)(3) of this part, that includes personal participation in cardiovascular clinical procedures for 50 complete cases and personal performance of 10 of those cases.

4. There have been no suggestions for changes in the physician training and experience criteria for therapeutic use of radiopharmaceuticals, which currently appear in 20 CFR 35.930, 35.932 and 35.934. However, the NRC takes this opportunity to invite comment on this text, particularly in light of the misadministrations that could perhaps be avoided by improving training. The text of these sections has been duplicated below for the convenience of the reader. The NRC would like comments on the following questions:

• Should these questions be revised? How? Why?

The regulatory text currently in effect reads as follows:

Section 35.930 Training for therapeutic use of radiopharmaceuticals.

Except as provided in § 35.970, the licensee shall require the authorized user of radiopharmaceuticals in § 35.300 to be a physician who:

(a) Is certified by:

(1) The American Board of Nuclear Medicine; or

(2) The American Board of Radiology in radiology or therapeutic radiology; or

(b) Has the classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurements of radioactivity; and

(iv) Radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

(i) Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in 10 individuals; and

(ii) Use of iodine-131 for treatment of thyroid carcinoma in three individuals.

Section 35.932 Training for treatment of hyperthyroidism.

Except as provided in § 35.970, the licensee shall require the authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(a) 80 hours of classrom and laboratory training that includes:

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity; and

(4) Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and treatment of hyperthyroidism in 10 individuals.

Section 35.934 Training for treatment of thyroid carcinoma.

Except as provided in § 35.970, the licensee shall require the authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(a) 80 hours of classroom and laboratory training that includes:

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity; and

(4) Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three individuals.

5. There have been no suggestions for changes in the physician training and experience criteria for brachytherapy, which currently appear in 10 CFR 35.940 and 35.941. However, the NRC takes this opportunity to invite comment on this text, particularly in light of the misadministrations that could perhaps be avoided by improved training. The text of these sections has been duplicated below for the convenience of the reader. The NRC would like comments on the following questions:

• Should these sections be revised? How? Why?

The current regulatory text reads as follows:

Section 35.940 Training for use of brachytherapy sources.

Except as provided in § 35.970, the licensee shall require the authorized

user of a brachytherapy source listed in § 35.400 for therapy to be a physician who:

(a) Is certified in:

(1) Radiology or therapeutic radiology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

(1) 200 hours of classroom and laboratory training that includes:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity; and

(iv) Radiation biology;

(2) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Checking survey meters for proper operation;

(iii) Preparing, implanting, and removing sealed sources;

(iv) Maintaining running inventories of material on hand;

(v) Using administrative controls to prevent the misadministration of byproduct material; and

(vi) Using emergency procedures to control byproduct material; and

(3) Three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

(ii) Selecting the proper brachytherapy sources and dose and method of administration;

(iii) Calculating the dose; and

(iv) Post-administration follow-up and review of case histories in collaboration with the authorized user.

Section 35.941 Training for ophthalmic use of strontium-90.

Except as provided in § 35.970, the licensee shall require the authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(a) 24 hours of classroom and laboratory training that includes:

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity; and

(4) Radiation biology;

(b) Supervised clinical training in ophthalmic radiotherapy, under the supervision of an authorized user at a medical institution, that includes the use of strontium-90 for the ophthalmic treatment of five individuals, that includes:

(1) Examination of each individual to be treated;

(2) Calculation of the dose to be administered;

(3) Administration of the dose; and

(4) Followup and review of each individual's case history.

6. There have been no suggestions for changes in the physician training and experience criteria for diagnostic use of sealed sources, which currently appear in 10 CFR 35.950. However, the NRC takes this opportunity to invite comment on this text. The text of this section has been duplicated below for the convenience of the reader. The NRC asks for comments on the following questions:

• Should this section be revised? How? Why?

The regulatory text currently in effect reads as follows:

Section 35.950 Training for use of sealed sources for diagnosis.

Except as provided in § 35.970, the licensee shall require the authorized user of a sealed source in a device listed in § 35.500 to be a physician, dentist, or podiatrist who:

(a) Is certified in

(1) Radiology, diagnostic radiology, or therapeutic radiology by the American Board of Radiology;

(2) Nuclear medicine by the American Board of Nuclear Medicine; or

(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(b) Has had eight hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that include:

(1) Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(2) Radiation biology;

(3) Radiation protection; and

(4) Training in the use of the device for the uses requested.

7. There have been no suggestions for changes in the physician training and experience criteria for teletherapy, which currently appear in 10 CFR 35.960. However, the NRC takes this opportunity to invite comment on this text, particularly in light of the misadministrations that could perhaps be avoided by improved training. The text of this section has been duplicated below for the convenience of the reader. The NRC would like comments on the following questions:

Should this section be revised? How? Why?

The regulatory text currently in effect reads as follows:

Section 35.960 Training for teletherapy.

Except as provided in § 35.970, the licensee shall require the authorized user of a sealed source (listed in § 35.600) in a teletherapy unit to be a physician who:

(a) Is certified in:

(1) Radiology or therapeutic radiology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

(1) 200 hours of classroom and laboratory training that include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity; and

(iv) Radiation biology;

(2) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that include:

(i) Review of the full calibration measurements and periodic spot checks;

(ii) Preparing treatment plans and calculating treatment times;

(iii) Using administrative controls to prevent misadministrations;

(iv) Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(v) Checking and using survey meters; and

(3) Three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that include:

(i) Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(ii) Selecting the proper dose and how it is to be administered;

(iii) Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(iv) Post-administration followup and review of case histories.

Physicists

8. The NRC has no training and experience criteria for brachytherapy physicists, and there have been no suggestions that criteria be developed. However, the NRC takes this opportunity to invite comment on this matter, particularly in light of the misadministrations that could be avoided by improved training. The NRC would like comments on the following questions:

• Should criteria be developed? Could appropriate existing criteria be modified for incorporation into NRC regulations?

• What should be included in addition to the following?

The draft section for comment reads as follows:

Training for Brachytherapy Physicist

The licensee shall require the brachytherapy physicist to be an individual who:

(a) Is certified by the American Board of Radiology in:

(1) Therapeutic radiological physics;

(2) Roentgen ray and gamma ray physics;

(3) X-ray and radium physics; or

(4) Radiological physics; or

(b) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a brachytherapy physicist at a medical institution, that includes the tasks listed in §§ 35.59, 35.75, 35.404, 35.406, 35.410, and 35.415.

9. There have been no suggestions for changes in the training and experience criteria for teletherapy physicists, which currently appear in 10 CFR 35.961. However, the NRC takes this opportunity to invite comment on this text, particularly in light of the misadministrations that could be avoided by improved training. The text of this section has been duplicated below for the convenience of the reader. The NRC asks for comments on the following questions:

• Should this section be revised? Could existing criteria be modified for incorporation into NRC regulations?

The current regulatory text reads as follows:

Section 35.961 Training for teletherapy physicist.

The licensee shall require the teletherapy physicist to be an individual who:

(a) Is certified by the American Board of Radiology in:

(1) Therapeutic radiological physics;

(2) Roentgen-ray and gamma-ray physics;

(3) X-ray and radium physics; or

(4) Radiological physics; or

(b) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a teletherapy physicist at a medical institution, that includes the tasks listed in §§ 35.59, 35.632, 35.634, and 35.641 of this part.

Technologists and Dosimetrists

10. The NRC has no training and experience criteria for other individuals who participate in the medical use of byproduct material, and there have been no recent suggestions that criteria be developed. (The Atomic Energy Commission, NRC's predecessor, did examine this matter in a Notice of Proposed Rulemaking published March 9, 1973; see 38 FR 6399. The Commission did not develop a final resolution of the issues that were raised in that proposed rule.) However, the NRC takes this opportunity to invite comment on this matter, particularly in light of the misadministrations that could be avoided by improved training.

• Should new sections on imaging technologist, therapy technologist, and therapy dosimetrist training such as the following draft sections be added to 10 CFR Part 35?

• How should the NRC determine the necessary duration of an integrated training program?

• What benefits or detriments would accrue by requiring that programs be accredited by an independent medical accrediting organization?

• Should NRC require that all technologists and dosimetrists be certified?

• Should these individuals' credentials be reviewed by NRC or by the licensee?

• What are the benefits or detriments, if any, of identifying individuals by name on the license as "radiation handlers" or "ancillary radiation staff"?

• Should NRC develop training and experience criteria for technicians who have been trained to perform certain clinical and safety tasks, but have not had training in the science and theory of the medical use of byproduct material?

The draft session for comment reads as follows:

Technologist Training for Imaging and Localization

The licensee shall require that a technologist who uses any radio-pharmaceutical, generator, or reagent kit in § 35.200(a) be an individual who:

(a) Is certified in nuclear medicine by the:

(1) American Registry of Radiologic Technologists; or

(2) Nuclear Medicine Technology Certification Board; or

(b) Has completed an integrated program of full-time training and experience that includes classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radio-pharmaceuticals, generators, and reagent kits, supervised

handling experience, and supervised clinical experience as follows:

(1) 200 hours of classroom and laboratory training that include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection policy, management, procedures, and regulations;

(iii) Mathematics of radiation and radioactivity;

(iv) Radiopharmaceutical chemistry;

(v) Imaging technology; and

(vi) Radiation biology.

(2) Supervised handling experience under the supervision of an authorized user or practicing technologist that includes:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(iii) Calculating and safely preparing stock radiopharmaceuticals and individual patient dosages;

(iv) Using administrative controls to prevent the misadministration of byproduct material;

(v) Containing spilled byproduct material and decontaminating; and

(vi) Eluting technetium-99m from generator systems, assaying and testing the eluate for molybdenum-99 and alumina contamination, processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and assaying radiopharmaceuticals to determine the portion of radioactivity bound to the radiopharmaceutical.

(3) Supervised clinical experience under the supervision of an authorized user that includes:

(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) Identifying the suitable radiopharmaceuticals for clinical procedures and calculating and measuring the dosages;

(iii) Administering dosages to patients and using syringe radiation shields; and

(iv) Acquiring and manipulating diagnostic data.

Dosimetrist Training for Teletherapy

The licensee shall require that a teletherapy dosimetrist who calculates treatment plans for use of a sealed source listed in § 35.600 in a teletherapy unit be an individual who:

(a)(1) Is certified in radiation therapy technology by the American Registry of Radiologic Technologists; or

(2) Has completed the training specified in § 35.967 and a period of full-time teletherapy technology employment; and

(b) Has completed an integrated program of full-time training and experience that includes classroom and laboratory training applicable to teletherapy dosimetry, and a period of supervised work experience as follows:

(1) 200 hours of classroom and laboratory training that include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection policy, management, procedures, and regulations;

(iii) Mathematics pertaining to radiation, radioactivity, and dosimetry;

(iv) Manual and computerized teletherapy dosimetry methods;

(v) Quality assurance procedures; and

(vi) Radiation biology.

(2) Supervised work experience under the supervision of a teletherapy physicist or practicing dosimetrist that includes:

(i) Review of the full calibration measurements and periodic spot checks;

(ii) Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(iii) Selecting the proper dose and how it is to be administered;

(iv) Calculating the teletherapy doses, collaborating with the authorized user in the review of patients' progress, consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation, and bringing discrepancies to the authorized user's or teletherapy physicist's attention;

(v) Using administrative controls to prevent misadministrations; and

(vi) Post-administration followup and review of case histories.

Technologist Training for Teletherapy

The licensee shall require that a technologist who uses any sealed source listed in § 35.600 in a teletherapy unit be an individual who:

(a) Is certified in radiation therapy technology by the American Registry of Radiologic Technologists; or

(b) Has completed an integrated program of full-time training and experience that includes classroom and laboratory training applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follow:

(1) 200 hours of classroom and laboratory training that include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection policy, management, procedures, and regulations;

(iii) Mathematics of radiation and radioactivity; and

(iv) Radiation biology;

(2) Supervised work experience under the supervision of an authorized user or practicing technologist that includes:

(i) Review of the full calibration measurements and periodic spot checks;

(ii) Preparing treatment plans for prescriptions and calculating treatment times;

(iii) Using administrative controls to prevent misadministrations;

(iv) Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(v) Checking and using survey meters; and

(3) Supervised clinical experience under the supervision of an authorized user or a practicing technologist, that includes:

(i) Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(ii) Selecting the proper does and how it is to be administered;

(iii) Reviewing calculations of teletherapy doses for accuracy and completeness; and monitoring patients' reaction to radiation, and bringing discrepancies to the authorized user's attention.

(iv) Application of radiation to patients, including the use of beam modifying devices, based on the instructions in the patient's chart; and

(v) Making and reviewing records of the medical use of radiation.

Dated at Washington, DC, this 20th day of May 1988.

For The Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-11714 Filed 5-24-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-2]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206L and 206L-1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the installation of a more reliable fuel system flow switch and the relocation of the in-line fuel filters on Bell Model 206L and 206L-1 helicopters. The proposed AD is needed to prevent failures in the fuel system which could result in an engine flameout and subsequent loss of the helicopter.

DATE: Comments must be received on or before July 10, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, Fort Worth, Texas 76193-0007, or delivered in duplicate to: Office of the Regional Counsel, FAA Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 88-ASW-2.

Comments may be inspected in Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

The applicable technical bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Commercial Publications Distribution, or may be examined in the Regional Rules Docket, Office of the Regional Counsel, FAA Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88-ASW-2." The postcard will be date/time stamped and returned to the commenter.

There have been reports in which certain part number fuel system flow switches installed on Bell Model 206L and 206L-1 helicopters have malfunctioned due to small debris which is typically in the fuel system. In some cases, the malfunctions caused failures in the fuel system which were undetected by the crew and subsequently resulted in engine flameout. Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require the installation of a more reliable fuel system flow switch and the relocation of the in-line fuel filters on Bell Model 206L and 206L-1 helicopters.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*). which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that the proposed regulation involves 200 helicopters and the approximate cost to each helicopter is $2,200 which would result in a total cost of $440,000. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to Bell Model 206L helicopters, S/N 45001 through 45153 and S/N 46601 through 46617, and to Bell Model 206L-1 helicopters, S/N 45154 through 45840, certificated in any category, with fuel system flow switches, P/N's 206-063-635-001, 206-064-601-001, -003, -101, or -103 installed. (Airworthiness Docket No. 88-ASW-2)

Compliance is required as indicated, unless already accomplished.

To prevent a possible fuel system failure due to the malfunction of the fuel system flow switches which could result in an engine flameout and subsequent loss of the helicopter accomplish the following:

(a) Within the next 250 hours' time in service after the effective date of this AD, remove and replace fuel system flow switches, P/N's 206-063-635-001, 206-064-601-001, -003, -101, or -103, whichever is installed, with fuel system flow switch retrofit kit, P/N 206-703-004-001 and relocate the in-line fuel filters, P/N 206-063-693-001 in accordance with Bell Helicopter Textron Technical Bulletin 206L-82-80, Revision A, dated November 29, 1982.

(b) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

Issued in Fort Worth, Texas, on May 11, 1988.

Wm. Jack Sasser,

Acting Director, Southwest Region.

[FR Doc. 88-11660 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-20-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which currently requires replacement of certain elevator rudder and aileron trim control system rods, levers, links, and tabs. That action was prompted by an FAA determination that, in the event of certain failures in these control systems, the potential exists for damage to the airframe due to flutter. This action would require the addition of two collars to the aileron trim tab control. These collars are necessary to properly secure the pins and bolts. The applicability statement would also be revised to include all CASA C-212 airplanes.

DATES: Comments must be received no later than July 19, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-20-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construcciones Aeronauticas S.A., (CASA) Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms Armella Donnelly, Standardization Branch, ANM-113; telephone 431-1967. Miling address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-20-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On August 31, 1987, FAA issued AD 88-18-08, Amendment 39-5724 (52 FR 35233; Setember 18, 1987), to require the replacement of certain elevator rudder, and aileron trim control system rods, levers links, and tabs on CASA Model C-212 series airplanes. The FAA had determined that, in the event of certain single failures in these trim control systems, the potential exists for damage to the airframe due to flutter. The replacement components would add fail-safe features to the trim control system.

Since issuance of that AD, CASA has issued Service Bulletin 212-27-25, Revision 4, dated October 28, 1987, which describes the addition of two collars to the aileron trim tab control. These collars are necessary to properly secure the pins and bolts of the trim control system. This service bulletin has been classified as "required and approved" by the Spanish airworthiness authorities (DGAC).

This airplane model is manufactured in the United Kingdom and Indonesia and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreements.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would revise AD 87-18-08 to require the addition of two collars to the aileron trim tab control, in accordance with the service bulletin previously mentioned. The FAA has detemined that installation of these collars must be accomplished concurrently with the existing requirements of AD 87-18-08.

Additionally, the applicability statement would be revised to include all U.S. registered CASA C-212 airplanes in order to ensure that all affected airplanes are subject to the requirements of the AD.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $316,800.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Fedruary 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C-212 are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 87-18-08, Amendment 39-5724 (52 FR 35233; September 18, 1987), by expanding the applicability statement, adding new paragraph B., and redesignating existing paragraphs B. and C. as C. and D., respectively, to read as follows:

CASA: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance is required by April 19, 1989, unless previously accomplished.

To prevent airframe damage due to flutter caused by certain single failure conditions of the trim control system, accomplish the following:

A. Replace elevator, rudder, and aileron trim control system components, in accordance with CASA Service Bulletin 212-27-25, Revision 2, dated October 28, 1985.

B. Install two collars on the aileron control system, in accordance with CASA Service Bulletin 212-27-25, Revision 4, dated October 28, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 17, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11661 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-6]

Proposed Alteration of VOR Federal Airway V-68; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-68 located in the vicinity of Durango, CO. The continued growth of Montrose, CO, and the substantial increase of air traffic to that resort area has created the need for an airway between Dove Creek, CO, and the Montrose terminal area. This action would increase air safety and improve flight planning.

DATE: Comments must be received on or before July 7, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 88-ANM-6, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airway V-68 located in the vicinity of Durango, CO. It is apparent that controlled airspace is necessary between Dove Creek, CO, and Montrose, CO, due to the rapid growth of Montrose which has resulted in a rapid increase in air traffic. Therefore, we propose to extend V-68 Montrose which is located in the Rocky Mountains. This action would increase air safety and improve traffic flow in that area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSAPCE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-66 [Amended]

By removing the words "From Farmington, NM, via" and substituting the words "From Montrose, CO; INT Montrose 220°T(186°M) and Dove Creek, CO, 069°T (055°M) radials; Dove Creek; Cortez, CO; Farmington, NM;"

Issued in Washington, DC., on May 13, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-11662 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 88-5]

Truck Size and Weight; National Network—Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to modify the National Network for commercial motor vehicles by permitting the State of Kentucky to restrict the use of the northbound lanes of Interstate Route I-75/71 in the Cincinnati area from I-275 to the Ohio State line by certain motor vehicles. The amendment is being proposed in response to an application by the Kentucky Transportation Cabinet under the provisions of the Surface Transportation Assistance Act of 1982 (STAA). The purpose of this notice is to provide an opportunity for the interested parties to comment on the application prior to a determination by FHWA. The National Network was established by the final rule on truck size and weight published at 49 FR 223302 on June 5, 1984. It is maintained under 23 CFR 658, Appendix A, as amended.

DATE: Comments on this docket must be received on or before July 25, 1988.

ADDRESS: Submit written comments to FHWA Docket No. 88-5, Federal Highway Administration, HCC-10, Room 4232, 400 Seventh Street SW., Washington, 20590. Any comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Director, Office of Planning (202) 366-2951 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C.20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Applicable Law

The statutory basis for prohibiting State restrictions on truck use of Interstate highways and designated non-Interstate Federal-aid Primary System highways is found in Sections 411 and 416 of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. No. 97-424, 96 Stat. 2097 (1983), as amended by the Tandem Truck safety Act of 1984 (TTSA), (Pub. L. No. 98-554, 98 Stat. 2829 (1984)), 42 U.S.C. 2311 and 2316. The STAA provides "exemption" procedures whereby FHWA (by delegation from the Secretary of Transportation) may permit States to restrict truck use of Interstate highways. The FHWA has concluded, after careful consideration of the law and recent court decisions, that the STAA prohibition on restrictions applies to all State bans which would directly impact STAA-authorized vehicles.

Background

In July 1986, the Secretary of the Kentucky Transportation Cabinet, in his capacity as Commissioner of Highways, ordered the prohibition of certain truck operations on the northbound lanes of I-75/71 and I-471 for safety purposes; this was confirmed by administrative regulation. The prohibition applies from I-275 northerly to the Ohio State line at the Ohio River on the south side of the city of Cincinnati. Specifically, the prohibition applies to northbound trucks with semitrailers which do not have destinations within the perimeter of I-275 or within a two-mile arc along the north side of I-275 in Ohio between U.S. 27 and U.S. 21.

On July 17, 1987, the FHWA notified the Governor of Kentucky that the STAA preempts truck restrictions of the type imposed, without Federal approval by the Secretary of Transportation. The State submitted an application on September 9, 1937, for approval to continue the ban on both routes, additional information on October 19, 1987, regarding prior consultations with the States of Ohio and Indiana, and additional accident data on December 14, 1987.

The State of Kentucky has completed major operational improvements for I-75/71 and has programmed a major reconstruction project for a portion of the route. The State estimates that the improvements to reduce the vertical grades and horizontal curvature in the so-called "cut-in-the-hill" section of I-75/71 should be completed sometime in 1992.

As a result of the consultations, the Governor of Ohio advised the Governor of Kentucky that "studies indicate that Ohio has not suffered major increases in truck-related accidents since the ban was initiated in July 1986. Consequently, I am compelled to agree with the original diversion order * * *."

Safety Determination

The FHWA may not approve the State's application unless FHWA determines that the segments of Interstate highways involved are not capable of safely accommodating the motor vehicles (trucks) described in the STAA. The State has supplied accident and highway geometrics data and commented on the Ohio-Kentucky-Indiana Regional Council of Government's "Interstate Truck Diversion Study," a March 1987 study of estimated effects of the restrictions by the metropolitan planning organization for the Cincinnati area. (The information has been included in the Docket for public review.)

Based on a careful review of the data, FHWA has concluded that Kentucky's restrictions have contributed to significant accident reduction on Kentucky I-75/71, have had minimal effect on Kentucky I-471, and have not significantly affected alternate routes. FHWA, therefore, denied the restrictions on I-471 and requested that Kentucky take the appropriate actions to ensure full access on I-471. Further, FHWA proposes by this rulemaking to temporarily approve the State of Kentucky restrictions on I-75/71. The approval would be valid through the programmed reconstruction period, estimated to be completed in 1992. FHWA has notified that State of Kentucky that the current restrictions on I-75/71 may continue during these rulemaking procedures.

Request For Comments

Those wishing to comment on the State's application to continue the restrictions are requested to send such comments or information to the docket established by this Notice. In addition to concerns related to the safety of the restricted Interstate segments and alternative routes, the FHWA is particularly interested in the effects of the restriction on interstate commerce, the views of affected State and local jurisdictions, and possible alternatives to the existing restrictions.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5, 1984, final rule by allowing restrictions on the use of certain highway segments in accordance with statutory provisions. The impacts of the change addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. The segments affected represents a very small portion of the National Network and have a negligible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Federalism

The FHWA has considered the "federalism" implications involved and has governed its actions and development of the proposal in accordance with the principles and policymaking criteria of Executive Order 12612, *Federalism*, of October 26, 1987. The proposal in this NPRM is in response to an application by the State. Final determination to grant all or part of the application under the relief provisions established by the TTSA amendments will serve to diminish the impact of previous preemptive actions mandated by the STAA. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on May 18, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Chapter I, Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of Kentucky to read as set forth below.

PART 658—[AMENDED]

1. The authority citation 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CR 1.48.

Appendix A to Part 658 [Amended]

2. Appendix A to Part 658 is amended for the State of Kentucky by designating the existing note at the end of the route listing as "NOTE 1" and adding "NOTE 2" to read as follows:

Note 2—Restrictions may be applied to through traffic with semitrailers and/or trailers on northbound I-75/71 from I-275 to the Ohio State line. Through traffic is defined as trucks which do not have destinations within I-275 (Circle Freeway) nor within a two (2) mile arc paralleling I-275 on the northern side of I-275 in Ohio between U.S. 22 and U.S. 27. This note is valid through the year 1992.

[FR Doc. 88-11721 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-22-M

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23 CFR Part 658

[FHWA Docket No. 83-14]

Truck Size and Weight; National Network

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to modify the National Network for commercial motor vehicles by deleting certain routes in Iowa and South Carolina. This action will address network changes of a routine nature. The National Network was established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. It is maintained under 23 CFR 658, Appendix A, as amended.

DATE: Comments on this docket must be received on or before July 25, 1988.

ADDRESS: Submit written, signed comments, preferably in triplicable, to FHWA Docket No. 83-14, Federal Highway Administration, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366-0233, Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366-4036, Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Pub. L. 97-424, 96 Stat. 2097 may operate, was first established by the final rule (23 CFR Part 658) published in the **Federal Register** at 49 FR 23302, June 5, 1984 and is located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed or described by category in Appendix A of the rule. Additional routes not on the network but available for STAA vehicles were also identified at State request.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11 and include the issuance of a notice of proposed rulemaking (NPRM) before final rulemaking. A number of revisions to the National Network have been completed or initiated by the FHWA in separate rulemaking actions. This type of rulemaking action is considered routine and intended to periodically address network changes initiated by the States, or by others through the States, as well as by the

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FHWA. Certain types of technical amendments to Appendix A, such as clarifications of route descriptions, adjustments in format, descriptions of available routes not on the network, etc., are not subject to notice and comment, requirements. The FHWA will make such technical amendments from time to time, in the interest of maintaining accuracy for Appendix users, and publish them in a final rule in the **Federal Register.**

Iowa

The Iowa Transportation Commission, as the Governor's designee, has requested the deletion of three segments as the National Network until they are widened or reconstructed. The Commission reviewed the segments as to physical and operating characteristics and found that each has a narrow pavement and is not necessary for motor carrier route continuity.

The stub route IA 40 from Allerton northerly to IA 2 has a pavement width of 20 feet. The portion of IA 175 from the east junction with US 169 easterly to the east city limits of Dayton has a pavement width of 16 feet. The stub route IA 415 from IA 160 northwesterly to the north city limits of Polk City has a pavement width of 20 feet and severe operating problems due to the route's substandard geometrics.

The FHWA has reviewed the routes and concurs in the request that the routes be deleted on the basis of potential safety problems. The routes are, therefore, proposed for deletion.

The State of Iowa has made available a considerable number of additional route segments for STAA vehicles under State legislation passed in June 1987. Further information on available routes may be obtained from its Office of Motor Carrier Service, Iowa Department of Transportation, Des Moines, Iowa at (515) 281–5664.

South Carolina

The FHWA published at 51 FR 8511 on March 12, 1986, a notice of proposed rulemaking (NPRM) requesting comments on a proposal to delete certain routes from the National Network in several States including South Carolina. One of the route segments recommended for deletion in the Center for Auto Safety respnse to the NPRM, a 0.70-mile segment of US 76 between SC 277 and I–126 in Columbia, had not been previously identified for possible deletion. A review by the FHWA indicates the segment has three lanes 11 or more feet in which each way plus turning lanes at intersections. The left turns from US 76 onto SC 277, however, use two 11-foot left-turn-only lanes that may involve lane encroachment safety problems for the larger STAA vehicles. Alternate routes on the National Network in the vicinity include I–20, I–26, I–126, and SC 277. Therefore, the 0.70-mile segment of US 76 in Columbia is proposed for deletion.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5, 1984, final rule by adding or deleting certain highway segments in accordance with statutory provisions. The impacts of the changes addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on May 16, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the States of Iowa and South Carolina to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658—[Amended]

2. Appendix A to Part 658 is amended for the State of Iowa by removing the Posted Route Number entries:

Posted route No.	From	To
IA 40	Begin route	IA 2.
IA 175	East Jct. US 169	ECL Dayton.
IA 415	US 6	NCL Polk City.

and inserting in place of IA 415 the following:

Posted route No.	From	To
IA 415	US 6	IA 160.

3. Appendix A to Part 658 is amended for the State of South Carolina by removing the following Posted Route Number entry:

Posted route No.	From	To
US 76	SC 277, Columbia	I–126, Columbia.

[FR Doc. 88–11720 Filed 5–24–88; 8:45 am]

BILLING CODE 4910-22-M

49 CFR Part 393

[FHWA Docket No. MC–115]

Splash/Spray Suppression Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: The FHWA is terminating its pending rulemaking to require splash and spray suppression devices on "in use" truck tractors, semitrailers, or trailers which would conform with National Highway Traffic Safety Administration (NHTSA) standards. The Surface Transportation Assistance Act of 1982 required the initiation of this rulemaking action. The Surface Transportation and Uniform Relocation Assistance Act of 1987 amended the 1982 Act by establishing specific statutory criteria. This termination action is being taken because the NHTSA has determined that no available technology has been demonstrated as meeting those statutory criteria.

EFFECTIVE DATE: May 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 414 of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424, 96 Stat. 2097, 2161, January 6, 1983, declared that "visibility on wet roadways on the Interstate Highway System should be improved by reducing, by a practicable and reliable means, splash and spray from truck tractors, semitrailers, and trailers."

The STAA also provided that "the Secretary [of Transportation] shall by regulation . . . establish minimum standards with respect to the performance and installation of splash and spray suppression devices." These standards would apply to new vehicles manufactured after 1 year from the effective date of a final rule, and 4 years from the effective date of a final rule. The Secretary delegated to the FHWA the responsibility for establishing minimum standards with respect to the performance and installation of splash and spray suppression devices on "in use" truck tractors, semitrailers, or trailers which would conform to (NHTSA) performance standards contained in 49 CFR Part 584.

The FHWA published proposed standards for the installation and maintenance of splash and spray suppression devices on "in use" vehicles in the **Federal Register** of April 12, 1985 (50 FR 14630). The NHTSA published proposed minimum standards for the performance and installation of splash and spray suppression devices on new vehicles in the same issue of the **Federal Register** (50 FR 14632). The comment period closed May 28, 1985 but was subsequently extended to August 12, 1985. See 50 FR 24549, June 11, 1985. A total of 149 comments to the docket were received. The vast majority of those comments were the same as those received by the NHTSA. Following review of the comments, the FHWA delayed further action pending rulemaking action by the NHTSA.

Section 205 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100–17, 101 Stat. 132, 221 amended section 414(b) of the STAA to read as follows:

"(b) The Secretary shall by regulation—

"(1) Within one year after the date of the enactment of the Highway Safety Act of 1987, establish final minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, and trailers unless the Secretary has determined that there is no available technology which—

"(A) can significantly reduce splash and spray from truck tractors, semitrailers, and trailers, and

"(B) can significantly improve visibility of drivers, as demonstrated during testing on highways, at test facilities, and in laboratories to take into account possible wind and rain conditions.

"(2) Within one year after the date on which the standards are established under paragraph (1) of this subsection, require that all new truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection; and

"(3) Within four years after the date on which the standards are established under paragraph (1) of this subsection, require that all truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection."

The NHTSA is the lead agency in the development of standards for splash and spray suppression devices to be used on truck tractors, semitrailers, and trailers. The NHTSA has determined that it is required either to issue final minimum standards for the performance and installation of splash and spray suppression devices by April 2, 1988, or to determine by that date that no available technology has been demonstrated to *significantly* reduce splash and spray from trucks and *significantly* improve driver visibility as a result of reducing splash and spray during testing on highways, at test facilities, and in laboratories, which testing accounts for possible wind and rain conditions.

Elsewhere in today's **Federal Register**, the NHTSA has published a notice of termination regarding its splash and spray suppression devices rulemaking activity (NHTSA Docket No. 83–05; Notice 5). The NHTSA has determined that, after reviewing all available data on the effectiveness of every technology for reducing splash and spray known to the agency, no available technology has been demonstrated to significantly reduce splash and spray from truck tractors, semitrailers, and trailers, and significantly improve visibility of drivers, during testing on highways, at test facilities, and in laboratories, which testing took into account possible wind and rain conditions. Thus, according to the express requirements of section 414 of the STAA, its rulemaking action must be, and is, terminated.

In view of the above, the FHWA is terminating its companion rulemaking action on splash and spray suppression devices. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

[49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48]

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 20, 1988.

Robert E. Farris,

Deputy Federal Highway Administrator.

[FR Doc. 88–11783 Filed 5–24–88; 8:45am]

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National Highway Traffic Safety Administration

49 CFR Part 584

[Docket No. 83–05; Notice 5]

Splash and Spray Suppression Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: The Surface Transportation Assistance Act of 1982, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, provides that NHTSA must establish minimum performance standards and installation requirements for splash and spray suppression devices on all new truck tractors, trailers, and semitrailers not later than April 2, 1988, *unless* the agency determines that there is no available technology that can *significantly* reduce splash and spray from truck tractors, semitrailers, and trailers and can *significantly* improve visibility of drivers, as demonstrated during testing on highways, at test facilities, and in laboratories to take into account possible wind and rain conditions.

If any splash and spray suppression device had been found to satisfy these criteria, the statute requires that the

device be mandated on *all* new truck tractors, trailers, and semitrailers manufactured on or after April 2, 1989. This notice announces the agency's determination that no available technology has been demonstrated as meeting those statutory criteria. Based on this determination, the agency is terminating its pending rulemaking to require splash and spray suppression devices on all new truck tractors, trailers, and semitrailers. That rulemaking was initiated pursuant to the mandate of the Surface Transportation Assistance Act of 1982, as originally enacted.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Rutland, Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–5275).

SUPLEMENTARY INFORMATION:

Surface Transportation Assistance Act of 1982 and Subsequent Rulemaking

As originally enacted, section 414 of the Surface Transportation Assistance Act of 1982, ("the STAA"; 49 U.S.C. 2314), reads as follows:

(a) The Congress declares that visibility on wet roadways on the Interstate system should be improved by reducing, by a practicable and reliable means, splash and spray from truck tractors, semitrailers, and trailers.

(b) The Secretary shall by regulation—

(1) Within one year of the date of the enactment of this title, establish minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, and trailers.

(2) Within one year after the date on which the standards are established under paragraph (1) of this subsection, require that all new truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection; and

(3) Within four years after the date on which the standards are established under paragraph (1) of this subsection, require that all truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection.

* * * * *

In response to this statutory mandate, NHTSA reviewed the research conducted since 1980 on the problem of truck splash and spray, and initiated some additional research of its own. After the review of past research was completed, but before the additional agency research efforts were finished, NHTSA published a notice of proposed rulemaking on April 12, 1985; 50 FR 14832.

That notice stated, "The only devices which current research indicates might be both practicable and reliable for use on existing vehicle designs are spray suppressant flaps and side skirts." 50 FR 14634. Spray suppressant flaps are flaps that hang down behind the tires and are designed to absorb some of the energy in the oncoming stream of water from the tires, contain and channel most of the water out of the area where spray could be formed, or otherwise reduce the formation of spray clouds behind those tires. Side skirts are flat surfaces that hang down from the side of a vehicle above and around the tires and are designed to prevent the water coming off the top of the wheel wells and tires from forming into spray clouds alongside the wheels. Other devices that had been considered during the research to reduce splash and spray included conventional fenders and mudflaps, a DOT spray protector, and air and water deflectors. However, none of these alternative splash and spray suppression devices had been demonstrated to be an effective means of improving visibility with current truck designs, as was discussed in the 1985 proposal.

As noted above, the 1985 proposal focused exclusively on spray suppressant flaps and side skirts as the potentially practicable and reliable devices to be required on trucks to improve visibility on wet roads. However, it is important to emphasize that these devices were only a *potentially* practicable and reliable means of improving visibility.

The prior research and the agency's new research had reached somewhat conflicting conclusions about how consistently effective the devices were at improving visibility. The first major research effort examining the proposed devices was sponsored by the Federal Highway Administration in 1977 at Fort Stockton, Texas. This study concluded that a combination of spray suppressant flaps and side skirts was the most effective of the tested devices at suppressing spray. NHTSA's own testing of spray suppressant flaps and side skirts in 1983 yielded less positive results. It raised some significant questions about the ability of these devices to reduce spray sufficiently so that the difference would be perceptible to the unaided eye. Testing sponsored by the Motor Vehicle Manufacturers Association (MVMA) in 1984 concluded that trucks fitted with a combination of spray reduction devices, including devices not proposed to be required, can reduce splash and spray by as much as 50 percent compared to trucks that use the standard hard rubber flaps typically now in use. The MVMA study cautioned that the test results could not be repeated consistently, that no specific combination of devices was found best for all vehicles, and that these devices can decrease, but not eliminate, splash and spray. After examining these research results, NHTSA stated, "This mixed pattern of research results leaves the agency with misgivings about the appropriateness of proceeding with rulemaking at this time." 50 FR 14634.

Additional and significant MVMA test data were received by the agency after the comment closing date for the notice of proposed rulemaking, as were two other comments containing field test data concerning the effectiveness of the proposed devices. Since NHTSA believed that the data in the late-filed comments could significantly affect its analysis in this rulemaking, the agency reopened the comment period to invite the public to analyze and comment on these data. 51 FR 5383; February 13, 1986. Eighteen more comments on the splash and spray rulemaking were submitted during this reopened comment period.

Amendment of the 1982 Act and NHTSA's Request for Comments and Public Meetings

Section 414(b) of the Surface Transportation Assistance Act of 1982 was amended on April 2, 1987, when Congress enacted the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17). Section 205 of the 1987 Act amended section 414(b) of the 1982 Act to read as follows:

(b) The Secretary shall by regulation—

(1) Within one year of the date of the enactment of the Highway Safety Act of 1987, establish final minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, and trailers unless the Secretary has determined that there is no available technology which—

(A) can significantly reduce splash and spray from truck tractors, semitrailers, and trailers, and

(B) can significantly improve visibility of drivers, as demonstrated during testing on highways, at test facilities, and in laboratories to take into account possible wind and rain conditions.

(2) Within one year after the date on which the standards are established under paragraph (1) of this subsection, require that all new truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection; and

(3) Within four years after the date on which the standards are established under paragraph (1) of this subsection, require that all truck tractors, semitrailers, and trailers operated on the Interstate system by equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection.

* * * * *

NHTSA interprets this statutory amendment as follows. The agency is required either to issue final minimum standards for the performance and installation of splash and spray suppression devices by April 2, 1988, or to determine by that date that no available technology has been demonstrated to *significantly* reduce splash and spray from trucks and *significantly* improve driver visibility as a result of reducing splash and spray during testing on highways, at test facilities, and in laboratories, which testing accounts for possible wind and rain conditions.

To satisfy the statutory criteria, the testing would have to be very thorough and probative. First, the testing would have to be conducted in three different test environments. Laboratory testing and test facility testing would attempt to duplicate normal wet weather conditions of wind and rain, and can use objective measurement techniques to quantify the improvement in visibility associated with any splash and spray suppression device. It would be more difficult to use objective measurement techniques for highway testing. However, a statistically significant number of subjective evaluations by unbiased observers of treated and untreated trucks traveling at the same speeds and under the same weather conditions could satisfy this statutory criteria. Test results would not support the issuance of a standard under the statutory criteria unless those results demonstrated that a splash and spray suppression device significantly reduces splash and spray and significantly improves visibility in *all three* of these testing environments.

Second, the testing would have to show significant reductions in splash and spray and significant improvements in visibility. The available data show that normal wet weather conditions allow approximately 15 percent light transmission, as measured by laser transmissometers. The data also show that most observers can consistently discern and properly identify objects when light transmission reaches a level of 40 percent or greater, as measured by laser transmissometers. The most comprehensive data on this topic result from the research conducted by Mr. Blackwell, a specialist in illuminating engineerings. The results of this research were reported in a number of engineering journals over a span of more than a decade and are now generally referred to as "the Blackwell data." Citations to and evaluations of the Blackwell data are set forth in pages II–44 through II–53 of NHTSA's preliminary regulatory evaluation for this rulemaking (NHTSA Docket No. 83–05–N01–046).

NHTSA interprets the statutory requirements for *significant* reductions of splash and spray and *significant* visibility improvements to mean that the splash and spray reductions and visibility improvements resulting from any mandated device must be sufficiently large so that the typical motorist will be able to see the road and any traffic significantly better than is possible without the device. Since the available data on this subject show that motorists can consistently discern an improvement in visibility only when lasers measure 40 percent or greater light transmission, NHTSA believes that any splash and spray suppression device must consistently result in no less than 40 percent light transmission for objects to be visible, and may need to exceed this level to satisfy the statutory requirement for *significant* improvement in visibility.

Hence, testing should demonstrate both that it began with conditions that were representative of normal wet weather conditions (about 15 percent light transmission) and that the addition of the proposed device to the test truck resulted in 40 percent or greater light transmission. For highway testing, where it would be difficult to position laser transmissometers, observers should rate treated trucks as exhibiting significantly better visibility than comparable untreated trucks.

Third, the testing must take into account possible wind and rain conditions. NHTSA does not interpret this to mean that the testing must take into account *all* possible wind and rain conditions. The agency does not understand the statute to require that these devices be shown to work in extraordinarily heavy rainfall accompanied by 60 mph winds, for instance. However, the law does require that testing demonstrate that the devices are effective under normal wind and rain conditions. To satisfy this statutory criteria, testing must demonstrate the effectiveness of a splash and spray suppression device in light, moderate, and reasonably heavy wind and rain conditions.

Fourth, the testing would have to demonstrate that a splash and spray suppression device was effective on at least three different types of semitrailers and trailers—vans, flatbeds, and tanks. The STAA specifies that any splash and spray suppression device that has been demonstrated to satisfy the statutory criteria must be installed on *"all* new truck tractors, semitrailers, and trailers * * *" and on *"all* truck tractors, semitrailers, and trailers operated on the Interstate system." Since the law expressly requires that any device mandated under the STAA must be installed on *all* truck tractors, semitrailers, *and* trailers, the agency has *no authority* to require a device mandated in this rulemaking to be installed only on semitrailers and trailers, and not require the device to be installed on truck tractors. Similarly, NHTSA has *no authority* to require a device to be installed on certain types of semitrailers and trailers (e.g., vans), but not on all other types of semitrailers and trailers. Because of the absence of authority to exempt any truck tractors, semitrailers, or trailers from any requirements established under the STAA, NHTSA believes Congress intended that the device should be shown to be effective on all types of truck tractors, semitrailers, and trailers. Since the statute requires installation of a splash and spray suppression device on all vehicle types mentioned in the STAA, if the device satisfies the statutory criteria, it seems reasonable to infer that the statute also requires the device to satisfy the statutory criteria on all vehicle types.

However, the agency does not believe that Congress intended to require that a splash and spray suppression device be demonstrated to satisfy the statutory criteria for every conceivable configuration of trailer or semitrailer. There are many configurations of trailers and semitrailers, most of which are designed for special uses and comprise a very small percentage of the total trailers and semitrailers in service. The agency's testing has focused on three particular types of trailers and semitrailers—vans, flatbeds, and tanks. Together these three types of trailers and semitrailers comprise more than 75 percent of the trailers and semitrailers in use. The agency concluded that, if testing had demonstrated that a device satisfied the statutory criteria for these three types of trailers and semitrailers, such testing would satisfy the criteria of the statute.

If the agency determines that no available technology has been demonstrated to satisfy the statutory criteria, the statutory mandate to complete rulemaking to require splash

and spray suppression devices on truck tractors, semitrailers, and trailers would be ended. Hence, the agency would be obligated to terminate the rulemaking proceeding begun in 1985. Any subsequent rulemaking actions with respect to splash and spray suppression devices would have to be based on authority granted to the agency under other statutes, most notably the National Traffic and Motor Vehicle Safety Act, as amended [15 U.S.C. 1381 *et seq.*].

In response to the 1987 amendments, NHTSA published a notice on September 28, 1987 (52 FR 36285). This notice announced the agency's tentative determination that neither the devices proposed in the 1985 notice nor any other devices have been demonstrated to significantly reduce spash and spray or significantly improve visibility for delivers. This tentative conclusion was based on the agency's extensive analysis of the available data for the proposed devices (spray suppressant flaps and side skirts), and the absence of data demonstrating that any other splash and spray suppression device significantly reduced splash and spray and significantly improved visibility during testing. NHTSA acknowledged that it had focused its effectiveness analysis almost exclusively on the proposed devices, since those where the devices that would have been mandated if the proposal were adopted as a final rule.

However, the notice noted that the amended language in section 414 does not limit the determination of the effectiveness to the proposed devices. Instead, the law requires NHTSA to determine that *no available technology* has been demonstrated to significantly reduce splash and spray and significantly improve visibility. The September 1987 notice acknowledged that the agency had very little test data on the effectiveness of technologies for reducing splash and spray, other than the proposed devices. What data were available led the agency to tentatively conclude that none of these other technologies had been demonstrated to satisfy the statutory criteria.

The notice asked for comments on the agency's tentative conclusion that neither the proposed devices nor any other technology for reducing splash and spray had been demonstrated to significantly reduce splash and spray and significantly improve visibility. Additionally, the notice asked interested persons to submit any data that demonstrated that some splash and spray suppression device meets those statutory criteria. Finally, the notice announced public meetings on November 9, 1987, in Columbus, Ohio, and on November 13, 1987, in Washington, DC, to allow interested members of the public a further opportunity to respond to the notice.

NHTSA received 27 written comments on this notice. Additionally, nine persons made presentations at the Columbus, Ohio public meeting, and six persons offered presentations at the Washington, DC public meeting. The agency has considered all of these comments and presentations in reaching its conclusions on this subject. The most significant comments, along with the agency's response, are set forth below.

The Proposed Devices Have Not Been Demonstrated to Significantly Reduce Splash and Spray and Significantly Improve Visibility

The September 1987 notice set forth the agency's tentative conclusion that the proposed devices; i.e., spray suppressant flaps and side skirts, would *not* significantly reduce truck splash and spray and would *not* significantly improve driver visibility, along with the detailed analyses that yielded that tentative conclusion. Most of the written comments and most of the presentations at the public meetings agreed with the agency's tentative conclusion. Many commenters specifically noted agreement with the agency's tentative conclusion that there were gaps in the available data for splash and spray suppression devices and commented that these limitations in the data would preclude a determination by NHTSA that some device had been demonstrated to significantly reduce splash and spray and significantly improve visibility. Some of these commenters noted that, although their effectiveness had not yet been demonstrated, there are some splash and spray suppression devices that should be investigated further.

The only commenter that disagreed with NHTSA's tentative conclusion that the proposed devices had not been demonstrated to satisfy the statutory criteria was Monsanto, a manufacturer of spray suppressant flaps. To support its position that the proposed devices have been demonstrated to significantly reduce splash and spray generated by large trucks, Monsanto discussed two subjects.

First, Monsanto referred to the agency's finding that 40 percent light transmission, as measured by properly positioned laser transmissometers, is necessary for most observers to rate visibility as satisfactory. Monsanto argued that there were three studies that showed the proposed devices would improve visibility to a level of at least 40 percent light transmission. These studies were:

a. This agency's 1985 testing;

b. A 1978 and 1979 Swedish testing program; and

c. The 1977 testing by the Federal Highway Administration at Fort Stockton, Texas.

NHTSA does not believe that any of these three studies, whether considered individually or collectively, *demonstrate* that the proposed devices significantly reduce splash and spray and significantly improve visibility. The 1985 NHTSA testing (DOT HS 806 694) used ten different cab-over-engine/van trailer configurations. Two of the configurations were baseline vehicles with no spray suppression treatment. One of the baseline configurations was equipped with an aeroaid, while the other was not. The remaining eight configurations were equipped with the proposed devices, and five of the eight test configurations were also equipped with an aeroaid. The baseline vehicle that was not equipped with an aeroaid had average transmissometer readings of 44 percent on the upwind side and 17 percent on the downwind side. The configurations equipped with the proposed devices, but no aeroaid, had average transmissometer readings of 36, 36, and 41 percent on the upwind side and 29, 24, and 18 percent on the downwind side.

These data fail to show any significant reductions of splash and spray or significant visibility improvements. The baseline configuration had satisfactory visibility on the upwind side and less than satisfactory visibility on the downwind side. The treated configurations did not improve visibility on the upwind side and did not offer satisfactory visibility on the downwind side.

The baseline vehicle that was equipped with an aeroaid had average transmissometer readings of 73 percent on the upwind side and 13 percent on the downwind side. The test configurations equipped with the proposed devices and an aeroaid had average transmissometer readings of 83, 73, 82, 91, and 86 percent on the upwind side, and 23, 41, 28, 27, and 16 percent on the downwind side.

The 1985 results for vehicles equipped with both the proposed devices and aeroaids led the agency to nearly the same observations it made with respect to the MVMA test results in the September 1987 notice. First, the upwind side does not present nearly the same degree of visibility problems as the downwind side does. Satisfactorily

visibility was present in NHTSA's 1985 testing on the upwind side of vehicles that were not equipped with any spray suppression devices. Second, the vehicles that were equipped with both the proposed devices *and* an aeroaid showed some marginal visibility improvements on the less problematic upwind side of trucks. However, NHTSA cannot conclude that these improvements were *significant*, since the light transmission was at a level that most observers would state results in satisfactory visibility for vehicles not equipped with the proposed devices. Third, on the downwind side, a combination of the proposed devices and aeroaids resulted in acceptable visibility for only one of the five configurations tested. For the other four configurations, visibility remained well below satisfactory even if vehicles were equipped with both the proposed devices and an aeroaid. NHTSA cannot conclude that a test series showing satisfactory visibility on the downwind side of one out of five vehicle configurations has demonstrated that the proposed devices and aeroaids would significantly reduce splash and spray and significantly improve visibility.

Based on its 1985 testing, NHTSA does not believe that it could determine that either the proposed devices or the proposed devices and aeroaids significantly reduce splash and spray and significantly improve visibility even on test tracks under conditions designed to limit the impacts of the environmental factors that influence the effectiveness of the proposed devices. However, NHTSA's statutory mandate is not limited to a determination of whether the proposed devices have been demonstrated to significantly reduce splash and spray and significantly improve visibility under controlled testing conditions. Instead, the agency is required to determine whether these devices will significantly reduce splash and spray and significantly improve driver visibility, as demonstrated during testing on highways, at test facilities, and in laboratories *to take into account possible wind and rain conditions.* NHTSA's 1985 testing was intended to minimize the influence of cross winds. Hence, that testing did not demonstrate that either the proposed devices or the proposed devices and an aeroaid had any significant effects on splash and spray or visibility in testing that "takes into account possible wind and rain conditions." In NHTSA's 1985 testing, downwind visibility in crosswinds with a mean speed of 8.5 mph was *worse* for vans equipped with aeroaids *and* the proposed devices than it was when those vans were not equipped with any spray suppression devices. Accordingly, the agency cannot conclude that its 1985 testing demonstrates the effectiveness of the proposed devices, when possible wind and rain conditions are taken into account.

Moreover, as noted above, the statute requires any mandated splash and spray suppression devices to be installed on *all* new truck tractors, trailers, and semitrailers. Thus, testing that satisfied the statutory criteria would have to demonstrate the effectiveness of a spray suppression device on at least three different types of trailers and semitrailers–vans, flatbeds, and tanks. NHTSA's 1985 testing focused primarily on the performance of spray suppression devices on vans. The limited testing that was done on other types of trailers showed that the proposed devices would yield some marginal visibility improvements on the downwind side, but would *not* result in 40 percent light transmission, the level needed for satisfactory visibility, when installed on tanks or flatbeds. Accordingly, NHTSA does not believe that its 1985 testing can be said to demonstrate significant reductions of splash and spray or significant visibility improvements with flatbeds or tanks. Therefore, the agency concludes that its 1985 testing did *not* make the statutorily-required demonstration.

Monsanto next referred to a 1980 paper prepared by Mr. Ulf Sandberg of the National Road and Traffic Research Institute of Sweden, as evidence that the proposed devices have been demonstrated to significantly reduce splash and spray and significantly improve visibility. Mr. Sandberg's paper was based on some 1978 and 1979 testing of trucks equipped with devices similar to the proposed devices. The results of this testing were that light transmission levels of between 19 and 30 percent were measured for trucks equipped with those devices. None of the treatments examined in this testing resulted in 40 percent or greater light transmission levels. This means that none of the treatments in this testing resulted in satisfactory visibility. Accordingly, the agency cannot conclude that this testing demonstrated that the proposed devices would significantly reduce splash and spray or significantly improve visibility.

Monsanto finally suggested that the 1977 testing at Fort Stockton demonstrated that the proposed devices satisfy the statutory criteria. That study concluded that the proposed devices were the most effective of the proposed devices at suppressing splash and spray. NHTSA had carefully evaluated this study and discussed it in the April 12, 1985 notice proposing to require these devices. 50 FR 14634. However, that same notice pointed out that NHTSA's own testing and testing sponsored by the Motor Vehicle Manufacturers Association had *not* reached the same results with regard to either the degree or the consistency of the reduction of splash and spray. For instance, the agency noted that its 1983 testing had "raised some significant questions about the ability of flaps and skirts to reduce spray sufficiently so that the difference is perceptible to the unaided eye." 50 FR 14634.

Since making that statement, the agency has analyzed results of all available tests on the effectiveness of the proposed devices. None of these tests duplicated the degree or the consistency of the improvements measured in the 1977 Fort Stockton testing. Additionally, the 1977 Fort Stockton testing was conducted under controlled testing conditions designed to minimize the effects of wind and rain. Accordingly, the agency must conclude that the 1977 Fort Stockton testing does *not* demonstrate that the proposed devices satisfy the statutory criteria.

The September 1987 notice set forth a detailed explanation of why the agency concluded that the Oregon testing, submitted by Schlegel, did not demonstrate that the proposed devices satisfied the statutory criteria. Monsanto asserted that three of the shortcomings of that testing identified by the agency were not really shortcomings. For instance, the agency noted that almost 84 percent of the treated trucks were equipped with *both* the proposed devices and an aeroaid, and that the treated trucks were driven at lower speeds than the untreated trucks. Monsanto sought to explain why these factors would not affect the results. However, Monsanto did not respond to the following discussion:

> Even assuming that the study were controlled for significant variables, * * * there is no indication that the difference would result in any meaningful visibility improvements for drivers in normal wet weather conditions. For instance, if the baseline visibility were rated as "adequate" or better, an increase of 0.27 points would not enhance the visibility of drivers on the wet roads. On the other hand, if the baseline visibility were rated as less than "adequate," an increase of 0.27 points still leaves drivers with less than adequate visibility. 52 FR 36285, at 36288–89; September 28, 1987.

Monsanto did not allege that this conclusion was unreasonable or not

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derived from a careful consideration of the data from the Oregon study. In other words, Monsanto did not expressly state in its comments that the Oregon study demonstrated that the proposed devices significantly reduced splash and spray or significantly improved visibility. Instead, Monsanto commented that the unusually scant rainfall during the study "sharply reduced the extent to which the data could demonstrate the real effectiveness of [the proposed devices]." The assertion that the proposed devices would be more effective if there had been more rainfall is not supported by any evidence. In fact, the author of the Oregon study concluded that the amount of rainfall had a much greater effect on the visibility ratings than did the proposed devices.

After reexamining the Oregon study and considering Monsanto's comments on that subject, NHTSA concluded that the Oregon study did *not* demonstrate that the proposed devices would significantly reduce splash and spray or significantly improve visibility. Therefore, the proposed devices do not satisfy the statutory criteria.

No Other Technology Has Been Demonstrated to Significantly Reduce Splash and Spray and Significantly Improve Visibility

The September 1987 request for comments set forth the bases for the agency's tentative conclusion that aeroaids alone have not been demonstrated to significantly reduce splash and spray and significantly improve visibility under the conditions set forth in the statute. The request for comments noted that the available test data for aeroaids show that these devices offer no visibility improvements when transverse perpendicular crosswinds reach speeds of only 8 mph. Additionally, that request for comments noted, "It appears from engineering analysis applying principles of aerodynamics that aeroaids would not provide any visibility improvements if the truck tractors were coupled with non-van semitrailers or trailers." 52 FR 36285, at 36289; September 28, 1987. The agency notes that these statements about aeroaids alone apply equally to a combination of aeroaids and the proposed devices. No commenters disagreed with the agency's tentative conclusion that aeroaids had not been demonstrated to satisfy the statutory criteria. Therefore, the agency has concluded that the available data do not demonstrate that aeroaids alone, or a combination of aeroaids and the proposed devices, satisfy the criteria set forth in the statute.

Schlegel, one of the manufacturers of the proposed devices, commented that it did not question the agency's analysis of the available data for the proposed devices. However, Schlegel stated it believed that the United Kingdom standard for "close valencing or containment" had been demonstrated to significantly reduce splash and spray and significantly improve visibility. The "close valencing or containment" to which Schlegel referred is a requirement in the British standard that certain wheels be fitted with devices similar to the proposed devices (spray suppressant flaps and side skirts) *and* a fender. According to Schlegel's comment, the combination of the proposed devices and a fender is effective in crosswinds, while the proposed devices alone are not effective in crosswinds.

Monsanto also discussed the developments and studies in the United Kingdom that led to the U.K. enacting a law requiring splash and spray suppression devices on heavy trucks. The British Standards Institute revised its Specification BS AU 200, "Spray Reducing Devices for Heavy Goods Vehicles." This revision specifies that heavy trucks shall either be equipped with fenders or a combination of spray suppressant flaps and side skirts at each wheel position. In the wake of this action, the British government promulgated Motor Vehicle Regulation 1984, No. 1543, requiring all heavy trucks to be equipped with devices that satisfy BS AU 200.

One of the studies that Monsanto asserted led to the British regulation was a 1973 British study, based on data gathered in 1971, that estimated that 7,000 accidents are caused in the United Kingdom each year by splash and spray from heavy trucks. After reviewing this study, NHTSA noted that the study's authors made general assumptions to attribute specific causes to the 25,000 U.K. accidents that are caused by wet roads. After assigning specific causes to 18,000 accidents, the study stated, "The remaining 7,000 [accidents] *may be assumed* to occur due to the generally impaired visibility in wet conditions." (Emphasis added) The study does not explain why such an assumption is reasonable, nor is it obvious that the assumption is valid. Further, Monsanto did not present any evidence indicating that the proposed devices would prevent any of these accidents. In any event, this study was not intended to and does not demonstrate that the proposed devices would significantly improve visibility.

Monsanto also referred to a 1983 study of British drivers, showing that 53 percent of them felt that spray from truck tires was the worst or second worst problem associated with truck traffic. This sample of opinion may demonstarte that British drivers consider splash and spray a problem, but it does not make the statutorily-required demonstration that the devices required by the British standard would significantly improve visibility.

In a final effort to show that devices required by the British standard have been demonstrated to significantly reduce splash and spray and significantly improve visibility, Monsanto attached to its comments a copy of a 1981 study by the University of Southampton, in the United Kingdom. There are several reasons why the agency has concluded that this study does not demonstrate that proposition. The results of the Southampton study were generally consistent with the results of the previously-analyzed MVMA test results. The Southampton study showed some marginal visibility improvements on certain truck configurations. However, the Southampton study did not show consistent visibility improvements to a level of 40 percent or greater light transmission. Accordingly, the agency concludes that the Southampton study did not demonstrate *significant* reductions of splash and spray and significant visibility improvements under conditions designed to *limit* the impacts of the environmental factors that influence the effectiveness of spray suppression devices.

However, the statute does not authorize NHTSA to mandate splash and spray suppression devices if they have been demonstrated to significantly improve visibility under carefully controlled test conditions. Instead, the statute requires the testing to take into account possible wind and rain conditions. The Southampton testing aborted all test runs if the ambient wind speed exceeded approximately 9 miles per hour (4 m/s). As noted in the September 1987 notice, National Weather Service data indicate that the mean wind velocity for the vast majority of the United States is 8 mph or greater. The failure of the Southampton testing to take account of these wind conditions leads to the inevitable conclusion that the Southampton testing did not satisfy the statutory criteria.

In summarizing the results of their testing, the authors of the Southampton study concluded, "Clearly further tests under normal wet motorway conditions would be required to check the spray performance of these devices before they are fitted as a production item." (NHTSA Docket No. 83-05-N04-008, at

p. 102). This statement in the CONCLUSIONS section of the Southampton study indicates that the authors of that study themselves did not believe that it demonstrated that the tested devices significantly reduced splash and spray and significantly improved visibility under normal wind and rain conditions. After again examining the Southampton study in response to Monsanto's comment, NHTSA concludes that it does not demonstrate that the devices required by the British standard would satisfy the criteria of the statute.

Furthermore, the statute requires this agency to make a determination of whether any devices "can significantly reduce splash and spray from truck tractors, semitrailers, and trailers, and can significantly improve visibility of drivers, *as demonstrated during testing on highways, at test facilities, and in laboratories to take into account possible wind and rain conditions.*" (Emphasis added.) NHTSA is not aware of any testing to date of devices mandated in the United Kingdom that satisfies the above-emphasized requirements of the statute. For instance, all of the testing to date, in the United States and the rest of the world, has been done at test facilities and in laboratories, except for the Oregon highway study of the proposed devices that was discussed at length in the September 1987 notice; *see* FR 36288-36289; September 28, 1987. The agency is not aware of, and neither Schlegel nor Monsanto referred to, any testing programs on real highways that shows that the devices mandated by the British standard significantly reduce splash and spray and significantly improve visibility on those highways. Likewise, the agency is not aware of, and neither Schlegel nor Monsanto referred to, any testing that takes into account possible wind and rain conditions. Since almost all testing to date has been conducted at test facilities and in laboratories, that testing was done under conditions designed to *minimize* the effects of possible wind and rain conditions. Accordingly, this testing is not sufficient to enable this agency to determine that the devices mandated by the British standard or any other splash and spray suppression device satisfies the requirements of the statue, by *taking into account* possible wind and rain conditions.

Schlegel implicitly acknowledged the limitations of previous testing, when it stated in its comment that it was currently designing a new testing program in conjunction with some other parties to remedy some shortcomings of the research to date. This testing program will, according to the comment, have three features that testing to date has not had. Schlegel identified these three features as follows:

1. The testing will simulate head and cross winds for the test vehicles;
2. The waterflow will be significantly greater than in previous testing, and
3. The results will be measured based on visibility within the parameters of the human eye, instead of light transmission alone.

Schlegel stated that the next step would be to conduct this additional testing of the proposed devices and fenders. NHTSA agrees with Schlegel's comment that there are obvious limitations in the test results to date for splash and spray suppression devices. These limitations serve to underscore the agency's conclusion that no available splash and spray technology has been demonstrated in testing to date to significantly reduce splash and spray and significantly improve visibility under the conditions set forth in the amended version of section 414 of the STAA.

Several commenters claimed that they had designed a new technology for reducing splash and spray that would satisfy the requirements of the law. Fleet Engineers submitted information on a fender design that that company currently markets. This commenter reasoned that a fender marketed by Schlegel was the most effective spray suppression device measured in the spray tunnel set forth in the 1985 proposal. Accordingly, the commenter concluded that the Schlegel fender would satisfy all requirements of the statute. The commenter stated that its fender was similar to the Schlegel fender. Hence, its fender would also satisfy the requirements of the statue. The commenter concluded by recommending that its fender be listed as one device that must be installed on all new tractors, semitrailers, and trailers as of September 1, 1989.

NHTSA disagrees with the commenter's assumption that the Schlegel fender satisfies all requirements of the statute. NHTSA has concluded that testing to date is inadequate to demonstrate that the Schlegel fender or any other splash and spray suppression device significantly reduces splash and spray and significantly improves visibility, under the conditions specified in the law. This commenter did not provide any additional data or test results for its fender, so the agency concludes that the Fleet Engineers fender has not been demonstrated to significantly reduce splash and spray and significantly improve visibility, under the conditions specified in the law.

Four inventors presented comments describing new splash and spray suppression systems they have invented. Mr. George Metcalf made a presentation at the Washington, DC public meeting, in which he described a system he had invented for reducing splash and spray. Mr. Metcalf displayed some of the devices and showed a video tape of a truck equipped with a prototype of the system. However, Mr. Metcalf did not provide any data to show that his device would satisfy the statutory criteria. Mr. Pierce Wittenberg submitted a comment stating that he is working on designing a truck flap that he claims will reduce spray by 65 percent. Mr. Wittenberg's letter stated that he plans to patent this invention. However, none of these flaps have yet been produced. Mr. John Becker described a fender system he has invented that he states has reduced spray by 95 percent on the road under real world wind and rain conditions. Mr. Becker did not provide the data that formed the basis for this statement. His comment noted that some of the road tests were captured on film, but that "[t]he film is not of sufficient quality, nor were the rains, winds, and speeds high enough to show the dramatic results which were achieved in other tests." Mr. Joseph FitzGerald commented that his two aerodynamic devices would aid in reducing spray. However, Mr. FitzGerald did not submit any data or testing in support of this claim. Whatever the ultimate efficacy of these systems may prove to be, the absence of data at this time compels the agency to conclude that none has been *demonstrated* to significantly reduce splash and spray and significantly improve visibility, under the conditions set forth in the law.

Jeco Plastic Products Co., Inc. (Jeco) commented that its fenders had been demonstrated to satisfy the requirements of the law. In support of this comment, Jeco submitted data from testing by Texas Transportation Institute (TTI). This is the same group that performed the MVMA testing that was analyzed and discussed at length in the September 1987 notice. The testing consisted of 86 test runs for six different teat configurations of fenders. These six configurations resulted from Jeco making adjustments to its fender during the testing to try to optimize the splash and spray reduction.

Since TTI performed the testing for both Jeco and MVMA, the agency analyzed the Jeco test results in the same way it had previously analyzed

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the MVMA results. This analysis yielded the following observations. There were a small number of runs for each of the six test configurations, and some of this small number of runs were questionable. For example, Table 1 of the TTI report for Jeco notes that some of the runs were "bad," without explaining how or why, the water was "too deep" on some runs, and some runs were a "quick test of stuffed fenders." As a result, page 11 of the TTI report states, "We have no explanation for why visibility estimates are less reliable than usual, other than the fact that far fewer runs were made on most configurations than the number usually used for computing visibility." The small number of runs, coupled with the running changes that were made during the testing, means that this testing does *not* provide sufficient information for the agency to conclude that the testing *demonstrated* that the Jeco fender can significantly reduce splash and spray and significantly improve visibility. Additionally, this testing was conducted solely with van trailers. As explained above, testing that satisfied the statutory criteria would have to demonstrate that the devices were effective on tanks and flatbeds, as well as vans.

In addition to the TTI test results, Mr. Claude Travis provided an anecdotal account of the effectiveness of the Jeco fender on highways. However, no data were submitted for the Jeco fender on highways, nor do the available data show that the testing took into account possible wind and rain conditions. Thus, the agency must conclude that the Jeco fender has not been demonstrated to satisfy the statutory criteria.

Other Comments

The Insurance Institute for Highway Safety (IIHS) stated that "the research needed to assess the efficacy of spray suppression is incomplete and terminating the rulemaking at this time would be premature." IIHS complained that NHTSA had not conducted full field evaluations of trucks equipped with the devices required by the British standard or of the drop-bottom trailers used by United Parcel Services.

The comment that it is premature for the agency to terminate rulemaking on splash and spray reflects a possible misunderstanding of the statutory amendment to section 414 of the STAA. That amendment requires NHTSA to take a final action under that statutory provision not later than April 2, 1988. The agency must either:

a. Issue a final rule establishing minimum standards for the performance of splash and spray devices by April 2, 1988, and require the installation of such devices on all new truck tractors, semitrailers, and trailers manufactured on or after April 2, 1989; or

b. Terminate rulemaking not later than April 2, 1988, based on a determination that there is no available technology that has been demonstrated to significantly reduce splash and spray and significantly improve visibility, based on testing on highways, at test facilities, and in laboratories that takes into account possible wind and rain conditions. Thus, the IIHS suggestion that the rulemaking remain open after April 2, 1988, to allow the completion of further research, cannot be considered, because it is beyond the agency's authority.

NHTSA's obligations under section 414 of the STAA are ended by this determination that no technology has been demonstrated to be effective under the conditions set forth in section 414. Based on some of the comments and presentations at the public meetings, the agency believes there may be some misunderstanding about the scope of this determination. Accordingly, NHTSA would like to emphasize the following points.

First, this is *not* a determination that current levels of splash and spray from these vehicles are desirable or are acceptable. Congress itself determined in enacting section 414 in 1982 that the splash and spray from heavy trucks is neither desirable or acceptable. Further, surveys have shown that motorists consider heavy truck splash and spray to be a problem. In addition, the International Brotherhood of Teamsters, speaking on behalf of its members, has made clear in its comments on this rulemaking that heavy truck drivers consider splash and spray to be a problem. NHTSA is *not* concluding that current levels of splash and spray are desirable or acceptable. The law requires NHTSA to determine if any existing means of addressing the problem of heavy truck splash and spray has been demonstrated to be effective under realistic conditions. The fact that no means of addressing this problem has been demonstrated to be effective should not be misinterpreted as an agency determination that splash and spray from heavy trucks does not present visibility problems.

Second, NHTSA is *not* saying that it can never be shown that any means of reducing splash and spray is effective. The agency notes that several commenters to this rulemaking believe that the spray suppression devices they have developed will be effective at reducing splash and spray. NHTSA has *not* determined that these commenters are wrong. Instead, the agency has reviewed all available data for every technology for reducing splash and spray that we know of, and determined that testing to date has not demonstrated that any technology can significantly reduce splash and spray and significantly improve visibility, under the conditions set forth in the law. With further development, research, and testing, it is possible that a product could be demonstrated to be effective at reducing splash and spray under realistic conditions.

Third, and finally, termination of rulemaking under the STAA does *not* end all possible actions by NHTSA to address splash and spray. The agency's authority under the STAA expires with this determination, but the agency has ample authority under the National Traffic and Motor Vehicle Safety Act to propose a regulation addressing the question of heavy truck splash and spray. The agency will monitor the area of heavy truck splash and spray, and the future testing and development of devices to reduce splash and spray. NHTSA would like to note that, just as is the case under the STAA, some technology for reducing splash and spray will have to be demonstrated to be effective *before* NHTSA could exercise its authority under the Safety Act.

Determination

After reviewing all available data on the effectiveness of every technology for reducing splash and spray known to the agency, NHTSA has determined that no available technology has been demonstrated to significantly reduce splash and spray from truck tractors, semitrailers, and trailers, and significantly improve visibility of drivers, during testing took into account possible wind and rain conditions. Thus, according to the express requirements of section 414 of the STAA, this rulemaking action must be, and hereby is, terminated.

Issued on May 20, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–11683 Filed 5–20–88; 1:00 pm]

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Notices

Federal Register

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Wednesday, May 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 20, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Animal and Plant Health Inspection Service

7 CFR Part 353, Phytosanitary Export Certification
PPQ Forms 572, 577 and 579
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 77,500 responses; 63, 750 hours; not applicable under 3504(h)
Leonard M. Crawford (301) 436–8537

- Animal and Plant Health Inspection Service

Request for Reimbursable Overtime Services
PPQ Form 192
On occasion
Individuals or households; Businesses or other for-profit; Non-profit institutions; 2000 responses; 166 hours; not applicable under 3504(h)
Cheryl Jenkins (301) 436–8548

- Departmental Administration

Solicitation/Award/Administration of Contracts for Procuring Goods and Services
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 638,800 responses; 129,000 hours; not applicable under 3504(h)
Larry Schereier (202) 447–8924

Revision

- Animal and Plant Health Inspection Service

9 CFR Part 166, Swine Health Protection
Forms VS 13–15, 13–16, 13–17
Recordkeeping; On occasion
Farms; Small businesses or organizations; 724 responses; 178 hours; not applicable under 3504(h)
D.F. Schwindaman (301) 436–8438

New

- Foreign Agricultural Service

Targeted Export Assistance Program for Fiscal Year 1989
Recordkeeping; Monthly; Quarterly; Annually
State of local governments; Businesses or other for-profit; Non-profit institutions; 1200 responses; 192,000 hours; not applicable under 3504(h)
Richard E. Passig (202) 447–4327
Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 88–11763 Filed 5–24–88; 8:45 am]
BILLING CODE 3410-01-M

Office of International Cooperation and Development

USDA Agribusiness Promotion Council; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on the Caribbean Basin Initiative, will meet from 8:00 a.m. to 5:00 p.m. on Monday, June 27, 1988. The meeting will be held in Rm. 104–A Administration Building, U.S. Department of Agriculture. The agenda for the meeting includes: Report on last year's activities, discussion of issues of concern to the entire Council, and recommendations on the future direction of the program and specific projects. The meeting is open to the public.

Comments may be submitted to Dr. Joan S. Wallace, Administrator, Office of International Cooperation and Development, until noon on June 23, 1988. Further information may be obtained by calling the Private Sector Relations Division, Office of International Cooperation and Development, (202) 653–7873. Signed at Washington, DC on May 19, 1988.

Joan S. Wallace,

Administrator, Office of International Cooperation and Development.

[FR Doc. 88–11764 Filed 5–24–88; 8:45 am]

BILLING CODE 3410-43-M

Animal and Plant Health Inspection Service

[Docket No. 88–093]

Availability of Environmental Assessment and Finding of No Significant Impact for 1988 Spring-Summer Boll Weevil Suppression Program in Alabama, Florida, Georgia, and South Carolina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental

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assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the 1988 Spring-Summer Boll Weevil Suppression Program in Alabama, Florida, Georgia, and South Carolina. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environment assessment and finding of no significant impact are available for public inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 1141, South Agricultural Building, 14th and Independence Ave., S.W., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert Pizel, Chief Staff Officer, Program Planning and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5235.

SUPPLEMENTARY INFORMATION:

Background

The boll weevil was introduced in 1892 near Brownsville, Texas. From that point of introduction the weevil spread quickly, and by 1922, it had completely infested a region known since then as the Boll Weevil belt. This area includes all or parts of 13 States extending from California to Virginia, and involves nearly 11 million acres of cotton.

As the boll weevil spread eastward and westward from its point of origin, it has caused more damage than any other cotton pest. It is currently the most important agricultural pest in the United States, responsible for more than $300 million in annual losses and control costs for cotton. The damage caused by the boll weevil and other pests has been estimated to be 7 to 20 percent of the U.S. crop. Growers expend about $200 million annually for chemical insecticides and applications.

In infested areas, economic losses from boll weevil infestations can be prevented only by intensive use of chemicals. Frequently, these chemicals must be applied repeatedly throughout the growing season to control weevils and any resulting secondary pests. Within the proposed program area, the boll weevil may be indirectly responsible for much of the damage caused by the bollworm, the tobacco budworm, and spider mites, because insecticides used to control the boll weevil destroy many of the natural enemies of these species. This, in turn, often results in higher crop losses and even more intensive use of insecticides to protect the crop from these pests. This boll weevil cycle results in very few options for using pest management control strategies against other pests.

In the past, APHIS has employed an Integrated Pest Management strategy for the eradication of boll weevil infestations that has resulted in a dramatic decrease in pesticide usage. An example of the effect boll weevil eradication has upon pesticide usage in cotton production areas is well demonstrated by the results seen in the Boll Weevil Eradication Trial implemented in northeastern North Carolina and southeastern Virginia in 1978 through 1982.

In 1978, the U.S. Department of Agriculture (USDA) began a Trial Boll Weevil Eradication Program on approximately 14,000 acres of cotton in northeastern North Carolina and southeastern Virginia. The purpose of this trial was to determine if the technical and operational requirements for eradication could be executed successfully in a large-scale program. When the trial was completed in 1980, cotton acreage had increased from 14,000 to 34,000 acres in the program area. The population suppression technology used in the trial program involved the integration of chemical, biological, and cultural control measures in a precisely timed program. The biological control measures included, among other techniques, field testing sterile weevil technology.

The trial program was considered a success. With concurrent conservative use of insecticides and apparently increasing populations of natural enemies of bollworms and budworms, the eradication of a well established boll weevil population was demonstrated to be a biological as well as a technical success. In 1983, the program was expanded to include the lower half of North Carolina and all of South Carolina. This expanded program was completed at the end of the 1986 season, and involved approximately 145,000 additional acres of cotton. In the first year, the trial program involved controlling other cotton insect pests as well as the boll weevil. In the expanded 1983–1986 program, however, the Department applied control measures only against the boll weevil.

The USDA is committed to support the cotton grower's efforts in eradicating the boll weevil from the cotton belt. The 1988 Spring-Summer Boll Weevil Suppression Program is designed to maintain areas of boll weevil eradication in Virginia, North Carolina, and South Carolina, and suppress 1988 Spring-Summer boll weevil populations in support of eradication efforts in Alabama, Florida, Georgia, and South Carolina.

The following alternatives were considered in selecting the recommended course of action:

1. No Action Alternative

The no action alternative would involve no Federally sponsored program control activity in the designated program area. This approach would result in the need for growers, or other non-Federal organizations to plan, organize, and implement their own controls for the boll weevil.

2. Sterile Insect Technique Alternative

With this alternative, boll weevils are reared in a laboratory, subjected to sterilizing radiation, and then aerially released into the program area. The sterile weevils then mate with the wild boll weevils and the eggs produced are nonviable.

3. Cultural Alternative

Cultural control of the boll weevil involves managing the cotton crop in a way that reduces or eliminates the food and reproduction habitat of the pest. Legally mandated stalk destruction (plowdown or shredding), early planting dates, and cotton varietal selection by growers are the primary cultural alternatives considered in this assessment. Growers are also encouraged to avoid planting cotton in areas which are difficult to treat by aerial application.

4. Chemical Alternative

The chemical alternatives considered are any of three primary program insecticides registered by the Environmental Protection Agency for use on cotton: azinphos-methyl, diflubenzuron, or malathion. Another pesticide, Propoxur, is used in boll weevil traps for survey and control purposes.

5. Integrated Pest Management (IPM) Alternative

The IPM alternative is the selection, integration, and implementation of pest control tactics in a systematic approach on the basis of anticipated ecological, economic, and sociological consequences. Here, IPM would allow any of the previously described techniques (no action, sterile insect, cultural, and chemical) to be selected singly or in combination for boll weevil control. Several factors considered would be ecological (the impact on nontarget organisms and the environment), economic (the cost and the cost effectiveness of various methods in the short and long term), and sociological (the acceptability of various IPM methods to cooperators, or the potential effects on land use).

APHIS has selected alternative 5 because this alternative will provide appropriate integration of control strategies in a systems approach, and will afford the best combination of environmental protection and program efficacy.

The facts supporting APHIS' finding of no significant impact are summarized below and contained in the environmental assessment.

The very nature of the 1988 Spring-Summer Boll Weevil Suppression Program (controlled treatment of cotton monocultures only) greatly reduces potential environmental effects, and when coupled with well-planned program safeguards or mitigative procedures, results in an environmentally sound, effective program. Program data, research, and careful evaluation indicate that all potential environmental effects have been identified. It is concluded that there will be no significant primary or secondary effects on the environment, and that negligible long term negative effects might be expected as a consequence of the program. Cumulative effects have been considered, and it is anticipated that the program will have beneficial effects on the environment through the coordinated and planned reduction of current pesticide use.

Standard program mitigation protects human beings and the quality of the human environment by: (1) Ensuring that humans will not come into contact with program pesticide, (2) containment of pesticide during mixing, loading, and storage, and (3) cholinesterase testing of program personnel. Wildlife and other species of concern are protected from significant environmental risks by program design, species habitat selectivity, and standard mitigation as described in the environmental assessment. Reduced pesticide usage will further protect the beneficial insect complex, enabling beneficial insects to become increasingly important in control of cotton pests which remain after boll weevils have been eradicated.

After considering the cumulative effects of implementing the selected alternative, APHIS has concluded there will be no primary or secondary effects on the human environment as a result of the program, and that any long-term negative effects will be negligible.

APHIS has evaluated the uniqueness or rareness of resources being affected and concluded that the selected alternative is not likely to have an adverse effect on the existence of any endangered or threatened species or their associated habitats.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) the Council on Environmental Quality's National Environmental Policy Act Regulations (40 CFR Parts 1500 through 1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Concerning the Implementation of NEPA Procedures (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 18th day of May 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–11766 Filed 5–24–88; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Mono Basin National Forest Scenic Area Minor Boundary Revisions

ACTION: Notice of boundary revisions.

AGENCY: Forest Service, USDA.

SUMMARY: The Secretary of Agriculture has approved minor boundary revisions for the Mono Basin National Forest Scenic Area which was established by sec. 301 of the California Wilderness Act of 1984 (98 Stat. 1632). On September 11, 1986, at 51 FR 32344, the Forest Service gave notice of six minor revisions in the boundary of the Scenic Area. Changes in the proposal have been made based on comments received from the public.

EFFECTIVE DATE: By order of the Secretary, these boundary revisions shall be effective July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Johnson, Lands Specialist, USDA, Forest Service, P.O. Box 96090, Washington, DC 20090–6090, (703) 235–2406 or John Ruopp, Recreation Staff Officer, Inyo National Forest, 873 N. Main, Bishop, California, (619) 873–5841.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the California Wilderness Act of 1984 (98 Stat. 1632) establishing the Mono Basin National Forest Scenic Area, the Secretary of Agriculture has approved four (4) minor revisions to the boundary of the Scenic Area as it was originally shown on a map dated June 1983. The proposed revisions were reviewed and adopted by the Scenic Area Advisory Board and published in the Federal Register on September 11, 1986. Affected landowners were notified by mail. Comments on the proposed revisions were requested. Three responses were received.

Summary of Key Public Comments and Agency Responses

Proposed Revision 1

The proposal was to delete 53 acres of private and public land adjacent to the boundary from the Scenic Area. The excluded private land was subdivided prior to the establishment of the Scenic Area and private residences have been constructed. The entire excluded parcel is not part of the Scenic Area viewshed and will clarify the boundary. No comments were received. This boundary revision was, therefore, adopted without change.

Proposed Revision 2

This proposed revision included private land with the concurrence of the landowner. It is a logical extension of the boundary and includes land important to maintaining visual values of the Scenic Area. This parcel is located between a major travel route and the shores of Mono Lake, is highly visible from throughout the Scenic Area and has the potential for subdivision if it is not included. It would add approximately 160 acres to the Scenic Area.

Comment: The landowner involved in Proposed Revision 2 of September 11, 1986, withdrew support for inclusion following publication of the Notice of Proposed Boundary Revisions.

Response: This parcel was outside the original boundary but is important to the maintenance of visual values within the Scenic Area, since it is located between a main travel way and the shores of Mono Lake. This parcel has potential for subdivision and consequent construction of private residences. With the original landowner's concurrence, the Forest Service recommended that the parcel be added as a important extension of the Scenic Area. Ownership of the property changed after the owner withdrew support. The new owner concurs not only in the original recommendation that the parcel be included within the Scenic Area, but also concurs in the inclusion of an additional 77 acres adjacent to the 160 acres, and in the same ownership. These

lands were purchased specifically for exchange for other National Forest System lands within the Inyo National Forest. Therefore, the final boundary revision includes not only the 160 acres originally proposed for inclusion but the additional 77 acres proposed by the landowner.

Proposed Revision 3

This proposal sought to clarify the description of portions of the eastern boundary of the Scenic Area as originally shown. The original boundary follows a sandy, four-wheel drive trail that is inaccurately shown on maps. This road also has a tendency to change location depending on weather factors. The new boundary will be a fixed location, easily marked and shown on maps. The included lands are currently public lands administered by the Bureau of Land Management. No comments were received on this proposal and the final boundary revision is identical to that proposed. These lands will become National Forest System lands effective with the boundary revision. This inclusion adds approximately 961 acres to the Scenic Area.

Proposed Revision 4

The proposed revision was to exclude 0.4 acre of private land from the Scenic Area. The property was improved with a cabin after the Scenic Area was established. Because this proposed revision would exclude a small area south of Pole Line Road permitting uncontrolled development potentially detrimental to the integrity of the Scenic Area, the proposed revision will not be pursued at this time. Rather, the situation which caused the boundary revision proposal will be resolved through application of the "Private Property Development Guidelines" adopted for the Scenic Area.

Proposed Revision 5

The proposed revision was at the request of the landowner, the Boy Scouts of America. Deletion of about 238 acres would allow feasible development. Boundary revision would not be detrimental to the integrity of the Scenic Area. The proposed revision will not be pursued at this time because the involved landowner has indicated a desire to sell the property and is currently seeking a buyer. The need for the boundary revision may no longer exist dependent on the needs of the new owner. The boundary revision may be resubmitted at a later time as the need is clarified.

Proposed Revision 6

The revision is necessary to include the location of the proposed Mono Basin National Forest Scenic Area Visitor Center, authorized by the Act. The land is owned by the City of Los Angeles, Department of Water and Power (DWP). A land exchange involving other National Forest lands is in progress whereby the land in question will be added to the National Forest System. The DWP has agreed to the boundary revision. The inclusion adds approximately 104 acres to the Scenic Area. No comments were received, so the boundary is revised as proposed.

Additional Comments

In addition to comments on the proposed revisions, the Forest Service received individual requests to remove two parcels of private land from the Scenic Area, as well as mining claims adjacent to one private land parcel. These parcels were not identified for removal in the September 11, 1986, proposal.

The first parcel is 320 acres of private land and adjacent mining claims located on National Forest lands. It lies one half mile inside the current boundary with no portion of it adjacent to the boundary. This parcel will not be excluded since exclusion of interior parcels is contrary to the intent of the Scenic Area statute and would be detrimental to the integrity of the Scenic Area. The Scenic Area Advisory Board concurs.

The second parcel is adjacent to the boundary and is 133 acres. This parcel consists of rolling to steep terrain. Mill Creek flows through the parcel. The respondent suggested the Forest Service retain a portion of the parcel within the Scenic Area and exclude the remainder. Much of the parcel that the respondent proposes for exclusion is highly visible from other parts of the Scenic Area. Exclusion would be detrimental to the visual value of the Scenic Area as exclusion would allow subdivision and subsequent use of the land not guided by the provisions of the Private Land Guidelines adopted for the Scenic Area. Accordingly, this parcel will not be excluded. The Advisory Board concurs.

Summary

These actions are of limited magnitude as most of the included lands are public lands. The boundary changes will include lands that will benefit and protect the resources and scenic values of the Scenic Area and will clarify the boundary location. The private lands (Revision 2) are added with the concurrence of the landowner who is actively pursuing a land exchange for comparable National Forest System lands within the Inyo National Forest. The net effect is to add approximately 940 acres of public lands, 104 acres of City of Los Angeles lands, and 225 acres of private lands. Based upon an environmental assessment, it has been found that these proposed changes will not have a significant impact on the quality of the human environment. Therefore, a detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c) is not required (40 CFR 1501.4).

In addition to publication in the Federal Register, notice of minor boundary revisions has been submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, as required in the Act. Maps showing the revisions are available at the Office of the Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California, and at the office of the District Ranger, Mono Lake Ranger District, Lee Vining, California.

Having considered the comments received, the Forest Service revised its recommendations to the Secretary who has approved the final revisions. A copy of the Secretary's order which includes the legal description of the boundary changes appears at the end of this notice.

George M. Leonard,
Associate Chief.

Date: May 19, 1988.

Revision of Boundaries of the Mono Basin National Forest Scenic Area, Inyo National Forest, California

Pursuant to the authority granted to the Secretary of Agriculture by Section 301 of the California Wilderness Act of 1984 (16 U.S.C. 543), I hereby approve the following minor boundary revisions for the Mono Basin National Forest Scenic Area which are depicted on maps on file at the office of the Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California, and at the office of the District Ranger, Mono Lake Ranger District, Lee Vining, California.

All Descriptions Are for the Mount Diablo Base Meridian

Revision 1

T2N R25E

Sec 13—NE¼NE¼; that portion of the NW¼NE¼ lying south of the northernmost edge of the right-of-way for the Lundy Lake Road (right-of-way S 038388, 200 feet from centerline on public lands); SE¼NE¼; SW¼NE¼, except that portion of Lot 12 as shown on the Final Parcel Map numbered 34-3 and as recorded beginning on page 57 of Parcel Maps Book No. 2, County of Mono, and as shown on Exhibit C dated August 20, 1986, on file at the Forest Supervisor Office, 873 N. Main, Bishop, CA, and at the District Ranger Office, Lee Vining, CA; that portion of the NE¼NW¼ lying south of the northern most edge of the right-of-way for the Lundy Lake Road and lying east of the easterly line of Lot 12 (said line having a bearing of N 26 degrees, 13 minutes, 9 seconds W as recorded above); SE¼NW¼, except Lots 9, 10, 11, 12 of Parcel 34-3 as recorded above and as shown on Exhibit C; SE¼; SW¼, except Lots 5, 6, 7, 8 of Parcel 34-3 as recorded above and shown on Exhibit C.

Revision 2

T2N R26E

Sec 7—That portion of the S½S½ SW¼ lying south of the southerly survey line for the Mono City Subdivision as recorded in Mono County Record of Maps, Volume 2, pages 121a and 121b, and as further shown on Exhibit D, dated February 9, 1987, on file at the Forest Supervisor Office, 873 N. Main, Bishop, CA, and at the District Ranger Office, Lee Vining, CA, and that portion lying west of the western most edge of right-of-way S 053845; that portion of the SW¼SE¼ lying south of the southerly survey line for the Mono City subdivision as recorded as above.

Sec 18—all, except that portion lying north of the southerly survey line for the Mono City subdivision as recorded in Mono County Record of Maps, Volume 2, pages 121a and 121b, and further excepting those parcels identified as assessors parcel numbers 1 and 2 as shown on Mono County Assessors Map Book 19, page 15 (10/82), all as shown on Appendix D, dated February 9, 1987.

Revision 3

T3N R28E

Sec 19—W½E½; W½ partly unsurveyed.
Sec 30—all
Sec 31—all
Sec 32—W½NW¼; SW¼.

T3N R27E

Sec 13—that portion lying south of the northernmost edge of right-of-way S 038388 (California State Highway 167, 200' from centerline).

Sec 23—that portion lying south of the northernmost edge of right-of-way S 038388 (California State Highway 167, 200' from centerline)

Sec 24—that portion lying south of the northernmost edge of right-of-way S 038388 (California State Highway 167, 200' from centerline)

Revision 4

T1N R26E

Section 6—That portion of the NE¼ lying east of the western most edge of right-of-way S 030385 (US Highway 395) and lying north of the extended northerly property line of the Lee Vining High School site as described below and as shown on Exhibit B.

Section 9—NE¼NW¼; NW¼NW¼ except that portion occupied by the Lee Vining High School as shown on the Record of Survey filed in Mono County Book 6 of maps, page 51; that portion of SW¼NW¼ lying north of the Lee Vining High School site as described above, all as shown on Exhibit B, dated April 24, 1986, on file at the Forest Supervisor Office, 873 N. Main, Bishop, CA and at the District Ranger Office, Lee Vining, CA.

The net effect is to add approximately 940 acres of public lands, 104 acres of City of Los Angeles lands, and 225 acres of private lands.

These revisions shall become effective 60 days from the date notice is published in the Federal Register.

Richard E. Lyng,
Secretary of Agriculture.

Date: April 27, 1988.

[FR Doc. 88-11702 Filed 5-24-88; 8:45 am]
BILLING CODE 3410-11-M

Mt. Hood Meadows Ski Area (1988); Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, with assistance from the Firm of Cogan, Sharpe, Cogan (Portland, OR), will prepare an environmental impact statement (EIS) for a proposal to expand the Mt. Hood Meadows Ski Area on the Hood River Ranger District, Mt. Hood National Forest, Hood River County, Oregon. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and effected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 1, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to David G. Mohla, Forest Supervisor, Mt. Hood National Forest, 2955 N.W. Division St., Gresham, Oregon 97030.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Doug Cochnour, Ski Area Planner, Mt. Hood National Forest, phone (503-666-0706) and Charles Parker, District Ranger, Hood River Ranger District, Mt. Hood National Forest, 6780 Highway 35, Mt. Hood-Parkdale, Oregon 97041, phone (503-666-0701).

SUPPLEMENTARY INFORMATION: A Final Environmental Statement (FES) was prepared for the Mt. Hood Meadows Ski Area in 1978. The area operator, Mt. Hood Meadows Oregon, Ltd., has now proposed additional development beyond the scope of the original 1978 FES. A new EIS will be written to replace the original FES and evaluate the new development proposals.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this site. One alternative will consider no additional development (No Action). A range of alternatives will be developed and examined to deal with the significant issues developed during the scoping process. Alternatives will consider development designs with capacities ranging from 8,600 to 17,500 skiers at one time. Alternative locations for uphill facilities, ski runs, boundary expansion, over-night housing and other support facilities will also be considered.

David G. Mohla, Forest Supervisor, Mt. Hood National Forest, Gresham, Oregon, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

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8. Determining potential cooperating agencies and task assignments.

The U.S. Army Corps of Engineers and the Oregon Department of Transportation (ODOT) will be invited to participate as Cooperating Agencies. The Corps of Engineers has permit authority over any potentially impacted wetland areas. ODOT has expressed an interest in any potential impacts to State Highways 26 and 35.

Public meetings will be held in the Gresham and Hood River, Oregon areas. Notice of meeting dates and locations will be published in local newspapers and a newsletter and posted in public buildings well in advance of the meetings.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1988. At that time copies of the DEIS will be distributed to interested and affected agencies, organizations and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Mt. Hood Meadows Ski Area participate at that time.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519,553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by February 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 211.18.

Dated: May 13, 1988.

David G. Mobia,

Forest Supervisor.

[FR Doc. 88-11755 Filed 5-24-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held June 15, 1988, at 9:00 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to Semiconductor equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information call Ruth D. Fitts at 202-377-2583.

Date: May 19, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-11707 Filed 5-24-88; 8:45 am]

BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Cellulose Insulation Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through May 31, 1991, of information collection requirements in the Amended Interim Safety Standard for Cellulose Insulation (16 CFR Part 1209). The standard is intended to eliminate or reduce unreasonable risks of injury associated with flammable or corrosive cellulose insulation and prescribes requirements for flame resistance and corrosiveness of that product. Sale or distribution of cellulose insulation which does not comply with the requirements of the standard violates section 19 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2068). Additionally, section 14 of the CPSA (15 U.S.C. 2063) requires manufacturers of cellulose insulation to issue certificates of compliance with the standard which are based on a reasonable testing program. Regulations implementing the standard prescribe testing and recordkeeping requirements for a reasonable testing program to support certificates of compliance.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Amended Interim Safety Standard for Cellulose Insulation; 16 CFR Part 1209.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon the individual manufacturer's production and the reasonable testing program in use.

General description of respondents: Manufacturers of cellulose insulation.

Estimated number of respondents: 250.

Estimated average number of hours per respondent: 26.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request are available from Franchine Shaster, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 20, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-11691 Filed 5-24-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Realignment and Closure Commission; Meeting

ACTION: Notice of Business Meeting and Public Hearing.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a business meeting at 9:00 a.m., June 8, 1988 in the Dirksen Senate Office Building, Room 628 to discuss its plan of action, as well as procedures and rules. This will be followed by a hearing at 10:00 a.m., to take testimony from members of Congress, the Joint Chiefs of Staff, the Military Services, the Defense Logistics Agency, and non-governmenal witnesses. The purpose of this first hearing it to obtain information on current and future defense mission and force structure requirements, and to identify the process and criteria the Services use for reviewing their base structure. This open forum will also provide interested parties an opportunity to inform the Commission about problems and possible solutions concerning base realignment and closure actions.

FOR FURTHER INFORMATION, PLEASE CONTACT: Russel Milnes, (202) 653-0160, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1988.

[FR Doc. 88-11742 Filed 5-24-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 14—15 June 1988.

Time of Meetings: 1230-1700 hours, 14 June 1988; 0800-1400 hours, 15 June 1988.

Place: Institute of Defense Analysis, Alexandria, VA, 14 June 1988; HQ US Air Force, Assistant Chief of Staff for Studies and Analysis, Pentagon, Washington, DC, 15 June 1988.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet with members of the Institute of Defense Analysis and also with personnel from HQ USAF Assistant Chief of Staff for Studies and Analysis for briefings concerning analytic study management practices. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably interwined. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-11739 Filed 5-24-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire, SF 254.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Chester Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523-3850.

SUPPLEMENTARY INFORMATION:

a. Purpose: This form is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A-E) projects. The form is submitted annually as required by 40 U.S.C. 541-544 by firms wishing to be considered for Government A-E contracts.

The information obtained on this form is used to determine if a firm should be solicited for A-E projects.

b. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 5,000; responses per respondent, 7; total annual responses, 35,000; preparation hours per response, 1; and total response burden hours, 350,000.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0004, Architect-Engineer and Related Services Questionnaire, SF 254.

Dated: May 18, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-11758 Filed 5-24-88; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire for Specific Project, SF 255.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Chester Mathews, Office of Federal Acquisition and Regulatory Policy, (202) 523–3656.

SUPPLEMENTARY INFORMATION:

a. Purpose: This form is used by all executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project. Hence, the need for information regarding the number and discipline of consultant personnel. The degree to which an A–E firm will utilize consultants can significantly impact on their suitability and qualifications for a specific project. The revision to the form requesting A–E firms provide the name and phone number of a point of contact, usually the project manager, will: (1) Reduce the time required by the Government to verify performance on current Federal contracts and (2) reduce the time lost by the A–E firms providing this information at a later date.

The information is used to determine if a firm is qualified to perform a specific project.

b. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 5,000; responses per respondent, 4; total annual responses, 20,000; preparation hours per response, 1.2; and total response burden hours, 24,000.

Obtaining Copies of Proposals

Requestor may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project, SF 255.

Dated: May 18, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88–11757 Filed 5–24–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting at two locations on consecutive days:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Thursday, June 16, 1988, 8:00 a.m. to 6:00 p.m.

Place: U.S. Department of Energy, Savannah River Plant, Main Administration Building 703–41A, Savannah River Plant Road No. 1, Aiken, South Carolina 29802.

Date & Time: Friday, June 17, 1988, 8:00 a.m. to 3:00 p.m.

Place: University of South Carolina, Aiken, Room 110, Classroom Building, 171 University Parkway, Aiken, South Carolina 29801.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S–3, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586–1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda: June 16, 1988.

- Savannah River Response the National Academy (NAS) Report on Defense Production Reactors.
- Noon to 1:00 p.m.—Lunch.
- Savannah River Rationale for Returning Reactors to Higher Power Levels.
- Savannah River Presentations on Selected Issues.
- Public Comment.

June 17, 1988.

- Public Comment.
- Noon to 1:00 p.m.—Lunch.
- Savannah River Perspective on Safety Issues.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–11704 Filed 5–24–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–383–000 et al.]

Tennessee Gas Pipeline Co. et al., Natural gas certificate filings

May 20, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88–385–000]

Take notice that on May 9, 1988, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–385–000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for UER Marketing Company (UER) under Tennessee's blanket certificate issued on June 18, 1987, in Docket No. CP87–115–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposed to transport for UER up to 50,000 dthd of natural gas, or approximately, 7,300,000 dth annually, pursuant to a transportation agreement dated April 4, 1988, from a receipt point at Black Lake, Natchitoches Parish, Louisiana, to a redelivery point in St. Mary Parish, Louisiana. Tennessee states the transportation service commenced April 19, 1988, as reported in Docket No. ST88–310.

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP88–377–000]

Take notice that on May 5, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88–377–000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(a)(b) of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 300,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Shell Gas Trading Company (Shell), a marketer of natural gas. Receipt points are located in Nueces, Jim Wells, Refugio and Wharton Counties, Texas, Cameron Parish, Louisiana and Vermilion Block 221 and West Cameron Block 170, offshore Louisiana, and delivery points are located in Cameron and Vermilion Parishes, Louisiana. Transportation would be performed under Natural's blanket certificate issued in docket No. CP88–583–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for Shell on March 4, 1988 at Docket No. ST88–3240 for a one hundred and twenty (120) day period ending July 2, 1988, pursuant to Section 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b).

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88–382–000]

Take notice that on May 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, pursuant to Section 7(b) of the Natural Gas Act, as amended, filed in Docket No. CP88–382–000 an application requesting an order permitting and approving abandonment of its Needville Compressor Station and related facilities located in Fort Bend County, Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, United proposes to abandon in place the aforementioned station, consisting of six 1,320 H.P. reciprocating engine units. Due to increased population density around United's 30-inch Needville to Goodrich Main Line, United reduced the maximum allowable operating pressure in order to remain in compliance with Department of Transportation's guidelines (DOT 192), it is stated. Since United is operating this line at reduced pressures, United states that it no longer needs on its own line the compression capacity of the Needville station. United plans now to use this compressor station and the related facilities in activities that are outside the Commission's jurisdiction.

Comment date: June 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP88–362–000]

Take notice that on May 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP88–362–000 a request pursuant to Section 7(b) of the Natural Gas Act, for authorization permitting and approving abandonment of (1) deliveries to Entex, Inc., a local distribution company, at a 1-inch farm tap located in St. Mary Parish, Louisiana and (2) approximately 0.39 mile of associated 6⅝ inch transmission pipeline and appurtenant facilities, all as more fully set forth in the application with is on file with the Commission and open for public inspection.

United states that, on December 10, 1987, it received notice from Entex, Inc. that it would no longer need gas at the above described location because the end-user (a farmer) no longer desired service. United further states that the related facilities are not currently being used and that it has no alternative use for such facilities in its operation. Thus, United proposes to abandon the facilities in place. The cost of the proposal is estimated to be $1,625. Finally, United states that the abandonment would not adversely affect or cause loss of service to any of its existing customers.

Comment date: June 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP88–371–000]

Take notice that on April 29, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–371–000, an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate additional points of delivery for existing wholesale customers under the certificate issued in Docket No. CP83–76–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate the facilities necessary to provide thirty additional points of delivery, as follows:

Wholesale customers	Commercial	Residential	Industrial	Annual volumes
Columbia Gas of Kentucky, Inc.		2		300 Mcf.
Columbia Gas of Ohio, Inc.	2	9	1	67,799 Mcf.
Columbia Gas of Pennsylvania, Inc.	2	1		1,405 Mcf.
Columbia Gas of Virginia, Inc.			1	346,800 Mcf.
Dayton Power and Light Company		4	1	5,092 Mcf.
Elam Gas Company			1	12,008 Mcf.
Mountaineer Gas Company		2		300 Mcf.
UGI Corporation			1	320,000 Dth.
Union Light, Heat and Power Company		1		200 Mcf.
Waterville Gas and Oil Company		1		2,000 Dth.
Waterville Gas and Oil Company		1		140 Mcf.

Columbia states that the additional points of delivery are required to serve new requests made by Columbia's wholesale customers for residential, commercial and/or industrial service. The quantities to be provided through the new delivery points are within Columbia's currently authorized level of service and would be within the peak day and annual delivery entitlements of such customers, it is stated. The sales to be made through the proposed points of delivery would be under Columbia's currently effective Service Agreements with such customers under Rate Schedule CDS or SGS, it is stated.

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Michigan Consolidated Gas Company—Interstate Storage Division

[Docket No. CP88-378-000]

Take notice that on May 6, 1988, Michigan Consolidated Gas Company—Interstate Storage Division (ISD), 500 Griswold Street, Detroit, Michigan 48226, filed in Docket No. CP88-378-000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act and its blanket certificate issued in Docket No. CP82-532-000 to undertake storage service for Western Gas Marketing USA Ltd. (WGM), all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that pursuant to the storage service agreement between ISD and WGM, ISD would provide storage service on behalf of WGM effective on the date of first delivery and continuing through March 31, 1993. It is also stated that ISD would take receipt of up to 4,000,000 Mcf of natural gas, plus compressor fuel of .9 percent of such volumes, which WGM would cause ANR Pipeline Company (ANR) and Consumers Power Company (CPCO) to tender to ISD for WGM's account at the interconnection between the facilities of ISD and ANR in Washtenaw County, Michigan (Willow Run); the interconnection between the facilities of ISD and ANR in Mecosta County, Michigan (Woolfolk); the interconnection between the facilities of ISD and CPO in Wayne County, Michigan (Northville) or other points mutually agreed to by the parties from time to time. It is maintained that ISD would store the gas and redeliver equivalent volumes, exclusive of compressor fuel, to ANR and CPCO for WGM's account at the interconnection between the facilities of ISD and ANR in Washtenaw County, Michigan (Willow Run); the interconnection between the facilities of ISD and ANR in Mecosta County, Michigan (Woolfolk); the interconnection between the facilities of ISD and CPCO in Wayne County, Michigan (Northville); or other points mutually agreed to by the parties from time to time.

It is asserted that as consideration for providing the storage service, ISD would receive 48.66 cent per Mcf of storage contract demand pursuant to Rate Schedule S-6 and 44.72 cent per Mcf of storage contract demand pursuant to Rate Schedule S-7. It is stated that such revenues received by ISD would be refunded to ISD's customers in accordance with Article IX of the Stipulation and Agreement approved by the Commission's Letter Order issued January 11, 1985, in Docket No. RP84-13-000.

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Arkla Energy Resources, Division of Arkla, Inc.

[Docket No. CP88-376-000]

Take notice that on May 5, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP88-376-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate 21 sales taps for the delivery of natural gas to right-of-way grantors and to continue to operate transmission facilities consisting of 54.8 miles of 8-inch pipeline which were installed under Natural Gas Policy Act Section 311 authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER proposes to install the interconnecting taps and related facilities in order to deliver gas to Arkansas Louisiana Gas Company (ALG), also a division of Arkla, Inc., for resale to new residential and commercial customers in Desha and Arkansas Counties, Arkansas. It is estimated that the cost of each tap would be $31,500. It is stated that AER would deliver to ALG up to 440 Mcf on a peak day and 19,710 Mcf on an annual basis. AER states that without authorization for the tap facilities, the customers would be forced to use propane. It is asserted that the gas would come from AER's system supply, which is more than adequate to serve the customers, and that AER's existing customers would not be adversely affected.

AER also requests 7(c) authorization for the continued operation of Line TM-10 in order for the line to be used in interstate commerce for the delivery of gas to the right-of-way grantors. It is explained that Line TM-10 was installed in 1966 pursuant to section 311 of the Natural Gas Policy Act in order to permit ALG to transport up to 10,000 Mcf of gas per day to a paper mill owned by Potlatch Corporation (Potlatch) near Rowher, Arkansas. It is asserted that AER proposes to continue the transportation for Potlatch under Section 311 authorization.

Comment date: June 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Trunkline gas Company

[Docket No. CP84-760-008]

Take notice that on May 3, 1988, Trunkline Gas Company (Trunkline), P.O. box 1642, Houston, Texas 77001, filed in Docket No. CP84-760-003 a petition to amend the order issued June 7, 1985, in Docket Nos. CP84-760-000 and CP84-760-001, pursuant to section 7(c) of the Natural Gas Act so as to authorize Trunkline to convert its transportation service for Amoco Gas Company (Amoco) from a firm basis to an interruptible basis, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Trunkline states that it is presently authorized to transport up to 5,000 Mcf per day of natural gas on a firm basis for Amoco from a point of receipt in South Timbalier Block 161, offshore Louisiana, to the interconnection between the facilities of Amoco and Trunkline near Katy, Waller County, Texas. Trunkline further states that Amoco has requested that this service be converted from a firm basis to an interruptible basis. Trunkline states that it would charge 16.01 cents per decatherm of gas transported, less 0.7 percent fuel usage and unaccounted for line loss and less plant reduction if gas is processed. Trunkline states that it would begin the interruptible service on the first day of the month following the date that the Commission issues the amended certificate applied for. It is stated that the volume of gas, and the receipt and delivery points will remain the same as previously authorized.

Comment date: June 10, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. KN Energy, Inc. Northern Utilities, Inc.

[Docket No. CP87-432-007]

Take notice that on May 6, 1988, KN Energy, Inc. (KN) and Northern Utilities, Inc. (NUI), P.O. Box 25265, Lakewood, Colorado 80215, filed in Docket No. CP87-432-007 a joint petition to amend the order issued October 30, 1987, in Docket No. CP87-432-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the continued exchange of natural gas for an unlimited term, all as more fully set forth in the petition to amend which is on filed with the Commission and open to public inspection.

KN and NUI state that by the above order, they were authorized to engage in the exchange of natural gas between two gas supply areas in the State of Wyoming. It is further stated that NUI, a Hinshaw pipeline regulated by the Wyoming Public Service Commission, was granted a limited jurisdiction certificate to the extent necessary for its participation in the exchange.

KN and NUI state that the exchange is governed by a Gas Exchange Agreement (Agreement) dated June 25, 1987. KN and NUI further state that the Agreement provides for a primary term of 15 years from the first day of the month following the date of the first delivery, and from year to year thereafter. Despite the long term nature of the gas exchange between KW and NUI, KN and NUI state that the Commission limited the term of the certificate authorizations for KN and NUI to a term of one year from the issue date of the order in Docket No. CP87-432-000, or until KN accepts a blanket certificate pursuant to Section 284.221, whichever first occurs. Likewise, the authorization granted NUI was also limited to a term of one year from the date of the order in that proceeding, unless KN accepts a blanket certificate during that time. If KN does accept a blanket certificate, NUI's certificate shall be unlimited in time.

KN and KUI request that their existing one year certificates be amended to provide for an unlimited term authorizing the continued exchange of natural gas supplies between their natural gas supply sources and facilities in the State of Wyoming.

Committee date: June 10, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Pelican Interstate Gas System

[Docket No. CP88-374-000]

Take notice that on May 4, 1988, Pelican Interstate Gas System (Pelican), 1600 Smith Street, Suite 3075, Houston, Texas, 77002, filed in Docket No. CP88-374-000 an application pursuant to Section 7(c) of the Natural Gas Act requesting authorization to transport natural gas, on an interruptible basis, for the account of Exxon Corporation (Exxon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pelican states that it has entered into a Gas Transporation Agreement dated March 11, 1988, to provide on an interruptible basis, transportation of up to a maximum of 30,000 MMBtu per day of natural gas for Exxon for a primary term of one year ending March 11, 1989, and continuing month to month thereafter.

Pelican indicates it would receive volumes of gas for the account of Exxon at the existing subsea interconnection of Pelican and Exxon in High Island Block 129, offshore Texas. Pelican proposes to transport and redeliver such gas at the existing onshore terminus of Pelican's pipeline facilities located at the Mobil Cameron Meadows plant in Cameron Parish, Louisiana.

Pelican porposes to charge Exxon a transportation fee of three and three-tenths cents (3.3 cents) per Mcf of gas received for transportation. Pelican states that this is its currently effective transportation rate in its Rate Schedule No. 1 of its FERC Gas Tariff, Original Volume No. 1.

Comment date: June 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

11. Energy Marketing Exchange, Inc.

[Docket No. CI88-425-001]

Take notice that on May 12, 1988, Energy Marketing Exchange, Inc. (EME) of 2500 E.T.C. Jester Boulevard, Suite 625, Houston, Texas 77008, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term which expired March 31, 1988, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: June 6, 1988, in accordance with Standard Paragraph J at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North

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Capitol Street, NE., Washington, DC 20426 a notice to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11747 Filed 5-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-385-000, et al.]

Kansas Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 20, 1988.

Take notice that the following filings have been made with the Commission:

1. Kansas Power and Light Company

[Docket No. ER88-385-000]

Take notice that on May 13, 1988, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated April 19, 1988, with the City of Troy, Troy, Kansas for wholesale electric service to that community. KPL states that this contract provides essentially for a ten year extension of the original terms of the presently approved contract. The proposed effective date is August 1, 1988. In addition, KPL states that copies of the contract have been mailed to the City of Troy and the State Corporation Commission.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Power & Light Company

[Docket No. ER88-119-001]

Take notice that on May 9, 1988, Utah Power & Light Company tendered for filing a refund report with a summary sheet of individual customers data. The refunds, calculated retroactively to July 1, 1987 without interest, were applied as a credit to the Customer's monthly billings with the exceptions of the Town of Levan and St. George City.

Copies of this filing have been served upon the affected wholesale customers and on the state commissions of Arizona, California, Colorado, Idaho, Nevada Utah and Wyoming.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Company

[Docket No. ER88-394-000]

Take notice that on May 16, 1988, Tucson Electric Power Company (Tucson) tendered for filing pursuant to § 35.12 of 18 Code of Federal Regulations, an agreement entitled Tucson-Nevada 1988-90 Short Term Seasonal Energy Agreement between Tucson Electric Power Company and Nevada Power Company.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Hampshire

[Docket No. ER88-395-000]

Take notice that on May 16, 1988, Public Service Company of New Hampshire (PSNH) tendered for filing with the Commission revised rate schedule sheets providing for a second delivery point to the Town of Wolfeboro, New Hampshire (Wolfeboro). PSNH proposes an effective date of May 1, 1988.

PSNH states that the second delivery point is required in order to implement an arrangement with Wolfeboro whereby PSNH is to purchase capacity and energy from diesel-generators owned and operated by Wolfeboro.

PSNH further states that no changes are proposed to the rates charged to Wolfeboro under the rate schedule, that Wolfeboro concurs with the proposed change, and that a copy of the filing has been served upon Wolfeboro.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Pacific Gas and Electric Company

[Docket No. ER88-397-000]

Take notice that on May 16, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a revision to FERC Rate Schedule 84. The revision is the incorporation of the Interim Combustion Turbine Settlement with the Interconnection Agreement between PG&E and the Northern California Power Agency (NCPA). The revision will resolve an ongoing billing dispute between PG&E and NCPA and makes the following changes to FERC Rate Schedule 84:

1. Rates are installed and language changes are made in Rate Schedule F of the rate appendix to the Interconnection Agreement;

2. Language changes are made in Rate Schedule D of the rate appendix to the Interconnection Agreement; and

3. Exhibit A-4 is modified.

PG&E has requested waivers to allow these changes to be made effective retroactively to January 1, 1988.

Copies of this filing have been served upon NCPA and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E General Office in San Francisco and PG&E's Sacramento Valley Regional Office in Sacramento.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Light and Power Company

[Docket No. ER88-398-000]

Take notice that on May 16, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Service Agreement (Agreement) dated February 1, 1988 between (1) CL&P and Western Massachusetts Electric Company ("WMECO", together with CL&P the "NU Companies") and (2) UNITIL Power Corp. (UNITIL).

CL&P states that the Agreement provides for service to UNITIL commencing February 1, 1988, for the transmission of their purchase of electric capacity and associated energy from the system of the Connecticut Municipal Electric Energy Cooperative (CMEEC) and from entitlements in certain generating units in which CMEEC has entitlements.

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Agreement. The monthly transmission charge is determined by the product of (1) the appropriate annual transmission charge rate (expressed in $/kW-year) divided by 12, and (ii) the number of kilowatts of capacity and energy UNITIL purchases from CMEEC during such month. Such transmission charge is reduced in recognition of payments made by UNITIL to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice period and permit the agreement to become effective on February 1, 1988.

WMECO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and UNITIL (Exeter, New Hampshire).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER88-392-000]

Take notice that on May 12, 1988, Florida Power & Light Company (FPL) tendered for filing an Amendment Number One To Short Term Agreement To Provide Power and Energy By Florida Power & Light Company To Utility Board of the City of Key West, Florida and Cost Support Schedules C, D, E, F, and G (together with Cost Support Schedule F Supplements) which support the rates for sales under Amendment Number One To Short Term Agreement.

Under Amendment Number One, FPL and Utility Board of the City of Key West (Key West) have agreed to revise and extend the term of the Short Term Agreement from December 31, 1989 through May 28, 1992 and to establish a maximum demand commitment for service to be provided by FPL pursuant to the applicable Rate Schedule under FPL's then-effective FERC Electric Tariff upon termination of the Short Term Agreement. FPL respectfully requests that the proposed Amendment and Cost Support Schedules C, D, E, F, and G (together with Cost support Schedule F Supplements) be made effective immediately. According to FPL, a copy of this filing was served upon the Utility Board of the City of Key West, Florida and the Florida Public Service Commission.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER88-391-000]

Take notice that on May 12, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a transmission service agreement with Wisconsin Power & Light Company (WPL). The agreement provides for firm transmission service to be rendered by Wisconsin Electric to WPL's retail service territory in the Village of Deerfield, Wisconsin. It would also allow Wisconsin Electric to provide non-firm transmission service for WPL when the 345 kV interconnection between WPL and Commonwealth Edison is out of service.

Wisconsin Electric requests an effective date of May 1, 1988. According to Wisconsin Electric, WPL joins in the requested effective date. Accordingly, Wisconsin Electric requests waiver of the commission's notice requirements in order to allow the effective date to become operative.

Copies of the filing have been served on WPL, Commonwealth Edison Company, and the Public Service Commission of Wisconsin.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11745 Filed 5-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2711]

Northern States Power Company; Existing Licensee's Intent To File an Application for New License

May 24, 1988.

Take notice that on March 22, 1988, Northern States Power Company, licensee for Trego Hydro Project No. 2711 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for Project No. 2711 will expire on March 31, 1993. The project is located on the Namekagon River in Washburn County, Wisconsin, a navigable waterway of the United States.

The principal project works currently licensed for Project No. 2711 are: (1) An earth-concrete dam with adjacent earth embankments; (2) a 470-acre reservoir at normal pool elevation 100 feet with negligible storage capacity; (3) a powerhouse containing two generating units with a total installed capacity of 1200 kW; and (4) appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11746 Filed 5-24-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During Week of March 4 Through March 11, 1988

During the Week of March 4 through March 11, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of

publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of March 3 through March 11, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 7, 1988	Gary/H.S. Sowards & Sons, Inc., Washington, DC.	RR47-3	Request for Modification/Rescission. If granted: The December 14, 1987 Decision and Order issued to H.S. Sowards & Sons, Inc. (Case No. RR47-1) regarding the firm's application for refund in the Gary proceeding would be modified.
Mar. 7, 1988	Jessica D. Culver, Clinton, TN	KFA-0168	Appeal of an Information Request Denial. If granted: The February 25, 1988 Freedom of Information Request Denial issued by Oak Ridge Operations would be rescinded and Ms. Culver would receive access to information in the Oak Ridge personnel files.
Mar. 7, 1988	New York, Albany, NY	KER-0040	Request for Modification/Rescission. If granted: The January 25, 1988 Decision and Order (Case No. KEG-0026) issued to New York by the Assistant Secretary for Conservation and Renewable Energy disapproving the State's proposed use of Stripper Well monies would be rescinded.
Mar. 8, 1988	Amoco/Indiana, Indianapolis, IN	RM21-168	Request for Modification/Rescission. If granted: The November 5, 1985 Decision and Order issued to Indiana (Case No. RQ21-211) regarding Indiana's plan for use of Amoco refund monies would be modified.
Mar. 10, 1988	Georgia, Atlanta, GA	KEG-0031	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper-well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Mar. 10, 1988	Pennzoil Co., Washington, DC	KEF-0104	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the May 12, 1987 Consent Order entered into by the DOE with the Pennzoil Company.
Mar. 10, 1988	Sun Oil Co., Washington, DC	KEF-0105	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund procedures pursuant to 10 CFR Part 205, Subpart V in connection with the November 24, 1987 Consent Order entered into by the DOE with the Sun Oil Company.
Mar. 11, 1988	The Herald, Dublin, CA	KEF-0167	Appeal of an Information Request Denial. If granted: The March 4, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and the Herald would receive access to records relating to the award fee determination for Advance Security for the six-month periods ending March 31, 1987 and September 30, 1987.
Mar. 10, 1988	Le Paul Oil Co., Troy, OH	KEE-0160	Exception to the Reporting Requirements. If granted: Le Paul Oil Company would no longer be required to file Form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report".
Mar. 10, 1988	Lone Star Oil & Chemical Co., Washington, DC.	KEF-0106	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the April 8, 1987 Consent Order entered into by the DOE with Lone Star Oil & Chemical Company.
Mar. 10, 1988	Mobil/Middletown Oil Co., Washington, DC.	RF225-18	Request for Modification/Rescission. If granted: The March 2, 1988 determination issued to Middletown Oil Company (Case No. RF225-10976) regarding the firm's Mobile Oil refund application would be rescinded.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of March 3 through March 11, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 11, 1988	Suffolk County, Long Island, NY, Washington, DC.	KFA-0166	Appeal of an Information Request Denial. If granted: Suffolk County, Long Island, would receive access to copies of any records relating to the Shoreham Nuclear Power Plant dated December 1, 1987, or thereafter.
Mar. 11, 1988	Suffolk County, Long Island, NY, Long Island, NY.	KFA-0169	Appeal of an Information Request Denial. If granted: Suffolk County, Long Island, would receive access to any records relating to the Nuclear Regulatory Commission rule concerning the "Evaluation of the Adequacy of Off-Site Energy Planning for Nuclear Power Plants at the Operating License Review State Where State and/or Local Governments Decline to Participate in Off-Site Emergency Planning".
Mar. 11, 1988	Webb's Oil Corp., Roanoke, VA	KEE-0161	Exception to the Reporting Requirements. If granted: Webb's Oil Corporation would no longer be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report".

Refund Applications Received

[Week of March 4 through March 11, 1988]

Date	Name of refund proceeding/Refund Applicant	Case No.
09/03/86	Lott Oil Co.	RF225-11008
09/03/86	Watson Oil, Inc.	RF225-11007
09/03/86	Brown Oil & Petroleum Co.	RF225-11006
03/08/88	Root River Oil Co.	RF265-2611
03/08/88	Panrod Drilling Co.	RF305-1
03/09/88	Valley	RF139-173
03/09/88	E.M. Lane Oil Co.	RF263-38
03/04/88 thru 03/11/88.	Crude Oil Refund Applications Received	RF272-49338 thru RF272-50238
03/04/88 thru 03/11/88.	Gulf Oil Refund Applications Received	RF300-5764 thru RF300-5808

[FR Doc. 88-11069 Filed 5-24-88; 8:45am]

BILLING CODE 6450-01-M

Cases Filed During Week of March 25 Through April 1, 1988

During the Week of March 25 through April 1, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings, and Appeals, Department of Energy, Washington, DC 20585.

May 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of March 25 through April 1, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 10, 1988	Mobil/Scoby Ratliff, Middletown, OH	RF225-20	Request for Modification/Rescission. If granted: The March 2, 1988, determination issued to Scoby Ratliff (Case No. RF225-10976) would be rescinded, regarding Mr. Ratliff's application in the Mobile Oil Refund proceeding.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of March 25 through April 1, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 25, 1988	MCO Holdings, Inc. & MGPC, Inc., Washington DC.	KFX-0051	Supplemental Order. If granted: The Office of Hearings and Appeals would set aside the portion of the consent order fund distributable to crude oil violations as a crude oil pool available for disbursement pursuant to 10 CFR, Part 205, Subpart V.
Mar. 25, 1988	Mobil/Franklin County Oil Co., Union MO	RR225-24, RR225-25	Request for Modification/Rescission. If granted: The March 15, 1988, determination issued to Franklin County Oil Company (Case Nos. RF225-10999 & RF225-11000) would be rescinded, regarding the firm's application in the Mobile Oil refund proceeding.
Mar. 25, 1988	Mobil/Lunde Fuel & Oil Supply, Valley City, ND.	RR225-21, RR225-22, RF225-23	Request for Modification/Rescission. If granted: The March 15, 1988, determination issued to Lunde Fuel & Oil Supply (Case Nos. RF225-11001, RF225-11002, RF225-11003) would be rescinded, regarding the firm's application in the Mobil Oil refund proceeding.
Mar. 29, 1988	Amoco/Caribou Four Corners, Inc., Washington, DC.	RR21-4	Request for Modification/Rescission. If granted: The March 15, 1988, Decision and Order issued to Caribou Four Corners, Inc. (Case No. RF21-12626) would be modified, regarding the firm's application for an Amoco refund.
Mar. 29, 1988	Beta/Caribou Four Corners, Inc., Salt Lake City, UT.	RR132-1	Request for Modification/Rescission. If granted: The March 13, 1988 Decision and Order issued to Caribou Four Corners, Inc. (Case No. RF132-2) would be modified, regarding the firm's application in the Beta Production Company refund proceeding.
Mar. 29, 1988	California Energy Commission, Sacramento, CA.	KFA-0178	Appeal of an Information Request Denial. If granted: The February 23, 1988, Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded and the California Energy Commission would receive access to information relating to the Revised Draft Long Term Inter-Tie Access Policy issued in December, 1987.
Mar. 31, 1988	PRO Oil Ogalla, NE	KEE-0164	Exception to the Reporting Requirements. If granted: PRO Oil would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Products Sales Report".
April 1, 1988	Arizona Phoenix, AZ	KER-0041	Request for Modification/Rescission. If granted: The December 1, 1987, Decision and Order issued to Arizona (Case No. KER-0041) would be modified, regarding the state's proposed expenditures for the stripper well funds.

REFUND APPLICATIONS RECEIVED

[Week of March 25 through April 1, 1988]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
3/30/88	Frank A. Days & Sons	RF299-81
3/30/88	Southern California Edison	RF272-00282
3/30/88	Pacific Gas & Electric Co	RF272-00287
3/10/88	Northern Petroleum, Inc.	RF265-2631
3/28/88	Behm Family Corp.	RF139-174
3/29/88	Coastal Tugs, Inc.	RF305-5
4/1/88	Amoco/Inter-Tribe Council of Michigan	RQ251-443
3/25/88 thru 4/1/88	Crude Oil Refund Applications Received	RF272-52265 thru RF272-53069
3/25/88 thru 4/1/88	Gulf Oil Refund Applications Received	RF300-6100 thru RF300-6244

[FR Doc. 88-11700 Filed 5-24-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During Week of April 1 Through April 8, 1988

During the Week of April 1 through April 8, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists also have been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 1 through 8, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 6, 1988	Alan J. White Potomac, MD	KFA-0179	Appeal of an Information Request Denial. If granted: The March 23, 1988, Freedom of Information Request Denial issued by the Director of Personnel would be rescinded and Alan J. White would receive access to documents relating to the former merit pay program.
Do	New York Petroleum Inc., Washington, DC	KFX-0052	Supplemental Order. If granted: The Office of Hearings and Appeals shall make available for distribution pursuant to 10 CFR Part 205, Subpart V, the remaining crude oil overcharge funds in the New York Petroleum escrow account.
Apr. 8, 1988	Charnicles & Goldstein, Washington, DC	KFA-0180	Appeal of an Information Request Denial. If granted: The March 4, 1988, Freedom of Information Request Denial issued by the Office of Hearings and Appeals would be rescinded and Charnicles & Goldstein would receive access to information regarding the True Companies.

REFUND APPLICATIONS RECEIVED

[Week of Apr. 1 to 8, 1988]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/4/88	Frantic Auto Repair.	RF265-2619
4/4/88	Good Housekeeping Gas Company.	RF277-90
4/4/88	Wright's Form Restaurant.	RF299-82
4/4/88	Campbell Hausfeld.	RF299-83
3/30/88	Cooper Range Company.	RF272-11295
3/30/88	Parker Drilling Company.	RD272-12163
3/30/88	Chickasha Fuel Supply, Inc.	RF 272-13480
3/30/88	Padre Drilling Company.	RF272-14020
3/30/88	Moxanco Drilling, Inc.	RF272-14039
3/30/88	Wes-Mor Drilling, Inc.	RF272-14146
3/30/88	Pool Company	RF272-15809
3/30/88	Westburne Drilling, Inc.	RF272-15845
3/30/88	Unit Corporation	RF272-16229
3/30/88	Sawyer Drilling & Service Inc.	RD272-16287
3/30/88	Cactus Drilling Company.	RD272-16965
4/4/88	Cooperative Power.	RS272-00023
4/4/88	New York Telephone.	RS272-11932
4/4/88	Madison Gas & Electric Company.	RS272-00224
4/4/88	Tri-State Generation & Transm.	RS272-00317

REFUND APPLICATIONS RECEIVED—Continued

[Week of Apr. 1 to 8, 1988]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/4/88	East Kentucky Power Coop. Inc.	RS272-00418
4/4/88	Arizona Elec. Power Cooperative.	RS272-09358
4/4/88	Northeast Utilities Serv. Company.	RS272-09086
4/4/88	Laclede Gas Company.	RS272-09678
4/4/88	Cincinnati Bell Telephone Company.	RS272-05434
4/4/88	Southern Bell Telephone Company.	RS272-05717
4/4/88	Citizens Gas & Coke Utility.	RS272-07233
4/4/88	Public Service Company of Indiana.	RS272-10666
4/4/88	Wisconsin Gas Company.	RS272-11936
4/4/88	Central Iowa Power Cooperative.	RS272-00061
4/4/88	Sunflower Electric Cooperative.	RS272-00332
4/4/88	United Power Association.	RS272-00345
4/4/88	Basin Electric Power Cooperative.	RS272-00349
4/4/88	Citizens Utilities Company.	RS272-00257
4/4/88	Delmarva Power	RS272-00255

REFUND APPLICATIONS RECEIVED—Continued

[Week of Apr. 1 to 8, 1988]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/4/88	Savannah Electric & Power Company.	RS272-00059
4/4/88	Arkansas Electric Cooperative.	RS272-00030
4/4/88	Wolverine Power Supply Cooperative.	RS272-00352
4/4/88	Southern Mississippi Electric Power.	RS272-00121
4/4/88	General Telephone Company, Inc.	RS272-03767
4/4/88	Bell of Pennsylvania.	RS272-03220
4/4/88	Minnkota Power Cooperative.	RS272-00098
4/4/88	Bethel Utilities Corporation.	RS272-02638
4/4/88	Brooklyn Union Gas.	RS272-00515
4/4/88	Orange & Rockland Utilities.	RS272-00286
4/4/88	San Diego Gas & Electric Company.	RS272-00265
4/4/88	Consolidated Edison Company.	RS272-00283
4/4/88	Long Island Lighting Company.	RS272-00284
4/4/88	Commonwealth Electric Company.	RS272-00296

REFUND APPLICATIONS RECEIVED—Continued

[Week of Apr. 1 to 8, 1988]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/4/88	Maui Electric Company, Limited.	RS272-00295
4/4/88	Cambridge Electric Light Company.	RS272-00299
4/4/88	Canal Electric Company.	RS272-00300
4/4/88	Florida Power Corpation.	RS272-00306
4/4/88	Public Service Electric & Gas.	RS272-00250
4/4/88	Newport Electric Corporation.	RS272-00233
4/4/88	Hawaii Electric Light Company.	RS272-00257
4/4/88	Iowa Power & Light Company.	RS272-00214
4/4/88	Hawaiian Electric Company, Inc.	RS272-00234
4/4/88	C&P Telephone Companies.	RS272-6716
4/4/88	Cordova Electric Cooperative.	RS272-07018
4/4/88	GTE Corporation.	RS272-14615
4/4/88	Carolina Telephone & Telegraph.	RS272-15005
4/5/88	WEG Propane Company.	RF139-175
4/6/88	Pokari's Service Station.	RS265-2620

REFUND APPLICATIONS RECEIVED—Continued

[Week of Apr. 1 to 8, 1988]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/22/88	Louis G. Guetter	RF272-42744
1/22/88	Earl Nydam	RF272-42745
1/22/88	Edward R. Gully	RF272-42746
1/22/88	Darrell Fisher Estate.	RF272-42747
1/22/88	Terry G. Weisgerd.	RF272-42748
1/22/88	John M. Brock, Jr.	RF272-42749
1/22/88	Erickson Farm	RF272-42750
1/22/88	Roberts Farms	RF272-42751
4/06/88	National Helium/ Massachusetts.	RQ2-444
4/8/88	Belridge/ Massachusetts.	RQ6-445
4/6/88	Palo Pinto/ Massachusetts.	RQ5-446
4/1/88 thru 4/8/88	Crude Oil Refund Applications Received.	RF272-53090 Thru RF272-54024
4/1/88 thru 4/8/88	Gulf Oil Refund applications received.	RF300-6245 thru RF300-6308

[FR Doc. 88-11701 Filed 5-24-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During Week of April 8, 1988, Through April 15, 1988

During the Week of April 8 through April 15, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 8 through 15, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 11, 1988	Oklahoma, Oklahoma City, OK	KEG-0032	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Apr. 12, 1988	Apex Oil Company, Weshington, DC	KRX-0053	Supplemental Order. If granted: The March 29, 1988 Special Report Order that was issued to Apex Oil Company (Case No. KRX-0050) would be modified.
Do	Consolidated Edison Company of New York, Inc. *et al*, Philadelphia, PA.	KFR-0042	Request for Modification/Rescission. If granted: The March 15, 1988 Decision and Order which implemented refund procedures for the distribution of the crude oil pool in the Shell Oil Company Subpart V proceeding (Case No. KFX-0048) would be modified regarding the disbursement of crude oil funds to the States.
Apr. 14, 1988	California, San Francisco, CA	KFR-0043	Request for Modification/Rescission. If granted: The April 8, 1988 Decision and Order issued to Pacific Gas & Electric Company *et al* (Case NOs. RS272-297, RS272-282 and RS272-23) would be modified regarding footnote 1, which includes California as among the group of States applying for relief in that proceeding.
Do	Pacific Gas & Electric Company, Philadelphia, PA	RR272-9	Request for Modification/Rescission. If granted: The March 18, 1988 Decision and Order issued to Pacific Gas & Electric Company (Case No. RF272-287) would be modified to permit the firm to pay legal fees and expenses from the refund approved in that Decision, to the extent allowed by its state regulatory commission.
Do	Southern California Edison Company, Philadelphia, PA.	RR272-8	Request for Modification/Rescission. If granted: The March 22, 1988 Decision and Order issued to Southern California Edison Company (Case No. RF272-282) would be modified to permit the firm to pay legal fees and expenses from the refund approved in that Decision, to the extent allowed by its state regulatory commission.

LISTOF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Apr. 8 through 15, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 15, 1988	Clark Oil & Refining Corporation *et al*, Washington, DC.	KRD-0590 KRH-0590	Motions for Discovery and Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted in response to a Proposed Remedial Order issued to Clark Oil & Refining Corporation (Case No. KRO-0590).

REFUND APPLICATIONS RECEIVED—Continued

[Week of Apr. 8 through 15, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/5/88	The Wichita Airport Authority.	RF225-11018 thru RF225-11020
3/10/87	S&D Oil Company	RF265-2621
7/6/87	L.G. Vander Work Marketers.	RF253-51
4/6/88	Pargas, Inc	RF265-2627
4/6/88	Frontier Airlines, Inc.	RF220-490
4/8/88	Amoco/Illinois	RQ251-447
4/8/88 thru 4/15/88	Cauda Oil Refund Applications Received.	RF272-54024 thru RF272-54587
4/8/88 thru 4/12/88	Gulf Oil Refund Applications Received.	RF300-6307 thru RF300-6398
4/12/88	Stander Oil Company	RF265-2623
4/12/88	Richard Flocchi	RF265-2624
4/12/88	Richard Flocchi	RF265-2625
4/12/88	Richard Flocchi	RF265-2626
4/13/88	Martin & Son, Inc.	RF153-39
4/13/88	Al Timmreck Mobil Service.	RF225-11010
4/13/88	Pedicone Mobil Service	RF225-11011
4/13/88	Gene's Mobil Service	RF225-11012
4/13/88	S&R Sons Mobil Service.	RF225-11013
4/13/88	Bill's Mobil Service	RF225-11014
4/13/88	Notari Mobil Service	RF225-11015
4/13/88	Ron's Mobil Service	RF225-11016
4/13/88	Illinois	RF225-11017
4/13/88	McDermott Marine Construction.	RF305-6
4/14/88	Jimmy's Skelly Station	RF265-2628
4/14/88	Riley's Skelly Station	RF265-2629

[FR Doc. 88-11702 Filed 5-24-88; 8:45 am]

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Cases Filed During Week of April 15 Through April 22, 1988

During the Week of April 15 through April 22, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washingtn, DC 20585.

May 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 15 through 22, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 18, 1988	Bock Oil Company, Hagerstown, MD	KEE-0165	Exception to the Reporting Requirements. If granted: Bock Oil Company would no longer be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
Apr. 20, 1988	Glen Milner, Seattle, WA	KFA-0181	Appeal of an Information Request Denial. If granted: The March 23, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Glen Milner would receive access to the minutes of a meeting held on the Trident II.
Apr. 21, 1988	Jerry O. Campbell, Edmond, OK	KFA-0182	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Inspector General's Office would be rescinded, and Jerry O. Campbell would receive access to a complete copy of an investigation of the Southwest Power Administration completed in December 1987.

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/23/88	Girling & Coutts	RF225-11021
2/22/88	Amoco-Grand Traverse Band of Ottawa and Chippewa Indians.	RQ251-448
4/18/88	Dubois Garage	RF265-2630
4/18/88	Cheston Oil Company	RF238-88
4/18/88 thru 4/22/88	Crude Oil refund applications received.	RF272-54098 thru RF272-54909 RF272-48291 thru RF272-48629
4/18/88 thru 4/22/88	Gulf Oil refund applications received.	RF300-6389 thru RF300-6456
4/20/88	Ha Way District Company.	RF292-6
4/22/88	Christian County Gas Company.	RF253-52

[FR Doc. 88-11703 Filed 5-25-88; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of March 28 Through April 1, 1988

During the week of March 28 through April 1, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

APPEAL

Jessica D. Culver, 3/28/88, KFA-0166

Jessica D. Culver filed an Appeal from a denial by the Assistant Manager for Administration of the Oak Ridge Operations Office of a Request for Information that she submitted under the Freedom of Information Act. The Appellant requested copies of documents concerning allegations that she used controlled substances. In considering the Appeal, the DOE found that reasonable search was made for responsive documents and that such documents could not be located. Accordingly, the Appeal was denied.

Remedial Order

Thomas P. Reidy, Inc., 4/1/88, HRO-0062

Thomas P. Reidy, Inc. objected to a Proposed Remedial Order alleging that during the period November 1, 1973 through May 31, 1975, Reidy charged prices for certain refined petroleum products that exceeded the permissible prices permitted under the provisions of the Mandatory Petroleum Price Regulations. After considering Reidy's objections, the Office of Hearings and Appeals concluded that (i) the ERA properly accounted for the firm's exchange transactions in determining the firm's inventory valuation, and (ii) the ERA was correct in its determination that Reidy had not made the requisite showing that it was entitled to any non-product cost increases. The OHA found, however, that the overcharge amount should be reduced by the amount of voluntary refunds made by Reidy to its customers during April 1974. The OHA also determined that the overcharges found in the PRO should be reduced by an additional amount because Reidy was correct in its contention that it did satisfy the requirements of the new market rule with respect to its sales of low sulfur residual fuel oil. With these modifications, the PRO was issued as a final Remedial Order and Reidy was directed to pay $0.3 million plus interest to the DOE to compensate for its violations.

Petition for Special Redress

Oregon, 4/1/88, KEG-0029

The OHA issued a Decision and Order concerning a Petition for Special Redress filed by the State of Oregon. Oregon sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary of Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The OHA approved the State's proposal to use $887,613 for the Lane Transit District bus maintenance facility program. The OHA determined that the project would result in increased energy conservation and efficiency, would have a restitutionary impact on the driving populace of the State, and was part of a large, well-balanced public transportation program. Furthermore, the OHA found that Oregon's program was permissible under the terms of the Settlement Agreement and OHA precedent. Accordingly, Oregon's Petition for Special Redress was approved.

Request for Exception

Delgado Oil Company, 3/30/88, KEE-0155

Delgado Oil Company filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Delgado's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

Supplemental Order

Apex Oil Company, 3/29/88, KRX-0050

The Associate Director of the OHA issued a Special Report Order (SRO) to Apex Oil Company. The SRO required the firm to supply information concerning its sales of crude oil for periods prior to and subsequent to the audit period of a Remedial Order issued to the firm.

Refund Applications

Conoco Inc./Chumbley & Jones Oil, 3/29/88, RF230-394

The DOE issued a Supplemental Order to Chumbley & Jones Oil (C&J), determining that the firm had been erroneously granted a refund for motor gasoline that it had obtained on consignment from Conoco. Accordingly, C&J was instructed to remit $188 in principal and $75 in interest to the DOE for deposit into the Conoco escrow fund.

Dorchester Gas Corp./Col Kan Propane Service, 3/28/88, RF253-48

Col Kan Propane Service filed an Application for Refund in the Dorchester Gas Corporation refund proceeding, based on purchases of 251,663 gallons of Dorchester refined products. Since the value of the applicant's claim did not exceed $5,000, the DOE granted it a refund without requiring a showing of injury. The amount of the refund was $2,378 in principal, plus accrued interest of $854.

Earth Resources Company/E.L. Morgan Company, 4/1/88, RF239-7

The DOE issued a Decision and Order concerning an Application for Refund filed by E.L. Morgan Company (Morgan) in the Earth Resources Company (ERC) special refund proceeding. The DOE did not accept Morgan's claim that it was disproportionately overcharged by ERC. However, Morgan was granted a volumetric refund for the motor gasoline and diesel fuel that it directly and indirectly purchased from ERC during the consent order period. Morgan's total refund was $178,667, representing $102,050 in principal and $76,628 in accrued interest.

Elbert Bright, et al., 3/30/88, RF 272-4088, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 43 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Thirty-eight of the applicants used the products for various agricultural activities. Of the remaining 5 applicants, 4 were businesses which used the products in vehicles, and 1 was a homeowner who used fuel oil to heat her home. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted is $3,778.

Getty Oil Company/Bob's Truck Stop, Inc., et al., 3/31/88, RF265-512, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. One applicant was eligible for a refund below the $5,000 small claims threshold. The two other applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $21,407, representing $10,551 in principal and $10,856 in accrued interest.

Getty Oil Company/Offerle Cooperative Grain & Supply, 3/30/88, RF265-843, RF265-844, RF265-845

The DOE issued a Decision and Order concerning three Applications for Refund filed by Offerle Cooperative Grain & Supply, an end-user of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Offerle submitted information indicating the volumes of Getty motor gasoline, middle distillates and propane that it purchased during the consent order period. As an end-user, Offerle was entitled to receive the full volumetric refund without demonstrating injury. The total amount of the refund approved in this Decision is $19,434, representing $9,579 in principal and $9,855 in accrued interest.

Getty Oil Company/Park Alignment, Inc., et al., 3//31/88, RF265-509, et al.

The DOE issued a Decision and Order concerning 33 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. Three of the applicants were eligible for a refund below the $5,000 small claims threshold. The remaining 30 applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $126,596, representing $62,399 in principal and $64,197 in accrued interest.

Getty Oil Company/Tri-Gas & Oil Co., Inc., et al., 3/31/88, RF265-805, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. All of the applicants elected to limit their claims to the applicable presumption of injury percentage. The sum of the refunds approved in this Decision is $116,979, representing $57,584 in principal and $59,395 in accrued interest.

Ichauway Planatation, et al., 3/30/88, RF272-5044, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the refined products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed and was therefore found injured based on the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,233.

John C. Rine, et al., 3/30/88, RF272-6062, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 42 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its purchase volumes either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based on the end-user presumption of injury. The sum of the refunds granted in this Decision is $867.

Mobil Oil Corporation/K&D Gas Station, Inc., Kasch Oil Company, E.E. Holub, 3/30/88, RR225-1, RR225-12, RR225-13

The DOE issued a Decision granting Motions for Reconsideration of Applications for Refund from the Mobil Oil Corporation escrow account filed by three retailers of Mobil refined petroleum products. Each applicant established that it had purchased additional volumes of Mobil covered products for which it had not received a refund in an earlier determination. Accordingly, the DOE granted additional refunds to the three applicants totaling $546 ($440 in principal plus $106 in interest).

Mobil Oil Corp./Kesseli & Morse Company, 3/30/88, RF225-4152

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation consent order fund filed by the Kesseli & Morse Company. Kesseli, a manufacturer and supplier of building materials, was an end-user of Mobil motor gasoline and lubricants. The firm presented evidence to prove that it purchased refined petroleum products directly from Mobil during the consent order period. Kesseli was found to be eligible for a refund in the amount of its full allocable share of the Mobil fund. The refund approved in the Decision totaled $29 ($23 in principal plus $6 in interest).

Oren A. Sosbe, 3/31/88, RF272-5084

The DOE issued a Decision and Order concerning an Application for Refund filed by Oren A. Sosbe from crude oil overcharge funds. Sosbe purchased motor gasoline for resale at his retail outlet. In considering Sosbe's application, the DOE stated that as a result of the Entitlements Program, crude oil overcharges equally affected resellers and retailers, regardless of supplier. Accordingly, the DOE found that no presumption of injury was applicable to crude oil overcharge claims filed by refined product resellers and retailers. Since Sosbe was unable to demonstrate that he was injured by crude oil overcharges, his Application for Refund was denied.

Pyrofax Gas Corporation/Chapman Gas and Welding, Wilson A. Rice and Son, 3/29/88, RF277-83, RF277-85

The DOE issued a Decision and Order concerning two Applications for Refund from a consent order fund made available by Pyrofax Gas Corporation. The claims were fied by Chapman Gas and Welding and Wilson A. Rice and Son, reseller/retailers of Pyrofax propane. Chapman was able to demonstrate injury as result of Pyrofax purchases and received a refund of $30,028 ($16,225 in principal and $13,803 in interest). Rice was unable to provide an estimate or any other documentation of its purchases from Pyrofax during the consent order period and its application was therefore denied.

Standard Oil Co. (Indiana)/Illinois, 3/31/88, RQ251-405

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The DOE issued a Decision and Order regarding an Application for Refund filed by the State of Illinois in the Standard Oil Co. (Indiana) (Amoco II) second-stage refund proceeding. In its application, Illinois proposed to spend $4,455,082 of its Amoco II monies on eleven programs. In reviewing Illinois' application, the DOE determined that several of the State's proposed programs, including two that would have provided assistance to electric utilities in the State, did not promise to make restitution to injured consumers of petroleum products in Illinois. With regard to the remaining programs proposed by Illinois, such as two energy information programs and a rural energy management program, the DOE determined that Illinois needed to undertake further planning of the programs before the programs could be deemed restitutionary. Accordingly, Illinois' application was denied in its entirety and the State was encouraged to resubmit several of its proposed projects once it had developed budgets and other materials related to program implementation.

State Escrow Distribution, 3/31/88, RF 302-3

The Office of Hearings and Appeals orderd the DOE's Office of the Controller to distribute $99,200,000 to the State Governments. These funds had been set aside for distribution to the States in a previously issued Decision, *Shell Oil Company*, 17 DOE ¶ 85,204 (1988). The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Storey Oil Company, Inc., 3/30/88, RF272-4236

The DOE issued a Decision and Order denying an application for refund filed by Storey Oil Co., Inc. The DOE found that Storey, a reseller of petroleum products, had not demonstrated that it was injured by crude oil overcharges.

Tiptop Construction Co., et al., 3/29/88, RF272-04374, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end user presumption of injury. Most of the applicants used the refined products for agricultural activities, and determined their purchase volumes either by consulting actual purchase records or by estimating their consumption based on the acres farmed. The non-agricultural claimants based their purchase volumes on invoices and/or tax records. The sum of the refunds granted in this Decision is $1,886.

Vicster, Inc., 3/28/88, RF272-3894, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 56 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its purchase volumes either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products involved and was therefore presumed injured. The sum of the refunds granted in this Decision is $3,208.

Dismissals

The following submissions were dismissed:

Name and Case No.
Blankenship's Mobil, RF225-76094
Border States Paving, Inc., RF273-12828, RF273-13760
Hassell Petroleum Co., RF225-10812
Louisiana, RQ251-629

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-11686 Filed 5-24-88; 8:45 am]

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Issuance of Decisions and Orders During the Week of April 11 Through April 15, 1988

During the week of April 11 through April 15, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Natural Resources Defense Council, 4/12/88, KFA-0171, KFA-0172

Natural Resources Defense Council (NRDC) filed two Appeals from denials by the Director of the Program Support Division of the DOE's Office of Military Application (OMA) of requests for information which the NRDC submitted under the Freedom of Information Act (FOIA). NRDC filed eight FOIA requests with the OMA seeking (1) lists of various DOE information, including the titles and subject matter of DOE publications and documents; and (2) documents pertaining to the nuclear weapons activities of the United Kingdom in the United States. In his determinations, the Director denied NRDC's requests for lists, stating that no such lists exist and that the FOIA does not require an agency to compile or create a record for the purpose of satisfying a request for information. The Director also withheld a majority of the other documents on the grounds that the DOE is not authorized by the U.K. to release U.K. information because such information is provided in confidence to the DOE. In considering NRDC's Appeals, the DOE concluded that the Director's determinations concerning the requests for lists were correct. However, the DOE found that the Director's rationale for denying NRDC's requests for specific documents to be insufficient. For example, the DOE noted that the Director cited no specific FOIA exemption in his determination. In addition, he did not determine whether any segregable portions of the requested information could be released. Accordingly, the DOE remanded this matter to the Director for a subsequent determination in accordance with the directives set forth in the Decision.

Petition for Special Redress

Georgia, 3/11/88, KEG-0031

The DOE issued a Decision concerning a Petition for Special Redress submitted by the State of Georgia. The State sought approval to use crude oil overcharge money to fund a program to install "dry hydrants" in rural areas, a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. After considering Georgia's Petition, the DOE was not convinced by Georgia's claim that the primary purpose of the dry hydrants program was energy conservation. Rather, the DOE found that the energy savings to be realized were incidental to increased fire protection and lowered fire insurance premiums. Accordingly, Georgia's Petition for Special Redress was denied.

Refund Applications

Aminoil U.S.A./Poe's Rural & City, Gas Company, Inc., 4/14/88, RF139-59

The DOE issued a Decision and Order concerning an Application for Refund filed by Poe's Rural and City Gas Company (Poe) in the Aminoil U.S.A. special refund proceeding. Poe documented banks of unrecovered product costs which exceeded its potential volumetric refund and, in addition, claimed that it had been disproportionately overcharged in its purchases from Aminoil. This claim was supported by material which, according to Poe, showed the elimination of a prompt payment discount and the addition of tank car fees and rail freight charges by Aminoil. The DOE concluded that the elimination of the prompt payment discount appeared to have been general in effect, and thus could not have been "disproportionate" vis-a-vis other, similar purchasers. The Aminoil tank car fees were found to have been in effect on or before May 15, 1973, and thus their elimination did not result in a disproportionate alleged overcharge. However, based on material showing that Poe was one of only four Aminoil customers required to pay a rail freight charge implemented after May 15, 1973, the DOE concluded that Poe had experienced a disproportionate alleged overcharge and found that it was injured by the alleged overcharges. It therefore granted a refund of $125,446. Consonant with the principles enunciated in *Standard Oil Co. (Indiana)/AAFES*, 12 DOE ¶85,015 (1984), the DOE concluded that no volumetric refund was warranted.

Donnell James, et al., 4/12/88, RF272-1973, et al.

The DOE issued a Decision and Order granting 50 Applications for Refund from available crude oil overcharge funds. The 50 claimants were farmers who used either a U.S. Department of Agriculture petroleum consumption formula or actual records to derive the number of gallons of petroleum products they used during the priod August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,227 was approved in this Decision and Order.

Eastern Mennonite College, et al., 4/13/88, RF272-6810, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 17 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for heating schools or transporting students, and each determined its claim either by consulting actual purchase records or by estimating its consumption. Estimates were accepted when exact figures were no longer available and the applicant supplied sufficient information substantiating its estimates. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $2,734. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Eau Claire County Highway Dept., 4/13/88, RF272-85

The DOE issued a Decision and Order granting a refund to Eau Claire County Highway Department. The County had submitted an Application for Refund in the DOE's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that two derivatives of eligible products upon which a crude oil refund claim may be based. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $1,275.

Eldon S. Molitor et al., 4/11/88, RF272-6802 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities or in operating small businesses. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,175.

Hygeia Coca et al., 4/13/88, RF272-85 et al.

The DOE issued a Decision and Order granting refunds to 39 claimants that filed Applications for Refund in its Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. As end-users of petroleum products, the applicants were presumed to have been injured as a result of the crude oil overcharges. The total of the refunds granted was $19,279.

Leo Torri, et al., 4/12/88, RF272-1888, et al

The DOE issued a Decision and Order granting 50 Applications for Refund from available crude oil overcharge funds. The 50 claimants were farmers who used either a U.S. Department of Agriculture petroleum consumption formula or actual records to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,772 was approved in this Decision and Order.

Lucia Lodge Arco/Lucia Lodge, 4/12/88, RF268-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Lucia Lodge, an entity that was under common ownership and management of the consent order firm, Lucia Lodge Arco. Under these circumstances, the DOE held that there was no basis for granting a refund. Accordingly, the Lucia Lodge Application for Refund was denied.

Marathon Petroleum Co./J.H. Nickodemus & Sons, Inc., 4/12/88, RF250-2477, RF250-2478

This Decision and Order concerns an Application for Refund filed by J.H. Nickodemus & Sons, Inc., seeking a refund in the Marathon Petroluem Company refund proceeding. Nickodemus was a reseller of Marathon products. During the consent order period, Nickodemus purchased 52,940,268 gallons of refined products from Marathon. Based on the results of a competitive injury analysis, the DOE granted Nickodemus a refund of $7,765 in principal and $1,146 in accrued interest.

Millard Barnhart, Jr., et al., 4/12/88, RF272-2307, et al.

The DOE issued a Decision and Order granting 50 Applications for Refund from available crude oil overcharge funds. The 50 claimants were farmers who

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used either a U.S. Department of Agriculture petroleum consumption formula or actual records to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,665 was approved in this Decision and Order.

Mobil Oil Corporation/Al Timmrick Mobil Service et al., 4/11/88, RF225-8581 et al.

The DOE issued a Decision granting eight Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $1,869 ($1,490 principal plus $380 interest).

Mobil Oil Corporation/Carl Johnson et al., 4/13/88, RF225-10828 et al.

The DOE issued a Decision and Order granting refund applications filed by 15 purchasers of Mobil refined petroleum products. According to the procedures set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil Oil Corporation escrow fund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this Decision was $60,338, representing $48,501 in principal plus $11,837 in accrued interest.

Mobil Oil Corporation/Trak Auto Corporation, 4/13/88, RF225-8552

The DOE issued a Decision regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by Trak Auto Corporation (Trak), a retailer of Mobil motor oil. In reviewing the Application, the DOE determined that the firm's purchases of motor oil from Mobil occurred primarily after price controls governing that product were lifted. Furthermore, those purchases made by Trak during the period of price controls qualified the firm for a refund of less than $15, the minimum refund amount for which the DOE will process refund claims. Accordingly, Trak's application was denied.

National Helium/Louisiana, Standard Oil Co. (Indiana)/Louisiana, 4/12/88, RM3-107 Rm3-108

The DOE issued a Decision granting the Motion for Modification filed by the State of Louisiana in the National Helium and Standard Oil Co. (Indiana) refund proceedings. In its Motion, Louisiana stated that it had fully implemented the programs approved in the DOE's prior Decision, *National Helium Corp./Louisiana*, 14 DOE 85,297 (1986), and that $7,923 was not expended. The State requested that the remaining funds be allocated to the vanpooling program approved in *Charter Co./Louisiana*, 16 DOE ¶ 85,123 (1987). The DOE found that the modification provided restitution to injured consumers of refined petroleum products. Accordingly, Louisiana's submission was granted.

Norman W. Pittillo, 4/13/88, RF272-2376, et al.

The DOE issued a Decision and Order granting 50 Applications for Refund from available crude oil overcharge funds. The 50 claimants were farmers who used either a U.S. Department of Agriculture petroleum consumption formula or actual records to derive the number of gallons of petroleum products they use during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,526 was approved in this Decision and Order.

Orlyn D. Chmat et al., 4/12/88, RF272-4309 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products which form the basis of its claim and was found to be injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $249.

Roland D. Burger et al., 4/13/88, RF272-4255 et al.

The Department of Energy issued a Decision and order approving applications for refund in the Subpart V crude oil refund proceedings filed by 14 applicants. Each applicant used petroleum products for various agricultural activities, and each determined its volume claim with reference to sales receipts, local fuel supplier records or the U.S. Department of Agriculture's data showing average annual petroleum product consumption per acre. Each applicant was an end-user and was therefore found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,085.

Suburban Propane Gas Corporation/All-Weather Roofing Co., Inc. et al., 4/13/88, RF272-76 et al.

The DOE issued a Decision and Order granting applications filed by five end-users of propane requesting refunds from the Suburban Propane Gas Corporation consent order fund. According to the procedures set forth in *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987), each applicant was found to be eligible for a refund based on the volume of propane it purchased from Suburban. The total amount of refunds approved in this Decision is $820, representing $732 in principal plus $88 in accrued interest.

Tri-County Metropolitan Transit District of Oregon et al., 4/13/88, RF272-309 et al.

Tri-County Metropolitan Transit District of Oregon and four other metropolitan and regional transit authorities filed applications for refund in the Subpart V crude oil refund proceedings. A group of utilities, transporters and manufacturers filed objections to the transit authorities' applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The objectors also claimed that as governmental authorities the applicants are ineligible for refunds from the twenty percent of the crude oil overcharge funds reserved to pay Subpart V claims. The DOE rejected both of the objectors' arguments. With respect to the latter, the DOE found that not all of the applicants were governmental entities, and even where they were, the Stripper Well Settlement Agreement does not prohibit a state from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. Accordingly, the applications were approved and the transit authorities were granted refunds totaling $84,037.

Dismissals

The following submissions were dismissed:

Name	Case No.
Glen Milner	KFA-0173
ICI America, Inc	RF272-14086
Leader Heights Golf	EF40-378
Mt. Airy Refining Co	KRD-0026
	KRD-0027
	KRD-0029
Pitcher Family Farm	RF272-3256
Rebel Enterprises, Inc	RF40-1518
San Francisco Herald	KFA-0105
Southern Bell Telephone and Telegraph Company	RS272-9717

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearing and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 12, 1988.

[FR Doc. 88-11697 Filed 5-24-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 18 Through April 22, 1988

During the week of April 18 through April 22, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Marty Jane Hatfield, 4/21/88, KFA-0177

On March 25, 1988, Marty Jane Hatfield filed an Appeal from a determination issued to her on March 1, 1988 by the Privacy Act Officer of the Oak Ridge Operations Office of the Department of Energy. That determination partially granted Ms. Hatfield's request for information pursuant to the Privacy Act. In considering the Appeal, the DOE found that the Privacy Act Officer's determination to withhold case analyses, memoranda and notes to file pursuant to subsection (d)(5) was consistent with the Privacy Act and DOE's implementing regulations.

Robert J. Yaes, 4/19/88, KFA-0174

Robert J. Yaes filed an Appeal from a determination by the Chairman of the Superconducting Super Collider (SSC) Task Force of a request which Yaes had submitted under the Freedom of Information Act. Yaes sought all documents which would show how the cost estimates for constructing and operating the SSC were derived. In considering the Appeal, the DOE found that all responsive documents were properly withheld under Exemption 5 to the FOIA. The DOE noted that by requesting documents that show how the cost estimates were derived, Yaes was requesting information that would necessarily reveal the deliberative process. Accordingly, Yaes' Appeal was denied.

Request for Modification and/or Rescission

California, 4/18/88, KFR-0043

On April 8, 1988, the DOE issued a Decision and Order with respect to *Pacific Gas & Electric Co.*, 17 DOE ¶ 85,315, concerning Applications for Stays filed by a group of states and territories. Subsequently, California informed the DOE that despite the DOE's assertion that it was among the group of states seeking the Stays, it was in fact not a member of that group and requested that the Decision and Order be modified to reflect that fact. The DOE reviewed the pleadings, determined that California was correct, and granted its request accordingly.

Refund Applications

Arthur Zech, et al., 4/18/88, RF272-2440, et al.

The DOE issued a Decision and Order granting 50 Applications for Refund from available crude oil overcharge funds. The 50 claimants were farmers who used either the U.S. Department of Agriculture petroleum consumption formula or actual records to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,187 was approved in this Decision and Order.

Baldwin County Board of Education, 4/19/88, RF272-3110

The DOE issued a Decision concerning an Application for Refund filed by Baldwin County Board of Education (Baldwin) in the Subpart V crude oil refund proceedings. The Applicant purchased eight different products during the period August 19, 1973 through January 27, 1981. The DOE determined that seven of the products purchased by Baldwin, including brake fluid and solvents, are eligible products for the purposes of the crude oil refund proceedings. However, the DOE concluded that antifreeze is not an eligible product and, therefore, denied that portion of the Applicants' claim. The total refund approved in its Decision is $527.

Beta Development Co./Caribou Four Corners, Inc., Standard Oil Co. (Indiana)/Caribou Four Corners, Inc., 4/22/88 RR132-1, RR21-4

The DOE considered a Motion for Modification filed by Caribou Four Corners, Inc., requesting further crude oil refunds from consent order funds remitted to the DOE by Beta Development Company and Standard Oil Company (Indiana)(Amoco). The DOE rejected Caribou's claim that it was entitled to refunds based on purchases of crude oil from Beta during the period covered by the Entitlements Program, finding that the Program should have generally compensated the firm for any injury caused by certification violations during that period. However, the DOE did find that Caribou, as a small refiner and entitlements purchaser during November 1974, was not compensated in that month for injury caused by certification violations. Further, the DOE found that Caribou was entitled to a greater percentage of the Beta consent order fund than it had originally received. Accordingly, Caribou was granted an additional refund of $16,640 in principal and $16,233 in interest. The DOE denied Caribou's request for a crude oil refund from the Amoco consent order fund, finding that Caribou had not established the likelihood that any overcharge occurred in connection with its purchases of Amoco crude oil.

Cherokee Paving Company, 4/18/88 RF 272-2197

The DOE issued a Decision and Order granting an Application for Refund filed by Cherokee Paving Company (Cherokee) in connection with the Subpart V crude oil overcharge refund proceedings. The DOE determined that Cherokee was eligible for a refund because it substantiated its gallonage claim, and it bore the impact of any crude oil overcharges. Cherokee used actual records to arrive at its gallonage figures for gasoline, diesel fuel, motor oil, grease, and pure liquid asphalt. Cherokee estimated its propane purchases by dividing its propane expenditures by an average $0.30/gallon of propane. The DOE found that although Cherokee is a paving contractor, it was not reimbursed for fuel expenses, or increases in those expenses. Therefore, the DOE concluded that Cherokee would have been injured by any crude oil overcharges associated with the gallons purchased. A total

refund of $1,222 was approved in this Decision and Order.

Conoco Inc./Frontier Airlines, Inc., 4/22/88, RF220-490

The DOE issued a Supplemental Decision and Order directing the DOE Controller to disburse a refund of $15,911 from the Conoco Inc. escrow account which had been granted to Frontier Airlines on November 6, 1986, plus the interest which has accrued on that amount. The refund had not been remitted to Frontier pursuant to a request made by the U.S. Department of Justice in connection with the firm's bankruptcy proceeding. Since the Justice Department has now dropped its objection to the payment of the refund to Frontier, this Supplemental Decision was issued.

Frank L. Day et al., 4/20/88, RF272-6423 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its purchase volume either by consulting actual records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found to be injured under the end-user presumption of injury. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available. The sum of the refunds granted in this Decision is $993.

Getty Oil Company/B & D Oil Company, 4/18/88, RF265-2621

The DOE issued a Decision and Order concerning an inadvertent understatement of 50,000 gallons of middle distillate in the purchase volume used in calculating the refund previously granted to B & D Oil Company. Accordingly, the refund previously granted to B & D was corrected and the total B & D refund approved was $12,658, representing $8,231 in principal and $8,427 in accrued interest.

Getty Oil Company/Primerica Corporation, 4/22/88, RF265-2815

The DOE issued a Decision and Order concerning an Application for Refund filed by an end-user of products covered by a consent order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volumes of Getty propane and ethane that were purchased during the consent order period. As an end-user, the applicant was entitled to receive the full volumetric refund. The sum of the refund approved in this Decision is $377,296, representing $185,727 in principal and $191,569 in accrued interest.

Holiday of Minocqua, Inc., 4/18/88, RF272-6839

The DOE issued a Decision and Order denying an application for refund filed by Holiday of Minocqua, Inc. in the crude oil refund proceeding. Minocqua was a retail merchandise store which also resold motor gasoline during the period of price controls. Although Minocqua substantiated its motor gasoline purchases, it did not submit any arguments or information to demonstrate that it was injured by crude oil overcharges. Accordingly, Minocqua's application was denied.

Husky Oil Company/Chem Oil & Tire Company, 4/18/88, RF161-13

The DOE issued a Decision and Order concerning an Application for Refund filed by Chem Oil & Tire Company, a retailer of Husky motor gasoline. Chem Oil submitted information which indicated that it purchased 22,555,064 gallons of motor gasoline from Husky during the consent order period. Under the refund procedures established for Husky applicants, Chem Oil's purchase claim yielded an allocable share of $10,285 plus a proportionate share of the interest that has accrued on the Husky consent order fund. However, since Chem Oil failed to make the required showing of injured for a full volumetric refund, the DOE approved a refund for the firm at the $5,000 small claims threshold level. Accordingly, Chem Oil was granted a refund of $7,314, representing the $5,000 principal plus $2,314 in accrued interest.

Keller Oil Company/Hartford Wood River Terminal, 4/22/88, RF298-16

The DOE issued a Decision and Order concerning an Application for Refund filed by Hartford Wood River Terminal in the Keller Oil Company special refund proceeding. Information submitted by Harford indicated that the firm was a spot purchaser of Keller motor gasoline during the consent order period. According to the procedures outlined in *Keller Oil Co.*, 16 DOE ¶ 85,147 (1987), a spot purchaser is ineligible for a refund unless it demonstrates that its purchases of Keller motor gasoline were sold to base period customers at a loss which was not subsequently recouped. Hartford failed to submit any information either to establish that it was not a spot purchaser or to rebut the spot purchaser presumption. Accordingly, Hartford's request for a refund was denied.

Mobil Oil Corporation/Berks Fuel Storage, Inc., 4/22/88, RF225-9620

The DOE issued a Decision granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Berks Fuel Storage, Inc., a retailer and reseller of Mobil distillates. The applicant elected to apply for a refund based upon the presumptions set forth in *Mobile Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted a refund of $8,219 ($5,000 principal plus $1,219 interest).

Mobil Oil Corporation/Rosenthal Oil Co., Wagner Oil Co., Mayer Oil Co., 4/22/88, RF225-9333 et al.

The DOE issued a Decision and Order granting Applications for Refund from the Mobil Oil Corporation escrow account filed by Rosenthal Oil Co. (Rosenthal), Wagner Oil Co. (Wagner) and Mayer Oil Co. (Mayer), resellers of Mobil refined petroleum products. In their refund applications, the claimants elected to submit documentation that they were injured by Mobil's pricing practices rather than to rely on the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the motor gasoline data submitted by the three applicants, the DOE determined that the motor gasoline purchased by each firm during the consent order period was purchased at prices higher than the average market price. The DOE concluded that Rosenthal, Wagner and Mayer suffered competitive disadvantages and were therefore eligible to receive full volumetric refund amounts for their purchases of motor gasoline from Mobil. In the cases of Rosenthal and Mayer, additional refunds for purchases of Mobil middle distillates were granted because the firms qualified as small claims purchasers and their total refund was less than $5,000. The refunds granted to the firms totalled $17,486, representing $14,058 in principal and $3,428 in interest.

Mobil Oil Corporation/The Atlas Oil Company, 4/20/88, RF225-9203

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by The Atlas Oil Company (Atlas), a reseller of Mobil refined petroleum products. In its refund application, Atlas elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the motor gasoline data submitted by Atlas, the DOE determined that the 169,810,857 gallons of Mobil motor gasoline purchased by the firm during the consent order period were purchased at prices higher than the market average price. The DOE concluded that Atlas suffered a competitive disadvantage and was therefore eligible to receive the full volumetric refund amount for its purchases from Mobil. The total refund granted to Atlas was $61,868, representing $68,268 in principal and $16,642 in interest.

Petroleum Heat and Power Co., Inc./ Catanzaro Oil & Heating Co., Inc., Bottini Fuel Corporation, 4/18/88, RF265-12, RF265-16

The DOE issued a Decision and Order concerning Applications for Refund filed by Catanzaro Oil & Heating Co., Inc. and Bottini Fuel Corporation in the Petroleum Heat & Power Co., Inc. (PH&P) special refund proceeding, *Petroleum Heat and Power Co.*, 15 DOE ¶ 85,036 (1986). Because neither firm was able to establish its purchase volumes from PH&P during the consent order period, their Applications for Refund were denied.

Plaquemines Oil Sales Corp./Penrod Drilling Co., et al., 4/21/88, RF305-1 et al.

The DOE issued a Decision and Order granting refund applications filed by one reseller and three end-users seeking refunds from the Plaquemines Oil Sales Corp. consent order fund. In accordance with the standards established in *Plaquemines Oil Sales Corp.*, 17 DOE ¶ 85,050 (1988), each applicant documented its purchase volumes of Plaquemines product and was found to be eligible to receive a refund. The total amount of refunds approved in the Decision was $85,284, representing $46,425 in principal and $18,859 in interest.

Reiniger Bros., Inc. et al., 4/20/88, RF272-6786 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,508.

Saber Energy, Inc./The Coastal Corporation, 4/18/88, RF192-9

The DOE issued a Decision and Order granting a refund from the Saber Energy, Inc. consent order fund to The Coastal Corporation. Since Coastal was a spot purchaser of Saber petroleum products, the DOE stated that the firm was requested to overcome the presumption that it was not injured by these Saber spot purchases. The DOE found that during the consent order period, Coastal sold various Saber petroleum products at less than their purchase price. The DOE also found that these purchases were made pursuant to short term contracts which obligated Coastal to purchase a certain volume of Saber products at set prices. Based on those findings, the DOE concluded that Coastal had overcome the spot purchases presumption for its purchases of regulated Saber petroleum products during the period of price controls. Accordingly, the firm was granted a refund of $8,328 plus interest, its full allocable share of the Saber refund pool for those purchases.

Savannah Electric & Power Co., 4/21/88, RF272-59

The DOE issued a Decision and Order granting a refund to Savannah Electric & Power Co. The firm had submitted an Application for Refund in OHA's Subpart V crude oil overcharge refund proceedings. The DOE fund that the Applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981 and that it had certified that it woud pass through the refund to its customers. In reaching its determination, the DOE found that the States had not demonstrated that Savannah was ineligible to receive a refund on behalf of its injured customers. The refund granted was $154,329

U.L. Smith, et al., 4/18/88, RF272-802, et al.

The DOE issued a Decision and Order granting 33 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by consulting actual purchase records or by estimating its consumption based on the acres it farmed. The sum of the refunds granted in this Decision is $1,714.

Wayne Frericks, et al., 4/21/88, RF272-1130, et al.

The DOE issued a Decision and Order granting 34 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by consulting actual purchase records or by estimating its consumption based on the acres it farmed. The sum of the refunds granted in this Decision is $748.

Dismissals

The following submissions were dismissed:

Name	Case No.
Champlin Marine, Inc.	RF225-6320
Clauss Heating Oils, Inc.	RF225-8305
DeYoung Enterprises, Inc.	RF225-8009
Eugene S. Post	KFA-0176
Haney Oil Co	RF225-10097 RF225-10098
Houston Executive Air Service, Inc.	RF225-447
Southwest Mississippi Electric Power Association.	RF273-1180
Telum, Inc	SRO-1244
Triboro Coach Corporation	RF225-7159 RF225-7160
Ultramar Petroleum, Inc.	RF225-8097 RF225-8098

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-11686 Filed 5-24-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

[OPP-100051; FRL-3383-6]

Planning Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Planning Research Corporation (PRC) will perform work specified in Delivery Orders issued under existing EPA contracts. This work will be done for the EPA Office of Pesticides and Toxic Substances (OPTS), and will require access to certain information submitted to EPA under FIFRA section 7. This information is defined as confidential business information (CBI) in FIFRA section 7(d). This information will be transferred to PRC as authorized by 40 CFR 2.307(h)(3). This action will enable PRC to fulfill the terms of these contracts, and serves to notify affected persons.

DATE: PRC will be given access to this information no sooner than June 1, 1988.

FOR FURTHER INFORMATION CONTACT:
By Mail:
Catherine S. Grimes, Program Management and Suport Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-4460).

SUPPLEMENTARY INFORMATION: EPA currently has contracts with PRC under Nos. 68-01-6844 and 68-01-7361. Under Delivery Order 095 of EPA Contract No. 68-01-6844, PRC will provide systems operation and maintenance services for OPTS' prime computer at EPA. In the process of this work, PRC employees will have access to FIFRA section 7 data.

Under Delivery Order 047 of EPA Contract No. 68-01-7361, PRC will provide, at EPA Regional Offices, data entry services on production data submitted by pesticide producers under section 7 of FIFRA.

These Delivery Orders will not be subcontracted by PRC.

The Office of Pesticide Programs has determined that access by PRC to information on all pesticide chemicals is necessary for the performance of these Delivery Orders.

This information is entitled to confidential treatment, having been submitted to EPA under section 7 of FIFRA.

In accordance with the requirements of 40 CFR 2.307(h)(2), PRC shall not use the information for any purpose other than purpose(s) specified in the contracts; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, PRC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to PRC until the above requirements have been fully satisfied. Records of information provided to PRC will be maintained by the Delivery Order Officer for these contracts in the EPA Office of Pesticides and Toxic Substances. All information supplied to PRC by EPA for use in connection with these Delivery Orders will be returned to EPA when PRC has completed its work.

Dated: May 5, 1988.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 88-11449 Filed 5-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36156; FRL-3383-6]

Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Comments.

SUMMARY: EPA is making available, for public comment, proposed addenda to the following studies in the Pesticide Assessment Guidelines: rodent oncogenicity, general metabolism, and livestock feeding studies. The addenda would supersede paragraphs in the Guidelines on data reporting and would provide a format for the preparation of study reports by those submitting data to EPA. This will increase the efficiency of pesticide registration and other regulatory activities. Copies of the proposed addenda are available at the address listed below for the Information Services Section.

DATE: Comments, identified by the docket control number OPP-36156 must be received on or before July 25, 1988.

ADDRESS: Submit three copies of written comments, identified with the docket control number "OPP-36156" by mail to:
Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of the draft guidelines are also available at this above address.

FOR FURTHER INFORMATION CONTACT:
Elizabeth M.K. Leovey, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone Number: Rm. 703, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2162).

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines describe protocols for performing tests to support the registration of pesticides under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. A description of the organization of these Guidelines and their relationship to data requirements, along with the necessary information for ordering them from the National Technical Information Service, appears in 40 CFR 158.115, published in the Federal Register of October 24, 1984 (49 FR 42856). The Data Reporting addenda will clarify sections in the Guidelines on data reporting and provide formats which guide pesticide registrants in report preparation. With

consistent and complete reports, the Agency will spend less time in reorganizing data, retrieving information, and resolving misunderstandings.

This is the fifth set of Data Reporting addenda which has been made available for public comment. Public comment for the other sets were requested in the Federal Register of July 31, 1985 (50 FR 31010); May 21, 1986 (51 FR 18660); October 15, 1986 (51 FR 36753); and March 25, 1987 (52 FR 9536). Most of these guidelines have been published by the National Technical Information Service as announced in the Federal Register of November 26, 1986 (51 FR 42931); September 23, 1987 (52 FR 35786); January 28, 1988 (53 FR 2535) and April 13, 1988 (53 FR 12186). The unpublished documents are being revised for publication in the near future. The specific subdivisions and series now being considered are: Subdivision F, Series 83-2 and 83-5, Rodent Oncogenicity Study; Subdivision F, Series 85-1, General Metabolism; and Subdivision O, Series 171-4(c)(3), Residues in Meat, Milk, Poultry, and Eggs: Livestock Feeding Studies. This is expected to be the last set of Data Reporting Guidelines developed for this effort.

Drafts have been reviewed by the Agency. Comments on this set of reporting formats will be considered by the Agency in preparing a final draft for publication by the National Technical Information Service.

Dated: May 11, 1988.

Anne L. Barton,
Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 88-11447 Filed 5-24-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-497; FRL-3384-2]

Pesticide Tolerance Petitions; Elanco Products Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions and food/feed additive petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to:
Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail: Registration Division (TS-767C), Attention: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Phil Hutton (PM 17)	Rm. 207, CM #2, 703-557-2690.	Do.
Lois Rossi (PM 21)	Rm. 227, CM #2, 703-557-1900.	Do.
Richard Mountfort (PM 23)	Rm. 237, CM #2, 703-557-1830.	Do.
Robert J. Taylor (PM 25)	Rm. 245, CM #2, 703-557-1900.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing the establishment and or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 7F3517.* Elanco Products Co., Division of Eli Lilly and Co., P.O. Box 708, Greenfield, IN 46140, proposes amending 40 CFR 180.421 by establishing a regulation to permit the residues of the fungicide fenarimol [alpha-(2- chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on pears at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-21)

2. *PP 8F3607.* Hoechst Celanese Corp., Route 202-206 North, Sommerville, NJ 08876, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)-butanoate (expressed as 2-amino-4-(hydroxymethylphosphinyl butanoic acid) and 3-methylphosphinicopropionic acid (expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid) in or on soybean seed at 0.05 ppm; apples at 0.05 ppm; grapes at 0.05 ppm; field corn grain, forage, fodder, and silage at 0.05 ppm; nuts at 0.05 ppm; and almond hulls at 0.50 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography. (PM 23).

3. *PP 8F3611.* Ciba Geigy Corp., Agricultural Division, Greensboro, NC 27419, proposes amending 40 CFR 180.368 by establishing a regulation to permit the residues of the herbicide metolachlor (2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl acetamide) and its metabolites determined as 2-[2-ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methyl-phenyl)-2-hydroxy-5-methyl-3-morpholinone in or on nongrass animal feeds group at 3.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23).

4. *PP 8F3612.* Agricultural Genetics Co. Ltd., C/O Jellinek, Schwartz, Connolly & Freshman, Inc., 1350 New York Ave., NW., Suite 400 Washington, DC 20036, proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for the granulosis virus (CpGV) of the codling moth when used as a pesticide on apples, pears, and walnuts. (PM 17).

5. *PP 8F3622.* Dow Chemical U.S.A., Agricultural Products Department, P.O. Box 1706, Midland, MI 48640, proposes amending 40 CFR 180.431 by establishing a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on field corn grain at 0.2 ppm, field corn fodder at 4.0 ppm, and field corn green forage and silage at 0.8 ppm. The proposed analytical method for determining residues is gas chromatography using Hall electrolytic conductivity detector. (PM 23).

6. *PP 8F3627.* Mycogen Corp., c/o W.R. Landis Associates, Inc., P.O. Box 5126, Valdosta, GA 31605-5126, proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for Bacillus Thuringiensis var. San Diego in or on all raw agricultural commodities. (PM 17).

7. *PP 8F2628.* BASF Corp., Chemicals Division, Agricultural Chemicals Group, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes amending 40 CFR 180.412 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing 2-cyclohexene-1-one moiety, in or on pomefruits at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 25).

8. *PP 8F2630.* Elanco Products Co., A Division of Eli Lilly and Co., P.O. Box 708, Greenfield, IN 46140, proposes amending 40 CFR 180.421 by establishing a regulation to permit the residues of the fungicide fenarimol (a-[2-chlorophenyl]-a-[4-chlorophenyl]-5-pyrimidinemethanol) in or on cherries at 1.0 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM 21).

9. *PP 8F3633.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposes amending 40 CFR 180.414 by establishing a regulation to permit the residues of the insecticide cyromazine (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its principal metabolite melamine (1,3,5-triazine-2,4,6-triamine) calculated as cyromazine in or on meat, fat, and meat byproducts, including kidney, at 0.2 ppm and liver at 0.4 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography. (PM 17).

10. *FAP 8H5555.* BASF Corp., Chemical Division, Agricultural Chemicals Group, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing 2-cyclohexene-1-one moiety, in or on dry pomace at 0.8 ppm. (PM 25).

11. *FAP 8H5558.* E.I DuPont DeNemours & Co., Inc., Agricultural Products Department, Barley Mill Plaza, Walker's Mill Bldg., Wilmington, DE 19898, proposes amending 21 CFR Parts 561 and 193 by establishing a regulation to permit the residues of the fungicide 1-[bis(4-fluorophenyl)methylsilyl]methyl]-1H-1,2,4-triazole [DPX-H6573] in or on grape pomace at 1.0 ppm, raisin waste at 1.0 ppm, and raisins at 1.0 ppm. (PM 21).

(7 U.S.C. 136a)

Dated: May 12, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-11575 Filed 5-24-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3185/T562; FRL-3385-5]

Amitraz; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire April 18, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2386).

SUPPLEMENTARY INFORMATION: Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, stating that temporary tolerances had been extended for the combined residues of the insecticide/miticide amitraz (N'-(2,4-dimethylphenyl)-N-[[(2,4-dimethylphenyl)imino]methyl]-N-methylmethanimidamide) and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on the raw agricultural commodities cottonseed at 0.20 part per million (ppm); in eggs at 0.01 ppm, and in meat, fat, and meat byproducts of poultry, goats, horses, and sheep at 0.01 ppm. These tolerances were issued in response to pesticide petition (PP) 5G3185.

These temporary tolerances have been extended to permit the continued marketing of the above raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 45639-EUP-27, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 18, 1989. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-11708 Filed 5-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59044; FRL-3385-6]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Sustances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of twenty-four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88-167—May 3, 1988.
Y 88-169, 88-170, 88-171—May 5, 1988.
Y 88-172, 88-173, 88-174—May 8, 1988.
Y 88-175—May 17, 1988.
Y 88-176, 88-177—May 8, 1988.
Y 88-178, 88-179, 88-180—May 11, 1988.
Y 88-181—May 12, 1988.
Y 88-182—May 15, 1988.
Y 88-183, 88-184—May 17, 1988.
Y 88-185—May 25, 1988.
Y 88-186—May 11, 1988.
Y 88-187, 88-188—May 23, 1988.
Y 88-189, 88-190—May 31, 1988.
Y 88-191—June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M. St., SW, Washington, DC, 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room, NE-G004, at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88-167

Manufacturer. Confidential

Chemical. (G) Tall oil fatty acid alkyd.

Use/Production. (S) Polymer for baked metal coating. Prod. range: Confidential.

Y 88-169

Manufacturer. Confidential.

Chemical. (G) Polyether-type polyurethane.

Use/Import. (G) Polymeric industrial adhesive. Import range: confidential.

Y 88-170

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Boats/general purpose resin. Prod. range: Confidential.

Y 88-171

Manufacturer. S.C. Johnson & Sons, Inc.

Chemical. (G) Random copolymer emulsion.

Use/Production. (G) Emulsion polymer/film former. Prod. range: Confidential.

Y 88-172

Manufacturer. Quantum Chemical Corporation Emery Div.

Chemical. (G) 1,3-Butanediol, polyester with azelaic acid and caprylic/capric acids.

Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 100,000-240,000 kg/yr.

Y 88-173

Manufacturer. Confidential.

Chemical. (G) Alkyd resin and caprylic/capric acids.

Use/Production. (G) Intermediate for print resin. Prod. range: Confidential.

Y 88-174

Manufacturer. Confidential.

Chemical. (G) Modified alkyd and caprylic/capric acids.

Use/Production. (G) Vehicle for use in prints. Prod. range: Confidential.

Y 88-175

Manufacturer. Confidential.

Chemical. (G) Dibasic acid polyol polyester and caprylic/capric acids.

Use/Production. (S) Polymer for coating from metal. Prod. range: 23,000-63,000 kg/yr.

Y 88-176

Manufacturer. The Good Year Tire & Rubber Co.

Chemical. (G) Butadiene-containing polymer and caprylic/capric acids.

Use/Production. (S) Tire manufacturing. Prod. range: 10,000,000-20,000,000 kg/yr.

Y 88-177

Manufacturer. Sherex Chemical Company.

Chemical. (G) Thermoplastic polyamide resin and caprylic/capric acids.

Use/Production. (S) Vehicle for adhesive, inks, varnish. Prod. range: Confidential.

Y 88-178

Manufacturer. Confidential.

Chemical. (G) Polyacrylate, sodium salt and caprylic/capric acids.

Use/Production. (S) Dispersant and process ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

Y 88-179

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyurethane and caprylic/capric acids.

Use/Production. (G) Coating or film. Prod. range: Confidential.

Y 88-180

Manufacturer. Confidential.

Chemical. (G) Aliphatic urethane and caprylic/capric acids.

Use/Production. (G) Coating or film. Prod. range: Confidential.

Y 88-181

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester urethane and caprylic/capric acids.

Use/Production. (G) Used in coating. Prod. range: Confidential.

Y 88-182

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Unsaturated polyester resin and caprylic/capric acids.

Use/Production. (G) Confidential. Prod. range: Confidential.

Y 88-183

Importer. Monsanto Company.

Chemical. (G) Imidized styrene/maleic anhydride polymer and caprylic/capric acids.

Use/Import. (S) Injection molded parts. Import range: confidential.

Y 88-184

Importer. Nippon Gohsei (U.S.A.) Co. Ltd.

Chemical. (G) Partially crosslinked saturated polyester with medium number-average molecular weight.

Use/Import. (S) Toner for electrophotography. Import range: 30,000-100,000 kg/yr.

Y 88-185

Manufacturer. Confidential.
Chemical. (G) Polyvinyl acetate poly(alkyleneoxy) acrylate copolymer.
Use/Production. (G) Pre-polymer for polyvinyl alcohol. Prod. range: 10,000–200,000 kg/yr.

Y 88-186

Manufacturer. Confidential.
Chemical. (G) Polyglycol, polymer with 1,1-methylenebis(4-isoc yanatocyclohexane).
Use/Production. (G) Thermoplastic elastomer. Prod. range: Confidential.

Y 88-187

Importer. Confidential.
Chemical. (S) Polyethyerester. 1,1-methylenebis(4-isoc yanatocyclohexane).
Use/Import. (S) Polyurethane foam. Import range: Confidential.

Y 88-188

Manufacturer. Superior Varnish & Dier.
Chemical. (G) Styrene/acrylic modified alkyd copolymer. 1,1-methylenebis(4-isoc yanatocyclohexane).
Use/Production. (S) Pigment finish vehicle. Prod. range: Confidential.

Y 88-189

Importer. Confidential.
Chemical. (G) Unsaturated Polyester diol. 1,1-methylenebis(4-isoc yanatocyclohexane).
Use/Import. (G) Thermoset plastic molding resin. Import range: 25,000–192,400 kg/yr.

Y 88-190

Importer. Confidential.
Chemical. (G) Chain-stopped alkyd resin. 1,1-methylenebis(4-isoc yanatocyclohexane).
Use/Import. (G) Component of industrial coating. Import range: 54,500–109,000 kg/yr.

Y 88-191

Manufacturer. Confidential.
Chemical. (G) Modified fatty acid diethanolamide. 1,1-methylenebis(4-isoc yanatocyclohexane).
Use/Production. (S) Lubricant and anti corrosion additive. Prod. range: Confidential.

Dated: May 18, 1988.

Steve Newberg/Rieu,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-11709 Filed 5-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-62064; FRL-3395-2]

Receipt of Application for Approval To Dispose of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of application.

SUMMARY: EPA Headquarters has received an application from Ogden Environmental Services, Inc. (OES), San Diego, California, for nationwide approval to dispose of polychlorinated biphenyls (PCBs) using a transportable circulating bed combuster. This approval process is done under the authority of section 6(e) of the Toxic Substances Control Act (TSCA). EPA is notifying interested persons of the request, and comments may be submitted.

DATE: Comments should be received by June 24, 1988.

ADDRESS: Three copies of written comments should be addressed to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Comments should bear the identifying notation OPTS-62064. The application (without confidential business information) and comments received in response to this notice are available for public inspection and copying in Rm. NE-G004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.60(e), the Regional Administrators and the Assistant Administrator for Pesticides and Toxic Substances (OPTS) share the approval authority for permitting alternative PCB disposal technologies. A Regional Administrator determines whether to approve an application when the disposal will take place in that region only or, in the case of research and development (R and D), on PCB disposal methods involving less than 500 pounds of PCB material. The Assistant Administrator for OPTS determines whether to approve applications for mobile and other types of PCB disposal technologies that may be operated in more than one region or, in the case of R and D, on disposal methods involving 500 pounds or more of material. Notwithstanding, the Assistant Administrator for OPTS may delegate the authority to review and approve any aspect of a disposal system to OPTS staff or to a Regional Administrator. The rationale for permit approval authority is discussed in "Polychlorinated Biphenyls (PCBs); Procedural Amendment of the Approval Authority for PCB Disposal Facilities and Guidance for Obtaining Approval," published in the Federal Register of March 30, 1983 (48 FR 13165).

In general, EPA may approve alternative methods of PCB disposal if they achieve a level of performance equivalent to an incinerator approved under 40 CFR 761.70 or a high efficiency boiler approved under 40 CFR 761.60 and will not present an unreasonable risk of injury to health or the environment. EPA also imposes some protective conditions requiring the application to address such items as testing of all gaseous, liquid, and solid effluent streams for PCBs and any other contaminants which may potentially contribute to the environmental risk of operating the disposal unit. To obtain a permit for an alternative method of PCB disposal, the applicant must supply detailed technical descriptions and drawings of the site, process and control equipment, monitoring and sampling methods, quality assurance plan, and emergency and contingency measures, as well as a full discussion of all cleanup and closure procedures.

When EPA Headquarters receives a permit application, it reviews the application and determines if the permit application is complete. If the application is not acceptable, EPA lists its deficiencies in a letter to the applicant and the applicant can remedy the application. If the application is acceptable, a determination is made whether a process demonstration is needed. If one is needed, the applicant must submit a demonstration test plan to the Agency. After receipt of the process demonstration test plan, EPA either approves, requires modification or additions to the process demonstration test plan, or disapproves it and notifies the applicant. Once the Agency accepts a process demonstration test plan, a demonstration test approval is issued by EPA. As part of this approval, the applicant will be required to give advance written notice of at least 30 days to the EPA regional office and State and local governments where the process demonstration will take place. This 30-day period provides the public an opportunity to discuss local issues related to the planned disposal operation and provides the EPA regional office with information necessary for effective monitoring for compliance with the demonstration test fails, the problems with the process demonstration are addressed on a case-by-case basis.

EPA will grant or deny approval for full scale operation based on a review of the application package, demonstration test results, and other submitted information. Approval for operation will contain special conditions that EPA finds necessary to protect human health or the environment. It also requires compliance with all applicable State, local, or other Federal requirements. The PCB disposal approval decision process (from receipt of the permit application to issuance of a final approval) generally can take from 6 months to 1 year, depending on the quality of information submitted by the applicant and the complexities involved. If a permit is issued for more than one site, 30-day notice is required before operation may begin at any site other than where the process demonstration took place.

The application from OES is for permission to use a 36-inch diameter unit identical in configuration to a 16-inch unit TSCA-permitted for nationwise use in March 1986. This larger unit is intended for use on PCB-contaminated gravel, sand, and silt at a faster rate of destruction than the smaller unit. If approved, the unit will be used nationwide for site remediation; the first site is located at the ARCO Swanson River Oil Field in the U.S. Fish and Wildlife Service Game Refuge on the Kenai Peninsula, Alaska.

In determining whether to approve this application, EPA will take into consideration, along with other factors, the comments received on the application.

Dated: May 16, 1988.

Martin P. Halper,

Director, Exposure Evaluation Division, Office of Toxic Substances.

[FR Doc. 88-11572 Filed 5-23-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council; Membership

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of 1988 members.

FOR FURTHER INFORMATION CONTACT: Debra J. Ahearn (202/377-6924).

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board hereby anounces the members of the 1988 Federal Savings and Loan Advisory Council. They are as follows:

Elected Members

John F. Murphy, President and Chief Executive Officer, Bay State Federal Savings Bank, Brookline, Massachusetts
District Representative: Federal Home Loan Bank of Boston
Gilbert G. Roessner, Director, City Federal Savings Bank, Bedminster, New Jersey
District Representative: Federal Home Loan Bank of New York
Ronald W. Bevan, President and Chief Executive Officer, Delaware Savings and Loan Association, Wilmington, Delaware
District Representative: Federal Home Loan Bank of Pittsburgh
William G. White, Jr., President, First Federal Savings and Loan Association, Winston-Salem, North Carolina
District Representative: Federal Home Loan Bank of Atlanta
Howard T. Glover, President, The Conneaut Savings and Loan Company, Conneaut, Ohio
District Representative: Federal Home Loan Bank of Cincinnati
Richard Belcher, President, First Federal Savings Bank, Rochester, Indiana
District Representative: Federal Home Loan Bank of Indianapolis
John C. Schlosser, Chairman of the Board and President, St. Francis Savings and Loan Association, St. Francis, Wisconsin
District Representative: Federal Home Loan Bank of Chicago
William V. Turner, President, Great Southern Savings and Loan Association, Springfield, Missouri
District Representative: Federal Home Loan Bank of Des Moines
Milton H. Thomas, President and Chief Executive Officer, First American Savings Bank, Hurst, Texas
District Representative: Federal Home Loan Bank of Dallas
Charles H. Thorne, Chairman of the Board, First Federal Savings and Loan Association, Lincoln, Nebraska
District Representative: Federal Home Loan Bank of Topeka
James C. Schmidt, President and Managing Officer, Great American First Savings Bank, San Diego, California
District Representative: Federal Home Loan Bank of San Francisco
Wayne E. Jack, Chairman of the Board, President and Chief Executive Officer, First Federal Savings and Loan Association, Honolulu, Hawaii
District Representative: Federal Home Loan Bank of Seattle

Appointed Members

Robert R. Bench, Price Waterhouse, Washington, DC
Richard C. Breeden, Baker and Botts, Washington, DC
John T. Collins, Steptoe and Johnson, Washington, DC, (FSLAC Chairman)
Stuart I. Greenbaum, Kellogg Graduate School of Management, Northwestern University, Evanston, Illinois
Bill R. Harman, Morgan Stanley, New York, New York
Don I Hovde, Hovde Financial, Inc., Washington, DC
C.F. Muckenfuss III, Gibson, Dunn & Crutch, Washington, DC
Larry S. Okinaga, Carlsmith, Wichman, Case, Mukai and Ichaki, Honolulu, Hawaii
John J. Oros, Goldman Sachs, New York, New York
Ken Rosen, Chairman and Professor, Center for Real Estate and Urban Economics, Berkeley, California
George H. Sorter, New York University, New York, New York
Tim S. Wahl, CitiBank, New York, New York
Robert H. Wilson, Chairman and President, R.H. Wilson Group, Ltd., Lake Forrest, Illinois

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Hearing Series on the Status of Minorities and Women in Corporate America

Agency holding the hearing: Equal Employment Opportunity Commission.
"Federal Register" Citation of previous announcement: 53 FR 11807, Monday, April 11, 1988.
Previously announced time and date of hearing: 9:00 a.m. to 5:00 p.m. (Eastern Time), June 15, 16, and 17, 1988.

Change in the hearing: Due to serious budget constraints, the hearing series has been postponed until next fiscal year. Written testimony received in response to the April 11 notice will remain a part of the official hearing record; the Commission continues to welcome additional testimony.

Contact person for more information: Linda Jackson, Task Force Chair, Office of the Chairman, (202) 634-6700.

Date: May 17, 1988.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88-11655 Filed 5-24-88; 8:45 am]

BILLING CODE 6570-06-M

Ex Officio Members

Kenneth Abt, President, First Federal Savings and Loan Association of Middletown, Middletown, New York
Brent Beesley, Farm Credit Corporation of America, Inglewood, Colorado
James Butera, National Council of Savings Institutions, Washington, DC
Dean Cannon, President, California League of Savings Institutions, Los Angeles, California
Kenneth R. Elshoff, President and Chief Executive, Officer, Ohio Savings and Loan League, Columbus, Ohio
Larry Fink, The Blackstone Group, New York, New York
Jim Fisher, Fisher Construction Company, Nashville, Tennessee
Patrick Forte, President, Association of ThriR Holding Co., Washington, DC
Robert Gniswinkler, President and Chief Executive Officer, National Savings and Loan Association, Milwaukee, Wisconsin
David Glenn, Executive Vice President and Chief Financial Officer, Federal Home Loan Mortgage Corporation, Reston, Virginia
Mary Grigsby, Houston, Texas
Rick Hohlt, U.S. League of Savings Institutions, Washington, DC
Takuro Isoda, DIAWA Securities America, Inc., New York, New York
Anne Jones, Partner, Sutherland, Asbill & Brennan, Washington, DC
George King, Administrator, Department of Commerce, Savings and Loan Division, Raleigh, North Carolina
Tom Long, Jones, Day, Reavis and Pogue, Washington, DC
Anita Miller, Chairman, Chief Executive Officer and President, AmariFederal Savings Bank, Lawrenceville, New Jersey
William Moore, National Association of Realtors, Washington, DC
Joe Morris, Columbia Savings Association, Emporia, Kansas
Dick Pratt, Merrill Lynch World Headquarters, New York, New York
Norman Raiden, Esquire, McKenna, Conner & Cuneo, Los Angeles, California
Michael Rostar, Morrison and Foerster, Los Angeles, California
Tom B. Scott, jr., UniFirst Bank for Savings, Jackson, Mississippi
Winfred Tom, President, Golden Coin Savings and Loan Association, San Francisco, California
Tom Vartanian, Fried, Frank, Harris, Schriver and Jacobsen, Washington, DC

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 88-11744 Filed 5-24-88; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-050
Title: United States Atlantic and Gulf/Venezuela Freight Association
Parties: Compania Anonima Venezolana de Navigacion; American Transport Lines, Inc.
Synopsis: The proposed amendment would permit the parties to exercise independent action on the level of compensation paid to an ocean freight forwarder who is also a customs broker.

Agreement No.: 202-010748-005
Title: West Coast/Middle East and West Asia Rate Agreement
Parties: American President Line; A.P. Moller-Maersk Line
Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 203-011117-003
Title: North America/Australasia Interconference and Carrier Discussion Agreement
Parties: Pacific Coast/Australia-New Zealand Tariff Bureau; Pacific Australia Direct Line; Blue Star Line, Ltd.; U.S. Atlantic & Gulf/Australia-New Zealand Conference; Columbus Line; Associated Container Transportation (Australia) Ltd.; Australia-New Zealand Direct Line; Scancarriers; Ocean Star Container Line A.G.
Synopsis: The proposed amendment would add Hong Kong Island Line America S.A., Leif Hoegh & Co., A.S. and Nedlloyd Lines as parties to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 18, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-11676 Filed 5-24-88; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 [46 U.S.C. app. 1718 and 46 CFR Part 510].

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Seven Seas Freight Forwarding Services, Inc., 16400 Lakewood Blvd. #101, Bellflower, CA 90706, Officer: Roger Wang, Sole Proprietor

Monarch Custom Brokers & Forwarders, Inc., 152 Nassau Street, New York, N.Y. 10038, Officers: Stanley Navarre, President, Peter Yamcek, Vice President

Informa International Ltd., Inc., 5401 W. Kennedy Blvd., Tampa, FL 33609, Officers: Sheldon J. Shalett, Director/President, Morzie G. Boas, Director/Vice President, Diane W. Krause, Stockholder/Secretary

Network Brokers International, Inc., Bldg. A2C, Airport Industrial Office Park, 145 Hook Creek Boulevard, Valley Stream, NY 11581, Officers: Judith A. Kearney, President, Patricia A. Kearney, Treasurer

Frances P. Cronwell, 622 S. Tyndall Parkway, Panama City, FL 32404, Officer: Frances P. Cronwell, Sole Proprietor

A B C Forwarding Co., 9320 Bathgate Court, Gaithersburg, MD 20879, Officer: Sam Salameh, Sole Proprietor

Miami In & Out Internacional Freight Forwarder's Corp., 7553 NW 70 St., Miami, FL 33166, Officers: Alberto R. Valdes, President, Guido R. Valdes, Treasurer

Pride International, Inc., 2200 Broening Highway, Ste 225, Baltimore, MD 21224, Officers: Cono Michael Bocolo, President, Leanne Marie Ciaccio, Vice President

Empire Transport, & Forwarding, Inc., 3705 Bandini Blvd., Los Angeles, CA 90023, Officers: Kwang Seo Song (a.k.a Matt Matowski), President, Masakatsu Eguchi, Secretary

Intercontinental Air Freight, Inc., One Intercontinental Way, Peabody, MA 01960, Officers: David W. Maloney, President/Director, John A. Ford, Vice President/Director, Paul A. Powell, Treasurer/Director.

By the Federal Maritime Commission.

Dated: May 20, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-11743 Filed 5-24-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Abigail Adams National Bancorp, Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the office of the Board of Governors not later than June 17, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Abigail Adams National Bancorp, Inc.*, Washington, D.C.; to engage *de novo* in making, acquiring and servicing commercial loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bootheel Bancorp, Inc.*, Bernie, Missouri; to engage *de novo* through its subsidiary, SEMO Bancshares Corp., Bernie, Missouri, in conducting real estate appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in the State of Missouri. Comments on this application must be received by June 16, 1988.

Board of Governors of the Federal Reserve System, May 19, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-11697 Filed 5-24-88; 8:45 am]
BILLING CODE 6210-01-M

John L. Cutter et al.; Change in Bank Control Notice; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 9, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *John L. Cutter*, Joseph A. Domanik, Mark F. Dudley, Louis A. Gral, Robert L. Habush, Gerald J. Kahn, Bernard J. Mitchell, Mitchell S. Schlesinger, and Zachary Takerian: to acquire 83.67 percent of the voting shares of First Mil Bank, Milwaukee, Wisconsin. Comments on this application must be received by June 3, 1988:

2. *Howard C. Mück*, Park Ridge, Illinois; to acquire 28 percent of the voting shares of GN Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Cladstone-Norwood Trust & Savings Bank, Chicago, Illinois.

B. *Federal Reserve Bank of Minneapolis* (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Marvin Christensen*, Waubun, Minnesota; to acquire 100 percent of the voting shares of Waubun Bancshares, Inc., Waubun, Minnesota, and thereby indirectly acquire Farmers State Bank of Waubun, Inc., Waubun, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *R. James Nicholson*, Englewood, Colorado; to acquire an additional 28.41 percent, and Neal C. Groff, Denver, Colorado, to acquire an additional 23.97 percent of the voting shares of Arvada Bankshares, Ltd., Arvada, Colorado, and thereby indirectly acquire The First National Bank of Arvada, Arvada, Colorado.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Robert Vance Kelly*, Burbank, California; to acquire a maximum of 8 percent of the voting shares of BNB Bancorp, Burbank California, and thereby indirectly acquire Burbank National Bank, Burbank, California.

Board of Governors of the Federal Reserve System, May 19, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-11698 Filed 5-24-88; 8:45 am]
BILLING CODE 6210-01-M

The Mitsubishi Bank, Ltd.; Application To Engage de Novo in Remissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 88-10581) published at page 16899 of the issue for Thursday, May 12, 1988.

Under the Federal Reserve Bank of San Francisco, the comment period for Mitsubishi Bank Ltd. is corrected to end on June 2, 1988.

Board of Governors of the Federal Reserve System, May 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11609 Filed 5-24-88; 8:45 am]

BILLING CODE 6210-01-M

Norwich Financial Corp.; et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14) of the Board Regulations Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 15, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Norwich Financial Corp.*, Norwich, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Norwich Saving Society, Norwich, Connecticut. Comments on this application must be received by June 13, 1988.

2. *Warren Bancorp, Inc.*, Peabody, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Warren Five Cents Bank, Peabody, Massachusetts. Comments on this application must be received by June 13, 1988.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First sterline Bancshares, Inc.*, Winter Haven, Florida; to acquire 51 percent of the voting shares of First Sterling Bank of Osceola County, Kissimmee, Florida, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FNBH Bancorp, Inc.*, Howell, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Howell, Howell, Michigan. Comments on this application must be received by June 10, 1988.

2. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Greater Milwaukee Financial Corp., Milwaukee, Wisconsin, and thereby indirectly acquire Greater Milwaukee Bank, Milwaukee, Wisconsin; Hartland Bancorp, Inc., Hartland, Wisconsin, and thereby indirectly acquire Hartland National Bank, Hartland, Wisconsin; and Village Banc Holding Co., and thereby indirectly acquire Village Bank of Elm Grove, Elm Grove, Wisconsin.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated*, Minneapols, Minnesota; to acquire 64.19 percent of the voting shares of Lakeville Financial Service, Inc., Lakeville, Minnesota, and thereby indirectly acquire First Lakeville Bank, Lakeville, Minnesota. Comments on this application must be received by June 9, 1988.

2. Mid-Wisconsin Financial Services, Inc., Medford, Wisconsin; to acquire 100 percent of the voting shares of Security State Bank of Colby, Colby, Wisconsin. Comments on this application must be received by June 16, 1988.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City Missouri 64198:

1. *The Columbian Corporation*, Topeka, Kansas, and its subsidiary, Topeka Bank and Trust Company, Topeka, Kansas; to merge with Columbian Financial Corporation, Topeka, Kansas, and thereby indirectly acquire Columbian National Bank and Trust Company, Topeka, Kansas.

2. *First of Fort Morgan, Inc.*, Fort Morgan, Colorado; to acquire 20 percent of the voting shares of First Community Bankshares, Inc., Fort Morgan, Colorado, which has applied to become a bank holding company by acquiring First National Bank of Holyoke, N.A., Colorado. In addition, Applicant also proposes to acquire 20 percent of the voting shares of Heartland Community Bankshares, Inc., Fort Morgan, Colorado, which has applied to become a bank holding company by acquiring Colorado National Bank-Sterling, N.A., Sterling, Colorado.

Board of Governors of the Federal Reserve System, May 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11670 Filed 5-24-88; 8:45 am]

BILLING CODE 6210-01-M

Prairieland Bancorp, Inc., et al., Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 15, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Prairieland Bancorp, Inc.*, Bushnell, Illinois; to acquire Prairieland Accounting and Tax Services, Bushnell, Illinois, and thereby engage in tax preparation and planning pursuant to § 225.25(b)(21) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Holding Company, Inc.*, Fullerton, Nebraska; to acquire E. Gdowski Insurance Agency, Inc., Fullerton, Nebraska, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Nance County, Nebraska. Comments on this application must be received by June 8.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Family Bancorp*, and Family Bank of Commerce, both in Grants Pass, Oregon; request for commitment relief to allow bank to engage in certain insurance activities which are impermissible bank holding company activities, but are otherwise permissible bank activites under Oregon state law. Comments on this application must be received by June 9.

Board of Governors of the Federal Reserve System, May 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11671 Filed 5-24-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[Wildlife Order 168; 1-D-IL-671]

Portions of Smithland Locks and Dam, Pope County, IL; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667b), notice is hereby given that:

1. By deed from the General Services Administration dated April 21, 1988, the property, consisting of 221.35 acres of unimproved land, known as Tracts Nos. 108, 109, and 110, portions of Smithland Locks and Dam, Pope County, Illinois, has been transferred to the State of Illinois, Department of Conservation.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 85-432.

Dated: May 13, 1988.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 88-11750 Filed 5-24-88; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0195]

International Medication Systems Limited; Proposal to Refuse Approval of New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to refuse approval of three new drug applications submitted by International Medication Systems Limited. The basis for the proposal is that, based on information contained in each of the three applications, the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drugs are inadequate to assure and preserve their identity, strength, quality, and purity. There is insufficient information about the drugs to determine whether they are safe.

DATES: A hearing request is due on June 24, 1988; data or information in support of a hearing request is due on July 25, 1988.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 88N-0195, and submitted to: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Walter A. Brown, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: On January 29, 1987, International Medication Systems Limited (IMS) 1886 Santa Anita Ave., South El Monte, CA 91733, submitted an abbreviated new drug application (ANDA 71-618) under section 505(j) of the Federal Food, Drug, and Cosmetic Act (the act) for Bretylium Tosylate Injection, 200 milligrams per milliliter (mg/mL), 10 milliliter (mL) Select-A-Jet. On February 8, 1988, the Center for Drug Evaluation and Research (CDER) issued a letter to IMS stating that the application was not approvable. In response, on February 12, 1988, pursuant to 21 CFR 314.120, IMS requested an opportunity for a hearing on the question of whether there are grounds for denying approval of the application.

On April 15, 1987, IMS submitted ANDA 89-732 under section 505(j) of the act for Isoprenaline Hydrochloride (Isoproterenol Hydrochloride Injection USP), 0.02 mg/mL, Min-I-Jet Syringe. On March 14, 1988, CDER issued a letter to IMS stating that the application was not approvable. In response, on March 28, 1988, pursuant to 21 CFR 314.120, IMS requested an opportunity for a hearing on the question of whether there are grounds for denying approval of the application.

On November 7, 1985, IMS submitted a new drug application (NDA 19-550) under section 505(b) of the act for Dextrose Injection 5% (Thermodilution Syringe). On March 16, 1988, CDER issued a letter to IMS stating the application was not approvable. In response, on March 25, 1988, pursuant to 21 CFR 314.120, IMS requested an opportunity for a hearing on the question of whether there are grounds for denying approval of the application.

The Director of the Center for Drug Evaluation and Research has reevaluated all three applications and concludes that they are not approvable under section 505 of the act for the following reasons.

I. Deficiencies Which Apply to all Three Applications (71-618, 89-732, and 19-550)

A. Failure To Provide Adequate Controls for Environmental Monitoring of Aseptic Filling Areas

1. ANDA 71-618 and ANDA 89-732 indicate only that the filling room is monitored. Information is lacking concerning adequate monitoring methods, including those for microbiological and particulate air quality in aseptic filling areas. Adequate procedures, frequency, specifications, action limits, and actions taken when limits are exceeded have not been specified. (21 U.S.C. 355(j)(3)(A); 21 CFR 314.125(b)(1), (4) and (13); 21 CFR 211.42(c)(10), 211.113(b) and 211.160(b))

2. NDA 19-550 indicates that there is daily monitoring of the air in the critical areas of the filling room utilizing settling plates, from which individual colonies are counted. Settling plates alone are not considered to be an adequate method of monitoring the quality of air in areas where sterilized products,

containers, or closures are exposed to the environment during aseptic filling operations. Testing methods should include procedures which provide quantitative results based on the number of viable organisms per volume of air sampled. This NDA does not provide adequate methods for such monitoring, nor is necessary information provided concerning the procedures, frequency, specifications, action limits, and actions taken when limits are exceeded. (21 U.S.C. 355(d)(3) and (4); 21 CFR 314.125(b)(1), (4) and (13); 21 CFR 211.42(c)(10), 211.113(b) and 211.160(b))

B. Failure To Provide Adequate Information Concerning Ethylene Oxide Sterilization Procedures and Controls

All three applications provide for ethylene oxide sterilization of the vial injectors, but the descriptions of rhe procedures and controls employed are insufficient to determine their adequacy. It is not clear which ethylene oxide processes may be carried out at IMS and which may be carried out by an outside contract sterilizer. It is also unclear which procedures and controls pertain to the two different cycles which are apparently employed. It is also unclear under what conditions injectors may be sterilized while bulk-packed or while in sealed cartons along with the drug product vials. Complete descriptions of the cycles, procedures, and controls employed under each set of conditions have not been provided. The applications also fail to provide any validation data for the ethylene oxide cycles. Such validation data are required to assure the effectiveness of each ethylene oxide sterilization cycle for each set of conditions. (21 U.S.C. 355(j)(3)(A) and 355(d)(3) and (4); 21 CFR 314.125(b)(1), (4) and (13); 21 CFR 211.94(d), 211.113(b) and 211.160(b))

C. Failure To Provide Adequate Controls Involving Radiation Sterilization Procedures

All three applications provide for an alternate radiation sterilization process for bulk-packed injectors. All three are deficient in the following areas concerning such radiation sterilization (1) A presterilization bioburden monitoring program has not been established. (2) A sterility dose auditing program has not been established. (3) The integrity of the container/closure system to microbiological challenge has not been demonstrated post-irradiation (maxium dose). (4) Final release specifications have not been provided. (21 U.S.C. 355(j)(3)(A) and 355(d) (3) and (4); 21 CFR 314.125(b) (1), (4) and (13); 21 CFR 211.94 (b) and (d), 211.113(b) and 211.160(b))

D. Failure To Provide Adequate Stability Data To Support Proposed Expiration Dates

1. For ANDA 71–818, IMS proposed an expiration date of 36 months. Some accelerated stability data and 36 months of controlled room temperature stability data were submitted. However, all of the stability data were based on four pilot lots (apparently eight liters each), three of which were made the same day. No stability data were submitted from normal production-sized batches. The submitted data are not sufficient to allow adequate evaluation of possible effects due to scale-up of batch size and use of different lots of the new drug substance from the actual supplier. Moreover, it has not been shown that the high pressure liquid chromatography assay method employed will differentiate between the new drug substance and possible degradation products. Thus, it has not been established that the stability testing method is reliable, meaningful, and specific. The available information is insufficient to support the proposed expiration date of 36 months. (21 U.S.C. 355(j)(3)(A); 21 CFR 314.125(b) (1), (4) and (13); 21 CFR 211.137(A) and 211.166 (a) and (b))

2. For ANDA 89–732, IMS proposed an expiration date of 24 months and submitted some stability data from production batches covering such a period. These batches, however, were made from new drug substance obtained from sources who are not authorized suppliers under this application. No stability data, not even accelerated data, have been submitted from batches of drug product made utilizing the supplier of the new drug substance who is currently provided for in the ANDA. IMS submitted stability data derived from an assay method which has not been shown to separate isoproterenol hydrochloride from its major degradation product. Thus, it has not been established that the assay procedure is stability indicating. The stability testing procedures also fail to provide for periodic sterility testing and particulate matter evaluation. (21 U.S.C. 355(j)(3)(A); 21 CFR 314.125(b) (1), (4) and (13); 21 CFR 211.137(a) and 211.166 (a) and (b))

3. For NDA 19–550, IMS proposed an expiration date of 24 months. Specifications for the product require that the dextrose content be between 95 percent and 105 percent of the labeled amount at the time of release. The product should therefore meet those limits throughout its expiration dating period under any of the recommended storage conditions. The stability data submitted, however, are not adequate to demonstrate that the vapor loss from the product would not lead to an increase of the dextrose concentration beyond the upper limit if the product were stored at 30°C (the upper limit of controlled room temperature). In fact, calculated values of predicted potency based on the available data indicate that the product could be out of limit after two years storage at 30°. Actual stability data for such storage at 30°C have not been submitted. In addition, only one lot of drug product was used to determine the rates of vapor loss at different temperatures, whereas at least three lots should be used to determine such values. The stability testing protocol also fails to include monitoring for 5-hydroxymethylfurfural and related substances, which should be tested for in accordance with the "United States Pharmacopoeia," 21st Revision. (21 U.S.C. 355(d) (3) an (4); 21 CFR 314.125(b) (1), (4) and (13); 21 CFR 211.137 (a) and (b) and 211.166 (a) and (b))

II. Additional Deficiencies Which Apply to ANDA'S 71–818 and 89–732.

A. Failure To Provide Adequate Methods and Controls for the Sterilization and Depyrogenation of Product Vials

Both ANDA's indicate that dry heat at 260°C for 90 minutes is used for the glass vial product containers, but no other information is provided concerning sterilization or depyrogenation of the vials. The applications fail to provide sufficient details of the process, including validation methods and data which support sterilization and depyrogenation. (21 U.S.C. 355(j)(3)(A); CFR 314.125(b) (1), (4) and (13); 21 CFR 211.94 (c) and (d), and 211.113(b))

B. Failure To Provide Adequate Validation for Aseptic Filling Operations

Both ANDA's fail to provide any results of media fill validations for the specific lines used for filling these products. They also fail to provide any information concerning the frequency of revalidation of filling lines. (21 U.S.C. 355(j)(3)(A); 21 CFR 314.125(b)(1), (4) and (13); 21 CFR 211.113(b))

C. Failure To Provide for Adequate Methods, Facilities, and Controls for the Drug Substance

1. For ANDA 71–818, IMS has provided information about the methods, facilities, and controls for the manufacture, processing, packing, and holding of the drug substance by referring to information in a drug master file submitted by the proposed supplier of bretylium tosylate. However, this proposed supplier was issued a deficiency letter by CDER on February 19, 1988, concerning inadequate controls for bretylium tosylate. The supplier is not presently considered an acceptable source of the drug substance until the deficiencies are corrected. Consequently, ANDA 71–818 does not provide appropriate information about the methods, facilities and controls to assure and preserve the identity, strength, quality, purity, and stability of the drug substance. (21 U.S.C. 355(j)(3)(A); 21 CFR 314.125(b) (1), (4) and (13); 21 CFR 211.113(b))

2. For ANDA 89–732, IMS has provided information about the methods, facilities, and controls for the manufacture, processing, packing, and holding of the drug substance by referring to information in a drug master filed submitted by the proposed supplier of isoproterenol hydrochloride. However, this proposed supplier was issued a deficiency letter by CDER on February 16, 1988, concerning inadequate controls for isoproterenol hydrochloride. The supplier is not presently considered an acceptable source of the drug substance until the deficiencies are corrected. Consequently, ANDA 89–732 does not provide appropriate information about the methods, facilities and controls to assure and preserve the identity, strength, quality, purity, and stability of the drug substance. (21 U.S.C. 355(j)(3)(A); 21 CFR 314.125(b)(1), (4) and (13); 21 CFR 211.160(b))

III. Additional Deficiency Which Applies to ANDA 71–818

Failure To Provide Batch Production and Control Records for a Production-Sized Batch

This application includes a complete batch record only for an eight-liter pilot batch. A blank master production and control record for a production-sized batch has also been submitted. However, no completed batch records or test results have been submitted for an actual production-sized batch to allow assessment of possible effects of scale-up operations on the drug product. (21 U.S.C. 355(j)(3)(A); 21 CFR 314.125(b)(1), (4) and (13); 21 CFR 211.188))

IV. Additional Deficiency Which Applies to ANDA 89–732

Failure To Provide Adequate Procedures and Controls for In-Process Adjustments

The applicant has indicated that it performs an in-process assay on the bulk solution and adjusts, if necessary, based on the assay. No further infomation has been provided concerning what is adjusted, how it is performed, or how it is controlled. This fails to provide sufficient information concerning such procedures and controls. (21 U.S.C. 355(j)(3)(A); 21 CFR 3145.125(b)(1), (4) and (13); 21 CFR 211.110(a) and (b))

Therefore, notice is given to the applicant, and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue orders under sections 505(j)(3) and (4) refusing to approve ANDA's 71–818 and 89–732, and under section 505(d) refusing to approve NDA 19–550, on the grounds that, (1) based on information contained in each of the three applications, the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drugs are inadequate to assure and preserve their identity, strength, quality, and purity, and (2) for NDA 19–550, upon the basis of information submitted as part of the application, or upon the basis of other available information, there is insufficient information to determine whether the drug is safe under the conditions prescribed, recommended, or suggested in its proposed labeling.

In accordance with section 505 and 21 CFR Part 314, the applicant is hereby given an opportunity for a hearing on the question of whether ANDA's 71–818 and 89–7321 and NDA 19–550 are approvable.

If the applicant decides to seek a hearing the applicant shall file: (1) On or before June 24, 1988 a written notice of appearance and request for hearing, and (2) on or before July 25, 1988 the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to refuse approval. The procedures and requirement governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of a hearing, are contained in 21 CFR 314.200.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed and the agency will summarily issue orders refusing to approve the applications.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the refusal to approve the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9:00 a.m. and 4:00 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: May 17, 1988.

Gerald F. Mayes,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 88–11075 Filed 5–24–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88E–0065]

Determination of Regulatory Review Period for Purposes of Patent Extension; Spectamine®; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: In the Federal Register of April 14, 1988 (53 FR 12464), the Food and Drug Administration published a notice announcing the agency's determination of the regulatory review period for the patented human drug product, Spectamine®. The manufacturer alerted the agency to typographical errors in 3 words that described the use of the product. This document corrects these errors.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chambles, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–8150, appearing at page 12464 in the Federal Register of Thursday, April

14, 1988, the following corrections are made:

Under the heading "SUPPLEMENTARY INFORMATION," third paragraph, Line 5, "nonlscmnar" is corrected to read "nonlucmnar"; line 7, "local" is corrected to read "focal"; and line 10, "ischematic" is corrected to read "ischemic".

Dated May 17, 1988.

Allen H. Denson,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 88-11674 Filed 5-24-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-040-4419-08]

Management Framework Plans; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability—Proposal to amend the Challis and Ellis-Pahsimeroi Management Framework Plans (MFP) to allow for the disposal of 17 tracts of land by exchange or sale.

NOTICE: Notice is hereby given that the Proposed Plan Amendment for the Challis and Elis-Pahsimeroi MFPs to allow for the disposal of 17 tracts (approximately 280 acres) of land by exchange or sale is available.

SUMMARY: The BLM has identified 17 parcels of public land totaling approximately 280 acres for transfer from public ownership. These parcels may be offered for disposal, first by exchange and then by direct sale, to the owners of record of the adjacent private lands. During the development of the Land Report and the Environmental Analysis of each parcel, the offered private lands will be evaluated for acceptance into public ownership. Disposals will be appraised at fair market value. None of these tracts join the Salmon River, nor do they provide access to the Salmon River.

The following Administrative actions will be required for implementation of the Plan Amendments:

Before the disposal of any of these parcels can be finalized, a complete Cultural Resource Inventory and a thorough examination for any known threatened or endangered plant or animal species or habitat will be conducted on each parcel.

Parcels identified for disposal will meet the "Policy Guidance for Retention or Disposal of Floodplains, Wetlands, Riparian Habitat, T/E Species Habitat and State-Listed Sensitive Species Habitat".

Parcels identified for disposal will meet the policy guidance in "Notification Prior to Cancellation of Grazing Permits/Leases and Reservation of Grazing Privileges in Public Sale Patents".

Parcels identified for disposal will meet the policy guidance for those lands involved in the "National Wildlife Federation Lawsuit".

Exchanges will be assessed on appraised values and not on an acre per acre basis. The offered lands will be reviewed by the Area Manager, and if he determines that it is in the public's interest to accept the offered lands, then the exchange can proceed.

SUPPLEMENTARY INFORMATION: Detailed information about the 17 parcels of land and disposal criteria can be obtained by contacting Bob Hium, Realty Specialist, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Planning Protest

Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest should be in writing and filed with the Director (760), Bureau of Land Management, 1800 "C" Street NW, Washington, DC 20240, within 30 days of this notice. The procedures for filing a protest are attached to the "Dear Reader" letter included with the proposed plan and listed in 43 CFR 1610.5-2.

Designation

In the absence of any planning protests this action will become the final determination of the Department of the Interior and the Plan Amendment will be in effect.

Dated: May 10, 1988.

Jerry W. Goodman,

District Manager.

[FR Doc. 88-11737 Filed 5-24-88; 8:45 am]

BILLING CODE 4310-GG-M

[ES-040-08-4520-13; ES-036806, Group 23]

Filing of Plat of Dependent Resurvey and Section Subdivision; Missouri

May 19, 1988.

1. The plat of the dependent resurvey of the retracement of the east boundary (Fifth Principal Meridian), Township 34 North, Range 1 West, and the dependent resurvey of the south boundary, Township 35 North, Range 1 East, a portion of the subdivisional lines and the survey of the subdivision of section 6 in Township 36 North, Range 1 East, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on July 5, 1988.

2. The dependent resurvey was made at the request of the United States Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., July 5, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Bennadin,

Acting Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-11727 Filed 5-24-88; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service

Receipt of Outer Continental Shelf Development Operations Coordination Document; Sandefer Offshore Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sandefer Offshore Operating Co. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5366, Block 128, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 18, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 17, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-11656 Filed 5-24-88; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Outer Continental Shelf Development Operations Coordination Document; Sohio Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sohio Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7397, Block 209, East Breaks Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Pelican Island, Texas.

DATE: The subject DOCD was deemed submitted on May 18, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 17, 1988.

J. Rogers Pearcy,

Gulf of Mexico OCS Region.

[FR Doc. 88-11657 Filed 5-24-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intent To Hold Meeting; Katmai National Park and Preserve, AK

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to hold meeting.

SUMMARY: Notice is hereby given that a public meeting is to be held by the National Park Service to present a proposed temporary restriction to the bag limit of fish taken by anglers on the Brooks River within Katmai National Park and Preserve. The item to be discussed will be a National Park Service proposal to temporarily restrict bag limits for fish along the Brooks River from June 15, 1988 through October 31, 1988 to allow only one (1) fish, regardless of species, to be kept by anglers. This would be a change from the current State regulation allowing a bag limit of five (5) salmon and two (2) rainbow trout. The National Park Service gives notice of this meeting in order to seek comments from the public in general, and local users in particular, on this proposal.

DATE: June 8, 1988, 10 a.m. Alaska Daylight Time.

ADDRESS: The meeting will be held at King Salmon, Alaska at the FAA Facility (Comserfac).

FOR FURTHER INFORMATION CONTACT: Ray Bane, Superintendent, Katmai National Park and Preserve, P.O. Box 7, King Salmon, Alaska 99613 (phone 907-246-3305).

SUPPLEMENTARY INFORMATION: This meeting is called pursuant to regulations published at 36 CFR 13.30(d) requiring a "hearing in the vicinity of the area(s) directly affected" by any proposed temporary restriction to the taking of fish and wildlife. The proposed area of the temporary restriction is to be the length of the Brooks River, which flows for approximately 1 mile between Brooks Lake and Naknek Lake located within Katmai National Park. A temporary restriction to fish bag limits, pursuant to 36 CFR 13.21(e), is proposed to specifically address concerns regarding potentially dangerous human/bear interactions along the Brooks River.

Richard J. Stenmark,

Acting Regional Director

[FR Doc. 88-11669 Filed 5-24-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303-TA-19 and 20 and Investigations Nos. 731-TA-391-399 (Preliminary)]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany et al.

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Singapore and Thailand of

[1] The record is defined in section 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

BEST COPY AVAILABLE

antifriction bearings (other than tapered roller bearings) and parts thereof, whether finished or unfinished, provided for in items 661.10, 661.39, and 692.32 of the Tariff Schedules of the United States (TSUS),[1] that are alleged to be subsidized by the governments of Singapore and Thailand.

The Commission also determines, pursuant to section 733(a) of the Act [19 U.S.C. 1673b(a)], that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom of antifriction bearings (other than tapered roller bearings) and parts thereof, whether finished or unfinished, provided for in items 660.30, 660.33, 660.37, 660.39, 661.04, 661.10, 661.39, and 692.32 of the Tariff Schedules of the United States,[2] that are alleged to be sold in the United States at less than fair value [LTFV].

Background

On March 31, 1988, petitions were filed with the Commission and the Department of Commerce by the Torrington Company, Torrington, CT, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore and Thailand, and by reason of LTFV imports of antifriction bearings (other than tapered roller bearings) from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. Accordingly, effective March 31, 1988, the Commission instituted preliminary countervailing duty investigations Nos. 303–TA–19 and 20 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–391–399 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 11, 1988 (53 FR 11917). The conference was held in Washington, DC, on April 21, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 16, 1988. The views of the Commission are contained in USITC Publication 2065 (May 1988), entitled "Antifriction bearings (other than tapered roller bearings) and parts thereof, from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Determinations of the Commission in Investigations Nos. 303–TA–19 and 20 and 731–TA–391–399 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: May 17, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–11723 Filed 5–24–88; 8:45 am]

BILLING CODE 7020–02–M

[1] Antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore and Thailand subject to investigation include ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 685.1010 and 681.1020) and proposed Harmonized Tariff Schedule (HTS) subheadings 8483.20.40, 8483.20.60, 8483.90.20, and 8483.90.80); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3000 and HTS subheading 8483.90.40); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HTS subheading 8708.93.50).

[2] For purposes of these investigations, the subject bearings and parts thereof include the following articles, whether finished or unfinished: antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and HTS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3360 and HTS subheading 8482.20.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3724, 680.3722, 680.3727, and 680.3738, and HTS subheadings 8482.10.50 and 8482.80.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HTS subheadings 8482.30.00 and 8482.90.30); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA items 680.3909 and HTS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70); ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HTS subheadings 8483.20.80, 8483.30, 8483.90.20, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1020, and HTS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3000 and HTS subheading 8483.90.80); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HTS subheading 8708.93.50). Finished but engraved or unengraved balls are not included in the scope of these investigations.

[Investigation No. 332–227]

Annual Reports on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: United States International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1988 annual report.

EFFECTIVE DATE: May 13, 1988.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–252–1284), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information through 1995. Notice of institution of the investigation and the schedule for such reports was published in the Federal Register of May 14, 1986 (51 FR 17670). The third report, covering calendar year 1987, is to be submitted by September 30, 1988.

In the original notice of investigation, it was announced that, as provided in section 215(b) of the CBERA, the Commission in such reports is required to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and assess the probable future effect which the act will have on the United States economy generally and on such domestic industries.

Written Submission

The Commission does not plan to hold public hearing in connection with the 1988 report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's 1988 report should be submitted at the earliest practical date and should be received no later than June 24, 1988. All submissions should be addressed to the Secretary of the Commission at the Commission's office in Washington, D.C.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1809.

By order of the Commission.

Issued: May 18, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–11727 Filed 5–24–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on June 6, 1988, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Issued: May 17, 1988.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 88–11728 Filed 5–25–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–264]

Commission Decision to Review and Affirm With Modification an Initial Determination Terminating the Investigation With Prejudice on the Basis of Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Review and affirmance with modification of an initial determination terminating the above-captioned investigation with prejudice on the basis of withdrawal of the complaint.

SUMMARY: Notice is hereby give that the U.S. International Trade Commission has determined to review and affirm with modification an initial determination (ID) (Order No. 14) of the presiding administrative law judge (ALJ) terminating the investigation with prejudice on the basis of withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Mitchell Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1087.

SUPPLEMENTARY INFORMATION: On April 6, 1987, the Commission instituted this investigation on the basis of a complaint filed by OPEX Corporation ("Opex") alleging unfair methods of competition and unfair acts in the importation of certain mail extraction desks and components thereof, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The complaint alleged infringement of claims 12, 2, 5–7, 10–12, and 14 of U.S. Letters Patent Re. 32,328 owned by Opex. Named as respondent in the investigation were Stielow GmbH & Co. ("Stielow"), Almega Systems ("Almega"), and Automated Equipment Services ("Automated"). The Commission's notice of investigation was published in the Federal Register on April 15, 1987 (52 FR 12286).

On January 22, 1988, complainant Opex and respondents Stielow, Almega, and Automated filed a joint motion (Motion No. 284–21) to terminate the investigation with prejudice on the basis of withdrawal of the complaint. On April 12, 1988, the presiding ALJ issued an ID (Order No. 14) granting the joint motion to terminate. Complainant Opex filed a petition for review of the ID and the Commission investigative attorney and counsel for respondents filed responses to the petition. No government agency comments were received.

The Commission's action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.54(b) and 210.56(c) (19 CFR 210.54(b) and 210.56(c)).

Copies of the Commission's Order, the Commission Opinion in support thereof, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: May 17, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–11726 Filed 5–24–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–267]

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Suspension of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: Notice is given that the Commission has determined to suspend the above-captioned investigation until thirty (30) days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1092.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and Commission rule 210.59 (19 CFR 210.59). The basis for suspension is the pendency before the Food and Drug Administration (FDA) of complainant The Upjohn Company's new drug application (NDA) for the topical minoxidil compositions which are the subject of this investigation.

On February 16, 1988, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding a violation of section 337. The Commission investigative attorney (IA) filed a petition for review which included a suggestion to suspend the investigation pending final action by the FDA on Upjohn's NDA. On April 4, 1988, the Commission determined to review portions of the ID.

Copies of the nonconfidential version of the commission Order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter

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can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: May 16, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-11730 Filed 5-24-88; 8:45 am]

BILLING CODE 7020-02-M

Dismissal of Request for Institution of a Section 751(b) Review Investigation; Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-244 (Final), Natural Bristle Paint Brushes from the People's Republic of China.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-244 (Final), regarding natural bristle paint brushes from the People's Republic of China.[1]

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1988, the Commission issued its determination in investigation No. 731-TA-244 (Final), Natural Bristle Paint Brushes from the People's Republic of China (53 FR 4662). The Commission determined that an industry in the United States was threatened with material injury by reason of imports from the People's Republic of China of natural bristle paint brushes, except artists' brushes, which had been found by the Department of Commerce to be sold at less than fair value (LTFV). On February 14, 1988, the Department of Commerce issued an antidumping duty order, notice of which was published in the Federal Register (53 FR 5568).

On February 24, 1988, the Commission received a request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731-TA-244 (Final). This request was filed by counsel on behalf of A. Hirsch, Inc., an importer of natural bristle paint brushes from the People's Republic of China.

On March 23, 1988, the Commission published a request for written comments in the Federal Register (53 FR 9496) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. Comments were supplied by counsel on behalf of the Paint Applicators Trade Action Coalition (PATAC), opposing the institution of a review investigation. PATAC represents a number of domestic manufacturers of paint brushes who were members of the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition that petitioned for relief in the original investigation (731-TA-244 (Final)). In addition, statements supporting the institution of an investigation were filed by Linzer Products Corporation, American Brush Co., Inc., DQB Industries, and Michigan Brush Manufacturing Co., Inc. Linzer and American were parties to the original investigation in opposition to the imposition of antidumping duties.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request does not show changed circumstances sufficient to warrant institution of a review investigation regarding natural bristle paint brushes from the People's Republic of China.

By order of the Commission.

Issued: May 17, 1988.

Kenneth R. Mason,

Secretary

[FR Doc. 88-11725 Filed 5-24-88; 8:45 am]

BILLING CODE 7020-02-M

[1] Natural bristle paint brushes are provided for in item 750.35 of the Tariff Schedules of the United States and item 9605.60.40 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

[Investigation No. 337-TA-281]

Certain Recombinant Erythropoietin; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on June 20, 1988, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Issued: May 17, 1988.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 88-11724 Filed 5-24-88; 8:45 am]

BILLING CODE 7020-02-M

[332-135]

Synthetic Organic Chemical (SOC) Reports

AGENCY: United States International Trade Commission.

ACTION: Change of authority.

Background: The original notice of institution of investigation No. 332-135 published in the Federal Register of February 10, 1982 (47 F.R. 6120), is amended to change the Commission's authority to conduct the investigation from section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) to section 332(g) (19 U.S.C. 1332(g)).

This action was taken following receipt of a letter dated April 27, 1988, from the Honorable Sam M. Gibbons, Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, requesting on behalf of the Committee on Ways and Means that the Commission continue publication of the SOC reports under the authority of section 332(g) of the Tariff Act of 1930.

EFFECTIVE DATE: May 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Emanuel or Mr. John J. Gersic, Energy and Chemicals Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436 (telephone 202-252-1307 and 202-252-1342, respectively).

By order of the Commission.

Issued: May 18, 1988.

Kenneth R. Mason,

Secretary

[FR Doc. 88-11722 Filed 5-24-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 297X)]

Burlington Northern Railroad Co.; Abandonment Exemption, Denver County, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by Burlington Northern Railroad Company of 1.15 miles of track in Denver County, CO, subject to standard labor protective conditions, a stipulated condition protecting an overhead shipper, and an historic preservation condition.

DATES: Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 10, 1988. Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 24, 1988.

Petitions to stay must be filed by June 9, 1988, and petitions for reconsideration must be filed by June 20, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 297X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: May 16, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11695 Filed 5-24-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48 440-48 446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. John R. Cauffman et al.

In accordance with Department policy, 28 CFR 50.7 and section 122(i) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat 1613 (1986), notice is hereby given that on May 4, 1988, a proposed Consent Decree in *United States v. John R. Cauffman, et al.*, Civil Action CV-83-6318-KNCBX was lodged with the United States District Court for the Middle District of California.

The proposed Consent Decree requires the defendants to pay the United States the sum of $1,049,750.00 for estimated response costs incurred in the surface cleanup and removal action at 12605 Marquart Avenue, Santa Fe Springs, California, also known as the "General Disposal" site. This decree will terminate the pending litigation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. John R. Cauffman, et al.*, D.J. No. 90-11-3-151.

The proposed Consent Decree may be examined at the office of the United States Attorney, 312 North Spring Street, Los Angeles, California 90012. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.30 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11736 Filed 5-24-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. City of Lancaster, et al.*, Civil Action No. 88-91, has been lodged in the United States District Court, Eastern District of Kentucky. The Complaint in this action sought injunctive relief and civil penalties for violation of the Clean Water Act 33 U.S.C. 1251, *et seq.*

Specifically, the City of Lancaster was charged with violating the terms of its Kentucky Pollution Discharge Elimination System Permit. The proposed Consent Decree requires the City of Lancaster to make capital improvements to its wastewater treatment plant and to pay a civil penalty of $6,800.

After the requisite Federal Register notice is published, the time period for comments has run, and the comments, if any, have been evaluated, the Court will be further advised as to any action which may be required by the Court at that time. During the pendency of the Register notice comment period under 28 CFR 50.7, no action is required of the Court.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Lancaster, et al.*, D.J. Ref. No. 90-5-1-1-2966.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, Federal Courthouse, Barr Street, Lexington, Kentucky, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1736(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11734 Filed 5-24-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordnace with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. City of Owenton, et al.*, Civil Action No. 88-20, has been lodged in the United States District Court, Eastern District of Kentucky. The Complaint in this action sought injunctive relief and civil penalties for violation of the Clean Water Act 33 U.S.C. 1251, *et seq.*

Specifically, the City of Owenton was charged with violating the terms of its Kentucky Pollution Discharge Elimination System Permit. The proposed Consent Decree requires the City of Owenton to make capital improvements to its wastewater treatment plant and to pay a civil penalty of $5,000.

After the requisite Federal Register Notice is published, the time period for comments has run, and the comments, if any, have been evaluated, the Court will be further advised as to any action which may be required by the Court at that time. During the pendency of the Register Notice comment period under 28 CFR 50.7, no action is required of the Court.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Owenton, et al.*, D.J. Ref. No. 90-5-1-1-2951.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, Federal Courthouse, Barr Street, Lexington, Kentucky, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1736(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11735 Filed 5-24-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-32]

John S. Noell, M.D.; Denial of Application

On March 5, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John S. Noell, M.D., Alcohol Rehabilitation Center, Black Mountain, North Carolina (Respondent), proposing to deny his application for registration executed on May 14, 1986. The statutory basis for the denial is that Respondent's registration with DEA would be inconsistent with the public interest as evidenced by: (1) His felony conviction, in the United States District Court for the Eastern District of Louisiana on 16 counts of illegal distribution of controlled substances on January 21, 1976, and (2) his prescribing of controlled substances utilizing the DEA registration of the Alcohol Rehabilitation Center to individuals who were not clients of the institution.

Respondent requested,a hearing by letter dated March 25, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was held in Washington, DC on September 22, 1987. Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision on February 5, 1988.

The Administrative Law Judge found that Respondent has a history of violations relating to controlled substances which dates back to 1962. In 1962 Respondent surrendered his narcotic drug license for failure to comply with Federal narcotic laws. In 1968 the Louisiana State Board of Medical Examiners suspended Respondent's license to practice medicine in that state for one year. In February 1971 an audit of respondent's controlled substances revealed unexplained shortages. Following several undercover purchases of amphetamines by DEA agents in 1975, Respondent was convicted, following a plea of *nolo contendere*, in the United States District Court for the Eastern District of Louisiana of 16 counts of unlawful distribution of controlled substances, felony violations of the Controlled Substances Act.

Effective June 6, 1977, the Administrator of DEA revoked Respondent's DEA Certificate of Registration. The revocation was upheld on Respondent's appeal to the United States Court of Appeals for the Fifth Circuit. 586 F.2d 554 (1978).

Respondent is now licensed to practice medicine in North Carolina. He received a limited license in 1980 and was given a full license in 1984. Respondent has been employed as a staff physician at the Alcoholic Rehabilitation Center (ARC) in Black Mountain, North Carolina since May 1981. After receipt of Respondent's application for DEA registration, DEA investigators reviewed prescriptions in several pharmacies in the Black Mountain area. They found 26 prescriptions for controlled substances written by Respondent during the period December 1985 through December 1986. Respondent was permitted to utilize ARC's DEA registration to write controlled substance prescriptions for persons who were in-patients at the facility. Some of the prescriptions for controlled substances found by investigators had been written by Respondent for former ARC patients and patients in a halfway house. However, eight of the prescriptions were written for Roy Walltower, a former patient of Respondent's and an employee of Respondent's mother in Raleigh, North Carolina. Mr. Walltower had never been a patient at ARC, and Respondent's prescribing of controlled substances to him was clearly unauthorized.

The Administrative Law Judge concluded that although Respondent has made great strides in his rehabilitation from alcohol, his lack of responsibility and good judgment, exhibited by writing unauthorized prescriptions for controlled substances, requires that his application for registration be denied.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that based upon Respondent's violative history related to the handling of controlled substances, his felony conviction, and his recent activity of writing unauthorized prescriptions for controlled substances, Respondent's registration with DEA would be inconsistent with the public interest. There is, therefore, a lawful basis for the denial of Respondent's application for registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration submitted by John S. Noell, M.D., dated May 14, 1986, be, and it hereby is, denied. Any other outstanding applications for registration submitted by Respondent are also denied. This order is effective May 25, 1988.

Dated: May 19, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-11712 Filed 5-24-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-61]

Richard N. Shatz; Denial of Application

On June 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued as Order to Show Cause to Richard N. Shatz, M.D. (Respondent) of 456 N. New Ballas Road, Suite 286, Creve Coeur, Missouri 63141 proposing to deny his application, executed on March 19, 1986, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

By letter dated July 20, 1987, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in St. Louis, Missouri on November 18, 1987. On February 17, 1988, the Administrative Law Judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On March 15, 1988, Respondent submitted exceptions to Judge Bittner's opinion and recommended ruling and on March 21, 1988, Government counsel filed a response to Respondent's exceptions. On March 21, 1988, the Administration Law Judge transmitted the record of these proceedings, including Respondent's exceptions and the Government's response thereto, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a medical doctor with a subspecialty in plastic surgery. In late June 1982, during a routine inspection of DEA order forms, DEA investigators discovered that from June of 1980 to June of 1982, Respondent ordered approximately one ounce of pharmaceutical cocaine per month, for a total of 20 ounces. During the course of the investigation, DEA investigators interviewed two plastic surgeons who stated that one ounce of cocaine per month for office use was excessive in the practice of plastic surgery. In addition, one of the plastic surgeons stated that he no longer uses cocaine in his office practice because of the high risk involved. In addition, the investigators reviewed the buying patterns for cocaine of area DEA registrants and found that during the same period of time that Respondent ordered 20 ounces of pharmaceutical cocaine, a 1,200 bed acute care facility with 52 operating rooms ordered 42 ounces.

On July 21, 1982, the investigators interviewed Respondent concerning the large quantity of cocaine he had ordered. Respondent indicated that he used the cocaine to numb his patients' noses. Respondent specifically stated that he hads never personally used any of the cocaine for recreational purposes. During the course of this visit, the investigators obtained the names of those patients to whom Respondent alleged he administered cocaine. The investigators interviewed 33 of these patients. Of these, 26 were certain that cocaine had not been administered to them by Respondent. A numer of them indicated that Respondent had never even examined their noses, but rather had treated them for other medical problems.

On January 13, 1984, Respondent pled guilty and was convicted in the United States District Court for the Eastern District of Missouri of one count of obtaining cocaine by misrepresentation, fraud, forgery, deception or subterfuge, a felony relating to controlled substances. The court granted a suspended imposition of sentence, placed Respondent on probation for four years and required him to perform 150 hours of community service. Respondent's probation period was suspended after two years.

Respondent is currently registered to handle controlled substances subject to certain conditions in the State of Missouri. He has fulfilled his community service obligation. The director of the center at which Respondent performed this service testified that Respondent never demonstrated inappropriate behavior while performing his duties. In addition, the director stated that Respondent continued to work at the health center even after his community service obligation was completed. From July 1987 through October 1987, Respondent was employed as a staff physician at a convenience care clinic., Individuals who worked with him at the clinic testified at the hearing that Respondent performed his duties at the clinic in an excellent manner.

Respondent's psychiatrist testified that he treated Respondent for acute depression that he experienced in reaction to being discovered using cocaine.

The Administrative Law Judge concluded that Respondent's registration would be inconsistent with the public interest. Judge Bittner noted that the health care professionals called as witnesses on Respondent's behalf testified that they saw no reason why Respondent should not be granted a DEA Certificate of Registration. Judge Bittner concluded however, that this testimony along with Respondent's performance of community service and treatment for depression are outweighted by Respondent's egregious abuse of his prior DEA registration.

Respondent used his DEA registration to obtain cocaine to perpetuate his own addition to the drug. A DEA registration entrusts the registrant with a serious responsibility for the proper use of controlled substances, and requires assurance that the registrant is willing and able to carry out the responsibility to handle controlled substances with sufficient care to protect the public interest. The Administrative Law Judge concluded that Respondent failed to provide convincing evidence to warrant such assurance. In fact, Judge Bittner noted, that Respondent's principal argument appears to be that he needs to be registered in order to maximize his earning potential. This is not the purpose of a Federal controlled substance registration. Medical practitioners are registered so that they may prescribe, dispense, administer and otherwise handle controlled substances in order to effectively treat their patients. These substances are controlled because of their potential for abuse, and they must be handled with care and in strict compliance with the law. Judge Bittner concluded that Respondent was not persuasive in evidencing an appropriate awareness of the responsibility which accompanies DEA registration. Consequently, the Administration Law Judge recommended that Respondent's application for registration be denied.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. Respondent's application must be denied. The Administrator, in reaching this conclusion, considered Respondent's exceptions to Judge Bittner's opinion. However, nothing in Respondent's exceptions persuaded the Administrator that Respondent should be registered.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.000(b), hereby orders that any pending applications for registration under the Controlled Substance Act submitted by Richard N. Shatz, M.D., be, and they hereby are, denied.

John C. Lawn,

Administrator.

Date May 18, 1988.

[FR Doc. 11677 filed 5–24–88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Carpenter Technology Corp.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 6, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 6, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 16th day of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Carpenter Technology Corp. (Company)	Bridgeport, CT	5/16/88	5/4/88	20,667	Stainless steel bars.
Cluett Shirtmakers, Inc. (ACTWU)	Andalusia, AL	5/16/88	5/2/88	20,668	Men's shirts.
Farah Mfg. Services (ACTWU)	El Paso, TX	5/16/88	5/3/88	20,669	Men's and ladies' jeans and jackets.
General Electric Co. (IUE)	Warwick, RI	5/16/88	4/25/88	20,670	Wiring devices.
International Shoe Co. (Workers)	Overland, MO	5/16/88	5/4/88	20,671	Administrative services for Int'l Shoe Co.
Miles Incorporated-Clifton Enzyme Plant (Workers)	Clifton, NJ	5/16/88	5/4/88	20,672	Industrial enzymes.
NRG Exploration Incorporated (Workers)	The Woodlands, TX	5/16/88	4/28/88	20,673	Crude oil and natural gas.
Geo Southern Energy Corp. (Workers)	do	5/16/88	4/28/88	20,674	Do.
Pea Ridge Iron Ore Co. (Workers)	Sullivan, MO	5/16/88	4/18/88	20,675	Iron ore pellets.
Quarto Mining Co., Mine #4 (Workers)	Powhatan Point, OH	5/16/88	5/6/88	20,676	Metallurgical coal.
RWC, Inc. (UAW)	Bay City, MI	5/16/88	4/26/88	20,677	Assembly line machinery.
Red Fork Drilling, Inc. (Workers)	Seminole, OK	5/16/88	5/1/88	20,678	Oil and gas wells.
Robes, Inc. (ILGWU)	Newark, NJ	5/16/88	4/26/88	20,679	Choir robes.
Todd Shipyards Corp. (Workers)	Galveston, TX	5/16/88	5/1/88	20,680	Ships.
Valley Vulcan Mold Co. (Workers)	Latrobe, PA	5/16/88	5/2/88	20,681	Cast iron molds.
Whitehouse Hospital Supply Corp. (ACTWU)	Teutopolis, IL	5/16/88	5/3/88	20,682	Hospital garments/surgery-wear.
Whitehouse Hospital Supply Corp. (ACTWU)	Hot Springs, AK	5/16/88	5/3/88	20,683	Do.

[FR Doc. 88–11645 Filed 5–24–88; 8:45am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; CM Offray and Son, Inc. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 9, 1988—May 13, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following case, the investigation revealed that criterion (3) has not been met for the reason specified.

TA–W–20,586; CM Offray and Son, Inc., Frackville, PA

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–20,534; J-Von, Leoninster, MA

A certification was issued covering all workers engaged in the production of thermal plastic unit soles separated on or after October 1, 1987 and before January 1, 1988.

TA–W–20,533; J.S. Friedberg, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after March 4, 1987.

TA–W–20,518; Southwestern Portland Cement Co., Amarillo, TX

A certification was issued covering all workers of the firm separated on or after February 29, 1988 and before April 30, 1988.

I hereby certify that the forementioned determinations were issued during the period May 9, 1988–May 13, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 17, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–11646 Filed 5–24–88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M–88–6–M]

Democrat Mine; Petition for Modification of Application of Mandatory Safety Standard

Democrat Mine, Box 686, Salmon, Idaho 83467 has filed a petition to modify the application of 30 CFR 57.11050 (escapeways and refuges) to its Democrat Mine (I.D. No. 10–00467) located in Lemhi County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirements that every mine have two or more separate, properly maintained escapeways to the surface from the lowest levels that are positioned so that damage to one will not lessen the effectiveness of the others.

2. As an alternate method, the petitioner proposes to construct two refuge chambers instead of the second escapeway. In support of this request, the petitioner states that—

(a) There is no danger of fire inside the mine;

(b) The underground average temperature is 38 °F;

(c) Except for portal timber, there is no timber or other flammable material extending 50 feet inside the tunnel. This timber is painted with fire retardant paint and covered with shotcrete. The ore shoots contain some timber, which is moisture-laden and incapable of burning;

(d) There is no electricity underground; and

(e) No smoking is permitted underground.

3. The petitioner further states that a second escapeway could not be used during a forest fire because the circulation of the outside air would be down the escapeway.

4. For these reasons, the petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 24, 1988. Copies of the petition are available for inspection at that address.

Date: May 18, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–11647 Filed 5–24–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–88–83–C]

Gang Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Gang Coal Company, P.O. Box 65, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15–15517) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June

24, 1988. Copies of the petition are available for inspection at that address.

Dated: May 17, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-11648 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-49-C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Helen Mining Company, R.D. 2, Box 2110, Homer City, Pennsylvania 15748-0504 has filed a petition to modify the application of 30 CFR 75.205 (installation of roof support using mining machines with integral roof bolters) to its Homer City Mine (I.D. No. 36-00926) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that, when roof bolts are installed by a continuous mining machine with integral roof bolting equipment, the distance between roof bolts be limited to 10 feet crosswise.

2. As an alternate method, petitioner proposes that—

(a) As the miner advances, roof bolts would be installed within 3 feet of each rib and within 4 feet of the previous row. These two bolts would be installed in conjunction with a 3-inch by 6-inch by 12-foot nominal wooden plank;

(b) After the miner has completed basic operating cycles in each given entry and connected crosscuts, regardless of distance and if moved into another entry or room, center bolts would be installed. The coal would be transported through another haulageway until the previously mined entry is center bolted in accordance with the approved roof control plan;

(c) After the miner has completed the slab mining sequence in a given entry, roof bolts would be installed within 3 feet of the solid coal rib and in the 3-inch by 8-inch by 12-foot wooden plank. The center bolt in the plank would be installed no further than 6-feet 4-inches from the slab side plank bolt;

(d) One center bolt would be installed per row approximately 5 feet from the rib bolts. The center bolt would be installed in the previously installed plank with the rib bolts 10-feet 4-inches apart;

(e) Equipment would not be allowed to operate inby an area that has not been center bolted or center posted. This procedure would apply to areas where the mining sequence has been completed and the mining machine has been moved to another entry;

(f) Upon completion of mining in the No. 1 Entry or any entry, or crosscut where roof is left unsupported, a warning sign or device would be installed at the last permanent support to warn persons approaching that the area inby is unsupported;

(g) When the continuous miner returns to No. 1 entry and the next mining cycle begins, the miner operator would only mine enough coal in the 16-foot wide cut for the next permanent support to be installed. Prior to any roof bolting, the jacks on the continuous miner would be pressurized against the mine roof and two (posts or jacks) temporary supports would be installed in the exposed area of the 4-foot slab cut;

(h) Prior to mining the slab cut sequence, the two temporary supports would be removed remotely;

(i) Distance of mining would be limited to 200 feet in any entry including the adjacent crosscut; and

(j) During mining in the No. 1 and No. 2 Entries, the faces would be advanced inby the anticipated crosscut, at a depth to permit the placement of the continuous miner for the next mining sequence.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 24, 1988. Copies of the petition are available for inspection at that address.

May 17, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-11649 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-19-C]

Hickory Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Hickory Coal Company, R.D. #1, Box 479, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its Slope No. 1 (I.D. No. 36-07703) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes. Particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 24, 1988. Copies of the petition are available for inspection at that address.

May 18, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-11650 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-45-C]

Pace Energies, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Pace Energies, Inc., HC 62, Box 442, Virgie, Kentucky 41572 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Sookey's Creek Mine (I.D. No. 15-12427) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 2 Elkhorn Seam and ranges from 34 to 42 inches in height with consistent ascending and descending grades, sometimes as steep as 6 to 8 percent, that create dips throughout the coal bed.

3. The petitioner states that the use of cabs or canopies would result in a diminution of safety because they could strike against the roof and possibly destroy roof support. The cabs or canopies would also limit the operator's field of view and restrict the operator's seating position, leading to possible mistakes and resulting in accidents. The required removal and installation of the cumbersome and heavy cabs or canopies on a daily basis could result in back or other injuries.

4. For these reasons, the petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 24, 1988. Copies of the petition are available for inspection at that address.

May 18, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-11651 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-3-M]

Sonora Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

Sonora Mining Corporation, P.O. Box 1418, Jamestown, California 95327 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Jamestown Mine (I.D. No. 04-04895) located in Tuolumne County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices.

2. The Jamestown Mine is located in a residential area and operates between 7:00 a.m. and 10:00 p.m., excluding Sundays and holidays, due to the noise restrictions and complaints from neighbors. In order to supply the mill with enough ore to run on a twenty-four-hour basis, it became necessary to operate the crushers later than 10:00 p.m.

3. The petitioner states that the use of strobe lights on the equipment has allowed them to operate as well as eliminate the noise from back-up alarms, before 7:00 a.m. and after 10 p.m., without jeopardizing the safety of the employees. However, during the summer months dawn renders the strobe lights ineffective.

4. In lieu of back-up alarms, petitioner proposes to temporarily eliminate access to the crusher apron by placing temporary rock berms at access points at the crusher apron. A lockable gate will be placed at the head of the stairway leading to the crusher apron. These barriers would be removed at 7:00 a.m.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 24, 1988. Copies of the petition are available for inspection at that address.

May 18, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-11652 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-36-C]

United Mine Workers of America; Petition for Modification of Application of Mandatory Safety Standard

United Mine Workers of America, 900 Fifteenth Street, NW., Washington, DC 20005 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems) to the Shoemaker Mine (I.D. No. 46-01436), McElroy Mine (I.D. No. 46-01437), and the Ireland Mine (I.D. No. 46-01438), operated by the Consolidation Coal Company and located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of any fire within each belt flight.

2. Petitioner states that the belt fire detection system presently in use at the mine will result in a diminution of safety because the system does not issue a warning until a fire actually exists and the flames cause the temperature to rise to a sufficient level, thereby exposing miners to the risks associated with belt fires.

3. As an alternate method, petitioner proposes to install an early warning fire detection system, in addition to heat point sensor devices. A low-level carbon monoxide detection system will be installed in all belt entries used as intake or return aircourses and at each belt drive and tailpiece located in intake aircourses. The low-level carbon monoxide (CO) system will be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed, and a device will be installed which will be capable of activating an alarm in case of low-charged batteries. A visual alert signal will be activated when the carbon monoxide level at any sensor is 10 parts per million (ppm) above the ambient level for the mine and an audible signal when the carbon monoxide level is 15

ppm above the ambient level for the mine. All persons will be withdrawn to a fresh air area outby the working places with communication to the surface at 10 ppm and evacuated at 15 ppm. The CO system will initiate the fire alarm signals at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and monitoring electrical continuity to detect electrical malfunctions. In addition, the system will be equipped with an audible alarm to be activated in the event any such malfunctions occur in the system and will also be equipped with a surge suppressor connected to outstations and datalines capable of taking a high voltage surge of electricity to ground.

4. The CO monitoring system will be visually examined at least once each shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized or malfunctions, the conveyor belt will be completely stopped and all personnel inby the last working sensor will be withdrawn to a point outby the next working sensor.

6. Positioning and installation of sensors will be done to assure that both vertical and horizontal placement assures maximum detection. CO sensors will be positioned in a combination track and belt haulageway so that the sensors will not be affected by any external heat sources.

7. When a CO monitoring system has the capability of expanding its functions, i.e., monitoring belts, bearing temperature, water, these expansions will be done without affecting the normal function of the system.

8. The CO monitoring system will be designed so that the system cannot be inadvertently shut down by accidentally punching one key. It will be programmed so that a coded message will have to be fed into the system.

9. If a sensor detects 15 ppm above the established ambient level for the mine, all section alarms on that split of air will be activated. The person sent to make the determination of the cause of activation will carry a SCSR (Self-Contained Self-Rescuer) a hand-held methane detector and a CO detection device with a built in alarm that will activate at 50 ppm of carbon monoxide.

10. The CO detection device, will be available for use on each working section. These devices will be used for one shift and then transported to the surface where a qualified person will recharge and calibrate them.

11. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 24, 1988. Copies of the petition are available for inspection at that address.

Date: May 17, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-11653 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-87-C]

United Mine Workers of America; Petition for Modification of Application of Mandatory Safety Standard

United Mine Workers of America, 900 Fifteenth Street, NW., Washington, DC 20005 has filed a petition to modify the application of 30 CFR 75.1707 (escapeways; intake air; separation from belt and trolley haulage entries) to the Shoemaker Mine (I.D. No. 46-01436), and the McElroy Mine (I.D. No. 46-01437, operated by the Consolidation Coal Company and located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the escapeways required to be ventilated with intake air be separated from the belt and trolley haulage entries for the entire length of such entries to the beginning of each working section.

2. The only intake entry which is available as an escapeway ventilated with intake air contains potential fire sources. These fire sources include, but are not limited to: A battery powered mantrip and haulage motors; a battery charging station; combustible materials such as hydraulic oil, gear oil and grease; transformers; a distribution box; a battery powered scoop; highvoltage cables and electrical pumps.

3. Petitioner states that the presence of such fire sources in the intake escapeway entry will result in a diminution of safety because the miners might not have an uncontaminated intake escapeway from which to escape the mine in the event of an emergency.

4. As an alternate method, petitioner proposes that with the exception of the distance between the belt tailpiece and the solid face (which distance should be no greater than 500 feet), all potential fire sources should be removed from the escapeway required to be ventilated with intake air.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 24, 1988. Copies of the petition are available for inspection at that address.

Date: May 17, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 88-11654 Filed 5-24-88; 8:45am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-6061] et al.

Proposed Exemptions: AmeriTrust Co. National Association, et al.

AGENCY: Pension and Welfare Benefits Administraiton, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: all written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be avaialble for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1. (40 FR 18471, April 28, 1975). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

AmeriTrust Company National Association (AmeriTrust) Located in Cleveland, Ohio

[Application No. D-6061]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code shall not apply to the proposed receipt of fees by AmeriTrust from the Financial Reserves Fund (the Fund), an open-end investment company for which AmeriTrust performs services, in connection with the investment of funds through a daily automated sweep arrangement, of those individual retirement accounts (the IRAs) for which AmeriTrust acts as trustee, under the terms described in this proposed exemption.[1]

Summary of Facts and Representations

1. AmeriTrust is a national banking association authorized to do business under the banking laws of the United States. AmeriTrust has established a prototype IRA for individuals who choose to adopt the IRA as a vehicle for holding and investing retirement funds which they have chosen to roll over to such IRA from a qualified retirement plan. Each such IRA is an individual retirement account as defined in section 408(a) of the Code. As of March 11, 1988, there were 250 individuals who had adopted the IRA.

2. The individuals who establish the IRAs have the right to direct the investment of the assets held therein. If an individual does not waive the right to direct the investment of assets in his or her IRA, AmeriTrust has no discretionary control or responsibility with respect to the investment of the IRA assets, nor does it render any investment advice with respect to those assets.

3. With respect to any IRA owner who waives the right to direct the investment of assets in his or her IRA, such owner still retains the right to direct the investment of cash accumulating in the IRA on a temporary basis. As to IRAs for which such a waiver is in effect, AmeriTrust charges an additional fee for its investment management services. Such additional fee is currently based on a range of .45% to .75% of the market value of the funds under management.

4. The Fund is a diversified open-end investment company and is designed to meet short-term investment requirements by providing for the investment of cash in a professionally managed portfolio of domestic money market instruments. Such short-term investments include certificates of deposit, banker's acceptances issued by major banks, commercial paper, obligations issued by the government of the United States or any agency or instrumentality thereof, short-term (one-year or less) corporate obligations and qualified repurchase agreements.

5. Fidelity Management and Research Company (FMR) is the Fund's investment adviser and shares of the Fund are distributed by Fidelity Distribution Corporation (FDC), a subsidiary of FMR which is registered as a broker-dealer under the Securities Exchange Act of 1934. The applicant represents that neither FMR nor FDC is a fiduciary or a disqualified person as defined in section 4975(e) of the Code with respect to any of the subject IRAs. There is no ownership connection or affiliation, direct or indirect, between AmeriTrust and either FMR or FDC.

6. AmeriTrust is the administrator for the Fund and performs services for the Fund as custodian of Fund assets and as the Fund's transfer, divided disbursing and shareholders' servicing agent. For these services which it renders to the Fund, AmeriTrust receives a monthly fee at an annual rate of .25% of the average daily net assets of the Fund. AmeriTrust represents that it receives no other consideration or benefits from the Fund.

7. Fund shares have been offered principally to prospective investors who have a fiduciary, custodial or agency relationship with AmeriTrust. Thus, the purchase of such shares would not be restricted to IRA owners. Shares of the Fund may be purchased or redeemed on a daily basis. A purchaser does not pay any sale charge or redemption fee to the Fund or AmeriTrust upon purchase or redemption of Fund shares. Such prospective purchasers receive a prospectus from the Fund and are entitled to vote all Fund shares held by them.

8. The applicant represents that IRA owners may not participate in any of AmeriTrust's collective investment funds for temporary investment which provide automated cash management for other Trust Department customers. Recently, AmeriTrust has made available to IRAs an automated cash management system using a daily sweep into a General Motors Acceptance Corporation (GMAC) master note, a commercial paper investment. The GMAC note is an unsecured promissory note of the issuer. The Fund, by contrast, is a money market fund comprised of approximately 50 different issues of

[1] Because the IRAs do not meet the conditions described in 29 CFR 2510.3-2(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

money market instruments. If the exemption proposed herein is granted, AmeriTrust intends to make the availability of the Fund known to IRA owners and let them choose their cash management vehicle.

9. The applicant represents that an IRA which elects to participate in the Fund will have cash in the IRA automatically swept into the Fund, down to a zero balance, on a daily basis, in order to have all of the IRA's funds invested at all times. AmeriTrust has no discretion with respect to the timing within the day of the sweep either into or out of the fund. The applicant also represents that the use of sweep arrangements into money market funds is customary in the banking industry.

10. The applicant represents that since all IRA owners direct the investment of cash of their IRAs, the IRA owners will receive a current prospectus which describes the Fund, the services provided by AmeriTrust and the fees paid to AmeriTrust. The decision to invest would be made solely by the IRA owner. AmeriTrust will continue to receive its standard custodial fees for the IRA assets invested in the Fund, but will receive no additional fee from the IRAs as a result of this investment. With respect to those IRAs for which the IRA owners have waived the right to direct investments, AmeriTrust will reduce its investment management fee (see rep. 3, above) by offsetting an amount equal to an annual fee of .25% of assets managed with respect to IRA assets invested in the Fund for the entire period of such investment. Thus, AmeriTrust would reduce its management fee for the IRA by an amount equal to the fee it receives as a service provider to the Fund (see rep. 8, above.)

11. The applicant represents that increases in fees paid to AmeriTrust by the Fund would be disclosed in a new prospectus issued by the Fund and supplied to all Fund participants prior to additional sales and purchases. In addition, if AmeriTrust's fee from the Fund were increased, AmeriTrust would reduce by an additional corresponding amount its management fee charged to the IRAs for which it provides investment management services.

12. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (a) The decision to invest in the Fund will be made for each IRA by the IRA owner and only after a full disclosure of the fees received by AmeriTrust; (b) the investment of IRA assets in the Fund will enable those assets to be fully invested on a daily basis in a money market fund with investment in over 50 different issues; and (c) the Fund is the best available means for AmeriTrust to provide for the daily investment of all the assets of the AmeriTrusts and the only available means to provide for automated cash management into a diversified money market fund.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Schroder Real Estate Fund A (the Fund) Located in New York, NY

[Application No. D-6911]

Proposed Exemption

Section I. Exemption for Certain Transactions Involving the Fund

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Fund (a Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not Schroder Real Estate Associates (Schroder) or one of its affiliates, any other Fund maintained by Schroder or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the Participating Plan does not exceed 10% of the total assets of the Fund, and the employer is no as "substantial employer" with respect to the Particpating Plan, as defined in section 3001(a)(2) of the Act; or

(B) The interest of the Participating Plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to Schroder or to the employer, or any affiliate of Schroder or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvement thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geopraphically.

(ii) In the case of employer securities—

(aa) Neither Schroder nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either;

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Fund not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Schroder, its affiliates, and any collective investment fund maintained by Schroder or its affiliates, shall be considered to be persons independent of the issuer if Schroder is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall not available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Schroder or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Schroder or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in sections 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of sections 406(a)(1) (A) through (D) and sections 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not Schroder, any affiliate of Schroder, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason by providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not Schroder or an affiliate of Schroder.

(d) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independently of Schroder and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess Holding Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if: (1) The acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Schroder or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) Schroder or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Schroder or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that maybe assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duty authorized employer or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan of any duly authorized employer or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employer or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Schroder or its affiliate, or commercial or financial

information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purpose of this exemption,

(a) The term "the Fund" shall include any collective investment fund that may hereafter be established, operated and managed by Schroder or its affiliate in essentially the same manner as the Schroder Real Estate Fund A.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee..

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same porportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

To date the Department has proposed and granted various individual exemptions on behalf of collective investment funds which have not qualified for relief under PTE 80–51 or Prohibited Transaction Exemption 78–19 (PTE 78–19, 43 FR 59915, December 22, 1978; class relief on behalf of pooled separated accounts sponsored by insurance companies). Such individual exemptions have provided relief for similar transactions subject to, in most instances, similar terms and conditions as those contained in the class exemptions.

Summary of Facts and Representations

1. The Fund was established as of January 31, 1986, as a closed-end group trust described in Rev. Rul. 81–100, 1981–1 C.B. 326. The Fund will provide qualified pension and profit-sharing plans and certain governmental plans and governmental units (the Participating Trusts) with a vehicle for pooling a portion of their funds for the purpose of making investments in real estate. The Fund is intended to be exempt from Federal income taxes under section 501(a) of the Code as a qualified trust under section 401(a) of the Code.

2. Pursuant to a written investment management agreement entered into with the trustees of the Fund, Schroder serves as the investment manager for the Fund. Schroder is an unincorporated joint venture formed by Argyle Advisory Corporation (Argyle), Braeswood Advisory Corporation (Braeswood) and Schroder Real Estate Corporation. Argyle, which is wholly-owned by Norman L. Peck, and Braeswood, which is wholly-owned by Charles Grossman, together own a fifty percent interest in Schroder and are the managing partners of the joint venture. Schroder Real Estate Corporation, which is wholly-owned by J. Henry Schroder Wagg & Co. Limited, owns a fifty percent interest in Schroder. Schroder succeeded to the business and assets of Schroder Real Estate Corporation upon its formation in 1984. Schroder is an investment adviser registered under the Investment Advisers act of 1940, and has its principal office at 437 Madison Avenue New York, New York. Schroder (including the predecessor business conducted by Schroder Real Estate Corporation prior to the formation in 1984 of Schroder) has been engaged in the acquisition and management of U.S. real estate on behalf of non-institutional clients since 1972, and on behalf of institutional pension fund investors since 1975. Schroder expects to provide property acquisition, maintenance and repair, rent collection, bookkeeping, lease negotiation, mortgage brokerage and other related management services to the Fund through an affiliate but may at its own expense retain unrelated property management companies. The trustees (the Trustees) of the Fund are Charles Grossman, Norman L. Peck, Mark Peskin, John E. Emmanuel and Linda F. Wooldrige. The Trustees are officers or employees of Schroder. The Trustees will not be compensated by the Fund.

3. Interests in the Fund will be offered pursuant to an offering memorandum (the Memorandum) which describes the management, operation, investment objectives and income tax consequences of the Fund and compensation to be paid to Schroder as investment manager. Units of beneficial interest in the Fund (Units) are offered for a price of $100,000, with a minimum subscription by an investor of $2 million or 20 units. No Participating Plan may contribute more than ten percent of the fair market value of its assets to the Fund, nor may a Participating Plan make a contribution which would result in such Participating Plan's holding an interest in the Fund exceeding one-third (33⅓%) of the fair market value of the Fund or $25,000,000, whichever is greater, unless the Trustees and Participating Plans holding a majority of the then outstanding Units (or subscriptions for such Units) otherwise consent. After a Participating Plan makes an initial acquisition of Units in the Fund, no additional contributions are required. No contributions to the Fund will be accepted, and no Units will be issued, until prospective Participating Plans have executed subscription agreements, on or before April 1, 1987, subscribing to at least $75,000,000 worth of Units. The Trustees currently anticipate that they will close the Fund to additional commitments to contribute to the Fund when the aggregate commitments reach $180,000,000 or February 1, 1988, whichever is earlier. The Trustees currently anticipate that all acquisitions of real property and interests therein by the Fund will be closed not later than 15 months after the Fund is closed to additional commitments to contribute to the Fund. Neither the Units nor any interest therein may be resold, transferred, assigned, or otherwise disposed of or encumbered by Participating Plans, as required by Rev. Rul. 81–100.

4. The decision of any plan to invest in the Fund will be made by fiduciaries of that plan. The Trustees may reject a subscription for any reason. The applicant states that none of the individual Trustees of the Fund, nor any of the employees, officers, directors or shareholders of Schroder or its affiliates will exercise any discretionary authority over or otherwise participate in the decision of any plan to invest in the Fund. Similarly, none of the individual Trustees of the Fund, nor any of the employees, officers, directors or shareholders of Schroder or its affiliates will serve as a director or officer of any sponsor of any Participating Plan.

In connection with the proposed exemption for the purchase and sale of Units in the Fund, the applicant represents that Schroder or its affiliates may act as an investment adviser or investment manager with respect to portions of the assets of plans that may become Participating Plans and may on occasion be retained by such plans to provide services with respect to specific real estate investments made by the plans. However, the applicant represents further that assets of plans for which Schroder or any of its affiliates acts as investment adviser or investor manager or otherwise subject to the investment discretion of Schroder or any of its affiliates will not be eligible for investment in the Fund. In addition, Schroder expects to engage in normal marketing and promotional activity in connection with the Fund, but it will not recommend investment therein of plan assets with respect to which it acts as an investment adviser or investment manager.[2]

[2] To the extent that, in the ordinary course of business, Schroder or any of its affiliates provides "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B) and recommends an investment of the plan's assets in the Fund, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) The Department is unable to conclude that fiduciary self dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of Units in the Fund to section 406(a) violations only.

5. The Trustees may terminate or liquidate the Fund at any time. The Fund will terminate if Participating Plans representing more than two-thirds (66⅔%) of the Units of the Fund then outstanding vote in favor thereof.

The Trustees and Schroder currently anticipate that, if the Fund has not previously been terminated and its assets liquidated, Schroder will begin liquidating the Fund's assets after the eleventh anniversary of the date of the closing of the last aquisition of real property or interest therein by the Fund. Schroder currently believes that property sales may commence as early as during the fourth year following the date of the closing of the last acquisition of real property or interest therein by the Fund once, in its judgment, a property's sales value has been maximized. The Trustees and Schroder currently anticipate that all real property interests held by the Fund will be sold within fifteen (15) years of the closing of its final real property investment, although such period may be extended upon the recommendation of Schroder. Property interests will be sold pursuant to an orderly liquidation (which currently is not expected to require more than three years to accomplish) with appropriate reserves maintained for existing and potential Fund obligations.

6. The Fund is "closed-end" and, except in extraordinary circumstances, Schroder will not consider any request by a Participating Plan to redeem any of the Units such Participating Plan may hold before the expiration of the four year period beginning on the date of the closing of the last acquisition of real property or interst herein by the Fund. A Participating Plan may, at any time after the expiration of the four-year period, request redemption of all or any number of its Units. Redemption requests will be considered on any quarterly valuation date. Schroder is authorized, but is not required, to sell one or more assets of the Fund in order to satisfy any redemption request. Redemption of units is required if a Participating Plans loses its tax-exempt status under section 501(a) of the Code as part of a qualified pension or profit-sharing plan under section 401(a) of the Code or if a governmental plan or governmental unit is determined no longer to be a "governmental plan" within the meaning of section 414(d) of the Code or no longer holds Units for use in satisfying an obligation to provide a benefit under a governmental plan, or otherwise fails

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to qualify as a Participating Plan. The Adviser may also require the redemption of a Participating Plan's Units if its contined participation in the Fund would result in the Fund engaging in a transaction that is prohibited by the provisions of the Act or other applicable law.

Redemptions will be made only out of funds which are not committed or necessary for Fund investments, to meet Fund expenses or otherwiae available for distribution. Upon receipt of a redemption request, Schroder may offer the Units with respect to which a redemption has been requested for sale to other Participating Plans or to prospective investors in the Fund. As soon as practicable after the quarterly valuation date as of which a Participating Plan has requested the redemption of its Units, the Trustees will pay to the redeeming Participating Plan 90% of the Units value of the Units being redeemed. In order to protect the interests of non-redeeming Participating plans from any uncertainty inherent in the determination of property values and, therefore, Unit values, the Trustees will withhold from the distribution any pay into a special redemption account maintained by the Fund an amount equal to 10% of the Unit value of the Units being redeemed (the Deferred Redemption Amount). The Trustees will invest the Deferred Redemption Amounts held from time to time in the special redemption account in short-term money-market instruments, the pro rata earnings from which instruments will be added to each Deferred Redemption Amount and held in such special account. Upon the termination and liquidation of the Fund, the Deferred Redemption Amount (including earnings thereon, but less the fee and expenses paid with respect to such amount) will be paid to the redeeming Participating Plan to which such amount relates if and to the extent that more than 90% of the aggregate Unit value of all Units of the Fund held by Participating Plans as of the valuation date immediately succeeding the date written notice of the redemption to which the Deferred Redemption Amount relates is received by the Trustees has been realized by the Fund upon the sale of its assets. Any portion of any Deferred Redemption Amount which is not required to be paid over to a redeeming Participating Plan will be held as part of the assets of the Fund for the benefit of other Participating Plans.

7. The Fund will maintain such reserves as Schroder deems appropriate. These reserves, along with any subscription proceeds not immediately used to acquire real estate will be temporarily invested in cash equivalents and money market instruments, including but not limited to, certificates of deposit, commercial paper, short-term government obligations, savings accounts, bankers acceptances, master notes, and any registered investment companies or collective or common investment funds which invest in any of the foregoing within the discretion of Schroder.

8. Pursuant to applicable Fund documents, Schroder as investment manager will receive a single fee based on the net value of the Fund's assets for the management of the assets of the Fund. Schroder will also be reimbursed by the Fund for all direct expenses properly and actually incurred by it and the Trustees in connection with the performance of certain property management and related services with respect to the Fund, including leasing commissions and other expenses for managing and leasing services, such as expansion, operation, disposition and ownership of real estate interests or mortgage loans or other property and in maintaining and managing real estate equity interests.

9. Because each Participating Plan will incorporate as part of such plan the terms, provisions, and conditions of the Fund agreement, the Fund will occupy a position equivalent to the trust created under such Participating Plan. Accordingly, pursuant to Revenue Ruling 81-100, it is the position of the Department that a "party in interest" as defined in the Act, or a "disqualified person" as defined in the Code, with respect or disqualified person with respect to the Fund. Thus, a transaction between such party and the Fund may be viewed as a prohibited transaction as described in section 406(a) of the Act, section 4975(c) of the Code, or both.

The applicant represents that if the Fund is unable to enter into transactions with certain persons because such persons are parties in interest with respect to a Participating Plan, the Fund's ability to make its investments prudently and conduct its operations solely for the benefit of the Participating Plans will be unduly restricted. In addition, the purchase and sale of units of participation in the Fund may be considered a prohibited sale or transfer of assets between a Participating Plan and the Trustees that is not exempted by operation of the statutory exemption provided in section 408(b)(8) of the Act because the Funds is not maintained by a bank or an insurance company.

10. The applicant requests prospective exemptive relief for many of those classes of transactions between the Fund and certain parties in interest which were afforded exemptive relief in PTE 80-51. The applicant proposes that such classes of transactions be subject to similar conditions, limitations, and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80-51.

11. The Trustees expect to retain Price Waterhouse & Co. to serve as the independent certified public accountants for the Fund. Within 120 days after the end of each fiscal year, a report containing a balance sheet, profit and loss statement and a statement of net asset value as of the end of the year will be distributed to all Participating Plans. Participating Plans will also receive statements of (a) all fees paid to Schroder and (b) all distributions and investments made during the year.

Participating Plans will also receive quarterly unaudited reports of the Fund which summarize operations, provide unit valuations and include operating statements and statements of financial condition.

Appraisals of all interests in real property owned directly or indirectly by the Fund will be made at least once each year by independent appraisers and such appraisals will be made available to Participating Plans upon request. All Fund records maintained pursuant to the Declaration of Group Fund will be available for inspection by any Participating Plan at reasonable times during usual business hours.

12. In summary, the applicant represents that the proposed exemption for certain transactions between the Fund and certain parties in interest satisfies the criteria of section 408(a) of the Act because: (a) The proposed exemption would allow the Fund to enter into transactions which, although prohibited, ar necessary for the Fund to make its investments prudently and conduct its operations solely for the benefit of its Participating Plans and their participants and beneficiaries; (b) the proposed exemption would only apply to various classes of prohibited transactions which were afforded relief in PTE 80-51 and would be subject to similar conditions, limitations and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80-51; and (c) independent fiduciaries, unrelated to the Fund, the Trustees, the investment manager or any other related party, will maintain complete discretion with respect to investment of the Participating Plan's assets in the Fund.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8671. (this is not a toll-free number.)

Cornelius C. Rose Associates, Inc. Defined Benefit Pension Plan (the Pension Plan), Cornelius C. Rose Associates, Inc. Employee Target Benefit Plan and Trust (the Target Plan), and Cornelius C. Rose Associates, Inc. Profit Sharing Plan (the Profit Sharing Plan; collectively, the Plans) Located in Hanover, New Hampshire

[Application Nos. D-7460 thru D-7462]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to sales (the Sales) of certain securities made to the Plans on November 22 and December 30, 1982, and on March 24, 1983, by Cornelius C. Rose (Mr. Rose), a disqualified person with respect to the Plans, to the extent that the aggregate values of the securities sold to each of the Plans did not exceed 25 percent of the total assets of each of the Plans on the dates of the respective Sales, and also, provided that the terms of the Sales were not less favorable to the Plans than terms obtainable in arm's-length transactions with unrelated parties.

Effective Date: If granted, this exemption will be effective November 22 and December 30, 1982, and March 24, 1983, the dates the securities were sold to the Plans as described in this proposed exemption.

Summary of Facts and Representations

1. The Plans consist of two defined contribution plans and one defined benefit plan. The defined contribution plans were established during 1974 and terminated during 1977. On June 19, 1978, the Internal Revenue Service issued to each of the terminated plans favorable determination letters regarding the terminations. Each of the trusts for the defined contribution plans has been continuously maintained since the termination. On the dates of the first Sales, the assets of the Target Plan totalled approximately $100,230 and the assets of the Profit Sharing Plan totalled approximately $51,047. During 1981 the Pension Plan was established as a defined benefit plan to replace the two terminated defined contribution plans. On the dates of the Sales, the assets of the Pension Plan totalled approximately $1,362,882. In addition to the Securities, the assets of the Plans consist of U.S. Treasury Bills and small cash positions. Mr. Rose is the sole participant and only trustee of the Plans. He is also the sole owner of the sponsor of the Plans, Cornelius C. Rose Associates, Inc. (the Employer).[3]

2. The Employer, which is solely owned by Mr. Rose and has no other employees, is a consulting firm that renders advice to clients for a fee with respect to economic trends, liability management strategy, real estate market strategy and management practices. Neither Mr. Rose nor the Employer provides advice or services to employee benefit plans. One of those persons receiving advice from the Employer is Mortgage Growth Investors (MGI), a Massachusetts Trust, which has its Common Shares traded on the American Stock Exchange. On March 1, 1982, MGI had 2,926,455 of its Common Shares outstanding and by March 2, 1984, the number of outstanding Common Shares had increased to 4,170,941. Mr. Rose, in addition to his relationship with the Employer, has served as an officer and/or director of several financial organizations, including MGI. In his capacity as Chairman of the Board of Trustees and as one of the Trustees of MGI, Mr. Rose was granted numerous options to acquire MCI Common Shares. During 1979 and 1982, Mr. Rose exercised some of these options and acquired 45,400 Common Shares of MGI (the Securities).

3. After consulting with his accountant and tax advisor, and also, after receiving assistance from his lawyer, Mr. Rose sold the Securities in private placements as restricted stock pursuant to section 4 of the Securities Act of 1933 for various prices on three different dates to the Plans for a total purchase price of $478,050. Some of the sales transactions were made by Mr. Rose extending credit to the Plans. All extensions of credit to the Plans in connection with the sales transactions have been repaid in full.[4] Although the transactions were structured in accordance with recommendations

[3] Since Mr. Rose is the only participant of the Plans and sole owner of the Employer, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[4] Repayment schedule:

Sales to	Date	Number of shares	Total price	Aggregate percentage of the plan assets used
The pension plan	11/22/82	6,000	$60,000	5.87
	12/30/82	6,000	84,000	12.03
	3/24/83	16,095	173,021.25	25.00
	(3/24/83)	(25,040)	(273,000)	(32.43)
The profit sharing plan	11/22/82	1,000	10,000	19.58
	12/30/82	263	2,768	25.00
	(12/30/82)	(1,000)	(10,500)	(40.15)
The target plan	11/22/82	1,000	10,000	9.98
	12/30/82	1,000	10,500	20.46

The applicant represents that Form 5330 was filed with the Internal Revenue Service on August 13, 1986, reporting the Sales and extensions of credit, and paying the excise tax on extensions of credit and on those portions of the Sales which exceeded 25 percent of the assets of the Plans. To the extent that exemptive relief is not provided herein, as represented by the figures enclosed with brackets ( ), the transactions will be "corrected" within the meaning of section 4975(f)(5) of the Code, Temp. Treas. Reg. § 141.4975-13, and Treas. Reg. § 53.4941(e)-1 within 60 days of the grant of this proposed exemption.

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furnished by his advisors, neither his accountant and tax advisor nor his lawyer informed Mr. Rose that the Sales were prohibited transactions under the Code. Since the Securities were "restricted stock," the purchase price of the Securities for the Sales was determined by discounting the respective daily closing prices as reported by the American Stock Exchange. The discount was determined in accordance with advice provided by Allen & Company, Incorporated, a financial institution in New York, and confirmed by Leventhol & Horwarth, certified public accountants.

4. Mr. Rose represents that he did not discover that the Sales were prohibited by the Code until the spring of 1985 when he proposed additional sales of his securities to the Plans. He was initially advised that the additional sales were permissible, but was later informed that such sales might be prohibited transactions and he abandoned his plans for such sales. Mr. Rose was also concerned about the Sales which had already taken place, and in October 1985 consulted with his present legal counsel. He was then made aware for the first time of his violation of the prohibited transaction provisions of the Code and filed an application for exemption shortly thereafter.

5. In summary, the applicant represents that the transactions involving the Sales satisfy the statutory criteria for an exemption under section 4975 of the Code because (a) Mr. Rose was the only person affected by the Sales and he caused the Sales to be consummated; (b) no commissions or other fees were incurred by the Plans from the Sales; (c) the Sales were conducted upon advice from professionals who failed to advise Mr. Rose of the prohibited nature of the transactions; (d) upon expiration of the restrictions the Securities would be freely marketable and could be disposed of at any time by the Plans through the facilities of the American Stock Exchange; and (e) the Plans paid no more than fair market value for the Securities.

Notice to Interested Persons: Because Mr. Rose is the sole participant of the Plan and is the only shareholder of the Employer, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of May, 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-11058 Filed 5-24-88; 8:45am]

BILLING CODE 4510-29-M

[Application No. D-7068]

Withdrawal of the Proposed Exemption Involving First Atlanta Corp. Retirement Plan (the Plan); Atlanta, GA

In the **Federal Register** dated March 18, 1988 (53 FR 9007), the Department of Labor published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective contribution to the Plan of certain real property located in Fulton County, Georgia by First Atlanta Corporation, the Plan sponsor and a party in interest with respect to the Plan.

By letter dated April 5, 1988, the applicant has requested that the exemption application be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC this 19th day of May, 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretations, Pension and Welfare, Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-11064 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7138 et al.]

Proposed Exemptions; Quevado Properties, Ltd. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Quevado Properties, Ltd. (Quevado) Located in Tyler, TX

[Application No. D-7138]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April, 28, 1975). If the exemption is granted the restrictions of section 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code shall not apply to the payment of an investment management fee to the general partner of Quevado, a limited partnership in which employee benefit plans may invest, in connection with the investment by Quevado in a particular parcel of unimproved real property.

Summary of Facts and Representations

1. Quevado is a proposed Texas limited partnership. Charles H. Featherston, an individual, is the proposed sole general partner (the General Partner). Limited partnership interests (Interests) in Quevado will be offered as an investment to employee benefit plans (Plans) as defined in section 3(3) of the Act. The purpose of Quevado will be to purchase, own, promote and sell one parcel of unimproved real estate located at the proposed intersection of State Highway 155 and the proposed Outer Loop 323 in Smith County, Texas (the Property). Quevado will have a term of no more than 20 years.

2. Interests will be offered to a Plan only if immediately after such an investment, the Plan will hold no more than one-third of its assets in real property generally and no more than 10% of its assets in Quevado. The trustee of each Plan who will decide whether to invest in Quevado will be independent and unrelated to the General Partner.

3. Quevado will be capitalized initially in the amount of $500,000, all to be contributed by the limited partners. There will be 16 interests in Quevado, therefore, each Interest purchased by a Plan will require a contribution of $31,250. The limited partners shall not be required to make any future capital contributions. However, with the prior written approval of at least 51% in interest of the limited partners, the General Partner may assess the limited partners for legal, accounting, insurance, promotional, marketing or other expenses reasonably related to the business of Quevado in an amount not to exceed a total of $25,000, or $1,562.50 per Interest. The General Partner shall be required to make future capital contributions as may be necessary to accomplish the purposes of Quevado or to satisfy the liability of Quevado. Any such capital contributions by the General Partner shall not increase the General Partner's share of the profits, losses and distributions of Quevado and shall not be considered a loan to Quevado.

4. Within 60 days after the end of each fiscal year of Quevado, the General Partner shall cause to be prepared and distributed to each limited partner with respect to the business of Quevado for that fiscal year (a) an unaudited balance sheet, (b) an unaudited income

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statement, (c) a federal income tax return, (d) the General Partner's analysis of market conditions affecting the current value of the Property, (e) a summary of the General Partner's services rendered to Quevado and (f) an independent appraisal of the current value of the Property. In addition, the General Partner shall at all times have the duty to promptly notify each limited partner of any circumstances or occurrence which results, or which could reasonably be expected to result, in a material reduction in the value of the Property.

5. The General Partner shall have exclusive authority and responsibility to manage Quevado. However, the General Partner will be required to obtain the prior written approval of at least 51% of the interests to do any of the following:

(a) Sell, exchange, lease for a term of more than 1 year, mortgage, transfer, encumber or otherwise alienate any of the Property;

(b) Knowingly and voluntarily incur any debt, liability or expense resulting in a lien or other encumbrance against the Property;

(c) Pay any partnership funds or incur any partnership debt directly or indirectly to the General Partner or any of the General Partner's affiliates other than as the General Partner's allocated share of the profits, losses and distributions of Quevado;

(d) Engage in any business other than that for which Quevado was originally formed; and

(e) Engage, or discharge from engagement an independent appraiser of the real property.

In addition, upon the vote of the least 51% of the Interests, the General Partner can be directed to sell the property.

6. The General Partner's sole fee shall be in the form of an allocation of: (a) 1% of the profits and distributions of Quevado prior to the return to the limited partners of their capital contributions (Payback); and (b) 20% of the profits and distributions of Quevado subsequent to Payback.[1] The General Partner shall receive no other fee, compensation or commission. In the event that any income is generated, any cash not required for partnership operations will be distributed at least quarterly.

7. The General Partner may be removed at any time, with or without cause, immediately upon delivery or written notice to the General Partner signed by at least 51% of the Interests. If the General Partner is removed, dies or otherwise fails to serve, then his interest in Quevado both before and after Payback will be reduced by the expense incurred in replacing him as the General Partner. However, in order to reasonably compensate the former General Partner for his services previously rendered in organizing and operating Quevado, his share of the profits and distributions of Quevado subsequent to Payback will not be reduced to less than 5% (from the original 20%) plus an additional 0.5% for each complete year that he served as the General Partner.

8. The General Partner's fee will be based solely upon the profits earned by the Partnership, and because the purpose of Quevado is to hold the Property for future appreciation, it is anticipated any fee that is earned will be paid upon the sale of the Property, as part of the termination of the Partnership. Therefore, the applicant represents that the General Partner's incentive to maximize his fee will also cause him to maximize the profits of the Partnership. Thus, the applicant represents the opportunity and motivation to abuse the Plans is virtually non-existent. The requirement that 51% of the Interests approve any significant transaction affecting the Property, as well as the ability of 51% of the Interests to require the sale of the Property provide further safeguards for the Plans.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 407(a) of the Act because: (a) The decision to invest in Quevado will in all cases be made by the Plan fiduciaries independent of Quevado and the General Partner; (b) the General Partner must receive the approval of 51% of the Interests in order to sell, lease for more than one year, exchange, transfer or encumber the Property; and (c) the General Partner can be directed to sell the Property by a vote of 51% of the Interests; and (d) the General Partner's sole fee will be its proportionate share of the profits and distributions generated by Quevado.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Drs. Pauly, Cocotos, Sherman, Koch, Burigo and Ross, P.A. Pension Plan and Trust (the Pension Plan) and Drs. Pauly, Cocotos, Sherman, Koch, Burigo and Ross, P.A. Profit Sharing Plan and Trust (the Profit Sharing Plan; collectively, the Plans) Located in West Palm Beach, Florida

[Application Nos. D-7160 and D-7161, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plans of certain improved real property consisting of a parcel of land (the Land) and a building (the Building) situated thereon, for the total cash consideration fo $379,761, to a trust (the Trust), the beneficiaries of whom are the six shareholders of Drs. Pauly, Cocotos, Sherman, Koch, Burigo and Ross, P.A. (the Employer) and several of their spouses, provided the amount paid for the Land and the Building is not less than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plans are the Pension Plan and the Profit Sharing Plan.[2] As of June 30, 1986, the Pension Plan had total assets having a fair market value of $1,287,421 and the Profit Sharing Plan had total assets having a fair market value of $1,657,729. Also, as of June 30, 1986, each Plan had 18 identical participants. Drs. John f. Pauly and Peter A. Sherman, who are 16 2/3 percent shareholders of the Employer as well as participants in the Plans, serve as the trustees (the Trustees) for both Plans. Investment decisions for the Plans are made by Professional Capital Management Company, Inc. of Jacksonville, Florida.

[1] As explained in regulation 29 CFR 2550.408b-2, section 408(b)(2) of the Act exempts from the prohibitions of section 406(a) of the Act the payment by a plan to a party in interest, including a fiduciary, for services, subjected to several conditions. Section 408(b)2 of the Act, however, does not provide relief from the self-dealing provisions of section 406(b) of the Act. Section 406(b) of the Act prohibits, in relevant part, fiduciaries from dealing with the assets of plans in their own interest or their own account. Thus a fiduciary may not use the authority, control or responsibility that makes such person a fiduciary to cause a plan to pay an additional fee to such fiduciary to provide a service. As a general matter, a fiduciary engages in violations of section 406(b)(1) whenever the fiduciary has the ability to determine the timing/or amount of the transaction on which his or her fee is based.

[2] The applicant represents that the Plans are not parties in interest with respect to each other within the meaning of section 3(14) of the Act.

The Employer renders obstetric and gynecological services in West Palm Beach, Florida.

2. On September 1, 1971, the Plans acquired an unimproved parcel of land consisting of three lots from Martin and Ruth Dietz (the Dietzes) who were unrelated parties.[3] The Land is located at 2611 North Dixie Highway, West Palm Beach, Florida. The Plans paid $40,000 for the property. At the time of purchase, the Land was encumbered by a mortgage in the principal amount of $28,400 that was payable to the Dietzes. The mortgage was subsequently satisfied in full by the Plans.

3. On March 31, 1973, the Plans entered into a 20 year lease agreement (the Lease) to rent the Land to the Employer. The Lease requires the Employer to pay an annual rental of $6,000. The Employer is obligated to pay all real estate taxes, insurance, maintenance or other expenses incidental or pertinent to the Land. The Lease states that upon its termination, whether by lapse of time or otherwise, all improvements constructed on the Land will revert to the Plans. Unless the Lease is terminated earlier, the Plans may acquire the demised premises, including the buildings and improvements situated thereon on March 21, 1993. Finally, the Lease permits the Employer to construct improvements on the Land and to mortgage said improvements for a sum that does not exceed $300,000 provided the Employer pays off the mortgage.

4. Contemporaneously with its leasing of the Land, the Employer erected thereon the Building, a 20,000 square foot medical facility. The Employer presently occupies the Building. In accordance with the provisions of the Lease, the Employer obtained a mortgage loan in the principal amount of $250,000 from Southern Bank of West Palm Beach, an unrelated entity. All payments under the loan have been timely made by the Employer. As of February 1988, there was an outstanding principal balance due on the mortgage loan of $105,239.

5. Since the inception of the Lease, there have been no defaults or deficiencies in lease payments. Although the applicant acknowledges that the Lease was a prohibited transaction under section 406 of the Act, the applicant is of the opinion that such Lease satisfied the provisions of section 414(c)(2) of the Act until June 30, 1984.[4]

6. In recognizing that the continuation of the Lease beyond June 30, 1984 constitutes a prohibited transaction, the Employer proposes to terminate the Lease and permit the Trust to purchase the Land and the Building from the Plans. Accordingly, an administrative exemption is requested to permit the proposed sale. For purposes of the sale transaction, the Employer will consider the ownership of the Building as having passed to the Plans upon the June 30, 1984 expiration of the statutory exemption provided under section 414(c)(2) of the Act. According to the applicant, under Florida law, the disposition of leased property when a lease becomes unenforceable is determined by the intention of the parties. The applicant states that such intention is governed by section 13 of the Lease which provides, in pertinent part, that "upon termination of this (Lease), whether by lapse of time or otherwise, the Lessee will at once peacefully and quietly deliver up to Lessors all of the demised premises, including the buildings and improvements situate thereon." Assuming the Lease is rendered unenforceable by virtue of the expiration of the transitional rules under section 414 of the Act, the applicant is of the opinion that the Plans, as Lessors under the Lease, would become the owners of the improvements on the property due to the operation of section 13 of the Lease.

7. The sales price for the Land and the Building will reflect their fair market values on the date of the sale. Part of the consideration will be the assumption and/ or discharge of the principal balance of the first mortgage on the subject property which principal amount, as previously stated, is $105,239. The remainder of the consideration will be paid in cash. In addition, the Plans will not be required to pay any real estate fees or commissions in connection therewith.

8. On January 15, 1987, Mr. Nathaniel J. Orr (Mr. Orr), M.A.I., an independent appraiser affiliated with Anderson and Carr, Inc. of West Palm Beach, Florida, placed the fair market value of the subject property at $485,000. Of the appraised amount, Mr. Orr allocated $180,000 to the Land and $305,000 to the Building. By letter dated July 10, 1987, Mr. Orr stated that the Land would have no special or unique value to the Trust by virtue of the fact that the Building is situated thereon. Thus, based upon the aforementioned valuations, the Trust will pay the Plans a total consideration of $379,761 ($485,000 representing the combined fair market value of the Land and the Building less $105,239 representing the outstanding principal balance of the first mortgage loan on the Building).

9. As part of the sale transaction, the applicant represents that the Employer will pay the Plans an additional amount sufficient to compensate the Plans for the differences between the fair market rental value of the Land and the Building and the rental actually paid plus interest for the period July 1, 1984 and the closing of the proposed transaction. Such determinations of deficient rent and interest will be made by the Trustees. In addition, as a result of the continued leasing of the Land and the Building by the Plans to the Employer after June 30, 1984, the applicant represents that the Employer will pay the Internal Revenue Service (the Service) all applicable excise taxes that are due within 60 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the sale will be a one-time transaction, the proceeds of which will be partially paid in cash and by the assumption and/or discharge of the first mortgage loan on the premises; (b) the Land and the Building will be sold to the trust for a price reflecting their fair market values as determined by an independent appraiser; (c) the Plans will not be required to pay any real estate commissions or fees in connection with the proposed sale; (d) within 60 days of the publication of the grant of the notice of proposed exemption in the **Federal Register**, and the Employer will pay the Service all applicable excise taxes that are due with respect to the subject property; and (e) the Plans will be compensated in an additional amount representing the difference between the fair market value of the Land and the building and the amount of rental actually paid plus interest for the period between July 1, 1984 and the date on which the transaction is closed as such determinations are made by the Trustees.

For Further Information Contract: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[3] Based upon the combined fair market value of the Plans' assets as of June 30, 1986 ($2,945,150) and the asset totals for each Plan ($1,287,421 for the Pension Plan and $1,657,729 for the Profit Sharing Plan), the value of the Land is allocated 44 percent to the Pension Plan and 56 percent to the Profit Sharing Plan.

[4] The Department expresses no opinion on whether the Lease met the requirements of section 414(c)(2) of the Act.

Elliot Siegal Self-Employed Retirement Plan (the Plan) Located in Massapequa, New York

[Application No. D-7321]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of unimproved real property (the Property) from the Plan to Elliot Siegel, D.D.S., a party in interest with respect to the Plan, provided the Plan receives no less than the greater of $190,000 or fair market value for the Property at the time of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan having four participants and total assets of $213,954 as of December 31, 1987. The four participants include Elliot Siegel (Siegel) and his spouse. Siegel is the sole proprietor of Elliot Siegel, D.D.S. (the Employer), a nonincorporated entity, and is the trustee of the Plan.

2. On February 22, 1985, the Plan purchased the Property for $150,000, with a cash payment of $50,000 and a mortgage in the amount of $100,000. The Mortgatge lender was Siegel's mother, Lillion Siegel.[5] The balance due on the mortgage was $75,000 as of December 31, 1986. The mortgatge is due to terminate in 1990 and bears an interest rate of 12 percent. Four annual payments of $25,000 are due on the mortgage with a balloon payment due at the time of termination. The Property is a parcel of vacant land consisting of approximately 13,530 square feet located in Massapequa, Nassau County, New York. The Property is located approximately one-half mile from the Employer's place of business. The applicant represents that the Property has not been used by any party in interest with respect to the Plan since the time of its acquisition by the Plan.

3. The applicant obtained an appraisal on the Property from Dominick S. Pompeo (Pompeo), a real estate appraiser located in New York City. The applicant represents that Pompeo is independent of the Plan and the Employer. Pompeo states that the Proeprty is located in an area which is classified as commercial. According to Pompeo, the highest and best use of the Property would be to improve the Property for retail commercial purposes. Placing emphasis on the comparable sales approach to value, Pompeo placed the fair market value of the Property as of May 19, 1987, at $14 per square foot, giving a total of approximately $190,000.

4. At the time of purchase, the Plan fiduciaries had hoped that the Plan would be able to sell the Property at a profit. The Plan has determined, however, that a further profit can be realized on the investment only if the Property is improved. Accordingly, the Plan proposes to sell the Property to Siegel. Siegel will pay no less than the greater of $190,000 or the current fair market value for the Property at the time of sale, based on an updated independent appraisal. Siegel will pay cash for the Plan's equity in the Property, as determined at the time of sale, and will assume the outstanding mortgage on the Property. The Plan will pay no commissions or other expenses in regard to the sale. The transaction will enable the Plan to diversify its investments as well as to enhance the liquidity of the assets of the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property will be entirely for cash and the Plan will pay no commissions or other expenses in regard to the sale; (2) Siegel will pay no less than fair market value for the property at the time of sale; (3) the current fair market value of the Property will be determined by an appraiser who is independent of the Plan and of the Employer; and (4) the sale will enable the Plan to diversify its investments and to enhance the liquidity of its assets.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

[5] The applicant recognizes that the mortgage loan between Siegel's mother and the Plan may have constituted a prohibited transaction under section 406 of the Act and section 4975 of the Code. Accordingly, the applicant will pay the Internal Revenue Service all excise taxes that are applicable under section 4975(a) of the Code within 90 days of the publication in the Federal Register of the grant of this proposed exemption.

Retirement Plan for Non-Bargaining Unit Employees of the Altoona Hospital (the Non-Bargaining Unit Plan) and the Retirement Plan for Bargaining Unit Employees of the Altoona Hospital (the Bargaining Unit Plan; Together, the Plans) Located in Altoona, Pennsylvania

[Application Nos. D-7379 and D-7380]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed exchange of certain publicly-traded securities (the Securities) between the Plans and the Funded Depreciation Fund (the Fund) for the Altoona Hospital (the Employer), the sponsor of the Plans.

Summary of Facts and Representations

1. The Plans are defined benefit plans that are qualified plans under section 401(a) of the Code. As of June 30, 1987, the Non-Bargaining Unit Plan had approximately 1177 participants and total assets of approximately $11,955,368.06, and the Bargaining Unit Plan had approximately 647 participants and total assets of $4,858,039.05. The trustee of the Plans is Mid-State Bank and Trust Company (the Trustee), a Pennsylvania banking corporation located in Altoona, Pennsylvania. The Trustee currently has exclusive authority and discretion to manage, control and invest the assets of the Plans.

2. The Fund is a depreciation fund established by the Employer which it uses to purchase new and replacement capital equipment and to accumulate assets to pay bond principal. The Fund consists of the Employer's money which is segregated into a reserve fund for bookkeeping purposes. The Fund had total assets of $16,402,140.85, as of June 30, 1987. The investment of the Fund's assets is currently handled by Mitchell Hutchins Asset Management, Inc. (Mitchell Hutchins), a subsidiary of Paine Webber Group, Inc. Mitchell Hutchins is a registered investment adviser under the Investment Advisers Act of 1940, located in New York, New York.

3. In 1986, the Employer engaged the services of Mercer-Meidinger Asset Planning of Pittsburgh, Pennsylvania (the Consultant), an unrelated party, to evaluate the performance of the investment managers for the Plans and the Fund. On October 16, 1986, the Consultant provided the Employer with a report which recommended that the Plans should hire an investment manager with a more aggressive investment strategy. The Consultant advised the Employer that the investment philosophy and performance of Mitchell Hutchins, based on its record as the investment manager for the Fund, made it better suited to manage and control the investment of the assets of the Plans. The Consultant's conclusion was based on the investment objectives and funding policy of the Plans established by the Employer.

On July 6, 1987, the Board of Trustees of the Employer adopted a resolution to appoint Mitchell Hutchins as the investment manager for the Plans. The Employer proposes to continue the services of the Trustee as a custodian of the assets of the Plans.

4. In a statement dated September 1, 1987, Mitchell Hutchins represents that it has reviewed the current investment portfolio of the Plans, in anticipation of accepting its new role as the investment manager for the Plans. Mitchell Hutchins has determined, based on its review, that certain adjustments are necessary in the portfolio of publicly-traded securities held by the Plans (the Plans' Securities). Mitchell Hutchins states that the portfolio of publicly-traded securities held by the Fund (the Fund's Securities), in the aggregate, is superior from the Plans' investment perspective to the Plans' Securities. Mitchell Hutchins believes that the acquisition by the Plans of the Fund's Securities would implement the investment strategy that is appropriate for the Plans and would be consistent with the funding policy of the Plans established by the Employer.

Mitchell Hutchins states that the repositioning of the Plans' portfolios could be accomplished through purchases and sales on the open market. However, the volume of transactions required to reposition the portfolios of the Plans would result in substantial direct costs (brokerage commissions) as well as indirect costs (market spread) that would reduce the overall value of the Plans' assets. Thus, Mitchell Hutchins states that these costs can be avoided if the Plans are permitted to exchange the Plans' Securities for the Fund's Securities.

5. The Employer proposes that the Plans exchange the Plans' Securities for the Fund's Securities, in accordance with the recommendation of Mitchell Hutchins.[6] It is anticipated that the exchange of the Securities will occur on a single, specific day selected by Mitchell Hutchins. The Plans would pay no brokerage commissions, special fees or other expenses with respect to the proposed transaction. The Non-Bargaining Unit Plan and the Bargaining Unit Plan would each receive a proportionate share of the Fund's Securities in exchange for the Plans' Securities and cash currently held by the Plan. The Employer ensures that the transaction would be restricted to only those securities held by the Plans and the Fund that are publicly traded.

The proposed transaction will involve approximately 80% of the Plans' current portfolios. The application represents that although the proposed transaction would involve a high percentage of the Plans' assets, the Fund's Securities to be acquired by the Plans would represent a diversified portfolio of securities. The applicant represents further that no one Security to be acquired by the Plans in the exchange will represent more than 25% of the total assets of either Plan.

The Employer states that Mitchell Hutchins will cease to be the investment manager for the Fund prior to the proposed exchange and will have no other relationships to the Employer. Mitchell Hutchins represents that in acting as a fiduciary of the Plans it has a responsibility to act solely in the interests of the Plans and their participants and beneficiaries. The Employer will approve the proposed exchange of the Fund's Securities on behalf of the Fund. However, the Employer states that if Mitchell Hutchins determines that any of the Fund's Securities are no longer superior to the Plans' Securities, the Fund's Securities that are considered inappropriate investments for the Plans will be excluded from the transaction.

6. Mellon Bank (Central), N.A. of Pittsburgh, Pennsylvania (the Bank), has been retained to act as an independent fiduciary on behalf of the Plans to ensure that the interests of the Plan are protected in the proposed transaction. The Bank acknowledges its duties, responsibilities and liabilities under the Act in acting as a fiduciary of the Plans. The Bank represents that it is not related to the Employer, the Trustee, or Mitchell Hutchins.

7. The Bank states that it will determine the safeguards that must be present to ensure that the Plans receive fair value for the Plans' Securities in the proposed transaction. The Bank will also ensure tht the Plans obtain valid legal title to the Fund's Securities.

The Bank represents that it has reviewed the Plans' Securities and the Fund's Securities and has determined that the closing market price on the date of transfer for issues listed on a national exchange and the mean between the bid and asked prices at the market close on the date of transfer for over-the-counter issues are the appropriate measurements of fair market value for the Securities. The Bank states that it will confirm this determination on the date of the transfer. Thus, the Bnak will determine, based upon these measurements of fair market value, the value of the Fund's Securities that the Plans can acquire on the date of transfer. The applicant states that Michell Hutchins will advise the Bank of the issues of the Fund's Securities that the Plans desire to acquire and the issues of the Plans' Securities that the Plans are willing to exchange for the Fund's Securities. The Employer will approve the exchange of the Fund's Securities and the acquisition of the Plan's Securities on behalf of the Fund. Finally, the Bank will verify that each of the Plans receives issues of the Fund's Securities which are equal in value to the particular Plans' Securities involved in the exchange, as determined in accordance with the proposed market price guidelines.

8. The Bank represents that it has reviewed the recommendations of Mitchell Hutchins with respect to the proposed adjustments to the Plans' portfolios as well as the recommendations of the Consultant. The Bank has also reviewed the mechanism of ordering the Securities in connection with the proposed exchange, as developed by Mitchell Hutchins and the Employer.

The Bank states that the proposed transaction is in the best interest of the Plans and their participants and beneficiaries. The Bank believes that the transaction represents a prudent strategy for diversifying the investments of the Plans and that the proposed exchange is an efficient mechanism for accomplishing that result. The Bank concludes that the proposed transaction would carry out the investment objectives and funding policies of the Plans, as established by the Employer, in a manner that is protective of the interests of the Plans' participants and

[6] The Department expresses no opinion as to whether the proposed exchange of the Securities would violate section 404(a) of the Act. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

beneficiaries, and will be achieved at a substantial savings for the Plans.

9. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Plans will receive publicly-traded securities with a fair market value which is equal to the Plans' Securities being exchanged on the date of the transaction, as evidenced by published market quotations, (b) no brokerage commissions or additional fees or expenses will be incurred by the Plan in connection with the transaction, (c) the Bank, as an independent fiduciary on behalf of the Plans, has determinded that the proposed exchange of the Securities is in the best interests of the Plans and their participants and beneficiaries; and (d) the Bank will monitor the proposed transaction to ensure that each of the Plans received fair market value for the Plans' Securities and will take whatever actions are necessary to safeguard the interests of the Plans.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Linda Wells, Inc., Pension Plan and Trust, and Linda Wells, Inc. Profit Sharing Plan and Trust (the Plans) Locatod in New York, New York

[Application Nos. D-7400 and D-7412]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plans of certain improved real property (the Property) to Linda Wells (Ms. Wells), a disqualified person with respect to the Plans; provided that the terms of such sale are at least as favorable to the Plans as the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined contribution pension plans sponsored by Linda Wells, Inc. (the Employer), a New York closely-held corporation engaged in the business of direct mail advertising in New York, New York. The Employer's president, sole shareholder and sole employee is Ms. Wells, who is also the Plans' sole participant. The Plans' trustees (the Trustees) are Ms. Wells, David K. Gordon of New York, New York and Phyllis Furst of Flushing, New York. The assets of the Plans are commingled for investment purposes.[1]

2. Among the Plans' assets is the Property, a two-story residence located at 50 Limerston Street SW 10 in the Borough of Kensington and Chelsea in London, England. The Property had a fair market value of L165,000 (U.K.) as of June 8, 1987, according to an appraisal of the Property by Melville Sharp Associates (MSA), a professional real estate appraisal firm in London. The Trustees purchased the Property from unrelated parties in January of 1981 and commenced leasing it to unrelated tenants. The Trustees represent that the Property's indicia of ownership consists of the deed to the Property, which is in their possession and held by them in New York. Ms. Wells moved to London in 1986 and commenced occupying the Property and leasing it in her individual capacity from the Plans under a net lease (the Lease) commencing July 1, 1986. Since the Property constitutes more than 50 percent of the Plans' assets, Mr. Wells proposes to purchase the Property from the Plans in order to achieve greater diversity of the Plans' assets and is requesting an exemption to permit such purchase transaction under the terms and conditions described herein.

3. Under the Lease, Ms. Wells commenced and has continued to pay the Plans rent in the amount of L1525 (U.K.) per month, or L361 (U.K.) per week. The previous tenant in the Property had paid rent of L367 per week. Ms. Wells pays all utilities, all costs for maintenance and repair on the Property and all real estate taxes applicable to the Property. In an opinion letter dated Janaury 15, 1988, MSA represents that the rentals paid by Ms. Wells under the Lease represent the Property's fair market rental value.

4. Ms. Wells proposes to pay the Plans cash for the Property in the amount of its full fair market value as of the sale date, but in no event less than L165,000 (U.K.). MSA's appraisal of the Property of June 8, 1987, will be updated as of the sale date and if the Property's appraised value has increased since MSA's appraisal, Ms. Wells will pay the higher amount. The Plans will not bear any costs or expenses related to the sale transaction. In recognition that the Plans' lease of the Property to Ms. Wells under the Lease constitutes a prohibited transaction under the Code for which the Department is not proposing exemptive relief herein, Ms. Wells represents that she will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of such Lease within 60 days of the publication in the Federal Register of a notice granting the exemption proposed herein.

5. In summary, the applicant represents that the proposed transaction satisfies the requirements of section 4975(c)(2) of the Code for the following reasons: (1) The Plans will receive cash for the Property in the amount of its fair market value as of the sale date; (2) The Plans will incur no costs or expenses related to the sale; (3) The Plans will divest of an asset which constitutes a high percentage of the Plans' assets, thereby increasing asset liquidity; and (4) The proposed transaction will terminate the ongoing Lease transaction.

Notice to Interested Persons: Because Linda Wells is the sole shareholder of the Plans' sponsor and the only participant in the Plans, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Metro Electrical Joint Apprenticeship and Training Trust (the Plan) Located in Portland, OR

[Application No. D-7528]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan of a tract of unimproved land (the Lot); for the total cash consideration of $45,500, to Electric Workers Local 48 Building Association, Inc. (the Corporation), a party in interest with respect to the Plan, provided the amount paid for the Lot is not less than fair market value at the time the transaction is consummated.

[1] Since Linda Wells is the sole shareholder of the Plans' sponsor and the only participant in the Plans, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a Taft-Hartley welfare plan that was established on December 17, 1963 by the Oregon-Columbia Chapter of the National Electrical Contractors Association and by Local Union No. 48 of the International Brotherhood of Electrical Workers (the Union). The Plan was organized to provide training, instructional and educational services to individuals who wish to serve apprenticeships and, is so doing, learn the skills necessary to work in the electrical industry. The Plan also provides training, instruction and educational services to journeymen electricians who wish to upgrade their skills and/or want to acquire special skills or training within the electrical industry. As of February 29, 1988, the Plan had total assets of $705,760. As of March 10, 1988, the Plan had approximately 2,000 participants. The Plan has four trustees who are designated by employer associations and four trustees who are appointed by the Union (the Trustees). The Trustees make investment decisions for the Plan. The geographic jurisdiction of the Plan covers several counties in the States of Washington and Oregon.

2. In 1977, the Plan purchased a parcel of improved real property (the Real Property) located in the City of Portland, Multomah County, Oregon, the street address of which is 5600 N.E. 42nd Avenue, Portland, Oregon. The Real Property consists of approximately three acres of land and a building situated thereon in which classes for the Plan's participants are conducted. The Plan acquired the Real Property for $225,000 from Safeway Stores, Inc., an unrelated party. At present, the Real Property is not subject to a mortgage or to any other encumbrance. Since its acquisition by the Plan, the Real Property has been non-income producing.

3. The Trustees believe that the Real Property more than accommodates the needs of the Plan in carrying out its apprentice/journeyman training and retraining program. Accordingly, the Trustees request an administrative exemption from the Department in order to sell a portion of the Real Property, consisting of 11,050 square feet of unimproved land, to the Corporation. The Corporation is a non-profit entity organized for the purpose of acquiring, holding and transferring realty on behalf of the Union. The Corporation owns no other property that is in proximity to the Real Property.

4. The Plan will sell the Lot to the Corporation for $45,500. This amount reflects the fair market value of the Lot as determined on February 22, 1988 by Mr. W.A. Bert Birdwell (Mr. Birdwell), I.F.A.C., an independent appraiser affiliated with Birdwell and Associates of Portland, Oregon. The amount of consideration for the Lot will be paid by the Corporation in cash. If at the time of the sale, the fair market value of the Lot is greater than $45,500, the sales price will be increased, correspondingly. Moreover, the Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.

5. Subject to its sale of the Lot to the Corporation, the Plan will retain an easement (the Easement) of twenty feet in width. The purpose of the Easement is to provide additional access to the Real Property for the participants and beneficiaries of the Plan. The Easement will run along the easterly border of the Lot and it will be created by means of a reservation in the warranty deed to the Corporation. Such warranty deed will be duly recorded by the Corporation.

The Plan will not compensate either the Corporation or the Union for its use of the Easement.

6. In addition to valuing the Lot, Mr. Birdwell states that he does not believe the proposed sale of the Lot by the Plan to the Corporation will diminish the value of the Real Property that is retained by the Plan. Mr. Birdwell notes that the building, owned by the Plan and situated on the Real Property, faces a westerly direction. He explains that any use of the Lot will not affect the use of the Real Property unless such use is an incompatible one. Because Mr. Birdwell says he is aware of the fact that the Lot will be improved by the Corporation with an office building, he believes this development will be in harmony with the current use of the Real Property, thereby enhancing its value. Mr. Birdwell bases his conclusion on the understanding that the Easement across the east end of the Lot will be granted in favor of the Plan for access to the east side of the Plan-owned building that is located on the Real Property.

Mr. Birdwell also believes that the Real Property that is retained by the Plan will not be rendered less attractive to a potential purchaser as long as it is specifically agreed to by the parties that the Lot will be developed with an improvement that is compatible with the present use of the Real Property. If this is done, Mr. Birdwell is of the opinion that the potential for sale of or for the future development of the Real Property will be increased. The Lot will be developed in accordance with the assumptions made by Mr. Birdwell in his appraisal and will, thus, be in harmony with the current use of the Real Property.

7. As stated briefly above, after acquiring title to the Lot, the Corporation contemplates constructing thereon an office building for use by the Union. The applicants represent that the Union is desirous of relocating its business premises as it is currently leasing office space on a month-to-month basis in an arrangement that is unsatisfactory to both the Union and its landlord. It is not anticipated that the Union will ever use any of the remaining Real Property adjoining the Lot for parking purposes. Rather, the applicants represent that the Lot is large enough to accommodate an office building and fourteen parking spaces for the officers and employees of the Union. The applicants also state that there is sufficient off-street parking next to the site of the proposed office building.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale of the Lot, subject to the Plan's retention of the Easement, will be a one-time transaction for cash; (b) the Plan will not be required to pay any real estate fees or commissions in connection therewith; (c) the fair market value of the Lot has been determined by an independent appraiser; and (d) the sale will increase the Plan's liquidity position through the receipt of the sales proceeds.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately described all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of May, 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-11665 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 88-45; Exemption Application No. D-6716 et al.]

Grant of Individual Exemptions; Transco Energy Co. Thrift Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notice were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Transco Energy Company Thrift Plan (the Thrift Plan) and Employee Stock Ownership Plan (collectively, the Plans) Located in Houston, Texas

[Prohibited Transaction Exemption 88-45; Exemption Application No. D-6716]

Exemption

The restrictions of Section 406(a) and 407(a) of the Act, shall not apply to: (1) The acquisition and holding by the Plans of certain depositary units (the Units) representing limited partnership interests in Transco Exploration Partners, Ltd., a party in interest with respect to the Plans, distributed as dividends to the Plans as shareholders of shares of common stock of Transco Energy Company (the Employer); and (2) the future purchase and holding of additional Units acquired on the open market at the fair market value as listed on the New York Stock Exchange on the date of acquisition by the individual accounts of participants in the Thrift Plan with cash distributions received with respect to the Units, the sale proceeds of other existing investment options, the participants' future contributions, and those of the Employer; provided that the value of all of the Units held in a participants's individual account after the purchase of the Units on the open market does not exceed ten percent (10%) of the value of the total assets of such participant's individual account in the Thrift Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1988, at 53 FR 9003.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Knox Nelson Oil, Co., Inc., Money Purchase Plan (the M/P Plan); Knox Nelson Oil Co., Inc., Profit Sharing Plan (the P/S Plan; collectively, the Plans) Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 88-46; Exemption Application Nos. D-7306 and D-7307]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the series of loans (the Loans) by each of the Plans to Knox Nelson Oil, Co., Inc.; provided that the terms and conditions of the Loans are not less favorable to the Plans than those obtainable in similar arm's length transactions with unrelated third parties; and provided further that the total amount of the Loans outstanding from either of the Plans at the time any of the Loans are entered and throughout the duration of the Loans does not exceed twenty-five percent (25%) of the fair market value of the assets of the M/P Plan or the P/S Plan from which such loans are made.

Written Comments

The applicants informed the Department: (a) That certain interested persons had been notified that the time period for comments or requests for public hearing was two days shorter than that required by the Department; and (b) that the applicants were unable to notify Kirk Stone, the independent fiduciary, and the National Bank of Commerce of Pine Bluff, the trustee with respect to the Plans, within the time period set forth in the proposed exemption. Pursuant to discussions with the Department, the applicants notified interested persons that the period for written comments and requests for public hearing would be extended until May 6, 1988. Specifically, the applicants have represented that interested persons were notified on or before April 6, 1988, by posting at the worksite for the benefit of employees, by hand delivery to the independent fiduciary and trustee, and by mailing to one remaining interested party who is a terminated employee participant.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1988, at 53 FR 9010.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of May, 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-11666 Filed 5-24-88; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

Copyright Office

[Docket RM 88-3]

Request for Information; Notice of Hearing, New Technology and Audiovisual Works

AGENCY: Library of Congress, Copyright Office.

ACTION: Request for information; notice of hearing, new technology and audiovisual works.

SUMMARY: The Copyright Office of the Library of Congress issues this request for information to advise the public that it is inquiring and intends to hold a public hearing on issues concerning how new technologies such as colorization, time compression, and panning-and-scanning affect the creation and uses of audiovisual works, including motion pictures and television programming. This notice invites participation in a public hearing intended to elicit comments, views, and information that will assist the Office in understanding the extent of the present use of these new technologies in conjunction with audiovisual works, the problems, if any, that this technology may create for both the integrity of our national film heritage and the creative freedom of filmmakers, as well as the extent such technologies are expected to be used in the future and their impact on consumers, artists, producers, distributors, and other affected individuals and industries. Written comments are also solicited.

The Office particularly invites comment from or participation by representatives of organizations of individuals involved in creating audiovisual works; with distributors, broadcasters and other commercial interests that exploit such works or own copyright interests in them; with consumers, institutional film collectors, archivists, academics, libraries, and government agencies.

DATE: The hearing will be held on September 8, 1988 in Washington, DC. Anyone desiring to testify should contact the Office of the Register of Copyrights at (202) 287-8350 by August 24, 1988. Ten copies of written statements should be submitted to the Copyright Office by 4:00 p.m. on August 17, 1988, if possible, and in any case no later than August 24, 1988. Written comments are also invited from persons who do not wish to testify, and should be submitted by September 22, 1988.

ADDRESSES: The hearing will be held on September 8, 1988 in the Mumford Room of the James Madison Memorial Building (LM-649), Sixth Floor, Library of Congress, First and Independence Avenue., SE., Washington, DC, beginning at 9:30 a.m.

Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20559.

All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: William Patry or Eric Schwartz, Policy Planning Advisors to the Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8350.

SUPPLEMENTARY INFORMATION: At the request of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary, the Copyright Office is conducting an inquiry and preparing a report on the effect new technologies such as colorization, time compression, and panning-and-scanning have on the creation and exploitation of audiovisual works, including motion pictures and television programming.

On June 22, 1987 the Copyright Office issued a Notice of Registration Decision regarding claims to copyright in certain computer-colorized versions of black and white motion pictures. 52 FR 23443-23446. The Notice informed the public that, after having received and reviewed 46 comments about the nature of claimed authorship in and the process of creating computer-colorized versions of black and white motion pictures, the Office had concluded that some computer-colorized films may contain sufficient authorship to justify registration. The standard to be applied in determining whether the color added to a black and white motion picture satisfies the originality standard for protection is that which already applies to all other derivative works: i.e., modifications "which, as a whole, represent an original work of authorship." 17 U.S.C. 101 (definition of

"derivative work"). The notice then enumerated five criteria the Office would apply in determining whether the coloring of a particular black and white film is a modification that satisfies this statutory standard. The Notice of Registration Decision noted that registration determinations cannot be made on aesthetic grounds and, accordingly, that aesthetic or moral arguments about the propriety of coloring black and white films did not form any part of the inquiry.

On June 24, 1987, the Office published a separate notice of proposed rulemaking regarding the deposit requirements for colorized versions of black and white motion pictures. 119 FR 23691–23692.

This notice does not seek additional comments regarding the registrability of computer-colorized versions of black-and-white audiovisual works. Instead, it seeks information concerning the nature, extent, and effect of these new technologies on creators, distributors, and the public.

Specifically, the Office seeks comments in the following areas:

1. Nature and Impact of the Technology

The Office would appreciate information regarding:

a. Description of the technologies of colorization, time compression, and panning-and-scanning and how and why these techniques are utilized after the creation of an audiovisual work.

b. What considerations are taken into account in deciding whether to use these technologies—commercial, aesthetic, or other factors? How does the use of these technologies affect the integrity of and economic rewards flowing to those involved in the creation of the original work (including but not limited to the director, producer, actors, cinematographers, screenplay authors, soundtrack composers, and set designers)? Have these individuals objected to the use of these technologies, and, if so, how have the objections been resolved?

c. What is the present extent of the use of the technologies and what is the present impact of the technologies on those involved in the distribution of the original and the altered versions of the work? What is the projected future use and impact of these technologies? Are there similar technologies currently in the planning or development stages, and, if so, what is their projected use and impact?

d. What is the impact of the new technologies on public access to audiovisual works? Do they increase or decrease demand for or availability of the original? Do the new technologies have different impact depending upon the medium of distribution; e.g., theatrical distribution, home videocassette sale or rental, and cable or other pay TV mechanisms?

2. Contractual Practices

Do existing contractual or collective bargaining agreements govern the nature and extent of the use of the new technologies, and if not, why not? Are there differences in contract provisions negotiated by established creators and those negotiated by lesser-known artists?

3. Foreign Practices

Have foreign countries addressed any of the issues raised by these new technologies, and if so, how, and are these foreign practices relevant or applicable to practices in the United States?

4. Possible Future Legislative Action

Is there a need for additional legislation to solve the problems caused by the new technologies or should the private contractual or collective bargaining process be relied upon? Would additional legislation upset existing contractual relationships or raise constitutional issues with respect to restrictions on the exploitation of existing rights? If legislation is believed to be necessary and appropriate, what form should it take—federal (e.g., amendments to the Copyright Act or the Lanham Act) or state (e.g., state moral rights statutes) and who should be protected—only the principal director or screenwriter of the original work, or all others involved in the creative process, e.g., the actors, the cinematographers, the screenplay authors, the soundtrack composers, and the set designers? Is it possible or desirable to distinguish between works which should be protected? Should protection be limited to recognized classics, and, if so, how should it be determined if a work is a classic or otherwise deserving of protection?

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, in Room 401, James Madison Memorial Building, Library of Congress, First and Independence Avenue, SE., Washington, DC 20559.

Dated: May 13, 1988.
Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 88–11705 Filed 5–24–88; 8:45 am]
BILLING CODE 1410–07–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Literature Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Translators Fellowships Section) to the National Council on the Arts will be held on June 10, 1988 from 9:00 a.m.–6:00 p.m., and on June 11, 1988 from 9:00 a.m.–2:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 11, 1988, from 1:00–2:00 p.m. for a policy discussion.

The remaining sessions of this meeting on June 10, 1988 from 9:00 p.m.–6:00 p.m. and on June 11, 1988 from 9:00 a.m.–1:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496.at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 18, 1988

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–11748 Filed 5–24–88; 8:45 am]
BILLING CODE 7537–01–M

Meeting of the Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts advisory Panel (Crafts Fellowships Section) to the National Council on the Arts will be held on June 13–16, 1988 from 9:00 a.m.–6:00 p.m., and on June 17, 1988 from 9:00 a.m.–5:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

May 18, 1988.

[FR Doc. 88–11749 Filed 5–24–88; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to Washington Nuclear Project No. 2 (WNP–2), located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Tables 3.3.–1, "Isolation Actuation Instrumentation" and 3.6.3–1, "Primary Containment Isolation Valves," of the Technical Specifications by adding footnotes stating that the isolation capability for valve RHR–V–8 on the residual heat removal system suction line will not be required when control of this valve is transferred to the alternate remote shutdown panel.

The proposed action is in accordance with the licensee's application for amendment dated January 5, 1988, as supplemented by letters dated February 12 and March 15, 1988.

The Need for the Proposed Action

The proposed change to the Technical Specifications will make it possible to operate the facility with control of value RHR–V–8 transferred to the alternate remote shutdown panel. This will resolve NRC concerns over the potential for spurious opening of the two valves on the line in the event of a control room fire.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions will allow the facility to operate when control of a valve on the residual heat removal system intake line is transferred away from the control room and isolation interlocks are bypassed. The revisions have been found to be acceptable because transfer of control of the valve as proposed will provide reasonable assurance that a control room fire will not cause spurious opening of the valve. Furthermore, since the valve is normally closed when the reactor is at power and since the valve will be locked in the closed position when control is at the alternate remote shutdown panel, the objective of the existing Technical Specification is not affected. The proposed changes do not increase the probability or consequences of an accident. No changes are proposed in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed amendment to the TS involves normal switch alignment for control of a system located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** March 14, 1988 (53 FR 8291). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there is no significant environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. Denial of the request would not reduce environmental impacts of plant operation and in fact would result in continued safety concern over spurious operation of the valve in the event of a control room fire.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2, dated December, 1981.

Agencies and Person Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 5, 1988 and supplemental letters dated February 12 and March 15, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 20th day of May, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11692 Filed 5–24–88; 8:45 am]
BILLING CODE 7590–01–M

VOL 53 ISS 101 MAY 25 1988 UMI

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16406; File No. 812-6597]

James U. Blanchard III, Sheffield Management Co., Sheffield Investments, Inc., Blanchard Strategic Growth Fund, and Free Market Advisors, Inc.; Filing of Application

May 19, 1988.

Notice is hereby given that James U. Blanchard III ("Blanchard") 2400 Jefferson Highway, Suite 200, Jefferson, Louisiana 70121, and Sheffield Management Company ("Sheffield Management"), Sheffield Investments, Inc. ("Sheffield Investments"), Blanchard Strategic Growth Fund, and Free Market Advisors, Inc. ("Free Market"), 41 Madison Avenue, 24th Floor, New York, New York 10010 (collectively "the Applicants") have filed an application and an amendment thereto requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"), that would permanently exempt Applicants from the provisions of section 9(a)(2) and 9(a)(3) of the Act in respect of the circumstances described below.

The Applicants state that Blanchard is the President and sole shareholder of James U. Blanchard and Company, Inc. ("Blanchard & Co."), located in Jefferson, Louisiana. Blanchard was also the President and sole shareholder of the National Committee for Monetary Reform, Inc., until that entity's merger with Blanchard & Co. in April, 1987. Blanchard, through Blanchard & Co., is primarily engaged in the business of marketing numismatic, semi-numismatic, and rare investment quality coins and precious metals. Blanchard also publishes various materials and periodicals and conducts certain conferences and seminars.

The Applicants state that Sheffield Management is a registered investment adviser. Sheffield Investments is a registered broker-dealer and a member of the National Association of Securities Dealers. Blanchard Strategic Growth Fund is a registered open-end non-diversified management investment company. Free Market is a registered investment adviser.

The Applicants state that from January 24, 1986, until December 15, 1986, Blanchard served as Chairman of the Board and "interested" trustee of Blanchard Strategic Growth Fund. From October 22, 1985 to December 15, 1986, Blanchard served as a director of Sheffield Management and Sheffield Investments. The Applicants state that Blanchard resigned from these positions on December 15, 1986.

On January 13, 1977, in an action entitled *SEC v. Silver Stack Mines, Ltd. et al,* Civil Action No. 77-0066 (D.C.C., filed January 12, 1977), the United States District Court for the District of Columbia entered a final judgment of permanent injunction against Blanchard. The District Court enjoined Blanchard from violations of the registration provisions of the Securities Act of 1933, the anti-fraud provisions of the Securities Exchange Act of 1934, and the anti-fraud and recordkeeping provisions of the Investment Advisers Act of 1940. Blanchard consented to the entry of the injunction without admitting or denying the allegations against him.

Section 9(a)(2) of the Act applies to persons who, by reason of any misconduct, have been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. The section prohibits these persons from serving or acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) extends these prohibitions to companies whose affiliated persons are subject to the prohibitions of section 9(a)(2).

Blanchard is subject to the prohibitions of section 9(a)(2) by reason of the entry of the permanent injunction against him. In addition, to the extent that Blanchard serves as a director of Sheffield Management or Sheffield Investments, he is an affiliated person of those entities, see Investment Company Act 2(a)(3)(D), thus barring them from serving as investment adviser and principal underwriter, respectively, to Blanchard Strategic Growth Fund or to other registered investment companies.

Section 9(c) of the Act provides that, upon application, the Commission may grant, either unconditionally or on an appropriate temporary or conditional basis, an exemption from the provisions of section 9(a). The applicant must establish that the prohibitions of section 9(a), as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application.

Applicants submit that the prohibitions of section 9(a) of the Act, to the extent applicable by virtue of the injunction against Blanchard, would be unduly or disproportionately severe as applied to them. Applicants also submit that the conduct of Blanchard has been such as not to make it against the public interest or the protection of investors to grant the Application. The Applicants therefore request that the Commission, pursuant to section 9(a) of the Act, grant Blanchard, Sheffield Management, Sheffield Investments, Free Market, and Blanchard Strategic Growth Fund a permanent exemption from the provisions of section 9(a) operative as a result of the entry of the injunction against Blanchard. The permanent exemption is sought to remove the prohibitions against Blanchard as an impediment to: (i) Service by Sheffield Management and Sheffield Investments as investment adviser or principal underwriter to Blanchard Strategic Growth Fund and to other registered investment companies in the future if Blanchard serves as a director of Sheffield Management or Sheffield Investments; and (ii) service by Blanchard as Chairman of the Board of Directors and interested trustee of Blanchard Strategic Growth Fund and otherwise as an affiliate of Sheffield Management and Sheffield Investments.

The Applicants make the following points in support of their arguments that the prohibitions of section 9(a) as applied to them would be unduly or disproportionately severe and that the conduct of Blanchard has been such as not to make it against the public interest or the protection of investors to grant the application:

- More than ten years have elapsed since the activities alleged in the compliant against Blanchard, and since section 9(a)(1) of the Investment Company Act provides that a felony conviction would serve as a bar for ten years, it would appear inequitable and unjust if the end result of a consent decree involving civil charges were longer lasting than the impact of a felony conviction;
- Prior to or since the entry of the injunction against Blanchard in January 1977, no findings or judgments relating to violations of federal or state securities laws had or have ever been entered by any court against Blanchard or any of the applicants;
- The allegations in the Complaint against Blanchard and the terms of the Judgment and the circumstances to which they relate did not involve activities of Blanchard Strategic Growth Fund or Sheffield Management's or Sheffield Investment's activities on behalf of the fund or any other registered investment company;
- The prohibitions of sections 9(a) would deprive Blanchard Strategic Growth Fund of advisory and distribution services which the "non-interested" Trustees of the Fund selected in the best interests of the Fund's shareholders, and would thus operate significantly to the detriment of the Fund and its shareholders, none of which were affected by the events that gave rise to the injunction against Blandhard.

The Applicants represent that they acknowledge, understand, and agree that the Commission's issuance of the order requested by their application shall not prejudice nor limit the Commission's rights in any manner with respect to any investigation, enforcement action, or proceeding under section 9(b) of the Investment Company Act, based, in whole or in part, upon conduct other than that giving rise to the injunction referred to above.

Notice is hereby given that any interested person may, not later than June 13, 1988, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application, accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 6-9, Washington, DC 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney, certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11754 Filed 5-24-88; 8:45 am]

BILLING CODE 8010-01-M

Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the declaration for complete statements of the proposed transactions summarized below. The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by June 13, 1988, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified below. Proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the declaration, as filed or as amended, may be permitted to become effective.

National Fuel Gas Company (70-7519)

Notice of Proposal to Issue and Sell Common Stock to DRIP Pursuant to Exception from Competitive Bidding; Order Authorizing Solicitation of Shareholders Participation in DRIP by Mailing of Prospectus and Authorization Form

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50(a)(5) and 62 thereunder.

National proposes to issue and sell from time-to-time through December 31, 1991, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, up to one million shares of its authorized but unissued common stock, no par value ("Additional Common Stock"), to Manufacturers Hanover Trust Company (or such other bank or trust company as National may from time-to-time designate) as agent for the participants in National's Dividend Reinvestment and Stock Purchase Plan, as amended ("New Plan"). National's existing Dividend Reinvestment and Stock Purchase Plan ("Old Plan") provides that, if participating shareholders elect to reinvest cash dividends and optional cash payments in National's common stock, such amounts are to be reinvested solely through open market purchases. However, National's New Plan will provide that such amounts can, at National's option, be reinvested through open market purchases of National's common stock and/or in Additional Common Stock.

National proposes to use the proceeds from the sale of the Additional Common Stock solely for its own use in the repayment of short-term debt, for interest and dividend requirements and to fund any operating losses it may incur.

National further proposes to solicit the participation of each holder of record of National's common stock in the New Plan by mailing of a prospectus and an authorization form. Future shareholders and nonparticipants may be informed of the New Plan by remailing of the prospectus and authorization form, by occasional announcements in company publications or by other means. National requests that the effectiveness of its declaration with respect to solicitation of the participation of its existing common shareholders in the New Plan by the mailing of the prospectus and authorization form be accelerated as provided in Rule 62. National proposes to mail the prospectus and authorization form to its shareholders on or about June 7, 1988.

It appearing to the Commission that National's declaration regarding the proposed solicitation of its shareholders by mailing of the prospectus and authorization form should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the solicitation of the participation of its existing common stockholders in the New Plan by mailing of the prospectus and authorization form be, and hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11752 Filed 5-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24648; 70-7519]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

May 19, 1988.

Notice is hereby given that the following filing has been made with the

[Release No. 35-24647]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 19, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules

promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should sumbit their views in writing by June 13, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70-7580)

AEP Resources, Inc.

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its proposed wholly owned subsidiary, AEP Resources, Inc. ("AEP Resources"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 87, 90 and 91 thereunder.

AEP proposes to organize, acquire the capital stock of, and provide initial financing for a new wholly owned subsidiary, AEP Resources. The primary business of AEP Resources will be the investment and participation in qualifying cogeneration facilities and in qualifying small power production facilities as defined by the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission ("FERC") (hereinafter collectively, "Qualifying Facilities"). The qualifying cogeneration facilities may be located in any geographic area, but participation by AEP Resources in qualifying small power production facilities will be limited to the service territories of the AEP System. The initial financing for AEP Resources will be provided by the purchase by AEP of 100 shares of AEP Resources's common stock, par value $1 per share, for $10,000.

AEP resquests authorization to invest up to an additional $200 million in AEP Resources through December 31, 1991, through acquisitions of common stock, capital contributions, open account advances and/or interest free subordinated loans. In addition, AEP Resources may obtain debt financing from non-affilitated third parties which AEP will guarantee if required. No third party financing obtained by AEP Resources or guaranteed by AEP will exceed a term of 10 years or bear an interest rate in excess of 115% of the prime rate in effect at the time of issuance. The aggregate amount of such financings both from AEP and/or third parties will not exceed $200 million.

It is further proposed by AEP Resources, through December 31, 1991, to make investments, capital contributions and/or commitments in connection with the Qualifying Facilities up to a total of $200 million. It is stated that AEP Resources may invest or participate directly in specific Qualifying Facilities on a project-by-project basis with one or more nonaffiliated companies by acquiring equity interests in corporations, partnerships, joint ventures or other entities created for the purpose of constructing, owning and/or operating particular projects. Alternatively, AEP Resources may choose to participate indirectly in Qualifying Facilities through partnerships, joint ventures or similar arrangements ("Joint Ventures") with nonaffiliates. In addition, investments may be made through special purpose companies to be formed by AEP Resources. All investments will be subject to applicable provisions of PURPA and FERC rules which presently limit participation by electric utilities and affiliates to 50% of the equity interest.

AEP Resources's investment and/or participation in Qualifying Facilities, Joint Ventures or any special purpose company formed by AEP Resources may take the form of the purchase of shares or other acquisitions of interest, the loaning of money, the guarantee of indebtedness or other contractual arrangements. The exact nature of contractual and investment opportunities cannot yet be specified and AEP Resources requests the flexibility to negotiate specific provisions with third parties without further Commission authorization, subject to the $200 million maximum financial commitment requested.

Ohio Power Company (70-7602)

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, S.W., Canton, Ohio 44702, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration pursuant to sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

By order dated March 6, 1978 (HCAR No. 20436) OPCo was authorized to issue and sell 1,600,000 shares of a series of its cumulative preferred stock, par value $25 per share, with a dividend rate of $2.27 per annum ("$2.27 Series"). Such shares may currently be redeemed at a price of $26.135 per share. There is no sinking fund providing for the retirement of the $2.27 Series.

OPCo proposes to acquire, through December 31, 1995, with funds available from time to time, up to the entire amount of its previously issued and outstanding $2.27 Series through one or more purchases made in the open market.

Central Power and Light Company (70-7520)

Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403, an electric utility subsidiary of Central and South West Corporation, a registered holding company has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

CP&L proposes to issue and sell up to $250 million aggregate principal amount of its first mortgage bonds ("Bonds") in one or more series through June 30, 1990 with up to a 30 year maturity. Under the terms of its Indenture of Mortgage or Deed of Trust ("Indenture"), CP&L would be able to issue and sell a maximum of $145 million of Bonds if the issue and sale were made today. Therefore, CP&L requests an order approving the issuance of up to $145 million in principal amount of the Bonds, and reserving the Commission's jurisdiction over the remaining amount until such time as CP&L may demonstrate its ability to issue additional Bonds under the terms of its Indenture.

CP&L presently intends to offer the Bonds in accordance with the competitive bidding procedures of Rule 50 under the Act, as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623). If market conditions warrant, CP&L may seek the Commission's approval by amendment to the declaration to enter into negotiations with one or more underwriters for the sale of the Bonds.

Southwestern Electric Power Company (70-7522)

Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, a wholly owned subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder. SWEPCO proposes to sell three gas turbines maintained on a standby basis at its Lone Star plant in Lone Star, Texas. It is currently seeking non-affiliated buyers for any or all of the turbines at a price in cash of approximately $260,000 each.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11753 Filed 5-24-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 13, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45620

Date Filed: May 10, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 7, 1988.

Description: Application of Trans Continental Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail on a permissive basis.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-11732 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 45619]

Sunworld International Airways, Inc.; Assignment of Proceeding

May 20, 1988.

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88-11722 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petitions

Mr. Russell J. Shew submitted a petition dated October 7, 1987, requesting the National Highway Traffic Safety Administration (NHTSA) to investigate all 1984 through 1987 Pontiac Fiero vehicles for breakage of the front outer tie rod end. A previous investigation (PE85-26) on breakage of tie rod ends of 1984 Fieros was closed for lack of a safety-related defect trend.

The petition presented no significant new information concerning failure incidents that would overcome the agency's earlier conclusion that there was not trend of incidents showing a significant number of failures. The petition referred to only one new incident and otherwise presented the petitioner's arguments for finding a trend in the evidence already considered by the agency. At the time of the closing of PE85-26, the agency was aware of 32 incident reports for 1984 model year Fieros. The agency is not aware of 58 reports for 1984 Fieros and a total of 16 others for subsequent model year vehicles. This number of reported failures might be enough to point to the possibility of a defect trend if there were no other evidence regarding the likelihood that vehicle failures had actually occurred. However, in this case there is substantial evidence which tends to indicate that the reports did not involve tie rod failures that occurred before the accidents. GM has provided test laboratory results showing that all of the broken tie rods it examined exhibited impact loading fracture characteristics, tending to prove that these tie rods has broken as the result of the accidents. Of the total of 74 reported incidents, ODI has information indicating that at least 53 involved accidents in all of which the broken tie rod was found on the side of the object which the Fiero contacted in the accident. The remaining reports may have also involved accidents, but the agency lacks information regarding them except that they involved broken tie rods. It is improbable that tie rod failures would occur in signifiant numbers with so few failure incidents, possibly none, in which accidents did not occur. The extremely high percentage of accidents among reported incidents also tends to support the inference that the accidents have been the cause rather than the result of the reported tie rod breakages.

The petitioners contended that the agency PE85-26 is reliance on vehicle tests performed by GM showing lack of safety consequences when tie rods fail and that the GM tests lacked credibility because of lack of certain "scientific" procedures, lack of recording of front end adjustment of the test vehicle, lack of recording of the test such as by film and lack of verification of the point in the tests when separation occurred. The petitioner also commented on the moderate speed of the GM tests. First it should be noted that the agency did not close PE85-26 on the basis of a finding that tie rod failure could not pose a risk to safety, and it makes no such finding in denying the present petition. However, the agency did request testing of the effect of tie rod failure on steering by the Vehicle Testing and Research Center (VRTC) in light of the petitioner's criticisms. These tests included a wider range of test speeds, and the test car's front end adjustment was set to manufacturer's specifications. The tests were recorded. The VRTC tests tend to show that separation of one tie rod, by itself, is unlikely to cause loss of control in normal driving situations.

The petitioner also contended that tie rod breakage is similar to the failures that were at issue in *United States v. General Motors, Pitman Arms*, 561 F.2d 923 (D.C. Cir. 1977). This is not the case. In the Pitman Arms case, it was conceded that there was a significant number of failures and that these failures always rendered the steering of the subject vehicles inoperable so that a loss of control was inevitable. The issue

there was whether the losses of control could be safety-related in light of their tendency to occur predominantly at very slow speeds. The evidence in PE85-26 and presented by the petition and technical review here does not show a significant number of failures, apart from those that may have been caused by accident impact, and this alone distinguishes this matter from the Pitman Arms case. Moreover, loss of control does not appear to occur necessarily whenever separation of a tie rod occurs.

A review of the above information revealed no defect trend that would be associated with breakage of the front outer tie rod end. Further commitment of resources does not appear to be warranted. It was concluded that there was not a reasonable possibility that reopening the investigation would result with the identification of a safety-related defect. The petition is denied.

(Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on May 19, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-11683 Filed 5-24-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series No. 14-88]

Treasury Notes of May 31, 1990, Series AB-1990

Washington, May 19, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of May 31, 1990, Series AB-1990 (CUSIP No. 912827 WF 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 31, 1988, and will Accrue interest from that date, payable on a semiannual basis on November 30, 1988, and each subsequent 6 months on May 31 and November 30 through the date that the principal becomes payable. They will mature May 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5 The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 10260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Wasington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 25, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 24, 1988, and received no later than Tuesday, May 31, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determation is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent

increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issued discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

34. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1 and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, May 31, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 26, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, May 31, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the part amount of Notes allotted shall, at the discretion of the Secretary of the Treasury be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURE DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agent of the United States, Federal Reserve Bank are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-11863 Filed 5-23-88; 2:48 pm]

BILLING CODE 4810-40-M

[Department Circular; Public Debt Series No. 15-88]

Treasury Notes of August 15, 1993, Series L-1993

Washington, May 19, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of United States securities, designated Treasury Notes of August 15, 1993, Series L-1993 (CUSIP No. 912827 WG 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated June 1, 1988, and will accrue interest from that date, payable on a semiannual basis on February 15, 1989, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the

extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, May 26, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 25, 1988, and received no later than Wednesday, June 1, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount aplied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, June 1, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, May 27, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, June 1, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue ssuch notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–11864 Filed 5–23–88; 2:49 pm]

BILLING CODE 4810-40-M

VOL 53 ISS 101 MAY 25 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 101
Wednesday, May 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Wednesday, June 1, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Reassessment of November 10, Decision to Terminate Pension Accrual Rulemaking Under Section 4(f)(2) of the ADEA

Closed Session

Agency Adjudication and Determination of Federal Agency Discrimination Complaint Appeals.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634–6748.

Dated: May 19, 1988

Hilda D. Rodriguez,

Executive Officer (Acting) Executive Secretariat.

[FR Doc. 88–11706 Filed 5–23–88; 10:05 am]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on May 17, 1988, from 10:00 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

*Closed Session

1. Examination and Enforcement Matters; and
2. Effective date for Interim Regulations Relating to Receiverships of System Institutions.

Dated: May 20, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–11707 Filed 5–23–88; 9:22 am]

BILLING CODE 6705–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 18, 1988

TIME AND DATE: 10:00 a.m., Wednesday, May 25, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Kaiser Coal Corp.*, Docket No. WEST 88–131–R (Issues include consideration of operator's petition for discretionary review).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interperters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Sandra G. Farrow (202) 653–5629/(202) 566–2673 for TDD Relay Acting Agenda Clerk.

Sandra G. Farrow

Acting Agenda Clerk

[FR Doc. 88–11740 Filed 5–23–88; 9:21 am]

BILLING CODE 6735–01–M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Corrections

Federal Register
Vol. 53, No. 101
Wednesday, May 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Technical Information Service

Intent to Grant Exclusive Patent License; Cetus Corp.

Correction

In notice document 88-11107 appearing on page 17744 in the issue of Wednesday, May 18, 1988, make the following correction:

In the first column, in the 10th line, "U.S. Patent No. 4,670,567" should read "U.S. Patent No. 4,670,487".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F3256/R953; FRL-3367-2]

Pesticide Tolerance for AC 222,293

Correction

In rule document 88-8509 beginning on page 12943 in the issue of Wednesday, April 20, 1988, make the following corrections:

1. On page 12943, in the third column, under **SUPPLEMENTARY INFORMATION**, the 11th line should read "imidazolin-2-yl]-*p*-toluate and methyl 6-".

2. On page 12944, in the first column, in the first complete paragraph, the fifth line should read "2-year feeding/ oncogenic study in rats fed".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0092]

C.R. Bard, Inc.; Premarket Approval of Dupen™ Long Term Epidural Catheter

Correction

In notice document 88-9766 appearing on page 15739 in the issue of Tuesday, May 3, 1988, make the following correction:

On page 15739, in the second column, under **SUPPLEMENTARY INFORMATION**, in the 11th line, "preservation-free" should read "preservative-free".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-10; C-48465]

Proposed Withdrawal; Proposed Public Meeting; Colorado

Correction

In notice document 88-8549 appearing on page 12826 in the issue of Tuesday, April 19, 1988, make the following correction:

In the second column, under T. 11 S., R. 104 W., the first line should read , "sec. 3, lots 3 and 4;".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Standards for Underground Coal Mines; Public Hearings

Correction

FR Doc. 88-10641 was published on page 16872 in the issue of Thursday, May 12, 1988. The document announces public hearings on a proposal to revise existing safety standards for ventilation at underground coal mines. It was published in the Rules section of the **Federal Register**. The document should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 154

[CGD 82-042]

Specification for Hand Held Flashlights

Correction

In rule document 88-11081 beginning on page 17702 in the issue of Wednesday, May 18, 1988, make the following correction:

§ 154.1 [Corrected]

On page 17705, in the third column, in § 154.1(b), under the heading "American Society for Testing and Materials", in the seventh line, "154.1400(c)(40)" should read "154.1400(c)(4)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, and 36

[Docket No. 23340 Amendment Nos. 21-62, 25-63, and 36-15]

Standards Governing the Noise Certification of Aircraft

Correction

In rule document 88-10005 beginning on page 16360 in the issue of Friday, May 6, 1988, make the following corrections:

1. On page 16360, in the third column, in the first complete paragraph, in the third line, "are" was misspelled.

2. On page 16362, in the first column, in the second paragraph, in the 10th line, insert a comma after the word "comments"; and "had" should read "has".

3. On the same page, in the third column, in the first complete paragraph, in the 16th line, "regulation" was misspelled; and in the 18th line, "implementation"was misspelled.

4. On the same page, in the same column, in the second complete paragraph, in the last line, "aircraft" was misspelled.

5. On page 16364, in the first column, in the first paragraph, in the first line, "comments" should read "commenters".

6. On the same page, in the same column, in the fifth paragraph, in the

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first line, "§ 36.7(e)(1)" should read "§ 36.7(c)(1)".

7. On the same page, in the third column, in the first complete paragraph, in the seventh line, "limit" should read "limits".

§ 36.7 [Corrected]

8. On page 16366, in the first column, in § 36.7(c)(1), in the first line, "There" should read "The".

§ 36.1581 [Corrected]

9. On the same page, in the third column, in § 36.1581(a), in the 12th line, "marketing" should read "markings"; and in § 36.1581(b), in the 6th line, "the" should read "and".

Note: For a Department of Transportation correction to this document see the Rule section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-184-86]

Income Taxes; Continued Accruals Beyond Normal Retirement Age

Correction

In proposed rule document 88-7880 beginning on page 11876 in the issue of Monday, April 11, 1988, make the following corrections:

1. On page 11877, in the third column, in the first paragraph, in the 11th line, "defined " was misspelled.

§ 1.411(b)-2 [Corrected]

2. On page 11881, in the first column, in § 1.411(b)-2(b)(4)(iii)(B), in the 11th line, "play" should read "plan".

3. On page 11883, in the third column, in § 1.411(b)-2(d)(1), in the 11th and 12th lines remove "joint and survivor annuity or the subsidized portion of a".

§ 1.411(c)-1 [Corrected]

4. On page 11886, in the first column, in § 1.411(c)-1(f)(2), in the first and second lines remove "*after retirement*"; and in the eighth line "411(b)(1)(H0" should read "411(b)(1)(H)".

BILLING CODE 1505-01-D

VOL 53 ISS 101 MAY 25 1988 UMI

federal register

Wednesday
May 25, 1988

Part II

Environmental Protection Agency

Strychnine; Notification of District Court Order; Notice

VOL 53 ISS 101 MAY 25 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36159; FRL-3383-8]

Strychnine; Notification of District Court Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of district court decision.

SUMMARY: This notification is being published pursuant to the April 11, 1988 order of the United States District Court for the District of Minnesota in the case of *Defenders of Wildlife* v. *Administrator*. It includes the order of the court enjoining the registrations of the pesticide strychnine for above-ground uses.

FOR FURTHER INFORMATION CONTACT: Judith W. Wheeler, Office of General Counsel (LE-132P), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-7510.

SUPPLEMENTARY INFORMATION: On April 11, 1988, the United States District Court for the District of Minnesota issued an Opinion and Order in the case of *Defenders of Wildlife* v. *Administrator* (Civil No. 4086-86?). The decision in that case relates to the continued registration of the pesticide strychnine for the above-ground uses.

The plaintiffs sued EPA in regard to the partial withdrawal by the Agency of a 1983 Notice of Intent to Cancel the registrations for above-ground use of strychnine and the issuance of a new Notice of Intent to Cancel in March, 1987, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which allowed for the continued use of strychnine for control of prairie dogs, ground squirrels and meadow mice if certain changes were made to the pesticide labels.

The court found the Agency to be in violation of the Administrative Procedure Act, the Endangered Species Act, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Accordingly, the court provided declaratory and injunctive relief as set forth in the court's opinion. The injunctive relief provided by the court to plaintiffs appears to require that EPA take immediate action to suspend or temporarily cancel all registrations of strychnine for above-ground use.

The court further ordered that EPA publish notice of the court's order and notify by letter all registrants of strychnine for above-ground uses of the order. This notice satisfies that portion of the court's order relating to publication of the notice.

EPA is currently examining its legal options in regard to the court's decision. Until and unless the court takes further action, the order of the court is effective and binding. Therefore, each registrant and applicator should carefully study the court's order and determine what actions are necessary and appropriate. The text of the court's order follows:

Memorandum Opinion and Order

[Civil 4-86-667]

Defenders of Wildlife, the Sierra Club, and Friends of Animals and their Environment, Plaintiffs, vs. Administrator, Environmental Protection Agency; and Secretary, Department of the Interior, Defendants, and American Farm Bureau Federation, a non-profit corporation, Intervenor-Defendant.

Brian B. O'Neill, Esq., Faegre & Benson, 2300 Multifoods Tower, Minneapolis, MN 55402, for plaintiffs.

Charles R. Shockey, Esq., United States Department of Justice, P.O. Box 7369, Washington, DC 20044-7309, for defendants Administrator of Environmental Protection Agency; and Secretary, Department of the Interior.

Richard L. Krauss., American Farm Bureau Federation, 225 Touhy Avenue, Park Ridge, IL 60068, for intervenor-defendant, American Farm Bureau Federation.

Plaintiffs Defenders of Wildlife, the Sierra Club, and Friends of Animals and Their Environment, bring this action challenging the registration of strychnine pesticide and rodenticide (strychnine) for certain above-ground uses. Defendants are the Administrator of the Environmental Protection Agency (EPA), who has responsibility for registering products containing strychnine, and the Secretary of the Interior, who is required to consult with the EPA and recommend safeguards when strychnine use might jeopardize any endangered or threatened species. Intervenor-defendant American Farm Bureau Federation represents farmers and ranchers who use strychnine to control rodents.[1]

This action is brought under several federal statutes: the Endangered Species Act (ESA), 16 U.S.C. 1531–1543 (1982); the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 *et seq.* (1974); the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668 *et seq.* (1986); the National Environmental Policy Act (NEPA), 42 U.S.C. 4332 (1975); and the Administrative Procedures Act (APA), 5 U.S.C. 501 *et seq.* (1966). The complaint alleges that defendants have, by their continuing approval of strychnine for certain above-ground uses, illegally "taken" [2] threatened and endangered species in violation of several Acts. It further alleges that defendants failed to assist the recovery of species, failed to prepare an environmental impact statement regarding the effects of continued registration of strychnine, and have acted arbitrarily and capriciously throughout the strychnine registration process, in violation of the APA. Jurisdiction is alleged under 28 U.S.C. 1331 and 16 U.S.C. 1540(g)(1).

Plaintiffs want injunctive and declaratory relief and attorney's fees. Plaintiffs seek to rescind a March 1987 "Notice of Intent" by the EPA which permits continued use of strychnine; an injunction requiring the EPA to adopt instead a more restrictive 1983 "Notice of Intent to Cancel" strychnine; and a court order requiring defendants to engage in further study on the effect of continued above-ground strychnine use on threatened and endangered species.

Before the court are cross motions for dismissal and for summary judgment by plaintiffs, defendants, and intervenor-defendant.[3] Plaintiffs seek summary judgment on all claims except count 6—the NEPA challenge, for which they seek dismissal without prejudice. Defendants move for dismissal for failure to state a claim and for lack of standing, and they seek summary judgment on all counts.[4] All parties agree that there are no disputed material facts and that the entire matter should be resolved on these motions. They disagree somewhat on the proper record. Defendants urge that the APA claims should be based solely on the administrative record which was before the EPA at the time of the pre-1987 administrative actions. Plaintiffs argue that more than the administrative record is involved since their challenge is broader than an appeal of administrative action.

[1] The only strychnine uses challenged here are against prairie dogs, ground squirrels, and meadow mice.

[2] The term "take" or one of its derivatives is used in several statutes to connote the varied ways in which a member of a protected species can be injured, captured, killed or otherwise harmed. In this instance it generally means killed by strychnine poison. Plaintiffs allege that illegal "takings" occur to numerous species, including gold eagle, bald eagle, other migratory birds, and other endangered birds and mammals. Lists of the affected species are noted below.

[3] Defendants' and intervenor-defendant's positions are similar. Except where otherwise noted, references to "defendants" include both defendants and intervenor-defendant.

[4] Plaintiffs now seek to dismiss count 6, the NEPA claim, without prejudice. Defendants argue for dismissal with prejudice given the lateness of the request. Defendants have extensively briefed their motion for summary judgment on count 6, and plaintiffs have not responded. On the basis of this record and Fed. R. Civ. P. 41(a)(2), count 6 should be dismissed with prejudice.

I

Strychnine, or strychnine sulfate (strychnine) is the active ingredient in numerous pesticides and rodenticides. Until recently many of these were registered by the EPA for numerous above-ground uses to control rodents, lagomorphs (rabbits, hares, and pikas), and birds. EPA Strychnine Position Paper 4, at 1 (September 30, 1983), EPA Ex. No. 285.[5] (hereafter P.D. 4). Strychnine is most commonly used as a grain bait, and is primarily used against ground squirrels and prairie dogs. P.D. 4, at 1. Up to one-half million pounds annually of strychnine bait is used, primarily in western states for rodent control in rangeland, pasture and cropland. P.D.4, at 1.

EPA regulations require that baits be placed in a manner in which the targeted species alone is likely to ingest the poison. Strychnine is non-selective, however, it kills anything which ingests a lethal dose. Mortality can occur to both "target" and "non-target" species—non-target being any species which the strychnine is not intended to kill, but which nonetheless ingests it. Primary poisoning occurs when a lethal dose of strychnine is directly ingested by consuming the grain bait. Mortality can also occur through "secondary poisoning," when a carnivore ingests a lethal dose by consuming an animal or bird which has ingested strychnine or a carcass with unmetabolized strychnine. *See* EPA Strychnine Position Paper P.D. ⅗, at 25 (September 1980); EPA Ex. No. 78, (P.D. ⅗).

Strychnine is registered by EPA under the procedures established by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sec. 136 *et. seq.* (1979). Both registration and cancellation of a controlled pesticide involves a process formerly known as a Rebuttal Presumption Against Registration (RPAR), and now called Special Review.[6] The burden is on proponents of a challenged use of a controlled pesticide to prove that it does not have any unreasonably adverse effect on the environment. 7 U.S.C. 136a(c). The EPA may cancel or modify a registration when evidence arises that the pesticide may be causing unreasonable adverse effects. The RPAR is concluded by a "Notice of Determination" where the agency explains whether the presumption of risk is rebutted, and explains any changes in the registration.

The challenge against above-ground strychnine use at issue here formally began in 1976 when the EPA began the review of potentially adverse effects of strychnine. The review resulted in EPA Position Document 1 (October 27, 1976); EPA Ex. No. 28 (P.D. 1). Later that year, the EPA published a Rebuttable Presumption Against Registration (41 FR 52810 (December 1, 1976), EPA Ex. No. 28, which required registrants to come forward with evidence rebutting the presumption that continued registration exceeded a permissible level of risk. The registrants were required to address whether all continued outdoor above-ground use of strychnine would cause acute toxicity to non-target species and fatality to endangered species. The EPA received numerous response (sic) from federal and state agencies, agricultural groups, and individuals.

As part of the RPAR process, the United States Fish and Wildlife Service (FWS), a division administered by defendant Secretary of the Department of the Interior, began a "jeopardy investigation" pursuant to ESA Section 7, 16 U.S.C. 1536(c) (a "Section 7" investigation). The FWS is charged with determining at the earliest possible time if agency action may affect endangered or threatened species. The FWS reports its findings by issuing a biological opinion. In 1979, the FWS issued a biological opinion to the EPA, summarizing the findings of the Section 7 investigation. EPA Ex. No. 65. The opinion noted 18 endangered species which were "likely to be jeopardized if the above-ground usage of strychnine as presently registered should occur in the areas where these species are found." EPA Ex. No. 65, at 18–29.[7] No likely jeopardy was found to bald eagles and to peregrine falcons, in part because there was no evidence of mortality to these species attributable to ingestion of strychnine. The biological opinion recommended that above-ground use of strychnine should be prohibited in geographical areas where it might jeopardize the continued existence of the noted species or adversely modify their critical habitat. EPA Ex. No. 65, at 33.

Continuing with the RPAR process, the EPA, in 1980, produced P.D. 2/3. It was based on the EPA's own expertise, on the FWS biological opinion, and on information received during the public comment period. P.D. 2/3 was a preliminary examination of evidence supporting and rebutting the original presumptions which permitted strychnine to be registered. *See* 45 FR 73602 (November 1980) EPA Ex. No. 85.[8] It contained over 100 pages of data and analysis, and suggested cancellation or modifications in the registration of strychnine for dozens of species commonly controlled by above-ground placement of laced baits. *See* P.D. 2/3, at 100–02. The EPA found likely jeopardy to 16 of the endangered species cited in the biological opinion if strychnine were used in their environment. It also noted special concern for the peregrine falcon and Aleutian Canada goose.[9] P.D. 2/3, at 31. In 1982 Congress amended the ESA to require the FWS to include in the biological opinion a statement permitting an "incidental taking" if an agency action is likely to harm members of an endangered species without jeopardizing the entire species. This amendment did not affect the 1979 biological opinion.

The EPA's next step in the RPAR process was P.D. 4, issued on September 30, 1983. P.D. 4 adopted in great part the findings and analysis of P.D. 2/3. It reasoned that the likely jeopardy to endangered species outweighed economic benefits to most continued strychnine uses. The document noted that effective alternatives to strychnine were available which posed less threat to non-target species and which were only marginally more expensive. P.D. 4, at 19–26. The EPA noted with particular detail strychnine's impact on six endangered species.[10] It also noted

[5] Citations to EPA Exhibits refer to the record of the EPA administrative proceedings. All references to the administrative record will generally be referred to by that number. *E.g.*, EPA EX. No. 1.

[6] Most the defendants' actions challenged here occurred before the name change and will be referred to as the RPAR process. The RPAR (now "Special Review") process is set forth at 40 CFR Part 154 (1987).

[7] The potentially jeopardized species expressly noted in the biological opinion are the following: Utah Prairie Dog, Morro Bay Kangaroo Rat, Salt Marsh Harvest Mouse, Red Wolf, Masked Bobwhite, Dusky Seaside Sparrow, Cape Sable Sparrow, Mississippi Sandhill Crane, Puerto Rican Plain Pigeon, Attwaters Greater Prairie chicken, Yellow-Shouldered Blackbird, Laysan Finch, Nihoa Finch, California Condor, Black-Footed Ferret, San Joaquin Kit Fox, Gray Wolf, and Grizzly Bear.

[8] The EPA states the purpose of the document in the introductory section of P.D. 2/3. EPA examined both the risks associated with use of the pesticide (dangerous toxicity or other unreasonable adverse effects) and the benefits of continued use. The principal focus is on economic impacts, however:

The final Agency decision is based upon achieving the goal of a pesticide performing its intended function without causing unreasonable adverse effects on the environment. P.D. 2/3, at 1.

[9] The FWS biological opinion found no likely jeopardy for the peregrine falcon or Aleutian Canada goose. That exclusion was based on part of the lack of evidence of falcon mortality attributable to strychnine. EPA Exhibit No. 65 at 7. The EPA nonetheless exercised its prerogative of restricting strychnine use out of concern for likely detriment to those species. P.D. 2/3, at 31.

[10] Attwater's greater prairie chicken, red wolf, Aleutian Canada goose, San Joaquin kit fox, black-footed ferret, and California condor. P.D. 4 at 7–12.

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special concern for the Aleutian Canada goose and peregrine falcon, assessing greater risk to these species from above-ground strychnine than did the FWS. P.D. 4, at 12

In P.D. 4 the EPA restated its intent to cancel registration of strychnine for above-ground use against most target species, including prairie dogs and meadow mice; and it announced modifications in the terms and conditions of registration for use against other species, including ground squirrels. P.D. 4 noted that continued registration for ground squirrel control was contingent upon the agency receiving more data on the "lowest efficacious bait concentration for ground squirrels." However, the EPA nonetheless proposed allowing continued but restricted use while that data was compiled. P.D. 4, at 42. After P.D. 4 was published, several parties alleged that the sole impetus for the proposed cancellations or modifications was concern for the endangered black-footed ferret. The text of P.D. 4 does not limit its concern to solely that species, however.

After P.D. 4 was compiled, a Notice of Intent To Cancel was then published in the Federal Register, 48 FR 48523 (October 19, 1983), EPA Ex. No. 286 (hereafter 1983 Notice of Intent To Cancel), which formally announced the proposed changes. Under FIFRA, the published notice would constitute the final agency action unless a hearing was requested within 30 days by someone adversely affected. 7 U.S.C. 136(d)(b). If a request is made, the *status quo* for registrations is maintained while a hearing is pending. In this case, EPA received requests for a hearing from the states of Wyoming and South Dakota and other interested parties.[11]

A hearing was scheduled before a hearing officer and a number of parties eventually joined the action.[12] The EPA submitted a brief to the hearing officer stating its position in support of the proposed cancellations. *See* EPA Ex. No. 297. The brief did not point to black-footed ferrets as the focus of concern for the cancellations, but rather expressed a more general concern for numerous species.

Before the hearing date settlement negotiations began, and the hearing was suspended. The discussions apparently lasted nearly two years, from 1984 through 1986. During that time the FWS issued a second biological opinion assessing jeopardy to the black-footed ferret. EPA Ex. No. 280 (November 1984 biological opinion). The FWS concluded that pre-control surveys of prairie dog colonies would effectively preclude jeopardy to any remaining wild ferrets. The November 1984 biological opinion superseded the March 1979 opinion as to ferrets.

In the summer of 1986 the dispute was settled with all but two parties.[13] *See* EPA Ex. No. 352. No administrative hearing was therefore ever held. Plaintiffs Defenders of Wildlife and Sierra Club were parties to the hearing, and did not enter the written settlement agreement. The agreement was formalized by publishing a Notice of Intent to Cancel. 52 FR 6762 (March 4, 1987), EPA Ex. No. 289 (hereafter March 1987 Notice). The Notice became final after thirty days. The March 1987 Notice permitted the continued registrations for above-ground use of strychnine for control of ground squirrels, prairie dogs, and meadow mice. It required label restrictions on all strychnine baits, and pre-control surveys of prairie dog colonies by the FWS and state authorities to assure that there is no evidence of black-footed ferrets living in the area. *See* EPA Ex. No. 289.

Plaintiffs now challenge defendants' actions leading up to the settlement and the March 1987 Notice. They claim that the EPA did an "about-face" by reversing the well-founded and deliberately conceived 1983 Notice of Intent to Cancel, without an adequate scientific basis. They argue that the last formal study was P.D. 4 which recommended a ban on most uses. Thus, they argue, the settlement was reached to accommodate western state agricultural interests, but had no scientific justification. Defendants assert that the settlement was an appropriate resolution of the 1983 Notice of Intent to Cancel. They claim that the motivation behind each FWS biological opinion and the EPA Position Documents which recommended against continued registration was concern for the black-footed ferret. That concern was allayed by the 1984 FWS jeopardy study which suggested that pre-control surveys were an adequate precaution.

Plaintiffs commenced this action on August 28, 1986. They have accumulated numerous documents from discovery and Freedom of Information Act (FOIA) requests, indicating mortality to protected species from strychnine poisoning.[14] Plaintiffs submitted the non-target kill book to the EPA in January 1987 to counter EPA claims that there was no evidence of eagle and peregrine falcon deaths caused by strychnine. Plaintiffs also submitted an affidavit by Keith Cline (attachment A to O'Neill Affidavit) which alleges that less than 3.5 percent of bald eagle deaths are discovered and reported. Plaintiffs use this to allege that the number of actual strychnine-caused deaths is a large multiple of those documented.

In September, 1987, approximately one year after this action was commenced, the EPA again reinitiated Section 7 consultations with the FWS. *See* Defendants' Exhibit No. 359, "Supplement to Administrative Record."[15] The consultation was apparently initiated in response to plaintiffs' non-target kill book data. In the request for consultation the EPA also seeks an "incidental take" statement from FWS to authorize in advance any incidental harm to threatened or endangered species caused by agency action.

II

Defendants argue that this action must be dismissed because plaintiffs have failed to exhaust the administrative remedies provided under FIFRA. They argue that cancellation of the registration of a pesticide can only be accomplished under the procedures set forth in FIFRA, 7 U.S.C. 136d(b). Defendants claim that plaintiffs in effect seek to cancel the registration of strychnine, but dress their FIFRA claim in the clothing of the APA and federal environmental statutes. Two of the plaintiffs, Sierra Club and Defenders of Wildlife, were parties to FIFRA administrative proceedings but chose to forgo appeal under FIFRA by failing to object formally to the March 1987 Notice of Intent to Cancel. Defendants therefore argue that plaintiffs' sole remedy is to petition the EPA to cancel the current registration and thereby obtain a judicially-reviewable decision. FIFRA, 7 U.S.C. 136n. *Merrell* v. *Thomas*, 606 F. Supp. 644, 647 (D. Ore. 1985), *aff'd* 807 F.2d 776 (9th Cir. 1986), *cert. denied*, 108 S. Ct. 145 (1987) (FIFRA provides exclusive mechanism for canceling or suspending herbicide registration).

The intervenor-defendant in addition argues that the entire action should be dismissed for lack of jurisdiction or failure to state a claim since FIFRA provides plaintiffs' sole remedy. *Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, 485 F.2d 780 (D.C. Cir. 1973) (district court had no jurisdiction over FIFRA action pending in court of appeals); *Fiedler* v. *Clark*, 714 F.2d 77 (9th Cir. 1983) (no private right of action under FIFRA).

Plaintiffs respond that Congress has neither expressly nor impliedly precluded judicial review under the APA of administrative action which touch on the registration of pesticides. *See, e.g., Sierra Club* v. *Peterson*, 705 F.2d 1475, 1478 (9th Cir. 1983) (FIFRA should not be read to preclude judicial review under APA). Plaintiffs argue that their choice to forgo a new FIFRA proceeding does not preclude this challenge based on the APA and other environmental statutes. They argue that the APA review provisions should be liberally construed to permit this challenge absent congressional limitations, and none are present here. *Japan Whaling Assoc.* v. *American Cetacean Soc.*, 478 U.S. 221, 106 S. Ct. 2860, 2866, n.4 (1986) (review of agency action under APA available absent convincing legislative intent to preclude review). Judicial review of agency action is favored, they argue, and this action is consistent with that goal.

Defendants' exhaustion claim relies strongly on the district court opinion in *Merrell* v. *Thomas*, 606 F. Supp. at 1647, which held that a private action brought under NEPA was an improper vehicle to effect the cancellation of herbicides. *Merrell* did not hold, however, that failure to exhaust FIFRA proceedings precludes challenges based on statutes which provide an independent source of jurisdiction. The appellate opinion addressed that issue squarely:

> We do not hold that Merrell's conduct amounted to a failure to exhaust administrative remedies. If Merrell had sued to cancel or suspend pesticide registrations, such a holding might be appropriate on these facts. [citation omitted.] But Merrell sued instead to compel the EPA to comply with NEPA when registering pesticides under FIFRA. Faced with a similar suit against a different agency, we concluded that a plaintiff was not obliged to exhaust his statutory remedies, because 28 U.S.C. Sec. 1331, NEPA, and section 10(a) of the Administrative Procedures Act, 5 U.S.C. Sec. 702, combined to create an independent ground of jurisdiction. *Jones* v. *Gordon*, 792 F.2d 821, 824 (9th Cir. 1986) (suit to set aside permit granted under the Marine Mammal Protection Act of 1972 because no EIS had been prepared). On that basis, we reach the merits in this case.
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> *Merrell*, 807 F.2d at 782 n.3.

The situation presented here is similar. Plaintiffs do not seek directly to cancel registrations under FIFRA. Rather, they want to require defendants to comply with the APA, as well as the ESA, MBTA, and BGEPA. Here, as in *Merrell*, there is an independent ground for jurisdiction, so plaintiffs need not exhaust administrative remedies.

Nor does the language of FIFRA expressly or impliedly preclude independent review. *Sierra Club* v. *Peterson*, 705 F.2d at 1478 (silence in FIFRA should not be read to preclude judicial review under the APA). "(T)he rule is that the cause of action for review of [agency action under the APA] is available absent some clear and convincing evidence of legislative intent to preclude review." *Japan Whaling Asso.*, 106 S.Ct. at 2866, n.4, (*citing Block* v. *Community Nutrition Institute*, 467 U.S. 340, 345 (1984)); *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 410 (1971); A careful review of the statute and opinions which have examined it reveals no indication that Congress intended FIFRA to preclude separate review of agency action under the APA or other statute. *Accord Sierra Club* v. *Peterson*, 705 F.2d at 1478.

As part of their exhaustion challenge, defendants also assert that the agency actions challenged here are not final and not amenable to review. Defendants argue that there is no final EPA action because plaintiffs have not sought reversal of the March 1987 Notice. Plaintiffs, in contrast, urge that either the 1986 settlement or the March 1987 Notice was a sufficiently final action to permit this challenge.

In order for plaintiffs' APA challenge to proceed, the challenge action must be final within the definition of the APA. Courts have interpreted the finality element in a pragmatic way. *See F.T.C.* v. *Standard Oil Co. of Calif.*, 449 U.S. 232, 239–40 (1980). Factors to consider include whether the agency action is a threshold inquiry or has status of law and imposes definite and immediate impact on petitioner and whether the legal issues are fit for judicial resolution. *Id.* at 239–43. A major consideration in determining finality is the legal or practical effect on the party seeking judicial review. *See Id.* at 243.

Many of the reasons often cited for delaying judicial review are absent here. There is no indication that further administrative proceedings are necessary for the EPA to "correct its mistakes" or "apply its expertise."[16] *Weinberger* v. *Salfi*, 422 U.S. 749, 765 (1975). Nor will judicial resolution of this dispute cause piecemeal litigation or promote other inefficiencies. *See F.T.C.* v. *Standard Oil*, 449 U.S. at 242–43. The EPA finalized the terms of the 1986 settlement by publishing the March 1987 Notice. Other than the recent request for a biological opinion from the FWS, there are no pending agency proceedings. The consultation began well after the litigation started, perhaps in response to it. The APA challenges before the court therefore present issues of law fit for judicial resolution. Considering all the circumstances, defendants' actions are final within the meaning of APA, 5 U.S.C. 704, and therefore subject to review. Defendants' motion to dismiss for failure to exhaust administrative remedies should therefore by denied.

III

Defendants argue that plaintiffs lack standing to bring this action. They assert that plaintiffs suffer no particularized injury which is traceable to the EPA actions challenged here. *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). They also claim that although plaintiffs are interested in studying and considering endangered species, the intensity of plaintiff's interest alone is not enough to confer standing. *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474–75 (1982); *Sierra Club*

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[11] No request for hearing was filed as to the EPA's Notice To Cancel registration of strychnine for control of deer mice, chipmunks, mountain beavers, opossums, jackrabbits, kangaroo rats, and cotton rats. Strychnine registrations for these uses were therefore canceled. FIFRA, 7 U.S.C. 126d(b). The only pending challenge before the hearing officer was the proposed ban on registrations for use on prairie dogs and meadow mice, and the restrictions on use against ground squirrels. *See* EPA Ex. No. 297, at 7, n.5. Those three uses are therefore the only subject of this action.

[12] The administrative appeal was docketed as *In re State of Wyoming, et al.* FIFRA Docket No. 518. It involved the EPA, the States of Wyoming and South Dakota, the American Farm Bureau Federation, the Department of the Interior, the United States Department of Agriculture, Defenders of Wildlife, and the Sierra Club. *See* Notice, 52 FR 6762 (March 4, 1987 at 6762, EPA Ex. No. 289).

[13] The EPA explained at the hearing before this court that the Administrator retains authority to settle disputes notwithstanding the objection of some parties. The Administrator determined that the objecting parties—Defenders of Wildlife and Sierra Club—would not be adversely affected by the settlement.

[14] This evidence has been compiled into an exhibit which will hereafter be referred to as the "non-target kill book." Plaintiffs' Appendix, volume II. It documents numerous strychnine kills over several decades. It cites, for example, 37 bald eagle, 17 golden eagle, and 5 peregrine falcon deaths since 1979 from primary or secondary strychnine poisoning.

[15] Plaintiffs challenge defendants' characterization of this evidence as a "supplement to the administrative record." They argue that these documents were not before the Agency when the challenged administrative actions were undertaken.

[16] Plaintiffs participated vigorously in the RPAR process and consistently made their positions known. Defendants rejected plaintiffs' arguments and settled the challenge to the 1983 Notice over plaintiffs' objections. Defendants argue that plaintiffs should have petitioned to begin anew the RPAR process which had just been completed after a ten year period. Viewing plaintiffs' situation pragmatically, further administrative challenge would have been futile. Carrying defendants' argument to its extreme, plaintiffs would never be entitled to judicial review since plaintiffs could repeatedly challenge any registrations through the RPAR process.

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v. *Morton*, 405 U.S. 727 (1972). They argue that no injury resulted from the March 1987 Notice since it imposed greater restrictions against strychnine use than existed in the past. Further, the alleged strychnine-related deaths are not traceable to the EPA action contested here.

Plaintiffs respond that they are proper parties to raise claims under environmental statutes and to challenge the defendants' administrative actions leading up to the 1986 settlement and the March 1987 Notice. Plaintiffs claim they meet the prerequisites to standing under Article III of the Constitution; they have suffered an injury in fact which is traceable to the defendants' actions and redressable by the relief sought. *See Valley Forge*, 454 U.S. at 471–72; *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976). They argue that their injury is their impaired ability to study, observe, and enjoy wildlife, caused by non-target strychnine poisoning. Plaintiffs argue further that their claims alleging illegal administrative actions fall within the zone of interests protected by each statute under which they proceed. *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, 156 (1970); *Clarke* v. *Security Industry Asso.*, 107 S.Ct. 750, 754–55 (1987), (standing to make APA challenge is construed broadly and accrues to persons aggrieved by agency action).

When standing is challenged based on allegations in the pleadings, the court "accept[s] as true all material allegations of the complaint, and construe[s] the complaint in favor of the complaining party." *Pennell* v. *City of San Jose*, 108 S.Ct. 849, 855 (1988), (*quoting Warth* v. *Seldin*, 422 U.S. 490 (1975)). Applying the constitutional standing requirements is not a mechanical exercise. Allen v. *Wright*, 468 U.S. at 751–52. Rather, the court's function is to assure that the issues before it are resolved "not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge*, 454 U.S. at 472. Here, the specific injuries complained of are the improper registration of strychnine and the continued taking of protected species.[17]

Defendants argue that plaintiffs suffer no injury because the current registrations of strychnine are more strict than had previously been in place. Plaintiffs respond that the procedures used to adopt these regulations were improper and that the regulations continue to permit illegal taking of protected species.

There are two central allegations in the complaint. They first claim that the EPA reversed, without adequate explanation or scientific support, the decision to ban most above-ground uses of strychnine rodenticide. They also argue that any continued registration will inevitably cause mortality to protected species, resulting in predictable and avoidable deaths, possibly even contributing to extinction.[18] Plaintiffs therefore allege that defendants' conduct directly impairs their organizational purposes study, enjoyment, and advancement of protected species.[19] This injury will be avoided if the restriction suggested in P.D. 2/3 and P.D. 4 are imposed. Plaintiffs therefore meet the constitutional prerequisites to standing.

An additional standing requirement is generally imposed upon plaintiffs seeking relief under the APA. The APA "grants standing to a person 'aggrieved by agency action within the meaning of a relevant statute.' " *Camp*, 397 U.S. at 153 (*quoting* APA, 5 U.S.C. 702). This requires inquiry into whether the "interest sought to be protected * * * [is] arguably within the zone of interests to be protected or regulated by the statute * * *." *Data Processing*, 397 U.S. at 153. The "zone of interests" test should be broadly construed. *Clarke*, 107 S.Ct. at 758–57. To determine the zone of interest protected by a statute, the court looks at the overall context of the statute to derive congressional intent as to its scope. *Id.* 107 S.Ct. at 758. "The essential inquiry is whether Congress intended for a particular class of plaintiffs to be relied on to challenge the agency disregard of the law.' " *Id.*, 107 S.Ct. at 757, *quoting Block* v. *Community Nutrition Institute*, 467 U.S. 340, 347 (1984).

The plaintiffs here raise an APA challenge in conjunction with three substantive environmental statues—the ESA, the MBTA, and the BGEPA. Each of the environmental statutes is concerned with conserving protected species from a wide variety of harm. Each protects against the unauthorized taking alleged here. In addition, the ESA provides for private cause of action, which is further evidence of Congressional intent to permit this APA challenge. *See Clarke*, 107 S. Ct. at 757. Plaintiffs therefore come within the intended scope of these statutes and have standing to bring each of their claims for which they seek summary judgment. The motion to dismiss for lack of standing should be denied.

IV

Plaintiffs alleged that defendants violated the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* (1986), in several ways. The principal claim, however, is that the EPA's revocation of the 1983 Notice of Intent to Cancel was arbitrary and capricious and not in accordance with law, in violation of APA section 706.[20]

Plaintiffs recount the elaborate history of their administrative challenge. They argue that over the course of several years the EPA published three formal position statements—P.D. 1, P.D. 2/3, and P.D. 4. Each considered the potential detriment to endangered species from continued above-ground strychnine use. These position documents suggested an outright ban on registrations of strychnine for control of prairie dogs and meadow mice, and suggested label restrictions for ground squirrel control, along with further study on the efficacy of continued use. *See* P.D. 4, at i-ii. Plaintiffs argue that the concern for endangered species demonstrated by the EPA was not limited to the severely endangered blackfooted ferret. However, in plaintiffs' view, the 1986 settlement reversed the EPA's well-founded recommendation for severe limitations on strychnine use. This reversal was based solely on one FWS study limited only to blackfooted ferrets. Plaintiffs describe this as caving in to agricultural interests, and an "end-run" around plaintiffs' refusal to agree to the settlement. They allege that the EPA avoided holding an administrative hearing where plaintiffs' challenges could be aired. Plaintiffs claim, therefore, that the EPA violated the APA when it failed adequately to justify with scientific data the lenient restraints agreed to by the settlement, and formalized by the 1987 Notice.

Defendants respond that plaintiffs' reliance on the APA is unfounded. They assert that APA review is precluded because FIFRA provides for judicial review. *See Califano* v. *Sanders*, 430 U.S. 99, 105–07 (1977) (Social Security Act provides exclusive method of judicial review).[21] Defendants also assert that adoption of the March 1987 Notice was not rulemaking under APA, 5 U.S.C. 551. Defendants' principal argument is that even if the APA applies, the EPA's actions withstand review because they were rationally undertaken and accompanied by well-reasoned analysis. They urge the court to adopt the position stated in *National Audubon Society* v. *Hester*, 801 F.2d 405 (D.C. Cir. 1986) (reversed district court injunction against bringing remaining wild California condors into captivity), where the court noted:

> The question for reviewing courts is not whether an agency decision is "correct," but rather whether the decision reflects sufficient attention to environmental concerns and is adequately reasoned and explained.

Id. at 407 (citations omitted). Defendants argue that their duty under FIFRA, as well as ESA, MBTA, and BGEPA, is to consider the agency's impact on protected species, as well as the overall environment, when undertaking pesticide registration. They claim that the major concern with strychnine registration has always been potential jeopardy to the blackfooted ferret. However, after P.D. 4 was published, they argue, the FWS determined that potential jeopardy to ferrets could be avoided by pre-control surveys and label restrictions. Thus, the March 1987 Notice permitting continued strychnine use was rationally based and well-founded on scientific evidence.

Defendants' assertions that the strychnine registration process is not rulemaking governed by APA, 5 U.S.C. 551, must be rejected. Defendants' administrative actions have been conducted in a manner consistent with informal rulemaking. They have solicited public comment, sought expert consultation, and then published the resulting policies in the **Federal Register**. The strychnine registration process has affected a wide variety of people, not only particular registrants. Review under APA, 5 U.S.C. Sec. 706 is therefore available absent legislative intention to preclude review.[22] *Japan Whaling*, 106 S.Ct. at 2866 n.4. The record for review consists of the records before the agency at the time the challenged actions were taken. *Camp* v. *Pitts*, 411 U.S. 138, 142 (1973).

The agency action principally challenged here is what plaintiffs characterize as an "about face" by the EPA from a proposed near-absolute ban on strychnine, to a regulation permitting continued use. The emphasis of each of the EPA position documents was concern for the effects of strychnine on non-target species. The status of "likely jeopardized" by continued use was assigned to numerous endangered species. In its position documents the EPA stated that its intended course was to ban most registrations. In contrast, the 1986 settlement agreement and March 1987 Notice noted concern almost exclusively for the black-footed ferret. This narrow focus was a departure from the EPA's prior policy.

When an agency changes course by reversing a policy, it must supply a reasoned analysis for the change. *Motor Vehicle Mfgr. Asso.* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S.C. 29, 42 (1983). When reviewing such a change of policy under the APA, a court first must determine whether an explanation was made, and then "address the sufficiency of [the explanation] under the 'arbitrary and capricious' standard." *Sierra Club* v. *Clark*, 755 F.2d 608, 619 (8th Cir. 1985).

In this instance the change in policy embodied by the 1986 settlement and March 1987 Notice is based upon a revised assessment of likely jeopardy to the black-footed ferret. The EPA's explanation is stated in the March 1987 Notice:

> *A. Risk Determination*
>
> In the Strychnine cancellation notice, EPA referred to Position Documents 2/3 and 4 (PD #2/3, PD #4), in which the Agency sets forth in detail its assessment of the risks and benefits associated with the outdoor, above-ground use of strychnine. Generally, the Agency determined that, in light of modest benefits, certain of these uses of strychnine caused unreasonable adverse effects on the environment because of the risks they pose to non-target species. Specifically, the Agency determined that strychnine used to control prairie dogs and ground squirrels would jeopardize the continued existence of the black-footed ferret, an endangered species.
>
> The Agency identified strychnine as highly toxic to all carnivores upon which it had been tested and determined that it was prudent to assume that strychnine would be highly toxic to black-footed ferrets as well. The agency also determined that black-footed ferrets were likely to feed on prairie dog and ground squirrel carcasses that had been poisoned with strychnine and that under certain field conditions they would die from secondary poisoning. Furthermore, the Agency was informed by the U.S. Office of Endangered Species (OES) in a "jeopardy opinion" that conducting a pre-control black-footed ferret survey to determine the presence of black-footed ferrets was not sufficient safeguard to permit strychnine treatment in its habitat. During the course of the settlement negotiations, however, OES reconsidered its original "jeopardy opinion." Based upon further experience with black-footed ferret survey techniques and their reliability in locating ferrets in the Meeteetsee Wyoming black-footed ferret populaiton, OES determined that if no ferrets were found in a pre-control black-footed ferret survey conducted according to OES survey guidelines and the requirements of the Notice, strychnine could be used to control prairie dogs and ground squirrels without jeopardizing the continued existence of the black-footed ferret.
>
> March, 1987 Notice, 52 FR at 6763. The EPA stated that it considered three options in response to the new ferret information: (1) Continued registration of strychnine for above-ground use with no further restrictions; (2) continued registration with modifications; and (3) cancellation of all registrations. The EPA summarized its decision:
>
> EPA has, therefore, decided to adopt option 2. Despite relatively low benefits associated with the use of strychnine-containing pesticides for prairie dog, ground squirrel, and meadow mouse control, they outweigh the even lower risk to the black-footed ferret from secondary poisoning if the terms and conditions of registrations are modified in accordance with this Notice.

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[17] The injury giving rise to standing may reflect "aesthetic, conservational, and recreational [values] as well as economic values." *Camp*, 397 U.S. at 154. Non-economic injury to aesthetic and environmental well-being is a sufficient injury to confer standing if the plaintiff is adversely affected. *Sierra Club* v. *Norton*, 405 U.S. 727 (1972).

[18] At the hearing the parties agreed that the California condor no longer exists in the wild. The last wild condors were taken captive in hopes that a captive breeding program might increase the population. The non-target kill book attributes five condor deaths to strychnine poisoning, in 1960 and 1966, although it does not state that the strychnine involved was placed as part of a rodent control program.

The parties also agree that the only known black-footed ferret colony, numbering 19 animals, was taken into captivity in Wyoming in the 1970s to attempt captive breeding. Neither side disputes that strychnine used for rodent control poses a threat to any nearby ferrets, if any exist in the wild.

[19] An association has standing on behalf of its members if: " * * (a) [its] members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of the individual members in the lawsuit." " *International Union, Auto. Aerospace & Agricultural Implement Workers* v. *Brock*, 477 U.S. 274, 106 S.Ct. 2523, 2529 (1986) (quoting *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). *See Alaska Fish & Wildlife Federation* v. *Dunkle*, 829 F.2d 933, 937–38 (9th Cir. 1987). Defendants do not contest plaintiffs' organizational standing, and plaintiffs meet the three prerequisites.

[20] Plaintiffs' other APA claims based on alleged illegal takings in violation of environmental statutes are discussed elsewhere.

[21] As discussed previously, plaintiffs may maintain this action without raising claims under FIFRA

[22] The reviewing court shall * * * (2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law * * * 5 U.S.C. 706.

March, 1987 Notice; 52 FR at 6764.

Nowhere in the explanation does the EPA note that all previous position documents had found likely jeopardy to numerous endangered species.[23] Rather, the EPA instead portrays its previous position as inspired solely out of concern for the black-footed ferret. That explanation is contradicted by the extensive record of pre-settlement statements by the EPA. Except for the 1984 ferret study, the record is devoid of any biological opinion or other scientific evidence reversing the finding of likely jeopardy to all of the other endangered species cited in P.D. 2/3 and P.D. 4. The reversal of agency policy was apparently undertaken, therefore, without an adequate scientific basis and without considering the entire problem.[24] "Normally an agency rule [is] arbitrary and capricious if the agency has * * * entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency * * *." *Motor Vehicles*, 463 U.S. at 43. By this standard, the 1986 settlement and March, 1987 Notice were arbitrary and capricious agency actions.

An agency also violates APA 5 U.S.C. 706(2)(a) if its action is "not in accordance with law." Defendants continuing registration of strychnine violates ESA, 16 U.S.C. 1536(b)(4), which permits an "incidental take" only upon prior authorization of the Secretary of the Interior.[25]

The EPA apparently has never obtained "incidental take" statements from the FWS, and implicitly acknowledges this in its recent request to reinitiate formal (Section 7) consultations. EPA letter to FWS, Sept. 16, 1987. EPA Exhibit 359 (attachment to defendants' memoranda, entitled "Supplement to Administrative Record."):

> [EPA] expects that the Fish and Wildlife Service will include an "incidental take" statement as provided for in recent amendments to the Endangered Species Act. We realize that reinitiation of consultation is required to determine the allowable level for incidental take. By acknowledging that continued registration may result in incidental taking of endangered species, yet finalizing the registration before receiving FWS approval, the defendants have engaged in agency action "not in accordance with law" in violation of APA section 706. Injunctive relief is appropriate to remedy these violations.

V

The BGEPA, 16 U.S.C. 668, protects bald eagles and golden eagles from a wide variety of harm.[26] The MBTA, 16 U.S.C. 701 *et seq.*, similarly prohibits the taking, except for permit, of any migratory bird protected by several international treaties.[27] Plaintiffs' contention is that the continued registration of strychnine for above-ground use over the ranges of migratory birds and eagles constitutes a taking in violation of these statutes. They argue that the prohibition is broad-reaching and applies no less to government agencies than to private parties. They claim the taking by strychnine is documented in the strychnine non-target kill book. Therefore, defendants' actions which result in illegal taking are arbitrary and capricious, and otherwise not in accordance with the law, in violation of APA, 5 U.S.C. 706(2).

Defendants respond that counts 4 and 5 of the complaint alleging violations of BGEPA and MBTA should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. They argue that both of these statutes are primarily law enforcement and wildlife management statutes. The statutes are enforced by government actions seeking criminal or civil penalties, but neither grants express or implied private right of action to these plaintiffs. *Citizens Against Toxic Sprays, Inc.* v. *Bergland*, 428 F. Supp. 908, 930 (D. Ore. 1977) (no private action under BGEPA); *See California* v. *Sierra Club*, 451 U.S. 287 (1981) (no private cause of action in Rivers and Harbors Act). Defendants argue that enforcement of these statutes is committed solely to agency discretion and judicial review is unavailable. *See Heckler* v. *Chaney*, 470 U.S. at 838 (agency decision not to institute enforcement action not reviewable under APA).

Plaintiffs agree that they are not entitled to assert a private cause of action under either statute. They argue, however, that each statute, in conjunction with the APA, provides an independent source of jurisdiction for review of agency actions which conflict with either statute. *See Alaska Fish and Wildlife Federation and Outdoor Council, Inc.* v. *Dunkle*, 829 F.2d 933, 938 (9th Cir. 1987) (agency action in violation of MBTA reviewable under APA, 5 U.S.C. 706); *Defenders of Wildlife* v. *Andrus*, 428 F. Supp. 167 (D.D.C. 1977) (FWS regulations permitting twilight hunting violated ESA and so were arbitrary and capricious in violation of APA, 5 U.S.C. 706). *Cf. Merrell* v. *Thomas*, 807 F.2d 776, 782, n.3 (9th Cir. 1986), *cert. denied*, 108 S.Ct. 145 (1987) (NEPA and APA combine to form independent bases for jurisdiction).

While neither the BGEPA nor the MBTA provide for private actions, agency action which violates either statute is subject to challenge under the APA.[28] Relief is limited to declaratory and injunctive remedies.

In *Heckler* v. *Chaney*, the Supreme Court summarized the types of agency action reviewable under the APA, and the narrow exceptions to such review:

> The APA's comprehensive provisions for judicial review of "agency actions," are contained in 5 U.S.C. 701–06. Any person "adversely affected or aggrieved" by agency action; see Sec. 702, including a "failure to act," is entitled to "judicial review thereof," as long as the action is a "final agency action for which there is no other adequate remedy in a court," see Sec. 704. The standards to be applied on review are governed by the provisions of Sec. 706. But before any review at all may be had, a party must first clear the hurdle of Sec. 701(a). That section provides that the chapter on judicial review "applies, according to the provisions thereof, except to the extent that—(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law."

Id. 470 U.S. at 828. The defendants' alleged violations of the MBTA and BGEPA are therefore reviewable under the APA unless review is statutorily precluded or the action is committed to agency discretion by law. Neither of these exceptions is present here. Neither statute expressly precludes review. Furthermore, the alleged prohibited taking of protected species through Federal agency action is not the type of enforcement action for which the agency should retain absolute discretion. *Compare Merrell* v. *Thomas*, 807 F. 2d 776, *cert. denied* 108 S.Ct. 145 (1987) (plaintiffs not precluded from challenging EPA's failure to comply with NEPA when registering pesticides) with *Heckler* v. *Chaney*, 470 U.S. at 838 (exception to reviewability of agency action remains narrow, but includes agency refusal to institute investigation or enforcement proceedings against individuals). Investigation and enforcement decisions by the defendants are not at issue here. Therefore plaintiffs are entitled to proceed to the merits of their claims.

Plaintiffs contend that the continued registration of strychnine constitutes a taking of protected species in violation of these Acts.[29] The unrebutted non-target kill book data reveals that numerous strychnine-caused deaths have occurred to protected species. Under both Acts, taking of protected species is permitted only pursuant to prior approval by the Secretary of the Department of the Interior.[30] Defendants acknowledge that they were aware of much of the non-target kill book data long before it was compiled and submitted to them by plaintiffs. No prior authorization for this taking is presented by defendants. The record does not conclusively show that the extensive poisonings documented by plaintiffs are all attributable to above ground grain baits placed for rodent control.[31] The threat to protected birds is readily apparent, however, and unrebutted by defendants. No one denies that strychnine is intended to serve as a poison or that it can cause mortality to non-target species which ingest it. Several of the necropsy reports in the record note that strychnine-laced grain was found in the digestive tract of poisioned birds. There is no evidence that the methods of application recommended by the EPA will eliminate these non-target kills. Defendants' continued registration of strychnine, resulting in death to protected birds, therefore violates both Acts and should be enjoined.

VI

The Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1543, is designed to conserve and promote endangered and threatened species.[32] The protections take many forms, one is ESA, 16 U.S.C. 1538, which broadly prohibits any form of "taking" of any endangered species.[33] Federal agencies must also assure that their actions are "not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or modification of habitat [critical to the species]." 16 U.S.C. 1536(a)(2).

In order to prevent such harm, the ESA requires agency consultation with designated wildlife agencies. 16 U.S.C. 1536(a)(2) (Section 7 consultation). In this case, the EPA was required to consult with the FWS to determine if the proposed registrations of strychnine would likely affect any endangered or threatened species. The FWS determined that 18 species were likely to be jeopardized by continued above-ground strychnine use. EPA Ex. No. 65. The FWS also proposed alternatives to avoid potential jeopardy, which the EPA used to formulate its Position Documents. *See* P.D. 4, at ii.

In May 1984 the EPA conducted a renewed Section 7 consultation which superseded the March 1, 1979 biological opinion as to the black-footed ferret. Then on September 16, 1987, the EPA again reinitiated Section 7 consultations in response to the non-target kill book. It appears that that consultation is ongoing and that no biological opinion has been issued.

Plaintiffs' ESA claims challenge three distinct violations by the defendants. First, plaintiffs allege that defendants have failed to "conserve and promote" protected species as required by 16 U.S.C. 1532(c)(1) and Sec. 1536(a)(1)[34] (Count 2). Second, they assert that the EPA failed timely to renew formal Section 7 consultations with the FWS after the non-target kill book was presented (Count 3). Third, plaintiffs allege that the continued registrations result in illegal taking of protected species in violation of the ESA (Count 1). Agency actions are reviewed under the standards set forth in APA, 5 U.S.C. 706. They may be set aside if arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law. *Sierra Club* v. *Marsh*, 816 F.2d at 1384.

A.

Plaintiffs allege that defendants have engaged in brinksmanship and violated their duty to conserve and promote endangered species by not opposing changes to the 1983 Notice of Intent to cancel. They argue that Congress intended to halt and reverse the trend towards species extinction, whatever the cost. *See Tennessee Valley Authority* v. *Hill*, 437 U.S. 153, 184 (1978)[35] (ESA prohibited completion of dam which would eradicate the endangered snail darter fish). Plaintiffs claim that the duty to conserve is enforceable against Federal agencies. *Carson-Truckee Water Conservancy Dist.* v. *Clark*, 741 F.2d 257, 261 (9th Cir. 1984), *cert. denied*, 470 U.S. 1083 (1985) (duty to conserve endangered species is imposed on Secretary of Interior).

Defendants respond that the agency has broad discretion in deciding what conservation methods are appropriate. The duty to conserve and promote is

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[23] *See, supra*, p. 7 which notes the species considered likely jeopardized by continued strychnine registration.

[24] Defendants argue that the March, 1987 Notice contained safeguards directed at protecting more endangered species than just the black-footed ferret. Defendants apparently refer to label statements which caution users to avoid using baits in areas potentially inhabited by enumerated endangered species. *See* March, 1987 Notice, 52 FR at 6765. There is no evidence in the record, however, indicating that such label notices are sufficient to avoid likely jeopardy to these species. Nor does the EPA provide any such explanation.

[25] Before an agency may take any action which results in the taking of an endangered or threatened species incidental to the agency action, the agency must receive from the appropriate wildlife agency a written statement that:

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary to minimize such impact, [and] * * *

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency * * *.

16 U.S.C. 1536(b)(4), (1988).

[26] [Whoever shall] take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, * * * any bald eagle * * * or any golden eagle, alive or dead * * * [shall be subject to criminal and civil penalties].

16 U.S.C. 668 (a) and (b).

[27] [Except as permitted by regulations, it] shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to barter, [etc.] * * * any migratory bird [protected by treaty] and birds in danger of extinction * * *

16 U.S.C. 703.

[28] The distinction between a private right of action and judicial review under the APA (of agency action taken in violation of a statute) is discussed in Timbers and Wirth, *Private Rights of Action and Judicial Review in Federal Environmental Law*, 70 Cornell L. Rev. 403 (1985).

[29] The BGEPA protects bald eagles and golden eagles. The MBTA protects numerous migratory and endangered birds. Plaintiffs allege that illegal taking of birds protected by the MBTA has occurred to the following species, as documented in the non-target kill book: bald eagle, golden eagle, peregrine falcon, California condor, blackbird, grack, blackbird, redwing blackbird, rusty blackbird, brewer blackbird, bluebirds, bluejay, steller's bluejay, cardinal, coot, cowbird, mourning dove, finch, gold finch, house finch, purple finch, black-back gull, glaucous gull, herring gull, ringbilled gull, junco, kildeer, horned lark, meadow lark, magpie, mallard duck, nuthatch, pigeon, lark sparrow, green towhee, wood duck, prairie falcon, gyrfalcon, hawks, Swainsons hawk, marsh hawk, redtailed hawk, roughlegged hawk, barn owl, great horned owl, snowy owl, gallinule, Canada goose.

[30] Under the MBTA, 16 U.S.C. 704, the Secretary may authorize the taking of protected birds after adopting appropriate regulations.

The BGEPA permits the Secretary to authorize a taking under several circumstances, including to protect agricultural interests. 16 U.S.C. 668(a).

[31] It may be impossible to make a conclusive showing of the source of strychnine causing each kill due to the nature of strychnine use in remote areas.

[32] List of species protected by the ESA is published at 50 CFR 17.11.

[33] The prohibition against taking is broadly construed to prohibit nearly any activity which might adversely affect protected species. *See Sierra Club* v. *Marsh*, 816 F.2d 1376, 1383 (9th Cir. 1987).

[34] Section 1531(c)(1) states: It is * * * the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in the furtherance of the purpose of this chapter.

Section 1536(a)(1) states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the *conservation* of endangered species and threatened species listed pursuant to section 1533 of this title. (Emphasis added).

[35] Superseded by statute, Energy and Water Development Appropriations Act of 1979, Pub. L. 9589 93 Stat. 437, authorizing impoundment of the Tellico reservoir not withstanding any other law.

directed at protecting each species as a whole, not individual members. Defendants assert that they have gone to extraordinary lengths to avoid harm to endangered and threatened species. Each of the Position Documents and published Notices has discussed at length the defendants' concern for conservation. Each statement has also made specific proposals to eliminate jeopardy. Defendants emphasize that the March 1987 Notice increased protection for endangered species to a level greater than existed previously. Moreover, defendants assert that they are working cooperatively with state agencies to increase the population of black-footed ferrets, and have recently reinitiated consultation with the FWS, regarding possible jeopardy to other species.

Plaintiffs have brought this "failure to conserve and promote" claim as a general procedural challenge against defendants' actions. In reviewing the actions of a federal agency it is not the court's role to substitute its judgment for the agency's, particularly in areas which require the application of agency expertise. *See, e.g., Heckler* v. *Chaney*, 470 U.S. at 831. Courts generally should "defer to an agency's construction of a statute it is charged with implementing and to the procedures it adopts for implementing and to the procedures it adopts for implementing that statute." *Id.* at 832 *(citing Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978)).

Reasonable people could disagree as to the proper level of activities required by an agency under the ESA. The court will not substitute its judgment for the agency's in deciding as a general matter that the totality of defendant's actions taken to protect threatened and endangered species were insufficient. This does not preclude the court from addressing claims alleging specific violations of the ESA by discreate acts or failures to act. The defendants' actions as a whole, however, do not constitute an arbitrary and capricious failure to conserve and promote threatened and endangered species.

B.

Plaintiffs allege that defendants did not timely reinitiate Section 7 consultations with the FWS in response to the data received in the non-target kill book. They argue that assessments of "no jeopardy" were assigned to bald eagles and peregrine falcons in the FWS's 1979 biological opinion because there was no evidence of strychnine-induced mortality. EPA Ex. No. 65, at 6–7. Evidence of such deaths from strychnine was provided in January 1987 in the non-target kill book. Plaintiffs claim therefore that defendants' failure to reinitiate Section 7 consultations before publishing the March 1987 Notice violated EPA Section 7, 16 U.S.C. 1636(a)(2).

Defendants respond that the "no jeopardy" determination in the 1979 biological opinion was an informed judgment based upon autopsy evidence from numerous eagles. Strychnine was not implicated as the cause of death in any instance. Nor was there evidence of strychnine-induced mortality to peregrine falcons. Jeopardy was assessed for other species, and appropriate precautions were imposed. Defendants further argue that they have now reinitiated Section 7 consultations with the FWS in response to the non-target kill book data and plaintiffs' failure to consult claim should be dismissed. They also argue that any challenge directed against the ongoing consultation is not ripe for review since the FWS has not yet issued a biological opinion.

Plaintiffs reply that the reinitiation of formal consultation occurred in September, 1987, nine months after the non-target kill book data was received, and after defendants filed their administrative record in this action. They characterize the new consultation as defendants' attempt to "back and fill" the administrative record.

The ESA does not specify the time within which an agency must reinitiate consultation and the agency is entitled to deference in decisions such as this. While the ESA does heighten the agency's duty to respond when jeopardy is possible to an endangered species, the delay of several months in these circumstances was not arbitrary or carpricious. Formal consultations are now underway, and the concerns raised by plaintiffs, particularly to bald eagles and peregrine falcons, will be addressed. Review would be premature and the outcome of the ongoing consultations is uncertain. Accordingly, defendants' motion for summary judgment on count 3 should be granted. Plaintiffs' claims under Section 7 of the ESA, count 3 of the complaint, should be dismissed.

C.

Plaintiffs allege that the continued registration of strychnine for above-ground use in areas inhabited by endangered and threatened species results in the taking of these species in violation of ESA Section 9, 16 U.S.C. 1538(a)(1)(B). They claim that the restrictions imposed by the ESA are extremely strict, and cannot be violated by any person or entity, including a federal agency, even to obtain a desirable result. *TVA* v. *Hill*, 437 U.S. 143; *Sierra Club* v. *Marsh*, 816 F.2d at 1385. Plaintiffs assert that courts have little discretion in enjoining violations of the ESA because of the strong presumption in favor of preserving species. They also argue that defendants violate the Act by not obtaining "incidental take" statements from the FWS before taking protected species.

Defendants respond that as a matter of law no taking occurs when an agency registers a rodenticide for lawful use by private persons. They argue further that continued use of strychnine as currently registered will avoid harm rather than cause harm to endangered species. Any impermissible use which results in death to a protected species will be prosecuted, and a warning to that effect is given on all strychnine products.

The protections afforded threatened or endangered species by section 9 of the EPA are substantial. The prohibition against "taking" is broadly defined in the statute, 16 U.S.C. 1532(19), and expansively construed. *See Palila* v. *Hawaii Department of Land and Natural Resources*, 639 F.2d 495, 497 (9th Cir. 1981). A violation of section 9 can be attributed to Federal agency action (or inaction) even when the agency does not directly cause the harm. *See, e.g., Sierra Club* v. *Marsh*, 816 F.2d at 1385 (Army Corps of Engineers' reliance on state to implement protective measures did not relieve Corps' burden to avoid jeopardy to endangered species under ESA).

In both the EPA administrative record and the more ample record now before court there is unrebutted evidence of strychnine kills among endangered species protected by the ESA. Defendants acknowledge this evidence, but discount it: "[O]nly a small, probably insignificant, number of endangered species have died from secondary strychnine poisoning. There is no evidence that there [sic] unfortunate deaths resulted from the agency action at issue in this case." Defendants' Memorandum in Opposition to Plaintiffs' Motion at 38.[36] Defendants also argue that plaintiffs cannot show "either that [bald eagle] deaths are likely under the carefully controlled above-ground strychnine use now in effect, or that additional incidents are likely to occur in the future." Defendants' Memorandum in Support, at 59, n. 58.

[36] Defendants do not dispute the accuracy of the non-target kill book data. Nor have they submitted any rebutal evidence on that point to create a genuine dispute as to that data. *See Celotex. Corp.* v. *Catrett*, 477 U.S. 317 (1988) (upon motion for summary judgment responding party must present affirmative rebuttal evidence to create genuine issue of disputed fact).

The strong statutory presumption in the ESA is preservation of endangered species, however, even when the practical cost is extraordinary. *See e.g., TVA* v. *Hill*, 437 U.S. 153. There is no level of threat to endangered species that can be deemed "insignificant" absent an incidental take statement. *See* 16 U.S.C. 1536(b)(4L).

Defendants cite no scientific evidence that strychnine use as currently permitted will prevent kills such as have occurred in the past. Nothing in the record indicates the safety or efficacy of the currently registered bait system as to any species except the black-footed ferret. There is no evidence that the ground squirrel study required by P.D. 4 was ever undertaken to determine the lowest bait concentration needed to provide control. *See* P.D. 4 at 42. With the exception of one FWS study limited exclusively to ferret jeopardy, the last scientific study was conducted in 1979. The biological opinions, incorporated in P.D. 2/3 and P.D. 4, do not approve the current registration program, but in fact note likely jeopardy to numerous species and recommend severe restrictions on strychnine use. On these grounds, the 1986 settlement and March 1987 Notice cause an illegal and ongoing taking of endangered species.

Moreover, the EPA has implicitly acknowledged the taking of endangered species in its September 16, 1987 request for Section 7 consultations. As noted previously, the EPA has a pending request for an "incidental take" statement to determine the lawful level of incidental taking which may result from strychnine registration. Such "incidental taking" may only occur after FWS authorization. 16 U.S.C. 1536(b)(4) (1982). The strychnine registrations currently in place are deficient since they may cause impermissible "incidential takings" in violation of the Act; they should therefore be enjoined.

VII

Plaintiffs seek a variety of declaratory and injunctive relief, and attorney's fees. Their claims under the APA, MBTA, and BGEPA all allege agency procedural violations under 5 U.S.C. 706. Declaratory and injunctive relief is available for such violations, but any injunction should be tailored to remedy the precise violation by the agency.

Plaintiffs are entitled to a declaration that defendants violated the APA by adopting the March 1987 Notice without adequate explanation and supporting evidence. The appropriate injunctive relief in this instance should address the specific shortcomings in defendants' actions while retaining those portions of the current registrations which enhance protection of endangered species. Plaintiffs are also entitled to a declaration that defendants' current registrations of strychnine for above-ground use result in impermissible taking of birds protected by the MBTA and the BGEPA, in violation of 5 U.S.C. 706. Injunctive relief is appropriate to enjoin the continuing violations.

Plaintiffs' ESA claims are distinct from the other claims in that the ESA provides for citizen suits, and the court's jurisdiction is independent of the APA. 16 U.S.C. 1540(g). A variety of relief is available to private parties who sue to vindicate the Act, including the declaratory and injunctive relief and attorney's fees sought here. When an injunction is sought under the ESA, the traditional balancing of equities is abandoned in favor of an almost absolute presumption in favor of the endangered species. *See TVA* v. *Hill*, 437 U.S. at 173. *Sierra Club* v. *Marsh*, 816 F.2d at 1383. The declaratory and injunctive relief provided here under the ESA is aimed at redressing defendants' violations of Section 9 of the ESA.

Order

Accordingly, based on the above and all the files, records and proceedings here, *it is hereby ordered that:*

1. Defendants' and intervenor-defendant's motion to dismiss or for summary judgment on counts one, four, five and seven of plaintiffs' complaint is denied.

2. Defendants' and intervenor-defendant's motion to dismiss count six of the complaint is granted, and count six is dismissed with prejudice.

3. Plaintiffs' motion to dismiss count six without prejudice is denied.

4. Defendants' and intervenor-defendant's motion for summary judgment on counts two and three is granted, and these counts are dismissed.

5. Plaintiffs' motion for summary judgment on counts one, four, five and seven is granted, and judgment should be entered in their favor on these counts.

6. Plaintiffs are entitled to declaratory relief, and it is therefore hereby declared and adjudged that:

The failure of the Administrator of the EPA to implement the 1983 Notice of Intent to Cancel, 48 FR 48522 (1983) and implementation instead of the March 1987 Notice, 52 FR 6762 (1987) without adequate scientific evidence and public explanation, was arbitary and capricious in violation of 5 U.S.C. 706. It is further declared and adjudged that:

The Administrator's continued registration of strychnine for above-ground use within the ranges of birds protected by the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) results in impermissible taking of birds protected by these Acts, in violation of 5 U.S.C. 706. It is further declared and adjudged that:

The Administrator is in continuing violation of ESA, section 9, 1538(a)(B) by registering for above-ground use for ground squirrel, prairie dog and meadow mouse control, strychnine which might be used within an area also inhabited by any threatened or endangered species determined to be likely jeopardized or which has suffered a strychnine kill documented in the non-target kill book.

The Administrator also is in continuing violation of ESA by permitting strychnine use in a manner which may cause the incidental taking of an endangered or threatened species without prior authorization of the Secretary of the Department of the Interior as provided in 16 U.S.C. 1536(b)(4).

7. Plaintiffs are entitled to injunctive relief as follows:

A. To remedy violations of the APA, the Administrator of the EPA and his agents shall retain the March 1987 Notice insofar as it prohibits and restricts strychnine registrations. They shall also temporarily impose the changes in registrations proposed by the 1983 Notice of Intent to Cancel for all registrations for ground squirrel, prairie dog and meadow mouse control to the extent that they restrict strychnine use or enhance the protection to endangered and threatened species. This shall include the cancellation of registrations for prairie dogs and meadow mouse control. The Administrator shall reexamine the registrations for prairie dog, ground squirrel and meadow mouse control. If continued strychnine use is proposed, the Administrator or his agents must make findings regarding the adequate geographic area needed as a buffer between endangered or threatened species habitat and areas where strychnine use will be permitted. Any final notice, if it should permit continued above-ground strychnine use, shall explain how jeopardy will be avoided to each potentially jeopardized species noted in any Position Document. If label restrictions are relied on to decrease potential jeopardy, the Administrator and his agents must provide an explanation based on reasonable study of the practical value of label restrictions to prevent

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strychnine use in areas or by methods not permitted.

The temporary restrictions on registrations shall expire when the review is completed and a notice of determination is published.

B. To remedy violations of the MBTA and BGEPA, the Administrator and his agents are enjoined from continuing the registrations of strychnine for above-ground use as a pesticide or rodenticide within the ranges of the bald eagle and golden eagle unless the Administrator certifies that methods by which strychnine might be applied will not cause injury or death to any bald or golden eagle. This injunction shall not apply to any taking of eagles incidental to strychnine use, authorized by the Secretary of the Interior pursuant to 16 U.S.C. 668a.

The Administrator of the EPA and his agents are enjoined from continuing the registrations of strychnine for above-ground use as a pesticide or rodenticide in a manner which may result in a non-target taking of the following migratory birds: bald eagle, golden eagle, peregrine falcon, California condor, blackbird, grack blackbird, redwing blackbird, rusty blackbird, brewer blackbird, bluebirds, bluejay, steller's bluejay, cardinal, coot, cowbird, mourning dove, finch, gold finch, house finch, purple finch, black-back gull, glaucous gull, herring gull, ringbilled gull, meadow lark, magpie, mallard duck, nuthatch, pigeon, lark sparrow, green towhee, wood duck, prairie falcon, gyrfalcon, hawks, Swainsons hawk, marsh hawk, redtailed hawk, roughlegged hawk, barn owl, great horned owl, snowy owl, gallinule, Canada goose, junco, kildeer, horned lark.

The Administrator may register strychnine for above-ground use in a manner that may result in the taking of a bird protected by the MBTA only pursuant to a permit issued according to 16 U.S.C. Sec. 703, and 50 CFR Part 21.

C. To remedy violations of the ESA, the Administrator of the EPA and his agents are enjoined from continuing the registrations for strychnine for above-ground use within the range of the following endangered species: Utah prairie dog, salt marsh harvest mouse, masked bobwhite, Cape Sable sparrow, Puerto Rican plain pigeon, California condor, San Joaquin kitfox, grizzly bear, Morro Bay kangaroo rat, red wolf, dusky seaside sparrow, Mississippi sandhill crane, Attwater's prairie chicken, black-footed ferret, gray wolf.

The Administrator of the EPA and his agents are enjoined from continuing the registrations of strychnine within the range of the bald eagle and peregrine falcon until the ongoing formal consultation with the Fish and Wildlife Service is completed and a formal notice of determination is issued in response. Thereafter, registrations for use in these ranges is permitted only if no taking by strychnine used under these registrations will occur, and the Administrator explains how this will be prevented.

The Administrator of the EPA and his agents are enjoined from continuing the registration of any strychnine product for above-ground use until the Secretary assesses the resulting likelihood of an incidental taking of any endangered or threatened species, and issues an "incidental take" statement permitting any such take that might occur.

The Administrator shall publish notice of this order and shall notify by letter all registrants of strychnine for above-ground use of the order. The notice and letters shall advise registrants of the injunctions against registrations stated herein, and shall advise all registrants to comply by ceasing the strychnine uses proscribed herein.

8. Plaintiffs are entitled to recover from defendants their reasonable costs and attorney's fees. They shall comply with Local Rule 6 and submit their petition for costs and attorney's fees and a memorandum regarding their entitlement to attorney's fees pursuant to the ESA, 16 U.S.C. 1540(g)(4); and the Equal Access to Justice Act, 28 U.S.C. 2412(d).

Let Judgment Be Entered Accordingly.

Dated: April 11, 1988.

Diane E. Murphy,

United States District Judge.

On April 25, 1988, the Agency filed a motion with the court seeking clarification of the Order and other relief. If there should be changes in the order as a result of that motion, strychnine registrants will be so informed. However, at this time the order is effective and compliance is required.

Dated: May 12, 1988.

Jonn A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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Wednesday
May 25, 1988

Part III

Department of Transportation

Urban Mass Transit Administration

49 CFR Part 604

Charter Service; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 604

[Docket No. 88-E]

Charter Service

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this Notice, the Urban Mass Transportation Administration (UMTA) proposes to amend its Charter Service Regulation by adding an exception to the general prohibition on using UMTA-funded equipment and facilities for charter service. The proposed exception would allow the incidental use of those UTMA-funded capital assets in direct charter contracting with non-profit social services agencies that serve elderly and handicapped persons or receive funding under certain U.S. Department of Health and Human Services programs, provided that the social service agency that the UMTA recipient contracts with is either a governmental entity or an organization exempt from taxation under Internal Revenue Code 501(c) (1), (3), (4), or (19).

DATES: Written comments should be received by July 25, 1988. The dates for the public hearings will be published in a Notice in the Federal Register as soon as they are available

ADDRESSES: Written comments should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88–E, 400 7th Street SW., Room 9316, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. and 5:00 p.m., Monday through Friday. Public hearings will be held in the following cities: Washington, DC, Kansas City, Missouri, San Francisco, California, and Cincinnati, Ohio. The exact locations for the public hearings will be published in a Notice in the Federal Register as soon as they are available.

FOR FURTHER INFORMATION CONTACT: Theodore A. Munter, Acting Chief Counsel, UMTA, Washington, DC., (202) 366–4063, or Jeanmarie Homan, Regional Counsel, UMTA Region VII, 6301 Rockhill Road, Suite 100, Kansas City, Missouri 64131, (816) 926–5053.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

On April 13, 1987 UMTA promulgated a complete revision of the regulation that governs permissible charter service by UMTA recipients (52 FR 11916, 49 CFR Part 604; hereafter the "April 1987 regulation"). In implementing subsections 3(f) and 12(c)(6) of the Urban Mass Transportation Act of 1964, as amended ("UMT Act"), (49 U.S.C. 1602(f) and 1608(c)(6)), the April 1987 regulation is designed to ensure that UMTA-funded equipment and facilities are used to meet mass transportation needs as intended by the UMT Act and to protect the private charter industry against subsidized and unfair competition by Federally assisted grantees. Although UMTA's previous charter regulation (published April 1, 1976, at 41 FR 14123) sought the same objectives, there were a number of significant problems with the effectiveness of the previous regulation in safeguarding the use of transit equipment and in protecting the health of the private charter industry. These problems were examined at length in the Notice of Proposed Rulemaking (NPRM) to the April 1987 regulation (published March 6, 1986 at 51 FR 7892).

The current rule establishes a general prohibition of the use of UMTA-funded equipment and facilities in charter service operations but permits their incidental use where no private charter operator is determined to be willing or able to provide the service, or where additional equipment or equipment accessible to elderly or handicapped persons is needed by a private operator. Two additional exceptions exist, but only by petition to UMTA: one for hardship situations in non-urbanized areas, and the other for special events. These exceptions were developed in consultation with the public and private transit industries and refined in response to comments on the March 1986 NPRM. Rather than prohibit all charter service, UMTA crafted these exceptions to allow UMTA-funded equipment and facilities to be used in charter service under circumstances and conditions where UMTA found such use would not jeopardize the integrity and purpose of the regulation.

In the March 1986 NPRM, UMTA requested comment on whether the regulation should provide any additional exceptions to the basic prohibition of charter service by UMTA recipients. Of the 307 comments received, less than ten percent commented on the possible adverse impact of the rule on the special needs of elderly, handicapped, and other transportation disadvantaged persons. These comments expressed concern, but offered no factual information or guidance in developing the exception proposed in today's NPRM.

B. Recent Congressional Actions

1. Proposed Exception for Non-profit Social Service Agencies

On December 22, 1987 the President signed the Department of Transportation and Related Agencies Appropriations Act, 1988 (Pub. L. 100–202, 101 Stat. 1329). In a report accompanying the appropriations act, conferees from the House and Senate Committees on Appropriations advised UMTA to undertake a rulemaking to amend the charter service regulation to "permit non-profit social service agencies with clear needs for affordable and/or handicapped-accessible equipment to seek bids for charter services from publicly funded operators." (H. Report 100–498, p. H 12787 as printed in the Congressional Record, 12/21/87). This report suggests that "[t]hese non-profit agencies * * * be limited to government entities and those entities subject to sections 501(c) 1, 3, 5 [sic] and 19 of the Internal Revenue Code." The report recommends, further, that "[i]n such cases, the public operator * * * be required to identify to the chartering organizations any private operator that has notified it of its willingness and ability to provide comparable charter service." UMTA notes, parenthetically, that the citation in the Congressional Record to Internal Revenue Code 501(c)(5) was a misprint; the conferees intended to cite section 501(c)(4) of the tax code.

The language in H. Report 100–498 (hereafter the "Conference Report") reflects a concern shared by the Congress, UMTA, and various interested parties, that the April 1987 regulation may be adversely affecting persons who are "transportation disadvantaged"—that is, persons of limited physical or financial means who depend heavily on publicly-subsidized mass transportation services to meet their needs for travel. In a September 1987 hearing before the House Committee on Appropriations, Subcommittee on Transportation, several persons testified that the regulation is causing an overall loss of charter services to the public, especially for handicapped, elderly, and poor persons. Proponents of the April 1987 regulation opined, however, that the regulation is too new to assess; that problems are limited to the current transition period, which has not been smooth because of the abuses under the previous rule; and that some UMTA recipients have not been cooperative in implementing the regulation.

Earlier last year, the House Committee on Appropriations suggested that UMTA amend the regulation by adding an exception to allow UMTA recipients to contract directly for charter services using UMTA-funded assets with all entities exempt from taxation under subsection 501(c) of the Internal Revenue Code ("IRC"; Title 26 of the United States Code); that is, all private non-profit organizations. (H. Rep. 100–202 at 107–8.) Subsequently, the Senate Committee on Appropriations expressed an opinion that the House Committee recommendation "would be unduly broad and difficult to administer." (S. Rep. 100–198 at 102.) The Senate Committee recommended a narrower exception to the rule to "permit non-profit social service agencies with clear needs for affordable and/or accessible equipment to seek bids for charter services from publicly funded operators," but only after first referring the requestor to any private operator providing comparable charter service.

In their separate reports, the House and Senate Appropriations Committees both stated an explicit support for the basic objectives of UMTA's charter service regulation: to ensure that Federally-funded facilities and equipment are not used to compete unfairly with private charter operators, and to ensure that Federal mass transportation financial assistance is not diverted for purposes that do not involve mass transportation.

In today's NPRM, UMTA is proposing an amendment to its charter regulation that is designed to carry out the recommendations in the report by the conferees from the House and Senate Committees on Appropriations. UMTA is mindful, specifically, of the Conference Report suggestion that an additional exception to the regulation be devised for the benefit of government entities, and organizations exempt from taxation under subsections 501(c) (1), (3), (4), or (19) of the Internal Revenue Code. And UMTA is mindful, specifically, of the Conference Report suggestions that the new exception be limited to instances where these government entities and tax-exempt organizations have "clear needs" for "affordable and/or handicapped-accessible equipment" that cannot be met through comparable service by an identifiable private operator.

It is difficult, however, to give an exact meaning to the words "clear needs," as suggested in the Conference Report. And it is impractical to try to predetermine all of the circumstances in which government entities and tax-exempt organizations might have "clear needs" for charter service. Thus, in today's NPRM, UMTA is proposing an amendment to the charter regulation that is fashioned not for the benefit of these government entities and tax-exempt organizations *per se* but for the benefit of the individuals that these agencies serve, and who most obviously might benefit from such an exception to the regulation: elderly and handicapped persons, and persons who, because of limited income or financial means, are "transit dependent" or "transportation disadvantaged."

It may be helpful, at this point, to examine briefly the wide variety of organizations that fall within the tax code provisions cited in the Joint Committee's Conference Report.

IRC subsection 501(c)(1) establishes an exemption from taxation for instrumentalities of the United States created by an Act of Congress and explictly so exempted by their enabling statutes. UMTA finds that most IRC subsection 501(c)(1) organizations are financial institutions, e.g., Federal Land Banks, Federal Reserve Banks, and Federal Credit Unions.

The organizations exempt from taxation under IRC subsection 501(c)(3) are entities established for religious, charitable, scientific, literary, and educational purposes, purposes of testing for public safety, and purposes of fostering amateur sports or preventing cruelty to children and animals. There are more than one-quarter million entities qualified under subsection 501(c)(3). The members of subsection 501(c)(3) religious organizations, alone, comprise nearly 60% of the population of the United States. Although contributions to subsection 501(c)(3) organizations are deductible by individual taxpayers as "charitable" contributions, these organizations are not all charities in the traditional meaning of that term—relief to the poor. Rather, these organizations serve a variety of public needs under a broader purpose of promoting the general welfare. By way of example, private schools and universities, the Lions, Elks, and Kiwanis Clubs, the Boy Scouts of America and the Junior Leagues are all subsection 501(c)(3) organizations.

IRC subsection 501(c)(4) provides tax exempt status to a particular class of civic leagues and organizations that promote social welfare. Primarily, subsection 501(c)(4) encompasses organizations that would qualify for tax exemption under subsection 501(c)(3) except that they devote part of their activities to political lobbying efforts, which are prohibited under subsection 501(c)(3). Unlike contributions to subsection 501(c)(3) organizations, contributions by individual taxpayers to subsection 501(c)(4) organizations are not deductible as "charitable" contributions. A sampling of organizations qualifying under IRC subsection 501(c)(4) includes an organization for the rehabilitation of over-aged unemployed persons, a garden club organized for the purpose of promoting horticultural subjects and area beautification, a "drag strip" operation that helps alleviate lawless activities by juveniles who race high-powered automobiles on public streets, an organization that provides facilities for firearms practice and instruction to the community in safe handling and proper care of weapons, and an organization that represents public interests at legislative and administrative hearings on tax matters.

IRC subsection 501(c)(19) establishes an exemption from taxation for Veterans' organizations. Subsection 501(c)(19) is similar to subsection 501(c)(4) in that to qualify for the exemption, an organization must have a purpose that is one of the purposes explictly listed as grounds for the exemption, and the list of those purposes is similar to the list of subsection 501(c)(4) purposes. *See,* U.S. Department of Treasury regulations, § 1.501(c)(19)–1. Although these Veterans' organizations might qualify for exemption from taxation under other provisions of IRC section 501(c), subsection 501(c)(19) was enacted to allow a special tax exemption for insurance payments that these organizations make.

In looking at these various organizations collectively—that is, all organizations that enjoy tax exempt status pursuant to IRC subsections 501(c)(1), (3), (4) or (19)—there is an obvious commonality, in that each of these organizations serves a social purpose. Each of these organizations promotes the well-being of its community and society at large. Aside, however, from this shared characteristic of social purpose, these organizations have little in common. Their missions and functions range from the very general to the very specific. Their financial resources range from the very large to the very modest. Their qualification for tax exempt status under IRC subsection 501(c)(1), (3), (4) or (19) does not depend on any personal economic needs of their individual members, nor, necessarily, on the economic needs of people who benefit from these organizations' services. Nor is there any correlation between these organizations, collectively, and their

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needs for transportation service by charter or their provision of transportation service by charter.

Similar to the lack of commonality among these non-profit, social service, tax exempt organizations, there is a lack of commonality among "non-profit agencies" that are "government entities," as referenced in the Conference Report. The missions, functions, and financial characteristics of "government entities" greatly vary. It is impractical, if not impossible, to try to identify government entities by any common characteristics of their constituencies. Again, there is no correlation between "government entities," collectively, and their needs for transportation service by charter or their provision of charter transportation services.

UMTA notes, specifically, that in many localities a governmental entity of the city makes the transportation arrangements for that city's conventions business. Obviously, few of these passengar trips for conventions business would transport persons who are "transit dependent" or "transportation disadvantaged." The April 1987 regulation is designed to prevent, in particular, the use of UMTA-funded facilities and equipment for convention charters; these convention charters were a widespread abuse of UMTA-funded capital assets prior to the April 1987 regulation.

Logically, the Conference Report recommendation of an exception to UMTA's charter regulation "to permit non-profit social service agencies with *clear needs* for *affordable* and/or *handicapped-accessible* equipment to seek bids for charter services from publicly funded operators" (emphasis added) was meant to be limited to two types of circumstances: (1) Circumstances where these government entities and tax exempt organizations need charter service that may be difficult for them, or their constituencies, to afford, and (2) circumstances where these government entities and tax exempt organizations need transportation equipment that is accessible to elderly and handicapped persons.

The problem becomes: what standard does UMTA use for making determinations of "clear needs"? UMTA is concerned, foremost, that such a standard be easily understood and simple to administer. UMTA is concerned, further, that any additional exception to its charter regulation not abrogate the fundamental purposes of the regulation: to ensure that Federally-funded facilities and equipment are not used for unfair competition with private charter carriers, and to ensure that any use of those facilities and equipment for a purpose other than providing mass transportation to the public at large is an incidental use, only.

In today's NPRM, UMTA is proposing an exception to the charter regulation in which a determination of "clear needs" for charter service would focus on the actual persons who might benefit from that service—elderly and handicapped persons, and persons who might not otherwise be able to afford that service. UMTA believes that this approach is simpler, and fairer, than trying to make case-by-case determinations of "clear needs" for charter service based solely on the status of an entity as a government entity or a tax exempt organization. Below, UMTA will explain the procedure for administering this exception to the charter regulation.

2. Charter Rights Purchased Before Enactment of the UMT Act

In addition to their recommendations regarding an exception to the charter regulation in instances of "clear needs for affordable and/or handicapped-accessible" charter service, the conferees from the House and Senate Committees on Appropriations recommended in their Conference Report that an "exemption" from the regulation "be provided to those public transit authorities which purchased charter rights entirely with non-federal funds prior to enactment of the Urban Mass Transportation Act of 1964."

The wording of this recommendation is somewhat ambiguous. UMTA presumes, however, that what the conferees are suggesting is a blanket "grandfather" exemption; that is, that any UMTA recipient that purchased charter rights from another carrier, public or private, prior to 1964, be entirely exempted from the requirements of the 49 CFR Part 604 charter regulations, regardless of that recipient's ongoing use of Federally-funded mass transportation facilities and equipment for purposes other than mass transportation operations.

UMTA is not proposing such a blanket exemption in today's NPRM, because, in UMTA's view, such an exemption would contravene the express directives of the UMT Act. All public bodies that receive financial assistance for their "mass transportation" operations, facilities, and equipment, under any of the authorities of the UMT Act, are bound by the definition of "mass transportation" established by subsection 12(c)(6) of the UMT Act; subsection 12(c)(6) defines "mass transportation" to *exclude* charter service, sightseeing service, and school buses. Further, UMT Act section 3(f) requires all applicants for financial assistance for the purchase or operation of buses to enter into an agreement with the Secretary of Transportation, to govern the recipient's intercity charter bus operations, which establishes "fair and equitable arrangements" to ensure that willing and able private charter bus operators are not foreclosed from the intercity charter markets by the recipient's operations. (The Secretary's authority is delegated to the Urban Mass Transportation Administrator pursuant to 49 CFR 1.51.) In UMTA's view, the exemption that the Conference Report is apparently proposing cannot be accomplished without amending the provisions of UMT Act sections 3(f) and 12(c)(6), which, of course, only the Congress is empowered to consider.

Further, such a blanket exemption would be inconsistent with the protections for private enterprise established by sections 3(e) and 8(e) of the UMT Act. Section 3(e) prohibits Federal financial assistance under the UMT Act to any State or local public authority for operating mass transportation facilities or equipment "in competition with, or supplementary to" services provided by an "existing mass transportation company," unless the Secretary (UMTA) finds, among other matters, that (1) "such assistance is essential" to the recipient's local program of projects, and (2) that the recipient's local program provides "to the maximum extent feasible" for participation by private mass transportation companies. Section 8(e) requires that the recipient's plans and programs "encourage to the maximum extent feasible the participation of private enterprise." In enacting these directives, the Congress was clearly concerned that subsidies under the UMT Act not be used to injure the economic health of private carriers. There are, of course, many private carriers that conduct both mass transportation and charter operations; there can be no question but that the economic health of these carriers could be injured by such an exemption for certain UMTA recipients as the Conference Report suggests.

It should be noted, here, that a recipient's purchase of charter rights has never been an item eligible for Federal assistance in the history of the programs under the Urban Mass Transportation Act. Thus, in UMTA's view, there is no purpose to be served in attempting to make a distinction among UMTA recipients on the basis of whether a recipient purchased charter rights before, or sometime after, the enactment of the UMT Act in 1964. It is the receipt of financial assistance under the UMT Act, alone, that triggers a recipient's obligation to comply with all of the requirements of the UMT Act, including the basic prohibition of using UMTA-funded capital assets for charter operations.

It must be emphasized, however, that all UMTA recipients are free, as they have been throughout the history of the UMT Act programs, to engage in charter bus activities that do not involve equipment and facilities receiving Federal financial assistance under the UMT Act; the 49 CFR Part 604 regulations do not apply to any recipient's charter bus operations that are entirely locally funded and separate and distinct from that recipient's Federally-funded operations.

UMTA invites comment on whether recipients that purchased charter rights prior to the enactment of the UMT Act should receive special treatment under the charter regulation.

3. Suggested Exception based on Vehicle Characteristics

The conferees from the House and Senate Committees on Appropriations further recommended, in their Conference Report, that UMTA continue to explore "the issue of whether public transit authorities that offer only standard transit buses for charter services should be permitted to compete against private operators."

Both UMTA and the Congress have received criticisms of the April 1987 regulation from persons contending that the rule is too stringent for recipients, inasmuch as recipients' UMTA-funded transit vehicles do not and cannot compete with private charter vehicles that provide more passenger comforts; e.g., larger and softer seats, restrooms, and reading lights. Arguably, with their standard transit coaches, UMTA recipients serve only the short, "local" trips which private operators do not want. Arguably, UMTA recipients cannot and do not want to compete with private carriers for longer trips, where the comfort of "over the road" private coaches is more important to passengers.

As suggested by the Conference Report, UMTA intends, in the near future, to make a study of recipients' charter services prior to the promulgation of the April 1987 regulation to determine whether there is any identifiable pattern of service based on vehicle comforts and amenities, trip lengths, and trip durations.

UMTA asks commenters to submit data on this matter. Are standard transit coaches and "over the road" vehicles in direct competition for the same charter markets? As a practical matter, have UMTA recipients and private charter operators already divided the markets among themselves, based on length, duration, and amenities offered? Are private operators seriously interested in providing short, "local" trips? Do UMTA recipients compete for "over the road" charter services? Would an exception to the regulation for standard transit coaches significantly infringe on the private charter operators' markets? Would such an exception tend to foreclose opportunities for private intercity charter operators? Would poor, elderly, and handicapped persons be the exclusive or at least major beneficiaries of a charter exception for hard seat transit coaches?

II. The Proposed Amendment

A. Summary of the Proposed Exception

In today's NPRM, UMTA proposes an amendment to the charter service regulation that would allow UMTA recipients using UMTA-funded equipment and facilities to provide charter service directly to government entities and organizations exempt from taxation under subsections 501(c)(1), (3), (4) or (19) of the Internal Revenue Code in either of two instances; an instance in which that entity or organization is contracting for transportation for groups of elderly or handicapped people, or an instance in which that entity or organization is receiving funding under certain Federal benefit programs and the requested charter trip will be consistent with that entity's or organization's functions and purposes.

The first necessary step in framing this proposed exception to the regulation is to identify the persons contemplated by the Conference Report recommendation—persons having "clear needs for affordable and/or handicapped-accessible equipment." The next step is to define these persons in terms and references that are familiar to UMTA recipients and the transit industries, and readily adaptable to the charter regulation. The following step is to establish a procedure whereby UMTA, and UMTA recipients, can easily administer this exception to the regulation in the appropriate instances.

1. Elderly and Handicapped Persons

Plainly, elderly and handicapped persons have "clear needs for affordable and/or handicapped-accessible equipment." Indeed, there is ample precedent in various programs under the UMT Act for addressing the special needs of elderly and handicapped persons; the funding authorities of UMT Act section 16 and the "half-fare" provisions of UMT Act subsections 5(m) and 9(e)(3)(D) reflect the judgment of the Congress that elderly and handicapped persons are often disadvantaged in their access to transportation, either physically, or economically, or both. Thus, in today's NPRM, UMTA is proposing an amendment to the April 1987 regulation that is meant to help elderly and handicapped persons obtain the charter services they need.

UMTA recognizes, certainly, that there are elderly persons who individually may be neither physically nor economically disadvantaged in their access to charter transportation. UMTA believes it appropriate, nonetheless, to deem elderly persons as a *per se* class in framing this exception to the charter regulation. Census statistics reflect that 75 percent of all individuals aged 65 or older fall within the bottom third of national income levels. When compared to other age groups, moreover, elderly individuals have the lowest median income. Because charter service is by definition "group" service, *see*, 49 CFR 604.5(e), UMTA believes it is consistent with the intent of Congress, and the available evidence, to target elderly persons as groups of people, without regard for the physical or economic characteristics of individual members of those groups. UMTA notes, also, that the Internal Revenue Service recognizes the elderly as a charitable class *per se* and grants charitable status to organizations serving the needs of elderly persons. *See*, Rev. Rul. 77–246, 1977–2C.B.190.

UMTA proposes, in today's NPRM, that UMTA recipients apply the same definitions of "elderly" and "handicapped" in this exception to the charter regulation that they apply for eligibility for the UMT Act half-fare provisions. (UMTA provides guidance to recipients on the definition of "elderly" and "handicapped" persons in UMTA Circular 9060.1, pp. IX–2, 3 (April 20, 1978)).

UMTA also asks for comment from recipients, private charter operators, and the handicapped community, especially, on their experience under the current exception to the charter regulation meant for the benefit of handicapped persons. 49 CFR 604.9(b)(2) allows recipients to lease accessible UMTA-funded facilities and equipment to private operators without regard to the number of other vehicles available to the private operator. UMTA questions how well this exception is working. In testimony before the House Subcommittee on Transportation a representative of an organization

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providing services to handicapped persons complained that the local UMTA recipient would not lease its accessible equipment. Is this an isolated incident? UMTA asks commenters to provide data on the frequency of requests for and the leasing of equipment accessible to handicapped persons.

2. Economically Disadvantaged Persons

In addition to elderly and handicapped persons, there are persons having "clear needs for affordable" charter service who are not so easy to identify or to define by regulation—persons who are "transit dependent," or "transportation disadvantaged," by reason of income or economic means. UMTA draws an assumption, from various reactions to the April 1987 regulation, that there may be many such persons of limited income or finances who need charter service but who cannot afford charter service in the open market, and whose needs will not be met absent the services of an UMTA recipient.

The terms "transit dependent" or "transportation disadvantaged" are not capable of an exact and objective application. For this reason, UMTA is not proposing an amendment to the regulation that would depend on definitions that would be troublesome for UMTA recipients to implement. We note, in this regard, the definition set forth in Chapter 427 of the Florida statute:

> Transportation Disadvantaged means those individuals who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities. (F.S.A. section 427.011, 1986).

While the Florida statute is an excellent definition of transportation disadvantaged individuals, the complex tests and subjective criteria in this statute would be functionally inappropriate in the context of an exception to the UMTA charter regulation. A determination of low-income requires economic guidelines and "means tests." UMTA believes that this would put an unconscionable burden on UMTA recipients which could not be administered without threat to the privacy rights of the individuals concerned.

Instead, UMTA proposes to target low-income persons having "clear needs for affordable" charter service through their affiliations with other persons of like circumstances. Specifically, UMTA proposes, in today's NPRM, to establish an exception to the charter regulation for the benefit of groups of persons who are transit dependent or transportation disadvantaged and who are participating in charter trips arranged by a government entity or tax-exempt organization that receives funding assistance from certain public welfare programs administered by the U.S. Department of Health and Human Services (USDHHS). Although, in some instances, this proposed exception to the regulation might duplicate the proposed exception for elderly and handicapped persons, the main thrust of this exception should reach transit dependent and transportation disadvantaged persons who are neither elderly nor handicapped.

This approach that UMTA is proposing—targeting persons "having clear needs for affordable" charter transportation by their affiliations in groups receiving assistance through USDHHS programs—is similar to an approach for identifying persons with special needs for transportation outlined by the American Public Welfare Association (APWA) in a report entitled "Strategies to Improve Specialized Transportation" (September 1983). The APWA observes that the identification and definition of special transportation user populations is a major problem confronting transit decision-makers. In attempting to target these populations, the APWA finds it useful, among other methods, to look to human service programs that provide transportation services to their clients. Conceptually, this approach appeals to UMTA for three reasons: (1) It calls on the participation of human service organizations that are experienced in arranging transportation for persons who are economically disadvantaged; (2) it identifies persons "having clear needs for affordable" transportation in ways that are simple and functional when applied to transit operations; and (3) it comports, logically, with the principle that charter service is "transportation * * * of a group of persons * * * pursuant to a common purpose * * *." 49 CFR 604.5(e).

Under the amendment proposed today, an UMTA recipient may enter into a direct charter service contract with a social service agency that is either a government entity or an organization exempt from taxation under IRC subsection 501(c)(1), (3), (4) or (19), and which directly or indirectly administers one of the USDHHS programs that provide funding for transportation services. These USDHHS programs are listed in Appendix A of this NPRM. In proposing to limit these eligible agencies to those that administer the listed USDHHS programs, UMTA is making what it believes is a logical assumption; that the Congress, in creating these USDHHS programs, has targeted the persons in our society who have clear needs for Federal welfare benefits, including needs for affordable charter transportation. Is this a valid assumption? And is it appropriate to limit the eligibility of these social service agencies to those that administer the listed USDHHS programs?

UMTA notes that, for the most part, the USDHHS programs take the form of block grants to the States, where the administration of these grants vary greatly. Also, the names of these programs, as administered by the States, vary somewhat from State to State. Appendix A, as proposed, lists only the titles of the Federal programs. UMTA specifically requests comment on whether this list is clear and adequate and whether programs have been inadvertently excluded.

B. Procedures and Monitoring

Under the amendment proposed today, UMTA recipients could provide these charter services without UMTA's prior concurrence or approval. In contrast to the exceptions to the April 1987 regulation for hardship in non-urbanized areas and for special events, a petition process would not be required. The proposed amendment would require, however, that the government entity or tax-exempt organization which is contracting for charter service submit a certification to the UMTA recipient that the entity or organization, and the specific charter trip in question, meet the conditions of this exception to the UMTA charter regulation.

To minimize the burden of this certification process, UMTA is providing the necessary wording for these certifications in the text of the proposed amendment: 49 CFR 604.9(b)(5) (i) and (ii). Subparagraph (i) sets forth the necessary wording to invoke the exception for charter service to elderly and handicapped persons. Subparagraph (ii) sets forth the necessary wording to invoke the exception for charter service in administering a USDHHS program.

The appropriate certification must be submitted by the contracting agency before an UMTA recipient could provide the charter service. UMTA would not expect recipients to look behind a certification unless they have reason to believe that the certification is false.

There are four elements to each certification. First, the contracting agency in both certifications must certify that it is a government entity or has tax exempt status under subsection 501(c) (1), (3), (4) or (19) of the Internal Revenue Code. It should be noted that, under these IRC provisions, eligible "organizations" include unincorporated associations, corporations, trusts, community chests, foundations and funds.

The second element of each certification is the element which distinguishes the certifications. The exception for elderly and handicapped persons requires the contracting agency to certify that more than 50 percent of the charter trip passengers will be elderly persons or that there will be a significant number of handicapped persons as passengers on the trip. UMTA has not attempted to define what constitutes a "significant number" or to assign a percentage figure to trips for the handicapped persons because UMTA recognizes that handicapped persons frequently travel with attendants and sponsors. The term "significant number" is simply meant to ensure that the charter trip be primarily for the benefit of handicapped persons.

For the exception linked to USDHHS programs, the second element of the certification requires the contracting agency simply to certify that it is a recipient of funds under one or more of the programs listed in Appendix A to today's NPRM. We note, again, that all of these programs provide transportation funding and are administered by the U.S. Department of Health and Human Services, which either distributes the funding directly to local agencies or indirectly through the states.

In the third element of each certification, the social service agency that is contracting for a charter trip attests that the trip will be consistent with that agency's governmental functions and purposes or the functions and purposes for which that agency receives its tax exemptions or its USDHHS benefits.

For example, a local Head Start agency could contract with an UMTA recipient for a charter trip to take program participants to the local zoo; such would be a function in accordance with the missions of the Head Start program. It would be impermissible, however, for that same Head Start agency to contract with an UMTA recipient for a charter trip to carry an adult social club to a National Football League game.

The fourth element in each certification requires the social service agency that is contracting for a charter trip to assure the UMTA recipient that the recipient's Federally-funded equipment and facilities will not be used for a charter trip that is organized or operated in a manner that discriminates against any person on the basis of race, color, religion, sex, national origin, or handicap.

Under the terms and conditions of UMTA grant agreements, UMTA recipients are required to assure compliance with Title VI of the Civil Rights Act of 1964, the anti-discrimination provisions of the UMT Act, and 49 CFR Part 27 in all activities and projects funded under those agreements, including the use of UMTA-funded facilities and equipment. It would be illegal, for example, for a government entity or tax-exempt organization to lease an UMTA-funded bus or van for a charter trip that discriminated against passengers based on race or religion. The anti-discrimination provision in the certifications in today's NPRM are intended to support this necessary assurance of civil rights compliance by UMTA recipients. UMTA asks for comment on whether these certifications are adequate for this purpose. UMTA notes, also, that by reason of their tax-exempt status, social service agencies have a duty not to engage in discriminatory activities, based on the principle that tax benefits are not applicable to actions that are illegal or contrary to public policy.

Although the only procedural requirement to providing charter services within the proposed exception is the certification requirement, this exception, like all other exceptions to the charter regulation, must be limited to the incidental use of UMTA-funded equipment and facilities. Also, as with each of the other exceptions to the regulation, UMTA recipients should not operate these charter services in direct competition with the private charter operators. Accordingly, UMTA expects that a recipient would not accept a request to provide charter service under this exception when it knows that a private operator is available to provide comparable service. While it is anticipated that UMTA recipients would not use this exception to unfairly compete with private charter operators or to violate the incidental use restrictions, UMTA believes that abuses can be effectively monitored through the complaint process and through the triennial review process. UMTA specifically requests comments on whether this hands-off approach is realistic. For example, should UMTA require a petition process similar to the hardship exceptions in non-urbanized areas? Should UMTA require the recipient to obtain evidence beyond the certification from those contracting for service under this exception? Should UMTA require recipients to provide a list of willing and able private charter operators to an entity contracting under this exception and require the entity to certify that it has contacted these operators before it can contract with the UMTA recipient?

C. Costs and Rates

UMTA questions whether UMTA recipients will be able to recover their fully allocated costs from the contracting organizations when providing charter services under today's proposed exception. Opponents of the April 1987 regulation have claimed that the regulation has increased charter rates, making it prohibitive for transportation disadvantaged persons to afford charter service. In the preamble to the April 1987 regulation, UMTA states its policy that charter service provided at costs below full recovery is non-incidential use of UMTA equipment because this has a detracting effect on the mass transportation use of the equipment. Prior to the April 1987 promulgation, UMTA recipients frequently offered charter services below full recovery level. They could do this economically only because of the UMTA subsidy. Because UMTA funds are not appropriated for charter service, these funds should not be used to subsidize charter service, including charter service for the beneficiaries of the exception proposed today.

UMTA believes its policy as stated in the preamble to the April 1987 regulation is essential to control the abuse which commonly occurred under the previous regulation. UMTA questions, however, whether the relief intended by this proposed exception will be realized if recipients recover their fully allocated costs from the revenues for these services. Notwithstanding UMTA's strong preference for the recovery of costs from the actual charter revenues, the circumstances of the charter services to be provided under the exception as proposed today may establish circumstances which require the costs to be supplemented from other local sources.

Indeed, in limited instances, UMTA will consider certain below-cost charter service to be "incidental." An example of this would be free charter service to a group of "transit dependent" or "transportation disadvantaged" individuals where there is no private operator willing and able to provide that service. *See*, the answer to question number 27 in UMTA's notice on Charter

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Service Questions and Answers, 52 FR 42248, 42253 (November 3, 1987).

D. Hearings and Request for Written Comment

UMTA intends to hold hearings on today's NPRM in Washington, DC, Kansas City, Missouri, San Francisco, California, and Cincinnati, Ohio. The exact dates, times, and locations of these hearings are not yet available; thus, UMTA asks persons interested in attending these hearings to contact the UMTA Office of the Chief Counsel, telephone (202) 366–4063, for further information. Once the exact times, dates, and locations of these hearings are confirmed, UMTA will publish a notice in the **Federal Register.**

Above, UMTA has asked for comment on several particular matters. In addition to those matters, UMTA specifically requests comment and data in response to the following questions:

1. Has cost been a factor in the purported negative impact of the April 1987 regulation on persons who are transportation disadvantaged?

2. Would charter services for transportation disadvantaged persons not be provided but for the willingness of UMTA recipients to provide those services at less than fully allocated costs?

3. Currently, are private operators and UMTA recipients competing with one another to provide charter services to elderly and handicapped groups, and social service agencies, as described in today's NPRM?

4. UMTA assumes that payment for most charter service provided under the proposed exception will also be publicly subsidized. Is that a factor in determining charter rates? Have UMTA recipients been charging higher or lower rates when the payment is subsidized?

5. UMTA assumes that charter service provided under the proposed amendment would be limited and therefore have a minimal negative effect on the mass transit use of UMTA-funded equipment and facilities. Is this a valid assumption?

6. If UMTA recipients charged less than full recovery rates to provide charter service for persons who are transportation disadvantaged, would this, in effect, foreclose private operators from competition for the service?

7. UMTA is aware of at least one community that dedicates local funds to reimburse a publicly-subsidized transit operator for the costs of providing charter services to the community's transportation disadvantaged. Is this a common practice? Are local subsidies available to private operators?

On all of the above questions, and those set forth earlier in this preamble, UMTA specifically solicits data that is available to commenters.

Commenters wishing acknowledgment of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

III. Regulatory Impacts

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and UMTA has determined this is not a major rule. If promulgated, this rule will not result in an annual effect on the economy of $100 million or more.

B. Regulatory Evaluation

The proposed regulation would be a "significant" rule, as defined by the Department's Policies and Procedures on Improving Governmental Regulations, because of substantial public interest. Thus, UMTA is required to prepare a Regulatory Evaluation in support of this rulemaking. At this juncture, however, UMTA has very little empirical data from which to make projections regarding increased or decreased costs, or ridership figures, that would result from the proposed regulation. Above, in this preamble, UMTA has posed a number of pointed questions to elicit these types of data and projections from interested persons.

As stated in the Regulatory Analysis supporting the April 1987 regulation, UMTA finds from its research that the health of the private intercity charter bus industry has progressively worsened through the 1970s and 1980s; specifically this industry's profitability decreased from 9.9 percent to 1.7 percent between 1970 and 1984, and its profits decreased by more than 50 percent during the same period. UMTA's opinion is that the charter service provided by UMTA recipients is significantly responsible for this decline, thus, the April 1987 regulation is designed to help reverse the trend. UMTA finds, further, from data supplied by UMTA recipients in response to reporting requirements, that UMTA recipients in the aggregate experience a financial loss when they provide charter services; in 1982, for example, UMTA's Section 15 Report shows that UMTA recipients earned $45 million in charter revenues at a cost of $47.5 million. UMTA believes that, in time, the reduction in recipients' charter service that the April 1987 regulation is designed to precipitate will help to reduce recipients' overall deficits by extending the life of equipment for mass transportation and avoiding labor, operating, and maintenance costs associated with charter service.

Although today's proposed amendment to the April 1987 regulation is significant for its public interest, it is likely to have very little effect on the basic economic trends and projections identified in the Regulatory Analysis supporting the April 1987 regulation. UMTA believes that charter services for elderly and handicapped persons, and persons who are "transit dependent" or "transportation disadvantages," comprise but a small fraction of the universe of charter services. If UMTA is correct in this assumption, the revenues to UMTA recipients that provide these charter services to elderly, handicapped, and transit dependent riders would be a very small fraction of these recipient's total revenues; even for those recipients that claimed to be earning profits from their charter operations prior to the April 1987 regulation, revenues from *all* of their charters equaled only 1, 2, or 3 percent of their total revenues. (See the Regulatory Analysis published April 13, 1987, at 52 FR 11932.) Thus, UMTA does not expect today's proposed regulation to have a material economic impact either on UMTA recipients or private charter carriers, albeit the regulation may be very important to persons who wish to patronize these charter services.

C. Executive Order 12612

This action has been reviewed under Executive Order 12612 or Federalism, and UMTA has determined that this action does not have implications for principles of federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policymaking and administrative descretion of the States, nor will it affect the States' abilities to discharge traditional State governmental functions or otherwise affect any aspect of State sovereignty.

Indeed, consistent with the fundamental principles of Federalism as described by Executive Order 12612, the programs and policies of the Urban Mass Transportation Administration are purposely structured to place primary responsibility on States and local governments for the provision of mass transportation services to their communities, and to encourage States and local governments to achieve their objectives for mass transportation through cooperative effort. As is true for all UMTA programs and policies, this action grants maximum administrative discretion to States and local governments.

D. Regulatory Flexibility Act

In accordance with 5 U.S.C. 606(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

E. Environmental Impacts

This proposed regulation would not adversely affect the environment.

F. Paperwork Reduction Act

The collection of information requirements contained in this proposed rule are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. These requirements are being submitted to the Office of Management and Budget for review. Comments on the proposed certification requirement must be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Department of Transportation. UMTA requests that the commenter also transmit an information copy of any such comments to UMTA Docket No. 88–E.

IV. 49 CFR Part 604

Accordingly, for the reasons described in the preamble, Title 49, Code of Federal Regulations, Part 604, Charter Service, would be amended as follows:

PART 604—[AMENDED]

1. The authority citation for Part 604 continues to read as follows:

Authority: Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

2. Section 604.9 is amended by adding paragraph (b)(5) to read as follows:

§ 604.9 Charter service.

* * * * *

(b) * * *

(5) A recipient may execute a contract with a government entity or a private, non-profit organization exempt from taxation under subsection 501(c)(1), 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code to provide charter service upon obtaining a certification from that entity or organization which states:

(i) "*[the entity/organization]* certifies that it is a government entity or an organization exempt from taxation under subsection 501(c)(1), 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code; more than 50 percent of the passengers on this charter trip will be elderly or there will be a significant number of handicapped persons as passengers on this charter trip; the requested charter trip is consistent with the functions and purposes of *[the entity/organization]*; and the charter trip will be organized and operated in compliance with Title VI of the Civil Rights Act of 1964, as amended, Section 19 of the Urban Mass Transportation Act of 1964, as amended, and 49 CFR Part 27."; or

(ii) "*[the entity/organization]* certifies that it is a government entity or an organization exempt from taxation under subsection 501(c)(1), 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code; *[the entity/organization]* receives funds, directly or indirectly, under one or more of the Federal programs listed in Appendix A of 49 CFR Part 604; the requested charter trip is consistent with the functions and purposes of the *[entity/organization]*; and this charter trip will be organized and operated in compliance with Title VI of the Civil Rights Act of 1964, as amended, and Section 19 of the Urban Mass Transportation Act of 1964, as amended, and 49 CFR Part 27."

* * * * *

3. Appendix A is added to read as follows:

Appendix A

The following is a list of Federal assistance programs administered under the United States Department of Health and Human Service (HHS). The financial assistance under each of these HHS programs includes funding for the transportation needs of the program beneficiaries.

Program title	Agency
Project grant and cooperative agreements for tuberculosis control programs.	Public Health Service, HHS.
Mental health service for Cuban entrants.	Do.
Mental health planning and demonstration projects.	Do.
Alcohol, drug abuse treatment and rehabilitation block grant.	Do.
Family planning services	Do.
Community health centers	Do.
Indian health services—health management development program.	Do.
Migrant health centers grants	Do.
Childhood immunization grants	Do.
Administration for children, youth and families (ACYF)—Head Start.	Office of Human Development Services, HHS.
ACYF child welfare research and demonstration program.	Do.
ACYF runaway and homeless youth.	Do.
ACYF adoption opportunities	Do.
ACYF child abuse and neglect (State grants).	Do.
ACYF child abuse and neglect discretionary.	Do.
Administration for Native Americans (ANA) Native American programs—financial assistance grants.	Do.
ANA research, demonstration and evaluation.	Do.
ANA training and technical assistance.	Do.
Administration of developmental disabilities (ADD)—basic support and advocacy grants.	Do.
ADD special projects	Do.
ADD university affiliated facilities.	Do.
Administration on Aging (ADA) special programs for the aging—Title III, Part B—Grants for Supportive Services and Senior Centers.	Do.
ADA Title III, Part C—Nutrition Services.	Do.
ADA grants to Indian tribes	Do.
ADA training, research and discretionary projects and programs.	Do.
Social service block grant	Do.
Medical assistance program medicaid; title XIX.	Health Care Financing Administration, HHS.
Medicare—supplemental medical insurance.	Do.
Aid to families with dependent children (AFDC)—maintenance assistance.	Family Support Administration, HHS.
Work incentive program	Do.
Community service block grant (CSBG).	Do.
CSBG discretionary awards	Do.
CSBG discretionary awards—community food and nutrition.	Do.
Social security—disability insurance.	Social Security Administration, HHS.
Supplemental security income	Do.
Home health services and training.	Public Health Service, HHS.
Coal miners respiratory impairment treatment clinics and services.	Do.
Preventive health services—sexually transmitted diseases control grants.	Do.
Health programs for refugees	Do.

Issued on May 20, 1988.

Alfred A. DelliBovi,

Administrator.

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H.R. 1811/Pub. L. 100-321

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H.R. 2616/Pub. L. 100-322

Veterans' Benefits and Services Act of 1988. (May 20, 1988; 102 Stat. 487; 69 pages) Price: $2.25

S. 999/Pub. L. 100-323

Veterans' Employment, Training, and Counseling Amendments of 1988. (May 20, 1988; 102 Stat. 556; 20 pages) Price: $1.00

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Federal Register
Vol. 53, No. 102
Thursday, May 26, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 953 and 958

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish assessment rates under Marketing Orders 953 and 958 for the 1988–89 fiscal period established for each order. This action will enable the Southeastern Potato Committee and Idaho-Eastern Oregon Onion Committee to incur expenses that are reasonable and necessary to administer these marketing order programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1988 through May 31, 1989 (§ 953.245) and July 1, 1988 through June 30, 1989 (§ 958.232).

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 953 (7 CFR Part 953) and 958 (7 CFR Part 958), regulating the handling of potatoes grown in Southeastern States and onions grown in Idaho-Eastern Oregon. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs of handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 15851, May 4, 1988). That document contained a proposal to add §§ 953.245 and 958.232 to establish expenses and assessment rates for the Southeastern Potato Committee and the Idaho-Eastern Oregon Onion Committee, respectively. That rule provided that interested persons could file comments through May 16, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 953 and 958

Marketing agreements and orders, Potatoes (Virginia, North Carolina) Onions (Idaho, Oregon).

For the reasons set forth in the preamble, §§ 953.245 and 958.232 are added as follows:

1. The authority citation for both 7 CFR Parts 953 and 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 953.245 and 958.232 are added to read as follows (these sections prescribe annual assessment rates and will not be published in the Code of Federal Regulations):

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

§ 953.245 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized and an assessment rate of $0.01 per hundredweight of potatoes is established for the fiscal period ending May 31, 1989. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

§ 958.232 Expenses and assessment rate.

Expenses of $1,038,500 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of assessable onions is established for the fiscal year period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 23, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–11919 Filed 5–25–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, California; Increase in Expenses for 1987–88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for the California Date Administrative Committee established under Marketing Order 987 for the 1987–88 fiscal year. The expenses will be increased from

$386,267 to $411,267. The increase is needed to cover the salary, and travel expenses of an executive director the committee plans to hire to manage its market promotion program.

EFFECTIVE DATES: October 1, 1987 through September 30, 1988 (§ 987.332).

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

A final rule establishing expenses in the amount of $386,267 for the California Date Administrative Committee for the fiscal period ending September 30, 1988, was published in the **Federal Register** on January 7, 1988 (53 FR 402). That action also fixed the assessment rate to be levied on date handlers during the 1987–88 fiscal period. At a meeting held on April 6, 1988, the California Date Administrative Committee voted unanimously to increase its budget of expenses from $386,267 to $411,267.

The increase is needed to cover the hiring, salary, and travel expenses of an executive director who will manage the California Date Administrative Committee's market promotion program. This person will direct the advertising agency, manage the promotion program, and make calls on the trade to stimulate buyer interest in package and product quality dates.

A proposed rule inviting comments on this increase was issued on April 25, 1988, and published in the **Federal Register** on April 29, 1988 (53 FR 15402). The comment period ended on May 9, 1988. No comments were received.

Adequate funds are available to cover the increased expenses for the California Date Administrative Committee. Hence, no change in the assessment rate is necessary because of the increase.

Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found that the increased expenses are reasonable, and that such expenses will tend to effectuate the declared policy of the Act.

Prompt approval of the budget increase is necessary because the committee needs to have authority to cover the additional expenses associated with hiring someone to manage its market promotion program, and it wants to hire this person as soon as possible. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 987

Marketing agreement and order, Dates, California.

For the reasons set forth in the preamble, § 987.332 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 987.332 is amended as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 987.332 [Amended]

Section 987.332 is amended by changing "$386,267" to "$411,267."

Dated: May 23, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–11918 Filed 5–25–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[T.D. 8165]

Excise Tax on Excess Distributions From Retirement Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on Thursday, December 10, 1987 (52 FR 46747). The rules relate to excess distributions from qualified plans, individual retirement plans, section 403(b) annuity contracts, custodial accounts, and retirement income accounts.

DATES: The regulations generally apply to calendar years beginning after December 31, 1986, except as otherwise specified in the Tax Reform Act of 1986.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, 202–568–3715 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections amend the Pension Excise Tax Regulations (26 CFR Part 54) to provide temporary rules under section 4981A of the Internal Revenue Code of 1986. The regulations reflect the addition of section 4981A to the Code by section 1133 of the Tax Reform Act of 1986.

Need For Corrections

As published, Treasury Decision 8165 contains a number of typographical errors that, if not corrected, could cause confusion to taxpayers and practitioners.

List of Subjects in 26 CFR Part 54

Excise taxes.

PART 54—[AMENDED]

Corrections of Publication

Accordingly, the publication of temporary regulations (T.D. 8165), which was the subject of FD 87–28401, is corrected by amending 26 CFR Part 54 as follows:

Par. 1. Under the heading "Supplementary Information", on page 46747, third column, printed line 42 from the top, the reference to "402(a)(4)" should be corrected to read: "403(a)(4)".

Par. 1a. The authority citation for Part 54 continues to read, in part:

Authority: 26 U.S.C. 7805. * * * Section 54.4981A–IT is also issued under 26 U.S.C. 4961.

§ 54.4981A–IT [Corrected]

Par. 2. § 54.4981A–IT, b–10: A., the reference to "Q&A a–5 through a–10" is revised to read: "Q&A b–5 through b–9".

Par. 3. § 54.4981A–1T, b–14: A., Example 1, the dollar figure that reads: "$562,000" should be corrected to read: "$562,500".

Par. 4. § 54.4981A–1T, Q&A b–14, Example 2, the language "is 482 months and on December 31, 1987, is 476 months." should be removed and the language "is 471 months and on December 31, 1987, is 488 months." should be added in its place.

Par. 5. In the same example, the number "42" should be corrected to read: "51".

Par. 6. In the same example, the number "56" should be revised to read: "88".

Par. 7. § 54.4981A–1T, Q&A c–1 (d) *Examples.*, Example (4)(c), the language "IRA X" should be corrected to read" "IRA Y".

Par. 8. In the same example, the parenthetical language "($1,000 minus $925,000)" should be revised to read: "($1,000,000 minus $925,000)".

Par. 9. In the same Q&A, Example (5)(b), the parenthetical "(15 percent of $111,000)." should be changed to read: "(15 percent of $111,111)."

Par. 10. § 54.4981A–1T, Q&A c–4(b), Example (1), the language "72 (t) and 4981A is $18,500" should be revised to read: "72(t) and 4981A is $22,500".

James J. McGovern,

Director, Employee Benefits and Exempt Organizations Division.

[FR Doc. 88–11612 Filed 5–25–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–88–04]

Special Local Regulations; International Bay City River Roar-Saginaw River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Bay City River Roar to be held on the Saginaw River. This event will be held on 5, 6 and 7 August 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 5 August 1988 and terminate on 7 August 1988.

FOR FURTHER INFORMATION CONTACT: CWO Patrick M. Farrell, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 02 May, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are CWO Patrick M. Farrell, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Bay City River Roar will be conducted on the Seginaw River on 5, 6 and 7 August 1988. This event will have an estimated 70 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Saginaw River, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0904 to read as follows:

§ 100.35–0904 International Bay City River Roar—Saginaw River

(a) *Regulated Area.* That portion of the Saginaw River from Liberty Bridge on the north to Vets Bridge on the South.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 9:30 a.m. (local time) until 4:00 p.m. on 5 August 1988, from 9:30 a.m. to 4:30 p.m. on 6 August 1988 and from 8:30 a.m. to 5:30 p.m. on 7 August 1988.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) Effective Dates: These regulations will become effective on 5 August 1988 and terminate on 7 August 1988.

Dated: May 17, 1988.

A.M. Danielsen,

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 88–11867 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–88–27]

Special Local Regulations for Night in Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.504.

SUMMARY: This notice implements 33 CFR 100.504 for the Night in Venice Boat Parade, an annual event held by the City of Ocean City, New Jersey, that will be held on July 16, 1988. These special local regulations are needed to provide for the safety of participants and spectators on navigable waters during this event. The

effect will be to restrict general navigation in the regulated area for the safety of participants in the parade.

EFFECTIVE DATES: The regulations in 33 CFR 100.504 are effective from 6:00 p.m. to Midnight, on July 16, 1988.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

The City of Ocean City, New Jersey, has submitted an application to hold the Night in Venice Boat Parade on July 16, 1988. The parade will start at Ship Channel Buoy C, cruise down the channel through Great Egg Waterway to Daybeacon 28 and return to Great Egg Waterway Buoy 2. Since this event is the type of event contemplated by these regulations and the safety of the participants would be enhanced by the implementation of the special local regulations for the regulated area.

The event is sponsored by the Ocean City, New Jersey, and will consist of approximately 150 vessels ranging from 70 feet or less. Commercial vessels will be permitted to transit the regulated area as the parade progresses, and thus commercial traffic should not be severely disrupted at any given time.

Dated: May 13, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–11870 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD08 88–11]

Special Local Regulations; Blessing of the Fleet; Pascagoula River—Between Pascagoula River Day Beacon Number 7 and the Seaboard System Railroad (L&N) Bridge

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for a Blessing of the Fleet to be held in the Pascagoula River Between the Pascagoula River Day Beacon number 7 and the Seaboard System Railroad (L&N) Bridge. This event will be held on 29 May 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective from 12:00 PM until 5:00 PM, 29 May 1988.

FOR FURTHER INFORMATION CONTACT: LTJG Steven D. Poulin; (205) 690–2231.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until 25 April 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event nor to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG Steven D. Poulin, Project Officer, Coast Guard Group Mobile, AL, and LCDR J. J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulations

The event requiring this regulation is a boat parade sponsored by Our Lady of Victories Catholic Church in Pascagoula, MS. A boat parade consisting of approximately 150 boats will be transiting the Pascagoula River between Day Beacon number 7 and the Seaboard System Railroad (L&N) Bridge. Commanding Officer, Coast Guard Group Mobile, Al., is establishing this Marine Event Regulation because of the need to regulate vessel traffic in this area during the event.

List of Subjects in 44 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 110.35–8 11 is added to read as follows:

§ 100.35–8 11 Pascagoula River.

(a) *Regulated Area.* Pascagoula River between Day Beacon number 7 and the Seaboard System Railroad (L&N) Bridge.

(b) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants of official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No vessel shall enter the regulated area unless cleared for such entry by or through an official regatta patrol vessel.

(2) All northbound traffic shall be restricted to transiting the westside of the centerline of the Pascagoula River and all southbound traffic shall transit along the eastside. The speed of all vessels in the area shall be restricted to a non-wake producing speed or 7 knots, whichever is lower.

(3) No spectators or participants shall block, loiter in, or impede the through transit of participants of official regatta patrol vessels in the regulated area during the effective date.

(4) Between the hours of 1:00 PM and 5:00 PM the following activities are strictly prohibited:

(i) Swimming.

(ii) Anchoring, except those vessels designated and authorized by the Coast Guard Patrol Commander.

(5) During the course of the event, participants and spectators shall not raise sails or otherwise impede the vision of any vessel operator. Any fishing vessels participating in the event shall rig in any gear extending from the sides of the vessel. Any vessel in tow shall be excluded from the regulated area.

(6) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a participant or spectator vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a detention, citation, or arrest for failure to comply.

(7) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time if it is deemed necessary for the protection of life and property. The Patrol Commander may be reached on VHF Channel 16 (156.8MHz) when required, by the call sign "PATCOM".

(c) *Effective Dates.* These regulations are effective from 12:00 PM until 5:00 PM, 29 May 1988.

Dated: May 12, 1988.

A.E. Henn,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 88–11869 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD1 88–026]

Special Local Regulations; Freeport Grand Prix, Long Beach, NY

AGENCY: Coast Guard; DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Freeport Grand Prix high performance powerboat race being sponsored by South Bay Performance Association. The regulations will be in effect on June 11, 1988 and will place operating restrictions on watercraft operating on the Atlantic coastal waters south of Long Beach, Long Island, New York.

EFFECTIVE DATE: These regulations are effective from 11:00 am to 3:00 pm on June 11, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223–8311.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Negotiations between the Coast Guard and the sponsor created a delay and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. The regulations will be published in the First Coast Guard District Local Notice to Mariners.

Drafting Information

The drafters of these regulations are LT L. Brown, project officer, First Coast Guard District Boating Affairs Branch and CDR M. A. Leone, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Freeport Grand Prix is a high performance, Indy 500 type, powerboat race around an eight (8) mile rectangular course situated approximately one and one quarter (1¼) miles south of Long Beach, Long Island, New York. There will be up to 50 vessels participating. The sponsoring organization will provide eight to 12 patrol boats along with turning and finishing mark boats. The purpose of this regulation is to close a portion of the Atlantic coastal waters south of Long Beach, Long Island, New York to all traffic except law enforcement vessels; regatta participants; and official regatta patrol vessels. No vessels other than race participants and patrol craft will be allowed to enter the regulated area which is described below. The regulated area and immediately adjacent waters will be patrolled by several Coast Guard and Coast Guard Auxiliary vessels which will be assisted by local law enforcement authorities and the sponsor provided patrol boats.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–01–26 is added to read as follows:

§ 100.35–01–26 Freeport Grand Prix, Long Beach, New York.

(a) Regulated Area. The regulated area is a trapezoidal area on the coastal Atlantic waters of Long Island to the south of Long Beach, New York. The racing area is one and one quarter (1¼) miles south of Long Beach and three and one quarter (3¼) miles north of the northern boundary of Ambrose Channel. The regulated area will be specifically bounded as follows:

(1) Northeast Corner: approximately one and one quarter (1¼) miles southwest of Jones Inlet breakwater at coordinates 40–33–42 North; 073–35–42 West

(2) Southeast Corner: southwest of Jones Inlet Approach Buoy (R "2"; Light List Number 685) at coordinates 40–31–45 North; 073–36–19 West

(3) Southwest Corner: east of East Rockaway Approach Buoy (R "4"; Light List Number 690) at coordinates 40–31–31 North; 073–42–21 West

(4) Northwest Corner: 40–33–30 North; 073–40–57 West

(b) Special Local Regulations. Vessels not participating in, or operating as a safety/rescue patrol shall:

(1) Not operate within the regulated area

(2) Immediately follow any specific instructions given by Coast Guard patrol craft.

(3) Exercise extreme caution when operating near the regulated area.

(c) Effective Dates. These regulations become effective at 11:00 am on June 11, 1988 and terminate at 3:00 pm on June 11, 1988.

Dated: May 17, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88–11871 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 140 and 143

[CGD 84–098a]

Self-Inspection of Fixed OCS Facilities

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the inspection of fixed facilities on the Outer Continental Shelf (OCS) to require the owner or operator to conduct the annual scheduled inspection rather than the Coast Guard. The owner or operator is required to report the results of that inspection to the Coast Guard. This amendment is necessary in order to provide for statutorily mandated inspection of all fixed OCS facilities. This program will improve safety by providing at least one inspection annually of all fixed OCS facilities and by allowing the Coast Guard to focus the efforts of its available marine inspectors on inspections of manned fixed facilities, particularly those which have a poor safety record. The Coast Guard will perform additional inspections of other fixed OCS facilities sufficient to provide oversight of the self-inspection program.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: LCDR Anthony Dupree, Jr., Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–2307.

SUPPLEMENTARY INFORMATION: On March 7, 1985, the Coast Guard published an Advanced Notice of Proposed Rulemaking (ANPRM) (50 FR 9290) entitled "Revision of the Regulations on Outer Continental Shelf Activities". One of several subjects discussed in the ANPRM concerned inspection of fixed OCS facilities. On July 7, 1987, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (52 FR 25392) entitled "Self-Inspection of Fixed OCS Facilities" (CGD 84–098a). That NPRM proposed regulations that

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would require the owner or operator of fixed OCS facilities to conduct annual inspections of their facilities and report the results of those inspections to the Coast Guard. The comment period for the NPRM closed on August 27, 1987. Fifteen comment letters were received. A public hearing was not requested and was not held.

Drafting Information

The principal persons involved in drafting this Final Rule were LCDR Anthony Dupree, Jr., Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Objectives

The principal objective of this Final Rule is to produce an overall improvement in safety. The Coast Guard, by allowing industry to perform the mandated annual inspections, will be able to focus its resources on those fixed OCS facilities that are manned, have a poor safety record, or are the subject of worker complaints. Further, the Coast Guard will be conducting oversight inspections (spot-checks) of randomly selected manned and unmanned facilities. The number of facilities inspected by the Coast Guard and the number of Coast Guard inspections per facility will be adjusted from year to year to assure that safety is not jeopardized and that the effectiveness of the self-inspection program is not compromised.

Additionally, inspection reports and casualty reports will be reviewed for inconsistencies and analyzed by the Coast Guard. This will allow the Coast Guard to better evaluate the safety performance of individual operators and will provide a mechanism whereby industry trends may be identified or predicted.

Discussion of Comments and Changes to the Regulations

A total of fifteen letters were received on the NPRM. Fourteen letters generally supported the proposed regulations and one opposed them. The comments and the resulting changes are discussed below.

1. One comment letter stated that self-inspections tend to be self serving and lack objectivity and that only fully qualified Coast Guard approved inspectors who are independent of the facility's owners and operators should be allowed to conduct the inspections. Such a program was considered by the Coast Guard but was rejected because the resources required to develop and administer an approval program would reduce the Coast Guard's ability to focus its attention on specific problem areas. The use of Coast Guard approved inspectors would not reduce the need for Coast Guard oversight inspections. Furthermore, limiting inspectors to those who are independent of the owner/operator would unnecessarily increase costs to owners/operators who prefer to use their own qualified employees.

2. One comment suggested that the self-inspection concept be extended to offshore supply vessels (OSVs) and another suggested that it be extended to mobile offshore drilling units (MODUs). The MODU inspection requirements (Subchapter I–A of 46 CFR Chapter I) and the OSV inspection requirements (Subchapter I of 46 CFR Chapter I) are based on statutes which generally would not permit the regulatory extension of self-inspection to these vessels.

3. One comment stated that "new facility" as used in §§ 140.101 and 140.103 should be defined. The Coast Guard agrees with this suggestion and has modified §§ 140.101 and 140.103 accordingly.

4. One comment questioned whether an unannounced inspection by the Coast Guard would restart the 12 month cycle prescribed in § 140.103(a). Under § 140.103(b), only the initial Coast Guard inspection of a new facility can be counted as a required annual inspection.

5. One comment suggested that § 140.103(a) be changed to permit one inspection per calendar year with the time between inspections not to exceed 18 months. The Coast Guard interprets 43 U.S.C. 1348 as requiring one scheduled on site inspection every 12 months. Therefore, this section remains unchanged in the Final Rule.

6. One comment stated that § 140.103(c) is not clear as to whether inspections by a third party contractor employed by the owner or operator are permitted. Section 140.103(c) has been reworded to avoid implications that the inspection must be performed only by employees of the owner or operator.

7. Four comments stated that the 10 day requirement in the proposed § 140.103(c) for submitting the Form CG–5432 would not allow sufficient time for the form to clear company channels. Therefore, "10 days" has been changed to "30 days."

8. Two comments suggested that Form CG–5432 be retained by the company rather than forwarded to the Coast Guard, as required in § 140.103(c). The Coast Guard needs the information contained on the forms in order to evaluate the effectiveness of the program and to verify compliance with 33 CFR Part 140. The inspection forms along with casualty reports, will be used to better evaluate the safety performance of individual operators. Therefore, this suggestion was not adopted.

9. Five comments suggested that § 140.103(d) be revised to allow facility owners/operators, rather than the Officer in Charge, Marine Inspection, (OCMI), to develop the annual inspection schedule for their existing facilities. The comments stated that this will allow the owner to carry out the inspections in a more effective and cost efficient manner. The Coast Guard agrees and has revised the paragraph to allow owners/operators to develop their own inspection schedules. However, because the OCMI is now excluded from the process, a provision has been added to require owners/operators to submit a list of the proposed inspection dates for each of their facilities to the OCMI. This information is needed to assist the Coast Guard in timing unannounced inspections and in allocating resources to process inspection forms.

10. Two comments objected to § 140.105(a) which requires the mutilation of defective or unrepairable lifesaving or firefighting equipment. The comments stated that company or third party inspectors may not have the expertise to determine if the equipment is repairable and that, in some cases, mutilation may be difficult and hazardous. The old regulations required that defective or unrepairable lifesaving and firefighting equipment be destroyed or rendered unusable in the presence of the inspector making the determination. The Coast Guard continues to believe that this is necessary in order to prevent the inadvertent or intentional use of defective lifesaving or firefighting equipment by subsequent users, whether on or off the facility. Therefore, the requirement remains unchanged in the final rule. To assist inspectors in determining the acceptability of firefighting and lifesaving equipment, the Coast Guard publishes a series of circulars which are identified in paragraph five of "Discussion of Comments and Changes to Form CG–5432" in this preamble.

11. Five comments suggested that the regulations provide definite timeframes for correction of the deficiencies under § 140.105. One of the comments also suggested that, in order to reduce the flow of paperwork and to provide a more efficient method of establishing timeframes for correction of deficiencies, § 140.105(c) be revised to permit the owner or operator to specify on Form CG–5432 when the outstanding deficiencies are to be corrected, subject to approval by the Coast Guard. The Coast Guard believes that it is not necessary to provide a timeframe for the correction of deficiencies in the regulations. With the expansion of the reporting period to 30 days, the vast majority of Forms CG–5432 will be submitted with no outstanding deficiencies. The owners/operators should be able to correct most deficiencies found during the inspections within the 30 day period allowed for submission of the report to the OCMI. In some instances, an acceptable time for correction of the deficiency may be less than the time it takes for the Coast Guard to process the proposed deficiency correction letter to the owner or operator. Therefore, the Final Rule now requires the owners or operators, in instances where lifesaving or firefighting equipment deficiencies cannot be corrected within the 30 day reporting period, to contact the OCMI for a determination of an appropriate timeframe for repair and to indicate the same on Form CG–5432. This contact must be made prior to submitting Form CG–5432 and in time to comply with the 30 day inspection reporting requirement contained in § 140.103(c).

Discussion of Comments and Changes to Form CG–5432

The Fixed OCS Facility Inspection Report, Form CG–5432, as published in the NPRM, has not been changed. Certain minor changes to the instructions printed with the form were made in response to comments requesting further clarification. A copy of the form with instructions will be available from OCMIs. Comments and changes are discussed below.

1. One comment stated that it could be cumbersome to identify all partners who are owners of a lease on Form CG–5432. The comment suggested that only the operating partner be required to be identified on the form. The Coast Guard agrees that in some instances the list of owners could be quite lengthy. Therefore, the instructions for the form have been changed to permit the listing of either the owners or the operating partner.

2. Two comments questioned the need to include the number of fire extinguishers in item seven of Form CG–5432 and suggested that the instructions for item seven be clarified with respect to the type of information necessary. In order to ascertain whether the amount of equipment is in compliance with the regulations, the Coast Guard needs to know the number of extinguishers on board the facility. The instructions for item seven have been revised to clarify what information is needed about the facility's portable, semi-portable, and fixed firefighting equipment.

3. One comment stated that the total number of life preservers, workvests, and ringbuoys called for on Form CG–5432 is immaterial and suggested that only the minimum number required should be reported. Under 33 CFR 146.15, all emergency equipment on a facility is required to be maintained in good condition at all times. The Coast Guard believes that an inspection of all the lifesaving equipment on board the facility is an important part of ensuring compliance with this requirement. The total number of life preservers, workvests, and ring buoys on board the facility must be included on the form in order for the Coast Guard to determine what equipment is on the facility and whether the emergency equipment complies with 33 CFR 146.15. Therefore, this suggestion was not adopted.

4. Two comments suggested that Form CG–5432 be altered to provide for the name, title, and phone number of the individual performing the inspection. For the purposes of Coast Guard recordkeeping, the identity of the individual making the inspection is not necessary and will not be required to be included on the form. However, owners or operators may enter the identity of the inspector under the comment section of the form if they so desire.

5. Two comments suggested that the Coast Guard should develop a short inspection guideline booklet to include the pertinent provisions of Parts 141, 142, 143, 144, and 146. One of the comments stated that it is not reasonable to expect the inspector to have these references available. One comment stated that Form CG–5432 is not sufficiently detailed to serve as either a guide or a checklist for the actual inspection. The Coast Guard does not believe it is necessary to provide a separate guideline booklet for the inspection of fixed OCS facilities. Parts 141 through 146 are all contained in the same volume of the Code of Federal Regulations which is readily available from the Government Printing Office (GPO) for a small cost. All the items required to be checked for a Coast Guard inspection are referenced on Form CG–5432. Inspection guidance in the form of Navigation and Vessel Inspection Circulars (NVCs) on the inspection of lifesaving equipment (NVC 2–83, 5–77, 1–80, 4–80, 9–80, 4–85, 3–86) and firefighting equipment (NCV 6–70, 7–70, 8–73, 13–86) are readily available from the Coast Guard's Marine Safety Center, 2100 Second Street SW., Washington, DC 20593–0001 for a small cost. For the other items referenced on Form CG–5432, the cited regulations contain sufficient information for carrying out the inspection. Therefore, this suggestion was not adopted.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, (202) 267–2307, from 8 a.m. to 3 p.m. Copies may also be obtained by contacting that office. The economic impact of the final rule will be minimal for many fixed OCS facilities because virtually all owners and operators already conduct some degree of self-inspection on their facilities. However, some owners and operators lack in-house expertise to properly conduct a self-inspection and will have to contract with a third party to conduct all or part of the self-inspection program. We estimate that the self-inspection program will cost the industry an additional $196,000 annually for personnel.

The primary means of transportation is expected to be by helicopter, although available vessels may be used for transportation to unmanned facilities in close proximity to other facilities equipped with helicopter decks. Transporation to and from facilities for inspections is expected to be provided by existing transportation 70% of the time. Transportation for the remaining 30% of the inspections is expected to be provided by dedicated helicopters resulting in an additional annual transportation cost of approximately $295,000.

It will take an annual expenditure of approximately 980 man-days to conduct the inspections of 3,074 facilities and thereby collect the information necessary to complete Form CG–5432. Additionally, we estimate that it would take between 15 and 30 minutes to complete Form CG–5432. The total information collection burden is estimated to be 9,400 man-hours. The dollar cost to collect the information is included in the estimated inspection costs. The maximum additional cost to complete the form is estimated to be $39,000 annually.

The total annual economic burden of the self-inspection program is estimated to be the total of additional transportation costs, additional personnel costs, and costs to complete the Form CG–5432. This total is $530,000.

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For the Coast Guard to conduct scheduled inspections of all OCS facilities, the annual cost would be approximately $760,000. This is in addition to inspections of MODU's, inspections in response to worker complaints, and unannounced inspections conducted as oversight of the OCS safety program, and reflects the operational economies achieved by scheduling multiple inspections wherever practicable. Under the Final Rule, the Coast Guard will not require the $760,000 to conduct scheduled inspections but will need to increase unannounced inspections to ensure that the self-inspection program is being carried out properly. It is estimated that $190,000 would be required annually to achieve approximately 25% inspections. The degree of oversight may be reduced after experience is gained with the self-inspection program.

The net result of the final rule will be to shift a function that would require the expenditure by the government of approximately $760,000 to the industry, at an estimated cost to industry of $530,000. Increased oversight inspections to ensure program reliability will require estimated annual government expenditures of $190,000 initially, but may be reduced in the future.

Specific comments on Coast Guard cost estimates were solicited in the NPRM from all interested and knowledgeable parties. One comment letter on the cost of the program was received. The comment stated that the Coast Guard cost figures had underestimated the average inspection time per facility. The comment also stated that the Coast Guard estimated average cost may be too low. The comment estimated the total cost to the industry to be in excess of $4.5 million, rather than the $530,000 estimated by the Coast Guard. The $4.5 million estimate was based on the incorrect assumption that the Coast Guard is responsible for inspecting the entire structure. Under the 1980 Memorandum of Understanding between the Minerals Management Service (MMS) and the Coast Guard, the Coast Guard is responsible for lifesaving, firefighting, and occupational safety and health items; MMS is responsible for all items relating to drilling, production, workover, and well control including the inspection of the structure itself. The failure to take into account this division of responsibility is the principal reason for the discrepancy between the cost estimates. However, the Coast Guard also reexamined its cost estimates for inspections required by this rulemaking and concluded that the Coast Guard estimates are reasonable.

The majority of the owners or operators are expected to combine the required annual inspection with other inspections, maintenance visits, or operational tests already being performed by the owner/operator. Further, although some platforms may require several hours to inspect, the majority of the platforms located on the U.S. OCS are unmanned and have minimal equipment that would require inspection under this rule. These rules would not affect State and local governments and would have a negligible effect on costs to consumers.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard considered whether the Final Rule is likely to have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These regulations will affect owners and operators of fixed OCS facilities. Because of the extremely high costs of these facilities, their owners and operators tend to be major corporations or subsidiaries of major corporations.

For the above reasons, the Coast Guard certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Comments were solicited in the NPRM from those who felt that this rule would have a significant impact on their small business. No comments on this issue were received.

Paperwork Reduction Act

This rulemaking contains information collection requirements in §§ 140.103 and 140.105. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements have been approved and have been assigned OMB No. 2115–0568.

Categorical Exclusion Statement has been prepared and is on file in the rulemaking docket.

List of Subjects

33 CFR Part 140

Administrative practice and procedure, Authority delegation, Continental shelf, Incorporation by reference, Law enforcement, Marine safety, Reporting and recordkeeping.

33 CFR Part 143

Continental shelf, Incorporation by reference, Marine safety.

In consideration of the foregoing, Parts 140 and 143 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 140—GENERAL

1. The authority citation for Part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

2. In § 140.101, the section heading and paragraph (b) are revised and new paragraphs (d) and (e) are added to read as follows:

§ 140.101 Inspection by Coast Guard marine inspectors.

* * * * *

(b) Under the direction of the Officer in Charge, Marine Inspection, marine inspectors may inspect units engaged in OCS activities to determine whether the requirements of this subchapter are met. These inspections may be conducted with or without advance notice at any time deemed necessary by the Officer in Charge, Marine Inspection.

* * * * *

(d) Coast Guard inspections of foreign units recognize valid international certificates accepted by the United States, including Safety of Life at Sea (SOLAS), Loadline, and Mobile Offshore Drilling Unit (MODU) Code certificates for matters covered by the certificates, unless there are clear grounds for believing that the condition of the unit or its equipment does not correspond substantially with the particulars of the certificate.

(e) Coast Guard marine inspectors conduct an initial inspection of each fixed OCS facility installed after June 27, 1988, to determine whether the facility is in compliance with the requirements of this subchapter.

§ 140.102 [Removed]

3. By removing § 140.102, Foreign units.

4. By revising § 140.103 to read as follows:

§ 140.103 Annual inspection of fixed OCS facilities.

(a) The owner or operator of each fixed OCS facility shall ensure that the facility is inspected, at intervals not to exceed 12 months, to determine whether the facility is in compliance with the requirements of this subchapter.

(b) Except for initial inspections under § 140.101(e), inspections by Coast Guard Marine inspectors do not meet the requirements for an inspection under paragraph (a) of this section.

(c) Except for initial inspections under § 140.101(e), the results of the inspection must be recorded on Form CG–5432. Forms CG–5432 may be obtained from the Officer in Charge, Marine Inspection. The owner or operator shall submit the completed Form CG–5432 to the Officer in Charge, Marine Inspection, within 30 days after completion of the inspection.

(d) For facilities installed on the OCS after June 27, 1988, the 12 month period under paragraph (a) of this section begins with the initial inspection under § 140.101(e). For facilities on the OCS on June 27, 1988, the 12 month period begins upon completion of the first inspection under paragraph (a) of this section, which inspection must be completed within 12 months after June 27, 1988. Before September 26, 1988, the owner or operator shall notify the Officer in Charge, Marine Inspection, of the proposed inspection date for each facility.

5. By revising § 140.105 to read as follows:

§ 140.105 Correction of deficiencies and hazards.

(a) Lifesaving and fire fighting equipment which is found defective during an inspection and which, in the opinion of the inspector, cannot be satisfactorily repaired must be so mutilated in the presence of the inspector that it cannot be used for the purpose for which it was originally intended. Lifesaving and fire fighting equipment subsequently determined to be unrepairable must be similarly mutilated in the presence of the person making that determination.

(b) Any deficiency or hazard discovered during an inspection by a Coast Guard marine inspector is reported to the unit's owner or operator, who shall have the deficiency or hazard corrected or eliminated as soon as practicable and within the period of time specified by the Coast Guard marine inspector.

(c) Deficiencies and hazards discovered during an inspection of a fixed OCS facility under § 140.103(a) must be corrected or eliminated, if practicable, before the Form CG–5432 is submitted to the Officer in Charge, Marine Inspection (OCMI). Deficiencies and hazards that are not corrected or eliminated by the time the Form is submitted must be indicated on the Form as "outstanding." For lifesaving and firefighting equipment deficiencies that cannot be corrected before the submission of Form CG–5432, the owner or operator shall contact the OCMI to request a time period for repair of the item. The owner or operator shall include a description of the deficiency and the time period specified by the OCMI for correction of the deficiency in the comment section of Form CG–5432. Upon receipt of a Form CG–5432 indicating outstanding deficiencies or hazards, the OCMI informs, by letter, the owner or operator of the fixed OCS facility of the deficiencies or hazards and the time period specified to correct or eliminate the deficiencies or hazards.

(d) Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection, initiates appropriate enforcement measures.

PART 143—DESIGN AND EQUIPMENT

6. The authority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); 49 CFR 1.46.

7. By revising § 143.210 to read as follows:

§ 143.210 Letter of compliance.

(a) The Officer in Charge, Marine Inspection, determines whether a mobile offshore drilling unit which does not hold a valid Coast Guard Certificate of Inspection meets the requirements of §§ 143.205 or 143.207 relating to design and equipment standards and issues a letter of compliance for each unit which meets the requirements. Inspection of the unit may be required as part of this determination.

(b) A letter of compliance issued under paragraph (a) of this section is valid for one year or until the MODU departs the OCS for foreign operations, whichever comes first.

Dated: March 2, 1988.

J.C. Irwin,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 88–11668 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 88–11–12]

Security Zone Regulations; Ports of Los Angeles/Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone within 100 yards of the USS FLORIDA while underway or moored within the ports of Los Angeles and Long Beach. This security zone is required to safeguard the vessel from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 19 May 1988. It terminates on 23 May 1988.

FOR FURTHER INFORMATION CONTACT: LT R. M. Miles at (213) 499–5560.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessel.

Drafting Information

The drafters of this regulation are LT R. M. Miles, project officer for the Captain of the Port, and LT G. R. Wheatly, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin on 19 May 1988. This security zone is necessary to ensure the security of the U.S.S. FLORIDA while underway or moored within the ports of Los Angeles and Long Beach. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1177 is added to read as follows:

§ 165.T1177 Security Zone: Ports of Los Angeles/Long Beach, CA.

(a) *Location.* The following area is a security zone: A 100 yard radius around the U.S.S. FLORIDA while underway or moored within the ports of Los Angeles and Long Beach.

(b) *Effective Date.* This regulation becomes effective 19 May 1988. It terminates at 23 May 1988.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, no one may enter, remain in, or transit the security zone without the permission of the Captain of the Port.

Dated: May 18, 1988.

R. A. Janecek,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 88-11366 Filed 5-25-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202-233-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending § 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan Programs—housing and community development, Manufactured homes, Veterans.

Approved: May 20, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, *Loan Guaranty*, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(1) Effective May 23, 1988, 13 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective May 23, 1988, 12½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective May 23, 1988, 12½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

(Authority: 38 U.S.C. 1819(f))

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¼ per centum per annum, effective May 23, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¾ per centum per annum, effective May 23, 1988, the interest rate of any graduated payment mortgage loan guaranteed or issued wholly or in part on or after such date may not exceed 10¾ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective May 23, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10½ per centum per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12 percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 88-11771 Filed 5-25-88; 8:45 am]

BILLING CODE 6320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3384-5]

Prevention of Significant Deterioration; Delegation of Authority to State Agency; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The United States Environmental Protection Agency (USEPA) has delegated full authority to the State of Wisconsin to implement and enforce the Federal Prevention of Significant Deterioration (PSD) Program. Wisconsin was granted a partial delegation on August 19, 1980. USEPA has determined that the technical, administrative, and enforcement elements of the State air program are adequate to implement a fully delegated PSD program.

DATE: The effective date of the full delegation of authority to the State of Wisconsin is November 13, 1987.

ADDRESSES: Copies of the delegation of authority agreement and background information are available for inspection at the following addresses. (It is recommended that you telephone Maggie Greene, at (312) 886-6029, before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster Street, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On October 28, 1986, the Secretary of the Wisconsin Department of Natural Resources (WDNR) requested full delegation of authority for the Prevention of Significant Deterioration (PSD) program. A partial delegation, published in the January 29, 1981, **Federal Register** at 46 FR 9585, was made to Wisconsin effective on August 19, 1980. A full delegation of authority to implement and enforce the PSD program became effective on November 13, 1987, in accordance with the terms and conditions of the following letter:

November 4, 1987.

Certified Mail
Return Receipt Requested

Carroll D. Besadny,
Secretary, Wisconsin Department of Natural Resources, Box 7921, Madison, Wisconsin 53707

Dear Mr. Besadny: In response to your October 28, 1986, request and your August 18, 1987, commitments related to receiving a full delegation of authority to implement the Prevention of Significant Deterioration (PSD) Program, we have prepared this amended agreement which outlines the terms and conditions of such a delegation to Wisconsin. Pursuant to your request, commitments, and subsequent discussions with Wisconsin Department of Natural Resources (WDNR) staff, Region V staff has evaluated the permitting requirements in Chapter NR 405 Wisconsin Administrative Code and the practices, procedures, and authority used by staff of the WDNR for reviewing construction permit applications. The United States Environmental Protection Agency (USEPA) has determined that the technical, administrative, and enforcement elements of the State air program are adequate to implement a fully delegated PSD program.

Therefore, in accordance with 40 CFR 52.21(u), the USEPA hereby delegates to the State of Wisconsin authority and responsibility to implement the PSD

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regulations found in 40 CFR 52.21, as they may be amended and in accordance with the permit review requirements in 40 CFR 124 Subparts A and C. This delegation is also subject to all USEPA policy guidance and determinations on 40 CFR 52.21 and other applicable regulations.

The delegation is based upon the following terms and conditions:

1. Authority is delegated to the State of Wisconsin for all sources located in the State subject to review for PSD. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act. With respect to PSD permits issued by the USEPA, this delegation does not include authority to implement the technical, administrative, and enforcement provisions of the PSD regulations, nor does it include authority to make permit amendments. This delegation does not include any authority found in 40 CFR 52.21(g) with respect to changing area classifications.

2. The primary responsibility for implementation and enforcement of the PSD regulations in the State of Wisconsin will rest with the WDNR.

a. The WDNR will enforce the provisions and regulations that pertain to the PSD program, except in those cases where the rules or policy of the State are more stringent; in which case, the State may elect to implement the more stringent requirement.

b. WDNR will follow the new source review guidance which has been provided to the State, including the guidance in the October 1980 *PSD Workshop Manual*, as well as all future guidance representing national policy.

c. If the State enforces the delegated provisions in a manner inconsistent with the terms and conditions of this delegation or the Clean Air Act, USEPA may exercise its enforcement authority contained in the Clean Air Act with respect to sources within the State of Wisconsin subject to the PSD provisions.

d. This delegation may be amended by the Regional Administrator at any time to assure the implementation of national policy or regulation changes.

3. If the Regional Administrator determines that the State is not implementing or enforcing the PSD program or has not implemented the requirements or guidance with respect to a specific permit in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation may be revoked in whole or in part, after consultation with the WDNR. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the State. Nothing in this paragraph shall preclude USEPA from exercising its enforcement authority, as provided in paragraph 2.c., above.

4. The permit appeal provisions in 40 CFR 124.19 shall apply to all appeals to the Administrator on permits issued by the WDNR under this delegation.

5. For purposes of implementing the Federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by WDNR is required to contain statements which indicate that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit is 30 days after the final decision to issue, modify, or revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The WDNR shall inform Region V in accordance with conditions 9.f. and 12 when there is a public comment requesting a change in a preliminary determination or in draft permit conditions. Failure by WDNR to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

6. Permits issued under this delegation are required to contain language stating that the PSD permit is issued after determining that the Federal PSD requirements have been satisfied.

7. The WDNR must allow for the provisions of 40 CFR 52.21(u)(4) to be met with regard to sources or modifications constructing in Class III areas.

8. Prior USEPA concurrence is to be obtained on any matter involving the interpretation of Sections 160–169 of the Clean Air Act, of 40 CFR 52.21, and of 40 CFR 124 to the extent that implementation, review, administration or enforcement of these Sections have not been covered by USEPA determinations or guidance sent to the WDNR.

9. The WDNR and USEPA will develop a communication system which accomplishes the following:

a. The USEPA will inform the WDNR of the compliance status at the time of this delegation of sources in the State of Wisconsin which have been issued a PSD permit by USEPA.

b. The WDNR will report to the USEPA the compliance status on a continuing basis of sources which have received a PSD permit from either WDNR or USEPA. The existing quarterly reporting system should be used.

c. The WDNR will: (1) Forward by certified mail to the USEPA before the public comment period a summary of the findings related to each PSD application and the justification for the WDNR preliminary determination, and (2) forward by certified mail to USEPA a copy of the PSD application immediately when an application has been determined to be complete. Should there be comments or concerns about the pending PSD permit, USEPA will communicate these comments and concerns to the WDNR, as soon as possible, before the closing of the public comment period. Failure by WDNR to comply with the terms of this paragraph shall render the subject permit to be invalid for Federal PSD purposes.

d. The WDNR will forward to USEPA copies of the final actions on PSD permit applications on the day of issuance, and notify a USEPA representative by telephone that the final action has been sent.

e. A copy of all regulation applicability determinations shall be forwarded to Region V by certified mail within 15 days of the end of each quarter.

f. A copy of all public comments, except for USEPA comments, with respect to a preliminary determination or draft permit, conditions shall be forwarded to Region V upon the issuance of a permit with attention called to any request to change a draft preliminary determination or draft permit conditions.

10. The State will at no time grant any waivers to the permit requirements, approve any compliance schedule, or issue any administrative order which violates any presently effective PSD provision.

11. With respect to PSD, this delegation supersedes the previously delegated authority contained in the August 19, 1980, letter from the Regional Administrator.

12. In the event that the State is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the WDNR will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude USEPA from exercising its enforcement authority.

If the State of Wisconsin agrees to implement the PSD program in accordance with the terms and conditions of this delegation, please sign in the space provided below and return this document to me.

A notice announcing this delegation will be published in the **Federal Register** in the near future.

Sincerely yours,
Valdas V. Adamkus,
Regional Administrator.

On behalf of the State of Wisconsin and the Wisconsin Department of Natural Resources, I accept the delegation of Federal Prevention of Significant Deterioration authority, pursuant to the terms and conditions of this delegation and the requirements of the Clean Air Act.

Dated: November 13, 1987.
Carroll D. Besadny,
Secretary, Wisconsin Department of Natural Resources.

The mailing address for material related to PSD permits remains the same as published in 40 CFR 52.2581(c).

Under section 307(b)(1) of the Clean Air Act, judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within 60 days of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought to enforce the permit requirements. For the above actions, the appropriate court is the U.S. Court of Appeals for the Seventh Circuit. A petition for review must be filed with that court on or before July 25, 1988.

Authority: 42 U.S.C. 7401–7642.

Dated: May 13, 1988.
Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 88-11832 Filed 5-25-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 52, 60, and 61

[FRL-3384-8]

Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants; Indiana, Minnesota and Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is hereby amending 40 CFR Parts 52, 60 and 61 to reflect changes in the list of mailing addresses for Prevention of Significant Deterioration (PSD) permit applications, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) documents in the States of Indiana, Minnesota, and Ohio.

DATE: This rule is effective on May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6029.

SUPPLEMENTARY INFORMATION: At the time of USEPA's delegation of PSD, NSPS, and NESHAP authority to the States of Indiana, Minnesota, and Ohio, USEPA codified the mailing addresses for the appropriate agencies in 40 CFR Parts 52, 60, and 61, respectively. Subsequent to USEPA's codifications, these addresses have changed. USEPA today is updating the mailing addresses for PSD applications in the States of Indiana and Minnesota. It is also updating the mailing addresses for NSPS and NESHAP documents for the States of Indiana, Minnesota, and Ohio. Because EPA considers today's action noncontroversial, routine, and procedural in nature, we are approving it today without prior proposal.

List of Subjects in 40 CFR Parts 52, 60, and 61

Air pollution control, Air toxics, Intergovernmental relations, Prevention of significant deterioration.

Dated: May 13, 1988.
Frank M. Covington,
Acting Regional Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Parts 52, 60 and 61 of the Code of Federal Regulations are amended as set forth below.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATIONS PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.793 is amended by revising paragraph (c) to read as follows:

§ 52.793 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of Indiana shall be submitted to the Commissioner, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

3. Section 52.1234 is amended by revising paragraph (c) to read as follows:

§ 52.1234 Significant deterioration of air quality.

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of Minnesota shall be submitted to the Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

4. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

5. Section 60.4 is amended by revising paragraphs (b)(P), (b)(Y), and (b)(KK) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(P) State of Indiana, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

* * * * *

(Y) Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

* * * * *

(KK) State of Ohio—

(i) Medina, Summit and Portage Counties; Director, Akron Regional Air Quality Management District, 177 South Broadway, Akron, Ohio 44308.

(ii) Stark County; Director, Air Pollution Control Division, Canton City Health Department, City Hall Annex Second Floor, 218 Cleveland Avenue S.W., Canton, Ohio 44702.

(iii) Butler, Clermont, Hamilton and Warren Counties: Director, Southwestern Ohio Air Pollution Control Agency, 2400 Beekman Street, Cincinnati, Ohio 45214.

(iv) Cuyahoga County: Commissioner, Division of Air Pollution Control Department of Public Health and Welfare, 2735 Broadway Avenue, Cleveland, Ohio 44115.

(v) Belmont, Carroll, Columbiana, Harrison, Jefferson, and Monroe Counties: Director, North Ohio Valley Air Authority (NOVAA), 814 Adams Street, Steubenville, Ohio 43952.

(vi) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties:

BEST COPY AVAILABLE

Supervisor, Regional Air Pollution Control Agency (RAPCA), Montgomery County Health Department, 451 West Third Street, Dayton, Ohio 45402.

(vii) Lucas County and the City of Rossford (in Wood County): Director, Toledo Environmental Services Agency, 26 Main Street, Toledo, Ohio 43605.

(viii) Adams, Brown, Lawrence, and Scioto Counties: Engineer-Director, Air Division, Portsmouth City Health Department, 740 Second Street, Portsmouth, Ohio 45662.

(ix) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood (except City of Rossford), and Wyandot Counties: Ohio Environmental Protection Agency, Northwest District Air Pollution Unit 1035 Dezlac Grove Drive, Bowling Green, Ohio 43402.

(x) Ashtabula, Holmes, Lorain, and Wayne Counties: Ohio Environmental Protection Agency, Northeast District Office, Air Pollution Unit, 2110 East Aurora Road, Twinsburg, Ohio 44087.

(xi) Athens, Coshocton, Gallia, Guernsey, Hocking, Jackson, Meiga, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties: Ohio Environmental Protection Agency, Southeast District Office, Air Pollution Unit, 2195 Front Street, Logan, Ohio 43138.

(xii) Champaign, Clinton, Highland, Logan, and Shelby Counties: Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, East Fourth Street, Dayton, Ohio 45402.

(xiii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties: Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, Ohio 43266-0140.

(xiv) Geauga and Lake Counties: Lake County General Health District, Air Pollution Control, 105 Main Street, Painesville, Ohio 44077.

(xv) Mahoning and Trumbull Counties: Mahoning-Trumbull Air Pollution Control Agency, 9 West Front Street, Youngstown, Ohio 44503.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.04 is amended by revising paragraphs (b)(P), (b)(Y), and (b)(KK) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(P) State of Indiana, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

* * * * *

(Y) Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

* * * * *

(KK) State of Ohio—

(i) Medina, Summit and Portage Counties: Director, Akron Regional Air Quality Management District, 177 South Broadway, Akron, OH 44308.

(ii) Stark County: Director, Air Pollution Control Division, Canton City Health Department, City Hall Annex Second Floor, 218 Cleveland Avenue S.W., Canton, OH 44702.

(iii) Butler, Clermont, Hamilton and Warren Counties: Director, Southwestern Ohio Air Pollution Control Agency, 2400 Beekman Street, Cincinnati, OH 45214.

(iv) Cuyahoga County: Commissioner, Division of Air Pollution Control, Department of Public Health and Welfare, 2735 Broadway Avenue, Cleveland, OH 44115.

(v) Belmont, Carroll, Columbiana, Harrison, Jefferson, and Monroe Counties: Director, North Ohio Valley Air Authority (NOVAA), 814 Adams Street, Steubenville, OH 43952.

(vi) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties: Supervisor, Regional Air Pollution Control Agency (RAPCA), Montgomery County Health Department, 451 West Third Street, Dayton, OH 45402.

(vii) Lucas County and the City of Rossford (in Wood County): Director, Toledo Environmental Services Agency, 26 Main Street, Toledo, OH 43605.

(viii) Adams, Brown, Lawrence, and Scioto Counties: Engineer-Director, Air Division, Portsmouth City Health Department, 740 Second Street, Portsmouth, OH 45662.

(ix) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van West, Williams, Wood (except City of Rossford), and Wyandot Counties: Ohio Environmental Protection Agency, Northwest District Office, Air Pollution Unit, 1035 Dezlaz Grove Drive, Bowling Green, OH 43402.

(x) Ashtabula, Holmes, Lorain, and Wayne Counties: Ohio Environmental Protection Agency, Northeast District Office, Air Pollution Unit, 2110 East Aurora Road, Twinsburg, OH 44087.

(xi) Athens, Coshocton, Gallia, Guernsey, Hocking, Jackson, Meiga, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties: Ohio Environmental Protection Agency, Southeast District Office, Air Pollution Unit, 2195 Front Street, Logan, OH 43138.

(xii) Champaign, Clinton, Highland, Logan, and Shelby Counties: Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, East Fourth Street, Dayton, OH 45402.

(xiii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties: Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, OH 43266-0149.

(xiv) Geauga and Lake Counties: Lake County General Health District, Air Pollution Control, 105 Main Street, Painesville, OH 44077.

(xv) Mahoning and Trumbull Counties: Mahoning-Trumbull Air Pollution Control Agency, 9 West Front Street, Youngstown, OH 44503.

* * * * *

[FR Doc. 88-11831 Filed 5-25-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 441, 482, 485, and 498

[BERC-451-CN]

Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: On March 1, 1988, we published a final rule concerning organ procurement organizations and protocols (53 FR 6526). In it were some clerical and typographical errors; we are correcting them in this notice.

FOR FURTHER INFORMATION CONTACT: Julie Brown, (301) 966-4669.

SUPPLEMENTARY INFORMATION: In Federal Register Document 88-4431, beginning on page 6526, in the issue of March 1, 1988, make the following corrections:

Page 6542, col. 3:

1. In the first paragraph of the Response, line 4: change "the" to "a". "The" may imply to some readers that hospitals may not deal with any designated OPO with which it wishes to deal.

PART 413—[AMENDED]

Page 6548, col. 3:

§ 413.178 [Corrected]

2. In § 413.178, paragraph (d)(1), line 5: Change "an " to "a".

3. In § 413.178, paragraph (d)(2). line 3: Insert "or" between "OPO" and "laboratory".

Page 6549:

4. Col. 1, § 413.178, paragraph (e)(2), line 2: Change "an" to "a".

PART 482—[AMENDED]

§ 482.12 [Corrected]

5. Col. 3, line 2: Add "and" at end of the line in § 482.12(c)(5)(i)(B).

PART 485—[AMENDED]

6. Col. 3, authority citation for Part 485 (in item 5.a.), line 3: Add "1320b-8," after "1302".

7. Col. 3, Subpart D, table of contents, in the heading for § 485.305, "procurement and transplantation network" should read "Procurement and Transplantation Network" and in the heading for § 485.306, "Organ Procurement Organizations" should read "organ procurement organizations". Page 6550, Col. 3:

§ 485.304 [Corrected]

8. In § 485.304, paragraph (g)(1), line 6: Remove the words "that have" the first time they appear so that the line reads "and that have an operating".

9. In § 485.304, paragraph (m), line 1: Change "makes" to "make".

Page 6551, Col. 1:

§ 485.305 [Corrected]

10. In the heading of § 485.305, capitalize "procurement": "Procurement".

§ 485.306 [Corrected]

11. In the heading of § 485.306, "Organ Procurement Organizations" should read "organ procurement organizations".

(Catalog of Federal Domestic Assistance Programs No. 13.714—Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 20, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88-11779 Filed 5-25-88; 8:45 am]

BILLING CODE 4120-01-M

Office of Child Support Enforcement

45 CFR Parts 303 and 305

Provision of Services in Interstate IV-D Cases—OMB Control Number for Approved Information Collection Requirements

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Technical amendment.

SUMMARY: Section 3512 of the Paperwork Reduction Act of 1980 and the Office of Management and Budget (OMB) implementing regulations at 5 CFR 1320.5(b) require that all information collection requirements contained in regulations and approved by OMB must display the valid OMB control number. This document satisfies this requirement for the information collection requirements in the final rule, Provision of Services in Interstate IV-D cases, that appeared in the Federal Register on February 22, 1988 (53 FR 5246).

EFFECTIVE DATE: May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Joyce Linder (202) 245-1773.

List of Subjects in 45 CFR Parts 303 and 305

Child welfare, grant programs, social programs.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. 45 CFR Part 303 is amended by adding the OMB control number at the end of § 303.7 as follows:

§ 303.7 Provision of services in interstate IV-D cases.

* * * * *

(Approved by the Office of Management and Budget under control number 0970-0085.)

PART 305—[AMENDED]

4. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

5. 45 CFR Part 305 is amended by adding the OMB control number at the end of § 305.32 as follows:

§ 305.32 Provision of services in interstate IV-D cases.

* * * * *

(Approved by the Office of Management and Budget under control number 0970-0085.)

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: May 18, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88-11684 Filed 5-25-88; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-154; RM-4958, RM-5068 and RM-5360 et al.]

Radio Broadcasting Services; Conway, Hot Springs, Wrightsville, Fairfield Bay, Perryville, and Maumelle, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a joint petition for reconsideration to the extent of deleting Channel 290C2 from Perryville, Arkansas, allotting Channel 290C1 to Hot Springs, Arkansas and allotting Channel 291C2 to Fairfield Bay, Arkansas. The earlier *Report and Order* had allotted Channel 290C2 to Perryville over the conflicting proposal to allot Channel 290C1 to Hot Springs. The Commission concurred with the petition for reconsideration that the earlier determination, which was based on a comparison of the respective populations which would receive service, was inaccurate. This document also modifies the license of Station KLAZ, Hot Springs to specify operation on Channel 290C1 and the license of Station KFFB, Fairfield Bay to specify operation on Channel 291C2. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 86-154, adopted May 10, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying

during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 290C2 from Perryville.

3. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 292A and adding Channel 290C1 at Hot Springs.

4. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 292A and adding Channel 291C2 at Fairfield Bay.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11875 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–434; RM–6021; RM–6191, and RM–6192]

Radio Broadcasting Services; Scranton and Surfside Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, pursuant to the separate request of Broadcasting of Scranton and Scranton Communications, allots Channel 275A to Scranton, South Carolina, as the community's first local FM service. Channel 275A can be allotted to Scranton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 33–55–06 and West Longitude 79–44–36. The mutually exclusive request of Jones, Eastern of the Grand Strand, Inc. to substitute Channel 276C2 for Channel 276A at Surfside Beach, South Carolina, and modification of its license for Station WYAK–FM to specify the higher powered channel, is denied. With this action, this proceeding is terminated.

DATES: Effective July 1, 1988. The window period for filing applications will open on July 5, 1988, and close on August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–434, adopted April 15, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by adding the following entry: Scranton, Channel 275A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11876 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 70639–8060]

Critical Habitat; Hawaiian Monk Seal; Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: NMFS is extending critical habitat for Hawaiian monk seals from 10 to 20 fathoms in all areas previously designated as critical. NMFS believes the designation of critical habitat to 20 fathoms will benefit the species because it includes additional areas that may require special management consideration or protection. Also, NMFS is adding Maro Reef to the areas designated as critical in the Northwestern Hawaiian Islands (NWHI).

DATE: This rule becomes effective on June 27, 1988.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Terminal Island, CA 90731, 213–548–2518; or Margaret Lorenz, Protected Species Management Division, NMFS, Washington, DC 20235, 202–673–5349.

SUPPLEMENTARY INFORMATION:

Background

After the final rule designating critical habitat out to 10 fathoms was issued (April 30, 1986, 51 FR 16047), NMFS continued to examine the basis for its decision. Of particular concern was whether areas beyond 10 fathoms were in need of special management consideration or protection either now or in the reasonably forseeable future.

After inviting comments on whether the area between 10 to 20 fathoms around the islands may require special management consideration or protection and reviewing our earlier decision, NMFS proposed regulations that would extend the designation of critical habitat out to 20 fathoms in all areas currently designated as critical and would include Maro Reef (January 8, 1988).

All commenters on the proposed rule, except the State of Hawaii, favored extending critical habitat out to 20 fathoms and including Maro Reef in the areas designated as critical. The State believes there is insufficient evidence to show that waters from 10 to 20 fathoms deep, or around Maro Reef, are particularly critical, and they believe there is no legal basis for the proposed rulemaking. The State did not agree with the original designation of critical habitat in the NWHI. In this case, the State believes that, to date, there has been no convincing demonstration through the best available scientific evidence of a need for critical habitat designation. However, based on the best scientific data available, NMFS believes that there is sufficient justification to designate critical habitat out to 20 fathoms and to include Maro Reef in the designation. The components of monk seal habitat identified in the FEIS include foraging and breeding areas, pupping and major haul-out sites, and nearshore waters used by females and pups.

Comments favoring the extension of critical habitat were received from the U.S. Department of the Interior, the Humane Society of the United States, the Sierra Club Legal Defense Fund, Greenpeace, the Committee for Humane Legislation, the Center for Environmental Education and one individual. However, Interior stated that they disagreed with the assessment contained in the proposed rule that the Minerals Management Service is one of the Federal agencies most likely to be affected by the designation of critical habitat. Interior believes the contention that there may be conflicts between deep seabed mining and monk seal critical habitat is not supported by any available scientific and commercial data.

NMFS agrees that deep seabed mining itself probably will not affect monk seals. However, the development of on- or near-shore support facilities may affect monk seals. If so, and if these facilities were subject to Interior's jurisdiction, it would be necessary for MMS to consult with NMFS.

The action NMFS is taking is described in Alternative One of the Final Environmental Impact Statement—Proposed Designation of Critical Habitat for the Hawaiian Monk Seal in the Northwestern Hawaiian Islands (May 1986). NMFS especially focused on the extensive comments regarding the areas that may need special management consideration or protection. The designation of critical habitat to 20 fathoms affords substantial protection for the Hawaiian monk seal and includes areas that are both essential and in need of special management consideration or protection. The additional areas incorporated in this designation consist primarily of foraging habitat.

To determine what portion of the monk seal's range contains habitat that is consistent with the definition of "critical habitat," NMFS reviewed the available biological information, comments on the Supplemental Environmental Impact Statement, the management recommendations made by the Recovery Team and the Marine Mammal Commission, the comments received in response to the advance notice and the proposed rule and the record of Endangered Species Act Section 7 consultations on Federal activities in the NWHI.

There are no inherent restrictions on human activities in an area designated as critical habitat. However, when an area is designated as critical, all activities that take place in that area are affected if they are authorized, funded, or carried out by Federal agencies. Critical habitat designation notifies Federal agencies that a listed species depends on a particular area for its continued existence and that any Federal action that may affect that area is subject to the consultation requirements of Section 7 of the ESA. Any Federally controlled activity may be conducted in an area designated as critical habitat if the authorizing Federal agency determines through the Section 7 consultation process that the activity is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. Activities that are conducted by state agencies or the private sector without Federal involvement may be carried out without regard to Section 7 although other provisions of the ESA and other Federal and State laws may impose prohibitions on activities resulting in the taking of endangered or threatened species.

Hawaiian Monk Seal Biology

The biology of the Hawaiian monk seal is discussed in the Supplemental and Final Environmental Impact Statements. The discussion includes the history of exploitation, trends in population size, current status of the population, life history parameters, habitat requirements, and biological problems confronting the species. Further information is available from the Draft Environmental Impact Statement, the Recovery Plan, and the 5-year Status Review for the Hawaiian monk seal. A summary of research studies concerning habitat requirements of the Hawaiian Monk Seal was provided in the proposed rule.

This final rule designates as critical habitat for the Hawaiian monk seal all beach areas, including all beach crest vegetation to its deepest extent inland, lagoon waters, and ocean waters out to a depth of 20 fathoms, around Kure Atoll, Midway Islands (except Sand Island and its harbor), Pearl and Hermes Reef, Maro Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island. References to beaches or beach areas include all sand spits and islets.

Effect of the Rulemaking

This action directly affects only Federal agencies and those who need Federal authorization or funding for their actions. It does not affect State and local government activities or private actions which do not depend on or are not limited by Federal authorization, permits or funds, although other law may prohibit actions that result in the taking of endangered or threatened species. However, many of the activities in the NWHI are subject to some Federal control and could be affected. Section 7 of the ESA requires Federal agencies to consult with NMFS to ensure that any activity funded, authorized, or undertaken by them is not likely to jeopardize the continued existence of endangered species or result in the destruction or adverse modification of critical habitat.

Currently, Federal agencies are required to consult on actions that may affect Hawaiian monk seals. The extension of designated critical habitat requires Federal agencies to evaluate their activities with respect to critical habitat to ensure that these activities are not likely to result in the destruction or adverse modification of the critical habitat. In most situations, consultations are required even if critical habitat has not been designated because actions that affect critical habitat are also likely to affect the monk seal. Therefore, expanding the designation of critical habitat does not substantially add to the Federal agencies' responsibilities and does not have any significant adverse economic impacts on State or private entities including small businesses. Extending the designation of critical habitat will assist Federal agencies in evaluating the potential effects of their activities on monk seals and in determining when consultation with NMFS would be required. The Federal agencies most likely to be affected by this designation include the U.S. Coast Guard, U.S. Navy, U.S. Fish and Wildlife Service, Minerals Management Service, Western Pacific Regional Fishery Management Council, and NMFS.

This final rule is not expected to have any direct impact on fisheries in the NWHI. The only direct economic costs are those associated with more extensive monitoring of Federal activities by NMFS or when other Federal agencies, after a review of their activities in the NWHI, must take certain administrative actions. Since Federal agencies are required to conduct Section 7 consultations for activities that may affect Hawaiian monk seals and conform to National Environmental Policy Act (NEPA) requirements for actions that significantly affect the quality of the human environment, any additional costs are expected to be minimal.

Classification

For reasons discussed in **Effects of the Rulemaking**, the NOAA Administrator has determined that this is not a major

rule requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required. This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

National Environmental Policy Act

Draft, draft supplemental, and final environmental impact statements were prepared on the action to designate critical habitat out to 10 fathoms. This proposed action to extend critical habitat to 20 fathoms is analyzed as Alternative One in the FEIS.

List of Subjects in 50 CFR Part 226

Endangered and threatened wildlife, marine mammals.

Dated: May 19, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

PART 226—[AMENDED]

Accordingly, Part 226 of Chapter II of Title 50 of the Code of Federal Regulations is amended as follows.

1. The authority citation for Part 226 continues to read as follows

Authority: 16 U.S.C. 1533.

2. Section 226.11 under Subpart B is revised to read as follows:

§ 226.11 Northwestern Hawaiian Islands.

Hawaiian Monk Seal

(*Monachus schauinslandi*)

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

Kure Atoll (28°24'N, 178°20'W)
Midway Islands, except Sand Island and its harbor (28°14' N, 177°22' W)
Pearl and Hermes Reef (27°55' N, 175° W)
Lisianski Island (26°46' N, 173°58' W)
Laysan Island (25°46' N, 171°44' W)
Maro Reef (25°25' N, 170°35' W)
Gardner Pinnacles (25°00' N, 168°00' W)
French Frigate Shoals (23°45' N, 166°00' W)
Necker Island (23°34' N, 164°42' W)
Nihoa Island (23°03.5' N, 161°55.5' W).

BILLING CODE 3510-22-M

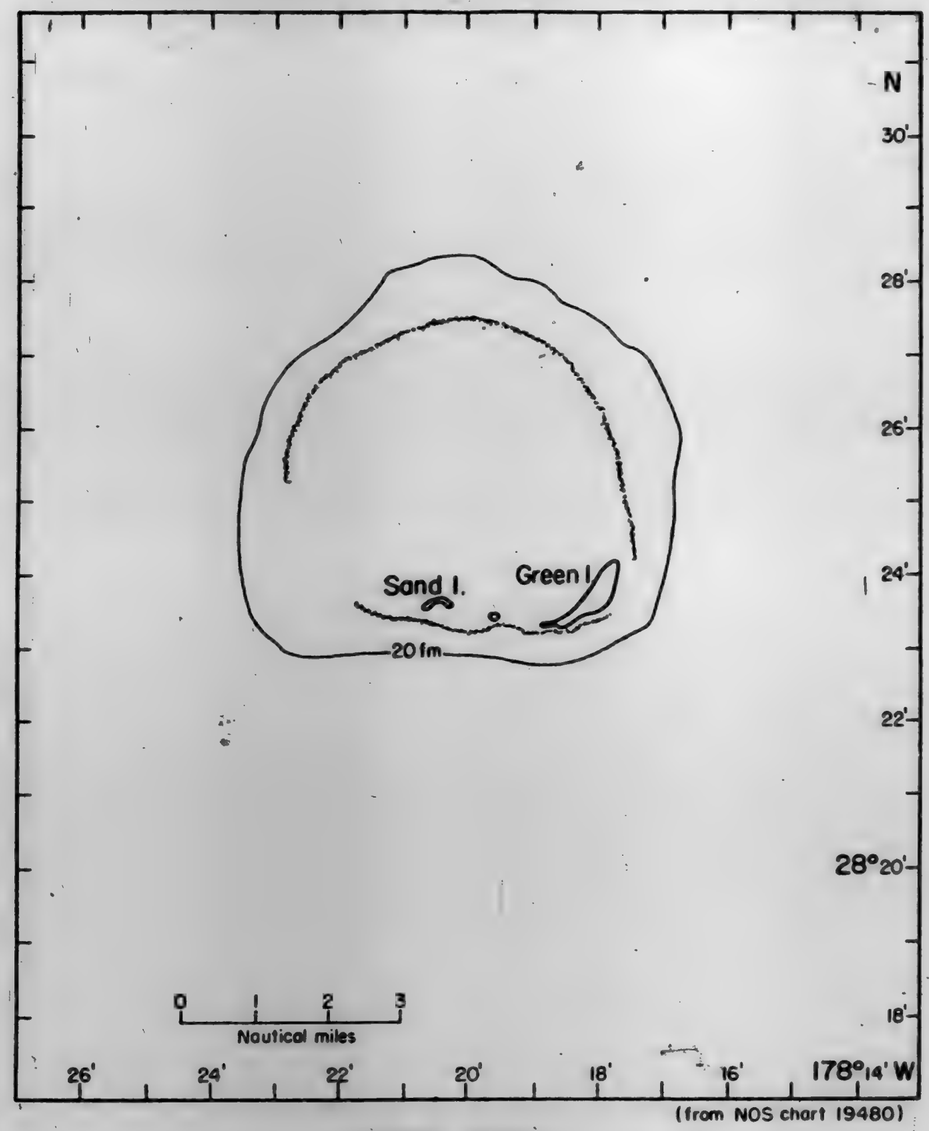

KURE ATOLL

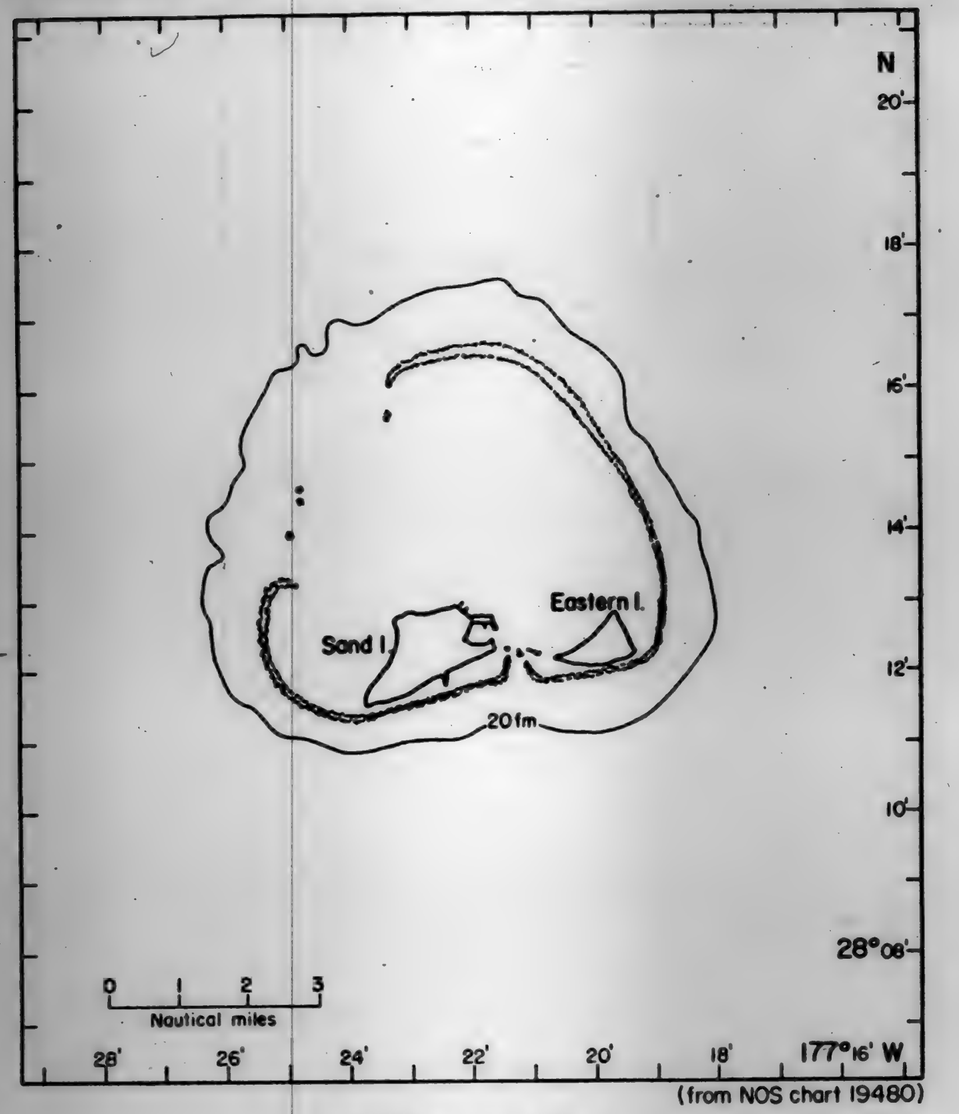

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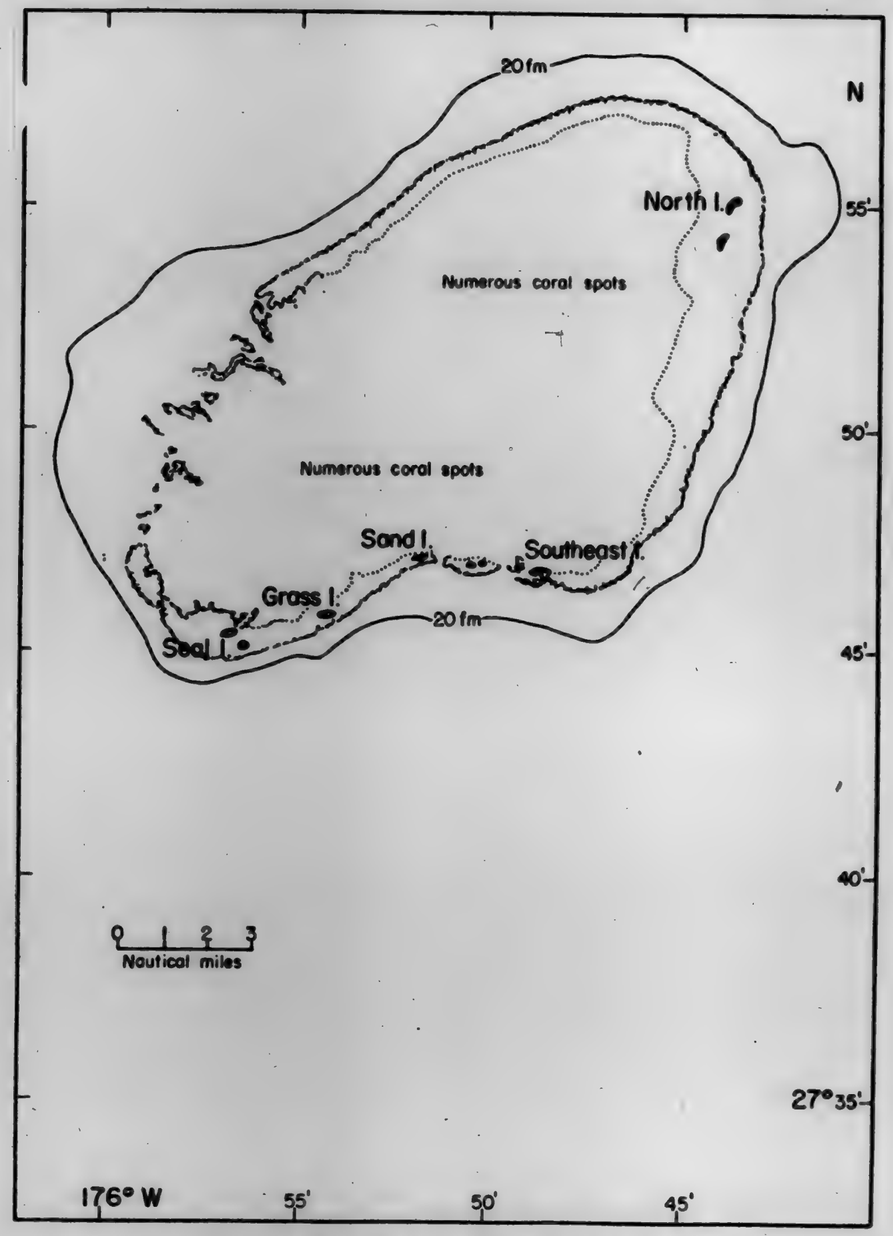

PEARL and HERMES REEF

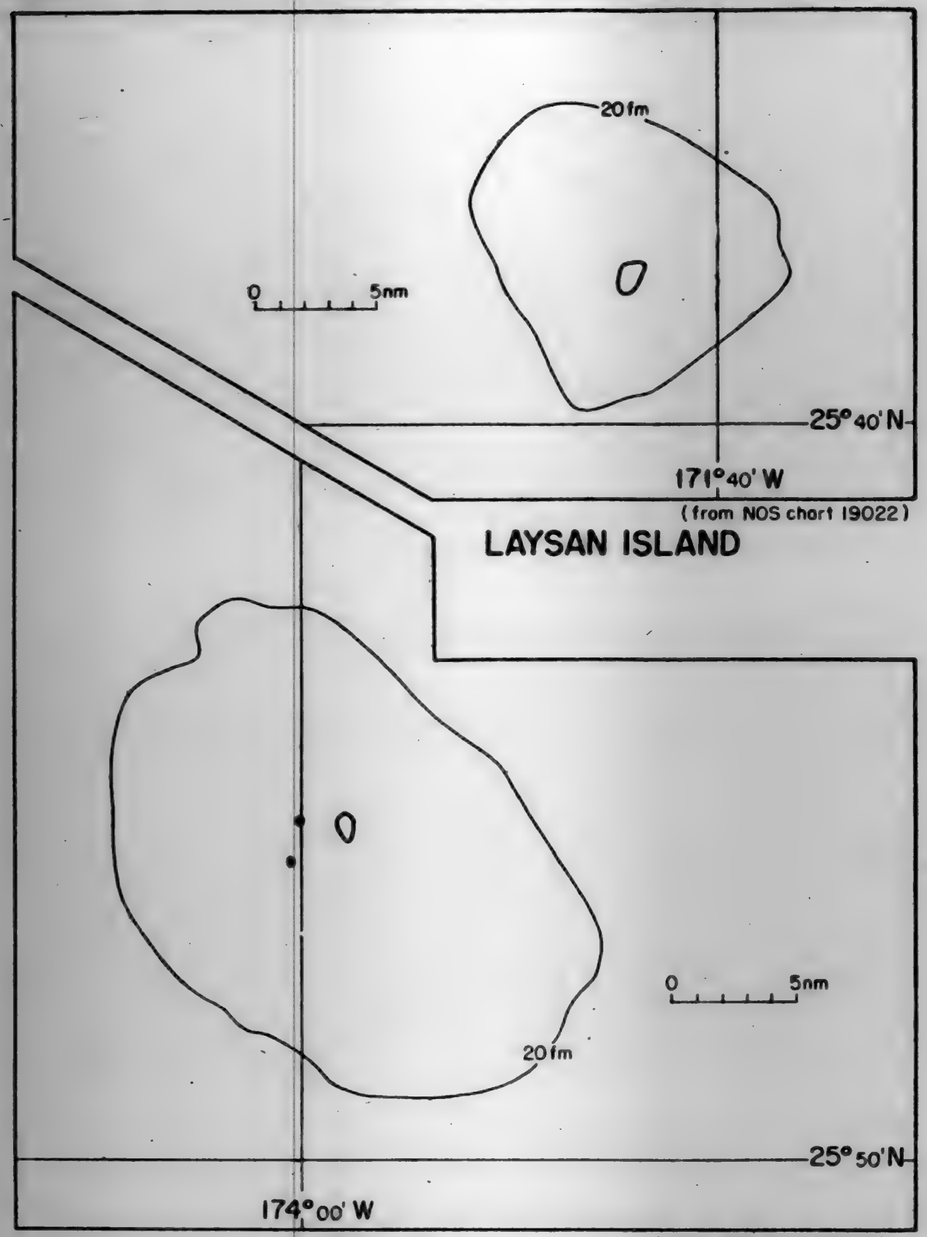
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LISIANSKI ISLAND

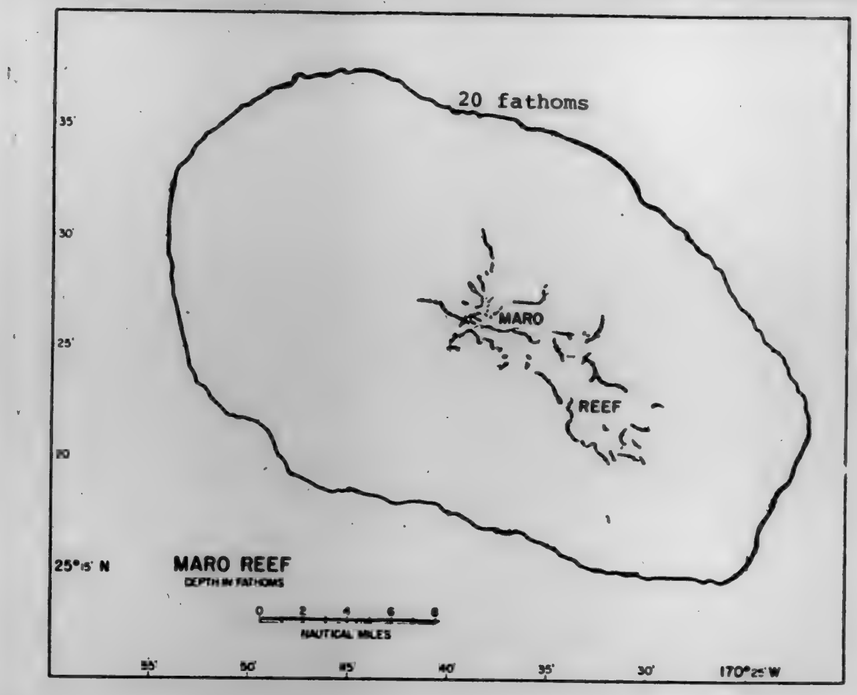
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REEF
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MARO REEF
DEPTH IN FATHOMS
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170°25' W

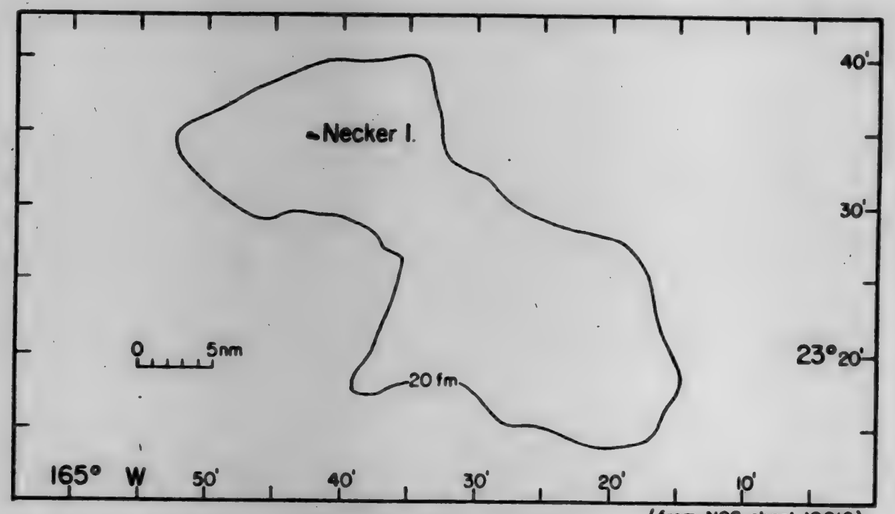
Necker I.
40'
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165° W
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20'
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(from NOS chart 19016)
NECKER ISLAND

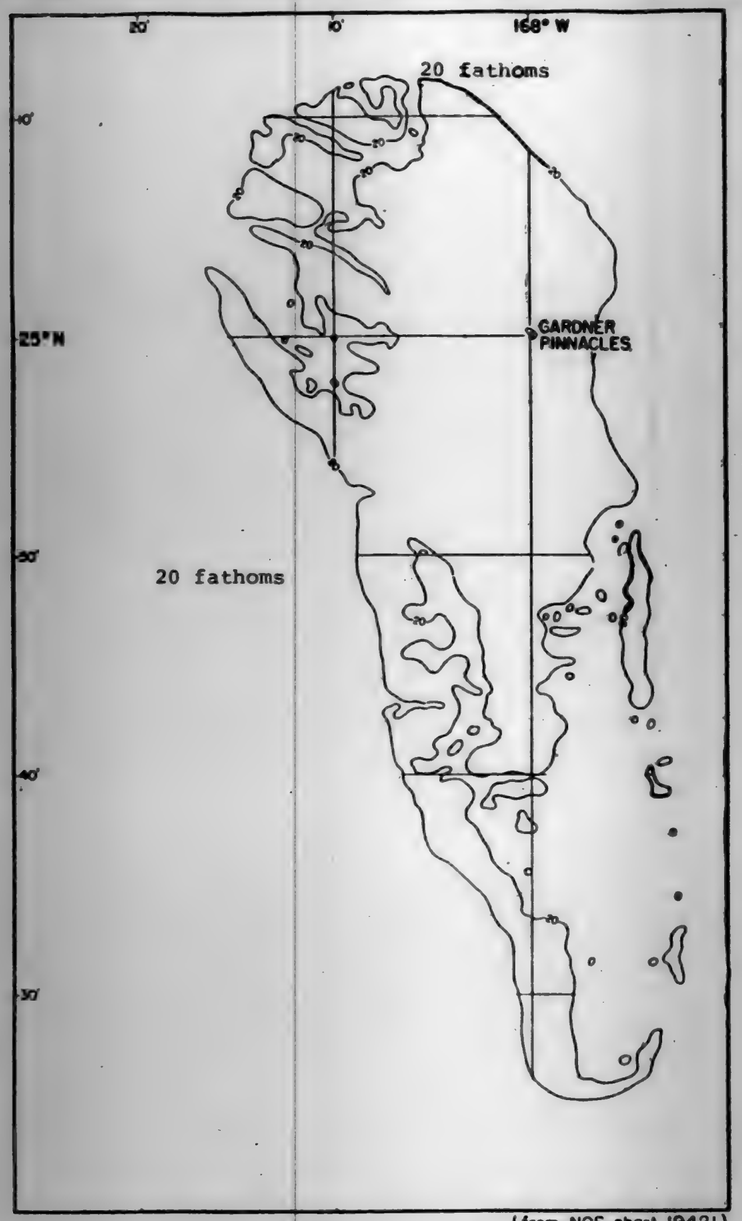

(from NOS chart 19421)

GARDNER PINNACLES

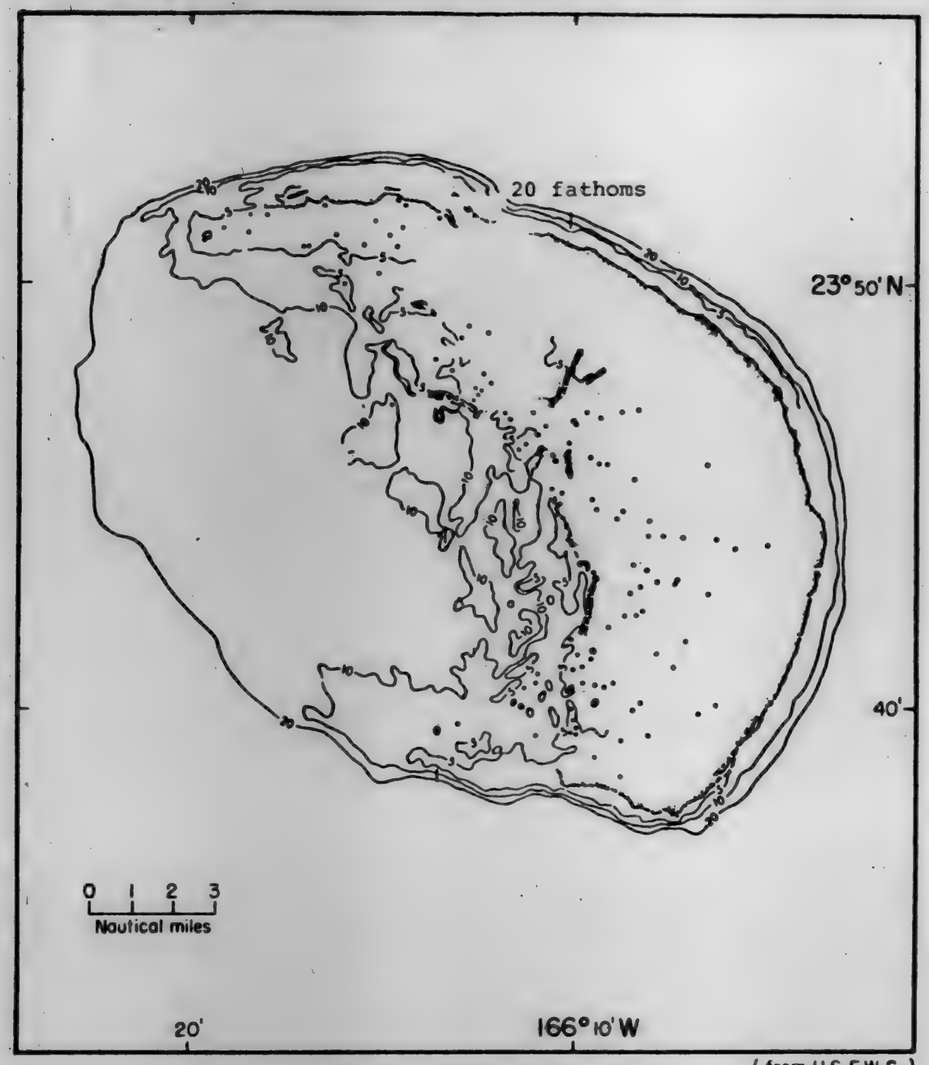

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FRENCH FRIGATE SHOALS

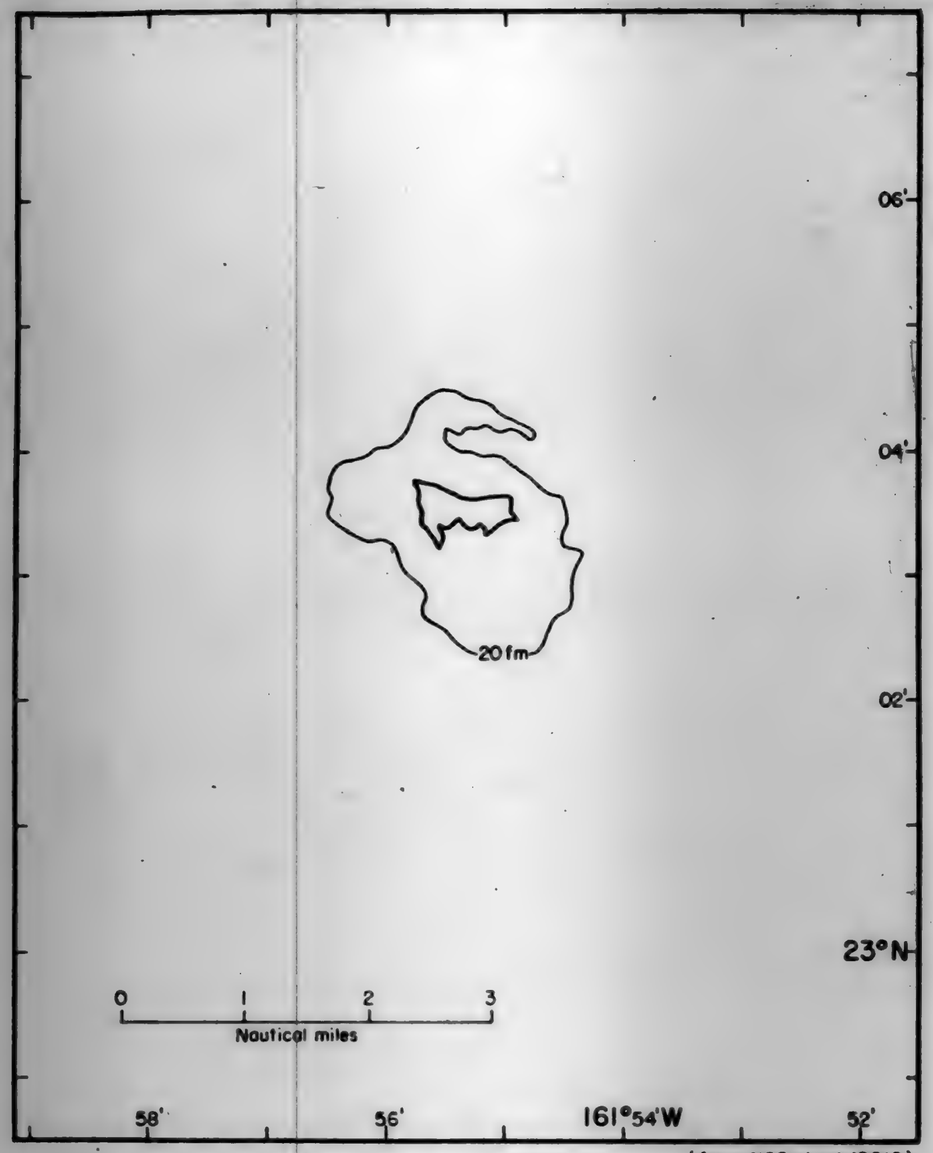

NIHOA ISLAND

[FR Doc. 88-11643 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-03-C

Proposed Rules

Federal Register
Vol. 53, No. 102
Thursday, May 26, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 945 for the 1988–89 fiscal period. Authorization of this budget would allow the Idaho-Eastern Oregon Potato Committee to incur expenses necessary to administer this program. This action would designate that funds to administer this program would be derived from assessments on handlers.

DATE: Comments must be received by June 27, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk durig regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Adminstration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 945 (7 CFR Part 945) regulating the handling of potates grown in designated counties in Idaho and Malheur County, Oregon. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon pototes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The recommended assessment rate is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Idaho-Eastern Oregon Potato Committee's recommended budget for the 1988–89 fiscal period totals $76,900 and an assessment rate of $0.0028 per hundredweight of potatoes is being proposed. This compares to the 1987–88 budget of $66,470. The proposed assessment rate is the maximum permitted under the order and has remained the same for over two decades. The proposed budget is $10,430 more than last year, reflecting an increase of $1,900 in salaries and $7,300 for the purchase of an automobile for the manager's use. At the proposed assessment rate of $0.0026, anticipated fresh market shipments of 20 million hundredweight would yield $52,000. This along with approximately $1,200 in fees, $700 in interest and $23,000 from the reserve would be adequate for budgeted expenses. By the end of the fiscal period the reserve fund is expected to total $23,000.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, it is proposed that § 945.241 be added as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 945.241 is added to read as follows:

§ 946.241 Expenses and assessment rate.

Expenses of $76,900 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 23, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-11920 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 998

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Proposed Expenses, Assessment Rate, and Indemnification Reserve for the Peanut Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures for administration and indemnification, establish an assessment rate, and authorize monetary additions to the indemnification reserve under Marketing Agreement 146 for the 1988–89 crop year. The proposed actions are needed for the committee to incur expenses and collect funds to pay its expenses during the 1988–89 crop year, which will facilitate program operations. Funds to administer this program are derived from assessements on handlers.

DATE: Comments must be received by June 6, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular hours.

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530–S, Washington, DC 20090–6456, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is proposeded under Marketing Agreement 146 [7 CFR Part 998] regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disporportionately burdened.

There are approximately 68 handlers of peanuts covered under the peanut marketing agreement, and approximately 46,950 producers in the 16 states covered under the agreement. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and the majority of producers may be classified as small entities.

Under the marketing agreement the assessement rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e. July 1). An annual budget of expenses is prepared by the Peanut Administrative Committee and submitted to the Department of Agriculture for approval. The members of the administrative committee are handlers and producers of peanuts. They are familiar with the committee's needs and with the costs for goods, services and personnal for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It automatically applies to all assessable peanuts from July 1. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget, rate of assessment, and the continuation of an indemnification reserve were acted upon by the committee on April 14 and 15, 1988, and expenses are incurred on a continuous basis. Therefore, this budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses starting on July 1, 1988.

The Peanut Administrative Committee unanimously recommended a 1988–89 budget of administrative expenses of $816,000, or $34,000 more that budgeted last year. The increase from last year is necessary to cover increases in the salary and benefits of the committee's staff, hire another field man, cover additional staff travel expected during the 1988–89 crop year, and to cover increases in office rent and parking.

The recommended assessment rate for the 1988–89 crop year is $2.48 per ton, of which $0.48 is for administrative expenses and $2.00 is for indemnification expenses. Last year $0.46 was fixed for administrative expenses and $3.00 was fixed for indemnification expenses. The 1988–89 assessable tonnage was estimated at 1.7 million tons, the same as last year. Applicable of the proposed assessment rates to this estimate would result in $816,000 for administration and $3.4 million for indemnification.

An estimated $4.9 million of 1987–88 indemnification funds would be carried forward into the 1988–89 crop year as a reserve under the agreement to meet 1988–89 indemnification expenses. The reserve is within the limits authorized by the agreement. Funding for the indemnification account also will be generated from interest on time deposits.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing agreement. Further, there are few small entities in the domestic peanut industry. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of

less than 30 days is appropriate because the budget and assessment rate approval and the authorization to continue an indemnification reserve for this program need to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, it is proposed that § 998.401 be added as follows:

PART 998–MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 998.401 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 998.401 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1988, shall be in the amount of $816,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1988 crop, effective July 1, 1988, are expected to be about $5.1 million, such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the committee, in accordance with § 998.48 of the marketing agreement, an assessment rate at the rate of $2.48 per net ton of farmers' stock peanuts received or acquired other than from the described in § 998.31(c) and (d). A total of $0.48 shall be for administrative expenses and a total of $2.00 shall be for indemnification expenses.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to the § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate and not expended in providing indemnification on the 1988 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: May 23, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-11921 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-02-M

POSTAL SERVICE

39 CFR Part 111

Use of Sampling Process for Indemnity Claims

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Under this proposal, the Domestic Mail Manual (DMM) would provide for an optional, and more efficient, sampling procedure for mailers who file large numbers of COD claims annually. More specifically, the procedure is targeted for mailers filing 2,000 or more claims annually. Adjudication would be handled by the St. Louis Postal Data Center instead of Postal Service Headquarters. The use of sampling procedures would reduce administrative costs for both the Postal Service and for most mailers filing large numbers of claims.

DATE: Comments must be received on or before June 25, 1988.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Steele, (202) 268–5312.

SUPPLEMENTARY INFORMATION: On June 19, 1987, the Postal Service published a notice in the **Federal Register** (52 FR 23308) soliciting comments on a proposal that would have made mandatory the sampling procedures that are now optional for mailers who submit 2,000 or more COD claims annually. No comments were received on the proposal. The Postal Service has, nevertheless, reconsidered the proposal, revised it in various respects, and is republishing the revised version for comment. Under the revised proposal, the sampling process would not be mandatory, but would remain optional. The revised regulations would also specify the method for computing the payment due a claimant, instead of leaving this matter to the discretion of the Postal Data Center. In addition, partial payments would be payable, generally within 45 to 60 days after the claims have been sent to the addressee post office for verification.

Currently, when mailers desire to file a large number of COD indemnity claims, they are contacted by the Postal Service to have the claims processed through a sampling procedure. To use the sampling procedure, mailers must sign an agreement with the Postal Service. All of the arrangements to process the claims, including adjudication, are made at Postal Service Headquarters.

While there is no requirement that mailers with large numbers of COD claims accept the sampling procedures, processing claims individually, by comparison, is much more costly to the Postal Service. A significant number of workhours is required both at the post office accepting the claims and at other post offices nationwide. Use of the sampling procedures will not only reduce the Postal Service's costs, but will allow the following benefits to mailers:

1. The mailer will need to present fewer individual claims. Since claims filed by most large mailers are computer-generated, the savings to them may be significant.

2. The mailer will not have to file inquiries or follow-up claims.

3. The mailer's total open accounts for the time period covered by the sample can be closed more quickly than when claims are filed individually.

4. A partial payment will be made to mailers approximately 45 to 60 days from the beginning of a sampling. This means that the mailers will receive a portion of the monetary compensation due for their claims prior to completion of a sampling. Final payment would be made when the sampling has been completed.

With a sampling, the Postal Service is able to avoid a number of costs as well as satisfy the customer's claims with a minimum amount of time and resources. Postal Service costs affect the fees charged for COD service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c),) regarding proposed rule making by 39 U.S.S. 410(a), the Postal Service invites public comment on the following proposed amendments to the

Domestic Mail Manual which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation of 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Renumber 149.6 through 149.8 as 149.7 through 149.9, respectively. Add new 149.6 reading as follows:

PART 149—INDEMNITY CLAIMS

149.6 Sample Claims.

149.61 Who may file

.611 Any C.O.D. mailer may request permission from the Manager, Claims & Inquiry Branch, Postal Data Center, P.O. Box 14977, St. Louis, MO 63180–0990, to file under alternative procedures. The manager will approve the request when this is found to be the most cost-efficient method of processing the mailer's claims, according to the standards set forth in 149.612. Mailers are encouraged to participate in this program, because of the following benefits:

a. Fewer individual claims need to be presented by the mailer. Since claims filed by most large mailers are computer-generated, the savings to them may be significant.

b. No inquiries or follow-up claims have to be filed by the mailer. This saves the mailer time, and also reduces overall costs incurred in filing claims.

c. The use of sampling procedures in lieu of processing individual claims minimizes the costs to the Postal Service.

.612 If the Manager, Claims & Inquiry Branch, determines that use of the sampling procedure is not the most effective and efficient method of processing the mailer's claims, the manager will notify the mailer, and instruct the post office to process the claims individually. The general criteria to be considered in making the decision include:

a. Expense to the mailer;

b. Expedition of the claims process;

c. Availability of labor and resources to process the claims at the accepting post office;

d. Whether use of the sampling procedure will result in an accurate determination of the Postal Service's responsibility for indemnification of the claimant;

e. Other interests of the Postal Service.

Claimants have the right to appeal the determination of the manager in accordance with 149.91.

.613 Mailers who file claims under the provisions of this section are deemed to have consented to adjudication of those claims as prescribed in 149.64.

149.62 Procedures for Filing Claims Under a Sampling Agreement

.621 List of Claims and Number of Articles Mailed. The claimant must present a list of all COD items eligible for adjudication to the Claims and Inquiry Section of any post office, or the employee in a post office who has been designated to handle insurance claims. The list must conform with the following conditions:

a. For each claimed item, the list must contain the COD number followed by the name and address of the addressee, date of mailing, postage, fee, and amount due sender. All items must be listed by COD number, in ascending numerical order.

b. The list must cover all claims within a specific time frame, and additional claims for articles mailed during that time frame may not be submitted. No additional claims may be filed under these procedures until any previous claims under these procedures have been completed. A mailer may not submit more than three groups of claims under these procedures annually.

c. The list must contain a summary sheet showing the total number of claims and total amount due sender.

d. The claimant must submit a statement showing the total number of COD articles mailed during the time period represented by the sample.

.622 Computing the Number of Claims to be Sampled. The postmaster will send a memorandum containing the name and address of the mailer, the total number of claims on the listing, and the name(s) and phone number(s) of the employee(s) primarily responsible for processing the sample to:

General Manager, Systems Development Division, Office of Revenue & Cost Systems, Rates & Classification Department, Washington, DC 20260–5330, *and*

Manager, Claims & Inquiry Branch, Postal Data Center, P.O. Box 14677, St. Louis, MO 63180–0990.

In addition, the postmaster will include in the memorandum submitted to the St. Louis PDC a copy of the mailer's statement showing the total number of COD articles mailed during the time period represented by the sample.

Upon receipt of the memorandum, the Systems Development Division will apply the sampling method commonly referred to as "Sampling For Estimation of Proportions" to determine the number of claims to be sampled, the first claim to be sampled and the sampling interval to identify the subsequent claims to be sampled.

Note: Under the procedure, "Sampling for Estimation of Proportions", an assumed approximate proportion, confidence level (95 percent), and target precision level allow a computation of a required sample size from a finite universe of specific size. A systematic random sampling procedure is effected, with the sampling interval being the largest integer not exceeding the ratio of universe to sample size.

The General Manager will issue a memorandum to the postmaster showing the total number of claims to be sampled, the first claim on the list to be sampled, and the interval for sampling the remaining claims. The General Manager will also send a copy to the Postal Data Center. Upon receipt, the postmaster will provide a copy of the memorandum to the claimant. The Manager, Claims and Inquiry Branch, at the St. Louis PDC, will coordinate the sample, and will provide additional instructions to the post office.

.623 Marking the List of Claims. The claims and inquiry employee will mark the list showing all claims which will be sampled, starting with the first claim specified by the mamorandum. The marked list will be returned to the mailer.

.624 Completion of Claim Forms. Using the marked list, claimants must complete the portions of the claim form (PS Form 3812, *Request for Payment of Domestic Postal Insurance*) normally completed by customers who file individual claims (see 149.313). Information on the claim form must be identical to the entries on Form 3877, *Firm Mailing Book for Registered, Insured, C.O.D., Certified and Express Mail*, or its facsimile. The actual date of mailing must be used. In addition, the claimant will be required to complete other portions of the form (for example, inserting the claim number and special identificaiton marking by computer).

Note: The name and address of the mailer shown on the Form 3877 and Form 3812 must be the same as the name and address of the mailer shown on the COD tags.

.625 Submission of Claim Forms. Mailers should return the marked list and completed claim forms (along with proof of mailing) within two weeks of receipt of the marked list. Claim forms must be submitted in the order on which they appear on the list. At the same time, mailers must also provide a separate listing of the claims to be sampled. In addition, mailers are encouraged to proivide the post office with a set of address labels showing the complete names and addresses of the addressees. This will expedite sending the inquiry portion of the claim form to the addressees.

.63 Partial Payment. A partial payment, based on those C.O.D. claims which can be verified by the addressee post office, will generally be made 45 to 60 days after the claims have been sent to the addressee post office for verification.

.631 In determining partial payment, the PDC will follow the guidelines for adjudication outlined in 149.641 and 149.642.

.64 Adjudication

.641 Computation of Payable Claims. The St. Louis PDC is responsible for determining the number of payable and non-payable C.O.D. claims under the sampling procedures, after receipt of the verification process completed by the local post office.

a. The PDC will determine the payment due claimant by multiplying the percentage of claims found to be payable by the number of claims submitted, and then multiplying the result by the average value of payable claims sampled. For the partial payment, the PDC will determine the partial payment due claimant by multiplying the percentage of claims found to be payable at that time by the number of claims submitted, and then multiplying the result by the *lowest* value of payable claims sampled.

b. Before determining payment due claimant, the PDC will adjust the total number of claims by: (1) subtracting any articles or contents returned to sender without a C.O.D. tag; (2) subtracting from the total due sender checks made out to the mailer. These checks will count as payable claims and will be given to the mailer.

.642 Notification of results. The St. Louis PDC will prepare a report to the mailer showing the following:

a. Number of claims submitted by the mailer;

b. Number of claims deducted from the total number submitted by the mailer and the reason for the deduction;

c. Number of payable claims in the sample;

d. Number of nonpayable claims in the sample;

e. Percent of payable claims;

f. Number of payable claims from the total number of claims submitted by the mailer;

g. Average value of claims in the sample less the COD fee;

h. Number and dollar value of any checks and money orders submited by COD recipients;

i. Total amount due the mailer;

j. Partial payment already made;

k. Balance due mailer.

.643 Mailer Review. The Postal Data Center will issue a check for the balance due to the mailer along with the report provided in 149.642. Upon review of the report, the claimant has the option of reviewing the results of the addressee post office's search of delivery records shown on disallowed completed claim forms. The mailer must exercise this option within two weeks of receipt of the report and check from the PDC. Failure to do so will constitute the claimant's concurrence with the report provided by the PDC. Photocopies of completed claim forms or delivery records cannot be provided to mailers. This review of the non-payable claims must take place with postal personnel at the post office where the claims were filed prior to the issuance of a check. If a discrepancy is noted, the check should be returned to the Postal Data Center showing the reason for the discrepancy. The Postal Data Center will reissue a check after the discrepancy is resolved. The cashing of the check for the balance due by the mailer constitutes the claimant's concurrence with the report provided by the PDC.

.644 Appeal. If any discrepancies cannot be resolved, the mailer may appeal the decision in accordance with 149.91.

.65 Exhibit 149.6 contains a sample schedule for completion of this process. Any individual claim may take more or less time to complete each stage of the process.

Exhibit 149.6—Time Limits for Completing Claims Sample

Action	*Time limit*
1. Mailer submits list of claims.	Within 1 yr. of date of mailing.
2. Post office sends memorandum to Headquarters and St. Louis PDC.	Within 3 days of receipt of list of claims from mailer.
3. Headquarters responds.	Within 1 week of receipt of notification.
4. Post office provides copy of response to mailer.	Immediately upon receipt.
5. Post office marks list of claims and returns to mailer.	Within 1 week of receipt of response.
6. Mailer completes claim forms and returns claims and list to post office.	Within 2 weeks from receipt of marked list.
7. Verification of claim forms.	Immediately upon receipt.
8. Initial processing of claims by accepting post office.	Within 2 weeks of receipt from mailer.
9. Duplicate claims completed and processed by accepting post office.	30 days after last claim is processed, complete and process immediately.
10. Partial payment issued.	Within 45 to 60 days from beginning of sampling.
11. Final claims action.	2 weeks after last duplicate claim is processed, begin telephone inquiries.
12. Adjudication and preparation of report and check by St. Louis PDC.	3 weeks.
13. Mailer review of report.	Immediately upon receipt.
14. Mailer review of claim forms (optional).	Within 2 weeks of notification to St. Louis PDC.
15. Issuance of check.	Immediately.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–11785 Filed 5–25–88; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–195, RM–5810]

Radio Broadcasting Services; Onawa, IA and Vermillion, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Barnco requesting the substitution of Channel 272C1 for Channel 272A at Onawa, Iowa, and the modification of its permit for Station KOOO to specify the higher powered channel, and the substitution of Channel 292A for Channel 272A at Vermillion, South Dakota, and the modification of its license for Station KVRF to specify Channel 292A. An *Order to Show Cause* is directed to Vermillion Radio, Inc. as to why its license should not be so modified. Channel 292A can be allocated to Vermillion, South Dakota, and can be used at Station KVRF's present transmitter site and Channel 272C1 can be allocated to Onawa and used at Station KOOO's present transmitter site. The coordinates for Channel 272C1 at Onawa are North Latitude 42–01–41 and West Longitude 96–11–11. The coordinates for Channel 292A at Vermillion are North Latitude 42–47–32 and West Longitude 97–00–03.

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DATES: Comments must be filed on or before July 7 1988, and reply comments on or before July 22, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William M. Barnard, Esq., Mark Van Bergh, Esq., Kenkel, Barnard & Edmundson, 1220 19th Street NW., Suite 202, Washington, DC 20035 (Counsel to Barnco).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–195, adopted April 6, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11681 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–195, RM–6315]

Radio Broadcasting Services; Harbeck-Fruitdale, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Carl Wilson proposing the allocation of Channel 252A to Harbeck-Fruitdale, Oregon, as the community's first local FM service. Channel 252A can be allocated to Harbeck-Fruitdale in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 42–24–53 and West Longitude 123–19–55.

DATES: Comments must be filed on or before July 7, 1988, and reply comments on or before July 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl Wilson, 778 NW. 4th Street, Suite 4, Grants Pass, Oregon 97526 [Petitioner].

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–196, adopted April 18, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(g) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11679 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–197, RM–6297]

Radio Broadcasting Services; Crockett, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James H. Gibbs, d/b/a Pioneer Broadcasting, licensee to Station KIVY–FM, proposing the substitution of Channel 224C2 for Channel 224A at Crockett, Texas, and modification of its station's license to specify operations on the higher class co-channel. The station's current transmitter site will meet the Commission's mileage separation requirements, at coordinates 31–18–20 and 95–27–06.

DATES: Comments must be filed on or before July 7, 1988, and reply comments on or before July 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Stanley G. Emert, Jr., Esquire, Watson, Ericksen & Emert, Suite 2108, Plaza Tower, Post Office Box 133, Knoxville, TN 37901 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (332) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–197, adopted April 18, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11678 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–196, RM–6212]

Radio Broadcasting Services; Haltom City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bluebonnet Radio Broadcasters, Inc., proposing the allocation of Channel 227C2 to Haltom City, Texas, as that community's first local FM service. A site restriction of 8.8 kilometers (5.5 miles) north of the community is required. The coordinates for the proposed site are 32–52–38 and 97–14–05.

DATES: Comments must be filed on or before July 7, 1988, and reply comments on or before July 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Harry C. Martin, Esquire, Reddy, Begley & Martin, 2033 M Street NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–196, adopted April 6, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11680 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–249, RM–6336]

Television Broadcasting Services; Cochran, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to delete channel *15 from Cochran, Georgia, and substitute Channel *29+, in response to a request from the Georgia Public Telecommunications Commission and the United States Department of Defense. Channel *29+ can be allotted to Cochran, Georgia, in compliance with the Commission's minimum distance separation requirements, at the present site of Station WDCO. We also propose to modify the license of Station WDCO to specify operations on Channel *29+ at coordinates 32–28–11 and 83–15–17.

DATES: Comments must be filed on or before July 8, 1988, and reply comments on or before July 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Georgia Public Telecommunications Commission, c/o Theodore P. Frank, Esq., Arent, Fox, Kintner, Plotkin, and Kahn. 1050 Connecticut Ave. NW., Washington, DC 20036–5339.

FOR FURTHER INFORMATION CONTACT: Karl A. Kensinger, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule, MM Docket No. 88–249, adopted May 9, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11677 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket 86–144]

Review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action, requested by the Consumer Electronics Group of the Electronic Industries Association, extends by 60 days the comment and reply comment periods for the *Further Notice of Proposed Rule Making*, in MM Docket 86–144. That further notice (53 FR 10259, March 30, 1988) proposes

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revised minimum distance separation requirements for FM broadcast stations on IF-related channels.

DATES: Comments are due July 12, 1988 and replies are due July 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order Granting Motion for Extension of Time for Filing Comments* in MM Docket 88-144, adopted on May 9, 1988 by the Chief, Mass Media Bureau under delegated authority and released on May 16, 1988. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Order Granting Motion for Extension of Time for Filing Comments

1. On March 22, 1988, the Commission released a *Further Notice of Proposed Rule Making* (*"Further Notice"*) in the captioned matter (53 FR 10259, March 30, 1988). In the *Further Notice*, the Commission proposes revised minimum distance separation requirements for FM broadcast stations on IF-related channels. Comments on the proposal were to be filed on or before May 13, 1988 and replies on or before May 31, 1988. On May 4, 1988, the Consumer Electronics Group of the Electronic Industries Association ("EIA-CEG") filed a motion requesting that the comment period be extended by 60 days.

2. In support of its request, EIA/CEG states that as of May 4, 1988, a technical memorandum referenced by the *Further Notice* ("Laboratory Test Results of the FM-IF Interference in Broadcast Receivers, Project EEB-86-8", OET Technical Memorandum, FCC/OET TM87-4, June 1987, by J. Ray Hallman and Kenneth R. Nichols) was neither in the Commission's docket file nor available from the Commission's copy contractor. EIA/CEG believes that review of this memorandum is essential for it to be able to file useful comments. EIA/CEG further states that the nature of the FM broadcast receiver industry is such that the review of technical data and the formulation of a consensus necessarily require communications with overpass parties. Thus, significantly more time is needed to prepare comments.

3. The Commission does not routinely grant extensions of time for filing comments in rule making proceedings. In this case, however, we believe that the requested extension is justified. We fully intended to make the aforementioned technical memorandum available for reference to commenters in this proceeding, and we have taken steps to insure that a copy of it will be placed in the docket file for public inspection. Furthermore, allowing additional time for EIA/CEG to collect comprehensive technical data from foreign as well as domestic sources will enhance the value of its expected filing. Good cause having been shown, we will grant the requested 60 days extension.

4. Accordingly, it is ordered that the Motion for Extension of Time submitted by the Consumer Electronics Group of the Electronic Industies Association is granted and that the dates for filing comments and replies are extended to July 12, 1988, and July 27, 1988, respectively.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, 1.45 and 1.46 of the Commission's Rules.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-11882 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

Department of Defense Federal Acquisition Regulation Supplement; Security of Government Contractor Telecommunications

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to DFARS Subpart 204.5 and DFARS 252.204-7006 to require contractors and subcontractors to furnish and utilize Government approved telecommunications security equipment, techniques and/or services as appropriate when communicating classified or sensitive information or when required to protect certain telecommunications systems.

DATE: Comments must be received by the DAR Council at the address shown below on or before July 25, 1988, to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 86-78D in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Fernandez, Office of Industrial Relations, National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755-6000 (301/688-5287).

SUPPLEMENTARY INFORMATION:

A. Background

In response to National Communications Security Instruction (NACSI) 6002, "Protection of Government Contractor Telecommunications" and in an effort to improve the communications security posture of Department of Defense (DoD) contractors, DoD issued DoD Directive 5210.74, which requires all DoD components to identify telecommunications security requirements for all contract-related telecommunications, and states that the costs associated with securing contractor telecommunications shall be allowable in the same manner as other security costs. Through new programs sponsored by the NSA, telecommunications security equipment is now available to Government contractors either as Government Furnished Property (GFP), Contractor-Acquired Property, or plant equipment.

The Defense Acquisition Regulatory Council now proposes to add to the DoD FAR Supplement the requirements for contracting officers to identify telecommunications security requirements, if any, for all DoD contracts, and to ensure the implementation of telecommunications security as necessary and appropriate.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the data required to evaluate status as a small business and the reasonableness of an assertion of inability to acquire the necessary equipment is already required to determine their status in respect to the Government contract. An initial regulatory flexibility analysis has been performed and submitted to the Chief Counsel for Advocacy for the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 86-610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 204 and 252

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 204 and 252 as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. A new Subpart 204.5, consisting of sections 204.500 through 204.503, is added to read as follows:

SUBPART 204.5—SECURITY OF CONTRACTOR TELECOMMUNICATIONS

Sec.

204.500 Scope of subpart.
204.501 Definitions.
204.502 Policy.
204.503 Contract clause.

SUBPART 204.5—SECURITY OF CONTRACTOR TELECOMMUNICATIONS

§ 204.500 Scope of subpart.

This subpart prescribes requirements for securing telecommunications between Department of Defense agencies and their contractors and subcontractors.

204.501 Definitions.

"Securing", as used in this subpart, means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this subpart, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this subpart, means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Defense agencies, contractors and subcontractors, to transmit (a) classified or sensitive information; (b) matters involving

intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or (c) matters critical to the direct fulfillment of military or intelligence missions.

204.502 Policy.

(a) National policy provides the basis for agency regulations concerning the security of Government contractor telecommunications systems.

(b) Technical or requirements organizations initiating purchase requests shall identify to the Contracting Officer:

(1) The nature and extent of information requiring security during telecommunications and the requirement for the contractor to secure telecommunications systems for each contract;

(2) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques or services must be interoperable; and

(3) The approved telecommunications security equipment, devices, techniques or services such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(c) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts. Except as provided in paragraph (d) below, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with Part 45 of the FAR. In some cases, such as for communications security (COMSEC) equipment designated as a Controlled Cryptographic Item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(d) The agency head or designee may agree to provide the necessary facilities as Government Furnished Property or authorize their acquisition as Contractor Acquired Property if: (1) the contractor or subcontractor is ineligible to own COMSEC equipment; or (2) the conditions of FAR 45.302–1(a) are met.

204.503 contract clause.

The Contracting Officer shall insert the clause at 252.204–7008, Telecommunications Security Equipment, Devices, Techniques and Services in solicitations and contracts when securing telecommunications is required in performance of a contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.204–7008 is added to read as follows:

252.204–7008 Security of contractor telecommunications.

As prescribed in 204.503 insert the following clause:

TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES AND SERVICES (DATE)

(a) Definitions.

"Securing", as used in this clause, means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this clause, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this clause, means voice, record, and data communications including management information systems and local data networks that connect to external transmission media, when employed by Defense agencies, contractors and subcontractors to transmit (a) classified or sensitive information; (b) matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or (c) matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and the requirement for the Contractor to secure telecommunication systems. The Contractor agrees to secure information and systems identified in

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(insert the location in solicitation/contract).

(c) To provide the secrity, the Contractor shall use Government-approved telecommunications security equipment, devices, techniques or services, as identified in

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(insert location in solicitation/contract). Equipment, devices, techniques or services used by the Contractor must be compatible or interoperable with

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(insert location in solicitation/contract listing any telecommunications security equipment, device, techniques or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as provided in DFARS 204.502(d), Contractors shall furnish all telecommunications security equipment, devices, techniques or services necessary to perform this contract. Contractors must meet ownership eligiblity conditions for COMSEC equipment designated as Controlled Cryptographic Items (CCI).

(e) This clause, including this paragraph (e), shall be included in all subcontracts which require securing telecommunications, suitably modified to reflect the relationship of the parties.

(End of clause)

[FR Doc. 88–11869 Filed 5–25–88; 8:45 am]
BILLING CODE 3810–01–M

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48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; Subcontract Pricing Considerations

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to DFARS 215.804, 215.805 and 215.806 concerning subcontract policies and procedures.

DATE: Comments must be received by the DAR Council at the address shown below on or before July 25, 1988, to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 84–96D in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory (DAR) Council is considering these changes as a result of increased management visibility in subcontract pricing and to ensure that the Government pays fair and reasonable prices for its needs. Subcontracts often account for more than 50% of a prime contract price. Therefore, scrutiny of these prices is a good management practice and a reasonable action.

B. Regulatory Flexibility Act

The proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 86–610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 215

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 215 as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

215.804–5 [Amended]

2. Section 215.804–6 is amended by removing paragraph (g)(3).

215.805–5 [Amended]

3. Section 215.805–5 is amended by removing paragraphs (i) and (j).

4. Sections 215.806–2 and 215.806–3 are added to read as follows:

215.806–2 Prospective subcontractor cost or pricing data.

(e)(4) The contract clause shall also give to the contracting officer a unilateral right, subject to the Disputes procedure, to determine the prime contract adjustment, if agreement on such price cannot be reached by the parties within a reasonable time.

215.806–3 Field pricing reports.

(a) If in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractor's cost estimates at the subcontractor's plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the ACO having cognizance of the prime contractor before being initiated. The contracting officer's need to complete negotiations in a timely manner should be strongly considered before initiating additional reviews. If a review of a subcontractor's proposal is necessary, the ACO for the prime contractor shall forward the request to the ACO for the subcontractor with an informational copy to the auditor for the subcontractor. In the event a lower tier subcontract proposal requires review, the request should be coordinated in sequence with the ACOs at the higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract ACO to the prime ACO with an information copy to the prime auditor.

(b) The appropriate contract administration activities will be notified by the PCO when review and evaluation of subcontractor's proposals will require extensive field pricing assistance in connection with acquisition of a major weapon system, or require special or expected action by field pricing personnel and such action is being, or has been delayed.

[FR Doc. 88–11926 Filed 5–25–88; 8:45 am]
BILLING CODE 3810–01–M

VOL 53 ISS 102 MAY 26 1988 UMI

Notices

Federal Register
Vol. 53, No. 102
Thursday, May 26, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-086]

Boll Weevil Eradication Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document advises the public that the Animal and Plant Health Inspection Service (APHIS) intends to prepare an environmental impact statement (EIS) for the Federal/cooperative Boll Weevil Eradication program. The impacts on the environment of the eradication of boll weevil will be evaluated in the EIS.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Environmental Specialist, BECS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-7602.

SUPPLEMENTARY INFORMATION:

Background

The boll weevil was introduced to the United States in 1892 near Brownsville, Texas. From that point of introduction the weevil spread quickly, and by 1922, it had completely infested a 15-State region known since then as the Boll Weevil Belt. This area involves nearly 11 million acres of cotton.

As the boll weevil spread eastward and westward from its point of origin, it caused more damage than any other cotton pest. It is currently the most important agricultural pest in the United States, responsible for more than $300 million in annual losses and control costs for cotton. The damage caused by the boll weevil and other pests has been estimated to be 7 to 20 percent of the U.S. cotton crop.

In infested areas, economic losses are traditionally prevented only by intensive use of chemicals by cotton growers. Frequently, these chemicals must be applied repeatedly throughout the growing season to control weevils and any resulting secondary pests. Within the proposed program area, the boll weevil may be indirectly responsible for much of the damage caused by the bollworm, the tobacco budworm, and spider mites, because insecticides used to control the boll weevil destroy many of the natural enemies of these species. This, in turn, often results in higher crop losses and even more intensive use of insecticides to protect the crop from these pests. This boll weevil cycle results in very few options for growers using pest management control strategies against other pests.

APHIS initiated a Boll Weevil Eradication Trial in North Carolina and Virginia during 1978 through 1982. That trial demonstrated that boll weevil can be eradicated, and, further, that the eradication of the boll weevil can also increase the value of land not previously planted for cotton production. Using county acreage figures, a regression model, and adjusting for other factors, cotton acreage increased from 50 to 60 percent due to the Boll Weevil Eradication Trial.

The success of this trial program on nearly 40,000 acres resulted in program expansion to other cotton producing areas. A significant benefit of the program is the decline in cotton insecticide application for the eradication zone following the program. The decline in pesticide usage was estimated to be 55 percent. In the buffer zone, private insect control expenditures also declined by about 14 percent.

APHIS has cooperated in three isolated Boll Weevil Eradication programs: Southeast, Texas High Plains, and Southwest. In the majority of these programs, APHIS has provided technical advice, and has participated only in the collection and distribution of survey and monitoring information. In the Southeast program, however, APHIS has been responsible for managing and supervising the entire supression program in four States: Alabama, Florida, Georgia, and South Carolina. Because of the success of the trial program and the relative success of the three cooperative programs, and the desire to instill more uniformity in the boll weevil eradication effort, APHIS proposes to implement a boll weevil eradication effort that covers the entire Boll Weevil Belt. The scope of that program, and the multi-year nature of the endeavor, triggers the need for a comprehensive, programmatic EIS.

Alternatives

The following five alternative methods of control for boll weevil will be considered in the EIS: (1) No Action, (2) Sterile Insect Technique (SIT), (3) Cultural, (4) Chemical, and (5) Integrated Pest Management (IPM).

Major Issues

The following are some of the major issues to be discussed in the EIS:

(1) Impacts of the alternatives on the biological environment, including target and nontarget species;

(2) Impacts of the alternatives on the physical environment, including soil, water quality, and air quality.

(3) Impacts of the alternatives on other aspects of the human environment, such as wilderness areas, domestic animals, recreation, public health and safety, the cultural environment, public attitudes, energy, and the economy.

Public Input and Scoping Meetings

Public input is a continuing process. Public written comments are requested on any issues or concerns of the proposed Boll Weevil Eradication program for use by APHIS in focusing the EIS analysis. The time and place for scoping meetings to allow for public involvement in the EIS scoping process will be provided in a subsequent **Federal Register** notice.

Done in Washington, DC, this 20th day of May 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-11922 Filed 5-25-88; 8:45 am]
BILLING CODE 3410-34-M

Food and Nutrition Service

Child Nutrition Programs; Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1988—June 30, 1989. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, and Child Care Food Program and by commodity schools. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29112, June 24, 1983.) This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612), and thus is exempt from the provisions of that Act.

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1733(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals in the National School Lunch Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Child Care Food Program (7 CFR Part 226), commodity schools (7 CFR Part 210), and the guidelines for free milk in the Special Milk Program (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge meals separately from other fees to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, social security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from considerations as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1988 through June 30, 1989. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the 1988 Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

BILLING CODE 3410-30-M

INCOME ELIGIBILITY GUIDELINES

July 1, 1988 - June 30, 1989

Household Size	Reduced Price Meals - 185%			Free Meals - 130%			Federal Poverty Guidelines		
	Year	Month	Week	Year	Month	Week	Year	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES									
1	10,675	890	206	7,501	626	145	5,770	481	111
2	14,301	1,192	276	10,049	838	194	7,730	645	149
3	17,927	1,494	345	12,597	1,050	243	9,690	808	187
4	21,553	1,797	415	15,145	1,263	292	11,650	971	225
5	25,179	2,099	485	17,693	1,475	341	13,610	1,135	262
6	28,805	2,401	554	20,241	1,687	390	15,570	1,298	300
7	32,431	2,703	624	22,789	1,900	439	17,530	1,461	338
8	36,057	3,005	694	25,337	2,112	488	19,490	1,625	375
For each add. family member	+3,626	+303	+70	+2,548	+213	+49	+1,960	+164	+38
ALASKA									
1	13,339	1,112	257	9,373	782	181	7,210	601	139
2	17,871	1,490	344	12,558	1,047	242	9,660	805	186
3	22,404	1,867	431	15,743	1,312	303	12,110	1,010	233
4	26,936	2,245	518	18,928	1,578	364	14,560	1,214	280
5	31,469	2,623	606	22,113	1,843	426	17,010	1,418	328
6	36,001	3,001	693	25,298	2,109	487	19,460	1,622	375
7	40,534	3,378	780	28,483	2,374	548	21,910	1,826	422
8	45,066	3,756	867	31,668	2,639	609	24,360	2,030	469
For each add. family member	+4,533	+378	+88	+3,185	+266	+62	+2,450	+205	+48
HAWAII									
1	12,303	1,026	237	8,645	721	167	6,650	555	128
2	16,465	1,373	317	11,570	965	223	8,900	742	172
3	20,628	1,719	397	14,495	1,208	279	11,150	930	215
4	24,790	2,066	477	17,420	1,452	335	13,400	1,117	258
5	28,953	2,413	557	20,345	1,696	392	15,650	1,305	301
6	33,115	2,760	637	23,270	1,940	448	17,900	1,492	345
7	37,278	3,107	717	26,195	2,183	504	20,150	1,680	388
8	41,440	3,454	797	29,120	2,427	560	22,400	1,867	431
For each add. family member	+4,163	+347	+81	+2,925	+244	+57	+2,250	+188	+44

BILLING CODE 3410-30-C

Authority: (42 U.S.C. 1758(b)(1)).

Dated: May 20, 1988.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 88-11851 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-30-M

Foreign Agricultural Service

Sunflower Oil Assistance Program (SOAP)

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that USDA will use $10,000,000 to purchase sunflower seed oil. This sunflower seed oil will be made available through fiscal year 1989 as a bonus to U.S. exporters to facilitate additional sales of sunflower seed oil in targeted world markets.

ADDRESS: Comments and proposed alternate systems should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250. A request to receive copies of the announcements under the program may be made by writing to the Commodity Credit Corporation Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, Phone (202) 447-6225 or William Hawkins, Agricultural Marketing Specialist, of the same Division, Phone (202) 447-3241.

SUPPLEMENTARY INFORMATION: Section 637 of the Rural Development, Agriculture and Related Agencies Appropriations Act, 1988, as contained in section 101(k) of Pub. L. 100-202, directed the Secretary of Agriculture to purchase $10 million of sunflower seed oil, using funds available under section 32 of Pub. L. 74-320, in order to facilitate additional export sales of sunflower seed oil during fiscal years 1988 and 1989, for the purpose of competing with other countries that export vegetable oil. The export promotion activity of the Sunflower Oil Assistance Program (SOAP) created under this authority will be administered by the General Sales Manager, Foreign Agricultural Service. The program will be designed to increase export sales of sunflower seed oil to those markets where U.S. exporters have been subjected to unfair competition by nations that subsidize their exports of vegetable oil.

The program will have two distinct parts. First, the Department of Agriculture will, from time to time, issue an Invitation for Bids to purchase sunflower seed oil. Second, sunflower seed oil will be made available to U.S. exporters in the form of bonuses for the purpose of increasing export sales of sunflower seed oil.

Periodically, the General Sales Manager will issue announcements and invitations for bonus offers containing the terms and conditions of the SOAP. These will specify, among other things, the quantity of sunflower seed oil that may be sold to foreign buyers and the country to which the sunflower seed oil must be exported.

In general, it is anticipated that the export part of the program will work as follows:

(1) U.S. exporters must qualify before they may enter into an agreement with the General Sales Manager. Interested U.S. exporters may contact the CCC Operations Division at the above address to obtain the specific qualifications requirements established for the program.

(2) Exporters participating under the program will be required to furnish an adequate performance security prior to entering into an agreement with the General Sales Manager.

(3) Upon issuance of an announcement and invitation by the General Sales Manager, an exporter may enter into a contract to sell sunflower seed oil overseas in accordance with the terms and conditions of the announcement. This contract may provide that the export sale is contingent upon the acceptance by the General Sales Manager of the exporter's bonus offer.

(4) After entering into a sales contract with a foreign buyer, an exporter may submit a bonus offer to the General Sales Manager. Each invitation will state whether the bonus offer should specify the amount of sunflower seed oil requested for a bonus in terms of (a) the dollar value of sunflower seed oil, (b) Units of quantity of the sunflower seed oil or (c) both, and will also state the process for submitting bonus offers. The bonus offer should be for only the amount that is needed to make the exporter's sale competitive with export sales from other suppliers of vegetable oil to the country specified in the invitation.

(5) Bonus offers, which comply with the terms and conditions of the applicable announcement and invitation, will be reviewed by the General Sales Manager on a competitive basis, considering the bonus requested, the sale price, and the sales prices of competitor countries in the same market. The General Sales Manager will reserve the right to reject any and all offers for a bonus.

(6) If the exporter's bonus offer is accepted, the exporter will be notified in writing.

(7) The exporter must furnish evidence that the sunflower seed oil has been exported in accordance with the terms and conditions of the agreement. The exporter may then request delivery of the bonus.

(8) After the General Sales Manager has determined that the exporter has complied with all the terms and conditions of the agreement, the performance security(ies) will be released.

The General Sales Manager invites the public to comment on this system and to propose alternate systems at any time during the course of the program. The operation of the program is subject to review and change at any time after comments are received, and in light of experience gained in operating the program.

Signed at Washington, DC, on May 6, 1988.

Melvin E. Sims,

General Sales Manager and Associate Administrator, FAS.

[FR Doc. 88-11916 Filed 5-24-88; 8:45 am]

BILLING CODE 3410-10-M

Soil Conservation Service

Beverly City Waterfront Critical Area Treatment (CAT) RC&D Measure, Burlington County, New Jersey

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Beverly City Waterfront Critical Area Treatment (CAT) RC&D Measure, Burlington County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant

local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Beverly City Waterfront Critical Area Treatment (CAT) RC&D Measure, New Jersey

Notice of a Finding of No Significant Impact

The measure concerns a plan for providing bank protection to control shoreline erosion along the waterfront.

The planned work of improvement includes the grading and installation of precast concrete revetment panels.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Enviornmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until June 27, 1988.

Dated: May 20, 1988.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Barbara T. Osgood,

State Conservationist.

[FR Doc. 88-11786 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-16-M

Madison High School Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Madison High School Critical Area Treatment (CAT) RC&D Measure, Morris County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Madison High School Critical Area Treatment (CAT) RC&D Measure, New Jersey Notice of a Finding of No Significant Impact

The measure concerns a plan for providing surface and subsurface water measures to control gully erosion on slopes adjacent to ballfields.

The planned works of improvement include the installation of a diversion, surface inlet, underground unlet, grading, and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until June 27, 1988.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 20, 1988.

Barbara T. Osgood,

State Conservationist.

[FR Doc. 88-11787 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-16-M

Carpentersville Road Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Carpentersville Road Critical Area Treatment (CAT) RC&D Measure, Warren County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Carpentersville Road Critical Area Treatment (CAT) RC&D Measure, New Jersey Notice of a Finding of No Significant Impact

The measure concerns a plan for providing for the installation of an underground outlet to control gully erosion along a roadside.

The planned works of improvement include the installation of 42" pipe, surface inlets, grading and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Barbara T. Osgood,

State Conservationist.

Date: May 10, 1988.

[FR Doc. 88-11789 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m., on June 20, 1988, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894-3427, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division office at least (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-11796 Filed 5-25-88; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of a subcommittee, composed of new appointees, of the Kentucky Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 5:00 p.m., on June 24, 1988, at the Seelbach Hotel, 500 4th Avenue, Louisville, Kentucky. The purpose of the meeting is to brief new members on the policies and procedures of the Commission and to discuss current civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-11797 Filed 5-25-88; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on June 16, 1988, at the Red Lion, 18740 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Washington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division, (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least (5) working days before the scheduled date of the meeting.

The meeting will be conducted purusant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 18, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-11798 Filed 5-25-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 80102-8095]

Allocation of Duty-Exemptions for Calendar Year 1988 Among Watch Producers Located in the Virgin Islands and Guam

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Allocation of duty-exemptions for calendar year 1988 among producers located in the Virgin Islands and Guam.

SUMMARY: This action allocates 1988 duty-exemptions for watch producers located in the Virgin Islands and Guam pursuant to Pub. L. 97-446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 97-446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the insular possessions and the Northern Mariana Islands. The total quantity of watches and watch movements which may be entered free of duty from the insular possessions and the Norther Mariana Islands is 6,700,000 units. Of this amount, 4,700,000 units may be allocated to Virgin Islands producers, 1,000,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (53 F.R. 17924).

The criteria for the calculation of the 1988 duty-exemption allocations among insular producers are set forth in Sec. 303.14 of the regulations (15 CFR Part 303) as amended on May 19, 1988 (53 F.R. 17924).

The Departments have verified the data submitted on application form ITA-334P by producers in the territories and inspected the current operations of all producers in accordance with Sec. 303.5 of the regulations.

The verification established that in calendar year 1987 the Virgin Islands watch assembly firms shipped 3,243,334 watches and watch movements into the customs territory of the United States under Headnote 6 of Schedule 7, Part 2, Subpart E of the Tariff Schedules of the United States. The dollar amount of creditable corporate income taxes paid

by Virgin Islands producers during calendar year 1987 plus the creditable wages paid by the industry during calendar year 1987 to residents of the territory totalled $6,024,457.

There is only one producer in Guam. Publication of the Guam data, accordingly, would disclose competitively sensitive information.

The calendar year 1988 Virgin Islands and Guam annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and Guam and are made in accordance with the formula governing the allocation of the duty-exemptions set forth in Sec. 303.14 of the regulations which includes a set-aside of 500,000 units for new entrant firms in each territory. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA Form—334P) as a result of the Departments' verification and reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to Sec. 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1988 in the Virgin Islands are as follows—

Name of firm	Annual allocation
1. Belair Quartz, Inc	500,000
2. Hampden Watch Co., Inc	300,000
3 Master Time Co., Inc	600,000
4. Progress Watch Co., Inc	618,548
5. Unitime Industries, Inc	871,452
6. Tropex, Inc	500,000
7. Timex V.I., Inc	750,000

The duty-exemption allocation for Guam is as follows—

Timewise Ltd	500,000

Joseph A. Spetrini,

Deputy to the Deputy Assistant Secretary for Import Administration.

Mark Hayward,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 88-11908 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-DS-M; 4310-93-M

DEPARTMENT OF COMMERCE

International Trade Administration

Caribbean Basin Business Promotion Council; Open Meeting

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: This is the second meeting of the Caribbean Basin Business Promotion Council (Council). The Council consists of 28 private sector members and eight U.S. Government representatives and was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice will also be forwarded to the interagency CBI Task Force.

Time and place: June 17, 1988 from 8:30 a.m. to approximately 5:30 p.m. The meeting will take place at the Hotel Condado Beach, Ashford Avenue, San Juan, Puerto Rico. Actual meeting room locations will be posted in the hotel's lobby.

Proposed Agenda:

1. Discussion of Puerto Rico's Caribbean Development (936) Program as it relates to economic development in the Caribbean Basin.

2. Investment climate reviews of Barbados, Costa Rica, Dominica, Grenada, Jamaica, and St. Lucia provided by country government representatives.

3. Analysis of CBI investment survey conducted by the U.S. Department of Commerce.

4. Review of Council's work plan and country visit assignments by Council members.

5. Discussion on Congressional and Administration outlook for CBI.

Public participation: The meeting will be open to public participation and a period will be set aside for oral comments or questions, beginning on or around 5:00 p.m. on June 17. Any member of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. Seating is available to the public. Seating will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Paul D. Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3020, Washington, DC 20230. Telephone (202) 377-0703. Copies of the minutes of the Council's meeting will also be available at the above office 30 days after the meeting.

Dated: May 18, 1988.

Gordon Studebaker,

Director, CBI Center.

[FR Doc. 88-11907 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-FP-M

Machine Tool Special Issue Licenses; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for special issue licenses under Article 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Machine Tools.

DATE: Comments must be submitted no later than June 6, 1988.

ADDRESS: Send all comments to John A. Richards, Director, Office of Industrial Resource Administration, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Industrial Resource Administration, Department of Commerce, Room 3878, Washington, DC 20230, (202) 377-3984.

SUPPLEMENTARY INFORMATION: Article 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses for the importation of machine tools covered by the Agreement. Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request to import 72 lathes from Japan. The machines have the following technical specifications:

SB-1 Machine

Base: Bed flat configuration, swing over bed 400 mm (15.748");

Headstock: Spindle diameter 80 mm (3.150"), spindle bore 47 mm (1.850"), spindle chuck 3-jaw 8" hydraulic, spindle speed 35-3500 rpm, spindle motor AC 5.5/7.5 KW;

Slides: Longitudinal travel (z-axis) 250 mm (9.843"), cross travel (x-axis) 300mm (11.811"), rapid rates z-axis/x-axis 10m/minute (393.7" per minute), feed rates (z-axis/x-axis) 1-5000 mm/minute to 0.000/500 mm/rev.;

The machine includes an optional center drilling capability through the spindle bore of the headstock. This center drill shall have a stroke capacity of 36.5 mm and shall be controlled via program. In this feature, the drill is stationary while the work piece rotates.

Accuracies

Bed level in longitudinal and traverse direction z-axis direction (in vertical plane) .02 mm/meter, bed concave not more than .02 mm/meter, straightness of bed slide ways z-axis direction (in horizontal plant) for center distance up to 1000 mm, maximum .005 mm, spindle flange runout OD/ID not to exceed .003 mm, parallelism of spindle center line with z-axis direction movement, test bar in spindle-vertical/horizontal planes .005 mm maximum/300 mm, spindle flange surface runout (face) not to exceed .005 mm, squareness of x-axis direction movement with spindle centerline .006 mm total/300 mm, repeatability x-axis and z-axis not to exceed .003 mm in 420 consecutive cycles.

SB-II Machine

Base: Bed slant bed configuration, swing over bed 440 mm (17.323")

Headstock: Spindle diameter 90 mm (3.543"), spindle bore 50 mm (1.969"), spindle speed 25-2500 rpm, spindle motor AC 11/15 kw (30 minute).

Slide: Longitudinal travel (z-axis) 300 mm (11.811"), cross travel (x-axis) 400 mm (15.748"), rapid rates (z-axis) 12 m/minute (472"/minute), (x-axis) 8m/minute (314"/minute), feedrates (z-axis/x-axis) 1-5000 mm/minute or 0.0000/500 mm/rev.

Aux. Slide: Travel stroke 15 mm (0.59"), rapid feed 2 m/minute (78.74"), feed rates 1-2000 mm/minute or 0.01-78.74"/minute);

Tailstock: Travel stroke 200 mm (7.874"), range of tailstock move on machine base 420 mm (16.535"), diameter of quill 90 mm (3.543"), center taper #5 MT, distance between center and headstock flange, minimum 42 mm (1.654), maximum 662 mm (26.063"), tailstock shall be operated manual, programmable or foot switch.

The machine described herein shall have the ability to turn non-concentric outside diameters (oval shapes) in a single setting for the production of various piston shapes. In addition, the machine must be capable of tilting the cutting axis +/-3 degrees from the x-axis to form the ring grooves and chamfers.

Accuracies

Bed level in longitudinal and traverse direction, z-axis direction (in vertical plane) .02 mm/meter, bed concave not more than .02 mm/meter, straighteners of bed slide ways z-axis direction (in horizontal plane) for center distance up to 1000 mm, maximum .005 mm, spindle flange runout OD/ID not to exceed .003 mm, parallelism of spindle centerline with z-axis direction movement—test bar in spindle—vertical plane .005 mm maximum 300 mm, horizontal plane .003 mm maximum/300 mm, spindle flange surface runout (face) not to exceed .005 mm, squareness of x-axis direction movement with spindle centerline .006 mm total/300 mm, parallelism of carriage movement with tailstock spindle in vertical plane .0/mm in 150 mm (must be high at free end), in horizontal plane +/-.003 mm in 150 mm, vertical alignment of headstock center with tailstock center maximum .01 mm (must be high at tailstock end, repeatability x-axis and z-axis not to exceed .003 mm in 420 consecutive cycles.

Any party interested in commenting on this request should send written comments as soon as possible, and not later than June 6, 1988.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address, (202) 377-1248.

May 23, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-11909 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, May 25, 1988, at 8 a.m., at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA (telephone: 412-391-4600), to discuss the stock assessment workshop; the National Oceanic and Atmospheric Administration (NOAA) attorneys; and Exclusive Economic Community (EEC) representatives' meetings, habitat issues, and other fishery management and administrative matters. The public meeting will adjourn on the afternoon of May 26 but may be lengthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION, CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901-6790; telephone: (302) 674-2331.

Date: May 23, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-11923 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's subcommittee of the Council Performance Select Group and the Council's Limited Entry Committee will convene separate public meetings at the Council's office, (address below), as follows:

Subcommittee of the Council Performance Select Group—on June 9, 1988, at 1:30 p.m., in Room 330, will develop initial recommendations for improving the Council's March management option development and display process for salmon. Recommendations developed by the subcommittee will be reviewed by the Council at its July 12-14, 1988, meeting. Oral or written statements pertaining to the March salmon management process will be accepted at appropriate times during the meeting. The meeting will continue on the following day as necessary to complete the subcommittee's work.

Limited Entry Committee—on June 7, 1988, at 8 a.m., is scheduled to meet in conjunction with the Council's Technical Advisory Group to finalize the Limited Entry Committee report. The public meeting will adjourn on June 8.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 200 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: May 23, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, Marine Fisheries Service.

[FR Doc. 88-11924 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Japan

May 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: May 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6583. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 314 is being reduced for carryforward used during the previous restraint period.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49470, published in the **Federal Register** on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 27, 1988, the directive of December 28, 1987 is hereby amended to reduce to 26,480,827 square yards [1] the previously established limit for cotton textile products in Category 314, as provided under the terms of the current bilateral agreement between the Governments of the United States and Japan.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11882 Filed 5–25–88; 8:45 am]

BILLING CODE 3510-DR-M

Extension of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

May 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: May 27, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: Inasmuch as no mutually agreed solution has been reached and to avoid continued market disruption, the limit for Categories 342/642 is being extended for the twelve-month period which begins on May 27, 1988 and extends through May 26, 1989. Overshipments of the previous restraint period will be charged to the limit established in this directive. Current data show overshipments in the amount of 94,478 dozen. This amount, plus the amount currently in embargo, may fill the limit upon opening.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Turkey, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 43097, published in the **Federal Register** on November 9, 1987, and 53 FR 165 and 53 FR 166, published on January 5, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 27, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in Turkey and exported during the twelve-month period which begins on May 27, 1988 and extends through May 26, 1989, in excess of 126,723 dozen.

Goods in excess of the previous limit shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11906 Filed 5–25–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc.; Proposed Amendments Relating to the Copper Futures Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Commodity Exchange, Inc. ("Comex" or "Exchange") has submitted for its copper futures option contract a proposal to change the futures contract underlying that option to the "Grade 1 copper" futures contract from the currently traded "copper" futures contract. In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before June 27, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the Comex copper futures option contract.

FOR FURTHER INFORMATION CONTACT: Contact Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The Comex recently has proposed to phase out its existing copper futures contract (Grade 2 copper) and to activate its Grade 1 copper futures contract which has not yet been listed for trading.[1] Under the Exchange's proposal, no new Grade 2 copper futures delivery months will be listed for trading after June 30, 1988, and delivery months in the Grade 1 copper futures contract will be listed for trading beginning on July 29, 1988. Ten Grade 1 futures delivery months will be listed initially, starting with the January 1989 delivery month.[2] The last Grade 2 futures delivery month will be May 1990. Therefore, under this implementation plan, both Grade 1 and Grade 2 copper futures contracts will be listed for the same delivery months from January 1989 through May 1990.

In connection with the phase-out of the Grade 2 copper futures contract and its replacement with the Grade 1 futures contract, the Exchange is proposing to change the designated futures contract which will underlie its copper futures option. With the proposed rule amendments to Chapter 17 of the copper option, holders of Comex copper futures options will have the right to buy (for calls) or sell (for puts) one Grade 1 copper futures contract, rather than one Grade 2 copper futures contract, at a specified price by a certain expiration date. No other terms or conditions of the Comex's copper option are affected by this proposal. The proposed amendments would apply only to newly listed option contracts. Existing option contracts would not be affected.

The Comex has indicated that on July 29, 1988, when the Grade 1 copper future is first listed for trading, the March and May 1989 Grade 1 copper options will be listed. The Grade 2 copper option will be gradually phased out beginning July 29, 1988, by not listing any additional months after that date and by delisting any existing Grade 2 option months for which open interest becomes zero on or after that date. On that date, the existing Grade 2 option months would be September and December 1988 and March and May 1989.[3] Thus, both Grade 1 and Grade 2 copper options will be listed for March and May 1989.

The Division requests comment on the acceptability of the Comex's proposal to change the futures contract underlying the copper option and the plan of implementation.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, view or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC, on May 23, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–11912 Filed 5–25–88; 8:45 am]

BILLING CODE 6351-01-M

[1] The Comex Grade 1 copper futures contract, which was designated by the Commission in October 1986, provides for the delivery of Grade 1 copper cathodes exclusively. The Comex's actively traded Grade 2 copper futures contract, which is being phased out, specifies par delivery of Grade 2 copper cathodes, electrolytic copper in wire bars, and fire refined copper in ingot bars. In addition, Grade 1 copper cathodes are deliverable on that contract, at a 1½-cent per pound premium, as well as electrolytic copper in ingot bars, at a ½-cent per pound premium, and fire refined copper assaying 99.88% copper (plus silver) in ingot bars, at a ⅛-cent per pound discount.

[2] Delivery months for copper futures are the current calendar month, the following two calendar months and every January, March, May, July, September, and December for a 23-month period from the current calendar month.

[3] Pursuant to existing Comex rules, trading in copper futures options is conducted in the nearest four of the following copper futures delivery months—March, May, July, September, and December.

Citrus Associates of the New York Cotton Exchange; Proposed Amendments Relating to Tariffs for the Handling and Storage of Frozen Concentrated Orange Juice Deliverable on the Frozen Concentrated Orange Juice Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Citrus Associates of the New York Cotton Exchange ("CANYCE" or "Exchange") has submitted a proposed amendment to the frozen concentrated orange juice ("FCOJ") futures contract establishing a 50-cent-per-hundredweight maximum fee on tariffs that Exchange-licensed facility operators may charge for storing or handling FCOJ for delivery on the FCOJ futures contract. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of

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major significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before June 27, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed amendment to the CANYCE FCOJ futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW. Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The proposed amendment to the FCOJ futures contract would provide that tariffs charged by Exchange-licensed facility operators for the storage or handling of FCOJ for futures contract deliveries may not exceed $.50 (50 cents) per hundredweight. This maximum fee of 50 cents per hundredweight would apply separately to each of the tariffs charged for handling in, handling out, or storage for one month. The current terms of the FCOJ futures contract provide that tariffs charged by Exchange-licensed facility operators must be satisfactory to the Exchange, though those terms do not currently specify what the Exchange deems to be satisfactory tariffs.

According to the Exchange, Rule 31(e) has been amended to include the policy decision of the CANYCE that a tariff for storage or handling in excess of 50 cents per hundredweight could not be deemed satisfactory. The Exchange believes that the proposed 50-cent-per-hundredweight maximum fee for handling or storage tariffs reflects current cash market practices, including the practices of facilities licensed for futures deliveries. The CANYCE also indicated that, with respect to individual requests for tariff increases, its current rules will continue to permit the Board of Directors of the Exchange to declare any such tariff increase request unsatisfactory independently of this proposed maximum fee. The Exchange indicates that the proposed amendment will be made effective immediately following receipt of notice of Commission approval for application to existing and new applications for tariff chanrges received by the Exchange.

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendment should send such comments to Jean A. Web, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on May 23, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-11913 Filed 5-25-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command Directorate of Personal Property Through Government Bill of Lading Program for Household Goods and Unaccompanied Baggage

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Invitation to comment on procedural change to weighing procedures for professional books, papers and equipment (PBP&E).

SUMMARY: Present wording in DOD 4500.34–R requires a carrier to weigh PBP&E separately on either a platform or bathroom scale. When these types of scales are not available, a constructive weight of 40 pounds per cubic foot may be used. Experience with PBP&E indicates that scales are seldom available, and if they are, the carrier sometimes uses an arbitrary lift weight (what he thinks it weighs from lifting the box). Also, bathroom scales are neither practical nor calibrated to provide a reliable weight. To simplify weighing procedures and to eliminate a potential adverse impact on a member's entitlement, i.e., not recording actual weight of PBP&E, the Military Services concur that constructive weights should be used to determine the weight of all PBP&E.

All applicable paragraphs in the Personal Property Traffic Management Regulation (PPTMR), including Appendix A, Tender of Service, would be changed to read as follows:

A constructive weight of 40 pounds per cubic foot will be used to determine the weight of all PBP&E. The cubic feet of each box and/or item will be annotated on the inventory. Carriers will multiply the cubic feet by 40 pounds and annotate the weight on the PPGBL. This weight will not be subtracted from the total shipment net weight.

DATE: Submit written comments by June 30, 1988, to: HQ Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT–PPQ–O, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: HQ Military Traffic Management Command, ATTN: MT–PPQ–O (Barbara Yarbrough), 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1654.

Kenneth L. Denton,

Alternate Liaison Officer With the Federal Register.

[FR Doc. 88-11802 Filed 5-25-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management of Trip-Leased Equipment

AGENCY: Military Traffic Management Command (MTMC), Department of the Army.

ACTION: Notice of final ruling on the use of trip-leased equipment with or without drivers to transport DOD freight.

SUMMARY: DOD prohibits carriers from trip leasing equipment with or without drivers to transport DOD freight except upon prior approval from the Military Traffic Management Command (MTMC). Leases of less than 30 days are considered trip leases.

It is essential that DOD have control over all shipments and, therefore, will no longer tender shipments to carriers on trip leases without specific authorization by MTMC. The vehicles used must be owned or leased under a valid agreement by the company transporting the shipment, and the vehicle drivers must be full-time employees or under the direct control and responsibility of that company. Current DOD policy prohibits trip leasing for shipments requiring a Transportation Protective Service.

Service is the primary concern when shipping Government freight. The Freight Carrier Performance Program was established by MTMC to ensure a satisfactory level of service is provided

by carriers transporting DOD freight. Since the Interstate Commerce Commission has allowed for the expanded use of trip leasing, the majority of serious service complaints concered trip-leased loads. Among the major concerns are the loss of control by the authorized carrier, the susceptibility for payment disputes between the lessor and the lessee leading to delay or loss of DOD freight, and the carrier's lack of adequate screening of trip-leased drivers.

DATE: Effective 1 October 1988, only carriers approved by MTMC will be able to trip lease equipment to transport DOD freight.

ADDRESS: Requests for trip-lease approval should be addressed to: Headquarters, Military Traffic Management Command, ATTN: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Sours or Ms. Patricia McCormick, HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, (703) 756–1565/1887.

SUPPLEMENTARY INFORMATION: All carriers desiring to trip lease equipment to transport DOD freight must be approved by MTMC and have a signed agreement on file with MTMC authorizing the carrier to trip lease. Requests for approval to trip lease should be sent to Commander, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF. In order to be considered for approval, carriers must provide proof of their common-carrier authority and provide a copy of their standard lease agreement to HQMTMC. In addition, carriers must have their insurance companies forward HQMTMC original certificate(s) of insurance for public liability and cargo insurance. The certificate holder block of the form will identify HQMTMC, Directorate of Inland Traffic, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, to be notified 30 days in advance of any change or cancellation. In addition to the minimum public liability insurance requirements identified in 49 CFR 387.9, MTMC's current cargo insurance requirements are based on the released value rare of the cargo. Lease agreements must include an equipment inspection checklist to be completed by the company transporting the shipment and must meet the requirements specified in 49 CFR 1057, such as:

(a) Lease shall be written.

(b) Lease shall be signed by the authorized carrier and the owner of the equipment.

(c) Lease shall specify the time and date or the circumstances on which the lease begins and ends.

(d) Lease shall provide that the authorized carrier has exclusive possession, control, and use of equipment, and shall assume complete responsibility for the operation of the equipment.

(e) Lease or the addendum attached to the lease will specify the amount paid by the authorized carrier for equipment and the driver's sservices.

(f) Lease shall specify which party will remove identification devices from the equipment.

(g) Lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier.

(h) Lease shall specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public.

(i) During the terms of the lease, the carrier shall identify the equipment in accordance with 49 CFR 1058.

An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease. The lease carried on the equipment must have original signatures of both the lessor and the lessee. Facsimile copies of the lease are unacceptable.

Carriers failing to have trip-lease approval from MTMC and/or failing to execute proper leases in accordance with 49 CFR 1057 will be considered as providing improper or inadequate equipment and may be nonused or disqualified by MTMC or the shipping activity. Also, the shipping activity reports may be considered in evaluating overall performance by a general freight board either at the area command level or headquarters level which could result in a maximum 3-years nationwide disqualification.

Agreement Between the Military Traffic Management Command and Motor Common Carriers For Approval To Trip Lease Equipment To Transport Department of Defense Freight

1. The undersigned, who is duly authorized and empowered to act on behalf of ———, hereinafter called the carrier, as a prerequisite for approval to trip lease equipment with or without drivers to transport freight for the account of the Department of Defense (DOD), agrees to comply with all conditions and requirements as set forth in this Agreement.

2. All lease agreements between the carrier and the owner of the equipment shall comply with requirements specified in 49 CFR 1057 and shall also include an equipment inspection checklist. All equipment will be inspected by the carrier prior to executing the lease. Copies of leases maintained on the equipment shall not be facsimiled and shall have original signatures of both parties.

3. Carrier will ensure their lease agreements are uniform and a copy of thier lease format and any subsequent revisions are on file with the Military Traffic Management Command (MTMC).

4. Carrier will ensure thier insurance companies file with MTMC an original certificate of insurance for public liability and cargo insurance. The certificate holder block of the form will identify HQMTMC, Directorate of Inland Traffic, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF to be notified 30 days in advance of any change or cancellation to the policy. Carrier will maintain at least the minimum public liability insurance required by 49 CFR 387.9 and the minimum cargo insurance required by MTMC.

5. Carrier will not trip lease equipment to transport any shipments requiring transportation protective services. Master leases between commonly owned companies are considered trip leases for shipments which require a transportation protective service.

6. Failure to comply with this agreement may result in revocation of the carrier's approval to trip lease equipment to transport DOD freight and/or carrier performance actions as specified in Chapter 42 of the Defense Traffic Management Regulation and MTMC Regulation No. 15–1, Transportation and Travel Procedure for Disqualifying and Placing Carriers in Nonuse.

Signature of Carrier Official

Title

Date SCAC

Name of Carrier

Carrier Address

Operating Authority Number

Signature of MTMC Official

Title

Date

Kenneth L. Denton,

Alternate Liaison Officer With the Federal Register.

[FR Doc. 88-11801 Filed 5-25-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR); for the Proposed Batiquitos Lagoon Enhancement Project; San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, and City of Carlsbad; DOD.

ACTION: Notice of Intent to prepare a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR).

SUMMARY: A joint Environmental Impact Statement/Environmental Impact Report will be prepared to evaluate alternatives to the proposed Batiquitos Lagoon Enhancement Project.

1. Alternatives. The proposed project consists of deepening Batiquitos Lagoon and the removal of sediment at the mouth of the lagoon to enhance natural tidal flow to the lagoon. Construction of lest tern nesting sites, including fences would also be implemented in the project. The project would also provide recreational benefits upon completion of walkways within the lagoon boundary. Alternatives would be limited to: (1) No project; (2) other alternatives which would provide a fully tidal system with varying acreage of restoration and dredging to create subtidal, intertidal, salt marsh and freshwater marsh habitat; and (3) restoration of the lagoon to an intermittent tidal condition. In addition there are several alternative components being examined for each project alternative including beach disposal in combination with various other planned disposal sites, sediment basins and different construction techniques.

2. Scoping Process. A scoping meeting will be held to obtain community input to assure that all concerns are identified and addressed in the EIS/EIR. A separate public scoping notice will be sent to the public to identify time and location of the meeting and to solicit public comment. An additional public meeting will be held during the review period of the draft Environmental Impact Statement/Environmental Impact Report. The specific date, time, and location of that meeting will be published in local newspapers.

3. Potentially Significant Issues. Potentially significant issues identified to date include impacts to water quality, biological resources, endangered species, and esthetics.

4. Availability of Joint EIS/EIR. The Draft Environmental Impact Statement/Environmental Impact Report is expected to be available to the public in December 1988.

5. Comments. Comments and Questions regarding the project may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Attn: Lisa Kiebel, CESPL-PD-RP, P.O. Box 2711, Los Angeles, CA 90053-2325, (213) 894-0237.

Dated: May 18, 1988.

Tadahiko Ono,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-11928 Filed 5-25-88; 8:45 am]

BILLING CODE 3710-KF-M

Defense Logistics Agency

Announcement of Direct Conversion to Contract Performance of Commercial Activities Function

AGENCY: Defense Logistics Agency (DLA).

ACTION: Notification of Intent to Effect Direct Conversion to Contract Performance of DLA CA Function.

SUMMARY: The publication of decisions to directly convert commercial activities (CA) to contract performance is required by Supplement to OMB Circular No. A-76 (Revised) and DoD Instruction 4100.33, "Commercial Activities Program Procedures."

Based on a Simplified Cost Comparison conducted 20 January 1988, the Defense Logistics Agency will issue a solicitation to directly convert to contract performance the box assembly function at the Defense Depot Richmond of the Defense General Supply Center (DGSC), Richmond, Virginia. The box assembly function supports the small parcel packing operation by shaping and taping boxes used for packing.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Hodges, DGSC-PE, Directorate of Contracting and Production (DGSC-PE), Richmond, Virginia 23297-5000, (804) 275-4076.

Interested commercial concerns should refer to announcements in the Commerce Business Daily (CBD) to be made as part of the contract solicitation process.

William J. Cassell,

Comptroller, Defense Logistics Agency.

[FR Doc. 88-11803 Filed 5-25-88; 8:45 am]

BILLING CODE 3620-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Planning and Technology Base Task Force will meet August 1-2, 1988 from 9 a.m. to 5 p.m. each day, in San Diego, California. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussion of key issues regarding the integration of technology management with strategic planning and requirements definition, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88-11772 Filed 5-25-88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet June 14-15, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88-11773 Filed 5-25-88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Lower Level Conflict Task Force will meet July 26-27, 1988 from 9 a.m. to 5 p.m. each day, in Norfolk, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to the employment of Naval forces in armed conflict with third world adversaries and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88-11774 Filed 5-25-88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet June 20-21, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88-11775 Filed 5-25-88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C App.), notice is hereby given that the Naval Research Advisory Committee Panel on Importance of Environmental Data will meet on June 14-15, 1988. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, VA. The meeting will commence at 8:30 a.m. and terminate at 4:00 p.m. on June 14 and 15, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on the significance of quantitative knowledge of environmental parameters to naval weapons and warfare. The agenda will include technical briefings and discussions addressing the environment in the weapons evaluation process, submarine operations, tactical use of the environment, environmental requirements for the battle force information management system, limitations in assessing warfighting utility of environment and determining the effect of environmental elements on naval weapon systems. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000.

Date: May 17, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88-11776 Filed 5-25-88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Automation of Ship Systems and Equipment will meet on June 16-17, 1988. The meeting will be held at the Office of the Chief of Naval Research, 800 N. Quincy Street, Arlington, VA. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on June 16 and 17, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members

of shipboard automation and manpower requirements for future surface combatants. The agenda will include technical briefings and discussions addressing the Department of the Navy's perspective on automation of ship systems and equipment. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000.

Date: May 17, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–12777 Filed 5–25–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 88–11; Certification Notice–16]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
CNG Energy Company, Pittsburg, PA	5–09–88	Cogeneration Combined Cycle	240	Lakewood, NJ.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on May 18, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–11799 Filed 5–25–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP88–21–000]

Texas Utilities Fuel Co.; Petition for Declaratory Order

May 23, 1988.

Take notice that, on May 10, 1988, Texas Utilities Fuel Company (TUFCO) filed a petition with the Commission seeking an order declaring that certain proposed transactions will not render TUFCO subject to the Commission's Natural Gas Act (NGA) jurisdiction. TUFCO proposes to purchase non-jurisdictional gas produced in the State of Oklahoma and transport that gas to Texas by an interstate pipeline under section 311(a)(1) of the Natural Gas Policy Act (NGPA). TUFCO will then sell the gas to an affiliated end-user in Texas.

TUFCO states that it is an intrastate natural gas pipeline operating solely within the State of Texas and a wholly-owned subsidiary of Texas Utilities Company, an investor-owned holding company for an electric utility system (TU System). The TU System provides electric service to approximately one-third of the population of the State of Texas through its subsidiary, Texas Utilities Electric Company (TU Electric). The rates and services of TU Electric are regulated by the Public Utility Commission of Texas. All gas purchased and acquired by TUFCO is held for the benefit of, and in trust for, TU Electric until the gas is delivered. Gas purchased by TUFCO is delivered into its intrastate pipeline system and is transported to the electric generation stations of TU Electric. None of TUFCO's current transactions are subject to the jurisdiction of the Commission under the NGA. According to its contracts with TU Electric and various other intrastate pipelines, TUFCO is prohibited from taking any action which would be subject to the Commission's jurisdiction under the NGA.

TUFCO further states that in order to obtain access to additional supplies of gas for TU Electric and to ensure the availability of gas supplies in the future, TUFCO proposes, for the first time, to purchase natural gas produced from outside the State of Texas. Such purchases would be "first sales" as defined in the NGPA, of gas which was not committed or dedicated to interstate commerce as of the day before the date of enactment of the NGPA, or gas for which final well category determinations have been received under NGPA sections 102(c), 103(c), or 107(c)(1–4). Therefore, the sale of the gas would not fall within the Commission's jurisdiction under the NGA by reason of sections 601(a)(1) (A) and (B) of the NGPA.

TUFCO has contracted to purchase supplies of a gas produced in Oklahoma from Sunrise Energy Company (Sunrise), a natural gas marketing company. Sunrise would purchase such gas from various producers located in the State of Oklahoma. Transportation of the gas is to be performed by an interstate pipeline from a point in Oklahoma for delivery into TUFCO's existing intrastate pipleline system in Texas pursuant to section 311(a)(1) of the NGPA. In some instances an intrastate pipeline in Oklahoma may be utilized to transport the gas from the wellhead or gathering lines to the interstate pipeline. Additionally, an intrastate pipeline may be utilized in Texas to transport the gas from the interstate pipeline to the pipeline facilities of TUFCO. If an intrastate pipeline transports such gas either to or from the interstate pipeline, the intrastate pipeline will do so pursuant to section 311(a)(2) of the NGPA. After receipt of the gas into its system, TUFCO would transfer legal title to and deliver the gas directly to TU Electric, delivering it along with the rest of its system supply for use in TU Electric's electric generating stations. TUFCO does not propose, nor will it be required, to add any facilities to its system in order to implement the arrangement herein described. The transaction with Sunrise is subject to the receipt by TUFCO of a final order from the Commission granted in accordance with this petition and in a form acceptable to TUFCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1987)) within 15 days of publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11910 Filed 5–25–88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3386–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Survey of Indoor Air Quality Diagnostic and Mitigation Firms. (EPA ICR #1448).

Abstract: Survey of companies in the private sector that offer services related to the prevention, diagnosis, and mitigation of indoor air quality (IAQ) problems in residences, schools, and commercial/public buildings. Survey results will be used to evaluate the private sector's ability to solve IAQ problems; the results will also be reported to Congress.

Respondents: Indoor Air Quality Diagnostic and Mitigation Firms.

Estimated Burden: 3,000 hours.

Frequency of Collection: One time only.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: May 13, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–11634 Filed 5–25–88; 8:45 am]

BILLING CODE 6560-50-M

[WH–FRL–3385–9]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reallotment of funds under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR Part 35, Subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1986 construction grant funds subject to reallotment after September 30, 1987, under section 205 of the Clean Water Act, 33 U.S.C. 1285, and explains the procedure by which the reallotment distribution was determined.

The construction grants program operates under authority of the Clean Water Act (the Act), Pub. L. No. 92–500, as amended. Section 205(d) of the Act requires that funds allotted to a State which are not obligated by the end of the second year of their availability "* * * shall be immediately reallotted by the Administrator * * *". This notice advises the public of the reallotted amounts made available to the eligible States and of $1,000,000 made available to the National Small Flows Clearinghouse as required under section 104(q) of the Act as amended by Pub. L. No. 100–4. Funds reallotted to participating States are added to their allotments for grants for the construction of municipal wastewater treatment facilities. Under section 205(d), these funds are available for obligation until September 30, 1989.

DATE: May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Richard McDermott, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382–5830.

SUPPLEMENTARY INFORMATION: Sums allotted to a State under section 205 of the Act remain available for obligation during the fiscal year in which appropriated and the following 12 months (40 CFR 35.2010(b)). Funds not obligated at the end of this period of availability are reallotted under section 205(d) to the States which fully obligated their allotments, after funds are made available to the National Small Flows Clearinghouse in accordance with the requirements of section 104(q) of the Act, as amended by Pub. L. No. 100–4. Section 104(q) requires the Administrator to make available to the Small Flows Clearinghouse, from funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1,000,000, whichever is less. Congress appropriated $600 million in FY 1986 funding for the construction grants program. Subsequent to a sequestration order being applied to these funds, $574.2 million was allotted to the States of the original $600 million. In Pub. L. No. 99–349 Congress appropriated an additional $1.2 billion in FY 1986 construction grants funding. At

BEST COPY AVAILABLE

the close of the availability period for the FY 1986 allotment (September 30, 1987), 17 States and territories had not obligated $4,600,043 of the $1,774.2 million available in FY 1986 allotments. The $4,600,043 consists of $2,914,175 of funds reserved under section 205(i) for innovative and alternative projects and $1,685,868 of funds reserved for small communities under section 205(h).

As explained below, not all of the unobligated funds remaining after the period of availability are subject to reallotment under section 205(d) as modified by section 104(q). Due to the following exception the total amount reallotted is $4,598,273.

Northern Mariana Islands: Section 3(b)(2) of Pub. L. No. 95–348 provides that any funds made available to the Northern Mariana Islands (NMI) by the Congress after March 24, 1976 " * * * are hereby authorized to remain available until expended." Accordingly, construction grants funds allotted to the NMI which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallotment. Because the NMI would have lost $3,770 to reallotment without this statutory provision, section 205(d) prevents the NMI from receiving any funds reallotted from other states.

Reallotment Procedure

To distribute the $4,598,273 that is subject to reallotment in accordance with the requirements of sections 205(d) and 104(q) of the Act the following procedure was used:

1. The sum of $1,000,000 was subtracted from the total subject to reallotment. This amount will be made available to the Small Flows Clearinghouse and reduce the amount for reallotment to the participating States to $3,598,273.

2. The State allotment shares listed in section 205(c) of the Act (as amended by Pub. L. 100–4) were modified to reflect funding reductions resulting from the former Trust Territories of the Pacific Islands' new status as freely associated States under Pub. L. No. 99–239, as amended by Pub. L. No. 99–658. Those shares were then adjusted to reflect the absence of States which did not fully obligate their funds [40 CFR 35.2010(b)].

3. The resulting allotment shares were applied to the $3,598,273 to arrive at each participating State's reallotment amount.

4. The resulting figures (rounded to the nearest $100, except for New York which is used as the balancing factor) are listed in the table which follows in the column titled "Reallotment." The table also identifies the States which did not fully obligate their funds and displays these amounts in the column titled "Subject to Reallotment."

These reallotted funds are available for obligation until September 30, 1989. After that date, unobligated balances will be reallotted under section 205(d) of the Act (40 CFR 35.2010). Grants from these funds may be awarded as of the date that advices of allowance are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: May 10, 1988.

Lee M. Thomas,

Administrator.

SUMMARY OF FISCAL YEAR 1986 CONSTRUCTION GRANTS REALLOTMENT

State	Subject to reallotment	Reallotment
Alabama		$46,900
Alaska		25,100
Arizona		28,300
Arkansas	$335,554	
California		299,800
Colorado		33,500
Connecticut	167,833	
Delaware	594,030	
Dist. Of Columbia	44,045	
Florida	305,230	
Georgia		70,900
Hawaii	560,280	
Idaho		20,800
Illinois		189,800
Indiana		101,000
Iowa		56,700
Kansas		37,800
Kentucky		53,400
Louisiana		46,100
Maine		32,400
Maryland		101,400
Massachusetts		142,300
Michigan		180,200
Minnesota		77,000
Mississippi		37,800
Missouri		116,200
Montana		20,800
Nebraska		21,400
Nevada		20,800
New Hampshire	234,100	
New Jersey	30	171,380
New Mexico	352,308	
New York		462,573
North Carolina		75,700
North Dakota	267,935	
Ohio		236,900
Oklahoma		33,900
Oregon		47,409
Pensylvania		166,000
Rhode Island	226,071	
South Carolina		42,900
South Dakota		20,800
Tennessee		60,900
Texas		191,600
Utah		22,100
Vermont		89,600
Virginia		85,800
Washington	418,445	
West Virginia		55,300
Wisconsin		113,300
Wyoming		20,800
Guam	46,960	
Puerto Rico	1,061,460	
Virgin Islands	75,350	
American Samoa	98,805	

SUMMARY OF FISCAL YEAR 1986 CONSTRUCTION GRANTS REALLOTMENT—Continued

State	Subject to reallotment	Reallotment
Trust Territories of Pacific Islands	49,857	
Northern Mariana Islands	[1]	
National Small Flows Clearinghouse		1,000,000
Total	4,598,273	4,598,273

[FR Doc. 88–11835 Filed 5–25–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3386-3]

Sole Source Aquifer Designation for the Hunt-Annaquatucket-Pettaquamscutt Aquifer Area, Rhode Island

AGENCY: U.S. Environmental Protection Agency (EAP).

ACTION: Notice.

SUMMARY: In response to a petition from the the towns of North Kingstown and East Greenwich, Rhode Island, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Hunt-Annaquatucket-Pettaquamscutt (HAP) Aquifer Area satisfies all determination criteria for designation as a Sole Source Aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The designation criteria include the following: The HAP Aquifer Area is the principal source of drinking water for the residents of that area; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the area's residents. As a result of this action, all federal financially assisted projects proposed for construction within the HAP Aquifer Area will be subject to EPA review to reduce the risk or ground water contamination from these projects.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time two weeks after the date of publication in the **Federal Register.**

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Water Management Division, WGP–2113, Boston, MA 02203. The designation petition submitted may also be inspected at the North Kingstown Free Library in North Kingstown, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP–2113, Boston, MA 02203, 617–565–3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523) states:

> If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On December 30, 1987, EPA received a petition from the towns of N. Kingstown and E. Greenwich, Rhode Island requesting designation of the HAP Aquifer Area as a sole source aquifer. EPA determined that the petition, after receipt and review of additional requested information fully satisfied the Completeness Determination Checklist. A public hearing was then scheduled and held on March16, 1988, in N. Kingstown, Rhode Island, in accordance with all applicable notification and procedural requirements. A two week public comment period followed the hearing.

II. Basis For Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would create a significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area and streamflow source area(s), the project designation area, and the project review area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the HAP Aquifer Area as a sole source aquifer:

1. The HAP Aquifer Area is the principal source of drinking water to all of the residents within the service area.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.

3. EPA has found that the towns of N. Kingstown and E. Greenwich have appropriately delineated the boundaries of the aquifer recharge area, designation area and project review area.

4. Although the quality of the area's ground water is rated as good to excellent, it is highly vulnerable to contamination due to the area's geological characteristics.

Because of this, contaminants can be rapidly introduced into the aquifer system from a number of sources with minimal assimilation. This may include contamination from chemical spills, highway, urban and rural runoff, septic systems, leaking storage tanks, both above and underground, road salting operations, saltwater intrusion, and landfill leachate. Since all residents are dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard and place a severe financial burden on the service area's residents.

III. Description of the HAP Aquifer Area, Designated Area, and Project Review Area

The HAP Aquifer Area covers 41 square miles in central Rhode Island. It encompasses most of N. Kingstown and E. Greenwich, and portions of Coventry, Exeter, Warwick, W. Greenwich and W. Warwick. It is comprised of three hydrogeologically interconnected aquifers. The aquifers consist of extensive deposits of stratified drift. They are generally located in the lowland areas of the basin. The recharge areas or highland portions of the basin consist of interfingered stratified drift and till deposits. Bedrock outcrops can also be found in these highland areas.

The designated area is defined as the surface area above the aquifer system and its recharge area. For the HAP Aquifer Area the boundary of the designated area coincides with the boundary of the project review area. The northern and southern boundaries of the area are the same as those delineated for the Potowomut-Wickford area in the US Geological Survey Water Supply Paper (WSP) #1775. The western boundary of the HAP Aquifer Area is conterminous with the western boundary of the Potowomut-Wickford area except in two areas. In these two areas, the ground water divide differs from the surface water divide. Using the ground water divide for the boundary includes a larger area than would be included using the surface water divide. Technically it is reasonable to extend the designated and project review area boundaries to the ground water divide because ground water from this area can recharge the aquifer system and therefore should be protected. The eastern boundary was mapped by the RI Department of Environmental Management, and is based upon surface topography. This eastern boundary represents the watershed/surface water divide which separates those areas contributing to the ground water reservoirs from those areas contributing to Narragansett Bay.

The recharge areas are usually comprised of bedrock and/or till which may be interfingered with stratified drift materials. The lowland areas, where the aquifers are located, generally consist of stratified drift. Activities occurring in the upland areas can have a direct impact on the ground water quality of the aquifers. For this reason, the designated area boundary and project review area boundary are coincident.

IV. Information Utilized in Determination

The information utilized in this determination includes: The petition submitted to EPA Region I by the towns of N. Kingstown and E. Greenwich, Rhode Island; additional information requested from and supplied by the petitioners; written and verbal comments submitted by the public; and the technical paper and maps submitted with the petition. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitment by federal agencies for projects which could contaminate the HAP Aquifer Area. EPA

will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's develpers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection mechanisms. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control mechanisms to protect the quality of ground water in the HPA Aquifer Area.

VI. Summary and Discussion of Public Comments

The majority of comments received from the public supported designation of the HAP Aquifer Area as a sole source aquifer. Twelve comments were received from the public. None of these comments expressed opposition to the designation. A few comments raised questions about the implications of the designation. These questions were all answered completely. Notable letters of support were received from state and local governments, as well as letters form environmental organizations and residents. Reasons given for support include: (1) The dependence of the residents on ground water for their drinking water supply; (2) the fact that there are no reasonably available alternative sources; (3) that growth and development in the HAP Aquifer Area threaten the continued purity of the resource; and (4) that the area's designation as a sole source aquifer would heighten public awareness of the vulnerability of the resource, and would encourage further protective efforts.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-11836 Filed 5-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3386-1]

Water Quality Criteria; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of final ambient water quality criteria document.

SUMMARY: EPA announces the availability and provides a summary of the final ambient water quality criteria document for chloride. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act. These water quality criteria may form the basis for enforceable standards.

Availability of Document: This notice contains: A summary of the final chloride criteria document containing final ambient water quality criteria for the protection of aquatic organisms and their uses. Copies of the complete criteria document may be obtained from the National Technical Information Service (NTIS), 5282 Port Royal Road, Springfield, VA 22161 (phone number ((703) 487-4650)). The NTIS publication order number for the document is published below. This document is also available for public inspection and copying during normal business hours at the Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries. Copies of the document are not available from the EPA office listed below. Requests sent to that office will be forwarded to NTIS or returned to the sender.

1. Ambient Water Quality Criteria for Chloride

EPA 440/5-88-001
NTIS Number PB88-175-047

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-7321.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976 the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), and February 15, 1984 (49 FR 5831), EPA announced the publication of 65 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act.

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for Dissolved Oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on May 1, 1986. Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). A final criteria document for zinc was issued on March 2, 1987 (52 FR 6213), and a final criteria document for selenium was issued on January 5, 1988 (53 FR 177).

Today EPA is announcing the availability of a final water quality criteria document for chloride. A draft criteria document for chloride was made available for public comment on October 8, 1987 (52 FR 37855). These final criteria have been derived after consideration of all comments received and after analysis of additional toxicity data which EPA received after the draft document was published.

Dated: May 11, 1988.

Rebecca Hanmer,

Acting Assistant Administrator for Water.

Appendix A—Summary of Water Quality Criteria for Chloride

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of dissolved chloride, when associated with sodium, does not exceed 230 mg/L more than once every three years on the average and if the one-hour average concentration does not exceed 860 mg/L more than once every three years on the average. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium. In addition, because freshwater animals have a narrow range of acute susceptibilities to chloride, excursions above this criterion might affect a substantial number of species.

Implementation

As discussed in the Water Quality Standards Regulation (U.S. EPA 1983a) and the Foreword to this document, a water quality criterion for aquatic life has regulatory impact only after it has been adopted in a State water quality standard. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s) (U.S. EPA 1983b, 1987). In each standard a State may adopt the national criterion, if one exists, or, if adequately justified, a site-specific criterion.

Site-specific criteria may include not only site-specific criterion concentrations (U.S. EPA 1983b), but also site-specific, and possibly pollutant-specific, durations of averaging periods and frequencies of allowed excursions (U.S. EPA 1985b). The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants, and "three years" is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions (Stephan et al. 1985; U.S. EPA 1985b). However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life.

Appendix B—Responses to Public Comments on the Draft Criteria Document for Chloride

Introduction—Some "comments" listed below are summaries of individual comments that expressed similar points of view. Comments that concered the National Guidelines, only incidentally concerned chloride, and were previously responded to in the Federal Register (Vol. 50, pp. 30784-30796, July 29, 1985; Vol. 52, pp. 6213-6216, March 2, 1987) are not dealt within herein.

1. *Comment*—Too few chronic tests with too few species have been conducted on which to base a valid criterion.

Response—In toxicology, as in many other fields, people can always identify questions that have not been adequately answered or additional data that would be desirable. EPA must decide when enough data are available that criteria are justified and desirable in spite of the arguments for delay. EPA must continually balance the risks and benefits of not regulating a chemical based on available data vs. the risks and benefits of not regulating the chemical. The National Guidelines require acute-chronic ratios with species of aquatic animals in at least three different families for the derivation of a criterion. These guidelines have been accepted by EPA and the Science Advisory Board as providing a reasonable basis for a decision concerning the defensibility of water quality criteria for aquatic life. A criteria document provides a synthesis of available pertinent data and should help people identify additional data that would be particularly useful. EPA will consider new data that become available and will revise criteria when appropriate. In addition, site-specific criteria may be derived whenever adequately justified. EPA feels that enough is known about the effects of chloride on freshwater organisms to justify the criterion.

2. *Comment*—The criterion does not adequately consider the effect of acclimation.

Response—A variety of species has been found to acclimate to a variety of toxicants in acute toxicity tests, but most species also lose such acclimation fairly rapidly. In the real world, most exposures to toxicants that are discharged in effluents are intermittent. Thus, it is usually unwise to use acclimation as a basis for raising criteria. When justified, acclimation can be taken into account in the derivation of site-specific criteria.

3. *Comment*—Populations of fathead minnows are found in Kansas in streams with naturally occurring concentrations of chloride from 500 to 3,000 mg/L, whereas the criteria document suggests that chronic effects could occur near 500 mg/L.

Response—Regulation of chloride in effluents that are discharged in areas of naturally occurring high concentrations of chloride should probably be based on site-specific criteria, rather than national criteria.

4. *Comment*—Criteria for naturally-occurring substances should be stated in terms of a relative change in concentration, rather than as an absolute concentration.

Response—A criterion for a naturally-occurring substance such as chloride could be expressed as a concentration, an increase in the concentration, or as a percent increase in the concentration. Whether one of these possible ways of expressing criteria is more generally useful than the others depends on how much aquatic organisms acclimated to various concentrations of chloride are affected by higher concentrations of chloride.

5. *Comment*—Because of the range of sensitivity within and between species of fishes, a chloride standard should be based on data for an individual stream, not on a number arbitrarily applied to all streams.

Response—As explained in the section on "Implementation" in the criteria document, site-specific criteria may be derived for any body of water or segment thereof. The U.S. EPA does not require that a national criterion be arbitrarily applied to all streams.

6. *Comment*—Enforcement of the proposed criterion for chloride could pose undue hardships on the vegetable brining industry and/or have adverse effects on product quality and safety for human consumption. The vegetable brining industry should be given time to develop methods so that any needed reductions in chloride can be safely made.

Response—Although derivation of water quality criteria cannot take into account such things as economic considerations, such things can be taken into account in the derivation of water quality standards and permit limits and in the development of time tables for compliance.

7. *Comment*—EPA should publish all of the studies upon which the criteria are based as an appendix to the criteria documents and make the studies available for review at EPA Headquarters.

Response—It is not necessary for EPA to publish or make available at Headquarters all the studies upon which the criteria are based. EPA does, however, attempt to fill all requests for documents that are only available from EPA, such as progress reports, memoranda, etc. at no cost to the requestor. On the other hand, EPA does

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not distribute copies of articles, books, etc, that are avaiable from libraries, etc.

8. *Comment*—EPA should provide at least a ninety-day comment period, especially where EPA proposes several criteria at once, as it has in this case, by proposing criteria for both chloride and ammonia.

Response—EPA feels that a sixty-day comment period should be adequate for most reviewers of most documents. The comment period will be extended to 90 days if a commentor so requests and provides adequate justification.

9. *Comment*—Extremely low or otherwise suspect values, especially when critical to a criterion, should not be used in the derivation of a criterion unless independently reconfirmed.

Response—All data that might be useful in a criteria document are reviewed and no values deemed to be questionable are used. Some tests are repeated when judged appropriate.

10. *Comment*—EPA has presented no technical or scientific basis for the one-hour and four-day averaging periods.

Response—The basis for the averaging periods are explained in the Introduction to the National Guidelines.

11. *Comment*—The frequency of allowed excursions does not distinguish between large and small excursions.

Response—As explained in the section on Implementation in the criteria document, use of criteria for such things as developing permit limits requires selection of an appropriate wasteload allocation model. Thus, various aspects of water quality criteria, such as the frequency of allowed excursions, must be understood in the context of their use in dynamic and steady-state models. Guidance available from the U.S. EPA on these subjects is referenced in the section on Implementation.

12. *Comment*—EPA must comply with Executive Order No. 12291 because this criterion will (a) have a total annual impact on the U.S. economy of $100,000,000 or more, and (b) have significant adverse impact on competition, employment, investment, and productivity, thus making the criterion a "major rule" as defined by the Executive Order.

Response—As explained in the section on "Implementation" in the criteria document, a water quality criterion for aquatic life has regulatory impact only after it has been adopted in a State water quality standard. In each State standard the State must specify a particular designated use for one or more bodies of water and specify a criterion that is consistent with that use. The criterion specified in the State standard might be the same as the national criterion (if one exists), or, if adequately justified, might be a site-specific criterion. Thus a national criterion, in and of itself, has no regulatory impact and, therefore, is not a "major rule" as defined by Executive Order No. 12291.

[FR Doc. 88-11837 Filed 5-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51706; FRL-3336-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of one hundred sixty-four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1156, 88-1157—July 5, 1988.
P 88-1161—July 6, 1988.
P 88-1162, 88-1163, 88-1164—July 9, 1988.
P 88-1165, 88-1166, 88-1167, 88-1168, 88-1169, 88-1170, 88-1171, 88-1172, 88-1173, 88-1174, 88-1175, 88-1177, 88-1178, 88-1180, 88-1181, 88-1182, 88-1183, 88-1184, 88-1185, 88-1186, 88-1187, 88-1188, 88-1189, 88-1190—July 10, 1988.
P 88-1191—July 11, 1988.
P 88-1192, 88-1193, 88-1194—July 12, 1988.
P 88-1195, 88-1196—July 6, 1988.
P 88-1197, 88-1198—July 12, 1988.
P 88-1199, 88-1200, 88-1201, 88-1202, 88-1203—July 13, 1988.
P 88-1205, 88-1206, 88-1207, 88-1208, 88-1209, 88-1210, 88-1211, 88-1212, 88-1213, 88-1214, 88-1215, 88-1216—July 16, 1988.
P 88-1217, 88-1218—July 10, 1988.
P 88-1219—July 19, 1988.
P 88-1220, 88-1221, 88-1222—July 17, 1988.
P 88-1225, 88-1226, 88-1227, 88-1228, 88-1229, 88-1230, 88-1231, 88-1232—July 18, 1988.
P 88-1233, 88-1234—July 19, 1988.
P 88-1235—July 20, 1988.
P 88-1236—July 23, 1988.
P 88-1237, 88-1238, 88-1239, 88-1240—July 20, 1988.
P 88-1241, 88-1242, 88-1243, 88-1244, 88-1245, 88-1246—July 23, 1988.
P 88-1247, 88-1248, 88-1249, 88-1250—July 24, 1988.
P 88-1251—July 23, 1988.
P 88-1252, 88-1253, 88-1254, 88-1255—July 25, 1988.
P 88-1256—July 26, 1988.
P 88-1257, 88-1258—July 25, 1988.
P 88-1260—July 26, 1988.
P 88-1261—July 25, 1988.
P 88-1262, 88-1263, 88-1265—July 26, 1988.
P 88-1266, 88-1267—July 27, 1988.
P 88-1268, 88-1269, 88-1270—July 30, 1988.
P 88-1271—July 31, 1988.
P 88-1272, 88-1273—August 1, 1988.
P 88-1274, 88-1275, 88-1276, 88-1277, 88-1278, 88-1279, 88-1281, 88-1282, 88-1284, 88-1285, 88-1286—July 31, 1988.
P 88-1287—August 1, 1988.
P 88-1288, 88-1289, 88-1290, 88-1291—July 31, 1988.
P 88-1292—August 2, 1988.
P 88-1293, 88-1294, 88-1295, 88-1296, 88-1297, 88-1298, 88-1299, 88-1300—July 31, 1988.
P 88-1301, 88-1302, 88-1303, 88-1304, 88-1305, 88-1306, 88-1307, 88-1308, 88-1309, 88-1310, 88-1311, 88-1312, 88-1313, 88-1314, 88-1315, 88-1316, 88-1317, 88-1318, 88-1319, 88-1320—August 2, 1988.
P 88-1321, 88-1322, 88-1323, 88-1324—August 3, 1988.
P 88-1325, 88-1326, 88-1327, 88-1328—August 6, 1988.
P 88-1329—August 8, 1988.
P 88-1330—August 6, 1988.
P 88-1331—August 8, 1988.

Written comments by:

P 88-1156, 88-1157—June 5, 1988.
P 88-1161—June 6, 1988.
P 88-1162, 88-1163, 88-1164—June 9, 1988.
P 88-1165, 88-1166, 88-1167, 88-1168, 88-1169, 88-1170, 88-1171, 88-1172, 88-1173, 88-1174, 88-1175, 88-1177, 88-1178, 88-1180, 88-1181, 88-1182, 88-1183, 88-1184, 88-1185, 88-1186, 88-1187, 88-1188, 88-1189, 88-1190—June 10, 1988.
P 88-1191—June 11, 1988.
P 88-1192, 88-1193, 88-1194—June 12, 1988.
P 88-1195, 88-1196—June 6, 1988.
P 88-1197, 88-1198—June 12, 1988.
P 88-1199, 88-1200, 88-1201, 88-1202, 88-1203—June 13, 1988.
P 88-1205, 88-1206, 88-1207, 88-1208, 88-1209, 88-1210, 88-1211, 88-1212, 88-1213, 88-1214, 88-1215, 88-1216—June 16, 1988.
P 88-1217, 88-1218—June 10, 1988.
P 88-1219—June 19, 1988.
P 88-1220, 88-1221, 88-1222—June 17, 1988.

P 88-1225, 88-1226, 88-1227, 88-1228, 88-1229, 88-1230, 88-1231, 88-1232—June 18, 1988.
P 88-1233, 88-1234—June 19, 1988.
P 88-1235—June 20, 1988.
P 88-1236—June 23, 1988.
P 88-1237, 88-1238, 88-1239, 88-1240—June 20, 1988.
P 88-1241, 88-1242, 88-1243, 88-1244, 88-1245, 88-1246—June 23, 1988.
P 88-1247, 88-1248, 88-1249, 88-1250—June 24, 1988.
P 88-1251—June 23, 1988.
P 88-1252, 88-1253, 88-1254, 88-1255—June 25, 1988.
P 88-1256—June 26, 1988.
P 88-1257, 88-1258—June 25, 1988.
P 88-1260—June 26, 1988.
P 88-1261—June 25, 1988.
P 88-1262, 88-1263, 88-1265—June 26, 1988.
P 88-1266, 88-1267—June 27, 1988.
P 88-1268, 88-1269, 88-1270—June 30, 1988.
P 88-1271—July 1, 1988.
P 88-1272, 88-1273—July 2, 1988.
P 88-1274, 88-1275, 88-1276, 88-1277, 88-1278, 88-1279, 88-1281, 88-1282, 88-1284, 88-1285, 88-1286—July 1, 1988.
P 88-1287—July 2, 1988.
P 88-1288, 88-1289, 88-1290, 88-1291—July 1, 1988.
P 88-1292—July 3, 1988.
P 88-1293, 88-1294, 88-1295, 88-1296, 88-1297, 88-1298, 88-1299, 88-1300—July 1, 1988.
P 88-1301, 88-1302, 88-1303, 88-1304, 88-1305, 88-1306, 88-1307, 88-1308, 88-1309, 88-1310, 88-1311, 88-1312, 88-1313, 88-1314, 88-1315, 88-1316, 88-1317, 88-1318, 88-1319, 88-1320—July 3, 1988.
P 88-1321, 88-1322, 88-1323, 88-1324—July 4, 1988.
P 88-1325, 88-1326, 88-1327, 88-1328—July 7, 1988.
P 88-1329—July 9, 1988.
P 88-1330—July 7, 1988.
P 88-1331—July 9, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-51706)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-1156

Importer. Stockhausen Inc.
Chemical. (G) Dialkylaminoalkylacrylamide, polymer with acrylic acid, sodium salt.
Use/Import. (S) Leather auxiliary. Import range: 5,000-10,000 kg/yr.

P 88-1157

Importer. Confidential.
Chemical. (G) Polyarylenesulfide.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.
Toxicity Data: Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Skin irritation: Negligible species(Rabbit). Mutagenicity: Negative.

P 88-1161

Manufacturer. Confidential.
Chemical. (G) Short oil alkyd resin.
Use-Production. (S) Component for industrial baking alkyd. Prod. range: 21,000-41,000 kg/yr.

P 88-1162

Importer. Confidential.
Chemical. (G) Substituted, substituted-methoxysilanes and silicones.
Use/import. (G) Open, nondispersive use. Import range: Confidential.

P 88-1163

Manufacturer. Confidential.
Chemical. (G) Aliphatic glycol.
Use-Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Inhalation toxicity: LC50 >2,000 mg/1. Static acute toxicity: Time LC50 96 hr>10,000 mg/kg species (Fathead Minnows). Eye irritation: Moderate. Skin irritation: Negligible species(Guines pig).

P 88-1164

Manufacturer.. Confidential.
Chemical. (G) Thermoplastic polyimide precursor.
Use/Production. (G) Composite matrix resin. Prod. range: Confidential.

P 88-1165

Manufacturer. Confidential.
Chemical. (G) Modified cellulose.
Use/Production. (G) Coating material. Prod. range: Confidential.

P 88-1166

Manufacturer. Confidential.
Chemical. (G) Alicyclic polyester.
Use/Production. (S) Intermediate. Prod. range: 250-1500 kg/yr.

P 88-1167.

Manufacturer. Confidential.
Chemical. (G) Modified cellulose.
Use/Production. (G) Coating material. Prod. range: Confidential.

P 88-1168

Manufacturer. Confidential.
Chemical. (G) Modified aliphatic alicyclic polyester.
Use/Production. (G) Industrial coatin componoment. Prod. range: 212,000-248,000 kg/yr.

P 88-1169

Manufacturer. Tennant Company.
Chemical. (G) Monoketimines of an aliphatic primary amine and non-cyclic ketones.
Use/Production. (G) Destructive use. Prod. range: 7,400-14,000 kg/yr.

P 88-1170

Manufacturer. Confidential.
Chemical. (G) Monoketimines of an aliphatic primary amine and non-cyclic ketones.
Use/Production. (G) Destructive use. Prod. range: 130,000-260,000 kg/yr.

P 88-1171

Manufacturer. Tennant Company.
Chemical. (G) The ammonium derivative of a copolymer of polyalkylglycols, diisocyanate and an alkyl polyamine.
Use/Production. (G) Open, nondispersive. Prod. range: 130,000-260,000 kg/yr.

P 88-1172

Manufacturer. Arizona Chemical Company.
Chemical. (G) Fatty acid ester of polyethylene glycol.
Use/Production. (G) Defoamer in paper manufacture. Prod. range: Confidential.

P 88-1173

Manufacturer. GE Plastics.
Chemical. (G) Polymer of an aromatic bisanhydride, an aromatic diamine, and an aromatic anhydride.
Use/Production. (S) Transportation. Prod. range: Confidential.

P 88-1174

Manufacturer. E.I. Du Pont De Nemours & Co. Inc.
Chemical. (G) Oxygen-containing heterocycle.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–1175

Manufacturer. E.I. Du Pont De Nemours & Co. Inc..
Chemical. (G) Polyamic acid.
Use/Production. (S) Protective coating. Prod. range: Confidential.

P 88–1177

Manufacturer. Confidential.
Chemical. (G) Substituted thioamide.
Use/Production. (G) Color former. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 .5–50 g/kg species(Rat. Acute dermal toxicity: LD50 2. 0 gm/ml. Eye irritation: none species(Rabbit).

P 88–1178

Manufacturer. Mazer Chemicals Div of PPG Industries.
Chemical. (G) Amphoteric surfactant.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–1180

Manufacturer. Confidential.
Chemical. (G) Acrylated polyester.
Use/Production. (G) Open use industrial coating. Prod. range: 500,000–1,2000,000 kg/yr.

P 88–1181

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate polyurethane.
Use/Production. (G) Dispersively used coating. Prod. range: 500–3,000 kg/yr.

P 88–1182

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 500,000–1,400,000 kg/yr.

P 88–1183

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 500,000–1,400,000 kg/yr.

P 88–1184

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 500,000–1,400,000 kg/yr.

P 88–1185

Manufacturer. Confidential.
Chemical. (G) Aliphatic alicyclic polyurethane.
Use/Production. (G) Industrial coating ingredient. Prod. range: 10,000–50,000 kg/yr.

P 88–1186

Manufacturer. Mazer Chemicals, Div. of PPG Industries.
Chemical. (G) Modified vegetable oil.
Use/Production. (G) Functional florid. Prod. range: Confidential.

P 88–1187

Manufacturer. Werner G. Smith Inc.
Chemical. (S) Mixed monobasic fatty acid esters with monohydric alchols and polyols, oxidized, polymerized.
Use/Production. (S) Metal working lubricant. Prod. range: 450,000–500,000 kg/yr.

P 88–1188

Manufacturer. Alcolac, Inc.
Chemical. (S) Dodecyl hydroxyethyl thioether.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88–1189

Importer. Confidential.
Chemical. (G) Chloro alkyl phosphonate.
Use/Import. (G) Flame retardant for polymers. Import range: Confidential.

P 88–1190

Importer. Confidential.
Chemical. (G) Brominated aromatic compound.
Use/Import. (G) Flame retardant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5000 mg/kg. Eye irritation: Slight species(Rabbit). Skin irritation: Negligible species(Rabbit). Mutagenicity: Negative.

P 88–1191

Manufacturer. Confidential.
Chemical. (G) Crosslinked polyurethane and polyglycol ether polymer.
Use/Production. (G) Metal coating. Prod. range: Confidential.

P 88–1192

Manufacturer. Confidential.
Chemical. (G) Hydroxy acid ester of short chain polyalcohol.
Use/Production. (G) Polymer plasticizer. Prod. range: Confidential.

P 88–1193

Manufacturer. Confidential.
Chemical. (G) Hydroxy acid ester of short chain polyalcohol.
Use/Production. (G) Polymer plasticizer. Prod. range: Confidential.

P 88–1194

Manufacturer. Confidential.
Chemical. (G) Hydroxy acid ester of chain polyalcohol.
Use/Production. (G) Polymer plasticizer. Prod. range: Confidential.

P 88–1195

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic resin.
Use/Production. (S) Molding of plastic articles. Prod. range: Confidential.

P 88–1196

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic resin.
Use/Production. (S) Molding of plastics articles. Prod. range: Confidential.

P 88–1197

Importer. Organic Dyestuff Corporation.
Chemical. (G) Acid orange 116.
Use/Import. (S) Resole to dye industry. Import range: 660–3, 740 kg/yr.

P 88–1198

Manufacturer. Confidential.
Chemical. (G) (Aminoaromatic alkyl) substituted heterocycle.
Use/Production. (G) Chemical intermediate. Prod. range: 1800–14,000 kg/yr.

P 88–1199

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Alkaline condensation product of toluenesulfonic acid.
Use/Production. (G) Liquid dye. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(Rat). Acute dermal toxicity: LD50 >2 g/kg species(Rabbit). Static acute toxcity: time LC50 96 h>1000 mg/1 species(Bluegill Sunfish). Eye irritation: Moderate species(Rabbit). Skin irritation: Slight species(Rabbit).

P 88–1200

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted heterocycle.
Use/Production. (G) Additive for polymer. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5000 mg/kg species(Rat). Acute dermal toxicity: LD50 >2000 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: Slight species(Rabbit). Mutagenicity: negative. Skin sensitization: Negative species(Mouse).

P 88–1201

Manufacturer. Confidential.
Chemical. (G) Anhydride-modified methacrylate polymer.

Use/Production. (S) Automative coating. Prod. range: Confidential.

P 88–1202

Manufacturer. Velsicol Chemical Corporation.
Chemical. (G) Benzoate ester.
Use/Production. (G) Solid glycol benzoate. Prod. range: Confidential.

P 88–1203

Manufacturer. Ciba-Geigy Corporation Dyestuffs & Chem.
Chemical. (G) Alkaline condensation product of toluenesulfonic acid.
Use/Production. (G) Liquid dye. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5000 mg/kg species(Rat). Static acute toxicity: Time LC50 96 h>1000 ppm species(Zebra fish). Eye irritation: none species(Rabbit). Skin irritation: Negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: Negative species (Guinea pig).

P 88–1205

Manufacturer. Dow Chemical USA.
Chemical. (G) Alkylated diphenyl oxide.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88–1206

Manufacturer. Dow Chemical USA.
Chemical. (G) Acid form of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–1207

Manufacturer. Confidential.
Chemical. (S) Copolymer of 1,3-butandiene with 2-propenenitrile, alpha,omega-(2-hydroxy-3-2-methylproprnyloxypropyl 4-cyano-4-methylbutyrate.
Use/Production. (G) Flexibilizer for adhesive and plastics. Prod. range: Confidential.

P 88–1208

Manufacturer. Confidential.
Chemical. (S) Terpolymer of 1,3-butadiene with 2-propenenitrile, and acrylic acid alpha, omega-(hydroxy-3-2-methylpropenoyloxy propyl 4-cyano-4-methylbutyrate.
Use/Production. (G) Electromeric modifier thermoplastic resin. Prod. range: Confidential.

P 88–1209

Manufacturer. E.I. Du Pont De Nemours & Co. Inc.
Chemical. (G) Amoniated Styrene acrylate copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1210

Manufacturer. Henkel Process Chemicals, Inc.
Chemical. (G) Aliphatic triol, alkyl ether.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 88–1211

Manufacturer. Henkel Corporation.
Chemical. (G) Alkoxylated polyol alkyl ether acrylate.
Use/Production. (S) Curable coatings/curable inks. Prod. range: Confidential.
Toxicity Data. Skin irritation: Slight species(Rabbit).

P 88–1212

Manufacturer. Dow Chemical USA.
Chemical. (G) Sodium salt of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Surfactant for cleanser, textile dyeing. Prod. range: Confidential.

P 88–1213

Manufacturer. The Dow Chemical Company.
Chemical. (G) Bisphenol A glycidyl ether, polyglycol reaction product.
Use/Production. (S) Binding agent for epoxy powder coatings. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg. Acute dermal toxicity: LD50 >2,000 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–1214

Manufacturer. Confidential.
Chemical. (S) Mixture of polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol and aromatic urethane with methacrylate and groups.
Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

P 88–1215

Manufacturer. Confidential.
Chemical. (G) Polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol.
Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

P 88–1216

Manufacturer. The Goodyear Tire & Rubber Company.
Chemical. (G) Dimethyl terephthalene, diphthalate, alkane polymer.
Use/Production. (S) Resin for toner in reprographics. Prod range: 227,000–909,093 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(Rat). Skin irritation: negligible species(Rabbit).

P 88–1217

Importer. Organic dyestuffs corporation.
Chemical. (G) Reactive-Yellow 84.
Use/Import. (S) Shading color. Import range: 2,000 kg/yr.

P 88–1218

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Reactive-Red 120.
Use/Import. (S) Shading color. Import range: 2,500–1,136 kg/yr.

P 88–1219

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Basic Red 46.
Use/Import. (S) Shading color. Import range: 1,200–2,500 kg/yr.

P 88–1220

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Acid Red 264.
Use/Import. (S) Shading color. Import range: 2,400–5,000 kg/yr.

P 88–1221

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Direct Blue 189.
Use/Import. (S) Shading color. Import range: 2,200–4,400 kg/yr.

P 88–1222

Manufacturer. Confidential.
Chemical. (G) Bis(phenylamino)sulfonphenylamino disubstituted carbomonocycle, mixed salts.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–1225

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylated, sodium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88–1226

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylate, potassium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88–1227

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylated, mixed potassium sodium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88-1228

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylated, ammonium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88-1229

Manufacturer. Confidential.
Chemical. (G) Alkyl aromatic sulfonic.
Use/Production. (S) Enhanced oil recovery addition. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5 /kg species (Rat). Eye irritation: Strong species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 88-1230

Manufacturer. Confidential.
Chemical. (G) Alkyl aromatic hydrocarbon.
Use/Production. Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat). Static acute toxicity: Time LC50 96 h>1 g/1 species (Rainbow) trout). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit). Mutagenicity: Negative.

P 88-1231

Manufacturer. Confidential.
Chemical. (G) Alkyl aromatic sulfonic acids.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88-1232

Manufacturer. Confidential.
Chemical. (G) Modified aliphatic hydrocarbon resin.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88-1233

Manufacturer. Confidential.
Chemical. (G) Styrene modified acrylic polyol polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1234

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organosiloxane.
Use/Import. (G) Ingredient for cosmetics. Import. range: 1,000–2000 kg/yr.

P 88-1235

Manufacturer. The Dow Chemical Company.
Chemical. (G) Acetylenic ethers.
Use/Production. (S) Chemical. Prod. range: Confidential.

P 88-1236

Manufacturer. The Dow Chemcial Company.
Chemical. (G) Olefinic and acetylenic ethers.
Use/Production. (G) Adhesive and aerospace composite. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >1,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88-1237

Manufacturer. The Dow Checmical Company.
Chemical. (G) Olefinic and acetylenic ethers.
Use/Production. (G) Adhesive and aerospace composite. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >1,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88-1238

Importer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Import. (S) Unsaturated polyester for wood coating formulation. Import range: 910–5,000 kg/yr.

P 88-1239

Manufacturer. Confidential.
Chemical. (G) (Amidoaromatic alkyl) halosubstituted heterocycle.
Use/Production. (G) Chemical intermediate. Prod. range: 1,800–14,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Guinea pig). Skin sensitization: positive.

P 88-1240

Manufacturer. E.I. Du Pont De Nemours & Co. Inc.
Chemical. (G) Eydroxy amine aromatic sulfonate salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1241

Importer. Confidential.
Chemical. (G) Polyurethane dispersion.
Use/Import. (S) Preparing adhesive. Import range: Confidential.

P 88-1242

Manufacturer. Confidential.
Chemical. (G) Modified maleated metal resinate.
Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 88-1243

Manufacturer. 3M.
Chemical. (G) Perfluorochemical.
Use/Production. (G) Isolated intermediate, nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 >2.0 g/kg species (Rabbit). Static acute toxicity: Time LC50 96 h82 mg/1 species (fathead minnow). Eye irritation: Moderate species (Rabbit). Skin irritation: Strong species (Rabbit).

P 88-1244

Manufacturer. 3M.
Chemical. (G) Nonadecafluorocanoic acid, ammonium salt.
Use/Production. (G) Processing aid. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity LD50 >65 mg/kg species (Rat). Acute dermal toxicity: LD50 >2.0 g/kg species (Rabbit). Eye irritation: Moderate species (Rabbit). Skin irritation: Slight species (Rabbit). Mutagenicity: negative.

P 88-1245

Importer. Mitsubishi Chemical Industries Amer. Inc
Chemical. (G) Substituted vinyl chloride—acrylic acid polymer.
Use/Import. (G) Automobile equipment. Import range: Confidential.

P 88-1246

Manufacturer. Confidential.
Chemical. (G) Modified hydrocarbon resin.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1247

Manufacturer. Eastman Kodak Company.
Chemical. (S) 3-(Methoxyphenol)-3-oxopropanoic acid, methyl ester.
Use/Production. (G) Chemical intermediar-te. Prod. range: 700–2,000.
Toxicity Data. Acute oral toxicity: LD50 3536–3969 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Rabbit). Skin sensitization: negative species (Guines pig).

P 88-1248

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted-alkylamino substituted-benzoic acid derivate.
Use/Production. (G) Chemical intermediate. Prod. range: 3300–6500 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rats). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Rabbit).

P 88-1249

Importer. Organic Dyestuff Company.
Chemical. (G) Acid Violet 90.
Use/Import. (S) Shading color. Import range: 400–1,1000 kg/yr.

P88-1250

Importer. Organic Dyestuff Company.
Chemical. (G) Acid Orange 88.
Use/Import. (S) Shading color. Import range: 1,000–2,000 kg/yr.

P 88-1251

Manufacturer. Owens-Corning Fiberglas Corporation.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Contact molding resin. Prod. range: Confidential.

P 88-1252

Importer. Confidential.
Chemical. (G) Urethane/acrylic resin.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 88-1253

Manufacturer. Confidential.
Chemical. (G) Mercaptan terminated polyether polymer.
Use/Production. (S) Polymer for adhesive and sealants. Prod. range: 400,000–1,500,000 kg/yr.

P 88-1254

Manufacturer. Confidential.
Chemical. (G) Substituted alkylsilylurea.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1255

Importer. Confidential.
Chemical. (G) Bis(nitroalkylamino) alkane.
Use/Import. (G) Rubber chemical. Import range: Confidential.

P 88-1256

Manufacturer. Baker Performance Chemicals.
Chemical. (G) Thiocarbamate potassium salt.
Use/Production. (G) Water clarifies. Prod. range: Confidential.

P 88-1257

Importer. Confidential.
Chemical. (G) Polyalkylsiloxane resin with alkoxy and hydroxy groups.
Use/Import. (S) Binder for paint. Import range: Confidential.

P 88-1258

Importer. Confidential.
Chemical. (G) Fluoro elastomer.
Use/Import. (G) Paint. Import range: Confidential.
Toxicity Data. Mutagenicity: Negative.

P 88-1260

Manufacturer. Wilmington Chemical Corporation.
Chemical. (G) Aqueous aliphatic polyurethane.
Use/Production. (G) Coating, open, nondispersive. Prod. range: Confidential.

P 88-1261

Manufacturer. Confidential.
Chemical. (G) 2-Anthracenesulfonic acid, l-amino-9,10-doxo-4-(substituted phenyl) amino)- aklali salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1262

Manufacturer. E.I. Du Pont De Nemours & Co, Inc.
Chemical. (G) Aliphatic polyester glycol.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Inhalation toxicity: LC50 >3.4 mg/kg species (Rat). Static acute toxicity: Time LC50 96h7.8 mg/l species (fathead minnow). Mutagenicity: Negative.

P 88-1263

Manufacturer. Confidential.
Chemical. (S) Polymer of; pelargonic acid; oleic acid; coconut fatty acid; glycerine; adipic acid.
Use/Production. (S) Industrial coating for paper. Prod. range: 57,000–252,000 kg/yr.

P 88-1265

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Rosin ester dispersion.
Use/Production. (S) Tackifier for pressure sensitive adhesives. Prod. range: Confidential.

P 88-1266

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aromatic ester carbonate.
Use/Production. (S) Thermoplastic resin. Prod. range: Confidential.

P 88-1267

Manufacturer. Confidential.
Chemical. (G) Hydrazine derivative.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88-1268

Importer. Atlantic Industries.
Chemical. (G) Substituted heterocyclic disazo.
Use/Import. (S) Reactive dispersive dye. Import range: Confidential.

P 88-1269

Manufacturer. Confidential.
Chemical. (G) 5,5',7-indigotrisulfonic acid.
Use/Production. (G) Indicator in water analysis ragout. Prod. range: 1–5 kg/yr.

P 88-1270

Manufacturer. Confidential.
Chemical. (S) Propenedioic acid, neopotassium salt.
Use/Production. (G) Component of buffer. Prod. range: 10–50 kg/yr.

P 88-1271

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: confidential.

P 88-1272

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/km species (Rat).

P 88-1275

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88-1274

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (Rat).

P 88-1275

Manufacturer:
BioTechnica Agriculture, Inc.
Microorganism. (G) Genetically engineered microorganism, Parent ____ strain: *Bradyrhizobium japonicum* strain USDA 110; Introduced genes: Streptomycin/spectinomycin resistance gene originated from *Shigella flexneri*

and termination sequences from *Escherichia coli*.

Use/Production. (G) Two small scale field trials: (1) To determine the effect of insertion of the marker genes on competition and symbiotic performance under field conditions; (2) To compare different methods of applying *B. japonicum* to soybean seeds. Production range: 8X10 ^{13} cells per year.

Test data. The wet weight of soybean plants infected with this PMN strain were 12.0% lower than soybean plants infected with the parent strain after 5 weeks of growth in a greenhouse.

Exposure. Human: Production and field application, maximum of 8 people. *Environmental:* Laboratory studies of survival in field soil indicate the log cell number per gram of soil decreased from 7.2 to 6.8 over six weeks in McAllister soil and from 7.2 to 6.0 over six weeks in Chippewa soil.

Environmental release. Production and disposal: Cultures sterilized before disposal in publically owned treatment works, soil and possible groundwater release at field site. *Small-scale field trial:* The microorganisms will be applied directly to the soybean seed prior to planting. The field test plot will be about one acre. The field trial will be conducted in two locations: (1) A 100 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw in Pepin County, Wisconsin and (2) a 77 acre site at McAllister Seed Company's facilities near Mount Pleasant in Henry County, Iowa.

P 88-1276

Importer. Biotechnica Agriculture, Inc.
Chemical. (G) Bradyrhizobium japonicum.
Use/Import. (S) Soil inoculant. Import range: Confidential.

P 88-1277

Importer. Biotechnica Agriculture, Inc.
Chemical. (G) Bradyrhizobium japonicum.
Use/Import. (S) Soil inoculant. Import range: Confidential.

P 88-1278

Importer. Biotechnica Agriculture, Inc.
Chemical. (G) Bradyrhizobium japonicum.
Use/Import. (S) Soil inoculant. Import range: Confidential.

P 88-1279

Manufacturer. Confidential.
Chemical. (G) Modified maleated calcium resinate.
Use/Production. (S) Publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5 gm/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-1281

Importer. Nuodex Inc.
Chemical. (S) Reaction product of branched nonylphenol, ethoxylalate with acetic acid, chloro-, sodium salt, acidified.
Use/Import. (S) Drilling fluids. Import range: 2,000–15,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg species (Rat). Eye irritation: Moderate species (Rabbit). Skin irritation: Moderate species (Rabbit).

P 88-1282

Importer. Nuodex Inc.
Chemical. (S) Reaction product of branched nonanol, ethoxylated, propoxylated with acetic acid, chloro-, sodium salt, acidified.
Use/Import. (S) Drilling fluid. Import range: 10,000–200,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg. Eye irritation: strong species (Rabbit). Skin irritation: Strong species (Rabbit).

P 88-1284

Importer. Nuodex Inc.
Chemical. (S) Butene, trimer.
Use/Import. (S) Viscosity regulator for PVC-poster.
Import range: 50,000–100,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >10,000 mg/kg species (Rat). Eye irritation: None species (Rabbit). Skin irritation: Strong species (Rabbit).

P 88-1285

Importer. Nuodex Inc.
Chemical. Butene, tetramer.
Use/Import. (S) Viscosity regulator for PVC-poster.
Import range: Confidential.
Toxicity Data. Eye irritation: None species (Rabbit). Skin irritation: Slight species (Rabbit).

P 88-1286

Importer. Nuodex, Inc.
Chemical. (S) Reaction product of alcohols, C12–C14, ethoxylated with acetic, chloro, sodium salt, acidified.
Use/Import. (S) Drilling fluids. Import range: 5,000–26,000 kg/yr.
Toxicity Data. Eye irritation: Moderate species (Rabbit). Skin irritation: strong species (Rabbit).

P 88-1287

Importer. Nuodex, Inc.
Chemical. (S) Butene, oligomer, (C20/C24), hydrogenated.
Use/Import. (S) Viscosity regulator. Import range: 50,000–100,000 kg/yr.
Toxicity Data. Eye irritation: None species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88-1288

Importer. Nuodex, Inc.
Chemical. (S) Reaction product of alcohols, (C9/C13)-branched, ethoxylated, propoxylated, with acetic acid, chloro-, sodium salt, acidified.
Use/Import. (G) Import range: 5,000–2,500 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg species (Rat). Eye irritation: None species (Rabbit).

P 88-1289

Importer. Nuodex, Inc.
Chemical. (S) Reaction product of poly(oxy-1,2-ethanediyl),-alpha-(dinonylphenyl),-omega-hydroxy-, branched with cetic acid, chloro-, sodium salt, acidified.
Use/Import. (S) Drilling fluids. Import range: 5,000–60,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >10,000 mg/kg. Eye irritation: None species (Rabbit). Skin irritation: Moderate species (Rabbit).

P 88-1290

Importer. Confidential.
Chemical. (S) Cyclohexadec-8-en-1-one mixture of cisand trans isomer.
Use/Import. (S) Perfume ingredient. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >10 g/kg species (Rat). Eye irritation: None species (Rabbit). Skin iritation: Negligible species (Rabbit).

P 88-1291

Importer. Atlantic Industries, Inc.
Chemical. (G) Substituted anthrquinone.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1292

Importer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Import. (G) Acrylic copolymer for coating. Import range: Confidential.

P 88-1295

Manufacturer. Pitman-Moore, Inc.
Chemical. (S) Complex-ester of neopentyl polyol and ether neopentyl polyol with hydroxyalkanoic acid.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin

sensitization: Negative species(guinea pig).

P 88-1294

Manufacturer. Confidential.
Chemical. (G) Vinyl urethane.
Use/Production. (G) Resin. Prod. range: Confidential.

P 88-1295

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.
Chemical. (S) Substituted alkenoic acid ester.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88-1296

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.
Chemical. (G) Substituted carboxylic acid ester heterocycle salt.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88-1297

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.
Chemical. (G) Substituted carboxylic acid ester heterocycle.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88-1298

Manufacturer. Confidential.
Chemical. (G) Styrene acrylated terpolymer.
Use/Production. (G) Resin for coating. Prod. range: Confidential.

P 88-1299

Manufacturer. Allied-Signal Inc.
Chemical. (G) Polyamide alloy.
Use/Production. (G) Polymer alloy. Prod. range: Confidential.

P 88-1300

Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified polyester resin.
Use/Import. (S) Resin for powder coating. Import range: 12,000–95,000 kg/yr.

P 88-1301

Manufacturer. Confidential.
Chemical. (G) Salt of substituted acrylazo butanamide.
Use/Production. (G) Open, dispersive use. Prod. range: Confidential.

P 88-1302

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive used. Prod. range: Confidential.

P 88-1303

Manufacturer. Confidential.
Chemical. (G) Halogenated hydrocarbon.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-1304

Manufacturer. Confidential.
Chemical. (G) Polypiperidinol acrylate-methacrylate.
Use/Production. (S) UV stabilizer for thermoplastics. Prod. range: Confidential.

P 88-1305

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkyl phenyl ether.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88-1306

Importer. Confidential.
Chemical. (S) 4-(((2-chloro, 4-nitro) phenyl) azo (N-2-cyano ethyl N-ethyl)aniline.
Use/Import. (S) Reaction dye for textiles. Import range: Confidential.

P 88-1307

Importer. Confidential.
Chemical. (S) 2-propyl amino-4- (((2-bromo-4-nitro-6-cyano) phenyl) azo)-nn-diethyl aniline.
Use/Import. (S) dispersive for textiles. Import range: Confidential.

P 88-1308

Importer. Confidential.
Chemical. (G) NN-daiacetoxy-ethyl aniline.
Use-Import. (S) Dispersive dye for textile. Import range: Confidential.

P 88-1309

Importer. Confidential.
Chemical. (S) Nitrobenzene, 4- ((4-NN-diacetoxyethyl, 2-chloro) phenyl) azo).
Use/Import. (S) Dispersive for textiles. Import range: Confidential.

P 88-1310

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1311

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1312

Importer. Confidential.
Chemical. (S) 9,10-anthracene-dione-1,5-diamino-bromo-4,8-dihydroxy.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1313

Importer. Confidential.
Chemical. (S) 3-(((2-bromo-4,6-dintro) phenyl) azo) 5-nn-diacetoxy ethyl, 4-methoxy, acetanilide.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1314

Importer. Confidential.
Chemical. (S) 2-(((2-chloro,4-nitro) phenyl) azo-5-(nn-diacetoxy ethyl) acetanilide.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1315

Importer. Confidential.
Chemical. (S) 4- (((2-chloro,4-nitro) phenyl) azo) (n-2-cyano ethyl, N-2-acetoxy ethyl) aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1316

Importer. Confidential.
Chemical. (S) 4- (((2-cyano, 4-nitro) phenyl) azo), (n,2-cyano ethyl, N-ethyl) aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1317

Importer. Confidential.
Chemical. (S) 3- (2-chloro propyl) amino-4- (((2-cyano-4-nitro) phenyl axo)-n,n-diethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1318

Importer. Confidential.
Chemical. (S) 9,10-Antracenedione 1,4-diamino-2,3-diphenyoxy.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1319

Importer. Confidential.
Chemical. (S) 9, 10-anthracene dione, 1-amino-4-hydroxy-2-(hexamethylene-1-yloxo-6-hydroxy).
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1320

Importer. Confidential.
Chemical. (S) 4-(((2-bromo, 4-nitro, 6-chloro) phenyl) azo) 3-chloro, nn-dihydroxy ethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1321

Manufacturer. Confidential.
Chemical. (G) Styrene modified acrylic.
Use/Production. (S) Latex for anticorrosion. Prod. range: Confidential.

P 88-1322

Importer. Confidential.
Chemical. (S) 2-methoxy-5-acetamino-4-[(2-,4-dinitro-6-bromo) phenyl azo]-n-ethyl, n-cyano ethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1323

Importer. Confidential.
Chemical. (G) 1- [(2-nitro) phenylazo amino carbonyl methylene) benzimidazole.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1324

Importer. Confidential.
Chemical. (S) 4-[([4-nitro, 2,6-dichloro) phenyl) azo) n-2-cyano ethyl, ,-2-acetoxy ethyl) aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1325

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyurea.
Use/Production. (G) Automotive coating component. Prod. range: Confidential.

P 88-1326

Importer. Confidential.
Chemical. (S) 9-10-anthacene dione, 1-amino-4-hydroxy-2-phenoxy.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1327

Importer. Confidential.
Chemical. (S) 3-acetamino-4-[(2-chloro-4-nitro) phenyl) azo] nn-diethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1328

Manufacturer. Dilson Greatbatch Ltd.
Chemical. (S) Silver vanadium oxide.
Use/Production. (S) Cathode material for lithium batteries. Prod. range: 82.5-2,500 kg/yr.

P 88-1329

Manufacturer. Mapei Corp.
Chemical. (G) Vinyl acetate- acrylic copolymer.
Use/Production. (G) Adhesive. Prod. range: 150,000-250,000 kg/yr.

P 88-1330

Manufacturer. Mapei Corp.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (S) Adhesive. Prod. range: 250,000-600,000 kg/yr.

P 88-1331

Manufacturer. Mapei Corp.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (S) Adhesive. Prod. range: 60,000-120,000 kg/yr.

Dated: May 20, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-11841 Filed 5-25-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 88-244]

Applications for Consolidated Hearings; R. Tyler Bland, Jr. and West Point Radio Ltd. Partnership

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A.R. Tyler Bland, Jr.; West Point, VA.	BPH-870615MP	88-244
B. West Point Radio Limited Partnership; West Point, VA.	BPH-870615NB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11885 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-229]

Applications for Consolidated Hearing; Dwight Broadcasting Co. and Imagery, Inc.

1. The Commission has before it the following mutually exclusive application for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Dwight Broadcasting Company; Dwight, IL.	BPH-870522MF	88-229
B. Imagery, Inc.; Dwight, IL.	BPH-870522MI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11886 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-243]

Applications for Consolidated Hearing; John Garber and Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. John Garber and Associates (A General Partnership); Lancaster, OH.	BPH-870514MD	88-243
B. Trell Broadcasting Company; Lancaster, OH.	BPH-870514MG	
C. Alspach/Varga Communications, Inc.; Lancaster, OH.	BPH-870515MH	
D. Phillips Broadcasting, Inc.; Lancaster, OH.	BPH-870515MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Financial Qualifications, B
2. Air Hazard, A
3. Comparative, A-D
4. Ultimate, A-D

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11887 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-241]

Applications for Consolidated Hearing; Livingston Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Livingston Communications, Inc., Brusly, LA.	BPH-870701MR	88-241
B. West Side Communications, Inc., Brusly, LA.	BPH-870701MX	
C. M. Kip Holden, d/b/a WKIP, Limited A Partnership in Commendam, Brusly, LA.	BPH-870701NB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A-C
2. Ultimate, A-C

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11888 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-230]

Applications for Consolidated Hearing; MarKey Broadcasting Co., Inc. and Vermont Broadcast Associates, Inc.

1. The commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. MarKey Broadcasting Co., Inc, Lyndon, VT.	BPH-880113ME	88-230
B. Vermont Broadcasting Associates, Inc., Lyndon, VT.	BPH-880113MF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose hearings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the compete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11889 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-242]

Applications for Consolidated Hearing; Nanette Markunas et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicants, City, and State	File No.	MM Docket No.
1. Nanette Markunas, Montauk, NY.	BPH-870331MD	88-242
2. CSS Radio Corporation, Montauk, NY.	BPH-870331MO	
3. Jeffrey A. Salling, Montauk, NY.	BPH-870406RF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth below in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and Applicants

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue in the proceeding, the full text of the issue and the applicant to which it applies are set forth below in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11891 Filed 5-25-88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88-236]

Applications for Consolidated Hearing; Milford, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Milford, Ltd., Milford, DE.	BPH-870514MR	88-239
B. JCH Broadcasters Corp., Milford, DE.	BPH-870515NG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, A
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11892 Filed 5-25-88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88-226]

Applications for Consolidated Hearing; Worth M. Miller and Megan H. McWilliams

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Worth M. Miller, Narrows VA.	BPH-870514MK	88-225
B. Megan H. McWilliams, Narrows, VA.	BPH-870515NI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicant(s) to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11893 Filed 5-25-88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88-225]

Applications for Consolidated Hearing; Spring Arbor College et al.

1. The Commission has before it the following mutually exclusive applications for modification of noncommercial FM facilities.

Applicant, City, and State	File No.	MM Docket No.
A. Spring Arbor College, WSAE(FM), Spring Arbor, MI.	BPED-790806AA	88-225
B. Board of Trustees/ Olivet College, WOCR(FM) Olivet, MI.	BPED-800303AD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 19, 1986. The letters shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Environmental, A
2. 307(b)-Modification A, B
3. Contingent Comparative-Noncommercial Educational FM, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in the proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC., The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11895 Filed 5-25-88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88-227]

Applications for Consolidated Hearing; Telecommunications Network, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Telecommunications Network, Inc., Dallas, PA.	BPH-880523ME	88-227
B. Dennis A. Schacht and Ronald E. Schacht d/b/a Mountain Broadcasting, Dallas, PA.	BPH-880530MH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, All
2. Ultimate, All

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11896 Filed 5-25-88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88-210]

Applications for Consolidated Proceeding; Topic-Air, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Tropic-Air, Ltd., Aiea, HI.	BPH-851028MA	88-210
B. Charles R. Crawford, Aiea, HI.	BPH-851028MB	
B. James Conrad Diaz, Sr., Aiea, HI.	BPH-851028MD	
D. Jess & Isabelle Drake, Joint Tenants, Aiea, HI.	BPH-851028MF, [Previously Dismissed].	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, All.
2. Comparative, All.
3. Ultimate, All.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may

Applications for Consolidated Hearing; Jerry Swink and Huntington Broadcasting Corp.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Jerry Swink, Huntington, TX	BPH-870219MB	88-208
Huntington Broadcasting Corp., Huntington, TX	BPH-870224MD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11894 Filed 5-25-88; 8:45 am]
BILLING CODE 6712-01-M

also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11897 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–228]

Applications for Consolidated Hearing; Visalia Broadcast Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Visalia Broadcast Limited Partnership, Visalia, CA.	BPH–870331NJ	88–229
B. Sharryle G. Chung, Eurich and Robert, Eurich d/b/a Oak Tree Broadcasting, Visalia, CA.	BPH–870331PE	
C. Stillwell Broadcasting Limited, Visalia, CA.	BPH–870415KQ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Financial, C
2. Air Hazard, A
3. Comparative, A, B, C
4. Ultimate, A, B, C

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicant(s) to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11898 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–238]

Applications for Consolidated Hearing; White Eagle Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. White Eagle, Limited Partnership, Des Moines, IA	BPH–870429MR	88–238
B. Johnson Des Moines Broadcasting Limited, Des Moines, IA	BPH–870429ML	
C. Ronald Sorenson, Des Moines, IA	BPH–870430MM	
D. Clear Channel Commuications, Inc., Des Moines, IA	BPH–870430MO	
E. Midwest Radio, Inc., Des Moines, IA	BPH–870430MQ	
F. Des. Moines Broadcast Limited Partnership, Des Moines, IA	BPH–870430MS	
G. Santee Broadcasting, Inc., Des Moines, IA	BPH–870430MV	
H. Joshua One Eight, dba Heart of Iowa Broadcasting, Des Moines, IA	BPH–870430MW	
I. SpacCom, Inc., Des Moines, IA	BPH–870430MZ	
J. Chuckay Corp., Des Moines, IA	BPH–870430NA	
K. Asterisk Breadcasting, Inc., Des Moines, IA	BPH–870430NB	
L. Sinclair Telecable, Inc., Des Moines, IA	BPH–870430NC	
M. Beverly J. Hewitt, Ruth Sirko, et al. d/b/a High Tower Partnership, Des Moines, IA	BPH–870430ND	
N. Des Moines Skywave, Inc., Des Moines, IA	BPH–870430OJ	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Financial Qualifications, B
2. Alien Control, C
3. Air Hazard, C, F, G, J
4. Comparative, A–N
5. Ultimate, A–N

3. If there is any non-standardized issue in this proceeding, the full test of the issue and the applicant to which it applies are set forth in the Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11899 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Anti-Arson Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Solicitation for Award of Cooperative Agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW–88–S–2877 on June 15, 1988, regarding the design and implementation of anti-arson strategy program for Community-Based Anti-Arson Programs. This program is limited to Community-Based Organizations.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

- To encourage neighborhood involvement in reducing arson fires through new and innovative broad spectrum programs.
- To expand the neighborhood involvement to a community-wide participation in fighting arson.
- To make information available to other neighborhoods and communities regarding successful programs.
- To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.
- To build a comprehensive community anti-arson program.

Applications for assistance must be requested in writing and addressed as follows:

Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street SW., Room 728, Washington, DC 20472, Attn: Cathy A. Green, Contract Specialist.

Request for Assistance No. EMW–88–S–2877

Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minimum of five (5) and a maximum of thirty (30) assistance awards will be made. The anticipated funding levels of this program are between $5,000.00 to $15,000.00 based on the criteria shown in Attachment C of the solicitation package.

Kenneth J. Brzonkala,

Director, Office of Acquisition Management.

[FR Doc. 88–11829 Filed 5–25–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 201–000065–003.
Title: Port of Greater New York and New Jersey Assessment Agreement.
Parties:
New York Shipping Association, Inc. (NYSA)
International Longshoreman's Association, AFL–CIO (ILA)

Synopsis: The amendment provides for the May 1, 1988 suspension of the NYSA–ILA Container Premium on northbound and southbound Puerto Rican cargoes.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 23, 1988.

[FR Doc. 88–11925 Filed 5–25–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice, that on May 17, 1988, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was considered effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224–002401–007.
Title: Long Beach Terminal Agreement.
Parties:
City of Long Beach
Sea-Land Services, Inc. (Sea-Land)

Synopsis: The agreement restates and amends the basic agreement to provide Sea-Land with an additional berth and land area, and revises the compensation formula.

Agreement No.: 224–200119.
Title: Port of Seattle Lease Agreement.
Parties:
Port of Seattle
Trans Pacific Container Service Corporation

Synopsis: The proposed agreement establishes a five-year lease with renewal options for a 23.7 acre container terminal facility at terminal 30, Seattle, Washington.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 23, 1988.

[FR Doc. 88–11872 Filed 5–25–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bryn Mawr Bank Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Bryn Mawr Bank Corporation*, Bryn Mawr, Pennsylvania; to engage *de novo* through its subsidiary, Havens & Company, Inc., Radnor, Pennsylvania, in the performance of real estate appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. Comments on this application must be received by June 10, 1988.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal*, Montreal, Quebec, Canada, and Bankmont Financial Corporation, Wilmington, Delaware; to engage *de novo* through their subsidiary, Harris Government Securities, Inc., Chicago, Illinois, in underwriting, dealing in, brokering, purchasing and selling of such obligations of the U.S. Government and its various agencies pursuant to § 225.25(b)(16) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Meredosia Bancorporation, Inc.*, Springfield, Illinois; to engage *de novo* in the origination of conventional, F.H.A. and V.A. mortgage loans for immediate sale to third-party investors pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted within a 200 mile radius of Springfield, Illinois.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Capital Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Capital Services, Inc., Houston, Texas, in full pay-out personal property leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11780 Filed 5-25-88; 8:45 am]

BILLING CODE 6210-01-M

Pasco Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 17, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Pasco Financial Corporation*, Dade City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Pasco, Dade City, Florida. Comments on this application must be received by June 16, 1988.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Britte Bancshares, Inc.*, Britt, Iowa; to become a bank holding company by acquiring 90 percent of the voting shares of First State Bank, Britt, Iowa.

2. *Tripoli Bancshares, Inc.*, Saint Paul, Minnesota; to acquire 10 percent of the voting shares of First State Bank, Britt, Iowa.

Board of Governors of the Federal Reserve System, May 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11781 Filed 5-25-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Immunization Availability of Funds for Fiscal Year 1988 and Amendment to Program Guidelines

Introduction

The Centers for Disease Control announces the availability of funds for Fiscal Year 1988 for Project Grants for Preventive Health Services—Immunization. The "Amendments" Section of this notice amends the Program Guidelines published in the **Federal Register** May 5, 1987 (52 FR 16451) to comply with Pub. L. 100-177.

Authority

This grant program is authorized by the Public Health Service Act, Section 317 (42 U.S.C. 247b), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and B. The Catalog of Federal Domestic Assistance Number is 13.268.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Purpose

The purpose of this grant program is to prevent the occurrence and transmission of diseases preventable through immunizations.

Availability of Funds

Approximately $85,000,000 will be available in Fiscal Year 1988 to award approximately 63 grants with the average award expected to be $1,350,000, ranging from $25,000 to $4,200,000. Grants are usually funded for 12 months in a 3- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. No new grants are expected to be made in 1988 since current grantees are coordinating activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

Amendments

Public Law 100-177 mandates the following changes in the previously published program announcement (Project Grants for Preventive Health Services-Immunization; Program Announcement; Program Guidelines, 52 FR 16451, May 5, 1987). On page 16455, column two, "Use of Grant Funds", letters B. and C. should be deleted and replaced with the following:

"B. No charge may be made to patients for the cost of vaccines provided through project grant funds, whether administered in public clinics or by private physicians. If an administration fee is charged, information must be prominently displayed which indicates that no one receiving an immunization in public clinics may be denied vaccine provided through project grant funds for failure to pay the administration fee or failure to make a donation to the provider."

C. Grant funds may be used for maintaining patient record systems, purchasing equipment (including data processing equipment), or providing vaccination facilities and services, only after complete justification has been included in the application and fund provided accordingly.

D. Grant funds may be used to supplement (not substitute for) existing immunization operations and services."

Information

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Application forms, information on review procedures, deadlines, the consequences of late submission, and copies of the program announcement and regulations may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: May 19, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

Department of Health and Human Services (HHS)—Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521-35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 331-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353-1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Room 501, Kansas City, Missouri 64106, (816) 426-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844-6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442-0430

[FR Doc. 88-11780 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88F-0167]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N,N'*-1,4-phenylenebis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4080) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of *N,N'*-1,4-phenylenebis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as colorant for food-contact polymers.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11791 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0118]

Diversey Wyandotte Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Diversey Wyandotte Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogen peroxide, peroxyacetic acid, acetic acid, sulfuric acid, and 2,6-pyridinedicarboxylic acid as components of a sanitizing solution for use on food-processing equipment and utensils.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8H4076) has been filed by Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of hydrogen peroxide, peroxyacetic acid, acetic acid, sulfuric acid, and 2,6-pyridinedicarboxylic acid as components of a sanitizing solution for use on food-processing equipment and utensils.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the

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evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11792 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0151]

Pfizer Central Research, Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer Central Research, Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose in fruit spreads.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that Pfizer Central Research, Pfizer, Inc., 235 East 42d Street, New York, NY 10017, has filed a petition (FAP 8A4068), proposing that the food additive regulations be amended to provide for the safe use of polydextrose in fruit spreads.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11793 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0111]

Union Camp Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by the Union Camp Corp. proposing that the food additive regulations be amended to provide for the safe use of poly(oxypropylene)diamine as a component of adhesives in food-packaging applications.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4056) has been filed by the Union Camp Corp., P.O. Box 2668, Savannah, GA 31402, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of poly(oxypropylene)diamine as a component of adhesives in food-packaging applications.

The potential environmental impact of this section is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11794 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0113]

West Agro, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that West Agro, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium-*N*-cyclohexyl-*N*-palmitoyl taurate; acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; iodine/hydroiodic acid; and calcium chloride as components of a sanitizing solution to be used on food-contact surfaces.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4010) has been filed by West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of sodium-*N*-cyclohexyl-*N*-palmitoyl taurate; acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; iodine/hydroiodic acid; and calcium chloride as components of a sanitizing solution to be used on food-contact surfaces.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11795 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0095]

Resonex, Inc.; Premarket Approval of Resonex Rx-4000™ Magnetic Resonance Imaging System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Resonex, Inc., Sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Resonex Rx-4000™ Magnetic Resonance Imaging System. After reviewing the application and determining that the data in the application met the safety and effectiveness approval criteria for magnetic resonance imaging devices established by the Radiological Devices Panel (an FDA advisory committee), FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 27, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adrianne Galdi, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7514.

SUPPLEMENTARY INFORMATION: On August 26, 1987, Resonex, Inc., Sunnyvale, CA 94008-3626, submitted to CDRH an application for premarket approval (PMA) of the Resonex Rx-4000™ Magnetic Resonance Imaging System, a magnetic resonance imaging device with multislice operation and a resistive magnet operating at 0.38 tesla. Magnetic resonance imaging, as performed by the Resonex Rx-4000™ Magnetic Resonance Imaging System, is a diagnostic imaging procedure used to generate a picture of the internal structure of the body, including the head. Images reflecting the spatial distribution of protons (hydrogen nuclei) exhibiting magnetic resonance can be produced in four planes: transverse (axial), sagittal, coronal, and oblique. Image appearance is a function of proton density, spin-lattice relaxation time (T1), spin-spin relaxation time (T2), and fluid flow. Magnetic resonance imaging provides useful diagnostic information when interpreted by a properly trained physician. All other uses of the Resonex Rx-4000™ Magnetic Resonance Imaging System remain investigational.

The Radiological Device Panel is deemed to have recommended approval of the device. Panel guidelines for magnetic resonance imaging devices were established at the July 27, 1987, public meeting. The guidelines set forth approval criteria for safety and effectiveness, predicated on uniform device design and labeling (the transcript of the July 27, 1987, meeting is available at the Docket Management Branch). Since CDRH determined that the Panel guidelines were satisfied by the PMA, the Resonex Rx-4000™ Magnetic Resonance Imaging System was approved by a February 29, 1988, letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Adrianne Galdi (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 27, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act.(sections 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 18, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-11800 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 53 FR 15290, April 28, 1988) is amended to reflect the following changes in the Office of the Director, NIH: (1) Revise the functional statement of the Division of Disease Prevention (HNA22); and (2) establish the Division of Nutrition Research Coordination (HNA24) in the Office of Disease Prevention (HNA2). The establishment of this division will clarify the activities of the Office of Disease Prevention related to nutrition coordination and provide formal recognition of these responsibilities in the Office of the Director, NIH.

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading *Division of Disease Prevention (HNA22),* delete the functional statement in its entirety and substitute the following:

Division of Disease Prevention. (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on research related to disease prevention; (2) coordinates and facilitates the systematic identification of research activities pertinent to all aspects of disease prevention, including: (a) identification of risk factors for disease; (b) risk assessment, identification, and development of biologic, environmental, and behavioral interventions to prevent disease occurrence or progression of pre-symptomatic disease; and (c) the conduct of field trials and demonstrations to assess interventions and encourage their adoption, if warranted; (3) identifies, coordinates, and encourages fundamental research aimed at elucidating the chain of causation of acute and chronic diseases; (4) coordinates and facilitates clinically-relevant NIH-sponsored research bearing on disease prevention, including interventions to prevent the progression of detectable but asymptomatic disease; (5) promotes the coordinating linkage for research institutes on biobehavioral modification toward prevention of disease; (6) coordinates with the Office of Medical Applications of Research to promote the effective transfer of identified safe and efficacious preventive interventions to the health care community and the public; (7) works with the research institutes to initiate and develop RFAs, PAs, and RFPs to enhance disease prevention program development; and sponsors, singly or in combination with other organizations, workshops and conferences on disease prevention; (8) provides a link between the disease prevention and health promotion activities of the research institutes of the NIH, the Office of the Assistant Secretary for Health, and the Secretary, DHHS; (9) monitors the effectiveness and progress of disease prevention and health promotion activities of the NIH; and (10) is responsible for reporting expenditures and personnel involved in prevention activity at NIH.

(2) After the statement for the *Office of Medical Applications of Research (HNA23),* insert the following:

Division of Nutrition Research Coordination (HNA24). (1) Serves as advisor to the Director, NIH, and the Associate Director for Disease Prevention on nutrition research issues; (2) coordinates the nutrition research and training activities of the research institutes; (3) works with NIH organizational components to develop RFAs, PAs, and RFPs to enhance the nutrition reserach activities of the NIH; (4) coordinates the Departmental Research Initiative in Nutrition that includes developing the 5-Year Plan on Nutrition and Training, and the NIH Program in Biomedical and Behavioral Nutrition Research and Training; (5) is responsible for the input and maintenance of all Federal (NIH, FDA, DOD, etc.) nutrition research into the Human Nutrition Research and Information Management System; (6) represents the NIH and provides liaison at the DHHS and interagency level on various committees on nutrition research and policy issues such as the Interagency Committee on Human Nutrition Research and the Nutrition Policy Board: (7) prepares the *Annual Report of the NIH Program in Biomedical and Behavioral Nutrition Research and Training;* (8) administers and coordinates the Fish Oils Test Materials Program; and (9) develops and maintains effective liaison with other departments and agencies that have nutrition mechanisms.

Date: May 18, 1988.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 88–11905 Filed 5–25–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–150–08–4830–11–ADVB–2410]

Grazing Advisory Boards

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal—grazing advisory boards.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's (BLM) 40 grazing advisory boards, listed below.

The 40 boards that have been renewed are as follows:

Arizona: Arizona Strip District Grazing Advisory Board, Kingman Resource Area Grazing Advisory Board, Phoenix-Lower Gila Resource Areas Grazing Advisory Board, Safford District Grazing Advisory Board

California: Bakersfield District Grazing Advisory Board, California Desert District Grazing Advisory Board, Susanville District Grazing Advisory Board

Colorado: Canon City District Grazing Advisory Board, Craig District Grazing Advisory Board, Grand Junction District Grazing Advisory Board, Montrose District Grazing Advisory Board

Idaho: Boise District Grazing Advisory Board, Burley District Grazing Advisory Board, Idaho Falls District Grazing Advisory Board, Salmon District Grazing Advisory Board, Shoshone District Grazing Advisory Board

Montana: Butte District Grazing Advisory Board, Lewistown District Grazing Advisory Board, Miles City District Grazing Advisory Board

Nevada: Battle Mountain District Grazing Advisory Board, Carson City District Grazing Advisory Board, Elko District Grazing Advisory Board, Ely District Grazing Advisory Board, Las Vegas District Grazing Advisory Board, Winnemucca District Grazing Advisory Board

New Mexico: Albuquerque District Grazing Advisory Board, Las Cruces District Grazing Advisory Board, Roswell District Grazing Advisory Board

Oregon: Lakeview District Grazing Advisory Board, Prineville District Grazing Advisory Board, Vale District Grazing Advisory Board

Utah: Cedar City District Grazing Advisory Board, Moab District Grazing Advisory Board, Richfield District Grazing Advisory Board, Salt Lake District Grazing Advisory Board, Vernal District Grazing Advisory Board

Wyoming: Casper District Grazing Advisory Board, Rawlins District Grazing Advisory Board, Rock Springs District Grazing Advisory Board, Worland District Grazing Advisory Board.

FOR FURTHER INFORMATION CONTACT: The Director, Bureau of Land Management (150), U.S. Department of the Interior, Washington, DC 20240.

Roland Robison,

Acting Director.

Date: May 17, 1988.

[FR Doc. 88–11807 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–84–M

[WY–040–08–4300–08; W–101888]

Availability of Amendment to Big Sandy Management Framework Plan; Green River Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of amendment to the Big Sandy Management Framework Plan (MFP) for closure of 357.34 acres of public lands from mineral location and entry under the general public land laws. The area involved is located in the Bureau of Land Management (BLM) Rock Springs District, Green River Resource Area, Sweetwater County, Wyoming.

SUMMARY: The BLM has prepared an environmental assessment (EA) addressing a proposal to close 357.34 acres to mineral location and to amend the Big Sandy MFP accordingly. The proposed closure area is located within the designated Natural Corrals Area of Critical Environmental Concern (ACEC). The EA also addresses management of the ACEC. Adoption of the amended planning decision would initiate proceedings to withdraw the lands involved from settlement, sale, location, or entry under the general public laws, including the mining laws. The lands involved are described as:

Sixth Principal Meridian

T. 21 N., R. 101 W.,
Sec. 18 Lots 1–3, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

The proposed plan amendment may be protested, pursuant to 43 CFR 1610.5–2, by parties who participate in the planning process and who have an interest which is or may be adversely affected by adoption of the plan amendment. A protest may raise only those issues which are submitted for the record during the planning process.

At the end of the 30-day protest period, the Proposed Plan amendment, excluding any portion under protest, will become final. Approval will be withheld on any portion of the amendment under protest until final action on the protest has been completed. Any significant change made as a result of a protest will be made available for public review and comment before it is approved.

DATES: Any comments on the adequacy of the EA and protests on the proposed plan amendment must be postmarked by June 27, 1988.

ADDRESSES: Protests on the proposed plan amendment should be sent to Director (760), Bureau of Land Management, 18th and C Streets NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Bill LeBarron Area Manager, Green River Resource Area, Bureau of Land Management, P.O. Box 1170, Rock Springs, Wyoming 82902–1170, (307) 362–6422.

SUPPLEMENTARY INFORMATION: The purpose of the closure and subsequent withdrawal of 357.34 acres is to provide protection for unique geological and cultural values as well as wildlife habitat and recreation values. The previously established Natural Corrals ACEC (1,276.56 acres) would remain a designated ACEC. The area was originally designated in 1982 to protect cultural, geological, wildlife, and recreation values. Limitations in this area include no surface occupancy for surface disturbing activities and an off-road closure.

In accordance with regulations contained in 43 CFR Part 8340, the following off-road vehicle designation is established. This is a modification to the current "Limited" designation. Approximately 12.5 acres in the Natural Corrals ACEC is designated as "closed" to off-road vehicles. The area contains a site listed on the National Register of Historic Places. To help protect the cultural and historical values, this area is closed to motorized travel.

Hillary A. Oden,

State Director.

May 18, 1988.

[FR Doc. 88–11810 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–22–M

[OR–010–08–4410–12;GP8–142]

Availability of Proposed Plan Amendment and Environmental Assessment; Lakeview District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and open house meetings.

SUMMARY: Bureau of Land Management (BLM) announces the availability of a proposed Plan amendment and environmental assessment for the Warner Lakes Management Framework Plan for public review and comment. This document addresses the impacts of six alternatives proposed for the management of 59,068 acres of BLM administered lands in the Warner Valley in the Lakeview District. The BLM also recommends designation of a new Area of Critical Environmental Concern (ACEC).

DATE: Written comments on the proposed Plan amendment must be submitted by July 25, 1988. All comments must be sent to: District Manager, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630. There will be two open house meetings to discuss provisions of the plan amendment, to answer questions and to accept comments at the following locations:

Lakeview, Oregon—July 19, 1988 at 1:00–5:00 p.m. and 7:00–9:00 p.m. Lakeview District Office

Portland, Oregon—July 21, 1988 at 2:00–5:00 p.m. and 7:00–9:00 p.m. Red Lion/Lloyd Center, 1000 N.E. Multnomah

A copy of the proposed plan amendment will be sent to all individuals, Government agencies, and groups who have expressed an interest in the Warner Lakes planning process. In addition, review copies may be examined at:

BLM State Office, Office of Planning and Environmental Coordination, 825 NE. Multnomah Street, Portland, Oregon 97208

BLM Lakeview District Office, District Planning Coordinator, 1000 South Ninth Street, Lakeview, Oregon 97630

Lake County Library, Courthouse, Lakeview, Oregon 97630.

FOR FURTHER INFORMATION CONTACT: Lakeview District Planning Coordinator, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630, (503) 947–2177.

SUPPLEMENTARY INFORMATION: A draft of the planning criteria and possible alternatives were identified in a planning newsletter dated May 15, 1987. As a result of public response to the

planning newsletter six alternatives were developed. A brief description of each follows:

Alternative 1: The Present Management Alternative, discusses the existing management direction for livestock management, wildlife, and recreation along with other uses. This alternative corresponds to the No Action Alternative required by NEPA.

Alternative 2: Primary Emphasis on Wildlife Habitat with Provisions for Other Uses, places primary emphasis on wildlife habitat for protection or enhancement, while providing opportunities for other uses.

Alternative 3: Primary Emphasis on Range Condition for Livestock Grazing, provides for increased livestock forage production, while maintaining or improving the condition of the present vegetation communities.

Alternative 4: Maximize Wildlife Habitat; Exclude Conflicting Uses, improves wildlife resource values eliminating all conflicting uses, demands and allocations.

Alternative 5: ACEC Designation for the Warner Lakes Potholes Area. This alternative would emphasize the need for preservation and protection of unique wildlife, ecological, cultural, recreational, and geological values identified with the Potholes area. The Warner Potholes area is located in the north end of the Warner Basin in Lake County, Oregon. The Potholes area lies from the southwest shoreline of Flagstaff Lake and runs northeast to near Bluejoint Lake. It is bordered on the east by the Hart Mountain National Wildlife Refuge and on the west near the Bluejoint Road.

Alternative 6: The Preferred Alternative calls for an interdisciplinary management regimen utilizing a mixture of opportunities outlined in the previous five alternatives.

Judy Nelson,

District Manager.

[FR Doc. 88-11809 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-33-M

[NV-060-4322-02]

Battle Mountain District Advisory Council Meeting; Eureka, NV

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday and Wednesday, June 21 and 22, 1988. The meeting will convene at 1:00 p.m. in the Judges Chambers at the Eureka County Courthouse in Eureka, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Review of rangeland monitoring information for the Tonopah Resource Area.
2. Cumulative impacts to the environment from mining and prospecting.
3. Review of Roberts Mountain Management Plan (riparian, wildlife habitat, livestock grazing, wild horses).
4. Field trip Wednesday, June 22, to Roberts Mountain Riparian Habitat Areas.

The meeting is open to the public. Interested persons may make oral statements between 4:00 and 4:30 p.m. on June 21, 1988. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m., June 17, 1988.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635-5181.

Date: May 16, 1988.

Peter J. Keenan,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 88-11811 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-HC-M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Thursday, June 16, 1988, in the Studio B room of the Eugene Hilton, 66 E. 6th Ave., Eugene, Oregon.

The agenda will include: (1) A review and discussion of the State Director Guidance document; and, (2) a presentation concerning the injunction against timber harvesting of certain age classes imposed by the Ninth Circuit Court of Appeals.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make a statement must register with the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, Oregon 97401 by June 15, 1988. A per person time limit may be imposed, depending on the number of persons wanting to address the Council.

Summary minutes of the Council meeting will be maintained in the District office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: May 19, 1988.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88-11812 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-33-M

[AK-040-08-4213-21; AA-64705; 800163]

Realty Action; FLPMA Lease Proposal Near Old FAA Farewell Landing Field, AK

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: Notice is hereby given that pursuant to section 302 of The Federal Land Policy and Management Act of October 1, 1976, (43 U.S.C. 1732), Phillip G. Esai and John R. Runkle of Nikolai, Alaska, have submitted a lease proposal to resolve their occupancy trespass of public land located approximately 12 miles southwest of the old FAA Farewell Landing Field and approximately 60 miles southeast of McGrath, Alaska, at the base of the Trimokish Hills along Khuchaynik Creek within the following general legal description:

Seward Meridian, Alaska

T. 27 N., R. 27 W., (unsurveyed),
Sec. 26, SE¼SE¼ those portions with improvements;
Sec. 35, NE¼ those portions with improvements.
Containing approximately 80.00 acres.

The above lands would be offered noncompetitively to the prospective lessees under a 20-year renewable lease at no less than fair market rental. The proposed lease would authorize existing improvements used in conjunction with their commercial guided hunting operations and personal traditional and customary subsistence activities. Only applications by the above prospective lessees, who built the improvements, and who have the appropriate licenses from the State of Alaska, will be accepted. The lessees would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease in accordance with 43 CFR 2920.6. The general terms and conditions for leases are found in 43 CFR 2920.7.

DATE: For a period up to and including July 1, 1988, interested parties may submit comments.

ADDRESS: Comments must be submitted to the Anchorage District Manager, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn (907) 267-1214.

John J. Rumpa,

District Manager.

[FR Doc. 88-11788 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-040-08-4212-14]
A 23308

Receipt of Conveyance of Mineral Interest Application in Cochise County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application A 23308 in Cochise County, Arizona.

SUMMARY: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, J. A. Kartchner Partnership has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 18 S., R. 19 E.,
Sec. 25, E½ (within).
T. 18 S., R. 20 E.,
Sec. 30, W½ (within).
Containing 548.92 acres, more or less.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, May 5, 1988, whichever occurs first.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the San Simon Resource Area Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Ray A. Brady,

District Manager.

Dated: May 18, 1988.

[FR Doc. 88-11813 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-08-4212-14; N-46540]

Amendment of Realty Action; Competitive Sale of Public Land in Washoe County, NV

The notice published in the **Federal Register** on Wednesday, September 2, 1987, Vol. 52, No. 170, Pages 33296 and 33297, identified a 20-acre parcel of land for modified-competitive sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976. The notice segregated the land from all forms of appropriation under the public land laws including the mining laws. The land did not sell at the original offering as a modified-competitive sale. The land will now be offered as a competitive sale in accordance with the September 2, 1987 notice. The segregative period is due to terminate on May 30, 1988. This notice extends the segregation until February 15, 1989.

Dated this 20th day of May, 1988.

Norman L. Murray,

Acting District Manager, Carson City District.

[FR Doc. 88-11790 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-920-08-4212-11; A-17979]

Arizona; Partial Termination of Classification

May 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; partial termination of classification.

SUMMARY: This notice partially terminates Recreation and Public Purposes Classification A-17979.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6, the Bureau of Land Management hereby partially terminates Recreation and Public Purposes Classification A-17979 where it involves the following described lands:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 E.,
Sec. 27, NW¼NW¼NW¼, N½SW¼NW¼NW¼, SW¼SW¼NW¼NW¼, W½W½SW¼NW¼;
Sec. 34, NW¼NW¼NE¼NE¼NE¼, NE¼NE¼NW¼NE¼NE¼, SE¼NE¼SE¼NE¼SE¼, E½SE¼SE¼NE¼SE¼, E½NE¼NE¼SE¼SE¼.
Containing 31.875 acres in Maricopa County.

Of those lands, the following lands remain segregated from entry and appropriation under the public land laws, including the mineral leasing laws, by withdrawal application A-9662 filed by the Army Corps of Engineers on September 2, 1976:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 E.,
Sec. 34, NW¼NW¼NE¼NE¼NE¼, NE¼NE¼NW¼NE¼NE¼.
Containing 1.25 acres in Maricopa County.

The remaining lands were found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

John T. Mezes,

Chief, Branch of Lands, Minerals Operations.

[FR Doc. 88-11808 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-32-M

[ID-060-08-4212-14]

Noncompetitive Sale of Public Lands; Coeur d'Alene District, ID

AGENCY: Idaho, Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Shoshone County, Idaho.

DATE AND ADDRESS: The sale offering for the parcels listed below will not be offered until at least on or before July 25, 1988, and will be held at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, ID 83814.

SUMMARY: The following public lands have been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) at not less than the appraised fair market value:

Parcel No.	Legal description	Acres	Proponent
	Boise Meridian, T. 58 N., R. 4 E., sec. 26.		
I-25844 B	Lot 16	0.90	George Banguard.
I-25498 B	Lot 19	0.71	Warren Van Zandt.
I-25502 B	Lot 20	0.09	Owen Bailey.
I-25499 B	Lot 21	0.99	Harriet Burgen.
I-25500 B	Lot 22	0.86	Agnes Johnson Estate.
I-25501 B	Lot 23	0.19	Del Enquist.
	T. 48 N., R. 5 E., sec. 9.		
I-25761 B	Portion of MS 655.	0.50	Jack Hayman.

Publication of this notice in the **Federal Register** segregates the above lands from the operation of the public land laws and the mining laws except

for a direct sale pursuant to section 203 of FLPMA. The segregative effect will end upon issuance of patents or 270 days from the date of publication, whichever occurs first.

Sale Procedures

The lands are proposed to be offered for sale to the parties listed above who have occupied the area inadvertently in trespass for several years and have been paying property taxes to Shoshone County (except Parcels I–25761 B and I–25844 B). Direct sale procedures are being used since competitive sales would not be appropriate and the public interest would best be served by direct sale to the parties involved. Benefits of direct sales will be to resolve potential claims to title and to give consideration to the parties involved who have significant interests in the subject properties.

The sale proposal is consistent with the Bureau of Land Management's planning system. The lands are not needed for any resource program and are difficult and uneconomical to manage and are not suitable for management by another Federal department or agency.

Conveyance of the available mineral interests under section 209 of FLPMA will occur simultaneously with the sale of each parcle. Acceptance of the direct sale offer and payment of a $50.00 filing fee will constitute an application for conveyance of those mineral interests.

The patents, when issued, will contain a reservation to the United States for ditches and canals and will be subject to any other existing rights of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sales can be obtained by contacting Eric Thomson, Realty Specialist, at (208) 765–1511. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objection will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: May 18, 1988.

Ted J. Graf,

Acting District Manager.

[FR Doc. 88–11819 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–040–08–4212–12; A–20349–A]

Realty Action; Exchange of Public and State Land in Arizona

May 20, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred title to 2,787.31 acres in Mohave County and accepted title from the State of Arizona on 23,035.55 acres in La Paz, Mohave and Yuma Counties.

FOR FURTHER INFORMATION CONTACT: Marsha L. Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal and Land Policy and Management Act, the following described public land was transferred to the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 20½ W.,
Sec. 14, lots 1 to 4, incl., NE¼, E½NW¼, N½N½SW¼;
Sec. 15, lots 1, 2, 3, 5 and 6, E½NE¼, NE¼ SE¼.
T. 16 N., R. 21 W., Sec. 1, lots 1 to 4, incl., S½ N½, S½;
Sec. 3, lots 1 and 2, S½NE¼, SE¼;
Sec. 12, all;
Sec. 28, E½, E½NW¼, NW¼NW¼, E½ SW¼NW¼, W½NW¼SW¼NW¼, SW¼SW¼NW¼.

Comprising 2,787.31 acres in Mohave County.

In exchange the United States accepted title to the following described land conveyed by the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 19 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all.
T. 5 N., R. 19 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, S½SW¼, SE¼;
Sec. 36, all.
T. 5 N., R. 20 W.,
Sec. 32, lots 5 to 8, incl., E½E½.
T. 8 N., R. 15 W.,
Sec. 32, SW¼SW¼.
T. 8 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, SW¼;
Sec. 32, SW¼SW¼.
T. 8 N., R. 17 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½, EXCEPTING a parcel of land in the NE¼ containing an area of 21.45 acres, more or less, and being more particularly described as follows: BEGINNING at the NE corner of said Section 2; thence along the east boundary of said Section 2 South 00°14' 46" West 1432.80 feet; thence leaving said east boundary North 41°59'55" West 1985.99 feet to a point in the north boundary of said Section 2; thence along said north boundary South 89°51'26" East 1304.43 feet to the point of beginning.
Sec. 16, all;
Sec. 36, all.
T. 8 N., R. 18 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 36, NE¼, N½SW¼, SW¼SW¼.
T. 9 N., R. 15 W.,
Sec. 16, all;
Sec. 32, all.
T. 9 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 9 N., R. 16 W.,
Sec. 16, NW¼.
T. 10 N., R. 16 W.,
Sec. 2, all.
T. 10 N., R. 18 W.,
Sec. 32, all.
T. 11 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, SE¼;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 8, all;
Sec. 10, all;
Sec. 14, all;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 22, all;
Sec. 28, N½, N½S½.
T. 11 N., R. 17 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 24, all;
Sec. 30, SW¼.
T. 11 N., R. 18 W.,
Sec. 2, SW¼NE¼, SE¼NW¼.
T. 12 N., R. 17 W.,
Sec. 2, NE¼SE¼.
T. 12 N., R. 18 W.,
Sec. 2, lots 1 and 2;
Sec. 36, E½, E½W½, W½NW¼, NW¼SW¼.
T. 13 N., R. 17 W.,
Sec. 16, all;
Sec. 32, all.
T. 13 N., R. 18 W.,
Sec. 32, all.
T. 15 N., R. 18 W.,
Sec. 32, SW¼.
T. 16 N., R. 18 W.,
Sec. 36, E½.
T. 2 S., R. 19 W.,
Sec. 16, SE¼SE¼.
T. 2S., R. 23 W.,
Sec. 32, all.
T. 3 S., R. 23 W.,
Sec. 32, SE¼SW¼.
T. 4 S., R. 23 W.,
Sec. 16, all.
T. 8 S., R. 17 W.,
Sec. 25-Two parcels of land in the NE¼ NE¼ containing a total of 8.80 acres, more or less, and being more particularly described as follows:

Parcel No. 1:

Beginning at the Northeast Corner of Section 25, T. 8 S., R. 17 W.; thence S. 89°52'26" W. along the north line of said Section 25, a distance of 163.37 feet to a point on a curve on the north right-of-way line of the Mohawk Canal, said point also being the true point of beginning; thence along the arc of a simple curve to the left, said curve having a central angle of 18°31'22", a radius of 2,150.00 feet, the bearing to said radius S. 30°01'15" E., an arc distance of 695.06 feet to a point on said curve; thence N.0°07'34" W., a distance of 436.97 feet to a point on the north line of said Section 25; thence N. 89°52'26" E. along said north line, a distance of 536.62 feet to the true point of beginning. All in NE¼NE¼, Section 25, T. 8 S., R. 17 W., G&SRBM, Yuma County, Arizona, containing 2.4 acres, and,

Parcel No. 2:

Beginning at the Northeast Corner of Section 25, T. 8 S., R. 17 W.; thence S. 89°52'26" W. along the north line of said Section 25, a distance of 700.00 feet to the true point of beginning; thence S. 0°07'34" E., a distance of 436. 97 feet to a point on a curve on the north right-of-way line of the Mohawk Canal; thence along the arc of a simple curve to the left, said curve having a central angle of 5°03'09", a radius of 2,150.00 feet, the bearing to said radius S. 48°32'26" E., an arc distance of 189.59 feet to the P.T. of said curve; thence S. 36°24'16" W., along said north right-of-way line, a distance of 471.37 feet to a point; thence N. 0°07'34" W., a distance of 962.91 feet to a point on the north line of said Section 25; thence N. 89°52'26" E. along said north line, a distance of 400.00 feet to the true point of beginning. All in the NE¼NE¼, Section 25, T. 8 S., R. 17 W., Yuma County, Arizona, containing 6.4 acres.

Comprising 23,035.55 acres in La Paz, Mohave and Yuma Counties. The purpose of this notice is to inform the public and local governmental officials of the exchange of public and state land between the United States and the State of Arizona.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–11815 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–08–4212–12; A–20347(D)]

Realty Action; Reconveyed Land Opened to Entry; Cochise County, AZ,

May 10, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening of land.

SUMMARY: This action will open 1,670.73 acres of reconveyed land in Cochise County to the public land laws and the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241–5534.

SUPPLEMENTARY INFORMATION: Title to the following described lands was accepted August 28, 1987, from the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 20 E.,
Sec. 25, S½NW¼, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 26, NE¼, N½NW¼;
Sec. 27, N½NE¼, NW¼;
Sec. 28, S½N½, N½S½;
Sec. 29, S½N½;
Sec. 30, lots 1 and 2, NE¼;
Sec. 36, NE¼.
T. 12 S., 21 E.,
Sec. 31, lots 2 and 3, NE¼SE¼;
Sec. 32, W½SW¼, SE¼SW¼.

The areas described comprise 1,670.73 acres in Cochise County.

At 9:00 a.m. on June 27, 1988, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on June 27, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9:00 a.m. on June 27, 1988, the lands will be opened to applications and offers under the mineral leasing laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–11816 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–08–4212; A–22436]

Realty Action; Exchange of Public and State Land in Arizona

May 19, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred title to 14,969.67 acres in Cochise, Graham and Greenlee Counties and accepted title from the State of Arizona on 23,154.26 acres in Cochise and Graham Counties.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, Post Office Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act, the following described public land was transferred to the State of Arizona under Patent No. 02–87–0049.

Gila and Salt River Meridian, Arizona

T. 4 S., R. 30 E.,
Sec. 25, E½, SW¼.
T. 6 S., R. 24 E.,
Sec. 25, SW¼SW¼;
Sec. 35, E½NE¼,NE¼SE¼,W½SE¼SE¼, SW¼SE¼.
T. 7 S., R. 24 E.,
Sec. 1, lots 3 and 4;
Sec. 2, SE¼SE¼;
Sec. 8, W½SW¼, S½SE¼;
Sec. 9, S½NE¼, W½;
Sec. 11, all;
Sec. 12, W½SW¼;
Sec. 13, NW¼NW¼, SE¼SE¼;
Sec. 14, N½NE¼, SW¼NE¼, NW¼, W½SW¼, NE¼SW¼, NW¼SE¼;
Sec. 15, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 17, E½;
Sec. 19, lots 2, 3, 4, W½NE¼, E½W½, SE¼;
Sec. 20, NW¼SW¼;
Sec. 22, all;
Sec. 23, lots 1 and 2, W½NW¼;
Sec. 24, lots 1, 2, 3, NE¼NE¼, S½NE¼, NE¼SW¼, N½SE¼.
T. 7 S., R. 25 E.,
Sec. 5, lot 1, SE¼NE¼, E½SW¼, N½SE¼;
Sec. 7, SW¼SE¼;
Sec. 8, E½NE¼, E½NW¼, SW¼NW¼, SE¼SW¼, SE¼;
Sec. 17, all;
Sec. 18, SE¼NE¼;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 30, lots 1 to 4, incl., N½NE¼, E½W½.
T. 8 S., R. 16 E.,
Sec. 23, S½.
T. 8 S., R. 30 E.,
Sec. 19, lots 3 and 4, SE¼SW¼, S½SE¼;
Sec. 30, NE¼.
T. 8 S., R. 31 E.
Sec. 22, N½NE¼, NE¼NW¼, SE¼SW¼, S½SE¼.
T. 8 S., R. 32 E.,
Sec. 3, lots 6 and 7, E½SW¼, W½SE¼;
Sec. 9, NW¼SE¼;
Sec. 10, lots 1–4, incl., W½E½, NW¼, E½SW¼;
Sec. 15, lots 1–4, incl., W½E½, N½NW¼.
T. 15 S., R. 19 E.,
Sec. 14, E½NE¼.
T. 15 S., R. 22 E.,
Sec. 22, lot 1, N½NW¼, SW¼NW¼.
T. 16 S., R. 31 E.,
Sec. 33, lots 3–6, incl.;
Sec. 34, NW¼SE¼.
T. 17 S., R. 20 E.,
Sec. 21, SE¼NW¼, SE¼SE¼;
Sec. 22, NE¼NW¼, NW¼SW¼.
T. 17 S., R. 31 E.,
Sec. 22, lots 4, 5, lots 8–14, incl.
T. 18 S., R. 20 E.,
Sec. 13, lot 1, W½NE¼, S½NW¼, SW¼, NW¼SE¼;
Sec. 23, NE¼, E½NW¼;
Sec. 24, lots 1 and 2, W½NE¼, NW¼.
T. 18 S., R. 32 E.,
Sec. 6, SW¼NW¼.
T. 19 S., R. 20 E.,
Sec. 5, lots 1–4, incl., S½N½, N½S½, S½SW¼, SW¼SE¼.
T. 20 S., R. 19 E.,
Sec. 29, lot 1.

T. 20 S., R. 20 E.,
Sec. 13, NE¼, NE¼SW¼, NW¼SE¼;
Sec. 23, NW¼NE¼;
Sec. 24, E½NE¼, SW¼NE¼, E½SW¼, SE¼;
Sec. 28, SE¼NW¼.
T. 20 S., R. 21 E.,
Sec. 18, NW¼NW¼, SE¼SE¼.
T. 21 S., R. 26 E.,
Sec. 31, lot 4, SE¼SW¼.
Comprising 13,467.80 acres.

The following described public land was transferred to the State of Arizona under Deed No. AZ–87–010.

Gila and Salt River Meridian, Arizona

T. 7 S., R. 24 E.,
Sec. 2, lots 1, 2, 3, S½N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 10, S½NE¼, NW¼, N½S½, SW¼SW¼.
T. 12 S., R. 28 E.,
Sec. 16, N½NE¼, NW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼.
T. 19 S., R. 26 E.,
Sec. 16, S½.
Comprising 1,501.87 acres.

In exchange the United States accepted title to the following land conveyed by the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 4 S., R. 23 E.,
Sec. 32, lots 1 to 6 incl., N½, NE¼SW¼, N½SE¼, SE¼SE¼.
T. 4 S., R. 27 E.,
Sec. 28, lots 1 to 4 incl.;
Sec. 27, lots 1 and 3;
Sec. 35, all;
Sec. 36, all.
T. 5 S., R. 22 E.,
Sec. 2, lots 1 to 4 incl.;
Sec. 24, lot 4;
Sec. 25, lots 1, 2 and 3, W½NE¼,E½NW¼, SW¼NW¼,NW¼SE¼;
Sec. 26, lots 4, 5 and 8;
Sec. 35, lot 1;
Sec. 36, lots 1 to 4 incl., W½E½, W½.
T. 5 S., R. 23 E.,
Sec. 9, S½SW¼, SW¼SE¼;
Sec. 16, E½, N½NW¼, E½SE¼NW¼, E½E½SW¼;
Sec. 17, NE¼NE¼, SW¼SE¼;
Sec. 19, lot 4, SE¼SW¼, SE¼;
Sec. 20, E½E½, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 29, N½NW¼, SW¼NW¼;
Sec. 30, lots 1, 2 and 3, SE¼NE¼, NE¼SW¼;
Sec. 32, all;
Sec. 33, all;
Sec. 34, S½;
Sec. 35, E½, SW¼;
Sec. 36, all.
T. 5 S., R. 26 E.,
Sec. 10, lots 4 and 5, SE¼;
Sec. 15, E½E½;
Sec. 25, N½, N½SE¼, N½S½SE¼.
T. 5 S., R. 27 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 12, N½;
Sec. 16, all;
Sec. 35, all (U.S. Minerals);
Sec. 36, all.
T. 6 S., R. 22 E.,
Sec. 16, all, excluding San Carlos Indian Reservation;
Sec. 20, NE¼, E½SE¼;
Sec. 21, W½, W½SE¼;
Sec. 28, all;
Sec. 29, NE¼, NE¼SE¼.
T. 6 S., R. 23 E.,
Sec. 1, lots 1 and 2, S½NE¼, E½SW¼, W½SE¼;
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 3, lots 1 to 4 incl., S½N½;
Sec. 11, NE¼SE¼;
Sec. 12, NW¼, W½SW¼;
Sec. 29, S½NW¼, SW¼;
Sec. 31, lots 1 to 7 incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼ (U.S. Minerals);
Sec. 32, lots 1 to 4 incl., N½S½, N½;
Sec. 35, lot 1.
T. 6 S., R. 24 E.,
Sec. 16, E½;
Sec. 17, SW¼SW¼ (U.S. Minerals);
Sec. 19, E½W½, E½SE¼ (U.S. Minerals);
Sec. 20, W½W½ (U.S. Minerals);
Sec. 29, W½W½ (U.S. Minerals);
Sec. 30, lots 3 and 4, S½NE¼, E½SW¼, SE¼ (U.S. Minerals);
Sec. 31, lot 1, N½NE¼, NE¼NW¼ (U.S. Minerals);
Sec. 32, W½E½, E½SE¼.
T. 6 S., R. 27 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 36, NE¼, N½NW¼.
T. 7 S., R. 23 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½ (U.S. Minerals E½SE¼);
Sec. 6, lots 1 to 6 incl., SW¼NE¼, SE¼NW¼.
T. 7 S., R. 24 E.,
Sec. 5, SE¼SW¼, SW¼SE¼ (U.S. Minerals).
T. 24 S., R. 32 E.,
Sec. 2, lots 1 to 4 incl., W½E½, W½;
Sec. 3, all;
Sec. 10, N½, SW¼, W½SE¼,SE¼SE¼;
Sec. 11, lots 1 to 4 incl., W½E½, NW¼NW¼ (U.S. Minerals);
Sec. 14, lots 1 to 4 incl., SW¼NE¼, S½NW¼, S½SW¼,W½SE¼;
Sec. 15, SE¼NE¼, SE¼SW¼, S½SE¼;
Sec. 16, all;
Sec. 22, lots 1 and 2;
Sec. 23, lots 1, 2, 3.
Comprising 23,154.26 acres.

The purpose of the notice is to inform the public and local governmental officials of the exchange of land between the United States and the State of Arizona.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-11617 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-32-M

[AZ-820-08-4212-12; A-22699]

Realty Action; Exchange of Public and State Land in Arizona

May 20, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred title to 4,273.67 acres in Yavapai and Pinal Counties and accepted title from the State of Arizona on 12,382.94 acres in Yavapai County.

FOR FURTHER INFORMATION CONTACT: Marsha L. Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal and Land Policy and Management Act, the following described public land was transferred to the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 12 N., R. 1 E.,
Sec. 21, lots 1, 3, 4.
T. 13 N., R. 1 E.,
Sec. 24, E½E½, SW¼SW¼, E½SW¼, W½SE¼;
Sec. 25, lots 1–4, incl., N½, S½S½.
T. 13 N., R. 1½ E.,
Sec. 1, lot 4;
Sec. 11, lots 1–4, incl.;
Sec. 12, lots 1, 2, NW¼NW¼, SW¼SW¼;
Sec. 13, lots 1–11, incl., W½NW¼, SE¼SE¼;
Sec. 14, lots 1, 2, 4, 5;
Sec. 24, W½;
Sec. 25, NW¼, N½SW¼, SW¼SW¼.
T. 5 S., R. 10 E.,
Sec. 11, N½NW¼, SW¼SW¼, S½SE¼SW¼, S½SE¼;
Sec. 15, NW¼, S½;
Sec. 20, E½;
Sec. 21, E½, SW¼;
Sec. 22, SE¼.
Comprising 4,273.67 acres in Yavapai and Pinal Counties.

In exchange the United States accepted title to the following described land conveyed by the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 1 E.
Sec. 13, all. (surface only)
T. 9 N., R. 2 E.
Sec. 5, lots 1–4, incl., S½N½, S½; (surface only)
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼; (surface only)
Sec. 7, lots 1–4, incl., E½, E½W½; (surface only)
Sec. 8, all; (surface only)
Sec. 17, E½NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, NW¼, S½; (surface only)
Sec. 18, lots 1–4, incl., E½, E½W½; (surface only)
Sec. 19, lots 1–4, incl., E½, E½W½; (surface only)
Sec. 30, lots 1–4, incl., E½, E½W½; (surface only)
T. 9½ N., R. 2 E.,

Sec. 19, lots 1–6, incl., E½SW¼, SE¼; (surface only)
Sec. 29, W½; (surface only)
Sec. 30, lots 1–4, incl., E½W½, E½; (surface only)
Sec. 31, lots 1–4, incl., E½W½, E½; (surface only)
Sec. 32, W½. (surface only)
T. 10 N., R. 2 E.,
Sec. 5, lots 1–4, incl., S½N½, S½; (surface only)
Sec. 6, lots 1–9, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼; (surface only)
Sec. 7, lots 1–8, incl., E½, E½W½; (surface only)
Sec. 8, E½; (surface only)
Sec. 18, lots 1–8, incl., E½W½; (surface only)
Sec. 19, lots 1–8, incl., E½W½; (surface only)
Sec. 30, lots 1–4, incl., lots 6–10, incl., E½NW¼; (surface only)
Sec. 31, lots 3–5, incl., lots 7–10, incl., E½SW¼; (surface only)

The areas described comprise 12,382.94 acres in Yavapai County.

The purpose of this notice is to inform the public and local governmental officials of the exchange of public and state land between the United States and the State of Arizona.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-11618 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-32-M

[CA 943-08-4220-10; CA 17849]

Proposed Withdrawal and Opportunity for Public Meeting; California

May 18, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,997.92 acres of public land in San Bernardino County, to protect the paleontological, geological, scenic, and recreational integrity of the Rainbow Basin-Mud Hills area. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by August 24, 1988.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, (916) 978–4815.

SUPPLEMENTARY INFORMATION: On April 27, 1988, a petition was approved allowing Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 11 N., R. 1 W.,
Sec. 18, lots 1 and 2, and NE¼.
T. 11 N., R. 2 W.,
Sec. 10, W½SW¼, SE¼SW¼, and S½S½SE½.
Sec. 11, S½S½SW¼;
Sec. 14, W½ and SW¼SE¼;
Sec. 15,
Sec. 22, E½NE¼;
Sec. 23, NE¼NE¼, W½NE¼, NW¼, N½SW¼, and W½SE¼.

The areas described aggregate 1,997.92 acres in San Bernardino County.

The purpose of the proposed withdrawal is to protect and preserve the paleontological, geological, scenic and recreational values of the Rainbow Basin-Mud Hills area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregated period are licenses, permits, cooperative agreements, or discretionary land-use authorizations of a temporary nature.

Nancy J. Alex,
Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-11620 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-40-M

[CA-056-08-4351-09]

Closure Order for Off-Road Vehicle Use; California

ACTION: Closure Order for Off-Road Vehicle Use.

SUMMARY: Notice is hereby given related to the closure of public land to off-road vehicle (ORV) use in accordance with regulations contained in 43 CFR 8341.2. Approximately thirty-seven (37) acres of rare plant habitat located in portions of Sections 26, 27, 34, 35, T. 6 N., R.1 W., H.M. and known as the foredunes of the Bureau's Manila Dunes tract, will be temporarily closed to ORV use. This closure order will remain in effect until a research project is completed or a formal activity plan is completed for the area.

DATE: This closure order is effective May 20, 1988.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource Area Manager, 1125 16th Street, Room 219, P.O. Box 1112, Arcata, California 95521 (Telephone: (707) 822–7648) or District Manager, Ukiah, District Office, 555 Leslie Street, Ukiah California 95482 (Telephone: (707) 462–3873).

SUPPLEMENTARY INFORMATION: The affected plant species is the Menzies' Wallflower (*Erysimum menziesii*), listed as endangered by the California Department of Fish and Game and identified as a candidate for Federal listing by the U.S. Fish and Wildlife Service. Its habitat has been reduced to dune systems along the California coast in three locations—Monterey, Fort Bragg and the Samoa Peninsula near Eureka.

Habitat restoration plans and research studies are currently being implemented on the thirty-seven (37) acres where ORV use will be prohibited by this closure order. The area has been fenced into four units in order to provide riding corridors from the inland dunes to the beach strand. Information and regulatory signs are posted and the fence wire is flagged and painted to increase its visibility to nearby ORV enthusiasts.

All restoration activities within this thirty-seven (37) acre area will be monitored for at least three years. During this period, the study area must be protected from impacts which could result in erroneous conclusions or recommendations. Upon completion of the habitat restoration and research projects, the authorized officer will determine whether or not to remove the fence and designate the area either open, limited, or closed to ORV's in

accordance with procedures established in 43 CFR 8342.

Edwin G. Katlas,
Acting District Manager.
May 18, 1988.
[FR Doc. 88-11814 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-40-M

Bureau of Mines

Sale of Helium Assets

AGENCY: Bureau of Mines, Interior.

ACTION: Solicitation of comments on the proposed sale of helium assets.

SUMMARY: The FY 1988 and 1989 Budgets for the Department of the Interior proposed the sale of Government helium assets as part of the President's initiative to privatize certain Federal operations. Under a contract with the Bureau of Mines, J.R. Campbell and Associates has prepared a report related to valuation of these assets and public comments are now being solicited on the issues described in that report in order to assist the Department in determining the options available for implementing the proposal.

DATES: Interested parties should provide their comments to the official listed below on or before June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Armond A. Sonnek, Assistant Director—Helium Operations, Bureau of Mines, Columbia Plaza Office Building, 2401 E Street NW., Washington, DC 20241; Telephone No. 202-634-4734.

SUPPLEMENTARY INFORMATION: A Federal Helium Program was established by Federal law in 1925 to develop and produce helium for Government use. In 1937, the law was changed to allow the Government to sell helium for other than Government use. The law was again changed in 1960 to allow the Secretary of the Interior to purchase crude helium for storage to meet the current and future military and scientific needs of the helium-using Federal agencies. As a result of this legislation the Bureau of Mines has a crude helium reserve of 38 billion SCF (standard cubic feet) stored in its Cliffside Reservoir in Amarillo, Texas.

The 1960 Act also encouraged the development of a private helium industry. The resultant private helium industry now has a helium production capacity which supplies about 75 to 80 percent of the total helium market. Federal agencies, under the law, are still required to purchase needed helium from the Bureau of Mines. Under the President's FY 1989 initiative to privatize certain industrial-type operations, sale of the Exell helium plant, the Amarillo container-filling plant, and the helium (liquid and gaseous) transportation equipment has been proposed.

As a result of this proposal, a Helium Operations Report for the U.S. Bureau of Mines was prepared by J.R. Campbell and Associates, Inc., Lexington, Massachusetts. Consistent with the terms of a competitively awarded contract, Campbell and Associates conducted an analysis of the issues relating to the valuation and potential disposition of the Government's helium processing and distribution operations. Three value and disposition alternatives are covered in the contractor's report.

These are:

1. Retain all its interests and not sell any crude helium.

2. Sell its production and distribution facilities, and sell crude helium in portions over the next 50 years.

3. Retain all its production and distribution facilities, while also selling portions of the crude helium over the next 50 years.

(Copies of the report may be obtained by contacting Armond A. Sonnek, Assistant Director—Helium Operations, Bureau of Mines, Columbia Plaza Office Building, 2401 E Street NW., Washington, DC 20241, Telephone No. 202-634-5734.)

In addition, a number of questions has been identified as follows:

1. Interest in Operating Facilities

Is private industry interested in purchase or operation of the Exell facility on a contract basis? If so, how should such a sale or contract be structured?

2. Impact on the Market

What role should the Government play in the helium market? Is private industry able to absorb the Government requirements, as defined in the contractor's study, in terms of processing capacity, as well as peak demand (with or without access to Government crude)? What would be the consequences for supply and price?

3. Transition Period

If the Federal Government were to cease supplying helium, would a period of transaction be needed from Government processing capacity to private supply of helium? How long a transition would be necessary, if any? Would sale of Government-owned helium be necessary to meet demand during such a period?

4. Conservation

What role should the Government play in the conservation of helium subsequent to a sale of assets? Should the Government sell conserved helium into the market? If so, how should crude sales be structured to prevent any disruption of the private helium market?

Responses are also solicited as to whether there are other considerations that should be taken into account.

Dated: May 20, 1988.

T.S. Ary,
Director.
[FR Doc. 88-11778 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-53-M

Bureau of Reclamation

Transfer of Recreation Lands at Red Bluff Reservoir, Central Valley Project, California, to the Forest Service

AGENCY: Bureau of Reclamation; Department of the Interior.

ACTION: Notice of transfer of administrative jurisdiction over approximately 488 acres of land acquired by the Bureau of Reclamation, Department of the Interior, for the Red Bluff Reservoir, Central Valley Project, California, to the Forest Service, Department of Agriculture. The Forest Service will manage these lands for recreation and other National Forest System purposes, along with other lands on the Mendocino National Forest. The lands transferred are located in six tracts located in Tehama County, California, in Sections 20, 28, 29, and 33 of Township 27 North, Range 3 West, Mount Diablo Base and Meridian, and a portion of the Rio de Los Berrendos Rancho, a.k.a. Rancho El Primer Canon.

DATE: This action was effective on March 16, 1988.

ADDRESSES: Maps, a complete legal description of the lands over which the Bureau of Reclamation transferred administrative jurisdiction to the Forest Service, and a copy of the transfer agreement, can be seen and reviewed by contacting: Mr. Gary T. Sackett, Assistant Regional Supervisor of Water and Power Resources Management, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, Telephone: (916) 978-4933.

SUPPLEMENTARY INFORMATION: The lands were transferred under the authority vested in the Secretary of the Interior by section 7(c) of the Act of July 9, 1965, Pub. L. 89-72 (79 Stat. 217), and his delegation to the Commissioner of Reclamation dated February 25, 1966, published March 4, 1966 (31 FR 3462).

As prescribed by section 7(C) of Pub. L. 89-72, the lands, once transferred, will become National Forest Lands, provided that all lands and waters within the Red Bluff Reservoir needed or used for the operation of the Central Valley Project, or for any other Reclamation purpose(s) shall continue to be administered by the Commissioner of Reclamation to the extent he deems necessary.

Date: May 13, 1988.

C. Dale Duvall,
Commissioner.
[FR Doc. 88-11602 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; CSX Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that CSX Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5703, Block 161, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 17, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service make information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 18, 1988.

J. Roger Pearcy,
Regional Director, Gulf of Mexico OCS Region.
[FR Doc. 88-11821 Filed 5-25-88; 8:45 am]
BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty-Eighth Meeting of the Board for International Food and Agricultural Development (BIFAD) on June 7, 1988.

The purpose of this meeting is to meet together with the Title XII Community and in an open forum discuss the following issues; additional inputs and suggestions with a focus on the 90's; future directions and trends for Title XII-sustainable agriculture, environmental sustainability and enhancement, developing policy analysis capability in host countries, expanding the research agenda, new modes for institutional development projects, developing collaborative linkages with ADC countries and institutions; internationalizing the university, etc.

The June 7, 1988 Meeting will be held in Fayetteville, Arkansas, the Center for Continuing Education, #2 University Center, Fayetteville Square. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, Washington, DC 20523, or telephone him on (707) 235-8929.

Date: May 20, 1988.

Lynn Pesson,
Executive Director, BIFAD.
[FR Doc. 88-11804 Filed 5-25-88; 8:45 am]
BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31247]

CSX Corp and American Commercial Lines, Inc.—Control—SCNO Acquisition Corp.[1]

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of determination that the proposal is a minor transaction and decision to waive and to clarify filing requirements.

SUMMARY: The Commission determines that the proposed acquisition of control of SCNO Barge Lines, Inc. by CSX Corporation and its wholly owned subsidiary, American Commercial Lines, Inc., is a minor transaction for purposes of handling of the application under the railroad consolidation regulations at 49 CFR Part 1180. Also, the Commission grants applicants' requests for waivers and clarifications of those regulations, including the environmental and energy regulations at 49 CFR 1180.6(a)(8) and 1180.6(a)(9).

[1] This proceeding was originally entitled Finance Docket No. 31247, *CSX Corporation and American Commercial Lines, Inc.—Control—SCNO Barge Lines, Inc.* The name of the proceeding has been revised in accordance with the request of counsel for CSX Corporation and American Commercial Lines, Inc., contained in a letter filed April 6, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: May 10, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Simmons, joined by Commissioner Lamboley, dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11628 Filed 5-25-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-25X)]

Central of Georgia Railroad Co.; Exemption, Abandonment and Discontinuance of Service at Atlanta, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* (1) to abandon its 475-foot line of railroad between Valuation Station 15551+30, near Foundry Street, and Valuation Station 15546+55, at International Boulevard, in Atlanta GA, and (2) to discontinue service over a 1,575-foot segment of contiguous trackage between Valuation Station 15546+55, at International Boulevard, and the point of switch with its Circle Track in the vicinity of Valuation Station 15530+80, near Martin Luther King Drive, in Atlanta.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective June 25, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by June 5, 1988,

and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 15, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Angelica D. Lloyd, Norfolk Southern Corporation, 8 North Jefferson Sreet., Roanoke, VA 24042-0041.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 31, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7216).

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 20, 1988.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub.-No. 8), *Exemption of Out-of-Service Rail Lines,* served March 8, 1983.

[2] *See Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11627 Filed 5-25-88; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Ariel Rios Federal Building, located on 12th Street NW., between Constitution and Pennsylvania Avenues in Washington, DC on June 23 and 24, 1988. The meeting will be in Room 3001 beginning at 8:30 a.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 5 U.S. Code, section 1242(a)(1)(B) and to review the May 1988 Joint Board examinations in order to make recommendations relative thereto, including minimum acceptable pass scores. A determination as required by section (d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1988 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

In addition to the above, there will be discussion of the following: (1) Topics for inclusion on the examination program for the November 1988 pension law examination and May 1989 basic actuarial examination; (2) a memorandum regarding the new approach to life contingencies submitted by the Society of Actuaries for review by the Joint Board and the Advisory Committee; (3) the possibility of consolidation of the current two part structure of the basic actuarial examination; and (4) material (e.g., law, revenue rulings, and notices) which may be included as part of the pension law examination booklets. The portion of the meeting dealing with the discussion of these topics will be open to the public as space is available. Such discussion will commence at 1:30 p.m. on June 23 and

will continue until the discussion is finished but not beyond 3:30 p.m.

Time permitting, after discussion by Committee members, interested persons may take statements germane to these subjects. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements must be received no later than June 20, 1988 by Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

Date: May 20, 1988.

[FR Doc. 88-11665 Filed 5-25-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

United States v. State of Washington et al.; Lodging of Consent Decree Pursuant to Clear Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 2, 1988, a proposed partial Consent Decree in *United States v. State of Washington et al.,* Civil Action No. C88-552R, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Air Act against the defendants, the State of Washington, the University of Washington, W.G. Clark Construction Company, and G. Brett Bodily d/b/a Monarch Painting Company, for violations of numerous work practice standards under the National Emissions Standards for Hazardous Air Pollutants [NESHAP] regulations for asbestos, promulgated under the Clean Air Act, during renovation and asbestos removal operations at the Husky Stadium and the TV/Drama Building, both located on the University of Washington at Seattle campus.

The Consent Decree requires the three settling defendants, namely, the State and University of Washington, and Clark Construction, jointly to pay a civil penalty totaling $65,000. The Decree also enjoins the settling defendants from further violations of the asbestos NESHAP regulations for one year and subjects those defendants to contempt of court proceedings for violations within that year.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. State of Washington,* D.J. Ref. 90-5-2-1-1163.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Washington, 3600 Seafirst 5th Avenue Plaza, 800 Fifth Avenue, Seattle, Washington; (2) the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue NW., Washington, DC.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11622 Filed 5-25-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-28]

Gordon M. Acker, D.M.D., Spring Lake Heights, NJ; Hearing

Notice is hereby given that on February 26, 1988, the Drug Enforcement Administration, Department of Justice, issued to Gordon M. Acker, D.M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration,

notice is hereby given that a hearing in this matter will be held on Thursday, June 9, 1988, commencing at 10:00 a.m., at the United States Claims Court, Courtroom 10, Room 309, 717 Madison Place NW., Washington, DC.

Dated: May 20, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-11626 Filed 5-25-88; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-413 and 50-414]

Duke Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35, and NPF-52 issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The amendments would revise Technical Specification (TS) Tables 3.3-12, 3.3-13, 4.3-8, 4.3-9, 4.11-1 and 4.11-2 to add TS requirements to cover operation of systems and components associated with the Monitor Tank Building (MTB) which is being constructed at Catawba Nuclear Station. Also, TS Figure 5.1-4 "Unrestricted Area and Site Boundary for Radioactive Gaseous Effluent" will be revised to show the MTB as a potential release point.

The MTB and associated components, including additional tankage, will increase process rates and ensure segregation for the various liquid waste streams. By providing a piping arrangement and process area to accommodate portable temporary equipment, the facility will provide surge capacity and processing flexibility to incorporate such future problems as load cycling, ice condenser ice melt and potential volume reduction requirements.

The licensee's application for amendments was dated March 23, 1988.

The Need for the Proposed Action

At the present time, Catawba does not have the capability to process large volumes of liquid radwaste due to

restrictions on releases and release rates. This is particularly true for peak load conditions associated with routine plant operations such as during refueling outages. The MTB will provide a means to handle larger quantities of radioactive wastes and reduce occupational exposures.

The amendments to the Technical Specifications are necessary to ensure that appropriate controls for the radioactive liquid and gaseous effluent monitors and flow rate measuring devices are in place to cover the operation of the MTB.

Environmental Impacts of the Proposed Action

The proposed amendments to the Catawba Technical Specifications would adequately ensure the operability of the radioactive gaseous and liquid effluent monitoring instrumentation and would also ensure that proper sampling and analysis programs are in place for all radioactive gaseous and liquid effluent releases.

The MTB includes many ALARA design features that will reduce the occupational doses from maintenance and operations from those currently received. Its primary functions are to provide additional processing capacity for high radwaste inventories during normal operation, primary-to-secondary leaks, and contaminated powdex processing. The dose levels associated with the powdex processing in the MTB would be much lower than if processing occurred in the turbine building. Therefore, for the same operations, the individual and occupational cumulative dose levels should be lower than what is currently experienced.

Operation of the MTB will not increase the quantity of radioactive gaseous and liquid effluents produced by the Catawba Nuclear Station. The MTB will provide a means to handle larger quantities of radioactive wastes and reduce occupational exposures.

The MTB and associated trenches do not house any equipment which is important to safety and being a remote facility, cannot adversely affect any equipment which is important to safety. An accident or malfunction within the facility can, however, result in a radioactive release to the environment. The most severe consequences would be those following a tank failure.

The accident which is already analyzed in the FSAR is the failure of the refueling water storage tank (RWST) which results in the release of 395,000 gallons on contaminated water directly to Lake Wylie. Since the total volume of all MTB tankage is much less than that of the RWST and since the radionuclide concentrations of liquids within the MTB will be less than those assumed in the RWST analysis, the consequences of an MTB accident would be much less severe than an RWST accident. The releases resulting from a postulated RWST failure were determined to be within the limits of 10 CFR Part 20, Appendix B.

Accidents and malfunctions within the MTB will, therefore, not affect the safe operation or shutdown of the plant and will not adversely affect the health and safety of the public.

From the above evaluation of accidents, occupational radiation exposures and radiological effluents, the Commission concludes that there are no significant radiological environmental impacts associated with granting of the proposed amendments.

With regard to potential non-radiological impacts, the proposed amendments involve systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Because the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts associated with Catawba Nuclear Station operations, would result in reduced operational flexibility, and may add to the occupational radiation exposures.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of the Catawba Nuclear Station, Units 1 and 2" (NUREG–0921), dated January 1983.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated March 23, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 19th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11843 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

Availability of Final Technical Position on Items and Activities in the High-Level Waste Geologic Repository Program Subject to Quality Assurance Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1318 "Technical Position on Items and Activities in the High-Level Waste Geologic Repository Program Subject to Quality Assurance Requirements," and a document providing staff responses to public comments on the September 1987 draft of the technical position.

ADDRESSES: A copy of NUREG–1318 and staff response to public comments on the September 1987 draft of the technical position are available for inspection and/or copying for a free at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Copies of NUREG–1318 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Kennedy, Section Leader, Quality Assurance Section, Operations Branch, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–3402.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (NWPA), Pub. L. 97–425, and the Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to DOE's submittal of a license application for a geological repository. These interactions are to fully inform DOE about the types and amounts of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is the NRC staff's Site Characterization Analysis (SCA) of DOE's Site Characterization Plan (SCP). The SCA and SCP are required by the NWPA and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA. These include staff technical positions (TPs).

This TP provides guidance to DOE on what the staff considers as appropriate methods for identifying item and activities that are subject to the quality assurance requirements of 10 CFR Part 60.

On July 31, 1986 the NRC published the Notice of Availability for the draft TP and solicited public comments. As a results, ninety-six comments were received from eight different parties. Furthermore, a public meeting was held August 25, 1986 to discuss the draft TP and the NRC staff's responses to the public comments. Representatives for the States, affected Indian Tribes, industry, and the Department of Energy were in attendance and provided feedback to the NRC staff. In September 1987, a revised draft was issued for additional comment. As a result, ninety-three comments were received from six different parties. Changes and clarifications have been made in the final TP as a result of these interactions. The final position has also been reviewed by the Commission's Advisory Committee on Reactor Safeguards (ACRS) Waste Management Subcommittee.

Dated at Rockville, Maryland, this 20th day of May 1988.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Branch Chief, Operations Branch, Division of High-Level Waste Management, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 88–11844 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved LWRs; Meeting

The ACRS Subcommittee on Improved LWRs will hold a meeting on May 31, 1988, Room 167, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 31, 1988—1:00 p.m. until the conclusion of business.

The Subcommittee will review the proposed Commission rule on standardization.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1413) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 20, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–11901 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364; License Nos. NPF–2 and NPF–8; EA 87–142]

Alabama Power Co., Farley Nuclear Plant; Order Imposing Civil Penalty

I

Alabama Power Company (licensee) is the holder of Operating License Nos. NPF–2 and NPF–8 issued by the Nuclear Regulatory Commission (NRC/Commission) on June 25, 1977 and March 31, 1981, respectively. The licenses authorize the licensee to operate Joseph M. Farley Nuclear Plant Units 1 and 2 in accordance with the conditions specified therein.

II

Inspections of the licensee's activities were conducted on May 11–22, June 1–5, and June 11—July 10, 1987. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated November 3, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by two letters, both dated December 17, 1987.

III

After consideration of the licensee's responses and the statements of facts, explanation and arguments for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that three examples of violation I.A, one example of violation I.B.5, and one example of violation II.A should be withdrawn; that the remaining examples of violations I.A, I.B.5, and II.A and the remaining violations in their entirety occurred as stated; that the violations were properly categorized in the aggregate as two Severity Level III problems; and that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector, Farley Nuclear Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in section II and modified in section III above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland, this 18th day of May 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions of Response to Notice of Violation

On November 3, 1987, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during NRC inspections. This Notice contained two Severity Level III problems each assessed a Twenty-Five Thousand Dollar ($25,000) civil penalty. Alabama Power Company (APC) responded to the Notice by two letters, both dated December 17, 1987. In its first response, the licensee protested the issuance of Violation II.A.4, denied violations I.A., I.B.5 (in part), II.A.2, and II.A.5; admitted the remaining violations; and presented mitigating circumstances for violations I.B.1, II.A.1, II.A.3, and II.B. The licensee also requested recategorization of individual findings (as separate violations rather than aggregate violations), reduction of the severity level, and withdrawal of the proposed civil penalties. In its second response, the licensee presented arguments, regarding inaccuracies in Inspection Reports Nos. 50-348/87-11 and 50-364/87-11. The NRC's evaluations and conclusions regarding the licensee's initial response are as follows:

Restatement of Violation I.A

I. Inadequate Control and Installation of Purchased Equipment

A. 10 CFR Part 50, Appendix B, Criterion VII, Control of Purchased Material, Equipment, and Services, requires that measures be established to assure that purchased material, equipment, and services conform to the procurement documents. These measures shall include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source and examination of products upon delivery. Documentary evidence that material and equipment conform to the procurement requirements is required to be available at the nuclear power plant prior to installation or use of such material and equipment.

Contrary to the above, at the time of the inspections, the licensee had nine circuit breakers with unconfirmed seismic qualification and voltage ratings installed in safety-related motor control centers at Farley Nuclear Plant (FNP) Units 1 and 2. The circuit breakers were sold by Satin American Corporation as seismically qualified safety-related circuit breakers acceptable for installation into 600-V motor control centers. The vendor provided inadequate justification for seismic and 600-V qualification. No testing or analysis that would qualify the use of these breakers as installed had been done either by the licensee or the vendor. Moreover, although the vendor represented that the circuit breakers were fully qualified for 600-V applications, the licensee should have been alerted to a possible problem since the breakers were still affixed with an Underwriters Laboratories, Inc. rating of 480-V.

Summary of Licensee's Responses to Violation I.A

Prior to allowing Satin American to supply the needed breakers, APC reviewed the Satin American Quality Assurance Program and found it acceptable. APC efforts to upgrade the 480-V breakers to 600-V standards and to resolve potential seismic qualification problems involved Siemens-ITE, Ecotech, Telemecanique and Bechtel. The efforts by APC and the companies listed above included both testing and analysis. Therefore, APC concluded that the NRC's assertion that "No testing or analysis that would qualify the use of these breakers as installed had been done either by the licensee or vendor" is not correct.

APC additionally objected to the NRC's statement that "* * * the licensee should have been alerted to a possible problem since the breakers were still affixed with an Underwriters Laboratories, Inc. rating of 480-V." APC stated that it is not aware of any regulatory requirement to maintain a UL listing for these breakers. Finally, the licensee contended that the number of breakers that were installed in safety-related applications was six rather than the nine cited by the NRC in the Notice of Violation.

NRC Evaluation of Licensee Response to Violation I.A

At the exit meeting conducted at the end of the subject inspection, the NRC inspectors were told there were nine circuit breakers installed in safety-related motor control centers. If six is the correct number, the NRC staff agrees that reference to three of the nine original breakers should be withdrawn. However, the remaining six examples occurred as stated and the significance of the subject violation would not be changed.

The NRC staff was aware of and considered the circumstances surrounding the procurement of the subject breakers as described in paragraph A of the APC response to the subject violation. The staff has reviewed and considered the activities performed after the inspection as described in paragraph B of the subject response. The testing performed by Satin American and by APC was recognized and evluated by the NRC. It was determined that this testing did not serve as a basis for ensuring the breakers would meet the applicable design requirements for the installed applications. Specifically, Bechtel specification SS-1102-01 for 600 volt, 480 volt, and 208 volt Motor Control Centers, used in the procurement of the original MCCs and breakers installed at the FNP, states in paragraph 6.1.3 that the 600-V circuit breakers should be capable of interrupting 18,000 amps rms symmetrical at 600 volts. The original supplied breakers were rated by UL as being capable of meeting this specification. To achieve this UL rating, a manufacturer is required to subject a production sample of breakers through vigorous testing performed on a quarterly basis. This testing includes subjecting the breakers to the rated interrupting current at the rated voltage (in this case 18,000 amps at 600 volts). This testing, performed on sample breakers, then serves as the basis for the UL rating associated with the other breakers manufactured during the same time period.

The circuit breakers received by FNP were UL rated for 480-V, not 600-V. Therefore, these were part of manufacturing lots subjected to testing at 480-V. No breakers manufactured during the same time period as those received by FNP were ever tested at 600-V, as would be necessary to establish an interrupting rating at 600 volts. Subsequent tests performed by Satin American and APC did not establish nor ensure that the subject breakers could interrupt 18,000 amps at 600 volts, as required by the Bechtel specification.

The staff agrees that the breakers installed at FNP are not rquired to have a UL rating, but in this case the UL rating served as the only assurance that the subject breakers could meet the design specifications. Additionally, information received from Seimens and from Telemecanique has reinforced the staff's position that the subject breakers are in fact not identical to the originally qualified 600 volt breakers. In the time period reviewed by the NRC inspectors (July 1984–June 1986) manufacturing and material changes were made to the type of breakers in question but, these changes were not evaluated for their possible effect on the 600 volt interrupting rating.

Appendix B to 10 CFR Part 50 provides the overall criteria for quality assurance programs for nuclear power plants in an effort to, among other things, provide a higher level of assurance that safety-related equipment and components are suitable for their application and will perform their intended safety function that is normally obtained with a typically commercially available off-the-shelf item. In this case, however, the 600 volt circuit breakers did not even benefit from the assurance of quality associated with a typical commercial grade quality assurance program (in this case UL) since they were not manufactured in a lot which was subject to "UL Proof Testing" at 600 volts. Consequently, APC started with a product that did not satisfy typical commercial grade testing requirements and then upgraded it to "nuclear grade" without performing equivalency tests or providing a technical basis for not doing them.

As detailed in the preceding paragraphs, based upon the information available at the time of the inspection, and with the additional knowledge obtained after completion of the inspection, the NRC staff has not seen nor does the staff know of existing documentation that would support qualification of the subject breakers for 600 volt applications. The NRC staff is concerned that APC, after thoroughly reviewing this issue and removing the subject breakers from safety-related applications, still has not addessed the technical adequacy of the available documentation as necessary to establish 600-V interrupting capabilities of the breakers. The staff considers Violation I.A valid as written for the six circuit breakers installed into the safety-related Motor Control Centers.

Restatement of Violation I.B.1

I. Inadequate Control and Installation of Purchased Equipment

B. 10 CFR Part 50, Appendix B, Criterion III, Design Control, requires that measures be established to assure that applicable regulatory requirements and the design basis for those structures, systems, and components to which this appendix applies are correctly translated into specifications, drawings, procedures, and instructions. It also requires that measures be established for the selection and review for suitability of materials, parts, equipment, and processes that are essential to the safety-related functions of structures, systems, and components.

Contrary to the above, the licensee installed a number of commercial grade parts at Farley Nuclear Plant Units 1 and 2 without adequately evaluating their suitability for use in safety-related applications. These parts were in use at the time of the inspections indicated above. Specifically:

1. Commercial grade circuit breakers were installed into safety-related motor control centers 1U and 2U.

Summary of Licensee's Response to Violation I.B.1

APC admitted that the decision to procure the items commercial grade did not include documented evaluation or dedication of parts procured as commercial grade for use in safety-related applications and that no documented evaluation/dedication was done prior to installation. However, the licensee asserted that pre-installation trip tests were performed at the time of installation.

The licensee's reason for the violation was that inadequate procedural guidance resulted in the failure to document fully evaluation of the suitability of commercial grade parts for installation in safety-related applications. The breakers were removed from service.

NRC Evaluation of Licensee's Response to Violation I.B.1

Although a pre-installation trip test may have been performed at the time of installation, no analysis or documentation existed that would show the similarity of the procured breakers to the original breakers installed in the motor control centers. Therefore, an adequate evaluation of suitability for use in safety-related applications was not performed.

Restatement of Violation I.B.5

I. Inadequate Control and Installation of Purchased Equipment

B. 10 CFR Part 50, Appendix B, Criterion III, Design Control, requires that measures be established to assure that applicable regulatory requirements and the design basis for those structures, systems, and components to which this appendix applies are correctly translated into specifications, drawings, procedures, and instructions. It also requires that measures be established for the selection and review for suitability of materials, parts, equipment, and processes that are essential to the safety-related functions of structures, systems, and components.

Contrary to the above, the licensee installed a number of commercial grade parts at FNP Units 1 and 2 without adequately evaluating their suitability for use in safety-related applications. These parts were in use at the time of the inspections indicated above. Specifically:

5. A commercial grade Agastat timing relay (ATR) was installed as a replacement in safety-related panel #Q2R16B007-B, 600-V load distribution panel. Additionally, commercial grade ATRs were found in other safety-related electrical enclosures including two ATRs in diesel generator load sequencer panel #O2R43E501B-B, and two ATRs in diesel generator relay terminal box #Q1R43G506-B.

Summary of Licensee's Response to Violation I.B.5

APC admitted that at the time of installation of the ATRs, it did not have documented evaluation or dedication of the ATR for safety-related use in the load distribution panel #Q2R16B007–B. However, the portion of the alleged violation associated with commercial grade ATRs in diesel generator load sequencer panel #Q2R43E501B–B and two ATRs in diesel generators relay terminal box #Q1R43G506–B was denied because the ATRs were part of the original equipment supplied with the panel and were therefore qualified by the vendor.

NRC Evaluation of Licensee's Response to Violation I.B.5

As originally stated, commercial grade ATRs were found in other safety-related electrical enclosures, including two relays in diesel generator load sequencer panel Q2R43G501–B and two relays in diesel generator relay terminal box Q1R43E506–B. While the NRC staff agrees with the licensee's conclusion that the relays found in relay terminal box Q1R43G506–B were part of the original equipment, the staff disagrees with the licensee's conclusion for load sequencer Q2R43E501B–B and APC's verification methodology, that appears to be based solely on a document review of maintenance work requests (MWR) and material issue forms (MIF). The NRC staff bases its disagreement on the following two points:

1. Deviations were noted in the APC document control, as discussed in Section 6.A, B, C, and D of the NRC inspection report. One example concerned a commercial grade circuit breaker that was withdrawn under a MIF but was installed in a safety-related system without a MWR (Reference 6.D.(2)).

2. A comparison of relay numbers revealed that two additional relays found in sequencer panel 02R43E501B–B were manufactured in the same week of 1979, which is after Unit 1 started operations.

Serial #79091355: 1,355th relay manufactured in the 9th week of 1979 (FNP device 2–2])

Serial #79091379: 1,379th relay manufactured in the 9th week of 1979 (FNP device 2–1])

Additionally, one of the relays in the Unit 2 sequencer panel was also manufactured in the same week as those above.

Serial #79091380: 1,380th relay manufacture in the 9th week of 1979

While the staff agrees that the relay terminal box Q1R43G506–B example of this violation should be withdrawn, it was concluded that your review of the remaining issues was inadequate. It would appear that relays 79091355 and 79091380 were replaced subsequent to plant startup, without using the MWR of MIF processes, since the licensee's review based on using these documents did not identify these relays as being replaced after start-up. Therefore, the remaining examples of this violation occurred as stated. NRC records will be adjusted accordingly.

Restatement of Violation II.A.1

II. Inadequate Corrective Actions and Inspections

A. 10 CFR Part 50, Appendix B, Criterion XVI, Corrective Action, requires that measures be established to assure that conditions adverse to quality, such as failures, defective material and equipment, and nonconformances are promptly identified and corrected. In the case of significant conditions adverse to quality, measures are required to assure that the cause of the condition is determined and corrective action is taken to preclude repetition. The identification of the significant conditions adverse to quality, the cause of the condition, and the corrective action taken are also required to be documented and reported to appropriate levels of management.

Contrary to the above, the inspector identified five instances where at the time of the inspections, the licensee had failed to take adequate corrective action:

1. A 10 CFR Part 21 notification by the Henry Pratt Company in May 1985 detailed problems with Pratt valves using Limitorque operators. This problem was not correctly or completely dispositioned in that seven valves were determined to be defective after the NRC inspection.

Summary of Licensee's Response to Violation II.A.1

APC admitted that the problem was not completely resolved but asserted that all seven affected valves were determined to be operable in the "as found" condition.

NRC Evaluation of Licensee Response to Violation II.A.1

Although all seven valves were determined to be operable, their condition was shown to be degrading as evidenced by slippage of ¾ of an inch of the spline adaptor of one of the valves. The degraded state of the valves, along with licensee's admission that the problem was not completely resolved, clearly indicated a lack of effective corrective action and therefore the violation is correct as written.

Restatement of Violation II.A.2

(See II.A.1 above for full restatement of violation)

II.A.2 A 10 CFR Part 21 notification by the Anchor/Darling Valve Company in June 1985 detailed failures with tilting disk check valve hinge pin bushings. This problem was not completely dispositioned in that only check valves in the Auxiliary Feedwater Systems were inspected. Other safety-related systems were not inspected.

Summary of Licensee's Response to Violation II.A.2

APC denied this violation and stated that the AFW valves were the only safety-related valves installed in Farley Nuclear Plant requiring inspection as a result of the 10 CFR Part 21 notification.

NRC Evaluation of Licensee Response to Violation II.A.2

The written and verbal information provided by the licensee at the time of the inspection [i.e., (1) Nuclear Generation Maintenance Memorandum dated May 13, 1987, from L.S. Ward to R.M. Coleman regarding Problem Report No. 7–122 Anchor Darling Tilting Disc Check Valves and (2) System Performance Group Problem Report No. 7–122 dated October 3, 1985, regarding Anchor Darling Tilting Disc Check Valves with Tack Welded Bushings] indicated that other valves in safety-related systems may have been affected and that the inspections/work was never performed. The NRC staff does not disagree that the subject valves were only in the auxiliary feedwater system but, the licensee did not know this at the time of the inspection. The evaluation/disposition of other systems was not completed until after the problem was identified by the inspectors (post inspection) nearly two years after receipt of the Part 21 notification and approximately four years after the event (hinge pin failure) occurred at Farley Nuclear Plant. Also, the information provided by System Performance Group Problem Report, dated October 3, 1985 states, in part that, "* * * additional Anchor Darling T.D.C.'s with tack welded bushings are installed in the plant." The valves potentially affected were prefixed with a Q, a designator used previously for safety-related equipment. These valves were in addition to the valves in the Auxiliary Feedwater System and partly formed the basis for the statement in the

inspection report. APC did not demonstrate at the time of the inspection that no other valves were located in safety-related systems. It was merely fortuitous that, in fact, the valves in the Auxiliary Feedwater System turned out to be the only valves of concern in safety-related systems. APC did not appropriately pursue this issue at the time of the event, or at the time of the Part 21 notification. Therefore, this violation occurred as stated.

Restatement of Violation II.A.3

(See II.A.1 above for full restatement of violation)

II.A.3. A Colt Industries Service Information Letter (SIL), A–2, dated February 1985, entitled "Blower Installation," was evaluated by the licensee, but not all the corrective actions determined to be appropriate by the APC engineering review were implemented in that SIL A–2, which gives service instructions, was never placed in the Colt Industries Emergency Diesel controlled vendor manual.

Summary of Licensee Response to Violation II.A.3

APC admitted that the instance occurred as described but considered that the actions taken in response to this SIL were adequate to assure operability. The licensee asserted that a Colt Service Information Letter, SIL A–2, was issued on February 18, 1985, concerning precautions regarding blower installation procedures for Model 38TD8–1/8 diesels. This SIL was received and evaluated in accordance with FNP procedures for evaluation of vendor technical information. A Problem Report was issued on March 29, 1985, recommending that the SIL be entered in the diesel generator instruction manual. Verification that the SIL had been entered in the manual was received on August 29, 1985; however, no update to the manual was actually made due to personnel error.

NRC Evaluation of Licensee Response to Violation II.A.3

The fact that the SIL was not entered into the manual is an example where vendor supplied information was evaluated; however, adequate and complete corrective action was not taken. In this case the action to be taken was to insert the SIL into the appropriate manual. The fact that this action was not performed was the basis of the violation. The NRC staff recognizes that corrective action was taken in that the diesel generators were appropriately inspected. However, without the inclusion of the SIL into the proper manual, there is no assurance that future inspections would have been properly conducted.

Restatement of Violation II.A.4

(See II.A.1 above for full restatement of violation)

II.A.4. Maintenance Work Request Nos. 44439 and 67875, which would have implemented corrective actions to the four control room fire damper electrical circuits to ensure that the circuits would function as desired, were not completed.

Summary of Licensee Response to Violation II.A.4

Although APC admitted that the above violation occurred as described, it protests the issuance of this violation. APC contends that this violation was identified previously as a Severity Level IV violation in the July 30, 1987, NRC inspection Reports Nos. 50–348/87–14 and 50–364/87–14. On August 25, 1987, APC, in a reply to a Notice of Violation, admitted to the violation, offered the reason for the violation, explained the corrective action taken and the results achieved, explained the corrective action taken to avoid a further violation, and reported the full compliance date. Therefore, it is inappropriate, and inconsistent with NRC Enforcement Policy, for the November 3, 1987, Notice of Violation to include this violation in a Severity Level III violation because the NRC already had cited it as a Severity Level IV violation in the July 30, 1987, Notice of Violation. The licensee contends that the imposition of two penalties on the basis of the same set of facts would result in an "undue overlapping of the penalties imposed." *In the matter of Atlantic Research Corporation*, 7 N.R.C. 701, 708 (1978) (footnote omitted), *rev'd on other grounds, 9 N.R.C. 611 (1979).*

NRC Evaluation of Licensee's Response to Violation II.A.4

The staff does not accept the proposition that the imposition of two penalties, where different regulatory requirements are based on the same facts, is prohibited. This need not be resolved here because different requirements and facts are at issue.

Violation II.A.4 is not the same as the violation issued on July 30, 1987. The July 30, 1987, violation cited the failure to inspect and/or test the four fire dampers following the completion of work authorized by CWR 1–32.86 and MWR 28982 in 1981. Had these tests been performed, it would have been discovered that wiring had not terminated on the Smoke Release Device (SRDs) for all four dampers.

Violation II.A.4 addresses the fact that in 1982 when APC discovered the failure to terminate the SRDs, two MWRs were written to correct the problem (44439 and 67875), but these work orders were not acted on until June 1987, after the issue was highlighted by the NRC.

The failure to take adequate corrective actions for an identified condition is the issue in violation II.A.4, while in the earlier violation the issue was the failure to perform an adequate test/inspection. Even though in this case the same plant hardware is involved, two regulatory requirements were not met and therefore two violations are appropriate.

Restatement of Violation II.A.5

(See II.A.1 above for full restatement of violation)

II.A.5 Contrary to the above, the inspectors identified cracks in a number of cells of the safety-related station batteries. Despite the fact that NRC Information Notice (IN) 84–83 identified that such conditions can be caused by the use of hydrocarbon-based solvents for cleaning purposes, the licensee had not updated one of three pertinent electrical maintenance procedures to address the problem.

Summary of Licensee's Response to Violation II.A.5

APC denied this violation and presented the following arguments:

NRC IN 84–83, "Various Battery Problems," which was issued by the NRC Staff on November 19, 1984, discussed overloading D.C. buses and solvent induced battery case cracking. The subject notice detailing three cases in which battery case cracking had occurred. The notice attributed the cracking in two cases to the use of a solvent, trichloroethylene, which was used to clean battery posts while the third case of cracking was attributed to the application of a hydrocarbon based grease to the vinyl straps on the battery racks to aid in installation of the cells. IN 84–83 states, "Licensees may wish to review their maintenance and surveillance procedures for station batteries to ensure that the use of solvents in the vicinity of batteries is carefully monitored and in accordance with procedures approved by the battery manufacturer's service department." The notice did not make any recommendation for cleaners to be used. The electrical maintenance procedures at Farley Nuclear Plant for battery cleaning have always required, in the material section, that bicarbonate soda be used. The use of bicarbonate soda for cleaning of batteries is also included in the training of maintenance personnel.

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APC maintained that it did provide adequate procedural guidance for cleaning batteries since only bicarbonate soda was listed in the maintenance procedures. The response to IN 84–83 was adequate since procedures specified the proper cleaning material and only electrical maintenance personnel are authorized to clean batteries. A precautionary note instructing personnel not to use solvents was added to the Units 1 and 2 procedure for cleaning the auxiliary building batteries. Although a precautionary note was not included in the procedure for cleaning the service water batteries, there is no evidence that solvents have ever been used on them. Therefore, there was no inadequacy of corrective action in this case.

Procedural guidance is provided for the purpose of directing the activities to be performed. It is not the intent of procedural guidance to provide precautions against all possible inappropriate actions. The addition of a precaution against use of hydrocarbon based on solvents is a procedural enhancement which is not mandatory for adequate corrective action. Therefore, there is no basis for a violation of Appendix B, Criterion XVI.

NRC Evaluation of Licensee Response to Violation II.A.5

This issue was included as an example of violation II.A since it was another instance of a corrective action being initiated but not completed (only two of three procedures were changed). However, the staff agrees that in this instance the corrective action was an enhancement to the procedure rather than a correction and therefore the failure to change the procedure would be more appropriately categorized as an observation of a poor practice in the area of corrective actions rather than an example of a violation. Consequently, the staff agrees that example five of violation II.A should be withdrawn.

Restatement of Violation II.B

II. Inadequate Corrective Actions and Inspections

B. 10 CFR Part 50, Appendix B, Criterion X, Inspection, as implemented by Section 17 of the Final Safety Analysis, Report and Joseph M. Farley Operations Quality Assurance Policy Manual, requires that inspection of activities affecting quality be established and executed to verify conformance with documented instructions, procedures, and drawings for accomplishing the activity.

Contrary to the above, on June 2, 1987, both Train B, 125–V Service Water (SW) battery racks, were found to be improperly installed and mounted creating in an unanalyzed condition concerning seismic qualification. Specifically, the concrete anchor bolt nuts on all Train B battery rack anchors were backed off and used as leveling nuts for the rack, thus providing no preload on the concrete anchors. The battery racks were improperly installed in the SW Train B battery room approximately one year prior to this inspection and remained in this unanalyzed condition until it was identified by the NRC inspector on June 2, 1987.

Summary of Licensee's Response to Violation II.B

APC admitted that anchor bolt installation was not properly performed in accordance with procedures, but also asserted that subsequent testing demonstrated that the installed configuration resulted in no significant safety issues.

Subsequent to the NRC inspection APC selected four cells, including one of the worst cells, and contracted with the battery manufacturer to perform seismic testing using Farley specific response spectra curves. Wyle Report 48857–1 dated July 17, 1987 states that, based on the seismic test of the four cells, the specimens possessed sufficient integrity to withstand, without compromise of structure, the prescribed simulated seismic environment. The testing and inspections described herein demonstrate that no safety issues resulted.

NRC Evaluation of Licensee's Response to Violation II.B

The fact that the battery rack anchors were improperly installed and were in an unanalyzed condition was the basis of this violation. The fact that subsequent testing demonstrated that the installed configuration resulted in no significant safety issues does not change the basis for this violation.

Summary of Licensee's Objection to Aggregation of Violations I.A. and I.B

The licensee contended that violations I.A. and I.B are two separate and distinct findings and should not have been considered in the aggregate as a Severity Level III problem. The first finding concerned activities alleged to be in violation of 10 CFR Part 50, Appendix B, Criterion VII, "Control of all Purchased Material and Equipment." The second finding concerned activities alleged to be in violation of Criterion III of Appendix B, "Design Control." APC asserted that the above findings involve separate and distinct conditions not appropriate for aggregation under the applicable Commission enforcement guidance found in NRC Inspection and Enforcement Manual, Chapter 0400, Section 05.06 (4/24/85).

Additionally, with respect to the first finding, APC denied that a violation of Criterion VII occurred. With respect to the second, APC denied, in part, that a violation of Criterion III occurred.

In arguing that the violations should not have been aggregated, APC claims that the NRC recognized the underlying dissimilarity of these findings when it cited separate and distinct regulatory provisions as having been violated in each case. Thus, separate civil penalties may be appropriate if the severity of each violation so warrants [Enforcement Manual § 05.06 *supra*], but aggregation of violations I.A and I.B was not appropriate. Accordingly, APC submitted that these findings should be assessed independently if, in fact, the violations occurred.

NRC Evaluation of Licensee Objection to Aggregation of Violations I.A and I.B

APC has improperly applied NRC enforcement guidance in this case. The guidance provides for aggregation when several violations stem from the same cause *or* problem area.

Violations I.A and I.B were aggregated due to the fact that both were the result of deficiencies identified in the procurement program in place at the APC. Both violations concerned items originally manufactured as commercial products and either improperly or inadequately evaluated for use in safety-related applications. The staff does not view characterizing the licensee's procurement program as the problem area as being inconsistent with enforcement guidance even though such a characterization may be broader than the licensee thinks is appropriate. Therefore, the aggregation of violations I.A and I.B was appropriate and the Severity Level III violation remains as stated.

Summary of Licensee's Request for Reduction of Severity Level for Violations I.A and I.B

When properly viewed as separate and distinct matters, the licensee contended that violations I.A and I.B should be classified as no greater than Severity Level IV violations. In this regard, APC relies on the NRC Enforcement Policy which states that (1) Severity Level III violations are cause for a significant concern; (2) Severity Level IV violations are less serious but are more than minor concern; i.e., if left uncorrected they could lead to a more serious concern; and (3) Severity Level V violations are of minor safety or environmental concern.

Based on the Enforcement Policy, APC asserted that the intent of the severity classification scheme is to premise enforcement action on the safety significance of the particular finding, even where a violation of a requirement may have occurred. The licensee concludes that evaluations of actions taken by APC, which are described in Attachment 1 of the licensee's response, demonstrate that no condition was identified with actual safety significance. Therefore, no adverse findings were made regarding the actual condition of the components involved and so the severity level of the violations should be reduced.

NRC Evaluation of Licensee Request for Reduction of Severity Level for Violations I.A and I.B

As described in the staff's evaluation of the licensee's response to Violation I.A, the staff still believes the subject circuit breakers were unqualified for use in 600 volt applications. This finding does involve safety significance due to the fact that the circuit breakers could actually be incapable of performing as intended during fault conditions.

Violation I.B is safety significant because the examples cited illustrated a programmatic breakdown in the APC procurement program. It is acknowledged that, for many of the examples of improperly procured parts cited in the violation, subsequent testing verified acceptability for safety-related applications. However, the very fact that further tests were necessary to verify acceptability is indicative of the programmatic shortcomings which were determined by the staff to be a significant concern. Therefore, the request for reduction of severity level for violations I.A and I.B is denied.

Summary of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations I.A and I.B

In the NRC's November 3, 1987, letter transmitting the Notice of Violation, the Staff states that the base civil penalty of $50,000 for this proposed Severity Level III violation was mitigated 50 percent because of "prior good performance." However, it was not fully mitigated "because of the extent of the weakness in management controls in the general area of procurement demonstrated by the number of examples cited." APC maintained that, based on its discussion above, the examples cited by the Staff in support of Violation I have been substantially reduced in both number and severity. Accordingly, APC maintains that the Staff's reason for not fully mitigating the civil penalty is no longer applicable and any remaining civil penalty should be fully mitigated. Additionally, to support further a full mitigation of the civil penalty, APC maintained that its prompt and extensive corrective action taken in response to the proposed violation warrants full and complete mitigation.

NRC Evaluation of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations I.A and I.B

The violations and corresponding examples cited by the staff have not been substantially reduced in number or severity by the discussion presented by APC. Furthermore, the corrective action taken as a result of the subject violations has not been judged to be unusually prompt or extensive in nature. Therefore, the request for full mitigation of violations I.A and I.B is denied.

Summary of Licensee's Objection to Aggregation of Violations II.A and II.B

The licensee contended that violations II.A and II.B are two separate and distinct findings and should not have been considered in the aggregate as a Severity Level III problem. The first finding concerned activities alleged to be in violation of 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Action." The second finding concerned activities alleged to be in violation of Criterion X of Appendix B, "Inspection." APC asserted that the above findings involve separate and distinct conditions not appropriate for aggregation under applicable Commission enforcement guidance. The licensee also referenced the NRC Inspection and Enforcement Manual, Chapter 0400, Section 05.06 (4/24/85). Additionally, with respect to the first finding, APC protested violation II.A.4 and denied violations II.A.2 and II.A.5. However, irrespective of the Staff's disposition of APC's denials of violations, APC claims that the findings of violation II.B should not have been aggregated as a single violation. APC's basis for this claim is that in their view the NRC recognized the underlying dissimilarity of these findings when it cited separate and distinct regulatory provisions as having been violated in each case. Thus, separate civil penalties may be appropriate if the severity of each violation so warrants. (Enforcement Manual § 05.06 *supra*), but aggregation of violations II.A and II.B was not appropriate. Accordingly, APC submitted that these findings should be assessed independently if, in fact, the violations occurred.

NRC Evaluation of Licensee's Objection to Aggregation of Violations II.A and II.B

Violations II.A and II.B were agregated due to the fact that both violations involved instances where conditions adverse to quality were either not identified or were identified but never corrected. The staff views these violations as being indicative of a less than aggressive attitude toward problem identification and correction which is a significant concern. Therefore, the aggregation of violations II.A and II.B remains.

Summary of Licensee's Request for Reduction of Severity Level for Violations II.A and II.B

When properly viewed as separate and distinct matters, the licensee contended that violations II.A and II.B should be classified as no greater than Severity Level IV violations. In so claiming, the licensee referenced the NRC Enforcement Policy which states: (1) Severity Level III violations are cause for a significant concerns; (2) Severity Level IV violations are less serious but are more than minor concern; i.e., if left uncorrected they could lead to a more serious concern; and (3) Severity Level V violations are of minor safety or environmental concern.

The licensee further noted that the Enforcement Policy, (Supplement I), states that a Severity Level III violation can involve, for example "[a] system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions * * *" (Supplement 1, § C.2). The Enforcement Policy also provides as one example of a Severity IV violation, "[f]ailure to meet regulatory requirements [following plant procedures] that have more than minor safety * * * significance." [Supplement I, D.3]. Further, the Supplement I example of a Severity Level V violation states, "Violations that have minor safety or environmental significance."

As discussed earlier, the licensee contended that the NRC incorrectly aggregated the separate and distinct conditions addressed in violations II.A and II.B, contrary to the NRC Inspection and Enforcement Manual. Further, violations II.A.2, II.A.4, and II.A.5 were shown either not to constitute violations or otherwise to have been incorrectly included in the Notice. Thus, violations II.A.1 and II.A.3 should stand alone as distinct findings.

Standing alone, the licensee stated that those three violations (II.A.2, II.A.4,

and II.A.5) should only be categorized as a Severity Level V or a Severity Level IV violation because none of the three items involved a safety issue of the significance contemplated for Severity Level III violations, e.g., important safety systems "not being able to perform its intended function." As discussed in Attachment 1 of the licensee's response, additional evaluations or inspections performed with respect to violation II.A.1 demonstrated the findings involved had little safety significance. Regarding violation II.A.3, the underlying issue involved only the absence of a single item from a manual which was of no safety significance as measures were in place which would have prevented the condition from occurring in the first instance.

In reference to violation II.B, APC determined that as-found configurations of the battery racks did not involve a safety significant issue, notwithstanding the discovered position of the nuts. Thus, the observed condition had only minor, if any, safety or environmental significance. Therefore, in accordance with the Enforcement Policy, at most a Severity Level IV violation should apply to this condition.

NRC Evaluation of Licensee Request for Reduction of Severity Level for Violations II.A and II.B

Violations II.A.1, II.A.4, and II.B concerned actual hardware deficiencies that at a minimum degraded safety-related equipment. These examples, along with those of less individual significance, indicate a programmatic problem in the areas of identification and corrective action of conditions adverse to quality. The staff still considers them to be of significant concern; and therefore, the request for a reduction in severity level for Violations II.A and II.B is denied.

Summary of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations II.A. and II.B

In the NRC's November 3, 1987, letter transmitting the Notice of Violation, the Staff states that the base civil penalty of $50,000 for this proposed Severity Level III violation was mitigated 50 percent because of "prior good performance." However, it was not fully mitigated "because of the extent of the weakness in management controls in the general area of procurement demonstrated by the number of examples cited." APC maintained that based on its discussion above, the examples cited by the Staff in support of Violation II have been substantially reduced in both number and severity. Accordingly, APC maintains that the Staff's reason for not fully mitigating the civil penalty is no longer applicable and any remaining civil penalty should be fully mitigated. Additionally, to support further a full mitigation of the civil penalty, APC maintained that its prompt and extensive corrective action taken in response to the proposed violation warrants full and complete mitigation.

NRC Evaluation of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations II.A and II.B

As previously stated, the examples cited by the staff have not been substantially reduced in either size or number. Furthermore, the corrective action taken as a result of the subject violations has not been judged to be unusually prompt or extensive in nature. Therefore, the request for full mitigation of violations II.A and II.B is denied.

Conclusion

After careful consideration of APC's response to the Notice of Violation and Proposed Imposition of Civil Penalties, the NRC staff has concluded that three of nine examples of violation I.A, the relay terminal box Q1R43G506–B example of violation I.B.5, and example 5 of Violation II.A should be withdrawn; that the remaining examples of violations I.A, I.B.5, and II.A and the remaining violations in their entirety occurred as stated in the Notice; and that an adequate basis was not provided to warrant either recategorization of the violations, reduction of the severity level, or withdrawal of the proposed civil penalties. Although three of nine examples of violation I.A, one example of violation I.B.5, and one example of Violation II.A have been withdrawn, these examples were not considered to be major contributors to the enforcement action taken. Consequently, the proposed civil penalties in the total amount of $50,000 should be imposed.

[FR Doc. 88–11845 Filed 5–25–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–440]

Cleveland Electric Illuminating Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendment to Facility Operating License No. NPF–58, issued to Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1 (the facility) located in Lake County, Ohio.

The licensees' application for the amendment was dated February 9, 1988. Notice of consideration of issuance of the amendment was published in the **Federal Register** on April 6, 1988 (53 FR 11377).

The amendment, as proposed by the licensees, would consist of the following changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF–58):

1. The proposed amendment to the Perry Nuclear Power Plant Technical Specifications would modify the note to Technical Specification Table 4.8.1.1.2–1 to allow that appropriate overhauls to a like-new condition can be used to reduce the number of previous test failures, if the overhaul performed would correct deficiencies which were directly responsible for past diesel generator test failures. The requirement for having the overhaul, including appropriate post-maintenance operation and testing, approved by the manufacturer and the requirement for a demonstration of reliability by testing would remain intact.

2. The proposed amendment would also expand the applicability of a footnote on Table 4.8.1.1.2–1 to apply both to the case where more than 1 failure was experienced in the last 20 starts and the case where more than 4 failures were experienced in the last 100 starts. Presently the footnote applies only in the former case.

3. The proposed amendment would also change the reporting requirements to be on a per-diesel-generator basis rather than a per-nuclear-unit basis.

The portion of the application which would allow an appropriate overhaul to like-new condition as justification for reducing the number of previous test failures has been denied. Without adequate specificity or bounding criteria for the components affected by previous valid failures, or the acceptance criteria employed for determining when an "appropriate overhaul" has been completed, other than "as approved by the manufacturer," the staff has no basis for approval of the proposed TS or subsequent inspection for compliance were it to be approved. The staff instead evaluated the particular case presented by the licensees and granted a one-time waiver to the requirement for performing a complete overhaul to rezero the failure count. The amendment would allow removal of four of the previous six test failures from consideration in the failure count.

The licensees were notified of the Commission's denial of this request by letter dated May 18, 1988. The third change requested by the licensees' application has been approved by Amendment No. 12. The second change requested is being held in abeyance. Notice of issuance of Amendment No. 12 will be published in the Commission's regular biweekly **Federal Register** notice.

By June 27, 1988, the licensees may demand a hearing with respect to the denial described above and any persons whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for the licensees.

For further details with respect to this action, see: (1) The application for amendment dated February 9, 1988, and (2) the Commission's Safety Evaluation issued with Amendment No. 12 to NPF–58 dated May 18, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Division of Reactor Projects—III, IV, V & Special Projects.

Dated at Rockville, Maryland this 18th day of May 1988.

For the Nuclear Regulatory Commission.
Timothy G. Colburn,
Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11846 Filed 5–25–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–16, issued to GPU Nuclear Corporation, et al., (GPUN or the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The amendment would revise Technical Specifications 3.13.B.2 and 3.13.B.3 to add a note to permit a one time change which applies during Cycle 11 only. The note allows continued power operation if both of the primary and backup safety valve position indicators become inoperable on no more than two safety valves. In addition, the requirement to reduce the setpoint of the acoustic monitor on an adjacent safety valve would be changed so that it compensates for the inoperability of an acoustic monitor only. The note would also state that the 7 day action statement in Specification 3.13.B.2 would commence should both primary and backup devices on a third safety valve become inoperable.

In addition, an administrative change to Technical Specification Section 3.13.A, 3.13.B and 3.13.C would capitalize Technical Specification definitions where they appear in the specification in these sections.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92). Under the Commission's regulations this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following evaluation of the proposed change with regard to these three standards:

1. The proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated. Since no hardware modifications are associated with this change and since safety valve position indication is only a monitoring system, the operability of the monitoring system does not affect or prevent the function of the safety valves. Therefore, the probability of any accident is unaltered. As no automatic action is associated with safety valve position indication instrumentation and system and operator actions are not altered by knowledge of safety valve position, the consequences of any accident will not increase.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since the function of the safety valves is unchanged. The state of operability of safety valve position indication instrumentation does not affect any system and as such will not alter any safety system function used to mitigate any accident. Further, the operator is not dependent upon this indication for event mitigation actions.

3. Safety system and operator response to a stuck open safety valve is not affected or dependent on the operability of safety valve position indication. The Technical Specification basis for safety valve position indication instrumentation currently reflects that operator response does not rely upon safety valve position indication. In addition, safety valve actuation setpoints are not changed. Therefore, there is no reduction in margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

The staff also concludes that the licensee's no significant hazards determination given above would also apply to the administrative changes which were identified.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory

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Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the requst and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbrige, 2000 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 29, 1988, as revised May 11, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, 101 Washington Street, Toms River New Jersey 08753.

Dated at Bethesda, Maryland, this 19th day of May 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11847 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

Applications; Notifications to Licensees; Minnesota Mining and Manufacturing Co.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notification to licensees generally licensed pursuant to 10 CFR 31.5 to use Po–210 static eliminators manufactured and distributed by Minnesota Mining and Manufacturing Company (3M).

On February 18, 1988, an Order was issued to general licensees who possessed 3M static eliminator devices based upon numerous failures of the devices in the course of ordinary use (53 FR 5061). The Order required general licensees in possession of such devices to immediately suspend use and return them to 3M by May 18, 1988. The Order further provided that the Director, Office of Nuclear Material Safety and Safeguards, may in writing relax or rescind the restrictions imposed by the Order for good cause shown.

Between February 18, 1988 and May 16, 1988, the majority of the 3M Po–210 devices used under general license have been returned to 3M for testing and evaluations. Detectable leakage has been found in about four percent of the returned devices with only half of the four percent being greater than the reportable limit of 0.005 microcuries.

Based on information obtained since the February 18, 1988 Order, I have determined that while the 3M devices do not meet the requirements of 10 CFR 32.51(a) for distribution to general licensees, the potential health and safety hazards for those uses of the device not involved with food, beverages, pharmaceuticals, or cosmetics are not as extensive as initially considered possible. The smaller than anticipated number of failed devices, the small leakage rate associated with those failures, and the nature and location of the contamination when found indicates less hazard than originally believed to be credible. Also, replacement devices are in short supply and, consequently, in many instances, 3M devices cannot be replaced immediately with alternative devices thus causing severe hardship to the users. The latter concern has been reflected in a number of requests to the NRC and the Agreement States for continued use of the 3M devices on a temporary basis.

Based on the reasons discussed, I have determined that good cause exists for relaxing of the Order. Accordingly, I conclude that relaxation of section III A and B of the February 18, 1988 Order to general licensees for those devices *not used* in the production of or packaging of food, beverages, pharmaceuticals, or cosmetics is appropriate as follows:

Section III A, of the Order is relaxed as follows: General licensees who currently possess Po–210 devices manufactured by 3M may continue to use these devices for 90 days from the date of this letter or the end of the licensee's lease date with 3M whichever is longer, provided the general licensee initially and every 30 days thereafter, has a survey performed of the area of use and a leak test of each device and the results do not indicate leakage of radioactive material in excess of 0.005 microcuries. Any devices failing the leak test shall be returned to 3M in accordance with instructions provided by 3M.

Section III B, of the Order is relaxed as follows: General licensees who currently possess Po–210 devices manufactured by 3M shall return the device within 90 days of date of this letter or the end of the licensee's lease date with 3M whichever is longer.

Nothing in this letter abrogates contractual arrangements between the general licensee and 3M concerning return dates under the lease. All other portions of the February 18, 1988 Order shall remain in effect.

Dated at Rockville, Maryland this 18th day of May, 1988.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88–11842 Filed 5–25–88; 8:45 a.m.]

BILLING CODE 7590–01–M

[Docket Nos. 50–445–OL2, 50–446–OL2; ASLBP No. 79–430–06–OL and Docket No. 50–445–CPA; ASLBP No. 86–528–02–CPA]

Texas Utilities Electric Co. et al.; Comanche Peak Steam Electric Station, Units 1 and 2; Prehearing Conference

May 20, 1988.

Before Administrative Judges: Peter B. Bloch, Chair; Dr. Walter H. Jordan; Dr. Kenneth A. McCollom

The public prehearing conference previously scheduled for May 11, 1988, has been rescheduled to June 1, 1988. We will conduct oral argument concerning consolidation of the two captioned cases and will clarify, to the extent that is currently feasible, the order in which specific issues may be litigated.

The conference is scheduled for 9 am to 1 pm in the Gallery Ballroom of the Sheraton Dallas Hotel and Towers, 400 North Olive Street, Dallas, TX 75201.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair, Administrative Judge.

[FR Doc. 88–11900 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co.; The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis–Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis–Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to Refueling Operations Limiting Conditions for Operation (LCO) and Surveillance Requirements (SR), the associated Refueling Operations Basis, and facility Design Features.

The proposed amendment, specifically, would add new LCO 3.9.13 and SR 4.9.13 relating to spent fuel pool fuel assembly storage, would revise TS Section 5.3.1 to reflect a change in the allowable fuel enrichment in reload cores to 3.8 weight percent, and would revise Section 5.6 to include additional design specification related to fuel storage rack neutron multiplication. In addition, Basis Section 3/4.9.13 relating to Spent Fuel Pool Fuel Assembly Storage would be added.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or

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petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pitman, Potts and Trowibridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 11, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of May, 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11848 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units No. 1 and 2 (NA–1&2) located in Louisa County, Virginia.

The proposed amendments, dated March 18, 1988, would modify the surveillance requirements of Technical Specification (TS) 3/4.7.13.1. "Groundwater Level-Service Water Reservoir." TS 3/4.7.13 currently requires the monitoring at 6-month intervals of nine pneumatic piezometers located around the Service Water Reservoir (SWR). Should the groundwater level measured at any piezometer exceed the allowable groundwater elevation given in the NA–1&2 TS Table 3.7.6, an engineering evaluation must be performed and a special report must be submitted to the Nuclear Regulatory Commission containing the results of the evaluation.

The proposed change to the NA–1&2 TS 4.7.13.1 would provide flexibility in the surveillance requirements. The NA–1&2 TS presently require that all of the existing piezometers at the service water reservoir be read every 6 months. However, the licensee states that it is not necessary to read all nine of the piezometers in order to detect a high rate of seepage from the reservoir. The licensee has proposed that three piezometer readings would provide the necessary data in order to detect a high rate of seepage.

An engineering evaluation has been performed by the licensee showing that reliable readings from at least one piezometer in each of the three areas of the dike (pump house, valve house and southeast side of the reservoir) is sufficient for detecting leakage from the reservoir. There are also other mechanisms available for identifying abnormally high groundwater levels that might signify increased seepage from the reservoir. These mechanisms are: (1) The horizontal drains which are monitored every 6 months in accordance with 4.7.13.1, (2) test wells located near the service water pump house, and (3) four weirs located at the toe of the reservoir dike. Items 2 and 3 are not currently being monitored, but the licensee states that they could be used to provide additional information if abnormal piezometer data were to be obtained at some future time.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated March 18, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 12th day of May 1988.

For the Nuclear Regulatory Commission.

Bruce A. Wilson,

Acting Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11849 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25717; File No. SR–AMEX–88–12]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Extension of the Near-Term Options Expiration Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 11, 1988 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to extend the stock options pilot program, which provides for four expiration months, including two near-term months, to December 31, 1988. The Exchange also requests permanent approval of the pilot program prior to its expiration in December.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

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and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to continue the stock options pilot program until December 31, 1988, and requests permanent approval of the program prior to that date.

In June 1985, in conjunction with the other options exchanges, the Amex implemented a stock option pilot program for certain January cycle stock options.[1] Under the terms of the pilot, the traditional January trading cycle was altered to ensure that: (i) One-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times. Since that time, the pilot program has been extended and expanded to all equity options on all three expiration cycles.[2]

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the program since its inception and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchange has found the pilot has improved investors' interest in trading such options.

The Exchange, therefore, proposes to continue the pilot program until December 31, 1988, and requests that the program be permanently approved prior to that date.

The Amex believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act, so that the pilot program can continue without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the pilot program can continue without interruption. In addition, the Commission previously has solicited comment on this and other near-term expiration pilot programs submitted by other options exchanges and has not received any negative comments on the operation of these pilot programs. Moreover, the current pilot program, which has been in effect for a year, has operated effectively and generally has been well received. Finally, the Commission's approval is limited until December 31, 1988 or until the Commission acts on the Amex's request for approval of the pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 16, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change is approved until December 31, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: May 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11853 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

[1] See Securities Exchange Act Release No. 22009, dated May 31, 1985, approving SR-Amex-85-16 to allow for implementation of the pilot program using monthly instead of quarterly expiration cycles.

[2] See Securities Exchange Act Release No. 23461, dated July 23, 1986, approving SR-Amex-86-21 to expand the pilot program to include all January cycle stock options and extend the program for six additional months; Securities Exchange Act Release No. 24193, dated March 9, 1987, approving SR-Amex-87-3 to extend the pilot program for four additional months; and Securities Exchange Act Release No. 24452, dated May 14, 1987, approving SR-Amex-87-7 to expand the pilot program to include February and March cycle stock options and extend the program for one additional year.

[3] 15 U.S.C. 78s(b) (1982).

[4] 17 C.F.R. 200.30-3(a)(12) (1988).

[1] 15 U.S.C. § 78s(b)(1).

[Release No. 34-25718; File Nos. SR-MCC-87-6 and SR-MSTC-87-7]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Midwest Clearing Corporation and the Midwest Securities Trust Co.

On December 28, 1987, the Midwest Clearing Corporation ("MCC") and Midwest Securities Trust Company ("MSTC") (collectively "Midwest") filed proposed rule changes (File Nos. SR-MCC-87-6, SR-MSTC-87-7), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to provide a computer-to-computer interface for the transmission of data between Midwest and its participants. On March 1, 1988, the Commission published notice of the proposed rule changes in the Federal Register.[2] No comments were received. This order approves the proposals for the reasons stated below.

I. Description

a. Purpose

Midwest proposes to develop and implement a new computer-to-computer communications link, termed the File Transmission Service ("FTS"), between Midwest's computer system and its participants' computer systems. Midwest developed this system in response to its participants' request for the capability to submit large batches of data to Midwest via a direct computer-to-computer link.[3] FTS is a new method of transmitting and receiving data, and generally will not change Midwest's operations or its participants' operations.

b. The FTS System's Components

Although Midwest believes FTS will become its primary method of data transmission, Midwest will continue to have several methods of data transmission.[4] Under this proposal, participants may gain access to FTS via a dedicated telephone line linking the two computers or via a dial-up connection. Participants will not need to procure new computers to use FTS; Midwest recognizes that its participants use several different types of computers and designed FTS to communicate with a variety of computers.[5] Participants, however, will need to obtain new data transmission telephone lines and modems to access FTS.[6]

To input data using FTS, participants will submit data to one of Midwest's two desination points, located in Chicago and New York. Data submitted to the Chicago destination point will be submitted directly to Midwest's computers, and data submitted to New York will be bundled and transmitted to Midwest's computers. (The New York destination point was established to allow participants in East Coast locations to transmit data more economically by transmitting their data to New York rather than by leasing telephone transmission lines from their locations to Chicago.) Participants also will receive reports from Midwest through FTS. Data submitted by participants and reports transmitted by Midwest to participants will retain the same format and contain the same data elements as current transmissions, with the exception of minor changes such as the addition of headers, trailers, and changes to data fields to adapt to software requirements.

Midwest will continue to process data via batch processing and use the same timeframes as it does now. Midwest stated that implementing FTS will result in automating processes that currently are performed manually.[7] Midwest has informed the Division's staff that FTS will not have any adverse effects on its computer system's capacity.[8] Indeed, Midwest believes it has significant excess capacity, because it doubled its system's capacity in February 1988.[9]

c. Security

Midwest stated in its filing that it has taken steps to ensure the FTS system's security. Midwest has established a password system and procedures to ensure that each participant can submit only instructions affecting its accounts and can not submit instructions to affect any other participant's accounts.[10] Midwest believes that FTS will improve the computer system's security because participants' data will be transmitted directly into the computer; today data is submitted on tapes that can be lost or damaged before they are inputted into Midwest's computer. Midwest has established standards for the transmission lines and the modems used by FTS to ensure control over the system's integrity.[11] Midwest also has developed procedures for providing service in the event of transmission difficulties with the dedicated transmission line. FTS will not change Midwest's existing computer back-up procedures and data storage methods. Midwest will continue to duplicate its computer programs and daily system data and store them at an off-site location.

Midwest has developed a security system to prevent unauthorized access. Midwest has leased a dedicated data grade telephone line and node on behalf of each participant. Those lines provide a separate physical location for the receipt of each participant's data; which prevents transmission through any other lines.[12] Midwest also has created programs that prevent participants from entering unauthorized portions of Midwest's computer system. The FTS program only allows data to be transmitted between the two computers. Midwest states in its filing that the system is designed to prevent, among other things, any attempt to manipulate data in any other Midwest computer system or to harm Midwest's computer or data.

Midwest's dail-up system features the same security system as the dedicated line system except that the computer determines that a request to transmit or receive data is preceded by the appropriate password.

II. Midwest's Rationale

Midwest states in its filing that the purpose of the FTS proposal is to provide Midwest and its participants with an imporved data transmission and communications network that will allow partcipants to submit and receive clearing and depository data in a more efficient and timely maner. Midwest believes the proposal fosters the Act's

[2] See Securities Exchange Act Release Nos. 25390 (February 23, 1988), 52 FR 6213; 25389 (February 23, 1988), 52 FR 6214.

[3] Midwest's participants believed that developing a new computer-to-computer interface would allow data to be transmitted more efficiently and would reduce the potential for data loss. Telephone conversation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[4] The four data transmission systems are as follows: FTS, tape transmission via Midwest's Mohawk tape transmission device (the Mohawk receives small quantities of information via telephone transmission and prepares a tape which is then mounted on Midwest's computer to input the data), key entry into a Midwest terminal, and submission of paper trade information which Midwest keys into its computers.

[5] As discussed in the proposed rule change, participants can communicate with FTS via either of two types of software: IBM's File Transfer Product (FTP) or IBM's Remote Job Entry (RJE). Some users will need to purchase new software to communicate with FTS, but others already own the appropriate software for use in other applications. Telephone conversation between John Rockrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[6] Under the proposal, participants may chose to procure telephone lines and modems themselves or request Midwest to procure them. Midwest informed the Division's staff that it prefers to procure these materials to allow it to have control over the integrity of the network. Telephone conversation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[7] Telephone conversation betsen John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[8] Telephone converstation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[9] Telephone converstaion between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[10] Midwest stated in its filing that new passwords must be obtained when a praticipant's employee with access to the password leaves the participant's employment.

[11] To ensure that these standards are met, Midwest has informed participants that it wishes to procure the transmission lines and the modems for the participants. Participents who elect to obtain the equipment themselves must obtain equipment that meets Midwest's standards. Telephone converstation between John Rockrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[12] Service bureaus have a special arrangement to permit the submission of data for a number of broker-dealers.

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goal of promoting the prompt and accurate clearance and settlement of securities transactions by improving the communications link used to transmit trade information and clearance and settlement instructions between Midwest and its participants.

Specifically, Midwest believes that FTS provides improvements not offered by its Mohawk tape transmission device. FTS reduces the steps required for participants to transmit data to Midwest and allows larger data transmissions to be submitted. Participants currently using the Mohawk must split submissions into several parts, which poses the risk that Midwest will not receive one (or more) of the transmissions.

Because FTS provides for the transmission of data directly to Midwest's computer, Midwest believes that FTS will eliminate the need to prepare tapes on the Mohawk for transporting and loading on the mainframe and thus eliminate loss or damage the tapes and related data. In addition, FTS will provide Midwest with the ability to identify lost data earlier than is possible under the current system. FTS provides a coding technique to identify missing transmissions immediately upon receipt by the mainframe. With this enhanced ability, Midwest believes that it will be able to replace missing data earlier and decrease the possibility of processing incomplete trade data.

Midwest has informed Division staff that FTS will enhance Midwest's ability to reconstruct instructions submitted by participants. With FTS, Midwest will maintain segregated copies of all instructions submitted by participants via computer. Midwest believes that these records will provide an audit trail that is easier to follow than the current method of post-execution instruction identification, which requires an examination of the current system's tapes.[12]

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act because it is designed to facilitate the prompt and accurate clearance and settlement of securities transactions. Midwest's proposal is designed to improve the method of transmission of trade data and clearance and settlement information between Midwest and its participants. Because FTS is a computer-to-computer communications system, participants will transmit information directly to Midwest's computer and no longer will need to use tape transmissions which pose risks of incomplete transmissions and data loss. Moreover, participants that use FTS will be able to cease creating tapes for the sole purpose of communicating with Midwest.

The Commission believes the security features built into the proposed system appear to be designed to assure the safeguarding of funds and securities within Midwest's control. While the Commission recognizes that no system can eliminate the risk of unauthorized system access, the Commission believes that clearing agencies' automated processing systems should contain prudent safeguarding mechanisms adequately designed to reduce the risk of unauthorized system access.[13] The Commission is satisfied that Midwest's system safeguards, *e.g.*, use of dedicated lines or dial-up terminal access controlled by password identification and function restriction to the transmission and receipt of authorized data, are appropriately designed to ensure system integrity by maintaining a sufficient level of protection against the risk of unauthorized system access.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule changes are consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MCC–87–6 and SR–MSTC–87–7) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11854 Filed 5–25–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25719; File No. SR–NASD–87–50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 2, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to establish a new registration category for individuals that transact business in corporate and certain other securities and to require those individuals to pass a Series 62 qualification exam.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25377, February 22, 1988) and by publication in the Federal Register [53 FR 5846, February 26, 1988]. The Commission did not receive any written comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11855 Filed 5–25–88; 8:45 am]

BILLING CODE 8010–01–M

[Redacted]

[Redacted]; National Association of Securities Dealers, Inc.; Proposed Amendment to the NASD "Free-Riding and Withholding" Interpretation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 29, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and an amendment thereto on May 5, 1988, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] Telephone communications between John Bechtold, Senior Vice President, Midwest and Cynthia Pearce, Staff Attorney, Commission, March 24, 1988

[13] The Commission previously has addressed and approved similar systems. *See* Securities Exchange Act Release Nos. 24–25782 (December 12, 1988), 52 FR 41082; 23580 (September 3, 1986), 51 FR 32762.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the NASD "Free-Riding and Withholding" Interpretation by providing members with an alternative means to comply in making sales of "hot issue" securities [1] to the accounts of investment partnerships and corporations, including hedge funds, investment clubs and other similar accounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The present section being amended, titled "Investment Partnerships and Corporations," was adopted in 1973 to impose a specific duty of inquiry upon members in making sales of "hot issues" securities to investment partnership and investment corporation accounts. The section was created in an effort to prevent these accounts from being used as vehicles by which restricted persons could indirectly obtain the benefits of "hot issues" ownership under circumstances inconsistent with the above basic prohibitions and restrictions of the Interpretation. The section currently prohibits members and their associated persons from selling "hot issue" securities to any investment partnership, corporation, or similar account unless the member receives from such account, prior to the execution of the transaction, the names and business connections of all persons having any beneficial interest in the account. If the information thus required to be obtained discloses that a restricted person has a beneficial interest in the account, the sale can be made only in compliance with the basic restrictions of the Interpretation. Under the existing provision, it is a violation for a member to fail to obtain the identities and business connections of all the beneficial owners regardless of whether any of the beneficial owners are restricted persons.

Description of the "Opinion of Counsel" Proposal

The proposed rule change is intended to provide an alternative means for members to comply with the Free-Riding Interpretation when selling "hot issue" securities to investment partnerships and similar accounts. The proposal would provide a member or associated person a "safe harbor" presumption of compliance with the requirements of the Free-Riding Interpretation if, prior to executing a transaction with an investment partnership, the member has obtained a copy of a current opinion from counsel stating that counsel reasonably believes that no person with a beneficial interest in the account is a restricted person under the Free-Riding Interpretation and stating that, in providing such opinion, counsel:

1. Has reviewed and is familiar with the Interpretation;
2. Has reviewed a current list of all persons with a beneficial interest in the account supplied by the account manager;
3. Has reviewed information supplied by the account manager with respect to each person with a beneficial interest in the account, including identity, employment, and any other business connections of such persons; and
4. Has requested and reviewed other documents and other pertinent information and made inquiries of the account manager and received responses thereto, if counsel determines that such further review and inquiry are necessary and relevant to determine the correct status of such persons under the Interpretation.

Under the proposed amendments, members are allowed an option and may continue to comply with the current requirements of the Interpretation's section on investment partnerships by obtaining a list of the names and business connections of all persons having a beneficial interest in the account from the account manager.

The Board of Governors' has adopted the proposed rule change filed herein because of concern that members often experience difficulty in complying with the existing requirement because, among other reasons, the general partners or other persons responsible for the management of the investment partnership or corporation or similiar investment accounts are often hesitant to release the names of all persons holding a beneficial interest in such accounts. The failure by a member to obtain a list of the names and business connections of all the beneficial owners before selling a "hot issue" security to the account under the existing exclusive requirement is nevertheless a violation of the Interpretation even though none of the beneficial owners may be restricted persons under the Interpretation.

Other Changes Under the Proposal

The proposed rule change would make certain other changes in the present section of the Interpretation in addition to incorporation of the alternative procedure for compliance described above. Under the proposal, the opinion of counsel or list of names and business connections, depending upon which procedure a member elects, would be deemed current if based upon the status of the account as of a date not more than eighteen (18) months prior to the transaction. The proposal also would require a member to maintain in its files a copy of the opinion of counsel or list of names for at least three (3) years following the member's last sale of a new issue to the account.

Finally, the proposal eliminates, as no longer necessary, the exemption under the existing requirement for sales to accounts of foreign investment partnerships and similar foreign accounts where disclosure of the names of the beneficial owners is prohibited by law. The present provision requires that members become knowledgeable about the laws of foreign countries, and exempts member sales to a foreign investment partnership only if the law of the particular country does in fact prohibit disclosure of the names of the beneficial owners and a written representation is obtained from the account manager that none of the beneficial owners are restricted persons. The proposal merely substitutes as a condition for exemption a requirement to obtain an opinion of counsel for the existing written representation from the account manager, and eliminates any need of the member to make a determination with respect to the application of foreign secrecy laws to the account.

Statutory Basis

The NASD believes the proposed rule change is consistent with Sections 15A(b) (2) and (6) of the Act, which require that NASD rules be designed to enforce compliance by its members with

[1] "Hot issue" securities are securities sold pursuant to a public offering that trade at a premium in the secondary market.

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its rules and to protect investors and the public interest, by providing an alternative method to ensure that the member is in compliance with the Interpretation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

In Notice to Members 86–40 (May 23, 1986), the NASD solicited comments on an earlier version of the proposed rule change. The comments were reviewed and in Notice to Members 87–73 (November 4, 1987), the NASD solicited comments on the present proposed rule change. The NASD received a total of (7) comment letters on the proposal filed herewith. There were two (2) comments which opposed adoption of the proposal, including one (1) which favored the earlier proposal rejected by the Board in favor of the present proposal.

There were two (2) comments which objected primarily to the opinion of counsel portion of the proposal stating that it appears to require lawyers to conduct a factual "audit" before rendering an opinion. It was argued that such an inquiry by lawyers goes beyond the standards established by the Code of Professional Responsibility of the American Bar Association ("ABA"). The Board of Governors and National Business Conduct Committee ("Committee") disagreed. The Board and Committee concluded that the degree of factual inquiry contemplated by the proposal is consistent with the applicable provisions of the Code of Professional Responsibility which does require reasonable inquiry into the facts upon which legal opinions on securities law matters are based.

There were three (3) comments which favored the proposal or favored it with some modification. These commentators uniformly favored an 18 month standard of "currency" as proposed. Although one (1) suggested the language be expanded to state that a member may not rely upon an opinion of counsel if the member knows that a restricted person has a beneficial interest in the account, it was felt that this was already implicit in the proposal. A second commentator questioned whether the proposal should not limit the opinion of counsel to outside counsel, but this suggestion was rejected as it was believed that inside counsel subject to professional standards of responsibility could be expected to give a proper opinion. The same commentator questioned whether the proposal should not also allow opinions to be given by independent accountants, but this was rejected on the basis that opinions of accountants have traditionally been reserved for accounting matters only.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period; (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and agruments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–9 and should be submitted by June 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11856 Filed 5–25–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25716; File No. SR Phlx–87–30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 10, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change to establish professional execution standards for certain limit orders [1] delivered to Phlx specialists over the PACE system.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act release No. 25450, March 11, 1988) and by publication in the **Federal Register** (53 FR 9163, March 21, 1988). No comments were received in connection with the proposal.

The Exchange indicates in its filing that Phlx equity specialists currently are expected to provide a professional execution for limit orders of 600 shares or greater routed to them over PACE. The Exchange notes, however, that it has not, to date, established guidelines governing such trades.[2] Accordingly, in proposing the new rule, the Exchange indicates that it seeks to provide guidance to Phlx specialists by identifying the types of trades that constitute a professional execution of this class of limit orders. As described more fully below, the proposed standards impose a number of trading obligations upon Phlx specialists when executing PACE limit orders of 600 shares or more.

The first standard involves a limit order whose price is between the PACE Quote[3] when received by the specialist.[4] Under the proposal, each time the New York Stock Exchange ("NYSE") prints a trade at the limit order price, the specialist would be required to execute a portion of the limit order equal to the size of the NYSE print. The limit order would not, however, be entitled to an execution until the NYSE prints a trade at the limit order price. The standard further provides that marketable limit orders are to receive an immediate execution against contra side Phlx orders, regardless of whether the NYSE has printed a trade at the limit price.

A limit order whose price is on the PACE Quote when received by the specialist falls under the second standard. Under the standard, the specialist would initially be required to ascertain the quotation size of the Reference Quote.[5] After determining the quotation size, the specialist would be obligated to execute the limit order when the NYSE market prints a trade(s) that is equivalent to the limit price and aggregates to the size of the Reference Quote. Thereafter, a portion of the limit order equal to the NYSE market print would be entitled to an execution each time a trade at the limit order price is printed on the NYSE market.[6]

The third standard provides for the execution of a limit order whose price is away from the PACE Quote when delivered to the specialist. In this instance, the specialist's initial obligation would be to determine the size of the PACE bid or offer when it reaches the limit price. This occurrence triggers two pre-conditions, one of which must occur before the specialist is allowed to execute the limit order.

First, for limit orders on the specialist's book for one day or more, the specialist would be required to execute the limit order when the NYSE prints a trade at the limit price equal to one-half of the Reference Quote size. Limit orders placed on the book for less than one day, on the other hand, would be entitled to an execution only when the NYSE market prints a trade(s) at the limit price which equals the Reference Quote size. In either instance, after the NYSE prints a trade at the limit price, the specialist would be required to execute that portion of the limit order equal to the size of the primary market print.[7] In addition, as noted above, if a contra side order in the security is received by the specialist prior to the occurrence of either condition, the specialist would be required to execute immediately the limit order of any portion thereof.

The final standard governs those circumstances in which the limit order price is traded through by a transaction reported on a market composing the PACE Quote.[8] The proposal provides that the specialist must execute the entire limit order, regardless of the size of the trade that caused the trade-through.

In its filing, the Exchange indicates that it believes the proposal will lead to increased consistency in the execution of limit orders on its trading floor.[9] The Exchange further indicates that the new standards are designed to notify PACE users as well as specialists of the kinds of execution they can anticipate for larger limit orders delivered to Phlx specialists over the PACE system. Finally, the Exchange maintains that the proposal is consistent with section 6(b) of the Act in that it will promote just and equitable principles of trade, facilitate transactions in securities and protect investors and the public interest.

After careful consideration, the Commission believes that the proposal to establish professional execution standards for PACE limit orders of 600 shares or more is appropriate. In particular, the Commission believes, that the proposal will lead to increased consistency in the overall execution of limit orders on the Exchange because all limit orders delivered to Phlx specialists over PACE will be subject to professional execution standards. Further, the Commission believes that the proposal will facilitate Exchange oversight of specialist performance in this area as specialists will not be held accountable to specific, codified execution standards for these larger PACE limit orders. The proposal also will facilitate transactions in securities in that it will provide guidance to specialists on what constitutes a professional execution of limit orders in addition to providing investors with information on how their limit orders will be executed. Finally, in addition to the general benefits, the proposed standards themselves will ensure that investors receive a fair execution for limit orders routed through PACE. Based upon the above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities Exchange, and, in particular, the requirements of Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to regulated authority.

Dated: May 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11857 Filed 5–25–88; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (American Realty Trust, Shares of Beneficial Interest, Par Value $1.00) File No. 1–5954

May 20, 1988.

American Realty Trust ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("Amex"). The Company's shares of beneficial interest were recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw its shares of beneficial interest from listing

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[1] The rule would apply to limit orders above 599 shares that are eligible for delivery over the PACE system. This includes round-lot limit orders of 600 shares to 1,000 shares, combined round-lot and odd-lot limit orders (PRL's) of 601 shares to 1,099 shares, and limit orders exceeding 1,099 shares that the specialist has agreed to accept. All limit orders routed to Phlx specialists over the PACE system are executed on a manual basis.

[2] By contrast, the Exchange has adopted standards governing the execution of PACE limit orders of up to 599 shares. Phlx Rule 229, Supplementary Material, .10(a) provides that limit orders of 599 shares or less entered into PACE for delivery to the specialist are guaranteed execution at the limit price up to a minimum of 500 shares for each 1,000 share trade of the security on the American, Boston, Cincinnati, Midwest, New York, or Pacific Stock Exchange.

[3] The PACE Quote consists of the best bid/ask quote among the American, Boston, Cincinnati, Midwest, New York, Pacific or Philadelphia Stock Exchange or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote. *See* Phlx Rule 229.

[4] Since the limit order in this instance betters the market for the particular security, the specialist is required to display the limit order price in accordance with the Firm Quote Rule prior to executing the limit order. *See* Securities Exchange Act Rule 11Ac1–1.

[5] Reference Quote, as used herein, is the PACE Quote. *See*, fn. 3.

[6] In this regard, we note that the limit order in this instance would be entitled to an immediate execution, if a contra side Phlx order were received by the specialist for the security regardless of whether the NYSE has printed a trade at the limit price.

[7] The Phlx has indicated in discussions with the Division of Market Regulation staff that its determination to distinguish orders based on how long they have been left on the specialists book is related to concerns that the execution of limit orders on the specialist's book for one day or more may be unduly delayed if conditioned upon the occurrence of a trade(s) in the primary market that matches the full Reference Quote size.

[8] *See* fn. 3, *supra.*

[9] We note, in this regard, that Phlx rules currently do not provide execution standards for limit orders manually delivered to equity specialists by floor brokers. Phlx officials have indicated, however, that specialists, in executing such orders, are nevertheless bound by general agency principles as well as other Phlx rules governing price, parity and precedence. In any event, the Phlx indicated that it will examine the issue to determine what action, if any, is necessary to address this issue. The Commission expects that any changes in Phlx rules proposed as a consequence of this examination will be submitted to the Commission for review under section 19(b) of the Act.

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on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its shares of beneficial interest on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its shares and believes that dual listing would fragment the market for its shares of beneficial interest.

Any interested person may, on or before June 13, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11858 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting Application To Withdraw From Listing and Registration; (Great Lakes Chemical Corp., Common Stock, $1.00 Par Value) File No. 1-6450

May 20, 1988.

Great Lakes Chemical Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("Amex"). The Company's common stock was recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before June 13, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11859 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16408; 812-6956]

Qualified Housing Partners Limited Partnership et al.; Application

May 20, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Qualified Housing Partners Limited Partnership ("Partnership") and Frederick Investment Corporation ("Managing General Partner").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the Act.

Summary of Application: Applicants seek an order exempting the Partnership from all of the provisions of the 1940 Act, and the rules thereunder, to permit the Partnership to invest in other limited partnerships that in turn will engage in the development, rehabilitation, ownership and operation of low-income housing projects. Such investment is expected to generate certain credits allowable under the Internal Revenue Code of 1986 ("Code") for investments in low-income housing projects.

Filing Date: The application was filed on January 7, 1988, and amended on May 16, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. any requests must be received by the SEC by 5:30 p.m., on June 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC, 20549; Applicant, c/o Frederick Investment Corporation, 3900 Barrett Drive, Suite 301, Raleigh, North Carolina 27609.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership was formed under the North Carolina Revised Uniform Limited Partnership Act on December 22, 1987, as a vehicle for equity investment in apartment complexes, the ownership of which is expected to generate certain credits allowable under the Code for investments in low-income housing projects. The Partnership will operate as a "two-tier" entity; *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships (the "Operating Partnerships"), that in turn, will engage in the development, rehabilitation, ownership and operation of apartment complexes for low and moderate income persons. The Partnership will normally acquire between a 94% and a 99% interest in the profits, losses and tax credits of each Operating Partnership, with the balance remaining with the local general partners of the Operating Partnership. The Partnership's investment objectives are (i) To preserve and protect the Limited Partners' capital; (ii) to generate tax benefits, primarily consisting of tax credits that investors in the Partnership (the "Limited Partners") may use to offset their tax liabilities on income from other sources; and (iii) to recognize appreciation in the value of the Partnership's investments through cash distributions from sales or refinancings of the Partnership's properties.

2. On January 4, 1988, the Partnership filed a registration statement (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), and amended the Registration Statement on April 4, 1988 and May 4, 1988. The Registration Statement as amended was declared effective on May 20, 1988. The Partnership intends to initially offer 15,000 units of limited partnership interest (the "Units") to the public at $1,000 per Unit, with a minimum investment of $5,000 per investor. Offers to sell and sales to the public of the Units will be effected through Wheat, First Securities, Inc. ("Wheat"), and through other members of the National Association of Securities Dealers, Inc. ("NASD") selected by Wheat, on a "best efforts" basis. Purchasers of Units will become Limited Partners pursuant to the Partnership's Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement"). In the event that subscriptions for more than 15,000 Units are received, the Partnership has registered a total of 25,000 Units and has granted to Wheat the right, exercisable in its sole discretion, to sell up to 10,000 additional Units (on the same terms and conditions as the other Units).

3. Subscriptions for Units must be approved by the Partnership's Managing General Partner, a North Carolina corporation, and such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership. Those standards are, in the case of an individual investor, that such investor reasonably expects to have substantial unsheltered passive income or reasonably expects to have adjusted gross income of less than $200,000 in the next twelve years and reasonably expects to have income tax liability during those years in respect of which the tax credits can be utilized and either: (1) He has a net worth (exclusive of home, furnishings and automobiles) of at least $30,000 in the current year and an annual gross income of not less than $30,000 in the current year and estimates that he will maintain these levels for each of the twelve succeeding years and that (without regard to investment in the Partnership) a portion of his income for the current year and the twelve succeeding years will be subject to federal income tax at the rate of 28% or more, or (2) irrespective of annual taxable income, he has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or (3) is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) or such net worth as set forth in clause (2). An investor that is a corporation, other than a corporation subject to Subchapter S of the Code, must have a net worth of not less than $75,000. Units will be sold in certain states only to persons who meet additional or alternative standards which are set forth in the Prospectus, any supplement to the Prospectus, or the subscription agreement; provided, however, that in no event shall the Partnership employ any such suitability standard which is less restrictive than that set forth above. The Partnership Agreement also imposes certain restrictions on the transfer of the Units. Further, with regard to subsequent transfers of Units, it is required that, prior to admission to the Partnership as a Limited Partner, each proposed assignee must deliver to the Managing General Partner evidence of his suitability. Applicants believe that the suitability standards set forth above are consistent with the requirements in Investment Company Act Release No. 8456 (Aug. 9, 1974) ("Release 8456"), and are consistent with the guidelines of those states which prescribe suitability standards. Also consistent with Release 8456 are the further protections for the interests of Limited Partners provided by the numerous provisions of the Partnership Agreement and Registration Statement designed to prevent overreaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis Limited Partners.

4. All proceeds of the public offering of Units will initially be placed in an escrow account with Crestar Bank of Richmond, Virginia (the "Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in the bank accounts referred to below, United States Government or governmental agency securities, securities issued by states or political subdivisions thereof, obligations (including certificates of deposit or time and bankers' acceptances) of banks located in the United States having a net worth of at least $50,000,000, prime commercial paper and other short-term corporate obligations of comparable investment quality, repurchase agreements covering any of the foregoing securities and in public investment companies registered with the Commission, the assets of which exceed $50,000,000 and are invested in the foregoing types of investments; provided that, until subscriptions for at least 5,000 Units are received and accepted, such funds shall be invested only in bank accounts, including savings and bank money market accounts (which may include such accounts of the Escrow Agent), or short-term securities issued or guaranteed by the United States Government (or pooled funds which invest exclusively in such securities). The offering will terminate in one year unless extended by the Partnership for up to an additional one year thereafter. If subscriptions for at least 5,000 Units have not been received by the termination date, no Units will be sold, and funds will be returned promptly with a pro rata share of any interest earned thereon. Upon receipt of the minimum number of subscriptions ($5,000,000), funds in escrow will be released to the Partnership and held in trust pending investment in Operating Partnerships. Any net proceeds not immediately utilized to acquire Operating Partnership interests, or for other Partnership purposes (such as the establishment of a reserve equal to 4.25% of the gross proceeds of the offering), will be invested in highly liquid, non-speculative securities which provide adequately for the preservation of capital. After an initial capital contribution to an Operating Partnership, other funds allocated for subsequent investment therein will also be temporarily invested in such securities, and interest earned thereon employed in a manner determined by the Managing General Partner.

5. The Partnership will be controlled by the Managing General Partner and George F. Marshall (the "Class A General Partner") (collectively the "General Partners"), while the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. Limited Partners owning a majority of the Units, however, will have the right to amend the Partnership Agreement (subject to certain limitations), remove any General Partner and elect a replacement therefore, and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

6. Wheat will receive commission of up to 7% of the gross proceeds of the sale of Units, together with an expense allowance (not to exceed 0.25% of the gross proceeds) to defray documented due diligence activities. Such selling

commissions are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD. Wheat will also receive a sales incentive fee in an amount equal to 0.25% of the purchase price of Units placed by it. The fee will be paid by the Managing General Partner and not the Partnership.

7. the General Partners and their affiliates will receive substantial fees and compensation from the Partnership. Furthermore, the local general partners of the Operating Partnership (the "Local General Partners") will receive substantial fees and compensation from each Operating Partnership. In addition to fees and interests in the Partnership, the General Partners and their affiliates will be allocated generally 1% of profits, losses and tax credits of the Partnership.

8. All compensation to be paid to the General Partners and their affiliates is specified in the Partnership Agreement and Prospectus, and no compensation will be payable to the General Partners, or any of their affiliates, that is not so specified. The substantial fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been arrived at through arm's length negotiations. All such compensation, however, is believed to be fair and on terms no less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribe such guidelines, including without limitation the statement of policy adopted by the North America Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

9. The Partnership will not accept any subscriptions for Units until the exemptive order applied for herein is granted, or the Partnership receives an opinion of counsel that is not required to register as an investment company under the 1940 Act.

Applicants' Legal Conclusions

1. Without conceding that Partnership is an investment company as defined in the 1940 Act, Applicants assert that the exemption of the Partnership from all provisions of the 1940 Act pursuant to section 6(c) of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure provides the only means of bringing private equity capital into such housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally; (c) the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has invested in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the credits, income and losses from the investment; (d) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act, such as the requirement of annual approval by investors of a management contract and the requirements concerning election of directors and the termination of the management contract; and (e) real estate limited partnerships such as the Partnership generally cannot comply with the asset coverage limitations imposed by Section 18 of the 1940 Act. Thus, an exemption from these basic provisions is necessary and appropriate so as not to discourage use of the two-tier limited partnership entity, and thus frustrate the public policy established by the housing laws.

2. The Partnership does not intend to trade in temporary investments, or investments of reserves or committed funds, and there will be no investment speculation by the Partnership; the partnership will own and hold these short-term securities on a temporary basis pending their investment in Operating Partnerships in accordance with the stated purposes of the Partnership. Further, it is the Partnership's intention to apply capital raised in its public offering to the acquisition of Operating Partnership interests as soon as possible.

3. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort that the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Operating Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to, and in some respects greater than, that provided by the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11860 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16407; 812-7099]

Vestar, Inc.; Application

May 19, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Vestar, Inc. ("Applicant").

Relevant 1940 Act Sections: Exemption is requested pursuant to section 3(b)(2) or, alternatively, pursuant to section 6(c) of the 1940 Act as set forth below.

Summary of Application: Applicant seeks an order pursuant to section 3(b)(2) of the 1940 Act declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities or, in the alternative, for an order pursuant to section 6(c) of the 1940 Act exempting Applicant from all provisions of the 1940 Act during the period from November 12, 1987, to the earlier to occur of November 12, 1988, or the next public offering of any class of Applicant's securities. Applicant further requests a temporary order, if necessary, pursuant to section 3(b)(2) of the 1940 Act extending the 60-day automatic exemption period contained in section 3(b)(2) or, in the alternative, pursuant to secton 6(c) of the 1940 Act, in each case until the SEC shall make a final determination upon the exemption sought.

Filing Date: The application was filed on November 12, 1987, and amended on May 10, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 10, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Vestar, Inc. 939 East Walnut Street, Pasadena, California 91106, Attention: Randall M. Gates, with a copy to Gerald A. Eppner, Esq., Reavis & McGrath, 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney at (202) 272-3024 or Karen L. Skidmore, Branch Chief at (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a free from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a biopharmaceutical company engaged in the development of liposomes as drug delivery systems for the treatment and diagnosis of malignant tumors and other disease conditions. Applicant's technical and commercial strategy is to build a product line in cancer diagnostics and therapeutics, both on its own and in collaboration with corporate sponsors and partners, and to use its technology to solve drug delivery problems for other companies.

2. Applicant's initial public offering of 1,437,500 shares of Common Stock in November 1986 resulted in net proceeds of $10,787,572. Applicant's second public offering of 1,000,000 shares of its Common Stock in June 1987 resulted in net proceeds of $9,785,000. The use of proceeds as set forth in the respective prospectuses included product development and commercialization efforts, clinical development, basic research and working capital. The Applicant does not anticipate publicly offering any class of its securities during the term of the requested exemption.

3. In order to preserve the value of the proceeds of the respective equity offerings, Applicant has purchased investment grade, short-term bank certificates of deposit issued by United States and Japanese banks, each with assets of at least $1 billion. Immediately upon the receipt of the proceeds of the respective equity offerings, more than 40 percent of the value of Applicant's total assets (on an unconsolidated basis and exclusive of government securities and case items) were represented by short-term bank certificates of deposit, which may be "investment securities" as defined in the 1940 Act. At September 30, 1987, Applicant's position in cash and cash equivalents, including short-term bank certificates of deposit, approximated 90 percent of the value of its total assets. Also for capital preservation purposes, Applicant may in the future use a portion of its assets to acquire high quality commerical paper, but will not increase the amount of its assets represented by short-term debt instruments relative to the levels reflected in the application.

4. The maintenance of large reserves of case or instruments readily convertible into cash is of critical importance to the Applicant. The Applicant currently has no product sales and the product development cycle is a very slow and expensive process. As the amount and timing of ultimate product revenues is dependent upon numerous variables, the Applicant is forced to raise capital in excess of its apparent short-term needs, which it has done on a recent occasion. Accordingly, cash items represent a significant portion of the Applicant's assets. The Applicant expects that as it moves from product development into manufacturing and marketing its products, the proportion of its assets in cash and cash equivalents will decline and a greater proportion of its assets will be comprised of inventory, accounts receivable and capital equipment.

5. At all times since Applicant's inception in 1981, its operating expenses have substantially exceeded its revenues. As Applicant's technology and potential products are in an early state of development, Applicant expects that its operating losses will increase and continue through the early 1990's.

Applicants Legal Analysis

1. Applicant submits that its historical development, the nature of its assets, the source of its income, its public representations of policy, and the activities of its officers and directors demonstrate that Applicant is primarily engaged in the biopharmaceutical business and is not primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities within the meaning of section 3(b)(2) of the 1940 Act and, therefore, is entitled to an order of the SEC under that provision.

2. Since its inception in 1981, the Applicant has historically engaged in the development of liposomes as drug delivery systems for the treatment and diagnosis of malignant tumors and other disease conditions. The Applicant's technology and potential products, however, are in the early stage of development. The Applicant has made substantial progress toward its goal of commercially producing liposome-based drug delivery systems.

3. Applicant is a biopharmaceutical company in the early stages of product development and as of September 30, 1987, had investable cash of $18,423,356, representing approximately 90 percent of total assets. The need for large cash reserves is due to the significant cost and time requirements necessary for successful product development.

4. The Applicant currently has no product sales. Since inception, the Applicant has generated revenues from research projects funded by the federal government and collaborative agreements with other companies. The Applicant has also obtained a substantial portion of its revenues from interest income. These revenues have offset in part the cost of projects under development but have not been sufficient to support fully the Applicant's operations. Applicant expects to commence limited product sales in 1988 and generated 56% of its revenue in 1987 from activities unrelated to its holdings of short-term bank certificates of deposit.

5. Applicant has consistently represented, in its prospectuses, public disclosure documents filed under the Securities and Exchange Act of 1934 ("Exchange Act"), annual and quarterly reports to stockholders and in press releases that it is engaged in the biopharmaceutical business. While the periodic reports disclose interest income, Applicant has never held itself out as being engaged or proposed to engage in, the business of investing, reinvesting, owning, holding or trading in securities. Press releases and written communications issued by the Applicant have related primarily to recent events regarding the Applicant's operations and product development. No press release or written communication to stockholders or the investment community mention the Applicant's holdings of short-term bank certificates of deposit other than to disclose them on the balance sheet and to note briefly the receipt of interest derived therefrom in the statement of operations. Accordingly, a shareholder's return on an investment in Applicant will be expected from its growth as a biopharmaceutical company and not from its holdings of short-term debt instruments.

6. Each of Applicant's five directors and three elected officers dedicate substantially all their working time for Applicant in operational and administrative activities. The Board of

Directors' involvement in capital preservation efforts has been limited to establishing the policy of preserving capital and obtaining a reasonable return while avoiding unreasonable risk to capital. The officers of the Applicant have extensive experience in operating companies and clinical development of pharmaceutical products. Applicant's directors and officers as a Group spend and are expected to continue to spend for the term of the requested exemption less than 1% of their time on activities related to Applicant's holdings of short-term debt instruments. Applicant's Board of Directors adopted a resolution declaring Applicant's continuing intention to be engaged primarily in a non-investment company business and to seek to decrease the value of its total assets comprised of short-term debt instruments so as not to be an investment company within the meaning of the 1940 Act and the rules and regulations thereunder as soon as reasonably possible and in any event within the period during which the requested order is in effect. Moreover, the Applicant does not employ the services of an external investment manager experienced in the management of a short-term debt portfolio in connection with its capital preservation effort.

7. In the alternative to an order under Section 3(b)(2) of the Act, Applicant submits that the SEC should issue the requested order of exemption pursuant to Section 6(c) of the 1940 Act as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicant maintains that its contemplated operations are not susceptible to abuses of the sort that the 1940 Act was designed to remedy.

8. The requested order is necessary or appropriate in the public interest because the change necessitated by registration under the 1940 Act would involve necessary burden and expense for the Applicant and its stockholders where not likelihood of abuse exists.

9. The requested order is consistent with the protection of investors since, as a reporting company under the Exchange Act, Applicant is already subject to extensive reporting and other requirements for the protection of its stockholders. Applicant's stockholders could possibly be harmed in Applicant were required to reallocate its existing short-term bank certificates of deposit to lower yielding U.S. Government securities or not permitted to acquire high quality commercial paper, in that Applicant's cash reserves may be affected, thereby impairing the successful development of a commercial product.

10. The requested order is consistent with the purposes fairly intended by the policies and provisions of the 1940 Act, as no regulatory purposes of the 1940 Act would be served by requiring Applicant to register under that Act.

11. Since November 12, 1986, Applicant could be deemed to have relied on the one year safe harbor exemption provided by Rule 3a-2 under the 1940 Act. Reliance on Rule 3a-2 does not preclude Applicant from applying to the SEC for exemptive order under the 1940 Act.

12. Applicant further submits that a temporary order exempting Applicant from all provisions of the 1940 Act pursuant to section 6(c) until a final determination is made on the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will limit its cash investments to investment grade, short-term certificates of deposit issued by banks with assets of at least $1 billion and high quality commercial paper, and hold those instruments to maturity.

2. Applicant will continue to be engaged primarily in a non-investment company business and to seek to decrease the value of its total assets comprised of short-term debt instruments so as not to be an investment company within the meaning of the 1940 Act and the rules and regulations thereunder as soon as reasonably possible and in any event within the period during which the requested order is in effect.

3. Applicant will not engage in trading in securities for short-term speculative purposes.

Temporary Order

The request for temporary exemptive relief pending a final determination on the application by the SEC has been considered, and it is found that, in view of the circumstances set forth above and in the application, that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to grant an immediate temporary order as requested by Applicant. Accordingly,

It is ordered, pursuant to section 6(c) of the 1940 Act, that the application for a temporary order exempting Applicant from all provisions of the 1940 Act, be and hereby is, granted, during the period from November 12, 1987 until the SEC shall make a final determination upon the application, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

For the SEC by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11861 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region VII Advisory Council; Public Meeting in Omaha, NE

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting, from 9:00 a.m. to 12:00 p.m., on Monday, June 27, 1988, at the SBA Office, 11145 Mill Valley Road, Omaha, Nebraska, 11154, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 11154—(402) 221-3620.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 19, 1988.

[FR Doc. 88-11784 Filed 5-25-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1052]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: This form (DSP-94) is used by the Department of State to administer the U.S. Government program regulating commercial exports of defense articles, data, and services under the Foreign Military Sales Program. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Politico-Military Affairs.

Title of information collection—Authority to Export Defense Articles and Defense Services Sold Under the Foreign Military Sales Program.

Form number—DSP-94.

Frequency—On occasion.

Respondents—U.S. exporters and foreign diplomatic missions.

Estimated number of responses—5,000.

Estimated burden hours—3,750.

Section 3504(h) of Pub. L. 96-511 was addressed in Departmental Regulation 108.840 (49 FR 47682).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Date: May 9, 1988

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88-11824 Filed 5-25-88; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 20, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0042.

Form Number: CF 4457.

Type of Review: Extension.

Title: Certificate of Registration for Personal Effects Taken Abroad.

Description: This document is used to provide travelers with a means of showing proof of prior possession of a foreign-made personal item.

Respondents: Individuals or households.

Estimated Burden: 10,556 hours.

Clearance Officer: Dennis Dore (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-11904 Filed 5-25-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The U.S. and Spain: An Educational Dialogue

The Office of Private Secter Programs will assist in supporting a 14-day study tour for 10 Spanish higher and post-secondary education officials. The program will focus on the dynamics of higher education policy-making in the U.S. and the operation of our university system. It will take place in September of 1988 and include travel to Washington, DC, and two other locations. The delegation will include representatives of policy-making institutions, the Spanish government ad the autonomous regions.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials marked "Spanish Education Project"—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 4th Street SW., Washington, DC 20547

Dated: May 16, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-11825 Filed 5-25-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amended System of Records

Notice is hereby given that the Veterans Administration (VA) is amending a system of records entitled "Employee Health Unit and Dispensary Records—VA" (08VA05) which is set forth on page 760 of the Federal Register publication, "Privacy Act Issuances," 1986 Compilation, Volume V. The system name is being retitled to read "Employee Medical File system Records (Title 38)—VA." The system is being amended by revising the paragraphs for System Name; System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System; System Manager(s) and Address; Notificaiton Procedure; Record Access Procedures; Contesting Record Procedures; and Record Source Categories.

The purpose of this amendment is to more efficiently administer VA Title 38 employee medical records and to reflect

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changes in "Employee Health Unit and Dispensary Records—VA" resulting from the establishment by the Office of Personnel Management (OPM) of a System of Records entitled "Employee Medical File System Records" (OPM/GOVT–10) to manage Federal civilian employee medical records. The system of records OPM developed covers employee medical records that are in the possession of Federal agencies and/or stored in Federal records centers. The OPM Government-wide system, however, does not cover VA Title 38 employees. We are, therefore, altering by amendment VA's "Employee Health Unit and Dispensary Records—VA" system (08VA05) by revising "Categories of Employees Covered by the System" to include only Title 38 employees. The system also is being amended to include record information that is stored in the Decentralized Hospital Computer Program (DHCP) system. The DHCP is an automated integrated information system that has been installed at each VA medical center which provides comprehensive support for medical center specific clinical and administrative needs, as well as the VA-wide management information. Employee health unit records are maintained in the DHCP system and include information on scheduling, laboratory, and radiology.

The amended system will provide effective safeguards to protect these highly sensitive records. Access to DHCP file information is controlled by a series of individually unique passwords/codes which are issued to authorized employees that are entered as a part of each data message. Employees who are authorized access to the system are limited to only that information in the file which is needed in the performance of their official duties.

Records in this system of records are maintained for a variety of reasons i.e., to meet the mandates of law, Executive Order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and Office of Workers' Compensation Programs (OWCP) regulations); to provide data necessary for proper medical evaluations and diagnoses; to ensure that proper treatment is administered and to maintain continuity of medical care; to provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual; to provide a legal document describing the health care administered and any exposure incident; to provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment work, workplace monitoring, and medical exam monitoring required by OSHA or by good practice; to ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with medical evaluations and disability retirement decisions); to document claims filed with and the decisions reached by OWCP and the individual's possible reemployment rights under statutes governing that program; to document an employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to OSHA and actions taken by that agency or by the VA; and to ensure proper and accurate operation of the VA's employee drug testing program under Executive Order 12564.

In addition, the paragraph entitled "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses" is being changed. Routine use number two has been deleted since there is no longer a reporting requirement. Routine uses numbered three, four, and five have been renumbered as two, three, and four. This paragraph is also being expanded to include additional routine uses numbered five through twenty-four, reflecting those uses identified in OPM/GOVT–10.

A "Report of Altered System" and an advance copy of the revised system have been sent to the Speaker of the House, the President of the Senate, and the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(o) (Privacy Act) and guidelines issued by the Office of Management and Budget (50 FR 52730), December 24, 1985.

Interested persons are invited to submit written comments, suggestions, or objections regarding the routine uses in this system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All relevant material received before June 28, 1988, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until July 11, 1988.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the routine uses in this system are effective June 28, 1988.

Approved: May 18, 1988.

Thomas K. Turnage,

Administrator.

Notice of Amendment to System of Records

The system identified as 08VA05, "Employee Health Unit and Dispensary Records—VA," appearing on page 760 of the **Federal Register** publication, "Privacy Act Issuances," 1986 Compilation, Volume V, is revised as follows:

08VA05

SYSTEM NAME:

Employee Medical File System Records (Title 38)—VA.

SYSTEM LOCATION:

For current employees, records are located in VA medical, personnel, dispensary, health, safety or other designated offices at Central Office and field facilities (see Appendix 1); with another agency providing such services for the VA; or with private sector contractors. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal records centers operated by the National Archives and Records Administration (NARA). Paper record abstract information is stored in automated storage media records that are maintained at the health care facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: current or former VA employees appointed under 38 U.S.C. Chapter 73 to the occupations identified in 38 U.S.C. 4103, 4104(1), and 4104(3); individuals in those occupations who are appointed under 38 U.S.C. 4114; and residents appointed under 38 U.S.C. 4114(b). This includes employees such as non-physician facility Directors, physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, certified respiratory therapy technicians, registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses. Current and former employees appointed under 38 U.S.C. Chapter 75 in the Veterans Canteen Service are also covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include: (1) Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed; (2) Medical records, forms, and reports completed during employment as a condition of employment, either by the VA or by another agency, State or local government entity, or a private sector entity under contract to the VA; (3) Records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the VA (e.g., by the VA Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and lists of who has been tested, who failed to report for testing, and related documents. Records maintained by a VA dispensary are included in the system only when they are the result of a condition of employment or related to an on-the-job occurrence. (4) Files containing reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file, maintained by the Department of Labor's Office of Workers' Compensation Program (OWCP) is part of that agency's system of records and not covered by this notice.) (5) All other medical records, forms, and reports created on an employee during his or her period of employment, including records retained on a short term/temporary basis (i.e., those designated to be retained only while the employee is with the VA) and records designated for long-term retention (i.e., those retained for the employee's duration of Federal service and for some period of time thereafter).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564; Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Pub. L. No. 100–71, Section 503, 101 Stat. 468 (1987); and Title 38, United States Code, Chapter 3, Section 210(c)(1,); Chapter 73, Section 4108 and Chapter 75, Section 4202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Except for Routine Use 7, no other Routine Use for this system of records applies to records included in Item (3) in the Categories of Records in the System section of this notice. Drug test results may not be released under any other routine use.

* * * * *

5. To disclose information to the Department of Labor, Social Security Administration, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

7. To disclose the results of a drug test of a Title 38 employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

8. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the VA is authorized to appear, when: (a) The VA, or any component thereof; or (b) any VA employee in his or her official capacity; or (c) any VA employee in his or her individual capacity where the Department of Justice or the VA has agreed to represent the employee; or (d) the United States, where the VA determines that litigation is likely to affect the VA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the VA is deemed by the VA to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

9. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

10. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

11. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordintion and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

12. To disclose information to officials of the Merit Systems Protection Board including the Office of Special Counsel, the Federal Labor Relations Authority and its general counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

13. To disclose information to survey team members from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet JCAHO standards.

14. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employee Health Benefits Program, information necessary to verify eligibility for payment of a claim for health benefits or to carry out the coordination of audit of benefit provisions of such contracts.

15. To locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

16. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

17. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

18. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under: (a) Medical evaluation (formerly Fitness for Duty) examinations procedures, or (b) agency-filed disability retirement procedures.

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19. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force.

20. To disclose information to a Federal agency, in response to its request or at the initiation of the VA, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the other agency, or the lawful statutory, administrative or investigative purpose of the agency to the extent that the information is relevant and necessary to the other agency's decision on the matter.

21. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the VA, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose as it relates to the conduct of job related epidemiological research or the assurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

22. To disclose to officials of labor organizations recognized under 5 U.S.C. Chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the record access rules of the OSHA, Department of Labor, and subject to the limitations of 29 CFR 1910.20(e)(2)(iii)(B).

23. Records from this sytem of records may be disclosed to a Federal Agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform a Federal Agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

24. Information in this system of records may be disclosed to a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders, microfiche, magnetic discs, magnetic tape, and on file cards, X-rays, or other medical reports and forms. These records are stored in VA medical, personnel, dispensary, health, safety or other designated offices at Central Office and field facilities. Information in the Decentralized Hospital Computer Program (DHCP) system is stored at health care facilities.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Generally, file areas are locked after normal duty hours. Automated records are protected by restricted access procedures and audit trails. Access to Employee Medical File System records is strictly lilmited to VA or contractor officials with a bona fide need for access to the records. Strict control measures are enforced to ensure that access to and disclosure from these records are limited to a "need-to-know basis." In VA Central Office these records are maintained in staffed rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel. Access to the DHCP computer rooms within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the DHCP system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Drug testing records will be maintained in accordance with the Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Pub. L. No. 100–71, Section 503, 101 Stat. 468 (1987). Contractor laboratories are subject to the same restrictions as VA employees.

RETENTION AND DISPOSAL:

Records are retained in accordance with records retention standards approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules. Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 2 years. Records are destroyed by shredding, burning, or by erasing the magnetic media. Automated storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel and Labor Relations (05), VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this sytem of records contains records on them should follow the appropriate procedure listed below.

a. Current employees. Current employees should contact the local facility at which they are employed. Individuals must furnish such identifying information as required by VA for their records to be located and identified.

b. Former employees. Former employees should contact the local facility at which they were employed. Individuals submitting requests must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) social security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature.

RECORD ACCESS PROCEDURES:

Individuals requesting access to and contesting the contents of records must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) social security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above).

RECORD SOURCE CATEGORIES:

Records in this system are obtained from: The individual to whom the records pertain, VA employee health unit staff, Federal and private sector medical practitioners and treatment facilities, supervisors/managers and other VA officials, testimony of witness, and other VA records.

[FR Doc. 88–11770 Filed 5–25–88; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 53, No. 102
Thursday, May 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3372-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

Correction

In proposed rule document 88-9523 beginning on page 15422 in the issue of Friday, April 29, 1988, make the following corrections:

1. On page 15424, in the second column, in the third complete paragraph, in the 15th line, "FAF" should read "EAF".

2. On page 15425, in table 3, in entry "Selenium", in column 9, remove "0"; in entry "Silver", column 9 should read "<0.01"; and the last entry, first column should read "Cyanide".

3. On page 15426, in the first column, in the third complete paragraph, in the eighth line, "or" should read "of".

4. On page 15427, in the first column, after the fifth complete paragraph, the "Date" line should appear immediately below "(Title of Certifying Person)".

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 62

[CGD 81-030]

Vital System Automation

Correction

In rule document 88-10622 beginning on page 17820 in the issue of Wednesday, May 18, 1988, make the following corrections:

§ 62.25-25 [Corrected]

1. On page 17841, in the second column, in § 62.25-25, in paragraph (a), in the first line, "programable" should be capitalized, and in paragraph (d), in the fifth line, "aboard" was misspelled.

§ 62.35-5 [Corrected]

2. On page 17842, in the second column, in § 62.35-5, in paragraph (b)(5), in the second line, "(e)" should read "(d)".

§ 62.35-50 [Corrected]

3. On page 17844, in § 62.35-50, in paragraph (a), in the table, at the end of the overall heading, the parenthetical reference should read "(Note 1)".

4. On the same page, in the table, in the third column, under "Instrumentation", the 23rd line, now reading "Temperature, forced lubrication" should read "Temperature", and the 24th line, now reading "Pressure" should read "Forced lubrication pressure".

5. On the same page, in the table, in the fifth column, under "Safety control", "do" should read "ditto" wherever it appears.

6. On the same page, in the table, in the sixth column, under "Notes" the 10th and 12th entries should be removed and the remaining entries should be non-superior arabic numerals without parentheses.

7. On the same page, following the table, in footnote two, "Roller" should read "Rollover".

§ 62.50-20 [Corrected]

8. On page 17845, in the third column, in § 62.50-20(c), in the note, in the second line, "machinery" was misspelled.

9. On page 17846, in the first column, in § 62.50-20, the second paragraph (g) should be paragraph (h).

§ 62.50-30 [Corrected]

10. On the same page, in the second column, in § 62.50-30, in paragraph (a), in the second line, "these" should read "those".

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federal register

Thursday
May 26, 1988

Part II

Environmental Protection Agency

40 CFR Parts 152 and 172
Pesticide Registration; Fees for Processing Activities; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 172

[OPP-36101B; FRL 3320-4]

Pesticide Registration; Fees for Processing Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing amendments to 40 CFR Parts 152 and 172 which establish fees to be collected by EPA from applicants when they request EPA to conduct certain registration activities under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., as amended. The amendments authorize EPA to collect the fees in advance of conducting requested registration activities and will allow EPA to recoup the cost to the Agency of providing registration activities. The authority for this rulemaking is 31 U.S.C. 9701 and Public Law 100-202.

DATE: These regulations are effective on June 27, 1988. Actual compliance with this rule will be required in association with applications received or postmarked after June 27, 1988. Applicants who submit applications prior to the effective date of the rule, which are determined by EPA to be complete, will not be required to pay fees. Incomplete applications submitted to EPA prior to the effective date of the rule, and resubmitted after the effective date, will be subject to the registration fee schedule contained in the rule. EPA may waive the fee if, in its judgment, the first submission was nearly complete.

FOR FURTHER INFORMATION CONTACT:

By Mail: Ken Wetzel, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Room 1002, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1128).

SUPPLEMENTARY INFORMATION: This rule establishes fees for certain registration activities that are required to be completed under FIFRA when applicants request a registration, a modification to an existing registration, or an experimental use permit. Each applicant must make payment of the fee prior to, or at the time the application is submitted. Food additive petition review fees were included in the proposed rule, but have not been included in this final rule. The Agency intends to establish these fees in a subsequent rule.

I. Background

A. Statutory Authority

EPA issued a proposed rule in the **Federal Register** of November 26, 1986 (51 FR 42974), proposing to collect fees for certain registration activities EPA conducts under FIFRA and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Subsequently, EPA issued a document extending the time for comment on the proposed rule, published in the **Federal Register** of January 22, 1987 (52 FR 2433). As stated in the preamble of the proposed rule, the Independent Offices Appropriation Act of 1952 (IOAA) contained a provision authorizing recoupment by Federal agencies of certain costs incurred by them. This statute, codified as 31 U.S.C. 9701 and commonly referred to as the "User Charge Statute", authorizes and encourages Federal regulatory agencies to recover, to the fullest extent possible, costs attributable to services provided to identifiable recipients. Public Law 100-202, which appropriated funds for EPA for FY 1988, contained a provision authorizing EPA, in 1988, to assess and collect fees and to deposit an amount not to exceed $25 million into a special fund which shall be available for appropriation, and remain available until expended, to carry out the Agency's activities in the programs for which the fees or charges are made. Pesticide registration fees were specifically cited by the Conference Report as an example of the type of fees authorized by that Act. Although Public Law 100-202 was passed subsequent to publication of the Agency's proposed rule, this final rule is being issued under the authority of 31 U.S.C. 9701 and Public Law 100-202 in view of the clear applicability of the Appropriations Act to the rule.

FIFRA authorizes EPA to regulate pesticide products. The regulation of pesticides includes registering products prior to distribution and sale within the United States, continued regulation of these products and their uses after registration, and identification and elimination of unreasonable adverse effects. A registration is a license that allows the registrant to market a pesticide product.

In recognition of the fact that pesticide applicants and registrants receive certain benefits from EPA's registration activities, the Agency has examined the feasibility and desirability of making the pesticide registration program as self-supporting as possible by having the applicant bear some of the costs of pesticide registration through the registration fee system authorized by 31 U.S.C. 9701 and Pub. L. 100-202. Through the annual appropriation of funds by the Congress, the public provided approximately $69 million to support the pesticide program in FY 1987.

It should be noted, that for many years, EPA has been collecting fees for processing related tolerance petitions, as authorized by FFDCA section 408(o). These fees are placed in a revolving fund and are directly available to the program. Fees collected under 31 U.S.C. 9701 are to be deposited to the U.S. Treasury, rather than being directly available to the program. Fees collected under Pub. L. 100-202 are to be deposited in a special fund in the U.S. Treasury which is to be available for appropriation, to remain available until expended, to carry out the Agency's activities in the program for which the fees or charges are made. Accordingly, fees assessed and collected in FY 1988 pursuant to this rule will be deemed to be assessed and collected under the authority of Pub. L. 100-202 in order to insure the availability of such funds to the Agency in accordance with Congressional intent. Assignment of fees in 1988, is, however, subject to the overall limit of $25 million on EPA fee collections pursuant to Pub. L. 100-202.

B. Activities for Which Fees Will be Charged

In this rule, EPA includes in its user charge system the costs of the following regulatory activities:

1. New chemical registration reviews.
2. New biochemical and microbial registration reviews.
3. New use pattern registration reviews.
4. Old chemical registration reviews.
5. Amendment reviews.
6. Experimental use permit reviews.

C. Activities for Which Fees Will Not Be Charged

The Agency will not collect fees under this rule for the following activities:

1. FFDCA section 408 tolerance petition reviews (currently charged for under 40 CFR Part 180).
2. Certification and training.
3. Reviews of currently registered uses of pesticides (including reregistration activities).
4. State registration reviews that meet special local needs.
5. Reviews of emergency exemption requests.
6. EPA's research and development activities.
7. Pesticide enforcement activities.

8. The integrated pest management program.
9. The farm safety program.
10. Food additive petition reviews.

D. Fee Schedule

The Agency published in the Notice of Proposed Rulemaking a proposed fee schedule which used FY 1983 data in the calculation of those fees. At that time, the Agency proposed increasing fees by Federal pay scale increases up to the date of publication of the final rule. The Federal pay scale increases were 4 percent in 1984, 3.5 percent in 1985, 0 percent in 1986, 3 percent in 1987, and 2 percent in 1988. Each fee on the schedule was, thereby, increased by 13.09 percent for FY 1984-1988 and rounded to the nearest $100. The fee schedule for 1988 is as follows:

TYPE OF REGISTRATION

Transaction	Amount of fee
New Chemical Registration Review	$184,500
New Biochemical and Microbial Registration Review	64,000
New Use Pattern Registration Review	33,800
Expedmental Use Permit Review	4,500
Old Chemical Registration Review	4,000
Amendment Review	700

These fees reflect the Agency's costs of conducting the above types of reviews. To the best of EPA's knowledge, they represent only a small fraction of most applicants' product development costs for these activities. Based on data from the National Agricultural Chemicals Association, which stated that its members spent $527 million on research and development for pesticides in 1982, the additional $14 million projected to be paid in fees would add about 2.7 percent to the expected industry research and development costs. The fee of $184,500 for a new chemical application represents about 0.7 percent of the $25 million a company would spend, on the average, in developing a product. It is the intent of the Agency to charge fees which continue to reasonably reflect the current costs of operating the registration program. The Agency shall, therefore, periodically review costs and fees to make certain that they are in balance. Should the methodology or procedure for calculating the user fees warrant change, EPA will prepare such changes and invite public comment prior to revision of the fee schedule. However, in order to keep the fees reasonably consistent with general costs, the fee schedule shall be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. New fees will be printed in the **Federal Register** as a final rule, to become effective 30 days or more after promulgation, as specified in the rule.

E. Fee Waivers

The rule contains provisions for five types of waivers: minor use, IR-4, severe economic impact, public interest, and EPA-initiated amendments. Issues concerning these waivers are addressed in Unit II. of this document.

II. Response to Comments

A. Lack of Statutory Authority

There were 28 comments stating that EPA lacks statutory authority to charge fees to applicants for services provided during the registration of the applicants' pesticide products. The Agency disagrees with the premise of these comments and promulgates these fees for FIFRA-related activities under the authority of 31 U.S.C. 9701 and, for FY 1988, Pub. L. 100-202.

Eleven commenters stated that the public in general derives a greater benefit from the registration of pesticides than does the industry and therefore, the industry should not be charged fees. Three comments suggested that the Agency's proposed rule represents a tax and not a fee. Two commenters cited *National Cable Television Assn.* v. *U.S.*, 415 U.S. 336 (1978) and *FPC* v. *New England Power Company*, 415 U.S. 345 (1974) as cases establishing the accepted understanding of the IOAA (31 U.S.C. 9701). In developing the registration fee structure, EPA reviewed the case law and kept in mind *National Cable Television Assn.* v. *U.S.*, in which the Supreme Court distinguished "taxes," which the Court stated could be levied only by the Congress, from "fees," which may properly be charged by Federal agencies pursuant to 31 U.S.C. 9701. The distinction drawn by the Court was that, unlike a tax, a fee, "is incident to a voluntary act, e.g., a request that a public agency permit an applicant" to engage in a regulated activity and is therefore charged for an agency action which, "bestows a benefit on the applicant, not shared by other members of society." The user fee established in this rule is a "fee" under that definition. Companies choose to produce a pesticide and request EPA to grant initial and continuing registrations for their products. The Agency, by granting such registrations, is bestowing a benefit on the applicant that is not shared by other members of society. This contention is supported by *Mississippi Power & Light Co.* v. *NRC*, 601 F. 2d 223, 229 (5th Cir. 1979), and *Phillips Petroleum Co.* v. *FERC*, 788 F. 2d 370, 376-377 (10th Cir. 1986).

In 1972, an amendment to FIFRA authorizing fees for registration was proposed, but was deleted in conference, and the conference report included language indicating that no fees should be charged (S. Rep. No. 92-1540, 92nd Cong., 2nd Sess. (1972)). Two commenters stated that this 1972 conference report demonstrated Congressional intent not to impose registration fees. The Agency views 31 U.S.C. 9701 as adequate justification for charging registration fees despite the 1972 legislative action on FIFRA. While Pub. L. 100-202 clearly authorizes collection of pesticide registration fees, EPA does not consider this to be an indication on the part of the Congress that the Agency otherwise lacked this authority. In addition, the Federal Pesticide Act of 1978 (Pub. L. 95-396, September 30, 1978), also required EPA to study the feasibility of establishing fees payable by applicants requesting registrations. The required study was completed and a report delivered to Congress.[1] In the report, EPA concluded that there were no major technical or administrative constraints on assessing and collecting fees.

B. Activity Costs

Several comments were related to the timely review of registration applications. The commenters argued that prompt EPA review of applications should be required if fees are to be levied. The Agency intends to provide as rapid a review of registration applications as is possible. EPA attempts to complete review of new chemicals and first food use registration applications in the time frames cited in OPP PR Notice 86-4, *Submission of Incomplete Applications for Registration of Pesticides Under Section 3 of FIFRA*. Other review time targets have been set administratively based on the nature of the work to be done. It is difficult to set absolute limits on the time required to review a registration application due to occasionally incomplete data bases, varying complexity of cases, and the occasional need for additional data or fluctuations in the number of incoming applications when OPP review resources are fixed. The Agency believes that fees will encourage applicants to submit necessary data and will also discourage

[1] "Technical and Economic Feasibility of Charging Fees to Cover Costs of Pesticide Registration Programs and FIFRA," Office of Pesticide Programs, February 1980.

the submission of inadequate applications.

Several commenters argued that the proposed new chemical fee would represent a substantial portion of their research and development budget, as opposed to the 2.9 percent share cited in the Notification of Proposed Rulemaking for the industry at large. The 2.9 percent figure (present estimate is 2.7 percent) was used to show the impact of fees on the industry in relation to overall research and development costs. In considering this average, it is critical to note that any one company may have fees that exceed this percentage of its research and development costs for any 1 year, but that same company may not have any registration activities in other years. Therefore, although fees will not impact heavily on the industry at large, it is acknowledged that some companies will periodically have fees that appear large when measured against their annual research and development costs. Such companies may be qualified to seek relief through the severe economic impact waiver provision of this rule.

Several commenters argued that it is unfair to charge a basic manufacturer the new chemical fee, when a follow-on registrant pays only the old chemical fee. No change has been made. The fees for new chemical reviews and old chemical reviews are based on the actual costs to the Agency. Three commenters advocated charging fees only to the manufacturer of an active ingredient, arguing that these costs would be passed on more equitably to formulators by the market than through separate fee categories. No change has been made. The primary objective in charging fees is to recover, as much as possible, EPA's cost of registration activities. Amendment and old chemical fees are charged for activities that create a cost to the Agency. The Agency notes that firms that formulate products from registered products purchased from others will pay registration fees that reflect only the cost of processing their end-use registrations. The much higher cost of review of the data on the safety of the active ingredient in the purchased product will be paid by the registrant of that product and, presumably, passed on in the manner these commenters support.

One commenter questioned the definitions of biochemical, biotechnical, and microbial registrations. Definitions for biochemical and microbial pesticides are contained in 40 CFR 158.65 (a) and (b). The Agency believes that these definitions adequately define these terms for purposes of the biochemical/microbial fee category. Although the NPRM contained the term "biotechnical" and the final rule omits that term, this should not be construed to mean that the rule's requirements do not apply to the process of biotechnology. The Agency's original concept of biotechnical pesticides is embodied in the cited definition for biochemicals and microbials. The change merely means that there may be new chemical registration applications for which the Agency will need to make a case-by-case assessment to determine which fee category is appropriate.

C. Method of Calculating User Fees

A few commenters indicated that the fee schedules were higher than the fees that would be justified by the services OPP provides. The Agency has established fees based on an in-depth analysis of the resources expended by the Agency on registration and supporting activities. The preamble to the proposed rule contained a full discussion of the methods used to develop the fee schedule.

The data used to develop this fee system were derived from the OPP Time Accounting Information System (TAIS), the OPP On-Line Action Tracking System (OLTS), the EPA Financial Management System (FMS), the OPP Extramural Resource Management System (ERMS), and other internal records. Interviews were also conducted with responsible program personnel to verify the information contained in the data bases and the technical steps involved in registering a pesticide. EPA will periodically monitor and review these systems to assure that the fees represent the true cost to the government for the appropriate registration activities. If a review of the data indicates that a new fee schedule is necessary, then the Agency will submit rulemaking to change the fees accordingly.

Four commenters indicated that state fees are a burden to the industry and need to be considered in setting the Federal fees. No change has been made. The Agency examined the fees charged by 48 states and the District of Columbia. These state fees are usually based on product registrations and range from $10 to $60 per product, averaging about $25. Some states also charge other types of fees, such as license fees, but these fees do not seem prohibitive either. EPA has concluded that the economic impact of state fees is not large enough to alter the fee structure. In any case, state fees have no effect on the cost to EPA of processing registration actions.

Several commenters indicated that a distinction should be made between food-use and non-food-use chemicals in levying fees. One argued that registration applications for non-food-use pesticides do not require as extensive a data base of residue and toxicology information as do food-use pesticides and that the fees should reflect this lower cost.

No change has been made. While this argument may have been true in the past, the Agency is now requesting much more information of non-food-use registrants and there is little difference in review time between most food-use and non-food-use applications. There may be additional review time incurred for the review of a tolerance submitted by a food-use applicant. The petitioner will be charged the appropriate tolerance fee, in addition to the registration fee. Therefore, a food-use applicant may incur more fee costs for associated registration activities than a non-food-use applicant.

Several commenters indicated that new chemical and new biochemical registrants should be charged the same fee if the system is to be fair and based on benefit to the recipient. Another commenter indicated that the cost of reviewing a new biochemical is approximately 20 times less than for reviewing a new non-biochemical insecticide. No change has been made. The fees being charged are based on review costs experienced by the Agency. EPA will periodically review its cost accounting data and adjust fees if warranted.

D. When the User Fees May be Waived or Adjusted

Several commenters requested a better definition of waiver criteria so that waivers will be granted in a consistent and equitable fashion. EPA has attempted to improve the entire waiver section of the rule so that criteria for each category can be better understood and the documentation required presents minimal burden to the waiver applicant. These improvements are described in this unit.

1. *Refunds.* One commenter stated that, if fees are truly based on benefits to the registrant, EPA should refund any fees when a registration application is denied or a registration is cancelled. Regardless of whether an application is denied, the cost of review is still incurred by the Agency, at the applicant's request. However, if an application is submitted to the Agency and is not processed because it is incomplete, then the Agency shall refund the fee, less $1,200 for handling and initial review. Additionally, if an application is withdrawn by the applicant prior to significant Agency scientific review, the Agency will refund the fee, less $1,200. Incomplete or withdrawn applications for amendments will not result in refunds of the fee because the fee for amendments ($700) is less than the charge ($1,200) for handling and initial review of applications. If an unacceptable or withdrawn application is resubmitted, the applicant must submit the full fee that would be required if it were being submitted for the first time.

2. *Waiver request fees.* One commenter argued that fees for waiver requests are inappropriate. No change has been made. The Agency will have to expend resources in order to evaluate waiver requests. The waiver request fee will be refunded and that cost will be absorbed by the U.S. Government when the waiver is granted. However, the Federal Government cannot absorb the cost of this review when the request is not warranted. Waiver request fees will discourage spurious waiver applications and ensure that the waiver review process does not place unreasonable administrative burdens on the Agency. Waiver request fees are not meant, however, to discourage legitimate requests. The waiver process in the rule is designed to provide minimal burden to an applicant in applying for a waiver.

3. *Integrated Pest Management (IPM).* The NPRM discussed a waiver of fees for registration of some products judged to be useful in IPM programs. One commenter indicated that any disincentive to the registration of pesticides caused by prohibitive fees would be a limitation on IPM practices. Although no specific waiver provision is established for IPM, the public interest waiver provision will permit consideration of a product's extraordinary utility for IPM as a factor in determining the extent of public interest demonstrated by the applicant in the waiver request. For example, the Agency will consider a waiver for a new pesticide which may be expected to become an essential part of an integrated pest management program or is a biologically integrated alternative for pest control which would result in a net reduction of the amount of risk and pesticide chemical applied over that used in conventional application methods.

4. *EPA-initiated amendments.* Four commenters suggested that the registration fee for an amendment action should be automatically waived when the need for the amendment arises solely due to an Agency initiative. An example of such an action would be an EPA-mandated label change. The Agency agrees. When EPA determines that an Agency-initiated amendment provides negligible benefit to the registrant, the amendment fee prescribed by this regulation will be waived. The Agency intends to announce such fee waivers through the EPA request for an amendment. The Agency will not approve any individual requests for such fee waivers.

5. *Minor use.* Several commenters supported waivers for minor use. One indicated that there should be automatic minor use waivers for pesticides used on fruits and vegetables. Another argued that there are specific small volume markets that would not be served unless the associated new use fees were waived. A third commenter indicated that the Agency needs to more clearly define "minor use" to head off a flood of waiver requests. The Agency has determined that it is in the public interest to waive pesticide registration fees for minor use registrations that lack commercial feasibility for the pesticide applicant. Applications may cover multiple uses, some of which are for minor uses. There is only one fee charged for review of an application, whether it addresses one or multiple uses and whether it contains only major uses or a combination of major and minor uses. Therefore, requests for a minor use waiver should address applications that are limited to minor uses. Waiver requests will be evaluated on a case-by-case basis. (See 51 FR 11341, Apr. 2, 1986 for a full discussion of EPA's minor use pesticide policy.)

6. *IR-4 program.* Many commenters supported waivers for Inter-Regional Research Project Number 4 (IR-4) related activities. The Agency will waive fees for registration actions that are determined to be specifically associated with tolerances established through IR-4 petitions when the Agency determines that a waiver would serve the public interest.

7. *Public interest.* Several commenters argued that the new chemical fee will inhibit the development of safer pesticides. One commenter stated that many biochemicals would have limited use and would not be cost effective to register. Another commenter indicated that fee waivers should be granted to those making a convincing argument that the public interest will be served by waiving the fee.

The public interest waiver has been retained. In the public interest, waivers may be granted in full or in part on a case-by-case basis, such as when a pest control agent is judged by EPA to significantly reduce a current environmental or health risk, provides an important improvement in public health control, or is based on a product's extraordinary utility for use in integrated pest management (IPM). Petitioners for such waivers must provide supporting information which fully substantiates the public interest nature of the individual request.

8. *Severe economic impact.* In the proposed rule, the Agency requested and encouraged public comment on the issue of small business waivers. No specific criteria or eligibility requirements were proposed by the Agency but suggestions by the Small Business Administration (SBA) on defining a small business and establishing criteria, were presented in the proposed rule. The SBA suggested that a small business be defined as one with up to $40 million in annual gross revenue, from all sales including pesticides, and one with no more than 150 employees. For businesses meeting this definition, SBA suggested that the fee should be no more than 1 percent of the annual gross revenue for the pesticide for which the registration action was requested. (In its comments on the proposed rule, the SBA expanded on this suggestion by proposing a sliding fee scale based on approximately 1 percent of projected first year sales.)

Many commenters supported small business waivers and stated that specific criteria should be established in the final rule. Without waivers, commenters claimed that smaller businesses would experience severe economic hardship, and in some cases, would be drive out of business. A few commenters claimed that the proposed fee would represent significant portions of the cost borne by a small company in developing a pesticide, placing the company at a competitive disadvantage. One commenter took the position that EPA should only consider gross revenue from pesticide sales in determining eligibility for any small business waiver.

In response to those concerns the Agency has taken a number of actions, such as the elimination of fees for Agency-initiated amendments as discussed earlier. The Agency has also developed specific waiver criteria for those small businesses severely impacted by fees and is establishing a partial waiver for them. The severe economic impact (SEI) waiver criteria in this rule are based on meeting two threshold requirements but are different from the criteria suggested by SBA.

The Agency has accepted the SBA position that $40 million or less in total gross annual revenues, including both pesticide and non-pesticide sales, is an appropriate threshold to determine what

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constitutes a small business. It was decided to include both pesticide and non-pesticide sales because the $40 million threshold relates to the economic viability of the entire business. However, to set the fee at 1 percent of gross annual revenue on pesticide products is thought to be inappropriate. Aside from the serious possibility that a fee based on gross annual revenue would be considered a "tax" that could only be levied by Congress, the SBA suggestion would decrease dramatically the amount of fees that could be collected without regard to the potential profitability of the product in question in future years. A company applying for a new chemical registration, for instance, would have to project more than $18 million in sales for the first year in order to be required to pay the full fee.

In developing the second threshold for the SEI waiver, current Agency policy and procedures in the areas of minor use and data waivers were used to provide a benchmark for identifying a meaningful level of impact on industry profits. The minor use policy and data waiver producers are based on assumptions about industry-wide company profits after taxes on pesticides. In general, EPA employs an industry-wide estimate of profitability of about 10 percent of pesticide sales, after taxes. The Agency believes, however, that small businesses may tend to have lower than average profit margins. As a result, the Agency has adopted 3 percent of annual pesticide sales as a threshold for fees paid during a year's time, after which a severe economic impact is likely to exist and a partial waiver would be appropriate.

Therefore, the Agency has determined that to qualify for this waiver a company must first establish that its total gross annual revenue from both pesticide and non-pesticide sales for the preceding fiscal year was less than $40 million, i.e., it is a small business. Second, a company must show that its cumulative cost for registration fees for the 12-month period following its most recently completed fiscal year is greater than 3 percent of the company's gross annual revenue for pesticide sales in its preceding fiscal year. If a company is able to demonstrate that it meets both criteria, then two-thirds of all Agency registration fees in excess of 3 percent of the applicant's pesticide sales in the most recently concluded fiscal year will be waived.

The Agency does not wish to place an unreasonable burden on the applicant applying for an SEI waiver.

Existing information, such as an annual report or income tax form filed with the Internal Revenue Service should provide information on total annual revenues. A notarized statement signed by a corporate officer would be sufficient to document annual pesticide sales.

The Agency concluded that it would be inappropriate to waive the fee entirely, since the applicant must expect to gain some economic benefit from the license sought and thus should be able to pay some amount toward the fee. The Agency finds that it is reasonable to expect a business to pay at least a share of the cost for review of registration applications. For the waiver to be meaningful to an eligible company, the Agency believes a fee of less than 50 percent of full value is necessary. Examination of other Federal user fee waivers for analogous types of fees, reveals that most partial fees are less than one-half of the full fee for those eligible. After considering these factors, the Agency concludes that a charge of one-third of the fee is appropriate after the 3 percent cumulative threshold has been reached.

The Agency concludes that the SEI waiver provision in this rule, along with elimination of fees for Agency-initiated amendments, such as label changes, and the already established formulator's exemption in FIFRA, provide a reasonable response to the concerns presented by small business. In addition, all of the above discussion concerning the impact of fees assumes that none of these fees will be recovered or passed through the economic chain. In reality, it is reasonable to believe that some of the additional cost due to fees will be recovered by the registrant.

In summary, the Agency's intent in establishing severe economic impact waivers is to provide relief to companies with gross annual revenues too small to pay the full fee. It would be inappropriate to grant large companies these waivers simply because their pesticide related sales are small. For this reason, the Agency is using a company's gross annual revenue for determining the first threshold of $40 million for SEI waivers, regardless of whether the revenues are pesticide related. The second threshold for determining company eligibility is based only on pesticide sales.

The Agency is concerned that this waiver may be requested by applicants that would not normally be eligible. The Agency will not grant such a waiver if it finds the entity submitting the application has been formed or manipulated to qualify for such a waiver. The submission of false or misleading information is a violation of 18 U.S.C. 1001, and may result in the imposition of a fine up to $10,000 or imprisonment up to 5 years, or both.

E. Post-Registration Fees

The Notice of Proposed Rulemaking solicited comments on possible future elaborations of a registration fee system to recover post-registration Agency costs. One approach, an annual fee for all science reviews, would combine all science review costs for an active ingredient and split them among all basic producers of that active ingredient. The second approach, differential fees based on Agency review costs associated with evaluation of risks/benefits or incomplete data, would vary fees based on EPA costs related to reviewing riskier chemicals or those chemicals with data gaps, rather than establishing uniform fees within activity categories.

Comments on these approaches were mixed. Several commenters questioned EPA's legislative authority to collect post-registration fees under 31 U.S.C. 9701 and voiced concern about their potential adverse economic impacts. Two commenters supported the idea of annual post-registration fees to achieve cost recovery and to eliminate "inactive" registered uses that are not being marketed. Two commenters supported the concept of differential fees if these were based on per pound charges, while two others emphasized that any such fees should take into account ability to pay. One commenter suggested that differential fees based on risk might be disproportionate to benefit received.

The Agency is not proposing to levy any fees associated with post-registration activities in this rule. Such fees, however, are being considered by Congress in connection with reauthorization of FIFRA. Consistent with EPA's position that registration to market a product represents a special benefit, the Agency supports implementation of appropriate fees that require private beneficiaries, rather than the tax-paying public at large, to bear some of the costs of protecting public health and the environment through the FIFRA post-registration process as a whole. EPA also recognizes that implementing a system comprised solely of registration fees may tend to discourage innovation by placing prospective registrants requesting Agency action on new chemicals and new use applications at a greater economic disadvantage relative to registrants of existing chemicals, and that a consistent approach to cost recovery across both registration and post-registration actions may represent

desirable policy in the long run. However, the Agency has no basis for concluding that today's fee schedule is likely to produce any undesirable results in the short term. For these reasons, EPA is continuing to explore alternatives concerning post-registration cost recovery and plans to propose such a fee in the near future under existing authority, unless a FIFRA reauthorization bill containing such a provision is enacted.

III. Other Changes

Unit II. of this document describes changes to the NPRM recommended by commenters and actions taken by the Agency in response to these comments. For purposes of clarification and completeness, additional changes have been made to the NPRM.

Section 152.403, Definitions of fee categories, was added to assist applicants in determining the appropriate fee categories for payment. This section also clarifies the effect that pending applications (those submitted to EPA, but not yet approved or denied) may have on the fees for other applications.

The Agency may, at any time, have several applications pending from different applicants for registration of products containing the same active ingredient leading to possible confusion concerning the proper fee for some of the applications. The new provisions are intended to eliminate that confusion. For example, if the Agency has before it a pending new chemical application and a new use pattern application is received for a product containing the same active ingredient, the revised provisions make it clear that only the new use pattern fee, not the new chemical fee, should be submitted for the new use pattern application.

Section 152.406 was added to clarify that submission of supplementary data for applications that are pending will not require payment of additional fees. The cost data used in calculating the fees include the cost of handling supplementary data for the associated applications. Language was added to clarify how fees would be charged for multiple new active ingredients in a single product. EPA has decided that the full fee for a new chemical registration review should be charged for the review of each active ingredient, since science and administrative reviews must be conducted by the Agency for each of them. EPA also has decided that if two or more applicants had applications pending for products containing the same new active ingredient and each applicant had developed and submitted separate data sets to support the registrations, then each applicant would be charged the full new chemical registration review fee. This is appropriate since the Agency may be expected to incur the costs of administrative and scientific reviews for each data set. If two or more applicants develop and submit a common data set for registering their products which have a common new active ingredient, the applicants would pay equal shares of the total fee. The total fee would include the fee for one new chemical registration review and a fee for an old chemical registration review for each of the additional products. This charge is consistent with the cost to be incurred by the Agency in reviewing a single generic data set and the specific data on each of the additional products.

The Agency identified an issue concerning experimental use permits (EUPs) that needed clarification. Generally, pesticides are exempted from the requirement for obtaining an EUP for small-scale field testing (40 CFR 172.3). However, due to the risk concerns about the capacity of microorganisms to reproduce and multiply in the environment, this exemption has been modified with respect to certain genetically-altered and non-indigenous microbial pest control agents so that the Agency may elect to require an EUP for small-scale field testing. The imposition of fees at this early stage of research and development, however, is considered to be inequitable with respect to traditional operating procedures within the pesticide program, and could discourage development of individual microbial pest control agents which prove safer alternatives both for human health and the environment. The Agency, therefore, has determined that EUPs required for small-scale field testing of microbial pest control agents should be excluded from fee charges.

The Agency proposed charging fees for FFDCA section 409 food additive petition reviews in the Notice of Proposed Rulemaking. The Agency has identified two issues concerning this fee:

1. The food additive fee published for comment was inaccurate due to a mathematical error in the computation. The correct fee would be approximately twice as large.

2. Various activities associated with reviewing food additive petitions differ substantially. For example, the level of effort needed to review a request for a new food additive tolerance that has a raw agricultural commodity tolerance associated with it may be considerably less than one for which no raw agricultural tolerance is required. Also, amendments to food additive tolerances would require lower levels of effort than the establishment of new tolerances. It appeared inequitable to charge the same fee for all food additive petition review activities.

Therefore, the Agency has decided to perform a more comprehensive analysis to correct these deficiencies and may publish food additive petition fees in a future rule.

IV. Administrative Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a rule is "major" and therefore, subject to the requirement for a Regulatory Impact Analysis. The Agency has determined that this rule is not major because it does not meet any of the criteria set forth and defined in section 1(b) of the Order.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1165 (5 U.S.C. 60 et. seq.)) and it has been determined that it will not have significant economic impact on a substantial number of small businesses, small governments, or small organizations. In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency developed a document entitled "Regulatory Impact Analysis of User Charges for Registering Pesticides Under the Federal Insecticide, Fungicide, and Rodenticide Act." The document was available for inspection during the comment period on the Notice of Proposed Rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* and have been assigned OMB control numbers 2070-0040 and 2070-0060.

List of Subjects in 40 CFR Parts 152 and 172

Administrative practice and procedure, Fees, Intergovernmental relations, Labeling, Pesticides and pests, Reporting and recordkeeping requirements, Research.

Dated: May 18, 1988.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 152—[AMENDED]

1. In Part 152:

a. The authority citation for Part 152 is revised to read as follows:

Authority: 7 U.S.C. 136–136y. Subpart U is also issued under 31 U.S.C. 9701 and Pub. L. 100–202.

Subparts M—T [Reserved]

b. By adding and reserving Subparts M through T.

c. By adding Subpart U to read as follows:

Subpart U—Registration Fees

Sec.

152.400 Purpose.
152.403 Definitions of fee categories.
152.404 Fee amounts.
152.405 Submission of supplementary data.
152.408 Special considerations.
152.410 Adjustment of fees.
152.412 Waivers and refunds.
152.414 Procedures.

Subpart U—Registration Fees

§ 152.400 Purpose.

Subpart U prescribes fees to be charged for the pesticide regulatory activities set forth in § 152.403 as performed by the Environmental Protection Agency (as authorized by 31 U.S.C. 9701 and Pub. L. 100–202) and provisions regarding their payment.

§ 152.403 Definitions of fee categories.

(a) "New chemical registration review" means review of an application for registration of a pesticide product containing a chemical active ingredient which is not contained as an active ingredient in any other pesticide product that is registered under FIFRA at the time the application is made.

(b) "New biochemical and microbial registration review" means review of an application for registration of a biochemical or microbial pesticide product containing a biochemical or microbial active ingredient not contained in any other pesticide product that is registered under FIFRA at the time the application is made. For purposes of this Subpart, the definitions of biochemical and microbial pesticides contained in § 158.65 (a) and (b) of this chapter shall apply.

(c) "New use pattern registration review" means review of an application for registration, or for amendment of a registration entailing a major change to the use pattern of an active ingredient contained in a product registered under FIFRA or pending Agency decision on a prior application at the time of application. For purposes of this paragraph, examples of major changes include but are not limited to, changes from non-food to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and non-residential to residential use.

(d) "Old chemical registration review" means review of an application for registration of a new product containing active ingredients and uses which are substantially similar or identical to those currently registered or for which an application is pending Agency decision.

(e) "Amendment review" means review of any application requiring Agency approval to amend the registration of a currently registered product, or for which an application is pending Agency decision, not entailing a major change to the use pattern of an active ingredient.

(f) "Experimental use permit review" means review of an application for a permit pursuant to section 5 of FIFRA to apply a limited quantity of a pesticide in order to accumulate information necessary to register the pesticide. The application may be for a new chemical or for a new use of an old chemical. The fee applies to such experimental uses of a single unregistered active ingredient (no limit on the number of other active ingredients, in a tank mix, already registered for the crops involved) and no more than three crops. This fee does not apply to experimental use permits required for small-scale field testing of microbial pest control agents (40 CFR 172.3).

§ 152.404 Fee amounts.

The fee prescribed by the following table must be submitted with each application for registration, amended registration or experimental use permit. Fees will be adjusted annually in accordance with § 152.410. The Agency may waive or refund fees in accordance with § 152.412.

TABLE.—REGISTRATION FEES

Type of review	Fee
New chemical	$184,500
New biochemical or microbial	64,000
New use pattern	33,800
Experimental use permit	4,500
Old chemical	4,000
Amendment	700

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

§ 152.405 Submission of supplementary data.

Applicants may submit data to supplement pending applications without incurring additional charges if the proper fee was paid with submission of the original application and subsequent submissions of supplementary data do not constitute a change in the type of registration action requested.

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

§ 152.408 Special considerations.

(a) If two or more applicants apply for a new chemical registration for products having the same active ingredient and each applicant provides a set of data in support of the registration developed independently of the other applicants' data, then each applicant submitting an independent set of data shall be charged the full new chemical registration review fee.

(b) If two or more applicants apply for a new chemical registration for products having the same active ingredient and the applicants have jointly developed or paid for the joint development of a common set of data to support their applications for registration, then each applicant shall be charged an equal share of the total fee for review of the applications for all of the subject products. The total fee will include the sum of the new chemical registration review fee for one product and one old chemical registration review fee for each additional product.

(c) If an application is received for registration of a product that contains two or more new chemical active ingredients and a different set of generic data is required by the Agency for each new chemical for the purpose of registration, the applicant will be required to pay the full new chemical registration review fee for each active ingredient.

§ 152.410 Adjustment of fees.

(a) The fee schedule will be adjusted annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. Such adjustments will be published in the Federal Register as a final rule and will be effective 30 days or more after promulgation.

(b) Processing costs and fees will be reviewed periodically and changes will be made to the schedule as necessary. Such adjustments will be published for notice and comment in the Federal Register.

§ 152.412 Waivers and refunds.

(a) *Refunds.* If an application is not accepted for processing because it is incomplete, the fee, less $1,200 for handling and initial review (or the amount of the fee, whichever is less), shall be returned. If an application is withdrawn by the applicant before significant Agency scientific review has begun, the fee, less $1,200, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were submitted for the first time.

(b) *Waiver of fees for activities initiated by the Agency.* The Agency may waive fees for amended registrations where the amendment has been initiated solely by the Agency. The Agency retains sole discretion in determining when this fee will be waived. The announcement of the fee waiver will accompany the EPA request for an amendment. The Agency will not approve any individual requests for waivers of EPA-initiated activity fees.

(c) *Waiver of fees for activities initiated by applicants.* Upon request by an applicant, together with the supporting documentation or justification described in this paragraph, the Agency may waive or refund fees in whole or in part. A request for waiver must be submitted in accordance with § 152.414(a). An application for which a waiver of fees has been requested will not be accepted for review until the waiver has been granted, or until the waiver has been denied and thereafter the proper fee has been submitted.

(1) *Minor use.* Fees may be waived for applications limited to minor uses that lack commercial feasibility for the pesticide applicant. An applicant requesting a waiver on this basis must provide supporting information that demonstrates that anticipated revenues from the uses that are the subject of the application would be insufficient to pay back the cost of the fee. The burden of proof of the reasonableness of this estimate rests with the applicant.

(2) *IR–4.* Fees will be waived for registration actions that are determined to be specifically associated with tolerance petitions submitted by the Inter-Regional Research Project Number 4 (IR–4 program) when such waiver is deemed by the Agency to be in the public interest.

(3) *Severe economic impact.* The Agency may waive two-thirds of any cumulative registration fee payment in a 12-month period following completion of the applicant's most recent fiscal year that exceeds 3 percent of the applicant's pesticide sales in its most recently completed fiscal year. An applicant requesting a waiver on this basis must provide documentation (e.g. copy of an annual report, or income tax forms filed with the Internal Revenue Service, or if needed, a notarized statement signed by a corporate officer regarding annual pesticide sales) demonstrating that:

(i) The company applying had less than $40 million in gross revenue (including all revenue sources) in the most recently concluded fiscal year of operation, and a single fee would constitute more than 3 percent of the applicant's gross revenue from pesticide sales in the most recently completed fiscal year of operation, or

(ii) The company applying had less than $40 million in gross revenue (including all revenue sources) in the most recently concluded fiscal year of operation, and the cumulative registration fees paid during the 12 months following the applicant's most recently completed fiscal year, including any registration fees paid for the applicant for which a waiver is requested, constitute more than 3 percent of the applicant's gross revenue from pesticide sales in the most recently concluded fiscal year of operation.

(iii) The Agency will not grant such a waiver if it determines that the entity submitting the application has been formed or manipulated to qualify for such a waiver.

(4) *Public interest.* The Agency, in its discretion, may waive in whole or in part any of the fees established herein in the public interest. Examples include, but are not limited to, pesticides offering unique advantages for reducing public health risks, those that significantly reduce a current environmental risk, or a product with extraordinary utility for use in Integrated Pest Management (IPM).

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

§ 152.414 Procedures

(a) *Procedures for requesting a waiver.* (1) A request for a waiver must be submitted in writing at the time the application is submitted to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS–767C), 401 M. Street SW., Washington, DC 20460.

(2) A payment of $1,200 for processing the waiver or the amount of the actual fee, whichever is less, must be submitted simultaneously to the address set forth in paragraph (b) of this section. This fee will be refunded (or applied to any resulting partial fee) if the waiver is granted. Payment of fees for the registration activities, in contrast to the waiver fee, shall not be required until the Agency makes a determination on the waiver request. Since the actual fee is submitted to an address different than the one to which the waiver request is submitted, a copy of the payment document must be submitted with the waiver request that is submitted to the Washington, DC address set forth in paragraph (a)(1) of this section. No fee is required from a person who has no financial interest in the application.

(b) *Procedures for payment of fees.* All fees required by this section must be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All payment of fees must be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Registration Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Registration Fees" and should be accompanied only by a copy of the registration application form or the experimental use permit application form, as appropriate. An application will not be accepted for processing until the required fees have been submitted.

(c) *Procedures for submitting application and supporting data.* The application, along with supporting data, shall be forwarded within 30 days of payment to the Washington DC address set forth in paragraph (a)(1) of this section.

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

PART 172—[AMENDED]

2. In Part 172:

a. The authority citation for Part 172 is revised to read as follows:

Authority: 7 U.S.C. 136c, 136v, and 136w. Section 172.4 is also issued under 31 U.S.C. 9701 and Pub. L. 100–202.

b. In § 172.4, by adding paragraph (c) to read as follows:

§ 172.4 Applications.

* * * * *

(c) *Fees.* The payment of fees for experimental use permits shall apply as specified in Subpart U of Part 152 of the chapter.

[FR Doc. 88–11839 Filed 5–25–88; 8:45 am]

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Part III

Department of Education

34 CFR Part 75
48 CFR Ch. 34
Acquisition Regulation; Establishment of Chapter; Final Regulations With Invitation to Comment

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DEPARTMENT OF EDUCATION

34 CFR Part 75

48 CFR Ch. 34

Acquisition Regulation; Establishment of Chapter

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary establishes the Department of Education Acquisition Regulation (EDAR) as Chapter 34 of Title 48 of the Code of Federal Regulations. The EDAR is being issued to implement and supplement the Federal Acquisition Regulation (FAR) within the Department of Education. The EDAR incorporates, together with the FAR, the policies, procedures, contract clauses, solicitation provisions and forms that govern the contracting process or otherwise control the relationship between the Department and contractors or prospective contractors.

DATES: These regulations are effective May 26, 1988. Comments must be received on or before July 25, 1988.

ADDRESSES: All comments concerning these regulations should be addressed to Richard Galloway, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3519, ROB–3, mail stop 3341), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Richard Galloway, telephone (202) 732–2525.

SUPPLEMENTARY INFORMATION: Federal acquisition is subject to two related means of regulation: (1) Governmentwide provisions under the FAR; and (2) agencywide provisions under individual agency regulations. The FAR was codified as Chapter 1 of Title 48 of the Code of Federal Regulations on April 1, 1984. The FAR, in turn, authorizes each agency to issue agency acquisition regulations to implement FAR policies and procedures and provide supplementary rules for special agency needs. FAR 1.301(b) requires publication of agency acquisition policy issuances that have a significant effect beyond internal agency operations or a significant cost or administrative impact on contractors or offerors.

The EDAR replaces the Education Department Procurement Regulation (EDPR) (41 CFR Chapter 34). The EDPR remains in effect only for contracts based upon solicitations issued prior to April 1, 1984. The EDPR became inapplicable to new contract actions when the FAR superseded the Federal Procurement Regulation under which the EDPR had been codified.

The EDAR does not establish new external policy or significantly change existing practice. Rather, the EDAR is the result of (a) conversion of policies established under the EDPR to conform with the FAR, (b) incorporation of standard agency solicitation provisions and contract clauses, and (c) designation of agency discretionary acquisition authorities. Accordingly, the EDAR does not represent new independent policy directions, but rather, reflects policies established by the present governmentwide regulation, the FAR. Further, although the old regulations, *i.e.*, the EDPR, did not incorporate standard agency provisions and clauses, the provisions and clauses in the EDAR do not differ substantially from the provisions and clauses that had been in use under EDPR. Designations of agency acquisition authorities, although required by the FAR, are primarily of internal rather than external significance.

A conforming amendment to the Education Department General Administrative Regulations (EDGAR) was needed to clarify the Department's copyright practice. Section 75.621 of EDGAR is amended in this document by revising the heading to read: Copyright Policy for Grantees; and deleting paragraph (b) from § 75.621. The Department follows the copyright provisions of the FAR, which were established by Federal Acquisition Circular 84–27.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not significantly change the Department's existing practice.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these regulations.

All comments submitted in response to these regulations will be available for public inspection, during and after the comment period, in Room 3519, ROB3, 7th and D Streets SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Accounting, grant programs—education, Reporting and recordkeeping requirements.

48 CFR Ch. 34

Government procurement.

Dated: July 23, 1987.

Editorial Note.—This was received at the office of the **Federal Register** May 20, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

TITLE 34—[AMENDED]

PART 75—[AMENDED]

1. The Secretary amends Title 34, Part 75, of the Code of Federal Regulations by revising the heading of § 75.621, as set forth below, by removing paragraph (b) and removing the paragraph designation "(a)".

§ 75.621 Copyright policy for grantees.

* * * * *

TITLE 48—[AMENDED]

2. The Secretary amends Title 48 of the Code of Federal Regulations by establishing a new Chapter 34 to read as follows:

CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

Part 3401 ED Acquisition Regulation System
Part 3402 Definitions of Words and Terms

Part 3403 Improper Business Practices and Personal Conflicts of Interest
Part 3404 Administrative Matters
Part 3405 Publicizing Contract Actions

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

Part 3406 Required Sources of Supplies and Services
Part 3400 Contractor Qualifications

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 3413 Small Purchase and Other Simplified Purchase Procedures
Part 3414 Sealed Bidding
Part 3415 Contracting by Negotiation
Part 3416 Types of Contracts
Part 3417 Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 3419 Small Business and Small Disadvantaged Business Concerns
Part 3424 Protection of Privacy and Freedom of Information
Part 3425 Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 3427 Patents, Data, and Copyrights
Part 3428 Bonds and Insurance
Part 3432 Contract Financing
Part 3433 Protests, Disputes, and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 3437 Service Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 3442 Contract Administration
Part 3443 Contract Modifications
Part 3445 Government Property
Part 3447 Transportation

SUBCHAPTER H—CLAUSES AND FORMS

Part 3452 Solicitation Provisions and Contract Clauses.

SUBCHAPTER A—GENERAL

PART 3401—ED ACQUISITION REGULATION SYSTEM

Sec.
3401.000 Scope of part.

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.
3401.104 Issuance.
3401.104–2 Arrangement of regulations.
3401.104–3 Copies

Subpart 3401.3—Agency Acquisition Regulations.

3401.304 Agency control and compliance procedures.

Subpart 3401.4—Deviations

3401.401 Definition.
3401.403 Individual deviations.
3401.404 Class deviations.

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.
3401.501–2 Opportunity for public comments.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in Title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Department of Education (ED) acquisition regulations, referred to as the EDAR, for the codification and publication of policies and procedures of ED which implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.

The FAR and the EDAR apply to all acquisitions as defined in FAR Part 2 except where expressly excluded.

3401.104 Issuance.

3401.104–2 Arrangement of regulations.

The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR (See FAR 1.104–2(c)).

3401.104–3 Copies.

Copies of the EDAR in the **Federal Register** and Code of Federal Regulations (CFR) form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

Subpart 3401.3—Agency Acquisition Regulations

3401.304 Agency control and compliance procedures.

The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

Subpart 3401.4—Deviations

3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Head of the Contracting Activity (HCA).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Procurement Executive.

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.

3401.501–2 Opportunity for public comments.

Unless the Secretary of Education (Secretary) approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

Contracting authority vests with the Secretary. The Secretary has delegated this authority to the Deputy Under Secretary for Management who has delegated this authority, with the right to redelegate, to the Procurement Executive and the HCA.

PART 3402—DEFINITIONS OF WORDS AND TERMS

Subpart 3402.1—Definitions

Sec.
3402.101 Definitions.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3402.1—Definitions

3402.101 Definitions

As used in this chapter—

"Head of the Contracting Activity" or "HCA" means the Director, Grants and Contracts Service (GCS), Office of Management of the Department of Education.

"Procurement Executive" means the Comptroller, Office of Management of the Department of Education.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

The contracting officer shall insert the clause in 3452.202–1, Definitions, in all solicitations and contracts in lieu of the clause in FAR 52.202–1, except—

(a) A fixed-price research and development contract that is expected to be $2,500 or less; or

(b) A purchase order.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3403.1—Safeguards

Sec.
3403.101 Standards of conduct.
3403.101–3 Agency regulations.

Subpart 3403.2—Contractor Gratuities To Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c)

Subpart 3403.1—Safeguards

3403.101 Standards of conduct.

3403.101–3 Agency regulations.

ED regulations on standards of conduct are in 34 CFR Part 73.

Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the Procurement Executive for disposition.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

(a) [Reserved]

(b) Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition shall—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the Procurement Executive.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Any Departmental personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees, shall report the matter promptly in accordance with the procedures in 3403.203.

Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Exceptions under FAR 3.602 must be approved by the Deputy Under Secretary for Management.

PART 3404—ADMINISTRATIVE MATTERS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3404.1—Contract Execution

3404.170 Ratification of unauthorized contract awards.

The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers acting in excess of the limits of their delegated authority, may be later ratified by the Department. To be effective, a ratification must be—

(a) A written document clearly stating that ratification of a previously unauthorized act is intended; and

(b) Signed by the HCA, or higher level official of the Department, who could have granted authority to enter into the commitment at the time it was made and still has the power to do so.

PART 3405—PUBLICIZING CONTRACT ACTIONS

Subpart 3405.2—Synopses of Proposed Contract Actions

Sec.
3405.270 Notices to perform market surveys.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3405.2—Synopses of Proposed Contracts Actions

3405.270 Notices to perform market surveys.

(a) If a sole-source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by the Government, constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;

(2) Any capabilities or experience required of a contractor and any other factors relevant to those requirements; and

(3) The criteria, including relative weights, to be used in the evaluation of responses.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the HCA.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 3408.8—Acquisition of Printing and Related Supplies

3408.870 Printing clause.

The contracting officer shall insert the clause in 3452.208–70, Printing, in all solicitations and contracts other than purchase orders.

PART 3409—CONTRACTOR QUALIFICATIONS

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 Definitions.
3409.406 Debarment.
3409.406–3 Procedures.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.
3409.503 Waiver.
3409.507 Procedures.
3409.570 Offeror certification provision.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 Definitions.

The Procurement Executive is designated as the "debarring official" and the "suspension official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405–1, 9.405–2, 9.406–1(c), and 9.407–1(d).

3409.406 Debarment.

3409.406–3 Procedures.

The debarring official may enter into a settlement with a contractor under which the contractor voluntarily excludes itself from, or restricts its participation in, Government contracting and subcontracting for a specified period.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR Subpart 9.5 or of this subpart.

3409.507 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED terminates the contract.

(b) The Procurement Executive is designated as the official to conduct reviews and make final decisions under FAR 9.507(c)(4).

3409.570 Offeror certification provision.

The contracting officer shall insert the provision in 3452.209–70, Organizational Conflict of Interest, in all solicitations.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3413.1—General

3413.107 Solicitation and evaluation of quotations.

(a)–(c) [Reserved]

(d) *Information provided by ED.* If ED provides information to a potential quoter concerning a request for quotations, that information must also be provided to all other potential quoters, by amending the request, if—

(1) The information is necessary to quoters in submitting quotations; or

(2) The lack of the information would be otherwise prejudicial to other potential quoters.

(e) *Late quotations.* The procedures in FAR 15.412 must be used for quotations received after the time specified for receipt at the contracting activity, except that late quotations may be accepted if the contracting officer determines in writing prior to the award that it is in the best interest of the Government to do so.

PART 3414—SEALED BIDDING

Subpart 3414.4—Opening of Bids and Award of Contract

Sec.
3414.406 Mistakes in bids.
3414.406–3 Other mistakes disclosed before award.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3414.4—Opening of Bids and Award of Contract

3414.406 Mistakes in bids.

3414.406–3 Other mistakes disclosed before award.

(a)–(d) [Reserved]

(e) Authority is delegated to the HCA to make determinations under FAR 14.406–3(a)–(d).

PART 3415—CONTRACTING BY NEGOTIATION

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

Sec.
3415.406–3 Part II—Contract clauses.
3415.407 Solicitation provisions.
3415.413–2 Alternate II.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.
3415.506 Agency procedures.

Subpart 3415.9—Profit

3415.902 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

3415.406–3 Part II—Contract clauses.

The contracting officer shall insert the clause in 3452.215–33, Order of Precedence, in all contracts other than purchase orders. The contracting officer shall use this clause in lieu of the clause in FAR 52.215–33.

3415.407 Solicitation provisions.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–12. The solicitation provision in 3452.215–70, Release of Restricted Data, informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer shall insert the provision in 3452.215–70, in all solicitations that include a reference to FAR 52.215–12, Restriction on Disclosure and Use of Data.

3415.413–2 Alternate II.

The Department uses the Alternate II procedures in FAR 15.413–2.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.

(a)–(c) [Reserved]

(d) Each unsolicited proposal must contain the following certification:

Unsolicited Proposal Certification by Offeror

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization)

3415.506 Agency procedures.

(a) [Reserved]

(b)(1) The HCA is the contact point to coordinate the receipt and handling of unsolicited proposals.

(2) Offerors shall direct unsolicited proposals to the HCA.

Subpart 3415.9—Profit

3415.902 Policy.

(a) [Reserved]

(b) The contracting officer shall establish the profit or fee portion of the Government prenegotiation objective in accordance with 48 CFR Chapter 3, Part 315, Subpart 315.9 (Department of Health and Human Services Acquisition Regulation).

PART 3416—TYPES OF CONTRACTS

Subpart 3416.3—Cost-Reimbursement Contracts

Sec.
3416.303 Cost-sharing contracts.
3416.307 Contract clauses.

Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.
3416.603–3 Limitations.

Subpart 3416.7—Agreements

3416.701 Contract clause.
3416.702 Basic agreements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

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Subpart 3416.3—Cost-Reimbursement Contracts

3416.303 Cost-sharing contracts.

(a) [Reserved]

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract may not be charged to the Government under any other grant, contract, cooperative agreement, or other arrangement.

3416.307 Contract clauses.

(a) If the clause in FAR 52.216-7, Allowable cost and Payment, is used in a contract with a hospital, the contracting officer shall modify the clause by deleting the words "Subpart 31.2 of the Federal Acquisition Regulation (FAR)" from paragraph (a) and substituting "34 CFR Part 74, Appendix E."

(b) The contracting officer shall insert the clause in 3452.216-70, Additional Cost Principles, in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutional, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A-122.

Subpart 3416.6—Time-and Materials, Labor-Hour and Letter Contracts

3416.603 Letter contracts.

3416.603-3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the Procurement Executive executes the written determination under FAR 16.603-3.

Subpart 3416.7—Agreements

3416.701 Contract clause.

The contracting officer shall insert the clause in 3452.216-71, Negotiated Overhead Rates—Fixed, in contracts with organizations that have fixed indirect cost rates with carryforward adjustments approved by the Government agency responsible for negotiating the organization's indirect cost rates.

3416.702 Basic agreements.

(a)–(d) [Reserved]

(e) *Negotiated overhead rates.* Basic agreements may include negotiated overhead rates for cost-reimbursement contracts. If a negotiated overhead rate is included, the bases to which the rate applies and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs must also be included.

PART 3417—SPECIAL CONTRACTING METHODS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3417.2—Options

3417.207 Exercise of options.

If any provision in a contract requires that an option may only be exercised within a specified time after funds become available, the same provision must specify that the date on which funds are available means the date funds become available to the contracting officer for obligation.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.
3419.705-2 Determining the need for a subcontracting plan.
3419.708 Solicitation provisions and contract clauses.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.
3419.870 Acquisition of technical requirements.

Authority: 5 U.S.C.; 40 U.S.C. 486(c).

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

3419.705-2 Determining the need for a subcontracting plan.

Incremental funding actions must be included in determining whether an acquisition meets the dollar threshold requiring a subcontracting plan.

3419.708 Solicitation provisions and contract clauses.

(a) [Reserved]

(b) If the clause "Small Business and Small Disadvantaged Business Subcontracting Plan" (see FAR 52.219-8) must be used in a solicitation, a notification must be included in the solicitation that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.

The signing of a contract document by the Small Business Administration (SBA) may be accepted by the contracting officer as the certification under FAR 19.801(b)(1).

3419.870 Acquisition of technical requirements.

(a) *Source selection.* (1) Except where SBA selects a concern for an award under section 8(a) or under the circumstances in paragraph (a)(5) of this section, ED selects a nominee for an 8(a) award by SBA through a limited technical competition if technical aspects, methodology, or approach are of primary importance rather than price.

(2) If limited technical competition is used, the concerns to be included are decided by the contracting officer in consultation with OSDBU and the Contracting Officer's Technical Representative (COTR).

(3) (i) ED may require the concerns participating in the limited technical competition to submit written technical proposals. Otherwise, ED holds oral discussions with the participating concerns.

(ii) In a limited technical competition, cost factors may not be included in the technical proposals nor considered during technical discussions of the proposals.

(4) ED evaluates the concerns participating in a limited technical competition based on the written technical proposals or oral discussions. ED nominates, to SBA for subcontract award, the concern that the contracting officer determines to have the best technical capability to perform the contract requirements.

(5) Instead of selecting a nominee through limited technical competition, ED may nominate one 8(a) concern to SBA if that concern has exclusive or predominant capability among 8(a) concerns by reason of experience, specialized facilities, or technical competence to perform the work within the time required.

(6) Each concern nominated for a specific 8(a) requirement must be approved by OSDBU or SBA for that particular requirement before the contracting officer initiates negotiation of 8(a) award terms with the concern.

(b) *Negotiation of 8(a) award.* The contracting officer shall give all possible assistance required by SBA with respect to SBA's negotiation of an 8(a) award.

(c) *Delegated 8(a) award administration.* If SBA delegates responsibility to ED for administration of the 8(a) award, ED informs SBA of all 8(a) award modifications, progress payments, problems experienced by the subcontractor, and other pertinent matters requested by SBA.

PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3424.1—Protection of Individual Privacy

3424.103 Procedures.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3424.1—Protection of Individual Privacy

3424.103 Procedures.

(a) If the Privacy Act of 1974 applies to a contract, the contracting officer shall specify in the contract the disposition to be made of the system or systems of records upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(b) If a notice of the system of records has not been published in the Federal Register, the contracting officer may proceed with the acquisition but shall not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

The Department's regulations implementing the Freedom of Informaiton Act, 5 U.S.C. 552, are in 34 CFR Part 5.

PART 3425—FOREIGN ACQUISITION

Subpart 3425.1—Buy American Act—Supplies

3425.102 Policy.

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3425.1—Buy American Act—Supplies

3425.102 Policy.

(a) [Reserved]

(b) The HCA approves determinations under FAR 25.120(a)(4).

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

The HCA is designated to make all determinations under FAR 25.302. This authority may not be redelegated.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3427—PATENTS, DATA, AND COPYRIGHTS

Subpart 3427.4—Rights in Data and Copyrights

3427.470 Publication and publicity clause.
3427.471 Paperwork Reduction Act clause.
3427.472 Advertising of awards clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3427.4—Rights in Data and Copyrights

3427.470 Publication and publicity clause.

The contracting officer shall insert the clause in 3452.227-70, Publication and Publicity, in all solicitations and contracts other than purchase orders.

3424.471 Paperwork Reduction Act clause.

The contracting officer shall insert the clause in 3452.227-71, Paperwork Reduction Act, in all solicitations and contracts.

3427.472 Advertising of awards clause.

The contracting officer shall insert the clause in 3452.227-72, Advertising of Awards, in all solicitations and contracts other than purchase orders.

PART 3428—BONDS AND INSURANCE

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3428.3—Insurance

3428.370 Contract clause.

The contracting officer shall insert the clause in 3452.228-70, Required Insurance, in all solicitations and resultant cost-reimbursement contracts.

PART 3432—CONTRACT FINANCING

Subpart 3432.1—General

3432.170 Method of payment.

Subpart 3432.4—Advance Payments

3432.402 General.
3432.407 Interest.

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.
3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.
3432.771 Provision for incremental funding.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(C).

Subpart 3432.1—General

3432.170 Method of payment.

The contracting officer shall insert the clause in 3452.232-72, Method of Payment, in all solicitations and contracts.

Subpart 3432.4—Advance Payments

3432.402 General.

(a)–(d) [Reserved]

(e) The HCA is designated to make determinations under FAR 32.402(c)(1)(iii)(A). This authority may not be redelegated.

3432.407 Interest.

The HCA is designated to authorize advance payments without interest under FAR 32.407(d).

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following format:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase, such as error in estimate or changed conditions.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.

The contracting officer shall insert the clause at 3452.232–70, Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations, in contracts with educational institutions, hospitals, and State and local governments. Contracts with commercial and nonprofit organizations shall be subject to the legislative lobbying prohibitions contained in FAR 31.205–22 and Office of Management and Budget Circular A–122, respectively.

3432.771 Provision for incremental funding.

The contracting officer shall insert the provision in 3452.232–71, Incremental Funding, in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

Subpart 3433.1—Protests

Sec.
3433.101 Definitions.
3433.103 Protests to the agency.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.
3433.212 Contracting officer's duties upon appeal.
3433.214 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3433.1—Protests

3433.101 Definitions.

"Filed," as used in this subpart, means that a document has been received by the contracting officer, the General Accounting Office (GAO), or the General Services Administration Board of Contract Appeals (GSBCA).

3433.103 Protests to the agency.

(a)(1) Protests to ED based on alleged improprieties in any type of solicitation that are apparent before bid opening or the closing date for receipt of proposals, must be filed before bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, protests based on alleged improprieties that do not exist in the initial solicitation, but that are added later, must be filed not later than the next closing date for receipt of proposals following the addition. In other cases, protests to ED must be filed not later than ten (10) Federal Government working days after a basis for protest is known or should have been known, whichever is earlier.

(b) With the concurrence of the HCA, the contracting officer is authorized to make a determination, using the criteria in FAR 33.103(a), to award a contract before resolution of a protest.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.

The General Services Administration Board of Contract Appeals (GSBCA) is designated to hear any appeal from a final decision of a contracting officer issued pursuant to the "Disputes" clause in a contract. The rules and regulations of the GSBCA are in 48 CFR Chapter 5, Appendix B, and govern the processing of these appeals.

3433.212 Contracting officer's duties upon appeal.

The Office of the General Counsel is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the GSBCA.

3433.214 Contract clause.

The contracting officer shall use the clause in FAR 52.233–1, Disputes, with its Alternate I.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3437—SERVICE CONTRACTING

Subpart 3437.1—Service Contracts—General

Sec.
3437.102 Policy.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clauses.
3437.271 Services of consultants clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3437.1—Service Contracts—General

3437.102 Policy.

If a service contract requires one or more end items of supply, FAR Subpart 37.1 and this subpart apply only to the required services.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clause.

The contracting officer shall include the clause in 3452.237–70, Identification of Reports Under Consulting Services Contracts, in all solicitations and contracts for consulting services.

3437.271 Services of consultants clause.

The contracting officer shall insert the clause in 3452.237–71, Services of Consultants, in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3442—CONTRACT ADMINISTRATION

Subpart 3442.7—Indirect Cost Rates

Sec.
3442.705 Final indirect cost rates.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.
3442.7002 Litigation and claims clause.
3442.7003 Delays clause.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3442.7—Indirect Cost Rates

3442.705 Final indirect cost rates.

The Chief, Cost Determination Branch, Grants and Contracts Service, is delegated the authority to establish final indirect cost rates under FAR 42.705–1 and 42.705–2.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.

(a) The contracting officer shall insert the clause in 3452.242–72, Withholding of Contract Payments, in all solicitations and contracts other than purchase orders.

(b) ED may withhold contract payments if any report required to be submitted by the contractor is overdue, or if the contractor fails to perform or deliver work or services as required by the contract.

(c) The contracting officer shall notify the contractor in writing that payments are being withheld in accordance with the clause.

3442.7002 Litigation and claims clause.

The contracting officer shall insert the clause in 3452.242–70, Litigation and Claims, in all solicitations and resultant cost-reimbursement contracts.

3442.7003 Delays clause.

The contracting officer shall insert the clause in 3452.242–71, Notice to the Government of Delays, in all solicitations and contracts other than purchase orders.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

(a) It is the policy of ED that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer shall insert the clause in 3452.242–73, Accessibility of Meetings, Confesences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 3443—CONTRACT MODIFICATIONS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

3443.106 Contract clause.

The contracting officer shall insert the clause in 3452.243–70, Key Personnel, in all solicitations and resultant cost-reimbursement contracts.

PART 3445—GOVERNMENT PROPERTY

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3445.4—Contractor Use and Rental of Government Property

3445.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA shall determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

PART 3447—TRANSPORTATION

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3447.70—Foreign Travel

3447.7000 Foreign travel clause.

The contracting officer shall insert the clause in 3452.247–70, Foreign Travel, in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3452.2—Texts of Provisions and Clauses

Sec.
3452.202–1 Definitions.
3452.208–70 Printing.
3452.209–70 Organizational Conflict of Interest.
3452.215–33 Order of Precedence.
3452.215–70 Release of Restricted Data.
3452.216–70 Additional Cost Principles.
3452.216–71 Negotiated Overhead Rates—Fixed.
3452.227–70 Publication and Publicity.
3452.227–71 Paperwork Reduction Act.
3452.227–72 Advertising of Awards.
3452.228–70 Required Insurance.
3452.233–70 Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations.
3452.232–71 Incremental Funding.
3452.232–72 Method of Payment.
3452.237–70 Identification of Reports Under Consulting Services Contracts.
3452.237–71 Services of Consultants.
3452.242–70 Litigation and Claims.
3452.242–71 Notice to the Government of Delays.
3452.242–72 Withholding of Contract Payments.
3452.242–73 Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities.
3452.243–70 Key Personnel.
3452.247–70 Foreign Travel.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3452.2—Texts of Provisions and Clauses

3452.202–1 Definitions.

As prescribed in 3402.201, insert the following clause in solicitations and contracts:

Definitions (Aug 1987)

(a) The term "Secretary" or "Head of the Agency" (also called "Agency Head") means the Secretary or Under Secretary of the Department of Education; and the term "his/her duly authorized representative" means any person, persons, or board authorized to act for these officials.

(b) The term "contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(c) The term "Contracting Officer's Technical Representative" means the person representing the Government for the purpose of technical monitoring of contract performance. The Contracting Officer's Technical Representative (COTR) is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost or price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term "Department" or "ED" means the Department of Education.

(e) Except as otherwise provided in this contract, the term "subcontract" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

3452.208–70 Printing.

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

Printing (Aug 1987)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, and printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, shall not be deemed to be printing. A production unit is defined as one sheet, size 8½ by 11 inches, and one side and color only.

(End of clause)

3452.209–70 Organizational Conflict of Interest.

As prescribed in 3409.570, insert the following provision in all certifications:

Organizational Conflict of Interest (Oct 1987)

The offeror certifies that it (___) is (___) is not aware of any potential organization conflict of interest that it may have under this procurement. If the offeror is aware of any potential conflict of interest, the offeror shall submit a disclosure statement fully describing the situation. An organizational conflict of interest is as defined and illustrated in FAR 9.5.

(End of provision)

3452.215–33 Order of Precedence.

As prescribed in 3415.406–3, insert the following clause in contracts:

Order of Precedence (Aug 1987)

Any inconsistency in this contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the work statement or specification).

(b) The contract clauses (Section I).

(c) Any incorporated documents, exhibits, or attachment, excluding the work statement or specifications and the contractor's proposal, representations, and certifications.

(d) The work statement or specifications, and

(e) The contractor's proposal, as amended, including representations and certifications.

(End of clause)

3452.215–70 Release of Restricted Data.

As prescribed in 3415.407, insert the following provision in solicitations:

Release of Restricted Data (Aug 1987)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215–12, Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the

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data under the Freedom of Information Act. the Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under the Freedom of Information Act. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold nor deny access to data requested pursuant to the Act and that the Government's FOI officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to the Act; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any propose, including the release of the information pursuant to requests under the Act.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with (1) a restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.515-12, *Restriction on Disclosure and Use of Data*, or (2) a statement taking exceptions to the terms of (a) or (b) of this provision.

(End of provision)

3452.216-70 Additional Cost Principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

Additional Cost Principles (Aug 1987)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basic as the allocation of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

3452.216-71 Negotiated Overhead Rates—Fixed.

Insert the following clause in cost-reimbursement contracts as prescribed in 3416.701:

Negotiated Overhead Rates—Fixed (Aug 1987)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. If the application of the negotiated fixed rates(s) against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for that period, the greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the contracting officer or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carry-forward adjustments, if any, by the contractor and the contracting officer, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for the fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed rate or rates or to the amount of any carry-forward adjustment under this clause shall not be considered a dispute for decision by the contracting officer within the meaning of the Disputes clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates, in accordance with the terms of the Allowable Cost and Payment clause, in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the contracting officer or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the contractor and the contracting officer or the duly authorized representative, as evidenced by negotiated overhead rate agreements signed by both parties, shall satisfy the requirements of paragraphs (b), (c), (d), and (e) of this clause.

(End of clause)

3452.227-70 Publication and Publicity.

As prescribed in 3427.470, insert the following clause in all solicitations and contracts other than purchase orders:

Publication and Publicity (Aug 1987)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the Contracting Officer's Technical Representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgment shall read substantially as follows:

"This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number _____. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

(End of clause)

3452.227-71 Paperwork Reduction Act.

As prescribed in 3427.471, insert the following clause in all solicitations and contracts:

Paperwork Reduction Act (Aug 1987)

(a) The Paperwork Reduction Act of 1980 (Pub. L. 96-511) applies to contractors that collect information for use or disclosure by the Federal Government.

If the contractor will collect information requiring answers to identical questions from 10 or more people then no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Deputy Under Secretary for Management (DUSM) or his/her delegate within the Department of Education (ED) and the Office of Management and Budget (OMB).

Contractors and Contracting Officers' Technical Representatives shall be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring DUSM and OMB clearance.

(b) The contractor shall obtain the required DUSM and OMB clearance through the Contracting Officer's Technical Representative before expending any funds or making public contacts for the collection of information described in (a) above. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for DUSM and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

3452.227-72 Advertising of Awards.

As prescribed in 3427.472, insert the following clause in all solicitations and contracts other than purchase orders:

Advertising of Awards (Aug 1987)

The contractor agrees not to refer to awards issued by the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal Government or is necessarily considered by the Government to be superior to other products or services.

(End of clause)

3452.228-70 Required Insurance.

As prescribed in 3428.370, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Required Insurance (Aug 1987)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR Subpart 28.3 or by the written direction of the contracting officer. Prior written approval of the contracting officer shall be required with respect to any insurance policy the premiums for which the contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

(End of clause)

3452.232-70 Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations.

The following clause is to be used in accordance with 3432.770:

Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations (Apr 1987)

No part of any funds under this contract shall be used to pay the salary and expenses of any contractor, or agency acting for the contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

(End of clause)

3452.232-71 Incremental Funding.

As prescribed in 3452.771, insert the following provision in solicitations:

Incremental Funding (Aug 1987)

(a) Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled "Limitation of Funds" in FAR 52.232-22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for cost incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Cost clause in FAR 52.232-20 shall supersede the Limitation of Funds clause in the event the contract becomes fully funded.

(End of provision)

3452.232-72 Method of Payment.

As prescribed in 3432.170, insert the following clause in all solicitations and contracts:

Method of Payment (Aug 1987)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The contractor shall forward the following information in writing to (designated payment party) not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution:

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of that institution and its nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to (designated payment office) in writing at least 30 days before the effective date of the change. It is the contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the contractor's official authorized to provide it, as well as the contractor's name and contract number.

(End of clause)

3452.237-70 Identification of Reports Under Consulting Services Contracts.

As prescribed in 3437.270, insert the following clause in all solicitations and contracts for consulting services:

Identification of Reports Under Consulting Service Contracts (Aug 1987)

The contractor shall set forth on the cover of every report submitted pursuant to this contract the following information:

(a) Name and business address of the contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Contracting Officer's Technical Representative and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

3452.237-71 Services of Consultants.

As prescribed in 3437.271, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Services of Consultants (Aug 1987)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts," the prior written approval of the contracting officer shall be required:

(a) If any employee of the contractor is to be paid as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the

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daily rate set forth elsewhere in this contract or, if no amount is set forth, $150, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by consultant to others for performing consultant services of a similar nature.

(End of clause)

3452.242-70 Litigation and Claims.

As prescribed in 3442.7002, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Litigation and Claims (Aug 1987)

(a) The contractor shall give the contracting officer immediate notice in writing of:

(1) Any action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for a cost which is allowable under the clause entitled "Allowable Cost and Payment."

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall:

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claim (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but which the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of clause)

3452.242-71 Notice of the Government of Delays.

As prescribed in 3442.7003, insert the following clause in all solicitations and contracts other than purchase orders:

Notice to the Government of Delays (Aug 1987)

Whenever the contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the contracting officer.

(End of clause)

§ 3452.242-72 Withholding of Contract Payments.

As prescribed in 3442.7001, insert the following clause in all solicitations and contacts other than purchase orders:

Withholding of Contract Payments (Aug 1987)

Notwithstanding any other payment provisions of this contract, failure of the contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, or failure to meet any of the requirements of the contract, will result in the withholding of payments under this contract in such amounts as the contracting officer deems appropriate, unless the failure arises out of causes beyond the control, and without the fault of negligence, of the contractor, as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted. Payment will be withheld until the failure is cured, a new delivery schedule is agreed upon, or payment is made as part of a termination settlement.

(End of clause)

3452.242-73 Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities.

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (Aug 1987)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

3452.243-70 Key Personnel.

As prescribed in 3443.106(b), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Key Personnel (Aug 1987)

The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without the written consent of the contracting officer; *provided*, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect that addition or deletion personnel.

(End of clause)

§ 3452.247-70 Foreign Travel.

As prescribed in 3447.7000, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Foreign Travel (Aug 1987)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, "foreign travel" means travel outside the fifty States comprising the United States, the District of Columbia, and Canada.

(End of clause)

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Thursday
May 26, 1988

Part IV

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3372-9]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final Rule

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule revising the regulation codified in Subpart L of 40 CFR Part 86, that makes nonconformance penalties (NCPs) available for specific Federal emission standards, to include a provision which will waive payment of penalties to EPA for those heavy-duty vehicles and engines (collectively referred to as HDVs) which are certified under the Federal NCP process and are titled, registered or principally used in the State of California under a California NCP program. EPA will waive collection of the amount due under 40 CFR section 86.1113(g) provided the identical nonconformance penalty is paid to the State of California. However, EPA reserves the right to collect any penalties which have been waived if a manufacturer fails to pay the quarterly penalty to the State of California when due, or if the amount of the penalty paid to the State of California is less than that which would have been due to EPA under the regulations.

EFFECTIVE DATE: June 27, 1988.

ADDRESSES: Public Docket: Copies of material relevant to this rulemaking are contained in Public Docket Number A-87-14, Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-132), Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 am and 3:00 pm on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Tesoriero or Mr. Anthony Erb, Manufacturers Operations Division (EN-340F), Office of Mobile Sources, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-2467 or (202) 382-2536, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Section 206(g) of the Clean Air Act (Act) requires EPA to issue a certificate of conformity for HDVs which exceed a section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by EPA by regulation. Congress intended NCPs as temporary relief for manufacturers which have difficulty complying with technology-forcing heavy-duty emission standards which otherwise might force some manufacturers out of the market place.

On August 30, 1985 (50 FR 35374) EPA published a final rule promulgating the administrative aspects of the NCP program. On December 31, 1985 (50 FR 53454), EPA promulgated a final rule making NCPs available for specific emission standards taking effect in model years 1987 and 1988. The regulations are codified in Subpart L of 40 CFR Part 86. These regulations did not specifically prohibit or allow NCPs for HDVs destined for the California market. However, California regulations, at that time, did not allow for NCPs and, thus, did not allow a manufacturer to obtain a California certificate of conformity for a nonconforming vehicle or engine based on payment of an NCP to EPA.

On December 8, 1986, the Executive Director of the State of California Air Resources Board (CARB) sent to EPA a letter describing a proposed California NCP program. A copy of this letter is available in the Public Docket Number A-87-14. It pointed out that the availability of NCPs for Federal HDVs had created a disparity between California and Federal HDV requirements. Thus, unless a California NCP program were implemented, beginning with the 1988 model year,[1] fewer HDV models would be available for sale in California than in neighboring states and California consumers might be encouraged to purchase and register higher emitting HDVs in other states. Assuming this occurred, these HDVs, along with other Federally certified vehicles engaging in interstate commerce, would travel a substantial number of miles on California highways each year and contribute to emissions within the State.

The December 8, 1986 letter also stated that to address this situation, the California Legislature had enacted Assembly Bill 3683 (AB 3683). This new law authorized CARB to implement an NCP program applicable to sales of HDVs in California which do not meet CARB emission standards, but which have already been certified under the Federal NCP program, contingent upon the following factors:

(1) That Federal emission standards and test procedures applicable to the specified HDVs are identical to the emission standards and test procedures adopted by the CARB; and

(2) That it is established that payment of nonconformance penalties to the State of California may substitute for payment of nonconformance penalties to the Federal Government.

The law (AB 3683) specified that the NCPs to be established are to be identical to those established by EPA for the same HDVs. All fees collected pursuant to AB 3683 are to be deposited in the State of California Air Pollution Control Fund and will provide a mechanism for funding measures to mitigate emission increases within the State from HDVs certified under the NCP process, thereby ensuring protection of California's ambient air quality.

In the December 8, 1986 letter, the CARB requested that EPA provide assistance in establishing a California NCP program. The CARB NCP program is very similar to the Federal NCP program. For pollutants where CARB and EPA have the same standards and procedures, noncomplying HDVs could be sold for titling, registration or principal use in the State of California if the manufacturer agrees to pay an NCP and the HDV emissions do not exceed an upper limit. The penalty rates and upper limit used for the California NCP program in such cases are identical to the Federal penalty rates and upper limits. However, California will not offer NCPs for pollutants which have standards or procedures that are not identical to Federal standards and procedures.[2] Moreover, under the CARB program, NCP payment to the State of California will substitute for payment to the Federal Government for HDVs sold for titling, registration or principal use in the State of California. The NCP payments made to the State of California would be used to mitigate any resultant emission increases that would occur within California.

On January 21, 1988, EPA proposed that the regulation governing payment of Federal NCPs be amended to include a provision which would waive payment of penalties to EPA for those HDVs which are certified under the Federal NCP process and registered, titled or principally used in the State of California under a California NCP program (53 FR 1716). EPA offered to hold a public hearing on the proposal but none was requested.

II. Statutory Authority

Section 206(g) of the Act, 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for heavy-duty vehicles or engines which exceed a section 202(a) emissions standard, but do not exceed a "practicable" upper limit determined by EPA, if the manufacturer pays a nonconformance penalty (NCP), that would escalate with time, established by rulemaking.[3] The purposes of section 206(g), in general, are to encourage EPA to promulgate stringent HDV standards by giving those manufacturers unable to meet certain standards a temporary means of continuing to market nonconforming HDVs, while creating incentives for such manufacturers eventually to bring the HDVs into conformance or, ultimately, to discontinue their manufacture. Since under California's program the California NCPs and HDV standards would have to be identical to the Federal NCPs and standards for the pollutants for which NCPs are currently available, waiving payment of NCPs to EPA based on payment of identical NCPs to California would continue to carry out the purposes and intent of section 206(g). Moreover, EPA would retain authority to collect NCPs in any case in which the California NCP program did not result in the manufacturer actually paying adequate penalties to California. Thus, the amendment is within the scope of the authority granted by section 206(g).

In its comments on the proposed rule Cummins Engine Company (Cummins) expressed some concern that allowing the waiver of the Federal NCP payment when all California HDV emission standards and procedures are not yet identical to Federal emission standards and procedures would not serve the purposes of section 206(g). EPA does not agree with Cummins' comment and has addressed Cummins' concerns in the "Discussion of Final Rule and Comments" section of this regulation.

III. Discussion of Final Rule and Comments

This final rule adopts most of the provisions proposed in the NPRM for the reasons stated in that NPRM. Thus, EPA will not discuss all of the provisions of the final rule in this notice. Instead, EPA will discuss only the most significant provisions, or those that have been revised or that were addressed in the comments.

EPA is revising 40 CFR Part 86, Subpart L to waive payment of NCPs to EPA, under certain conditions, for those nonconforming HDVs which are certified under the Federal NCP process and which are titled, registered or principally used in California, and for which the manufacturers have paid NCPs to California in the same amount that EPA would have been paid. EPA reserves the right to collect a waived amount (in full or in part, as appropriate) if the manufacturer has not demonstrated either that it has paid California an amount equal to the penalty which has been assessed under the Federal NCP rule, or that the HDVs claimed to have been titled, registered or principally used in California were, in fact, titled, registered or principally used in California. Moreover, if in a later model year a manufacturer brings a previously nonconforming HDV configuration into compliance with the standards and certifies that HDV configuration, EPA will be responsible only for a portion of the refund (if any) to the manufacturer of the engineering and development component of the penalty. EPA's portion of the refund will be proportional to the amount of the NCP payment for HDVs of that configuration paid to EPA.

During the time that was available for public comment on the NPRM, only three organizations provided written comments. All three are vehicle or engine manufacturers.

The Chrysler Corporation supported the revisions as proposed and recommended a speedy publication of the final rule so that the California NCP program could be implemented without delay.

General Motors Corporation (GM) supported the revision and stated it is extremely interested in the implementation of the California NCP program as quickly as possible so that existing market demand can be satisfied. However, GM also stated its concern that proposed language requirements for a specific emissions label statement on California nonconformance engines and vehicles would be unnecessarily restrictive. GM believes that its current product ordering and production system efficiently differentiates between any engines or vehicles that are built to be introduced in commerce in California and those built to be introduced only in the other 49 states. GM requested that the proposed labeling requirement be modified to allow approval of alternative processes to demonstrate separation of California and 49-state NCP engines and vehicles. In the Proposed Action section of the NPRM, EPA stated that other forms of demonstration of the HDV destination could be acceptable. However, in the proposed regulatory language EPA failed to include a provision permitting alternative demonstrations. Thus, in response to GM's comment a provision has been made in the final rule to allow for manufacturers to make such a demonstration in lieu of using the suggested label language.

An example for an alternative system that could be approved would be one in which the manufacturer clearly informs its distributors and dealers in writing of the guidelines used to determine whether it is appropriate to sell a HDV to a customer for titling, registration or principal use in California or in the other 49-states and the manufacturer has an established communication link with the distributor or dealers through which it can receive feedback to determine that appropriate decisions are being made as to the sale of California or 49-state HDVs.

Moreover, upon consideration of GM's comments, EPA also has determined that the proposed labeling requirement could have unnecessarily restricted the waiver of NCP payment to only those HDVs delivered to dealers in California. In the NPRM, EPA proposed that it would waive payment of NCPs to EPA for those HDVs which were certified under the Federal NCP process and which "entered into commerce in the State of California" under a California NCP program. After further review, EPA has determined that the phrase, "entered into commerce in the State of California" could have been construed in an overly restrictive way to preclude waivers of NCP payments where prospective purchasers have a legitimate need to take delivery of a California HDV outside of California. Such a case could exist where a business established in a state other than California desires to purchase an HDV which will be titled, registered or principally used in California. Under such circumstances, it may be appropriate to deliver a California-designated HDV outside of California. Thus, to avoid any potential confusion,

[1] There was no need for a California NCP program for the 1987 model year since Title 13 of the California Administrative Code, Section 1956.7 allowed manufacturers that had certified for California in 1986, to carry forward that certification to the 1987 model year.

[2] For the 1988 and 1989 model years, the only difference between the Federal and California standards for Heavy-Duty Engines is for oxides of nitrogen (NOx). The Federal NOx standard is 10.7 grams per brake horsepower hour (g/BHP-hr) and the California NOx standard is 6.0 g/BHP-hr for these years. Beginning in 1990 and for later model years, the Federal and California NOx standard will be the same.

[3] Section 206(g) of the Act does not expressly require that NCPs be paid to EPA.

the phrase, "* * * entered into commerce in the State of California * * *" in the NPRM has been revised and clarified in the appropriate sections of the Final Rule to read, "* * * which are titled, registered or principally used in the State of California."

The Cummins Engine Company (Cummins) made several comments concerning this rulemaking. Cummins questions the authority of the CARB to adopt an NCP program unless CARB, "has adopted emission standards and test procedures which are identical to the corresponding Federal emission standards and test procedures." Cummins also stated its belief that the granting of a waiver of Federal preemption by EPA to CARB for collection of NCPs would be inappropriate unless CARB agrees to adopt a program which is totally consistent with EPA's. Further, Cummins stated that the changes proposed in section 86.1113–87(h)(iii) would require that EPA make an independent decision as to whether CARB has the statutory authority to adopt NCPs as proposed. The specific language in the NPRM stated, "Such a waiver of preemption would be applicable only if the Administrator finds that: (A) California has adopted emission standards and test procedures for heavy-duty vehicles or engines which are identical to the corresponding Federal emission standards and test procedures for which NCPs are available, (B) California has adopted nonconformance penalty fees, requirements and other procedures identical to corresponding Federal nonconformance penalty fees, requirements and other procedures, and (C) all criteria for a waiver under section 209(b) have been met."

Cummins also expressed concern regarding whether the proposed rule was consistent with the intent of section 206(g).

As explained below, Cummins' concerns regarding the authority of CARB to adopt an NCP program are beyond the scope of this rulemaking. Cummins' claim that EPA should not grant a waiver of Federal preemption under section 209(b) of the Clean Air Act for CARB's NCP program, unless EPA independently determines that California's HDV emission standards and NCP program are identical in every respect to the Federal HDV emission standards and NCP program, is not appropriate in the context of this section 206(g) rulemaking. However, Cummins' argument would be appropriate, and will be considered, in the context of EPA's separate proceeding under section 209(b) to determine whether CARB's NCP program is entitled to a waiver of preemption or is within the scope of a previous preemption waiver.[4]

Upon review of Cummins' comment and the proposed revisions to section 86.1113–87(g)(1)(iii), EPA believes that the proposal itself may have caused some confusion by suggesting that EPA would determine whether CARB's NCP program is subject to a waiver from preemption based, in part, on whether California's standards and NCP procedures are identical to Federal standards and NCP procedures. Such a consideration would be appropriate, if at all, in the context of a separate section 209(b) proceeding. This rulemaking, by contrast, should be and is limited to establishing whether and how to waive payment of NCPs under section 206(g). Thus, this final rule clarifies the scope and purpose of this rulemaking by deleting any reference to the criteria for granting a preemption waiver from revised section 86.1113–87(g)(1)(iii). Of course, the existence of an applicable 209(b) preemption waiver (if not the grounds for granting one) is a legitimate criterion for determining whether to waive NCP payments, as stated in the NPRM and adopted in this Final Rule.

Regarding Cummins' concerns about whether this rule is consistent with the intent of section 206(g), the proposed rule stated "waiving payment of NCPs to EPA based on payment of identical NCPs to California will continue to carry out the purpose and intent of section 206(g)." Cummins commented that it believes, "California use of Federal NCPs without [complete] alignment between California and Federal standards and on a pollutant-by-pollutant basis would be inconsistent with the intent of the NCP program." Cummins bases this comment on its belief that "the Federal NCP program and schedule reflects . . . a balancing of costs and technology trade-offs designed to encourage conformance with all standards while not creating competitive disadvantages for those manufacturers that conform to all of the standards."

EPA disagrees with Cummins' conclusions. Under the present circumstances, for the 1988 and 1989 model years, EPA does not believe that manufacturers of complying vehicles will be at a competitive disadvantage or that there will be a disincentive to conformance with emission standards if California does not align all of its HDV standards with Federal standards and limits its NCP program to only those pollutants for which California and Federal standards are identical.

NCPs were developed to cope with the situation where manufacturers faced different costs to comply with technology-forcing standards. Section 206(g) contemplated that it would be initially less costly for some technological laggard manufacturers to pay NCPs than to comply with standards. Thus, the NCP penalty rates are devised so that it could be cost effective, on a temporary basis, for a technological laggard to pay an NCP, whereas it would not be cost effective for such a manufacturer to build a complying engine. Other manufacturers who are capable of developing technology, however, may find it more cost effective to build complying engines.

In its comments Cummins seems to assume that for all manufacturers it would be less expensive to pay an NCP rather than develop the technology to comply with emission standards. For the reasons stated above, EPA does not believe this is a valid assumption.

Even if EPA accepted Cummins' argument, currently all CARB and Federal heavy-duty engine emission standards, except for 1988–1989 model year oxides of nitrogen (NO_x) standards, are identical. Therefore, the only pollutants which could cause Cummins concern are NO_x and particulates (in that there is a possibility of trading off particulate emissions to achieve additional NO_x control.)

The Federal and California NCP programs will not permit NCPs for NO_x in the 1988 and 1989 model years. Thus, the NO_x NCP penalty rate is not an issue in the decision of whether or not to waive Federal collection of the NCP payment if an NCP payment has been made to California because manufacturers will not have the option of paying an NCP for HDVs which exceed the NO_x standard.

The Federal program will permit payment of an NCP for HDVs that exceed the particulate standard. However, California has decided not to permit payment of an NCP for HDVs that exceed the particulate standard. Even if California did permit the payment of NCPs for HDVs that exceeded the particulate standard, the Federal NCP penalty rate for particulates was developed assuming a 0.6 gram per brake horsepower hour (g/BHP-hr) particulate standard (the current Federal and California particulate standard) and a 6.0 g/BHP-hr NO_x standard (the applicable Federal NO_x standard at the time the particulate penalty rate was developed [5] and the current California NO_x standard). Thus, Cummins' suggestion that the temporary discrepancy between the California and Federal NO_x standards somehow changes the technological and economic factors underlying the Federal NCP rate for particulates is factually incorrect. Therefore, it would not be inappropriate to apply the Federal particulate NCP penalty rate to California vehicles which exceed the particulate standard. However, at this time, this is essentially an academic issue since California does not now intend to allow NCPs for, and thus they will not certify for sale in California, any HDVs that exceed the particulate standard.

Based on the reasoning described above, EPA believes that waiving payment of pollutant-specific NCPs to EPA based on payment of identical NCPs to California carries out the purpose and intent of section 206(g).

[4] This is not to say that EPA agrees with Cummins' comment that CARB's proposed NCP program would exceed CARB's statutory authority or that EPA should not defer to CARB's assessment of its own authority.

IV. Impacts of the Final Rule

A. Economic Impact

Because the use of NCPs is optional, manufacturers have flexibility to choose whether or not to use NCPs for California HDVs based on their ability to comply with emission standards. If manufacturers elected not to use NCPs to introduce HDVs into California, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

The use of NCPs may provide some direct cost savings to HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer that desires to market in California and has difficulty certifying HDVs in conformance with emission standards, or fails an emissions audit, has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost; or refrain from selling such engines or vehicles for titling, registration or principal use in the State of California. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and market HDVs in California upon payment of a penalty for each HDV that exceeds the standard until emissions conformance is achieved.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only way to continue to sell HDVs for titling, registration or principal use in California. Hence, this rule may be considered to have a favorable economic impact on some manufacturers.

The CARB has pointed out that many of the HDVs marketed in California are incomplete vehicles and are completed by secondary manufacturers based on specific customer needs. Without California NCPs, these secondary manufacturers and their customers within the State of California will likely suffer adverse economic impacts due to the inability of the primary manufacturer to deliver the required HDVs and the resulting inability of the secondary manufacturers within the State of California to produce the product the consumers require.

B. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used for HDVs marketed in California.

If manufacturers are able to market all their engines in California without using NCPs, all HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the Federal rulemakings that established the emission regulations will not be affected.

If some manufacturers do elect to participate in the NCP program, some HDVs will be marketed in California that will be emitting pollutants above applicable standards. However, Congress contemplated such a possibility when it mandated that EPA provide Federal NCPs. The magnitude of this reduced environmental benefit is proportional to the number of HDVs subject to NCPs and their degree of nonconformance; the upper limits on the availability of NCPs exclude gross emitters from being introduced into commerce. In previous rulemakings concerning NCPs, EPA estimated that an NCP would not be used for more than 10 percent of the HDVs for which NCPs are available in the first year that they were available and that they would be used for less than one percent in the third year. These percentages are not expected to be different for the State of California. The long-term environmental impact from NCP usage is expected to be very small, if any, due to the high penalty rates and the annual adjustment factor that rapidly increases penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit generally refers not to an increase in emissions from previous levels, but from levels that would otherwise occur from tightened emission standards without NCPs.

Further, the NCP payment to the State of California will be used to mitigate any emission increases that occur as a result of NCPs. This may lead to some improvement over the potential situation wherein consumers, in order to meet their specific vehicle needs, may purchase nonconforming vehicles certified under the existing Federal NCP process in bordering states for primary use on California roadways.

Because the emission impacts of the NCPs in the State of California are anticipated to be very small, compared to the total emissions of California HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air quality impact analysis has been made regarding this rule.

V. Compliance with Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Administrator is required to prepare a regulatory flexibility analysis or to certify that this regulation would not have a significant economic impact on a substantial number of small business entities. None of the affected HDV primary manufacturing entities meet the requirements for classification as a small business. Moreover, as already discussed, the NCP waiver program can be expected to have salutary effects on manufacturers, both primary and secondary. Thus, I certify that this rule would not have a significant adverse impact on a substantial number of small entities.

VI. Administrative Designation

Under Executive Order 12291, the Administrator has determined that this regulation is not "major" and therefore not subject to the requirement of a draft Regulatory Impact Analysis.

(A) The NCP waiver program for the California HDVs would not result in an annual adverse effect on the economy of $100 million or more. NCPs, in general, merely provide a temporary, economically viable, alternative to other possible actions at least as costly as NCPs that may be utilized when a manufacturer is unable to comply with a

[5] When the Federal NCP rules were finalized, EPA had promulgated a 6.0 g/BHP-hr NO_x standard to take effect in May 1988. Subsequently, pursuant to a court order the 6.0 NO_x standard was deferred until May 1990.

standard. This concept was discussed in the Economic Impact section.

(B) This waiver program will not result in adverse cost or price impacts above those that would otherwise occur from compliance with the emission standards themselves.

(C) This waiver program will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Final Rulemaking has been submitted to the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and any EPA written response to those comments are available for inspection in the public docket for this rulemaking.

VII. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2060–0132.

VIII. Judicial Review

This rulemaking is a final Agency action within the meaning of section 307(b) of the Clean Air Act. Under section 307(b), judicial review of this action is available only in the appropriate federal court of appeals upon filing of a petition for review within 60 days of the date of publication of this Federal Register notice. Review may not be obtained in any subsequent proceeding to enforce these regulations.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Section 202, 203, 206, 207, 208, 215 and 301(a) of Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

Dated: May 20, 1988.

Lee M. Thomas,

Administrator.

TABLE OF CHANGES

Section	Change	Reason
1. Part 86, Authority	Add cites	Clarification.
2. Section 86.1113–87:		
(a)(4)	Amend paragraph to redefine terms to include California-designated engines and vehicles	Do.
(g)(1)	Amend paragraph to provide for the waiver of a portion of the NCP payment due to EPA each quarter equal to the amount a manufacturer pays to California. Formula to calculate waived amount is presented. Addition of requirement that "California only" designation be added to emission label or that manufacturers develop an alternative method which will be approved by EPA demonstrating that engines or vehicles will be registered, titled or principally used in California.	Do.
(g)(3)(i)	Amend paragraph to provide for manufacturer's submittal of information documenting introduction into commerce for the State of California and payment of NCPs to California.	Do.
(h)	Amend paragraph to provide for refund of a portion of the engineering and development component of the penalty when such is applicable to reflect that EPA responsibility will be limited only to that portion of vehicles or engines for which NCPs were paid to EPA.	Do.

PART 86—[AMENDED]

For the reasons set forth in the preamble, Part 86, Subpart I, Chapter 1 of the Title 40, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 86 is revised to read as follows:

Authority: Sections 202, 203, 206, 207, 208, 215, 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

2. In § 86.1113–87 of Subpart I, paragraphs (a)(4), (g)(1), (g)(3) (i), and (h) are revised to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

(a) * * *

(4) The terms in the above formulas have the following meanings and values, which may be determined separately for each subclass and pollutant for which an NCP is offered. The production of Federal and California designated engines or vehicles shall be combined for the purpose of this section in calculating the NCP for each engine or vehicle.

NCP_n = NCP for year n for each applicable engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by section 86.1104–87, except that, if the upper limit is determined by section 86.1104–87(c), the value of UL in paragraph (a)(2) of this section shall be the prior emission standard for that pollutant.

UL' = Upper limit as determined by section 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which NCP_i equals COC_{ce}

$$X = \frac{COC_{ce}}{(F)(MC_{ce})} + S$$

PR_1 = Penalty rate when CL<X

PR_2 = Penalty rate when X<CL<applicable upper limit

$\prod_{i=1}^{n} AAF_i$ = Running product, i.e., $(AAF_1)X(AAF_2)X \ldots X (AAF_n)$

i = An index representing a year. It represents the same year for both Federal and California designated engines or vehicles of the same production model year.

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n=1 for the first year that the NCP is available, and so on until n=n for the nth year that the NCP is available). The factor "n" is based on the model year the NCP is first available, as specified in section 86.1105–87 for the engine or vehicle subclass and pollutant for both Federal and California designated engines and vehicles.

COC_{ce} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit.

COC_{ce} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit.

MC_{ce} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard.

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3).

AAF_i = Annual adjustment factor for year i, $frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (year i-1).

A_i = Usage adjustment factor in year i: $A_i = 0.10$ for $i = 2$; $A_i = 0.06$ for $i > 2$.

I_i = Percentage increase in overall consumer price index in year i.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the nonconformance penalty or penalties assessed under this subpart must be paid as follows:

(i) By the quarterly due dates, i.e., within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter.

(ii) The penalty shall be payable to U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251, except as provided in paragraph (iii).

(iii) Payment of a portion of the amount due each quarter under this section for any vehicle(s) or engine(s) is waived equal to the amount which the manufacturer has paid the State of California as a nonconformance penalty for nonconforming vehicle(s) or engine(s) titled, registered or principally used in the State of California, provided a waiver of Federal preemption under section 209(b) of the Clean Air Act permitting the State of California to collect NCPs for those vehicle(s) or engine(s) is approved by the Administrator. The nonconformance penalty for which payment is waived by EPA and due to the State of California shall be payable in accordance with California regulations and is calculated for each engine or vehicle subclass as follows;

$W_{q,n} = (Cal_{q,n})(NCP_n)$

where:

n = Index representing the number of model years for which the NCP has been available (same as "n" in paragraph (a)(4).

q = calendar quarter for which an NCP payment is due.

$W_{q,n}$ = waivered portion of the NCP payment for calender quarter q of year n.

$Cal_{q,n}$ = number of engines or vehicles of the subclass titled, registered or principally used in the State of California during calendar quarter q of year n.

NCP_n = the NCP for year n for the subclass (same as "NCP_n" in paragraph (a) (4)).

(iv) EPA reserves the right to collect any nonconformance penalties previously waived under paragraph (g)(1)(iii) if:

(A) The manufacturer has not adequately demonstrated that it has paid the amount due to California for any quarter; or

(B) The payment by the manufacturer to California is less than that which would be due to EPA for the number of HDVs titled, registered or principally used in California in that quarter; or

(C) The manufacturer has not adequately demonstrated that all vehicles claimed to have been titled, registered or principally used in the State of California were in fact titled, registered or principally used in the State of California.

(v)(A) In the situation described in paragraph (g)(1)(iv)(A), EPA reserves the right to collect the entire NCP amount assessed under this Subpart.

(B) In the situations described in paragraphs (g)(1)(iv)(B) and (C), EPA reserves the right to collect the difference between the amount that is due to EPA for the vehicles in question and the lesser amount (if any) paid to the State of California.

(C) A statement on the emissions label required under Subpart A of 40 CFR Part 86 that the engine or vehicle is designated for title, registration or principal use only for the State of California will constitute adequate demonstration that the engine or vehicle was titled, registered or principally used in the State of California, for the purpose of this section. Other forms of demonstration that a vehicle was titled, registered or principally used in the State of California would be acceptable if the manufacturer submits a request for approval of an alternative demonstration plan to the Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN–340F, Washington, DC 20460, and if that request is approved prior to the production of such vehicles.

* * * * *

(g)(3)(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, identification and quantity and proof of title, registration or principal use in the State of California for any engines or vehicles subject to California NCPs and documentation of the NCP paid to the State of California under paragraph (g)(1)(iii) of this section, certificate identification (number and date), and NCP payment calculations, if applicable.

* * * * *

(h) A manufacturer that certifies as a replacement for the nonconforming configuration, a configuration that is in conformance with applicable standards, and that performs a production compliance audit (PCA) in accordance with § 86.1112–87(a) that results in a compliance level below the applicable standard, will be eligible to receive a refund of a portion of the engineering and development component of the penalty. The engineering and development component will be determined by multiplying the base penalty amount by the engineering and development factor for the appropriate subclass and pollutant in § 86.1105–87. The amount refunded will depend on the model year in which the certification and PCA take place. In cases where payment of penalties have been waived by EPA in accordance with paragraph (g)(1)(iii) of this section, EPA will refund a portion of the engineering and development component. The proportionate refund to be paid by EPA will be based on the proportion of vehicles or engines of the nonconforming configuration for which NCPs were paid to EPA. The refund is calculated as follows:

$R_{tot} = D_n \times F_{E\&D} \times NCP_1 \times Prod_{tot}$

$R_{Cal} = (Prod_{Cal}/Prod_{tot}) \times (R_{tot})$

$R_{EPA} = R_{tot} - R_{Cal}$

Where:

n = index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n=1 for the first year that NCPs are available, . . . , n=n for the n^{th} year the NCPs are available; same as "n" in paragraph (a)(4)).

D_n = discount factor depending on the number of model years (n) for which NCPs were available at the time of certification and PCA of the replacement configuration, and its value is as follows:

$D_1 = 0.90$

$D_2 = 0.79$

$D_3 = 0.67$

$D_4 = 0.54$

$D_5 = 0.39$

$D_6 = 0.23$

$D_7 = 0.05$

$D_n = 0.00$ for n = 8 or larger

$F_{E\&D}$ = the engineering and development factor specified in section 86.1105–87 for the appropriate subclass and pollutant

NCP_1 = the penalty for each engine or vehicle during the first (base) year the NCP is available as calculated in paragraph (a)

$Prod_{sub}$ = total number of engines or vehicles produced in the subclass for which NCPs were paid to EPA or to the State of California

$Prod_{Cal}$ = number of engines or vehicles in the subclass demonstrated to have been titled, registered or principally used in the State of California and for which NCPs were paid to the State of California under paragraph (g)(1)

R_{tot} = Total refund due to the manufacturer for the engineering and development component of the NCP

R_{Cal} = Refund due to the manufacturer from the State of California for the engineering and development component of the NCP

R_{EPA} = Refund due to the manufacturer from EPA for the engineering and development component of the NCP.

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Part V

Department of Education

34 CFR Part 776

Library Career Training Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 776

Library Career Training Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary is issuing final regulations for the Library Career Training Program. These final regulations will give the Secretary the flexibility to select priorities for the program from among those cited in the regulations. This flexibility will allow the program to be more responsive to the changing needs for library training. Additionally, the amount of allowable costs for the participants in training projects is increased, and the existing regulations are revised to conform with the Department's current requirements regarding the style and format of regulatory documents.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of the regulations, write or call the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue NW., Washington, DC 20208–1430. Telephone: (202) 357–6315.

SUPPLEMENTARY INFORMATION: Under the Library Career Training Program funds are awarded to institutions of higher education and to library organizations or agencies for the purpose of training persons in librarianship. The training is carried out through full-time, year-long fellowships at institutions of higher education or through short or long-term institutes or traineeships conducted by institutions of higher education or other library organizations or agencies. A fellowship is awarded to a person who is or will be enrolled in a graduate or undergraduate program in librarianship. An institute provides persons with skills needed to enter the library and information science field or provides library and information science personnel with an opportunity to strengthen their competencies. A traineeship provides individualized insruction designed to meet the particular needs of mid-level professionals, usually through an internship. In all cases, the award is made to the institution, organization, or agency; it, in turn, selects the individual participants.

On December 14, 1987, the Secretary published a notice of proposed rulemaking for this program in the Federal Register (52 FR 47538). The regulation changes were designed to allow the Secretary to establish priorities for the program that would accurately reflect the training needs of the library community and prepare librarians for service where qualified professional shortages are critical. In addition to this change, the Secretary has increased the amount of allowable costs for participants and added a definition of "disadvantaged" as it applies to this program. Finally, the regulations are revised to conform with the Department's current requirements regarding the style and format of regulatory documents.

Analysis of Comments and Changes

In responses to the Secretary's invitation in the NPRM, 23 parties submitted comments on the proposed regulations. An analysis of the comments on the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section headings of the regulations to which they pertain. Technical and other minor changes are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification on the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 776

Fellowships, scholarships, traineeships, Higher Education Act–library training, Library training, Libraries, Library and information science education, Library training, fellowships, Library training, scholarships, Reporting and recordkeeping requirements.

Dated: May 10, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.036, Library Career Training)

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Responses

The following is an analysis of comments concerning the NPRM. Substantive issues are discussed under the section headings of the regulations to which they pertain. Technical and other minor changes are not addressed.

Priorities the Secretary May Establish

Comment: The Secretary received 22 comments on the proposed deletion of the language that cited the training and professional advancement of traditionally underrepresented groups as an objective of the program. The commenters opposed the change and suggested that the language be reinstated. Two commenters indicated concern about the decline in the number of minorities graduating from American Library Association (ALA) accredited library education programs, which they believe would be aggravated by the proposed deletion. Two others cited reduced funding for training for minorities from other sources as a reason that continued support from Title II–B is needed. Five commenters stated that the recruitment of minority students for master's degrees in Library Science is essential in order to provide leadership throughout the library profession and suitable outreach services to the varied local communities.

One commenter wholeheartedly supported the establishment of the priorities in order to allow the Secretary and the program to be more responsive to increasing and ever-changing areas of need.

Two commenters, one of them speaking for the membership of the American Library Association, noted that there is nothing in the statute, either previously or in the Higher Education Amendments of 1986, which allows for the establishment of priorities by the Secretary as proposed in § 776.5(a). They suggested that the introductory clause in § 776.5(a) be restated to encourage applicants to "design projects that will address one or more of the following priorities" and to include the training of underrepresented groups as one of these priorities.

Discussion: The enabling legislation provides sufficient flexibility to permit the Secretary to establish a list of activities and annual priorities. Establishing program priorities is consistent with the Education Department General Administrative Regulations (EDGAR), which became effective on January 14, 1981. Section 75.105 of Part 74, Code of Federal Regulations, EDGAR, authorizes the Secretary to establish priorities for any discretionary program. For this program, the Secretary has defined six broad categories as priorities. These priorities will provide a strong base for the continued development of library science training and better preparation of participants for professional careers as leaders in their particular areas of study.

With respect to the expressed concern about the decline in the number of minorities graduating from ALA-accredited library schools, the Secretary will endeavor to select for funding those applications whose proposed projects are most responsive to the critical training needs of the library community. The Secretary believes that an award under this program provides an incentive to the grantee to recruit the best possible participants. The Secretary presumes that the recommended slate will include a number of ALA-accredited schools and that the participants selected will include minority persons.

Change: None.

Comment: The commenters favored the attention to areas of specialization and target groups in § 776.5(a)(1) and (a)(6). They agreed that reduced funds mandate the concentration of attention on the areas of critical need. One commenter however, suggested that a clarification of "disadvantaged" in § 776.5(a)(6) is needed, as this term does not adequately cover the needs of ethnic and racial minority populations which are newer to the United States and are increasing in size.

Discussion: The Secretary concurs with the commenters and, for this program, is attempting to provide maximum flexibility in meeting critical library and information needs. The areas which have been identified by the Secretary are lacking in the numbers of the qualified personnel needed to meet the information service requirements of the varied society in which we live.

For purposes of this program and to maintain consistency with other library programs, the term "disadvantaged" refers to persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefitting from library services to the same extent as the general community benefits from these services. The Secretary feels this adequately covers the varied minority and other special groups for which library service has become critical.

Change: The term "disadvantaged" and its definition have been added to § 776.7.

Allowable Costs for Participants

Comments: All of the commenters had positive responses to the increase in the amounts of stipends noted in § 776.30 which they felt would make their fellowship programs more attractive to talented applicants. However, several commenters suggested that part-time students be included in this program, with appropriate stipends. This would allow greater opportunity and flexibility for promising students whose circumstances would not allow full-time study, even with fellowship assistance.

Discussion: The Secretary makes no special provision for part-time students in the program. The Department's policy is to adhere to the accepted common practice of the applicant institutions that requires a fellowship recipient to complete a course of study in one academic year plus one summer.

Change: None.

Restrictions on stipend levels

Comment: A commenter, speaking on behalf of the American Library Association, sought clarification of the wording in § 776.32 which states that Pell Grant funds will be deducted from a Library Career Training award and questioned whether the Pell Grant amount is to be subtracted in all cases or only if the student actually receives the Pell Grant.

Discussion: Pell Grants are awards to undergraduates to assist in paying for their postsecondary education. The Pell Grant deduction, therefore, would only apply to the fellowship recipient in the undergraduate category, and only if the student actually receives a Pell Grant. There was no intention to imply that a standard amount would be deducted from every II–B recipient.

Change: None.

Funds available

Comment: Several comments were made concerning the lack of sufficient funds for the program overall. The commenters felt that an appropriation of less than one million dollars is severely inadequate to cover the increasing demand for fellowships, traineeships and institutes.

Discussion: The Title II–B program is designed to assist in providing fellowship and training funds for talented students who require financial aid. The dollar amount of the appropriation is outside the scope of these regulations.

Change: None.

The Secretary revises Part 776 of Title 34 of the Code of Federal Regulations to read as follows:

PART 776—LIBRARY CAREER TRAINING PROGRAM

Subpart A—General

Sec.
776.1 What is the Library Career Training Program?
776.2 Who is eligible for an award?
776.3 Who is eligible to participate in a project?
776.4 What activities may the Secretary fund?
776.5 What priorities may the Secretary establish?
776.6 What regulations apply?
776.7 What definitions apply?
776.8 What is the duration of a project?

Subpart B—How Does One Apply for an Award?

776.10 What requirements apply to all applicants for fellowships, institutes, and traineeships?

Subpart C—How Does the Secretary Make an Award?

776.20 How does the Secretary evaluate an application?
776.21 What selection criteria does the Secretary use to evaluate an application for a fellowship?
776.22 What selection criteria does the Secretary use to evaluate an application for an institute?
776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship?

Subpart D—What Conditions Must Be Met After an Award?

776.30 What are the allowable costs for participants?
776.31 What are the restrictions on costs for participants?
776.32 What are the allowances for assistance under other Federal programs?
776.33 What requirements govern the removal, withdrawal, and substitution of participants?
776.34 What agencies must be informed of activities funded by this program?

Authority: 20 U.S.C. 1021, 1031, 1032, unless otherwise noted.

Subpart A—General

§ 776.1 What is the Library Career Training Program?

The Secretary awards grants under the Library Career Training Program to—

(a) Train or retrain persons in librarianship through fellowships, institutes, or traineeships; and

(b) Establish, develop, and expand programs of library and information science, including new techniques of information transfer and communication technology.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.2 Who is eligible for an award?

Eligible applicants are—

(a) Institutions of higher education; and

(b) Library organizations and agencies.

(Authority: 20 U.S.C. 1032)

§ 776.3 Who is eligible to participate in a project?

In order to be selected by a grantee as a participant in a project, an individual must—

(a)(1) Be a United States citizen or national;

(2) Provide evidence from the United States Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b) Be engaged in or preparing to engage in a profession or other occupation involving library or information science; and

(c) Meet the selection criteria of the grantee.

(Authority: 20 U.S.C. 1032)

§ 776.4 What activities may the Secretary fund?

A grantee may conduct one or more fellowship projects, institute projects, and traineeship projects with funds under this program.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.5 What priorities may the Secretary establish?

(a) The Secretary may give priority to applications that propose one or more of the following:

(1) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

(2) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

(3) To increase excellence in library leadership through advanced training in library management.

(4) To increase excellence in library education by encouraging study in librarianship and related fields at the doctoral level.

(5) To provide advanced training in the development, structure, and management of new library organizational formats, such as networks, consortia, and information utilities.

(6) To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

(b) The Secretary established priorities by publishing a notice in the **Federal Register**, in accordance with 34 CFR 75.105.

(Authority: 20 U.S.C. 1032)

§ 776.6 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 776.

(Authority: 20 U.S.C. 1021)

§ 776.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract (includes definition of Subcontract)
Department
EDGAR
Grant
Grantee
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Dependent" means a spouse or other person who receives more than half of his or her support from a participant during the course of a project conducted under this program, or any person identified as a personal exemption on a participant's income tax return for the calendar year preceding the year in which the participant is enrolled in the project.

"Disadvantaged" refers to those persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from library services to the same extent as the general community benefits from these services.

"Fellowship" means an award of financial assistance to an individual who has been accepted for admission to an institution of higher education and who is or will be enrolled full-time in a graduate or undergraduate program of library and information science, working toward or completing the requirements for a specific degree in some aspect of librarianship.

"Institute" means a specialized long-term or short-term group training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Has an innovative curriculum; and

(3) Either provides persons with the skills needed to enter the library and information science field or provides library and information science personnel—including library educators—an opportunity to strengthen or increase their knowledge and skills.

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Act.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

"Library organization or agency" means a public or private organization or agency that provides library services or programs.

"Participant" means a person who is enrolled in a training project funded under this part.

"State agency" means the State agency designated under section 1203 of the Act.

"Traineeship" means a training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Is designed to meet the individual needs of mid-level library and information science professionals; and

(3) Provides individualized instruction, usually through an internship.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.8 What is the duration of a project?

(a) A fellowship or long-term institute project must provide at least one academic year but not more than 12 months of training.

(b) A short-term institute project must provide at least one week but no more than six weeks of training.

(c) A traineeship project may not exceed 12 months.

(Authority: 20 U.S.C. 1021, 1032)

Subpart B—How Does One Apply for an Award?

§ 776.10 What requirements apply to all applicants for fellowships, institutes, and traineeships?

(a) An applicant shall submit separate applications for fellowship, institute, and traineeship projects.

(b) An applicant shall submit separate applications for fellowships at the bachelor's, master's, post-master's, and doctoral levels.

(c) An applicant may request any number of fellowships.

(d) An applicant shall specify the amount to be paid to participants as stipends.

(Authority: 20 U.S.C. 1021, 1032)

Subpart C—How Does the Secretary Make an Award?

§ 776.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.21 and awards up to 100 possible points for these criteria.

(b) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.22 and awards up to 100 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.23 and awards up to 100 possible points for these criteria.

(d) The maximum score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1032)

§ 776.21 What selection criteria does the Secretary use to evaluate an application for a fellowship?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The project objectives are clearly stated, realistic, and satisfy a current training need;

(3) The required courses meet standards that are recognized by the library and information science profession; and

(4) The student field experience component (if included) is well designed.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(2) The quality of the design of the project;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) How well the objectives of the project relate to the purpose of the program; and

(5) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of selecting participants, including—

(1) Conformance with program priorities; and

(2) Evidence that admissions standards for participants are comparable to those for other students admitted to the library education program.

(e) *Applicant characteristics.* (20 points) The Secretary reviews each application to determine the applicant's commitment to library and information science education, including—

(1) The adequacy of the description in the applicant's catalog of the specific library education program in which participants will be enrolled;

(2) The extent to which the amount the applicant spends per student for education in librarianship is comparable to that of other education programs;

(3) The extent to which the ratio of degrees awarded to total enrollment in the applicant's library education program is comparable to that of other library education programs;

(4) The extent to which the ratio of requested fellowships to other fellowships and scholarships in librarianship supported by the applicant is comparable to that of other library education programs; and

(5) The extent to which the academic level of the project is appropriate to the applicant's capabilities or experience.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(h) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.22 What selection criteria does the Secretary use to evaluate an application for an institute?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The subject matter of the project is significant, timely, well described, appropriate for an institute, and is not duplicated in the applicant's regular curriculum;

(3) The project duration is appropriate for presenting the subject matter;

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(4) The project content satisfies rigorous educational standards;
(5) The blend of theoretical and practical training is suitable to the subject matter and the needs of the participants; and
(6) The training methods are innovative and imaginative.
(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—
(1) The quality of the design of the project;
(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;
(3) How well the objectives of the project relate to the purpose of the program; and
(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.
(c) *Quality of key personnel.* (15 points)
(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—
(i) The qualifications of the project director (if one is to be used);
(ii) The qualifications of each of the other key personnel to be used in the project; and
(iii) The time that these key personnel will commit to the project.
(2) To determine the qualifications of these key personnel, the Secretary considers—
(i) Experience, training, and professional productivity in fields related to the objectives of the project; and
(ii) Any other qualifications that pertain to the quality of the project.
(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the method of participant selection, including the extent to which—
(1) Participants will be selected according to their ability, experience, current responsibilities, and training needs; and
(2) The number of participants is appropriate to the training methods and project resources.
(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—
(1) The budget is adequate to support the project; and
(2) Costs are reasonable in relation to the objectives of the project.
(f) *Evaluation plan.* (8 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—
(1) Appropriate to the project;
(2) Objective; and
(3) Are designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.
(h) *Project effectiveness.* (10 points) The Secretary reviews each application to determine the effectiveness of the project, including the extent to which—
(1) The project will increase the number of librarians with specialized skills;
(2) The project includes plans for disseminating promising results and high quality materials to other institutions or agencies.

(Authority: 20 U.S.C. 1032)

§ 776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship?

(a) *Project description.* (15 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—
(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);
(2) The training needs to be met by the project are significant, of current interest to the library and information science community, and well described;
(3) Project activities are designed to meet the individual needs of each participant; and
(4) Other library agencies or institutions will cooperate with the applicant in providing appropriate and high quality internship opportunities.
(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—
(1) The quality of the design of the project;
(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;
(3) How well the objectives of the project relate to the purpose of the program; and
(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.
(c) *Quality of key personnel.* (15 points)
(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—
(i) The qualifications of the project director (if one is to be used);
(ii) The qualifications of each of the other key personnel to be used in the project; and
(iii) The time that these key personnel plan to commit to the project.
(2) To determine the qualifications of these key personnel, the Secretary considers—
(i) Experience, training, and professional productivity in fields related to the objectives of the project; and
(ii) Any other qualifications that pertain to the quality of the project.
(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of participant selection, including the extent to which participants will be selected on the basis of their stated career goals and on their potential for high level advancement and continued professional growth within the field of library and information science.
(e) *Budget and cost effectiveness.* (10 Points) The Secretary reviews each application to determine the extent to which—
(1) The budget is adequate to support the project; and
(2) Costs are reasonable in relation to the objectives of the project.
(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—
(1) Appropriate for the project;
(2) Objective; and
(3) Are designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (15 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1021, 1032)

Subpart D—What Conditions Must Be Met after an Award?

§ 776.30 What are the allowable costs for participants?

(a)(1) A grantee may use grant funds in the following amounts to cover the cost of providing fellowship training:
(i) For each fellowship awarded at the undergraduate level—$2000 for an academic year plus $500 for a summer session.
(ii) For each fellowship awarded at the master's level—$4600 for an academic year plus $800 for a summer session.
(iii) For each fellowship awarded at post-master's and doctoral levels—$6400 for an academic year plus $1000 for a summer session.
(2) A grantee shall use grant funds to pay stipends to fellowship participants in the following amounts:
(i) Undergraduate level—$2000 for an academic year plus $500 for a summer session.
(ii) Master's level—$4600 for an academic year plus $800 for a summer session.
(iii) Post-master's and doctoral level—$6400 for an academic year plus $1000 for a summer session.
(b) A grantee may use grant funds to pay stipends to institute participants in the following amounts:
(1) Long-term, full-time post-baccalaureate level—$4600 for an academic year plus $800 for a summer session.
(2) Long-term, full-time pre-baccalaureate level—$2000 for an academic year plus $500 for a summer session.
(3) Short-term, full-time—up to $375 per week.
(4) Part-time—up to $75 per day.
(c)(1) The grantee shall use grant funds to provide traineeship training in accordance with the allowable costs of providing training for either fellowships or institutes, whichever is applicable.
(2) The grantee may use grant funds to pay stipends to traineeship participants in accordance with the allowable costs of fellowships or institutes, whichever is applicable.
(d)(1) The Secretary may authorize travel allowances for participants—
(i) In cases of extreme hardship; and
(ii) If travel is necessary for successful participation in the project.
(2) The mileage rate must be consistent with rates applicable to Federal Government employees.
(3) The Secretary may defer authorization of travel allowances until the grantee establishes the need by appropriate documentation.
(e)(1) In cases of extreme hardship, the Secretary may authorize allowances for dependents of participants. The maximum amount that may be provided per dependent is $800 for an academic year, $200 for a summer session, and $50 per week for short-term projects.
(2) The Secretary may defer authorization of allowances for dependents until the grantee has documented need.
(f)(1) The grant award specifies the amount for stipends and dependency and travel allowances.
(2) The grantee shall disburse the stipends and the dependency and travel allowances to the appropriate project participants.

(Authority: 20 U.S.C. 1032)

§ 776.31 What are the restrictions on costs for participants?

A grantee may not charge tuition or fees to a participant in a training project funded under this program.

(Authority: 20 U.S.C. 1032)

§ 776.32 What are the allowances for assistance under other Federal programs?

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except veterans', war orphans', and widows' educational assistance under Title 38, United States Code) must be deducted from the amount that participant would receive under this part.
(b) If a participant receives a federally assisted educational loan, the amount of the loan and any interest paid may not be deducted from the amount received by the participant under this part.

(Authority: 20 U.S.C. 1021, 1032 and 38 U.S.C. 1700)

§ 776.33 What requirements govern the removal, withdrawal, and substitution of participants?

(a) A grantee shall remove a participant from a training project if the grantee determines that the participant has ceased to maintain academic proficiency.
(b) If a grantee removes the participant or if a participant withdraws, the grantee—
(1) May replace the participant if the new participant can successfully complete the training at no additional cost to the Department; and
(2)(i) Shall notify the Secretary in writing—
(A) Within 30 days of the removal or withdrawal; or
(B) Within 30 days of a substitution if the grantee substitutes another participant.
(ii) The date of removal or withdrawal is—
(A) The date the grantee determined that the participant had ceased to maintain academic proficiency; or
(B) The last date the participant attended class.
(c)(1) If a grantee removes the participant or if the participant withdraws, the grantee shall prorate the participant's stipend and any allowances, according to the number of the weeks the participant has completed in the project.
(2) For purposes of paragraph (c)(1) of this section, the grantee shall count attendance in any part of a week as a full week.
(d) If a grantee does not substitute a participant for the participant who has been removed or who has withdrawn, the grantee shall return to the Federal Government the unused portion of the stipend and any allowances.

(Authority: 20 U.S.C. 1032)

§ 776.34 What agencies must be informed of activities funded by this program?

Each institution of higher education that receives a grant under this part shall annually inform the agency designated under section 1203 of the Act of its project activities.

(Authority: 20 U.S.C. 1022)

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Part VI

Office of Personnel Management

5 CFR Part 950

1988 Combined Federal Campaign; Final Rule and Notice

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rules.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982), Charitable Fund-Raising, 47 FR 12785 (March 23, 1982), and Executive Order 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983). These regulations are intended to be consistent with the restrictions placed on OPM by section 618 of the Treasury, Postal Service, and General Government Appropriations Act for 1988. These regulations provide a system for administering the annual charitable solicitation campaign conducted by Federal personnel in their Government workplaces and set forth ground rules under which charitable organizations may receive contributions from Federal personnel through the Combined Federal Campaign.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, CFC Coordinator, (202) 632–5564.

SUPPLEMENTARY INFORMATION: On Wednesday, February 17, 1988, OPM published a Notice of Proposed Rulemaking in the **Federal Register**, 53 FR 4631, to revise regulations codified at 5 CFR Part 950, governing the conduct of the Combined Federal Campaign (CFC). The regulations were proposed to implement Executive Orders 12353 and 12404. These regulations were also intended to be consistent with the restrictions placed on OPM by section 618 of the Treasury, Postal Service, and General Government Appropriations Act for 1988.

Analysis of Comments

OPM received over 300 comments on the proposed regulations that were published on February 17, 1988. Many of the commentators complemented OPM on its efforts to publish clearer and more logical rules. Comments were received from a variety of persons including local Federal officials, representatives of voluntary agencies and federations, members of Congress, and the Federal donor.

OPM considered these comments and made various revisions to improve the final regulations which OPM believes will insure a well-run and well-organized CFC.

The receipt of over 300 sets of comments has necessarily delayed promulgation of these final rules. The comments were on the whole extraordinarily helpful in refining the proposed rules, and in pointing out minor inconsistencies between the statute and the proposed rules. On the whole, the comments conveyed a sincere appreciation not only of the complexity of the campaign operations but also an appreciation of the campaign's legal status as a non-public forum, the need for OPM oversight, and a recognition of the inability of any workplace campaign to meet all the demands of the not-for-profit world.

Perhaps the greatest change reflected in these rules is the clear recognition that OPM must maintain vigilance of campaign operations and must act to penalize attempts to interfere with employee designations or to gain entry to the campaign under false certifications of eligibility. OPM will aggressively enforce the standards set forth in these rules confident of the clear expectation of Congress, the employees, and the general not-for-profit world that it do so.

It is a certainty that not all observers or would-be participants in the CFC will be satisfied with these rules. As the rules balance numerous demands, those organizations that discover their ineligibility to participate in future campaigns or which find themselves penalized for practices inconsistent with the rules will not doubt demand access to campaign listings on nothing more than a claim to tax-exempt status. It is OPM's earnest hope that courts confronting such challenges will recognize from the outset of litigation that this set of rules was developed in close cooperation with the Congress, and that it is anticipated that the rules will operate to provide fair but not universal access to the campaign.

In the near decade of controversy that has beset the CFC there have remained principled voices of reason that have repeatedly pointed out that the controversies, however satisfying, were achieved at a real cost to those least able to bear it: the poor and the sick. With the promulgation of these rules, it is OPM's hope that an era of cooperative endeavor will begin that allows the full beneficent force of the Federal workforce to address itself to the alleviation of their needs.

E.O. 12291, Federal Regulations

After a careful review of the proposed rulemaking, including the analysis set forth below, for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule for purposes of Executive Order No. 12291, Federal Regulations, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in the costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

(1) Reasons Why Action by Agency is Being Considered

OPM issues these rules because President Reagan's Executive Order No. 12404 and Pub. L. 100–202 require OPM to promulgate rules for charitable solicitation in the Federal workplace.

(2) Objectives and Legal Basis for Rule

These regulations are issued under Executive Orders No. 12353 and 12404, and Pub. L. 100–202. The objective of these regulations is to provide a system for administering the annual charitable solicitation drive among Federal civilian and military employees in the CFC, and to set forth ground rules under which charitable organizations receive Federal employee donations through the CFC.

(3) Number of Small Entities Covered Under the Rule

The rule would apply to all human health and welfare agencies that apply to participate in the CFC.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The new rules continue, for the most part, the reporting, recordkeeping, and other requirements that have been a part of the campaign operations since the 1984 CFC. The paperwork burden is kept to the minimum necessary to be consistent with the governing Executive orders and the statute.

The rules assure the free choice of the employee to contribute or not to contribute to those agencies found eligible to participate in the CFC. The Government has no obligation to subsidize these voluntary agencies or those found ineligible to participate in the CFC. So every effort must be made by the responsible Federal officials to reduce the cost to the Government of the operation of the CFC and to shift the cost of CFC operations to the beneficiaries of the Federal donors.

These regulations in no way inhibit solicitation by any organization that may wish to conduct a fund-raising drive other than in the Federal workplace. Thus, there is no regulatory burden placed upon ineligible agencies. The regulatory burden imposed on participating agencies is minimal.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There are no duplicating, overlapping or conflicting Federal rules that apply to the CFC.

(6) Differing Compliance or Reporting Requirements

The campaign arrangements used from 1984 through 1987 were fundamentally unsound and raised administrative costs excessively. They proved to be controversial and disruptive of the Federal workplace. OPM has taken as much advantage as it can within the limitations imposed on it by the statute, to improve the operation of the CFC. There have been no substantial changes in compliance or reporting requirements.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As was noted above there are no substantial changes to compliance and reporting requirements.

(8) Use of Other Standards

Appropriate alternative standards are not available that would impose less burdensome regulations, unless the CFC was abolished.

(9) Exemption of Small Entities From Coverage

Exemptions from coverage for small entities is not practical because many of the eligible voluntary agencies are small entities, and exceptions for those groups would frustrate the major purposes of Executive Order No. 12404 and Pub. L. 100–202: To limit participation to voluntary agencies delivering service and benefits to human beings and to require that eligible organizations meet reasonable standards of financial integrity and public accountability. As a result of the above Regulatory Flexibility Analysis, I have determined that the rule will not have any significant detrimental economic impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 950

Charitable contributions, Government employees, Nonprofit organizations.

Office of Personnel Management

Constance Horner,

Director.

Accordingly, OPM is issuing final rules to amend 5 CFR Chapter I, Subchapter B as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 110 continues to read as follows:

Authority: 5 U.S.C. 1103; Section 110.201 is also issued under 5 U.S.C. 1104, 5 CFR Part 5.2(c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320.

2. The table in paragraph (b) of § 110.201 is amended by removing the reference to Part 950 and adding the citations set out below.

§ 110.201 OMB control numbers.

* * * * *

(b) * * *

5 CFR citation	OMB Control No.
* * * * *	
950.105	3206–0131
950.202	3206–0131
950.203	3206–0131
950.204	3206–0131
950.205	3206–0131
950.302	3206–0131
950.303	3206–0131
950.601	3206–0131
950.901	3206–0131

3. Part 950 is revised to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—General Provisions

Sec.
950.101 Definitions.
950.102 Scope of the Combined Federal Campaign.
950.103 Structure of the Combined Federal Campaign.
950.104 Local Federal Coordinating Committee.
950.105 Principal Combined Fund Organization.
950.106 PCFO expenses.
950.107 Lack of a qualified PCFO.
950.108 Preventing coercive activity.
950.109 Avoidance of conflict of interest.
950.110 Prohibited discrimination.

Subpart B—Eligibility Provisions and Public Accountability Standards

950.201 National eligibility.
950.202 National eligibility requirements.
950.203 Public accountability standards.
950.204 Local eligibility.
950.205 Appeals.

Subpart C—Federations

950.301 National Federations.
950.302 Responsibilities of National Federations.
950.303 Local Federations.

Subpart D—Campaign Materials

950.401 Campaign and publicity materials.
950.402 Miscellaneous.
950.403 Pledge cards.
950.404 Penalties.

Subpart E—Distribution of Undesignated Funds

950.501 Applicability.
950.502 Fall 1988 and 1989.
950.503 Fall 1990 and thereafter.
950.504 Review by the Director.

Subpart F—Miscellaneous Provisions

950.601 Release of contributor names.
950.602 Solicitation methods.

Subpart G—DoD Overseas Campaign

950.701 DoD Overseas campaign.

Subpart H—CFC Timetable

950.801 Campaign schedule.

Subpart I—Payroll Withholding

950.901 Payroll allotment.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR 1982 Comp., p. 139, E.O. 12404 (February 10, 1982), 48 FR 6685 (February 15, 1983), and Pub. L. 100–202 (5 U.S.C. 1101 Note).

Subpart A—General Provisions

§ 950.101 Definitions.

"Agency" or "Voluntary Agency" means a private, non-profit, philanthropic, human health and welfare organization.

"Business Days" means calendar days exclusive of Saturdays, Sundays, and Federal holidays.

"Combined Federal Campaign" or "Campaign" or "CFC" means the charitable fund-raising program established and administered by the Director of the Office of Personnel Management (OPM) pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and all subsidiary units of such program.

"Designated Funds" means those contributions which the contributor has designated to specific voluntary agencies or federation.

"Director" means the Director of the Office of Personnel Management.

"Domestic Area" means the several United States, the District of Columbia,

the Commonwealth of Puerto Rico, and the United States Virgin Islands.

"Employee" means any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service, uniformed service, foreign service, and the postal service.

"Federation" or "Federated Group" means a group of voluntary charitable human health and welfare agencies organized for purposes of supplying common fund-raising, administrative, and management services to its constituent members.

"International Agency" means a voluntary agency that provides services either exclusively or in a substantial preponderance in the overseas area or primarily on behalf of non-U.S. citizens in the overseas area.

"Local Federal Coordinating Committee" or "LFCC" means the group of Federal officials designated by the Director to conduct the CFC in a particular community.

"Overseas Area" means the Department of Defense (DoD) Overseas Campaign which includes all areas other than those included in the domestic area.

"Principal Combined Fund Organization" or "PCFO" means the federated group or combination of groups, or a voluntary agency selected by the LFCC to administer the local campaign under the direction and control of the LFCC and the Director.

"Undesignated Funds" means those contributions which the contributor has not designated to a specific voluntary agency or federated group.

§ 950.102 Scope of the Combined Federal Campaign.

(a) The CFC is the only authorized charitable fund-raising drive in the Federal workplace. A campaign may be conducted in every Federal agency in the campaign community in accordance with these regulations. No other fund-raising drive may be conducted in the Federal workplace without the express written permission of the Director, and no departure from any provisions of these rules is permitted without the express written permission of the Director.

(b) The Director establishes and maintains the official list of local CFCs and each CFC's geographic coverage. CFCs are normally conducted only in those locations which include a Federal employee population of at least 300 employees.

(c) Realignment of the geographical boundaries of local campaigns may be done only upon the express written permission of the Director.

(d) Payroll allotments to voluntary agencies are only authorized at those locations that are included in an established CFC as defined by the Director.

(e) The solicitation of employee will occur for no more than a six-week period between September 1 and November 15, as established by the LFCC. The six-week period may be extended by the LFCC as local conditions require but, in no event may it be extended beyond November 15, except in those instances where the campaign includes deployed military units and then not beyond December 15th.

§ 950.103 Structure of the Combined Federal Campaign.

(a) The Director exercises general supervision over all operations of the CFC, and takes all steps that may be necessary and proper to ensure the achievement of the campaign objectives. Any disputes relating to the interpretation or implementation of this part may be submitted to the Director for resolution. The decisions and rulings of the Director are final for administrative purposes.

(b) The Director establishes a LFCC to govern the conduct of the local CFC. The LFCC will, whenever possible, be comprised of members of local Federal inter-agency organizations, such as Federal Executive Boards, Federal Executive Associations, Federal Business Associations or, in the absence of such organizations, self-organized associations of local Federal officials. These groups will include all the local Federal agency heads or their representatives. It will also include, wherever possible, representatives of employee unions and other employee groups.

(c) The head of the local Federal installation having the largest number of employees is responsible for organizing the LFCC and assuring that it carries out its responsibilities in accordance with these regulations. The LFCC Chairmanship will normally, but not necessarily, rotate among its members.

§ 950.104 Local Federal Coordinating Committee.

(a) The LFCC is responsible for organizing the local CFC, deciding on the eligibility of local voluntary organizations, supervising the activities of the PCFO, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the CFC.

(b) The LFCC shall, by majority vote, select a PCFO to administer the campaign and to serve as fiscal agent. A federated group(s) or voluntary agency found by the Director, by a written decision issued after notice and opportunity to submit written comments, to have violated these regulations may be barred from serving as a PCFO for one year. Such decision shall be communicated in writing to the LFCC, and the LFCC shall not consider an application from such group(s) or agency to serve as the PCFO during terms of debarment.

(c) The responsibilities of the LFCC include, but are not limited, to the following:

(1) Selecting the PCFO on the basis of presentations made to the local committee by applicant organizations. The LFCC shall consider the efficiency and effectiveness of the campaign as the primary factors in selecting a PCFO.

(2) Ensuring that the PCFO selected or retained does not use the services of consulting firms, advertising firms or similar business organizations to perform the policy-making or decision-making functions in the CFC. A PCFO may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its ministerial tasks.

(3) Ensuring that, within the limits of the policies and procedures established by the Director nationally, local campaign arrangements are facilitated.

(4) Naming a campaign chairman.

(5) Ensuring that no employee is coerced in any way to participate in the campaign.

(6) Bringing allegations of coercion to the attention of the Director and the employee's agency and providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fund-raising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper channels for pursuing such complaints.

(7) Monitoring the work of the PCFO, and inspecting closely the annual audit required of the PCFO.

(8) Encouraging local Federal agencies to detail, on administrative leave, loaned executives to assist in the campaign; encouraging the establishment of a thorough network of employee keyworkers and volunteers; and cooperating on interagency briefing sessions and kick-off meetings.

(9) Ensuring that every employee is given the opportunity to participate in the CFC, and that employee designations are honored.

(10) Encouraging designations to voluntary agencies or federations and ensuring that the PCFOs include in their keyworker training specific information on how undesignated monies are distributed and instructing them to encourage employees to specify the voluntary agencies of federations to receive their donations.

(11) Insuring that undesignated contributions are divided in accordance with the formula established by law and repeated in these regulations.

(12) Calling to the attention of the Director any significant questions concerning the campaign, and abiding by the Director's decisions on these questions.

(13) Determining the eligibility of local organizations that apply to participate in the local campaign.

(14) Ensuring that the list of charities found by the Director to be nationally eligible to participate in all local campaigns is reproduced in the local brochure in accordance with these regulations.

(15) Ensuring that the local brochure and pledge card are produced in accordance with these regulations.

(16) Developing understanding of campaign policies, procedures and voluntary agency programs among Federal employees by serving as the central point of information.

(17) Responding promptly to any request for information from the Director.

§ 950.105 Principal Combined Fund Organization.

(a) Only federations, combinations of federations, or a voluntary agency may serve as the PCFO.

(b) Any organization or combination of organizations that wishes to apply to be the PCFO must submit to the LFCC on or before March 1 of each year:

(1) A written campaign plan which shall be in sufficient detail to allow the LFCC to determine if the applicant could administer an efficient and effective CFC, and shall include a CFC budget that details all costs estimated to be required to operate the CFC. The costs in the budget shall be based on estimated actual expenses, not on the percentage of the funds raised in the local campaign, and

(2) A written application to the LFCC which will include a pledge signed by the applicant's local director or equivalent pledging to administer the CFC fairly and equitably, to conduct the applicant's non-CFC operations separately from the campaign operations, and to be subject to the decisions and supervision of the LFCC and a signed acknowledgment that it is subject to the provisions of § 950.404(a) of these regulations.

(c) The specific responsibilities of the PCFO include but are not limited to:

(1) Helping to ensure that no employee is in any way coerced with regard to participation in the campaign and that allegations of coercion are brought to the attention of the appropriate Federal officials.

(2) Training employee keyworkers and volunteers in the methods of non-coercive solicitation.

(3) Honoring employee designations.

(4) Ensuring that no employee is in any way questioned as to his or her designation or its amount, other than for arithmetical inconsistencies.

(5) Preparing pledge cards and brochures that comply with these regulations.

(6) Honoring the request of employees who indicate in the box on the pledge card that their names not be released to the agency(ies) that they designate. PCFOs will include specific guidance to keyworkers during their training to inform employees that failure to check this box may result in the employee's name and home address being forwarded to the voluntary agency(ies).

(7) Submitting an extensive and thorough audit of its operations, conducted by an independent certified public accountant in accordance with generally accepted auditing standards, to the LFCC within four months of the end of their business year during which contributions pledged are collected.

(8) Absorbing the cost of any reprinting, embezzlement, loss of funds, or cost overrun connected with the campaign as a result of its action or inaction.

(9) Designing and implementing CFC awards programs which are accessible to all employees and which reflect the Government's commitment to non-coercion in that the awards are not ostentatious or of more than nominal value. Awards to Federal employees or Federal agencies by individual voluntary agencies or federations for CFC accomplishments are prohibited.

(10) Communicating to all applicants by U.S.P.S. registered or certified mail the eligibility decisions of the LFCC.

(11) Responding in a timely and appropriate manner to all inquiries from participating organizations.

(12) Producing any documents or information requested by the LFCC and/or the Director within 10 business days of the receipt of that request.

(13) Consulting, as appropriate, with federated groups on the operation of the local campaign and any printed materials, giving an adequate opportunity for them to participate in local campaign events, and providing them timely access to all reports, budgets, audits, and other records.

(d) The failure of the PCFO to perform any of these responsibilities listed in paragraph (c) of this section may be grounds for removal and disqualification by the Director to serve as PCFO for one year. Before deciding on removing or disqualifying a PCFO the Director shall give the PCFO an opportunity to respond to any allegations of failure to perform its responsibilities. The PCFO must submit its response to the Director within 10 business days. The Director will issue a written determination based on a review of all of the information submitted.

§ 950.106 PCFO expenses.

(a) The PCFO shall recover from the gross receipts of the campaign its expenses, approved by the LFCC, reflecting the actual costs of administering the local campaign. In no event shall the amount recovered for expenses exceed by more than 10 percent the estimated budget submitted pursuant to § 950.105(b) of this part.

(b) The campaign expenses will be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts.

§ 950.107 Lack of a qualified PCFO.

In the absence of a qualified PCFO, there is no authority in statute or regulation for an LFCC or any Federal official or employee to assume the duties and responsibilities of the PCFO. In the event that there is no qualified PCFO, the LFCC Chairman will promptly inform the Director in writing. The Director will make reasonable efforts to identify an eligible organization to function as the PCFO in the specific campaign, but failure to find a qualified PCFO will result in the local CFC being cancelled. No workplace solicitation of any Federal employee in the campaign area is authorized and payroll allotments cannot be accepted and honored during the duration of the cancellation.

§ 950.108 Preventing coercive activity.

True voluntary giving is fundamental to Federal fund-raising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fund-raising policy. Certain activities are contrary to the

intent of Federal fund-raising policy and, in the interest of preventing coercive activities in Federal fund-raising, are not permitted in the campaigns, they include but are not limited to:

(a) Solicitation of employees by their supervisor or by any individual in their supervisory chain of command. This does not prohibit the head of an agency to perform the usual activities associated with the campaign kick-off and to demonstrate his or her support of the CFC in employee newsletters or other routine communications with the Federal employees.

(b) Supervisory inquiries about whether an employee chose to participate or not to participate or the amount of an employee's donation. Supervisors may be given nothing more than summary information about the major units that they supervise.

(c) Setting of 100 percent participation goals.

(d) Establishing personal dollar goals and quotas.

(e) Developing and using lists of non-contributors.

(f) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and allotments, and as allowed under § 950.601 of this part.

(g) Using as a factor in a supervisor's performance appraisal the results of the solicitation in the supervisor's unit or organization.

§ 950.109 Avoidance of conflict of interest.

Any Federal employee who serves on the LFCC, on the eligibility committee, or as a Federal agency fund-raising program coordinator, must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest under any criminal statutes, Executive Order 11222, or applicable agency standards of conduct.

§ 950.110 Prohibited discrimination.

Discrimination for or against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation is prohibited in all aspects of the management and the execution of the CFC. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this part to participate in the CFC, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

Subpart B—Eligibility Provisions and Public Accountability Standards

§ 950.201 National eligibility.

(a) In accordance with the timetable issued by the Director and pursuant to procedures established by the Director, the Director shall annually determine which national organizations qualify to be listed for inclusion in all local CFCs.

(b) The Director shall provide to all local campaigns the list of agencies that have been judged to have met all the standards and may participate on a national basis. The list will be provided no later than April 30 of each year. The list shall be reproduced in all local brochures in accordance with these regulations. The list will be accompanied by eligibility numbers which shall be an organization's national number code. These number codes must be faithfully reproduced in the local brochures.

(c) When a voluntary agency is found to be a national organization it may elect to have its local affiliate listed in its stead. For the local affiliate or subunit to be listed in lieu of the national organization the following procedures must be followed:

(1) The national organization must send a letter to the local affiliate or subunit in that particular CFC authorizing the local group to be listed in the local campaign brochure.

(2) The local affiliate or subunit will present to the LFCC a copy of the letter authorizing its inclusion in the brochure and all the required materials for completing a local agency application.

(3) Upon presentation of this letter, the national listing of the agency shall be deleted in the local campaign list. Under no circumstances may an agency appear in both the national and local sections of the list of voluntary organizations.

§ 950.202 National eligibility requirements.

All organizations seeking national eligibility:

(a) Must demonstrate that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states over the three year period immediately preceding the start of the year involved; or several foreign countries or several parts of a foreign country.

(b) Must certify that it is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170.

(c) Must provide a separate certification that the organization's expenses connected with lobbying and all attempts to influence voting or legislation at the local, State, or Federal level would classify it as a tax-exempt agency under 26 U.S.C. 501(h).

§ 950.203 Public accountability standards.

(a) To insure that the organizations that wish to solicit donations from Federal employees in the workplace are portraying accurately their programs and benefits, the following public accountability standards must be met by all organizations applying to participate in the CFC.

(b) To qualify for inclusion on the list of organizations judged eligible to participate on a national basis, an organization must submit annually to the Director:

(1) Documentary evidence that it accounts for its funds in accordance with generally accepted accounting principles and was audited in accordance with generally accepted auditing principles by an independent certified public accountant in the year immediately preceding any year in which it applies for admission to, or its federation certifies its eligibility to receive donations from the CFC. This documentary evidence must include a copy of the organization's audit, prepared in accordance with the above-mentioned principles. Agencies with affiliates must provide combined or acceptably compiled financial statements prepared in accordance with generally accepted accounting principles.

(2) A statement that it is directed by an active and responsible governing body whose members have no material conflict of interest and, a majority of which serve without compensation. This statement will be accompanied by a list that shall include the names and locations of the directors, and a statement of the directors' participation in the conduct of the organization's affairs.

(3) A statement demonstrating that, if its fund-raising and administrative expenses are in excess of 25 percent of total support and revenue, its actual expense for those purposes are reasonable under all the circumstances in its case. For those agencies whose expenses are not in excess of the 25 percent limit, a statement so affirming shall be supplied which also sets forth the actual percentage of their funds that are used for administrative and fund-raising. The Director may reject any application from an agency with fund-raising and administrative expenses in excess of 25 percent of total support and revenue, unless the agency demonstrates to the satisfaction of the Director that its actual expenses for those purposes are reasonable under all the circumstances in its case.

(4) A statement affirming that the organization's fund-raising practices protect against unauthorized use of its CFC contributor lists, permit no general telephone solicitations of the public, permit no payment of commissions, finders fees, percentages, bonuses, or similar practices in connection with fund-raising.

(5) A statement affirming that its publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, include all material facts, and make no exaggerated or misleading claims.

(6) A statement affirming that the organization is a human health and welfare organization which providing services, benefits, or assistance to, or conducts activities affecting human health and welfare. The statement shall enumerate those benefits.

(7) A statement affirming that the funds contributed by Federal personnel are effectively used for the announced purposes of the voluntary agency.

(8) A statement specifying under which governmental entity the voluntary agency is organized.

(9) A statement affirming that, with the exception of a voluntary agency whose revenues are affected by unusual or emergency situation, as determined by the Director, it has received at least 50 percent of its total support and revenues from sources other than the Federal government or at least 20 percent of its total support and revenue from voluntary contributions from the general public.

(10) A statement affirming that it prepares and makes available to the public an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. A copy of the annual report shall accompany its application.

(11) A statement in 25 words or less describing the program of the voluntary organization and the percentage of its total support and revenue that goes to administration and fund-raising. In addition, organizations will provide a telephone number through which the donors may receive further information about the organization. This information will be used in the campaign brochure listing of agencies.

(12) A copy of the organization's IRS 990 form.

(c) The Director shall review these applications for accuracy, completeness, and compliance with these regulations. Failure to supply any of this information may be judged a failure to comply with the requirements of public accountability, and the voluntary organization may be ruled ineligible for inclusion on the national list.

(d) The Director may request such additional information as the Director deems necessary to complete these reviews. An organization that fails to comply with such requests within 10 business days may be judged ineligible.

(e) The Director may waive any of these public accountability standards upon a showing of extenuating circumstances.

§ 950.204 Local eligibility.

(a) The LFCC shall establish an annual application process for organizations that wish to be listed in the local brochure and which have not been listed on the national list.

(b) The requirements established by the LFCC shall include all substantive requirements of the national eligibility and public accountability process in §§ 950.202 and 950.203 of this part, with the following exceptions:

(1) Voluntary agencies have delivered benefits in 15 states over the prior three years,

(2) Organizations whose annual budget is less than $50,000 may submit IRS Form 990 in lieu of an audit report,

(3) The applicant voluntary agency must have a substantial presence in the geographical area covered by the local campaign or a substantial presence in the geographical area covered by a contiguous local campaign. "Substantial presence" is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to its clientele or members of the public seeking the voluntary agency's services or benefits that it provides, and which is open at least 15 hours a week. The facility, office or portion of a residence dedicated exclusively to that organization, may be staffed by volunteers. An LFCC may also make an exception to this requirement to include organziations in their campaign that provide services on a statewide or region-wide basis. This exception shall not be granted on the basis of a showing of services provided through an "800" telephone number or the U.S. Mails or a combination thereof.

(4) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFC funds.

(c) The LFCC shall announce its decisions on the local applications at an open public meeting and will communicate all eligibility decisions by USPS registered or certified mail to the applicant agencies within 10 business days of the decision. Applicants denied eligibility may appeal in accordance with § 950.204 of this part.

(d) No LFCC may print the local eligibility list while there are appeals from their campaign pending with the Director. LFCCs are under an obligation to check with OPM 21 calendar days after the mailing of the last decision as to whether the Director is on notice of a pending timely appeal.

(e) No LFCC shall grant eligibility to an organization the name of which is substantially similar to the name of an organization which has been granted national eligibility, unless the similarly named organizations demonstrate that they provide their services or benefits in different geographic areas within the campaign community.

§ 950.205 Appeals.

(a) *National Eligibility.* Applicants denied national listing will be notified of the Director's decision. They may petition the Director in writing to reconsider the denial within 15 business days of the decision. Such a petition for reconsideration may be dismissed as untimely unless it is received by the Director by the close of business 15 business days from the date of receipt of the Director's decision. This petition shall be limited to those facts justifying reversal of the original decision.

(b) *Local Eligibility.* (1) Because local applicants will have the opportunity to attend the local meeting as required by § 950.203(c), the date and location of which will be publicly announced in the campaign area, at which time all eligibility decisions and the reasons for any adverse decisions will be announced, the schedule for appealing adverse decisions is shortened. This shortened schedule does not excuse the LFCC from informing both successful and unsuccessful applicants by certified or registered mail of the result of the LFCC's deliberations.

(2) Applicants denied listing in the local brochure must first appeal in writing to the LFCC to reconsider its denial. Such an appeal must be received by the LFCC within the seven calendar days immediately following the receipt of the letter. This appeal shall be limited to those facts justifying reversal of the original decision. The LFCC must consider all timely appeals within the next seven calendar days after the receipt of a timely appeal.

(3) An applicant which is unsuccessful in its appeal to the LFCC may appeal to the Director. All appeals must be in writing. The appeal to the Director must be received by the Director within 14 calendar days of the date of the letter of

the LFCC's denial of the appeal. The Director's decision is final for administrative purposes.

Subpart C—Federations

§ 950.301 National federations.

(a) Organizations presently with national federation status for purposes of participation in the Combined Federal Campaign are:

(1) The United Way of America (UWA),

(2) The International Service Agencies (ISA),

(3) The International Service Agencies-Overseas (ISAO) (Overseas Campaign Only),

(4) The National Voluntary Health Agencies (NVHA),

(5) The National Service Agencies (NSA), and

(6) The American Red Cross (ARC).

(b) The Director may establish additional national federations that conform to statutory requirements. The Director may decertify a federation for up to one year if it is determined on the record after opportunity for a hearing that the federated group has not complied with the requirements set forth in this part. This determination shall be the final administrative review.

(c) By applying for inclusion in the CFC, federations consent to allow the Director complete access to it and its members' CFC books and records and to respond to requests for information by the Director or the Director's designee.

§ 950.302 Responsibilities of national federations.

(a) National federations must ensure that their member organizations comply with all eligibility requirements included in these regulations, and must identify to OPM which of their member agencies fail to meet such requirements.

(b) National federations may elect to certify the eligibility of their member agencies at the national and local levels in accordance with Subpart B.

(1) LFCCs must accept the certifications of national federations, but may ask the Director to review any such certification.

(2) The Director may elect to review, accept or reject the certifications of the eligibility of the members of the national federations. If the Director requests information supporting a certification of national eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 calendar days of the receipt of the request constitutes grounds for the denial of national eligibility.

(c) The Director may elect to decertify a federation which makes a false certification for up to one campaign year, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the hearing.

(d) The failure of a national federation to respond in a timely fashion to a request for required information or cooperation in an investigation by the Director may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) National federations shall file with the Director by December 1 of each year an audit of the federation's operations completed by an independent certified public accountant. Failure to comply with this provision may be grounds for decertification, provided that decertification is preceded by a hearing on the record and is communicated in writing.

§ 950.303 Local federations.

(a) LFCCs may grant in accordance with these regulations, in the fall 1990 CFC and thereafter, local federation status to groups of 15 or more voluntary agencies. In the fall 1988 campaign they may grant local federation status to a group of five or more and, in the fall 1989 campaign to a group of 10 or more agencies. This recognition will be in writing from the Chairman of the LFCC. Local federations must re-establish eligibility each year, and in 1989 and 1990, must demonstrate that their membership includes 10 and 15 groups respectively. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(b) An applicant for local federation status must certify and demonstrate:

(1) That all member organizations are qualified for inclusion on the local eligibility list.

(2) That it possesses the necessary financial responsibility to operate as a federation, and that its financial practices conform to generally accepted accounting procedures.

(3) That its fund-raising and administrative expenses meet the requirements for national federations, as set forth in this part.

(4) That it does not employ the services in its CFC operations of private consultants, consulting firms, advertising agencies or similar business organizations to perform the policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its ministerial tasks.

(c) The Director may decertify after an opportunity for a hearing on the record any local federation at any time when such local federation falsely certifies its eligibility of any of its member agencies.

(d) Local federations, having been properly established, may certify their member voluntary agencies as eligible to be included on a local list, and they may be listed on the local list and be eligible to receive funds. The LFCC may require any member agency of a local federation to supply independent evidence of its eligibility.

Subpart D—Campaign Materials

§ 950.401 Campaign and Publicity materials.

(a) The specific campaign and publicity materials, i.e., the contributor information leaflet and list of organizations, will be developed locally, except as specified in these regulations, under the direction of the LFCC and will be printed and supplied by the PCFO. Any disputes over local materials will be resolved by the LFCC. All publicity materials must have the approval of the LFCC before being used. All publicity materials must be developed in consultation with other federations which are able to respond in a timely fashion to the opportunity to consult.

(b) Distribution of any bona fide educational materials of the voluntary agencies or federations or the provision of other services to employees at Federal establishments must be handled through personnel offices, occupational health units, or other appropriate agency components, and not the CFC coordinators, keyworkers, or members of the LFCC.

(c) Voluntary agencies and federations are encouraged to publicize their activities outside Federal facilities, to broadcast messages aimed at Federal employees in an attempt to solicit their contributions, through the media and other outlets. They may also communicate with Federal employees in writing through USPS Mail addressed to them at their Federal workplaces, as long as these mailings do not interfere with Federal government activities. The head of the Federal agency must make a single determination as to what will be

the agency's policy on such mail solicitations.

(d) LFCCs are further authorized to permit the distribution by voluntary agencies of brochures to Federal personnel in public areas at or near Federal workplaces in connection with the CFC, provided that the manner of distribution accords equal treatment to all voluntary agencies furnishing such brochures for local use, and further provided that no such distribution shall utilize Federal personnel or interfere with Federal government activities. LFCC members and other campaign personnel are to be particularly aware of the prohibition to not assist any voluntary agency or federated group to distribute any type of literature, especially during the campaign period. Nothing in this section shall be construed to require an LFCC to distribute or arrange for the distribution of any material other than the contributor's information leaflet, the list of voluntary agencies, and the pledge card.

(e) The Campaign Brochure shall consist of a Contributor's Information Leaflet, a List of Eligible Voluntary Organizations (divided into national and local sections), and a joint Pledge Card, Payroll Authorization, and Name Release form. The brochure shall be distributed by each keyworker as the official CFC information package to each potential contributor. All CFC literature must inform employees of their right to make a choice to contribute or not to contribute; to designate or not to designate; and to give a confidential gift in a sealed envelope.

(f) Campaign materials must constitute a simple and attractive package that has fund-raising appeal and essential working information. The package should focus on the CFC without undue use of voluntary agency symbols or other distractions that compete for the donor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors' receipts, and similar reports, which are primarily for keyworkers must be avoided.

(g) The following applies specifically to the campaign materials:

(1) Contributor's Information Leaflet

(i) This will be the primary informational material distributed to the individual contributors. It will describe the CFC arrangement; explain the payroll deduction privilege; and explain the formula for the distribution of undesignated monies. It will clearly state and urge the Federal donor to direct his or her gift to specific voluntary agencies or group of his or her choice by designating in the boxes provided, up to five organizations. It will further explain that failure to designate a specific agency or federation to receive the employee's gift will result in the donation being distributed in accordance with the formula established by law for allotting undesignated funds. It will also include an explanation as to exactly how this formula will operate.

(ii) The leaflet will include a statement that the donor may only designate the voluntary agencies and groups that are listed in the brochure and that write-ins are prohibited.

(iii) The leaflet will provide instructions about how an employee may obtain more specific information about the programs and the finances of the organizations participating in the campaign.

(iv) It will also inform employees of their rights to pursue complaints of undue pressure or coercion in Federal fund-raising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agencies.

(2) Agency Listing

(i) The listing of agencies shall be in two major divisions. The first shall be labelled "National Voluntary Agencies" and will consist of a faithful reproduction of the list provided by OPM, except as described in § 950.201(c). The second division will consist of "Local Voluntary Federated Agencies" and a list of "Local Unaffiliated Voluntary Agencies." The order of the listing of the federated and unaffiliated organizations will be determined by a random drawing. The order of agencies within a federation subgroup will be determined by the federation. The order of agencies within the unaffiliated list will be determined by random drawing. Each participating agency and federated group may include a description, not to exceed 25-words, of their services and programs, plus a telephone number for the Federal donor to request further information about the groups services, benefits and administrative expenses. The description will include a statement of the percent of the organization's total receipts and revenues that are used for administration and fund-raising.

(ii) Each national federation and voluntary agency will be assigned a code number by OPM. Local federations and local voluntary agencies will be assigned code numbers by the LFCC. At the beginning of each federated group's listing will be listed the federation including its 25-word statement. The federation will only be listed once in the campaign materials.

(iii) All other requirements of § 950.401 will be followed.

(3) Pledge Card—The pledge card as described in § 950.403 of these regulations will be distributed with the campaign materials described above.

§ 950.402 Miscellaneous.

(a) *Omission of an eligible voluntary agency requires that all brochures be reprinted and redistributed.* The LFCC may direct that the cost of such reprinting and redistribution shall be borne by the PCFO or charged to administrative expenses.

(b) *Dual listing is prohibited.* No voluntary agency or federation may be listed in both the national and local lists. The listing of both a national voluntary agency and its local affiliate or other subunit is prohibited even if the local affiliate or other subunit is prohibited even if the local affiliate or other subunit applies separately for admission to the local campaign. The national parent agency shall determine whether it or its local affiliate or other subunit will be listed. If the national parent agency applies for the national list then it will be presumed, unless it authorizes in writing that its local affiliate be listed instead of the national parent agency, that the national parent agency has determined that its local affiliates and subunits will not be included in local CFCs. Similarly-named local agencies may be listed provided that the LFCC determines that each delivers services to distinct geographical areas.

(c) *An employee may not make a designation to an organization not listed in the brochure.* Any attempt to do so voids the employee's contribution. The PCFO will return to the employee any money received and/or ask the employee to cancel his or her allotment. An employee whose designation is voided may not be resolicited.

§ 950.403 Pledge card.

(a) The Director will make available a model pledge card which must be faithfully reproduced at the local level. This will be the only authorized pledge card for use in the CFC.

(b) Upon written request the Director may authorize the use of different pledge cards.

(c) The use of a pledge card other than one that faithfully reproduces the Director's design or which has been authorized by the Director is prohibited.

§ 950.404 Penalties.

(a) A PCFO's failure to comply with Subpart D of these regulations may result in either disqualification from future service as PCFO, disqualification as a participating federation, forfeiture of all undesignated money otherwise directed to the PCFO, or all three penalties. Any or all of these penalties may only be imposed after a hearing on the record and communication of the Director's decision in writing.

(b) These penalties may be imposed in the sole discretion of the Director after an opportunity for a hearing on the record.

Subpart E—Distribution of Undesignated Funds

§ 950.501 Applicability.

(a) This Subpart applies to all domestic area campaigns. It does not apply to the DoD Overseas Campaign.

(b) The amount of undesignated funds to which the distribution formulas described in §§ 950.502 and 950.503 of this part apply shall be the amount remaining after the PCFO's approved budget is deducted from the total campaign receipts.

§ 950.502 Fall 1988 and 1989.

(a) For the fall 1988 and 1989 campaigns, the local United Way, ISA, NVHA, the American Red Cross, and those federations and voluntary agencies described in § 950.503(a)(4) of this part shall be allocated the same average dollar amount from undesignated funds as each received in the fall 1985 and 1986 local campaigns, except that:

(1) If there are not enough undesignated funds for the local UW, ISA, NVHA, the American Red Cross, and those federations and voluntary agencies described in § 950.503(a)(4) of this part to receive the same average dollar amount each received in the fall 1985 and 1986 local campaigns, then the shortfall shall be shared proportionally by them, so that each receives the average percentage of the pool of undesignated funds as it received in the 1985–86 campaigns; or

(2) If undesignated funds exceed the total of the average dollar amounts, then the excess shall be allocated in the following manner:

(i) The excess shall be added proportionally to the average dollar amounts of ISA, NVHA, and those federations and voluntary agencies described in § 950.503(a)(4) of this part, so that:

(A) 78 percent of the excess is divided evenly for ISA and NVHA each to receive an amount of up to 7 percent of the average of all undesignated funds for the fall 1985 and 1986 local campaigns; and

(B) Those federations and voluntary agencies described in § 950.503(a)(4) of this part receive 22 percent of the excess to be allocated by the LFCC among them so that they receive up to 4 percent of the average of all undesignated funds for the fall 1985 and 1986 local campaigns.

(ii) Any undesignated funds remaining after the distribution described in paragraph (a)(2)(A) of this section shall be distributed in accordance with the formula described in § 950.503 of this part.

(b) Each LFCC shall determine the average dollar amount of undesignated funds received in its fall 1985 and 1986 local campaigns by the local United Way, ISA, NVHA, the American Red Cross, and those federations and voluntary agencies described in § 950.503(a)(4) of this part, by adding the dollar amounts of the undesignated funds each received in those campaigns and dividing each recipient's total by two.

§ 950.503 Fall 1990 and thereafter.

(a) For the fall 1990 campaign, all undesignated funds received in a local campaign shall be allocated as follows:

(1) 82 percent shall be allocated to the local United Way;

(2) 7 percent shall be allocated to ISA;

(3) 7 percent shall be allocated to NVHA; and

(4) 4 percent shall, after fair and careful consideration of all eligible federated groups and agencies, be allocated by the LFCC among any or all of the following:

(i) National federated groups, other than the local UW, ISA, NVHA, except that a national federated group shall not be eligible unless:

(A) There are at least 15 member agencies of such group participating in the local campaign,

(B) The members of such group collectively receive at least 4 percent of the designated contributions in the local CFC, and

(C) Such group was granted national eligibility status for the fall 1988, 1989, or 1990 CFC;

(ii) Local federated groups;

(iii) Any local non-affiliated voluntary agency that receives at least 4 percent of the designated contributions.

(b) In those campaigns that have no local United Way or in which no organization is eligible to receive the 4 percent share, the LFCC will distribute what would have been the local UW or the 4 percent share of the undesignated funds in a fair and equitable manner that is reflective of the needs of the community. NVHA and ISA shall not receive more than 7 percent each of these funds.

(c) In those campaigns that have two or more United Ways, the United Way organization which is to receive the share of undesignated funds allocated shall agree with the other United Ways in the campaign area how their share of the undesignated monies will be distributed.

(d) The Director shall adjust the formula described in paragraph (a) of this section to reflect the experiences gained in the fall 1988, 1989, and 1990 CFCs. In so doing, the Director shall consult and give appropriate weight to the preferences of the Federal donors and other interested parties.

(e) The formula for distributing undesignated funds after the 1990 campaign shall be the one described in paragraphs 950.503(a) and (b), unless the formula is adjusted by the Director.

§950.504 Review by the Director.

The Director may alter an LFCC's distribution of undesignated funds:

(a) To reverse any allocation to ineligible organizations; or

(b) To enforce the distribution formulas described in §§950.502 and 950.503 of this part.

Subpart F—Miscellaneous Provisions

§950.601 Release of contributer names.

(a) The pledge card will contain a box for an employee to check if the employee does not wish his or her name and home address forwarded to the charitable agency or agencies designated. Failure to honor this decision may be grounds for decertifying the PCFO.

(b) An employee who elects to have his or her name forwarded to the organization(s) that the employee designates will complete a form, attached to the pledge card, a copy of which is to be forwarded to the organization(s). The original may be kept by the PCFO for one year from the end of the campaign, after which it will then be destroyed.

(c) It is the responsibility of the PCFO to forward the names and addresses of these employees to the recipient organization. The PCFO may not make any other use of this information provided by the employees.

(d) Recipient organizations that receive the names and addresses of employees must segregate this information from all other lists of contributors. This segregated list may not be sold or in any way released to anyone outside of the recipient organization. Failure to protect the integrity of this information may result in penalties up to permanent expulsion from the CFC.

(e) Organizations must cooperate fully with OPM investigations into the care and appropriate use of these lists. Should an organization ignore or fail to respond to OPM's requests for cooperation or hamper an investigation, the Director may propose that the organization be suspended or expelled from the CFC. After considering any response, the Director will issue a decision.

§950.602 Solicitation methods.

Employee solicitations shall be conducted during duty hours using methods that permit true voluntary giving and shall reserve to the individual the option of disclosing any gift or keeping it confidential. Raffles, lotteries, bake sales, carnivals, athletic events, or other fund-raising activities not specifically provided for in these regulations are strictly prohibited. This does not bar kick-offs, victory events, awards, and other non-fund-raising events to build support for the CFC.

Subpart G—DoD Overseas Campaign

§950.701 DoD Overseas Campaign.

(a) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a six-week period in the fall. Organizations that may participate in the Overseas Campaign will consist of:

(1) All agencies and federations found nationally eligible by OPM which meet the statutory eligibility requirements and the regulatory requirements of this part.

(2) The American Red Cross.

(3) The United Service Organizations.

(b) The DoD may select any organization or combination of organizations to serve as PCFO as it deems in the best interests of the overseas campaign.

(c) Federal civilian agencies with overseas personnel may elect to have these employees participate in the DoD campaign or in the National Capital Area campaign.

(d) On-base morale, welfare, and youth recreational activities may be supported from CFC funds.

(e) The distribution of undesignated funds shall be controlled by the determination of the organization or organizations serving as PCFO.

Subpart H—CFC Timetable

§ 950.801 Campaign schedule.

(a) The Combined Federal Campaign after 1988 will be conducted according to this timetable.

(1) During one 30-day period between January and March, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the national list.

(2) Within 30 days of the closing of the receipt of applications, the Director will issue notices and the reasons to organizations that failed to qualify for inclusion on the national list by U.S.P.S. first class mail.

(3) Organizations appealing the Director's adverse decision may petition for reconsideration within 15 business days of receipt of the initial decision. The deadline for this appeal will be determined by the date of the letter in paragraph (a)(2) of this section for receipt of this appeal.

(4) Local Federal Coordinating Committees must select a PCFO not later than March 15.

(5) The Director will issue a national eligibility list to all local campaigns 30 days after the deadline for the receipt of reconsideration petitions.

(6) Local Federal Coordinating Committees must accept applications from organizations seeking local eligibility for 30 days, and must render eligibility decisions at a public meeting advertised in the local media not later than two weeks after the deadline for receipt of applications.

(7) The appeals process described in section 950.204 of this part will be followed.

(b) The Director will annually issue a timetable for conducting eligibility hearings and processing appeals.

Subpart I—Payroll Withholding

§ 950.901 Payroll allotment.

The policies and procedures in this section are authorized for payroll withholding operations in accordance with the Office of Personnel Management Pay Administration regulations in Part 550 of this chapter.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local CFC organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to one year or less may make an allotment to a CFC when an appropriate official of the employing Federal agency determines that the employee will continue employment for a period to justify an allotment. This includes part-time and intermittent employees who are regularly employed.

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than three months).

(c) *Authorization.* (1) Allotments will be totally voluntary and will be based upon contributor's individual authorizations.

(2) Authorization forms in conformance with the model provided by the Director may be printed or purchased from a central source by each PCFO. These forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed payroll withholding authorization forms should be transmitted to the contributor's servicing payroll office as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by the payroll office.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24, or 12 pay periods depending on the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. Three months of employment is considered the minimum amount of time that is reasonable for establishing an allotment.

(e) *Amount.* (1) Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount of the allotment will be determined by the LFCC but will not be less than $1 per payday, with no restriction on the size of the increment above that minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) No deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the CFC allotment. No adjustment will be made in subsequent periods to make up for the missed deductions.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point (CRP) at each location for which the payroll office has

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received allotment authorizations. The Director will provide a list of the authorized CRPs to Federal payroll offices.

(2) The check will be accompained by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the one year withholding period; or

(ii) On the death, retirement, or separation of the allotter from the federal service, whichever is earlier.

(2) The allotter may revoke the authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different Department or agency, his or her allotment authorization will be transfered to the new payroll office.

(2) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated.

(i) *Accounting.* (1) Federal payroll offices will oversee the establishment of individual allotment accounts, the deductions each pay period, and the reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit at least monthly for campaigns of $500,000 of more or quarterly if less than that amount, minus only the approved proportionate share for administrative cost reimbursement. It shall remit the contributions to each agency or to the federated group, if any, of which the agency is a member. The PCFO shall notify the federated groups, national agencies, and local agencies as soon as practicable after the completion of the campaign, but in no case not later than 60 days thereafter, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution amount the voluntary agencies of remittances from the PCFO; and

(ii) Arrangements for an independent audit conducted by a certified public accountant agreed upon by the participating voluntary agencies.

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OFFICE OF PERSONNEL MANAGEMENT

1988 Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Timetable for the 1988 Combined Federal Campaign.

SUMMARY: OPM has published final regulations on the CFC. This announcement governs the schedule for the 1988 campaign. The schedule provided in the regulations will govern subsequent campaigns.

May 27–June 17 Voluntary organizations applying for the national list submit their applications to OPM. To be considered timely applications must be received at the address below by 4:00 p.m. EDT June 17.

Office of Personnel Management
Office of the General Counsel
Room 7354, 1900 E Street, NW.,
Washington, DC 20415

May 27–July 15—Local voluntary organizations submit applications to Local Federal Coordinating Committees, to be considered timely they must be received by the LFCC by the close of business 4:00 p.m. local time on July 15.

July 1—Director issues letters to agencies found ineligible for the national list. Agencies found ineligible would be well-advised, pending appeal to the Director requesting reconsideration from the Director, to submit applications to those local campaings for which they are eligible to participate as a local organization.

Appeals of the Director's adverse decision must be received at OPM by the close of business (4:00 p.m. EDT), 15 business days after receipt of the above-mentioned letter.

July 25—Director issues the list of voluntary organizations for the 1988 CFC.

July 22—All LFCCs will have completed the notification, as required in regulations, to all applicants for the local CFC list.

August 5—The last date for an appeal to be received by the LFCC of an original adverse decision, to be considered timely it must be received by COB 4:00 p.m. local time.

August 12—Last date for LFCCs to reconsider timely appeals.

August 26—By close of business (4 p.m. EDT) all appeals of LFCCs denials of reconsideration must be received by the Director.

September 2—Last date for LFCCs to check with OPM on any timely appeals.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, Special Assistant to the General Counsel for the Combined Federal Campaign, 1900 E Street, NW., Room 7354, Washington, DC 20415 (202) 632–5564

Office of Personnel Management.
Constance Horner,
Director.

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Part VII

Nonprocurement Debarment and Suspension; Notice and Final Rule and Interim Final Rule

Office of Management and Budget
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Department of State
International Development Cooperation Agency
Agency for International Development
United States Information Agency
Department of Housing and Urban Development
Department of the Treasury
Internal Revenue Service
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Veterans Administration
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum Services
ACTION
Department of Transportation

OFFICE OF MANAGEMENT AND BUDGET

Memorandum to the Heads of Executive Departments and Agencies; Governmentwide Nonprocurement Suspension and Debarment

May 26, 1988.

In February 1986, the President signed an executive order directing that persons suspended or barred from doing nonprocurement business with ONE agency of the Executive Branch should be suspended or barred from ALL agencies. For example, if you debar an organization from fraudulent or criminal conduct in its dealings with you, that organization will not be able to shop for work from other Federal agencies. This is one more step in our war against fraud, waste, and abuse.

Twenty-eight agencies are today publishing a final common rule on "governmentwide nonprocurement suspension and debarment," and OMB is amending its guidelines to conform to the common rule.

Further information regarding the OMB guidelines may be obtained from Barbara Kahlow in the Financial Management Division on 395–3053.

Joseph J. Wright, Jr.,

Deputy Director.

[FR Doc. 88–11560 Filed 5–25–88; 8:45 am]

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DEPARTMENT OF ENERGY
10 CFR PART 1036
SMALL BUSINESS ADMINISTRATION
13 CFR PART 145
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
14 CFR PART 1265
DEPARTMENT OF COMMERCE
15 CFR PART 26
DEPARTMENT OF STATE
22 CFR PART 137
INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
Agency for International Development
22 CFR PART 208
UNITED STATES INFORMATION AGENCY
22 CFR PART 513
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
24 CFR PART 24
DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR PART 601
DEPARTMENT OF JUSTICE
28 CFR PART 67
DEPARTMENT OF LABOR
29 CFR PART 98
FEDERAL MEDIATION AND CONCILIATION SERVICE
29 CFR PART 1471
DEPARTMENT OF DEFENSE
32 CFR PART 280
DEPARTMENT OF EDUCATION
34 CFR PARTS 85 AND 668
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
36 CFR PART 1200
VETERANS ADMINISTRATION
38 CFR PART 44
ENVIRONMENTAL PROTECTION AGENCY
40 CFR PART 32
GENERAL SERVICES ADMINISTRATION
41 CFR PART 101–50
DEPARTMENT OF THE INTERIOR
43 CFR PART 12
FEDERAL EMERGENCY MANAGEMENT AGENCY
44 CFR PART 17
DEPARTMENT OF HEALTH AND HUMAN SERVICES
45 CFR PART 76
NATIONAL SCIENCE FOUNDATION
45 CFR PART 620
NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
National Endowment for the Arts
45 CFR PART 1154
National Endowment for the Humanities
45 CFR PART 1169
Institute of Museum Services
45 CFR PART 1185
ACTION
45 CFR PART 1229
DEPARTMENT OF TRANSPORTATION
49 CFR PART 29

Nonprocurement Debarment and Suspension

AGENCIES: Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, ACTION, Agency for International Development, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Small Business Administration, United States Information Agency, Veterans Administration.

ACTION: Final rule and interim final rule.

SUMMARY: This final common rule and this interim final rule establish among the Federal agencies shown above a uniform system of nonprocurement debarment and suspension. The rules are required under Executive Order 12549 of February 18, 1986. The rules are intended to prevent waste, fraud, and abuse in Federal nonprocurement transactions.

DATES: The effective date for both the final common rule and the interim final common rule is October 1, 1988. However, the Department of Housing and Urban Development is required to submit the interim final common rule provisions to Congress for review. See HUD's agency specific preamble below. Comments on the interim final common rule must be submitted by July 25, 1988. Sections ____.105(n) (phrase beginning at "except:" through the end of the definition), ____.110(a) (deletion of the word "domestic" from the first introductory sentence only), ____.110(a)(2)(ii), and ____.200(c)(2) comprise the interim final portion of the common rule. Public comment is invited solely on those provisions. The Department of Education is requesting comments on additional items within its agency-specific preamble. See the agency-specific preamble for the Department of Education below.

ADDRESSES: Persons wishing to submit comments on §§ ____.105(n), ____.110(a), ____.110(a)(2)(ii), and ____.200(c)(2), as specified above, should send them to Karin L. Genis, U.S. Small Business Administration, 1441 L Street, NW., Room 722, Washington, DC 20416. For all other purposes, see individual agencies below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council for Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its 1982 report, that such a system was both desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on

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Nonprocurement Suspension and Debarment. This Task Force recommended, in its 1984 report, that a governmentwide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. This could be the first step toward a comprehensive system, including both procurement and nonprocurement.

The Task Force on Nonprocurement Suspension and Debarment considered many issues in developing the proposed governmentwide nonprocurement debarment and suspension system. It concluded that the system should be as compatible as possible with the procurement debarment and suspension system in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of the nonprocurement programs. As a result, the proposed system essentially used the due process procedural structure of the FAR. Also, the proposed causes for debarment and suspension were substantially similar to those in the FAR. The proposal combined the causes common to existing agency nonprocurement regulations with the causes in the FAR.

In furtherance of the Task Force's recommendation, President Reagan signed Executive Order 12549, "Debarment and Suspension," on February 18, 1986. It was published on February 21, 1986 (51 FR 6370–71). The Executive Order established governmentwide effect for an agency's nonprocurement debarment or suspension action.

Section 6 of the Executive Order directed OMB to issue guidelines governing implementation of the Order, and Section 3 of the Executive Order directed the departments and agencies to promulgate final rules, consistent with these guidelines, within one year of the date of OMB's issuance of the guidelines.

On February 21, 1986, OMB published proposed guidelines covering the subjects indicated in section 6 of E.O. 12549, including: coverage, governmentwide criteria, and minimum due process procedures (51 FR 6372–79). After consideration of public comment on the proposed guidelines, OMB issued final guidelines on May 26, 1987, published on May 29, 1987 (52 FR 20360–69).

On October 20, 1987, 25 of the 28 affected departments and agencies (all but the Departments of Education, Energy, and Housing and Urban Development) published proposed or interim final rules consistent with the final OMB guidelines (52 FR 39015–62, 39198–204). Subsequently, the Departments of Housing and Urban Development and Energy published proposed rules on November 2, 1987 (52 FR 42004–16) and December 24, 1987 (52 FR 48693–702), respectively. The Department of Education publishes herein a final rule with a request for comments on several sections, as indicated in the Department of Education's agency-specific preamble.

The common rule is being published here in part as a final rule and in part as an interim final rule. Because the common rule deletes the limitation contained in § ____.110(a) to *domestic* Federal nonprocurement programs, as proposed in the common rule by the Agency for International Development, and instead follows more closely the exemption set forth in the Executive Order for foreign governments and public international organizations, those sections affected by this change are being published as on an interim final basis. Those sections are:
§ ____.105(n) (phrase beginning at "except:" through the end of the definition), § ____.110(a) (deletion of the word "domestic" from the first introductory sentence only),
§ ____.110(a)(2)(ii), and
§ ____.200(c)(2). Public comment is invited solely on these provisions.

Comments on Proposed and Interim Rules

All 28 departments and agencies have shared a common docket for purposes of this rulemaking. 75 comments were received from the public: seven from executive branch agencies, 11 from Members of Congress, two from State and local governments, 36 from universities and academic associations, 11 from nonprofit organizations, four from hospitals, one from a business, and three from individuals.

Of the 25 agencies issuing proposed or interim final rules on October 20, 1987, 20 voluntarily joined a common proposed rule. The five other agencies and the two agencies which published in November and December 1987 proposed consistent rules with some variations. The public comments urged a final common rule, governmentwide uniformity and various substantive changes. The final common rule reflects substantive changes that respond to various public comments. As a consequence, OMB is amending its final guidelines to conform to the final common rule herein promulgated by all 27 participating Federal departments and agencies. The Department of Agriculture was unable to complete its clearance process on this document. A memorandum to the heads of executive departments and agencies appears elsewhere in today's Federal Register.

The preamble to the October 20, 1987 proposed common rule specifically invited public comment on two areas of the proposed regulation: "Coverage" (§ ____.110(a)(1)) and "Responsibilities of Federal agencies" (§ ____.505(e)). With respect to the first, the common preamble discussed the agency choice offered in the OMB guidelines to cover direct *or* direct and indirect costs. Under the guidelines, agencies were given the discretion to extend coverage of the regulations to lower tier transactions charged as indirect costs.

The February 1986 proposed OMB guidelines requested public comment on the scope of the governmentwide system, including: types of programs; lower tier transactions; dollar thresholds; which, if any, employees should be covered; and types of costs. The final OMB guidelines attempted to be responsive to the public comments received up to that point. The common rule limited coverage to lower tier transactions charged as direct costs, and thereby proposed to exempt indirect cost transactions.

The second section on which the common preamble specifically invited public comment, § ____.505(e), set out minimum agency responsibilities for implementing and enforcing the regulation. The proposed common rule required agencies to establish procedures for dissemination and use of the List of debarred and suspended persons and to obtain certifications from participants, in transactions at or below the Federal procurement small purchase threshold, that they are not debarred or suspended. Several of the agencies in the common rulemaking proposed variations on this theme in their individual preambles. These variations ranged from requiring certifications below $25,000 and checking the List over $25,000 to exempting all transactions under $25,000 and requiring only certifications for transactions over $25,000.

Substantial public comment was received on both sections. The proposed rule was amended in several respects, as set forth below, in response to these and other public comments.

General Comments

The public comments generally supported the Executive Order's establishment of governmentwide effect for an agency's nonprocurement debarment or suspension action, but expressed concerns about the fairness and workability of certain provisions of the proposed rule and the potential impact on programs, and consistency with the procurement rules for debarments and suspensions. The final rule has been reviewed and amended to better balance the Federal Government and private interests at stake in Federal nonprocurement programs.

Several commenters stated that they considered the rule too vague and, therefore, subject to misuse. In response to these concerns, the final rule has been amended to emphasize more clearly that debarment and suspension actions are serious actions which should be undertaken only where the conduct upon which such an action is based seriously and directly affects the responsibility of the participant.

Additionally, several sections were amended with a view toward reducing potential ambiguities regarding the responsibilities of participants.

A number of commenters urged that the compliance provisions of the regulation be reconsidered in light of the paperwork and administrative burdens they appeared to impose on participants. The final rule establishes a uniform compliance system for all agencies and participants, which is less burdensome. These amendments are discussed in detail below.

The next step towards a comprehensive debarment and suspension system covering both procurement and nonprocurement activities will require technical revisions to be made to both this final common rule and to 48 CFR Subpart 9.4, which governs procurement debarment and suspension actions. The public will have a further opportunity to comment at that time. In addition, before the October 1, 1988 effective date of this final common rule, the public has the opportunity to address general questions and concerns to OMB or specific program questions to the affected agency.

Section-by-Section Analysis

The numbering system of the final rule varies somewhat from that of the proposed rule. Some sections were added and others reordered. For purposes of this discussion, the numbering of the final rule will be used, except where otherwise indicated.

Section ____.100 Purpose.

No public comment was received on this section. Paragraph (a) and the introductory sentence in paragraph (b) are amended for clarity. The order of reference to "debarred," "suspended," "ineligible," and "voluntarily excluded" persons is amended here and is made consistent throughout the regulation. Paragraph (d) of the proposed rule has been deleted since it was OMB guidance to the agencies.

Section ____.105 of the proposed rule, "Authority," is deleted as unnecessary. Reference to authority is included after the table of contents in each agency's individual preamble.

Section ____.105 Definitions.

This section (§ ____.120 of the proposed rule) was moved forward in the regulation for greater clarity in view of the fact that several of the defined terms are used in sections which formerly preceded the definitions section. For purposes of clarity of reference and to permit easier amendment by agencies which desire agency-specific language in their individual agency regulations, each definition has been given an alphabetical designation. Additionally, certain of the individual definitions were changed to respond to public comments and to conform them to changes made elsewhere in response to public comments.

The definition of "affiliate" is amended to conform to the definition in the July 31, 1987 proposed revision to the FAR (52 FR 28643). As a result, the separate definition of "control" that was included in the proposed rule is deleted as unnecessary.

A new definition of "civil judgment" is added to the regulation at § ____.105(d). The Department of Transportation (DOT) proposed this definition in its interim rule. DOT noted that the OMB guidelines authorized debarment and suspension based on civil judgments, but the guidelines contained no definition of "civil judgment." Further, DOT noted that the same rationale would justify debarment or suspension based on agency proceedings under the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99–509, 31 U.S.C. 3801–12). The Small Business Administration (SBA) also proposed inclusion of this ground for debarment or suspension, although in a different section. No public comment was received on either proposal. The final rule adopts the DOT definition, except that the word "wrongful" is omitted as misleading in that it is generally associated with tortious acts.

The definition of "debarring official" at § ____.105(g) was reformatted without substantive change to facilitate agency designations within their individual agency regulations of officials designated by the agency head to impose debarments. A corresponding change was also made to the format of the definition of "suspending official" at § ____.105(t).

The final rule at § ____.105(l) retains the definition of "ineligible" in the proposed common rule with two amendments. These amendments make clear that persons will be considered "ineligible" under this definition only where there has been a determination of ineligibility which results in that person's exclusion from more than one covered transaction. The revised language is intended to make clear that the definition is not intended to include persons denied assistance with respect to a single covered transaction for failure to satisfy statutory or regulatory eligibility criteria.

The term "Nonprocurement List" at § ____.105(k) has been subsituted in the final rule for the term "Consolidated List" in the proposed rule to conform to decisions made by the General Services Administration (GSA) regarding the title and captions of the *List of Persons Excluded from Federal Procurement or Nonprocurement Programs.* Additionally, the word "participants" has been changed to "persons" to conform the text to the new treatment of participants and principals elsewhere in the regulation. See discussion of "participant" and "principal" below.

The definition of "participant" at § ____.105(m) is substantially revised from the proposed rule. The definition of "participant" formerly included any person who might "perform services in connection with" a covered transaction and any person who "conducts business * * * as an agent or representative" of a participant. Public comment opposed this broad concept of "participant" which would encompass any employee of the participant, however indirectly involved in a covered transaction. Based on a proposal made by the Department of Defense (DOD), which was strongly supported by the public comments, the final rule deletes the "performs services in connection with" language from the definition of "participant," and revises the last sentence of the definition. Both changes are to conform the definition of "participant" to the new definition of "principal" at § ____.105(p).

This change significantly narrows the breadth of the rule. By introducing the concept of "principals," the rule now covers only those persons who participate in a covered transaction and who are working for a participant in a capacity of primary management, or who have a critical influence on or substantive control over a covered transaction (e.g., not support staff).

The definition of "participant" was also amended by replacing the phrase "receives an award or subaward" with "enter into a covered transaction" to

conform the definition to the definition of "covered transaction" in § ____.110. The concept of "award" is related to grants and cooperative agreements, which are only a part of the range of transactions which constitute "covered transactions."

The final common rule adopts SBA's proposals to delete the phrase "including any subsidiary of any of the foregoing" from the definition of "person" at § ____.105(n) and to delete the definition of "subsidiary." These changes conform the definition section to the treatment of subsidiaries under § ____.325. See discussion of this significant change under that section.

The definition of "person" has also been amended to exclude certain international participants in covered transactions. The Executive Order specifically excluded direct awards to foreign governments and public international organizations. Other related entities have been added to these two Executive Order designated entities to recognize that the sort of transaction to which the Executive Order referred sometimes is accomplished through combinations of foreign governments and other nongovernmental entities. The consequence of this exclusion, taken together with the deletion of "domestic" from § ____.110(a), is to include international nonprocurement activities of the Federal Government involving entities not specifically excluded from the definition of "person." The discussion of § ____.110(a) below provides the rationale for this extension of the coverage of this rule. This new language is being published on an interim final basis and public comment is specifically invited.

The definition of "principal" at § ____.105(p) is added to the final rule based on a proposal made by DOD in its proposed rule. The change was intended to conform the nonprocurement rule to the July 31, 1987 proposed amendment to the FAR provisions governing procurement debarment and suspension (52 FR 28642–46). The definition of "principal" in the final rule is different from that under the proposed FAR to reflect differences in the procurement and nonprocurement programs. The definition reaches all persons critical to the covered transaction, whether or not employed by the participant. This change includes within the concept of "principal" persons that would fall outside of the definition in the FAR amendment, but who have primary management of, a critical influence on or substantive control over a nonprocurement covered transaction (e.g., principal investigators).

The concept of "principal" is used in the rule in connection with the description of the effect of a debarment or suspension, and who is subject to the enforcement procedures outlined in Subpart E of the rule. The adoption of this concept limits the effect of the rule by excluding persons who would otherwise have been covered under the proposed rule.

The final rule is formatted to permit agencies to add to the examples of "persons who have a critical influence on or substantive control over a covered transaction," for purposes of their individual agency programs. This approach is intended to permit agencies to reach persons within a participant who are key to a covered transaction but who might not otherwise be considered "principals" of the transaction under the basic definition in the common rule. See agency specific amendments.

The definition of "proposal," at § ____.105(q), is amended to conform more closely with the coverage of the rule, i.e., all Federal nonprocurement programs.

A definition of "State" at § ____.105(s) has been added. The proposed rule, while using the concept "State," did not define the term. The definition included here reflects this Administration's Federalism policy.

The definition of "suspension" at § ____.105(u) has been amended by adding "Program Fraud Civil Remedies Act" to the first sentence. This change is made to conform the definition to changes made to the procedural provisions governing suspension actions. See discussion of §§ ____.411 and ____.415.

Section ____.110 Coverage.

The final rule contains fully revised language describing the coverage of these regulations. The public comments highlighted a significant weakness of the proposed rule's treatment of the distinction between coverage, effect of debarment, scope of debarment, and certification. The proposed rule combined elements of all these provisions in former § ____.110(a), which led to substantial confusion and charges that the regulations were overboard.

The public expressed substantial concern about the treatment of indirect cost transactions. Most commenters on this section objected to the inclusion of such transactions, or questioned the feasibility of such inclusion.

The final rule deletes any reference to direct or indirect costs as a basis for inclusion or exclusion of a transaction from the coverage of the regulation. The final rule omits this distinction based on the view that it is an inappropriate vehicle for limiting the scope of the rule. As the public comment made clear, use of a direct/indirect cost distinction creates difficulties in identifying which transactions are covered by the rule at the time into which they are entered. Further, exclusion of indirect cost transactions may result in a shifting of cost by participants from direct to indirect cost categories in order to evade the rule. Finally, indirect cost transactions may represent a significant portion of the cost of covered transactions, and the Federal Government's interest in these transactions cannot be legitimately distinguished from its interest in direct cost transactions.

The final common rule adopts a new approach intended to avoid the limitations of the direct/indirect cost approach. Also, it more clearly identifies the transactions affected by the rule so that participants may better avoid inadvertent violations of the rule. In response to the general concern that the rule reaches too far, the final rule contains several changes which have the effect of significantly limiting and clarifying its scope. Section ____.110(a) is revised to distinguish between primary covered transactions and lower tier covered transactions. Primary covered transactions are described at § ____.110(a)(1)(i) using substantially the same language as appeared in the proposed common rule § ____.110(a)(1). Primary covered transactions are defined to include the transactions formerly identified as "specially covered transactions" in § ____.110(a)(2) of the proposal. These transactions include essentially all Federal activities other than Federal procurement activities in which the Federal Government deals directly with a person.

Lower tier covered transactions, defined at § ____.110(a)(1)(ii), are those transactions between a participant in a covered transaction and another person growing out of a primary covered transaction. The definition of lower tier covered transaction distinguishes between three types of transactions. The first involves transactions other than procurement contracts for goods or services growing out of a covered transaction. These include, for example, subgrants under grants. All such transactions are included because they generally involve the submission of applications or other documentation before the transaction is entered into. Because of this, the enforcement procedures contained in the final rule may be applied without creating onerous paperwork or administrative burdens. See discussion of § ____.510.

The second category of lower tier covered transactions is certain procurement contracts for goods or services growing out of covered transactions. The final rule limits coverage of these transactions to contracts expected to equal or exceed the Federal procurement small purchase threshold, currently set at $25,000. This exception is made because procurement transactions under the Federal procurement small purchase threshold frequently do not involve the submission of written offers or proposals under participant's procurement procedures. Consequently, coverage of these transactions would require participants to establish additional recordkeeping and administrative procedures to comply with the rule.

The third category of lower tier covered transactions is procurement contracts for goods or services between participants and a person under which such person will have a critical influence on or substantive control over a covered transaction. This category is established to accommodate the need to reach certain procurement contracts under $25,000 for goods or services of persons having a critical influence on or substantive control over a covered transaction, e.g., bid and proposal estimators and preparers. The final common rule is formatted to permit agencies to add to the example of such persons for purposes of their individual agency programs. See agency specific amendments. Only contracts with those persons listed, either in the common rule or as a result of agency specific additions, will be considered lower tier covered transactions under paragraph (a)(1)(ii)(C).

One commenter urged that estimators be included within the scope of lower tier covered transactions. We have concluded that it is unnecessary to include such a provision in the list in paragraph (a)(1)(ii)(C) of the common rule because such persons do not participate in agency programs throughout the Federal Government. Those agencies whose programs involve estimators may designate such persons as having a critical influence on or substantive control over a covered transaction in their individual agency amendments.

Other changes in the rule also serve to narrow its scope. The inclusion of the concept of principals limits the effect of the rule to participants and their principals, and thereby excludes all other individuals employed by participants or principals. The elimination of § ____.325(a) of the automatic application of debarments and suspensions to subsidiaries also limits the effect of debarment and suspension actions. Further, the rule generally excludes procurement contract transactions which do not equal or exceed the Federal procurement small purchase threshold, currently set at $25,000. These changes are believed to be more appropriate methods of narrowing the focus of the rule to transactions and persons about which and whom the Federal Government should be most concerned.

Some commenters questioned the meaning of the term "intermediary." The term is unnecessary in view of the changes made to this provision, and is omitted from the final regulation.

One congressional commenter urged that the rule cover export licensing. The final common rule does not cover these licensing actions in part because export licenses issued under the Export Administration Act of 1979, as amended, and licenses under the Arms Export Control Act, as amended may be denied only for certain reasons specified by statute. These reasons are not currently compatible with the causes for debarment under this rule. Moreover, the Department of Commerce and State, which administer these licensing programs, currently have procedures for excluding persons from those programs. Persons so excluded would be considered "ineligible" under this rule, and would be so listed on the *List of Persons Excluded from Federal Procurement or Nonprocurement Programs.*

Section ____.110(a)(2) of the rule contains the language formerly contained in § ____.110(a)(3), with an amendment. This paragraph is reorganized for clarity and to conform to the order of reference to transactions excluded by the Executive Order.

The list in § ____.110(a)(2) is duplicated in § ____.200(c) to clarify that a person who has been debarred or suspended nevertheless retains eligibility for the listed transactions. For example, if a person receiving disability benefits is debarred for any of the causes under § ____.305 in connection with performance of a grant, such person is not prohibited from continuing to receive the disability benefits.

Persons engaged in the transactions on this exclusion list are not required to comply with the certification requirements in § ____.510 in connection with such transactions. For instance, an individual does not need to certify that he or she is not debarred or suspended in order to receive food stamps.

A particular transaction's exclusion from the definition of covered transaction, however, does not affect the Federal Government's authority to debar a person from any of the causes under § ____.305 in connection with that transaction. For instance, a person may be debarred for fraud in connection with acceptance of food stamps.

Three new categories of transactions are also excluded pursuant to this paragraph. The final common rule now includes reference to two categories identified in the Executive Order but omitted from the proposed common rule: direct awards to foreign governments and public international organizations and federal employment. The exclusion for foreign governments and public international organizations has been expanded to include related entities involved in such transactions. This change is made as a consequence of the deletion of "domestic" in the introductory sentence of § ____.110(a). See the discussion of that change above. This addition is published as an interim final rule, and public comment is expressly invited. A new exclusion has been added for transactions growing out of emergencies or disasters recognized by Federal agencies. This change is made to recognize the need for expedient action which could be encumbered unnecessarily by application of this rule.

Section ____.110(b) is amended by deleting the word "additional" before "affiliates" in the last sentence. This change is made to conform the provision to the changes made in § ____.325 relating to subsidiaries and affiliates.

Section ____.110(c) is amended by deleting the first sentence. The phrase "under Federal procurement contracts" is added to modify "subcontractors" in the second sentence to make clear that the exception does not include contracts or subcontracts under covered transactions. The last sentence of this provision, as contained in the proposed rule, is omitted as unnecessary. That sentence contained instructions from OMB to the agencies.

Section ____.115 Policy.

A new paragraph (c) is added to this section. The new paragraph provides that where more than one agency has an interest in proposing a debarment or suspension, a lead agency may be designated for purposes of taking the debarment or suspension action. This change is made for three reasons. First, it will facilitate coordination of Federal agencies having shared interests in the

debarment or suspension of a person. Second, it will enhance efficiency, by avoiding duplication of effort by several agencies. Third, it will protect persons from being subject to multiple debarment or suspension proceedings by different agencies. Public comment urged that the agencies act as "one government." This provision will help respond to these comments, and will conform the rule to the proposed changes to the FAR published on July 31, 1987 (52 FR 28642–46).

Section _____.200 Debarment or suspension.

The language of § _____.200 has been substantially revised to state more clearly the effect of a debarment or suspension. In the proposed rule, § _____.200(a) described the effect of a debarment or suspension on the eligibility of persons to be participants in covered transactions; § _____.200(b) described the effect on such persons to serve in certain key capacities within participants (see discussion of § _____.510). The final rule is organized to describe with greater clarity the effect of debarment and suspension in relation to the different categories of covered transactions.

Section _____.200(a) now specifically provides that debarred or suspended persons are excluded as either participants or principals in primary covered transactions. Section _____.200(b) now provides that debarred or suspended persons are excluded from participating in lower tier covered transactions.

A number of commenters expressed concerns about the effect of debarment or suspension. One commenter asked what would happen if a debarment or suspension terminated between the date of bid opening and the date of award. Although these regulations do not specifically address this question, the practice under the FAR is that if the debarment terminated prior to the date of award, the award may be made to the formerly debarred person.

Some commenters expressed concern that the proposed rule implied that a person who was debarred or suspended might be excluded from all Federal Government benefits. In response to these comments, a new § _____.200(c) has been added. This paragraph contains language formerly found in § _____.110(a)(3). The order of the items excluded has been amended to conform to the order of reference in the Executive Order. The list has also been expanded consistent with the amendment at § _____.110(a)(2) to include direct awards to foreign governments and public international organizations (and related transactions), Federal employment, and transactions growing out of national or agency-recognized emergencies and disasters. The reference to direct awards to foreign governments and public international organizations is published as an interim final rule, and public comment on that item is specifically invited.

The addition of this list of exclusions to § _____.200 makes clear that persons who are debarred or suspended are not rendered ineligible for participation in the nonprocurement transactions listed in this paragraph. For example, debarred and suspended persons continue to be eligible for protection of their deposits in federally-insured financial institutions as such protection is a statutory entitlement. Incidental benefits include use of the U.S. Postal Service, National Parks and recreation areas, and certain Federal licenses and permits.

Commenters also questioned whether debarment of a person would preclude that person from having any form of connection with a participant. Under the rule, a person who is debarred or suspended is only excluded from either a participant or a principal of either a primary or lower tier covered transaction. Such person is not precluded from serving in another capacity with respect to a participant, such as a non-principal employee.

Several commenters raised concerns about the motives behind and severity of a debarment or suspension action and/or its governmentwide effect. Some feared overzealous use of the procedures to harass, punish, or defund certain groups. In fact, however, the causes and due process procedures for nonprocurement debarment and suspension are not essentially different from those for nonprocurement debarment and suspension before Executive Order 12549. The principal difference is that a governmentwide system will save the Federal Government the cost and effort of taking repetitive actions to exclude participation of the same entity. Other less severe remedies, such as suspension or termination of a particular grant or disallowance of costs, will remain available, and may be more appropriate in many circumstances. Overall, the process should be viewed as beneficial to the vast majority of participants because it will ensure that assistance and benefits go only to qualified, responsible participants.

A related concern was whether a debarred or suspended person could serve on the board of directors or as an officer of a nonprofit organization receiving Federal funds. A board member or officer is included within the definition of "principal" at § _____.105(p). Therefore, an organization would be ineligible to participate in covered transactions if a debarred or suspended individual was either an officer or director.

Section _____.210 Voluntary exclusion.

This section was designated as § _____.205 in the proposed common rule. It is redesignated as § _____.210 to conform to the order of reference throughout the rule to "debarred," "suspended," "ineligible," and "voluntarily excluded" persons. Section _____.210 of the proposed common rule, "Ineligible Persons," has been redesignated as § _____.205 for the same reason. Further, text of this section is amended by replacing the term "participants" with "persons" to make it clear that voluntary exclusions may affect both participants and principals. The second sentence is deleted from the final common rule because it is misleading. The requirement to contact the original action agency is eliminated for participants and is limited to Federal agencies. Participants are not precluded from doing so, however, if they so choose. This is to conform the section to § _____.510(b)(2), which allows participants to rely on certifications received from lower tier participants, and to recognize the fact that participants are not expected to be in possession of the List. This change further reduces the compliance burden imposed on participants.

Section _____.215 Exception provision.

The term "voluntarily" is inserted before "excluded" in the first sentence of this provision. This change is made to recognize that no exception may be granted to a person who is ineligible for a program, as defined in § _____.105(l); whereas, an exception may be granted to a voluntarily excluded person.

Section _____.220 Continuation of Covered transactions.

The caption of this section has been amended to conform to the use of "covered transaction" in place of "award" throughout the rule. Two commenters asked for clarification that no-cost time extensions or change orders were not affected by § _____.220(b). Language is added to indicate that no-cost time extensions of existing awards are not affected by subsequent debarments or suspensions. A similar provision is not included for change orders because of the varied nature of change orders. If change orders are necessary to protect the integrity of the covered transaction, the exception provisions of § _____.215 may be utilized.

Section _____.225 Failure to adhere to restrictions.

The phrase "ineligible or voluntarily excluded" is substituted for "otherwise excluded" each time it appears in this provision and throughout the regulation. This change limits the reference to actions covered by this regulation.

The first sentence of this section is amended to more clearly state the types of transactions which would constitute a violation of the rule. The proposed common rule language could have been read as precluding any transaction with any person who was debarred, suspended, ineligible, or voluntarily excluded, regardless of whether the transaction was in connection with a covered transaction, or whether the person was ineligible or voluntarily excluded from the individual transaction involved.

The final common rule also substitutes "knowingly" for "known or reasonably should have been known" to conform this provision to the comparable proposed FAR provision. The comparable FAR provision appears in the certification in the July 31, 1987 proposed amendments to the FAR (52 FR 28642–46). Knowingly doing business with a debarred or suspended person could result in a cost disallowance or other action.

Six commenters expressed concerns that the sanctions for failing to adhere to restrictions would place an undue burden on participants. In response to these concerns, a provision is added stating that a participant pursuant to § _____.510(b), unless the participant knows that the certification is erroneous. The burden of proof is on the Federal Government to prove that the participant knowingly did business with a debarred or suspended person.

Section _____.305 Causes for debarment.

Several commenters expressed concern that the proposed common rule vested too much administrative discretion in agencies, that the causes for debarment under § _____.305 were too broad and/or vague, and that some of the grounds for debarments were inconsistent with those in the FAR. The principal concern raised was that agencies might use the debarment process to exclude persons for inadvertent or insignificant actions or as punishment. These concerns focused on the grounds in three paragraphs.

Concern was expressed that paragraph (b)(1) and (b)(3), which permitted debarment based on willful *or* material failures to perform or violations of applicable requirements, could be used to exclude persons for insignificant cause. Other commenters objected to paragraph (c)(2), which permits debarment based on a participant's doing business with a person the participant knew or should have known was debarred, suspended, ineligible, or voluntarily excluded from a covered transaction. The concern was that persons could be debarred for unintentional and inadvertent violations of these provisions.

The final rule retains most of the grounds for debarment of the proposed rule with amendments. Most of the amendments are to conform the grounds for debarment under this rule with those contained in the FAR causes for debarment at 48 CFR 9.406–2 (a)–(c). Paragraph (a) is amended to delete the phase beginning with "any offense indicating" through the colon, in conformity with the comparable FAR provision. Paragraphs (a)(1) through (a)(4) restate the causes for debarment contained in paragraphs (a)(1) through (a)(3) and (c)(3) of the proposed rule in language that more closely parallels the comparable FAR provisions. They have also been reordered to conform to the order of the FAR provisions.

One commenter suggested that the grounds for debarment under § _____.305(a) be restricted to the offenses related to the assistance program or benefit in question. In order for the Federal Government to adequately protect its various interests, it is necessary to take cognizance of a person's propensity to commit fraud or other wrongs in other similar relationships, whether the original offense was against another Federal agency, a State, or a private person. It is the act of wrongdoing, and not the program or victim, that is relevant to the protection of the Federal interest.

The phrase "public or private agreement or transaction" in paragraph (a)(1) is intended to paralled "public contract or subcontract" in 48 CFR 9.406–2(a)(1). Private agreements and transactions need to be covered because certain lower tier covered transactions will be between two private parties.

Other changes are made to narrow the grounds for debarment in response to the public comments. Paragraph (b) is amended by substituting the phrase "integrity of an agency program" for "present responsibility of a participant." This change is made to better describe the Federal interest intended to be protected by the grounds for debarment outlined in paragraph (b).

Several commenters objected to the "or material" language in paragraphs (b)(1) and (b)(3). In response to these comments, and to conform with the FAR causes for debarment at 48 CFR 9.406–2(b), that language has been deleted from the final rule.

Paragraph (c)(1) has been amended to restrict this cause to debarments by Federal departments or agencies under the FAR procurement debarment and suspension regulations, 48 CFR Subpart 9.4. Paragraph (c)(1) in the proposed rule provided that a person may be debarred for debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § _____.305. This cause was narrowed to include only debarments by Federal agencies under the FAR and nonprocurement debarments by Federal agencies taken prior to the effective date of these regulations. This change was made in response to the concern that State debarment proceedings may not provide the same due process rights as Federal proceedings and, therefore, such proceedings by themselves should not constitute sufficient cause for a Federal debarment.

Paragraph (c)(2) has been amended by substituting "knowingly" for "known or reasonably should have been known" to conform to the comparable proposed FAR provision. The comparable FAR provision appears in the certification in the July 31, 1987 proposed amendment to the debarment provision (52 FR 28642–46).

Paragraph (c)(3) in the proposed common rule has been moved in substance to paragraph (a)(4) to conform to the FAR.

Paragraph (c)(3) was designated as paragraph (c)(5) of the proposed common rule. Commenters expressed concern that the effect of this provision would be to convert this regulation into another tool used by agencies to collect debts, and that this provision could be used to exclude persons with a single or nominal debt. These concerns are unwarranted. This cause is intended to ensure that the Federal Government does not enter into covered transactions with persons who have either defaulted on a single, substantial obligation to a Federal agency (e.g, an agri-business loan, but not a single student loan), or defaulted on a number of obligations to one of more Federal agencies. It is also not intended to reach debts once in default that have since been repaid or otherwise forgiven.

In light of the public comment and the underlying purpose of the provision, the final rule is amended to provide that

debarment may be based on a failure to satisfy a single, substantial outstanding debt or a number of outstanding debts owed to any Federal agency or instrumentality, provided that such debt is uncontested or that all administrative remedies have been exhausted by the debtor. Additionally, because concern was raised that this cause might be used as a method for compelling payment of tax deficiencies and related assessments, the cause has been amended in the final rule to exclude debts due under the Internal Revenue Code.

Paragraph (c)(4) of the proposed common rule is deleted from the final common rule. This cause for debarment is not in the FAR, and raises possible due process concerns.

Paragraph (c)(6) in the proposed rule is redesignated as paragraph (c)(4) in the final rule.

As revised, the causes for debarment are now better tailored to focus on the appropriate range of events and behavior that potentially threaten the integrity of federally-administered nonprocurement programs and more closely parallel the FAR causes for debarment. Additionally, the rule provides adequate protection to the public and business community against frivolous agency debarment actions or actions based on insignificant events. Section _____.300 clearly states that the mere technical existence of a cause for debarment does not require an agency to debar. Under that section, the debarring official must consider the seriousness of the person's acts and any mitigating factors, before rendering a decision. Moreover, the procedures in §§ _____.310–_____.314 guarantee substantial due process rights to a person proposed for debarment, and any final determination by an agency is subject to judicial review.

Section _____.310 Procedures.

The provisions contained in § _____.310 of the proposed rule are restructured and simplified to improve their readability. The language is now divided into separate sections, §§ _____.310–_____.314. The substance of the common rule, as revised, is essentially unchanged from that of the proposed common rule.

The language from the first part of proposed rule § _____.310(b), is now contained in substance in § _____.310.
§ _____.310(a) is now contained in substance in § _____.311.
§ _____.310(b)(1) is now in § _____.312.
§ _____.310(b)(2) is now in § _____.313(a). § _____.310(b)(3) is now in § _____.313(b).
§ _____.310(b)(4) is now in § _____.314 (a) and (b). § _____.310(b)(5) is now § _____.314(c). § _____.310(b)(6) is now § _____.314(d).

Further, the provisions have been structured to permit individual Federal agencies to insert additional provisions necessary to conform the regulation to their internal operating procedures. Additionally, non-substantive language changes have been made in various sections to improve clarity.

The Department of Housing and Urban Development (HUD) has organized its procedural sections differently to accommodate actions for both procurement and nonprocurement debarment and suspension. See its agency specific preamble.

Public comments focused on several aspects of the procedures. Some commenters expressed concern that the standard of proof was too low. The "preponderance of the evidence" standard set out in § _____.314(c)(1) is the same standard of evidence contained in the FAR, 48 CFR 9.406–3(d)(3), and in other regulations Governing comparable proceedings throughout the Federal Government. Moreover, this standard has been found adequate by courts reviewing actions under the FAR and other such regulations. For these reasons, the "preponderance of the evidence" standard is retained in the final rule.

Some commenters expressed concern that the regulation does not clearly assign the burden of proof. While the proposed common rule was silent on this point, a new paragraph (c)(2) is added which states that the burden of proof is on the proposing agency.

Many commenters urged that the regulation include an administrative appeal process. The purpose of these regulations is, among other things, to ensure that minimum due process is guaranteed to all respondents. Due process does not require that administrative agencies provide an administrative appeal from its decisions to debar. The final rule allows individual agencies to decide what level, style or avenue of appeal, if any, they wish to provide. This approach is consistent with rules currently in effect for debarment under the FAR, which have been upheld by the courts.

Two commenters objected to the procedures now contained in § _____.314 (a) and (b), "No additional proceedings necessary" and "Additional proceedings necessary," respectively, in which the debarment decision may be based on the administrative record without providing the respondent a fact-finding hearing. The procedural section of the proposed common rule was drafted to conform to the procedures for debarment under FAR. Those regulations have withstood Constitutional challenge. Where material facts are not in dispute, due process does not require a full fact-finding hearing, including confrontation of witnesses. The final rule, like the proposed rule, neither requires agencies to nor precludes them from providing hearings to receive and consider mitigating evidence and other information that may influence the agency's decision.

Section _____.314(d)(2) permits dismissal without prejudice of a debarment action against a person. Should a second agency debar that same person, however, such debarment shall have governmentwide effect, and shall be recognized by the agency that had dismissed its own debarment action.

Section _____.315 of the proposed rule, "Effect of proposed debarment," gave limited effect to a proposed debarment. Concern was expressed that this sort of provision meant, in effect, that persons could be considered guilty before having had an opportunity to defend themselves. In response to this concern, and, since the suspension provision permits agencies to exclude persons viewed as posing a threat to Federal interests pending a debarment decision, this provision was deleted, together with all related references elsewhere in the regulation. Proposed debarments currently do not have governmentwide effect under the FAR, although such effect is proposed in the July 31, 1987 notice of proposed rulemaking (52 FR 28642–48). If the FAR adopts this treatment, this provision will be reconsidered.

Section _____.315 of the final rule, "Settlement and voluntary exclusion," formerly designated § _____.320, reflects changes to clarify the purpose and effect of voluntary exclusions under settlement agreements.

Section _____.320, "Period of debarment," designated as § _____.325 in the proposed rule, is unchanged from the proposed rule. Some commenters urged a shorter period of debarment, and others urged longer periods. The proposed rule language is amended to be made consistent with the FAR. In this regard, the phrase "or indefinite" is deleted from paragraph (a) of the final common rule. Additionally, the word "may" in the final sentence of that paragraph has been replaced by "shall."

The language at the beginning of § _____.320(c) has been amended to improve clarity. Under this paragraph, respondents may request reversal of a debarment or a reduction in its period or scope. Such request must be in writing and supported by documentation.

Section _____.330(a) of the proposed rule (now designated § _____.325(a), "Scope in general") provided that debarment automatically included all subsidiaries, divisions, and other organizational elements of a participant or an affiliate. The scope of a debarment has been narrowed in the final rule by deleting the term "subsidiaries" from § _____.325(a)(1). As a result, subsidiaries will be treated as affiliates under the rule, and debarring agencies must afford them the same rights to notice and opportunity to respond to the proposed debarment as that given any person proposed for debarment. In other words, affiliates will be considered respondents under the rule if a proposed debarment action includes them. Because of this change, the word "other" has been deleted before "affiliate" in former § _____.330(a)(2) to recognize that there is only one class of affiliates, all of which are entitled to the procedural rights afforded all respondents. As a result of the change affecting affiliates, agencies that also seek to debar particular affiliates of a participant will similarly need to identify such affiliates and provide them with notice of the proposed debarment under § _____.312 and the opportunity to participate in proceedings under § _____.313.

Section _____.325(a)(1) specifically states that a debarment may be limited to particular individuals, divisions or organizational elements of participants. In such cases the notice of proposed debarment under § _____.312 will be directed only to the affected individuals, divisions or organizational elements.

Some commenters objected to the possibility of including affiliates at all in any debarment action where direct culpability cannot be shown. Extension of a debarment to affiliates, regardless of complicity, is necessary to prevent a debarred person from participating in covered transactions through or under the guise of other entities that such person controls.

Section _____.325(b) of the final rule, "Imputing conduct," formerly § _____.330(b), received substantial public comment. While some predicted that imputing misconduct would discourage citizen involvement in community projects, others were concerned that the existence of a cause for debarment with respect to one person would result in debarment of others who were not responsible for the actions in question. The principle of imputing the misconduct of one individual or organization to another, or between individuals and organizations, is a well established principle in the law, and has been used in debarment proceedings under both Federal procurement and nonprocurement programs that predate this rule. The imputed conduct provisions in this rule conform with those in the FAR.

Other concerns regarding this provision are resolved by the language of the rule itself. Some commenters expressed the concern that it is inappropriate to impute conduct to individuals or organizations without regard to their responsibility for or culpability in the misconduct. The language in § _____.325(b) expressly limits imputing conduct to situations where the person to whom it is imputed had knowledge of, approved of, or acquiesced in the misconduct in question, or where such misconduct was done for or on behalf of the person to whom it is imputed. Additional protection is afforded individuals to whom conduct may be imputed by virtue of the procedural protections in the rule. The debarring official is required by these rules to consider all relevant information and mitigating factors presented before rendering a decision. The rule does not permit a person to be debarred based on imputed conduct without just cause.

Section _____.400 General.

Section _____.400(b) is reorganized without substantive change for greater clarity.

Section _____.400(c) is added to incorporate language currently found at 48 CFR 9.407–1(b). This outlines the approach agencies will take in assessing the adequacy of the evidence in support of a suspension.

Section _____.405 Causes for suspension.

Some commenters questioned whether "mere suspicion" that a participant engaged in an activity which would be grounds to debar was sufficient reason to suspend under § _____.405(a)(1). The language is derived from the corresponding FAR provision. 48 CFR 9.407–2(a) provides that suspension may be imposed against "a contractor suspected, upon adequate evidence, of" commission of a covered offense. The provision here similarly protects the interests of suspended persons by requiring that such suspensions based on suspicion of an offense be based on adequate evidence. Further, the provision stating that an indictment shall be considered adequate evidence to support a suspension replicates the corresponding provision in the FAR at 48 CFR 9.407–2(b).

Moreover, § _____.400(b) requires that before imposing a suspension, the suspending official must be satisfied that "immediate action is necessary to protect the public interest. If the gravity of the Federal Government's intereat is not deemed sufficient, suspension may not be imposed even if a technical cause to suspend has been established.

In addition, the rule does not preclude an agency from employing other means than suspension to protect its interests. Where circumstances warrant, an agency and a person may enter into an agreement governing that person's participation in agency programs pending resolution of the matter. Agencies are expected to use their judgment in resorting to suspension, balancing the interest to be protected against the effects resulting from imposing a suspension.

One commenter requested clarification of the language contained in § _____.405(b) which reads "Indictment shall constitute adequate evidence for purposes of suspension actions." This provision is consistent with language contained in the FAR. An indictment represents a determination by competent authority that probable cause exists to believe that the named defendant has committed a criminal act; executive agencies are neither authorized nor positioned to question the factual support for the allegations contained therein. Accordingly, an indictment satisfies the standard of § _____.405(a)(1) that there must be "adequate evidence * * * to suspect the commission of an offense." Therefore, as a technical matter, the adequate evidence standard is met. Agencies would be remiss if they failed to acknowledge the significance of the issuance of an indictment and to act upon it where a legitimate Federal Government interest is threatened. Nonetheless, even where an indictment would serve as a basis for suspension, suspension cannot occur unless immediate action is necessary to protect the public interest.

Section _____.410 Procedures.

The provisions contained in § _____.410 of the proposed rule are restructured and simplified to improve their readability. The language is now divided into separate sections, §§ _____.410–_____.413. The substance of the rule, as amended, is essentially unchanged from that of the proposed rule.

HUD has organized its procedural sections differently to accommodate actions for both procurement and nonprocurement debarment and

suspension. See its agency specific preamble.

The language from the proposed rule § ____.410(b)(1), is now contained in substance in § ____.411. The language in paragraph (e) is revised to include reference to "Program Fraud Civil Remedies Act" proceedings, consistent with the change to definition of "civil judgment" at § ____.105(d), as a result of which imposition of a penalty under that act could be a cause for debarment.

Section ____.410(b) (2) and (3) are now contained in substance in § ____.412 (a) and (b), respectively. Section ____.410(b)(4) is now in § ____.413 (a) and (b). § ____.410(b)(5) is now in § ____.413(c). Further, the provisions have been structured to permit individual Federal agencies to insert additional provisions necessary to conform the regulation to their internal operating procedures. Recommendations for substantive change are discussed below.

Many commenters expressed concern about the procedures employed under §§ ____.412—____.413 to contest a suspension. Several suggested that the procedures deny due process to a respondent. Attention was particularly focused upon the provisions indicating that no additional proceedings will be conducted where suspension is based on an indictment or upon advice of the Department of Justice under § ____.413(a).

The provisions regarding the process to be accorded suspended individuals is derived from the FAR provisions at 48 CFR 9.407–3, albeit in a somewhat reorganized fashion. The FAR provisions have been held to provide adequate due process to protect the interests of suspended contractors. Because these provisions substantively duplicate those provisions, we believe they similarly provide the required due process.

Section ____.415 Period of suspension.

One commenter proposed that the period of suspension be reduced in the final rule. The commenter believed 12 months was too long. The 12-month period noted in the regulation represents an outer bound on the duration of a suspension where a legal or administrative proceeding is not instituted, unless extended to 18 months at the written request of an Assistant Attorney General or United States Attorney. The duration of a suspension is keyed to the legal, debarment, or Program Fraud Civil Remedies Act proceeding. In most cases a suspension would not last 12 months. In cases where a lengthy suspension is expected, it may be necessary for the suspended party to negotiate an alternative arrangement with the agency. Barring such an interim agreement, the agency may need to suspend the person to protect the Federal Government's interest. The period of suspension in the proposed and final rule is identical to the FAR debarment procedures at 48 CFR 9.407–4.

A reference to the Program Fraud Civil Remedies Act is added to this provision. This change is to conform this provision to the change made earlier, making a civil penalty imposed under the Program Fraud Civil Remedies Act a basis for debarment.

Section ____.500 GSA responsibilities.

The term "participant" is replaced by "person" both times it appears in this section to conform to prior changes regarding principals.

Section ____.505 [Agency] responsibilities.

Section ____.505 is substantially revised to conform to the spirit of amendments proposed by the Environmental Protection Agency (EPA) and SBA. Both proposed that agency and participant responsibilities be separately addressed, and that the latter be included in a new § ____.510. Section ____.505 now contains only agency responsibilities.

Paragraph (a) is revised to simplify the language. Paragraph (c) of the proposed rule is deleted as not appropriate for inclusion in the common rule. That provision dealt with dissemination of the List. To the extent that it pertained to dissemination within an agency, it is more appropriately contained in internal agency procedures. To the extent that it dealt with external distribution to participants, due to the addition of § ____.510 to the final rule, participants are not required to use the List. Former paragraph (d) is redesignated § ____.505(c).

Paragraph (d) of the final rule generally incorporates language proposed by EPA, SBA, and the Department of Agriculture. It requires agencies to consult the Nonprocurement List before entering into a primary covered transaction. Paragraph (e) applies the same requirement where the Federal agency is required under the terms of a primary covered transaction to approve principals in that transaction or participants in lower tier covered transactions.

Section ____.510 Participants' responsibilities.

As noted above, this section is added based on the amendments to the common rule proposed by EPA and SBA. Paragraph (a) of this section provides that a participant in a primary covered transaction shall submit the certification contained in Appendix A to this regulation at the time it submits its proposal in connection with any primary covered transaction. This generally follows the requirement contained in § ____.505(e) of the proposed rule. The remainder of this paragraph appeared at the end of § ____.505(e) of the proposed common rule.

In the proposed rule, at former § ____.200(b), participants were asked to certify for themselves and for persons acting in the following capacities: "as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any position charged as a direct cost under the covered transaction." DOD proposed that certification be limited to participants and their principals, similar to the requirements in the proposed FAR provisions governing debarment and suspension under Federal procurement programs published on July 31, 1987 (52 FR 28642–46). Public comments strongly supported this proposal. The final rule requires participants to certify only for themselves and for their principals (see Appendix A). Consistent with this Administration's Federalism policy, States, as defined at § ____.105(s), will not need to certify as to themselves, but will be required to certify as to their principals.

Agencies proposed a number of approaches for enforcement as to lower tier covered transactions. The agency proposals included a variety of combinations of participants' checking the List and obtaining certifications from participants in lower tier covered transactions. Numerous commenters cited the need for uniformity among agencies. However, there was little agreement among the commenters on what approach should be taken. Some preferred checking the List, some preferred certification, and others preferred giving participants the option to do either. § ____.510(b) of the final rule establishes a uniform system, similar to that provided by the proposed amendment to the FAR for Federal procurement. Participants at any tier are to obtain certifications in the form specified in Appendix B to this final rule from participants, about themselves and their principals, in lower tier covered transactions at the next lower tier.

The proposed common rule included no dollar threshold for lower tier covered transactions. DOD and the National Endowment for the Arts proposed establishing a $25,000 threshold below which no certifications would be required. The comments that were received reflected wide support for establishing a threshold, but disagreed on the dollar amount. Commenters proposed thresholds ranging from $10,000 to $100,000.

As described in the earlier discussion of § ____.110(a)(1), "Covered transaction," the final rule adopts the Federal procurement small purchase threshold (currently $25,000) as a threshold for lower tier covered transactions in the form of procurement contracts, with one exception. The one exception is for contracts with persons to act as principals; for these contracts there is no threshold.

The threshold for procurement contracts under covered transactions, with the one exception, is consistent with the proposed revision to the FAR coverage of subcontracts. As noted above for the broader definition of principals, the one exception is intended to provide adequate coverage for some Federal nonprocurement programs that are substantively different from Federal procurement programs. This broader definition is not intended to create wider enforcement for other Federal programs that are substantively similar to Federal procurement programs.

A number of commenters suggested that certification should be obtained at the time of award rather than at the time a participant submits a proposal in connection with a covered transaction. For many nonprocurement programs this was deemed impractical. To wait until award would force agencies and participants, for example, to process applications only to find that the applicants are excluded. Therefore, the final rule requires participants to submit certifications at the time of proposal. This also is consistent with proposed FAR coverage for Federal procurement programs, where Federal contracting officers will include a certification clause in solicitations as well as contracts.

Some commenters suggested that annual certification of individuals should suffice to ensure that excluded or ineligible persons are not participating in Federal programs. Commenters also noted that any certification requirement might create the need for investigations of personnel and associated recordkeeping burden. The final rule allows the participant to decide the method and frequency by which it determines the eligibility of its principals. If they choose, participants at any tier may, but are not required to, check the Nonprocurement List to determine whether their principals are debarred, suspended, ineligible, or voluntarily excluded. It is noted that nothing in the rule is to be construed to require the participant to establish a system of records in order to render the certification in good faith. Moreover, the knowledge and information upon which a certification is based need not exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. The approach taken by the final nonprocurement rule in this regard is consistent with that taken by the proposed revision to the FAR.

This regulation will become effective October 1, 1988, the start of the next Federal fiscal year. This makes this regulation effective on the same date as the governmentwide grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," implementing OMB Circular A–102, published on March 11, 1988 (52 FR 8034–103).

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We do not believe that this regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this regulation is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

We certify that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

DEPARTMENT OF ENERGY

10 CFR Part 1036

FOR FURTHER INFORMATION CONTACT: Thomas Brown, Department of Energy, Procurement and Assistance Management Directorate, (MA–441), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9075.

Carol A. Cowgill, Department of Energy, Office of the Assistant General Counsel for Procurement and Finance, (GC–34)1000, Independence Avenue SW. Washington, DC 20585, (202) 586–6902.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) is joining in the joint publication of regulations implementing Executive Order 12549, "Debarment and Suspension," signed by President Reagan on February 18, 1986. The Executive Order required the Office of Management and Budget (OMB) to develop guidelines for agency implementation of the Order. The OMB issued its "Guidelines for Nonprocurement Debarment and Suspension" on May 26, 1987, which were published in the Federal Register on May 29, 1987 (52 FR 20360–20369).

These Guidelines were intended to serve as a model regulation for adoption by the affected agencies. In accordance with section 3 of E.O. 12549, the DOE published a proposed rule on December 24, 1987 at (52 FR 48693–48702) that was consistent with the proposed Guidelines but also contained existing DOE procedures adopted from the DOE procurement and nonprocurement procedures in 10 CFR Part 1035. As required by the OMB, the DOE is participating in the final common rule as supplemented by the DOE specific procedures which were proposed on December 24, 1987. 10 CFR Part 1035 will be amended to reflect that Part 1035 will only apply to DOE procurement debarments and suspensions and will no longer govern the agency's nonprocurement debarments and suspensions.

Five public institutions submitted comments to the DOE. These comments were the identical or substantially the same as the comments these institutions submitted to the OMB on the proposed common rule issued on October 20, 1987

at (52 FR 39015–39062, 39198–39204) and thus are addressed in the common rule preamble.

The DOE is joining other agencies in giving interim final effect to changes in the wording of its December 24, 1987, proposed rule which in effect excludes public international organizations and foreign entities which are governmentally controlled or owned to some extent. In so doing, DOE is dispensing with prior notice and comment pursuant to 42 U.S.C. 7191(c)(1) and 5 U.S.C. 553(b)(3)(B) because the changes represent largely non-discretionary, clarifying, technical amendments to conform the common rule to the actual provisions of section 1(c) of Executive Order 12549. As such, the changes do not pose any substantial issues of fact or law or significant impacts of which the Department could take account consistent with Executive Order 12549. In addition, there is good cause to waive prior notice and comment as impracticable because it is the only method of meeting the Executive Order deadline for publication of implementing regulations one year from the date of the OMB guidelines and achieving the President's policy objectives by uniform agency action. Finally, there is good cause to waive prior notice and comment as unnecessary because a 60-day comment period on the interim final portions of the common rule begins today and the DOE will be able to respond to any relevant comments prior to the effective date of the whole common rule which is October 1, 1988.

The DOE has added definitions to § 1036.110 for awardee, Director, the DOE, and the DOE List. In §§ 1036.110(h)(1) and 1036.110(u)(1), the DOE identifies the Director, Procurement and Assistance Management Directorate as both the debarring and suspending official for the DOE. The Director is also identified in § 1036.215(a) as the person designated for the DOE to grant exceptions. In § 1036.115(c)(1), DOE notes that the debarment and suspension of the DOE procurement contractors is covered by 10 CFR Part 1035.

In §§ 1036.312, 1036.314(d), and 1036.411, the DOE adds the previously proposed DOE procedures for the notice of proposed DOE debarment, notice of the debarring official's decision, and the notice of suspension. Sections 1036.313(1) and 1036.412(a)(1) are added to identify that a request for a meeting should be sent to the Director. In the DOE's proposed rule issued December 24, 1987, the DOE procedures for consideration of voluntary exclusion prior to a final debarment decision were numbered § 1036.320; in the final rule, they are found in Section 1036.315(c).

Subpart F is added to the common rule which contains the additional DOE procedures for debarment and suspension. This subpart is essentially the same as proposed on December 24, 1987. The only substantive change is the deletion of the words "DOE participants" from § 1036.615(b), (c), (d), (e), and (g). This change deletes the requirement for the DOE participants to check the DOE List and the Nonprocurement List prior to making any new, continuation or renewal awards or lower tier covered transactions. Section 1036.615(h) is added as prohibition for DOE participants for awarding, extending or renewing agreements with lower tier participants who fail to complete the certification required by § 1036.510(b).

List of Subjects in 10 CFR Part 1036

Administrative practice and procedure, Nonprocurement debarment and suspension, Grant programs/Energy, Loan programs/Energy, Cooperative agreements.

For the reasons set out in the preamble, Title 10 of the Code of Federal Regulations is amended as set forth below.

G. L. Allen,

Deputy Director, Procurement and Assistance Management Directorate.

1. Part 1036 is added to read as set forth at the end of this document:

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

1036.100 Purpose.
1036.105 Definitions.
1036.110 Coverage.
1036.115 Policy.

Subpart B—Effect of Action

1036.200 Debarment or suspension.
1036.205 Ineligible persons.
1036.210 Voluntary exclusion.
1036.215 Exception provision.
1036.220 Continuation of covered transactions.
1036.225 Failure to adhere to restrictions.

Subpart C—Debarment

1036.300 General.
1036.305 Causes for debarment.
1036.310 Procedures.
1036.311 Investigation and referral.
1036.312 Notice of proposed debarment.
1036.313 Opportunity to contest proposed debarment.
1036.314 Debarring official's decision.
1036.315 Settlement and voluntary exclusion.
1036.320 Period of debarment.
1036.325 Scope of debarment.

Subpart D—Suspension

1036.400 General.
1036.405 Causes for suspension.
1036.410 Procedures.
1036.411 Notice of suspension.
1036.412 Opportunity to contest suspension.
1036.413 Suspending official's decision.
1036.415 Period of suspension.
1036.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1036.500 GSA responsibilities.
1036.505 DOE responsibilities.
1036.510 Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Secs. 644 and 646, Public Law 95–91, 91 Stat. 599 (42 U.S.C. 7254, and 7256); and Executive Order 12549 51 FR 6370 (February 18, 1986), 3 CFR 1986 Comp., p. 189; OMB Guidelines for Nonprocurement Debarment and Suspension, 52 FR 20360 (May 29, 1987).

2. Part 1036 is further amended as set forth below.

a. "[Agency]" is removed and "DOE" is added wherever "[Agency]" occurs.

b. Section 1036.105 is amended by adding paragraphs (g)(3), (t)(3), (w), (x), (y), and (z) to read as follows:

§ 1036.105 Definitions.

* * * * *

(g) * * *

(3) The DOE debarring official is the Director, Procurement and Assistance Management Directorate.

* * * * *

(t) * * *

(3) The DOE suspending official is the Director, Procurement and Assistance Management Directorate.

* * * * *

(w) *Awardee.* Any organization or individual that:

(1) Submits proposals for, or is awarded, or reasonably may be expected to submit proposals for, or be awarded a DOE agreement; or

(2) Conducts business with DOE as an agent or representative of an awardee.

(x) *Director.* The Director, Procurement and Assistance Management Directorate, DOE.

(y) *DOE.* The Department of Energy, including the Federal Energy Regulatory Commission.

(z) *DOE List.* The DOE Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees maintained by DOE in accordance with § 1036.610 of this part and 10 CFR 1035.15.

c. Section 1036.110 is amended by adding paragraph (c)(1) to read as follows:

§ 1036.110 Coverage.

* * * * *

(c) * * *

* * * * *

(1) Debarment and suspension of DOE procurement contractors is covered by the rules in 10 CFR Part 1035.

d. Section 1036.215 is amended by adding paragraph (a) following the existing text to read as follows:

§ 1036.215 Exception provision.

* * * * *

(a) The DOE authorized designee is the Director, Procurement and Assistance Management Directorate.

e. Section 1036.312 is amended by adding paragraph (b)(1), (d)(1), (e)(1), (f), and (g) to read as follows:

§ 1036.312 Notice of proposed debarment.

* * * * *

(b) * * *

(1) The notice shall omit any information which, if disclosed, would prejudice an ongoing civil or criminal investigation or a pending or contemplated legal proceeding, or would compromise national security;

* * * * *

(d) * * *

(1) The notice shall cite the DOE procedures in § 1036.600; and

(e) * * *

(1) If a notice of proposed debarment is issued to a person or affiliate who is not suspended, the notice shall state that, for purposes of affected DOE agreements and subagreements, the proposed debarment shall have the effect of a suspension for DOE only.

(f) That within 30 days after receipt of the notice, the respondent may submit, or make a written request for an opportunity to submit, to the Director or designee, information and argument in opposition to the proposed debarment, including any additional specific information that may raise a genuine dispute over the material facts. The submission in opposition may be made in person, in writing or through a representative; and

(g) That the respondent's name and address have been placed on the DOE List.

f. Section 1036.313 is amended by adding paragraph (a)(1) to read as follows:

§ 1036.313 Opportunity to contest proposed debarment.

(a) * * *

(1) A request for a meeting should be sent to the Director. (See § 1036.600(c).)

* * * * *

g. Section 1036.314 is amended by adding paragraphs (d)(1) (v), (vi), (vii) and (viii) to read as follows:

§ 1036.314 Debarring official's decision.

* * * * *

(d) * * *

(1) * * *

(v) Advising whether the decision limits the debarment or suspension action to affected covered transactions involving particular commodities, products, services, or forms of energy, or to projects or work performed in specified geographic regions;

(vi) Stating the names and addresses of the respondents that will be placed on the DOE List;

(vii) Stating that a copy of the debarment notice was sent to GSA and that the respondent's name and address will be added to the Nonprocurement List; and

(viii) Advising that if less than an entire organization is debarred, the identity or description of the organizational element(s) included within the scope of the debarment.

* * * * *

h. Section 1036.315 is amended by adding paragraph (c) to read as follows:

§ 1036.315 Settlement and voluntary exclusion.

* * * * *

(c) At any time prior to the issuance of a final decision under § 1036.314, the Director may, in the public interest, agree, in writing, to terminate a suspension or withdraw a proposed debarment on the conditions that the respondent voluntarily refrain from attempting to obtain, and from entering into, one or more types of DOE or other Federal covered transactions. Failure to observe such conditions shall be an independent cause for debarment or suspension. The name and address of the respondent who is a party to a voluntary exclusion shall be placed on the DOE List and the GSA List. The Director shall not enter into a voluntary exclusion if the proposed debarment is based on conviction of or civil judgment for any of the causes in § 1036.305(a), or if the suspension was based on an indictment for any of the causes in § 1036.305(a).

i. Section 1036.411 is amended by adding paragraphs (c)(1), (f)(1), (h), (i), and (j) to read as follows:

§ 1036.411 Notice of suspension.

* * * * *

(c) * * *

(1) That the notice shall omit any information which, if disclosed, would prejudice an ongoing civil or criminal investigation or a pending or contemplated legal proceeding, or would compromise national security;

* * * * *

(f) * * *

(1) The notice shall cite the DOE procedures in § 1036.600; and

* * * * *

(h) That within 30 days after receipt of the notice, the respondent may submit, or make a written request for an opportunity to submit, to the Director or designee, information and argument in opposition to the suspension, including any additional specific information that may raise a genuine dispute over the material facts. The submission in opposition may be made in person, in writing, or through a representative.

(i) That the suspension is effective as of the date of the notice.

(j) That the respondent's name and address have been placed on the DOE List

j. Section 1036.412 is amended by adding paragraph (a)(1) to read as follows:

§ 1036.412 Opportunity to contest suspension.

(a) * * *

(1) A request for a meeting should be sent to the Director. (See § 1036.600(c)).

* * * * *

k. Subpart F is added to read as follows:

Subpart F—Additional DOE Procedures for Debarment and Suspension

1036.600 Decisionmaking.
1036.605 Coordination with Department of Justice.
1036.610 DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees.
1036.615 Effects of being listed on the DOE and nonprocurement lists.

Subpart F—Additional DOE Procedures for Debarment and Suspension

§ 1036.600 Decisionmaking.

(a) *Definitions.* (1) "Fact-finding panel" means a three-member panel appointed by the Director to conduct a fact-finding conference under paragraph (d) of this section. This panel shall consist of an office director within the Procurement and Assistance Management Directorate, a senior attorney nominated by the General Counsel or designee, and senior official

of a program or other office of the Department.

(2) For purposes of this section, "timely" means mailed or delivered to the Director not later than 30 days after the date of the notice under § 1036.310(b)(1) or § 1036.410(b)(1) or on or before such later date as may be specified in the notice. If the postmark date is affixed by a postage meter and DOE receives the document more than five days after the postmark date, the date of receipt shall be used to determine timeliness.

(b) *Written response.* A timely written response to a notice of suspension or proposed debarment may contain any or all of the following:

(1) A request for a meeting with the Director or designee (§ 1036.600(c));

(2) A request for a fact-finding conference (§ 1036.600(d)); and

(3) Information and argument in opposition to the suspension or proposed debarment including identification of disputed material facts. If the respondent fails to submit a timely written response to notice of suspension or proposed debarment, the Director shall notify the respondent in accordance with § 1036.310(b)(8) or § 1036.410(b)(5) that the awardee remains suspended, or that the awardee is debarred, as applicable.

(c) *Meeting.* Upon receipt of a timely request therefore, the Director shall schedule a meeting with the Director or designee and the respondent, no later than 30 days from the date the request is received. The Director or designee may postpone the date of the meeting if the respondent requests a postponement in writing.

(1) At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for suspension or debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration, or effects of a suspension, proposed debarment, or debarment. The respondent may offer or explain a previous offer to agree to a voluntary exclusion (§ 1036.210) at the meeting.

(2) Any written information or arguments submitted at or in connection with the meeting shall be included in the administrative record. The Director shall not be required to make a transcript of the meeting unless there are disputed material facts.

(3) Within two weeks following the date of the meeting, the Director shall send a notice to the respondent containing the following information:

(i) Names, organizational affiliations, titles, addresses, and telephone numbers of all individuals who attended;

(ii) A brief description of each document submitted by the respondent;

(iii) A summary of the issues discussed; and

(iv) A statement describing the action the Director has taken or proposes to take.

(d) *Fact-finding conference.* The purposes of a fact-finding conference under this section are to provide the respondent an opportunity to dispute material facts and to make arguments related to a suspension or proposed debarment, and to provide the Director with proposed findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence.

(1) *Appointment of fact-finding panel and notice to respondent.* If the Director determines that a written response or a presentation at the meeting puts material facts in dispute, the Director shall appoint a fact-finding panel. (See § 1036.313(b)). Upon appointment, the panel shall notify the respondent that the case has been referred to the panel and shall schedule a fact-finding conference.

(2) *Appearances.* The Director may be represented at the fact-finding conference by the General Counsel or designee.

(3) *Scope of the fact-finding conference.* The factual issues considered at the conference shall be limited to those identified in the Director's referral and any amendments thereto filed by the Director.

(4) *Procedures.* The fact-finding conference shall be conducted in accordance with applicable procedural rules adopted by the General Counsel or designee. The procedural rules shall be as informal as practicable, consistent with the principles of fundamental fairness, prompt decisionmaking, and with the evidentiary standards for suspension and debarment. (See 10 CFR Part 1035, Appendix A—Rules for Fact-Finding Conferences.)

(5) *Preliminary administrative record.* At least 10 days before the fact-finding conference date, the Director shall file with the fact-finding panel, and mail or deliver to the respondent, a copy of the administrative record as of the date of the transmittal. The copy sent to the respondent shall not include any documents which, as provided in § 1035.7, may not be disclosed; the copy filed with the fact-finding panel shall identify which documents must be sealed and viewed by the fact-finding panel only in camera, as provided in § 1036.605.

(6) *Evidence and argument.* The respondent and the Director shall have the opportunity to submit documentary evidence, to examine and cross-examine witnesses, and to present argument. Only evidence which is relevant to the issues referred for the fact-finding conference and which is reliable and probative shall be admissible.

(7) *Transcript.* The fact-finding panel shall make a transcribed record of the fact-finding conference which shall be transmitted to the Director within 20 days after the hearing record is closed.

(8) *Fact-finding conference report.* Within 30 days after the conference record is closed, the fact-finding panel shall transmit to the respondent (by notice) and to the Director a written report setting forth proposed findings of fact. The findings shall resolve any disputes over material facts based on a preponderance of the evidence if the case involves a proposal to debar, or on adequate evidence if the case involves a suspension. The respondent shall have 30 days from receipt of the fact-finding panel's report to submit written exceptions to the Director.

(9) *Final decision.* If the final decision sustains a proposed debarment, the debarment may begin no earlier than ten days after the date of the notice of final decision a copy of which shall be transmitted to the fact-finding panel.

§ 1036.605 Coordination with Department of Justice.

Whenever a meeting or fact-finding conference is requested, under § 1036.600(b)(1) or (b)(2), the Director's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such official requests in writing that evidence needed to establish the existence of a cause for suspension or proposed debarment not be disclosed to the respondent, the Director shall:

(a) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(b) Rely on such evidence without disclosing it to the respondent. At the fact-finding conference, the Director shall make such evidence available for in-camera inspection to the fact-finding panel. Evidence submitted for in-camera inspection shall be part of the administrative record, but may not be disclosed to the respondent or any member of the public until release is

authorized in writing by an appropriate Department of Justice official or until related legal proceedings are concluded, whichever occurs first.

§ 1036.610 DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees.

The Director shall compile and maintain a list of persons and affiliates who are currently suspended, proposed for debarment, debarred, ineligible or voluntarily excluded under this part and 10 CFR Part 1035. The DOE List shall contain the following information at a minimum:

(a) The person's name and address;

(b) The cause(s) relied upon under this part;

(c) The effect on each action;

(d) The effective date of the action and, in the case of debarment, the expiration date; and

(e) The name and telephone number of the DOE official who can be contacted for additional information about the action.

§ 1036.615 Effects of being listed on the DOE and the nonprocurement lists.

The Director may grant an exception to the prohibitions of paragraphs (a) through (e) of this section by issuing a written determination setting forth the compelling reasons justifying the waiver in accordance with § 1036.215.

(a) DOE shall not solicit, or consider, and shall return any proposal submitted by a contractor, awardee, or person on the DOE List or a person on the Nonprocurement List, to the extent that the solicitation activity or proposal falls within the scope of the suspension, proposed debarment, debarment, ineligibility of voluntary exclusion, as indicated on the DOE List or Nonprocurement List.

(b) DOE shall not award, extend, renew any agreement or primary covered transaction with an awardee or person on the DOE List or on the Nonprocurement List, to the extent that the activity falls within the scope of the suspension, proposed debarment, debarment, ineligibility or voluntary exclusion, as indicated on the DOE List or Nonprocurement List.

(c) DOE shall not approve or consent to any new, continuation, renewal award or extension of a subagreement or lower tier covered transaction with a contractor, awardee, or person on the DOE List and shall not approve or consent to any new, continuation, renewal award or extension of a subagreement or lower tier covered transaction with a person on the Nonprocurement List, to the extent that the award falls within the scope of the suspension proposed debarment, debarment, ineligibility or voluntary exclusion.

(d) DOE shall disapprove or not consent to the selection (by an awardee or participant) or a individual or principal to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is on the DOE List or the Nonprocurement List.

(e) DOE shall not conduct business with an agent or representative whose name appears on the DOE List or the Nonprocurement List.

(f) DOE shall review existing agreements and may initiate a review of any subagreements with a contractor, awardee or person on the DOE List or on the Nonprocurement List for the purpose of determining whether termination or other remedial action, available under the terms of the agreement, subagreement, or applicable law, is necessary to protect the Government's interest.

(g) DOE shall review the DOE List and the Nonprocurement List before conducting a preaward survey or soliciting proposals, making new, continuation, or renewal awards or otherwise extending the duration of existing agreements, or approving or consenting to the award, extension, or renewal of subagreements.

(h) DOE participants shall not award, extend, renew any agreement or lower tier covered transaction with an awardee or person that fails to complete the certification required by § 1036.510(b), or that the participant knows that the certification is false.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

FOR FURTHER INFORMATION CONTACT: Karin L. Genis, Attorney-Advisor, (202) 653-6649.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is joing the joint publication of final regulations implementing Executive Order 12549, "Debarment and Suspension," signed by President Reagan on February 18, 1986. In its agency-specific preamble accompanying the proposed rule, published in the **Federal Register** on October 20, 1987 (52 FR 39018), SBA proposed a number of changes. Many of the concerns underlying those changes have been addressed in the final common rule.

Except with respect to the definition of "Principal," and the section on covered transactions (§ 145.110), the amendments to the final common rule discussed below serve to conform the rule to the programs and organization of SBA. Technical changes have been made to the agency-specific amendments in the proposed rule to conform to the reorganization of the common rule.

The definition of "Principal," (§ 145.105(p)) is amended by adding references to specific types of persons who have a critical influence on SBA nonprocurement programs. The effect of the additions is to include in the definition of "Principal" certain persons who are important to SBA-supported activities.

Section 145.105 is further amended by adding a definition of "SBA." The final common rule permits agencies to insert their own names in places designated by "[Agency]." This definition is needed to clarify that these references to "SBA" are to the Small Business Administration.

Section 145.110(a)(1)(ii)(C) is amended by adding references to specific types of persons who have a critical influence on SBA nonprocurement programs. The effect of the additions is to include in the definition of "Lower Tier Covered Transaction" certain procurement contracts under $25,000 which are important to SBA-supported activities.

Sections 145.313, 145.314, 145.412 and 145.413 are amended to specify that the Office of Hearings and Appeals of SBA shall conduct such fact-finding proceedings as may be necessary to adjudicate disputed material facts in either suspension or debarment proceedings. The language has been expanded to specify that the decision of the Office of Hearings and Appeals is a recommended decision under 13 CFR Part 134, the procedural regulations for the Office of Hearings and Appeals. Under § 134.35 of those regulations, parties to the proceeding may file exceptions to the Office of Hearings and Appeals' decision with the reviewing official of the action in question, here the debarring or suspending official, as appropriate.

List of Subjects in 13 CFR Part 145

Debarment and suspension (nonprocurement).

Title 13 of the Code of Federal Regulations is amended as set forth below.

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Dated: May 5, 1988.

James Abdnor,

Administrator.

1. Part 145 is added to read as set forth at the end of this document.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
145.100 Purpose.
145.105 Definitions.
145.110 Coverage.
145.115 Policy.

Subpart B—Effect of Action

145.200 Debarment or suspension.
145.205 Ineligible persons.
145.210 Voluntary exclusion.
145.215 Exception provision.
145.220 Continuation of covered transactions.
145.225 Failure to adhere to restrictions.

Subpart C—Debarment

145.300 General.
145.305 Causes for debarment.
145.310 Procedures.
145.311 Investigation and referral.
145.312 Notice of proposed debarment.
145.313 Opportunity to contest proposed debarment.
145.314 Debarring official's decision.
145.315 Settlement and voluntary exclusion.
145.320 Period of debarment.
145.325 Scope of debarment.

Subpart D—Suspension

145.400 General.
145.405 Causes for suspension.
145.410 Procedures.
145.411 Notice of suspension.
145.412 Opportunity to contest suspension.
145.413 Suspending official's decision.
145.415 Period of suspension.
145.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

145.500 GSA responsibilities.
145.505 SBA responsibilities.
145.510 Participants responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: 15 U.S.C. 634(b)(6), Executive Order 12549.

2. Newly added Part 145 is further amended as set forth below.

a. Each reference to "[Agency]" is revised to read "SBA" wherever it occurs.

b. Section 145.105 is amended by adding new paragraphs (p)(2) and (w) to read as follows:

§ 145.105 Definitions.

* * * * *

(p) * * *

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) Programs.

* * * * *

(w) *SBA.* The Small Business Administration.

c. Section 145.110 is amended by adding new paragraphs (a)(1)(ii)(C) (*3*) through (*5*) to read as follows:

§ 145.110 Coverage.

* * * * *

(a) * * *
(1) * * *
(ii) * * *
(C) * * *

(*3*) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC), and Small Business Investment Company (SBIC) Programs.

(*4*) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC) and section 7(j) Programs.

(*5*) Providers of professional services under the section 7(a) Loan, Certified Development Center (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) Programs.

d. Section 145.313 is amended by adding a new paragraph (b)(3) to read as follows:

§ 145.313 Opportunity to contest proposed debarment.

* * * * *

(b) * * *

(3) In accordance with § 145.314(b)(2), the debarring official may refer cases involving disputed material facts to the Office of Hearings and Appeals, which shall conduct any additional proceedings necessary in accordance with the procedures contained in Part 134 of this title. Upon conclusion of such proceedings, the Office of Hearings and Appeals shall issue a recommended decision to the debarring official including proposed findings of facts and conclusions of law.

e. Section 145.314 is amended by adding new paragraphs (b)(2)(i) and (ii) to read as follows:

§ 145.314 Debarring official's decision.

* * * * *

(b) * * *
(2) * * *

(i) The Office of Hearings and Appeals shall conduct any proceedings regarding disputed material facts necessary under this section.

(ii) Any party to the debarment proceeding may file exceptions to the recommended decision with the debarring official in accordance with 13 CFR 134.35.

* * * * *

f. Section 145.412 is amended by adding a new paragraph (b)(3) to read as follows:

§ 145.412 Opportunity to contest suspension.

* * * * *

(b) * * *

(3) In accordance with § 145.413(b)(2), the suspending official may refer cases involving disputed material facts to the Office of Hearings and Appeals, which shall conduct any additional proceedings necessary in accordance with the procedures contained in Part 134 of this title. Upon conclusion of such proceedings, the Office of Hearings and Appeals shall issue a recommended decision to the suspending official including proposed findings of facts and conclusions of law.

g. Section 145.413 is amended by adding new paragraphs (b)(2)(i) and (ii) to read as follows:

§ 145.413 Suspending official's decision.

* * * * *

(b) * * *
(2) * * *

(i) The Office of Hearings and Appeals shall conduct any proceedings regarding disputed material facts necessary under this section.

(ii) Any party to the suspension proceeding may file exceptions to the recommended decision with the suspending official in accordance with 13 CFR 134.35.

* * * * *

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

FOR FURTHER INFORMATION CONTACT: Thomas J. Whelan, (202) 453–8251.

List of Subjects in 14 CFR Part 1265

Grants, Cooperative agreements, Debarment and suspension (nonprocurement).

Title 14 of the Code of Federal Regulations is amended as set forth below.

May 17, 1988.

Dale D. Myers,

Deputy Administrator.

1. Part 1265 is added to read as set forth at the end of this document.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1265.100 Purpose.
1265.105 Definitions.
1265.110 Coverage.
1265.115 Policy.

Subpart B—Effect of Action

1265.200 Debarment or suspension.
1265.205 Ineligible persons.
1265.210 Voluntary exclusion.
1265.215 Exception provision.
1265.220 Continuation of covered transactions.
1265.225 Failure to adhere to restrictions.

Subpart C—Debarment

1265.300 General.
1265.305 Causes for debarment.
1265.310 Procedures.
1265.311 Investigation and referral.
1265.312 Notice of proposed debarment.
1265.313 Opportunity to contest proposed debarment.
1265.314 Debarring official's decision.
1265.315 Settlement and voluntary exclusion.
1265.320 Period of debarment.
1265.325 Scope of debarment.

Subpart D—Suspension

1265.400 General.
1265.405 Causes for suspension.
1265.410 Procedures.
1265.411 Notice of suspension.
1265.412 Opportunity to contest suspension.
1265.413 Suspending official's decision.
1265.415 Period of suspension.
1265.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1265.500 GSA responsibilities.
1265.505 NASA responsibilities.
1265.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: National Aeronautics and Space Act, Pub. L. 85–568, July 29, 1958, as amended, Sec. 203(c)(1), Executive Order 12549.

2. Part 1265 is further amended as follows:

a. "[Agency]" is removed, and "NASA" is added wherever "[Agency]" occurs.

b. Section 1265.105 is amended by adding paragraph (w) to read as follows:

§ 1265.105 Definitions.

* * * * *

(w) *NASA.* National Aeronautics and Space Administration.

DEPARTMENT OF COMMERCE

15 CFR Part 26

FOR FURTHER INFORMATION CONTACT: Barbara L. Spithas, 202–377–5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: In order to determine the extent of coverage of this rule, the Department reviewed the legislation and intent of its nonprocurement programs. Among the transactions not covered by the rule, §§ 26.110(a)(2)(vi) and 26.200(c)(6) exempt a person's eligibility for incidental benefits derived from ordinary governmental operations and §§ 26.110(a)(2)(vii) and 26.200(c)(7) exempt other transactions where the application of these regulations would be prohibited by law.

Following a review of its programs in light of this rule, the Department of Commerce believes that certain of its programs and activities may be properly excluded from the coverage of this rule because they either confer no benefits or the benefits result from routine government activities and are therefore, incidental. These include programs and activities such as assistance available through the export promotion, trade information and counseling, and trade policy programs of the Department and its constituent agencies, and the issuing of licenses and permits under the Magnuson Fisheries Act.

Other Department programs may be exempted from coverage under this rule by other exceptions as set forth in the Executive Order and the common rule. They include programs such as export control programs administered by the Bureau of Export Administration as authorized by the Export Administration Act of 1979, as amended, programs authorized under the Foreign Trade Zones Act, import programs conferring duty-free status on certain imports administered by the International Trade Administration, administration of the Export Trading Company Act, administration of Antidumping and Countervailing Duty statutes, and administration of the Defense Production Act and related authorities covering emergency preparedness activities.

Due to the expanded scope of transactions covered under the final common rule, the Department is adding a new subsection (3) to § 26.110(a) describing the initial scope of the rule's coverage with respect to the Department of Commerce. The Department will review its other nonprocurement program activities to determine whether such activities will be included in the coverage. Based on this review, the Department will issue a notice of proposed rulemaking to obtain public comment on its coverage on or before October 1, 1988, the effective date of the Common rule.

List of Subjects in 15 CFR Part 26

Administrative practice and procedures, Debarment and suspension.

Title 15 of the Code of Federal Regulations is amended as set forth below.

Sonya G. Stewart,

Director for Finance and Federal Assistance.

1. Part 26 is added as set forth at the end of this document.

PART 26—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
26.100 Purpose.
26.105 Definitions.
26.110 Coverage.
26.115 Policy.

Subpart B—Effect of Actions

26.200 Debarment or suspension.
26.205 Ineligible persons.
26.210 Voluntary exclusion.
26.215 Exception provision.
26.220 Continuation of covered transactions.
26.225 Failure to adhere to restrictions.

Subpart C—Debarment

26.300 General.
26.305 Cause for debarment.
26.310 Procedures.
26.311 Investigation and referral.
26.312 Notice of proposed debarment.
26.313 Opportunity to contest proposed debarment.
26.314 Settlement and voluntary exclusion.
26.320 Period of debarment.
26.325 Scope of debarment.

Subpart D—Suspension

26.400 General.
26.405 Causes for suspension.
26.410 Procedures.
26.411 Opportunity to contest suspension.
26.413 Suspending official's decision.
26.415 Period of suspension.
26.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

26.500 GSA Responsibilities.
26.505 Department of Commerce responsibilities
26.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 5 U.S.C. 301.

2. Part 26 is further amended as follows:

a. "[Agency]" is removed and "Department of Commerce" is added wherever "[Agency]" occurs.

b. Section 26.110 is amended by adding paragraph (a)(3) to read as follows:

§ 26.110 Coverage

(a) * * *

(3) *Department of Commerce covered transactions.* These Department of Commerce regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards).

* * * * *

DEPARTMENT OF STATE

22 CFR Part 137

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520. Tel. (703) 875–7044.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State establishes this final rule as Part 137 of Title 22 of the Code of Federal Regulations.

Pursuant to § 137.110(a)(2)(vii), the Department of State has determined that this rule does not apply to its export functions under the Arms Export Control Act, Pub. L. 90–629, as amended, and the International Traffic in Arms Regulations (ITAR), 22 CFR Subchapter M. In particular, this rule does not affect the debarment and suspension regulations prescribed in the ITAR (22 CFR Part 127). The Arms Export Control Act contains specific standards on when export privileges may be denied. The debarment and suspension regulations established under the ITAR implement those statutory requirements; application of the non-procurement debarment and suspension system as finalized herein is not authorized under the Arms Export Control Act.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Grant programs-foreign relations, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John J. Conway,

Procurement Executive.

May 13, 1988.

1. Part 137 is added as set forth at the end of this document.

PART 137—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
137.100 Purpose.
137.105 Definitions.
137.110 Coverage.
137.115 Policy.

Subpart B—Effect of Action

137.200 Debarment or suspension.
137.205 Ineligible persons.
137.210 Voluntary exclusion.
137.215 Exception provision.
137.220 Continuation of covered transactions.
137.225 Failure to adhere to restrictions.

Subpart C—Debarment

137.300 General.
137.305 Causes for debarment.
137.310 Procedures.
137.311 Investigation and referrals.
137.312 Notice of proposed debarment.
137.313 Opportunity to contest proposed debarment.
137.314 Debarring official's decision.
137.315 Settlement and voluntary exclusion.
137.320 Period of debarment.
137.325 Scope of debarment.

Subpart D—Suspension

137.400 General.
137.405 Causes for suspension.
137.410 Procedures.
137.411 Notice of suspension.
137.412 Opportunity to contest suspension.
137.413 Suspending official's decision.
137.415 Period of suspension.
137.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants

137.500 GSA responsibilities.
137.505 Department responsibilities.
137.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Lower Tier Covered Transactions

Authority: Executive Order 12549 and 22 U.S.C. 2658.

2. Part 137 is further amended as follows:

a. "[Agency]" is removed and "Department" is added wherever "[Agency]" occurs.

b. Section 137.105 is amended by adding paragraph (w) to read as follows:

§ 137.105 Definitions.

* * * * *

(w) *Department.* Department of State.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

FOR FURTHER INFORMATION CONTACT: Ralph C. Oser (202) 647–8332.

ADDITIONAL SUPPLEMENTARY INFORMATION: Examples of A.I.D. specific covered transactions include A.I.D.-financed cooperating country contracts under A.I.D. Handbook 11, A.I.D.-financed commodity transactions under 22 CFR Part 201, the reimbursement for overseas freight charges under 22 CFR Part 202, and A.I.D.'s investment gurarantee program.

Examples of causes for debarment include failure to furnish information in accordance with the terms of any agreement or subagreement, violation of regulation, offer or acceptance of a bribe or other illegal payment or credit, or commission of a fraudulent act.

The government-wide regulations have been supplemented by A.I.D. to designate the officials authorized to suspend, debar and to grant exceptions (§§ 208.120 and 208.215).

Section 208.105 is further supplemented by adding a definition of "A.I.D." The final common rule permits agencies to insert their own name in places designated by "[Agency]." This definition is needed to clarify that these references to "A.I.D." are to the Agency for International Development.

List of Subjects in 22 CFR Part 208

Accounting, Administrative practice and procedures, Foreign aid grant programs-Foreign relations, Grants Administrator, Loan programs-Foreign relations.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John F. Owens,

Associate Assistant to the Administrator for Management.

1. Part 208 is revised to read as set forth at the end of this document.

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
208.100 Purpose.
208.105 Definitions.
208.110 Coverage.
208.115 Policy.

Subpart B—Effect of Action

208.200 Debarment or suspension.
208.205 Ineligible persons.
208.210 Voluntary exclusion.
208.215 Exception provision.
208.220 Continuation of coverered transactions.
208.225 Failure to adhere to restrictions.

Subpart C—Debarment

208.300 General.
208.305 Causes for debarment.
208.310 Procedures.
208.311 Investigation and referral.
208.312 Notice of proposed debarment.
208.313 Opportunity to contest proposed debarment.
208.314 Debarring official's decision.
208.315 Settlement and voluntary exclusion.
208.320 Period of debarment.
208.325 Scope of debarment.

Subpart D—Suspension

208.400 General.
208.405 Causes for suspension.
208.410 Procedures.
208.411 Notice of suspension.
208.412 Opportunity to contest suspension.
208.413 Suspending officials decision.
208.415 Period of suspension.
208.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

208.500 GAS responsibilities.
208.505 A.I.D. responsibilities.
208.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Section 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

2. Part 208 is further amended as follows:

a. "[Agency]" is removed and "A.I.D." is added wherever "[Agency]" occurs.

b. Section 208.105 is amended by adding paragraphs (g)(3), (t)(3) and (w) to read as follows:

§ 208.105 Definitions.

* * * * *

(g) * * *

(3) The A.I.D. debarring official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

* * * * *

(t) * * *

(3) The A.I.D. suspending official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

* * * * *

(w) *A.I.D.* Agency for International Development.

c. Section 208.215 is amended by adding paragraph (a) following the undesignated paragraph to read as follows:

§ 208.215 Exception provisions.

* * * * *

(a) The Associate Assistant to the Administrator for Management has authority to grant exceptions.

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

FOR FURTHER INFORMATION CONTACT: Charles N. Canestro, United States Information Agency, Management Plans And Analysis Staff, (M/M), Room 818, 301 Fourth Street SW., Washington, DC 20547, Telephone (202) 485–8676.

List of Subjects in 22 CFR Part 513

Grant monitoring, Grants administration, Ineligible grantees.

Title 22 of the Code of Federal Regulations is amended as set forth below.

David L. Hitchcock,

Acting Associate Director for Management.

1. Part 513 is added as set forth at the end of this document.

PART 513—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
513.100 Purpose.
513.105 Definitions.
513.110 Coverage.
513.115 Policy.

Subpart B—Effect of Action

513.200 Debarment or suspension.
513.205 Ineligible persons.
513.210 Voluntary exclusion.
513.215 Exception provision.
513.220 Continuation of covered transactions.
513.225 Failure to adhere to restrictions.

Subpart C—Debarment

513.300 General.
513.305 Causes for debarment.
513.310 Procedures.
513.311 Investigation and referral.
513.312 Notice of proposed debarment.
513.313 Opportunity to contest proposed debarment.
513.314 Debarring official's decision.
513.315 Settlement and voluntary exclusion.
513.320 Period of debarment.
513.325 Scope of debarment.

Subpart D—Suspension

513.400 General.
513.405 Causes for suspension.
513.410 Procedures.
513.411 Notice of suspension.
513.412 Opportunity to contest suspension.
513.413 Suspending official's decision.
513.415 Period of suspension.
513.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

513.500 GSA responsibilities.
513.505 USIA Responsibilities.
513.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; 40 U.S.C. 486(c).

2. Part 513 is further amended as follows:

a. "[Agency]" is removed and "USIA" is added wherever "[Agency]" occurs.

b. Section 513.105 is amended by adding paragraph (w) to read as follows:

§ 513.105 Definitions.

* * * * *

(w) USIA. *United States Information Agency.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. R–88–0831; FR–1676]

24 CFR Part 24

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Assistant General Counsel for Inspector General and Administrative Proceedings, Department of Housing and Urban Development, Room 10286, 451 Seventh Street SW.,

Washington, DC 20410, (202) 755–7200. (This is not a toll-free number.)

DATE: HUD is unable to adopt the interim provisions of the common rule at this time. Under applicable law (see section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)), HUD must submit to the responsible congressional committees an agenda of all its rules that are under development. Any rule that is on that agenda may not be published for comment until it has been submitted to the responsible committee for review. Because HUD's proposed rule on debarment and suspension did not contain those provisions identified as interim provisions in the common rule, HUD cannot adopt the interim provisions of the common rule until the statutory 15-day period has expired. On the expiration of that period, HUD will publish a separate agency-specific preamble adopting the interim provisions of this rule.

ADDITIONAL SUPPLEMENTARY INFORMATION: By publication of this separate preamble the Department adopts the final common rule on nonprocurement debarment and suspension. In addition, the Department is amending the common rule to add provisions relating to debarment and suspension of procurement contractors, HUD-specific limited denials of participation, and hearing procedures.

Background

On November 2, 1987, the Department of Housing and Urban Development published a proposed rule on suspension and debarment (52 FR 42005) incorporating provisions set forth in the interim rule (52 FR 37112, October 2, 1987) and those mandated by Executive Order 12549 and the Office of Management and Budget's (OMB) final Guidelines for Nonprocurement Debarment and Suspension (Guidelines) published May 29, 1987 at 52 FR 20360.

Since the publication of HUD's proposed rule, OMB has decided to publish the final rule on Nonprocurement Debarment and Suspension as a common rule. However, because HUD's regulations on debarment and suspension apply to participants in nonprocurement activities as well as to contractors in procurement activities, the Department is amending the common rule by (1) incorporating provisions in HUD's proposed rule on suspensions and debarments and (2) including provisions that clarify the application of the common rule to HUD programs and activities. The continuation of HUD's system of suspension and debarment, covering both procurement and nonprocurement activities, is consistent with the goal of creating a comprehensive debarment system with governmentwide effect.

Under this final rule, a suspension or debarment by HUD precludes a person's participation in both procurement and nonprocurement activities within the Department. It also excludes a participant from covered nonprocurement transactions, and a contractor from procurement activities throughout the Federal Executive Branch.

This regulation also provides for limited denials of participation with strictly Departmental effect. Limited denials of participation are sanctions of limited duration and scope not warranting governmentwide effect.

The comments received by HUD in response to its proposed and interim rules were addressed in the preamble to the common rule.

HUD's previously published proposed and interim rules are being replaced by the common rule and the amendments cited. Citations contained in this final rule differ significantly from those contained in HUD's previous rules, and a table indicating the corresponding sections of the proposed and final rule is set forth at the end of this preamble. It should be noted that the preamble refers to the final rule's citations, unless otherwise stated.

Section by Section Analysis

A new paragraph (d) is added to § 24.100 to indicate that the purpose of these regulations is also to prescribe policies and procedures governing the debarment and suspension of contractors and the limited denial of participation of contractors and participants. This provision was included in the proposed rule at § 24.2.

The definitions of debarment and suspension in § 24.105 (f) and (u) are expanded to reflect that such terms also include sanctions taken to exclude contractors from procurement activities. The definitions of debarment and suspension in the proposed rule, § 24.(4)(i) and (as) respectively, also indicated that the sanctions would exclude contractors from procurement activities governmentwide.

Definitions for "benefits," "contractor," "hearing officer," "limited denial of participation," and "ultimate beneficiaries" have been included and the definition of "procurement list" has been substituted for "consolidated lists" to reflect the expanded coverage of HUD's regulation at § 24.105 (w)–(aa). These definitions were contained in the proposed rule at § 24.4 (d), (e), (f) (m), (r), and (bb) respectively.

The definition of "principal," § 24.105(p), specifies those persons previously included in HUD's definition of "participant" (§ 24.6(t)) who are now included in the definition of principal. The term "principal" was not defined in the proposed rule, but has been added to the final common rule. Definitions for "control," "grant," "grantee," and "HUD List of Debarred, Suspended and Ineligible Contractors and Participants" have been deleted because of other changes in the rule make these definitions unnecessary.

Those transactions designated in § 24.110(c)(1)(i) (A) and (B) are included as primary covered transactions. They were included as specifically covered activities in § 24.3(a)(2) of HUD's proposed rule.

Persons identified in § 24.110(a)(1)(ii)(C) (*3*)–(*12*) were included within the scope of HUD's definition of participant in § 24.6(t) of the proposed rule.

Paragraph (d) is added to § 24.110 to indicate the coverage of these regulations for contractors, and paragraphs (e) and (f) are added to § 24.200 to indicate the effect of debarment and suspension on contractors. The coverage of contractors, and the effect of the sanctions on contractors, was contained in § 24.8(a) of the proposed rule.

Throughout the proposed rule reference was made to "direct or indirect participation" in HUD programs. Due to changes in the common rule, such language is no longer necessary. As stated in the preamble to the common rule, participation in covered transactions is prohibited whether such participation is direct or indirect.

Other amendments have been made to the common rule relating to suspension and debarment of contractors:

(1) Section 24.110(e) is added to describe the retroactive effect of this rule. This language was contained in § 24.36 of the proposed rule.

(2) Paragraph (d) has been added to § 24.115. It duplicates language contained in § 24.5 of the proposed rule. Language added to § 24.215 concerning the effect of debarment on contractors was contained in § 24.8 of the proposed rule. Paragraphs (c) and (d) have been added to § 24.220 indicating the effect of a suspension or debarment on existing contracts. Similar language was set forth at § 24.8 of the proposed rule.

(3) In the policy section of the proposed rule (§ 24.1, now replaced by

§ 24.120), HUD identified deterrence as a basis for imposing suspensions and debarments. This language was not included in the common rule, and its inclusion by amendment is unnecessary because case law has clearly established that deterrent effect is an appropriate consideration in protecting the public interest.

(4) Paragraph (e) has been added to § 24.200 to reflect the effect of suspension and debarment on contractors. This effect was described in § 24.37 and 24.20 of the proposed rule.

(5) Paragraph (f) has been added to § 24.200 to reflect HUD specific exceptions to the effect of sanctions under this part. Similar language was contained in §§ 24.3 and 24.3a of the proposed rule.

(6) Section 24.305 is amended by adding examples to paragraph (d) that were set forth in § 24.6(c)(7), (8), (9), (10) and (11) of the proposed rule. There is a new paragraph (e) which sets forth the causes for debarring a contractor that were included in § 24.6(a) and (h) of the proposed rule.

(7) The hearing procedures set forth in §§ 24.313, 24.314, 24.411 through 24.413 previously appeared at § 24.12–24.14 of the proposed rule. These sections replace the appeal procedures set forth in identically numbered sections of the common rule. HUD's procedures provide that all contested debarments and suspensions shall be referred to a hearing officer for action, except where there is a pending or contemplated legal proceeding and the Department of Justice has determined that a suspension hearing would prejudice the Department's case. Because the right to a determination by an impartial hearing officer provides greater protection to persons suspended or proposed for debarment than the right to appear before the suspending or debarring official, the use of such procedures will not adversely affect due process or fundamental fairness.

(8) Section 320(c) replaces the reinstatement provision of § 24.15 of the proposed rule. This section allows the debarring official to reduce the period or scope of a debarment. The proposed rule required referral of a request for reinstatement to a hearing officer for recommendation on reinstatement. That provision has been eliminated from the final rule and replaced by the common rule provision in order to provide consistency with the common rule. Paragraph (d) has been added to § 24.320 to indicate that a request to modify or terminate a debarment based on either elimination of causes for debarment or other appropriate reasons may not be considered for at least six months after the final determination to debar. This six-month limitation was contained in § 24.15(a)(2) of the proposed rule.

(9) Paragraph (3) is added to § 24.325(a) to indicate the scope of debarment of a contractor. Paragraph (4) is added to § 24.325(b) to indicate that the rules for imputing conduct also apply to contractors. Similar provisions were contained in § 24.11 of the proposed rule.

(10) Sections 24.411 through 24.413 contain the suspension appeal and hearing procedures set forth in § 24.23 of the proposed rule. As explained in the discussion of §§ 24.312 through 24.314, such procedures meet the required due process standards.

(11) The provision at § 24.413(a) is consistent with the common rule provision at § 24.412(b)(1)(ii) in denying hearing rights based on Department of Justice advice that substantial interests of the Federal Government in pending or contemplated legal proceedings would be prejudiced by a hearing on a suspension based on the same facts. A similar provision was contained in § 24.13(b)(2) of HUD's proposed rule, except that in the proposed rule the hearing officer, rather than the suspending official, was responsible for considering documentary evidence and written briefs submitted by the Respondent. The change of decision-maker has been made to provide consistency with the common rule.

(12) Sections 24.32 and 24.33 of the proposed rule have been deleted. These provisions related to internal agency requirements that have been abolished because of the format adopted by GSA for publication of the procurement and nonprocurement list. All persons currently included on the HUD list will also be included on one or both parts of the GSA list.

(13) Subpart F is added to the common rule to set forth HUD's provisions relating to limited denials of participation. These provisions were contained in Subpart D of the proposed rule. Certain provisions have been changed to clarify the effect and scope of the sanction. Section 24.613 (§ 24.30 of the proposed rule), was changed to reflect that the hearing request must be made within 30 days. The prior 15-day period was inconsistent with § 24.612, (previously § 24.29), and was incorrect.

(14) Also, language has been added to § 24.630 clarifying that a limited denial of participation is superseded by a suspension based on the same facts, and any appeal will be heard solely as an appeal of suspension.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule was listed as item 887 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13865) under Executive Order 12291 and the Regulatory Flexibility Act.

The following list indicates the relationship of the common rule and HUD's proposed rule:

HUD proposed rule	Final rule
24.1—Policy	24.115
24.2—Scope	24.110
24.3—Applicability	24.200–215
24.3a—Relations to other sanctions	24.200
Debarment	
24.5—General	24.300
24.6—Causes	24.305
24.7—Procedures	24.310 through .312
24.8—Effect on Debarment	24.200
24.9—Voluntary Exclusion	24.210 and .315
24.10—Period of Debarment	24.320
24.11—Scope	24.325
24.12—Appeal Procedures	24.313
24.13—Hearing Procedures	24.313
24.14—Determination of Hearing Officer	24.314
24.15—Request for Period Debarment	24.320
24.16—Settlement	24.210 and .315
Suspensions	
24.17—General	24.400
24.18—Causes	24.405
24.19—Procedures	24.410
24.20—Effect on Suspension	24.200 and .215
24.21—Period of Suspension	24.415
24.22—Scope	24.420
24.23—Appeal	24.412 and .413
24.24—Settlements	24.210 and .315
Limited Denial of Participation	
24.25—General	24.600
24.26—Causes	24.605
24.27—Period and Scope	24.610
24.28—Notice	24.611
24.29—Conference	24.612
24.30—Appeal	24.613
Lists, etc. consolidated	
24.31—Lists	24.500
24.32—HUD List	N.A.
24.33—Classifications	N.A.
24.34—Effect of Sanctions	24.200–220
24.35—Certification	24.510
24.36—Retroactivity	24.110

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List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Title 24 of the Code of Federal Regulations is amended as set forth below.

Dated: May 16, 1988.

J. Michael Dorsey,

Acting Secretary, U.S. Department of Housing and Urban Development.

1. Part 24 is revised to read as set forth at the end of this document.

PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION

Subpart A—General

Sec.
24.100 Purpose.
24.105 Definitions.
24.110 Coverage.
24.115 Policy.

Subpart B—Effect of Action

24.200 Debarment or suspension.
24.205 Ineligible persons.
24.210 Voluntary exclusion.
24.215 Exception provision.
24.220 Continuation of covered transactions.
24.225 Failure to adhere to restrictions.

Subpart C—Debarment

24.300 General.
24.305 Causes for debarment.
24.310 Procedures.
24.311 Investigation and referral.
24.312 Notice of proposed debarment.
24.313 Opportunity to contest proposed debarment.
24.314 Debarring official's decision.
24.315 Settlement and voluntary exclusion.
24.320 Period of debarment.
24.325 Scope of debarment.

Subpart D—Suspension

24.400 General.
24.405 Causes for suspension.
24.410 Procedures.
24.411 Notice of suspension.
24.412 Opportunity to contest suspension.
24.413 Suspending official's decision.
24.415 Period of suspension.
24.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

24.500 GSA responsibilities.
24.505 HUD responsibilities.
24.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, (Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Part 24 is further amended as follows:

a. "[Agency]" is removed and "HUD" is added wherever "[Agency]" occurs.

b. Section 24.100 is amended by adding paragraphs (d) and (e) to read as follows:

§ 24.100 Purpose

* * * * *

(d) These regulations also:

(1) Prescribe policies and procedures governing the debarment and suspension of contractors and the limited denial of participation of participants and contractors;

(2) Provide for the listing of debarred, suspended and ineligible contractors; and

(3) Set forth the consequences of such listing.

(e) Although this part covers the listing of ineligible contractors, it does not prescribe policies and procedures governing declarations of ineligibility.

c. Section 24.105 is amended by adding paragraphs (f)(1) and (2), (p)(2)–(22), (u)(1) and (2), (v)(1) and (2), and (w) through (cc) to read as follows:

§ 24.105 Definitions

* * * * *

(f) * * *

(1) An action taken by HUD under these regulations shall also exclude a participant from participating in procurement contracts with HUD, and

(2) Shall exclude a contractor from participating in covered transactions with HUD and from Federal procurement activities.

* * * * *

(p) * * *

(2) Loan officers;

(3) Staff appraisers and inspectors;

(4) Underwriters;

(5) Bonding companies;

(6) Borrowers under programs financed by HUD or with loans guaranteed, insured or subsidized through HUD programs;

(7) Purchasers of properties with HUD-insured or Secretary-held mortgages;

(8) Recipients under HUD assistance agreements;

(9) Ultimate beneficiaries of HUD programs;

(10) Fee appraisers and inspectors;

(11) Real estate agents and brokers;

(12) Management and marketing agents;

(13) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;

(14) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD insured loans, or acquired properties including properties held by HUD as mortgagee-in-possession;

(15) Closing agents;

(16) Turnkey developers of projects financed by or with financing insured by HUD;

(17) Title companies;

(18) Escrow agents;

(19) Project owners;

(20) Administrators of nursing homes and projects for the elderly financed or insured by HUD;

(21) Developers, sellers or owners of property financed with loans insured under Title I or Title II of the National Housing Act; and

(22) Employees or agents of any of the above.

* * * * *

(u) * * *

(1) An action by HUD taken under these regulations shall also exclude a participant from participating in procurement contracts with HUD, and

(2) Shall exclude a contractor from participating in covered transactions with HUD and from Federal procurement activities.

(v) * * *

(1) An action taken under these regulations shall also exclude a participant from participating in procurement contracts with HUD, and

(2) Shall exclude a contractor from participating in covered transactions with HUD and from Federal procurement activities.

(w) *Benefits.* Money or any other thing of value provided by, or realized because of the Department. "Thing of value" includes insurance or guarantees of any kind.

(x) *Contractor.* As used in this part, contractor means any individual or other legal entity that:

(1) Submits offers for, or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract (or a subcontract under a Government contract); or

(2) Conducts business with the Government as an agent or representative of another contractor;

(y) *Hearing officer.* An Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary, or by the Secretary's designee, to conduct proceedings under this part.

(z) *HUD.* Department of Housing and Urban Development.

(aa) *Limited denial of participation.* An action taken to immediately exclude from participation, or to immediately impose conditions on the participation, of any person in a program or programs of the Department within a limited geographical area.

(bb) *Procurement List.* A list compiled, maintained, and distributed by the General Services Administration (GSA) (see § 24.500(c)), containing the names and other information regarding contractors debarred or suspended or declared ineligible by agencies under the procedures of this part as well as under other statutory or regulatory authority.

(cc) *Ultimate beneficiaries.* Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors such as those assisted under Section 8 Housing Assistance Payments Contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

d. Section 24.110 is amended by adding paragraph (a)(1)(i)(A), (a)(1)(ii)(C) (*3*) through (*20*), (d), and (e) to read as follows:

§ 24.110 Coverage.

(a) * * *

(1) * * *

(i) * * *

(A) Specially designated transactions are:

(*1*) Transactions regulated by the Interstate Land Sales Act (15 U.S.C. 1701);

(*2*) Transactions regulated by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401);

(ii) * * *

(C) * * *

(*3*) Bonding companies;

(*4*) Borrowers;

(*5*) Purchasers of a property with a HUD-insured or Secretary-held mortgage;

(*6*) Recipients under HUD assistance agreements;

(*7*) Ultimate beneficiaries of HUD programs;

(*8*) Fee appraisers and inspectors;

(*9*) Real estate agents and brokers;

(*10*) Management and marketing agents;

(*11*) Accountants, consultants, investment bankers; architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;

(*12*) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD insured loans, or acquired properties including properties held by HUD as mortgagee-in-possession;

(*13*) Closing agents;

(*14*) Turnkey developers of projects financed with or insured by HUD;

(*15*) Title companies;

(*16*) Escrow agents;

(*17*) Project owners;

(*18*) Administrators of nursing homes and projects for the elderly financed or insured by HUD;

(*19*) Developers, sellers or owners of property financed with loans insured under Title I or Title II of the National Housing Act; and

(*20*) Employees or agents of any of the above.

* * * * *

(d) These regulations also apply to all persons who have participated, are currently participating or may reasonably be expected to participate in Federal procurement programs. For purposes of these regulations, such persons will be referred to as "contractors" and such transactions will be referred to as "procurement contracts." The consequences of a debarment or suspension, as set forth in §§ 24.200(e) apply to contractors in Federal procurement programs, and §§ 24.325 and 24.420 govern the extent to which a specific contractor or its organizational elements would be included within a debarment or suspension action.

(e) *Retroactivity.* Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of these regulations (October 1, 1988) regardless of the date of the cause giving rise to the sanction.

e. Section 24.115 is amended by adding paragraph (d) to read as follows:

§ 24.115 Policy

* * * * *

(d) The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision. In this connection, the supplying of information by the contractor to the Government pursuant to the Anti-Kickback Act of 1986 shall be favorable evidence of the contractor's responsibility.

f. Section 24.200 is amended by adding paragraphs (c)(8), (d), (e), and (f) to read as follows:

§ 24.200 Debarment and suspension.

* * * * *

(c) * * *

(8) Debarment for any of the causes set forth in § 24.305(f) shall have no governmentwide effect.

(d) The debarment of a contractor by HUD shall have the following effect:

(1) Exclusion from participation in HUD programs, including receiving contracts and HUD shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors, unless the Secretary or designee determines in writing that there is a compelling reason for such action.

(2) In addition to exclusion from participation in HUD programs, a contractor's debarment or suspension from procurement for the causes set forth in § 24.305(d) shall be effective throughout the Executive Branch of the Government, in accordance with 48 CFR 9.406–1(c), unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e) *Other exceptions.* (1) Sanctions under this part shall also not preclude the receipt of benefits from the sale of the personal residence of an excluded individual or the purchase of HUD-owned housing units offered for all-cash sale without qualification at public sales.

(2) Sanctions against participants whose only involvement in HUD programs is as ultimate beneficiaries, such as subsidized tenants and subsidized mortgagors, may be taken only upon evidence of fraud unless the participant has otherwise been debarred or suspended by another Federal agency.

(3) Sanctions under this part against HUD FHA-approved mortgagees may be initiated only with the approval of the Mortgagee Review Board.

(f) Relationship to HUD administrative sanction procedures. (1) *Sanctions provided pursuant to contract provisions.* Nothing in this part shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

(2) *Other Departmental sanctions.* Where an office of the Department is required by statute, regulation, or

Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation or Executive Order shall take precedence. These alternate procedures include, but are not limited to: Part 200 Previous Participation Review and Clearance procedures, Part 25 Mortgagee Review Board administrative actions, and Part 570 Community Development Block Grant corrective and remedial actions.

g. Section 24.215 is amended by adding paragraph (a) immediately following the undesignated paragraph to read as follows:

§ 24.215 Exception provision.

* * * * *

(a) A contractor's debarment shall be effective throughout the executive branch of the Government, unless a contracting agency's head or his or her designee states in writing the compelling reasons justifying continued business dealings between the agency and the contractor.

h. Section 24.220 is amended by adding paragraphs (c) and (d) to read as follows:

§ 24.220 Continuation of covered transactions.

* * * * *

(c) Notwithstanding the debarment or suspension of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the contracting agency's head or designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(d) Agencies shall not renew current contracts or subcontracts of debarred or suspended contractors, or otherwise extend their duration, unless the contracting agency's head or a designee states in writing the compelling reasons for renewal or extension.

i. Section 24.305 is amended by adding paragraphs (d)(1), (e), and (f) to read as follows:

§ 24.305 Causes for debarment.

(d) * * *

(1) These causes include but are not limited to:

(i) Failure to comply with Title VIII of the Civil Rights Act of 1968 or Executive Order 11063, HUD's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan;

(ii) Violation of Title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1973, section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975;

(iii) Violation of any law, regulation, or agreement relating to conflict of interest;

(iv) Violation of any nondiscrimination provisions included in any agreement or contract;

(e) Debarment of a contractor may be imposed for any of the causes in paragraphs (a), (b), and (d). For purposes of this section, "agreement" is deemed to include "contracts or subcontracts."

(f) In addition to the causes set forth above, HUD may debar a person from participating in any programs or activities of the Department for material violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction including applications for grants, financial assistance, insurance or guarantees, or to the performance of requirements under a grant, assistance award or conditional or final commitment to insure or guarantee.

j. Sections 24.313 and 24.314 are revised to read as follows:

§ 24.313 Appeal and hearing procedures.

(a) *Appeal procedures.* Within 30 days of receipt of a notice of proposed debarment, any participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. If no appeal is filed within the time limit, the proposed decision to debar shall be final. For purposes of compliance with this section, notice shall be considered to have been received by the addressee if the notice is properly mailed to the last known adress of such addressee.

(b) *Hearing procedures*—(1) *General.* Hearings shall be governed by the procedures set forth at 24 CFR Part 26 (except as provided in § 24.313 and 24.314) including § 26.16 regarding time computation. Specifically, § 26.16 provides that computation of any period of time prescribed or allowed by this part shall begin with the first business day following the day on which the act, event, development or default initiating the period of time occurred. When the last day of the period computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following business day. Except when any prescribed or allowed period of time is seven days or less, each of the Saturdays, Sundays, and national holidays shall be included in the computation of the prescribed or allowed period.

(2) *Right to hearing.* A participant or contractor, including any affiliate, that has requested a hearing has the right to be heard before a Hearing Officer and to be represented by counsel as follows:

(i) Except as provided in paragraphs (b)(2)(ii) of this section or § 24.412(a), the participant or contractor may request an oral hearing before a hearing officer. Where debarment is based on a finding of civil rights noncompliance after a hearing, however, the hearing officer is bound by the finding of noncompliance reached in the prior hearing.

(ii) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer;

(3) *Standard of proof in any contested action.* The cause for debarment must be established by a preponderance of the evidence. If the debarment is based upon a conviction, a civil judgment, or debarment by another Federal agency, the standard shall be deemed to have been met. The cause for suspension or limited denial of participation must be established by adequate evidence. If the suspension or limited denial of participation is based upon an indictment or suspension by another Federal agency, the standard shall be deemed to have been met. In determining whether a limited denial of participation should be continued, the hearing officer shall consider any evidence offered by respondent in opposition to HUD's proof as well as evidence of any mitigating circumstances. If the limited denial of participation is based upon a limited denial of participation by another HUD regional or field office, the standard shall be deemed to have been met.

(4) *Burden of proof.* The agency proposing debarment has the burden of proving to establish cause for debarment. The respondent has the burden of proof for establishing mitigating circumstances.

(5) *Consolidation of hearing.* Where a sanction under this part is accompanied or followed by another sanction under this part, the hearings may be consolidated.

§ 24.314 Determination of hearing officer; review of determination.

(a) *Written determination.* After the participant or contractor has been afforded an opportunity to be heard, the hearing officer shall make a written determination on the evidence presented, including, where appropriate, any evidence of mitigating circumstances. The hearing officer shall issue a determination in accordance with Part 26. If it is proposed that the sanction include an affiliate, the hearing officer shall rule specifically whether, and to what extent, the determination applies to the affiliate. The hearing officer's determination shall be transmitted to all appealing parties by certified mail, return receipt requested.

(b) *Transmission of determination.* The hearing officer's determination shall also be transmitted promptly to the HUD official who invoked the administrative sanction, and to the Office of General Counsel.

(c) *Finality and Secretarial Review.* The hearing officer's determination shall be final unless, pursuant to 24 CFR Part 26, the Secretary or the Secretary's designee, within 30 days of receipt of a request decides as a matter of discretion to review the finding of the hearing officer. The 30 day period for deciding whether to review a determination may be extended upon written notice of such extension by the Secretary or his designee. Any party may request such a review in writing within 15 days of receipt of the hearing officer's determination.

(d) Notice of the Secretary's decision to review the hearing officer's determination and notice of the subsequent determination by the Secretary or the Secretary's designee, shall be given in writing, signed by the Secretary or the Secretary's designee and transmitted by certified mail, return receipt requested.

(e) Where a review is granted, the determination by the Secretary or the Secretary's designee shall be based on the record of the initial hearing and shall fully recite the evidentiary grounds upon which the Secretary's determination is made. Such determination shall be issued within 30 days of the decision to grant review, unless written notice is given by the Secretary or designee extending the period for making a determination.

(f) Each determination shall become a part of the record.

(g) *Notice of debarring official's decision.* After determination in a contested action, or after the expiration of the period for requesting a hearing when no request has been received, the debarring official shall issue a final determination:

(1) Referring to the notice of proposed debarment;

(2) Specifying the reasons for debarment;

(3) Stating the period of debarment, including effective dates; and

(4) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authroized designee makes the determination referred to in § 24.215.

(h) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

k. Section 24.320 is amended by adding paragraph (d) to read as follows:

§ 24.320 Period of debarment.

* * * * *

(d) Where respondent's request to reduce the period or scope of debarment is based on reasons set forth in paragraphs (c)(4) or (5) of this section, such request may not be submitted earlier than six months after the final decision to debar. In no event may more than one such request be submitted within any 12-month period.

l. Section 24.325 is amended by adding paragraphs (a)(3) and (b)(4) to read as follows:

§ 24.325 Scope of debarment.

(a) * * *

(3) Debarment of a contractor under these regulations, or by another Federal agency pursuant to 48 CFR Subpart 9.4, constitutes debarment of all its divisions and other organizational elements from all Federal procurement, unless the debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of contracts. The debarment may be extended to include any affiliates of the contractor, if they are specifically named, given written notice of the proposed debarment, and provided with an opportunity to respond.

(b) * * *

(4) The provisions of paragraphs (b)(1) through (3) of this section are also applicable for purposes of imputing conduct to a contractor.

m. Section 24.400 is amended by adding paragraph (d) to read as follows:

§ 24.400 General.

* * * * *

(d) All suspensions shall be for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue. A suspension shall become effective immediately upon issuance of the notice specified in § 24.411. In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests, in writing, a continuance for an additional six months. In no event shall such a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. The time limitations for suspension contained in this section may be waived by the affected party.

n. Section 24.410 is amended by adding paragraph (c) to read as follows:

§ 24.410 Procedures.

* * * * *

(c) Suspension is a serious action to be imposed when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, the Suspending Official shall consider how much information is available, the credibility of the evidence given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result of all available evidence.

o. Sections 24.411, 24.412, and 24.413 are revised to read as follows:

§ 24.411 Notice of suspension.

(a) Suspension shall be made effective by advising the participant or contractor, and any specifically named affiliates, by certified mail, return receipt requested—

(1) That suspension is being imposed;

(2) That suspension is based on an indictment or other adequate evidence that the participant or contractor has committeed irregularities:

(i) Of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealings with the participant or contractor. Any such irregularities shall be described in terms sufficient to place the participant or contractor on notice without disclosing the Government's evidence;

(3) Of the cause(s) relied upon under § 24.405 for imposing suspension;

(d) That the suspension is for a temporary period pending the completion of an investigation and such

legal, debarment or Program Fraud Civil Remedies Act proceedings as may ensue;

(e) Of the right to request within 30 days, in writing, a hearing (either oral or on the basis of any written submissions by the respondent) under § 24.412 and 24.413;

(f) Of the potential effect(s) of suspension as set forth in § 24.200.

(g) Of HUD's appeal procedures governing suspensions.

§ 24.412 Appeal procedures.

Within 30 days of receipt of a notice of suspension, a participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10286, Washington, DC 20410.

§ 24.413 Hearing procedures.

If a hearing is requested, it shall be held in accordance with §§ 24.313 and 24.314, except:

(a) Where an Assistant Attorney General has advised in writing that substantial interests of the Government would be prejudiced by an administrative hearing, and the suspending official determines that a suspension is based on the same facts as pending or contemplated legal proceedings referenced by the Assistant Attorney General, there shall be no right to a hearing under this part. The participant or contractor may submit documentary evidence and written briefs for consideration by the suspending official. The suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the Suspending Official extends this period for good cause.

(b) A decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of a suspension for the same cause by any other agency or a debarment by any agency.

p. Section 24.415 is amended by adding paragraph (d) to read as follows:

§ 24.415 Period of suspension.

* * * * *

(d) The time limitations for suspension contained in this section may be waived by the affected party.

q. Section 24.500 is amended by adding paragraph (c) to read as follows:

§ 24.500 GSA responsibilities.

* * * * *

(c) In accordance with 48 CFR 9.404, GSA shall compile and distribute a list of contractors who are debarred, suspended or ineligible.

r. Section 24.505 is amended by adding paragraphs (f) through (h) to read as follows:

§ 24.505 HUD responsibilities.

* * * * *

(f) The agency shall notify GSA within 5 working days after modifying or rescinding an action;

(g) The agency shall, in accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the agency;

(h) Contracting Officers shall check the Procurement List before entering into any contract or before approving any subcontract to determine whether a contractor is debarred, suspended, ineligible or voluntarily excluded.

s. Subpart F is added to Part 24 to read as set forth below:

Subpart F—Limited Denial of Participation

Sec.

24.600 General.
24.605 Causes for a limited denial of participation.
24.610 Period and scope of a limited denial of participation.
24.611 Notice.
24.612 Conference.
24.613 Appeal.

Subpart F—Limited Denial of Participation

§ 24.600 General.

Officials who may order a limited denial of participation. A Regional Administrator, Office Manager, or Director of an Office of Indian Programs is authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except HUD–FHA approved mortgagees. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

§ 24.605 Causes for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(3) Failure of a participant or contractor to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.305;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee.

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.

(11) Imposition of a limited denial of participation by any other HUD regional or field office.

(12) Debarment or suspension by another Federal agency for any cause substantially the same as provided in § 24.305.

(b) *Indictment.* Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.* Imposition of a limited denial of participation by any other HUD regional or field office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

§ 24.610 Period and scope of a limited denial of participation.

(a) The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation generally extends only to participation in the program under which the cause arose, except: Where it is based on an indictment, conviction, or suspension or debarment by another agency, it need not be based on offenses against HUD and it may apply to all programs.

(2) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts, notwithstanding any *quid pro quo* given and whether the Department gives anything in return. "Program" may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary.

(3) The sanction may be imposed for a period not to exceed 12 months, is limited to specific HUD programs, and shall be effective only within the geographic jurisdiction of the office imposing it.

(b) *Effectiveness.* This sanction shall be effective immediately upon issuance, and shall remain effective up to 12 months thereafter. If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 24.611 Notice.

(a) *Generally.* A limited denial of participation shall be initiated by advising a participant or contractor, and any specifically named affiliate, by mail, return receipt requested—

(1) That the sanction is effective as of the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.605 for imposing the sanction;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held within 10 business days of receipt of the request;

(5) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, the official imposing the limited denial of participation shall notify the Participation and Compliance Officer for Housing Programs that no conference has been requested. If a conference is requested within the 30-day period, no notice shall be given unless a decision to affirm all or a portion of the remaining period of exclusion is issued. The Participation and Compliance Officer shall be responsible for notifying all HUD field offices of sanctions imposed.

§ 24.612 Conference.

Upon receipt of a request for a conference as specified in § 24.611(b), the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 24.613. Although the formal rules of procedure contained in 24 CFR Part 26 do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is made to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of notice of decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

§ 24.613 Appeal.

Where the decision is made to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at § 24.311 through 24.314. Where a limited denial of participation is followed by a suspension, the limited denial of participation shall be superseded by the suspension and the appeal shall be heard solely as an appeal of the suspension.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

FOR FURTHER INFORMATION CONTACT: Marion L. Butler, Taxpayer Information and Education Branch, TR:T:I—Room 7215, 1111 Constitution Avenue NW., Washington, DC 20224 telephone 202–566–4904 (not a toll-free number).

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Grant programs—debarment and suspension, Taxes.

Title 26 of the Code of Federal Regulations, Part 601, is amended as follows:

Michael J. Murphy,
Acting Commissioner of Internal Revenue.

PART 601—[AMENDED]

Paragraph 1. The authority for Part 601 is revised to read as follows:

Authority: Executive Order 12549, and 5 U.S.C. 301 and 552.

Par. 2. Subpart I is redesignated Subpart J.

Par. 3. A new Subpart I is added as set forth at the end of this document.

Subpart I—Governmentwide Debarment and Suspension (Nonprocurement)

General

Sec.

601.901 (_____.100) Purpose.
601.902 (_____.105) Definitions.
601.903 (_____.110) Coverage.
601.904 (_____.115) Policy.

Effect of Action

601.910 (_____.200) Debarment or suspension.
601.911 (_____.205) Ineligible persons.
601.912 (_____.210) Voluntary exclusion.
601.913 (_____.215) Exception provision.
601.914 (_____.220) Continuation of covered transactions.
601.915 (_____.225) Failure to adhere to restrictions.

Debarment

601.920 (_____.300) General.
601.921 (_____.305) Causes for debarment.
601.922 (_____.310) Procedures.
601.923 (_____.311) Investigation and referral.

Sec.
601.924 (___.312) Notice of proposed debarment.
601.925 (___.313) Opportunity to contest proposed debarment.
601.929 (___.314) Debarring official's decision.
601.927 (___.315) Settlement and voluntary exclusion.
601.928 (___.320) Period of debarment.
601.929 (___.325) Scope of debarment.

Suspension
601.930 (___.400) General.
601.931 (___.405) Causes for suspension.
601.932 (___.410) Procedures.
601.933 (___.411) Notice of suspension.
601.934 (___.412) Opportunity to contest suspension.
601.935 (___.413) Suspending official's decision.
601.936 (___.412) Period of suspension.
601.937 (___.420) Scope of suspension.

Responsibilities of GSA, Agency and Participants
601.940 (___.500) GSA responsibilities
601.941 (___.505) Department of the Treasury responsibilities.
601.942 (___.510) Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Par. 4. Subpart I is further amended by removing "[Agency]" and adding "Department of the Treasury" wherever "[Agency]" occurs.

DEPARTMENT OF JUSTICE

28 CFR Part 67

[Atty. Gen. Order No. 1271–88]

FOR FURTHER INFORMATION CONTACT: Gregory C. Brady, Department of Justice, Office of Justice Programs, 633 Indiana Avenue NW., Room 1268, Washington, DC 20531, (202) 724–6235.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice has adopted a uniform system of nonprocurement debarment and suspension that will be applicable to the nonprocurement assistance activities of the offices, bureaus, and divisions of the Department of Justice which have grantmaking authority. These include: The Office of Justice Programs (including the Office for Victims of Crime, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Statistics), the National Institute of Corrections, the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation and the Drug Enforcement Administration. With respect to the Drug Enforcement Administration's authority to enter into contractual agreements with State and local law enforcement agencies under 21 U.S.C. 873(a)(7) to provide for cooperative enforcement and regulatory activities, the Attorney General will delegate the authority to grant exceptions, where warranted, under § 67.215 of this rule to the Administrator, DEA, or his designee, for the purposes of these section 873(a)(7) agreements.

List of Subjects in 28 CFR Part 67

Administrative practice and procedures, Grant programs—Law, Grants administration, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

May 16, 1988.

Edwin Meese III,
Attorney General.

1. Part 67 is added to read as set forth at the end of this document.

PART 67—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
67.100 Purpose.
67.105 Definitions.
67.110 Coverage.
67.115 Policy.

Subpart B—Effect of Action
67.200 Debarment or suspension.
67.205 Ineligible persons.
67.210 Voluntary exclusion.
67.215 Exception provision.
67.220 Continuation of covered transactions.
67.225 Failure to adhere to restrictions.

Subpart C—Debarment
67.300 General
67.305 Causes for debarment.
67.310 Procedures.
67.311 Investigation and referral.
67.312 Notice of proposed debarment.
67.313 Opportunity to contest proposed debarment.
67.314 Debarring official's decision.
67.315 Settlement and voluntary exclusion.
67.320 Period of debarment.
67.325 Scope of debarment.

Subpart D—Suspension
67.400 General.
67.405 Causes for suspension.
67.410 Procedures.
67.411 Notice of suspension.
67.412 Opportunity to contest suspension.
67.413 Suspending official's decision.
67.415 Period of suspension.
67.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants
67.500 GSA responsibilities.
67.505 Department of Justice responsibilities.
67.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4251–4353.

2. Part 67 is further amended by removing "[Agency]" and adding "Department of Justice" wherever "[Agency]" occurs.

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 98

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Room S–1522, U.S. Department of Labor, Washington, DC 20210. Telephone: (202) 523–6904.

List of Subjects in 29 CFR Part 98

Accounting, Administrative practice and procedures, Grant programs—debarment and suspension procedures, Grants administration, Reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations be amended as set forth below.

Ann McLaughlin,
Secretary of Labor.

1. Part 98 is added to read as set forth at the end of this document.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
98.100 Purpose.
98.105 Definitions.
98.110 Coverage.
98.115 Policy.

Subpart B—Effect of Action
98.200 Debarment or suspension.
98.205 Ineligible persons.
98.210 Voluntary exclusion.
98.215 Exception provision.
98.220 Continuation of covered transactions.
98.225 Failure to adhere to restrictions.

Subpart C—Debarment
98.300 General.
98.305 Causes for debarment.
98.310 Procedures.
98.311 Investigation and referral.
98.312 Notice of proposed debarment.
98.313 Opportunity to contest proposed debarment.
98.314 Debarring official's decision.
98.315 Settlement and voluntary exclusion.
98.320 Period of debarment.
98.325 Scope of debarment.

Subpart D—Suspension
98.400 General.
98.405 Causes for suspension.
98.410 Procedures.
98.411 Notice of suspension.
98.412 Opportunity to contest suspension.
98.413 Suspending official's decision.
98.415 Period of suspension.
98.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants
98.500 GSA responsibilities.
98.505 Department of Labor responsibilities.
98.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 29 U.S.C. 551, 5 U.S.C. 301.

2. Part 98 is further amended by removing "[Agency]" and adding "Department of Labor" wherever "[Agency]" occurs.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

FOR FURTHER INFORMATION CONTACT: Lee A. Buddendeck, 653–5320.

List of Subjects in 29 CFR Part 1471

Grants programs, Grant administration.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Kay McMurray,
Director.

1. Part 1471 is added as set forth at the end of this document.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1471.100 Purpose.
1471.105 Definitions.
1471.110 Coverage.
1471.115 Policy.

Subpart B—Effect of Action
1471.200 Debarment or suspension.
1471.205 Ineligible persons.
1471.210 Voluntary exclusion
1471.215 Exception provision.
1471.220 Continuation of covered transactions
1471.225 Failure to adhere to restrictions.

Subpart C—Debarment
1471.300 General.
1471.305 Causes for debarment.
1471.310 Procedures.
1471.311 Investigation and referral.
1471.312 Notice of proposed debarment.
1471.313 Opportunity to contest proposed debarment.
1471.314 Debarring official's decision.
1471.315 Settlement and voluntary exclusion.
1471.320 Period of debarment.
1471.325 Scope of debarment.

Subpart D—Suspension
1471.400 General.
1471.405 Causes for suspension.
1471.410 Procedures.
1471.411 Notice of suspension.
1471.412 Opportunity to contest suspension.
1471.413 Suspending official's decision.
1471.415 Period of suspension.
1471.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants
1471.500 GSA responsibilities.
1471.505 FMCS responsibilities.
1471.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction

Authority: Executive Order 12549, 29 U.S.C. 175a.

2. Part 1471 is further amended as follows:

a. "[Agency]" is removed and "FMCS" is added wherever "[Agency]" occurs.

b. Section 1471.105 is amended by adding paragraph (w) to read as follows:

§ 1471.105 Definitions

* * * * *

FMCS. Federal Mediation and Conciliation Service.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 280

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slavsky, (202) 697–6335.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) adopts the following rule to govern debarment and suspension for grants, cooperative agreements, scholarships, fellowships and other nonprocurement actions. This rule is not intended to apply to DoD Foreign Military Sales Programs (FMS).

Section 280.200(b), which deals with the effect of action for lower tier covered transactions excludes participation by persons in lower tier transactions who have been suspended or debarred. In addition, § 280.510 requires certifications by participants in lower tier transactions that they are not debarred, suspended, ineligible, or voluntary excluded from covered transactions by any Federal agency. This language is similar to that proposed in a July 31, 1987 Notice of Proposed Rulemaking (52 FR 28843–48) which would amend the FAR to provide for certification by subcontractors and a bar against contractors awarding subcontracts to firms which are suspended or debarred. The current FAR does not cover subcontracts for this purpose unless they are subject to approval by the Federal Government. The language to be included in the FAR has not been finalized and in the event the final FAR treatment differs from that proposed in the July 31 NPRM, the provisions in this rule may be reconsidered and may be amended by the Department.

By adopting this government-wide common rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will establish uniform practices that are also consistent with those being established by other Executive Departments and Agencies.

List of Subjects in 32 CFR Part 280

Administrative practice and procedures, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 32 of the Code of Federal Regulations is amended as set forth below.

May 12, 1988.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

1. Part 280 is added to read as set forth at the end of this document.

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PART 280—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

280.100 Purpose.
280.105 Definitions.
280.110 Coverage.
280.115 Policy.

Subpart B—Effect of Action

280.200 Debarment or suspension.
280.205 Ineligible persons.
280.210 Voluntary exclusion.
280.215 Exception provision.
280.220 Continuation of covered transactions.
280.225 Failure to adhere to restrictions.

Subpart C—Debarment

280.300 General.
280.305 Causes for debarment.
280.310 Procedures.
280.311 Investigation and referral.
280.312 Notice of proposed debarment.
280.313 Opportunity to contest proposed debarment.
280.314 Debarring official's decision.
280.315 Settlement and voluntary exclusion.
280.320 Period of debarment.
280.325 Scope of debarment.

Subpart D—Suspension

280.400 General.
280.405 Causes for suspension.
280.410 Procedures.
280.411 Notice of suspension.
280.412 Opportunity to contest suspension.
280.413 Suspending official's decision.
280.415 Period of suspension.
280.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

280.500 GSA responsibilities.
280.505 Military Departments and Defense Agencies responsibilities.
280.510 Participants responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 5 U.S.C. 301.

2. Part 280 is further amended by removing "[Agency]" and inserting "Military Departments and Defense Agencies" wherever "[Agency]" occurs.

DEPARTMENT OF EDUCATION

34 CFR Parts 85 and 668

DATES: In addition to the interim common regulations for which comments are requested in the general preamble for this document, the Department of Education (ED) requests comments on an ED appeal procedure and the ED deviations from the common regulations. The ED provisions for which comments are requested are §§ 85.100(a), 85.200 (a) and (b), 85.201, 85.220(b), 85.314(d)(1)(iv), 85.316, 85.414, and 668.82(e). Comments on these sections must be received on or before July 25, 1988. For each comment please identify the specific section(s) in the regulations to which the comment relates. The provisions of ED's debarment and suspension regulations for which comments are requested in this agency specific preamble are effective on October 1, 1988. If the Secretary determines that comment on these provisions requires changes to the regulations, the effective date for those changes will be specified when the Department publishes in the **Federal Register** its responses to the comments.

ADDRESS: All comments should be addressed to Mary Jane Kane, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3122, GSA Regional Office Building No. 3), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, Telephone (202) 732-7400.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Rulemaking Considerations

It is the policy of ED to consider comments received in response to a notice of proposed rulemaking (NPRM) before publishing final regulations. However, in this case the Secretary has concluded that publication of an NPRM is unnecessary because these common regulations have been subjected to extensive public scrutiny. OMB has published proposed and final guidelines and 27 agencies have requested comments on implementing regulations either through a voluntary notice of proposed common rulemaking or through separate publications of NPRMs or interim rules. In order to respond to public comments requesting uniform outcomes, OMB has requested all executive agencies to join in this final common rulemaking action. Under section 3 of the Executive order, final regulations must be published within a year after issuance by OMB of the final guidelines, May 26, 1988. Because these common regulations have been subjected to considerable public comment and must be published by May 26, the Secretary has decided, for good cause under 5 U.S.C. 553(b)(B), to dispense with proposed rulemaking on the common regulations.

The development of the deviations for Title IV of the Higher Education Act of 1965 (HEA), as amended, took considerable time due to the complex nature of the statutes involved. As a result, the Department has been unable to publish deviations before this time. As mentioned above, section 3 of the Executive order requires Federal executive agencies to publish final regulations by May 26, 1988. If the Secretary did not publish the Title IV, HEA deviations as final regulations simultaneously with the final common regulations, considerable uncertainty and confusion would result regarding the effect of the debarment or suspension of an educational institution or lender by ED or another Federal agency on participation in Title IV, HEA programs.

Consequently, the Secretary has determined that publication of the Title IV, HEA deviations as proposed rules would be impracticable in the time remaining for publication of the final rules. The Secretary has also determined that a failure to publish the deviations as final rules by May 26, would be contrary to the public interest of having in place a uniform system of debarment and suspension covering nonprocurement transactions by the Federal Government. In consideration of the foregoing, the Secretary, for good cause under 5 U.S.C. 553(b)(B), waives proposed rulemaking on the deviations. The Secretary will accept comments on the proposed deviations. The deadline for receipt of comments and the address to which the comments must be submitted are specified at the beginning of this agency-specific preamble.

Appeals from Debarments and Suspensions Under the Common Regulations

The preamble to the common regulations indicates that agencies have discretion to permit appeals from debarment and suspension decisions. The Secretary has not included any appeal procedures in these final regulations. However, the Secretary is interested in receiving comment about whether the Department should have an appeal procedure and, if so, to whom appeals should be made, if not the Secretary; how long a time period a person should have to appeal a debarment or suspension; and what other procedural limitations should be imposed on the appeal process.

Deviations from the Common Regulations

These regulations do not change the procedures for disqualifying, limiting, suspending, and terminating the participation of educational institutions, lenders, and guarantee agencies under the student financial assistance programs authorized under Title IV, HEA, as amended.

The procedures used when the Secretary intends to suspend or terminate an educational institution under Title IV of the HEA in conjunction with a debarment or suspension under Executive Order 12549 are described in § 85.316 and § 85.414. These regulations modify the debarment and suspension procedures applicable to educational institutions participating in the Title IV, HEA programs, to make them consistent with the procedural requirements applicable by statute to the suspension and termination of Title IV, HEA participation. *See* section 487(c)(1)(D) of the HEA. The effect of debarments and suspensions by this and other agencies under Executive Order 12549 on Title IV, HEA participation by educational institutions is addressed in § 85.201 and in 34 CFR 668.82(e).

Consistent with § 85.505, the Department will review the list of debarred and suspended entities to determine if action is necessary to debar or suspend an educational institution that has been debarred or suspended by another Federal agency. The Secretary will also initiate before an administrative law judge debarment or suspension proceeding against any educational institution that has been debarred or suspended, respectively, by ED or another Federal agency, if the procedures used did not meet the Title IV, HEA requirements for a formal adjudication, including a hearing on the record before an administrative law judge.

The Secretary strongly believes that lenders debarred by ED or another Federal agency should not be permitted to continue to make loans and receive payments thereon under the financial aid programs authorized by Title IV, Part B, of the HEA. However, section 428(b)(1)(U) of the HEA requires that any eligible lender be permitted to participate in those student loan programs unless it is eliminated as a lender under certain statutory termination criteria and procedures. Thus, these regulations would permit an eligible lender to participate in HEA, Part B, student loan programs even if the lender has been debarred by ED or another Federal agency. 20 U.S.C. 1078(b)(1)(U). However, as the regulations indicate, the Secretary will promptly conduct an audit or program review of the Guaranteed Student Loan Program administration of any lender that is debarred by ED or another Federal agency in order to determine whether grounds also exist to terminate the lender from participation in the Title IV, HEA program. (See § 85.201(b)(2)(i))

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the deviations from the common regulations and whether the Department should have an appeal procedure.

All comments submitted in response to these regulations will be available for public inspection, during and after the common period, in Room 3122, GSA Regional Office Building No. 3, Seventh and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the deviations from the common regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 85

Administrative practice and procedure, Debarment, Grant programs—Education, Grants administration, Suspension.

34 CFR Part 668

Administrative practice and procedures, Colleges and universities, Education, Loan programs—education, Grant programs—education, Student aid.

Dated: May 2, 1988.

William J. Bennett,

Secretary of Education.

(CFDA: Although debarment and suspension will affect general eligibility under all covered assistance programs during the period of debarment or suspension, it is not practicable to list all affected programs because of the great number covered)

The Secretary amends Title 34 of the Code of Federal Regulations as set forth below.

1. A new Part 85 is added as set forth at the end of this document:

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
85.100 Purpose.
85.105 Definitions.
85.110 Coverage.
85.115 Policy.

Subpart B—Effect of Action

85.200 Debarment or suspension.
85.201 Treatment of Title IV, HEA participation.
85.205 Ineligible persons.
85.210 Voluntary exclusion.
85.215 Exception provision.
85.220 Continuation of covered transactions.
85.225 Failure to adhere to restrictions.

Subpart C—Debarment

85.300 General.
85.305 Causes for debarment.
85.310 Procedures.
85.311 Investigation and referral.
85.312 Notice of proposed debarment.
85.313 Opportunity to contest proposed debarment.
85.314 Debarring official's decision.
85.315 Settlement and voluntary exclusion.
85.316 Procedures for Title IV, HEA debarments.
85.320 Period of debarment.
85.325 Scope of debarment.

Subpart D—Suspension

85.400 General.
85.405 Causes for suspension.
85.410 Procedures.
85.411 Notice of suspension.
85.412 Opportunity to contest suspension.
85.413 Suspending official's decision.
85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.
85.415 Period of suspension.
85.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

85.500 GSA responsibilities.
85.505 ED responsibilities.
85.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transactions

Authority: Executive Order 12549; 20 U.S.C. 1474, unless otherwise noted.

2. Part 85 is further amended, as follows:

a. "[Agency]" is removed and "ED" is added wherever "[Agency]" occurs.

b. Paragraph (a) of § 85.100 is revised and an authority citation is added to read as follows:

§ 85.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal

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programs and activities. Except as provided in § 85.200, Debarment or Suspension, § 85.201, Treatment of Title IV, HEA participation, and § 85.215, Exception provision, debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

* * * * *

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

c. Section 85.105 is amended by adding a new paragraph (w) and an authority citation is added to read as follows:

§ 85.105 Definitions.

* * * * *

(w) *ED.* The U.S. Department of Education.

(Authority: E.O. 12549; 20 U.S.C. 3474)

d. Paragraphs (a) and (b) of § 85.200 are revised and an authority citation is added to read as follows:

§ 85.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of Title IV, HEA participation, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, ED shall not enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 85.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law and subject to § 85.210, Treatment of Title IV, HEA participation, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transaction (see § 85.110(a)(1)(ii)) for the period of their debarment or suspension. Such persons shall also be excluded from all contracts to provide federally-required audit services regardless of contract amount.

* * * * *

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

e. A new § 85.201 is added, to read as follows:

§ 85.201 Treatment of Title IV, HEA participation.

(a)(1) The debarment of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554–557 (formal adjudication requirements under the Administrative Procedures Act) terminates the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended, for the duration of the debarment.

(2)(i) The suspension of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554–557 suspends the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(b)(1) Except as provided in paragraph (a) of this section, the debarment, suspension, proposed debarment, or proposed suspension of an educational institution or lender under E.O. 12549 does not affect the eligibility of the institution or lender to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(2)(i) The Secretary initiates a debarment or suspension proceeding under § 85.316 or § 85.414, respectively, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554.557.

(ii) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

f. Paragraph (b) of § 85.220 is revised and an authority citation is added to read as follows:

§ 85.220 Continuation of covered transactions.

* * * * *

(b) Except as provided in § 85.201, Treatment of Title IV, HEA participation, and § 85.215, Exception provision, the Secretary shall not, and participants shall not, renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible or voluntary excluded.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

g. Paragraph (d)(1)(iv) of § 85.314 is revised and an authority citation is added to read as follows:

§ 85.314 Debarring official's decision.

* * * * *

(d) * * *

(1) * * *

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 85.215 or the debarment or suspension is against—

(A) An educational institution under procedures that do not meet the requirements of § 85.201(a); or

(B) A lender participating in the Title IV, Part B, HEA program.

* * * * *

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

h. A new § 85.316 is added to read as follows:

§ 85.316 Procedures for Title IV, HEA debarments.

(a)(1) If the Secretary debars an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the debarment to ensure that the debarment also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.312, Notice of proposed debarment, and § 85.314(d), Notice of debarring official's decision.

(ii) Instead of the procedures in § 85.313 and § 85.314(a)–(c), the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the debarring official for proceeding under this section.

(b) On appeal from a decision debarring an educational institution, the Secretary issues a final decision after all parties have filed their written materials with the Secretary.

(c) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the debarring official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for debarment as set forth in § 85.305.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

i. A new § 85.414 is added, to read as follows:

§ 85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.

(a) *Title IV E.O. 12549 suspensions.* (1) If the Secretary suspends an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the suspension to ensure that the suspension also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.411, Notice of suspension.

(ii) Instead of the procedures in §§ 85.412, 85.413, and 85.415, the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the suspending official for proceeding under this section.

(3) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the suspending official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for suspension under E.O. 12549 as set forth in § 85.405.

(b) *Continued assistance under Title IV, HEA.* The institution may continue its participation in the Title IV programs until the procedures described in paragraph (a) of this section, except for those relating to appeals to the Secretary, have been completed, unless the Secretary takes an emergency action under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

j. An authority citation is added after each section in Part 85 other than §§ 85.100, 85.105, 85.200, 85.201, 85.220, 85.314, 85.316, and 85.414, to read as follows:

(Authority: E.O. 12549; 20 U.S.C. 3474)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3. Part 668 is amended as follows:

a. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

b. Section 668.82 is amended by adding a new paragraph (e) to read as follows:

§ 668.82 Standards of Conduct.

* * * * *

(e)(1) The debarment of a participating institution under Executive Order (E.O.) 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557, terminates the institution's eligibility to participate in the Title IV, HEA programs for the duration of the debarment.

(2)(i) The suspension of a participating institution under E.O. 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557, suspends the institution's eligibility to participate in the Title IV, HEA programs.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(3)(i) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(ii) The Secretary initiates a fine, limitation, suspension, or termination action under 34 CFR Part 668, Subpart G, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554–557.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 202–523–3214 (FTS 523–3214).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) makes grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs. The Catalog of Federal Domestic Assistance number is 89.003.

List of Subjects in 36 CFR Part 1209

Administrative practice and procedure, Grant programs—Archives and Records, Grant administration, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended as set forth below.

Dated: April 28, 1988.

Don W. Wilson,

Archivist of the United States.

1. Part 1209 is added as set forth at the end of this document.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1209.100 Purpose.
1209.105 Definitions.
1209.110 Coverage.
1209.115 Policy.

Subpart B—Effect of Action

1209.200 Debarment or suspension.
1209.205 Ineligible persons.
1209.210 Voluntary exclusion.
1209.215 Exception provision.
1209.220 Continuation of covered transactions.
1209.225 Failure to adhere to restrictions.

Subpart C—Debarment

1209.300 General.
1209.305 Causes for debarment.
1209.310 Procedures.
1209.311 Investigation and referral.
1209.312 Notice of proposed debarment.
1209.313 Opportunity to contest proposed debarment.
1209.314 Debarring official's decision.
1209.315 Settlement and voluntary exclusion.
1209.320 Period of debarment.
1209.325 Scope of debarment.

Subpart D—Suspension

1209.400 General.
1209.405 Causes for suspension.
1209.410 Procedures.
1209.411 Notice of suspension.
1209.412 Opportunity to contest suspension.
1209.413 Suspending official's decision.
1209.415 Period of suspension.
1209.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1209.500 GSA responsibilities.
1209.505 NARA responsibilities.
1209.510 Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 44 U.S.C. 2104(a).

2. Part 1209 is further amended as follows:

a. "[Agency]" is removed and "NARA" is added wherever "[Agency]" occurs.

b. Section 1209.105 is amended by adding paragraph (w) to read as follows:

§ 1209.105 Definitions.

* * * * *

(w) *NARA.* National Archives and Records Administration.

VETERANS ADMINISTRATION

38 CFR Part 44

FOR FURTHER INFORMATION CONTACT: Gail A. Gompf, Director, Office of Intergovernmental Affairs (61), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3116.

ADDITIONAL SUPPLEMENTARY INFORMATION: These final regulations codify the OMB guidelines pursuant to Executive Order 12549. Veterans Administration (VA) programs affected by these regulations include, but are not limited to, affiliation agreements (38 U.S.C. 4101(b)); agencies training counseling staffs at VA Regional Offices; exchange of medical information agreements under 38 U.S.C. 5054(a) and (b); health professional scholarships authorized by 38 U.S.C. 4141–4148; insurance; loan guaranty; provision of training to non-DM&S personnel by Regional Medical Education Centers (RMECs) authorized by 38 U.S.C. 4123(b); State contracts with individuals or organizations for the acquisition or construction of a State home using State home grant funds; State cemetery grants; and vocational rehabilitation and education.

In the area of vocational rehabilitation and education, for example, several programs are affected. The final regulations apply to facilities to which the VA pays training costs for veterans pursuing vocational rehabilitation programs, and costs for veterans receiving evaluation services or independent living services in rehabilitation facilities. Also included are agencies and organizations for which the VA authorizes grants to conduct rehabilitation research and provide training to enhance the skills of counseling and rehabilitation staff, and employers who are receiving payments that represent a portion of a veteran-trainee's wage under the Veterans' Job Training Act (VJTA).

The VA currently disapprove job training programs when the Agency discovers irregularities in them. Under the regulations, the VA could debar offending employers as well. Further, if an employer were debarred or suspended by another agency, even for reasons unrelated to job training, that employer would be unable to participate in VJTA programs, unless specifically excepted from sanctions under 38 CFR 44.215.

Similarly, in the loan guaranty program, the final regulations would affect all nonprocurement program participants, including lenders, builders, participants in the manufactured home loan program (manufacturers, dealers and park operators), fee appraisers, and real estate sales brokers and agents, and their employees. VA may currently impose sanctions on any lender who has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or the Government. A lender who has been suspended or debarred is thereafter barred for the length of the suspension or debarment from making or acquiring by purchase any VA guaranteed loans. In addition, VA suspends or debars on a reciprocal basis lenders who have been denied the benefits of participation in programs administered by the Secretary of Housing and Urban Development (HUD). Under the final regulations, lenders who have been debarred or suspended by their agencies would be unable to participate in the VA loan guaranty program. For example, a lender denied participation in the housing loan programs of the Farmers Home Administration would be unable to participate in the VA Home Loan program, unless specifically excepted under 38 CFR 44.215.

Under 38 U.S.C. 1804(b), VA may currently refuse to appraise any dwelling owned, sponsored or to be constructed by any person identified with housing previously sold to veterans as to which substantial deficiencies have been discovered or where the type of contracts or sale or methods and practices pursued in relation to the marketing of units were unfair or unduly prejudicial to veterans. VA may also refuse to appraise dwellings where the builder or broker has been denied participation in HUD programs. Under the final regulations, dwellings constructed or sold by builders or brokers debarred or suspended by other agencies would not be available for appraisal by the VA, unless a specific exception were granted under 38 CFR 44.215.

The VA has enumerated under the definition of "principal" in §§ 44.105 and 44.110(a)(1)(ii)(C) a listing of participants in the loan guaranty program who are considered to be principals to loan guaranty transactions and whose activities are covered by these regulations.

In the Department of Medicine and Surgery (DM&S), States which qualify are awarded VA grants for construction and acquisition of State veterans home facilities. A suspension or debarment action could arise in a number of situations involving a construction firm with which a State contracts. For instance, there might be fraud or a criminal offense on the part of the contractor in obtaining that public contract. In addition, affiliation agreements, health professional scholarships, the training of non-DM&S personnel by RMECs, and exchange of medical information agreements would all be susceptible to investigation and referral for suspension or debarment by the VA for willful failure of the second party or adhere to terms of the agreement. In each of these situations, the transgressions of the participants could invoke the regulations on debarment and suspension.

However, these final regulations do not cover VA programs permitting VA beneficiaries to obtain services or benefits at VA expense from private providers of their choice. These programs include the fee-basis care program (38 U.S.C. 603), the CHAMPVA (38 U.S.C. 613), and the automobile adaptive equipment program (38 U.S.C. 1902). These programs are excepted because they provide benefits to individuals as personal entitlements without regard to any responsibility on the part of the individual beneficiary (38 CFR 44.110(a)(2)).

The final rules do not impose paperwork or recordkeeping burdens. Only some participants in covered transactions under the rules are small entities for purposes of the Regulatory Flexibility Act. Moreover, only those participants involved in debarment or suspension proceedings would be affected. Consequently, less than a substantial number of small entities will be affected by these rules.

List of Subjects in 38 CFR Part 44

Accounting, Administrative practice and procedures, Agreements, Grant programs—State cemetary and State veterans homes, Insurance, Loan guaranty, Reporting and recordkeeping requirements, Scholarships, Veterans, Vocational rehabilitation and Education.

Title 38 of the Code of Federal Regulations is amended as set forth below.

Approved: May 9, 1988.

Thomas K. Turnage,

Administrator.

1. Part 44 is added to read as set forth at the end of this document:

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
44.100 Purpose.
44.105 Definitions.
44.110 Coverage.
44.115 Policy.

Subpart B—Effect of Action

44.200 Debarment or suspension.
44.205 Ineligible persons.
44.210 Voluntary exclusion.
44.215 Exception provision.
44.220 Continuation of covered transactions.
44.225 Failure to adhere to restrictions.

Subpart C—Debarment

44.300 General.
44.305 Causes for debarment.
44.310 Procedures.
44.311 Investigation and referral.
44.312 Notice of proposed debarment.
44.313 Opportunity to contest proposed debarment.
44.314 Debarring official's decision.
44.315 Settlement and voluntary exclusion.
44.320 Period of debarment.
44.325 Scope of debarment.

Subpart D—Suspension

44.400 General.
44.405 Causes for suspension.
44.410 Procedures.
44.411 Notice of suspension.
44.412 Opportunity to contest suspension.
44.413 Suspending official's decision.
44.415 Period of suspension.
44.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

44.500 GSA responsibility.
44.505 Veterans Administration responsibilities.
44.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 (51 FR 6370); 38 U.S.C. 210(c).

2. Part 44 is further amended by removing "[Agency]" and adding "Veterans Administration" wherever "[Agency]" occurs.

3. Section 44.105 is further amended by adding paragraph (p)(2) to read as follows:

§ 44.105 Definitions.

* * * * *

(p) * * *

(2) In the Veterans Administration loan guaranty program, principals include, but are not limited to the following:

(i) Loan officers,
(ii) Loan solicitors,
(iii) Loan processors,
(iv) Loan servicers,
(v) Loan supervisors,
(vi) Office managers,
(vii) Staff appraisers and inspectors,
(viii) Fee appraisers and inspectors,
(ix) Underwriters,
(x) Bonding companies,
(xi) Real estate agents and brokers,
(xii) Management and marketing agents,
(xiii) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under the Veterans Administration loan guaranty program,
(xiv) Contractors involved in the construction, improvement or repair of properties financed with Veterans Administration guaranteed loans,
(xv) Closing agents.

* * * * *

4. Section 44.110 is amended by adding paragraph (a)(1)(ii)(C)(*3*) to read as follows:

§ 44.110 Coverage.

* * * * *

(a) * * *
(1) * * *
(ii) * * *
(C) * * *

(*3*) In the Veterans Administration loan guaranty program, such persons include, but are not limited to the following:

(*i*) Fee appraisers and inspectors,
(*ii*) Bonding companies,
(*iii*) Real estate agents and brokers,
(*iv*) Management and marketing agents,
(*v*) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under the Veterans Administrations loan guaranty program,
(*vi*) Contractors involved in the construction, improvement or repair of properties financed with VA guaranteed loans,
(*vii*) Closing agents.

* * * * *

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

[FRL-3350-8]

FOR FURTHER INFORMATION CONTACT: Robert Meunier or David Sims, at (202) 475-8025.

ADDITIONAL SUPPLEMENTARY INFORMATION: On May 26, 1987, the Office of Management and Budget (OMB), issued Governmentwide guidelines governing debarment and suspension by Executive Branch agencies under nonprocurement programs. On October 20, 1987, many agencies joined in proposing a common rule to implement the guidelines. The Environmental Protection Agency (EPA) also published its proposed rule at that time, but not as part of the common rule (52 FR 39198). Since then, OMB has amended the guidelines and determined that all agencies will join the common rule in order to ensure greater uniformity. Comments on EPA's proposed rule were considered in preparing a final common rule and are addressed in the common preamble.

EPA is adopting several additions to the common rule. Under the common rule, agencies have the option to insert additional agency-specific examples to the definitions. The definitions of "debarring official" and "suspending official" under the common rule are being amended by adding subparagraphs (g)(3) and (t)(3) to § ____.105 to designate the Director, Grants Administration Division, as the Agency's debarring and suspending official. In addition, EPA is amending the definition of "Principal" at § ____.105(p) by adding bid and proposal estimators and preparers as an agency-specific example.

Sections ____.110(a)(2)(iv) and ____.200(c)(5) of the final common rule exempt transactions pursuant to national or agency-recognized emergencies or disasters from the effect of a suspension or debarment. This exemption does not apply to transactions under any programs carried out by EPA. Accordingly, § 32.110(a)(2)(iv)(A) and § 32.200(c)(5)(i) are added to clarify these exemptions. In special cases, EPA is authorized to permit a debarred, suspended or voluntarily excluded person to participate in a particular covered transaction by granting an exception under § 32.215.

EPA is adding subparagraph (d) to § 32.115 stating that while Part 32 does not apply to direct Federal procurement activities, which are governed by the

Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4, it is EPA's policy, for purposes of rational and efficient management, to integrate its administration of these two complementary programs.

One commenter sought clarification about whether a person could be debarred or suspended for violating environmental laws. An environmental violation could give rise to a debarment or suspension action under several of the causes at § 32.305, where there is a reasonable connection between the offense committed and future performance under an EPA assistance program. For example, a conviction of civil judgment for falsely certifying hazardous waste disposal manifests could result in debarment under § 32.305(a)(3). The unauthorized disposal of hazardous wastes, such as through "midnight dumping", could result in debarment under § 32.305 (a)(4) or (d). Failure to comply with environmental requirements incorporated into a public contract could result in debarment under § 32.305(b).

The common rule requires a hearing only where there exists a genuine dispute as to facts material to a proposed debarment or suspension. EPA is adding language to §§ ____.313 and ____.412, permitting a respondent to request a hearing regardless of whether there are "material facts" in dispute. This reflects EPA's policy and current practice of affording all respondents the same procedural options for the resolution of pertinent issues. A request for hearing upon suspension, however, is still subject to denial under § 32.412(b)(1)(ii), where pending or contemplated legal proceedings would be prejudiced.

Also, the common rule makes no provision for post-determination review of debarment or suspension decisions. EPA is opting to retain its current post-determination review procedures by adding §§ 32.330 and 32.425, which permit a party to request the debarring/suspending official to reconsider a decision to debar or suspend due to an error of fact or law. EPA is also adding §§ 32.335 and 32.430, which permit discretionary review of debarment and suspension decisions by the Director of EPA's Office of Administration, upon a written appeal filed within 30 calendar days of receipt of the debarring or suspending official's determination. We note that several comments to the proposed common rule recommended that an administrative review process be provided.

The common rule states generally that the "Agency" is authorized to settle debarment and suspension actions. At EPA this authority is vested in the Director, Grants Administration Division, as the debarring and suspending official. Accordingly, EPA is adding subparagraph (1) to § ____.315(a) to reflect this responsibility.

The proposed common rule contained a certification requirement which encompassed a range of important information from which to determine the current eligibility or potential responsibility of the prospective participant. In the final common rule, there are separate certifications, one for primary covered transactions (e.g., assistance recipients) and one for lower-tier covered transactions (e.g., contractors, subcontractors, suppliers). The lower-tier certification is an abbreviated version of the primary-tier certification.

Because EPA is most vulnerable to waste, fraud or abuse at the lower-tier level, EPA is expanding the certification for lower-tier participants by requiring them to certify to much of the same information provided in the certification submitted by primary participants. Accordingly, paragraph (3) and subparagraphs (a), (b) and (c) are being added to the lower-tier certification form.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Assistance programs—environmental protection, Technical assistance.

Lee M. Thomas,
Administrator.

Dated: May 11, 1988.

Title 40 of the Code of Federal Regulations is amended as set forth below.

1. Part 32 is revised to read as set forth at the end of this document:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
32.100 Purpose.
32.105 Definitions.
32.110 Coverage.
32.115 Policy.

Subpart B—Effect of Action

32.200 Debarment or suspension.
32.205 Ineligible persons.
32.210 Voluntary exclusion.
32.215 Exception provision.
32.220 Continuation of covered transactions.
32.225 Failure to adhere to restrictions.

Subpart C—Debarment

32.300 General.
32.305 Causes for debarment.
32.310 Procedures.
32.311 Investigation and referral.
32.312 Notice of proposed debarment.
32.313 Opportunity to contest proposed debarment.
32.314 Debarring official's decision.
32.315 Settlement and voluntary exclusion.
32.320 Period of debarment.
32.325 Scope of debarment
32.330 Reconsideration.
32.335 Appeal.

Subpart D—Suspension

32.400 General.
32.405 Causes for suspension.
32.410 Procedures.
32.411 Notice of suspension.
32.412 Opportunity to contest suspension.
32.413 Suspending official's decision.
32.415 Period of suspension.
32.420 Scope of suspension.
32.425 Reconsideration.
32.430 Appeal.

Subpart E—Responsibilities of GSA, Agency and Participants

32.500 GSA responsibilities.
32.505 EPA responsibilities.
32.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transaction

Authority: Executive Order 12549; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901, 7401, 9601 et seq.

2. Part 32 is further amended as follows:

a. "[Agency]" is removed and "EPA" is added wherever "[Agency]" occurs.

b. Section 32.105 is amended by adding paragraphs (g)(3), (p)(2), (t)(3), (w), and (x) to read as follows:

§ 32.105 Definitions.

* * * * *

(g) * * *

(3) The Director, Grants Administration Division, is the authorized debarring official.

* * * * *

(p) * * *

(2) Bid and proposal estimators and preparers.

* * * * *

(t) * * *

(3) The Director, Grants Administration Division, is the authorized suspending official.

* * * * *

(w) *EPA.* Environmental Protection Agency.

(x) *Agency head.* Administrator of the Environmental Protection Agency.

c. Section 32.110 is amended by adding paragraph (a)(2)(iv)(A) to read as follows:

* * * * *

§ 32.110 Coverage.

(a) * * *

(2) * * *

(iv) * * *

(A) For the purpose of this paragraph, no transactions under EPA assistance programs are deemed to be pursuant to agency-recognized emergencies or disasters.

* * * * *

d. Section 32.115 is amended by adding paragraph (d) to read as follows:

§ 32.115 Policy.

* * * * *

(d) While Part 32 does not apply to direct Federal procurement activities, which are governed by the Federal Acquisition Regulations (FAR) at 48 CFR Subpart 9.4, it is EPA's policy to integrate its administration of these two complementary debarment and suspension programs.

e. Section 32.200 is amended by adding paragraph (c)(5)(i) to read as follows:

§ 32.200 Debarment or suspension.

* * * * *

(c) * * *

(5) * * *

(i) For the purposes of this paragraph, no transactions under EPA assistance programs are deemed agency-recognized emergencies or disasters.

* * * * *

f. Section 32.215 is amended by adding paragraph (a) after the undesignated paragraph to read:

§ 32.215 Exception provision.

* * * * *

(a) The Director, Grants Administration Division, is the official authorized to grant exceptions.

g. Section 32.313 is amended by adding paragraph (a)(1) to read as follows:

§ 32.313 Opportunity to contest proposed debarment.

(a) * * *

(1) If the respondent desires a hearing, it shall submit a written request to the debarring official within the 30-day period following receipt of the notice of proposed debarment.

* * * * *

h. Section 32.315 is amended by adding paragraph (a)(1) to read as follows:

§ 32.315 Settlement and voluntary exclusion.

(a) * * *

(1) The debarring and suspending official is the official authorized to settle debarment or suspension actions.

* * * * *

i. Sections 32.330 and 32.335 are added to Subpart C, to read as follows:

§ 32.330 Reconsideration.

Any party to the action may petition the debarring official to reconsider a debarment determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the determination.

§ 32.335 Appeal.

(a) The debarment determination under § 32.314 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the debarring official by filing a request with the OA Director within 30 calendar days of the party's receipt of the debarment determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the debarring official may stay the effective date of a debarment order pending resolution of the appeal. If a debarment is stayed, the stay shall be automatically lifted if the OA Director affirms the debarment.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, and abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.314 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31 or 33 of this subchapter.

j. Section 32.412 is amended by adding paragraph (a)(1) to read as follows:

§ 32.412 Opportunity to contest suspension.

(a) * * *

(1) If the respondent desires a hearing, it shall submit a written request to the suspending official within the 30-day period following receipt of the notice of suspension.

* * * * *

k. Sections 32.425 and 32.430 are added to Subpart D to read as follows:

§ 32.425 Reconsideration.

Any party to the action may petition the suspending official to reconsider a suspension determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the suspension determination.

§ 32.430 Appeal.

(a) The suspension determination under § 32.413 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the suspending official by filing a request with the OA Director within 30 calendar days of the party's receipt of the suspension determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the suspending official may stay the effective date of a suspension order pending resolution of appeal. If a suspension is stayed, the stay shall be automatically lifted if the OA Director affirms the suspension.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.413 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31, or 33 of this subchapter.

l. Appendix B, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transactions, is amended by adding the following paragraphs (3)(a), (3)(b) and (3)(c) to read:

Appendix B—[Amended]

* * * * *

(3) The prospective lower-tier participant also certifies that it and its principals:

(a) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(b) Are not presently indicted for or otherwise criminally or civilly charged by a

governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (3)(a) of this certification; and

(c) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default. Where the prospective lower-tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–50

[FPMR Amdt. H–167]

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Property Management Division, (703) 557–1240.

List of Subjects in 41 CFR Part 101–50

Administrative practice and procedures, Federal surplus property.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Dated: May 13, 1988.

John Alderson,

Acting Administrator of General Services.

1. Part 101–50 is added as set forth at the end of this document.

PART 101–50—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart 101–50.1—General

Sec.
101–50.100 Purpose.
101–50.105 Definitions.
101–50.110 Coverage.
101–50.115 Policy.

Subpart 101–50.2—Effect of Action

101–50.200 Debarment or suspension.
101–50.205 Ineligible persons.
101–50.210 Voluntary exclusion.
101–50.215 Exception provision.
101–50.220 Continuation of covered transactions.
101–50.225 Failure to adhere to restrictions.

Subpart 101–50.3—Debarment

101–50.300 General.
101–50.305 Causes for debarment.
101–50.310 Procedures.
101–50.311 Investigation and referral.
101–50.312 Notice of proposed debarment.
101–50.313 Opportunity to contest proposed debarment.
101–50.314 Debarring official's decision.
101–50.315 Settlement and voluntary exclusion.
101–50.320 Period of debarment.
101–50.325 Scope of debarment.

Subpart 101–50.4—Suspension

101–50.400 General.
101–50.405 Causes of suspension.
101–50.410 Procedures.
101–50.411 Notice of suspension.
101–50.412 Opportunity to contest suspension.
101–50.413 Suspending official's decision.
101–50.415 Period of suspension.
101–50.420 Scope of suspension.

Subpart 101–50.5—Responsibilities of GSA, Agency and Participants

101–50.500 GSA responsibilities (information dissemination).
101–50.505 GSA responsibilities.
101–50.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; and Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Part 101–50 is further amended as follows:

a. "[Agency]" is removed and "GSA" is added wherever "[Agency]" occurs.

b. Section 101–50.105 is amended by adding paragraph (w) to read as follows:

§ 101–50.105 Definitions.

* * * * *

(w) *GSA.* General Services Administration.

§ 101–50.500 GSA responsibilities (information dissemination).

c. Section 101–50.500 is amended by revising the section head to read as set forth above.

c. Section 101–50.500 is amended by revising the section head to read as set forth above.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: William Opdyke, Acting Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, (202) 343–3433.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking on October 20, 1987 (52 FR 39042), separate from the common proposed rule issued by 20 other agencies. As a result of revisions made in the common rule to accommodate agency implementing procedures, the Department is participating in this joint publication. The Department is adding to the list of exceptions under § 12.110(a)(2) transactions entered into pursuant to Pub. L. 93–638, "Indian Self-Determination and Education Assistance Act," since application of the common rule to such transactions is prohibited by this statute. A corresponding change is made in § 12.200(c) to add a reference to these excluded transactions.

Due to the expanded scope of transactions covered under the final common rule, the Department is adopting only the coverage included in § 12.110(a)(1) of its proposed rule as its coverage in § 12.110(a)(3) of the final rule. The Department will review its other nonprocurement program activities to determine whether such activities will be included in the coverage. Based on this review, the Department will issue a notice of proposed rulemaking to obtain public comment on its coverage on or before October 1, 1988, the effective date of the common rule.

Comments received by the Department of the Interior were reproduced and exchanged among all of the agencies and used to prepare this final rule.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration Grant program. Title 43 of the Code of Federal Regulations is amended as set forth below.

Date: May 17, 1988.

William L. Kendig,

Acting Principal Deputy Assistant Secretary-Policy, Budget and Administration.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: Executive Order 12549 of February 18, 1986; 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–128; OMB Circular A–102.

2. A new Subpart D is added as set forth at the end of this document.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement)

General

Sec.
12.100 Purpose.
12.105 Definitions.
12.110 Coverage.
12.115 Policy.

Effect of Action

12.200 Debarment or suspension.
12.205 Ineligible persons.
12.210 Voluntary exclusion.
12.215 Exception provision.
12.220 Continuation of covered transactions.
12.225 Failure to adhere to restrictions.

Debarment

12.300 General.
12.305 Causes for debarment.
12.310 Procedures.
12.311 Investigation and referral.
12.312 Notice of proposed debarment.
12.313 Opportunity to contest proposed debarment.
12.314 Debarring official's decision.
12.315 Settlement and voluntary exclusion.
12.320 Period of debarment.
12.325 Scope of debarment.

Suspension

12.400 General.
12.405 Causes for suspension.
12.410 Procedures.
12.411 Notice of suspension.
12.412 Opportunity to contest suspension.
12.413 Suspending official's decision.
12.415 Period of suspension.
12.420 Scope of suspension.

Responsibilities of GSA, Agency and Participants

12.500 GSA responsibilities.
12.505 Department of the Interior responsibilities.
12.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 of February 18, 1986; 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–128; OMB Circular A–102.

3. Subpart D is further amended as follows:

a. "[Agency]" is removed and "Department of the Interior" is added wherever "[Agency]" occurs.

b. Section 12.105 is amended by adding paragraphs (g)(3), (t)(3), (w) and (x) to read as follows:

§ 12.105 Definitions.

* * * * *

(g) * * *

(3) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

* * * * *

(t) * * *

(3) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

* * * * *

(w) *Exception official.* The official authorized to grant exceptions under § 12.215 for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(x) *Findings of fact official.* The official authorized to conduct and prepare findings of fact, if required under § 12.314(b)(2) or § 12.413(b)(2), is the Director, Office of Hearings and Appeals, or designee.

c. Section 12.110 is amended by adding paragraphs (a) (2)(viii) and (3) to read as follows:

§ 12.110 Coverage.

(a) * * *

(2) * * *

(viii) Transactions entered into pursuant to Pub. L. 93–638.

(3) *Department of the Interior covered transaction.* These Department of the Interior regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type of (including subtier awards under awards which are statutory entitlement or mandatory awards).

* * * * *

d. Section 12.200 is amended by adding paragraph (c)(8) to read as follows:

§ 12.200 Debarment or suspension.

* * * * *

(c) * * *

(8) Transactions entered into pursuant to Pub. L. 93–638.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Office of the Comptroller, Policy Division (202) 646–4235.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency incorporates the final rule as Part 17 of Title 44 of the Code of Federal Regulations.

As a general comment, the Federal Emergency Management Agency prohibits by regulations and by written agreement with the State, the use of suspended or debarred contractors for disaster assistance funded under Pub. L. 93–288. We consider our prohibition to be proper and prudent management of Federal funds. We do note that § 17.215 of this common rule authorizes agencies to grant exceptions permitting debarred and suspended parties to participate in otherwise covered transactions upon a determination that there is a need to participate. This would allow us the discretion to permit such participation on a case-by-case basis.

List of Subjects in 44 CFR Part 17

Accounting, Administrative practice and procedures, Grant programs—civil defense, disaster, hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements. Title 44 of the Code of Federal Regulations is amended as set forth below.

Arthur E. Curry,

Chief, Policy Division.

1. Part 17 is added as set forth at the end of this document.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
17.100 Purpose.
17.105 Definitions.
17.110 Coverage.
17.115 Policy.

Subpart B—Effect of Action

17.200 Debarment or suspension.
17.205 Ineligible persons.
17.210 Voluntary exclusion.
17.215 Exception provision.
17.220 Continuation of covered transactions.
17.225 Failure to adhere to restrictions.

Subpart C—Debarment

17.300 General.
17.305 Causes for debarment.
17.310 Procedures.
17.311 Investigation and referral.
17.312 Notice of proposed debarment.
17.313 Opportunity to contest proposed debarment.
17.314 Debarring official's decision.
17.315 Settlement and voluntary exclusion.
17.320 Period of debarment.
17.325 Scope of debarment.

Subpart D—Suspension

17.400 General.

17.405 Causes for suspension.
17.410 Procedures.
17.411 Notice of suspension.
17.412 Opportunity to contest suspension.
17.413 Suspending official's decision.
17.415 Period of suspension.
17.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

17.500 GSA responsibilities.
17.505 FEMA responsibilities.
17.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Reorg. Plan No. 3 1978.

2. Part 17 is further amended as follows:

a. "[Agency]" is removed and "FEMA" is added wherever "[Agency]" occurs.

b. Section 17.105 is amended by adding paragraph (w) to read as follows:

§ 17.105 Definitions

* * * * *

(w) *FEMA.* Federal Emergency Management Agency.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 76

FOR FURTHER INFORMATION CONTACT: Mr. Gary Houseknecht, Acting Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513–D, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245–7565.

ADDITIONAL SUPPLEMENTARY INFORMATION: The definition of "principal" in the common rule provides for Federal agencies to add examples of individuals performing functions that have a critical influence on an agency's covered transactions. We have added "researchers" to the list of examples for HHS because researchers have a critical influence on our covered transactions, and all of our non-procurement debarments have been researchers. (§§ 76.105(p) and 76.110(a)(1)(ii)(C)(*3*).)

We have also added a citation of the Civil Monetary Penalties Act (42 U.S.C. 1320a-7a) to that of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–12) in the definition of "civil judgment." The former holds equivalent status, but is specific to HHS.

List of Subjects in 45 CFR Part 76

Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grant administration.

Accordingly Title 45 of the Code of Federal Regulations is amended to read as set forth below.

Dated: April 29, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

1. Part 76 is revised to read as set forth at the end of this document.

PART 76—GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
76.100 Purpose.
76.105 Definitions.
76.110 Coverage.
76.115 Policy.

Subpart B—Effect of Action

76.200 Debarment or suspension.
76.205 Ineligible persons.
76.210 Voluntary exclusion.
76.215 Exception provision.
76.220 Continuation of covered transactions.
76.225 Failure to adhere to restrictions.

Subpart C—Debarment

76.300 General.
76.305 Causes of debarment.
76.310 Procedures.
76.311 Investigation and referral.
76.312 Notice of proposed debarment.
76.313 Opportunity to contest proposed debarment.
76.314 Debarring official's decision.
76.315 Settlement and voluntary exclusion.
76.320 Period of debarment.
76.325 Scope of debarment.

Subpart D—Suspension

76.400 General.
76.405 Causes for suspension.
76.410 Procedures.
76.411 Notice of suspension.
76.412 Opportunity to contest suspension.
76.413 Suspending official's decision.
76.415 Period of suspension.
76.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants

76.500 GSA responsibility.
76.505 HHS responsibilities.
76.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 and 5 U.S.C. 301.

2. Revised Part 76 is amended as follows:

a. All references to "[Agency]" are revised to read "HHS."

b. Section 76.105 is amended by adding new paragraphs (d)(1), (p)(2), and (w) to read as follows:

§ 76.105 Definitions.

* * * * *

(d) * * *

(1) "Civil judgment" also includes determinations under the Civil Monetary Penalties Act (42 U.S.C. 1320a–7a).

* * * * *

(p) * * *

(2) Researchers.

* * * * *

(w) *HHS.* The Department of Health and Human Services.

c. Section 76.110 is amended by adding a new paragraph (a)(1)(ii)(C)(*3*) to read as follows:

§ 76.110 Coverage

(a) * * *

(1) * * *

(ii) * * *

(C) * * *

(*3*) Researchers.

* * * * *

NATIONAL SCIENCE FOUNDATION

45 CFR Part 620

FOR FURTHER INFORMATION CONTACT: Arthur J. Kusinski, Assistant General Counsel, (202) 357–9435. (Not a toll-free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: On July 1, 1987, the Foundation adopted final regulations on "Misconduct in Science and Engineering Research" (45 CFR Part 689). Misconduct as defined in 45 CFR 689.1(a) may be a cause for debarment under § 620.305 (b)(3) or (d) of these regulations.

List of Subjects in 45 CFR Part 620

Administrative practice and procedure, Grants Administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Erich Bloch,

Director.

1. Part 620 is added as set forth at the end of this document.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
620.100 Purpose.
620.105 Definitions.
620.110 Coverage.
620.115 Policy.

Subpart B—Effect of Action

620.200 Debarment or suspension.
620.205 Ineligible persons.
620.210 Voluntary exclusion.
620.215 Exception provision.
620.220 Continuation of covered transactions.
620.225 Failure to adhere to restrictions.

Subpart C—Debarment

620.300 General.
620.305 Causes for debarment.
620.310 Procedures.
620.311 Investigation and referral.
620.312 Notice of proposed debarment.
620.313 Opportunity to contest proposed debarment.
620.314 Debarring official's decision.
620.315 Settlement and voluntary exclusion.
620.320 Period of debarment.
620.325 Scope of debarment.

Subpart D—Suspension

620.400 General.
620.405 Causes for suspension.
620.410 Procedures.
620.411 Notice of suspension.
620.412 Opportunity to contest suspension.
620.413 Suspending official's decision.
620.415 Period of suspension.
620.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

620.500 GSA responsibilities.
620.505 NSF responsibilities.
620.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibilities Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; and section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. section 1870(a)).

2. Part 620 is further amended as follows:

(a) "[Agency]" is removed and "NSF" is added wherever "[Agency]" occurs.

(b) Section 620.105 is amended by adding paragraph (w) to read as follows:

§ 620.105 Definitions.

* * * * *

(w) *NSF.* National Science Foundation.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

FOR FURTHER INFORMATION CONTACT: Arthur Warren, Deputy General Counsel, 682–5418, or Laurence Baden, Grants Officer, 682–5403, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

List of Subjects in 45 CFR Part 1154

Accounting, Administrative practice and procedures, Claims, Grants programs, Grant administration.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Peter J. Basso,

Deputy Chairman for Management.

1. Part 1154 is added to read as set forth at the end of this document.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1154.100 Purpose.
1154.105 Definitions.
1154.110 Coverage.
1154.115 Policy.

Subpart B—Effect of Action

1154.200 Debarment or suspension.
1154.205 Ineligible persons.
1154.210 Voluntary exclusion.
1154.215 Exception provision.
1154.220 Continuation of covered transactions.
1154.225 Failure to adhere to restrictions.

Subpart C—Debarment

1154.300 General.
1154.305 Causes for debarment.
1154.310 Procedures.
1154.311 Investigation and referral.
1154.312 Notice of proposed debarment.
1154.313 Opportunity to contest proposed debarment.
1154.314 Debarring official's decision.
1154.315 Settlement and voluntary exclusion.
1154.320 Period of debarment.
1154.325 Scope of debarment.

Subpart D—Suspension

1154.400 General.
1154.405 Causes for suspension.
1154.410 Procedures.
1154.411 Notice of suspension.
1154.412 Opportunity to contest suspension.
1154.413 Suspending official's decision.
1154.415 Period of suspension.
1154.420 Scope of suspension.

Subpart E—Responsibility of GSA, Agency and Participants.

1154.500 GSA responsibilities.
1154.505 Arts Endowment responsibilities.
1154.510 Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; 20 U.S.C. 959(a)(1).

2. Part 1154 is further amended as follows:

"a. [Agency]" is removed and "Arts Endowment" is added wherever "[Agency]" occurs.

b. Section 1154.105 is amended by adding paragraph (w) to read as follows:

§ 1154.105 Definitions.

* * * * *

(w) *Arts Endowment.* National Endowment for the Arts.

National Endowment for the Humanities

45 CFR Part 1169

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Acting General Counsel and Deputy General Counsel, National Endowment for the Humanities, Room 530, 1100 Pennsylvania Avenue NW., Washington, DC 20506, Telephone (202) 786–0322.

List of Subjects in 45 CFR Part 1169

Accounting, Administrative practice and procedures, Claims, Grants programs, Grant administration.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Lynne V. Cheney,

Chairman.

1. Part 1169 is added as set forth at the end of this document.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1169.100 Purpose.
1169.105 Definitions.
1169.110 Coverage.
1169.115 Policy.

Subpart B—Effect of Action

1169.200 Debarment or suspension.
1169.205 Ineligible persons.
1169.210 Voluntary exclusion.
1169.215 Exception provision.
1169.220 Continuation of covered transactions.
1169.225 Failure to adhere to restrictions.

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Subpart C—Debarment
1169.300 General.
1169.305 Causes for debarment.
1169.310 Procedures.
1169.311 Investigation and referral.
1169.312 Notice of proposed debarment.
1169.313 Opportunity to contest proposed debarment.
1169.314 Debarring official's decision.
1169.315 Settlement and voluntary exclusion.
1169.320 Period of debarment.
1169.325 Scope of debarment.

Subpart D—Suspension
1169.400 General.
1169.405 Causes for suspension.
1169.410 Procedures.
1169.411 Notice of suspension.
1169.412 Opportunity to contest suspension.
1169.413 Suspending official's decision.
1169.415 Period of suspension.
1169.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants
1169.500 GSA responsibilities.
1169.505 NEH responsibilities.
1169.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 20 U.S.C. 959(a)(1).

2. Part 1169 is further amended as follows:

a. "[Agency]" is removed and "NEH" is added wherever "[Agency]" occurs.

b. Section 1169.105 is amended by adding paragraph (w) to read as follows:

§ 1169.105 Definitions.

* * * * *

(w) *NEH.* National Endowment for the Humanities.

Institute of Museum Services

45 CFR Part 1185

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, (202) 786-0539.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Institute of Museum Services, by notice in the **Federal Register**, published October 20, 1987, 52 FR 39015, 39029, proposed the inclusion in its regulations of a new Part 1185 that would make applicable to IMS programs a rule establishing a uniform system of nonprocurement debarment and suspension. By this document IMS joins other federal departments and agencies in the final common rule and interim final rule regarding nonprocurement debarment and suspension as set forth below.

Public comments on the proposed common regulations were received, and changes have been made in response to those comments. This document incorporates the common, uniform regulatory provisions reflecting the rule, as changed in response to public comments. As revised, the uniform regulations will become a new Part 1185 of the IMS regulations. Except as otherwise provided by regulation, Part 1185, as set forth below, will apply generally to awards to IMS applicants for grants under the general operating support and conservation project support programs, as well as to other forms of federal financial assistance provided by IMS.

List of Subjects in 45 CFR Part 1185

Accounting, Administrative practice and procedure, Grant programs—Museums, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Lois Burke Shepard,
Director.

1. Title 45 of the Code of Federal Regulations is amended by adding Part 1185 as set forth at the end of this document.

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General
Sec.
1185.100 Purpose.
1185.105 Definitions.
1185.110 Coverage.
1185.115 Policy.

Subpart B—Effect of Action
1185.200 Debarment or suspension.
1185.205 Ineligible persons.
1185.210 Voluntary exclusion.
1185.215 Exception provision.
1185.220 Continuation of covered transactions.
1185.225 Failure to adhere to restrictions.

Subpart C—Debarment
1185.300 General.
1185.305 Causes for debarment.
1185.310 Procedures.
1185.311 Investigation and referral.
1185.312 Notice of proposed debarment.
1185.313 Opportunity to contest proposed debarment.
1185.314 Debarring official's decision.
1185.315 Settlement and voluntary exclusion.
1185.320 Period of debarment.
1185.325 Scope of debarment.

Subpart D—Suspension
1185.400 General.
1185.505 Causes for suspension.
1185.410 Procedures.
1185.411 Notice of suspension.
1185.412 Opportunity to contest suspension.
1185.413 Suspending official's decision.
1185.415 Period of suspension.
1185.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants
1185.500 GSA responsibilities.
1185.505 IMS responsibilities.
1185.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 20 U.S.C. 961-68.

2. Part 1185 is further amended as follows:

a. "[Agency]" is removed and "IMS" is added wherever "[Agency]" occurs.

b. Section 1185.105 is amended by adding paragraph (w) to read as follows:

§ 1185.105 Definitions.

* * * * *

(w) *IMS.* Institute of Museum Services.

ACTION

45 CFR Part 1229

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale, Acting Chief, Grants Branch, (202) 634-9150.

List of Subjects in 45 CFR Part 1229

Accounting, Administrative practice and procedures, Grant programs—Volunteer Services, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Donna M. Alvarado,
Director.

1. Part 1229 is added to read as set forth at the end of this document.

PART 1229—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General
Sec.
1229.100 Purpose.
1229.105 Definitions.
1229.110 Coverage.
1229.115 Policy.

Subpart B—Effect of Action
1229.200 Debarment or suspension.
1229.205 Ineligible persons.
1229.210 Voluntary exclusion.
1229.215 Exception provision.
1229.220 Continuation of covered transactions.
1229.225 Failure to adhere to restrictions.

Subpart C—Debarment
1229.300 General.
1229.305 Causes for debarment.
1229.310 Procedures.
1229.311 Investigation and referral.
1229.312 Notice of proposed debarment.
1229.313 Opportunity to contest proposed debarment.
1229.314 Debarring official's decision.
1229.315 Settlement and voluntary exclusion.
1229.320 Period of debarment.
1229.325 Scope of debarment.

Subpart D—Suspension
1229.400 General.
1229.405 Causes for suspension.
1229.410 Procedures.
1229.411 Notice of suspension.
1229.412 Opportunity to contest suspension.
1229.413 Suspending official's decision.
1229.415 Period of suspension.
1229.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants
1229.500 GSA responsibilities.
1229.505 ACTION responsibilities.
1229.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Pub. L. 93-113; 42 U.S.C. 4951, *et seq;* 42 U.S.C. 5060.

2. Part 1229 is further amended by removing "[Agency]" and adding "ACTION" wherever "[Agency]" occurs.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[OST Docket 45206; Amdt. 29-1]

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Department of Transportation, Office of the General Counsel (C-10), U.S. Department of Transportation, Washington DC 20590, at (202) 366-9161.

ADDITIONAL SUPPLEMENTARY INFORMATION: On May 26, 1987 the Office of Management and Budget (OMB) issued government-wide guidelines governing debarment and suspension by Executive Branch agencies under nonprocurement programs. On October 20, 1987 many agencies joined in proposing a common rule to implement the guidelines while the Department of Transportation (DOT) published an interim final rule at that time, 52 FR 39056. Substantive differences between DOT's interim final rule and the proposed common rule were minor. Since then, OMB has determined that all agencies, including DOT, will join the final common rule in order to ensure greater uniformity.

In clarification of two provisions of the final rule, it should be noted that in applying the definition in § 29.105(j) of "Legal proceedings" to § 29.415(b), the Department will consider that legal proceedings have been initiated, thereby ensuring the continuation of an on-going suspension, upon the initiation of a grand jury proceeding or the issuance of an indictment or criminal information.

All comments on DOT's interim final rule were considered in preparing a final rule and are addressed in the common preamble.

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Government contracts, Loan programs—transportation, Grant programs—transportation, Fraud.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Issued this 17th day of May, 1988 at Washington, DC.

Jim Burnley,
Secretary of Transportation.

1. Part 29 is revised to read as set forth at the end of this document.

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General
Sec.
29.100 Purpose.
29.105 Definitions.
29.110 Coverage.
29.115 Policy.

Subpart B—Effect of Action
29.200 Debarment or suspension.
29.205 Ineligible persons.
29.210 Voluntary exclusion.
29.215 Exception provision.
29.220 Continuation of covered transactions.
29.225 Failure to adhere to restrictions.

Subpart C—Debarment
29.300 General.
29.305 Causes for debarment.
29.310 Procedures.
29.311 Investigation and referral.
29.312 Notice of proposed debarment.
29.313 Opportunity to contest proposed debarment.
29.314 Debarring official's decision.
29.315 Settlement and voluntary exclusion.
29.320 Period of debarment.
29.325 Scope of debarment.

Subpart D—Suspension
29.400 General.
29.405 Causes for suspension.
29.410 Procedures.
29.411 Notice of suspension.
29.412 Opportunity to contest suspension.
29.413 Suspending official's decision.
29.415 Period of suspension.
29.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants.
29.500 GSA responsibilities.
29.505 DOT responsibilities.
29.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 49 U.S.C. 322.

2. Part 29 is further amended as follows:

a. "[Agency]" is removed and "DOT" is added wherever "[Agency]" appears.

b. Section 29.105 is amended by adding paragraphs (g)(3), (t)(3), (w), and (x) to read as follows:

§ 29.105 Definitions.

* * * * *

(g) * * *

(3) *Debarring Official.* For DOT the designated official is the head of a Departmental operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

* * * * *

(t) * * *

(3) *Suspending Official.* For DOT the designated official is the head of a Departmental operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

* * * * *

(w) *DOT.* Department of Transportation.

(x) *Operating administration* includes the Office of the Secretary, the head of which, for the purposes of this rule, is the Assistant Secretary for Administration.

c. Section 29.120 is added to read as follows:

§ 29.120 Saving clause.

Any debarment or suspension initiated before October 1, 1988, shall be governed by Part 29 of the Department's regulations as Part 29 existed immediately before October 1, 1988, including § 29.125 thereof.

d. Section 29.215 is amended by adding paragraph (a) to follow the

undesignated paragraph to read as follows:

§ 29.215 Exception provision.

* * * * *

(a) A debarring or suspending official may grant exceptions and make written determinations under this section.

e. Section 29.315 is amended by adding paragraph (a)(1) to read as follows:

§ 29.315 Settlement and voluntary exclusion.

* * * * *

(a) * * *

(1) An operating administration may settle a debarment or suspension action under this section.

* * * * *

f. Section 29.510 is amended by adding paragraph (b)(1)(i) to read as follows:

§ 29.510 Participants' responsibilities.

* * * * *

(b) * * *

(1) * * *

(i) However, an operating administration may require that a person who enters into a primary covered transaction require the next lower tier participant to include, with conforming modifications, the certification in Appendix A.

* * * * *

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART __—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, [citation to Agency rulemaking authority]

Subpart A—General

§ __.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § __.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ __.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ __.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign

government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § ____.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § ____.110(a). Sections ____.325, "Scope of debarment," and ____.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ ____.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ ____.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § ____.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § ____.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ ____.205 Ineligible persons.

Persons who are ineligible, as defined in § ____.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ ____.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § ____.315 are excluded in accordance with the terms of their settlements. [Agency] shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ ____.215 Exception provision.

[Agency] may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § ____.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § ____.505(a).

§ ____.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § ____.215.

§ ____.225 Failure to adhere to restrictions.

Except as permitted under § ____.215 or § ____.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ ____.300 General.

The debarring official may debar a person for any of the causes in § ____.305, using procedures established in §§ ____.310 through ____.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ ____.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ ____.300 through ____.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § ____.215 or § ____.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § ____.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ ____.310 Procedures.

[Agency] shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ ____.311 through ____.314.

§ ____.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ ____.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § ____.305 for proposing debarment;

(d) Of the provisions of § ____.311 through § ____.314, and any other [Agency] procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ ____.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ____.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be

arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § ____.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ ____.135 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, [Agency] may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ ____.220 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ ____.311 through ____.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ ____.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ ____.311 through ____.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ ____.400 General.

(a) The suspending official may suspend a person for any of the causes in § ____.405 using procedures established in §§ ____.410 through ____.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § ____.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ ____.405. Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ ____.400 through ____.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § ____.305(a); or

(2) That a cause for debarment under § ____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ ____.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* [Agency] shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § ____.411 through § ____.413.

§ ____.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § ____.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § ____.411 through § ____.413 and any other [Agency] procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ ____.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ____.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § ____.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ ____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ ____.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § ____.325), except that the procedures of §§ ____.410 through ____.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ ____.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ ____.505 [Agency] responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations

of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which [Agency] has granted exceptions under § _____.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § _____.500(b) and of the exceptions granted under § _____.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ _____.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to [Agency] if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B—Certification Regarding Debarment, Suspension, Ineligibilty and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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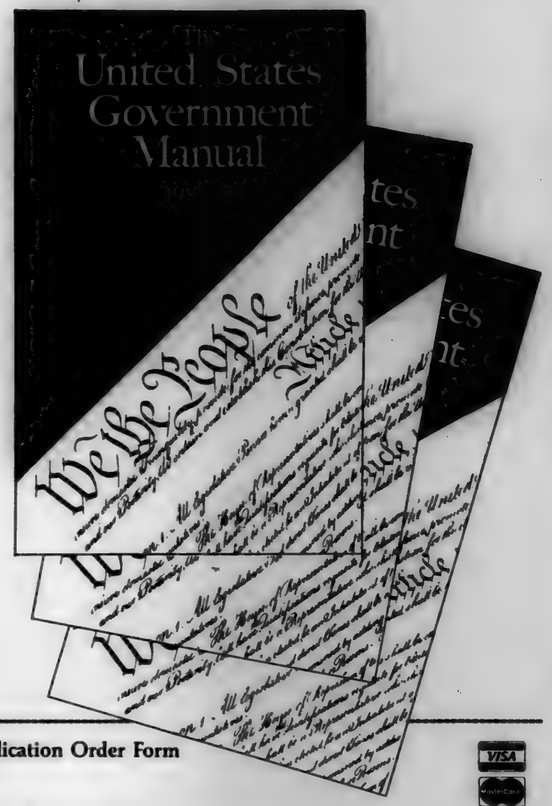

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Presidential Documents

Title 3—

The President

Proclamation 5827 of May 25, 1988

Take Pride in America Month, 1988

By the President of the United States of America

A Proclamation

Our beautiful land is blessed from sea to shining sea with bountiful natural and cultural resources on Federal, State, and local lands. We are also blessed that the American people possess a unique volunteer spirit rooted in our frontier tradition.

It is truly fitting that we take a special period of time to recognize our Nation's recreational and cultural resources and how they contribute to the economic and social well-being of our communities and our country. Through our stewardship of these natural wonders and great monuments to history, we can express our love for our country, our pride in America, and our desire to preserve our resources and our heritage for the future.

The Take Pride in America campaign, with its theme, "Take Pride in America: You Can Make a Difference," encourages all of us to do just this. The campaign is a partnership of public and private groups, Federal agencies, and State and local governments that fosters public awareness of the need for wise stewardship of our natural resources and for retention of our countless cultural resources as well. Let us remind ourselves often, this month and always, to do our share and "Take Pride in America."

The Congress, by House Joint Resolution 530, has designated May 1988 as "Take Pride in America Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1988 as Take Pride in America Month. I call upon the people of the United States and government officials at every level to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Proclamation 5828 of May 25, 1988

National NHS–NeighborWorks Week, 1988

By the President of the United States of America

A Proclamation

Socially, culturally, economically, spiritually, and in so many ways, our neighborhoods tell the American story of family, faith, and freedom. The motto *E pluribus unum,* or "Out of many, one," is an appropriate description of our myriad neighborhoods and their residents. We all love and cherish this blessed land of liberty; therefore, let us join together as partners and neighbors to enrich it, each other, and every one of our neighborhoods with all of the strengths our many heritages provide us. That is something for us to reflect upon, and observance of National NHS–NeighborWorks Week presents a fine opportunity for reflection and action in our communities.

Both reflection and action are already taking place around our land in neighborhoods where residents, business owners, concerned citizens, community groups, and government agencies are turning decay and despair into promise and prosperity. They are using some of the most powerful sources of America's greatness—our volunteer spirit, our spiritual strength, the love and caring of our families, our hard work and determination, our civic energy—to create opportunities and bring renewed inspiration and hope.

Among them are the groups from which this week of observance takes its name. NeighborWorks is a national organization composed of Neighborhood Housing Services (NHS), Apartment Improvement Programs, and Mutual Housing Associations, cooperative ventures that are resident-business-government partnerships relying primarily on volunteer effort and private and local resources. They are revitalizing more than 200 neighborhoods and have generated more than $4 billion in reinvestment funds. These efforts are clearly a major contribution to our Nation and deserve our gratitude, encouragement, cooperation, and emulation during National NHS–NeighborWorks Week and in the future as well.

The Congress, by Public Law 100–261, has designated the week of June 5 through June 11, 1988, as "National NHS–NeighborWorks Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of June 5 through June 11, 1988, as National NHS–NeighborWorks Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Rules and Regulations

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Friday, May 27, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 17; Doc. No. 5541S]

General Crop Insurance Regulations; Onion Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new subpart, 7 CFR 401.126, to be known as the Onion Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on onions in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as December 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.126, the Onion Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring onions.

On Wednesday, March 2, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 6654, to provide the regulations containing the provisions of crop insurance protection on onions in an endorsement to the general crop insurance policy. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the rule published at 53 FR 6654 as a final rule.

Upon review of these regulations prior to issuing a final rule, FCIC determined that a clarification of section 5 was necessary. The intent of this change is not to modify the meaning of section 5, but to clarify any misconception as to the maximum number of units per county which an insured may have. Onion acreage may be divided into units by type (Red, Yellow, or White). Under the provisions of section 5.b. an insured would have a maximum of three units (by type) for insurance purposes. Under the provisions of section 5.c., when irrigated and non-irrigated practices are carried out, the insured grower would have the potential of three units per type for irrigated practice, and three units by type for non-irrigated practice, for a total of 6 units.

Inasmuch as this is a new program offering by FCIC and potential producer-insureds need as much time as possible to study the offer, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

General crop insurance regulations; Onion endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.126 Onion Endorsement, effective for the 1988 and succeeding crop years, to read as follows:

§ 401.126 Onion endorsement.

The provisions of the Onion Endorsement for the 1988 and subsequent crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Onion Endorsement

1. Crop insured.

a. The crop insured will be onions planted for harvest as dry onions (bulb onions).

b. In addition to the onions not insurable under section 2 of the general crop insurance policy, we do not insure any onions planted for green (bunch) or seed onions, including chives, garlic, leek, or scallions.

c. A late planting agreement will be available.

2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual premium.

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance period.

In lieu of section 7 of the general crop insurance policy, insurance attaches on each unit or part of a unit when the onions are planted and ends at the earliest of:

(a) Total destruction of the onions on the unit;
(b) Five days after digging of the onions;
(c) Removal of the onions from the field;
(d) Final adjustment of a loss on a unit; or
(e) The following dates for the calendar year in which the onions are normally harvested:

Washington–Walla Walla Sweets and any other non-storage type onion—July 31
Colorado—September 30
All other Washington onions and all other states—October 15

5. Unit division.

Onion acreage that would otherwise be one unit, as defined in the general policy, may only be further divided into units by onion type (Red, Yellow, or White) if you agree to pay an additional premium as provided for by the actuarial table and if for each proposed unit by type:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports by type based on those records are filed to obtain an insurance guarantee.

b. The acreage boundaries between onion types is clearly identifiable, the insured acreage is easily determined and the onions are planted in such a manner that the planting pattern does not continue into the adjacent field of different type (maximum number of units, three); or

c. The acreage planted to onions consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Onions planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area (maximum number of units, six; three irrigated and three non-irrigated).

6. Notice of damage or loss.

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss:

a. You must give us written notice if you want to harvest the onions (After such notice is given, we will appraise the potential production. If we are unable to do so before harvest, you may harvest the crop, provided representative samples are left for appraisal purposes.); and

b. Any representative sample must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;
(2) Multiplying the result by the price election;
(3) Subtracting therefrom the dollar amount obtained by multiplying the total production of onions to be counted (see subsection 7b.) by the larger of your price election or the local market price at the time the onions are appraised; and
(4) Multiplying this result by your share.

b. The total production (in hundredweight) to be counted for a unit will include all harvested and appraised production.

(1) The extent of any loss may be determined no later than the date onions are placed in storage or delivered to a packer or processor, whichever is earlier.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent and such disposition prevents accurate determination of production; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of onions becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and termination dates.

The cancellation and termination dates are March 1st.

9. Contract changes.

The contract change date is December 31 preceding the cancellation date.

10. Meaning of terms.

"Harvest" means the digging of onions and placement of the onions into a container.

Done in Washington, DC on May 9, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-11030 Filed 5-26-88; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 917

[Docket No. AMS-FV-88-041IR]

Fresh Pears, Plums, and Peaches Grown in California; Decrease in Size Requirements and Revision of Maturity Regulations for Plums

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule specifies maturity requirements and maturity variance procedures applicable to the handling of plums grown in California. This rule makes no changes in plum size requirements, except for changes which relieve size requirements for two varieties. This action is designed to facilitate plum maturity determinations and promote marketing of the crop. Interested persons are invited to comment on this rule change.

DATE: This interim final rule becomes effective May 27, 1988. Comments which are received by July 11, 1988 will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, D.C. 20090–6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jerry N. Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917), and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of such fruit may be classified as small entities.

Shipments of California plums are regulated by grade, maturity, and size under Plum Regulation 19 (7 CFR 917.460, as amended and published in the Federal Register on April 29, 1987, 52 FR 15488). A proposed rule concerning the size and maturity regulations was published in the Federal Register on April 6, 1988, (53 FR 11672). Numerous comments were received, including a request for an extension of the comment period that was originally scheduled to expire on April 25, 1988. The Department granted this request on April 21, 1988, and the notice extending this request was published in the Federal Register on April 25, 1988, (53 FR 13413). Proposed changes to § 917.460 were recommended by the Plum Commodity Committee and the Department.

This interim final rule is based upon the Plum Commodity Committee's recommendation, information submitted by the committee, comments received both supporting and opposing the action, and other available information.

Inspected shipments, in packages, of California plums for the 1987 season totalled 17,399,500 and they were primarily marketed in the fresh market. In 1987, the total production value of California plums was about $75,361,000. Although this interim final rule would continue to impose requirements on plums, exemptions from the inspection and certification requirements would continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

In the proposal, paragraph (b) and (c) of § 917.460 would have been revised to increase the size requirements for 47 varieties of plums and to decrease the size requirement for the Sharron's Plum variety of plums. This was to be accomplished by decreasing the number of plums allowed in an eight-pound sample (count per pound requirements) for 47 varieties and by increasing the number of plums allowed in an eight-pound sample for the Sharron's plum variety for plums from 61 to 63. In addition, four-basket crate requirements for each listed count per pound size requirement were specified. Plums packed in four-basket crates were not to be subjected to the eight-pound sample test. When plums were packed in four-basket crates, the proposed four-basket crate requirements were to be used. The current minimum size regulations do not specify four-basket crate equivalents for each count per pound size requirement. When plums are packed in four-basket crates, the size is indicated by the arrangement of the fruit in the top layer. For example, the term "6x6" means that the top layer contains six rows with six pieces of fruit in each row and the term "4x5" means four rows with five pieces of fruit in each row. The minimum size for non-listed varieties was to continue to be 139 plums per eight-pound sample or "6x6" when packed in four-basket crates.

In addition, the proposal included changes to establish variety-specific size requirements for plums varieties now produced in commercially significant quantities and to remove one variety no longer produced in significant quantities from variety-specific size requirements. Specifically, the Ambra, Black Ace, Black Giant, Black Gold, Royal Diamond, Royal Garnet, and Shayna varieties of plums were proposed to be added to the variety-specific size requirements in paragraph (b) of § 917.460. The Bee Gee variety of plums was proposed to be removed from the variety-specific size requirements. Shipments of the varieties that were proposed to be individually regulated exceeded 10,000 packages during the 1987 season. Shipment of the variety that was proposed to be removed from the variety-specific size requirements fell below 5,000 packages during the 1987 season.

Numerous comments were received from interested persons supporting and opposing these recommendations. Those supporting the recommendations generally reflected the rationale of the committee in recommending the proposed size changes: namely, that the implementation of the recommended changes would help the California plum industry sell more fruit and encourage repeat purchases. The proponents further contend that the elimination of small-sized plums would respond to consumer demands for larger fruit. A consumer research study conducted and paid for by the committee indicated that the basic problem hurting plum sales was small size. Other commenters indicated that through cultural practices larger size fruit can be produced and yields can be increased throughout the production area.

The commenters opposing the size increases indicate that they have consistently found markets here and abroad for the plums proposed to be eliminated, and that the sale of these sizes has been profitable. Many expressed concern that if shipments of smaller-sized plums were eliminated, they would suffer severe economic hardships especially in the early production areas of Kern and southern Tulare counties. Others contended that the marketing problems experienced in 1984 and again in 1987 were due to an oversupply of plums, not because small plums were not desirable. Many in opposition indicated that it is too late for them to take the necessary cultural practices in recognition of the size increases of the magnitude proposed.

After further considering the committee's recommendation, its supporting information, and all of the comments received in response to the proposed size changes several things stand out. There is honest disagreement within the industry on whether there are or are not profitable markets for the plums proposed to be eliminated, whether or not the early-season sales of the plums to be removed do in fact adversely impact sales of plums from the later production areas, and whether or not shipments of some varieties of plums would be disproportionately reduced because of the higher size requirements. There is agreement that growers in both the early and later production areas would be affected in some way by the proposed size changes.

However, there is strong disagreement as to whether or not the impact on the growers and packers in the earlier production areas would be harsher than on those in the later growing areas. Finally, it is too late this season for growers to make any cultural changes on the basis of the proposed size increases if they have not already done so. Shipments of 1988 crop plums began the first week of May.

The wide divergence of views on these important issues within the industry indicates that further analysis of the proposed size increases is necessary by the committee to address these issues and determine: (1) How shipments of smaller plums affect the overall price structure for plums; (2) the impact smaller size plums have on the marketability of plums in general; (3) the effect of smaller plums on consumer acceptance and price; and (4) the effect of the size increases on the total supply marketed in domestic and foreign markets. Additional information also needs to be developed on the contention that the proposed increases would cause inequities.

Therefore, the Department has decided not to adopt the committee's size recommendation which would have: (1) Increased the size requirements for 47 varieties of plums by decreasing the number of plums allowed in an eight-pound sample (variety-specific count per pound requirements); and (2) added four-basket crate equivalents for each listed count per pound size requirement (plums packed in four-basket crates were not to be subjected to the eight-pound sample test).

Also, the Department has decided not to adopt the recommendation which would have added the Ambra, Black Ace, Black Giant, Black Gold, Royal Diamond, Royal Garnet, and the Shayna to the list of varieties subject to variety-specific size requirements. The requirements for these varieties were proposed at the higher levels with four-basket crate equivalents which the Department has decided not to adopt. The Department does not have the information necessary to accurately convert the proposed size requirements to an equivalent in the current system since these varieties were not previously covered under the current system. Therefore, these varieties will continue to be subject to the 139 plums per eight-pound sample requirements for non-listed varieties.

This action adopts without change the decrease in the variety-specific size requirements for the Sharron's Plum variety of plums, and the removal of the Bee Gee plum variety from the variety-specific size requirements. With regard to the Sharron's Plum variety, the number of plums allowed in an eight-pound sample of plums will be increased from 61 to 63. This is intended to more accurately reflect the sizing characteristics of this plum variety. The removal of the Bee Gee variety of plums from the variety-specific size requirements will subject such plums to the minimum size for non-listed varieties, which is 139 plums per eight pound sample. Both of these actions reduce the regulatory burden on handlers and would not be detrimental to the quality efforts of the California plum industry.

Further, the proposal included revisions in paragraph (a) of § 917.460 to clarify the plum maturity requirements and simplify the maturity determination system currently used by the plum industry. Among other things, the proposed revision of paragraph (a) specified that no handler can ship plums unless they are at least "well-matured," as defined in paragraph (d) and specified the role of Federal or Federal-State inspectors in making "well-matured" determinations.

It was proposed that the first sentence of paragraph (a) be revised to read: "No handler shall ship any lot of packages or containers of any plums unless such plums grade at least U.S. No. 1, except that the plums shall be 'well-matured,' rather than 'mature,' but not over-ripe or shriveled." This change was intended to clarify the fact that all plums marketed under this program must be "well-matured," rather than "mature" as defined in the U.S. grade standards for plums. Since May 19, 1980 (45 FR 33586; May 20, 1980) plums have been required to be "well-matured" rather than "mature," and this requirement has been implemented by the Federal-State Inspection Service since that time.

In addition to specifying that plums must be "well-matured" the proposed change defined "well-matured" to mean a condition distinctly more advanced than "mature." "Mature" is defined in the U.S. grade standards as follows: " 'Mature' means that the fruit has reached the stage of maturity which will insure a proper completion of the ripening process." This is a minimum standard of maturity which was in effect before the more recent advances in handling and distribution techniques and does not preclude inspecting to a higher degree of maturity. In 1980, in fact, it was determined that plums picked and packed at this minimum maturity level were poorly received by consumers because they lacked flavor and were too hard. Comments discussed later support the contention of proponents that the "well-matured" requirement has resulted in more consumer acceptance and expansion of markets for California plums.

To ascertain compliance with the "well-matured" standard with regard to each variety of plums, various tests are used. Since 1980, the Federal-State Inspection Service, based on its expertise, has been primarily responsible for determining which specific test or tests should be used for each variety of plums and which test level (e.g., particular percent of color or particular color chip) is appropriate for each variety. When the Federal-State Inspection Service has sufficient experience with a variety to determine that a particular test or tests and a particular test level should normally be appropriate for the entire production area for every year, it has advised the committee of that determination. The committee has then ratified that determination, publishing it in its annual bulletin. After such a determination for a particular variety has been published, variances during the season or permanent changes between seasons have been made by the committee or its maturity subcommittee. The committee and its staff have provided advice to the Federal-State Inspection Service in making its maturity determinations, and likewise the Federal-State Inspection Service and the committee staff have advised the committee and its maturity subcommittee in making variances and changes.

To lessen the burdens on committee members, it was proposed that the responsibility for variances during the season and changes between the seasons be given to the Federal or Federal-State Inspection Service. This change would have simplified the procedures by assigning all maturity determinations and the application of those determinations to one group. In making this proposal, it was intended that the Federal or the Federal-State Inspection Service, while considering variances and changes, would seek the advice of the committee and its staff in order to draw upon their wealth of expertise. It was also intended that any changes and any variances would be applicable to all growers and handlers of the particular variety. Finally, it was intended that any changes and variances would be made at the supervisory level of the Federal or the Federal-State Inspection Service, rather than by the particular packinghouse inspector. This was intended to ensure that these decisions are made by those who have the greatest background and expertise and who are in a position to be knowledgeable concerning current conditions throughout the entire production area.

Further, a table was proposed to be added to paragraph (a) of § 917.460 to specify color chips and other maturity guides which the Federal or the Federal-State Inspection Service intended to use for the specified varieties of plums.

For these varieties, it was proposed to continue the requirement that not less than 90 percent of any lot shall meet the surface color, flesh color, or spring requirements established for the variety, or not less than 90 percent of any lot shall meet the ground color standard established for that variety.

The varieties listed in the table were those described above where the inspection service has sufficient experience to determine a generally appropriate test or tests and test levels. It was proposed that the Federal or Federal-State Inspection Service would have the authority to make variances from the guides in the table during the season for any variety to reflect changes in crop and weather conditions that would make the guide an inappropriate measure of "well-matured." For varieties not listed in the table, the Federal or Federal-State Inspection Service would use such tests as it deems appropriate.

Several changes were proposed in the table from the list in the 1987 Plum Bulletin. The maturity guide for Roysum plums was proposed to be changed by adding "green streaking" as a maturity indicator with regard to ground color. This was intended to help make maturity determinations for this variety of plums more accurate. The "well-matured" guide for fresh prune/plums was proposed to be revised by changing the basis used in determining the soluble solids average from a base which requires the consideration of varying amounts of the least mature appearing fruits to one which only requires a representative sample. Experience has indicated that the current procedure is overly restrictive. Also, the soluble solids percentage for fresh French Prunes used as a guide by the Federal or Federal-State Inspection Service would be reduced from 19 percent to 18 percent. The French Prune has been developed for a one-pick harvest and some handlers have had difficulty meeting the 19 percent requirement in past seasons. In view of this, French prunes should be able to meet the well matured standard at 18 percent. "Soluble solids" percentages are highly correlated with the sweetness of the fruit juices. No comments were received with respect to these proposed changes. Therefore, they are adopted as proposed.

Numerous comments were received regarding other aspects of the proposed maturity requirements and variance procedures. Some commenters disagreed with or suggested modifications to the proposed requirements and procedures. Some commenters requested that the current "well-matured" requirements continue in effect. Other commenters thought that the maturity requirements should be returned to the level which existed in 1980 or to the mature requirements specified in U.S. No. 1 grade standards. Some thought that the variance procedures were lacking because an appeal process was not provided to review the setting of standards in the first place or for reviewing variance decisions. Two commenters suggested that the proposed definition of "well-matured" be clarified and made more specific as it related to the condition of fruit to make decisions on variances more objective.

In many instances, the favorable comments and other information sufficiently refuted the unfavorable comments, particularly regarding the desirability of continuing the "well-matured" requirement. Contrary to some commenters' contentions, at least one study has been conducted which indicates that the implementation of the "well-matured" requirement has resulted in greater consumer acceptance of the fruit than existed prior to 1980. Further, the shipments of "well-matured" fruit, as opposed to "mature" fruit have helped the industry's market expansion efforts. In fact, the requirement has been generally well received by the industry, retailers, and the consuming public.

In fact, one commenter submitted a *Final Report of California Summer Fruits Retailer Research* by Ervin D. Thuerk. Mr. Thuerk is a marketing consultant with the Thuerk Pro-Con Company in Westlake Village, California. Mr. Thuerk directed a project to, among other things, pursue individual retailers' attitudes and their wants and needs for fruit quality and maturity. Meetings were held with twenty-five companies in approximately twenty cities, representing nearly 17,000 retail supermarkets, which equals a 38.7 percent share of the total industry units operated. Information was obtained on: (1) Product needs in the fresh produce industry; (2) retail marketing trends and how they are changing; (3) consumer attitudes and their changing wants and needs; (4) the development of future programs for the marketing of California summer fruits; and (5) attitudes toward industry standards and marketing programs. The findings indicate that early season fruit which is picked immature does not provide satisfaction to the consumer and does not encourage repeat purchases, and does not benefit the market. Fruit has to look good to get the consumer to buy it, but it must also taste good to foster additional sales. There is definitely a lag effect on sales from poor eating quality on the varieties which follow. When this occurs prices are depressed because the pipelines are filled with poor fruit, according to the executives interviewed.

In addition, a marketing extension pomologist from the University of California at Davis indicated that in the late 1970's the post harvest performance of a number of commercial plum cultivars had been evaluated. In these tests, researchers found that low maturity fruit tended to be more susceptible to bruising (especially vibration bruising), and also more susceptible to flesh browning following bruising. He further indicated that size is generally correlated with maturity in fruits. Typically in any population of fruits, the smallest size fruits will be lower in sugars, and often less physiologically mature, than larger fruits. He went on to say that this is especially true in a climate like California, where the bloom period is normally prolonged and thus size may indicate the length of the growing season for the individual fruits.

The Thuerk report described earlier also addresses the comments that the "well-matured" requirement does not reflect the different needs of buyers in markets far from the production area compared to buyers in nearby markets.

In addition, a comment from the Executive Vice President of the Canadian Fruit Wholesalers Association indicated that some of its members feel that the current "well-matured" standard has played an important role in keeping high quality consumer, acceptable fruit grown in the United States available in Canadian markets. The members of the association polled felt that a change from the "well-matured" to the mature standard would be regressive and would hurt sales. Along the same lines, a buyer in Chelsea, Massachusetts, indicated that it is extremely important for California packers to maintain the high quality, taste, appearance, and shelf life that their customers have come to expect. To continue its trend of buying more and more fruit, the buyer indicated that the "well-matured" standard should be maintained.

In response to the commenter who asserted that the tests currently in effect are more restrictive than when the "well-matured" requirement was

implemented in 1980, there has been an increase in the number of color chips used. However, the initial chips were not considered adequate to cover the variations in color among the numerous varieties. As a result, gradations in color have been added to more accurately reflect the characteristics of the many varieties of plums. Therefore, the number of color chips *per se* does not support the contention that the color chips are more restrictive now than there were in 1980 and 1981.

One commenter stated that the price received for "well-matured" fruit has not adequately compensated for the increase in harvesting costs that have been incurred. However, the commenter did not document this claim. Further, the "well-matured" requirement has in general contributed to the economic health of the plum industry. More than 100,946,000 packages of California plums have been inspected and shipped since the "well-matured" requirement became effective in 1980. Also, when the growers under this program participated in 1986–87 in a referendum to determine industry support for the plum marketing order program, a majority of those voting favored continuance of the program. It is doubtful that growers would favor continuing a program that resulted in considerable lost profits.

Some commenters expressed the view that the maturity levels have been drastically raised to control volume as opposed to causing better consumer quality fruit to reach the market. One of these commenters indicated that this is evidenced by the decrease in packages shipped per acre from 1980 to 1987 even though increasing acreage was coming into production with a substantially higher number of trees planted per acre. However, this commenter's evaluation is inconclusive because he did not consider other factors in addition to the "well-matured" requirement that could affect the amount of plums shipped to the fresh market. Other factors could lead to a reduced number of cartons shipped per acre, such as age of the trees, weather, cultural practices, and failure to meet other types of handling requirements such as minimum size requirements.

One commenter indicated that the spring test for some plum varieties was arbitrary because results can vary depending on the strength of the inspector and how hard the inspector squeezes the fruit and the test, therefore, should be eliminated. While the Department acknowledges that the strength of inspectors can vary, the Department contends that the inspectors are trained in proper techniques for applying the spring test which should compensate for this difference in strength. Therefore, the difference in the strength among inspectors is not grounds for eliminating the spring requirement.

One commenter requested an exemption for "leaf spots" and recommended a 10 percent exemption from the "well-matured" requirement be established as long as the fruit otherwise meets the U.S. No. 1 standard. These recommendations are being referred to the committee for evaluation.

In view of the foregoing, this action adopts, the proposed maturity requirements described above to recognize the interest of California plum growers and handlers in maintaining the quality and maturity of the plums they market. As stated previously, in 1980, it was determined that plums picked and packed at the minimum standard of maturity, "mature," were poorly received by consumers because they lacked flavor and were too hard. The evidence indicates that the "well-matured" requirement in effect since that time has resulted in more consumer acceptance and the expansion of markets for California plums.

We do, however, believe that a more specific definition of "well-matured" could be helpful. Therefore, comments are invited on developing a definition with more specificity.

In addition to the comments received on the size and maturity requirements, the Department received comments on the variance procedures described in the proposed rule. The proposal stated that: "The Federal or the Federal-State Inspection Service has the authority to make variances for any variety from any guide or tests, including those in Table I, during the season to reflect changes in crop or weather conditions that would make the existent guide an inappropriate measure of "well-matured."

The purpose of this change was to relieve the maturity subcommittee of the burden of making variances during the season because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their own businesses.

However, comments from the committee and officials from the Federal-State Inspection Service indicated that the committee and its maturity subcommittee should continue to play a direct role in making final determinations on making changes and granting variances in the maturity guides used in determining whether the fruit meets the "well-matured" standard. The commenters indicated that these very important decisions should not rest solely in the hands of one group, but they should be fair and timely because of the perishability of the commodity.

Comments received from the California Department of Food and Agriculture (CDFA) indicated that full responsibility to allow or disallow variances from color chip requirements should not be placed on the inspection service. The comment indicated that the CDFA and Federal-State Inspection Service has provided and will continue to provide expert advice on the condition or maturity of the fruit.

The committee suggested that the first contact should be with the Federal-State Inspection supervisor so the supervisor would first be able to review the problem to determine if the problem is with maturity or with interpretation of an individual inspector. The committee pointed out that in the past, the supervising inspector has been able to resolve many issues by working with the grower or shipper and the packing house inspector. If the situation could not be resolved to the satisfaction of the inspection service and the requester, then the requester would ask for a maturity variance.

In view of this, the Department has decided to specify in the regulations procedures for handling variances during the current and subsequent seasons which are similar to those currently used. In addition, in order to respond to comments that there is no recourse to adverse decisions of the maturity subcommittee, this interim final rule establishes a procedure for appealing those decisions. These procedures are specified in paragraph (a)(3) of § 917.460.

Under these procedures, a grower or handler may make a request for a variance from the maturity guide by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. This fieldman would call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site. If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall take into account written comments, observations, and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two days from the time the request for variance is received.

Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Because of the large geographical area involved and the need for timely decisions, the subcommittee may hold telephone meetings. A majority of the subcommittee must vote in favor of variance. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and to the Department's California Marketing Field Office in Fresno. If the requester is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal as described later.

If after on-site review of the request neither the fieldman nor the inspection official believe a variance is warranted, the variance will not be granted and the matter will not be referred to the maturity subcommittee. The requester may however file an appeal from this determination in accordance with procedure described below.

To file an appeal, the requester shall notify the Plum Commodity Committee manager who will immediately refer the appeal to the Appeal Committee established by this rule. It is important that the members of the Appeal Committee are different from those serving on the maturity subcommittee which makes the initial determination. It is also important that members of the Appeal Committee are knowledgeable about crop and maturity conditions in the industry. Therefore, the Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Plum Commodity Committee manager is notified of the appeal, recognizing that a final decision must be made promptly. A majority vote of the Appeal Committee is needed to grant a variance. The Appeal Committee may hold telephone meetings in order to facilitate the decisionmaking process. The Appeal Committee shall prepare a written report of its determination and the reasons therefor.

A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

Another change from the proposal is that any decision to grant a variance for a particular plum variety will not automatically apply to all growers and handlers of that variety throughout California. The committee and other commenters have pointed out that the granting of variances on an across-the-board basis throughout the state may not be appropriate. Because of the differences in weather and growing conditions that occur throughout the growing area a variety grown in the San Joaquin Valley may be "well-mature" at a lesser degree of color than an orchard of the same variety in the upper San Joaquin Valley. This condition is sometimes significant and can even occur in neighboring orchards.

The inspection and industry officials designated to make these variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area.

It is the Department's view that the change to delete one variety no longer produced in commercially significant quantities from the variety-specific (named-variety) size requirements and to decrease those requirements for one variety of plums will not be detrimental to small entities. These changes are responsive to the committee's request to decrease certain minimum size requirements. The change to clarify and revise the maturity requirements for plums is intended to foster and facilitate a greater understanding of these requirements within the plum industry and, as such, will not result in additional costs. The change to the well matured guides for French Prunes will relax present requirements.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendations, the comments received in favor and opposition, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1988 crop plums began the first week of May and this action should cover as much of the 1988 crop as possible; (2) the maturity requirements set forth below are substantially the same as currently implemented and should be made effective as soon as possible; and (3) this interim final rule decreases the minimum size requirements for two varieties of plums.

The actions set forth below are being issued on an interim final basis with opportunity for written comments rather than as a final rule so interested persons will be able to provide input on the maturity modifications and still allow the maturity procedures to be used for as much of the 1988 shipping season as possible. An opportunity needs to be provided for interested persons to file comments, but, as mentioned earlier, it is imperative that the maturity requirements and variance procedures apply to as much of the 1988 crop as possible.

The committee's recommendation, other information, and all written comments timely received in response to this interim final with request for comments will be considered prior to any finalization of this interim final rule. Commenters are encouraged to submit their views in support of or in opposition to this interim final rule. Any pertinent data to support views and comments should also be submitted.

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.460 is revised to read as follows:

§ 917.460 Plum Regulation 19.

(a)(1) No handler shall ship any lot of packages or containers of any plums unless such plums grade at least U.S. No. 1, except that the plums shall be "well-matured," rather than "mature" but not overripe or shriveled. Internal discoloration not considered serious damage and healed growth cracks emanating from the stem end which do not cause serious damage shall be permitted. In addition to the above, any lot of Tragedy or Kelsey plums shall be permitted an additional 10 percent tolerance for defects not considered serious damage.

(2) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the surface color, flesh color or "spring" requirements established for the variety or not less than 90 percent of any lot shall meet the ground color standard established for the variety except that for the Ebony variety, an additional lot tolerance of 17 percent shall be permitted for fruit not meeting the "spring" requirement. For varities not listed, the Federal or the Federal-State Inspection Service will use such tests as it deems proper.

(3) A variance for any variety from the application of the maturity guides specified in Table I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well-matured." The maturity determination variance procedure is set forth as follows:

(i) A grower or handler may initiate a request for a variance from a maturity guide (e.g., color chip) by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. The fieldman shall call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site.

(ii) The committee fieldman and the officer-in-charge accompany the requester to the site.

(iii) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall take into account written comments, observations and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two days from the time the request for variance is received. A majority of the subcommittee must vote in favor of the variance for it to be implemented. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and to the Department's California Marketing Field Office in Fresno. If the requester is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal in accordance with paragraph (v) below.

(iv) If neither the fieldman nor the inspection official believe a variance is warranted, the variance shall not be granted. The requester may file an appeal from this determination as specified in paragraph (v) below.

(v) To file an appeal, the requester shall notify the Plum Commodity Committee manager who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Plum Commodity Committee manager is notified of the appeal. A majority vote of the Appeal Committee is needed to overturn the determination of the maturity subcommittee. The Appeal Committee may hold telephone meetings. The Appeal Committee shall prepare a written report of its determination and the reasons therefor. A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

TABLE I

Column A, variety	Column B, maturity guides
Ace	⅛ of surface mottled red color characteristic of the variety, or ⅝ red or light amber flesh color.
Amazon	⅛ of surface red with "spring."
Ambra	Full surface dark red color with "spring."
Andy's Pride	Some of surface mottled red with remainder good yellow color. *G color.*
Angeo	That portion of the surface not distinct red color shall be light yellow color. *I color.*
Angeleno	Full surface dark purple or ¾ dark purple with remainder light greenish yellow. *B color.*
Armelita	Full surface dark red color with "spring."
Asheg	90 percent of surface dark red with "spring."
August Rosa	⅝ of surface red or full yellow color. *I color.*
Autumn Rosa	⅛ of surface red color or full light yellow color. *F color.*
Beauty	85 percent of surface yellowish green or trace of red. *A color.*
Bee-Gee	¾ of surface red color with "spring."
Bella-Rosa	¾ of surface red color, remainder yellow color. *C color.*
Berry Red	Full surface red color.
Blackamber	Full surface red color with "spring."
Black Beaut	Full surface distinct red color with "spring," or supervisor discretion.
Black Giant	⅞ of surface red color with remainder yellow color. *H color.*
Black Jewel	Full surface dark red color with "spring."
Black Knight	Smooth shoulders. ⅝ of surface dark red color or full distinct red.
Burgandy	Full dark red surface color or full distinct red flesh color.
Burmosa	½ of surface red color or full yellowish green color. *A color.*
Carolyn Harris	½ of surface mottled red characteristic of the variety or ¾ red or light amber flesh color.
Casselman	Not less than 95 percent of the surface shall be distinct red color or full yellow color. *I color.*
Catalina	Full surface red color with "spring."

TABLE I—Continued

Column A, variety	Column B, maturity guides
Durado	½ of surface red (any degree), with remainder yellowish green. Smooth shoulders. *A color.* Note: This plum must be considered on individual field basis.
Early Beaut	¾ of surface distinct red color or full light greenish yellow color. *F color.*
Early Ann	"Spring." ⅝ of surface dark purplish blue with Hawaiian remainder yellow color.
Early Simka	Dark red color, remainder full light yellow color. *F color.*
Ebony	Full surface dark red with "spring." Additional lot tolerance of 17 percent for fruit not meeting the spring requirement.
El Dorado	"Spring." Full dark red surface color or part red with remainder yellow color, except stem cavity. *D color.*
Eldorosa	½ of surface red color or full light greenish yellow color. *D color.*
Elephant Heart	⅛ of surface mottled red color characteristic of the variety, or ¾ red or light amber flesh color.
Emily	½ of surface red color or full light greenish yellow color. *B color.*
Empress	Full surface dark purplish blue or ⅝ dark purplish blue, remainder light greenish yellow color. *B color.*
Frank Ann	Full surface yellow color. *D color.*
Freedom	⅝ of surface dark red with remainder full light greenish yellow color. *C color.*
Fresno Black	90 percent of surface dark red with "spring."
Fresno Rosa	That portion of the surface not distinct red color shall be full yellow color. *I color.*
Friar	Full surface red color with "spring."
Frontier	⅛ of surface mottled red color characteristic of the variety, or ⅝ red or light amber flesh color.
Gar-Rosa	½ of surface red color or full light greenish yellow color. *C color.*
Gavora	¾ of surface red color or light greenish yellow color. *B color.*
Grand Rosa	¾ of surface red color or full light greenish yellow color. *C color.*
Hiland Rose	½ of surface red color or yellowish green color. *B color.*
Honey Gold	85 percent of surface distinct red color or full light yellow color, light green streaking permitted. *F color.*
Improved Late Santa Rosa.	85 percent of surface distinct red color or full light yellow color, light green streaking permitted. *F color.*
July Red	¾ of surface red color.
July Santa Rosa	¾ of surface red color or full light greenish yellow color. *C color.*
June Beaut	Full surface red with "spring."
Kelsey	Shoulders and surface smooth with "spring."

TABLE I—Continued

Column A, variety	Column B, maturity guides
King David	¾ of surface red color with remainder light greenish yellow color. *D color.*
King Richard	Full surface red color or light greenish yellow. *D color.*
King's Black	¾ of surface red with remainder light yellow color. *F color.*
King's Red	Full surface red color or full light yellow color. *H color.*
Laroda	Full surface dark red or dark red color at blossom end and remainder of surface full light yellow color, with a surface tolerance of 5 percent for fruit not meeting the yellow surface requirement. *F color.*
Late Duarte	⅛ of surface mottled red color characteristic of the variety, or ⅝ red or light amber flesh color.
Late Santa Rosa	85 percent of surface distinct red color or full light yellow color, light green streaking permitted. *F color.*
Linda Rosa	That portion of the surface not distinct red color shall be full yellow color. *I color.*
Mariposa	⅛ of surface mottled red color characteristic of the variety, or ¾ red or light amber flesh color.
May Rosa	¾ of surface red color or full light greenish yellow. *C color.*
Midsummer	Full surface dark red.
Milwaukee	¾ of surface red color with "spring."
Nubiana	"Spring." Full surface dark purplish blue or ¾ surface dark purplish blue with remainder light amber color characteristic of the variety.
Padre	¼ of surface red color or full light greenish yellow color. *B color.*
Premier	½ of surface red color with remainder light greenish yellow color. *B color.*
Prima Rosa	¾ of surface distinct red color or full light greenish yellow color. *F color.*
President	¾ of surface reddish purple color with remainder light yellowish green color. *A color,* or full light greenish yellow color. *B color.*
Fresh Prune/ Plums.	That portion of the surface not red color shall be changing in color from dark green to light green. In addition, for all varieties of prune/plums shipped fresh, the soluble solids shall average 19 percent: *Provided,* That for French Prunes the soluble solids shall average 18 percent: *Provided Further,* That Moyer Prunes shall average 16 percent soluble solids.
Queen Ann	"Spring." Full surface dark purple color or some purple color with remainder of surface light greenish yellow color. *B color.*
Queen Rosa	"Spring." ⅛ of surface red color or yellowish green color. *B color.*

TABLE I—Continued

Column A, variety	Column B, maturity guides
Red Beaut	¾ of surface distinct red color or full light greenish yellow color. *F color.*
Red Glow	⅛ of surface red, remainder full light greenish yellow color. *F color.*
Red Heart	⅛ of surface mottled red color characteristic of the variety, or ⅝ red or light amber flesh color.
Red Rosa	85 percent of surface distinct red color or full light yellow color. Light green streaking permitted. *F color.*
Redroy	¾ of surface red color or 10 percent of surface red color with remainder light yellow color. *F color.*
Rich Red	¾ of surface distinct red color or full light greenish yellow color. *F color.*
Rosa Ann	¾ of surface distinct red color or full light yellow color. *F color.*
Rosa Grande	¾ of surface red color or greenish yellow color. *B color.*
Rose Ann	¾ of surface distinct red color or full light yellow color. *F color.*
Rosemary	¾ of surface red, remainder full light greenish yellow color. *F color.*
Royal Beaut	¾ of surface red color or full light greenish yellow. *D color.*
Royal Diamond	Full surface red color with "spring."
Royal Garnet	Full surface red color or full light greenish yellow color. *G color.*
Royal Red	Full surface distinct red color or ⅛ of surface red color, remainder light yellow color. *C color.*
Royal Zee	⅝ of surface red color or full light greenish yellow color. *F color.*
Roysum	⅝ of surface distinct red color or full light yellow color with green streaking. *F color.*
Santa Rosa	⅝ of surface red color or full light greenish yellow color. *C color.*
Shayna	Full surface red color or full light yellow color. *F color.*
Shiro	Full surface greenish yellow color or trace of red color. *B color.*
Simka, New Yorker.	Full surface dark red color or dark color with remainder of surface full light yellow color. *F color.*
Spring Beaut	¾ of surface distinct red or full light greenish yellow color. *F color.*
Standard	⅝ of surface purple color or full surface light greenish yellow color. *B color.*
Swall Rosa	That portion of the surface not distinct red color shall be full yellow color. *I color.*
Tragedy	30 percent of surface purple color or full light greenish yellow color. *B color.*
Valentine	⅛ of surface mottled red color characteristic of the variety, or ⅝ of the surface red or light amber flesh color.

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TABLE I—Continued

Column A, variety	Column B, maturity guides
Wickson	Shoulders and surface smooth with "spring."

Note.—Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

(b) No handler shall ship any package or other container of any variety of plums listed in Column A of the following Table II unless such plums are of a size that an eight-pound sample, representative of the sizes of the plums in the package or container, contains not more than the number of plums listed for the variety in Column B of said table.

TABLE II

Column A, Variety	Column B, plums per sample
Andya Pride	89
Angeleno	67
Angeo	67
Autumn Rose	72
Blackamber	56
Black Beaut	69
Black Diamond	59
Black Knight	58
Carolyn Herrie	61
Casselman	63
Catalina	56
d'Agen Sugar Prune	139
Durado	74
Early Hawaiian Ann	60
Ebony	66
El Dorado	68
Empress	57
Freedom	56
French Prune	139
Frier	56
Frontier	61
Gar-Rose	71
Grand Rose	54
July Red	64
July Santa Rose	69
Kelsey	47
King David	50
King Richard	54
King's Black	56
Laroda	56
Late Santa Rose (including improved Late Santa Rose and Swell Rose)	64
Linda Rose	63
Mariposa	61
Midsummer	63
Moyer Prune	139
Nubiana	56
President	57
Prime Black	69
Queen Ann	50
Queen Rose	53
Red Beaut	74
Red Rose	64
Redroy	58
Rich Red	74
Rose Ann	69
Rosemary	50
Rose Ann	60
Royal Red	74
Royeum	74
Santa Rosa	69
Sharron' Plum	63

TABLE II—Continued

Column A, Variety	Column B, plums per sample
Simka, Arrosa, New Yorker	50
Spring Beaut	74
Standard	63
Wickson	51

(c) No handler shall ship any package or container of any variety of plums not specifically named in paragraph (b) of this section, unless such plums are of a size that an eight-pound sample representative of the sizes of the plums in the package or container contains not more than 139 plums.

(d) *Definitions.* As used herein, "U.S. No. 1," "mature," and "serious damage" means the same as defined in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538). "Well-matured" means a condition distinctly more advanced than "mature."

Dated: May 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-12039 Filed 5-26-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 916

[Docket No. AMS-FV-88-056IR]

Nectarines Grown in California; Size Requirements and Maturity Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the size regulations established for California nectarines. The increase in variety-specific size requirements for numerous nectarine varieties and the increase in minimum size requirements for non-listed varieties are designed to make nectarines more marketable and to give retailers and consumers a better product. This rule also will change the coverage of the size requirements by adding six varieties of nectarines and by removing four varieties from the variety-specific size list. In addition, this rule specifies the maturity requirements and maturity variance procedures. This action is designed to facilitate nectarine maturity determinations and promote marketing of the crop. Interested persons are invited to comment on this rule change.

DATES: This interim final rule becomes effective May 27, 1988. Comments which are received by July 11, 1988, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jerry N. Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-5464

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 916 (7 CFR Part 916), regulating the handling of nectarines grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917), and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those

having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of such fruit may be classified as small entities.

Shipments of California nectarines are regulated by grade, maturity, and size under Nectarine Regulation 14 (7 CFR 916.356, as amended and published in the Federal Register on April 29, 1987, 52 FR 15487, and as corrected on May 6, 1987, 52 FR 17504). A proposed rule concerning the size and maturity regulations was published in the Federal Register on April 18, 1988, (53 FR 12690). A correction was published in the Federal Register on May 12, 1988, (53 FR 16831). Numerous comments were received. Proposed changes to § 916.356 were recommended by the Nectarine Administrative Committee and the Department.

This interim final rule is based upon the committee's recommendation, information submitted by the committee, comments received both supporting and opposing the action, and other available information.

Inspected shipments of California nectarines for the 1987 season totalled 16,863,000 packages and they were primarily sold in the fresh market. In 1987, the production value of California nectarines was about $65,545,000. Although this interim final rule would impose requirements on the handling of nectarines, exemptions from the inspection and certification requirements would continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

Comments have been received from interested persons concerning the proposed increase in minimum size requirements. Many of the comments were made by an attorney representing two entities who do business as handlers in the nectarine industry and from individuals that have an interest in or who work for one of the two entities. Comments were also received from the committee and a few other interested individuals concerning this matter.

Generally, the material problems with the size proposal as asserted by its opponents are that: (1) No studies have been conducted to determine if small-size nectarines lack taste; (2) the bulletins used by the committee to document market conditions and for regulatory recommendations are tainted by the influence of "mega-packinghouses"; (3) the minimum size requirement often conflicts with the "well-matured" requirement because the fruit will often meet the "well-matured" requirement yet become overripe because it must remain on-tree in order to increase in size and meet the minimum size requirements; (4) the proposal would drastically reduce volume of fruit shipped because in addition to the container-based dimension test (i.e., maximum number fruit per container) being increased there would also be a proposed increase in the weight-based test (i.e., maximum number of fruit in a 16-pound sample) which would further reduce the volume of fruit shipped; and (5) it is too late for growers to utilize or modify their cultural practices (i.e., pruning and thinning) in order to meet the more restrictive size requirements contained in the proposal.

Generally, those in favor of the size proposal contend that the size proposal is warranted because: (1) Studies have been conducted to determine if small-size nectarines lack taste and while one study found there is "no clear relationship between fruit size and flavor provided that all fruits are picked mature," such studies do support the contention that size is an important factor in visual quality; (2) the bulletins used by the committee to document market conditions and for regulatory recommendations accurately report the needs of the market for better quality fruit; (3) large fruit is necessary because the "consumer believes bigger is better and feels that large size produce represents better quality;" (4) a general consensus exists within the nectarine industry that larger size fruit is necessary for the industry to compete in the highly competitive fresh fruit market; and (5) regardless of the contention that it is too late for growers to utilize or modify their cultural practices in order to meet the more restrictive size requirements contained in the proposal, such small size fruit should be removed from the market as it would be very difficult to move and would in turn adversely affect the pricing structure of the market.

One commenter provided the Department with numerous studies that he had obtained from the University of California at Davis. One of the studies found that "there is no clear relationship between fruit size and flavor provided that all fruits are picked mature." Nevertheless, the study stated that consumers "see good quality as good appearance, firmness, good flavor, and nutritive value." Furthermore, the study stated that although "consumers buy on the basis of appearance and feel, their satisfaction and subsequent purchases depend upon good eating quality."

The Department finds that the minimum size requirements set forth in this rule are needed to assure that fresh nectarines have the various characteristics demanded by consumers. Different size requirements for different varieties recognize varietal characteristics and market preferences.

In assessing market demand, the committee utilizes market reports and other data. Committee personnel survey markets receiving California nectarines and determine the overall quality and sizes of the fruit offered and buyer reactions. The changes in size requirements respond to market needs.

Another comment on increasing the minimum size requirements is contained in a *Final Report of California Summer Fruits Retailer Research* by Ervin D. Thuerk. Mr. Thuerk is a marketing consultant with the Thuerk Pro-Con Company in Westlake Village, California. Mr. Thuerk directed a project designed to ascertain individual retailers' attitudes and their wants and needs for fruit quality and maturity. Meetings were held with 25 companies in approximately 20 cities, representing nearly 17,000 retail supermarkets. These supermarkets equal 38.7 percent of the total industry units operated. Information was obtained on: (1) Product needs in the fresh produce industry; (2) retail marketing trends and how they are changing; (3) consumer attitudes and their changing wants and needs; (4) the development of future programs for the marketing of California summer fruits; and (5) attitudes toward industry standards and marketing programs. The findings indicate that early season fruit which is small in size does not provide satisfaction to the consumer, does not encourage repeat purchases, and nor does it benefit the market.

Some commenters have contended that the proposal would drastically reduce the volume of fruit shipped because, in addition to the container-based dimension test (i.e., maximum number of fruit per container) being increased, there would also be an increase in the weight-based test (i.e., maximum number of fruit in a 16-pound sample) which would further reduce the volume of fruit shipped. The Department disputes the contention that the proposal would drastically reduce the volume of fruit shipped because the industry has recognized the fact that in past seasons small size nectarines have been a detriment to the trade and as such the industry has directed its efforts toward production and marketing of better quality and larger size fruit. The Department finds that this action is

needed to provide fresh markets with larger sizes of fruit preferred by these markets.

Finally, some commenters contended that it is too late for growers to modify their cultural practices (i.e., pruning and thinning) in order to meet the more restrictive size requirements contained in the proposal. However, at the time the committee made its recommendation most growers had begun to undertake ordinary cultural practices on their orchards to attain desirable fruit size. Any committee recommendation reflects the sentiments of the industry and the feasibility and practicality of the contemplated action.

The changes are necessary to remove from the market those sizes of fruit which are not being well-received by consumers. These actions are intended to foster repeat purchases and maintain consumer satisfaction. Early season purchases of small-sized nectarines have a negative effect on total nectarine sales because consumers do not make repeat purchases after being dissatisfied with their original purchases. Increased size requirements are needed to make nectarines more marketable and are essential for the consumer satisfaction needed to maintain current markets and to build new markets. No shortage is expected as a result of the size changes, rather, healthier market conditions for California nectarines are anticipated.

After considering all of the comments received, this action adopts the following size requirements to recognize the interest of California nectarine growers and handlers in maintaining the quality of the nectarines they market. To implement the committee's size recommendations, paragraph (a) of § 916.356 will be revised to increase the variety-specific size requirements for 75 varieties of nectarines and to change the size requirements for four varieties by removing them from the variety-specific size requirements and by subjecting them to the minimum size requirements established for non-listed varieties.

This action will decrease the number of nectarines allowed in a 16-pound representative sample. For example, the minimum size requirement for Early Diamond nectarines would be increased from the smaller size "108" to the larger size "96." Also, two new size designations will be added to § 916.356(a), and one size designation will be removed from the minimum size requirements prescribed in that paragraph. Specifically, size "84" (not more than 84 nectarines in a No. 22D standard lug box) will be replaced by two new size designations, size "88" and size "80."

Also, under this action, size "108" nectarines when packed in a loose-filled container will be subject only to a 16-pound sample test instead of both the 16-pound test and the tray pack test as required previously. Size "108" nectarines will only be subject to the tray pack requirement specifying that such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of standard pack, not more than 108 nectarines in the lug box. This recognizes that the Aurelio Grand, Maybelle, Mayfire, and Royal Delight variety nectarines subject to the "108" size requirements normally develop well enough to meet the tray pack requirements, but sometimes do not produce enough soluble solids to meet the 16-pound weight test.

This action will also change the requirements for non-listed varieties of nectarines. Currently, the requirements for non-listed varieties of nectarines specify a minimum size "108" to be shipped during January 1 through May 31 of each fiscal period, size "96" to be shipped during June 1 through June 30 of each fiscal period, and size "84" to be shipped during July 1 through December 31 of each fiscal period. This action will increase the requirements for nectarines to size "96" during January 1 through May 31 of each fiscal period, size "88" during June 1 through June 30 of each fiscal period, and size "80" during July 1 through December 31 of each fiscal period.

In addition, the maximum number of nectarines allowed in a representative 16-pound sample of "108" size nectarines will be reduced from 95 to 92. For example, the minimum size requirement for Royal Delight nectarines will continue to be a size "108"; however, the maximum number of Royal Delight nectarines allowed in a representative 16-pound will be 92 and they will be subject to the tray pack test (not more than 108 nectarines in a No. 22D standard lug box) when packed in loose-filled containers.

In addition, this action will establish variety-specific size requirements for nectarine varieties not produced in commercially significant quantities and remove varieties no longer produced in significant quantities from variety-specific size requirements. Variety-specific size regulations for nectarines are implemented when the nectarine variety is produced in commercially significant quantities, i.e., shipments in excess of 10,000 packages during a season. When varieties are no longer produced in significant quantities (less than 5,000 packages during the previous season), they are removed from the variety—specific size requirements, but are subject to, minimum size requirements established for non-listed varieties. The quantities used in making these determinations are the same as those used in prior seasons. These requirements are specified in paragraph (a) of § 916.356. Specifically, the Kism Grand, September Red, Sun Diamon, and 181–119 varieties of nectarines will be added to the variety-specific requirements in paragraph (a)(5) of § 916.356; May Diamond will be added to the variety-specific requirements in paragraph (a)(4) of § 916.356; and Mayfire will be added to the variety-specific requirements in paragraph (a)(2) of § 916.356. The Armking, Gee Red, Richards Grand, and Star Grand varieties of nectarines will be removed from the variety-specific size requirements. Shipments of the new varieties that will be added to the variety-specific size regulations exceeded 10,000 packages during the 1987 season. Shipments of the varieties that will be removed from the variety-specific size regulations fell below 5,000 packages during the 1987 season.

Further, the April 18 proposal included revisions in paragraph (a) of § 916.356 to clarify the nectarine maturity requirements and simplify the maturity determination system currently used by the nectarine industry. Among other things, the proposed revision of paragraph (a) specified that no handler can ship nectarines unless they are at least "well-matured," as defined in paragraph (b) and specified the role of Federal or Federal-State inspectors in making "well-matured" determinations.

It was proposed that the first sentence of paragraph (a)(1) be revised to read: "Any lot of package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade, except that the nectarines shall be 'well-matured,' rather than 'mature,' but not over-ripe or shriveled." This change was intended to clarify the fact that all nectarines marketed under this program must be "well-matured," rather than "mature" as defined in the U.S. grade standards for nectarines. Since May 16, 1980 (45 FR 32309; May 16, 1980) nectarines have been required to be "well-matured" rather than "mature," and this requirement has been implemented by the Federal-State Inspection Service since that time.

In addition to specifying that nectarines must be "well-matured," the proposed change defined "well-matured" to mean a condition distinctly more advanced that "mature."

According to the U.S. grade standards, a nectarine is considered mature when it has reached the stage of growth which will insure a proper completion of the ripening process. This is a minimum standard of maturity which was in effect before the more recent advances in handling and distribution techniques and does not preclude inspecting to a higher degree of maturity. In 1979 the committee reported that "the maturity of nectarines at destination was rather severely criticized." Comments discussed later support the contention of proponents that the "well-matured" requirement has resulted in more consumer acceptance and expansion of markets for California nectarines.

To ascertain compliance with the "well-matured" standard with regard to each variety of nectarines, various tests are used. Since 1980, the Federal-State Inspection Service, based on its expertise, has been primarily responsible for determining which specific test or tests should be use for each variety of nectarines and which test level (e.g., particular color chip) is appropriate for each variety. When the Federal-State Inspection Service has sufficient experience with a variety to determine that a particular test or tests or a particular test level should normally be appropriate for the entire production area for every year, it has advised the committee of the determination. The committee has then ratified that determination, publishing it in its annual bulletin. After such a determination for a particular variety has been published, variances during the season or permanent changes between seasons have been made by the committee or its maturity subcommittee. The committee and its staff have provided advice to the Federal-State Inspection Service in making its maturity determinations, and likewise the Federal-State Inspection Service and the committee staff have advised the committee and its maturity subcommittee in making variances and changes.

To lessen the burdens on committee members, it was proposed that the responsibility for variances during the season and changes between the seasons be given to the Federal or Federal-State Inspection Service. This change would have simplified the procedures by assigning all maturity determinations and the application of those determinations to one group. In making this proposal, it was intended that the Federal or the Federal-State Inspection Service, while considering variances and changes, would seek the advice of the committee and its staff in order to draw upon their wealth of expertise. It was also intended that any changes and any variances would be applicable to all growers and handlers of the particular variety. Finally, it was intended that any changes and variances would be made at the supervisory level of the Federal or the Federal-State Inspection Service, rather than by the particular packinghouse inspector. This was intended to ensure that these decisions are made by those who have the greatest background and expertise and who are in a position to be knowledgeable concerning current conditions throughout the entire production area.

Further, a table was proposed to be added to paragraph (a) of § 916.356 to specify color chips which the Federal or the Federal-State Inspection Service intended to use the specified varieties of nectarines.

For these varieties, it was proposed to continue the requirement that not less than 90 percent of the fruit surface shall meet the color guide established for the variety, and not less than 90 percent of any lot shall meet the color guide established for the variety.

The varieties listed in the table were those described above where the inspection service has sufficient experience to determine a generally appropriate test or tests and test levels. It was proposed that the Federal or Federal-State Inspection Service would have the authority to make variances from the guides in the table during the season for any variety to reflect changes in crop and weather conditions that would make the guide an inappropriate measure of "well-matured." For varieties not listed in the table, the Federal or Federal-State Inspection Service would use such tests as it deems appropriate.

There are no changes of color chips in the table from the list in the 1987 Nectarine Bulletin. However, an additional aggregate surface tolerance of 10 percent for the Tom Grand and 61–61 varieties of nectarines will be added to paragraph (a)(1)(i) of § 916.356. This is intended to help make maturity determinations for these varieties of nectarines more accurate. This exception is the same as is currently in effect for the Fairlane variety of nectarines. No comments were received with respect to the proposed changes. Therefore, they are adopted as proposed.

Numerous comments were received regarding other aspects of the proposed maturity requirements and variance procedures. Some commenters disagreed with or suggested modifications to the proposed requirements and procedures. Some commenters requested that the current "well-matured" requirements continue in effect. Other commenters thought that the maturity requirements should be returned to the level which existed in 1980 or to the mature requirements specified in U.S. No. 1 grade standard. Some thought that the variance procedures were lacking because an appeal process was not provided to review the setting of standards in the first place or for reviewing variance decisions. Two commenters suggested that the proposed definition of "well-matured" be clarified and made more specific as it related to the condition of fruit to make decisions on variances more objective.

In many instances, the favorable comments and other information sufficiently refuted the unfavorable comments, particularly regarding the desirability of continuing the "well-matured" requirement. Contrary to some commenters' contentions, at least one study has been conducted which indicates that the implementation of the "well-matured" requirement has resulted in greater consumer acceptance of the fruit than existed prior to 1980. Further, the shipments of "well-matured" fruit, as opposed to "mature" fruit have helped the industry's market expansion efforts. In fact, the requirement has been generally well received by the industry, retailers, and the consuming public.

In fact, one commenter submitted a *Final Report of California Summer Fruits Retailer Research* by Ervin D. Thuerk. The report was previously described in this document. With respect to maturity, the findings indicate that early season fruit which is picked immature does not provide satisfaction to the consumer and does not encourage repeat purchases, and does not benefit the market. Fruit has to look good to get the consumer to buy it, but it must also taste good to foster additional sales. There is definitely a lag effect on sales from poor eating quality on the varieties which follow. When this occurs, prices are depressed because the pipelines are filled with poor fruit, according to the executives interviewed.

In addition, a marketing extension pomologist from the University of California at Davis indicated that in the late 1970's the post harvest performance of a number of commercial nectarine cultivars had been evaluated. In these tests, researchers found that low maturity fruit tended to be more susceptible to bruising (especially vibration bruising), and also more susceptible to flesh browning following bruising. He further indicated that size is

generally correlated with maturity in fruits. Typically in any population of fruits, the smallest size fruits will be lower in sugars, and often less physiologically mature, than larger fruits. He went on to say that this is especially true in a climate like California, where the bloom period is normally prolonged and thus size may indicate the length of the growing season for the individual fruits.

The Thuerk report described earlier also addresses the comments that the "well-matured" requirement does not reflect the different needs of buyers in markets far from the production area compared to buyers in nearby markets.

In addition, a comment from the Executive Vice President of the Canadian Fruit Wholesalers Association indicated that some of its members feel that the current "well-matured" standard has played an important role in keeping high quality consumer acceptable fruit grown in the United States available in Canadian markets. The members of the association polled felt that a change from the "well-matured" to the mature standard would be regressive and would hurt sales. Along the same lines, a buyer in Chelsea, Massachusetts, indicated that it is extremely important for California packers to maintain the high quality, taste, appearance, and shelf life that their customers have come to expect. To continue its trend of buying more and more fruit, the buyer indicated that the "well-matured" standard should be maintained.

In response to the commenter who asserted that the tests currently in effect are more restrictive than when the "well-matured" requirement was implemented in 1960, there has been an increase in the number of color chips used. However, the initial chips were not considered adequate to cover the variations in color among the numerous varieties. As a result, gradations in color have been added to more accurately reflect the characteristics of the many varieties of nectarines. Therefore, the number of color chips *per se* does not support the contention that the color chips are more restrictive now than there were in 1960 and 1961.

One commenter stated that the price received for "well-matured" fruit has not adequately compensated for the increase in harvesting costs that have been incurred. However, the commenter did not document this claim. Further, the "well-matured" requirement has in general contributed to the economic health of the nectarine industry. More than 123,554,000 packages of California nectarines have been inspected and shipped since the "well-matured" requirement became effective in 1960. Also, when the growers under this program participated in 1986-87 in a referendum to determine industry support for the nectarine marketing order program, a majority of those voting favored continuance of the program. It is doubtful that growers would favor continuing a program that resulted in considerable lost profits.

Some commenters expressed the view that the maturity levels have been drastically raised to control volume as opposed to causing better consumer quality fruit to reach the market. One of these commenters indicated that this is evidenced by the decrease in packages shipped per acre from 1980 to 1987 even though increasing acreage was coming into production with a substantially higher number of trees planted per acre. However, this commenter's evaluation is inconclusive because he did not consider other factors in addition to the "well-matured" requirement that could affect the amount of nectarines shipped to the fresh market. Other factors could lead to a reduced number of cartons shipped per acre, such as age of the trees, weather, cultural practices, and failure to meet other types of handling requirements such as minimum size requirements.

One commenter requested an exemption for "leaf spots" and recommended a 10 percent exemption from the "well-matured" requirement be established as long as the fruit otherwise meets the U.S. No. 1 standard. These recommendations are being referred to the committee for evaluation.

In view of the foregoing, this action adopts, the proposed maturity requirements described above to recognize the interest of California nectarine growers and handlers in maintaining the quality and maturity of the nectarines they market. As stated previously, in 1979, the committee reported that nectarines picked and packed at the minimum standard of maturity, "mature," were rather severely criticized at destination. The evidence indicates that the "well-matured" requirement in effect since that time has resulted in more consumer acceptance and the expansion of markets for California nectarines.

We do, however, believe that a more specific definition of "well-matured" could be helpful. Therefore, comments are invited on developing a definition with more specificity.

In addition to the comments received on the size and maturity requirements, the Department received comments on the variance procedures described in the proposed rule. The proposal stated that: "The Federal or the Federal-State Inspection Service has the authority to make variances for any variety from any guide or tests, including those in Table I, during the season to reflect changes in crop or weather conditions that would make the existent guide an inappropriate measure of "well-matured."

The purpose of this change was to relieve the maturity subcommittee of the burden of making variances during the season because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their own businesses.

However, comments from the committee and officials from the Federal-State Inspection Service indicated that the committee and its maturity subcommittee should continue to play a direct role in making final determinations on making changes and granting variances in the maturity guides used in determining whether the fruit meets the "well-matured" standard. The commenters indicated that these very important decisions should not rest solely in the hands of one group, but they should be fair and timely because of the perishability of the commodity.

Comments received from the California Department of Food and Agriculture (CDFA) indicated that full responsibility to allow or disallow variances from color chip requirements should not be placed on inspection service. The comment indicated that the CDFA and Federal-State Inspection Service has provided and will continue to provide expert advice on the condition or maturity of the fruit.

The committee suggested that the first contact should be with the Federal-State Inspection supervisor so the supervisor would first be able to review the problem to determine if the problem is with maturity or with interpretation of an individual inspector. The committee pointed out that in the past, the supervising inspector has been able to resolve many issues by working with the grower or shipper and the packing house inspector. If the situation could not be resolved to the satisfaction of the inspection service and the requester, then the requester would ask for a maturity variance.

In view of this, the Department has decided to specify in the regulations procedures for handling variances during the current and subsequent seasons which are similar to those currently used. In addition, in order to respond to comments that there is no recourse to adverse decisions of the maturity subcommittee, this interim final rule establishes a procedure for appealing those decisions. These procedures are specified in paragraph (a)(1) of § 916.356.

Under these procedures, a grower or handler may make a request for a variance from the maturity guide by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. This fieldman would call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site. If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall take into account written comments, observations, and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two days from the time the request for variance is received.

Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Because of the large geographical area involved and the need for timely decisions, the subcommittee may hold telephone meetings. A majority of the subcommittee must vote in favor of a variance. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and to the Department's California Marketing Field Office in Fresno. If the requester is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal as described later.

If after on-site review of the request neither the field man nor the inspection official believe a variance is warranted, the variance will not be granted and the matter will not be referred to the maturity subcommittee. The requester however may file an appeal from this determination in accordance with the procedures described below.

To file an appeal, the requester shall notify the Nectarine Administrative Committee manager who will immediately refer the appeal to the Appeal Committee established by this rule. It is important that the members of the Appeal Committee are different from those serving on the maturity subcommittee which makes the initial determination. It is also important that members of the Appeal Committee are knowledgeable about crop and maturity conditions in the industry. Therefore, the Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Plum Commodity Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Nectarine Administrative Committee manager is notified of the appeal, recognizing that a final decision must be made promptly. A majority vote of the Appeal Committee is needed to grant a variance. The Appeal Committee may hold telephone meetings in order to facilitate the decisionmaking process. The Appeal Committee shall prepare a written report of its determination and the reasons therefor.

A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

Another change from the proposal is that any decision to grant a variance for a particular nectarine variety will not automatically apply to all growers and handlers of that variety throughout California. The committee and other commenters have pointed out that the granting of variances on an across-the-board basis throughout the state may not be appropriate. Because of the differences in weather and growing conditions that occur throughout the growing area a variety grown in the San Joaquin Valley may be "well-mature" at a lesser degree of color than an orchard of the same variety in the upper San Joaquin Valley. This condition is sometimes significant and can even occur in neighboring orchards.

The inspection and industry officials designated to make these variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area.

It is the Department's view that the change to add several new varieties of nectarines now produced in commercially significant quantities to the variety-specific (named-variety) size requirements and to delete four varieties no longer produced in commercially significant quantities from those requirements will not be detrimental to small entities. These changes are expected to improve the quality of nectarines in the fresh market which will be beneficial in maintaining current markets and developing new ones. The change to clarify and revise the maturity requirements for nectarines is intended to foster and facilitate a greater understanding of these requirements within the nectarine industry and, as such, will not result in additional costs. The changes to the well matured guides for the Tom Grand and 61–61 varieties of nectarines will relax requirements.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendations, the comments received in favor and opposition, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1988 crop nectarines have begun and this action should cover as much of the 1988 crop as possible; (2) the maturity requirements set forth below are substantially the same as currently implemented and should be made effective as soon as possible; and (3) this interim final rule relaxes maturity requirements for two varieties of nectarines.

The actions set forth below are being issued on an interim final basis with opportunity for written comments rather than as a final rule so interested persons will be able to provide input on the maturity modifications and still allow the maturity procedures to be used for as much of the 1988 shipping season as

possible. An opportunity needs to be provided for interested persons to file comments, but, as mentioned earlier, it is imperative that the size and maturity requirements and variance procedures apply to as much of the 1988 crop as possible.

The committee's recommendation, other information, and all written comments timely received in response to this interim final with request for comments will be considered prior to any finalization of this interim final rule. Commenters are encouraged to submit their views in support of or in opposition to this interim final rule. Any pertinent data to support views and comments should also be submitted.

List of Subjects in 7 CFR Part 916

Marketing agreement and order, Nectarines, California.

For the reasons set forth in the preamble, 7 CFR Part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 916.356 is revised to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) No handler shall ship:

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade except that the nectarines shall be "well-matured," rather than "mature," but not overripe or shriveled: *Provided,* That nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further,* That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen.

(i) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Fairlane, Tom Grand, and 61–61 varieties of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or the Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well-matured."

The maturity determination variance procedure is set forth as follows:

TABLE I

Column A variety	Column B maturity guide
Ame Lyn	G
Ambrosia	G
Apache	G
Apkarian	G
Armking	B
Aurelio Grand	F
Autumn Delight	M
Autumn Grand	L
Bob Grand	L
Clinton-Strawberry	H
Desert Dawn	G
Early May	G
Early May Grand	H
Early Star	G
Early Sungrand	H
Fairlane	M
Fantasia	L
Firebrite	H
Flamekist	L
Flaming Red	K
Flavortop	J
Flavortop I	K
Gee Red	H
Gold King	H
Granderli	J
Grand Star	C
Hi-Red	J
Independence	H
July Red	H
June Glo	H
June Grand	G
Kent Grand	L
Larry's Grand	M
Late Le Grand	L
Late Tina Red	I
Le Grand	H
Maybelle	F
Mayfair	C
May Glo	H
May Grand	H
Mayred	B
Mike Grand	H
Moon Grand	M
Niagara Grand	H
P-R Red	L
Red Diamond	M
Red Delight	I
Red Free	L
Red Grand	H
Red Jim	L
Red June	G
Regal Grand	L
Richards Grand	L
Rio Red	L
Royal Delight	F
Royal Giant	I
Ruby Grand	J
Scarlet Red	K
September Grand	L
September Red	L
Sherri Red	J
Son Red	L
Sparkling June	M
Sparkling Red	L
Spring Diamond	M
Spring Grand	G
Spring Red	H
Stan's Grand	C
Star Brite	J
Star Grand	H
Summer Beaut	H
Summer Diamond	M
Summer Grand	L
Summer Red	L
Sunfire	F
Sun Grand	G
Tasty Free	L
Tom Grand	L
Zee Gold	G
61–61	J
#91	C

NOTE. Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

(ii) A grower or handler may initiate a request for variance from a maturity guide (e.g., color chip) by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. This fieldman will call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site.

(iii) The committee fieldman and the officer-in-charge accompany the requester to the site.

(iv) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall take into account written comments, observations and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two days from the time the request for variance is received. A majority of the subcommittee must vote in favor of the variance for it to be implemented. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and the Department's California Marketing Field Office in Fresno. If the requester is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal in accordance with paragraph (a)(1)(vi) of this section.

(v) If neither the fieldman nor the inspection official believe a variance is warranted, the variance shall not be granted. The requester may file an appeal from this determination as specified in paragraph (a)(1)(vi) of this section.

(vi) To file an appeal, the requester shall notify the Nectarine Administrative Committee manager who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Plum Commodity Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Nectarine Administrative Committee manager is notified of the appeal. A majority vote of the Appeal Committee is needed to grant a variance. The Appeal Committee may hold telephone meetings. The Appeal Committee shall prepare a written report of its determination and the reasons therefor. A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

(2) Any package or container of Aurelio Grand, Maybelle, Mayfire, or Royal Delight variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box; and

(ii) Such nectarines, when packed other than as specified in paragraph (a)(2)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines.

(3) Any package or container of Early Diamond, Mayfair, or May Glo variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

(4) Any package or container of Ame Lyn, Apache, Early May, Early May Grand, Mike Grand, Early Star, Grand Stan, June Glo, June Grand, May Grand, Pacific Star, Red Delight, Red June, Spring Grand, Star Brite, Sunfre, or May Diamond variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, except for the Apache variety of nectarines when packed in tray packs, are of a size that a 16-pound sample, represenative of the nectarines in the package or container, contains not more than 78 nectarines.

(5) Any package or container of Autumn Delight, Autumn Grand, Bob Grand, Clinton-Strawberry, Early Sungrand, Fairlane, Fantasia, Firebrite, Flamekist, Flaming Red, Flavortop, Flavortop I, Gold King, Grand Diamond, Granderli, Hi-Red, Independence, July Red, Kent Grang, Kism Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P–R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Royal Giant, Ruby Grand, September Grand, September Red, Tasty Free, Tom Grand, Larry's Grand, Scarlet Red, Son Red, Spring Diamond, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Bright, Summer Diamond, Summer Grand, Summer Red, Sun Diamond, Sun Grand, Sherri Red, Super Star, Rio Red, 61–61, or 181–119, variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

(6) During January 1 through May 31, of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4), or (5) of this section unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

(7) During June 1 through June 30, of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4), or (5) of this section unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

(8) During July 1 through December 31, of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4), or (5) of this section unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

(b) *Definitions.* As used herein, "U.S. No. 1," "mature," and "standard pack" mean the same as defined in the United States Standards for Grades of Nectarines [7 CFR 51.3145 to 51.3160]; "No. 22D standard lug box" means the same as defined in section 1380.19(17) of

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the "Regulations of the California Department of Food and Agriculture." "Well-matured" means a condition distinctly more advanced than "mature."

Dated: May 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-12036 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 917

[Docket No. AMS-FV-88-055IR]

Fresh Pears, Plums, and Peaches Grown in California; Size Requirements and Maturity Regulations for Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the size regulations established for California peaches. The coverage of the variety-specific size requirements will be changed by removing two varieties, no longer produced in significant quantities, from the variety-specific size list. Also size requirements will be modified for varieties of peaches not subject to variety-specific size requirements which are shipped November 1 through July 2. This is intended to bring these requirements into conformity with those in effect for shipments during the July 3 through October 31 period. In addition, this rule specifies maturity requirements and maturity variance procedures. This action is designed to facilitate peach maturity determinations and promote marketing of the crop.

DATE: The interim final rule becomes effective May 27, 1988. Comments which are received by July 11, 1988 will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jerry N. Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-5404.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917), and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of such fruit may be classified as small entities.

Shipments of California peaches are regulated by grade, maturity, and size under Peach Regulation 14 (7 CFR 917.459, as amended and published in the Federal Register on April 20, 1987, 52 FR 15488). A proposed rule concerning the size and maturity regulations was published in the Federal Register on April 18, 1988, (53 FR 12694). Comments were received concerning the proposed maturity requirements. Proposed changes to § 917.459 were recommended by the Peach Commodity Committee and the Department.

This interim final rule is based upon the committee's recommendation, information submitted by the committee, comments received both supporting and opposing the action, and other available information.

Inspected shipments of California peaches for the 1987 season totalled 13,654,000 packages and they were primarily sold in the fresh market. In 1987, the production value of California freestone peaches (fresh and processed) and clingstone peaches was about $68,252,000 and $65,612,000, respectively. Although this interim final rule would continue to impose requirements on the handling of peaches, exemptions from the inspection and certification requirements would continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

The proposal included changes in the minimum size requirements for peaches. No comments were received concerning such changes.

Accordingly, this action adopts the proposed size requirements described below to recognize the interest of California peach growers and handlers in maintaining the quality of peaches they market.

To implement the peach committee's size recommendations, paragraph (a)(5) of § 917.459 will be revised to remove two varieties no longer produced in significant quantities from variety-specific size requirements. Variety-specific size regulations for peaches are implemented when the peach variety is produced in commercially significant quantities; i.e., shipments in excess of 10,000 packages during a season. When varieties are no longer produced in significant quantities (less than 5,000 packages during the previous season), they are removed from the variety-specific size requirements, but are subject to minimum size requirements established for non-listed varieties. The quantities used in making these determinations are the same as those used in prior seasons. These requirements are specified in paragraphs (a), (b), and (c) of § 917.459. Specifically, the Summerset and Windsor varieties of peaches will be removed from the variety-specific size requirements in that paragraph. Shipments of the varieties that will be removed from the variety-specific size requirements fell below 5,000 packages during the 1987 season.

Paragraphs (b) and (c) of § 917.459 require all varieties of peaches not subject to the variety-specific size requirements to be subject to minimum size requirements. The total shipments of these peaches are significant enough to warrant coverage, even though shipments of the individual varieties of them do not exceed 10,000 packages. Paragraph (b) covers shipments of these varieties during the period November 1 through July 2, and paragraph (c) covers shipments during the period July 3 through October 31.

For shipments during the July 3 through October 31 period, paragraph (c) currently specifies minimum size requirements for peaches packed in No. 22D standard lug boxes, requirements for these peaches packed in No. 12B standard fruit (peach) boxes, and 16-pound representative sample count per pound requirements for peaches packed in other containers. Paragraph (b) specifies No. 22D standard lug box requirements and 16-pound representative sample count per pound requirements, but does not specify size requirements for fruit packed in No. 12B standard fruit (peach) boxes. To foster consistency of regulation throughout the year, size requirements will be added to paragraph (b) for peaches packed in No. 12B standard fruit (peach) boxes for shipment during the period November 1 through July 2. The peaches so packed will have to be of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box. These are the same requirements as specified in paragraph (c) for shipments during the July 3 through October 31 period. With the change, such peaches packed in No. 12B standard fruit (peach) boxes will no longer be subject to the 16-pound representative sample count per pound requirements, just the pack requirements.

Further, the proposal included revisions in paragraph (a) of § 917.459 to clarify the peach maturity requirements and simplify the maturity determination system currently used by the peach industry. Among other things, the revision of paragraph (a) specified that no handler could ship peaches unless they are at least "well-matured," as defined in paragraph (d) and specified the role of Federal or Federal-State inspectors in making "well-matured" determinations.

It was proposed that the first sentence of paragraph (a)(1) be revised to read: "Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade, except that the peaches shall be 'well-matured,' rather than 'mature,' but not over-ripe or shriveled." This change was intended to clarify the fact that all peaches marketed under this program must be "well-matured," rather than "mature" as defined in the U.S. grade standards for peaches. Since May 16, 1980 (45 FR 32310; May 16, 1980) peaches have been required to be "well-matured" rather than "mature," and this requirement has been implemented by the Federal-State Inspection Service since that time.

In addition to specifying that peaches must be "well-matured," the proposed change defined "well-matured" as a condition distinctly more advanced than "mature." According to the U.S. grade standards, a peach is considered mature when it has reached the stage of growth which will insure a proper completion of the ripening process. This is a minimum standard of maturity which was in effect before the more recent advances in handling and distribution techniques and does not preclude inspecting to a higher degree of maturity. In 1979 the committee reported that higher maturity standards were necessary to satisfy trade demand, particularly in eastern markets. Comments discussed later support the contention of proponents that the "well-matured" requirement has resulted in more consumer acceptance and expansion of markets for California peaches.

To ascertain compliance with the "well-matured" standard with regard to each variety of peaches, various tests are used. Since 1980, the Federal-State Inspection Service, based on its expertise, has been primarily responsible for determining which specific test or tests should be used for each variety of peaches and which test level (e.g., particular color chip) is appropriate for each variety. When the Federal-State Inspection Service has sufficient experience with a variety to determine that a particular test or tests and a particular test level should normally be appropriate for the entire production area for every year, it has advised the committee of that determination. The committee has then ratified that determination, publishing it in its annual bulletin. After such a determination for a particular variety has been published, variances during the season or permanent changes between seasons have been made by the committee or its maturity subcommittee. The committee and its staff have provided advice to the Federal-State Inspection Service in making its maturity determinations, and likewise the Federal-State Inspection Service and the committee staff have advised the committee and its maturity subcommittee in making variances and changes.

To lessen the burdens on committee members, it was proposed that the responsibility for variances during the season and changes between the seasons be given to the Federal or Federal-State Inspection Service. This change would have simplified the procedures by assigning all maturity determinations and the application of those determinations to one group. In making this proposal, it was intended that the Federal or Federal-State Inspection Service, while considering variances and changes, would seek the advice of the committee and its staff in order to draw upon their wealth of expertise. It was also intended that any changes and any variances would be applicable to all growers and handlers of the particular variety. Finally, it was intended that any changes and variances would be made at the supervisory level of the Federal or the Federal-State Inspection Service, rather than by the particular packinghouse inspector. This was intended to ensure that these decisions are made by those who have the greatest background and expertise and who are in a position to be knowledgeable concerning current conditions throughout the entire production area.

Further, a table as proposed to be added to paragraph (a) of § 917.459 to specify color chip guides which the Federal or the Federal-State Inspection Service intends to use beginning with the 1988 season for the specified varieties of peaches.

For these varieties, an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, and not less than 90 percent of any lot shall meet the color guide established for the variety.

The varieties listed in the table were those described above where the inspection service has sufficient experience to determine a generally appropriate test or tests and test levels. It was proposed that the Federal or Federal-State Inspection Service would have the authority to make variances from the guides in the table during the season for any variety to reflect changes in crop and weather conditions that would make the guide an inappropriate measure of "well-matured." For varieties not listed in the table, the Federal or Federal-State Inspection Service would use such tests as it deems appropriate.

There is one change in the table from the list in the 1987 Peach Bulletin. The color guide for the Prima Fire peach variety would be changed from the "I" color guide to the "H" color guide. This is intended to help make the maturity determination for this peach variety more accurate. This change is the same

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as was in effect for such peach variety at the end of last season. No comments were received with respect to the proposed change. Therefore, the change is adopted as proposed.

Comments were received regarding other aspects of the proposed maturity requirements and variance procedures. One commenter opposed the proposal and in his comments, while not specific to any particular peach variety, he requested that his comments on similar proposals concerning California nectarines and plums be held applicable to California peaches. Some commenters disagreed with or suggested modifications to the proposed requirements and procedures. Some commenters requested that the current "well-matured" requirements continue in effect. One commenter thought that the maturity requirements should be returned to the level which existed in 1980 or to the mature requirements specified in U.S. No. 1 grade standards. One commenter thought that the variance procedures were lacking because an appeal process was not provided to review the setting of standards in the first place or for reviewing variance decisions. Two commenters suggested tha the proposed definition of "well-matured" be clarified and made more specific as it related to the condition of fruit to make decisions on variances more objective.

In many instances, the favorable comments and other information sufficiently refuted the unfavorable comments, particularly regarding the desirability of continuing the "well-matured" requirement. Contrary to one commenter's contentions, at least one study has been conducted which indicates that the implementation of the "well-matured" requirement has resulted in greater consumer acceptance of the fruit than existed prior to 1980. Further, the shipments of "well-matured" fruit, as opposed to "mature" fruit have helped the industry's market expansion efforts. In fact, the requirement has been generally well received by the industry, retailers, and the consuming public.

In fact, one commenter submitted a *Final Report of California Summer Fruits Retailer Research* by Ervin D. Thuerk. Mr. Thuerk is a marketing consultant with the Thuerk Pro-Con Company in Westlake Village, California. Mr. Thuerk directed a project to, among other things, pursue individual retailers' attitudes and their wants and needs for fruit quality and maturity. Meetings were held with twenty-five companies in approximately twenty cities, representing nearly 17,000 retail supermarkets, which equals a 38.7 percent share of the total industry units operated. Information was obtained on: (1) Product needs in the fresh produce industry; (2) retail marketing trends and how they are changing; (3) consumer attitudes and their changing wants and needs; (4) the development of future programs for the marketing of California summer fruits; and (5) attitudes toward industry standards and marketing programs. The findings indicate that early season fruit which is picked immature does not provide satisfaction to the consumer and does not encourage repeat purchases, and does not benefit the market. Fruit has to look good to get the consumer to buy it, but it must also taste good to foster additional sales. There is definitely a lag effect on sales from poor eating quality on the varieties which follow. When this occurs prices are depressed because the pipelines are filled with poor fruit, according to the executives interviewed.

In addition, a marketing extension pomologist from the University of California at Davis indicated that in the late 1970's the post harvest performance of a number of commercial peach cultivars had been evaluated. In these tests, researchers found that low maturity fruit tended to be more susceptible to bruising (especially vibration bruising), and also more susceptible to flesh browning following bruising. He further indicated that size is generally correlated with maturity in fruits. Typically in any population of fruits, the smallest size fruits will be lower in sugars, and often less physiologically mature, than larger fruits. He went on to say that this is especially true in a climate lake California, where the bloom period is normally prolonged and thus size may indicate the length of the growing season for the individual fruits.

The Thuerk report described earlier also addresses the comments that the "well-matured" requirement does not reflect the different needs of buyers in markets far from the production area compared to buyers in nearby markets.

In addition, a comment from the Executive Vice President of the Canadian Fruit Wholesalers Association indicated that some of its members feel that the current "well-matured" standard has played an important role in keeping high quality consumer acceptable fruit grown in the United States available in Canadian markets. The members of the association polled felt that a change from the "well-matured" to the mature standard would be regressive and would hurt sales. Along the same lines, a buyer in Chelsea, Massachusetts, indicated that it is extremely important for California packers to maintain the high quality, taste, appearance, and shelf life that their customers have come to expect. To continue its trend of buying more and more fruit, the buyer indicated that "well-matured" standard should be maintained.

In response to the commenter who asserted that the tests currently in effect are more restrictive than when the "well-matured" requirement was implemented in 1980, there has been an increase in the number of color chips used. However, the initial chips were not considered adequate to cover the variations in color among the numerous varieties. As a result, gradations in color have been added to more accurately reflect the characteristics of the many varieties of peaches. Therefore, the number of color chips *per se* does not support the contention that the color chips are more restrictive now than there were in 1980 and 1981.

One commenter stated that the price received for "well-matured" fruit has not adequately compensated for the increase in harvesting costs that have been incurred. However, the commenter did not document this claim. Further, the "well-matured" requirement has in general contributed to the economic health of the peach industry. More than 108,295,000 packages of California peaches have been inspected and shipped since the "well-matured" requirement became effective in 1980. Also, when the growers under this program participated in 1986-87 in a referendum to determine industry support for the peach marketing order program, a majority of those voting favored continuance of the program. It is doubtful that growers would favor continuing a program that resulted in considerable lost profits.

One commenter expressed the view that the maturity levels have been drastically raised to control volume as opposed to causing better consumer quality fruit to reach the market. One commenter indicated that this is evidenced by the decrease in packages shipped per acre from 1980 to 1987 even though increasing acreage was coming into production with a substantially higher number of trees planted per acre. However, this commenter's evaluation is inconclusive because he did not consider other factors in addition to the "well-matured" requirement that could affect the amount of peaches shipped to the fresh market. Other factors could lead to a reduced number of cartons shipped per acre, such as age of the trees, weather, cultural practices, and

failure to meet other types of handling requirements such as minimum size requirements.

One commenter requested an exemption for "leaf spots" and recommended a 10 percent exemption from the "well-matured" requirement be established as long as the fruit otherwise meets the U.S. No. 1 standard. These recommendations are being referred to the committee for evaluation.

In view of the foregoing, this action adopts, the proposed maturity requirements described above to recognize the interest in California peach growers and handlers in maintaining the quality and maturity of the peaches they market. As stated previously, in 1979, the committee reported that peaches picked and packed at the minimum standard of maturity "mature," were rather severely criticized at destination. The evidence indicates that the "well-matured" requirement in effect since that time has resulted in more consumer acceptance and the expansion of markets for California peaches.

We do, however, believe that a more specific definition of "well-matured" could be helpful. Therefore, comments are invited on developing a definition with more specificity.

In addition to the comments received on the size and maturity requirements, the Department received comments on the variance procedures described in the proposed rule. The proposal stated that: "The Federal or the Federal-State Inspection Service has the authority to make variances for any variety from any guide or tests, including those in Table I, during the season to reflect changes in crop or weather conditions that would make the existent guide an inappropriate measure of "well-matured."

The purpose of this change was to relieve the maturity subcommittee of the burden of making variances during the season because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their own businesses.

However, comments from the committee and officials from the Federal-State Inspection Service indicated that the committee and its maturity subcommittee should continue to play a direct role in making final determinations on making changes and granting variances in the maturity guides used in determining whether the fruit meets the "well-matured" standard. The commenters indicated that these very important decisions should not rest solely in the hands of one group, but they should be fair and timely because of the perishability of the commodity.

Comments received from the California Department of Food and Agriculture (CDFA) indicated that full responsibility to allow or disallow variances from color chip requirements should not be placed on the inspection service. The comment indicated that the CDFA and Federal-State Inspection Service has provided and will continue to provide expert advice on the condition or maturity of the fruit.

The committee suggested that the first contact should be with the Federal-State Inspection supervisor so the supervisor would first be able to review the problem to determine if the problem is with maturity or with interpretation of an individual inspector. The committee pointed out that in the past, the supervising inspector has been able to resolve many issues by working with the grower or shipper and the packing house inspector. If the situation could not be resolved to the satisfaction of the inspection service and the requester, then the requester would ask for a maturity variance.

In view of this, the Department has decided to specify in the regulations procedures for handling variances during the current and subsequent season which are similar to those currently used. In addition, in order to respond to comments that there is no recourse to adverse decisions of the maturity subcommittee, this interim final rule establishes a procedure for appealing those decisions. These procedures are specified in paragraph (a)(1) of § 917.459.

Under these procedures, a grower or handler may make a request for a variance from the maturity guide by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. This fieldman would call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site. If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall take into account written comments, observations, and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two days from the time the request for variance is received.

Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Because of the large geographical area involved and the need for timely decisions, the subcommittee may hold telephone meetings. A majority of the subcommittee must vote in favor of variance. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and to the Department's California Marketing Field Office in Fresno. If the requestor is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal as described later.

If after on-site review of the request neither the fieldman nor the inspection official believe a variance is warranted, the variance will not be granted and the matter will not be referred to the maturity subcommittee. The requester however may file an appeal from this determination in accordance with the procedure described below.

To file an appeal, the requester shall notify the Peach Commodity Committee manager who will immediately refer the appeal to the Appeal Committee established by this rule. It is important that the members of the Appeal Committee are different from those serving on the maturity subcommittee which makes the initial determination. It is also important that members of the Appeal Committee are knowledgeable about crop and maturity conditions in the industry. Therefore, the Appeal Committee shall consist of the Chairman of the Plum Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Peach Commodity Committee manager is notified of the appeal, recognizing that a final decision must be made promptly. A majority vote

of the Appeal Committee is needed to grant a variance. The Appeal Committee may hold telephone meetings in order to facilitate the decisionmaking process. The Appeal Committee shall prepare a written report of its determination and the reasons thererfor.

A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

Another change from the proposal is that any decision to grant a variance for a particular peach variety will not automatically apply to all growers and handlers of that variety throughout California. The committee and other commenters have pointed out that the granting of variances on an across-the-board basis throughout the state may not be appropriate. Because of the differences in weather and growing conditions that occur throughout the growing area a variety grown in the San Joaquin Valley may be "well-mature" at a lesser degree of color than an orchard of the same variety in the upper San Joaquin Valley. This condition is sometimes significant and can even occur in neighboring orchards.

The inspection and industry officials designated to make these variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area.

It is the Department's view that the change to delete two varieties no longer produced in commercially significant quantities from variety-specific size requirements and to change size requirements for peaches shipped in No. 12B standard fruit (peach) boxes during the period November 1 through July 2 will not be detrimental to small entities. The change to clarify and revise the maturity requirements for peaches is intended to foster and facilitate a greater understanding of these requirements within the peach industry and, as such, would not result in additional costs. The change to the "well-matured" guide for the Prima Fire variety of peaches will make maturity determination more accurate.

Based on the above, the Administrator of AMS has determined that the issuance of this interim final rule will not have a signficant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendations, the comments received in favor and opposition, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1988 crop peaches have begun and this action should cover as much of the 1988 crop as possible; and (2) the maturity requirements set forth below are substantially the same as currently implemented; and (3) this interim final rule relaxes size requirements for two varieties of peaches.

The actions set forth below are being issued on an interim final basis with opportunity for written comments rather than as a final rule so interested persons will be able to provide input on the maturity modifications and still allow the maturity procedures to be used for as much of the 1988 shipping season as possible. An opportunity needs to be provided for interested persons to file comments, but, as mentioned earlier, it is imperative that the size, maturity requirements and variance procedures apply to as much of the 1988 crop as possible.

The committee's recommendation, other information, and all written comments timely received in response to this interim final with request for comments will be considered prior to any finalization of this interim final rule. Commenters are encouraged to submit their views in support of or in opposition to this interim final rule. Any pertinent data to support views and comments should also be submitted.

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.459 is revised to read as follows:

§ 917.459 Peach Regulation 14.

(a) No handler shall ship:

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade, except that the peaches shall be "well-matured," rather than "mature," but not overripe or shriveled.

(i) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or the Federal-State Inspection Service will use such tests as if deems proper. A variance for any variety from the application of the maturity guides specified in Table I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well-matured." The maturity determination variance procedure is set forth as follows:

(ii) A grower or handler may initiate a request for variance from a maturity guide (e.g., color chip) by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. This fieldman will call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site.

(iii) The committee fieldman and the officer-in-charge accompany the requester to the site.

(iv) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall take into account written comments, observations and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two days from the time the request for variance is received. A majority of the subcommittee must vote in favor of the variance for it to be implemented. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and the Department's California Marketing Field Office in Fresno. If the requester is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal in accordance with paragraph (a)(1)(vi) of this section.

(v) If neither the fieldman nor the inspection official believes a variance is warranted, the variance shall not be granted. The requester may file an appeal from this determination as specified in paragraph (a)(1)(vi) of this section.

(vi) To file an appeal, the requester shall notify the Peach Commodity Committee manager who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Plum Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Peach Commodity Committee manager is notified of the appeal. A majority vote of the Appeal Committee is needed to grant a variance. The Appeal Committee may hold telephone meetings. The Appeal Committee shall prepare a written report of its determination and the reasons therefor. A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

(2) Any package or container of Desertgold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(2)(i) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) Any package or container of any type of Morning Sun or Springold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 84 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(3) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 79 peaches.

(4) Any package or container of Babcock, Coronet, Early Coronet, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Crest, Golden Lady, Honey Red, June Crest, June Lady, Kern Sun, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Ray Crest, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50–178 variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(4) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 65 peaches in the box; or

(5) Any package or container of Angelus, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Belmont, Berenda Sun, Blum's Beauty, Cassie, Cal Red, Carnival, Early O'Henry, Elberta, Elegant Lady, Fairmont, Fairtime, Fay Elberta, Fayette, Fire Red, Flamecrest, Fortyniner, Franciscan, July Lady, July Sun, Kings Lady, Lacey, Mary Ann, O'Henry, Pacifica, Parade, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Ryan's Sun, Scarlet Lady, Sparkle, Sprague Last Chance, Suncrest, Sun Lady, or Toreador variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(5) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 64 peaches.

TABLE I

Column A variety	Column B maturity guide
Angelus	I
Armgold	D
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Babcock Type (Ask Supervising Insp.)	
Bella Rosa	G
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Bonjour	F
Cardinal	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Delp	C
Desertgold	B
Early Coronet	D
Early Elberta	C
Early Fairtime	I
Early O'Henry	I
Early Royal May	G
Early Top	G
Elberta	B
Elegant Lady	M
Fairtime	G
Fay Elberta	C
Fayette	I
Fiesta	I
Fire Red	I
First Lady	D
Firecrest	I
Flamecrest	I
Flavorcrest	G
Flavor Red	G
Fortyniner	F
Franciscan	G
Golden Lady	F
Halloween	I
Honey Red	G
JJK-1	G
Jody Gaye	F
Judy Elberta	C
July Lady	G
June Crest	G
June Lady	G
Kearney	I
Kern Sun	H
Kim Elberta	C
King's Lady	I
Lacey	I
Mardigras	G

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TABLE I—Continued

Column A variety	Column B maturity guide
May Crest	G
May Lady	G
Merrill Gem	G
Merrill Gemtree	G
Morning Sun	D
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Prauss Suncrest	F
Prima Fire	H
Ray Crest	G
Red Cal	I
Redglobe	C
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rio Oso Gem	I
Royal April	D
Royal Gold	D
Royal May	G
Ryan's Sun	I
Scarlet Lady	F
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Summerset	I
Suncrest	G
Sun Lady	I
Toreador	I
Treasure	F
Willis Red	G
Windsor	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guide applicable to the varieties not listed above.

(b) During the period November 1 through July 2 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

(1) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with requirements of standard pack, not more than 96 peaches in the box; or

(2) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, no more than 65 peaches in the box; or

(3) Such peaches in any container when packed other than as specified in paragraphs (b) (1) or (2) of this section are of a size that a 18-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(c) During July 3 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

(1) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with requirements of standard pack, not more than 80 peaches in the box; or

(2) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(3) Such peaches in any container when packed other than as specified in paragraphs (c) (1) or (2) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

(d) As used herein, "U.S. No. 1," "mature," and "standard pack" mean the same as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); and "No. 22D standard lug box" and "No. 12B standard fruit (peach) box" mean the same as defined in section 1380.19(18) of the "Regulations of the California Department of Food and Agriculture." "Well-matured" means a condition distinctly more advanced than "mature."

Dated: May 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-12037 Filed 5-26-88; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 4, 11, 25, 30, 31, 32, 34, 35, 40, 50, 60, 61, 70, 71, 73, 74, 75, 95, and 110

Retention Periods for Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to establish a definite retention period for each record that an NRC application or licensee for a materials or facility license is required to maintain. This action is necessary to comply with the Office of Management and Budget requirement that a specific retention period be identified for each record. The final rule also establishes a uniform standard acceptable to the NRC for the condition of a record throughout each specified retention period. This action is expected to reduce the overall recordkeeping burden for NRC applicants and licensees by use of uniform and specific retention periods for each recordkeeping requirement.

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Brenda J. Shelton, Acting Chief, Records and Reports Management Branch, Division of Information Support Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8132.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission's (NRC) regulations require that applicants and licensees retain a variety of records for various periods of time. Licensees must also retain certain plans and procedures for routine operation and emergency situations and file reports of certain occurrences and events. The NRC reviewed its recordkeeping requirements to determine how long the required records should be retained. This rule reflects the results of that review and of the public comments received on the proposed rule. The NRC did not include 10 CFR Part 20 in its review. The record retention requirements contained in Part 20 were examined and modified as part of the proposed revision to Part 20 that was published for public comment in the **Federal Register** on December 20, 1985, (50 FR 51992) and republished on January 9, 1986 (51 FR 1092). Codification of these amendments and amendments in certain published proposed rules combined with this final rule will establish uniform retention periods for all NRC recordkeeping requirements. NRC also intends to conform record retention requirements in future rules to the four uniform periods contained in this rule.

Previously, NRC regulations sometimes specified that a record be retained for a specific period of time. These periods varied widely from 1 or 2 years, to the 40-year life of a reactor license, or to the completion of decommissioning for some licenses. In other instances, the regulation specified that a record be kept until the Commission authorized its disposition, and in others, that it be retained indefinitely. Some parts of NRC regulations specified the condition of a record acceptable to the NRC throughout its required retention period; others did not.

This rule amends regulations in 19 parts of Title 10 to require that certain records in these parts be retained for specific periods. The rule also provides for all parts to Title 10, Chapter I, the condition of a record acceptable to the NRC throughout its retention.

This rule also establishes four specific retention periods to be used throughout 10 CFR Chapter I. With the exception of one 6 month retention period at 10 CFR 70.58(h), uniform retention periods of 3 years, 5 years, 10 years, or the life of the component, activity, area, or facility are being codified to simplify the system for retaining NRC records. These particular four periods, although not ideal for every record retention requirement, seem to be the best choices for NRC record needs. Uniform periods were recommended to the NRC by the Nuclear Information and Record Management Association (NIRMA) based on the nuclear industry's input to NIRMA. Three of the uniform periods coincide with the retention periods for quality assurance (QA) records in Parts 50 and 71; the fourth coincides with the retention periods for records such as those covered by technical specifications.

The NRC recognizes that technical specifications for each nuclear power plant include record retention requirements that may, in some cases, differ from those set out in this rule. The requirements in this rule take precedence over and supersede any conflicting requirements presently in the technical specifications. Therefore, the Office of Nuclear Reactor Regulation (NRR) intends to issue a generic letter that would provide guidance to licensees for revising their technical specifications to conform with this rule and would include model technical specifications to follow for achieving this conformance.

During the course of reviewing 10 CFR 50.36, "Technical Specifications," the staff found that this section does not clearly reflect the difference in recordkeeping and reporting requirements for reactors licensed under different sections of the regulations. Specifically, commercial and industrial facilities are licensed under § 50.21(b) or § 50.22 and have detailed notification and reporting requirements delineated in § 50.72 and § 50.73, respectively. Therefore, specific cross references to § 50.72 and § 50.73 have been added to § 50.36 where appropriate. Facilities licensed under §50.21(a) for medical therapy uses and facilities licensed under § 50.21(c) for research and development activities do not have separate sections dealing with notification and reporting. The reporting requirements on the automatic safety system and for these types of reactors are contained within § 50.36. Accordingly, language is being added to § 50.36(c)(1)(ii)(A) to make it conform with § 50.72(b)(2)(iii) and § 50.73(a)(2)(v).

An effort has been made to use consistent terminology with regard to paperwork throughout this multi-part rule. For example, the term "retain" conveys the idea of keeping secure or intact and the term "maintain" continuing to preserve and update, in this case, a record. Consistent terminology and specific recordkeeping requirements and retention periods should assist an NRC applicant or a licensee in complying with these requirements.

The changes resulting from this rule should result in an overall reduction in the recordkeeping burden imposed on the NRC applicant or licensee. The major reduction in burden results from establishing 126 specific retention periods, primarily three years or the life of a license, for records that up to now were retained indefinitely. This major reduction, plus four other reductions of retention periods by two years, offsets the increase in retention periods for 54 records; 42 cases by one year, 10 cases by two years, 1 case by two and one half years, and 1 case by three years. Based on staff's understanding of current industry practices, the increases in retention periods would either not impose any additional burden or could be readily accommodated within current equipment configurations and, therefore, would represent no appreciable increase in burden. A paragraph describing the form and condition of a record acceptable to the NRC for review is being codified in ten parts. This requirement is comparable to similar provisions currently included in other parts of the NRC regulations.

Specifying clearly in NRC regulations what records to retain, how long to retain them, and the condition of a record required for NRC inspection is mutually beneficial to the applicant or licensee and to the NRC. The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) added impetus to the NRC's interest in the regulatory burden imposed on an applicant or a licensee by the preparation and retention of records. Furthermore, OMB's regulations implementing the Paperwork Reduction Act require that record retention requirements imposed by Federal regulations contain specific retention periods. The NRC complies with the Act's requirement for Office of Management and Budget (OMB) review of the information collection requirements in each rulemaking. In addition, two documents on paperwork are being prepared for publication in the NUREG-series: One document will be based on Regulatory Guide 10.1, which is a compilation of reporting requirements for persons subject to NRC regulations, and the other document will summarize the record retention periods for the recordkeeping requirements contained in NRC regulations. These companion documents should be useful to an NRC applicant or a licensee.

On October 28, 1987, the NRC published the proposed rule in the **Federal Register** (52 FR 41442). The comment period ended on December 28, 1987.

Summary of Public Comments

Comments were received from sixteen respondents comprised of eight power reactor licensees, three industry groups, two law firms, one university, one fuel fabrication plant operator, and one private citizen. Copies of the comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, DC. Fifteen of the sixteen commenters generally agreed with the proposed amendments and one commenter disagreed.

Individual who disagreed did not identify any specific records but stated that "reduction of many record retentions to three years would invite cheating, criminal activity, and the ignoring of rules set up to protect the public." The Commission does not agree with this comment. The Commission has an extensive compliance monitoring and inspection program. While examination of licensee record is an important part of the program, it is not the only means by which NRC determines whether licensees are operating safely. Moreover for those requirements covered by the three year minimum period, the Commission believes that records covering the previous three year period will be sufficient to assist the agency in judging compliance or noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident. In the situation alluded to by the commenter, large irradiators and large medical licensees possessing significant quantities or radioactive material are inspected annually, hence the three year minimum period is adequate.

The remaining fifteen commenters agreed with the proposed changes with the following general comments:

1. *Comment.* Three commenters recommended that the Commission specify in the "statement of Considerations" that a Technical Specification amendment made to conform to this rule is not required and that "pen and ink" changes are

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acceptable. Two commenters suggested that fees should not be required for these changes.

Response. The Commission agrees that a Technical Specification amendment to conform to the adminstrative requirements of this rule is not required and that "pen and ink" changes will suffice. However, should licensees desire to amend their Technical Specifications to conform to the administrative requirement of this rule, the licensees would not be required to submit fees under 10 CFR Part 170.

2. *Comment.* One commenter suggested that the general statement appearing in the Supplementary Information which states that requirements in this rule take precedence over and supersede any conflicting requirements in the Technical Specifications should be addressed in 10 CFR 50.36 and, as appropriate, referenced in other 10 CFR Parts.

Response. The Commission believes that the information provided in the "Supplementary Information" is adequate. 10 CFR 50.71(d)(2) currently addresses the precedence issue for 10 CFR Part 50 licensees and applicants. Reference to § 50.71(d)(2) in other 10 CFR Parts is not necessary.

3. *Comment.* Three commenters recommended that the maintenance of records in electronic media such as computerized records and optical disks be addressed.

Response. The Commission does not object to the use of electronic media for the storage of records as long as legible, accurate, and complete records can be produced in hardcopy throughout the duration of the required retention period. Records such as letters, drawings, specifications, etc. must include all pertinent features such as stamps, initials, and signatures. Adequate safeguards against tampering with and loss of records must also be maintained. The rule has been changed to address the use of electronic media.

4. *Comment.* One commenter recommended that the records to be retained under 10 CFR Part 20 be addressed in this rule.

Response. The Commission believes that the pending amendment to 10 CFR Part 20 is the most efficient and economical means for addressing the records contained in that part. The amendment to 10 CFR Part 20 will meet all of the record retention requirements established by this rule. This approach will ensure that the recordkeeping requirements are consistent with changes to the technical and administrative aspects to Part 20 that may result from the public comments and additional staff review of the requirements included in that part.

5. *Comment.* One commenter recommended that the increased record retention periods remain as they are currently specified in 10 CFR Chapter I and another specifically questioned the increased retention period for 53 records.

Response. The Commission has modified many retention periods to streamline and standardize its record retention requirements and to reduce the burden imposed by those requirements. There are instances in which an individual record retention period has been increased. However, we believe that, in general, the rule will result in an ultimate benefit to the majority of the applicants and licensees as well as to the NRC.

6. *Comment.* One commenter stated that the proposed rule changes the current requirements of § 74.31 from a performance-oriented rule to one containing specific recordkeeping requirements. The commenter believes that the proposed changes complicate the licensee's ability to devise its own recordkeeping system, compatible with its own operations, in accordance with a performance oriented rule, and that the proposed changes are unnecessary and should be eliminated.

Response. The Commission has reevaluated the proposed changes in light of this comment and has determined that the specific enumeration of records is not necessary. The current performance-oriented rule adequately provides for retention of records to demonstrate compliance with the Commission's requirements. The proposed change to § 74.31 has been deleted from the final rule.

7. *Comment.* Two commenters stated that the records retention period for the Safety Analysis Report is not obvious and needs to be addressed.

Response. Section 50.71(e) requires licensees to periodically update their FSAR's. Implicit in this requirement is the retention of the updated FSAR by licensees for the duration of their licenses. The Commission believes that the retention period of an updated FSAR is inherent in its existing regulations. Nevertheless, 10 CFR 50.71(e)(6) has been added to the rule to specify that the updated Final Safety Analysis Report (FSAR) is to be retained by the licensees until the NRC terminates their licenses.

8. *Comment.* One Commenter stated that the rule does not make it clear that the retention periods specified are minimum requirements.

Response. The commission does not object to licensees/applicants retaining records beyond the retention period required by NRC regulations. The intent of retention periods for recordkeeping requirements is to establish the minimum retention necessary for compliance with NRC regulations. Should licensees or applicants elect to retain records beyond the retention period required by the NRC, they have that option. Licensees should be aware, however, that NRC's recordkeeping requirements apply only to NRC requirements for the information. Other Federal, State, or local agencies may have requirements that may apply now or in the future.

9. *Comment.* One commenter stated that the recordkeeping requirement pursuant to § 50.54(p)(2) has not been addressed and suggested that the retention be changed to three years.

Response. The omission of the recordkeeping requirement contained at § 50.54(p)(2) was an oversight and has been included in the final rule with a three year retention period.

10. *Comment.* One commenter suggested that the minimum retention period be changed to "three years or until the next inspection, whichever is longer," stating that three years is an insufficient retention period because some records would be destroyed before the next inspection.

Response. While some inspection frequencies are longer than three years, the Commission believes that records covering the previous three year period are sufficient to permit the NRC to judge compliance or noncompliance, to act on possible noncompliance, and to examine necessary facts following an incident. Licensees possessing materials which could pose a significant risk to public health and safety, such as irradiators or large medical facilities, are inspected annually. The three year period, while not ideal for all situations, is a reasonable period which generally satisfies NRC's record needs and conforms to OMB guidelines by providing for the availability of records while not imposing any undue burden on the licensees.

11. *Comment.* One commenter stated that increases in retention periods from two to three years are unnecessary. The commenter believes that present inspection cycles make two years an adequate retention period and suggested that the current two year retention periods for records contained in §§ 70.22(k), 71.9(a), and 110.53(b) be retained.

Response. As explained in the proposed rule, the three year period was selected as one of four periods to provide a uniform system for retention of all NRC required records. While it is not ideal for all situations, it is a reasonable period which generally satisfies NRC's record needs and conforms to OMB guidelines while not imposing any undue burden on licensees. The Commission believes that any added burden on licensees by an increase, such as from two to three years, is slight and is balanced by the benefit of a uniform system for overall records retention.

12. *Comment.* One commenter stated that the requirements in § 71.135(a) to keep QA records for three years beyond the date the licensee last engages in the activity for which the QA procedures were developed and to keep superseded portions of written procedures for three years are unnecessary and should be deleted. The commenter believes that it is sufficient to retain the QA records only for the life of the package to which they apply.

Response. The Commission disagrees with this comment. Quality assurance records, such as design, fabrication, or predetermination tests, must be retained beyond the end of the service life of the package so that they will be available for examination by the Commission in any analysis following an accident, incident, or other problem involving public health and safety.

13. *Comment.* One commenter stated that the requirement in § 70.24(a)(3) to retain the superseded portion of emergency procedures is unnecessary and should be deleted.

Response. The Commission disagrees with the comment. It is essential that, following any incident in which the use of emergency procedures may be involved, NRC be able to examine all of the facts that existed at the time of the incident, including the emergency procedures that were in effect at that time. Because it is possible, if not probable, that emergency procedures may be revised following an emergency incident based on the licensee's experience in using the procedures, it is necessary that superseded portions be retained for the minimum period, three years.

14. *Comment.* One commenter stated that the requirement in § 70.42(d) to keep copies of licenses, certificates, and other documents used to verify that a recipient of licensed material is authorized to receive it is not necessary and should be deleted.

Response. The Commission disagrees with the comment and believes that NRC needs to be able to examine these records to ensure that licensees are complying with the requirement that they verify the authorization of the persons receiving licensed radioactive material.

15. *Comment.* One commenter stated that the backfit rule, § 50.109, should apply because the recordkeeping rule adds new record retention requirements to various sections of 10 CFR Part 50.

Response. The Commission disagrees with the comment. Section 50.36 is the only section within Part 50 that has been revised to clarify recordkeeping requirements. However, all records specified in this section are currently required by other provisions contained in 10 CFR Chapter I. As stated on page 41443 of the "Federal Register Notice" for the proposed rule published October 28, 1987, the backfit rule, 10 CFR 50.109, does not apply to the records retention rule.

16. *Comment.* One commenter stated that the specific uniform record retention periods being proposed do not conform to the retention periods for the Nuclear Liability Insurance Records identified in ANI/MAELU Information Bulletin 80–1A which requires the records to be maintained for the life of the nuclear liability insurance policy plus ten years.

Response. The record retention requirements set forth in the 10 CFR Chapter I establish the minimum retention periods necessary for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety. Retention of records beyond the minimum period is at the option of the licensee. Licensees should be aware, however, that NRC's recordkeeping requirements apply only to NRC requirements for the information. Other Federal, State, or local agencies may have requirements that may apply now or in the future.

17. *Comment.* One commenter stated that the lack of clear definitions for terms such as "legible" and "authenticated" has the potential to create substantial confusion as to what records are acceptable.

Response. The following definitions of "legible" and "authenticated" apply to records retained under the NRC's regulatory authority. The term "legible" denotes that the records can be read and deciphered within a reasonable amount of time. "Authenticated" denotes that the data has been verified for completeness and accuracy by an authorized individual and that it is a true representation of the original data. This also addresses one commenter's concern about what constitutes a record capable of producing a clear copy.

18. *Comment.* One commenter stated that the requirement in 10 CFR Part 73, Appendix B, Criteria I.C., that a physical test be performed within thirty days of a physical examination was deleted in August 1987 and should not be reintroduced.

Response. The requirement to conduct a medical examination within the preceding 30 days of the physical fitness qualification was revised after publication of the proposed rule. On January 7, 1988 (53 FR 403) Criteria I.C. was revised to state that subsequent to the medical examination, physical fitness shall be demonstrated. This revision is reflected in the final rule.

19. *Comment.* One commenter stated that the requirement in § 73.70(d) to list the "reason for entry," into a vital area was deleted and should not be reintroduced.

Response. The Commission agrees with the comment. The requirement has been deleted from the final rule.

20. *Comment.* One commenter noted that § 50.49(d) contains revised wording that apparently makes this section redundant with existing § 50.49(j).

Response. The Commission disagrees that the recordkeeping requirement contained in § 50.49(d) is redundant to that contained in § 50.49(j). Section 50.49(d) requires the retention of the list of electrical equipment important to safety and information specified in paragraphs (d)(1), (2), and (3) only. Section 50.49(j) requires the retention of records to support the qualification of equipment, but reiterates that there are qualification records contained in § 50.49(d) that must be retained for the same period.

21. *Comment.* One commenter recommended that the Commission update Regulatory Guide 10.1 to clarify and simplify recordkeeping requirements. The commenter also recommended that all recordkeeping requirements be consolidated into a single location within the regulations.

Response. Regulatory Guide 10.1 is a partial listing of regulatory reporting requirements. As indicated in the Supplementary Information, NRC will publish a separate compilation of NRC regulatory reporting and recordkeeping requirements in the NUREG series. The Commission believes the publication of these compilations will preclude the need to group all recordkeeping requirements in a single location within the regulations.

22. *Comment.* One commenter questioned why the retention period for safeguards contingency plans varies depending upon whether the special nuclear material is in transit or at a fixed location and cited § 73.26(e)(3) and

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§ 73.40(b) as examples of this discrepancy.

Response. The record retention periods for §§ 73.26(e)(3) and 73.40(b) differ because the individual requirements are different. Section 73.26 covers licenses to transport special nuclear material (SNM) where possession of the material occurs at discrete times and terminates when the last shipment is completed through acknowledged receipt by the receiver. On the other hand, § 73.40(b) covers licenses to hold SNM at fixed sites where possession of material is more continuous and it is more difficult to confirm that possession has ended and the license can be terminated.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusions 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This final rule has been submitted to the Office of Management and Budget for review and approval. Requirements in nineteen parts included in this rule were assigned approval numbers by the Office of Management and Budget as follows:

Part 4—3150-0053; Part 11—3150-0062; Part 25—3150-0046; Part 30—3150-0017; Part 31—3150-0016; Part 32—3150-0001; Part 34—3150-0007; Part 35—3150-0010; Part 40—3150-0020; Part 50—3150-0011; Part 60—3150-0127; Part 61—3150-0135; Part 70—3150-0009; Part 71—3150-0008; Part 73—3150-0002; Part 74—3150-0123; Part 75—3150-0055; Part 95—3150-0047; Part 110—3150-0036.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), and NRC Size Standards (50 FR 50241; December 9, 1985), the Commission hereby certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The rule amends parts of the NRC regulations by specifying a period to retain each required record. The rule affects most facility and materials licensees by reducing the regulatory burden of retaining records for an unnecessarily long or indefinite period. Therefore, it is not expected to have a significant economic impact on any licensee. Comments on the expected economic impact of this rule on small entities were solicited; however, none were received.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to the rule. The rule is purely administrative in nature, and therefore does not result in the "modification of or addition to systems, structures, components, or design of a facility * * * or the procedures or organization required to design, construct, or operate a facility * * *". See 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Parts 4, 11, 25, 30, 31, 32, 34, 35, 40, 50, 60, 61, 70, 71, 73, 74, 75, 95, and 110

Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 4, 11, 25, 30, 31, 32, 34, 35, 40, 50, 60, 61, 70, 71, 73, 74, 75, 95, and 110.

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

1. The authority citation for Part 4 continues to read as follows:

Authority: Sec. 101, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. A new § 4.6 is added to read as follows:

§ 4.6 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

3. Section 4.32 is revised to read as follows:

§ 4.32 Compliance reports.

(a) Each recipient shall keep records and submit to the responsible NRC official, timely, complete, and accurate compliance reports at the times and in the form and containing the information that the responsible NRC official may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with this subpart.

(b) In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit necessary compliance reports to the primary recipient to enable the primary recipient to carry out its obligations under this subpart.

(c) The primary recipient shall retain each record of information needed to complete a compliance report pursuant to paragraph (a) of this section for three years or as long as the primary recipient retains the status of primary recipient as defined in § 4.4, whichever is shorter.

4. In § 4.125, the introductory text of paragraph (d) is revised to read as follows:

§ 4.125 Preemployment inquiries.

* * * * *

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant must be collected on separate forms. The recipient shall retain each form as a record for three years from the date the applicant's employment ends, or, if not hired, from the date of application. Each form must be accorded confidentiality as a medical record, except that:

* * * * *

5. In § 4.127, the introductory text of paragraph (d) is revised to read as follows:

§ 4.127 Existing facilities.

* * * * *

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop a transition plan setting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including handicapped persons, or organizations representing handicapped persons, and the plan is to meet with the approval of the NRC. The recipient shall retain a copy of the transition plan as a record until any structural change to a facility is complete. A copy of the transition plan

is to be made available for public inspection. At a minimum, the plan is to:

* * * * *

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

6. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 11.9 [Amended]

7. Section 11.9 is amended by changing "two years" to "three years" in the last sentence.

8. A new § 11.10 is added under the center heading "General Provisions" to read as follows:

§ 11.10 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawing, specification, must include all pertinent information such as stamps, initials, and signatures etc. The licensee shall maintain adequate safeguards against tampering with and loss of records.

9. In § 11.13, paragraph (b) is revised to read as follows:

§ 11.13 Special requirements for transportation.

* * * * *

(b) Each licensee who, 365 days after Commission approval of the amended security plan submitted in accordance with § 11.11(a), transports or delivers to a carrier for transport special nuclear material subject to the physical protection requirement of §§ 73.20, 73.25, 73.26, or 73.27 of this chapter shall confirm and record prior to shipment the name and special nuclear material access authorization number of all individuals identified in paragraph (a) of this section assigned to the shipment. The licensee shall retain this record for three years after the last shipment is made. However, the licensee need not confirm and record the special nuclear material access authorization number in the case of any individual for whom an application has been submitted and is pending before the NRC in accordance with paragraph (a) of this section.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

10. The authority citation for Part 25 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 25.11 [Amended]

11. Section 25.11 is amended by changing "two years" to "three years" in the last sentence.

12. In § 25.13, the existing test is designated paragraph (a) and a new paragraph (b) is added and the section heading revised to read as follows:

§ 25.13 Maintenance of records.

* * * * *

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 25.23 [Amended]

13. In § 25.23, the introductory text is amended by changing "one year" to "three years" in the fifth sentence.

§ 25.35 [Amended]

14. In § 25.35, the last sentence of the existing text is amended by changing "two years" to "three years."

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

15. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

16. In § 30.34, paragraph (g) is revised to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(g) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall test the generator eluates for molybdenum-99 breakthrough in accordance with § 35.14(b)(4) (i) through (iv) of this chapter. The licensee shall record the results of each test and retain each record for three years after the record is made.

* * * * *

17. In § 30.51, paragraph (c) is removed, paragraph (d) is redesignated (c), and paragraphs (a), (b), and (c)(1) are revised to read as follows:

§ 30.51 Records.

(a) Each person who receives byproduct material pursuant to a license issued pursuant to the regulations in this part and Parts 31 through 35 of this chapter shall keep records showing the receipt, transfer, and disposal of the byproduct material as follows:

(1) The licensee shall retain each record of receipt of byproduct material as long as the material is possessed and for three years following transfer or disposal of the material.

(2) The licensee who transferred the material shall retain each record of transfer for three years after each transfer unless a specific requirement in another part of the regulations in this chapter dictates otherwise.

(3) The licensee who disposed of the material shall retain each record of disposal of byproduct material until the Commission terminates each license that authorizes disposal of the material.

(b) The licensee shall retain each record that is required by the regulations in this part and Parts 31 through 35 of this chapter or by license condition for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the record must be retained until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(c)(1) Records which must be maintained pursuant to this part and Parts 31 through 35 of this chapter may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for

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producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

* * * * *

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

18. The authority citation for Part 31 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

19. In § 31.5, paragraph (c)(4) is revised to read as follows:

§ 31.5 Certain measuring, gauging, or controlling devices.[3]

* * * * *

(c) * * *

(4) Shall maintain records showing compliance with the requirements of paragraphs (c)(2) and (c)(3) of this section. The records must show the results of tests. The records also must show the dates of performance of, and the names of persons performing, testing, installing, servicing, and removing from the installation radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(i) Each record of a test for leakage or radioactive material required by paragraph (c)(2) of this section must be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of.

(ii) Each record of a test of the on-off mechanism and indicator required by paragraph (c)(2) of this section must be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of.

(iii) Each record that is required by paragraph (c)(3) of this section must be retained for three years from the date of the recorded event or until the device is transferred or disposed of.

* * * * *

20. A new § 31.12 is added to read as follows:

§ 31.12 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

21. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

22. A new § 32.3 is added to read as follows:

§ 32.3 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

23. The authority citation for Part 34 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

24. A new § 34.4 is added to read as follows:

§ 34.4 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy of a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 34.24 [Amended]

25. Section 34.24 is amended by changing "two years" to "three years" in the next to last sentence.

26. In § 34.25, paragraph (c) is revised to read as follows:

§ 34.25 Leak testing, repair, tagging, opening, modification, and replacement of sealed sources.

* * * * *

(c) The leak test must be capable of detecting the presence of 0.005 microcurie of removable contamination on the sealed source. An acceptable leak test for sealed sources in the possession of a radiography licensee would be to test at the nearest accessible point to the sealed-source storage position, or other appropriate measuring point, by a procedure to be approved pursuant to § 34.11(f). Each record of leak test results must be kept in units of microcuries [or disintegrations per minute (dpm)] and retained for inspection by the Commission for three years after it is made.

* * * * *

§ 34.26 [Amended]

27. Section 34.26 is amended by changing "two years" to "three years" in the last sentence.

28. In § 34.27, the introductory paragraph is revised to read as follows:

§ 34.27 Utilization logs.

Each licensee shall maintain current logs, which shall be kept available for three years from the date of the recorded event, for inspection by the Commission, at the address specified in the license, showing for each sealed source the following information:

* * * * *

29. In § 34.28, paragraph (b) is revised to read as follows:

§ 34.28 Inspection and maintenance of radiographic exposure devices, storage containers, and source changers.

* * * * *

(b) The licensee shall conduct a program for inspection and maintenance of radiographic exposure devices, storage containers, and source changers at intervals not to exceed three months or prior to the first use thereafter to ensure proper functioning of components important to safety. The licensee shall retain records of these inspections and maintenance for three years.

30. In § 34.29, paragraph (c) is revised to read as follows:

§ 34.29 Permanent radiographic installations.

* * * * *

(c) The alarm system must be tested at intervals not to exceed three months or prior to the first use thereafter of the source in the installation. The licensee shall retain records of these tests for three years.

31. In § 34.32, the introductory paragraph is revised to read as follows:

§ 34.32 Operating and emergency procedures.

The licensee shall retain a copy of current operating and emergency procedures as a record until the Commission terminates the license that authorizes the activity for which the procedures were developed and, if superseded, retain the superseded material for three years after each change. These procedures must include instructions in at least the following:

* * * * *

32. In § 34.33, paragraphs (b) and (e) are revised to read as follows:

§ 34.33 Personnel monitoring.

* * * * *

(b) Pocket dosimeters must be read and exposures recorded daily. The licensee shall retain each record of these exposures for three years after the record is made.

* * * * *

(e) Reports received from the film badge or TLD processor must be retained for inspection until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

33. The authority citation for Part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

34. A new § 35.5 is added to read as follows:

§ 35.5 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 35.27 [Amended]

35. Section 35.27 paragraph (c) is amended by changing "two years" to "three years."

§ 35.29 [Amended]

36. Section 35.29, paragraph (b) is amended by changing "two years" to "three years."

§ 35.50 [Amended]

37. Section 35.50, paragraph (e) introductory text is amended by changing "two years" to "three years."

§ 35.51 [Amended]

38. Section 35.51, paragraph (d) introductory text is amended by changing "two years" to "three years."

§ 35.53 [Amended]

39. Section 35.53, paragraph (c) introductory text is amended by changing "two years" to "three years."

§ 35.59 [Amended]

40. Section 35.59, paragraph (i) is amended by changing "two years" to "three years."

§ 35.70 [Amended]

41. Section 35.70, paragraph (h) is amended by changing "two years" to "three years."

§ 35.80 [Amended]

42. Section 35.80, paragraph (f) is amended by changing "two years" to "three years."

§ 35.92 [Amended]

43. Section 35.92, paragraph (b) is amended by changing "two years" to "three years."

§ 35.204 [Amended]

44. Section 35.204, paragraph (c) is amended by changing "two years" to "three years."

§ 35.310 [Amended]

45. Section 35.310, paragraph (b) is amended by changing "two years" to "three years."

§ 35.315 [Amended]

46. Section 35.315, paragraph (a)(4) is amended by changing "two years" to "three years."

§ 35.404 [Amended]

47. Section 35.404, paragraph (b) is amended by changing "two years" to "three years."

§ 35.406 [Amended]

48. Section 35.406, paragraph (d) is amended by changing "two years" to "three years."

§ 35.410 [Amended]

49. Section 35.410, paragraph (b) is amended by changing "two years" to "three years."

§ 35.415 [Amended]

50. Section 35.415, paragraph (a)(4) is amended by changing "two years" to "three years."

§ 35.610 [Amended]

51. Section 35.610, paragraph (c) is amended by changing "two years" to "three years."

§ 35.615 [Amended]

52. Section 35.615, paragraph (d)(4) is amended by changing "two years" to "three years."

§ 35.634 [Amended]

53. Section 35.634, paragraph (c) is amended by changing "two years" to "three years."

54. Section 35.634, paragraph (f) is amended by changing "two years" to "three years."

§ 35.636 [Amended]

55. Section 35.636, paragraph (c) is amended by changing "two years" to "three years."

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[3] Persons possessing byproduct material in devices under the general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the requirements of § 31.5 in effect on January 14, 1975.

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PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

56. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

57. In § 40.26, paragraph (c)(2) is revised to read as follows:

§ 40.26 General license for possession and storage of byproduct material as defined in this part.

* * * * *

(c) * * *

(2) The documentation of daily inspections of tailings or waste retention systems and the immediate notification of the appropriate NRC regional office as indicated in Appendix D to 10 CFR Part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) that if not corrected could lead to failure of the system and result in a release of tailings or waste into unrestricted areas; and any additional requirements the Commission may by order deem necessary. The licensee shall retain this documentation of each daily inspection as a record for three years after each inspection is documented.

* * * * *

58. In § 40.35, paragraph (e)(3) is revised to read as follows:

§ 40.35 Conditions of specific licenses issued pursuant to § 40.34.

* * * * *

(e) * * *

(3) Keep records showing the name, address, and a point of contact for each general license to whom he or she transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in § 40.25 or equivalent regulations of an Agreement State. The records must be retained for three years from the date of transfer and must show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

59. In § 40.61, paragraph (c) is removed, paragraph (d) is redesignated (c), and paragraphs (a), (b), and (c)(1) are revised to read as follows:

Records, Reports, and Inspections

§ 40.61 Records.

(a) Each person who receives source or byproduct material pursuant to a license issued pursuant to the regulations in this part shall keep records showing the receipt, transfer, and disposal of this source or byproduct material as follows:

(1) The licensee shall retain each record of receipt of source or byproduct material as long as the material is possessed and for three years following transfer or disposition of the source or byproduct material.

(2) The licensee who transferred the material shall retain each record of transfer or source or byproduct material until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(3) The licensee shall retain each record of disposal of source or byproduct material until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(4) If source or byproduct material is combined or mixed with other licensed material and subsequently treated in a manner that makes direct correlation of a receipt record with a transfer, export, or disposition record impossible, the licensee may use evaluative techniques (such as first-in-first-out), to make the records that are required by this Part account for 100 percent of the material received.

(b) The licensee shall retain each record that is required by the regulations in this part or by license condition for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, each record must be maintained until the Commission terminates the license that authorizes the activity that is subject to the recordkeeping requirement.

(c)(1) Records which must be maintained pursuant to this part may be the original or reproduced copy or microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

* * * * *

60. In Appendix A to Part 40, I. Technical Criteria, the second paragraph of Criterion 8 and Criterion 8A are revised to read as follows:

Appendix A [Amended]

I. Technical Criteria

* * * * *

Criterion 8 * * *

Checks must be made and logged hourly of all parameters (e.g., differential pressures and scrubber water flow rates) that determine the efficiency of yellowcake stack emission control equipment operation. The licensee shall retain each log as a record for three years after the last entry in the log is made. It must be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action must be taken when performance is outside of prescribed ranges. Effluent control devices must be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack. Drying and packaging operations must terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions must be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations must cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All these cessations, corrective actions, and restarts must be reported to the appropriate NRC regional office as indicated in Criterion 8A, in writing, within ten days of the subsequent restart. * * *

* * * * *

Criterion 8A—Daily inspections of tailings or waste retention systems must be conducted by a qualified engineer or scientist and documented. The licensee shall retain the documentation for each daily inspection as a record for three years after the documentation is made. The appropriate NRC regional office as indicated in Appendix D to 10 CFR Part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, must be immediately notified of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) that is not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

61. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

62. In § 50.36, the introductory text of paragraph (c) and paragraphs (c) (1), and (c)(2), and (c)(7) are revised to read as follows:

§ 50.36 Technical specifications.

* * * * *

(c) Technical specifications will include items in the following categories:

(1) *Safety limits, limiting safety system settings, and limiting control settings.* (i)(A) Safety limits for nuclear reactors are limits upon important process variables that are found to be necessary to reasonably protect the integrity of certain of the physical barriers that guard against the uncontrolled release of radioactivity. If any safety limit is exceeded, the reactor must be shut down. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. Operation must not be resumed until authorized by the Commission. The licensee shall retain the record of the results of each review until the Commission terminates the license for the reactor, except for nuclear power reactors licensed under § 50.21(b) or § 50.22 of this part. For these reactors, the licensee shall notify the Commission as required by § 50.72 and submit a Licensee Event Report to the Commission as required by § 50.73. Licensees in these cases shall retain the records of the review for a period of three years following issuance of a Licensee Event Report.

(B) Safety limits for fuel reprocessing plants are those bounds within which the process variables must be maintained for adequate control of the operation and that must not be exceeded in order to protect the integrity of the physical system that is designed to guard against the uncontrolled release or radioactivity. If any safety limit for a fuel reprocessing plant is exceeded, corrective action must be taken as stated in the technical specification or the affected part of the process, or the entire process if required, must be shut down, unless this action would further reduce the margin of safety. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. If a portion of the process or the entire process has been shutdown, operation must not be resumed until authorized by the Commission. The licensee shall retain the record of the results of each review until the Commission terminates the license for the plant.

(ii)(A) Limiting safety system settings for nuclear reactors are settings for automatic protective devices related to those variables having significant safety functions. Where a limiting safety system setting is specified for a variable on which a safety limit has been placed, the setting must be so chosen that automatic protective action will correct the abnormal situation before a safety limit is exceeded. If, during operation, it is determined that the automatic safety system does not function as required, the licensee shall take appropriate action, which may include shutting down the reactor. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the reactor except for nuclear power reactors licensed under § 50.21(b) or § 50.22 of this part. For these reactors, the licensee shall notify the Commission as required by § 50.72 and submit a Licensee Event Report to the Commission as required by § 50.73. Licensees in these cases shall retain the records of the review for a period of three years following issuance of a Licensee Event Report.

(B) Limiting control settings for fuel reprocessing plants are settings for automatic alarm or protective devices related to those variables having significant safety functions. Where a limiting control setting is specified for a variable on which a safety limit has been placed, the setting must be so chosen that protective action, either automatic or manual, will correct the abnormal situation before a safety limit is exceeded. If, during operation, the automatic alarm or protective devices do not function as required, the licensee shall take appropriate action to maintain the variables within the limiting control-setting values and to repair promptly the automatic devices or to shut down the affected part of the process and, if required, to shut down the entire process for repair of automatic devices. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the plant.

(2) *Limiting conditions for operation.* Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specifications until the condition can be met. When a limiting condition for operation of any process step in the system of a fuel reprocessing plant is not met, the licensee shall shut down that part of the operation or follow any remedial action permitted by the technical specifications until the condition can be met. In the case of a nuclear reactor not licensed under § 50.21(b) or § 50.22 of this part or fuel reprocessing plant, the licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the nuclear reactor or the fuel reprocessing plant. In the case of nuclear power reactors licensed under § 50.21(b) or § 50.22, the licensee shall notify the Commission if required by § 50.72 and shall submit a Licensee Event Report to the Commission as required by § 50.73. In this case, licensees shall retain records associated with preparation of a Licensee Event Report for a period of three years following issuance of the report. For events which do not require a Licensee Event Report, the licensee shall retain each record as required by the technical specifications.

* * * * *

(7) *Written Reports.* Licensees for nuclear power reactors licensed under §50.21(b) and § 50.22 of this part shall submit written reports to the Commission in accordance with § 50.73 of this part for events described in paragraphs (c)(1) and (c)(2) of this section. For all licensees, the

Commission may require Special Reports as appropriate.

* * * * *

63. In § 50.36a, paragraph (a)(1) is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) * * *

(1) That operating procedures developed pursuant to § 50.34a(c) for the control of effluents be established and followed and that equipment installed in the radioactive waste system, pursuant to § 50.34(a), be maintained and used. The licensee shall retain the operating procedures in effect as a record until the Commission terminates the reactor license and shall retain each superseded revision of the procedures for three years from the date it was superseded.

* * * * *

64. In § 50.48, paragraph (a) is revised to read as follows:

§ 50.48 Fire protection.

(a) Each operating nuclear power plant must have a fire protection plan that satisfies Criterion 3 of Appendix A of this part. This fire protection plan must describe the overall fire protection program for the facility, identify the various positions within the licensee's organization that are responsible for the program, state the authorities that are delegated to each of these positions to implement those responsibilities, and outline the plans for fire protection, fire detection and suppression capability, and limitation of fire damage. The plan must also describe specific features necessary to implement the program described above, such as administrative controls and personnel requirements for fire prevention and manual fire suppression activities, automatic and manually operated fire detection and suppression systems, and the means to limit fire damage to structures, systems, or components important to safety so that the capability to safely shut down the plant is ensured.[3] The licensee shall retain the fire protection plan and each change to the plan as a record until the Commission terminates the reactor license and shall retain each superseded revision of the procedures for three years from the date it was superseded.

* * * * *

65. In § 50.49, the introductory text of paragraph (d) is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(d) The applicant or licensee shall prepare a list of electric equipment important to safety covered by this section. In addition, the applicant or licensee shall include the information in paragraphs (d)(1), (2), and (3) of this section for this electric equipment important to safety in a qualification file. The applicant or licensee shall keep the list and information in the file current and retain the file in auditable form for the entire period during which the covered item is installed in the nuclear power plant or is stored for future use to permit verification that each item of electric equipment is important to safety meets the requirements of paragraph (j) of this section.

* * * * *

66. In § 50.54, the introductory text of paragraph (p)(2) and paragraph (q) are revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(p) * * *

(2) The licensee may make changes to the plans referenced in paragraph (p)(1) without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior Commission approval for a period of three years from the date of the change, and shall submit, as specified in § 50.4, a report containing a description of each change within two months after the change is made. Prior to the safeguards contingency plan being put into effect, the licensee shall have:

* * * * *

(q) A licensee authorized to possess and operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) and the requirements in Appendix E of this part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E to this part. The licensee shall retain the emergency plan and each change that decreases the effectiveness of the plan as a record until the Commission terminates the license for the nuclear power reactor. The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of Appendix E to this part. The research reactor and/or the fuel facility licensee may make changes to these plans without Commission approval only if these changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E to this part. This nuclear power reactor, research reactor, or fuel facility licensee shall retain a record of each change to the emergency plan made without prior Commission approval for a period of three years from the date of the change. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission. The licensee shall submit, as specified in § 50.4, a report of each proposed change for approval. If a change is made without approval, the licensee shall submit, as specified in § 50.4, a report of each change within 30 days after the change is made.

* * * * *

67. In § 50.71, paragraph (c) and (d)(1) are revised, and a new (e)(6) is added to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(c) Records that are required by the regulations in this part, by license condition, or by technical specifications, must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license.

(d)(1) Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability of producing legible, accurate, and

[3] Basic fire protection guidance for nuclear power plants is contained in two NRC documents:

- Branch Technical Position Auxiliary Power Conversion System Branch BTP APCSB 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants," for new plants docketed after July 1, 1976, dated May 1976.
- Appendix A to BTP APCSB 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976," for plants that were operating or under various stages of design or construction before July 1, 1976, dated August 22, 1976.

Also see Note 4.

complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

* * * * *

(e) * * *

(6) The updated FSAR shall be retained by the licensee until the Commission terminates their license.

68. In Appendix R to Part 50, Section III, Specific Requirements, paragraph I.3.d. is revised to read as follows:

Appendix R—Fire Protection Program For Nuclear Power Facilities Operating Prior to January 1, 1979

* * * * *

III. * * *

I. * * *

3. * * *

(d) At 3-year intervals, a randomly selected unannounced drill must be critiqued by qualified individuals independent of the licensee's staff. A copy of the written report from these individuals must be available for NRC review and shall be retained as a record as specified in § III.L4 of this appendix.

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

69. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

70. Section 60.4 is revised to read as follows:

§ 60.4 Communications and records.

(a) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications reports, and applications may be delivered in person at the Commission's offices at 1717 H Street NW., Washington DC, or 11555 Rockville Pike, Rockville, Maryland.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

71. In § 60.71, the section heading and paragraph (b) are revised to read as follows:

§ 60.71 Records and reports.

* * * * *

(b) Records of the receipt, handling, and disposition of radioactive waste at a geologic repository operations area shall contain sufficient information to provide a complete history of the movement of the waste from the shipper through all phases of storage and disposal. DOE shall retain these records in a manner that ensures their useability for future generations in accordance with § 60.51(a)(2).

72. In § 60.72, paragraph (a) is revised to read as follows:

§ 60.72 Construction records.

(a) DOE shall maintain records of construction of the geologic repository operations area in a manner that ensures their useability for future generations in accordance with § 60.51(a)(2).

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

73. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

74. In § 61.80 of Subpart G paragraphs (c), (e) and (f) are revised to read as follows:

Subpart G—Records, Reports, Tests, and Inspections

§ 61.80 Maintenance of records, reports, and transfers.

* * * * *

(c) Records which must be maintained pursuant to this part may be the original or a reproduced copy or a microform if this reproduced copy or microform is capable of producing copy that is clear and legible at the end of the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

* * * * *

(e) Notwithstanding paragraphs (a) through (d) of this section, the licensee shall record the location and the quantity of radioactive wastes contained in the disposal site and transfer these records upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State governor and other State, local, and Federal governmental agencies as designated by the Commission at the time of license termination.

(f) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record the date of disposal of the waste, the location in the disposal site, the condition of the waste packages as received, any discrepancies between materials listed on the manifest and those received, and any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in Department of Transportation and Commission regulations. The licensee shall briefly describe any repackaging operations of any of the waste packages included in the shipment, plus any other information required by the Commission as a license condition. The licensee shall retain these records until the Commission transfers or terminates the license that authorizes the activities described in this section.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

75. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

76. In § 70.22, paragraph (g), (h), (i), (j), and (k) are revised to read as follows:

§ 70.22 Contents of applications.

* * * * *

(g)(1) Each application for a license that would authorize the transport or delivery to a carrier for transport of special nuclear material in an amount specified in § 73.1(b)(2) of this chapter must include (i) a description of the plan for physical protection of special nuclear material in transit in accordance with §§ 73.20, 73.25, 73.26, 73.27, and

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73.67(a), (e), and (g) for 10 kg or more of special nuclear material of low strategic significance, and § 73.70(g) of this chapter including, as appropriate, a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer, and (ii) a licensee safeguards contingency plan or response procedures, as appropriate, for dealing with threats, thefts, and radiological sabotage relating to the special nuclear material in transit.

(2) Each application for such a license involving formula quantities of strategic special nuclear material must include the first four categories of information contained in the applicant's safeguards contingency plan. (The first four categories of information, as set forth in Appendix C to Part 73 of this chapter, are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix. The fifth category of information, Procedures, does not have to be submitted for approval.)

(3) The licensee shall retain this discription of the plan for physical protection of special nuclear material in transit and the safeguards contingency plan or safeguards response procedures and each change to the plan or procedures as a record for a period of three years following the date on which the licensee last possessed the appropriate type and quantity of special nuclear material requiring this record under each license.

(h)(1) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U–235) + 2.5 (grams U–233 + grams plutonium), other than a license for possession or use of this material in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, must include a physical security plan, consisting of two parts. Part I must address vital equipment, vital areas, and isolation zones, and must demonstrate how the applicant plans to meet the requirements of §§ 73.20, 73.40, 73.45, 73.46, 73.50, 73.60, 73.70, and 73.71 of this chapter in the conduct of the activity to be licensed, including the identification and description of jobs as required by § 11.11(a) of this chapter. Part II must list tests, inspections, and other means to demonstrate compliance with such requirements.

(2) The licensee shall retain a copy of this physical security plan and each change to the plan as a record for a period of three years following the date on which the licensee last possessed the appropriate type and quantity of special nuclear material requiring this record under each license.

(i) Each application for a license to possess and use special nuclear material for processing and fuel fabrication, scrap recovery, or conversion of uranium hexafluoride must contain, in addition to the other information required by this section, plans for coping with emergencies.[9] The licensee shall retain a copy of these plans for coping with emergencies as records until the Commission terminates each license obtained by this application or any application for renewal of a license, and each change to the plan for three years after the date of change.

(j)(1) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U–235) + 2.5 (grams U–233 + grams plutonium) other than a license for possession or use of this material in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, must include a licensee safeguards contingency plan for dealing with threats, thefts, and radiological sabotage, as defined in Part 73 of this chapter, relating to nuclear facilities licensed under Part 50 of this chapter or to the possession of special nuclear material licensed under this part.

(2) Each application for such a license must include the first four categories of information contained in the applicant's safeguards contingency plan. (The first four categories of information, as set forth in Appendix C to Part 73 of this chapter, are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix.) The fifth category of information, Procedures, does not have to be submitted for approval.

(3) The licensee shall retain a copy of this safeguards contingency plan as a record until the Commission terminates each license obtained by this application or any application for renewal of a license and retain each change to the plan as a record for three years after the date of the change.

(k) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee special nuclear material of moderate strategic significance or 10 kg or more of special nuclear material of low strategic significance as defined under § 73.2 (x) and (y) of this chapter, other than a license for possession or use of this material in the operation of a nuclear power reactor licensed pursuant to Part 50 of this chapter, must include a physical security plan that demonstrates how the applicant plans to meet the requirements of § 73.67(d), (e), (f), and (g), as appropriate, of this chapter. The licensee shall retain a copy of this physical security plan as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license and each change to the plan for three years after the change.

* * * * *

77. In § 70.24, paragraph (a)(3) is revised to read as follows:

§ 70.24 Criticality accident requirements.

(a) * * *

(3) The licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm. These procedures must include the conduct of drills to familiarize personnel with the evacuation plan, and designation of responsible individuals for determining the cause of the alarm, and placement of radiation survey instruments in accessible locations for use in such an emergency. The licensee shall retain a copy of current procedures for each area as a record for as long as licensed special nuclear material is handled, used, or stored in the area. The licensee shall retain any superseded portion of the procedures for three years after the portion is superseded.

* * * * *

78. In § 70.32, the introductory text of paragraph (c)(2) and paragraphs (d), (e), and (g) are revised to read as follows:

§ 70.32 Conditions of licenses.[9]

* * * * *

(c) * * *

(2) The licensee shall maintain records of changes to the material control and accounting program made without prior Commission approval, for three years after they are superseded, and shall furnish to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office shown in Appendix A to Part 73 of this chapter, a report containing a description of each change within two months after the change is made.

* * * * *

(d) The licensee shall make no change which would decrease the effectiveness of the plan for physical protection of special nuclear material in transit prepared pursuant to § 70.22(g) or § 73.20(c) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for a change in the technical specifications incorporated in his or her license, if any, or for an amendment to the license pursuant to § 50.90 or § 70.34 of this chapter, as appropriate. The licensee may make changes to the plan for physical protection of special nuclear material without prior Commission approval if these changes do not decrease the effectiveness of the plan. The licensee shall retain a copy of the plan as a record for the period during which the licensee possesses a formula quantity of special nuclear material requiring this record under each license and each change to the plan for three years from the effective date of the change. A report containing a description of each change must be furnished the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office shown in Appendix A to Part 73 of this chapter within two months after the change.

(e) The licensee shall make no change which would decrease the effectiveness of a security plan prepared pursuant to §§ 70.22(h), 70.22(k), or 73.20(c) without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee shall maintain records of changes to the plan made without prior Commission approval, for three years from the effective date of the change, and shall furnish to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office shown in Appendix A to Part 73 of this chapter, a report containing a description of each change within two months after the change is made.

* * * * *

(g) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C to Part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of its safeguard contingency plan. The licensee shall retain a copy of the safeguards contingency plan procedures as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license for which the procedures were developed and each change to the plan for three years from the effective date of the change. The licensee shall make no change that would decrease the safeguards effectiveness of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in any licensee safeguards contingency plan prepared pursuant to §§ 70.22(g), 70.22(j), 73.30(g), or 73.40 of this chapter without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee may make changes to the licensee safeguards contingency plan without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain each change to the plan made without prior approval as a record during the period for which possession of a formula quantity of special nuclear material is authorized under a license and retain the superseded material for three years from the effective date of the change and shall furnish a report containing a description of each change within 60 days after the change is made to the Regional Administrator of the appropriate NRC Regional Office specified in Appendix A to Part 73 of this chapter, with a copy to the Director of Nuclear Material Safety and Safeguards.

* * * * *

79. In § 70.42, paragraphs (d)(1), (2), (3), (4), and (5) are revised to read as follows:

§ 70.42 Transfer of special nuclear material.

* * * * *

(d) * * *

(1) The transferor may have in his or her possession, and read, a current copy of the transferee's specific license or registration certificate. The transferor shall retain a copy of each license or certificate for three years from the date that it was obtained.

(2) The transferor may have in its possession a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date. The transferor shall retain the written certification as a record for three years from the date of receipt of the certification;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he or she is authorized by license or registration certification to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days. The transferor shall retain the written confirmation of the oral certification for three years from the date of receipt of the confirmation;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations. The transferor shall retain the compilation of information as a record for three years from the date that it was obtained; or

(5) When none of the methods of verification described in paragraphs (d)(1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the special nuclear material. The transferor shall retain the record of confirmation for three years from the date the record is made.

80. In § 70.51, the paragraphs (b)(2), (3), (5), and (6), (c), the introductory text of (e)(1), (f)(2)(v), and (i)(1) are revised to read as follows:

§ 70.51 Material balance, inventory, and records requirements.

* * * * *

(b) * * *

(2) Each record that is required by the regulations in this part or by license condition must be maintained and retained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the licensee shall retain the record until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

[9] Emergency plans shall contain the elements that are listed in Section IV, "Content of Emergency Plans," of Appendix E to Part 50 of this chapter.

(3) Each record of receipt, acquisition, or physical inventory of special nuclear material that must be maintained pursuant to paragraph (b)(1) of this section must be retained as long as the licensee retains possession of the material and for three years following transfer of such material.

* * * * *

(5) Each record of transfer of special nuclear material to other persons must be retained by the licensee who transferred the material until the Commission terminates the license authorizing the licensee's possession of the material. Each record required by paragraph (e)(1)(v) of this section must be retained for three years after it is made.

(6) Each record of disposal of special nuclear material must be retained until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(c) Each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the special nuclear material in the licensee's possession under license. The licensee shall retain these procedures until the Commission terminates the license that authorizes possession of the material and retain any superseded portion of the procedures for three years after the portion is superseded.

* * * * *

(e) * * *

(1) Maintain procedures that include items listed in paragraphs (e)(1)(i), (ii), (iii), (iv), (v), (vi), and (vii) of this section and retain each record required in these paragraphs for three years after the record is made.

* * * * * *

(f) * * *

(2) * * *

(v) Documentation in compliance with the requirements of paragraphs (f)(2)(i), (ii), (iii), and (iv) of this section. Each record documenting compliance with these requirements must be retained for three years after it is made.

* * * * * *

(i)(1) Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

* * * * *

81. In § 70.57, the introductory text of paragraph (b) and paragraphs (b)(2), (3), (4), (6), (7), the introductory text of (8), (11), and (12) are revised to read as follows:

§ 70.57 Measurement control program for special nuclear materials control and accounting.

* * * * *

(b) In accordance with § 70.58(f), each licensee who is authorized to possess at any one time and location strategic special nuclear material, or special nuclear material of moderate strategic significance, in a quantity exceeding one effective kilogram and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, those involved in a waste disposal operation, or as sealed sources, shall establish and maintain a measurement control program for special nuclear materials control and accounting measurements. Each program function must be identified and assigned in the licensee organization in accordance with § 70.58(b)(2), and functional organizational relationships must be set forth in writing in accordance with § 70.58(b)(3). The program must be described in a manual which contains the procedures, instructions, and forms prepared to meet the requirements of this paragraph, including procedures for the preparation, review, approval, and prompt dissemination of any program modifications or changes. The licensee shall retain the current program as a record until the Commission terminates the license authorizing possession of the nuclear materials. The licensee's program shall include the following:

* * * * *

(2) Provisions must be made for management reviews to determine the adequacy of the program and to assess the applicability of current procedures and for planned audits to verify conformance with all aspects of the program. These reviews and audits must be performed at intervals not to exceed 12 months. Audits and reviews must be performed by trained individuals independent of direct responsibility for the receipt, custody, utilization, measurement, measurement quality, and shipment of special nuclear material. The results of reviews and audits must be recorded and reported to licensee management. The licensee shall retain each record of a review or an audit for three years after the record is made.

(3) The licensee shall ensure that any person who contracts to perform materials control and accounting measurement services conforms with applicable requirements of paragraphs (b)(4) through (8) and (10) through (12) of this section. Conformance must include reporting by the contractor of sufficient error data to allow the licensee to calculate bias corrections and measurement limits of error. All statistical studies must be reported or references in the measurement report submitted to the licensee, who shall have access to the contractor's supporting control data. The licensee shall perform reviews to determine the adequacy of the contractor's program and audits to verify conformance with all aspects of the program. Reviews and audits must be performed at intervals not to exceed 12 months. The results of reviews and audits must be documented and reported to licensee management. The licensee shall retain the record of the results of the licensees review and audit of the contractor's program for three years after the record is made.

(4) In order to ensure that potential sources of sampling error are identified and that samples are representative, process and engineering tests must be performed using well characterized materials to establish or to verify the applicability of existing procedures for sampling special nuclear materials and for maintaining sample integrity during transport and storage. The licensee shall record the results of the above process and engineering tests and shall maintain those results as a record for as long as that sampling systems is in use and for three years following the last such use. The program must ensure that such procedures are maintained and followed, and that sampling is included in the procedures for estimating biases, limits for systematic errors, and random error variances.

* * * * *

(6) To ensure the adequacy of each measurement system with respect to process flows, sampling and measurement points, and nominal material compositions, engineering analyses and evaluations must be made of the design, installation, preoperational tests, calibration, and the operation of each system. These analyses and evaluations must be repeated whenever a significant change is made in any component of a system. The licensee shall record the results of these analyses and evaluations and retain these records for three years after the life of the process or equipment.

(7) Procedures and performance criteria must be established for the training, qualifying, and periodic requalifying of all personnel who perform sampling and measurements for materials control and accounting purposes. The licensee shall retain as a record the results of personnel qualification or requalification for three years after the record is made.

(8) The program must generate current data on the performance of measuring processes, including, as appropriate, values for bias corrections and their uncertainties, random error variances, limits for systematic errors, and other parameters needed to establish the uncertainty of measurements pertaining to materials control and accounting. The program data must reflect the current process and measurement condition existing at the time the control measurements are made. The licensee shall record this data and retain this record for three years after the record is made. Measurements which are not controlled by the program may not be used for materials control or for accounting purposes. The program must include:

* * * * *

(11)(i) The licensee shall establish and maintain a statistical control system, including control charts and formal statistical procedures, designed to monitor the quality of each type of program measurement. The licensee shall retain a copy of the current statistical control system as a record until the Commission terminates each license that authorizes possession of the material that the system affects and shall retain copies of such system documents for previous inventory periods as a record for three years after they are replaced.

(ii) Control chart limits must be established to be equivalent to levels of significance of 0.05 and 0.001. Whenever control data exceed the 0.05 control limits, the licensee shall investigate the condition and take corrective action in a timely manner. The licensee shall record the results of these investigations and actions and retain each record for three years after the record is made. Whenever the control data exceed the 0.001 control limits, the measurement system that generated the data must not be used for material control and accounting purposes until the deficiency has been corrected and the system has been brought into control at the 0.05 control level.

(12) The licensee shall provide a records system in which all data, information, reports, and documents generated by the measurement control program must be retained for three years. Records must include a summary of the error data utilized in the limit of error calculations performed for each material balance period. The records system must be organized for efficient retrieval of program information. Each reported result must be readily relatable to the original measurement data and to all relevant measurement control information, including pertinent calibration data. Records must be available for NRC inspection.

* * * * *

82. In § 70.58, paragraphs (b)(3), (e), (f), (h), and (j) and the introductory text of paragraphs (i) and (k) are revised to read as follows:

§ 70.58 Fundamental nuclear material controls.

* * * * *

(b) * * *

(3) Material control and accounting functional and organizational relationships must be set forth in writing in job descriptions, organizational directives, instructions, procedure manuals, etc. This documentation must include position qualification requirements and definitions of authorities, responsibilities, and duties. Delegations of material control and accounting responsibilities and authority must be in writing. The licensee shall retain this documentation as a record until the Commission terminates each license that authorizes the activity that is subject to retention of the documentation, and if any portion of the documentation is superseded, retain the superseded material for three years after each change.

* * * * *

(e) A system must be established, maintained, and followed for the measurement of all special nuclear material received, produced, or transferred between MBAs, transferred from MBAs to ICAs, on inventory, or shipped, discarded, or otherwise removed from inventory and for the determination of the limit of error associated with each such measured quantity except for plutonium-beryllium sources; samples that have been determined by other means to contain less than 10 grams U–235, U–233, or plutonium each; and reactor-irradiated fuels involved in research, development, and evaluation programs in facilities other than irradiated-fuel reprocessing plants. The system must be described in writing and provide for sufficient measurements to substantiate the quantities of element and isotope measured and the associated limits or error. The licensee shall record the required measurements and associated limits of error and shall retain any record associated with this system for three years after the record is made.

(f) A program must be established, maintained, and followed pursuant to § 70.57(b) for the continuing determination and control of the systematic and random errors of measurement processes at a level commensurate with the requirements of § 70.51(e)(5). The licensee shall retain each completed record required by the program for three years after the record is made.

* * * * *

(h) A system of storage and internal handling controls must be established, maintained, and followed to provide current knowledge of the identity, quantity, and location of all special nuclear material contained within a plant in discrete items and containers. The licensee shall include procedures as specified in § 70.51(e)(1) and retain any record associated with the procedures for six months after the record is made;

(i) Procedures for special nuclear material scrap control must be established, maintained, and followed to limit the accumulation and the uncertainty of measurement of these materials on inventory. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license that authorizes the activity that is subject to the retention of procedures and, if any portion of the procedures is superseded, retain the superseded portion for three years after each change. Such procedures must include:

* * * * *

(j) Physical inventory procedures must be established, maintained, and followed so that special nuclear material balance and their measurement uncertainties can be determined on the basis of measurements in compliance with the material balance and inventory requirements and criteria specified in § 70.51. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license that authorizes the activity that is subject to the retention of procedures and, if any portion of the procedures is superseded, retain the superseded portion for three years after each change.

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(k) A system of records and reports must be established, maintained, and followed that will provide information sufficient to locate special nuclear material and to close a measured material balance around each material balance area and the total plant, as specified in § 70.51. As required by § 70.51, the licensee shall retain the records associated with this system for three years after the records are made. This system must include:

* * * * *

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

83. The authority citation for Part 71 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

84. In § 71.1, the existing paragraph is designated (a), the section heading is revised, and a new paragraph (b) is added to read as follows:

§ 71.1 Communications and records.

* * * * *

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

85. Section 71.91 is revised to read as follows:

§ 71.91 Records.

(a) Each licensee shall maintain for a period of three years after shipment a record of each shipment of licensed material not exempt under § 71.10, showing, where applicable:

(1) Identification of the packaging by model number;

(2) Verification that there are no significant defects in the packaging, as shipped;

(3) Volume and identification of coolant;

(4) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(5) For each item of irradiated fissile material:

(i) Identification by model number and/or serial number;

(ii) Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

(iii) Any abnormal or unusual condition relevant to radiation safety.

(6) Date of the shipment;

(7) For Fissile Class III and for Type B packages, any special controls exercised;

(8) Name and address of the transferee;

(9) Address to which the shipment was made; and

(10) Results of the determinations required by § 71.87 and by the conditions of the package approval.

(b) The licensee shall make available to the Commission for inspection, upon reasonable notice, all records required by this part. Records are valid only if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

(c) Each licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by § 71.85; design, fabrication, and assembly records; results of reviews, inspections, tests, and audits; results monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability and the action taken in connection with any deficiencies noted. The records must be retained for three years after the life of the packaging to which they apply.

86. In § 71.97, paragraphs (c)(4), (e), and (f)(2) are revised to read as follows:

§ 71.97 Advance notification of shipment of nuclear waste.

* * * * *

(c) * * *

(4) The licensee shall retain a copy of the notification as a record for three years.

* * * * *

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee in accordance with this section will not be met, shall telephone a responsible individual in the office of the governor of the State or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

(f) * * *

(2) The licensee shall state in the notice that it is a cancellation and shall identify the advance notification which is being cancelled. The licensee shall retain a copy of the notice as a record for three years.

87. In § 71.101, paragraph (b) is revised to read as follows:

Subpart H—Quality Assurance

§ 71.101 Quality assurance requirements.

* * * * *

(b) Each licensee shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of §§ 77.101 through 71.137 of this subpart and satisfying any specific provisions that are applicable to the licensee's activities, including procurement of packaging. The licensee shall apply each of the applicable criteria in a graded approach, i.e., to an extent that is consistent with its importance to safety.

* * * * *

88. In § 71.105, paragraph (a) is revised to read as follows:

§ 71.105 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time, consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of §§ 71.101 through 71.137 of this subpart. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

* * * * *

89. Section 71.135 is revised to read as follows:

§ 71.135 Quality assurance records.

The licensee shall maintain sufficient written records to describe the activities affecting quality. The records must include the instructions, procedures, and drawings required by § 71.111 to prescribe quality assurance activities and must include closely related specifications such as required

qualifications of personnel, procedures, and equipment. The records must include the instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility. The licensee shall retain these records for three years beyond the date when the licensee last engages in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee shall retain the superseded material for three years after it is superseded.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

90. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

91. In § 73.24, paragraph (b)(1) is revised to read as follows:

§ 73.24 Prohibitions.

* * * * *

(b) * * *

(1) The licensee shall confirm and log the arrival at the final destination of each individual shipment and retain the log for three years from the date of the last entry in the log. The licensee shall also schedule shipments to ensure that the total quantity for two or more shipments in transit at the same time does not equal or exceed the formula quantity, or

* * * * *

92. In § 73.26, paragraphs (c)(1)(ii) and (2), the introductory text of paragraph (d)(3), and paragraphs (d)(4) and (e)(1) are revised to read as follows:

§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.

* * * * *

(c) * * *

(1) * * *

(ii) The shipment must be protected at all times within the geographical limits of the United States as provided in this section and §§ 73.25 and 73.27. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license authorizing the licensee to ship this material, and superseded material for three years after each change.

(2) A licensee who exports a formula quantity of strategic special nuclear material shall comply with the requirements of this section and §§ 73.25 and 73.27, as applicable, up to the first point where the shipment is taken off the transport outside the United States. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license authorizing the licensee to export this material, and superseded material for three years after each change.

(d) * * *

(3) The licensee or the licensee's agent shall establish, maintain, and follow a written management system to provide for the development, revision, implementation, and enforcement of transportation physical protection procedures. The licensee or the agent shall retain as a record the current management system for three years after the close of period for which the licensee possesses the special nuclear material under the license for which the system was developed and, if any portion of the system is superseded, retain the superseded material for three years after each change. The system shall include:

* * * * *

(4) Neither the licensee nor the licensee's agent shall permit an individual to act as an escort or other security organization member unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, of this part, "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission, the licensee or the agent shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Armed escorts shall requalify in accordance with Appendix B to this part at least every 12 months. Each requalification must be documented. The licensee or the agent shall retain documentation of the initial qualification for the term of employment and of each requalification as a record for three years from the date of the requalification.

* * * * *

(e) *Contingency and Response Plans and Procedures.* (1) The licensee or the licensee's agent shall establish, maintain, and follow a written safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to strategic special nuclear material in transit subject to the provisions of this section. This safeguards contingency plan must be in accordance with the criteria in Appendix C of this part, "Licensee Safeguards Contingency Plan." The licensee or the agent shall retain the contingency plan as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the plan is used and superseded material for three years after each change.

* * * * *

93. In § 73.37, paragraphs (b)(2), (b)(5), and the introductory text of paragraph (b)(3) are revised to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

* * * * *

(b) * * *

(2) Include and retain a copy of current procedures for coping with circumstances that threaten deliberate damage to a spent fuel shipment and with other safeguards emergencies as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

(3) Include instructions for each escort and retain a copy of the current instructions as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the activity that requires the instruction and retain any superseded material for three years after each change. The instructions must direct that, upon detection of the abnormal presence of unauthorized persons, vehicles, or vessels in the vicinity of a spent fuel shipment or upon detection of a deliberately induced situation that has the potential for damaging a spent fuel shipment, the escort will:

* * * * *

(5) Provide for maintenance of a written log by the escorts and communications center personnel for each spent fuel shipment, which will include information describing the shipment and significant events that occur during the shipment, and will be available for review by authorized NRC personnel for a period of at least three years following completion of the shipment.

* * * * *

94. In § 73.40, paragraphs (b), (c)(2), and (d) are revised to read as follows:

§ 73.40 Physical protection: General requirements at fixed sites.

* * * * *

(b) Each licensee subject to the requirements of §§ 73.20, 73.45, 73.46, 73.50, 73.55, or § 73.60 shall prepare a safeguards contingency plan in accordance with the criteria set forth in Appendix C to this part. The licensee shall retain the current plan as a record until the Commission terminates the license for which the plan was developed and, if any portion of the plan is superseded, retain the superseded material for three years after each change. The safeguards contingency plan must include plans for dealing with threats, thefts, and radiological sabotage relating to nuclear facilities licensed under Part 50 or to the possession of special nuclear material licensed under Part 70 of this chapter. Each licensee subject to the requirements of this paragraph shall submit to the Commission for approval the first four categories of information contained in the safeguards contingency plan. (The first four categories of information, as set forth in Appendix C to this part, are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix. The fifth category of information, Procedures, does not have to be submitted for approval.)[1] The plan becomes effective and must be followed by the licensee 30 days after approval by the Commission.

(c) * * *

(2) Detailed procedures developed according to Appendix C to this part available at the licensee's site. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change, and

* * * * *

(d) The licensee shall provide for the implementation, revision, and maintenance of this safeguards contingency plan. To this end, the licensee shall provide for a review at least every twelve months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards system along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of three years from the date of the review or audit.

95. In § 73.46, paragraphs (b)(3)(i), (b)(4), (d)(3), (d)(10), (d)(13), (h)(1), and (h)(2) are revised to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(b) * * *

(3) * * *

(i) Written security procedures that document the structure of the security organization and detail the duties of guards, watchmen, and other individuals responsible for security. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which they were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change;

* * * * *

(4) The licensee may not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B to this part "General Critieria for Security Personnel." Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, or other member of the security organization, whether a licensee or contractor employee, shall requalify in accordance with Appendix B to this part at least every 12 months. This requalification must be documented. The licensee shall retain the documentation of each requalification as a record for three years after the requalification.

* * * * *

(d) * * *

(3) The licensee shall establish and follow written procedures that will permit access control personnel to identify those vehicles that are authorized and those materials that are not authorized entry to protected, material access, and vital areas. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

* * * * *

(10) Before exiting from a material access area, containers of contaminated wastes must be drum scanned and tamper sealed by at least two individuals, working and recording their findings as a team, who do not have access to material processing and storage areas. The licensee shall retain the records of these findings for three years after the record is made.

* * * * *

(13) Individuals not permitted by the licensee to enter protected areas without escort must be escorted by a watchman or other individual designated by the licensee while in a protected area and must be badged to indicate that an escort is required. In addition, the individual shall be required to register his or her name, date, time, purpose of visit and employment affiliation, citizenship, and name of the individual to be visited in a log. The licensee shall retain each log as a record for three years after the last entry is made in the log.

* * * * *

(h) * * *

(1) The licensee shall have a safeguard contingency plan for dealing with threats, thefts, and radiological sabotage related to the strategic special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans." Contingency plans must include, but need not be limited to, the response requirements in paragraphs (h)(2) through (h)(5) of this section. The licensee shall retain a copy of the current safeguards contingency plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain the superseded material for three years after each change.

(2) The licensee shall establish and document response arrangements that have been made with local law enforcement authorities. The licensee shall retain documentation of the current arrangements as a record until

[1] Licensees subject to § 73.55 may modify their physical security plans to incorporate contingency plan information specified in Appendix C to this part. A physical security plan that contains all the information required in both § 73.55 and Appendix C to Part 73 satisfies the requirement for a contingency plan.

the Commission terminates each license requiring the arrangements and, if any arrangement is superseded, retain the superseded material for three years after each change.

* * * * *

96. In § 73.50, paragraphs (a)(3) and (4), (c)(5), and (g)(1) and (2) are revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

* * * * *

(a) * * *

(3) The licensee shall establish, maintain, and follow written security procedures that document the structure of the security organization and detail the duties of guards, watchmen, and other individuals responsible for security. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

(4) The licensee may not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, "General Criteria for Security Personnel," to this part. Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with Appendix B to this part at least every 12 months. This requalification must be documented. The licensee shall retain the documentation of each requalification as a record for three years after the requalification.

* * * * *

(c) * * *

(5) Individuals not employed by the licensee must be escorted by a watchman, or other individual designated by the licensee, while in a protected area and must be badged to indicate that an escort is required. In addition, the licensee shall require that each individual not employed by the licensee register his or her name, date, time, purpose of visit, employment affiliation, citizenship, name and badge number of the escort, and name of the individual to be visited. The licensee shall retain the register of information for three years after the last entry is made in the register. Except for a driver of a delivery or service vehicle, an individual not employed by the licensee who requires frequent and extended access to a protected area or a vital area need not be escorted if the individual is provided with a picture badge, which the individual must receive upon entrance into the protected area and return each time he or she leaves the protected area, that indicates—

(i) Nonemployee-no escort required,

(ii) Areas to which access is authorized, and

(iii) The period for which access has been authorized.

* * * * *

(g) *Response requirement.* (1) The licensee shall have a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans." The licensee shall retain a copy of the plan and each change to the plan as a record until the Commission terminates each license for which the plan was developed and retain the superseded materials for three years after each change.

(2) The licensee shall establish and document liaison with law enforcement authorities. The licensee shall retain the documentation of the current liaison as a record until the Commission terminates each license for which the liaison was developed and, if any portion of the liaison documentation is superseded, retain the superseded material for three years after each change.

* * * * *

97. In § 73.55, paragraphs (b)(1) and (3)(i) and (ii) and (4), (d)(6), and (h)(2) are revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) *Physical Security Organization.* (1) The licensee shall establish a security organization, including guards, to protect his facility against radiological sabotage. If a contract guard force is utilized for site security, the licensee's written agreement with the contractor that must be retained by the licensee as a record for the duration of the contract will clearly show that:

(i) The licensee is responsible to the Commission for maintaining safeguards in accordance with Commission regulations and the licensee's security plan,

(ii) The NRC may inspect, copy, and take away copies of all reports and documents required to be kept by Commission regulations, orders, or applicable license conditions whether the reports and documents are kept by the licensee or the contractor,

(iii) The requirement in paragraph (b)(4) of this section that the licensee demonstrate the ability of physical security personnel to perform their assigned duties and responsibilities, includes demonstration of the ability of the contractor's physical security personnel to perform their assigned duties and responsibilities in carrying out the provisions of the Security Plan and these regulations, and

(iv) The contractor will not assign any personnel to the site who have not first been made aware of these responsibilities.

* * * * *

(3) * * *

(i) Written security procedures that document the structure of the security organization and detail the duties of guards, watchmen, and other individuals responsible for security. The licensee shall maintain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedure is superseded, retain the superseded material for three years after each change.

(ii) Provision for written approval of these procedures and any revisions to the procedures by the individual with overall responsibility for the security functions. The licensee shall retain each written approval as a record for three years from the date of the approval.

(4)(i) The licensee may not permit an individual to act as a guard, watchman armed response person, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, "General Criteria for Security Personnel," to this part. Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with Appendix B to this part at least every 12 months. This requalification must be documented. The licensee shall retain

the documentation of each requalification as a record for three years after the requalification.

(ii) Each licensee shall submit a training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of this paragraph. The licensee shall maintain a current copy of the training and qualifications plan as a record until the Commission terminates each license for which the plan was developed and, if any portion of the plan is superseded, retain the material that is superseded for three years after each change. The training and qualifications plan must include a schedule to show how all security personnel will be qualified two years after the submitted plan is approved. The training and qualifications plan must be followed by the licensee 60 days after the submitted plan is approved by the NRC.

* * * * *

(d) * * *

(6) Individuals not authorized by the licensee to enter protected areas without escort shall be escorted by a watchman or other individual designated by the licensee while in a protected area and shall be badged to indicate that an escort is required. In addition, the licensee shall require that each individual register his or her name, date, time, purpose of visit, employment affiliation, citizenship, and name of the individual to be visited. The licensee shall retain the register of information for three years after the last entry in the register.

* * * * *

(h) * * *

(2) The licensee shall establish and document liaison with local law enforcement authorities. The licensee shall retain documentation of the current liaison as a record until the Commission terminates each license for which the liaison was developed and, if any portion of the liaison documentation is superseded, retain the superseded material for three years after each change.

* * * * *

98. In § 73.67, the paragraphs (c)(1), (d)(11), (e)(3)(iv), (e)(5), and (3)(6)(i), and the introductory text to (e)(4), (f)(4), and (g)(3)(i), (g)(4), and (g)(5)(i) are revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(c) * * *

(1) Submit a security plan or an amended security plan describing how the licensee will comply with all the requirements of paragraphs (d), (e), (f), and (g) of this section, as appropriate, including schedules of implementation. The licensee shall retain a copy of the effective security plan as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the original plan was submitted. Copies of superseded material must be retained for three years after each change.

* * * * *

(d) * * *

(11) Establish and maintain written response procedures for dealing with threats of thefts or thefts of these materials. The licensee shall retain a copy of the response procedures as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license for which the original procedures were developed and, for three years thereafter. Copies of superseded material must be retained for three years after each change.

(e) * * *

(3) * * *

(iv) Establish and maintain written response procedures for dealing with threats of thefts or thefts of this material. The licensee shall retain a copy of the current response procedures as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were established. Copies of superseded material must be retained for three years after each change.

* * * * *

(4) Each licensee who arranges the physical protection of strategic special nuclear material in quantities of moderate strategic significance while in transit or who takes delivery of this material free on board (f.o.b.) the point at which it is delivered to a carrier for transport shall comply with the requirements of paragraphs (e)(1), (2), and (3) of this section. The licensee shall retain each record required by paragraphs (e)(1), (2), (3), and (4)(i) and (ii) of this section for three years after close of period licensee possesses special nuclear material under each license that authorizes these licensee activities. Copies of superseded material must be retained for three years after each change. In addition, the licensee shall—

* * * * *

(5) Each licensee who exports special nuclear material of moderate strategic significance shall comply with the requirements specified in paragraphs (c) and (e)(1), (3), and (4) of this section. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to export this material. Copies of superseded material must be retained for three years after each change.

(6) * * *

(i) Comply with the requirements specified in paragraphs (c) and (e)(2), (3), and (4) of this section. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to import this material. Copies of superseded material must be retained for three years after each change.

* * * * *

(f) * * *

(4) Establish and maintain response procedures for dealing with threats of thefts or thefts of this material. The licensee shall retain a copy of the current response procedures as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were established. Copies of superseded material must be retained for three years after each change.

(g) * * *

(3) * * *

(i) Establish and maintain response procedures for dealing with threats or thefts of this material. The licensee shall retain a copy of the current response procedures as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were established. Copies of superseded material must be retained for three years after each change.

* * * * *

(4) Each licensee who exports special nuclear material of low strategic significance shall comply with the appropriate requirements specified in paragraphs (c) and (g) (1) and (3) of this section. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to export this material. Copies of superseded material must be retained for three years after each change.

* * * * *

(5) * * *

(i) Comply with the requirements specified in paragraphs (c) and (g) (2) and (3) of this section and retain each record required by these paragraphs for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to import this material. Copies of superseded material must be retained for three years after each change.

* * * * *

99. Section 73.70 is revised to read as follows:

§ 73.70 Records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records. Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.55, or 73.60 shall keep the following records:

(a) Names and addresses of all individuals who have been designated as authorized individuals. The licensee shall retain this record of currently designated authorized individuals for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license that authorizes the activity that is subject to the recordkeeping requirement and, for three years thereafter. Copies of superseded material must be retained for three years after each change.

(b) Names, addresses, and badge numbers of all individuals authorized to have access to vital equipment or special nuclear material, and the vital areas and material access areas to which authorization is granted. The licensee shall retain the record of individuals currently authorized this access for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license that authorizes the activity that is subject to the recordkeeping requirement and, for three years thereafter. Copies of superseded material must be retained for three years after each change.

(c) A register of visitors, vendors, and other individuals not employed by the licensee pursuant to §§ 73.46(d)(1), 73.55(d)(6), or § 73.60. The licensee shall retain this register as a record for three years after the last entry is made in the register.

(d) A log indicating name, badge number, time of entry, and time of exit of all individuals granted access to a vital area except those individuals entering or exiting the reactor control room. The licensee shall retain this log as a record for three years after the last entry is made in the log.

(e) Documentation of all routine security tours and inspections, and of all tests, inspections, and maintenance performed on physical barriers, intrusion alarms, communications equipment, and other security related equipment used pursuant to the requirements of this part. The licensee shall retain the documentation for these events for three years from the date of documenting each event.

(f) A record at each onsite alarm annunciation location of each alarm, false alarm, alarm check, and tamper indication that identifies the type of alarm, location, alarm circuit, date, and time. In addition, details of response by facility guards and watchmen to each alarm, intrusion, or other security incident shall be recorded. The license shall retain each record for three years after the record is made.

(g) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification, and any other information to confirm the means utilized to comply with §§ 73.25, 73.26, and 73.27. This information must be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan, including monitor changes, trace investigations, and others must also be recorded. The licensee shall retain each record about a shipment required by this paragraph (g) for three years after the record is made.

(h) Procedures for controlling access to protected areas and for controlling access to keys for locks used to protect special nuclear material. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedure is superseded, retain the superseded material for three years after each change.

100. In Appendix B to Part 73, Section I.C. E, and F and II.A, B, C, and E, and the introductory text of Section IV are revised to read as follows:

Appendix B—General Criteria for Security Personnel

* * * * *

Criteria

I. * * *

C. Medical examinations and physical fitness qualifications—Guards, armed response personnel, armed escorts and other armed security force members shall be given a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications as disclosed by the medical examination to participation by the individual in physical fitness tests. Subsequent to this medical examination, guards, armed response personnel, armed escorts and other armed security force members shall demonstrate physical fitness for assigned security job duties by performing a practical physical exercise program within a specific time period. The exercise program performance objectives shall be described in the license training and qualifications plan and shall consider job-related functions such as strenuous activity, physical exertion, levels of stress, and exposure to the elements as they pertain to each individual's assigned security job duties for both normal and emergency operations. The physical fitness qualification of each guard, armed response person, armed escort, and other security force member shall be documented and attested to by a licensee security supervisor. The licensee shall retain this documentation as a record for three years from the date of each qualification.

* * * * *

E. Physical requalification—At least every 12 months, central alarm station operators shall be required to meet the physical requirements of B.1.b of this section, and guards, armed response personnel, and armed escorts shall be required to meet the physical requirements of paragraphs B.1.b (1) and (2), and C of this section. The licensee shall document each individual's physical requalification and shall retain this documentation of requalification as a record for three years from the date of each requalification.

F. Documentation—The results of suitability, physical, and mental qualifications data and test results must be documented by the licensee or the licensee's

agent. The licensee or the agent shall retain this documentation as a record for three years from the date of obtaining and recording these results.

* * * * *

II. Training and qualifications.

A. Training requirements—Each individual who requires training to perform assigned security-related job tasks or job duties as identified in the licensee physical security or contingency plans shall, prior to assignment, be trained to perform these tasks and duties in accordance with the licensee or the licensee's agent's documented training and qualifications plan. The licensee or the agent shall maintain documentation of the current plan and retain this documentation of the plan as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the plan was developed and, if any portion of the plan is superseded, retain the material that is superseded for three years after each change.

B. Qualification requirements—Each person who performs security-related job tasks or job duties required to implement the licensee physical security or contingency plan shall, prior to being assigned to these tasks or duties, be qualified in accordance with the licensee's NRC-approved training and qualifications plan. The qualifications of each individual must be documented and attested by a licensee security supervisor. The licensee shall retain this documentation of each individual's qualifications as a record for three years after the employee ends employment in the security-related capacity and for three years after the close of period for which the licensee possesses the special nuclear material under each license, and superseded material for three years after each change.

C. Contract personnel—Contract personnel shall be trained, equipped, and qualified as appropriate to their assigned security-related job tasks or job duties, in accordance with sections II, III, IV, and V of this appendix. The qualifications of each individual must be documented and attested by a licensee security supervisor. The licensee shall retain this documentation of each individual's qualifications as a record for three years after the employee ends employment in the security-related capacity and for three years after the close of period for which the licensee possesses the special nuclear material under each license, and superseded material for three years after each change.

* * * * *

E. Requalification—Security personnel shall be requalified at least every 12 months to perform assigned security-related job tasks and duties for both normal and contingency operations. Requalification shall be in accordance with the NRC-approved licensee training and qualifications plan. The results of requalification must be documented and attested by a licensee security supervisor. The licensee shall retain this documentation of each individual's requalification as a record for three years from the date of each requalification.

* * * * *

IV. Weapons qualification and requalification program.

Qualification firing for the handgun and the rifle must be for daylight firing, and each individual shall perform night firing for familiarization with assigned weapon(s). The results of weapons qualification and requalification must be documented by the licensee or the licensee's agent. Each individual shall be requalified at least every 12 months. The licensee shall retain this documentation of each qualification and requalification as a record for three years from the date of the qualification or requalification, as appropriate.

* * * * *

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

101. The authority citation for Part 74 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

102. In § 74.31, the existing text of paragraph (d) is redesignated as (d)(1) and paragraph (d)(2) is added to read as follows:

§ 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.

* * * * *

(d) * * *

(2) Records which must be maintained pursuant to this part may be the original or a reproduced copy or a microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures.

The licensee shall maintain adequate safeguards against tampering with and loss of records.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

103. The authority citation for Part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

104. The heading for § 75.6 is revised and a new paragraph (e) is added to read as follows:

§ 75.6 Maintenance of records and delivery of information, reports, and other communications.

* * * * *

(e) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

105. In § 75.12, paragraphs (b)(1) and (4) are revised to read as follows:

§ 75.12 Communication of information to IAEA.

* * * * *

(b)(1) A licensee may request that information of particular sensitivity, which it customarily holds in confidence, not be transmitted physically to the IAEA. A licensee who makes such a request should, at the time the information is submitted, identify the pertinent document or part thereof and make a full statement of the reasons supporting the request. The licensee shall retain a copy of the request and all documents related to the request as a record until the Commission terminates the license for each installation involved with the request or until the Commission notifies the licensee that the licensee is no longer under the agreement. Superseded material must be retained for three years after each change is made.

* * * * *

(4) If a request is granted, the Commission will determine a location where the information will remain readily available for examination by the IAEA and will so inform the licensee. The licensee shall retain this information as a record until the Commission terminates the license for the installation involved with the request or until the Commission notifies the licensee that the licensee is no longer under the agreement. Superseded material must be retained for three years after each change is made.

* * * * *

106. In § 75.21, paragraph (a) is revised to read as follows:

§ 75.21 General requirements.

(a) Each licensee who has been given notice by the Commission in writing that its installation has been identified under the Agreement shall establish, maintain, and follow written material accounting and control procedures. The licensee shall retain as a record current material accounting and control procedures until the Commission terminates the license for the installation involved with the request or until the Commission notifies the licensee that the licensee is no longer under the agreement. Superseded material must be retained for three years after each change is made.

* * * * *

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

107. The authority citation for Part 95 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

108. Section 95.11 is revised to read as follows:

§ 95.11 Specific exemptions.

The Commission may, upon application of any interested party, grant an exemption from the requirements of Part 95. Exemptions will be granted only if they are authorized by law and will not constitute an undue risk to the common defense and security. The licensee shall retain the documentation related to the request, notification, and processing of an exemption for three years beyond the period covered by the exemption.

109. Section 95.13 is revised to read as follows:

§ 95.13 Maintenance of records.

(a) Each licensee or organization granted security facility approval under this part shall maintain records prescribed within the part. These records are subject to review and inspection by NRC representatives during security surveys.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

110. In § 95.25, paragraphs (a)(3), and (h) are revised to read as follows:

§ 95.25 Protection of national security information and restricted data in storage.

(a) * * *

(3) When protective personnel are used, physical checks of security containers must be made as soon as possible after the close of each normal workday and at least once every eight hours thereafter during non-working hours. The licensee shall record the results of these checks and retain each record for three years after it is made.

* * * * *

(h) Unattended security container found opened: In the event that an unattended security container housing classified matter is found unlocked, the custodian or an alternate shall be notified immediately. The container must be secured by protective personnel and the contents inventoried as soon as possible but not later than the next workday. A report reflecting all actions taken must be submitted to the responsible Regional Office (see Appendix A, 10 CFR Part 73 for addresses) with an information copy to the NRC Division of Security. The licensee shall retain records pertaining to these matters for three years after completion of final corrective action.

* * * * *

§ 95.33 [Amended]

111. Section 95.33 is amended by changing "one year" to "three years" in the last sentence.

112. In § 95.37, paragraph (i) is revised to read as follows:

§ 95.37 Classification and preparation of documents.

* * * * *

(i) *Document which custodian believes is improperly classified or lacking appropriate classification markings.* If a person receives a document which, in his or her opinion, is not properly classified, or does not have appropriate classification markings, he or she shall immediately notify the sender and suggest to the originator the classification which he believes to be appropriate. Whenever requested, this challenge of classification marking must be handled in a manner which will ensure the anonymity of the challenger. Pending final determination of proper classification, the document must be safeguarded in accordance with the procedures required for the highest classification in question. Where unauthorized disclosure may have occurred, a report in accordance with § 95.57 of this part is required. These reports must be retained for three years after final corrective action has been taken.

* * * * *

§ 95.41 [Amended]

113. Section 95.41 is amended by changing "two years" to "three years" in the last sentence.

114. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter containing national security information and/or restricted data.

Documents containing National Security Information and/or Restricted Data may be destroyed by burning, pulping, or another method that ensures complete destruction of the information which they contain. The method of destruction must preclude recognition or reconstruction of the classified information. Any doubts on methods should be referred to the NRC Division of Security. If the document contains Secret National Security Information and/or Restricted Data a record of the subject or title, document number, if any, originator, its date or origination, its series designation and copy number, and the date of destruction must be signed by the person destroying the document and must be maintained in the office of the custodian at the time of destruction. These destruction records must be retained for three years after destruction.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIALS

115. The authority citation for Part 110 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

116. In § 110.53, paragraph (b) is revised to read as follows:

§ 110.53 United States address, records, and inspections.

* * * * *

(b)(1) Each licensee shall maintain records concerning his exports or imports. The licensee shall retain these

records for five years after each export or import except that byproduct material records must be retained for three years after each export or import.

(2) Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

* * * * *

Dated at Rockville, Maryland, this 13th day of May 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-11583 Filed 5-26-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-03-AD; Amdt. 39-5940]

Airworthiness Directives; Cessna 180, A182, 182, F182, FR182, R182, 185, 188, T188, 190, 195, 205, 206, P206, U206, TP206, TU206, 207, T207, 210 and T210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This Amendment revises and reissues Airworthiness Directive (AD) 84-10-01, Amendment 39-4863 (49 FR 21507, May 22, 1984), applicable to certain Cessna single engine airplanes, to allow for the installation of raised filler neck fuel caps as an equivalent means of compliance for those airplanes presently required to be equipped with a fuel system preflight placard. Incidents of engine power loss and accidents due to water contamination of the fuel system have occurred on some models of the above airplanes. The prescribed action identifies airplanes having bladder fuel cells which tend to retain water contamination, provides fuel tank drainage provisions and reduces the possibility that water may enter and be retained in the fuel tanks.

EFFECTIVE DATE: July 5, 1988.

ADDRESSES: Cessna Service Information Letters SE79-45 dated September 10, 1979, SE82-34 dated July 23, 1982, SE84-8 dated March 16, 1984, SE84-9 dated March 23, 1984, and Cessna Single Engine Service Kit SK182-85 dated September 10, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201. This information may also be examined at the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-03-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a revision to AD 84-10-01, Amendment 39-4863 was published on February 1, 1988, in the **Federal Register** (53 FR 2763). AD 84-10-01, Amendment 39-4863 (49 FR 21507, May 22, 1984), effective May 22, 1984, applicable to certain Cessna single engine airplanes required (among other things) that airplanes containing wrinkles in the fuel bladder tanks (other than fluid trapping diagonal corner wrinkles which were required to be removed or the bladder replaced) that trapped more than three fluid ounces to be placarded for specific fuel system preflight procedures. The proposal resulted from reports of accidents attributed to fuel contamination by water on certain single-engine Cessna airplanes. Investigation has revealed that many fuel cap installations have defective seals which will allow the entrance of water around the fuel cap seal. This amendment introduces reduced diameter fuel filler caps with raised filler necks to prevent precipitation from entering the fuel tanks even when the caps receive minimum maintenance and inspection.

Interested persons have been afforded an opportunity to comment on the proposal. Two comments were received on the proposed amendment. One comment received from a national aircraft users organization was in favor of the proposal as drafted.

A comment from the aircraft manufacturer was in opposition to removal of the preflight procedures placard as it considered these procedures necessary for detection of fuel contamination from an unfiltered source. The FAA has determined that the primary source of fuel contamination on the airplanes affected by the proposal is from precipitation leaking past a deteriorated seal on an improperly maintained flush fuel cap installation. Fuel contamination from an unfiltered source is considered to be very rare in view of the quality control maintained by the fuel suppliers and retailers. Therefore, the FAA disagrees with the manufacturer's comments.

The specific serial numbers of the Cessna 190/195 models were identified after the NPRM was issued. The FAA has determined that clearly identifying the specific serial numbers of these airplanes fully meets the intent of the NPRM and does not impose any additional burden. Accordingly, an AD is being issued in accordance with the NPRM except for the addition of the airplane models and serial numbers.

If the airplane owner elects to install the raised filler neck fuel caps, the projected cost for parts and labor is $200 per airplane. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of the Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the Regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 84-10-01, Amendment 39-4863 (49 FR 21507, May 22, 1984), as follows:

Cessna: Applies to the following series and serial numbered airplanes certificated in any catagory:

Series	Serial Numbers
180	30000 thru 50911; 18050912 thru 18053000 (1953 thru 1978)
	18053001 thru 18053203 (1979 thru 1981) (optional tanks only)
182	33000 thru 53007; 18253008 thru 18256590 (1956 thru 1978).
R182	R18200001 thru R18200583 (1978).
185	185-0001 thru 18503683 (1961 thru 1978).
	18503684 thru 18504414 (1979 thru 1983) (optional tanks only).
188	188-0446 thru 18803856 (1972 thru 1981) (wing tanks only).
	18800977T thru 18803966T (1972 thru 1983).
T188	T18803307T thru T18803966T (1979 thru 1983).
190/195	7001 thru 7999; 16000 thru 16183.
210-5 (205)	205-0001 thru 205-0577 (1983 and 1984).
206, U206, TU206	206-0001 thru U20604649 (1964 thru 1978).
P206, TP206	P206-0001 thru P20600847 (1965 thru 1970).
207, T207	20700001 thru 20700771 (1969 thru 1984).
210	57001 thru 57575; 21057576 thru 21059518 (1960 thru 1965).
T210	T210-0001 thru T210-0197 (1966).
A182	A182-0001 thru A182-0146 (1966 thru 1974).
F182	F18200001 thru F18200094 (1976 thru 1978).
FR182	FR18200001 thru FR18200020 (1975).

Compliance: Required as indicated, unless already accomplished:

To prevent power loss or engine stoppage due to water contamination of the fuel system, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, on all applicable airplanes, install quick drains in the fuel tank sumps and fuel tank reservoirs where applicable, in accordance with the kits specified by Cessna Service Letters SE79-45 dated September 10, 1979, and SE84-8 dated March 16, 1984, or using equivalent aircraft standard hardware.

(b) Within the next 50 hours time-in-service after the effective date of this AD, inspect the fuel tank filler area for proper sealing in accordance with the following:

(1) On all applicable airplanes:

(i) Visually inspect the wing aft of the fuel filler for indications of inflight fuel leakage.

(ii) Visually inspect the fuel cap locking mechanism and seals for cracking, distortion and any condition which might prevent sealing.

(iii) Remove the fuel filler caps and inspect the adapter sealing face for distortion, scratches, corrosion or any condition which may prevent the cap from sealing.

(2) In addition, on all applicable airplanes except models 190 and 195 airplanes:

(i) Visually check the sealing and security of the attachment of the adapter flange to the adapter plate paying particular attention to the adhesive (if present) between the parts.

(ii) Check the fuel cap seal by actuating the locking tab and noting that force is maintained between the cap, seal, and adapter when the tab is in the overcenter locked position or conduct a fuel cap seal test in accordance with Cessna Single Engine Service Information Letter SE82-34 dated July 23, 1982.

(3) Correct any deficiencies disclosed by the above inspections by parts replacement or adjustment, as required, before returning the airplane to service.

(c) Within the next 50 hours time-in-service after the effective date of this AD, on all applicable airplanes, except models 190 and 195, conduct an inspection for fuel tank wrinkles in accordance with the following:

(1) Drain and wing fuel tanks.

(2) Note any wrinkles which retain fluid after draining. Remove diagonal wrinkles across the inboard rear corner in the vicinity of the fuel tank drain by installation of Cessna drain kit described in Service Letter SE84-9 dated March 23, 1984, or by replacement of the fuel bladder. Verify that no wrinkles exist in the tank sump drain area before returning the airplane to service.

Note: The manufacturer has identified some new bladder cells which may require installation with a special adapter to prevent the information of the above described wrinkles and has included this part with these bladder cells. Use of this part, or the drain kit, may be necessary to eliminate these wrinkles.

(3) If wrinkles are found in the tank bottom at a location other than diagonally across the inboard rear corner, determine the amount of fluid which is trapped by these wrinkles in accordance with the following:

(i) Place the airplane in the normal ground (water) attitude.

(ii) Service tank(s) with enough fuel to completely cover bottom of tank surface. Drain tank and note any wrinkles which retain fuel.

(iii) Direct all trapped fluid to the tank drain area, using a non-absorbent squeegee or other tool compatible with the fuel bladder, and drain and measure the fluid retained in both tanks.

(iv) If this total does not exceed three ounces, no further action is required.

(v) If the total quantity drained exceeds three ounces, check the snaps and fasteners for security. If necessary, blend and smooth the tank bottom to remove wrinkles. Blending may include replacement of the protective tape on the corners or edges to maintain a tank surface which will not trap excess fluid. Caution: Excessive blending or smoothing may cause leaks to develop in the tank.

(vi) If the tanks trap fluid in excess of three ounces after compliance with paragraph (v) above accomplish either paragraph (A) or paragraph (B) as follows:

(A) Fabricate using letters at least .10 inches in height, and install a placard in full view of the pilot which states as follows:

"Prior to flight following exposure to rain, sleet, snow, or after fueling from an unfiltered fuel source:

1. Drain and catch the contents of the fuel gascolator, wing, and (if equipped) reservoir tank sumps and check for water contamination.

2. Place the airplane on a level surface and lower the tail to within 5 inches of the ground (on nose gear airplanes).

3. Rock the wings 10 inches up and 10 inches down at least 12 times.

4. Drain and catch the contents of the fuel gascolator, wing, and (if equipped) reservoir tank sumps and check for water contamination.

5. If water is found in step 4 above, repeat steps 3 and 4 until no additional water is detected, or drain the entire airplane fuel system.

(B) Install reduced diameter (raised filler neck) fuel caps on all fuel filler openings in accordance with Cessna Service Kit SK182-85 dated September 10, 1984. If SK182-85 is accomplished, paragraph (d) below no longer applies.

(d) Within 12 months after initial compliance with this AD, and each 12 months thereafter, reinspect the fuel installation of airplanes that require the placard per paragraph (c)(3)(vi) in accordance with paragraph (b) of this AD.

(e) The placard required by paragraph (c)(3)(vi) may be fabricated and installed by the airplane owner, or operator, providing that this person possesses at least a private pilot license.

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished if it is determined that no water is present in the tank from which fuel will be used.

(g) An equivalent means of compliance with this AD may used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. Fuel cells and quick drain valves that are approved for the applicable airplanes are approved as an equivalent means of compliance in replacement of corresponding parts required to be installed by this AD.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the Federal Aviation Administration, Office of the

BEST COPY AVAILABLE

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Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 84-10-01, Amendment 39-4863 (49 FR 21507, May 22, 1984), effective May 22, 1984.

This amendment becomes effective on July 5, 1988.

Issued in Kansas City, Missouri, on May 18, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-11938 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-07-AD; Amdt. 39-5941]

Airworthiness Directives; Cessna Models 177RG and F177RG Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adopts a new Airworthiness Directive (AD), which requires installation of a control to actuate the fuel strainer (gascolator) quick drain on Cessna Models 177RG and F177RG airplanes. The FAA has determined that these airplanes are not equipped with a quick drain control to remove water from the fuel strainer. This action will preclude engine power loss caused by undrained water in the fuel strainer.

DATES: *Effective Date:* July 5, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Pilots Association Supplemental Type Certificates (STCs) SA2335CE and SA2336CE information may be obtained from Mr. John Frank, Editor Cessna Pilots Association, Wichita Mid-Continent Airport, 2120 Airport Road, P.O. Box 12948, Wichita, Kansas 67277, telephone (316) 946-4777. Air Plains Inc. STCs SA2344CE and SA2345CE information may be obtained from Mr. Kent McIntyre, Vice President, Air Plains, Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326-8561. Information on this Final Rule may also be obtained from the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring installation of fuel strainer quick drain controls on certain Cessna 177RG and F177RG airplanes was published on February 22, 1988, in the **Federal Register** (53 FR 5192).

The proposal resulted from accident and incident reports on Cessna Models 177RG and F177RG airplanes which indicated that water collected in the fuel strainer (gascolator) and then passed to the engine in quantities sufficiently large enough to cause power loss. Water may enter the engine fuel system or ice crystals may form from water and restrict fuel from entering the engine fuel system. These occurrences were attributed to the fact that the airplanes were not equipped with quick drain control provisions on the fuel strainer at the time of manufacture. Accordingly, the proposed amendment would require installation of fuel strainer quick drain controls on Cessna Models 177RG and F177RG airplanes. The fuel strainer quick drain control provisions are identical to those installed on other Cessna airplanes that were equipped with fuel strainer quick drain controls at the time of manufacture.

Interested persons have been afforded an opportunity to comment on the proposal. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves approximately 1100 airplanes at an approximate cost for parts and labor of $200 per airplane.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to all serial numbers of Models 177RG and F177RG airplanes certificated in any category.

Compliance: Required within the next 75 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent power loss or engine stoppage due to water contamination of the fuel system, accomplish the following:

(a) Modify the airplane fuel system using one of the options in subparagraphs (a)(1), (a)(2), or (a)(3) below:

(1) Install a fuel strainer quick drain control in accordance with STC SA2344CE or SA2345CE.

Note 1: These STCs are owned by Air Plains, Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326-8561.

(2) Install a fuel strainer quick drain control in accordance with STC SA2335CE or SA2336CE.

Note 2: These STCs are owned by Cessna Pilots Association, Inc., Wichita Mid-Continent Airport, 2120 Airport Road, P.O. Box 12948, Wichita, Kansas 67277, telephone (316) 946-4777.

(3) Install a fuel strainer quick drain control by using equivalent aircraft standard hardware.

Note 3: The FAA has received reports of corrosion inside the fuel strainer bowl caused by undrained water. A check of the condition of the fuel strainer and bowl can be made during installation of the fuel strainer quick drain control.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used, if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the document(s) referred to herein upon request to: Cessna Pilots Association Supplemental Type Certificates (STCs) SA2335CE and SA2336CE information may be obtained from Mr. John Frank, Editor Cessna Pilots Association, Wichita Mid-Continent Airport, 2120 Airport Road, P.O. Box 12948, Wichita, Kansas 67277, telephone (316) 946-4777. Air Plains Inc. STCs SA2344CE and SA2345CE information may be obtained from Mr. Kent McIntyre, Vice President, Air Plains, Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326-8561. These documents may also be examined at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This Amendment becomes effective on July 5, 1988.

Issued in Kansas City, Missouri, on May 18, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-11939 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-33-AD; Amdt. 39-5938]

Airworthiness Directives; EMBRAER Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, Rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) T85-18-51 (Amendment 39-5174), applicable to EMBRAER Models 110P1 and EMB-110P2 airplanes. This AD was issued following a runaway trim incident on an EMB-110 model airplane. Subsequent to its issuance, the FAA has learned that the incident was an isolated occurrence and the reported high failure rate of the dual trim switches is not supported by the facts.

EFFECTIVE DATE: May 31, 1988.

ADDRESSES: Information pertaining to this action may be obtained from the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-33-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. W.H. Trammell, Atlanta Aircraft Certification Office, FAA, ACE-130A, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to rescind AD T85-18-51, Amendment 39-5174 (50 FR 49350) was published in the **Federal Register** on Thursday, November 12, 1987 (52 FR 43342). The AD requires inhibition of the operation of the Bendix Electric Trim System and the Bendix Autopilot System (if installed) by disconnection from the power source of all EMBRAER EMP-110P1 and EMB-110P2 airplanes. The proposal to rescind the AD resulted from a re-evaluation of the justification for the issurance of the AD. The AD was prompted by a single report of a runaway trim incident on an EMB-110 airplane, assumed to be caused by a dual trim switch which would not return to the neutral position after activation and a purportedly abnormally high failure rate of these switches.

Subsequent investigations has determined that a runaway trim situation is unlikely, that adequate safeguards are provided for runaway trim should it ever occur, and that the abnormally high failure rate referenced in the AD cannot be supported by facts. The Bendix Electric Trim System is designed to be single fault free. The swtich has two elements: One controls the servo motor and the second controls the servo clutch. If either portion of the switch sticks or is separately activated, there is an audible warning which sounds after one second. The electric trim, if in a runaway condition (both switches stuck up or down), can be easily controlled by pilot action to return both switches to center or to opposite trim momentarily as required. Also, trim can be controlled and easily overpowered by the use of the Manual Trim wheel control and the electric trim system can be disconnected by pulling the circuit breaker.

Following issuance of the AD, the switch involved in the single incident was again examined, tested, disassembled, and reassembled, and the reported failure could not be duplicated. Based on this evaluation and the fact that no other reports of both switches sticking have been received, this incident is now recognized as an isolated instance. Therefore, since a switch induced runaway trim can be readily overcome and corrected and the high failure rate does not exist, the AD is unnecessarily restrictive.

Interested persons have been afforded an opportunity to comment on the proposal. Only one comment was received and it agreed with the FAA intention to rescind the AD. Accordingly, the proposal is adopted without change.

Consequently, the effect of rescinding AD T85-18-51 is to permit the removal of the "Electric Trim System Inoperative per AD T85-18-51" placard located on the instrument panel and the reconnection of the stowed trim servo plug in the aft fuselage section. The FAA has determined that this regulation only involves 120 airplanes at an approximate one-time cost of $60 for each airplane and $7,200 total.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

Lists of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By rescinding AD T85-18-51, Amendment 39-5174 (50 FR 49350, December 2, 1985).

This amendment becomes effective on May 31, 1988.

Issued in Kansas City, Missouri, on May 16, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-11940 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-13-M

VOL 53 ISS 103 MAY 27 1988 UMI

14 CFR Part 71

[Airspace Docket No. 87-ASW-58]

Revision of Transition Area; Cherokee Village, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Cherokee Village, AR. The relocation of the Cherokee Village Nondirectional Radio Beacon (NDB) from on the Cherokee Village Airport to approximately 5 miles south of the airport made this revision necessary. In addition, a new standard instrument approach procedure (SIAP) has been developed utilizing the Cherokee Village NDB is its new location. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the airport. Coincident with this action, the status of the Cherokee Village Airport will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On March 22, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Cherokee Village, AR (53 FR 11101).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises that transition area located at Cherokee Village, AR. The Cherokee Village NDB is being relocated from on the airport to approximately 5 miles south of the airport. The relocation of the NDB has required the development of a new SIAP, utilizing the Cherokee Village NDB in its new location, thus necessitating this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the airport. Coincident with this action, the status of the airport will change from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Cherokee Village, AR [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Cherokee Village Airport (latitude 36°15'55" N., longitude 91°33'45" W.).

Issued in Fort Worth, TX, on May 16, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-11941 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ACE-15]

Revocation of VOR Federal Airway V-426; Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes Federal Airway V-426 located between St. Louis, MO, and Decatur, IL. FAA is revoking the entire segment of V-426 because records indicate that V-426 is rarely requested or utilized. This action removes that airway from the National Airspace System thereby reducing chart clutter.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 2, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke VOR Federal Airway V-426 located in the vicinity of St. Louis, MO, (53 FR 6666). This action revokes the entire segment of V-426. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes VOR Federal Airway V-426 located between St. Louis, MO, and Decatur, IL. FAA has documentation that indicates V-426 is rarely used or requested by pilots and FAA has revoked this VOR Federal Airway. This action reduces chart clutter.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airway.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.123 [Amended]

2. Section 71.123 is amended as follows:

V-426 [Removed]

Issued in Washington, DC, on May 19, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-11937 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-13-M

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airway.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

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§71.123 [Amended]

2. Section 71.123 is amended as follows:

V-426 [Removed]

Issued in Washington, DC, on May 19, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-11937 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-55]

Amendment to Transition Area; Levelland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The action will amend the transition area located at Levelland, TX. The development of a new standard instrument approach procedure (SIAP) to Runway 35 at the Levelland Airport, utilizing the Levelland Nondirectional Radio Beacon (NDB), has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the airport.

EFFECTIVE DATE: 0901 UTC, October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On March 19, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the transition area located at Levelland, TX (53 FR 10546).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received from the United States Air Force (USAF). The objection centered around the arrival extension south of the Levelland Airport and the fact that it would interfere with T-37 student training at Terry County Air Force Auxiliary Field. In reviewing the SIAP, it was determined that the south arrival extension could be reduced from the initial proposal of 11.5 miles south of the Levelland NDB to 8.5 miles south of the NDB and still provide adequate controlled airspace for the SIAP. This reduction of airspace was acceptable to the USAF and they removed their objection. The legal description of this transition area reflects this change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will amend the transition area located at Levelland, TX. The development of a new SIAP to Runway 35 at the Levelland Airport, utilizing the Levelland NDB, has necessitated this amendment. The existing transition area will remain unchanged, but a new arrival extension south of the airport will be added. The intended effect of this amendment is to provide adequate controlled airpace for aircraft executing all SIAP's serving the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.181 [Amended]

2. Section 71.181 is amended as follows:

Levelland, TX [Amended]

By adding to the end of the legal description: "and within 3.5 miles each side of the 175° bearing of the Levelland NDB, extending from the 7-mile radius to 8.5 miles south of the Levelland NDB.

Issued in Forth Worth, TX, on May 12, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-11943 Filed 5-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-56]

Establishment of Transition Area; Oakwood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment will establish a transition area at Oakwood, TX. The development of a special instrument approach procedure (SIAP) to the Carter Ranch Airport, Oakwood, TX, utilizing the Leona Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this amendment

necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this amendment is the changing of the status of the Carter Ranch Airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On March 24, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Oakwood, TX (53 FR 11100).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will establish a new transition area at Oakwood, TX. The development of a new SIAP to the Carter Ranch Airport, utilizing the Leona VORTAC, has necessitated this amendment. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this amendment is the changing of the status of the Carter Ranch Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Oakwood, TX [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Carter Ranch Airport (latitude 31°34'00" N, longitude 95°45'59" W.), and within 4.5 miles either side of the 0.22° radial of the Leona VORTAC (latitude 31°07'26" N., longitude 95°58'04" W.), extending from the 6.5-mile radius area to 9 miles south of the airport, excluding that portion that overlies the Palestine, TX, Transition Area.

Issued in Fort Worth, TX, on May 12, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–11942 Filed 5–26–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 8c

[Docket No. 40923–7270]

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Commerce Programs

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This regulation requires that the Department of Commerce operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation in issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Richard A Stearns, Chief, EEO Programs Division, Office of Civil Rights, U.S. Department of Commerce, Washington, DC 20230; (202) 377–5691 (voice) or 377–5691 (TDD).

These are not toll free numbers.

Copies of this regulation are available on tape for those with impaired vision. They may be obtained from the EEO Programs Division, Office of Civil Rights, U.S. Department of Commerce, Room 6012, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 21, 1984, the Department of Commerce published a Notice of Proposal Rulemaking (NPRM) in the **Federal Register** (49 FR 45861) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of Commerce, to be codified at 15 CFR Part 8c. Shortly after the NPRM was published, the Department received eight comments from individuals and organizations representing individuals with handicaps. After analysis of the comments received, the Department of Justice's (DOJ) section 504 regulation for its own programs and activities, and the joint publications by eighteen agencies on February 5, 1986 (51 FR 4566) and 21 agencies on June 23, 1986 (51 FR 22860), the Department of Commerce decided to adopt this final rule. The decisions that the Department made in response to comments, however, were not made on the number of comments addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of written comments will remain available for public inspection at the Department of Commerce, 14th and Constitution Avenue NW., Washington, DC in Room 6012 from 8:30 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays, until July 26, 1988.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submittted. The Department has

today submitted this regulation to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor. The regulation will become effective on July 26, 1988.

This rule applies to all programs and activities conducted by the Department of Commerce.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Commerce (DOC). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (sec. 119, Pub. L. 95–602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> ((29 U.S.C. 794) (1978 amendment italicized).)

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2688, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13897 (remarks of Rep. Brademas); *id.* at 38552 (remarks of Rep. Sarasin).

There are, however, some language differences between this final rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent U.S. Courts of Appeals decisions interpreting *Davis* and section 504. *See Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Divis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "the regulations implementing § 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.* at 301, n.21) (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs, as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the courts in *Davis*, subsequent lower court cases interpreting *Davis*, and *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various Courts of Appeals. Of Course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this final rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298).

It has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis has not been prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 601–612).

This rule does not contain collections of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Section-by-Section Analysis and Response to Comments

Section 8c.1 Purpose.

Section 8c.1 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

No comments were received on this section and it remains unchanged from the proposed rule.

Section 8c.2 Application.

The regulation applies to all programs or activities conducted by the agency. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

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No comments were received on this section.

Section 8c.3 Definitions.

"Agency." For purposes of the regulation "agency" means Department of Commerce.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 8c.60(a)(1), they may also be necessary to meet other requirements of the regulation. Comments on the definition of "auxiliary aids" are discussed in connection with § 8c.60(a)(1).

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § 8c.70(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 8c.49, 8c.50, and 8c.70(f).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) of the definition states that a "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The definition of "qualified individual with handicaps" has been revised to make clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 8c.50(a)(2) and 8c.60(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

Paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services in the coordination regulation for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 8c.40. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 8c.10 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

This final rule uses the same provision adopted by the Department of Justice in its final rule implementing section 504 for its federally conducted programs. 28 CFR 39.110. The Department of Justice determined that this regulatory language was appropriate after it had analyzed the Federal Advisory Committee Act (5 U.S.C. app.), Executive Order 12024, and 41 CFR Part 101–6, the regulation of the General Services Administration implementing the Act.

This final rule provides that the agency shall provide an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

Section 8c.11 Notice.

Section 8c.11 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 8c.11 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § 8c.60(d)) that the agency provide individuals with handicaps with information concerning their rights. Because § 8c.11 encompasses the requirements of proposed § 8c.60(d), that latter paragraph has been deleted as duplicative.

Section 8c.30 General prohibitions against discrimination.

Section 8c.30 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 8c.30 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 8c.30. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participaton in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are bling in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 8c.49–8c.51) and communications (§ 8c.60) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 8c.30(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 8c.3).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(8) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Some commenters argued that the regulation should extend to the activities of licensees or certified entities, citing *Community Television of Southern California v. Gottfried*, 459 U.S. 498 (1983), in that case, the Court held that section 504 as applied to federally assisted programs did not require the Federal Communications Commission to prohibit discrimination on the basis of handicap by licensed broadcasters, but that "the policies underlying the Communications Act" might authorize the Commission to issue a regulation governing such discrimination. The Court did not, however, indicate that section 504 itself could serve as the source of such regulatory authority.

The Court has held that "the use of the words 'public interest' in a regulatory statute is not a beard license to promote the general public welfare. Rather the words take meaning from the purposes of the regulatory legislation." *National Association for the Advancement of Colored People v. Federal Power Commission*, 425 U.S. 662, 669 (1976). Section 504 does not of itself extend an agency's regulatory authority to the activities of licensees or certified entities.

Some commenters objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance, and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provisions, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c), provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

Section 8c.40 Employment.

Section 8c.40 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. U.S. Postal Service*, 662 F.2d 292, 303–04 (5th Cir. 1981). *Contra McGuiness v. U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 504 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 8c.40 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, § 8c.70(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

The final rule has not been changed, except that a reference to the Equal Employment Opportunity Commission has been added. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 8c.49 Program accessibility: Discrimination prohibited.

Section 8c.49 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 8c.50 and 8c.51.

Section 8c.50 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 8c.50 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 8c.50(a)(1)). However, § 8c.50, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility § 8c.50 (a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 8c.60(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program

modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, Courts of Appeals have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt, supra; American Public Transit Association v. Lewis (APTA), supra.*

Paragraphs (a)(2) and § 8c.60(d) are also supported by the Supreme Court's decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination prohibited by section 504 or its implementing regulation (*id.* at 299).

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*id.* at 301) and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program' " (*id.*, n.20) (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus the failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This provision is therefore unchanged from the proposed rule.

Some commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal Courts of Appeals cases mentioned above. The *APTA* and *Dopico* decisons made it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens v. New Mexico*, 678 F. 2d 847 (10th Cir. 1982). In addition, the Court in *Alexander* held that the "administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on handicapped people "would be well beyond the accommodations that are required under *Davis.*" (469 U.S. at 308).

One comment included a lengthy analysis opposing the undue burdens defense. This comment was premised on the assumption that the proposed regulation was substantively inconsistent with the regulations for federally assisted programs. This assumption is incorrect. Judicial interpretations have established that neither section 504 nor the regulations for federally assisted programs establish an unlimited obligation to modify programs or activities to accommodate individuals with handicaps.

This comment also argued that APTA is no longer good law, in view of the Supreme Court's decision in *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984) (*Conrail*), in which the Court said that Congress intended, through the 1978 amendments to the statute, to codify the HFW regulation. Other commenters also argued that *Conrail* prohibits departures from the language of the federally assisted regulation. The *Conrail* decision addressed only the question of employment coverage under the Statute and cannot be read to mean that Congress "codified" other parts of the regulation. Furthermore, the undue burdens defense is not inconsistent with the HEW regulation; in fact, the employment provisions of the HEW regulation—those addressed in *Conrail*—do include an "undue hardship" defense. This position is confirmed by the Supreme Court's decision in *Alexander*. There the Court referred to its previous recognition in *Conrail* of the regulation as "an important source of guidance on the meaning of section 504," *Alexander*, 469 U.S. at 304, n.24, and at the same time, as discussed above, emphasized that section 504 does not mandate extensive costs and administrative burdens.

The agency is adopting the proposed rule's procedural requirements for application of the "fundamental alteration" and "undue financial and administrative burdens" language. The agency believes that, in most cases, making an agency program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with section 8c.50(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Secretary of Commerce or the Secretary's designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Secretary's decision or failure to make a decision may file a complaint under the compliance procedures established in section 8c.70. This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

A commenter argued that the decision that an action would result in undue burdens should be based on the resources of the agency as a whole. The agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the agency's budget can be earmarked for specific purposes and are simply not available for use in making the agency's programs accessible to disabled persons.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with

provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 8c.51 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 8c.51 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 8c.50. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 8c.51.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. the *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 8c.60 Communications.

Section 8c.60 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 8c.60(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 8c.60(a)(1)(ii)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 8c.60(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the lower court opinions interpreting it (*see supra* preamble § 8c.50(a)(2)). Unless not required by § 8c.60(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

One commenter argued that the communication section should require that communications for handicapped people be "equal" to those for non-handicapped people, not merely "effective." The regulation requires the agency to provide auxiliary aids to ensure that individuals with handicaps have "an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency." Where the form of communication is different for individuals with handicaps than for non-handicapped people (*e.g.*, oral instead of written for blind people, sign language instead of speech for deaf people) the effectiveness of the communication is the only appropriate measurement of equality of treatment.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. When sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 8c.60(a)(1)(iii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

A commenter suggested that the language in proposed § 8c.60(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use or study be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of Federal programs and those that are not, and which parallels the requirements of the Federal Government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 8c.70 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (i) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) of the proposed rule provided that the head of the agency would designate an official to be responsible for coordinating implementation of this section. However, this regulation has been revised to designate the official responsible for coordinating implementation of § 8c.70 and to provide an address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ 8c.70(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 8c.70(e)).

One commenter on the compliance procedures suggested that the agency should be required to refer a complaint to the appropriate agency when it does not have jurisdiction over it. The proposed rule merely required the agency to make reasonable efforts to do so. The agency has not adopted this suggestion because of several possible circumstances in which the agency might not be able to successfully refer a complaint. For example, the agency might receive a complaint that no Federal agency would have jurisdiction over or that did not contain sufficient information to identify the appropriate agency.

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 8c.70(g)). One appeal within the agency shall be provided (§ 8c.70 (i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 8c.70(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

One commenter suggested that the compliance procedures include: (a) A provision to ensure that all other regulation forms and directives issued by the agency are superseded by the nondiscrimination requirements of this regulation; (b) a provision for judicial review; (c) a provision for the availability of the Federal agency to award attorney fees in administrative proceedings; and (d) a provision for the availability of compensation to the prevailing party.

A statement that previous inconsistent agency directives are superseded is unnecessary as that is the ordinary effect of regulations. The purpose of the regulations on compliance procedures is to notify affected persons of the means to seek an administrative remedy. It is beyond our jurisdiction to specify that judicial review is available to complainants. That issue is for the courts to resolve. Nothing in title V of the Rehabilitation Act provides for the agency award of attorneys fees or compensation to complainants in administrative proceedings other than those involving Federal employees.

List of Subjects in 15 CFR Part 8c

Blind, Buildings, Civil Rights, Employment, Equal Employment Opportunity, Federal buildings and facilities, Handicapped, Government employees.

Date: April 14, 1988.

Katherine Bulow,

Assistant Secretary for Administration.

For the reasons set forth in the preamble, Chapter 15, subtitle A of the Code of Federal Regulations is amended by adding Part 8c to read as follows:

PART 8c—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF COMMERCE

Sec.

8c.1 Purpose.
8c.2 Application.
8c.3 Definitions.
8c.4 through 8c.9 [Reserved]
8c.10 Self-evaluation.
8c.11 Notice.
8c.12 through 8c.29 [Reserved]
8c.30 General prohibitions against discrimination.
8c.31 through 8c.39 [Reserved]
8c.40 —Employment.
8c.41 through 8c.48 [Reserved]
8c.49 Program accessibility: Discrimination prohibited.
8c.50 Program accessibility: Existing facilities.
8c.51 Program accessibility: New construction and alterations.
8c.52 through 8c.59 [Reserved]
8c.60 Communications.
8c.61 through 8c.69 [Reserved]
8c.70 Compliance procedures.
8c.71 through 8c.99 [Reserved]

Authority: 29 U.S.C 794.

§ 8c.1 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 8c.2 Application.

This part applies to all programs or activities conducted by the agency except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 8c.3 Definitions.

For purposes of this part, the term—

"Agency" means the Department of Commerce.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

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"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participant in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 8c.40.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978)Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 8c.4. through 8c.9 [Reserved]

§ 8c.10 Self-evaluation.

(a) The agency shall, by July 26, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 8c.11 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Secretary of Commerce or the Secretary's designee finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 8c.12 through § 8c.29 [Reserved]

§ 8c.30 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate

in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicaps; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicaps.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 8c.31 through 8c.39 [Reserved]

§ 8c.40 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 8c.41 through 8c.48 [Reserved]

§ 8c.49 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 8c.50, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 8c.50 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with section § 8c.50(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary of Commerce or the Secretary's designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by September 26, 1988, except that where structural changes in facilities are

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undertaken, such changes shall be made by July 26, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by January 26, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its program or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 8c.51 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 8c.52 through 8c.59 [Reserved]

§ 8c.60 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applications and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 8c.60 would result in such alteration or burdens. The decision that compliance would result in such alteration of burdens must be made by the Secretary of Commerce or the Secretary's designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 8c.61 through 8.69 [Reserved]

§ 8c.70 Compliance procedures

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Chief of the Compliance Divison shall be responsible for coordinating implemention of this section. Complaints may be sent to Chief, Compliance Division, Office of Civil Rights, Room 6012, Herbert C. Hoover Building, 14th and Constitution Avenue, Washington, D.C., 20230.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 8c.70(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Assistant Secretary for Administration.

(j) The Assistant Secretary for Administration shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Assistant Secretary for Administration determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additonal information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of the section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 8c.71 through 8c.99 [Reserved]

[FR Doc. 88–9009 Filed 5–26–88; 8:45 am]
BILLING CODE 3510–BT–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1501

Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Interpretation

AGENCY: Consumer Product Safety Commission.

ACTION: Rule; Statement of Interpretation, Stay of Enforcement.

SUMMARY: In this statement, the Commission * announces its interpretation of its regulation on toys and other articles intended for use by children under the age of three that are or contain small part components made of paper, fabric, yarn, fuzz, elastic, and string. The Commission interprets its small parts regulation as applying to such components. However, in view of its staff's previously publicly disclosed interpretation that the small parts regulation did not apply to such components, the Commission is temporarily staying enforcement of the small parts regulation for such components. This stay of enforcement will give firms which may have relied on the previous staff guidance an adequate opportunity to bring their products into compliance with the small parts regulation and should not unduly risk the safety of children.

DATES: Effective May 27, 1988. Enforcement of the Commission's interpretation of §1501.4(b)(2), that the exclusion for paper, fabric, yarn, fuzz, elastic, and string applies only to bits and pieces that break off from a larger component and does not apply when substantially all of a component made of such materials becomes detached, is stayed from May 27, 1988 until November 23, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Poth, Director, Division of Regulatory Management, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) (492–6400).

SUPPLEMENTARY INFORMATION:

A. The Regulation

In June, 1979, the Commission issued a final regulation classifying as a banned hazardous substance any toy or other article intended for use by children under three (3) years of age, that presents a choking, aspiration, or ingestion hazard because of small parts, ("small parts" regulation), 16 CFR Part 1501. The regulation took effect on January 1, 1980.

The small parts regulation sets forth a test procedure for determining whether a product is or contains a small part banned under the regulation. 16 CFR 1501.4. Under the test procedure, if a product or any of its separate parts fits entirely within a cylinder described in the regulation, the product is banned. If the entire product or any of its separate parts does not fit within the cylinder, the product is subjected to the appropriate "test methods for simulating use and abuse of toys and other articles intended for use by children" (hereinafter "use and abuse"), 16 CFR 1500.50, 1500.51 or 1500.52. Any components or pieces of the product which become detached from the article as a result of the use and abuse testing are then placed in the cylinder, one at a time. If any components or pieces fit entirely within the chlinder, the product is banned.

The section of the small parts regulation dealing with components and pieces of a product also addresses, among other things, the applicability of the regulation to components or pieces that are made of paper, fabric, yarn, fuzz, elastic, and string in the following manner:

> Any components or pieces (excluding paper, fabric, yarn, fuzz, elastic, and string) which have become detached from the article as a result of the use and abuse testing shall be placed into the cylinder, one at a time. If any such components or pieces fit entirely within the cylinder, in any orientation and without being compressed, the article fails to comply with the test procedure.

16 CFR 1501.4(b)(2).

Beginning in 1981, the Commission staff interpreted the section of the regulation quoted above as excluding from its scope both "components" and "pieces" of a product made of paper, fabric, yarn, fuzz, elastic, and string. This staff interpretation initially was included in internal enforcement programs later publicly disclosed, and in response to inquiries from individual firms.

In mid 1987, a particular violation of the small parts regulation resulted in the staff of the Commission's Compliance Directorate and Office of the General Counsel examining more closely the interpretation of the small parts regulation's applicability to fabric components. In doing so, the staff reviewed the language in the preamble to the small parts regulation which discussed and explained the exclusion for paper, fabric, yarn, fuzz, elastic, and string (hereinafter, referred to collectively as "fabric"). It became clear from this review that the regulation excluded only fabric pieces and bits that broke off from a larger component and did not exclude the fabric component itself. This distinction is significant. It means that if substantially all of a fabric component of a product, a pom pon or a fabric eyebrow on a stuffed animal, for example, separates from the product during use and abuse testing, and the component fits within the small parts cyclinder, the product is banned. If, however, a bit or piece of the fabric component breaks off during use and abuse testing, the product is not banned even if the bit or piece fits within the small parts cylinder.

It is clear from the preamble that the basis for the exclusion from the small parts regulation for bits and pieces of material was testing limitations rather than because the material did not present an unreasonable risk of injury. The preamble explains the exclusion as follows:

> [T]he Commission's proposed regulation excluded from coverage certain substances that could become exposed as a result of the use and abuse testing. These were bits of fabric, yarn, paper, and fuzz. *The reason for these exclusions was that these fibrous type materials cannot be meaningfully tested with the truncated cylinder when they are pulled off or out of a toy.* For example, the bits of fuzz that can be "picked off" a teddy bear and the clumps of yarn hair that can be plucked from a doll's head cannot be tested in the cylinder with any precision. The Commission does not expect these minor exclusions to affect the overall effectiveness of the regulation.

44 FR 34682, 34699, 34699 (June 15, 1979) (emphasis added).

This issue is further discussed in another part of the preamble:

* The Commission approved this statement by a 3–1 vote with Commissioner Carol G. Dawson dissenting. Copies of Commissioners' separate statements are available from the Commission's Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207.

(g) *Articles made of fabric, yarn, fuzz, and paper.* The proposed regulation excluded from the test procedure any piece or "bit" of paper, fabric, yarn or fuzz that became detached from a toy as a result of use and abuse testing. As already discussed in this section, these exclusions (as well as exclusions for elastic and string) are contained in the final regulation (§ 1501.4(b)(2)). *They are based on the testing limitations posed by these bits of materials.* (Emphasis added) A number of commenters have suggested that products made of the same materials be added to the list of exempted products in § 1501.3. The Commission declines to do so because products made entirely of these materials present the same potential small parts risk as products made of all other materials. It is only bits of the materials which cannot be tested meaningfully and which have therefore been excluded in § 1501.4(b)(2). (For a different reason, products made of paper are already exempted. In addition, fuzz is, by definition a bit of material, and an entire product would not be made of fuzz). (emphasis added)

44 FR 34682, 34000 (June 15, 1979)

The testing limitation referred to in the excerpt from the preamble quoted above, concerns the random size of a fabric "bit" or "piece" that may detach from an article when subjected to use and abuse testing. However, the Commission is unaware that there actually ever existed any such similar testing limitation for fabric components that may detach and, therefore, no such technical basis for excluding fabric components from the scope of the small parts regulation.

Due to the July, 1987 staff reinterpretation of fabric components coverage under the small parts regulation, several toys and other articles intended for use by children were seized in joint operations with the Customs Service.

B. Commission Interpretation

The Commission believes that the new interpretation is in all respects proper and in accordance with law. However, the Commission also believes that in view of the previous publicly disclosed staff interpretation that the small parts regulation did not apply to fabric components, immediate enforcement of the new interpretation could result in unfairness and inequities, particularly to those firms that may have relied in good faith on the prior staff interpretation of the small parts regulation.

In view of the Commission's affirmation of the new staff interpretation of the small parts regulation as it applies to components made of paper, fabric, yarn, fuzz, elastic, and string, the Commission has decided as a matter of enforcement discretion to stay all future enforcement of the small parts regulation as it applies to these components effective from May 27, 1988, until November 23, 1988. The Commission believes that the stay of enforcement until May 23, 1989, will give industry, if any confusion exists, an adequate opportunity to bring toys and other articles intended for use by children under the age of three (3) containing fabric components into compliance with the small parts regulation. The Commission further believes the stay of enforcement will not unduly risk the safety of children under the age of three because in the event a particular component made of paper, fabric, yarn, fuzz, elastic, or string creates a significant risk of injury to children, the Commission can use the authority of section 15(c) of the FHSA, 15 U.S.C. 1274(c), to seek public notice of the hazard and removal of the product from the marketplace.

Of course, the Commission expects and urges firms to make necessary modifications in their products to bring products bearing fabric components into compliance with the small parts regulation as much in advance of that date as possible.

The Commission also notes that although its new interpretation of 16 CFR 1501.4 could be read to require components made of paper to comply with the small parts regulation, another section of the small parts regulation, 16 CFR 1501.3(b), exempts "[b]ooks and other articles made of paper * * *" In view of that exemption, components made of paper are not subject to the small parts regulation. However, as noted previously, if a particular paper component presents a substantial risk of injury to children, the Commission can use the authority of 15 U.S.C. 1274(c) to seek public notice of the hazard and the removal of that product from the marketplace.

In any enforcement action based on the interpretation set forth below, affected parties who disagree with the action will have a full opportunity in a federal district court and/or administrative proceeding to challenge the Commission's interpretation concerning the applicability of the small parts regulation to components made of fabric and the other named materials. Affected parties of course had the opportunity for notice and comment on the previously promulgated small parts regulation, 44 FR 34903 (June 15, 1979).

Accordingly, pursuant to the Federal Hazardous Substances Act, 74 Stat. 372, 378, 80 Stat. 1303–1304, 83 Stat. 187, 189; 15 U.S.C. 1261, 1262, 1269; and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 573, 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a), 16 CFR Part 1501 is amended as follows:

PART 1501—[AMENDED]

1. By inserting a new Subpart A heading immediately preceding § 1501.1 to read as follows:

Subpart A—Regulations

2. By adding a new Subpart B to read as follows:

Subpart B—Interpretations

§ 1501.20 Components.

(a) To eliminate any confusion concerning the staff's interpretation of the small parts regulation's applicability to components of a product which become detached from the article as a result of use and abuse testing, it is the Commission's interpretation of § 1501.4(b)(2) of this regulation that the exclusion for paper, fabric, yarn, fuzz, elastic, and string, applies only to bits and pieces that break off from a larger component. That exclusion does not apply when substantially all of a component made of paper, fabric, yarn, fuzz, elastic, or string becomes detached. Paper, however, is exempted from the regulation by § 1501.3(b). Based on that exemption for paper, paper components would not be subject to § 1501.4(b)(2).

(b) In the event a product intended for use by children under the age of three (3) bears a component made of paper, that the Commission believes may present a significant risk of injury to children, the Commission has the authority under 15 U.S.C. 1274(c) to seek public notice of the hazard and the removal of the product from the marketplace. Similarly, the Commission has the authority under 15 U.S.C. 1274(c) to seek public notice and the removal from the marketplace of products from which bits and pieces separate if those bits and pieces may present a substantial risk of injury to children.

Dated: May 19, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-11869 Filed 5-26-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-001; Order No. 493]

Natural Gas Data Collection System

Issued: May 19, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of availability of record formats and Order providing new effective date.

SUMMARY: On May 2, 1988, the Federal Energy Regulatory Commission (Commission) granted rehearing of Order No. 493 concerning the natural gas data collection system, 53 FR 15023 (Apr. 27, 1988), for the purpose of further consideration. The order granting rehearing providing applicants filing timely petitions for rehearing an additional period of time to review the record formats in Order No. 493. The order granting rehearing also suspended the effective date of Order No. 493 until the record formats were available.

This notice provides that the record formats in Order No. 493 were made available on May 19, 1988. Applicants that have filed petitions for rehearing of Order No. 493 will have until July 5, 1988, to supplement these petitions for rehearing with respect to the record formats.

This notice also provides that the new effective date for Order No. 493 is August 1, 1988.

DATES: This notice of availability is effective May 19, 1988.

Supplements to the petitions for rehearing with respect to the record formats in Order No. 493 are due on or before July 5, 1988.

The new effective date for Order No. 493 is August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

On May 2, 1988, the Federal Energy Regulatory Commission (Commission) issued an order granting rehearing of Order No. 493 [1] for the purpose of further consideration. The Commission also suspended the effective date of Order No. 493 until the record formats for electronic date submission of certain rate filings, certificate and abandonment applications and FERC Forms were available to the public for review and comment.[2]

The record formats in Order No. 493 are available at the Commission as of May 19, 1988. The record formats may be obtained from three sources. A limited number of printed copies of the record formats are available in the Commission's Public Reference Room.

The record formats are also available on diskette (3½" or 5¼") from the Commission's photocopying contractor for a fee of $5.00 per diskette. Requests should be forwarded to: Public Reference Room, 825 North Capitol Street, NE., Room 1000, Washington, DC 20426, (202) 898-1151.

Finally, the record formats are available through the Commission Issuance Posting System (CIPS) for a period of ten days. The CIPS is an electronic bulletin board offered at no charge to the user and available 24 hours a day using a personal computer and modem. For additional information on CIPS, contact the Commission's Public Reference Room at (202) 357-5118.

The following files are available on diskette and can be accessed through CIPS:

File name	Contents	Hardcopy reference
1. FORM2.P1	Form 2, Part 1	Pages 1-79.
2. FORM2.P2	Form 2, Part 2	Pages 80-163.
3. FORM2.P3	Form 2, Part 3	Pages 164-239.
4. FORM2.P4	Form 2, Part 4	Pages 240-284.
5. FORM2.P5	Form 2, Part 5	Pages 285-331.
6. FORM2A.P1	Form 2A, Part 1	Pages 1-85.
7. FORM2A.P2	Form 2A Part 2	Pages 86-161.
8. FORM8	Form 8	Pages 1-23.
9. FORM11	Form 11	Pages 1-34.
10. FORM14	Form 14	Pages 1-34.
11. FORM15	Form 15	Pages 1-36.
12. FORM16	Form 16	Pages 1-39.
13. RATES.P1	Rate Filings, Part 1.	Pages 1-101.
14. RATES.P2	Rate Filings, Part 2.	Pages 102-202.
15. TARIFFS	Tariffs	Pages 1-17.
16. CERTS	Certificate Applications.	Pages 1-19.

Petitioners filing petitions for rehearing in this docket will have 45 days to supplement their petitions with additional comments on the record formats. Supplementary comments must be filed with the Commission on or before July 5, 1988.

Subject to OMB approval, the new effective date for Order No. 493 is August 1, 1988.

By the Commission.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-11911 Filed 5-26-88; 8:45 am]

BILLING CODE 6717-01-M

[1] 53 FR 15023 (Apr. 27, 1988).

[2] 53 FR 16056 (May 5, 1988).

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment submitted by the State of Ohio as a modification to its permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to the Ohio program regulations regarding historic properties.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio program

The Ohio program became effective on August 16, 1982, following conditional approval by the Secretary of the Interior on August 10, 1982. Information pertinent to the Ohio program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15 and 935.16.

II. Discussion of Amendment

By letter dated October 16, 1987 (Administrative Record No. OH-0984) Ohio submitted Program Amendment

Number 31, which revised various provisions of the Ohio Administrative Code (OAC) concerning the protection of historic properties from the adverse effects of coal exploration and surface coal mining and reclamation operations.

The proposed revisions were submitted, in part, to satisfy the requirements of a June 9, 1987 letter from OSMRE to Ohio setting forth those provisions of the Ohio program in need of amendment to remain no less effective than the corresponding Federal regulations revised and promulgated on February 10, 1987. The amendment also satisfies one of the requirements the Director placed on Ohio when he approved Program Amendment Number 25 on July 17, 1987 (52 FR 26959–26972), as codified at 30 CFR 935.16(d).

The December 7, 1987 Federal Register announced receipt of the proposed amendment and invited public comment on its adequacy (52 FR 46377).

III. Director's Findings

As discussed below, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that Program Amendment Number 31, as submitted by Ohio on October 16, 1987, meets the requirements of SMCRA and 30 CFR Chapter VII.

1. *OAC 1501:13–1–02 Definitions.*

(a) *Cemetery.* Ohio proposes to revise the definition of "cemetery" in paragraph (M) of this section to delete the exclusion of isolated grave sites and family burial grounds owned by private citizens. On July 17, 1987, as codified at 30 CFR 935.12(c) and 935.16(d), OSMRE disapproved this exclusion and required that Ohio amend its regulations accordingly (52 FR 26959). This amendment fulfills that requirement.

The revised rule defines "cemetery" as "any area of land where human bodies are interred." Since this language is identical to the corresponding Federal definition at 30 CFR 761.5, the Director finds that it is no less effective than that regulation. Therefore, the disapproval of OAC:13–1–02(M) listed at 30 CFR 935.12(c) and the requirement that Ohio amend its program to include private family burial grounds within the definition of cemetery, as directed by § 935.16(d), can be removed.

(b) *Fragile and historic lands.* Ohio proposes to revise the definition of "fragile lands" in paragraph (PP) of this section to add paleontological sites to the list of examples of fragile lands and to delete buffer zones for areas in which mining is prohibited from that list. The changes parallel those made to the corresponding Federal definition at 30 CFR 762.5. As noted in the preamble to that rule (52 FR 18793, May 19, 1987), deletion of buffer zones from the list of examples of fragile lands does not prohibit such lands from being disignated as unsuitable for mining where the regulatory authority deems it appropriate to do so; it merely recognizes the fact that buffer zones are not in and of themselves fragile lands.

In addition, Ohio proposes to revise the definition of "historic lands" in paragraph (YY) of this section by deleting paleontological sites from the list of examples of historic lands and adding National Historic Landmarks to that list to parallel the revised Federal definition of this term at 30 CFR 762.5.

Both definitions have been revised to delete the requirement that, before lands can be designated as fragile or historic, the petitioner demonstrate that historic or fragile resources could suffer irreparable damage or be destroyed by coal mining operations. This revision is in accordance with a December 3, 1984 order of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144), as reflected in the revised Federal definitions promulgated on May 18, 1987.

Therefore, since Ohio's proposed definitions of "fragile lands" and "historic lands" are identical to the corresponding Federal definitions, the Director finds that they are no less effective than those definitions.

2. *OAC 1501: 13–3–03 Areas Where Mining is Prohibited or Limited.*

Ohio proposes to revise paragraph (C) of this section to remove the prohibition on the conduct of coal mining operations on lands where mining would adversely affect places eligible for listing, but not actually listed, on the National Register of Historic Places. The corresponding Federal rule at 30 CFR 761.11(c) affords such protection only to publicly owned parks and properties actually listed on the Register. Since the Ohio rule retains equivalent protection for such sites, the Director finds that OAC 1501:13–3–03(C) is no less effective than the Federal regulation at 30 CFR 761.11(c).

Ohio also proposes to revise paragraph (G) of this section to specifically allow relocation of cemeteries if authorized under State law or regulations. Since the corresponding Federal rule at 30 CFR 761.11(g) contains an identical provision, the Director finds that OAC 1501:13–3–03(G) is no less effective than that Federal regulation.

3. *OAC 15:13–3–04 Procedures for Identifying Areas Where Mining is Prohibited or Limited.*

Ohio proposes to revise paragraph (E) of this section to eliminate its applicability to places eligible for listing, but not actually listed, on the National Register of Historic Places. The rule would continue to apply to publicly owned parks and places listed on the Register. In addition, Ohio has added a new subparagraph authorizing the Chief to grant an extension of the timeframe within which the agency jurisdiction over the park or place must approve or disapprove permit applications for operations which would adversely affect the park or place. Since the revised rule is identical to the corresponding Federal rule at 30 CFR 761.12(f), the Director finds that it is no less effective than that regulation.

4. *OAC 1501:13–4–01 General Content Requirements for Permit Applications.*

Ohio proposes to amend paragraph (B) of this section, which requires coordination of permit application review and issuance with all other applicable Federal or State permitting processes, to include compliance with the Archaeological Resources Protection Act of 1979 where Federal or Indian lands are involved. The Director finds that this change corresponds to a similar revision in the analogous Federal rule at 30 CFR 773.12 and that it is therefore no less effective than that rule. However, he expects that a punctuation error in the amendment, which could be misinterpreted as limiting the applicability of the Bald Eagle Protection Act to Federal and Indian lands rather than all lands, will be corrected prior to promulgation or in a subsequent rulemaking.

5. *OAC 1501:13–4–04 and 1501:13–4–13 Permit Application Requirements for Information on Environmental Resources.*

In addition to minor editorial revisions, Ohio proposes to revise paragraph (A) of these two sections, which apply to surface and underground mining operations, respectively, to authorize the Chief to require the applicant to identify and evaluate historic resources within the proposed permit area. The proposed language is identical to that of the corresponding Federal regulations at 30 CFR 779.12(b) and 783.12(b); therefore, the Director finds that the amended Ohio provisions are no less effective than the Federal rules.

Ohio is also revising paragraph (K)(7) of these two sections by deleting language made redundant by the revised definition of cemetery. Since the changes to this paragraph, which requires that all human burial sites within 100 feet of the proposed permit area be identified on the application map, do not substantively alter any requirement, the Director finds that the revised State regulations are no less effective than the corresponding Federal regulations at 30 CFR 779.24(j) and 783.24(j), which contain identical cemetery mapping requirements.

6. *OAC 1501:13–4–05 and 1501:13–4–14 Permit Application Requirements for Reclamation and Operations Plans*

OAC 1501:13–4–05(K) and OAC 1501:13–4–14(J), which apply to surface and underground operations, respectively, require the applicant to explain how public parks and historic places will be protected during mining. Ohio proposes to revise these rules to specify that the reclamation and operations plan must describe how adverse impacts to these sites will be prevented, or, if valid existing rights exist or joint agency approval has been requested, how such impacts will be minimized. In addition, the proposed rules clarify that the Chief has the authority to require the applicant to protect properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures.

The revised State rules are identical to the corresponding Federal requirements at 30 CFR 780.31 and 784.17; therefore, the Director finds that the amended State provisions are no less effective than these Federal regulations.

7 *OAC 1501:13–5–01 Review, Public Participation and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.*

OAC 1501:13–5–01(E)(16) currently requires that, prior to approving any application for a permit, significant revision or renewal, the Chief find that the mining and reclamation operations will not adversely affect a private family burial ground. Since the revised definition of "cemetery" includes private family burial grounds, this finding no longer serves any purpose. Accordingly, Ohio is now deleting this finding and replacing it with one that the Chief has taken into account the effect of the proposed permitting action on properties listed on or eligible for listing on the National Register of Historic Places.

The corresponding Federal regulation at 30 CFR 773.15(c)(11) was similarly revised on February 10, 1987 (52 FR 4262). Therefore, the Director finds that the Ohio finding as revised is no less effective than the Federal rule.

IV. Public and Agency Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the December 7, 1987 Federal Register ended January 6, 1988. No written comments were received. Only one person requested an opportunity to testify at a public hearing. Therefore, on January 4, 1988, a public meeting was held in place of the hearing scheduled at OSMRE's Columbus Field Office. A record of this meeting was prepared, attached to the legal documents entered in testimony by the commenter, and placed in the Ohio Administrative Record (OH–1010).

At this meeting, the commenter, representing Holmes Limestone Company, stated that the OSMRE requirement that Ohio remove the reference to private family burial grounds and isolated grave sites from the definition of "cemetery" at OAC 1501:13–1–02(M) was inconsistent with the May 3, 1985 finding of the U.S. District Court for the Northern District of Ohio in *Holmes Limestone Company, et al.*, v. *Cecil B. Andrus, et al.*, Case Number C–80–993A. In this decision, the court found that, to be consistent with the purposes of SMCRA and avoid a substantial constitutional question, the term "cemetery" should be construed as excluding private family burial grounds or sites. On the basis of the history of this issue as outlined below, the Director does not agree that the findings of the court in this case require him to disapprove the proposed definition.

On March 13, 1979, the Secretary promulgated a regulation defining cemetery as "any area of land where human bodies are interred" (44 FR 15341). On June 6, 1980, Holmes Limestone Company filed suit (*Holmes Limestone* v. *Andrus*) challenging this definition to the extent that it included private family burial sites located on private property. On October 7, 1980, the District Court dismissed this suit, finding that, under Section 526(a)(1) of SMCRA, it had no jurisdiction to hear challenges to the Secretary's regulations. However, on August 6, 1981, the U.S. Court of Appeals for the Sixth Circuit (Case No. 80–3686, 655 F.2d 732) reversed this jurisdictional finding and remanded the case to the District Court for reconsideration. Although the decision of the Court of Appeals was confined to the question of jurisdiction and did not reach the merits of the plaintiffs' arguments, in an opinion accompanying the decision, the Court also noted that there appeared to be no basis for the inclusion of private family burial grounds within the definition of cemetery. On May 24, 1982, the U.S. Supreme Court denied the government's petition for a writ of certiorari, thus allowing the decision of the Court of Appeals to stand (456 U.S. 995, 102 S. Ct. 2280).

In accordance with these decisions and the opinion of the Court of Appeals, OSMRE subsequently promulgated a revised definition of cemetery which excluded private family burial grounds (48 FR 41348, September 14, 1983). However, on July 15, 1985, the U.S. District Court for the District of Columbia ruled that, the *Holmes Limestone* decision notwithstanding, the revised definition and in particular the exclusion of private family burial grounds, was inconsistent with SMCRA (*In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144). To comply with this decision, OSMRE on February 10, 1987, repromulgated the original March 13, 1979 definition of cemetery, which states simply that "cemetery means any area of land where human bodies are interred." Therefore, since the regulation which was the subject of the *Holmes Limestone* litigation has been revised and relitigated subsequent to that decision, the Director believes that the decision of the U.S. District Court for the Northern District of Ohio is no longer controlling.

Agency Comments

Pursuant to Section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The Farmers Home Administration identified an insignificant typographical error in OAC 1501:13–4–14(J)(2) and suggested that the wording of two other regulations (neither of which is the subject of this rulemaking) be modified for clarity. The Mine Safety and Health Administration and the U.S. Army Corps of Engineers submitted comments pertaining only to program provisions which are not the subject of this amendment; therefore, the Director did not consider them in this rulemaking. No other comments were received. OSMRE has suggested that Ohio correct the typographical error prior to promulgation and has forwarded all other comments to the State for consideration in future rulemakings as appropriate.

Pursuant to 30 CFR 732.17(h)(4), copies of the amendment were provided to the State Historic Preservation Officer and the Advisory Council on Historic Preservation for review and comment. The State Historic Preservation Officer stated that, while he felt additional consideration should be afforded cultural resources, he did not object to the amendment and recognized that the changes were in concert with those promulgated by OSMRE on February 10,

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1987 (Administrative Record No. OH-0976). No comments were received from the Advisory Council.

V. Director's Decision

Based upon the findings discussed above, the Director is approving the amendment as submitted on October 16, 1987, and is amending Part 935 of 30 CFR Chapter VII to implement this decision. In additon, as explained in Finding 1(a), the Director is amending 30 CFR 935.12(c) and 935.16(d) to (1) remove his disapproval of the definition of cemetery at OAC 1501:13-1-02(M) and (2) delete the requirement that Ohio amend this definition to include private family burial grounds. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C., 1291(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With Executive Order 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

3. Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 19, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.12, the introductory language of paragraph (c) is removed and paragraphs (c)(1) through (c)(3) are redesignated as paragraphs (a) through (c), respectively.

3. In § 935.15, a new paragraph (ee) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ee) The following amendment concerning the treatment and protection of historic properties and the definition of "fragile lands," as submitted to OSMRE on October 16, 1987, is approved effective May 27, 1988: Revisions to the following provisions of Chapter 1501 of the Ohio Administrative Code: 13-1-02(M), (PP) and (YY); 13-3-03 (C) and (G); 13-3-04(E); 13-4-01(B); 13-4-04 (A) and (K)(7); 13-4-05(K); 13-4-13 (A) and (K)(7); 13-4-14(J) and 13-5-01(E)(16).

§ 935.16 [Removed and reserved]

4. In § 935.16, paragraph (d) is removed and reserved.

[FR Doc. 88-12009 Filed 5-26-88; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 527

[Army Regulation 210-60]

Personal Check Cashing Control and Abuse Prevention

AGENCY: Army Department, DOD.

ACTION: Final rule.

SUMMARY: This regulation standardizes dishonored check procedures at check-cashing facilities on Army installations and implements fair, but firm, controls over dishonored check writers.

EFFECTIVE DATE: June 27, 1988.

ADDRESS: Ofc of the Dir. Fin & Acctg (FM), (SAFM-FAP-B), Indianapolis, IN 46249-1015.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Johnson, (317) 542-3250.

SUPPLEMENTARY INFORMATION: 32 CFR Part 527 is published to give the Army's procedures on dishonored checks. These procedures are intended to protect and assist the check writers and the check-cashing institutions. Some changes from AR 210-60, July 15, 1984 are:

- The definition of an offense is any insufficient funds check.
- Suspension policy reflects the policies of check-cashing facilities.
- Appeal policy has been relaxed to accommodate the new definition of an offense.
- RCS: CSCOA-105 added Row C, total number of check writers. Manual ICCO reporting systems may report only total dollar amount and total number of dishonored checks. Enlisted groupings have been changed from E1-E3 and E4-E6 to E1-E4 and E5-E6.

Title 32, Chapter V, Subchapter A is amended by adding Part 527 to read as follows:

PART 527—PERSONAL CHECK CASHING CONTROL AND ABUSE PREVENTION

Subpart A—Introduction

Section I—General

Sec.

527.1 Purpose and scope.
527.2 References.
527.3 Explanation of abbreviations and terms.
527.4 Department of the army objective.

Section II Responsibilities

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527.6 Deputy Chief of Staff for Personnel/U.S. Army Community and Family Support Center.
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527.8 Commanders of major Army commands (MACOMs).
527.9 Commanding General, U.S. Army Training and Doctrine Command.
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527.11 Unit commanders.
527.12 Supervisors of civilians.
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527.14 Finance officer.
527.15 Personnel administration center.
527.16 Director of personnel and community activities.
527.17 Heads of check-cashing facilities.
527.18 Persons with check-cashing privileges.

Subpart B—Controls

Section I—Policy

527.19 Authority.
527.20 General.
527.21 Two party checks.
527.22 Sponsor responsibility.

Section II—Offenses and Penalties

527.23 Offense and related offense.
527.24 Bank or other excusable error.
527.25 First offense.
527.26 Second offense.
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527.29 Check-cashing facility.
527.30 Unit commander.
527.31 Supervisor of civilians.
527.32 Installation check control officer.
527.33 Identification card issuing facility.
527.34 Personnel of other Services.
527.35 Appeals.
527.36 Disposal and transfer of records.

Subpart D—Monthly Dishonored Check Report, RCS: CSCOA-105

527.37 Purpose.
527.38 Source of Data.
527.39 Preparation.
527.40 Frequency, routing, and due dates.
527.41 Relinquishing data.

Subpart E—Training

527.42 Ethics and military competence.
527.43 Personal financial readiness/soldier money management.
527.44 Initial entry training.
527.45 Remedial training.

Appendix A—References

A. References

Authority: 5 U.S.C. 5511-5512; 37 U.S.C. 1007; 18 U.S.C. 1382; Articles 123a, 133, and 134, Uniform Code of Military Justice (UCMJ, Art 123a, 133, and 134).

Subpart A—Introduction

Section I General

§ 527.1 Purpose and scope.

(a) This regulation prescribes policies and procedures to—

(1) Control and prevent abuse of check-cashing privileges.

(2) Reduce losses to appropriated fund (AF) and nonappropriated fund (NAF) activities.

(b) Policies and procedures for cashing checks or redeeming dishonored checks at check-cashing facilities are not within the scope of this regulation. These are prescribed by the proponent agencies of the activities providing check-cashing services to patrons for their facilities in—

(1) AR 60-20/AFR 147-14 and Exchange Service Manual 55-21 for Army and Air Force Exchange Service (AAFES) facilities.

(2) AR 30-19 and the Commissary Operating Manual for commissary resale activities.

(3) AR 215-1 and AR 215-2 for U.S. Army Community and Family Support activities.

(4) AR 37-103 for finance and accounting offices.

(c) Policies and procedures for all suspensions of check-cashing privileges and appeal actions on such suspensions, regardless of where the dishonored check was returned on the installation, are governed by this regulation.

§ 527.2 References.

Required and related publications are listed in Appendix A to this part.

§ 527.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the glossary.

§ 527.4 Department of the Army (DA) objective.

Prevention of abuse of check-cashing privileges includes all measures taken to reduce acts of abuse or misuse to the lowest possible level. Factors leading to this abuse stem mainly from lack of education and experience in managing personal finances. The DA objective is to ensure all soldiers acquire and maintain knowledge, skills, and motivation needed to practice responsible personal financial management.

Section II Responsibilities

§ 527.5 Director, Finance & Accounting, Assistant Secretary of the Army (Financial Management).

The Director, Finance & Accounting, Assistant Secretary of the Army (Financial Management) (OASA (FM)) establishes and administers the Department of the Army (DA) program to control and prevent abuse of check-cashing privileges on Army installations by Department of Defense (DOD) personnel. The Director, Finance & Accounting (OASA(FM)) will—

(a) Give technical assistance to major Army commands (MACOMs) and installations with regard to their dishonored check programs.

(b) Coordinate with Deputy Chief of Staff, Personnel (DCSPER)/USACFSC on aspects of the check-cashing abuse prevention program pertaining to morale and welfare.

(c) Maintain liaison with the Deputy Chief of Staff for Operations and Plans and the Commanding General, U.S. Army Training and Doctrine Command (TRADOC) on Personal Financial Readiness/Soldier Money Management (PFR/SMM) in DA service schools and training centers.

§ 527.6 Deputy Chief of Staff for Personnel/U.S. Army Community and Family Support Center.

The Deputy Chief of Staff for Personnel/U.S. Army Community and Family Support Center (DCSPER/USACFSC) will—

(a) Advise the Director, Finance & Accounting (OASA (FM)) on personnel aspects of the program affecting the morale and welfare of DA members.

(b) Establish, maintain, and administer PFR/SMM and counseling services for DA personnel and their family members within the Army Community Service (ACS) Center program.

(c) Coordinate with the Director, Finance & Accounting (OASA(FM)) on the PFR/SMM aspect of the ACS consumer education training and budget counseling.

(d) Include PFR/SMM in the curriculum of the Army Continuing Education System and other DA schools administered by DSCPER that serve DA personnel and their family members.

§ 527.7 Heads of Headquarters, Department of the Army and field operating agencies.

Heads of Headquarters, Department of the Army (HQDA) and field operating agencies will—

(a) Prescribe procedures and conditions for providing check-cashing service to patrons of their facilities.

(b) Coordinate with the Director, Finance & Accounting (OASA(FM)) on policies and procedures to control and prevent dishonored checks. (See AR 310-3, para 1-9.)

§ 527.8 Commanders of major Army commands (MACOMs).

MACOM commanders will—

(a) Support and monitor the Dishonored Check Control Program—

(1) At intermediate or subordinate commands.

(2) At installations reporting directly to their headquarters.

(b) Give policy and procedural guidance to subordinate elements within their jurisdictions.

(c) Monitor effectiveness of the command Dishonored Check Control Program.

(d) Evaluate the Dishonored Check Control Program monthly.

(e) Ensure all subordinate elements within their jurisdiction conduct ongoing PFR/SMM training and educational programs. (See Training Circular 21-7)

(f) Establish a monitoring and evaluation system to ensure—

(1) Training programs are managed effectively.

(2) Training programs agree with DA goals, objectives, and guidelines.

§ 527.9 Commanding General, U.S. Army Training and Doctrine Command.

The Commanding General, U.S. Army Training Doctrine Command (TRADOC) will—

(a) Develop and maintain the course of instruction for the PFR/SMM training of all soldiers.

(b) Ensure time is allotted in basic training, advanced individual training, or one station unit training for—

(1) Training of enlistees.

(2) Repeat of the course for trainees not achieving the lesson standard.

(c) Ensure programs of instruction (POI) of the Army Finance School include courses that equip finance officers and noncommissioned officers to assist in providing PFR/SMM to soldiers and units in the field. (See Training Circular 21–7).

§ 527.10 Installation commanders.

Installation commanders (or equivalent) or designated representatives will—

(a) Maintain, support, and monitor installation programs to control and prevent abuse of check-cashing privileges.

(b) Set up check control offices under the direct control of active duty commissioned or warrant officers, senior noncommissioned officers, or DA civilians GS–7 and above. Prior to the appointment of an installation check control officer (ICCO), the commander should review the provisions of §§ 527.13 and 527.31, and consider which major organizational element has staff supervision over—

(1) The majority of check-cashing facilities.

(2) The extension or withdrawal of installation privileges.

(3) The overstamping of identification (ID) cards.

(c) Ensure that if responsibility of ICCO is transferred from one organizational element to another, that resources are transferred also.

(d) Approve/disapprove appeals of suspended check-cashing privileges when checkwriter has committed four or more offenses.

(e) Appoint an individual or individuals serving at an installation staff directorate level to act on appeals of suspended check-cashing privileges when the checkwriter has committed 3 offenses.

(f) Appoint an individual or individuals serving at an installation staff division level to act on appeals of suspended check-cashing privileges when the checkwriter has committed 2 offenses.

(g) Ensure the priority of educational efforts is based on the needs of personnel under their command.

(h) Ensure the POI for suspended personnel will stress—

(1) Career consequences of abuse of check-cashing privileges.

(2) Referral to individual and family counseling sources, when required.

(i) During inprocessing at permanent change of station for the following:

(1) Soldiers (E1 through E5). Emphasis will be on—

(i) Basics of checkbook management.

(ii) Check to financial organization pay option.

(iii) Consequences of abuse of check-cashing privileges.

(iv) Counseling services.

(2) Leaders (E6 through E9 and officers). Education will stress—

(i) The command unique elements of the dishonored check problem.

(ii) Leaders' responsibilities for role setting, training troops, and applying discipline.

(3) DA civilians and Family members. Education and counseling will be offered on a voluntary basis in accordance with AR 600–1.

§ 527.11 Unit commanders.

Unit commanders will assist the post/installation commander in the control and prevention of check-cashing privilege abuse. Unit commanders will—

(a) Advise all newly arrived personnel during the initial interview of their responsibilities for the proper use of personal checking accounts and check-cashing privileges and ensuring that their family members are aware of the same. Also determine the capabilities of the soldier for maintaining their checking account.

(b) Deliver notices of dishonored check offenses and suspensions to unit members and counsel them within 2 days of written notification.

(c) Take actions to properly settle the personal debts of soldiers if soldiers under their command issue dishonored checks. Articles 15, 121, 123a, and 133 or 134 of the UCMJ may be applied as stated in AR 600–20, para 5–10.

(d) Approve/disapprove appeals of suspended check-cashing privileges if a soldier or family member has committed a first offense.

(e) Recommend approval or disapproval of appeal actions to the individual appointed by the installation commander for 2 or more offenses.

(f) Determine whether the overstamping of an ID card is necessary if this is the checkwriter's first or second offense. As a disciplinary and control action this is advised.

(g) Schedule soldiers for remedial training and encourage family members who have written dishonored checks to attend this training.

§ 527.12 Supervisors of civilians.

Where DOD civilians are authorized check-cashing privileges the supervisors of these civilians will—

(a) Deliver notices of dishonored check offenses and suspensions to employees and counsel them.

(b) Approve/disapprove appeals of suspended check-cashing privileges if the employee has committed a first offense.

(c) Recommend approval or disapproval of appeal actions to the individual appointed by the installation commander for 2 or more offenses.

(d) Schedule employees for remedial training when the checkwriter has committed an offense.

§ 527.13 Installation check control officer.

The ICCO is the primary contact for dishonored check matters The ICCO will—

(a) Serve as liaison between commander and check-cashing facilities.

(b) Be authorized to suspend check-cashing privileges.

(c) Maintain and circulate a dishonored check list. (See § 527.32(c))

(d) Maintain a central file of dishonored checkwriters (See § 527.32(a))

(e) Establish a grace period of 10 calendar days. The grace period will be 10 calendar days from the date of the written dishonored check notification. The ICCO may allow additional time on a case by case basis (i.e. checkwriter is TDY or no leave away from the installation.). There will be a standard grace period for all check-cashing facilities.

(f) Establish an installation test on checkbook maintenance. Those attending remedial training will have to pass this test prior to being removed from the dishonored check list. The test may be open book. The test criteria should include:

(1) Posting samples of: checks written, deposits (direct deposits, interest, cash, and checks), check charges, printing fees, and bank card transactions.

(2) Maintaining the check register balance.

(3) Reconciling check register to bank statement.

(4) Scoring 70 or greater to pass.

(g) Evaluate the effectiveness of the installation Dishonored Check Control Program using the Monthly Dishonored Check Report (RCS: CSCOA–105). Distribute the report in accordance with § 527.40.

(h) Set up points of contact with all installation facilities providing financial management and consumer awareness training and counseling. Make unit commanders aware of these resources.

(i) Notify installation commander and military police or Army criminal investigation office of any pattern of check-cashing abuse suggesting fraud, forgery, or improper use of ID cards.

(j) Set up liaison with installation ID card issuing facility.

(k) Reinstate check-cashing privileges when an appeal has been approved in accordance with § 527.25 through § 527.28 or when the suspension period is over. The checkwriter must have redeemed the dishonored check, paid the administrative/service charges, attended remedial training, and passed the installation test on checkbook maintenance.

(l) Maintain and conduct an effective installation PFR/SMM program, as required by Subpart E. (See Training Circular 21–7).

(m) Maintain a counseling or counseling referral service to help personnel solve personal financial problems, develop budgets, formulate debt liquidation plans, get consumer protection, and buy on credit wisely. All installation resources will be used to develop this service; for example, ACS centers and on post financial institutions. Counseling services will be open to personnel and their families on a voluntary basis.

(n) Ensure DA issued articles are published in post media in coordination with the public affairs office. Publicize benefits of the counseling service, with emphasis on the preventive nature of the program.

§ 527.14 Finance officer.

The finance officer will assist the ICCO in the control and prevention of check-cashing privilege abuse. The finance officer will—

(a) Assist the unit commander in conducting training for personnel in checkbook maintenance by providing instructional material.

(b) Provide installation commander with management information concerning the level of dishonored checks using the Monthly Dishonored Check Report (Fig 4–1).

(c) Cash a soldier's personal check when the soldier is on the dishonored check list, is on SURE-PAY, has a non-local checking account, and the soldier has a written request from his/her commander to the finance officer requesting this service. If the check is returned due to insufficient funds, collection action will occur IAW DODPM and AR 37–103 for the amount of the check, plus any administrative or service charge.

(d) Establish procedures in Central Accounting Office for accounting for nonappropriated fund dishonored checks.

(e) Process DD Form 139 (Pay Adjustment Authorization) received from the check-cashing facility and return completed copy to the ICCO.

(f) Distribute amounts collected from soldier's or civilian's pay to the appropriate check-cashing facility.

(g) Analyze the RCS CSCOA–105 received from the ICCO.

(h) Inform the installation commander of dishonored check analysis.

§ 527.15 Personnel Administration Center.

The Personnel Administration Center (PAC) will assist unit commanders by completing some of the paperwork and other administrative details. Where PACs do not exist the unit commander will be responsible for completing these actions as well as those listed in § 527.11. The PAC will—

(a) Schedule soldiers and family members for remedial training when the checkwriter has committed an offense.

(b) Notify the ICCO when timely notification of dishonored check or suspension cannot be made because the soldier is absent from duty due to TDY, hospitalization, etc.

(c) Verify ID card overstamping has occurred and notify ICCO in writing.

§ 527.16 Director of Personnel & Community Activities.

The Director of Personnel & Community Activities (DPCA) will—

(a) Overstamp ID cards when requested by the ICCO.

(b) Ensure the quality of PFR/SMM training taught at the installation.

§ 527.17 Heads of check-cashing facilities.

In addition to the requirements of their proponent agencies, heads of check-cashing facilities will—

(a) Coordinate with the ICCO on administrative matters relating to the Dishonored Check Control Program.

(b) Ensure all personnel under their supervision know the installation policies and procedures for cashing checks and review the ICCO dishonored checklist prior to approving checks for encashment.

(c) Prominently display the sign cited below at each check-cashing point:

NOTICE TO CHECK CASHERS: DISCLOSURE OF SOCIAL SECURITY NUMBER (SSN) AND OTHER PERSONAL INFORMATION IS SOLICITED BY AUTHORITY OF SECTION 3012 AND 8012, TITLE 10, UNITED STATES CODE, AND IS MANDATORY IF YOU WISH TO CASH A CHECK.

ALL INFORMATION FURNISHED, INCLUDING SSN, WILL BE USED TO IDENTIFY WRITERS OF CHECKS RETURNED UNPAID.

(d) Require a consent statement authorizing immediate collection from pay for a dishonored check be placed on each check and signed by the individual. The consent statement to use is: "If this check is returned as dishonored, I consent to immediate collection from my pay for the amount of the dishonored check plus any related service or administrative charges." A prominently displayed consent sign at check cashing points may be used in lieu of the statement placed on each check.

(e) Obtain a stamp for recording additional information on the back of all personal checks if the information is not on the face of the check. This information is: name, rank, SSN, duty station, home address, home/duty phone number, and branch of service.

(f) Notify checkwriters in writing through their unit commander or first line supervisor for civilian employees of a dishonored check that has been returned by the financial institution.

§ 527.18 Persons with check-cashing privileges.

All persons with check-cashing privileges will—

(a) Fill out check properly and legibly. Include all information to be recorded on the back. Checks should be completed in black or blue/black ink, not water soluble. A pencil or any other type of writing instrument that can be erased, changed, or modified should not be used.

(b) Maintain sufficient funds in their checking account to cover the full amount of the checks.

(c) Notify the ICCO, unit commander, military police, and bank upon discovery of any lost/stolen personal checks.

(d) Provide check-cashing facilities with required information when attempting to cash a check.

(e) Have their ID card overstamped when directed to do so.

(f) Take full responsibility for any check cashed on their checking account including those cashed by family members.

(g) Redeem all checks written against their checking account which have been returned for insufficient funds.

(h) Attend remedial training when directed to do so by the ICCO.

(i) Distribute copies of disclaimer notices to check-cashing facilities.

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Subpart B—Controls

Section I—Policy

§ 527.19 Authority.

(a) Policies in this regulation are based on statutory authority including, but not limited to, the following:

(1) Sections 5511–5512, title 5, United States Code.

(2) Section 1007, title 37, United States Code.

(3) Section 1382, title 18, United States Code.

(4) Articles 123a, 133, 134, Uniform Code of Military Justice (UCMJ, Art. 123a, 133, and 134).

(b) Debts to instrumentalities and agencies of the United States can be collected from military personnel by involuntary deductions from their pay when such action is authorized by law. (See Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), part seven, chapter 7, and Department of Defense Retired Pay Manual (DODRPM).)

§ 527.20 General.

(a) DA policy is to give maximum service to persons entitled to use Army facilities. Installation activities extend check-cashing privileges for the convenience of their customers.

(b) The personal check is more than a simple promise to pay. By signing a check, the person makes a binding agreement to the receiver (in exchange for goods, services, or cash) that enough money to cover the check is in the person's account.

(c) The number of dishonored checks and the subsequent loss of funds to Army facilities call for firm measures to control and prevent dishonored checkwriting. Timely administrative action will be taken in all cases involving abuse or misuse of check-cashing privileges. Moral persuasion and command supervision will be used as primary measures to ensure dishonored checks are promptly redeemed and dishonored checkwriting ceases. Commanders will not tolerate or make excuses for dishonored checks issued by soldiers and their family members. Soldiers, their eligible family members, and other authorized patrons of Army facilities are expected to pay their just financial debts. Commanders will take immediate action to ensure prompt redemption of dishonored checks. They will counsel and take disciplinary action where appropriate to prevent abuse or fraud by soldiers under their command.

(d) Patrons who have abused check-cashing privileges will be given a chance to present evidence in their behalf. (See §§ 527.24 and 527.35.)

(e) Patrons may have their check-cashing privileges suspended indefinitely if they show a chronic attitude of personal and financial irresponsibility.

(f) If a person is found using an unstamped ID card during their suspension period and when they are required to have their card overstamped, the person's check-cashing privileges may be suspended indefinitely.

(g) Suspension procedures in this chapter do not preclude action under the UCMJ.

(h) All persons who abuse check-cashing privileges are subject to pertinent civil laws. Reported check-cashing abuses may be referred to civil law enforcement authorities or, if applicable under local U.S. procedures, to a U.S. magistrate. (See AR 190–29.)

§ 527.21 Two party checks.

When a two party check is returned "unpaid", the endorser may be subject to the dishonored check provision of this regulation only if the endorser fails to redeem the check within the grace period. If the original maker of the check is proven to have written a previous dishonored check, then an additional offense will be charged to the original maker and appropriate suspension imposed. If the endorser is currently under suspension, an additional offense will be charged and the suspension period will be increased. The endorser will be required to execute a consent statement to authorize collection from his/her pay if the two party check is returned for insufficient funds. The consent statement to be executed by the endorser is stated in § 527.17(d).

§ 527.22 Sponsor responsibility.

(a) Sponsors may be held liable for acts of family members when a family member uses their dependent ID card and their sponsor's SSN for check cashing. If a family member commits an offense under these conditions, the sponsor may then be placed on the dishonored checklist. The family member may be placed on the dishonored checklist in their own right if they used a civilian ID card with their own SSN as identification and the check becomes dishonored.

(b) Sponsors who wish to disclaim responsibility for dishonored checks written by family members may do so by filing a letter of disclaimer with the ICCO. (See fig. 2–1 for a sample letter.) This letter announces a sponsor's voluntary withdrawal of responsibility for acts of family members. It will be updated annually. Absence of a disclaimer does not prove agency relationship between sponsor and family members.

(c) Some facilities may deny check-cashing privileges to family members of sponsors who have filed a letter of disclaimer. The sponsor will inform family members of this denial.

Section II—Offenses and Penalties

§ 527.23 Offense and related offense.

(a) *Offense.* An offense has been committed when an individual does not redeem a dishonored check or redeems 3 or more checks within the grace period.

(b) *Related offense.* An individual may write several dishonored checks which are related. For example one error in the checkbook could cause several dishonored checks. All of these dishonored checks are considered related to each other and if not redeemed will be considered as a single offense. The individual must prove to the ICCO that the dishonored checks are related. If proof is not provided, each dishonored check will be considered an offense if not redeemed within the grace period. Related checks normally occur within a 10 day period.

§ 527.24 Bank or other excusable error.

If an individual can prove bank or other excusable error, dishonored checks resulting from these errors will not be considered offenses. The checkwriter's name will not be added to any list or central file.

§ 527.25 First offense.

(a) An individual who writes a check which later becomes dishonored and does not redeem it within the grace period has committed a first offense.

(b) An individual who writes 3 dishonored checks which are unrelated to each other and redeems them all within the grace period has committed a first offense.

(c) The penalty for a first offense is required attendance at remedial training and suspension of check-cashing privileges for 6 months from date of suspension letter. The ID card may be overstamped.

(d) The individual may be removed from the dishonored checklist prior to the end of the suspension period if the check has been redeemed, all charges have been paid, remedial training has been completed, the individual has passed the installation checkbook maintenance test, and the unit commander (for soldiers and family members) or first line supervisor (for civilians) approves.

§ 527.26 Second offense.

(a) An individual who writes a second dishonored check, unrelated to the first dishonored check, and does not redeem it within the grace period has committed a second offense.

(b) An individual who writes 4 dishonored checks which are unrelated to each other and redeems them all within the grace period has committed a second offense.

(c) The penalty for a second offense is required attendance at remedial training and suspension of check-cashing privileges for 12 months from date of suspension letter if checkwriter is not currently on the dishonored checklist. If the checkwriter is currently on the dishonored checklist, the suspension period will be increased by 12 months. The ID card may be overstamped.

(d) The individual may be removed from the dishonored checklist prior to the end of the suspension period if the check has been redeemed, all charges have been paid, remedial training has been completed, the individual passed the installation checkbook maintenance test, and the individual appointed by the installation commander (§ 527.10(f)) so approves.

§ 527.27 Third offense.

(a) An individual who writes a third dishonored check, unrelated to the previous dishonored checks, and does not redeem it within the grace period has committed a third offense.

(b) An individual who writes 5 dishonored checks which are unrelated to each other and redeems them all within the grace period has committed a third offense.

(c) The penalty for a third offense is required attendance at remedial training overstamping of the ID card, and suspension of check-cashing privileges for 18 months from date of suspension letter if the checkwriter is not currently on the dishonored checklist. If the checkwriter is currently on the dishonored checklist, the suspension period will be increased by 18 months.

(d) The individual may be removed from the dishonored checklist prior to the end of the suspension period if the check has been redeemed, all charges have been paid, remedial training has been completed, the individual passed the installation checkbook maintenance test, and the individual appointed by the installation commander (§ 527.10(c)) so approves.

§ 527.28 Fourth or greater offense.

(a) An individual who writes a fourth dishonored check, unrelated to the previous checks, and does not redeem it within the grace period has committed a fourth offense.

(b) An individual who writes 6 dishonored checks which are unrelated to each other and redeems them all within the grace period has committed a fourth offense.

(c) The penalty for a fourth offense is required attendance at remedial training, overstamping of the ID card, and suspension of check-cashing privileges indefinitely from the date of suspension letter.

(d) The individual may be removed from the dishonored checklist if the check has been redeemed, all charges have been paid, remedial training has been completed, the individual passed the installation checkbook maintenance test, and the installation commander (§ 527.10(d)) so approves.

Subpart C—Procedures

§ 527.29 Check-cashing facility.

In addition to the requirements of its proponent agency, the head of the facility to which a check is returned unpaid will do the following:

(a) Notify the checkwriter through the checkwriter's unit commander (for soldier or family member) or checkwriter's supervisor (for civilian) of the dishonored check. See figure 3–1 for a sample notification letter. A copy of the notification will be furnished to the ICCO. Sufficient copies will be sent to the commander or supervisor so a copy can be returned to the ICCO acknowledging receipt and indicating action to be taken. Notices will include, but are not limited to, the following:

(1) Name of checkwriter (or endorser, if a two party check).

(2) Date and amount of check.

(3) SSN of checkwriter.

(4) Status (active duty, retired, Reserve, National Guard, family member, civilian employee, etc.) and service (Army, Navy, Air Force, Marine Corps, or Coast Guard).

(5) Name, grade, SSN, and duty station of sponsor, if applicable.

(6) Home address and telephone number.

(7) Clear instructions covering—.

(i) Method of redemption.

(ii) Time allowed in which redemption must be made.

(iii) Administrative/service charges.

(iv) Appeal rights.

(b) Notify the ICCO as soon as—

(1) The check is redeemed. Provide date of redemption.

(2) Written evidence is furnished proving a bank or other error clearing the checkwriter of fault.

(3) The checkwriter fails to redeem the check within the grace period.

(4) the check is written off.

(c) Begin action for collection from pay when authorized, if all efforts at direct collection fail. (See AR 37–108, AR 37–104–3, and AR 37–104–10.)

§ 527.30 Unit commander.

On receipt of notice that a soldier or a soldier's family member of a commander's unit has written a dishonored check or has been placed on the dishonored checklist, the unit commander will (Some of these actions may be done by the PAC where PACs exist.)—

(a) Deliver the notice and counsel the checkwriter to comply with the requirements of the notice. See figure 3–2 for a sample counseling statement.

(b) Return copy of notification letter to the ICCO within 10 calendar days stating whether the dishonored check was redeemed within the grace period.

(c) Assist the checkwriter in determining the cause of the dishonored check. Make proper referral if budget counseling or financial assistance is needed.

(d) Assist the checkwriter in obtaining proof of bank or other excusable error clearing the checkwriter of fault.

(e) Schedule remedial checkbook maintenance training and ensure the checkwriter attends the training.

(f) Determine if checkwriter should have ID card overstamped if this is the first or second offense. If the decision is to overstamp the ID card, the unit commander will—

(1) Ensure the checkwriter receives notification and is counseled to comply with the instructions.

(2) Refer checkwriter to ID card issuing facility for reissuing of new ID card with overstamp.

(3) Ensure that the checkwriter received an overstamped ID card.

(4) Notify ICCO within 15 days from date of notification letter which notified the checkwriter of placement on dishonored checklist that ID card was overstamped.

(g) Work with the finance officer to cash checks for a soldier who is on the dishonored check list, is on SURE-PAY, and has a non-local bank account.

(h) Ensure checkwriter redeems the check and pays any administrative/service charge.

(i) Take administrative or disciplinary action, when proper. (See AR 600–31 and AR 600–37.)

(j) Approve/disapprove appeal actions on first offense if remedial training has been completed, the checkwriter passed the installation checkbook maintenance test, the check has been redeemed, and the

administrative/service charges have been paid. If approval is given, send a letter to the ICCO stating that approval is granted to remove the soldier or family member from the dishonored checklist. Letter must indicate action taken on counseling and training, that the checkwriter passed the installation test on checkbook maintenance, that checks have been redeemed, and administrative/service charges have been paid.

(k) Forward appeal actions on second and greater offenses to the individual designated by the installation commander to handle such appeal actions if the conditions in paragraph (j) of this section.

(l) Maintain soldier on SURE-PAY if at all possible.

§ 527.31 Supervisor of civilian.

On receipt of notice that a civilian employee under his/her supervision has written a dishonored check or has been placed on the dishonored checklist, the first line supervisor will—

(a) Deliver the notice and counsel the checkwriter to comply with the requirements of the notice.

(b) Return a copy of the notification to ICCO within 10 calendar days of date of notice indicating receipt and proposed action to be taken.

(c) Schedule remedial checkbook maintenance training and ensure the checkwriter attends the training.

(d) Ensure checkwriter redeems check(s) and pays any administrative service charges.

(e) Approve/disapprove appeal actions on first offense if training has been completed, the checkwriter passed the installation checkbook maintenance test, the check has been redeemed, and the administrative/service charges have been paid. If approval is given, send a letter to ICCO stating that approval is granted to remove the checkwriter from the dishonored checklist. Letter must indicate action taken on counseling and training, that the checkwriter passed the installation checkbook maintenance test, that the check has been redeemed, and that administrative/service charges have been paid.

(f) Forward appeal actions of second or greater offenses to individual designated by the installation commander if the conditions in paragraph e. above have been met.

§ 527.32 Installation check control officer.

(a) On receipt of notice from the check-cashing facility that a check was returned as dishonored, the ICCO will update the central file on dishonored checkwriters. (See § 527.13(d)). This file will contain, as a minimum, the following information:

(1) Name and SSN.

(2) Status (active duty, retired, Reserve, National Guard, family member, civilian employee, etc.) and Service (Army, Navy, Air Force, Marine Corps, or Coast Guard).

(3) Name, grade, and SSN of sponsor, if applicable.

(4) Organization address and telephone number.

(5) Home address and telephone number.

(6) Amount of dishonored check.

(7) Date check was returned as dishonored.

(8) Date check was redeemed.

(9) Effective date of suspension of check-cashing privileges.

(10) Date check-cashing privileges are restored.

(b) The central file on dishonored checkwriters will be maintained on all personnel, including those who redeem the dishonored check within the grace period. The file will be used for reference to identify repeat offenders.

(c) The dishonored checklist will be updated at least monthly to accurately show the current status of suspensions. The list will include suspension expiration dates and will be circulated at least monthly to installation check-cashing and ID card issuing facilities. On post banks and credit unions may also receive a copy of the dishonored checklist. The list may not be circulated to any other institution on or off the installation.

(d) The ICCO may be provided terminal access to an electronic check verification system. The ICCO may use this system to verify check-cashing privileges of individual checkwriters at the request of installation check-cashing facilities.

(e) If the checkwriter commits a first offense (see § 527.25), the ICCO will—

(1) Add the checkwriter's name to the dishonored check list.

(2) Suspend check-cashing privileges for 6 months.

(3) Inform the commander (supervisor if checkwriter is a civilian) and checkwriter by letter that check-cashing privileges are suspended for 6 months from the date of letter and that the checkwriter must attend remedial training. (See figure 3–3.) The check writing privileges will be restored when the suspension period is over or earlier if the checkwriter has met the conditions in § 527.25(d) and the unit commander for soldiers and their family members or the first line supervisor for civilians decides to restore check-cashing privileges sooner.

(f) If the checkwriter commits a second offense (See § 527.26), the ICCO will—

(1) Add the checkwriter's name to the dishonored checklist if currently not on the list.

(2) Suspend check-cashing privileges for 12 months or increase suspension by 12 months if checkwriter is currently under suspension.

(3) Inform the unit commander (supervisor if checkwriter is a civilian) and checkwriter by letter that check-cashing privileges are suspended for 12 months from date of letter or increased by 12 months and that the checkwriter must attend remedial training. (See figure 3–4.) The check cashing privileges may be restored when the suspension period is over or earlier if the checkwriter has met the conditions in § 527.26(d) and the individual appointed by the installation commander to act on appeals of second offenses approves.

(g) If the checkwriter commits a third offense (see § 527.27), the ICCO will—

(1) Add the checkwriter's name to the dishonored checklist if currently not on the list.

(2) Suspend check-cashing privileges for 18 months or increase suspension by 18 months if checkwriter is currently under suspension.

(3) Inform the commander (supervisor if checkwriter is a civilian) and checkwriter by letter that check-cashing privileges are suspended for 18 months from date of letter or increased by 18 months, that the checkwriter must attend remedial training, and that the ID card must be overstamped. (See figure 3–5.) The check-cashing privileges may be restored when the suspension period is over or earlier if the checkwriter has met the conditions in § 527.27(d) and the individual appointed by the installation commander to act on appeals of third offenses approves.

(h) If the checkwriter commits a fourth offense (see § 527.28), the ICCO will—

(1) Add checkwriter's name to the dishonored checklist if currently not on the list.

(2) Suspend check-cashing privileges indefinitely.

(3) Inform the commander (supervisor if checkwriter is a civilian) and checkwriter by letter that check-cashing privileges have been suspended indefinitely, that the checkwriter must attend remedial training, and that the ID card must be overstamped. (See figure 3–6.) The installation commander may reinstate check-cashing privileges if the checkwriter has met the conditions in § 527.28(d).

(i) If the checkwriter continues to write dishonored checks after the fourth offense, the ICCO will follow guidance in paragraph (h) of this section.

(j) The ICCO will remove an individual from the dishonored checklist at the end of the suspension period or at the request of the individual having appeal approval authority. The checkwriter must have redeemed the dishonored checks, paid the administrative/service charges, attended remedial training, and passed the installation checkbook maintenance test.

(k) If proof of bank error or other excusable error is given, the ICCO will—

(1) Clear checkwriter's name from central file of offenders.

(2) Cancel any suspension imposed because of this error.

(3) Inform checkwriter by letter of action taken.

§ 527.33 Identification card issuing facility.

(a) When informed by the ICCO or the unit commander that an authorized user of the installation check-cashing facilities is suspended for issuing a dishonored check and is required to have their ID card overstamped, the ID card issuing facility will take action under AR 640–3, paragraph 4–10, to overstamp the offender's ID card.

(b) When reissuing ID cards lost, stolen, etc., the dishonored checklist will be examined to determine if the individual applying for a new or replacement card is on it. The individual's unit or civilian's supervisor should be contacted to determine whether the ID card should be overstamped.

§ 527.34 Personnel of other Services.

DA officials may not overstamp ID cards issued by other Services. DA officials may suspend check-cashing privileges of members of other Services, or their family members, by placing them on the dishonored checklist. Repeated abuse of check cashing privileges may result in barring from the installation persons not assigned thereto, except for needed medical services (See figs 3–7 and 3–8.) This barring may apply to family members and retirees of any Service.

§ 527.35 Appeals.

(a) Any person whose check-cashing privileges are suspended may submit a written appeal for removal of the suspension. Active duty soldiers or their family members will send the appeal to their unit commander. Civilian employees will send their appeals to their first line supervisor. The appeal will include the following:

(1) Date check-cashing privileges were suspended.

(2) Check-cashing facility where check was cashed.

(3) Date and where full payment, including administrative/service charges, was made.

(4) Date remedial training was completed.

(5) Grade received on installation checkbook maintenance test.

(6) Reasons privileges should be restored.

(b) ICCOs will not restore privileges if the checkwriter has not attended required training, has not passed the installation checkbook maintenance test, or has not paid in full all dishonored checks and administrative/service charges that did not result from bank or other excusable error.

(c) If appeal was approved, the ICCO will—

(1) Remove checkwriter's name from dishonored checklist.

(2) Inform checkwriter promptly of action taken.

§ 527.36 Disposal and transfer of records.

ICCOs will—

(a) Dispose of inactive files as required by AR 25–400–2 for file number 210–60a (Check-cashing Privileges).

(b) Ensure that the ICCO is added to the installation out-processing checklist.

(c) Send active dishonored check files directly to the ICCO of the gaining installation when offenders are reassigned before the end of their or their family member's suspension period.

(d) Place incoming individuals on check cashing suspensions, if their existing suspensions have not expired. These individuals will remain on suspension until the suspension expires or an appeal is approved.

Subpart D—Monthly Dishonored Check Report, RCS: CSCOA–105

§ 527.37 Purpose.

The Monthly Dishonored Check Report, RCS: CSCOA–105, provides data needed for control and management purposes.

§ 527.38 Source of data.

Data for preparation of the report will be obtained from records kept at each installation.

§ 527.39 Preparation.

(a) The Monthly Dishonored Check Report will be prepared by the ICCO in the format at figure 4–1 for ICCOs with automated systems. For ICCOs with manual systems, the report need only contain the total number of dishonored checks and total dollar value. Figure 4–1 is preferred. Negative reports are required. Items, such as corrective actions taken, may improve the report as needed.

(b) Statistics for transferred personnel will be dropped by the losing installation and picked up by the gaining installation for suspension purposes.

§ 527.40 Frequency, routing, and due dates.

The ICCO will—

(a) Prepare the report monthly.

(b) Send the original report to their MACOM.

(c) Send copy of the report to finance and accounting officer for evaluation (see § 527.14(b)) and ultimate routing to installation commander.

(d) Send copy of the report to the Office of the Director of Finance and Accounting, ATTN: SAFM–FAP–B, Indianapolis, IN 46249–1016, due no later than 15 calendar days (30 days for overseas) after the end of the reporting period.

(e) Provide unit commander with unit dishonored check data.

§ 527.41 Relinquishing data.

Data in the Monthly Dishonored Check Report may be provided to banks and credit unions operating on military installations.

Subpart E—Training

§ 527.42 Ethics and military competence.

Ethics and military competence are closely related. Poor performance in one area contributes to poor performance in another. Therefore, a major element in personal financial management is ethics. Responsibility, integrity, and high standards of conduct will be stressed. This aspect of responsible financial management is considered a part of leader development and should be included in leadership instruction.

§ 527.43 Personal financial readiness/soldier money management (PFR/SMM).

PFR/SMM training will be conducted throughout the Army training system as shown in §§ 527.44 and 527.45.

§ 527.44 Initial entry training.

Emphasis during initial entry training will be on prevention of abuse of check-cashing privileges. Recruits will be—

(a) Given overview of basic pay entitlements, DA Form 3686 (JUMPS–Army Leave and Earnings Statement), and maintenance of a checkbook.

(b) Made aware of counseling resources and procedures.

(c) Instructed on their financial responsibilities to themselves, their family members, and their peers.

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(d) Made aware of the disciplinary and career consequences of the abuse of check-cashing privileges.

§ 527.45 Remedial training.

Remedial training is mandatory for checkwriters committing an offense. Emphasis will be on checkbook management skills. This training is a prerequisite for removal from check-cashing suspensions. (See § 527.25 through § 527.28.) Remedial training will include budget counseling when budget problems exist. After completion of the remedial training the individual will be given a test on checkbook maintenance. The ICCO will require 70% or greater correct responses for passing the test. The individual must be able to demonstrate successful completion of the training and that he/she has the ability to properly maintain a checking account.

(Office Symbol) (Date)
MEMORANDUM THRU (Installation Check Control Officer)
FOR (All Installation Check-cashing Facilities)
SUBJECT: Disclaimer of Responsibility

1. Effective this (date) day of (month and year) I, (name), disclaim responsibility for any check issued by the person(s) listed below:

Name _____
SSN _____
Address _____
Relationship _____

2. I have advised the individual(s) named above that I have disclaimed responsibility for check(s) presented by them to military check-cashing facilities. I have also advised the above named person(s) that their check-cashing privileges in these facilities may no longer be authorized.

(Signature)
(SSN)
[Address]
(Unit)

Note.—This memorandum must be notarized by a licensed notary public prior to submission.

Figure 3–1. Sample of Notification of Disclaimer of Responsibility By Sponsor

(Office Symbol) (Date)
MEMORANDUM THRU (unit commander of active duty check writer or sponsor, State adjutant general for members of the Army National Guard, or supervisor for civilians)
FOR (Check writer)
SUBJECT: Notification of Dishonored Check

1. Reference AR 210–60, Personal Check-cashing Control and Abuse Prevention, dated (date of regulation).

2. Your check(s) in the amount of ($), dated (date), was/were returned to (name of check-cashing facility) as dishonored.

3. You have 10 calendar days from the date of this letter to make redemption and pay any administrative/service fee. Failure to make full restitution will result in a suspension of your check-cashing privileges. Restitution for the above check(s) must be made by cash, certified check, or money order to (where redemption should be made).

4. If you can furnish proof of bank or other excusable error to the installation check control officer at (installation), your installation check-cashing privileges will be restored immediately. If proof is furnished, this would not be considered an offense, and no record of this transaction will be kept.

Note.—MEMORANDUM THRU of address applies when two or more offenses occurred.

Figure 3–1. Sample of Notification of Dishonored Check

(Office Symbol) (Date)
MEMORANDUM FOR (Check writer)
SUBJECT: Counseling Statement for Dishonored Check(s)

1. A Notification of Dishonored Check, dated (date), has been received and is given to you in conjunction with this counseling statement. The Notification requires you to perform one of the following:

a. Make restitution.

b. Furnish proof of bank error or other extenuating circumstances.

2. I have discussed the reason for the dishonored check with you, which is as follows:

3. Several offices are available to provide budgeting or financial assistance. I am/am not scheduling you for this training.

4. Consequences for abusing check-cashing privileges include the following:

a. Suspension of check-cashing privileges.
b. Letter of reprimand.
c. Appropriate comments in evaluation reports.
d. Administrative separation.
e. Bar to enlistment.
f. Denial of promotion.
g. Reduction in grade for inefficiency.

5. These consequences may be avoided by performing the requirements in paragraph 1 above. Subsequent offenses may be dealt with more severely.

(Signature of commander)

Soldier's Comments:

(Signature of check writer)

Figure 3–2. Sample Counseling Statement for Dishonored Check

(Office Symbol) (Date)
MEMORANDUM THRU (Unit commander of active duty check writer/sponsor, State adjutant general for members of the Army National Guard, or supervisor for civilians)
FOR (Check writer)
SUBJECT: Suspension of Check-Cashing Privileges—First Offense

1. Reference AR 210–60, Personal Check-cashing Control and Abuse Prevention, (date of regulation).

2. Your dishonored check(s) in the amount of (dollar amount), dated (date), and returned to (name of check-cashing facility) as dishonored was/were not redeemed within the grace period. Therefore, your installation check-cashing privileges are suspended for 6 months and you are required to attend remedial training on checkbook maintenance. The suspension period will end 6 months from the date of this letter, provided the check(s) has/have been redeemed and all administrative/service charges have been paid, you have attended remedial training, and you have passed the installation checkbook maintenance test. Failure to make redemption will result in collection action being taken against your pay account. A record of this occurrence will be kept in the check control office. Future dishonored check instances may result in more severe restrictions and/or disciplinary action against you.

3. You may appeal the suspension of your installation check-cashing privileges to your unit commander (if military or family member) or first line supervisor (if civilian). Your unit commander (if military or family member) or first line supervisor (if civilian) may approve restoring your check-cashing privileges prior to the end of 6 months. However, the check(s) must have been redeemed, all administrative/service charges paid, remedial training completed, and you must have passed the installation checkbook maintenance test.

(Installation check control officer)

Figure 3–3. Sample of Suspension Notification—first offense

(Office Symbol) (Date)
MEMORANDUM THRU (Unit commander of active duty check writer/sponsor, State adjutant general for members of the Army National Guard, or supervisor for civilians)
FOR (Check writer)
SUBJECT: Suspension of Check-Cashing Privileges—Second Offense

1. Reference AR 210–60, Personal Check-cashing Control and Abuse Prevention, (date of regulation).

2. Your dishonored check(s) in the amount of (dollar amount), dated (date), and returned to (name of check-cashing facility) as dishonored was/were not redeemed within the grace period. Therefore, your installation check-cashing privileges are suspended for 12 months and you are required to attend remedial training, since this is your second offense. The suspension period will end 12 months from the date of this letter, provided the check(s) has/have been redeemed and all administrative/service charges have been paid, you have attended remedial training, and you have passed the installation checkbook maintenance test. Failure to make redemption will result in collection action being taken against your pay account. A record of this occurrence will be kept in the check control office. Future dishonored check instances may result in more severe restrictions and/or disciplinary action against you.

3. You may appeal the suspension of your installation check-cashing privileges to your unit commander (if military or family member) or first line supervisor (if civilian). Your unit commander (if military or family member) or first line supervisor (if civilian) may approve restoring your check-cashing privileges prior to the end of 12 months. However, the check(s) must have been redeemed, all administrative/service charges paid, remedial training completed, and you must have passed the installation checkbook maintenance test.

(Installation check control officer)

Note.—If the check writer is currently on the dishonored check list, change paragraph 2 to indicate that current suspension is increased by 12 months.

Figure 3–4. Sample of Suspension Notification—second offense

(Office Symbol) (Date)
MEMORANDUM THRU (Unit commander of active duty check writer/sponsor, State adjutant general for members of the Army National Guard, or supervisor for civilians)
FOR (Check writer)
SUBJECT: Suspension of Check-Cashing Privileges—Third Offense

1. Reference AR 210–60, Personal Check-cashing Control and Abuse Prevention, (date of regulation).

2. Your dishonored check(s) in the amount of (dollar amount), dated (date), and returned to (name of check-cashing facility) as dishonored was/were not redeemed within the grace period. Therefore, your installation check-cashing privileges are suspended for 18 months, you must have your ID card overstamped, and you are required to attend remedial training, since this is your third offense. The suspension period will end 18 months from the date of this letter, provided the check(s) has/have been redeemed and all administrative/service charges have been paid, you have attended remedial training, and you have passed the installation checkbook maintenance test. Failure to make redemption will result in collection action being taken against your pay account. A record of this occurrence will be kept in the check control office. Future dishonored check instances may result in more severe restrictions and/or disciplinary action against you.

3. You may appeal the suspension of your installation check-cashing privileges to your unit commander (if military or family member) or first line supervisor (if civilian). The installation commander may approve restoring your check-cashing privileges. However, the check(s) must have been redeemed, all administrative/service charges paid, remedial training completed, and you must have passed the installation checkbook maintenance test.

(Installation check control officer)

Figure 3–5. Sample of Suspension Notification—third offense

(Office Symbol) (Date)
MEMORANDUM THRU (Unit commander of active duty check writer/sponsor, State adjutant general for members of the Army National Guard, or supervisor for civilians)
FOR (Check writer)
SUBJECT: Suspension of Check-Cashing Privileges—Fourth Offense

1. Reference AR 210–60, Personal Check-cashing Control and Abuse Prevention, (date of regulation).

2. Your dishonored check(s) in the amount of (dollar amount), dated (date), and returned to (name of check-cashing facility) as dishonored was/were not redeemed within the grace period. Therefore, your installation check-cashing privileges are suspended indefinitely, and you are required to attend remedial training, and you must have your ID card overstamped since this is your fourth offense. You must report to the ID card issuing facility to receive an overstamped ID card. The suspension period will end only at the approval of the installation commander, provided the check(s) has/have been redeemed and all administrative/service charges have been paid, you have attended remedial training, and you have passed the installation checkbook maintenance test. Failure to make redemption will result in collection action being taken against your pay account. A record of this occurrence will be kept in the check control office. Future dishonored check instances may result in more severe restrictions and/or disciplinary action against you.

3. You may appeal the suspension of your installation check-cashing privileges to your unit commander (if military or family member) or first line supervisor (if civilian). The installation commander may approve restoring your check-cashing privileges. However, the check(s) must have been redeemed, all administrative/service charges paid, remedial training completed, and you must have passed the installation checkbook maintenance test.

(Installation check control officer)

Figure 3–6. Sample of Suspension Notification—fourth offense

(Office Symbol) (Date)
MEMORANDUM FOR (Check writer)
SUBJECT: Intent to Debar from United States Military Installation

1. You are hereby notified of intent to bar you from entering or reentering the limits of (name of installation), except to enter and exit the installation by the most direct route for needed medical treatment at (name of hospital of clinic). This bar to the installation is because (reason for debarment). This bar to the installation will be removed (date or when certain actions are completed).

2. Section 1382, title 18, United States Code, states: "Whoever within the jurisdiction of the United States, goes upon any military, Naval, or Coast Guard Reservation, Post, Fort, Arsenal, Yard, Station or Installation, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof shall be fined not more than $500 or imprisoned not more than 6 months, or both."

3. After debarment, if you are found within the limits of (name of installation) without having received prior approval to enter the installation, except for the purpose of obtaining needed medical care, you will be detained by military authorities and turned over to Federal authorities for prosecution under the above law.

4. Prior to final action barring you from entering or reentering the limits of (name of installation), you are hereby given an opportunity to present evidence on your behalf and to comply with the requirements set forth in paragraph 1 above. This information may be presented to (ICCO). If a reply is not received within (number of) days of the date you receive this letter, a letter of debarment will automatically be sent to you.

(Installation commander)

Figure 3–7. Sample Notice of Intent to Debar From Installation

(Office Symbol) (Date)
MEMORANDUM FOR (Check writer)
SUBJECT: Debarment from United States Military Installation

1. You are hereby prohibited as of this date from entering or reentering the limits of (name of installation), except to enter and exist the installation by the most direct route for needed medical treatment at (name of hospital of clinic). This bar to the installation is because (reason for debarment). This bar to the installation will be removed (date or when certain actions are completed).

2. Section 1382, title 18, United States Code, states: "Whoever within the jurisdiction of the United States, goes upon any Military, Naval, or Coast Guard Reservation, Post, Fort, Arsenal, Yard, Station or Installation, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof shall be fined not more than $500 or imprisoned not more than 6 months, or both."

3. If you are hereafter found within the limits of (name of installation) without having received prior approval to enter the installation, except for the purpose of obtaining needed medical care, you will be detained by military authorities and turned over to Federal authorities for prosecution under the above law.

4. If you wish to appeal this debarment, a written request for a hearing on the matter should be sent to (ICCO) within (number of) days of the date of this letter. You will be informed by letter of the date, time, and place of the hearing for your appeal.

(Installation commander)

CF:
PM
SJA

Figure 3–8. Sample Notice of Debarment From Installation

MONTHLY DISHONORED CHECK REPORT

		AAFES	Commissary	FAO	NAF	Other	Total
1 E1–E4	A						
	B						
	C						
2. E5–E6	A						
	B						
	C						
3. E7–E9	A						
	B						
	C						
4 W01/05	A						
	B						
	C						
5. 06/Above	A						
	B						
	C						
6 Total (Line 1–5)	A						
	B						
	C						
7 Other Services	A						
	B						
	C						
8 Retired Military	A						
	B						
	C						
9 NG/Res	A						
	B						
	C						
10 Family Member	A						
	B						
	C						
11. All Other (DOD Civ)	A						
	B						
	C						
12. Total (Line 7–11)	A						
	B						
	C						
13. Grand Total (Line 6+12)	A						
	B						
	C						

Row A—Number of dishonored checks by category for the month.
Row B—Total dollar value of dishonored checks by category for the month. (Dollar values will be rounded to the nearest dollar.)
Row C—Number of dishonored check writers by category for the month.
Figure 4–1. Sample format of Monthly Dishonored Check Report, RCS: CSCOA–105.

Appendix A—References

*Army publications referenced in this document are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, Telephone: (703) 487–4684.

Section I

Required Publications

AR 30–19
Army Commissary Store Operating Policies. (Cited in § 527.1(b))
AR 37–103
Finance and Accounting for Installations: Disbursing Operations. (Cited in § 527.1(b))
AR 37–104–3
Military Pay and Allowances Procedures: Joint Uniform Military Pay System (JUMPS–Army). (Cited in § 527.29(c))
AR 37–104–10
Military Pay and Allowances Procedures for Inactive Duty Training: Joint Uniform Military Pay System—Reserve Components (JUMPS–(RC)–Army). (Cited in § 527.29(c))
AR 37–109
General Accounting and Reporting for Finance and Accounting Offices. (Cited in § 527.29(C))
AR 60–20/AFAR 147–14
Army and Air Force Exchange Service (AAFES) Operating Policies. (Cited in § 527.1(b))
AR 190–29
Minor Offenses and Uniform Violation Notices Referred to U.S. District Courts. (Cited in § 527.19(h))
AR 215–1
Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 527.1(b))
AR 215–3
The Management and Operation of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 527.1(b)) Preparation, Coordination, and Approval of Department of the Army Publications. (Cited in § 527.7(b))
AR 600–20
Army Command Policy and Procedures. (Cited in § 527.11(c))
AR 600–31
Suspension of Favorable Personnel Actions for Military Personnel in National Security Cases and Other Investigations or Proceedings. (Cited in § 527.30(i))
AR 600–37
Unfavorable Information. (Cited in § 527.30(i)) Identification Cards, Tags, and Badges. (Cited in § 527.33(a))

Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.
Department of Defense Military Pay and Allowances Entitlements Manual (DODPM).
Exchange Service Manual 55–21.

Section III

Referenced Forms

DA Form 3686
JUMPS-Army Leave and Earnings Statement
DD Form 2A (Act)
Active Duty Military ID Card
DD Form 2A (Res)
Armed Forces of the United States ID Card (Reserve).
DD Form 2A (Ret)
United States Uniformed Services ID Card (Retired)
DD Form 139
Pay Adjustment Authorization

Glossary

Section I

Abbreviations

AAFES—Army and Air Force Exchange Service
ACS—Army Community Service
AF—appropriated fund
ASA(FM)—Assistant Secretary of the Army (Financial Management)
CG—commanding general
DA—Department of the Army
DCSPER—Deputy Chief of Staff, Personnel
DOD—Department of Defense
DODPM—Department of Defense Military Pay and Allowances Manual
DODRPM—Department of Defense Retired Pay Manual
DPCA—Deputy for Personnel and Community Activities
HQDA—Headquarters, Department of the Army
ICCO—installation check control office(r)
ID—identification
MACOM—major Army command
NAF—nonappropriated fund
OASA(FM)—Office of the Assistant Secretary of the Army (Financial Management)
PAC—Personnel Administration Center
PFR/SMM—personal financial readiness/soldier money management
POI—program of instruction
RCS—requirement control symbol
SSN—social security number
TDY—temporary duty
TRADOC—U.S. Army Training and Doctrine Command
UCMJ—Uniform Code of Military Justice
USACFSC—U.S. Army Community and Family Support Center

Section II

Terms

Agency relationship. Relationship that exists when an individual authorizes a person (or persons) to act on the individual's behalf
Check-cashing facility. Appropriated fund or non appropriated fund activity that accepts or cashes checks for merchandise, services, cash, or payment of debts to the Government
Dishonored check. Check returned unpaid by the financial institution on which it was drawn due to insufficient funds, closed account, no account, or other like cause
Central file of offenders. A file maintained by the installation check control officer listing all persons that have written a dishonored check. This file is not published for use by any of the check-cashing facilities
Dishonored check list. Manual list or listing stored in an electronic check verification system of persons whose check-cashing privileges are suspended
Electronic check verification system. Automated system that identifies persons whose check-cashing privileges have been denied; for example, the AAFES' TRW system, or the commissary's National Cash Register electronic point of sales system
Grace period. Time allowed (10 calendar days from date of notification letter) in which redemption of a dishonored check must be made
Offense. An offense occurs when a check writer does not redeem a dishonored check within the grace period. The dishonored check was not the result of a bank or other excusable error
Habitual dishonored check writer. A soldier who writes dishonored checks on a regular basis but redeems the check within the grace period, thus never being placed on the dishonored check list
Overstamped ID card. DD Form 2A (Act) (Active Duty Military ID Card), DD Form 2A (Res) (Armed Forces of the United States ID Card (Reserve)), DD Form 2A (Ret) (United States Uniformed Services ID Card (Retired)), or other form of identification for Active, Reserve Components, retired or civilian personnel stamped on the face to show check-cashing privileges are revoked
Proof of bank or other excusable error. Written admission of error by a financial institution or other responsible party clearing check writer of fault
Related offense. Any group of dishonored checks which resulted from a common error (for example, a subtraction error in the checkbook). The check writer must prove to the ICCO that these dishonored checks are related. If none of the checks are redeemed, they will be called one offense
Two-party check. A written order dated and signed by the maker directing the bank to pay a certain sum of money to the order of a second party.

Kenneth L. Denton,
Alternate Liaison Officer with the Federal Register.

[FR Doc. 88–11850 Filed 5–26–88; 8:45 am]
BILLING CODE 3710–08–M

Department of the Air Force

32 CFR Part 855

Use of United States Air Force Installations by Other Than United States Department of Defense Aircraft

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has decreased the amount of third party liability insurance required for civil aircraft use of Air Force airfields. This action was taken to make the cost of obtaining insurance less expensive for civil aircraft operators. The intended effect is to reduce the cost of the insurance.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. R.A. Young, HQ USAF/PRPJ, Washington, DC 20330–5000, telephone (202) 697–1796.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 855

Aircraft, Federal buildings and facilities.

Accordingly 32 CFR Part 855, Subpart D is amended as follows:

PART 855—USE OF UNITED STATES AIR FORCE INSTALLATIONS BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

1. The authority for Part 855 is revised to read as follows:

Authority: 10 U.S.C. 8013, 49 U.S.C. 1507.

§ 855.15 [Amended]

2. In 32 CFR Part 855, Subpart D, Table 1 under § 855.15 is revised to read as follows:

TABLE 1.—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS

[Stated in U.S. dollars]

	Bodily injury	Property damage	Passenger
Civil aircraft without passenger seats:			
12,500 pounds and under:			
Each person	$100,000		
Each accident	300,000	$100,000	

TABLE 1.—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS—Continued

[Stated in U.S. dollars]

	Bodily injury	Property damage	Passenger
Over 12,500 pounds:			
Each person	100,000		
Each accident	1,000,000	1,000,000	
Civil aircraft with passenger seats:			
12,500 pounds and under:			
Each person	100,000		$100,000.
Each accident	300,000	100,000	$100,000 x number of passenger seats.
Over 12,500 pounds:			
Each person	100,000		$100,000.
Each accident	1,000,000	$1,000,000	$100,000 x 75% x number of passenger seats.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 88-11109 Filed 5-26-88; 8:45 am]
BILLING CODE 3910-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Determination of Delimiting Date

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: On December 31, 1979, the Veterans Administration (VA) liberalized the regulation containing the criteria used by the VA in determining whether the character of service of a veteran who received an other than honorable discharge was under other than dishonorable conditions. Before this liberalization the regulation (38 CFR 3.12(d)) held that a discharge or release from active service because of homosexual acts will be considered to have been issued under dishonorable conditions. The liberalized regulation now provides that a discharge issued because of homosexual acts involving aggravated circumstances or other factors affecting performance of duty must be considered to have been issued under dishonorable conditions. Hence, discharges of many veterans which would have been considered to have been issued under dishonorable conditions before December 31, 1979, are now not considered to have been issued under dishonorable conditions. This regulation, which is used to determine the ending date of a veteran's eligibility under the Vietnam Era GI Bill, now states how to determine the ending date of eligibility for a veteran who is favorably affected by the liberalization.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On page 620 of the **Federal Register** of January 11, 1988, there was published a notice of intent to amend Part 21 to state how to determine the delimiting date of a veteran who has been favorably affected by a liberalized VA rule concerning character of discharge. Interested people were given 30 days to submit comments, suggestions or objections. The VA received one comment letter from a university official. The official stated that he agreed with the proposal. Accordingly, the VA is adopting the amended regulation.

The VA has determined that this final regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The final regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The Administrator of Veterans Affairs has certified that this final regulation will not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the final regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e. small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulatory amendment is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 5, 1988.
Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, *Vocational Rehabilitation and Education,* § 21.1042 is amended by adding paragraph (e)(4) to read as follows:

§ 21.1042 Ending dates of eligibility.

* * * * *

(e) *Eligibility established after the VA determines the character of the discharge.*

* * * * *

(4) If the veteran was discharged before December 31, 1979, and due to the veteran's commission of homosexual acts while on active duty, his or her discharge is considered to have been under dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date of his or her discharge, but is considered to have been under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted after December 30, 1979, educational assistance may be afforded the veteran through December 31, 1989.

(Authority: 38 U.S.C. 1662, 3103)

* * * * *

[FR Doc. 88-11944 Filed 5-26-88; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Updating of Table of Contents

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Some changes and additions to the Domestic Mail Manual have caused changes or additions to the parts and section headings of the Manual. The purpose of this final rule is to make the parts and section headings of the Manual that are listed in the Code of Federal Regulations conform to the changed or added headings.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In § 111.5, the heading and the introductory text are republished and paragraphs (a)(2)(ii), (a)(2)(vi), (a)(3)(i), (a)(3)(ii), (a)(3)(vi), (a)(5)(i), (a)(5)(iv), (a)(5)(viii), (a)(6)(ii), (a)(7)(iii), (a)(7)(v), (b)(1)(i), (b)(1)(vi) are revised, and new paragraphs (a)(7)(vi), (b)(1)(v), (b)(2)(v), (b)(2)(vi) and (b)(2)(vii) are added; paragraphs (b)(4)(ii) and (b)(6)(iii) are revised; paragraphs (b)(7) (i)-(iii), (b)(8) (i)-(vii) are added; paragraphs (b)(9) (i)-(v) are revised, and paragraphs (b)(9)(vi) and (b)(9)(vii) are added; paragraphs (c)(2) (ii)-(iv) are revised, and paragraphs (c)(2)(v) and (c)(2)(vi) are added; paragraphs (c)(6) (i)-(iii) are revised, and paragraphs (c)(6) (iv)-(ix) are added; paragraphs (c)(7)(ii) and (c)(7)(iii) are revised, and new paragraph (c)(7)(iv) is added; paragraphs (c)(8) (i)-(iii) are revised; (d)(5) introductory text is revised and paragraphs (d)(5) (i)-(v) are added; paragraph (d)(6) is revised; paragraph (d)(6)(i) is revised; paragraphs (d)(6) (ii)-(iv) are revised; paragraphs (d)(6)(v) and (d)(6)(vi) are added; paragraphs (d)(6)(vii), (d)(6)(viii) and (d)(8)(iv) are added; paragraph (d)(9)(i) is revised; paragraph (e) is revised; paragraph (f)(2)(vi) is revised, and paragraphs (f)(2)(vii) and (f)(2)(viii) are deleted; paragraph (f)(6)(iii) is revised; paragraph (f)(6)(vi) is added; paragraphs (f)(6)(vii), (f)(6)(viii), (f)(9)(v) and (g)(5)(iii) are added; paragraphs (g)(6)(iii) and (g)(6)(iv) are revised; paragraph (g)(6)(v) is revised; paragraphs (g)(6) (vi)-(viii) are added; paragraphs (i)(1)(iv) and (i)(1)(vii) are revised; paragraphs (i)(1)(ix); (i)(3)(iv) and (i)(4)(vi) are added; paragraph (i)(5)(i) is revised to read as follows:

§ 111.5 Contents of the Domestic Mail Manual.

The Domestic Mail Manual contains the following parts:

(a) * * *

(2) * * *

(ii) Part 122—Delivery Address

* * * * *

(vi) Part 126—Mail Sent Via Department of State to U.S. Government Personnel Abroad

* * * * *

(3) * * *

(i) Part 131—Responsibilities

(ii) Part 132—Rates and Classification Centers

* * * * *

(vi) Part 136—Mixed Classes of Mail

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(5) * * *

(i) Part 151—Mail Receptacles

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(iv) Part 154—Plant-Load Operations

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(viii) Part 158—Mail Claim Check System

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(6) * * *

(ii) Part 162—Purpose and Selection of Commemorative Stamps, Postal Stationery, and Philatelic Products

* * * * *

(7) * * *

(iii) Part 173—Requirements for Obtaining Special Cancellation Die Hubs

* * * * *

(v) Part 175—Postal-Message Cancellations

(vi) Part 176—Mail Submitted for Special Cancellations

(b) * * *

(1) * * *

(i) Part 211—General Rate Information

* * * * *

(iv) Part 214—Express Mail Next Day and Second Day Service Rates

(v) Part 215—Address-Correction Fee

(2) * * *

(v) Part 225—Express Mail Second Day Service

(vi) Part 226—Express Mail Military Service

(vii) Part 227—Express Mail Reship Service

* * * * *

(4) * * *

(ii) Part 242—Express Mail Corporate Accounts

* * * * *

(6) * * *

(iii) Part 263—Express Mail Next Day, Second Day, and Military Services

(7) * * *

(i) Part 271—Express Mail Same Day Airport Service

(ii) Part 272—Express Mail Custom Designed Service

(iii) Part 273—Express Mail Next Day and Second Day Services

(8) * * *

(i) Part 281—Express Mail

(ii) Part 282—Corporate Account

(iii) Part 283—Federal Agencies

(iv) Part 284—USPS Mail

(v) Part 285—Pickup Charges

(vi) Part 286—Insufficient Prepayment

(vii) Part 287—Express Mail Shipments Not Bearing Postage

(9) * * *

(i) Part 291—Forwarding, Holding, and Return

(ii) Part 292—Address Correction and Directory Services

(iii) Part 293—COD Service

(iv) Part 294—Evidence of Mailing

(v) Part 295—Insurance and Indemnity

(vi) Part 296—Claims Procedures

(vii) Part 297—Return Receipts

(c) * *

(2) * * *

(ii) Part 322—Postal Cards and Postcards

(iii) Part 323—Presorted First-Class Mail and Carrier Route First-Class Mail

(iv) Part 324—ZIP + 4 First-Class Mail

(v) Part 325—ZIP + 4 Barcoded Rate

(vi) Part 326—Priority Mail

* * * * *

(6) * * *

(i) Part 361—Addressing

(ii) Part 362—Marking Requirements

(iii) Part 363—Sealing

(iv) Part 364—ZIP + 4 Barcoded First-Class Mail

(v) Part 365—Combined Presort Mailings

(vi) Part 366—Preparation Requirements for Optional Combined ZIP + 4 Presort and Presort First-Class Mailings (Destinating at Automated Sites)

(vii) Part 367—Preparation of Presort First-Class and First-Class Carrier Route Mailings

(viii) Part 368—Preparation Requirements for ZIP + 4 First-Class Mail

(ix) Part 369—Optional Endorsement Line in Address Block or Label

(7) * * *

(ii) Part 372—Matter Mailed at Carrier Route First-Class, Presorted First-Class,

Nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded Rates
(iii) Part 373—Priority Mail
(iv) Part 374—Presort Verification
(8) * * *
(i) Part 381—Single Piece Rates (See Exhibit 310)
(ii) Part 382—Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded Rates
(iii) Part 383—Priority Mail Rates (See Exhibit 310)
* * * * *
(d) * * *
(5) Subchapter 450—Preparation of Mailing Pieces
(i) Part 451—Physical Limitations
(ii) Part 452—Addressing
(iii) Part 453—Marking Requirements and Endorsements
(iv) Part 454—Enveloping, Sealing, Folding
(v) Part 455—Special Requirements
(6) Subchapter 460—Preparation of Bulk-Rate Mailings
(i) Part 461—[Reserved]
(ii) Part 462—Preparation Requirements for the Carrier Route Level Rates (Levels C, I, and K)
(iii) Part 463—Preparation Requirements for the Five-Digit Level Rates (Levels B and H)
(iv) Part 464—Preparation Requirements for the Basic Rates (Levels A, D, G, and J)
(v) Part 465—[Reserved]
(vi) Part 466—[Reserved]
(vii) Part 467—Bundling and Palletizing
(viii) Part 468—Special Preparation Requirements or Options for Presort-Level Discount-Rated Pieces (Levels B, C, H, I, and K)
* * * * *
(8) * * *
(iv) Part 484—Statement of Publication of More Than One Issue on the Same Day
(9) * * *
(i) Part 491—Forwarding Local and Nonlocal Change of Address
* * * * *
(e) Chapter 5—[Reserved]
(f) * * *
(2) * * *
(vi) Part 626—Attachments
* * * * *
(6) * * *
(iii) Part 663—[Reserved]
* * * * *
(vi) Part 666—[Reserved]
(vii) Part 667—Preparation of Bulk Rate Mailings
(viii) Part 668—Optional Endorsement Line in Address Block or Label
* * * * *
(9) * * *
(v) Part 695—Nonmailable or Nonstandard Pieces
(g) * * *
(5) * * *
(iii) Part 753—Nonmachinable Surcharge
(6) * * *
(iii) Part 763—Carrier Route Bound Printed Matter
(iv) Part 764—Preparation of Special Fourth-Class Mail
(v) Part 765—[Reserved]
(vi) Part 766—Preparation of Library Rate-Materials
(vii) Part 767—Preparation of Bound Printed Matter
(viii) Part 768—Optional Endorsement Line in Address Block or Label
* * * * *
(i) * * *
(1) * * *
(iv) Part 914—Collect on Delivery (COD) Mail
* * * * *
(vii) Part 917—Business Reply Mail (BRM)
* * * * *
(ix) Part 919—Merchandise Return
* * * * *
(3) * * *
(iv) Part 934—Return Receipt for Merchandise
(4) * * *
(vi) Part 946—Address Squencing Services
(5) * * *
(i) Part 951—Post Office Box (P.O. Box) Service
* * * * *

Fred Eggleston,
Assistant General Counsel, Legislative Division.

[FR Doc. 88-11933 Filed 5-26-88; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3386-2]

Standards of Performance for New Stationary Sources; Surface Coating of Plastic Parts for Business Machines; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on standards of performance for new stationary sources for surface coating of plastic parts for business machines.

This action is necessary to correct an inadvertent inclusion of delegable functions in the list of nondelegable functions in § 60.726 of the regulation that was published in the **Federal Register** on January 29, 1988 (53 FR 2672).

EFFECTIVE DATE: January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Doug Bell or Laura Butler, Standards Development Branch, ESD (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5566 or (919) 541-5267.

SUPPLEMENTARY INFORMATION:

List of subjects in 40 CFR Part 60

Air pollution control.

Date: May 20, 1988.

Eileen Claussen,
Acting Assistant Administrator for Air and Radiation.

For reasons set out in the preamble, 40 CFR Part 60, § 60.726(b), is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, and 7601(a).

2. Section 60.726 is amended by revising paragraph (b) to read as follows:

§ 60.726 Delegation of authority.

* * * * *

(b) Authorities which will not be delegated to the States:
Section 60.722(b)(1)
Section 60.723(b)(2)(i)(C)
Section 60.723(b)(2)(iv)
Section 60.724(e)
Section 60.725(b)

[FR Doc. 88-11852 Filed 5-26-88; 8:45 am]
BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1104, 1111, 1113, 1118, 1130, 1131, 1132, 1136, 1137, 1139, 1143, 1150, 1152, 1154, 1161, 1169, 1170, 1182, 1183, 1185, 1186, and 1331

[Ex Parte No. 471]

Copies of Pleadings

AGENCY: Interstate Commerce Commission.

ACTION: Amendment of final rules.

SUMMARY: In a decision served March 25, 1988, 53 FR 10095 (March 29, 1988), the Commission adopted final rules that specify, with limited exceptions, a uniform 10 copy requirement for pleadings and other documents filed in Commission proceedings. In response to a petition to reopen this proceeding, we have reconsidered the prior decision and have determined that the uniform 10 copy requirement would be unnecessarily burdensome in temporary authority (TA) and emergency temporary authority (ETA) application proceedings under 49 CFR Part 1162. The revised rules are vacated to the extent they applied to TA and ETA matters processed under 49 CFR Part 1162 and are amended accordingly.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley, (202) 275-7292; or Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423 or call (202) 275-7428 [assistance for the hearing impaired is available through TDD services (202) 275-1721].

Environmental and Energy Considerations

These rule revisions will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission reiterates its prior certification that these rule revisions will not have a significant economic impact on a substantial number of small entities. The involved changes are ministerial only and do not impose additional substantive requirements on any entity. Indeed, the rules as amended here represent a reduced paperwork and administrative burden on TA and ETA applicants as compared with the rules previously adopted.

List of Subjects

49 CFR Parts 1104, 1113, 1118, 1130, and 1132

Administrative practice and procedure.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1131

Administrative practice and procedure, Investigations, Railroads.

49 CFR Part 1136

Administrative practice and procedure, Buses, Motor carriers, Railroads.

49 CFR Parts 1137 and 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1139

Administrative practice and procedure, Buses, Freight, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1143

Administrative practice and procedure, Buses, Intergovernmental relations.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts, Abandonments and discontinuances, Investigations, Public use conditions.

49 CFR Part 1154

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

49 CFR Parts 1161, 1162, and 1163

Administrative practice and procedure, Motor carriers.

49 CFR Part 1169

Administrative practice and procedure, Buses.

49 CFR Part 1170

Administrative practice and procedure, Buses, Employment.

49 CFR Part 1185

Administrative practice and procedure, Antitrust, Railroads.

49 CFR Part 1186

Administrative practice and procedure, Freight, Motor carriers.

49 CFR Part 1331

Buses, Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads.

Decided: May 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,
Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

The final rules published in the **Federal Register** of Tuesday, March 29, 1988, on pages 10095-10097 are withdrawn.

PART 1104—[AMENDED]

1. The authority citation for Part 1104 continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1104.3 [Amended]

2. In § 1104.3 the numeral "6" in paragraph (a) is revised to read "10".

3. In § 1104.3 the words "one copy" in paragraph (b) are revised to read "10 copies."

PART 1111—[AMENDED]

4. The authority citation for Part 1111 continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1111.3 [Amended]

5. In § 1111.3 the numeral "6" is revised to read "10."

§ 1111.4 [Amended]

5. In § 1111.4 the numeral "six" in paragraph (b) is revised to read "10."

PART 1113—[AMENDED]

7. The authority citation for Part 1113 continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1113.7 [Amended]

8. In § 1113.7 the words "one additional copy" and "three copies" in paragraph (e) are revised to read "10 copies."

§ 1113.12 [Amended]

9. In § 1113.12 the words "one copy" in paragraph (a) are revised to read "10 copies."

§ 1113.13 [Amended]

10. In § 1113.13 the words "one copy" are revised to read "10 copies."

PART 1118—[AMENDED]

11. The authority citation for Part 118 continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1118.4 [Amended]

12. In § 1118.4 the word "six" in paragraph (b) is revised to read "10."

PART 1130—[AMENDED]

13. The authority citation for Part 1130 continues to read:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 553 and 559.

§ 1130.2 [Amended]

14. In § 1130.2 the word "six" in paragraph (f) is revised to read "10."

PART 1131—[AMENDED]

15. The authority citation for Part 1131 continues to read:

Authority: 49 U.S.C. 10321 and 11701; 5 U.S.C. 559.

§ 1131.8 [Amended]

16. In § 1131.8 the word "six" is revised to read "10."

§ 1131.9 [Amended]

17. In § 1131.9 the word "six" in paragraph (b) is revised to read "10."

PART 1132—[AMENDED]

18. The authority citation for Part 1132 continues to read:

Authority: 49 U.S.C. 10321 10707, 10708, and 10728; 5 U.S.C. 553 and 559.

§ 1132.1 [Amended]

19 In § 1132.1 the numeral "11" and the word "six" in paragraph (d) are revised to read "10."

§ 1132.2 [Amended]

20. In § 1132.2 the numeral '15" and the word "six" in paragraph (b) are revised to read "10."

PART 1136—[AMENDED]

21. The authority citation for Part 1136 continues to read:

Authority: 49 U.S.C. 10321 10707, and 10708; 5 U.S.C. 559.

§ 1136.2 [Amended]

22. In § 1136.2 the numeral "24" is revised to read "10."

PART 1137—[AMENDED]

23. The authority citation for Part 1137 continues to read:

Authority: 49 U.S.C. 10321 10705, and 10728; 5 U.S.C. 553 and 559.

§ 1137.1 [Amended]

24. In § 1137.1 the numeral "15" in paragraph (a)(1) and (d) is revised to read "10."

PART 1139—[AMENDED]

25. The authority citation for Part 1139 continues to read:

Authority: 49 U.S.C. 10321 and 10708; 5 U.S.C. 553 and 559.

§ 1139.7 [Amended]

26. In §1139.7 the numeral "16" is revised to read "10."

PART 1143—[Amended]

27. The authority citation for Part 1143 continues to read:

Authority: 49 U.S.C. 10321, 11501(e), and 5 U.S.C. 553.

§ 1143.5 [Amended]

28. In §1143.5 the numeral "12" and the word "six" are revised to read "10".

PART 1150—[AMENDED]

29. The authority citation for Part 1150 continues to read:

Authority: 49 U.S.C. 10321, 10901, and 10505; 5 U.S.C. 553 and 559.

§ 1150.10 [Amended]

30. In § 1150.10 the word "five" in paragraphs (b) and (g) is revised to read "10".

PART 1152—[AMENDED]

31. The authority citation for Part 1152 continues to read:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

§ 1152.24 [Amended]

32. In § 1152.24 the word "six" in paragraph (a) is revised to read "10".

§ 1152.25 [Amended]

33. In § 1152.25 the numeral "2" in paragraphs (c)(2) and (4) is revised to read "10'.'

§ 1152.40 [Amended]

34. In § 1152.40 the word "six" in paragraph (b) is revised to read "10".

§ 1152.42 [Amended]

35. In § 1152.42 the word "six" in paragraph (a) is revised to read "10".

PART 1154—[AMENDED]

36. The authority citation for Part 1154 continues to read:

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

§ 1154.6 [Amended]

37. In § 1154.6 the numeral "15" in paragraph (a) is revised to read "10".

PART 1161—[AMENDED]

38. The authority citation for Part 1161 continues to read:

Authority: 49 U.S.C. 10321, 10931; 5 U.S.C. 559.

§ 1161.5 [Amended]

39. In § 1161.5 the word "six" is revised to read "10" in both places it appears.

PART 1169—[AMENDED]

40. The authority citation for Part 1169 continues to read:

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.6 [Amended]

41. In § 1169.6 the word "two" in paragraph (b) is revised to read "10".

§ 1169.23 [Amended]

42. In § 1169.23 the word "two' in paragraph (a) is revised to read "10".

§ 1169.32 [Amended]

43. In § 1169.32 the word "two" is revised to read "10".

PART 1170—[AMENDED]

44. The authority citation for Part 1170 continues to read:

Authority: 49 U.S.C. 10321, 5 U.S.C. 553 and Pub. L. 97–261, sec. 27.

§ 1170.3 [Amended]

45. In § 1170.3 the words "one copy" in paragraph (e) are revised to read "10 copies."

§ 1170.7 [Amended]

46. In § 1170.7 the words "one copy" in paragraph (c) are revised to read "10 copies."

PART 1182—[AMENDED]

47. The authority citation for Part 1182 continues to read:

Authority: 49 U.S.C. 10321, 11343, 11344 and 11345(a); 5 U.S.C. 559.

§ 1182.1 [Amended]

48. In § 1182.1 the word "two (2)" in paragraph (e)(1) is revised to read "10".

§ 1182.2 [Amended]

49. In § 1182.2 the words "one copy" in paragraph (c) are revised to read "10 copies."

§ 1182.4 [Amended]

50. In § 1182.4 the word "two" in paragraph (c)(1) is revised to read "10" and in paragraph (c)(2), the word "one" is revised to read "10".

§ 1182.5 [Amended]

51. In § 1182.5 the word "two" in paragraph (e) is revised to read "10".

PART 1183—[AMENDED]

52. The authority citation for Part 1183 continues to read:

Authority: 49 U.S.C. 10321, 11341, 11343, 11344 and 11345a; 5 U.S.C. 559.

§ 1183.1 [Amended]

53. In § 1183.1 the word "three" in paragraph (b) is revised to read "10".

§ 1183.4 [Amended]

54. In § 1183.4 the word "three" in paragraph (b) is revised to read "10".

§ 1183.5 [Amended]

55. In § 1183.5 the word "three" in paragraph (b) is revised to read "10".

PART 1185—[AMENDED]

56. The authority citation for Part 1185 continues to read:

Authority: 49 U.S.C. 10321 and 11322; 5 U.S.C. 559.

§ 1185.7 [Amended]

57. In § 1185. 7 the word "six" is revised to read "10".

PART 1186—[AMENDED]

58. The authority citation for Part 1186 continues to read:

Authority: 49 U.S.C. 10321 and 11343(e) and 5 U.S.C. 553.

§ 1186.3 [Amended]

59. In § 1186.3, introductory text, the word "four" is revised to read "10".

PART 1331—[AMENDED]

60. The authority citation for Part 1331 continues to read:

Authority: 49 U.S.C. 10321, 10721.

§ 1331.3 [Amended]

61. In § 1331.3(b) the word "twenty" is revised to read "10".

[FR Doc. 88–11957 Filed 5–26–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the Bering Sea subarea to directed joint venture (JVP) fishing for pollock under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action is necessary to limit joint venture fishing to the amount of pollock specified for JVP. It is intended to assure optimum use of groundfish and promote the orderly conduct of the groundfish fisheries.

DATES: This closure is effective from 0759 G.m.t. May 25, 1988, through December 31, 1988. Comments will be accepted through June 8, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patricia A. Peacock (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by rules appearing at 50 CFR 611.93 and Part 675. The FMP establishes a split-season apportionment of pollock for JVP and divides the JVP amount of pollock into two parts. Part One, equal to 40 percent of the sum of the initial JVP for pollock plus 15 percent of the TAC for pollock, is available to the directed JVP fishery for pollock from January 15, through April 15. Directed fishing is defined in § 675.2. Part Two, the remainder of the initial JVP for pollock plus any reserve releases, is available for the directed JVP fishery from April 16 through December 31.

In 1988, Part One of the JVP apportionment for pollock in the Bering Sea Subarea was 274,335 mt (50 FR 894, January 14, 1988). As many as 90 U.S. catcher boats delivered pollock to about 70 foreign processors. Total daily deliveries by the fishing fleet included as much as 16,000 mt of pollock. Part One of the JVP apportionment (less 5,000 mt of pollock for bycatch in other fisheries) was taken by February 9, when the Bering Sea Subarea was closed to directed fishing for pollock (53 FR 4178, February 12, 1988).

Amounts reapportioned from the reserve, 100,000 mt (53 FR 12772, May 10, 1988) and 95,000 mt (May 25, 1988), increased the JVP apportionment for pollock to 685,838 mt. Total daily catches during Part Two are slightly smaller than total daily catches during Part One. As many as 100 U.S. catcher boats are delivering pollock to about 50 foreign processors, and as much as 11,000 mt of pollock are delivered daily. NMFS estimates 680,838 mt of pollock will be taken by May 25, 1988.

Notice of Closure to Directed Fishing

Under § 675.20(b)(3)(ii), when the Regional Director determines that an unharvested amount of pollock in Part Two is necessary for bycatch in JVP fisheries for other groundfish species, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for pollock for the remainder of Part Two.

The Regional Director estimates that directed JVP fisheries for Pacific cod, yellowfin sole, and other flatfish will require a bycatch of 5,000 mt of pollock. To preserve this bycatch amount, U.S. fishermen delivering catches to foreign processing vessels must cease directed fishing for pollock at 0759 G.m.t. May 25, 1988. Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to prevent the JVP for pollock from being prematurely exceeded. This action is taken under the authority of § 675.20(b) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 88–12011 Filed 5–24–88; 3:57 pm]

BILLING CODE 3510–22–M

VOL 53 ISS 103 MAY 27 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No.
Friday, May 27, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 18; Doc. No. 5596S]

General Crop Insurance Regulations; Guaranteed Tobacco Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section, 7 CFR 401.127, be known as the Guaranteed Tobacco Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on tobacco guaranteed in an endorsement to the general crop insurance policy.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 26, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect of the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.127, the Guaranteed Tobacco Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring tobacco.

Upon publication of 7 CFR 401.127 as a final rule, the provisions for insuring tobacco contained in 7 CFR 401.127 will supersede those provisions contained in 7 CFR Part 436, the Guaranteed Tobacco Crop Insurance Regulations, effective with the beginning of the 1989 crop year.

The present policy contained in 7 CFR Part 436 will be terminated at the end of the 1988 crop year and later removed and reserved. FCIC proposes to amend the title of 7 CFR Part 436 by separate document so that the provisions therein are effective only through the 1988 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Guaranteed Tobacco Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring tobacco as follows:

1. Section 1—Add a provision stating that tobacco destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to the crop intended for eventual destruction to comply with other U.S. Department of Agriculture programs.

2. Section 4—Provide that insurance will begin and end on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage. The end of insurance period for type 31 tobacco has also been changed to February 28 for consistency between policies.

3. Section 5—Unit division provisions are included in this section of the endorsement.

4. Section 7—Added language stating production commingled between ASCS farm serial number units will be prorated. Language has been clarified in this section to indicate that if appraisals for uninsured causes are made in conjunction with other appraisals, we intend to count the entire uninsured appraisal.

5. Section 10—Added definition ("Average value per pound") to provide a method to establish a value for grades of tobacco which, after delivery to the market warehouse, does not sell.

FCIC is soliciting public comment on this proposed rule for 60 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Guaranteed tobacco endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, as follows

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.127, Guaranteed Tobacco Endorsement, effective for the 1989 and succeeding crop years, to read as follows:

§ 401.128 Guaranteed tobacco endorsement.

The provisions of the Guaranteed Tobacco Endorsement for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Guaranteed Tobacco Endorsement

1. Insured crop and acreage.

a. The crop insured will be any of the following tobacco types you elect which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table:

Flue Cured
Type 11A
Type 11B
Type 12
Type 13
Type 14

Fire Cured
Type 21
Type 22
Type 23

Maryland
Type 32

Cigar Filler
Type 41
Type 42
Type 44

Cigar Wrapper
Type 61

Burley
Type 31

Dark Air
Type 35
Type 36
Type 37

Cigar Binder
Type 51
Type 52
Type 54
Type 55

b. In addition to the tobacco not insurable under section 2 of the general crop insurance policy, we do not insure any acreage:

(1) On which the tobacco crop was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture; or

(2) Planted to tobacco of a discount variety under provisions of the tobacco price support program.

2. Causes of loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant diseases;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual premium.

a. The annual premium amount is computed by multiplying the production guarantee for the unit times the applicable price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the guaranteed tobacco policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance period.

In lieu of the provisions of section 7 of the general crop insurance policy insurance attaches on each unit or part of a unit when the tobacco is transplanted and ends at the earliest of:

a. total destruction of the tobacco;
b. weighing-in at the tobacco warehouse;
c. removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);
d. final adjustment of a loss; or
e. the following dates immediately after the normal harvest period:

(1) Types 11 and 12..... November 30;
(2) Type 13..... October 31;
(3) Type 14..... October 15;
(4) Type 31 and 36.....February 28;
(5) Types 21, 35 and 37..... March 15;
(6) Types 22 and 23..... April 15;
(7) Type 32..... May 15;
(8) All other types..... April 30.

5. Unit division.

a. In lieu of subsection 17.q. of the general crop insurance policy, a unit will be defined as all of the insurable acreage of the tobacco type you elect to insure in the county at the time insurance first attaches, (1) in which you have an insured share, and (2) which is identified by a single ASCS Farm Serial Number.

b. We may reject or modify an ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will be prorated by us.

6. Notice of damage or loss.

In addition to the provisions in section 8 of the general crop insurance policy:

a. You may not destroy any tobacco on which an indemnity will be claimed until we give consent; and

b. For purposes of section 8 of the general crop insurance policy, the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the applicable price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the market price per pound; and

(b) Multiplying that result by the number of pounds of such damaged harvested tobacco.

(c) If due to insurable causes there is no market price available for the grade being adjusted, the value of production to count will be reduced 20% for each grade that the production falls below the lowest marketable grade with a market price (see subsection 10.d.(2)).

(2) All harvested tobacco production which is not damaged by insurable causes and cannot be sold in the current market year will be considered production to count.

(3) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be allowed:

BEST COPY AVAILABLE

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(4) Appraised production to be counted will include:

(a) Not less than the guarantee for any acreage which is abandoned or put to another use without prior written consent or damaged solely by an uninsured cause;

(b) Not less than 35 percent of the guarantee for all unharvested acreage;

(c) Unharvested production on harvested acreage; and

Potential production lost due to uninsured causes and to failure to follow recognized good tobacco farming practices.

(5) We may appraise any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed prior to our consent at not less than the guarantee.

(6) Any appraisal we have made on insured acreage for which we have given written consent to put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us; or

(b) Further damage by an insured cause and reappraised by us; or

(c) Harvested.

(7) The commingled production of units will be prorated to such units in proportion to our liability on the harvested acreage of each unit.

(8) No replanting payment will be made under this endorsement.

8. Cancellation and termination dates.

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; South Carolina; and Surry, Wilkes, Caldwell, Burke, and Cleveland counties, North Carolina, and all North Carolina counties east thereof.	March 31.
All other North Carolina counties and all other states.	April 15.

9. Contract changes.

Contract changes will be available at your service office by December 31 prior to the cancellation date.

10. Meaning of terms.

a. "*Average value per pound*" means the total value of all harvested production from the unit divided by the harvested pounds and may include the value of any harvested production which is not sold.

b. "*County*" means that land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. "*Harvest*" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

d. "*Market price*":

(1) For types, 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support progamr (If for any crop year a price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvestad); and

(2) For types 32, 41, 51, 52, and 61 means the season average price for the applicable type of tobacco (Such price will be the season average price for the current crop year for any unit or part thereof which is harvested) and may be established by including the value of sold and unsold production.

e. "*Planting*" means transplanting the tobacco plant from the bed into the field.

Done in Washington, DC on May 4, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-11929 Filed 5-26-88; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 25; Doc. No. 4986S]

General Crop Insurance Regulations; Quota Tobacco Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section, 7 CFR 401.133, Quota Tobacco Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on tobacco (quota) in an endorsement to the general crop insurance policy.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 26, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.133, the Quota Tobacco Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring tobacco.

Upon publication of 7 CFR 401.133, as a final rule, the provisions for insuring tobacco contained therein will supersede those provisions contained in 7 CFR Part 435, the Tobacco (Quota) Crop Insurance Regulations, effective with the beginning of the 1989 crop year. The present policy contained in 7 CFR Part 435 will be terminated at the end of the 1988 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 435 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Quota Tobacco Endorsement to 7 CFR Part 401, FCIC proposes to make changes in the provisions for insuring tobacco as follows:

1. Section 1—Add a provision stating that tobacco destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a crop that is intended for destruction or destroyed to comply with other USDA programs.

2. Section 2—Add language dealing with allocation and report of effective poundage quota.

3. Section 7—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

4. Section 8—Unit division provisions are now included in this section of the endorsement—Language was adding stating production commingled between Farm Serial Number units will be prorated.

FCIC is soliciting public comment on this proposed rule for 60 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Quota tobacco endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, as follows:

401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.133, Quota Tobacco Endorsement, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.133 Quota tobacco endorsement.

The provisions of the Quota Tobacco Crop Insurance Endorsement for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Quota Tobacco Endorsement

1. Crop, acreage, and share insured.

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table;

b. In addition to the tobacco not insurable in section 2 of the general crop insurance policy, we do not insure any tobacco on which the crop was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture;

c. Planted to tobacco of a discount variety under provisions of the tobacco price support program.

2. Insured poundage quota.

The insured poundage quota for each crop year will be the effective poundage marketing quota (within ASCS to tolerance) applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations for the crop year as reported by you or as determined by us, whichever we elect, not to exceed any amount which would be subject to a marketing quota penalty under ASCS Tobacco Marketing Quota Regulations. However:

a. The insured poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage marketing applicable to the unit when such poundage reduction is clearly specified by you in filing the acreage and quota report;

b. The insured poundage quota will never exceed the pounds obtained by multiplying the insured acres by the applicable farm yield per acre; and

c. Unless otherwise provided by the actuarial table, for any crop year in which tobacco poundage marketing quota regulations are not in effect, the insured poundage quota will be the pounds obtained by multiplying the applicable farm yield per acre (as shown at ASCS) times the lower of the reported or insured acreage on the unit. We will allocate the effective poundage quota for the unit proportionately by acreage, to all insured and uninsured acres in the unit except when designated by the insured by the acreage reporting date and approved in writing by our Field Underwriting Office.

3. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

4. Report of acreage, share, practice and poundage quota.

a. In addition to the requirements of Section 3 of the general policy, you are required to report:

(1) All the acreage of insurable types of tobacco in the county in which you have a share; and

(2) The effective poundage marketing quota applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations for the crop year. Such poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage quota applicable to the unit, provided such poundage reduction is clearly specified in this report.

b. In addition to the factors of share, and practice, referred to in Section 3 of the General Policy, poundage quota is also a factor in determining the insured premium, indemnity, and coverage.

5. Amounts of insurance and coverage level.

a. The amount of insurance for a unit will be the dollar amount determined by multiplying the insured poundage quota for the unit by the percentage guarantee for the applicable coverage level established by the actuarial table and multiplying this product by the current year's support price for type 31 tobacco (rounded to the nearest cent) less six cents per pound for warehouse charges).

b. Subsection 4.d. of the general crop insurance policy is not applicable to this endorsement.

6. Annual premium.

a. The annual premium amount is computed by multiplying the amount of insurance for the unit, times the premium rate, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the quota tobacco policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

7. Insurance period.

In lieu of the provisions in section 7 of the general crop insurance policy, insurance attaches on each unit or part of a unit when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;
c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);
d. Final adjustment of a loss; or
e. February 28 immediately after the normal harvest period.

8. Unit division.

a. In lieu of subsection 17.q. of the general crop insurance policy, a unit will be defined as all of the insurable acreage of the tobacco type you elect to insure at the time insurance first attaches, (1) in which you have a share, and (2) which is identified by a single ASCS Farm Serial Number.

b. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will be prorated.

9. Notice of damage or loss.

In addition to the provisions in section 8 of the general crop insurance policy:

a. You may not destroy any tobacco on which an indemnity will be claimed until we give consent;

b. For purposes of section 8 of the general crop insurance policy, the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field; and

c. Notice must be given immediately if any tobacco is destroyed or damaged by fire during the insurance period.

10. Claim for indemnity.

a. An indemnity will be determined for each unit by:

(1) Subtracting from the amount of insurance for the unit, the value of the total production of tobacco to be counted. (See section 10.b.)

(2) Multiplying the remainder by your share.

b. The value of the total production to be counted for a unit will include the value of all harvested and appraised production.

(1) The value to count will include:

(a) The gross returns (less six cents per pound for warehouse charges) from tobacco sold on the warehouse floor;

(b) The fair market value of the tobacco sold other than on the warehouse floor;

(c) The fair market value of the tobacco harvested and not sold;

(d) The fair market value of any unharvested tobacco as if such tobacco were harvested and cured; and

(e) The current year's support price per pound (less six cents per pound for warehouse charges) for appraisals made by us for poor farming practices or uninsured causes of loss. (If a price support program is not in effect, such appraised production will be valued at the fair market price for the current crop year).

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be allowed to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of, and if the best offer you receive for any such tobacco is considered by us to be inadequate, to obtain additional offers on your behalf.

(3) The value of appraised production to be counted will include:

(a) Not less than the average amount of insurance per insured acre for the unit for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(b) Not less than 35 percent of the average amount of insurance per insured acre for the unit for all unharvested acreage;

(c) The value of any unharvested production on harvested acreage; and

(d) Any appraisal for the value of potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices.

(4) Any appraisals we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The commingled production of units will be prorated to such units in proportion to our liability on the harvested acreage of each unit.

(6) No replanting payment will be made under the endorsement.

11. *Cancellation and termination dates*

The cancellation and Termination dates are April 15.

12. *Contract changes*

Contract changes will be available at your service office by December 31 prior to the cancellation date.

13. *Meaning of terms*

a. *"Carryover tobacco"* means any tobacco on hand from the previous year's production.

b. *"County"* means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. *"Effective poundage marketing quota"* means the farm marketing quota as established and recorded by ASCS.

d. *"Farm Yield"* means the yield per acre used by ASCS in establishing the basic farm marketing poundage quota for the tobacco farm unless we have established a yield for the farm in the actuarial table (FCIC Yield). The FCIC yield may be constructed from any actual yields and established yields available.

e. *"Field Underwriting Office"* is the office of the Federal Crop Insurance Corporation which has rating responsibility for the county your tobacco is insured in.

f. *"Harvest"* means the completion of cutting of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut.

g. *"Market price"* for a crop year means the average auction price for the applicable type (less six cents per pound for warehouse charges) in the belt or area. The market price will be as determined by us.

h. *"Planting"* means the transplanting of the tobacco plant from the bed into the field.

i. *"Rounded"* means rounding up for ½ and above and rounding down for less than ½.

j. *"Support price per pound"* means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. For any crop year in which a price support for the insured type is not in effect, the fair market price for that crop year will be used.

Done in Washington, DC, on May 5, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-11931 Filed 5-20-88; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R-0636]

Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System proposes to amend Regulation H, 12 CFR Part 208. The purpose of the proposed amendment is to make available to the public information regarding the financial condition of State member banks and U.S. branches and agencies of foreign banks. The proposed amendment would require state member banks to make available to shareholders and any member of the public, upon request, information regarding each such bank's financial condition in the form of the bank's two most recent year-end Reports of Condition and Income ("Call Reports") (OMB No. 7100-0036). As alternatives to furnishing the Call Reports, at each bank's option, persons requesting such information could be given one of the following: (1) Specified schedules from the Call Reports; (2) in the case of a bank required to file statements and reports pursuant to Regulation H, a copy of the bank's annual report to shareholders for meetings at which directors are elected; (3) copies of independently audited financial statements (accompanied by a copy of the certificate or report of the independent auditor) if they contain information comparable to that presented in the Call Report schedules specified for alternative (1) above; or (4) in the case of a state member bank that is the only bank subsidiary of a bank holding company, that is majority owned by that bank holding company, and has assets equal to 95 percent or more of the bank holding company's consolidated total assets: (A) A copy of the annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission; or (B) copies of those portions of the bank holding company's Form FR-Y-9C, "Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank" (OMB No. 7100-0128), that are comparable to the Call Report schedules specified for alternative (1) above.

The proposed amendment would also require state licensed agencies of foreign banks and state licensed branches of such banks that are not insured by the Federal Deposit Insurance Corporation to make available, upon request, Call Report (OMB No. 7100-0032) Schedules RAL (Assets and Liabilities), E (Deposit Liabilities and Credit Balances), and P (Other Borrowed Money).

DATE: Comments must be received by August 19, 1988.

ADDRESS: Interested persons are invited to submit written comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or to deliver such comments to Room B-2222, 20th & Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information. (12 CFR 261.6(a)). All written comments should refer to Docket No. R-0636.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452-3920), Lorraine E. Waller, Attorney, Legal Division (202/452-3789), Frederick M. Struble, Associate Director, Division of Banking Supervision and Regulation (202/452-3794) or Rhoger H Pugh, Manager, Policy Development Section, Division of Banking Supervision and Regulation (202/728-5883); or for the hearing impaired *only:* Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The proposed amendment to Regulation H would require state member banks to make available annually specified financial information to shareholders and members of the public, upon request.

The Federal Deposit Insurance Corporation, on December 17, 1987, adopted a final regulation requiring state-chartered banks that are not members of the Federal Reserve System to prepare annual disclosure statements that are to be made available to the public upon request. The Office of the Comptroller of the Currency adopted a final regulation similar to the FDIC's but applicable to national banks on February 10, 1988. The regulations of both Agencies also apply to U.S. branches and agencies of foreign banks that are regulated by those Agencies.

The Board's proposed regulation would require state member banks to make available each year the most recent year-end Report of Condition and Income ("Call Report") together with the Call Report for the prior year-end. Alternatively, a state member bank could fulfill the disclosure requirement of the proposed regulation by making available: (1) Certain specified schedules from the Call Reports; (2) annual reports to shareholders; (3) independently audited financial statements; or (4) in the case of a state member bank that is the only bank subsidiary of a bank holding company, is majority owned by that bank holding company, and has assets equal to 95 percent or more of the bank holding company's consolidated total assets, the bank holding company's annual reports filed with the SEC or its consolidated financial statements filed with the Board pursuant to Regulation Y.

The Board's proposed regulation would also require state licensed agencies of foreign banks and state licensed branches of such banks that are not insured by the Federal Deposit Insurance Corporation to make available, upon request, Call Report Schedules RAL (Assets and Liabilities), E (Deposit Liabilities and Credit Balances), and P (Other Borrowed Money).

The purpose of the proposed regulation is to make available to the public information regarding the financial condition of state member banks and U.S. branches and agencies of foreign banks. The information made available pursuant to this regulation will most likely be of particular interest to shareholders and to persons doing business with such institutions. The regulation is not intended to affect the legal rights of shareholders and other persons under state and federal laws or contractural obligations between banks and other persons.

The information required to be disclosed under the proposed regulation is information that is publicly available and that is routinely disclosed upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Board's regulations implementing that Act. The proposed regulation does not address the disclosure obligations of banks and bank holding companies under federal and state securities laws. The proposed regulation is structured to facilitate the disclosure of information that is properly in the public domain in a manner that imposes the least possible burden on state member banks and other covered institutions. Banks and other institutions would not be required to prepare new reports, but would be required only to make available upon request reports or other financial information that they already prepare. The regulation also would require banks and other covered institutions to notify shareholders and the public of the availability of these reports. In the case of shareholders, the proposed regulation specifies that notification be made in the form of a written announcement that may be included with the notice of the annual shareholders meeting. In the case of the public the regulation does not specify the means to be used to provide notification. The Board notes, in this regard, that state member banks presently are required to publish the balance sheet portion of their call reports pursuant to § 208.10 of Regulation H.

State member banks, and Board-regulated U.S. branches and agencies of foreign banks would also be required to inform persons receiving information pursuant to the proposed regulation that the Board is not responsible for its accuracy or completeness. The Board notes, however, that such state member banks are required to prepare the Call Reports by 12 U.S.C. 324 and § 208.10 of Regulation H (12 CFR 208.10), that U.S. branches and agencies of foreign banks are subject to the reporting requirements of 12 U.S.C. 3105(b), and that the filing of false reports with an agency of the United States is a federal crime (18 U.S.C. 1001, 1005). In addition, the content and accuracy of reports to shareholders and of audited financial statements are adequately addressed by other Federal and state laws.

The proposed regulation addresses only the disclosure to the public of the documents identified in proposed § 208.17(d)).

Comment is requested on all matters associated with the proposed regulation including, but not limited to, the need for the proposal, any burden associated with the proposal, and any possible modifications to the proposal that may facilitate the achievement of its purpose.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulation merely requires state member banks to make available to the public copies of reports that they already prepare.

The proposed amendment would not result in the creation of any new "collection of information requirement" within the meaning of the Paperwork Reduction Act (44 U.S.C. 3502) or OMB regulations on controlling paperwork burdens (5 CFR 1320.7(c)). The proposal would not require the creation of any new reports, only the wider dissemination of reports that state member banks are already required to prepare and that have already received OMB approval. The only additional requirement proposed is that state member banks make these reports available to shareholders and members of the public, and that they inform members of the public and shareholders that the information is publicly available. Thus, the proposal does not require state member banks to "obtain or compile information for the purpose of disclosure to members of the public or to the public at large * * *." (5 CFR 1320.7(c)(2)).

List of Subjects in 12 CFR Part 208

Membership, Banks, Accounting, Confidential business information, Federal Reserve System, Reporting and recordkeeping requirements, Securities, Disclosures of financial information.

For the reasons set out in this notice, and pursuant to the Board's authority under section 11 of the Federal Reserve Act of 1913, as amended (12 U.S.C. 248), and section 7 of the International Banking Act of 1978 (12 U.S.C. 3105(b)) the Board proposes to amend 12 CFR Part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for Part 208 is revised to read as follows:

Authority: 12 U.S.C. 248, 321–338, 486, 1814, 3105(b), 3907, 3909 and 15 U.S.C. 781(i).

2. Section 208.17 is added to read as follows:

§ 208.17 Disclosure of financial information by State member banks.

(a) *Purpose and scope.* The purpose of this section is to facilitate the dissemination of publicly available information regarding the financial condition of State member banks, State licensed agencies of foreign banks, and State licensed branches, of foreign banks, that are not insured by the Federal Deposit Insurance Corporation. This section requires all state-chartered banks that are members of the Federal Reserve System and all other covered institutions: to make year-end Call Reports or Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks or, in the case of state member banks, other alternative financial information available to shareholders, customers, and the general public upon request; and to advise shareholders and the public of the availability of this information. This section does not amend or modify the publication requirements for section 208.10, or any other section of this regulation.

(b) *Definitions.* For the purposes of this section, the following definitions apply:

(1) "Call Report" means the Consolidated Reports of Condition and Income (OMB No. 7100-0036) filed pursuant to 12 U.S.C. 324 and 208.10 of this regulation (12 CFR 208.10).

(2) "State member bank" means a bank that is chartered by a State and is a member of the Federal Reserve System.

(3) "Other covered institutions" means state licensed agencies of foreign banks, or state licensed branches of foreign banks that are not insured by the Federal Deposit Insurance Corporation.

(c) *Availability of financial information*—(1) *Shareholders.* Each state member bank shall advise its shareholders, by a written announcement, which may be included in the notice of the annual shareholder's meeting, that certain financial information is available upon request. The announcement shall include, at a minimum, an address or telephone number to which requests may be directed.

(2) *General public.* State member banks and other covered institutions shall use other reasonable means at their disposal to advise the public of the availability of information pursuant to this section.

(d) *Financial information to be provided by state member banks.* State member banks may fulfill the requirements of this section by providing, upon request, the following information as soon as it becomes available:

(1) Copies of their entire Call Reports for the most recent year end and the prior year end, excluding any information for which confidential treatment is permitted pursuant to the Call Report instructions; or

(2) Copies of only the following schedules from their Call Reports for the most current year end and the prior year end, excluding any information for which confidential treatment is permitted pursuant to the Call Report instructions:

(i) Schedule RC (Balance Sheet);

(ii) Schedule RC–N (Past Due and Nonaccrual Loans and Leases);

(iii) Schedule RI (Income Statement);

(iv) Schedule RI–A (Changes in Equity Capital);

(v) Schedule RI–B (Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses)—Part I may be omitted; or

(3) In the case of a bank required to file statements and reports pursuant to the Board's Regulation H, 12 CFR Part 208), a copy of the bank's annual report to shareholders for meetings at which directors are to be elected or the bank's annual report; or

(4) In the case of a bank with independently audited financial statements copies of the audited financial statements, and the certificate or report of the independent accountant if such statements contain information comparable to that specified in subsection (d)(2); or

(5) In the case of a bank that is the only bank subsidiary of a bank holding company, is majority owned by that bank holding company, and has assets equal to 95 percent or more of the bank holding company's consolidated total assets, a copy of either:

(i) The annual report of the bank holding company prepared in conformity with the regulations of the Security and Exchange Commission, 17 CFR 240.13a–1; or

(ii) The sections in the bank holding company's consolidated financial statements on Form FR–Y–9C ("Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank" (OMB No. 7100–0128)) prepared pursuant to the Board's Regulation Y, 12 CFR Part 225, and comparable to the Call Report schedules enumerated in paragraph (d)(2) of this section.

(e) *Financial information to be provided by other covered institutions.* Other covered institutions may fulfill the requirements of this section by providing, upon request, as soon as it becomes available, the following schedules from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (OMB No. 7100–0032) for the most recent year end and the prior year end:

(1) Schedule RAL (Assets and Liabilities);

(2) Schedule E (Deposit Liabilities and Credit Balances);

(3) Schedule P (Other Borrowed Money).

(f) *Disclaimer.* The following legend shall be included with any financial information provided pursuant to this section: "This financial information has not been reviewed, or confirmed for accuracy or relevance, by the Board of Governors of the Federal Reserve System."

Board of Governors of the Federal Reserve System, May 19, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11782 Filed 5-26-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-6]

Transition Area Revocation; Petersburg, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the transition area currently designated for Petersburg, MI, by returning the airspace to a non-controlled status for use by the aviation flying public.

DATE: Comments must be received on or before July 5, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-6, 2300 East Devon Avenue, Des Plaines, Illionis 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the designated transition area for Petersburg, MI.

The Petersburg, MI, transition area airspace was established to accommodate a VOR-A Standard Instrument Approach Procedure (SIAP) to Lada Airport, Petersburg, MI. The transition area was necessary to ensure the segregation of aircraft utilizing the SIAP from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace.

The VOR-A SIAP will be cancelled effective June 2, 1988. Notification of this cancellation was made to the public under separate docket action. The Federal Aviation Administration believes that since the SIAP is being cancelled the transition area is no longer necessary or warranted.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

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PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Petersburg, MI [Removed]

Issued in Des Plaines, Illinois, on May 13, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–11945 Filed 5–26–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–102–86]

Cooperative Housing Corporations; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the Income Tax Regulations under section 216 of the Internal Revenue Code of 1986, relating to cooperative housing corporations. Section 216 of the Code was amended by the Tax Reform Act of 1986. The regulations would provide cooperative housing corporations and tenant-stockholders with guidance needed to comply with the law.

DATE:

Proposed Effective Date: The regulations are proposed to be effective for taxable years beginning after December 31, 1986

Date for Comments and Request for a Public Hearing: Written comments and requests for a public hearing must be delivered or mailed by July 26, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–102–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Joel S. Rutstein of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION: This document contains proposed amendments to the Income Tax Regulations under section 216 of the Code relating to cooperative housing corporations. Section 216 was amended by section 644 of the Tax Reform Act of 1986 (100 Stat. 2285) (the "Act").

The Act expanded the definition of tenant-stockholder under section 216(b)(2) to include persons other than individuals. Prior to its amendment by the Act, section 216(b)(2) restricted the definition of tenant-stockholders generally to individuals.

Section 216(b)(3)(B) provides an elective alternative to the proportionate share rule contained in section 216(b)(3)(A) for determining the amount a tenant-stockholder may deduct on account of real estate taxes and interest. Previously, the proportionate share rule required that a tenant-stockholder's share of the cooperative housing corporation's interest and real estate taxes bear the same ratio to the total amount of the corporation's interest and real estate taxes that the amount of stock held by the tenant-stockholder bore to the total outstanding amount of stock of the corporation.

Under this alternative, for taxable years beginning after 1986, if the corporation allocates to each tenant-stockholder a portion of the interest or real estate taxes or both that reasonably reflects the cost to the corporation of the interest or real estate taxes or both attributable to such tenant-stockholder's dwelling unit (and such unit's share of the common areas), then the corporation may make an election whereby the tenant-stockholder's proportionate share of the corporation's interest or real estate taxes equals the amount or amounts separately allocated. The proposed regulations incorporate the procedure for making this election that was prescribed in the temporary regulations under § 5h.5 (relating to elections under the Tax Reform Act of 1986). Those temporary regulations will be superseded with respect to this election when this notice of proposed rulemaking is adopted.

Section 216(b)(5) as amended provides that in certain circumstances a person may be eligible for tenant-stockholder status despite the person's agreement with the cooperative housing corporation that such person or such person's nominee may not occupy the house or apartment without the prior approval of the cooperative corporation. The proposed regulations reflect this change for taxable years beginning after 1986, but no inference is to be drawn as to the effect of such agreements in prior years on the eligibility of a person as a tenant-stockholder.

Section 216(c) was amended by the Act to provide that for taxable years beginning after 1986 any amounts disallowed as a deduction for depreciation because such amounts exceeded the tenant-stockholder's adjusted basis in his stock in the cooperative housing corporation may be carried forward to the succeeding taxable year.

Section 216(d) was added by the Act to clarify that amounts paid or incurred by a cooperative housing corporation which are chargeable to such corporation's capital account may not be deducted by a stockholder. Such amounts, however, are to be added to the adjusted basis of the stockholder's stock in the cooperative housing corporation. The proposed regulations reflect this clarification. No inference is to be drawn, however, as to the treatment of such amounts in a taxable years beginning prior to 1987.

Comments and Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on those regulations should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Exective Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on those requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissoner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public comment requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these proposed regulations is Joel S. Rutstein of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects in 26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.216–2 also issued under 26 U.S.C. 216 (d).

§ 1.216–1 [Amended]

Par. 2. Section 1.216–1 is amended as follows:

1. In paragraph (a) introductory text, the first sentence is amended by removing the words "An individual who qualifies as a" and by adding in their place the word "A".

2. In paragraph (c)(1), the second sentence is amended by removing the language "paragraph (f)" and adding in its place the language "paragraph (g)". Paragraph (c)(2) is redesignated as paragraph (c)(3) and is amended by adding at the end thereof two new examples to read as set forth below.

3. New paragraph (c)(2) is added immediately preceding newly redesignated paragraph (c)(3) to read as set forth below.

4. In paragraph (d)(1), the last sentence is amended by removing the language "paragraph (f)" and by adding in its place the language "paragraph (g)". Paragraph (d)(2) is revised to read as set forth below.

5. Paragraph (e) is revised to read as set forth below.

6. Paragraphs (c), (d), (e), (f) and (g) are redesignated as paragraphs (d), (e), (f), (g) and (h) respectively.

7. New paragraph (c) is added immediately preceding newly redesignated paragraph (d) to read as set forth below.

§ 1.216–1 Amounts representing taxes and interest paid to cooperative housing corporation.

* * * * *

(c) *Disallowance of deduction for certain payments to the corporation.* For taxable years beginning after December 31, 1986, no deduction shall be allowed to a stockholder during any taxable year for any amount paid or accrued to a cooperative housing corporation (in excess of the stockholder's proportionate share of the items described in paragraph (a) (1) and (2) of this section) allocable to amounts that are paid or incurred at any time by the cooperative housing corporation and are chargeable to such corporation's capital account. The adjusted basis of the stockholder's stock in such corporation shall be increased by the amount of such disallowance. For example, a special assessment with respect to the repaving of a community parking lot would not be deductible by the stockholders but would increase the stockholders' adjusted basis in the stock of the corporation.

(d) *Tenant-stockholder's proportionate share* * * *

(2) *Special rule*—(i) *In general.* For taxable years beginning after December 31, 1986, if a cooperative housing corporation allocates to each tenant-stockholder a portion of the real estate taxes or interest (or both) that reasonably reflects the cost to the corporation of such taxes or of such interest attributable to such tenant-stockholder's dwelling unit (and the unit's share of the common areas), the cooperative housing corporation may elect to treat the amounts so allocated as the tenant-stockholder's proportionate share.

(ii) *Time and manner of making election.* The election referred to in paragraph (d)(2)(i) of this section is effective only if, by January 31 of the year following the first calendar year that includes any period to which the election applies, the cooperative housing corporation furnishes to each person that is a tenant-stockholder during that period a written statement showing the amount of real estate taxes or interest (or both) allocated to such tenant-stockholder with respect to such tenant-stockholder's dwelling unit or units and share of common areas for that period. The election shall be made by attaching a statement to the corporation's timely filed tax return (taking extensions into account) for the first taxable year for which the election is to be effective. The statement shall contain the name, address, and taxpayer identification number of the cooperative housing corporation, identify the election as an election under section 216(b)(3)(B)(ii) of the Code, and indicate whether the election is being made with respect to the allocation of real estate taxes or interest (or both). The election applies for the taxable year and succeeding taxable years. It is revocable only with the consent of the Commissioner and will be binding on all tenant-stockholders.

(iii) *Reasonable allocation.* An allocation whereby each tenant-stockholder is allocated a portion of the real estate taxes or interest (or both) that bears the same ratio to the cooperative housing corporation's total interest or real estate taxes as the fair market value of the dwelling unit (including the unit's share of the common areas) bears to the fair market value of all the dwelling units with respect to which stock is outstanding (including stock held by the corporation) at the time of allocation is reasonable. If, however, real estate taxes are separately assessed on each dwelling unit by the relevant taxing authority, the tenant-stockholder's allocation of such taxes is reasonable if it is based on such assessment. If one or more of the tenant-stockholders prepays any portion of the principal of the indebtedness that gives rise to interest, any allocation of interest to those tenant-stockholders will be reasonable if the allocation is reduced to reflect the reduction in the debt service attributable to such prepayment. In addition, similar kinds of allocations may also be reasonable, depending on the facts and circumstances.

(3) *Examples.* * * *

Example (3). The X Corporation is a cooperative housing corporation within the meaning of section 216. In 1987, it acquires for $1,000,000 a building containing 10 category A apartments, 10 category B apartments, and 10 category C apartments. The value of each category A apartment is $20,000, of each category B apartment is $30,000, and of each category C apartment is $50,000. X issues 1 share of stock to each of the 30 tenant-stockholders, each share carrying the right to occupy one of the apartments. X allocates the real estate taxes and interest to the tenant-stockholders on the basis of the fair market value of their respective apartments. Since the fair market value of all of the apartments is $1,000,000, the allocation of taxes and interest to each tenant-stockholder that has a right to occupy a category A apartment is 1/50 ($20,000/$1,000,000). Similarly, the allocation of taxes and interest to each tenant-stockholder who has a right to occupy a category B apartment is 3/100 ($30,000/$1,000,000) and of a category C apartment is 1/20 ($50,000/$1,000,000). X may elect in accordance with the rules described in

paragraph (d)(2) of this section to treat the amounts so allocated as each tenant-stockholder's proportionate share of real estate taxes and interest.

Example (4). The X Corporation is a cooperative housing corporation within the meaning of section 216. In 1987, it acquires a housing development containing 5 detached houses for $1,100,000, incurring an indebtedness of $1,000,000 for the purchase of the property. Each house is valued at $220,000. X issues one share of stock to each of the five tenant-stockholders, each share carrying the right to occupy one of the houses. A, a tenant-stockholder prepays all of the corporation's indebtedness allocable to his house. The periodic charges payable to X by A are reduced commensurately with the reduction in X's debt service. Because no part of the indebtedness remains outstanding with respect to A's house, A's share of the interest expense is $0. The other four tenant-stockholders do not prepay their share of the indebtedness. Accordingly, 1/4 of the interest is allocated to each of the tenant-stockholders other than A. X may elect in accordance with the rules described in paragraph (d)(2) of this section to treat the amounts so allocated as each tenant-stockholder's proportionate share of interest.

(e) *Cooperative housing corporation.*

* * *

(2) *Right of occupancy.* Each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under section 216(b)(2) and paragraph (f), of this section, must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reason of his ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial. For taxable years beginning after December 31, 1986, there shall not be taken into account for purposes of this paragraph the fact that, by agreement with the cooperative housing corporation, a person or his nominee may not occupy the house or apartment without the prior approval of such corporation:

(i) In any case where a person acquires stock of the cooperative housing corporation by operation of law, by inheritance, or by foreclosure (or by instrument in lieu of foreclosure),

(ii) In any case where a person other than an individual acquires stock in the cooperative housing corporation, and

(iii) In any case where the person from whom the corporation has acquired the apartments or houses (or leaseholds therein) acquires any stock of the cooperative housing corporation from the corporation not later than one year after the date on which the apartments or houses (or leaseholds therein) are transferred to the corporation by such person.

For purposes of the preceding sentence, paragraph (e)(2) (i) and (ii) of this section shall not apply to acquisitions of stock by foreclosure by the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).

* * * * *

(f) *Tenant-stockholder.* The term "tenant-stockholder" means a person that is a stockholder in a cooperative housing corporation, as defined in section 216(b)(1) and paragraph (e) of this section, and whose stock is fully paid up in an amount at least equal to an amount shown to the satisfaction of the district director as bearing a reasonable relationship to the portion of the fair market value, as of the date of the original issuance of the stock, of the corporation's equity in the building and the land on which it is situated that is attributable to the apartment or housing unit which such person is entitled to occupy (within the meaning of paragraph (e)(2) of this section). Notwithstanding the preceding sentence, for taxable years beginning before January 1, 1987, only individuals, certain lending institutions, and certain original sellers can be tenant-stockholders.

* * * * *

Par. 3. Section 1.216–2 is amended by revising paragraph (c) to read as follows:

§ 1.216–2 Treatment as property subject to depreciation.

* * * * *

(c) *Limitation.* If the allowance for depreciation for the taxable year determined in accordance with the provisions of paragraph (b) of this section exceeds the adjusted basis (provided in section 1011) of the stock described in paragraph (a) of this section allocable to the tenant-stockholder's proprietary lease or right of tenancy used in a trade or business or for the production of income, such excess is not allowable as a deduction. For taxable years beginning after December 31, 1986, such excess, subject to the provisions of paragraph (b) of this section, shall be allowable as a deduction for depreciation in the succeeding taxable year. To determine the portion of the adjusted basis of such stock which is allocable to such proprietary lease or right of tenancy, the adjusted basis shall be reduced by taking into account the same factors as are taken into account under paragraph (b)(1) of this section in determining the allowance for depreciation.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–11970 Filed 5–26–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Ch. I

Hazard Communication

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on its advance notice of proposed rulemaking for hazard communication in 30 CFR Chapter I due to requests from the public.

DATES: Written comments on the advance notice of proposed rulemaking for hazard communication should be received on or before June 30, 1988.

ADDRESSES: Comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On March 30, 1988, MSHA published an advance notice of proposed rulemaking (53 FR 10258) which would require employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets and training programs.

The comment period was scheduled to close on May 31, 1988. Due to requests from the public, MSHA is extending the comment period to June 30, 1988. All interested parties are encouraged to submit comments, and comments must be received on or prior to that date.

Date: May 24, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–11952 Filed 5–26–88; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42084D; FRL–3387–8]

Commercial Hexane; Proposed Definition of Test Substance and Effective Date

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the final test rule in 40 CFR 799.2155 on commercial hexane which was published in the Federal Register of February 5, 1988 (53 FR 3382). The rule was issued under section 4(a) of the Toxic Substance Control Act (TSCA). This document proposes to redefine the percentage of *n*-hexane in the test substance and to extend the deadlines for submission of notices of intent to test, exemption applications, and test results.

DATES: Submit written comments on or before June 27, 1988. If persons request an opportunity to submit oral comments by June 27, 1988, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit V of this preamable.

ADDRESS: Submit written comments, identified by the document control number (OPTS–42084D) in triplicate to: TSCA Public Docket Office (TS–793), Office of Toxic Substances, Evironmental Protection Agency, Room NE–G004, 401 M Street SW., Washington, DC 20460. (202) 554–1404.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room EB–55, 401 M Street SW., Washington, DC 20460. (202) 554–1404.

SUPPLEMENTARY INFORMATION: The Agency proposes to amend the final rule on commercial hexane by changing the specification of the test substance and the effective date.

I. Background

EPA issued a final rule under TSCA section 4(a)(1)(B), published in the Federal Register of February 5, 1988 (53 FR 3382) that established health effects testing requirements for commercial hexane. It specified that the test substance conform to ASTM D1836 specifications and contain no more than 40 liquid volume percent *n*-hexane and no less than 10 liquid volume percent methylcyclopentane (MCP). It also established the effective date of the rule as March 21, 1988.

On March 25, 1988 the American Petroleum Institute (API) notified EPA that the composition of *n*-hexane in the commercial hexane currently being manufactured did not meet the specifications of the test substance as promulgated (Ref. 1). On April 13, 1988, API (Ref. 3) requested that EPA modify the definition of the test substance and extend the reporting deadlines in the rule accordingly.

In the final rule, EPA stated that it wanted to test a commercial hexane that contained the smallest fraction of *n*-hexane so that the *n*-hexane would not mask the effects of MCP and other six carbon (C_6) isomers found in commercial hexane products. The Agency plans to retain this approach and is only proposing the revised definition because commercial hexanes are currently not being produced with a *n*-hexane composition low enough to meet the criteria EPA originally promulgated.

II. Proposed Test Substance Definition

Based on newly submitted confidential business information (CBI) on the *n*-hexane composition of currently available commercial hexane, EPA proposes to redefine the commercial hexane test substance as a mixture that contains at least 40 liquid volume percent but no more than 55 liquid volume percent *n*-hexane, and no less than 10 liquid volume percent MCP. According to API, the version of commercial hexane with the lowest percentage of *n*-hexane that is currently available in the market and that has potential for work place and consumer exposure contains about 55 liquid volume percent *n*-hexane (Ref. 1). From this new data and the CBI, the Agency has concluded that a range of between 51 to 55 pecent *n*-hexane formulation now represents the minimum *n*-hexane content of a currently available commercial hexane product. Therefore, the change in the definition of the test substance requested by API is warranted.

III. Effective Date of the Rule

The effective date of the final rule (53 FR 3382) was March 21, 1988. The time required to issue this proposal, to allow for public comment, and to promulgate the changes, if appropriate, will necessitate an extension of the dates for completion of testing (Ref. 2) and for other submission requirements specified in 40 CFR 790.45 which are calculated from the effective date of the rule. The EPA is proposing that the new effective date will be 44 days after publication of the final amendment. The Agency anticipates that the effective date would thus be moved a minimum of 3 months from March 21, 1988 to July 1988.

IV. Economic Analysis

A change in the test substance definition will not significantly alter the cost of testing. Thus, the economic analysis for the final test rule for commercial hexane is unchanged.

V. Pubic Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed amendment to Agency officials who are directly responsible for developing the amendment and supporting analyses, EPA will hold a public meeting after the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554–1404, by June 27, 1988. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arrange to present comments and to designated EPA participants. Persons wishing to attend should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency would transcribe the meeting and include the written transcript in the rulemaking record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42084D). This record includes information considered by the EPA in developing this proposed amendment and appropriate Federal Register notices.

This record includes the following information:

A. Supporting Documentation

(1) Federal Register notices consisting of:

(a) Notice of proposed test rule on MCP and commercial hexane (51 FR 17854; May 15, 1986).

(b) Notice of final test rule for commercial hexane and methylcyclopentane (53 FR 3382; February 5, 1988).

(2) Communications consisting of:

(a) Written public comments and letters.

(b) Contract reports of telephone conversations.

B. References

(1) American Petroleum Institute (API) Letter from Martha A. Beauchamp, Director of Health & Environmental Affairs Department, to Charles Elkins, Director, Office of Toxic Substances, USEPA. (March 25, 1985).

(2) USEPA, Letter from Susan F. Vogt, Deputy Director, Office of Toxic Substances, to Martha A. Beauchamp, API. (April 8, 1988).

(3) API, Letter from Martha Beauchamp to A. E. Conroy, Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances and to Susan F. Vogt, USEPA. (April 13, 1988).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE–G004, 401 M St. SW., from 8 a.m. to 4 p.m., Monday through Friday, except on legal holidays.

VII. Other Regulatory Requirements

A. Executive Order 12291

EPA judged that the final test rule was not subject to the requirement of a Regulatory Impact Analysis under Executive Order 12291. EPA has determined that the proposed modifications to the rule do not alter this determination.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certified that the final test rule would not have a significant impact on a substantial number of small businesses. The proposed changes to the final rule will not change this determination.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the final rule for commercial hexane under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96–511, December 11, 1980), and has assigned OMB control number 2070–0033. The proposed changes in the definition of the test substance and the effective date will not alter information collection requirements.

List of Subjects in 40 CFR Part 799

Chemicals, Environmental protection, Hazardous substances, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: May 20, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By revising § 799.2155 (a)(2) and (d) to read as follows:

§ 799.2155 Commercial hexane.

(a) * * *

(2) The commercial hexane test substance, for purposes of this section, is a product which conforms to the specifications of ASTM D1836 and contains at least 40 liquid volume percent but no more than 55 liquid volume percent *n*-hexane and no less than 10 liquid volume percent MCP.

* * * * *

(d) *Effective date.* The effective date of § 799.2155 will be 44 days after publication of the final rule incorporating this amendment.

[FR Doc. 88–11981 Filed 5–26–88; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register

Vol. 53, No. 103

Friday, May 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Targeted Export Assistance Program, Fiscal Year 1989

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the conduct of the Targeted Export Assistance Program for fiscal year 1989.

FOR FURTHER INFORMATION CONTACT: Richard E. Passig, Director, Marketing Programs Division, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 Telephone: (202) 447–5521.

Targeted Export Assistance (TEA) Program for FY 1989

Section 1124 of the Food Security Act of 1985, as amended (7 U.S.C. 1736s) (the Act), provides that, for fiscal years 1986 through 1990, the Secretary of Agriculture shall use a specified amount of funds of, or commodities owned by, the Commodity Credit Corporation (CCC) to counter or offset the adverse effect on the export of a U.S. agricultural commodity, or the product thereof, of a subsidy, import quota, or other unfair trade practice of a foreign country. Such funds or commodities must be used for export activities authorized to be carried out by the Secretary of Agriculture or CCC.

Section 1124 of the Act requires the Secretary to provide export assistance on a priority basis in the case of agricultural commodities and products thereof with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 or for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974.

For each of the fiscal years 1989 and 1990, the minimum amount of funds or value of commodities required to be used is not less than $325,000,000. However, the Administration has submitted a proposal to Congress to reduce by $30,000,000 the minimum level of funding for targeted export assistance in each of the fiscal years 1989 and 1990.

It is currently intended that targeted export assistance will be provided in a Targeted Export Assistance Program conducted as follows: Project agreements will be entered into by CCC with nonprofit agricultural trade associations, regional state sponsored organizations or private U.S. firms. These project agreements will provide for the issuance by CCC of generic commodity certificates to partially reimburse participants for authorized promotional activities to increase the export of specific agricultural commodities. At the option of CCC reimbursement may be made in CCC funds. Agreements are signed by the Vice President, CCC, who is the Administrator, Foreign Agricultural Service (FAS).

Promotional activities will be undertaken with respect to those countries that offer a reasonable possibility for increased exports to counter or offset unfair trade practices of foreign countries including countries that (1) maintain such practices, or (2) represent markets in which the export of U.S. agricultural commodities is adversely affected by such practices.

Persons desiring to participate in the program must be able to provide substantial cost sharing (contributions) for export promotional activities, adequate administrative support and a commitment to promotional activities. Project agreements will also provide for control and review via activity plans, reporting requirements, program evaluation, and the conduct of compliance audits. In addition, each TEA project will be subject to audit and evaluation factors to be determined by USDA. Contributions to cost sharing for export promotional activities must be in addition to what would have been spent on such activities had there been no program.

The criteria upon which CCC will base its allocation of fiscal year 1989 resources will include: (1) A review of the commodity or product to be promoted and the degree to which the organization represents U.S. producer interests on a commodity or nationwide basis; (2) the degree to which exports of the commodity or product may benefit from promotional activities; (3) the dollar amount of assistance requested; (4) the identification of an unfair foreign trade practice and the extent to which it has adversely affected exports of the commodity; (5) the extent to which the applicant organization is willing to contribute resources to the joint project, including the identification of the source of contributions projected that may be provided by the applicant and third parties; (6) the organization's prior export development experience and the adequacy of its administrative and personnel resources for the purposes of planning and managing the requested program level; (7) the historical export levels of the commodity or product; (8) the anticipated likelihood of success of the proposed project in terms of increasing U.S. exports or mitigating the unfair trade practice or its effects; (9) whether or not the commodity or product is in adequate supply; and (10) the extent to which the composition of the commodity or product is U.S. origin. Products whose composition is less than 50 percent U.S. origin, computed on a volume or value basis, will not be considered.

The deadline for submitting applications for consideration for participation in the program for fiscal year 1989 is 45 days from the date of publication of this notice. Applications for participation in the allocation of fiscal year 1989 TEA resources should address the above criteria and any other factors the applicant deems appropriate. CCC may change the terms and conditions under which it will provide targeted export assistance or the structure of the Targeted Export Assistance (TEA) Program at any time.

For further information regarding application procedures and the TEA program, contact the Marketing Program Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington DC 20250–1000, telephone (202) 447–5521.

Thomas O. Kay,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 88–12016 Filed 5–26–88; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Applicant Background Questionnaire
Form Number: Agency—BC-1431; OMB—0607-0494
Type of Request: Revision of a currently approved collection
Burden: 92,300 respondents; 7,636 reporting hours
Needs and Uses: The information collected on this revised questionnaire will be used by Census to strengthen its affirmative action plan. This questionnaire is given to applicants for noncompetitive positions, along with the Census Employment Inquiry, when they report to apply and be tested.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: May 23, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-11989 Filed 5-26-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Foreign Ocean Carriers' Expenses in the United States
Form Number: Agency—BE-29; OMB—0608-0012
Type of Request: Revision of a currently approved collection
Burden: 130 respondents; 520 reporting hours
Needs and Uses: The purpose of this survey is to obtain data for the preparation of U.S. international transportation accounts of the U.S. balance of payments
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: May 23, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-11990 Filed 5-26-88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-582-405]

Cellular Mobile Telephones and Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by three respondents and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. The review covers four manufacturers and/or exporters of this merchandise to the United States, and the period June 11, 1985 through November 30, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 51724) an antidumping duty order on cellular mobile telephones and subassemblies from Japan. Three respondents, Mitsubishi Electric Corporation, Nihon Dengyo and Japan Radio Company, and the petitioner, Motorola, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 20, 1987 (52 FR 2123). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are cellular mobile telephones ("CMTs"), CMT transceivers, CMT control units, and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, i.e., a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, i.e., a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this antidumping duty order.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cutoff point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter and exciter. The presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than $5, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this review: pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Cellular mobile telephones and subassemblies are currently classified under TSUSA item numbers 685.28 and 685.33; they are classified under HS item numbers 8525.20.60, 8525.10.80, 8527.90.80, 8529.10.60, 8529.90.50, 8542.20.00 and 8542.80.00.

The review covers four manufacturers and/or exporters of Japanese CMTs and subassemblies and the period June 11, 1985 through November 30, 1986.

Fujitsu Limited ("Fujitsu") failed to respond to the Department's antidumping questionnaire. The Department consequently used the best information available for assessment and antidumping duties cash deposit purposes. The best information available was Fujitsu's cash deposit rate, which is the rate from the fair value investigation.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), as defined in section 772 of the Tariff Act, as appropriate.

Purchase price was based on the packed f.o.b. price to an unrelated purchaser in the United States or an unrelated Japanese trading company for export to the United States. Exporter's sales price ("ESP") was based on the packed delivered price to the first unrelated purchaser in the United States. Where applicable, we made deductions for foreign inland freight and insurance as well as Japanese brokerage fees. For ESP, we made further adjustments for ocean freight, marine insurance, U.S. brokerage/handling fees, U.S. inland freight, customs duties, discounts, rebates, commissions to unrelated parties, warranties, credit, selling expenses incurred in Japan and in the U.S., and any increased value resulting from further processing in the U.S.

Foreign Market Value

In calculating foreign market value the Department used home market price, third country price or constructed value, as defined in section 773 of the Tariff Act. Home market price was used when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Third country price was used when insufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When insufficient quantities of such or similar merchandise were sold in either the home market or third countries, we used constructed value.

Home market and third country prices were based on the packed delivered price to unrelated purchasers, with adjustments, where applicable, for inland freight and insurance, warranties and technical services, differences in the physical characteristics of the merchandise credit, and differences in the cost of packing. No other adjustments were claimed or allowed. Constructed value consisted of the sum of the cost of materials, fabrication, general expenses, profit and the cost of packing. The amount added for general expenses was the statutory minimum of ten percent of the sum of materials and fabrication costs when actual costs for general expenses were less than that amount; the actual amount for general expenses was used in those instances where actual expenses exceeded the ten percent statutory minimum Actual profit was used when the actual profit on sales of the same class or kind of merchandise exceeded the statutory minimum of eight percent of the sum of the cost of materials, fabrication and general expenses; the profit rate used was the statutory minimum of eight percent when profit was below that amount. To constructed value we made adjustments, where applicable, for warranty expenses, indirect selling expenses, and credit.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 11, 1985 through November 30, 1986:

Manufacturer	Margin (percent)
Mitsubishi Electric Corporation	12.21
Nihon Dengyo	3.24
Japan Radio	17.71
Fujitsu	57.81

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday

thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by 19 CFR 353.48(b), a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any further entries of this merchandise from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 17.71 percent shall be required. These deposit requirements are effective for all shipments of Japanese cellular mobile telephones and subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 21, 1988.

[FR Doc. 88-12015 Filed 5-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory committee will be held on Tuesday, June 21, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classifed under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes, contact Alfreda Burton (202) 377-5761.

Dated: May 24, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-11987 Filed 5-26-88; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Wednesday, June 22, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 16, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes, contact Alfreda Burton (202) 377-5761.

Dated: May 24, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-11988 Filed 5-26-88; 8:45 am]

BILLING CODE 3510-DR-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-635,945 (4,737,371)
Process for Stabilizing Whole Cereal Grains
SN 7-133,477
Roller Drafter, Process of Use, and Products Produced Thereby
SN 7-155,442
Production of High Yields of Glycolic and Oxalic Acids from Polysaccharide-Containing Materials

Department of Health and Human Services

SN E-592-87
Vector for Secretion of Proteins Directly Into Periplasm or Culture Medium
SN E-452-87
Cell Lines Secreting Uteroglobin in Vitro
SN 6-410,965 (4,520,031)
Method for Reducing Toxic Effects of Methyl-Glyoxal
SN 6-920,780
Isolation and Purification of the R Gene of HTLV-III
SN 6-927,002
An Envelope Cassette of HTLV-III
SN 7-168,486
Yeast RNA Vector for Efficient Production of a Desired Protein
SN 7-169,033
Novel Neutrophil Chemotactic Factor, Cloned cDNA and Monoclonal Antibodies Thereto
SN 7-178,153
Phosphoramidite Reagent for Chemical Synthesis of Modified DNA
SN 7-178,736
High Speed Adaptive Ultrasonic Phased Array Imaging System
SN 7-191,067
Method for Treating Autoimmune Disease Using Succinylacetone

Department of the Air Force

SN 6-743,845 (4,723,075)
Translational Mount For Large Optical Elements
SN 6-807,154 (4,733,236)
Space Target With Multi-Spectral Energy Reflectivity
SN 6-867,728
Trephine Assembly
SN 6-936,109 (4,726,507)
Cryogenic Glass-To-Metal Seal
SN 6-936,678 (4,730,535)
Extendable Rail Weapon Launcher
SN 7-056,034
Flow-Through Cell Cultivation System
SN 7-084,342
Uniform Excitation Apparatus by a Single Power Supply of Two Dimensional Arrays of Waveguide Gas Lasers
SN 7-107,185
Command Operated Liquid Metal Opening Switch
SN 7-110,808
Compact Device for Continuous Removal of Water from an Airstream-Cascade Screen
SN 7-112,162
Anti-Rotation Locking Device for Fasteners
SN 7-125,633
Stimulator for Eye Tracking Oculometer
SN 7-128,006
Detection Apparatus for Bi-Phase Signals
SN 7-132,497
An Improved Resolution Delta Gun Color Monitor System Apparatus
SN 7-137,541
Dielectric Ridge Waveguide Gas Laser Apparatus
SN 7-142,472
Electrodepostion Without Internal Deposit Stress

Department of the Army

SN 7-153,611
Electrolyte Additive for Lithium Rechargeable Organic Electrolyte Battery
SN 7-166,336
Method and Apparatus for Optical Fiber Transmission in a Utility Conduit Containing a Hostile Fluid

Department of Transportation

SN 7-163,578
Energy Efficient Asymmetric Pre-Swirl Vane and Twisted Propeller Propulsion System

[FR Doc. 88-11988 Filed 5-26-88; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Ecogen, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Ecogen, Inc., having a place of business in Langhorne, PA, an exclusive right in the United States under the patent rights which have been assigned to the United States of America, as represented by the Secretary of Agriculture, to manufacture, use, and sell products embodied in the invention entitled "Novel Phenazine Antibiotic From Pseudomonas Fluorescens", U.S. Patent Application 6-817,374.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be admitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-11961 Filed 5-26-88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

May 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 31, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4214. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for certain cotton, wool and man-made fiber textile products in Groups II and III and sublevels in Groups I and II are being adjusted, variously, for carryover and carryforward used.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 60, published in the **Federal Register** on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James A. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 24, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 29, 1987, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 31, 1988, the directive of December 29, 1987 is amended to include adjustments to the previously established restraint limits for cotton, wool and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted 12-mo. limit [1]
Sublevel within Group I	
200	859,965 pounds.
219	7,743,974 square yards.
226/813/814/815	19,000,942 square yards.
300	5,454,601 pounds.
301–P [2]	5,300,000 pounds.
301–O [3]	1,067,600 pounds.
313	13,934,484 square yards.
314	29,248,791 square yards.
315	18,512,729 square yards.
317/326	7,496,206 square yards.
604	937,101 pounds of which not more than 544,337 pounds shall be in Category 604–A.
611	4,349,781 square yards.
669–P	2,488,116 pounds.
Group II	
239, 330–354, 359, 630–664 and 659, as a group.	83,431,328 square yards equivalent.
Sublevels in Group II	
334/335	76,134 dozen.
338/339	785,141 dozen.
340	146,837 dozen.
341	152,921 dozen.
342/642	282,571 dozen.
347/348	347,530 dozen.
Group III	
410, 414, 431–448 and 459, as a group.	3,069,248 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 301–P, not wholly cotton, in TSUSA numbers 300.6025, 300.6027 and 300.6028.
[3] In Category 301–O, wholly cotton in TSUSA numbers 302.—28 and 302.—28.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11986 Filed 5–26–88; 8:45am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Morgan Stanley Capital International EAFE (Europe, Australia and Far East) stock index. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before June 27, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME EAFE Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jafee, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: On September 11, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the EAFE Stock Index futures contract (52 FR 34404). On January 4, and March 25, 1988, the Commission republished in the **Federal Register**, for 30-day and 15-day comment periods, respectively, notices of availability of this contract's proposed terms and conditions (53 FR 64 and 53 FR 9798). In a May 20, 1988 later to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on May 24, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–12010 Filed 5–26–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Corporate Aircraft Costs.

ADDRESS: Send comments to Mr Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Government contractors that use company aircraft must maintain logs of flights containing specified information to ensure that costs are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

b. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, 3,000; hours per recordkeeper, 6; and total recordkeeping hours, 18,000.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washingotn, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs.

Dated: May 19, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88–11967 Filed 5–26–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of the Fiscal Intermediary Preferred Provider Organization Demonstration Project.

SUMMARY: The Assistant Secretary of Defense for Health Affairs has made arrangements for a Fiscal Intermediary Preferred Provider Organization demonstration project in Florida and Georgia, beginning July 1, 1988. This two-year project will test the feasibility of having CHAMPUS' fiscal intermediary (FI) contractors establish preferred provider organization (PPO) arrangements to improve the delivery of cost-effective health care services. Under this project, Blue Cross and Blue Shield of South Carolina, the CHAMPUS FI for the Southeastern Region, will establish a PPO program called "CHAMPUS Preferred," which will feature: (1) An extensive network of providers throughout most of Florida and Georgia that will reduce normal beneficiary outpatient services coinsurance payments from 20% to 15% for dependents of active duty members and from 25% to 20% for other beneficiaries, reduce their billed charges for CHAMPUS beneficiaries, and handle all claims filing requirements; (2) new utilization review procedures applicable to preferred providers to avoid unnecessary health care services; and (3) reduced CHAMPUS costs.

This notice, published in accordance with 32 CFR § 199.1(o), informs the public of the changes in normally applicable requirements and procedures relating to this demonstration project, including those regarding beneficiary coinsurance, utilization review activities and calculation of prevailing charge profiles. The FI–PPO demonstration project is being conducted pursuant to section 731(c)(2)(E) of the National Defense Authorization Act for Fiscal Years 1988 and 1989.

DATES: Implementation starting date of this demonstration is July 1, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Tanya Agee, Office of Program Development, OCHAMPUS, telephone (303) 361–3586, or Steve Lillie, Office of the Assistant Secretary of Defense for Health Affairs (Health Program Management/OCHAMPUS), (202) 697–5975.

SUPPLEMENTARY INFORMATION: At the direction of William Mayer, M.D., Assistant Secretary of Defense for Health Affairs, this notice describes the Fiscal Intermediary Preferred Provider Organization demonstration project.

A. Background

Section 731(c)(2)(E) of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100–180, December 4, 1987) directs DoD to conduct:

> A fiscal intermediary demonstration project, to be implemented by amending one or more existing Department of Defense contracts with fiscal intermediaries in a State or region to require the intermediary to demonstrate a managed health care network with cost-containment initiatives, such as utilization review, pre-admission screening, second surgical opinions, contracting for care on a discounted basis, and other methods.

In anticipation of the enactment of this provision, in September 1987 the Director of OCHAMPUS invited each CHAMPUS fiscal intermediary to develop a proposal to implement such a demonstration project. DoD sought to award two contract modifications under this project, but after review of proposals from several FIs, only one proposal, that submitted by the fiscal intermediary for the Southeast Region (Blue Cross and Blue Shield of South Carolina, or BCBSSC) was considered to be viable. The detailed development of this proposal has produced the project described in this notice.

B. The "CHAMPUS Preferred" Provider Network

The operation of this demonstration project centers on the establishment by BCBSSC of a preferred provider organization (PPO) program called "CHAMPUS Preferred." PPOs have become a popular option in many civilian health care programs. PPOs are modifications to typical fee-for-service provider reimbursement under which beneficiaries are offered financial incentives to use network providers. Both the beneficiary and the program sponsor can save because of discounts offered by the providers. Providers stand to benefit by increasing their market share. Controls on excessive utilization are usually a part of PPO arrangements.

CHAMPUS Preferred has the major features of standard PPOs. It involves a network of health care providers throughout Florida and Georgia. More specifically, it is composed of one established PPO in Georgia and two in Florida.

A PPO network will cover the entire state of Georgia, including major metropolitan areas and several Military Treatment Facility (MTF) catchment areas. This network is the VIP Plan, operated by Blue Cross and Blue Shield of Georgia. This plan currently includes over 5,100 providers across the state, and has been in operation since 1984.

In Florida, PPO providers initially will be available in the following metropolitan areas: Jacksonville, Melbourne, Miami, Orlando, Pensacola, and Tampa-St. Petersburg. The MTF catchment areas covered are: Naval Hospital Jacksonville, USAF Hospital Patrick Air Force Base, USAF Hospital Homestead Air Force Base, Naval Hospital Orlando, Naval Hospital Pensacola, and MacDill Regional Hospital (MacDill Air Force Base).

In Florida, the CHAMPUS Preferred network is made up of two existing PPOs. Most of the state, except the panhandle area, will be covered by Healthwin, a division of Lincoln National Life Insurance. Healthwin is a national organization, with a large provider base in Florida population centers.

In Pensacola, Florida, the CHAMPUS Preferred network will be the providers of the Medical Center Clinic, P.C., a large multi-specialty clinic. No PPOs are operational at this time in Ft. Walton Beach or Panama City, Florida, so the CHAMPUS Preferred Network will not be readily accessible to beneficiaries in those population centers at the outset of the demonstration.

Nearly 90 percent of CHAMPUS beneficiaries in the two states are expected to have ready access to PPO providers. Other PPOs may be added during the course of the demonstration.

Agreements with the contracted PPO networks will be entered into for reimbursement discounts below current allowable charges for professional services. BCBSSC estimates that up to

40 percent of CHAMPUS beneficiaries who have access to the PPO will use it.

C. Benefits Under "CHAMPUS Preferred"

Use of the "CHAMPUS Preferred" network providers is entirely voluntary for the beneficiary; beneficiaries will continue to have the freedom of choice of their civilian provider. There is no enrollment required. However, in accordance with standard PPO arrangements, there are incentives for beneficiaries to use PPO providers. Beneficiaries who opt to use a network provider will reap significant benefits. First, beneficiary cost shares for outpatient professional services will be reduced from 20 percent to 15 percent for active duty dependents and from 25 percent to 20 percent for all other beneficiaries (for all professional services). The demonstration alters the normally applicable cost-sharing requirements in the CHAMPUS Regulation, DoD 6010.8–R, Chapter 4, Section F.

In addition to reduced cost-share requirements, the discounts which have been negotiated with the provider networks will result in a lower overall charge, so the cost-share percentage will be taken from a smaller base.

All network providers will accept the discounted CHAMPUS-determined allowable charge as payment in full, so that the beneficiary's financial responsibility will be limited to the copayment.

CHAMPUS Preferred not only reduces out-of-pocket costs; it also relieves a significant paperwork burden, since all network providers will file claims on behalf of the beneficiary.

Beneficiaries residing within the target areas will be given more information about CHAMPUS Preferred and its providers through various media as well as through mass mailing of information packages to known CHAMPUS users. The decision to use a network provider can be made on a case-by-case basis. No enrollment is involved, and there is no requirement to continue using a network provider.

Beneficiaries will be able to locate network providers in several ways. Each family in the target areas will be mailed a directory of network providers, and local health benefits advisors will also have directories. Also, a special toll-free Health Care Finder Service will be operated by the fiscal intermediary from which beneficiaries may obtain the names of network providers in their locality.

D. Utilization Review Under CHAMPUS Preferred

In order to assure quality and necessity of care, the fiscal intermediary will operate an enhanced utilization review (UR) program for network providers. Responsibility for obtaining any needed clearances or certifications will rest with the network provider, not the beneficiary. The UR program imposes no additional requirements on beneficiaries. The new procedures apply only to network providers; they do not apply to non-network providers.

The PPO utilization review program has three components: (1) Preadmission review of all non-emergency hospitalizations; (2) continued stay reviews of psychiatric hospitalizations; and (3) individual case management of selected high cost diagnoses.

The Preadmission Review program will require the PPO provider to contact the fiscal intermediary prior to a non-emergency hospital admission. The PPO provider will describe the reasons for the admission; fiscal intermediary staff will certify the necessity of the admission. In the case of psychiatric admissions, an initial length of stay will be certified, and the case will be reviewed periodically to determine continued medical necessity and appropriateness of the hospital stay, in consultation with the admitting provider. The CHAMPUS 60-day limitation on psychiatric hospitalizations will continue in effect.

In high-cost cases where other treatment methods may be more effective than long hospitalizations, Individual Case Management will be used to make the health care system work more effectively for the patient. In order for ICM to apply, alternatives to the hospitalization must be less costly, and there must be no degradation of the required care level for the patient. Cases where ICM may be considered include, for example, cerebral vascular accidents, severe head traumas, high risk neonates, severe burns, and ventilator-dependent patients. The case manager will assist in obtaining alternative services, such as home nursing care, and will monitor the case on an ongoing basis.

Existing CHAMPUS procedures, such as non-availability statement requirements, medical necessity reviews of certain claims, and other requirements of CHAMPUS payment for medical services will continue to apply in the demonstration states.

E. Program Savings Under the FI–PPO Demonstration

DoD anticipates that this demonstration will produce program savings. Estimates of the amount of likely savings are extremely difficult because CHAMPUS has limited experience with this type of program. Savings depend, for example, on the percentages of beneficiaries who will use CHAMPUS Preferred for some or all of their civilian-provided care and the effectiveness of the utilization review programs in eliminating unnecessary hospital admissions and controlling lengths of stay; these factors are difficult to predict with assurance.

Nonetheless, some projections of costs and savings under this demonstration project are possible. BCBSSC estimates potential total savings of about $7.7 million in the first year of operation. To achieve these savings, start-up and operational costs of about $2.1 million will be incurred. Additionally, about $1 million of the savings will be passed directly to beneficiaries who use the PPOs in the form of reductions in the copayment percentage.

The majority of savings of the demonstration arise from the impact of the utilization review program in avoiding unnecessary inpatient care. When considered in relation to inpatient hospital costs in the PPO, the net savings anticipated are about 5 percent.

It is possible that additional savings may result from non-network providers reducing fees to remain competitive with CHAMPUS Preferred providers and from including the discounted payment rates for CHAMPUS Preferred providers in the calculation of new CHAMPUS prevailing charge profiles for these states, beginning with the update for fiscal year 1990.

F. Other Information

To avoid confusion, it should be noted that this demonstration project is entirely separate from the CHAMPUS Reform Initiative (CRI) demonstration project, for which a contract was recently awarded for health care coverage for beneficiaries residing in California and Hawaii. The FI–PPO demonstration project has some similarities with the CRI demonstration. Notably similar are features of CHAMPUS Preferred and the PPO-like option under CRI known as "CHAMPUS Extra." CRI, however, includes many additional health care delivery and financing aspects, including a Health Maintenance Organization (HMO)-like enrollment program called CHAMPUS Prime, resource sharing agreements with military hospitals, an overall fixed-price contract (subject to modifications), and other features.

Florida and Georgia are excellent states for the demonstration of CHAMPUS improvements. Overall, these two states represent about 11 percent of CHAMPUS beneficiaries in the United States, and about 14 percent of CHAMPUS costs.

The FI–PPO demonstration project will be evaluated by the Office of the Assistant Secretary for Health Affairs in accordance with requirements of the National Defense Authorization Act for Fiscal Years 1988 and 1989. Details of the evaluation plan will be provided to Congress as required by that Act, as will interim and final evaluation reports concerning the project.

As noted above in the background discussion, DoD originally sought to establish, as contemplated in the statute, two FI–PPO demonstration project sites. This Fall, DoD expects to survey the other CHAMPUS fiscal intermediaries in an effort to determine the feasibility of initiating a second FI–PPO demonstration in fiscal year 1989. It may be that some of the circumstances preventing a second project at this time will be sufficiently different next year to permit another contract modification. Conducting a second project through a modification of another fiscal intermediary contract would help produce realistic and accurate findings concerning the feasibility of adopting PPO requirements as standard features in future CHAMPUS FI contracts.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 24, 1988.

[FR Doc. 88–12034 Filed 5–26–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Scientific Advisory Board; Meeting

May 19, 1988.

The USAF Scientific Advisory Board Committee on USAF Operations in Chemically Hostile Environments will meet June 14–16, 1988 at the Armstrong Aerospace Medical Research Laboratory, Wright-Patterson AFB, Ohio. The meeting will begin at 8:00 a.m. and end at 5:00 p.m. each day.

The purpose of the meeting is to review the current and anticipated future threat to USAF war-fighting capability and to review current U.S. deterrent and defensive posture and steps being taken to improve USAF capability to meet the threat.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and, accordingly will be closed to the public.

For further information, contact the Air Force Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–11950 Filed 5–26–88; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 27, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 24, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Report of Handicapped Children and Youth Receiving Special Education and Related Services
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 56
Burden Hours: 8,265
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by States to report the number of handicapped children and youth receiving special education and related services under Part B of the Education of the Handicapped Act, as amended. The Department will use these data for monitoring activities and for distributing Federal funds.

Type of Review: Reinstatement
Title: Report of Special Education and Related Services in Need of Improvement
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 58
Burden Hours: 116
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will collect information from States on the number and type of special education programs and related services in need of improvement. The Department will use the information to assist in establishing programmatic priorities and for reporting purposes.

Type of Review: Extension

BEST COPY AVAILABLE

Title: Report of: (A) Handicapped Children and Youth Exiting the Educational System and (B) Anticipated Services Needed by Handicapped Children and Youth
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 58
Burden Hours: 13,978
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by States to report the number of handicapped youth exiting the school system and the services needed by these youth in the following year. The Department will use the information to assess progress and effectiveness of State efforts to implement programs under Part B of the Education of the Handicapped Act, as amended.

Office of Postsecondary Education

Type of Review: New
Title: New and Continuation Application for Grants under the School, College, and University Partnerships Program
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 3,500
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by local education agencies and institutions of higher education to apply for funding under the School, College, and University Partnerships Program. The Department will use the information to make grant awards.

Type of Review: New
Title: Application for Grants to Institutions to Encourage Minority Participation in Graduate Education Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 200
Burden Hours: 5000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by institutions of higher education to apply for funding under the Institutions to Encourage Minority Participation in Graduate Education Program. The Department will use the information to make grant awards.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Application for Grants under Library Research and Demonstration Program
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 70
Burden Hours: 2,520
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by institutions of higher education and library organizations to apply for funding under the Library Research and Demonstration Program, Title II–B of the Higher Education Act of 1965, as amended. The Department will use the information to make grant awards.

[FR Doc. 88–11966 Filed 5–26–88; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88–06–NG]

MidCon Sales, Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting MidCon Sales, Inc. (MidCon Sales), blanket authorization to import natural gas. The order issued in ERA Docket No. 88–06–NG authorizes MidCon Sales to import up to 200 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 16, 1988.
Constance L. Buckley,
Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.
[FR Doc. 88–11949 Filed 5–26–88; 8:45 a.m.]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–398–000, et al.]

Louisiana Power and Light Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 23, 1988.

Take notice that the following filings have been made with the Commission:

1. Louisiana Power and Light Company

[Docket No. ER88–398–000]

Take notice that on May 16, 1988, Louisiana Power & Light Company (LP&L) tendered for filing revised rate schedules for sale of electricity to the City of Winnfield, Louisiana under LP&L Schedule FERC No. 70 and to the Town of Vidalia, Louisiana under LP&L Rate Schedule FERC No. 75. LP&L states that the revision is necessary to permit the cost of test energy from its Waterford No. 3 nuclear generating plant generated during the period June through September 1985 to be recognized in its wholesale fuel cost adjustment clause on the basis of the displacement cost of such energy. LP&L has requested waiver of Part 35 of the Commission's regulations to the extent necessary to permit the revision to be effective during that period.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Company

[Docket Nos. ER84–604–010 and ER85–477–003]

Take notice that on May 18, 1988, Southwestern Public Service Company (Southwestern) tendered for filing a compliance interim refund report. Southwestern states that it issued net refund on May 6, 1988 by offsetting the principal amount, without interest, of fuel cost under-recoveries from the total interim refund computed in each docket.

Southwestern states that section 1 of the compliance interim refund report shows the fuel cost under-recovery offset calculations by customers. Sections 2 and 3 show the interim base rate refund calculations, including compound interest, for Docket Nos. ER84–604–009 and ER85–477–002, respectively.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER88–401–000]

Take notice that on May 17, 1988, Puget Sound Power & Light Company (Puget) tendered for filing, pursuant to 18 CFR 35.30(c), documents relating to the calculation of Average System Cost (ASC) for the exchange period effective October 1, 1987, through January 31, 1988. Puget states that it is filing pursuant to the revised ASC methodology which was approved by the Federal Energy Regulatory Commission effective October 1, 1984.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Blackstone Valley Electric Company

[Docket No. ER88–400–000]

Take notice that on May 17, 1988, Blackstone Valley Electric Company (Blackstone) tendered for filing three related agreements concerning Blackstone's service to meet Narragansett Electric Company's (Narragansett's) load in Franklin, Massachusetts. The first is a facilities support contract between Blackstone and Narragansett for the use of Blackstone's Riverside substation by Narragansett to support that load. This agreement is effective as of April 1, 1988 and supersedes the Franklin-Plainsville Operating Agreement dated June 27, 1949. The new agreement provides that Narragansett will pay 18% of the yearly cost of service for the 13.8kV portion of the substation and 100% of the yearly cost of service of the 25kV portion.

The second is an amendment to the 1973 Agreement for Sharing Cost of Certain Transmission Facilities in Northern Rhode Island between Blackstone and Narragansett (designated Rate Schedule FERC No. 20). Narragansett has agreed to pay 8⅓% of the yearly cost of service for use of Blackstone's H–17 line to support Narragansett's load in Franklin.

The third is an amendment to a 1973 agreement under which Blackstone leases facilities in northern Rhode Island to Montaup Electric Company (Montaup). Blackstone's bulk power supply affiliate (FERC Rate Schedule No. 19). Since the portion of the H–17 line not used by Narragansett is leased by Blackstone to Montaup it was necessary to amend the Blackstone/Montaup agreement in order to adjust the percentage by Montaup.

Blackstone requests waiver of the 60 days notice requirements in order to place the three agreements in effect on April 1, 1988. Negotiations took longer than expected due to uncertainty of the final support percentages. The agreements should be placed in effect as of April 1, 1988 in order to reflect Narragansett's current use of facility beginning then. If waiver is granted, there would be no effect on purchasers under any other rate schedule.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Kentucky Utilities Company

[Docket No. EC88–19–000]

Take notice that on May 16, 1988, Kentucky Utilities Company (KU) tendered for filing an application pursuant to section 203 of the Federal Power Act for authorization to acquire from Old Dominion Power Company (Old Dominion) certain of the latter's securities. Old Dominion is the wholly-owned subsidiary of KU.

KU states that it is applying for authority to acquire from Old Dominion unsecured promissory notes of Old Dominion from time to time.

KU states that the proposed transaction will enable Old Dominion to obtain needed funds at a cost which it is believed will be not greater than the cost of money which would be incurred by Old Dominion were it to seek to obtain such funds through the issuance of its securities otherwise than to KU.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88–12025 Filed 5–26–88; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP88–393–000, et al.]

Gateway Pipeline Co., et al.; Natural Gas Certificate Filings

May 23, 1988.

Take notice that the following filings have been made with the Commission:

1. Gateway Pipeline Company

[Docket No. CP88–393–000]

Take notice that on May 13, 1988, Gateway Pipeline Company (Gateway), 600 Travis, Houston, Texas 77002, filed an application in Docket No. CP88–393–000 pursuant to section 7(c) of the Natural Gas Act requesting authorization to construct and operate a total of approximately 25.75 miles of 30-inch and 20-inch diameter pipeline in Mobile County, Alabama. Gateway states that the purpose of this proposed pipeline is to transport natural gas produced in the Mobile Bay Area from three gas treatment plants to United Gas Pipe Line Company's (United) interstate pipeline system, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Gateway proposes to construct the pipeline and related facilities in order to provide open-access transportation service for all potential shippers of Mobile Bay Area gas. Gateway states that the proposed pipeline would connect three natural gas treatment plants in Mobile County, Alabama, with United's existing Lirette, Louisiana, to Mobile, Alabama, 30-inch pipeline at a point in Mobile County. It is stated that the estimated cost of construction of these facilities is $18,875,000. Gateway states that compression facilities are not anticipated as the expected pressures from each of the three treatment plants would be sufficient to deliver gas into United's system.

Gateway further states that the instant proposal would provide the most efficient and flexible means of transportation for potential shippers of Mobile Bay Area gas to markets in the United States. Gateway states that another proposed Mobile Bay Area pipeline is pending before the Commission. Gateway states that United's interconnections with other major pipeline systems provide the most cost-effective and flexible transportation options for Mobile Bay Area gas into the nation's pipeline grid.

Gateway states that the construction of its proposed pipeline would not harm environmentally-sensitive areas, and that any environmental impact the project may have would only occur during the construction phase.

Moreover, Gateway certifies that the proposed facilities will be designed, installed, and operated in accordance with all Federal and State safety standards.

In addition to the proposals set forth above Gateway states that in order to provide all potential shippers an opportunity to obtain initial transportation services from Gateway, Gateway proposes: (1) To accept requests for both firm and interruptible transportation services on a first-come, first-served basis for 75 days after the date the notice of this application is published in the **Federal Register** (Request Period) and (2) to request any necessary authorization to transport gas for shippers requesting services and to executing a precedent agreement within that time, and to file all executed precedent agreements within 15 days of the end of the Request Period. Gateway further states that for any shippers requiring downstream transportation services, it anticipates that any required applications for authorization to render such services for these shippers would be filed with the Commission.

Comment date: June 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Gateway Pipeline Company

[Docket No. CP88-394-000]

Take notice that on May 13, 1988, Gateway Pipeline Company (Gateway), 600 Travis, Houston, Texas 77002, filed in Docket No. CP88-393-000 an application pursuant to section 7(c) of the Natural Gas Act and Section 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing Gateway to transport natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Gateway states that it will comply with the terms and conditions set forth in Subpart A of Part 284 of the Commission's regulations.

Comment date: June 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88-386-000]

Take notice that on May 9, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-386-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct one delivery point and appurtenant facilities to effect the delivery of natural gas to Iowa Public Service Company (IPSC) under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to construct one large-volume delivery point to accommodate natural gas deliveries to the community of Zimmerman, Minnesota to be served by IPSC. In addition, Northern requests authorization to realign the firm entitlement of IPSC.

Northern avers that the total estimated cost to construct the proposed facilities is $167,000. It is stated that IPSC would not be required to contribute to the cost of construction.

Comment date: July 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP82-82-000]

Take notice that on May 12, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP82-82-000 a petition to amend requesting the elimination of the equivalent inlet/outlet Btu requirement of volumes of gas delivered to a processing plant owned and operated by Cities Service Helex, Inc. (Helex), in Grant County, Kansas, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

WNG states that its existing agreement, dated November 23, 1986, with Helex requires Helex to return processed gas with a Btu content equivalent to that received by Helex. WNG proposes to delete the equivalent inlet/outlet Btu requirement of the agreement. Further, WNG proposes to replace the equivalent Btu content requirement with a requirement that Helex maintain a Btu level no lower than 925 at the outlet of the plant, in accordance with a January 12, 1988, letter agreeemnt. WNG explains that as a result of the issuance of FERC Order Nos. 436, 451 and 500 the heat content of gas being delivered to Helex will be increased. WNG states that its proposal would not affect WNG's sales to Helex or Helex's operation of its facilities.

Comment date: June 13, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. LaSER Marketing Company, a Division of LaSalle Energy Corp.

[Docket No. CI85-521-001, et al.]

Take notice that on May 12, 1988, LaSER Marketing Company, a Division of LaSalle Energy Corp., P.O. Box 1478, Houston, Texas 77251-1478, filed an application pursuant to the provisions of Section 16 of the Natural Gas Act, 15 U.S.C. 717(o) (1982) and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) issued thereunder, petitioning the Commission to redesignate all certificates issued by the Commission in the name of UER Marketing Company to LaSER Marketing Company, a Division of LaSalle Energy Corp., as shown on the attached Exhibit and substitute LaSER Marketing Company, a Division of LaSalle Energy Corp., in place of UER Marketing Company in any other proceedings pending before the Commission. This application is on file with the Commission and open to public inspection.

Effective June 30, 1987, UER Marketing Company was acquired by LaSalle Energy Corp. UER Marketing Company's name was subsequently changed, effective April 1, 1988, to LaSER Marketing Company, a Division of La Salle Energy Corp.

Comment date: June 3, 1988, in accordance with Standard Paragraph J at the end of this notice.

Exhibit

List of Federal Energy Regulatory Commission's Proceedings.

CI-85-521	ST86-465
ST85-1598	ST86-1317
ST85-1784	ST86-1375
ST85-1782	ST87-172
ST86-128	ST87-175
ST86-617	ST87-469
ST86-301	ST85-1415
ST86-1305	ST85-1783
ST86-1374	ST85-1823
ST87-171	ST86-092
ST87-174	ST86-139
ST87-468	ST86-403
CI85-673	ST86-1247
ST85-1781	ST86-1361
ST85-1819	ST86-1638
ST86-091	ST87-173
ST86-149	ST87-221
ST86-393	ST87-1006

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission's, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12026 Filed 5-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3966-002, et al.]

Sun Exploration and Production Co., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

May 24, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 7, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3966-002, D, 5/6/88	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Texas Gas Pipeline Co., Nome Field, Jefferson County, TX.	(1)
G-7496-001 D, 5/9/88	Amoco Production Co., P.O. Box 3092, Houston, TX 77253.	Northern Natural Gas Co., Division of Enron Corp., Eumont Field, Lea County, NM.	(2)
CI61-1429-019, D, 5/9/88	Sun Exploration and Production Co.	El Paso Natural Gas Co., Jalmat Field, Lea County, NM.	(3)
CI62-1237-001, D, 5/6/88	do	do	(4)
CI70-654-003, D, 5/9/88	do	Transcontinental Gas Pipe Line Corp., Various Fields, Jim Hogg County, TX.	(5)
CI76-691-003, D, 5/9/88	Amoco Production Co.	El Paso Natural Gas Co., Carlsbad Field, Eddy County, NM.	(3)
CI77-114-003, D, 5/9/88	Sun Exploration & Production Co.	El Paso Natural Gas Co., Jalmat, *et al* Fields, Lea County, NM.	(6)
CI88-429-000 (CI64-999), B, 4/21/88	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77252.	El Paso Natural Gas Co., South Fullerton Field, Andrews County, TX.	(7)
CI88-439-000, F, 5/3/88	Texaco Production Inc., P.O. Box 52332, Houston, TX 77052.	Colorado Interstate Gas Co., Greenwood Field, Morton County, KS.	(8)
CI88-440-000, B, 5/5/88	Hamon Operating Co., Republic Bank Tower, 325 No. St. Paul, Suite 3900, Dallas, TX 75201-3902.	El Paso Natural Gas Co., Ramp Field, Hemphill County, TX.	(9)
CI88-441-000, B, 5/5/88	do	Northern Natural Gas Co., Division of Enron Corp., Mocane-Laverne Field, Beaver County, OK.	(10)

Docket No. and date filed	Applicant	Purchaser and location	Description
CI88-442-000, B, 5/5/88	....do	Tennessee Gas Pipeline Co., a Division of Tenneco Inc., King's Bayou Field, Cameron Parish, LA.	(10)
CI88-443-000, B, 5/5/88	....do	Williams Natural Gas Co., Hugoton-Anadarko Field, Hemphill County, TX.	(10)
CI88-444-000 (CI79-459), 5/5/88	Phillips Petroleum Co., 990-G Plaza Office Bldg., Bartlesville, OK 74004.	Natural Gas Pipeline Co. of America, West Gruver Field, OCS-G-2398, High Island Block A-273, Offshore Texas.	(11)
CI88-445-000 (CI81-356), B, 5/5/88	....do	ANR Pipeline Co., OCS-G-2398 High Island Block A-273, Offshore Texas.	(11)
CI88-446-000 (CI76-226), B, 5/6/88	ARCO Oil & Gas Company, a Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Co., Cinta Roja Field, Lea County, NM.	(12)
CI88-448-000 (CI63-1344), B, 5/9/88	Sun Exploration & Production Co	El Paso Natural Gas Co., Langlie Mattix Field, Lea County, NM.	(13)
CI88-449-000 (CI78-1213), B, 5/9/88	....do	El Paso Natural Gas Co., Jalmat Field, Lea County, NM.	(14)
CI88-450-000 (CI77-63), B, 5/9/88	Amoco Production Co	El Paso Natural Gas Co., Bruneon Field, Lea County, NM.	(15)
CI88-451-000 (G-3711), B, 5/9/88	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, CA 90051.	Transcontinental Gas Pipe Line Corp., Vinton Field, Calcasieu Parish, LA.	(16)
CI88-453-000 (CI63-429), D, 1/4/88	Maxus Exploration Co., LTV Center, 2001 Ross Ave., Dallas, TX 75201.	Natural Gas Pipeline Co. of America, Certain acreage in Beaver County, OK.	(17)

[1] Effective 12-1-85, Sun assigned its interest in Property No. 435000, J. E. Burrows (all wells and equipment located on various deeds covering up to 214.44 acres, M/1, out of John Blair League A-4, from surface to 8000 ft, and Sun's interest in Minerals from surface to 8000 ft.), to King Sherwood Oil Co. Sun retained depths below 800 ft., and surface of Fee Deed 2729.
[2] Effective 8-1-87, Amoco Production Company assigned certain acreage to ENAQ, Inc.
[3] Effective 1-2-86, Sun assigned its interest in Property No. 639982, South Langlie Jal (formerly Van Zandt #4), to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[4] Effective 1-2-86, Sun assigned its interest in Property No. 746055, Watkins, and Property No. 781805, Woolworth (partial interest) to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[5] Effective 11-25-86, Sun released its interest in Property No. 748676, Lease No. 23597, Weil Bros. Lease to the heirs of John Weil.
[6] Effective 1-2-86, Sun assigned its interest in Property No. 437463, S. R. Cooper, and Property No. 437464, S. R. Cooper 'A' to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[7] Effective 7-1-87, Tenneco assigned certain acreage to Amoco Production Company.
[8] Effective 11-1-87, CNG Production Company assigned certain acreage to TPI.
[9] Reserves depleted and well plugged and abandoned 4-5-83.
[10] Reserves depleted and all wells plugged and abandoned.
[11] Production from High Island Block A-273 has ceased, all wells have been plugged and abandoned and the lease terminated in December, 1986.
[12] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.
[13] Effective 1-2-86, Sun assigned its interest in Property No. 456583, Eaton B. AC #1; Property No. 456584, Eaton, N.W.; and Property No. 456585, Eaton N.W.; to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[14] Effective 1-2-86, Sun assigned its interest in Property No. 520785, J. W. Cooper, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[15] Effective 8-1-87, all the acreage dedicated to El Paso under the related gas contracts dated 8-23-76 (basic) and 9-1-85 (rollover) comprising Gas Rate Schedule No. 729, was assigned to ENAQ, Inc.
[16] Effective 2-1-83, UXP assigned certain leases to The Exploration Company of Louisiana, Inc., and UXP no longer has any remaining properties subject to Gas Rate Schedule No. 4.
[17] Diamond Shamrock Exploration Company (now Maxus) assigned all of its interest in the well and leases covered by Gas Rate Schedule No. 17 to Cabot Petroleum Corporation and Anadarko Petroleum Corporation effective 11-1-86.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-12024 Filed 5-26-88; 8:45am]
BILLING CODE 6717-01-M

[Docket No. OR88-3-000]

Air Transport Association of America v. Buckeye Pipe Line Co., L.P.; Filing of Complaint

May 23, 1988.

Take notice that on April 29, 1988, Air Transport Association of America (ATA or complainant) filed a complaint pursuant 18 CFR 385.206 against Buckeye Pipe Line Company (Buckeye). It requests the Commission to prescribe just and reasonable rates for Buckeye and order reparations under sections 13(1), 15(1), and 16(1) of the Interstate Commerce Act (ICA). Complainant, a non-profit trade association of air passenger and freight carriers that directly and indirectly ship aviation jet fuel on the Buckeye system, alleges that its member air carriers are currently being charged unjust and unreasonable tariff rates by Buckeye. ATA asserts that testimony and data submitted in a current investigation of Buckeye's tariff rates in *Buckeye Pipe Line Co., L.P., et al.*, Docket Nos. IS87-14-000, *et al.*[1] demonstrate that Buckeye's current revenues far exceed its costs and that its tariff rates are excessive and unlawful under the ICA. By this complaint, ATA seeks to utilize the record established in *Buckeye* to obtain relief under sections 15(1) and 16(1) of the ICA. ATA requests that the Commission expand the scope of that proceeding to ensure that the issues to be resolved include: (1) The justness and reasonableness of all of Buckeye's tariff rates for the transportation of aviation jet fuel, whether or not an increase to any such rate has been proposed; (2) the just and reasonable rate to be thereafter observed to the extent that any of Buckeye's tariff rates for the transportation of aviation jet fuel are found to be unjust and unreasonable; and (3) the appropriate measure of reparations, with interest, to be made to ATA's member air carriers as relief for unjust and unreasonable tariff rates charged for the transportation of aviation jet fuel for the period from January 1, 1987 to the date that the prescribed just and reasonable rates became effective.

ATA asserts that once the hearing is held in *Buckeye* the Commission will have a full record upon which to prescribe the just and reasonable rate to be thereafter observed with respect to each Buckeye tariff rate found to be unjust and unreasonable. ATA emphasizes that although proceedings in Buckeye will involve all of Buckeye's tariff rates, ATA is requesting relief in this complaint only with respect to tariff rates for the transportation of aviation jet fuel. With respect to reparations, ATA is not seeking relief on behalf of other parties. ATA requests the Commission to order reparations with respect to all shipments of aviation jet fuel on or after January 1, 1987 for which one of the ATA member air carriers was a direct or indirect shipper. Finally, ATA requests that the Commission consolidate the instant complaint with the ongoing proceedings in *Buckeye*.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before June 22, 1988.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-12033 Filed 5-26-88;8:45am]
BILLING CODE 6717-01-M

[1] Buckeye filed increased rates of approximately $6 million. This general rate increase was suspended for one day by Oil Pipeline Board order issued March 13, 1987, 38 FERC 62,250 (1987).

[Docket No. TM88-2-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 24, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 17, 1988, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed to be Effective June 1, 1988
Twenty-seventh Revised Sheet No. 203
Eighteenth Revised Sheet No. 204

Algonquin states that Twenty-seventh Revised Sheet No. 203 and Eighteenth Revised Sheet No. 204 are being filed pursuant to section 7 of its Rate Schedules F-2 and F-3, to reflect changes in the underlying rates by its pipeline suppliers, CNG Transmission Corporation ("CNGT") and National Fuel Gas Supply Corporation ("National"), respectively. Algonquin states that, Twenty-seventh Revised Sheet No. 203 and Eighteenth Revised Sheet No. 204 are proposed to be effective June 1, 1988 to coincide with the proposed effective date of CNGT's and National's filings.

Algonquin states that the proposed changes would increase revenues from Rate Schedule F-2 by $74,000 and decrease revenues from Rate Schedule F-3 by $1,167,000, based on actuals for the 12 month period ended March 31, 1988.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-12027, Filed 5-26-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-173-000]

Northern Border Pipeline Co.; Proposed Changes in F.E.R.C. Gas Tariff

May 24, 1988

Take notice that on May 18, 1988, Northern Border Pipeline Company (Northern Border) tendered for filing to become a part of Northern Border Pipeline Company's F.E.R.C. Gas Tariff, Original Volumes Nos. 1 and 2 the following tariff sheets:

Original Volume No. 1
Fourth Revised Sheet No. 157
Second Revised Sheet No. 158

Original Volume No. 2
First Revised Sheet No. 40
First Revised Sheet No. 147

These tariff sheets were filed to reflect a revised Maximum Rate and Minimum Revenue Credit under Rate Schedule IT-1, to modify the Delinquency Charge provision in Section 6.4 of the General Terms and Conditions of Original Volume No. 2, and to eliminate Rate Schedule X-8 through X-11 which were the Interruptible Transportation Service For System Supply contracts Northern Border had with ANR Pipeline Company Natural Gas Pipeline Company of America, Tennessee Gas Pipeline Company and Transcontinental Gas Pipe Line Corporation collectively referred to as the "Great Plains Shippers". The temporary certificate authority for Rate Schedules X-8 through X-11 authorized in Docket Nos. CP83-263-002, 004, and 006, expired thirty days after the Commission's acceptance and approval of Northern Border's revised tariff sheets and pro-forma service agreement in Docket Nos. CP88-395-000 and 001. Northern Border has requested that these revised tariff sheets be effective on July 1, 1988. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-12028 Filed 5-26-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-154-001 and TQ88-1-37-001]

Northwest Pipeline Corp., Proposed Change in FERC Gas Tariff

May 27, 1988.

Take notice that on May 16, 1988, Northwest Pipeline Corporation ("Northwest") filed the following tariff sheets to supplement its May 2, 1988 filing in the above dockets:

First Revised Volume No. 1
Substitute Eighth Revised Sheet No. 127-A
Substitute Fourth Revised Sheet No. 128-A
Substitute Fifth Revised Sheet No. 129

Northwest states that the purpose of Sheet No. 127-A is to provide for the

distribution or collection of any portion of the December 31, 1987 Commodity Deferral Subaccount Balance which remains unamortized as of March 31, 1988. The allocation is to be based upon the ratio of each jurisdictional customer's total purchases from Seller to Seller's total jurisdictional sales for the twelve months ended March 31, 1988. Sheet Nos. 128–A and 129 are tendered to clarify the mechanics of the calculation of the demand gas cost deferral.

Additionally, Northwest tenders the following alternate tariff sheets in the instant filing:

Alternate Tariff Sheets

Alternate Fourth Amended Thirty Ninth Revised Sheet No. 10
Alternate First Amended First Revised Sheet No. 301
Alternate First Amended Original Sheet No. 303

Northwest states that it is filing the alternate tariff sheets listed above to reflect the requested conversion of Northwest Natural Gas Co. of 15 percent of its sales contract demand to firm transportation pursuant to § 284.10 of the Commission's regulations. Sheet No. 10 reflects a change in the demand charge rates based upon Northwest Natural's revised billing determinants, while Sheet Nos. 301 and 303 reflect the conversion in the Index of Purchases. In the event that the conversion is effectuated on or before June 1, 1988, Northwest requests that these alternate sheets be accepted by the Commission to be effective June 1, 1988.

A copy of the filing has been mailed to Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12029 Filed 5–26–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ88–1–28–001 and RP88–133–000]

Panhandle Eastern Pipe Line Co.; Filing

May 24, 1988.

Take notice that on May 16, 1988, Panhandle Eastern Pipe Line Company (Panhandle) filed First Substitute Sixty-Fourth Revised Revised Sheet No. 3–A and First Substitute Forty-First Revised Sheet No. 3–B to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective June 1, 1988.

Panhandle states that the above-listed revised tariff sheets reflect a decrease of ($0.10) for its Demand (D1) component, from those tariff sheets filed on April 29, 1988 to reflect a revision in the computation of its Section 18.4 pipeline supplier tracker.

Panhandle respectfully requests that the Commission accept these substitue tariff sheets in lieu of the original sheets filed on April 29, 1988, and requests that the Commission grant such waivers as may be necessary for the acceptance of these substitute tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12030 Filed 5–26–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–67–003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 24, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 16, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2 certain tariff sheets.

Texas Eastern states that in compliance with Commission orders issued March 31, 1988 and April 21, 1988, the tariff sheets reflect: (1) The D–2 nominations made by Texas Eastern's customers and revisions to Texas Eastern's tariff to establish charges for gas taken in excess of a Buyer's D–2 nomination; (2) an updated capitalization structure reflecting the actual cost of debt incurred; and (3) the reallocation of volumes and costs to establish projected units of service consistent with § 284.7 of the Commission's regulations.

Texas Eastern states that it is proposing in this filing to eliminate the mileage rate for transportation within Zone A under Rate Schedules TS–1, TS–2, and IT–1 and in lieu thereof is proposing a single commodity rate for transportation originating and delivered within Zone A under these rate schedules, regardless of the distance of haul.

Texas Eastern states that the Commission's orders also required Texas Eastern to reflect in the allocation of D–1 costs on a three-day peak basis and the elimination of the standby component. It submits that the original filing by Texas Eastern did allocate D–1 costs on a three-day peak basis and includes in its filing a schedule supporting the use of a three-day peak. Furthermore, the sales and storage commodity rates for all Rate Schedules in Texas Eastern's March 1, 1988 filing did not include a standby component. Columns 5, 6, and 7 of Schedule J–1 Page 1, Columns 6, 7, and 8 of Schedule K–1 Page 1 and Columns 15, 16, and 17 of Schedule K–1 Page 1 detailing components of Texas Eastern's commodity cost of service and associated commodity rates were labeled "Other", "Gas", and "Standby", respectively. These columns should have been labeled "Transmission", "Gas", and "Production and Storage".

Texas Eastern requests the Commission accept and suspend these tariff sheets until September 1, 1988, the end of the suspension period for tariff sheets originally filed on March 1, 1988 in this proceeding.

Texas Eastern states that further revisions in the tariff sheets filed herewith may be required at the time Texas Eastern moves to place these rates into effect on September 1, 1988 to reflect gas plant in service and an updated capitalization structure and also to reflect tariff changes approved by the Commission in the interim period prior to September 1, 1988. Texas Eastern intends at that time to supplement its Statement P to reflect these finally revised tariff sheets and intends to provide revised statements and schedules to the extent necessary.

Texas Eastern states that as required by the Commission's March 31 order supporting workpapers detailing PCB-related costs included in each cost of service and rate base account are attached.

Texas Eastern is providing workpapers respecting the revised tariff sheets to the Staff for informational purposes.

Copies of this filing are being served upon all parties of record in Docket No. RP88–67 *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12031 Filed 5–26–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–172–000]

Northwest Alaskan Pipeline Co.; Tariff Changes

May 24, 1988.

Take notice that on May 16, 1988, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108–0899, tendered for filing in Docket No. RP88–172–000, Twenty-Second Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-Second Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to three of Northwest Alaskan's four U.S. purchasers, Panhandle Eastern Pipe Line Company ("Panhandle"), United Gas Pipe Line Company ("United") and Pacific Interstate Transmission Company ("PIT"), under Rate Schedules X–2, X–3 and X–4 respectively, and a small increase in total demand charges for Northwest Alaskan's fourth U.S. purchaser, Northern Natural Gas Company, Division of Enron Corp. ("Northern") under Rate Schedule X–1.

Northwest Alaskan states that it is submitting Twenty-Second Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, United and PIT, and pursuant to Rate Schedules X–1, X–2, X–3, and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1988 through December 31, 1988) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-Second Revised Sheet No. 5 become effective July 1, 1988.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 12032 Filed 5–26–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3387–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 9, 1988 through May 13, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13310).

Draft EISs

ERP No. D–AFS–L65125–OR, Rating E02, Silver Fire Recovery Project Area, August thru November 1987 Silver Complex Fire Land Management Plan, Implementation, Siskiyou National Forest, Josephine and Curry Counties, OR.

Summary: EPA believes this document represents a conscientious effort to accurately disclose the environmental effects of salvage logging in the project area. However, this document indicates that temperature standards and anti-degradation provisions of Oregon State Water Quality Standards may be exceeded by the project. Additional information is needed to support the final EIS, including a detailed water quality/fishery monitoring plan, and a critical assessment of the uncertainty in the cumulative effects model is needed, and the way in which this uncertainty would affect the EIS conclusions on water quality/fishery effects.

ERP No. D–BLM–K65115–AZ, Rating EC2, Phoenix Resource Area Management Plan, Implementation, Apache, Navajo, Gila Maricopa, Pima, Pinal, Santa Cruz and Yavapai Counties, AZ.

Summary: EPA expressed environmental concerns with project impacts to existing watershed and riparian habitat conditions as well as with related water quality impacts.

ERP No. D–BOP–E81028–KY, Rating EC1, Manchester Federal Correctional Institution Complex, Construction and Operation, Clay County, KY.

Summary: EPA has reviewed this document and requested that additional information on air quality and the water management plan needs to be addressed in the final EIS.

ERP No. D–FHW–E40714–GA, Rating EC2, US 411 Relocation, US 411/GA–20 Interchange with US 41 to US 411 Interchange with I–75, Funding and 404 Permit, Bartow County, GA.

Summary: EPA is concerned with stream crossing and noise impacts and the lack of detailed mitigation proposals to offset or minimize these losses.

ERP No. DS–FHW–K40158–CA, Rating EC2, I–5/Santa Ana Freeway Widening and Interchanges Reconstruction, CA–22/57 Interchange to CA–55, Additional Transitway Construction Alternative, CA–55 to CA–22, Funding and 404 Permit, Orange County, CA.

Summary: EPA expressed environmental concerns because of potential adverse air quality impacts. EPA asked that the final EIS address the potential cumulative impacts of all I–5

improvements in the Santa Ana Corridor, the project's compliance with the State Implementation Plan and mitigation measures to offset adverse air quality impacts.

Final EISs

ERP No. F-AFS-K65089-CA., Sequoia National Forest, Land and Resource Management Plan, Implementation, Tulare, Kern and Fresno Counties, CA.

Summary: EPA requested that additional baseline information on soil tolerance and water quality be gathered and analyzed before the preferred alternative is implemented due to the proposed increases in Sequoia National Forest resource outputs. EPA also requested that amendments to the forest plan discuss potential reforestation backlogs.

ERP No. F-COE-H36098-00, Coldwater Creek Watershed Flood Damage Reduction and Related Improvement Plan, Implementation, St. Louis County, MO.

Summary: EPA's concern with the draft EIS were adequately responded to in this document.

Dated: May 24, 1988.

William D. Franklin,

Acting Director, Office of Federal Activities.

[FR Doc. 88-12006 Filed 5-26-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3387-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed May 16, 1988 Through May 27, 1988 Purusant to 40 CFR 1506.9.

EIS No. 880157, Draft, NPS, AK, Cape Krusenstern National Monument, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 29, 1988, Contract: Linda Nebel (907) 257-2654.

EIS No. 880158, Draft, SCS, CO, McElmo Creek Unit Salinity Control Study, Onfarm Irrigation Improvements, Funding and Implementation, Montezuma County, CO, Due: July 11, 1988, Contact: Sheldon G. Boone (303) 964-0295.

EIS No. 880159, Draft, FHW, OR, Tualatin-Sherwood/Edy Road Improvements, I-5 to OR-99W, Funding and 404 Permit, Washington County, OR, Due: July 18, 1988, Contact: Dale Wilken (503) 399-5749.

EIS No. 880160, FSuppl, FAA, NH, Lebanon Muncipal Airport Runway 18 Extension, Outer Marker and Compass Locator Facility Installation, Approval, W. Peter Kochis (617) 273-7157.

EIS No. 880161, Final, FHW, IN, Keystone-Rural Corridor Improvement, Pleasant Run Parkway North Drive to IN-37/Fall Creek Boulevard, Funding, Marion County, IN, Due: June 27, 1988, Contact: L.D. Tucker (317) 269-7481.

EIS No. 880162, Draft, CDB, MI, Ambassador Bridge Border Station Expansion and Hubbard-Richard Housing Project Development, Urban Development Action and Community Development Block Grants, Wayne County, MI, Due: July 11, 1988, Contact: Robert Davenport (313) 224-0343.

EIS No. 880163, Final, EPA, PR, Arecibo, Maqaquez, Ponce and Yabocoa Harbors, Ocean Dredged Material Disposal Site, Designation, PR, Due: July 11, 1988, Contact: Robert Witte (212) 264-6681.

Amended Notice

EIS No. 880082, Final, COE, CO, Metropolitan Denver Water Supply Project, Two Forks Dam and Reservoir and Williams Fork Gravity Collection System Construction, 404 Permit and Approvals, Douglas, Jefferson and Grand Counties, CO, Due: June 10, 1988, Contact: Steven G. West (402) 221-3900. Published FR 3-25-88—Review period extended.

Dated: May 24, 1988.

William D. Franklin,

Acting Director, Office of Federal Activities.

[FR Doc. 88-12007 Filed 5-26-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3386-9]

Office of Policy, Planning and Evaluation Workshop; Toxic Sediments—Approaches to Management; Meeting

The following meeting will be sponsored by the U.S. Environmental Protection Agency (US EPA), Office of Policy, Planning and Evaluation (OPPE) and will be open to the public for observation limited by the space available:

Date: June 15-17, 1988

Time: 8:30-4:30 pm, June 15; 8:30-5 pm, June 16; 8:30-12 noon June 17.

Place: American Management Systems, 1777 North Kent Street, 14th Floor, Penthouse Room 314, Arlington, Virginia 22209

Purpose: The workshop will focus on EPA, state and other federal agencies experiences in managing toxic sediments. The goal is to develop general guidance on the best approaches to toxic sediment management. Interested members of the public are invited to attend.

Additional information may be obtained from: Sally Valdes-Cogliano, OPPE; US EPA, 401 M St., SW., Washington, DC 20460. Telephones: FTS: 382-5671; Commercial; 202-382-5671.

Sally J. Valdes-Cogliano,

Ecologist, Science-Policy Integration Branch, Office of Policy, Planning and Evaluation.

[FR Doc. 88-11965 Filed 5-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44507; FRL 3386-8]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on diethylenetriamine (CAS No. 111-40-0), tetrafluoroethylene (CAS No. 116-14-3) and hexafluoropropene (CAS No. 116-15-4) submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4 (d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4 (a) within 15 days after it is received.

I. Test Data Submissions

A. Diethylenetriamine

Test data for diethylenetriamine (DETA) was submitted by The Dow Chemical Company pursuant to a test rule at 40 CFR 799.1575. It was received by EPA on May 12, 1988. The submission describes two tests: (1) A *Drosophila* sex-linked recessive lethal (SLRL) assay; and (2) an *in vivo* cytogenetics test (mouse bone marrow micronucleus test). Mutagenic effects testing is required by this test rule.

DETA is used primarily for production of paper wet-strength resins, epoxy-curing agents, chelating agents, lubricating oil and fuel additives, surfactants and corrosion inhibitors.

B. Fluoroalkenes

Test data for two fluoroalkenes, tetrafluoroethylene (TFE) and hexafluoropropene (HFP), were submitted by E. I. du Pont de Nemours and Company, Inc. pursuant to a test rule at 40 CFR 799.1700. The data was received by EPA on May 16, 1988. Two final study reports were received: (1) A mutagenicity evaluation of tetrafluoroethylene in the CHO/HPRT assay; and (2) a mutagenicity evaluation of hexafluoropropene in the CHO/HPRT assay. Gene mutation in somatic cells studies are required by this test rule.

These fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to their completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44507). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 18, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-11940 Filed 5-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140096; FRL-3387-6]

Access to Confidential Business Information by ABT Associates, Inc.; Dynamac Corp. and Meta Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ABT Associates, Inc. (ABT) of Cambridge, MA and its subcontractors, Dynamac Corporation (DYN) of Rockville, MD and the Meta Company (MET) of Cambridge, MA access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under section 4, 6, and 8 of TSCA. Certain existing chemical substances intended to be exported to foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to be imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2) are evaluated by EPA under section 21 of TSCA.

Under contract no. 68-01-4283, EPA's contractor ABT, 55 Wheeler Street, Cambridge, MA and its subcontactors DYN, 11140 Rockville Pike, Rockville, MD and MET, 10 Holworthy Street, Cambridge, MA will assist the Office of Toxic Substances' (OTS) Economics and Technology Division by providing aid in performing chemistry, chemical engineering, economic, and regulatory impact analyses. Primarily these analyses will address the costs, economic impacts, benefits, and regulatory impacts of actions proposed or taken under TSCA as well as chemical and engineering assessments supporting TSCA actions. They may involve the regulation of chemicals under any section of TSCA. Also, under contract no. 68-02-4283, EPA's subcontactor DYN will assist OTS's Information Management Division by providing consultation and assistance on safe and appropriate storage and access of CBI on various computer systems.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract no. 68-02-4283, ABT, DYN, and MET will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. ABT, DYN, and MET personnel will be given access to all information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ABT, DYN, and MET access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1990.

ABT, DYN, and MET personnel will be required to sign nondisclosure agreements, will be briefed on appropriate security procedures and must pass a test on those security procedures before they are permitted access to TSCA CBI.

Dated: May 17, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-11982 Filed 5-26-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Grants; Hazardous Materials Training Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that FEMA is accepting grant applications to develop a training program in Hazardous Materials under SARA Title III. These applications will be limited to federally recognized Indian Tribes.

DATE: Grant applications must be requested from FEMA, National Emergency Training Center by June 1, 1988.

ADDRESS: Requests should be submitted to: Federal Emergency Management Agency, National Emergency Training Center, Attention: Procurement Branch, E-115, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

FOR FURTHER INFORMATION CONTACT: Estelle F. Marr at (301) 447-1077 (FTS 652-1077).

Estelle F. Marr,

Chief, Procurement Branch.

[FR Doc. 88-11953 Filed 5-26-88; 8:45 am]

BILLING CODE 4718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–002605–003.
Title: Port of Oakland Preferential Assignment Agreement.
Parties:
City of Oakland
American President Lines, Ltd.

Synopsis: The proposed agreement is amended to provide for two seven-year renewal terms of the basic assignment.

Agreement No.: 224–200096–001.
Title: North Carolina Terminal Agreement.
Parties:
North Carolina State Ports Authority
Senator Linie

Synopsis: The agreement is amended to provide that no option to renew the term of this agreement shall be implemented until filed with this Commission and effective pursuant to the Shipping Act of 1984.

Agreement No.: 224–200120.
Title: Port of Houston Terminal Agreement.
Parties:
Cavalair Corp. (CC)
ITO Corp. (ITO)
Kerr Steamship Co., Inc. (KSC)

Synopsis: The proposed agreement provides for CC, ITO and KSC, as shareholders of Fairway Terminal Corporation, to furnish stevedore services at Barbours Cut Terminal in the Port of Houston.'

Agreement No.: 224–003975–004.
Title: Port of Longview, Washington Lease Agreement.
Parties:
Port of Longview
Continental Grain Company

Synopsis: The proposed agreement is amended to provide for seven additional one-year renewal terms of the basic lease.

By Order of the Federal Maritime Commission.
Dated: May 24, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88–12020 Filed 5–26–88; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213–010885–002.
Title: Mitsui O.S.K. Lines, Ltd. and Kawasaki Kisen Kaisha, Ltd. Space Charter and Sailing Agreement in the Far East-U.S. Pacific Coast Trades.
Parties:
Mitsui O.S.K. Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment would delete EAC Transpacific Service, Ltd. as a party to the agreemet.

By Order of the Federal Maritime Commission.
Dated: May 24, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88–12021 Filed 5–26–88; 8:45 am]
BILLING CODE 6730–01–M

[Fact Finding Investigation No. 17]

Rates, Charges and Services Provided at Marine Terminal Facilities; Order Extending Investigation

May 24, 1988.

The Commission instituted this nonadjudicatory investigation on May 14, 1987, to examine the furnishing of marine terminal facilities and services in connection with the transfer of cargo between an ocean common carrier, on the one hand, and a shipper or consignee or other means of transportation, on the other. The Commission directed the Investigative Officer to provide a final report of findings and recommendations no later than one year after publication of the Order in the **Federal Register** (52 FR 18743, May 19, 1987). The Investigative Officer has now advised that an additional sixty days will be needed for submission of a final report.

Therefore, it is ordered, That the Investigative Officer shall issue to the Commission a final report of findings and recommendations on or before July 18, 1988.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 88–12022 Filed 5–26–88; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 20, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. Licensure Forms for the Clinical Laboratory Improvement Act (CLIA)—0938–0151—The CLIA of 1967 requires that clinical laboratories soliciting or accepting specimens in interstate commerce hold a valid license or letter of exemption for licensure issued by the Secretary of Health and Human Services. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 6,359; Frequency of Response: Annually; Estimated Annual Burden: 1,851 hours.

2. Comprehensive Outpatient Rehabilitation Facility Survey Forms and Information Collection Requirements—0938–0267—In order to participate in the Medicare, Medicaid Program as a CORF providers most meet Federal conditions of participation.

These forms are used to record compliance with the conditions and report it to HCFA. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Annually; Estimated Annual Burden: 528.5 hours.

OMB Desk Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

1. State Program Report, Title III of the Older Americans Act, Grants for State and Community Programs on Aging—0980–0004—and—0980–0120—Comply with statutory requirements relative to annual reporting on Title III services and programs for the aged, monitor Program operations, respond to Congress, OMB, GAO and others. Respondents: State or local governments. Number of Respondents: 59; Frequency of Response: One-time; Estimated Burden: 1,033 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

National Institutes of Health

1. Primary Prevention (Smoking) of Cancer in Black Populations: Physican Delivered Intervention—NEW—A Physician delivered smoking cessation program will be assessed using in-person interviews and telephone surveys along with chemical validation of smoking cessation. The data will help guide NCI's National Cancer Prevention and Control program and provide needed information to assess the effectiveness of a physician delivered smoking cessation program in the black population which is disproportionately effected by cancer mortality. Respondents: Individuals or households. Number of Respondents: 1,372; Frequency of Response: Single-time; Estimated Annual Burden: 201 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

Date: May 23, 1988.

James F. Trickett,
Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–11951 Filed 5–26–88; 8:45 am]
BILLING CODE 4150–04–M

Agency for Toxic Substances and Disease Registry

Pilot and Epidemiologic Studies To Determine the Relationship Between Human Exposure to Hazardous Substances and Adverse Health Outcomes; Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that competitive Grant and Cooperative Agreement applications are being accepted to provide financial assistance for States to conduct Pilot and Epidemiologic studies to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes. The Catolog of Federal Domestic Assistance number is 13.161.

Program Objective

The objective of this program is to assist the recipients' capability to characterize the relationship between exposure to hazardous substances and adverse health outcomes through the development and use of site-specific health study protocols, studies at multiple sites with similar hazardous substances, and the implementation of site-specific or multiple-site health investigations.

Project Types

Financial and technical assistance will be provided to the recipients for conducting the following types of projects:

A. Pilot Studies

1. Symptom/disease prevalence studies—Symptom and disease prevalence studies consist of a measurement of self-reported disease occurrence which may be validated through medical records, if available. This study will collect citizens' health concerns in a standardized manner and determine if a health problem may exist in the community which requires further investigation. If unusual disease occurrence is discovered, additional investigations to determine etiologic factors may be undertaken. Recommendations will be developed for identified health problems which may include public education, additional environmental sampling, biological exposure studies, epidemiologic studies, registries, surveillance projects, or remedial actions.

2. Exposure studies—Biological sampling of persons at potentially high risk of exposure will be performed to determine if exposure can be verified. Test results will be compared to published normal values or compared with unexposed reference populations. The biological tests may include direct assay of chemicals or their metabolites or an indirect assay testing for other biological markers of exposure. If exposure to hazardous substances can be verified, additional investigations to determine if adverse health effects are occurring may be recommended. Follow-up recommendations may include public education, additional environmental sampling, additional biological exposure studies, epidemiologic studies, registries, surveillance projects, and/or remedial actions.

3. Cluster investigation studies—Investigations of putative disease clusters will be conducted to determine if the cases do represent an unexpected excess in the number of cases present in the concerned community. Investigations will consist of confirmation of the case reports; determine if they represent an unusual disease occurrence; and, if possible, investigate possible etiologic and environmental factors. Follow-up recommendations may include public education, additional environmental sampling, additional biological exposure studies, epidemiologic studies, registries, surveillance projects, and/or remedial actions.

B. Epidemiologic Studies

Analytic investigations evaluate the possible causal relationships between exposure to hazardous substances and disease outcome by testing a scientific hypothesis. Information such as the strength of the association between two factors and biological plausibility of the outcome is to be considered. Case-control, cohort, cross-sectional, survival, or other scientifically valid study designs may be considered. Recommendations may include public education, additional environmental sampling, registries, surveillance projects or remedial actions.

Type of Assistance

Awards resulting from this announcement will be either Grants or

Cooperative Agreements. Up to 20 awards will be made.

Determination of Which Instrument to Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. The funding agency will review the applications in accordance with the appropriate criteria. Projects funded through a cooperative agreement that involves collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

Program Requirements

A. Cooperative Agreements

In a Cooperative Agreement, the funding agency will assist the collaborator in conducting the studies to determine the relationship between exposure to hazardous substances and illness. The application should be presented in a manner that demonstrates the applicant's ability to address the health problem in a collaborative manner with the funding agency.

The Cooperative Activities of the recipient agency and the funding agency are as follows:

1. Recipient Activities

a. Background review—Review environmental sampling information, human disease surveillance information, and other appropriate information to identify populations potentially exposed to hazardous substances.

b. Study design and implementation—Design, develop, and implement a protocol to conduct the necessary pilot or epidemiologic study. The protocol will cover all aspects of the project.

c. Peer review—Recipient, with assistance from the funding agency, will conduct a peer review of the proposed study protocol prior to implementation of the pilot or epidemiologic study and at the completion of the study prior to submission to the funding agency. The peer review should be conducted by a scientific committee with appropriate representation to objectively evaluate the study findings.

d. Recipient is expected to maintain accurate and timely accounting records with proper classification of expenditures in order to allow a full cost recovery of funds awarded under the Grant or cooperative agreement.

e. Recipient is required to provide proof by way of citation to state code or regulation or other state pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual, and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

2. ATSDR Activities

a. Assist in the development of the pilot or epidemiologic study.

b. Assist in the analysis of information on background morbidity and mortality rates for the study area.

c. Provide epidemiologic and other technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

d. Consult with and assist in monitoring the collection and handling of information and the sampling and testing activities.

e. Participate in the statistical and epidemiologic analysis.

f. Collaborate in the interpretation of the study findings.

g. Collaborate with recipient in organizing and conducting a peer review of study protocol and the results of the study prior to publication and submission of the final report.

B. Grants

A grant application should be presented in a manner that demonstrates the applicant's ability to address the environmental health problem. In addition to financial support requested, the application should include a protocol to conduct the pilot or epidemiologic study for the problems identified in the Pre-Application (see Applications A). The protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, the procedure to collect biologic and environmental specimens, laboratory analysis and medical evaluation of test results of biologic specimens, statistical and epidemiologic analysis of study information, and a description of the safeguards to protect the confidentiality of individuals on whom data is collected.

The applicant must conduct a peer review of the pilot or epidemiologic study as described under Cooperative Agreements A.1(c) above.

Availability of Funds

It is anticipated that awards will be for a 12-month budget period with a proposed project period ranging from 1 to 5 years. Approximately $3,000,000 will be available in Fiscal Year 1988. It is anticipated that up to 20 cooperative agreements/grants will be funded. ATSDR anticipates that funds will be available to expand the number of cooperative agreements/grants in future years to all States and Territories, depending upon the needs in these jurisdictions.

Authority

ATSDR's authority to enter into cooperative agreements and/or grants with States to conduct health studies is set forth in section 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. 9604(i)(15)).

Eligible Applicants

The only eligible applicants are the official health agencies of the States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated State of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa. Local health jurisdictions may apply with the concurrence of the State Health Officer.

Application Submission and Deadline Dates

The original and two copies of the application (PHS Form 5161–1 revised 3–86) must be submitted to Chief, Grants Management Branch; Procurement and Grants Office; Centers for Disease Control; 255 East Paces Ferry Road NE., Room 321; Atlanta, Georgia 30305. Applications will be accepted throughout the fiscal year only after the applicant has been informed in writing by the Grants Office that the pre-application has been reviewed and ATSDR will consider a formal application.

Formal Application Content

In a narrative format, the applicant should include a discussion of those areas listed under "Program Requirements" as they relate to this proposed program. Since these criteria serve as the basis for evaluating the application, omissions or incomplete information may affect the rating of the application.

Other Submission and Review Information

Applications are not subject to review as governed by Executive Order 12372 entitled "Intergovernmental Review of Federal Programs."

Scheduling and Reporting

The length of time the program will continue in any State will depend upon the complexity of these problems

associated with any particular hazardous substance site.

Annual performance and financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are requested 90 days after the end of each project period.

At a minimum, an annual meeting will be held between the recipients and ATSDR staff to discuss program progress, problems, etc.

Methods and Criteria for review

A. Review Procedure

Applications will be reviewed by an ad hoc review group established in accordance with the Public Health Service Grants Administration Manual, Part 134.

B. Competitive Funding

Competing activities, including the initial application for a new project period, will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Applications

a. Relevance of the proposal to the objective of this program.

b. Demonstrated experience in evaluating human exposures to hazardous substances in the environment through multi-media exposure pathways.

c. Training and experience of staff to be assigned to and/or hired for the project.

d. Suitability of facilities and equipment available or to be purchased for the project.

e. Appropriateness of the requested budget relative to the work proposed.

f. Capability of the applicant and its consultants to carry out the tasks involved in the project.

g. Soundness and innovation of the proposed approach to the range of activities presented in the project.

h. Capability of the applicant's administrative structure to foster successful scientific and administrative management of a study as described in the application.

i. Adequacy of the proposed time frame for completion of studies.

2. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria: (1) Satisfactory progress in meeting project objectives; (2) objectives for the new budget period are realistic, specific, and measurable; (3) proposed changes in described long-term objectives, methods of operation, need for grant/cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and (5) the budget request is clearly justified and consistent with the intended use of cooperative agreement/grant funds.

Applications

A. Pre-Applications

Formal applications will be solicited by the Grants Management Officer only after a pre-application is received, reviewed, and approved by ATSDR. The pre-application (two to three pages plus a proposed budget with justification) should be submitted only after the completion of a health assessment or an emergency response report which indicates a potential health problem or after a review of relevant health-related information indentifies the existence of a health problem or potential exposures which require public health investigation actions.

Pre-applications should be submitted using PHS Form 5161–1 (revised 3–86). The original and two copies of the pre-application must be submitted to: Chief, Grants Management Branch; Procurement and Grants Office; Centers for Disease Control; 255 East Paces Ferry Road NE., Room 321; Atlanta, Georgia 30305.

Specific Criteria Necessary to Initiate an Exposure Study

1. Human exposure is believed to be occurring because of direct human interaction with a pathway of exposure, such as direct contact, inhalation, or ingestion, known to be contaminated by a hazardous substance; and

2. People potentially exposed along this pathway can be identified and located for testing; and

3. Adequate quality controlled and sensitive laboratory test is available to detect the presence of the hazardous substance, its metabolite, or other biological market known to be closely associated with exposure which is measurable in some biological tissue or fluid; and

4. Adequate resources and local cooperation are available; and

5. Previous experience and scientific knowledge are inadequate or insufficient to predict if biological uptake of hazardous substances or illness would occur under the environmental conditions present at the site.

Specific Criteria Necessary to Initiate a Symptom/Disease Prevalence Study

1. The presence of a human population in the vicinity of a hazardous substance site; and

2. Exposure of a human population to a hazardous substance(s) has been documented or a reasonable concern for the potential of a yet undefined route of exposure; and

3. Reasonable concern generated by reports of disease occurrences in the community; and

4. Either no available information regarding the potential for exposure observed at other similar sites or previously documented exposures observed occurring at other similar sites; and

5. Adequate resources and local cooperation are available.

Specific Criteria Necessary to Initiate Cluster Investigation Studies

1. The presence of a human population in the vicinity of a hazardous substance site; and

2. Exposure of a human population to a hazardous substance(s) has been documented or a reasonable concern for the potential of a yet undefined route of exposure; and

3. Reasonable concern generated by reports of disease occurrences in the community; and

4. Either no available information regarding the potential for exposure observed at other similar sites or previously documented exposures observed occurring at other similar sites; and

5. Case information can be located or collected to verify the disease and document the geographic and temporal occurrence of the cases; and

6. Biological plausibility between the hazardous substances at the site and the disease cases being reported; and

7. Adequate resources and local cooperation are available.

Specific Criteria Necessary to Initiate Epidemiologic Studies

1. Biological levels indicating the level of exposure are available or can be obtained or when other similarly predictive surrogate measure of exposure can be obtained; and

2. The possible effects of the exposure are known; and

3. The health effect is relatively specific or is caused only by the exposure; and

4. Enough people are exposed to allow statistically valid conclusions for the study; and

5. Adequate resources and local cooperation are available.

Information

Further information on this project may be obtained from:

Jeffrey A. Lybarger, M.D., Chief, Epidemiology and Medicine Branch, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mailstop F38, Atlanta, Georgia 30333, 404/488-4800.

and/or

Nealean K. Austin, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, 404/842-6575.

Dated: May 23, 1988.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-11963 Filed 5-26-88; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 86P-0436/CP]

Protek Inc.; Hip Joint Metal/Ceramic/Polymer Semi-Constrained Cemented or Uncemented Prosthesis; Panel Recommendation on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Orthopedic and Rehabilitation Devices Panel (the Panel). The Panel recommended that FDA reclassify the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, from class III (premarket approval) into class II (performance standards). The Panel made this recommendation after the review of a reclassification petition filed by PROTEK, Inc., Indianapolis, IN. FDA is also issuing for public comment its tentative findings on the Panel's recommendation. After reviewing any public comments on the recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the petition will be announced in the Federal Register.

DATE: Comments by July 26, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

SUPPLEMENTARY INFORMATION: On October 15, 1986, PROTEK, Inc., Indianapolis, IN 46278, submitted to FDA under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)) and 21 CFR 860.134 a reclassification petition for a device (Ref. 1). The petitioner requested that the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, be reclassified from class III into class II. The subject device is automatically classified into class III under section 513(f)(1) of the act because it is not a preamendments device (i.e., a device that was in commercial distribution before May 28, 1976), and it is neither substantially equivalent to a preamendments device nor substantially equivalent to any postamendments device (i.e., a device that has been placed in commercial distribution since May 28, 1976), which has subsequently been classified into class II or class I.

Section 513(f)(2) of the act provides that a manufacturer or importer of a device classified into class III under section 513(f)(1) of the act may file a petition for reclassification of the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. For purposes of reclassification of the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, it is necessary to show that the proposed new class has sufficient controls to provide reasonable assurance of the safety and effectiveness of the device.

Consistent with the act and the regulations, the agency referred the reclassification petition to the Panel, and on October 31, 1986, during an open public meeting, the Panel recommended that FDA reclassify the generic type of device from class III into class II. The Panel also recommended that FDA assign to this type of device the designation "hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis."

I. Background

Originally the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, as a system could have been classified as a class II device, except for the presence of the ceramic head. The system, without the ceramic head, is substantially equivalent to other devices that have been classified by the agency (see the metal/polymer semi-constrained cemented prosthesis (21 CFR 888.3350)). However, the presence of the ceramic head creates a "new device" that has been automatically classified into class III by operation of law (see 21 U.S.C. 360c(f)). DePuy, Inc., submitted a premarket notification for the Mueller femoral stem, ceramic head, and polyethylene acetabular component on June 16, 1977. The device was found not to be substantially equivalent to any device that was in commercial distribution before May 28, 1976, and therefore was deemed to be a class III device under 21 U.S.C. 360c(f). (see the Federal Register of February 24, 1978; 43 FR 7709.)

DePuy then submitted a petition to reclassify the device from class III to class II on December 2, 1977. The petition was presented to the Orthopedic Classification Panel, and FDA received their recommendation to reclassify the device into class II on March 27, 1978. FDA disagreed with the Panel and published their denial of the reclassification in the Federal Register of June 6, 1978 (43 FR 24601).

Richards Manufacturing Co. submitted a premarket notification for the Autophor/Xenophor femoral stems with ceramic femoral heads articulating with a ceramic acetabular component. On December 12, 1980, this device was also found to be not substantially equivalent to any device that was in commercial distribution before May 28, 1976. On August 21, 1984, a similar not substantially equivalent decision was made for the Kyocera Bioceramic Hip Stem with an interference fit ceramic head and a screw-in (uncemented) ceramic backed ultra high molecular weight polyethylene (UHMWPE) acetabular cup.

The Richards Manufacturing Co. submitted a premarket approval application (PMA) for the OsteoAutophor Ceramic Total Hip Replacement System. On November 5, 1982, FDA approved this device under PMA P810048 (Ref. 2).

Four years later, after reviewing the data in the literature, the agency sent a letter dated May 2, 1986, to manufacturers of orthopedic implants requesting assistance in gathering public information and clinical data to support a reclassification from class III to class II of a total hip prosthesis which included a ceramic femoral head.

The literature indicated that reclassification would benefit both the industry and the agency. The agency received comments, the majority of which were favorable, with one opposing comment from Richards Manufacturing Co. On October 15, 1986, PROTEK, Inc., submitted a petition for reclassification. The data submitted address the performance of the Feldmuehler ceramic head. The generic type of device subject to reclassification only includes the Feldmuehler ceramic head, and excludes the Kyocera ceramic head because there are insufficient data on the record to support reclassification of the Kyocera type of device.

II. Device Description

A hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint.

The device limits translation and rotation in one or more planes via the geometry of its articulated surfaces. It has no linkage across the joint. The two-part femoral component consists of a femoral stem made of alloys to be fixed in the intramedullary canal of the femur by impaction with or without use of bone cemet. The proximal end of the femoral stem is tapered with a surface that ensures positive locking with the spherical ceramic (aluminum oxide, Al_2O_3) head of the femoral component. The acetabular component is made of UHMWPE, or UHMWPE reinforced with metal alloys, and used with or without bone cement.

A reclassification of the metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis will allow all marketed metal femoral stems, the self-locking spherical ceramic head and an UHMWPE acetabular cup and all substantially equivalent components to be reviewed under section 510(k) (21 U.S.C. 360(k)) of the act.

III. Recommendation of the Orthopedic and Rehabilitation Devices Panel

The Panel met on October 31, 1986, in an open public meeting to discuss the subject device. The Panel recommended that the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, for use in the reconstruction of the hip to restore function, stability and motion be reclassified from class III into class II and that FDA assign a low priority for the development of a performance standard. The Panel also recommended that the labeling for the device include a comprehensive description of the risks presented by the device and identify the various kinds of biocompatible metal and polymer components that must be used with the ceramic femoral head. Additionally, the Panel recommended that the primary properties of the ceramic material should comply with a voluntary material standard prepared by the International Standards Organization (ISO-6474) (Ref. 5).

IV. Summary of the Reasons for the Recommendation

The Panel gave the following summary of reasons for recommending that the metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, be reclassified from class III to class II:

1. General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

2. There is sufficient publicly available information to demonstrate that risks to health have been characterized for the device and that the relationships have been established between these risks and the performance parameters of the device. Weighing the benefits derived from implantation of the device (reduction in pain, improvement in quality of life, and improvement in mobility) against the risks presented by use of the device (adverse tissue reaction, loosening, pain, infection, structural failure of the device, mechanical wear debris produced by articulating components, and possible reoperation for removal of device), the Panel believes that the benefits to be obtained outweigh the risks presented. For these reasons, the Panel recommended that the device be reclassified from class III to class II.

3. A performance standard is necessary to control the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish, in order to prevent loss or reduction of limb function. Sufficient information is available to establish such a standard. However, development of such a standard is a low priority because the device has such low levels of known risks, such as structural failure, loosening, pain, and loss of function. The comparable safety and effectiveness characteristics of devices found to be substantially equivalent to the proposed reclassified type of device can be assured by the general controls including, of course, the premarket notification process under section 510(k) of the act.

V. Risks to Health

The Panel has determined that the primary foreseeable risks to health associated with the device are related to structural failure of the ceramic femoral head leading to crippling pain and total loss of function; these health risks require surgical intervention for correction. Other reasonably foreseeable risks to health that may be associated with the device are adverse tissue reactions, loosening, infection, migration of the device, loss of function, and pain. It is well established that these additional risks to health may result in the need for additional surgical intervention, possibly including implant revision.

VI. Summary of Data Upon Which the Recommendation is Based

When the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, that is described under the heading "Device Description" is manufactured in conformance to the specifications presented in the petition, the overall impact of implantation of the device as a total hip replacement can be predicted. Risks to health that have been observed as surgical complications reported during the clinical studies included in support of this petition are few and similar to those reported with respect to implantation of other orthopedic hip joint prostheses now in commercial distribution. (see the final rule classifying preamendments orthopedic devices published in the Federal Register of September 4, 1987; 52 FR 33686).

The petition (Ref. 1) and other publicly available data adequately describe the technical features and conditions of use of the device which ensure that it is safe and effective. The Panel based its recommendation on the clinical performance and safety of total hip prostheses which are representative of the generic type of device identified in the petition. The Panel also considered publicly available preclinical experience with aluminum oxide ceramics which have composition and mechanical properties representative of that used in the ceramic femoral head of the device. The femoral stem of the device, manufactured of metal alloys that meet specifications of existing voluntary standards (such as ASTM F75, specifications for cast cobalt-chromium-molybdenum alloy for surgical implant applications; ASTM F90, specifications for cobalt-chromium-nickel-tungsten applications; and ASTM F136, specifications for titanium, 6A1-4V ELI Alloy, or surgical implant applications), provides anchorage for the ceramic femoral head which articulates with the UHMWPE acetabular resurfacing component. The proximal end of the femoral component is machined to a

specific conical taper and may be provided with a structured surface to assure positive locking with the ceramic head. The femoral head is manufactured of aluminum oxide (Al_2O_3) ceramic conforming to the material specifications of existing voluntary standards (Ref. 5). The head is spherical and articulates against an UHMWPE acetabular component of an appropriate interior diameter; the head must also be designed to mechanically interlock with modular stems having a matching tapered cylindrical neck. The acetabular component is manufactured of UHMWPE with a metal or metal alloy support cup. The UHMWPE meets specifications of existing voluntary standards (Ref. 7).

The admiistrative record shows that the three standards (Refs. 5, 6, and 7) applicable to the materials used in the device were referenced in the petition. These standards are currently employed by the orthopedic implant industry in the manufacture of hip prostheses and provide the device with well-defined chemical and physical properties which ensure the strength, and contribute to the performance, safety, and effectiveness of the device.

Structural failure has been identified in earlier clinical literature (Refs. 10 and 11) as a possible cause of risks to health associated with the device. Although infrequent, the incidence of structural failure in these reports was found to be related either to the surgical technique or to the interfaces within the device. Structural failure of the ceramic head may also be caused by manufacturing defects, mishandling, or its use with unsuitable femoral or acetabular components. The Panel considered recent clinical experience from five European clinical studies (Ref. 3) and a retrospective study performed in the United States (Ref. 4) which were presented to it by manufacturers, other than the sponsor of the petition, during the open Panel meeting of October 31, 1986. The clinical data and retrospective study results did not report any structural failures of the ceramic head after 2 to 5 years of followup of patients after implantation (Refs. 3 and 4). Laboratory investigations by Dorre and Dawihl (Refs. 15 and 17) support the recent clinical results and document the service life of the ceramic head of the femoral components when it was used with a friction cone locking element under a variety of laboratory and in vivo (i.e., animal) conditions. Other reports show that when the femoral cone design properly matches that of the internal coupling cone design of the ceramic head, the ceramic head is capable of withstanding 46 kilonewtons (10,326 lbs.) of co-axial load with a probability of fracture of 0.03 percent (Ref. 17). The ceramic head theoretically is capable of withstanding a minimum of 30 years of use (Ref. 16).

The mechanical behavior of aluminum oxide ceramic in both body fluids and simulated body environments have also been studies extensively by Dawihl (Ref. 13), Dalgleish (Ref. 14), and Dorre (Refs. 15, 16, and 17). These reports show that the ceramic material does not undergo significant alteration due to aging and maintains its structural strength under the conditions experienced in the body. The petition referenced three existing material standards (Refs. 5, 6, and 7). Manufacturer's conformance to these voluntary standards during construction of the device assures that the materials of the stem, ceramic head and acetabular cup have well-defined chemical, physical, and mechanical properties.

Adverse tissue reaction has also been identified in earlier reports (Refs. 10 and 11) as a potential risk to health. Laboratory testing confirms that significantly less wear is produced when UHMWPE articulates with a ceramic head than when UHMWPE articulates with a metal head (Refs. 12, 18, and 19). Aluminum oxide ceramics which meet existing voluntary standards of composition have been shown through animal and human experiments to be a biocompatible implant material (Refs. 8 and 9).

Furthermore, the available data and results from European and United States clinical studies of 2 to 5 years of patient followup do not report any cases of adverse tissue reaction from use of the ceramic femoral head (Refs. 3 and 4).

The Panel reviewed the clinical results of the multi-clinic (5 European centers) study (Ref. 3) and the retrospective study done in the United States (Ref. 4). The European series reported no cases of loosening; the study in the United States reported 2 cases of stem loosening, but these were unrelated to the use of the ceramic head component. In the European data, 2 cases (0.8 percent of 253 hip prostheses) of superficial infection which later healed without difficulty were reported. Eleven cases (4.4 percent of 253 prostheses) were reported to have experienced stem migration of 2 millimeters or more. The extent and incidence of infection and migration were not reported in the United States study.

Intraoperative and early postoperative complications were observed; for example, occasional fraction of the trochanter or development of hematomas. These occurences were considered by the Panel to be typical of complications observed with hip prostheses in commercial distribution. The Panel believed that these complications were unrelated to the use of the ceramic head reclassified in the petition, and are typical for the patient populations examined.

The Panel reviewed the clinical results of 245 European patients (Ref. 3) who recieved 253 hip prostheses (8 bilateral replacements). There were 247 cases (239 patients) with a patient followup range after implantation of .75 to 3.58 years (mean followup of 2.3 years and standard deviation of .5 years). Based on the Harris hip evaluation system which includes function and pain assessment, approximately 91 percent of the patients showed excellent/good results. The manufacturer compared the clinical results of the European patients, using the device subject to the petition, with a Zweymuller femoral stem and ceramic head, to results published in the literature of implantation of conventional hip protheses in commercial distribution. The analysis of the study results indicates that the clinical results of these European patients was compared to that of other recipients of conventional hip prostheses. The Panel also reviewed the clinical results of 49 cases in the United States (5 bilateral replacements) (Ref. 4). Thirty of 33 cases (98 percent) with 2 years or more of followup had excellent/good post surgical patient scores using the Harris hip evaluation and scoring system.

In the European studies, no cases of implant failure requiring revision occurred (Ref. 3); in the U.S. study, two patients developed loose femoral stems, and surgical revisions were necessary 4 years post-surgery (Ref. 4). The manufacturer documenting the experience in the United States, also provided the results of a survivorship analysis which compared the performance of the Mueller femoral stem and ceramic head to the performances of metal-on-plastic hip prostheses in commercial distribution. After 5 years post-surgery, 95 percent of 40 of these prostheses remained implanted compared to 94.9 percent of conventional metal-on-plastic prostheses.

The primary risks which are directly attributable to the ceramic femoral head, i.e., structural failure and adverse tissue reaction, can be controlled by a performance standard (class II controls). The risk of adverse tissue reaction is related to the chemical composition and physical properties of the aluminum oxide ceramic used in the manufacture of the ceramic head and can be controlled by manufacturer's conformance with existing material specifications in voluntary standards for aluminum oxide ceramics. Structural failure is related to: (1) The physical and mechanical properties of the aluminum oxide ceramic; (2) to design/functional parameters of the ceramic femoral head; and (3) to the manufacturing procedure used to fabricate the device. Therefore, structural failure can be controlled through standards applicable to proper material selection and device design and through good manufacturing practices. In addition, proper device labeling will ensure that the surgeon uses the device appropriately. The other foreseeable risks to health attributable to this device have a low probability of occurrence, with a relatively low level of significance, and are known to be associated with prostheses for total hip replacement in commercial distribution.

In summary, the Panel, based on publicly available valid scientific evidence, believes that the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding ceramic acetabular cups, can be regulated as a class II device to reasonably assure the device's safety and effectiveness, if it is designed with the proper materials and functional specifications, and manufactured under an adequate quality assurance program to ensure critical specifications are met within specified tolerances and proper labeling.

VII. References

The transcript of the panel meeting and the following material are on public file in the Dockets Management Branch (address above) where it may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. PROTEK, Inc., reclassification petition, 86P-0426.

2. Summary of safety and effectiveness for the Osteo Ceramic Hip, 47 FR 55519, December 10, 1982 (Docket No. 82M-0367).

3. Clinical Studies and Results from Five European Centers with the Biolox/Ceramic Head and the Zweymuller System in 245 Patients, Premarket Approval Application P840010, ALLO PRO.

4. A retrospective study of 64 Ceramic Ball Hip Prostheses, September 1986, Depuy.

5. Implants for Surgery—Ceramics Materials Based on Alumina, International Standards Organization, ISO—6474.

6. Implants for Surgery—Metallic Materials, International Standards Organization, ISO—5832.

7. Implants for Surgery—Ultra-high Molecular Weight Polyethylene, International Standards Organizations, ISO—5834.

8. Willert H.G., et al., "The Morphology of the Tissue Reaction to Very Small Al_2O_3—Ceramic Particles", Unpublished. Presented at the 3d Annual Meeting of the Society for Bio-Materials, April 1977, New Orleans, LA.

9. Harms, J., E. Mausle, "Tissue Reaction to Ceramic Implant Material", *Journal of Biomedical Materials Research*, vol. 13, No. 1, January 1979, pp. 67–87.

10. Plitz, W., P. Griss, "Clinical, Histomorphologic and Material-Related Observations on Removed Aluminum Ceramic Hip Joint Components; Implant Retrieval; Material and Biologic Analysis Conference Proceedings", U.S. Department of Commerce, NBS, p. 131, 1981.

11. Griss, P., G. Heimke, "Five Years Experience with Ceramic Metal-Composite Hip Endoprostheses", *Archives of Orthopaedics and Trauma Surgery*, p. 98, 1981.

12. Semlitsch, M., "Improved UHMW Polyethylene Low Friction Hip Endoprosthesis Using Al_2O_3 Ceramic Instead of Metal for the Articulating Ball", Engineering in Medicine, vol. 2, "Advances in Artificial Hip and Knee Joint Technology", Springer-Verlag, Berlin and Heidelberg, 1976, pp. 456–457.

13. Dawihl, W., E. Dorre, "Adsorption Behavior of High Density Aluminum Ceramics Exposed to Fluids", Chapter 20, Evaluation of Biomaterials, (1982), Edited by Winter Leray, de Groot, pp. 239–245.

14. Dalgleish, B.J., and R.D. Rawlings, "A Comparison of the Mechanical Behaviors of Aluminum in Air and Simulated Body Environment", *Journal of Biomedical Materials Research*, vol. 15, 1981, pp. 527–542.

15. Dorre, E., W. Dawihl, "Ceramic Hip Endoprosthesis", Chapter 9, Mechanical Properties of Biomaterials, (1980), edited by Hastings and Williams, pp. 113–127.

16. Dawihl, W., E. Dorre, G. Altmeyer, "Determination of the Services Life of a Friction Cone Locking Fixation Element for Use in Ceramic Total Hips", Biomedical Techniques, vol. 25, 1980, pp. 311–315, (English Translation).

17. Dorre, E., W. Dawihl, V. Krahn, et. al., "Do Ceramic Components of Hip Joints Maintain Their Strength in Human Bodies", Ceramics in Surgery, (1983) Edited by P. Vacenzini, Elserier, Science Publishing Co., pp. 61–72.

18. Niederer, P.G., "Total Hip Arthroplasty with Ceramic Polyethylene Articulation", Scientific Exhibit presented at Sicot 1978, Kyoto, Japan.

19. Zichner, L., M. Starker, U. Paschen, "In Vivo Wear of Total Hip Prostheses with Ceramic/PE Articulation." Unpublished, (Translation 1986).

VIII. FDA's Tentative Findings

FDA believes that the data provided by the petitioner and other persons constitute valid scientific evidence demonstrating that the controls of class II are sufficient to provide reasonable assurance by the safety and effectiveness of the generic type of device as identified in the device description section. Accordingly, the agency believes that premarket approval is unnecessary for this device. FDA tentatively agrees with the recommendation of the Panel that the generic type of device hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding ceramic acetabular cups, be reclassified from class III into class II and that the promulgation of a performance standard for the device be low priority.

IX. Economic Considerations

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition would not have significant economic impact on a substantial number of small entities. The petitioner and all future manufacturers of the device, hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis, excluding the ceramic acetabular cup, would be relieved of the costs of complying with the premarket approval requirements in section 515 of the Act (21 U.S.C. 360e). There are no off-setting costs that the petitioner would incur from reclassification into class II. The magnitude of the economic savings from approval of this petition depends on the extent of premarket approval studies the petitioner would have conducted and the number of future competitors satisfying the same requirements. Neither of these parameters can be reliably calculated to permit detailed quantification of the economic savings. Because of statutory deadlines (section 513(f)(2) of the act) and requirements in the regulations (21 CFR 860.134(b)(5)), FDA is required to publish this notice in the **Federal Register** as soon as practicable. As authorized by section 8(a)(2) of Executive Order 12291, FDA is publishing in the **Federal Register** this notice without clearance of the Director, Office of Management and Budget. As soon as practicable, FDA will notify that office of the publication of this notice.

Interested persons may, on or before July 26, 1988, submit to the Dockets Management Branch (address above) written comments on the Panel's recommendation or FDA's tentative findings. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the

name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-11935 Filed 5-26-88; 8:45am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that announced forthcoming advisory committee meetings for veterinary medicine, oncologic drugs, dermatologic drugs, and pulmonary-allergy drugs (53 FR 9148; March 21, 1988). The notice inadvertently stated Adam J. Trujillo's title as "Acting Commissioner for Regulatory Affairs." This document corrects that error.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-6059, appearing at page 9148 in the **Federal Register** of March 21, 1988, the following correction should be made: On page 9149, second column, at the end of the document, Adam J. Trujillo's title is corrected to read "Acting Associate Commissioner for Regulatory Affairs".

Dated: May 20, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-11934 Filed 5-26-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-08-4212-11; Nev-058218]

Realty Action; Order Providing for Opening of Lands; Nevada

May 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens the described lands to the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126, 702-388-6403.

SUPPLEMENTARY INFORMATION: The reconveyance to the United States of the following described land was published in the **Federal Register** on November 28, 1979 (44 FR 68038) and a correction notice was published on April 9, 1987 (52 FR 11561).

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 1, NE¼SE¼SE¼SE¼.
T. 22 S., R. 61 E.,
Sec. 6, lots 142, 143, 145, 150, 153, 154, 157, 162, 163, and 164.

The lands are located in Clark County, Nevada.

Upon acceptance of title, the subject land became part of the public lands administered by the Bureau of Land Management. At 9:00 a.m. on June 27, 1988, the land described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable laws. All valid applications received prior to 9:00 a.m. on June 27, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9:00 a.m. on June 27, 1988, the land will be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing and material sale laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-11965 Filed 5-26-88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-050-8-4212-11, A-23226]

Realty Action, Lease of Lands; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable to be classified for lease under the provisions of the *Recreation and Public Purposes Act* of June 14, 1926, as amended (43 U.S.C. 869 *et. seq.*) and the regulations established by 43 CFR Part 2740 and 2910, as amended in the Final Rulemaking published in the **Federal Register** on December 10, 1985.

T. 20 N., R. 22 W., Gila and Salt River Meridian, Arizona,
Sec. 20, portion of Lot 2, containing 10 acres more or less.

The City of Bullhead City has applied to lease the above described lands for recreational purposes. The city proposes to use these lands to construct a swimming pool, ball fields, and related recreational facilities.

Subject to all valid existing rights, the lands are hereby segregated from appropriations under any other public land law, including location under the mining laws. This segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

DATES: For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, effective 60 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Robert V. Abbey,

Acting District Manager.

Date: May 20, 1988.

[FR Doc. 88-11982 Filed 5-26-88; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-08-4220-10; N-48578]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

May 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The National Park Service proposes to withdraw 2.5 acres of public land for use as a temporary administrative site for the Great Basin National Park. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by August 25, 1988.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-784-5481.

SUPPLEMENTARY INFORMATION: On April 14, 1988, a petition was approved allowing the National Park Service to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian, Nevada

T. 13 N., R. 70 E.,
Sec. 9, SE¼SE¼SE¼NW¼.

The area described contains 2.5 acres in White Pine County.

The purpose of the proposed withdrawal is to establish and protect a temporary administrative site for the Great Basin National Park. The land is currently withdrawn by the U.S. Forest Service.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are leases, licenses, permits, and rights-of-way.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the National Park Service.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-11964 Filed 5-26-88; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Notice on NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historical Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmarks has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Attention: Chief of Registration (Phone: 202-343-9536).

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

City of Rocks National Historic Landmark, Cassia County, Idaho
Fort Concho National Historic Landmark District, San Angelo, Texas (Tom Green County)
Haskell Institute National Historic Landmark, Lawrence, Kansas (Douglas County)
Old Economy National Historic Landmark District, Ambridge, Pennsylvania (Beaver County)
Taos Pueblo National Historic Landmark, Taos vicinity, New Mexico (Taos Country).

[FR Doc. 88-12017 Filed 5-26-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notice on Proposed NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, we are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Attention: Chief of Registration (202) 343-9536. Copies of the documentation of the landmarks and their proposed boundaries, including

BEST COPY AVAILABLE

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maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Telluride Historic District, Telluride, Colorado (San Miguel County)

The Telluride Historic District is composed of two noncontiguous geographic areas: (1) the Town of Telluride and (2) Lone Tree Cemetery.

Area 1: The Town of Telluride

The point of beginning shall be Point A (the intersection of the east edge of Davis Street and the south bank of Cornet Creek).

Thence proceeding northeast along the south bank of Cornet Creek to its intersection with the southern edge of Galena Avenue; east along West Galena Avenue to its intersection with the west property line of 507 West Galena Avenue; north along the property line to its intersection with the southern edge of the alley north of West Galena Avenue; east along the alley and the alley extended to its intersection with the east property line of 447 West Galena Avenue; south along the property line to its intersection with the southern edge of West Galena Avenue; east along West Galena Avenue to its intersection with the eastern edge of Aspen Street; north along Aspen Street to its intersection with the north property line of 319 West Galena Avenue; east along the property line to its intersection with the eastern edge of the alley just east of Aspen Street; north along the alley to Point B (the intersection of the alley and the north property line of 343 North Oak Street).

Thence proceeding east along the property line to its intersection with the western edge of North Oak Street; south along North Oak Street to its intersection with the southern edge of Mountain Avenue; east along Mountain Avenue to its intersection with the east property line of 109 East Gregory Avenue; south along the property line to its intersection with the southern edge of East Gregory Avenue; east along East Gregory Avenue to its intersection with the western edge of Willow Street; south along Willow Street to its intersection with the southern edge of Galena Avenue; east along East Galena Avenue to its intersection with the western edge of the alley just east of Willow Street; south along the alley to its intersection with the southern edge of Pandora Avenue extended; east along Pandora Avenue extended and Pandora Avenue to Point C (the intersection of Pandora Avenue and the western edge of Maple Street).

Thence proceeding along Maple Street to it intersection with the northern edge of East Columbia Avenue; west along East Columbia Avenue to its intersection with the western edge of Alder Street; south along Alder Street to its intersection with the northern edge of the alley just south of East Columbia Avenue; west along the alley to its intersection with the western edge of Willow Street; south along Willow Street to its intersection with the northern edge of East Pacific Avenue; west along East Pacific Avenue to its intersection with the western edge of the alley just east of Pine Street; south along the alley to its intersection with the northern edge of San Juan Avenue; west along San Juan Avenue to its intersection with the western edge of the alley just west of Fir Street; south along the alley to Point D (the intersection of the alley with a property line just north of the San Juan River).

West along the property line to the eastern edge of Oak Street; north along Oak Street to its intersection with the south property line of 237 South Oak Street; west along the property line to its intersection with the eastern edge of Aspen Street; north along Aspen Street to its intersection with the northern edge of the alley just south of Pacific Avenue; west along the alley to a point approximately 50 feet east of the eastern edge of Townsend Street; south for approximately 250 feet; west for approximately 375 feet; north for approximately 250 feet to the northern edge of the alley just south of Pacific Avenue; west along the alley just south of Pacific Avenue to the eastern edge of Davis Street; and north along Davis Street to Point A (the intersection of the eastern edge of Davis Street and the southern bank of Cornet Creek).

Area 2: Lone Tree Cemetery

The point of beginning shall be Point A (the northwesternmost corner of Lone Tree Cemetery).

Thence proceeding east and south for approximately 875 feet to Point B (the easternmost point of Lone Tree Cemetery).

Thence proceeding west and south for approximately 550 feet to Point C (the southernmost point of Lone Tree Cemetery).

Thence west and north for approximately 375 feet to Point D.

Thence north and east for approximately 375 feet to Point A (the northernwesternmost corner of Lone Tree Cemetery).

Chilkoot Trail and Dyea Site, Taiya River Valley, Alaska (Skagway-Angoon-Yakutat Division)

Verbal Boundary Description

Beginning at Bench Mark "Lame" in T27S, R59E, Copper River Meridian (CRM), thence in a northerly direction along a line one-half mile east of the center of the Taiya River to a point on the U.S. Canadian Border one-half mile southeast of Monument 120 in T25S, R60E, CRM, thence northwest along the the U.S.-Canadian border for a distance of one-half mile, thence in a southerly direction along a line one-half mile west of the center of the Taiya River to a point due east of Bench Mark "Lame," thence due east to Bench Mark "Lame." Where the Taiya River has more than one channel running side-by-side, the "center" of the river is the center of the easternmost channel for purposes of the eastern boundary line of this description and the "center" of the river is the center of the westernmost channel for purposes of the western boundary line of this description.

[FR Doc. 88-12018 Filed 5-26-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

May 24, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) MFC Services (AAL),
(2) P.O. Box 500, Madison, MS 39110.
(3) U.S. Hwy. 51 North, Madison, MS 39110.
(4) Melba Prince, P.O. Box 500, Madison MS 39110.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11955 Filed 5-26-88; 8:45 am]
BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Parent: (1) Nestle Foods Corporation, 100 Manhatanville Road, Purchase, NY 10577.

Subsidiary Performing Service: (2) Food Ingredient Development Company, Inc., 4 Gannett Drive, White Plains, NY 10604.

B. 1. Parent corporation and address of principal office. Spartan Stores, Inc., 850 76th Street, Grand Rapids, MI 49508.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and state(s) of incorporation:

(i) Harding's Market, Inc., MI.
(ii) L & L/Jiroh Distributing Company, MI.
(iii) Market Development Corporation, MI.
(iv) Shield Insurance Agency, Inc., MI.
(v) United Wholesale Grocery Corporation, MI.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11956 Filed 5-26-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 52X)]

Union Pacific Railroad Co.; Exemption; Abandonment in Sarpy County, NE

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 4.02-mile line of railroad between milepost 12.23 near Gilmore and milepost 16.25 near Papillion in Sarpy County, NE.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint file by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complaint within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of final assistance has been received, this exemption will be effective June 26, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve enviromental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by June 6, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 16, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Law Department—Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environemental or energy impacts if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an enviromental assessment (EA). SEE will serve the EA on all parties by June 1, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon enviromental or public use conditions.

Decided: May 20, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11958 Filed 5-26-88; 8:45 am]
BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, ___ I.C.C.2d ___, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-20, 564A]

Florsheim Shoe Co., South Canal Street, Chicago, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 28, 1988 in response to a worker petition received on March 28, 1988 which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers at Florsheim Shoe Company, South Canal Street, Chicago, Illinois.

An active certification covering the petitioning group of workers remains in effect (TA-W-17,442A—impact data of May 5, 1985 and a termination date of October 21, 1988). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 17th of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-11904 Filed 5-26-88; 8:45 am]
BILLING CODE 4510-30-M

Job Training Partnership Act; Indian and Native American Programs; Final Total Allocations, Allocation Formulas and Formula Rationales for Job Training Partnership Act Program Year 1988 Title IV-A Regular Program and Calendar Year 1988 (Program Year 1987) Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the final Native American allocations,

allocation formulas and formula rationales for the Program Year 1988 (July 1, 1988–June 30, 1989) Title IV–A regular program funded under the Job Training Partnership Act and for the Calendar Year 1988 Summer Youth Employment and Training Program funded under Title II–B of the Job Training Partnership Act.

FOR FURTHER INFORMATION CONTACT: Mr. William McVeigh. Telephone: (202) 535–0507.

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes the final allocations, allocation formulas and rationales for those formulas for Native American grantees to be funded under JTPA, Title IV–A, Section 401 and JTPA, Title II–B. The total amounts to be allocated are $59,713,000 for the Program Year 1988 JTPA, Title IV–A, section 401 regular program, and $13,639,358 for the Calendar Year 1988 JTPA, Title II–B, Summer Youth Employment and Training Program (SYETP).

This information, along with individual grantee planning estimates, was published in the **Federal Register** as a proposal on February 17, 1988. 53 FR 4749.

Written comments were invited from the public, but none were received. Therefore, the estimates and formulas published in the February 17, 1988, notice are adopted as the final allocations and formulas. Since no changes are made, the amounts are not reprinted herein. They can be read at 53 FR 4750–4787 (February 17, 1988).

The formula for JTPA, Title IV–A, Section 401 provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating JTPA, Title II–B, SYETP funds divides the funds among eligible recipients based on the proportion that the number of youth in a recipient's area bears to the total number of youth in all eligible areas.

The rationale for the above formulas is that the number of povery-level persons, unemployed persons and youth among the Native American population is indicative of the need for training and employment funds.

Statistics on poverty-level persons, unemployed persons and youth among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC, this 18th day of May 1988.

Roberta T. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88–11995 Filed 5–26–88; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration; Wage and Hour Division

Child Labor Advisory Committee; Subcommittee on Child Labor Regulation No. 3

A meeting of the Child Labor Advisory Committee, Subcommittee on Child Labor Regulation No. 3, will be held on June 20, 1988, from 9:00 a.m. to 5:00 p.m., and on June 21, 1988, from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room N3437, Frances Perkins Building, Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The Subcommittee will consider Child Labor Regulation No. 3, Employment Standards for 14- and 15-year-olds, including the permitted hours of work for such youth, and door-to-door sales of candy.

Members of the public are invited to attend these proceedings; however, since these are work sessions, seating is limited. Written data, reviews or arguments pertaining to the business before the Subcommittee must be received by the Committee Coordinator prior to the meeting date. Twenty-six copies are needed for distribution to the members and for inclusion in the meeting minutes.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila Stovall, Coordinator for the Child Labor Advisory Committee, Room S–3028, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; telephone: area code (202) 523–7640.

Signed at Washington, DC, this 24th day of May 1988.

Paula V. Smith,

Administrator.

FR Doc. 88–12004 Filed 5–26–88; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: This notice provides the date, time, place, and agenda summary for the sixth meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 8:30 a.m. and 5:00 p.m. on June 23 and June 24, 1988, at the Holiday Inn, 4610 N. Fairfax Drive, Arlington, Virginia 22203; (703) 243–9800.

This nine-member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesel equipment in underground coal mines.

The agenda for his meeting will include a review of the Committee's draft report and recommendations to the Secretary of Labor. Any other safety and health issues which have not been addressed will be discussed at this meeting.

Official records of the meeting will be available for public inspection at the Office of Technical Support, Mine Safety and Health Administration, Room 913A, 4015 Wilson Boulevard, Arlington, Virginia; phone (703) 235–1570.

Signed at Arlington, Virginia this 24th day of May, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88–12012 Filed 5–26–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–82–C]

A & G Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

A & G Coal Company, General Delivery, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15–14635) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximatley 30–40% of the coal is hand loaded. Approximatley 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner purposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on tree wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 19, 1988.

[FR Doc. 88–11996 Filed 5–26–88; 8:45 a.m.]

BILLING CODE 4510–43–M

[Docket No. M–88–56–C]

Black Streak Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Black Streak Mining, Inc., P.O. Box 261, Cawood, Kentucky 40815 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its No. 1 Mine I.D. No. 15–16166) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner proposes to use a 28-foot width in the belt entry, a 24-foot width in the crosscut and a 20-foot width in the aircourses, with a partial bolt plan, bolting the belt entry and one aircourse.

3. In support of this request, petitioner states that the mining equipment used is an auger-type continuous miner. This system is not designed to operate in 28-foot widths, which does not allow enough space to maneuver in the petitioner's mine. A 20-foot width would also restrict the mobility of the miners.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–11997 Filed 5–26–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–4–M]

Camp Bird Venture; Petition for Modification of Application of Mandatory Safety Standard

Camp Bird Venture, P.O. Box 1790, Ouray, Colorado 81427 has filed a petition to modify the application of 30 CFR 57.11059 (respirable atmosphere for hoist operators underground) to its Camp Bird Mine (I.D. No. 05–00437) located in Ouray County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the hoist operator be provided with a respirable atmosphere completely independent of the mine atmosphere. This independent ventilation system should convert without contamination, to an approved and properly maintained 2-hour self-contained breathing apparatus to provide a safe means of escape for the hoist operator after the hoisting duties have been completed.

2. The No. 3 shaft hoist operator is on level 9 and the closest escape routes are either 1000 feet up the shaft or down to the main level and then outside and down the 1410 shaft. It would not be feasible for the hoist operator to climb up or down the shaft carrying a 2-hour self-contained breathing apparatus on his/her back.

3. As an alternate method, petitioner proposes to have only a 1-hour independent air supply with a quick coupler so as to allow the hoist operator plenty of time to reach the refuge area, either on level 9 or on level 14 after all personnel have been removed to their appointed area.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June

27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 19, 1988.

[FR Doc. 88-11998 Filed 5-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-91-C]

Krystal Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Krystal Coal Company, Route 2, Box 420, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-13615) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petition's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently teated.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machinea, with no hydraulics. The bucket ia a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a handheld continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 18, 1988.

[FR Doc. 88-11999 Filed 5-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-57-C]

Lisa Anthony Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lisa Anthony Coal Co., Inc., P.O. Box 261, Cawood, Kentucky 40815 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its No. 1 Mine (I.D. No. 15-16019) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner proposes to use a 26-foot width in the belt entry, a 24-foot width in the crosscut and a 20-foot width in the aircourses, with a partial bolt plan, bolting the belt entry and one aircourse.

3. In support of this request, petitioner states that the mining equipment used is an auger-type continuous miner. This system is not designed to operate in 20-foot widths, which do not allow enough space to maneuver in the petitioner's mine. A 20-foot width would also restrict the mobility of the miners.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 19, 1988.

[FR Doc. 88-12000 Filed 5-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-54-C]

Paradox Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Paradox Coal Company, Inc., P.O. Box 100, Cawood, Kentucky 40815 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its No. 1 Mine (I.D. No. 15-12471) located in Harlan County, Kentucky. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, a petitioner proposes to use a 28-foot width in the belt entry, and a 24-foot width in the breaks or crosscuts.

3. In support of this request, petitioner states that the mine is using conventional roof control with the specified widths along with spot bolting and cribbing for adverse conditions. Full bolting is highly impractical in the mine's seam which averages 27 inches. In heights of 27 inches, it is difficult to transport miners and supplies. Bolting would take 1½ inches to 2 inches of the available clearance, creating an unsafe condition due to equipment snagging on protruding roof bolts.

4. Petitioner further states that the mining equipment used is an auger type continuous miner. This system is not designed to operate in 20-foot widths, which does not allow enough space to maneuver in the petitioner's mine. A 20-foot width would also restrict the mobility of the miners on a working section.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 19, 1988.

[FR Doc. 88-12001 Filed 5-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-52-C]

Rough Hill Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rough Hill Coal Company, Route 5, Box 161-A, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Rough Hill Mine (I.D. No. 15-15828) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atomosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 19, 1988.

[FR Doc. 88-12002 Filed 5-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-5-M]

Tg Soda Ash, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tg Soda Ash, Inc., P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.22305 (approved equipment) to its Trona Operations (I.D. No. 48-00639) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that equipment be approved if it is used in or beyond the last open crosscut and or if it is used in areas where methane may enter the air current. The standard prohibits equipment from operating in atmospheres containing 1.0 percent or more methane.

2. As an alternate method, the petitioner proposed to use a nonpermissible HILTI Inc. spad (nail) driver powered by a .27 caliber explosive booster to drive the spads to hang ventilation tubing as the face advances.

3. In support of this request, the petitioner states that—

(a) Trona ore is noncombustible and does not emit methane;

(b) Methane concentrations in the mining faces and all areas of the mining operation are very low, if not undetectable;

(c) An auxiliary fan would be operating if the face has been advanced more than 30 feet beyond the last open crosscut;

(d) All miners at the face would wear eye and ear protection while operating the spad driver;

(e) The atmosphere would be examined for methane before the spad driver is used at the site;

(f) If 1.0 percent or more methane is found, the procedures in 30 CFR 57.22234 would be followed; and

(g) The continuous miner has a methane monitor that continuously samples methane in the immediate areas where the spad driver would be used.

4. For these reasons, the petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All

comments must be postmarked or received in that office on or before June 27, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: May 19, 1988.

[FR Doc. 88-12003 Filed 5-26-88; 8:45 am]
BILLING CODE 4510-43-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA88-1 (Jan. 8, 1988) ..... Pp. 376-378.
MA88-2 (Jan. 8, 1988) ..... Pp. 392-393.
MA88-3 (Jan. 8, 1988) ..... Pp. 406, 408.
Maryland:
MD88-2 (Jan. 8, 1988) ..... Pp. 422-423.
MD88-15 (Jan. 8, 1988) ..... P. 454.
New York:
NY88-2 (Jan. 8, 1988) ..... Pp. 684-690.
NY88-12 (Jan. 8, 1988) ..... Pp. 792-799.
Listing by location (index) ..... P. xxxv.

Volume II

Iowa:
IA88-3 (Jan. 8, 1988) ..... P. 34.
Missouri:
MO88-9 (Jan. 8, 1988) ..... Pp. 648-653.

Volume III

California:
CA88-1 (Jan. 8, 1988) ..... Pp. 34-42.
CA88-2 (Jan. 8, 1988) ..... Pp. 44, 47-48. Pp. 51-53.
CA88-4 (Jan. 8, 1988) ..... Pp. 70-102b.
Colorado:
CO88-2 (Jan. 8, 1988) ..... P. 114.
Nevada:
NV88-1 (Jan. 8, 1988) ..... P. 241.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 20th day of May 1988.

Alan L. Moss,
Director, Division of Wage Determinations.

[FR Doc. 88-11759 Filed 5-26-88; 8:45 am]
BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-53)]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: June 7, 1988, 8:30 a.m. to 4:30 p.m., June 8, 1988, 8:30 a.m. to 5:30 p.m., June 9, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: As listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space Applications Advisory Committee consults with and advises the Council and NASA on plans for and work in progress on, and accomplishments for NASA's Space Applications programs. The group is chaired by Mr. Leonard Jaffe and is composed of 32 members. The Committee operates both through a number of informal subcommittees and as a whole. The agenda which follows includes all Committee and subcommittee sessions. The meeting will be closed on June 9, 1988, from 2:30 p.m. to 3:30 p.m. to discuss and evaluate qualifications of candidates being considered for membership to the new Space Science and Applications Advisory Committee (SSAAC). Such discussions would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the capacity of the rooms. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda:

June 7, 1988

Communications Subcommittee—NASA Headquarters Building, 600 Independence Avenue SW., Room 226A, Washington, DC 20546.

8:30 a.m.—Introductory remarks.
8:45 a.m.—Communications Division goals: organization, budget and plans.
9:15 a.m.—Program activities: status, issues and future plans.
1 p.m.—Advanced communications overview for the Office of Aeronautics and Space Technology.
1:45 p.m.—Advanced communications overview for the Office of Space Operations.
2:40 p.m.—Space Applications Board report.
3:30 p.m.—Committee discussion.
4 p.m.—Adjourn.

Microgravity Subcommittee—Holiday Inn-Capitol, 550 C Street SW., Jupiter Room, Washington, DC 20024.

9 a.m.—Introduction and opening remarks.
9:30 a.m.—Review of committee recommendations: output from Microgravity Science and Applications Division planning meeting.
1 p.m.—Review of current microgravity strategic planning activities.
2 p.m.—Review approach and schedule for Microgravity Science and Applications Division communications plans.
3 p.m.—Review and discuss purpose and composition of the Office of Commercial Programs Industry Advisory Board.
4:30 p.m.—Adjourn.

Information Systems Subcommittee—Holiday Inn-Capitol, Room 943.

9:30 a.m.—Chairman's remarks.
10 a.m.—Report from Office of Space Science and Applications Communications Division on information systems long-range planning.
11 a.m.—Subcommittee response to the Communication Division plans and objectives for information systems.
1 p.m.—Status of information systems five-year plan.
2 p.m.—Information systems objectives identified.
3 p.m.—Discussion of allocated resources past and future to accomplish information systems objectives.
4:30 p.m.—Adjourn.

Remote Sensing Subcommittees—Holiday Inn-Capitol, Clark Room.

9:30 a.m.—Introduction and opening remarks.
10 a.m.—Current status of Landsat Program.
11:30 a.m.—Applications Research Program status.
1:30 p.m.—Congressional view of remote sensing.
2:30 p.m.—Space Policy Study and Commercialization.
3:30 p.m.—Status of the International Consortium on Remote Sensing.
4:30 p.m.—Adjourn.

June 8, 1988

Full Committee—Holiday Inn-Capitol, Columbia South Room.

8:30 a.m.—Chairman's Remarks.
9 a.m.—Office of Space Science and Applications status report.
10 a.m.—Reports from subcommittees.

Microgravity Subcommittee—Holiday Inn-Capitol, Jupiter Room.

1 p.m.—Group discussion and development of recommendations for Microgravity Science and Applications Division.
4 p.m.—Adjourn.

Information Systems Subcommittee—Holiday Inn-Capitol, Room 943.

1:30 p.m.—Formulation of subcommittee statements and recommendations for Communications Division.

Remote Sensing Subcommittee—Holiday Inn-Capitol, Columbia South Room.

1:30 p.m.—Briefing on Earth Science and Applicatcns Division programs and plans.
5:30 p.m.—Adjourn.

Thursday, June 9, 1988

Full Committee—Holiday Inn-Capitol, Clark Room.

8:30 a.m.—Continuation of Subcommittee reports.
11 a.m.—Discussion of final committee actions.
1:30 p.m.—Subcommittee chairmen meet to complete final statements and recommendations to the NASA Advisory Council (NAC).
2:30 p.m.—Closed session.
3:30 p.m.—Adjourn.

May 23, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11971 Filed 5-26-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identif, records of sufficient value to warrant preservation in the National Archives of

the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 11, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1–AFU–88–29). Private commercial solicitation case files.

2. Department of the Air Force (N1–AFU–88–30). Host-tenant, interservice, and other support agreements.

3. Department of the Air Force (N1–AFU–88–32). Records relating to the investigation of fraud, waste, and abuse (files dealing with historically significant cases are permanent).

4. Department of the Air Force (N1–AFU–88–33). Excess/surplus property records.

5. Department of the Air Force (N1–AFU–88–34). Emergency room control registers.

6. Department of Commerce, International Trade Administration (N1–151–88–8). Records relating to Proclaimed Lists of Blocked Nationals.

7. Department of Commerce, Bureau of Economic Analysis (N1–375–88–1). Working papers used by the Bureau in developing estimates for the Personal Consumption Expenditures and Income Size Distribution Programs.

8. Farm Credit Administration, Records and Projects Division (N1–103–88–5). Files of personnel actions relating to chief executive officers of Farm Credit System institutions.

9. Federal Communications Commission, Common Carrier Bureau (N1–173–88–3). Spectrum Studies conducted in 1979.

10. Federal Emergency Management Agency (N1–311–86–1). Comprehensive schedule covering the records of the entire agency.

11. Department of Housing and Urban Development, Public Housing Administration (N1–196–88–1). Contracts of sale and other fiscal records relating to war housing and reuse programs, 1940–1957.

12. National Aeronautics and Space Administration (N1–255–88–2). Public Affairs records relating to the Spacemobile Program.

13. National Security Agency (N1–457–88–1, 2, 3, and 4). These NSA schedules are classified in the interest of national security pursuant to Executive Order 12356 and are further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)[3], and Public Law 86–36.

14. Department of State (N1–59–88–30). Foreign Service National (FSN) Claims.

15. Tennessee Valley Authority, Office of Agriculture and Chemical Development (N1–142–87–7). Duplicate copies and photographs lacking archival value removed during archival processing from permanently valuable still picture files documenting the activities of the Office of Agricultural and Chemical Development.

16. Department of the Treasury, U.S. Customs Service (N1–36–86–1). Revised comprehensive records schedule.

Dated: May 23, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–11963 Filed 5–26–88; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on June 13, 1988 from 1:30 p.m.–7:30 p.m., on June 14–15, 1988 from 8:00 a.m.–7:30 p.m., on June 16, 1988 from 8:30 a.m.–5:30 p.m., and on June 17, 1988 from 8:30 a.m.–12:30 p.m., in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 13, 1988, from 1:30–2:15 p.m., on June 16, 1988 from 2:00 p.m.–5:30 p.m., and on June 17, 1988 from 8:30 a.m.–12:30 p.m., for an introduction/orientation session and policy issues discussion.

The remaining sessions of this meeting on June 13, 1988 from 2:15 p.m.–7:30 p.m., on June 14–15, 1988 from 8:00 a.m.–7:30 p.m., and on June 16, 1988 from 8:30 a.m.–1:00 p.m., are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

May 24, 1988.

[FR Doc. 88–11823 Filed 5–26–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing; Miami, Florida; Marine Accident

In connection with its investigation of the accident involving the engineroom fire on board the Passenger Vessel SCANDINANVIAN STAR in the Gulf of Mexico on March 15, 1988, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on June 22, 1988, in the Hyatt Regency Miami-Jasmine Room, 400 SE 2nd Avenue, Miami, Florida. For more information contact Alan Pollock, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, telephone (202) 382–6606.

Bea Hardesty,

Federal Register Liaison Officer.

May 23, 1988.

[FR Doc. 88–11969 Filed 5–26–88; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company, et al., (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The amendments would revise Technical Specification (TS) 3/4.4.5, "Steam Generators" and its bases. The revision would eliminate the requirement for plugging of a steam generator tube if the tube defects are located at least 1.60 inches below the top of the tubesheet. The associated bases 3/4.4.5 would be supplemented to distinguish between defects located at least 1.60 inches below the top of the tube sheet and those located elsewhere in the tubes.

These revisions to the Technical Specifications would be made in response to the licensee's application for amendments dated October 8, 1987, as supplemented December 3, 1987.

The Need for the Proposed Action

The proposed amendments would avoid the plugging of steam generator tubes when the location of defects is such that plugging is unnecessary. The amendments, therefore, preclude the attendant radiation exposure which would otherwise be incurred by plant workers involved with tube plugging operations. The proposed amendments would also maintain operational flexibility by avoiding a loss of margin in reactor coolant system flow and therefore assist in assuring that minimum flow rates are maintained in excess of that required for operation at full power.

Environmental Impacts of the Proposed Action

An evaluation was performed to demonstrate tube integrity under the postulated loss of coolant accident condition of secondary-to-primary differential pressure. Tube collapse strength characteristics indicate that the constraint provided to the tube by the tubesheet gives a significant margin between tube collapse strength and the limiting secondary-to-primary differential pressure condition, even in the presence of circumferential or axial indications.

Primary-to-secondary leakage in a steam generator during normal plant operation is limited by Technical Specifications. This limit, based on plant radiological release considerations, is applicable to a leak source within the tubesheet. Similarly, the evaluation considered accidents such as main steam line and feedwater line breaks which increase tube differential pressure and the driving head for a leak, and which, therefore, represent events with the largest potential for increasing primary-to-secondary leakage. The evaluation shows that, because of the effect of the hardroll, no increase in primary-to-secondary leakage would occur during or after an accident.

The Commission has reviewed these evaluations and test results and finds them acceptable. We find that, based on the operating limits on primary-to-secondary leakage and the results of the analysis of accident conditions, the proposed amendments would not cause any adverse changes in radiological impacts during normal operations as reported in the "Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2," NUREG–0921 (FES) dated January 1983, nor any adverse changes to radiological impacts of postulated accidents as reported in the FES. Therefore, no adverse change in radiological impacts to the environment would result from the proposed amendments.

The proposed amendments involve systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Because we have concluded that no adverse environmental effects are associated with the proposed action, any alternatives would have equal or greater environmental impact and need not be selected.

The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative because either case would require the licensee to plug tubes in accordance with existing TS requirements. (As an alternative to plugging, the licensee could request further TS changes to allow repairs of tubes by a tube sleeving technique. Although sleeving would result in less loss of margin in available reactor coolant system flow, it would result in more than twice the dose to workers involved with sleeving installation than the dose resulting from inserting of mechanical, removable plugs. Sleeving within the tubesheet region would also preclude further repairs of the same tube within its remaining tube length without substantial additional workers exposure associated with sleeve removal and replacement.) Neither plugging nor sleeving would reduce environmental impacts associated with correction of steam generator tube imperfections

when compared to the proposed amendments, but both would result in reduced margins in reactor coolant system flow and increased occupational radiological exposure to plant workers.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's "Final Environmental Statement related to the operation of the Catawba Nuclear Plant, Units 1 and 2" NUREG–0921, dated January 1983.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request of October 6 and December 3, 1987, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for the amendments dated October 6, 1987, and its supplement dated December 3, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 23rd day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11975 Filed 5–26–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved LWRs; Cancellation

The ACRS Subcommittee meeting on Improved LWRs scheduled to be held on June 8, 1988 (53 FR 16880 and 53 FR 17776) has been cancelled.

Date: May 20, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–11902 Filed 5–24–88; 8:45 am]

BILLING CODE 7590–01–M

Issuance and Availability of Draft NUREG–1217, "Evaluation of Safety Implications of Control Systems in LWR Nuclear Power Plants — Technical Findings Related to USI A–47," and Draft NUREG–1218, "Regulatory Analysis for Proposed Resolution of USI A–47"

The U.S. Nuclear Regulatory Commission (NRC) staff is issuing for public comment the proposed resolution of Unresolved Safety Issue (USI) A–47, "Safety Implications of Control Systems." The proposed resolution is documented in two draft reports entitled "Evaluation of Safety Implications of Control Systems in LWR Nuclear Power Plants—Technical Findings Related to USI A–47" (Draft NUREG–1217) and "Regulatory Analysis for Proposed Resolution of USI A–47" (Draft NUREG–1218). Safety Implications of Control Systems was identified as an Unresolved Safety Issue in the NRC 1980 Annual Report to the Congress pursuant to section 210 of the Energy Reorganization Act of 1974 as amended on December 13, 1977.

Nuclear power plant instrumentation and control systems are composed of safety-grade protection systems and non-safety-grade control systems. The safety-grade protection systems are designed to satisfy the General Design Criteria identified in Appendix A to 10 CFR Part 50. They are used in part to trip the reactor when certain plant parameters exceed allowable limits and to protect the core from overheating by actuating emergency core cooling systems. Non-safety-grade control systems are used to maintain the plant within prescribed pressure and temperature limits during shutdown, startup, and normal power operation. The non-safety-grade control systems are not relied on to perform any safety functions during or following postulated transients or accidents. They are used, however, to control plant processes that could have a significant impact on plant dynamics.

The purpose of the USI A–47 study was to perform a review of the non-safety-grade control systems and to assess the effects of control system failures on plant safety. To this end, tasks were established to identify potential control system failures that, either singly or in selected combinations, could cause overpressure, overcooling, overheat, overfill, or reactivity events.

The NRC staff concluded from its A–47 investigations that certain actions should be taken to improve safety in LWR plants. These actions would request that plants (1) upgrade their systems to protect against reactor vessel/steam generator overfill events and to prevent steam generator dryout, (2) modify their technical specifications to periodically verify operability of these systems, and (3) modify selected emergency procedures to ensure safe plant shutdown following a small-break loss-of-coolant accident. Most plants already have sufficient protection against control system failures. The requested safety improvements would only apply to those plants for which enhanced protection is justified. The recommended actions are included in Appendix C of NUREG–1218.

Comments are being solicited from interested organizations, groups, and individuals. It is expected that holders of and applicants for licenses for nuclear power plants will review the proposed resolution of USI A–47 for applicability to their facility and provide comments, if appropriate. The staff is particularly interested in the assessment by each licensee or applicant of the applicability of the staff analyses, assumptions, and conclusions to its plant. The staff will evaluate the comments received and address them as appropriate in the final documents.

Copies of the draft documents will be available after May 29, 1988. Copies will be sent directly to utilities, utility industry groups, and associations. Other copies will be available for inspection or copying in the NRC Public Document Room, 1717 H Street NW., Washington, DC and, upon request, in the Commission's Local Public Document Rooms in the vicinity of nuclear power plants. To request that copies be placed in a local Public Document Room, contact: the Local Public Document Room Program Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone toll free (800) 638–8081. Free single copies of the draft documents may be obtained to the extent of supply by writing to the U.S. Nuclear Regulatory Commission, ATTN: Distribution Section, Mail Stop P–522, Washington, DC 20555.

Comments should be forwarded in writing to Mr. Robert Baer, Chief, Engineering Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 by July 29, 1988.

Dated at Rockville, Maryland, this 18th day of May 1988.

For the Nuclear Regulatory Commission.

Robert J. Bosnak,

Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 88–11979 Filed 5–26–88; 8:45 am]

BILLING CODE 7590–01–M

Availability of Volume 2 of Safety Evaluation Report on Tennessee Valley Authority; Revised Sequoyah Nuclear Performance Plan

The U.S. Nuclear Regulatory Commission (NRC) announced the publication of NUREG–1232, Volume 2 Safety Evaluation Report (SER) on the Tennessee Valley Authority Sequoyah Nuclear Performance Plan—Revised.

On September 17, 1985, NRC issued a letter to the Tennessee Valley Authority (TVA), pursuant to 10 CFR 50.54(f), requesting TVA to submit information on its plans for correcting problems in the overall management of its nuclear program as well as plant-specific problems. In response to this letter, TVA prepared a plan that identifies and proposes corrections to problems with TVA's management of its nuclear program. For corporate management, the plan is documented in revisions of the TVA Corporate Nuclear Performance Plan (CNPP) dated November 1, 1985; March 10, and December 4, 1986; and March 26, 1987 and in its letter dated May 27, 1987. For Sequoyah-specific problems, the plan is documented in revisions of the Sequoyah Nuclear Performance Plan (SNPP) dated November 1, 1985; April 1, and July 2, 1987.

NUREG–1232, Volume 2 presents the NRC staff evaluation of the information submitted in the revised SNPP through Revision 2. In this report the staff concludes (1) that TVA has acceptably addressed the Sequoyah-specific concerns raised by NRC in its 10 CFR 50.54(f) letter dated September 17, 1985; (2) that because much of SNPP is programmatic, the effectiveness depends on its implementation; (The NRC staff has closely monitored this implementation and found it generally effective), and (3) that, at this time, the programmatic improvements in place or underway, are sufficient to resolve the concerns at Sequoyah that led to issuance of the 10 CFR 50.54(f) letter dated September 17, 1985, and to support continuing nuclear activities, including plant operations.

Copies of NUREG–1232, Volume 2 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Bethesda, Maryland this 17th day of May, 1988.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–11978 Filed 5–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–457]

Commonwealth Edison Co.; Braidwood Station, Unit No. 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–77 to Commonwealth Edison Company (the licensee) which authorizes operation of Braidwood Station, Unit No. 2 (the facility) at reactor core power levels not in excess of 3411 megawatts thermal (100 percent rated power).

Braidwood Station, Unit No. 2 is a pressurized water reactor located in Will County, Illinois, about 20 miles south-southwest of Joliet, Illinois, in Reed Township. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** in December 15, 1978 (43 FR 58659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Braidwood Station, Units 1 and 2 (dated June 1984) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–77, with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated February 11, 1985; (3) the Commission's Safety Evaluation Report, dated November 1983, (NUREG–1102), and Supplements 1 through 6; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated June 1984, (NUREG–1026).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street NW., Washington, DC 20555 and in the Wilmington Township Public Library, 201 S. Kanakee Street, Wilmington, Illinois 60481. A copy of Facility Operating License NPF–77 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1 through 6 (NUREG–1002) and the Final Environmental Statement (NUREG–1026) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

Dated at Rockville, Maryland this 20th day of May 1988.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Project Directorate III–2, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–11976 Filed 5–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–389]

Florida Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–16, issued to Florida Power and Light Company (the licensee), for operation of the St. Lucie Plant, Unit No. 2 located in St. Lucie County, Florida.

By application dated November 27, 1987, the licensee requested that the

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reactor coolant system (RCS) pressure/temperature (P/T) limits and RCS low temperature overpressure protection (LTOP) system Technical Specifications (TS) be amended. The TS changes were necessary because the existing P/T limits and associated LTOP system settings would become invalid on May 23, 1988. The licensee specifically proposed new P/T limit curves for six operating periods starting at 4 Effective Full Power Years (EFPY) out to 32 EFPY, and proposed associated changes for the LTOP system TS to include reformatting the limiting conditions for operation, applicability, and action statements.

The licensee's November 27, 1987 application was noticed in the **Federal Register** on February 10, 1988 (53 FR 3954), and a proposed no significant hazards consideration determination was made by the staff.

The staff's review of the licensee's submittal is continuing; however, the existing P/T limits expired on May 23, 1988. By letters dated May 4 and 20, 1988, the licensee requested the staff to issue P/T limits valid until 6 EFPY, in order to permit the staff to complete its review and not affect plant operation. In essence, the originally proposed curves valid until 10 EFPY will be changed to be valid until 6 EFPY. The staff is renoticing this amended application because it represents a significant change from what was previously noticed. The net effect of the change is a more restrictive set of TS.

The staff is issuing this notice under exigent circumstances. As specified above, the existing P/T limits expired on May 23, 1988. The staff and the licensee have been evaluating the issues associated with this review and currently agree that the 6 EFPY curves are satisfactory. The licensee did not request emergency treatment of the amended application; the staff does not believe that an emergency situation exists. However, the staff does believe that the amendment should be issued promptly.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As specified above, the staff noticed the original application and proposed a no significant hazards consideration determination. The staff evaluated the above three factors as part of the proposed determination.

The amended application involves taking the proposed P/T limits for 10 EFPY and making them valid for 6 EFPY. Therefore, the 6 EFPY curves will be more conservative. The staff's analysis of the three factors for a no significant hazards consideration determination as described in the original **Federal Register** notice is also valid for the more restrictive P/T limits. Thus, the staff continues to propose that the amended application does not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or involve a significant reduction in a margin of safety. Therefore, the staff proposed to determine that the amended application involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permited to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 342-6000). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esq., Newman and Holtzinger, 1615 L Street NW., Washington DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 27, 1987, as supplemented May 4 and 20, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Rockville, Maryland, this 24th day of May, 1988.

For the Nuclear Regulatory Commission.

E.G. Tourigny,

Project Manager, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11977 Filed 5-26-88:8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to Illinois Power Company (the licensee), for operation of Clinton Power Station, Unit 1 located in DeWitt County, Illinois.

This amendment consists of the addition of a note to item 14 on Table 3.3.7.5-1 to allow inoperability of primary containment isolation valve position indication when the valve/valve operator is electrically deactivated in the isolated position. When any motor-operated containment isolation valve is electrically deactivated, its breaker is usually switched to the "OFF" position. Power is consequently lost to the position indication circuit and all position indication in the main control room is lost. ACTION 82 associated with item 14 of Table 3.3.7.5-1 will require a plant shutdown after seven days if all position indication to a primary containment isolation valve is lost.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designted by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requsting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference

scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the oportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Leif J. Norrholm: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Zeldon Zebel, Esquire, Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 18th day of May 1988.

For the Nuclear Regulatory Commission.

Leif J. Norrholm,

Acting Director, Project Directorate III–2, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–11972 Filed 5–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by the licensee for an amendment to Facility Operating License No. DPR–40 issued to Omaha Public Power District, for operation of the Fort Calhoun Station, Unit 1 located in Washington County, Nebraska. The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on March 23, 1988 (53 FR 9509).

The amendment, as proposed by the licensee, would: (1) Relax the current Technical Specifications (TS) requirement to control airborne radioactive effluents on an instantaneous basis; (2) allow the licensee to use a non-standard format for reporting radioactive effluent releases; (3) allow the licensee to use annual average (rather than real-time) meteorological dispersion factors to calculate doses; and (4) correct and clarify some parts of TS 2.9.1 and 5.9.4.

With regard to item (1) above, the licensee proposed amending the TS and Basis to 2.9.1 by deleting the word "instantaneous" so that they state "to ensure that these releases result in an annual dose from radioactive materials in liquid and gaseous effluents released to unrestricted areas that are within the limits specified in 10 CFR Part 20." The effect of these changes would allow the licensee to exceed the concentrations specified in 10 CFR Part 20 on an "instantaneous basis." The staff finds the proposed change unacceptable because it would alow the licensee to exceed the concentrations in 10 CFR Part 20 on an instantaneous basis; this would not be consistent with the Standard Technical Specifications.

With regard to item (2), the licensee proposes to change TS 5.9.4.a to delete the phrase "as outlined in Regulatory Guide 1.21, Revision 1" from the Radioactive Effluent Release Reporting requirements. The proposed change would allow the licensee more flexibility in formatting their radioactive effluent release reports. The staff finds this change unacceptable since the licensee would no longer be required to use a standard format to report the quantities of radioactive effluents released from Fort Calhoun.

With regard to items (3) and (4), the staff finds the proposed changes acceptable. These items are addressed in a separate Federal Register Notice.

By June 27, 1988, the licensee may demand a heraing with respect to the partial denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20055, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date.

A copy of any petition should be sent to the Office of the General Counsel, 15B–18 OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 8, 1988, and (2) the Commission's Safety Evaluation forwarded to the licensee by letter dated May 4, 1988, which are available for public inspection at the Commission's Public document Room, 1717 H Street NW., Washington, DC 20555, and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102. A copy of Item (2) may be obtained upon request addressed to U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of May, 1988

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11973 Filed 5–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp.; Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commisson) has issued Amendment No. 104 to Facility Operating License No. DPR–28, issued to the Vermont Yankee Nuclear Power Corporation, (the licensee), which authorizes the use of spent fuel storage racks of new design for the Vermont Yankee Nuclear Power Station located in Windham County, Vermont. The amendment was effective as of the date of its issuance.

The amendment allows the installation of racks of new design in the spent fuel pool sufficient to accommodate 2870 assemblies, and the storage of fuel assemblies in the new racks up to the present Technical Specification limit of 2000 assemblies in the pool. The amendment is in partial response to the licensee's proposed application for amendment dated April 25, 1986, as supplemented on August 15, September 26, October 21, and November 24, 1986, and February 25, March 19, March 31, April 9, April 13, May 22, June 11, September 1, and December 11, 1987, and March 2, 1988.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 18, 1986.

Requests for a hearing were filed on January 29, 1987 by the New England Coalition on Nuclear Pollution and by the State of Vermont. On January 30, 1987 a request was filed by the Commonwealth of Massachusetts.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determinend that no significant hazards considerations are involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves on siginficant hazards considerations. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared.

For further details with respect to the action, see (1) the application for amendment dated April 25, 1986, as supplemented by letters dated August 15, September 26, October 21, and November 24, 1986, and February 25, March 19, March 31, April 9, April 13, May 22, June 11, September 1, and December 11, 1987 and March 2, 1988; (2) Amendment No. 104 to Facility Operating License No. DPR–28; (3) and the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 20th day of May, 1988.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Project Manager, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88–11974 Filed 5–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

Public Service Co. of New Hampshire (Seabrook Plant); Exemption

I

Public Service Company of New Hampshire (the licensee) is the holder of Facility Operating License No. NPF–56 for the operation of Seabrook Station nuclear power plant. This license, issued on October 17, 1986, restricts Seabrook Station to loading fuel and conducting precriticality testing only. However, the license provides, among othe things, that the licensee is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor rated at 3411 MW(t) at the licensee's site located in Rockingham County, New Hampshire.

II

Section 10 CFR 50.54(w) of the Commission's regulations requires that each commercial power reactor licensee shall obtain onsite property damage insurance in the amount of $1.06 billion. This requirement, among other changes, increased the amount of required property insurance from $620 million and became effective on October 5, 1987.

On October 1, 1987, the licensee filed an Application for Schedular Exemption from the requirements for property insurance above $620 million until such time as the Commission may grant a low power (5%) operating license. This request was supplemented by additional information dated February 29, 1988. In support of its request, the licensee indicated that "Criticality at Seabrook Station has not been achieved. The primary system is not radioactive, and in accordance with license requirements, the reactor coolant system is maintained with a boron concentration equal to or greater than 2000 parts per million." Maintaining the boron concentration of the reactor coolant equal to or greater than 2000 parts per million ensures that the reactor cannot be made critical, even if all the control rods are fully withdrawn. The licensee also maintains that the coverage in the amount of $620 million that it currently carries is "more than adequate to compensate for any conceivable condition that may occur." The amount of coverage should be more than adequate since the reactor does not contain a significant inventory of fission products and the 2000 parts per million boron concentration of the reactor coolant prevents the reactor from achieving criticality and thereby generating fission products. Therefore, the consequences of any credible accident would not include any significant radiological hazards and the existing insurance coverage should be adequate to compensate for any conceivable condition.

The licensee indicates that the cost of property insurance in excess of $620 million (i.e. an additional $440 million in coverage) would exceed $1 million annually. In addition, by purchasing additional insurance, the licensee would

be liable under the terms of the policy to pay a potential retrospective premium assessment of as much as 7.5 times the annual premium if an accident were to occur at any insured site. Thus, potential costs to the licensee of buying the additional insurance could be significant.

III

The Commission may grant exemptions from the requirements of Part 50 "which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security" (10 CFR 50.12(a)(1)). In its submittal, the licensee argued that the justification for its exemption request meets the "special circumstances" described in § 50.12(a)(2)(ii), (iii) and (v). Section 50.12(a)(2) stipulates, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; or * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation * * *"

The licensee meets the conditions for granting an exemption. First, with respect to § 50.12(a)(1), the exemption is authorized by law and does not present an undue risk to public health and safety. The risk to public health and safety presented by the Seabrook Station in its present state of cold shutdown is substantially lower than reactors operating at a significant percentage of rated power since the reactor is prevented from achieving criticality, it has not yet achieved criticality and does not contain a significant inventory of fission products.

The Seabrook exemption request also meets the special circumstances presented in § 50.12 (a)(2)(ii). The Commission agrees with the licensee's assessment that, under the conditions proposed, a significant accident is, for all practical purposes, highly improbable since the reactor has not gone critical or been allowed to operate at any power level. Therefore requiring excessive onsite property damage insurance before the reactor achieves criticality would not serve the underlying purpose of the rule, which is to provide sufficient funds to clean up after a significant accident. The licensee is requesting a temporary exemption only until such time as it may be allowed to make the reactor critical and operate at low power. The licensee states that it will comply fully with $50.54(w) prior to initial criticality.

The Commission agrees that these factors ensure that the circumstances of the exemption from the subject requirements prior to achieving initial criticality do not present an undue risk to the public health and safety.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, a temporary exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption:

The licensee is exempt from the requirements of 10 CFR 50.54(w) with respect to on-site property damage insurance in excess of $620 million prior to such time as Seabrook Station receives an operating license which allows the reactor to go critical or operate at any power level.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10-CFR 51.5(d)(4), an environmental impact appraisal need not be prepared in connection with this action. Copies of the licensee's request for exemption dated October 1, 1987 and supplement dated February 29, 1988 are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director of Reactor Projects I/II.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 11th day of May 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11980 Filed 5-26-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25729; File No. MBS-88-13]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corporation Relating to Modifications to the Schedule for the Conversion of GNMA Securities Which are To Be Designated for Book-Entry Trade, Clearance and Settlement; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 16, 1988, the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On April 28, 1988, MBSCC issued a Bulletin for the Depository Division of MBS Clearing Corporation ("MBSCC") which further modified the conversion schedule of Government National Mortgage Association ("GNMA") securities to book-entry form.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies the schedule for the conversion of GNMA securities which are to be designated for book-entry trade, clearance and settlement. For settlements beginning June 16, 1988, the 12.00–12.49% GNMA coupons will be eligible for conversion to book-entry form. With this action, all coupons below or equal to 7.49% and higher than or equal to 12.00% are eligible for conversion to book-entry form.

In anticipation of the proposed rule change, Depository Division senior management has completed the installation and testing of expanded computer hardware and software required by larger-than-anticipated increases in participation and trading volume. MBSCC has also assisted Depository Division Participants in making necessary changes to their own operating systems. MBSCC believes that with such installation, testing, and modifications, the additional GNMA coupons will be implemented in an orderly manner.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been generally solicited or received. However, representatives of the Public Securities Association, GNMA, as well as representatives of several Depository Division Bank Participants were consulted in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. MBS-88-13 and should be submitted by June 17, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 20, 1988.

[FR Doc. 88-12036 Filed 5-26-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

AMX International, Inc.; Suspension of Trading

May 24, 1988.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AMX International, Inc., a Delaware corporation with offices located at 5477 Glen Lakes Drive, Dallas, Texas, and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the financial condition of the company and the value of its assets. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of AMX International.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of AMX International, Inc., over-the-counter or otherwise, is suspended for the period from 10:00 a.m. (E.D.T.) on May 24, 1988 through 11:59 p.m. (E.D.T.) on June 2, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12035 Filed 5-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25736; File No. SR-NASD-87-9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On February 6, 1987, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to amend section 19(f) of the NASD's Rules of Fair Practice to allow the receipt of performance-based fees under certain circumstances. In effect, the proposed rule change would permit members or persons associated with members to receive performance-based compensation for managing client accounts under circumstances similar to the circumstances enumerated in Rule 205-3 of the Investment Advisers Act of 1940 ("Advisers Act").[1]

The proposed rule change would allow a member or person associated with a member to receive compensation based on a share of profits or gains in an account when: (1) Written authorization is obtained from a member carrying the client's account; (2) the customer meets stated minimum net worth or investment size requirements; (3) there is a reasonable belief that the customer understands the compensation method and its risks; (4) the arrangement is reduced to writing; (5) there is a reasonable belief that the agreement was reached through arms-length negotiation; (6) the arrangement takes into account gains and losses over at least a one-year period; and (7) the member has disclosed all material information relating to the arrangement. Written performance agreements will be subject to examination by the NASD during routine inspections.[2]

Notice of the proposed rule change, together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24355, April 16, 1987) and by

[1] 17 CFR 275.205-3, adopted in Investment Advisers Act Release No. 986 (November 14, 1985); 50 FR 48556 (November 26, 1985).

[2] *See* letter from T. Grant Callery, Associate General Counsel, NASD to Robina M. Gumbs, Attorney, Division of Market Regulation, dated September 2, 1987.

publication in the Federal Register (52 FR 13778, April 24, 1987). One comment was received with respect to the proposed rule change.[3] The comment letter favors the proposal and suggests that the NASD be encouraged to interptet its proposed rule change coterminously with Rule 205–3 under the Advisers Act.[4] The NASD has represented to the Commission that it intends to interpret the proposed rule change in a manner consistent with Rule 205–3.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is approved. For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12033 Filed 5–26–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Informal Airspace Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Informal Airspace Meetings.

SUMMARY: This notice announces informal airspace meetings to discuss the following: 1. Establishment of a Terminal Control Area (TCA) at Phoenix, AZ; 2. Modification of the TCA at Dallas/Fort Worth, TX; 3. Establishment of a TCA at Tampa, FL, and 4. Establishment of a TCA at Orlando, FL.

The formal airspace meeting dates and places are as follows:

Phoenix, AZ, TCA

Date: July 25, 1988.
Time: 7:00 p.m.
Location: Thunderbird Adventist Academy Chapel, 7401 East Sutton Drive, Scottsdale, AZ.

Dallas/Fort Worth, TX, TCA

Date: August 4, 1988.
Time: 7:00 p.m.
Location: Holiday Inn North, Conference Center, Meacham Room, 2540 Meacham Boulevard (I–35W), Fort Worth, TX; and
Date: August 9, 1988.
Time: 7:00 p.m.
Location: Holiday Inn Greater Southwest, Salon A, B & C, North Highway 360 and Brown Boulevard, North Arlington, TX; and
Date: August 11, 1988.
Time: 7:00 p.m.
Location: Dallas Marriot Quorum, Grand Ballroom, 14901 Dallas Parkway, Dallas, TX.

Orlando, FL

Date: August 16 and 17, 1988.
Time: 7:00 p.m.
Location: Valencia Community College, West Campus, Building 3, Room 111, 1800 S. Kirkman Road, Orlando, FL.

Tampa, FL

Date: August 23, 1988.
Time: 7:00 p.m.
Location: Gaither High School Auditorium, 1600 N. Dale Mabry Highway, Tampa, FL; and
Date: August 24, 1988.
Time: 7:00 p.m.
Location: University of South Florida, Bayboro Campus, Marine Science Laboratory Auditorium, 140 Seventh Avenue South, St. Petersburg, FL; and
Date: August 25, 1988.
Time: 7:00 p.m.
Location: Airport Administration Building, McElmurry Auditorium, General Spaatz Boulevard, Sarasota Airport, Sarasota, FL.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO–340), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–0252.

Issued in Washington, DC, on May 18, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–11946 Filed 5–26–88; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Cherry Capital Airport, Traverse City, MI; closing

Notice is hereby given that on or about May 10, 1988, the present Flight Service Station at Cherry Capital Airport, Traverse City, Michigan will be closed. Services to the general public, formerly provided by this office, will be provided by the New automated Flight Service Station in Lansing, Michigan. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

William H. Pollard,

Director, Great Lakes Region.

Issued in Des Plaines, Illinois on April 8, 1988.

[FR Doc. 88–11947 Filed 5–26–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center; Meeting

AGENCY: Advisory Committee to the National Center for State and Local Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes: opening remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-Chair; discussion of present and FY 89 program status and Operation Alliance update; a report from the Assessment Sub-Committee; and program development activities.

DATE: June 8, 1988.

ADDRESS: Federal Law Enforcement Training Center, Building 94, Board Room, Glynco Georgia.

FOR FURTHER INFORMATION CONTACT: Howard N. Goetsch, Assistant Director, Office of State and Local Training, Federal Law Enforcement Training Center, Glynco, Georgia 31524.

Charles F. Rinkevich,

Director.

May 23, 1988.

[FR Doc. 88–12013 Filed 5–26–88; 8:45 am]

BILLING CODE 4810–32–M

[3] Letter from Joseph P. Scordato, Vice President, Shearson Lehman Brothers, to Jonathan G. Katz, Secretary, SEC dated May 14, 1987.

[4] The Commission's Division of Investment Management takes the position that compensation received by a member or person associated with a member under this rule would constitute "special compensation" for purposes of the broker-dealer exception to the definition of the term "investment adviser" in section 202(a)(11)(C) of the Advisers Act. Accordingly, a member or person associated with a member, who receives compensation based on a share of profits or capital appreciation in a customer's account, and who does not fit within the exceptions from registration set forth in the Advisers Act, must comply with section 205(1) and Rule 205–3 under the Advisers Act with respect to such compensation.

[5] *See* letter to Katherine A. England, Branch Chief, SEC, from T. Grant Callery, Associate General Counsel, NASD dated May 4, 1988.

UNITED STATES INFORMATION AGENCY

Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in West Berlin June 6–7, 1988. The Commission will review USIA's programs in Europe and will consult with senior USIA officers from U.S. embassies in Bonn, USNATO Brussels, London, Moscow, and Paris.

Please call Gloria Kalsmets, (202) 485–2468 for further information.

Dated: May 23, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc 88–11954 Filed 5–26–88; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, July 14, 1988, at 2:30 p.m.
Thursday, July 28, 1988, at 2:30 p.m.
Thursday, August 11, 1988, at 2:30 p.m.
Thursday, August 25, 1988, at 2:30 p.m.
Thursday, September 8, 1988, at 2:30 p.m.
Thursday, September 22, 1988, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: May 19, 1988.

By direction of the Administrator.

Rose Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–12008 Filed 5–26–88; 8:45 am]

BILLING CODE 8320–01–M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 53, No. 103
Friday, May 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:00 noon, Wednesday, June 1, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12044 Filed 5-25-88; 10:18 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 1, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed modification to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to implement the Competitive Equality Banking Act of 1987 to permit state member agricultural banks to amortize losses on qualified agricultural loans. (Proposed earlier for public comment; Docket No. R-0615)
2. Proposals regarding the Board's Statement of Policy on Banking Market Extension Mergers and Acquisitions. (Proposed earlier for public comment; Docket No. R-0386)

Discussion Agenda

3. Publication for comment of proposed amendment to Regulation Y (Bank-Holding Companies and Change in Bank Control) to implement the limitations placed on grandfathered nonbank banks by the Competitive Equality Banking Act of 1987.
4. Proposed revisions to the Board's Rules Regarding Availability of Information. (Proposed earlier for public comment; Docket No. R-0601)
5. Proposed 1989 Federal Reserve Board budget guideline.
6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: May 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12043 Filed 5-25-88; 10:18 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:45 p.m., Thursday, June 2, 1988.

PLACE: Amway Grand Plaza Hotel, Pantlind Ballroom/Hotel Concourse Level, Pearl at Monroe, Grand Rapids, Michigan 49503, 1-800-253-3690.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Request by the State of Texas for Exemption from NCUA Lending Rules.
6. Proposed Field of Membership Expansion Request from Ocean Communities Federal Credit Union.
7. Request for Comments Chartering/Field of Membership (FOM) Issues.
8. Review NCUA Long Range Plan.
9. Legislative Update.

TIME AND DATE: 2:30 p.m., Wednesday, June 1, 1988.

PLACE: Amway Grand Plaza Hotel, Pearl Room/Hotel Concourse Level, Pearl at Monroe, Grand Rapids, Michigan 49503, 1-800-253-3690.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Merger under section 205(h) of the Federal Credit Union Act. Closed pursuant to exemption (8), (9)(A)(ii), and (9)(B).
3. Termination of Conservatorship. Closed pursuant to exemption (8).
4. Assistance under section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemption (8).
5. Review of Delegations of Authority. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-12115 Filed 5-25-88; 3:11 pm]

BILLING CODE 7535-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, June 7, 1988, at the University Plaza Holiday Inn, 333 John Q. Hammons Parkway, Springfield, Missouri. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, June 6, 1988, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

June 7, 1988, 8:00 a.m. (Open)

1. Minutes of the Previous Meeting, May 2-3, 1988.
2. Remarks of the Postmaster General.

3. Consideration of the Postal Rate Commission's Recommended Decision in the Money Order Sale Limitation Case (Docket No. MC88-1). (Mr. Cox)
4. Productivity Measurement. (Mr. Strasser)
5. Report of the Chief Postal Inspector. (Mr. Clauson)
6. Semiannual Report on Consumer Protection. (Mr. Clauson)
7. Capital Investments.
   a. Research and Development Project—Remote Video Encoding. (Mr. Jacobson)
   b. Philadelphia, Pennsylvania, Airport Mail Facility (Mr. Smith)
8. Tentative Agenda for July 7-8, 1988, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 88-12116 Filed 5-25-88 3:11 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 31, 1988:

An open meeting will be held on Wednesday, June 1, 1988, at 10:00 a.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10) permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the open meeting scheduled for Wednesday, June 1, 1988, at 10:00 a.m., will be:

1. Consideration of a staff report and recommendations concerning the use of predispute arbitration clauses by the securities industry in agreements with its public customers. For further information, please contact Robert Love at (202) 272-3084.
2. Consideration of possible amendments to Rule 10b-4 (17 CFR 240.10b-4), the short tendering rule, in light of the decision of the Court of Appeals for the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*. For further information, please contact M. Blair Corkran at (202) 272-2853.
3. Consideration of whether to approve a proposed rule change by the New York Stock Exchange ("NYSE" or "Exchange") that would permit members to install telephone lines at their booth spaces that will enable them to communicate from the Exchange floor with non-members located off the floor. The proposed NYSE rule would specifically prohibit the use by members of portable telephones on the Exchange floor. For further information, please contact Robert J. Sevigny at (202) 272-2409.
4. Consideration of whether to issue a release for public comment (1) proposed amendments to revise the reporting requirements for issuers changing their fiscal year end; (2) proposed related amendments to Form 8-K; (3) proposed amendments to the accounting and proxy rules relating to financial reporting; and (4) proposed amendments to the quarterly reporting rules. For further information, please contact Howard Hodges at (202) 272-2553.

The subject matter of the closed meeting scheduled for Wednesday, June 1, 1988, following the 10:00 a.m. open meeting, will be:

Formal order of investigation.
Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Shirley E. Hollis,

Assistant Secretary.

May 24, 1988.

[FR Doc. 88-12122 Filed 5-25-88; 4:02 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 103
Friday, May 27, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

School Breakfast Program; Nutritional Improvements and Offer Versus Serve

Correction

In proposed rule document 88-11512 beginning on page 18289 in the issue of Monday, May 23, 1988, make the following corrections:

§ 220.8 [Corrected]

On page 18292, in § 220.8(a)(2), in the table, in the first column, in the last line, after "guidance)", insert "P"; and in the second column, in the second entry, "1/3 cup oz" should read "1/3 oz".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80462-8082]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

Correction

In rule document 88-9863 beginning on page 16002 in the issue of Wednesday, May 4, 1988, make the following corrections:

1. On page 16002, in the third column, in the last paragraph, in the fifth line, "salmon" was misspelled.

2. On page 16003, in the second column, in the sixth complete paragraph, in the third line, "be" should read "by".

3. On page 16006, in the second column, in the sixth complete paragraph, in the sixth line, "an" should read "and".

4. On page 16008, in the table, in the last column, the fifth entry should read "Conservation Zone 2 (Klamath River mouth) is closed".

5. On page 16010, in the first column, in paragraph 1., in the second line, after "as" insert "follows:".

6. On page 16011, in the third column, in paragraph 7., in the second line, "Queens" should read "Queets"; and in the third line, "15'" should read "45'".

7. On the same page, in the table, in the second column, in the second entry, in the first line, "48=" should read "48'"; in the third entry, in the first line, "47=" should read "47'"; in the last entry, in the first line, "47=" should read "47'", and in the last line, "125'" should read "125'".

8. On the same page, in the table, in the fourth column, all entries beginning with "July 1..." and ending with "...quota", should appear in the third column "Open seasons" directly under the entry beginning with "May 1..." and ending with "...quota."; and the word "All" appearing directly under the entries for "July 1..." should remain in the last column "Salmon species" opposite the "July 1..." entry.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy

Correction

In rule document 88-7764 beginning on page 11942 in the issue of Monday, April 11, 1988, make the following corrections:

§ 99.5 [Corrected]

1. On page 11945, in the second column, in § 99.6(a)(4), in the fifth line, "§ 99.1(a)(1)" should read "§ 99.31(a)(1)".

§ 99.7 [Corrected]

2. On the same page, in the second column, in the heading for § 99.7, "manual" should read "annual".

§ 99.20 [Corrected]

3. On page 11946, in the second column, in § 99.20(b), in the first line, "education" should read "educational".

§ 99.31 [Corrected]

4. On page 11947, in the first column, in § 99.31(a)(3), in the second line, "authorize" should read "authorized".

5. On the same page, in the second column, in § 99.31(a)(5)(ii), in the third line, "or State" should read "of State".

§ 99.36 [Corrected]

6. On page 11948, in the third column, in § 99.36(a), in the first and second lines, "of safety or" should read "or safety of".

§ 99.67 [Corrected]

7. On page 11949, in the second column, in § 99.67(b), in the sixth line, "complainant" was misspelled.

8. On page 11950, in the third column, in *"Section 99.3"*, in the second paragraph, in the 11th line, "statue" should read "statute".

9. On page 11953, in the second column, in the sixth indented paragraph, in the first line, "Two" should read "The".

10. On page 11954, in the third column, in the fourth line, "disclosed" should read "disclose".

11. On page 11956, eleven lines from the bottom, "student" should read "statute".

12. On page 11957, in the second column, eleven lines from the bottom, after "the" insert "student as".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 86N-0047]

Antibiotic Drugs; Cefmenoxime Hydrochloride for Injection

Correction

In rule document 88-6936 beginning on page 13400 in the issue of Monday, April 25, 1988, make the following corrections:

§ 436.363 [Corrected]

1. On page 13401, in the third column, in § 436.363(c)(3), after "where:", in the fourth line, "w_h" should read "w_1".

§ 442.22a [Corrected]]

2. On page 13403, in the first column, in § 442.22a, in paragraph (b)(4)(i), in the last line, after "sodium" insert "sulfate".

§ 442.222 [Corrected]

3. On page 13404, in the first column, in § 442.222, in paragraph (b)(1)(iv)(A), the formula should read:

$$\text{Micrograms of cefmenoxime per milligram} = \frac{R_s \times P_s \times 100 \times d}{R_t \times C_s (100\text{-}L\text{-}S)}$$

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0040]

Sulfamethazine in Food-Producing Animals; Public Hearing Before the Commissioner

Correction

In notice document 88-10012 beginning on page 15886 in the issue of Wednesday, May 4, 1988, make the following corrections:

1. On page 15888, in the second column, in the first paragraph, in the second line, "(=0)" should read "(P=0.00005)".

2. On the same page, in the third column, under **V. Hearing Procedures Under 21 CFR Part 15**, before paragraph 1, insert the following:

"Options available to the agency or the Center for Veterinary Medicine include:".

3. On the same page, in the same column, the last line should read "containing products marketed under 21 CFR 510.450 (section 512(d) of the act and 21 CFR 514.111)."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-08-4212-13; A-23217]

Public Land Exchange; Mohave and Yavapai Counties, AZ

Correction

In notice document 88-6071 beginning on page 9150 in the issue of Monday, March 21, 1988, make the following corrections:

1. On page 9151, in the first column, the 12th line should read "T. 14½ N., R. 6 W.".

2. On the same page, in the same column, the 30th line should read "T. 13 N., R. 7 W.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160 (9th Mtg.)-406 MHz Emergency Locator Transmitters (ELT); Open Meeting

Correction

In notice document 88-11194 appearing on page 18018 in the issue of Thursday, May 19, 1988, make the following correction:

In the first column, in the first paragraph, in the seventh line, "June 5" should read "June 15".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-28-86]

Apportionment of Expenses in the FSC and DISC Contexts

Correction

In proposed rule document 86-11004 beginning on page 17473 in the issue of Tuesday, May 17, 1988, make the following corrections:

1. On page 17473, in the second column, the "INTL" number is corrected as set forth above.

§ 1.861-8 [Corrected]

2. On page 17474, in the third column, in the section heading following **Par. 4**, the section number should read as set forth above.

3. On page 17475, in the second column, in § 1.861-8(g), in *"Example (23)"*, in paragraph (iii), in the first line "(a)" should read "(A)".

4. On the same page, in the third column, in the same section, paragraph and example, in paragraph (C), the last four lines should read "Apportionment of the general and administrative expenses to the residual grouping, gross income from domestic sales of electronic equipment:".

BILLING CODE 1505-01-D

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Part II

Federal Reserve System

12 CFR Part 229
Availability of Funds and Collection of Checks; Final Rule
Federal Reserve Bank Services; Notice

FEDERAL RESERVE SYSTEM

[Docket No. R-0620]

12 CFR Part 229

Regulation CC; Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a new rule (Regulation CC) to implement the Expedited Funds Availability Act. This rule sets out the requirements that banks and other depository institutions make funds deposited into accounts available according to specified time schedules and disclose funds availability policies to their customers. Regulation CC also establishes rules designed to speed the return of unpaid checks.

The Board has also submitted the collection of information requirements in Regulation CC to the Office of Management and Budget (OMB) for its review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). The information collection requirements are contained in Regulation CC and published in this notice. Additional supporting documents may be obtained from the Board clearance officer listed below. Any comments on the collection requirements should be sent to the OMB desk officer listed below. OMB's usual practice is not to take any action on an information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

EFFECTIVE DATE: September 1, 1988, except for 12 CFR 229.12, which is effective on September 1, 1990. After September 1, 1990, 12 CFR 229.11 will no longer be effective.

FOR FURTHER INFORMATION CONTACT: For information regarding Subparts A and C contact Joseph R. Alexander, Senior Attorney, (202/452–2489), or Stephanie Martin, Attorney, (202/452–3198), Legal Division.

For information on §§ 229.10 through 229.14, and §§ 229.19 through 229.21 of Subpart B, contact Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations, (202/452–3874).

For information on §§ 229.15 through 229.18 of Subpart B, contact Gerald P. Hurst, Senior Counsel, (202/452–3667), Kathleen S. Brueger, Attorney, (202/452–2412), or Thomas J. Noto, Attorney, (202/452–3667), Division of Consumer and Community Affairs.

For the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452–3254).

Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics, (202/452–3622).

OMB Desk Officer, Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202/395–7340).

SUPPLEMENTARY INFORMATION:

Overview

Delayed availability—the holds that some banks [1] place on checks deposited into their customers' accounts before the funds may be withdrawn—was a subject of growing concern in the Congress for a number of years. Many argued that the holds placed by many banks were unduly long, and that depositors have a right to prompter access to their funds. Banks that impose holds responded that their availability schedules reflect the time needed for the collection and return of checks returned unpaid by the paying bank and provide a measure of protection against the risk that the bank could not recover funds from the depositor if those funds had already been withdrawn from the depositor's account.

The Congress concluded that federal legislation was required to address delayed availability practices and passed the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100–86, enacted on August 10, 1987). The Act seeks to ensure prompt availability of funds and to expedite the return of checks; the Board is directed to issue regulations to implement the Act, which becomes effective on September 1, 1988.

The Act includes specific and detailed provisions requiring banks to: (1) Make funds available to their customers within specified time frames, (2) pay interest on interest-bearing transaction accounts not later than the day the bank receives provisional credit, and (3) disclose their funds availability policies to their customers. These statutory provisions provide the Board with little flexibility in developing rules to implement the Act's requirements.

The Act requires that cash deposits, wire transfers, and certain check deposits that Congress believes pose little risk to the depositary bank, such as Treasury checks and cashier's checks, generally be made available for withdrawal by the business day after the day of deposit. The time when the depositary bank must make other check deposits available for withdrawal depends on whether the check is "local" or "nonlocal" to the depositary bank. A local check is a check deposited in a depositary bank that is located in the same Federal Reserve check processing region as the paying bank. A nonlocal check is a check deposited in a different check processing region than the paying bank. There are a total of 48 Federal Reserve check processing offices in the United States, and the territory served by each office constitutes a check processing region.

Under the temporary schedule that becomes effective on September 1, 1988, a depositary bank must make the proceeds of local checks available for withdrawal by the third business day following deposit; that is, the proceeds of local checks deposited on a Monday must be available for withdrawal by the following Thursday. The depositary bank must make the proceeds of nonlocal checks available for withdrawal by the seventh business day following deposit; that, is, the proceeds of a Monday deposit must be available for withdrawal by Wednesday of the following week. On September 1, 1990, these time periods are reduced. At that time, proceeds of local and nonlocal checks must be available for withdrawal by the second and fifth business day following deposit, respectively. Special rules are provided for cash withdrawals, deposits at nonproprietary automated teller machines, and deposits made in banks outside the continental United States.

Congress provided several exceptions to the availability schedules. When a bank invokes one of these exceptions, it may extend the hold on a customer's account beyond the statutory schedule by a reasonable period of time, as determined by Regulation CC.

The statute requires banks to disclose their availability policies to their customers and inform their customers that deposited funds may not be available for immediate withdrawal. Banks are required to provide disclosures to new customers prior to opening an account or upon request. In addition, disclosures are required on preprinted deposit slips, at staffed locations where consumers make deposits, and at automated teller machines. Banks must also provide notice to their consumer customers whenever their availability policies change.

The Act gives the Board authority to make improvements in the check collection and return systems in order to shorten the time within which depositary banks learn of the nonpayment of checks, and thereby reduce the number of situations when the bank will be required by law to make funds available to its customers before it learns a check has been dishonored. The Board's authority is broad and general, and extends to checks that are not cleared through the Federal Reserve System. Previously, the Federal Reserve generally had the authority to regulate only those checks it collected.

The Board issued for public comment a proposed regulation and proposed Federal Reserve Bank services to implement the Act on December 3, 1987. (52 FR 47,112 (Dec. 11, 1987).) Over 1,000 comments have been received on the proposals.[2] Many of these comments were very thorough, and provided excellent analyses of issues raised in the proposal. A number of commenters stated that the proposal did a good job implementing the Act's requirements, and provided guidance that is essential for industry compliance. The commenters, however, expressed concern over the complexity of the Act and regulation, and the increased costs and risks to the banking industry due to the disclosure and funds availability requirements. In particular, many commenters were concerned with the risks inherent in the requirement to provide next-day availability for certain check deposits. This, as well as a number of other concerns, relate to statutory requirements the Board has little or no flexibility to modify.

The Board and Board staff considered all comments received, and discussed aspects of the proposed regulation with the Consumer Advisory Council and the Return Item Advisory Group, which is a joint Federal Reserve/banking industry group, as well as representatives of both industry and consumer groups. Two consulting firms were retained to assess the effect of certain aspects of the proposal on the banking industry. Based on the analysis of the issues raised by the public comments and this additional input, the Board made a number of changes to the proposed regulation. Other provisions of the proposed regulation, including some of those criticized by commenters, were retained either because they are required by the Act, or because they are important to carry out the purposes of the Act.

Discussion

Regulation CC (12 CFR Part 229), Availability of Funds and Collection of Checks, contains three subparts. Subpart A defines terms and provides for administrative enforcement. Generally, the terms in the regulation are defined as they are in the Act. The Board has adopted a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms not defined in the Act, and to carry out the purposes of the Act.

Subpart B specifies schedules within which banks must make funds available for withdrawal. The regulation reflects the availability schedules provided in the Act. Thus, deposits of cash and electronic payments, as well as certain check deposits, must be made available for withdrawal on the next business day following deposit. Longer schedules are provided for other checks, based on whether the checks are local or nonlocal. The following charts depict the schedules for these checks. The schedules for local and nonlocal checks, and in limited instances certain checks that must be given next-day availability, are subject to several exceptions to protect the depositary bank in higher risk situations.

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[1] Regulation CC terminology corresponds with the terminology of the Uniform Commercial Code, with some modifications. "Bank" is defined to include all depository institutions. A "paying bank" is the bank on which the check is drawn. In the case of payable through drafts, the payable through bank is the paying bank. A "returning bank" is an intermediary bank handling a returned check. A "depositary bank" is the bank in which the check was first deposited. (See § 229.2 of Regulation CC for the complete definitions of these terms.)

[2] Approximately two-thirds of the commenters were commercial banks or bank holding companies. Ten percent of the comments were received from savings and loan associations, eight percent from corporations, five percent from credit unions, and the remainder from trade associations, clearinghouses, consumer groups, and others.

Temporary Funds Availability Schedules

Figure 1

Illustrates availability of different types of checks under the temporary schedules

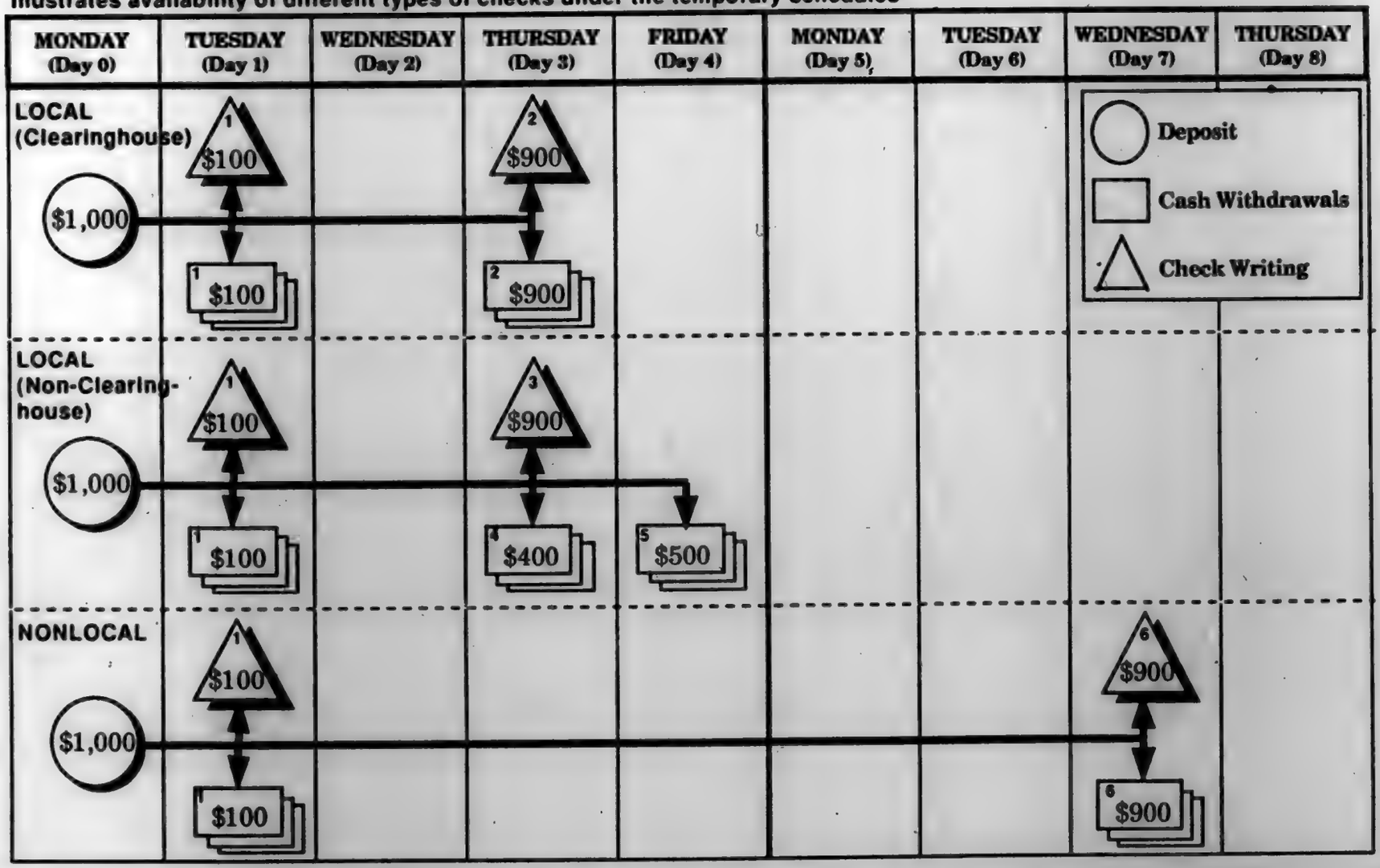

1 The first $100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).

2 For local checks cleared through a local clearinghouse, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the third business day following the day of deposit § 229.11(b)(1).

3 For local checks cleared outside a local clearinghouse, the remainder of the deposit must be made available for check writing purposes by the third business day following the day of deposit § 229.11(b)(2).

4 For local checks cleared outside a local clearinghouse, $400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This amount is in addition to the $100 that must be made available on the business day following the day of deposit § 229.11(b)(2).

5 The remainder of the deposit must be available for cash withdrawal at the start of business on the following day § 229.11(b)(2).

6 For nonlocal checks, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the seventh business day following the day of deposit § 229.11(b)(2).

Permanent Funds Availability Schedules

Figure 2

Illustrates availability of different types of checks deposited the same day, under the permanent schedules.

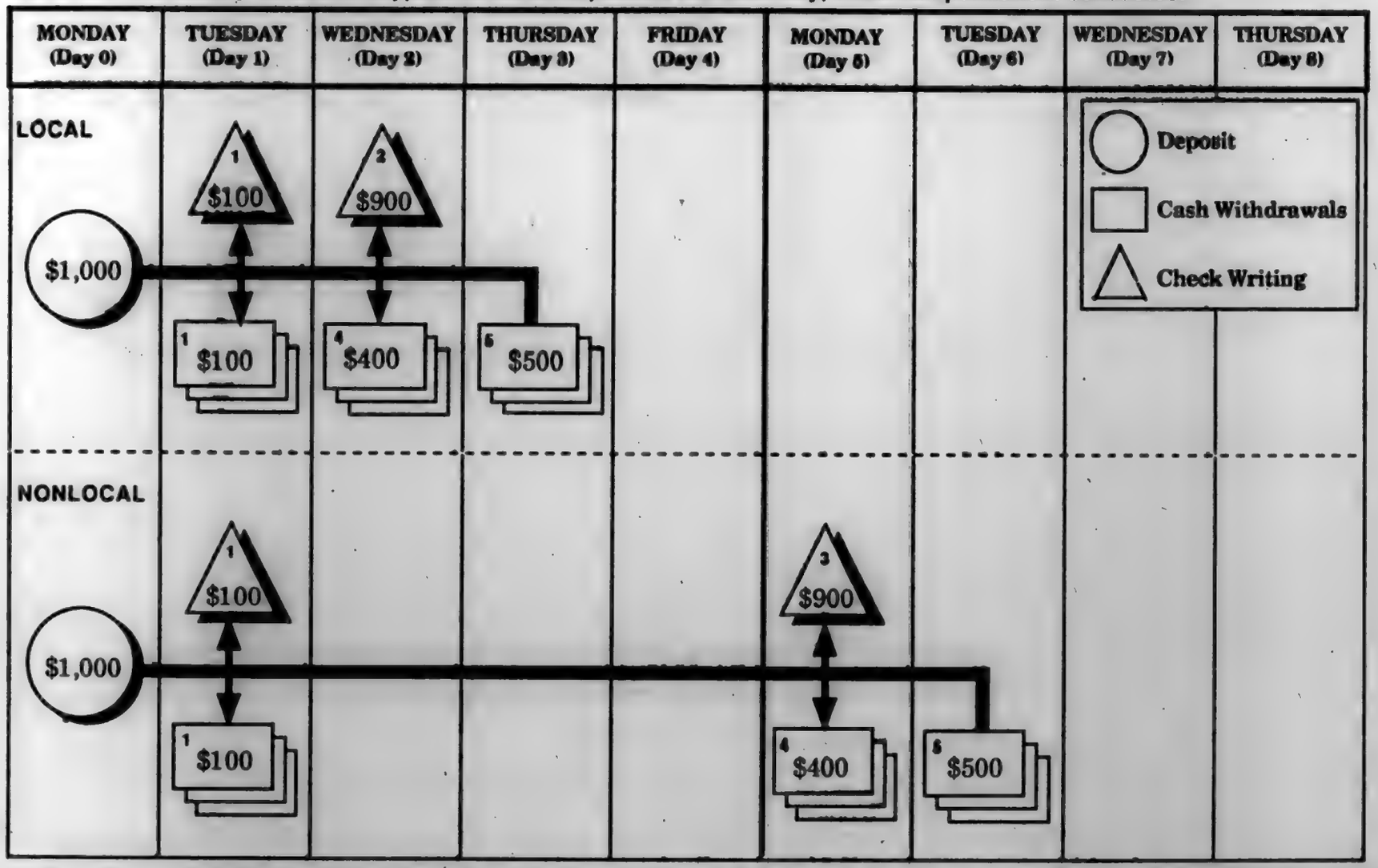

1 The first $100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).

2 Local checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).

3 Nonlocal checks must be made available for check writing purposes by the fifth business day following deposit § 229.12(c).

4 $400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the $100 that must be made available on the business day following deposit § 229.12(d).

5 The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

Permanent Funds Availability Schedules

Figure 3

Illustrates availability of different types of checks deposited on separate days, under the permanent schedule.

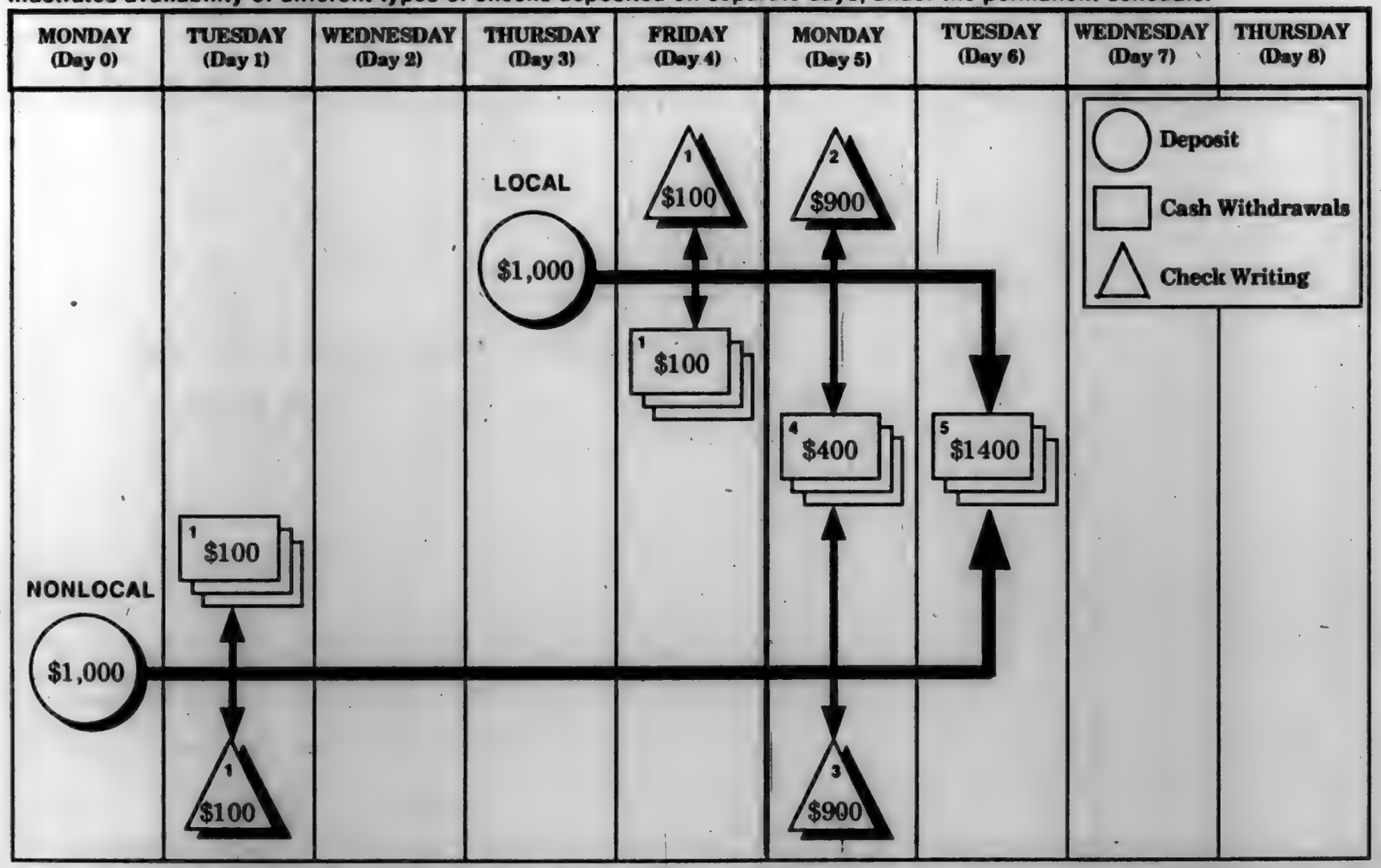

1 The first $100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).

2 Local checks must be made available for check writing purposes by the **second** business day following deposit § 229.12(b).

3 Nonlocal checks must be made available for check writing purposes by the **fifth** business day following deposit § 229.12(c).

4 $400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This applies to the aggregate amount of deposits that must be made available on a specified day, and is in addition to the $100 that must be made available on the business day following deposit § 229.12(d).

5 The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

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Subpart B also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest. The Act and regulation require banks to disclose their specific policy as to when deposited funds will be available for withdrawal to existing customers, to any person opening a new account, and to any person upon request. In addition, banks are required to disclose their availability policies in locations where consumer deposits are accepted by bank employees, and to provide reminders at ATMs and on preprinted deposit slips that deposited funds may not be available for immediate withdrawal.

Subpart C includes rules to speed the collection and return of checks. These rules cover the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check indorsement standards, and other related changes to the check collection system. The Board adopted the indorsement standard required by the regulation (Appendix D to Regulation CC) on April 4, 1988. (53 FR 11,832 (April 4, 1988).) A discussion of the impact of Subpart C on the check collection system is summarized at the end of this overview.

Significant Changes in the Final Regulation CC

The following describes the substantive differences between the proposed regulation and the final Regulation CC. Other significant issues and comments received on the regulation are highlighted later in this document.

1. Availability Schedules and Exceptions

Treasury Accounts. At the request of the Treasury, accounts held by the United States Treasury, such as Treasury General Accounts and Treasury Tax and Loan Deposit Accounts, are not subject to the availability and disclosure requirements of Subpart B of the regulation. (§ 229.2(a).)

Noncash Items. The Act and regulation exclude noncash items from the definition of check. Thus, noncash items are not subject to the funds availability requirements of the statute and regulation. A number of commenters asked the Board to clarify that accepting checks on a collection basis is permitted under the regulation, and that such checks are not subject to the regulation's availability requirements.

While the regulation does not generally authorize banks to take checks for collection as an alternative to taking them for deposit subject to the statutory schedules, it does permit certain current bank practices of taking checks for collection. For example, at the request of a customer, a bank may take a check on a collection basis, handle the check as a noncash item, and send it directly to the paying bank with special payment instructions. This practice enables a bank's customer to know whether a check is being paid or dishonored. Taking checks for collection under these circumstances is not subject to the availability schedules in the Act. (§ 229.2(u).)

Deposits of next-day checks at unstaffed facilities. The Act provides next-day availability for cash deposits and certain check deposits to accounts at a depositary bank "staffed by individuals employed by such institution." (The Act does not require, however, that Treasury checks and "on us" [8] checks be deposited at a staffed teller station in order to receive next-day availability.) The proposed regulation required that these deposits be made available on the next business day, whether or not they were deposited in person to an employee of the bank. The Board requested comment on whether this expansion of the Act's requirement would pose any operational problems.

Commenters strongly opposed this expansion of the next-day availability requirement, indicating that it would be very difficult to make funds available on a next-day basis for deposits made at automated teller machines (ATMs) and other facilities other than staffed teller stations. They stated that it is often not possible to collect and verify deposits made at unstaffed locations in time to make the funds available at the start of business on the following day. To address the operational concerns of the banks, the final regulation conditions the receipt of next-day availability to deposits (other than the deposit of Treasury checks and on us checks) "made in person to an employee of the depositary bank," in accordance with the Act. The Board believes that extending the hold on these deposits to the local and nonlocal schedules is not warranted by these operational concerns. Thus, the regulation provides that deposits that are eligible for next-day availability that do not meet this condition must be made available for withdrawal by the start of the second business day following deposit. (§ 229.10(c).)

ATM cut-off hours. In addition to the next-day availability requirements, commenters cited other provisions of the proposed regulation that would be very difficult to implement operationally with respect to accepting deposits at, and permitting withdrawals from, ATMs. Some of their concerns focused on what constitutes the start and close of a day for the purpose of ATM withdrawals and deposits. The proposed regulation enabled banks to establish a cut-off hour of 2:00 p.m. or later for deposits considered received on a given day. To provide greater flexibility in the servicing of ATMs, the final regulation allows a cut-off time as early as 12:00 noon for the receipt of deposits at ATMs and other off-premise facilities. (§ 229.19(a).)

Start of business. The regulation generally requires that funds be made available for withdrawal at the start of business on the day specified in the schedule. The proposed regulation provided that the start of business was generally the time the branch opens to the public, and, in the case of ATMs, not later than 7:00 a.m. In response to comments that customer accounts often cannot be updated with the day's opening balance by 7:00 a.m., the regulation has been modified to require a 9:00 a.m. start of business for ATM withdrawals. (§ 229.19(b).)

Notice of reasonable cause to doubt collectibility exception. The Act and regulation provide an exception to the availability schedules for instances where a depositary bank has reasonable cause to doubt whether a particular check will be collected. Commenters expressed concern regarding the manner in which the reason this exception is invoked must be disclosed, as required by the Act, if the reason relates to confidential information, such as the pending insolvency of the drawer of the check or the paying bank. The Commentary to the regulation has been expanded to provide guidance on how the bank must disclose, in the notice it provides its customer, the reason this exception has been invoked. The revised Commentary provides that in such cases, the bank may disclose to the customer that the exception is being applied based on confidential information. The bank is required to include in its records a brief statement of the facts upon which the determination to invoke this exception was based. (§ 229.13(e) and § 229.13(g).)

Cash Withdrawal Limitation. Certain banks limit the amount of cash a customer may withdraw on any day at

[8] Checks drawn on the depositary bank.

ATMs and/or staffed teller facilities. The proposed regulation did not prohibit these limitations as long as the bank's policy is applied without discrimination to all customers of the bank, is not dependent on the length of time the funds have been in the account (as long as the hold has expired), and is related to security requirements or bonding limitations of the bank. Commenters believed this policy is overly restrictive, particularly in the case of policies related to ATM cash withdrawal limits. The final regulation does not prohibit cash withdrawal limitations at ATMs if the bank's policy is not dependent on the length of time the funds have been in the account, and in the case of limits on over-the-counter cash withdrawals, is applied without discrimination to all customers, and is related to security, operating, or bonding requirements of the bank. The regulation does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law. (§ 229.19(c).)

Repeated Overdrafter. The proposal contained an exception to the availability schedules for deposits to accounts of repeated overdrafters. Commenters suggested that the proposed exception would be very difficult operationally to implement. The final rule is revised in an effort to simplify the application of this exception. The exception now defines a repeated overdrafter as a customer that overdraws its account, or bounces checks, on six or more banking days during a six-month period, or on two or more banking days during a six-month period in the amount of $5,000 or more. (§ 229.13(d).)

Time Period for Exceptions. The proposed regulation allowed a bank to extend the availability schedule by not more than four business days when it invokes an exception to the regulation's availability schedule. The final regulation allows a bank to extend the schedule by a reasonable period of time, and states that an extension of up to four business days is a reasonable period. An extension of more than four days may be reasonable, but the bank has the burden of so establishing. (§ 229.13(h).)

Relation to State Law. The Act provides that a state law supersedes federal law if it requires that funds be made available more promptly than required by federal law. Other provisions of state law that are inconsistent with the Act or regulation are preempted. This standard is broader than those of other consumer statutes, such as the Electronic Fund Transfer Act and Fair Credit Billing Act, which provide for preemption of provisions of state law that are inconsistent, "and then only to the extent of the inconsistency."

The proposed regulation included standards that would be applied to determine whether state law relating to the time funds must be available for withdrawal are inconsistent with federal law, and thus preempted. The proposal did not, however, provide standards for determining whether state disclosure requirements related to funds availability are inconsistent. The Board provided, in the regulation, that disclosures or notices concerning availability provisions of state law relating to transaction accounts are preempted by the requirements of Regulation CC. (229.20(c).)

2. Interest Accrual

Use of Fractional Availability. The Act requires that a bank begin to accrue interest on interest-bearing accounts not later than the day it receives provisional credit on the funds deposited. To facilitate compliance with this requirement, the final regulation permits a bank to begin accruing interest on check deposits based on the average availability the bank receives on such deposits on a bank-wide basis. (229.14(a).)

3. Disclosures

Case-by-Case Hold Policy. The proposed regulation required as a general rule that banks disclose their specific policy in a way that would allow customers to determine when a particular deposit would be available for withdrawal. The proposed regulation provided a simplified alternative disclosure for banks that generally make funds available on the business day following the day of deposit, and place holds only on a case-by-case basis. This proposed alternative disclosure required a bank to disclose that it usually provides next-day availability, although from time to time it may hold deposits for a longer specified time, and that if a longer hold was imposed, the customer would be notified. The proposal required that the bank furnish the notice that availability of a deposit was going to be delayed at the time the deposit was made. A bank could provide notice of the delay later, if the bank informed the customer that a hold might be placed at the time of the deposit, and then notified the customer by the end of that day if a hold was in fact going to be placed on the deposit.

Generally, the commenters favored an alternative disclosure for banks that had case-by-case hold policies. Several commenters, however, asked that the ability to use the case-by-case disclosure not be limited to banks with a policy of next-day availability. In addition, commenters objected to the timing of the notice requirement when a bank imposed a case-by-case hold. Specifically, commenters stated that a teller may not know whether a check will be held, and thus would not be able to inform the customer of the possibility of a hold at the time of the deposit. In addition, commenters stated that the requirement that the bank notify the customer of any hold on the day of the deposit was too restrictive.

The Board adopted modifications to the proposed disclosure requirements to address these concerns. The modified disclosure rule does not limit the case-by-case alternative to banks that generally give next-day availability. Instead, the rule allows any bank that generally makes funds available for withdrawal sooner than is required in the regulation to use this alternative disclosure.

A bank that extends a hold on a case-by-case basis must provide notice to its customer within the same time frames as the notice that is required when an exception to the availability schedules is invoked. Thus, a bank would be required to provide a notice at the time of deposit if the deposit is made at a staffed teller station and the decision to extend the hold is made at the time of deposit. Otherwise, the bank must mail the notice of the hold to the customer not later than the business day following the day of deposit. In addition, the final rule also parallels the requirement applicable to the reasonable cause exception by prohibiting a bank that does not provide a notice of a hold at the time of the deposit from imposing service fees or charges for overdrafts or returned checks resulting from the hold, if the check subject to the hold is in fact paid. (§ 229.16(c).)

ATM Notice. The proposed regulation contained special notice requirements for ATMs at which customers of banks other than the bank to which the ATM is proprietary are able to make deposits. The proposed notice included a requirement to identify the bank to which the ATM is proprietary. These requirements generated concerns as to consumer confusion, competitive effect, disclosure burden, and effect on state law. The final regulation eliminates the requirement to identify the bank to which an ATM is proprietary at the ATM, but a bank that extends the time period applicable to deposits at nonproprietary ATMs must explain its policy in its initial disclosure and either provide a list of proprietary or nonproprietary ATMs with that disclosure, or identify the bank's name on all proprietary ATMs. (§ 229.18(c).)

Branch Location Notice—Drive-Through Teller Windows. The Act requires that a notice of time periods applicable to the availability of funds be posted in each location where employees accept deposits. The proposed regulation required this notice to be posted in the lobby at some place where customers would be likely to see it before making their deposits, and required that the notice also be posted at any drive-through teller windows. Commenters noted the practical problems the drive-through requirement would generate and the fact that the Act itself is silent on the matter. The requirement that this notice be posted at drive-through teller windows has been eliminated in the final regulation. (§ 229.18(b).)

Change in Terms Notice. The proposed regulation required that notices of changes in availability policy be sent to all customers. The final regulation limits this requirement to consumer accounts, consistent with the statutory requirement. In addition, the Commentary provides that banks are not required to send a change in terms notice if the Board revises Appendix B, which lists the routing numbers of certain nonlocal checks that are subject to prompter availability than the nonlocal schedule. (§ 229.18(e).)

4. Check Return Rules

Standards for expeditious return. The proposed regulation required paying and returning banks to return checks expeditiously, using the forward collection process as the standard for expeditious return. A number of commenters stated that this standard was uncertain, particularly in comparison to the current midnight deadline rule, and expressed concern that litigation in this area may increase as a result. These commenters asked that a more definitive standard for expeditious return be provided.

The forward collection standard, rather than a specific number of days for return, was proposed as the standard for expeditious return to facilitate compliance for banks, particularly country banks or banks returning checks to country banks, that require a longer period of time to return checks to a depositary bank. In order to respond to commenters, concerns, the final regulation contains a second test of what constitutes expeditious return by a paying or returning bank. Under this second test, a bank satisfies its return requirements if it returns a check so that the check would normally be received by the depositary bank within two days after the check is presented in the case of a local paying bank or four days after the check is presented in the case of a nonlocal paying bank with respect to the depositary bank. If a check is not received within these time frames, the return would still be expeditious if the return process met the forward collection standard. The Board believes that the combination of these rules will speed the return of checks so that the majority of checks can be collected and returned within the temporary statutory availability schedules. At the same time, it provides a workable standard that can be implemented by paying banks and correspondent banks offering check return services. (§§ 229.30(a) and 229.31(a).)

Expeditious Return—Notice Option. Under the proposed regulation, a bank could fulfill its responsibilities to return checks expeditiously by providing a notice of nonpayment expeditiously, with the check returned in a slower manner. Commenters opposed this notice alternative, stating that notices are often inaccurate, and consequently the depositary bank often cannot charge back the customer's account with confidence based on a notice. Commenters did not believe that this notice alternative was warranted, and stated that the paying bank should be required to return the check itself in an expeditious manner. The final regulation eliminates notice as an option for meeting the duty of expeditious return. (§ 229.30(a).)

Unidentifiable Depositary Bank. The proposed regulation permitted a paying or returning bank to send a returned check to a bank that handled that check for forward collection, even if the collecting bank does not agree to act as a returning bank. In response to comments that it was unreasonable to impose expeditious return requirements on banks that did not hold themselves out as returning banks, the final regulation limits this option for return to cases where the paying or returning bank is unable to identify the depositary bank with respect to a returned check. In these cases, the bank may send the check to a bank that handled the check for forward collection, if the bank advises the collecting bank that it is unable to identify the depositary bank. Checks that must be returned in this manner are not subject to the expeditious return requirements. (§§ 229.30(b) and 229.31(b).)

Notice in Lieu of Return. If a check is unavailable for return, a paying or returning bank can send in its place a notice in lieu of return. The depositary bank must treat this notice as it would a returned check. The proposed regulation permitted electronic notices in lieu of return. Commenters stated that allowance for electronic notices in lieu would entail significant accounting and reconcilement problems. The final regulation requires a notice in lieu of return be in the form of a copy of the returned check, and if no such copy is available, a written notice. (§§ 229.30(f) and 229.31(f).)

Midnight deadline extension for checks of $100 or less. One of the objectives of the proposed regulation was to reduce the volume of checks that are returned. Over one-half of all returned checks are in amounts of $100 or less. Many of these returns are automatically redeposited, and over 60 percent are paid on the second presentment. To eliminate many of these returns entirely, the proposed regulation allowed the paying bank to hold checks of $100 or less for an additional two business days beyond its midnight deadline in an effort to secure payment.

Most of the respondents that commented on this provision opposed its inclusion in the final regulation. Banks asserted that this practice would create accounting and reconcilement problems, as well as the customer relations problems arising from the imposition of returned check charges. Banks also argued that unlike an automatic redeposit service, where the depositary bank makes the decision to redeposit the check and incur the risk that the check may be returned a second time, this provision placed the decision to hold the checks an additional two days on the paying bank, although the risks remain with the depositary bank or its customer. Very few commenters indicated that they would use this optional authority. Therefore, the Board has deleted from the final regulation the provision to hold low-dollar checks an additional two business days, in an effort to obtain payment.

Notice of Nonpayment. Notice of large-dollar returns is now required only for those checks collected through the Federal Reserve. The proposal expanded this requirement to all checks of $2,500 or more, regardless of the channel through which they were cleared, and reduced the time within which notice must be received by the depositary bank. Commenters generally supported this requirement, but recommended several modifications. A number of technical changes have been made to the final regulation. These include changes that address cases in which the paying bank cannot determine with reasonable certainty from the check all of the required information for

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the notice, as well as locations at which depositary banks must accept notices of nonpayment. The final regulation also addresses the depositary bank's duty to notify its customer that a check is being returned, and the paying bank's responsibility for giving notice of nonpayment and subsequently returning the check. (§§ 229.33 and 229.34(b).)

Indorsements. The final regulation includes indorsement standards and rules for depositary banks, subsequent collecting banks, and returning banks. The Board approved these indorsement standards on April 4, 1988. One subsequent modification to the indorsement standard was made to eliminate the requirement that the depositary bank indorsement avoid the MICR clear band along the bottom of the check. (§ 229.35(a); Appendix D.)

Inquiry to Paying Bank. To address the concerns of the banking industry regarding the risks inherent in providing next-day availability for cashier's, certified, and teller's checks, the proposed regulation included a duty on the paying bank to respond to inquiries regarding the authenticity of official checks that it issued. The final regulation eliminates this requirement, due to operational difficulties noted by the commenters.

Liability—Responsibility for Back of the Check. The final regulation defines the liability of the paying and depositary bank for untimely returns due to unreadable indorsements caused by material on the back of the check. The paying bank is responsible for the condition of the back of the check when it is issued. Thus, an unreadable indorsement due to a carbon band, printed contract, or other material on the back of the check at the time it is issued is the responsibility of the paying bank. The depositary bank is responsible for the condition of the check after issuance and before acceptance by the depositary bank, such as indorsements or other stamps placed on the check by its customer or a prior indorser. (§ 229.38(d).)

Liability—Bona Fide Errors. Under the proposed regulation, a bank would not be liable for a violation of the return rules of Subpart C if the violation were due to a bona fide error. The liability standard in the final regulation provides that a bank is required to exercise ordinary care and act in good faith, without the shield of the bona fide errors provision. The bona fide errors shield is not necessary, as the standards for negligence liability incorporate the purpose of the bona fide error provision. (§ 229.38(a).)

Exclusions. Under the proposed regulation, U.S. Postal Service money orders, checks drawn on the account of the U.S. Treasury, and checks indorsed by, or for credit to, the Treasury, were excluded from the expeditious return requirements of Subpart C. At the request of the Treasury, the final regulation eliminates the exclusion for checks indorsed by, or for credit to, the Treasury. The final regulation also excludes checks drawn on a state or local government from the expeditious return requirement. (§ 229.42.)

Variation by Agreement. A number of commenters asked that banks be explicitly permitted to vary the requirements of the regulation by agreement, as is permitted under the Uniform Commercial Code. There are a number of situations where an allowance for variation by agreement would be useful. For example, a depositary bank may wish to limit its liability to its depositor, or a paying bank to its customer, for late return due to material on the back of the check by the depositor or customer that obscures the depositary bank's indorsement. The final regulation permits variation by agreement for the provisions of Subpart C check return rules. Persons that are not party to the agreement, however, are not bound by the variations of the regulation's requirements. Banks are not authorized to vary the requirements of the funds availability and disclosure requirements of Subpart B by agreement. (§ 229.37.)

Transition Rule for Merged/Acquired Banks. Commenters stated that it would be extremely difficult to comply with certain requirements of the regulation for a period of time following a merger or acquisition of a bank. These difficulties arise from having to treat the banks that have merged as one entity, before the operations of the banks have been consolidated. New provisions have been added to the regulation to provide a one-year transition period for merged/acquired banks, during which they may be treated as separate banks for certain purposes. (§§ 229.19(g) and 229.40.)

Federal Reserve Bank Services (Docket No. R–0621)

Returned check services. The Board has adopted new Federal Reserve Bank returned check services designed to facilitate bank compliance with the regulatory requirements to return checks expeditiously, effective September 1, 1988. These services were published for public comment in December 1987. (52 FR 47,171 (Dec. 11, 1987).) Under the new services, Federal Reserve Banks will accept and process any returned check, and return the check directly to the local depositary bank or a processing center designated by the depositary bank, bypassing any intermediary collecting banks in the indorsement chain. Direct return of checks will reduce the time required to return checks to the depositary bank. In contrast, today a Federal Reserve Bank only accepts and processes returned checks that it collected, and returns each check to the bank that deposited the check with the Reserve Bank for forward collection.

Reserve Banks will also accelerate their processing of returned checks. Beginning September 1, 1988, local returns will be processed on an overnight basis and dispatched with the forward collection checks the next morning. Nonlocal returns will be prepared for high-speed processing ("qualified") by the first Federal Reserve office and dispatched to the second Federal Reserve office the following night. The Federal Reserve offices will also accept returned checks that have been qualified by the paying bank or prior returning bank, and dispatch them as quickly as forward collection checks. Today, local returns are processed during the day, and dispatched one day later. Moreover, nonlocal returns are processed manually by two Reserve Bank offices, adding an extra day to the return process.

With the introduction of new returned check services, returns will be priced explicitly, with the returned check fees assessed on the paying or returning bank depositing returns with the Federal Reserve Bank. Forward collection fees will be reduced due to the elimination of the return cost component. Currently, the Federal Reserve does not explicitly price returned checks; instead, the costs of handling returns are incorporated in the Reserve Banks' forward collection fees. Reserve Banks will also offer a same-day notification service for all large-dollar returned checks. Beginning on January 1, 1989, any depositary bank that has an on-line electronic connection with funds transfer capabilities with the Federal Reserve must receive large-dollar notices of nonpayment electronically.

The Board has approved additional 1988 expenditures to implement the new returned check service offerings, not to exceed $15,000,000 in capital expenditures and $15,000,000 in operating expenditures. The costs of providing these services will be recovered by the Reserve Banks through the fees assessed for the services.

Truncation and extended MICR capture services. As part of the December 1987 package, the Board proposed to make the truncation service being piloted by six Reserve Banks a permanent service that could be offered

by all Reserve Banks. In truncation, the MICR-line information on the check is captured and presented to the paying bank electronically, while the paper checks are retained by the presenting bank. Although initially Reserve Banks would provide a truncation service to paying banks who request this service on a local basis only, eventually the Federal Reserve System intends to provide a national interbank truncation service; that is, truncation at the first Federal Reserve Bank to receive the check. Private sector service providers would be able to participate in a nationwide network under the rules of the National Association for Check Safekeeping (NACS). One Reserve Bank is now engaged in interbank truncation on a pilot basis, under the NACS rules.

The benefits of truncation include expeditious check processing and return and a reduction in the number of times the paper check is handled. The benefits of truncation will increase as checks are truncated earlier in the collection process. The Board also requested comment on a proposed service that offers many of the same benefits of truncation without stopping the flow of the paper check—the extended MICR capture service. Under this service, which has also been provided on a pilot program basis, Reserve Banks would deliver payment information by electronic transmission or magnetic tape, provide returned check and retrieval service, and deliver the checks to the paying bank several days later using less time-critical transportation.

The Board approved an expansion of the Federal Reserve's truncation and extended MICR capture pilot programs to permanent services for all Federal Reserve offices, effective July 15, 1988. (See Docket R–0621, published elsewhere in today's Federal Register, for additional information on truncation and extended MICR capture services.)

Effect of the Proposal

Cost effect. The requirements of the Act and regulation will result in several benefits to the public. Transaction account customers will be given specific information on when funds will be made available for withdrawal, which should help them better manage their accounts. In addition, many customers will gain earlier access to their funds.

A number of commenters indicated, however, that the overall costs to the banking industry to implement the availability and disclosure requirements will be quite significant. For many banks, these requirements will result in higher operating expenses and lost investment income due to earlier withdrawal of collected balances. There is also a potential for increases in bad check losses that may result from the availability requirements. In particular, the commenters stated that banks will be exposed to an unacceptable level of risk from the requirement that certain check deposits, such as cashier's checks and certified checks, be made available for withdrawal at the start of the next business day following deposit, regardless of the amount. The next day availability of these checks, however, is a requirement of the Act.

While the improvements to the check return system provided in Subpart C of the regulation may increase costs to the banking industry in the short term as banks adjust to the new processing environment, these initiatives may result in a reduction of the overall cost of processing returns in the long run. Returns will be received by the depositary bank more quickly than they are today, reducing the bank's risk from providing prompt availability of funds to its customers. Returned checks will be handled by a smaller number of intermediary banks, due to the direct return provisions in the regulation. The availability and disclosure requirements may result in a reduction in the number of returns, because funds may be available for withdrawal sooner, and customers would know more precisely when they may withdraw funds from their accounts. Most importantly, the new indorsement standard should facilitate the more efficient processing of returns by making the depositary bank more readily identifiable. Future enhancements to the indorsement standard would allow all parties in the check collection system to automate their return processing completely, thus further lowering costs.

Competitive Effect. An important factor considered in the development of the regulatory framework for expedited returns and related Reserve Bank services was the effect on competition in the check collection system. In this regard, the Board requested comment on whether there are any returned check services or other procedural changes for returning banks that the Federal Reserve did not propose that might assist the returning bank in providing returned check services.

Commenters' primary concerns with the implementation of the proposed Federal Reserve services centered around the potential for the Federal Reserve to become the predominant provider of returned check services, given the availability schedules and deadlines that will be provided by the Federal Reserve Banks. Several commenters urged that the Federal Reserve delay offering returned check services or, at a minimum, delay unbundling returned check costs from forward collection prices until correspondent banks and other interested parties could develop their own returned check products and get some experience with the market pricing mechanism. There were also comments suggesting that the Federal Reserve has an unfair competitive advantage due to its role as regulator and service provider, and its lower price structure, due, in part, to the fact that the Federal Reserve does not incur certain costs, such as presentment fees, that the private sector must pay.

The Board implemented the requirements in Subpart C of Regulation CC to improve the check return process effective September 1, 1988, in conjunction with the effective date of the funds availability and disclosure requirements mandated by the Act. Industry representatives indicated that implementation of these improvements concurrent with the effective date of the funds availability requirements is important to minimize risks to the depositary bank from making funds available on a more prompt basis.

To enable banks to comply with these requirements, the Federal Reserve Banks will begin offering returned check services that would meet the requirements in the Act on September 1, 1988. Handling of returned checks by the Federal Reserve must be explicitly priced with the introduction of these new services, since return costs cannot be recovered through the Federal Reserve Banks' forward collection fees as they are today. Some returned checks handled by the Federal Reserve under the new services will not have been collected through the Federal Reserve, and thus will not have been subject to the Federal Reserve's forward collection fees. In addition, paying banks and returning banks will be able to deposit returned checks with the Federal Reserve in various ways that result in different costs being incurred by the Reserve Banks. To provide correspondent banks with as much advance notice as possible in order to develop competing returned check services, the Board published, on April 4, 1988, estimated price ranges and deadlines for the new Federal Reserve returned check services. It is the Board's belief that the proposed services meet the standards that the Federal Reserve has established for priced services, as they will recover costs; yield clear public benefits by speeding the handling of returned checks; and because initially, adequate returned check

services are unlikely to be provided by the private sector.

Educational Efforts

During the public comment period, Federal Reserve Banks conducted over 220 seminars throughout the country to explain the requirements of the proposed regulation, and better prepare the public to comment on the Board's proposals. Approximately 17,500 participants attended these seminars, representing over 9,000 depository institutions. The Federal Reserve Banks plan to conduct additional seminars in June, to assist the industry in preparing for the regulatory and operational changes to be effective on September 1. In addition, Federal Reserve staff is working closely with various industry groups with similar seminars they plan to offer their constituencies.

Effect of the New Return Rules on the Check Collection System

The following is an explanation of the current process for returning checks and a description of the responsibilities of paying, returning, and depositary banks now and in the future, under the check return requirements of Regulation CC. This overview should assist the reader in better understanding the effect of the proposed changes to expedite the return of checks on paying banks, returning banks, and depositary banks.

In contrast to the forward collection process, the returned check process is a slow, relatively labor intensive, and costly operation. A study prepared for the Bank Administration Institute concluded that, while the forward collection process takes an average 1.6 days to complete, the return process takes an average of 5.2 days. (*Return Items Study, Final Report*, prepared for the Bank Administration Institute by J.D. Carreker and Associates, Inc. (May 1985), "BAI Study.") The BAI study found that, during the return process, the average returned check is handled by 3.4 banks: the paying bank, an average of 1.4 returning banks, and the depositary bank. Even though less than one percent (the study estimated 0.86 percent) of all checks are returned, the absolute volume of returns (the study estimated 350 million annually) is relatively large.

The BAI Study found that approximately 40 percent of returned checks take seven days or longer to complete the collection and return cycle and 15 percent take 10 days or longer. Under the temporary schedules, the proceeds of local checks must be available for withdrawal on or before the third business day after deposit and the proceeds of nonlocal checks must be available for withdrawal on or before the seventh business day after deposit. Under the permanent schedule, proceeds of local checks must be available for withdrawal on or before the second business day after deposit and proceeds of nonlocal checks must be available for withdrawal on or before the fifth business day after deposit. Approximately one-third of the checks handled by the Federal Reserve Banks would be considered nonlocal under the Act.

Both correspondent banks and Federal Reserve offices frequently act as returning banks between the paying and depositary banks in the return process. Correspondent banks may route forward collection checks for payment either through the Federal Reserve or through private channels. Thus, the return process currently may include one or more correspondents and the Federal Reserve before the returned check reaches the depositary bank. The more intermediate processing steps a returned check must pass through on its route to the depositary bank, the greater the probability that additional time will be necessary to complete the process.

Many checks are collected through local clearing arrangements, clearinghouses, and direct exchange arrangements. Such arrangements consist of two or more banks agreeing to exchange checks drawn on each other. There are many such arrangements, and they are a very efficient and fast means of collecting and returning certain checks. The returned check processes of local clearinghouses should be largely unaffected by the Board's proposals, although the individual participants are subject to the provisions of the Act.

The Paying Bank

Current. Today, the paying bank's principal duty when returning a check is to assure timely dispatch of the check back to the presenting bank. The U.C.C. and the Federal Reserve's Regulation J specify that the paying bank must dispatch a check it has determined not to pay by midnight of the banking day following the day the paying bank received the check for payment (the "midnight deadline"). This obligation may be satisfied by dispatching the returned check by courier or by mail. The return of checks presented for payment through clearinghouses is usually subject to the rules of the clearinghouse and these checks are dispatched accordingly.

Typically, paying banks receive checks for payment throughout the day: from correspondents, the Federal Reserve, or through a clearinghouse. Checks received on a Monday, for example, would be posted to customers' accounts on Monday night and any checks that are not to be paid (due to insufficient funds, account closed, etc.) are rejected from the system and reports are prepared for management review. The actual decision to return a check can be made automatically as a matter of bank policy or following review by management on Tuesday. The checks to be returned are then sent by courier with the bank's forward collection checks, by mail or courier to other collecting banks, or by messenger to the clearinghouse. The return process in this example must begin by midnight Tuesday to conform to the U.C.C. Because the return process must begin by midnight, many paying banks return checks by mail when a courier leaving after midnight would be faster. If a check to be returned was presented by the Federal Reserve and is for $2,500 or more, the paying bank is also obligated to provide notice of return to the depositary bank by midnight of the third banking day following receipt (Thursday in this example). Receipt of the physical check by the depositary bank within this time frame would fulfill this notification requirement.

Many paying banks currently receive checks from more than one collecting bank and, therefore, dispatch returned checks to each of those banks. If the paying bank does not deposit checks for collection with the bank to which it is returning checks, these checks are usually returned through the mail. In some cases, mail is also used by paying banks to transport returns to the bank to which it sends its forward collection checks in order to ensure compliance with the midnight deadline. The paying bank currently has little incentive to make an effort to speed the return process and is generally not concerned about the return process after a returned check has been dispatched timely.

New return rules. A major impetus for change in the role of the paying bank will be the responsibility placed on the paying bank by § 229.30 of the regulation. This section states that the return process must be accomplished in an "expeditious manner," thus providing the incentive to the paying bank to take steps to speed the flow of returned checks. Under this new duty, the paying bank must dispatch returned checks with the same speed and diligence that it would dispatch forward collection checks received for deposit by noon on the banking day after the day of presentment of the returned check. This means that a check presented to the paying bank on Monday that is not paid must be dispatched as quickly as a

check deposited in that bank on Tuesday morning that is drawn on the depositary bank. A paying bank also returns a check expeditiously under the new rules if it returns a local check to the depositary bank within two business days following presentment, or a nonlocal check within four business days following presentment. The Federal Reserve will provide new deadlines for deposit of returned checks and other new or enhanced services, to assist paying banks in meeting the regulation's new duties.

Some of the changes in the return process from the perspective of the paying bank will be:

1. In many cases, paying banks will dispatch returns by the same manner, and at the same time, as they send forward collection checks. This will usually mean that returns will be sent via courier rather than mail. The paying bank will be required to meet the deposit deadlines and sorting requirements set by any returning bank to which the returned check is sent.

2. Additional options will be available to send returns. Returns would not be required to follow the indorsement chain through which the check was originally collected. This means that the paying bank could return all checks to a single returning bank rather than sending them to multiple presenting banks. Paying banks could return checks to the depositary bank or to a bank agreeing to process returns, including the Federal Reserve. If the paying bank cannot identify the depositary bank from the indorsement, it may find it necessary to send that returned check back to the presenting bank. The Federal Reserve would accept returned checks from all paying banks and explicitly charge for this service. Other returning banks are likely to establish similar services.

3. Paying banks will have the option to prepare a returned check for automated processing by high-speed equipment. This option will be used only when the paying bank is sending the returned check to a returning bank. The bank can produce a "qualified returned check" (QRC) by enclosing a returned check in a carrier envelope or attaching a strip to the bottom of the check, and encoding the carrier or strip with the nine-digit routing number of the depositary bank, a special returned check identifier, and the amount of the check. By creating QRCs, the paying bank facilitates expeditious return of the check to the depositary bank. Preparation of QRCs by paying banks also reduces the cost of the overall return process because returning banks will be able to handle these checks more efficiently. To encourage paying banks to prepare QRCs, the Federal Reserve will provide later deposit deadlines at lower prices for QRCs than for returned checks that are not qualified. The Board believes that correspondent banks will adopt a similar strategy.

4. Paying banks will be required to provide notice of nonpayment on all returned checks of $2,500 or more, regardless of the channel of collection, at an earlier time than required today. Notices will have to be received by the depositary bank by 4:00 p.m. (local time) on the second business day following presentment of a check to the paying bank. This means that if a decision is made to return a check of $2,500 or more that was presented on Monday, the paying bank must ensure that the notice is received by the depositary bank no later than 4:00 p.m. Wednesday. The Federal Reserve will provide timely notice to the depositary bank provided that the message is originated by Fedwire by noon on the due date or that the physical returned check or a telephone message is given to the Federal Reserve by 9:00 a.m. on the due date.

Returning Banks, Including Federal Reserve Banks

Current. Returning banks currently receive returned checks from paying banks and from other returning banks, and subsequently send those returned checks to depositary banks and to other returning banks. Banks that act as collecting banks during the forward collection process also act as returning banks during the return process. Generally, a returning bank receives a returned check from the bank to which it sent the check for collection or payment. The returning bank then sends the returned check to its prior indorser. In sending the returns to its prior indorser, returning banks are under a duty similar to the duty applicable to paying banks to dispatch returned checks by the midnight deadline. One of the advantages to the practice of returning through the indorsement chain is that parties in the return process have established account relationships that were used during the forward collection process. The payment for the returned check is typically a reversal of the payment made during the forward collection process.

The Federal Reserve functions as a returning bank in the current return process only for checks that it handled in the forward collection process. The Federal Reserve receives returned checks from paying banks and sends them to depositary banks and other returning banks. Approximately 43 percent of the returns currently handled by the Federal Reserve are sent to correspondent banks acting as returning banks. In some Federal Reserve regions, where correspondent banking is particularly active, the Federal Reserve office currently sends well over 50 percent of the returns it handles to correspondents in their role as returning banks.

New return rules. Under the regulation, returning banks will be held to a standard similar to paying banks. That is, returning banks must handle returned checks in an "expeditious manner," i.e., returned checks must be processed and dispatched in the same general manner as forward collection checks or returned to the depositary bank within the two day/four day time period established for paying banks. This means that returning banks must process returned checks in a much shorter time frame than is typical today.

Federal Reserve Banks will establish new deposit deadlines for returned checks that closely parallel those for forward collection checks. It is expected that other returning banks will also establish new deposit deadlines for returned checks. While these deadlines need not be the same as for checks received for forward collection, returning banks may wish to establish these deadlines so as to permit paying or other returning banks to send returned checks to them on the same courier as forward collection checks. Returning banks may return a check directly to the depositary bank or to another returning bank as long as the route chosen for the return is expeditious.

Returning banks would have the option, but not be required, to convert returns to QRCs. If a returning bank chooses to prepare a QRC, it may take a day to do so beyond the time when the check would otherwise have been dispatched. An extra day is not available when returning directly to the depositary bank, because preparation of a QRC would not speed the return of such checks.

It is anticipated that one of the most significant changes in the return processing system for non-Federal Reserve returning banks will be the effect of the Federal Reserve's direct return policy. Federal Reserve offices will no longer send returned checks to other non-Federal Reserve returning banks. This potential shift in volume (about 43 percent of current Federal Reserve return volume) could significantly reduce the number of returned checks that are handled by these returning banks.

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The Depositary Bank

Current. The depositary bank receives returned checks from both paying and returning banks. Generally, a returned check is received from the bank used by the depositary bank for forward collection. Depositary banks also receive notices of nonpayment on checks of $2,500 or more collected through the Federal Reserve.

New return rules. The depositary bank's requirement to place a standard indorsement on the check is critical to improvements in the return process. By following the new indorsement standard and imprinting a complete, legible indorsement on the check, the depositary bank will greatly assist paying and returning banks in identifying the depositary bank and, therefore, in processing the return promptly. To comply with the standard, most depositary banks will need to replace their current indorsement plates. Some banks may want to work with corporate customers that encode checks prior to deposit to have the corporate customer place the depositary bank's indorsement on the check according to the new standard. Some small depositary banks may want to arrange with their correspondent to have the correspondent place its indorsement on the check as the depositary bank endorsement. Failure to follow the indorsement standard may increase the risk of loss to the depositary bank because paying and returning banks may be relieved of liability for delay in return if the delay is due to a nonstandard indorsement.

Depositary banks may receive returns from returning banks with which the depositary bank currently does not have a forward check collection relationship. Many depositary banks will, for the first time, begin receiving returned checks directly from the Federal Reserve. If the depositary bank requests courier delivery of its returned checks at a location where the Federal Reserve does not currently provide courier service, the depositary bank may be charged for the transportation.

Some depositary banks that currently are charged by a returning bank for returned checks will begin receiving returned checks without a per item charge. Depositary banks must pay, in same-day funds, for returned checks on the day the checks are received. If paying banks and returning banks that return checks directly do not wish to receive same-day payment by wire transfer, cash, or Federal Reserve net settlement, or if the paying or returning bank does not maintain an account relationship with the depositary bank, the banks may agree as to the form of payment. The form of payment may be a check or an ACH payment.

Depositary banks that have an electronic connection with the Federal Reserve with funds transfer capability will have to receive notices of nonpayment electronically after January 1, 1989.

Under the new check return rules, depositary banks will receive returned checks and notices of nonpayment earlier than they do today, and will receive notices of nonpayment on all large-dollar returned checks, instead of only those checks which were collected through the Federal Reserve.

Future regulatory initiatives. The rules contained in Subpart C of the regulation will significantly improve the check return process. Under the temporary schedule, these rules will facilitate the return of most checks before the time the depositary bank must make funds available for withdrawal. A significant percentage of checks will not be returned to the depositary bank before the time funds must be made available, however, under the permanent availability schedule, which takes effect in 1990. The Board will review whether further modifications to the check return rules should be proposed, providing for an even more expeditious return of checks, after assessing the effect of the new requirements on the check return system.

Changes to the forward collection process are also being considered. On April 4, 1988, the Board requested public comment on whether a paying bank should be required to pay checks presented before its cut-off hour, on the day of presentment and without the imposition of presentment fees. This proposal has the potential to speed the collection of some checks. In December 1987, the Board requested comment on actions the Board should take to limit certain delayed disbursement practices. The Board will consider specific proposals to limit the delayed disbursement of "official" checks in the near future.

Section-by-Section Analysis

The Board received 940 comment letters on Docket No. R-0620, a proposed regulation (Regulation CC, 12 CFR Part 229) to clarify the provisions of the Expedited Funds Availability Act, to provide detailed rules to facilitate compliance with the availability and disclosure requirements, and to make several substantive changes to the current law on the collection of checks and the Board's current Regulation J (12 CFR Part 210) to encourage faster return of unpaid checks, thus minimizing the losses that could result from compliance with the availability schedules.

The comments to Docket No. R-0621 (proposed new Federal Reserve Bank Services) will be summarized in a separate document.

The following list shows the 940 commenters by category:

Category of commenter	Number of comments
Commercial banks	573
Savings and loan institutions	107
Credit unions	49
Bank holding companies	52
Trade associations	36
Clearinghouses	13
Corporations (banking-related business)	69
Corporations (other)	8
Consumer groups	1
Individuals	6
Federal government	4
State government	5
Federal Home Loan Banks	10
Other (legal, educational community)	7
	940

The following list shows the 940 commenters by Federal Reserve District:

Federal Reserve District	Number of commenters
1. Boston	21
2. New York	60
3. Philadelphia	25
4. Cleveland	59
5. Richmond	74
6. Atlanta	82
7. Chicago	207
8. St. Louis	34
9. Minneapolis	32
10. Kansas City	75
11. Dallas	129
12. San Francisco	142
	940

A number of comment letters from members of the same trade association or subsidiaries of the same holding company were identical. A group of 47 commercial banks who are members of the Independent Bankers Association of America sent identical letters. Thirty commercial banks affiliated with the holding company MCorp sent identical letters, as did 23 commercial banks affiliated with First Republic Bank Corp.

Section 229.2 Definitions.

"ACCOUNT"

The proposed rule defined "account" as a deposit as defined in 12 CFR 204.2(a)(1)(i) that is a transaction account as described in 12 CFR 204.2(e). The definition briefly described such accounts and gave examples, such as a demand deposit account, a negotiable order of withdrawal account, a share draft account, an automatic transfer account, and any other transaction account that is not a time or savings deposit under 12 CFR Part 204. The definition of "account" excluded accounts where the account holder is a bank.

The Board received 28 comments on the definition of "account." Seven commenters supported the definition as it appeared in the proposal. Seven commenters requested that business accounts be excluded because corporate customers can already bargain for availability. Six commenters opposed the exclusion of interbank accounts because such an exclusion would be unfair to banks that use correspondents and would limit the ability of depositary banks to manage funds.

Section 602(1) of the Act states that the term "account" means "a demand deposit account or other similar transaction account at a depository institution." The Board believes that this term is intended to include both consumer and corporate accounts.

As for interbank accounts, most banks generally give better availability to checks deposited in accounts held by other banks than that required in the schedules, with the exception of next-day availability checks. Furthermore, banks should be familiar with the requirements of the Act and therefore do not need disclosures. To require disclosures to account-holding banks would be difficult because a depositary bank may modify its collection schedules for transit checks on a fairly frequent basis. In addition, the Act would be difficult to apply to interbank accounts in certain situations. For example, nonlocal cashier's, certified, and teller's checks generally would not be deposited into interbank accounts with special deposit slips, which the correspondent could require under the regulation as a condition for giving next-day availability. For these reasons, the final regulation excludes interbank accounts from the definition of "account."

The commenters also raised other issues concerning the definition of "account." Four commenters requested that the regulation set out the CFR definitions of "deposit" and "transaction account" rather than refer to them. The final regulation clarifies the definition of "account" with a description and examples. The Board did not set out the CFR definitions as well because to do so would lengthen the regulation unnecessarily.

One commercial bank requested that the availability schedules extend to money market deposit accounts, which are not transaction accounts under the Board's Regulation D. The final regulation continues to exclude nontransaction accounts, such as money market deposit accounts, because of the Act's limiting language in section 602(1), which refers to transaction accounts held by depository institutions.

Two commenters raised questions concerning the "account" definition. A commercial bank asked whether the definition included accounts in savings and loan institutions used to deposit transit items. Such accounts are interbank accounts and are excluded from coverage. A savings and loan institution asked whether the definition included a savings account from which funds are automatically transferred to cover overdrafts in a NOW account. Such automatic transfer or "ATS" accounts are included in 12 CFR 204.2(e) as transaction accounts and therefore would be accounts under this regulation.

The definition in the final regulation also excludes accounts held by the Treasury of the United States as well as accounts of foreign offices of domestic and foreign banks. The Board does not believe that the Congress intended the Act to apply to U.S. Treasury accounts and has therefore excluded them from the definition of "account" with the consent of the U.S. Treasury. The language of the Commentary has been revised to clarify that, for purposes of Subpart C, the definition applies to accounts maintained by certain nondepository institutions including Federal Reserve Banks, Federal Home Loan Banks, and private banks, and to make other clarifications.

"AUTOMATED TELLER MACHINE" ("ATM")

The proposed rule defined "automated teller machine" or "ATM" as an electronic or mechanical device at which a natural person may make deposits by cash or check to accounts and perform other transactions.

One commercial bank suggested that the definition of "ATM" specifically define "natural person" to include corporations and partnerships. This change is not necessary because "natural person" as used in the ATM definition refers to the person who performs functions at the machine, not the account-holding entity.

Two commenters asked that the ATM definition be revised to explicitly state that an ATM does not include night depositories or any device that does not accept deposits, such as a cash dispenser. The proposed definition clearly excludes cash dispensers in that it defines ATM as any device that accepts deposits and performs other functions. These facilities are not intended to be included under the definition of ATM. The Board has clarified the definition to provide that only electronic, and not mechanical, devices are considered ATMs. The Commentary notes that night depositories and cash dispensers are not considered ATMs.

In addition, the final regulation changed the provision that an ATM is a device at which a natural person may "make deposits by cash or checks to accounts" to provide that an ATM is a device at which a natural person may "make deposits to an account by cash or check."

"AVAILABLE FOR WITHDRAWAL"

The proposed regulation defined "available for withdrawal" with respect to funds deposited as any use generally permitted to the depositor for actually and finally collected funds under the bank's account agreement and policies, such as for payment of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

The Board received six letters commenting on the definition of "available for withdrawal." One commenter objected to the definition in general terms, and one suggested that the time funds are available for withdrawal should be the time data on the deposit are available for processing. The Board has retained the definition of "available for withdrawal" generally as it appeared in the proposal, except that "any use" has been changed to "all uses," and the definition and Commentary have been changed to clarify that a bank may certify a check when funds are available for withdrawal even if the check has not been delivered to the paying bank. To allow a bank to hold funds until data on the deposit are available for processing would undermine the Act's goal of minimizing hold periods for all customers.

One commenter believed that the definition should not preclude a depositary bank from charging the customer interest whenever the bank has to make funds available before receiving provisional credit. The final regulation does not include such a change because the Act does not condition availability on whether or not the depositary bank has received credit for the deposited checks. To charge the customer interest for funds made available before provisional credit is received would be contrary to purposes of the Act.

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One commenter suggested that the statute is unclear as to whether the Congress meant "available for withdrawal" to include withdrawal of cash or whether it meant withdrawal only by check unless cash was specified. The Board believes that the statute is clear in its intent to provide availability to customers by cash *and* by check except for the explicit cash rules in §§ 229.11(b)(2), and 229.12(d).

Two commercial banks requested that the Board clarify that a bank is not in violation of the Act or the regulation if it holds funds that are subject to garnishment, tax levy, or court order restricting disbursements from the account. The Commentary has been amended to clarify that funds may be available for withdrawal even if they are subject to legal process preventing withdrawal.

"BANK"

The Act defines "depository institution" as an institution defined in classes (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act, or an office, branch, or agency of a foreign bank located in the United States. The definition in the proposed regulation changed the term "depository institution" to "bank" and explicitly set out the terms of the cited clauses of the Federal Reserve Act. The proposal also defined "bank" to include a "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act. The proposed definition required that a bank be located in the United States and that the term "bank" included all of a bank's offices in the United States.

Three commercial banks requested that the Board include private banks and industrial banks within the definition of "bank." The Board believes that the language of the Act (section 602(12)) which defines "depository institution" (equivalent to "bank" in the regulation) clearly limits the definition of "bank" for purposes of Subpart B. Given the Act's broad mandate to the Board to improve and regulate the check processing system, however, the Board has expanded the definition of "bank" for the purposes of Subpart C, and in connection therewith, Subpart A. For check collection system improvements to function properly, they must apply to checks deposited in all types of banks. This is necessary because all paying banks that return checks will not be able to differentiate the manner of return based on type of depositary bank. The final regulation has been revised to provide that, for purposes of Subpart C, and in connection therewith, Subpart A, the term "bank" includes any person engaged in the business of banking, including a Federal Reserve Bank and a Federal Home Loan Bank. This definition would include private bankers and could include certain industrial banks. These institutions will be subject to the expedited return provisions of Subpart C and appropriate provisions of Subpart A.

"BANKING DAY" and "BUSINESS DAY"

The proposed regulation defined "business day" as a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. The definition stated that if January 1, July 4, November 11, or December 25 falls on a Sunday, the next Monday is not a business day. The proposal defined "banking day" as that part of any business day on which the bank is open to the public for carrying on substantially all of its banking functions.

The Board received 44 comments on the definitions of "banking day" and "business day." Twenty-five commenters suggested that when the depositary bank and the paying bank are in the same state, a state holiday should not be a business day. (Twelve of the 24 letters were from Hawaiian institutions which celebrate four nonstandard state holidays.) Such a rule would be difficult to administer and would create confusion for customers and out-of-state banks. Therefore, the final regulation retains the definition of "business day" as it appeared in the proposal.

Nine commenters stated that "business day" should be defined the same as "banking day" so that a bank will never have to make funds available on a day it is not open for business. The Act provides, in section 602(3), that "business day" means any day other than a Saturday, Sunday, or legal holiday. The Act anticipates that the way banks count days for purposes of the availability schedules will be uniform for every bank; the commenters' suggestion would allow the schedules to vary depending on whether or not the bank is open. The reason for having the banking/business day dichotomy is because banking days are relevant to when a deposit is considered received, and business days, which are more uniform than banking days, are more appropriate when counting the days in which funds must be available. The statutory availability schedules are based on check collection and return times which are not related to the banking days of the depositary bank. Therefore, the final regulation does not incorporate this suggestion.

Two commenters agreed with the proposed definitions. Two other commenters suggested that "banking day" be defined as "that day, as normally communicated to deposit customers, on which the bank routinely posts deposits to customer accounts." The Board considers the definition of "banking day" in the proposed rule to be more complete and clearer to the customer than the suggested definition. The final regulation, therefore, retains the proposed definition of "banking day."

Another commenter suggested that all banks be put on the same holiday schedule. The Board believes that regulating when a bank can and cannot be open would be unnecessary for the purposes of the Act at this time.

Two community banks pointed out that some small banks close on Wednesday and open on Saturday due to community needs. The commenters stated that the definition of business day is a burden to such banks. The Board recognizes that community banks and credit unions often do not keep standard business hours but does not believe that the definition will create undue burden for community banks. Because the regulation does not force any bank to be open at any particular time, but only requires that all banks make funds available according to the availability schedules through whatever medium is open to the public on the day funds must be available (e.g., over the counter or ATM), the Board believes that any burden on banks with nonstandard hours will be minimal.

Another commenter noted that if a legal holiday falls on a Saturday, the previous Friday should not be a business day. The Board did not exclude Fridays before Saturday holidays from the definition of "business day" because it is often the case that customers need access to their accounts on the day before a holiday, particularly on December 31 when many account holders need to settle their year-end finances. Even if a depositary bank is closed on a Friday before a Saturday holiday, customers should have funds available for check-writing purposes or for cash withdrawals from ATMs on that day.

Three letters contained comments that because branches often do not have on-line communication with on-premise ATMs, the banking day for an ATM should be governed by whether the main office of the bank is open, not by whether any particular branch is open.

The Commentary to the final regulation has been revised to clarify that for deposits made at an ATM, if the day is a banking day for the account-holding branch of the depositary bank, then it is a banking day for the ATM. Even if the depositary bank branch has no on-line contact with a proprietary ATM, the branch may still arrange to have access to the ATM to verify deposits.

No changes have been made to the definitions of "business day" and "banking day" in the regulation.

"CASHIER'S CHECK"

The proposed regulation defined "depository check" as a cashier's check, certified check, or teller's check.

The Board received 140 comments in response to the definition of "depository check." Twenty-one commenters requested that the Board change the term "depository check" to "official check." The Board recognizes that the term "depository check" caused confusion in the banking. The final regulation deletes the term "depository check" and refers specifically to cashier's checks, certified checks, and teller's checks.

One hundred three letters suggested that in order for a cashier's, certified, or teller's check to receive next-day availability it should be labeled "Official Check" on its face so that the depositary bank can easily identify it as eligible for next-day availability.

To require that all cashier's, certified, and teller's checks be labeled "Official Check" would not avoid fraud—the dishonest depositor would label all deposited checks "Official" in hopes that the depositary bank would automatically give them next-day availability. The Board recognizes the fact that sometimes it is hard to determine whether or not a particular check is a cashier's, certified, or teller's check, but believes that the "Official" label would provide a false sense of security. The Board believes that it is better that bank personnel be trained to look at the check itself rather than look at the label on the check. There is nothing in the regulation that prevents an issuing bank from voluntarily labeling a cashier's, certified, or teller's check as an official check, and many such checks are so labeled. Such a label, however, is not a prerequisite for next-day availability.

Twelve commenters suggested that the identification problem be solved by requiring all cashier's, certified, and teller's checks to have a unique MICR code. The only free position on the MICR-line is position 44, which, under this regulation, must now be used to identify a qualified returned check. Therefore, the final regulation does not require a special MICR code for cashier's, certified, and teller's checks.

The Board has also amended the definition of cashier's check to exclude checks drawn by a bank on itself or another bank used to pay vendors or employees; the Board does not believe that these checks serve the same function as checks provided to customers.

"CHECK"

The proposed regulation defined "check" as a negotiable demand draft that is drawn on or payable through or at an office of a bank, or drawn on the Treasury of the United States, a state government, a Federal Reserve Bank, or a Federal Home Loan Bank; a United States Postal Service money order; or a traveler's check. The definition provided that "check" does not include a noncash item and that a draft may be a "check" even though it is described on its face as a "money order." The definition further provided that for purposes of Subpart C, the term "check" also includes a demand draft of the type described in the definition that is nonnegotiable.

One hundred sixty-one comment letters suggested that changes be made to the definition of "check." Eighty commenters opposed the inclusion of warrants drawn on state or local governments. These commenters argued that there is no means to ensure that a state or local government will act expeditiously in paying warrants, and even if the issuing government is subject to the paying bank rules of expeditious return, it is unlikely that it would comply. Some commenters suggested that if warrants are to be considered checks, they should be labeled with a warning that delays may be caused by the issuing government that are beyond the depositary bank's control. Only four commenters favored inclusion of warrants. One state treasurer requested clarification on the status of drafts drawn on a state agency and presented to the state treasury for payment. The commenter also noted that a state court had ruled that state warrants are nonnegotiable drafts.

The final regulation includes state warrants in the definition of "check." Because some units of general local government also draw checks on themselves, the final regulation has been revised to include these instruments in the definition of check as well. The regulation does not impose the duty of expeditious return on the state or local governments that issue warrants. Many warrants are used to pay state unemployment compensation and other vital payments to consumers. The Board believes that the Act intended to cover these and other instruments that are the functional equivalent of checks.

Thirty-three commenters requested that the definition explicitly state that the regulation applies only to checks drawn on or payable through or at a bank located within the United States. The proposed regulation required checks to be drawn on entities which are located in the United States (the U.S. Treasury, state governments, Federal Reserve Banks, and Federal Home Loan Banks) or drawn on or payable through or at banks, which must be, under the regulation's definition of "bank," located in the United States. Accordingly, the Board has not made this revision to the definition.

Commenters also addressed the status of drafts drawn on nonbank entities, such as bank holding companies, which are payable through or at a bank. Nineteen commenters requested that such items be included in the definition of "check." Six commenters requested that they *not* be included, two of whom stated that if a nonbank entity can not obtain a routing number, then items drawn on those entities should be noncash items. Section 602(7) of the Act explicitly states that "check" includes negotiable demand drafts drawn on or payable through a bank, which the Board expanded to include payable at drafts for reasons stated in the Commentary. Therefore, in the final regulation, all drafts that are payable through or at a bank, even if drawn on a nonbank entity, remain within the definition of "check." One commercial bank requested that any item drawn on a savings and loan institution, a credit union, or a brokerage house be excluded from the definition of "check"—this suggestion was clearly contrary to the Act's definition.

Thirteen commenters opposed defining payable through drafts as "checks." They argued that the risk of return of such items is high, particularly with drafts drawn on insurance companies which tend to be held for long periods of time before being returned. The Act's definition of "check," however, clearly states that payable through drafts are checks. Therefore, payable through drafts are defined as "checks" in the final regulation.

One commenter requested that the definition provide that a check must be payable in United States dollars. Because items drawn in foreign currency are not normally handled by banks as cash items, the final regulation has been amended to provide that the term "check" does not include an item

payable in a medium other than United States money.

One commercial bank asked that the phrase "and which the Federal Reserve Banks agree by regulation or operating letter to handle as a cash item" be added to the end of the definition. The U.S. Treasury requested that the Board add the words "a negotiable demand draft drawn on a Federal Reserve Bank including fiscal agency checks." The Board considered both suggestions, but decided that the first creates undue uncertainty in the definition of "check," as some banks might not be aware of these checks which the Federal Reserve Bank collects, and the second is not needed because checks drawn on Federal Reserve Banks, including fiscal agency checks, are already within the definition of "check" and need no explicit mention.

One commercial bank asked that the Board require all checks to be pre-encoded with the paying bank's routing number and the drawer's account number. The definition of "noncash item" states that any check without the paying bank's routing number encoded in magnetic ink may be treated as a noncash item. As for encoding the drawer's account number, the Board believes that the drawer's account number is not necessary to speed the return of checks by paying banks or to aid depositary banks in granting availability under the Act.

The definition in the final regulation has also been amended to clarify that the definition of "check" does not include traveler's checks drawn on banking offices outside of the United States or checks payable in foreign currencies. The Commentary to this definition has also been revised extensively for clarity.

"CHECK CLEARINGHOUSE ASSOCIATION"

The proposed regulation defined "check clearinghouse association" as any arrangement by which participants exchange checks in a specified area. The definition also stated that a "check clearinghouse association" may include arrangements using the premises of a Federal Reserve Bank, but it does not include the handling of checks for forward collection or return by a Federal Reserve Bank.

The Board received 127 comments on the definition of "check clearinghouse association." Eighty-three commenters stated that the Board should limit the definition of "check clearinghouse association" to a local, metropolitan, or regional area as indicated section 602(8) of the Act. Thirty-one commenters (all of which were affiliated with the same bank holding company) agreed with the definition as proposed, and seven commenters thought that members of a clearinghouse should be local to each other regardless of their location. Two commenters suggested that the definition should be decided by each association and its local Federal Reserve Bank. The Board rejected this suggestion in favor of a uniform definition. The Board has, however, changed the definition to accord more closely with the statutory language.

Three commenters requested clarification of other aspects of the definition of "check clearinghouse association." One commercial bank asked for clarification of the status of associate clearinghouse members. The regulation's definition of "participant," which closely parallels the definition in the Act (section 602(19)), provides that a "participant" is a bank that is located in the geographic area served by a check clearinghouse association and both collects and receives for payment checks through the check clearinghouse association either directly or through an intermediary. Therefore, associate clearinghouse members would be considered participants under the definition of "check clearinghouse association." The regulation has been clarified to indicate that banks that exchange checks through an intermediary are only participants if the intermediary is a participant.

A savings and loan institution asked that the definition be amended to state that the term "clearinghouse" does not apply to two banks that directly present and return checks to each other. The Board has added a provision that a check clearinghouse association must be an arrangement between three or more banks. The Board does not believe that the definition of "check clearinghouse association" was intended to apply to direct exchanges between any two banks.

One commercial bank requested that a "clearinghouse" be limited to those organizations with well-defined members and rules. The Board believes, however, that the Congress intended a broader definition of "check clearinghouse association." The Commentary has been expanded to explain that the definition includes informal arrangements regardless of whether the participants have formally constituted themselves as an association, provided that the participants generally exchange checks among each other.

The Commentary to this definition has been revised extensively for clarity.

"CHECK PROCESSING REGION"

The proposed regulation defined "check processing region" as the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

The sole comment on "check processing region" was from a commercial bank which agreed with the definition but requested that the Board provide a map of regions. The definition in the final regulation is unchanged, and the final regulation does not include a map; however, maps are generally available at local Reserve Banks.

"CONSUMER ACCOUNT"

The proposed regulation and the Act (section 602(10)) defined "consumer account" as any account used primarily for personal, family, or household purposes.

One commercial bank requested that the Board redefine "consumer account" as "any account held by an individual." The Board has retained the language of the Act and the proposed regulation; however, a Commentary to the provision has been added. The definition of "consumer account" is relevant only for certain requirements of Subpart B.

"DEPOSITARY BANK"

The proposed regulation defined "depositary bank" as the first bank to which a check is transferred even though it is also the paying bank or the payee. The definition provided that for the purposes of Subpart C, the term also included a Federal Reserve Bank or a Federal Home Loan Bank to which a check is transferred by a person other than a bank.

Because the definition of "bank" has been revised in the final regulation to include Federal Reserve Banks and Federal Home Loan Banks for the purposes of Subpart C, the second sentence in the definition of "depositary bank" has been dropped as superfluous.

Four commenters agreed with the proposed definition of "depositary bank," and one commenter suggested the term be changed to "receiving bank." After considering other terms for "depositary bank" such as "receiving bank" and "bank of first deposit," the Board decided to keep the term "depositary bank," which is consistent with the terminology of the Uniform Commercial Code.

The definition has been changed to clarify an issue that was raised by eleven commenters—that the depositary bank for deposits at shared ATMs is the bank with the account relationship with the depositor, not necessarily the owner/operator of the ATM. The definition now provides that when a check is deposited in an account, the depositary bank is the bank holding the account into which the check is deposited even if the check is physically received by another bank first.

"ELECTRONIC PAYMENT"

The proposed regulation defined "electronic payment" as a wire transfer or an ACH credit transfer.

The Board received 71 comments on the definition of "electronic payment." Seventeen of the commenters favored explicit exclusion of electronic credit and debit card transfers. The Commentary to the definition of "electronic payment" has been expanded to explain that point-of-sale transactions would not be covered by this definition unless the transactions were effected by wire transfer or ACH credit transfer.

Many letters included comments on the inclusion of ACH credits within the definition. Twenty-two commenters opposed the inclusion of ACH credits on the grounds that they are governed by other rules, which already provide for better than next-day availability. (Two opposed the inclusion of *any* wire transfers.) Twenty commenters requested that the regulation should provide same-day availability for all electronic payments. Six commenters agreed with the proposed definition. The U.S. Treasury requested that the Board add the provision "Treasury regulations governing the availability of electronic funds transfers (wire and ACH) including 31 CFR Part 210, to the extent not inconsistent, supersede 12 CFR Part 229."

The Board has retained ACH credits within the definition of "electronic payment" and has left the wording of the definition as it appeared in the proposal. The Board recognizes that existing rules offer better than next-day availability for ACH credits, but also recognizes that there is no liability for violating existing rules. This regulation does not override Treasury regulations or ACH association rules that require prompter availability. Existing rules for ACH credits will not be superseded, instead the regulation will provide a floor for liability.

The commenters raised other ACH issues as well. Two commenters asked for clarification of the status of ACH debits, and one asked whether banks must accept all forms of ACH transfers. The Commentary clarifies that ACH debits are not affected by this regulation. There is no provision in the regulation that requires any bank to accept any particular type of deposit. (See § 229.19(c)(2)(i).)

One commenter suggested that electronic payments and wire transfers should not be considered any different from checks. Sections 602(25) and 603(a) of the Act, however, make special provision for "wire transfers" and specify that they are to be given next-day availability, which clearly indicates that the Congress meant for them to be treated differently from checks.

The Commentary to the term electronic payment has been revised for clarity.

"LOCAL CHECK" AND "LOCAL PAYING BANK"

The proposed regulation defined "local check" as a check drawn on or payable through or at a local paying bank. The definition also provided that a depositary bank may rely on the check's routing number, as listed in Appendix A, to determine whether a check is a local check.

The proposed regulation defined "local paying bank" as a paying bank to which a check is sent for forward collection that is located in the same check processing region as the branch or proprietary ATM of the depositary bank in which that check was deposited.

The Board received 42 comments on the definition of "local paying bank" and three on the definition of "local check." Sixteen commenters requested that the Board clarify that a paying bank is "located" in the same check processing region as the depositary bank branch only when the second through fourth digits of the routing number on the deposited check are the same as the second through fourth digits of the routing number on checks drawn on the depositary bank branch. The commenters reasoned that because checks are cleared and returned by processing facilities that are indicated by routing numbers, the suggested approach would be consistent with the Board's statement in the Commentary that "the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned." The commenters raised the question of whether the routing number on the deposited check should be compared to the routing number associated with the depositary bank's physical location or the routing number printed on checks drawn on the depositary bank (which may be the routing number of the depositary bank's check processing center located in a different check processing region from the depositary bank).

Section 602(13) of the Act defines "local originating depository institution" (equivalent to "local paying bank" in the regulation) as "any originating depository institution which is located in the same check processing region as the receiving depository institution" (equivalent to "depositary bank" in the regulation). The Board believes the Congress intended that, generally, "local" checks are those deposited into depositary banks that are physically located in the same check processing region as the paying bank to which a check is sent for collection. The Act anticipates that customers will be able to determine which checks are local. The customer is much more likely to know a bank's physical location than to know the location associated with a bank's routing number.

The Board also recognizes, however, that it may be difficult for the depositary bank to determine in which check processing region a paying bank is located without relying on the encoded routing number. Many banks will perform an automated sort of local and nonlocal checks using machine-readable routing numbers. Therefore, the definition of "local check" allows (but does not require) the depositary bank to rely on the routing number of the deposited check. (It is not a burden to the depositary bank to determine in which check processing region its own branch is physically located.) The Board has amended the definition to provide that it is the physical location of the depositary bank that must be compared with the paying bank's routing number, and that the depositary bank can rely on the routing number only if the check is sent for payment or collection based on the routing number.

Two savings and loan institutions asked whether all of a bank's branches are local to each other if they are in different check processing regions but send all checks to a central location for processing. Under the current routing number policy, if branches are in different check processing regions, they must have different routing numbers. Therefore, as outlined above, only those branches within the same region would be local to each other. As one bank holding company commented, banks with branches in the same state but different check processing regions must either have more than one hold policy for intrastate checks or provide local availability statewide.

Five commenters agreed with the definition of "local paying bank" and two agreed with the definition of "local check" as it appeared in the proposal. Six commenters were concerned with the inequities in sizes of check processing regions. They noted that in the western part of the country, check processing regions can cover huge areas

and that it would be unfair to include out-of-state checks in the definition of "local" even if the paying bank is located in the same region. A related comment from three Hawaiian savings and loan institutions voiced a similar concern; the commenters felt that mainland checks should not be local to Hawaiian banks even though drawn within the same check processing region. Similarly, a New York commercial bank asked that checks drawn on banks in Puerto Rico and the Virgin Islands not be considered local in New York. The Board recognizes the distance problems, but the Act defines "check processing region" (section 602(9)) as the geographical area served by a Federal Reserve Bank check processing center or such *larger* area as the Board may prescribe. The Board has not enlarged the areas identified as check processing regions, but given the provisions of the Act, neither has it changed the regulation to accommodate these comments.

A branch of a bank located in Guam pointed out that Appendix A contained the routing numbers 1214 and 3214 for Guam, Saipan and Pacific locations. Because these locations are not within the United States as defined by the Act (section 602(23)) and the regulation, these routing numbers have been deleted from Appendix A.

Five commenters said that it would be difficult to educate tellers and customers regarding check processing regions and the local/nonlocal distinction. These commenters advocated an in-state/out-of-state distinction instead. One clearinghouse suggested that in states where no Federal Reserve office exists, the primary clearinghouse should be designated as the logical territory for local availability schedules. Because of the provisions of the Act noted above, the Board has not adopted these suggestions.

The definition of local paying bank has also been revised to clarify that where a check is deposited in a nonproprietary ATM, both the nonproprietary ATM and the branch of the depositary bank holding the customer's account must be in the same check processing region as the paying bank for the paying bank to be a local paying bank. The Commentary to these definitions has also been revised extensively for clarity.

"MERGER TRANSACTION"

The Board received 14 comments requesting clarification of the status of merged or acquired banks under the availability schedules and the return rules of Subpart C. The commenters asked that the Board provide a transition period in which the two banks are considered separate entities while their operating systems are integrated. The Board addressed this issue by defining merger transaction in § 229.2 and adding §§ 229.19(g) and 229.40 to provide that merged banks may be treated as separate banks for a period of up to one year. Examples of the effect of these changes are included in the Commentary to §§ 229.19 and 229.40. The Board believes that a one-year transition period is necessary because it is often difficult for merged or acquired banks to integrate their systems immediately.

"NONCASH ITEM"

The proposed regulation defined "noncash item" as an item that would otherwise be a check, except that: a passbook, certificate, or other document is attached; it is accompanied by special instructions, such as a request for special advice of payment or dishonor; it consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or it has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

The Board received 24 comments on the definition of "noncash item." Twenty-three of the commenters requested that the regulation specifically state that credit card drafts are noncash items. The Commentary to the definition of "check" specifically excludes credit card drafts. Therefore, the availability schedules do not apply to credit card drafts, and there is no need to include them in the definition of "noncash item."

One commercial bank requested that unreadable or misencoded checks be included in the definition of "noncash item." The Board did not incorporate this suggestion in the final regulation. Unreadable checks may become reject items at any point in the check collection process. A rule that allowed the status of an item to change from check to noncash item at an undetermined point in the check collection process would be unworkable.

In addition, the Board added language to the Commentary clarifying that checks sent for collection with special instructions are noncash items.

"PARTICIPANT"

The Commentary has been revised to clarify the term "participant" as it relates to a clearinghouse participant.

"PAYING BANK"

The Act defines "originating depository institution" as the branch of a depository institution on which a check is drawn. The proposed regulation substituted the term "paying bank," which was defined as: the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; the bank at or through which a check is payable and to which it is sent for payment or collection; the bank whose routing number appears on a check in magnetic ink or in fractional form and to which the check is sent for payment or collection; the Federal Reserve Bank or Federal Home Loan Bank by which a check is payable; or the state on which a check is drawn.

The Board received 72 comments on the definition of "paying bank." Eleven commenters agreed with the proposed definition.

Fifty commenters objected to the inclusion of payable through banks within the definition of "paying bank." Three of the commenters requested that the Board ask the Congress to amend the Act to provide longer availability schedules for payable through drafts or, alternatively, that payable through drafts be noncash items. A joint comment from four consumer groups noted that consumers will be confused if payable through drafts drawn on local credit unions are treated as nonlocal, and thus requested that the burden of conforming to local schedules be placed on the institutions using the payable through drafts. Commenters pointed out that the statutory definition of "originating depository institution" (equivalent to "paying bank" in the regulation) was "the branch of a depository institution on which a check is drawn" (section 602(17)). The Act's definition does not explicitly include payable through or payable at banks. The commenters favored limiting the definition to the drawee bank, because it is the drawee bank that will make the decision whether or not to pay a check.

The Board believes that the Act does not clearly specify the treatment of payable through drafts for the purpose of availability, or other purposes. In defining the "originating depository institution" in section 602(17) as the "institution on which a check is drawn" the Act does not define the term "drawn." Although in a technical sense the institution on which a check is drawn can refer to the institution holding the drawer's account, the term can be used more generically to designate the person to whom a draft is directed and who is requested to pay the amount specified. *E.g.*, Black's Law Dictionary 44 (5th ed. 1979). A depository institution through which a draft is payable can be viewed as a paying bank with respect to that draft. *E.g., Berman* v. *United States National Bank*, 197 Neb. 268, 249 N.W.2d 187 (1976).

The Board finds that the structure of the statute itself shows that the Congress did not intend the "institution on which a check is drawn" in section 602(17) to be used in a technical sense, and that this phrase can reasonably be read to include the institution through which a check is payable. Section 602(7) of the Act defines the term "check" to include negotiable demand drafts "drawn on or payable through an office of a depository institution located in the United States." As noted above, under section 602(17) of the Act, the "originating depository institution" is defined to mean the branch of a depository institution on which a check is drawn.

Under other provision of the Act, a check deposited in an account is either local or nonlocal, and subject to differing maximum hold periods, based on whether the originating depository institution is local or nonlocal with respect to the depository institution in which the check is deposited. Whether an originating depository institution is local or nonlocal depends upon whether it is located in the same Federal Reserve check processing region as the depository institution in which the check is deposited. Thus, for each check subject to the Act, Congress clearly intended that there be an originating depository institution.

Some checks covered by the Act are written on accounts held at organizations that are not depository institutions, *i.g.*, an insurance company, but are payable through a depository institution. If the term "drawn" in the definition of "originating depository institution" is viewed narrowly, such a draft would be neither a local nor nonlocal check and thus not subject to the Act, since it would be "drawn" on no depository institution. This interpretation would conflict with the Act's definition of check, which the Board believes is intended to cover all drafts payable through depository institutions. In order to resolve this conflict, such drafts must be viewed as being "drawn" on the payable through institution for purposes of section 602(17). In addition, it is clear that Congress did not intend the technical definitions found in state laws governing negotiable instruments to govern interpretation of the Act's provisions. To the contrary, the Act establishes a comprehensive federal framework for the collection and payment of checks and expressly defines many terms, like "check," in ways that vary from accepted definitions under state laws such as the Uniform Commercial Code. The Act expressly provides that its provisions and the implementing regulations supersede any provision of state law that is inconsistent with the Act.

In short, the term "depository institution on which a check is drawn" in section 602(17) can be read as referring both to the institution at which a customer's funds are held and to the institution through which a draft may be payable. Therefore, where a depositor writes a draft on funds held in one depository institution and where the draft is payable through another depository institution, such as many credit union share drafts, it is unclear from the terms of the statute which institution Congress intended to be the originating depository institution. Where a term is capable on its face of more than one interpretation, construction of that term must depend on the legislative history and purposes of the statute. Based on a review of the fundamental objectives of the statute, the Board finds that these kinds of drafts were also intended to be viewed as drawn on the payable through institution for purposes of determining whether they are local or nonlocal checks.

Under the Board's final rule, credit union share drafts payable through another bank but sent to the credit union on which they were drawn would be considered local or nonlocal based on the location of the credit union. On the other hand, if these drafts were sent to the payable through bank, because they bear the routing number of the payable through bank or because the credit union refused to accept payable through drafts delivered to it, the determination is made based on the location of the payable through bank. As a practical matter, because credit unions using payable through share drafts place the routing number of the payable through bank on their drafts, most of these drafts would be sent to the payable through bank for collection and would be considered nonlocal even though they are deposited in a bank located in the Federal Reserve check processing region where the credit union on which the draft is drawn is located. This approach is consistent with the Act's designation of checks as local or nonlocal based on the time required for the collection and return of the checks.

The approach of basing the determination as to whether a payable through share draft is local or nonlocal on the location of the credit union would expose the bank receiving the share draft for deposit to increased risks of check fraud, because drafts sent to the payable though institution for collection routinely would be returned after funds would have to be made available under the availability schedules for local checks in the Act. Comments on the proposed rules to implement the Act indicated that sophisticated groups would be likely to take advantage of this opportunity to defraud depository institutions. If the determination of whether the payable through share draft is local or nonlocal is based on the location of the credit union, banks seeking to minimize the losses due to such fraud might be reluctant to accept these share drafts for deposit thereby reducing the acceptance of share drafts. Some commenters are apparently concerned that the treatment of payable through share drafts as nonlocal checks in many cases would reduce the acceptance of these instruments more than their acceptance will be reduced by the potential for increased fraud. On balance, the Board does not believe that this potential for a lower level of acceptance of credit union share drafts offsets the risks of increased fraud to other banks warrants a different approach to the treatment of payable through share drafts.

In addition, treatment of credit union payable through drafts as local or nonlocal depending on the location of the credit union on which they are drawn would greatly complicate the tasks of banks taking share drafts for deposit. Banks must have some reliable method of readily establishing whether a check is local or nonlocal for availability purposes. Because the Act defines the local/nonlocal distinction in terms of Federal Reserve check processing regions, the only practical method available at this time of identifying local and nonlocal checks for purposes of check processing is to rely on the routing numbers that appear on checks, which can be read by automated check processing equipment. Similarly, the only practical way to disclose to customers the difference between local and nonlocal checks is through the use of these routing numbers. In the case of payable through share drafts, the routing number appearing on the draft is that of the payable through bank, not the credit union.

In arriving at a final rule, the Board considered and rejected several alternative approaches to the treatment of credit union share drafts payable through another bank. First, as suggested by some comments, the Board

could have provided that a share draft deposited in an account at a bank is local or nonlocal based on the location of the credit union, even though the share draft is sent to a payable through bank for collection. This approach was rejected because it would expose depositary banks to increased risks of check fraud, would be difficult to disclose, and would be difficult to implement as more fully described above.

A second alternative, suggested by one commenter, was to prohibit the use by credit unions and other banks of drafts payable through a nonlocal bank. This alternative would have addressed the risk, disclosure, and operating problems, but has been rejected at this time because it would have been more disruptive than the approach adopted by the Board. The Board, nevertheless, remains concerned about the remote disbursement aspects of the use of nonlocal payable through banks, and may reconsider this issue in the future.

A third alternative was to consider the drawee bank as the paying bank for payable through drafts and hold the drawee bank (usually a credit union) liable for any losses suffered by the depositary bank due to the fact that the depositary bank had to give local availability on a check that was sent to a nonlocal bank for collection. This alternative only addressed the risk issue and did not deal with the disclosure and operating issues.

After the close of the comment period but before adoption of the final regulation, the Board received affidavits from a trade association. The affidavits were from a payable through bank and a processor that serves payable through banks for a large number of credit union share drafts. These affidavits described these banks' share draft processing operations and speculated that under the check collection improvements required by Subpart C collection and return of share drafts deposited in banks that were not local to the payable through bank might be returned within the local schedules, if certain conditions were met. The Board believes that even if these time frames are met for the checks described, a significant number of credit union share drafts that are payable through nonlocal banks would not be collected and returned within the local schedules. Consequently, the Board believes that the approach taken in the proposal is the fairest alternative and has retained payable through banks in the final regulation's definition of "paying bank."

Although the Board believes that the definition of paying bank as initially proposed provides for the appropriate treatment of payable through share drafts, the Board notes that future changes in the share draft program could result in reductions in the schedules applicable to such share drafts. For example, if these checks were truncated early in the collection process and were identified by a "truncation eligible" identifying number in the MICR-line, such checks might be collected and returned more swiftly than other checks that are payable through nonlocal banks, and therefore could be included in the reduced schedules provided for in § 229.11(c)(2) or 229.12(c)(2) and included in Appendix B to the regulation. Further, the truncation identifier would facilitate disclosures and internal bank operations.

Two commenters asked that the Board clarify that the payable through bank's duties under the Uniform Commercial Code be changed, i.e., that payable through banks should not be subject to paying bank liabilities. The Board believes that because the payable through or payable at bank would not be making the decision whether to pay a check, it should not be liable for wrongful dishonor. As explained in the Commentary to the final regulation, however, the payable through or payable at bank would be responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable through or payable at bank may contract with the payor with respect to these Subpart C responsibilities. (See Commentary and Comment Summary for Subpart C.)

Five commenters requested that the Board clarify the status of a state government that issues warrants drawn on itself. As stated in the regulation, the definition of "paying bank" includes a state. The definition has been revised to include units of general local government because commenters indicated that some units of general local government draw checks on themselves. The Board believes that it is important that the availability schedules apply to these checks because they include payments that are important to bank customers. It is necessary to include state and local governments in the definition of paying bank so that determinations can be made as to whether checks drawn on them are local checks or nonlocal checks, if the checks do not meet the requirements for next-day availability. Checks drawn on states and units of general local government are excluded from the coverage of Subpart C because the Act does not clearly impose liability on states for failure to meet their duties under Subpart C. Without such liability, imposing the duties of Subpart C on states or units of general local government would have little effect.

One credit union requested that the Board provide a transition period for credit unions who use nonlocal payable through banks so that they can modify their practices. The Board did not make such a provision because section 603(c)(3) of the Act provides that the temporary availability schedules go into effect on September 1, 1988. As explained in the Regulatory Flexibility Analysis, the Board will not make exceptions in the regulation for specific types of institutions.

One commenter said that to condition the definition of "paying bank" on the "sending" of a check may cause uncertainty under future truncation arrangements where checks are not actually "sent." The Board has not changed the definition but has clarified in the Commentary that truncation arrangements do not affect the definition.

The Commentary to the definition of "paying bank" has also been revised to clarify that a check sent to a bank for payment based on that bank's routing number on the check is the paying bank with respect to that check even if the check is fraudulent and is not drawn on the paying bank.

"PROPRIETARY ATM"

The proposed regulation defined "proprietary ATM" as an ATM that is (1) owned or operated by, or operated exclusively for, the depositary bank; (2) located on the premises (including the outside wall) of the depositary bank; or (3) within 50 feet of the premises of the depositary bank. The definition further provided that an ATM is not considered to be proprietary to more than one unaffiliated bank; if the criteria of provisions (1) through (3) are met by more than one bank with respect to any ATM, the ATM would be proprietary to the bank that satisfied the lowest-numbered criterion. The definition stated that if more than one bank meets the owned or operated criterion, the ATM is considered proprietary to the bank that operates it.

The Board received 103 comments, the majority from commercial banks, on the definition of proprietary ATM. Four commenters agreed with the proposed definition. One commercial bank asked that the Board make no distinction between proprietary and nonproprietary ATMs. This request is clearly contrary to the Act, which explicitly defines "proprietary ATM" in section 602(16) and provides for different availability requirements depending on whether an ATM is proprietary or nonproprietary in section 603(e).

Fifty-seven commenters said that the Board should require disclosure of ownership as a part of the definition. Two commenters felt that posting the name of the proprietary bank on every ATM would be confusing to customers who use shared ATM networks. In an attempt to minimize disclosure burden and consumer confusion, and in recognition of the fact that some states do not allow identification of the proprietary bank on an ATM, the Board's final regulation does not require that the name of the proprietary bank be posted at each ATM. Section 229.16(b)(5) of the regulation has been amended to provide that a depositary bank's disclosure statement shall contain a description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank imposes delays on deposits at nonproprietary ATMs longer than on deposits at proprietary ATMs.

Twenty-eight commenters requested clarification of the criterion that states that a proprietary ATM is one that is within 50 feet of the premises of the depositary bank. One bank holding company suggested that the question of whether an ATM is proprietary should be determined solely by the owned/operated criterion and not by the location of the ATM. Because section 602(16)(A)(ii) of the Act provides that a proprietary ATM is one that is in close proximity, as defined by the Board, to the depositary bank, the Board retained the 50-foot criterion but added the phrase "and not identified as being owned or operated by another entity" for clarification.

Three commenters requested that the Board define and clarify the distinctions between owning and operating an ATM. The Board has revised the Commentary accordingly.

Twenty-four commenters asked that the Board either strike or clarify the provision that an ATM is not considered to be proprietary to more than one unaffiliated bank. The Board has revised the definition to address the concerns of the commenters. The final regulation's definition eliminates the "unaffiliated" provision and the provisions regarding the priority rules governing the three criteria. The Board believes that the final definition is clearer and easier to apply than the definition originally proposed. Based on a question asked by seven commenters, the Commentary clarifies that some ATMs may not be proprietary to any bank.

One commenter suggested that an on-premise ATM should not be proprietary to the bank that owns it if another bank services it. The regulation provides that if more than one bank meets the owned or operated criterion, the ATM is considered proprietary to the bank that operates it.

A commercial bank asked whether an ATM that is jointly owned but operated by a third-party contractor is proprietary to both owners/operators. The Commentary has been expanded to explain that where the ATM is jointly owned, and operated by a nonbank servicer, the ATM is proprietary to the owners.

Another commercial bank asked whether the lead bank in an ATM network is the proprietary bank for those ATMs owned and operated by franchisees. Under the regulation's priority rules, if the franchisee is the owner/operator, the franchisee, not the lead bank, is the proprietary bank.

Three commenters asked the Board to clarify whether an ATM that is proprietary to one bank within a holding company is automatically proprietary to all affiliated banks. As stated above, the final regulation does not include the "unaffiliated" provision, therefore, in this situation, the ATM would not be proprietary to all affiliated banks.

The Commentary has also been revised to clarify that the operator of an ATM is the person that puts deposited checks into the forward collection stream and to make other clarifications.

"QUALIFIED RETURNED CHECK"

The proposed regulation defined "qualified returned check" ("QRC") as a check that is prepared for handling by automated check processing equipment for return to the depositary bank. The definition provided that a qualified returned check must be encoded in magnetic ink with the routing number of the depositary bank, the dollar amount of the check, and a return identifier in the form of a "2" in position 44 of the MICR-line.

The Board received 24 comments on the definition of "qualified returned check." Nineteen commenters suggested that the bank that creates a QRC should encode its routing number on the check in order to leave an audit trail. The Board believes that it would be beneficial for the creator of a QRC to print its name and routing number on the QRC, either on the envelope or strip, but believes that the costs to the industry of doing so might outweigh the benefits of being able to identify the creating bank. The Board has not included this requirement in the final regulation because of the uncertain expense and burden to the qualifying bank.

One commercial bank was opposed to any provision for QRCs in the regulation. The commenter cited operational difficulties associated with carrier envelopes and adhesive strips and generally opposed the use of QRCs. The Board believes that, overall, the preparation of QRCs for automated processing speeds up the return system, despite the occasional operational problem. Because of the importance of shortening check return times, the Board will continue to encourage the creation of QRCs in the final regulation.

A bank holding company requested that the Commentary state that a QRC may be automated by use of electronic media accompanying the returned check as an alternative to the stripping process. The Board rejected this proposal because, at this time, electronic media may not be readily usable by returning banks generally.

A savings and loan institution commented that it is not necessary to encode the dollar amount of the check on a QRC. The definition has retained the dollar amount requirement as this is necessary for high speed processing of the check.

The definition in the regulation has been amended to delete the content requirements for the MICR encoding on QRCs. These requirements have been moved to §§ 229.30 and 229.31 so that a returned check may be a QRC even if there is an encoding mistake. Clarifying changes have also been made to the Commentary.

"RETURNING BANK"

The proposed regulation defined "returning bank" as a bank (other than the paying or depositary bank but including a Federal Reserve Bank or Federal Home Loan Bank) handling a returned check or notice in lieu of return.

Because the definition of "bank" has been revised in the final regulation to include Federal Reserve Banks and Federal Home Loan Banks for the purposes of Subpart C, and in connection therewith, Subpart A, the clause including such banks as "returning banks" has been deleted as superfluous.

Two commenters noted that the definition of "returning bank" specifically excluded the depositary bank, but the Commentary on "returning bank" did not. The Commentary has been amended to correspond to the language of the regulation.

The definition of returning bank has been revised in the regulation and the accompanying Commentary to clarify that a returning bank is considered a

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collecting bank for the purpose of the U.C.C. midnight deadline applicable to collecting banks.

"SIMILARLY SITUATED BANK"

The proposed regulation defined "similarly situated bank" as a bank of similar size, located in the same community, and with similar check payments activities as the paying bank or returning bank.

One trade association asked the Board to clarify the meaning of the phrase "similar check payment activities" which is part of the "similarly situated bank" definition. The definition of similarly situated bank and the Commentary to § 229.30(a)(2) have been expanded to explain that two banks have similar check payment activities if they handle a similar volume of checks.

"TELLER'S CHECK"

The proposed regulation defined "teller's check" as a check drawn by a bank on another bank.

The Board received five comments on the definition of "teller's check." Two commenters favored giving next-day availability to checks drawn by banks on bank holding companies and suggested that such checks be included in the definition of "teller's checks." The Board agrees that such checks are the functional equivalent of teller's checks and has redefined "teller's check" to be any check drawn by a bank on another bank or payable through or at a bank. The Board believes that any check drawn by a bank, even if drawn on a nonbank, that is payable through or at a bank is generally as low-risk as checks drawn by a bank on another bank because the drawing bank is responsible for the check. Such checks usually appear to be teller's checks to those who purchase and accept them.

One Federal Home Loan Bank suggested that a special provision for next-day availability for Federal Home Loan Bank checks drawn by other banks would not be necessary as they are already included in the definition of "teller's check" as a check drawn on one bank by another. Because the definition of "bank" includes Federal Home Loan Banks for the purposes of Subpart C, but not Subpart B, checks drawn on Federal Home Loan Banks must be specified separately in § 229.10(c).

A commercial bank asked that the term "teller's check" be changed to "bank draft." The Board decided that "bank draft," which is sometimes used in place of "teller's check," can easily be misinterpreted to mean *any* draft drawn by a bank. The Board prefers the narrower term "teller's check" for checks drawn by one bank on another.

Another commercial bank commented that if teller's checks are to be treated the same as cashier's checks for availability purposes, then stop payment of teller's checks should not be allowed, and Article 3 of the Uniform Commercial Code should be amended accordingly. The Board is aware of the stop payment problem associated with the use of teller's checks and other "near-cash-equivalent" items. The Board may address this issue in the future, but to do so at this time would be premature. The definition also has been revised and a Commentary added to exclude checks drawn by a bank to pay employees and vendors.

"TRAVELER'S CHECKS"

The definition of "traveler's check" has been revised to clearly limit it to traveler's checks drawn on a bank and to exclude the references to the denominations of these checks. A Commentary has been added to aid banks in identifying traveler's checks.

"WIRE TRANSFER"

The definition of "wire transfer" and the Commentary have been revised to more clearly exclude point-of-sale and related transactions.

Miscellaneous Comments

One commenter requested that the Board define "insufficient funds" and "uncollected funds." Another asked the Board to define "hold." The Board believes that these are commonly-used terms that need no explicit definition in the regulation.

The Board received 21 comments on the issue of whether the regulation allows banks to send cash items for collection. Fifteen commenters favored sending cash items for collection, two were opposed, and three requested clarification on this issue. The Congress clearly did not intend for banks to be able to evade the statutory availability schedules. (See Commentary and Comment Summary to "noncash item.")

Three commenters asked that the final regulation contain a letter or number for each definition. The Board has amended the regulation accordingly.

Section 229.10 Next-Day Availability.

(a) *Cash deposits.* The Board received 504 letters that commented on § 229.10. Those 504 letters contained 179 comments in response to § 229.10(a) on cash deposits. The proposed rule stated that a bank shall make funds deposited in an account by cash available for withdrawal not later than the business day after the banking day on which the cash is deposited. The proposed rule differed from the Act's language, which provides next-day availability for cash only when deposited at a staffed facility. The Board proposed to expand next-day availability for cash deposits to include deposits made to unstaffed locations because current law generally provides for next-day availability for cash deposits, and the Board was not aware of any impediments to providing such availability at unstaffed locations such as proprietary ATMs, night depositories, lobby deposit boxes, or through the mail. The Board requested comment on any problems this requirement may pose for depositary banks.

Many commenters opposed the proposed rule on cash deposits. Of the 179 commenters that discussed this issue, only 15 favored next-day availability for all cash deposits. Ninety-nine commenters asked for at least one additional day before giving availability to deposits made at unstaffed locations. Commenters cited verification problems at off-premise ATMs and drop boxes. Commenters explained that it is generally not possible to collect and verify deposits made at off-premise unstaffed locations in time to make funds available the next morning. Fifty-one commenters stated that the 2:00 p.m. cut-off hour is too late to give the depositary bank enough time to collect from and balance off-premise ATMs. These commenters also noted that night deposit boxes are for the convenience of customers who make late evening deposits, and that the bank usually empties them out early in the morning. The commenters stated that it would not be fair to require banks to give next-day availability for cash deposits to night depositories made after the morning pick-up but before the 2:00 p.m. cut-off hour. Many commenters suggested that cash deposits be considered received when the ATM or depository is serviced by the bank.

Twelve commenters cited § 4-106 of the U.C.C., which provides that each branch is considered a separate bank for determining the time at which a bank must carry out an action. The commenters argued that the cash deposit rule should accord with the U.C.C. (i.e., a cash deposit to an off-premise facility should not be considered made to the depositary bank until actually received at the depositary bank), or should at least apply to only cash deposits made in the same state where the account is located.

Because of the operational difficulties in making cash deposited at unstaffed facilities available the day after deposit, the Board has revised this paragraph and the accompanying Commentary to require that cash deposits at unstaffed facilities be available for withdrawal on the second business day after the banking day of deposit. (See also discussion of modification to provision related to cut-off times in § 229.19(a).)

(b) *Electronic payments.* The comments the Board received on § 229.10(b), electronic payments, are covered in the definitions section under "electronic payment." This paragraph and the Commentary have been revised to provide that an electronic payment is received when the bank has received both actually and finally collected funds and the information on the account and the amount to be credited. The Commentary has also been revised to clarify that this paragraph does not affect Treasury or ACH association rules on the availability of ACH payments.

(c) *Certain check deposits.* The Commentary to § 229.10(c) has been revised to reflect changes to the regulation, discussed below, concerning deposits of certain checks at unstaffed facilities. As in the case of cash, commenters indicated that these checks should not be given next-day availability unless deposited at staffed facilities in accordance with the Act.

(c)(1)(i) *Treasury checks.* Twenty-five commenters responded specifically to § 229.10(c)(1)(i), which provides next-day availability to checks drawn on the Treasury of the United States and deposited in an account held by the payee of the check. One trade association agreed with the proposed rule. A commercial bank opposed the rule because of the high risk of forgery of Treasury checks. Twenty-four commercial banks, citing the long delays of government check returns, requested that the Treasury or the Federal Reserve provide a telephone inquiry service through which a depositary bank could verify a Treasury check. A savings and loan institution requested that next-day availability be limited to those Treasury checks deposited by direct deposit (ACH).

The Board has made no changes to § 229.10(c)(1)(i) of the proposed rule. The statutory language (section 603(a)(2)(A) of the Act) is clear and indicates that next-day availability be given to Treasury checks regardless of whether or not they are deposited at a staffed facility. The Board recognizes the risk of forgery, but does not believe that Treasury checks are more susceptible to forgery than any other type of check that requires next-day availability.

The Board has elected not to establish any duty on issuers of next-day checks (government entities or banks) to respond to inquiries concerning those checks. The Board was concerned with the burden on paying banks to implement procedures to respond promptly to such inquiries, especially given the short time in which such a service would have to be established. The Board will continue to study the need for and feasibility of an inquiry service in cooperation with the banking industry.

The Commentary to this provision has been revised for clarity.

(c)(1)(ii) *U.S. Postal Service money orders.* Section 229.10(c)(1)(ii) of the proposed regulation provided next-day availability for U.S. Postal Service money orders deposited into an account held by a payee of the money order. The Act does not address U.S. Postal Service money orders, but the Board proposed to add them as next-day checks because they are functionally equivalent to other next-day checks and do not present greater risk of loss to banks.

Twenty-two commenters opposed the addition of U.S. Postal Service money orders to the next-day availability list. The commenters cited reasons such as high risk of forgery and theft, untimely returns, and lack of holder in due course status under U.C.C. § 3-805. Four commenters agreed with the inclusion of U.S. Postal Service money orders, and one commenter requested that the Board publish a directory of routing numbers for these items. U.S. Postal Service money orders generally bear the routing number "0000 0800 2." Appendix A has been expanded to include a list of routing numbers designating certain categories of checks that must be accorded next-day availability.

The Board believes that U.S. Postal Service money orders are no more prone to forgery and theft than other types of next-day checks. The Board believes that U.S. Postal Service money orders are used for payments that are important to the recipients of the payments and should be covered by the availability schedules. Section 229.10(c)(1)(ii) of the final regulation has been revised to require U.S. Postal Service money orders to be deposited at staffed facilities in order to obtain next-day availability.

(c)(1)(iii) *Federal Reserve Bank and Federal Home Loan Bank checks.* Section 229.10(c)(1)(iii) of the proposed regulation provided next-day availability for checks drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited in an account held by a payee of the check. The Act does not address Federal Reserve Bank or Federal Home Loan Bank checks, but the Board proposed to add them as next-day checks. Section 602(11) of the Act provides that the term "depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board. The Board determined that Federal Reserve Bank and Federal Home Loan Bank checks are often used as the functional equivalent of cashier's, certified, and teller's checks, and, in the case of fiscal agency checks, Treasury checks.

Three commenters agreed with the proposed rule. Twenty-four commenters opposed the inclusion of Federal Reserve Bank and Federal Home Loan Bank checks. The commenters cited reasons similar to to those cited for opposition of the inclusion of U.S. Postal Service money orders—forgery, theft, and untimely returns. Ten commenters requested that Federal Home Loan Bank checks drawn outside the depositary bank's Federal Reserve district be considered nonlocal checks because of their longer return time. Two Federal Home Loan Banks noted that inclusion of their checks as next-day checks would decrease the acceptability of their checks by depositary banks. Two commenters stated that no checks should be added to the next-day list unless they are subject to the new account exception.

The Board believes that Federal Home Loan Bank and Federal Reserve Bank checks, like U.S. Postal Service money orders, are no more prone to forgery and theft than other types of next-day checks. The likelihood of return of such checks is generally less than the likelihood of return of cashier's, teller's, and certified checks from banks. Return times for Federal Reserve Bank and Federal Home Loan Bank checks are generally equal to or faster than return times for cashier's, certified, and teller's checks. Furthermore, checks drawn on Federal Reserve Banks and Federal Home Loan Banks by other banks are not significantly more risky than those drawn by the Federal Reserve Bank or Federal Home Loan Bank. Consequently, the Board determined that Federal Reserve Bank and Federal Home Loan Bank checks are the functional equivalents of cashier's, certified, and teller's checks and therefore should be subject to the next-day availability requirements in the final regulation.

Section 229.10(c)(1)(iii) of the final regulation has been revised to require that Federal Reserve Bank and Federal Home Loan Bank checks be deposited at staffed facilities in order to obtain next-day availability.

One bank holding company requested that the Board publish a directory of Federal Reserve Bank, Federal Home Loan Bank, and U.S. Postal Service

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money order routing numbers. The Board has included these routing numbers in Appendix A to the final regulation.

(c)(1)(iv) *State and local government checks.* Section 229.10(c)(1)(iv) of the proposed regulation provided next-day availability for a check drawn by a state or local government that is deposited: in an account held by the payee of the check; in a depositary bank located in the same state that issued the check or the same state as the unit of local government that issued the check; and with a special deposit slip, if such slips are required by the depositary bank under § 229.10(c)(2).

The Board received 13 comments on this provision. Four commercial banks agreed with the requirement that to receive next-day availability, the check must be deposited in a depositary bank located in the same state as the state or unit of local government that issued the check.

Eight commercial banks and one bank holding company opposed giving state and local government checks next-day availability, largely because such checks are a high forgery risk. Sections 603(a)(2)(B) and (C) of the Act, however, specifically grant next-day availability to state and local government checks. The Act contains a requirement for next-day availability that was not included in the proposed regulation, i.e., that the check must be deposited to a staffed facility. In view of the risk of fraud and the technical problems of giving next-day availability to ATM deposits (discussed below), the Board has amended the regulation to permit a bank to require that to receive next-day availability, state and local government checks must be deposited in person to an employee of the depositary bank.

Section 229.10(c)(1)(iv) has been revised to permit a bank to require the use of special deposit envelopes as well as special deposit slips.

(c)(1)(v) *Cashier's, certified, or teller's checks.* Section 229.10(c)(1)(v) of the proposed regulation provided next-day availability for depository checks that are deposited in an account held by the payee of the check and deposited with a special deposit slip, if such slips are required by the depositary bank under § 229.10(c)(2). Because the term "depository check" has been eliminated from the regulation, the final regulation refers to these checks by name, i.e., cashier's checks, certified checks, and teller's checks.

The Board received 99 comments on the depository check provision. Sixty-one commenters opposed next-day availability for cashier's, certified, and teller's checks. Most of the commenters were concerned about the risk of fraud with such checks. The commenters noted that these checks are often forged or stolen and that the depositary bank would undergo great risk by making funds available before knowing whether the check was genuine.

Other commenters suggested that the Board should put more limitations on the conditions under which cashier's, certified, and teller's checks must be given next-day availability. Twenty-six commercial banks suggested that only checks drawn by a bank on itself should receive next-day availability. Five commenters suggested that only those cashier's, certified, and teller's checks that are local checks to the depositary bank should get next-day availability. A credit union and a bank holding company suggested that next-day availability for these checks be required only when deposited in accounts that are at least six months old.

Section 603(a)(2)(F) of the Act specifically grants next-day availability to cashier's, certified, and teller's checks. The Act contains a requirement for next-day availability that was not included in the proposed regulation, i.e., that the check must be deposited to a staffed facility. In view of the risk of fraud and the technical problems of giving next-day availability to ATM deposits (discussed below), the Board has amended the regulation to permit a bank to require that cashier's, certified, and teller's checks must be deposited in person to an employee of the depositary bank to receive next-day availability. Given the Act's specific requirements for next-day availability, the Board believes it would be inappropriate to include any of the other limitations suggested by the commenters.

One commercial bank suggested the regulation explicitly exclude personal money orders from next-day availability. The Board believes that such language is unnecessary because, generally, personal money orders are not covered by the definitions of cashier's, teller's, or certified checks, and therefore would not be afforded next-day availability. Personal money orders are generally signed by the purchasing customer, not by an officer of the issuing bank and therefore are not cashier's checks subject to the requirement for next-day availability.

The regulation has also been revised to permit a bank to require the use of special deposit envelopes as well as special deposit slips.

(c)(1)(vi) *"On us" checks.* Section 229.10(c)(1)(vi) of the proposed regulation provided next-day availability for checks deposited in a branch of the depositary bank and drawn on the same or another branch of the depositary bank if both branches are located in the same state or the same check processing region.

The Board received 20 comments on this provision. One bank holding company agreed with the provision (but disagreed with giving next-day availability to any other type of check). Fourteen commenters requested that the provision remain as proposed regarding the treatment of payable through drafts, i.e., that payable through drafts not be considered on us checks for the payable through bank.

The Act and final regulation afford next-day availability to checks deposited to and drawn on the same bank, i.e., on us checks do not include payable through drafts deposited in the payable through bank. The Board believes that to treat payable through drafts as on us checks for the payable through bank would create risks for the payable through bank, because the time necessary to verify that the check will be paid by the drawee of the check would often extend beyond the opening of business the next day when funds must be made available. The treatment of payable through drafts as on us checks for the drawee bank and not for the payable through bank is different from the treatment of payable through drafts under the definition of "paying bank." The final regulation treats the payable through banks as the paying bank for payable through drafts. (See Commentary and Comment Summary on the definition of "paying bank.") These two rules are consistent in that they both minimize the risk of fraud for the depositary bank.

Two commercial banks and one savings and loan institution suggested that on us checks should have an extra day before funds are made available so that the depositary bank has extra time to verify the signature of the drawer. Given the Act's specific requirements for next-day availability for on us checks (section 603(a)(2)(E)), the Board believes it would be inappropriate to add another day to the statutorily mandated availability schedule.

Two commenters asked whether a statewide bank that covers two check processing regions must give next-day availability to on us checks when the check is deposited at a branch in a different check processing region from the branch on which the check is drawn. Under the Act and the regulation, as long as the two branches are in the same state *or* the same check processing region, the on us check must be given next-day availability.

Accordingly, § 229.10(c)(1)(vi) has not been revised, although the Commentary to it has been revised for clarity.

(c)(1)(vii) *$100 rule.* Section 229.10(c)(1)(vii) of the proposed regulation provided that the depositary bank give next-day availability to the lesser of $100 or the aggregate amount deposited on any one banking day by check or checks other than checks subject to § 229.10(c)(1) (i) through (vi).

The Board received 71 comments on the $100 dollar rule. Thirty-four commenters opposed the $100 rule. The major reasons given for opposition were risk and operational burden. The commenters complained that to require depositary banks' to provide automatically up to $100 on the day after deposit is an invitation to fraud. Many commenters also noted that it is extremely difficult for banks to keep track of the $100 and the rest of the deposited funds separately.

In addition to the commenters who explicitly opposed the $100 rule, 14 others pointed out the operational problems that banks will have in complying with the rule. Because many banks, automated systems lack the capacity to track the $100 separately from the rest of the deposit, the commenters predicted that depositary banks would either have to make $100 available every day or would have to make the entire deposit available on the business day after deposit. The commenters considered either option to be excessively risky for the depositary bank.

The Board appreciates the risks and burdens of the $100 rule, but given the Act's provision that a depositary bank give next-day availability to "the first $100 deposited by check or checks on any one business day" (section 603(a)(2)(D)), the Board has retained the $100 rule in the final regulation.

Three commenters suggested that the aggregation of deposits for the purposes of the $100 rule be on a per-customer, not a per-account basis. The commenters pointed out that if aggregation is done on a per-account basis, a customer could evade the $100 limitation by making deposits to multiple accounts on the same day. The Board concurs with the commenters, and has clarified that aggregation may be across all deposits by check or checks on any one banking day to all accounts of the customer. Similarly, two commenters asked that the regulation clarify that the $100 rule applies to the aggregate of all the deposits on one banking day, not to each individual deposit. The language of the regulation clearly states that aggregation for the $100 rule may be across all of a customer's deposits during one banking day.

Two commenters suggested that next-day checks should be included in the aggregation for purposes of the $100 rule. In the Board's view, the Act provides for next-day availability of up to $100 of local and nonlocal checks deposited *in addition to* the next-day checks described in § 229.10(c)(1) (i) through (vi). The final regulation and the Commentary have been revised to clarify the relation between the $100 rule and other availability requirements.

Five commenters asked whether the depositary bank must make $100 available on the next day if the customer receives at least $100 cash back on the deposit at the time of deposit. The Commentary has been amended to clarify that, in such a case, the depositary bank need not make another $100 available the next day. Similarly, four commenters suggested that the $100 rule should not apply to deposits which the depositary bank has applied towards a negative balance. The Commentary has been modified to explain that if the account to which the deposit is made has a negative book balance or negative available balance at the time of deposit, the $100 that must be available on the next business day may be made available by applying the $100 to the negative balance rather than by withdrawal by cash or check the next day.

Five commenters asked whether a bank has discretion to choose from which deposited check the $100 is to be deducted. It is the Board's view that the bank may choose from which local or nonlocal check or checks the $100 is deducted as long as the remaining balance is made available for withdrawal according to the appropriate local or nonlocal schedule.

Two commenters suggested that the $100 rule should be waived in the cases where the depositary bank makes the entire amount of the deposit available when provisional credit is received. The Board believes this suggestion is contrary to the Act and has not incorporated it into the final regulation. Under such a rule, in certain cases the depositary bank would not receive next-day provisional credit from its correspondent and would not give next-day availability to any portion of the deposit even for checks that are next-day checks under the Act.

(c)(2) *Checks not deposited in person.* A new paragraph has been added concerning checks not deposited at staffed facilities. Certain checks, including U.S. Postal Service money orders, state and local government checks, Federal Home Loan Bank and Federal Reserve Bank checks, and cashier's, certified, and teller's checks, must be deposited in person to an employee of the depositary bank in order to receive next-day availability. This new paragraph provides that when these checks are not deposited in person to an employee of the depositary bank, they must be made available on the second business day after deposit.

(c)(3) *Special deposit slip.* Section 229.10(c)(2) of the proposed regulation provided that, as a condition to giving next-day availability, a depositary bank may require that a state or local government check or a depository check be deposited with a special deposit slip that identifies the type of check. The paragraph also provided that if a depositary bank requires a special deposit slip, it must make the slips readily available to its customers. Because the term "depository check" has been eliminated from the regulation, the final regulation (in § 229.10(c)(3)) refers to these checks by type, i.e., cashier's checks, certified checks, and teller's checks.

The Board received 92 comments on the special deposit slip provision. Fifty commenters disapproved of the provision. Most of the commenters stated that special deposit slips are a useless alternative for the depositary bank and predicted that few banks would take advantage of the provision. The commenters cited problems such as the increased expense of printing the new slips and reprogramming sorting systems, inconvenience to both banks and customers, and confusion on the part of customers who must determine when to use the special slip. Many commenters stated that they would not use the special deposit slips, but would instead resort to a manual sorting system which will increase costs and slow up processing.

The Board recognizes the disadvantages of special deposit slips. The use of special deposit slips is optional, not mandatory, in both the Act and the final regulation. Special deposit slips may be used by banks that wish to identify checks that cannot be identified as next-day checks by their routing number.

Fifteen commenters requested that the special deposit slip provision be expanded to include all next-day checks for which next-day availability is conditioned on the check being deposited into an account held by a payee of the check. The commenters pointed out that in an automated system, the depositary bank can not ascertain whether the next-day check has been deposited into an account of a

payee. The Act clearly states that state and local government, cashier's, certified, and teller's checks are the only checks for which a bank can require a special deposit slip for next-day availability. The Board believes that it would not be appropriate to expand on the statutory limitations. Furthermore, Treasury checks and other next-day checks for which special deposit slips may not be required can be identified from their routing numbers by high speed equipment.

Fourteen commenters asked for clarification regarding the teller's duty to inform the customer that a special deposit slip may be required for next-day availability. The regulation does not impose an affirmative duty on the teller to alert a customer that a special deposit slip may be appropriate, as long as the bank has notified the customer in its general disclosure statement that special deposit slips are required for next-day availability of state and local government, cashier's, certified, and teller's checks, and the special slips are made readily available to the customer. If a bank agrees to prepare a deposit for a customer, however, it must use a special deposit slip when appropriate.

Thirteen commenters expressed concern over the potential misuse, either intentional or accidental, of special deposit slips by customers. The commenters suggested that the depositary bank should be able to maintain control of the special deposit slips, i.e., not provide free access to the slips in the lobby but keep them behind the teller counter. A bank may retain some control over the dispensation of special deposit slips as long as the slips are reasonably and freely available and that customers are informed as to where in the branch the slips can be obtained.

This section and the Commentary to it have been revised to permit the use of special deposit envelopes for use at ATMs and other unstaffed facilities. The Commentary has also been revised to clarify the requirement that special deposit slips be available for customers.

Other comments on § 229.10—Account of payee requirement. The Board received 16 comments on the requirement that Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, teller's, and certified checks be deposited into an account held by a payee of the check to get next-day availability. Seven commenters agreed with the requirements as proposed.

Five commenters addressed the situation where there is more than one payee on a check. Two commenters suggested that the regulation should require joint payee checks to be indorsed by all payees with the signature guaranteed for any payee who is not a joint holder of the account into which the check is deposited. Three commenters requested that the regulation require that all payees of the check must also be holders of the account for the check to get next-day availability. Another commenter asked that the regulation require the check to be deposited into an account held by one of the payees, not necessarily all of the payees.

The language of the Act is somewhat different from the language of the proposed regulation. The Act provides that the check be "endorsed only by the person to whom it was issued." This statutory provision could be interpreted to include a check that has been indorsed in blank and deposited to the account of a third party. The Board believes that the Act intends to allow the depositary bank to limit next-day availability to those next-day checks that are deposited to an account of a payee, and reworded the provision in the regulation accordingly. The final regulation requires only that the check be deposited in an account of a payee; all joint payees need not be holders of the account as long as all joint payees have indorsed the check. Two commenters requested that the Board clarify that "payee" means the named payee on the check, not transferees. The Commentary has been amended to require that checks be deposited in the account of an original payee of the check.

Availability based on provisional credit. Forty-five commenters suggested that depositary banks should be able to make funds available on the date on which the depositary bank receives provisional credit for the deposited checks rather than on the day after deposit. Many of the commenters stated that if banks give availability to uncollected funds, they will be in essence making loans to the account holders. Others commented that it was unfair for a depositary bank to have to make funds available to its customers before the bank to which the checks are sent in the forward collection chain makes funds available to the depositary bank.

In most cases, banks receive next-day provisional credit for checks, therefore the statutory local and nonlocal availability schedules would actually be longer than the time by which funds would be made available. In certain cases, however, provisional credit would not be received on the day after deposit and the statutory next-day availability requirements would not be met (e.g., for nonlocal cashier's, certified, and teller's checks). Because the Act clearly provides for next-day availability for certain checks, the Board decided it would not be appropriate to allow depositary banks to extend availability for such checks. Depositary banks are free, however, to give better availability to local and nonlocal checks than is required by the Act and the regulation.

Certain Federal Reserve Bank practices. Three commercial banks commented that the Federal Reserve Bank in their district requires all in-district banks to make a separate sort of all checks under $100 drawn on in-district banks. Because of this practice, out-of-district banks get faster availability on low-dollar checks than do in-district banks. Given the requirement of § 229.10(c)(1)(vii) that up to $100 of local and nonlocal checks be given next-day availability, the commenters requested that their local Federal Reserve Bank process in-district, low-dollar checks as fast as out-of-district, low-dollar checks. The Federal Reserve Bank's policy will be changed accordingly.

Record of losses. Two commenters suggested that banks should keep a record of losses that are attributable to the availability schedules. The Board suggests that such records may be useful for banks to keep, but has not required that they be kept under the regulation.

Calculation of reserves. Four commenters asked whether pay-outs of uncollected funds should be included as "cash items in process of collection" for calculation of reserves. Alternatively, the commenters asked if such pay-outs should be included as "vault cash" that would serve as a portion of maintained reserves. Cash items in the process of collection are a deduction from reservable deposits for uncollected funds. Similarly, a withdrawal of funds from an account is a deduction from reservable deposits. (See 12 CFR 204.) Including withdrawals of uncollected funds as cash items in the process of collection could result in a double deduction that would be inappropriate. Similarly, accounts paid out in withdrawals are not available to meet depositors' claims and therefore should not be considered as vault cash.

General comments. Several banks did not comment specifically on a particular provision, but instead made general comments on next-day availability. Twelve commenters voiced opposition to next-day availability in general (some opposed the local and nonlocal schedules as well) on the grounds that such availability will induce an unacceptable level of fraud. Two commenters noted that remote community banks will be especially hard-hit by the next-day availability requirements because all of their checks are processed at a central processing facility, which increases the length of the collection and return process. Two commenters requested a delay in the implementation date for next-day availability to give banks time to update their computer systems before exposing themselves to liability for next-day availability. Due to the language of the Act requiring that all depositary banks provide next-day availability as provided in § 229.20 and that such availability is to be implemented on September 1, 1988, the Board has retained the requirements for next-day availability subject to the changes discussed above.

Sections 229.11 and 229.12 Temporary and Permanent Availability Schedules.

Section 229.11(a) and Section 229.12(a) Effective date. The proposed regulation provided that the temporary availability schedule is to be effective from September 1, 1988, through August 31, 1990, and the permanent availability schedule is effective September 1, 1990. The Act mandated these effective dates, but provided in sections 603(b)(4) and 603(c)(3) that the Board could accelerate the implementation of the permanent schedule. The Board requested comment on whether the permanent schedule should become effective earlier than September 1, 1990. Of the 260 comments received on whether the schedules should be implemented earlier, 248 were opposed. In view of the operational problems that banks would face if the schedules were to be implemented earlier than provided in the Act, the Board has decided not to change the effective dates of the availability schedules.

Nine commenters suggested that the Board eliminate the two-tiered schedule approach and implement one schedule, either the temporary or a compromise between the temporary and permanent, in 1989.

Twelve commenters opposed the schedules in general. Three of these commenters noted that the schedules are workable only for banks that have their own data processing capture system and that many thrifts and credit unions operate real-time and cannot capture float. The Board has not modified the final regulation in accordance with these comments because the statutory scheme includes a temporary *and* a permanent schedule and sets the latest possible dates by which each must be effective. The Board has attempted to minimize the disruption from moving to shorter schedules as much as possible in the regulation.

Three commenters asked if banks can, on their own, meet the statutory schedules before they become effective. Banks may provide better availability than mandated by the statute at any time.

Sixty-three commenters requested that the Board delay implementation of both the temporary and permanent schedules. Most of the commenters asked that the delay be for as long as it takes for the check return system to be improved. Others requested extra time to make software changes or to redesign their checks. Because of the requirements of the Act, the final regulation does not delay the implementation of the schedules.

Section 229.11(b)(1) and section 229.12(b) Local checks and certain other checks.

The proposed regulation provided that U.S. Treasury checks and U.S. Postal Service money orders that are not subject to next-day availability under § 229.10 and all local checks must be made available the third business day following the banking day of deposit during the temporary schedule and the second business day following the banking day of deposit under the permanent schedule.

The Board received two comments on the general local check provisions. One commercial bank pointed out that the local schedules should also apply to state and local government checks, Federal Reserve Bank and Federal Home Loan Bank checks, and cashier's, certified, and teller's checks that are not subject to next-day availability under § 229.10. The Board has amended §§ 229.11(b) and 229.12(b) to explicitly include these checks. (The Board also made similar amendments to the sections governing availability of nonlocal checks, §§ 229.11(c) and 229.12(c).)

One savings and loan institution requested that local availability should be given only to a local check deposited into an account of a payee of the check. The Board has not incorporated this suggestion into the final regulation because the Act (sections 603(b)(1) and 603(c)(1)) clearly does not intend that such a requirement be a prerequisite of availability under the local schedules.

Sections 229.11(b)(1) and 229.12(b) and the corresponding Commentary sections have been revised to clarify the treatment of next-day checks that are local checks and do not meet the requirements for next-day availability.

Section 229.11(b)(2) and section 229.12(d) Time period adjustment for withdrawal by cash or similar means.

Clearinghouse association rule. The proposed regulation provided that a depositary bank may extend by one business day the time that funds deposited into an account by a local check under the temporary schedule or by local or nonlocal check under the permanent schedule are available for withdrawal by cash or similar means. Under the temporary schedule, however, the extension would not apply to checks drawn on a paying bank that is a participant in the same check clearinghouse association as the depositary bank.

The Board received five comments on the same-clearinghouse provision. Three commercial banks and one savings and loan institution commented that it would be difficult for tellers and customers to determine whether the paying bank of a deposited check is in the same check clearinghouse association as the depositary bank and that this provision should be dropped. Depositary banks may, but are not required to, provide a list of the members of the bank's clearinghouse association to its tellers and customers.

A Hawaiian savings and loan institution commented that there is no difference in return times to Hawaiian depositary banks between a local check drawn on a mainland bank processed through a clearinghouse and a nonlocal nonclearinghouse check. The commenter suggested eliminating the clearinghouse limitation for nonmainland banks. The Board has retained the provision in the final regulation because it was included in the Act (section 603(c)(1)(B)(i)). A depositary bank can avoid having to make a clearinghouse/nonclearinghouse determination by not taking the one-day extension for cash availability. (See discussion of the definition of check clearinghouse association in the Comment Summary.)

Cash or similar means. The time period adjustment rules of §§ 229.11(b)(2) and 229.12(d) of the proposed regulation allowed, in certain cases, a one-day extension to the availability schedules for withdrawal by cash or "similar means." The Board included the phrase "similar means" to cover other irrevocable debits to the customer's account such as electronic payments, issuance of cashier's and teller's checks, certification of checks, and over-the-counter payment of checks to third parties.

The Board received 28 comments on the phrase "similar means." Twenty-six commenters approved of the "similar means" language. Two commercial banks asked whether "similar means" included cashing checks for third parties. The Commentary has been amended to clarify that cashing checks drawn on the customer's account may be included in "similar means."

$400 rule. The time period adjustment rules of §§ 229.11(b)(2) and 229.12(d) of the proposed regulation provided that although the depositary bank may, in certain cases, extend the availability schedule by one day for withdrawals by cash or similar means, the depositary bank must make $400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds are otherwise available under the applicable availability schedule. The regulation also provides that the $400 is in addition to the $100 available under § 229.10(c)(1)(vii).

The Board received 46 comments on the $400 requirement. Forty-five commenters opposed the rule. Many commenters stated that they did not have the technology to make a midday update to their computer system and therefore would have to make the entire $400 available at the start of the day. Others commented that the distinction between cash and check-writing availability would be confusing to customers. A few commenters predicted that banks will close earlier to avoid having to pay the $400 at 5:00 p.m. The Board has retained the provision in the final regulation because it was included in the Act (section 603(b)(3)(B) and (c)(1)(B)(ii)). The depositary bank can avoid having to make a midday update by providing availability by cash or similar means (of either the entire amount of the deposit or of the $400) earlier than is required by the Act and the regulation. The $400 rule remains available under the regulation for those depositary banks who can implement it.

One commercial bank noted that § 229.11(b)(2) of the regulation referred only to deposits of "a local check." The commenter noted that the language should be amended to include deposits of one or more local checks. The Board has amended the final regulation accordingly.

Section 229.11(c) and section 229.12(c) Nonlocal checks.

The proposed regulation provided that a depositary bank must make funds deposited by nonlocal checks available for withdrawal not later than the seventh business day following the banking day of deposit under the temporary schedule and the fifth business day after the banking day of deposit under the permanent schedule. These sections have been revised to clarify the treatment of next-day checks that do not meet the requirements for next-day availability.

The regulation also provided that nonlocal checks specified in the corresponding Appendix (B–1 for temporary schedule, B–2 for permanent schedule) must be made available for withdrawal not later than the times prescribed in that Appendix.

The Board received 11 comments regarding Appendices B–1 and B–2. Five commenters suggested that depositary banks should have to make one initial disclosure of the Appendix B schedules with update disclosures as the Appendix B schedules are revised. These commenters suggested that the Board should make changes to Appendix B at a specified time each year so that banks can plan their update notices. A related comment by a savings and loan institution asked whether, in fact, the Board would actually make changes to Appendix B. The Board does not anticipate making any changes to Appendix B–1 after publication of the final regulation. If the Board decides at a future date that frequent revisions to Appendix B–2 will be necessary, it will establish regular procedures to do so. Banks are only required to disclose the reduction in schedules, contained in Appendix B, to customers upon request.

Three commenters pointed out that Appendix B contained reduced schedules for certain processing territories but not for others that process checks just as fast. The Board has revised Appendix B to eliminate many of the inconsistencies.

One commercial bank noted that under the availability schedule, because of the clearinghouse rule, it would be possible that a depositary bank would have to make funds deposited by a nonlocal check available in full before funds deposited by a local nonclearinghouse check are available in full. The commenter suggested that the Board add language to § 229.11(c)(2) to provide that to the extent that the provisions of Appendix B–1 require that the proceeds of deposited checks be made available to depositors on the third business day, the time period adjustment as set forth in § 229.11(b)(2) would apply. The Board has revised Appendix B–1 so that no nonlocal schedule requires that funds be available for withdrawal earlier than the fourth business day after deposit.

Section 229.11(d) Deposits at nonproprietary ATMs.

The proposed regulation provided that, under the temporary schedule, funds deposited to a nonproprietary ATM by cash or check must be available for withdrawal not later than the seventh business day after the banking day of deposit. Two commercial banks commented that the Board should clarify that § 229.11(d) supersedes § 229.10 for such deposits. The Commentary has been amended to clarify that, under the temporary schedule, next-day availability does not apply to deposits to nonproprietary ATMs.

Section 229.11(e) and section 229.12(e) Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

The proposed regulation provided that the depositary bank may extend the time periods set forth in the temporary and permanent schedules by one business day in the case of any check that is deposited in an account at a branch located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and is deposited by a check drawn on or payable through or at a paying bank not located in the same state as the depositary bank.

The Board received 39 comments on this extension provision. One trade association approved of the rule. Thirty-three commenters requested that the special extension rule apply in both directions, i.e., that depositary banks in the continental U.S. will also be able to extend the schedules an extra day for checks drawn on or payable through or at a paying bank located in Hawaii, Alaska, Puerto Rico, or the Virgin Islands. The Board did not include reciprocity of this provision in the final rule. The language of the Act (section 603(d)(2)) allowed the extension to work in one direction only. The Board believes that it would be inappropriate to expand on the statutory language.

One commercial bank commented that the extra day for Alaskan depositary banks is not necessary for checks drawn on banks in the state of Washington served by the same Federal Reserve office. A Hawaiian savings and loan institution commented that a local check deposited into a Hawaiian bank drawn on a mainland bank can never be returned before funds must be made available, even if the checks are handled expeditiously. The commenter requested a longer extension for these checks. Given the language of the Act, the Board did not either add to or subtract from the extension as it appeared in the proposed regulation.

One savings and loan institution asked that the Board clarify that the extension applies only when the paying bank is located in a different state than the depositary bank branch where the deposit is made. The regulation and Commentary have been revised to clarify that deposits must be made in a branch located in one state and drawn on a paying bank located in another state. The Board also made clarifying changes in this provision of the regulation.

Other comments on sections 229.11 and 229.12. Six commenters asked that the Board allow banks to vary the availability schedules by agreement with business customers. The Board believes that such a practice would be inconsistent with the Act's intent to provide a ceiling for holds on deposited funds applicable to both consumer and business accounts. A depositary bank can give better availability than the schedules or can use calculated availability for nonconsumer accounts as provided in § 229.19(d). Neither the Act nor the regulation will allow a bank to provide worse than statutory availability, even if the customer agrees.

One commercial bank commented that if the regulation requires a bank to adopt a single hold policy for all its branches, it would give an unfair advantage to multiple-charter bank holding companies that can tailor hold policies based on a smaller area. The Board believes that regulation does not provide an unfair advantage to bank holding companies. Section 229.19(c) provides that a depository bank may provide different availability policies to different segments of its customer base.

Sections 229.10, 229.11, and 229.12 ATM issues.

In addition to the comments addressed to specific sections dealing with the availability schedules, the Board also received 286 comments on how the availability schedules in general would affect the use and operation of ATMs.

Eighty commenters discussed the problems with giving expedited availability to deposits at nonproprietary ATMs. The commenters stated that deposits at nonproprietary ATMs are usually processed before the bank that holds the account is notified. The commenters suggested that for nonproprietary ATM deposits that are verified off-premise, the depositary bank needs more time, particularly under the permanent schedule, so that the deposit information can be delivered.

The Board recognizes the problems faced by depositary banks that accept deposits at nonproprietary ATMs. The Act, generally provides that deposits at nonproprietary ATMs be accorded the same availability as deposits at proprietary ATMs under the permanent schedule. The Conference Report on the Act states that "the conferees believe it is reasonable to expect the owners and operators of such ATMs to develop the necessary technology to make such differentiations within a reasonably short time."

In related comments, 29 commenters stated that because ATMs cannot distinguish between cash and different types of checks, particularly Treasury checks, participants in ATM networks will have to increase their staff and upgrade their communications systems at a tremendous cost. Many commenters did not think that these changes could be made by the time the permanent schedule goes into effect. The commenters were concerned that if an ATM cannot distinguish between different types of deposits, the bank would have to make all ATM deposits available on the next day, when Treasury checks must be available for withdrawal under the temporary schedule. Seventy-four commenters predicted that most banks will discontinue taking deposits at nonproprietary, or in some cases all, ATMs.

The Board has revised the final regulation to require that cash, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, certified, and teller's checks must be deposited to a staffed location to receive next-day availability. The Board has also interpreted the term "branch to exclude an off-premise ATM; thus on us checks deposited to an off-premise ATM would not have to be given next day availability. Treasury checks deposited to a proprietary ATM, however, must receive next-day availability.

In addition, former § 229.12(e) concerning availability of deposits at nonproprietary ATMs under the permanent schedule has been deleted as unnecessary due to changes in treatment of deposits of next-day checks at ATMs generally. This paragraph had provided for second-day availability for deposits of next-day checks at nonproprietary ATMs. Under the final rule these checks are subject to second-day availability when deposited at any ATM. (See § 229.20(c)(2).)

Section 229.13 Exceptions.

(a) New Accounts.—(1) Deposits to new accounts. The Act provides that in certain instances a depositary bank may delay availability of a deposit beyond the statutory schedules by invoking an exception. The first such exception is for new accounts. Section 229.13(a)(1) of the proposed regulation provided that a deposit in a new account is subject to the next-day availability requirements of § 229.10 (a) and (b) for cash and electronic payments. The proposed regulation also provided that new account deposits would be subject to the requirements of § 229.20(c)(1) (i) through (v) (governing next-day availability for Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, certified, and teller's checks, and for the purposes of the new account exception only, traveler's checks) only with respect to the first $5,000 of funds deposited on any one banking day; any amount of the deposit over $5,000 must be available on the ninth business day following the banking day of deposit. The proposed regulation provided that deposits to new accounts would not be subject to the next-day availability requirements of § 229.10(c)(1) (vi) and (vii) (governing on us checks and the $100 rule), § 229.10(c)(2) (second-day availability), the temporary schedules of § 229.11, or the permanent schedules of § 229.12.

The Board received 306 comments on the new account exception. Sixty-four commenters questioned the inclusion of traveler's checks in the next-day availability requirement for the first $5,000 of the deposit. The commenters pointed out that this provision is inconsistent with § 229.10 because traveler's checks do not get next-day availability when deposited into established accounts. The Board recognizes the inconsistency, but has retained the traveler's check provision because it is a requirement of the Act (section 604(a)(1)(c)).

Thirty commenters objected to the next-day availability requirement in the new account exception. The commenters favored eliminating this requirement with respect to certain check deposits. One commercial bank favored eliminating next-day availability for cash and electronic payments under the exception as well. The Board did not amend these provisions in the final regulation because the language of the Act in section 604(a)(3) specifically provides for next-day availability for up to $5,000 of certain checks deposited to

new accounts, and section 604(a)(1) provides for next-day availability for deposits of cash and electronic payments to accounts subject to this exception.

Three commercial banks asked the Board to clarify whether the $5,000 refers to total deposits made throughout the new account period or for each day's deposits. The language of the regulation is clear in that it refers to "the first $5,000 of funds deposited *on any one banking day,*" not throughout the entire new account period. Although the Act is not explicit on this point, the Board believes that it was the intent of the Act to apply the $5,000 rule to deposits on any one banking day under the new account exception.

Two commercial banks and one savings and loan institution requested that the Board clarify the length of the hold period for deposits subject to the new account exception. As the regulatory language states, the depositary bank may institute a nine-day hold on portions of certain deposits for which $5,000 must be available on the day after deposit. For deposits covered by § 229.10(c)(1) (vi) and (vii) (on us checks and checks subject to the $100 rule), and checks subject to the temporary and permanent availability schedules of §§ 229.11 and 229.12, there is no schedule of availability for deposits to new accounts.

(2) When an account is considered new. Section 229.13(a)(2) of the proposed regulation provided that an account is considered new during the first 30 calendar days after it is established. The proposed regulation also provided that an account is not considered new if the customer had, within 30 calendar days before the account is established, another account at the depositary bank for at least 30 days.

One hundred eighty-six commenters indicated that a 30-day period is not long enough to determine the validity of a new account. Suggestions for the length of the new account period ranged from 60 days to six months. Many commenters requested that the depositary bank be able to lengthen the new account period if the account showed unusual activity indicating a potential for fraud, if the account had been overdrawn within the 30-day period, or for deposits made after the 30-day period that exceed the previous average balance. Twenty-six commenters stated generally that the depositary bank should have more discretion over the hold period.

Section 604(a) of the Act specifically requires a 30-day period for the new account exception, or such shorter period as the Board may establish. The Board, following the statutory provision, has retained the 30-day period for the new account exception in the final regulation.

Thirty-one commenters suggested that the regulation should consider an account to be new if *any* holder of the account is new, even if another joint holder is an established customer. One commercial bank commented that the opposite should be the case, i.e., that an account should not be considered new if any holder of the account is an established customer. The Board believes that the intent of the new account exception is to protect depositary banks from the risk involved when dealing with an unknown customer. As long as any holder of an account may withdraw funds from the new account, that customer presents the kind of risk that the Act intends to address. Therefore, the Board has amended the regulation and the Commentary to provide that an account is not considered new if *each* customer on the account has had another established account at the depositary bank within the previous 30 days.

Nine commenters suggested that if a previous joint account holder opens an individual account, the individual account should be considered new, because the behavior of the customer is different as a joint holder than as an individual holder. The Board did not incorporate this suggestion into the final regulation. The Board believes that the Act does not intend banks to invoke the new account exception when the customer on the account is not new. Section 604(a) of the Act provides that the new account exception applies to any account established at a bank by a new depositor. Under the statutory language, a new name on an account constitutes a new depositor, and the new account exception would apply, but the name of an existing account holder on an account, including a joint account holder, would not yield a new account.

Two trade associations asked whether a corporate account would be considered new every time there are new corporate signers on the account. Because the holder of the account is the corporation, not the individual signers, the account would not be new every time the signers changed. The commenters also asked whether an individual account opened by a corporate signer would be considered new if the corporate account had been established for at least 30 days. Because the corporate signer is not the holder of the corporate account, any individual account opened by the corporate signer could be considered new.

A bank holding company commented that if a customer's established account is not in good standing or not of the same type as the newly-opened account, the new account exception should apply. The Board believes this limitation of new accounts would be contrary to the intent of the Act.

Sixteen commenters favored elimination of all distinctions between new and established customers by treating every account as new when opened. The commenters complained that the exception involved too much technological complexity and that the new account periods would be difficult if not impossible to track under current computer systems. The Board has retained the customer distinctions due to the statutory language in section 604(a) of the Act, which applies the new account exception to accounts established by a "new depositor."

The Commentary has been revised to include a number of examples of when accounts are considered to be new accounts. In addition, other clarifying changes have been made to the Commentary.

Twenty-nine commenters requested that the Board allow banks to rely on the customer's representation as to whether the customer has had an established account within the last 30 days. The commenters explained that many banks can not cross-reference common names on accounts through their computer systems. The Board has clarified in the Commentary that the depositary bank can rely on the representation of the customer for this information.

One commercial bank suggested that a reactivated dormant account should be considered new. A dormant account that is reopened is not a new account, and the Commentary has been revised to clarify this point.

One banking-related corporation commented that the new account exception should apply to accounts held by escrow companies into which they deposit checks which they hold in escrow for clients who own the entire beneficial interest in the deposit. The commenter noted that while the escrow company, as account holder, is not a new customer, the clients who hold the beneficial interest in the deposits are generally new customers to both the escrow company and the depositary bank. Because the Act and regulation consider the actual account holder to be the depositor, the escrow company, not the escrow company's client, is the customer for the purposes of the regulation. Therefore, the escrow company's accounts would not be subject to the new account exception.

In addition to these issues, clarifying changes were made to the language of the new account exception in the regulation.

(b) Large Deposits. The proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 would not apply to the aggregate amount of deposits by one or more checks that is in excess of $5,000 on any one banking day. The regulation also provided that for customers that have multiple accounts, a depositary bank may apply this exception to the aggregate amount deposited to all accounts of the customer if all the holders of each account are the same. The regulation did not allow a depositary bank to aggregate the deposits in both individual and joint accounts for the purpose of this exception.

The Board received 150 letters that contained comments on the large deposit exception. Five commenters opposed the exception in general on the grounds that it is too complex and is not workable given current technology. Sixty-five commenters requested that the Board allow a depositary bank to aggregate a day's deposits across all accounts on which the customer's name appears, regardless of the other names on the accounts. Only one commenter agreed with the provision as it appeared in the proposed regulation. The risk to the depositary bank associated with large deposits is similar whether the customer makes the deposit to one account or allocates the deposit over several accounts. The Board has amended the regulation and the Commentary to provide that the depositary bank may apply the large deposit exception to the aggregate amount deposited to all accounts of the customer, even if not all the holders of the customer's accounts are the same.

Fifty-six commenters requested that the large dollar exception apply to deposits subject to next-day availability. Four commenters asked whether next-day checks could count toward the $5,000 for aggregation purposes. The language of the Act (section 604(b)), however, clearly excludes next-day deposits from the large dollar exception. The Board, therefore, has not applied the large deposit exception to these next-day checks in the final regulation. Additionally, next-day checks cannot be counted toward the $5,000 aggregation because they cannot be held under the exception. The Commentary has been expanded to provide an illustrative example to clarify the operation of the large deposit exception.

Twenty-one commenters suggested that the Board lower the $5,000 cut-off point. Many of the commenters suggested that the cut-off should be $2,500, which is consistent with the large-dollar notice of nonpayment requirement of § 229.33(a). Section 604(b)(1) of the Act specifically provides that the large-dollar cut-off be set at $5,000. To be consistent with the Act, the Board has not lowered the dollar cut-off in the final regulation. For the same reason, the Board has not incorporated other suggestions by the commenters, such as applying the exception to the whole deposit rather than just the amount over $5,000 and aggregating funds deposited over a longer period of time than one banking day.

Two commenters requested that banks be able to vary the terms of the exception with corporate customers, and two other commenters requested that the exception not apply to corporate accounts at all. The Act clearly anticipates that the exceptions will apply to all accounts, both consumer and corporate, but the decision to invoke an exception is optional. A depositary bank may choose not to apply the large deposit exception to a corporate account with routinely large deposits.

(c) Redeposited checks. The proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 would not apply to a check that has been returned unpaid and redeposited by the customer or the depositary bank. The proposed regulation provided that this exception would not apply to checks that have been returned due to a missing indorsement and redeposited after the indorsement had been obtained, if the reason for return stamp on the check states that it was returned due to a missing indorsement; or to a check that has been returned because it was postdated, if the check is no longer postdated when redeposited.

The Board received 56 comments on the redeposited check exception. Three commenters agreed with the provision as it appeared in the proposed regulation, and two commenters opposed the exception on general terms because it would be too complex and costly for banks to implement.

Forty-two commenters asked that the exception be extended to checks returned because of a missing indorsement or because they were postdated. The commenters stated that checks may be signed imperfectly or postdated on purpose and that the regulation should discourage such practices. The Board believes that the exceptions in the Act were meant to address the risk problems of depositary banks rather than customer discipline. The final regulation retains the exclusion of postdated and misindorsed checks from the redeposited check exception because generally these two types of checks do not have as high a risk of return as do checks that have already been returned once for insufficient funds.

One commercial bank requested that if a check is returned because it is postdated, the reason for return should indicate so or else this exception could apply to that check. The regulation and the Commentary have been revised to state that a bank may rely on the reason for return indicated by the paying bank.

One commercial bank suggested that the Board clarify that the availability schedules for all redeposited checks should begin as of the date of redeposit. The Commentary has been amended to clarify this point.

Two commenters asked whether this exception applied to next-day availability checks, and two commenters asked whether the $100 rule applied to redeposited checks. Under section 604(b) of the Act, the redeposited check exception does not apply to any of the next-day availability provisions. The Commentary to the final regulation has been revised to clarify that a bank must give next-day availability to a redeposited check that falls under the schedules set out in § 229.10, and must provide up to $100 the next day for local and nonlocal redeposited checks. The depositary bank will have presumably charged back the customer's account when the check was first returned.

(d) Repeated Overdrafts. The proposed regulation provided that if any account or combination of accounts of a depositary bank's customer has been repeatedly overdrawn, then for a period of six months after the last such instance, the temporary and permanent schedules of §§ 229.11 and 229.12 do not apply to any of the accounts. The proposed regulation considered an account to be "repeatedly overdrawn" if there have been three or more instances within a given six-month period in which the balance of the account has become negative, or would have become negative if checks or other charges had been paid. The proposed regulation defined "instance" as a period of up to three consecutive banking days during which an account is negative due to overdrafts, or during which additional checks or other charges to the account are returned or rejected. The proposed regulation also provided that a separate

instance occurs if an account has a negative balance for more than three consecutive banking days or if charges or checks are rejected or returned over a period of longer than three consecutive banking days.

The Board received 203 letters that contained comments on the repeated overdraft exception. Sixteen commenters agreed with the exception as proposed, and 26 commenters opposed the exception in general terms. These commenters complained that the proposal was too confusing, difficult to implement, and in some cases, too lenient. Four commenters said that the definition of "instance" was unclear and asked for a simplified rule. Thirty-six commenters requested that each bank be able to use its own discretion in determining what accounts are repeatedly overdrawn. Many of these commenters were concerned that the proposed exception was too lenient for commercial accounts, for which three overdraft "instances" within six months would be excessive.

Other commenters offered suggestions as to how the definition of "repeated overdraft" should be changed. Sixty-five commenters suggested that the proposed six-month period in which the "instances" are counted should be lengthened to a one-year period. Fifty-nine commenters stated that it was impossible, under many current operating systems, for a bank to track groups of three consecutive days of overdraft. The commenters suggested that an "instance" should be one day, not a group of consecutive days. Similarly, 48 commenters suggested that each check that causes, or would have caused had it been paid, an overdraft should be regarded as an "instance."

Twenty commenters suggested that the overdraft exception contain a dollar-amount trigger (e.g., three instances of overdraft or one $5,000 overdraft would satisfy the exception). One commercial bank suggested a sliding scale of allowable number of overdrafts according to the age of the account.

The final regulation reflects changes in the overdraft exception which incorporate many of the commenters' suggestions and make the exception less confusing and easier to implement. The final rule retains the six-month period, following the language of the Conference Report on the Act, which states that a reasonable definition of a repeatedly overdrawn account is one that is overdrawn on three separate and distinct occasions within any six-month period. The final regulation no longer defines "instance" in terms of consecutive days, but instead focuses on the number of days and the amount of the overdraft. Specifically, the final regulation provides that a depositary bank may consider a customer's account to be "repeatedly overdrawn" if on six or more banking days within a six-month period, the balance of the account is negative, or would have become negative if checks or other charges to the account had been paid; or if on two or more banking days within a six-month period, the balance of the account is negative, or would have become negative if checks or other charges to the account had been paid, in the amount of $5,000 or more.

Seven commenters asked the Board to clarify whether an instance occurs when a customer writes a check overdrawing the account or when a customer's deposited check is returned and the consequent charge-back overdraws the account. Three commenters asked whether overdrafts caused by overdraft fees could be included. The revised Commentary explains that all of the instances described above would constitute an overdraft instance for the purposes of the repeated overdraft exception. Overdrafts covered by overdraft lines of credit may not be counted in determining whether the repeated overdraft exception applies.

Five commenters asked whether the initial six-month period for counting overdrafts starts on September 1, 1988, or six months before that date. The Commentary has been revised to clarify that the depositary bank may consider overdraft activity that occurred prior to September 1, 1988.

One commenter asked whether the six-month period in which deposits can be held is rolling or distinct, (e.g., once a six-month hold period starts, must the depositary bank wait until the six months is over before recalculating the number of overdrafts?). The regulation provides that the six months is a rolling period and that a bank may invoke the exception immediately after the last overdraft.

Three commenters asked whether an overdraft must exceed total deposited funds or only available funds. The Commentary has been revised to clarify that an overdraft occurs when either the total deposited balance or the available balance is exceeded.

Four commenters asked whether this exception applied to next-day availability checks. Under section 604(b) of the Act, the repeated overdraft exception does not apply to any deposits subject to next-day availability.

(e) Reasonable cause to doubt collectibility. Section 229.13(e)(1) of the proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 and the next-day availability provisions of § 229.10(c)(1)(iii) and (v) for Federal Reserve Bank and Federal Home Loan Bank checks and cashier's, certified, and teller's checks do not apply with respect to any deposited check that the depositary bank has reason to believe is uncollectible from the paying bank. The proposed regulation provided that the existence of facts that would cause a well-grounded belief in the mind of a reasonable person that the check is uncollectible is required, and that such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The proposed regulation required that the reason for the bank's belief that the check is uncollectible shall be included in the notice required under § 229.13(g).

The Board received 158 letters containing comments on § 229.13(e)(1). Two commenters agreed with the provisions of the reasonable cause exception, and one commenter objected to the provision in general terms.

One hundred forty-three commenters opposed the requirement that the depositary bank must include the reason why it has reasonable cause to doubt a check's collectibility in the notice to the customer. The commenters pointed out that if the bank's reason for doubting collectibility is that it believes the depositor may be engaging in check fraud, to specify the reason in the notice could at worst expose the bank to liability in a libel suit and at best do severe damage to customer relations. The commenters also noted that if a bank doubts collectibility based on confidential knowledge of the possible failure of the paying bank, disclosure of the reason could cause a run on the paying bank. Many commenters asked the Board to provide model language that the depositary bank may use in the notice. A few commenters suggested that the depositary bank should have immunity from libel suits if it follows the Board's model language or acts in good faith using reasonable judgment.

The Commentary has been amended to clarify the situations in which the reasonable cause exception can be invoked and a depositary bank's responsibility to provide its customer with the reason that this exception is invoked. In certain limited cases, the depositary bank may indicate that the exception is being invoked on the basis of confidential information. Model notice form C–13A in Appendix C includes language that the bank may use in cases to describe the reason it believes a check is uncollectible. (See Commentary to § 229.13(e).)

A number of commenters made suggestions as to specific reasons why a depositary bank might believe a check is uncollectible. One commenter requested that counter checks and checks with the same maker and payee should be subject to the exception. The Board does not believe that either of these types of checks necessarily gives reasonable cause to doubt collectibility. One commenter suggested that a mutilated check should be covered by the reasonable cause exception. Damage to or loss of a check may give a bank reason to doubt the check's collectibility, and this reason is listed in model form C–13A.

Five commenters suggested that the depositary bank should be able to use a statistical base to determine the likelihood of collecting a particular check. Section 604(c)(2) of the Act provides that the determination to invoke a reasonable cause exception may not be based on any class of checks or persons. The final regulation tracks the Act's language. The Commentary has been amended to clarify that a depositary bank, however, may look at all the facts concerning a deposited check when determining whether to invoke an exception, as long as its decision is not based on the class of check or class of depositor.

Six commenters suggested that this exception should apply to all next-day availability checks. Similarly, five commercial banks commented that the $100 rule should not apply to checks held under the reasonable cause exception. Under section 604(c)(1) of the Act, the only next-day checks that can be held under the reasonable cause exception are cashier's, certified, and teller's checks. The regulation includes checks drawn on Federal Reserve Banks and Federal Home Loan Banks in the reasonable cause exception because the Board believes that in many cases, such checks are functionally equivalent to teller's checks. All other next-day availability checks, as well as the $100 rule, are not subject to the reasonable cause exception.

One trade association requested that the Board define "uncollectible funds." The Board does not believe that further definition of "uncollectible funds" is necessary.

Section 229.13(e)(2) of the proposed regulation provides that the depositary bank shall not assess any fee for any subsequent overdraft (including the use of a line of credit) or return of a check or other unpaid charge under the following conditions: the depositary bank has extended the time by which deposited funds will be available under the reasonable cause exception, the depositor was not provided with written notice of the extended hold required by § 229.13(g) at the time of deposit, the overdraft or return of the check or other unpaid charge would not have occurred except for the fact that the funds so deposited were not available but would have been available if the exception were not invoked, and the check was finally paid by the paying bank.

The Board received 93 comments on § 229.13(e)(2). All of the commenters suggested that the depositary bank should be allowed to assess a fee, then refund the fee if the conditions listed in § 229.13(e)(2) occur. The commenters noted that it is not feasible, under most banks' computer systems, to track overdraft fees as the proposed regulation would require. The final regulation makes the provision easier for the depositary banks to implement, yet preserves the customers' rights. The final regulation and Commentary have been revised to provide that the depositary bank may assess an overdraft fee under the conditions listed in § 229.13(e)(2) if it notifies the customer, in the notice of exception required under § 229.13(g), that the customer may be entitled to a refund of overdraft fees that were assessed due to the application of this exception if the check is paid and how to obtain such refund, and refunds any such fees upon request of the customer.

(f) Emergency conditions. The proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 do not apply to funds deposited by check in a depositary bank in the case of an interruption of communications facilities, or computer or other equipment failure; a suspension of payments by another bank; a war; or an emergency condition beyond the control of the depositary bank, if the depositary bank exercises such diligence as the circumstances require.

The Board received 100 comments on the emergency conditions exception. Seventy-four commenters suggested that the regulation should include an explicit exception for a weather-related emergency. Three commercial banks commented that the emergency exception should explicitly include transportation delays and equipment failures. Two commenters asked whether a lost cash letter constitutes an emergency. The final regulation does not specify the exceptions requested by the commenters because weather, transportation, equipment, and lost cash letter emergencies that are beyond the bank's control are already included in the emergency exception. The Commentary has been amended to clarify that a delay due to emergency conditions beyond the bank's control, such as severe weather, which causes delay in the collection of checks, may qualify for an extended hold under the emergency exception.

Fourteen commenters opposed the exclusion of next-day availability checks from the emergency exception. The regulation does not apply the emergency exception to next-day checks because section 606(d) of the Act provides that the emergency exception applies only to the temporary and permanent schedules. The Commentary has been revised to clarify that if next-day checks are not posted to a customer's account under certain emergency conditions, such as computer malfunction, the depositary bank may not be liable on those checks under the bona fide error provision of § 229.21(c).

Two commenters asked that the Board define "emergency" more clearly. The final regulation has not expanded the definition of "emergency." The language of the regulation tracks the Act's language in section 604(d), which the Board believes is sufficiently clear and flexible to meet most emergencies.

(g) Notice of exception.—(1) In general. Section 229.13(g)(1) of the proposed regulation provided that if a depositary bank extends the time for availability of deposits under the exceptions contained in §§ 229.13 (b) through (f), the depositary bank shall provide notice to the customer of the reason the exception was invoked and the day funds will be available for withdrawal. This paragraph also provides that the depositary bank need not include the day funds will be available for withdrawal in the notice if it in good faith does not know, at the time notice must be provided, the duration of the emergency and, consequently, when funds will be available for withdrawal.

The Board received 168 letters containing comments on § 229.13(g). Forty-two commenters objected to the requirement that if an exception is invoked, a notice must be given upon receipt of every deposit. The commenters suggested that, in many cases, a one-time notice would be sufficient. For example, a depositary bank could make one general disclosure of its hold policy for large-dollar deposits and redeposited checks, and could make one notice per six-month period in the case of a hold under the repeated overdraft exception. The Act, however, provides in section 604(f) that separate notice of an extended hold must be provided to the customer for each deposit that is subject to the hold.

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except for those deposits held under the new account exception. The final regulation follows the Act's provisions and requires a notice upon each deposit held under § 229.13 (b) through (f).

Four savings and loan institutions commented that a notice of exception would not be necessary for deposits that are under $100 because the deposit would have to be available the next day under § 229.10(c)(1)(vii). The Board believes that if funds are not held under § 229.13, no notice is required.

One commercial bank asked whether documentation of the reason for invoking the exception must be included in the notice. The Act and the regulation only require that the reason for invoking the exception must be included, not extensive documentation of the facts which substantiate the reason. The depositary bank may, however, wish to retain such documentation for its own records. Furthermore, as explained in the Commentary to the § 229.21(g) record retention requirements, a bank must retain a copy of each notice of a hold under the reasonable cause exception, and a brief description of the facts that gave rise to the reasonable cause to doubt collectibility.

Two commercial banks suggested that the notice should include the name of the drawer instead of the payee as provided in model form C–7 of the proposed regulation. The model forms for hold notices in Appendix C (C–13 and C–13A) of the final regulation have been amended to specify the name of the drawer.

Section 229.13(g)(1) and the Commentary have been revised to clarify that other information required in this notice includes the customer's account number and the date of the deposit.

(2) Timing of Notice. Section 229.13(g)(2) of the proposed regulation required the depositary bank to provide notice of a hold in writing to the customer at the time of deposit, if the deposit is made in person to an employee of the depositary bank. The proposed regulation further provided that in the case of any other deposit, or if the facts upon which the bank bases its determination to invoke a hold only become known to the bank after the deposit is made, the bank shall mail the notice to the depositor as soon as practicable, but not later than the first business day following the calendar day the facts become known to the bank or the day the deposit is made, whichever is later. The regulation also provided, however, that for funds held under the emergency conditions exception, the depositary bank is not required to send notice if the funds will become available before the notice must be sent.

Under the proposed regulation, a depositary bank is deemed to have knowledge of the facts upon which the determination is made when the facts are brought to the attention of the person(s) responsible for making the determination, and, in any event, from the time when the facts would have been brought to their attention if the bank had exercised due diligence.

Thirty-four commenters stated that a teller should not be expected to make the determination of whether an exception should be invoked. The commenters said that hold decisions will always be made by officers and notice mailed by the end of the next business day as required in the regulation. Four commenters suggested that the teller should be allowed to inform the customer of a possible hold in the event a subsequent determination to place a hold is made by a bank official. Ten commenters were opposed to the notice requirement altogether because tellers are unable to make the hold determination, and the time frame allowed for ATM deposit and mail deposit determinations is not long enough.

The final regulation contains the same requirements regarding the timing of the notice as the proposed regulation. These requirements are based on section 604(f) of the Act. The Board believes that the notice requirements are flexible enough to allow the depositary bank to rely on its officers and not its tellers to make hold decisions and still meet the timing requirements.

Thirty-three commenters asked that the Board delete the phrase "as soon as practicable" because it is confusing and redundant. The final regulation retains the phrase "as soon as practicable" because it is a requirement of section 604(f)(3) of the Act.

Thirty-one commenters requested that the Board clarify that notice given at the time of deposit is sufficient if given to the person making the deposit, even if that person is not the account-holder. The Commentary has been amended to clarify that notice of a hold may be given to the person making the deposit.

A number of commenters were confused about when the notice must be sent in cases when the deposit is not made to an employee or when the facts upon which the hold is based become known after the deposit is made. Twenty commenters apparently confused the notice requirements of § 229.13(g) with those of § 229.16(b)(2) and requested that the bank be allowed to send notice by the next business day after deposit, which was permitted under the proposed regulation for purposes of § 229.13(g), but not for § 229.16(b)(2). Six commenters requested specifically that the timing of the notice requirements in the two sections be made consistent. Section 229.16(b) of the final regulation has been revised so that the timing requirements in § 229.16(b)(2) match those of § 229.13(g).

Thirty-one commenters asked that the depositary bank be allowed to mail the notice by the close of the next *banking* day as opposed to the next business day, when the bank might not be open. Some of the commenters based their request on the Commentary to the definitions of "banking day" and "business day," which states that when dealing with a bank's duty to perform some action, the focus should be on the banking day. The final regulation has retained the duty to send the notice on the next business day because it is important for customers to receive these notices as quickly as possible. If a bank knows it will be closed on a business day, it can mail out the exception notices on the day of deposit rather than the next business day.

Twelve commenters opposed the notice provision because the cost of compliance will be high. The commenters remarked that instead of invoking exceptions, banks will refuse to accept checks for deposit or will accept them on a collection basis. A bank's ability to send an item for collection, however, is limited by the definition of "noncash item." (See the discussion in the Commentary to the definition of "noncash item.") Nevertheless, the regulation does not prevent a depositary bank from refusing to take a check for deposit.

Four commenters requested that a depositary bank be able to give notice by telephone or by leaving a message on a telephone answering machine, if notice was not given to the customer at the time of the deposit. Two commenters asked whether a bank can place a hold after it has received the deposit if it is unable to contact the customer by telephone. While the bank may wish to notify the customer of a hold by telephone, such notice would be *in addition* to the written notice required by § 229.13(g). Both the Act and the regulation require a written notice to be given so that both the bank and the customer have an accurate record of exceptions to the availability schedules.

With respect to the requirement to use due diligence in ascertaining the facts on which a hold is based, four commenters asked that the Board either define or delete the phrase "due diligence." The final regulation retains

the phrase "due diligence" without a definition. "Due diligence" depends on the reasonableness of an action in particular circumstances. It would be inappropriate to define the term by regulation.

Five commenters suggested that when describing a deposit made to an employee of the depositary bank, the regulation's language is too broad and that the Board should add the word "appropriate" before employee. The Board believes that reference to a deposit to an employee of the depositary bank makes it sufficiently clear that the employee is an appropriate employee.

One bank holding company requested that the depositary bank be able to vary the time of notice by agreement with its customer. The Act provides that the notice rules apply to all accounts and does not allow variation of this, or other Subpart B requirements, by the depositary bank. The regulation follows the provisions of the Act and makes the notice requirement mandatory and not subject to variation by agreement.

(3) Record retention. Section 229.13(g)(3) of the proposed regulation provided that a depositary bank shall retain a record, in accordance with § 229.21(g), of each notice provided pursuant to its application of the reasonable cause exception under § 229.13(e).

Two commenters raised questions about the nature of the records a bank is required to keep. The final regulation and Commentary have been revised to provide that a bank must retain, in addition to each reasonable cause notice, a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check. Such records must be kept for two years, or such longer time as provided in the record retention requirements of § 229.21(g).

(h) Availability of deposits subject to exceptions. The proposed regulation provided that if an exception applies under § 229.13 (b) through (e), the depositary bank may extend the temporary or permanent availability schedule by not more than four business days. The proposed regulation also provided that if a depositary bank invokes an exception with respect to a check that is subject to § 229.10(c)(1) (i) through (v), the depositary bank may extend availability by not more than four business days after the funds would have been available had the check been subject to the temporary or permanent schedules. Furthermore, the proposed regulation provided that if a depositary bank invokes a hold under the emergency conditions exception, it shall make the funds available not later than four business days after the emergency has ceased or after the day the funds must be available under the temporary or permanent schedules, whichever is later.

The Board received 78 comments that responded to proposed § 229.13(h). One savings and loan institution agreed with the provision as proposed. Most of the commenters suggested lengthening the four-day hold period. Twenty-three commenters suggested that the depositary bank should be allowed to extend the hold period upon receipt of a notice of nonpayment. Ten commenters requested that the four-day period be extended in all cases. The commenters, suggestions for the length of the hold period ranged from five to ten days; some commenters wished to leave the length to the depositary bank's discretion. Fifteen commenters suggested that the hold period be based on a reasonableness standard rather than a prescribed number of days. The final regulation has been amended to reflect concerns raised by these commenters. The final regulation provides that the depositary bank may extend the hold on deposits under § 229.13 (b) through (f) for a reasonable period of time. Under the final regulation, four days is deemed to be a reasonable period of time; for holds longer than four days, the depositary bank must establish that such longer hold is reasonable.

The Commentary has been revised to clarify the application of the revised regulation and that § 229.13(h) does not apply to the new account exception.

Other commenters raised questions as to how the four-day hold should be implemented. Four commenters asked the Board to clarify that, even if a depositary bank usually gives next-day availability for all deposits, the four days are added to the statutory availability schedule when invoking an exception, not to the bank's usual availability schedule. Both the final regulation and the Commentary state that this is the case.

Seven commercial banks asked whether, when a depositary bank receives a notice of nonpayment, the bank can apply a hold even if funds have already been made available. As explained in the Commentary to § 229.13(h), a bank can apply a hold in such a case.

One commercial bank asked whether the hold period would apply to all of the customer's accounts. The Act and regulation allow the depositary bank to hold only that portion of the deposit that is subject to an exception. The rest of the deposit and funds in all other accounts of the customer must be made available according to the availability schedules. Subject to § 229.19(e), in certain cases a depositary bank may place a hold on funds in another account instead of on funds in the account to which the deposit was made.

Section 229.14 Payment of interest.

Section 229.14 of the proposed regulation provided that a depositary bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depositary bank receives provisional credit for the funds. The proposed regulation allowed a depositary bank to rely on the availability schedule of its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine the time provisional credit is actually received. The proposed regulation also provided a special rule for credit unions based on section 606(b) of the Act. The special rule provided that the requirement that interest accrual be based on receipt of provisional credit does not apply to credit unions that begin accrual of interest at a later date with respect to all funds, including cash, deposited in the account and that provide notice of its interest or dividend payment policy in the manner required under § 229.16. The proposed regulation did not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

The Board received 80 comment letters that responded to proposed § 229.14. Two commenters favored the section as proposed.

Many of the commenters stated that they would have technological problems in implementing the rule. Five commenters complained that many computer systems can not make the distinction between when a check is available for withdrawal and when provisional credit has been received for a check, thus the depositary bank will have to pay interest based on the day of deposit, which would significantly increase costs. Some commenters stated that most computer systems are not able to distinguish between funds availability and interest availability, thus forcing banks to make all funds available as of the date of provisional credit. Five commenters suggested that interest should accrue on the day funds must be available, thereby allowing banks to compete on the basis of their availability schedules. Six commenters requested that the depositary bank be able to accrue interest according to a formula based on the fractional availability schedule under which the

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depositary bank receives provisional credit.

The Board recognizes that some banks may be required to make software programming changes to implement the payment of interest rules. The provision that interest must accrue when the depositary bank receives credit is mandated by the Act (section 606) and remains part of the final regulation. The final regulation has been revised to allow accrual of interest based on fractional availability for all accounts. (Under § 229.19(d) of the proposed regulation, calculated availability was permitted for nonconsumer accounts.) A depositary bank may accrue interest on a uniform basis for all interest-bearing accounts based on the availability of funds the depositary bank usually receives from the paying or collecting banks to which it sends checks for payment or collection, without the need to track the type of check deposited to each account.

Four commenters noted that the date of provisional credit from a Federal Reserve Bank or from a correspondent bank often depends on which deadline the depositary bank's courier meets, which is not always known to the depositary bank. Thirty-four commenters requested that the Board allow the depositary bank to charge back the interest paid to accounts when the depositary bank misses the Federal Reserve Bank or correspondent bank deadline and subsequently does not receive provisional credit on the date on which the accrual of that interest was based. Similarly, one commercial bank asked whether the depositary bank can adjust the interest paid when provisional credit is delayed due to an equipment failure or weather delay. The final regulation requires that banks pay interest as of the day they receive credit. The Commentary has been amended to clarify that if a bank does not receive credit as soon as it expected, it may charge back the interest it paid before actually receiving credit. The final regulation and the Commentary have also been revised to refer to "credit" instead of provisional credit. Under revised § 229.36(d), credit given during the forward collection process is considered to be final credit.

Three commenters requested that the Board clarify that a depositary bank can begin paying interest sooner than the time specified in the regulation. Similarly, two commercial banks suggested that the interest provision should include savings and time deposits as well as accounts as defined in Subpart A. The commenters noted that it will be difficult to keep track of two types of interest payments. The language of § 229.14 and the Commentary to the final regulation clearly state that interest on accounts must accrue not later than the times specified and that a bank may voluntarily pay interest to accounts not covered by the regulation, such as savings and time deposits, at the same time as they pay interest to transaction accounts.

Three commenters asked the Board to clarify that accounts must continue to meet minimum or average balance requirements before interest will be paid. The Commentary has been amended to clarify that such requirements are not superseded by the regulation.

Two commenters asked whether "interest" includes earnings credits applied to non-interest-bearing accounts for balances maintained. The Commentary has been revised to clarify that "interest" does not include the absorption of expenses incident to providing a normal banking function or forbearance from charging a fee in connection with a banking service, and thus earnings credits are not interest payments.

One commercial bank asked when interest should accrue for deposits of on us checks (which the depositary bank does not send for collection), and another commercial bank asked when interest should accrue for ACH credits. The regulation has been amended to provide that the depositary bank must accrue interest on the day on which it receives credit. As explained in the Commentary to the final regulation, a bank receives credit on a cash deposit, an electronic payment, or an on us check on the day the cash, electronic payment, or check is received.

Some commenters were concerned that the payment of interest provision would give a competitive advantage to the Federal Reserve Banks. Seven commenters pointed out that the regulation will cause banks to value low per-item charges more than faster availability from correspondents because the advantages of faster availability will be passed along to the bank's customers. The commenters believed that the Federal Reserve Banks will gain an advantage because of their low per-item costs. The Board believes that one of the purposes of the Act is to require that this interest be passed back to customers and that the interest payment provision is mandated by the Act.

Four commenters suggested that if depositary banks must pay interest as of the provisional credit date, the Federal Reserve Bank or correspondent bank should also have to pay interest to the depositary bank as of that date. For the reasons explained under the definition of "account," the regulation does not apply to interbank accounts, and therefore, Federal Reserve Banks and other correspondent banks are not subject to § 229.14 for deposits made by other banks. Furthermore, a correspondent bank would be prohibited from paying "interest" because such payments would generally constitute payment of interest on a demand deposit.

Six commenters opposed the special rule for credit unions because it gives credit unions an unfair advantage over other banks. The special credit union rule is provided in section 606(b) of the Act and is part of the final regulation. The rule was included in the Act because the Congress, as stated in the Conference Report, intended "to accommodate the unique operating procedures of credit unions whose traditional accounting practices often [include] partial dividends on funds not on deposit for an entire dividend period." The Congress did not intend that individual credit unions change existing practices to avoid compliance.

One bank holding company requested that the depositary bank should be able to agree with the customer to waive the payment of interest rule in return for the bank's expenditures for transportation costs and other collection services. The Board does not believe it would be appropriate to allow such a waiver. Transportation and other collection expenses represent a cost of doing business for the depositary bank. The Act confers certain rights to bank customers, such as prompt payment of interest, which would be undermined should the Board allow banks to offset their operating costs against interest payments to customers.

One commercial bank suggested that the Board add the words "regardless for the reason for return" to the end of § 229.14(c), which provided that banks need not pay interest on "funds deposited by a check that is returned unpaid." The Board has not changed § 229.14(c) in the final regulation but has added this phrase to the Commentary for clarification.

The Commentary to this section has also been revised to clarify that this section is not intended to affect interest accrual or payment policies unrelated to the time that funds have been on deposit, provided that deposits are considered made in such accrual or payment policies based on the receipt of credit or as required by this section.

Sections 229.15–229.18 Disclosures.

Disclosures Generally

The proposed regulation required banks to make a number of disclosures to their customers. These disclosures were:

—Disclosure of the bank's specific availability policy to existing account customers, to customers prior to opening a new account, and to any person upon request;
—Reminder notices regarding availability on deposit slips, and at automated teller machines, and at all locations where bank employees accept deposits; and
—Notice when a hold is placed that varies from the policy normally followed by a bank on a case-by-case basis, or as a result of one of the exceptions to the regulation's availability schedules, and when there are changes in a bank's availability policy.

Approximately three-fourths of the 940 comments received on the proposed regulation addressed the disclosure requirements. Several commenters objected to the disclosure requirements generally. Twenty-eight commenters complained that too many disclosures were required and that requiring banks to make so many disclosures would result in a considerable cost burden. Fourteen commenters suggested that banks should be given additional time to prepare for compliance with the disclosure requirements. Ten commenters stated that customers would not understand the required disclosures because of the numerous conditions and exceptions in the regulation's availability schedules.

Even though the Board has made some changes to the disclosure requirements in the proposed regulation, the Board has not significantly reduced the disclosure requirements. The number of disclosures, the detail required as a result of the conditions and exceptions to the availability schedules, and the September 1, 1988 effective date, are all aspects of the disclosure scheme mandated by the Act and therefore have not been modified by the Board in the final regulation.

Section 229.15 General disclosure requirements.

Under the proposed regulation, banks are required to make disclosures clearly and conspicuously in writing. Except for the notices posted at branches and ATMs and printed on deposit slips, disclosures must be in a form that the customer may keep. (The final regulation substitutes the phrase "posted at locations where employees accept consumer deposits" for "posted at branches." See Comment Summary to § 229.18(b).) The proposed regulation also provided that the disclosures shall appear together, shall not contain information that is not directly related to information required by Subpart B, and shall be highlighted if they appear as part of a larger document. In addition, the proposed regulation required that banks utilize a prescribed uniform reference to the day of availability in their disclosures. Furthermore, the proposed regulation outlined the disclosure requirements for multiple account holders or accounts, and included an exception for disclosures for dormant or inactive accounts.

Fifteen commenters asked that the Board clarify in the regulation that banks using the model forms properly will be in compliance with the notice requirements of the regulation. The Board has revised Appendix C to include language that makes clear that banks are deemed to be in compliance if they make proper use of the forms.

Seven commenters were concerned about how banks should handle making the disclosures to customers who have specified that they want no mail sent concerning their accounts. The Commentary to the final regulation addresses this issue and makes clear that a special mailing is not required.

Four commenters stated that disclosures should not be provided to commercial account holders. The Act (section 605(c)) requires that disclosures be given to "customers," and does not distinguish between consumer and commercial customers for purposes of the disclosures generally.

Eight commenters asked the Board to clarify what accounts are intended to be covered by the dormant or inactive accounts exception. Two asked that banks be allowed to use their own standards for determining what accounts are dormant or inactive for purposes of this section. The Board has included material in the Commentary to the final regulation to indicate that whether an account is dormant or inactive for purposes of this section depends on whether the account is considered dormant or inactive by the bank for other purposes.

Section 229.16 Content of specific availability policy disclosure.

The proposed regulation outlined two alternative methods for banks to use in disclosing their specific availability policies. Section 229.16(a) addressed the situation where a bank imposes blanket holds on check deposits, with the length of the delays varying by the type of deposit. Section 229.16(b) was designed as an alternative disclosure method for banks that, as a general rule, provide customers with next-day availability, and place holds only on a case-by-case basis. The alternative provided for a somewhat simplified disclosure, but banks following this alternative would be required to notify the customer when a case-by-case hold was placed on a deposit. The bank was to either give notice of the hold at the time of deposit, or tell the customer at the time of the deposit that a hold might be placed and then notify the customer by the end of the day of deposit if a hold was placed.

Eleven commenters suggested that the Board should allow a bank to disclose, as its hold policy, the maximum delays that could be imposed on deposits under the regulation, even though the bank does not, in fact, have such a policy. The Board did not include this as a disclosure alternative in the final regulation. The Board believes that allowing banks to disclose something other than the policy that the banks actually follow in most cases would be inconsistent with the statutory requirement that banks disclose their "specific policy" as to when deposited funds will be available for withdrawal. (See section 605(c)(1) of the Act.)

The Board has added a disclosure requirement for banks that elect to impose longer delays on customers' deposits at nonproprietary ATMs than are imposed on deposits at proprietary ATMs. These banks must describe how customers can differentiate between a proprietary and a nonproprietary ATM. (See § 29.16(b)(5).) This disclosure requirement has been substituted in the final regulation for the proposed regulation's special notice at ATMs that are nonproprietary to certain banks, but at which customers of those banks could make deposits. (See the discussion of comments to § 229.18(c), regarding the notice at or on ATMs.)

With regard to the case-by-case disclosure alternative, two commenters asked whether this approach could be used by banks that normally give availability on the second business day after deposit (instead of just by those that give availability on the next business day), or by banks who might impose blanket holds only on certain categories, such as ATM deposits. One commenter asked that the Board clarify what bank policies would qualify as case-by-case policies.

In the final regulation, the Board has modified the disclosure provisions to clarify that any bank may choose to delay certain deposits on a case-by-case basis and thus provide a case-by-case

disclosure as part of their specific availability policy. (See §§ 229.16 (a), (b), and (c).) Under the revised provisions, any bank that generally makes funds available for withdrawal sooner than the time periods set as the federal maximums may make the case-by-case disclosures and impose case-by-case holds. The case-by-case disclosure is no longer a separate disclosure alternative; the disclosure of a case-by-case hold policy is part of the specific availability policy requirements. (See § 229.16(c)(1).)

The notice requirements that were part of the case-by-case disclosure alternative in the proposed regulation generated numerous comments. One hundred four commenters asked that the Board delete the requirement of a case-by-case hold notice on the same day a case-by-case hold is placed. Some of these commenters argued that banks using the case-by-case disclosure alternative are already making funds available to their customers in less time than required by the statutory time frames. Others stated that this notice requirement might encourage banks to implement the full statutory holds in order to avoid the requirement. Twenty-seven commenters wrote that the same-day notice requirement was too burdensome on banks when the decision to delay availability is made after the customer leaves the bank lobby. One commenter questioned the statutory basis for the notice requirement since the case-by-case hold would be within the time periods by which the Act and regulation require funds to be made available.

With regard to the details of the same-day notice requirement, 15 commenters expressed concern as to how often it would be possible to actually reach a customer by phone, and six asked how banks could prove that an attempt had been made. Twenty-six commenters suggested that a good-faith effort by the bank to reach a customer by phone (with a follow-up notice by mail suggested by 17) should be sufficient to satisfy the same-day notice requirement. Thirty-four commenters suggested that banks should be allowed to shift the burden to customers to check back to ascertain whether the bank decided to place a hold after the deposit is made and the customer had left the bank. Nineteen commenters suggested that notice by mail should be allowed, or that the case-by-case notice rules should mirror those rules applicable to exception holds. Ten commenters suggested that the deadline for the notice should be extended an additional day, because deposits are sometimes not processed until late in the evening.

The Board has made a number of revisions and clarifications in the final regulation and Commentary concerning the case-by-case notice. The most significant adjustment is that the requirements for the case-by-case hold notice are now the same as the requirements for the exception hold notice under § 229.13, except that no reason for the case-by-case hold need be given. (See § 229.16(c)(2).) The requirement that the customer be told of the possibility of a hold at the time of a deposit has been eliminated, as has the requirement of same-day notice of an actual hold if the customer is not told of a hold at the time of deposit. As with the exception hold notice provisions in § 229.13, a provision has been added to the case-by-case provisions stating that a bank that fails to provide a customer with a notice of a case-by-case hold at the time of deposit may be prohibited from imposing overdraft or returned check fees that result from the hold being placed. (See § 229.16(b)(c)(3).)

Among the other comments on the case-by-case notice requirements in the proposal, six commenters asked that the language in § 229.16(b)(2) of the regulation, which provides that notice should be sent on the "banking" day the deposit is made, be changed to refer to the "calendar" day on which the "banking" day occurs since the definition of "banking" day includes only a portion of a day on which a bank is open for business. The changes to the notice rules discussed above eliminate the problems raised by these commenters. Six commenters also asked that the Board clarify that banks may provide the required notice to whomever makes the deposit, even if that person is not the account holder. The Board has clarified in the Commentary that a bank may give notice to whomever makes the deposit. Four commenters asked that deposits by armored car be clarified to be mail deposits, not in-person deposits for notice purposes. The Board has clarified this point in the Commentary. Two commenters suggested that the generic deposit slip notice required on all deposit slips should satisfy the requirement of notice of hold at the time of deposit. The Board believes that the notice requirements for a case-by-case hold are clear, and that a generic notice is not sufficient.

The specific availability policy disclosure provisions also called for disclosure of a bank's cut-off hours. Three commenters expressed confusion as to whether banks with different business cut-off times at different locations or ATMs must state all of their cut-off times in their disclosure. The Board has clarified in the Commentary that such banks need only disclose the cut-off time that generally applies, and indicate that other cut-off times may apply and state the earliest cut-off time that might apply.

In the final regulation, the disclosure required by § 229.14(a), of a credit union's interest payment policy when the credit union does not accrue dividends on cash or check deposits from the date of receiving credit on a deposited check, has been added to § 229.16 as paragraph (d). In the proposed regulation, the disclosure was included as an additional disclosure requirement in § 229.16. The Board believes that since the disclosure must be included in the credit union's initial disclosure of its specific availability policy, it is most appropriately included in § 229.16.

A number of commenters asked that additional model forms be created by the Board for all of the requirements of § 229.16. Three suggested that the Board create a form for banks that place holds on a selective basis if holds are placed only on a small percentage of checks and customers are told when holds are placed. Eleven commenters expressed interest in a form that would allow disclosure of the maximum availability schedule while indicating that actual availability might be faster. One commenter suggested that the Board create a version of model form C–4 that would incorporate the new accounts exception (as found in proposed model forms C–6 and C–7). The Board has revised model form C–4, modified the other model forms, and added model clauses to address some of the concerns raised by commenters.

Section 229.17 Initial disclosures.

This section of the regulation addressed when banks must provide the specific availability policy disclosure discussed in § 229.16. Under the Act and final regulation, the disclosure must be given to all existing account holders no later than October 31, 1988, and prior to opening an account.

Some of the comments received reflected confusion as to whether it was permissible to send the disclosure out prior to the September 1, 1988 effective date. One commenter asked that the deadline for providing notices to existing customers be extended until November 30, 1988. The final regulation and Commentary allow banks to send notices out prior to September 1, 1988.

The Board has revised the Commentary to clarify that if the required disclosures are sent to the customer separate from the first scheduled mailing to the customer after September 1, 1988, such as the mailing of the customer's statement, the separate mailing must be made prior to the statement being mailed. The Board has also revised the Commentary to clarify that a bank may disclose in its availability policy disclosure both the policy that it will follow from September 1, 1988 to August 31, 1990, and the policy that it will follow on September 1, 1990 and beyond. The Board did not make changes to the deadline for notices being sent because the October 31, 1988 date is set by the Act.

Five commenters asked that institutions be exempted from the requirements of this section if their state law has already required them to provide an availability policy disclosure that they believe is similar to the one required by the Act. The Board has indicated that disclosures that meet the requirement of this section can satisfy the required disclosure to existing accounts even if they were previously given, and that banks must review their disclosures and make their own determinations.

Several commenters asked for clarification as to when disclosures need be given when an account is opened and, particularly, when the account is being opened due to a telephone request. The Board has clarified the timing requirements in the Commentary.

Section 229.18 Additional disclosure requirements.

(a) *Notice on deposit slips.* This section of the proposed regulation required a bank that delays availability on deposits to include a notice on all preprinted deposit slips furnished to its customers that deposits may not be available for immediate withdrawal.

The overriding concern expressed in the comments on this section was the banks' responsibility for the deposit slip disclosure when customers obtain deposit slips from third parties. Twenty-two commenters asked that the final regulation clarify that banks are only responsible for the notice on deposit slips that they supply their customers.

Nine commenters asked the Board to clarify what exact language is required on the deposit slip, where the language should appear on the slip, and the type-size. Two commenters asked that this notice be standardized so that printing costs could be minimized. The model form in the proposed regulation included optional language and used the term "banks" instead of the more generic "financial institutions."

Eleven commenters argued that this disclosure is unnecessary. Four commenters were unclear as to whether this notice requirement would apply to banks using the case-by-case alternative. Six commenters stated that this requirement would be expensive to implement, and nine asked if customers may exhaust their existing stock of deposit slips before they start using slips carrying the notice. A few commenters thought that the Board was requiring that a bank's entire availability policy be printed on deposit slips.

The Board revised the Commentary to clarify various aspects of the deposit slip disclosure requirement, such that supplies of deposit slips held by customers need not be replaced and that banks have no disclosure responsibility as to slips ordered from third-parties. The Board has also standardized the model notice.

(b) *Notice at branch locations.* This section of the proposed regulation required a bank to post at each location where its employees receive deposits to consumer accounts, a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

Four commenters wrote that this disclosure will be burdensome, costly, and counterproductive. Two commenters questioned whether this notice had to be at each drive-in bay or at night depository locations. In addition, two asked that the regulation specifically indicate that this notice is not required at each teller window in a branch. The final regulation makes clear that a notice is not required at drive-in windows or night depositories and that a notice is not required at each teller window in a branch.

Two commenters asked what type of notice must be given by banks using the case-by-case alternative disclosure, and the Board was asked to provide a model form for such banks. The final regulation includes a model form for the case-by-case alternative.

One commenter noted that while the proposed regulation referred to disclosure at all "branch locations," the Act (Section 605(d)) and the Commentary refer to "each location where deposits are accepted by employees" and that in unit-banking states, such as Colorado, locations where deposits are accepted are not considered to be branches. The Board has made clarification to this notice and has substituted the Act's language of "locations where employees accept deposits" for "branch" locations. The Board also has created a model form to accommodate banks using the case-by-case alternative.

(c) *Notice at or on ATMs.* This section of the proposed regulation required the owner or operator of an ATM to post or provide a notice at the ATM stating that funds deposited in the ATM may not be available for immediate withdrawal. The proposed regulation also required an additional disclosure if an ATM could be used for deposits by customers of banks to whom the machine is considered nonproprietary. In those situations, the proposed regulation required that the bank to which the ATM is proprietary be identified at or on the ATM and a notice be posted stating that funds may not be available until the seventh business day after deposit.

The requirements of this section generated a number of comments. Most of the commenters were critical of the additional notice requirements for nonproprietary ATMs. Nine expressed concern regarding the requirement that ATMs be identified because such identification would directly contradict some state laws. One commenter suggested that a product or trade name be allowed for identification purposes instead of the institution's name.

Twelve commenters criticized the requirement that the possibility of a seven-day hold be disclosed, on the grounds that posting such a notice at ATMs would confuse and mislead customers who may not be sure whether the hold applies to them or not, and who may, as a result, be discouraged from using ATMs altogether. Some of these commenters asked that there be a uniform notice for proprietary and nonproprietary machines. Four commenters suggested that the ATM disclosure be required to be on the ATM deposit envelopes so that proprietary and nonproprietary machines would look the same. Two commenters suggested requiring banks to list all proprietary ATMs in their initial disclosure instead of having a special notice at the ATMs. Three commenters were confused as to whose responsibility it would be to post the ATM notice in a shared network situation.

The Board eliminated the requirement of a special notice at all ATMs that accept deposits to accounts in banks for which the ATM is considered nonproprietary. A bank that imposes longer delays on deposits at nonproprietary ATMs must, however, make the disclosure required in § 229.16(b)(5). (See the previous discussion of this point in the Comment Summary to § 229.16.)

The final regulation has been revised to provide that a depository bank that

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operates an off-premises ATM from which deposits are removed not more than two times each week shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received. See § 229.16(c)(2).)

(e) *Change in policy notice.* This section requires banks to send notices to customers at least 30 days before implementing a change to the bank's availability policy, unless the change expedites the availability of funds, in which case the change must be disclosed not later than 30 days after implementation. Three commenters suggested that the Board should require notice only when there is a material change in policy because, with regard to commercial accounts, minor changes in availability are frequently made and the disclosure requirement could prove to be a disincentive to banks to make these adjustments for faster availability. One commenter also asked that notice not be required if a change is the result of the Board's updating of Appendix B. In the final regulation, the Board has clarified that only consumer account holders need to receive the change in terms notice. In addition, the Commentary makes clear that no notice is required when a change is due to a Board change to Appendix B.

The Commentary to the final regulation discusses a bank's change-in-terms responsibilities when it has disclosed the ATMs that are proprietary or nonproprietary to it for purposes of its customers making deposits, as required by § 229.19(b)(5). The Commentary states that a bank must provide a change-in-terms notice only when a machine that was proprietary becomes nonproprietary, or if the bank had previously disclosed the nonproprietary machines that would result in a longer delay in availability and a new nonproprietary machine is added. In any event, the Commentary states that a notice concerning ATMs is required only once per year.

(f) *Interest policy disclosure.* This section of the proposed regulation required that if a credit union begins to accrue interest or dividends on all deposits made in an interest-bearing account later than the business day on which it receives provisional credit for the funds, its full availability policy disclosure must contain an explanation of when the credit union begins to accrue interest or dividends on deposits. The three comments received on this requirement suggested that the Board clarify whether the disclosure must be made when interest is accrued based on the Reserve Bank's or correspondent banks' availability schedule.

As discussed previously, the Board has moved the credit union interest payment policy from § 229.16 to § 229.16(d).

Section 229.19 Miscellaneous.

(a) When deposits are considered made. Section 229.19(a) of the proposed regulation provided that a deposit mailed to the depositary bank is considered made when it is received by the depositary bank. The section also provides that a deposit is considered made on the next banking day in the case of a deposit that is made on a day that is not a banking day for the depositary bank or after a cut-off hour set by the depositary bank for the receipt of deposits of 2:00 p.m. or later. The proposed regulation allowed different cut-off hours to be established for receipt of different types of deposits or for receipt of deposits at different locations.

The Board received 175 comment letters in response to proposed § 229.19. Of those 175 letters, 93 contained comments on § 229.19(a). Thirty-eight commenters said that the 2:00 p.m. cut-off hour is too late for ATM deposits. The commenters stated that the 2:00 p.m. cut-off does not allow the depositary bank enough time to collect and process deposits in off-premise ATMs by the end of the banking day. The commenters were especially concerned with giving next-day availability to checks which have not been verified. The final regulation addresses this problem by permitting an earlier cut-off hour (12 noon) for deposits to ATMs and other off-premise facilities. (The next-day availability problem has also been addressed in part by the changes to § 229.10 regarding deposits to unstaffed facilities.)

Three commercial banks made similar comments regarding remote branches of depositary banks. The commenters explained that some remote branches send their deposits to a central processing facility where they are processed the following day. The commenters pointed out that, in cases of next-day availability, the branches would have to make funds available before they are posted to the customer's account. The final regulation has not changed the cut-off hour for deposits to staffed locations, even if the location is a branch that is far from its central processing facility. Section 603(a) of the Act specifically provided for next-day availability on certain deposits at staffed locations. The Board believes that to allow an early morning cut-off hour for staffed branches would be contrary to the intent of the Act. If a branch uses a central processing facility to post deposits, it must be responsible for transmitting and receiving information to and from that facility to meet the statutory availability schedules.

Twenty-three commenters suggested that night depositories and lock boxes should not be subject to a 2:00 p.m. cut-off hour because they are generally meant to be used as overnight depositories and are emptied out early in the morning. The Board has amended the final regulation and Commentary to provide that funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depositary bank.

Eleven commenters suggested that mailed deposits be considered made when they are received at a particular location specified or permitted by the depositary bank. The final regulation provides that funds mailed to the depositary bank are considered deposited on the day they are received by the depositary bank. The Commentary to the final regulation explains that funds are received at the depositary bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than a check processing area.

Three commenters asked whether the 2:00 p.m. cut-off applies to mailed deposits. If a depositary bank receives a mailed deposit after 2:00 p.m., it may consider that deposit received on the next banking day as provided in § 229.19(a)(5) of the final regulation.

Eight commenters requested that the Board allow an earlier cut-off hour (or later starting hour) in emergency situations. The Board did not include such a provision in the final regulation because the regulation already permits a bank to close any of its facilities before the § 229.19(a) cut-off hour or open any of its facilities after the § 229.19(b) starting hour. The regulation only requires that if any facilities are open at or after the cut-off hour or at or before the starting hour, those deposits at those facilities are subject to the cut-off or starting hour. Furthermore, deposits that are not posted due to an emergency situation may be subject to the emergency exception contained in § 229.13(f).

Three commenters asked whether a depositary bank is required to remain open until 2:00 p.m. on all of its banking days. Section 229.19(c)(3) of the final regulation expressly provides that the regulation does not require a bank to open on any particular day. The Commentary to § 229.19 has been revised to clarify that a bank does not have to remain open to any particular hour.

One bank holding company explicitly approved of the provision that different cut-off hours may be established for different types of deposits or for different locations. One commercial bank asked whether, if a depositary bank establishes different cut-off hours at different locations, it must disclose the cut-off hour at every location. The final regulation does not require a bank to post the cut-off hour at each ATM. Disclosure of ATM cut-off hours may be in the form of a written notice as provided in § 229.16(b).

One commercial bank suggested that § 229.19(a), which describes when a deposit is considered received, should go in the definitions section (§ 229.2). The Board did not move paragraph (a) because it contains substantive provisions which are not appropriate for the definitions section.

Section 229.19(a) and the Commentary have also been revised to clarify when funds deposited at staffed facilities and ATMs are considered deposited.

(b) Availability at the start of business day. Section 229.19(b) of the proposed regulation provided that, except for deposits subject to the time period adjustments of §§ 229.11(b)(2) and 229.12(d), funds that must be available on a business day must be available by the later of 7:00 a.m. (local time) or the time the depositary bank's teller facilities (including ATMs) are available for customer account withdrawals.

The Board received 84 comments on § 229.19(b). One trade association approved of the 7:00 a.m. starting hour. One commercial bank objected to requiring funds to be available at the opening of the business day. The Act, however, provides that when funds must be available for withdrawal on any business day, such funds shall be available at the start of such business day (section 607(b)). The final regulation includes this requirement as well.

Sixty-one commenters complained that the 7:00 a.m. starting hour is too early for the banks to be able to update ATMs in time to make funds available. The final regulation and Commentary have been amended to change the 7:00 a.m. starting hour to 9:00 a.m.

Fifteen commenters asked the Board to clarify that "local time" means local time at the branch that holds the customer's account. The regulation and Commentary have been amended to clarify that 9:00 a.m. refers to local time of the branch of the depositary bank that holds the customer's account.

Five commercial banks suggested that the 7:00 a.m. (now 9:00 a.m.) rule should not apply to deposits that must be made available on a business day which is not a banking day for the depositary bank. The final regulation does not incorporate this suggestion because the Act and regulation require funds to be available based on business days, not banking days. (See Commentary and Comment Summary of "business day" and "banking day" definitions.) The regulation does not require a bank to be open on every business day, but only to update its ATMs by the start of every business day.

(c) Effect on policies of depositary bank. Section 229.19(c) of the proposed regulation provided that the regulation does not prohibit a bank from providing better availability than is required by the regulation. The paragraph also provided that the regulation does not affect a bank's right to accept or reject a check for deposit; to revoke provisional settlement of a check; charge back the customer's account for a check based on return of the check or receipt of a notice of nonpayment; or claim a refund of provisional credit; and to charge back funds made available to a customer for an electronic payment for which the bank has not received actually and finally collected funds. Furthermore, the paragraph provided that the regulation does not require a bank to open or otherwise make its facilities available for customer transactions on a given business day. In addition, the proposed regulation provided that § 229.19(c) does not supersede any policy of a bank that limits the amount of cash a customer may withdraw at an ATM or staffed teller station on any one day, as long as that policy is applied without discrimination to all customers, is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time periods specified in the regulation's schedules, and is related to security requirements or bonding limitations of the bank.

The Board received 48 comments on § 229.19(c). Forty-six commenters objected to the nondiscrimination requirements of the paragraph. The commenters stated that banks impose different ATM withdrawal limits on customers based on creditworthiness, account history, or other similar factors. The commenters asked that the regulation continue to allow banks to give higher withdrawal limits at ATMs for established good customers. The Board has revised the regulation and Commentary to provide that the nondiscrimination requirements apply only to withdrawal requests made in person to an employee of the depositary bank, not to withdrawals from ATMs. In addition, the final regulation and Commentary have been revised to allow a bank to limit, for operational reasons, cash withdrawals made over the counter.

Two commenters asked whether a bank's common law right to close an account is affected by the regulation. Similarly, one commenter asked whether the regulation preserved a bank's right of set-off. Nothing in the regulation revokes these rights.

(d) Use of calculated availability. Section 229.19(d) of the proposed regulation provided that a depositary bank may provide availability to, and begin to accrue interest on, its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, provided that the terms for availability or interest payment based on the sample are equivalent to or more prompt than the availability and interest payment requirements of the regulation.

The Board received one comment, from a commercial bank, on § 229.19(d). The commenter asked that the Board provide guidelines on how often a bank should revise its calculated availability and how a proper check sample should be selected. The Board does not believe more specificity is required, as long as the depositary bank bases its calculated availability on the customer's typical deposit mix and updates its calculations if the typical deposit mix changes.

This paragraph has been revised by deleting references to payment of interest, which is now covered by § 229.14(d). The Commentary has been revised to reflect the limitation of this paragraph to availability.

(e) Holds on other funds. Section 229.19(e) of the proposed regulation provided that a depositary bank that receives a check for deposit in an account or purchases a check for cash, other than a check drawn on that bank and presented over the counter for payment in cash, may place a hold on any funds of the customer at the bank if the amount of funds that are held do not exceed the amount of the check, and the funds are made available for withdrawal within the times specified in the availability schedules.

The Board received eight comments on § 229.19(e). Three commenters agreed with the provision. Five commercial banks asked the Board to clarify that the provision does not apply to holds that a bank puts on funds for reasons other than protecting itself from returned checks. Under the definition of "available for withdrawal" in § 229.2(d),

funds are considered available for withdrawal even though they cannot actually be withdrawn due to a court order or other legal process. (See Commentary discussion on § 229.2, the definition of "available for withdrawal.")

(f) Employee training and compliance. Section 229.19(f) of the proposed regulation required each bank to provide a statement detailing the requirements of Subpart B to all employees who perform duties relating to the requirements of Subpart B. The proposed regulation also required each bank to establish procedures to ensure that the bank complies with the requirements of Subpart B and to provide each employee who performs duties relating to Subpart B with a statement of the procedures applicable to that employee. In addition, the proposed regulation required each bank to conduct an internal review, at least once each year, to determine its employees' compliance with the procedures the bank has established under § 229.19(f).

The Board received 79 comments on § 229.19(f). Forty commenters requested that the Board eliminate the requirement that a bank must provide a statement to employees of both the requirements of the regulation and the procedures established by the bank to comply with the regulation. The commenters asked that the banks be given more discretion in training their staff. The final regulation requires only that a bank inform employees how they should comply with the regulation but need not provide a separate statement describing the provisions of the regulation.

Twenty-seven commenters requested that the Board eliminate the internal review requirement because such a requirement is burdensome and not required by the Act. To accommodate banks' needs for flexibility in monitoring compliance with this regulation, the final regulation does not include the internal review provision.

Twelve commenters asked the Board to provide a model statement which the banks could give to their employees. The Board has not provided such a statement because it believes that each bank needs to tailor its employee statements to its own operating system.

(g) Effect of merger transaction. A new paragraph has been added providing for a one year transition period for certain sections of Subpart B for merged banks. (See discussion in Commentary to definition of "merger transaction," § 229.2(t).)

Section 229.20 Relation to state law.

(a) In general. The proposed regulation provided that a state law in effect on or before September 1, 1989, that requires funds deposited in an account at a state-chartered bank to be made available for withdrawal in a shorter time than is provided by the regulation, shall supersede the provisions of the regulation to the extent that the state law's provisions relate to the time by which deposited funds are available for withdrawal. The proposed regulation also provided that such a state law shall apply to all federally-insured banks located within the state. In addition, the proposed regulation provided that no state funds availability law that becomes effective after September 1, 1989, shall supersede the Act and Subparts A and B of the regulation, but that unamended provisions of state law shall remain in effect.

The Board received 27 comments in response to proposed § 229.20. Three commenters requested that the federal law govern in all cases to avoid confusion. One trade association pointed out that if the federal law did not preempt all state laws, banks with multi-state operations would be forced to acquire separate computer systems for each state. The intent of the Act is to provide customers with prompt funds availability; it would be contrary to this intent to allow the federal law to preempt state laws which provide faster availability. The Act explicitly provides (in section 608(a)) that state laws in effect on September 1, 1989, that improve on the federal availability schedules, shall supersede the federal schedules. Therefore, the final regulation has retained this provision.

One savings and loan institution commented that all federally-insured banks should be required to follow federal law, regardless of state law provisions. A trade association stated the opposing view that all banks within one state, both state and federally-insured, should be subject to the same laws. Section 608(a)(2) of the Act and § 229.20(a)(2) of the regulation explicitly provide that federally-insured banks are subject to the provisions of state law that supersede federal law. The Commentary to § 229.20 has been revised to clarify that if a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally-insured banks in the state.

Four commenters pointed out that some state availability laws cover nontransaction accounts. The commenters predicted that having a state law that applies to some accounts and a federal law that applies to others would create much confusion for banks and customers. The Act and the regulation provide the states with one year after the Act and regulation take effect to make changes to state laws governing transaction accounts. A state may make amendments to availability laws governing nontransaction accounts, such as savings or time deposits, at any time.

(b), (c), and (d) Preemption of inconsistent state law and preemption standards. The proposed regulation provided that except as provided in paragraph (a), the Act, Subpart B, and, in connection therewith, Subpart A of the regulation supersede any inconsistent provision of state law. The proposed regulation also provided that any interested party may request that the Board make a preemption determination. The regulation then defined an inconsistent state law, for the purposes of preemption determinations, as one that provides for longer availability schedules than those required by the Act or one that provides an exception that addresses the same type of risk as the exceptions in the regulation, but is a different exception or allows a different exception hold period.

One commercial bank commented that federal law should preempt state disclosure provisions as well as availability schedules. The Board believes that the disclosure provisions of the Act and regulation supersede state disclosure provisions with respect to accounts. Section 608(b) of the Act provides that, except for state availability laws in effect by September 1, 1989, the Act and regulations prescribed under the Act shall supersede any provision of the law of any state which is inconsistent with the Act or such regulations. The Board has revised the regulation and Commentary to provide that a state law may be inconsistent with federal law if it provides for disclosures or notices concerning availability provisions of state law relating to accounts. As explained in the Commentary, however, state disclosure laws that apply to deposits other than accounts, such as savings or time deposits, are not inconsistent with the Act or the regulation.

Two commercial banks commented that the proposed regulation was unclear about whether an entire body of state law would be preempted or just

that part that contained an inconsistency. One of the commenters preferred the former interpretation and one the latter. Under the final regulation, if a provision of any state law is inconsistent with the Act and the regulation under certain circumstances, the entire provision of state law is superseded. The Board realizes that, in some cases, a state law might provide faster availability than the federal law for some deposits and slower for others and that preempting the entire state law will eliminate the faster availability. The Commentary to the final regulation explains that superseding these state laws in their entirety avoids the necessity of forming very complex hybrids of state and federal law that could not have been contemplated by the state or federal legislatures.

One trade association asked the Board to clarify that shorter state holds should supersede federal law only as to categories of checks defined by federal law. It would be possible for a state law to give faster availability than federal law to a certain type of check (e.g., an in-state check) that is not a separate category of check under the federal law. Such a state law would supersede federal law for all in-state checks, whether the checks are local or nonlocal under the federal law.

The Commentary has also been revised to indicate that state law may supersede federal law even if no preemption determination has been issued by the Board.

Section 229.21 Civil liability.

The proposed regulation provided that a depositary bank that fails to comply with Subpart B or any state law that supersedes Subpart B would be subject to civil liability for damages to the injured party or for class action awards. In addition, the proposed regulation provided that a bank is not liable if it demonstrates by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. The proposed regulation also provided that any actions under § 229.21 could be brought in any U.S. District Court, or in any other court of competent jurisdiction, within one year after the violation occurred. Furthermore, under the proposed regulation, a bank would not incur liability if it acted in good faith reliance on a Board rule, regulation, or interpretation. Section 229.21 would not apply to claims arising under Subpart C or to actions for wrongful dishonor. Finally, § 229.21 would require banks to retain records evidencing their compliance with Subpart B for at least two years.

The Board received 17 comments in response to proposed § 229.21. One commenter asked that the liability provisions be delayed for one year to allow the banks to have a transition period to adapt to the new schedules. The Act (section 613) specifies, however, that the civil liability provisions are to take effect on September 1, 1988, at the same time as the rest of Subpart B. The regulation follows the effective dates as set forth in the Act.

One commercial bank asked if the Federal Reserve Banks are subject to the same liability provisions as depositary banks under Subpart B. As explained in the definition of "bank" and the accompanying Commentary, a Federal Reserve Bank is not a bank for purposes of Subpart B, and therefore, is not subject to the liability provisions of § 229.21. The Federal Reserve Banks do not receive a competitive advantage vis-a-vis other correspondent banks because the regulation does not apply to interbank accounts held by correspondent banks other than the Federal Reserve Banks.

One commercial bank requested that the Board delete the reference to state law in the liability section because the federal government cannot create a private right of action under a state law. The reference to state law remains in the final regulation, and the Commentary has been revised to clarify that the regulation creates liability only for those state laws that supersede federal law and thereby become, in effect, the federal law.

Two commercial banks asked that the Board give additional guidance on what constitutes a bona fide error. The Board believes that the determination of a bona fide error is based on the facts of each particular case, but has expanded the Commentary to include an example of a bona fide error.

One commenter asked that the Board clarify that the regulation confers subject matter jurisdiction, not personal jurisdiction or venue. The Commentary has been amended accordingly.

Seven commenters responded to the record retention requirement. Five commenters asked that the Board specify what records should be kept. One commenter believed that the requirement was overly burdensome for the banks, and another suggested that the burden of proof for violations be on the customer so that the bank can avoid costly documentation and record retention. The Board believes that depositary banks are better suited to keeping records of their compliance with the regulation than are the customers of the depositary bank. The regulation is not specific as to what records must be kept to allow each bank to tailor its record retention to its own operations. The Commentary to the final regulation explains that a bank's records should show that its procedures reasonably ensure the customer's receipt of required notices and disclosures.

One savings and loan institution made several comments on § 229.21. The commenter asked that the Board define "preponderance of the evidence." Because the phrase is a legal term of art, the Board believes that such a definition is unnecessary.

The commenter also requested that the Board not allow a plaintiff to recover against a bank under both federal and state law. As explained above, if a state law preempts the regulation, the state law becomes, in effect, the federal law. Therefore, there can be no duplicative violations as described by the commenter.

The commenter also raised two other issues. One issue was whether a defendant sued in state court under § 229.21 can remove the case to a federal court. The other issue was whether a person may use a bank's failure to comply with Subpart B defensively in the bank's collection suit where the bank's action is commenced more than one year after the occurrence. The Board believes that the resolution of these issues depends on the facts of the particular case and that such questions are best left to the courts.

The final regulation has been revised to apply the provisions of § 229.21 to any bank, rather than any depositary bank.

Effective Date of Subpart C. Forty-one commenters requested that the effective date of Subpart C of Regulation CC be delayed beyond September 1, 1988. Of the 41 commenters who requested a delay in the effective date, nine specifically stated that additional time would be necessary to comply with the indorsement standard, and four indicated that it would be difficult and expensive for banks to modify their return item operations by September 1, 1988. Six commenters suggested that Subpart C should be extended by one year, two requested 90 days, one suggested six months, and one suggested 60 days.

In response to the specific concerns raised by the commenters, the Board adopted a modified indorsement standard on April 4, 1988, so that banks would have more lead time to comply with the new requirements. The final standard is more flexible than the proposed standard, thereby minimizing

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the operational and cost impact. The objective of the September 1, 1988, effective date is to implement improvements to the check return system simultaneously with the implementation of the funds availability schedules, in order to reduce the risk to the depositary bank that a check would be returned after funds have been withdrawn. Therefore, the Board decided to implement Subpart C, as well as Subparts A and B, of Regulation CC, on September 1, 1988.

Section 229.30 Paying bank's responsibility for return of checks.

(a) Return of checks.—Expeditious Return Rule. A total of 155 comments were received on the proposal to require the paying bank to return unpaid checks expeditiously. The proposed standard for determining whether return of a check was expeditious was based on how a "similarly situated bank" would handle a forward collection check of the same dollar amount drawn on the depositary bank. The Board requested comment on whether the duty of the paying bank should be stated in a more concrete manner, e.g., a paying bank must return a check so that it reaches the depositary bank on the second business day following the day of presentment for local checks and the third business day following the day of presentment for nonlocal checks.

Fifty commenters supported the rule as proposed, with the forward collection test as the standard for expeditious return, rather than basing the standard on returning the check in a specified number of days. Many commenters indicated that a standard based on a specific number of days for the return to reach the depositary bank would be inappropriate because the paying bank loses control of the timing of the return process after the returned check is dispatched by the paying bank.

Most of the commenters who expressed concern with the proposed regulation believed that the concept of requiring a paying bank to complete the return process in an expeditious manner was not clear. Thirty-nine commenters suggested that the standard be more specific in order to avoid possible litigation for claims of late return against the paying bank.

Twenty-five commenters suggested that the concept of return by expeditious means could be retained, but that an alternative be provided that would incorporate a more specific time frame for completing the return process. The provision of a specific time frame would provide a "safe harbor" within which a paying bank could plan and conduct its return item operations. Commenters suggested several different alternatives. Twelve commenters suggested that the standard require the paying bank to select a method and route of return so that the returned check ordinarily would reach the depositary bank within two business days following the date of presentment for local checks and four business days for nonlocal checks. Thirteen commenters suggested a two business day/three business day standard for local and nonlocal checks, respectively. Several commenters suggested that, even when the standard specifies a set number of days for the returned checks to reach the depositary bank, the standard should not impose a duty on the paying bank for actions beyond the control of the paying bank.

In response to the commenters' concerns about the uncertainty of the forward collection test contained in the proposal, the final rule provides a two-day/four-day test as an alternative which the paying bank may use to comply with its duty to return a check in an expeditious manner. This test specifies time limits within which the depositary bank must receive a returned check after the check has been presented for payment to the paying bank. The two-day/four-day test provides that a paying bank must return the check so that it would normally be received by the depositary bank within specified times, depending on whether the paying bank is a local paying bank or a nonlocal paying bank with respect to the depositary bank. For a local paying bank, the check is returned expeditiously if it is returned to the depositary bank by 4:00 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. For a nonlocal paying bank, the deadline to complete the return is 4:00 p.m. of the fourth business day after the banking day on which the check was presented to the paying bank. The rule retains the forward collection test from the proposal with certain modifications so that a paying bank satisfies its duty of expeditious return if it meets either the two-day/four-day test or the forward collection test.

Thirty-one commenters believed the "similarly situated bank" concept was confusing, ambiguous, or vague. One commenter stated that the similarly situated bank standard is at best ambiguous and at worst not determinable because in many areas there are no other banks of similar size. Some commenters stated that use of such a standard would create the kind of uncertainty that is likely to result in dispute and litigation. A trade association stated that the similarly situated bank criterion was unclear and would prove to be unworkable. It was suggested that the standard should be based on how the paying bank, not a similarly situated bank, would handle a forward collection check of the same dollar amount drawn on the depositary bank.

Under the forward collection test, the determination of what constitutes expeditious return is based on a community standard for the handling of forward collection checks. Under the proposal, if a bank handled forward collection checks less expeditiously than the community standard, it must improve its procedures for handling returns, but a bank that uses a more expeditious means of handling forward collection checks could not use the less efficient community standard. Commenters stated that this rule penalized banks that use highly efficient means for forward collection, such as direct send arrangements, that are not used by similarly situated banks, by holding these banks to a higher standard for returns. The final regulation provides that banks with highly efficient means of forward collection of checks drawn on a particular depositary bank are not required to use that means for returned checks, if similarly situated banks use less efficient means.

In order for paying banks to determine what the expeditious return rule means for a particular check, the proposed rule indicated that returned checks be handled like a check received for deposit by the paying bank before noon on the day following presentment. Some commenters suggested the "before noon" language be deleted because it is difficult for banks to determine whether checks were deposited before or after noon for establishing compliance with the expeditious means standard in case of a disputed return. Other commenters suggested that "before noon" be modified to state "by noon." One commenter stated that the noon requirement penalized banks with early afternoon dispatch of forward collection checks because the processing time available to them is compressed. The regulation has been revised to state "by noon."

Some commenters suggested clarification as to how the paying bank would receive compensation from the returning bank, and the methods by which returning banks would compensate each other. One commenter suggested, in light of the concerns raised, that this section of the regulation be monitored and revisited, if necessary, before 1990. Payment for returned checks by returning banks is addressed by § 229.31(c).

Return to a Collecting Bank. The proposal permitted a paying bank to return a check to a bank that handled the check for forward collection. Commenters objected to imposing expeditious return responsibilities on banks that do not agree to offer returned check services. In the final regulation, the Board added paragraph 229.30(b), *"Unidentifiable depositary bank."* This paragraph limits the right of a paying bank to return a check to a prior collecting bank that does not hold itself out as a returning bank to circumstances in which the paying bank cannot identify the depositary bank with respect to a given check, or where the bank cannot obtain payment for the returned check from the depositary bank. (See discussion of § 229.35(b).) This paragraph also clarifies the duties, rights, and responsibilities of paying banks when they cannot identify the depositary bank from the indorsements on the returned check. The Board expects these cases to be infrequent. Return of checks under this section is not subject to the requirements for expeditious return by the paying bank, although the returned check remains subject to the midnight deadline.

Notice of Nonpayment. The proposed regulation allowed the paying bank to meet its expeditious return duty by sending a notice of nonpayment and then returning the physical check in a reasonably prompt manner. The Board requested comment on whether this option should be available as an alternative to expeditious return of the physical check.

One hundred ninety-one commenters commented on allowing notice of nonpayment as an effective alternative to expeditious return of the physical check. One hundred twenty commenters objected to this alternative, based on the fact that these notices would be insufficient to meet the needs of the depositary bank. Forty-two commenters indicated that, although the notice would be a beneficial addition, it should not replace an expeditious return of the check itself. The inaccuracy of notices was an underlying reason for opposition, expressed explicitly by 17 commenters. One commenter stated that 30 percent of all notices currently received are inaccurate, and another commenter indicated that 20 percent of notices received today are inaccurate. Three commenters stated that notice as a means of expeditious return would unnecessarily clutter the nation's wire notification systems. Twenty-four commenters stated that these notices would result in settlement problems between banks and their customers or between returning and depositary banks. Two commenters requested that banks be allowed to place extended hold periods on funds until the physical check is received. Thirty respondents commented that notices should only be allowed for exception circumstances. Sixteen commenters expressed a fear that allowing notice would remove the incentive for a paying bank to deliver the returned check in a timely manner. Eleven commenters indicated that notice should only be permitted on large-dollar checks.

Thirty-eight commenters were in favor of notice as a means of expeditious return, and 33 had mixed reactions. Twenty-eight of the commenters that had mixed reactions specifically stated that notice as a means of expeditious return would only be acceptable if the returned check followed within a specified time period, usually two to four days. One commenter supported the provision because it allows for a cheaper but timely return of the physical check; one commenter favored the provision because it compensates for unavoidable delays in the return of the physical returned check; one commenter favored the incentive that these notices create for conversion to truncation; one commenter stated that depositary banks do not need the returned check at all and that the notice alone is sufficient; and two commenters supported the provision because it gives paying banks options as to a means of return.

Many of the comments made on notice of nonpayment as an alternative to expeditious return also referred to § 229.30(f), *"Notice in lieu of return."* There appeared to be some confusion between the two provisions. Notice as an alternative to expeditious return offers paying banks the opportunity to notify the depositary bank, in an expeditious manner, of a returned check rather than send the physical returned check in the same expeditious manner; the returned check would follow in a reasonably prompt manner. Notice in lieu of return, on the other hand, allows for notice to be delivered when a check is lost or otherwise unavailable. See discussion of § 229.30(f), *"Notice in lieu of return."*

Public comment on notice of nonpayment as a means of expeditious return indicated that such a provision would impose operational burdens on depositary banks, such as settlement problems, delays in receiving the physical returned check, and inaccurate information. The comments indicated that these inefficiencies would not be offset by the benefits of allowing such notification. Because the benefits of the notice alternative are uncertain, the Board eliminated notice of nonpayment as an option for meeting the duty of expeditious return.

Paying bank's preparation of Qualified Returned Checks (QRCs). A total of 131 comments were received on the question of whether the paying bank should be required to prepare QRCs for returns being sent through a returning bank. Seventy-one of the commenters opposed requiring paying banks to prepare QRCs. Most commenters based their opposition on the cost involved, and stated that the paying bank should be allowed to make its own decision to minimize costs. Smaller banks in particular noted that such a requirement could prove operationally infeasible and exceptionally expensive.

Some commenters noted that it may not be necessary to prepare a QRC in order to return a check expeditiously. One commenter opposed the requirement that paying banks be required to prepare QRCs because it believes that the regulation should avoid all potential delays in seeking to fashion an expeditious return system.

There were 54 responses in favor of requiring paying banks to prepare QRCs for all returned checks sent to returning banks. Many of the commenters, especially smaller banks, responded favorably on the premise that preparation of QRCs by paying banks would expedite the return process. One commenter noted that most banks have some type of encoding equipment, and because QRCs speed the return process, paying banks should be required to qualify returned checks. Some commenters noted that the indorsement standard must be in place before such a requirement is imposed. Some commenters argued that an extra day should be granted to paying banks to prepare QRCs, similar to the extra day proposed in § 229.31 to allow returning banks to prepare QRCs destined to other returning banks.

Under the final regulation, a paying bank may, but is not required to, convert the returned check to a qualified returned check. The Board believes that requiring all paying banks to prepare QRCs is not warranted at this time. When the indorsement standard is fully implemented, the preparation of QRCs will be less difficult. Further, the importance of preparing QRCs early in the return process may increase when the statutory schedules are reduced in 1990.

Eight commenters suggested that the paying bank should be allowed an extra

day to prepare a QRC, because it is immaterial to the depositary bank which institution prepared the QRC as long as the returned check is not delayed in transit. One commenter noted that the paying bank is the first bank in the return chain and should logically be the first bank provided with an incentive to create a qualified return.

Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the extension is not available to paying banks because a paying bank has more time available to dispatch the check. Ordinarily, paying banks will be able to convert a check to a qualified returned check any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning. The Commentary has been revised extensively to reflect the changes to the paying bank's duty to return checks expeditiously. This paragraph also has been amended to specify the MICR-encoding requirements of QRCs. These requirements were previously in the definition of QRC. The Commentary also clarifies that an encoding error does not result in failure to create a QRC.

(b) Extension of deadline for small-dollar checks. A total of 187 comments were received on the proposal that paying banks be given the option to retain checks of $100 or less, which were to be returned, for two business days in an effort to obtain payment. Under the proposal, the paying bank must reexamine the basis for nonpayment before actually returning the check. The objective of this proposal was to reduce the number of returned checks that must be handled by the check collection system.

There were 45 comments in favor of the proposal. One trade association stated that it had no objection to this general concept, but was not confident that the two-day extension would be lengthy enough to make a significant difference in the volume of returned checks. Some of the commenters that favored the proposal suggested that a returned check held in an effort to obtain payment should be stamped "Presented twice—do not redeposit" if it was eventually returned to the depositary bank.

One hundred twenty-eight commenters opposed the proposal, and strong opposition was voiced by several smaller banks. One commenter stated, "Community banks are strongly opposed to allowing paying banks the option to hold checks of $100 or less. This practice could expose the small business customer of the depositary bank to undue risk if the paying bank is allowed this option. Automatic redeposit by the depositary bank is the only acceptable alternative."

Nine commenters said this procedure should be either mandated or eliminated, but should not be optional because of the uncertainty regarding whether and when returned checks may be returned to them. One commenter suggested that the dollar limit of the returned checks to be held should be raised to $150; one commenter suggested that the limit be reduced to $50; and one commenter suggested that the period of hold be extended to three days. Some commenters suggested that banks should not hold multiple checks deposited in the same account at the same bank.

The proposed regulation's provision to extend the deadline for return of small-dollar checks did not generate a great deal of support among the commenters. There appeared to be some hesitation, even among the supporters of the concept, with respect to the practical benefits to be gained at this time from implementation of this provision. Based on the comments received, the Board believes that extension of the midnight deadline for these small-dollar checks is not warranted at this time, and that elimination of this provision will not adversely affect the efficiency of the returned check system. Thus, this provision has been deleted from the final regulation. (The paragraph on returns involving unidentifiable depositary banks has been substituted in its place.) The Board believes that the concept of holding small-dollar checks has the potential to reduce the volume of returned checks that must be handled and will work with the banking industry to explore alternative solutions.

(c) *Extension of deadline for expedited delivery.* Seventeen comments were received on the proposal that paying banks be allowed to extend the midnight deadline in order to send returned checks by courier provided that such action does not delay the return process. All of the commenters generally supported the proposal. One commenter suggested that the exception should only apply when a bank qualifies the returned check for high-speed processing.

One commenter asked that the Board explain what constitutes a "highly expeditious means of transportation," for the purposes of the extension of the midnight deadline requirement. The Commentary addresses this issue, clarifying that highly expeditious means of transportation pertains primarily to air courier arrangements from west coast banks to east coast banks.

(d) *Identification of returned check.* A total of 45 responses were received on the proposal to make mandatory the practice of indicating the reason for return on the returned checks. All of the commenters generally were in favor of the proposal to identify returned checks as returned checks. Three commenters stated that it was unnecessary to require a returned check to indicate on its face that it is a "returned check" because the reason for return is adequate indication that it is a returned check.

The major issue raised by the commenters was whether "refer to maker" constituted a "reason" and was, therefore, an allowable reason for return under this section. Most of the 22 commenters that addressed this subject believed that "refer to maker" was an acceptable reason for return; however, five commenters were opposed to allowing the use of "refer to maker" as an acceptable reason for return. One commenter recommended that a check being returned for cause have that cause clearly identified and that the regulation prohibit "refer to maker" or some similar wording that does not precisely identify the problem to the depositary bank and its customer. One commenter opposed banning the use of "refer to maker" because it saw no benefit to such an action. Another commenter pointed out potential liability problems with affixing a specific reason for returning a check and stated that, if this proposed requirement is adopted, the regulation should specifically provide that "refer to maker" is acceptable.

One commenter requested that a list of acceptable reasons be included in the Commentary. The Board believes that such a list is unnecessary and might prove to be restrictive. Another commenter asked what a bank could do if there is no reason stamped on a returned check when it is received. Under § 229.38, a paying bank may be liable for damages, if any, due to its failure to include the reason for return on a returned check.

The Board adopted the regulation as proposed. The Commentary has been modified to provide that a check is identified as a returned check by a reason for return stamp, even though the stamp does not specifically state that the check is a returned check. A reason such as "refer to maker" is permissible in appropriate cases.

(e) *Depositary bank without accounts.* Two comments were received on the proposal that checks being returned to banks without accounts need not be returned expeditiously. One commenter concurred with the proposal as stated. One commenter pointed out that paying and returning banks will rarely be certain that a particular depositary bank does not maintain accounts. Accordingly, banks will not be able to use this exception, except perhaps as a defense after the fact. The Board believes that paying and returning banks in a given local area, who would be most likely to encounter checks being returned to a bank without accounts, would probably be aware of the fact that the bank has no accounts and would benefit from the proposed rule.

The Commentary has been modified to reflect that the expeditious return requirements apply to checks deposited into a Federal Reserve Bank, Federal Home Loan Bank, certain industrial banks, and private banks, which are not depositary banks within the meaning of Subpart B of the regulation, but do maintain accounts.

(f) *Notice in lieu of return.* The proposed regulation provided that if a check is unavailable for return, a paying or returning bank can send in its place a notice in lieu of return. The depositary bank must treat this notice as it would a returned check. The proposed regulation permitted electronic notices in lieu of return. Two hundred fourteen respondents commented on the regulation's provision allowing notice in lieu of return. One hundred ninety-nine commenters opposed this provision as proposed, and five commenters had mixed reactions. Sixty-eight commenters indicated that all notices must be followed by the physical checks, indicating that copies are insufficient, and 75 commenters specified that notices should be followed by either the returned check or a copy. Sixteen commenters specifically opposed allowing notices to carry dollar value. Other specific comments are discussed in conjunction with the summary of comments on § 229.30(a), *"Return of checks or notice of nonpayment,"* because there was some confusion among commenters regarding the distinctions between the two provisions.

Forty-six commenters responded to the question on whether electronic notice in lieu of return would create accounting problems. Thirty-four commenters indicated that electronic notices would lead to significant accounting and reconciliation problems. Most commenters indicated that the returned check or at least a copy was necessary when settling for returned checks. Since the returned check would not be available in circumstances where notice in lieu of return is permitted, some commenters noted that the regulation should require the return of a copy of the check, in order to ease the burden on paying banks.

The Board modified the notice in lieu of return requirement in the final regulation and Commentary such that if a check is lost or otherwise unavailable for return, it may be returned by sending a copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.33(b). Thus, electronic notice has been excluded.

(g) Reliance on routing number. A total of eight comments were received on the proposal to permit paying banks to rely on any routing number of the depositary bank as it appears on the check in the depositary bank's indorsement, or in magnetic ink in a QRC. The paying bank must act in good faith but does not have to resolve any inconsistency.

All of the commenters agreed with the proposal. The rule was adopted as proposed, but the Commentary has been modified to delete the reference to routing numbers appearing on QRCs in magnetic ink, since the paying bank does not receive checks drawn on it which have already been qualified.

Section 229.31 Returning bank's responsibility for return of checks.

(a) *Return of checks.* Twenty-two comments were received on the requirement that a returning bank handle returned checks in an expeditious manner. The proposed rule provided the same "similarly situated bank" standard proposed in § 229.30(a) for paying banks.

Eight commenters supported the requirement as proposed. One trade association commented that the proposal was an appropriate standard for returning banks, even if the paying bank rule was modified to provide that a check is returned expeditiously when it is returned to the depositary bank within a specified number of days. This commenter believed that a fixed schedule standard should not apply to returning banks. Another trade association, which suggested that a fixed return schedule should be established for paying banks under § 229.30(a), suggested that the returning bank's responsibility should be to meet its published schedule, thereby allowing paying banks to choose a returning bank based on the returning bank's stated ability to meet a schedule.

Four commenters specifically objected to the reference to similarly situated banks in this section for the same reasons commenters opposed this standard for paying banks. Several other commenters expressed their overall opposition to the similarly situated bank standard in their comments on § 229.30(a).

One commenter stated that returning banks should be required to have formal agreements with paying banks in order to be considered a returning bank. Four commenters favored a rule which would specify that sending a returned check through a Federal Reserve Bank would satisfy the returning bank's duty of expeditious return. Another commenter suggested a provision allowing a correspondent bank to accept both forward collection and returned checks, without designating itself as a returning bank. This bank then could send the returns to a Federal Reserve Bank without processing and without incurring the duties and liabilities of a returning bank. Two commenters wanted to retain the right of charge-back, primarily because of expected accounting difficulties.

One commenter stated that the expeditious return standard should correspond to the U.C.C. and be based on dispatch of the returned checks by midnight of the day following receipt of the return by the returning bank. Another commenter urged that expeditious return be defined to mean return of a check by any means resulting in receipt of the check by the receiving bank earlier than if the check had been mailed to that bank prior to the midnight deadline.

The Board revised this paragraph so that the standards for return of checks by returning banks are similar to those for paying banks. Returning banks are required to return checks expeditiously. As in the case of a paying bank, a returning bank's return is expeditious if it meets either the two-day/four-day test or the forward collection test, which are similar tests to those set out in § 229.30(a). While a returning bank will not have first-hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, share liability with paying banks for late return based on the delays caused by each. The Board also clarified the similarly situated bank standard for returning banks.

A clarification was added to the Commentary noting that a returning bank agrees to handle a check for expeditious return if it: (1) publishes an availability schedule for return of checks and accepts the check for return, (2) handles a check for return that it did not handle for forward collection, or (3) otherwise agrees to handle a check for expeditious return.

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One commenter was concerned about the effects of rejects and holdovers on the "expeditious" return standard. Although some rejects and holdovers are common in the check collection process, the Board believes that whether these are the result of negligence must be determined on a case-by-case basis and therefore did not address this issue in the final regulation and Commentary.

The Board did not adopt a standard for expeditious return that was based on the returning bank returning checks within its published availability schedule. Such a standard would allow a returning bank not to meet the regulation's requirements without acting in an expeditious manner and would slow the overall return process. It is important that returning banks participate in accelerating the check return system.

2:00 p.m. Cut-Off. Fifty-five comments were received on the proposal that the returning bank may set a cut-off hour for receipt of returned checks earlier than its cut-off hour for forward collection checks, but no earlier than 2:00 p.m. Thirty-one commenters agreed that the proposed 2:00 p.m. cut-off time was appropriate and would not restrict the flow of returned checks. One commenter noted that any later cut-off hour could be detrimental to operations at a returning bank and could contribute to either delays in dispatching return letters or a reduction in quality and accuracy. Twelve other commenters preferred a later cut-off time. Suggested cut-off times were generally between 3:00 p.m. and 5:00 p.m. Three commenters preferred an earlier deadline (noon). One commenter did not want the regulation to specify an earliest cut-off time for the acceptance of returned checks.

The Board adopted a cut-off hour for returning banks of 2:00 p.m. or later, as proposed. The Commentary was modified to clarify the setting of cut-off times for returned checks.

Extension of Deadline for Qualified Returned Checks. Ninety-six respondents commented on paragraph (b) of proposed § 229.31, which provided the returning bank a day beyond the time otherwise required to handle a returned check in order to prepare a QRC, if the returned check is being sent to another returning bank. The Board requested comment on whether returning banks should also be permitted a day to create QRCs for checks being returned directly to depositary banks.

Thirty commenters generally supported the proposal that returning banks be allowed an extra day to qualify any returned check, including returned checks going directly to the depositary bank. Many of these commenters discussed the operational difficulty of separating the returned checks going to other returning banks from those going directly to depositary banks. There was some sentiment among a few of the commenters that the extra time to prepare QRCs for returned checks going to depositary banks would be acceptable, provided the overall time it takes to complete the return process is not lengthened. Forty-nine commenters were opposed to providing the returning bank an extra day to qualify those returns being returned directly to the depositary bank, because qualifying these returns would not speed the return process.

The Board adopted, as part of § 229.31(a), a modified rule that a returning bank may extend its deadline for return of checks to other returning banks by one day in order to prepare QRCs under the forward collection test, but the extra day to qualify returns does not extend the time for the return under the two-day/four-day test. The Board did not provide an extra day to qualify all returned checks, because the benefits that accrue from qualifying returned checks (i.e., the ability of subsequent banks to process the returns on an automated basis), do not apply to returns that are sent directly to the depositary bank. Therefore, the Board concluded that expanding this provision to all returned checks would delay the return of many checks, without providing sufficient offsetting benefits.

(b) Unidentified depositary bank. Two comments addressed proposed § 229.31(c), which provided that a collecting bank may not refuse to accept the return of a check that it handled for forward collection.

One commenter was concerned that this paragraph would allow a paying or returning bank to send all of its returned checks to the collecting bank. The collecting bank then is put in the position of a returning bank, even if it does not offer returned check services. It was suggested that the collecting bank not be required to accept the return, although it remains liable as an indorser. Three commenters suggested that the regulation specify the returning bank's responsibility for handling returned checks if it was not involved in the forward collection process for that check and cannot determine the depositary bank.

The right of a returning bank to send a returned check to a bank that collected the check has been restricted to instances in which it is unable to identify the depositary bank. The final regulation clarifies the returning bank's responsibilities when a returning bank that was not involved in the forward collection of a check cannot identify the depositary bank from the indorsements on the returned check. This section is similar to § 229.30(b), but is applicable to returning banks.

(c) *Settlement.* Three comments were received on the requirement for a returning bank to settle for a returned check in the same way that it would settle for a forward collection check. One commenter stated that the proposal was appropriate. Another commented that the removal of the right of charge-back was the best incentive to expedite the return process. One commenter was opposed to the requirement because it would create a new class of deferments with a resulting increase in the number of entries to "cash items in process" accounts and transactions to reconcile. This commenter wanted to allow the continuation of the current practice of charging when returns are shipped, and where there are no accounts to charge, to use an ACH debit.

One commenter wanted clarification as to how and when the paying bank is paid by the returning bank for a returned check, and how returning banks compensate each other.

This paragraph was adopted as proposed, except that it provides that settlement is final when made, rather than provisional until receipt of the returned check by the depositary bank. (See Commentary to §§ 229.31(a) and 229.35(b) for a discussion of the elimination of the concept of provisional credit.) The Commentary was modified to note that a returning bank may settle by means of availability schedules and may vary the settlement method it uses by agreement with paying banks or other returning banks.

(d) Charges. This paragraph proposed to permit any returning bank to impose a fee on the paying bank for its services. Several Illinois banks requested that the Board clarify that this provision preempts a nonuniform provision in the Illinois Uniform Commercial Code prohibiting Illinois banks from charging any person other than the drawer a fee on a returned check for insufficient funds or no account. These commenters stated that if Illinois law is not preempted, Illinois banks would be placed at a competitive disadvantage in providing returned check services. Although under § 229.48, *"Relation to State Law,"* the Illinois statute appears to be clearly preempted, the Commentary was modified to acknowledge that this paragraph preempts state laws that prevent returning banks from charging fees for handling returned checks. The Commentary was revised to indicate that a depositary bank may not impose a charge for honoring its obligations under § 229.35(b).

(e) *Depositary bank without accounts.* No comments were received on this section, which is similar to § 229.30(e), and relieves the returning bank of the duty to return expeditiously to banks without accounts. This section was adopted as originally proposed. The Commentary was modified to reflect that the expeditious return requirements apply to checks deposited in a Federal Reserve Bank, Federal Home Loan Bank, certain industrial banks, and private banks.

(f) *Notice in lieu of return.* This paragraph of § 229.31 for the returning bank was modified to be consistent with § 229.30(f), which contains a similar rule for the paying bank.

(g) *Reliance on routing number.* One comment was received on this paragraph, which is similar to § 229.30(g), and permits a returning bank to rely on the routing number of the depositary bank appearing on a returned check. The commenter stated that it believed the proposal was appropriate. This section was adopted as proposed (renumbered from § 229.31(f) to § 229.31(g)).

Section 229.32 Depositary bank's responsibility for returned checks.

(a) *Acceptance of returned checks.* Forty-three comments were received on this paragraph, which defined the places a depositary bank must accept returned checks and written notices of nonpayment. The proposal provided four options where a bank must receive returned checks: (1) At any office consistent with the address in the bank's indorsement; (2) if no address appears in the indorsement, at any office associated with the routing number in the indorsement; (3) if no routing number or address appears in the indorsement, at any office of the bank; and (4) at any location at which the bank accepts checks as a paying bank.

Twenty-four commenters recommended that option 4 be deleted from the locations a bank must accept returned checks. Commenters believed that this provision could be interpreted to require a bank to accept returned checks at any branch at which it accepts checks presented over the counter for payment, which would be very difficult, if not impossible, for many banks to administer. Commenters wanted to be able to designate where they would receive returned checks, by designating in their indorsement the location where checks should be returned. Thrift institution and small bank commenters asked that the rule be clarified to permit return to a processing center or a third-party agent. Two commenters objected to receiving returns without a preexisting arrangement with the returning bank.

The Board modified the list of places where a bank must accept returned checks and written notices of nonpayment to clarify that the depositary bank may specify a location, either through an address or a routing number, in its indorsement. In addition, the regulation was clarified to require that returned checks must be accepted at the location at which the bank requests presentment of forward collection checks, rather than any location the bank pays checks as a paying bank. The Commentary was modified to reflect that returns cannot be presented at every branch of a bank, merely because checks are paid over the counter. Delivery of returned checks to the bank's forward collection presentment point furthers the efficiency of the check return process by enabling banks to send returned checks by the same means of transportation as forward collection checks. Two commenters recommended that the regulation prohibit a paying bank or returning bank from delivering QRCs intermixed with forward collection checks, except by agreement with the depositary bank. The final regulation provides that a depositary bank may require that returned checks must be separated from forward collection checks.

Fifteen commenters suggested that the Federal Reserve develop, maintain, and distribute a directory of locations at which banks will accept returns. The Board believes that, in most cases, banks should be able to tell from the indorsement where the depositary bank prefers to accept returned checks. Failing that, the paying or returning bank may contact the depositary bank to determine where the depositary bank would prefer to accept returned checks.

(b) *Payment.* Twenty-five comments were received on the proposal that the depositary bank must pay for a returned check at the close of business on the day on which it receives the check. The proposal provided that payment must be made by debit to an account of the depositary bank on the books of the returning bank, cash, wire transfer, or any other form of payment acceptable to the returning or paying bank.

Six commenters expressed agreement with the proposal as stated, and most commenters supported the proposal generally. Five commenters wanted to include net settlement as an optional form of payment. One commenter stated that the Board should encourage payment to be made by net settlement at the Federal Reserve because it is the most cost effective and expeditious means of payment. Another commenter was concerned that errors in return letters paid by net settlement arrangements could cause account balance problems. Net settlement is an optional form of payment for returned checks, and a bank need not enter into net settlement arrangements if it is concerned about errors. Both the proposed and final Commentary include net settlement as an option for payment by the depositary bank. The Commentary was modified to state that a wire transfer should indicate the purpose of the payment.

Four commenters wanted to be able to delay payment for a day if there is no preestablished agreement between the returning bank and depositary bank. The Board noted that the provision of prompt payment, combined with the elimination of the right of charge-back, is necessary to provide an incentive to the returning bank to speed the return process.

One commenter suggested limiting same-day payment requirements to amounts over $20,000, with lesser amounts being paid through the ACH system. Five other commenters suggested that next-day ACH credits be allowed as a means of payment. They stated that the ACH mechanism provides a low-cost, effective means that would be particularly appropriate for low-dollar value payments such as returned checks. The Commentary states that a returning bank may agree to accept payment later than the day it delivers the returned checks to the depositary bank. Thus, payment could be made through the ACH system, by agreement with the returning bank. Two commenters discussed fees and questioned which party should pay the cost of settlement for returned checks.

One commenter stated that it was unable to send a wire transfer after 12:30 p.m., and would have problems making same-day payment after that time if returned checks were received. The Board recognizes that in some cases it may be difficult for depositary banks to meet their payment responsibilities. Depositary banks may establish a cut-off hour for receipt of returned checks, generally not earlier than 2:00 p.m., and treat returned checks received after that hour as being received on the next banking day. In addition, the Commentary provides that if the depositary bank is unable to make

payment on the day that it receives returned checks, because the paying or returning bank is closed due to a holiday or because the time when the depositary bank received the check is after the close of Fedwire, payment can be made on the next banking day.

A large commercial bank suggested that the concept of prompt payment proposed for returned checks should be expanded to apply to payment for forward collection checks presented by private sector banks. The Board incorporated this suggestion in the concept of same-day payment, which was issued for public comment on April 4, 1988 (Federal Register, April 11, 1988).

The Board requested comment on whether a penalty provision is required to ensure that payment for returned checks is made as required. There were 68 comments received on this question.

Thirty-three commenters supported the concept of establishing a penalty provision in the regulation in order to encourage prompt payment by depositary banks. Two commenters suggested that the penalty for lost funds should be computed by the formula contained in the New York Clearing House Compensation Rules; however, claims valued at less than $100 per day should not be pursued.

Thirty-three commenters were opposed to establishing provisions for a penalty for late payment. Several commenters believed a penalty would not be necessary and recommended a wait-and-see approach. These commenters recommended that, if problems develop, a penalty provision could be adopted at a later time. One trade association did not believe a penalty provision was necessary, particularly because most payments will be made via net settlement arrangements. One commenter stated that a penalty requirement was unnecessary, but that the returning bank should have an option to request an interest adjustment when excessive delays occur.

The Board believes that an explicit penalty provision in the regulation is not needed at this time. A bank that does not make same-day payment without making a good faith effort to do so may be liable for damages suffered as a proximate consequence under § 229.38(a). Language indicating that a depositary bank becomes accountable for the amount of a returned check has been deleted as unnecessary in light of the bank's duty to pay.

(c) *Recovery by depositary bank from collecting bank.* There was one favorable comment received on the proposal that the depositary bank can recover any payment not yet received from a collecting bank if it pays for the returned check. This section was deleted as unnecessary because changes to the final regulation eliminate the concept of provisional credit. Subsequent paragraphs have been renumbered.

(c) *Misrouted returned checks and notices of nonpayment.* Section 229.32(d) of the proposal required a bank that received a misrouted returned check to act as a returning bank and send the returned check to the depositary bank, if it can be identified, or to the presenting bank. (This paragraph was renumbered as § 229.32(c).) Twenty-six comments were received on this paragraph.

Three commenters generally supported this proposal. Thirteen commenters stated that the bank that received a misrouted returned check should always have the option of returning the check to the sending bank. One of those commenters suggested that the regulation should require the receiving bank to return the misrouted returned check to the sending bank. Two additional commenters stated that a bank that received a misrouted returned check should be allowed to send the check to the local Federal Reserve office.

Two commenters objected to holding the bank receiving a misrouted returned check to a standard of expeditious return, including liability for failure to handle the check in accordance with § 229.31. One commenter believed it was inappropriate to demand a bank to pay for and process misrouted returned checks as proposed. This commenter maintained that if the receiving bank chooses to forward the returned check, it should be relieved of any associated liability, with the exception of gross negligence. One commenter suggested that a bank should be compensated for the cost of researching and rerouting a returned check incorrectly returned to it.

One commenter asked that the regulation clarify the liability of the paying bank, depositary bank, and the bank that received the misrouted returned check. One commenter requested clarification on settlement for misrouted returned checks. Another commenter suggested that banks be provided an incentive to expedite return if they receive a misrouted returned check.

One commenter suggested that a misrouted return check be sent back to the paying bank. The paying bank is readily identifiable on the check, whereas the sender may not be. Also, the check ultimately may have to go back to the paying bank so it can be returned through the forward collection chain. Thus, sending misrouted returned checks directly to the paying bank would expedite the return process.

The Board modified this section to provide that the recipient of a misrouted returned check shall either promptly forward the returned check to the depositary bank (either directly or through a returning bank) or send the returned check back to the sender. The Board believes that it is inappropriate to impose the responsibilities of a returning bank on the bank that receives a misrouted return, and has clarified that the bank receiving a misrouted returned check is required to act promptly but is not required to meet the expeditious return requirements of § 229.31(a). The Commentary also clarifies the duty of a bank receiving a misrouted returned check.

(d) *Charges.* In response to a number of comments requesting clarification with respect to the fees banks may charge other banks for handling returned checks, a new paragraph was added to provide that a depositary bank may not impose a charge for accepting and paying checks being returned to it. The Commentary for this paragraph notes that a returning bank may charge a fee for handling returned checks received in a mixed return letter even though some checks contained in the return letter are being returned to the returning bank.

Section 229.33 Notice of nonpayment.

(a) *Requirement.* Two hundred sixty-three respondents commented on the appropriate dollar limit for notice of nonpayment. Two hundred thirteen commenters indicated that the $2,500 limit that is contained in the Regulation J notice of nonpayment requirement should be maintained; 46 opposed retaining the $2,500 limit; and four had mixed reactions. Twenty-eight of the commenters opposing the $2,500 limit suggested that a higher limit be implemented to decrease the number of notices that must be provided, and 21 commenters supported lowering the limit in order to protect depositary banks from the potential increase in fraud that may result from shorter availability schedules.

Based on the strong preference of the commenters, the Board has adopted a $2,500 limit for notices of nonpayment. The Board believes that a higher limit of $5,000 would significantly increase the risks to banks while not providing significant relief operationally, since only a small portion of returns are between $2,500 and $5,000. A $1,000 limit would greatly increase the number of returned checks subject to the notice of nonpayment rule beyond the increase in the volume of notices that will result from the expansion of the rule to cover all large-dollar returned checks, rather than only those returned checks that were collected originally through the Federal Reserve. Seven commenters requested that the dollar limit be reexamined within the next two to three years in order to ensure the validity of the limit chosen.

Ten commenters supported expanding the notice of nonpayment requirement to all large-dollar returned checks, rather than retaining the current requirement, which is limited to checks processed through the Federal Reserve. No commenters opposed this provision, and one gave a mixed comment. The Board adopted the requirement contained in the proposed regulation that all large-dollar checks be subject to the notice of nonpayment requirement.

Forty-six respondents commented on the requirement that large-dollar notices of nonpayment be received by the depositary bank by 4:00 p.m. on the second business day following presentment, compared to the requirement in Regulation J that the notice be received by midnight of the third day following presentment. Forty commenters either opposed or had mixed reactions to this requirement. Twenty-seven of these commenters suggested shortening the time frame to the day following presentment, in order to increase the likelihood that the notice will arrive before the depositary bank must make funds available for withdrawal. Of those 27 commenters, 16 premised their suggestion by requiring that all institutions have an electronic connection with the Federal Reserve for the purpose of receiving notices of nonpayment. The Board does not believe that it would be appropriate to require by regulation that all banks have electronic connections with the Federal Reserve. Four commenters specifically requested that the time frames be extended so that banks with branches who use one returned check processing center, or smaller institutions that utilize an outside processor for return services, have adequate time to review their returned checks before sending notices.

The Board adopted the time requirement for notice of nonpayment as proposed. The regulation's time frame provides more than a one-day improvement in the receipt of notices of nonpayment compared to the current requirement. This offers a significant improvement, and addresses the concerns of commenters that stressed the need for an acceleration in the timing of the notice requirement. Although these commenters requested even further reductions in the time frames, shorter time frames would be difficult for smaller institutions at this time. The Commentary has also been revised to clarify that in many cases the return of a check will constitute adequate notice and to refer to the new warranties for notices.

(b) *Content of notice.* Seventy respondents commented on the requirement in § 229.33(b) that "if a paying bank cannot identify the depositary bank, it should send the notice of nonpayment to the first bank that it can identify that handled the check during forward collection." Forty-four commenters opposed this provision, citing that it would be more efficient to return the check or a copy through the forward collection indorsement chain, rather than increasing the volume of notices of nonpayment with incomplete notices that are of questionable value. Twenty-three commenters favored this provision since it would encourage an expeditious return of the returned check information.

Because notices of nonpayment that are sent to collecting banks when the depositary bank cannot be identified are of questionable usefulness, the Board has eliminated this requirement in the final regulation. The Commentary indicates that a paying bank may wish to send a notice to a prior collecting bank in these cases, since the collecting bank may be able to identify the depositary bank, or may in fact be the depositary bank.

Eighty-seven commenters provided varied comments regarding the content requirements of the notice. Nine commenters requested exemptions from the notice of nonpayment requirements. Three commenters suggested that banks in a clearinghouse arrangement be exempt from the notice requirements and six commenters requested exemption from providing notice in instances where the minimum amount of information cannot be determined. Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary. This may be the case for large-dollar checks that are returned through a clearinghouse arrangement, if the check will normally be received by the depositary bank within the time limits for notice. With regard to providing notice where not all required information is available, the Board believes that it is important to require notice of nonpayment regardless of the discernible information so that banks do not become lax about determining information. In addition, an incomplete notice may still be useful to the depositary bank in determining the check that is being returned. Therefore, the final regulation does not excuse a paying bank from providing notice of nonpayment if not all required information is available. The final regulation requires banks to provide all available information and, if there is doubt, provide the information to the extent possible and identify that uncertain information with question marks.

Thirty-one commenters requested that a standardized form be used for all notifications. The regulation specifies the standard information to be included in all notices, but does not dictate a particular format for the transmission of such notices.

(c) *Acceptance of notice.* Sixty-one commenters opposed the provision regarding acceptance of notice. The proposed requirement, adopted from Regulation J, was for acceptance of all nonwritten notices of returned checks at either the telephone or telegraph number of the head office or branch designated in the indorsement, at the number of the return item unit, or any other number held out by the bank for receipt of notice of nonpayment. No priority rule was provided regarding acceptance at these locations.

Commenters were concerned that costly delays might result from notifications being received by the bank at locations where the bank was unable to handle them, especially if delivery is allowed to any branch. Forty-seven commenters filed identical comments stating that notice should be given only to the location specified in the indorsement. Seven commenters requested that paying banks be required to notify the return item unit designated in the indorsement and, only if no such number exists, provide the notice to another location specified in the regulation. Two commenters recommended that notices of nonpayment be required to be in writing, except by agreement of the depositary bank and paying bank. Three commenters specifically requested that the reference to telephone receipt of notice be removed from this paragraph because they opposed the provision allowing telephone notification.

The proposed regulation required depositary banks to accept telephone notification. One hundred seventeen commenters supported telephone notification, while 16 opposed and nine expressed mixed opinions. Of those opposing telephone notification, two commenters cited that phone

notification offers no legal proof of notice, another demanded that only certain language be permitted, and two indicated that these notices create incomplete and unreliable information. Of those commenters with mixed reactions, four commenters indicated telephone notices should only be allowed if a previous agreement has been made between the returning and the depositary banks; two commenters suggested that phone notification only be permitted for large-dollar returns; and five indicated that the returned check or a written notice should follow the telephone notification. Telephone notification is an important tool for returning banks who must notify quickly, especially those who do not have on-line notification capabilities.

One hundred nine commenters requested that there be a requirement for telephone notification to be made to a specific area of the bank or to a specific employee. The proposed regulation does not indicate any specific location or person at which a depositary bank must accept telephone notices. Commenters who requested that notification be made to the location specified by the bank expressed concern that, under the proposed regulation, the wrong area of a bank could receive the notice, which may result in late or misplaced notifications.

The regulation continues to require banks to accept telephone notices because many banks rely on the ability to give telephone notice. To address the concerns raised by these commenters, the final regulation allows a bank to limit the locations at which notices of nonpayment may be given to those designated by the depositary bank, either in its indorsement, or at any other location held out by the bank for receipt of notices. If no telephone number appears in the indorsement, or if the number is illegible, notices can be given at the general purpose telephone number of the bank's head office or branch indicated in the indorsement. Depositary banks are required to accept written notices as specified in § 229.32(a). The Commentary clarifies that banks may establish agreements to vary the location and manner in which notices are received.

Five commenters suggested that the Federal Reserve establish a directory of locations at which depositary banks wish to receive notices of nonpayment. Since the provision of a telephone directory is not a regulatory issue, it is not addressed in the final regulation. The Federal Reserve will work with the industry to determine the need for such a directory service.

(d) *Notification to customer.* The proposed regulation included a paragraph addressing the liability of a depositary bank to its customer resulting from failure to charge back based on a notice, if the notice contained sufficient information for charge-back.

The fourteen commenters who addressed this paragraph either opposed the rule, or expressed concern regarding how the rule would operate. Five commenters who opposed this paragraph indicated that a depositary bank should await the receipt of the physical check prior to charge-back. Four commenters requested that a provision be added stating that a depositary bank is only liable for loss if the notice complies with the minimum notice requirements under § 229.33(b). Three commenters suggested modifying the provision so that the bank delaying the charge-back or failing to send notice is liable to the customer for actual damages, rather than for "any loss" as is currently suggested.

The paragraph and the Commentary have been modified to require a depositary bank that receives a returned check or notice of nonpayment to notify its customer by its midnight deadline or a later reasonable time. In addition, a warranty provision for notice of nonpayment was added based on concerns raised by the commenters. (See § 229.34(b).) No liability is imposed by the final rule for failure to charge back the customer's account based on the receipt of a notice of nonpayment. Receipt of a notice alerts the customer of the pending return of the check, and thus provides the benefits of expedited return to the customer. The Commentary has also been revised to note that this notice may be combined with a notice that the bank is invoking the reasonable cause exception.

Section 229.34 Warranties by paying bank and returning bank.

(a) *Warranty of returned check.* The proposed regulation incorporated the warranties of timely return of § 210.12(b) of Regulation J (12 CFR 210.12(b)) and added warranties that the paying or returning bank is authorized to return the check and that the returned check has not been materially altered.

Fifty-five commenters commented on this paragraph of the proposed regulation. Of these, 31 commenters favored this paragraph with suggested clarifications and/or modifications; three had mixed reactions to this paragraph; and only one commenter was opposed to this paragraph as proposed.

Of those that commented favorably, 17 suggested that the reference in subparagraph (a)(3) to "returned check" should be clarified to indicate: "The warranty should only apply during the time the check being returned is in the possession of the paying or returning bank. The warranty should not cover alterations made in the collection process."

Twenty-six commenters suggested that the Board require the same warranties for notice in lieu as it required for the physical return of a check. Twelve other commenters requested that this paragraph be amended to provide for warranties with respect to a notice in lieu similar to those provided for a returned check and with respect to the accuracy of information contained in such notice.

In addition, one commenter believed that paying and returning banks should be required to provide warranties with respect to encoding errors, such as in connection with the preparation of a QRC. Another commenter suggested that this paragraph require that the paying bank warrant the information contained on the notice of nonpayment and the notice in lieu of return.

One commenter suggested that the regulation include the applicable statute of limitation periods for making breach of warranty claims and a provision indentical to U.C.C. § 4–207(4) should be added with respect to losses caused or resulting from delays (even within the statute of limitations period) in making claims.

One commenter was concerned with the returning bank's warranty that the paying bank returned the check timely and stated that such a warranty would inappropriately shift the risk of litigation of late return claims from the paying bank to the returning bank. It was further argued that, while the returning bank could recover under the warranty provision from a prior returning bank or the paying bank, many of these claims would result in negotiated settlements, particularly as they often involve a multi-party, multi-state bank collection chain. The commenters also stated that this result would be inconsistent with repeated assurances contained elsewhere in the proposed regulation that a bank is not responsible for default or misconduct of another bank.

This commenter further indicated that paragraphs (a) (2) and (3) also required clarification. The following questions were raised as points of confusion:

- What kind of circumstances would constitute a breach of warranty that the returning bank is "authorized" to return the check?
- Does the warranty concerning material alteration apply with respect to alteration which occurred at any time, alteration which occurred only after the check entered the bank collection system, or alteration which occurred after the check was presented to the paying bank?
- Does material alteration refer only to the traditional information (e.g., payee amount, date) or does it include, for example, obliteration of indorsement information that would identify a bank as having handled (and perhaps mishandled) the check?

Another commenter stated that the creation of warranties on the part of the paying or returning bank is a significant change in the payment system. While these warranties would basically track the warranties of the forward collection process, the commenter believed analysis of the impact of such warranties on the return process deserved further study prior to their becoming effective. This commenter further argued that payable through banks should not be placed in the position of making the warranties for or on behalf of the credit union on which a check is drawn. This commenter requested that the Board conduct a thorough study of the impact of this new warranty scheme prior to it becoming effective.

The Board believes that the regulation's warranty system enables banks to make claims against prior banks in the return indorsement chain to the party responsible for the breach of warranty, and has retained the proposed warranties. This process is similar to that which occurs in the forward collection process, and the laws and procedures applicable to these warranties address many of the issues raised by the commenters. The Commentary clarifies that the warranty of timely return only warrants compliance with the paying bank's midnight deadline and does not extend to whether a paying bank has complied with the expeditious return requirements of § 229.30(a). The Board added a warranty for notice in lieu in § 229.34(a)(4), that the check itself has not and will not be returned, to provide protections to the depositary bank similar to those ordinarily provided through a separate indemnity agreement. The Board did not extend the warranty to encoding errors in preparing QRCs because paying and returning banks preparing a QRC may be liable for these errors under the liability provisions of § 229.38.

(b) *Warranty of notice of nonpayment.* Seventy-nine commenters requested clarification of the paying bank's liability for notice of nonpayment. The comments indicated that the regulation should state that if a depositary bank receives a notice of nonpayment, it is entitled to rely on that notice in dealing with its customers unless and until a notice of cancellation is received, whether or not the returned check is received in a timely manner.

Three commenters specifically suggested that warranties should be provided in the context of the notice of nonpayment to ensure that depositary banks may rely on such notices. Such warranties would parallel those applicable to the return of a check including (1) the notice is accurate based on information obtained from the check; (2) the party providing the notice is authorized to do so; and (3) the notice is timely and complies with the requirements of the Board's regulations. Similar warranties would also apply to a cancellation of a notice of nonpayment. In the case of the return of a returned check in the amount of $2,500 or more, one commenter suggested the paying bank should warrant that notice has been given in accordance with the requirement of the large-dollar notice.

The proposed regulation included a provision in § 229.33(e) that required a paying bank that gives notice of nonpayment and subsequently determines to pay the check to provide a second notice as soon as reasonably possible indicating that it is a second notice cancelling the previous notice. Nineteen commenters were in favor of adding to this provision a clarification of the liabilities associated with cancellation. Such a statement would indicate that a paying bank that cancels a notice of nonpayment is responsible for loss suffered by the depositary bank that acted in good-faith reliance on such cancellation.

In response to the comments received, the Board adopted a new warranty of notice of nonpayment that the paying bank will return the check, that it is authorized to send the notice, and that the check has not been materially altered. This warranty does not include a warranty that the notice is accurate and timely under § 229.33, rather the accuracy and timeliness of the notice are subject to the liability provisions of § 229.38. The Commentary to § 229.33(a) clarifies that the paying or returning bank that sends a notice of nonpayment and subsequently decides not to return the check might wish to send a cancellation of that notice to mitigate damages.

(c) *Damages.* The proposed regulation adopted the warranty damages of U.C.C. § 4–207(3), which states that damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank plus finance charges and expenses related to the returned check, if any.

Eight commenters supported this paragraph of the proposed regulation. Six commenters indicated that this paragraph should clarify the extent that "expenses" includes reasonable attorneys' fees and court costs. These commenters indicated that given the damage limitation contained in the regulation and the dollar amounts that will often be involved, if reasonable attorneys' fees and court costs are not permitted, the loss in many instances will be borne by the party initially incurring the loss, regardless of the merits, because it will not be cost-justified for that party to pursue the issue. Moreover, it was believed that failure to provide for reasonable attorneys' fees and court costs will have a disproportionately discriminatory impact on individuals and smaller banks.

Other commenters supported the inclusion of reasonable attorneys' fees for other reasons as well. One commenter indicated that in many cases, the paying bank returns a check "late" to "see if it can get away with it." The commenter explained that, if the depositary bank challenges the timeliness of the return under Regulation J, the Federal Reserve has a mechanism to process and resolve these claims on a timely basis. However, no similar mechanism exists for returned checks cleared outside the Federal Reserve System, where paying banks often return checks late and then refuse to reimburse the depositary bank for its loss. In essence, the commenter suggested that paying banks take a "sue me" position. For small-dollar checks drawn on paying banks located in other parts of the country, the cost and expense of litigation might exceed the amount of the check at issue. The commenter believed the threat of a paying bank having to pay the attorneys' fees and costs of suit to the depositary bank will likely cause the paying bank to honor the breach of warranty claim without the need for litigation. Similarly, the depositary bank will not be reluctant to bring suit to enforce the breach of warranty if the depositary bank knows that the court must award attorneys' fees and costs of suit as part of the damages. Another commenter believed that "finance charges" should be defined to mean, at a minimum, interest charged at the legal rate.

The Board adopted this paragraph as proposed such that damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank plus finance charges and

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expenses related to the returned check, if any. This limits the amount of damages that may be claimed to the dollar value of the returned check plus finance charges and expenses related to the returned check. The Commentary references U.C.C. 4–207(3) to provide courts guidance in interpreting this provision. The official comment 5 to U.C.C. § 4–207(3) indicates that in appropriate cases expenses could include attorneys, fees.

(d) *Tender of defense.* The proposed regulation provided that, if a returning bank is sued for breach of a warranty under this section, it may give a prior returning bank or the paying bank written notice of the litigation, and the bank notified may then give similar notice to any other prior returning bank or the paying bank. If the notice states that the paying or returning bank notified may come in and defend and that if the paying or returning bank notified does not do so, it will, in any action against it by the paying or returning bank giving the notice, be bound by any determination of fact common to the two litigations; then, unless after reasonable receipt of the notice the paying or returning bank notified does come in and defend, it is so bound.

Four commenters commented on this paragraph of the proposed regulation; two commenters supported this provision and two had mixed reactions. The commenters that favored adoption of this paragraph indicated that "seasonable" should be substituted for "reasonable" before "receipt of notice" in the second sentence. The Board corrected the typographical error noted by the commenters.

Both commenters with mixed reactions indicated that under § 229.34, paying and/or returning banks are required to warrant to subsequent returning banks and the depositary bank that the paying bank made a timely return. The commenters believed that this would give the depositary bank and its customer a cause of action against the last returning bank, but that bank may have difficulty obtaining jurisdiction over the paying bank in the same action. The commenters requested clarification of whether the tender of defense provision will be effective against a paying bank in another jurisdiction.

The Board believes that although a depositary bank may bring an action against the last returning bank, the tender of defense provisions will permit claims to be asserted against paying banks.

Section 229.35 Indorsements.

(a) *Indorsement standards.* This paragraph of the proposed regulation required a bank, Federal Reserve Bank, or Federal Home Loan Bank other then a paying bank that handles a check during forward collection or a returned check, to indorse the check according to the indorsement standard provided in Appendix D.

Five hundred fifty-nine commenters commented on the indorsement standard. Five hundred forty-one commenters agreed that an indorsement standard is necessary to expedite the return process; however, 346 commenters expressed concern that the standard as proposed was too rigid. One hundred nineteen commenters indicated that it would be difficult to implement the proposed standard by September 1, 1988, due to the extensive equipment changes required to comply with the technical requirements of the proposed standard. In addition, commenters indicated that the technical modifications required by the proposed indorsement standard were unnecessarily burdensome and would be expensive for the banking industry to implement.

In response to these comments, the Board adopted technical modifications to the proposed indorsement standard to make the standard more flexible and to minimize both the operational and cost effects of the technical requirements of the standard. In making these modifications, Board staff consulted with banks, equipment manufacturers, and check printers to ensure that the modifications adequately addressed the specific concerns raised by the commenters. These modifications were adopted by the Board on April 4, 1988.

After distribution of the indorsement standard adopted by the Board on April 4, 1988, the Board subsequently modified the indorsement standard to delete the reference to avoiding the MICR clear band in the depositary bank indorsement standard. This change was made as a result of telephone inquiries received by Board staff. The reference to avoiding the MICR clear band was adopted from the draft standards currently under review by the American National Standards Institute ("ANSI"). It was discovered that ANSI's intent is to retain this area for future use, but that no current use for this area exists. In order to decrease the burden of complying with the standard, the Board has eliminated reference to avoiding the MICR clear band. If a future use for this area is developed, the Board will consider modifying the standard to avoid the MICR clear band at that time.

(b) *Liability of a bank handling a check.* Section 229.35(b), *"Contract of indorser,"* of the proposed regulation provided that a paying or returning bank makes the contract of indorser and may have the rights of a holder with respect to each returned check it handles. No comments were received on this paragraph.

The paragraph on contract of indorser has been replaced by a new paragraph entitled *"Liability of a bank handling a check."* This paragraph is similar to the corresponding paragraph in the proposal, but it does not incorporate the U.C.C. contract of indorsement.

(c) *Indorsement by a bank.* This paragraph was added because commenters were concerned that the term "pay any bank" commonly used in bank indorsement was not part of the proposed standard. The "pay any bank" language is intended to limit the transfer of a check to banking channels unless it is returned to the original depositor or a bank takes specific action to transfer the check to a nonbank. This restriction is thought desirable to protect the interests of the depositor or any collecting bank that has a security interest in the check in case the check is lost or stolen and transferred to an innocent party who becomes a holder in due course. In these cases, the restrictive indorsement "pay any bank" gives notice to third parties of potential adverse claims against the check. While the limitation on transfer to banking channels may be desirable, there does not appear to be any need to rely on specific words to accomplish this result. Because banks routinely place restrictive indorsements on the checks they handle, a new paragraph 229.35(c), *"Indorsement by a bank,"* has been added to the final regulation to provide that any bank indorsement would be considered restrictive unless a bank takes specific action otherwise. Thus, third parties would be placed on notice of potential adverse claims by the bank indorsement itself without additional language. Accordingly, "pay any bank" is not part of the standard, and the use of this language in indorsements is discouraged for depositary banks and prohibited for subsequent collecting banks.

(d) *Indorsement for depositary bank.* This paragraph was added to address issues raised by the commenters with regard to who must indorse checks.

Twenty-five commenters expressed concern over who must indorse the checks. Several commenters questioned whether small banks (particularly credit unions) must indorse checks as the depositary bank. They suggested that a small bank be permitted to act as a

corporate depositor and agree with its correspondent to have the correspondent place the correspondent's indorsement on the back of the check as the depositary bank indorsement. This approach could be beneficial to both the depositary bank and returning banks, particularly if the depositary bank wants its returned checks to be delivered to the correspondent. Similar comments were raised with regard to bank holding companies that want the returns destined to their subsidiary banks to go to one location rather than to each subsidiary. This issue also arises in the context of nonproprietary ATMs or lock box arrangements whose operators process checks for which they are not the bank of account.

Because the indorsement standard is being proposed to expedite the return process, the Board believes that the indorsement placed on the check as the depositary bank indorsement should reflect the location where the returned checks and notices of nonpayment under § 229.33 should be directed. If the bank of account agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depositary bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator. A paying or returning bank sending a returned check or notice of nonpayment to the bank indorsing the check as the depositary bank in accordance with the regulation will have complied with its expeditious return and notification responsibilities. The bank of account that handles the check but agrees to the placement of another bank's indorsement as the depositary bank may physically indorse the check in an ink color other than purple outside of the area designated for the depositary bank. Otherwise, the bank of account and the bank indorsing as the depositary bank may agree that the bank of account will be responsible for the check without requiring the bank of account to place an indorsement on the check itself.

Section 229.36 Presentment of checks.

(a) *Presentment of checks.* Sixteen commenters commented on the proposed provision that a check payable at or through a paying bank is considered to be drawn on that bank for the purposes of determining the time for return or notice of nonpayment. (The majority of comments on the payable through issue were submitted under § 229.2.) Nineteen respondents opposed the treatment of a payable through bank as a paying bank; three commenters supported the rule; and four had mixed reactions. Twelve commenters specifically stated that payable through drafts should not be subjected to the duties of expeditious return. See the Commentary to § 229.2 for a summary of the Board's action on this issue.

The final rule treats the payable at or through bank as the bank on which the check is drawn for the purposes of the expeditious return and notice of nonpayment under Subpart C, but not for purposes of a payor bank's midnight deadline or wrongful dishonor under the U.C.C.

(b) *Receipt at bank office or processing center.* Fourteen respondents commented on the proposal that a check is considered received by the paying bank when it is received at any branch or head office identified on the check by name without address, at any branch or head office consistent with the name and address on the check, at any address of the bank associated with the routing number on the check, or at a location to which delivery is requested by the paying bank. Commenters were unsure whether this paragraph referred to only the receipt of forward collection checks or to the delivery of returned checks as well. This paragraph governs only the receipt of forward collection checks by the paying bank.

Eight commenters opposed the provision as written, three were in favor, and three had mixed reactions. The commenters opposing this provision cited the need to set a priority for the locations for receipt so that checks are not delivered to any location affiliated with the institution. Three commenters requested that the first priority for receipt be locations identified by the routing number of the paying bank on the check. Three commenters suggested that it be clearly stated that the regulation will override provisions in the U.C.C. which deal with the receipt of presentment.

The Board has modified this paragraph so that receipt at a location to which delivery is requested by the paying bank is the first location defined for presentment. The Commentary also suggests that paying banks, concerned with presentment to specific locations, specify particular addresses on their checks rather than just general addresses or the name of the bank.

(c) *Truncation.* Seven commenters commented on the provision to permit truncation by agreement with the paying bank, given that truncation does not extend the paying bank's time for return. Two commenters supported the provision as written, two were opposed, and three expressed mixed opinions. Two commenters indicated that the definition of truncation is too narrow and should be extended to more than just depositary and collecting banks so that there is a degree of flexibility in potential participants. One commenter cited that truncation would only be effective if aspects of the U.C.C. governing liabilities associated with indorsements, signatures, etc., were changed to encourage the use of truncation.

The Board believes that this paragraph, as proposed, provides flexibility to allow potential participants to implement truncation agreements. Therefore, the Board adopted this paragraph as proposed. The Board plans to continue to evaluate these provisions in the future to determine whether they are adequate to facilitate the development of truncation programs.

(d) *Liability of bank during forward collection.* A new paragraph has been added to provide that settlements during the forward collection process are final when made instead of provisional. This change is consistent with the treatment of settlements for returned checks under § 229.31(c), including the removal of charge-back under that section. It is also consistent with the scheme of the expeditious return system under §§ 229.30(a) and 229.31(a) under which checks are not returned up the forward collection path. This paragraph also clarifies that this finality of settlement does not affect a bank's liability under certain provisions of the U.C.C.

Section 229.37 Variation by agreement.

A number of commenters asked that the Board include a provision in the final regulation authorizing banks to vary the requirements of the regulation by agreement. They stated that such variations are explicitly authorized by the U.C.C., and that similar authority is needed in this regulation, because many provisions of the regulation relate to U.C.C. requirements.

This section was added to parallel U.C.C. § 4–103(1). The Board emphasizes that agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under § 229.38 to entities not party to the agreement. This section is consistent with the limits on truncation agreements in § 229.36(c). The Commentary to the regulation includes examples of situations where variation by agreement is permissible. Variation by agreement is not authorized with respect to the requirements of Subpart B of the regulation.

Section 229.38 Liability.

(a) *Standard of care; liability; measure of damages.* The proposed regulation established a standard of care that applies to any bank covered by the requirements of Subpart C and is similar to the standard imposed by U.C.C. §§ 1–203 and 4–103(1). A bank not fulfilling this standard of care is liable to the depositary bank, the owner of the check, or another party to the check. The measure of damages stated was derived from U.C.C. §§ 4–103(5) and 4–202(3). This paragraph also stated that it did not affect a paying bank's liability to its customer. The Board requested specific comment on whether a bank's liability under this paragraph should be limited to the depositary bank and owner of the check.

Ninety-eight commenters commented on this paragraph of the proposed regulation. Among these commenters, 53 generally favored the Board's proposal with technical changes, while 19 had mixed reactions, and 26 opposed this part of the proposal as written. Eighty-seven commenters addressed the issue of whether a bank's liability under this paragraph should be limited to the depositary bank and owner of the check. Forty-five commenters stated that liability should apply to the depositary bank, owner of the check, or another party to the check. On the other hand, 42 commenters indicated that the bank's liability should be limited to the depositary bank and owner of the check.

One commenter indicated that because a bank is liable under the Act and regulation only if it failed to exercise ordinary care or act in good faith, a bank's failure to comply with the requirements of the regulation would not necessarily result in liability. Accordingly, the commenter believed there would be a certain degree of uncertainty for other parties as to whether recovery will be realized against a particular bank that violated the regulation. Moreover, the commenter indicated that losses will be shifted from banks failing to comply with the requirements of the regulation (albeit not in a negligent or bad faith manner) to innocent parties that have fully complied with the regulations.

At the state level, the commenter believed it was important that the Board's regulations be interpreted consistently by the state courts in each state. In this regard, it was suggested that the Board consider including language in the regulation encouraging state courts to certify to the Board issues concerning the interpretation of this regulation. In addition, the Board was encouraged to indicate in the regulation that it is prepared to file, and will file, amicus briefs in state courts to ensure consistent interpretation of its regulation across the country. This commenter believed that such Board involvement in state court proceedings was particularly appropriate, because Subpart C represented a significant new federal overlay applicable to legal relationships previously governed primarily by state law and regulated by state courts.

Another commenter indicated that one of the most critical issues currently facing California banks is the recent influx of "bad faith" suits in which punitive damage awards of, for instance, $20 million have been made as a result of a bank's alleged breach of its "implied warranty of good faith and fair dealing" to its customers. The commenter indicated that the California legislature recently amended California law to slow the pace of similar cases, which represented a true crisis to the California banking community. According to this commenter, California law (Financial Code § 668.4) currently limits banks' liability for failure to comply with California's funds availability laws to actual damages plus additional action and the lesser of $500,000 or one percent of net worth. In view of this information, the commenter made three requests:

(1) That no reference be made anywhere in the regulation to a standard of "good faith," rather, that the negligence, reasonableness and/or due diligence standard be used;

(2) That the regulation state specifically that it does not establish a standard of or otherwise impose an implied or express warranty of good faith and fair dealing not otherwise existing under applicable state law;

(3) That § 229.38 explicitly state that the amount of damages will be subject to applicable state law.

Of those commenters opposed to this section as proposed, one commenter believed that the proposal imposed liability for consequential damages upon a showing of "lack of good faith." The commenter believed that this is different language from that found in U.C.C. § 4–103(5) which requires an affirmative finding of "bad faith" before subjecting a bank to liability for consequential damages and from the language in the Act which provides for such damages only "where there is bad faith." (See section 611(f) of the Act.) The commenter asked if this change in language was intentional and recommended that the language in the regulation parallel that of the Act.

Another commenter believed that an "ordinary care" standard does not provide banks with a clear standard by which they may measure their conduct, and suggested that the Board adopt a "good faith" standard instead. Another commenter indicated that under U.C.C. §§ 1–203 and 4–103(1), standards of care are imposed upon each bank handling the check. This should not change, and liability should be assigned to any bank causing a delay in the handling of the check.

Another commenter indicated that it may be very difficult to comply 100 percent of the time considering the complexities of the Act. Consequently, it was noted that the following questions should be addressed in the regulation or commentary. What will "ordinary care" mean? What will "good faith" mean? If a returned check is lost, how is the determination of whether the bank exercised care made?

Another commenter was concerned that the Federal Reserve may be the responsible party for delaying a returned check and would not be subject to the liability provisions of this section. The Board notes that the Federal Reserve is subject to the same duties and liabilities under the regulation as any returning bank.

One commenter failed to see the need for § 229.38, since the U.C.C. already establishes a standard of care for check return obligation. This standard has been clarified by a large number of judicial decisions. The commenter believed that, by combining this proposed regulation with the expeditious return requirement of Subpart C, an issue of fact will be created in every lawsuit seeking damages under its terms.

Another commenter believed that liability should not be imposed on a bank that misroutes a returned check due to the inaccurate identification of the depositary bank. Another commenter indicated that good faith encoding errors in processing QRCs should not create liability on the part of the bank that encoded the check. Another commenter indicated that "standard of care" should be a responsibility of all institutions involved in the returned check process.

Of those that supported this provision, nine indicated that under the QRC process, a misrouted return is a definite liability of the paying bank and agreed that this liability should extend at the very least to the depositary bank, the depositor, and the issuer of the check. Three commenters indicated that in order to clearly determine the identity of the paying/returning bank that has misencoded a QRC, the bank creating a QRC be required to encode its routing number on the front of the check. These commenters indicated that liability for actual and direct damages (including court costs and attorneys' fees) should extend to all injured parties. Six other commenters generally agreed that the provisions of paragraph (a) were adequate. Fifteen commenters recommended this paragraph contain a provision similar to the following: "provided the bank had handled the return of an item in a manner consistent with standard industry practices, the fact that the bank has not returned the item in strict accordance with this regulation shall not be deemed to create a presumption that the bank has failed to exercise ordinary care or to act in good faith."

One commenter recommended that the regulation clarify that qualifying banks are responsible for losses caused by delays due to improper qualification. Improper qualification may cause a check to be misrouted, delaying its return to the depositary bank. The commenter suggested that, if the depositary bank shows that the check would have been returned before it released funds but for the delay caused by the improper qualification, the qualifying bank should be held liable for the resulting loss.

Another commenter suggested clarification in that the U.C.C. states that a collecting bank exercises ordinary care if it acts by its midnight deadline. A similar standard should be adopted by this paragraph so that "ordinary care" is not left to interpretation. Likewise, good faith should be tied to the U.C.C. definition of "good faith," which is "honesty in fact." Another commenter supported this paragraph but indicated that it should be limited to the depositary bank and its customer. However, other banks may share in the paying bank's liability if they failed to exercise ordinary care.

Two other commenters suggested that the liability under § 229.38(a) should be restricted to the depositary bank or the owner of the check and that the Commentary be expanded to state that in the fifth sentence the term "notice" in the phrase "for loss or destruction of a check or notice in transit" refers to a notice of nonpayment or notice in lieu of return.

One other commenter suggested that the Board modify this provision so as to discourage litigation by (1) placing the burden of proof on the party seeking to recover; (2) where a party seeks to recover a sum in excess of the amount of the check, establish a high evidentiary standard such as "clear and convincing evidence;" (3) include the U.C.C. definition of "good faith" (i.e., honesty in fact) and emphasize in the commentary that an error in legal judgment, gross negligence, or other circumstances not involving actual dishonesty do not constitute a lack of good faith; (4) identify in the Commentary some of the most prevalent factual circumstances arising in check collection litigation and clarify whether a loss has been incurred and whether such loss is attributable to delayed returns under those circumstances; and (5) clarify that the depositary bank cannot refuse to make full settlement by offsetting alleged losses from alleged late returns against the settlement due.

Another commenter agreed that a bank's liability for failure to use reasonable care in handling a check should apply only in favor of the depositary bank or owner of the check. This would eliminate the requirement to involve intermediary banks in such disputes.

Other commenters questioned how the depositary bank would revoke settlement should a dispute arise when settling directly with a drawee bank when an account relationship did not exist. Another commenter indicated that interpretation and limits of liability to determine "fault" must be considered (e.g., unreadable indorsements). It was suggested that returns delivered in error to a financial institution should be under special consideration.

The Board believes that it is important to the expeditious return requirements of this regulation for banks to be liable for any losses due to their negligence in handling checks. This approach is consistent with the current treatment of collecting bank liability under the U.C.C. The Board also believes that it is important to return the liability for other damages in laws where a bank fails to act in good faith. The Commentary indicates that these standards are derived from U.C.C. standards, and therefore U.C.C. case law will provide guidance in their interpretation. The Board also recognizes that litigation under these standards will often involve complex fact situations and does not believe that it can address the variety of situations that may arise. Nevertheless, the Commentary has been revised in an attempt to clarify a depositary bank's duty to seek recovery from its customer and that a depositary bank is generally not negligent for making funds available to its customer. The Board will monitor developments in liability under this standard to see if future revisions are necessary.

Bona fide errors. Under the proposal, a depositary bank was shielded from liability under this paragraph for a violation of a requirement of this subpart if it could demonstrate, by a preponderance of evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. An error in legal judgment, however, would not constitute a bona fide error.

Nine commenters commented on this paragraph. Of these, one comment was favorable, three were mixed, and five were opposed to the paragraph as proposed. One commenter suggested that the Board broaden the interpretation of bona fide error recognizing the manual processing and training issues involved in complying with the regulation's requirements. One commenter stated that errors in legal judgment should be included in the definition of bona fide error. Another commenter requested that the Board establish procedures to answer questions via telephone and to promptly respond to written ruling requests concerning Regulation CC and affected Regulation J provisions because banks are not shielded from errors in legal judgment.

Another commenter questioned the applicability of the bona fide errors provisions to Federal Reserve Banks, given the fact that the Act limits this shield to depository institutions. One commenter stated that this provision was somewhat unclear and confusing, and suggested that it should describe the liability for bank errors or omissions in each case covered by Subpart C, particularly the liability of a bank for failure to properly indorse a check. One commenter recommended that this provision be deleted from the final rule.

On further review, the Board believes that the bona fide error provision is not necessary under Subpart C, as the standards for negligence liability incorporate the purpose of the bona fide error provision. Therefore, the Board has deleted this provision from the final regulation.

(b) *Paying bank's failure to make timely return.* Section 229.30(a) of the proposed regulation imposed requirements on the paying bank for expeditious return of a check and left in place the U.C.C. time limits, which may allow return at a different time. This paragraph clarified that the paying bank could be liable for failure to meet either standard but not for failure to meet both.

Eight commenters commented on this paragraph of the Board's proposal. Five commenters favored the proposal as written, and three commenters suggested clarifications to the proposal. One commenter indicated that this paragraph should be clarified to ensure that litigants may plead in the

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alternative under both the U.C.C. and the Board's regulation.

Another commenter indicated that under current laws, the definition of late return is explicit. The proposed regulation removed the standards for judging what constituted a late return. The commenter believed that disputes over expeditious return and late returns are inevitable and suggested that the Board clarify this definition in the final regulation and/or Commentary. One other commenter questioned the liability of other returning banks when holding a returned check causes the returned check to be late. The Board notes that the current U.C.C. midnight deadline requirement is explicit only in the case of paying banks.

Of those generally supporting this paragraph as proposed, two commenters favored a charge-back to the customer's account even if the returned check is not returned timely, upon receipt of the physical check or a copy. One commenter recommended that the proposed regulation be amended to authorize a check of $2,500 or more be charged back against the reserve account of the drawee bank, if a depositary bank submits an affidavit proving this loss was a result of failure to receive a notice, if such notice as now required by Regulation J was not given by the drawee bank. The Board believes that automatic charge-back would be inappropriate, because the determination of liability would involve the review of the facts of each case.

This paragraph is designed to shield a bank from double liability under the U.C.C. and this regulation for a single error. It has been adopted substantially as proposed.

(c) *Comparative negligence.* This paragraph of the proposed regulation established a "pure" comparative negligence standard for liability under Subpart C of the regulation. This comparative negligence rule may have particular application where a paying or returning bank delays returning a check because of difficulty in identifying the depositary bank. Nine commenters commented on this paragraph. Of those that commented, three were opposed, five had mixed reactions, and one commenter supported this paragraph as proposed.

Of those opposed, one commenter indicated that this rule created a nightmare in resolving disputes. For example, if a bank returned a returned check late and the depositary bank suffered a loss, the depositary bank would make claim on the paying bank for a late return. The paying bank would invariably claim that the depositary bank was negligent in allowing its customer to withdraw the money and, therefore, the paying bank would not be liable for the late return. In essence, the commenter believed that this proposed comparative negligence section introduced an alien "personal injury" concept into the laws governing commercial paper, bank deposits, and collections.

Another commenter indicated that the Board was circumspect in exercising its authority by proposing such a comparative negligence rule, and only time will tell how the adoption of the comparative negligence doctrine will affect predictability, speedy dispute resolution, and efficiency in the check collection system. One other commenter believed the comparative negligence standard is unworkable as it eliminated the clear framework of liability, which characterizes the current system. The commenter indicated that rather than help resolve disputes, comparative negligence will result in the introduction of too many variables to enable resolution without costly litigation. The commenter believed that the prevailing party in any dispute under this paragraph should be entitled to both costs and reasonable attorneys, fees.

One commenter stated that the concept of comparative negligence, if applied in all instances, will result in much needless litigation between banks with the attendant costs and delays involved in adversary proceedings. This commenter suggested that losses of $5,000 or less resulting from indorsement, returned check, or notice problems be shared equally by the banks handling a returned check, and allocation of losses exceeding $5,000 be determined by a comparative negligence standard. Another commenter indicated that it was unclear how the comparative negligence and "bona fide errors" provisions interrelate.

Another commenter indicated that it would be difficult to determine when a returned check was late. The commenter questioned whether a paying or returning bank must establish proof that a returned check was qualified, delayed by research for a routing number, sent on a courier after midnight, or held for two days as a small-dollar item. It was suggested that the Federal Reserve set a standard for reasonableness on claims of late returns to better manage potential disputes.

One commenter suggested that the Board undertake a thorough analysis of the comparative negligence standard in cooperation with the National Conference of Commissioners on Uniform State Law before adoption of this provision. One commenter agreed that comparative negligence is a fair standard which is generally used today in settlements, although the commenter foresaw possible problems in determining percentages of negligence and bad faith.

Today, under a general negligence standard, a party may not be liable if the other party was negligent; therefore comparative negligence is not a new concept in commercial law. The Board believes that a comparative negligence standard equitably balances the interests of all parties, and provides greater incentives for compliance with the requirements of this subpart, particularly the indorsement standards. Therefore, the Board adopted this paragraph of the regulation as proposed.

(d) *Responsibility for back of check.* This paragraph was added to clarify the responsibility for damages under paragraph (a) when the condition of the back of the check adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35.

(e) *Timeliness of action.* This paragraph incorporated the standard of U.C.C. § 4–108(2) with the addition of "failure of equipment" and "interruption of computer facilities" as causes of delay. Seventeen commenters commented on this portion of the proposed regulation. Of these, one commenter supported, and 16 opposed, this paragraph as proposed. Commenters opposed to this provision indicated that the causes of delay for "equipment failure" and "interruption of computer facilities" are too vague and requested that more specific definitions be provided in the Commentary in order to prevent abuses.

The Board adopted this paragraph of the regulation essentially as proposed. No examples were included in the Commentary concerning equipment failures because to do so might have the effect of establishing equipment standards for the banking industry and would therefore be beyond the scope of the original proposal.

(f) *Exclusion.* This paragraph of the proposed regulation provided that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and 611(b) of the Act (12 U.S.C. 4010 (a) and (b)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Two commenters commented on this paragraph—one favored and one opposed. The Board revised this paragraph to exclude the bona fide error provisions of the Act from Subpart C.

(g) *Jurisdiction.* The proposed regulation provided for the jurisdiction and statute of limitations for civil actions for violations of this subpart. Four commenters commented on this paragraph. Two supported the paragraph as proposed, and two had mixed reactions to the proposal.

One commenter questioned whether it was appropriate to use the limited resources of the federal courts to resolve disputes concerning small-dollar checks. Another commenter believed that this provision indicated that any action "may" be brought within one year. If the intent is to preclude any action brought after one year, the commenter preferred to remove any ambiguity by stating that no action *shall* be brought after one year. The commenter was also concerned that the provision made no exception for cross claims and third-party claims, which are prevalent in check collection litigation. The commenter indicated that in view of the warranty and comparative negligence provisions contained in the proposed regulation, it appears that the defendant in an action brought under § 229.36 should have an additional 60 to 90 days to bring in a third party or file an independent action, after the defendant is served.

One commenter supporting this paragraph indicated that it would be helpful if the Board clarified jurisdiction (or the lack thereof) and whether the appropriate long-arm statute is applicable. In addition, it was recommended that, to the extent already not incorporated, the exceptions to providing notice of dishonor found in U.C.C. § 3–511 apply under the regulation as well (i.e., check return rules, notice of nonpayment).

This paragraph was revised to refer to action under this subpart instead of this section in order to include actions brought under other sections of this subpart such as § 229.35(b). The Commentary has been revised to clarify that this paragraph covers subject matter jurisdiction.

(h) *Reliance on Board rulings.* This paragraph of the proposed regulation shielded banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. In addition to the regulation, banks may also rely on the Commentary of this regulation, which will be issued as an official Board interpretation. One commenter commented in support of this paragraph. The Board adopted this paragraph essentially as proposed.

Section 229.39 Insolvency of bank.

Two respondents commented on this provision of the proposed regulation dealing with instances in which banks fail without having made final settlement for checks. One comment supported the provision. One commenter opposed this rule, citing doubt as to whether the Federal Reserve Board has the right to preempt federal statutes on the insolvency of banks.

The Board believes that this provision is consistent with the Board's authority to regulate the check collection system under the Act. Therefore, the Board has adopted this section essentially as proposed. The Commentary to this section has been expanded to clarify its operation.

Section 229.40 Effect of merger transaction.

Several commenters stated that it would be extremely difficult to comply with certain requirements of the regulation for a period of time following a merger or acquisition of a bank. These difficulties arise from having to treat the banks that have merged as one entity before the operations of the banks have been consolidated. This section has been added to the regulation to provide a one-year transition period for merged/acquired banks, during which they may be treated as separate banks.

Section 229.41 Relation to state law.

This section of the proposed regulation specified that state law relating to the collection of checks would be preempted to the extent that it is inconsistent with this regulation. Thus, the proposed regulation was not a complete replacement for state laws relating to the collection or return of checks. Sixteen commenters commented on this section.

Of these, 14 supported this section as proposed with suggestions for clarification and/or modification, while two of the commenters opposed the proposed section. Five commenters urged that the regulation and/or Commentary define explicitly those provisions of the U.C.C. that are preempted and those that are not.

One commenter suggested that this section include a standard defining the extent to which any "inconsistency" must exist before it is deemed preempted, which would include examples and descriptions of such inconsistencies. Of specific concern was the interrelationship between the accountability rules under the U.C.C. and the liability rules under the proposed regulation. In addition, two commenters suggested that the procedures applied in Subpart B to resolve inconsistencies between the proposed regulation, the U.C.C., and other state laws should be equally applicable to issues arising in this subpart. One commenter opposed to the proposed section suggested that the Board examine the laws of each state for conflicts with the regulation and encourage respective state legislators to change the laws and/or ensure that banks within each state are aware of any inconsistencies.

One commenter suggested that, once the regulation is implemented, the Board seriously consider consolidating Regulation CC, Regulation J, and the U.C.C. into one comprehensive regulation governing check collection and return, seeking input from banking, consumer, and other interested groups, such as the National Conference of Commissioners on Uniform State Law.

The Board believes that the preemption determination procedures established in § 229.30 with respect to Subpart B requirements are not warranted with respect to state law determinations under Subpart C, because this subpart does not impose punitive damages for violations in contrast to the liability provisions of Subpart B. The Commentary to the various sections of this subpart generally address the relation between these requirements and provisions of the U.C.C.

Section 229.42 Exclusions.

This section of the proposed regulation specified that checks drawn upon the account of the United States Treasury, or indorsed by the Treasury, and U.S. Postal Service money orders are excluded from the coverage of the expeditious return requirements of Subpart C of this regulation. Twenty-six commenters commented on this section of the proposed regulation. Twenty-two commenters opposed and four supported the section as proposed.

The majority (16) of commenters opposed to this provision stated that it is not appropriate to exclude checks drawn on the U.S. Treasury, checks indorsed by or to the credit of the U.S. Treasury, or U.S. Postal Service money orders from the expeditious return requirements of this subpart. One commenter believed that government checks should have the same statute of limitations as other checks for returns due to indorsement problems, etc. In addition, several other commenters indicated that government entities whose checks must be made available in one day should be required to comply with all provisions of Subpart C as well as the midnight deadline of the U.C.C., or be given the same availability as nonlocal checks, because under the regulation such checks represent potentially the greatest risk to banks.

Other commenters suggested that there should be no differentiation between the rules applicable to Treasury checks, cashier's checks, certified checks, and teller's checks, and that the issuers of any of these checks should be required to provide notice to the depositary bank of the pending return. One commenter suggested that all governmental entities (city, local, state, and federal) be required to comply with the expeditious return rules contained in this subpart. The Board did not subject Treasury checks to the expeditious return requirements, due to the fact that return of these checks is currently subject to Treasury rules rather than the U.C.C. midnight deadline requirement applicable to the return of checks. The Board has also excluded checks drawn on a state or unit of general local government that are not payable through or at a bank from the expeditious return and notice of nonpayment requirements of Subpart C, because the Board's authority under the Act to regulate these checks is not clear.

Three commenters stated that depositary banks that do not hold transaction accounts should also be excluded from the Subpart C requirements. These banks, however, would not be subject to the expeditious return or notice of nonpayment requirements, since they do not act as a paying bank.

At the request of the U.S. Treasury, the Board eliminated the exclusion for checks indorsed to or for credit to the account of the U.S. Treasury.

Inquiry to Paying Bank. The proposed regulation required paying banks to respond promptly to a telephone or telegraph inquiry from a depositary bank with respect to whether a cashier's or certified check drawn upon it had been issued, certified, or payment stopped thereon, or whether the check had been paid, returned or notice of nonpayment given, and confirm information on the face of the check including the amount and payee. With respect to a teller's check, the proposed regulation required the drawing bank to respond to such an inquiry. Under the proposal, the paying or drawing bank did not guarantee payment of the check by responding to an inquiry.

A total of 310 commenters responded to this section of the proposed regulation. One hundred ninety-three favored the concept of requiring paying banks to respond to inquiries but suggested certain conditions and modifications. Fifty commenters indicated mixed reactions to this provision, and 67 commenters generally opposed this section as unworkable operationally. Specifically, 78 commenters indicated that the provision would not protect depositary banks completely because many forgeries and counterfeits would go undetected. In addition, if a stop payment was issued after the inquiry had been made, the depositary bank would be unaware of that fact. Furthermore, depositary banks would not know where to direct the inquiry within the paying bank to obtain reliable information, or may not be able to contact or receive a response from the paying bank within a reasonable time. Twenty-five commenters recommended that issuers of cashier's, certified, and teller's checks be required to print a telephone number on the face of the check and require all verification inquiries to be directed to that specific telephone number.

Sixty-one commenters were also concerned that differing time zones and the requirement that cashier's, certified, and teller's check proceeds be made available at the opening of business on the day after deposit may result in the depositary bank making funds available before it had the opportunity to contact the paying bank and obtain a response. Seventy-nine commenters further indicated that the information provided by the paying bank should not be guaranteed because of problems with recordkeeping and proof, and because telephone messages are too unreliable. Fifty commenters indicated that having access to reliable information at the paying bank may be difficult because many banks do not have the sophisticated systems necessary to centralize all information from branches that issue cashier's, certified, or teller's checks. Designing and implementing such a system could be very expensive and many banks could not do it by September 1, 1988. On the other hand, several other commenters indicated that currently such systems are maintained and could be expanded to meet this requirement.

Because a significant number of banks would have difficulty complying with this inquiry requirement by September 1, 1988, the Board eliminated this provision from the regulation. The Board expects that many banks will respond to inquiries absent a regulatory requirement to do so. The Board may consider, however, adopting this or a similar provision at a later date.

Final Regulatory Flexibility Analysis. Of the items required to be contained in a final regulatory flexibility analysis by 5 U.S.C. 604(a), the first (a statement of the need for and objectives of the rule) and second (a summary of the issues raised by the commenters, the Board's assessment of the issues, and the changes made to the proposed rule in response to the comments) are contained elsewhere in this preamble.

The third item required for a final regulatory flexibility analysis is a description of significant alternatives to the rule consistent with the objectives of applicable statutes and designed to minimize any significant economic effect of the rule on small entities considered by the Board, and why these alternatives were rejected. In the initial regulatory flexibility analysis, which was published with the proposal (52 FR 47112, 47148 (Dec. 11, 1987)), the Board noted that it had considered exempting very small banks, those that fall below the threshold for filing reports of deposit under the Board's Regulation D (12 CFR Part 204), from Regulation CC's requirements, but did not do so because the availability schedules (which by statute apply to all banks regardless of size) and the expeditious return requirements could be made to work only if all banks were subjected to the same rules.

Of all the comments received, only 20 mentioned the burden on small banks. These commenters, however, did not offer any significant alternatives other than to suggest that the Board exempt small banks from the regulation. As noted previously, the Board had considered this approach and rejected it. No commenters specifically addressed the difficulties in exempting small banks identified by the Board in the initial regulatory flexibility analysis: that the Act does not provide any exemptions for small banks from its availability and disclosure requirements; in order to minimize the risks to all banks (large and small) that must make funds available to their customers according to these expedited schedules, all paying banks, regardless of size, must be subjected to the expedited return provisions of Subpart C. Exemption of small banks from the expeditious return requirements would mean that small banks would be permitted to continue to use inefficient manual processing of returns. When this inefficient return process is combined with the expedited availability mandated by the Act, the result could be increased losses for banks that accept for deposit checks drawn on small banks. Accordingly, the Board has determined to implement Regulation CC without any exemption for small banks.

The Board notes that some very small institutions, especially credit unions, do not maintain accounts as that term is defined in Regulation CC. These institutions are not subject to the expedited availability and disclosure requirements of the Act or of the regulation. Further, any institution that does not offer accounts subject to check or draft (again, primarily small credit unions) would not be subject to the expeditious return requirements of Subpart C of the regulation. Finally, the Act provides relief to certain credit unions, generally those that are small and lack sophisticated operations, from certain interest accrual requirements.

A number of small businesses other than banks requested that the Board specifically address the effect of its proposed indorsement standard on small businesses that use or make checks with a carbon band. This issue was addressed in the final regulatory flexibility analysis that accompanied the Board's adoption of the indorsement standard in April. (53 FR 11832, 11836 (Apr. 11, 1988).)

Paperwork Reduction Act Notice. The Board has submitted the disclosure requirements and model forms of Regulation CC to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and OMB's regulation on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). (OMB Docket number: 7100-0234.)

A detailed description of the disclosure requirements, including why the Board has adopted them, the institutions that will be subject to them, and how frequently disclosures will be required, is contained elsewhere in this notice. The model forms are set forth in Appendix C to Regulation CC.

The Board estimates that the disclosure requirement will result in a one-time reporting burden of 3.2 million hours and an annual reporting burden of 2.3 million hours for all institutions subject to the requirements. State member banks and other institutions subject to the Board's jurisdiction under § 229.3 will incur a reporting burden of approximately 375,000 hours (one-time) and 218,000 hours (annual); the balance of the reporting burden will be included in the information collection budgets of the other agencies identified in § 229.3 of Regulation CC in proportion to the burden associated with the institutions subject to their jurisdiction.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 229 of the Code of Federal Regulations is revised to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

Subpart A—General

229.1 Authority and purpose; organization.
229.2 Definitions.
229.3 Administrative enforcement.

Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

229.10 Next-day availability.
229.11 Temporary availability schedule.
229.12 Permanent availability schedule.
229.13 Exceptions.
229.14 Payment of interest.
229.15 General disclosure requirements.
229.16 Specific availability policy disclosure.
229.17 Initial disclosures.
229.18 Additional disclosure requirements.
229.19 Miscellaneous.
229.20 Relation to state law.
229.21 Civil liability.

Subpart C—Collection of Checks

229.30 Paying bank's responsibility for return of checks.
229.31 Returning bank's responsibility for return of checks.
229.32 Depositary bank's responsibility for returned checks.
229.33 Notice of nonpayment.
229.34 Warranties by paying bank and returning bank.
229.35 Indorsements.
229.36 Presentment of checks.
229.37 Variation by agreement.
229.38 Liability.
229.39 Insolvency of bank.
229.40 Effect of merger transaction.
229.41 Relation to state law.
229.42 Exclusions.
Appendix A—Routing Number Guide to Local Checks and Certain Checks That Are Subject to Next-Day Availability.
Appendix B-1—Reduction of Schedules for Certain Nonlocal Checks Under the Temporary Schedule.
Appendix B-2—Reduction of Schedules for Certain Nonlocal Checks Under the Permanent Schedule.
Appendix C—Model Forms, Clauses, and Notices.
Appendix D—Indorsement Standards.
Appendix E—Commentary.

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

Subpart A—General

§ 229.1 Authority and purpose; organization.

(a) *Authority and purpose.* This part (Regulation CC; 12 CFR Part 229) is issued by the Board of Governors of the Federal Reserve System ("Board") to implement the Expedited Funds Availability Act ("Act"), which is contained in Title VI of Pub. L. 100-86.

(b) *Organization.* This part is divided into subparts and appendices as follows—

(1) Subpart A contains general information. It sets forth—

(i) The authority, purpose, and organization;

(ii) Definition of terms; and

(iii) Authority for administrative enforcement of this part's provisions.

(2) Subpart B of this part contains rules regarding the duty of banks to make funds deposited into accounts available for withdrawal, including both temporary and permanent availability schedules. Subpart B of this part also contains rules regarding exceptions to the schedules, disclosure of funds availability policies, payment of interest, liability of banks for failure to comply with Subpart B of this part, and other matters.

(3) Subpart C of this part contains rules to expedite the collection and return of checks by banks. These rules cover the direct return of checks, the manner in which the paying bank and returning banks must return checks to the depositary bank, notification of nonpayment by the paying bank, rules regarding indorsement and presentment, the liability of banks for failure to comply with Subpart C of this part, and other matters.

§ 229.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) "Account" means a deposit as defined in 12 CFR 204.2(a)(1)(i) that is a transaction account as described in 12 CFR 204.2(e). As defined in these sections, "account" generally includes accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. "Account" also includes accounts at a bank from which the account holder may make third party payments at an ATM, remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits or accounts described in 12 CFR 204.2(d)(2) even though such accounts permit third party transfers. An account may be in the form of—

(1) A demand deposit account,

(2) A negotiable order of withdrawal account,

(3) A share draft account,

(4) An automatic transfer account, or

(5) Any other transaction account described in 12 CFR 204.2(e).

"Account" does not include an account where the account holder is a bank, where the account holder is an office of an institution described in

paragraphs (e)(1) through (e)(6) of this section or an office of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

(b) "Automated clearinghouse" or "ACH" means a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.

(c) "Automated teller machine" or "ATM" means an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions.

(d) "Available for withdrawal" with respect to funds deposited means available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

(e) "Bank" means—

(1) An "insured bank" as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that Act (12 U.S.C. 1815);

(2) A "mutual savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(3) A "savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(4) An "insured credit union" as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that Act (12 U.S.C. 1781);

(5) A "member" as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(6) An "insured institution" as defined in section 401 of the National Housing Act (12 U.S.C. 1724) or an institution that is eligible to make application to become an insured institution under section 403 of that Act (12 U.S.C. 1726); or

(7) A "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101).

For purposes of Subpart C and, in connection therewith, Subpart A, the term "bank" also includes any person engaged in the business of banking, including a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term "bank" includes all of a bank's offices in the United States, but not offices located outside the United States.

(f) "Banking day" means that part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.

(g) "Business day" means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

(h) "Cash" means United States coins and currency.

(i) "Cashier's check" means a check that is—

(1) Drawn on a bank;

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer;

(3) A direct obligation of the bank; and

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

(j) "Certified check" means a check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that—

(1) (i) The signature of the drawer on the check is genuine; and

(ii) The bank has set aside funds that—

(A) Are equal to the amount of the check, and

(B) Will be used to pay the check; or

(2) The bank will pay the check upon presentment.

(k) "Check" means—

(1) A negotiable demand draft drawn on or payable through or at an office of a bank;

(2) A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;

(3) A negotiable demand draft drawn on the Treasury of the United States;

(4) A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;

(5) A United States Postal Service money order; or

(6) A traveler's check drawn on or payable through or at a bank.

The term "check" does not include a noncash item or an item payable in a medium other than United States money. A draft may be a "check" even though it is described on its face by another term, such as "money order." For purposes of Subpart C, and in connection therewith, Subpart A, of this part, the term "check" also includes a demand draft of the type described above that is nonnegotiable.

(l) "Check clearinghouse association" means any arrangement by which three or more participants exchange checks on a local basis, including an entire metropolitan area. The term "check clearinghouse association" may include arrangements using the premises of a Federal Reserve Bank, but it does not include the handling of checks for forward collection or return by a Federal Reserve Bank.

(m) "Check processing region" means the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

(n) "Consumer account" means any account used primarily for personal, family, or household purposes.

(o) "Depositary bank" means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank.

(p) "Electronic payment" means a wire transfer or an ACH credit transfer.

(q) "Forward collection" means the process by which a bank sends a check on a cash basis to the paying bank for payment.

(r) "Local check" means a check drawn on or payable through or at a local paying bank. A depositary bank may rely on the routing number that appears on a check in magnetic ink to determine whether a check is a local check if the check is sent for payment or collection based on the routing number.

(s) "Local paying bank" means a paying bank to which a check is sent for payment or collection that is located in the same check processing region as the physical location of—

(1) The branch or proprietary ATM of the depositary bank in which that check was deposited; or

(2) Both the branch of the depositary bank at which the account is held and the nonproprietary ATM at which the check is deposited.

(t) "Merger transaction" means—

(1) A merger or consolidation of two or more banks; or

(2) The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities.

(u) "Noncash item" means an item that would otherwise be a check, except that—

(1) A passbook, certificate, or other document is attached;

(2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;

(3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or

(4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

(v) "Nonlocal check" means a check payable by, through, or at a nonlocal paying bank.

(w) "Nonlocal paying bank" means a paying bank that is not a local paying bank with respect to the depositary bank.

(x) "Nonproprietary ATM" means an ATM that is not a proprietary ATM.

(y) "Participant" means a bank that—

(1) Is located in the geographic area served by a check clearinghouse association; and

(2) Both collects and receives for payment checks through the check clearinghouse association either directly or through another participant.

(z) "Paying bank" means—

(1) The bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection;

(2) The bank at or through which a check is payable and to which it is sent for payment or collection;

(3) The bank whose routing number appears on a check in magnetic ink or in fractional form and to which the check is sent for payment or collection;

(4) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable; or

(5) The state or unit of general local government on which a check is drawn.

(aa) "Proprietary ATM" means an ATM that is—

(1) Owned or operated by, or operated exclusively for, the depositary bank;

(2) Located on the premises (including the outside wall) of the depositary bank; or

(3) Located within 50 feet of the premises of the depositary bank, and not identified as being owned or operated by another entity.

If more than one bank meets the owned or operated criterion of paragraph (aa)(1) of this section, the ATM is considered proprietary to the bank that operates it.

(bb) "Qualified returned check" means a returned check that is prepared for automated return to the depositary bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. A qualified returned check need not contain other elements of a check drawn on the depositary bank, such as the name of the depositary bank.

(cc) "Returning bank" means a bank (other than the paying or depositary bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for the purpose of U.C.C. 4–202 (1)(e) and (2).

(dd) "Routing number" means—

(1) The number printed on the face of a check in fractional form or in nine-digit form that identifies a paying bank; or

(2) The number in a bank's indorsement in fractional or nine-digit form.

(ee) "Similarly situated bank" means a bank of similar size, located in the same community, and with similar check handling activities as the paying bank or returning bank.

(ff) "State" means a state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands.

(gg) "Teller's check" means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

(hh) "Traveler's check" means an instrument for the payment of money that—

(1) Is drawn on or payable through or at a bank;

(2) Is designated on its face by the term "traveler's check" or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation or bank that is an issuer of traveler's checks;

(3) Provides for a specimen signature of the purchaser to be completed at the time of purchase; and

(4) Provides for a countersignature of the purchaser to be completed at the time of negotiation.

(ii) "Uniform Commercial Code," "Code," or "U.C.C." means the Uniform Commercial Code as adopted in a state.

(jj) "United States" means the states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(kk) "Unit of general local government" means any city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units of government, such as school districts or water districts.

(ll) "Wire transfer" means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through the Federal Reserve Communications System, the New York Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. "Wire transfer" does not include an electronic fund transfer as defined in section 902(f) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

(mm) Unless the context requires otherwise, the terms not defined in this section have the meanings set forth in the U.C.C.

§ 229.3 Administrative enforcement.

(a) *Enforcement agencies.* Compliance with this part is enforced under—

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of—

(i) National banks by the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks) by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) Section 5(d) of the Home Owners Loan Act of 1933 (12 U.S.C. 1464(d)), section 407 of the National Housing Act (12 U.S.C. 1730), and section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437), by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) in the case of any institution subject to those provisions; and

(3) The Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any federal credit union or credit union insured by the National Credit Union Share Insurance Fund.

(b) *Additional powers.* (1) For the purposes of the exercise by any agency referred to in paragraph (a) of this section of its powers under any statute referred to in that paragraph, a violation of any requirement imposed under the Act is deemed to be a violation of a requirement imposed under that statute.

(2) In addition to its powers under any provision of law specifically referred to

in paragraph (a) of this section, each of the agencies referred to in that paragraph may exercise, for purposes of enforcing compliance with any requirement imposed under this part, any other authority conferred on it by law.

(c) *Enforcement by the Board.* (1) Except to the extent that enforcement of the requirements imposed under this part is specifically committed to some other government agency, the Board shall enforce such requirements.

(2) If the Board determines that—

(i) Any bank that is not a bank described in paragraph (a) of this section; or

(ii) Any other person subject to the authority of the Board under the Act and this part,

has failed to comply with any requirement imposed by this part, the Board may issue an order prohibiting any bank, any Federal Reserve Bank, or any other person subject to the authority of the Board from engaging in any activity or transaction that directly or indirectly involves such noncomplying bank or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks, and any related function of the payment system with respect to checks).

Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

§ 229.10 Next-day availability.

(a) *Cash deposits.* (1) A bank shall make funds deposited in an account by cash available for withdrawal not later than the business day after the banking day on which the cash is deposited, if the deposit is made in person to an employee of the depositary bank.

(2) A bank shall make funds deposited in an account by cash available for withdrawal not later than the second business day after the banking day on which the cash is deposited, if the deposit is not made in person to an employee of the depositary bank.

(b) *Electronic payments.*—(1) *In general.* A bank shall make funds received for deposit in an account by an electronic payment available for withdrawal not later than the business day after the banking day on which the bank received the electronic payment.

(2) *When an electronic payment is received.* An electronic payment is received when the bank receiving the payment has received both—

(i) Payment in actually and finally collected funds; and

(ii) Information on the account and amount to be credited.

A bank receives an electronic payment only to the extent that the bank has received payment in actually and finally collected funds.

(c) *Certain check deposits.*—(1) *General rule.* A depositary bank shall make funds deposited in an account by check available for withdrawal not later than the business day after the banking day on which the funds are deposited, in the case of—

(i) A check drawn on the Treasury of the United States and deposited in an account held by a payee of the check;

(ii) A U.S. Postal Service money order deposited—

(A) In an account held by a payee of the money order; and

(B) In person to an employee of the depositary bank.

(iii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited—

(A) In an account held by a payee of the check; and

(B) In person to an employee of the depositary bank;

(iv) A check drawn by a state or a unit of general local government and deposited—

(A) In an account held by a payee of the check;

(B) In a depositary bank located in the state that issued the check, or the same state as the unit of general local government that issued the check;

(C) In person to an employee of the depositary bank; and

(D) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depositary bank under paragraph (c)(3) of this section.

(v) A cashier's, certified, or teller's check deposited—

(A) In an account held by a payee of the check;

(B) In person to an employee of the depositary bank; and

(C) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depositary bank under paragraph (c)(3) of this section.

(vi) A check deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check processing region; and,

(vii) The lesser of—

(A) $100, or

(B) The aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next-day availability under paragraphs (c)(1) (i) through (vi) of this section.

(2) *Checks not deposited in person.* A depositary bank shall make funds deposited in an account by check or checks available for withdrawal not later than the second business day after the banking day on which funds are deposited, in the case of a check deposit described in and that meets the requirements of paragraphs (c)(1) (ii), (iii), (iv), and (v), of this section, except that it is not deposited in person to an employee of the depositary bank.

(3) *Special deposit slip.* (i) As a condition to making the funds available for withdrawal in accordance with this section, a depositary bank may require that a state or local government check or a cashier's, certified, or teller's check be deposited with a special deposit slip or deposit envelope that identifies the type of check.

(ii) If a depositary bank requires the use of a special deposit slip or deposit envelope, the bank must either provide the special deposit slip or deposit envelope to its customers or inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available.

§ 229.11 Temporary availability schedule.

(a) *Effective date.* The temporary availability schedule contained in this section is effective from September 1, 1988, through August 31, 1990. For the permanent availability schedule, which is effective September 1, 1990, see § 229.12.

(b) *Local checks and certain other checks.*—(1) *In general.* A depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the third business day following the banking day on which funds are deposited, in the case of—

(i) A local check;

(ii) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(iii) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

(iv) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(1)(iv) of this section is a local check that is not governed by the availability requirements of § 229.10(c).

(2) *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more

local checks are available for withdrawal by cash or similar means unless the checks are drawn on or payable at or through a local paying bank that is a participant in the same check clearinghouse association as the depositary bank. Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, Federal Reserve Bank, or Federal Home Loan Bank that presents a check to the depositary bank for payment. A depositary bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the third business day following the banking day on which the funds are deposited. This $400 is in addition to the $100 available under § 229.10(c)(1)(vii).

(c) *Nonlocal checks.*—(1) *In general.* A depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the seventh business day following the banking day on which funds are deposited, in the case of—

(i) A nonlocal check; and

(ii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; a cashier's, certified, or teller's check; or a check deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) *Reduction in schedule for certain check deposits.* Nonlocal checks specified in Appendix B–1 to this part must be made available for withdrawal not later than the times prescribed in that Appendix.

(d) *Deposits at nonproprietary ATMs.* A depositary bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the seventh business day following the banking day on which the funds are deposited.

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depositary bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in § 229.10, that is—

(1) Deposited in an account at a branch of a depositary bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depositary bank.

§ 229.12 Permanent availability schedule.

(a) *Effective date.* The permanent availability schedule contained in this section is effective September 1, 1990.

(b) *Local checks and certain other checks.* A depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited, in the case of—

(1) A local check;

(2) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(3) A check drawn on the Treasury of the United States that is deposited at a nonproprietary ATM;

(4) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

(5) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(5) is a local check that is not governed by the availability requirements of § 229.10(c).

(c) *Nonlocal checks.*—(1) *In general.* A depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

(i) A nonlocal check; and

(ii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; a cashier's, certified, or teller's check; or a check deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) Nonlocal checks specified in Appendix B–2 to this part must be made available for withdrawal not later than the times prescribed in that Appendix.

(d) *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs (b) or (c) of this section are available for withdrawal by cash or similar means. Similar means include electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depositary bank for payment. A depositary bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds are available under paragraphs (b) and (c) of this section. This $400 is in addition to the $100 available under § 229.10(c)(1)(vii).

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depositary bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in § 229.10, that is—

(1) Deposited in an account at a branch of a depositary bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depositary bank.

§ 229.13 Exceptions.

(a) *New accounts.* (1) A deposit in a new account—

(i) Is subject to the requirements of § 229.10 (a) and (b) to make funds from deposits by cash and electronic payments available for withdrawal on the business day following the banking day of deposit or receipt;

(ii) Is subject to the requirements of § 229.10(c)(1) (i) through (v) and § 229.10(c)(2) only with respect to the first $5,000 of funds deposited on any one banking day; but the amount of the deposit in excess of $5,000 shall be available for withdrawal not later than the ninth business day following the banking day on which funds are deposited; and

(iii) Is not subject to the availability requirements of §§ 229.10(c)(1) (vi) and (vii), 229.11, and 229.12.

For purposes of this paragraph, checks subject to § 229.10(c)(1)(v) include traveler's checks.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each customer on the account has had, within 30 calendar days before the account is established, another account

at the depositary bank for at least 30 calendar days.

(b) *Large deposits.* Sections 229.11 and 229.12 do not apply to the aggregate amount of deposits by one or more checks to the extent that the aggregate amount is in excess of $5,000 on any one banking. day. For customers that have multiple accounts at a depositary bank, the bank may apply this exception to the aggregate deposits to all accounts held by the customer, even if the customer is not the sole holder of the accounts and not all of the holders of the accounts are the same.

(c) *Redeposited checks.* Sections 229.11 and 229.12 do not apply to a check that has been returned unpaid and redeposited by the customer or the depositary bank. This exception does not apply—

(1) To a check that has been returned due to a missing indorsement and redeposited after the missing indorsement has been obtained, if the reason for return indication on the check states that it was returned due to a missing indorsement; or

(2) To a check that has been returned because it was post dated, if the reason for return indicated on the check states that it was returned because it was post dated, and if the check is no longer postdated when redeposited.

(d) *Repeated overdrafts.* If any account or combination of accounts of a depositary bank's customer has been repeatedly overdrawn, then for a period of six months after the last such overdraft, §§ 229.11 and 229.12 do not apply to any of the accounts. A depositary bank may consider a customer's account to be repeatedly overdrawn if—

(1) On six or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative if checks or other charges to the account had been paid; or

(2) On two or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative, in the amount of $5,000 or more, if checks or other charges to the account had been paid.

(e) *Reasonable cause to doubt collectibility.*—(1) *In general.* If a depositary bank has reasonable cause to believe that the check is uncollectible from the paying bank, then § 229.10(c)(1)(iii) and (v); § 229.10(c)(2) to the extent that it applies to a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank, or a cashier's, teller's, or certified check; § 229.11; and § 229.12 do not apply with respect to a check deposited in an account at a depositary bank. Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the bank's belief that the check is uncollectible shall be included in the notice required under paragraph (g) of this section.

(2) *Overdraft and returned check fees.* A depositary bank that extends the time when funds will be available for withdrawal as described in paragraph (e)(1) of this section, and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks of other debits to the account, if—

(i) The overdraft or return of the check would not have occurred except for the fact that the deposited funds were delayed under paragraph (e)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depositary bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice of exception required in paragraph (g) of this section and, when required, refunds any such fees upon the request of the customer. The overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the exception is paid and how to obtain a refund.

(f) *Emergency conditions.* Sections 229.11 and 229.12 do not apply to funds deposited by check in a depositary bank in the case of—

(1) An interruption of communications or computer or other equipment facilities;

(2) A suspension of payments by another bank;

(3) A war; or

(4) An emergency condition beyond the control of the depositary bank,

if the depositary bank exercises such diligence as the circumstances require.

(g) *Notice of exception.*—(1) *In general.* When a depositary bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (f) of this section, it must provide the depositor with a written notice. The notice shall include the following information—

(i) The account number of the customer;

(ii) The date and amount of the deposit;

(iii) The amount of the deposit that is being delayed;

(iv) The reason the exception was invoked; and

(v) The day the funds will be available for withdrawal, unless the emergency conditions exception in paragraph (f) of this section has been invoked, and the depositary bank, in good faith, does not know the duration of the emergency and, consequently, when the funds must be made available at the time the notice must be given.

(2) *Timing of notice.* (i) The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depositary bank, or, if the facts upon which a determination to invoke one of the exceptions in paragraphs (b) through (f) of this section to delay a deposit only become known to the depositary bank after the time of the deposit. If the notice is not given at the time of the deposit, the depositary bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depositary bank, or the deposit is made, whichever is later.

(ii) If the availability of funds is delayed under the emergency conditions exception provided in paragraph (f) of this section, the depositary bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent under paragraph (g)(2)(i) of this section.

(3) *Record retention.* A depositary bank shall retain a record, in accordance with § 229.21(g), of each notice provided pursuant to its application of the reasonable cause exception under paragraph (e) of this section, together with a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check.

(h) *Availability of deposits subject to exceptions.* (1) If an exception contained in paragraphs (b) through (f) of this section applies, the depositary bank may extend the time periods established under §§ 229.11 and 229.12 by a reasonable period of time.

(2) If a depositary bank invokes an exception under paragraph (e) of this section based on its reasonable cause to doubt collectibility of a check that is subject to § 229.10(c)(1)(iii) or (v) or § 229.10(c)(2) to the extent that it applies to a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank, or a cashier's, teller's, or certified check, the depositary bank shall make the funds available for withdrawal not later than a reasonable period after the day the funds would have been required to be made available had the check been subject to §§ 229.11 or 229.12.

(3) If a depositary bank invokes an exception under paragraph (f) of this section based on an emergency condition, the depositary bank shall make the funds available for withdrawal not later than a reasonable period after the emergency has ceased or the period established in §§ 229.11 and 229.12, whichever is later.

(4) For the purposes of paragraphs (h)(1), (2), and (3) of this section, an extension of up to four business days is a reasonable period. An extension of more than four business days may be reasonable, but the bank has the burden of so establishing.

§ 229.14 Payment of interest.

(a) *In general.* A depositary bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depositary bank receives credit for the funds. For the purposes of this section, the depositary bank may—

(1) Rely on the availability schedule of its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine the time credit is actually received; and

(2) Accrue interest or dividends on funds deposited in interest-bearing accounts by checks that the depositary bank sends to paying banks or subsequent collecting banks for payment or collection based on the availability of funds the depositary bank receives from the paying or collecting banks.

(b) *Special rule for credit unions.* Paragraph (a) of this section does not apply to any account at a bank described in § 229.2(e)(4), if the bank—

(1) Begins the accrual of interest or dividends at a later date than the date described in paragraph (a) of this section with respect to all funds, including cash, deposited in the account; and

(2) Provides notice of its interest or dividend payment policy in the manner required under § 229.16(d).

(c) *Exception for checks returned unpaid.* This subpart does not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

§ 229.15 General disclosure requirements.

(a) *Form of disclosures.* A bank shall make the disclosures required by this subpart clearly and conspicuously in writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the customer may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures required by this subpart. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document by, for example, use of a separate heading.

(b) *Uniform reference to day of availability.* In its disclosure, a bank shall describe funds as being available for withdrawal on "the _____business day after" the day of deposit. In this calculation, the first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.

(c) *Multiple accounts and multiple account holders.* A bank need not give multiple disclosures to a customer that holds multiple accounts if the accounts are subject to the same availability policies. Similarly, a bank need not give separate disclosures to each customer on a jointly held account.

(d) *Dormant or inactive accounts.* A bank need not give availability disclosures to a customer that holds a dormant or inactive account.

§ 229.16 Specific availability policy disclosure.

(a) *General.* To meet the requirements of a specific availability policy disclosure under §§ 229.17 and 229.16(d), a bank shall provide a disclosure describing the bank's policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the policy followed by the bank in most cases. A bank may impose longer delays on a case-by-case basis or by invoking one of the exceptions in § 229.13, provided this is reflected in the disclosure.

(b) *Content of specific availability policy disclosure.* The specific availability policy disclosure shall contain the following, as applicable—

(1) A summary of the bank's availability policy;

(2) A description of any categories of deposits or checks used by the bank when it delays availability (such as local or nonlocal checks); how to determine the category to which a particular deposit or check belongs; and when each category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received);

(3) A description of any of the exceptions in § 229.13 that may be invoked by the bank, including the time following a deposit that funds generally will be available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;

(4) A description, as specified in paragraph (c)(1) of this section, of any case-by-case policy of delaying availability that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy; and

(5) A description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs.

(c) *Longer delays on a case-by-case basis.*—(1) *Notice in specific policy disclosure.* A bank that has a policy of making deposited funds available for withdrawal sooner than required by this subpart may extend the time when funds are available up to the time periods allowed under this subpart on a case-by-case basis, provided the bank includes the following in its specific policy disclosure—

(i) A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time following a deposit that funds will be available for withdrawal;

(ii) A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy; and

(iii) A statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

(2) *Notice at time of case-by-case delay.—(i) In general.* When a depositary bank extends the time when funds will be available for withdrawal on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information—

(A) The account number of the customer;

(B) The date and amount of the deposit;

(C) The amount of the deposit that is being delayed; and

(D) The day the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not

made in person to an employee of the depositary bank or the decision to extend the time when the deposited funds will be available is made after the time of the deposit. If notice is not given at the time of the deposit, the depositary bank shall mail or deliver the notice to the customer not later than the first business day following the banking day the deposit is made.

(3) Overdraft and returned check fees. A depositary bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if—

(i) The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under paragraph (c)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depositary bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice required in paragraph (c)(2) of this section and, when required, refunds any such fees upon the request of the customer. The overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid and state how to obtain a refund.

(d) *Credit union notice of interest payment policy.* If a bank described in § 229.2(e)(4) begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in § 229.14(a), the bank's specific policy disclosures shall contain an explanation of when interest or dividends on deposited funds begin to accrue.

§ 229.17 Initial disclosures.

(a) *New accounts.* Before opening an account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in § 229.16.

(b) *Existing accounts.* (1) In the first regularly scheduled mailing to customers after September 1, 1988, but not later than October 31, 1988, a bank shall send to existing customers the specific availability policy disclosure described in § 229.16, unless the bank has previously given disclosures that meet the requirements of that section.

(2) If the disclosure required by paragraph (b)(1) of this section is included with a disclosure of other account terms and conditions, the bank must direct the customer's attention to the availability disclosures by, for example, the use of an insert or a letter.

(3) The disclosure required by paragraph (b)(1) of this section may not be included in a mailing of promotional material, such as a solicitation for a new product or service, unless the mailing also includes the customer's account statement.

§ 229.18 Additional disclosure requirements.

(a) *Deposit slips.* A bank shall include on all preprinted deposit slips furnished to its customers a notice that deposits may not be available for immediate withdrawal.

(b) *Locations where employees accept consumer deposits.* A bank shall post in a conspicuous place in each location where its employees receive deposits to consumer accounts a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

(c) *Automated teller machines.* (1) A depositary bank shall post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

(2) A depositary bank that operates an off-premises ATM from which deposits are removed not more than two times each week, as described in § 229.19(a)(4), shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

(d) *Upon request.* A bank shall provide to any person, upon oral or written request, a notice containing the applicable specific availability policy disclosure described in § 229.16.

(e) *Changes in policy.* A bank shall send a notice to holders of consumer accounts at least 30 days before implementing a change to the bank's availability policy regarding such accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation.

§ 229.19 Miscellaneous.

(a) *When funds are considered deposited.* For the purposes of this subpart—

(1) Funds deposited at a staffed facility or an ATM are considered deposited when they are received at the staffed facility or ATM;

(2) Funds mailed to the depositary bank are considered deposited on the day they are received by the depositary bank;

(3) Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depositary bank;

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depositary bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week; and

(5) Funds may be considered deposited on the next banking day, in the case of funds that are deposited—

(i) On a day that is not a banking day for the depositary bank; or

(ii) After a cut-off hour set by the depositary bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs or off-premise facilities, of 12:00 noon or later. Different cut-off hours later than these times may be established for receipt of different types of deposits, or receipt of deposits at different locations.

(b) *Availability at start of business day.* Except as otherwise provided in §§ 229.11(b)(2) and 229.12(d), if any provision of this subpart requires that funds be made available for withdrawal on any business day, the funds shall be available for withdrawal by the later of—

(1) 9:00 a.m. (local time of the depositary bank); or

(2) The time the depositary bank's teller facilities (including ATMs) are available for customer account withdrawals.

(c) *Effect on policies of depositary bank.* This part does not—

(1) Prohibit a depositary bank from making funds available to a customer for withdrawal in a shorter period of time than the time required by this subpart;

(2) Affect a depositary bank's right—

(i) To accept or reject a check for deposit;

(ii) To revoke any settlement made by the depositary bank with respect to a check accepted by the bank for deposit, to charge back the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund of such credit; and

(iii) To charge back funds made available to its customer for an electronic payment for which the bank has not received payment in actually and finally collected funds;

(3) Require a depositary bank to open or otherwise to make its facilities available for customer transactions on a given business day; or

(4) Supersede any policy of a depositary bank that limits the amount of cash a customer may withdraw from its account on any one day, if that policy—

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§ 229.10, 229.11, 229.12, or 229.13; and—

(ii) In the case of withdrawals made in person to an employee of the depositary bank—

(A) Is applied without discrimination to all customers of the bank; and

(B) Is related to security, operating, or bonding requirements of the depositary bank.

(d) *Use of calculated availability.* A depositary bank may provide availability to its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, if the terms for availability based on the sample are equivalent to or more prompt than the availability requirements of this subpart.

(e) *Holds on other funds.* A depositary bank that receives a check for deposit in an account or purchases a check for cash, other than a check drawn on that bank and presented over the counter for payment in cash, may place a hold on any funds of the customer at the bank, if—

(1) The amount of funds that are held do not exceed the amount of the check; and

(2) The funds are made available for withdrawal within the times specified in §§ 229.10, 229.11, 229.12, and 229.13.

(f) *Employee training and compliance.* Each bank shall establish procedures to ensure that the bank complies with the requirements of this subpart, and shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.

(g) *Effect of Merger Transaction.* For purposes of this subpart, except for the purposes of the new accounts exception of § 229.13(a), and when funds are considered deposited under § 229.19(a), two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

§ 229.20 Relation to state law.

(a) *In general.* Any provision of a law or regulation of any state in effect on or before September 1, 1988, that requires funds deposited in an account at a bank chartered by the state to be made available for withdrawal in a shorter time than the time provided in Subpart B, and, in connection therewith, Subpart A, shall—

(1) Supersede the provisions of the Act and Subpart B, and, in connection therewith, Subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and

(2) Apply to all federally insured banks located within the state.

No amendment to a state law or regulation governing the availability of funds that becomes effective after September 1, 1989, shall supersede the Act and Subpart B, and, in connection therewith, Subpart A, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a), the Act and Subpart B, and, in connection therewith, Subpart A, supersede any provision of inconsistent state law.

(c) *Standards for preemption.* A provision of a state law in effect on or before September 2, 1988, is not inconsistent with the Act, or Subpart B, or in connection therewith, Subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the Act and Subpart B, and in connection therewith, Subpart A, may exist when state law—

(1) Permits a depositary bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under Subpart B, and, in connection therewith, Subpart A; or

(2) Provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state, bank, or other interested party, whether the Act and Subpart B, and, in connection therewith, Subpart A, preempt provisions of state laws relating to the availability of funds.

(e) *Procedures for preemption determinations.* A request for a preemption determination shall include the following—

(1) A copy of the full text of the state law in question, including any implementing regulations or judicial interpretations of that law; and

(2) A comparison of the provisions of state law with the corresponding provisions in the Act and Subparts A and B of this part, together with a discussion of the reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the Act and Subparts A and B of this part.

A request for a preemption determination shall be addressed to the Secretary, Board of Governors of the Federal Reserve System.

§ 229.21 Civil liability.

(a) *Civil liability.* A bank that fails to comply with any requirement imposed under Subpart B, and in connection therewith, Subpart A, of this part or any provision of state law that supersedes any provision of Subpart B, and in connection therewith, Subpart A, with respect to any person is liable to that person in an amount equal to the sum of—

(1) Any actual damage sustained by that person as a result of the failure;

(2) Such additional amount as the court may allow, except that—

(i) In the case of an individual action, liability under this paragraph shall not be less than $100 nor greater than $1,000; and

(ii) In the case of a class action—

(A) No minimum recovery shall be applicable to each member of the class; and

(B) The total recovery under this paragraph in any class action or series of class actions arising out of the same failure to comply by the same depositary bank shall not be more than the lesser of $500,000 or 1 percent of the net worth of the bank involved; and

(3) In the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) *Class action awards.* In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) The amount of any damages awarded;

(2) The frequency and persistence of failures of compliance;

(3) The resources of the bank;

(4) The number of persons adversely affected; and

(5) The extent to which the failure of compliance was intentional.

(c) *Bona fide errors.*—(1) *General rule.* A bank is not liable in any action brought under this section for a violation of this subpart if the bank demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) *Examples.* Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to the

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bank's obligation under this subpart is not a bona fide error.

(d) *Jurisdiction.* Any action under this section may be brought in any United States district court or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(e) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

(f) *Exclusions.* This section does not apply to claims that arise under Subpart C of this part or to actions for wrongful dishonor.

(g) *Record retention.* (1) A bank shall retain evidence of compliance with the requirements imposed by this subpart for not less than two years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) If a bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by an agency charged with monitoring that bank's compliance with the Act and this subpart, or has been served with notice of an action filed under this section, it shall retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

Subpart C—Collection of Checks

§ 229.30 Paying bank's responsibility for return of checks.

(a) *Return of checks.* If a paying bank determines not to pay a check, it shall return the check in an expeditious manner as provided in either paragraphs (a)(1) or (a)(2) of this section.

(1) *Two-day/four-day test.* A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4:00 p.m. (local time of the depositary bank) of—

(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is a local paying bank with respect to the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is a nonlocal paying bank with respect to the depositary bank. If the last business day on which the paying bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the paying bank meets the two-day/four-day test if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

(2) *Forward collection test.* A paying bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depositary bank; and

(iii) Deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank.

Subject to the requirement for expeditious return, a paying bank may send a returned check to the depositary bank, or to any other bank agreeing to handle the returned check expeditiously under § 229.31(a). A paying bank may convert a check to a qualified returned check. A qualified returned check must be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a "2" in position 44 of the MICR line as a return identifier, in accordance with the American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (Sept. 1983). This paragraph does not affect a paying bank's responsibility to return a check within the deadlines required by the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c).

(b) *Unidentifiable depositary bank.* A paying bank that is unable to identify the depositary bank with respect to a check may send the returned check to any bank that handled the check for forward collection even if that bank does not agree to handle the check expeditiously under § 229.31(a). A paying bank sending a returned check under this paragraph to a bank that handled the check for forward collection must advise the bank to which the check is sent that the paying bank is unable to identify the depositary bank. The expeditious return requirements in § 229.30(a) do not apply to the paying bank's return of a check under this paragraph.

(c) *Extension of deadline for expedited delivery.* The deadline for return or notice of nonpayment under the U.C.C. or Regulation J (12 CFR Part 210) is extended if a paying bank, in an effort to expedite delivery of a returned check to a bank, uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent on or before the receiving bank's next banking day following the otherwise applicable deadline. The deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day.

(d) *Identification of returned check.* A paying bank returning a check shall clearly indicate on the face of the check that it is a returned check and the reason for return.

(e) *Depositary bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited in a depositary bank that does not maintain accounts.

(f) *Notice in lieu of return.* If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements of this subpart.

(g) *Reliance on routing number.* A paying bank may return a returned check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank's indorsement.

§ 229.31 Returning bank's responsibility for return of checks.

(a) *Return of checks.* A returning bank shall return a returned check in an expeditious manner as provided in either paragraphs (a)(1) or (a)(2) of this section.

(1) *Two-day/four-day test.* A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4:00 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is a local paying bank with respect to the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is a nonlocal paying bank with respect to the depositary bank. If the last business day on which the returning bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the returning bank meets this requirement if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

(2) *Forward collection test.* A returning bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depositary bank; and

(iii) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check, except that a returning bank may set a cut-off hour for the receipt of returned checks that is earlier than the similarly situated bank's cut-off hour for checks received for forward collection, if the cut-off hour is not earlier than 2:00 p.m.

Subject to the requirement for expeditious return, the returning bank may send the returned check to the depositary bank, or to any bank agreeing to handle the returned check expeditiously under § 229.31(a). The returning bank may convert the returned check to a qualified returned check. A qualified returned check must be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a "2" in position 44 of the MICR line as a return identifier, in accordance with the American National Standard Specification for Placement and Location of MICR Printing, X9.13 (Sept. 1983). The time for expeditious return under the forward collection test, and the deadline for return under the U.C.C. and Regulation J (12 CFR part 210), are extended by one business day if the returning bank converts a returned check to a qualified returned check. This extension does not apply to the two-day/four-day test specified in paragraph (a)(1) of this section or when a returning bank is returning a check directly to the depositary bank.

(b) *Unidentifiable depositary bank.* A returning bank that is unable to identify the depositary bank with respect to a returned check may send the returned check to—

(1) Any collecting bank that handled the check for forward collection if the returning bank was not a collecting bank with respect to the returned check; or

(2) A prior collecting bank, if the returning bank was a collecting bank with respect to the returned check; even if that collecting bank does not agree to handle the returned check expeditiously under § 229.31(a). A returning bank sending a returned check under this paragraph must advise the bank to which the check is sent that the returning bank is unable to identify the depositary bank. The expeditious return requirements in paragraph (a) of this section do not apply to return of a check under this paragraph. A returning bank that receives a returned check from a paying bank under § 229.30(b), but which is able to identify the depositary bank, must thereafter return the check expeditiously to the depositary bank.

(c) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depositary bank. This settlement is final when made.

(d) *Charges.* A returning bank may impose a charge on a bank sending a returned check for handling the returned check.

(e) *Depositary bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited with a depositary bank that does not maintain accounts.

(f) *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements of this subpart.

(g) *Reliance on routing number.* A returning bank may return a returned check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank's indorsement or in magnetic ink on a qualified returned check.

§ 229.32 Depositary bank's responsibility for returned checks.

(a) *Acceptance of returned checks.* A depositary bank shall accept returned checks and written notices of nonpayment—

(1) At a location at which presentment of checks for forward collection is requested by the depositary bank; and

(2) (i) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

(ii) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check; or

(iii) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank. A depositary bank may require that returned checks be separated from forward collection checks.

(b) *Payment.* A depositary bank shall pay the returning or paying bank returning the check to it for the amount of the check prior to the close of business on the banking day on which it received the check ("payment date") by—

(1) Debit to an account of the depositary bank on the books of the returning or paying bank;

(2) Cash;

(3) Wire transfer; or

(4) Any other form of payment acceptable to the returning or paying bank;

provided that the proceeds of the payment are available to the returning or paying bank in cash or by credit to an account of the returning or paying bank on or as of the payment date. If the payment date is not a banking day for the returning or paying bank or the depositary bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning or paying bank. These payments are final when made.

(c) *Misrouted returned checks and written notices of nonpayment.* If a bank receives a returned check or written notice of nonpayment on the basis that it is the depositary bank, and the bank determines that it is not the depositary bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depositary bank directly or by means of a returning bank agreeing to handle the returned check expeditiously under § 229.31(a), or send the check or notice back to the bank from which it was received.

(d) *Charges.* A depositary bank may not impose a charge for accepting and paying checks being returned to it.

§ 229.33 Notice of nonpayment.

(a) *Requirement.* If a paying bank determines not to pay a check in the amount of $2,500 or more, it shall provide notice of nonpayment such that the notice is received by the depositary

bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depositary bank, receipt of notice on the depositary bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), telephone, Fedwire, telex, or other form of telegraph.

(b) *Content of notice.* Notice must include the—

(1) Name and routing number of the paying bank;

(2) Name of the payee(s);

(3) Amount;

(4) Date of the indorsement of the depositary bank;

(5) Account number of the customer(s) of the depositary bank;

(6) Branch name or number of the depositary bank from its indorsement;

(7) Trace number associated with the indorsement of the depositary bank; and

(8) Reason for nonpayment.

The notice may include other information from the check that may be useful in identifying the check being returned and the customer, and, in the case of a written notice, must include the name and routing number of the depositary bank from its indorsement. If the paying bank is not sure of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy with question marks.

(c) *Acceptance of notice.* The depositary bank shall accept notices during its banking day—

(1) Either at the telephone or telegraph number of its return check unit indicated in the indorsement, or, if no such number appears in the indorsement or if the number is illegible, at the general purpose telephone or telegraph number of its head office or the branch indicated in the indorsement; and

(2) At any other number held out by the bank for receipt of notice of nonpayment, and, in the case of written notice, as specified in § 229.32(a).

(d) *Notification to customer.* If the depositary bank receives a returned check or notice of nonpayment, it shall send notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check or notice, or within a longer reasonable time.

(e) *Depositary bank without accounts.* The requirements of this section do not apply to checks deposited in a depositary bank that does not maintain accounts.

§ 229.34 Warranties by paying bank and returning bank.

(a) *Warranties.* Each paying bank or returning bank that transfers a returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depositary bank, and to the owner of the check, that—

(1) The paying bank returned the check within its deadline under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) of this part;

(2) It is authorized to return the check;

(3) The check has not been materially altered; and

(4) In the case of a notice in lieu of return, the original check has not and will not be returned.

These warranties are not made with respect to checks drawn on the Treasury of the United States, a state, or a unit of general local government.

(b) *Warranty of notice of nonpayment.* Each paying bank warrants to the transferee bank, to any subsequent transferee bank, to the depositary bank, and to the owner of the check that—

(1) The paying bank returned or will return the check within its deadline under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) of this part;

(2) It is authorized to send the notice; and

(3) The check has not been materially altered.

These warranties are not made with respect to checks drawn on a state or a unit of general local government.

(c) *Damages.* Damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank, plus finance charges and expenses related to the returned check, if any.

(d) *Tender of defense.* If a returning bank is sued for breach of a warranty under this section, it may give a prior returning bank or the paying bank written notice of the litigation, and the bank notified may then give similar notice to any other prior returning bank or the paying bank. If the notice states that the paying or returning bank notified may come in and defend, and that if the paying or returning bank notified does not do so, it will in any action against it by the paying or returning bank giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the paying or returning bank notified does come in and defend, it is so bound.

§ 229.35 Indorsements.

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check during forward collection or a returned check shall indorse the check in accordance with the indorsement standard set forth in Appendix D to this part.

(b) *Liability of bank handling check.* A bank that handles a check for forward collection or return is liable to any bank that subsequently handles the check to the extent that the subsequent bank does not receive payment for the check because of suspension of payments by another bank or otherwise. This paragraph applies whether or not a bank has placed its indorsement on the check. This liability is not affected by the failure of any bank to exercise ordinary care, but any bank failing to do so remains liable. A bank seeking recovery against a prior bank shall send notice to that prior bank reasonably promptly after it learns the facts entitling it to recover. A bank may recover from the bank with which it settled for the check by revoking the settlement, charging back any credit given to an account, or obtaining a refund. A bank may have the rights of a holder with respect to each check it handles.

(c) *Indorsement by a bank.* After a check has been indorsed by a bank, only a bank may acquire the rights of a holder—

(1) Until the check has been returned to the person initiating collection; or

(2) Until the check has been specially indorsed by a bank to a person who is not a bank.

(d) *Indorsement for depositary bank.* A depositary bank may arrange with another bank to apply the other bank's indorsement as the depositary bank indorsement, provided that any indorsement of the depositary bank on the check avoids the area reserved for the depositary bank indorsement as specified in Appendix D. The other bank indorsing as depositary bank is considered the depositary bank for purposes of Subpart C of this part.

§ 229.36 Presentment of checks.

(a) *Payable through and payable at checks.* A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return and notice of nonpayment requirements of this subpart.

(b) *Receipt at bank office or processing center.* A check is considered received by the paying bank when it is received:

(1) At a location to which delivery is requested by the paying bank;

(2) At an address of the bank associated with the routing number on the check, whether in magnetic ink or in fractional form;

(3) At any branch or head office, if the bank is identified on the check by name without address; or

(4) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address.

(c) *Truncation.* A bank may present a check to a paying bank by transmission of information describing the check in accordance with an agreement with the paying bank. A truncation agreement may not extend return times or otherwise vary the requirements of this part with respect to parties interested in the check that are not party to the agreement.

(d) *Liability of bank during forward collection.* Settlements between banks for the forward collection of a check are final when made; however, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depositary bank, and the depositary bank's customer.

§ 229.37 Variation by agreement.

The effect of the provisions of Subpart C may be varied by agreement, except that no agreement can disclaim the responsibility of a bank for its own lack of good faith or failure to exercise ordinary care, or can limit the measure of damages for such lack or failure; but the parties may determine by agreement the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

§ 229.38 Liability.

(a) *Standard of care; liability; measure of damages.* A bank shall exercise ordinary care and act in good faith in complying with the requirements of this subpart. A bank that fails to exercise ordinary care or act in good faith under this subpart may be liable to the depositary bank, the depositary bank's customer, the owner of a check, or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss that party would have incurred even if the bank had exercised ordinary care. A bank that fails to act in good faith under this subpart may be liable for other damages, if any, suffered by the party as a proximate consequence. Subject to a bank's duty to exercise ordinary care or act in good faith in choosing the means of return or notice of nonpayment, the bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for loss or destruction of a check or notice of nonpayment in transit or in the possession of others. This section does not affect a paying bank's liability to its customer under the U.C.C. or other law.

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with § 229.30(a) and to comply with the deadline for return under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.30(a) or such other provision, but not both.

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check or notice of nonpayment (§§ 229.32(a) and 229.33(c)), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) *Responsibility for back of check.* A paying bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A depositary bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. Responsibility under this paragraph shall be treated as negligence of the paying or depositary bank for purposes of paragraph (c) of this section.

(e) *Timeliness of action.* If a bank is delayed in acting beyond the time limits set forth in this subpart because of interruption of communication or computer facilities, suspension of payments by a bank, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

(f) *Exclusion.* Section 229.21 of this part and § 611 (a), (b), and (c) of the Act (12 U.S.C. 4010 (a), (b), and (c)) do not apply to this subpart.

(g) *Jurisdiction.* Any action under this subpart may be brought in any United States district court, or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(h) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

§ 229.39 Insolvency of bank.

(a) *Duty of receiver.* A check or returned check in, or coming into, the possession of a paying, collecting, depositary, or returning bank that suspends payment, and which is not paid, shall be returned by the receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

(b) *Preference against paying or depositary bank.* If a paying or depositary bank finally pays a check or returned check and suspends payment without making a settlement for the check with the prior bank which is or becomes final, the prior bank has a preferred claim against the paying or depositary bank.

(c) *Preference against collecting, paying, or returning bank.* If a collecting, paying, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a preferred claim against the collecting or returning bank.

(d) *Finality of settlement.* If a paying or depositary bank gives, or a collecting, paying, or returning bank gives or receives, a settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

§ 229.40 Effect of merger transaction.

For purposes of this subpart, two or more banks that have engaged in a

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merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

§ 229.41 Relation to state law.

The provisions of this subpart supersede any inconsistent provisions of the U.C.C. as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

§ 229.42 Exclusions.

The expeditious return (§§ 229.30(a) and 229.31(a)) and notice of nonpayment (§ 229.33) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

Appendix A.—Routing Number Guide to Local Checks and Certain Checks That Are Subject to Next-Day Availability

Each bank is assigned a routing number by Rand McNally & Co., as agent for the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank is normally identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check).

The first four digits of the nine-digit routing number and the denominator of the fractional routing number form the "Federal Reserve routing symbol," which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank. Because the Expedited Funds Availability Act and Regulation CC define local and nonlocal checks in terms of the Federal Reserve office serving the paying bank, it is possible to determine whether a check is local or nonlocal by referring to the Federal Reserve routing symbol.

Following are two lists: a list of next-day availability checks and a list of Federal Reserve routing symbols associated with each Federal Reserve office. A depositary bank should refer to the routing numbers listed below for the Federal Reserve office that serves the territory in which the branch of deposit is located. Checks with these Federal Reserve routing symbols are considered local checks.

First Federal Reserve District

[Federal Reserve Bank of Boston]

Head Office

0110[1]	2110[2]
0113	2113
0114	2114
0115	2115
0116	2116
0117	2117

Windsor Locks office

0111	2111
0118	2118
0119	2119
0211[3]	2211[3]

Lewiston Office

0112	2112

Second Federal Reserve District

[Federal Reserve Bank of New York]

Head Office

0210	0260
0223	2215
0215	2216
0216	2260

Buffalo Branch

0220	2220
0223	2223

Cranford Office

0212	2212
0270	

Jericho Office

0214	2214
0219	2219
0280	2280

Utica Office

0213	2213

[1] The first two digits identify the Federal Reserve District. Thus 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco).

[2] Adding 2 to the first digit denotes a thrift institution. Thus 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

[3] Banks in Fairfield County, Connecticut are members of the Federal Reserve Bank of New York and therefore have Second District routing numbers. Their checks, however, are processed by the Windsor Locks office. Thus, checks drawn on banks with 0211 or 2211 routing numbers would not be local checks for Second District depositary banks.

Third Federal Reserve District

[Federal Reserve Bank of Philadelphia]

Head Office

0310	2310
0311	2311
0312	2312
0313	2313
0319	2319
0360	2360

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0410	2410
0412	2412

Cincinnati Branch

0420	2420
0421	2421
0422	2422
0423	2423

Pittsburgh Branch

0430	2430
0432	2432
0433	2433
0434	2434

Columbus Office

0440	2440
0441	2441
0442	2442

Fifth Federal Reserve District

[Federal Reserve Bank of Richmond]

Head Office

0510	2510
0514	2514

Baltimore Branch

0520	2520
0521	2521
0522	2522
0540	2540
0550	2550
0560	2560
0570	2570

Charlotte Branch

0530	2530
0531	2531

Columbia Office

0532	2532
0539	2539

Charleston Office

0515	2515
0519	2519

Sixth Federal Reserve District

[Federal Reserve Bank of Atlanta]

Head Office

0610	2610
0611	2611
0612	2612
0613	2613

Birmingham Branch

0620	2620
0621	2621
0622	2622

Jacksonville Branch

0630	2630
0631	2631
0632	2632

Nashville Branch

0640	2640
0641	2641
0642	2642

New Orleans Branch

0650	2650
0651	2651
0652	2652
0653	2653
0654	2654
0655	2655

Miami Branch

0660	2660
0670	2670

Seventh Federal Reserve District

[Federal Reserve Bank of Chicago]

Head Office

0710	2710
0711	2711
0712	2712
0719	2719

Detroit Branch

0720	2720
0724	2724

Des Moines Office

0730	2730
0739	2739

Indianapolis Office

0740	2740
0749	2749

Milwaukee Office

0750	2750
0759	2759

Eighth Federal Reserve District

[Federal Reserve Bank of St. Louis]

Head Office

0810	2810
0812	2812
0815	2815
0819	2819
0885	2885

Little Rock Branch

0820	2820
0829	2829

Louisville Branch

0813	2813
0830	2830
0839	2839
0803	2803

Memphis Branch

0840	2840
0841	2841
0842	2842
0843	2843

Ninth Federal Reserve District

[Federal Reserve Bank of Minneapolis]

Head Office

0910	2911
0911	2912
0912	0900
0913	2913
0914	2914
0915	2915
0916	2916
0919	2919
2910	2900

Helena Branch

0920	2920
0921	2921
0929	

Tenth Federal Reserve District

[Federal Reserve Bank of Kansas City]

Head Office

1010	3010
1011	3011
1012	3012
1019	3019

Denver Branch

1020	3020
1021	3021
1022	3022
1023	3023
1070	3070

Oklahoma City Branch

1030	3030
1031	3031
1039	3039

Omaha Branch

P1040	3040
1041	3041
1049	3049

Eleventh Federal Reserve District

[Federal Reserve Bank of Dallas]

Head Office

1110	3110
1111	3111
1113	3113
1119	3119

El Paso Branch

1120	3120
1122	3122
1123	3123
1163	3163

Houston Branch

1130	3130
1131	3131

San Antonio Branch

1140	3140
1149	3149

Twelfth Federal Reserve District

[Federal Reserve Bank of San Francisco]

Head Office

1210	3210
1211	3211
1212	3212
1213	3213
1214	3214

Los Angeles Branch

1220	3220
1221	3221
1222	3222
1223	3223
1224	3224

Portland Branch

1230	3230
1231	3231
1232	3232
1233	3233

Salt Lake City Branch

1240	3240
1241	3241
1242	3242
1243	3243

Seattle Branch

1250	3250
1251	3251
1252	3252

U.S. Treasury Checks and Postal Money Orders

0000 0050 5	0000 0119 3
0000 0051 8	0000 0000 2

Federal Reserve Offices

0110 0001 5	0630 0019 0
0111 0048 1	0630 0019 9
0112 0048 8	0640 0010 1
0210 0120 8	0650 0021 0
0220 0026 6	0660 0010 9
0214 0950 9	0710 0030 1
0213 0500 1	0720 0028 0
0310 0004 0	0730 0033 8
0410 0001 4	0740 0020 1
0420 0043 7	0750 0012 9
0430 0030 0	0810 0004 5
0440 0050 3	0820 0013 8
0510 0003 3	0830 0059 3
0520 0027 8	0840 0003 9
0530 0020 6	0810 0008 0
0539 0008 9	0820 0028 7
0519 0002 3	1010 0004 8
0610 0014 6	1020 0019 9

1090 0024 6 1210 0007 4
1040 0012 6 1230 0016 6
1110 0003 8 1230 0001 3
1120 0001 1 1240 0031 3
1130 0004 9 1250 0001 1
1140 0072 1

Federal Home Loan Banks

0110 0053 6 0740 0101 9
0420 0091 6 1011 0194 7
0430 0143 5 1110 1083 0
0610 0076 6 1210 0070 1
0710 0450 1 1230 0050 3
0730 0091 4

Appendix B–1—Reduction of Schedules for Certain Nonlocal Checks Under the Temporary Schedule

A depositary bank that is located in the following check processing territories shall make funds deposited in an account by a nonlocal check described below available for withdrawal not later than the number of business days following the banking day on which funds are deposited, as specified below.

Federal Reserve office	Number of business days following the banking day funds are deposited
Boston	
Depositary banks (0110, 2110) to: 0210, 0260, 0280, 0310, 0360, 0710, 2260, 2310, 2360, 2710	5
Windsor Locks	
None.	
Lewiston	
None.	
New York	
Depositary banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to: 0214, 0219, 0280, 2214, 2219	4
Depositary banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to: 0110, 0212, 0213, 0220, 0270, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2212, 2213, 2220, 2270, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Jericho	
Depositary banks (0214, 2214, 0219, 2219, 0260) to: 0210, 0260, 2260	4

Federal Reserve office	Number of business days following the banking day funds are deposited
Depositary banks (0214, 2214, 0219, 2219, 0280) to: 0110, 0212, 0213, 0215, 0216, 0220, 0270, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2212, 2213, 2215, 2216, 2220, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Cranford	
Depositary banks (0212, 0270, 2212) to: 0210, 0260, 0280, 2260	4
Depositary banks (0212, 2212, 0270) to: 0110, 0213, 0214, 0215, 0216, 0219, 0220, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2213, 2214, 2215, 2216, 2219, 2220, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Buffalo	
Depositary banks (0220, 2220, 0223, 2223) to: 0210, 0212, 0260, 0270, 0280, 2212, 2260	4
Depositary banks (0220, 2220, 0223, 2223) to: 0110, 0213, 0214, 0215, 0216, 0219, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2213, 2214, 2215, 2216, 2219, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5

Federal Reserve office	Number of business days following the banking day funds are deposited
Utica	
Depositary banks (0213, 2213) to: 0210, 0212, 0260, 0270, 0280, 2212, 2260	4
Depositary banks (0213, 2213) to: 0110, 0214, 0215, 0216, 0219, 0220, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2214, 2215, 2216, 2219, 2220, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3040	5
Cleveland	
Depositary banks (0410, 2410) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Philadelphia	
Depositary banks (0310, 2310, 0360, 2360) to: 0110, 0210, 0220, 0260, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5

Federal Reserve office	Number of business days following the banking day funds are deposited
Cincinnati	
Depositary banks (0420, 2420) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0430, 0440, 0441, 0442, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0749, 0750, 0810, 0813, 0830, 0839, 0840, 0863, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2430, 2440, 2441, 2442, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2749, 2750, 2810, 2813, 2830, 2839, 2840, 2863, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Columbus	
Depositary banks (0440, 2440) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5

Federal Reserve office	Number of business days following the banking day funds are deposited
Richmond	
Depositary banks (0510, 2510) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0515, 0519, 0520, 0521, 0522, 0530, 0531, 0539, 0550, 0560, 0570, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2515, 2519, 2520, 2521, 2522, 2530, 2531, 2539, 2550, 2560, 2570, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140	5
Baltimore	
Depositary banks (0520, 2520) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0830, 0840, 0910, 0960, 1010, 1020, 1040, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2830, 2840, 2910, 2960, 3010, 3020, 3040, 3240	5
Charlotte	
Depositary banks (0530, 2530) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0520, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2520, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140	5
Columbia	
Depositary banks (0539, 2539) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140	5

Federal Reserve office	Number of business days following the banking day funds are deposited
Charleston	
Depositary banks (0519, 2519) to: 0110, 0210, 0220, 0260, 0290, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0830, 0840, 0910, 0960, 1010, 1020, 1040, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2830, 2840, 2910, 2960, 3010, 3020, 3040, 3240	5
Atlanta	
Depositary banks (0610, 2610) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2440, 2510, 2519, 2520, 2530, 2539, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Birmingham	
Depositary banks (0620, 2620) to: 0651, 2651	4
Depositary banks (0620, 2620) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Jacksonville	
Depositary banks (0630, 2630) to:	

Federal Reserve office	Number of business days following the banking day funds are deposited
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140	5
Miami	
Depositary banks (0650, 2660) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140	5
Nashville	
0813, 2613	4
Depositary banks (0540, 2540) to: 0530, 0539, 0610, 0620, 0630, 0650, 0660, 0840, 2530, 2539, 2610, 2620, 2630, 2650, 2660, 2840	5
New Orleans	
Depositary banks (0550, 2650) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Chicago	
Depositary banks (0710, 2710) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Detroit	
Depositary banks (0720, 2720) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Des Moines	
Depositary banks (0730, 2730) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Indianapolis	
Depositary banks (0740, 2740) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Milwaukee	
Depositary banks (0750, 2750) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
St. Louis	
Depositary banks (0810, 2610) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3240	5

Federal Reserve office	Number of business days following the banking day funds are deposited
Little Rock	
Depositary banks (0820, 2920) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Louisville	
Depositary banks (0630, 2630) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1040, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2840, 2910, 2960, 3010, 3020, 3040, 3240	5
Memphis	
Depositary banks (0840, 2840) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Minneapolis	
Depositary banks (0910, 2910, 0960, 2960) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Helena	
None.	
Kansas City	
0865, 2865	4
Depositary banks (1010, 3010) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Denver	
Depositary banks (1020, 3020) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Oklahoma City	
Depositary banks (1030, 3030) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Omaha	
Depositary banks (1040, 3040) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
Dallas	
Depositary banks (1110, 3110) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5

Federal Reserve office	Number of business days following the banking day funds are deposited
Houston	
Depositary banks (1130, 3130) to:	
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0529, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0725, 0736, 0740, 0750, 0810, 0820, 0836, 0840, 0910, 0929, 0956, 1010, 1020, 1030, 1040, 1110, 1120, 1140, 1210, 1229, 1223, 1230, 1240, 1250, 2110, 2220, 2360, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2538, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2929, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
San Antonio	
Depositary banks (1140, 3140) to:	
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0529, 0530, 0538, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0850, 0840, 0910, 0920, 0950, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2350, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
El Paso	
Depositary banks (1120, 3120) to:	
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0836, 0840, 0910, 0920, 0950, 1010, 1020, 1030, 1040, 1110, 1120, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2360, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250	5
San Francisco	
Depositary banks (1210, 3210) to:	
1220, 1223, 3220, 3223	5
Los Angeles	
Depositary banks (1220, 1223, 3220, 3223) to:	
1210, 3210	5
Portland	
Depositary banks (1230, 3220) to:	
1250, 3250	5
Salt Lake City	
None.	
Seattle	
Depositary banks (1250, 3250) to:	
1230, 3230	5

Appendix B–2—Reduction of Schedules for Certain Nonlocal Checks Under the Permanent Schedule

A depositary bank that is located in the following check processing territories shall make funds deposited in an account by a nonlocal check described below available for withdrawal not later than the number of business days following the banking day on which funds are deposited, as specified below.

Federal Reserve office	Number of business days following the banking day funds are deposited
New York	
Depositary banks (0210, 0260, 0280, 2260) to:	
0214, 0219, 2214, 2219	3
Jericho	
0210, 0260, 2260	3
Cranford	
0210, 0260, 0280, 2260	3
Utica	
0210, 0260	3
Nashville	
0613, 2613	3
Kansas City	
0865, 2865	3

Appendix C—Model Forms, Clauses, and Notices

This Appendix contains model disclosure forms, clauses and notices to facilitate compliance with the disclosure requirements of the regulation. Although use of these forms, clauses and notices is not required, banks using them properly to make disclosures required by the regulation are deemed to be in compliance.

Model Specific Policy Disclosure Forms

C–1 Next-day availability
C–2 Next-day availability and § 229.13 exceptions
C–3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions (temporary schedule)
C–4 Holds to statutory limits on all deposits (temporary schedule)
C–5 Holds to statutory limits on all deposits (temporary schedule, includes chart)
C–6 Holds on all deposits, but for less time than the statutory limits, and case-by-case holds to the statutory limits (temporary schedule)
C–7 Holds to statutory limits on all deposits (permanent schedule)

Model Clauses

C–8 Holds on other funds (check cashing)
C–8A Holds on other funds (other account)
C–9 Appendix B availability (nonlocal checks)
C–10 Automated teller machine deposits (temporary schedule, extended hold)
C–11 Cash withdrawal limitation (temporary schedule)
C–11A Cash withdrawal limitation (temporary schedule, clearinghouse member)
C–11B Cash withdrawal limitation (permanent schedule)
C–12 Credit union interest payment policy

Model Notices

C–13 Exception hold notice
C–13A Reasonable cause hold notice
C–14 Case-by-case hold notice
C–15 Notice at locations where employees accept consumer deposits
C–15A Notice at locations where employees accept consumer deposits (case-by-case holds)
C–16 Notice at automated teller machines
C–17 Notice at automated teller machines (delayed receipt)
C–18 Deposit slip notice

Model Specific Policy Disclosure Forms

C–1—Next-day availability

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. At that time, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

C–2—Next-day availability and § 229.13 exceptions

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. At that time, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than $5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first $5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over $5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you [and you may have to use a special deposit slip]. The excess over $5,000 will be available on the ninth business day after the day of your deposit. If you do not make the deposit in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C–3—Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions (temporary schedule)

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. At that time, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the seventh business day after the day of your deposit. However, the first $100 of your deposits will be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than $5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first $5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over $5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you [and you may have to use a special deposit slip]. The excess over $5,000 will be available on the ninth business day after the day of your deposit. If you do not make the deposit in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C–4—Holds to statutory limits on all deposits (temporary schedule)

YOUR ABILITY TO WITHDRAW FUNDS at (*bank name and location*)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you.

Wire transfers, including preauthorized credits, such as social security benefits and payroll payments.

Checks drawn on (*bank name*) [unless (*any limitations related to branches to different states or check processing regions*)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

Personal check

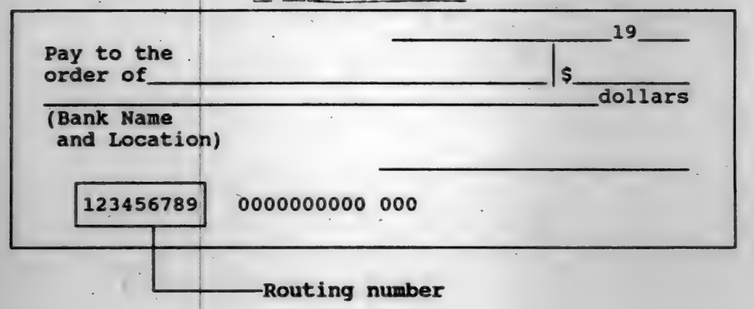

Business check

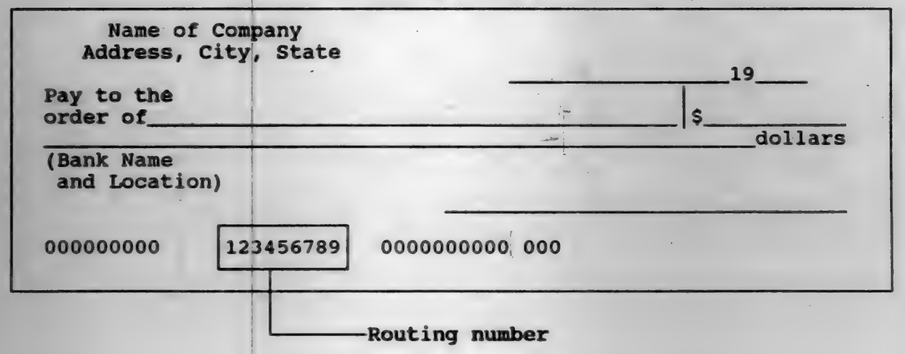

If the first four digits of the routing number (1234 in the examples above) are (*local numbers*), then the check is a local check. Otherwise, the check is a nonlocal check. Our policy is to make funds from these checks available as follows.

1. *Local checks.* The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the third business day after the day of your deposit.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Thursday.

2. *Nonlocal checks.* The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the seventh business day after the day of your deposit.

For example, if you deposit a $700 nonlocal check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Wednesday of the following week.

If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than $5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first $5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over $5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you [and you may have to use a special deposit slip]. The excess over $5,000 will be available on the ninth business day after the day of your deposit. If you make a deposit in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C-5—Holds to statutory limits on all deposits (temporary schedule, includes chart)

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you.

Wire transfers, including preauthorized credits, such as social security benefits and payroll payments.

Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Cashier's certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:

Personal check

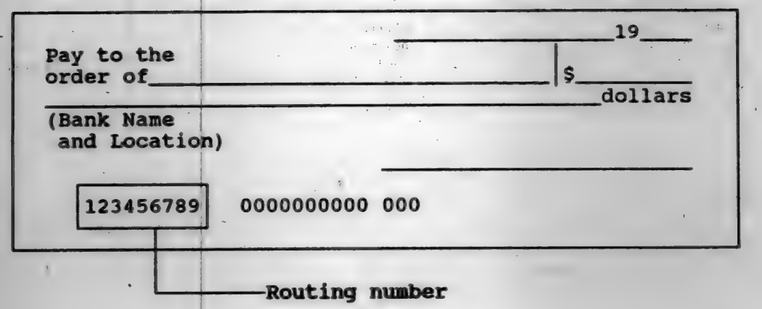

Business check

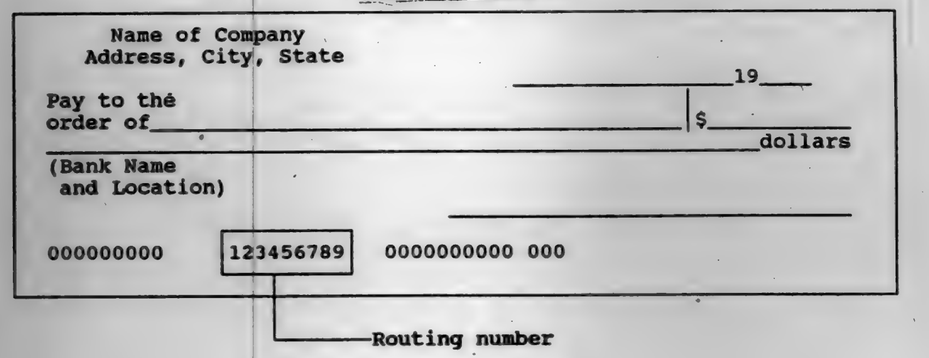

Once you have determined the first four digits of the routing number (1234 in the examples above), the following chart will show you when funds from the check will be available:

First four digits from routing number	When funds are available:	When funds are available if a deposit is made on a Monday
(Local numbers)..	$100 on the first business day after the day of your deposit.	Tuesday.
	Remaining funds on the third business day after the day of your deposit.	Thursday.
All other numbers..	$100 on the first business day after the day of your deposit.	Tuesday.
	Remaining funds on the seventh business day after the day of your deposit.	Wednesday of the following week.

If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than $5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first $5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over $5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you [and you may have to use a special deposit slip]. The excess over $5,000 will be available on the ninth business day after the day of your deposit. If you do not make the deposit in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C-6—Holds on all deposits, but for less time than the statutory limits, and case-by-case holds to the statutory limits (temporary schedule)

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Next-day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you.

Wire transfers, including preauthorized credits, such as social security benefits and payroll payments.

Checks drawn on (bank name) [unless (any limitations related to branches in different states or check processing regions)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

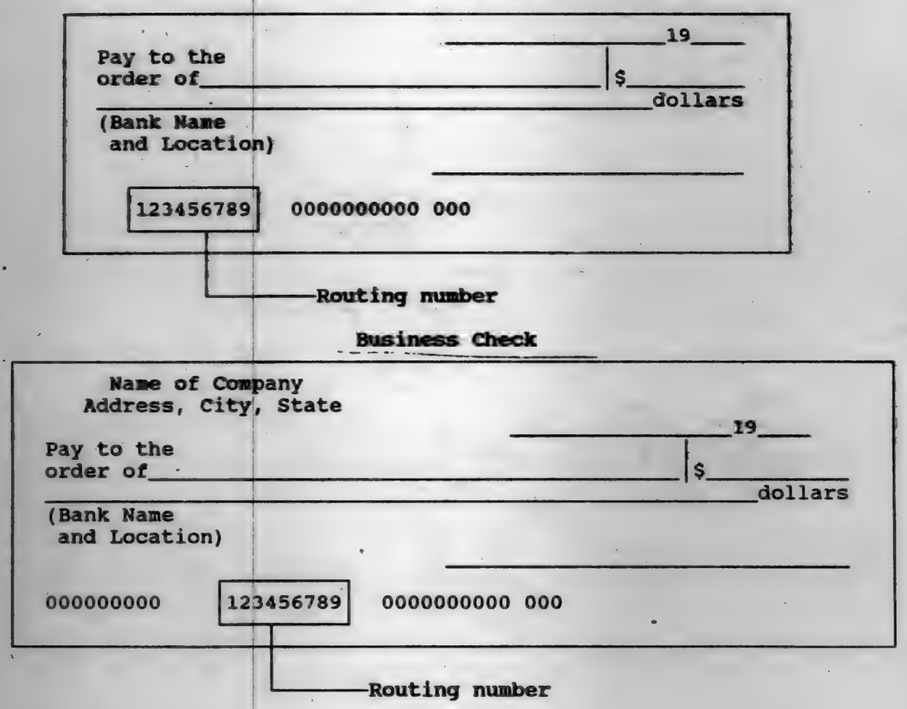

If the first four digits of the routing number (1234 in the examples above) are (local numbers), then the check is a local check. Otherwise, the check is a nonlocal check. Our policy is to make funds from these checks available as follows.

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the (number) business day after the day of your deposit.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on (day).

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the (number) business day after the day of your deposit.

For example, if you deposit a $700 nonlocal check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on (day).

If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available at the times shown above. Depending on the type of check that you deposit, funds may not be available until the seventh business day after the day of your deposit. However, the first $100 of your deposits will be available on the first business day after the day of your deposit.

If we are not going to make all funds from your deposit available at the times shown above, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to a bank employee, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than $5,000 on any one day

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be

available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first $5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over $5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you [and you may have to use a special deposit slip]. The excess over $5,000 will be available on the ninth business day after the day of your deposit. If you do not make the deposit in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C-7—Holds to statutory limits on all deposits (permanent schedule)

YOUR ABILITY TO WITHDRAW FUNDS at (*bank name and location*)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you.

Wire transfers, including preauthorized credits, such as social security benefits and payroll payments

Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

Personal check

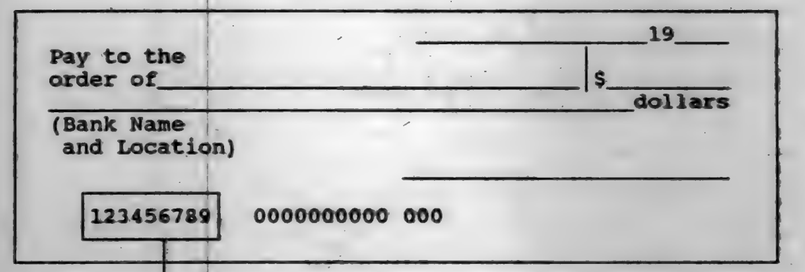

Business check

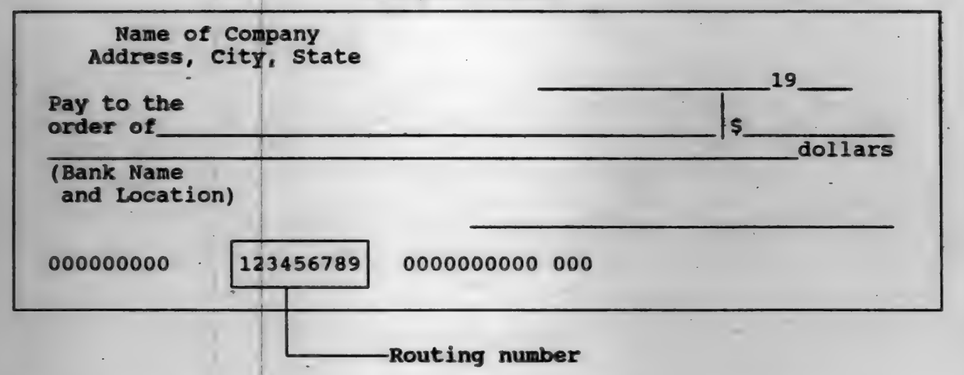

If the first four digits of the routing number (1234 in the examples above) are (*local numbers*), then the check is a local check. Otherwise, the check is a nonlocal check. Our policy is to make funds from these checks available as follows.

1. *Local checks.* The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Wednesday.

2. *Nonlocal checks.* The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a $700 nonlocal check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Monday of the following week.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than $5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open. The first $5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over $5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If you do not make the deposit in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

Model Clauses

C–8—Holds on Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it. For example, if we cash a $100 local check for you, $100 of funds already in your account will not be available until the (*number*) business day after the day we cashed the check.

C–8A—Holds on Other Funds (Other Account)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

C–9—Appendix B Availability (Nonlocal Checks)

3. Certain other checks. We can process nonlocal checks drawn on financial institutions in certain areas faster than usual. Therefore, funds from deposits of checks drawn on institutions in those areas will be available to you more quickly. Call us if you would like a list of the routing numbers for these institutions.

C–10—Automated Teller Machine Deposits (Temporary Schedule, Extended Hold)

Deposits at Automated Teller Machines

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the seventh business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

[A list of our ATMs is enclosed.]

or

[A list of ATMs where you can make deposits but that are not owned or operated by us is enclosed.]

or

[All ATMs that we own or operate are identified as our machines.]

C–11—Cash withdrawal limitation (temporary schedule)

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit to pay checks you have written to others. All of the remaining funds will be available on the third business day after the day of your deposit to pay checks you have written to others.

The first $100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after (*time no later than 5:00 p.m.*) on the third business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the fourth business day after the day of your deposit.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Thursday. At or after (*time no later than 5:00 p.m.*) on Thursday you may withdraw another $400 of the deposit in cash, and you may withdraw the rest in cash on Friday.

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit for cash withdrawal and to pay checks you have written to others. The remainder will be available on the seventh business day after the day of your deposit for both of these purposes.

For example, if you deposit a nonlocal check on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining funds from the deposit are available on Wednesday of the following week for cash withdrawal and to pay checks written to others.

C–11A—Cash Withdrawal Limitation (Temporary Schedule, Clearinghouse Member)

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit for cash withdrawal and to pay checks you have written to others. The remainder generally will be available on the third business day after the day of your deposit for both of these purposes.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining $600 is available on Thursday for cash withdrawal and to pay checks you have written to others.

In some cases, however, depending on the bank on which the check is drawn, special limitations apply to withdrawals in cash. The first $100 will be available for cash withdrawal on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after (*time no later than 5:00 p.m.*) on the third business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the fourth business day after the day of your deposit.

In these cases, for example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Thursday. At or after (*time no later than 5:00 p.m.*) on Thursday you may withdraw another $400 of the deposit in cash, and you may withdraw the rest in cash on Friday.

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit for cash withdrawal and to pay checks you have written to others. The remainder will be available on the seventh business day after the day of your deposit for both of these purposes.

For example, if you deposit a nonlocal check on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining funds from the deposit are available on Wednesday of the following week for cash withdrawal and to pay checks written to others.

C–11B—Cash Withdrawal Limitation (Permanent Schedule)

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit to pay checks you have written to others. All of the remaining funds will be available on the second business day after the day of your deposit to pay checks you have written to others.

The first $100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after (*time no later than 5:00 p.m.*) on the second business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the third business day after the day of your deposit.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Wednesday. At or after (*time no later than 5:00 p.m.*) on Wednesday you may withdraw another $400 of the deposit in cash, and you may withdraw the rest in cash on Thursday.

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit for cash withdrawal and to pay checks you have written to others. The remainder will be available on the seventh business day after the day of your deposit for both of these purposes.

For example, if you deposit a nonlocal check on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining funds from the deposit are available on Wednesday of the following week for cash withdrawal and to pay checks written to others.

The first $100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after (*time no later than 5:00 p.m.*) on the fifth business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the sixth business day after the day of your deposit.

For example, if you deposit a nonlocal check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Monday of the following week. At or after (*time no later than 5:00 p.m.*) on that Monday, you may withdraw another $400 of the deposit in cash. The rest may be withdrawn in cash on Tuesday of that following week.

C-12—Credit Union Interest Payment Policy

Interest Payment Policy

If we receive a deposit to your account on or before the tenth of the month, you begin earning interest on the deposit (whether it was a deposit of cash or checks) as of the first day of that month. If we receive the deposit after the tenth of the month, you begin earning interest on the deposit as of the first of the following month. For example, a deposit made on June 7 earns interest from June 1, while a deposit made on June 17 earns interest from July 1.

Model Notices

C-13—Exception hold notice

NOTICE OF HOLD

Account number: *(number)*
Date of deposit: *(date)*
Amount of deposit: *(amount)*

We are delaying the availability of $*(amount being held)* from this deposit. These funds will be available on the *(number)* business day after the day of your deposit.

We are taking this action because:
—A check you deposited was previously returned unpaid.
—You have overdrawn your account repeatedly in the last six months.
—The checks you deposited on this day exceed $5,000.
—An emergency, such as failure of communications or computer equipment, has occurred.
—We believe a check you deposited will not be paid for the following reasons:

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, *(description of procedure for obtaining refund)*.]

C-13A—Reasonable cause hold notice

NOTICE OF HOLD

Account number: *(number)*
Date of deposit: *(date)*
Amount of deposit: *(amount)*

We are delaying the availability of the funds you deposited by the following check: *(description of check, such as amount and drawer)*

These funds will be available on the *(number)* business day after the day of your deposit. The reason for the delay is explained below:
—We received notice that the check is being returned unpaid.
—We have confidential information that indicates that the check may not be paid.
—The check is drawn on an account with repeated overdrafts.
—We are unable to verify the endorsement of a joint payee.
—Some information on the check is not consistent with other information on the check.
—There are erasures or other apparent alterations on the check.
—The routing number of the paying bank is not a current routing number.
—The check is postdated or has a stale date.
—Information from the paying bank indicates that the check may not be paid.
—We have been notified that the check has been lost or damaged in collection.
—Other:

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, *(description of procedure for obtaining refund)*.]

C-14—Case-by-case hold notice

NOTICE OF HOLD

Account number: *(number)*
Date of deposit: *(date)*
Amount of deposit: *(amount)*

We are delaying the availability of $*(amount being held)* from this deposit. These funds will be available on the *(number)* business day after the day of your deposit.

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, *(description of procedure for obtaining refund)*.]

C-15—Notice at Locations Where Employees Accept Consumer Deposits

FUNDS AVAILABILITY POLICY

Description of deposit	When funds can be withdrawn by cash or check
Cash, wire transfers, cashier's, certified, teller's, or government checks, checks on *(bank name)* (unless *(any limitation related to branches in different check processing regions)*), and the first $100 of a day's deposits of other checks.	The first business day after the day of deposit.
Local checks	The third business day after the day of deposit.
Nonlocal checks	The seventh business day after the day of deposit.

C-15A—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

FUNDS AVAILABILITY POLICY

Our general policy is to allow you to withdraw funds deposited in your account on the *(number)* business day after the day we receive your deposit. In some cases, we may delay your ability to withdraw funds beyond the *(number)* business day. Then, the funds will generally be available by the seventh business day after the day of deposit.

C-16—Notice at Automated Teller Machines

AVAILABILITY OF DEPOSITS

Funds from deposits may not be available for immediate withdrawal. Please refer to your institution's rules governing funds availability for details.

C-17—Notice at Automated Teller Machines (Delayed Receipt)

NOTICE

Deposits at this ATM between *(day)* and *(day)* will not be considered received until *(day)*. The availability of funds from the deposit may be delayed as a result.

C-18—Deposit Slip Notice

Deposits may not be available for immediate withdrawal.

Appendix D.—Indorsement Standards

1. The depositary bank shall indorse a check according to the following specifications:

• The indorsement shall contain—
—The bank's nine-digit routing number, set off by arrows at each end of the number and pointing toward the number;
—The bank's name/location; and
—The indorsement date.

• The indorsement may also contain—
—An optional branch identification;
—An optional trace/sequence number;
—An optional telephone number for receipt of notification of large-dollar returned checks; and
—Other optional information provided that the inclusion of such information does not interfere with the readability of the indorsement.

• The indorsement shall be written in dark purple or black ink.

• The indorsement shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.[1]

2. Each subsequent collecting bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by:

• Including *only* its nine-digit routing number (without arrows), the indorsement date, and an optional trace/sequence number;

• Using an ink color other than purple; and

• Indorsing in the area on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

3. Each returning bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by:

• Using an ink color other than purple;

• Staying clear of the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge of the check.

[1] The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Committee on Financial Services *Specification for the Placement and Location of MICR Printing, X 9.13.*

Appendix E.—Commentary

The Board interpretations, which are labeled "Commentary" and follow each section of Regulation CC, provide background material to explain the Board's intent in adopting a particular part of the regulation; the Commentary also provides examples to aid in understanding how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4030(e)), no provision of section 611 imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

The Commentary is an "interpretation" of a regulation by the Board within the meaning of section 611.

Section 229.2 Definitions

Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the Expedited Funds Availability Act (12 U.S.C. 4001). The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the Act, and to carry out the purposes of the Act. The Board has also incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of the Regulation CC's definitions are self-explanatory and therefore are not discussed in this commentary.

(a) *Account.* The Act defines account to mean "a demand deposit account or similar transaction account at a depositary institution." The regulation defines "account" in terms of the definition of "transaction account" in the Board's Regulation D (12 CFR Part 204). The definition of "account" in Regulation CC, however, excludes certain deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are covered under the definition of "transaction account" in Regulation D. The definition applies to accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. The Board believes that it is appropriate to exclude these accounts because of the reference to demand deposits in the Act, which suggests that the Act is intended to apply only to accounts that permit unlimited third party transfers.

The term account also differs from the definition of transaction account in Regulation D because the term "account" refers to accounts held at banks. Under Subparts A and C, the term "bank" includes not only any "depository institution," as defined in the Act, but also any person engaged in the business of banking, such as a Federal Reserve Bank, a Federal Home Loan Bank, or a private banker that is not subject to Regulation D. Thus accounts at these institutions benefit from the expeditious return requirements of Subpart C.

Interbank deposits, including accounts of offices of domestic banks or foreign banks located outside the United States, and direct and indirect accounts of the United States Treasury (including Treasury General Accounts and Treasury Tax and Loan Deposit Accounts) are exempt from Regulation CC.

(b) *Automated clearinghouse (ACH).* The Board has defined "automated clearinghouse" as a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular governing automated clearinghouse items or the rules of an ACH association. ACH credit transfers are included in the definition of "electronic payment."

The reference to "credit transfers" and "debit transfers" does not refer to the corresponding credit and debit entries that are part of the same transaction, but to different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator's account to be credited.

A facility that handles only "wire transfers" (defined elsewhere) is not an ACH.

(c) *Automated teller machine (ATM)* is not defined in the Act. The regulation defines an ATM as an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g. point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g. night depositories and lobby boxes) and cannot perform other transactions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM.

A facility may be an ATM within this definition even if it is a branch under state or federal law, although an ATM is not a branch as that term is used in this regulation.

(d) *Available for withdrawal.* Under this definition, when funds become "available for withdrawal," the funds may be put to all uses for which the customer may use actually and finally collected funds in the customer's account under the customer's account agreement with the bank. Examples of such uses include payment of checks drawn on the account, certification of checks, electronic payments, and cash withdrawals. Funds are available for these uses notwithstanding provisions of other law that may restrict the use of uncollected funds (e.g., 18 U.S.C. 1004; 12 U.S.C. 331).

If a bank makes funds available to a customer for a specific purpose (such as paying checks that would otherwise overdraw the customer's account and be returned for insufficient funds) before the funds must be made available under the bank's policy or this regulation, it may nevertheless apply a hold consistent with this regulation to those funds for other purposes (such as cash withdrawals). For the purposes of this regulation, funds are considered available for withdrawal even though they cannot actually be withdrawn because they are subject to garnishment, tax levy, or court order restricting disbursements from the account.

(e) *Bank.* The Act uses the term "depository institution," which it defines by reference to section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i) through (vi)). This regulation uses the term "bank," a term that conforms to the usage the Board has previously adopted in Regulation J. "Bank" is also used in Article 4 of the Uniform Commercial Code.

"Bank" is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the Act, and U.S. branches of foreign banks. For purposes of Subpart C, and in connection therewith, Subpart A, any Federal Reserve Bank, Federal Home Loan Bank, or any other person engaged in the business of banking is regarded as a bank. The phrase "any other person engaged in the business of banking," is derived from U.C.C. § 1-201(4), and is intended to cover entities, such as certain industrial banks and private bankers that handle checks for collection and payment, so that all checks will be covered by the same rules for forward collection and return, even though they may not be covered by the requirements of Subpart B. For the purposes of Subpart C, and in connection therewith, Subpart A, term may also include states and units of general local government to the extent that they pay warrants or other drafts drawn directly on the state or local government itself.

Unless otherwise specified, the term bank includes all of a bank's offices in the United States. The regulation does not cover foreign offices of U.S. banks.

(f) *Banking day* and (g) *Business day.* The Act defines "business day" as any day excluding Saturdays, Sundays, and legal holidays. "Legal holiday," however, is not defined, and the variety of local holidays, together with the practice of some banks to close midweek, makes the Act's definition difficult to apply. The Board believes that two kinds of business days are relevant. First, when determining the day when funds are deposited or when a bank must perform certain actions (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation or when notice of nonpayment must be received by the depositary bank, there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondents and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the regulation has two definitions: "business day" generally follows the standard Federal Reserve holiday schedule (which is followed by most large

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banks), and "banking day" is defined to mean that part of a business day on which a bank is open for substantially all of its banking activities.

The definition of banking day corresponds to the definition of banking day in U.C.C. § 4–104(1)(c), except that a banking day is defined in terms of a "business day." Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the U.C.C., but it would not be a banking day for purposes of Regulation CC because Saturday is never a "business day" under the regulation.

The definition of banking day is phrased in terms of when "an office of a bank is open" to indicate that a bank may observe a banking day on a per branch basis. Deposits made at an ATM are considered made at the branch holding the account into which the deposit is made for purposes of determining the day of deposit.

(h) *Cash* means U.S. coins and currency. The phrase in the Act "including Federal Reserve notes" has been deleted as unnecessary. (See 31 U.S.C. 5103.)

(i) *Cashier's check.* The regulation adds to the second item in the Act's definition of "cashier's check" the phrase, "on behalf of the bank as drawer," to clarify that the term "cashier's check" is intended to cover only checks that a bank draws on itself. The definition of cashier's check includes checks provided to customers for purposes of making payments or to pay withdrawals or provided to others to enable them to make payments. Cashier's checks provided to customers or others are often labeled as "cashier's check," "officer's check," or "official check." The definition does not include checks that a bank draws on itself for other purposes, such as to pay employees and vendors.

(j) *Certified check.* The Act defines a certified check as one to which a bank has certified that the drawer's signature is genuine and that the bank has set aside funds to pay the check. Under the Uniform Commercial Code, certification of a check means the bank's signed agreement that it will honor the check as presented (U.C.C. §§ 3–410, 3–411). The regulation defines "certified check" to include both the Act's and U.C.C.'s definitions.

(k) *Check* is defined in section 602(7) of the Act as a negotiable demand draft drawn on or payable through an office of a depository institution located in the United States, excluding noncash items. The regulation includes six categories of instruments within the definition of check.

The first category is negotiable demand drafts drawn on or payable through or at an office of a bank. As the definition of "bank" includes only offices located in the United States, this category is limited to checks drawn on or payable through or at a banking office located in the United States.

The Act treats drafts payable through a bank as checks, even though under the U.C.C. the payable through bank is a collecting bank to make presentment and is generally not authorized to make payment (U.C.C. § 3–120). The Act does not expressly address items that are payable at a bank. This regulation treats both payable through and payable at demand drafts as checks. The Board believes that treating demand drafts payable at a bank as checks will not have a substantial effect on the operations of payable at banks—by far the largest proportion of payable at items are not negotiable demand drafts, but time items, such as commercial paper, bonds, notes, bankers' acceptances, and securities. These time items are not covered by the requirements of the Act or this regulation. (The treatment of payable through drafts is discussed in greater detail in connection with the definitions of "local check" and "paying bank.")

The second category is checks drawn on Federal Reserve Banks and Federal Home Loan Banks. Principal and interest payments on federal debt instruments are often paid with checks drawn on a Federal Reserve Bank as fiscal agent of the United States, and these "fiscal agency checks" are indistinguishable from other checks drawn on Federal Reserve Banks. (See 31 CFR Part 355.) Federal Reserve Bank checks are also used by some banks as substitutes for cashier's or teller's checks. Similarly, savings and loan associations often use checks drawn on Federal Home Loan Banks as teller's checks. The definition of check includes checks drawn on Federal Home Loan Banks and Federal Reserve Banks because in many cases they are the functional equivalent of Treasury checks or teller's checks.

The third and fourth categories of instrument included in the definition of check refer to government checks. The Act refers to checks drawn on the U.S. Treasury, even though these instruments are not drawn on or payable through an office of a depository institution, and checks drawn by state and local governments. The Act also gives the Board authority to define functionally equivalent instruments as "depository checks." [1] Thus, the Act is intended to apply to instruments other than those that meet the strict definition of check in section 602(7) of the Act. Checks and warrants drawn by states and local governments are often used for the purposes of making unemployment compensation payments and other payments that are important to the recipients. Consequently, the Board has expressly defined check to include drafts drawn on the U.S. Treasury and drafts or warrants drawn by a state or a unit of general local government on itself.

The fifth category of instrument included in the definition of check is U.S. Postal Service money orders. These instruments are defined as checks, because they are often used as a substitute for checks by consumers, even though money orders are not negotiable under Postal Service regulations. The Board has not provided specific rules for other types of money orders; these instruments are generally drawn on or payable through or payable at banks and are treated as checks on that basis.

The sixth and final category of instrument included in the definition of check is traveler's checks drawn on or payable through or at a bank. "Traveler's check" is defined in paragraph (hh) of this section. Finally, for the purposes of Subpart C, and in connection therewith, Subpart A, the definition of check includes nonnegotiable demand drafts because these instruments are often handled as cash items in the forward collection process.

The definition of check does not include an instrument payable in foreign currency (i.e., other than in United States money as defined in 31 U.S.C. 5101) or a credit card draft.

(l) *Check clearinghouse association.* The Act defines a clearinghouse association as any arrangement by which participants exchange deposited checks on a local basis, including an entire metropolitan area. The definition includes informal arrangements where the participants have not formally constituted themselves as an association. The definition of check clearinghouse association excludes direct exchanges involving only two banks.

The Act defines clearinghouses as local arrangements, which may cover an entire metropolitan area. In some cases, most notably California, a single in different metropolitan areas. For purposes of this regulation, each of those exchanges would be regarded as a separate clearinghouse.

Using the premises of a Federal Reserve Bank to exchange checks does not constitute the handling of checks for collection by the Reserve Bank. Several clearinghouses meet at Reserve Banks to exchange checks among their members.

(m) *Check processing region.* The Act defines this term as "the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations." The Board has defined check processing region as the territory served by one of the 48 Federal Reserve head offices, branches, or regional check processing centers. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office. The definition of check processing region is key to determining whether a check is considered local or nonlocal.

(n) *Consumer account* is defined as an account used primarily for personal, family, or household purposes. Both consumer and nonconsumer accounts are subject to the requirements of this regulation, including the requirement that funds be made available according to specific schedules and that the bank make specified disclosures of its availability policies. Section 229.18(b) (notices at branch locations) and § 229.43(e) (notice of changes in policy) apply only to consumer accounts. Section 229.19(d) (use of calculated availability) applies only to nonconsumer accounts.

(o) *Depositary bank.* The regulation uses the term depositary bank rather than the term "receiving depository institution." "Receiving depository institution" is a term unique to the Act, while "depositary bank" is the term used in Article 4 of the U.C.C. and Regulation J.

A depositary bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depositary bank since foreign offices of banks are not included in the definition of bank.

If a customer deposits a check in its account at a bank, the customer's bank is the depositary bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depositary bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under § 229.35 the depositary bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depositary bank. For the purposes of Subpart C, the bank applying its indorsement as the depositary bank indorsement on the check is the depositary bank.)

A bank may act as both the depositary bank and the paying bank with respect to a check, if the check is drawn on, payable at, or payable through the bank in which it was deposited. A bank is also considered a depositary bank with respect to checks it receives as payee. For example, a bank is a depositary bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be "deposited to accounts," they would not be subject to the availability or disclosure requirements of Subpart B.

(p) *Electronic payment* is defined to mean a wire transfer as defined in § 229.2(11) or an ACH credit transfer. The Act requires that funds deposited by wire transfer be made available for withdrawal on the business day following deposit but expressly leaves the definition of the term wire transfer to the Board. Because ACH credit transfers frequently involve important consumer payments, such as wages, the regulation requires that funds deposited by ACH credit transfers be available for withdrawal on the business day following deposit.

ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like checks than wire transfers. Further, bank customers that receive funds by originating ACH debit transfers are primarily large corporations, which would generally be able to negotiate with their banks for prompt availability.

A point-of-sale transaction would not be considered an electronic payment unless the transaction was effected by means of an ACH credit transfer or wire transfer.

(q) *Forward collection* is defined to mean the process by which a bank sends a check to the paying bank for payment as distinguished from the process by which the check is returned after nonpayment. Noncash collections are not included in the term "forward collection."

(r) *Local check* is defined as a check drawn on, payable through, or payable at a local paying bank. A depositary bank may rely on the routing number on the check in determining whether the check is local or nonlocal if the bank collects the check based on the routing number. A check, such as a check drawn on a local bank but payable through a nonlocal bank, could have two paying banks, one local and one nonlocal, depending on where the check is sent for payment or collection.

Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office to enable persons to determine whether or not a check is local.

(s) *Local paying bank* is defined as a paying bank to which a check is sent for forward collection located in the same check processing region as the branch or proprietary ATM of the depositary bank. A bank may rely on the routing number on a check in identifying a local check provided that it sends the check for payment or collection based on that routing number; consequently, a person can determine which checks are local by reference to the routing number.

Examples

1. If a check that is drawn on a bank that is located in the same check processing region as the depositary bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on where the check was sent for payment. If the depositary bank sends the check directly to the drawee bank for payment, the check is considered local; if it sends the check to the payable through bank, the check is considered nonlocal.

2. The location of the depositary bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depositary bank located in one check processing region sends a check to the depositary bank's central facility in another check processing region, and the central facility is in the same check processing region as the paying bank, the check is still considered nonlocal. (See commentary on definition of "paying bank".)

For deposits at nonproprietary ATMs, a paying bank is a local paying bank only if the paying bank to which a check is sent for forward collection is located in the same check processing region as the location of both the branch of the depositary bank at which the account is held, and the nonproprietary ATM at which the check is deposited.

(t) *Merger transaction* is a term used in Subparts B and C in connection with transition rules for merged banks. It encompasses mergers, consolidations, and purchase/assumption transactions of the type that must usually be approved under the Bank Merger Act (12 U.S.C. 1828) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 U.S.C. 1842) or section 408 of the National Housing Act (12 U.S.C. 1730a) where an acquired bank maintains its separate corporate existence.

Regulation CC adopts a one-year transition period for banks that are party to a merger transaction during which the merged banks will continue to be treated as separate entities. (See §§ 229.19(g) and 229.40.)

(u) *Noncash item.* The Act defines the term "check" to exclude "noncash items," and defines noncash items to include checks to which another document is attached, checks accompanied by special instructions, or any similar item classified as a noncash item in the Board's regulation.

The regulation's definition of "noncash item" also includes checks that consist of more than a single thickness of paper (except checks that qualify for handling by automated check processing equipment, e.g. those placed in carrier-envelopes) and checks that have not been preprinted or post-encoded in magnetic ink with the paying bank's routing number as well as checks with documents attached or accompanied by special instructions.

A check that has been preprinted or post-encoded with a routing number that has been retired (e.g., because of a merger) for at least three years is a noncash item unless the current number is added for processing purposes by placing the check in an encoded carrier document or adding a strip to the check.

Checks that are accompanied by special instructions are also noncash items. For example, a person concerned about whether a check will be paid may request the depositary bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depositary bank promptly when the check is paid or dishonored.

For purposes of forward collection, a copy of a check is neither a check nor a noncash item, but may be treated as either. For purposes of return, a copy is generally a notice in lieu of return. (See §§ 229.30(f) and 229.31(f).)

(v) *Participant* means a bank that is located in the geographic area served by a clearinghouse and that both collects checks drawn on other clearinghouse participants, and receives for payment checks from other clearinghouse participants through the clearinghouse either directly or through another participant. The phrase "through a participant" covers associate members of the clearinghouse, but a bank is not a participant merely because it sends a check to a correspondent that in turn presents the check through a clearinghouse exchange.

(z) *Paying bank.* The regulation uses this term in lieu of the Act's "originating depository institution," and defines it, as in Regulation J (12 CFR Part 210), to include the payor bank, the payable at bank, and the payable through bank.

Under §§ 229.30 and 229.36(a), a bank designated as a "payable through bank" or "payable at bank" is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable through or payable at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable through bank additional time to forward checks to the payor, and await return or pay instructions from the payor, would delay the return of these checks, increasing the risks to depositary banks. Accordingly, for

[1] Section 602(11) of the Act (12 U.S.C. 4001(11)) defines "depository check" as "any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board."

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availability purposes, a check payable through or payable at a bank is considered drawn on the payable through or payable at bank if it is sent to that bank for collection.

If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of Subpart C requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

The phrase "and to which [the check] is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of Subpart B.

'(aa) *Proprietary ATM.* Under the temporary schedule, all deposits at nonproprietary ATMs are treated as deposits of nonlocal checks and deposits at proprietary ATMs are generally treated as deposits at banking offices. The Conference Report on the Act indicates that the special availability rules for deposits received through nonproprietary ATMs are provided because "nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits" (H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987)). Thus, during the temporary schedule, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated as if it were a deposit of nonlocal checks, because the depositary bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.

A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11288 (Aug. 4, 1987)) indicates that whether a bank operates the ATM is the primary criterion to determining whether the ATM is proprietary to that bank. Since a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits. If more than one bank meets the owns or operates criterion, the ATM is considered proprietary to the bank that operates it. For the purpose of this definition, the bank that operates an ATM is the bank that puts checks deposited into the ATM into the forward collection stream. An ATM owned by one or more banks, but operated by a nonbank servicer, is considered proprietary to the bank or banks that own it.

The Act also includes location as a factor in determining whether an ATM that is either owned or operated by a bank is proprietary to that bank. The definition of proprietary ATM includes an ATM located on the premises of the bank, either inside the branch or on its outside wall, regardless of whether the ATM is owned or operated by that bank. Since the Act also defines a proprietary ATM as one that is "in close proximity" to the bank, the regulation defines an ATM located within 50 feet of a bank to be proprietary to that bank unless it is identified as being owned or operated by another entity. The Board believes that the statutory proximity test was designed to apply to situations where it would appear to the depositor that the ATM is run by his or her bank, because of the proximity of the ATM to the bank. The Board believes that an ATM located within 50 feet of a banking office would be presumed proprietary to that bank unless it is clearly identified as being owned or operated by another entity.

(bb) *Qualified returned check.* Subpart C requires the paying bank and returning bank(s) to return checks in an expeditious manner. The banks may meet this responsibility by returning a check to the depositary bank by the same general means used for forward collection of a check from the depositary bank to the paying bank. One way to speed the return process is to prepare the returned check for automated processing. Returned checks can be automated by either the paying bank or a returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the return, and encoding the envelope or strip with the routing number of the depositary bank, the amount of the check, and a special return identifier. Returns are identified by placing a "2" in position 44 of the MICR line. (See American National Standards Committee on Financial Services, *Specification for the Placement and Location of MICR Printing, X9.13* (Sept. 8, 1983) hereinafter referred to as "ANSI X9.13–1983.")

Generally, under the standard of care imposed by § 229.38, a paying or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check, or return identifier on a qualified returned check unless the error was due to problems with the depositary bank's indorsement. (See also discussion of § 229.38(c).) A qualified returned check that contains an encoding error would still be a qualified returned check for purposes of the regulation.

A qualified returned check need not contain the elements of a check drawn on the depositary bank, such as the name of the depositary bank, as is required under the direct return provision of U.C.C. § 4–212(2). Because indorsements and other information on carrier envelopes or strips will not appear on a returned check itself, banks will wish to retain carrier envelopes and/or microfilm or other records of carrier envelopes or strips with their check records.

(cc) *Returning bank* is defined to mean any bank (excluding the paying bank and the depositary bank) handling a returned check. A returning bank may or may not be a bank that handled the returned check in the forward collection process. A returning bank includes a bank that agrees to handle a returned check for expeditious return to the depositary bank under § 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to act seasonably under U.C.C. § 4–202.

(dd) *Routing number.* Each bank is assigned a routing number by Rand McNally & Co. as agent for the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right hand corner of the check) and the nine-digit form. The nine-digit routing number of the paying bank is generally printed in magnetic ink near the bottom of the check (the "MICR strip;" see ANSI X9.13–1983). Subpart C requires depositary banks and subsequent collecting banks to place their routing numbers in nine-digit form in their indorsements.

(gg) *Teller's check* is defined in the Act to mean a check issued by a depository institution and drawn on another depository institution. The definition in the regulation includes not only checks drawn by a bank on another bank, but also checks payable through or at a bank. This would include checks drawn on a nonbank, as long as the check is payable through or at a bank. The definition explicitly excludes checks used by the bank to pay employees or vendors. (See also Commentary on the definition of "cashier's check.")

(hh) *Traveler's check.* The Act and regulation require that traveler's checks be treated as cashier's, teller's, or certified checks when a new depositor opens an account. (See § 229.13(a); 12 U.S.C. 4003(a)(1)(C).) The Act does not define traveler's check.

One element of the definition states that a traveler's check is "drawn on or payable through or at a bank." Traveler's checks that are not issued by banks may not have any words on them identifying a bank as drawee or paying agent, but may bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

Because a traveler's check is payable by, at, or through a bank, it is also a check for purposes of this regulation. When not subject to the next-day availability requirement for new accounts, a traveler's check should be treated as a local or nonlocal check depending on the location of the paying bank. The depositary bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.

(ii) *Uniform Commercial Code* is defined as the version of the Code adopted by the individual states. For purposes of uniform citation, all citations to the U.C.C. in this part refer to the Official Text as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

(ll) *Wire transfer.* The Act delegates to the Board the authority to define the term "wire transfer." The regulation defines wire transfer as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between commercial accounts. Unconditional means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A wire transfer may be transmitted by electronic or other means. "Electronic means" include computer-to-computer links, on-line terminals, telegrams (including TWX, TELEX, or similar methods of communication), telephone calls, or other similar methods. Fedwire (the Federal Reserve's wire transfer network), CHIPS (Clearing House Inter-bank Payments System, operated by the New York Clearing House), and book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term "wire transfer" excludes "electronic fund transfers" as that term is defined by the Electronic Fund Transfer Act.

Section 229.10 Next-Day Availability

(a) *Cash deposits.* This paragraph implements the Act's requirement for next-day availability for cash deposits to accounts at a depositary bank "staffed by individuals employed by such institution." [2] This paragraph, as well as other provisions of this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of "business days" following the "banking day" on which the funds are deposited. Thus, a deposit is only considered made on a banking day, i.e., a day that the bank is open to the public for carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on that bank's next banking day.

Nevertheless, "business days" are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a local check were made on a Monday under the temporary schedule, which requires that funds be available for withdrawal on the third business day after deposit, funds must be made available on Thursday regardless of whether the bank was closed on Wednesday for other than a standard legal holiday as specified in the definition of "business day."

Under this paragraph, cash deposited in an account at a staffed teller station on a Monday must become available for withdrawal by the start of business on Tuesday. It must become available for withdrawal by the start of business on Wednesday if it is deposited by mail, at a proprietary ATM (or at a nonproprietary ATM under the permanent schedule), or by other means other than at a staffed teller station.

(b) *Electronic payments.* The Act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term "electronic payment," rather than "wire transfer," to include both wire transfers and ACH credit transfers under the next-day availability requirement. (*See* discussion of definitions of "automated clearinghouse," "electronic payment," and "wire transfer" in § 229.2.)

The Act requires that funds received by wire transfer be available for withdrawal not later than the business day following the day a wire transfer is received. This paragraph clarifies what constitutes receipt of an electronic payment. For the purposes of this paragraph, a bank receives an electronic payment when the bank receives both payment in finally collected funds and the payment instructions indicating the customer accounts to be credited and the amount to be credited to each account. For example, in the case of Fedwire, the bank receives finally collected funds at the time the payment is made. (See 12 CFR 210.36.) Finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank's account on the settlement day. In certain cases, the bank receiving ACH credit payments will not receive the specific payment instructions indicating which accounts to credit until after settlement day. In these cases, the payments are not considered received until the information on the account and amount to be credited is received.

This paragraph also establishes the extent to which an electronic payment is considered made. Thus, if a participant on a private network fails to settle and the receiving bank receives finally settled funds representing only a partial amount of the payment, it must make only the amount that it actually received available for withdrawal.

The availability requirements of this regulation do not preempt or invalidate other rules, regulations, or agreements which require funds to be made available on a more prompt basis. For example, the next-day availability requirement for ACH credits in this section does not preempt ACH association rules and Treasury regulations (31 CFR Part 210), which provide that the proceeds of these credit payments be available to the recipient for withdrawal on the day the bank receives the funds.

(c) *Certain check deposits.* The Act generally requires that funds be made available on the business day following the banking day of deposit for Treasury checks; state and local government checks; cashier's, certified, and teller's checks; and "on us" checks, under specified conditions. (Treasury checks are checks drawn on the Treasury of the United States and have a routing number beginning with the digits "0000.") This section also requires next-day availability for additional types of checks not addressed in the Act. Checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders must also be made available on the next business day following deposit under specified conditions. For the purposes of this section, all checks drawn on a Federal Reserve Bank or Federal Home Loan Bank are subject to the next-day availability requirement if they are deposited in an account held by a payee of the check and in person to an employee of the depositary bank, regardless of the purpose for which the checks were issued.

Deposit in Account of Payee

One statutory condition to receipt of next-day availability of Treasury checks; state and local government checks; and cashier's, certified, and teller's checks is that the check must be "endorsed only by the person to whom it was issued." The Act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. The Board believes that such a check presents greater risks than a check deposited by the payee and that Congress did not intend to require next-day availability to such checks. The regulation, therefore, provides that funds must be available on the business day following deposit only if the check is deposited in an account held by a payee of the check. For the purposes of this section, payee does not include transferees other than named payees. The regulation also applies this condition to Postal Service money orders, and checks drawn on Federal Reserve Banks and Federal Home Loan Banks.

Deposit at Staffed Teller Station

In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on the deposit of these checks in person to an employee of the depositary bank. If the deposit is made at a proprietary ATM (and at a nonproprietary ATM under the permanent schedule), night depository, or through the mail, rather than at a staffed teller facility, the proceeds of the deposit must be available for withdrawal by the start of business on the second business day after deposit, under paragraph (c)(2) of this section.

The Act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations in the case of Treasury checks. Therefore, Treasury checks deposited at a proprietary ATM must be accorded next-day availability, if the check is deposited to an account of a payee of the check.

"On Us" Checks

The Act and regulation require next-day availability for on us checks, i.e., checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if both branches are located in the same state or check processing region. Thus, checks deposited in one branch of a bank and drawn on another branch of the same bank must receive next-day availability even if the branch on which the checks are drawn is located in another check processing region but in the same state as the branch in which the check is deposited. For the purposes of this requirement, deposits at facilities that are not located on the premises of a brick-and-mortar branch of the bank, such as off-premise ATMs and remote depositories, are not considered deposits made at branches of the depositary bank.

First $100

The Act and regulation also require that up to $100 of the aggregate deposit by check or checks not subject to next-day availability on any one banking day be made available on the next business day. For example, if $70 were deposited in an account by check(s) on a Monday, the entire $70 must be available for withdrawal at the start of business on Tuesday. If $200 were deposited by check(s)

[2] Nothing in the Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (See 12 CFR 204.2(e)(2).)

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on a Monday, this section requires that $100 of the funds be available for withdrawal at the start of business on Tuesday. The portion of the customer's deposit to which the $100 must be applied is at the discretion of the depositary bank, as long as it is not applied to any checks subject to next day availability. The $100 next-day availability rule does not apply to deposits at nonproprietary ATMs.

The $100 that must be made available under this rule is in addition to the amount that must be made available for withdrawal on the business day after deposit under other provisions of this section. For example, if a customer deposits a $1,000 Treasury check, and a $1,000 local check in its account on Monday, $1,100 must be made available for withdrawal on Tuesday—the proceeds of the $1,000 Treasury check, as well as the first $100 of the local check.

A depositary bank may aggregate all local and nonlocal check deposits made by the customer on a given banking day for the purposes of the $100 next-day availability rule. Thus, if a customer has two accounts at the depositary bank, and on a particular banking day makes deposits to each account, $100 of the total deposited to the two accounts must be made available on the business day after deposit. Banks may aggregate deposits to individual and joint accounts for the purposes of this provision.

If the customer deposits a $500 local check, and gets $100 cash back at the time of deposit, the bank need not make an additional $100 available for withdrawal on the following day. Similarly, if the customer depositing the local check has a negative book balance, or negative available balance in its account at the time of deposit, the $100 that must be available on the next business day may be made available by applying the $100 to the negative balance, rather than making the $100 available for withdrawal by cash or check on the following day.

Fees for Withdrawals

A depositary bank may not impose a fee on a customer if the fee is based on the fact that the customer has withdrawn funds for which the bank has not received credit, if the funds must be made available for withdrawal under this Subpart.

Special Deposit Slips

Under the Act, a depositary bank may require the use of a special deposit slip as a condition to providing next-day availability for certain types of checks. This condition was included in the Act because a number of banks determine the availability of their customers' check deposits in an automated manner by reading the MICR-encoded routing number on the deposited checks. Using these procedures, a bank can determine whether a check is a local or nonlocal check: a check drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depositary bank; or a U.S. Postal Service money order. Appendix A includes the routing numbers of certain categories of checks that are subject to next-day availability. The bank cannot require a special deposit slip for these checks.

A bank cannot distinguish whether the check is a state or local government check or a cashier's, certified, or teller's check by reading the MICR-encoded routing number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

The regulation specifies that if a bank decides to require the use of a special deposit slip (or a special deposit envelope in the case of a deposit at an ATM or other unstaffed facility) as a condition to granting next-day availability under paragraphs (c)(1)(iv) or (c)(1)(v) of this section or second day availability under paragraph (c)(2) of this section, and if the deposit slip that must be used is different from the bank's regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers.

A bank may meet this requirement by providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slips before this condition is imposed. If a bank provides deposit slips in its branches for use by its customers, it must also provide the special deposit slips in the branches. If special deposit envelopes are required for deposits at an ATM, the bank must provide such envelopes at the ATM.

Generally, a teller is not required to advise depositors of the availability of special deposit slips merely because checks requiring special deposit slips for next-day availability are deposited without such slips. If a bank only provides the special deposit slips upon the request of a depositor, however, the teller must advise the depositor of the availability of the special deposit slips. If a bank prepares a deposit for a depositor, it must use a special deposit slip where appropriate. A bank may require the customer to segregate the checks subject to next-day availability for which special deposit slips could be required, and to indicate on a regular deposit slip that such checks are being deposited, if the bank so instructs its customers in its initial disclosure.

Section 229.11 Temporary Availability Schedule

(a) *Effective date.* Checks, other than those that must be accorded next-day availability, are categorized as either local or nonlocal, with different availability schedules attached to each. These schedules are effective on September 1, 1988, and will be superseded by more stringent schedules on September 1, 1990.

(b) *Local checks and certain other checks.* This paragraph sets forth the maximum hold period that can be placed on local checks during the temporary schedule. The regulation refers to the day on which funds must be available for withdrawal as within a specified number of business days after deposit, rather than after a specified number of intervening business days, as provided in the Act. A depositary bank must make funds from the deposit of a local check available on the third business day following the banking day on which the check is deposited. This requirement corresponds to the two intervening business days specified in the Act. Thus, under the temporary schedule, a local check deposited on a Monday must be available for withdrawal on Thursday, except in the case of deposits at nonproprietary ATMs and deposits to accounts in banks located outside the 48 contiguous states.

The regulation provides that Treasury checks and U.S. Postal Service money orders be treated as local checks, where the conditions to receiving next-day (or second-day) availability in § 229.10(c) are not met. These checks are treated as local checks because they are payable at any Federal Reserve office. Thus, a Treasury check or a postal money order that is indorsed and deposited in an account not held by the payee must be made available in accordance with the schedule for local checks.

Other types of checks described in § 229.10(c), such as checks drawn on a Federal Reserve Bank or Federal Home Loan Bank; state and local government checks; and cashier's, certified, and teller's checks for which next-day availability does not apply (e.g., because they were not deposited in an account of a payee of the check), are treated as either local or nonlocal checks, depending on the check processing region in which they are payable.

Time Period Adjustment for Withdrawal by Cash

The Act provides an adjustment to the availability rules for cash withdrawals. During the temporary schedule, the Act provides that funds from local checks that are drawn on or payable at or through a paying bank that is not a participant in the same check clearinghouse association as the depositary bank need not be available for cash withdrawal until 5:00 p.m. on the day specified in the schedule. At 5:00 p.m., $400 of the deposit must be made available for cash withdrawal. This $400 is in addition to the first $100 of a day's deposit, which must be made available for withdrawal at the start of business on the next business day following the banking day of deposit. The remainder of the funds must be available for cash withdrawal at the start of business on the business day following the business day specified in the schedule. This special rule does not, under the temporary schedule, apply to deposits of local checks cleared through a check clearinghouse association or to nonlocal checks.

The Act recognizes that the $400 that must be provided on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit, and explicitly provides that the Act does not supersede the bank's policy in this regard. The Board believes that the rationale for accommodating a bank's ATM withdrawal limit also applies to other cash withdrawal limits established by that bank. Section 229.19(c)(4) of the regulation addresses the relation between a bank's cash withdrawal limit (for over-the-counter cash withdrawals as well as ATM cash withdrawals) and the requirements of this subpart.

The Board believes that the Congress included this special cash withdrawal rule to provide a depositary bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a local check on a Monday, and that check is returned by the paying bank, the depositary bank may receive the returned check on Thursday (the day funds must be made available under the temporary schedule), but may not receive the returned check by the start of business on Thursday. Checks written by the customer that are presented to the depositary bank on Thursday are typically not posted to the customer's account until late Thursday night. Any returned checks that have been received on that day are debited to the customer's account before the checks being presented are posted. Thus, for the purpose of checks written by the customer, the fact that a return is not received until sometime during the day on which funds must be made available does not increase the bank's risk.

Nonetheless, the depositary bank's risk does increase significantly if the customer withdraws the funds in cash, because the withdrawal may occur before the return is received and posted. The intent of the special cash withdrawal rule is to minimize this risk to the depositary bank.

For this rule to minimize the depositary bank's risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer's account or commitment to pay by the bank on the customer's behalf during the day. Thus, the cash withdrawal rule also includes withdrawals by electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as authorization of an on-line point-of-sale debit. The rule would also apply to checks presented over-the-counter for payment on the day of presentment by the depositor or another person. Such checks could not be dishonored for insufficient funds if an amount sufficient to cover the check had become available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank's cut-off hour established under U.C.C. § 4–107. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

(c) *Nonlocal checks.* Under the temporary schedule, funds deposited by nonlocal checks must be made available for withdrawal not later than the seventh business day following the banking day the funds are deposited, except in the case of deposits at nonproprietary ATMs or in accounts of banks located outside the 48 contiguous states. Thus, funds from a nonlocal check deposited on a Monday must be available for withdrawal by Wednesday of the following week. The Act does not establish a special rule for cash withdrawals for nonlocal checks under the temporary schedule. Therefore, subject to § 229.19(c), the full amount of the deposit becomes available for withdrawal at the start of business on the business day specified in the schedule.

Reduction in Schedules

Section 603(d)(1) of the Act (12 U.S.C. 4002(d)(1)) requires the Board to reduce the statutory schedules for any category of checks where most of those checks would be returned in a shorter period of time than provided in the schedules. The conferees indicated that "if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly." H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987).

Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the Act's schedules. Specifically, shorter schedules are provided for checks deposited in banks located in certain Federal Reserve cities and drawn on or payable at or through banks located in certain other Federal Reserve cities, where transportation arrangements allow for faster collection and return. In addition, shorter schedules are provided for checks drawn on or payable at or through certain banks that are served by two Federal Reserve offices, and for certain checks deposited in and drawn on or payable at or through banks in the New York City metropolitan area, where the proximity of the Federal Reserve offices facilitates faster clearing and return of these checks.

Appendix B–1 sets forth the specific reduction of schedules applicable to banks located in each check processing region.

(d) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. Notwithstanding other provisions of the regulation concerning availability requirements, during the temporary schedule, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks. A deposit at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day availability, must be made available for withdrawal not later than Wednesday of the following week. This rule does not apply to deposits made at proprietary ATMs.

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The Act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. The schedules for local checks, nonlocal checks (including nonlocal checks subject to the reduced schedules of Appendix B), and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depositary bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the fourth business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

The Congress did not provide this extension of the schedules to checks drawn on a paying bank located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and deposited in an account at a depositary bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the third rather than the fourth business day following deposit.

Section 229.12 Permanent Availability Schedule

(a) *Effective date.* The permanent schedule supersedes the temporary schedule on September 1, 1990.

(b) *Local checks and certain other checks.* Under the permanent schedule, local checks must be made available for withdrawal not later than the second business day following the banking day on which the checks were deposited.

In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under § 229.10(c); Treasury checks deposited in nonproprietary ATMs; checks drawn on Federal Reserve Banks and Federal Home Loan Banks; checks drawn by a state or unit of general local government; and cashier's, certified, and teller's checks not subject to next-day (or second-day) availability under § 229.10(c) and payable in the same check processing region as the depositary bank, must be made available for withdrawal by the second business day following deposit.

Exceptions are made for withdrawals by cash or similar means and for deposits in banks located outside the 48 contiguous states. Thus, the proceeds of a local check deposited on a Monday generally must be made available for withdrawal on Wednesday.

(c) *Nonlocal checks.* Under the permanent schedule, the time period for availability of nonlocal checks is also reduced. Nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit, i.e., proceeds of a nonlocal check deposited on a Monday must be made available for withdrawal on the following Monday. In addition, a check described in § 229.10(c) that does not meet the conditions for next-day availability (or second-day availability) is treated as a nonlocal check, if the check is drawn on or payable through or at a nonlocal paying bank. Adjustments are made to the schedule for withdrawals by cash or similar means and deposits in banks located outside the 48 contiguous states.

As described in the discussion of § 229.11(c), the Board is required to shorten the schedules for any category of check where most of those checks can be returned to the depositary bank in a shorter period of time than provided in the schedule. Appendix B–2 sets forth the reductions to the schedule for certain nonlocal checks under the permanent schedule.

(d) *Time period adjustment for withdrawal by cash or similar means.* Unlike the temporary schedule, the Act applies the special cash withdrawal rule to all local and nonlocal checks under the permanent schedule. The regulation implementing this

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rule is described in the discussion of the temporary schedule at § 229.11(b). Under the permanent schedule, if the proceeds of local and nonlocal checks become available for withdrawal on the same business day, the $400 withdrawal limitation applies to the aggregate amount of the funds that became available for withdrawal on that day.

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The extension of the availability schedules provided to check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands under the temporary schedule also applies when the permanent schedule becomes effective. Explanation of this provision is provided in the discussion of § 229.11(d).

Section 229.13 Exceptions

While certain safeguard exceptions (such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible) are established in the Act, the Congress gave the Board the discretion to determine whether certain other exceptions should be included in its regulations. Specifically, the Act gives the Board the authority to establish exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions do not apply to checks or other deposits that must be accorded next-day availability (or second-day availability, if the deposit is not made in person to an employee of the depositary bank) under § 229.10.

Many checks will not be returned to the depositary bank by the time funds must be made available for withdrawal under the local and nonlocal schedules. In order to reduce risk to depositary banks, the Board has exercised its statutory authority to adopt these exceptions to the schedules in the regulation to allow the depositary bank to extend the time within which it is required to make funds available. The exceptions provided in this section apply to the schedules for local and nonlocal checks during the temporary and permanent schedules, and, in limited cases, to the next-day availability requirement for certain check deposits.

The Act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations or issue orders to implement this statutory authority if and when circumstances requiring its implementation arise.

(a) *New accounts.*

Definition of New Account

The Act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account is opened. An account is open when the first deposit is made to the account. An account is not considered a new account, however, if each customer on the account has a transaction account relationship with the depositary bank, including a dormant account, that is at least 30 calendar days old on September 1, 1988, or at any time thereafter (i.e., an established account), or has had an established account with the depositary bank or within the 30 calendar days prior to opening the account.

The following are examples of what constitutes, and does not constitute, a new account:

(1) If the customer has an established account with a bank and opens a second account with the bank, the second account is not subject to the new account exception.

(2) If a customer's account were closed and another account opened as a successor to the original account (due, for example, to the theft of checks or a debit card used to access the original account), the successor account is not subject to the new account exception, assuming the previous account relationship is at least 30 days old. Similarly, if a customer closed an established account and opens a separate account within 30 days, the new account is not subject to the new account exception.

(3) If a customer has a savings deposit or other deposit that is not an account (as that term is defined in § 229.2(a)) at the bank, and opens an account, the account may be subject to the new account exception.

(4) If a person that is authorized to sign on a corporate account (but has no other relationship with the bank) opens a personal account, the personal account is subject to the new account exception.

(5) If a customer has an established joint account at a bank, and subsequently opens an individual account with that bank, the individual account is not subject to the new account exception.

(6) If two customers that each have an established individual account with the bank open a joint account, the joint account is not subject to the new account exception. If one of the customers on the account has no current or recent established account relationship with the bank, however, the joint account is subject to the new account exception, even if the other individual on the account has an established account relationship with the bank.

Rules Applicable to New Accounts

During the new account exception period, the schedules for local and nonlocal checks do not apply, and, unlike the other exceptions provided in this section, the regulation provides no maximum time frames within which the proceeds of these deposits must be made available for withdrawal. Maximum times within which funds must be available for withdrawal during the new account period are provided, however, for certain other deposits. Deposits received by cash and electronic payments must be made available for withdrawal in accordance with § 229.10.

Special rules also apply to deposits of Treasury checks; U.S. Postal Service money orders; checks drawn on Federal Reserve Banks and Federal Home Loan Banks; state and local government checks; cashier's, certified, and teller's checks; and, for the purposes of the new account exception only, traveler's checks. The first $5,000 of funds deposited to a new account on any one banking day by these check deposits must be made available for withdrawal in accordance with § 229.10(c). Thus, the first $5,000 of the proceeds of these check deposits must be made available on the next business day following deposit, if the deposit is made in person to an employee of the depositary bank and the other conditions of next-day availability are met. Funds must be made available on the second business day after deposit for deposits that are not made over-the-counter, in accordance with § 229.10(c)(2). (Proceeds of Treasury check deposits must be made available on the next business day after deposit, even if the check is not deposited in person to an employee of the depositary bank.) Funds in excess of the first $5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of § 229.10(c)(1)(vi) and (vii) that "on us" checks and the first $100 of a day's deposit be made available for withdrawal on the next business day do not apply during the new account period.

Representation by Customer

The depositary bank may rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new account exception.

(b) *Large deposits.* Under the large deposit exception, a depositary bank may extend the hold placed on local and nonlocal check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds $5,000. While the first $5,000 of a day's deposit is subject to the availability provided for local or nonlocal checks, the amount in excess of $5,000 may be held for an additional period of time as provided in § 229.13(h). Deposits by cash, electronic payment, or checks that must be granted next-day (or second-day) availability under § 229.10 are not subject to this exception for large deposits.

The following example illustrates the operation of the large deposit exception. If a customer deposits a $10,000 Treasury check and a $9,000 local check on a Monday, $10,100 (the proceeds of the Treasury check and the first $100 of the local check) must be made available for withdrawal on Tuesday. An additional $4,900 of the proceeds of the local check must be available for withdrawal in accordance with the local schedule (i.e. Thursday under the temporary schedule), and the remaining $4,000 may be held for an additional period of time under the large deposit exception.

Where a customer has multiple accounts with a depositary bank, the bank may apply the large deposit exception to the aggregate deposits to all of the customer's accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer's accounts are the same. Thus, a depositary bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large deposit exception. Aggregation of deposits to multiple accounts is permitted because the Board believes that the risk to the depositary bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

(c) *Redeposited checks.* The Act gives the Board the authority to promulgate an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depositary bank.

This exception addresses the increased risk to the depositary bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that this increased risk is present for checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (see § 229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future dated), if the reason for return indicated on the check states that it was returned because it was postdated, and if it is no longer postdated when redeposited.

To determine when funds must be made available for withdrawal, the banking day on which the check is redeposited is considered to be the day of deposit. A depositary bank that made $100 of a check available for withdrawal under § 229.10(c)(1)(vii) can charge back the full amount of the check including the $100 if the check is returned unpaid, but the $100 must be made available again if the check is redeposited.

(d) *Repeated overdrafts.* The Act gives the Board the authority to establish an exception for "deposit accounts which have been overdrawn repeatedly." This paragraph provides two tests to determine what constitutes repeated overdrafts. Under the first test, a customer's accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer's account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depositary bank of dealing with the repeated overdrafter. Under this test, a customer incurs repeated overdrafts if, on two banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of $5,000 or more, or would have become negative in an amount of $5,000 or more if checks or other charges to the account had been paid.

The exception relates not only to overdrafts caused by checks drawn on the account, but also overdrafts caused by other debit charges (e.g. ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or returned unpaid. An overdraft resulting from an error on the part of the depositary bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under §§ 229.12(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrafter. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

In determining whether an account is subject to the repeated overdraft exception, a depositary bank may consider overdraft activity that occurred prior to the effective date of the regulation.

(e) *Reasonable cause to doubt collectibility.* In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to a deposit of a local or nonlocal check, a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank, or a cashier's, certified, or teller's check. If the reasonable cause exception is invoked, the bank must include in the notice to its customer, required by § 229.13(g), the reason that the bank believes that the check is uncollectible.

The following are several examples of circumstances under which the reasonable cause exception may be invoked:

If a bank received a notice from the paying bank that a check was not paid and is being returned to the depositary bank, the depositary bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

The depositary bank may have received information from the paying bank, prior to the presentment of the check, that gives the bank reasonable cause to believe that the check is uncollectible. For example, the paying bank may have indicated that payment has been stopped on the check, or that the drawer's account does not currently have sufficient funds to honor the check. Such information may provide sufficient basis to invoke this exception. In these cases, the depositary bank could invoke the exception and disclose as the reason the exception is being invoked the fact that information from the paying bank indicates that the check may not be paid.

The fact that a check is deposited more than six months after the date on the check (i.e. a stale check) is a reasonable indication that the check may be uncollectible, because under U.C.C. § 4-404 a bank has no duty to its customer to pay a check that is more than six months old. Similarly, if a check being deposited is postdated (future dated), the bank may have a reasonable cause to believe the check is uncollectible, because the check is not properly payable under U.C.C. § 4-401. The bank, in its notice, should specify that the check is stale date or postdated.

There are reasons that may cause a bank to believe that a check is uncollectible that are based on confidential information. For example, a bank could conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency or pending insolvency of the drawer of the check or the drawee bank and that the checks will not be paid may also justify invoking this exception. In these cases, the bank may indicate, as the reason it is invoking the exception, that the bank has confidential information that indicates that the check might not be paid.

The Board has included a reasonable cause exception notice as a model form in Appendix C (C-13A). The model notice includes a number of reasons for which this exception may be invoked. The Board does not intend to provide a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear on the model notice may be used as the basis for extending a hold, if the reason satisfies the conditions for invoking this exception. A depositary bank may invoke the reasonable cause exception based on a combination of factors that give rise to a reasonable cause to doubt the collectibility of a check. In these cases, the bank should disclose the primary reasons for which the exception was invoked in accordance with paragraph (g) of this section.

The regulation provides that the determination that a check is uncollectible shall not be based on a class of checks or persons. For example, a depositary bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area and the depositary bank knows it will not have the opportunity to learn of nonpayment of that check before funds must be made available under the availability schedules. Similarly, a depositary bank cannot invoke the reasonable cause exception based on the race or national origin of the depositor.

If a depositary bank invokes this exception with respect to a particular check and does not provide a written notice to the depositor at the time of deposit, the depositary bank may not assess any overdraft fee (such as an NSF charge) or charge interest for use of overdraft credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked. A bank may assess an overdraft fee under these circumstances, however, if it provides notice to the customer, in the notice of exception required by paragraph (g) of this section, that the fee may be subject to refund, and refunds the charges upon the request of the customer. The notice must state that the

customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid, and indicate where such requests for a refund of overdraft fees should be directed.

(f) *Emergency conditions.* Certain emergency conditions may arise that delay the collection or return of checks, or delay the processing and updating of customer accounts. In the circumstances specified in this paragraph, the depositary bank may extend the holds that are placed on deposits of local and nonlocal checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. For example, if a bank learns that a check has been delayed in the process of collection due to severe weather conditions or other causes beyond its control, an emergency condition covered by this section may exist and the bank may place a hold on the check to reflect the delay. In cases where the emergency conditions exception does not apply, as in the case of next-day checks under § 229.10(c), the depositary bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

(g) *Notice of exception.* If a depositary bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10, 229.11, and 229.12, it must provide a notice to its customer stating the customer's account number, the date of deposit, the reason the exception was invoked, and the day funds will be available for withdrawal.

The requirement that the notice state the day the funds shall be made available may be satisfied if the notice identifies the date the deposit is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual check in the deposit will be available for withdrawal; instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the funds will be available for deposit. Appendix C (C–13) contains a model form of this exception notice.

For deposits made in person to an employee of the depositary bank, the notice generally must be given to the person making the deposit, i.e. the "depositor", at the time of deposit. The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, or through the mail, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made.

Notice to the customer also may be provided at a later time, if the facts upon which the determination to invoke the exception do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must mail the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

If the depositary bank extends the hold placed on a deposit due to an emergency condition, the notice requirement generally applies; however, the regulation provides that the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depositary bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

A depositary bank must retain a record of each notice of a reasonable cause exception for a period of two years, or such longer time as provided in the record retention requirements of § 229.21. This record must contain a brief description of the facts on which the depositary bank based its judgment that there was reasonable cause to doubt the collectibility of a check. In many cases, such as where the exception was invoked on the basis of a notice of nonpayment received, the record requirement may be met by retaining a copy of the notice sent to the customer. In other cases, such as where the exception was invoked on the basis of confidential information, a further description to the facts, such as insolvency of drawer, should be included in the record.

(h) *Availability of deposits subject to exceptions.* If a depositary bank invokes any exception other than the new account exception, the bank may extend the time within which funds must be made available under the schedule by a reasonable period of time. This provision establishes that an extension of up to four business days is a reasonable period. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depositary bank to establish that a longer period is reasonable.

For example, assume a bank extended the hold on a check deposit by four business days based on its reasonable cause to believe that the check is uncollectible. If, on the day before the extended hold is scheduled to expire, the bank receives a notification from the paying bank that the check is being returned unpaid, the bank may determine that a longer hold is warranted, if it decides not to charge back the customer's account based on the notification. If the bank decides to extend the hold, the bank must send a second notice, in accordance with paragraph (g) of this section, indicating the new date that the funds will be available for withdrawal.

With respect to certain checks subject to the next-day (or second-day) availability requirement, the depositary bank may extend the time funds must be made available for withdrawal under the reasonable cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day availability requirement. Thus, for a check drawn on a Federal Reserve Bank or Federal Home Loan Bank, or a cashier's, certified, or teller's check, the additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank.

Four business days, in addition to the time period provided in the schedule, should provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned.

In the case of the application of the emergency conditions exception, the depositary bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under §§ 229.11 or 229.12, whichever is later.

This provision does not apply to holds imposed under the new account exception. Under that exception, the maximum time period within which funds must be made available for withdrawal is specified for deposits that generally must be accorded next-day availability under § 229.10. This subpart does not specify the maximum time period within which the proceeds of local and nonlocal checks must be made available for withdrawal during the new account period.

Section 229.14 Payment of Interest

(a) *In general.* This section requires that a depositary bank begin accruing interest on interest-bearing accounts not later than the day on which the depositary bank receives credit for the funds deposited.[9] A depositary bank generally receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit of a check that is drawn on the depositary bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit is generally received on the day the bank that operates the ATM credits the depositary bank for the amount of the deposit.

[9] This section implements section 606 of the Act (12 U.S.C. 4008). The Act keys the requirement to pay interest to the time the depositary bank receives "provisional credit" for a check. "Provisional credit" is a term used in the U.C.C. that is derived from the Code's concept of "provisional settlement." (See U.C.C. §§ 4–211 and 4–213.) Provisional credit is credit that is subject to charge-back if the check is returned unpaid; once the check is finally paid, the right to charge back expires and the provisional credit becomes "final."

Under Subpart C, a paying bank no longer has an automatic right to charge back credits given in settlement of a check, and the concept of provisional settlement is no longer useful and has been eliminated by the regulation. Accordingly, this section uses the term "credit" rather than "provisional credit," and this section applies regardless of whether a credit would be provisional or final under the U.C.C. "Credit" does not include a bookkeeping entry (sometimes referred to as "deferred credit") that does not represent funds actually available for the bank's use.

Because "account" includes only transaction accounts, other interest-bearing accounts of the depositary bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement; however, a bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The Board intends the term "interest" to refer to payments to or for the account of any customer as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or a bank's forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d).) Thus, earnings credits often applied to corporate accounts are not interest payments for the purposes of this section.

It may be difficult for a depositary bank to track which day the depositary bank receives credit for specific checks in order to accrue interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. Thus, for the purpose of the interest accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent to determine when the depositary bank receives credit. If availability is delayed beyond that specified in the availability schedule, a bank may charge back interest erroneously accrued or paid on the basis of that schedule.

This paragraph also permits a depositary bank to accrue interest on checks deposited to all of its interest-bearing accounts based on when the bank receives credit on all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited in the bank by check as of the business day of deposit (e.g., "on us" checks), 70 percent as of the business day following deposit, and 10 percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue on check deposits to all interest-bearing accounts, regardless of when the bank received credit on the funds deposited in any particular account. Thus, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without the need to track the type of check deposited to each account.

This section is not intended to limit a policy of a depositary bank that provides that interest only accrues on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period, provided that the balance is determined based on the date that the depositary bank receives credit for the funds. This section is also not intended to limit any policy providing that interest accrues sooner than required by this paragraph.

(b) *Special rule for credit unions.* This provision implements a requirement in section 606(b), and provides an exemption from the payment of interest requirements for credit unions that do not begin to accrue interest or dividends on their customer accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from the payment of interest requirements, as long as they provide notice of their interest accrual policies in accordance with § 229.16(d). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first of that month, and on all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers.

The Act limits this exemption to credit unions; other types of banks must comply with the payment of interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

(c) *Exception for checks returned unpaid.* This provision is based on section 606(c) of the Act (12 U.S.C. 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that has been returned unpaid, regardless of the reason for return.

Section 229.15 General Disclosure Requirements

(a) *Form of disclosures.* This paragraph sets forth the general requirements for the disclosures required under Subpart B. All of the disclosures must be given in a clear and conspicuous manner, must be in writing, and, in most cases, must be in a form the customer may keep. Disclosures posted at locations where employees accept consumer deposits, at ATMs, and on preprinted deposit slips need not be in a form that the customer may keep. Appendix C of the regulation contains model forms, clauses, and notices to assist banks in preparing disclosures.

Disclosures concerning availability must be grouped together and may not contain any information that is not related to the disclosures required by this subpart. Therefore, banks may not intersperse the required disclosures with other account disclosures, and may not include other account information that is not related to their availability policy within the text of the required disclosures. Banks may, however, include information that is related to their availability policies. For example, a bank may inform its customers that, even when the bank has already made funds available for withdrawal, the customer is responsible for any problem with the deposit, such as the return of a deposited check.

The regulation does not require that the disclosures be segregated from other account terms and conditions. For example, banks may include the disclosure of their specific availability policy in a booklet or pamphlet that sets out all of the terms and conditions of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for example, by use of a separate heading for the disclosures, such as "When Deposits are Available for Withdrawal."

(b) *Uniform reference to day of availability.* This paragraph requires banks to disclose in a uniform manner when deposited funds will be available for withdrawal. Banks must disclose when deposited funds are available for withdrawal by stating the business day on which the customer may begin to withdraw funds. The business day funds will be available must be disclosed as "the _____ business day after" the day of deposit, or substantially similar language. The business day of availability is determined by counting the number of business days starting with the business day following the banking day on which the deposit is received, as determined under § 229.19(a), and ending with the business day on which the customer may begin to withdraw funds. For example, a bank that imposes delays of four intervening business days for nonlocal checks must describe those checks as being available on "the fifth business day after" the day of the deposit.

(c) *Multiple accounts and multiple account holders.* This paragraph clarifies that banks need not provide multiple disclosures under the regulation. A single disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly held account, satisfies the disclosure requirements of the regulation.

(d) *Dormant or inactive accounts.* This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inactive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

Section 229.16 Specific Availability Policy Disclosure

(a) *General.* This section describes the information that must be disclosed by banks to comply with §§ 229.17 and 229.16(d), which require that banks furnish notices of their specific policy regarding availability of deposited funds. The disclosure provided by a bank must reflect the availability policy followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay.

(b) *Content of specific policy disclosure.* This paragraph sets forth the items that must be included, as applicable, in a bank's specific availability policy disclosure. The information that must be disclosed by a particular bank will vary considerably depending upon the bank's availability policy. For example, a bank that makes deposited funds available for withdrawal on the business day following the day of deposit need simply disclose that deposited funds will be available for withdrawal on the first business day after the day of deposit, the bank's business days, and when deposits are considered received.

On the other hand, a bank that has a policy of routinely delaying on a blanket basis the

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time when deposited funds are available for withdrawal would have a more detailed disclosure. Such blanket hold policies might be for the maximum time allowed under the federal law or might be for shorter periods. These banks must disclose the types of deposits that will be subject to delays, how the customer can determine the type of deposit being made, and the day that funds from each type of deposit will be available for withdrawal.

Some banks may have a combination of next-day availability and blanket delays. For example, a bank may provide next-day availability for all deposits except for one or two categories, such as deposits at nonproprietary ATMs and nonlocal personal checks over a specified dollar amount. The bank would describe the categories that are subject to delays in availability and tell the customer when each category would be available for withdrawal, and state that other deposits will be available for withdrawal on the first business day after the day of deposit. Similarly, a bank that provides availability on the second business day for most of its deposits would need to identify the categories of deposits which, under the regulation, are subject to next-day availability and state that all other deposits will be available on the second business day.

Because many banks' availability policies may be complex, banks must give a brief summary of its policy at the beginning of the disclosure. In addition, the bank must describe any circumstances when actual availability may be longer than the schedules disclosed. Such circumstances would arise, for example, when the bank invokes one of the exceptions set forth in § 229.13 of the regulation, or when the bank delays or extends the time when deposited funds are available for withdrawal up to the time periods allowed by the regulation on a case-by-case basis. Also, a bank that must make certain checks available faster under Appendix B (reduction of schedules for certain nonlocal checks) must state that some check deposits will be available for withdrawal sooner because of special rules and that a list of the pertinent routing numbers is available upon request.

The business day cut-off time used by the bank must be disclosed and if some locations have different cut-off times the bank must note this in the disclosure and state the earliest time that might apply. A bank need not list all of the different cut-off times that might apply.

A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.11(d) must explain this in the initial disclosure. In addition, the bank must provide a list (on or with the initial disclosure) of either the bank's proprietary ATMs or those ATMs that are nonproprietary at which customers may make deposits. As an alternative to providing such a list, the bank may label all of its proprietary ATMs with the bank's name and state in the initial disclosure that this has been done. Similarly, a bank taking advantage of the cash withdrawal limitations of §§ 229.11(b)(2) and 229.12(d), or the provision in § 229.19(e) allowing holds to be placed on other deposits when a deposit is made or a check is cashed, must explain this in the initial disclosure.

(c) *Longer delays on a case-by-case basis.*—(1) *Notice in specific policy disclosure.* Banks that make deposited funds available for withdrawal sooner than required by the regulation—for example, providing their customers with immediate or next-day availability for deposited funds—and delay the time when funds are available for withdrawal only from time to time determined on a case-by-case basis must provide notice of this in their specific availability policy disclosure. This paragraph outlines the requirements for that notice.

In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must: state that from time to time funds may be available for withdrawal later than the time periods in their specific policy disclosure; disclose the latest time that a customer may have to wait for deposited funds to be available for withdrawal when a case-by-case hold is placed; state that customers will be notified when availability of a deposit is delayed on a case-by-case basis; and advise customers to ask if they need to be sure of the availability of a particular deposit.

A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by §§ 229.11 or 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under §§ 229.11 or 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements.

(2) *Notice at time of case-by-case delay.* In addition to including the disclosures required by paragraph (c)(1) of this section in their specific availability policy disclosure, banks that delay or extend the time period when funds are available for withdrawal on a case-by-case basis must give customers a notice when availability of funds from a particular deposit will be delayed or extended beyond the time when deposited funds are generally available for withdrawal. The notice must state that a delay is being imposed and indicate when the funds will be available. In addition, the notice must include the account number, the date and amount of the deposit, and the amount of the deposit being delayed.

If notice of the delay was not given at the time the deposit was made and the bank assesses overdraft or returned check fees on accounts when a case-by-case hold has been placed, the case-by-case hold notice provided to the customer must include a notice concerning overdraft or returned check fees. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that result from the deposited funds not being available if the check that was deposited was in fact paid by the payor bank, and explain how to request a refund of any fees. (See § 229.18(c)(3).)

The requirement that the case-by-case hold notice state the day that funds will be made available for withdrawal may be met by stating the date or the number of business days after deposit that the funds will be made available. This requirement is satisfied if the notice provides information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual item in the deposit will be available for withdrawal. Instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the held funds will be available for withdrawal.

For deposits made in person to an employee of the depositary bank, the notice generally must be given at the time of the deposit. The notice at the time of the deposit must be given to the person making the deposit, that is, the "depositor." The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, through the mail, or by armored car, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also may be provided not later than the close of the business day following the banking day on which the deposit was made if the decision to delay availability is made after the time of the deposit.

(3) *Overdraft and returned check fees.* If a depositary bank delays or extends the time when funds from a deposited check are available for withdrawal on a case-by-case basis and does not provide a written notice to its depositor at the time of deposit, the depositary bank may not assess any overdraft or returned check fees (such as an insufficient funds charge) or charge interest for use of an overdraft line of credit, if the deposited check is paid by the paying bank and these fees would not have occurred had the additional case-by-case delay not been imposed. A bank may assess an overdraft or returned check fee under these circumstances, however, if it provides notice to the customer in the notice required by paragraph (c)(2) of this section that the fee may be subject to refund, and refunds the fees upon the request of the customer when required to do so. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that are assessed if the deposited check is paid, and indicate where such requests for a refund of overdraft fees should be directed.

(d) *Credit union notice of interest payment policy.* This paragraph sets forth the special disclosure requirement for credit unions that delay accrual of interest or dividends for all cash and check deposits beyond the date of receiving provisional credit for checks being deposited. (The interest payment requirement is set forth in § 229.14(a).) Such credit unions are required to describe their policy with respect to accrual of interest or dividends on deposits in their specific availability policy disclosure.

Section 229.17 Initial Disclosures

(a) *New accounts.* This paragraph requires banks to provide a notice of their availability policy to all potential customers prior to opening an account. The requirement of a notice prior to opening an account requires banks to provide disclosures prior to accepting a deposit to open an account. Disclosures must be given at the time the bank accepts an initial deposit regardless of whether the bank has opened the account yet for the customer. If a bank, however, receives a written request by mail from a person asking that an account be opened and the request includes an initial deposit, the bank may open the account with the deposit, provided the bank mails the required disclosures to the customer not later than the business day following the banking day on which the bank receives the deposit. Similarly, if a bank receives a telephone request from a customer asking that an account be opened with a transfer from a separate account of the customer's at the bank, the disclosure may be mailed not later than the business day following the banking day of the request.

(b) *Existing accounts.* This section requires banks to send a notice of their specific policy with respect to the availability of deposited funds to all existing account holders in the first scheduled mailing to such customers occurring after September 1, 1988. The notice must be sent not later than October 31, 1988. Thus, banks must include a notice in the first statement mailed to customers after September 1, 1988, unless, prior to the mailing of this statement, the bank has provided a notice to its customers of its availability policy that meets the requirements of § 229.16. A bank that has provided availability policy disclosures to its customers, either under a state law or as a matter of bank practices or policy, need not provide disclosures under this section if the disclosures that were previously given comply with the requirements of this regulation. A bank may disclose both its present policy and its policy for September 1, 1990, and beyond in a single notice.

The notice of specific policy may be sent alone in a separate mailing, instead of with an account statement, provided the mailing is made prior to the first statement mailing on the account after September 1, 1988. Banks may not furnish the required notice to customers by including the notice with promotional material, such as a solicitation for health or hospitalization insurance, unless that material is included with the account statement. A bank is permitted to provide the notice by furnishing the customer with a booklet or pamphlet that describes the terms and conditions of the bank's accounts generally. The bank, however, must then direct the customer's attention to the disclosures required by this section by, for example, use of a special insert or a letter.

If a customer has requested that the bank not mail any information regarding the account, the bank need not make a special mailing that includes the disclosure of the bank's specific availability policy. The disclosure should be made available to the customer in accordance with the customer's instructions to the bank for statements and other account information.

Section 229.18 Additional Disclosure Requirements

(a) *Deposit slips.* This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit slip notice need only state, somewhere on the front of the deposit slip, that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by the bank in response to a customer's order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—or on those special deposit slips provided to the customer under § 229.10(c). A bank is not responsible for ensuring that the notice appear on deposit slips that the customer does not obtain from or through the bank.

This paragraph applies to preprinted deposit slips furnished to customers on or after September 1, 1988. A bank need not mail deposit slips to customers to replace the customers' existing supply, and customers on or may continue to use any slips they were sent prior to September 1, 1988. In addition, a bank may mail or deliver to its customers after September 1, 1988, preprinted deposit slips requested by the customers prior to September 1, 1988, even though the deposit slips do not include the required notice.

(b) *Locations where employees accept consumer deposits.* This paragraph describes the statutory requirement that a bank post in each location where its employees accept consumer deposits a notice of its availability policy pertaining to consumer accounts. The notice that is required must specifically state the availability periods for the various deposits that may be made to consumer accounts. The notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted.

(c) *Automated teller machines.* This paragraph sets forth the required notices for ATMs. Paragraph (c)(1) provides that the depositary bank is responsible for posting a notice on all ATMs at which deposits can be made to accounts at the depositary bank. The depositary bank may arrange for a third party, such as the owner or operator of the ATM, to post the notice and indemnify the depositary bank from liability if the depositary bank is liable under § 229.21 for the owner or operator failing to provide the required notice.

The notice may be posted on a sign, shown on the screen, or included on deposit envelopes provided at the ATM. This disclosure must be given before the customer has made the deposit. Therefore, a notice provided on the customer's deposit receipt or appearing on the ATM's screen after the customer has made the deposit would not satisfy this requirement.

Paragraph (c)(2) requires a depositary bank that operates an off-premises ATM from which deposits are removed not more than two times a week to make a disclosure of this fact on the off-premises ATM. The notice must disclose to the customer the days on which deposits made at the ATM will be considered received.

(d) *Upon request.* This paragraph requires banks to provide written notice of their specific availability policy to any person upon that person's oral or written request. The notice must be sent within a reasonable period of time following receipt of the request.

(e) *Changes in policy.* This paragraph requires banks to send notices to their customers when the banks change their availability policies with regard to consumer accounts. A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability disclosure, the bank must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure.

Generally, a bank must send a notice at least 30 calendar days before implementing any change in its availability policy. If the change results in faster availability of deposits—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—the bank need not send advance notice. The bank must, however, send notice of the change no later than 30 calendar days after the change is implemented. A bank is not required to give a notice when there is a change in Appendix B (reduction of schedules for certain nonlocal checks).

A bank that has provided its customers with a list of ATMs under § 229.16(b)(5) shall provide its customers with an updated list of ATMs once a year if there are changes in the list of ATMs previously disclosed to the customers.

Section 229.19 Miscellaneous

(a) *When funds are considered deposited.* The time funds must be made available for withdrawal under this subpart is determined by the day the deposit is made. This paragraph provides rules to determine the day funds are considered deposited in various circumstances. Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds mailed to the depositary bank are considered deposited on the banking day they are received by the depositary bank. The funds are received by the depositary bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than the check processing area.

In addition to deposits at staffed facilities, at ATMs, and by mail, funds may be deposited at a facility such as a night depository or a lock box. A night depository is a receptacle for receipt of deposits, typically used by corporate depositors when the branch is closed. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to

the depositary bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening, and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. The depositary bank generally assumes the responsibility for collecting the mail from the lock box, processing the checks, and crediting the corporation for the amount of the deposit. Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depositary bank for processing.

A special provision is made for certain off-premise ATMs that are not serviced daily. Funds deposited at such an ATM are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This provision is intended to address the practices of some banks of servicing certain remote ATMs infrequently. If a depositary bank applies this provision with respect to an ATM, a notice must be posted at the ATM informing depositors that funds deposited at the ATM may not be considered received on the day of deposit, in accordance with § 229.18.

This paragraph also provides that a deposit received on a day that the depositary bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, for purposes of the availability schedules of this subpart, a bank may establish a cut-off hour of 2:00 p.m. or later for receipt of deposits at its head office or branch offices. For receipt of deposits at ATMs or off-premises facilities, such as night depositories or lock boxes, the depositary bank may establish a cut-off hour of 12:00 noon or later. This earlier cut-off for ATM or off-premises deposits is intended to provide greater flexibility in the servicing of ATMs and other off-premises facilities.

Different cut-off hours may be established for different types of deposits. For example, a bank may establish a 2:00 p.m. cut-off for the receipt of check deposits, but a later cut-off for the receipt of wire transfers. Different cut-off hours may also be established for deposits received at different locations. For example, a different cut-off may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12:00 noon cut-off for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits for purposes of this subpart can be established earlier than 2:00 p.m. Nevertheless, a bank is not required to remain open until 2:00 p.m.

(b) *Availability at start of business day.* If funds must be made available for withdrawal on a business day, the funds must be available for withdrawal by the later of 9:00 a.m. or the time the depositary bank's teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in §§ 229.11(b)(2) and 229.12(d). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., funds must be available for customer withdrawal beginning at 10:00 a.m. If the bank has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, this paragraph sets 9:00 a.m. as the start of the day with respect to ATM withdrawals. The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

The start of business is determined by the local time of the branch or other location of the depositary bank at which the account is maintained. For example, if funds in a customer's account at a west coast bank are first made available for withdrawal at the start of business on a given day, and the customer attempts to withdraw the funds at an east coast ATM, the depositary bank is not required to make the funds available until 9:00 a.m. west coast time (12:00 noon east coast time).

(c) *Effect on policies of depositary bank.* This subpart establishes the maximum hold that may be placed on customer deposits. A depositary bank may provide availability to its customers in a shorter time than prescribed in this subpart. A depositary bank may also adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, a bank may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

This regulation does not affect a depositary bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer.

Nothing in the regulation requires a depositary bank to have facilities open for customers to make withdrawals at specified times or on specified days. For example, even though the special cash withdrawal rule set forth in §§ 229.11(b)(2) and 229.12(d) states that a bank must make up to $400 available for cash withdrawals no later than 5:00 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5:00 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5:00 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depositary bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

The special cash withdrawal rule in the Act recognizes that the $400 that must be made available for cash withdrawal by 5:00 p.m. on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit and explicitly provides that the Act does not supersede a bank's policy in this regard. As a result, if a bank has a policy of limiting cash withdrawals from automated teller machines to $250 per day, the regulation would not require that the bank dispense $400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

Even though the Act clearly provides that the bank's ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the Act does not specifically permit banks to limit cash withdrawals at ATMs on subsequent days when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the Act's provision that a bank's ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days. Nothing in the regulation prohibits a depositary bank from establishing ATM cash withdrawal limits that vary among customers of the bank, as long as the limit is not dependent on the length of time funds have been in the customer's account, provided that the permissible hold has expired.

A number of small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over-the-counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

Nothing in the regulation is intended to prohibit a bank from limiting the amount of cash that may be withdrawn at a staffed teller station, if the bank has a policy limiting the amount of cash that may be withdrawn, and that policy is applied equally to all customers of the bank, is based on security, operating, or bonding requirements, and is not dependent on the length of time the funds have been in the customer's account, as long as the permissible hold has expired. The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

(d) *Use of calculated availability.* A depositary bank may provide availability to its nonconsumer accounts on a calculated availability basis. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability terms that result from the sample are equivalent to or more prompt than the requirements of this subpart.

(e) *Holds on other funds.* Section 607(d) of the Act (12 U.S.C. 4006(d)) provides that once funds are available for withdrawal under the Act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This provision of the Act is designed to prevent evasion of the Act's availability requirements.

This paragraph clarifies that, if a customer deposits a check, the bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the check deposited, and the total amount of funds held are made available for withdrawal within the times required in this subpart. For example, if a customer cashes a check (other than an "on us" check) over-the-counter, the depositary bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the check cashed, as long as the hold does not exceed the hold that could be placed on the check cashed over-the-counter, if the check had been deposited in the account.

(f) *Employee training and compliance.* The Act requires banks to take such actions as may be necessary to inform fully each employee that performs duties subject to the Act of the requirements of the Act, and to establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

This paragraph requires a bank to establish procedures to ensure compliance with these requirements and provide these procedures to the employees responsible for carrying them out.

(g) *Effect of merger transaction.* After banks merge, there is often a period of adjustment before their operations are consolidated. This paragraph accommodates this adjustment period by allowing merged banks to be treated as separate banks for purposes of this subpart for a period of up to one year after consummation of the merger transaction, except that a customer of any bank that is a party to the transaction that has an established account with that bank may not be treated as a new account holder for any other party to the transaction for purposes of the new account exception of § 229.13(a), and a deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with § 229.19(a).

This rule affects the status of the combined entity in a number of areas. For example:

1. When the resulting bank is a "participant" in a check clearinghouse association (§ 229.2 (y) and (l) and § 229.11(b)(2)).

2. When an ATM is a "proprietary ATM" (§ 229.2(aa), § 229.11(d), and § 229.12(b)).

3. When a check is drawn on a branch of the depositary bank (§ 229.10(c)(1)(vi)). "Merger transaction" is defined in § 229.2(t).

Section 229.20 Relation to State Law

(a) *In general.* A number of states have enacted laws that govern when banks in these states must make funds available to their customers. The Act provides that any state law in effect on September 1, 1988, that provides that funds be made available in a shorter period of time than provided in this regulation, will supersede the time periods in the Act and the regulation. The Conference Report on the Act clarifies this provision by stating that any state law enacted on or before September 1, 1988, may supersede federal law to the extent that the law relates to the time funds must be made available for withdrawal. H.R. Rep. No. 261, 100th Cong. 1st Sess. at 182 (1987).

Thus, if a state wishes to adopt a law governing funds availability, it must do so, effective on or before September 1, 1988. Laws adopted after that date will not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that has a law governing funds availability in effect before September 1, 1988, amends its law after that date, the amendment will not supersede federal law, but an amendment deleting a state requirement will be effective.

If a state provides for a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Thus, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

The Act also provides that any state law that provides for availability in a shorter period of time than required by federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

(b) *Preemption of inconsistent law.* This paragraph reflects the statutory provision that other provisions of state law that are inconsistent with federal law are preempted. Preemption does not require a determination by the Board to be effective.

(c) *Standards for preemption.* This section describes the standards the Board will use in making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depositary bank to make funds available to a customer in the same or a longer period of time than the maximum period permitted by the Act and this regulation. For example, a state law that permits a hold of four days or longer for local checks permits a hold that is longer than the maximum under the temporary schedule of the Act and this regulation, and therefore is inconsistent and superseded.

Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the Act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for the first $100 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of $100 or less that is deposited. Under the Act, if either one $150 check or three $50 checks are deposited on a given day, $100 must be made available for withdrawal on the next business day, and $50 must be made available in accordance with the local or nonlocal schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability.

In this example, because the state law would, in some of these situations, permit a hold longer than the maximum permitted by the Act, the provision of state law in this example is inconsistent and superseded in its entirety. The Board recognizes that this standard will eliminate the faster availability that would be obtained for some compositions of deposits if the provision of state law were superseded only partially. Nonetheless, superseding these state law provisions in their entirety avoids the necessity of forming very complex hybrids of state and federal law that could not have been contemplated by the state or federal legislatures.

Similarly, a provision of state law could establish a different method of calculating the exception for large-dollar deposits than the large-deposit exception in this subpart (see § 229.13(b)). Thus, a state law could exempt each check of more than $5,000 from its availability rules, rather than the Act's exemption of aggregate deposits in excess of $5,000. Such a provision of state law would allow for longer availability for the portion of a check under $5,000, and therefore the provision of state law would be superseded.

State laws that provide maximum availability periods for categories of deposits or institutions that are not covered by the Act would not be superseded. Thus, state funds availability laws that apply to funds in time and savings deposits or to deposits in money market mutual funds are not affected by the Act or this regulation.

Generally, state rules governing the disclosure of availability policies and actions applicable to accounts are also superseded. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than "accounts," such as savings or time deposits, are not inconsistent with the Act or this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

(d) *Preemption determinations.* The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of Subparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state

U.C.C. provisions to the requirements of Subpart C.

(e) *Procedures for preemption determinations.* This provision sets forth the information that must be included in a request by an interested party for a preemption determination by the Board.

Section 229.21 Civil Liability

(a) *Civil liability.* This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to provisions of state law that supersede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See Commentary to § 229.20.)

(b) *Class action awards.* This paragraph sets forth the provision in the Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

(c) *Bona fide errors.* A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give next-day availability on a check drawn on the Treasury because the bank's computer system malfunctions in a way that prevents the bank from updating its customer's account.

(d) *Jurisdiction.* The Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

(e) *Reliance on Board rulings.* This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on this Commentary, which is issued as an official Board interpretation, as well as on the regulation itself.

(f) *Exclusions.* This provision clarifies that liability under this § 229.21 does not apply to violations of the requirements of Subpart C of this regulation, or to actions for wrongful dishonor of a check by a paying bank's customer.

(g) *Record retention.* Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record retention period is extended in the case of civil actions and enforcement proceedings. Generally, a bank is not required to retain records showing that it has actually given disclosures or notices required by this subpart to each customer, but it must retain evidence demonstrating that its procedures reasonably ensure the customers' receipt of the required disclosures and notices. A bank must, however, retain a copy of each notice provided pursuant to its use of the reasonable cause exception under § 229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

Section 229.30 Paying Bank's Responsibility for Return of Checks

(a) *Return of checks.* This section requires a paying bank that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the "two-day/four-day" test, and the "forward collection" test.

Under the "two-day/four-day" test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment in the case of a local check, or four business days after presentment in the case of a nonlocal check, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and drawn on the depositary bank to be collected. Therefore, the Board has included a "forward collection" test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depositary bank within the two day or four day period.

(1) *Two-day/four-day test.* Under the first test, a paying bank must return the check so that the check would normally be received by the depositary bank within specified times, depending on whether the paying bank is a local paying bank or a nonlocal paying bank with respect to the depositary bank. Whether a paying bank is local or nonlocal for a particular check is determined using the definition of local paying bank in § 229.2(s).

For a local paying bank, a check is returned expeditiously if it is returned to the depositary bank by 4:00 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a local paying bank must be returned to the depositary bank by 4:00 p.m. on Wednesday. For a nonlocal paying bank, the deadline to complete return is 4:00 p.m. (local time of the depositary bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to a nonlocal paying bank on Monday must be returned to the depositary bank by 4:00 p.m. on Friday.

This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.

Often, returned checks will be delivered to the depositary bank together with forward collection checks. Where the last day on which a check could be delivered to a depositary bank under this two-day/four-day test is not a banking day for the depositary bank, a returning bank might not schedule delivery of forward collection checks to the depositary bank on that day. Further, the depositary bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depositary bank, the check may be delivered to the depositary bank before the close of the depositary bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depositary bank.

The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by § 229.10(c), must be made available for withdrawal under the temporary schedules in § 229.11.

Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see § 229.31) as their agents to return checks to depositary banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

(2) *Forward collection test.* Under the second, "forward collection" test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depositary bank.

Generally, the paying bank would satisfy the "forward collection" test if it uses a transportation method and collection path for return comparable to those used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under § 229.31(a). This test allows many paying banks a simple means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.

The paying bank's normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.

Under the "forward collection" test, a paying bank must handle, route, and transport a returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward collection check (1) of similar amount, (2) drawn on the depositary bank, and (3) received for deposit by a branch of the paying bank or a similarly situated bank by noon on the banking day following the banking day of presentment of the returned check.

This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check handling activity as the paying bank. (See § 229.2(ee).) A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.

Under the forward collection test, banks that use means of handling returned checks that are less efficient than the means used by similarly situated banks must improve their procedures. On the other hand, a bank with highly efficient means of collecting checks drawn on a particular bank, such as a direct presentment of checks to a bank in a remote community, is not required to use that means for returned checks, i.e. direct return, if similarly situated banks do not present checks directly to that depositary bank.

Examples

1. If a check is presented to a paying bank on Monday and the depositary bank and the paying bank are participants in the same clearinghouse, the paying bank should arrange to have the returned check received by the depositary bank by Wednesday. This would be the same day the paying bank would deliver a forward collection check to the depositary bank if the paying bank received the deposit by noon on Tuesday.

2. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depositary bank by sending them to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank, provided that the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)

The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's appropriate cut-off hour. The appropriate cut-off hour is the cut-off hour for returned checks that corresponds to the cut-off hour for forward collection checks drawn on the depositary bank that would normally be used by the paying bank or a similarly situated bank. A returned check cut-off hour corresponds to a forward collection cut-off hour if it provides for the same or faster availability for checks destined for the same depositary banks.

In this example, delivery to the correspondent or a Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank's duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day as a qualified returned check. Where the paying bank delivers forward collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward collection test.

3. If a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier to meet the forward collection test.

4. If a paying bank normally sends its forward collection checks directly to the depositary bank, which is located in another community, but similarly situated banks send forward collection checks drawn on the depositary bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the depositary bank, but could send them to a correspondent or a Federal Reserve Bank.

The dollar amount of the returned check has a bearing on how it must be returned. If the paying bank and similarly situated banks present large-dollar checks drawn on the depositary bank directly to the depositary bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank would be required to send its large-dollar returns directly to the depositary bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.

In meeting the requirements of the forward collection test, the paying bank is responsible for its own actions, but not for those of the depositary bank or returning banks.[4] For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank (including delay to create a qualified returned check), generally the paying bank has met its requirements. (See § 229.38.) If, however, the paying bank selects a returning bank that the paying bank should know is not capable of meeting its return requirements, the paying bank will not have met its obligation of exercising ordinary care in selecting intermediaries to return the check. The paying bank is free to use a method of return, other than its method of forward collection, as long as the alternate method results in delivery of the returned check to the depositary bank as quickly as the forward collection of a check drawn on the depositary bank or, where the returning bank takes a day to create a qualified returned check under § 229.31(a), one day later than the forward collection time.

Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the one business day extension provided to returning banks is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Normally, paying banks will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning.

In effect, under either test, the paying bank acts as an agent or subagent of the depositary bank in selecting a means of return. Under § 229.30(a), a paying bank is authorized to route the returned check in a variety of ways:

1. It may send the returned check directly to the depositary bank by courier or other means of delivery, bypassing returning banks; or

2. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depositary bank under § 229.31(a), regardless of whether or not the returning bank handled the check for forward collection.

If the paying bank elects to return the check directly to the depositary bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depositary bank at any location permitted under § 229.32(a).

Except for the extension permitted by § 229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under U.C.C. §§ 4–301 and 4–302, which continue to apply. Under section 4–302, a paying bank is "accountable" for the amount of a demand item other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under U.C.C. §§ 3–418 and 4–213(1), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.

The expeditious return requirement applies to a paying bank that determines not to pay a check. This requirement applies to a payable through or a payable at bank that is defined as a paying bank (see § 229.2(z)) and that returns a check. This requirement begins when the payable through or payable at bank receives the check during forward collection, not when the payor returns the check to the payable through or payable at bank. Nevertheless, a check sent for payment or collection to a payable through or payable at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of U.C.C. § 4–301. (See discussion of § 229.30(a).) The liability section of this subpart (§ 229.38) provides that a paying bank is not subject to both "accountability" for missing the midnight deadline under the U.C.C. and liability for missing the timeliness requirements of this regulation.

This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

1. Section 4–212(2), in that direct return by the paying bank is now permitted in all jurisdictions even though not all jurisdictions have adopted this optional provision. Also,

[4] This is analogous to the responsibility of collecting banks under U.C.C. § 4–202(3).

the paying bank does not have to create a draft on the depositary bank.

2. Section 4–301(4), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depositary bank or to a returning bank.

3. Section 4–301(1), in that time limits specified in that section may be affected by the additional requirement to make an expeditious return and in that settlement for returned checks is made under § 229.31(c), not by revocation of settlement.

(b) *Unidentifiable depositary bank.* In some cases, a paying bank will be unable to identify the depositary bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as skilled return clerks will readily identify the depositary bank from the depositary bank indorsement required under § 229.35 and Appendix D. In cases where the paying bank is unable to identify the depositary bank, the paying bank may, in accordance with § 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depositary bank under § 229.31(a). The returning bank may be better able to identify the depositary bank.

In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks will normally be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank may send such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expeditious return to the depositary bank under § 229.31(a). A paying bank returning a check under this paragraph to a bank that has not agreed to handle checks expeditiously must advise that bank that it is unable to identify the depositary bank. This information will warn the bank that this check will require special research and handling in accordance with § 229.31(b). The return of a check to a bank that handled the check for forward collection is consistent with § 229.35(b), which requires a bank handling a check to take up the check it is has not been paid.

The sending of a check to a bank that handled the check for forward collection under this paragraph, but that has not agreed to handle returned checks expeditiously, is not subject to the requirements for expeditious return by the paying bank. Often, the paying bank will not have courier or other expeditious means of transportation to the collecting or presenting bank. Although the lack of a requirement of expeditious return will create risks for the depositary bank, in many cases the inability to identify the depositary bank will be due to the depositary bank's, or a collecting bank's, failure to use the indorsement required by § 229.35(a) and Appendix D. If the depositary bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depositary bank is due to indorsements or other information placed on the back of the check by the depositary bank's customer or other prior indorser, the depositary bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depositary bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by the depositary bank due to less than expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.

This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depositary bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depositary bank's indorsement, making the indorsement unreadable. (See § 229.38(d).)

A paying bank's return under this paragraph is also subject to its midnight deadline under U.C.C. § 4–301, Regulation J, and the exception provided in § 229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under § 229.35(b) where the depositary bank is insolvent or in other cases as provided in § 229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under U.C.C. § 4–207.

(c) *Extension of deadline for expedited delivery.* A paying bank may have a courier that leaves after midnight to deliver its forward collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches either the depositary bank or the returning bank to which it is sent on that bank's banking day following the expiration of the midnight deadline or other applicable time for return. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, a west coast paying bank may use this further extension to ship a returned check by air courier directly to an east coast depositary bank even if the check arrives after the close of the depositary bank's banking day.

The time limits that are extended are the paying bank's midnight deadline in U.C.C. §§ 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12). As this extension is designed to speed the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

The paying bank satisfies its midnight deadline under the U.C.C. by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the midnight deadline.

This paragraph directly affects U.C.C. §§ 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

(d) *Identification of returned check.* Most paying banks currently use some form of stamp indicating the reason for return. This paragraph makes this practice mandatory. No particular form of stamp is required, but the stamp must indicate the reason for return. A check is identified as a returned check by a reason for return stamp, even though the stamp does not specifically state that the check is a returned check. A reason such as "Refer to Maker" is permissible in appropriate cases. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check, but need not repeat the reason for return stated in the check if it in fact appears on the check.

(e) *Depositary bank without accounts.* Subpart B of this regulation applies only to "checks" deposited in transaction-type "accounts." Thus, a depositary bank with only time or savings accounts need not comply with the availability requirements of Subpart B. Collecting banks will not have couriers delivering checks to these banks as paying banks, because no checks are drawn on them. Consequently, the costs of using a courier or other expedited means to deliver returned checks directly to such a depositary bank may not be justified. Thus, the expedited return requirement of § 229.30(a) and the notice of nonpayment requirement of § 229.33 do not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in U.C.C. §§ 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12) would continue to apply to these checks. Returning banks would also be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of returning checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depositary bank under the same rules as checks deposited in other banks, with the exception of the expeditious return and notice of nonpayment requirements of §§ 229.30(a), 229.31(a), and 229.33.

The expeditious return requirements also apply to a check deposited in a bank that is not a depository institution. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not "depository institutions" within the meaning of the Act, and are therefore not subject to the expedited availability and disclosure requirements of Subpart B. These banks do, however, maintain accounts as defined in § 229.2(a), and a paying bank returning a check to one of these banks would be required to return the check to the depositary bank, in accordance with the requirements of this section.

(f) *Notice in lieu of return.* A check that is lost or otherwise unavailable for return may be returned by sending a copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or written notice must clearly indicate it is a substitute for the returned check. Notice by telephone, telegraph, or other electronic transmission, other than a legible facsimile or similar image transmission of both sides of the check, does not satisfy the requirements for a notice in lieu of return. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depositary banks are informed that the notice carries value. Section 229.34(a)(4) includes a warranty that the original check has not been and will not be returned if a notice in lieu has been returned.

The requirement of this paragraph supersedes the requirement of U.C.C. § 4–301(1) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

The notice in lieu of return is subject to the provisions of § 229.30 and is treated like a returned check for settlement purposes. If the original check is over $2,500, the notice of nonpayment under § 229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of § 229.33.

If not all of the information required by § 229.33(b) is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

(g) *Reliance on routing number.* Although § 229.35 and Appendix D require that the depositary bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary bank's indorsement) when it is received by the paying bank.

If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depositary bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

Section 229.31 Returning Bank's Responsibility for Return of Checks

(a) *Return of checks.* The standards for return of checks established by this section are similar to those for paying banks in § 229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depositary bank for the purposes of returning the check. A returning bank agrees to handle a returned check for expeditious return to the depositary bank if it:

(1) Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

(2) Handles a returned check for return that it did not handle for forward collection; or

(3) Otherwise agrees to handle a returned check for expeditious return.

As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the "two-day/four-day" test, the check must be returned so that it would normally be received by the depositary bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether the paying bank is a local or a nonlocal paying bank with respect to the depositary bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to § 229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.

The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depositary bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

Under the forward collection test, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depositary banks.

Examples

1. If a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depositary bank and the returning bank are participants in the same clearinghouse, the returning bank should arrange to have the returned check received by the depositary bank by Tuesday. This would be the same day that it would deliver a forward collection check drawn on the depositary bank and received by the returning bank at a corresponding forward collection cut-off hour on Monday.

2. If a returning bank receives a returned check, and the returning bank would normally collect a forward collection check drawn on the depositary bank by sending the forward collection check to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check in the same manner if the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). The returning bank would have to deliver the check by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depositary bank. A returning bank may take a day to convert a check to a qualified returned check. Where the forward collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.

A returning bank must return a check to the depositary bank by courier or other means as fast as a courier, if similarly situated returning banks use couriers to deliver their forward collection checks to the depositary bank.

For some depositary banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable through drafts does not normally have checks presented to it because the drafts are normally sent to the payable through bank for collection. In these circumstances, the community standard is established by taking into account the dollar volume of the checks being sent to the depositary bank, and the location of the depositary bank, and determining whether similarly situated banks would normally deliver forward collection checks to the depositary bank, taking into account the particular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.

The expeditious return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to act seasonably under U.C.C. § 4–202 in returning a check. A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Notwithstanding its duty of expeditious return, its midnight deadline under U.C.C. § 4–202 and § 210.12(a) of Regulation J (12 CFR 210.12(a)), under the forward collection test, a returning bank may take an extra day to qualify a returned check. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. This paragraph gives a returning bank an extra business day beyond the time that would otherwise be required to return the returned check to convert a returned check to a qualified returned check. The qualified returned check must include the routing number of the depositary bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. If the

returning bank is sending the returned check directly to the depositary bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks.

If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence. The returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.

Under § 229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

1. It may send the returned check directly to the depositary bank by courier or other expeditious means of delivery; or

2. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depositary bank under this section regardless of whether or not the returning bank handled the check for forward collection.

If the returning bank elects to send the returned check directly to the depositary bank, it is not required to send the check to the branch of the depositary bank that first handled the check. The returned check may be sent to the depositary bank at any location permitted under § 229.32(a).

In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depositary bank. (See U.C.C. § 4–202(3) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process, but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a loss to the depositary bank. (See § 229.38.) A returning bank must handle a notice in lieu of return as expeditiously as a returned check.

This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

1. Section 4–212(2), in that direct return by the returning bank is now permitted in all jurisdictions even though not all jurisdictions have adopted this optional provision. Also, the returning bank does not have to create a draft on the depositary bank.

2. Section 4–213(1), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.

3. Section 4–212(1), in that settlement for returned checks is made under § 229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expeditious return.

(b) *Unidentifiable depositary bank.* This section is similar to § 229.36(b), but applies to returning banks instead of paying banks. In some cases a returning bank will be unable to identify the depositary bank with respect to a check. Returning banks agreeing to handle checks for return to depositary banks under § 229.31(a) are expected to be expert in identifying depositary bank indorsements. In the limited cases where the returning bank cannot identify the depositary bank, the returning bank may send the returned check to a returning bank that agrees to handle the returned check for expeditious return under § 229.31(a), or it may send the returned check to a bank that handled the check for forward collection even if that bank does not agree to handle returned checks expeditiously under § 229.31(a).

If the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward collection process, which will be better able to identify the depositary bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depositary bank. As in the case of paying banks under § 229.36(b), a returning bank's sending of a check to a bank that handled the check for forward collection under § 229.31(b) is not subject to the expeditious return requirements of § 229.31(a).

The returning bank's return of a check under this paragraph is subject to the midnight deadline under U.C.C. § 4–202(2). (See definition of returning bank in § 229.2[cc].)

Where a returning bank receives a check that it does not agree to handle expeditiously under § 229.31(a), such as a check sent to it under § 229.36(b), but the returning bank is able to identify the depositary bank, the returning bank must thereafter return the check expeditiously to the depositary bank. The returning bank returns a check expeditiously under this paragraph if it returns the check by the same means it would use to return a check drawn on it to the depositary bank or by other reasonably prompt means.

As in the case of a paying bank returning a check under § 229.30(b), a returning bank that sends a check to a collecting bank under this paragraph must advise the collecting bank that the returning bank is unable to identify the depositary bank.

(c) *Settlement.* Under the U.C.C., a collecting bank receives settlement for a check when it is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depositary bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See § 229.36(d).)

A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See § 229.38.) If payment cannot be obtained from a depositary or returning bank because of its insolvency or otherwise, recovery can be had by returning, paying, and collecting banks from prior banks on this basis of the liability of prior banks under § 229.35(b).

This paragraph affects U.C.C. § 4–212(1) in that a paying or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under § 229.36(d), a bank collecting a check remains liable to prior collecting banks and the depositary bank's customer under the U.C.C.

(d) *Charges.* This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

(e) *Depositary bank without accounts.* This paragraph is similar to § 229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depositary bank that does not maintain any accounts. (See the Commentary to § 229.30(e).)

(f) *Notice in lieu of return.* This paragraph is similar to § 229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. (See the Commentary to § 229.30(f).)

(g) *Reliance on routing number.* This paragraph is similar to § 229.30(g) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depositary bank's indorsement or on qualified returned checks. (See the Commentary to § 229.30(g).)

Section 229.32 Depositary Bank's Responsibility for Returned Checks

(a) *Acceptance of returned checks.* This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depositary banks with no preexisting arrangements as to where the returned checks should be delivered. This paragraph states where the depositary bank is required to accept returned checks and written notices of nonpayment under § 229.33. (These locations differ from locations at which a depositary bank must accept electronic notices.) It is derived from U.C.C. § 3–506(2), which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depositary bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.

The paragraph specifies four locations at which the depositary bank must accept returned checks:

1. The depositary bank must accept returned checks at any location at which it requests presentment of forward collection checks such as a processing center. A depositary bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

2. (i) If the depositary bank indorsement states the name and address of the depositary bank, it must accept returned checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depositary bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is "New York, New York," each branch in New York City must accept returned checks.

(ii) If no address appears in the depositary bank's indorsement, the depositary bank must accept returned checks at any branch or head office associated with the depositary bank's routing number. The offices associated with the routing number of a bank are found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number.

(iii) If no routing number or address appears in its indorsement, the depositary bank must accept a returned check at any branch or head office of the bank. The indorsement requirement of § 229.35 and Appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depositary bank has failed to comply with the indorsement requirement.

For ease of processing, a depositary bank may require that returning or paying banks returning checks to it separate returned checks from forward collection checks being presented.

(b) *Payment.* As discussed in the comment to § 229.31(c), under this regulation a paying or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depositary bank. This paragraph imposes an obligation to "pay" a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depositary bank may not return a returned check for which it is the depositary bank. Also, certain means of payment, such as remittance drafts, may only be used with the agreement of the returning bank.

The depositary bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to U.C.C. § 4–107, which permits the bank to establish a cut-off hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day. If the depositary bank is unable to make payment to a returning or paying bank on the banking day that it receives the returned check, because the returning or paying bank is closed for a holiday or because the time when the depositary bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.

Payment must be made so that the funds are available for use by the bank returning the check to the depositary bank on the day the check is received by the depositary bank. For example, a depositary bank meets this requirement if it sends a wire transfer of funds to the returning or paying bank on the day it receives the returned check, even if the returning or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

The depositary bank may use a net settlement arrangement. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

The bank sending the returned check to the depositary bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

This paragraph and this subpart do not affect the depositary bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.33(d) and 229.35(d).)

(c) *Misrouted returned checks.* This paragraph permits a bank receiving a check on the basis that it is the depositary bank to send the misrouted returned check to the correct depositary bank, if it can identify the correct depositary bank, either directly or through a returning bank agreeing to handle the check expeditiously under § 229.30(a). In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depositary bank would be required to pay for the returned check under § 229.32(b), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.31(c). If the check was originally received "free," that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge, to the bank from which it came. The bank to which the returned check was misrouted is required to act promptly but is not required to meet the expeditious return requirements of § 229.31(a), however, it must act within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

(d) *Charges.* This paragraph prohibits a depositary bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank is also the depositary bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depositary bank, however, no fee may be charged.

Section 229.33 Notice of Nonpayment

(a) *Requirement.* Notice of nonpayment as required by this section and written notice in lieu of return as provided in §§ 229.30(f) and 229.31(f) serve different functions. The two kinds of notice, however, must meet the content requirements of this section. The paying bank must send a notice of nonpayment if it decides not to pay a check of $2,500 or more. A paying bank may rely on an amount encoded on the check in magnetic ink to determine whether the check is in the amount of $2,500 or more. The notice of nonpayment carries no value, and the check itself (or the notice in lieu of return) must be returned. The paying bank must ensure that the notice of nonpayment is received by the depositary bank by 4:00 p.m. local time on the second business day following presentment. A bank identified by routing number as the paying bank is considered the paying bank under this regulation and would be required to create a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See Commentary to the definition of paying bank in § 229.2(z).)

The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under § 229.34(b), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depositary bank that the check has been paid.

Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary. For example, in many cases the return of a check through a clearinghouse to another participant of the clearinghouse will be made in time to meet the time requirements of this section. If the check will not normally be received by the depositary bank within the time limits for notice, the return of the check will not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depositary bank, unless the paying bank has reason to know the availability schedules are inaccurate.

(b) *Content of notices.* This paragraph provides that the notice must at a minimum contain eight elements which are specifically

enumerated. In the case of written notices, the name and routing number of the depositary bank are also required.

If the paying bank cannot identify the depositary bank from the check itself, it may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depositary bank. The collecting bank may be able to identify the depositary bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depositary bank.

(c) *Acceptance of notice.* In the case of a written notice, the depositary bank is required to accept notices at the locations specified in § 229.32(a). In the case of telephone notices, the bank may not refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device. Banks may vary by agreement the location and manner in which notices are received.

(d) *Notification to customer.* This paragraph requires a depositary bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment. This requirement is similar to the requirement under the U.C.C. as interpreted in *Appliance Buyers Credit Corp. v. Prospect National Bank*, 708 F.2d 290 (7th Cir. 1983), that a depositary bank may be liable for damages incurred by its customer for its failure to give its customer timely advice that it has received a notice of nonpayment. Notice must also be given if a depositary bank receives a notice of recovery under § 229.35(b). The notice to the customer required under this paragraph may also satisfy the notice requirement of § 229.13(g) if the depositary bank invokes the reasonable cause exception of § 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets the other requirements of § 229.13(g).

Section 229.34 Warranties by Paying Bank and Returning Bank

(a) *Warranty of returned check.* This paragraph includes warranties that a returned check was returned by the paying bank within the deadline under the U.C.C., Regulation J, or § 229.36(c), that the paying or returning bank is authorized to return the check, that the returned check has not been materially altered, and that, in the case of a notice in lieu of return, the original check has not and will not be returned. The warranty does not include a warranty that the bank complied with the expeditious return requirements of §§ 229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, a state, or a unit of general local government.

(b) *Warranty of notice of nonpayment.* This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.33. The requirements of § 229.30 that are not covered by the warranty are subject to the liability provisions of § 229.38. These warranties are designed to give the depositary bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (See Commentary on § 229.38(a).)

(c) *Damages.* This paragraph adopts for the new warranties in § 229.34 (a) and (b) the warranty damages of U.C.C. § 4–207(3).

(d) *Tender of defense.* This paragraph adopts for this regulation the vouching-in provisions of U.C.C. § 3–408.

Section 229.35 Indorsements

(a) *Indorsement standards.* This section and Appendix D require banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. The standard provides for indorsements by all collecting and returning banks, plus a unique standard for depositary bank indorsements. It is designed to facilitate the identification of the depositary bank and the prompt return of checks. The indorsement standard specifies the information each indorsement must contain and its location and ink color.

The indorsement standard requires that the nine-digit routing number of the depositary bank be wholly contained in an area on the back of the check from 3.0 inches from the leading edge to 1.5 inches from the trailing edge of the check. This permits banks to use encoding equipment that measures from either the leading or trailing edge of the check to place indorsements in this area. The standard does not require that the entire depositary bank indorsement be contained within the specified area, but checks will be handled most efficiently if depositary banks place as much information as possible within the designated area to ensure that the information is protected from being overstamped by subsequent indorsements. The location requirement for subsequent collecting bank indorsements (not including returning bank indorsements) limits these indorsements to the area on the back of the check from the leading edge to 3.0 inches from the leading edge of the check. The area from the trailing edge of the check to 1.5 inches from the trailing edge is commonly used for the payee indorsement.

The standard requires depositary banks to use either purple or black ink. The Board encourages depositary banks to indorse checks in purple ink where possible, because use of a unique ink color will facilitate the speedy identification of the depositary bank. Black ink, however, may be used when use of purple ink is not feasible, such as where a bank uses the same equipment to apply both depositary bank and subsequent collecting bank indorsements, and the equipment has only one source of ink. The standard requires subsequent collecting banks to use an ink color other than purple for their indorsements. The standard also requires the depositary bank's indorsement to include its nine-digit routing number set off by arrows, the bank's name and location, and the indorsement date, and permits the indorsement to include other identifying information.

The standard does not include the fractional routing number for depositary banks; however, a bank may include its fractional routing number or repeat its nine-digit routing number in its indorsement. If a depositary bank includes its routing number in its indorsement more than once, paying and returning banks will be able to identify the depositary bank more readily.

A depositary bank is not required to place a street address in its indorsement; however, a bank may want to do so in order to limit the number of locations at which it must accept returned checks under § 229.33(a). Banks should note, however, that § 229.32(a) also requires depositary banks to accept returned checks at the location(s) it accepts forward collection checks. The inclusion of a depositary bank's telephone number where it would receive notices of large-dollar returns in its indorsements is optional.

Under the U.C.C., a specific guarantee of prior indorsement is not necessary. (See U.C.C. §§ 3–417(1)(a) and 4–207(1), and official comment 2 to U.C.C. § 4–207.) Use of guarantee language in indorsements, such as "P.E.G." ("prior endorsements guaranteed"), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depositary bank. Subsequent collecting bank indorsements may not include this language.

The standard for returning banks requires a returning bank to apply an indorsement that avoids the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge—the area reserved for the payee and depositary bank indorsements. Returning bank indorsements may differ from subsequent collecting bank indorsements. The use of various methods to process returns using a variety of equipment may also cause returning bank indorsements to vary substantially in form, content, and placement on the check. Thus, a returning bank indorsement may be on the face of the check or on the back of the check. A returning bank indorsement may not be in purple ink. No content requirements have been adopted for the returning bank indorsement.

If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notice of nonpayment for the bank of account, the indorsement placed on the check as the depositary bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section.

The backs of many checks bear pre-printed information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also, contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payee of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depositary bank indorsement, thus making the depositary bank indorsement unreadable.

The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depositary banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depositary bank indorsement by staying clear of the area reserved for the depositary bank indorsement.

Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depositary bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depositary bank that made the depositary bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depositary and paying banks may shift these risks to their customers by agreement.

The standard does not require the paying bank to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standard for returning banks.

(b) *Liability of bank handling check.* When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depositary bank through any subsequent collecting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depositary bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depositary bank. To avoid circuity of actions, the returning bank could recover directly from the first collecting bank. Under the U.C.C., the first collecting bank might ultimately recover from the depositary bank's customer or from the other parties on the check.

Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, § 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank could then either continue the return to the depositary bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank could also recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depositary bank (which could recover from its customer).

A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery is also permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expeditious return, but the claiming bank remains liable for its negligence under § 229.38.

This liability is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying or returning bank may also recover from a prior collecting bank as provided in §§ 229.30(b) and 229.31(b). This provision is not a substitute for a paying or returning bank making expeditious return under §§ 229.30(a) or 229.31(b). This paragraph does not affect a paying bank's accountability for a check under U.C.C. §§ 4–213(1) and 4–302.

This paragraph affects the following provisions of the U.C.C., and may affect other provisions:

1. Section 4–212(1), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4–212(1) would continue to permit a depositary bank to recover a provisional settlement from its customer. (See § 229.33(d).)

2. Section 3–414 and related provisions (such as sections 3–502, 3–503(2), and 3–508), in that such provisions would not apply as between banks, or as between the depositary bank and its customer.

(c) *Indorsement by bank.* This section protects the rights of a customer depositing a check in a bank without requiring the words "pay any bank," as required by the U.C.C. (See U.C.C. § 4–201(2).) Use of this language in a depositary bank's indorsement will make it more difficult for other banks to identify the depositary bank. The indorsement standard in Appendix D prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

(d) *Indorsement for depositary bank.* This section permits a depositary bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—i.e., the depositary bank. If the indorsing bank applies the depositary bank's indorsement, checks will be returned to the depositary bank. If the indorsing bank does not apply the depositary bank's indorsement, by agreement with the depositary bank it may apply its own indorsement as the depositary bank indorsement. In that case, the depositary bank's own indorsement on the check (if any) should avoid the location reserved for the depositary bank. The actual depositary bank remains responsible for the availability and other requirements of Subpart B, but the bank indorsing as depositary bank is considered the depositary bank for purposes of Subpart C. The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depositary bank.

Because the depositary bank for Subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depositary bank may require the depositary bank to agree to take up the check if the check is not paid even if the depositary bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of Subpart C under § 229.37.

Section 229.36 Presentment of Checks

(a) *Payable through and payable at checks.* The regulation defines a payable through or payable at bank (which could be designated the collectible through or collectible at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33, are imposed on a payable through or payable at bank and are based on the time of receipt of the forward collection check by the payable through or payable at bank. This is consistent with looking to the location of the payable through or payable at bank when a check is sent to that bank for payment in order to determine whether a check is a local or a nonlocal check. This provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.

(b) *Receipt at bank office or processing center.* This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depositary bank, and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.32(b) because presentment of checks differs from delivery of returned checks.

The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent

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to that bank, the payable through bank is the paying bank.

1. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. § 4–204(3).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it only requests presentment of checks bearing a particular routing number at the location designated for receipt of forward collection checks bearing that routing number.

2. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number. Checks are generally handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number.

There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank may generally control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

In some cases, a paying bank may have several offices in the city associated with the routing number. In such a case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank would normally deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

3. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. § 3–504(2), which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

4. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check is generally in the control of the paying bank.

This paragraph may affect U.C.C. § 3–504(2)(c) to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

(c) *Truncation.* Truncation includes a variety of procedures in which the physical check is held or delayed by the depositary or collecting bank, and the information from the check is transmitted to the paying bank electronically. Presentment takes place when the paying bank receives the electronic transmission. This process has the potential to improve the efficiency of check processing, but use of truncation has been limited, partly because of uncertainties about whether the U.C.C. permits it without the agreement of all parties. This paragraph allows truncation by agreement with the paying bank; however, such agreement may not prejudice the interests of prior parties to the check. For example, a truncation agreement may not extend the paying bank's time for return. Such an extension could damage the depositary bank, which must make funds available to its customers under mandatory availability schedules.

(d) *Liability of bank during forward collection.* This paragraph makes settlement between banks during forward collection final when made, subject to any deferrment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under U.C.C. § 4–201 during forward collection of a check. That U.C.C. section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the U.C.C. applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depositary bank's customer for negligence during the forward collection of a check under the U.C.C., even though this paragraph provides that settlement between banks during forward collection is "final" rather than "provisional." Settlement by a paying bank is not considered to be final payment for the purposes of U.C.C. § 4–213 (b) or (d), because a paying bank has the right to recover settlement from a returning or depositary bank to which it returns a check under this subpart. Other provisions of the U.C.C. not superseded by this subpart, such as section 4–202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of returning bank in § 229.2(cc).)

Section 229.37 Variations by Agreement

This section is similar to U.C.C. § 4–103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to U.C.C. § 4–103(1) (which in turn follows U.C.C. § 102(3)) should be followed in construing this section. For example, as stated in Official Comment 2 to section 4–103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under § 229.38 to entities not party to the agreement. This section is consistent with the limits on truncation agreements in § 229.36(c).

The Board has not followed U.C.C. § 4–103(2), which treats Federal Reserve regulations and operating letters, clearinghouse rules, and the like as agreements, and permits them to apply to parties that have not specifically assented. For this particular regulation, which seeks to protect many of those parties, that treatment does not appear warranted.

The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

a. A depositary bank may authorize another bank to apply the other bank's indorsement to a check as the "depositary bank." (See § 229.35(d).)

b. A depositary bank may authorize returning banks to commingle qualified returned checks with forward collection checks. (See § 229.32(a).)

c. A depositary bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depositary bank's customer or prior indorser in the area of the depositary bank indorsement. (See § 229.38(d).)

d. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depositary bank. (See § 229.38(d).)

e. A collecting or paying bank may agree to accept forward collection checks without the indorsement of a prior collecting bank. (See § 229.35(a).)

f. A bank may agree to accept returned checks without the indorsement of a prior bank. (See § 229.35(a).)

The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

Section 229.38 Liability

(a) *Standard of care; liability; measure of damages.* The standard of care established by this section applies to any bank covered by the requirements of Subpart C of the regulation. Thus, the standard of care applies to a paying bank under §§ 229.30 and 229.33, to a returning bank under § 229.31, to a depositary bank under §§ 229.32 and 229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depositary bank under § 229.32(d), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by U.C.C. §§ 1–203 and 4–103(1).

A bank not meeting this standard of care is liable to the depositary bank, the depositary bank's customer, the owner of the check, or another party to the check. The depositary bank's customer is usually a depositor of a check in the depositary bank (but see § 229.35(d)). The measure of damages stated derives from U.C.C. §§ 4–103(5) and 4–202(3). This subpart does not absolve a collecting bank of liability to prior collecting banks under U.C.C. § 4–201.

Under this measure of damages, a depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux* v. *Van Wyk*, 572 F.2d 661 (9th Cir. 1978); *Appliance Buyers Credit Corp.* v. *Prospect Nat'l Bank*, 706 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depositary bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

This paragraph also states that it does not affect a paying bank's liability to its customer. Under U.C.C. § 4–402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

(b) *Paying bank's failure to make timely return.* Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. deadlines (as they may be modified by § 229.30(c)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's "accountability" for missing its midnight or other deadline under the U.C.C., (e.g., sections 4–213 and 4–302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

(c) *Comparative negligence.* This paragraph establishes a "pure" comparative negligence standard for liability under Subpart C of this regulation. This comparative negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depositary bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depositary bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§ 229.30(a) or 229.31(a).

(1) If a depositary bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depositary bank or find its routing number, the paying or returning bank's liability to the depositary bank would be reduced or eliminated.

(2) If the depositary bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank or find its routing number, the paying or returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depositary bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.

(3) If a depositary bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depositary bank's indorsement is obscured by the printing, carbon band, or other material, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank, the returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depositary bank to the extent that the printing, carbon band, or other material caused the delay.

(d) *Responsibility for back of check.* The indorsement standard in § 229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank or depositary bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

The paying bank is responsible for the condition of the check when it is issued by it or its customer. (It would not be responsible for a check issued by a person other than its customer.) Thus, the paying bank would be responsible for the adverse effect (if any) of a carbon band or other material placed on the back of a check before issuance. The paying bank may contract with its customers with respect to such responsibility.

The depositary bank is responsible for the condition of the check arising after it is issued and before it is accepted by the depositary bank, as well as any condition of the check arising during its handling of the check. The depositary bank would be responsible for the adverse effect (if any) of a stamp placed on the check by its customer or a prior indorser. The depositary bank may refuse to accept a check whose back is unreasonably obscured or contract with its customers with respect to such responsibility.

Responsibility under this paragraph is treated as negligence for comparative negligence purposes, and the contribution to damages under this paragraph is treated in the same way as the degree of negligence under paragraph (c) of this section.

(e) *Timeliness of action.* This paragraph excuses certain delays. It adopts the standard of U.C.C. § 4–109(2) with the addition of "failure of equipment" and "interruption of computer facilities" as causes of delay.

(f) *Exclusion.* This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611 (a) and (b), and the bona fide error provision of 611(c) of the Act (12 U.S.C. 4010 (a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in Subpart C.

(g) *Jurisdiction.* The Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

(h) *Reliance on Board rulings.* This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the Commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

Section 229.39 Insolvency of Bank

These provisions cover situations where a bank becomes insolvent during collection or return, and are derived from U.C.C. § 4–214. They are intended to apply to all banks.

(a) *Duty of receiver.* This paragraph requires a receiver of a closed bank to return a check to the prior bank if it does not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

(b) *Preference against paying or depositary bank.* This paragraph gives a bank a preferred claim against a closed paying or depositary bank that finally pays a check without settling for it. If the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

(c) *Preference against paying, collecting, or depositary bank.* This paragraph gives a bank a preferred claim against a closed collecting,

paying, or returning bank that receives settlement but does not settle for a check. (See Commentary to § 229.35(b) for discussion of prior and subsequent banks.) As in the case of § 229.39(b), if the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

(d) *Finality of settlement.* This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

Section 229.40 Effect on Merger Transaction

When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term "merger transaction" is defined in § 229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart. For example:

1. The paying bank's responsibility for expeditious return (§ 229.30).
2. The returning bank's responsibility for expeditious return (§ 229.31).
3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depositary bank that has merged with the returning bank (§ 229.31(a)).
4. Where the depositary bank must accept returned checks (§ 229.32(a)).
5. Where the depositary bank must accept notice of nonpayment (§ 229.33(c)).
6. Where a paying bank must accept presentment of checks (§ 229.36(b)).

Section 229.41 Relation to State Law

This section specifies that state law relating to the collection of checks is only preempted to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

Section 229.42 Exclusions

Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious return and notice of nonpayment requirements of Subpart C of this regulation. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

Appendix C.—Model Forms, Clauses, and Notices

Appendix C contains model forms and clauses that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the model forms and clauses properly will be in compliance with the disclosure requirements of the regulation.

Certain information that must be inserted by a bank using the forms is italicized within parentheses in the text of the forms. Some forms contain alternative clauses, and these are set forth in brackets and separated by the word "or." Banks may make certain changes in the format or content of the model forms and delete material that is inapplicable without losing the Act's protection from liability for banks that use the forms properly. For example, if a bank does not take advantage of the § 229.13 exceptions, it may delete the material relating to those exceptions. The rearrangement of the model forms may not be so extensive, however, as to affect the substance, clarity, or meaningful sequence of the forms. Acceptable changes include, for example:

- Using "customer" and "bank" instead of pronouns.
- Not using bold type for headings.
- Incorporating certain state law "plain English" requirements.

Shorter time periods for availability may always be substituted for time periods used in the model forms.

Banks may also add information related to their availability policies. For example, a bank might indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could provide in its disclosure a telephone number to be used if a customer has an inquiry regarding a deposit.

Banks are cautioned against using the forms without reviewing their own policies and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using a model form will be in compliance with the Act and the regulation only if its disclosures correspond to the bank's availability policy.

Models C–1 through C–7 generally. These forms are models for the specific availability policy disclosure described in § 229.16 of the regulation. The forms accommodate a variety of availability policies, ranging from policies of next-day availability to holds on a blanket basis up to the maximum time allowed in the regulation. Models C–3 and C–6 reflect the additional disclosures discussed in §§ 229.16 (b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

Except for Model C–7, the forms reflect the temporary schedules that are in effect from September 1, 1988 through August 31, 1990. Model C–7 reflects availability under the permanent schedule in § 229.12 effective September 1, 1990.

As already noted, there are several places in the forms where information must be inserted. This information includes the bank's name and cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the ordinal number (such as first, second, etc.) of the business day the funds will become available.

Models C–1 through C–7 generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these provisions are included in the model clauses (Models C–8 through C–12). A bank using one of the model forms should also consider whether it must incorporate one or more of the model clauses.

Model C–1. A bank may use this form when its policy is to make funds from all deposits available on the first business day after a deposit is made. This form may also be used by banks that provide immediate availability by substituting the word "immediately" in place of "on the first business day after the day we receive your deposit."

Model C–2. A bank may use this form when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new account and other exceptions in § 229.13 of the regulation.

Model C–3. A bank may use this form when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this form also reserves the right to invoke the exceptions listed in § 229.13 of the regulation.

Model C–4. A bank may use this form when its policy is to impose delays to the full extent allowed under the temporary schedule in § 229.11 and to reserve the right to invoke the § 229.13 exceptions.

Model C–5. A bank may use this form when its policy is the same as that outlined in Model C–4. The only difference between Model C–4 and Model C–5 is that in the latter a chart showing the bank's availability policy for local and nonlocal checks is substituted for the narrative description in the former.

Model C–6. A bank may use this form when its policy is to delay availability based on the deposit categories (next-day availability items and local and nonlocal checks) in the regulation, but to make funds available more quickly than is required by the regulation. A bank using this form would also reserve the right to place holds on a case-by-case basis up to the statutory limits and to invoke the § 229.13 exceptions.

Model C–7. A bank may use this form when its policy is to impose delays to the full extent allowed by the permanent schedule in § 229.12 and to reserve the right to invoke the § 229.13 exceptions.

Models C–8 through C–12 generally. These model clauses must be incorporated into a bank's specific availability policy disclosure under certain circumstances. The commentary to each clause indicates when the clause is required.

Model C–8. This clause must be incorporated in the specific availability policy disclosure by banks that reserve the right to place a hold on funds already on deposit when they cash a check for the customer, as discussed under § 229.19(c).

Model C–8A. This clause must be incorporated in the specific availability disclosure by banks that reserve the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as discussed in § 229.19(e).

Model C–9. This clause must be incorporated in the specific availability policy disclosure by banks in check processing regions where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of the regulation. Banks using Model C–4, C–6, or C–7 may insert this clause at the conclusion of the discussion titled "Nonlocal checks."

Model C–10. This clause must be incorporated in the specific availability policy disclosure by banks that reserve the right to delay availability of deposits at nonproprietary ATMs until the seventh business day following the day of the deposit, as permitted during the temporary schedule in § 229.11. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under § 229.16(b)(5).

Model C–11. This clause must be incorporated in the specific availability policy disclosure by banks that are not members of a local clearinghouse and that choose to limit their customers' ability to withdraw cash on the third business day following the deposit of a local check, as allowed during the temporary schedule under § 229.11. Banks using Model C–4 or C–6 may substitute this clause for the sections titled "Local checks" and "Nonlocal checks."

Model C–11A. This clause serves the same purpose as Model C–11 except that it reflects the § 229.11 rule for banks that are members of local clearinghouses. Banks using Models C–4 or C–6 may substitute this clause for the sections titled "Local checks" and "Nonlocal checks."

Model C–11B. This clause may be used to disclose cash withdrawal limitations under the permanent schedule in § 229.12. Banks using Model C–7 to disclose availability under the permanent schedule may substitute this clause for the sections titled "Local checks" and "Nonlocal checks." This clause should not be used in making disclosures under the temporary schedule in § 229.11.

Model C–12. This clause must be incorporated in the specific availability policy disclosure by credit unions seeking to satisfy the notice requirement of § 229.14(b). This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

Models C–13 through C–18 generally. These forms are models for various notices required by the regulation.

Model C–13. This form satisfies the written notice required under § 229.13(g) of the regulation when a bank places a hold based on a § 229.13 exception. If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a § 229.13 exception.

Model C–13A. This form satisfies the same requirement as Model C–13, and the same instructions apply, except that Model C–13A is for use by a bank that invokes the reasonable cause exception in § 229.13. The form provides the bank with a list of specific reasons that may be given for invoking the exception. If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. Banks may disclose of the reason for their doubting collectability by checking the appropriate reason on the form. If the "Other" category is checked, the reason must be given.

Model C–14. This form satisfies the notice required under § 229.16(b)(2) when a bank with a case-by-case hold policy imposes a delay on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a § 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

Model C–15 and C–15A. Either of these forms satisfies the notice requirement of § 229.18(b) (notice at locations where employees accept consumer deposits). Model C–15 is based on an availability policy that is the same as the temporary schedules in the regulation and the policy reflected in Models C–4 and C–5. Model C–15A may be used by a bank with a case-by-case availability policy.

Model C–16. This form satisfies the ATM notice requirement of § 229.18(c)(1).

Model C–17. This form satisfies the ATM notice requirement of § 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under § 229.29(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

Model C–18. This form satisfies the notice requirements of § 229.18(a) for deposit slips.

By order of the Board of Governors of the Federal Reserve System, May 13, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–11267 Filed 5–26–88; 8:45 am]

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FEDERAL RESERVE SYSTEM

[Docket No. R-0621]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has adopted a proposal for the Federal Reserve Banks to offer several new returned check services to depository institutions. These services will assist depository institutions in complying with the new rules for the collection and return of checks that the Board has, in Docket No. R-0620, adopted to implement the Expedited Funds Availability Act. The Board has also approved check truncation and extended MICR capture services as permanent Federal Reserve Bank services.

DATE: New services to facilitate expedited returns will be offered beginning September 1, 1988. Check truncation and extended MICR capture are authorized as permanent Federal Reserve Bank services beginning July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Steven O. App, Manager (202/452-3790); Gayle Thompson, Program Leader (202/452-2984); or Kathleen M. Connor, Analyst (202/452-3617); Division of Federal Reserve Bank Operations. For the hearing impaired only: Telecommunications Device for the Deaf, Ernestine Hill or Dorothea Thompson (202/452-3254).

SUPPLEMENTARY INFORMATION: On December 3, 1987, the Board requested public comment on a proposed set of Federal Reserve Bank services to carry out the provisions of the proposed Regulation CC. (52 FR 47171 (Dec. 11, 1987).) This set of services was designed to facilitate bank compliance with Regulation CC requirements to expedite returns and improve the check collection system. The services include establishing new returned check services and expanding Reserve Bank truncation and extended MICR capture services from pilot programs to permanent services. In order to achieve the objectives of the proposed regulatory requirements to speed the return of checks, it is essential that the Federal Reserve Banks and private sector correspondent banks provide new returned check services. The Board anticipates that a number of correspondent banks will provide an array of services similar to those offered by the Reserve Banks.

The comment period for the proposed Federal Reserve Bank services expired on February 8, 1988. In addition, the Board requested comment on a number of longer-term initiatives to improve the check collection and return process, including digitized image technology and bar code endorsements. (Docket No. R-0622, 52 FR 47176 (Dec. 11, 1987).) The comment period for these longer-term initiatives expired on April 8, 1988. The Board will act on the proposals on longer-term initiatives at a later date.

Summary of Comments

The Board received approximately 1,000 comments on the proposed Regulation CC and the accompanying Federal Reserve Bank services. Two hundred sixty-eight of the comments discussed Federal Reserve Bank services. A list of these commenters, identified by category of respondent, is reflected in the following table:

Bank holding companies	17
Clearinghouses	3
Commercial banks	183
Corporations (banking-related business)	9
Credit unions	14
Federal home loan banks	8
Savings and loan associations	27
Trade associations	5
Other	2
Total	268

Returned Check Services

Direct Returns

The current returned check system is a slow process due to the number of returning banks that process a check during its trip from the paying bank back to the depositary bank. Returned checks handled by the Federal Reserve generally are returned to the bank that deposited the check with the Federal Reserve for forward collection. In many cases, the Federal Reserve Bank sends the returned check to a correspondent bank that, in turn, sends it to its indorser that ultimately returns the check to the depositary bank.

The Board proposed that Federal Reserve Banks begin delivering returns directly to the depositary bank, bypassing other returning banks in the indorsement chain, in order to minimize the number of banks that must handle a returned check. Generally, the Federal Reserve anticipates that most of the volume of the returned checks could be delivered to the depositary bank by using existing couriers; the Federal Reserve Banks currently deliver to approximately 10,500 endpoints via courier. The Federal Reserve's transportation expenses for delivery of returned checks could increase substantially, however, if delivery of returns were made via courier to all depositary banks. (The Federal Reserve estimates that it may sort to approximately 26,000 endpoints under a direct return procedure.) Recognizing the desirability of providing prompt return of checks, while seeking to minimize increases in transportation costs, the Board requested comment on the following:

- A depositary bank may receive returned checks from the Federal Reserve, at no charge, at a location where the Federal Reserve currently delivers the bank's forward collection checks, or at a location where the Federal Reserve currently provides courier delivery, or at another designated location through the U.S. mail.
- A depositary bank that wishes its returned checks delivered by courier to a location where the Federal Reserve does not currently provide courier service may be charged for newly instituted transportation.

A total of 156 comments were received on the proposal that Federal Reserve Banks return checks directly to the depositary bank. One hundred ten commenters agreed with the direct return service as proposed and many of the commenters stated that the service should eliminate several steps in the current returned check process, thereby expediting the flow of returned checks to the depositary bank. Other commenters that favored the service stated that direct return was an excellent idea and critical to expediting returns, in order to reduce the exposure to depositary banks complying with the new funds availability schedules. Some of the commenters were critical of the proposed guidelines for delivery of returned checks by courier because the guidelines allowed Reserve Banks to occasionally use the mail to send returned checks directly to the depositary bank.

While most of these commenters generally agreed with the concept of direct return, a few commenters expressed reservations about whether they could receive checks at third-party processing centers or use other intercept arrangements. Several commenters did not want to receive returned checks via the mail. Finally, there were a few general remarks regarding the Federal Reserve Bank fee schedules and some opposition was raised about the Federal Reserve Banks passing on any additional courier costs through the basic returned check fee, because such a procedure may discriminate against banks that supply private courier services to pick up returned checks from the Federal Reserve office.

In view of the benefits provided by the Federal Reserve Banks returning unpaid checks directly to the depositary bank, the Board adopted the direct return service that was published for comment. Effective September 1, 1988, the Federal Reserve Banks will send return checks under the guidelines for delivery of returned checks described in Appendix A. The guidelines for delivery of returned checks have been modified to provide for minimal use of the mail by Federal Reserve offices, consistent with the Federal Reserve Banks' expeditious return responsibilities under § 229.31(a). In addition, the guidelines allow depositary banks to designate a third-party processor for the delivery of returned checks.

Universal Returns and Expedited Processing of Returns

Currently, unpaid checks are sent back through the indorsement chain. In order to assist paying banks in meeting the new requirements for prompt return, the Board proposed that Federal Reserve Banks accept from paying or returning banks all returned checks, regardless of whether or not the returned checks were collected originally through the Federal Reserve (universal returns). Paying banks would not be obligated to send their returned checks to the Federal Reserve.

The Board proposed to establish, effective September 1, 1988, new returned check deposit deadlines at Federal Reserve offices, supported by expanded processing capabilities, such that local returns would, in most instances, be returned to the local depositary bank the day following dispatch by the paying bank. The objective of the proposal was to provide for overnight processing and dispatch of returned checks similar to current processing and presentment time frames for forward collection checks.

In its proposal, the Board included estimated price ranges for returned check services. Currently, the Federal Reserve Banks do not explicitly price for returned checks. The costs of handling returned checks are incorporated in the forward collection fees. With the introduction of new returned check services, returns will be priced explicitly, with the returned check fees assessed on the paying or returning bank depositing returns with a Federal Reserve Bank. Forward collection fees will be reduced through the elimination of the return cost component.

The Board requested comment on the effect of the proposed deadline and fee changes on the operations of banks. In addition, the Board also requested specific comment on a proposed deposit option wherein paying banks would place the depositary bank's nine-digit routing number on the face of the returned check before sending it to the Federal Reserve.

A total of 77 comments were received on the proposal for Federal Reserve Banks to accept for deposit returned checks that had not been collected through the Federal Reserve. Seventy commenters agreed that the universal return service would be beneficial. Some of the commenters mentioned that it would be appropriate for Federal Reserve Banks to process returns not originally collected through the Federal Reserve, provided that returned checks were explicitly priced.

Six commenters expressed concerns about the universal return service. Most of these commenters were concerned about the competitive aspects of the service; some stated that the Federal Reserve's proposed fee schedules and deposit deadlines were not specific, and that the lack of product announcements by correspondent banks left them with few alternatives but to use Federal Reserve services until competing services become available. A few other commenters were concerned about the unbundling of returned check prices and subsequent reductions in forward collection prices, and the effect such reductions would have on correspondent banks.

The Board received a total of 117 comments on the proposal for Federal Reserve Banks to offer new deposit deadlines for returned check services, supported by expanded processing hours, such that local returned checks would, in most instances, be returned to the local depositary bank the day following dispatch by the paying bank. There were 84 comments on the proposed fees for return check services. Forty-two commenters agreed with the proposed fees. There were 37 commenters that expressed concerns about the proposed fees. Several of these commenters agreed that a fee should be assessed, but indicated that the 300 percent range that was published for comment was too large to determine the effect on banks. These commenters stated that lack of information about alternative products limited their ability to determine whether they would use the service. It was recommended that the Federal Reserve publish a specific fee schedule as soon as possible so that other banks could decide whether to develop competing services. A few commenters noted that the Federal Reserve should not make expedited returned check processing a profit-making venture. Five commenters disagreed with the proposed price ranges and noted that the proposed fees were too high.

There were 57 comments on the proposed deposit deadlines for returned check services. Forty-eight commenters agreed with the proposed deadlines. Several commenters noted that the deposit deadlines were reasonable and necessary to support next-day delivery of local returned checks. Several commenters indicated that the proposal to set the deadline for returns to correspond with a forward collection deadline was valid because banks would be able to use existing transportation arrangements to deliver their returns to the Federal Reserve Banks. Several other commenters stated that Reserve Banks should be required to offer a raw return deposit option to assist banks of all sizes in complying with Regulation CC. There were other requests that the Federal Reserve publish the deposit deadlines as early as possible so banks would be able to determine how best to deal with the new regulation.

Several commenters stated that the 8:00 p.m. return deposit deadline for raw returns was too early. The commenters stated that the 8:00 p.m. deadline would require, at a minimum, a complete reorganization of transportation schedules and would result in a significant increase in the number of cash letters being delivered to the Federal Reserve.

There were 81 comments on the proposed deposit option wherein paying banks would place the nine-digit routing number of the depositary bank on the face of the returned check prior to sending it to a Reserve Bank for subsequent processing. Eleven commenters supported the proposed option and noted that it would speed the return process. Several commenters requested that the Federal Reserve consider mandating this practice as a regulatory requirement for the paying bank. Five commenters disagreed with this deposit option because the process was too time consuming and not cost effective. Sixty-five commenters expressed concern about determining whether the paying bank writing the nine-digit number or the returning bank encoding the nine-digit number would be liable if a returned check was sent by mistake to a bank other than the depositary bank. Several other commenters noted that this concept had merit but needed a uniform standard for format and placement. Most commenters stated that the proposed

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option should only be used when preparing QRCs.

The Board believes that changes to Federal Reserve Bank returned checks services are necessary to expedite the return of unpaid checks to the depositary banks. The Board has approved the proposal to allow Federal Reserve Banks to accept for deposit, from paying and returning banks, returned checks that had not been collected through the Federal Reserve. In addition, the Board has approved the proposal to establish deposit deadlines and explicitly price for returned check services. In response to the concerns expressed by the commenters that the proposed price ranges were too large, the Board published narrower price ranges and specific deposit deadlines for each Federal Reserve office on April 4, 1988. (53 FR 11960 (April 11, 1988))

Based on the mixed response received to the proposal wherein paying banks would place the nine-digit routing number of the depositary bank on the face of the returned check prior to sending it to a Reserve Bank for subsequent processing, the Board decided to make the service optional to the Reserve Banks, which may offer it as a deposit option to paying or returning banks.

The Reserve Banks are currently in the process of developing deposit deadlines and prices for returned check services. To address the concerns of the commenters, Reserve Banks will be establishing multiple deposit deadlines. Generally, Reserve Banks will be establishing a deposit deadline for raw returns that corresponds to the deposit deadline for RCPC forward collection checks. Reserve Banks may require that raw returns be sorted as to local or nonlocal at this deadline. If sorting is required, the Reserve Banks will offer an earlier deposit deadline (no earlier than 6:00 p.m.) where no sorting is required. The Board plans to publish the final deposit deadlines and fees for Federal Reserve Bank returned check services in mid-June.

High-Speed Processing of Returns

The proposed Regulation CC allowed paying and returning banks to qualify returned checks for high-speed processing by placing a strip on the bottom of the returned check or placing the returned check in a carrier envelope and encoding that strip or envelope with the nine-digit routing number of the depositary bank, the amount of the check, and a return identifier (a "2" in position 44 of the MICR line; see American National Standards Committee on Financial Services, *Specifications for the Placement and Location of MICR Printing*, X9.13 (Sept. 8, 1983)). This process was proposed because the automation of returned checks being handled by multiple banks should expedite the return of unpaid checks to the depositary bank.

The Board proposed that the Federal Reserve Banks accept for deposit returned checks that have been qualified by paying and returning banks. In addition, the Board proposed that Federal Reserve Banks qualify returned checks received raw when doing so would speed the return process. Generally, this would occur for nonlocal returned checks being processed by more than one Federal Reserve office; however, in some cases, Reserve Banks may qualify local returns when doing so would facilitate more efficient and cost-effective processing of local returns.

The Board proposed that the processing of returned checks via the QRC process would be separate from the processing of forward collection checks. Thus, banks depositing qualified returned checks with Federal Reserve Banks generally would deposit QRCs in separate return letters. It was also proposed that Reserve Banks may, as a separate deposit option, accept QRCs intermixed with forward collection checks. QRCs being dispatched by the Federal Reserve Banks would not be intermixed with forward collection checks unless the depositary bank agreed that returns be included in its Federal Reserve forward collection cash letter.

The Board requested comment on the use of the QRC process for expediting the handling of returned checks by returning banks. Specifically, the Board requested comment on the likelihood of paying banks initiating this process.

The Board received a total of 172 comments on the proposed QRC process. One hundred commenters supported the proposed QRC process and agreed that it was an excellent means for expediting the handling of returned checks. Several of these commenters stated that the QRC process should be mandatory because it was the only way to ensure that banks of all sizes would use the process. Approximately one-third of the 172 commenters indicated that they would qualify returns. Other commenters stated that paying banks would turn to the Federal Reserve or their correspondent bank for QRC processing.

Eleven commenters disagreed with the proposed QRC process. These commenters indicated that the costs of preparing a QRC would not be offset by the benefits. Several other commenters indicated that they did not have the appropriate software and hardware to create QRCs. Some commenters also noted that the separation of QRCs from forward collection checks would neutralize many of the advantages of high-speed processing of returned checks.

Approximately 60 commenters expressed some concerns about certain aspects of the proposed QRC process. Several commenters expressed concern over the use of a carrier envelope. They stated that returned checks are often separated from open-faced carrier envelopes and that there was no audit trail when this occurred. It was also noted that using carrier envelopes is not conducive to microfilming or high-speed processing. It was recommended that the carrier envelopes only be used for mutilated checks. Similar concerns were expressed about the application of strips to the bottom of returned checks. Commenters were concerned that a strip might be removed if the returned check is rejected, and the returned check would then be released into the forward collection stream and represented to the paying bank.

For purposes of clear identification, several commenters recommended that QRCs have a unique color strip or carrier. A few commenters also recommended that the carrier envelope should be identified as carrying a QRC. These commenters also urged the Federal Reserve to develop a standard cash letter advice form for returned checks. The unique color strip or carrier, the identification of the carrier as carrying a QRC, and the standard cash letter advice would alert personnel handling the returned checks that the checks are returns and require special handling.

Commenters also expressed concern about the placement of liability if encoding errors were made on the envelope or strip and the returned check was mishandled as a result. It was recommended that the qualifying bank's routing number also be included on the carrier or strip.

Several commenters also noted that the use of the QRC option would depend on the cost difference between raw and qualified returns. It was stated that a significant per transaction fee for raw returns would serve as an incentive to qualify returns.

The Board believes that the QRC process will expedite the processing of returns and has approved the proposal that Reserve Banks accept for deposit QRCs prepared by paying or returning banks beginning September 1, 1988. The Board believes that the QRC process will be effective using either carrier envelopes or strips and that either should be allowed so that each bank may individually make the most cost-effective choice. The Board believes it is unnecessary to require that the strips or envelopes be of a unique color because the returned check identifier in position 44 of the MICR-line should be sufficient to distinguish the returned check from a forward collection check. The Federal Reserve offices will also qualify raw returns received for deposit when this process will expedite the return process. In recognition of the fact that many banks process returned checks separately from forward collection checks, the Board adopted a policy that the processing of returned checks via the QRC process would generally be kept separate from the processing of forward collection checks. Qualified returned checks dispatched by the Federal Reserve Banks will not be intermixed with forward collection checks unless the depositary bank agrees that the returns be included in its Federal Reserve cash letter. As the banking industry gains experience with the new procedures for handling returned checks, the Board may permit all banks to mix their QRC's with their forward collection checks.

Notice of Nonpayment

Regulation CC, adopted by the Board in a related action today (see Docket No. R-0620) requires notice of all large-dollar returned checks of $2,500 or more, regardless of whether the returned checks were collected through the Federal Reserve. Under the proposal, the paying bank must notify the depositary bank by 4:00 p.m. (local time of the depositary bank) on the second business day following presentment of the check to the paying bank.

The Board proposed several changes to its notice of nonpayment service in support of the proposed regulation. Specifically, it proposed that the Federal Reserve Banks provide a same-day notice service beginning September 1, 1988. The proposed new deadlines and fees for notice of nonpayment are as follows:

Origination by—	Deadline	Fee
Wire	12 noon	$1.75
Telephone call to Fed	9 a.m.	4.25
Physical check to Fed	do	5.25

The Board also proposed that, beginning January 1, 1989, any bank with an on-line electronic connection with the Federal Reserve be required to take notices over its connection or a designated third-party connection.

A total of 106 comments were received on the proposed modifications to the Federal Reserve's notice of nonpayment service. A majority of the commenters agreed with the proposed modifications. Several commenters, however, expressed some concern with the proposal. Some of these commenters opposed requiring banks to use their electronic connections to accept notices. One commenter suggested that the Federal Reserve Banks use facsimile systems for notice because it was relatively inexpensive compared to wire notice.

The Board believes that the proposed modifications to the Federal Reserve Banks' notice of nonpayment service are necessary to meet the requirements of Regulation CC and approved this proposal. Further, the Board approved that any depositary bank with an on-line electronic connection with the Federal Reserve will be required to receive all notices from the Federal Reserve over an electronic connection either directly or through a designated third party. Electronic connections, for this purpose, include only connections for funds transfer applications and, therefore, do not include electronic connections used solely for tape transmission of ACH items or other activities such as cash ordering.

Truncation and Extended MICR Capture Services

The Act directed the Federal Reserve to consider several electronic alternatives to improve the check processing system, including check truncation. In truncation, the MICR-line information on the check is captured and presented to the paying bank electronically, while the paper checks are retained by the presenting bank. During 1985, the Federal Reserve implemented a pilot program of the truncation process at four Reserve Banks. By the end of 1986, two additional Reserve Banks became participants in the pilot program. The objectives of the pilot included developing, testing, and refining the Federal Reserve's ability to: (1) Provide local storage and retrieval services to paying banks; (2) participate in a pilot sponsored by the National Association for Check Safekeeping (NACS), which offers the potential benefits of truncating eligible checks earlier in the collection stream; and (3) work with NACS representatives to expand the NACS program to include all types of checks.

In December 1987, the Board proposed that all Federal Reserve Banks be permitted to provide truncation services as a permanent service. As part of the proposed service, the Federal Reserve Banks would participate in the NACS truncation program. Initially, the Reserve Banks would truncate checks for local paying banks, expanding into truncation for nonlocal paying banks as the rules and procedures of NACS become more fully developed.

Under the Federal Reserve pilot program, a Reserve Bank truncates checks for local paying banks. In providing this service, the Reserve Bank captures the complete payment information from the MICR-line of each check, including the nine-digit routing number, account number, check number, and dollar amount. Checks rejected during high-speed processing are also included on the MICR output file. All MICR-captured checks are microfilmed, and unique sequence numbers are inserted into the MICR file and printed on both the microfilm and the physical check. These sequence numbers facilitate Reserve Bank processing of returned checks and retrieval requests. The Reserve Bank delivers the captured MICR-line data and related totals to the paying bank or its agent on magnetic tape or by data transmission, as requested by the paying bank. Under this service, presentment to the paying bank is based on the receipt of electronic presentment, because the paying bank does not receive the physical paper checks. The Federal Reserve Bank stores the physical checks and microfilm for a negotiated period, usually 90 days and seven years, respectively, after which time both are destroyed.

Upon receipt of the MICR data, the paying bank processes and posts the MICR data to the appropriate customer accounts. If a decision is made to return a check, the paying bank notifies the Reserve Bank no later than the published deadline on the business day following the day the MICR data are presented. The Federal Reserve Bank retrieves the physical checks and initiates the return process to the depositary bank. The paying bank may also request retrieval services, such as information from a truncated check, a copy of a check, or the original physical check (provided the request is received before the check has been destroyed).

The pilot program incorporates a standard pricing structure and common set of pricing principles used by the Reserve Banks. Local pricing is used to reflect the different processing costs at each office. The prices have remained in effect throughout the pilot program, with minor adjustments. The fee structure contains a basic per item fee and separate fees for returned checks

(initiated by telephone or automated means), retrievals, fine-sort processing, and over-the-counter processing. Reject reentry and microfilming costs are part of the basic per item fee, while large-dollar notice of nonpayment costs are part of the returned check fee.

In the proposal, the Board anticipated that fees at most Reserve offices will approximate those in the pilot. Fee ranges at the six pilot Reserve Banks are as follows:

Basic per item:
—Via tape, $0.011–$0.020
—Via transmission, $0.014–$0.025
Return item:
—Telephone, $1.60–$2.80
—Automated, $1.35–$2.30
Retrieval per item, $1.00–$2.00
Fine sort:
—Per package, $0.00–$2.00
—Per item, $0.006–$0.020
Over-the-counter:
—Per package, $0.50–$0.50
—Per item, $0.014–$0.018

The Board received 155 comments on the truncation service. Eighty-one commenters supported the implementation of truncation services at the Federal Reserve Banks, 24 commenters were opposed, and 50 commenters were silent as to agreement or opposition to the proposed truncation service. Commenters supporting the proposal indicated that truncation is necessary to provide a less costly checking product. These commenters stated that the primary benefit would be the reduction in paper flow.

Commenters opposed to the proposed truncation service stated various reasons for opposition. Eight commenters indicated that receipt of the physical checks is preferred because their customers want the paid checks to be included in the customers' monthly statements. In addition, commenters indicated a need to review the physical check before deciding whether or not to pay the check (i.e., inspections of large-dollar checks, inspections for payable-through checks).

Commenters that did not indicate whether they favored or opposed the Federal Reserve's proposal to provide a truncation service pointed out specific concerns about the technical details of the proposal. These commenters were concerned that the proposed truncation service would not be easily integrated with current bulkfiling, statement cycle, and other operational procedures at paying banks. These commenters indicated that the potential for the service to be successful in the short term was minimal due to low demand; expanded use of truncation by the industry needed to occur first. In addition, commenters were concerned about the legal aspects associated with properly payable items, proof of payment, and timeliness. While a few commenters pointed out that a mandatory system would receive the maximum benefits because paying banks would not have to maintain dual processing systems for electronic and paper presentments, other commenters indicated that, because of the legal concerns about properly payable items, a voluntary system would be preferable.

Several commenters indicated that it is inappropriate for Federal Reserve Banks to offer local truncation services because private sector service providers currently offer an adequate level of service. One commenter stated that the Federal Reserve should build and support private sector systems already in place, rather than offering its own truncation service. The commenter stated that the Federal Reserve program should foster, not stifle, alternative systems in the intermediate local stages leading toward national truncation. One commenter indicated that the provision of a local truncation service would place undue burden on the Federal Reserve offices.

Federal Reserve policy regarding the provision of new services was set forth by the Board on August 14, 1984, in a paper entitled "The Federal Reserve in the Payments System." The criteria for the Federal Reserve to enter a new service include: (1) Full recovery of costs in the long run; (2) yield of a clear public benefit, including, for example, improving the efficiency of the payments mechanism or reducing the use of real resources; and (3) a finding that other providers alone cannot be expected to provide the service with reasonable effectiveness, scope, and equity, including, for example, a finding that the Federal Reserve's presence is needed to ensure an adequate level of service nationwide, or to avoid undue delay in the development and implementation of the service.

The Federal Reserve Bank's truncation service meets these criteria. It will be priced to recover its costs, including the private sector adjustment factor. Ultimate provision of this service on a nationwide level will promote the efficiency of the payments mechanism and reduce the use of real resources, once sufficient numbers of checks are truncated. The Federal Reserve Banks, which handle approximately 35 percent of all checks written, must be involved to ensure an adequate level of service nationwide. Experience under the NACS program indicates that private sector providers of local truncation services are unwilling to participate in interbank truncation until a sufficient volume of checks are eligible for truncation. Thus, Federal Reserve involvement should hasten the development and implementation of a nationwide truncation service. Provision of a local truncation service by the Federal Reserve is a necessary first step to a full nationwide interbank truncation service.

The Board approved the offering of the truncation service by the Reserve Banks as a permanent service, effective July 15, 1988. This service will not be a mandatory service, but rather would be offered to paying banks that choose to participate in the truncation program. The fee structure for the truncation service will correspond to that used in the pilot program. Paying banks that participate in the Federal Reserve's local truncation service may establish a dollar limit on the checks eligible for truncation. Under interbank truncation, this dollar limit is governed by NACS rules, which currently set a $2,500 limit on checks eligible for truncation.

The Board also requested comment on a proposed service that offers many of the same benefits of truncation without stopping the flow of the paper check—the extended MICR capture service. Under this service, which has also been provided as a pilot program, Reserve Banks would deliver payment information by electronic transmission or magnetic tape, provide returned check and retrieval services identical to the truncation service, and deliver the checks to the paying bank several days later using less time-critical transportation. The paying banks are charged for the checks based on the electronic presentment of the MICR data. In addition, paying banks are charged for return and retrieval services identical to the truncation service.

The Board received 80 comments on the extended MICR capture service. In general, commenters agreed with the concept of the extended MICR capture service, with 43 comments in favor, 6 opposed, and 31 neutral. Commenters in favor of the proposal indicated that extended MICR would assist in evaluating the operational components of truncation without experiencing the problems associated with nonreceipt of checks. In addition, customer habits would not need to change because the paying bank could continue to send the physical checks to the customer.

Commenters opposed to the proposal indicated that there is no need for the Federal Reserve to become involved in the extended MICR capture service. One commenter indicated that, while the delivery of check information would be faster, the delivery of paper checks would be slower, causing potential problems for the paying bank.

The Board believes that the extended MICR capture service will expedite the returned check process. Offering of this service is consistent with the criteria listed in the paper "The Federal Reserve in the Payments System," which is discussed above. This service will not be a mandatory service but rather would be offered to the paying banks that choose to participate in the program. The Board has approved the extended MICR capture service as a permanent service to be offered by the Reserve Banks, effective July 15, 1988. The service will be provided as described above in the pilot program.

Competitive Issues

An important factor considered in the development of the regulatory framework for expedited returns and related Reserve Bank services was the impact on competition in the check collection system. In this regard, the Board requested comment on whether there are any returned check services or other procedural changes for returning banks that the Federal Reserve has not proposed that might assist the returning bank in providing returned check services.

Commenters that supported implementation of the proposed Federal Reserve services indicated that the services are designed to encourage competition as well as improve the check collection and return process. One trade association added that the public and the majority of depository institutions have benefited from the competitive environment that has existed between the Federal Reserve and the correspondent banks.

Other commenters expressed concern that correspondents will lose a significant portion of their returned check income, because the Federal Reserve will become the predominant provider of returned check services, given the availability schedules and deadlines that will be provided by the Federal Reserve Banks. Several commenters urged that the Federal Reserve delay offering returned check services or, at a minimum, delay unbundling returned check costs from forward collection prices until correspondent banks and other interested parties could develop their own returned check products and get some experience with the market pricing mechanism.

The Board implemented the requirements in Subpart C of Regulation CC to improve the check return process effective September 1, 1988, in conjunction with the effective date of the funds availability and disclosure requirements mandated by the Act. Industry representatives indicated that implementation of these improvements concurrent with the effective date of the funds availability requirements is important to minimize risks to the depositary bank from making funds available on a more prompt basis.

To enable banks to comply with these requirements, the Federal Reserve Banks will begin offering returned check services that would meet the requirements in the Act on September 1, 1988. Handling of returned checks by the Federal Reserve must be explicitly priced with the introduction of these new services, since return costs cannot be recovered through the Federal Reserve Banks' forward collection fees as they are today. Some returned checks handled by the Federal Reserve under the new services will not have been collected through the Federal Reserve, and thus will not have been subject to the Federal Reserve's forward collection fees. In addition, paying banks and returning banks will be able to deposit returned checks with the Federal Reserve in various ways that result in different costs being incurred by the Reserve Banks. To provide correspondent banks with as much advance notice as possible in order to develop competing returned check services, the Board published, on April 4, 1988, estimated price ranges and deadlines for the new Federal Reserve returned check services. The Board retained consulting services to survey banks about the published price ranges and deadlines and provide feedback on the likelihood that banks would offer competing returned check services. This effort revealed that the price differentials between raw and qualified returned check services would provide incentives for banks to qualify their returns prior to deposit at the Federal Reserve office. In addition, banks indicated that they would offer returned check services.

A number of commenters focused on the general role of the Federal Reserve in the check collection system, rather than discussing specifically the competitive impact of the proposed Federal Reserve returned check services. These commenters indicated that the competitive presence of the Federal Reserve disadvantages private sector service providers. They asserted that the Federal Reserve has an unfair competitive advantage due to its dual role as regulator and service provider, and its lower price structure, which they believe is due, in part, to the fact that the Federal Reserve does not incur certain costs, such as presentment fees, that private sector competitors must pay.

The Board has carefully analyzed the proposed services, and believes that they meet the standards that the Federal Reserve established for priced services, as they will recover costs; yield clear public benefits by speeding the handling of returned checks; and because adequate returned check services are unlikely to be provided by the private sector. In this regard, staff notes that the requests for delay in the check return rules from correspondent banks argue in favor of the Federal Reserve providing check return services.

Appendix A—Federal Reserve Policy on Delivery of Returned Checks

The Federal Reserve's policy on the delivery of returned checks is based on the Regulation CC provision governing where a depositary bank must accept its returned checks and Reserve Bank's duties as returning banks. Under § 229.32(a) of the regulation, a depositary bank must accept returned checks at the location(s) in accordance with its indorsement, or at any location at which the bank accepts checks as a paying bank. The Federal Reserve cannot receive payment for the returned checks until the checks are delivered to the depositary bank. Returning banks, including Federal Reserve Banks, are required to handle returned checks expeditiously, under § 229.31(a).

Federal Reserve arrangements for delivery of returned checks will depend on the following factors:

(1) Whether a depositary bank is subject to the expeditious return rule (i.e. whether the bank has transaction accounts);

(2) How quickly the checks will be returned to the depositary bank;

(3) Preference of the depositary bank;

(4) Established courier routes;

(5) The dollar volume of returns to the depositary bank, recognizing the particular risks associated with returned checks;

(6) Minimization of overall costs of providing Federal Reserve check services.

These factors allow for a Federal Reserve delivery policy that meets the Federal Reserve Banks' duty for expeditious return, while allowing for delivery arrangements suited to the individual needs of depositary banks.

The Federal Reserve policy on delivery of returned checks is as follows:

—A depositary bank with transaction accounts may receive returned checks from the Federal Reserve, at no charge, at a location where the Federal Reserve currently delivers the bank's forward collection checks, or in the case of a depository institution that issues payable through drafts, at a location based on the indorsement on the returned check.

—In the case of certain depository institutions, primarily credit unions, that issue payable through drafts, the Reserve Banks would determine the manner of expeditious return based on the location of

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the depositary bank and the dollar volume of returned checks, taking into account the risk associated with returned checks.

—In instances where the depositary bank does not want its returns delivered to the same place as its forward collection checks, or in instances where an institution that issues payable through drafts does not want returns by mail where mail would constitute expeditious return, Reserve Banks may consider the following delivery alternatives:

(1) The depositary bank may arrange to have the Federal Reserve deliver the returned checks to a correspondent bank or service bureau that is on an existing courier route, at no charge;

(2) The depositary bank may arrange to pick up the returned checks at the Federal Reserve;

(3) The depositary bank may elect to have a facsimile or other information concerning the returned checks transmitted by means of an approved depositary bank service or truncation arrangement, to a specified location, with the physical check to follow;

(4) The depositary bank and the local Federal Reserve office may agree to an alternative arrangement tailored to meet the needs of the depositary bank. If the costs of that arrangement exceed the costs of delivery to a location where the Federal Reserve would offer delivery at no charge, the depositary bank may be required to absorb the costs of returned check delivery.

Board Action

For the reasons stated above, the Board has adopted a proposal for the Federal Reserve Banks to offer depository institutions several new returned check services and services to improve the collection of checks. These services will assist depository institutions in complying with the new rules for the collection and return of checks that the Board has, in Docket No. R–0620, adopted to implement the Expedited Funds Availability Act. The Board has also approved check truncation and extended MICR capture services as permanent Federal Reserve Bank services.

By order of the Board of Governors of the Federal Reserve System, May 13, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–11268 Filed 5–26–88; 8:45 am]

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May 27, 1988

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412 and 413

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BERC-465-P]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare inpatient hospital prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system. In addition, in the addendum to this proposed rule, we are proposing changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. These changes would be applicable to discharges occurring on or after October 1, 1988. We are also setting forth proposed rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 26, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-465-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may delivery your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-465-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

For individual copies of this proposed rule, contact the following: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for individual copies is $1.50 for each issue or for each group of pages as actually bound, payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT:

Thomas Hoyer—Physician Attestation, (301) 966-4607

Linda Magno—All Other Issues, (301) 966-4529.

To obtain copies of this document, see the "Address" section, above. To obtain data used in deriving the standardized amounts and DRG relative weights, see section IV.B., Public Requests for Data.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system for payment of inpatient hospital services under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the inpatient hospital prospective payment system are located in 42 CFR Part 412.

Sections 1886(d)(1)(A), (C), and (D) of the Act provide for the implementation of the prospective payment system over a four-year transition period. During the transition period, payment to hospitals is based on a combination of the Federal prospective payment rates and hospital-specific rates, the proportions of which change with the hospital's cost reporting period. In addition, during that period, the Federal rate is a combination of regional and national rates, the proportions of which change with the Federal fiscal year.

On September 1, 1987, we published a final rule (52 FR 33034) to update the prospective payment rates for the first year after the four-year transition period (that is, for Federal fiscal year (FY) 1988). Technical corrections to that final rule were issued on September 18, 1987 (52 FR 35350) and October 9, 1987 (52 FR 37769). However, on September 29, 1987, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100-119) was enacted. Section 107(a)(1) of Pub. L. 100-119 made several changes to payment for inpatient hospital services under the prospective payment system in FY 1988. On October 23, 1987, we published a notice (52 FR 39637) that identified these statutory changes as follows:

- For discharges occurring on or after October 1, 1987 and before November 21, 1987, the applicable percentage increase used to update the inpatient hospital prospective payment system average standardized amounts for FY 1988 is zero percent.
- The prospective payment transition period was extended as follows:

—For the period October 1, 1987 through November 20, 1987, the national/regional blend of the Federal portion of a hospital's prospective payment rate remained at 50 percent national and 50 percent regional

—For the first 51 days of a hospital's cost reporting period beginning during FY 1988, the hospital's prospective payment rate continues to be composed of 75 percent of the Federal rate and 25 percent of the hospital-specific rate. The applicable hospital-specific rate for this period is the hospital's rate that was in effect for its cost reporting period that began during FY 1987.

—For hospitals and hospital units excluded from the prospective payment system, the applicable percentage increase used to update the hospital's rate-of-increase limits is zero percent for the first 51 days of its cost reporting period beginning in FY 1988.

Subsequently, on December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) was enacted. Portions of section 4002, 4005, 4006, and 4009 of Pub. L. 100-203 affected FY 1988 payments to prospective payment hospitals and hospitals excluded from the prospective payment system. On April 5, 1988, we published a notice with comment period (53 FR 11134) to describe these statutory changes as follows:

- For discharges in FY 1988 occurring on or after April 1, 1988, the applicable percentage increase used to update the standardized amounts for prospective payment system hospitals is—

—3.0 percent for hospitals located in rural areas;

—1.5 percent for hospitals located in large urban areas; and

—1.0 percent for hospitals located in other urban areas.

- A "large urban area" is defined as an urban area that the Secretary determines has a population of more than 1,000,000 based on the most recent available population data published by the Bureau of the Census. In addition, any New England County Metropolitan Area (NECMA) with a population of more than 970,000 is a large urban area.
- For discharges occurring in a fiscal year beginning on or after October 1, 1987, the Secretary computes average standardized amounts for hospitals located in rural, large urban, and other urban areas. For FY 1988 discharges occurring on or after April 1, 1988, the average standardized amounts for large urban and other urban areas are computed by applying the applicable update factor to the urban average standardized amount that was in effect for the 51-day period beginning October 1, 1987.
- For discharges occurring on or after April 1, 1988 and before October 1, 1990, "regional floors" for the standardized amounts are established. The regional floor for a region is the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15 percent of the average standardized amount for the region.
- Hospitals and hospital units excluded from the prospective payment system receive a 2.7 percent increase for cost reporting periods beginning in FY 1988, excluding the first 51 days of these cost reporting periods for which the increase is zero percent.
- For cost reporting periods beginning on or after October 1, 1987, a sole community hospital's hospital-specific portion is increased by zero percent for the first 51 days of the cost reporting period, 2.7 percent for the next 132 days, and for the remainder of the cost reporting period by the same percentage increase as is used in updating the applicable Federal rate (that is, 3.0 percent for hospitals located in rural areas, 1.5 percent for hospitals located in large urban areas, and 1.0 percent for hospitals located in other urban areas).
- Effective with discharges on or after April 1, 1988, rural hospitals may qualify as rural referral centers if they have 275 or more beds.
- For discharges occurring on or after April 1, 1988 and before October 1, 1989 that are classified in DRGs relating to burn cases, the marginal cost factor to be used in computing payments for outliers is 90 percent.

The comment period for the April 5, 1988 notice ends on June 6, 1988.

B. Major Contents of this Proposed Rule

This proposed rule would be effective for the sixth year of operation of the prospective payment system. Following is a summary of the major changes that we are proposing to make to the system:

1. Changes to DRG Classification and Weighting Factors

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors at least annually. Our proposed changes for FY 1989 are set forth in section II of this preamble.

2. Changes in the Wage Index

We are proposing to update the wage index by basing it entirely on 1984 wage data. In addition, we would make adjustments to the wage data to reflect the provisions of sections 4004(b) and 4005(a) of Pub. L. 100-203. These proposed changes are set forth in section III of this preamble.

3. Other Decisions and Regulations Changes

In section IV of this preamble, we discuss several current provisions of the regulations in 42 CFR Parts 412 and 413, and set forth certain proposed changes concerning—

- Physician attestation;
- Updating the prospective payment rates and rate-of-increase limits;
- Changes in geographic classifications;
- Creation of a regional floor for standardized amounts;
- Payment for outlier cases;
- Payments to sole community hospitals;
- Referral center criteria;
- Payment for disproportionate share hospitals;
- Classification of capital-related costs and direct medical education costs;
- Elimination of interim payments for the indirect costs of medical education;
- Payment for the indirect costs of medical education; and
- Ceiling on rate of hospital cost increases.

4. Determining Prospective Payment Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the methods, amounts, and factors for determining the FY 1989 prospective payment rates. We are also proposing new target rate percentages for determining the rate-of-increase limits for FY 1989 for hospitals and hospital units excluded from the prospective payment system.

5. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

6. Report to Congress on the Update Factor

Section 1886(e)(3)(B) of the Act requires the Secretary to report to Congress no later than March 1, 1988 on our initial estimate of an update factor for FY 1989 for both prospective payment hospitals and hospitals excluded from the prospective payment system. This report is included as Appendix B of this proposed rule.

7. Proposed Recommendation of Update Factor

As required by sections 1886 (e)(4) and (e)(5) of the Act, Appendix C provides our recommendation of the appropriate percentage change for FY 1989 in the—

- Large urban, other urban, and rural average standardized amounts for inpatient hospital services paid for under the prospective payment system; and
- Target rate-of-increase limits to the allowable operating costs of inpatient hospital services furnished by hospitals and hospital units excluded from the prospective payment system.

8. Discussion of Prospective Payment Assessment Commission Recommendations

The Prospective Payment Assessment Commission (ProPAC) is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classifications and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary. ProPAC is also directed, by the provisions of sections 1886 (e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. These recommendations for FY 1989 were submitted to the Secretary on March 1, 1988.

We are printing ProPAC's report, which includes its recommendations, as Appendix D of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble. Those recommendations that are not specifically relevant to matters presented below are discussed in section V of this preamble. For a brief summary of the ProPAC recommendations, we refer the reader to pages 5 through 8 of the ProPAC report as set forth in Appendix D of this

proposed rule. ProPAC also produced a volume of technical appendixes to its March 1, 1988 report that provides background material and detailed analyses used in preparation of the ProPAC report. For further information relating specifically to the ProPAC report or to obtain copy of the technical appendixes, contact ProPAC at (202) 453–3988.

II. Changes to DRG Classifications and Weighting Factors

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average of resources used to treat all Medicare cases. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average Medicare case.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors annually beginning with discharges occurring in FY 1988. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1988 are discussed below.

B. Reclassification of DRGs

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to four additional diagnoses, and any procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnostic and procedure information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment.

The list of DRGs currently contains 475 specific categories in 23 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

Principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis, age, and presence or absence of complications or comorbidities (hereafter CC) only. Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not done in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We are proposing to make some changes to the DRG classification system on the basis of problems identified over the past year. These proposed changes are set forth below.

2. MDC 3: Diseases and Disorders of the Ear, Nose and Throat

We have received a few comments observing that the DRG assignment, hence, weighting factors and payment levels, for surgical treatment of metastases of mouth carcinomas varies widely based on the exact site of the primary cancer within the mouth. For example, cases involving major surgical procedures such as glossectomy, radical neck dissection, or mandibulectomy are assigned to DRG 49 (Major Head and Neck Procedures) with a weighting factor of 2.8923 if the principal diagnosis is a malignant neoplasm of the tongue. The same case with a principal diagnosis of malignant neoplasm of the mouth floor groups to DRG 168 or 169 (Mouth Procedures)[1] with weights of 1.4067 and .6688, respectively. This anomaly stems from the original treatment of the mouth as part of the digestive system (MDC 6). The list of mouth procedures in MDC 6 duplicates a range of procedures that are assigned to a variety of DRGs in MDC 3, because the anatomical proximity of the mouth to the ears, nose, tongue and throat results in diagnoses in one area necessitating procedures in another.

Based on our review of the types of cases brought to our attention and the overall logic of the DRG classification scheme, we are proposing to restructure MDC 3 and MDC 6 by removing mouth-related diagnoses and procedures from MDC 6 and adding them to MDC 3, which would now be titled "Diseases and Disorders of the Ear, Nose, Mouth and Throat." We would move DRGs 168 and 169 (Mouth Procedures) and DRGs 185 and 186 (Dental and Oral Disease) and 187 (Dental Extractions and Restorations) from MDC 6 to MDC 3. The diagnosis and procedure codes in these three DRGs would be deleted from MDC 6.

The mouth malignancy diagnosis codes (140.0–145.9) in DRGs 185, 186, and 187 fit more appropriately with other MDC 3 malignancy codes in DRG 64 (Ear, Nose and Throat Malignancy). Therefore we would delete codes 140.0–145.9 from DRGs 185, 186, and 187 and add them to DRG 64, which would now be retitled Ear, Nose, Mouth and Throat Malignancy. In addition, several mouth-related diagnosis codes currently in DRGs 73 and 74 (Other Ear, Nose and Throat Diagnoses) would fit more appropriately in DRGs 185, 186, and 187. Therefore, the diagnosis codes listed below would be deleted from DRGs 73 and 74 and added to DRGs 185, 186, and 187.

Diagnosis code	Description
210.1	Benign neoplasm tongue.
744.81–744.84	Congenital anomalies of the mouth.
749.00–749.04	Cleft palate.
749.10–749.14	Cleft lip.

[1] A single title combined with two DRG numbers is used to signify pairs, the first DRG of which is cases with CC and the second of which is cases without CC. If a third number is included, it represents cases of patients who are age 0–17

Diagnosis code	Description
749.20–749.25	Cleft palate with cleft lip.

DRGs 73 and 74 would now be retitled Other Ear, Nose, Mouth and Throat Diagnoses) to conform with the rest of the restructured MDC 3.

Finally, four neoplasm codes included in DRGs 188, 189, and 190 (Other Digestive System Diagnoses) would be better classified in the revised DRGs 185, 186, and 187 in MDC 3. We propose to delete diagnosis codes 210.0, 210.3, 210.4, and 213.1, benign neoplasms of the lip, mouth floor, mouth, and lower jawbone, respectively, from MDC 6 and add them to DRGs 185, 186, and 187 now in MDC 3.

As noted above, all of the procedure codes in the surgical DRGs 168 and 169 are presently assigned to clinically coherent DRGs in MDC 3. Thus, merely moving DRGs 168 and 169 into MDC 3 would produce a situation in which a case involving one of the mouth procedures could be assigned to multiple DRGs or, alternatively, a situation in which DRGs 168 and 169 would be empty. In order to prevent such an outcome, we propose deleting from DRGs 168 and 169 all procedures except the following, which are very specific to the mouth:

Procedure code	Description
24.2	Gingivoplasty.
24.4	Excision of dental lesion of jaw.
24.5	Alveoloplasty.
25.1	Excision or destruction of lesion or tissue of tongue.
25.59	Other repair and plastic operations on tongue.
25.94	Other glossotomy.
25.99	Tongue operation NEC.
27.0	Drainage of face and floor of mouth.
27.1	Incision of palate.
27.21	Biopsy of bony palate.
27.22	Biopsy of uvula and soft palate.
27.31	Local excision or destruction of lesion or tissue of bony palate.
27.42	Wide excision of lesion of lip.
27.43	Other excision of lesion or tissue of lip.
27.49	Other excision of mouth.
27.53	Closure of fistula of mouth.
27.55	Full-thickness skin graft to lip and mouth.
27.56	Other skin graft to lip and mouth.
27.57	Attachment of pedicle or flap graft to lip and mouth.
27.59	Other plastic repair of mouth.
27.61	Suture of laceration of palate.
27.71	Incision of uvula.
27.72	Excision of uvula.
27.73	Repair of uvula.
27.79	Other operations on uvula.
27.92	Incision of mouth, unspecified structure.
27.99	Other operations on oral cavity.

Since these procedures are also presently assigned to DRG 63 (Other Ear, Nose and Throat Procedures), we would remove them from DRG 63. By removing these procedures from DRG 63 and including them in the restructured DRGs 168 and 169 in MDC 3, we create a specific DRG pair for mouth-related procedures in MDC 3. Cases involving all other procedures currently in DRGs 168 and 169 would now be assigned to DRGs 49 through 62. We propose to add DRGs 168 and 169 to the revised surgical hierarchy for MDC 3 described below in section II.B.4. of the preamble. To conform with the restructured MDC, DRG 63 would be retitled Other Ear, Nose, Mouth and Throat Procedures. Also, DRG 55 would be retitled Miscellaneous Ear, Nose, Mouth and Throat Procedures.

3. Reclassification of MDC 7

Recently, a problem with the DRG assignment of certain cases involving multiple biliary tract procedures in MDC 7 (Diseases and Disorders of the Hepatobiliary System and Pancreas) was brought to our attention. If a patient is admitted for a biliary tract disorder and a choledochoenterostomy is performed, the discharge is assigned to DRG 193 or 194 (Biliary Tract Procedures Except Total Cholecystectomy). However, a patient with the same diagnosis who has both a choledochoenterostomy and a cholecystectomy performed is assigned to DRG 197 or 198 (Total Cholecystectomy without Common Duct Exploration). DRGs 197 and 198 have lower relative weights than DRGs 193 and 194, respectively, although more resources are involved in treating the patient who has both procedures performed.

This result occurs because, within the biliary tract section of the surgical hierarchy, the first determinant of DRG assignment is performance of a cholecystectomy, regardless of what other procedures might also have been performed. If a cholecystectomy was performed, a case will group to either DRG 195 or 196 (Total Cholecystectomy with Common Duct Exploration) if a common bile duct exploration (procedure code 51.41, 51.42, or 51.51) was also performed. However, a discharge with cholecystectomy performed and no bile duct exploration will group to DRG 197 or 198. Therefore, we decided to review the way surgical procedures were used to distinguish surgical patients.

Based on our review, we propose that, for operating room procedures done on the biliary tract, procedures first be differentiated on the basis of whether a total cholecystectomy, with or without common bile duct exploration, was the only procedure performed, or whether some other biliary tract procedure was also performed. If, in addition to cholecystectomy with or without common bile duct exploration, another biliary tract procedure was performed, the case would group to DRG 193 or 194. If a cholecystectomy and common bile duct exploration are the only procedures performed, the case would be assigned to DRG 195 or 196.

Finally, DRGs 197 and 198 would be reserved for those cases in which the only biliary tract procedure performed is a cholecystectomy.

In MDC 7, another problem in the surgical hierarchy was found in DRG 191 (Major Pancreas, Liver and Shunt Procedures) and DRG 192 (Minor Pancreas, Liver and Shunt Procedures). The relative weights suggested that DRG 192 was more resource intensive than DRG 191 and, therefore, should be ordered above it in the surgical hierarchy. Logically, however, minor procedures should not be ordered above major procedures. Consequently, this occurrence suggested that something was amiss in our delineation of major and minor procedures.

First, we decided to determine whether individual procedures should be changed from minor to major or major to minor. However, in reviewing the standardized charges for each procedure in DRGs 191 and 192, we could not find a discernible pattern. In both DRGs 191 and 192, there were some procedures with low average standardized charges and others with high average standardized charges. We again reviewed the data on the basis of whether a CC was present. This resulted in more homogeneous groups with standardized charges for a procedure with a CC resembling the standardized charges for other procedures with a CC. Therefore, we are proposing to combine all the procedures in DRGs 191 and 192 and group discharges having these procedures based on the presence or absence of a CC. DRG 191 would now be entitled "Pancreas, Liver and Shunt Procedures with CC," and DRG 192 would be entitled "Pancreas, Liver and Shunt Procedures without CC."

As part of our ongoing review, we are also examining the data to determine if procedures involving the pancreas should be separated from the other procedures in DRGs 191 and 192. In the first analysis, pancreas procedures had higher standardized charges than most other procedures. Based on this review, we may conclude that the procedures should be grouped in a different manner.

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4. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the particular principal diagnosis is assigned. It is therefore necessary to have a decision rule by which such cases are assigned to a single DRG. The surgical hierarchy, an ordering of groups of procedures from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive procedure group.

Because the relative resource intensity of procedure groups can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of procedures coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

The surgical hierarchy is based upon procedure groups. Consequently, in many cases, hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive procedure groups, therefore, involves weighting each DRG for frequency to determine the average resources for each procedure group. For example, assume procedure group A includes DRGs 1 and 2 and procedure group B includes DRGs 3, 4, and 5, and that the weighting factor for DRG 1 is higher than that for DRG 3, but the weights for DRGs 4 and 5 are higher than the weight for DRG 2. To determine the surgical hierarchy, we would weight the weighting factor of each DRG by frequency to determine average resource consumption for the group of procedures and order the procedure groups from that with the highest to that with the lowest average resource utilization, with the exception of "other OR procedures" as discussed below.

This methodology may occassionally result in a case involving multiple procedures being assigned to the lower weighted DRG of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for procedures that sometimes occur in cases involving multiple procedures, this result is unavoidable.

We would like to point out, notwithstanding the foregoing discussion, that there are a few instances where a procedure group with a smaller average relative weight is ordered above a procedure group with a higher average relative weight. First, the "other OR procedures" group is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs regardless of the fact that the weighting factor for the DRG or DRGs in that procedure group may be higher than that for other procedure groups in the MDC. The "other OR procedures" group is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

The second type of situation occurs when the difference between the two average weights for two procedure groups is very small. We have found that small differences generally do not warrant reordering the hierarchy since, by virtue of the hierarchy change, the weighting factors are likely to shift such that the higher-ordered procedure group has a lower average weight than the group ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As discussed below in section II.C. of this preamble, we anticipate that the final recalibrated weights will be somewhat different than those proposed since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for MDCs 3, 5, 6, and 8 as follows:

a. As discussed above in section II.B.2 of this preamble, we are proposing to move all mouth diagnoses and procedures into MDC 3 to create one MDC for the Ear, Nose, Mouth and Throat. Accordingly, DRGs 168 and 169 would move from MDC 6 into MDC 3 and must be placed into the surgical hierarchy for MDC 3. Based on this change and the resulting relative weights, we propose to reorder the procedure groups in MDC 3 as follows:

Major Head and Neck Procedures (DRG 49)
Tonsillectomy and Adenoidectomy Procedure Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57 and 58)
Mouth Procedures (DRGs 168 and 169)
Cleft Lip and Palate Repair (DRG 52)
Myringotomy with Tube Insertion (DRGs 61 and 62)
Sialoadenectomy (DRG 50)
Sinus and Mastoid (DRGs 53 and 54)
Salivary Gland Except Sialoadenectomy (DRG 51)
Miscellaneous Ear, Nose, Mouth and Throat (DRG 55)
Rhinoplasty (DRG 56)
Tonsillectomy and/or Adenoidectomy Only (DRGs 59 and 60)
Other Ear, Nose, Mouth and Throat OR Procedures (DRG 63)

b. In MDC 5, we would reorder Other Cardiothoracic or Vascular Procedures with Pump (DRG 108) above Coronary Bypass (DRGs 106 and 107).

c. In MDC 6, Mouth Procedures (DRGs 168 and 169) would be removed from the hierarchy and placed into MDC 3.

d. In MDC 8, we would reorder Soft Tissue (DRGs 226 and 227) above Local Excision and Removal of Internal Fixation Devices of Hip and Femur (DRG 230).

e. As noted in section II.B.3 of this preamble, we are proposing to separate pancreas, liver, and shunt procedures based on the presence or absence of a CC. However, the surgical hierarchy would not change. (DRG 191 (Pancreas, Liver and Shunt Procedures with CC) would be ordered above (DRG 192 (Pancreas, Liver and Shunt Procedures without CC).

5. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications and comorbidities (CCs). This list was developed by physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. A substantial CC, in turn, is defined as a condition that, because of its presence with a specific principal diagnosis, would cause an increase in length of stay by at least one day for at least 75 percent of the patients.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER Logic so that certain diagnoses included on the standard list of complications and comorbidities would not be considered a valid CC in combination with a particular principal diagnosis. (Thus we created the CC Exclusions List.) We made these changes to preclude coding of closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as complications or comorbidities, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 33143), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites would not be considered as CCs for one another.
- Closely related conditions would not be considered as CCs for one another.

We indicated in the September 1, 1987 final notice (52 FR 33154) that the creation of the CC Exclusions List was a major project involving hundreds of thousands of codes and that the FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications of another diagnosis. For that reason and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions, as appropriate.

We are proposing a limited revision of the CC Exclusion Lists, which includes corrections of errors in the existing list, addition of a number of excluded CCs, and the deletion of a number of excluded CCs. These proposed changes are being made in accordance with the principles established when we created the Exclusions List in 1987.

Tables 6d and 6e in section IV of the addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1988. Although 72 principal diagnoses have both deletions from and additions to the diagnoses that are excluded as CCs, for clarity we have shown the additions and deletions to the CC Exclusions List in separate tables. The tables show the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that would be added to the list are in Table 6d—Additions to the CC Exclusions List. (Currently, the indented diagnoses are recognized by the GROUPER as valid CCs for the asterisked principal diagnosis but would be excluded and thus ignored by the GROUPER beginning with discharges on or after October 1, 1988.)

CCs that would be deleted from the list are in Table 6e—Deletions from the CC Exclusions List. (Currently, the indented diagnoses are excluded and are not recognized by the GROUPER as valid CCs for the asterisked principal diagnosis but would be recognized as valid CCs beginning with discharges on or after October 1, 1988.)

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $59.95 and on microfiche for $17.50. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, ((PB) 88–133970), should be made to the following address:

National Technical Information Service,
United States Department of Commerce, Springfield, Virginia 22161

or by calling (703) 487–4650.

Users should be aware of the fact that the revisions in Tables 6d and 6e must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1988.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List is available from Health Systems International (HSI). HSI, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Fourth Revision is available for $165.00, which includes $15.00 for shipping and handling. The fifth revision of this manual, which will include the changes proposed on this document as finalized in response to public comment, will be available in September 1988 for $165.00. These manuals may be obtained by writing HSI at:

100 Broadway, New Havtn, Connecticut 06511

or by calling (203) 562–2101.

Please specify the revisions requested.

6. Additional Procedure Code Changes in DRG 468

Each year, we review cases assigned to DRG 468 (Unrelated Operating Room Procedures) in order to determine whether, in conjunction with certain principal diagnoses, there are certain procedures performed that are not currently included in the surgical hierarchy for the MDC in which the diagnosis falls. Since DRG 468 is reserved for those cases in which none of the operating room (OR) procedures is related to the principal diagnosis, it is intended to capture atypical medical cases, that is, those not occurring with sufficient frequency to represent a distinct recognizable clinical group. For that reason, we conduct our review of procedures producing DRG 468 assignments on the basis of volume of cases with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. On the basis of this review, we are proposing several DRG classification changes in order to reduce unnecessary assignment of cases to DRG 468.

In MDC 5 (Diseases and disorders of the circulatory system), when procedure code 54.93 (Creation of cutaneoperitoneal fistula) is performed with a principal diagnosis such as mechanical complication of other vascular device, implant and graft (diagnosis code 996.1), the discharge is assigned to DRG 468. We are proposing to add procedure code 54.93 to the list of operating room procedures in DRG 120 (Other Circulatory System OR Procedures). We are also proposing in DRG 120 to include procedure code 54.95 (Incision of peritoneum), which now, if paired with a principal diagnosis in MDC 5 such as mechanical complication of other vascular device, implant and graft (diagnosis code 996.1), groups to DRG 468.

In DRGs 170 and 171 (Other Digestive System OR Procedures), we are proposing to add procedure code 39.27 (Arteriovenostomy for renal dialysis) as one of the operating room procedures. This would preclude assignment of a discharge to DRG 468 if this procedure is performed with a principal diagnosis such as diagnosis code 567.2 (Suppurative peritonitis).

Currently, procedure code 39.25 (Aorta-iliac-femoral bypass), when combined with a diagnosis code such as 707.1 (Chronic leg ulcer) in MDC 9 (Diseases and disorders of the skin,

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subcutaneous tissue and breast), results in assignment to DRG 468 (Unrelated OR Procedures). We are proposing to include procedure code 39.25 as an oeprating room procedure in DRGs 269 and 270 (Other Skin, Subcutaneous Tissue and Breast Procedures). We are also proposing to add procedure code 39.29 (Vascular shunt and bypass not elsewhere classified (NEC)) to the operating room procedures included in DRGs, 269 and 270.

Currently, procedure code 54.95 (Incision of peritoneum) if performed with a principal diagnosis in MDC 11 (Diseases and disorders of the kidney and urinary tract) such as 585 (Chronic renal failure) groups to DRG 468. We are proposing to add this procedure code to the list of operating room procedures in DRG 315 (Other Kidney and Urinary Tract OR Procedures).

• Diagnosis code 617.5 (Intestinal endometriosis) is currently classified in MDC 13 (Diseases and disorders of the female reproductive system), while surgical procedures on the intestine are in MDC 6. Hence, if this condition is treated surgically, the discharge is assigned to DRG 468. While endometriosis has its origins in a disorder of the female reproductive system, the occurrence of intestinal endometriosis sufficiently severe to necessitate hospitalization is a disorder of the digestive system. This is analogous to renal manifestations of diabetes, the diagnoses of which are included in MDC 11 (Diseases and disorders of the kidney and urinary tract) where the problems occur rather than in MDC 10 (Endocrine, nutritional, and metabolic diseases and disorders) where the problems originate. Therefore, we would remove diagnosis code 617.5 from MDC 13 and place it into MDC 6. Medical cases would be assigned to DRGs 182, 183 and 184 (Esophagitis, Gastroenteritis and Miscellaneous Digestive Disorders).

Similarly, diagnosis code 617.6 (Endometriosis in scar) is classified in MDC 13 while the surgical procedures performed with this diagnosis are in MDC 9 (Diseases and disorders of the skin, subcutaneous tissue and breast). We propose to remove diagnosis code 617.6 from MDC 13 and add it to MDC 9, in DRGs 283 and 284 (Minor Skin Disorders).

In MDC 14 (Pregnancy, childbirth and puerperium), we are proposing to add three procedure codes to the operating room procedures in DRG 374 (Vaginal Delivery With Sterilization and/or D&C). Currently these procedures, when combined with a principal diagnosis in MDC 14 such as 665.41 (High vaginal laceration), group to DRG 468. The three procedure codes to be added to DRG 374 are procedure codes 66.4 (Total unilateral salpingectomy), and code 66.69 (Other partial salpingectomy), and 66.92 (Unilateral destruction or occlusion of fallopian tube).

Currently, if procedure code 54.93 (Creation of cutaneoperitoneal fistula) is performed as part of treating a principal diagnosis in MDC 21 (Injury, poisoning and toxic effects of drugs) such as Infection or inflammation of a device or graft (diagnosis code 996.6), the discharge groups to DRG 468. We are proposing to add procedure code 54.93 as part of the operating procedures in DRGs 442 and 443 (Other OR Procedures for Injuries). In addition, we are also proposing to add procedure code 54.95 (Incision of peritoneum) to the list of the operating room procedures in DRGs 442 and 443.

Patients hospitalized for a long period of time run the risk of developing decubitus ulcers for which wound debridement may be the appropriate treatment. Currently, procedure code 86.22 (Wound debridement) with a principal diagnosis in MDC 2 (Diseases and disorders of the eye), MDC 4 (Diseases and disorders of the respiratory system), MDC 7 (Diseases and disorders of the hepatobiliary system and pancreas), MDC 13 (Diseases and disorders of the female reproductive system), and MDC 16 (Diseases and disorders of the blood and blood-forming organs and immunological disorders) groups to DRG 468. We are proposing to add procedure code 86.22 to the list of operating room procedures in DRGs 40 and 41 (Extraocular Procedures Except Orbit), DRGs 76 and 77 (Other Respiratory System OR Procedures), DRG 201 (Other Hepatobiliary or Pancreas OR Procedures), DRG 365 (Other Female Reproductive System OR Procedures), and DRG 394 (Other OR Procedures of Blood and Blood Forming Organs).

7. Refinement of DRG 468

ProPAC, as stated in its Recommendation No. 16, believes that refinements to DRG 468 are needed to improve the accuracy of patient classification. ProPAC recommends that all cases currently assigned to DRG 468 should be reassigned to existing surgical DRGs, using secondary, rather than principal, diagnoses. Cases that could be reassigned to more than one DRG should be assigned to the DRG with the highest relative weight.

DRG 468 is reserved specifically for those cases in which none of the surgical procedures furnished to a patient is related to the patient's principal diagnosis. It was established as a means of identifying those cases that do not readily lend themselves to classifications within groups of clinically similar patients because the cases themselves do not reflect typical treatment patterns. For example, cases in which the patient develops pressing medical-surgical needs related to a secondary diagnosis or complication are assigned to DRG 468.

Adoption of ProPAC's recommendation would result in cases that are currently assigned to DRG 468 being moved to one of the existing surgical DRGs. We believe that this would not produce improved DRG definitions. For example, currently a patient who is admitted and treated for pneumonia, and who, during the stay, has a transurethral prostatectomy because of temporary urinary retention is assigned to DRG 468. A patient admitted for pneumonia who has a transurethral prostatectomy is clearly atypical both clinically and from a resource perspective when compared to patients admitted for a transurethral prostatectomy. The transurethral prostatectomy is the single procedure that results in the highest frequency of cases assigned to DRG 468, accounting for some 10 percent of all cases in DRG 468.

Patients admitted for a transurethral prostatectomy are assigned to DRGs 306, 307, 336, and 337. The average Medicare length of stay for these patients is 10.3, 6.1, 7.2, and 5.0 days, respectively. Medicare patients who are assigned to DRG 468 as a result of a transurethral prostatectomy have an average length of stay of 17.9 days. Thus, the redistribution of DRG 468 cases to DRGs 306, 307, 336, and 337 would add to those DRGs patients whose resource profile is very atypical for the patients in those DRGs. This would tend to increase the coefficient of variation in those DRGs and make a significant proportion of the DRG 468 cases outliers. The net effect of the redistribution of DRG 468 cases would make the current DRGs less homogeneous from both a clinical and statistical perspective.

A second difficulty with the redistribution of DRG 468 cases is the recommendation that the relative weights be used to select the precise DRG to which a case would be reassigned. Across MDCs, the weights of many DRG are similar. Each year, the recalibration of the relative weights results in minor changes in the individual DRG weights even when there are no clinical logic changes for a particular DRG. Therefore, if the ProPAC recommendation were adopted,

over the years, patients with identical clinical characteristics could be assigned to different DRGs solely as a result of small fluctuations in the relative weights.

Further, some Blue Cross plans, Medicaid agencies, and State commissions are using DRGs for payment purposes. In general, these payors use the Medicare DRG definitions with their own relative weights. Thus, if we were to adopt ProPAC's recommendation, a hospital would obtain a different DRG assignment for a patient based on which payor's weights are being used. This would be very confusing to hospitals and would appear illogical to physicians. As a general principal, we believe that DRG assignment should be based exclusively on patient characteristics and not on the attributes of the payment system. The DRG definitions should be based on clinical logic and should remain independent of the logic of the payment system.

However, we agree with ProPAC that there are problems with the current definition of DRG 468. Our original expectation was that the patients assigned to DRG 468 would be those who experienced significant unanticipated complications that were not associated with the patient's principal diagnosis and that necessitated performance of a surgical procedure. We expected that these types of patients would be atypical and would have a high use of hospital resources as evidenced by the high payment weight for DRG 468. However, in examining the discharges in DRG 468 and procedures associated with these discharges, we found that there are two additional distinct types of discharges in DRG 468.

The first distinct type of discharge is that of a male patient admitted for a medical problem who, after treatment for the medical problem, experiences urinary retention. A transurethral prostatectomy is performed and the discharge is then grouped to DRG 468.

The second distinct type of discharge is that of a patient admitted for a medical problem who, after treatment for the medical problem, has an unrelated elective or diagnostic procedure performed, for example, a polypectomy of cataract extraction. The performance of the unrelated procedure results in the discharge being grouped to DRG 468. We believe the high relative weight associated with DRG 468 may provide a financial incentive for hospitals to perform these procedures on patients admitted for unrelated medical reasons.

In order to address these problems in DRG 468, we are proposing to add the following two new DRGs to the current list:

• DRG 476—Unrelated Prostatic OR Procedure. DRG 476 would be assigned to those discharges in which one of the following prostatic procedures is performed that is unrelated to the principal diagnosis:

60.2—Transurethral prostatectomy
60.61—Local excision of lesion of prostate
60.69—Prostatectomy NEC
60.94—Control of postoperative hemorrhage of prostate

• DRG 477—Unrelated Non-extensive OR Procedure Only. DRG 477 would be assigned to those discharges in which the only procedure performed is a nonextensive procedure that is unrelated to the principal diagnosis.

In Table 6c in section VI of the addendum to this proposed rule, we have listed the ICD–9–CM procedure codes for all of the procedures we would consider nonextensive procedures if performed with an unrelated principal diagnosis. These cases would be grouped in DRG 477.

We believe that the addition of these two DRGs would result in the grouping of discharges that are more clinically coherent and homogeneous. We also believe that the relative weights for the new DRG 476 and DRG 477 and resulting revised weight for DRG 468 would be more reflective of the resources used in treating patients.

In reviewing the date on discharges that has previously grouped to DRG 468, we found that discharges with an unrelated, nonextensive OR procedure were a large volume of the total discharges but were not as resource intensive as other discharges. We also found that the average length of stay for these discharges was lower than the average length of stay for other discharges in DRG 468.

8. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1. of this preamble, ICD–9–CM is a coding system for the reporting of diagnostic information and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has primary responsibility for the ICD–9–CM diagnoses codes included in Volumes 1 and 2—Diseases: Tabular List and Diseases: Alphabetic Index, while HCFA has primary responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by major health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for input into coding matters from representatives from recognized organizations in the coding fields, such as the American Medical Record Association, the American Hospital Association, and the Commission on Professional and Hospital Activities, as well as physicians, medical record administrators, and other members of the public. Considering the opinions expressed at the public meetings, the Committee formulates recommendations, which then must be approved by the co-chair agency heads (that is, the Administrator of HCFA and the Director of NCHS) before adoption for general use.

The Committee presented proposals for coding changes at a public meeting held in Washington, DC on December 4, 1987 and finalized the coding changes after consideration of comments received at that meeting and in writing in the 30 days following the meeting. The initial meeting for consideration of coding issues for resolution in FY 1989 was held on April 14, 1988. Copies of the minutes of these meetings may be obtained by writing to the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Ms. Sue Meads, R.R.A., Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS, Rm 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

Questions and comments concerning the procedure codes should be addressed to: Ms. Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, HCFA, Office of Coverage Policy, Rm 309, East

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High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

The additional new ICD-9-CM codes that have been recommended by the Committee and approved by both agency heads will become effective October 1, 1988. The new ICD-9-CM codes are listed, along with their proposed DRG classifications, in Tables 6a and 6b in section VI of the addendum. As we stated above, the code numbers and their titles were aired for public comment in the ICD-9-CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments on the proposed DRG classification only.

Further, the Committee has recommended, and the agency heads have approved, the deletion of ICD-9-CM procedure code 48.66 (Hartmann resection of the rectum). This procedure will be classified under ICD-9-CM procedure code 45.75 (Left hemicolectomy), which is classified by the GROUPER program as follows:

MDC 6 DRGs 148 and 149
MDC 10 DRGs 292 and 293
MDC 17 DRGs 400, 406, and 407
MDC 21 DRGs 442 and 443

9. Other Issues

a. Cochlear Implants. In the September 1, 1987 final notice on changes to the DRG classification system (52 FR 33143), we agreed to evaluate the placement of cochlear implant discharges in DRG 49 (Major Head and Neck Procedures). While cochlear implant cases may not be clinically coherent with other discharges assigned to DRG 49, the Medicare data do not indicate there would be a material difference in the weighting factors if a separate DRG were created for cochlear implants.

We examined the mean standardized charge for all cochlear implants and separately examined the mean standardized charges for single channel and multichannel implants. The mean standardized charge for all cochlear implants was approximately 10 percent less than the mean standardized charge for all other procedures in DRG 49. However, cochlear implant discharges only represent one percent of the total discharges in DRG 49. In addition to the very small number of cases, if we were to remove cochlear implants from DRG 49 to create a separate DRG, payment for cochlear implants would be less since the lower mean standardized charge would result in a lower relative weighting factor. Thus, we find no compelling reason to create a new DRG at this time.

b. Tissue Plasminogen Activator (TPA). We have received inquiries concerning whether HCFA has any plans to pay for tissue plasminogen activator (TPA), a thrombolytic agent used in treating blockages of coronary arteries, in a special manner. Those making inquiries assert that hospitals need to be shielded from the effects of TPA's high price.

We have considered this issue and the arguments presented. However, at this point, we have determined that TPA should not be singled out for special treatment. That is, we believe that the update factors established in section 1886(b)(3)(B)(i) of the Act, combined with continuing improvements in hospital efficiency, are adequate to finance appropriate care of Medicare patients.

Our belief is based on the fact that the annual prospective payment system update determined by Congress is meant to recognize, among other factors, the impact of new technologies. In addition, section 1886(d)(4)(C) of the Act requires that we recalibrate the DRG weighting factors each year. Thus, the resource use associated with TPA will be reflected in these weighting factors, once the charges for TPA that are included in the patient bills are incorporated into our data base. The recalibration process ensures the fair distribution of available Medicare funds across the DRGs.

Given the fact that the prospective payment system already takes into account the impact of new technologies, there is a question as to whether the circumstances involving TPA are so unique as to justify some special accommodation. We have concluded, as has ProPAC (see Appendix D of this proposed rule at 28), that a special accommodation for TPA would not be appropriate. Despite the drug's initial high price, preliminary evidence from at least one study indicates that there may be significant reductions in length of stay for patients with acute myocardial infarctions treated with TPA. Such reductions could help to offset the incremental costs of the drug, and may even result in cost savings. It is too early to know what the exact outcome of increased use of TPA will be.

There are additional reasons we are especially reluctant to make a special payment provision for this drug at this time. Our review of the issues, which included medical input, indicates that there is reason for caution about the widespread use of TPA. The contraindications and warnings associated with TPA include factors likely to be more prevalent in the Medicare population than in the general population. For example, almost fifty percent of Medicare beneficiaries admitted for an acute myocardial infarction in FY 1986 were 75 years or older, an age cohort for which physicians are cautioned to weigh the expected benefits of TPA against the risks. Other contraindications that are more common in the Medicare population than in the general population include uncontrolled hypertension and history of cerebrovascular accident or disease. In addition, it is not clear at this point that TPA, a thrombolytic agent, is significantly better than other such agents.

Given the uncertainties with respect to cost and medical appropriateness for large numbers of Medicare patients, we agree with ProPAC that TPA (or indeed any thrombolytic agent) should not be singled out as a special case requiring special treatment, and that "clinical data have not fully identified the short- and long-term relative benefits and risks of different agents." (Appendix D at 26.) We believe that the update factors provided for in the Act, as well as the annual recalibration process, provide sufficient recognition of TPA. We will, of course, continue to analyze the issue of the appropriate payment for thrombolytic agents by the Medicare program and will consider additional options in the future if necessary.

C. Recalibration of DRG Weights

One of the basic issues in recalibration is the choice of a data base that allows us to construct relative DRG weights that most accurately reflect current relative resource use. Since FY 1986, the DRG weights have been based on charge data. The latest recalibration, which was published as a part of the FY 1988 prospective payment final rule, used hospital charge information from the FY 1986 Medicare provider analysis and review (MEDPAR) file. For a discussion of the options we considered and the reasons we chose to use charge data beginning in FY 1986, we refer the reader to the rules published on June 10, 1985 (50 FR 24372) and September 3, 1985 (50 FR 35652).

We are proposing to use the same methodology for the FY 1989 recalibration as we did for FY 1988. That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1987 MEDPAR file, rather than the FY 1986 MEDPAR file. The MEDPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hosptial bills.

The proposed recalibrated DRG relative weights are constructed from FY 1987 MEDPAR data, received by HCFA through December 1987, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The MEDPAR file currently included data for approximately 9.5 million Medicare discharges.

The methodology used to calculate the proposed DRG weights from the MEDPAR file is as follows:

- All the claims were regrouped using the revised DRG classifications discussed above in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weight. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average standardized charge per case to determine the weighting factor.
- We established the weighting factor for heart transplants (DRG 103) in a manner consistent with the methodology for all other DRGs except that the heart transplant cases that were used to establish the weight were limited to those Medicare-approved heart transplant centers that have cases in the FY 1987 MEDPAR file.
- Kidney acquisition costs continue to be paid on a reasonable cost basis but, unlike other excluded costs, kidney acquisition costs are concentrated in a single DRG (DRG 302, Kidney Transplant). For this reason, it was necessary to make an adjustment to prevent the relative weight for DRG 302 from including the effect of kidney acquisition costs, since these costs are paid separately from the prospective payment rate. Kidney acquisition charges were subtracted from the total charges for each case involving a kidney transplant prior to computing the average charge for the DRG and prior to eliminating statistical outliers.
- Heart acquisition costs, like kidney acquisition costs, continue to be paid on a reasonable cost basis and are similarly concentrated in a single DRG (DRG 103, Heart Transplant). Accordingly, for the heart transplant cases in the updated MEDPAR file used for recalibration, we subtracted from the total charges of each case an estimate of heart acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers, identical to the adjustment we make for removing kidney acquisition charges from cases in DRG 302. For additional information about the methodology for estimating heart acquisition costs, see the September 1, 1987 final rule at 52 FR 33037.

The weights developed according to the methodology described above, using the revised GROUPER program, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights were normalized by an adjustment factor so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

When we recalibrated the DRG weights for FY 1986 and FY 1988, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. In FY 1988, there were 32 DRGs that contained fewer than 10 cases. We propose to use that same case threshold in recalibrating the DRG weights for FY 1989. In the FY 1988 recalibration, we computed the weight for the 32 low-volume DRGs by adjusting the original weights of these DRGs by the percent change in the weight of the average case in the remaining DRGs. However, we note that normalization (discussed above) results in holding constant the weight for low-volume DRGs since the adjustment factor is the same as the percent change in the weight of the average case across all DRGs. We propose to use this same methodology for the FY 1989 recalibration. Using the FY 1987 MEDPAR data set, there are 35 DRGs that contain fewer than 10 cases.

ProPAC, in its Recommendation 15, has recommended that, starting with the FY 1989 recalibration, the DRG weights be recalibrated annually on the basis of costs rather than charges. However, ProPAC indicates concern about the current Medicare cost-finding methods for estimating costs because the limitations of the Medicare cost report data may in some cases produce imprecise DRG weights. Therefore, ProPAC recommends that the Secretary verify the accuracy of the cost report data and implement changes as necessary.

While time constraints preclude us from adopting ProPAC's recommendation for FY 1989, we believe that recalibration of the DRG weights using costs does warrant further consideration. We plan to examine the feasibility of developing cost-based DRG relative weights for FY 1990. However, as we have noted previously, we continue to believe that the disadvantages associated with charge-based weights are compensated for by the fact that for purposes of recalibration, charge data are available on a more timely basis than cost data. For example, for the proposed recalibrated weights for FY 1989, we used FY 1987 Medicare billing data from the MEDPAR file. However, we have yet to obtain a full file of FY 1986 Medicare cost reports. Thus, any cost data we were to use for recalibration would be at least one year and perhaps as much as two years older than the most recent available charge data.

In addition, since costs are not accumulated on an individual case basis, DRG by DRG, it is necessary even in developing cost-based weights to link ancillary charge data from the claims file to cost report data as part of the process of estimating the average costs of cases in each DRG. To maintain consistency and to accurately determine relative resource use, charge data for the same period as the cost data should be used in cost-based recalibration. Therefore, both the charge and cost data that would be used would be significantly older than the most recently available charge data.

We believe that using old data is inappropriate, particularly given the rapid advance in medical technology and resulting changes in treatment patterns. We further believe that it is in the best interest of the hospitals and Medicare beneficiaries that the resource use associated with these major new medical advances be reflected in the DRG weights as soon as possible. This can be accomplished by the use of charge-based weights computed on an annual recalibration schedule. We are concerned that use of cost-based weights would significantly delay recognition of new technologies or greatly complicate the recalibration process by necessitating a number of special adjustments to take such new technologies into account. Therefore, if we decided to adopt cost-based weights in the future, we believe it is essential

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that we address the timeliness problem and take steps to ensure that changing technologies are reflected in the DRG relative weights on a timely basis.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(2)(C)(ii) of the Act required, as a part of the process of developing separate urban and rural standardized amounts for FY 1984, that we standardize the average cost per case of each hospital for differences in area wage levels. Section 1886(d)(2)(H) of the Act required that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals for FY 1984. To fulfill both requirements, we constructed an index that reflects average hospital wages in each urban or rural area as a percentage of the national average hospital wage.

For purposes of determining the prospective payments to hospitals in FY 1984 and 1985, we constructed the wage index using calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' ES 202 Employment, Wages and Contributions file for hospital workers. Beginning with discharges occurring on or after May 1, 1986, we have been using a hospital wage index based on HCFA surveys of hospital wage and salary data as well as data on paid hours in hospitals. The HCFA hospital wage index was developed in an attempt to overcome the limitation of the BLS data with regard to full-time and part-time employment. The methodology used to compute the first HCFA wage index, which was based on 1982 wage data, was set forth in detail in the September 3, 1985 final rule (50 FR 35661).

In the September 1, 1987 final rule, we made a change in the methodology for computing the national average hourly wage, which serves as the basis for indexing the area wage levels (51 FR 33039). To minimize the impact on the national average hourly wage when the wage data for hospitals in an area are adjusted or when hospitals are reclassified from one area to another, we moved from an area-weighted national average hourly wage index to an hour-weighted wage index. That is, we now compute the national average hourly wage by dividing the total wages for all hospitals in the data base by the total paid hours for all hospitals in the data base.

In the September 1, 1987 final rule, we also updated the wage index by using wage data from 1984. However, we did not not base the new wage index solely on 1984 data. Because adoption of a wage index based solely on 1984 data would have resulted in abrupt, large changes in wage index values for some areas because of economic changes in certain areas that had occurred between 1982 and 1984, we adopted a blended wage index that incorporated both 1982 and 1984 wage data. The blended index was based on area wage index values computed from 1982 data on an hour-weighted basis and wage index values computed from 1984 data on an hour-weighted basis, equally weighted to produce average area wage index values.

Although we are not proposing to change the methodology for computing the wage index for use in FY 1989, we are proposing to base the wage index solely on 1984 wage data. We have also made a number of corrections to the 1984 wage data based on our continuing analysis of those data.

Section 4005(a) of Pub. L. 100-203 enacted a new section 1886(d)(8)(B) of the Act. Under this new provision, for discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) would be considered to be located in one of the adjacent MSAs if certain standards are met. (These requirements are explained in greater detail in section IV. of this preamble.) Because of this provision, it was necessary to reclassify the wage data for those rural areas as if the hospitals in those areas were located in the adjacent MSAs and to recompute the wage index values for the affected MSAs and rural areas. The table in section IV.A of this preamble indicates in which MSAs hospitals in certain rural counties would be considered to be located for purposes of the wage index adjustment. The wage index tables in section IV of the addendum reflect these revised urban and rural designations.

In accordance with the provisions of section 4004(b) of Pub. L. 100-203, effective October 1, 1988, we would include in the calculation of the wage index certain wage costs for organizations related to hospitals that had received a waiver authorized by section 602(k) of the Social Security Amendments of 1983 (Pub. L. 98-21). For cost reporting periods beginning before October 1, 1986, hospitals that qualified for this waiver were allowed to continue billing for inpatient nonphysician services under Part B and to be paid for those services under Part B even though all other hospitals subject to the prospective payment system were required to bill those inpatient nonphysician services under Part A.

The wage costs that would now be included in the calculation of the wage index would be those for employees of a related organization described above who are directly involved in the delivery and administration of care provided by the related organization to the inpatients of a hospital that received the waiver under section 602(k) of Pub. L. 98-21. Section 4004(b) of Pub. L. 100-203 specifies that these wage costs do not include costs of overhead or home office administrative salaries or any costs not incurred in the MSA in which the hospital is located. We are currently in the process of collecting the data to implement this provision and intend to include the data in the calculation of the wage index set forth in the final rule.

The method used to compute the proposed wage index is as follows:

Step 1—Each of the non-Federal acute care hospitals subject to the prospective payment system for which 1984 data have been received was classified into its appropriate urban or rural area based on the urban area definitions to be used in the prospective payment system in FY 1989.

Step 2—For each hospital, the total gross hospital salaries as reported for hospital fiscal years that began in FY 1984 were inflated from the end of the hospital's cost reporting year through August 31, 1985 using the percentage change in average hourly earnings of hospital industry workers (S.I.C. 806) in BLS Employment and Earnings Bulletin. This was done to eliminate any distortion in the data caused by differing hospital cost reporting years.

(August 31, 1985 was the latest end date for hospital cost reporting years in the data collection.)

Step 3—For each hospital, the inflated gross hospital salaries computed in step 2 were divided by the reported number of total paid hours to yield an average hourly wage. Hospitals with an aberrant average hourly wage, which was defined as an average hourly wage either less than $3.35 (the minimum wage in 1984) or greater than $23.61 (2½ times the national average hourly wage as computed from the data collection at the time the 1984 data were first used in computing a wage index), were excluded.

Step 4—Within each urban or rural area, the result computed in step 2 was summed for all remaining hospitals to yield the total gross hospital salaries in each area.

Step 5—The total gross hospital salary result computed in step 4 was divided by the corresponding total number of paid hours in the area to yield an average hourly wage for each urban or rural area.

Step 6—The inflated gross hospital salaries computed in Step 2 for all hospitals not eliminated due to aberrant wage data were divided by the reported number of total paid hours in these hospitals to obtain the national average hourly hospital wage based on gross salaries. This national average is $9.76, which remains unchanged from the national average hourly wage used to calculate the wage index based on 1984 data for the September 1, 1987 final rule.

Step 7—For each urban or rural area, the hospital wage index value was calculated by dividing the average hourly wage computed in step 5 by the national average hourly wage.

IV. Other Decisions and Proposed Changes to the Regulations

A. Physician Attestation (Section 412.46)

Currently, § 412.46(a) requires that, as a part of DRG validation, the attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest to the principal diagnosis, secondary diagnoses, and names of major procedures that have been performed. The information must be in writing in the medical record. Below the diagnostic and procedural information, and on the same page, the following statement must immediately precede the physician's signature:

> I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge.

In addition, when the claim is submitted, the hospital must have on file a current signed acknowledgement from the attending physician that the physician has received the following notice:

> NOTICE TO PHYSICIANS: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

The acknowledgement must have been completed within the year prior to the submission of the claim.

HCFA has received a number of requests from hospitals and hospital corporations for permission to install automated systems for executing physician attestations. These hospitals often already use automated systems to generate the list of diagnoses and procedures and the certification that the physician must sign; however, the physician must still personally sign the document. It cannot be electronically prepared and "signed" entirely by computer because the physician needs to be physically present to affix his or her signature to the hard copy. For example, with a fully automated system, a physician could record the appropriate information and attest to it from his home or office. Hospitals have asserted that the use of fully automated systems is critical for the efficient use of staff, including physician staff, prompt and accurate completion of medical records, and timely submission of claims.

We have reviewed materials submitted by various hospitals and have concluded that it would be acceptable for physician attestations to be completed electronically so long as the procedures a hospital establishes are sufficient to achieve the program objectives of the existing requirements. That is, the physician would personally execute the attestation by computer and the system would contain safeguards to ensure that the physician's identifier is confidential and to enable the physician to determine whether the attestation had been correctly recorded. The physician would be informed of the penalty for making false statements and for allowing others to complete the required attestations using his or her identifier.

Therefore, we would amend § 412.46(a) to provide that a physician attestation may, at the request of a hospital, be completed electronically if the intermediary determines that the hospital's system meets standards established by the Secretary.

Based on information received to date, we expect that two types of physician attestation systems would be approved. The first type involves the use of alpha/numeric identifiers for physicians. First, the physician would gain access to the hospital's records system by entering a physician-specific identification code. Then, the physician would enter diagnosis and procedure information onto a computer and affirm its accuracy.

The second type of physician attestation system involves the use of biometrics. The physician would attest to the diagnoses and the procedure information as discussed above but would gain access to the record system through a computer-assisted device that identifies the physician, for example, by reading his or her fingerprint.

In making this option for electronic signatures available, we anticipate requiring hospitals to take some additional safeguards to ensure that physicians making use of the option are aware of the attestations that have been made and that there is documentation in hard copy to support their attestations. In cases where an alpha-numeric code is used, we would expect a hospital to generate a periodic hard copy list of attestations made by the physician and send it to the physician for his or her signature as a means by which the physician can confirm that the appropriate diagnoses and procedures were reported. In the case of biometric equipment, we would expect the hospital to send the physician a copy of each attestation for his or her records so that there would be a document against which the hospital's reports could be judged.

We note that this option would not be a requirement for physicians. Instead, it is an alternative means of meeting the existing requirement at § 412.46(a). This alternative would be acceptable to us in cases where a hospital and its medical staff determine that they would prefer this alternative and request to use it. Therefore, this change in the regulations would not constitute a new Federal requirement.

We have also made a clarifying change in these regulations by explicitly stating that the physician attestation and acknowledgement be dated as well as signed. We have received a number of inquiries concerning whether the physician attestation must be dated. Since § 412.46(a) has always required that the attestation be provided "shortly before, at, or shortly after discharge (but before a claim is submitted)," it is clear that a date is needed to demonstrate compliance. We made this point in the preamble of the September 3, 1985 final rule (50 FR 35672); however, continued questions on the issue have indicated the need to clarify the language of the regulation. We would now explicitly state this requirement in § 412.46(a) to ensure that the attestation be signed and dated. We would also make a similar change in current § 412.46(b) (which we are redesignating as § 412.46(c)) to clarify that the physician acknowledgement must be signed and dated. Again, the date must be included to meet the existing requirement in that paragraph that the acknowledgement be completed "within the year prior to the submission of the claim."

B. Increase in the Prospective Payment Rates and Rate-of-Increase Limits (Sections 412.63, 412.73, 412.208, 412.210, and 413.40)

Section 4002(a) of Pub. L. 100–203 amended section 1886(b)(3)(B)(i) of the Act to provide that the applicable percentage increases for prospective payment hospitals for FY 1988 effective with discharges on or after April 1, 1988 are—

- 3.0 percentage points for hospitals located in rural areas;
- 1.5 percentage points for hospitals located in large urban areas; and
- 1.0 percentage points for hospitals located in other urban areas.

However, under 4002(g)(1)(B) of Pub. L. 100–203, for the purposes of determining the standardized amounts for discharges occurring on or after October 1, 1988 (for FY 1989), the applicable percentage increases effective April 1, 1988 are deemed to have been in effect for the entire FY 1988.

Amended section 1886(b)(3)(B)(i) of the Act also sets forth the applicable percentage increases for FY 1989 as—

- The market basket percentage increase minus 1.5 percentage points for hospitals located in rural areas;
- The market basket percentage increase minus 2.0 percentage points for hospitals in large urban areas; and
- The market basket percentage increase minus 2.5 percentage points for hospitals in other urban areas.

In addition, the applicable percentage increase for FY 1990 and each subsequent fiscal year for hospitals in all areas is the market basket percentage increase.

Section 1886(b)(3)(B) of the Act also governs the target rate-of-increase limits for hospitals and units excluded from the prospective payment system. Section 4002(e) of Pub. L. 100–203 amended section 1886(b)(3)(B)(ii) of the Act to provide that the applicable percentage increase for FY 1988 for these hospitals and units is the market basket percentage increase minus 2.0 percentage points. However, section 4002(g)(3) of Pub. L. 100–203 provided that for a hospital's cost reporting period beginning during FY 1988, payment is made as though the applicable percentage increase equals 2.7 percent times the ratio of 315 to 366. This results in an actual applicable percentage increase for FY 1988 of 2.328 percent. However, for purposes of updating the target rate-of-increase limits for FY 1989, the applicable percentage increase for FY 1988 is deemed to have been 2.7 percent for the entire period.

Section 4002(e) of Pub. L. 100–203 amended section 1886(b)(3)(B)(ii) of the Act to provide that for FY 1989 and subsequent fiscal years the applicable percentage increase for excluded hospitals and units is the market basket percentage increase.

The percentage increases applicable in FY 1988 to hospitals both included in and excluded from the prospective payment system were described in the April 5, 1988 notice at 53 FR 11135. As a part of this proposed rule, we would amend §§ 412.63, 412.73, 412.210 and 413.40 to implement the provisions of section 1886(b)(3)(B) (i) and (ii) of the Act. A conforming change would be made to § 412.212(b).

We are also proposing to revise §§ 412.62(k), 412.63(k) (currently § 412.63(j)), 412.208(i), and 412.210(c)) to clarify in the regulations that when we refer to "geographic areas" in the context of adjusting the rates for different area wage levels, we mean urban and rural areas.

C. Changes in Geographic Classification (Sections 412.63, 412.208, and 412.210)

Prior to the enactment of Pub. L. 100–203, section 1886(d)(2)(D) of the Act required the Secretary to compute separate average standardized amounts for hospitals located in urban and rural areas. The term "urban area" is defined as an area within a Metropolitan Statistical Area (MSA). Urban areas in New England are defined as New England County Metropolitan Areas (NECMAs).) However, under section 601(g) of Pub. L. 98–21, certain nonurban New England counties were deemed to be parts of urban areas. For purposes of the prospective payment system, we have treated those counties as part of the NECMAs of which they were a part in 1979. The only other exception to the strict use of MSA and NECMA definitions in identifying urban areas has been for a rural county that qualifies for reclassification into an MSA under § 412.63(b)(3). In these two instances, the population of the rural counties deemed to be urban is included in calculating the population of the MSA or NECMA to which the county has been appended for Medicare prospective payment purposes.

1. Establishment of Large Urban Areas

Section 4002(c)(1) of Pub. L. 100–203 amended section 1886(d)(3) of the Act to require the Secretary to compute three average standardized amounts for discharges occurring in a fiscal year beginning on or after October 1, 1987: One for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. Section 4002(b) of Pub. L. 100–203 amended section 1886(d)(2)(D) of the Act to define a "large urban area" as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Pub. L. 100–203 provides that an NECMA with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Under that section as now amended, urban areas that do not meet the criteria for large urban areas are referred to as "other urban areas."

Based on 1986 population estimates published by the Bureau of the Census, we identified 46 urban areas that meet the criteria to be defined as large urban areas for FY 1988. A list of these areas was set forth in the April 5, 1988 notice at 53 FR 11138. We are proposing no change in these areas for purposes of this proposed rule. If new population estimates are published by the Bureau of the Census before we publish the final rule, we would include any resulting additions to and deletions from the list of large urban areas in that rule.

As part of this proposed rule, we would amend §§ 412.63 and 412.210 to implement the provision of 1886(d)(3) of the Act. In addition, in Table 4a in section VI of the addendum to this proposed rule, which sets forth the wage index values for urban areas, we have specifically designated those urban areas that qualify as large urban areas for the convenience of the reader.

2. Revision of Standards for Including a Hospital Located in a Rural County in an Urban Area

Section 4005(a) of Pub. L. 100–203 revised 1886(d)(8) of the Act to provide that, if certain conditions are met, the Secretary would treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban area to which the greatest number of workers in the county commute. As specified in section 1886(d)(8)(B) of the Act, the conditions that must be met for a hospital located in a rural county adjacent to one or more urban areas to be treated as being located in the urban area to which the greatest number of workers commute are as follows:

- The rural county would otherwise be considered part of an MSA but for the fact that the rural county does not meet the standard established by the Executive Office of Management and Budget (EOMB) relating to the commuting rate of workers between the county and the central county or counties of any adjacent MSA.
- The rural county meets one of the following commuting standards:

—At least 15 percent of the residents of the rural county who are employed commute to the central county or counties of all adjacent urban areas.
—The sum of the number of resident of the rural county who commute to the central county or counties of all adjacent urban areas and the number of residents of all adjacent urban areas who commute to the rural county equals at least 20 percent of the number of employed residents of the rural county.

A county meeting the above commuting standards must also meet the other standards established by EOMB for inclusion in an MSA as an outlying county. In order to meet these requirements, the rural county must have a degree of "metropolitan character." "Metropolitan character" is established by meeting one of the following EOMB standards, which were published in the Federal Register on January 3, 1980 (45 FR 956):

- At least 50 percent of the employed workers residing in the county commute to the central county or counties and the population density is at least 25 persons per square mile.
- From 40 percent to 50 percent of the employed workers residing in the county commute to the central county or counties and the population density is at least 35 persons per square mile.
- From 25 percent to 40 percent of the employed workers residing in the county commute to the central county or counties and the population density is at least 35 persons per square mile. In addition, the county meets at least one of the following conditions:

—The county has a population density of at least 50 persons per square mile.
—At least 35 percent of the population in the county is classified as urban by the Bureau of the Census.
—At least 10 percent of the population or at least 5,000 persons live within the urbanized area of the central county.

- From 15 percent to 25 percent of the employed workers residing in the county commute to the central county or counties and the county has a population density of at least 50 persons per square mile. In addition, the county meets at least two of the following conditions:

—The county has a population density of at least 60 persons per square mile.
—At least 35 percent of the population in the county is classified as urban by the Bureau of the Census.
—Between 1970 and 1980, the population must have increased by at least 20 percent.
—At least 10 percent of the population or at least 5,000 persons live within the urbanized area of the central county.

The determination as to whether a county qualifies for inclusion in an MSA is made based on data from the Bureau of the Census.

In determining the total commuting percentage for a county, we rounded the number to two decimal places to determine which commuting category would apply to the county. For example, a county with total commuting to adjacent MSAs of 39.99 percent would fall into the 25 percent to 40 percent commuting category. This number (39.99 percent) would not be rounded up to 40 percent. This is consistent with the rounding policy used by EOMB in making its MSA determinations. The rural counties that would be considered as part of MSAs solely for the purpose of treating hospitals in those counties as being located in an adjacent urban area are shown in the table below.

For purposes of payment under the prospective payment system, a hospital located in a rural county that qualifies under this provision would be deemed to be located in the MSA to which the greatest number of workers in the rural county commute. The area wage indexes would be recomputed to reflect the reclassification of these counties as urban and, consequently, part of the urban wage area.

Section 1886(d)(8)(B)(i) of the Act as added by section 4005(a) of Pub. L. 100–203 applies to a rural county adjacent to one or more urban areas that "would otherwise be considered part of an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation * * *." Section 1886(d)(8)(B)(ii) of the Act as added by section 4005(a) of Pub. L. 100–203 provides an alternative commuting standard under which total commuting to all adjacent urban areas may be counted in determining whether a rural county meets the commutation standard.

We note that in determining whether a county meets the criteria for being designated an outlying county of an MSA that were published in the January 3, 1980 Federal Register notice (and summarized in this document, above), EOMB first determines the county's commuting rate to the central county or counties of individual MSAs and then determines, based on that rate, which additional criteria the county must meet for MSA status. Thus, for example, if a county's commuting rate is less than 15 percent to the central county or counties or the sum of the employed workers commuting from the outlying county to the central county or counties and the employed workers commuting from the central county or counties to the outlying county is at least 20 percent of the employed workers living in the outlying county, the county cannot qualify for MSA status under any criteria. If the commutation rate is from 15 percent to 25 percent, the county must meet at least two out of the following four additional criteria: A population density of at least 60 persons per square mile; at least 35 percent of the population is classified as urban; 1970–1980 population growth of at least 20 percent; and a significant portion of the population lives within the urbanized area of the central county.

Since the purpose of amended section 1886(d)(8) of the Act is to recognize all other criteria for MSA designations except for the alternative commuting standard, we followed the EOMB and Bureau of the Census procedures for evaluating urban status. That is, we first determined which rural counties adjacent to one or more urban areas would meet the alternative standard specified in section 1886(d)(B)(ii) of the Act, and then evaluated whether each of the counties that meet the alternative standard also meet the required additional criteria applicable to the rural county's level of commuting.

On the basis of our evaluation of census data, we have determined that hospitals located in a rural county in the first column of the following table are considered to be located in the

corresponding urban area in the second column.

Rural County	MSA
Marshall, AL	Huntsville, AL
Charlotte, FL	Sarasota, FL
Indian River, FL	Fort Pierce, FL
Christian, IL	Springfield, IL
Macoupin, IL	St. Louis, MO-IL
Mason, IL	Peoria, IL
Clinton, IN	Lafayette, IN
Henry, IN	Anderson, IN
Owen, IN	Bloomington, IN
Jefferson, KS	Topeka, KS
Allegan, MI	Grand Rapids, MI
Barry, MI	Battle Creek, MI
Cass, MI	Benton Harbor, MI
Ionia, MI	Lansing-East Lansing, MI
Lenawee, MI	Ann Arbor, MI
Shiawassee, MI	Flint, MI
Tuscola, MI	Saginaw-Bay City-Midland, MI
Van Buren, MI	Kalamazoo, MI
Clinton, MO	Kansas City, KS-MO
Cass, NE	Omaha, NE
Caswell, NC	Danville, VA
Currituck, NC	Norfolk-Virginia Beach-Newport News, VA
Harnett, NC	Fayetteville, NC
Genesee, NY	Rochester, NY
Columbiana, OH	Beaver County, PA
Morrow, OH	Mansfield, OH
Preble, OH	Dayton-Springfield, OH
Van Wert, OH	Lima, OH
Lawrence, PA	Beaver County, PA
Cherokee, SC	Greenville-Spartanburg, SC
Bedford, VA	Roanoke, VA
Isle of Wight, VA	Norfolk-Virginia Beach-Newport News, VA
Spotsylvania, VA	Washington, DC-MD-VA
Jefferson, WI	Milwaukee, WI
Walworth, WI	Milwaukee, WI
Jefferson, WV	Washington, DC-MD-VA
Lincoln, WV	Charleston, WV

Section 1886(d)(8)(C) of the Act requires that the effect of this provision be budget neutral; that is, a proportional adjustment to the standardized amount for urban hospitals would be made to ensure that total aggregate payments systemwide would be neither greater nor less than aggregate payments to the same hospitals absent this provision. In addition, section 1886(d)(8)(C) of the Act requires that aggregate payments to those rural hospitals not affected by this provision would remain constant. Thus, appropriate adjustments to the standardized amounts set forth in Tables 1a, 1b, and 1c in section IV of the addendum to this proposed rule have been made to reflect the budget neutrality requirement. For a discussion of this adjustment, see section II.A.5.b. of the addendum to this proposed rule.

In the conference report that accompanied Pub. L. 100–203, Congress specified "that the effect of this provision shall be limited to the treatment, for payment purposes, of the hospitals located in qualifying rural counties; the boundaries and population size of the adjacent urban areas shall not be altered." (H.R. Rep. No. 495, 100th Cong., 1st Sess. 532 (1987).) Accordingly, even though a hospital located in a qualifying rural county would be deemed a part of an adjacent MSA for payment purposes, the population of that county would not be included in the MSA for purposes of determining whether the MSA is a large urban area (that is, an MSA with a population of at least 1,000,000 or an NECMA with a population of at least 970,000).

As noted above, other than those exceptions required by law, we have made only one exception to the strict use of MSA and NECMA definitions in identifying urban areas. Under current § 412.63(b)(3), a hospital classified as rural is deemed to be urban and receives the urban Federal payment amount if the county in which it is located meets the following criteria:

- At least 95 percent of the perimeter of the rural county is contiguous with urban counties.
- The county was reclassified from an urban area to a rural area after April 20, 1983.
- At least 15 percent of employed workers in the county commute to the central county of one of the adjacent MSAs or NECMAs.

This provision was added to the regulations by the September 3, 1986 final rule (51 FR 31469) under the Secretary's authority pursuant to section 1886(d)(5)(C)(iii) of the Act "* * * to provide by regulation for such other exceptions and adjustments * * * as the Secretary deems appropriate * * *."

Since implementation of this exception, only one hospital in one county (Shiawassee, MI) has qualified under this provision. Because this hospital would be deemed to be in an urban area under the new statutory requirements in section 1886(d)(8)(B) of the Act, we believe there is no reason to retain our special exception as set forth in current § 412.63(b)(3). Therefore, we would eliminate that provision under the Secretary's authority in section 1886(d)(5)(C)(iii) of the Act "* * * to provide by regulation for such other exceptions and adjustments * * * as the Secretary deems appropriate* * *." That is, this special rule, which was authorized by the Secretary, would no longer be deemed appropriate because it has been effectively included in a statutory requirement.

3. Multicampus Hospitals

Some hospitals receiving payment under the prospective payment system are multicampus hospitals; that is, they consist of two or more separately located inpatient hospital facilities. We have received inquiries concerning how we determine the prospective payment rate for these hospitals when the various individual hospital facilities are located in areas with different prospective payment rates or wage indexes.

Section 1886(c)(3)(D) of the Act as amended by section 4002(c)(1)(D) of Pub. L. 100–203 provides that prospective payment rates are established "for hospitals located * * * in a large urban area or other urban area * * *" and "for hospitals located in a rural area * * *." That is, the prospective payment rate is based on the geographic location of the hospital at which the discharge occurs rather than on any other location, such as, for example, the location of the headquarters of the multicampus facility that owns and operates the various individual hospital facilities, or the location of the main hospital facility. Therefore, we would amend § 412.63 to provide that a multicampus hospital that qualifies as a single provider must be paid prospective payment rates that are determined by the geographic location of each individual hospital facility within the multicampus hospital.

D. Establishment of a Regional Floor (Section 412.70)

Section 4002(d) of Pub. L. 100–203 amended section 1886(d)(1)(A)(iii) of the Act to establish a "regional floor" for the prospective payment rate applicable to a hospital. In accordance with this section, hospitals' payments are based on the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15 percent of the average standardized amount for the Census region in which they are located. This provision is effective for discharges occurring on or after April 1, 1988 and before October 1, 1990 and was described in the April 5, 1988 notice at 53 FR 11134.

In implementing this provision and determining which regions qualify for the regional floor, we compared the total of the labor-related and non-labor-related portions of each standardized amount in each region with the total of the labor-related and non-labor-related portions of the national standardized amount. In structuring the comparison in this way, we are following the explication of this provision contained in the Conference Committee Report accompanying Pub. L. 100–203 (H.R. Rep. No. 495, 100th Cong., 1st Sess. 525 (1987)).

Based on the updated payment rates published in the April 5, 1988 notice, we determined that for discharges occurring on or after April 1, 1988 and before October 1, 1988, rural hospitals in Census regions I, II, III, and IV and hospitals in large urban areas and other urban areas in Census regions I and IV will receive greater payments using the national/regional blend than the national average standardized amount. Therefore, for discharges occurring on or after April 1, 1988 and before October 1, 1988, the Federal portion of the payment for these hospitals is comprised of 85 percent of the national average standardized amount and 15 percent of the applicable regional average standardized amount rather than 100 percent of the national average standardized amount.

Based on the updated payment rates proposed in this notice, we have determined that there is no change to the areas for which the regional floor is applicable. That is, for discharges occurring on or after October 1, 1988 and before October 1, 1989, rural hospitals in regions I, II, III, and IV and hospitals in large urban areas and other urban areas in regions I and IV would receive greater payments using the national/regional blend than the national average standardized amount. Therefore, for discharges occurring on or after October 1, 1988 and before October 1, 1989, the Federal portion of the payment for these hospitals would be comprised of 85 percent of the national average standardized amount and 15 percent of the applicable regional average standardized amount rather than 100 percent of the national average standardized amount.

As part of this proposed rule, we would amend § 412.70 to implement the provisions of section 1886(d)(1)(A)(iii) of the Act.

E. Payment for Outlier Cases (Sections 412.82 and 412.84)

Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made to hospitals for atypical cases known as "outliers". These are cases that have either an extremely long length of stay or extraordinarily high costs when compared to the other discharges classified in the same DRG.

Section 1886(d)(5)(A)(iii) of the Act specifies that the outlier payments should approximate the marginal cost of care beyond the outlier threshold. In the September 1, 1983 interim final rule, we established the ratio of marginal cost to average cost at 60 percent (48 FR 39776). Therefore, the regulations (§§ 412.82 and 412.84) currently provide that the payment for outlier cases is based on a 60 percent marginal cost factor.

For day outliers, an additional per diem payment is made for each covered day of care beyond the length of stay threshold. The per diem payment is equal to 60 percent of the average per diem Federal rate for the DRG, which is calculated by dividing the wage-adjusted Federal rate for the DRG by the geometric mean length of stay for the DRG. This amount is multiplied by the applicable Federal blend percentage. After the end of the transition period, the Federal portion is 100 percent of the payment rate except for sole community hospitals, which continue to receive payment equal to 75 percent of the hospital-specific portion and 25 percent of the Federal regional portion.

For cost outliers, the additional payment is equal to 60 percent of the difference between the hospital's charges for the discharge, adjusted to cost, and the cost threshold. We currently determine the cost of the discharge to be equal to 66 percent of the billed charges for covered services based on the average ratio of operating costs to charges for Medicare discharges nationwide. The resulting cost estimate is further adjusted to exclude an estimate of indirect medical education costs and payments to hospitals that serve a disproportionate share of low-income patients. As with day outliers, the resulting amount is then multiplied by the applicable Federal blend percentage.

Our analysis indicates that while our payment policy for outliers effectively reduces the risk faced by hospitals in treating cases that are outside the normal range of cases in terms of duration or costliness, additional compensation would be justified for the most expensive cases, particularly those long-stay cases with extremely high costs. On the other hand, some cases that currently qualify for additional payment as day outliers are not extraordinarily costly.

In the June 10, 1987 proposed rule (at 52 FR 22089), we proposed to make two changes to the outlier regulations in order to more adequately compensate hospitals for outlier cases. First, we proposed that a marginal cost factor of 80 percent be applied to the most expensive outlier cases (that is, all outlier cases exceeding the cost threshold). Thus, outlier payment for these cases would be equal to 80 percent of the difference between the adjusted charges for the case and the cost threshold. Second, we proposed that outlier payment for cases with lengths of stay exceeding the day threshold and adjusted charges exceeding the cost threshold also be equal to 80 percent of the difference between the adjusted charges for the case and the cost threshold.

In the September 1, 1987 final rule (52 FR 33048), we discussed the public comments received in response to the proposed changes in the payment policy for outlier cases and our decision to delay implementation of any changes to that policy. While most commenters supported an outlier policy that pays a higher fraction of outlier payments for extremely costly cases, many were concerned about the impact of the proposed changes and recommended that changes in the outlier policy be delayed until further study could be completed. The areas of particular concern were the continued use of a national average cost-to-charge ratio to pay cost outliers and the negative impact of the proposed outlier policy on certain groups of hospitals, such as teaching and small rural hospitals.

Given the concerns expressed by commenters, we decided to delay implementation of any changes to the outlier payment policy. We continued our research on the impact of using a national cost-to-charge ratio in computing cost outlier payments. In addition, in our ongoing analyses of outlier payments, we have investigated numerous options for changing the way that outlier cases are defined and outlier payment is determined. We have developed a proposed outlier policy that we believe would reduce the risks to hospitals for the most expensive cases. Given the number of changes we are proposing and their intended effects, we are particularly interested in soliciting comments on our proposed outlier policy and the degree to which specific features of it are likely to reduce financial risk associated with extremely atypical cases. We are proposing the following changes to the outlier policy to be effective for discharges on or after October 1, 1988. We would amend §§ 412.82 and 412.84 and add a new § 412.86 to implement these changes.

1. Marginal Cost Factor for Cost Outliers

We are proposing to pay cost outlier cases at a marginal cost factor of 80 percent of adjusted charges beyond the cost outlier threshold (except for burn outlier cases, which are being paid using a marginal cost factor of 90 percent for discharges occurring on or after April 1, 1988 and before October 1, 1989, as explained below).

We previously proposed this change in the June 10, 1987 proposed rule (52 FR 22090) as part of our earlier proposal to revise outlier payment policy. As indicated at that time, our research has shown that a higher marginal cost factor for cost outliers would result in more appropriate outlier payments for

atypically expensive cases. In particular, we have found that the estimated loss per case is higher for cost outliers than for day outliers. This finding leads us to conclude that the current marginal cost factor of 60 percent is too low for cost outliers. Further, we have found that increasing the marginal cost factor for cost outlier effectively targets a higher proportion of outlier payments to the most costly cases, thus reducing the financial risk faced by hospitals under the prospective payment system. Since the reduction of this risk is one of the major objectives of outlier payment, a higher marginal cost factor for cost outliers is strongly supported by these findings.

Accordingly, for discharges occurring on or after October 1, 1988, we are proposing to set the marginal cost factor for cost outlier cases at 80 percent of adjusted charges beyond the cost outlier threshold. Based on our research to date, we believe that this revised marginal cost factor would result in more accurate payment for the marginal cost of cost outliers and more adequate compensation to hospitals treating the most costly outlier cases.

2. Higher of Day or Cost Outlier Payment

In addition, for those day outlier cases that have adjusted charges exceeding the cost threshold, we propose to make outlier payment equal to the greater of 60 percent of the per diem Federal rate for each day beyond the length of stay threshold or 80 percent of the difference between adjusted charges and the cost threshold.

We currently pay even the most expensive day outliers at a per diem amount that is based on the average payment for all discharges assigned to that DRG. For some of the cases that currently qualify as day outliers, the per diem rate paid does not adequately compensate the hospital for its marginal costs. This is especially true for day outlier cases with extremely high costs, for which the daily costs may vastly exceed the day outlier per diem and for which that daily difference is multiplied by a long length of stay. Indeed, when day outliers are separated into two categories—those exceeding the length of stay threshold but not the cost threshold, and those exceeding both thresholds—the estimated loss per case for the most expensive day outliers (those also exceeding the cost threshold) substantially exceeds that for the less expensive day outliers (those that do not exceed the cost threshold).

In order to rectify this situation, we are proposing that for the most expensive day outlier cases (that is, those that also meet the cost outlier criterion) we would pay the case an amount equal to 80 percent of adjusted charges beyond the cost outlier threshold, if that amount exceeds the amount that would be paid using the day outlier methodology, on the grounds that the marginal cost for these cases appears to exceed the per diem Federal rate that they are currently paid.

We had previously recommended using the cost outlier payment methodology for all cases that exceeded both the length of stay and the cost thresholds. However, this could result in reduced outlier payments for cases that barely "cross" the cost threshold after exceeding the length of stay threshold by a large margin. We believe that adjusted charges are a more accurate indicator of exceptional cost than is length of stay; however, in light of the response to our proposal last year, we believe, pending conclusive results and evidence on the behavioral response to the other changes that we have proposed, that it would be more appropriate to shift gradually toward reliance on adjusted charges as the measure of atypicality. Consequently, so as not to reduce payments to day outlier cases as they cross the cost threshold, we are proposing to pay for any case that qualifies as both a day and a cost outlier according to the methodology that results in the higher outlier payment for the case.

3. Hospital-Specific Cost-to-Charge Ratios

We are proposing to use hospital-specific cost-to-charge ratios to adjust charges for the purpose of computing cost outlier payments. The use of hospital-specific cost-to-charge ratios should greatly enhance the accuracy with which outlier cases are identified and outlier payments are computed, since there is wide variation among hospitals in these cost-to-charge ratios. Also, as indicated in the September 1, 1987 final rule (52 FR 33048), our preliminary studies concerning the use of a national cost-to-charge ratio for computing cost outlier payments suggest that, in general, the types of hospitals that have high profits per case under the basic rates have lower cost-to-charge ratios than do the types of hospitals that have lower profits per case under the basic rates. This means that use of the national cost-to-charge ratio to compute cost outlier payments results in a transfer of payments to hospitals that are doing well from hospitals that are doing less well. The magnitude of this effect has been limited to date because cost outliers have accounted for only 15 to 20 percent of all outlier payments and because outlier payments have only been made on the Federal portion of payments. However, as noted by many of the commenters on last year's proposal, the increased emphasis on cost in computing outlier payments heightens the need to use reasonably reliable factors to estimate costs from charges. Therefore, we believe the use of hospital-specific cost-to-charge ratios is essential to ensure that outlier payments are made for cases that have extraordinarily high costs, and not merely high charges.

Because of a number of administrative and data problems, we were not able to implement hospital-specific cost-to-charge ratios for FY 1988. However, we have resolved these problems and believe we currently have the capability to accurately compute hospital-specific cost-to-charge ratios both for payment purposes and for estimating outlier payments in order to establish thresholds.

A cost-to-charge ratio would be computed for each hospital by the intermediary using cost data from the hospital's latest settled cost report and charge data for the same period from the billing file maintained by the intermediary. The intermediary would compute the hospital-specific cost-to-charge ratios based on the ratio that follows:

$$\frac{\text{Medicare Operating Cost (from cost report)}}{\text{Medicare Covered Charge (from billing file)}}$$

For hospitals that have not yet filed their first Medicare cost report with their fiscal intermediary or for which the intermediary is unable to compute a reasonable cost-to-charge ratio, we computed statewide average cost-to-charge ratios for urban hospitals and for rural hospitals, which appear in Table 8 of section IV of the addendum to this proposed rule. These average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes cost-to-charge ratios lower than 0.36 or greater than 1.24. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals (0.67). We believe that ratios falling outside this range are unreasonable, in that they are probably due to faulty data reporting or entry, and should not be used to identify and pay for cost outliers.

Hospital-specific cost-to-charge ratios would be computed annually before the beginning of each Federal fiscal year, based on each hospital's latest settled cost report. The intermediary would enter the appropriate ratio for each hospital into the PRICER program used by the intermediary to calculate payments and would be used for discharges occurring during that Federal fiscal year. We intend to issue to intermediaries more specific instructions for computing and applying hospital-specific cost-to-charge ratios.

We would continue our policy that cost outlier payments would be final and not subject to recalculation based on later data that would affect the hospital-specific cost-to-charge ratios, indirect medical education adjustment factors, or disproportionate share adjustment factors. This policy was first set forth in the September 1, 1983 final rule (48 FR 39779) and at that time codified at § 405.454(m)(5). This section was subsequently redesignated as § 413.64(k)(1)(ii) in a final rule with comment period published on September 30, 1986 (51 FR 34790). However, in a final rule with comment period published on January 21, 1988 (53 FR 1621), when this section was further redesignated as § 412.116(e), we inadvertently deleted from that section the sentence that specified that outlier payments are based on submitted bills and represent final payment. As a part of this proposed rule, we are correcting that paragraph to include the deleted sentence.

4. Outlier Thresholds and Size of the Outlier Pool

As explained above, section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act correspondingly requires that the standardized amounts be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the September 1, 1987 final rule, we set the outlier thresholds so as to result in estimated outlier payments equal to five percent of total prospective payments (that is, estimated outlier payments plus regular prospective payments per discharge, excluding indirect medical education payments and disproportionate share hospital payments) for FY 1988 (52 FR 33085). These same thresholds were estimated to result in outlier payments of 5.1 percent of total DRG payments based on the rates as updated for discharges occurring on or after April 1, 1988 and adjusted to reflect the use of a 90 percent marginal cost factor for burn-related outliers. The urban and rural outlier offsets averaged out to produce this 5.1 percent outlier "pool".

Section 1886(d)(3)(B) of the Act requires that, effective with discharges occurring on or after October 1, 1986, each national and regional standardized amount be reduced for hospitals located in urban areas and for hospitals located in rural areas based on the estimated proportion of total DRG payments attributable to outlier payments for hospitals in urban areas and for hospitals in rural areas, respectively. Consequently, instead of the uniform five percent reduction factor applying equally to all the standardized amounts, there are now two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Rates for urban hospitals, which are projected to receive outlier payments in excess of five percent of total DRG payments, are reduced by that larger percentage (instead of by five percent). Rates for rural hospitals, which are projected to receive outlier payments of less than five percent of total DRG payments, are reduced by the lower percentage (instead of by five percent).

Under section 1886(d)(5)(A)(iv) of the Act, we are proposing to continue to set the outlier thresholds so as to result in estimated outlier payments equal to five percent of total prospective payments. This requires, for FY 1989, that the day outlier threshold be set at the lesser of 24 days or 3.0 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $27,000. These thresholds would result in estimated outlier payments equaling five percent of total prospective payments.

While similar to ProPAC's recommendation that thresholds be adjusted so that 40 to 50 percent of outlier payments would be paid as cost outliers, the proposed thresholds would result in a somewhat greater emphasis on the cost outlier methodology, accounting for 60 percent of outlier payments. (The previous payment split was approximately 85 percent day outliers and 15 percent cost outliers.) This shift is consistent, however, with ProPAC's recommendation that there be greater emphasis on cost rather than length of stay as a criterion for paying for outliers, and is also reflective of an 80 percent marginal cost factor for cost outliers, rather than the 60 percent factor used by ProPAC. Also, in view of the fact that, compared to current thresholds, the increase in the proposed cost threshold is already triple the increase in the proposed day threshold, we decided not to raise the cost threshold further as would have been necessary to hold to 50 percent the proportion of outlier payments made on the basis of the cost methodology.

Our overriding goal in modifying outlier payment policy is to afford hospitals better financial protection against the risks of extremely costly cases. Based on our research findings that adjusted charges are a better measure of costliness than length of stay, paying all outlier cases exceeding the cost threshold using the cost outlier methodology would be the simplest way to achieve that goal.

In light of the reaction to our proposal to implement such a policy last year, however, we decided a more gradual shift toward use of the cost outlier methodology was in order, so as to avoid the occurrence of cases in which there are sharp reductions in payments for day outlier cases as their costs barely exceed the cost threshold. This "notch effect," which also occurs under the current policy when extremely expensive cases cross the length of stay threshold, is perceived as unfair and may create undersirable incentives for hospitals treating these cases. Hence, we are proposing to pay day outliers exceeding the cost threshold on the basis of the methodology that generates the higher payment. However, this policy would result in higher payment for many outlier cases (those for which payments using the cost outlier methodology are lower than payments using the day outlier methodology), and thus requires that the thresholds be increased beyond those that would have been set under either a continuation of the current policy or a policy of paying expensive day outliers (those whose costs exceed the cost outlier threshold) using the cost outlier methodology, as proposed last year.

The substantial increases in both the day and the cost outlier thresholds stem not only from the combined effects of all the proposed changes to outlier payment policy set forth above, but also from continued slight increases in the Medicare length of stay and hospital charge increases in excess of the hospital market basket increase. Based on the most recent billing data available (FY 1987 MEDPAR), we now estimate that the current outlier thresholds may result in outlier payments equal to almost 5.5 percent of total DRG payments. This result suggests that the current outlier thresholds are too low.

We note, consequently, that even if we were proposing not to modify outlier payment policy but only to update the day and cost thresholds based on the FY 1987 MEDPAR data and on updated national cost-to-charge ratio of 0.63, the revised thresholds for FY 1989 would be the lesser of 21 days (an increase of three days) or 2.0 standard deviations for day outliers and, for cost outliers, the greater of $19,000 (an increase of $5,000) or 2.0 times the Federal prospective payment rate. These thresholds would be necessary to ensure that estimated outlier payments are neither more nor less than the five percent of total Federal DRG payments (including outlier payments) as reflected in the rates and, accordingly, should be used as the basis for comparison of the proposed thresholds and policy.

By comparison, if the only change in outlier policy were to pay the greater of day or cost outlier payments using a marginal cost factor of 60 percent or both, as ProPAC recommended, the thresholds for FY 1989 would have had to be increased to the lesser of 22 days or 3.0 standard deviations for day outliers and the greater of $23,000 or 2.0 times the Federal prospective payment rate for cost outliers.

Alternatively, using the cost outlier methodology, with an 80 percent marginal cost factor, to pay for all expensive day outliers (those that also meet the cost outlier criteria), as we proposed last year, would require thresholds of 24 days or 3.0 standard deviations for day outliers and $23,000 or 2.0 times the Federal rate for cost outliers.

Finally, the combination of an 80 percent marginal cost factor in the cost outlier methodology and payment of expensive day outliers using the methodology that yields the higher outlier payment pushes the thresholds to the lesser of 24 days or 3.0 standard deviations for day outliers and the greater of $27,000 or 2.0 times the Federal prospective payment rate for cost outliers. We note that the shift from 2.0 to 3.0 standard deviations for the day outlier threshold was motivated by a desire to keep the fixed number of days as low as possible. In addition, this change had virtually uniform distributive effects across all groups of hospitals, either by type or by geographic location. Had we continued to use 2.0 standard deviations in our proposed policy, the fixed number of days would have had to increase to 30 days.

The proposed outlier adjustment factors for FY 1989 are as follows:

Outlier Reduction Factors

Urban	Rural
.9448	.9781

These proposed outlier thresholds and reduction factors apply to hospitals located in the fifty states and the District of Columbia as well as to hospitals located in Puerto Rico.

ProPAC agrees with us that the outlier payment policy should be refined to better protect hospitals from the risk of extremely costly cases (Recommendation 18). Our proposed changes are also consistent with ProPAC's recommendations to pay day outliers exceeding the cost threshold on the basis of the greater of the day or the cost outlier amounts and to utilize hospital-specific cost-to-charge ratios for identifying and paying cost outliers.

We are not, however, adopting ProPAC's recommendation to increase the outlier pool from five percent to the maximum six percent allowed under the law. In light of the numerous outlier policy changes that we are already proposing, we believe that it is desirable to maintain a five-percent outlier reserve at this time, because it allows proportionately greater payment for typical cases. Increasing the aggregate outlier reduction to six percent would result in less payment to all hospitals for the vast majority of cases, which involve neither exceptionally long nor costly stays. While benefiting facilities with a greater incidence of outliers, it penalizes those hospitals with relatively few outlier cases. Furthermore, our research shows only a marginal reduction in risk associated with moving to a six-percent outlier reserve. We would be interested in comments on the appropriate size of the outlier pool.

We note that ProPAC has also recommended that a corrective adjustment be made if outlier payments in a year are different from the amount financed by the offsets to the urban and rural rates. In light of our estimate that outlier payments in FY 1988 will be about 5.5 percent of total prospective payments, as compared to a 5.1 percent outlier pool, adopting this recommendation would result in a 0.4 percent reduction to the standardized amounts. Since the update factor applied to the standardized amounts is prescribed by law, we have no authority to make such an adjustment. Moreover, as we have explained in previous prospective payment rules (50 FR 35708, 51 FR 31523, and 52 FR 33047), we believe that we have consistently met our statutory obligation under sections 1886(d)(3)(B) and 1886(d)(5)(A)(iv) of the Act to ensure that the rate offsets used to finance outlier payments were equal to the estimated proportion of total prospective payments that were expected to be additional payments for outliers, and that the thresholds be set so as to yield outlier payments of five to six percent of estimated total DRG-based payments. We have consistently used the most recent Medicare discharge data available to estimate total prospective payments and outlier payments as a percentage thereof. Any discrepancy between the estimated outlier payment proportion (which is, in turn, equal to a weighted average of the urban and rural outlier offsets) and the actual outlier payment proportion is attributable entirely to behavioral and other changes that we are unable to predict and that affect length of stay and hospital charges between the year from which data is used to estimate outlier payments and total prospective payments and the year for which the payment rates and outlier thresholds are applicable.

5. Differential Urban and Rural Thresholds

Under current policy, the same outlier thresholds are applicable to urban and rural hospitals. Since rural hospitals generally have less complex and costly cases, they have fewer outlier cases. Presently, only 2.5 percent of payments to rural hospitals are additional payments for outlier cases. Although rural hospitals have a smaller outlier pool (and higher payments for typical cases), this means that, as a proportion of total prospective payments, they receive less outlier protection than do urban hospitals. At the same time, rural hospitals have fewer inpatient cases and, as a result, are more vulnerable to large losses on individual cases. Moreover, an expensive outlier case has a greater financial effect on a small rural hospital than on the average urban hospital.

In order to provide additional outlier protection to rural hospitals, we considered establishing lower thresholds for rural hospitals than for urban hospitals. Although we decided not to propose this change, we would like to invite comments on the appropriateness of replacing the current combination of uniform thresholds and differential urban and rural outlier offsets with a policy of uniform offsets and differential thresholds for hospitals paid the urban rate and hospitals paid the rural rate. Such a policy would, in order to comport with statutory constraints, require an increase in the proportion of payments to rural hospitals attributable to outlier payments, a corresponding reduction in the rural standardized amounts, and lower thresholds for hospitals paid the rural rate so as to identify and pay for more outlier cases in rural hospitals.

6. Burn Outliers

In the April 5, 1988 notice (53 FR 11137), we discussed the provisions of section 4008(d)(1)(A) of Pub. L. 100-203, which changed the marginal cost factor from 60 percent to 90 percent for both day and cost outliers in DRGs related to burn cases. These provisions are effective for discharges occurring on or after April 1, 1988 and before October 1, 1989 for outlier cases classified in the six DRGs relating specifically to burn cases:

DRG	Name
456	Burns, transferred to another acute care facility.
457	Extensive burns w/o O.R. procedure.
458	Non-extensive burns with skin graft.
459	Non-extensive burns with wound debridement or other O.R. procedure.
460	Non-extensive burns with w/o O.R. procedure.
472	Extensive burns with O.R. procedure.

As part of the proposed rule, we would amend §§ 412.82 and 412.84 to implement the provisions of section 4008(d)(1) of Pub. L. 100-203.

ProPAC supports the intent of section 4008(d) of Pub. L. 100-203, which temporarily increases outlier payments for burn DRGs. However, ProPAC's preliminary analysis indicates that the increase in outlier payments is appropriate only for those cases treated in specialized burn centers and units. ProPAC will examine this topic further and submit additional recommendations to the Congress and the Secretary as required by section 4008(d)(2)(B) of Pub. L. 100-203.

While we recognize ProPAC's concern that outlier cases result in a more serious impact to specialized burn centers and units than to general hospitals treating burn cases, we generally do not believe it appropriate to create a new class of hospital (that is, burn hospitals and burn units) simply for the purpose of targeting outlier payments.

However, since ProPAC indicated it will carry out further analysis and make additional recommendations, we will comment in more detail once that analysis and subsequent recommendations are completed. We also believe that our proposed changes in outlier policies would serve to improve payments for burn outliers. Within the context of the prospective payment system, we generally believe that solutions to problems should be found on a systematic basis, rather than through making special adjustments for individual cases or small group of cases.

F. Payments to Sole Community Hospitals (Section 412.92)

Section 4005(c) of Pub. L. 100-203 amended section 1886(d)(5)(C)(ii) of the Act to extend through cost reporting periods beginning before October 1, 1990, the time period allowed for a sole community hospital (SCH) to qualify for a payment adjustment for a cost reporting period during which the hospital experiences, due to circumstances beyond its control, a significant (that is, more than a five percent) decrease in its total inpatient discharges as compared to its immediately preceding cost reporting period. We are proposing to revise § 412.92(e) to reflect this change.

In addition, section 4005(c) of Pub. L. 100-203 also amended section 1886(d)(5)(C)(ii) of the Act to extend the payment adjustment discussed above to those hospitals that meet the criteria to qualify as SCHs but do not receive payment under the prospective payment system as an SCH (that is, payment equal to 75 percent of the hospital-specific portion and 25 percent of the Federal regional portion). That is, if a hospital meets the criteria to qualify as an SCH, it may file for the volume decline adjustment regardless of whether it is being paid as an SCH. Of course, in order to receive the volume adjustment, the hospital must meet all the criteria necessary to qualify for a volume adjustment. This provision is effective for cost reporting periods beginning on or after October 1, 1987.

If a hospital wishes to take advantage of this payment adjustment, it would have to submit a request for SCH status to a HCFA regional office. The hospital's application must clearly state that it is seeking SCH status solely to qualify for the volume adjustment and that it does not wish to be paid under the prospective payment system as an SCH. For this purpose, the hospital must meet all criteria for classification of an SCH that are set forth in § 412.92(a).

Once HCFA's regional office has determined that a hospital meets the criteria to qualify as an SCH for the payment adjustment only, it would notify the hospital and the hospital's intermediary. The hospital would then submit to the intermediary documentation demonstrating the size of the decrease in discharges, explaining the circumstances giving rise to the decline in discharges and how they were beyond the hospital's control. The hospital's submission to the intermediary must be made within 180 days from the date on the notice from the HCFA regional office. The hospital must also furnish evidence of the actions it took to control costs in the face of the circumstances cited and the resulting decline in discharges.

HCFA determines the volume adjustment under the provisions of § 412.92. We would clarify that section to conform with our current practice that HCFA makes its determination within 180 days from the date HCFA receives the hospital's request and all other necessary information from the intermediary. In addition, we would state that this volume adjustment determination is subject to review under Subpart R of Part 405.

Thus, we would revise § 412.92(e) to extend the time period for the payment adjustment and add a new § 412.92(f) to provide for the payment adjustment for a hospital that qualifies as an SCH although it chooses not to be paid on the basis of a hospital-specific/Federal regional blend.

Section 4005(c)(2)(B) of Pub. L. 100-203 requires the Secretary to take appropriate steps to ensure that no more than $5 million is paid for FY 1988 and no more than $10 million is paid for FY 1989 to hospitals that qualify for SCH payment adjustments under this special provision. Accordingly, we will monitor expenditures under this provision to ensure that they do not exceed the amounts specifically authorized.

We also note that ProPAC has recommended that we issue guidelines, before FY 1989 begins, for interpreting the criteria used by our regional offices to designate sole community hospitals, so as to promote greater uniformity in their application (Recommendation 11). ProPAC also recommends that we evaluate whether the criteria can be improved to better identify sole providers of care to isolated populations.

We agree with ProPAC that it is desirable to have as much uniformity as possible in interpreting the criteria for determining sole community hospital status. Our analysis of the sole community hospital criteria is an ongoing process and we will continue to evaluate these criteria in order to achieve as much uniformity as possible in their application. However, the Secretary's current criteria, as set forth in the regulations at § 412.92, and the process for making sole community hospital determinations are the result of long experience with various criteria as well as with centralized and

decentralized procedures for determining sole community status.

The Medicare program's experience with sole community hospitals began with the implementation in 1974 of the hospital cost limits under section 223 of the 1972 Social Security Amendments (Pub. L. 92–603). Under section 223 of Pub. L. 92–603, Congress exempted a hospital from the hospital cost limits if it was the sole source of care that was reasonably available to Medicare beneficiaries. Accordingly, the Secretary developed a procedure by which a hospital wishing to obtain a sole community hospital exemption would submit a request to its Medicare fiscal intermediary. After review and development by the intermediary, the request was sent to the Medicare central office for a final determination.

This centralized system was the focus of much criticism from small rural hospitals. These hospitals felt that central office personnel could not possibly be familiar with the many varied conditions that determine the availability of care in the geographic area served by each hospital seeking sole community hospital status. That is, the hospitals believed that HCFA personnel in Baltimore were unaware of, and could not accurately evaluate, local weather conditions, topography, mileage, and other criteria.

After study, HCFA agreed with these arguments. Thus, the authority to make sole community hospital determinations was delegated to the HCFA regional offices in the 1978 in order to build more flexibility into sole community hospital decisions and to better enable the Medicare program to take account of local conditions. To assist and guide the regional offices in their determination, general guidelines were published. However, the regional offices decided how to apply the general criteria in light of the local conditions pertaining in each case.

We have been generally satisfied with this decentralized process and, therefore, retained it even when the criteria were modified at the inception of the prospective payment system. However, decentralization has not meant abdication of responsibility by the HCFA central office. When there are complaints about the sole community hospital criteria or their application by the regional offices, we investigate these complaints.

In addition, in the interest of promoting uniformity of determinations regarding sole community hospital status, in the September 1, 1983 interim final rule implementing the prospective payment system (48 FR 39752), we included detailed regulatory criteria that a hospital must satisfy in order to obtain sole community hospital status. These criteria, which were subject to public comment, were the result of our long experience with the sole community hospital issue. After analysis of all comments received on the interim final rule, we published a final rule on January 3, 1984 that set forth our final criteria along with our responses to all the public comments.

Based on our experience with sole community hospital criteria and the decision making process, we believe the criteria and process for making sole community hospital determinations are appropriate and provide the proper balance between uniform standards and recognition of local conditions. We have received very little criticism of the current system from hospitals. Nevertheless, we will continue to study ProPAC's recommendations and the analyses performed by their contractor to assure that our criteria are appropriate for determining which hospitals are the sole source of care for Medicare beneficiaries. Moreover, in light of ProPAC's concern about the lack of interpretive guidelines, we are proposing to incorporate into the regulations our definition of a service area and also an explanation of what a hospital must provide to the intermediary to document that no more than 25 percent of the residents of its service area were admitted to other like hospitals for care. This policy was first discussed in the preamble of the September 1, 1983 final rule (48 FR 39781).

First, a hospital that seeks to qualify as a sole community hospital under § 412.92(a)(2)(i) or (a)(2)(ii), under which no more than 25 percent of the residents of the hospital's service area are admitted to other like hospitals for care, must submit to its intermediary admissions data documenting the boundaries of its service area. The term "service area" means the area from which a hospital draws at least 75 percent of its inpatients.

A hospital may delineate its service area by identifying the zip codes of all its inpatients for the cost reporting period ending before the date it applies for SCH status. The lowest number of zip codes accounting for at least 75 percent of its inpatients would then constitute its service area. Alternatively, the boundaries of a hospital's service area as established by a statewide health planning agency may be used as long as the hospital can demonstrate that 75 percent of its inpatients are drawn from that area for the cost reporting period ending before it applies for SCH status.

In order to document that no more than 25 percent of the residents of its service area were admitted to other like hospitals for care, a hospital would also be required to gather and submit applicable admissions data by patient origin from all other hospitals located within its service area or, if larger, within 50 miles of the requesting hospital. That a hospital can develop its data using inpatients from the total population or from the Medicare population was previously discussed in the January 3, 1984 final rule (49 FR 272) and is already reflected in § 412.92(a)(2)(i) of the regulations. We are not proposing to modify this provision. We expect that intermediaries can assist hospitals applying for SCH status by making available Medicare discharge data by patient origin for neighboring hospitals.

Similarly, we are not proposing any revision to the stated policy that, if a hospital has fewer than 50 beds, it can be deemed to meet this criterion (that no more than 25 percent of the residents of its service area were admitted to other like hospitals for care) if its intermediary certifies that the hospital would have met this criterion were it not for the fact that some Medicare beneficiaries or residents of the hospital's service area were forced to seek care outside the service area due to the unavailability of certain specialty services at the hospital with fewer than 50 beds.

The term "service area" and its definition would be added to § 412.92(c). Information that the hospital must provide to the intermediary would be added to § 412.92(b).

In addition, we are proposing to clarify certain terms used in the regulations text. In § 412.92(a)(2)(i), we are proposing to add "who become hospital inpatients" after the word "residents" and after the word "beneficiaries." In § 412.92(c)(1), we are proposing to replace the first sentence with the following: "The term "*miles*" means the shortest distance measured in miles over improved roads." The rest of that definition remains unchanged.

Although we believe that the intent of our existing regulations is clear, we have received some questions and suggestions that the language be more specific. These changes that we are proposing are not changes in policy, but are merely clarification of existing policy.

G. Rural Referral Centers (Section 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a referral center. Prior to the enactment of Pub. L. 100–203, one of the criteria under which a rural hospital could qualify as a referral center was to have 500 or more beds available for use. Section 4005(d) of Pub. L. 100–203 amended section 1886(d)(5)(C)(i)(I) of the Act to reduce the bed size criterion from 500 or more beds to 275 or more beds, effective with discharges on or after April 1, 1988.

In the April 5, 1988 notice, at (53 FR 11136), we discussed our policy concerning which beds in a hospital should be counted in evaluating whether a rural hospital meets the new bed size criterion. We stated that, in determining whether a hospital has 275 or more beds, we count only beds available for use within the subsection (d) hospital (that is, we do not count beds located in an excluded psychiatric unit, rehabilitation unit, or newborn nursery).

As further clarification of our policy in implementing the provisions of Pub. L. 100–203 concerning rural referral centers, we are proposing that the definition for determining the number of beds for indirect medical education purposes be used for counting available beds for rural referral center purposes. That is, the definition at § 412.118(b) would be used to determine if a hospital has 275 or more available beds to qualify it as a rural referral center. For rural referral center purposes, we would look at the hospital's most recently completed cost reporting period in making this determination. For example, for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1989, we would apply the definition at § 412.118(b) for determining the number of beds for indirect medical education payment purposes to the hospital's cost reporting period that began on or after October 1, 1986 and before October 1, 1987. This is consistent with the time period used to count a hospital's number of discharges to qualify as a rural referral center under § 412.96(c)(2).

In the April 5, 1988 notice, we also stated that rural referral centers should be paid the standardized amounts for hospitals located in other urban areas rather than the standardized amounts for hospitals located in large urban areas. As a part of this proposed rule, we would amend § 412.96 to implement the provisions of section 1886(d)(5)(C)(i)(I) of the Act.

A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, currently a hospital is classified as a rural referral center if its—

- Case mix index is equal to the lower of the median case mix index for urban hospitals in each census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if less, the median number of discharges for urban hospitals in the census region in which the hospital is located. (We note that the number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining referral center status. In determining the proposed national and regional case-mix index values, we would follow the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value would include all urban hospitals nationwide and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.118).

These values are based on discharges occurring during FY 1987 (October 1, 1986 through September 30, 1987) and include bills posted to HCFA's records through December 1987. Therefore, in addition to meeting other criteria, we are proposing that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1988, a hospital's case-mix index value for FY 1987 would have to be at least—

- 1.1704; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.118) calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.1370
2. Middle Atlantic (PA, NJ, NY)	1.1124
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.1624
4. East North Central (IL, IN, MI, OH, WI)	1.1307
5. East South Central (AL, KY, MS, TN)	1.1186
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	1.1501
7. West South Central (AR, LA, OK, TX)	1.1795
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.1950
9. Pacific (AK, CA, HI, OR, WA)	1.1929

The above numbers will be revised in the final rule to the extent that additional bills are received for discharges through September 30, 1987.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing the FY 1987 case-mix index values in Table 3c in section VI of the addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(i)(II) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards, which are based on discharges for urban hospitals during the third year of the prospective payment system (that is, October 1, 1985 through September 30, 1986), which is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1988, a hospital's number of discharges for its cost reporting period that began during FY 1987 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located as indicated in the table below.

We again note that to qualify for or to retain rural referral center status for

cost reporting periods beginning on or after October 1, 1988, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1987 would have to be at least 3,000.

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6,730
2. Middle Atlantic (PA, NJ, NY)	8,083
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	6,125
4. East North Central (IL, IN, MI, OH, WI)	7,381
5. East South Central (AL, KY, MS, TN)	5,782
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	5,102
7. West South Central (AR, LA, OK, TX)	4,393
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	5,142
9. Pacific (AK, CA, HI, OR, WA)	4,797

H. Disproportionate Share Adjustment (Section 412.106)

Section 4003 (b), (c), and (d) of Pub. L. 100–203 amended section 1886(d) of the Act to provide for several changes to the rules that govern the disproportionate share adjustment. Section 412.106 would be revised to implement these provisions, which are all effective beginning with discharges on or after October 1, 1988.

First, section 4003(b)(1) of Pub. L. 100–203 amended section 1886(d)(5)(F)(iii) of the Act to increase from 15 percent to 25 percent the disproportionate share payment adjustment factor for a hospital that qualifies as a disproportionate share hospital under § 412.106(b)(1)(ii), that is, the hospital has 100 or more beds; is located in an urban area; and receives more than 30 percent of net inpatient revenues from State and local government sources for the care of indigent patients not eligible for Medicare or Medicaid.

Second, section 4003(b)(2) of Pub. L. 100–203 amended section 1886(d)(5)(F)(iv)(I) of the Act to eliminate the 15 percent cap on the payment adjustment factor for a hospital that qualifies as a disproportionate share hospital under either § 412.106(b)(1)(i)(A) or (b)(2): That is, the hospital has a disproportionate patient percentage of at least 15 percent, has 100 or more beds, and is located in an urban area; or the hospital has a disproportionate patient percentage of at least 15 percent, has 500 or more beds, and is located in a rural area.

Third, section 4003(c) of Pub. L. 100–203 amended sections 1886(d)(2)(C)(iv) and 1886(d)(5)(F)(i) of the Act to extend payment of the disproportionate share adjustment through discharges that occur before October 1, 1990. Prior to enactment of Pub. L. 100–203, the payment adjustment for disproportionate share hospitals was to be made only through discharges occurring before October 1, 1989.

In addition, section 1886(d)(5)(F) of the Act as amended by section 4009(j)(3)(A) of Pub. L. 100–203 clarifies that "net" inpatient revenues is the denominator when determining whether a hospital meets the requirement that 30 percent of its inpatient revenues are from State and local government sources for the care of indigent patients. Because regulations at § 412.106(b)(1)(ii) refers to total inpatient care revenues, we would revise this section to clarify that we would use net inpatient revenues rather than gross inpatient revenues in determining whether a hospital qualifies for a disproportionate share adjustment under this provision.

Net inpatient revenues are defined as gross inpatient revenues minus allowances. Allowances represent reductions in revenue for amounts not expected to be realized as revenues. These include allowances for bad debts, charity care, and courtesy discounts and third party contractual allowances.

I. Classification of Capital-Related Costs and Direct Medical Education Costs (Section 412.113)

The prospective payment system was enacted by section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) with the intention of curtailing the high rate of increase in hospital inpatient operating expenditures. The term "operating costs of inpatient hospital services" was defined to include all inpatient routine and ancillary costs except for capital-related costs. Payment for capital-related costs continues to be determined on a reasonable cost basis. Payment for the cost of approved medical educational activities also continues to be made on a reasonable cost basis except with respect to activities defined in § 413.85(d).

In order to ensure that reclassification of costs included or excluded from the prospective payment system was minimized, we added the "consistency rule" to the regulations governing the prospective payment system. It is currently set forth at § 412.113(a)(1) and (b). The consistency rule required that the classification of these capital-related and direct medical education costs remain constant for each hospital during the prospective payment transition period. This rule was necessary since a portion of the prospectively determined payment during the transition to fully Federal standardized rates was based upon a hospital's own cost experience (that is, the hospital-specific rate). Continued use of the same classifications was instituted to avoid paying for the same costs under both payment methodologies; that is, once in the hospital-specific rate where they are included in base-year costs and once in pass-through costs if the classification of cost changed during the transition.

We believe that the "consistency rule" for capital-related and direct medical education cost classifications has been effective during the transition period. The rule has been particularly important in indentifying situations where there were gross and monetarily substantial misclassifications of those costs in the period before implementation of the prospective payment system. This was especially true for medical education cost misclassifications. As a result of application of the consistency rule, both hospitals and HCFA have sought revisions on a case-by-case basis to ensure that the same costs are not paid for under both payment methodologies (that is, on a reasonable cost basis as a pass-through item and under the prospective payment system as part of the hospital-specific rate) and to ensure appropriate payments for such costs are consistent with the modification of base year costs rules at § 412.72.

With the expiration of the transition period, prospectively determined payment is now based on national and regional standardized rates that do not depend upon an individual hospital's cost experience. Thus, restrictions on the classification of capital-related and direct medical education costs are no longer necessary. Therefore, we would eliminate this requirement so that it would not be confusing to hospitals in future cost reporting periods.

J. Elimination of Interim Payments for Indirect Medical Education Cost (Section 412.116)

Currently, under § 412.116, payments for indirect medical education costs are on the basis of 26 equal biweekly payments, subject to a year-end adjustment. Because the PRICER program used by intermediaries to calculate payments already computes the indirect medical education interim payments on a bill-by-bill basis, we propose to pay for indirect medical education costs on a bill-by-bill basis, effective with discharges on or after October 1, 1988. This would be consistent with the way in which payments are made for the disproportionate share adjustment.

Thus, we would desire § 412.116(d) from the regulations.

K. Indirect Medical Education Costs (Section 412.118)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that operate medical education programs receive an additional payment for the indirect costs of medical education. The regulations governing the calculation of this additional payment are set forth at § 412.118. Each hospital's additional indirect medical education payment is determined by multiplying the hospital's total DRG revenue by the applicable education adjustment factor.

Section 4003(a) of Pub. L. 100–203 revised section 1886(d)(5)(B)(ii) of the Act to reduce the education adjustment factor used to determine the indirect medical education payment from approximately 8.1 percent to approximately 7.7 percent for discharges occurring on or after October 1, 1988 and before October 1, 1990. The education adjustment factor is an approximation because the adjustment factor is applied on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship; that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs.

For discharges occurring on or after October 1, 1988 and before October 1, 1990, the indirect medical education factor equals the following:

$$1.89 \times \left[\left(\frac{1 + \text{interns and residents}}{\text{beds}} \right)^{.405} - 1 \right]$$

For discharges occurring on or after October 1, 1990, the indiret medical education factor equals the following:

$$1.43 \times \left[\left(\frac{1 + \text{interns and residents}}{\text{beds}} \right)^{.3706} - 1 \right]$$

We would amend § 412.118 (c) and (d) to implement the provisions of section 1886(d)(5)(B)(ii) of the Act.

L. Ceiling on Rate of Hospital Cost Increases (Section 413.40)

Payment to hospitals and hospital units that are excluded from the prospective payment system is on a reasonable cost basis, subject to the rate-of-increase limits provisions of section 1886(b) of the Act. These excluded hospitals and hospital units receive payment for the inpatient hospital services they furnish on the basis of reasonable cost up to a ceiling. The ceiling is determined by a per discharge rate based upon each hospital's or excluded hospital unit's average cost per case in a particular year (that is, the base year) that is updated annually by an applicable percentage. The per discharge rate is referred to as the target amount, and the percentage update is referred to as the target rate or rate-of-increase limit. By using each hospital's or hospital unit's historical cost to establish a target amount for future periods, the choice of an appropriate and representative base period becomes an important factor that must be carefully defined and uniquely maintained for each excluded hospital or hospital unit for all future cost reporting periods.

Section 1886(b)(3) of the Act provides for the use of a particular 12-month cost reporting period as the base period that is to serve as the basis of future period's cost per case (that is, the target amount) after updating by the applicable percentage increase. That particular 12-month period is the hospital's or hospital unit's cost reporting period beginning on or after October 1, 1981. Section 1886(b)(5) of the Act gives the Secretary the authority to determine the applicable 12-month period to use as the base period for hospitals or hospital units that have a cost reporting period that is other than 12 months' duration. This policy is set forth in regulations at § 413.40(b).

We have experienced increasingly frequent requests from hospitals to change their original base year to a later period of time when the hospital does not have consecutive 12-month cost reporting periods after October 1, 1982. In addition, we have received requests for the selection of a new base year for an excluded hospital or excluded hospital unit when it has experienced a break in providing patient services, certification, or Medicare program involvement. We have also been asked to explain the difference in treatment for exclusion of new hospitals as compared to the treatment of new excluded hospital units.

Hospitals have used the provisions of § 413.40(b)(2) to argue for use of later 12-month cost reporting periods for base years when the first 12-month cost reporting period is not followed immediately by another 12-month period. We recognize that the statute requires the target amount to be applied to 12-month cost reporting periods, or in the case of any hospital having a cost reporting period of other than a 12-month period, a 12-month period determined by the Secretary. Rather than either prohibiting cost reporting periods of other than 12-months' duration due to financial or administrative reasons or requiring that hospitals combine data from multiple cost reporting periods in order that the target rate-of-increase limits be applied on a 12-month basis, we believe it is more appropriate to continue to apply the rate-of-increase ceiling to all cost reporting periods, of whatever duration, beginning during each Federal fiscal year. Therefore, we would revise section 413.40(b)(2) to clarify that ceilings would apply to any cost reporting period following a base period established under § 413.40(b)(1) that began on or after October 1, 1982, or, if later, after the hospital's exemption from the target amount expires unless the exception provided in § 413.40(b)(3) applies to such periods that are shorter than 12 months duration.

An excluded hospital or hospital unit may leave the Medicare program due to temporary closure or decertification reasons. Questions have arisen regarding whether there is a need to establish a new base period or whether a "new provider" exemption period is

available in those cases. In other to avoid such confusion, we would revise § 413.40(b)(1) by deleting the word "initial" in the first sentence. We would include a provision that the ceiling, once established, remains applicable to an excluded hospital unit or hospital regardless of intervening cost reporting periods during which the excluded hospital or hospital unit may not be subject to its target amount as a result of other provisions of the law or regulations, or nonparticipation in the Medicare program. This clarification is needed due to the number of excluded hospitals and particularly distinct part units that may be excluded one year, subject to the prospective payment system in a subsequent year (owing, for example, to failure to continue to meet all the criteria for exclusion), and then excluded again in the next year. Such fluctuation from excluded status to prospective payment system status and back again is not considered sufficient reason to establish a new base period.

The authority to establish distinct part units of hospitals is provided for under section 1886(d)(1)(B)(iv) of the Act. Regulations specifically setting forth criteria for establishing distinct part units are contained in §§ 412.25 through 412.29 and 412.32. Distinct part units are excluded from the prospective payment system and are subject to the ceiling on the rate of hospital cost increases. Due to the fact that a majority of the distinct part units was created as a result of the prospective payment system, many hospitals have requested exemptions for newly created distinct part units as new hospitals under § 413.40(f)(1). In that section, a new hospital is defined as a "* * * a provider of inpatient hospital services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership, or both, for less than three full years."

A distinct part unit is not equivalent to a hospital within the meaning of the regulations. A distinct part unit is basically a subprovider within a hospital for which the hospital has decided to separately report costs. Unless the hospital as a whole is new within the meaning of § 413.40(f)(1), a distinct part unit within a hospital would not qualify for an exemption under § 413.30(f).

The base period established under § 413.40(b)(1) for a newly established distinct part unit is the first 12-month cost reporting period for which costs of the unit were reported separately to Medicare. As a result of the confusion created by the establishment of distinct part units, we would modify § 413.40(f) to specifically state that a distinct part unit does not qualify for an exemption under the rate of increase ceiling provision as a new hospital.

V. Other ProPAC Recommendations

As required by law, we have reviewed the March 1, 1988 report submitted by ProPAC and have given its recommendations careful consideration in conjunction with the proposals set forth in this document. Recommendations 1 through 5 concerning the update factors are discussed in Appendix C. Recommendation 11 concerning sole community hospital criteria is discussed in section IV.F. of this preamble. Recommendation 15 concerning recalibration of the DRG weights is discussed in section II.C. of this preamble. Recommendation 16 concerning improvement to DRG 468 is discussed in section II.B. of this preamble, and Recommendations 17 and 18 concerning payment for outlier cases are discussed in section IV.E. of this preamble. The remainder of the recommendations are discussed below.

A. Updating Prospective Payment System Payments

Timely and Accurate Medicare Cost Data (Recommendation 6)

Recommendation: ProPAC believes that the availability of reliable and timely data is a critical priority for decision making. While significant improvements have been made in Medicare cost data timeliness, ProPAC is concerned about the quality of these data for use in policy development. Therefore, the Secretary should consider improvements to the data to better reflect the costs of treating Medicare beneficiaries and to ensure comparability of data over time.

Response: We agree with ProPAC that it is desirable to have timely and accurate hospital cost data. We will continue to improve our data to the extent feasible. We have concerns as to the feasibility of additional improvements in timeliness and accuracy of cost data because of the need to audit cost reports. That is, greater accuracy can be achieved only at the expense of longer time frames to obtain these data.

However, in accordance with section 4007 of Pub. L. 100-203, we are in the process of improving and making more timely our data base for inpatient hospital operating costs.

B. Adjustments to the Prospective Payment System Payment Formula

1. Capital Institutional Neutrality (Recommendation 7)

Recommendation: Until capital costs are incorporated into an all-inclusive prospective payment rate, the Secretary should provide supplemental payments to hospitals that have contracts with other facilities (for example, other hospitals and clinics) for capital costs incurred at those other facilities. Currently, Medicare does not pay for these costs.

Response: We do not accept this recommendation. As we indicated in response to this recommendation last year (52 FR 18854, May 19, 1987), the prospective payment rates represent the full rebundled costs to hospitals of providing services. Under the prospective payment system, hospitals are responsible for the full costs of providing inpatient services, whether they are furnished inhouse or by arrangement.

In developing the prospective payment rates, we incorporated all operating costs of providing services. We also included both the costs of purchased services performed outside the hospital and formerly billed separately by the supplier of services and the costs of services furnished "under arrangements," that is, where the services were furnished by an outside supplier, but billed by the hospital as Part A services. No attempt was made to distinguish operating and capital components of these services furnished by entities other than the hospital. A hospital's own direct costs are appropriately disaggregated into capital and operating costs. While there is a capital component to many items and services purchased by the hospital for use in patient care or provided under arrangements, the charges made for such services do not distinguish the capital from the operating component of such services. It was charges for purchased services that were used to establish the rebundling adjustment to the Federal rates and that were used by the intermediary as the basis for modifying base-year costs to incorporate the effect of the rebundling requirement in the hospital-specific rate. (No similar adjustment was necessary for services furnished "under arrangements" since the allowable costs of these services was already reflected in hospital cost reports used in determining the prospective payment rates.) Therefore, we believe the prospective payment rates already reflect the full costs of services, and that any additional amount to cover the capital costs of services provided outside the hospital would constitute a duplicate payment.

2. Indirect Teaching and Disproportionate Share Adjustments (Recommendation 8)

Recommendation: The indirect costs of teaching and the costs of serving a disproportionate share of low-income patients should be recognized through the use of data-based adjustments to hospital payments under the prospective payment system. In addition, the Secretary should support further research efforts to improve measurement of the sources of hospital cost variation. Results of this research could be employed to improve the overall structure of payments under the prospective payment system.

Response: We support further research efforts to improve the measurement of the sources of hospital cost variation, including the indirect costs of graduate medical education and treating a disproportionate share of low-income patients. The indirect medical education and disproportionate share adjustment factors are set by law, however, and we do not have the discretion to change them. While we believe the research that ProPAC recommends would be of use in refining future policy, we also believe it is of lower priority at the present time than other studies, including several mandated by Congress.

3. Labor Market Area Definitions (Recommendation 9)

Recommendation: ProPAC states that it continues to believe that the current hospital labor market area definitions are seriously flawed and that they can be improved substantially with currently available data. ProPAC recommends that the Secretary should adopt improved definitions of hospital labor market areas. For urban areas, the Secretary should modify the current MSAs to distinguish between central and outlying areas. The central areas should be defined using urbanized areas as designated by the Census Bureau. For rural areas, the Secretary should distinguish between urbanized rural counties and other rural counties within each State. Urbanized rural counties should be defined as counties with a city or town having a population of 25,000 or greater. The implementation of improved definitions should not result in any change in aggregate hospital payments. Furthermore, these definitions should not affect the assignment of hospitals to urban or rural areas for purposes of determining standardized amounts.

Response: We appreciate the effort and analysis that ProPAC has devoted to trying to better define labor market areas for purposes of applying the wage index. However, we continue to believe that defining labor market areas on the basis of urbanized and nonurbanized areas within areas classified as urban and rural would create administrative problems. In our response to this same recommendation in the April 1, 1987 ProPAC report for FY 1988 (52 FR 22003, June 10, 1987), we raised a number of concerns that still trouble us.

First, we continue to be concerned with the Census Bureau's definition of urbanized areas. Because the boundaries are based on population density and defined to the census tract level, urbanized areas follow boundaries that do not coincide with street address, zip codes, or other identities with which hospitals, intermediaries or we are routinely familiar. In addition, the actual boundaries of urbanized areas are volatile and subject to dramatic change where extensive development occurs. However, the Census Bureau routinely draws the boundaries for urban areas only once each decade following the decennial census. Hence, we would anticipate numerous cases in which hospitals would argue that their location has changed from a nonurbanized area to an urbanized area because of development since the last census. This boundary issue, along with the increase in boundaries resulting from classifying hospitals according to four labor market area classifications, would multiply the number of cases in which hospitals perceive that they are being disadvantaged.

Second, we continue to have concern regarding the accuracy with which hospitals would be assigned to urbanized areas. As we noted in the September 1, 1987 final rule (52 FR 33055), the census tract is not a part of the data we routinely receive from hospitals, nor is it data with which hospitals or intermediaries are familiar. To assign hospitals to classifications below the county level would require this information.

Third, while ProPAC's suggested refinements to labor market areas would most likely recognize greater wage variations than are currently indicated, we note that these wage differentials are highly correlated with and thus are already taken into account in some degree through the indirect medical education and disproportionate share adjustments for hospitals, and the special treatment for rural referral centers. In addition, constructing the wage index for labor market areas as redefined by ProPAC would dictate recalculation of the indirect medical education and disproportionate share adjustments in order to ensure that we would not be aggravating payment disparities among groups of hospitals. Such recalculation would require legislation.

It is not clear that the labor market areas recommended by ProPAC are any more reflective of the markets in which hospitals compete for labor than the current system. We agree that use of more labor market areas would result in a wage index with greater explanatory power with regard to hospital wage levels. In fact, maximum explanatory power would be achieved by using a hospital-specific wage index. However, under the prospective payment system, we are concerned with hospital level cost differences rather than wage level differences. It is anticipated under the prospective payment system that hospitals with high wages substitute nonlabor inputs for labor inputs in order to keep overall costs down.

We recognize that the current system of MSAs used for defining labor market areas has shortcomings. We look forward to continuing to work with ProPAC to develop a classification methodology that better reflects labor market areas and that overcomes the administrative problems discussed above.

4. Evaluation of Sole Community Hospital Policies (Recommendation 10)

Recommendation: Using the most recent data available, the Secretary should immediately initiate an evaluation of the adequacy of current sole community hospital policies for the protection of isolated rural hospitals. Based on this evaluation, the Secretary should develop policies to ensure that prospective payment system policy does not jeopardize Medicare beneficiaries' access to inpatient hospital care in isolated rural areas.

Response: We share ProPAC's concern regarding sole community hospitals and we are committed to maintaining access to the health care system in rural areas. We realize that the financial position of some sole community hospitals remains serious. Accordingly, we have already begun evaluating the current SCH payment provisions.

In addition, Pub. L. 100-203 contained two provisions that should be of considerable value to isolated rural hospitals. First, Congress extended for two additional years the provisions for

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payment adjustments for sole community hospitals that experience a yearly decline in discharges of greater than five percent. More significant, Congress extended the adjustment for volume decline to those hospitals that could qualify as sole community hospitals but choose not to or that later choose to give up that designation. This new provision will allow a sole community hospital or a hospital that could qualify as a sole community hospital to choose the payment rate that is most advantageous (either the sole community hospital blended rate or the regular prospective payment rate) while at the same time retaining the protection afforded by the adjustment for declines in volume. (See our discussion of these provisions in section IV.F. of this preamble.)

We are supportive of sole community hospitals and the role they play in ensuring access to care in remote rural areas. However, we also believe that the problems of sole community hospitals are not exclusively related to the Medicare program. While the Medicare program should be a part of any solutions to these problems, sole community hospitals and the communities they serve are encouraged to explore alternative ways in which the hospital can maintain financial stability while continuing to provide essential services in the communities.

C. Quality of Care

Evaluation of Peer Review Organization (PRO) Review and Quality of Care (Recommendation 12)

Recommendation: The Secretary should review and synthesize the findings of the PROs over the past four years. A major comprehensive evaluation of PROs and their impact on quality of care should follow. The evaluation should focus on issues of access to and use of services, patterns of denials, and instances of poor quality care. Issues related to expenditure control and efficient administration of PRO contract requirements should be secondary to broader quality-of-care evaluative goals. The assessment should also evaluate and compare criteria used to make judgments about when care is appropriate. Finally, this major study should assist the Secretary in developing and implementing mechanisms for expanded PRO review of episodes of care that are patient-oriented rather than institution-oriented.

Response: While we agree conceptually with the purpose of a longitudinal study of PRO review findings, we do not believe that such a study is feasible given the transitional nature of the PRO program during the targeted time period. The PRO program was implemented simultaneously with the prospective payment system in 1984, and, in 1986, its focus changed from utilization review to quality review.

Major changes have been made to improve the review methodology both through our program policies and as a result of legislative mandates. As a result, we do not have a consistent data base on which to perform longitudinal analysis. In addition, we have not collected data on individual case reviews; we have summary data only. This further limits our data analysis techniques. In the next PRO contract scope of work, we are implementing a new data collection system that will include disaggregated data, which will significantly improve our ability to perform a longitudinal analysis.

We have contracted with the Institute of Medicine (IOM) to assess the current state of the art in quality review. IOM will evaluate the procedures, costs, and adequacy of quality assurance mechanisms and examine the availability of reliable and clinically valid criteria and standards to judge quality of care. A comprehensive report of the IOM study outlining findings, conclusions, and recommendations, will be prepared for Congress.

The second part of the ProPAC recommendation concerns the evaluation of PRO criteria. ProPAC believes that the Secretary should review the development, use, and application of criteria related to medical necessity and appropriateness.

All PROs are required to submit their criteria to HCFA 45 days before implementation and to submit any changes to these criteria 30 days before implementation. All criteria are then reviewed by HCFA central office and regional office medical personnel. After this review, the strengths and weaknesses of the criteria are discussed with the PROs, and the PROs are then required to make appropriate revisions to these criteria. In addition, both the HCFA regional offices and an independent contractor, SysteMetrics, Inc. (the so-called "SuperPRO") review a sample of PRO cases using the PRO's approved criteria to assure that the criteria are applied appropriately and that the medical determinations are accurate. In addition, over the next year, the "SuperPRO" will analyze the PRO criteria and made recommendations for changes.

We also agree that the PRO program should focus on outcomes of care. To that end, we are developing uniform, accurate screening procedures using clinical data abstracted from the individual medical records. Under this process, we will review an array of diagnostic information, including objective positive physician findings and information on the course of hospitalization. This will permit assessment of the severity of illness at admission and the care a person receives while a patient, as well as monitoring the outcome. The data generated from this process will be used to systematically identify for indepth review physicians and providers with aberrant practice patterns.

We are in agreement with ProPAC's recommendation that the appropriate mix of cases in all areas should be examined along with the number of reviews and type of tools needed to identify quality problems. A number of activities have taken place in the past year in this regard. A zero based analysis of PRO reviews was performed prior to the development of the new PRO contract scope of work (which is effective for contracts entered into or renewed on or after October 1, 1988) to refine the mix of reviews in order to assure that activities are focused appropriately. In addition, we convened a task force composed of PRO and HCFA representatives that further refined and improved the HCFA inpatient hospital generic quality screens. We believe that the improved quality screens will improve the identification of quality problems. We also convened a task force to develop a model quality intervention plan to ensure that the PROs will take more consistent actions to improve quality of care when problems are identified.

In the new PRO contract scope of work, PROs will review a sample of posthospital care furnished before a readmission that occurred within 31 days of discharge from a hospital. To make that review more meaningful, work groups were convened in early 1987 to develop generic quality screens to help in the identification of quality problems in skilled nursing facilities, home health care, and outpatient surgery areas.

Also, we are in the process of providing some PROs with added funds to conduct pilot studies. These studies will test varying review methodologies in an attempt to identify the most efficient and effective way to identify cases for review. Examples of the areas that will be studied are review of short stays, deaths within 20 days of hospital discharge, and services furnished by skilled nursing facilities and home health agencies.

D. Patient Classification and Case-Mix Measurement

1. Improvements to Case Mix Measurement (Recommendation 13)

Recommendation: ProPAC continues to believe that the DRG system is the best available measure of hospital case mix for the prospective payment system. However, the Secretary should continue to refine the DRGs to improve the equity of hospital payments and to update the DRGs to account for changing technology. The Secretary should focus on generic improvements through the use of patient data currently available from the discharge abstract. The Secretary should also consider the use of temporary, technology-specific DRGs if assignment to an existing DRG is not appropriate.

Response: We agree with ProPAC that the DRG system is the best currently available system for reflecting relative resource intensity in inpatient hospital services and that the system could be further refined. We believe that many of the DRG refinements that have been made have constituted significant improvements to the classification of cases. ProPAC itself has been a contributor to these improvements through its recommendations and analysis.

We believe our commitment to further DRG refinement is also evidenced by the fact that we have proposed DRG classification changes every year since FY 1985 regardless of the fact that we were not obligated by law to reclassify and recalibrate annually until FY 1988. In addition, we continue to support research with respect to DRG refinements. For example, we are sponsoring research by Yale University to investigate ways in which the use of complications and comorbidities in the DRG system could be revised so as to capture severity of illness. We anticipate that this work will inform the DRG classification changes that we may propose in the future.

With respect to the use of technology-specific DRGs, we continue to oppose this approach for reasons discussed in previous Federal Register documents. Also, as we noted in the May 19, 1987 proposed notice on changes to the DRG classification system (52 FR 18880), it is not necessary to create new DRGs to trace costs associated with particular technologies, since unique ICD–9–CM codes are available for this purpose.

2. Coding Improvements (Recommendation 14)

Recommendation: The Secretary should formalize a more timely, systematic, and consultative approach to consider ICD–9–CM codes for new diagnoses, procedures, devices, and other treatments. When new codes are considered and created, both coding specialists and clinical specialists should be involved. ProPAC continues to believe that the Secretary's guidelines prohibiting the use of Chapter 16 codes as principal diagnoses should be reviewed because the prohibition has, in some cases, impeded appropriate DRG assignment of important diagnoses. (Chapter 16 of the ICD–9–CM system is a compendium of symptoms, signs, ill-defined conditions, and abnormal findings of laboratory and investigative procedures. Chapter 16 rules contradict the usual guidelines of the ICD–9–CM coding system concerning the sequence of principal and secondary diagnoses.)

Response: We disagree with ProPAC's assertion that the current system for coding changes is not timely, systematic, and consultative. Each fiscal year, we publish the process for coding changes and we request public comment concerning problems and recommendations. We also publish notices in the Federal Register to announce the time, place and proposed agenda for regularly scheduled public meetings concerning coding changes. During calendar year 1987, we held meetings in April, July, and December.

Prior to all public meetings, the ICD–9–CM Coordination and Maintenance Committee (the Committee) thoroughly researches the topics on the agenda. This committee is composed of individuals trained in the coding of medical records in addition to physicians, nurses, and others familiar with the Medicare prospective payment system. In addition to the thorough review by this committee, outside organizations are also contacted for consultation. At the public meetings, presentations may be given by qualified experts on particular topics of interest.

While this may appear to be a lengthy time process, we have received many public comments that the timeframes are not sufficient for hospitals to implement or adopt coding changes.

One of the reasons for length of time between meetings is to permit the public to provide additional comments on the proposals presented at the public meetings. In addition to those who regularly attend the public meetings, we also send summaries of the Committee meetings to an additional 200 organizations and individuals. Included among this group are coding specialists as well as physicians. As a result of this distribution, we receive additional comments from those unable to attend the meetings. While the last public meeting is held in December, written comments are accepted until January 31.

The time we allot to this process is necessary to permit us time to consider the volume of input from outside groups before we make a final decision on changing a code. To accurately edit, index, and print the errata for the three volumes of ICD–9–CM, we must have some lead time. In addition, final coding changes may necessitate changes in DRG classification that would require revisions in the GROUPER program.

By statute, the prospective payment rates and update factors that are to be effective for a given Federal fiscal year (that is, on or after October 1) must be published in the Federal Register by the preceding May 1 with 60 days allowed for public comment. Since coding changes affect the DRGs that are used in computing final payment for inpatient services, we must finalize coding changes before the May 1 publication date. In order to finalize changes by May 1, we begin formulation of the final proposed code revisions on February 1. By February 15, final clearance begins within HCFA and the National Center for Health Statistics (NCHS). Approval must be obtained by all relevant staff before submission to the HCFA Administrator and NCHS Director. By March 1, revisions have received final approval, and work is completed in April on the tabular and indexing of the Addendum that will contain the new and revised codes. Publication of the Addendum occurs sometime in August. The Addenda for FY 1986 and FY 1987 contained 50 new and revised codes and 100 new and revised codes, respectively.

A great deal of background work goes into a proposal before it is presented at a public meeting. The ICD–9–CM Coordination and Maintenance Committee thoroughly researches the topics on the agenda. This committee is composed of people trained in the coding of medical records in addition to physicians, nurses and others familiar with the prospective payment system. In addition to the review by this committee, technical advice is solicited from clinical specialists. Examples of groups who have provided technical advice include the American Society for Gastrointestinal Endoscopy, North American Society for Pacing and Electrophysiology, the National Association of Children's Hospitals and Related Institutions, and the National Association for Sleep Disorders. Physician specialists regularly attend the public meetings and make presentations on medical procedure and technology. The results are better revisions to the ICD–9–CM.

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In its recommendation ProPAC noted what it considered to be two areas of continuing coding problems, acute myocardial infarctions (AMIs) and partial joint replacements.

We agree, with ProPAC, that problems still exist with the coding of AMIs. The diagnosis codes are contained in volumes 1 and 2 of the ICD–9–CM and therefore are the primary responsibility of NCHS. NCHS has been reviewing the problems with the codes throughout the year. Several proposals have been presented by the public and NCHS at the public meetings. However, the proposals have not adequately distinguished between patients admitted with an AMI and patients not admitted for treatment of an AMI but whose diagnosis is an AMI because of the "eight week rule." Under the eight week rule, a diagnosis of AMI must be coded under some circumstances if the patient has had an infarction within eight weeks of the admission.

HCFA will continue to work with NCHS to improve the guidelines and code definitions. Any comments from the public on improving Chapter 16 and any other coding questions concerning volumes 1 and 2 of ICD–9–CM should be sent to: Ms. Sue Meads, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, National Center for Health Statistics, Room 2–19 Center Building, 3700 East-West Highway, Hyattsville, MD 20782.

We will also continue to examine the necessity of codes for partial joint replacements. Since this is an issue related to procedure codes within volume 3 of ICD–9–CM, HCFA has the lead responsibility for making any changes. This topic is already scheduled on the agenda for the July meeting and will be addressed during the next year. Any concerns with the coding of procedures in volume 3 of the ICD–9–CM should be sent to: Ms. Patricia Brooks, Health Care Financing Administration, Office of Coverage Policy, Room 309, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

VI. Other Required Information

A. Paperwork Reduction Act

This proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. Public Requests for Data

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format and are listed below with the cost of each tape. Anyone wishing to purchase data tapes should submit a written request along with a check to cover the cost of the tapes to the following address: HCFA Office of Statistics and Data Management, Bureau of Data Management and Strategy, Room 1–F–2 Oak Meadows Building, 6325 Security Boulevard, Baltimore, MD 21207.

1. MEDPAR Public Use File

This file contains billing and medical data for Medicare beneficiaries using short-stay hospital inpatient services for a 20 percent sample determined by the terminal digits in the beneficiary's Health Insurance Claim Number. The file is stripped of most data elements that would have identified either the beneficiary or the hospital.

Periods Available: Calendar Year (CY) 1980 through CY 1987

Price: $800.00 for each calendar year

2. Expanded Modified MEDPAR File

The file contains records for 100 percent of Medicare beneficiaries using short-stay hospital inpatient services. The file is stripped of most data elements that would have identified beneficiaries. The hospitals are identified. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Use for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), which was amended by the July 2, 1985 Notice of Proposed New Routine Use for an Existing System of Records (50 FR 27361). Under the requirements of these notices, a data use agreement must be signed by the purchaser before release of these data.

Periods Available: FY 1984 through FY 1987

Price: $2650.00 for each fiscal year

3. HCFA Hospital Wage Index Survey

Wage indexes for acute care hospitals are used to adjust payments in the prospective payment system. Both the 1982 and 1984 wage index files include the following data items for each hospital: provider number, intermediary number, beginning and ending dates of the cost reporting period, total gross hospital salaries, total paid hours, and state and county codes. In addition, the 1982 wage index file includes the date the hospital became subject to the prospective payment system. These files are generated upon special request.

Periods Available: Cost reporting periods ending in calendar year 1982 and cost reporting periods ending September 30, 1984 through September 29, 1985

Price: $370.00 for each of the two periods

4. H180 Extract, Cost Reporting Periods Ending January 1, 1981 through December 31, 1981

This file contains selected data items from cost reports. These data were used in computing the initial Federal prospective payment rate.

Price: $530.00

5. H180 Extract, Cost Reporting Periods Ending January 1, 1982 through September 29, 1983

This file contains the target amount computations that provide the basis for the determination of the final prospective payment system hospital-specific rates and rate-of-increase limits hospital-specific target amounts per case.

Price: $530.00

6. TEFRA Minimum Data Set, Cost Reporting Periods Ending September 30, 1983 through September 29, 1984

The TEFRA Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552–83). There is a single record for each of 6,679 Medicare certified hospitals. This data set includes capital-related cost (fixed and moveable) information used in the early analyses of prospective capital payment. Most of these files are taken from cost reports that have been settled by the intermediaries.

Price: $530.00

7. PPS–I Minimum Data Set, Cost Reporting Periods Ending September 30, 1984 through September 29, 1985

The PPS–I Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552–84). There is a single record for each Medicare certified hospital. The data files include submitted, final settled, and reopened cost reports received from the intermediary.

Price: $530.00

8. PPS–II Minimum Data Set, Cost Reporting Periods Ending September 30, 1985 through September 29, 1986

The PPS–II Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552–85). There is a single record for each Medicare certified hospital. The data set includes submitted, final settled, and reopened cost reports received from the intermediaries.

Period Available: September 30, 1985 through September 29, 1986

Price: $530.00

9. PPS–III Minimum Data Set, Cost Reporting Periods Ending September 30, 1986 through September 29, 1987

The PPS–III Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552–86). There is a single record for each Medicare certified hospital. The data set includes submitted, final settled, and reopened cost reports received from the intermediaries.

Price: $530.00

10. Provider-Specific Variable File

This file is a component of the PRICER program used in an intermediary's system to compute individual DRG payments. The file contains records for all prospective payment system hospitals and short-stay acute care hospitals in waiver States, and data elements used in standardizing hospital charges for recalibration in simulating payments to hospitals.

Periods Available: 1984, 1986, and 1987

Price: $370.00

For further information concerning these data tapes, contact Rose Connerton at (301) 966–8067.

In addition, certain other data, such as area wage data and data used to construct the Puerto Rico standardized amounts, are available in hard copy format. Commenters interested in examining hard copy data should contact Paul Olenick at (301) 966–4534.

We realize that commenters may be interested in obtaining data other than those we have discussed above. These commenters should direct their requests to Paul Olenick at the number provided above.

Finally, in lieu of obtaining data through the mail, certain data may also be available for inspection at the central office of the Health Care Financing Administration in Baltimore, Maryland. Commenters interested in obtaining more information about this alternative for reviewing data should also contact Paul Olenick.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the "Dates" section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1989 be published by September 1, 1988, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAMS

I. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395g(e), 1395hh, and 1395ww).

B. In Subpart C, § 412.46, paragraph (a) is revised, paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e), respectively, a new paragraph (b) is added, and newly redesignated paragraph (c) is revised to read as follows:

Subpart C—Conditions for Payment Under the Prospective Payment System

§ 412.46 Medical review requirements: DRG validation.

(a) *Physician attestation.* The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest to the principal diagnosis, secondary diagnoses, and names of major procedures performed. The information must be in writing in the medical record, and, except as provided in paragraph (b) of this section, the physician must sign the statement. Below the diagnostic and procedural information, and on the same page, the following statement must immediately precede the physician's dated signature:

"I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge."

(b) *Alternative signature requirement.* The attending physician's signature, along with the other information required in paragraph (a), may be provided by electronic means through a hospital data system if the intermediary determines that the hospital data system meets the guidelines established by HCFA.

(c) *Physician acknowledgement.* In addition, when the claim is submitted, the hospital must have on file a current signed and dated acknowledgement from the attending physician that the physician has received the following notice:

"Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws."

The acknowledgement must have been completed within the year prior to the submission of the claim.

* * * * *

C. Subpart D is amended as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

1. Section 412.62(k) is revised to read as follows:

§ 412.62 Federal rates for fiscal year 1984.

* * * * *

(k) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (j) of this section that are attributable to wages and labor-related costs, for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area (that is, urban or rural area as determined under the provisions of paragraph (f) of

this section) of the hospital compared to the national average hospital wage level.

2. Section 412.63, is amended by revising paragraph (b)(3) and by adding new paragraph (b)(4); revising paragraph (c)(4) and adding a new paragraph (c)(6); paragraphs (f) and (g) are revised; paragraphs (h), (i), and (j) are redesignated as paragraphs (i), (j), and (k), respectively; a new paragraph (h) is added; the introductory texts of newly redesignated paragraphs (j) and (j)(1), and paragraph (j)(1)(i) are revised; and newly redesignated paragraph (k) is revised to read as follows:

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

* * * * *

(b) *Geographic classifications.* * * *

(3) For discharges occurring on or after October 1, 1988, a hospital located in a rural county adjacent to one or more urban areas is deemed to be located in an urban area and receives the Federal payment amount for the urban area to which the greatest number of workers in the county commute if the county in which the hospital is located meets the following criteria:

(i) The rural county meets one of the following commuting standards:

(A) At least 15 percent of the residents of the rural county who are employed commute to the central county or counties of all adjacent urban areas.

(B) The sum of the number of employed residents of the rural county who commute to the central county or counties of all adjacent urban areas and the number of employed residents of all adjacent urban areas who commute to the rural county equals at least 20 percent of the number of employed residents of the rural county.

(ii) The rural county meets all other applicable Executive Office of Management and Budget (EOMB) standards for the level of commuting determined under paragraph (b)(4)(i) of this section for designation as an outlying county of an MSA. These EOMB standards are set forth in the notice of final standards for classification of MSAs published in the **Federal Register** on January 3, 1980 (45 FR 956), and available from HCFA, East High Rise Building, Room 132, 6325 Security Boulevard, Baltimore, Maryland 21207.

(4) For hospitals that consist of two or more separately located inpatient hospital facilities, the national adjusted prospective payment rate is based on the geographic location of the hospital facility at which the discharge occurs.

(c) *Updating previous standardized amounts.* * * *

(4) For fiscal years 1987 through 1990 HCFA standardizes the average standardized amounts by excluding an estimate of the payments for hospitals that serve a disproportionate share of low-income patients.

* * * * *

(6) For fiscal year 1988 and thereafter, HCFA computes average standardized amounts for hospitals located in large urban areas, other urban areas, and rural areas. The term "large urban area" means an MSA with a population of more than 1,000,000 or an NECMA with a population of more than 970,000 based on the most recent available population data published by the Bureau of the Census.

* * * * *

(f) *Applicable percentage change for fiscal year 1988.* (1) The applicable percentage change for fiscal year 1988 is—

(i) For discharges occurring on or after October 1, 1987 and before November 21, 1987, zero percent;

(ii) For discharges occurring on or after November 21, 1987 and before April 1, 1988, 2.7 percent; and

(iii) For discharges occurring on or after April 1, 1988 and before October 1, 1988—

(A) 3.0 percent for hospitals located in rural areas;

(B) 1.5 percent for hospitals located in large urban areas; and

(C) 1.0 percent for hospitals located in other urban areas.

(2) For purposes of determining the standardized amounts for discharges occurring on or after October 1, 1988 (for Federal fiscal year 1989), the applicable percentage change for fiscal year 1988 is deemed to have been—

(A) 3.0 percent for hospitals located in rural areas;

(B) 1.5 percent for hospitals located in large urban areas; and

(C) 1.0 percent for hospitals located in other urban areas.

(g) *Applicable percentage change for fiscal year 1989.* The applicable percentage change for fiscal year 1989 is the percentage increase in the market basket index (as described in § 413.40(c)(3)(ii))—

(1) Minus 1.5 percentage points for hospitals located in rural areas;

(2) Minus 2.0 percentage points for hospitals in large urban areas; and

(3) Minus 2.5 percentage points for hospitals in other urban areas.

(h) *Applicable percentage change for fiscal years 1990 and following.* The applicable percentage change for FY 1990 and each subsequent fiscal year for hospitals in all areas is the percentage increase in the market basket index (as described in § 413.40(c)(3)(ii)).

* * * * *

(j) *Computing Federal rates for large urban, other urban, and rural hospitals.* For each discharge classified within a DRG, HCFA will establish for the fiscal year a national prospective payment rate and a regional prospective payment rate, for each region, as follows:

(1) For hospitals located in a large urban or other urban area in the United States or that region respectively, the rate equals the product of—

(i) The adjusted average standardized amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in a large urban or other urban area in the United States or in that region; and

* * * * *

(k) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (j) of this section that are attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area (that is, urban or rural area as determined under the provisions of paragraph (b) of this section) of the hospital compared to the national average hospital wage level.

D. Subpart E is amended as follows:

Subpart E—Determination of Transition Period Payment Rates

1. Section 412.70, is amended by revising paragraph (c)(5); adding a new paragraph (c)(6) immediately preceding the table to paragraph (c) revising paragraph (d)(4); and adding a new paragraph (d)(5) to read as follows:

§ 412.70 General description.

* * * * *

(c) *Amount of blended portions.*

* * * * *

(5) The appropriate Federal prospective payment rate is a combined regional and national rate and changes with the Federal fiscal year. For Federal fiscal year 1984, which begins October 1, 1983, the Federal prospective payment rate is 100 percent regional. For Federal fiscal years 1985 and 1986, which begin October 1, 1984 and October 1, 1985, respectively, the combined rate is 75 percent regional and 25 percent national. For Federal fiscal year 1987, which begins October 1, 1986, the combined rate is 50 percent regional and 50 percent national. Effective with Federal fiscal year 1988, which begins October 1, 1987, the Federal prospective payment rate is 100 percent national except as provided in paragraph (c)(6) of this section.

(6) For discharges occurring on or after April 1, 1988 and before October 1, 1990, payments to a hospital are based on the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15 percent of the average standardized amount for the region in which the hospital is located.

* * * * *

(d) *Blended portions for new hospitals.*

* * * * *

(4) For discharges occurring on or after October 1, 1987, the prospective payment rate equals the appropriate Federal national rate except as provided in paragraph (d)(5) of this section.

(5) For discharges occurring on or after April 1, 1988 and before October 1, 1990, payments to a hospital are based on the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15 percent of the average standardized amount for the region in which the hospital is located.

2. Section 412.73(c) is amended by revising paragraph (c)(5) and adding a new paragraph (c)(6) to read as follows:

§ 412.73 Determination of the hospital-specific rate.

* * * * *

(c) *Updating base-year costs*

* * * * *

(5) *For Federal fiscal year 1988.* (i) For purposes of determining the prospective payment rates for sole community hospitals under § 412.92(d) for cost reporting periods beginning in Federal fiscal year 1988 (that is, on or after October 1, 1987 and before October 1, 1988), the base-year cost per discharge is updated as follows:

(A) For the first 51 days of the hospital's cost reporting period, by zero percent.

(B) For the next 132 days of the hospital's cost reporting period, by 2.7 percent.

(C) For the remainder of the hospital's cost reporting period, by—

(*1*) 3.0 percent for hospitals located in urban areas;

(*2*) 1.5 percent for hospitals located in large rural areas; and

(*3*) 1.0 percent for hospitals located in other urban areas.

(ii) For purposes of determining the updated base-year costs for cost reporting periods beginning in Federal fiscal year 1989 (that is, beginning on or after October 1, 1988 and before October 1, 1989), the update factor for the cost reporting period beginning during Federal fiscal year 1988 is deemed to have been—

(A) 3.0 percent for hospitals located in rural areas;

(B) 1.5 percent for hospitals located in large urban areas; and

(C) 1.0 percent for hospitals located in other urban areas.

(6) *For Federal fiscal years 1989 and following.* For Federal fiscal years 1989 and following, the update factor is determined using the methodology set forth in § 412.63(g) and (h).

E. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.80, pargraph (a) is amended by revising the introductory texts of paragraph (a)(1) and (a)(1)(ii), and paragraph (a)(2) to read as follows:

§ 412.80 General provisions.

(a) *Basic rule.* (1) Except as provided in paragraph (a)(2) of this section concerning transferring hospitals, HCFA provides for additional payment, approximating a hospital's marginal cost of care beyond thresholds specified by HCFA, to a hospital for covered inpatient hospitals services furnished to a Medicare beneficiary if either of the following conditions is met:

* * * * *

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1)(i) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a cost-to-charge ratio as described in § 412.84(h), exceed the greater of the following:

* * * * *

(2) *Outlier cases in transferring hospitals.* HCFA provides cost outlier payments to a transferring hospital that does not receive payment under § 412.2(b) for discharges specified in § 412.4(d)(2), if the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a cost-to-charge ratio as described in § 412.84(h), exceed the greater of the criteria specified in paragraph (a)(1)(ii) of this section.

* * * * *

2. In § 412.82, paragraph (c) is revised; paragraph (d) is redesignated as paragraph (e); and a new paragraph (d) is added to read as follows:

§ 412.82 Payment for extended length-of-stay cases (day outliers).

* * * * *

(c) Except as provided in paragraph (d) of this section or § 412.86, the per diem payment made under paragraph (a) of this section is derived by first taking 60 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rate determined under Subpart D of this part by the mean length-of-stay for that DRG. The resulting amount is then multiplied by the applicable Federal portion of the blend as follows:

Cost reporting periods beginning on or after	Federal portion (percent)
October 1, 1983	25
October 1, 1984	50
October 1, 1985	
The first seven months of the cost reporting period	50
The remaining five months of the cost reporting period	55
October 1, 1986	75
October 1, 1987	100

(d) For discharges occuring on or after April 1, 1988 and before October 1, 1989, the per diem payment made under paragraph (a) of this section for the DRGs related to burn cases, which are identified in the most recent annual notice of prospective payment rates published in accordance with § 412.8(b), is derived under the provisions of paragraph (c) of this section except that the calculation is made using 90 percent of the average per diem payment of the applicable DRG.

* * * * *

3. In § 412.84, paragraphs (e) and (g) are revised; paragraphs (h) and (i) are redesignated as paragraphs (i) and (j), respectively; a new paragraph (h) is added; newly redesignated paragraph (j) is revised; and a new paragraph (k) is added to read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

(a) A hopsital may request its intermediary to make an additional payment for inpatient hospital services that meet the criteria established in accordance with § 412.80(a)(1)(ii).

* * * * *

(g) The intermediary bases the cost of the discharge on the billed charges for covered inpatient services adjusted by a cost-to-charge ratio as described in paragraph (h) of this section. The cost is adjusted further to exclude an estimate of indirect medical education costs, and payments for hospitals that serve a disproportionate share of low-income patients, and to include the reasonable charges for nonphysician services billed by an outside supplier in accordance with § 489.23(c)(3) of this chapter.

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(b) The cost-to-charge ratio used to adjust covered charges is computed by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report. Statewide cost-to-charge ratios are used in those instances in which a hospital's cost-to-charge ratio falls outside reasonable parameters. HCFA sets forth these parameters and the Statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published under § 412.8(b).

(j) Except as provided in paragraph (k) of this section, the additional amount is derived by first taking 80 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(1)(ii). The resulting amount will then be multiplied by the applicable Federal portion of the blend as indicated in § 412.62(c).

(k) For discharges occurring on or after April 1, 1988 and before October 1, 1988, the additional payment amount for the DRGs related to burn cases, which are identified in the most recent annual notice of prospective payment rates published in accordance with § 412.8(b), is computed under the provisions of paragraph (j) of this section except that the payment is made using 80 percent of the difference between the hospital's adjusted cost for the discharge and the threshold criteria.

4. A new § 412.86 is added to read as follows:

§ 412.86 Payment for extraordinarily high-cost day outliers.

If a discharge that qualifies for an additional payment under the provisions of § 412.82 has charges adjusted to costs that exceed the cost outlier threshold criteria for an extraordinarily high-cost case as set forth in § 412.80(a)(1)(ii), the additional payment made for the discharge is the greater of—

(a) The applicable per diem payment computed under § 412.82 (c) or (d); or

(b) The payment that would be made under § 412.84 (i) or (j) if the case had not met the day outlier criteria threshold set forth in § 412.80(a)(1)(i).

F. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

§ 412.92 [Amended]

1. In § 412.90(h), the phrase "October 1, 1988" is revised to read "October 1, 1990".

2. In § 412.92, the introductory text of paragraphs (a) and (a)(2) is republished and paragraph (a)(2)(i) is revised; paragraphs (b)(1)(iii) and (b)(1)(iv) are redesignated as paragraphs (b)(1)(iii) and (b)(1)(iv), respectively; new paragraph (b)(1)(ii) is added; the introductory text of paragraph (c) is republished, paragraph (c)(1) is revised, and a new paragraph (c)(3) is added; paragraph (d)(2) is revised; the heading of paragraph (e) and paragraph (e)(1) are revised; the introductory texts of paragraphs (e)(2) and (e)(3) is revised; paragraphs (e)(3)(ii), (e)(3)(iii), and (e)(3)(iv) are redesignated as paragraphs (e)(3)(i)(A), (e)(3)(i)(B), and (e)(3)(i)(C), respectively; new paragraphs (e)(3)(i) introductory text, (e)(3)(ii) and (e)(3)(iii) are added; paragraph (f) is redesignated as paragraph (g); a new paragraph (f) is added; and newly redesignated paragraph (g)(1) is revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

(a) *Criteria for classification as a sole community hospital.* HCFA classifies a hospital as a sole community hospital if it is located in a rural area (as defined in § 412.62(f)), and meets one of the following conditions:

* * * * *

(2) The hospital is located between 25 and 50 miles from other like hospitals and meets one of the following criteria:

(i) No more than 25 percent of the residents who become hospital inpatients or, if data on general resident utilization are not available, no more than 25 percent of the Medicare beneficiaries who become hospital inpatients in the hospital's service area are admitted to other like hospitals for care:

* * * * *

(b) *Classification procedures*—(1) *Request for classification as a sole community hospital.* * * *

(ii) If a hospital is seeking sole community hospital classification under paragraph (a)(2)(i) or (a)(2)(ii) of this section, the hospital must include the following information with its request:

(A) The hospital must provide patient origin data (for example, the number of patients from each zip code from which the hospital draws inpatients) for all inpatient discharges to document the boundaries of its service area.

(B) The hospital must provide patient origin data from all other hospitals located within a 50 mile radius of it or, if larger, within its service area, to document that no more than 25 percent of either all of the population or the Medicare beneficiaries residing in the hospital's service area and hospitalized for inpatient care were admitted to other like hospitals for care.

* * * * *

(c) *Terminology.* As used in this section—

(1) The term "miles" means the shortest distance in miles measured over improved roads. An improved road for this purpose is any road which is maintained by a local, State, or Federal government entity and which is available for use by the general public.

* * * * *

(3) The term *"service area"* means the area from which a hospital draws at least 75 percent of its inpatients during the most recent 12-month cost reporting period ending before it applies for classification as a sole community hospital.

(d) *Determining prospective payment rates for sole community hospitals.*

* * * * *

(2) *Adjustments to payments.* A sole community hospital may receive an adjustment to its payments to take into account a significant decrease in number of discharges or a significant increase in inpatient operating costs, as described in paragraphs (e) and (g) of this section respectively.

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease.* (1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1990, HCFA provides for a payment adjustment for a sole community hospital for any cost reporting period during which the hospital experiences, due to circumstances as described in paragraph (e)(2) of this section, of more than five percent decrease in its total discharges of inpatients as compared to its immediately preceding cost reporting period. If either the cost reporting period in question or the immediately preceding cost reporting period is other than a 12-month cost reporting period, the intermediary must convert the discharges to a monthly figure and multiply this figure by 12 to estimate the total number of discharges for a 12-month cost reporting period.

(2) To qualify for a payment adjustment on the basis of a decrease in discharges, a sole community hospital must no later than 180 days after the date on the intermediary's notice of program reimbursement—

* * * * *

(3) HCFA determines a lump sum adjustment amount not to exceed the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue based on DRG-adjusted prospective payment

rates (including outlier payments determined under Subpart F of this part and additional payments made for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.118).

(i) In determining the adjustment amount, HCFA considers—

* * * * *

(ii) HCFA makes its determination within 180 days from the date HCFA receives from the intermediary the hospital's request and all other necessary information.

(iii) The HCFA determination is subject to review under Subpart R of Part 405 of this chapter.

(f) *Additional payments to other hospitals experiencing a significant volume decrease.* (1) For cost reporting periods beginning on or after October 1, 1987 and before October 1, 1990, HCFA provides for a payment adjustment for a hospital that qualifies as a sole community hospital but is not receiving payment as a sole community hospital under paragraph (d) of this section for any cost reporting period during which the hospital experiences, due to circumstances beyond its hospital's control, a decrease of more than five percent in its total discharges of inpatients as compared to its immediately preceding cost reporting period. If either the cost reporting period in question or the immediately preceding cost reporting period is other than a 12-month cost reporting period, the intermediary must convert the discharges to a monthly figure and multiply that figure by 12 to estimate the total number of discharges for a 12-month cost reporting period. The payment adjustment is determined under the provisions of paragraph (e)(3) of this section.

(2) To qualify for a payment adjustment under paragraph (f)(1) of this section, a hospital must complete the following:

(i) The hospital must submit to the HCFA regional office a request for sole community hospital status for the purpose of the payment adjustment only furnishing the documentation as may be necessary to demonstrate that the hospital meets the criteria in paragraph (a) of this section.

(ii) Within 180 days from the date on the notice from the regional office indicating that sole community hospital status has been granted for purposes of the payment adjustment only, the hospital submits to the intermediary documentation demonstrating the size of the decrease in discharges and the resulting effect on per discharge costs and shows that the decrease is due to circumstances beyond the hospital's control.

(g) *Payment adjustment for new inpatient facilities or services*—(1) *General rule.* If a sole community hospital experiences a significant increase in inpatient operating costs resulting from new inpatient services or facilities that were not available in the hospital during its base period and that are necessary for patient care, HCFA may adjust payments made to the hospital to ensure that it is receiving reasonable compensation, as defined in paragraph (g)(2) of this section, for the operating costs of the new inpatient facilities or services (including special care units).

* * * * *

3. In § 412.96, introductory text is added to paragraph (b), paragraphs (b)(1) and (d) are revised, and paragraph (e) is removed and reserved to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(b) *Criteria for cost reporting periods beginning on or after October 1, 1983.* The hospital meets either of the following criteria:

(1) The hospital is located in a rural area (as defined in § 412.63(b)) and has the following number of beds, as determined under the provisions of § 412.118(b), available for use:

(i) Effective for discharges occurring before April 1, 1988, the hospital has 500 or more beds.

(ii) Effective for discharges occurring on or after April 1, 1988, the hospital has 275 or more beds during its most recently completed cost reporting period.

* * * * *

(d) *Payment to rural referral centers.* Effective for discharges occurring on or after April 1, 1988, a hospital that is located in a rural area and meets the criteria of paragraphs (b)(1), (b)(2), or (c) of this section is paid prospective payments per discharge based on the applicable other urban payment rates as determined in accordance with § 412.63, as adjusted by the hospital's area wage index.

(e) [Reserved]

* * * * *

4. In § 412.106, the introductory text of paragraph (b)(1), and paragraphs (b)(1)(ii), (b)(2), and (c) are revised to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(b) *Criteria for classification*—(1) *General rule.* For discharges occurring on or after May 1, 1986 and before October 1, 1990, a payment adjustment (as described in paragraph (c) of this section) is made for each hospital that meets one of the following criteria:

* * * * *

(ii) The hospital is located in an urban area, has 100 or more beds, and can demonstrate that, during its cost reporting period, more than 30 percent of its net inpatient care revenues are derived from State and local government payments for indigent care furnished to patients who are not covered by Medicare or Medicaid.

(2) *Special rule for certain rural hospitals.* For discharges occurring on or after October 1, 1986 and before October 1, 1990, a payment adjustment (as described in paragraph (c) of this section) is made for each hospital that, during its cost reporting period, has a disproportionate patient percentage that is at least equal to 15 percent, if the hospital is located in a rural area and has 500 or more beds.

(c) *Payment adjustment.* For discharges occurring on or after October 1, 1986, if a hospital meets one of the criteria in paragraph (b) of this section, the hospital's total DRG revenue based on DRG-adjusted prospective payment rates (for transition period payments, the Federal portion of the hospital's payment rates), including outlier payments determined under Subpart F of this part but excluding additional payments made under the provisions of this subpart or § 412.118, is increased by the disproportionate share payment adjustment factor, determined as follows:

(1) If the hospital meets the criteria of paragraph (b)(1)(i)(A) or (b)(2) of this section, the disproportionate share payment adjustment factor is 2.5 percent plus one-half the difference between the hospital's disproportionate patient percentage and 15 percent.

(2) If the hospital meets the criteria of paragraph (b)(1)(i)(B) of this section, the disproportionate share payment adjustment factor is five percent.

(3) If the hospital meets the criteria of paragraph (b)(1)(i)(C) of this section, the disproportionate share payment adjustment factor is four percent.

(4) If the hospital meets the criteria of paragraph (b)(1)(ii) of this section, the disproportionate share payment adjustment factor is 25 percent.

G. Subpart H is amended as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

1. In § 412.113, paragraphs (a)(1) and (b) are revised to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

(a) *Capital related costs.* (1) *Payment.* Subject to the reductions described in paragraph (a)(2) of this section, payment for capital-related costs (as described in § 413.130 of this chapter) is determined on a reasonable cost basis.

* * * * *

(b) *Direct medical education costs.* Payment for the cost of approved medical educational activities as defined in § 413.85 of this chapter is made on a reasonable cost basis (except with respect to activities defined in § 413.85(d) of this chapter). For cost reporting periods beginning on or after July 1, 1985, but before July 1, 1988, payment for these reasonable costs is limited as described in § 413.85(a) of this chapter.

* * * * *

2. In § 412.116, the heading and paragraph (a) are revised, paragraph (d) is removed, paragraphs (e) and (f) are redesignated as paragraphs (d) and (e), respectively, and newly redesignated paragraph (d) is revised to read as follows:

§ 412.116 Method of payment.

(a) *General rule.* Unless the provisions of paragraphs (b) and (c) of this section apply, hospitals are paid for each discharge based on the submission of a discharge bill. Payments for inpatient hospital services furnished by an excluded distinct part psychiatric or a rehabilitation unit of a hospital are made as described in § 413.64 (a), (c), (d), and (e) of this chapter.

* * * * *

(d) *Outlier payments.* Payments for outlier cases (described in Subpart F of this part) are not made on an interim basis. The outlier payments are made based on submitted bills and represent final payment.

* * * * *

3. In § 412.118, the introductory text of paragraph (c) is republished; paragraphs (c)(1) and (c)(2) are revised; paragraph (d)(1) is removed and paragraph (d)(2) is redesignated as paragraph (d)(1); newly redesignated paragraph (d)(1) is amended by revising the introductory text and paragraphs (d)(1)(i) and (d)(1)(iii); and a new paragraph (d)(2) is added to read as follows:

§ 412.118 Determination of indirect medical education adjustment.

* * * * *

(c) *Measurement for teaching activity.* The factor representing the effect of teaching activity on inpatient operating costs is equal to the following:

(1) For discharges occurring on or after May 1, 1986 and before October 1, 1990, the factor equals .405.

(2) For discharges occurring on or after October 1, 1990, the factor equals .5795.

(d) *Determination of education adjustment factor.* (1) For discharges occurring on or after October 1, 1988 and before October 1, 1990, each hospital's education adjustment factor is calculated as follows:

(i) *Step one*—A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent interns and residents to beds, as determined under paragraph (a)(1) of this section, is raised to an exponential power equal to the factor set forth in paragraph (c)(1) of this section.

* * * * *

(iii) *Step three*—The factor derived from completing steps one and two is multiplied by 1.89.

(2) For discharges occurring on or after October 1, 1990, each hospital's education adjustment factor is calculated as follows:

(i) *Step one*—A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent interns and residents to beds, as determined under paragraph (a)(1) of this section, is raised to an exponential power equal to the factor set forth in paragraph (c)(2) of this section.

(ii) *Step two*—The factor derived from step one is reduced by 1.00.

(iii) *Step three*—The factor derived from completing steps one and two is multiplied by 1.43.

* * * * *

H. Subpart K is amended as follows:

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

1. In § 412.208, the introductory text of paragraph (f)(1) is republished, paragraph (f)(1)(ii) is redesignated as paragraph (f)(1)(iii), a new paragraph (f)(1)(ii) is added, and paragraph (i) is revised to read as follows:

§ 412.208 Puerto Rico rates for Federal fiscal year 1988.

* * * * *

(f) *Geographic classifications.* (1) For purposes of this paragraph (e) of this section, the following definitions apply:

* * * * *

(ii) The term "large urban area" means an MSA with a population of more than 1,000,000.

* * * * *

(i) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Puerto Rico rates computed under paragraph (h) of this section that are attributable to wages and labor-related costs, for area differences in hospital wage levels, by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level (that is, urban or rural area as determined under the provisions of paragraph (f) of this section).

2. In § 412.210, paragraph (a)(2) is revised; the text of paragraph (b) is redesignated as paragraph (b)(1) and revised new paragraphs (b)(2) and (b)(3) are added; and the introductory text of paragraph (c), paragraph (c)(1), the introductory texts of paragraphs (d) and (d)(1), paragraph (d)(1)(i), and paragraph (e) are revised to read as follows:

§ 412.210 Puerto Rico rates for fiscal years after fiscal year 1988.

(a) *General rule.* * * *

(2) The rate is determined for hospitals located in large urban, other urban, or rural areas within Puerto Rico, as described in paragraphs (b) through (e) of this section.

(b) *Geographic classifications.* (1) For purposes of this section, the definitions set forth in § 412.208(f)(1) apply.

(2) For discharges occurring on or after October 1, 1988, a hospital located in a rural county adjacent to one or more urban areas is deemed to be located in an urban area and receives the Federal payment amount for the urban area to which the greatest number of workers in the county commute if the county in which the hospital is located meets the following criteria:

(i) The rural county meets one of the following commuting standards:

(A) At least 15 percent of the residents of the rural county who are employed commute to the central county or counties of all adjacent urban areas.

(B) The sum of the number of employed residents of the rural county who commute to the central county or counties of all adjacent urban areas and the number of employed residents of all adjacent urban areas who commute to the rural county equals at least 20 percent of the number of employed residents of the rural county.

(ii) The rural county meets all other applicable Executive Office of Management and Budget (EOMB) standards for the level of commuting determined under paragraph (f)(3)(i) of this section for designation as an outlying county of an MSA. Those EOMB standards are set forth in a notice of final standards for classification of MSAs published in the Federal Register on January 3, 1980 (45 FR 956), and available from HCFA, East High Rise Building, Room 132, 6325 Security Boulevard, Baltimore, Maryland 21207.

(3) For hospitals that consist of two or more separately located inpatient hospital facilities, the national adjusted prospective payment rate is based on the geographic location of the hospital at which the discharge occurs.

(c) *Updating previous standardized amounts.* HCFA computes separate average standardized amounts for hospitals in large urban, other urban, and rural areas within Puerto Rico equal to the respective average standardized amount computed for fiscal year 1988 under § 412.208(e)—

(1) Increased by the applicable percentage changes determined under § 412.63 (g) and (h); and

* * * * *

(d) *Computing Puerto Rico rates for large urban, other urban, and rural hospitals.* For each discharge classified within a DRG, HCFA establishes for the fiscal year a Puerto Rico prospective payment rate as follows:

(1) For hospitals located in a large urban or other urban area in Puerto Rico, the rate equals the product of—

(i) The average standardized amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in a large urban or other urban area; and

* * * * *

(e) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Puerto Rico rates computed under paragraph (d) of this section that is attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area (that is, urban or rural area as determined under the provisions of paragraph (b) of this section) of the hospital compared to the national average hospital wage level.

§ 412.212 [Amended]

3. In § 412.212, the reference to "§ 412.63(i)(1)(i)" in paragraph (b)(1) is revised to read "§ 412.63(j)(1)(i)" and the reference to "§ 412.63(i)(2)(i)" in paragraph (b)(2) is revised to read "§ 412.63(j)(2)(i)".

II. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1614(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1396rr, and 1395ww).

B. In Subpart C, § 413.40, paragraphs (a)(2), (b)(1), and (b)(2) are revised; the introductory text of paragraph (c)(3)(i) is republished; paragraphs (c)(3)(i)(C) and (c)(3)(i)(D) are revised; paragraph (f)(1) is redesignated as paragraph (f)(1)(i); and a new paragraph (f)(1)(ii) is added to read as follows:

§ 413.40 Ceiling on rate of hospital cost increases.

(a) *Introduction.* * * *

(2) *Applicability.* (i) This section is not applicable to—

(A) Hospitals reimbursed in accordance with section 1814(b)(3) of the Act or under State reimbursement control systems that have been approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter; or

(B) Hospitals that are paid under the prospective payment system for inpatient hospital services in accordance with section 1886(d) of the Act and Part 412 of this chapter.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section is applicable to hospitals excluded from the prospective payment system in accordance with § 412.23 of this chapter, subprovider psychiatric and rehabilitation units (distinct parts) excluded from the prospective payment system in accordance with §§ 412.25 through 412.32 of this chapter, and those hospitals eligible for special treatment under the prospective payment system as described in § 412.94(b) of this chapter.

(b) *Cost reporting periods subject to the rate of increase ceiling.*—(1) *Base period.* Each hospital's ceiling is based on allowable inpatient operating costs per case incurred in the 12-month cost reporting period immediately preceding the first cost reporting period subject to ceilings established under this section, except that, when the immediately preceding cost reporting period is a short reporting period (fewer than 12 months) the first 12-month period subsequent to that short period is the base period. The ceiling established under this procedure remains applicable for a hospital or excluded distinct part hospital unit, as described in §§ 412.25 through 412.32 of this chapter, in spite of intervening cost reporting periods during which the hospital or excluded distinct part hospital unit is not subject to the target amount as a result of other provisions of the law or regulations, or nonparticipation of the Medicare program, unless the hospital or excluded distinct part hospital unit qualifies as a new hospital or excluded distinct part hospital unit under paragraph (f) of this section.

(2) *Periods subject to the ceiling.* Ceilings established under this section are applied to all cost reporting periods that—

(i) Begin on or after October 1, 1982; and

(ii) Immediately follow the base period established under paragraph (b)(1) of this section unless the exception in paragraph (b)(3) of this section is applicable.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).* * * *

(3) *Target rate percentage.* * * *

(i) The applicable target rate percentage is determined as follows: * * *

(C) *Federal fiscal year 1988.* The applicable target rate percentage for cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988 is 2.3238 percent. For purposes of updating the target rates for cost reporting periods beginning on or after October 1, 1988, the target rate percentage for cost reporting periods beginning during FY 1988 is deemed to have been 2.7 percent.

(D) *Federal fiscal year 1989 and following:* The applicable target rate percentage for cost reporting periods beginning during FY 1989 and in all fiscal years thereafter is the percentage increase in the hospital market basket (as described in paragraph (c)(3)(ii)) of this section.

* * * * *

(f) *Exemptions*—(1)(i) *New hospitals.* New hospitals that request and receive an exemption from HCFA are not subject to the rate of increase ceiling imposed under this section. For purposes of this section, a new hospital is a provider of inpatient hospital services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership, or both, for less than three full years. This exemption expires at the end of the first cost reporting period

beginning at least two years after the hospital accepts its first patient. The first cost reporting period beginning at least two years after the hospital accepts its first patient is the base period in accordance with paragraph (b) of this section.

(ii) A newly-established distinct part unit that is excluded from the prospective payment system under the provisions of §§ 412.25 through 412.32 of this chapter does not qualify for the exemption afforded to a new hospital under paragraph (f)(1)(i) of this section unless the distinct part unit is located in a hospital that, if it were subject to the provisions of this section, would qualify as a new hospital under paragraph (f)(1)(i) of this section. The first 12-month cost reporting period under which a newly-established excluded distinct part unit exists is the base period used to establish a target amount.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: May 13, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 20, 1988.

Otis R. Bowen,

Secretary

[Editorial Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges On or After October 1, 1988, and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1988

I. Summary and Background

In this addendum, we are proposing changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services. We are also proposing new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals and hospital units excluded from the prospective payment system.

For hospital cost reporting periods beginning on or after October 1, 1988, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be comprised of 100 percent of the Federal rate. Except for hospitals affected by the regional floor, the Federal portion of a hospital's prospective payment rate is based on 100 percent of the national rate.

Sole community hospitals are to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate (section 1886(d)(5)(C)(ii) of the Act). Hospitals in Puerto Rico are paid on the basis of a rate per discharge composed of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act). Hospitals affected by the regional floor are paid on the basis of 85 percent of the Federal national rate and 15 percent of the Federal regional rate.

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates. The changes, to be applied prospectively, would affect the calculation of the Federal rates. Section III sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section IV.

II. Proposed Changes to Prospective Payment Rates For Hospitals for FY 1989

The basic methodology for determining prospective payment rates is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below we discuss the manner in which we are proposing to change some of the factors or methodology used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, would be effective with discharges occurring on or after October 1, 1988. As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighing factors for discharges in FY 1989.

In summary, the standardized amounts set forth in Tables 1a, 1b, and 1c of section IV of this addendum were:

- Restandardized to reflect the revision to the indirect medical education and disproportionate share hospital adjustment factors.
- Except for the amounts in Table 1c, adjusted to generate and preserve program savings from the reduction in indirect medical education payments.
- Adjusted to ensure budget neutrality as provided in section 4005(a)(1)(C) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203).
- Adjusted by the revised urban and rural outlier offsets.
- Updated by—

—The market basket percentage increase minus 1.5 percentage points for hospitals located in rural areas;

—The market basket percentage increase minus 2.0 percentage points for hospitals in large urban areas; and

—The market basket percentage increase minus 2.5 percentage points for hospitals in urban areas other than large urban areas.

A. Calculation of Adjusted Standardized Amounts

1. Standardization and Restandardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contains a detailed explanation of how base-year cost data were established in the initial development of standard amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs or, for Puerto Rico, adjusted target amounts, from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(C) and 1886(d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients. Restandardization for the revised indirect medical education and disproportionate share hospital adjustment factors is performed at the individual hospital level because the original adjustments are performed on a hospital-specific basis and it is those adjustments that must be replaced.

Since all adjustments for variation in hospital operating costs or target amounts except those for the indirect medical education and disproportionate share hospitals have already been accounted for consistent with the construction of the standardized amounts, no revision was made at the hospital level for those factors. That is, the adjustments for differences in case mix, wages, and cost-of-living reflected in the FY 1989 proposed standardized amounts are identical to those reflected in the current (FY 1988) standardized amounts. Therefore, the discussion below is limited to the changes in standardization for indirect medical education and disproportionate share hospitals necessitated by section 4003 of Pub. L. 100-203.

a. Indirect Medical Education Costs. Section 1886(d)(2)(C)(i) of the Act requires that the updated FY 1984 amounts be standardized for indirect medical education costs. Section 1886(d)(9)(B)(ii)(I) is the parallel requirement for development of the Puerto Rico rates from updated FY 1987 target amounts. Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals receive an additional payment for the indirect costs of medical education.

Section 4003(a) of Pub. L. 100-203 revised section 1886(d)(5)(B)(ii) of the Act to reduce the indirect medical education adjustment factor used to determine the indirect medical education payment from approximately 8.1 percent to approximately 7.7 percent for discharges occurring on or after October 1, 1988 and before October 1, 1990. (These factors are approximations because the adjustment factor is applied on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship, that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs.) For discharges occurring on or after October 1, 1990 and before October 1, 1990, the indirect medical education factor equals the following:

$$1.89 \times \left\{ \left(\frac{1 + \text{interns and residents}}{\text{beds}} \right)^{.405} - 1 \right\}$$

Section 1895(b)(1)(B) of the Tax Reform Act of 1986 (Pub. L. 99-514), enacted October 22, 1986, provides that "If the formula under paragraph (5)(B) [of 1886(d) of the Act] for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula." Accordingly, since the indirect medical education adjustment factor has been changed by section 4003(a) of Pub. L. 100-203, the base-year costs and target amounts have been readjusted (restandardized) using the new formula.

The restandardization is accomplished by multiplying each affected hospital's base-year cost or target amount per discharge by 1.0 plus the hospital's indirect medical education adjustment factor computed using the formula in effect prior to the enactment of Pub. L. 100-203 and then dividing the product by 1.0 plus the hospital's revised indirect medical education adjustment factor computed using the formula required by section 1886(d)(5)(B)(ii) of the Act as amended by section 4003(a) of Pub. L. 100-203.

b. Costs for Hospitals that Serve a Disproportionate Share of Low-Income Patients. Prior to enactment of Pub. L. 100-203, sections 1886(d)(2)(C)(iv) and 1886(d)(9)(B)(ii)(IV) of the Act provided that, effective with discharges occurring on or after October 1, 1986 and before October 1, 1988, the updated hospital costs and target amounts per case be standardized for the estimated additional payments made to hospitals that serve disproportionate shares of low-income patients. That is, the law requires us to remove the effects of the payments made to disproportionate share hospitals from the costs used to establish the standardized amounts.

Section 4003(b) and (c) of Pub. L. 100-203 amended section 1886(d) of the Act to provide the following changes to the disproportionate share adjustment:

- The adjustment is extended to discharges occurring before October 1, 1990.
- For hospitals that qualify for a disproportionate share adjustment because they receive more than 30 percent of their net inpatient revenues from State and local government sources for the care of indigent patients, the adjustment is raised from 15 percent to 25 percent.
- For hospitals with 100 or more beds that are located in urban areas and for hospitals with 500 or more beds that are located in rural areas, the 15 percent cap on the amount of the payment adjustment is eliminated.

In establishing the standardized amounts for FY 1987 and FY 1988, we adjusted each disproportionate share hospital's inpatient operating cost or target amount per discharge by adding 1.0 to the applicable disproportionate share payment factor and dividing the hospital's cost or target amount per discharge by that number. In this way, we removed the effect of payment adjustments for disproportionate share hospitals from the standardized amounts as required under section 1886(d)(2)(C)(iv) of the Act.

The changes to the disproportionate share adjustment will result in higher adjustment factors than are taken into account in standardizing the costs used to establish the standardized amounts. Thus, it is now necessary to restandardize the base-year costs and target amounts to remove the effects of disproportionate share payments computed in accordance with the revised formula. In order to accomplish the restandardization, we first multiplied each affected hospital's base-year cost or target amount per discharge by 1.0 plus the applicable disproportionate share payment factor computed under the law as in effect prior to enactment of Pub. L. 100-203 and used to standardize the costs for FY 1988. This eliminated the effects of prior standardization for disproportionate share payments. We then divided the product of this calculation by the disproportionate share payment adjustment factor computed using the most recent data available to reflect the elimination of the 15 percent cap on disproportionate share adjustments and other changes required by section 4003(c) of Pub. L. 100-203.

2. Wage Index Values for Puerto Rico

As discussed in section III of the preamble to this proposed rule, we are proposing to update the HCFA wage index by basing it entirely on 1984 wage data. However, since the current wage index values for areas in Puerto Rico are based solely on 1984 data (and are not a blend of indexes based on 1982 and 1984 data), any changes in Puerto Rico wage index values would be attributable only

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to the provisions of section 4008(a) of Pub. L. 100-203 and any corrections we have made to the 1984 wage data based on our continuing analysis of the data. Since the Puerto Rico standardized amounts are based on target amount data from relatively few hospitals, it is necessary to restandardize the target amount data to reflect changes in the wage values for Puerto Rico in order for the standardized amounts to be accurately adjusted for differences in area relative wage levels.

3. Computing Urban and Rural Averages Within Geographic Areas

In determining the prospective payment rates for FY 1984, section 1886(d)(2)(D) of the Act required that the average standardized amounts be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. Under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge for FY 1988 must be determined for hospitals located in urban and rural areas in Puerto Rico.

For FY 1989, except for hospitals in Puerto Rico and those hospitals that are affected by the regional floor, the Federal rates will be comprised of 100 percent of the national rate (section 1886(d)(1)(A)(iii) of the Act). The Federal rate for hospitals affected by the regional floor is based on 85 percent of the national rate and 15 percent of the regional rate. Section 1886(d)(5)(C)(ii) of the Act specifies that a sole community hospital's Federal rate is based on 100 percent of the regional rate. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Table 1a contains the three national standardized amounts that would be applicable to most hospitals. Table 1b sets forth the 27 regional standardized amounts that would be applicable to sole community hospitals and to hospitals subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act as amended by section 4002(c) of Pub. L. 100-203, effective October 1, 1987, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national rural standardized amount, the national large urban standardized amount and the national other urban standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the three standardized amounts that would be applicable to most hospitals in Puerto Rico.

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that we now apply separate update factors for the purposes of determining large urban and other urban rates.

The Executive Office of Management and Budget (EOMB) may announce revised listings of the Metropolitan Statistical Area (MSA) and New England County Metropolitan Area (NECMA) designations that are used in calculating the standardized amounts. If EOMB makes the announcement before we issue the final rule, we will list the revised MSA/NECMA designations in the addendum to the final rule. Consistent with Medicare policy, the changes in designation will be effective for discharges occurring on or after October 1, 1988.

4. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, as amended by section 4002(c) of Pub. L. 100-203, we are proposing to update the large urban, other urban, and rural average standardized amounts using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act, as amended by section 4002(a) of Pub. L. 100-203. The percentage increase to be applied is mandated under that section of the law as the estimated percentage increase in the hospital market basket minus—

- 1.5 percentage points for hospitals located in rural areas;
- 2.0 percentage points for hospitals located in large urban areas; and
- 2.5 percentage points for hospitals located in other urban areas.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care.

The most recent forecasted hospital market basket increase for FY 1989 is 4.8 percent. Therefore, the applicable percentage increases are—

- 3.3 percent for hospitals located in rural areas;
- 2.8 percent for hospitals located in large urban areas; and
- 2.3 percent for hospitals in other urban areas.

In accordance with section 1886(b)(3)(B)(i) of the Act, we are also proposing that the hospital-specific rate (which after the first 81 days of cost reporting periods beginning on or after October 1, 1987 applies only to sole community hospitals) be updated by the applicable percentage increase for hospitals located in a large urban, other urban, or rural area based on the location of the sole community hospital.

Although the update factors for FY 1989 are set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress no later than March 1, 1988 on our initial recommendation of update factors for FY 1989 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included this report as Appendix B of this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4) and (e)(5)(A) of the Act), as well as our responses to ProPAC's recommendations concerning the update factors, are set forth as Appendix C to this proposed rule.

5. Other Adjustments to the Average Standardized Amounts

a. Indirect Medical Education. Section 1886(d)(3)(C)(ii) of the Act provides that, effective for discharges occurring on or after October 1, 1988, the average standardized amounts be further reduced, taking into consideration the effects of the standardization for indirect medical education costs as described in section II.A.1.a. of this addendum. The required adjustment is to ensure that the program savings that would be achieved through standardizing for indirect medical education on one basis and computing indirect medical education payments on another basis are preserved. The first such adjustment was implemented for the standardized amounts effective October 1, 1988. (See the September 3, 1986 final rule (51 FR 31521).) Section 1886(d)(3)(C)(ii) of the Act, as amended by section 4003(a)(2) of Pub. L. 100-203, now requires a revision of the adjustment due to the revision of the adjustment factor for computing indirect medical education payments effective October 1, 1988.

Specifically, for each geographic area (regional and national, large urban, other urban, and rural), total payments including indirect medical education and disproportionate share hospital adjustments, based on payment rates for FY 1989, standardized for a 7.7 percent curvilinear indirect medical education factor and for disproportionate share, shall be neither more nor less than the estimated total of payments, including indirect medical education adjustment payments that would have been made based on rates standardized for an 11.59 percent linear indirect medical education factor and paid out at approximately 8.3 percent on a curvilinear basis. The adjustment is performed on a regional basis in order to reflect congressional intent that the necessary calculations will not redistribute payments among the regions.

Through this adjustment, Congress is ensuring that total prospective payments, on a regional basis, taking into consideration the restandardization of rates for disproportionate share payments and for a revised indirect medical education payment factor of approximately 7.7 percent on a curvilinear basis, will equal payments that would have resulted with rates standardized for an 11.59 percent indirect medical education adjustment factor, and payments computed using an indirect medical education factor of approximately 8.3 percent applied on a curvilinear basis. Since the first such adjustment already ensures system savings equal to those that would have been achieved by a reduction in indirect medical education payments from 11.59 percent on a linear basis to about 8.7 percent on a curvilinear basis, the only further adjustment necessary is to achieve the incremental savings that would result from a further reduction in indirect medical education payments from 8.7 percent to about 8.3 percent, both on a curvilinear basis. Therefore, under section 1886(d)(3)(C)(ii) of the Act, for FY 1989, we are proposing to adjust the large urban, other urban, and rural regional and national standardized amounts to account for indirect medical education.

Because there is no specific reference in the Act to making this adjustment for hospitals in Puerto Rico, this adjustment was not made to the Puerto Rico standardized amounts. It is reflected, however, in the discharge-weighted national average standardized amount applicable to Puerto Rico.

The factors applied to the standardized amounts are shown in the table below:

	Large urban and other urban	Rural
1. New England (CT, ME, MA, NH, RI, VT)	0.99682	0.99626
2. Middle Atlantic (PA, NJ, NY)	0.99755	0.99804
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	0.99823	0.99927
4. East North Central (IL, IN, MI, OH, WI)	0.99909	0.99965
5. East South Central (AL, KY, MS, TN)	0.99796	0.99904
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	0.99757	0.99869
7. West South Central (AR, LA, OK, TX)	1.00064	0.99981
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	0.99813	0.99990
9. Pacific (AK, CA, HI, OR, WA)	0.99826	1.00000
10. National	0.99826	0.99949

b. Rural Hospitals Deemed to be Urban. Section 1886(d)(8)(B) of the Act, as added by section 4008(a) of Pub. L. 100-203, provides that certain rural hospitals will be deemed urban effective with discharges occurring on or after October 1, 1988. Section 1886(d)(8)(C) of the Act specifies two payment conditions that must be met. First, the FY 1989 urban standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of this provision are equal to the aggregate prospective payments that would have been made absent the provision. Second, the rural standardized amounts are to be adjusted to ensure that aggregate payments to rural hospitals not affected by this provision neither increase nor decrease as a result of implementation of this provision. The following adjustment factors, necessary to achieve the requisite budget neutrality constraints, were applied to the standardized amounts: Urban: .98624; rural: 1.00075.

c. Outliers. Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(2)(B) of the Act correspondingly requires that the urban and rural standardized amounts, respectively, be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts be reduced by the proportion of estimated total payments made to hospitals in Puerto Rico attributable to estimated outlier payments.

Consequently, instead of the uniform reduction factor applying equally to all the standardized amounts, there are now two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Furthermore, sections 1886(d)(5)(A)(iv) and 1886(d)(9)(i) of the Act direct that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the September 1, 1987 final rule, we set the outlier thresholds so as to result in estimated outlier payments equal to five percent of total prospective payments. We also set the same outlier thresholds and offsets for the Puerto Rico prospective payment standardized amounts as we had for hospitals located outside Puerto Rico. Therefore, for FY 1988, we set the day outlier threshold at the lesser of 18 days or 2.0 standard deviations and the cost outlier threshold at the greater of $14,000 or 2.0 times the prospective payment rate for the DRG. The outlier adjustments for FY 1988 were .94441 for the urban rates and .97485 for the rural rates.

These adjustments were modified effective for discharges occurring on or after April 1, 1988 to .9441 for urban rates and .9746 for rural rates, with a budget neutrality factor of .997697, for the increase to 90 percent in the marginal cost factor for burn outliers in accordance with section 4008(d)(1)(A) of Pub. L. 100-203. (See the April 5, 1988 notice (53 FR 11137).) These thresholds and offsets were estimated to yield outlier payments of 5.1 percent of total prospective payments.

We are proposing to continue to set the outlier thresholds so as to result in estimated outlier payments equal to five percent of total prospective payments. Therefore, for FY 1989, we would set the day outlier threshold at the lesser of 24 days or 3.0 standard deviations and the cost outlier threshold at the greater of $27,000 or 2.0 times the prospective payment rate for the DRG. See section IV.E of the preamble to this proposed rule for a detailed discussion of proposed outlier policy changes and the proposed outlier thresholds for FY 1989.

The proposed outlier adjustment factor for FY 1989 are as follows:

OUTLIER REDUCTION FACTORS

Urban	Rural
.9448	.9781

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section D below. For discussion

purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Tables 1a, 1b, and 1c, as we propose in this addendum, contain the actual labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

1. Adjustment for Area Wage Levels

Sections 1886(d)(2)(H) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble to this proposed rule, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a and 4b of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken account of in the adjustment for area wages above. For FY 1989, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Weighting Factors

As discussed in section II of the preamble to this proposed rule, we have developed a classification system for all hospital discharges, sorting them into DRGs, and have developed weighting factors for each DRG that are intended to reflect the resource utilization of cases in each DRG relative to that of the average Medicare case.

Table 5 of section IV of this addendum contains the weighting factors that we propose to use for discharges occurring in FY 1989. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1989

General Formula for Calculation of Prospective Payment Rates for FY 1989:

Prospective Payment Rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal Portion

Prospective Payment Rate for Sole Community Hospitals = 75 percent of the hospital-specific portion + 25 percent of the Federal portion

Prospective Payment Rate for Puerto Rico Hospitals = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the large urban, other urban, and rural national rates

1. Federal Portion

For discharges on or after October 1, 1988 and before October 1, 1989, except for sole community hospitals and hospitals located in Puerto Rico, the hospital's rate is comprised exclusively of the Federal rate. The Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals located in regions affected by the regional floor, whose Federal rate equals 85 percent of the Federal national rate and 15 percent of the Federal regional rate. For sole community hospitals, the 25 percent Federal portion is based entirely on the Federal regional rate. The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban, other urban, or rural (see Tables 1a and 1b, section IV of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a and 4b, section IV of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Sum the amount from step 2 and the nonlabor portion of the standardized amount (adjusted if appropriate under step 3).

Step 5—Multiply the final amount from step 4 by the weighting factor corresponding to the appropriate DRG (see Table 5, section IV of this addendum).

Step 6—For sole community hospitals, multiply the result in step 5 by 25 percent. The result is the Federal portion of the FY 1989 prospective payment for a given discharge for a sole community hospital.

2. Hospital-Specific Portion (Applicable Only to Sole Community Hospitals)

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

$$\frac{\text{Base year costs per discharge}}{\text{1981 case-mix index}} \times \text{update factor} = \text{Hospital-specific rate}$$

For sole community hospitals, the hospital-specific portion equals 75 percent of the hospital-specific rate for all cost reporting periods beginning on or after October 1, 1983. For each subsequent cost reporting period, the hospital-specific portion is derived as follows: Hospital-Specific Rate × Update Factor × Blending Percentage × DRG Weight.

For a more detailed discussion of the hospital-specific portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. Updating the Hospital-Specific Rates for FY 1989 Cost Reporting Periods. For cost reporting periods beginning on or after October 1, 1988, we are proposing to increase the hospital-specific rates by—

- 3.3 percent (market basket percentage increase minus 1.5 percentage points) for hospitals located in rural areas;
- 2.8 percent (market basket percentage increase minus 2.0 percentage points) for hospitals located in large urban areas; and
- 2.3 percent (market basket percentage increase minus 2.5 percentage points) for hospitals located in other urban areas.

As required by section 1886(b)(3)(B) of the Act (as amended by section 4002 of Pub. L. 100-203), these are the same percentage increases by which we are proposing to change the Federal rates for FY 1989.

b. Calculation of Hospital-Specific Portion. For sole community hospital cost reporting periods beginning on or after October 1, 1988, the hospital-specific portion of a hospital's payment for a given discharge would be calculated by—

Step 1—Multiplying the hospital's hospital-specific rate for the preceding cost reporting period by the applicable update factor (that is, 3.3 percent for hospitals located in rural areas, 2.8 percent for hospitals located in large urban areas, and 2.3 percent for hospitals located in other urban areas);

Step 2—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge; and

Step 3—Multiplying the result in step 2 by 75 percent. (The result is the hospital-specific portion of the FY 1989 prospective payment for a given discharge for a sole community hospital.)

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico beginning on or after October 1, 1988 and before October 1, 1989

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban, other urban, or rural designation of the hospital (see Table 1c, section IV of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section IV of the addendum).

Step 3—Sum the amount from step 2 and the nonlabor portion of the standardized amount.

Step 4—Multiply the result in step 3 by 75 percent.

Step 5—Multiply the amount from step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section IV of the addendum) by the appropriate wage index.

Step 2—Sum the amount from step 1 and the nonlabor portion of the national average standardized amount.

Step 3—Multiply the result in step 2 by 25 percent.

Step 4—Multiply the amount from step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Background

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient cost per discharge) is set for each hospital, based on the hospital's own historical cost experience, trended forward by the applicable update factors. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount would be paid no more than that amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of (1) 50 percent of the difference between the inpatient operating cost per discharge and the target amount, or (2) five percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage. For cost reporting periods beginning on or after October 1, 1988, section 1886(b)(3)(B)(ii) of the Act, as amended by section 4002(e) of Pub. L. 100-203, provides that the applicable percentage increase is the market basket percentage increase. Also, under section 4002(g)(3)(C) of Pub. L. 100-203, the hospital's target amount for the cost reporting period beginning in FY 1988 is deemed to have been increased by 2.7 percent (rather than 315/366 multiplied by 2.7, which was the actual target rate of increase applicable for this period). Therefore, in order to determine a hospital's target amount for its cost reporting period beginning in FY 1989, the following steps apply:

- Increase the hospital's target amount for its reporting period which began in FY 1987 by 2.7 percent;
- Increase the result of step one by the market basket percentage increase for FY 1989.

The most recent forecasted hospital market basket increase for FY 1989 is 4.8 percent. Therefore, the applicable percentage increase is also 4.8.

IV. Tables

This section contains the tables referred to throughout the preamble to

this proposed rule and in this addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 3c, 4a, 4b, 5, 6a, 6b, 6c, 6d, 6e, 7a, 7b, and 8 are presented below. The tables are as follows:

Table 1a—National Adjusted Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 3c—Hospital Case-Mix Indexes for Discharges Occurring in FY 1987
Table 4a—Wage Index for Urban Areas
Table 4b—Wage Index for Rural Areas
Table 5—Diagnosis-Related Groups
Table 6a—New Diagnosis Codes
Table 6b—New or Revised Procedure Codes
Table 6c—Elective, Diagnostic and Other Nonextensive Procedures Unrelated to Principal Procedures that Group to DRG 477
Table 6d—Additions to the CC Exclusions List
Table 6e—Deletions from the CC Exclusions List
Table 7a—Length-of-Stay Percentiles Using FY 1988 DRG Classification
Table 7b—Length-of-Stay Percentiles Using Proposed FY 1989 DRG Classification
Table 8—Statewide Average Cost-to-Charge Ratios for Urban and Rural Hospitals

This section contains the tables referred to in this preamble.

TABLE 1A.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban		Other Urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2360.10	836.21	2037.05	828.04	2202.06	809.83

TABLE 1B.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban		Other urban	Nonlabor-related	Rural	
	Labor-related	Nonlabor related	Labor-related		Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2474.45	871.46	2450.28	862.96	2457.28	722.68
2. Middle Atlantic (PA, NJ, NY)	2232.58	830.79	2210.78	822.68	2207.36	661.67
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2374.95	762.58	2351.76	755.13	2233.09	592.86
4. East North Central (IL, IN, MI, OH, WI)	2502.75	901.41	2478.31	892.61	2263.60	656.92
5. East South Central (AL, KY, MS, TN)	2278.71	691.84	2256.45	685.09	2217.53	553.75
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2373.88	821.55	2350.64	813.54	2150.85	590.88
7. West South Central (AR, LA, OK, TX)	2373.27	758.06	2350.10	751.48	2063.66	543.34
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2276.26	811.49	2254.02	803.56	2098.26	629.09
9. Pacific (AK, CA, HI, OR, WA)	2216.62	826.88	2194.97	817.82	2029.99	704.12

TABLE 1C.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large Urban		Other urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related	Labor related	Nonlabor related
Puerto Rico	2065.97	375.45	2065.80	371.79	1488.86	273.11
National	2211.73	775.96				

BILLING CODE 4120-01-M

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	01.2309	010059	00.9709	010120	00.9554	030002	01.4526	030071	00.8923
010004	00.9806	010060	00.9983	010121	01.0624	030003	01.2018	030072	00.9266
010005	01.1431	010061	00.9712	010122	00.9988	030004	00.9100	030073	01.0242
010006	01.1342	010062	00.9506	010123	01.1723	030006	01.3359	030074	00.9614
010007	00.9540	010064	01.4223	010124	01.1835	030007	01.1912	030075	00.8646
010008	00.9892	010065	01.0590	010125	00.9980	030008	01.2991	030076	00.8973
010009	01.0889	010066	00.8549	010126	01.0095	030009	01.2355	030077	00.8693
010010	00.9981	010067	00.9060	010127	01.2036	030010	01.3155	030078	01.1215
010011	01.2791	010068	01.1485	010128	01.0233	030011	01.2337	030079	00.8460
010012	01.2311	010069	01.0530	010129	01.0600	030012	01.1013	030080	01.3316
010015	01.1092	010070	01.1797	010130	01.0368	030013	01.1347	030081	00.9319
010016	01.2003	010072	01.1115	010131	01.1329	030014	01.2537	030082	01.0432
010018	00.9905	010073	00.9372	010133	00.8159	030016	01.0980	030083	01.1706
010019	01.1136	010074	00.9219	010134	00.9025	030017	01.1890	030084	01.1870
010020	01.0708	010075	01.0580	010136	01.0204	030018	01.3212	030085	01.0794
010021	01.1667	010078	01.1642	010137	01.2047	030019	01.1132	030086	01.1216
010022	00.9944	010079	01.1044	010138	01.0384	030020	01.2365	030087	01.1545
010023	01.1865	010080	01.0245	010139	01.4259	030022	01.2485	030088	01.2038
010024	01.1722	010081	01.5190	010142	00.9612	030023	01.2127	030089	01.1368
010025	01.1250	010083	01.0566	010143	01.0868	030024	01.4557	030091	00.9371
010026	00.9370	010084	01.2970	010144	01.1174	030025	01.1116	040001	01.0473
010027	01.0821	010085	01.2104	010145	01.1705	030027	01.0286	040002	01.0435
010028	00.9971	010086	00.9790	010146	01.0014	030030	01.4559	040003	00.9742
010029	01.1987	010087	01.2723	010148	01.0363	030033	01.1349	040004	01.2947
010030	00.9337	010089	01.0277	010149	01.2252	030034	01.0981	040005	01.0616
010031	01.1765	010090	01.2458	010150	01.0130	030035	01.1424	040006	00.9930
010032	00.9119	010091	01.0046	010152	01.1650	030036	01.1639	040007	01.3799
010033	01.7186	010092	01.2883	010153	01.0038	030037	01.6285	040008	01.0898
010034	01.0097	010094	01.0845	020001	01.3550	030038	01.4301	040009	00.9725
010035	01.0595	010095	01.0076	020002	01.0447	030040	01.1276	040010	01.1402
010036	01.0704	010096	00.9122	020004	01.1471	030041	00.9402	040011	00.9295
010038	01.0387	010097	01.0119	020005	00.8941	030043	01.0669	040013	01.0830
010039	01.5286	010098	01.0821	020006	01.0562	030044	01.0875	040014	01.1616
010040	01.1455	010099	01.0152	020007	00.8989	030046	00.9581	040015	01.0992
010041	00.8638	010100	01.1533	020008	01.0145	030047	00.9921	040016	01.3445
010043	00.9396	010101	01.0190	020009	00.9304	030049	01.0159	040017	01.1414
010044	00.9057	010102	00.9708	020010	00.8834	030051	01.0415	040019	01.1596
010045	01.0096	010103	01.4121	020011	00.9771	030054	01.0482	040019	01.1612
010046	01.1029	010104	01.4549	020012	01.1989	030055	01.0967	040020	01.3901
010047	00.9729	010108	01.0928	020013	00.9467	030057	01.2439	040021	00.9911
010049	00.9851	010109	01.0575	020014	00.9825	030059	01.1760	040022	01.4298
010050	00.9788	010110	00.9475	020017	01.1258	030060	01.1494	040024	00.9786
010051	00.8921	010111	00.8524	020018	00.9698	030061	01.3306	040025	00.9365
010052	00.9887	010112	01.0372	020019	00.9363	030062	01.1304	040026	01.2181
010053	01.0753	010113	01.3835	020021	00.9065	030063	01.1885	040027	01.1954
010054	01.1015	010114	01.1181	020024	01.1106	030064	01.3476	040028	01.0785
010055	01.2857	010115	00.9932	020025	00.9272	030065	01.3972	040029	01.0569
010056	01.1869	010117	00.9280	020026	01.2300	030067	00.9707	040030	00.9524
010057	01.1086	010118	01.1517	020027	00.8370	030068	01.0743	040031	00.9978
010058	01.0817	010119	01.1383	030001	01.1477	030069	01.2441	040032	00.9515

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 2 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
040033	00.8671	040108	00.9334	050052	01.1312	050111	01.2062	050172	01.1759
040035	00.9504	040109	01.1771	050053	01.1979	050112	01.3171	050173	01.2309
040036	01.1618	040114	01.6221	050054	01.1779	050113	01.1531	050174	01.4581
040037	01.0483	040115	00.9902	050055	01.1940	050114	01.3056	050175	01.1845
040039	00.9813	040116	01.1617	050056	01.1699	050115	01.2782	050177	01.3207
040040	00.9833	040118	01.0589	050057	01.2343	050116	01.3437	050179	01.1534
040041	01.1524	040119	01.1947	050058	01.2943	050117	01.1642	050180	01.3442
040042	01.2207	040122	01.0089	050060	01.3157	050118	01.1249	050181	01.1922
040043	00.9604	040123	00.8570	050061	01.2094	050119	00.8513	050183	01.1085
040044	00.9673	040124	01.0655	050063	01.2815	050121	01.1122	050186	01.1827
040045	00.9430	040126	00.9870	050065	01.2995	050122	01.3882	050187	01.1451
040047	01.0035	040128	00.8907	050066	01.1939	050124	01.2366	050188	01.2383
040048	01.1543	040130	01.0748	050067	01.1350	050125	01.1495	050189	00.9896
040050	01.0498	050002	01.1730	050068	01.0751	050126	01.2747	050190	01.2229
040051	00.8987	050004	01.1599	050069	01.3858	050127	01.2513	050191	01.3018
040053	01.0018	050006	01.1662	050070	01.1523	050128	01.3310	050192	01.0049
040054	01.0841	050007	01.3741	050071	01.1597	050129	01.4697	050193	01.2828
040055	01.2508	050008	01.2782	050072	01.2271	050131	01.1922	050194	01.2161
040058	00.9233	050009	01.3244	050073	01.1490	050132	01.2114	050195	01.2081
040060	00.9865	050011	01.1662	050074	00.9573	050133	01.1733	050196	01.1762
040062	01.1477	050013	01.9341	050075	01.2165	050134	01.2693	050197	01.6697
040063	01.2893	050014	01.1721	050076	01.4420	050135	01.4989	050199	01.0905
040064	00.9747	050015	01.2442	050077	01.4568	050136	01.2396	050201	01.0361
040066	00.9551	050016	01.1027	050078	01.1937	050137	01.1781	050202	01.2009
040067	01.0347	050017	01.6366	050079	01.2238	050138	01.4054	050204	01.4099
040069	01.0213	050018	01.1236	050080	01.1228	050139	01.2136	050205	01.1119
040070	00.9580	050019	00.9234	050081	01.4193	050140	01.2049	050207	01.1978
040071	01.1789	050021	01.1292	050082	01.2269	050141	01.1530	050208	01.1808
040072	01.0247	050022	01.3307	050084	01.3667	050143	01.1929	050211	01.2402
040074	01.0447	050024	01.1312	050086	01.1076	050144	01.3109	050212	01.0931
040075	01.1027	050025	01.4549	050087	01.2743	050145	01.2468	050213	01.1920
040076	00.9724	050026	01.3341	050088	01.1204	050146	01.2515	050214	01.3500
040077	00.9060	050028	01.2504	050089	01.1939	050147	00.8694	050215	01.2971
040078	01.2051	050029	01.1903	050090	01.1913	050148	01.1035	050217	01.1624
040080	00.9772	050030	01.1560	050091	01.2015	050149	01.1647	050219	01.2594
040081	00.8800	050032	01.1130	050092	01.0915	050150	01.2096	050220	01.0869
040082	01.1687	050033	01.3073	050093	01.4467	050151	01.2342	050221	01.2016
040084	01.0553	050034	01.1484	050095	01.1095	050152	01.2323	050222	01.1743
040085	01.0155	050036	01.2381	050096	01.1678	050153	01.4709	050224	01.2688
040087	00.9833	050038	01.2418	050097	01.1797	050154	01.1773	050225	01.1643
040088	01.1670	050039	01.4410	050099	01.3105	050155	01.1726	050226	01.4152
040090	00.9487	050040	01.1230	050100	01.6806	050158	01.4425	050228	01.2355
040091	01.0663	050041	01.1110	050101	01.2561	050159	01.1760	050229	01.2195
040093	01.0621	050042	01.1629	050102	01.2595	050161	01.1746	050230	01.2036
040095	00.9791	050043	01.5191	050103	01.3901	050164	01.2597	050231	01.3446
040098	01.1714	050045	01.1116	050104	01.2317	050166	01.0493	050232	01.5472
040100	01.0741	050046	01.0970	050107	01.2405	050167	01.2414	050233	01.1428
040105	01.0085	050047	01.5044	050108	01.3261	050168	01.3350	050234	01.1917
040106	01.0453	050049	01.1492	050109	01.9583	050169	01.3655	050235	01.3076
040107	01.0560	050051	01.0355	050110	01.1229	050170	01.2944	050236	01.1695

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 3 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050238	01.2005	050309	01.2074	050383	01.0842	050455	01.4877	050544	01.1714
050239	01.2645	050310	01.0943	050385	01.2014	050456	01.3181	050545	00.8217
050240	01.2414	050312	01.2549	050387	00.9812	050457	01.4038	050546	00.9531
050241	01.1452	050313	01.1139	050388	00.9504	050458	00.7628	050547	00.9348
050242	01.2786	050315	01.2368	050390	01.2114	050459	01.2609	050549	01.4060
050243	01.2612	050317	01.1749	050391	01.1706	050464	01.5529	050550	01.2575
050245	01.3604	050318	00.9151	050392	01.0200	050467	01.2013	050551	01.2634
050248	01.0981	050319	01.2369	050393	01.2699	050468	01.2752	050552	01.1419
050251	01.0348	050320	01.1144	050394	01.3727	050469	00.9530	050557	01.2192
050253	01.2029	050324	01.5905	050395	01.1476	050470	01.0624	050559	01.2133
050254	01.1486	050325	01.2016	050396	01.4333	050471	01.4889	050560	01.0946
050256	01.5381	050326	01.2565	050397	01.0445	050473	01.2078	050561	01.1082
050257	01.2160	050327	01.5022	050401	01.2148	050476	01.2160	050562	01.1082
050258	01.2743	050328	01.1754	050404	01.0923	050477	01.1362	050564	01.1475
050260	01.1094	050329	01.2136	050406	01.0324	050478	01.1389	050565	01.1501
050261	01.1075	050331	01.2506	050407	01.1702	050481	01.2537	050566	00.9462
050262	01.5082	050333	01.0950	050410	01.0812	050482	01.0186	050567	01.2673
050263	01.1992	050334	01.2081	050411	01.2173	050483	01.2097	050568	01.1815
050264	01.2608	050335	01.0832	050413	01.3087	050485	01.4122	050569	01.2724
050267	01.3743	050336	01.2391	050414	01.0773	050486	01.3075	050570	01.4540
050268	01.2086	050337	01.1096	050417	01.1458	050488	01.2037	050571	01.2510
050269	01.1791	050342	01.1669	050418	01.0672	050489	01.1463	050573	01.4036
050270	01.2228	050343	01.1351	050419	01.1661	050491	01.2437	050575	01.0831
050272	01.2456	050345	01.2756	050420	01.1967	050492	01.1283	050577	01.2750
050273	00.9347	050348	01.3647	050421	01.2203	050494	01.0331	050578	01.0733
050274	00.9393	050349	00.9430	050423	01.0234	050496	01.5870	050579	01.2339
050276	01.0437	050350	01.2770	050424	01.4511	050497	00.8454	050580	01.1116
050277	01.2160	050351	01.3868	050425	01.1985	050498	01.1989	050581	01.2181
050278	01.2681	050352	01.0900	050426	01.1173	050502	01.6274	050583	01.5347
050279	01.1409	050353	01.5231	050427	00.9307	050503	01.2917	050584	01.1319
050280	01.2030	050355	00.9782	050430	00.9066	050506	01.2376	050585	01.2389
050281	01.2712	050357	01.4603	050431	01.0944	050510	01.1349	050586	01.1299
050282	01.2197	050359	01.0935	050432	01.2251	050512	01.1424	050587	01.2412
050283	01.2528	050360	01.1872	050433	00.9787	050515	01.2986	050588	01.2134
050286	01.0637	050361	00.9180	050434	01.0415	050516	01.2963	050589	01.1998
050289	01.5455	050362	01.0499	050435	01.1452	050517	01.1371	050590	01.1973
050290	01.3600	050363	01.1113	050436	01.0466	050522	01.1726	050591	01.1568
050291	01.2140	050366	01.1660	050438	01.3669	050523	01.1439	050592	01.2411
050292	01.1457	050367	01.2290	050440	01.1154	050526	01.1238	050593	01.1069
050293	00.9903	050369	01.1682	050441	01.5775	050527	01.1868	050594	02.0734
050295	01.2560	050371	01.0021	050442	01.1704	050528	01.1442	050597	01.1435
050296	01.1048	050372	01.1174	050443	00.9398	050530	01.2139	050598	01.1900
050298	01.0302	050373	01.1056	050444	01.1357	050531	01.2019	050599	01.3179
050299	01.2500	050376	01.2992	050446	00.9521	050534	01.1801	050601	01.1770
050300	01.2280	050377	01.0413	050447	01.2943	050535	01.2508	050603	01.3737
050301	01.1416	050378	01.0556	050448	00.9930	050537	01.2661	050604	01.1861
050302	01.2715	050379	01.0248	050449	01.1943	050539	01.2692	050605	01.0864
050305	01.3132	050380	01.5067	050450	00.8615	050541	01.3757	050607	01.1651
050307	01.3374	050381	00.9313	050451	00.9760	050542	01.0719	050608	01.1164
050308	01.4196	050382	01.3610	050454	01.6618	050543	01.1581	050609	01.2498

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 4 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050613	00.9949	060014	01.4069	060072	00.9376	070034	01.2243	100030	01.0677
050615	01.1340	060015	01.3467	060073	00.9073	070035	01.2935	100032	01.2039
050616	01.0327	060016	01.2147	060074	01.1126	070036	01.2594	100033	01.2670
050618	01.0070	060017	01.2261	060075	01.1767	070038	00.9216	100034	01.3616
050619	01.2334	060018	01.1614	060076	01.2455	080001	01.3083	100035	01.2070
050622	01.1297	060019	01.2240	060077	00.9769	080002	01.1210	100036	01.2234
050623	01.1584	060020	01.3228	060083	01.0622	080003	01.1917	100038	01.3902
050624	01.2051	060022	01.4816	060085	00.9426	080004	01.2250	100039	01.2730
050625	01.3721	060023	01.3260	060087	01.1076	080005	01.1168	100040	01.3591
050630	01.0470	060024	01.4084	060088	01.0445	080006	01.0530	100042	01.1327
050633	01.1779	060026	01.3174	060090	00.9878	080007	01.1780	100043	01.2479
050635	01.2750	060027	01.2441	060092	00.9989	090001	01.3012	100044	01.2299
050636	01.2207	060028	01.3870	060093	00.9163	090002	01.0481	100045	01.2483
050637	01.1791	060029	01.0185	060096	01.1423	090003	01.2074	100046	01.1620
050638	00.9271	060030	01.2002	060097	00.6840	090004	01.3570	100047	01.2027
050641	01.1218	060031	01.3946	060098	01.1558	090005	01.2299	100048	00.9717
050643	00.9730	060032	01.3643	060099	00.8740	090006	01.2147	100049	01.1620
050644	01.1384	060033	01.2402	060101	01.6750	090007	01.0733	100050	01.0945
050649	01.0177	060034	01.2184	070001	01.6614	090008	01.1249	100051	01.0783
050650	01.2150	060035	01.1575	070002	01.5212	090009	01.1307	100052	01.2684
050651	01.2037	060036	01.1313	070003	01.2183	090010	01.0906	100053	01.1496
050660	01.2361	060037	00.9818	070004	01.1463	090011	01.5778	100054	01.2454
050661	01.0607	060038	01.0784	070005	01.3072	100001	01.2642	100055	01.1676
050662	01.0199	060039	01.0966	070006	01.1757	100002	01.2918	100056	01.1533
050663	01.1257	060041	00.9862	070007	01.2290	100004	01.1045	100057	01.2057
050666	00.9002	060042	01.0276	070008	01.1362	100005	01.0561	100059	01.4070
050667	01.1326	060043	00.9790	070009	01.1807	100006	01.3920	100060	01.4129
050668	01.3825	060044	01.2183	070010	01.3969	100007	01.6220	100061	01.2257
050669	00.7371	060045	01.0271	070011	01.2057	100008	01.3916	100062	01.2022
050671	01.0357	060046	01.1331	070012	01.1563	100009	01.3543	100063	01.1650
050672	00.6944	060047	01.1120	070013	01.1964	100010	01.2392	100065	01.1001
050674	01.2277	060049	01.0442	070014	01.1731	100011	01.0069	100067	01.2656
050675	01.2890	060050	01.1583	070015	01.1933	100012	01.2599	100068	01.1642
050676	00.8937	060051	01.2673	070016	01.2354	100013	00.9375	100069	01.1940
050677	01.2251	060052	00.8780	070017	01.2639	100014	01.1605	100070	01.2512
050678	01.1633	060053	00.8746	070018	01.1990	100015	01.1468	100071	01.2641
050679	01.0828	060054	01.2351	070019	01.1754	100016	01.0399	100072	01.1511
050680	01.0729	060056	00.9474	070020	01.2556	100017	01.2578	100073	01.4545
060001	01.4128	060057	01.1924	070021	01.2055	100018	01.2550	100074	01.1459
060003	01.1607	060058	01.0046	070022	01.5677	100019	01.2625	100075	01.4431
060004	01.0688	060060	01.0747	070023	01.1933	100020	01.2068	100076	01.0887
060005	01.3970	060062	00.9812	070024	01.1955	100021	01.1898	100077	01.2360
060006	01.2477	060063	01.0579	070025	01.4938	100022	01.4029	100078	01.0826
060007	01.1626	060064	01.2558	070026	01.1319	100023	01.1868	100079	01.2133
060008	01.1599	060065	01.1950	070027	01.2467	100024	01.1971	100080	01.2272
060009	01.2303	060066	01.0075	070028	01.3341	100025	01.4217	100081	01.0288
060010	01.4559	060067	01.0374	070029	01.2087	100026	01.3444	100082	01.2760
060011	01.1314	060068	01.1285	070030	01.1389	100027	01.0140	100083	01.1204
060012	01.3179	060070	01.1396	070031	01.2613	100028	01.1534	100084	01.3029
060013	01.2464	060071	01.2684	070033	01.1907	100029	01.2480	100085	01.1710

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 5 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100086	01.1947	100151	01.5277	100220	01.4874	110002	01.1903	110059	01.0583
100087	01.5425	100152	01.1813	100221	01.5994	110003	01.1583	110061	00.8783
100088	01.2999	100154	01.3295	100222	01.1319	110004	01.2352	110062	00.9530
100089	01.1642	100156	01.0547	100223	01.2367	110005	01.1437	110063	01.0113
100090	01.1300	100157	01.3353	100224	01.1886	110006	01.1559	110064	01.1882
100092	01.1526	100159	01.0160	100225	01.1616	110007	01.2915	110065	01.0664
100093	01.2595	100160	01.0597	100226	01.1653	110008	01.0032	110066	01.1759
100098	00.9357	100161	01.2666	100227	01.1435	110009	01.0169	110069	01.0552
100099	01.1645	100162	01.2283	100228	01.1559	110010	01.8275	110070	00.9438
100100	01.1408	100164	00.9951	100229	01.2030	110011	01.1067	110071	00.9372
100102	01.0585	100165	00.9301	100230	01.1465	110013	01.0030	110072	00.9316
100103	00.9612	100166	01.2667	100231	01.4832	110014	01.0768	110073	00.9987
100105	01.1754	100167	01.1754	100232	01.0621	110015	01.0467	110074	01.1904
100106	01.0907	100168	01.2297	100234	01.1793	110016	01.2030	110075	01.0774
100107	01.1509	100169	01.4970	100235	01.2050	110017	00.9189	110076	01.2575
100108	01.0180	100170	01.2020	100236	01.2550	110018	01.1207	110077	00.9559
100109	01.1543	100172	01.1626	100237	01.7038	110020	01.1114	110078	01.4144
100110	01.2008	100173	01.1883	100238	01.1959	110023	01.1241	110079	01.0490
100112	00.9711	100174	01.3980	100239	01.3179	110024	01.1904	110080	01.0428
100113	01.6329	100175	01.0736	100240	00.7480	110025	01.1636	110081	01.0173
100114	01.2417	100176	01.6668	100241	01.0372	110026	00.9771	110082	01.6861
100115	01.0965	100177	01.1722	100242	01.1820	110027	01.0297	110083	01.2184
100117	01.1993	100179	01.3467	100243	01.1833	110028	01.3670	110085	01.1320
100118	01.1373	100180	01.2779	100244	01.1736	110029	01.1348	110086	01.1631
100120	01.1819	100181	01.0849	100246	01.1916	110030	01.1362	110087	01.1434
100121	01.0935	100183	01.1564	100248	01.4402	110031	01.1196	110088	00.8579
100122	01.1210	100185	01.0591	100249	01.0897	110032	01.1378	110089	01.1074
100124	01.1529	100186	01.2522	100252	01.1615	110033	01.1225	110091	01.1830
100125	01.1610	100187	01.1523	100253	01.2413	110034	01.2098	110092	01.0547
100126	01.1883	100189	01.2061	100254	01.2411	110035	01.1368	110093	00.9954
100127	01.3211	100191	01.2234	100255	01.1763	110036	01.3984	110094	00.9068
100128	02.0703	100194	01.1913	100256	01.2398	110037	01.1116	110095	01.2259
100129	01.1946	100195	01.1358	100258	01.2533	110038	01.2008	110096	01.0194
100130	01.1945	100196	01.2455	100259	01.1433	110039	01.1420	110097	00.9956
100131	01.1727	100199	01.1697	100260	01.1956	110040	00.9866	110098	00.9223
100132	01.1961	100200	01.2155	100262	01.2258	110041	01.1205	110099	00.9002
100134	00.9190	100203	01.2254	100263	01.1722	110042	01.0049	110100	01.0575
100135	01.4333	100204	01.3793	100264	01.2471	110043	01.3645	110101	00.9796
100137	01.1579	100206	01.1448	100265	01.1602	110044	01.1245	110103	00.9939
100138	00.9978	100207	01.2147	100266	01.1263	110045	01.0170	110104	01.0592
100139	01.1465	100208	01.2056	100267	01.1674	110046	01.1661	110105	01.1463
100140	01.0634	100209	01.2542	100268	01.1464	110047	00.9548	110107	01.4085
100142	01.0607	100210	01.4760	100269	01.2081	110048	01.0785	110108	00.9371
100143	00.9699	100211	01.2135	100270	00.9200	110049	00.9293	110109	00.9553
100144	01.0402	100212	01.1953	100271	01.3229	110050	01.0159	110111	01.0036
100145	01.1743	100213	01.2948	100273	00.9313	110051	00.9303	110112	00.9104
100146	01.0752	100214	01.3202	100275	01.1395	110052	00.8925	110113	00.9945
100147	01.0235	100217	01.0974	100276	01.1359	110054	01.1916	110114	01.0676
100149	01.1565	100218	01.1291	100277	01.1266	110055	00.9523	110115	01.3482
100150	01.2446	100219	01.2099	110001	01.0982	110056	00.9243	110117	00.9312

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 6 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110118	00.9642	110181	01.0279	130012	00.9400	140017	01.2285	140080	01.5732
110120	00.9532	110183	01.1343	130013	01.1343	140018	01.2681	140081	01.0982
110121	00.9503	110184	01.0573	130014	01.2152	140019	00.9243	140082	01.1787
110122	01.1644	110185	01.0893	130015	01.0156	140023	01.0892	140083	01.1139
110123	01.0167	110186	01.0533	130016	00.9392	140024	00.9936	140084	01.1623
110124	01.0008	110187	01.0700	130017	01.0619	140025	01.0931	140085	01.2177
110125	01.0888	110188	01.2218	130018	01.2489	140026	01.1195	140086	01.1159
110127	00.9964	110189	00.9858	130019	01.0789	140027	01.1285	140087	01.1632
110128	01.1231	110190	01.1040	130021	00.9237	140029	01.2124	140088	01.4702
110129	01.3083	110191	01.1519	130022	01.0860	140030	01.3105	140089	01.0988
110130	00.9304	110192	01.2119	130024	01.2029	140031	01.0653	140090	01.2797
110131	00.9975	110193	01.0395	130025	01.0024	140032	01.1397	140091	01.3164
110132	00.9827	110194	00.9875	130026	01.0651	140033	01.1153	140093	01.1233
110133	00.9553	110195	00.9759	130027	00.9156	140034	01.0673	140094	01.0997
110134	00.8692	110196	01.6054	130028	01.1862	140035	01.0616	140095	01.2163
110135	00.9971	110198	01.1880	130029	01.1050	140036	01.0734	140097	01.0625
110136	01.0588	110200	01.4246	130030	00.9498	140037	01.0268	140098	01.1555
110140	00.9338	110201	01.1434	130031	01.1294	140038	01.1689	140099	01.1438
110141	00.9353	110202	00.9467	130032	00.8992	140039	00.9723	140100	01.0826
110142	01.1179	110203	00.9386	130034	00.8984	140040	01.1570	140101	01.0643
110143	01.1116	120001	01.4294	130035	01.0522	140041	01.0650	140102	01.0093
110144	01.1448	120002	01.0788	130036	01.1656	140042	00.9536	140103	01.1250
110146	00.8695	120003	01.0916	130037	01.0685	140043	01.1395	140104	01.1103
110149	00.9657	120004	01.2341	130038	00.8909	140045	01.0258	140105	01.1767
110150	01.0873	120005	01.1467	130039	01.1041	140046	01.0877	140107	00.9401
110151	01.0013	120006	01.1358	130040	00.9910	140047	01.0516	140108	01.1680
110152	00.9766	120007	01.4409	130043	01.0198	140048	01.1209	140109	00.9739
110153	01.0138	120008	01.1240	130044	00.9793	140049	01.2590	140110	01.1434
110154	00.9627	120009	00.9694	130045	00.9587	140051	01.1961	140111	01.0406
110155	00.9688	120010	01.4540	130048	00.9978	140052	01.2324	140112	01.1216
110156	00.8606	120011	01.2881	130049	01.2155	140053	01.4878	140113	01.4060
110157	01.1446	120012	01.0964	130051	01.0395	140054	01.2741	140114	01.1166
110158	01.0647	120014	01.1279	130054	00.9275	140055	00.9339	140115	01.0426
110161	01.2236	120015	00.9561	130056	00.9552	140058	01.0648	140116	01.2263
110162	00.8804	120016	00.9721	130057	00.9910	140059	01.0351	140117	01.1930
110163	01.2076	120018	00.8676	140001	01.1443	140061	01.0879	140118	01.3512
110164	01.2150	120019	01.0616	140002	01.2213	140062	01.1655	140119	01.4619
110165	01.1376	120021	00.9709	140003	00.9838	140063	01.1659	140120	01.1117
110166	01.2114	120022	01.4688	140004	01.0500	140064	01.1649	140121	01.1284
110168	01.2705	120024	01.2270	140005	00.8971	140065	01.2106	140122	01.2203
110169	00.7240	130001	01.0460	140007	01.1663	140066	01.0691	140123	01.1228
110170	00.8895	130002	01.2577	140008	01.2484	140067	01.4604	140124	01.0266
110171	01.1612	130003	01.2155	140009	01.0043	140068	01.0816	140125	01.0925
110172	01.0893	130005	01.2365	140010	01.2848	140069	01.0628	140126	01.4056
110174	00.9124	130006	01.5214	140011	01.0662	140070	01.2688	140127	01.1452
110175	01.0156	130007	01.3563	140012	01.1812	140072	01.1060	140128	01.0563
110176	01.1058	130008	00.8905	140013	01.2232	140074	01.0768	140129	01.0161
110177	01.1653	130009	00.9198	140014	01.0651	140075	01.2608	140130	01.1520
110178	00.9663	130010	00.9854	140015	01.1312	140077	00.9536	140131	01.1751
110179	01.1200	130011	01.2367	140016	01.0193	140079	01.1499	140132	01.2962

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 7 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140133	01.2178	140190	01.0024	140253	01.1489	150032	01.5920	150088	01.1013
140134	01.2070	140191	01.1585	140258	01.2564	150033	01.3411	150089	01.1924
140135	01.1315	140192	01.1038	140261	01.1218	150034	01.0742	150090	01.2393
140136	01.0301	140193	00.9773	140271	00.9766	150035	01.1538	150091	01.0882
140137	01.0907	140197	01.2682	140273	00.9756	150036	01.0254	150092	01.0637
140138	01.1575	140199	01.0491	140275	01.0964	150037	01.1216	150094	00.9894
140139	01.0741	140200	01.2445	140276	01.8188	150038	01.1470	150095	01.0604
140140	01.0770	140202	01.1729	140280	01.1223	150039	01.0122	150096	01.0179
140141	01.0162	140203	01.0774	140281	01.3770	150042	01.1436	150097	01.0653
140142	01.1320	140204	01.2199	140285	01.0711	150043	01.0900	150098	01.0922
140143	01.0914	140205	01.0964	140286	01.1514	150044	01.1327	150099	01.1239
140144	01.0506	140206	01.0598	140288	01.3542	150045	01.1432	150100	01.3237
140145	01.1377	140207	01.1730	140289	01.2306	150046	01.3073	150101	01.0493
140146	00.9618	140208	01.3256	140290	01.1747	150047	01.3347	150102	01.0168
140147	01.0593	140209	01.2713	140291	01.1877	150048	01.1644	150103	00.9945
140148	01.3613	140210	01.0263	140292	01.1473	150049	01.0016	150104	01.1014
140150	01.2434	140211	01.1253	140293	01.0132	150050	01.1435	150105	01.0889
140151	01.2308	140212	01.0591	140294	01.0808	150051	01.1888	150106	01.0565
140152	01.0445	140213	01.1334	140295	01.2268	150052	01.0091	150109	01.2202
140154	01.1198	140215	01.0594	140297	01.2131	150053	00.9825	150110	00.9483
140155	01.0952	140216	00.9340	140298	01.2779	150054	01.0335	150111	01.0953
140156	01.2076	140217	01.1771	150001	01.1036	150056	01.4351	150112	01.1442
140157	01.0127	140218	01.0360	150002	01.1521	150057	01.9946	150113	01.0797
140158	01.2107	140219	01.1853	150003	01.3328	150058	01.3990	150114	01.0350
140159	01.1293	140220	01.0860	150004	01.2104	150059	01.0875	150115	01.1935
140160	01.2189	140223	01.3522	150005	01.1376	150060	01.0770	150122	01.0695
140161	01.0234	140224	01.2601	150006	01.2039	150061	01.1088	150123	00.9745
140162	01.1659	140226	00.9779	150007	01.0926	150062	01.0095	150124	01.1389
140164	01.1325	140228	01.4006	150008	01.2052	150063	01.1012	150125	01.2990
140165	00.9981	140229	01.0532	150009	01.1939	150064	01.0629	150126	01.6357
140166	01.1455	140230	00.9582	150010	01.0581	150065	01.1453	150127	01.1053
140167	01.0724	140231	01.1875	150011	01.1630	150066	01.0837	150128	01.1132
140168	01.0608	140232	01.0114	150012	01.2942	150067	01.0097	150129	01.1015
140170	01.0317	140233	01.4406	150013	01.0116	150069	01.1219	150130	01.1838
140171	00.9827	140234	01.1577	150014	01.1527	150070	01.1006	150132	01.3074
140172	01.3285	140235	00.9910	150015	01.1391	150071	01.1364	150133	01.1493
140173	00.9641	140236	00.9650	150017	01.4723	150072	01.2101	150134	01.1452
140174	01.2311	140239	01.3533	150018	01.1688	150073	01.0841	150135	00.7826
140176	01.1206	140240	01.1614	150019	01.1346	150074	01.3075	150136	01.2039
140177	01.1250	140241	00.8883	150020	01.0513	150075	01.1645	160001	01.1569
140179	01.2201	140242	01.2445	150021	01.3393	150076	01.0568	160002	01.3103
140180	01.2366	140243	01.1194	150022	01.0595	150077	01.1412	160003	01.0385
140181	01.1051	140245	01.0056	150023	01.2065	150078	01.0417	160004	01.1572
140182	01.2519	140246	01.0592	150024	01.1046	150079	01.0473	160005	01.2094
140184	01.0914	140247	00.9848	150025	01.3530	150081	01.0273	160007	01.0601
140185	01.1773	140248	01.1535	150026	01.1876	150082	01.2378	160008	01.1466
140186	01.1065	140249	00.8249	150027	01.0581	150083	00.8570	160009	01.1156
140187	01.2366	140250	01.1854	150029	01.1816	150084	01.5520	160012	01.0777
140188	00.9879	140251	01.1940	150030	01.1492	150085	00.9847	160013	01.2796
140189	01.0992	140252	01.2111	150031	01.0375	150086	01.1073	160014	01.0655

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 8 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
160016	01.1978	160070	01.0162	160130	01.1518	170036	00.9758	170095	01.0851
160018	01.0095	160071	01.2069	160131	01.1274	170037	01.1261	170097	00.9992
160020	01.0738	160072	01.0761	160132	01.2152	170038	01.0240	170098	01.0838
160021	01.0806	160073	00.9429	160133	01.1207	170039	01.0522	170099	01.1408
160023	01.1424	160074	01.0058	160134	00.9506	170040	01.3302	170100	00.8390
160024	01.1704	160075	01.0397	160135	00.9327	170041	01.0331	170101	01.0531
160025	01.4779	160076	00.9950	160138	01.0880	170043	01.0760	170102	00.9804
160026	01.1056	160077	01.0164	160140	01.0264	170044	01.0985	170103	01.1821
160027	01.1435	160079	01.2220	160141	00.9501	170045	01.0586	170104	01.2651
160028	01.1680	160080	01.0974	160142	01.1551	170046	00.9754	170105	01.0340
160029	01.2460	160081	01.1238	160143	01.0050	170049	01.1659	170106	00.9744
160030	01.2271	160082	01.4421	160145	01.0889	170050	00.9612	170108	01.0732
160031	01.0878	160083	01.3841	160146	01.2783	170051	01.0020	170109	01.0616
160032	01.0533	160085	01.2102	160147	01.3036	170052	01.0042	170110	00.9300
160033	01.2338	160086	00.9927	160151	01.1083	170053	01.0196	170112	00.9461
160034	01.0292	160088	00.9995	160152	01.0554	170054	01.0736	170113	01.0702
160035	01.0766	160089	01.1373	160153	01.4123	170055	01.0310	170114	01.1110
160036	01.1412	160090	01.0610	170001	01.1382	170056	00.9837	170115	01.0570
160037	01.0938	160091	01.2600	170002	01.1779	170057	01.0014	170116	01.1431
160038	01.1844	160092	01.0212	170003	01.0951	170058	01.0021	170117	01.0238
160039	01.0062	160093	00.9844	170004	01.0654	170060	01.0035	170119	00.9034
160040	01.2284	160094	01.1299	170005	00.9683	170061	01.1073	170120	01.1532
160041	01.1113	160095	01.1105	170006	01.1765	170062	00.9449	170121	00.8208
160043	01.0641	160097	01.1342	170007	01.1331	170063	00.9656	170122	01.5973
160044	01.2262	160098	01.1005	170008	00.9730	170064	01.0463	170123	01.3552
160045	01.3902	160099	01.0503	170009	01.1424	170066	00.9221	170124	01.0073
160046	01.0223	160101	01.1100	170010	01.0968	170067	00.9615	170125	00.9236
160047	01.2250	160102	01.2827	170011	01.1548	170068	01.1602	170126	00.9465
160048	01.0700	160103	00.9353	170012	01.3544	170069	01.0019	170128	01.0349
160049	00.9843	160104	01.0733	170013	01.2767	170070	00.9598	170130	01.4044
160050	01.0888	160106	01.2112	170014	01.0847	170072	00.9376	170131	01.1493
160051	01.1140	160107	01.0840	170015	01.0461	170073	01.1066	170133	01.2273
160052	01.1197	160108	01.1604	170016	01.4458	170074	01.1060	170134	01.0345
160053	01.1324	160109	01.1111	170017	01.1091	170075	00.8876	170137	01.1406
160054	01.0523	160110	01.3428	170018	01.0538	170076	01.0751	170138	01.1488
160055	01.0513	160111	01.1250	170019	01.1944	170077	00.9367	170139	01.0071
160056	01.0051	160112	01.2411	170020	01.1921	170079	00.9180	170140	01.0198
160057	01.1540	160113	01.0280	170021	01.0047	170080	00.9968	170142	01.1831
160058	01.4790	160114	01.0032	170022	01.1614	170081	01.0147	170143	01.1405
160059	01.2116	160115	01.0815	170023	01.2909	170082	00.9023	170144	01.3108
160060	01.0600	160116	01.1214	170024	00.9768	170084	00.9716	170145	01.0993
160061	01.0357	160117	01.2623	170025	01.2032	170085	00.9999	170146	01.2470
160062	01.0382	160118	01.1078	170026	01.0422	170086	01.3375	170147	01.1966
160063	01.2046	160119	00.8833	170027	01.1599	170087	01.2709	170148	01.1973
160064	01.2106	160120	01.0346	170030	00.9780	170088	01.0114	170150	01.0769
160065	01.0863	160122	01.0785	170031	01.0097	170089	00.9512	170151	01.0012
160066	01.1032	160123	01.1187	170032	01.0469	170090	00.9470	170152	00.9321
160067	01.1475	160124	01.1299	170033	01.1491	170092	01.0148	170159	00.9371
160068	01.0798	160126	01.1096	170034	00.9630	170093	00.9750	170160	00.9079
160069	01.3087	160129	01.0225	170035	00.9747	170094	00.9988	170164	01.2253

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 9 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
170166	01.0272	180045	01.1312	180122	00.9794	190046	01.2807	190130	00.9413
170168	01.0631	180046	00.9856	180123	01.1377	190047	01.0851	190131	01.0627
170170	01.1318	180047	00.9976	180124	01.2322	190048	01.0523	190132	01.1131
170171	01.0807	180048	01.1070	180125	00.9403	190049	01.0190	190133	01.0674
170172	00.9632	180049	01.1093	180126	01.0870	190050	00.9827	190134	00.8520
170173	00.9657	180050	01.1326	180127	01.1100	190053	01.1507	190135	01.3417
170174	00.9096	180051	01.2097	180128	01.0337	190054	01.2506	190136	00.9735
170175	01.1179	180053	00.9516	180129	00.9329	190058	00.9783	190137	00.9530
170176	01.2517	180054	01.0779	180130	01.1940	190059	01.0217	190138	00.7550
170178	01.0354	180055	01.0198	180132	01.1012	190060	01.1948	190139	01.0651
180001	01.1275	180056	01.1085	180133	01.0872	190064	01.2879	190140	00.9782
180002	00.9994	180058	00.8648	180134	01.1814	190065	01.3648	190141	01.0094
180004	01.1026	180059	00.9282	180136	01.1826	190067	01.0407	190142	00.9575
180005	01.0015	180060	00.9013	180137	01.2418	190071	00.9886	190144	01.1039
180006	00.8979	180062	00.9087	180138	01.1444	190073	00.8558	190145	00.9394
180007	01.2152	180063	00.9392	190001	00.9664	190075	01.1835	190146	01.3413
180009	01.0955	180064	01.0532	190002	01.3795	190077	01.0363	190147	00.8930
180010	01.4962	180065	00.9754	190003	01.1713	190078	01.0381	190148	00.8702
180011	00.9977	180066	01.0100	190004	01.1367	190079	01.0734	190149	01.0628
180012	01.1345	180067	01.3871	190005	01.1231	190081	00.9421	190151	01.1182
180013	01.1787	180068	00.9778	190006	01.0894	190083	00.9198	190152	01.1262
180014	01.3939	180070	00.9758	190007	01.0033	190086	01.1033	190155	00.9724
180015	01.0590	180072	01.1101	190008	01.3308	190088	01.0287	190156	00.9192
180016	01.1698	180075	00.9472	190009	01.0749	190089	01.1229	190157	00.9299
180017	01.1821	180078	00.9441	190010	01.0519	190090	01.0442	190158	01.0664
180018	01.1472	180079	00.9611	190011	01.0618	190092	01.1712	190160	01.0260
180019	01.0988	180080	01.0916	190012	01.0576	190095	00.9306	190161	01.0909
180020	00.9711	180081	01.1912	190013	01.1222	190098	01.2213	190162	01.1593
180021	00.9458	180085	01.2154	190014	00.9799	190099	01.0264	190163	00.9662
180023	00.8496	180087	01.0621	190015	01.1551	190101	00.9902	190164	01.0745
180024	00.9811	180088	01.3557	190017	01.1159	190102	01.2540	190165	01.0029
180025	01.1766	180092	01.0615	190018	01.2162	190103	00.8708	190166	00.9469
180026	01.0292	180093	01.2168	190019	01.2453	190106	00.9784	190167	01.1370
180027	01.0471	180094	00.9621	190020	01.0573	190109	01.0322	190169	00.9763
180028	00.9262	180095	01.0697	190023	00.9203	190110	00.9862	190170	00.9036
180029	01.0918	180096	00.9613	190025	01.1223	190111	01.3070	190173	01.2117
180030	01.0043	180100	01.1470	190026	01.2400	190112	01.1942	190175	01.1471
180031	01.0189	180101	01.1116	190027	01.2289	190113	01.1330	190176	01.3689
180032	00.8956	180102	01.1934	190029	01.0569	190114	01.0002	190177	01.0952
180033	01.0911	180103	01.4192	190033	00.9191	190115	01.2133	190178	00.9533
180034	01.0067	180104	01.2541	190034	01.1377	190116	01.1012	190179	01.0337
180035	01.2284	180105	00.8467	190035	01.2494	190117	01.0317	190180	01.0651
180036	01.0305	180106	00.8388	190036	01.4143	190118	00.9944	190182	01.0292
180037	01.1369	180108	00.8725	190037	01.0234	190119	01.0287	190183	01.0367
180038	01.1167	180115	00.9805	190039	01.3379	190120	00.9130	190184	00.9068
180040	01.5703	180116	01.1878	190040	01.2967	190122	01.1234	190185	01.1603
180041	01.0071	180117	00.9685	190041	01.3148	190124	01.2156	190186	00.9378
180042	01.0196	180118	00.9777	190043	01.0333	190125	01.1947	190187	01.0476
180043	01.0045	180120	00.9307	190044	01.0066	190127	01.0978	190188	00.9801
180044	01.0039	180121	00.9660	190045	01.1656	190128	01.0214	190189	01.1092

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CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 10 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
190190	01.0932	200044	01.1439	210045	01.0214	220049	01.1535	220110	01.7737
190191	01.1659	200047	01.1539	210046	01.0371	220050	01.0432	220111	01.1280
190193	01.1775	200049	00.9376	210047	01.0389	220051	01.2118	220114	01.0567
190194	01.0507	200050	01.1108	210048	01.1248	220052	01.1780	220115	01.2122
190195	01.0335	200051	01.0466	210049	01.2009	220053	01.1587	220116	01.5893
190196	00.9640	200052	01.0571	210050	00.9394	220055	01.1602	220117	01.0423
190197	01.2023	200055	01.0480	210051	01.1876	220057	01.1594	220118	01.7081
190198	01.0714	200062	01.0597	210054	01.1138	220058	01.0538	220119	01.2064
190199	01.4111	200063	01.2289	210055	01.1490	220060	01.1198	220120	01.0502
190200	01.1315	200066	01.1398	210056	01.2826	220061	01.2052	220121	01.0523
190201	01.1618	210001	01.2444	210057	01.2063	220062	00.8900	220123	01.0105
190202	01.1552	210002	01.5577	210058	01.8141	220063	01.0987	220124	02.9401
190203	01.3314	210003	01.1887	210059	01.1268	220064	01.1843	220126	01.1706
190204	01.1323	210004	01.1968	220001	01.1901	220065	01.1172	220128	01.1380
190205	01.2135	210005	01.2146	220002	01.2977	220066	01.2284	220129	01.1562
190206	01.2712	210006	01.0608	220003	01.0034	220067	01.1938	220131	01.0441
190207	01.1038	210007	01.3981	220004	01.1517	220068	00.6884	220133	00.8410
200001	01.2212	210008	01.1804	220005	01.1241	220070	01.1357	220135	01.1115
200002	01.0380	210009	01.3531	220006	01.1821	220071	01.6001	220153	01.0223
200003	01.0112	210010	01.1198	220008	01.1775	220072	01.1161	220154	01.0168
200005	00.8878	210011	01.1937	220009	01.1174	220073	01.1658	220156	01.1388
200006	01.1431	210012	01.2122	220010	01.1378	220074	01.0921	220162	01.0584
200007	01.0200	210013	01.1986	220011	01.1981	220075	00.7483	220163	01.7818
200008	01.2152	210015	01.1899	220012	01.2145	220076	01.1598	220171	01.3542
200009	01.5572	210016	01.4136	220015	01.1687	220077	01.4461	230001	01.1657
200012	01.0593	210017	01.0533	220016	01.1549	220079	01.1092	230002	01.1522
200013	01.1776	210018	01.2268	220017	01.1883	220080	01.1078	230003	01.1401
200015	01.2242	210019	01.3141	220019	01.1168	220081	01.0386	230004	01.4759
200016	01.0293	210021	01.1613	220020	01.1410	220082	01.1531	230005	01.1287
200017	01.1781	210022	01.2202	220021	01.1430	220083	01.1527	230006	01.0227
200018	01.1237	210023	01.1839	220022	01.0598	220084	01.1856	230007	01.0293
200019	01.2250	210024	01.1955	220023	01.1646	220086	01.4755	230011	01.0335
200020	01.1006	210025	01.1186	220024	01.1555	220087	00.9233	230012	01.0949
200021	01.1310	210026	01.1580	220025	01.1160	220088	01.3699	230013	01.1966
200023	00.9560	210027	01.1628	220026	01.2141	220089	01.1998	230014	01.0686
200024	01.1545	210028	01.0780	220028	01.2078	220090	01.1086	230015	01.1111
200025	01.1953	210029	01.2900	220029	01.1202	220092	01.1663	230017	01.3410
200026	01.0065	210030	01.0161	220030	01.0962	220094	01.1322	230019	01.2142
200027	01.0625	210031	01.5240	220031	01.4815	220095	01.1053	230020	01.2084
200028	01.0551	210032	01.0583	220033	01.1749	220097	01.0975	230021	01.2018
200031	01.1491	210033	01.1224	220034	01.0803	220098	01.1569	230022	01.2157
200032	01.2427	210034	01.1407	220035	01.0883	220099	01.0894	230023	01.0315
200033	01.3727	210035	01.1041	220036	01.3639	220100	01.2386	230024	01.3629
200034	01.1787	210036	01.1848	220038	01.1270	220101	01.2035	230027	01.0802
200037	01.1098	210037	01.1845	220040	01.1205	220102	01.0790	230029	01.2264
200038	01.0196	210038	01.1823	220041	01.1188	220104	01.1038	230030	01.2521
200039	01.2510	210039	01.1330	220042	01.1019	220105	01.1132	230031	01.2430
200040	01.0711	210040	01.2533	220045	01.1742	220106	01.1156	230032	01.6063
200041	01.1100	210043	01.1424	220046	01.2759	220107	01.0510	230034	01.0514
200043	00.8364	210044	01.1854	220048	01.1217	220108	01.0722	230035	01.1452

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230036	01.2153	230101	01.0846	230159	01.1855	230235	00.9795	240036	01.2485
230037	01.0465	230102	01.1775	230161	00.8651	230236	01.2306	240037	01.1102
230038	01.5267	230103	01.0679	230162	00.9253	230237	01.1436	240038	01.3806
230039	01.2368	230104	01.3558	230163	00.9844	230239	01.0735	240040	01.1171
230040	01.1962	230105	01.3716	230165	01.4833	230241	01.0735	240041	01.1584
230041	01.1100	230106	01.0862	230167	01.1780	230244	01.1753	240043	01.1871
230042	01.1176	230107	01.0085	230169	01.1517	230253	01.0522	240044	01.1099
230043	00.8334	230108	01.1735	230171	01.1146	230254	01.1765	240045	01.0938
230046	01.5121	230110	01.1458	230172	01.1795	230256	01.0704	240046	01.2894
230047	01.1117	230111	00.9810	230173	01.1195	230257	01.0508	240047	01.2702
230051	00.9537	230113	00.9256	230174	01.1297	230259	01.0923	240048	01.2403
230053	01.3374	230114	00.9397	230175	00.9198	230264	01.1022	240049	01.5199
230054	01.3294	230115	01.0199	230176	01.0999	230265	01.0552	240050	01.1325
230055	01.0485	230116	00.9298	230178	01.0957	230266	01.1209	240051	00.9618
230056	00.9681	230117	01.6416	230179	00.9284	230269	01.1433	240052	01.2041
230057	00.9685	230118	01.2068	230180	01.0842	230270	01.1109	240053	01.3511
230058	01.0533	230119	01.0222	230181	01.1497	230273	01.2113	240055	01.1597
230059	01.3671	230120	01.0599	230184	01.1222	230275	01.0415	240056	01.3171
230060	01.1250	230121	01.1466	230186	01.0922	230276	00.9421	240057	01.5720
230062	00.9962	230122	01.2072	230188	01.0505	230277	01.1387	240058	00.9875
230063	01.1618	230123	00.9492	230189	00.9611	240001	01.3481	240059	01.0529
230065	01.1927	230124	01.0469	230190	01.1321	240002	01.4303	240061	01.4058
230066	01.1661	230125	01.2978	230191	00.9009	240003	01.1052	240062	01.1523
230067	00.8971	230127	01.6182	230193	01.1560	240004	01.3068	240063	01.3064
230068	01.2166	230128	01.2782	230194	01.1049	240005	00.9929	240064	01.1872
230069	01.0767	230129	01.6495	230195	01.2262	240006	01.1506	240065	00.9564
230070	01.2493	230130	01.3192	230197	01.0863	240007	01.0925	240066	01.2365
230071	00.7304	230132	01.1933	230199	01.0703	240008	01.0483	240069	01.0991
230072	01.1316	230133	01.0981	230201	01.0235	240009	01.1254	240071	01.1149
230075	01.2000	230134	01.0958	230203	00.7816	240010	01.8394	240072	01.0353
230076	01.1971	230135	01.1477	230204	01.2349	240011	01.0428	240073	01.0082
230077	01.6179	230137	01.0560	230205	01.1631	240013	01.2636	240074	01.0356
230078	01.0552	230138	00.8858	230207	01.1055	240014	01.0922	240075	01.1612
230080	01.1662	230140	01.0300	230208	01.3398	240016	01.2938	240076	01.1417
230081	01.0485	230141	01.3414	230211	00.9361	240017	01.1782	240077	01.0077
230082	01.1466	230142	01.1289	230212	01.0955	240018	01.1727	240078	01.3244
230084	01.0662	230143	01.2304	230213	01.0105	240019	01.3600	240079	01.0958
230085	01.1245	230144	01.1291	230216	01.2450	240020	01.1467	240080	01.2248
230086	01.0279	230145	01.1432	230217	01.1000	240021	01.0292	240081	01.2755
230087	01.0464	230146	01.1350	230219	00.9231	240022	01.1263	240082	01.2814
230089	01.2053	230147	01.1751	230221	01.2047	240023	01.0632	240083	01.1397
230090	01.3590	230149	01.0958	230222	01.1528	240024	01.1350	240084	01.2696
230092	01.1916	230150	01.4773	230223	01.1930	240025	01.1368	240085	00.9117
230093	01.1536	230151	01.2824	230224	01.0388	240026	01.3077	240086	01.0890
230095	01.0415	230153	01.1302	230225	01.1259	240027	01.0484	240087	01.1765
230096	01.0839	230154	00.9956	230227	01.1816	240028	01.1137	240088	01.3692
230097	01.1935	230155	00.9585	230228	01.1636	240029	01.0893	240089	01.0036
230098	01.1353	230156	01.4549	230230	01.2921	240030	01.3229	240090	01.0209
230099	01.1390	230157	01.1721	230231	00.9580	240031	01.0239	240091	01.0053
230100	01.1209	230158	00.9921	230232	01.0305	240033	00.9552	240093	01.2903

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 12 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
240094	01.0634	240150	00.9880	250016	00.8592	250077	00.9000	250138	00.9957
240096	01.0619	240152	01.0418	250017	00.8834	250078	01.2146	250139	00.9243
240097	01.1072	240153	01.0407	250018	01.0278	250079	00.8504	250140	00.8795
240098	00.9870	240154	00.9808	250019	01.1459	250081	01.1258	260001	01.3949
240099	01.1206	240155	00.9911	250020	00.9712	250082	01.0867	260002	01.1804
240100	01.1902	240156	00.9645	250021	00.9072	250083	00.8711	260003	00.9909
240101	01.0374	240157	01.0513	250023	00.9039	250084	01.1045	260004	01.0625
240102	00.9513	240158	01.1541	250024	00.9343	250085	00.9775	260005	01.1730
240103	01.0380	240160	01.0295	250025	00.9799	250086	01.0071	260006	01.1886
240104	01.1942	240161	01.0207	250026	00.8942	250088	01.0444	260007	01.1536
240105	00.9704	240162	01.0972	250027	00.9468	250089	00.9908	260008	01.1523
240106	01.2351	240163	01.0693	250029	00.8862	250091	00.9345	260009	01.1440
240107	01.0413	240165	00.9919	250030	00.9042	250093	01.1172	260010	01.1470
240108	00.9948	240166	01.1362	250031	01.0569	250094	01.1091	260011	01.2182
240109	01.0440	240167	00.9637	250032	01.1514	250095	01.0284	260012	00.9298
240110	01.1510	240169	00.9215	250033	00.8711	250096	01.0998	260013	01.0761
240111	01.0733	240170	01.0995	250034	01.3115	250097	01.0819	260014	01.3879
240112	01.0439	240171	01.0536	250035	00.9098	250098	00.8965	260015	01.0355
240114	00.9947	240172	01.0337	250036	00.9625	250099	01.0798	260016	01.1681
240115	01.2080	240173	01.0175	250037	00.9473	250100	01.1582	260017	01.2199
240116	00.9967	240175	00.9461	250038	00.9187	250101	00.8903	260018	01.0176
240117	01.1238	240176	01.0254	250039	00.9265	250102	01.3484	260019	00.9993
240118	00.9608	240177	00.9937	250040	01.0651	250104	01.1651	260020	01.3682
240119	00.9033	240179	01.0252	250042	01.0429	250105	00.8783	260021	01.2485
240121	00.9513	240180	01.0592	250043	00.8622	250107	00.9271	260022	01.2925
240122	01.0833	240183	01.0986	250044	00.9863	250109	00.8989	260023	01.2155
240123	01.0514	240184	01.0043	250045	01.0517	250110	00.9351	260024	01.0902
240124	01.0495	240187	01.1858	250046	00.9673	250111	00.8915	260025	01.1937
240125	01.0640	240192	00.9669	250047	00.9865	250112	00.9334	260026	01.0832
240127	01.0767	240193	01.0353	250048	01.2867	250113	00.9412	260027	01.3118
240128	01.1107	240196	01.3540	250049	00.9166	250114	00.8561	260029	01.1345
240129	01.0457	240200	00.9229	250050	01.1575	250117	00.9503	260030	01.1556
240130	01.0129	240201	00.9493	250051	00.8607	250118	01.0503	260031	01.3607
240131	01.2713	240205	00.8520	250057	01.0367	250119	00.9296	260032	01.4286
240132	01.2103	240206	00.8389	250058	01.0769	250120	01.0548	260033	01.1944
240133	01.1146	240207	01.1687	250059	01.0046	250121	00.9142	260034	01.0420
240134	01.0582	240210	01.2468	250060	00.8303	250122	01.0625	260035	00.9601
240135	00.6973	250001	01.3868	250061	00.9949	250123	01.1221	260036	01.0563
240136	01.0556	250002	00.8672	250062	01.0417	250124	00.8959	260037	01.1867
240137	01.0517	250003	00.8808	250063	00.9085	250125	01.0473	260039	01.1152
240138	00.9984	250004	01.2591	250065	01.0204	250126	00.9955	260040	01.3118
240139	01.0710	250005	01.0037	250066	00.9068	250127	00.8605	260041	01.0333
240140	00.9235	250006	00.9525	250067	01.0346	250128	01.0167	260042	01.0943
240141	01.0036	250007	01.0308	250068	00.8632	250129	01.0309	260044	01.0542
240142	01.1371	250008	00.8653	250069	01.1057	250131	01.0001	260047	01.1950
240143	00.9869	250009	01.0920	250071	01.0125	250132	00.9708	260048	01.1316
240144	01.0056	250010	01.0093	250072	01.1241	250133	00.8600	260049	00.9515
240145	00.9353	250012	00.9275	250073	00.9199	250134	01.0714	260050	01.0232
240146	01.0113	250014	01.0011	250075	00.9465	250136	00.9966	260051	01.0988
240148	00.9571	250015	01.0179	250076	00.8962	250137	00.8679	260052	01.1471

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PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
260053	01.1046	260116	01.1407	270001	00.9282	270068	00.9139	280048	01.0292
260054	01.1897	260118	01.2057	270002	01.0454	270071	00.9651	280049	01.0849
260055	01.0623	260119	01.2261	270003	01.1140	270072	00.8712	280050	01.0022
260056	01.1919	260120	01.1249	270004	01.6176	270073	01.0630	280051	01.0410
260057	01.0525	260121	01.0811	270006	00.8738	270074	00.9209	280052	01.0784
260058	01.1253	260122	01.0505	270007	00.9742	270075	00.9005	280054	01.1502
260059	00.9938	260123	00.9963	270008	00.9279	270076	00.8780	280055	01.0141
260061	01.0746	260127	01.0533	270009	00.9477	270079	00.9639	280056	01.1036
260062	01.1388	260128	01.0536	270011	01.0917	270080	01.1187	280057	01.0670
260063	01.1205	260129	01.1568	270012	01.2657	270081	00.9923	280058	01.1449
260064	01.2261	260131	01.2384	270013	01.1622	270082	00.9210	280060	01.2645
260065	01.3662	260134	01.1091	270014	01.4315	270083	01.0290	280061	01.2757
260066	01.0642	260137	01.1855	270016	00.8888	280001	01.1096	280062	01.1328
260067	01.0341	260138	01.5515	270017	01.2268	280003	01.6159	280064	01.0607
260068	01.7008	260141	01.6612	270018	01.1072	280004	01.1134	280065	01.2159
260070	01.0206	260142	01.2384	270019	00.9281	280005	01.2758	280066	01.1256
260073	01.0061	260143	01.3976	270021	01.1059	280009	01.3131	280068	00.9118
260074	01.1189	260146	00.8949	270023	01.2556	280010	01.3345	280070	01.0495
260077	01.2020	260147	00.9950	270024	01.0169	280011	01.0367	280071	00.9667
260078	01.0594	260149	00.9376	270026	00.8521	280012	01.2258	280073	01.0465
260079	01.0586	260158	01.1908	270027	01.1198	280013	01.4003	280074	01.1125
260080	01.2042	260159	01.0121	270028	01.0215	280014	01.1159	280075	01.1449
260081	01.3635	260160	01.1645	270029	00.9637	280015	01.0483	280076	01.1075
260082	01.1540	260162	01.2246	270030	00.9309	280017	01.1470	280077	01.2693
260083	01.1128	260163	01.1148	270031	00.8413	280018	01.0220	280078	01.0679
260085	01.2421	260164	01.0540	270032	01.0838	280020	01.3475	280079	00.8912
260086	00.9973	260165	00.9845	270033	00.8950	280021	01.3276	280080	01.0100
260088	01.1773	260166	01.1643	270035	01.0110	280022	01.1324	280081	01.3285
260089	01.0556	260171	00.7159	270036	01.0234	280023	01.2555	280082	00.9599
260090	01.2212	260172	01.0544	270039	01.0454	280024	00.9059	280083	01.0352
260091	01.3971	260173	01.1427	270040	01.0774	280025	01.0553	280084	01.0156
260092	00.9988	260175	01.1521	270041	00.9829	280026	00.9761	280085	01.2722
260093	01.1269	260176	01.2185	270042	00.8921	280028	00.9666	280087	01.2575
260094	01.1336	260177	01.2390	270043	00.8493	280029	01.2303	280088	01.4765
260095	01.1715	260178	01.2542	270044	01.0091	280030	01.5079	280089	01.0000
260096	01.2721	260179	01.3370	270046	00.8745	280031	01.0344	280090	00.9648
260097	01.1573	260180	01.3371	270047	00.8992	280032	01.2036	280091	01.0815
260100	01.1058	260182	01.0794	270048	01.1125	280033	01.0225	280092	00.9309
260102	01.0632	260183	01.2253	270049	01.2570	280034	01.2686	280093	00.9096
260103	01.1763	260186	01.0955	270050	01.0121	280035	00.9957	280094	00.9849
260104	01.3619	260188	01.1728	270051	01.1129	280037	01.0994	280097	01.0039
260105	01.6309	260189	01.0403	270052	00.9201	280038	01.1880	280098	00.9845
260107	01.2390	260190	01.1392	270053	00.8202	280039	01.0118	280101	01.0657
260108	01.5034	260191	01.1496	270055	00.8059	280040	01.4507	280102	01.0611
260109	01.0029	260192	00.8116	270057	01.1734	280041	01.0607	280103	01.0166
260110	01.3942	260193	01.1737	270058	01.1244	280042	01.1200	280104	01.0074
260111	01.0472	260195	01.0405	270059	00.9891	280043	01.0703	280105	01.2030
260112	01.2506	260197	01.1166	270060	00.8618	280045	01.1996	280106	01.1514
260113	01.1227	260198	01.1133	270063	00.9178	280046	01.1407	280107	01.1144
260115	01.1321	260200	01.0671	270067	00.9554	280047	01.1299	280108	01.0529

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
280105	00.9394	300015	01.0678	310041	01.2058	310112	01.1426	320070	00.8423
280110	01.0864	300016	01.1638	310042	01.0964	310113	01.1941	320074	01.1571
280111	01.1866	300017	01.1899	310043	01.1502	310115	01.1841	320076	01.0489
280114	01.0070	300018	01.2128	310044	01.1851	310116	01.1960	320077	00.8632
280115	01.0458	300019	01.1581	310045	01.1616	310118	01.1198	330001	01.1504
280116	00.8748	300020	01.1030	310047	01.2681	310119	01.1736	330002	01.2097
280117	01.2165	300021	01.0950	310048	01.1964	310120	01.0860	330003	01.2272
280118	01.1778	300022	01.1218	310049	01.1554	310515	00.8852	330004	01.1645
280119	00.7887	300023	01.1653	310050	01.1272	320001	01.3069	330005	01.4392
280122	00.8859	300024	01.1522	310051	01.2294	320002	01.1780	330006	01.2313
280123	00.7607	300028	01.1134	310052	01.1785	320003	01.1545	330007	01.1817
290001	01.3731	300029	01.1932	310054	01.2727	320004	01.1148	330008	01.1048
290002	00.9553	300032	00.9302	310056	01.1275	320005	01.1963	330009	01.0445
290003	01.3320	300033	01.0045	310057	01.2374	320006	01.1702	330010	01.1191
290005	01.1786	300034	01.3561	310058	01.0369	320009	01.2264	330011	01.1366
290006	01.0225	310001	01.4097	310059	00.8522	320010	01.2278	330012	01.2973
290007	01.3929	310002	01.6601	310060	01.1801	320011	01.0428	330013	01.7381
290008	01.1241	310003	01.1264	310061	01.1266	320012	00.9904	330014	01.1499
290009	01.2837	310004	01.1710	310062	00.9719	320013	01.0218	330015	01.2156
290010	01.1080	310006	01.1285	310063	01.2277	320014	00.9264	330016	01.0179
290011	01.0317	310008	01.2301	310064	01.1966	320016	01.0351	330019	01.0690
290012	01.2386	310009	01.1363	310067	01.1308	320017	01.2065	330020	00.9941
290013	00.9769	310010	01.2004	310068	01.1539	320018	01.2030	330022	01.0178
290014	01.0160	310011	01.1798	310069	01.1139	320019	01.2584	330023	01.1816
290015	00.9246	310012	01.2749	310070	01.2012	320021	01.5780	330024	01.4726
290016	01.0981	310013	01.2090	310071	01.1208	320022	01.2432	330025	01.0373
290018	00.7729	310014	01.3634	310072	01.1939	320025	01.1156	330027	01.1088
290019	01.1799	310015	01.2476	310073	01.1476	320030	01.0619	330028	01.1692
290020	00.9102	310016	01.1479	310074	01.2052	320031	00.9216	330029	01.2304
290021	01.4119	310017	01.2242	310075	01.1880	320032	00.9736	330030	01.0070
290022	01.4840	310018	01.1059	310076	01.2424	320033	01.0972	330033	01.2610
290027	01.0308	310019	01.4479	310077	01.5067	320035	00.9558	330034	01.1274
290029	00.9128	310020	01.1497	310078	01.1224	320037	01.1550	330036	01.0652
290031	01.0666	310021	01.1777	310081	01.1429	320038	01.1423	330037	01.0927
290032	01.1894	310022	01.1485	310083	01.1202	320046	01.0688	330038	01.0629
290033	01.0074	310024	01.1916	310084	01.1758	320048	01.1305	330039	01.0280
290034	00.7590	310025	01.0897	310085	01.1829	320049	01.0600	330041	01.2010
300001	01.2380	310026	01.1436	310086	01.1604	320053	01.0311	330043	01.1290
300002	01.0787	310027	01.1495	310087	01.1558	320056	00.9208	330044	01.1989
300003	01.4974	310028	01.0005	310088	01.1398	320057	01.1512	330049	01.1726
300005	01.2298	310029	01.5879	310090	01.2020	320058	00.9359	330046	01.2404
300006	01.0558	310031	02.1423	310091	01.1735	320059	01.0436	330047	01.1371
300007	01.0497	310032	01.1310	310092	01.1682	320060	00.9054	330048	01.1750
300008	01.1269	310033	01.1238	310093	01.0868	320061	01.0949	330049	01.2237
300009	01.1951	310034	01.1576	310094	01.0528	320062	00.8688	330050	01.0995
300010	01.0950	310036	01.1384	310096	01.3624	320063	01.1502	330052	01.1352
300011	01.1565	310037	01.2093	310105	01.0069	320065	01.1009	330053	01.0465
300012	01.1917	310038	01.4098	310108	01.1700	320067	00.9391	330055	01.2319
300013	01.0647	310039	01.1733	310110	01.1592	320068	01.0287	330056	01.2045
300014	01.2133	310040	01.1044	310111	01.1638	320069	01.1490	330057	01.2779

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330058	01.1719	330132	01.0754	330201	01.2510	330265	01.2011	330372	01.1380
330059	01.3317	330133	01.1576	330202	01.1250	330267	01.1595	330373	00.7242
330061	01.1776	330135	01.1076	330203	01.2425	330268	01.1462	330381	01.0632
330062	00.9771	330136	01.2287	330204	01.1484	330270	01.7866	330383	01.1408
330064	01.1804	330140	01.4423	330205	01.0565	330272	01.0119	330385	01.1112
330065	01.1619	330141	01.1604	330208	01.1314	330273	01.1118	330386	01.1240
330066	01.1276	330142	01.1643	330209	01.1604	330275	01.1761	330387	00.8900
330067	01.2131	330144	01.0074	330210	01.0900	330276	01.1349	330389	01.7278
330072	01.2233	330148	01.0244	330211	01.1059	330277	01.0501	330390	01.0997
330073	01.0960	330151	01.0620	330212	01.0862	330279	01.1524	330391	01.5234
330074	01.1330	330152	01.1960	330213	01.0045	330281	00.8104	330393	01.4399
330075	01.0322	330153	01.2338	330214	01.5469	330285	01.4141	330394	01.1750
330076	01.1077	330154	01.3339	330215	01.1287	330286	01.1537	330395	01.1898
330078	01.2315	330155	01.1727	330217	01.0351	330288	01.0136	330396	01.0256
330079	01.1790	330157	01.1772	330218	01.1394	330290	01.4066	330397	01.2302
330080	01.0872	330158	01.1843	330219	01.2551	330291	01.0460	330398	01.1064
330082	01.1548	330159	01.2565	330221	01.1476	330293	01.0810	330399	01.1587
330084	00.9759	330160	01.1672	330222	01.1281	330297	01.0755	340001	01.2063
330085	01.3199	330161	01.0580	330223	01.0135	330304	01.1701	340002	01.5402
330086	01.1255	330162	01.2317	330224	01.1461	330306	01.2062	340003	01.1641
330088	01.1675	330163	01.0959	330225	01.1556	330307	01.0814	340004	01.3052
330090	01.4905	330164	01.3097	330226	01.1910	330308	01.0986	340005	01.1546
330091	01.1631	330165	01.0824	330229	01.1351	330309	01.1097	340006	01.0416
330092	01.0159	330166	01.0294	330230	01.2394	330314	01.1394	340007	01.1663
330094	01.2067	330167	01.3754	330231	01.0988	330315	01.0963	340008	01.0591
330095	01.1430	330168	01.0514	330232	01.1681	330316	01.2125	340009	00.9010
330096	01.0070	330169	01.1733	330233	01.1661	330320	01.0860	340010	01.2524
330097	01.0919	330171	01.2106	330234	01.7542	330327	00.9407	340011	01.0263
330100	00.6290	330174	00.9797	330235	01.1439	330331	01.0662	340012	01.0956
330101	01.4471	330175	01.0701	330236	01.2283	330332	01.0940	340013	01.1695
330102	01.1874	330176	00.9363	330238	01.0945	330333	01.1310	340014	01.3268
330103	01.1430	330177	01.0525	330239	01.1040	330335	01.0931	340015	01.2357
330104	01.1575	330179	00.9554	330240	01.0723	330336	01.0922	340016	01.1335
330106	01.4378	330180	01.1755	330241	01.6055	330338	01.1078	340017	01.1575
330107	01.1594	330181	01.1762	330242	01.1942	330339	00.8769	340018	01.3056
330108	01.1976	330182	02.0364	330244	01.0714	330340	01.0558	340019	01.1240
330110	00.9732	330183	01.2811	330245	01.2270	330345	00.7427	340020	01.1201
330111	01.1103	330184	01.1625	330246	01.1874	330350	01.5832	340021	01.2340
330114	01.0118	330185	01.0970	330247	00.6420	330351	01.0517	340022	01.1242
330115	01.1081	330186	01.0795	330249	01.1697	330353	01.1284	340023	01.1619
330116	01.0005	330188	01.1283	330250	01.1193	330354	00.9548	340024	01.1491
330118	01.3227	330189	00.7221	330252	00.8773	330357	01.2003	340025	01.1208
330119	01.2057	330191	01.1636	330254	00.9506	330359	00.9867	340026	00.9807
330120	01.5043	330193	01.2454	330256	01.1167	330362	00.7212	340027	01.1446
330121	01.0189	330194	01.3779	330257	01.0124	330363	00.8117	340028	01.2307
330122	01.1022	330195	01.4432	330258	01.1332	330366	00.7212	340030	01.6562
330125	01.4343	330196	01.1765	330259	01.1737	330367	00.7212	340031	01.1342
330126	01.0433	330197	01.0557	330261	01.1863	330368	00.7212	340032	01.2945
330127	01.1366	330198	01.2066	330263	00.9808	330369	00.7256	340034	01.2949
330128	01.1509	330199	01.1112	330264	01.0974	330371	00.7351	340035	01.0987

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
340036	01.0502	340106	01.0914	350003	01.0661	350065	00.9610	360053	01.1542
340037	01.2192	340107	01.2454	350004	01.5783	350066	00.9488	360054	01.1718
340038	01.2247	340109	01.2274	350005	01.1245	350067	00.8601	360055	01.1867
340039	01.1400	340111	01.2112	350006	01.1458	360001	01.1343	360056	01.1373
340040	01.5211	340112	00.9887	350007	00.9516	360002	01.1667	360057	01.0234
340041	01.1826	340113	01.7442	350008	00.9306	360003	01.2515	360058	01.1318
340042	01.1279	340114	01.2381	350009	01.1347	360006	01.4917	360059	01.2106
340044	00.9898	340115	01.2955	350010	01.1090	360007	00.9940	360061	00.9473
340045	01.0779	340116	01.4487	350011	01.5513	360008	01.0947	360062	01.3980
340047	01.5309	340119	01.1564	350012	01.0156	360009	01.1789	360063	01.0198
340049	00.6656	340120	01.0972	350013	01.0021	360010	01.0893	360064	01.3131
340050	01.1260	340121	01.0018	350014	00.9779	360011	01.2787	360065	01.2142
340051	01.2655	340122	01.0467	350015	01.4999	360012	01.2330	360066	01.1239
340052	00.9643	340123	01.1494	350016	01.1098	360013	01.0876	360067	01.1091
340053	01.4183	340124	01.0251	350017	01.1321	360014	01.1151	360068	01.2737
340054	01.0212	340125	01.3672	350018	00.9336	360015	01.3381	360069	01.0297
340055	01.2391	340126	01.2079	350019	01.3133	360016	01.2342	360070	01.2014
340060	01.0907	340127	01.1727	350020	01.2164	360017	01.3628	360071	01.2053
340061	01.4903	340129	01.1185	350021	01.0539	360018	01.2638	360072	01.1401
340063	01.1055	340130	01.1962	350023	00.9741	360019	01.1683	360074	01.2079
340064	01.0527	340131	01.2602	350024	00.9798	360020	01.1350	360075	01.2898
340065	01.1164	340132	01.2263	350025	01.0181	360021	01.1796	360076	01.1699
340067	00.9853	340133	01.1064	350027	01.0048	360022	01.0908	360077	01.2597
340068	01.1920	340135	01.0097	350029	00.8957	360024	01.0725	360078	01.1536
340069	01.6091	340136	01.0671	350030	01.1005	360025	01.1433	360079	01.4905
340070	01.2439	340137	01.0273	350031	01.0637	360026	01.1084	360080	01.1619
340071	01.0469	340138	01.1914	350032	01.1337	360027	01.3416	360081	01.1749
340072	01.0873	340141	01.2684	350033	00.9500	360028	01.1939	360082	01.2127
340073	01.2372	340142	01.1689	350034	00.9310	360029	01.0877	360083	01.0845
340075	01.1258	340143	01.2887	350035	00.8625	360030	01.1031	360084	01.2999
340076	01.0379	340144	01.1444	350036	00.9272	360031	01.1179	360085	01.5119
340079	00.9589	340145	01.1306	350038	00.9092	360032	01.1611	360086	01.1209
340080	01.0192	340146	00.9917	350039	00.9343	360034	01.0370	360087	01.1712
340084	01.0792	340147	01.1697	350041	00.9230	360035	01.3543	360088	01.0219
340085	01.2371	340148	01.2334	350042	00.9950	360036	01.1389	360089	01.0665
340087	01.0507	340151	01.0389	350043	01.1549	360037	01.5128	360090	01.1501
340088	01.1152	340153	01.9293	350044	00.9012	360038	01.2266	360091	01.2329
340089	00.9743	340154	00.8767	350047	00.9839	360039	01.1486	360092	01.1299
340090	01.1231	340155	01.3306	350048	00.9441	360040	01.1349	360093	01.0624
340091	01.4773	340156	00.8952	350049	01.0229	360041	01.1528	360094	01.0619
340093	01.0483	340157	01.2146	350050	00.9665	360042	01.0742	360095	01.1977
340094	01.2332	340158	01.0685	350051	00.8784	360044	01.1665	360096	01.0898
340096	01.1034	340159	01.0990	350053	00.9676	360045	01.3172	360098	01.2144
340097	01.0024	340160	01.0725	350055	00.9993	360046	01.0297	360099	01.0847
340098	01.4859	340162	01.1308	350056	00.9394	360047	01.0320	360100	01.1534
340099	01.1424	340164	01.1750	350058	00.9909	360048	01.3520	360101	01.3400
340100	01.1836	340166	01.2224	350060	00.9818	360049	01.1158	360102	01.1855
340101	01.1663	340167	00.7978	350061	01.0277	360050	01.0641	360103	01.1887
340104	01.0201	350001	00.8961	350063	00.9545	360051	01.3010	360104	00.9907
340105	01.2495	350002	01.4299	350064	00.9623	360052	01.3563	360105	01.1544

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TABLE 3C.1 HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 17 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360107	01.0973	360165	01.0815	370011	00.9418	370077	01.1186	370157	00.9945
360108	01.0737	360166	00.9772	370012	00.9300	370078	01.3639	370158	01.0102
360109	01.0484	360167	00.8835	370013	01.3636	370079	00.9671	370159	01.1085
360112	01.3414	360168	00.9569	370014	01.1111	370080	01.0323	370161	01.0475
360113	01.1678	360169	00.9873	370015	01.1114	370082	00.9304	370163	00.9701
360114	01.0090	360170	01.0883	370016	01.2339	370083	01.0533	370165	01.0472
360115	01.1528	360171	01.1001	370017	00.9514	370084	01.0081	370166	00.9687
360116	01.0342	360172	01.1824	370018	01.2093	370085	00.9310	370168	00.8998
360118	01.2246	360174	01.0812	370019	01.0320	370086	01.0688	370169	01.0414
360119	01.0685	360175	01.1141	370020	01.1438	370089	01.2106	370170	01.0325
360120	00.8820	360176	01.1376	370021	00.9636	370090	00.9095	370171	01.0065
360121	01.0753	360177	01.0277	370022	01.1986	370091	01.3888	370172	00.9353
360122	01.1558	360178	01.1176	370023	01.1284	370092	00.9694	370173	01.1005
360123	01.1276	360179	01.1508	370025	01.2238	370093	01.4477	370174	00.8273
360124	01.1838	360180	01.8755	370026	01.2831	370094	01.1617	370176	01.1031
360125	01.0832	360184	01.0555	370028	01.4650	370095	01.0194	370177	00.9413
360126	01.1751	360185	01.1172	370029	01.1440	370096	01.1859	370178	00.9948
360127	00.9856	360186	00.9583	370030	01.1010	370097	01.2166	370179	00.9623
360128	01.1028	360187	01.1723	370032	01.1891	370099	00.9754	370180	01.1593
360129	00.9971	360188	01.1109	370033	01.0574	370100	00.9706	370182	00.8871
360130	01.0752	360189	01.1595	370034	01.1193	370103	01.0611	370183	01.0204
360131	01.1111	360192	01.2234	370035	01.3831	370105	01.8494	370184	01.2986
360132	01.0827	360193	01.1872	370036	00.9819	370106	01.2581	380001	01.3284
360133	01.2542	360194	01.1002	370037	01.5233	370107	00.9743	380002	01.1998
360134	01.3180	360195	01.1449	370038	01.0133	370108	01.0491	380003	01.1700
360135	01.0809	360197	01.0540	370039	01.1280	370110	00.9775	380004	01.6322
360136	00.9975	360200	01.0794	370040	01.0642	370112	00.9758	380005	01.1279
360137	01.3945	360203	01.0977	370041	01.0164	370113	01.0816	380006	01.1941
360139	01.0538	360204	01.0725	370042	00.9000	370114	01.4016	380007	01.4027
360140	01.0316	360210	01.1071	370043	00.9127	370117	01.0631	380008	01.0672
360141	01.7733	360211	01.0826	370045	01.0367	370121	01.1394	380009	01.5264
360142	01.0427	360212	01.2471	370046	01.0017	370122	00.8546	380010	01.1620
360143	01.1596	360213	01.0731	370047	01.1084	370123	01.1259	380011	01.0806
360144	01.1768	360218	01.2194	370048	00.9814	370125	00.9463	380013	01.0747
360145	01.2765	360230	01.2205	370049	01.1514	370126	01.0508	380014	01.1521
360147	01.1576	360231	01.0750	370050	00.9658	370130	01.0129	380017	01.5251
360148	01.1728	360232	01.1093	370051	01.0019	370131	00.9491	380018	01.4690
360149	01.0511	360234	01.1440	370054	01.1062	370133	01.0101	380019	01.2506
360150	01.1376	360236	01.0946	370056	01.1972	370136	00.9450	380020	01.2550
360151	01.1812	360238	01.0375	370057	01.1554	370138	00.9421	380021	01.1824
360152	01.2768	360239	01.1472	370059	01.1261	370139	01.0064	380022	01.1777
360153	01.0807	360240	01.2214	370060	01.0789	370140	00.9543	380023	01.2077
360154	01.0854	360241	00.7701	370061	00.9541	370141	01.2766	380024	01.1917
360155	01.1113	370001	01.4890	370063	01.0215	370144	01.2233	380025	01.2509
360156	01.1009	370002	01.0042	370064	00.9958	370146	01.0218	380026	01.1504
360159	01.1198	370004	01.0881	370065	01.1861	370148	01.2364	380027	01.1355
360161	01.1485	370005	00.9332	370069	01.0369	370149	01.1944	380029	01.0196
360162	01.1076	370006	01.1562	370071	00.9223	370153	01.0321	380030	00.9954
360163	01.4040	370007	01.1557	370072	00.9393	370154	00.9592	380031	00.9334
360164	01.0551	370008	01.1741	370076	01.1390	370156	00.9830	380033	01.4526

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
380035	01.2367	390006	01.4440	390059	01.2671	390116	01.2004	390173	01.0695
380036	01.0608	390007	01.1298	390060	01.1138	390117	01.0785	390174	01.4714
380037	01.1480	390008	01.1431	390061	01.2167	390118	01.0339	390176	01.1418
380038	01.1990	390009	01.3035	390062	01.1300	390119	01.1672	390177	00.9203
380039	01.2068	390010	01.0824	390063	01.4308	390121	01.1831	390178	01.2878
380040	01.0989	390011	01.1700	390064	01.1959	390122	01.0765	390179	01.1614
380041	00.8115	390012	01.1964	390065	01.1745	390123	01.1825	390180	01.2095
380042	01.0481	390013	01.1404	390066	01.1752	390125	01.1205	390181	01.0698
380043	00.9651	390014	01.0379	390067	01.3635	390126	01.1474	390183	01.0430
380044	01.0084	390015	01.0588	390068	01.1657	390127	01.1101	390184	01.0873
380045	01.1231	390016	01.0989	390069	01.1376	390128	01.1228	390185	01.1447
380047	01.3707	390017	01.0626	390070	01.1330	390130	00.9924	390186	01.0264
380048	00.9244	390018	01.1376	390071	01.0924	390131	01.1847	390187	01.0829
380050	01.2029	390019	01.0603	390072	01.0088	390132	01.0375	390188	01.0860
380051	01.2540	390020	01.0728	390073	01.1593	390133	01.2577	390189	01.0611
380052	01.1621	390021	01.0979	390074	01.1996	390135	01.1609	390191	01.1110
380055	01.1884	390022	01.1402	390075	01.1536	390136	01.1481	390192	01.0360
380056	00.9823	390023	01.1399	390076	01.1633	390137	01.0827	390193	01.0909
380059	00.9775	390024	00.7711	390077	01.2801	390138	01.2197	390194	01.0736
380060	01.2645	390025	00.8024	390078	01.0169	390139	01.3619	390195	01.3769
380061	01.3883	390026	01.2340	390079	01.6247	390142	01.4170	390196	01.1645
380062	00.9824	390027	01.4025	390080	01.1580	390143	00.9060	390197	01.1846
380063	01.1233	390028	01.5007	390081	01.1979	390145	01.0959	390198	01.1409
380064	01.1623	390029	01.3896	390083	01.1069	390146	01.1500	390199	01.1927
380065	01.1632	390030	01.0608	390084	01.0086	390147	01.1264	390200	01.0659
380066	01.1478	390031	01.1199	390086	01.0792	390148	01.0789	390201	01.2137
380068	01.0917	390032	01.1655	390088	01.2553	390149	01.1913	390203	01.2272
380069	01.0298	390034	01.0695	390090	01.4841	390150	01.1367	390204	01.1571
380070	00.9923	390035	01.1587	390091	01.0850	390151	01.2167	390205	01.1265
380071	01.1998	390036	01.1714	390092	01.0889	390152	01.0495	390206	01.2020
380072	00.9169	390037	01.1764	390093	01.0976	390153	01.1682	390209	00.9616
380075	01.2099	390039	01.0735	390095	01.1881	390154	01.1103	390211	01.0624
380077	01.0148	390040	01.0530	390096	01.1704	390155	01.2566	390213	00.9900
380078	01.1261	390041	01.1146	390097	01.2575	390156	01.1908	390215	01.0977
380079	01.1627	390042	01.1815	390098	01.4768	390157	01.1026	390217	01.0683
380081	00.9435	390043	01.0424	390100	01.5131	390158	01.2367	390219	01.1572
380082	01.2098	390044	01.3862	390101	01.1892	390159	01.1568	390220	01.1420
380083	01.1458	390045	01.2056	390102	01.2096	390160	01.0966	390222	01.1687
380084	01.2468	390046	01.2994	390103	01.0208	390161	00.9988	390223	01.5710
380087	01.0307	390047	01.3393	390104	01.1116	390162	01.1798	390224	00.9095
380088	01.1518	390048	01.1133	390106	01.0136	390163	01.1332	390225	01.1467
380089	01.2674	390049	01.2667	390107	01.1545	390164	01.4299	390226	01.3976
380090	01.2530	390050	01.3103	390108	01.1990	390165	01.0550	390228	01.1765
380091	01.2413	390051	01.8584	390109	01.1481	390166	01.1329	390229	01.2349
380094	00.9798	390052	01.0617	390110	01.1525	390167	01.1246	390231	01.2425
390001	01.1330	390054	01.1376	390111	01.6168	390168	01.1403	390232	01.1185
390002	01.1964	390055	01.4785	390112	01.1033	390169	01.1114	390233	01.2143
390003	01.1130	390056	01.1465	390113	01.1515	390170	01.5721	390234	01.1868
390004	01.1834	390057	01.2054	390114	00.9776	390171	01.0626	390235	01.5192
390005	01.0250	390058	01.2368	390115	01.1619	390172	01.1090	390236	01.0877

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 19 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
390237	01.4187	420017	00.9317	420080	01.1801	430054	00.9251	440034	01.1900
390238	00.8492	420018	01.4078	420081	00.9638	430056	00.9001	440035	01.0859
390242	01.1381	420019	01.1143	420082	01.1879	430057	00.9660	440038	00.3555
390244	00.9007	420020	01.1284	420083	01.1567	430060	00.9459	440039	01.4142
390245	01.2197	420022	01.0145	420084	00.7577	430062	00.8811	440040	00.9046
390246	01.1271	420023	01.1574	420085	01.1758	430064	00.9717	440041	00.9022
390247	01.0452	420026	01.6388	420086	01.1752	430065	00.9345	440046	01.0509
390249	01.0915	420027	01.1237	420087	01.3286	430066	00.9676	440047	00.9470
390252	00.8435	420028	00.9935	420088	01.1322	430072	01.0560	440048	01.3009
390256	01.5484	420029	02.1404	420089	01.1986	430073	01.0541	440049	01.3255
390258	01.1477	420030	01.0617	430004	01.0577	430076	01.0597	440050	01.0445
390260	01.1783	420031	00.9287	430005	01.1767	430077	01.2415	440051	00.9941
390261	01.5987	420032	00.9602	430007	01.0026	430079	01.0221	440052	00.8782
390262	01.2913	420033	01.1802	430008	01.1675	430080	00.8632	440053	01.1666
390263	01.2954	420035	00.6418	430009	01.1204	430081	00.9451	440054	00.4483
390265	01.1995	420036	01.1466	430010	01.0716	430082	00.9111	440055	01.0313
390266	01.1751	420037	01.1756	430011	01.2384	430083	00.8409	440056	00.9271
390267	01.1241	420038	01.0345	430012	01.2801	430084	00.8352	440057	00.9428
390268	01.1280	420039	01.0879	430013	01.1177	430085	00.9421	440058	01.0539
390270	01.1770	420040	01.2119	430014	01.1855	430086	00.9089	440059	01.0945
390272	01.8673	420042	01.0616	430015	01.0696	430087	00.8594	440060	01.0789
390275	00.7707	420043	01.1312	430016	01.2519	430089	01.0068	440061	01.1318
390276	00.5520	420044	01.1049	430017	01.1487	440001	01.0313	440063	01.1327
410001	01.1527	420048	01.0061	430018	00.9329	440002	01.3334	440064	00.9280
410002	01.0825	420049	01.0504	430020	00.9694	440003	01.0881	440065	01.0509
410004	01.2355	420050	00.9237	430022	00.8745	440005	00.9986	440067	00.9936
410005	01.2667	420051	01.4075	430023	00.9735	440006	01.1716	440068	01.0639
410006	01.2033	420053	01.0526	430024	01.0023	440007	00.9780	440069	01.1132
410007	01.3691	420054	01.0699	430025	00.9959	440008	00.9867	440070	00.9232
410008	01.0688	420055	01.0303	430026	00.9684	440009	00.9839	440071	01.1390
410009	01.1923	420056	01.1502	430027	01.5034	440010	01.0144	440072	01.0872
410010	00.9940	420057	01.0910	430028	00.9800	440011	01.1406	440073	01.1619
410011	01.1308	420059	01.1061	430029	00.9413	440012	01.1716	440074	00.9023
410012	01.3614	420061	01.0442	430030	01.1495	440014	00.9522	440078	00.9184
410013	01.1142	420062	01.0676	430031	00.9424	440015	01.4696	440079	00.8448
410014	01.1224	420064	01.0523	430033	01.1053	440016	00.9961	440081	01.1036
410016	01.0210	420065	01.1967	430034	01.0415	440017	01.3015	440082	01.6228
410811	01.0760	420066	00.9592	430036	01.0516	440018	01.1328	440083	00.9049
420002	01.2086	420067	01.0948	430037	00.9996	440019	01.3746	440084	01.0636
420003	01.1166	420068	01.1673	430038	01.0762	440020	00.9968	440087	00.8833
420004	01.5795	420069	01.0045	430039	00.9560	440022	01.1141	440090	00.9565
420005	01.0633	420070	01.1591	430040	00.9663	440023	00.9215	440091	01.3100
420006	01.1362	420071	01.2008	430041	00.9544	440024	01.0993	440095	00.9595
420007	01.3313	420072	00.8713	430042	00.9628	440025	01.0770	440100	00.9312
420009	01.2013	420073	01.1689	430043	01.0658	440026	01.1655	440102	01.0428
420010	01.0975	420074	00.9919	430044	00.9124	440029	01.1429	440103	01.0657
420011	01.0783	420075	00.9987	430047	01.0640	440030	01.0521	440104	01.3082
420014	01.0723	420076	00.9641	430048	01.0701	440031	01.0010	440105	00.8724
420015	01.1151	420078	01.3464	430049	00.9170	440032	00.9706	440109	01.0638
420016	01.2180	420079	01.3133	430051	00.9412	440033	01.0239	440110	01.0270

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PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
440111	01.1106	440182	00.8967	450045	01.1920	450111	01.2559	450178	00.9684
440113	01.0286	440183	01.1927	450046	01.2511	450112	01.1901	450179	01.0704
440114	01.0418	440184	01.1004	450047	01.1261	450113	01.0991	450181	00.9478
440115	01.0786	440185	01.0040	450048	01.0344	450115	01.0753	450182	00.9224
440117	00.8711	440186	00.9959	450050	01.0301	450116	01.2184	450183	01.1873
440120	01.1802	440187	00.9359	450051	01.5729	450118	01.2381	450184	01.3559
440121	01.1146	440189	01.2731	450052	01.1202	450119	01.2147	450185	00.9982
440125	01.2073	440191	01.0745	450053	01.0325	450121	01.2058	450187	01.3206
440128	00.9183	440192	01.0190	450054	01.4128	450122	00.9558	450188	00.9766
440130	01.0944	440193	00.9812	450055	01.1544	450123	01.1527	450190	01.1989
440131	01.0362	440194	01.0492	450056	01.3567	450124	01.4277	450191	01.2267
440132	00.9701	440196	00.9760	450057	01.1810	450126	01.1910	450192	01.0528
440133	01.3069	440197	01.2371	450058	01.3246	450127	00.9970	450193	02.0495
440134	01.0774	440200	00.9832	450059	01.1932	450128	01.1720	450194	01.0862
440135	01.1200	440203	00.9680	450060	01.1715	450130	01.3385	450195	01.2256
440136	01.0395	440204	01.0457	450063	01.0024	450131	01.2002	450196	01.1866
440137	01.0104	450002	01.2209	450064	01.3221	450132	01.3398	450197	01.2518
440141	00.8871	450004	01.0384	450065	01.0355	450133	01.2075	450200	01.2107
440142	00.8752	450005	00.9988	450066	01.4020	450134	01.1785	450201	00.9761
440143	00.9642	450007	01.2025	450068	01.3354	450135	01.3822	450203	01.1659
440144	00.9715	450008	01.2378	450070	01.0617	450137	01.1882	450206	01.0629
440145	00.9469	450010	01.2072	450072	01.1105	450140	00.9649	450207	01.2098
440146	00.9218	450011	01.2264	450073	01.0863	450141	01.0089	450208	01.1494
440147	00.9579	450013	01.3585	450074	01.1049	450142	01.1958	450209	01.2368
440148	00.9789	450014	01.0308	450076	01.1404	450143	01.0456	450210	01.0664
440149	00.9922	450015	01.3729	450077	00.9932	450144	01.1329	450211	01.1505
440150	01.1824	450016	01.4254	450078	01.0690	450145	01.0324	450213	01.2376
440151	01.0938	450018	01.3128	450079	01.2959	450146	00.9019	450214	01.1436
440152	01.2956	450019	01.1605	450080	01.1787	450147	01.1914	450217	01.0418
440153	00.8949	450020	01.0560	450081	01.1150	450148	01.2258	450218	01.0751
440154	00.8218	450021	01.5539	450082	01.0375	450149	01.2271	450219	01.0896
440156	01.2162	450022	00.9876	450083	01.3201	450150	01.0865	450221	01.0895
440157	00.8716	450023	01.3058	450084	01.1259	450151	01.0659	450222	01.1975
440159	01.1198	450024	01.1733	450085	01.0771	450152	01.2860	450224	01.1119
440160	00.9906	450025	01.3888	450087	01.2480	450153	01.3475	450229	01.3110
440161	01.4202	450027	01.1202	450090	01.1636	450154	01.1920	450230	01.0729
440162	00.9878	450028	01.2406	450092	01.1507	450155	01.2513	450231	01.4223
440164	01.2283	450029	01.1826	450094	01.1517	450157	01.0986	450233	01.0223
440167	01.1748	450031	01.1462	450095	01.0855	450160	00.8602	450234	00.9436
440168	01.0023	450032	01.1725	450096	01.3878	450162	01.4067	450235	01.1213
440170	01.0337	450033	01.4648	450097	01.2978	450163	01.0723	450236	01.0756
440171	00.9884	450034	01.3620	450098	01.0566	450164	00.9920	450237	01.3613
440173	01.1283	450035	01.2984	450099	01.1081	450165	01.0567	450239	01.1291
440174	00.9384	450037	01.2514	450101	01.2554	450166	01.0078	450241	00.9833
440175	01.0290	450039	01.1440	450102	01.4086	450169	00.9182	450242	00.9802
440176	01.1285	450040	01.4163	450104	01.1385	450170	01.1757	450243	01.0558
440177	00.9328	450041	01.0134	450107	01.2465	450174	01.1798	450246	00.9833
440178	01.1259	450042	01.4312	450108	01.0458	450175	01.1042	450248	01.0690
440180	00.9274	450043	01.2081	450109	01.0613	450176	01.1274	450249	01.0296
440181	01.0476	450044	01.4660	450110	01.2145	450177	01.1091	450250	00.9642

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450253	01.0515	450341	00.9231	450438	01.1783	450561	01.3188	450638	01.9541
450256	00.9583	450342	00.9966	450440	01.0852	450563	01.1039	450639	01.2179
450258	00.8456	450343	01.1120	450446	01.0122	450565	01.1391	450641	00.9309
450259	01.1611	450346	01.1993	450447	01.1842	450568	01.0532	450643	01.0892
450263	01.1707	450347	01.1342	450450	01.0777	450569	01.0850	450644	02.1571
450264	00.9388	450348	01.1272	450451	01.0735	450570	00.9975	450646	01.2023
450268	01.1109	450349	01.2159	450454	00.9771	450571	01.2704	450647	01.9782
450269	00.9680	450351	01.2064	450457	01.3952	450573	01.0931	450648	01.1212
450270	01.0157	450352	01.1987	450458	00.9102	450574	00.9237	450649	01.0985
450271	01.1635	450353	01.0554	450459	01.2219	450575	01.0720	450651	01.2772
450272	01.1487	450355	01.0324	450460	00.9618	450578	00.9846	450652	00.9687
450275	01.0249	450357	01.2172	450462	01.3737	450580	01.1252	450653	01.2399
450276	01.0630	450358	01.6389	450464	00.9602	450581	01.1254	450654	01.0246
450278	00.9931	450359	00.9403	450465	01.1416	450583	00.9962	450656	01.1870
450280	01.2790	450362	00.9702	450467	01.0756	450584	01.2365	450658	01.0580
450281	01.3134	450365	01.1306	450469	01.2469	450586	01.0281	450659	01.3219
450282	00.8378	450366	01.1854	450472	01.1439	450587	01.1475	450660	01.4741
450283	01.0180	450369	01.1527	450473	00.9930	450588	00.9191	450661	01.0447
450286	01.2328	450370	01.0531	450475	01.1425	450590	00.9270	450662	01.1936
450288	01.1535	450371	01.0640	450476	00.9936	450591	01.1093	450665	01.0290
450289	01.0947	450372	01.2658	450484	01.1433	450595	01.0635	450666	01.1482
450292	01.1474	450373	01.0790	450486	01.0699	450596	01.1246	450667	00.9445
450293	00.9491	450374	00.8306	450488	01.0359	450597	01.1132	450668	01.4308
450296	01.0366	450376	01.3289	450489	01.1867	450600	00.9925	450669	01.1842
450297	00.9925	450378	01.2288	450492	00.9782	450603	00.7833	450670	01.1262
450299	01.2105	450379	01.2302	450493	01.0186	450604	01.2432	450671	00.8384
450300	00.9574	450381	01.0670	450497	01.1190	450605	01.2192	450672	01.3842
450303	00.9665	450388	01.4260	450498	01.0156	450607	01.0401	450673	01.0193
450305	00.8652	450389	01.1339	450508	01.2305	450609	01.0079	450674	00.9043
450306	01.0544	450391	01.1770	450513	01.0673	450610	01.2998	450675	01.1950
450307	01.1475	450393	01.2654	450514	01.0902	450613	01.0497	450677	01.2446
450309	01.1743	450394	01.2000	450517	00.9607	450614	01.0367	450678	01.2066
450311	00.9595	450395	01.0657	450518	01.1542	450615	01.0089	450679	01.0001
450315	01.1823	450399	01.0420	450523	01.3109	450616	02.7296	450681	01.3261
450317	00.9658	450400	01.0812	450527	01.0807	450617	01.2450	450682	01.1411
450320	01.2128	450402	01.0448	450530	01.2323	450620	01.1096	450683	01.2999
450321	00.9862	450403	01.3016	450534	00.9910	450621	00.9696	450684	01.1792
450322	00.8796	450410	01.0519	450535	01.1864	450623	01.0259	450685	01.1346
450324	01.2877	450411	01.0462	450537	01.2293	450624	01.0998	450686	01.3081
450325	01.0742	450415	01.1948	450538	01.2717	450626	01.1733	450687	01.0713
450327	00.9648	450416	01.2271	450539	01.2181	450627	01.2792	450688	01.0797
450328	00.9072	450417	00.9132	450544	01.1342	450628	00.9798	450690	01.2467
450330	01.1489	450418	01.2749	450545	01.1990	450629	00.9833	450691	01.2042
450331	01.0088	450419	01.1947	450546	01.2107	450630	01.5654	450694	01.1030
450332	01.2526	450422	00.7865	450547	00.9595	450631	01.4832	450696	01.2488
450333	01.0154	450423	01.2600	450550	01.1312	450632	00.9304	450697	01.2217
450334	01.0234	450424	01.1113	450551	01.0863	450633	01.3955	450698	00.9101
450337	01.0898	450425	01.0002	450557	00.9832	450634	01.2009	450700	00.9829
450338	00.8798	450429	01.0105	450558	01.4817	450635	00.8396	450702	01.2044
450340	01.1773	450431	01.3361	450559	00.9869	450637	01.1836	450703	01.0656

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
3 CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 22 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450704	01.1375	460018	00.8671	490012	01.0125	490083	00.7418	500011	01.1939
450705	00.9454	460019	00.9857	490013	01.0616	490084	01.0521	500012	01.3858
450706	01.2094	460020	00.9774	490014	01.3999	490085	01.0666	500014	01.4728
450709	01.1316	460021	01.1969	490015	01.2048	490088	01.0763	500015	01.2446
450711	01.3445	460022	00.9501	490017	01.1678	490089	01.0352	500016	01.3455
450712	00.8230	460023	01.1577	490018	01.1081	490090	01.1170	500017	01.1440
450713	01.2007	460024	00.9998	490019	01.1390	490091	01.2180	500019	01.1401
450715	01.1919	460025	00.9208	490020	01.0358	490092	01.0762	500020	01.2144
450716	01.1091	460026	00.9914	490021	01.1127	490093	01.1833	500021	01.3100
450717	01.2023	460027	00.9392	490022	01.1754	490094	01.1013	500023	01.1089
450718	01.1127	460029	00.9537	490023	01.1354	490095	01.1942	500024	01.3002
450719	01.1780	460030	01.0165	490024	01.4011	490097	01.1045	500025	01.8907
450722	00.9829	460032	01.0060	490027	01.0356	490098	01.1155	500026	01.2425
450723	01.2107	460033	00.9290	490028	01.1351	490099	00.9694	500027	01.4694
450724	01.3393	460035	00.9117	490029	01.0945	490100	01.2151	500028	00.9748
450725	01.1137	460036	00.9503	490030	01.1461	490101	01.0743	500029	00.9329
450726	00.9778	460037	00.9276	490031	01.0686	490104	00.8090	500030	01.3233
450727	01.1892	460039	00.9011	490032	01.5685	490105	00.8604	500031	01.1671
450728	01.1359	460041	01.1713	490033	01.1685	490106	00.8847	500033	01.2295
450729	01.0380	460042	01.2767	490035	01.0563	490107	01.1020	500034	01.0643
450730	01.1398	460043	01.1504	490037	01.0944	490108	00.8586	500035	01.3097
450732	01.0629	460044	01.1242	490038	01.1038	490109	00.9716	500036	01.2075
450733	01.2258	460046	01.0912	490040	01.1394	490110	01.0463	500037	01.0823
450734	01.0781	470001	01.1484	490041	01.1343	490111	01.0623	500039	01.1888
450735	00.9061	470003	01.6184	490042	01.0986	490112	01.3761	500040	01.1225
450736	00.9025	470004	01.0754	490043	01.1604	490113	01.0838	500041	01.1833
450737	00.7386	470005	01.1940	490044	01.1648	490114	01.0315	500042	01.2178
450739	01.1898	470006	01.1405	490045	01.1337	490115	01.0584	500043	01.1443
450740	00.9847	470008	01.1307	490046	01.2326	490116	01.0212	500044	01.7199
450741	00.8762	470010	01.0926	490047	01.1171	490117	00.9608	500045	01.1173
450742	01.1486	470011	01.2469	490048	01.2132	490118	01.4340	500046	01.2619
450743	01.1347	470012	01.1585	490050	01.1471	490119	01.1545	500048	00.8703
450744	01.0244	470013	01.0620	490052	01.3432	490120	01.1902	500049	01.2944
450746	00.6032	470015	01.1505	490053	01.1971	490122	01.1096	500050	01.1553
460001	01.4813	470016	01.0420	490054	01.0775	490123	01.1029	500051	01.3722
460003	01.3648	470018	01.0923	490055	00.9146	490124	01.1520	500052	01.1656
460004	01.4552	470020	00.9809	490057	01.1713	490125	00.9683	500053	01.0960
460005	01.2170	470023	01.2370	490059	01.2563	490126	01.1057	500054	01.6779
460006	01.1971	470024	01.1157	490060	00.9263	490127	00.9214	500055	00.9755
460007	01.1798	490001	00.9365	490063	01.3991	490129	01.1035	500057	01.1937
460008	01.1366	490002	00.9489	490066	01.0425	490130	01.1493	500058	01.2635
460009	01.5282	490003	00.7702	490067	01.1002	490131	00.8999	500059	01.2818
460010	01.6716	490004	01.1835	490069	01.1696	500001	01.3005	500060	01.0978
460011	01.1295	490005	01.2772	490071	01.1734	500002	01.2974	500061	01.0173
460012	01.4150	490006	01.1653	490073	01.1582	500003	01.2333	500062	01.0613
460013	01.3756	490007	01.5684	490074	01.2691	500005	01.4913	500064	01.3079
460014	01.0054	490008	01.0265	490075	01.1494	500007	01.2413	500065	01.1671
460015	01.2014	490009	01.4519	490077	01.1290	500008	02.0000	500066	00.8466
460016	00.9249	490010	01.0400	490078	00.9150	500009	01.2720	500068	00.9977
460017	01.2357	490011	01.1796	490079	01.1149	500010	01.2028	500069	01.0222

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
1 CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
500070	01.0810	510004	00.9690	510068	01.1139	520041	01.0644	520107	01.1808
500071	01.0750	510005	00.9964	510070	01.0638	520042	01.0873	520109	01.0346
500072	01.1522	510006	01.1930	510071	01.2294	520043	01.4561	520110	01.0969
500073	01.1116	510007	01.2840	510072	01.0699	520044	01.2788	520111	01.1142
500074	01.1592	510008	01.1594	510074	00.9903	520045	01.4232	520112	01.0702
500075	01.3296	510009	01.0984	510076	00.9880	520047	00.9642	520113	01.1970
500076	01.2843	510011	00.9341	510077	00.9957	520048	01.2728	520114	01.1171
500077	01.2058	510012	01.0641	510080	00.9531	520049	01.6835	520115	01.1478
500078	01.2483	510013	01.1186	510081	01.0123	520051	01.6583	520116	01.1118
500079	01.1405	510014	01.1956	510082	00.9533	520053	01.0400	520117	01.0436
500080	00.9319	510015	00.9851	510084	00.9704	520054	01.1090	520118	00.9314
500084	01.0148	510016	01.0214	510085	01.1440	520056	01.1216	520120	01.0769
500085	01.0666	510018	01.1296	510086	00.9915	520057	01.1019	520121	00.9795
500086	01.2174	510019	00.8991	520001	01.2529	520058	01.0911	520122	01.0850
500087	01.2497	510020	01.1103	520002	01.2502	520059	01.2332	520123	01.0707
500088	01.2552	510022	01.3875	520003	01.1034	520060	01.1409	520124	01.0640
500089	01.0836	510023	01.0231	520004	01.2461	520062	01.1901	520126	00.9415
500090	00.8773	510024	01.1644	520006	01.1110	520063	01.2026	520127	00.9213
500092	01.0464	510025	00.8896	520007	01.1267	520064	01.3677	520130	00.9761
500093	01.1044	510026	00.9526	520008	01.1784	520066	01.1889	520131	01.1081
500094	01.1156	510027	01.0479	520009	01.2825	520068	00.9664	520132	01.1743
500096	01.0963	510028	01.0724	520010	01.0722	520069	01.2228	520134	01.0626
500097	01.0563	510029	01.1296	520011	01.1005	520070	01.2315	520135	00.9664
500098	00.8679	510030	01.0850	520012	00.9893	520071	01.1406	520136	01.3643
500100	01.0694	510031	01.1602	520013	01.1942	520074	01.0787	520138	01.6742
500101	00.9889	510033	01.1855	520014	01.1798	520075	01.2519	520139	01.2368
500102	00.9353	510035	01.0041	520015	01.1498	520076	01.1801	520140	01.2972
500104	01.1115	510036	01.1889	520016	01.0450	520077	01.0582	520141	01.0595
500106	00.9084	510038	01.0632	520017	01.0908	520078	01.2009	520142	00.9755
500107	01.1470	510039	01.1500	520018	01.0995	520081	01.2222	520143	01.0498
500108	01.4870	510040	01.0148	520019	01.1873	520082	01.1959	520144	00.9924
500109	01.1319	510043	01.0313	520020	01.3455	520083	01.4150	520145	01.0606
500110	01.2136	510045	00.8518	520021	01.1664	520084	01.0788	520146	01.1485
500114	01.2679	510046	01.1937	520022	01.0775	520087	01.4083	520148	01.1427
500118	01.1835	510047	01.1871	520024	01.0060	520088	01.1850	520149	01.0580
500119	01.2391	510048	01.1011	520025	01.1231	520089	01.2473	520151	01.0567
500122	01.2374	510050	01.1489	520026	01.1469	520090	01.1192	520152	01.1365
500123	00.8832	510053	00.9963	520027	01.2090	520091	01.2937	520153	01.0414
500124	01.2340	510054	00.9141	520028	01.3124	520092	01.1250	520154	01.1306
500125	01.0885	510055	01.1863	520029	00.9959	520094	01.3553	520156	01.0865
500129	01.5233	510058	01.1654	520030	01.3411	520095	01.2003	520157	01.0625
500132	01.0024	510059	00.7718	520031	01.1592	520096	01.2171	520159	00.9446
500133	01.1782	510060	01.0494	520032	01.1592	520097	01.2031	520160	01.6267
500135	01.1291	510061	01.0253	520033	01.2190	520098	01.5260	520161	01.0273
500138	01.1139	510062	01.1915	520034	01.2132	520100	01.1010	520167	01.1771
500139	01.0375	510063	01.1823	520035	01.1739	520101	01.1283	520170	01.1753
500140	00.9393	510064	01.0163	520037	01.5448	520102	01.1389	520171	00.9446
500141	01.1554	510065	00.9947	520038	01.1629	520103	01.2525	520173	01.1330
510001	01.3442	510066	01.0806	520039	01.0352	520104	00.9644	520174	01.3625
510002	01.1429	510067	01.1587	520040	01.2211	520105	00.9443	520175	00.7370

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1987 PAGE 24 OF 24

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
520177	01.3271								
520178	01.1740								
520184	00.7449								
520185	00.9327								
530001	01.1106								
530002	01.1422								
530003	00.8915								
530004	00.9731								
530005	01.0323								
530006	01.0939								
530007	01.1810								
530008	01.0875								
530009	01.0362								
530010	01.0428								
530011	01.0903								
530012	01.3738								
530014	01.1101								
530015	01.0881								
530016	01.1480								
530017	00.9137								
530018	00.9482								
530019	00.8794								
530022	01.0063								
530023	00.9446								
530024	01.0033								
530025	01.1647								
530026	01.1026								
530027	00.9423								
530029	01.0527								
530031	00.8581								
530032	00.9935								

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1987.

BILLING CODE 4120-01-C

TABLE 4A.—WAGE INDEX FOR URBAN AREAS

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Abilene, TX	0.8256
Taylor, TX	
Aguadilla, PR	0.4624
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9669
Portage, OH	
Summit, OH	
Albany, GA	0.7847
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8759
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0021
Bernalillo, NM	
Alexandria, LA	0.7793
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9944
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northhampton, PA	
Altoona, PA	0.9581
Blair, PA	
Amarillo, TX	0.9683
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA *	1.2259
Orange CA	
Anchorage, AK	1.4424
Anchorage, AK	
Anderson, IN	0.9062
Henry, IN	
Madison, IN	
Anderson, SC	0.7855
Anderson, SC	
Ann Arbor, MI	1.1559
Lenawee	
Washtenaw, MI	
Anniston, AL	0.7732
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9580
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.4401
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8735
Buncombe, NC	
Athens, GA	0.7774
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA *	0.9360

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	0.9919
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.8841
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9950
Kane, IL	
Kendall, IL	
Austin, TX	1.0371
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0957
Kern, CA	
Baltimore, MD *	0.9935
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9135
Penobscot, ME	
Baton Rouge, LA	0.8146
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9710
Barry, MI	
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9364
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	0.9526
Colombiana, OH	
Beaver, PA	
Lawrence, PA	
Bellingham, WA	1.0923
Whatcom, WA	
Benton Harbor, MI	0.8496
Berrien, MI	
Cass, MI	
Bergen-Passaic, NJ*	1.0552
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9953
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8089
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9279

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Broome, NY	
Tioga, NY	
Birmingham, AL	0.9419
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.9337
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.9176
Monroe, IN	
Owen, IN	
Bloomington-Normal, IL	0.9725
McLean, IL	
Boise City, ID	1.0241
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA*	1.0645
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0849
Boulder, CO	
Bradenton, FL	0.8996
Manatee, FL	
Brazoria, TX	0.8495
Brazoria, TX	
Bremerton, WA	0.9642
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1367
Fairfield, CT	
Brownsville-Harlingen, TX	0.8685
Cameron, TX	
Bryan-College Station, TX	0.9810
Brazos, TX	
Buffalo, NY	0.9463
Erie, NY	
Burlington, NC	0.7688
Alamance, NC	
Burlington, VT	0.9458
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4002
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8967
Carroll, OH	
Stark, OH	
Casper, WY	0.9343
Natrona, WY	
Cedar Rapids, IA	0.8974
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8908
Champaign, IL	
Charleston, SC	0.8604
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9715
Kanawha, WV	
Lincoln, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC*	0.8443

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TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.8909
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.8944
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.8649
Laramie, WY	
Chicago, IL*	1.0578
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0640
Butte, CA	
Cincinnati, OH-KY-IN*	1.0310
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7321
Christian, KY	
Montgomery, TN	
Cleveland, OH*	1.0542
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0336
El Paso, CO	
Columbia, MO	1.0453
Boone, MO	
Columbia, SC	0.8331
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7399
Russell, AL	
Chattahoochee, GA	
Muscogee, GA	
Columbus, OH*	0.9540
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8349
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.9186
Allegany, MD	
Mineral, WV	
Dallas, TX*	0.9038

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7684
Caswell, NC	
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.9514
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9990
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Preble, OH	
Daytona Beach, FL	0.9549
Volusia, FL	
Decatur, IL	0.8967
Macon, IL	
Denver, CO*	1.1843
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9781
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI*	1.0862
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7949
Dale, AL	
Houston, AL	
Dubuque, IA	0.9525
Dubuque, IA	
Duluth, MN-WI	0.9672
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8830
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.9676
El Paso, TX	
Elkhart-Goshen, IN	0.9264
Elkhart, IN	
Elmira, NY	0.9200
Chemung, NY	
Enid, OK	0.9253
Garfield, OK	
Erie, PA	0.9637
Erie, PA	
Eugene-Springfield, OR	1.0272
Lane, OR	
Evansville, IN-KY	1.0376
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0112
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8084

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Cumberland, NC	
Harnett, NC	
Fayetteville-Springdale, AR	0.7436
Washington, AR	
Flint, MI	1.1654
Genesee, MI	
Shiawassee, MI	
Florence, AL	0.7137
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.7759
Florence, SC	
Fort Collins-Loveland, CO	1.0366
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL*	1.0334
Broward, FL	
Fort Myers-Cape Coral, FL	0.9068
Lee, FL	
Fort Pierce, FL	0.9831
Indian River, FL	
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.8813
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8241
Okaloosa, FL	
Fort Wayne, IN	0.9073
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX*	0.9804
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1217
Fresno, CA	
Gadsden, AL	0.8585
Etowah, AL	
Gainesville, FL	0.8791
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0698
Galveston, TX	
Gary-Hammond, IN	1.0566
Lake, IN	
Porter, IN	
Glens Falls, NY	0.8799
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9607
Grand Forks, ND	
Grand Rapids, MI	1.0149
Allegan, MI	
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9910
Cascade, MT	
Greeley, CO	1.0268
Weld, CO	
Green Bay, WI	0.9731
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.8645
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.9242

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.8778
Washington, MD	
Hamilton-Middletown, OH	0.9284
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0260
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT*	1.1582
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8594
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1449
Honolulu, HI	
Houma-Thibodaux, LA	0.7989
Lafourche, LA	
Terrebonne, LA	
Houston, TX*	0.9457
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9943
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8189
Madison, AL	
Marshall, AL	
Indianapolis, IN*	0.9981
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.1089
Johnson, IA	
Jackson, MI	0.8859
Jackson, MI	
Jackson, MS	0.8126
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7814
Madison, TN	
Jacksonville, FL	0.9665
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7371
Onslow, NC	
Janesville-Beloit, WI	0.9089
Rock, WI	
Jersey City, NJ	1.0844
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8089

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Bristol, VA	
Washington, VA	
Johnstown, PA	0.9215
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0488
Grundy, IL	
Will, IL	
Joplin, MO	0.8657
Barper, Mo	
Newton, MO	
Kalamazoo, MI	1.0666
Kalamazoo, MI	
Van Buren, MI	
Kankakee, IL	0.9389
Kankakee, IL	
Kansas City, KS-MO*	1.0164
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0839
Kenosha, WI	
Killeen-Temple, TX	1.1208
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8281
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9478
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.9766
LaCrosse, WI	
Lafayette, LA	0.8697
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.9847
Clinton, IN	
Tippecanoe, IN	
Lake Charles, LA	0.8864
Calcasieu, LA	
Lake County, IL	1.0632
Lake, IL	
Lakeland-Winter Haven, FL	0.8348
Polk, FL	
Lancaster, PA	1.0865
Lancaster, PA	
Lansing-East Lansing, MI	1.0374
Clinton, MI	
Eaton, MI	
Ingham, MI	
Ionia, MI	
Laredo, TX	0.7413
Webb, TX	
Las Cruces, NM	0.8839

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Dona Ana, NM	
Las Vegas, NV	1.1227
Clark, NV	
Lawrence, KS	0.9081
Douglas, KS	
Lawton, OK	0.9307
Comanche, OK	
Lewiston-Auburn, ME	0.9238
Androscoggin, ME	
Lexington-Fayette, KY	0.9238
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.9173
Allen, OH	
Auglaize, OH	
Van Wert, OH	
Lincoln, NE	0.9497
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8389
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8813
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.9429
Lorain, OH	
Los Angeles-Long Beach, CA*	1.2505
Los Angeles, CA	
Louisville, KY-IN	0.9618
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.9669
Lubbock, TX	
Lynchburg, VA	0.9059
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.7899
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0745
Dane, WI	
Manchester-Nashua, NH	0.9454
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8814
Morrow, OH	
Richland, OH	
Mayaguez, PR	0.4942
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San Germain, PR	
McAllen-Edinburg-Mission, TX	0.7734
Hidalgo, TX	
Medford, OR	0.9722
Jackson, OR	
Melbourne-Titusville, FL	0.9038
Brevard, FL	
Memphis, TN-AR-MS	0.9409

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0126
Merced, CA	
Miami-Hialeah, FL*	1.0298
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0000
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0586
Midland, TX	
Milwaukee, WI*	1.0166
Jefferson, WI	
Milwaukee, WI	
Ozaukee, WI	
Walworth, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI*	1.1427
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8294
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0776
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9455
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.8208
Ouachita, LA	
Montgomery, AL	0.8026
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.9722
Delaware, IN	
Muskegon, MI	0.9976
Muskegon, MI	
Naples, FL	1.0972
Collier, FL	
Nashville, TN	0.9957
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY*	1.2194
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9547
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0646
New Haven, CT	
New London-Norwich, CT	1.0746
New London, CT	
New Orleans, LA*	0.9420
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY*	1.2277
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ*	1.0957
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8937
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA*	0.8334
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA*	1.4125
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8201
Marion, FL	
Odessa, TX	0.8647
Ector, TX	
Oklahoma City, OK	0.9015
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0516
Thurston, WA	
Omaha, NE-IA	0.8881
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.8904
Orange, NY	
Orlando, FL	0.9180
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.9016
Daviess, KY	
Oxnard-Ventura, CA	1.4059
Ventura, CA	
Panama City, FL	0.7957
Bay, FL	
Parkersburg-Marietta, WV-OH	0.9130
Washington, OH	
Wood, WV	
Pascagoula, OH	0.8812
Jackson, MS	
Pensacola, FL	0.8310
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.9514
Mason, IL	
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ*	1.0852
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ*	1.0088
Maricopa, AZ	
Pine Bluff, AR	0.8048
Jefferson, AR	
Pittsburgh, PA*	1.0181
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0315
Berkshire, MA	
Ponce, PR	0.5515
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9688
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR*	1.1296
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	0.9467
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	0.9798
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI*	0.9905
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	0.8948
Utah, UT	
Pueblo, CO	0.9562
Pueblo, CO	
Racine, WI	0.9249
Racine, WI	
Raleigh-Durham, NC	0.9463
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8409
Pennington, SD	
Reading, PA	0.9163
Berks, PA	
Redding, CA	0.9972
Shasta, CA	
Reno, NV	1.1338
Washoe, NV	
Richland-Kennewick, WA	0.9790
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.8826
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA*	1.1373
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8222
Bedford, VA	
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0441
Olmsted, MN	
Rochester, NY	0.9444
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9677
Boone, IL	
Winnebago, IL	
Sacramento, CA*	1.2159
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0782
Bay, MI	
Midland, MI	
Saginaw, MI	
Tuscola, MI	
St. Cloud, MN	0.9961
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.8754
Buchanan, MO	
St. Louis, MO-IL*	1.0182
Clinton, IL	
Jersey, IL	
Macoupin, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0576
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2673
Monterey, CA	
Salt Lake City-Ogden, UT*	0.9338
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8456
Tom Green, TX	
San Antonio, TX*	0.8394

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents)	Wage index
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA*	1.2453
San Diego, CA	
San Francisco, CA*	1.4454
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA*	1.4808
Santa Clara, CA	
San Juan, PR*	0.5402
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1806
Santa Barbara, CA	
Santa Cruz, CA	1.2414
Santa Cruz, CA	
Santa Fe, NM	0.9556
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.4293
Sonoma, CA	
Sarasota, FL	0.9025
Charlotte, FL	
Sarasota, FL	
Savannah, GA	0.8476
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.9306
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA*	1.0980
King, WA	
Snohomish, WA	
Sharon, PA	0.9276
Mercer, PA	
Sheboygan, WI	0.9396
Sheboygan, WI	
Sherman-Denison, TX	0.8514
Grayson, TX	
Shreveport, LA	0.9004
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.9091
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.9561
Minnehaha, SD	
South Bend-Mishawaka, IN	0.9782
St. Joseph, IN	
Spokane, WA	1.0841
Spokane, WA	
Springfield, IL	0.9666
Christian, IL	
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8930
Christian, MO	
Greene, MO	
Springfield, MA	1.0112
Hampden, MA	
Hampshire, MA	
State College, PA	1.0538
Centre, PA	
Steubenville-Weirton, OH-WV	0.9187
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1454
San Joaquin, CA	
Syracuse, NY	0.9630
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0320
Pierce, WA	
Tallahassee, FL	0.8173
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL*	0.9062
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.9277
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	0.8056
Miller, AR	
Bowie, TX	
Toledo, OH	1.0736
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9799
Jefferson, KS	
Shawnee, KS	
Trenton, NJ	1.0384
Mercer, NJ	
Tucson, AZ	0.9647
Pima, AZ	
Tulsa, OK	0.9224
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.9490
Tuscaloosa, AL	
Tyler, TX	0.9272
Smith, TX	
Utica-Rome, NY	0.8158
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2366
Napa, CA	
Solano, CA	
Vancouver, WA	1.0546
Clark, WA	
Victoria, TX	0.8317
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9878
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.2989

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk.]

Urban area (Constituent Counties or County Equivalents)	Wage index
Tulare, CA	
Waco, TX	0.8650
McLennan, TX	
Washington, DC-MD-VA*	1.0815
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Jefferson, WV	
Waterloo-Cedar Falls, IA	0.9524
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9687
Marathon, WI	
West Palm Beach-Boca Raton, Delray Beach, FL	0.9541
Palm Beach, FL	
Wheeling, WV-OH	0.8615
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0299
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8375
Wichita, TX	
Williamsport, PA	0.9152

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk.]

Urban area (Constituent Counties or County Equivalents)	Wage index
Lycoming, PA	
Wilmington, BE-NJ-MD	1.0353
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8256
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9435
Worcester, MA	
Yakima, WA	0.9890
Yakima, WA	
York, PA	0.9471
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0088
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0163
Sutter, CA	
Yuba, CA	

TABLE 4B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7019
Alaska	1.3693
Arizona	0.8545
Arkansas	0.7042
California	1.0215
Colorado	0.8515
Connecticut	1.0248
Delaware	0.8392
Florida	0.8082
Georgia	0.7560
Hawaii	0.8904
Idaho	0.8119

TABLE 4B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Illinois	0.8052
Indiana	0.8079
Iowa	0.7991
Kansas	0.7906
Kentucky	0.7986
Louisiana	0.7620
Maine	0.8293
Maryland	0.8023
Massachusetts	1.0208
Michigan	0.9092
Minnesota	0.8095
Mississippi	0.7228
Missouri	0.7507
Montana	0.8580
Nebraska	0.7795
Nevada	0.8541
New Hampshire	0.8626
New Jersey [1]	
New Mexico	0.8107
New York	0.8117
North Carolina	0.7884
North Dakota	0.8457
Ohio	0.8068
Oklahoma	0.7896
Oregon	0.9080
Pennsylvania	0.8625
Puerto Rico	0.5489
Rhode Island [1]	
South Carolina	0.7156
South Dakota	0.7613
Tennessee	0.7096
Texas	0.7527
Utah	0.8680
Vermont	0.8457
Virginia	0.7910
Washington	0.9892
West Virginia	0.8506
Wisconsin	0.8480
Wyoming	0.8981

[1] All counties within the State are classified urban.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG		CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.4415	18.7	13.9	38
2	01	SURG		CRANIOTOMY FOR TRAUMA AGE >17	4.0382	18.9	12.8	37
3	01	SURG	*	CRANIOTOMY AGE 0-17	2.9183		12.7	37
4	01	SURG		SPINAL PROCEDURES	2.6175	16.4	12.0	36
5	01	SURG		EXTRACRANIAL VASCULAR PROCEDURES	1.5632	7.8	6.5	30
6	01	SURG		CARPAL TUNNEL RELEASE	.4508	2.6	2.0	16
7	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	2.7264	21.6	11.5	35
8	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.7451	5.2	3.3	27
9	01	MED		SPINAL DISORDERS & INJURIES	1.2649	10.6	7.0	31
10	01	MED		NERVOUS SYSTEM NEOPLASMS WITH CC	1.2403	11.5	7.8	32
11	01	MED		NERVOUS SYSTEM NEOPLASMS W/O CC	.7866	7.5	5.0	29
12	01	MED		DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9294	9.8	6.9	31
13	01	MED		MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.9226	9.6	7.4	31
14	01	MED		SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2376	10.4	7.5	31
15	01	MED		TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6370	5.4	4.2	28
16	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0540	8.9	6.6	31
17	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6320	6.0	4.5	29
18	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.9471	8.5	6.2	30
19	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6110	5.9	4.3	28
20	01	MED		NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.7056	11.6	7.9	32
21	01	MED		VIRAL MENINGITIS	1.3689	9.6	7.3	31
22	01	MED		HYPERTENSIVE ENCEPHALOPATHY	.7067	5.7	4.5	29
23	01	MED		NONTRAUMATIC STUPOR & COMA	.9405	6.7	4.5	28
24	01	MED		SEIZURE & HEADACHE AGE >17 WITH CC	.9555	7.3	5.3	29
25	01	MED		SEIZURE & HEADACHE AGE >17 W/O CC	.5367	4.6	3.6	28
26	01	MED		SEIZURE & HEADACHE AGE 0-17	.9521	5.2	3.1	27
27	01	MED		TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5858	9.2	4.7	29
28	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.1966	9.3	5.9	30
29	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5953	5.2	3.5	28
30	01	MED	*	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3539		2.0	17
31	01	MED		CONCUSSION AGE >17 WITH CC	.6630	6.0	4.2	28
32	01	MED		CONCUSSION AGE >17 W/O CC	.4066	3.7	2.8	26
33	01	MED	*	CONCUSSION AGE 0-17	.2457		1.6	9
34	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.2633	9.1	6.1	30
35	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5817	5.4	3.9	28

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG	RETINAL PROCEDURES	.6603	3.4	2.9	16
37	02	SURG	ORBITAL PROCEDURES	.7319	4.3	3.0	27
38	02	SURG	PRIMARY IRIS PROCEDURES	.3685	2.8	2.2	17
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4739	2.0	1.7	7
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4768	2.7	2.0	17
41	02	SURG *	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657		1.6	7
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6458	3.0	2.4	17
43	02	MED	HYPHEMA	.3721	4.6	3.7	28
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6406	7.0	5.8	30
45	02	MED	NEUROLOGICAL EYE DISORDERS	.5549	4.3	3.4	27
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.6331	5.8	3.9	28
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.3658	3.6	2.6	27
48	02	MED *	OTHER DISORDERS OF THE EYE AGE 0-17	.4018		2.9	27
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	2.8283	15.3	11.0	35
50	03	SURG	SIALOADENECTOMY	.6539	3.2	2.6	17
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5844	3.0	2.4	17
52	03	SURG	CLEFT LIP & PALATE REPAIR	.8356	4.3	2.9	27
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	.6251	3.0	2.1	21
54	03	SURG *	SINUS & MASTOID PROCEDURES AGE 0-17	.6889		3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.4639	2.3	1.7	12
56	03	SURG	RHINOPLASTY	.4731	2.3	1.8	13
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.9260	4.0	3.6	28
58	03	SURG *	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097		1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.3930	2.1	1.6	11
60	03	SURG *	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2616		1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	.8017	5.4	2.7	27
62	03	SURG *	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3089		1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	.9428	5.6	3.5	27
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.0654	5.5	4.9	29
65	03	MED	DYSEQUILIBRIUM	.4584	4.2	3.4	23
66	03	MED	EPISTAXIS	.4425	4.1	3.2	25
67	03	MED	EPIGLOTTITIS	1.0538	6.2	4.8	29
68	03	MED	OTITIS MEDIA & URI AGE >17 WITH CC	.7814	6.3	5.1	29
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5379	4.7	3.9	27
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.5495	4.2	3.3	27

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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED	LARYNGOTRACHEITIS	.9000	6.4	4.4	28
72	03	MED	NASAL TRAUMA & DEFORMITY	.5170	4.5	3.2	27
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7662	5.6	3.8	28
74	03	MED	* OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3427		2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.0203	14.8	12.1	36
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.1260	13.0	8.9	33
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0406	6.4	4.1	28
78	04	MED	PULMONARY EMBOLISM	1.4780	10.7	8.4	33
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	2.0729	12.8	9.7	34
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.3052	9.6	7.7	32
81	04	MED	* RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.1032		6.1	30
82	04	MED	RESPIRATORY NEOPLASMS	1.2396	9.6	6.6	31
83	04	MED	MAJOR CHEST TRAUMA WITH CC	.9956	8.4	6.9	30
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5177	5.2	4.1	28
85	04	MED	PLEURAL EFFUSION WITH CC	1.1695	9.2	6.9	31
86	04	MED	PLEURAL EFFUSION W/O CC	.7442	6.2	4.8	29
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.5159	8.1	5.8	30
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.1240	8.0	6.3	30
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.3044	9.3	7.4	31
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.8926	7.1	6.1	30
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7775	5.1	4.2	28
92	04	MED	INTERSTITIAL LUNG DISEASE WITH CC	1.3193	9.1	6.9	31
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.8569	6.8	5.2	29
94	04	MED	PNEUMOTHORAX WITH CC	1.3899	9.9	7.4	31
95	04	MED	PNEUMOTHORAX W/O CC	.7060	6.3	5.0	29
96	04	MED	BRONCHITIS & ASTHMA AGE >17 WITH CC	1.0152	7.3	6.1	30
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.7119	5.7	4.9	27
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.6343	4.6	3.7	26
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS WITH CC	.7477	5.2	4.0	28
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5116	3.9	2.8	19
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.9861	7.2	5.4	29
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.6650	5.4	4.0	28
103	05	SURG	HEART TRANSPLANT	15.9576	48.9	34.6	59
104	05	SURG	CARDIAC VALVE PROCEDURE W-PUMP & W CARDIAC CATH	7.5[illegible]2	21.3	17.9	42
105	05	SURG	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.9199	16.1	13.2	37

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.5574	16.1	14.2	38
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.2998	12.4	11.0	35
108	05	SURG	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	5.7536	16.2	11.0	35
109	05	SURG	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.7440	11.9	7.4	31
110	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP WITH CC	3.6449	16.2	12.7	37
111	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2.1715	10.1	8.9	33
112	05	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	1.9092	7.8	5.6	30
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.4615	18.8	14.6	39
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.7199	13.8	10.1	34
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.9884	15.2	12.8	37
116	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.6738	8.1	6.5	30
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2065	6.4	4.6	29
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.6598	3.9	2.8	27
119	05	SURG	VEIN LIGATION & STRIPPING	.8357	6.0	4.0	28
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.6574	17.1	11.1	35
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.6615	10.9	9.1	33
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1537	8.2	6.8	31
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4217	5.4	3.0	27
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1910	6.2	4.5	28
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.6862	3.1	2.4	19
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	3.0366	22.5	17.1	41
127	05	MED	HEART FAILURE & SHOCK	1.0402	8.0	6.2	30
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.8391	9.0	8.0	32
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.5096	5.6	2.8	27
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.8934	8.0	5.8	30
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5927	5.8	4.2	28
132	05	MED	ATHEROSCLEROSIS WITH CC	.7779	5.8	4.5	28
133	05	MED	ATHEROSCLEROSIS W/O CC	.5660	4.3	3.4	27
134	05	MED	HYPERTENSION	.6053	5.5	4.4	28
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.8952	6.9	5.2	29
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5766	4.5	3.6	28
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6315		3.3	27
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8521	6.2	4.8	29
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5779	4.4	3.5	27
140	05	MED	ANGINA PECTORIS	.6597	4.9	4.1	26

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.6911	5.7	4.5	28
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5239	4.2	3.4	24
143	05	MED	CHEST PAIN	.5424	3.7	3.0	20
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1499	7.9	5.8	30
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6452	4.7	3.6	28
146	06	SURG	RECTAL RESECTION WITH CC	3.4287	17.9	15.3	39
147	06	SURG	RECTAL RESECTION W/O CC	2.0086	12.3	11.3	35
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.1988	17.1	14.3	38
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.7505	11.1	10.3	34
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.7130	15.0	12.5	37
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.4612	9.8	8.7	33
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.4755	10.1	8.0	32
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0722	7.8	6.8	31
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	3.7808	17.3	13.2	37
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.7226	10.2	8.5	32
156	06	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8382		6.0	30
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9784	7.3	5.5	30
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5311	4.0	3.2	25
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.1184	7.2	5.7	30
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6619	4.4	3.7	25
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7368	4.9	3.7	28
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4745	2.9	2.4	15
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.9831	6.5	5.1	29
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.4194	12.9	11.2	35
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.4358	8.6	7.9	27
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.4604	8.5	7.0	31
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.8097	5.0	4.5	18
168	03	SURG	MOUTH PROCEDURES WITH CC	1.3375	8.0	5.1	29
169	03	SURG	MOUTH PROCEDURES W/O CC	.6186	3.7	2.5	27
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7199	16.0	11.2	35
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.3338	8.8	6.3	30
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2005	10.4	7.0	31
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6975	6.2	4.2	28
174	06	MED	G.I. HEMORRHAGE WITH CC	.9869	7.2	5.7	30
175	06	MED	G.I. HEMORRHAGE W/O CC	.6405	5.1	4.3	26

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TABLE 5

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	.9976	7.8	6.1	30
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7761	6.5	5.4	29
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5719	4.9	4.2	23
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0913	9.4	7.3	31
180	06	MED	G.I. OBSTRUCTION WITH CC	.9188	7.7	5.9	30
181	06	MED	G.I. OBSTRUCTION W/O CC	.5369	5.0	4.1	28
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7402	6.3	5.0	29
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5308	4.6	3.7	27
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.6576	4.6	2.9	27
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7550	6.1	4.3	28
186	03	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4112		2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.4574	2.8	2.1	16
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9556	7.3	5.1	29
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4902	4.2	3.0	27
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.7953	5.8	4.2	28
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC	5.1989	22.8	17.6	42
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2.4795	13.8	11.7	36
193	07	SURG	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY WITH CC	3.0632	17.5	14.8	39
194	07	SURG	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W/O CC	1.8838	12.4	10.7	35
195	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. WITH CC	2.3457	13.6	12.1	36
196	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.5778	10.2	9.3	31
197	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. WITH CC	1.7836	10.6	9.2	33
198	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0541	7.1	6.5	22
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.2733	15.5	12.5	36
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.6573	13.8	9.5	34
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.4449	13.0	8.8	33
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2418	10.2	7.4	31
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0889	9.6	6.6	31
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0305	7.7	6.1	30
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2410	9.5	6.8	31
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6433	5.7	4.0	28
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.9597	7.3	5.7	30
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5835	4.6	3.7	28
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.3940	13.0	11.9	36
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	2.1276	15.4	13.2	37

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.5499	11.8	10.7	35
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.4789	10.4	7.3	31
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7680	13.6	10.1	34
214	08	SURG	BACK & NECK PROCEDURES WITH CC	2.0479	14.4	12.0	36
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.3118	9.6	8.4	32
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.6324	13.4	8.5	32
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.9579	21.8	13.7	38
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 WITH CC	1.5606	11.0	8.7	33
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	.9878	6.7	5.5	30
220	08	SURG *	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.9242		5.3	29
221	08	SURG	KNEE PROCEDURES WITH CC	1.5128	9.9	6.5	30
222	08	SURG	KNEE PROCEDURES W/O CC	.8305	5.0	3.5	27
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	1.0635	6.2	4.8	29
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6418	3.6	2.9	20
225	08	SURG	FOOT PROCEDURES	.6988	4.5	3.2	27
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.3651	9.9	6.6	31
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6651	4.3	3.2	27
228	08	SURG *	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.8124	4.2	3.0	27
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5179	2.7	2.0	16
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.8542	6.4	4.3	28
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.8727	5.8	3.6	28
232	08	SURG	ARTHROSCOPY	.9520	6.1	3.3	27
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.6451	12.0	8.7	33
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	.8617	6.1	4.6	29
235	08	MED	FRACTURES OF FEMUR	1.1890	13.8	8.3	32
236	08	MED	FRACTURES OF HIP & PELVIS	.8845	9.8	7.1	31
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5694	6.1	4.6	29
238	08	MED	OSTEOMYELITIS	1.6532	14.6	10.7	35
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	.9735	10.0	7.6	32
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.1129	9.6	7.3	31
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6383	6.5	5.1	29
242	08	MED	SEPTIC ARTHRITIS	1.3182	11.3	8.5	33
243	08	MED	MEDICAL BACK PROBLEMS	.6576	6.8	5.1	29
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7197	7.3	5.5	30
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5235	5.5	4.2	28

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					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED		NON-SPECIFIC ARTHROPATHIES	.5715	5.7	4.6	29
247	08	MED		SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5378	5.1	3.8	28
248	08	MED		TENDONITIS, MYOSITIS & BURSITIS	.6219	5.9	4.5	28
249	08	MED		AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6700	6.7	4.4	28
250	08	MED		FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.6846	6.5	4.4	28
251	08	MED		FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4223	3.4	2.5	24
252	08	MED	*	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3496		1.8	15
253	08	MED		FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7800	8.2	5.9	30
254	08	MED		FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4451	5.0	3.7	28
255	08	MED	*	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638		2.9	27
256	08	MED		OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6412	5.5	4.0	28
257	09	SURG		TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9909	6.9	6.0	29
258	09	SURG		TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7930	5.3	4.8	20
259	09	SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9846	7.2	5.0	29
260	09	SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6006	3.6	2.9	20
261	09	SURG		BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.6352	3.2	2.6	17
262	09	SURG		BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4333	2.4	1.9	12
263	09	SURG		SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.6665	21.5	15.6	40
264	09	SURG		SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.5825	14.3	10.6	35
265	09	SURG		SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.4163	10.8	6.9	31
266	09	SURG		SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.6900	4.9	3.3	27
267	09	SURG		PERIANAL & PILONIDAL PROCEDURES	.6152	4.5	3.1	27
268	09	SURG		SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.6202	3.8	2.5	27
269	09			OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.6018	11.8	7.8	32
270	09			OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.6857	4.9	3.4	27
271	09	MED		SKIN ULCERS	1.2173	11.7	8.8	33
272	09	MED		MAJOR SKIN DISORDERS WITH CC	1.0332	9.6	7.4	31
273	09	MED		MAJOR SKIN DISORDERS W/O CC	.7092	7.7	5.9	30
274	09	MED		MALIGNANT BREAST DISORDERS WITH CC	1.0473	9.8	6.3	30
275	09	MED		MALIGNANT BREAST DISORDERS W/O CC	.5766	5.3	3.4	27
276	09	MED		NON-MALIGANT BREAST DISORDERS	.5386	4.6	3.1	27
277	09	MED		CELLULITIS AGE >17 WITH CC	.9689	8.9	7.3	31
278	09	MED		CELLULITIS AGE >17 W/O CC	.6879	6.8	5.0	30
279	09	MED	*	CELLULITIS AGE 0-17	.7367		4.2	24
280	09	MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.6410	6.4	4.7	29

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					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4268	4.5	3.4	27
282	09	MED	*	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3424		2.2	19
283	09	MED		MINOR SKIN DISORDERS WITH CC	.7751	7.4	5.5	30
284	09	MED		MINOR SKIN DISORDERS W/O CC	.4811	5.0	3.7	28
285	10	SURG		AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.9829	23.2	17.3	41
286	10	SURG		ADRENAL & PITUITARY PROCEDURES	2.6038	13.7	11.2	35
287	10	SURG		SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.1823	19.0	13.6	38
288	10	SURG		O.R. PROCEDURES FOR OBESITY	2.0573	11.5	8.0	32
289	10	SURG		PARATHYROID PROCEDURES	1.0939	6.7	5.1	29
290	10	SURG		THYROID PROCEDURES	.8065	4.5	3.7	22
291	10	SURG		THYROGLOSSAL PROCEDURES	.5098	2.6	2.1	13
292	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.6606	17.3	12.2	36
293	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2020	9.2	6.6	31
294	10	MED		DIABETES AGE >35	.7623	7.5	6.1	30
295	10	MED		DIABETES AGE 0-35	.7779	6.1	4.7	29
296	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.9399	8.3	6.1	30
297	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5751	5.6	4.4	26
298	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.5892	4.3	3.3	27
299	10	MED		INBORN ERRORS OF METABOLISM	.8414	7.0	4.7	29
300	10	MED		ENDOCRINE DISORDERS WITH CC	1.1237	9.6	7.2	31
301	10	MED		ENDOCRINE DISORDERS W/O CC	.6458	6.0	4.6	29
302	11	SURG		KIDNEY TRANSPLANT	3.7180	18.4	15.9	40
303	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.7287	14.9	12.6	37
304	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.4872	14.3	10.9	35
305	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.3634	8.3	6.3	30
306	11	SURG		PROSTATECTOMY WITH CC	1.4358	10.3	8.1	32
307	11	SURG		PROSTATECTOMY W/O CC	.8672	6.1	5.2	29
308	11	SURG		MINOR BLADDER PROCEDURES WITH CC	1.5388	10.3	7.2	31
309	11	SURG		MINOR BLADDER PROCEDURES W/O CC	.8420	5.5	4.0	28
310	11	SURG		TRANSURETHRAL PROCEDURES WITH CC	.9140	6.3	4.6	29
311	11	SURG		TRANSURETHRAL PROCEDURES W/O CC	.5486	3.4	2.7	21
312	11	SURG		URETHRAL PROCEDURES, AGE >17 WITH CC	.8261	5.9	4.2	28
313	11	SURG		URETHRAL PROCEDURES, AGE >17 W/O CC	.5069	3.4	2.6	23
314	11	SURG	*	URETHRAL PROCEDURES, AGE 0-17	.4323		2.3	26
315	11	SURG		OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.4135	13.7	8.5	32

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TABLE 5

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					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED		RENAL FAILURE	1.2852	9.3	6.4	30
317	11	MED		ADMIT FOR RENAL DIALYSIS	.3507	4.8	2.0	18
318	11	MED		KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.0643	9.2	6.1	30
319	11	MED		KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5775	4.5	3.0	27
320	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	1.0457	8.6	7.0	31
321	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.7286	6.5	5.5	29
322	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.7584	6.3	5.2	29
323	11	MED		URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.9048	4.2	3.0	27
324	11	MED		URINARY STONES W/O CC	.4219	3.1	2.4	18
325	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6848	6.1	4.6	29
326	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4361	3.9	3.1	26
327	11	MED	*	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5511		3.1	27
328	11	MED		URETHRAL STRICTURE AGE >17 WITH CC	.6250	5.1	3.9	28
329	11	MED		URETHRAL STRICTURE AGE >17 W/O CC	.4259	3.3	2.5	21
330	11	MED	*	URETHRAL STRICTURE AGE 0-17	.2769		1.6	9
331	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.9133	7.5	5.4	29
332	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5677	4.9	3.5	27
333	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.7223	5.7	3.9	28
334	12	SURG		MAJOR MALE PELVIC PROCEDURES W CC	1.8573	12.3	11.0	35
335	12	SURG		MAJOR MALE PELVIC PROCEDURES W/O CC	1.3671	9.5	8.9	26
336	12	SURG		TRANSURETHRAL PROSTATECTOMY WITH CC	1.0205	7.2	6.2	30
337	12	SURG		TRANSURETHRAL PROSTATECTOMY W/O CC	.6993	5.0	4.5	16
338	12	SURG		TESTES PROCEDURES, FOR MALIGNANCY	.7532	5.2	3.2	27
339	12	SURG		TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.5068	3.8	2.7	27
340	12	SURG	*	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4335		2.4	13
341	12	SURG		PENIS PROCEDURES	.9864	5.0	4.0	28
342	12	SURG		CIRCUMCISION AGE >17	.4509	2.9	2.1	20
343	12	SURG	*	CIRCUMCISION AGE 0-17	.3788		1.7	6
344	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0867	7.1	5.5	30
345	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.7907	5.7	4.1	28
346	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9165	8.2	5.5	30
347	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.4884	3.7	2.6	27
348	12	MED		BENIGN PROSTATIC HYPERTROPHY WITH CC	.6749	5.5	3.8	28
349	12	MED		BENIGN PROSTATIC HYPERTROPHY W/O CC	.3873	2.8	2.1	17
350	12	MED		INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6806	5.9	5.0	29

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					RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	*	STERILIZATION, MALE	.3333		1.3	5
352	12	MED		OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5267	4.1	2.9	27
353	13	SURG		PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.2528	14.7	12.5	36
354	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.5082	9.9	8.7	33
355	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.9474	6.6	6.3	17
356	13	SURG		FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7651	5.8	5.3	20
357	13	SURG		UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.1869	13.2	11.2	35
358	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.2525	8.6	7.7	30
359	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8579	6.1	5.8	15
360	13	SURG		VAGINA, CERVIX & VULVA PROCEDURES	.7472	5.5	3.7	28
361	13	SURG		LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.7253	4.4	2.9	27
362	13	SURG		ENDOSCOPIC TUBAL INTERRUPTION	.3853	2.0	1.6	10
363	13	SURG		D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6850	5.0	3.5	28
364	13	SURG		D&C, CONIZATION EXCEPT FOR MALIGNANCY	.4417	3.0	2.2	18
365	13	SURG		OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.8970	12.4	9.4	33
366	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.1247	9.9	6.3	30
367	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5149	4.5	3.0	27
368	13	MED		INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.8805	7.3	5.9	30
369	13	MED		MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5057	4.6	3.3	27
370	14	SURG		CESAREAN SECTION W CC	.9616	7.6	6.3	30
371	14	SURG		CESAREAN SECTION W/O CC	.7174	5.1	4.8	14
372	14	MED		VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.4518	3.8	3.1	21
373	14	MED		VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3125	2.5	2.3	9
374	14	SURG		VAGINAL DELIVERY W STERILIZATION &/OR D&C	.5577	3.3	2.9	11
375	14	SURG	*	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6817		4.4	28
376	14	MED		POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.4039	3.6	2.8	20
377	14	SURG		POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	.6078	4.3	3.2	27
378	14	MED		ECTOPIC PREGNANCY	.7902	5.0	4.4	20
379	14	MED		THREATENED ABORTION	.3014	2.8	2.2	18
380	14	MED		ABORTION W/O D&C	.2511	2.0	1.6	10
381	14	SURG		ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.3888	2.1	1.6	11
382	14	MED		FALSE LABOR	.1254	1.5	1.3	5
383	14	MED		OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.4431	5.1	3.6	28
384	14	MED		OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3085	3.3	2.3	25
385	15		*	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2232		1.8	24

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15		* EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6480		17.9	42
387	15		* PREMATURITY W MAJOR PROBLEMS	1.8267		13.3	37
388	15		* PREMATURITY W/O MAJOR PROBLEMS	1.1571		8.6	33
389	15		FULL TERM NEONATE W MAJOR PROBLEMS	1.8319	14.1	7.0	31
390	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	1.0173	7.4	4.9	29
391	15		* NORMAL NEWBORN	.2218		3.1	11
392	16	SURG	SPLENECTOMY AGE >17	3.6194	16.5	12.8	37
393	16	SURG	* SPLENECTOMY AGE 0-17	1.5206		9.1	33
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.2136	7.8	4.8	29
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7455	6.2	4.5	29
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.6619	4.1	2.0	26
397	16	MED	COAGULATION DISORDERS	1.0418	7.6	5.6	30
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.2464	9.0	6.6	31
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.5917	5.6	4.1	28
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.7296	15.3	11.0	35
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.1581	15.0	10.2	34
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.9068	6.4	4.3	28
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.5663	11.8	8.1	32
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8004	6.9	4.8	29
405	17		* ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0407		4.9	29
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.7678	16.8	12.6	37
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.4493	9.2	7.0	31
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	.9202	6.4	4.1	28
409	17	MED	RADIOTHERAPY	1.0395	10.4	6.9	31
410	17	MED	CHEMOTHERAPY	.4838	3.2	2.5	20
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4801	3.8	2.8	27
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4319	3.1	2.2	22
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.2392	10.7	7.1	31
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7899	7.4	4.9	29
415	19	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5386	20.5	14.8	39
416	18	MED	SEPTICEMIA AGE >17	1.5907	10.6	7.6	32
417	18	MED	SEPTICEMIA AGE 0-17	1.0726	7.6	6.0	30
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0164	8.8	6.9	31
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9650	7.6	5.9	30
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6790	5.7	4.6	29

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.6523	5.5	4.4	28
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.6802	5.0	3.5	27
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6050	11.5	8.1	32
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.2528	21.0	12.6	37
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6202	6.0	4.4	28
426	19	MED	DEPRESSIVE NEUROSES	.6292	8.0	5.8	30
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6020	7.7	5.4	29
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7325	10.0	6.1	30
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8895	10.7	7.3	31
430	19	MED	PSYCHOSES	.9100	12.7	8.8	33
431	19	MED	CHILDHOOD MENTAL DISORDERS	.7135	8.9	6.1	30
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.6739	6.7	4.3	28
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.4162	5.1	3.2	27
434	20		ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.8126	8.4	5.9	30
435	20		ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.5756	7.6	5.0	29
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.0160	15.8	11.3	35
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.2813	18.1	14.4	38
438	20		NO LONGER VALID	.0000		.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6445	12.3	7.0	31
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	2.4467	16.8	10.4	34
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7008	3.8	2.5	26
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.9049	9.8	5.8	30
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.1927	6.4	4.2	28
444	21	MED	MULTIPLE TRAUMA AGE >17 WITH CC	.7813	7.0	5.2	29
445	21	MED	MULTIPLE TRAUMA AGE >17 W/O CC	.5217	5.0	3.8	28
446	21	MED	* MULTIPLE TRAUMA AGE 0-17	.4796		2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	.4738	3.5	2.6	24
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3470		2.9	17
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	.8113	6.1	4.5	28
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4818	4.0	2.9	27
451	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.4836	4.9	2.9	27
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.9387	6.9	4.7	29
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.5050	4.5	3.2	27
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.8980	6.7	4.4	28
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4416	3.7	2.7	27

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				RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.6439	9.2	4.8	29
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.5594	8.3	3.6	28
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	4.0064	24.2	17.1	41
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.9638	15.0	10.2	34
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0122	9.1	6.4	30
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.7309	4.4	2.4	26
462	23	MED	REHABILITATION	1.7643	18.2	13.4	37
463	23	MED	SIGNS & SYMPTOMS W CC	.7689	7.0	5.2	29
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4851	4.5	3.5	27
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.3450	2.5	1.9	14
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5490	4.9	2.7	27
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4431	8.5	3.1	27
468			UNRELATED OPERATING ROOM PROCEDURES	3.2568	18.7	12.5	36
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000		.0	0
470		**	UNGROUPABLE	.0000		.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	4.1429	19.0	16.8	41
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	12.3422	33.6	19.1	43
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	2.9017	15.7	8.9	33
474	04		RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	12.2149	44.9	34.0	58
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.1196	13.1	8.8	33
476			UNRELATED PROTASTIC OR PROCEDURE	2.2884	17.9	15.0	39
477			UNRELATED NON-EXTENSIVE OP PROCEDURE ONLY	1.5289	11.1	6.7	31

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

BILLING CODE 4120-01-C

TABLE 6a.—NEW DIAGNOSIS CODES

Diagnosis code	Description	DRG
764.00	"Light-for-dates" without mention of fetal malnutrition, unspecified [weight]	390
764.01	"Light-for-dates" without mention of fetal malnutrition, less than 500 grams	390
764.02	"Light-for-dates" without mention of fetal malnutrition, 500–749 grams	390
764.03	"Light-for-dates" without mention of fetal malnutrition, 750–999 grams	390
764.04	"Light-for-dates" without mention of fetal malnutrition, 1,000–1,249 grams	390
764.05	"Light-for-dates" without mention of fetal malnutrition, 1,250–1,499 grams	390
764.06	"Light-for-dates" without mention of fetal malnutrition, 1,500–1749 grams	390
764.07	"Light-for-dates" without mention of fetal malnutrition, 1,750–1,999 grams	390
764.08	"Light-for-dates" without mention of fetal malnutrition, 2,000–2,499 grams	390
764.09	"Light-for-dates" without mention of fetal malnutrition, 2,500+ grams	391
764.10	"Light-for-dates" with signs of fetal malnutrition, unspecified [weight]	390
764.11	"Light-for-dates" with signs of fetal malnutrition, less than 500 grams	389
764.12	"Light-for-dates" with signs of fetal malnutrition, 500–749 grams	389
764.13	"Light-for-dates" with signs of fetal malnutrition, 750–999 grams	389
764.14	"Light-for-dates" with signs of fetal malnutrition, 1,000–1,249 grams	389
764.15	"Light-for-dates" with signs of fetal malnutrition, 1,250–1,499 grams	389
764.16	"Light-for-dates" with signs of fetal malnutrition, 1,500–1,749 grams	389
764.17	"Light-for-dates" with signs of fetal malnutrition, 1,750–1,999 grams	389
764.18	"Light-for-dates" with signs of fetal malnutrition, 2,000–2,499 grams	389
764.19	"Light-for-dates" with signs of fetal malnutrition, 2,500+ grams	390
764.20	Fetal malnutrition without mention of "light-for-dates", unspecified [weight]	390
764.21	Fetal malnutrition without mention of "light-for-dates", less than 500 grams	389
764.22	Fetal malnutrition without mention of "light-for-dates", 500–749 grams	389
764.23	Fetal malnutrition without mention of "light-for-dates", 750–999 grams	389
764.24	Fetal malnutrition without mention of "light-for-dates", 1,000–1,249 grams	389
764.25	Fetal malnutrition without mention of "light-for-dates", 1,250–1,499 grams	389

TABLE 6a.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	DRG
764.26	Fetal malnutrition without mention of "light-for-dates", 1,500–1,749 grams	389
764.27	Fetal malnutrition without mention of "light-for-dates", 1,750–1,999 grams	389
764.28	Fetal malnutrition without mention of "light-for-dates", 2,000–2,499 grams	389
764.29	Fetal malnutrition without mention of "light-for-dates", 2,500+ grams	390
764.90	Fetal growth retardation, unspecified, unspecified [weight]	390
764.91	Fetal growth retardation, unspecified, less than 500 grams	390
764.92	Fetal growth retardation, unspecified, 500–749 grams	390
764.93	Fetal growth retardation, unspecified, 750–999 grams	390
764.94	Fetal growth retardation, unspecified, 1,000–1,249 grams	390
764.95	Fetal growth retardation, unspecified, 1,250–1,499 grams	390
764.96	Fetal growth retardation, unspecified, 1,500–1,749 grams	390
764.97	Fetal growth retardation, unspecified, 1,750–1,999 grams	390
764.98	Fetal growth retardation, unspecified, 2,000–2,499 grams	390
764.99	Fetal growth retardation, unspecified, 2,500+ grams	391
765.00	Extreme immaturity, unspecified [weight]	387
765.01	Extreme immaturity, less than 500 grams	386
765.02	Extreme immaturity, 500–749 grams	386
765.03	Extreme immaturity, 750–999 grams	386
765.04	Extreme immaturity, 1,000–1,249 grams	386
765.05	Extreme immaturity, 1,250–1,499 grams	386
765.06	Extreme immaturity, 1,500–1,749 grams	387
765.07	Extreme immaturity, 1,750–1,999 grams	387
765.08	Extreme immaturity, 2,000–2,499 grams	387
765.09	Extreme immaturity, 2,500+ grams	470
765.10	Other preterm infants, unspecified [weight]	388
765.11	Other preterm infants, less than 500 grams	387, 388
765.12	Other preterm infants, 500–749 grams	387, 388
765.13	Other preterm infants, 750–999 grams	387, 388
765.14	Other preterm infants, 1,000–1,249 grams	387, 388
765.15	Other preterm infants, 1,250–1,499 grams	387, 388
765.16	Other preterm infants, 1,500–1,749 grams	387, 388
765.17	Other preterm infants, 1,750–1,999 grams	387, 388
765.18	Other preterm infants, 2,000–2,499 grams	387, 388
765.19	Other preterm infants, 2,500+ grams	387, 388

TABLE 6b.—NEW OR REVISED PROCEDURE CODES

Procedure code	Description	DRG
20.95	Implantation of electromagnetic hearing device.	3.
22.11	Closed [endoscopic] [needle] biopsy of nasal sinus.	Non-OR.
22.12	Open biopsy of nasal sinus	53, 54.
25.01	Closed [needle] biopsy of tongue.	Non-OR.
25.02	Open biopsy of tongue Wedge biopsy.	168, 169
26.11	Closed [needle] biopsy of salivary gland or duct.	Non-OR.
26.12	Open biopsy of salivary gland or duct.	51
31.43	Closed [endoscopic] biopsy of larynx.	Non-OR.
31.44	Closed [endoscopic] biopsy of trachea.	Non-OR.
31.45	Open biopsy of larynx or trachea.	55, 76, 77
35.84	Total correction of transposition of great vessels, not elsewhere classified.	108, 109
37.26	Cardiac electrophysiologic stimulation and recording studies.	Non-OR.
37.27	Cardiac mapping	Non-OR.
37.33	Excision or destruction of other lesion or tissue of heart.	Non-OR.
37.34	Catheter ablation of lesion or tissues of heart.	Non-OR.
39.61	Extracorporeal circulation auxiliary to open heart surgery.	Non-OR.
39.65	Extracorporeal membrane oxygenation [ECMO].	Non-OR.
41.00	Bone marrow transplant, not otherwise specified.	394, 400, 406, 407.
41.01	Autologous bone marrow transplant.	394, 400, 406, 407
41.02	Allogeneic bone marrow transplant with purging.	394, 400, 406, 407
41.03	Allogeneic bone marrow transplant without purging.	394, 400, 406, 407
42.24	Closed [endoscopic] biopsy of esophagus.	Non-OR.
42.25	Open biopsy of esophagus	63, 154, 155, 400, 406, 407
45.16	Esophagogastroduodenoscopy [EGD] with close biopsy.	Non-OR.
45.23	Colonoscopy	Non-OR.
45.24	Flexible sigmoidoscopy	Non-OR.
45.42	Endoscopic polypectomy of large intestine.	Non-OR.
48.23	Rigid proctosigmoidoscopy	Non-OR.
48.29	Other diagnostic procedures on rectum, rectosigmoid, and perirectal tissue.	Non-OR.
86.22	Excisional debridement of wound, infection, or burn.	7, 8, 40, 41, 63, 76, 77, 120, 170, 171, 201, 217, 263, 264, 265, 266, 267, 315, 365, 394, 440, 459, 472.
86.28	Nonexcisional debridement of wound, infection, or burn.	Non-OR.
89.17	Polysomnogram	Non-OR.

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TABLE 6b.—NEW OR REVISED PROCEDURE CODES—Continued

Procedure code	Description	DRG
89.18	Other sleep disorder function tests.	Non-OR.
89.58	Other nonoperative cardiac and vascular measurements.	Non-OR.
93.90	Continuous positive airway pressure [CPAP].	[1] Non-OR.
93.92	Other mechanical ventilation.	[1] Non-OR.
99.71	Therapeutic plasmapheresis.	Non-OR.
99.72	Therapeutic leukopheresis	Non-OR.
99.73	Therapeutic erythrocytapheresis.	Non-OR.
99.74	Therapeutic plateletpheresis.	Non-OR.
99.79	Other [2]	Non-OR.
99.88	Therapeutic photopheresis	Non-OR.

[1] If coded in addition with 96.04, insertion of endotracheal tube, case may be assigned to DRG 475.
[2] Other therapeutic apheresis.

TABLE 6c.—ELECTIVE, DIAGNOSTIC AND OTHER NONEXTENSIVE PROCEDURES UNRELATED TO PRINCIPAL PROCEDURES THAT GROUP TO DRG 477

Procedure code	Procedure
04.07	Other excision or avulsion of cranial and peripheral nerves.
04.43	Release of carpal tunnel.
08.11	Biopsy of eyelid.
08.20	Removal of lesion of eyelid, not otherwise specified (NOS).
08.21	Excision of chalazion.
08.22	Excision of other minor lesion of eyelid.
08.25	Destruction of lesion of eyelid.
08.33	Repair of blepharoptosis by resection or advancement of levator muscle or aponeurosis.
08.36	Repair of blepharoptosis by other techniques.
08.49	Other repair or entropion or ectropion.
08.52	Blepharorrhaphy.
08.59	Other adjustment of lid position.
08.70	Reconstruction of eyelid, NOS.
08.74	Other reconstruction of eyelid, full-thickness.
08.81	Linear repair of laceration of eyelid or eyebrow.
08.82	Repair of laceration involving lid margin, partial-thickness.
08.83	Other repair of laceration of eyelid, partial-thickness.
08.84	Repair of laceration involving lid margin, full-thickness.
08.85	Other repair of laceration of eyelid, full-thickness.
08.86	Lower eyelid rhytidectomy.
08.87	Upper eyelid rhytidectomy.
08.89	Other eyelid repair.
08.91	Electrosurgical epilation of eyelid.
08.92	Cryosurgical epilation of eyelid.
08.93	Other epilation of eyelid.
08.99	Other operations on eyelids.
09.20	Excision of lacrimal gland, NOS.
09.21	Excision of lesion of lacrimal gland.
10.6	Repair of laceration of conjunctiva.
12.72	Cyclocryotherapy.
13.11	Intracapsular extraction of lens by temporal inferior route.
13.19	Other intracapsular extraction of lens.
13.2	Extracapsular extraction of lens by linear extraction technique.
13.3	Extracapsular extraction of lens by simple aspiration (and irrigation) technique.
13.41	Phacoemulsification and aspiration of cataract.
13.42	Mechanical phacofragmentation and aspiration of cataract by posterior route.
13.43	Mechanical phacofragmentation and other aspiration of cataract.
13.51	Extracapsular extraction of lens by temporal inferior route.
13.59	Other extracapsular extraction of lens.
13.61	Discission of primary membranous cataract.
13.62	Excision of primary membranous cataract.
13.63	Mechanical fragmentation of primary membranous cataract.
13.64	Discission of secondary membrane [after cataract].
13.65	Excision of secondary membrane [after cataract].
13.66	Mechanical fragmentation of secondary membrane [after cataract].
13.69	Other cataract extraction.
13.70	Insertion of pseudophakos, NOS.
13.71	Insertion of intraocular lens prosthesis of time of cataract extraction, one-stage.
13.8	Removal of implanted lens.
13.9	Other operations on lens.
14.71	Removal of vitreous, anterior approach.
14.72	Other removal of vitreous.
14.73	Mechanical vitrectomy by anterior approach.
14.74	Other mechanical vitrectomy.
14.75	Injection of vitreous substitute.
14.79	Other operations on vitreous.
15.13	Resection of one extraocular muscle.
20.09	Other myringotomy.
21.5	Submucous resection of nasal septum.
21.84	Revision rhinoplasty.
21.85	Augmentation rhinoplasty.
21.86	Limited rhinoplasty.
21.87	Other rhinoplasty.
21.88	Other septoplasty.
21.89	Other repair and plastic operations on nose.
21.99	Other operations on nose.
25.1	Excision or destruction of lesion or tissue of tongue.
26.21	Marsupialization of salivary gland cyst.
26.29	Other excision of salivary gland lesion.
26.30	Sialoadenectomy, NOS.
26.31	Partial sialoadenectomy.
26.32	Complete sialoadenectomy.
27.43	Other excision of lesion or tissue of lip.
28.11	Biopsy of tonsils and adenoids.
30.09	Other excision or destruction of lesion or tissue of larynx.
34.3	Excision or destruction of lesion or tissue of mediastinum.
34.4	Excision or destruction of lesion of chest wall.
38.00	Incision of vessel, unspecified site.
39.94	Replacement of vessel-to-vessel cannula.
40.0	Incision of lymphatic structures.
40.11	Biopsy of lymphatic structure.
40.19	Other diagnostic procedures on lymphatic structures.
40.21	Excision of deep cervical lymph node.
40.23	Excision of axillary lymph node.
40.24	Excision of inguinal lymph node.
40.29	Simple excision of other lymphatic structure.
43.42	Local excision of other lesion or tissue of stomach.
43.49	Other destruction of lesion or tissue of stomach.
45.31	Local excision of lesion of duodenum.
45.32	Other destruction of lesion of duodenum.
45.33	Local excision of lesion or tissue of small intestine, except duodenum.
45.34	Other destruction of lesion of small intestine, except duodenum.
45.41	Local excision of lesion or tissue of large intestine.
45.49	Other destruction of lesion of large intestine.
46.43	Other revision of stoma of large intestine.
48.35	Local excision of rectal lesion or tissue.
49.3	Local excision or destruction of other lesion or tissue of anus.
49.44	Destruction of hemorrhoids by cryotherapy.
49.45	Ligation of hemorrhoids.
49.46	Excision of hemorrhoids.
53.00	Unilateral repair of inguinal hernia, NOS.
53.01	Repair of direct inguinal hernia.
53.02	Repair of indirect inguinal hernia.
53.03	Repair of direct inguinal hernia with graft or prosthesis.
53.04	Repair of indirect inguinal hernia with graft or prosthesis.
53.05	Repair inguinal hernia with graft or prosthesis, NOS.
53.10	Bilateral repair of inguinal hernia, NOS.
53.11	Bilateral repair of direct inguinal hernia.
53.12	Bilateral repair of indirect inguinal hernia.
53.13	Bilateral repair of inguinal hernia, one direct and one indirect.
53.14	Bilateral repair of direct inguinal hernia with graft or prosthesis.
53.15	Bilateral repair of indirect inguinal hernia with graft or prosthesis.
53.16	Bilateral repair of inguinal hernia, one direct and one indirect, with graft or prosthesis.
53.17	Bilateral inguinal hernia repair with graft or prosthesis, NOS.
53.21	Unilateral repair of femoral hernia with graft or prosthesis.
53.29	Other unilateral femoral herniorrhaphy.
53.31	Bilateral repair of femoral hernia with graft or prosthesis.
53.39	Other bilateral femoral herniorrhaphy.
54.21	Laparoscopy.
54.22	Biopsy of abdominal wall or umbilicus.
54.3	Excision or destruction of lesion or tissue of abdominal wall or umbilicus.
56.0	Transurethral removal of obstruction from ureter and renal pelvis.
56.1	Ureteral meatotomy.
56.2	Ureterotomy.
56.39	Other diagnostic procedures on ureter.
57.33	Closed [transurethral] biopsy of bladder.
57.39	Other diagnostic procedures on bladder.
57.49	Other transurethral excision or destruction of lesion or tissue of bladder.
57.59	Open excision or destruction of other lesion or tissue of bladder.

TABLE 6c.—ELECTIVE, DIAGNOSTIC AND OTHER NONEXTENSIVE PROCEDURES UNRELATED TO PRINCIPAL PROCEDURES THAT GROUP TO DRG 477—Continued

Procedure code	Procedure
57.82	Closure of cystostomy.
58.0	Urethrotomy.
58.1	Urethral meatotomy.
61.2	Excision of hydrocele (of tunica vaginalis).
63.09	Other diagnostic procedures on spermatic cord, epididymis, and vas deferens.
63.1	Excision of varicocele and hydrocele of spermatic cord.
63.2	Excision of cyst of epididymis.
63.3	Excision of other lesion or tissue of spermatic cord and epididymis.
64.0	Circumcision.
64.11	Biopsy of penis.
64.2	Local excision or destruction of lesion of penis.
64.95	Insertion or replacement of non-inflatable internal prosthesis of penis.
64.96	Removal of internal prosthesis of penis.
64.97	Insertion or replacement of inflatable penile prosthesis.
66.21	Bilateral endoscopic ligation and crushing of fallopian tubes.
66.22	Bilateral endoscopic ligation and division of fallopian tubes.
66.29	Other bilateral endoscopic destruction or occlusion of fallopian tubes.
66.31	Other bilateral ligation and crushing of fallopian tubes.
66.32	Other bilateral ligation and division of fallopian tubes.
66.39	Other bilateral destruction or occlusion of fallopian tubes.
66.92	Unilateral destruction or occulusion of fallopian tube.
67.11	Endocervical biopsy.
67.12	Other cervical biopsy.
67.19	Other diagnostic procedures on cervix.
67.2	Conization of cervix.
67.31	Marsupialization of cervical cyst.
67.32	Destruction of lesion of cervix by cauterization.
67.33	Destruction of lesion of cervix by cryosurgery.
67.39	Other excision or destruction of lesion or tissue of cervix.
68.15	Closed biopsy of uterine ligaments.
68.16	Closed biopsy of uterus.
69.01	Dilation and curettage for termination of pregnancy.
69.09	Other dilation and curettage.
69.51	Aspiration curettage of uterus for termination of pregnancy.
69.52	Aspiration curettage following delivery or abortion.
69.95	Incision of cervix.
70.23	Biopsy of cul-de-sac.
70.24	Vaginal biopsy.
70.29	Other diagnostic procedures on vagina and cul-de-sac.
70.31	Hymenectomy.
70.32	Excision or destruction of lesion of cul-de-sac.
70.33	Excision or destruction of lesion of vagina.
70.76	Hymenorrhaphy.
71.11	Biopsy of vulva.
71.19	Other diagnostic procedures on vulva.
71.23	Marsupialization of Bartholin's gland (cyst).
71.3	Other local excision or destruction of vulva and perineum.
71.4	Operations on clitoris.
71.71	Suture of laceration of vulva or perineum.
71.79	Other repair of vulva and perineum.
76.2	Local excision or destruction of lesion of facial bone.
77.41	Biopsy of bone, scapula, clavicle, and thorax [ribs and sternum].
77.51	Bunionectomy with soft tissue correction and osteotomy of the first metatarsal.
77.52	Bunionectomy with soft tissue correction and arthrodesis.
77.53	Other bunionectomy with soft tissue correction.
77.54	Excision of bunionette.
77.59	Other bunionectomy.
77.68	Local excision of lesion or tissue of bone, tarsals and metatarsals.
77.69	Local excision of lesion or tissue of bone, other.
80.26	Arthroscopy of knee.
80.6	Excision of semilunar cartilage of knee.
80.88	Other local excision or destruction of lesion of joint, foot, and toe.
80.96	Other excision of joint, foot, and toe.
81.18	Other fusion of toe.
82.11	Tenotomy of hand.
82.21	Excision of lesion of tendon sheath of hand.
82.29	Excision of other lesion of soft tissue of hand.
82.41	Suture of tendon sheath of hand.
82.45	Other suture of other tendon of hand.
82.46	Suture of muscle or fascia of hand.
83.03	Bursotomy.
83.21	Biopsy of soft tissue.
83.39	Excision of lesion of other soft tissue.
83.61	Suture of tendon sheath.
85.12	Open biopsy of breast.
85.20	Excision or destruction of breast tissue, NOS.
85.21	Local excision of lesion of breast.
85.23	Subtotal mastectomy.
85.50	Augmentation mammoplasty, NOS.
85.53	Unilateral breast implant.
85.54	Bilateral breast implant.
86.09	Other incision of skin and subcutaneous tissue.
86.21	Excision of pilonidal cyst or sinus.
86.25	Dermabrasion.
86.3	Other local excision or destruction of lesion or tissue of skin and subcutaneous tissue.
86.60	Free skin graft, NOS.
86.82	Facial rhytidectomy.
86.83	Size reduction plastic operation.
86.84	Relaxation of scar or web contracture of skin.
95.04	Eye examination under anesthesia.

BILLING CODE 4120-01-M

Table 6d — Additions to the CC Exclusions List

CCs that would be added to the list are in Table 6d — Additions to the CC Exclusions List. (Currently, the indented diagnoses are recognized by the GROUPER as valid CCs for the asterisked principal diagnosis but would be excluded and thus ignored by the GROUPER beginning with discharges on or after October 1, 1988.)

Example:

*3488
3240

Diagnosis code 324.0 (Intracranial abscess) (Tuberculous pneumonia confirmed by other methods) is currently recognized by the GROUPER as a CC for principal diagnosis 348.8 (Brain conditions NEC). Beginning with discharges occurring on or after October 1, 1988 diagnosis code 3240 would not be recognized as a CC for the principal diagnosis 348.8.

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*01166	1531	1920	01305	3979	*55001	5529	8088	*80003
01166	1532	1921	01310	*3952	5528	*5513	8089	430
*01481	1533	1922	01311	3979	5529	5528	82000	431
01481	1534	1923	01312	*3959	*55002	5529	82001	4320
*0361	1535	1928	01313	3979	5528	*5516	82002	4321
0361	1536	1960	01314	*3971	5529	5528	82003	436
*0363	1537	1961	01315	3979	*55003	5529	82009	7800
0363	1538	1962	01316	*39690	5528	*5519	82010	*80004
*03640	1539	1963	0360	3970	5529	5528	82011	430
03640	1540	1965	0530	3971	*55010	5529	82012	431
*03641	1541	1966	05472	3979	5528	*55200	82013	4320
03641	1542	1968	0721	3980	5529	5528	82019	4321
*03642	1543	1969	09042	39891	*55011	5529	82020	436
03642	1548	1970	0942	*39891	5528	*55201	82021	7800
*03643	1550	1971	11283	40201	5529	5528	82022	*80005
03643	1551	1972	1142	40211	*55012	5529	82030	430
*03681	1552	1973	11501	40291	5528	*55202	82031	431
03681	1560	1974	11511	5184	5529	5528	82032	4320
*03682	1561	1975	11591	*4290	*55013	5529	8208	4321
03682	1562	1976	*3499	4290	5528	*55203	8209	436
*0550	1568	1977	01300	*430	5529	5528	82100	7800
0550	1569	1978	01301	436	*55090	5529	82101	*80006
*0551	1570	1980	01302	7800	5528	*5521	82110	430
0551	1571	1981	01303	*431	5529	5528	82111	431
*0552	1572	1982	01304	436	*55091	5529	*7800	4320
0552	1573	1983	01305	7800	5528	*55220	430	4321
*05571	1574	1984	01306	*4320	5529	5528	431	436
05571	1578	1985	01310	436	*55092	5529	4320	7800
*05671	1579	1986	01311	7800	5528	*55221	4321	*80009
05671	1622	1987	01312	*4321	5529	5528	436	430
*1124	1623	19881	01313	436	*55093	5529	*7854	431
1124	1624	19882	01314	7800	5528	*55229	7854	4320
*1125	1625	19889	01315	*4329	5529	5528	*7991	4321
1125	1628	1990	01316	436	*55100	5529	51801	436
*11505	1629	*20281	0360	7800	5528	*5523	51802	7800
11515	1630	20241	0530	*4340	5529	5518	*80000	*80010
11595	1631	*2899	05472	436	*55101	5519	430	430
*11515	1638	2880	0721	*4341	5528	5528	431	431
11595	1639	2881	09042	436	5529	5529	4320	4320
*1958	1642	*3241	0942	*4349	*55102	*5531	4321	4321
1510	1643	3240	11283	436	5528	5528	436	436
1511	1648	3249	1142	*436	5529	5529	7800	7800
1512	1649	325	11501	4340	*55103	*5920	*80001	*80011
1513	1890	*3481	11511	4341	5528	5921	430	430
1514	1891	3481	11591	4349	5529	*70503	431	431
1515	1892	*3488	*3940	*5171	*5511	6820	4320	4320
1516	1910	3240	3979	5171	5528	*7331	4321	4321
1518	1911	*3489	*3941	*51801	5529	80800	436	436
1519	1912	3240	3979	51802	*55120	80802	7800	7800
1520	1913	*34989	*3942	7991	5528	8083	*80002	*80012
1521	1914	01300	3979	*51802	5529	80843	430	430
1522	1915	01301	*3948	51801	*55121	80849	431	431
1523	1916	01302	3979	7991	5528	80851	4320	4320
1528	1917	01303	*3950	*58000	5529	80852	4321	4321
1529	1918	01304	3979	5528	*55129	80853	436	436
1530	1919	01305	*3951	5529	5528	80859	7800	7800

*80013	*80023	*80033	*80043	*80053	*80063	*80073	*80083	*80093
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*80021	*80031	*80041	*80051	*80061	*80071	*80081	*80091	*80101
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*80022	*80032	*80042	*80052	*80062	*80072	*80082	*80092	*80102
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*80103	*80113	*80123	*80133	*80143	*80153	*80163	*80173	*80183
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*80104	*80114	*80124	*80134	*80144	*80154	*80164	*80174	*80184
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*80105	*80115	*80125	*80135	*80145	*80155	*80165	*80175	*80185
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*80106	*80116	*80126	*80136	*80146	*80156	*80166	*80176	*80186
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*80112	*80122	*80132	*80142	*80152	*80162	*80172	*80182	*80192
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*80193	*80303	*80313	*80323	*80333	*80343	*80353	*80363	*80373
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*80194	*80304	*80314	*80324	*80334	*80344	*80354	*80364	*80374
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*80195	*80305	*80315	*80325	*80335	*80345	*80355	*80365	*80375
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*80196	*80306	*80316	*80326	*80336	*80346	*80356	*80366	*80376
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*80199	*80309	*80319	*80329	*80339	*80349	*80359	*80369	*80379
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*80302	*80312	*80322	*80332	*80342	*80352	*80362	*80372	*80382
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*80383	*80393	*80403	*80413	*80423	*80433	*80443	*80453	*80463
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*80384	*80394	*80404	*80414	*80424	*80434	*80444	*80454	*80464
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*80385	*80395	*80405	*80415	*80425	*80435	*80445	*80455	*80465
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*80386	*80396	*80406	*80416	*80426	*80436	*80446	*80456	*80466
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*80389	*80399	*80409	*80419	*80429	*80439	*80449	*80459	*80469
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*80390	*80400	*80410	*80420	*80430	*80440	*80450	*80460	*80470
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*80391	*80401	*80411	*80421	*80431	*80441	*80451	*80461	*80471
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7800	7800	7800	7800	7800	7800	7800	7800	7800
*80392	*80402	*80412	*80422	*80432	*80442	*80452	*80462	*80472
430	430	430	430	430	430	430	430	430
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436	436	436	436	436	436	436	436	436
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*80473	*80483	*80493	95205	95206	95207	95208	95201	95202
430	430	430	95206	95207	95208	95209	95202	95203
431	431	431	95207	95208	95209	*8058	95203	95204
4320	4320	4320	95208	95209	*80514	95200	95204	95205
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436	436	436	*80503	95200	95201	95202	95206	95207
7800	7800	7800	95200	95201	95202	95203	95207	95208
*80474	*80484	*80494	95201	95202	95203	95204	95208	95209
430	430	430	95202	95203	95204	95205	95209	*80606
431	431	431	95203	95204	95205	95206	*80601	95200
4320	4320	4320	95204	95205	95206	95207	95200	95201
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436	436	436	95206	95207	95208	95209	95202	95203
7800	7800	7800	95207	95208	95209	95210	95203	95204
*80475	*80485	*80495	95208	95209	*80515	95211	95204	95205
430	430	430	95209	*80510	95200	95212	95205	95206
431	431	431	*80504	95200	95201	95213	95206	95207
4320	4320	4320	95200	95201	95202	95214	95207	95208
4321	4321	4321	95201	95202	95203	95215	95208	95209
436	436	436	95202	95203	95204	95216	95209	*80607
7800	7800	7800	95203	95204	95205	95217	*80602	95200
*80476	*80486	*80496	95204	95205	95206	95218	95200	95201
430	430	430	95205	95206	95207	95219	95201	95202
431	431	431	95206	95207	95208	9522	95202	95203
4320	4320	4320	95207	95208	95209	9523	95203	95204
4321	4321	4321	95208	95209	*80516	9524	95204	95205
436	436	436	95209	*80511	95200	9528	95205	95206
7800	7800	7800	*80505	95200	95201	9529	95206	95207
*80479	*80489	*80500	95200	95201	95202	*8059	95207	95208
430	430	95200	95201	95202	95203	95200	95208	95209
431	431	95201	95202	95203	95204	95201	95209	*80608
4320	4320	95202	95203	95204	95205	95202	*80603	95200
4321	4321	95203	95204	95205	95206	95203	95200	95201
436	436	95204	95205	95206	95207	95204	95201	95202
7800	7800	95205	95206	95207	95208	95205	95202	95203
*80480	*80490	95206	95207	95208	95209	95206	95203	95204
430	430	95207	95208	95209	*80517	95207	95204	95205
431	431	95208	95209	*80512	95200	95208	95205	95206
4320	4320	95209	*80506	95200	95201	95209	95206	95207
4321	4321	*80501	95200	95201	95202	95210	95207	95208
436	436	95200	95201	95202	95203	95211	95208	95209
7800	7800	95201	95202	95203	95204	95212	95209	*80609
*80481	*80491	95202	95203	95204	95205	95213	*80604	95200
430	430	95203	95204	95205	95206	95214	95200	95201
431	431	95204	95205	95206	95207	95215	95201	95202
4320	4320	95205	95206	95207	95208	95216	95202	95203
4321	4321	95206	95207	95208	95209	95217	95203	95204
436	436	95207	95208	95209	*80518	95218	95204	95205
7800	7800	95208	95209	*80513	95200	95219	95205	95206
*80482	*80492	95209	*80507	95200	95201	9522	95206	95207
430	430	*80502	95200	95201	95202	9523	95207	95208
431	431	95200	95201	95202	95203	9524	95208	95209
4320	4320	95201	95202	95203	95204	9528	95209	*80610
4321	4321	95202	95203	95204	95205	9529	*80605	95200
436	436	95203	95204	95205	95206	*80600	95200	95201
7800	7800	95204	95205	95206	95207	95200	95201	95202

95203	95204	83905	95203	95207	95211	95215	95219	430
95204	95205	83906	95204	95208	95212	95216	9522	431
95205	95206	83907	95205	95209	95213	95217	9523	4320
95206	95207	83908	95206	95210	95214	95218	9524	4321
95207	95208	83910	95207	95211	95215	95219	9528	436
95208	95209	83911	95208	95212	95216	9522	9529	7800
95209	*80616	83912	95209	95213	95217	9523	*8500	*85101
*80611	95200	83913	95210	95214	95218	9524	430	430
95200	95201	83914	95211	95215	95219	9528	431	431
95201	95202	83915	95212	95216	9522	9529	4320	4320
95202	95203	83916	95213	95217	9523	*8399	4321	4321
95203	95204	83917	95214	95218	9524	95200	436	436
95204	95205	83918	95215	95219	9528	95201	7800	7800
95205	95206	95200	95216	9522	9529	95202	*8501	*85102
95206	95207	95201	95217	9523	*83979	95203	430	430
95207	95208	95202	95218	9524	95200	95204	431	431
95208	95209	95203	95219	9528	95201	95205	4320	4320
95209	*80617	95204	9522	9529	95202	95206	4321	4321
*80612	95200	95205	9523	*83959	95203	95207	436	436
95200	95201	95206	9524	95200	95204	95208	7800	7800
95201	95202	95207	9528	95201	95205	95209	*8502	*85103
95202	95203	95208	9529	95202	95206	95210	430	430
95203	95204	95209	*83949	95203	95207	95211	431	431
95204	95205	*8069	95200	95204	95208	95212	4320	4320
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95206	95207	83901	95202	95206	95210	95214	436	436
95207	95208	83902	95203	95207	95211	95215	7800	7800
95208	95209	83903	95204	95208	95212	95216	*8503	*85104
95209	*80618	83904	95205	95209	95213	95217	430	430
*80613	95200	83905	95206	95210	95214	95218	431	431
95200	95201	83906	95207	95211	95215	95219	4320	4320
95201	95202	83907	95208	95212	95216	9522	4321	4321
95202	95203	83908	95209	95213	95217	9523	436	436
95203	95204	83910	95210	95214	95218	9524	7800	7800
95204	95205	83911	95211	95215	95219	9528	*8504	*85105
95205	95206	83912	95212	95216	9522	9529	430	430
95206	95207	83913	95213	95217	9523	*8479	431	431
95207	95208	83914	95214	95218	9524	95200	4320	4320
95208	95209	83915	95215	95219	9528	95201	4321	4321
95209	*80619	83916	95216	9522	9529	95202	436	436
*80614	95200	83917	95217	9523	*8398	95203	7800	7800
95200	95201	83918	95218	9524	95200	95204	*8505	*85106
95201	95202	95200	95219	9528	95201	95205	430	430
95202	95203	95201	9522	9529	95202	95206	431	431
95203	95204	95202	9523	*83969	95203	95207	4320	4320
95204	95205	95203	9524	95200	95204	95208	4321	4321
95205	95206	95204	9528	95201	95205	95209	436	436
95206	95207	95205	9529	95202	95206	95210	7800	7800
95207	95208	95206	*83950	95203	95207	95211	*8509	*85109
95208	95209	95207	95200	95204	95208	95212	430	430
95209	*8068	95208	95201	95205	95209	95213	431	431
*80615	83900	95209	95202	95206	95210	95214	4320	4320
95200	83901	*83940	95203	95207	95211	95215	4321	4321
95201	83902	95200	95204	95208	95212	95216	436	436
95202	83903	95201	95205	95209	95213	95217	7800	7800
95203	83904	95202	95206	95210	95214	95218	*85100	*85110

430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85111	*85121	*85131	*85141	*85151	*85161	*85171	*85181	*85191
430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85112	*85122	*85132	*85142	*85152	*85162	*85172	*85182	*85192
430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85113	*85123	*85133	*85143	*85153	*85163	*85173	*85183	*85193
430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85114	*85124	*85134	*85144	*85154	*85164	*85174	*85184	*85194
430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85115	*85125	*85135	*85145	*85155	*85165	*85175	*85185	*85195
430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85116	*85126	*85136	*85146	*85156	*85166	*85176	*85186	*85196
430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85119	*85129	*85139	*85149	*85159	*85169	*85179	*85189	*85199
430	430	430	430	430	430	430	430	430
431	431	431	431	431	431	431	431	431
4320	4320	4320	4320	4320	4320	4320	4320	4320
4321	4321	4321	4321	4321	4321	4321	4321	4321
436	436	436	436	436	436	436	436	436
7800	7800	7800	7800	7800	7800	7800	7800	7800
*85120	*85130	*85140	*85150	*85160	*85170	*85180	*85190	*85200

430	430	85220	7800	7800	7800	7800	7800	7800
431	431	*85221	*85231	*85241	*85251	*85301	*85311	*85401
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85201	*85211	436	436	436	436	436	436	436
430	430	7800	7800	7800	7800	7800	7800	7800
431	431	*85222	*85232	*85242	*85252	*85302	*85312	*85402
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85202	*85212	436	436	436	436	436	436	436
430	430	7800	7800	7800	7800	7800	7800	7800
431	431	*85223	*85233	*85243	*85253	*85303	*85313	*85403
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85203	*85213	436	436	436	436	436	436	436
430	430	7800	7800	7800	7800	7800	7800	7800
431	431	*85224	*85234	*85244	*85254	*85304	*85314	*85404
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85204	*85214	436	436	436	436	436	436	436
430	430	7800	7800	7800	7800	7800	7800	7800
431	431	*85225	*85235	*85245	*85255	*85305	*85315	*85405
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85205	*85215	436	436	436	436	436	436	436
430	430	7800	7800	7800	7800	7800	7800	7800
431	431	*85226	*85236	*85246	*85256	*85306	*85316	*85406
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85206	*85216	436	436	436	436	436	436	436
430	430	7800	7800	7800	7800	7800	7800	7800
431	431	*85229	*85239	*85249	*85259	*85309	*85319	*85409
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85209	*85219	436	436	436	436	436	436	436
430	430	7800	7800	7800	7800	7800	7800	7800
431	431	*85230	*85240	*85250	*85300	*85310	*85400	*85410
4320	4320	430	430	430	430	430	430	430
4321	4321	431	431	431	431	431	431	431
436	436	4320	4320	4320	4320	4320	4320	4320
7800	7800	4321	4321	4321	4321	4321	4321	4321
*85210	*85220	436	436	436	436	436	436	436

7800	95203	8069
*85411	95204	*95203
430	95205	8068
431	95206	8069
4320	95207	*95204
4321	95208	8068
436	95209	8069
7800	95210	*95205
*85412	95211	8068
430	95212	8069
431	95213	*95206
4320	95214	8068
4321	95215	8069
436	95216	*95207
7800	95217	8068
*85413	95218	8069
430	95219	*95208
431	9522	8068
4320	9523	8069
4321	9524	*95209
436	9528	8068
7800	9529	8069
*85414	*92611	*9528
430	95200	9529
431	95201	*9529
4320	95202	9528
4321	95203	*9591
436	95204	95200
7800	95205	95201
*85415	95206	95202
430	95207	95203
431	95208	95204
4320	95209	95205
4321	95210	95206
436	95211	95207
7800	95212	95208
*85416	95213	95209
430	95214	95210
431	95215	95211
4320	95216	95212
4321	95217	95213
436	95218	95214
7800	95219	95215
*85419	9522	95216
430	9523	95217
431	9524	95218
4320	9528	95219
4321	9529	9522
436	*95200	9523
7800	8068	9524
*8739	8069	9528
8739	*95201	9529
*9051	8068	
95200	8069	
95201	*95202	
95202	8068	

Table 6e -- Deletions from the CC Exclusions List

CCs that would be deleted from the list are in Table 6e -- Deletions from the CC Exclusions List. (Currently, the indented diagnoses are excluded and are not recognized by the GROUPER as valid CCs for the asterisked principal diagnosis but would be recognized as valid CCs beginning with discharges on or after October 1, 1988.)

Example:

*01100
494
496

Diagnosis codes 494 (Bronchiectasis) and 496 (Chronic obstructive pulmonary disease) are currently not recognized by the GROUPER as CCs for principal diagnosis 011.00 (Tuberculosis of lung, infiltrative, unspecified documentation). Beginning with discharges occurring on or after October 1, 1988, diagnosis codes 494 and 496 would be recognized as CCs for the principal diagnosis 011.00.

*01100	496	494	*01180	496	4958	496	494	*4870
494	*01125	496	494	*01205	4959	*0391	496	494
496	494	*01153	496	494	496	494	*4809	496
*01101	496	494	*01181	496	500	496	494	*490
494	*01126	496	494	*01206	501	*11505	496	4911
496	494	*01154	496	494	502	494	*481	4912
*01102	496	494	*01182	496	503	496	494	4918
494	*01130	496	494	*01210	504	*11515	496	4919
496	494	*01155	496	494	505	494	*4820	*4910
*01103	496	494	*01183	496	5060	496	494	4911
494	*01131	496	494	*01211	5061	*11595	496	4912
496	494	*01156	496	494	5070	494	*4821	4918
*01104	496	494	*01184	496	5071	496	494	4919
494	*01132	496	494	*01212	5078	*1221	496	*4950
496	494	*01160	496	494	5080	494	*4822	494
*01105	496	494	*01185	496	5081	496	494	496
494	*01133	496	494	*01213	5111	*1304	496	74861
496	494	*01161	496	494	5118	494	*4823	*4951
*01106	496	494	*01186	496	5119	496	494	494
494	*01134	496	494	*01214	5130	*1363	496	496
496	494	*01162	496	494	515	494	*4824	74861
*01110	496	494	*01190	496	5160	496	494	*4952
494	*01135	496	494	*01215	5161	*1922	496	494
496	494	*01163	496	494	5162	1910	*4828	496
*01111	496	494	*01191	496	5163	1911	494	74861
494	*01136	496	494	*01216	5168	1912	496	*4953
496	494	*01164	496	494	*5169	1913	*4829	494
*01112	496	494	*01192	496	5171	1914	494	496
494	*01140	496	494	*01236	5172	1915	496	74861
496	494	*01165	496	481	5178	1916	*483	*4954
*01113	496	494	*01193	4820	*01280	1917	494	494
494	*01141	496	494	4821	494	1918	496	496
496	494	*01166	496	4822	496	1919	*4841	74861
*01114	496	494	*01194	4823	*01281	*1923	494	*4955
494	*01142	496	494	4824	494	1910	496	494
496	494	*01170	496	4828	496	1911	*4843	496
*01115	496	494	*01195	4829	*01282	1912	494	74861
494	*01143	496	494	483	494	1913	496	*4956
496	494	*01171	496	4841	496	1914	*4845	494
*01116	496	494	*01196	4843	*01283	1915	494	496
494	*01144	496	494	4845	494	1916	496	74861
496	494	*01172	496	4846	496	1917	*4846	*4957
*01120	496	494	*01200	4847	*01284	1918	494	494
494	*01145	496	494	4848	494	1919	496	496
496	494	*01173	496	485	496	*20281	*4847	74861
*01121	496	494	*01201	486	*01285	20242	494	*4958
494	*01146	496	494	4870	494	*4800	496	494
496	494	*01174	496	494	496	494	*4848	496
*01122	496	494	*01202	4950	*01286	496	494	74861
494	*01150	496	494	4951	494	*4801	496	*4959
496	494	*01175	496	4952	496	494	*485	494
*01123	496	494	*01203	4953	*0212	496	494	496
494	*01151	496	494	4954	494	*4802	496	74861
496	494	*01176	496	4955	496	494	*486	*500
*01124	496	494	*01204	4956	*0310	496	494	494
494	*01152	496	494	4957	494	*4808	496	496

74861	74861	5846	5809	74191	*80516	*80606	83913	83912
*501	*5089	5847	5810	74192	86399	86399	83914	83913
494	494	5848	5811	74193	*80517	*80607	83915	83914
496	496	5849	5812	*7479	86399	86399	83916	83915
74861	74861	585	5813	74100	*80518	*80608	83917	83916
*502	*5171	59010	59181	74101	86399	86399	83916	83917
494	496	59011	58189	74102	*8058	*80609	*83950	83918
496	*5178	5902	5819	74103	83900	86399	83900	*83979
74861	4911	5903	5834	74190	83901	*80610	83901	83900
*503	4912	59080	5845	74191	83902	86399	83902	83901
494	4918	59081	5846	74192	83903	*80611	83903	83902
496	4919	5909	5847	74193	83904	86399	83904	83903
74861	4928	591	5848	*7484	83905	*80612	83905	83904
*504	496	5990	5849	74861	83906	86399	83906	83905
494	*5182	*5921	585	*7485	83907	*80613	83907	83906
496	4928	5800	59010	74861	83908	86399	83908	83907
74861	*5183	5804	59011	*74860	83910	*80614	83910	83908
*505	4928	58081	5902	74861	83911	86399	83911	83910
494	*51889	58089	5903	*74869	83912	*80615	83912	83911
496	4911	5809	59080	74861	83913	86399	83913	83912
74861	4912	5810	59081	*7488	83914	*80616	83914	83913
*5060	4918	5811	5909	74861	83915	86399	83915	83914
494	4919	5812	591	*7489	83916	*80617	83916	83915
496	4928	5813	5935	74861	83917	86399	83917	83916
74861	496	58181	5950	*7590	83918	*83940	83918	83917
*5062	*5198	58189	5951	7882	*8059	83900	*83959	83918
494	4911	5819	5952	*80500	83900	83901	83900	*8398
496	4912	5834	5954	86399	83901	83902	83901	83900
74861	4918	5845	59581	*80501	83902	83903	83902	83901
*5063	4919	5846	59582	86399	83903	83904	83903	83902
494	4928	5847	59589	*80502	83904	83905	83904	83903
496	494	5848	5959	86399	83905	83906	83905	83904
74861	496	5849	*74689	*80503	83906	83907	83906	83905
*5070	*5199	585	74100	86399	83907	83908	83907	83906
494	4911	59010	74101	*80504	83908	83910	83908	83907
496	4912	59011	74102	86399	83910	83911	83910	83908
74861	4918	5902	74103	*80505	83911	83912	83911	83910
*5071	4919	5903	74190	86399	83912	83913	83912	83911
494	4928	59080	74191	*80506	83913	83914	83913	83912
496	494	59081	74192	86399	83914	83915	83914	83913
74861	496	5909	74193	*80507	83915	83916	83915	83914
*5078	*5920	591	*7469	86399	83916	83917	83916	83915
494	5800	5935	74100	*80508	83917	83918	83917	83916
496	5804	5950	74101	86399	83918	*83949	83918	83917
74861	58081	5951	74102	*80510	*80600	83900	*83969	83918
*5080	58089	5952	74103	86399	86399	83901	83900	*8399
494	5809	5954	74190	*80511	*80601	83902	83901	83900
496	5810	59581	74191	86399	86399	83903	83902	83901
74861	5811	59582	74192	*80512	*80602	83904	83903	83902
*5081	5812	59589	74193	86399	86399	83905	83904	83903
494	5813	5959	*74789	*80513	*80603	83906	83905	83904
496	58181	*5929	74100	86399	86399	83907	83906	83905
74861	58189	5800	74101	*80514	*80604	83908	83907	83906
*5088	5819	5804	74102	86399	86399	83910	83908	83907
494	5834	58081	74103	*80515	*80605	83911	83910	83908
496	5845	58089	74190	86399	86399	83912	83911	83910

83911	83918	83905	
83912	*92611	83906	
83913	83900	83907	
83914	83901	83908	
83915	83902	83910	
83916	83903	83911	
83917	83904	83912	
83918	83905	83913	
*8479	83906	83914	
83900	83907	83915	
83901	83908	83916	
83902	83910	83917	
83903	83911	83918	
83904	83912		
83905	83913		
83906	83914		
83907	83915		
83908	83916		
83910	83917		
83911	83918		
83912	*95200		
83913	8072		
83914	8073		
83915	*95201		
83916	8072		
83917	8073		
83918	*95202		
*86385	8072		
86390	8073		
86391	*95203		
86392	8072		
86393	8073		
86394	*95204		
*8739	8072		
86122	8073		
86130	*95205		
86131	8072		
86132	8073		
*9051	*95206		
83900	8072		
83901	8073		
83902	*95207		
83903	8072		
83904	8073		
83905	*95208		
83906	8072		
83907	8073		
83908	*95209		
83910	8072		
83911	8073		
83912	*9591		
83913	83900		
83914	83901		
83915	83902		
83916	83903		
83917	83904		

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	24369	18.8864	6	9	14	23	37
002	4877	19.1411	4	8	13	23	40
003	5	24.0000	1	1	23	24	56
004	4411	16.7345	4	7	12	21	34
005	48360	8.1711	3	4	6	10	15
006	2332	2.8563	1	1	2	3	5
007	5113	22.1109	2	5	12	24	49
008	4561	5.4567	1	2	3	6	11
009	2026	11.3307	2	4	8	13	22
010	17237	11.6097	2	4	8	15	24
011	5304	7.5650	1	3	5	9	16
012	26726	10.5323	2	4	7	12	19
013	5380	9.9059	3	5	8	12	17
014	315112	10.7289	3	5	8	13	20
015	154306	5.6284	2	3	4	7	10
016	14160	9.2824	2	4	7	11	17
017	6780	6.4639	2	3	5	7	11
018	12033	9.3354	2	4	7	11	17
019	12203	4.0989	1	2	5	8	12
020	5825	11.7085	2	4	9	15	24
021	700	10.0152	3	4	7	13	19
022	13229	5.8546	2	3	5	7	11
023	4507	6.8825	1	2	5	8	14
024	44387	7.5910	2	3	5	9	15
025	29298	4.7518	1	2	4	6	9
026	44	5.2273	1	1	3	5	12
027	2322	9.4190	1	2	5	11	22
028	5074	9.4943	1	3	6	12	19
029	6674	5.2955	1	2	4	7	12
030	1	1.0000	1	1	1	1	1
031	4264	6.5016	1	2	4	8	12
032	8076	3.8424	1	2	3	5	8
034	11225	9.3354	2	4	6	11	19
035	5755	5.9626	1	2	4	7	11
036	20412	3.4272	1	2	3	4	6
037	3113	4.5895	1	2	3	5	9
038	1539	2.8697	1	1	2	3	5
039	35909	2.0561	1	1	2	2	3
040	9608	2.8874	1	1	2	3	6
041	1	1.0000	1	1	1	1	1
042	23381	3.1143	1	2	2	4	6
043	311	4.6592	1	2	4	5	8
044	2378	7.0135	3	4	6	9	13
045	3635	4.4209	1	2	3	6	8
046	3378	6.0580	1	2	4	8	12
047	3196	3.6076	1	1	2	5	7
049	5756	15.8822	4	8	13	19	30
050	5446	3.2595	1	2	3	4	6
051	799	3.0751	1	1	2	3	6
052	130	4.1077	1	2	3	5	7
053	9319	3.3595	1	1	2	3	7

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
054	3	5.6667	4	4	5	8	8
055	8665	2.5924	1	1	1	2	4
056	1578	2.4474	1	1	2	3	5
057	757	6.2563	1	2	3	7	14
059	351	2.0798	1	1	1	2	4
060	1	3.0000	3	3	3	3	3
061	358	5.7039	1	1	2	6	14
062	3	6.3333	1	1	3	15	15
063	4252	7.8789	1	2	5	9	17
064	6198	8.7417	1	2	5	11	20
065	31438	4.2275	2	2	3	5	8
066	10360	4.1519	1	2	3	5	7
067	450	6.4956	2	3	5	8	12
068	12217	6.4601	2	3	5	8	12
069	5491	4.8299	2	3	4	6	9
070	27	4.2222	1	2	3	6	7
071	118	6.4068	2	2	4	7	10
072	776	5.0103	1	2	3	6	9
073	9108	5.9657	1	2	4	7	12
074	1	1.0000	1	1	1	1	1
075	28505	15.1835	6	8	12	18	28
076	10563	13.2620	2	5	10	17	27
077	2510	6.5040	1	2	4	9	14
078	28342	10.7871	4	7	10	15	24
079	83548	12.9527	4	6	10	16	24
080	19309	9.6900	3	5	8	12	17
081	4	7.0000	1	1	4	7	16
082	89744	9.6385	2	4	7	12	20
083	6420	8.7301	2	4	7	11	16
084	2723	5.3907	2	3	4	7	10
085	14845	9.2525	2	4	7	12	18
086	3097	6.3839	2	3	5	8	12
087	46333	8.3131	2	4	6	10	16
088	123305	8.1437	3	4	6	10	15
089	258566	9.4736	3	5	8	12	17
090	95425	7.1748	3	4	6	9	12
091	43	5.1163	2	3	4	7	10
092	9763	9.2529	3	4	7	12	18
093	3271	6.8156	2	3	5	9	13
094	8025	9.9581	3	5	8	12	19
095	1851	6.3857	2	3	5	8	12
096	182286	7.4992	3	4	6	9	13
097	52495	5.7150	2	3	5	7	10
098	13	4.6154	1	2	4	6	7
099	23313	5.4147	2	2	4	7	10
100	12739	3.5265	1	2	3	4	6
101	17335	7.3671	2	3	6	9	14
102	7764	5.4557	1	2	4	7	10
103	29	48.8966	13	19	33	51	127
104	9145	21.8074	10	13	18	26	38
105	9784	16.6800	8	10	13	18	30

TABLE 3a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
106	52279	16.7591	9	11	14	19	27
107	36184	13.0575	7	9	10	14	20
108	1698	16.5041	2	8	13	20	33
109	9610	12.0699	1	4	9	15	26
110	59893	16.6131	6	9	13	19	31
111	20515	10.2590	5	7	9	12	16
112	80142	7.9382	2	3	6	10	16
113	32028	19.0684	6	9	14	23	36
114	8502	14.0042	3	6	11	18	28
115	6753	15.3015	6	9	13	18	26
116	53384	8.1922	3	4	7	10	15
117	3768	6.5796	2	3	4	8	13
118	7700	3.9478	1	2	3	4	8
119	4321	6.4909	1	2	4	7	14
120	18954	17.3994	3	6	12	22	36
121	130168	11.0040	4	7	10	13	18
122	127305	8.1858	2	5	8	10	13
123	67374	5.5322	1	1	3	7	13
124	71876	6.3539	1	2	5	8	13
125	99782	3.2009	1	2	2	4	7
126	3349	22.3586	5	11	20	31	43
127	500931	8.1823	3	4	6	10	15
128	34515	9.1856	4	6	8	11	14
129	8098	5.7791	1	1	2	7	14
130	55497	8.1142	2	3	7	10	15
131	33500	5.8690	1	2	5	8	11
132	20573	6.0062	2	3	5	7	11
133	9066	4.5831	1	2	4	5	8
134	39410	5.6929	2	3	4	7	10
135	7223	7.1308	2	3	5	9	14
136	2386	4.5889	1	2	4	6	8
138	154780	6.3696	2	3	5	8	12
139	83446	4.4489	1	2	4	6	8
140	366458	4.9987	2	3	4	6	9
141	63525	5.9211	2	3	5	7	11
142	41366	4.3083	1	2	3	5	8
143	86124	3.7143	1	2	3	5	7
144	43551	8.0491	2	4	6	10	16
145	9230	4.8905	1	2	4	6	9
146	17264	18.3716	9	11	15	21	31
147	5582	12.2890	7	9	11	14	18
148	101332	17.5270	8	10	14	20	31
149	31250	11.2531	7	8	10	13	17
150	15071	15.3399	6	9	12	18	27
151	7407	9.8817	5	7	9	12	16
152	6501	10.2549	3	6	8	12	19
153	4388	7.7995	3	6	8	10	12
154	42243	17.5136	5	9	13	21	34
155	10807	10.2396	4	6	9	12	18
156	3	3.3333	1	1	1	8	8
157	22807	7.5280	2	3	6	9	14

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
158	24105	4.0261	1	2	3	5	8
159	11836	7.4155	2	4	6	9	14
160	16529	4.4594	2	2	4	6	8
161	30725	5.1466	1	2	4	6	10
162	54597	2.9834	1	2	3	4	5
163	15	6.4667	2	4	6	7	9
164	3775	13.2697	6	8	11	15	22
165	3022	8.6982	5	6	8	10	13
166	2222	8.8110	3	5	7	10	15
167	2909	5.0890	3	3	5	6	8
168	3942	9.5335	1	2	5	12	22
169	4759	3.7626	1	1	2	4	8
170	11165	16.0751	3	7	12	20	32
171	2901	8.9935	2	4	7	11	17
172	30309	10.4660	2	4	7	13	22
173	6971	6.3179	1	2	4	8	13
174	119641	7.3250	2	4	6	9	13
175	40862	5.1334	2	3	4	6	9
176	11472	8.0039	3	4	6	10	15
177	17460	6.6513	3	4	5	8	12
178	10457	4.9896	2	3	4	5	8
179	7168	9.5989	3	5	7	12	18
180	49799	7.9142	2	4	6	10	15
181	29014	5.1332	2	3	4	6	9
182	216101	6.4626	2	3	5	8	12
183	105599	4.6671	2	2	4	6	8
184	51	4.5882	1	2	3	5	8
185	4319	6.7151	1	2	4	6	9
186	3	9.3333	4	4	5	15	14
187	2044	2.9951	1	2	3	3	6
188	31996	7.4329	2	3	5	9	15
189	13893	4.2521	1	2	3	5	9
190	179	6.4134	2	3	4	7	11
191	5502	21.0931	8	11	17	26	39
192	2622	22.3436	6	10	15	27	46
193	8379	18.0822	8	11	15	22	32
194	2622	12.4886	5	8	11	16	21
195	23007	14.1979	7	9	12	16	23
196	4945	10.4159	6	7	9	12	16
197	53911	11.2095	5	7	9	13	19
198	43179	7.2058	4	5	6	8	11
199	3290	15.4894	5	8	13	20	29
200	2087	13.8955	2	6	11	18	28
201	4209	13.0772	2	5	10	16	27
202	14662	10.2349	2	4	8	13	20
203	30039	9.5991	2	4	7	12	20
204	32321	7.9953	3	4	6	10	15
205	18036	9.6092	2	4	7	12	19
206	4437	5.7142	1	2	4	7	12
207	33858	7.5022	2	4	6	9	14
208	19068	4.6561	1	2	4	6	9

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
209	181360	13.2831	8	9	12	15	20
210	77631	15.9807	7	10	13	18	26
211	51391	11.9955	6	8	11	14	18
212	11	10.3636	1	6	9	9	12
213	4940	13.9547	4	6	10	17	27
214	20693	14.7116	6	8	12	18	27
215	31492	9.7040	4	6	8	12	17
216	4647	13.4717	2	4	10	18	29
217	12149	21.8941	3	7	15	29	47
218	10032	11.5531	4	6	9	14	21
219	16795	6.8810	3	4	6	8	12
220	1	3.0000	3	3	3	3	3
221	3210	9.9919	2	3	7	13	21
222	8819	5.0836	1	2	4	7	11
223	12125	6.4435	2	3	5	8	12
224	8535	3.6667	1	2	3	4	7
225	16397	4.8567	1	2	3	5	10
226	3607	10.4439	2	4	7	13	22
227	8377	4.3925	1	2	3	5	9
228	5255	4.4799	1	2	3	5	9
229	4980	2.7773	1	1	2	3	5
230	3458	7.1186	1	2	4	8	14
231	7759	6.2111	1	2	3	7	13
232	845	6.3160	1	1	3	7	16
233	4951	12.4520	3	5	9	15	25
234	6358	6.2606	2	3	5	8	12
235	6187	13.9271	2	4	8	15	34
236	38469	10.0834	2	5	8	12	19
237	1982	6.2200	2	3	5	8	12
238	5289	14.6137	4	7	11	18	30
239	59823	10.1914	3	5	8	13	20
240	10520	9.8664	3	5	7	12	19
241	7118	6.5794	2	3	5	8	12
242	2398	11.4570	3	5	8	14	23
243	138344	6.9613	2	3	6	9	13
244	11612	7.5260	2	3	6	9	14
245	9368	5.6158	2	3	4	7	10
246	2374	6.0080	2	3	5	7	11
247	10363	5.1662	1	2	4	7	10
248	7052	6.0553	2	3	5	7	12
249	5219	6.8362	1	2	5	8	15
250	3449	6.8800	1	2	4	8	13
251	5073	3.5399	1	1	2	4	7
253	14391	8.7382	2	4	6	10	16
254	19169	5.2942	1	2	4	6	10
256	9501	5.6474	1	2	4	7	11
257	21745	7.1282	3	4	6	8	12
258	27285	5.3610	3	4	5	7	8
259	3549	7.3995	2	3	5	9	16
260	4781	3.6164	1	2	3	5	6
261	4250	3.3007	1	2	3	4	6

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
262	4129	2.6295	1	1	2	3	4
263	24462	21.6964	6	9	15	27	44
264	7661	14.4772	4	7	11	18	28
265	5004	11.2706	2	4	7	14	24
266	6612	4.9992	1	2	3	7	11
267	599	4.7329	1	2	3	6	10
268	1965	3.9720	1	1	2	4	8
269	8381	12.0199	2	4	9	15	25
270	7783	5.1126	1	2	3	6	11
271	17253	12.0825	3	6	9	14	22
272	6567	9.6930	3	5	7	12	19
273	3828	7.7153	2	4	6	9	16
274	4435	9.9565	2	3	7	12	21
275	940	5.7489	1	2	4	6	12
276	1159	4.5764	1	2	3	6	10
277	49522	9.1000	3	5	7	11	16
278	29122	6.9354	3	4	6	8	12
279	4	3.7500	2	2	4	4	5
280	12330	6.7262	2	3	5	8	13
281	11027	4.6232	1	2	3	6	9
282	1	6.0000	6	6	6	6	6
283	5850	7.6605	2	3	6	9	15
284	4045	5.1654	1	2	4	6	10
285	3072	23.4883	7	11	18	29	45
286	1370	14.7693	6	8	10	17	28
287	6468	19.3879	5	8	13	23	38
288	504	12.1885	3	5	7	13	23
289	3671	7.1632	2	3	5	7	15
290	8662	4.9008	2	3	4	5	9
291	212	2.9858	1	1	2	3	5
292	3857	17.4599	4	8	13	21	34
293	1018	10.2996	2	4	7	12	19
294	101670	7.7236	3	4	6	9	14
295	2849	6.2411	2	3	5	7	11
296	161461	8.5519	2	4	6	10	16
297	62195	5.7573	2	3	4	7	10
298	60	4.3167	1	2	3	5	7
299	970	7.2155	1	3	5	9	15
300	10446	9.8260	3	5	7	12	19
301	3550	6.1727	2	3	5	8	12
302	5626	18.6314	8	11	15	23	33
303	14648	15.2266	7	9	12	18	26
304	12505	14.5631	4	7	11	18	28
305	8352	8.2473	2	4	7	10	15
306	10301	10.6463	4	5	8	13	19
307	7327	6.2277	3	4	5	8	11
308	7383	10.6407	2	4	8	13	21
309	5157	5.6343	1	2	4	8	12
310	28703	6.4951	2	3	5	8	13
311	31458	3.5010	1	2	3	4	7
312	4071	6.1155	1	2	4	8	12

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
313	4052	3.9644	1	2	3	4	7
314	2	4.5000	4	4	5	5	5
315	24103	13.8619	2	4	9	18	30
316	30904	9.4292	2	4	7	12	19
317	1884	3.0058	1	1	2	3	4
318	7723	9.3304	2	3	6	12	20
319	1936	4.4597	1	1	3	6	10
320	128095	8.8528	3	5	7	10	15
321	46422	6.6280	3	4	6	8	11
322	54	4.5926	2	3	5	8	14
323	22778	4.2967	1	2	3	5	7
324	19874	3.0916	1	1	2	4	6
325	11267	6.2966	2	3	5	8	12
326	7162	3.9968	1	2	3	5	8
327	6	4.3333	1	1	3	6	6
328	2226	5.3068	1	2	4	7	10
329	935	3.3155	1	1	2	4	6
330	2	2.0000	2	2	2	2	2
331	22930	7.6868	2	3	6	9	15
332	10541	4.9863	1	2	3	6	10
333	80	6.6375	1	2	4	8	15
334	8101	12.5180	7	8	11	15	20
335	8116	9.5241	6	7	9	11	14
336	87557	7.4736	3	4	6	9	13
337	116367	5.0358	3	4	5	6	8
338	10575	5.4709	1	1	3	7	13
339	6986	4.0416	1	1	3	5	9
340	8	11.0000	1	1	2	16	25
341	16329	5.1311	2	3	4	6	9
342	1048	3.1708	1	1	2	3	7
344	3511	7.2865	2	4	6	8	13
345	2448	5.9759	1	2	4	7	12
346	10540	8.3132	2	3	6	10	17
347	3548	3.8636	1	1	2	5	8
348	6085	5.6079	1	2	4	7	11
349	5614	2.8669	1	1	2	3	6
350	9378	6.0094	2	4	5	7	10
351	3	1.0000	1	1	1	1	1
352	1265	4.3447	1	2	3	5	9
353	1721	15.1307	6	8	12	18	27
354	6218	10.3191	5	6	8	12	17
355	7441	6.6940	4	5	6	8	9
356	27242	5.9234	3	4	5	7	9
357	6156	13.6588	6	8	11	16	25
358	12607	8.8651	5	6	7	10	15
359	27272	6.1976	4	5	6	7	9
360	5102	5.8105	1	2	4	7	12
361	506	4.6719	1	2	2	5	10
362	30	2.0333	1	1	1	2	3
363	4225	5.4133	1	2	3	5	11
364	5338	3.1263	1	1	2	3	6

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
365	3370	12.6656	4	6	9	15	25
366	5606	10.0121	2	3	7	13	22
367	1931	4.6194	1	2	3	5	10
368	1441	7.7189	3	4	6	9	14
369	3451	5.0519	1	2	3	6	10
370	400	7.7675	4	5	6	8	14
371	557	5.3034	3	4	5	6	7
372	236	3.9237	1	2	3	5	7
373	1476	2.7080	1	2	2	3	4
374	258	3.4884	2	2	3	4	4
375	2	3.5000	3	3	4	4	4
376	102	3.9902	1	2	3	4	8
377	34	4.9118	1	2	3	6	8
378	103	5.0000	3	3	4	5	7
379	195	3.0359	1	1	2	4	6
380	52	1.9808	1	1	1	2	5
381	274	2.4197	1	1	1	2	5
382	107	1.5514	1	1	1	2	3
383	605	5.2132	1	2	3	6	10
384	83	3.4458	1	1	2	4	8
385	7	10.0000	1	2	5	8	18
386	1	9.0000	9	9	9	9	9
389	46	14.1087	2	3	7	13	31
390	47	7.4255	1	3	5	10	15
392	2117	16.8573	6	8	12	21	33
393	1	6.0000	6	6	6	6	6
394	1963	8.1503	1	2	5	10	18
395	74329	6.4088	1	3	5	8	12
396	38	4.0789	1	1	1	2	10
397	9068	7.7354	2	3	6	10	15
398	10555	9.1184	2	4	7	11	17
399	3062	5.7531	1	2	4	7	11
400	7548	15.5062	4	7	11	19	32
401	5606	15.1687	3	6	11	19	31
402	4087	6.5165	1	2	4	8	14
403	23835	11.9269	2	5	8	15	25
404	8720	6.9547	1	3	5	9	15
405	2	2.5000	2	2	3	3	3
406	3617	17.1275	5	8	13	22	33
407	2035	9.2354	2	5	8	11	18
408	9767	6.6768	2	2	4	7	15
409	7830	10.4777	2	4	6	14	23
410	122243	3.4019	1	2	3	4	6
411	678	4.2552	1	2	3	5	8
412	580	3.2000	1	1	2	4	7
413	9859	10.6994	2	4	8	14	23
414	4788	7.4478	1	3	5	9	16
415	21496	20.6644	5	9	15	25	41
416	96711	10.6323	2	5	9	13	20
417	29	7.5517	2	4	7	10	15
418	11132	8.8876	3	4	7	11	17

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
419	13842	7.0229	2	4	6	9	15
420	4849	5.9008	2	3	5	7	11
421	11582	5.7146	2	3	4	7	10
422	92	5.2283	1	2	3	7	8
423	6316	11.6742	3	5	8	14	24
424	3248	21.5619	3	7	14	26	43
425	14861	6.3136	2	3	4	7	12
426	10846	8.1425	2	3	6	10	16
427	1989	7.8457	2	3	5	9	16
428	1232	10.2849	1	3	6	12	22
429	30809	11.6369	3	4	7	12	21
430	60147	12.8056	3	5	9	16	27
431	416	9.1659	2	3	6	11	19
432	624	6.8478	1	2	4	8	14
433	4843	5.0900	1	1	3	6	12
434	15446	8.7209	2	3	6	10	19
435	14268	7.6694	2	3	5	8	21
436	4670	15.4916	2	6	15	24	29
437	7639	18.0747	4	9	20	27	30
439	1100	12.7909	1	3	8	17	29
440	6822	16.9945	2	5	11	22	38
441	1084	4.2943	1	1	2	4	9
442	38345	10.0714	1	3	6	13	22
443	16935	6.6853	1	2	4	9	15
444	3374	7.1349	2	3	5	9	14
445	2965	5.1619	1	2	4	6	10
446	1	2.0000	2	2	2	2	2
447	2826	3.7155	1	1	3	5	7
448	1	4.0000	4	4	4	4	4
449	30045	6.3445	2	3	5	8	12
450	12811	4.0984	1	2	3	5	8
451	14	4.8571	1	2	3	4	9
452	24622	7.0679	1	3	5	9	15
453	11895	4.5470	1	2	3	6	9
454	3913	7.0787	1	2	4	8	14
455	1724	5.8798	1	2	3	5	8
456	227	10.4009	1	2	5	11	22
457	127	5.1969	1	1	3	12	21
458	1486	24.4852	5	10	19	32	50
459	906	15.4117	3	6	11	19	32
460	2363	9.5044	2	4	7	11	18
461	9039	4.7806	1	1	2	5	11
462	5159	18.1312	4	7	15	24	35
463	9493	7.2019	2	3	5	9	14
464	4113	4.6871	1	2	3	6	9
465	985	2.8589	1	1	2	3	5
466	4282	5.2494	1	1	2	6	11
467	7022	8.5144	1	1	3	6	14
468	119624	16.2511	2	6	12	20	33
471	3583	19.4689	10	12	16	23	31
472	178	33.6404	1	10	28	47	73

TABLE 7a - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V5.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
473	7562	15.7314	2	4	9	23	39
474	8339	44.3899	13	22	35	55	83
475	17370	13.0866	2	5	10	17	26

TECHNICAL NOTE: The V5.0 GROUPER software used to assign FY 1987 cases to DRGs is based on the DRG classifications in effect for discharges occurring in Federal FY 1988.

Each percentile length of stay (LOS) value was computed according to the following formula: Let n represent the number of discharges classified by DRG and let $x_1, x_2, \ldots, x_n$ represent the ordered LOS values for each DRG set of discharges. For the t_{th} percentile, where $p = t/100$, let $np = j + g$ where j is the integer part and g is the fractional part of np. The t_{th} percentile, y, is defined as the LOS value at x_{np}.

$$y = (1 - g)x_j + gx_{j+1}$$

(See SAS User's Guide: Basics, Version 5 Edition, Cary, NC: SAS Institute Inc., 1985, p. 1186.)

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TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	24369	18.8864	6	9	14	23	37
002	4877	19.1411	4	8	13	23	40
003	5	24.0000	1	1	23	24	56
004	4411	16.7345	4	7	12	21	34
005	48360	8.1711	3	4	6	10	15
006	2332	2.8563	1	1	2	3	5
007	5113	22.1109	2	6	12	24	49
008	4561	5.4567	1	2	3	6	11
009	2026	11.3307	2	4	8	13	22
010	17237	11.6097	2	4	8	15	24
011	5304	7.5650	1	3	5	9	16
012	26726	10.5323	2	4	7	12	19
013	5380	9.9059	3	5	8	12	17
014	315112	10.7289	3	5	8	13	20
015	154306	5.6284	2	3	4	7	10
016	14160	9.2824	2	4	7	11	17
017	6780	6.4639	2	3	5	7	11
018	12033	9.3354	2	4	7	11	17
019	12203	6.0989	1	2	5	8	12
020	5825	11.7085	2	4	9	15	24
021	788	10.0152	3	4	7	13	19
022	13229	5.8546	2	3	5	7	11
023	4307	6.8825	1	2	5	8	14
024	44387	7.5910	2	3	5	9	15
025	29298	4.7518	1	2	4	6	9
026	44	5.2273	1	1	3	5	12
027	2322	9.4190	1	2	5	11	22
028	5974	9.4943	1	3	6	12	19
029	4674	5.2955	1	2	4	7	12
030	1	1.0000	1	1	1	1	1
031	4264	6.5016	1	2	4	8	12
032	5076	3.8424	1	2	3	5	8
034	11225	9.3354	2	4	6	11	19
035	5755	5.5626	1	2	4	7	11
036	20412	3.4272	1	2	3	4	6
037	3113	4.5895	1	2	3	5	9
038	1535	2.8697	1	1	2	3	5
039	35909	2.0561	1	1	2	2	3
040	5806	2.8874	1	1	2	3	6
041	1	1.0000	1	1	1	1	1
042	23381	3.1143	1	2	2	4	6
043	311	4.6592	1	2	4	5	8
044	2378	7.0135	3	4	6	9	13
045	3635	4.4209	1	2	3	6	8
046	3378	6.0580	1	2	4	8	12
047	3596	3.6076	1	1	2	5	7
049	7159	15.5330	3	7	12	19	30
050	5594	3.2959	1	2	3	4	6
051	869	3.1435	1	1	2	4	6
052	231	4.7489	1	2	3	5	10
053	9404	3.3889	1	1	2	3	7

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
054	3	3.6667	1	1	3	8	8
055	8721	2.6278	1	1	2	2	5
056	1595	2.4821	1	1	2	3	5
057	810	4.2173	1	2	3	7	11
059	361	2.0748	1	1	2	2	3
060	1	3.0000	3	3	3	3	3
061	365	3.7425	1	1	2	7	11
062	3	6.3333	1	1	3	15	15
063	10211	6.0291	1	2	3	7	13
064	6974	8.7133	1	2	5	11	20
065	31438	4.2275	1	2	3	5	8
066	10366	4.1519	1	2	3	5	8
067	456	6.4956	2	3	5	8	12
068	12217	6.4601	2	3	5	8	12
069	5891	4.8299	2	3	4	6	9
070	27	4.2222	1	2	3	4	7
071	118	4.4068	2	2	4	7	10
072	776	5.0103	1	2	3	6	9
073	9100	5.9697	1	2	4	7	12
074	1	1.0000	1	1	1	1	1
075	28505	15.1835	6	8	12	18	28
076	10965	13.2620	2	5	10	17	27
077	2510	6.5040	1	2	4	9	14
078	28342	10.7871	4	7	10	13	18
079	85948	12.9527	4	6	10	16	24
080	14909	9.6900	3	6	8	12	17
081	4	7.0000	1	1	4	7	16
082	88744	9.6385	2	4	7	12	20
083	6480	8.7301	2	4	7	11	16
084	2723	5.3907	2	3	4	7	10
085	14845	9.2525	2	4	7	12	18
086	3097	6.3859	2	3	5	8	12
087	46333	8.3131	2	4	6	10	16
088	123908	8.1437	3	4	6	10	15
089	258564	9.4796	3	5	8	12	17
090	95428	7.1748	3	4	6	9	12
091	43	5.1163	2	3	4	7	10
092	9763	9.2529	3	4	7	12	18
093	3221	6.8150	2	3	5	9	13
094	8028	9.7901	3	5	8	12	19
095	1851	6.3857	2	3	5	8	12
096	162286	7.4992	3	4	6	9	13
097	52498	5.7159	2	3	5	7	10
098	13	4.6154	1	2	4	6	9
099	23913	5.4147	2	2	4	7	10
100	12738	3.5289	1	2	3	4	6
101	17638	7.5471	2	3	6	9	14
102	7764	5.4557	1	2	4	7	10
103	89	48.8989	13	19	33	51	127
104	9145	21.8074	10	13	18	26	38
105	9784	16.6800	8	10	13	18	30

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
106	52278	16.7591	9	11	14	19	27
107	38184	13.0575	7	9	10	14	20
108	1698	16.5041	2	8	13	20	33
109	9610	17.0699	1	4	9	15	26
110	59893	16.6131	6	9	13	19	31
111	20515	10.2590	5	7	9	12	16
112	80142	7.9382	2	3	6	10	16
113	32028	19.0684	6	9	14	23	36
114	8502	14.0042	3	6	11	18	28
115	6753	15.3015	6	9	13	18	26
116	53384	8.1922	3	4	7	10	15
117	3768	6.5796	2	3	4	8	13
118	7700	3.9478	1	2	3	4	8
119	4321	6.4909	1	2	4	7	14
120	18954	17.3994	3	6	12	22	36
121	130168	11.0040	4	7	10	13	18
122	127305	8.1858	2	5	8	10	13
123	67374	5.5322	1	1	3	7	13
124	71876	6.3539	1	2	5	8	13
125	99782	3.2009	1	2	2	4	7
126	3349	22.3586	5	11	20	31	43
127	500931	8.1823	3	4	6	10	15
128	34515	9.1856	4	6	8	11	14
129	8098	5.7791	1	1	2	7	14
130	55497	8.1142	2	3	7	10	15
131	33500	5.8690	1	2	5	8	11
132	20573	6.0062	2	3	5	7	11
133	9066	4.5831	1	2	4	5	8
134	39410	5.6929	2	3	4	7	10
135	7223	7.1308	2	3	5	9	14
136	2386	4.5889	1	2	4	6	8
138	154780	6.3696	2	3	5	8	12
139	83446	4.4489	1	2	4	6	8
140	366458	4.9987	2	3	4	6	9
141	53525	5.9211	2	3	5	7	11
142	41366	4.3083	1	2	3	5	8
143	86124	3.7143	1	2	3	5	7
144	43551	6.0491	2	4	6	10	16
145	9230	4.8905	1	2	4	6	9
146	17264	18.3716	9	11	15	21	31
147	5582	12.2890	7	9	11	14	18
148	101332	17.5270	8	10	14	20	31
149	31250	11.2531	7	8	10	13	17
150	15071	15.3399	6	9	12	16	27
151	7407	9.8817	5	7	9	12	16
152	6501	10.2549	3	6	8	12	19
153	4388	7.7995	3	6	8	10	12
154	42254	17.5114	5	9	13	21	34
155	10819	10.2333	4	6	9	12	18
156	3	3.3333	1	1	1	8	8
157	22807	7.5280	2	3	6	9	14

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
158	24105	4.0261	1	2	3	5	8
159	11836	7.4155	2	4	6	9	14
160	16529	4.4594	2	2	4	6	8
161	30725	5.1466	1	2	4	6	10
162	54597	2.9834	1	2	3	4	5
163	15	6.4667	2	4	6	7	9
164	3775	13.2697	6	8	11	15	22
165	3022	8.6982	5	6	8	10	13
166	2222	8.8110	3	5	7	10	15
167	2909	5.0890	3	3	5	6	8
168	333	8.4324	1	2	5	10	19
169	451	3.7827	1	1	2	4	8
170	11165	16.0751	3	7	12	20	32
171	2901	8.9935	2	4	7	11	17
172	30309	10.4660	2	4	7	13	22
173	6871	6.3179	1	2	4	8	13
174	119641	7.3250	2	4	6	9	13
175	40862	5.1334	2	3	4	6	9
176	11472	8.0039	3	4	6	10	15
177	17460	6.6513	3	4	5	8	12
178	10457	4.9896	2	3	4	6	8
179	7168	9.5989	3	5	7	12	18
180	49799	7.9142	2	4	6	10	15
181	29014	5.1332	2	3	4	6	9
182	216101	6.4626	2	3	5	8	12
183	105599	4.6671	2	2	4	6	8
184	51	4.5882	1	2	3	5	8
185	4084	6.3051	1	2	4	8	12
186	3	9.3333	4	4	9	15	15
187	2025	2.9556	1	1	2	3	6
188	31991	7.4336	2	3	5	9	15
189	13884	4.2532	1	2	3	5	9
190	179	6.4134	2	3	4	7	11
191*	5502	21.0931	8	11	17	26	39
192*	2622	22.3436	6	10	15	27	44
193	12289	17.6823	8	10	15	21	31
194	3361	12.3535	5	8	11	15	20
195	21012	14.0316	7	9	12	16	23
196	4638	10.3251	6	7	9	12	16
197	51996	10.9690	5	7	9	13	18
198	42750	7.1582	4	5	6	8	11
199	3290	15.4894	5	8	13	20	29
200	2087	13.8955	2	6	11	18	28
201	4209	13.0772	2	5	10	16	27
202	14662	10.2349	2	5	8	13	20
203	30039	9.5991	2	4	7	12	20
204	32321	7.9953	3	4	6	10	15
205	18036	9.6092	2	4	7	12	19
206	4437	5.7142	1	2	4	7	12
207	33858	7.5022	2	4	6	9	14
208	19068	4.6561	1	2	4	6	9

*Distribution does not reflect proposed changes to DRGs 191 and 192, which are described in section II.B.3. of the preamble.

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
209	181360	13.2831	8	9	12	15	20
210	77631	15.9807	7	10	13	18	26
211	51391	11.9955	6	8	11	14	18
212	11	10.3636	1	6	9	9	12
213	4940	13.9547	4	6	10	17	27
214	20693	14.7116	6	8	12	18	27
215	31492	9.7040	4	6	8	12	17
216	4647	13.4717	2	4	10	18	29
217	12149	21.8941	3	7	15	29	47
218	10032	11.5531	4	6	9	14	21
219	16795	6.8810	3	4	6	8	12
220	1	3.0000	3	3	3	3	3
221	3210	9.9919	2	3	7	13	21
222	8819	5.0836	1	2	4	7	11
223	12125	6.4435	2	3	5	8	12
224	8535	3.6667	1	2	3	4	7
225	16397	4.8567	1	2	3	5	10
226	3607	10.4439	2	4	7	13	22
227	8377	4.3925	1	2	3	5	9
228	5255	4.4799	1	2	3	5	9
229	4980	2.7773	1	1	2	3	5
230	3458	7.1186	1	2	4	8	14
231	7759	6.2111	1	2	3	7	13
232	845	6.3160	1	1	3	7	16
233	4951	12.4520	3	5	9	15	25
234	6358	6.2606	2	3	5	8	12
235	6187	13.9271	2	4	8	15	34
236	38469	10.0834	2	5	8	12	19
237	1982	6.2200	2	3	5	8	12
238	5289	14.6137	4	7	11	18	30
239	59823	10.1914	3	5	8	13	20
240	10520	9.8664	3	5	7	12	19
241	7118	6.5794	2	3	5	8	12
242	2398	11.4570	3	5	8	14	23
243	138344	6.9613	2	3	6	9	15
244	11612	7.5260	2	3	6	9	14
245	9368	5.6158	2	3	4	7	10
246	2374	6.0080	2	3	5	7	11
247	10363	5.1642	1	2	4	7	10
248	7052	6.0553	2	3	5	7	12
249	5219	6.8362	1	2	5	8	15
250	3449	6.8800	1	2	4	8	13
251	5873	3.5399	1	1	2	4	7
253	14391	8.7382	2	4	6	10	16
254	19169	5.2942	1	2	4	6	10
256	9501	5.6474	1	2	4	7	11
257	21745	7.1282	3	4	6	8	12
258	27285	5.3610	3	4	5	7	8
259	3549	7.3995	2	3	5	9	16
260	4781	3.6164	1	2	3	5	6
261	4250	3.3007	1	2	3	4	6

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
262	4129	2.6295	1	1	2	3	4
263	24462	21.6964	6	9	15	27	44
264	7661	14.4772	4	7	11	18	28
265	5004	11.2706	2	4	7	14	24
266	6612	4.9992	1	2	3	7	11
267	599	4.7329	1	2	3	6	10
268	1965	3.9720	1	1	2	4	8
269	8381	12.0199	2	4	9	15	25
270	7783	5.1126	1	2	3	6	11
271	17253	12.0825	3	6	9	14	22
272	6567	9.6930	3	5	7	12	19
273	3828	7.7153	2	4	6	9	16
274	4435	9.9565	2	3	7	12	21
275	940	5.7489	1	2	4	6	12
276	1159	4.5764	1	2	3	6	10
277	49522	9.1000	3	5	7	11	16
278	29122	6.9354	3	4	6	8	12
279	4	3.7500	2	2	4	4	5
280	12330	6.7262	2	3	5	8	13
281	11027	4.6232	1	2	3	6	9
282	1	5.0000	6	6	6	6	6
283	5850	7.6605	2	3	6	9	15
284	4045	5.1654	1	2	4	6	10
285	3072	23.4883	7	11	18	29	45
286	1370	14.7693	6	8	10	17	28
287	6468	19.3879	5	8	13	23	38
288	504	12.1885	3	5	7	13	23
289	3671	7.1632	2	3	5	7	15
290	8662	4.9008	2	3	4	5	9
291	212	2.9858	1	1	2	3	5
292	3857	17.4599	4	8	13	21	34
293	1018	10.2996	2	4	7	12	19
294	101670	7.7236	3	4	6	9	14
295	2849	6.2411	2	3	5	7	11
296	161461	8.5519	2	4	6	10	16
297	62155	5.7573	2	3	4	7	10
298	60	4.3167	1	2	3	5	7
299	970	7.2155	1	3	5	9	15
300	10448	9.8260	3	5	7	12	19
301	3550	6.1727	2	3	5	8	12
302	5626	18.6314	8	11	15	23	33
303	14648	15.2266	7	9	12	18	26
304	12505	14.5631	4	7	11	18	28
305	8352	8.2973	2	4	7	10	15
306	10301	10.6463	4	5	8	13	19
307	7326	6.2282	3	4	5	8	11
308	7568	10.5229	2	4	8	13	21
309	5500	5.5431	1	2	4	7	11
310	28699	6.4944	2	3	5	8	13
311	31456	3.5009	1	2	3	4	7
312	3890	6.1347	1	2	4	8	13

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
313	3712	3.5119	1	2	3	4	7
314	2	4.5000	4	4	5	5	5
315	24103	13.8619	2	4	9	18	30
316	38904	9.4292	2	4	7	12	19
317	1004	3.0058	1	1	2	3	6
318	7723	9.3304	2	3	6	12	20
319	1936	4.4597	1	1	3	6	10
320	128095	8.8528	3	5	7	10	15
321	46422	6.6280	3	4	6	8	11
322	54	6.5926	2	3	5	8	14
323	22778	4.2967	1	2	3	5	9
324	19874	5.0918	1	1	2	4	8
325	11267	6.2986	2	3	5	8	12
326	7162	3.9968	1	2	3	5	8
327	6	4.3333	1	1	3	6	6
328	2226	5.3068	1	2	4	7	10
329	935	3.3155	1	1	2	4	6
330	2	2.0000	2	2	2	2	2
331	22930	7.6868	2	3	6	9	15
332	10541	4.9863	1	2	3	6	10
333	80	6.6375	1	2	4	8	15
334	8101	12.5180	7	8	11	15	20
335	8116	9.5241	6	7	9	11	14
336	87557	7.4736	3	4	6	9	13
337	116367	5.0358	3	4	5	6	8
338	10575	5.4709	1	1	3	7	13
339	6466	4.0416	1	1	3	5	9
340	4	11.0000	1	1	2	16	25
341	16329	5.1311	2	3	4	6	9
342	1048	3.1708	1	1	2	3	7
344	3500	7.2946	2	4	6	8	13
345	2445	5.9710	1	2	4	7	12
346	10540	8.3132	2	3	6	10	17
347	3548	3.8636	1	1	2	5	8
348	6065	5.6079	1	2	4	7	11
349	5614	2.8669	1	1	2	3	6
350	9378	6.0094	2	4	5	7	10
351	3	1.0000	1	1	1	1	1
352	1265	4.3447	1	1	3	5	9
353	1721	15.1307	6	8	12	18	27
354	6218	10.3191	5	6	8	12	17
355	7441	6.6940	4	5	6	8	9
356	27242	5.9234	3	4	5	7	9
357	6156	13.5588	6	8	11	16	25
358	12607	8.8651	5	6	7	10	15
359	27272	6.1976	4	5	6	7	9
360	5102	5.8105	1	2	4	7	12
361	506	4.6719	1	2	2	5	10
362	30	2.0333	1	1	1	2	3
363	4225	5.4133	1	1	3	5	11
364	5330	3.1263	1	1	2	3	6

TABLE 7b. - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
365	3359	12.6818	4	6	9	15	25
366	5606	10.0121	2	3	7	13	22
367	1931	4.6194	1	2	3	5	10
368	1441	7.7189	3	4	6	9	14
369	3451	5.0519	1	2	3	6	10
370	400	7.7675	4	5	6	8	14
371	557	5.3034	3	4	5	6	7
372	236	3.9237	1	2	3	5	7
373	1476	2.7080	1	2	2	3	4
374	258	3.4884	2	2	3	4	4
375	2	3.5000	3	3	4	4	4
376	102	3.9902	1	2	3	4	8
377	34	4.9118	1	2	3	6	8
378	103	5.0000	3	3	4	5	7
379	195	3.0359	1	1	2	4	6
380	52	1.9808	1	1	1	2	5
381	274	2.4197	1	1	1	2	5
382	107	1.5514	1	1	1	2	3
383	609	5.2132	1	2	3	6	10
384	83	3.4458	1	1	2	4	8
385	7	10.0000	1	2	5	8	18
386	1	9.0000	9	9	9	9	9
389	46	14.1087	2	3	7	13	31
390	47	7.4255	1	3	5	10	15
392	2117	16.8573	6	8	12	21	33
393	1	6.0000	6	6	6	6	6
394	1963	5.1903	1	2	3	10	18
395	74329	4.4088	1	2	3	5	8
396	38	4.0789	1	1	1	2	10
397	9868	7.7359	2	3	4	6	10
398	10555	9.1184	2	3	4	7	11
399	3062	5.7531	1	2	2	4	7
400	7548	15.5862	4	7	11	19	32
401	5606	15.1687	3	6	11	19	31
402	4087	6.5165	1	2	4	8	14
403	23635	11.9269	2	5	8	15	25
404	8720	5.9547	1	3	5	9	15
405	2	2.5000	2	2	3	3	3
406	3617	17.1275	5	8	13	22	33
407	2035	9.2354	2	5	8	11	18
408	9767	6.6768	2	2	4	7	15
409	7030	10.4777	2	4	6	14	23
410	122243	3.4019	1	2	3	4	6
411	678	4.2552	1	2	3	5	8
412	580	3.2000	1	1	2	4	7
413	9859	10.6994	2	4	8	14	23
414	4788	7.4478	1	3	5	9	16
415	21496	20.6844	5	9	15	25	41
416	96711	10.6323	2	5	9	13	20
417	29	7.5517	2	4	7	10	13
418	11132	8.8876	3	4	7	11	17

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
419	13842	7.8229	2	4	6	9	15
420	4849	5.9008	2	3	5	7	11
421	11582	5.7146	2	3	4	7	10
422	92	5.2283	1	2	3	7	8
423	6316	11.6742	3	5	8	14	24
424	3248	21.5419	3	7	14	26	43
425	14861	6.3136	2	3	4	7	12
426	10866	8.1425	2	3	6	10	16
427	1989	7.8457	2	3	5	9	16
428	1232	10.2849	1	3	6	12	22
429	30809	11.6369	3	4	7	12	21
430	60147	12.8056	3	5	9	16	27
431	415	9.1639	2	3	6	11	19
432	624	6.8478	1	2	4	8	14
433	4843	5.0900	1	1	3	6	12
434	15446	8.7209	2	3	6	10	19
435	14268	7.6694	2	3	5	8	21
436	4670	15.4914	2	6	15	24	29
437	7635	18.0747	4	9	20	27	30
439	1100	12.7909	1	3	8	17	29
440	6022	16.9943	2	5	11	22	38
441	1084	4.2943	1	1	2	4	9
442	38348	10.0708	1	3	6	13	22
443	16944	6.6863	1	2	4	9	15
444	3374	7.1349	2	3	5	9	14
445	2965	5.1619	1	2	4	6	10
446	1	2.0000	2	2	2	2	2
447	2026	3.7155	1	1	3	5	7
448	1	4.0000	4	4	4	4	4
449	30045	6.3645	2	3	5	8	12
450	12811	4.0984	1	2	3	5	8
451	14	4.8571	1	2	3	4	9
452	24622	7.0679	1	3	5	9	15
453	11895	4.5470	1	2	3	6	9
454	3913	7.0787	1	2	4	8	14
455	1724	3.8794	1	2	3	5	8
456	227	10.4009	1	2	5	11	22
457	127	6.1969	1	1	3	12	21
458	1686	24.4852	5	10	19	32	50
459	906	15.4117	3	6	11	19	32
460	2363	9.5044	2	4	7	11	18
461	9039	4.7806	1	1	2	5	11
462	5159	18.1312	4	7	15	24	35
463	9493	7.2019	2	3	5	9	14
464	4113	4.6871	1	2	3	6	9
465	985	2.8589	1	1	2	3	5
466	4282	5.2494	1	1	2	6	11
467	7022	8.5144	1	1	3	6	14
468	66945	18.9106	3	8	14	23	38
471	3583	19.4689	10	12	16	23	31
472	178	33.6404	1	10	28	47	73

TABLE 7b - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY87 MEDPAR UPDATE 12/87 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
473	7562	15.7314	2	4	9	23	39
474	8339	44.3699	13	22	35	55	83
475	17870	13.0866	2	5	10	17	26
476	11733	18.1989	8	11	15	21	31
477	40957	11.3495	1	3	8	14	23

TECHNICAL NOTE: The V6.0 GROUPER software used to assign FY 1987 cases to DRGs is based on the DRG classifications that will be in effect for discharges occurring in Federal FY 1989.

Each percentile length of stay (LOS) value was computed according to the following formula: Let n represent the number of discharges classified by DRG and let $x_1, x_2, \ldots, x_n$ represent the ordered LOS values for each DRG set of discharges. For the t_{th} percentile, where $p = t/100$, let $np = j + g$ where j is the integer part and g is the fractional part of np. The t_{th} percentile, y, is defined as the LOS value at x_{np}.

$$y = (1 - g)x_j + gx_{j+1}$$

(See SAS User's Guide: Basics, Version 5 Edition, Cary, NC: SAS Institute Inc., 1985, p. 1186.)

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TABLE 8.—STATEWIDE AVERAGE COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS

[Case Weighted]

State	Urban	Rural
Alabama	0.5194	0.5815
Alaska	0.6731	0.6809
Arizona	0.6117	0.6523
Arkansas	0.6076	0.5922
California	0.6095	0.6023
Colorado	0.6747	0.7349
Connecticut	0.7262	0.8196
Delaware	0.6008	0.6079
District of Columbia	0.6429	
Florida	0.5455	0.5496
Georgia	0.6174	0.5996
Hawaii	0.6498	0.7648
Idaho	0.7100	0.7257
Illinois	0.6055	0.6643
Indiana	0.7174	0.7262
Iowa	0.7118	0.7290
Kansas	0.6590	0.7555
Kentucky	0.6030	0.5904
Louisiana	0.6001	0.6038
Maine	0.6815	0.6840
Maryland	0.7315	0.7333
Massachusetts	0.6893	0.7797
Michigan	0.6214	0.7019
Minnesota	0.7073	0.7762
Mississippi	0.6301	0.6376
Missouri	0.5969	0.6416
Montana	0.6694	0.7004
Nebraska	0.6232	0.7363
Nevada	0.5141	0.6392
New Hamshire	0.7298	0.7469
New Jersey	0.6823	
New Mexico	0.5939	0.6106
New York	0.6270	0.7102
North Caroline	0.6560	0.5967
North Dakota	0.7175	0.7089
Ohio	0.7129	0.7016
Oklahoma	0.6111	0.6055
Oregon	0.6747	0.6872
Pennsylvania	0.5684	0.6402
Puerto Rico	0.5959	0.7791
Rhode Island	0.7797	
South Carolina	0.5975	0.5795
South Dakota	0.6142	0.6991
Tennessee	0.5642	0.5681
Texas	0.6134	0.7097
Utah	0.6636	0.6854
Vermont	0.7896	0.7129
Virginia	0.6019	0.6018
Washington	0.6933	0.7362
West Virginia	0.6474	0.6071
Wisconsin	0.7769	0.7733
Wyoming	0.7400	0.7458

APPENDIX A—REGULATORY IMPACT ANALYSIS

I. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area or New England County Metropolitan Area, as modified for purposes of the prospective payment system in accordance with the provisions of 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21). Section 4005(a) of the Pub. L. 100–203 (which revised section 1886(d) of the Act) specifies that hospitals located in certain rural counties adjacent to urban areas are deemed to be located in the adjacent urban area. We have identified 52 hospitals, some of which may be considered small, which we are classifying as urban hospitals.

It is clear that the changes proposed in this document would affect both a substantial number of small rural hospitals as well other classes of hospitals, and the effects on some would be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA.

II. Objectives

We expect these proposed changes to further Congress' original objectives in establishing the prospective payment system. The prospective payment rates create incentives similar to the incentives a hospital faces in pricing and marketing its services in a conventional market. By paying similar hospitals the same rate for similar services, we let hospitals know in advance the amount they will be paid per discharge. We give them both an opportunity to receive this payment, regardless of their specific cost experience, and a strong incentive to operate more efficiently, thus minimizing unnecessary costs. Unlike a cost limitation approach, which achieves savings largely by disallowing Medicare payment for costs that are not reasonable or that are in excess of a specific limit, the prospective payment system achieves savings by intensifying hospitals' incentives to operate efficiently. Thus, our objectives include—

- Restructuring hospitals' economic incentives;
- Basing payment on a system that identifies the product being purchased more accurately than cost reimbursement;
- Reinforcing the role of the Federal government as a prudent buyer of services; and
- Restraining the rate of hospital cost increases, thus moderating the outflow of expenditures from the Medicare trust fund while maintaining high quality care.

In addition, we share national goals of deficit reduction and restraints on government spending in general. We believe these proposals would further all of our goals while maintaining the financial viability of the hospital industry and ensuring access to high quality care for beneficiaries.

We also expect these proposed changes to further these objectives while avoiding or minimizing unintended adverse consequences and ensuring that the outcomes of this payment system are, in general, reasonable and equitable. Thus, the intent is to refine further the prospective payment system without undercutting our objectives.

III. Limitations of Our Analysis

From the outset of the prospective payment system, we have developed increasingly sophisticated models of how the prospective payment system works. Nevertheless, at present, we still have no adequate way to model, and therefore to quantify, many of the potential behavioral changes in response to the prospective payment system on the part of hospitals, hospital managers and employees, physicians, suppliers, or beneficiaries. Further, changes in the private sector, related to both the supply of, and demand for, health care services, interact with the behavioral incentives created by the Medicare payment system. We do not have the capability to model such behavioral changes or interactions among the various parties participating in the market place.

We continue to study many aspects of the prospective payment system with the intent of obtaining more adequate data to better assess behavioral changes in response to the incentives of the payment system. Examples of these initiatives include various reports to Congress, as required by section 603 of Pub. L. 98–21, sections 9113 and 9114 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), and section 9305 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). These reports examine many issues, including the need for and the feasibility of developing severity of illness measures and the quality of post-acute care. We are also required, under section 603(a)(2)(A) of Pub. L. 98–21, to study and report annually to the Congress on the impact of the prospective payment system.

In addition to these initiatives, we and others (such as ProPAC and the Office of the Inspector General) have undertaken a variety of studies on the effects of the prospective payment system, such as examining the effects of the payment system on different classes of hospitals. In spite of these efforts, our ability to attribute causability to particular regulations is still limited. The complexity of the prospective payment system itself, along with numerous other rapidly occurring changes in the hospital environment, make it virtually impossible for us to isolate the effects of any one change in our policy, much less the effects of the entire prospective payment system on the health care industry.

Therefore, as has been the case in previously published regulatory impact analyses, the following quantitative analysis is limited to presenting the projected effects of proposed policy and rate changes on current and projected payment rates. In the analysis that follows we examined the effects of both statutory and proposed policy changes on hospital payments by projecting estimated payments under each set of policy changes on to the current payment amounts. That is, we projected the effects of each policy change on payments while holding all other payment variables constant. Thus, we are not attempting to predict behavioral responses to our proposals, and we are not generally accounting for changes in such exogenous variables as admissions, lengths of stay, or case mix.

In view of the difficulty we have in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the most feasible one. Wherever possible, we have included quantitative representations of proposed changes. As with previously published impact analyses, we are soliciting comments and information about the anticipated effects of these proposed changes on the prospective payment system.

IV. Hospitals Included in and Excluded From the Prospective Payment System

Hospitals began operating under the prospective payment system with the start of their cost reporting period beginning on or after October 1, 1983. Further, since September 1985, both Massachusetts and New York have terminated the waivers under which they were excluded from the Medicare prospective payment system, and hospitals in those States have entered that system. (Massachusetts hospitals came under the Medicare prospective payment system in October 1985, while New York hospitals began receiving Medicare prospective payments in January 1986.) As of March 15, 1988, about 5650 hospitals (85 percent of all Medicare-participating hospitals) were operating under the prospective payment system.

With the enactment of section 9304 of Pub. L. 99–509, which added section 1886(d)(9) to the Act, the 58 acute care hospitals located in Puerto Rico began receiving payments under the prospective payment system effective with discharges occurring on or after October 1, 1987. Also, effective with cost reporting periods that began on or after October 1, 1987, alcohol/drug hospitals and units that had been excluded from the prospective payment system under § 412.22(c) of the regulations began receiving Medicare prospective payments. Only 163 short term acute care hospitals remain excluded from the prospective payment system under sections 1814(b)(3) and 1886(c) of the Act (in Maryland and New Jersey, respectively) or demonstration projects (Rochester and Finger Lakes regions of New York State).

As of March 15, 1988, 864 Medicare hospitals were excluded from the prospective payment system and continue to be paid on the basis of reasonable cost reimbursement, subject to limits on the rate of their cost increases for FY 1989. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals. Another 1,523 psychiatric and rehabilitation units in hospitals subject to the prospective payment systems are excluded from the prospective payment system as of the same date. These units, too, are paid on the basis of reasonable cost reimbursement subject to limits on the rate of their cost increases.

More than hospitals are being paid on various special bases under the prospective payment system, as required by statute. They include sole community hospitals, rural referral centers and cancer treatment and research hospitals that meet certain conditions. In addition, there are some 1,270 hospitals that are receiving additional payments on the basis of being classified as disproportionate share hospitals and about 1,090 hospitals receiving additional payments for the indirect cost of medical education. There are about 500 hospitals that qualify for additional payments under both categories.

V. Impact on Excluded Hospitals and Units

As noted above, 864 Medicare hospitals and 1,523 units in hospitals included in the prospective payment system currently are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of § 413.40. For cost reporting periods beginning in FY 1989, these hospitals would have their individual target amounts increased by the hospital market basket percentage increase. We are projecting an increase in the hospital market basket of 4.6 percent.

The effect this would have on affected hospitals and units would vary depending on each one's existing relationship of costs per discharge to its target amount, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that incur per discharge costs lower than their target amounts, the primary impact would be to affect the level of incentive payments made under § 413.40(d). A hospital may receive incentive payments for incurring costs that are less than its target amount, but may not receive payments for costs that exceed the target amount. Although a lower update may be justified, we expect the increased ceiling on payments would maintain existing incentives for economy and efficiency experienced by excluded hospitals and units.

VI. Analysis of the Quantifiable Impact of Proposed Changes Affecting Rates and Payment Amounts

A. Basis and Methodology of Estimates

The data used in developing the quantitative estimates of changes in payments in Table I, below, are taken from FY 1987 billing data and hospital-specific data for FY 1985 and FY 1986.

As in previous analyses, we propose to compare the effects of changes being proposed in this document for FY 1989 to our estimate of the payment amounts in effect for FY 1988.

Although many of the FY 1988 payment parameters have been in effect only since April 1, 1988, for purposes of this impact analysis, we are assuming that all payment parameters have been in effect since October 1, 1987. Moreover, section 4002(e)(1)(B) of Pub. L. 100-203 specifies that the update factors applicable to rates for discharges occurring on or after April 1, 1988 are deemed to have been in effect since October 1, 1987 for purposes of determining updated payment rates for discharges occurring in FY 1989. Thus, in the following analysis, base year (FY 1988) payment amounts are based on the parameters that were in effect on April 1, 1988.

In addition, we have treated all hospitals in our database as if they had the same cost reporting period; that is, a cost reporting period coinciding with the Federal fiscal year. Our model does not take into account any prospective behavioral changes in response to these proposals.

The tables and the discussion that follow reflect our best effort to identify and quantify the effects of the changes being proposed in this document. It should be noted, however, that as a result of gaps in our data, we are unable to quantify some of the effects of the proposed rule. Also; we could not utilize all the hospitals in the recalibration or outlier data sets for modeling the impact analysis because in some cases the hospital-specific data necessary for constructing our impact model were missing. Data on hospital bed size and type of control were the data elements most frequently missing. The absent data prevented us from properly classifying and displaying these hospitals in the impact analysis. The missing data, however, did not prevent us from using the discharges from these hospitals in recalibrating the DRG weights or calculating the proposed outlier payments.

The analysis that follows examines each of the proposed major changes separately. That is, all variables except those associated with the provision under examination were held constant so as to display the effects of each provision compared to baseline provisions. In columns 1, 2, and 3, we are comparing estimated FY 1988 payments under current policy with the FY 1988 payments that would result if only the specified changes were made. To isolate the impact of the proposed changes in the outlier policy displayed in column 4, we compared FY 1989 payment amounts that we estimate would be paid under the proposed outlier policy (as described in section IV.E. of the preamble to this proposed rule) against FY 1989 estimated payments under current outlier policy with updated outlier thresholds.

Column 5 presents the combined effect of all changes being proposed in this rule. That is, column 5 displays the combined effects of the previous four columns as well as the FY 1989 update factor (which, given a weighted average of 2.7 percent increase, generally has the largest effect), and the provision to deem urban the hospitals located in certain rural counties adjacent to MSAs or NECMAs. As such, this last column is the only one in which the effects of the payment policy changes on simulated FY 1989 payments are reflected.

Consistent with the display of the impact presented in Table I, the following discussion is divided into three parts. The first part (columns 1 and 2) describes the effects of two major changes mandated by the statute: Annual changes to the DRG classification system and recalibration of the DRG weights required under section 1886(d)(4)(C) of the Act; and changes to payments for disproportionate share hospitals required under section 1886(d)(5)(F) of the Act and adjustments to the rates in accordance with section 1886(D)(3)(C)(ii) of the Act, all of which were amended by section 4003 of Pub. L. 100-203. The second part of the discussion (columns 3 and 4) deals with the effects of changes to the wage index and outlier payment policy we are proposing, while the final section discusses the combined effect of all provisions being proposed in this rule.

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TABLE I--ESTIMATED IMPACT OF THE PROPOSED CHANGES IN THE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM

	Number of Hospitals 1/	Reclassification and Recalibration 2/ (1)	Statutory Teaching and DSH Changes 3/ (2)	Proposed Wage Index Change 4/ (3)	Proposed Outlier Payment Changes 5/ (4)	Combined Effect of All Changes 6/ (5)
All Hospitals	5636	0.0	-0.5	0.1	0.0	1.7
Urban by Region						
New England	184	0.0	-0.7	0.8	-0.7	1.2
Middle Atlantic	369	0.0	-0.7	0.3	-1.8	-0.6
South Atlantic	432	0.1	-0.5	0.3	0.1	1.7
East North Central	511	0.1	-0.6	-0.5	0.3	1.2
East South Central	170	0.1	-0.6	0.2	-0.1	1.5
West North Central	198	0.0	-0.6	0.3	0.9	2.5
West South Central	379	0.1	-0.4	-0.6	1.1	2.2
Mountain	125	0.0	-0.3	0.3	1.0	3.1
Pacific	523	0.1	-0.2	0.4	0.7	2.9
Puerto Rico	52	0.0	0.5	0.1	-0.7	1.7
Rural by Region						
New England	61	-0.2	-0.5	0.8	0.5	3.4
Middle Atlantic	102	-0.2	-0.4	-0.2	-0.5	2.6
South Atlantic	356	0.0	-0.3	0.5	-0.2	3.4
East North Central	365	-0.2	-0.3	0.1	0.2	4.2
East South Central	323	0.1	-0.2	0.6	-0.1	3.2
West North Central	592	-0.3	-0.2	0.1	0.2	3.0
West South Central	444	0.0	-0.2	-0.7	0.0	1.9
Mountain	271	-0.2	-0.3	-0.9	0.5	2.3
Pacific	171	-0.3	-0.2	-0.3	0.2	2.3
Puerto Rico	8	-0.2	0.1	-0.0	-0.1	1.4
Large Urban Areas (populations over 1 million)	1470	0.1	-0.4	0.0	-0.2	1.4
Other Urban Areas (populations with 1 million or smaller)	1473	0.0	-0.7	0.2	0.3	1.7
Urban Hospitals	2943	0.1	-0.5	0.1	0.0	1.5
0-99 Beds	668	-0.1	-0.4	0.4	0.2	2.2
100-199 Beds	749	-0.1	-0.3	0.2	-0.3	1.5
200-299 Beds	574	0.0	-0.3	0.1	0.0	1.7
300-399 Beds	611	0.1	-0.5	0.1	0.0	1.5
400 + Beds	267	0.2	-0.9	-0.1	0.1	1.2
Rural Hospitals	2693	-0.1	-0.3	0.1	0.0	3.1
0-49 Beds	1079	0.0	-0.1	0.0	0.2	3.6
50-99 Beds	857	-0.1	-0.1	0.0	0.1	3.7
100-149 Beds	382	-0.2	-0.1	0.0	0.0	3.5
150-199 Beds	154	-0.2	-0.3	-0.1	0.1	2.6
200 + Beds	158	-0.1	-0.6	0.3	-0.2	2.1

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Table I - continued

	Number of Hospitals 1/	Reclassification and Recalibration 2/ (1)	Statutory Teaching and DSH Changes 3/ (2)	Proposed Wage Index Change 4/ (3)	Proposed Outlier Payment Changes 5/ (4)	Combined Effect of All Changes 6/ (5)
Teaching Status						
Non-Teaching	4542	-0.1	-0.2	0.2	0.1	2.3
Resident/Bed Ratio Less than 0.25	894	0.1	-0.6	0.0	0.1	1.4
Resident/Bed Ratio 0.25 or Greater	300	0.5	-1.1	0.1	-0.4	0.7
Disproportionate Share Hospitals (DSH)						
Non-DSH	4378	-0.1	-0.5	0.1	0.3	2.1
Urban DSH 100 Beds or More	913	0.2	-0.6	0.1	-0.5	1.1
Urban DSH fewer than 100 Beds	95	0.3	-0.5	0.5	-0.7	1.2
Rural DSH	250	0.2	0.2	0.1	-0.3	2.9
Urban Teaching and DSH						
Both Teaching and DSH	498	0.3	-0.8	0.2	-0.6	0.8
Teaching only	519	0.0	-0.7	-0.1	0.4	1.5
DSH only	510	0.0	-0.1	0.1	-0.3	1.6
Nonteaching and Non-DSH	1416	-0.1	-0.3	0.3	0.2	2.0
Other Special Status (rural)						
Sole Community Hospitals (SCHs)	300	-0.1	-0.3	0.0	0.1	3.2
Rural Referral Centers (RRCs)	200	-0.2	-0.7	0.2	-0.1	1.8
Both SCH & RRC	21	-0.4	-0.7	0.1	0.2	3.3
Type of Ownership						
Voluntary	3025	0.0	-0.5	0.1	0.0	1.4
Proprietary	913	0.0	-0.2	0.2	-0.3	1.8
Government	1556	0.2	-0.4	0.2	0.2	2.4

1/ Because data necessary to classify some hospitals by category were missing, these hospitals were omitted from the analysis. Therefore the total number of hospitals in each category may not equal the national total.

2/ Recalibration of the DRG weights and classification changes are based on FY 1987 billing data and charges and are performed annually in accordance with section 1886(d)(4)(C) of the Act.

3/ This column reflects the combined effects of adjustments to the indirect medical education cost factor required under section 1886(d)(5)(B)(ii) of the Act, and changes to payments for disproportionate share hospitals required under section 1886(d)(5)(F) of the Act, and adjustments to the rates in accordance with section 1886(d)(3)(C)(ii) of the Act, all of which were amended by section 4003 of Pub. L. 100-203.

4/ The proposed wage index constructed entirely from 1984 hourly wage data was compared to the current wage index which is based on a blend of 1982 and 1984 data.

5/ Outlier payments under the proposed outlier policy changes were compared to payments under the present outlier payment policies. In both cases, FY 1987 data and updated thresholds were used.

6/ This column shows the combined effects of all the previous columns as well as the effects of the update factors mandated under section 4002(a) of Pub. L. 100-203 which amended section 1886(b)(3)(B)(i) of the Act, and the effects of section 4005(a) of Pub. L. 100-203 which amended section 1886(d)(8) of the Act, to require that the hospitals located in certain rural counties adjacent to MSAs or MSCMAs be deemed urban. Also FY 1988 baseline payments reflect an estimate of outlier payments at 5.5 percent in contrast to the 5.1 percent set for the outlier pool. Because our total FY 1989 estimated payments do not perpetuate this 0.4 percent excess of outlier payments relative to the outlier pool, this column reflects the 0.4 percent reduction in total prospective payments necessary to ensure equality between projected outlier payments and the outlier offsets. In addition, this column captures certain interactive effects which we are not able to quantify.

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B. Statutory Changes

Columns 1 through 3 of Table I display the estimated percentage change in payments that would result from each of the statutory changes that become effective on October 1, 1988 as mandated by Pub. L. 100-203: That is, changes in the amounts paid to hospitals qualifying as disproportionate share hospitals and in the factor used to calculate the amount paid to hospitals for the indirect cost of graduate medical education; and the reclassification of hospitals in certain rural counties adjacent to urban areas. We also include among the statutory changes the required annual recalibration of DRG weights. The combined effects of all changes mandated by statute are shown in column 3.

In Column 1, we present the combined effects of revising the current DRG definitions and recalibrating the weights to reflect changes in practice patterns, modes of treatment and new technologies as required each year by section 1886(d)(4)(C) of the Act. These changes are described in section II of the preamble to this proposed rule. (The DRGs that have been recalibrated for this analysis also reflect, insofar as possible, the proposed changes to the DRG classification system also set forth in section II of the preamble of this proposed rule.) That is, we compared estimated FY 1988 payments to hospitals using an estimate of each hospital's case-mix index based on the current DRG classifications and weighting factors with simulated payments using an estimate of each hospital's case-mix index based on the proposed DRG classifications and recalibrated weighting factors.

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Overall, the effect of reclassification and recalibration, applied to estimated FY 1988 payments, would be negligible. Analyzing the effects geographically, however, column 1 shows that urban hospitals would benefit by about 0.1 percent and rural hospitals would experience payment reductions of the same amount. Teaching hospitals with large teaching programs would receive a 0.5 percent increase. Small rural hospitals (under 50 beds) would experience no significant change as a result of these changes.

Column 2 displays the combined effects of the changes mandated under section 4003 (a) and (c) of Pub. L. 100-203. Section 4003(a) of Pub. L. 100–203 (which revised section 1886(d)(B)(ii) of the Act) reduces the education adjustment factor used to determine the indirect medical education payment from approximately 8.1 percent to approximately 7.7 percent for discharges occurring on or after October 1, 1988 and before October 1, 1990.

Section 4003(c) of Pub. L. 100–203 amended section 1886(d) of the Act to provide the following changes to the disproportionate share adjustment:

- The adjustment is extended to discharges occurring before October 1, 1990.
- For hospitals that qualify for a disproportionate share adjustment because they receive more than 30 percent of net patient revenues from State and local governmental sources for the care of indigent patients, the payment adjustment factor is increased from 15 percent to 25 percent.
- For hospitals that have 100 or more beds and are located in an urban area and for hospitals that have 500 or more beds and are located in a rural area, the 15 percent cap on the amount of the payment adjustment is eliminated.

The values in column 2 also reflect the effects of restandardization of the rates for the revised indirect medical education factor and, using the latest available data, estimated payments to hospitals serving a disproportionate share of low income patients in accordance with the revised payment formula. Also, we had to adjust the rates in order to generate program savings consistent with the reduction in the indirect medical education factor pursuant to section 1886(d)(3)(C)(ii) of the Act (see section II.A.4.c of the Addendum to this proposed rule).

The overall effect of changing the indirect teaching adjustment factor and payments to disproportionate share hospitals would be to reduce payments, nationally, by about 0.5 percent. By far, the greatest burden of the payment reductions would fall on urban area hospitals. On average, these hospitals could expect a 0.5 percent reduction while rural area hospitals would experience only a 0.3 percent payment reduction. Urban hospitals in New England and Middle Atlantic regions would receive the largest reductions in payments of about 0.7 percent while rural hospitals in several regions would experience reductions averaging around 0.2 percent. Among the various types of hospitals, those urban hospitals that qualify for both disproportionate share and indirect medical payments would sustain a nearly 0.8 percent reduction in payments. Urban hospitals with 400 beds or more are projected to receive a nearly 0.9 percent reduction in payments.

Small rural hospitals would experience a slight decline in payments of about 0.1 percent. Rural hospitals with 200 or more beds, however, could expect a decrease of about 0.6 percent.

C. Other Proposed Changes

Columns 3 and 4 of Table I show the estimated effects of changes to the wage index and outlier payments that we are proposing in this document.

We are proposing to base the wage index required under section 1886(d)(3)(E) and 1886(d)(9)(B)(vi) of the Act entirely on 1984 gross hourly wage data rather than on a blend of an index based on 1982 gross hourly wage data and one based on 1984 data (as described in section III of the preamble to this proposed rule). The overall effect of the proposed changes to the wage index would be to increase payments, nationally, by about 0.1 percent. Both urban and rural hospitals in the New England region are expected to receive the highest increase under the proposed wage index. We estimate that these hospitals would gain, on average, about 0.8 percent.

Among hospital categories, urban disproportionate share hospitals with fewer than 100 beds would experience an increase of about 0.5 percent. The largest decline in payments resulting from the proposed wage index among types of hospitals would occur among teaching hospitals that do not receive disproportionate share payments. The projected effect of the proposed wage index on these hospitals is a reduction of about 0.1 percent in prospective payments. Small rural hospitals would see no appreciable difference in their payments as a result of this proposed change.

As a result of the changes to outlier payments that we are proposing in §§ 412.80, 412.82, 412.84 and in the new § 412.86 of the regulations, many day outlier cases whose adjusted charges exceed the cost outlier threshold would be paid using the cost outlier methodology. Also, because we are proposing to increase the marginal cost factor from 60 percent to 80 percent for cost outlier cases (with the exception of cases falling into the six burn-related DRGs described in section IV.E.3 of the preamble to this proposed rule), hospitals would generally receive higher payments for these types of cases. For both day and cost burn outlier cases that occur between April 1, 1988 and September 30, 1989, section 4008(d)(1)(A) of Pub. L. 100–203 specifies the use of a 90 percent marginal cost factor in computing payment. Because we are required, under section 1886(d)(5)(A)(iii) of the Act, to ensure that outlier payments are between five and six percent of total payments, the necessary corollary of improving payment for outlier cases is that the total number of cases for which we may make outlier payments would have to be decreased.

As discussed in section IV.E. of the preamble to this rule, we have proposed several changes in the methodology to be used to indentify and pay for outlier cases in FY 1989—an increase to 80 percent in the marginal cost factor for cost outliers, the greater of the day or cost outlier payment amounts to determine payment for the most expensive day outliers (that is, those whose charges adjusted to cost exceed the cost outlier threshold); and the use of hospital-specific cost-to-charge ratios to adjust charges to cost for discharges from each hospital.

The reasons for these changes were also discussed in section IV.E. of the preamble. Based on our research findings that the average discrepancy between cost and payment is larger for cost outliers than for day outliers ($9,600 for cost outliers versus $7,700 for day outliers, we concluded that the current marginal cost factor for cost outliers is too low. In light of the extremely large losses, $13,300 per case, represented by day outliers that also meet the cost outlier criteria and our desire to avoid potentially sharp drops in payment when outlier cases exceed a second threshold, we believe that payment of the greater of the day or cost outlier amount is appropriate. Finally, as suggested by comments on the outlier changes we proposed in June 1987 and supported by our own further analysis, the use of a national cost-to-charge ration results in an inappropriate transfer of outlier monies from hosptials with above average cost-to-charge ratios to hospitals with below average cost-to-charge ratios. In order to avoid this

effect, which would be more pronounced in the context of a policy under which there is greater emphasis on cost as a criterion to identify and pay for outliers, we have proposed hospital-specific cost-to-charge ratios so as to reflect the charge practices of each individual hospital.

The essential objectives of these proposed changes are to improve the identification of outlier cases—that is, to direct outlier payment toward those cases that are truly exceptional and, therefore, in need of special treatment under the prospective payment system—and to improve the payment of these cases—that is, to direct more payment per case toward these exceptional cases. In order to minimize the reduction in the basic rates necessary to finance outlier payments, we have proposed not to increase the outlier pool above the current five percent of total DRG payments (including outlier payments).

The following table shows the effects of alternative outlier payment options on the day and cost outlier thresholds and outlier payments per outlier case for cases paid under the day and cost outlier formulas, respectively. Under the current policy, the day threshold for FY 1989 would be the lesser of 21 days or 2 standard deviations, while the cost threshold would be the greater of $19,000 or 2 times the Federal rate—substantially higher thresholds than are currently in effect. The estimated outlier payment per case would be $5,367 for day outliers and $4,682 for cost outliers. As the table shows, paying the greater of the day or cost outlier amounts and raising the marginal cost factor for cost outliers would result in substantially higher thresholds (and thus fewer outlier cases), but substantially greater payments to the most costly cases. The third line in the table, which represents our proposed outlier policy, shows that raising the number of standard deviations used in computing the day threshold allows for a substantial reduction in the fixed number of days, while substantially increasing the outlier payment per day outlier case and slightly increasing effect on cost outlier payments per case. The increase in average day outlier payments suggests that, despite the reduction from 30 to 24 days, which would increase the number of day outliers, the shift to 3.0 standard deviations eliminates a substantial number of relatively inexpensive cases from the day outlier category.

For purposes of comparison, we have also shown the estimated effects on outlier payments per case of paying all outliers that meet the cost threshold using the cost outlier methodology. The reduction in both day and cost outlier payments reflects the shift in payment of about a quarter of the day outlier cases (those whose costs exceed the cost outlier threshold) from the day outlier methodology under the proposed "greater of" policy to the cost outlier methodology. Beause payment of such cases is lower using the cost outlier methodology, it is necessary to increase the number of outliers (by reducing the thresholds) in order to ensure that estimated outlier payments would be equal to the amount by which the rates are reduced.

These estimates lend further support to our belief that changes to outlier payment policy that we have proposed for FY 1989 are appropriate means of achieving our goals of targeting outlier payments to the most costly cases and improving payments for those cases, without reducing payments to cases that meet both day and cost outlier thresholds.

TABLE II—THE EFFECTS ON DAY AND COST OUTLIER PAYMENTS OF ALTERNATIVE OUTLIER PAYMENT POLICIES AND DAY AND COST OUTLIER THRESHOLDS

Outlier policy	Outlier thresholds		Fiscal year 1989 Outlier payment per Outlier case [1]	
	Day (lesser of)	Cost (greater of)	Day outlier methodology	Cost outlier methodology
(1) Current policy	21 days or 2 S.D.[2]	$19,000 or 2x [3]	$5,367	$4,682
(2) Greater of day or cost outlier payment; marginal cost factor=.60 (day), .80 (cost)	30 days or 2 S.D.	$27,000 or 2x	4,546	15,819
(3) Same policy as (2), with alternative thresholds	24 days or 3 S.D.	$27,000 or 2x	5,054	15,989
(4) Cost outlier methodology for all day outliers that meet cost outlier threshold; marginal cost factor = .60 (day), .80 (cost).	24 days or 3 S.D.	$23,000 or 2x	4,025	12,765

[1] For purposes of this table, day outliers that also meet the cost threshold are classified as day or cost outliers on the basis of the methodology under which they would be paid.
[2] S.D.=Standard deviations above the mean of the log distribution of lengths of stay for each DRG.
[3] 2x=2 times the adjusted Federal rate for the DRG.

Column 4 of Table I presents the impact these proposed changes would have on estimated FY 1989 payments. Because we are assuming, for purposes of this analysis, the same base payment amount for outlier payments under current and proposed policies, there is no national effect resulting from the proposed changes in outlier payment policies. The distributive effects of the proposed changes, however, are significant.

Payment to urban hospitals in the Middle Atlantic region are projected to decline by 1.8 percent while payments to urban hospitals in the West South Central region are projected to increase by about 1.1 percent over current levels. Those hospitals that have graduate medical education programs and serve a disproportionate share of the poor would see a reduction in payments of about 0.6 percent, while those hospitals with graduate medical education programs, but which do not serve a disproportionate share of the poor could expect to gain about 0.4 percent in prospective payments. Also, the proposed outlier policy change would benefit small rural hospitals by increasing their payments by about 0.2 percent.

E. Combined Effects

Column 5 shows the FY 1989 rates that incorporate the combined effects of all changes. In addition to the changes described in columns 1–4, column 5 also reflects the update factors mandated under section 4002(a) of Pub. L. 100–203 which amended section 1886(b)(3)(B)(i) of the Act. Based on a projected 4.8 percent increase in the hospital market basket, the update factor is——

- 3.3 percent for hospitals located in rural areas;
- 2.8 percent for hospitals located in large urban areas (populations of over 1 million); and
- 2.3 percent for hospitals located in other urban areas.

This column also shows the effects of section 4005(a) of Pub. L. 100–203 which amended section 1886(d) of the Act. The provision requires that hospitals in certain rural counties adjacent to urban areas be deemed urban if the rural county meets criteria specified in the statute.

Because Column 5 combines FY 1989 payment rates and all statutory changes, the effects displayed also include the payment offset for outlier payments required under section 1886(d)(5)(A)(iv) of the Act. This provision requires that total outlier payments should not be less than five percent nor more than six percent of total prospective payments. In our analysis, similar to FY 1988, we have set outlier thresholds and offset urban and rural rates for outliers so as to yield outlier payments for FY 1989 equal to five percent of total DRG payments. In addition, the statute requires that the urban and rural rates be offset by the same percentage of total payments that are outlier payments for urban and rural hospitals, respectively. Based on the most recent discharge data available, however, we anticipate that total outlier payments for FY 1988 will equal 5.5 percent of total prospective payments, instead of the 5.1 percent accounted for by the offsets to the current rates. Therefore, column 5 also reflects a reduction of 0.4 percent in payments compared to FY 1988 payments because the FY 1988 baseline payments are overstated by the 0.4 percent outlier payments in excess of the outlier offsets reflected in the FY 1988 standardized amounts.

Nationally, the effects of all changes we are proposing are expected to result in a 1.7 percent payment increase. As one might expect, hospitals located in rural areas would benefit the most because of the comparatively large update factor granted these providers and the smaller effect of the indirect medical education and disproportionate share changes on hospitals located in rural areas. Hospitals located in urban areas with populations of over 1 million would receive the smallest increase largely because of the negative effects of the reduction in the indirect medical education factor mandated by statute, and reductions in outlier payments as a result of the proposed policy for outlier payments. Their increase would be only 1.4 percent compared to the increase projected for hospitals located in other urban areas of 1.7 percent.

Among hospital grouped by category, hospitals that are both sole community hospitals and rural referral centers and hospitals that are only sole community hospitals are projected to receive the largest increases in payments of about 3.2 percent and 3.1 percent, respectively. Teaching hospitals with heavy teaching program (intern-to-bed ratios of greater than 0.25) would receive the smallest increase of 0.7 percent. Small rural hospitals could expect to receive an average increase in their per case payments of 3.4 percent.

We must point out that there are interactions that result from the combining of the various separate provisions analyzed in the previous columns that we are unable to isolate. Thus, the values appearing in column 5 do not represent merely the additive effects of the previous columns plus the update factors.

Table III presents the projected FY 1989 average payments per case for urban and rural hospitals and for the different categories of hospitals shown in Table I, and compares them with the average estimated per case payments for FY 1988. As such, this table presents in terms of the average dollar amounts paid per discharge the combined effects of the proposed changes presented in Table I. That is, the percentage change in average payments from FY 1988 to FY 1989 equals the percentage changes shown in the last column of Table I.

TABLE III.—COMPARISON OF PAYMENT PER CASE FISCAL YEAR 1989 COMPARED TO FISCAL YEAR 1988

	Number of hospitals	Average fiscal year 1988 payment per case	Average fiscal year 1989 payment per case	Average percentage change [1]
All hospitals	5,636	$4,267	$4,341	1.7
Urban by region:				
New England	184	4,847	4,904	1.2
Middle Atlantic	369	5,347	5,314	−0.6
South Atlantic	432	4,267	4,340	1.7
East North Central	511	4,729	4,798	1.2
East South Central	170	4,059	4,118	1.4
West North Central	198	4,693	4,810	2.5
West South Central	379	4,265	4,357	2.1
Mountain	125	4,601	4,743	3.0
Pacific	523	5,317	5,470	2.8
Puerto Rico	52	1,806	1,837	1.7
Rural by region:				
New England	61	3,401	3,517	3.3
Middle Atlantic	102	3,111	3,190	2.5
South Atlantic	356	2,840	2,936	3.3
East North Central	365	2,882	3,004	4.1
East South Central	325	2,440	2,519	3.1
West North Central	592	2,666	2,745	2.9
West South Central	444	2,555	2,603	1.8
Mountain	271	2,980	3,050	2.3
Pacific	171	3,459	3,537	2.2
Puerto Rico	8	1,281	1,296	1.3
Large urban areas (populations over 1 million)	1,470	5,130	5,200	1.3
Other urban areas (populations with 1 million or smaller)	1,473	4,299	4,370	1.6
Urban hospitals	2,943	4,721	4,792	1.5
0–99 Beds	668	3,683	3,765	2.2
100–199 Beds	749	4,092	4,152	1.4
200–299 Beds	574	4,414	4,491	1.7
300–399 Beds	611	4,776	4,850	1.5
400 + Beds	357	5,581	5,655	1.1
Rural hospitals	2,693	2,793	2,878	3.0
0–49 Beds	1,079	2,370	2,456	3.6
50–99 Beds	857	2,534	2,627	3.5
100–149 Beds	382	2,746	2,842	3.4
150–199 Beds	154	2,977	3,055	2.6
200 + Beds	158	3,297	3,367	2.1
Teaching status:				
Nonteaching	4,542	3,590	3,672	2.2
Resident/bed ratio:				
Less than 0.25	894	4,812	4,877	1.3
0.25 or Greater	200	7,115	7,165	0.7
Disproportionate share hospitals (DSH):				
Non-DSH	4,378	3,921	4,003	2.1
Urban DSH 100 beds or more	913	5,258	5,313	1.0
Urban DSH fewer than 100 beds	95	4,636	4,693	1.2
Rural DSH	250	2,484	2,556	2.9
Urban teaching and DSH:				
Both teaching and DSH	498	5,829	5,876	0.8
Teaching only	519	4,918	4,993	1.5
DSH only	510	4,261	4,330	1.6
Nonteaching and non-DSH	1,416	4,029	4,111	2.0
Other special status (rural):				
Sole community hospitals	300	2,787	2,876	3.1
Rural referral centers (RRCs)	200	3,415	3,476	1.8
Both SCH & RRC	21	3,542	3,658	3.2
Type of ownership:				
Voluntary	3,025	4,436	4,506	1.6
Proprietary	913	3,807	3,874	1.7
Government	1,556	3,860	3,954	2.4

[1] Discrepancies between the percentage changes shown in this column and those in column 5 of table I are due to rounding.

TABLE III.—COMPARISON OF PAYMENT PER CASE FISCAL YEAR 1989 COMPARED TO FISCAL YEAR 1988—Continued

[1] Discrepancies between the percentage changes shown in this column and those in column 5 of table I are due to rounding.

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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON D.C. 20201

MAR 1 1988

The Honorable Jim Wright
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Section 1886(b)(3)(B)(i) of the Social Security Act, as amended by section 4002 of P.L. 100-203 (the Omnibus Budget Reconciliation Act of 1987 (OBRA)), sets the FY 1989 applicable percentage increases for the Medicare prospective payment system (PPS) at the market basket rate of increase (MB) minus 1.5 percentage points for hospitals in rural areas, MB minus 2.0 percentage points for hospitals in urban areas with population greater than one million, and MB minus 2.5 percentage points for hospitals in other urban areas. OBRA also amends section 1886(b)(3)(B) for the purpose of establishing the target rate of increase for hospitals excluded from PPS, setting the rate of increase for these hospitals for FY 1989 at the market basket rate of increase.

Section 1886(e)(3)(B) requires that the Secretary, not later than March 1, 1988, report to the Congress his initial estimate of the applicable percentage increase that he will recommend for FY 1989. This submission constitutes the required report.

The President's FY 1989 budget was developed using applicable percentage increases consistent with current law and an assumed market basket rate of increase of 4.6 percent. Using a market basket of 4.6 percent, current law would produce updates equal to 3.1 percent for hospitals in rural areas, 2.6 percent for hospitals in large urban areas, 2.1 percent for hospitals in other urban areas, and 4.6 percent for PPS-exempt hospitals. For the PPS hospitals, the differential updates are equivalent to a general update of 2.45 percent. Based on preliminary analysis of data available at this time, I recommend that we use the PPS update factors as defined by current law.

The Bipartisan Budget Summit Agreement established the current law PPS updates only a few months ago. We have no new data that would indicate that a change from these levels is appropriate for the broad hospital classes defined -- hospitals in large urban areas, hospitals in other urban areas and hospitals in rural areas. Preliminary HHS Inspector General analyses indicate that,

while hospitals continued to have substantial operating margins on average in the third year of PPS, these levels have fallen from the high operating margins experienced in the first and second years of PPS. For that reason, we believe a PPS update somewhat higher than the updates in past years is appropriate. However, we also believe that an update factor lower than the market basket rate of increase, as contained in current law, is needed to encourage the hospital industry to better control its costs.

At this time, on the basis of available data, we do not believe that it is appropriate to use the FY 1989 PPS update as a vehicle for further reductions in hospital payments. However, there are classes of hospitals, such as teaching hospitals, for which historical Medicare operating margins have been -- and would otherwise continue to be -- appreciably higher than average. To reduce these excessive payments, the President's Budget includes a proposal to reduce the indirect medical education add-on.

Our recommendation is contingent on current projections of relevant data, such as the hospital market basket, and comes more than six months before promulgating the final percentage increase and before we have full understanding of the recommendations of the Prospective Payment Assessment Commission (ProPAC). We will make our final recommendation on the appropriate percentage increases for FY 1989 nearer the beginning of the new Federal fiscal year, based on the latest estimates of all relevant factors, including ProPAC's recommendations.

My staff and I look forward to discussing this recommendation with you in the coming weeks.

Sincerely,

Otis R. Bowen, M.D.
Secretary

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAR 1 1988

The Honorable George H.W. Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 1886(b)(3)(B)(i) of the Social Security Act, as amended by section 4002 of P.L. 100-203 (the Omnibus Budget Reconciliation Act of 1987 (OBRA)), sets the FY 1989 applicable percentage increases for the Medicare prospective payment system (PPS) at the market basket rate of increase (MB) minus 1.5 percentage points for hospitals in rural areas, MB minus 2.0 percentage points for hospitals in urban areas with population greater than one million, and MB minus 2.5 percentage points for hospitals in other urban areas. OBRA also amends section 1886(b)(3)(B) for the purpose of establishing the target rate of increase for hospitals excluded from PPS, setting the rate of increase for these hospitals for FY 1989 at the market basket rate of increase.

Section 1886(e)(3)(B) requires that the Secretary, not later than March 1, 1988, report to the Congress his initial estimate of the applicable percentage increase that he will recommend for FY 1989. This submission constitutes the required report.

The President's FY 1989 budget was developed using applicable percentage increases consistent with current law and an assumed market basket rate of increase of 4.6 percent. Using a market basket of 4.6 percent, current law would produce updates equal to 3.1 percent for hospitals in rural areas, 2.6 percent for hospitals in large urban areas, 2.1 percent for hospitals in other urban areas, and 4.6 percent for PPS-exempt hospitals. For the PPS hospitals, the differential updates are equivalent to a general update of 2.45 percent. Based on preliminary analysis of data available at this time, I recommend that we use the PPS update factors as defined by current law.

The Bipartisan Budget Summit Agreement established the current law PPS updates only a few months ago. We have no new data that would indicate that a change from these levels is appropriate for the broad hospital classes defined -- hospitals in large urban areas, hospitals in other urban areas and hospitals in rural areas. Preliminary HHS Inspector General analyses indicate that,

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while hospitals continued to have substantial operating margins on average in the third year of PPS, these levels have fallen from the high operating margins experienced in the first and second years of PPS. For that reason, we believe a PPS update somewhat higher than the updates in past years is appropriate. However, we also believe that an update factor lower than the market basket rate of increase, as contained in current law, is needed to encourage the hospital industry to better control its costs.

At this time, on the basis of available data, we do not believe that it is appropriate to use the FY 1989 PPS update as a vehicle for further reductions in hospital payments. However, there are classes of hospitals, such as teaching hospitals, for which historical Medicare operating margins have been -- and would otherwise continue to be -- appreciably higher than average. To reduce these excessive payments, the President's Budget includes a proposal to reduce the indirect medical education add-on.

Our recommendation is contingent on current projections of relevant data, such as the hospital market basket, and comes more than six months before promulgating the final percentage increase and before we have full understanding of the recommendations of the Prospective Payment Assessment Commission (ProPAC). We will make our final recommendation on the appropriate percentage increases for FY 1989 nearer the beginning of the new Federal fiscal year, based on the latest estimates of all relevant factors, including ProPAC's recommendations.

My staff and I look forward to discussing this recommendation with you in the coming weeks.

Sincerely,

Otis R. Bowen, M.D.
Secretary

APPENDIX C—RECOMMENDATION OF UPDATE FACTORS FOR RATES OF PAYMENT FOR INPATIENT HOSPITAL SERVICES

I. Background

Several provisions of the Social Security Act (the Act) impose requirements concerning procedures for setting update factors for Medicare payment for inpatient hospital services furnished during FY 1989. The provisions apply to update factors for hospitals subject to the prospective payment system and for those excluded from the prospective payment system.

Section 1886(b)(3)(B)(i) of the Act, as amended by section 4002(a) of Pub. L. 100–203, sets the FY 1989 applicable percentage increases for prospective payment hospitals for FY 1989 as—

- The market basket percentage increase minus 1.5 percentage points for hospitals located in rural areas;
- The market basket percentage increase minus 2.0 percentage points for hospitals located in large urban areas; and
- The market basket percentage increase minus 2.5 percentage points for hospitals in other urban areas.

Section 1886(b)(3)(B) of the Act also governs the target rate-of-increase limits for hospitals excluded from the prospective payment system. Section 4002(e) of Pub. L. 100–203 amended section 1886(b)(3)(B)(ii) of the Act to provide that for FY 1989 the target rate of increase for hospitals excluded from the prospective payment system is the market basket percentage increase.

Therefore, in accordance with section 1886(d)(3)(B) of the Act, as amended by section 4002 of Pub. L. 100–203, we are proposing to update the average standardized amounts and the target rate-of-increase limits for hospitals exlcuded from the prospective payment system as provided for in section 1886(b)(3)(B) of the Act, as set forth above.

Section 1886(e)(3)(A) of the Act requires that the Prospective Payment Assessment Commission have recommended to the Secretary by March 1, 1988 an update factor that takes into account changes in the market basket index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

In its March 1, 1988 report, ProPAC recommended that a prospective payment update factor estimated to be 4.6 percent for rural hospitals and 3.8 percent for urban hospitals be approved. ProPAC did not recommend a separate update factor for hospitals in large urban areas with a population greater than one million. The components of these factors are described in detail in the ProPAC report, which is published as Appendix D in this document. We discuss ProPAC's recommendations concerning the update factors and our responses to those recommendations below.

Section 1886(e)(4) of the Act, as amended by section 4002(f) of Pub. L. 100–203, requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for FY 1989 that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the recommended FY 1989 update factors that are provided for under section 1886(e)(4) of the Act. Accordingly, the purpose of this Appendix is to provide our recommendations of appropriate update factors, our analysis of the derivation of the amount of the update factors, and our responses to the ProPAC recommendations concerning the update factors.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that we use the update factors determined by Congress and set forth in section 1886(b)(3)(B)(i) of the Act. (The target rate-of-increase update factor is set forth in section 1886(b)(3)(B)(ii) of the Act.) Based on the currently forecasted hospital market basket increase of 4.8 percent, the updates established by Congress would be 3.3 percent for hospitals in rural areas, 2.8 percent for hospitals in large urban areas, 2.3 percent for hospitals in other urban areas, and 4.8 percent for hospitals excluded from the prospective payment system. In recommending these increases, we have taken into account the requirement in section 1886(e)(4) of the Act that the amounts be high enough to ensure the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. Our responses to the ProPAC recommendations concerning the update factor are discussed below.

III. ProPAC Recommendations for Updating Prospective Payment System Payments and Our Response

ProPAC recommends that for FY 1989, the standardized amounts should be updated by the following factors:

- An average 1.1 percent reduction to reflect first-year prospective payment system cost information, with separate reductions for urban and rural hospitals of 1.2 and 0.4 percent, respectively.
- The projected increase in the hospital market basket (estimated to be 5.1 percent at the time ProPAC's report was printed).
- A discretionary adjustment factor of 1.4 percent composed of the following two allowances:
  - —A positive allowance for scientific and technological advancement, offset by an equal negative allowance for productivity improvement, with no adjustment for site-of-care substitution.
  - —A positive allowance for real case-mix change (estimated by ProPAC at 1.4 percent).

In addition, the DRG weights should be adjusted to remove any increase in the average DRG weight occurring during FY 1988 (estimated by ProPAC at 1.5 percent).

For excluded hospitals and excluded units, ProPAC recommends that an update factor separate from the prospective payment system update factor should be used to update for FY 1989 the target rate-of-increase limits applicable to the group of psychiatric, rehabilitation, and long-term care hospitals, and distinct part units excluded from the prospective payment system. The update factor should reflect the projected increase in the hospital market basket for rehabilitation, psychiatric and long-term hospitals corrected for forecast error, with no further adjustment for productivity or scientific and technological advancement. The update factor for the FY 1989 target rate-of-increase for children's hospitals should equal the market basket increase for prospective payment hospitals.

Response: HCFA is recommending for FY 1989 a prospective payment system update that is consistent with the Bipartisan Budget Summit Agreement. That update would be the market basket increase minus 1.5 percent for hospitals in rural areas, market basket increase minus 2.0 percent for hospitals in large urban areas, and market basket increase minus 2.5 percent for hospitals in other urban areas. Based on our projection of a 4.8 percent market basket increase, our recommendation would result in updates of 2.8 percent for hospitals in large urban areas, 2.3 percent for hospitals in other urban areas, and 3.3 percent for hospitals in rural areas. (If the market basket increase were 5.1 percent, as estimated by ProPAC at the time its report was prepared, then each

update factor would increase accordingly by 0.3 percent.) In additon to reflecting the Bipartisan Budget Summit Agreement, our update recommendation for FY 1989 reflects payment amounts that we believe are sufficient to ensure the continued provision of high quality care to Medicare beneficiaries.

The analysis by the Department concerning hospital profitability in the third year of the prospective payment system indicates that in FY 1986 Medicare operating margins of hospitals declined somewhat from the high operating margins experienced in the first two years of the prospective payment system. Nevertheless, we believe that an update factor that is lower than the market basket increase, as provided for in section 1886(b)(3)(B)(i)(IV) of the Act as amended by section 4002(a) of Pub. L. 100–203, is needed both to encourage the hospital industry to better control its costs and to permit the Medicare program to share in the benefits of changes in hospital operations since the inception of the prospective payment system.

We agree that the standardized amounts should be increased by less than the market basket increase to take into account the overall cost reductions realized by the hospital industry in the first two years of the prospective payment system. We also concur with ProPAC's approach of phasing in a reduction over time in order to minimize the impact on hospitals' cash flows.

We have commented previously on these matters (52 FR 22389, June 11, 1987). We refer the reader to that discussion regarding our views on incorporation of a reduction in the standardized amounts.

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APPENDIX D

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

MARCH 1, 1988

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Jeannette A Younes

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION
300 7th Street, S.W. Washington, D.C. 20024 (202) 453-3986

Stuart H. Altman, Ph.D.
Chairman

Donald A. Young, M.D.
Executive Director

March 1, 1988

The Honorable Otis Bowen, M.D.
Secretary
Department of Health and Human Services
Washington, D.C. 20101

Dear Mr. Secretary:

I am pleased to transmit to you the annual report of the Prospective Payment Assessment Commission as required by Section 1886 (e)(4) of the Social Security Act as amended by Public Law 98-21. This report contains 18 recommendations updating the Medicare prospective payments and modifying the diagnosis-related group (DRG) classification and weighting factors.

The report also provides information on the Commission's priorities, the status of the Medicare Prospective Payment System to date, and a description of ProPAC's agenda for coming years.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

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Executive Summary

In this report, the Prospective Payment Assessment Commission (ProPAC) presents recommendations to the Secretary of the Department of Health and Human Services (HHS) on ways to update and improve the Medicare prospective payment system (PPS) for fiscal year 1989. The 18 recommendations in the report reflect the collective judgment of ProPAC's 17 Commissioners regarding issues of substantial importance to beneficiaries, hospitals, and the Medicare program.

The Commission presents these recommendations to comply with its statutory mandate and to contribute to an informed and open debate about hospital payment policy under PPS. The recommendations were produced through a process of agenda setting, information collection, analysis, and deliberation that has continued since the publication of the Commission's report to the Secretary in April 1987. The proposed changes are necessary, in the Commission's view, to maintain access to high-quality health care, to encourage hospital productivity and cost-effectiveness, and to permit the adoption of innovative and appropriate technological change. The following major areas are addressed in this year's recommendations.

Updating PPS Payments—The Commission recommends an average increase in the level of PPS prices of 3.9 percent for fiscal year 1989. This would provide an increase of 3.8 percent for urban hospitals and 4.6 percent for rural hospitals.

The update factor recommendations combine several components. The largest is the PPS market basket, which is used to estimate inflation in the prices of goods and services purchased by hospitals. At the time the Commission developed its recommendation, the market basket was forecast to increase 5.1 percent in fiscal year 1989. The Commission also recommends a net negative adjustment of 0.1 percent, which takes into account scientific and technological advancement, improvements in hospital productivity, and changes in hospital case mix. The market basket and case-mix components of the update factor may change as more recent data and forecasts become available.

In addition, the Commission's recommendation includes an average 1.1 percent reduction to the standardized amounts for fiscal year 1989. This reduction is the average of a 1.2 percent reduction for urban hospitals and a 0.4 percent reduction for rural hospitals. It is the second-year portion of a reduction that the Commission recommended phasing in over three years beginning in fiscal year 1988. The three-year reduction is intended to adjust PPS payments to account for part of the difference between actual first-year PPS costs and the cost projections underlying the payment rates for that year.

Adjustments to the PPS Payment Formula—The Commission recommends several technical improvements in the calculation of PPS payments. These recommendations address: additional payments to hospitals for inpatient-related capital costs incurred at other facilities; continued assessment of indirect teaching and disproportionate share adjustments; improvements in hospital labor market areas; and revisions to and further study of Sole Community Hospital (SCH) policies.

Quality of Care—The Commission is concerned about the impact of PPS and the Peer Review Organization (PRO) program on quality of care. The Commission urges a comprehensive synthesis, analysis, and evaluation of the findings from PRO review activities.

Patient Classification and Case-Mix Measurement—The Commission continues to believe that diagnosis-related groups (DRGs) are the most appropriate available measure of hospital case mix for PPS. ProPAC reiterates its conclusion that available data can and should be used to refine and improve the DRGs. The Commission also stresses the necessity and feasibility of improving the International Classification of Disease (ICD-9-CM) coding system and its use in DRG assignment.

DRG Classification and Weighting Factors—The Commission offers several recommendations to improve the ability of the DRGs to reflect relative resource use of hospitalized Medicare patients. It calls for recalibrating the DRG weights on the basis of charges adjusted to estimate costs rather than charges alone. ProPAC also recommends changes in the DRG assignment for cases with surgical procedures unrelated to the principal diagnosis (DRG 468), and in outlier payments for burn DRGs.

Outlier Payment Policy—The Commission believes that current outlier payment policy needs substantial reform. ProPAC recommends movement to hospital-specific cost-to-charge ratios for calculation of cost outlier payments. The Commission also prefers outlier payments that are more closely related to the actual costs of treating extraordinarily expensive cases. In addition, the Commission believes that once a more optimal payment strategy is developed, allocating a higher proportion of PPS payments to outlier cases should be considered.

AGENDA FOR THE FUTURE

The Commission's mandate requires it to recommend appropriate updates and improvements to PPS. ProPAC also assesses the impact of PPS on health care delivery and financing. In the early years of PPS, the Commission's attention was focused on achieving technical improvements in the system. Continued refinements of PPS, however, are increasingly dependent on broader-based evaluations of the program and determination of its impact.

The major Medicare and PPS issues the Commission believes require further analysis and public policy attention are:

- The level of PPS payments—refining the empirical foundation for the annual update in PPS prices;
- The distribution of PPS payments across types of hospitals—increasing the understanding of the extent to which payment differences correspond with underlying variations in resource use, and the implications this relationship may have for interhospital equity;
- The data used for analyzing PPS payments—improving the accuracy, timeliness, and comprehensiveness of data used to inform PPS payment decisions;
- Hospital behavioral responses to PPS—identifying ways in which PPS has brought about changes in the organization and management of hospital services;
- The shift of patient care services to settings outside the hospital—establishing ways to examine the full range of services provided in and outside the hospital during an episode of illness; and
- Beneficiary access and quality of care—identifying the effects of PPS on beneficiaries, including both inpatient and out-of-hospital care.

The Commission continues to be concerned about how PPS and other changes in health care delivery and financing affect the health care system. In June 1988, ProPAC's report to the Congress, *Medicare Prospective Payment and the American Health Care System*, will address these issues.

REPORT ORGANIZATION

Chapter 1 discusses the Commission's role and priorities, as well as recent changes in health care financing and public policy. This chapter also summarizes changes in the Medicare prospective payment system since its inception. Chapter 2 presents ProPAC's 18 recommendations for improving PPS. These recommendations fall into six broad areas for fiscal year 1989:

- Updating PPS payments,
- Adjustments to the PPS payment formula,
- Quality of care,
- Patient classification and case-mix measurement,
- DRG classification and weighting factors, and
- Payment for outlier cases.

Chapter 3 outlines the Commission's proposed analytic agenda. It describes the issues that ProPAC intends to study in the near future.

The Technical Appendixes, a separate volume accompanying this report, contain the descriptive and analytical studies conducted by staff and outside experts that were the basis for the Commission's recommendations.

RECOMMENDATIONS FOR FISCAL YEAR 1989

Updating PPS Payments

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1989, the standardized amounts should be updated by the following factors:

- An average 1.1 percent reduction to reflect first-year PPS cost information. This reduction entails separate adjustments for urban and rural hospitals of 1.2 and 0.4 percent, respectively;
- The projected increase in the hospital market basket (currently estimated to be 5.1 percent);
- A discretionary adjustment factor of 1.4 percentage points composed of the following:
  - — A positive allowance for scientific and technological advancement, offset by an equal negative allowance for productivity improvement, with no adjustment for site-of-care substitution; and
  - — A positive allowance for real case-mix change (currently estimated to be 1.4 percent).

In addition, the DRG weights should be adjusted to remove any increase in the average DRG weight occurring during fiscal year 1988 (currently estimated to be 1.5 percent).

This recommendation reflects the Commission's judgment about the appropriate increase in the level of PPS prices for fiscal year 1989. It assumes that the Commission's other concerns regarding the payment formula and the DRG weighting factors are also addressed in the fiscal year 1989 payment rates.

Recommendation 2: Adjustment to the Level of the Standardized Amounts

The update factor for fiscal years 1989 and 1990 should include an adjustment to lower the standardized amounts an average of 1.1 percent each year. The urban standardized amount should be reduced by 1.2 percent, and the rural amount by 0.4 percent. The adjustments are based on the Commission's judgment of how information on average Medicare costs per case from the first year of PPS should be incorporated into the update factor.

Recommendation 3: Allowance for Scientific and Technological Advancement and Productivity Improvement Goals, and Site-of-Care Substitution

For fiscal year 1989, the net allowance for scientific and technological advancement, productivity improvement, and site-of-care substitution in the discretionary adjustment factor should be zero.

Recommendation 4: Adjustments for Case-Mix Change

For fiscal year 1989, the update of PPS standardized amounts should be adjusted for case-mix change in the following manner:

- A positive allowance in the DAF of 0.5 percent for within-DRG case-complexity change;
- A positive allowance in the DAF of 0.9 percent for across-DRG patient-distribution change; and
- An across-the-board reduction in the DRG weights for increases in the case-mix index during fiscal year 1988, currently estimated to be 1.5 percent.

Recommendation 5: Update Factor for Excluded Hospitals and Distinct-Part Units

For fiscal year 1989, a target rate-of-increase factor, separate from the PPS update factor, should be used to update payment rates for the group of psychiatric, rehabilitation, and long-term care hospitals and hospital distinct-part units excluded from PPS. The target rate-of-increase factor should

reflect the projected increase in the hospital market basket for these hospitals, corrected for forecast error. The net allowance for scientific and technological advancement and productivity should be zero, consistent with the targets established for PPS hospitals.

For fiscal year 1989, the target rate-of-increase factor for children's hospitals and distinct-part units should reflect the projected increase in the hospital market basket for PPS hospitals, corrected for forecast error. The net allowance for scientific and technological advancement and productivity should be zero.

Recommendation 6: Timely and Accurate Medicare Cost Data

Availability of reliable and timely data is a critical priority for decision making. While significant improvements have been made in Medicare cost data timeliness, the Commission is concerned about the quality of these data for use in policy development. Therefore, the Secretary should consider improvements to the data to better reflect the costs of treating Medicare beneficiaries and to ensure comparability of data over time.

Adjustments to the PPS Payment Formula

Recommendation 7: Capital Institutional Neutrality

The Secretary should provide supplemental payments to hospitals for inpatient-related capital costs incurred at other facilities. Such supplemental payments should continue until capital is incorporated into the PPS payment rate.

Recommendation 8: Indirect Teaching and Disproportionate Share Adjustments

The indirect costs of teaching and the costs of serving a disproportionate share of low-income patients should be recognized through the use of data-based adjustments to hospital PPS payments. These adjustments should be reestimated annually using the most recent cost data available. The Secretary should support further research efforts to improve measurement of the sources of hospital cost variation. Results of this research could be employed to improve the overall structure of PPS payments.

Recommendation 9: Labor Market Area Definitions

The Commission continues to believe that the current hospital labor market area definitions are seriously flawed. These definitions can be improved substantially with currently available data. Therefore, the Secretary should adopt the following definitions of hospital labor market areas:

- For urban areas, the Secretary should modify the current Metropolitan Statistical Areas (MSAs) to distinguish between central and outlying areas. The central area should be defined using urbanized areas as designated by the Census Bureau.

- For rural areas, the Secretary should distinguish between urbanized rural counties and other rural counties within each state. Urbanized rural counties should be defined as counties with a city or town having a population of 25,000 or greater.

The implementation of improved definitions should not result in any change in aggregate hospital payments. Furthermore, these definitions should not affect the assignment of hospitals to urban or rural areas for purposes of determining standardized amounts.

Recommendation 10: Evaluation of Sole Community Hospital Policies

Using the most recent data available, the Secretary should immediately initiate an evaluation of the adequacy of current Sole Community Hospital policies for protecting isolated rural hospitals. Based on this evaluation, the Secretary should develop policies to ensure that PPS payment policy does not jeopardize Medicare beneficiaries' access to inpatient hospital care in isolated rural areas.

Recommendation 11: Clarification of Sole Community Hospital Designation Criteria

Before fiscal year 1989 begins, the Secretary should issue guidelines for interpreting the criteria used by HCFA regional offices to designate Sole Community Hospitals. The guidelines should be structured to provide greater uniformity in the standards used to designate SCHs. The Secretary should also assess whether the criteria themselves can be improved to better define sole hospital providers of care to isolated populations.

Quality of Care

Recommendation 12: Evaluation of PRO Review and Quality of Care

The Secretary should review and synthesize the findings of Peer Review Organizations over the past four years. A major, comprehensive evaluation of PROs and their impact on quality of care should follow. The evaluation should focus on issues of access to and use of services, patterns of denials, and instances of poor quality care. Issues related to expenditure control and efficient administration of PRO contract requirements should be secondary to broader quality of care evaluative goals. The assessment should evaluate and compare criteria used to make judgments about when care is appropriate. Finally, this major study should assist the Secretary in developing and implementing mechanisms for expanded PRO review of episodes of care that are patient-oriented rather than institution-oriented.

Patient Classification and Case-Mix Measurement

Recommendation 13: Improvements to Case-Mix Measurement

The Commission continues to believe that the DRG system is the best available measure of hospital case mix for the Medicare PPS. The Secretary should continue, however, to refine the DRGs to improve the equity of hospital payments and update the DRGs to account for changing technology. The Secretary should focus on generic improvements through the use of patient data currently available from the discharge abstract. The Secretary should also consider the use of temporary, technology-specific DRGs whenever assignment to existing DRGs is not appropriate.

Recommendation 14: Coding Improvements

The Secretary should formalize a more timely, systematic, and consultative approach to consider ICD-9-CM codes for new diagnoses, procedures, devices, and other treatments. When new codes are considered and created, both coding and clinical specialists should be involved. The Commission continues to support its previous recommendations that the Secretary review Chapter 16 codes and coding procedures.

DRG Classification and Weighting Factors

Recommendation 15: Method of Recalibrating the DRG Weights

The DRG weights should be annually recalibrated on the basis of costs rather than charges. The Secretary should implement cost-based weights starting with the fiscal year 1989 recalibration. The Commission is concerned, however, about the current Medicare cost-finding methods for estimating costs. The limitations of the Medicare cost report data may, in some cases, produce imprecise DRG weights. Thus, the Secretary should verify the accuracy of the cost report data and implement changes as necessary.

Recommendation 16: Improvements to DRG 468

The Secretary should reassign cases from DRG 468 to existing surgical DRGs. These cases should be reassigned using secondary, rather than principal, diagnoses. Cases that can be reassigned to more than one DRG should be assigned to the DRG with the highest relative weight.

Recommendation 17: Burn Hospitals and Units

The Commission supports the intent of current legislation temporarily increasing outlier payments for burn DRGs. However, the Commission's preliminary analysis indicates that the increase in outlier payments is appropriate only for those cases treated in specialized burn centers and units. The Commission will examine this topic further and submit additional recommendations to the Congress and the Secretary of Health and Human Services as required by Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203.

Payment for Outlier Cases

Recommendation 18: Outlier Payment Policy

The Secretary should modify outlier payment policy to protect hospitals more adequately from the risk of extremely costly cases. Hospital-specific cost-to-charge ratios should replace a national cost-to-charge ratio for calculating cost outlier payments. Greater emphasis should be placed on costs rather than length of stay for determining outlier

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payments. As an interim step toward emphasizing costs, the Secretary should move from day outlier precedence to paying the greater of day or cost outlier payments. Furthermore, the Secretary should adjust threshold levels so that 40 to 50 percent of outlier payments are paid as cost outliers.

The Commission urges the Secretary to increase outlier contributions to the maximum of 6 percent of total projected payments allowed under the statute. A correction should be made in the following year's payments if the amount paid for outliers is different from the amount set aside. If necessary, the Secretary should seek statutory change for these initial improvements while continuing analysis to refine outlier payment policy. Further analysis should also include consideration of an increase above the 6 percent set-aside amount allowed under the statute.

Chapter 1

Introduction and Commission Priorities

Between 1965 and 1983, the nation experienced unprecedented growth in health care spending. In the early 1980s this growth was particularly rapid. Faced with rising Medicare expenditures, the Congress sought a means for controlling the rate of increase in hospital costs while maintaining access for Medicare beneficiaries. In 1983, it enacted the Medicare prospective payment system (PPS) for payment of inpatient hospital services.

PPS constituted a major reform in Medicare payment policy, moving from a retrospective, cost-based payment methodology to a fixed-price payment system. Prospective payment offered hospitals incentives for increased efficiency and productivity in the delivery of health care services. The system did this by placing hospitals at risk for operating losses while allowing them to retain revenue surpluses from prospective payments.

When it enacted PPS in Pub. L. 98-21, Congress also established the Prospective Payment Assessment Commission (ProPAC) with responsibilities related to maintaining and updating the payment system. The Commission is an independent panel providing analysis and advice on PPS issues to the executive and legislative branches of the Federal government. Its 17 members, selected by the congressional Office of Technology Assessment (OTA), have expertise in health care delivery, financing, and research. Biographies of the Commission members appear in this report's appendix.

ProPAC's analysis and decision making are guided by a set of interrelated priorities. These priorities provide the underlying basis for the Commission's recommendations on updating the payment rates and improving PPS. They include:

- Maintaining beneficiary access to high-quality health care;
- Encouraging hospital productivity and long-term cost-effectiveness;
- Facilitating innovation and appropriate technological change;
- Maintaining stability for providers, consumers, and other payers; and
- Making decisions based on reliable, timely data and information.

The Commission has developed a process and guidelines for identifying and analyzing issues related to its responsibilities. Once the Commission establishes its policy agenda, ProPAC staff provides analyses that enable the Commissioners to make informed judgments about appropriate changes to PPS. Since 1983, ProPAC has examined a number of important policy issues and has made recommendations in numerous areas. In many instances, the Secretary of the Department of Health and Human Services (HHS) has made adjustments to the system or Congress has legislated necessary changes. Other adjustments will be needed, however, to respond to a health care delivery system undergoing constant change.

Chapter 1 summarizes issues that ProPAC has addressed in the early years of PPS. It describes technical improvements to the payment system as well as activities to assess how PPS has affected American health care. It also includes a summary of recent changes in health financing and public policy related to PPS. Chapter 2 contains the Commission's recommendations for additional improvements to PPS in fiscal year 1989. Chapter 3 describes issues for further analysis and consideration.

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ASSESSING THE MEDICARE PROSPECTIVE PAYMENT SYSTEM

The Commission's work falls into two broad areas. The first includes activities directed toward developing recommendations for technical improvements in the PPS payment structure. By law, ProPAC is required to recommend annually to the Secretary of HHS an appropriate percentage change in Medicare payments for inpatient services delivered in PPS hospitals. This requirement includes a recommendation on the target rate-of-increase limits in cost reimbursement for hospitals and units excluded from PPS. The Commission also recommends changes in the diagnosis-related groups (DRGs) and their relative weights, along with other technical improvements to PPS.

The second area includes activities directed toward informing the Congress about how PPS has affected the American health care system. Among these activities are assessing the effect of PPS on the organization, delivery, and financing of patient care inside and outside the hospital. During 1987, the Commission reexamined its allocation of resources and began to devote more effort to examining these areas and determining how PPS affects hospitals and those who work in them, the Medicare program, and its beneficiaries.

These two areas, which have been important to the Commission during the past four years, are described below. Technical payment issues at both the hosptial and patient level are addressed first. Key findings on the impacts of PPS are also summarized. In June 1988, ProPAC will submit an extensive report on this subject to Congress.

Hospital-Level Payment Issues

One of the Commission's chief concerns is whether the PPS payment levels are appropriate and offer incentives that encourage hospitals to provide high-quality, cost-effective care to Medicare beneficiaries. A major focus of ProPAC's work is updating the standardized amounts— the foundation of PPS payments. The Commission also recognizes problems in other components of the payment calculation and has devoted resources to study them. The following section describes previous updates to other PPS payments as well as improvements in hospital-level payment adjustments.

Update Factor—The Commission's mandate includes developing recommendations on an appropriate annual percentage change in the Medicare payments for inpatient hospital care, called the update factor. The Commission is required to consider a number of variables, including the quality and long-term cost-effectiveness of inpatient services provided.

Given this charge, ProPAC first developed a conceptual approach for determining an appropriate update factor. It divided the update factor into two major components: changes in the hospital market basket, and changes in all other variables related to updating payments. A major portion of the latter component is referred to as the discretionary adjustment factor (DAF). The DAF was defined to include an allowance for changes in hospital productivity, scientific and technological advances, site-of-care substitution, and real case-mix change. A similar approach has also been adopted by HHS in its proposed regulations on the annual update of PPS payments.

The Commission then turned to developing empirical bases for annually determining the update factor components. ProPAC continues to refine methods for deriving empirical findings. Such methods provide a consistent basis for public discussion and Commission judgment regarding the appropriate update for PPS payments. The Commission's judgment has provided another perspective for the Congress, which has legislated the update factor for payments beginning with fiscal year 1986. Although ProPAC's recommendation is not intended to be a ceiling, hospital payment updates have fallen between its recommendation update and the Secretary's proposed update.

The rest of this section describes ProPAC analyses that have provided supporting information for determining the update factor.

Market Basket—The hospital market basket is the component of the update factor that reflects inflation in the prices hospitals pay for goods and services, or inputs. The Commission has made numerous recommendations in this area, most notably on the treatment of wages in the market basket and correction of market basket forecast errors. Analysis of the market basket led the

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Commission to conclude that it appropriately reflects the impact of inflation on hospital costs.

The Secretary has implemented several technical improvements to the market basket to reflect more accurately inflation in prices of inputs. The Commission will continue to examine other market basket issues, including those related to changes in the skill mix of hospital employees.

Discretionary Adjustment Factor—The DAF component of the update relies heavily on Commission judgment regarding appropriate additions to and subtractions from the market basket. Over the past four years, ProPAC has devoted significant resources to developing an empirical foundation for its judgment on the DAF components.

In developing an adjustment for hospital productivity, the Commission has attempted to adapt basic economic concepts. That is, productivity is the ratio of outputs per unit of resource input. Further, ProPAC has defined two levels of hospital output, or product. The discharge is the final hospital product, while individual hospital department services are intermediate products. Productivity analyses have attempted to adjust for changes in the complexity of the hospital product. In addition, Commission efforts have focused on overcoming limitations in the definition and measurement of discharge and intermediate-level productivity. This information has supported ProPAC's judgment on an appropriate productivity target for hospitals.

The Commission has also developed a method for assessing the incremental inpatient operating costs related to the use of new, cost-increasing, quality-enhancing technologies and scientific advances. Continued refinement of this approach allows the Commission to reach more precise judgments about the rate at which payments should increase to reflect advances in technology and the services furnished to Medicare patients.

When PPS was implemented, policy makers recognized that hospitals had strong incentives to substitute outpatient services for those previously furnished on an inpatient basis. In many cases, this substitution is desirable and appropriate. The Commission believes, however, that the costs for such services provided in other settings and reimbursed by Medicare should be removed from the payment base. In its first three reports to the Secretary, the Commission recommended an adjustment in the update factor to account for site substitution.

The Commission considers changes in the characteristics of patients and treatments to develop its recommendation for updating hospital payments. In earlier deliberations, ProPAC distinguished these real case-mix changes from changes in medical record coding practices. The Commission's update factor recommendation ensures that coding changes are not built into future PPS payments. Real case-mix changes are separated into two components— changes in case complexity within DRGs and changes across DRGs. Both of these components affect resources used in patient care and are also considered in the Commission's update factor recommendation.

Adjustments to the Standardized Amounts—In 1986, the Commission received data on hospital costs for the first year of PPS. From these data, ProPAC determined that actual hospital costs for the first year of PPS were substantially lower than the projected costs used to set the standardized amounts in place at the time. The Commission considered these findings on cost differences in its deliberations on the update factor for fiscal year 1988. This information also contributed to the debate over PPS payment increases.

Medicare cost data provide valuable information for improving PPS and for assessing the effects of PPS on hospitals. Timely, reliable data are essential to determine changes in hospital costs. The Commission, therefore, proposed alternative strategies for sampling cost report data to obtain these data sooner. The Secretary has taken steps to make cost data for the third year of PPS available earlier. These more timely data have been considered in the Commission's update recommendation for fiscal year 1989.

Excluded Hospitals—Psychiatric, rehabilitation, pediatric, and long-term care facilities are excluded from PPS by statute. As with the PPS standardized amounts, the cost reimbursement limits for excluded hospitals are updated annually. The Commission recognizes that the types of patients seen and the treatment provided vary significantly between PPS and excluded hospitals. In addition, the incentives for excluded hospitals are far different from those for PPS hospitals. Therefore, ProPAC has annually recommended a different update

factor for both groups of hospitals. The Congress has passed legislation establishing the authority to determine a separate update factor for excluded hospitals.

Other Hospital-Level Payment Issues—The Congress included payment adjustments when it enacted PPS to recognize certain cost differences across hospitals. The Commission has recommended changes to the policies affecting the level and distribution of payments to hospitals and has examined PPS capital payment policy. A summary of issues addressed follows.

Disproportionate Share Adjustment—When PPS was enacted, the Congress was concerned about adjusting for the higher Medicare costs per case associated with treating a disproportionately large share of low-income patients. The Commission shared this concern and initiated efforts to determine an appropriate payment adjustment for these hospitals. ProPAC worked closely with the Congressional Budget Office (CBO) and others to provide empirical analyses for identifying low-income patients. Studies were designed to determine the relationship between treating a high number of low-income patients and Medicare costs per case. On the basis of CBO analysis, Congress ultimately enacted a disproportionate share adjustment that was consistent with ProPAC's recommendations.

Rural Hospitals—The Commission believes that some PPS policies may place rural hospitals and the beneficiaries they serve at a disadvantage. Between 1981 and the first year of PPS, costs per case increased faster for rural hospitals than for their urban counterparts. For fiscal year 1988, the Commission recommended, and Congress legislated, separate urban and rural payment amount updates.

Most of the Commission's work has focused on the problems of isolated rural hospitals. In 1987, it recommended expanding protection offered to some isolated hospitals against the financial problems associated with volume fluctuation. Congress has enacted legislation making small, isolated rural hospitals eligible for payment adjustments if they experience a significant reduction in the number of Medicare patients they serve.

Labor Market Areas—PPS payments are adjusted to reflect differences in hospital wage levels across geographic areas. ProPAC has been concerned that the definitions used for labor market areas are inadequate and thus do not accurately reflect wage variations. Based on extensive analysis, the Commission has made several recommendations to refine these definitions for both urban and rural areas. Subsequently, the Secretary and CBO conducted other studies, which verified that this area needs improvement. ProPAC continues to encourage the Secretary to make changes to definitions of the labor market areas.

Capital—In developing PPS, the Congress recognized that additional study was required to include capital payments in the new system. Congress excluded capital-related costs from PPS and continued payment for these costs on a pass-through basis. Although this exclusion was intended to be temporary, capital is still reimbursed on this basis.

ProPAC has extensively analyzed capital payment issues and has made numerous recommendations for including capital in PPS. Although initially different, the Secretary's 1987 proposal was similar to the Commission's. ProPAC also conducted a study to identify hospitals that would be potentially vulnerable to new capital payment policy. This analysis indicated the need for an exceptions process, which was also later adopted in the Secretary's proposal. Meanwhile, Congress has delayed incorporating capital into PPS until 1992.

Patient-Level Payment Issues

The DRG patient classification system describes and measures hospital case mix and serves as an important basis for per-case payment under PPS. In the broadest sense, ProPAC has examined both DRGs and alternative case-mix measurement systems for potential use in PPS. The Commission's work has also focused on improving and updating the existing DRG system to better reflect relative resource consumption and to incorporate new and changing technologies and practice patterns. Significant changes in these areas follow.

Improving the Measurement of Case Mix—In the past, ProPAC has considered three general approaches to improving case-mix measurement. These include retaining the current system and revising it incrementally; retaining the current system, but reconstructing it using more complete data; and implementing an alternative system. In its 1986 report, the Commission recommended retaining the current DRG system and outlined several incremental improvements.

Although the Commission believes that the current system is the best alternative at present, it is still concerned about significant resource use variations within DRGs. Therefore, in 1986, ProPAC initiated a systematic evaluation of the DRGs and other studies to improve case-mix measurement. These studies produced findings to support several generic improvements to the DRGs, which have since been implemented. These are described below.

Patient Age—When the DRGs were developed, patient age, typically used in combination with the presence of a complication or comorbidity (CC), was an important factor in DRG assignment. The Commission became concerned that, for the Medicare population, age was not an appropriate determinant of resource use. After further study, ProPAC concluded that defining DRGs only on the basis of the presence of CCs is more appropriate in grouping Medicare cases for PPS payment purposes. The Secretary eliminated age as a criterion for DRG classification in 1987.

Complications and Comorbidities—The Commission has undertaken several studies to evaluate the CC variable in DRG classification. Results led ProPAC to recommend revising the current list of CCs to ensure more appropriate grouping of Medicare cases for payment under PPS. HHS currently has major research under way to examine all CCs for all DRGs. Analysis includes examining those DRGs that do not currently include CCs as a basis for classification.

Hospital-Level Effects of Changes to the DRGs—ProPAC analysis indicates that refinements that reduce the variation in resource use of cases within DRGs do not necessarily have important effects on aggregate hospital payments. The Commission continues to believe, however, that improvements at both the patient level and the hospital level are essential to provide incentives that promote equity in payments. ProPAC's hospital-level analysis has provided a model for measuring and evaluating the aggregate effects of case-mix improvements. Furthermore, the analysis provides evidence regarding the respective roles of case-mix measurement deficiencies and practice pattern variations to explain hospital-level variation in resource use.

Recalibration of the DRG Weights—Recalibration is a method for periodically adjusting PPS payments to reflect changes in hospital technologies and practice patterns. The Commission's recalibration recommendations fall into two broad areas: the frequency of recalibration and the data to be used.

In 1986, the Commission recommended recalibrating the DRG weights annually to reflect the use of new technologies and other changes in practice patterns. Congress subsequently enacted legislation requiring annual recalibration beginning in fiscal year 1988.

ProPAC also initially recommended that the DRG weights be recalibrated using charge data alone. This recommendation was partly based on the fact that PPS cost data were not available in a timely fashion. Further, analysis indicated little difference between weights based on charges adjusted by costs and those based on charges alone. The recalibration process subsequently adopted by the Secretary was consistent with this approach. Because Medicare cost data are available much sooner, however, the Commission this year reevaluated its recommendation on data to be used in recalibration. The Commission decided to recommend implementation of weights based on charges adjusted by costs beginning with the next recalibration.

Coding Changes and Grouper Logic—In case-by-case analyses, the Commission has identified a significant degree of dissimilarity among cases within many of the DRGs. Much of this variation can be linked to inadequacies in the DRG system's assignment criteria.

Initial partitioning of the DRGs is based on ICD-9-CM codes for principal diagnosis and operating room procedure. The Commission has made several recommendations related to improving the use of these codes in DRG construction and assignment. For example, to describe changing technologies or practice patterns such as those associated

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with cardiac pacemakers, the Commission recommended the use of new codes. ProPAC also recommended implementing administrative mechanisms to identify specific procedures or conditions when a new code cannot be developed in a timely manner. The Secretary shares ProPAC's concerns about issues related to coding and Grouper logic, and continues to devote resources toward needed improvements.

DRG Classifications and Relative Weights—The Commission has made several recommendations to address problems related to individual technologies and changing medical practice patterns. It has also examined problems of certain hospitals that provide specialized care and services. ProPAC staff as well as concerned individuals and organizations have brought issues to the Commissioners' attention. Many of the problems can be corrected incrementally, leaving the basic construction, classification, and weighting scheme of the DRG system intact.

ProPAC has conducted numerous analyses that have resulted in recommendations for technical modifications to the DRGs; other analyses have failed to substantiate the need for such changes. Efforts have also been directed toward monitoring modifications to the DRGs. An important component of these ProPAC analyses is assessing how cases involving specific technologies or practice patterns are distributed across hospitals. As new data become available, ProPAC continues to monitor and update prior analyses and recommendations.

Impact of PPS

Implementation of PPS increased pressure for substantial change in the nation's health care system. ProPAC has examined the potential consequences of new Medicare payment policy on access to, as well as the quality, delivery, and financing of, inpatient services. Key findings are described below. The Commission's June 1988 report to the Congress, *Medicare Prospective Payment and the American Health Care System*, will cover these and other topics in greater detail.

Quality—Concern for the welfare of Medicare beneficiaries is paramount in virtually all the Commission's deliberations. In 1985, ProPAC systematically reviewed anecdotal evidence and perceptions related to quality of care. The study was reassuring in that it did not support public concerns regarding significant problems related to quality of care. So far there is no evidence that quality has been compromised under PPS. The Commission and others, however, are continuing research on measuring health outcomes and assessing the effect of PPS on quality of care.

Besides the findings regarding quality of care, the perceptions study indicated that beneficiaries needed more information about PPS and rights of appeal within the system. This finding led the Commission to recommended that the Secretary and others develop and disseminate to beneficiaries and providers of care more and better-written information about PPS. In 1987, the Secretary published and made available a beneficiary information pamphlet.

Changing practice patterns have resulted in less frequent use of the inpatient facilities of the acute care hospital. Hospital incentives to decrease length of stay have contributed to this shift in the site of care. Care is being provided more frequently in outpatient centers, skilled nursing facilities (SNFs), other community facilities, and the patient's home. The care that beneficiaries receive in these alternative settings can be a primary factor in the overall quality of care during an episode of illness. For this reason, the Commission has recommended extending the focus of Peer Review Organization (PRO) activities to the entire episode of care, including post-discharge services. In addition, the Commission has recommended that PROs be required to review and monitor the quality of care for selected outpatient surgery cases.

Beneficiary Cost Sharing—The Commission's concern for the effects of PPS on beneficiaries goes beyond quality of care issues. ProPAC recommended, and the Congress enacted, changes in the formula for setting the inpatient hospital deductible to make it more consistent with the per-case orientation of PPS. Additional improvements are addressed in the catastrophic benefit package currently under congressional review.

Use, Cost, and Provision of Health Care Services—Significant changes in health care delivery have influenced the use of inpatient hospital care and total health spending. Despite

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cost-containment efforts at many levels, the nation's total health care expenditures continue to comprise an increasing share of the gross national product. Substitution of outpatient services for inpatient services has contributed to varying increases in the components of health care spending, however. For several years, Medicare expenditure increases for ambulatory care have exceeded those for inpatient hospital and SNF care.

The shift in services has also led to a decline in hospital admissions since 1981, although the rate of decline has recently diminished. In addition, patient length of stay (LOS) has declined in recent years and now appears to be leveling off. Lower admission rates and shorter LOS continue to contribute to reduced hospital occupancy.

The numbers and mix of workers in the hospital industry continue to change as well. The shift in services has led to a decline in inpatient full-time equivalent (FTE) personnel, although total hospital employment increased during the first eight months of 1986. Hospitals have also changed the skill mix of personnel over time. Commission analysis of various categories of medical personnel indicates that, for most occupational categories studied, hospitals have shifted to higher skilled workers. In the nursing category, for example, RNs made up almost 50 percent of nursing personnel in 1980. By 1985, RNs had grown to 63 percent of the nursing work force. The percentage of LPNs, on the other hand, decreased in 1984 and 1985.

Distributional Effects of PPS on Hospitals—ProPAC believes that the distribution of payments to hospitals influences quality of care as much as the overall level of payment. Therefore, the Commission has devoted significant resources to examining this issue.

Past efforts include studying how the transition to national rates has affected the distribution of payments across hospitals. Results from its first-year modeling effort led ProPAC to propose a one-year delay in the transition to national rates because of possible consequences for hospitals. The Congress subsequently adopted such a delay which, when implemented, resulted in payment savings to the Federal government.

The Commission has also studied and reported on distributional differences in hospital case-mix index change and outlier cases and payments. Finally, like many others, ProPAC examined hospital financial condition, including PPS operating margins. ProPAC analysis differed, however, in that the Commission focused on the distribution rather than on the overall level of PPS margins. Further, ProPAC compared PPS margins with total and patient margins. Total margins include revenues and expenses from all sources. Patient margins exclude nonpatient sources of revenue. The information was useful in the debate over financial performance of hospitals under PPS.

This report reflects the Commission's analysis of how changes in the payment components of PPS might contribute to the objectives of the system. Despite efforts to encourage cost-effective, quality-enhancing care, Medicare inpatient costs per case and total expenditures both continue to rise at unexpected rates. While the Commission believes that PPS needs further improvement, it is also concerned about achieving the goals of cost containment and improved hospital productivity. ProPAC will examine this broader question of the overall impact of PPS in its June 1988 report to the Congress.

RECENT CHANGES IN HEALTH FINANCING AND PUBLIC POLICY

During the past year, the Federal health policy debate has been dominated by pressure to reduce the large national budget deficit. The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) contained numerous changes to the Medicare program. Some of these changes have been discussed previously, and others are highlighted below.

Concern about significant cost differences and cost changes among hospitals led the Congress to enact separate payment updates for urban and rural hospitals as well as for hospitals in large metropolitan areas. In addition, Congress instituted a regional payment adjustment under PPS. Hospitals will be paid the greater of full national rates or a blend of 85 percent national and 15 percent regional rates.

The Congress continued to defer the implementation of a new capital payment policy by prohibiting

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the Secretary from incorporating capital into PPS until fiscal year 1992. Congress reduced the capital cost pass-through, however, by discounting payments to hospitals by 12 percent for most of 1988 and 15 percent in fiscal year 1989.

OBRA 1987 also contained modifications to the disproportionate share and indirect teaching payment adjustments. Starting in fiscal year 1989, additional payments for certain hospitals serving large numbers of low-income patients are no longer limited to 15 percent. The indirect teaching allowance was reduced from 8.1 percent to 7.7 percent. ProPAC will study the disproportionate share and indirect teaching adjustments in the coming year to determine whether they appropriately account for hospital cost differences related to teaching and service to the poor. (For further discussion of this issue, see Chapter 3.)

Congress devoted significant effort to expanding the Medicare program to include catastrophic illness coverage in 1987. It has not passed legislation on this issue, however. Catastrophic coverage will likely dominate the Federal health policy debate during the second session of the Congress. ProPAC will continue to monitor congressional action on this and other major health financing policies.

In the four years since PPS implementation, numerous improvements have been made in payment policies and case-mix measurement. Additional improvements are necessary to refine the system as well as to keep pace with medical advances and changes in the organization and delivery of health care services.

Chapter 2

Recommendations

The Commission's recommendations for fiscal year 1989 are the result of an ongoing process of agenda setting, information collection, analysis, and deliberation. ProPAC selects issues for consideration to conform with its statutory mission and to contribute to an open policy debate on matters of substantial importance to beneficiaries, hospitals, and the Medicare program.

The recommendations reflect the collective judgment of the 17 Commissioners. In certain cases, however, individual Commissioners did not agree with the majority opinion.

Some recommendations, such as those pertaining to the annual update of payment rates, will be repeated in similar format every year. In other instances, the Commission has reconsidered and amplified or modified past recommendations on the basis of new evidence. In addition, certain issues were examined for which no recommendations were developed. Because these issues receive little or no attention elsewhere in the report, they are briefly discussed later in this chapter.

Concern for reducing the Federal deficit and attaining a balanced budget continued to dominate public policy debates while these recommendations were being developed. Although ProPAC did not explicitly take budgetary concerns into account, the recommendations were developed in recognition of a constrained fiscal environment. Furthermore, the Commission believes that budgetary pressures intensify the need to address distributional and technical payment issues that may bear on the quality of care furnished to Medicare beneficiaries.

The following discussion presents an overview of the Commission's 18 recommendations for fiscal year 1989. The full text and discussion of each recommendation follow the overview. Background information, statistical analyses, and alternative options considered are in the Technical Appendixes. The issue areas addressed by the Commission this year are:

- Updating PPS payments,
- Adjustments to the PPS payment formula,
- Quality of care,
- Patient classification and case-mix measurement,
- DRG classification and weighting factors, and
- Payment for outlier cases.

OVERVIEW OF THE COMMISSION'S RECOMMENDATIONS FOR FISCAL YEAR 1989

Updating PPS Payments

In making recommendations on the update factor, the Commission is required by the PPS statute to:

> . . . take into account changes in the hospital market basket . . ., hospital productivity, technological and scientific advances, the quality of care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient services.

The Commission must report its recommendations on the update factor to the Secretary of Health and Human Services no later than March 1 of each year, and

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. . . taking into consideration the recommendations of the Commission, the Secretary shall recommend . . . an appropriate change factor . . . which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

Since fiscal year 1986, the Congress has set the update factor through legislation. Both ProPAC and HHS are thus advisers to the Congress on aggregate payment increases under PPS. Nevertheless, the Secretary has an opportunity to evaluate ProPAC's recommendations before the HHS proposed update is developed.

Recommendation 1 reflects the Commission's overall judgment of the appropriate change in the level of PPS prices for fiscal year 1989 based on currently available data. The Commission recommends a 3.8 increase in PPS prices for urban hospitals and 4.6 percent for rural hospitals. Several of the components of the update factor may change as new data are received before the final rules for fiscal year 1989 are published. The Commission will publicize any revisions to its recommendation on the update factor during the rulemaking period.

Recommendation 2 modifies an update factor component introduced in 1987. At that time, the Commission recommended a 5.4 percent average reduction in the standardized amounts, to be phased in over a three-year period. The recommended reduction was based on an examination of first-year PPS cost data, which showed that actual costs were substantially below the projected costs on which first-year payments were based.

The Commission lowered the annual average reduction for fiscal year 1989 from 1.8 percent to 1.1 percent. The updates hospitals received in fiscal year 1988 suggest that more than one-third of the recommended 5.4 percent average reduction to the standardized amounts was taken away. Therefore, smaller reductions for the next two fiscal years are appropriate.

Recommendation 3 consists of a combined allowance for scientific and technological advancement and productivity improvement goals and for changes in the site of services delivered to Medicare hospital inpatients. The Commission decided that the net effect of these three factors on the update should be zero.

Recommendation 4 is an allowance for changes in patient mix and complexity that are not otherwise provided for in the PPS payment structure. It also includes a recommended adjustment to offset expected change in the average DRG weight. The Commission has preliminarily estimated that these factors nearly offset one another. The net effect on the update is -0.1 percent. These estimates may be revised when more recent data become available.

Recommendation 5 satisfies the Commission's statutory obligation to recommend an update factor for hospitals and distinct-part units of hospitals excluded from PPS. These hospitals and units continue to be paid on a reasonable cost basis, subject to limits on increases in reimbursement per case. The Commission recommends a 5.1 percent update in the limit for children's hospitals and units, and a 5.2 percent update in the limit for psychiatric, rehabilitation, and long-term care hospitals and units.

Recommendation 6 underscores the Commission's conviction that Medicare cost report data should continue to be available for the update recommendation and other purposes. The Commission is impressed with the improved timeliness of the data since last year. Nevertheless, further improvements in timeliness should be sought, and measures should be taken to enhance and verify the accuracy of the data.

Adjustments to the PPS Payment Formula

The Commission continues to be concerned with technical improvements to the calculation of PPS payments. Such improvements will distribute payments more equitably among hospitals and lower the risk of access and quality problems for beneficiaries. Recommendations 7 through 11 address several potential adjustments to the methods of calculating PPS payments.

In its 1986 and 1987 reports to the Secretary, the Commission presented detailed recommendations related to paying for capital under PPS. The Congress has decided to continue to defer prospective payment for capital and has instituted reductions in capital costs reimbursed on a pass-through

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basis. The Commission is concerned about the adverse incentives that this dual payment system may create over time. In Recommendation 7, the Commission advises making supplemental payments to hospitals for inpatient-related capital costs incurred at other facilities. This adjustment is intended to reduce hospitals' incentives to develop the capacity to provide all services in-house.

The indirect teaching and disproportionate share adjustments were designed to compensate hospitals for costs that are not otherwise recognized in PPS payments. In Recommendation 8, ProPAC expresses its belief that these adjustments should regularly be assessed with current data to monitor the relationship between teaching and service to the poor and Medicare costs.

In its 1985, 1986, and 1987 reports to the Secretary, the Commission recommended improving the way that hospital labor market areas are defined under PPS. These definitions substantially affect the distribution of hospital payments because they are used to apply the area wage index adjustment to PPS prices for every hospital. The Commission remains convinced that the current definitions are seriously flawed and can be substantially improved with existing data. Because the Secretary has not yet modified these definitions, ProPAC reiterates its proposed improvements in Recommendation 9.

The welfare of beneficiaries who rely on small, isolated rural hospitals for Medicare services continues to concern the Commission. In Recommendation 10, ProPAC proposes assessing whether Sole Community Hospital (SCH) policies adequately protect beneficiary welfare in isolated rural areas. In Recommendation 11, the Commission also advises making the criteria used to designate SCHs more specific and uniform, and proposes assessing whether the criteria themselves can be improved.

Quality of Care

Concern for beneficiary welfare enters into virtually all the Commission's deliberations and resultant recommendations. In addition, many of ProPAC's resources are expended on assessing the consequences of PPS for beneficiaries, such as researching the effects of PPS on quality and beneficiary financial impact.

In Recommendation 12 and its discussion, the Commission reiterates points made in previous reports. Once again, it urges the Secretary to initiate a comprehensive evaluation of PRO quality of care review activities. Information from such an evaluation would be extremely helpful in assessing the quality of care Medicare beneficiaries receive under PPS and in identifying potential problem areas for further investigation.

Patient Classification and Case-Mix Measurement

The Commission continues to believe that DRGs are the most appropriate available measure of hospital case mix for PPS. In Recommendation 13, ProPAC restates its conclusion that available data can be used to refine and improve the DRG system. In addition, temporary, technology-specific DRGs should be used when existing DRGs do not adequately reflect changing medical technology.

In Recommendation 14, ProPAC stresses again the necessity and feasibility of improving the International Classification of Disease (ICD-9-CM) coding system and its use in DRG assignment. In particular, the Commission believes that a more structured and consultative process involving advice from clinical specialists should be used in adapting ICD-9-CM codes to new diagnoses and technologies.

DRG Classification and Weighting Factors

The PPS statute requires the Commission to

> consult with and make recommendations to the Secretary with respect to the need for adjustments [in classification and weighting factors] . . . based on its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities.

These adjustments refer to the system for

> . . . classification of inpatient hospital discharges by diagnosis-related groups and a methodology

for classifying specific hospital discharges within these groups.

They also relate to the assignment of:

. . . an appropriate weighting factor [to each diagnosis-related group] which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

Recommendations 15 through 17 provide advice to improve the ability of the DRGs to reflect relative resource use of hospitalized Medicare beneficiaries. The Commission believes that the DRG weights should be based on costs, but it questions the accuracy of DRG-level estimates derived from Medicare billing and cost report data. In Recommendation 15, the Commission advises the Secretary to implement cost-based weights in fiscal year 1989. At the same time, the Secretary should take steps to verify and improve the accuracy of the cost report data and methods of adjusting charges to estimate costs.

Recommendation 16 proposes a change in the principles used to assign cases to DRG 468, which contains all cases with surgical procedures unrelated to the principal diagnosis. The Commission believes that most cases should be reassigned to existing DRGs on the basis of secondary diagnosis.

Recommendation 17 is concerned with burn DRGs, in which the sickest cases tend to be concentrated in burn hospitals and units. ProPAC is aware that the Congress addressed this problem in recent legislation by increasing outlier payments for the burn DRGs. The Commission will examine this issue further and will report its recommendations to the Congress and to the Secretary as required by OBRA 1987.

Payment for Outlier Cases

In Recommendation 18, the Commission states its belief that outlier payment policy is inadequate and ought to be substantially reformed. ProPAC specifically recommends movement to hospital-specific cost-to-charge ratios for calculation of cost outlier payments. The Commission also believes that greater emphasis should be placed on costs rather than on length of stay, as is now the case. As an interim measure, the Commission recommends a modest shift toward greater emphasis on costs in the way outlier payments are calculated in fiscal year 1989.

In addition, ProPAC believes that consideration should be given to devoting a higher proportion of total PPS payments to outliers than current law allows, once a more optimal payment strategy is developed. The Commission recommends paying the maximum 6 percent allowed under the statute in fiscal year 1989, and adjusting payment in the future if the amount paid for outliers differs from the amount set aside.

The Commission realizes that the Secretary is contemplating a reform of outlier payment policy, and that such reform may require legislation. Needed improvements in this area must be supported by thorough analysis. The Secretary should proceed with this analysis as quickly as possible so that improvements are not unnecessarily delayed. In this effort, ProPAC will confer with and assist the Secretary in any way possible.

OTHER ISSUES CONSIDERED BY THE COMMISSION

The Commission addressed several issues that did not lead to recommendations. These were related to new and changing technologies and practice patterns, specialty centers and units, mechanical ventilation, multiple major joint replacements, thrombolytic therapy, adjustments to the labor and nonlabor portions of the standardized amounts, Acquired Immune Deficiency Syndrome (AIDS), and hospital-specific mortality statistics.

New and Changing Technologies and Practice Patterns

In previous reports, the Commission recommended making adjustments in DRG assignment or payment for cases involving cardiac pacemakers, penile prostheses, implantable defibrillators, cochlear implants, and magnetic resonance imaging. The Secretary has made some adjustments related to implantable defibrillators, but no others.

ProPAC remains convinced that payment considerations should not lead hospitals to deny patients access to quality-enhancing technologies. The Commission will therefore continue to monitor the use of these technologies and to recommend payment adjustments where appropriate.

Specialty Centers and Units

The Commission conducted several analyses comparing the average costs that specialty centers and units incur with the PPS payments they receive. Designed to examine the relationship between costs and payments for a select group of DRGs, the analyses included the following types of specialty centers and units: burn, cancer, cystic fibrosis, dermatology, epilepsy, hemophilia, spinal cord injury, and trauma.

The Commission supports the intent of the provision in OBRA 1987 that temporarily increases outlier payments for burn DRGs. To develop a more adequate long-term solution, ProPAC will continue its analysis of burn centers and units (Recommendation 17). In addition, the Commission will continue its analyses of cancer, epilepsy, dermatology, hemophilia, and trauma centers and units.

In general, the Commission believes that improvements in outlier payment policy will ameliorate some of the financial difficulties facing certain specialty centers. For instance, the Commission is concerned about the high percentage of outlier cases treated at spinal cord injury centers. Although there were few Medicare discharges from these centers, costs were substantially higher than payments. This difference may result from the higher percentage of outlier cases treated at such centers.

In addition, the Commission is concerned about the use of Medicare DRGs by other payers whose patient populations may differ from Medicare's. ProPAC is particularly concerned that PPS may not adequately compensate hospitals for treating patients with cystic fibrosis. However, payment for other patients in the same DRGs as those with cystic fibrosis appears appropriate. While relatively few Medicare beneficiaries have cystic fibrosis, people with this disease may constitute a larger percentage of other payers' patient populations. It may thus be inappropriate for other payers to use Medicare DRGs, as currently constructed, for payment purposes. The Commission therefore hopes that other payers will carefully evaluate the use of Medicare DRGs for their beneficiaries.

The Commission is also concerned about the adequacy of payment for dermatology DRGs. ProPAC's preliminary findings indicate that, on average, payments were substantially less than costs for several of the DRGs and subgroups within the DRGs examined. The difference was greater for hospitals with specialized dermatology departments compared with other PPS hospitals. The analysis also indicates that in some DRGs part of the difference results from payments that were less than costs for both inlier and outlier cases. However, the Commission was unable to determine exactly what caused this difference. Therefore, ProPAC will continue studying this issue in the coming year. The analysis will assess the adequacy of codes and the current classification of dermatology cases. In addition, the Commission will examine the effect of potential improvements in outlier payment policy.

Finally, the Commission questions the appropriateness of PPS payment for patients with hemophilia. The analyses indicate that, for these patients, some DRGs' costs exceeded payments. Part of the difference between costs and payments may result from the clotting factor concentrate required by these patients. The Commission will continue analysis of this issue in the upcoming year. (For more information on these analyses refer to Technical Appendix B.)

Mechanical Ventilation

In its April 1987 report, the Commission recommended a review of ICD-9-CM coding rules to better identify and classify patients with respiratory failure, many of whom require mechanical ventilation. Beginning with fiscal year 1988, the Health Care Financing Administration (HCFA) introduced a new diagnosis code (518.81) for the classification of respiratory failure. In addition, HCFA recognized the higher costs of care furnished patients requiring mechanical ventilation by creating DRGs 474 and 475. Patients can be assigned to these DRGs only if they have a principal diagnosis in Major Diagnostic Category (MDC) 4 and also receive a tracheostomy or require both endotracheal intubation and mechanical ventilation.

The new DRGs relieve the significant previous payment inequities for most cases in MDC 4, although problems remain for some surgical patients in MDC 4 and for cases in other MDCs. The

Commission is concerned, however, with the decision to use procedure codes rather than diagnostic codes to categorize patients with respiratory failure. ProPAC will continue to monitor the experience with the new DRG and assess the appropriateness of the classification and payment amounts.

Multiple Major Joint Replacements

At the beginning of PPS, all patients undergoing one or more major joint replacement or limb reattachment procedures were assigned to DRG 209. In response to concerns that the single DRG did not recognize the significantly higher costs of patients undergoing multiple joint procedures, HCFA created DRG 471 (Bilateral or Multiple Major Joint Procedures) in fiscal year 1986. Cases having certain combinations of major lower joint replacement procedures performed within a single hospitalization are classified in this new DRG. The payment weight for cases in DRG 471 is about 50 percent higher than the weight for DRG 209.

The Commission has examined the experience to date with DRGs 209 and 471 and has concluded that the new DRG results in more appropriate clinical classification and payment amounts.

Thrombolytic Therapy

Thrombolytic therapy—using tissue plasminogen activator (TPA), streptokinase, and other thrombolytic agents—is indicated for certain patients with acute myocardial infarction (MI). While TPA is considerably more costly than other thrombolytic agents, clinical data have not fully identified the short- and long-term relative benefits and risks of the different agents. Moreover, there is a great deal of uncertainty about the effect of alternative agents on the use of other hospital resources, such as cardiac catheterization.

The Commission considered a number of payment options to reflect the increased costs of thrombolytic therapy. Among them are: paying for the costs of agents on a pass-through basis, creating a special additional payment for the care of patients receiving thrombolytic therapy, and creating one or more new temporary DRGs.

ProPAC decided to include the costs of thrombolytic therapy in the science and technology component of the discretionary adjustment factor (Recommendation 3). The Commission assumes that thrombolytics will diffuse evenly through hospital groups, as myocardial infarction is common to many demographically varied patient groups. Ultimately, recalibration will result in more appropriate DRG relative weights as the technology diffuses.

Adjustment of the Standardized Amounts for Expensive Device DRGs

In its April 1986 report, the Commission recommended adjusting the portions of the standardized amounts attributed to labor and nonlabor costs for certain DRGs that frequently involve the use of expensive devices. This recommendation was based on ProPAC analysis showing that, for these DRGs, payments relative to costs are greater for hospitals in high-wage areas than for those in low-wage areas.

ProPAC has examined the findings from research funded by HCFA on this subject. The Commission has concluded that payment problems for most DRGs involving expensive medical devices are not as substantial as it thought in early 1986. Therefore, the Commission no longer recommends an adjustment.

Acquired Immune Deficiency Syndrome

The Commission considered a number of topics related to patients with AIDS. Currently, only a small number of AIDS patients are covered by Medicare. The number may increase due to advances in therapy or changes in Medicare disability or entitlement rules. Information about inpatient hospital costs and DRG payments for Medicare AIDS patients is sparse, but recent improvements in ICD-9-CM coding should soon improve this situation.

The Commission simulated DRG assignment and examined average costs for AIDS patients. The analysis suggested that current DRG assignment and payment rules may not be appropriate for AIDS cases. The Commission will monitor changes in Medicare eligibility of AIDS patients and advances in treatment that may affect the number of Medicare-eligible patients. ProPAC will also examine the appropriateness of DRG assignment and payment as additional information becomes available.

Preliminary analysis indicates that the presence of AIDS patients has altered routine hospital infection control procedures in ways that increase the costs of caring for all patients in hospitals. The Commission decided to include an estimate of the Medicare share of such costs in the science and technology portion of the discretionary adjustment factor (Recommendation 3).

Hospital-Specific Mortality Statistics

In December 1987, HCFA released hospital-specific mortality data. Before doing so, HCFA asked ProPAC to comment. The Commission responded by letter and also sponsored additional research on this topic

The Commission supports the effort to provide more information on health outcomes through the release of hospital-specific mortality information However, the Commission encourages the Secretary to increase efforts to educate providers, beneficiaries, and others concerning appropriate use of the information ProPAC anticipates that the Secretary will continue to refine and improve the methods for calculating hospital-specific mortality statistics and will examine and develop other measures for evaluating health outcomes

The Commission believes that mortality statistics must be interpreted carefully and should serve as a screen to indicate whether additional quality review should be undertaken One of the major benefits of such data is that poor mortality experience may encourage some hospitals to examine their procedures carefully to discover whether they have overlooked ways of improving quality

RECOMMENDATIONS FOR FISCAL YEAR 1989

Updating PPS Payments

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1989, the standardized amounts should be updated by the following factors:

- **An average 1.1 percent reduction to reflect first-year PPS cost information. This reduction entails separate adjustments for urban and rural hospitals of 1.2 and 0.4 percent, respectively;**
- **The projected increase in the hospital market basket (currently estimated to be 5.1 percent);**
- **A discretionary adjustment factor of 1.4 percentage points composed of the following:**
  - **A positive allowance for scientific and technological advancement, offset by an equal negative allowance for productivity improvement, with no adjustment for site-of-care substitution; and**
  - **A positive allowance for real case-mix change (currently estimated to be 1.4 percent).**

In addition, the DRG weights should be adjusted to remove any increase in the average DRG weight occurring during fiscal year 1988 (currently estimated to be 1.5 percent).

This recommendation reflects the Commission's judgment about the appropriate increase in the level of PPS prices for fiscal year 1989. It assumes that the Commission's other concerns regarding the payment formula and the DRG weighting factors are also addressed in the fiscal year 1989 payment rates.

The Commission's recommendation would result in an estimated 3.9 percent increase in the average level of PPS prices for fiscal year 1989 This represents an estimated increase of 3.8 percent for urban hospitals and 4.6 percent for rural hospitals The recommendation includes a separate adjustment for urban and rural hospitals to account for different cost experiences reflected by the first-year PPS cost data The table below summarizes the components of the Commission's update factor recommendation.

The numerical amount of the Commission's update factor recommendation is likely to be modified as more current market basket forecasts and

additional information regarding changes in hospital case mix become available. In particular, the Commission is concerned that current national hospital wage data and forecasts do not yet reflect a recent trend in relatively high wage increases for nurses.

Current law requires that the fiscal year 1989 PPS prices increase by the market basket minus 2.0 percent for hospitals in urban areas with a population of 1 million or more, market basket minus 2.5 percent for other urban hospitals, and market basket minus 1.5 percent for rural hospitals. These updates average to about 3.0 percent based on the current market basket forecast of 5.1 percent. Adoption of the Commission's update recommendation would thus require legislative action.

The rationale for the Commission's proposed update factor is presented in Recommendations 2 through 4 and accompanying discussions. In addition, Technical Appendix A contains background information and analysis on issues related to the update of PPS payments.

The Commission's recommended 3.9 percent update factor will lead to a larger increase in the average payment per case between fiscal years 1988 and 1989. The update factor is applied to the standardized amounts in place at the end of fiscal year 1988. Because these amounts do not take effect until April 1988—halfway through the Federal fiscal year—the average fiscal year 1988 payment will be lower than end-of-the-year rates. The Commission's recommendation assumes that the

Estimated Increase in PPS Prices For Fiscal Year 1989 Under Commission Recommendations[a]

Adjustment to level of standardized amounts			
Urban			-1.2%
Rural			-0.4
Average adjustment to standardized amounts			-1.1
FY89 Update Factor			
FY89 market basket forecast			5.1
Correction for FY88 forecast error			0.0
Components of discretionary adjustment factor			
Scientific and technological advancement		0.5[b]	
Productivity		-0.5[b]	
Site substitution		0.0[b]	
Real case-mix change in FY88		1.4	
DRG case-mix index	0.9		
Within DRG patient complexity	0.5		
Total discretionary adjustment factor			1.4
Estimated total change in case-mix index for FY88 (DRG weights adjusted after recalibration)			-1.5
Subtotal: Update and case-mix adjustment			5.0
Total change in PPS prices			
Urban		3.8	
Rural		4.6	
Average total change in PPS prices			3.9

[a] Market basket and case-mix change estimates are likely to be modified as more recent data and forecasts become available.

[b] In the Commission's judgment, the scientific and technological advancement, productivity, and site substitution components of the DAF should sum to zero. The individual estimates here represent only one point in a reasonable range for each component.

Congress intended that the end-of-year rates should be used as the base for applying the update factor.

In its deliberations, the Commission reviewed sample Medicare cost report data for the first three years of PPS. These preliminary data show increases in Medicare operating cost per case of about 10 percent annually during the second and third years of PPS. The increase is roughly 6 percentage points higher than inflation in the hospital market basket. American Hospital Association data suggest that this rate of increase has continued. This trend is partly related to the substantial decline in Medicare admissions during the early years of PPS. But market basket inflation and volume decline do not explain the cost increase entirely.

Revenue increases matched the 10 percent figure in the second year of PPS, but fell to about 3 percent in the third year. Consequently, the overall PPS operating margin fell from about 14 percent during the first two years of PPS to about 8 percent in the third year. Margins have probably continued to decline since then. Although this information was not used to develop a specific component of the update factor, it provided a context for the Commission's deliberations on the appropriate level of PPS payments. Trends in hospital costs, revenues, and operating margins will be examined in ProPAC's June 1988 report to the Congress, *Medicare Prospective Payment and the American Health Care System*.

Recommendation 2: Adjustment to the Level of the Standardized Amounts

The update factor for fiscal years 1989 and 1990 should include an adjustment to lower the standardized amounts an average of 1.1 percent each year. The urban standardized amount should be reduced by 1.2 percent, and the rural amount by 0.4 percent. The adjustments are based on the Commission's judgment of how information on average Medicare costs per case from the first year of PPS should be incorporated into the update factor.

This recommendation reflects a judgment made by the Commission in 1987 that the update factor should include a reduction to the standardized amounts. At that time, ProPAC also recommended phasing in the reduction over a three-year period, beginning in fiscal year 1988. The Commission continues to believe the reduction is appropriate. Due to recent congressional action, however, this year's recommendation modifies the amount of the adjustment for the remaining two years of the phase-in period.

The Commission's original recommendation stemmed from a review of data from the first year of PPS. ProPAC recalculated the standardized amounts by replacing updated 1981 costs per case with first-year PPS costs per case. The newly recalculated amounts were, on average, 12.3 percent lower: 13.0 percent for urban hospitals and 7.6 percent for rural hospitals.

In developing its 1987 recommendation for a negative adjustment to the standardized amounts, the Commission considered several factors. First, part of the differential represents the costs of preadmission or post-discharge services that formerly were provided during the inpatient stay but now are delivered at other sites. Inasmuch as the costs of these services are covered elsewhere in the Medicare program, ProPAC thinks that this part of the differential should be removed from the payment rates rather than shared with the hospital industry. Moreover, errors in projecting costs and changes in hospital accounting practices may account for part of the differential.

The treatment of productivity gains was the second factor considered by the Commission. As with its previous update recommendations, ProPAC maintained that the portion of the differential attributed to productivity gains should be shared between the hospital industry and the Medicare program. Finally, the Commission considered the extent to which relatively low update factors in fiscal years 1986 and 1987 already accounted for part of Medicare's share of the cost differential. After considering these factors, the Commission recommended that 5.4 percent of the 12 percent cost differential be removed over a three-year period.

The Commission's April 1987 recommendation advised that the 5.4 percent average reduction be applied in three 1.8 percent annual increments in fiscal years 1988 through 1990. Although this year's recommendation upholds the original

reduction, it revises the level of the adjustment for fiscal years 1989 and 1990 by taking into account the update factor hospitals received for fiscal year 1988.

ProPAC believes that in legislating the updates for fiscal year 1988, the Congress implicitly adjusted for more than one-third of the Commission's recommended reduction. That Congress set the update factor substantially below the market basket partly reflects its response to first-year PPS cost data. This year's modification of the balance of the adjustment simply incorporates another year of relatively low updates.

This modification is computed as follows. The average 1.4 percent difference between the Commission's recommended total update factor for fiscal year 1988 (2.3 percent) and the approximate average update hospitals actually will have received (0.9 percent) is applied to the balance of the Commission's adjustment. Thus, the remaining average adjustment for fiscal years 1989 and 1990 is 2.2 percent: the 3.6 percent the Commission anticipated in its original recommendation less 1.4 percent. The 2.2 percent figure averages a remaining adjustment of 2.4 percent for urban hospitals and 0.8 percent for rural hospitals. The Commission believes these amounts should be phased in over two years. Thus, the recommended average reduction for fiscal year 1989 is 1.1 percent: 1.2 percent for urban hospitals and 0.4 percent for rural hospitals.

The disparate effects that recommendations like this have across hospitals continue to concern the Commission. An across-the-board adjustment may have a detrimental effect on some hospitals, while others could absorb a larger reduction. Distributional concerns have become even more important as operating margins are falling for all hospitals. The Commission will continue to recommend improvements in the PPS payment formula and examine other factors that might cause financial difficulties for particular types of hospitals.

Recommendation 3: Allowance for Scientific and Technological Advancement and Productivity Improvement Goals, and Site-of-Care Substitution

For fiscal year 1989, the net allowance for scientific and technological advancement, productivity improvement, and site-of-care substitution in the discretionary adjustment factor should be zero.

The discretionary adjustment factor is the quantitative expression of the Commission's judgment regarding the rate at which the Medicare standardized amounts should increase or decrease beyond inflation in the hospital market basket. It incorporates particular considerations outlined in the statute establishing PPS. This adjustment also takes into consideration other factors that ProPAC determines are important. Together with the market basket inflation factor, the correction for market basket forecast error, and the adjustment to the standardized amounts, the DAF updates the payment rates from fiscal year 1988 to fiscal year 1989.

In constructing the DAF, the Commission considered four specific factors: (1) scientific and technological advancement, (2) hospital productivity improvement, (3) site-of-care substitution, and (4) real case-mix change. Each factor became a component in the Commission's overall DAF judgment.

The Commission did not attempt to quantify each component precisely. The data led the Commission to conclude that the reasonable ranges of the positive scientific and technological advancement adjustment and the negative productivity improvement adjustment are roughly equal. ProPAC set these adjustments at 0.5 percent, recognizing that other levels could also be supported. The Commission further decided that the evidence supporting the negative site substitution allowance had diminished substantially.

Based on these considerations, the Commission arrived at a judgment that the net of the first three components should be zero. ProPAC concluded that any additional expenditures for quality-enhancing, cost-increasing technologies and practice pattern changes should be balanced by

reductions in resource use associated with productivity gains and shifts in the site of care to non-inpatient settings.

When the recommended increase for real case-mix change is added into the DAF, the total fiscal year 1989 DAF recommendation represents a 1.4 percent increase to the standardized amounts. Consistent with its treatment of quality and long-term cost-effectiveness in previous recommendations, the Commission considered these factors when it set the level of the DAF and examined each of the DAF components.

The individual adjustments for scientific and technological advancement, hospital productivity, and site-of-care substitution are discussed below. The adjustment for real case-mix change is addressed in Recommendation 4.

Scientific and Technological Advancement—The scientific and technological advancement allowance is a future-oriented policy target. It provides additional funds for the hospitals to improve services by adopting quality-enhancing, cost-increasing health care advances.

As stated in previous reports, the Commission believes that advances resulting in greater hospital efficiency do not require a special allowance since they should lower hospital costs. The effects of cost-decreasing technologies are considered implicity in the productivity target.

The policy target must ultimately be based on judgment since it is impossible to enumerate all the technologies that meet this definition and to define their costs precisely. In order to develop a more informed judgment, however, the Commission examines a representative set of important new technologies and scientific developments.

Based on this examination, the Commission estimates that the standardized amounts would need to be increased by 0.3 percent. This estimate includes the effects of substituting new for existing technologies. The Commission's recommendation, however, is for a 0.5 percent increase to include technologies and changes in practice patterns not considered in its study. In the Commission's judgment, this amount represents only one point in a reasonable range for this component.

The Commission's recommendation presumes that, during fiscal year 1989, hospitals will be able to finance part of their expenditures for new technologies from productivity gains. It further presumes that Medicare capital payments will be sufficient to accommodate capital expenses associated with the implementation of cost-effective new technologies and treatments. Finally, the allowance for real case-mix change finances part of the expense associated with cost-increasing, patient-related practice pattern changes.

Hospital Productivity—The productivity allowance in the DAF is a future-oriented target. The Commission believes it is appropriate to expect hospitals to achieve modest productivity gains during the coming year.

The Commission adopted the position that it is both desirable and appropriate to translate productivity gains into price reductions. Such price reductions should be shared by the Medicare program, the Medicare beneficiaries, and the hospital industry. The Commission also determined that the Medicare program should not subsidize decreases in productivity.

The Commission's recommendation includes a minus 0.5 percent productivity allowance in the fiscal 1989 update factor for PPS hospitals. This allowance is associated with a target productivity gain of 1.0 percent, since the Commission's approach is to share the productivity gains roughly equally with the hospital industry.

Site-of-Care Substitution—This DAF allowance reflects the decrease in average inpatient costs per case associated with reductions in inpatient resources used to care for patients admitted to the hospital. Resource reductions result from the provision of non-inpatient services to patients who formerly received such services during the inpatient stay. The Commission believes that the Medicare program and the Medicare beneficiary may be overpaying for these services since the cost base used to calculate DRG payment rates includes the costs of services that are now being provided in other settings.

The allowance is not meant to reflect how the diversion of entire admissions to other settings affects average Medicare costs per case. The

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impact of this type of shift is considered under the real case-mix change adjustment.

The Commission recommends no offset to the standardized amounts to accommodate site-of-care substitution in the fiscal year 1989 update factor. The lack of an adjustment reflects the Commission's belief that the potential for site-of-care substitution has diminished substantially over time.

Given the increases in both case-mix adjusted length of stay and intensity, the Commission believes that the potential for a further site substitution will largely disappear by fiscal year 1989 unless technology or the Medicare benefit structure undergo a major change. For example, if nursing-home supply and benefits expand significantly, patients may be discharged earlier to these settings. It is difficult, however, to project the likelihood of these changes in fiscal year 1989. If new evidence indicates continued or renewed site-of-care substitution, the Commission will factor this information back into its DAF recommendation. (For background information supporting this recommendation, see Technical Appendix A.)

Recommendation 4: Adjustments for Case-Mix Change

For fiscal year 1989, the update of PPS standardized amounts should be adjusted for case-mix change in the following manner:

- **A positive allowance in the DAF of 0.5 percent for within-DRG case-complexity change;**
- **A positive allowance in the DAF of 0.9 percent for across-DRG patient-distributional change; and**
- **An across-the-board reduction in the DRG weights for increases in the case-mix index during fiscal year 1988, currently estimated to be 1.5 percent.**

The Commission believes that prospective payments to hospitals should reflect real case-mix changes associated with increases in resources used by patients. Increases in payments should not systematically result from upcoding, however, which is associated with improved medical record coding practices but not with increased patient resource use.

The Commission separates case-mix change into three components. Within-DRG case-complexity change does not affect hospital payments, but it does reflect increases in patient-care resources. By contrast, across-DRG change in the distribution of patients affects both payments and resource use. Both components constitute real case-mix change. Changes in case mix resulting from upcoding, however, increase payments even though they do not reflect increased patient resource use.

The hospital case-mix index (CMI) measures the distribution of cases across DRGs. In patient billing data, which is used to compute the CMI, across-DRG patient-distributional change and change due to upcoding are indistinguishable. Thus, differentiating real case-mix change from upcoding in the CMI is an extremely important but difficult empirical problem.

The Commission's recommendation incorporates three adjustments. These are needed to allow payments to increase due to real case-mix change and to remove the effects of upcoding from the payment base. ProPAC includes an allowance for both components of real case-mix change as part of its discretionary adjustment factor. To account for upcoding, the Commission recommends offsetting all expected change in the case-mix index by an appropriate percentage reduction in the DRG weights. The combined effect of the allowances and the reduction is to allow payments to increase only for real case-mix change.

Case-mix index change in fiscal year 1988 is estimated to be 1.5 percent. Of this amount, 0.9 percent is attributable to changes in the distribution of patients across DRGs and 0.6 percent to upcoding. The Commission thus assumes that three-fifths of the total CMI increase is real. This assumption is consistent with past estimates that the proportion of real case-mix change increases as the total CMI change declines.

In the early years of PPS, the CMI increase attributable to upcoding was estimated to be quite large. The medical record data used to calculate the original CMIs contained inaccurately and incompletely coded information. Hospitals have improved their coding practices since the implementation of PPS. In addition, hospitals now have the incentive to assign codes legitimately that will yield the greatest payment. Both of these practices shift patients into higher-weighted DRGs, thus raising CMIs. The Commission believes, however, that opportunities for hospitals to change their coding practices are declining. Changes in coding rules and DRG assignment strategies will continue to make upcoding possible, although at a slower rate than in the early years of PPS.

Across-DRG changes in patient distributions reflect increases in the resources used in patient care. New technologies may encourage more aggressive and resource-intensive treatments, like lithotripsy, that sometimes result in patients being placed in higher-weighted DRGs. Substituting outpatient treatments for inpatient stays is another source of this type of case-mix change. Such shifts reduce the frequency of cases in the lower-weighted DRGs relative to the higher-weighted DRGs, causing increases in the CMI. This is likely to diminish as the opportunities for outpatient shifts subside.

The Commission used data from the Commission on Professional and Hospital Activities (CPHA) to estimate a long-term trend of within-DRG case-complexity increases for the elderly. Based on this trend, within-DRG case-complexity change was estimated to increase average costs per case by 0.7 percent in 1986. One indicator of increases in this component of real case-mix change—declining admission rates—is less important now than in the early years of PPS. Stabilized admission rates indicate that cases that would have been assigned to low-weighted DRGs have already been shifted to outpatient settings. The estimate based on the long-term trend, therefore, was reduced to 0.5 percent in 1987.

The Commission uses data from HCFA on case-mix index change as the basis for the across-the-board reduction in the DRG weights. Because the estimate for CMI change in fiscal year 1988 is not yet available, the Commission is basing its 1988 figure on the final estimate of change during fiscal year 1987. Thus, the reduction and allowances are preliminary and may be modified when more current data are available. The Commission will report any modifications in the case-mix change recommendation during the rulemaking period prior to the establishment of the fiscal year 1989 payment rates.

Recommendation 5: Update Factor for Excluded Hospitals and Distinct-Part Units

For fiscal year 1989, a target rate-of-increase factor, separate from the PPS update factor, should be used to update payment rates for the group of psychiatric, rehabilitation, and long-term care hospitals and hospital distinct-part units excluded from PPS. The target rate-of-increase factor should reflect the projected increase in the hospital market basket for these hospitals, corrected for forecast error. The net allowance for scientific and technological advancement and productivity should be zero, consistent with the targets established for PPS hospitals.

For fiscal year 1989, the target rate-of-increase factor for children's hospitals and distinct-part units should reflect the projected increase in the hospital market basket for PPS hospitals, corrected for forecast error. The net allowance for scientific and technological advancement and productivity should be zero.

Besides inflation and the correction for market basket forecast error, the Commission's update factor recommendation for excluded facilities includes two allowances: one for scientific and technological advancement, and another for productivity improvement. The Commission did not attempt to quantify each allowance precisely. Instead, it determined that the net of the individual DAF allowances should be zero.

Based on currently projected market basket inflation rates, ProPAC estimates that this recommendation results in a 5.2 percent target rate-of-increase for psychiatric, rehabilitation, and long-term care facilities. For children's hospitals, the target rate-of-increase is 5.1 percent. These estimates are subject to revision as more current forecasts of inflation become available.

The Commission's approach to developing the update factor for excluded hospitals is discussed in

the following sections. Its recommendations for excluded facilities are summarized in the table following this discussion.

Excluded Hospitals—The PPS statute created two broad classes of hospitals: those that are paid on the basis of DRGs and those that are not. Excluded hospitals—psychiatric, rehabilitation, children's, and long-term care hospitals (hospitals with unusually long average lengths of stay)—continue under cost-reimbursement rules, which limit increases in reimbursement per discharge. Both the PPS standardized amounts and the reimbursement limits for excluded facilities are to be updated each year.

The types of patients seen and the treatments they receive vary significantly between PPS and excluded facilities. In this report, the Commission adopts the same approach used in its previous update recommendations for excluded facilities. That is, it recommends that separate update factors be developed for children's hospitals and for the group of psychiatric, rehabilitation, and long-term care facilities excluded from PPS.

Market Basket—As in previous reports, the Commission recommends using the PPS market basket inflation factor for children's facilities. It recommends calculating a separate inflation factor for the group of rehabilitation, psychiatric, and long-term care facilities. The labor share of expenses in the latter group of excluded facilities is substantially higher than in PPS hospitals. Children's hospitals, however, have been shown to have a mix of labor and nonlabor expenses similar to PPS hospitals. The differences in the use of labor and nonlabor resources have substantially affected calculations of the hospital market basket inflation factor in certain years.

The current forecasts of the fiscal year 1989 market basket increase for PPS and excluded facilities are extremely close: 5.1 percent and 5.2 percent, respectively. This may not be the case in the future. It is important to continue to calculate separate market basket inflation factors so that future differences in inflationary pressures can be detected and appropriately reflected in the target rate-of-increase factor. In addition, calculation of the individual inflation factors should be refined to account for differences in the skill mix of employees in PPS and excluded facilities.

Scientific and Technological Advancement—The scientific and technological advancement allowance is a future-oriented policy target. It reflects the Commission's judgment of the financial requirements for hospitals to implement cost-increasing but quality-enhancing technologies used to treat Medicare inpatients.

In developing this allowance, the Commission applied the same approach as that used for PPS hospitals. It attempted to estimate the potential effect of newly introduced devices or treatments on Medicare costs by examining a select group of technologies.

Analyses led the Commission to conclude that it is reasonable to incorporate the PPS allowance for scientific and technological advancement in the update factor for excluded facilities. Until more specific measures of case-mix change are developed, ProPAC believes the scientific and technological advancement allowance should accommodate treatment modality changes in response to

Estimated Percent Increase in Excluded Hospital Payment Limits for Fiscal Year 1989 Under Commission Recommendations

	Children's	Psychiatric, Rehabilitation, Long-Term Care
FY89 market basket increase[a]	5.1%	5.2%
Correction for market basket errors in FY88	0.0	0.0
Discretionary adjustment factor[b]		
Scientific and technological advancement	0.5	0.5
Productivity	−0.5	−0.5
Total change	5.1	5.2

a Market basket estimate is likely to be modified as more recent data and forecasts become available.

b In the Commission's judgment, the scientific and technological advancement and productivity components of the DAF should sum to zero. The individual estimates here represent only one point in a reasonable range for each component.

changing case mix. Therefore, the Commission set the allowance slightly higher than if it had been based solely on the emergence of new technologies.

Productivity—The productivity allowance is a future-oriented target that reflects potential changes in both efficiency and productivity resulting from implementation of constrained target rate-of-increase limits.

Wide annual fluctuations in the excluded facilities' admissions and limitations in the available data restrict any decisive conclusions concerning productivity trends. Given this uncertainty, the Commission determined that the productivity target for both excluded and PPS hospitals should be equally stringent.

Case-Mix and Site-of-Care Substitution Adjustments—The Commission reaffirms its previous recommendation that no adjustments should be made for case-mix change, real or otherwise, in the target rate-of-increase for excluded facilities. Excluded facilities are not paid on a DRG basis, and coding change does not influence their payments. Therefore, any PPS adjustment for coding change is inappropriate for these hospitals.

On the other hand, excluded hospitals may be experiencing increases in the medical care needs of patients due to earlier transfer of sicker patients from PPS hospitals. Suitable data for estimating the degree of case-mix change in excluded facilities are unavailable, however. The Commission has attempted to account for some of this case-mix change in the scientific and technological advancement allowance. (For background information supporting this recommendation, see Technical Appendix A.)

Recommendation 6: Timely and Accurate Medicare Cost Data

Availability of reliable and timely data is a critical priority for decision making. While significant improvements have been made in Medicare cost data timeliness, the Commission is concerned about the quality of these data for use in policy development. Therefore, the Secretary should consider improvements to the data to better reflect the costs of treating Medicare beneficiaries and to ensure comparability of data over time.

Accurate and timely cost data are essential to the development of informed PPS payment policy. These data are used by the Commission in determining the update factor recommendation, assessing the impact of PPS, and in other analytical activities. Furthermore, cost report data are widely used by HCFA and other organizations for both PPS and non-PPS analytic purposes.

Concerns about timely and accurate cost data have arisen often in the Commission's deliberations. In its April 1987 report, the Commission recommended that the Secretary routinely collect "early returns" Medicare cost report data from a subset of hospitals with accounting years beginning during the first four months of the Federal fiscal year. The Commission is pleased that the timeliness of cost report data has improved significantly since last year. In 1987, ProPAC received an early returns sample from the third year of PPS. Additional ProPAC analysis indicates that this approach is feasible and desirable for obtaining more timely data for hospitals excluded from PPS. (See Technical Appendix A.)

Although data have become available more quickly, the Commission hopes that the Secretary will explore additional methods to further improve the timeliness of cost report data. ProPAC also advises careful consideration of future changes to the cost report. Such changes could potentially delay the availability of data and inhibit the comparability of data across years. If changes to the cost report are necessary, any resulting delays or comparability problems should be minimized.

The Commission is concerned about the accuracy of Medicare cost report data for making policy decisions and assessing the impact of PPS on hospitals. Whether these data adequately reflect the costs associated with treating Medicare beneficiaries should be carefully examined. The extent of changes in cost reporting practices and the potential effect of these changes on cost measurement should be emphasized. ProPAC has completed an initial study of cost report data accuracy and plans to undertake additional work in this area. (See Chapter 3 and Technical Appendix A.) The Commission welcomes the opportunity to work with the Secretary to assess cost report data quality and identify areas for improvement.

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Now more than ever, policy makers require reliable, timely, and consistent data to understand changes in hospital costs under PPS. The Commission recognizes that collecting and verifying these data can be costly for both hospitals and the Medicare program. Furthermore, the costs associated with changing the Medicare Cost Report (MCR) can be significant. Thus, funding must be sufficient to promote the development and maintenance of high-quality data. The Commission believes, however, that investments in cost data should be undertaken only if the benefits in improved timeliness and accuracy outweigh the added expense.

Adjustments to the PPS Payment Formula

Recommendation 7: Capital Institutional Neutrality

The Secretary should provide supplemental payments to hospitals for inpatient-related capital costs incurred at other facilities. Such supplemental payments should continue until capital is incorporated into the PPS payment rate.

The Congress has delayed implementation of prospective payment for capital until fiscal year 1992. Capital costs thus will continue to be paid on a reduced-cost basis while operating costs are paid prospectively on a fixed-price basis. This dual payment system introduces distorted incentives for hospital investment behavior. Until capital payments are incorporated into PPS, hospitals will continue having incentives that inappropriately substitute capital for labor and other operating costs. These incentives remain even though capital payments are reduced below full capital costs.

Under this dual payment system, capital payments are not neutral as to site of service delivery. Medicare does not pay the capital-related costs of services that a hospital purchases from other institutions for its inpatients. If the hospital provides those services in-house, however, it is reimbursed for Medicare's share of the associated capital costs. Thus, Medicare provides hospital managers with an incentive to develop the capacity to provide all services in-house. The Commission, therefore, reaffirms its recommendation for an institutional neutrality adjustment to reduce the effect of these incentives.

The 1981 data used to develop the standardized amounts incorporated payments to outside facilities that had provided services to Medicare inpatients. These payments did not distinguish between operating and capital costs. The standardized amounts, therefore, reflect an estimate of the full costs of those purchased services.

There have been several changes in the delivery of health care services, however, since the standardized amounts were developed. The introduction of new capital-intensive technologies and procedures and increased use of free-standing diagnostic and therapeutic centers have increased hospitals' opportunities to purchase services for inpatients. The capital costs of the new purchased services are not reflected in the standardized amounts. The institutional neutrality adjustment, therefore, is needed to account for these costs.

The institutional neutrality adjustment should incorporate the legislated reductions to capital pass-through payments. This would equalize the incentives to offer a service in-house or to purchase it from another provider. (Technical Appendix A provides additional information on how the institutional neutrality adjustment might be implemented.)

The Commission continues to be concerned about the distorted investment incentives introduced by the dual capital-operating cost payment mechanisms. ProPAC believes Medicare capital payment policy should not provide hospitals with incentives to favor investing in capital instead of labor or other operating inputs. ProPAC is investigating trends in capital and total expenditures and will present this information in *Medicare Prospective Payment and the American Health Care System.*

Recommendation 8: Indirect Teaching and Disproportionate Share Adjustments

The indirect costs of teaching and the costs of serving a disproportionate share of low-income patients should be recognized through the use of data-based adjustments to hospital PPS payments. These adjustments should be reestimated annually using the most recent cost data available. The Secretary should support further research efforts to improve measurement of the sources of hospital cost variation. Results

of this research could be employed to improve the overall structure of PPS payments.

Under PPS, hospital payments are based on national and regional average urban and rural rates. Payments are subsequently adjusted to account for hospital cost variation due to area wage rates, the costs of outlier cases, the costs of teaching hospitals, and the costs of serving a disproportionate share of low-income cases. As questions regarding the equity of PPS payments become increasingly important, the Commission intends to devote even greater attention to this vital policy area. In this recommendation, the Commission addresses the indirect teaching and disproportionate share adjustments.

For fiscal years 1984 and 1985, teaching hospitals received an 11.59 percent per case add-on to their PPS payments for every 0.1 percentage point in the hospital's ratio of interns and residents per bed. Beginning during fiscal year 1986 and continuing into fiscal years 1987 and 1988, the adjustment was lowered to 8.1 percent. The adjustment has been lowered again, to 7.7 percent, beginning in fiscal year 1989. Further changes in the indirect teaching adjustment are being discussed in the Congress and the executive branch. The Commission will examine these potential changes and conduct related analyses during the coming year.

During fiscal year 1986, the disproportionate share payment adjustment was added to PPS. Disproportionate share is defined as the sum of (1) the percentage of Medicare hospital patient days attributed to Medicare beneficiaries entitled to Supplemental Security Income (SSI), and (2) the percentage of total hospital days attributed to Medicaid recipients. The formulas used to calculate the adjustment vary by urban or rural location and bed size.

The Commission's recommendation addresses four major issues related to these adjustments: the use of a data-based estimate for calculating the adjustments, the need for reestimating the adjustments on a periodic basis, the need to maintain these payment adjustments as long as the data support their continuation, and the need for further research to improve the equitable distribution of hospital payments.

Data-based Estimates—The indirect teaching and the disproportionate share adjustments were derived from different forms of regression analysis. Regression analysis was used to calculate estimates of how much hospital cost variation, measured by Medicare operating costs per case, could be attributed to different factors. These factors included area wage rates, case mix, urban or rural location, the indirect effects of teaching, and a disproportionate share of low-income patients.

The Commission generally supports the current analytic approach to derive estimates for the indirect teaching and the disproportionate share adjustments. The approach, although admittedly not perfect, appears consistent with current policy goals. This view was supported by a technical advisory panel, convened by ProPAC staff to review the technical aspects of the analysis used to derive the adjustments and their policy implications. ProPAC will undertake further analysis of the adjustments, using alternative approaches to estimate the effects of teaching and service to low-income patients on Medicare costs per case.

More importantly, the Commission stresses the need to base the indirect teaching and the disproportionate share adjustments on estimates derived from data analysis. As PPS moves to national rates, sources of cost variation are recognized to a lesser degree in hospital payments. Equity of payments, therefore, is dependent on the use of data-based estimates to adjust payments.

Further, the Commission urges that special attention be given to hospitals facing the largest share of the cost burden from both the indirect costs associated with teaching and a disproportionate share of low-income patients. As part of its future analysis, ProPAC will identify the effects of large teaching programs and a disproportionately high share of low-income patients on cost variation for these hospitals.

Reestimating Adjustments—As cost patterns of hospitals continue to change, and as other aspects of the payment system are revised, reviewing the estimates used for the indirect teaching and disproportionate share adjustments becomes essential. The Commission believes that the adjustments should be reestimated annually, using the most

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recent cost data available. Revised estimates could be used as a basis for changing the amount or form of the adjustments.

In addition, the Commission maintains that the indirect teaching and disproportionate share adjustments should be retained in the payment system, as long as data analysis indicate they are appropriate. In particular, the Commission is concerned that the disproportionate share adjustment is scheduled to expire in 1990.

Further Research Efforts—The Commission recognizes that the estimates for both adjustments serve as proxies for factors associated with hospital cost variation—for example, severity of illness—for which adequate measures do not yet exist. The Commission is concerned about identifying other factors that affect variation in cost per case.

In addition to the unintended proxy effects of the indirect teaching estimate, the Commission is concerned in general with how well the teaching and disproportionate share estimates measure cost variation. The Commission strongly urges the Secretary to support research on the sources of hospital cost variation. Significant research effort needs to be devoted to identifying factors affecting cost variation among hospitals and improving methods to measure how these factors affect costs. Assessing the adequacy of the intern to bed ratio as a measure of teaching effort, along with other factors identified in the literature, is also strongly encouraged.

As part of its future analytic agenda, the Commission will critically review the overall approach and amounts used to adjust payments. The relationships between the current adjustments—for example, the relationship between outlier payments and the indirect teaching adjustment—need to be examined to ensure an equitable payment system.

Recommendation 9: Labor Market Area Definitions

The Commission continues to believe that the current hospital labor market area definitions are seriously flawed. These definitions can be improved substantially with currently available data. Therefore, the Secretary should adopt the following definitions of hospital labor market areas:

- **For urban areas, the Secretary should modify the current Metropolitan Statistical Areas (MSAs) to distinguish between central and outlying areas. The central area should be defined using urbanized areas as designated by the Census Bureau.**

- **For rural areas, the Secretary should distinguish between urbanized rural counties and other rural counties within each state. Urbanized rural counties should be defined as counties with a city or town having a population of 25,000 or greater.**

The implementation of improved definitions should not result in any change in aggregate hospital payments. Furthermore, these definitions should not affect the assignment of hospitals to urban or rural areas for purposes of determining standardized amounts.

The Commission has had a long-term commitment to this issue and has studied it extensively. The Commission has made recommendations calling for improvements in labor market area definitions in each of its annual reports to the Secretary since April 1985. Furthermore, ProPAC conducted its own major study, which led to specific recommendations for improvements in its April 1987 report to the Secretary.

The Secretary rejected the Commission's proposal last year, stating that additional study and analysis were necessary to evaluate alternative options to redefine labor market areas and to determine their impact. In 1986, Congress enacted legislation requiring the Secretary to report on methods for improving hospital labor market areas by May 1987. The legislation also required the Secretary to collaborate with ProPAC on this report. The results of ProPAC's study have been shared with HCFA staff.

The Commission continues to believe that improvements are necessary to increase the equity of hospital payments. ProPAC also believes that its proposal represents the best available means for improving labor market area definitions.

In urban areas, the greatest improvement can be achieved by dividing MSAs into urbanized and non-urbanized areas. Hospitals within urbanized areas, on average, have wages almost 16 percent higher than hospitals in non-urbanized areas.

In rural areas, the greatest improvement can be achieved by dividing rural counties within each state into urbanized and other counties. The average hospital wage within urbanized rural counties is about 8.5 percent higher than the average wage within non-urbanized counties.

If implemented, the Commission's recommendation would increase the number of labor market areas from 365 to 527. The Commission believes that the improved equity of hospital payments is well worth the additional effort needed to make hospitals familiar with these new geographic boundaries.

ProPAC's proposal identified labor market area definitions that produced the greatest percentage difference in average hospital wages. The Commission's study showed that these wage differences remained even after adjusting for skill-mix differences between areas. ProPAC considered a number of other factors in developing its recommendation, including the amount of variation explained by the new definitions, the total number of new labor market areas, and the financial impact on individual hospitals. A complete discussion of these factors was presented in Technical Appendix A of ProPAC's April 1987 report

The Commission believes that the effect of these new definitions on other PPS payment adjustments should be examined, and urges the Secretary to conduct such an analysis. ProPAC considered the financial impact of its proposal on individual hospitals. This analysis, published in Technical Appendix A of its April 1987 report, focused on changes in the wage index values of individual hospitals rather than the overall effect of new labor market areas on the distribution of PPS payments.

The Secretary conducted an analysis showing that ProPAC's recommendation would help hospitals already doing well under PPS. The Commission believes, however, that the Secretary should address the issue of financially troubled hospitals directly as a separate issue, not indirectly by delaying improvements in labor market area definitions.

There is ample evidence that current labor market areas are poorly defined. ProPAC has called attention to this issue in its annual reports for three years, but the Secretary has chosen to postpone or to minimize the significance of the problem. The Commission believes this fundamental flaw in the original design of PPS should be corrected as soon as possible.

Recommendation 10: Evaluation of Sole Community Hospital Policies

Using the most recent data available, the Secretary should immediately initiate an evaluation of the adequacy of current Sole Community Hospital policies for protecting isolated rural hospitals. Based on this evaluation, the Secretary should develop policies to ensure that PPS payment policy does not jeopardize Medicare beneficiaries' access to inpatient hospital care in isolated rural areas.

The SCH adjustment was established under Section 223 of the 1972 Social Security Amendments and thus predates PPS Concern for beneficiary access underlies continuation by the Congress of the SCH exception under PPS Hospitals that become insolvent cannot continue to provide care to Medicare beneficiaries or anyone else In isolated areas with single hospital providers, hospital closure would likely force area residents to travel long distances to receive care. While such travel might not be unduly burdensome for the general population, it could create a significant barrier to care for Medicare beneficiaries. Moreover, it could result in higher costs for both the Medicare program and the beneficiaries.

Current legislation grants the Secretary the authority to provide designated Sole Community Hospitals with three basic protections against financial insolvency. First, payment is based on a combination of 75 percent hospital-specific and 25 percent regional average rates. Second, SCHs are exempt from capital payment cuts. Third, SCH payment is adjusted for a decline in discharges of more than 5 percent over the preceding cost period, if the decline is due to factors beyond the hospital's

control. OBRA 1987 expands the latter provision to allow hospitals that qualify as SCHs to apply for the volume adjustment, whether the hospital is actually an SCH-designated hospital or not.

In both its April 1986 and April 1987 reports, the Commission expressed concern that the current SCH provisions might inadequately protect isolated rural hospitals and the beneficiaries they serve. Since these reports were issued, the Commission has become convinced that current PPS payment policies require reevaluation based on the most recent financial data available.

Medicare cost report data for a sample of SCHs suggest that even with the presumable protections afforded by SCH status, 25 percent of these hospitals incurred PPS deficits during the first two years of PPS. By the third year, more than 50 percent of the SCHs incurred PPS deficits. In that year, one-quarter of the SCHs incurred PPS deficits greater than 13 percent, and one-tenth of the SCHs incurred PPS deficits of 37 percent or more.

These deficits occurred despite attempts to contain the rate of increase in hospital costs. In fact, preliminary Medicare cost report data suggest that SCHs achieved significant cost reductions during the first three years of PPS. During this period, these hospitals reduced their aggregate operating costs by 0.4 percent per year. A 7.6 percent reduction in discharges, however, resulted in a 7 7 percent average annual increase in SCH cost per case. Nevertheless, the increases for this group were less than for any other group studied except major teaching hospitals.

It has been suggested that the shift to discharge weighted standardized amounts will improve the financial status of rural hospitals. For SCHs, however, discharge weighting will have a relatively small impact, since only the 25 percent Federal payment portion of the rate would be affected.

Based on this information, the Commission has concluded that a comprehensive evaluation should be made of the protections afforded isolated rural hospitals under current PPS policies. The evaluation should address why some hospitals appear to fare poorly under current policies while others appear to flourish. For example, while one-tenth of the SCHs incurred PPS deficits of 37 percent or more, another one-tenth incurred PPS profits of 15 percent or higher during the third year of PPS. As will be discussed further in Recommendation 11, it is important to expand this evaluation to include all isolated hospitals, not just those currently designated as SCHs.

In ProPAC's opinion, any alternative policies developed should provide protections for financially vulnerable hospitals that serve isolated populations. The policies, however, do not have to reflect a return to cost-based reimbursement. Policies based on prospective rolling average base payments with annual updates, periodic rebasing to adjust for volume declines up to a threshold, and other alternatives should be explored.

The Commission will continue to evaluate this issue in an effort to assist the Secretary in the development of more appropriate policies for isolated rural hospitals. Efforts will focus on describing hospitals that gain or lose financially under current policies and relating hospital financial position to SCH status.

Recommendation 11: Clarification of Sole Community Hospital Designation Criteria

Before fiscal year 1989 begins, the Secretary should issue guidelines for interpreting the criteria used by HCFA regional offices to designate Sole Community Hospitals. The guidelines should be structured to provide greater uniformity in the standards used to designate SCHs. The Secretary should also assess whether the criteria themselves can be improved to better define sole hospital providers of care to isolated populations.

HCFA has specified that to qualify as a SCH under PPS, a hospital must meet one of the following conditions:

- It must be located more than 50 miles from the nearest similar hospital.
- It must be located between 25 and 50 miles from the nearest similar hospital and meet one of the following criteria:
  - — It must be the exclusive provider to at least 75 percent of the service population, or to at least 75 percent of the Medicare beneficiaries in its area, or
  - — It must have fewer than 50 beds; further, the Peer Review Organization or intermediary must certify that it failed to meet the exclusive provider criterion because specialty services were unavailable, forcing beneficiaries to seek care outside the area, or
  - — It must be isolated from the nearest similar hospital for at least one month per year due to local topography or severe weather conditions.
- It must be located between 15 and 25 miles from the nearest similar hospital and be isolated for at least one month per year due to local topography or severe weather conditions.

As of June 1987, 361 hospitals were designated SCHs. There are a few urban SCHs; most are small, rural facilities.

Not all isolated rural hospitals that qualify for SCH status apply for it. Some find the advantages of staying on national PPS payment rates outweigh those of SCH status. In addition, some hospitals have given up their designation, believing they are financially disadvantaged by the SCH payment formula of 75 percent hospital-specific and 25 percent regional rates.

Consequently, while the number of hospitals designated as SCHs is known, the precise number of hospitals that would otherwise qualify for such status is unknown. Moreover, the criteria themselves may be so restrictive as to exclude hospitals that are the sole source of care for a substantial portion of the population in certain rural areas.

In Recommendation 10, the Commission cited its concern that current PPS payment policies inadequately protect isolated rural hospitals against financial insolvency. In designing better protections, it is important to ensure that the SCH designation criteria reasonably define the hospitals serving isolated populations. At the very least, the hospitals eligible for SCH designation on the basis of current criteria should be identified. Such information is essential to evaluate the impact of altering current SCH payment policies to better protect inpatient hospital access for Medicare beneficiaries living in isolated areas.

During the past year, ProPAC contracted to study the adequacy of current SCH criteria for identifying isolated rural hospitals. The study attempted to identify all rural hospitals eligible for SCH designation, whether they are actually designated or not. The study also simulated the impact of altering the criteria.

Study results suggest a mismatch between the set of hospitals that would meet current criteria and those that are currently designated. If the criteria were applied using nationally consistent standards, 211 rural hospitals would be eligible for SCH designation within the continental United States. This is significantly less than the approximately 308 rural hospitals currently designated as SCHs. Moreover, 119 SCH-eligible hospitals are not currently designated.

In part, the discrepancy may be attributable to the large number of rural SCHs that were grandfathered into the system (233). These hospitals were designated as SCHs by regional HCFA offices at a time when explicit criteria were not promulgated.

Another source of the discrepancy is the lack of uniform, measurable standards for implementing the current criteria. For example, the number of SCH-eligible hospitals is highly sensitive to the definition of a market area. The more narrowly defined the market area, the higher the probability a hospital can achieve a dominant market share. A small change in the hospital market area definition could qualify literally a hundred or more additional facilities.

Measurable standards do not exist for defining local market areas. The PPS regulations clearly indicate a 75 percent *market share* standard for hospitals between 25 and 50 miles from the nearest hospital. What is left unclear, however, is the definition of the local *market area*. Most regional offices use state planning areas to specify hospital market or service areas. These areas do not conform to any uniform definition across regions or states.

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Moreover, except for hospitals with fewer than 50 beds, the market share criterion makes no allowance for patients requiring specialty services unavailable in the area. Even if this exception were expanded, the dearth of areawide, service-specific patient origin data would severely limit implementation of the exception in many parts of the country. It may be administratively simpler to slightly lower the market share criterion for small rural hospitals (i.e., those below a given bed size threshold) than to attempt to incorporate complex adjustments for specialty service out-of-area use.

Finally, the study suggests the potential benefits of giving hospitals the option to demonstrate geographic isolation based on travel-time rather than distance. Under the current distance criterion, approximately 236 hospitals would not be considered isolated even though the nearest hospital was more than 40 minutes away by automobile. These hospitals would not be eligible for SCH status unless they met other criteria related to market share, severe weather, or local topography.

Based on its analyses, the Commission has concluded that the guidelines for interpreting the SCH designation criteria need to be strengthened. Moreover, the criteria themselves require a careful reevaluation. If the goal of the SCH provisions is to ensure that Medicare policies do not jeopardize beneficiary access to inpatient hospital services, the Commission believes that the SCH designation criteria should reasonably define the hospitals serving isolated populations. Potential changes that deserve particular attention include relaxing the 75 percent market share criterion, and providing the option for hospitals to demonstrate isolation based on travel-time instead of distance. (For more information on this recommendation, see Technical Appendix A.)

Quality of Care

Recommendation 12: Evaluation of PRO Review and Quality of Care

The Secretary should review and synthesize the findings of Peer Review Organizations over the past four years. A major, comprehensive evaluation of PROs and their impact on quality of care should follow. The evaluation should focus on issues of access to and use of services, patterns of denials, and instances of poor quality care. Issues related to expenditure control and efficient administration of PRO contract requirements should be secondary to broader quality of care evaluative goals. The assessment should evaluate and compare criteria used to make judgments about when care is appropriate. Finally, this major study should assist the Secretary in developing and implementing mechanisms for expanded PRO review of episodes of care that are patient-oriented rather than institution-oriented.

In making this recommendation, the Commission reiterates points made in previous reports. In 1986, ProPAC urged that PROs undertake expanded review into episodes of care. In 1987, the Commission called for a major evaluation of the findings of PROs and their impact on quality of care. Responding to the 1987 recommendation, the Secretary repeatedly mentioned administrative review techniques as a method of PRO evaluation. This ongoing contract monitoring and review was not the focus of ProPAC's concern. Instead, the recommended major evaluation should be in addition to the administrative program oversight frequently cited by the Secretary.

PROs have been in place for four years. The cumulative experience of all PROs in their review of the process and quality of care received by Medicare beneficiaries is unique and extremely valuable. This experience needs to be synthesized, analyzed, and evaluated. The results of this synthesis and evaluation should be made public.

Two ProPAC studies undertaken this year have indicated a need to review carefully the criteria PROs use to determine the necessity and appropriateness of acute medical services. In research on transitional and subacute care, the need for more uniformity in using and applying criteria to discharge decisions was documented. Similarly, a study of preadmission review identified problems with the definition and application of criteria for patient admissions to the hospital.

Thus, the Commission believes the Secretary's evaluation should review the development, use, and application of criteria related to medical necessity and appropriateness. The evaluation should verify the suitability of all existing criteria for purposes of medical necessity and appropriateness review. The Secretary should then provide advice about the strengths and weaknesses of existing criteria to PROs and other utilization review organizations.

The conceptual basis of PRO review should be considered in detail. Early PRO activity was appropriately focused on expenditure and administrative controls. A maturing and evolving PRO program should focus more on outcomes of care as well as access to and use of services. The spectrum of review should be widened to consider preadmission activities, the process of acute care, and post-acute care needs and services. The appropriate mix of reviews in all these areas should be examined, along with the number of reviews and the types of tools needed to identify quality of care problems.

The refinements identified in the major evaluation should move the PRO program toward more extensive review of the appropriateness of medical care. Inappropriate and unnecessary care is not high-quality care. The development of more sophisticated techniques to identify inappropriate care should thus be a major priority for Federal research and analysis. The knowledge and experience of PROs should be used in these activities.

Patient Classification and Case-Mix Measurement

Recommendation 13: Improvements to Case-Mix Measurement

The Commission continues to believe that the DRG system is the best available measure of hospital case mix for the Medicare PPS. The Secretary should continue, however, to refine the DRGs to improve the equity of hospital payments and update the DRGs to account for changing technology. The Secretary should focus on generic improvements through the use of patient data currently available from the discharge abstract. The Secretary should also consider the use of temporary, technology-specific DRGs whenever assignment to existing DRGs is not appropriate.

In the past three years, the Commission has considered three general approaches to improving the measurement of hospital case mix: (1) retain the DRG system but revise it incrementally as problems emerge; (2) retain the DRG system in principle but reconstruct it using a newer, more complete data base; and (3) implement an alternative system, either in conjunction with or as a replacement for the DRGs.

To date, the Commission has recommended retaining the current system along with several incremental modifications and improvements. ProPAC has also expressed its concern regarding variations in resource use within some DRGs. The Commission recognizes that, as a case-mix measurement tool, DRGs require periodic adjustments to ensure fair and equitable payments. For example, DRGs periodically need to be created, changed, or modified to incorporate new technologies. ProPAC also recognizes that in the long-term it may be necessary to consider an alternative patient classification system to replace or modify the DRGs.

As part of its efforts to identify improvements in case-mix measurement, the Commission convened a technical advisory conference on patient classification systems in June 1987. Participants included the developers of six major patient classification systems, researchers, and policy makers knowledgeable in this area. The conference was held to inform ProPAC about the latest advances and developments in each of the systems, and to determine the Commission's role in evaluating their potential use in the Medicare prospective payment system.

Conference participants supported the conclusions regarding case-mix measurement reached by the Commission in its April 1987 report. These conclusions are:

- Research concerning the possible use of alternative case-mix systems to modify or to replace DRGs is still at an early stage. It is unlikely that any of the systems will be ready for use under PPS within the next two years.
- For the short-term, modest but important modifications in the DRGs can be made using currently available information from the discharge abstract.

- For the long-term, greater improvements in case-mix measurement may be achieved through systems that use clinical data not currently available from the discharge abstract.

Further research is warranted to evaluate the cost and benefit of collecting additional data.

Based on the information presented and discussed at the conference, the Commission believes it is premature to implement an alternative case-mix system for payment of Medicare hospital inpatients. However, ProPAC will continue to monitor the development and implementation of alternative case-mix measurement systems. The Commission will also continue to track studies that evaluate alternative systems, including a comprehensive study recently funded by HCFA.

The Commission continues to believe that the DRG system can be improved. In its April 1987 report, ProPAC made the following recommendations to the Secretary for generic improvements in the DRGs:

- Eliminate age over 69 as a criterion for defining DRGs,
- Refine the list of complications and comorbidities, and
- Update the surgical hierarchies and list of operating room procedures

The Secretary generally agreed with these recommendations and implemented some, but not all, the changes called for by the Commission. For example, ProPAC recommended modifying the list of complications and comorbidities to reflect differences in the relative intensity of resource use. ProPAC also recommended examining DRGs that do not currently split on the basis of CCs to determine whether such a split should be made. HCFA is conducting a study to develop both of these improvements in the use of CCs. The Commission encourages the Secretary to implement these improvements as soon as possible.

For fiscal year 1988, the Secretary expanded the use of non-operating room procedures and the use of combinations of diagnoses to assign cases to some DRGs. These fundamental changes may improve the DRGs. The Commission cautions the Secretary, however, not to implement such major changes on a piecemeal basis. Instead, the Secretary should identify appropriate fundamental changes and examine the potential benefits across all DRGs.

The Secretary's current policy for updating DRGs utilizes similarity of resource use as a criterion for determining DRG assignment for cases involving new technology. The costs associated with new technologies may, however, change rapidly as the technologies diffuse and are used more widely. This policy, therefore, can create inappropriate economic incentives or disincentives related to the use of new technologies. The Commission believes that temporary, technology-specific DRGs are a valuable alternative under certain circumstances when no existing DRG is appropriate for a new technology. The Commission's recommendation would permit the Secretary to collect data on the cost of a new technology for Medicare cases as use of the technology spreads. It would also maintain the clinical coherence of existing DRGs.

Recommendation 14: Coding Improvements

The Secretary should formalize a more timely, systematic, and consultative approach to consider ICD-9-CM codes for new diagnoses, procedures, devices, and other treatments. When new codes are considered and created, both coding and clinical specialists should be involved. The Commission continues to support its previous recommendations that the Secretary review Chapter 16 codes and coding procedures.

The ICD-9-CM Coordination and Maintenance Committee has made a number of changes that have resulted in more timely implementation of new codes and improvements in existing codes. However, the Committee could achieve further improvements by using a more systematic approach to identify conditions and treatments for review.

The Committee now considers coding changes that are requested by members and other interested parties on an ad hoc basis. It meets three times each year, and issues must be presented to the Committee no later than November for implementation in the following fiscal year. This timetable entails an 11- to 23-month delay after problems have been brought to the Committee's attention.

ProPAC believes that the need for new or modified codes could be identified earlier if the Committee followed a more systematic approach in setting its agenda. For example, the Committee should review all devices newly approved by the FDA. It should also routinely consult professional societies to identify important new technologies that merit codes. Both coding and clinical specialists should be involved in the development of new codes and the revision of existing codes.

Chapter 16 of the ICD-9-CM system is a compendium of symptoms, signs, ill-defined conditions, and abnormal findings of laboratory and investigative procedures. The Chapter 16 rules contradict the usual guidelines of the ICD-9-CM coding system concerning the sequence of principal and secondary diagnoses. They have, in some cases, impeded appropriate DRG assignment of important diagnoses. The Commission believes the guidelines prohibiting the use of Chapter 16 codes as principal diagnoses should be reviewed.

ProPAC has identified two specific coding problems in its work this year. The Commission believes that codes need to be created for partial joint replacements where they do not currently exist. There are also serious problems with the diagnosis codes for myocardial infarction and other ischemic heart disease. The ICD-9-CM Coordination and Maintenance Committee is modifying some of the long-recognized problems with these codes. These modifications will distinguish patients with a new-onset MI from those who have had an MI within several weeks. ProPAC has identified other problems with the MI codes that have not been addressed by the Committee. (See Technical Appendix B.)

DRG Classification and Weighting Factors

Recommendation 15: Method of Recalibrating the DRG Weights

The DRG weights should be annually recalibrated on the basis of costs rather than charges. The Secretary should implement cost-based weights starting with the fiscal year 1989 recalibration. The Commission is concerned, however, about the current Medicare cost-finding methods for estimating costs. The limitations of the Medicare cost report data may, in some cases, produce imprecise DRG weights. Thus, the Secretary should verify the accuracy of the cost report data and implement changes as necessary.

The Commission believes that, beginning in fiscal year 1989, the DRG weights should be calculated on the basis of charges adjusted to estimate costs rather than charges alone. Charges are set by hospitals based on many factors, including estimated costs, market conditions, payer mix, and revenue maximization strategies. This process may result in charges that are significantly above or below the costs of resources used to produce the service. The variation in charge-setting practices also results in charges that are generally not comparable across hospitals.

The original DRG weights were cost-based. Computed using 1981 patient-level charge data, they were adjusted using per diem costs and cost-to-charge ratios from the 1981 Medicare Cost Reports. The first recalibration of the weights was completed for fiscal year 1986 using fiscal year 1984 patient billing data. Because current cost report information was not available at the time, HCFA developed these new weights based on charges alone.

In the most recent recalibration for fiscal year 1988, HCFA has again used only charges to calculate the DRG weights, although more recent MCR data were available from the second year of PPS. During 1987, the Commission analyzed the two methods for recalibrating the DRG weights to determine if a return to cost-based weights is warranted. The analysis compared weights calculated using charge data alone (charge-based weights) with weights calculated using charges that were adjusted to approximate costs (cost-based weights). The results demonstrate that cost-based DRG weights and hospital case-mix indexes differ significantly from current charge-based weights and CMIs. Thus, the two sets of weights are not interchangeable, and the Commission believes that the cost-based methodology is preferable.

Weights for medical DRGs would be higher under the cost-based methodology, and surgical DRG weights would be lower. Thus, while aggregate payments would remain unchanged, moving to

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cost-based weights would redistribute payments from the surgical DRGs to the medical DRGs. In general, this redistribution would result in lower payments to large, urban, and teaching hospitals coupled with higher payments to small, rural, and nonteaching hospitals. This is because the former group of hospitals treats a larger proportion of surgical cases. Further information on the redistributive consequences of the Commission's recommendation and the related analyses are in Technical Appendix B.

ProPAC recognizes that uncertainty exists regarding the adequacy of the current data and methods for estimating costs. Some have argued that the current Medicare cost-finding methodology (i.e., step-down allocation, apportionment of costs between Medicare and other payers, and assignment of costs between PPS and pass-throughs) distorts estimates of true cost. Further, ancillary level cost-to-charge ratios (RCCs) may not be accurate for all services provided within a department.

ProPAC nevertheless believes that real resource use is more accurately reflected by currently available cost data—even if they are imperfect—than by charges. The cost-based methodology for calculating DRG weights removes some of the variation in charges related to hospital charge-setting practices. In addition, the cost-based methodology explicitly removes the estimated costs of capital and direct medical education. These costs currently are not paid under PPS and should not be reflected in the DRG weights. By contrast, the charge-based weights are assumed to include these costs.

For these reasons, ProPAC believes that the cost-based approach is preferable. The Commission, however, urges the Secretary to devote the necessary resources to study the current Medicare cost-finding methods. The Secretary should verify the adequacy of the cost report data and make the necessary improvements. During 1988, the Commission will also study this issue further.

Recommendation 16: Improvements to DRG 468

The Secretary should reassign cases from DRG 468 to existing surgical DRGs. These cases should be reassigned using secondary, rather than principal, diagnoses. Cases that can be reassigned to more than one DRG should be assigned to the DRG with the highest relative weight.

DRG 468 is the miscellaneous category for all surgical cases with procedures that are clinically unrelated to their principal diagnoses. The Commission believes that refinements to this DRG are necessary to improve the accuracy of patient classification. In fiscal year 1986, DRG 468 was one of the 15 highest-volume DRGs, with more than 120,000 cases. Because DRG 468 is a miscellaneous category, it shows considerable variation in resource use. It also has more outliers than any other DRG. Finally, DRG 468 is not clinically coherent because it contains all unrelated combinations of principal diagnosis and surgical procedure.

The Grouper program assigns cases to DRG 468 in the following way. First, it groups all cases into a Major Diagnostic Category according to principal diagnosis. Then, it assigns surgical cases to a DRG using an MDC-specific list of procedures. These lists were developed using clinical judgment to identify procedures related to the principal diagnoses in each MDC. Finally, the Grouper program assigns any surgical case with no procedures on the MDC-specific list to DRG 468.

For fiscal year 1988, the Secretary implemented several changes in the Grouper program to improve the clinical coherence of DRG 468. However, these changes will not substantially reduce the variation in resource use, the large number of cases, or the large number of outliers in DRG 468.

The Commission studied three alternative approaches for reducing the large volume of cases assigned to DRG 468. Each approach modified the Grouper program to reassign cases from DRG 468 to new or existing DRGs. (See Technical Appendix B.) This study led ProPAC to conclude that the best approach is to reassign cases from DRG 468 to existing DRGs, using resequenced secondary diagnoses.

The Commission's recommendation requires the following modifications to the Grouper program for cases in DRG 468. First, the Grouper should resequence each secondary diagnosis and treat it as a principal diagnosis. It should also treat the original principal diagnosis as a secondary diagnosis.

Then, the Grouper should determine a DRG assignment for each resequenced secondary diagnosis. This can produce as many as four possible DRG assignments, because Medicare discharge abstracts include up to four secondary diagnoses. Finally, cases with multiple DRG assignments should be assigned to the highest-weighted DRG.

The Commission believes this is the best approach for improving DRG 468. First, it does not require any new DRGs. Almost all cases (88 percent) in DRG 468 can be reassigned to an existing surgical DRG. Second, the average cost of cases reassigned from DRG 468 is comparable to the average cost of cases already in each reassigned DRG. Therefore, this approach will not substantially affect DRG relative weights.

The Commission's approach represents a departure from the current assignment principles of the DRG system. It permits secondary diagnoses, rather than the principal diagnosis, to determine DRG assignment for cases in DRG 468. But DRG 468 was always unusual in several respects. In fact, the system's architects originally designed this DRG to identify atypical cases rather than serve as a basis for payment. By removing many cases from DRG 468, the Commission's recommendation is consistent with this original intent.

ProPAC believes this change is justified because cases in DRG 468 cannot be assigned to existing surgical DRGs using principal diagnosis. The Commission's approach is similar to the assignment principles of other patient classification systems, such as Disease Staging and Patient Management Categories. Unlike DRGs, these systems examine all diagnoses regardless of their sequence to determine the patient's underlying disease condition. The Commission believes its approach substantially improves patient classification without greatly increasing the complexity of the DRG system. The Commission will continue to monitor the effect of its recommendation and to study additional ways of reducing assignment to DRG 468.

Recommendation 17: Burn Hospitals and Units

The Commission supports the intent of current legislation temporarily increasing outlier payments for burn DRGs. However, the Commission's preliminary analysis indicates that the increase in outlier payments is appropriate only for those cases treated in specialized burn centers and units. The Commission will examine this topic further and submit additional recommendations to the Congress and the Secretary of Health and Human Services as required by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203.

The Omnibus Budget Reconciliation Act of 1987 temporarily increases outlier payments for burn DRGs. Cost outlier payments will be increased to 90 percent of marginal costs, and day outlier payments will be increased to 90 percent of the appropriate per diem. The legislation did not change the threshold for either cost or day outliers. This outlier payment policy will continue until fiscal year 1990.

OBRA 1987 also requires the Commission to report to Congress and the Secretary of HHS on this method of outlier payments for burn DRGs. In addition, ProPAC is required to present options for more adequate and appropriate payments with respect to burn outlier cases.

While the Commission supports the intent of this legislation, its analysis indicates that additional payments are appropriate only for those hospitals with specialized burn care units. The Commission analyzed data from 1986 MEDPAR file to determine the equity of PPS payment for burn cases treated by specialized burn centers and units. This analysis compared the average costs and average PPS payments for burn centers and other PPS hospitals. The preliminary results indicated that costs for hospitals with specialized burn centers and units were consistently higher than PPS payments for burn cases. The analysis also indicated that the costs of PPS hospitals without specialized burn units were considerably lower than PPS payments.

In addition, this analysis indicated that, compared with other PPS hospitals, hospitals with burn centers and units had a substantially higher percentage of outlier burn cases. (See Technical Appendix B for information on the burn DRGs examined.) The Commission believes that refinements in outlier payment policy may ameliorate some of the financial losses experienced by these hospitals (Recommendation 18).

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Payment for Outlier Cases

Recommendation 18: Outlier Payment Policy

The Secretary should modify outlier payment policy to protect hospitals more adequately from the risk of extremely costly cases. Hospital-specific cost-to-charge ratios should replace a national cost-to-charge ratio for calculating cost outlier payments. Greater emphasis should be placed on costs rather than length of stay for determining outlier payments. As an interim step toward emphasizing costs, the Secretary should move from day outlier precedence to paying the greater of day or cost outlier payments. Furthermore, the Secretary should adjust threshold levels so that 40 to 50 percent of outlier payments are paid as cost outliers.

The Commission urges the Secretary to increase outlier contributions to the maximum of 6 percent of total projected payments allowed under the statute. A correction should be made in the following year's payments if the amount paid for outliers is different from the amount set aside. If necessary, the Secretary should seek statutory change for these initial improvements while continuing analysis to refine outlier payment policy. Further analysis should also include consideration of an increase above the 6 percent set-aside amount allowed under the statute.

The Commission reaffirms its previous recommendation that outlier payment policy should be refined to reflect more accurately the resources hospitals use to treat extraordinarily expensive cases. The PPS statute recognized that hospitals warrant additional payment above the fixed DRG payment for treating such cases. As part of PPS, outlier policy was designed to limit the financial risks of a fixed-price system and to account for limitations in case-mix measurement.

The Commission is concerned with the level of losses that hospitals incur under current outlier policy. Analyses completed by ProPAC and others indicate that current outlier payments do not effectively limit the risk of financial losses associated with the random and systematic occurrence of extraordinarily expensive cases.

Ratios of costs to charges vary significantly across hospitals. Therefore, a change from national to hospital-specific RCCs will redistribute outlier payments to some extent. Under current policy, however, a comparison of national and hospital-specific RCCs showed no systematic pattern across hospital groups in the average difference between payments and costs for outlier cases. Further, there was no systematic pattern in major losses across hospital groups. These findings were also obtained in a simulation of paying for cost outliers only, which places maximum importance on the use of RCCs to calculate outlier payments.

Use of a national RCC combined with greater emphasis on costs would result in an inappropriate shift of payments to hospitals with low RCCs. The Commission believes that the incentives to raise charges to maximize outlier payments would become stronger with greater emphasis on costs if a national RCC were continued.

The Commission's analysis indicates that day outlier cases, on average, consume fewer hospital resources than cost outlier cases. ProPAC recognizes, however, that both days and costs, as derived from Medicare charge and cost data, are proxies for true costs. Emphasis on either factor affects the distribution of payments across hospital groups.

The Commission recommends changing from day outlier precedence to paying the greater of day or cost outlier payments. This recommendation is based on a preference for emphasizing costs in outlier payment policy. Better cost information is needed, however, to more accurately reflect true hospital costs and to develop hospital-specific RCCs. Therefore, the Commission favors a gradual approach toward greater recognition of cost outliers. Some hospitals that are adversely affected might not be able to absorb the entire reduction in outlier payments easily if the movement to greater emphasis on costs were abrupt. ProPAC is also concerned that the continued use of charge data to estimate costs can distort estimates of true costs in favor of certain types of procedures and hospitals.

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The Commission's recommendation would allow more time to analyze the effect of the shift away from day outlier precedence on hospitals' pricing strategies. Analysis is needed to understand how hospital response to different precedence options would affect length of stay. Additional time is also required to develop cost data and methods that measure true costs more accurately.

Preliminary analysis indicates that greater loss protection can be achieved by increasing the outlier pool size. The amount of extra protection appears to fall as the pool size is increased, however. Alternative set-aside amounts should be evaluated to balance the risk-reduction objective of outlier payments with the cost-reduction incentives of fixed price payments. This evaluation should take into account a more optimal outlier payment policy that emphasizes costs.

Until this analysis can be completed, the Commission believes that the Secretary should increase the outlier pool to the maximum 6 percent of total projected payments allowed under the statute. In addition, since there have been significant differences between outlier set-asides and actual outlier payments, a correction should be made in the following year's payments if the amount paid for outliers is different from the amount set aside.

ProPAC will continue to examine outlier payment policy, including the goals of such policy and the extent to which total payments for outlier cases should reflect the reasonable costs of outlier cases. The Commission will also analyze the outlier payment structure, particularly the method for defining outliers and setting day or cost outlier thresholds.

Furthermore, the Commission believes the effects of increasing the outlier pool on inlier payments should be examined. Under current policy, the outlier pool is funded by reducing payments for the inlier portion of care. Therefore, increasing the outlier pool might result in significant losses for hospitals that have relatively few outlier cases. In addition, alternative funding approaches, such as DRG-specific set-asides, should be examined.

Still other issues that remain for future examination include determination of a marginal cost factor, and the relationship between outlier payments and the indirect teaching and disproportionate share adjustments. Further analysis of these additional outlier issues is necessary before a fully integrated, reformed policy can be developed. The Commission will be pleased to work with the Secretary in analytic efforts to improve outlier payment policy.

Chapter 3

Issues for Future Consideration

In the early years of PPS, attention was appropriately focused on improving its technical aspects. Continued refinements of PPS, however, are increasingly dependent on broader-based evaluations of the impact of the system. The Commission's work has also changed, shifting emphasis to an assessment and evaluation of PPS. This chapter discusses the major issues the Commission will consider in its future analytic work as PPS and the health care system continue to evolve.

The changing characteristics of the health care system further underscore the need for a broader evaluation of the effects of PPS. Medical care provided to inpatients and care provided in other settings are increasingly interdependent. ProPAC will thus examine PPS in light of the experiences in the entire health care system, not just the inpatient hospital setting.

ProPAC is concerned that emphasis on moderating inpatient costs may have caused increases in total health care costs. The Commission believes that shifts in site of care, changes in the volume of services delivered in various settings, and increases in competition among providers affect total health care costs. As it evaluates the impact of PPS, ProPAC will consider these changes in health care delivery and financing. The Commission will consult and coordinate its efforts to investigate these issues with the Physician Payment Review Commission.

More comprehensive evaluations of PPS are possible because more data are available. Information on Medicare inpatient costs, total hospital costs, and beneficiary utilization under PPS has been compiled. More and better data sources to supplement Medicare billing information are needed, however. The continuing challenge is to develop data capabilities to evaluate the quality of care, total costs, and service utilization throughout an entire episode of care.

The major Medicare and PPS issues the Commission believes require public policy attention are: level of PPS payments, distribution of PPS payments, improving the data used for analyzing PPS payments, hospital behavioral responses to PPS, shift of services for an episode of care, and beneficiary access and quality of care. The Commission will continue to explore these issues, as discussed below.

LEVEL OF PPS PAYMENTS

The total level of payments under PPS is adjusted annually through the update to the standardized amounts. The Commission is concerned about providing an appropriate level of payments to hospitals because of the need to ensure beneficiary access and high quality of care. At the same time, payments should encourage efficiency and cost-consciousness in the delivery of services. The Commission will continue to examine the level of PPS payments. These efforts will focus on estimating and understanding the factors that affect hospital costs.

Annual Update Factor

The principal components of the Commission's annual update recommendation are the market basket forecast and the discretionary adjustment factor. The market basket forecast allows for changes in the price of the goods and services used by hospitals. The DAF is composed of four components that influence the average cost of a discharge: scientific and technological advances, hospital productivity, site-of-care substitution, and real case-mix change. Within this analytic framework, the

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Commission has developed separate measures for each of these components. (These are described in more detail in Technical Appendix A.)

Scientific and Technological Advances—The Commission bases this component of the DAF on estimates of the change in Medicare operating costs caused by the adoption of specific quality-enhancing technologies. In 1986, ProPAC estimated the additional operating costs associated with adopting selected new technologies. In 1987, the Commission expanded its approach to include a more comprehensive list of technologies. ProPAC will continue to use and refine the same methodology to estimate the costs of scientific and technological advances. The methodology, however, will be more comprehensive by including estimates of use and costs of a broader range of new technologies and practice patterns. It will also incorporate refined cost-estimation techniques.

Hospital Productivity—The Commission has tried to understand factors that affect hospital productivity by examining changes in both hospital inputs and expenditures since the early 1980s. Hospital productivity trends are particularly difficult to measure and assess because productivity and changes in the hospital product are hard to define. For example, inflation-adjusted expenses per discharge, an aggregate output measure, rose 4.1 percent from 1985 to 1986. Controlling for real case-mix change—a measure of product change—reduces the growth rate to 2.1 percent. Future Commission work will focus on refining measures of intermediate and discharge productivity and accounting for product change.

Site-of-Care Substitution—The Commission has estimated the effect of site-of-care substitution on the basis of declines in hospital length of stay and evidence that more services were being provided out of the hospital. Hospital length of stay now is relatively stable. This partially removes the empirical basis for continuing this adjustment. The Commission will continue to monitor data on length of stay and service delivery for renewed evidence of a need for the site-of-care substitution adjustment.

Real Case-Mix Change—The average DRG case weight increased more than 7 percent from 1984 to 1986. This change partly reflects increases in the resources devoted to treating the average Medicare inpatient—that is, real case-mix change. Changes in the average DRG case-weight also reflect improved medical record coding practices that alter DRG assignment. The Commission is working with HCFA to develop a method to apportion case-mix index change into real and coding change components. ProPAC also is refining its method to measure case-complexity change within DRGs, a component of real case-mix change that is not measured by the case-mix index. The method will group patients in each DRG by severity of illness using alternative patient classification systems. Changes in severity of illness, holding DRG constant, will be calculated using Medicare program data. The estimated costliness of these changes will be used to develop the within-DRG case-complexity change component of the update recommendation.

PPS Costs, Revenues, and Operating Margins

The Commission will continue to examine the factors that affect hospital costs. Medicare operating costs per case rose at an average annual rate of 10.2 percent during the second and third years of PPS. This increase is 6.4 percentage points above the average PPS market basket increase during this period. Average PPS hospital revenues increased 10.3 percent between the first and second years and 3.0 percent between the second and third years of PPS.

Hospital PPS operating margins—the difference between PPS payments and Medicare allowable operating costs as a percent of such payment—reflect these changes in costs and revenues. During the first and second years of PPS, the overall PPS operating margin was 14.0 percent and 14.3 percent, respectively. It had fallen to 8.2 percent by the third year of PPS. Based on preliminary data, the Commission estimates that the average PPS operating margin fell to about 2 percent in 1987 and will probably fall below zero in 1988.

Clearly, the large volume declines that hospitals experienced during the first three years of PPS contributed to the rapid increase in average costs per case. Volume, however, is not the only factor contributing to this change. A better understanding of hospital costs and the factors that influence

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changes over time will help inform the deliberations on the annual update factor. Further, this information is essential for modifying PPS to better serve the Medicare program and its beneficiaries.

PAYMENT DISTRIBUTION ISSUES

Under PPS, the distribution of these payments across types of hospitals is as important as the level of aggregate payments. In general, the distribution of payments is governed by four elements of PPS: DRG classifications and weights; payment adjustments for indirect teaching and disproportionate share status; outlier payments; and payment adjustments for geographical cost differences. Variation in resource use across hospitals also affects the adequacy of the distribution of payments. Analyses related to these factors are discussed below.

DRG Classifications and Weights

The equitable distribution of PPS payments is directly influenced by the adequacy of the DRG classifications and the accuracy of the DRG weights. The classifications and weights must be updated to account for new technologies and changing practice patterns, and to reflect changes in relative resource use. In addition, the methods and tools used to define the DRGs and to calculate weights require continued study to ensure proper distribution of payments.

During 1988, ProPAC will continue to analyze changes in the treatment of myocardial infarction and hospital admissions related to AIDS. In addition, many of the other issues the Commission has already addressed will be monitored to determine if further adjustments are needed. Implementing these improvements may require modifications to the ICD-9-CM coding system. Although HCFA is primarily responsible for coding maintenance and improvements, ProPAC will continue to monitor this activity and suggest necessary modifications to the coding system.

In addition to specific improvements to DRGs or groups of DRGs, generic improvements in the DRG definitions are sometimes warranted. Since the implementation of PPS, a significant amount of government and private research has focused on the ability of the DRG classifications to distribute payments equitably across hospitals and patients. These efforts have typically attempted to measure and reduce the heterogeneity of the DRGs.

Research on alternative case-mix measurement systems to modify or replace the DRGs is still at an early stage. A potentially fruitful area for short-term generic DRG improvement is through refining the definitions of CCs. Work on CCs, sponsored by HCFA, is nearing completion and may yield significant improvements in DRG homogeneity for fiscal year 1989. The Commission will continue to examine these and other improvements under consideration by HCFA.

Indirect Teaching and Disproportionate Share Adjustments

The indirect teaching and disproportionate share adjustments to PPS payments significantly affect the distribution of payments across hospitals. More than 1,000 PPS hospitals receive an indirect teaching adjustment. For those hospitals, the average adjustment to the Federal rate is about $475 per case in 1988 dollars. More than 1,200 hospitals receive adjustments to their PPS payments because they treat a disproportionate number of poor people. Prior to recent legislation, the average adjustment to the Federal rate for these hospitals was $280 per case in 1988 dollars. Further, many hospitals that receive an indirect teaching adjustment also receive a disproportionate share adjustment.

These adjustments were developed to compensate hospitals for increased costs not otherwise recognized by the PPS payment formula. ProPAC is examining these two major adjustments as part of a broader effort to understand cost variations across hospitals. The Commission will analyze the empirical basis and the policy implications of these adjustments as well as possible alternative measures of these costs. This study will be helpful in evaluating the appropriateness of PPS payments.

Outlier Payments

Since the implementation of PPS, modifying outlier payment policy has been recognized as one of the most important avenues for improving the equity of PPS payments. Outlier payments are included in PPS to limit hospitals' financial risks. These risks arise in part because of deficiencies in measuring case mix. Although it was expected that hospitals would incur losses on some cases and

realize profits on others, both random and systematic occurrences of costly cases may cause financial hardship for some hospitals.

Previous analyses by ProPAC and others have demonstrated that the number of outlier cases and the amount of payments are unevenly distributed across DRGs and hospitals. Further, the Commission's analysis of cases treated in specialty hospitals has demonstrated that payment inequities for these cases are largely due to problems with outlier payment policy.

ProPAC will devote significant resources to studying outlier payment policy, focusing on the basis for calculating outlier payments and the size of the outlier pool as a percentage of total PPS payments. The Commission will also examine the methods of funding outlier payments, the methods for setting outlier thresholds, the marginal cost factor, DRG-specific outlier set-asides, adequate payments for burn outliers, and the relationship between outlier payment policy and the indirect teaching and disproportionate share adjustments.

One of the more difficult issues in outlier payment is estimating the marginal cost factor used to calculate payments for outlier cases. Currently, there are no adequate measures of true marginal costs. ProPAC, therefore, has funded a major research project to study daily cost patterns for inpatient care. The study also will provide more information about the services provided throughout a hospital stay, the timing of those services, and the effect of varying lengths of stay on costs.

Payment Adjustments for Geographical Cost Differences

Data from Medicare Cost Reports indicate that, during the first three years of PPS, small rural hospitals were much more likely to have negative operating margins than their urban counterparts. This has raised concerns about a subgroup of rural hospitals that may be particularly vulnerable under PPS. Legislative changes have been enacted since the third year of PPS to help the financial position of rural hospitals. Despite these changes, some rural hospitals may continue to have problems under PPS. Legislative changes have been enacted since the third year of PPS to help the financial position of rural hospitals. Despite these changes, some rural hospitals may continue to have problems under PPS.

The Commission is thus focusing analytic efforts on isolated hospitals that may be the only source of care for beneficiaries in rural areas. Using more recent data, ProPAC will examine the differences in costs between urban and rural hospitals. The Commission also will consider the criteria for defining Sole Community Hospitals. The analysis will determine which hospitals meet alternative criteria for SCH status and whether the SCH volume payment adjustments provide adequate financial relief to those with declining admissions.

ProPAC plans to examine the basis for the separate urban and rural standardized amounts. Congress, in the Omnibus Reconciliation Act of 1987, asked that ProPAC consider two major issues. The first is the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural payment rates. The second issue concerns the desirability of maintaining separate payment rates for hospitals located in large urban areas.

The Commission will continue to monitor the Secretary's efforts to develop new labor market area definitions. ProPAC believes the current definitions are a fundamental flaw in the design of PPS. Current labor market areas fail to recognize the substantial wage differences between inner-city and suburban hospitals in urban areas. They also fail to account for wage differences in rural areas. Analytic efforts will focus on examining methods for developing a skill-mix adjustment to the area wage index. ProPAC also will study the feasibility and appropriateness of adjusting the non-wage-related portion of the adjusted standardized amounts. These adjustments would be based on area differences in hospitals' non-labor costs and input prices.

Variation in Resource Use and the Distribution of Payments

Variations in the use of procedures, hospitalizations, and other medical services have been well documented. These variations have not yet been explained adequately by population characteristics. Further, the extent to which unexplained variation reflects appropriate differences in medical practices or inefficient medical care remains unclear.

Work completed by ProPAC during the past year suggests that differences in medical practice may be a major contributor to the unexplained variation of resource use in the DRG system. This study of hospital-level variation in charges demonstrated that using currently available data refinements of the DRGs is unlikely to alter the distribution of payments to hospitals. Further, other research suggests that even if additional data were used to refine DRGs, the impact on aggregate payments would be limited.

During 1988, ProPAC will complete additional analyses of hospital resource use. These efforts will determine the extent to which resource use variation is due to different use of specific inpatient services, such as special care units and individual ancillary departments. In addition, the analyses will document the relationship between variation in costs and payments under PPS.

The Commission also plans to study regional variation in per-case treatment costs within specific surgical procedure groups and medical conditions. The effect of varying medical practice patterns on hospital costs will be examined for the selected procedures and conditions. This analysis will develop the groundwork for explaining the linkage between variation in resource use at the hospital level and variation in medical practice patterns.

Related analyses will study the effects of PPS on medical practice patterns. ProPAC is conducting a longitudinal analysis of trends in the concentration of specialized procedures. The study will examine the changes in hospital procedure volumes, costs, and operating margins from 1984 to 1986. ProPAC will estimate the effect of these changes on the number of hospitals performing these procedures.

IMPROVING THE DATA USED FOR ANALYZING PPS PAYMENTS

Timely and accurate cost data are critical for developing improvements to PPS, as well as for evaluating the effects of this system. Although PPS has shifted Medicare away from cost-based reimbursement, cost data are central to many of the analyses necessary for maintaining and evaluating the system. The Commission, for example, uses cost data to develop recommendations for updates to the PPS payment amounts, to study PPS payment adjustments, to simulate DRG recalibration using cost-based weights, and to calculate hospital-specific cost-to-charge ratios for outlier payments.

During 1987, HCFA significantly improved the timeliness of cost data. A sample of Medicare Cost Reports for the third year of PPS (primarily covering fiscal year 1986) was made available in June 1987. It essentially constituted the "early returns" sample recommended by ProPAC in its April 1987 report to the Secretary. Barring any major changes in the MCR, the relatively short time lag in data availability should continue. In this report, the Commission urges the Secretary to explore additional areas for improving the timeliness of cost data.

The accuracy and validity of cost report data continue to be more difficult to address. The cost report was designed solely to estimate costs for Medicare reimbursement purposes. Cost report data, therefore, may not fully reflect the actual costs of treating Medicare patients. Estimating costs from the MCR is complicated by accounting and management strategies that vary across hospitals and over time. These include hospital step-down allocation methods, pricing strategies, and apportionment of costs between Medicare and other payers.

The Commission sponsored a preliminary effort to assess the accuracy of data from the MCR. A survey of fiscal intermediaries and hospital administrators provided some broad perceptions on the accuracy of cost data under PPS. Results indicate that although PPS has broken the link between the MCR and Medicare payment, the quality of the cost data has not changed. The data, however, still reflect techniques hospitals used to maximize cost-based reimbursement. They indicate some new incentives as well, such as more complete reporting of costs for PPS pass-throughs and outpatient department services. (The results of this work are summarized in Technical Appendix A.)

ProPAC plans to conduct additional analyses on the adequacy of MCR data for specific purposes. The Commission also is developing a longitudinal data base linking MCRs from 1981 through the third year of PPS. This data base will be used to analyze costs before and after PPS implementation. Analyses will focus on changes in per-case costs, ancillary cost-to-charge ratios, and the

relationship between per-case costs and the case-mix index over time.

HOSPITAL BEHAVIORAL RESPONSES TO PPS

PPS and other forces in the health care industry have changed the way hospitals deliver care to Medicare beneficiaries. Indications of such changes can be evaluated through cost report or patient billing data, as discussed earlier. The Commission also evaluates these changes by examining the hospital industry more directly. Because hospital behavioral changes could affect both cost and quality of care, ProPAC will continue to expand its study of these changes.

Management Strategies

Managerial strategies alter the structure or the process of care in various ways to respond to the incentives of the payment method. These strategies affect both the circumstances under which care is delivered and the resources made available for patient care. ProPAC will examine the changes in the structure and process of patient care by focusing on three major factors: hospital staffing, the structure of the industry, and the sensitivity of hospitals to the DRG prices.

Staffing—Hospitals have reduced the size of their inpatient work force since the implementation of PPS. Inpatient FTEs declined by 2.1 percent from 1983 to 1986. Inpatient FTEs per admission, however, increased by 0.8 percent during this period. These trends may reflect hospitals' inability to respond quickly to declining admissions. In addition, hospitals may not be able to reduce inpatient FTEs per admission due to increasing patient severity.

ProPAC will investigate these staffing trends, focusing on how the function, numbers, and organization of hospital employees have changed. Research will emphasize understanding how and why staffing changes differ across hospitals. The Commission will examine information on the extent to which changes are attributable to PPS and prospective pricing instituted by other payers. These data will be used to infer the potential effects of staffing changes on hospitals, hospital employees, the Medicare program, and its beneficiaries.

Structure of the Industry—Until recently, most health care was provided by single entities like hospitals, physicians, clinics, and nursing homes. Facing new market pressures, however, the structure of the health care industry is changing. Particularly notable are vertical and horizontal integration strategies. These are strategies in which hospitals expand to provide similar services or related services covering other phases and levels of care. Little is known about the effects of these strategies on the Medicare program and its beneficiaries.

ProPAC is undertaking an investigation of alternative vertical and horizontal integration strategies and the effects of each on the overall structure of the hospital industry. The study will look at existing data on the prevalence of such strategies in the health care industry. The Commission will review alternative corporate governing and decision-making structures. The legal and financial implications of these alternative approaches, including consequences for Medicare payments to hospitals, will be explored. Finally, the study will address the hospitals' objectives in adopting these integration strategies.

DRG Price Sensitivity—The extent to which hospitals are sensitive to variations in DRG prices is an important component of the relationship between prospective pricing incentives and hospital behavioral changes. ProPAC will identify the extent and objectives of hospital strategies to concentrate in or discontinue selected services. The analysis will assess whether these strategies are a direct response to variations in the DRG prices or other factors influencing hospital management. The role of product-line management and service costing in hospitals' responses to DRG price variations also will be examined. ProPAC will use this information to examine changes in the provision of hospital services over time. Any trends in the adoption or discontinuation of services since the introduction of PPS will be identified.

Responses to the Continuation of the Capital Cost Pass-Through

Capital continues to be reimbursed on a pass-through basis. Paying for capital in this manner—while operating costs are paid under a prospective system—has given hospitals economic incentives

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to substitute capital for operating costs. Some hospitals may have responded to the incentives by actually increasing their capital investments. Others may have attempted to maximize Medicare reimbursement by changing their accounting strategies so that more costs are classified as capital. Indeed, it is uncertain whether part of the 11.5 percent annual growth rate in capital costs since PPS implementation is attributable to these kinds of behavioral changes. Under current policy, payments were reduced below costs for 1987 through 1989. This policy may thus lessen the effect of the incentives.

ProPAC will examine the impact of the dual capital-operating cost payment system. Medicare cost report trend data will provide descriptive information on changes in hospital investment behavior. The study will examine, for example, changes in the relative capital costs of ancillary departments compared with their total costs. From this, ProPAC will draw general conclusions about the effects of the incentives inherent in the dual payment method.

In addition, ProPAC will study the relationship between capital costs and occupancy. This information will support Commission judgments on the feasibility and appropriateness of linking capital payments to hospital occupancy rates. This study is in response to a congressional mandate in the Omnibus Budget Reconciliation Act of 1987.

SHIFT OF SERVICES FOR AN EPISODE OF CARE

There have been major shifts in the site of health care service delivery since the implementation of PPS. Two phenomena are largely responsible. First, medical or surgical procedures that were performed in inpatient hospital facilities are being shifted to ambulatory settings, eliminating hospital admissions. This trend began well before the implementation of PPS. Second, services that used to be provided as part of a hospital admission increasingly are delivered before or after the hospital stay in an ambulatory setting. This trend is associated with declining lengths of stay that can, in part, be attributed to the incentives of PPS.

These major changes in site of care have raised many questions about total costs, quality of care, and beneficiary access to services. Further, the extent and nature of site-of-care shifts may vary across beneficiary groups and hospital types. It is difficult to explore these issues because available data are inadequate to investigate services provided throughout an entire episode of care. For certain service delivery sites there are neither data nor plans to develop sources of data. ProPAC is interested in these issues because of the critical role PPS is playing in these changes even though they involve outpatient service settings.

PPS incentives to shift services out of the inpatient hospital setting affect beneficiary out-of-pocket spending. The Commission has examined illustrative examples of typical cases. ProPAC determined that beneficiary cost-sharing responsibilities for the facility charges are usually less for outpatient surgery than for the same surgery performed in an inpatient setting. This would probably be true for medical treatment performed in the outpatient setting as well. On the other hand, when beneficiaries are treated as inpatients, but discharged earlier for further treatment, they must bear the cost of coinsurance for additional facility charges, thus increasing total liability.

Many questions remain about the effects of site-of-care shifts on total health care costs. While such shifts could reduce costs for inpatient care, they may increase the total costs over an episode of care. These changing cost patterns may vary across types of procedures, DRGs, or various beneficiary groups. The quality of care also may be affected by the shifts in site of care.

Finally, beneficiary access to appropriate services, particularly because patients are being discharged from hospitals earlier, needs to be assessed and monitored. Post-hospitalization services may not be available to some beneficiaries, either because they are not provided in a particular area or because the beneficiaries cannot afford them.

One of the Commission's major priorities in the coming year is to better understand the cost, quality, and access to services throughout an entire episode of care. To do this, beneficiary-level data on an entire episode of care are needed. These data would include utilization and costs of services covered under both Medicare Part A and Medicare Part B.

Because of the importance of these issues and the clear need for more and better data, ProPAC is initiating a major data development effort to merge Medicare Part A and B files. The Commission is carefully monitoring other organizations' efforts to produce similar data bases and will collaborate on these efforts if possible. The development of a linked data base is the first stage of several specific analytic activities ProPAC plans to undertake. These include examinations of particularly vulnerable beneficiary groups and variations in medical practice patterns.

A related effort will examine benefit changes in the Medicare program since 1980 by reviewing statutory, regulatory, and administrative changes. These benefit changes affect utilization and costs, so they will be important to understand in analyses of changes in services provided throughout an episode of care.

BENEFICIARY ACCESS AND QUALITY

Beneficiary access to health care, and the quality of that care, continue to be among the most important issues facing the Medicare program. To assess PPS fully, methods are needed that accurately measure and assess changes in access and quality of care. Additional methods are necessary to identify what has caused these changes—for example, specific provider practices, features of PPS, or other factors.

Ensuring beneficiary access to high-quality care has always been one of the Commission's major priorities. All analyses and policy recommendations are undertaken considering their potential effects on quality of care. One of the major objectives of ProPAC's work on variations in resource use, for example, is to assess how these variations affect quality of care. The studies of hospitals' behavioral responses to PPS also will examine potential effects on quality of care. In addition, ProPAC will look at specific activities that may compromise quality of care. It will also identify specific populations that may be particularly vulnerable to declines in quality of care. The Commission will continue to use existing data to investigate particular characteristics of the process of care in light of its concerns about quality.

Studies of beneficiary access and quality require considerable time and financial resources. To conserve and focus the Commission's resources, therefore, ProPAC will continue to monitor research conducted by other organizations. The Institute of Medicine of the National Academy of Sciences recently launched a major assessment of quality of care mechanisms under the Medicare program. This congressionally mandated study may become the basis of critical public policy discussions and actions on beneficiary access and quality of care. The study will provide important information that the Commission will consider in its deliberations.

Measuring the Quality of Inpatient Care

As its focus shifts to the broader effects of PPS, the Commission has intensified its attempts to use health outcomes to measure quality of care, although data inadequacies continue to limit these efforts. Only very crude outcome statistics, such as mortality and readmission rates, are available. Findings based on these data are incomplete and difficult to interpret.

The Commission believes that mortality statistics are an important source of information about quality of care. Further technical and statistical analysis, however, is needed to refine the methodology for calculating mortality statistics. In particular, data need to be adequately adjusted for severity of illness. The Commission thus plans to complete a preliminary study of the effects of within-DRG patient severity on mortality statistics. Information from this study will supplement data HCFA is gathering on this issue.

Changes in readmission rates over time may provide additional empirical evidence about how hospital responses to the incentives of PPS affect quality of care. The Commission is analyzing rates of readmission during the first three years of PPS. This study will document overall changes in readmission rates for beneficiaries in all DRGs as well as for specific groups of DRGs. In addition, readmission rates will be compared across various hospital types.

Although the currently available outcome measures of quality of care are limited, there is a significant amount of data that can provide descriptive information about the quality of care

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provided to Medicare beneficiaries. ProPAC will continue its analysis of vulnerable beneficiary groups that may be at a greater risk of adverse health outcomes if quality of care declines. The groups are defined by diagnosis, age, and income status. For these vulnerable groups, ProPAC will document longitudinal patterns of inpatient resource use, including length of stay, total charges, and mortality and readmission rates. This descriptive information will be useful in understanding the changing hospital stay and identifying areas needing further research.

Measuring the Quality of Non-Inpatient Care

As more of the beneficiary's care is provided outside the hospital, ProPAC will broaden its examinations of quality of care to incorporate these other settings. The Commission will continue to devote a significant portion of its resources to examining the structure and process of the care provided throughout an episode of care. Two such efforts are described below.

Transitional Care—The Commission's major study of post-acute, or transitional, care is in its second year. This study was initiated to examine the provision of post-acute care in hospital settings. A national survey and series of case studies were designed to define transitional care, measure its prevalence and distribution, and examine the cost and quality of care implications for this level of care.

Preliminary findings from the study's survey and from several case studies are summarized in Technical Appendix C. During 1988, the Commission will complete this analysis and consider additional research suggested by the results.

Shift of Inpatient Care to Outpatient Settings—Consistent with the incentives of PPS and PRO activities, service delivery is increasingly being shifted to outpatient settings. Unlike the problems associated with post-acute care, this shift of site may affect beneficiaries who are not hospitalized. It is important, therefore, to begin developing data bases to document the magnitude of the shift and to characterize the patients now treated in outpatient settings.

The Commission has developed several research strategies for addressing this issue. As described earlier, ProPAC is developing a data base that links hospital and outpatient services by beneficiary. The Commission will use these and other data to document changes in volume and costs for several procedures provided in the inpatient and outpatient setting. ProPAC will compare, by service setting, the health outcomes and severity of illness of patients undergoing these procedures.

The Commission will also study hospital outpatient services that are not necessarily provided during an episode of care that includes hospitalization. The Omnibus Reconciliation Act of 1987 instructed ProPAC to advise the Secretary on the payment system for ambulatory surgery and nonsurgical outpatient services furnished by hospitals. Initially, ProPAC will examine available MCR data to describe the cost and use of these services across hospitals.

Perceptions of Quality of Care

Beneficiaries' and providers' perceptions of quality are important sources of information. ProPAC considers these perceptions in assessing changes in quality, identifying particular problem areas, and determining research needs. The Commission systematically reviewed anecdotal evidence and perceptions related to quality of care in 1986. Besides identifying areas that were most sensitive to changes in quality of care, the study helped ProPAC refine its research agenda for this issue. The Commission worked closely with the American Association of Retired Persons (AARP), which is continuing analyses and studies on this topic. ProPAC will monitor AARP's efforts and will review the information developed through its studies.

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May 27, 1988

Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Income Taxes; Partnerships, S Corporations and Personal Service Corporations; Taxable Year Election; Temporary Regulations and Notice of Proposed Rulemaking

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8205]

Income Taxes; Election of Taxable Year Other Than Required Year by Partnerships, S Corporations and Personal Service Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the election by partnerships, S corporations, and personal service corporations to use a taxable year other than their required taxable year. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register. Changes to the applicable law were made by the Revenue Act of 1987. The regulations affect partnerships, S corporations, and personal service corporations (and owners of those entities) and provide them with the guidance needed to comply with the law. In addition, the temporary regulations include conforming and clarifying rules regarding the determination of the taxable year of a partnership under section 706.

EFFECTIVE DATE: The temporary regulations are generally effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis III of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566-3918, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Sections 706(b), 1378, and 441(i) of the Internal Revenue Code (the Code), as amended by section 806 of the Tax Reform Act of 1986 (the 1986 Act) (Pub. L. 99-514, 100 Stat. 2085), generally require partnerships, S corporations, and personal service corporations ("PSCs"), respectively, to conform their taxable years to the taxable years of their owners.

The Revenue Act of 1987 (the 1987 Act) (Pub. L. 100-203, 101 Stat. 1330), enacted on December 22, 1987, added sections 444, 7519, and 280H to the Code, effective for taxable years beginning after December 31, 1986. Section 444 allows certain partnerships, S corporations, and PSCs to make an election (a "section 444 election") to use a taxable year that is different from the taxable year that such entities would otherwise be required to use. Section 444(d)(3), however, generally prohibits entities that are members of a tiered structure from making a section 444 election.

Electing partnerships and S corporations are required to make payments under section 7519 ("required payments") to the Federal government that are intended to represent the value of the tax deferral obtained by the owners of those entities through the entity's use of a taxable year different from the required taxable year.

Electing PSCs failing to distribute certain amounts to employee-owners by December 31 of a taxable year may be required, under section 280H, to defer certain deductions for amounts includible (at any time) in the gross income of employee-owners.

On January 15, 1988, the Internal Revenue Service issued Notice 88-10 (1988-5 I.R.B. 24) to provide guidance with respect to certain issues of immediate concern to taxpayers affected by section 444. Notice 88-10 stated that forthcoming temporary regulations would provide that a section 444 election shall not be required to be made before the later of (i) April 30, 1988, or (ii) 60 days after the publication of those temporary regulations in the **Federal Register**. Publication of these temporary regulations in the **Federal Register** commences the beginning of the 60-day period for making a section 444 election. Thus, a section 444 election for the first taxable year beginning after December 31, 1986, must be made on or before July 26, 1988.

On March 11, 1988, the Internal Revenue Service issued Announcement 88-49 (1988-13 I.R.B. 34) to provide guidance to corporations electing S status that are considering whether to make a section 444 election. On March 15, 1988, the Internal Revenue Service issued Notice 88-36 (1988-13 I.R.B. 27) to provide guidance regarding the definition of a "tiered structure" for purposes of section 444 (d)(3).

Furthermore, on April 4, 1988, the Internal Revenue Service issued Notice 88-49 (1988-16 I.R.B. 29). Notice 88-49 waived certain penalties and answered additional questions regarding sections 444, 7519, and 280H that had not been answered in the earlier notices related to these sections.

Section 444

a. In General

If three conditions are met, a partnership, S corporation, or PSC is eligible to make a section 444 election. First, with one limited exception, the entity may not be a member of a tiered structure. Second, the entity must not have had a section 444 election in effect previously. Third, certain restrictions on the deferral period of the taxable year to be elected must be satisfied. In general, the deferral period of the taxable year to be elected must be no more than three months. However, there are special rules regarding the deferral period for entities that are changing or retaining their taxable year.

For purposes of section 444 and these temporary regulations, the term "required taxable year" is defined as the taxable year that is determined under section 706(b), 1378, or 441(i), without taking into account any taxable year which is allowable by reason of business purpose. Thus, the calendar year is the required taxable year for most partnerships and all S corporations and PSCs. The only partnerships that can have a required taxable year of other than a calendar year are certain partnerships with fiscal year partners.

Furthermore, for purposes of section 444 and these temporary regulations, the term "deferral period" is defined as the number of months that occur after the end of the taxable year desired under section 444 and through the close of the required taxable year. For example, if the taxable year desired under section 444 is September 30 and the required taxable year is December 31, the deferral period for such September 30 taxable year is 3 months (September 30 to December 31). With respect to taxpayers using a taxable year that is the same as their required taxable year, the deferral period for such year is zero.

If an entity qualifies to make a section 444 election and desires to make such election, the entity must file Form 8716 in accordance with § 1.444-3T of these temporary regulations. Furthermore, the entity must comply with the requirements of section 7519 or 280H, whichever is applicable.

A section 444 election shall remain in effect until it is terminated. Paragraph (a)(5) of § 1.444-1T of these temporary regulations provides that a section 444 election is terminated when the entity (1) changes to the required taxable year, (2) liquidates (including a deemed liquidation of a partnership pursuant to § 1.708-1(b)(1)(iv)), (3) willfully fails to comply with the requirements of section 7519 or 280H, whichever is applicable, or (4) becomes a member of a tiered structure (unless the "same taxable year exception" provided in § 1.444-2T(e) of these temporary regulations applies). In addition, a section 444 election is generally terminated if (5) a corporation's S election is terminated or (6) a PSC ceases to be a PSC. However, if a corporation is a PSC immediately after termination of its S election, a section 444 election may be continued by the PSC (subject to the rules of § 1.280H-1T). Furthermore, a PSC that ceases to be a PSC solely because it becomes an S corporation may also continue a section 444 election (subject to the rules of §§ 1.7519-1T and 1.7519-2T).

b. Tiered Structure

1. In General

If an entity is a member of a tiered structure, such entity cannot make or continue a section 444 election unless the same taxable year exception provided in § 1.444-2T(e) applies. An entity is generally considered a member of a tiered structure if the entity directly owns any portion of a deferral entity or a deferral entity owns any portion of the entity. A deferral entity is any entity that is a partnership, S corporation, PSC, or trust. However, grantor trusts and certain trusts treated like grantor trusts are excluded from the definition of a deferral entity. Furthermore, as provided in § 1.444-2T(c) of these temporary regulations, certain deferral entities may be disregarded if, in the aggregate, they are de minimis with respect to the entity desiring to make a section 444 election.

These temporary regulations provide that the date for determining the existence of a tiered structure is generally the last day of the required taxable year ending within the taxable year that would result from a section 444 election. Thus, for example, assume an S corporation that historically used a September 30 taxable year desires to retain its September 30 taxable year by making a section 444 election for its taxable year beginning October 1, 1987. The general rule provides that December 31, 1987, is the time for determining whether such S corporation is a member of a tiered structure. However, for taxable years beginning in 1987, these temporary regulations provide that an entity will not be a member of a tiered structure if, on the date the entity files its section 444 election for such taxable year, the entity is not a member of a tiered structure. Thus, in the above example, the S corporation will be considered to be a member of a tiered structure for its taxable year beginning October 1, 1987, only if the S corporation is a member of a tiered structure on both December 31, 1987, and the date the S corporation files its section 444 election for such year.

2. De minimis Rules

These temporary regulations include two de minimis rules that allow an entity to disregard certain deferral entities in determining whether the entity is a member of a tiered structure. The "downstream de minimis rule" provides that if an entity owns any portion of one or more deferral entities, such ownership is disregarded if, in the aggregate, all such deferral entities meet either (i) the 5 percent adjusted taxable income test, or (ii) the 2 percent gross income test. See § 1.444-2T(c)(2) of these temporary regulations for further details on these two tests. The "upstream de minimis rule" provides that if an entity is directly owned by one or more deferral entities, such ownership is disregarded if deferral entities directly own, in the aggregate, 5 percent or less of the entity desiring to make or continue a section 444 election.

3. Same Taxable Year Exception

Paragraph (e) of § 1.444-2T of these temporary regulations provides that if a partnership or S corporation is a member of a tiered structure, the partnership or S corporation may have a section 444 election in effect if the tiered structure consists entirely of partnerships or S corporations (or both), all of which have the same taxable year. The same taxable year exception is generally not available if a PSC is a member of the tiered structure. The temporary regulations provide detailed rules for the interaction of the de minimis rules with the same taxable year exception (see § 1.444-2T(e)(5)).

4. Notice 88-36

Except for three minor clarifications and several minor editorial changes, § 1.444-2T of these temporary regulations contains the same tiered structure rules first provided in Notice 88-36. The first clarification relates to the date for determining the existence of a tiered structure (see § 1.444-2T(d)). Specifically, these temporary regulations clarify that if the taxable year resulting from a section 444 election does not include the last day of the required taxable year for such taxable year, then the entity making the section 444 election is not considered to be a member of a tiered structure for such year (see example (2) in § 1.444-2T (d)(1)).

The second clarification relates to the exception from the term "deferral entity" for grantor trusts (and certain trusts treated as grantor trusts) in § 1.444-2T(b)(2)(ii). Specifically, these temporary regulations clarify that to the extent any taxpayer owns a grantor trust, such taxpayer is treated as directly owning the assets of such a trust. For illustrations of this rule, see examples (1) and (2) in § 1.444-2T (b)(2)(ii).

The third clarification is that an affiliated group of personal service corporations filing a consolidated income tax return is treated as a single entity for purposes of determining whether a taxpayer is part of a tiered structure. See § 1.444-2T(b)(2)(i).

c. Limitations on Deferral Period

In general, a section 444 election may be made only if the deferral period of the taxable year to be elected is not longer than three months. However, if an entity is changing its taxable year, the deferral period of the taxable year to be elected may not be longer than the shorter of (1) three months or (2) the deferral period of the taxable year that is being changed. These temporary regulations define the phrase "deferral period of the taxable year that is being changed" as the deferral period of the taxable year immediately preceding the taxable year for which the entity desires to make a section 444 election.

Thus, for example, assume a partnership that has historically used a March 31 taxable year desires to change to a taxable year ending September 30 for its taxable year beginning April 1, 1987. Further assume that for the taxable year beginning April 1, 1987, the partnership's required taxable year is December 31. Based on these facts, the deferral period of the taxable year being changed is nine months (March 31 to December 31) and the deferral period of the taxable year being elected is three months (September 30 to December 31). As a result, the partnership may, if otherwise qualified (*i.e.*, the partnership is not considered to be a member of a tiered structure), make a section 444 election to change to a year ending September 30 for its taxable year beginning April 1, 1987.

These temporary regulations provide special transitional rules for certain taxpayers. First, § 1.444-1T(b)(2)(ii) of these temporary regulations provides that if a corporation (1) elected S status after September 18, 1986, and before January 1, 1988, and (2) elected to have a calendar taxable year, then such corporation is allowed to modify the normal deferral period limitations on changing its taxable year. Specifically, such corporation may substitute the deferral period of the last taxable year

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prior to electing to be an S corporation for the deferral period of the taxable year that is being changed. Thus, in order to benefit from this special rule, the corporation electing S status must have been in existence prior to electing S status.

The second special transitional rule provides that an entity may, if otherwise qualified, make a section 444 election for its first taxable year beginning after December 31, 1986, to have a taxable year that is the same as the entity's last taxable year beginning in 1986. See § 1.444–1T(b)(3) of these temporary regulations.

d. Procedures for Making a Section 444 Election (Section 1.444–3T)

1. In General

A section 444 election is made by filing Form 8716, "Election to Have a Tax Year Other Than a Required Tax Year," with the Service Center indicated by the instructions to Form 8716. In general, Form 8716 must be filed by the earlier of (i) the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective, or (ii) the due date (without regard to extensions) of the income tax return resulting from the section 444 election. However, if, based on the general rule set forth in the preceding sentance, the due date for filing Form 8716 is prior to July 29, 1988, the due date is extended to July 29, 1988. In addition to filing Form 8716 with the appropriate Service Center, a copy of Form 8716 must be attached to the entity's income tax return for the taxable year for which the section 444 election is made.

2. Corporations Electing S Status

A corporation electing S status is subject to the same procedural rules for filing Form 8716 as any other entity making a section 444 election. Thus, a corporation electing S status that desires to make a section 444 election is required to file Form 8716 in accordance with the rules in these temporary regulations, but is not required to file Form 8716 with its Form 2553, "Election by a Small Business Corporation." However, a corporation electing S status after September 26, 1988, that desires to make a section 444 election, is required to state on Form 2553 its intention to (i) make a section 444 election, if qualified, or (ii) make a "back-up section 444 election." If a corporation electing S status fails to state either of the above intentions, the District Director may, at his discretion, disregard a subsequent section 444 election for such entity.

Section 1.444–1T(a)(6) provides rules for reactivating certain S elections with respect to the first taxable year of the taxpayer beginning after December 31, 1986.

e. Back-up Section 444 Election

These temporary regulations provide that if an entity requests permission, based on business purpose, to use a particular taxable year, such entity may, if otherwise qualified, file a back-up section 444 election. Thus, if the entity's business purpose request is subsequently denied by the Commissioner, the entity shall activate the back-up election for such year. The rules and procedures concerning back-up section 444 elections are provided in § 1.444–3T(b)(4) of these temporary regulations.

f. Miscellaneous Administrative Relief

These temporary regulations automatically extend the due dates for filing certain income tax returns (see § 1.444–3T(c)(1)). These temporary regulations also waive certain late payment penalties that may otherwise be imposed on a PSC or S corporation (see § 1.444–3T(c)(2)).

Section III. B. of Notice 88–49 waived certain late payment and filing penalties that may otherwise be imposed on the owners of a partnership or S corporation considering whether to make a section 444 election for its first taxable year beginning after December 31, 1986. However, section III. C. of Notice 88–49 requires that interest must be paid on any underpayment of income tax.

Section 7519

a. In General

Section 7519 and the temporary regulations thereunder apply to any taxable year that a partnership or S corporation has a section 444 election in effect (an "applicable election year"). For each applicable election year, a partnership or S corporation must file a return and make a required payment as provided in § 1.7519–2T. However, if the required payment for an applicable election year is not more than $500 and the partnership or S corporation has not been required to make a required payment for a prior year, the partnership or S corporation should not make a required payment for that applicable election year. Nevertheless, such partnership or S corporation must file a return.

b. Required Payment

1. In General

Section 1.7519–1T(a)(3) provides that the term "required payment" means, with respect to any applicable election year of a partnership or S corporation, an amount equal to the excess of—

(i) The product of the applicable percentage of the adjusted highest section 1 rate, multiplied by the net base year income of the entity, over

(ii) The cumulative amount of the required payments, actually made for all preceding applicable election years (reduced by the cumulative amount of payments refunded under section 7519(c) for all such preceding years).

Under the temporary regulations, a partnership or S corporation that has made a section 444 election and that is a member of a tiered structure must separately determine the amount of its required payment without regard to the required payment of any other member of the tiered structure. (See example (3) of § 1.7519–1T(d)).

2. Applicable Percentage

Under section 806(e)(2)(C) of the 1986 Act, certain partners and shareholders are entitled to a four-year "spread" of the income and expense items from a partnership or S corporation that is required to change its taxable year under the 1986 Act. In order to provide a de facto four-year spread, section 7519(b)(1)(A) multiplies the required payment otherwise required to be made by a partnership or S corporation by the applicable percentage defined in section 7519(d)(4). However, certain entities (*e.g.*, a corporation that elected to be an S corporation for a taxable year beginning in 1987) that qualify to make a section 444 election, and thereby obtain the de facto four-year spread, may have partners or shareholders that would not have been entitled to the four-year spread under section 806(e)(2)(C) of the 1986 Act. Nevertheless, the temporary regulations provide that the applicable percentage for the first taxable year beginning in 1987 of any partnership or S corporation properly making a section 444 election is 25 percent.

3. Adjusted Highest Section 1 Rate

For any applicable election year, the term "adjusted highest section 1 rate" means the highest rate of tax under section 1 applicable to the period defined in the regulations, plus 1 percentage point. Notwithstanding the preceding sentence, the adjusted highest section 1 rate is 36 percent for applicable election years beginning in 1987. The temporary regulations provide that for purposes of section 7519 the highest rate of tax is determined without regard to the effect of section 1(g) (relating to the phaseout of the 15-percent rate and personal exemptions).

4. Net Base Year Income

In general, the net base year income of a partnership or S corporation is the sum of—

(i) The deferral ratio multiplied by the partnership's or S corporation's net income for the base year, plus

(ii) The excess (if any) of—

(A) The deferral ratio multiplied by the aggregate amount of applicable payments made by the partnership or S corporation during the base year, over

(B) The aggregate amount of such applicable payments made during the deferral period of the base year.

For purposes of section 7519 and the temporary regulation, the term "base year" means, with respect to any applicable election year, the taxable year of the partnership or S corporation immediately preceding such applicable election year. The temporary regulations define the term "deferral ratio" as the number of months in the deferral period of the applicable election year divided by 12 months.

5. Applicable Payment

For purposes of section 7519, the temporary regulations generally define the term "applicable payment" as any amount deductible in the base year that is includible at any time, directly or indirectly, in the gross income of a taxpayer that during the base year is a partner or shareholder. The temporary regulations provide that the term "applicable payment" does not include any guaranteed payments under section 707(c).

In general, an amount is indirectly includible in the gross income of a partner or shareholder if the amount is includible in the gross income of a related party, as determined under § 1.7519–1T(b)(5)(iv)(D) of the temporary regulations.

The temporary regulations further provide that if an S corporation was a C corporation for the base year, the corporation shall be treated as if it were an S corporation for the base year for purposes of determining the corporation's net base year income, including applicable payments. Thus, amounts deductible by a C corporation in the base year that are includible at any time in the gross income of a taxpayer that is a shareholder during the base year are treated as if deductible by an S corporation and are, therefore, within the meaning of the term "applicable payment."

6. Special Rule for Base Year of Less Than Twelve Months

If a base year is a taxable year of less than twelve months (a "short base year"), the temporary regulations provide special rules for computing the net base year income for such short year. The net base year income for the short base year is an amount equal to the excess, if any, of—

(i) The deferral ratio multiplied by the annualized short base year income, over

(ii) Applicable payments made during the deferral period of the applicable election year following the base year.

See § 1.7519–1T(b)(5)(v) of these temporary regulations.

c. Special Rules for Certain Applicable Election Years

The temporary regulations provide special rules for determining the applicable payment for certain applicable election years. If an applicable election year is a partnership's or S corporation's first year in existence (*i.e.*, the partnership or S corporation is newly formed and therefore does not have a base year), the temporary regulations provide that the required payment for such applicable election year is zero. If a partnership or S corporation makes a section 444 election and the resulting applicable election year (the "first applicable election year") of the partnership or S corporation ends prior to the last day of the required year, the temporary regulations provide that the required payment for the first applicable election year is zero.

d. Refunds of Required Payments

A partnership or S corporation is entitled to make a claim for refund if (1) the product of th applicable percentage of the adjusted highest section 1 rate multiplied by the net base year income is less than the cumulative amount of required payments in all preceding applicable election years (reduced by the cumulative amount of refunds for such preceding years), or (2) the partnership or S corporation terminates its section 444 election as defined in paragraph (a)(5) of § 1.444–1T.

e. Returns Under Section 7519

Section 7519(e)(3) provides that each partnership or S corporation that makes a section 444 election shall include on any required return or statement such information as the Secretary shall prescribe as is necessary to carry out the provisions of section 7519. The temporary regulations provide that with respect to an applicable election year, a partnership or S corporation must file a return showing the required payment, even if the required payment for the applicable election year is zero. For an applicable election year beginning in 1987, the return shall be made on Form 720, "Quarterly Federal Excise Tax Return." For an applicable election year beginning after 1987, the return shall also be made on Form 720 unless another form is prescribed by the Commissioner.

Partnerships and S corporations that would otherwise file Form 720 for the second quarter of 1988 must file Form 720 by the normal due date of such form for the second quarter of 1988. Thus, in most cases, these partnerships and S coporations will file Form 720 on or before July 31, 1988. However, some partnerships and S corporations (for example, those required to pay the windfall profits tax) must file Form 720 on or before August 31, 1988. See the instructions to Form 720 for additional general information. Partnerships and S corporations making a section 444 election that would not othewise file Form 720 for the second quarter of 1988 must file Form 720 on or before July 31, 1988. See § 1.444–3T(b)(4)(iii) for a special rule that may extend the due date for filing a return when a partnership or S corporation makes a back-up section 444 election.

f. Payment of Required Payments

For an applicable election year beginning in 1987, the required payment is due and patable without assessment and notice on or before the date specified in the temporary regulations for filing the Form 720. The required payment must be paid by check or money order and such check or money order must be sent, together with Form

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720, to the Service Center indicated by the instructions to Form 720. See § 1.444–3T(b)(4)(iii) for a special rule that may extend the due date for making a required payment when a partnership or S corporation makes a back-up section 444 election.

For an applicable election year beginning after 1987, the required payment is due and payable without assessment and notice on or before May 15 of the calendar year following the calendar year in which the applicable election year begins.

Section 280H

a. In General

Section 280H applies to any taxable year that a personal service corporation (PSC) has a section 444 election in effect (an "applicable election year"). For purposes of section 280H, the term "personal service corporation" has the same meaning given such term in § 1.441–4T(d).

If, for any applicable election year, a PSC does not satisfy the minimum distribution requirement of section 280H(c), the deduction otherwise allowable under chapter 1 of the Code for applicable amounts shall not exceed the maximum deductible amount. Any amount not allowed as a deduction in an applicable election year is allowed as a deduction in the succeeding taxable year.

Section 280H provides that the disallowance of deductions under section 280H shall not apply for purposes of subchapter G of chapter 1 of the Code (relating to personal holding companies). The temporary regulations clarify that the disallowance of deductions under section 280H does not apply for purposes of determining whether compensation to employee-owners is reasonable.

b. Applicable Amount

For purposes of section 280H, the term "applicable amount" means, with respect to a taxable year, any amount that is otherwise deductible by a PSC in such year and includible at any time, directly or indirectly, in the gross income of employee-owners. The temporary regulations clarify that an amount includible in the gross income of an employee-owner will be considered an applicable amount even though such employee owns no stock of the corporation on the date the employee included the amount in income.

In general, an amount is indirectly includible in the gross income of an employee-owner if the amount is includible in the gross income of a related party, as determined under § 1.280H–1T(b)(4)(ii) of the temporary regulations.

c. Minimum Distribution Requirement

A PSC meets the minimum distribution requirement for an applicable election year if, during the deferral period of such year, applicable amounts (not including excess applicable amounts carried over from the preceding year) for all employee-owners in the aggregate equal or exceed the lesser of the amount determined under the "preceding year test" or the amount determined under the "3-year average test" as described in paragraph (c) of § 1.280H–1T.

The temporary regulations provide special rules for applying section 280H to newly organized personal service corporations and to existing corporations that become PSCs. A newly organized PSC is deemed to satisfy the preceding year test and the 3-year average test for the first year of the corporation's existence. If an existing corporation was not a PSC for each of the three years preceding the corporation's first applicable year, the determination of whether the corporation satisfies the preceding year test and the three-year average test is made by treating the corporation as though it were a PSC for each of the three preceding years (or as many years as the corporation has been in existence).

d. Preceding Year Test

The amount determined under the preceding year test is the product of (1) the applicable amounts during the taxable year preceding the applicable election year (the "preceding taxable year"), divided by the number of months in the preceding taxable year, multiplied by (2) the number of months in the deferral period of the preceding taxable year.

e. 3-year Average Test

The amount determined under the 3-year average test is the applicable percentage multiplied by the adjusted taxable income for the deferral period of the applicable election year. The term "applicable percentage" means the percentage (not in excess of 95 percent) determined by dividing—

(1) The applicable amounts during the 3 taxable years of the corporation immediately preceding the applicable election year, by

(2) The adjusted taxable income of such corporation for such 3 taxable years.

The temporary regulations provide that if the PSC has been in existence less than 3 years, the 3-year average test is applied taking into account the years the corporation has been in existence.

f. Adjusted Taxable Income

The temporary regulations define the term "adjusted taxable income" as taxable income determined without regard to applicable amounts. The temporary regulations provide that the adjusted taxable income for the deferral period of the applicable election year equals the adjusted taxable income that would result if the PSC filed an income tax return for the deferral period of the applicable election year under its normal methods of accounting. However, under the temporary regulations, a PSC may make a reasonable estimate of such amount.

For purposes of determining the adjusted taxable income for any period, the temporary regulations provide that any NOL carryover shall be reduced by the amount of such carryover that is attributable to the deduction of applicable amounts. The portion of the NOL carryover attributable to the deduction of applicable amounts is the difference between the NOL carryover computed with the deduction of such amounts and the NOL carryover computed without the deduction of such amounts. For purposes of determining the adjusted taxable income for the deferral period, an NOL carryover to the applicable election year, as reduced, shall be allowed first against the income of the deferral period.

g. Maximum Deductible Amount

The term "maximum deductible amount" means the applicable amounts during the deferral period of the applicable election year, plus the product of (1) such applicable amounts divided by the number of months in the deferral period of the applicable election year, multiplied by (2) the number of months in the nondeferral period of the applicable election year. The term "nondeferral period" means the portion of the applicable election year that occurs after the portion of such year constituting the deferral period.

h. NOL Carrybacks Disallowed

No net operating loss carryback is allowed to (or from) any taxable year of a PSC to which a section 444 election applies.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–1036.

Drafting Information

The principal author of these temporary regulations is Arthur E. Davis III of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Department of Treasury participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.444–1—1.453–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR 1.7519–OT—1.7519–3T

Income taxes, Administrative and procedure, Miscellaneous, Required payments.

26 CFR 1.701–1—1.771–1

Income taxes, Partnerships.

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

For the reasons set forth in the preamble, Parts 1 and 602 of Title 26, Code of Federal Regulations, are amended as set forth below:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.444–0T through 1.444–3T and section 1.7519–3T are also issued under 26 U.S.C. 444 (f). Sections 1.7519–0T through 1.7519–3T, and 1.280H–0T and 1.280H–1T also issued under 26 U.S.C. 7519 (g).

Par. 2. Sections 1.444–0T through 1.444–3T are added in the appropriate place.

§ 1.444–0T Table of contents (temporary).

This section lists the captions that appear in the temporary regulations under section 444.

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(c) Effective date.
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§ 1.444–2T Tiered structure (temporary).

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§ 1.444–3T Manner and time of making section 444 election (temporary).

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§ 1.444–1T Election to use a taxable year other than the required taxable year (temporary).

(a) *General rules*—(1) *Year other than required year.* Except as otherwise provided in this section and § 1.444–2T, a partnership, S corporation, or personal service corporation (as defined in § 1.441–4T(d)) may make or continue an election (a "section 444 election") to have a taxable year other than its required taxable year. See paragraph (b) of this section for limitations on the taxable year that may be elected. See § 1.444–2T for rules that generally prohibit a partnership, S corporation, or personal service corporation that is a member of a tiered structure from making or continuing a section 444 election. See § 1.444–3T for rules explaining how and when to make a section 444 election.

(2) *Effect of section 444 election*—(i) *In general.* A partnership or S corporation that makes or continues a section 444 election shall file returns and make payments as required by §§ 1.7519–1T and 1.7519–2T. A personal service corporation that makes or continues a section 444 election is subject to the deduction limitation of § 1.280H–1T.

(ii) *Duration of section 444 election.* A section 444 election shall remain in effect until the election is terminated pursuant to paragraph (a)(5) of this section.

(3) *Section 444 election not required for certain years.* A partnership, S corporation, or personal service corporation is not required to make a section 444 election to use—

(i) A taxable year for which such entity establishes a business purpose to the satisfaction of the Commissioner (*i.e.*, approved under section 4 or 6 of Rev. Proc. 87–32, 1987–28 I.R.B. 14, or any successor revenue ruling or revenue procedure), or

(ii) A taxable year that is a "grandfathered fiscal year," within the meaning of section 5.01(2) of Rev. Proc. 87–32 or any successor revenue ruling or revenue procedure.

Although a partnership, S corporation or personal service corporation qualifies to use a taxable year described in paragraph (a)(3) (i) or (ii) of this section, such entity may, if otherwise qualified, make a section 444 election to use a different taxable year. Thus, for example, assume that a personal service corporation that historically used a January 31 taxable year established to the satisfaction of the Commissioner, under section 6 of Rev. Proc. 87–32, a business purpose to use a September 30 taxable year for its taxable year beginning February 1, 1987. Pursuant to this paragraph (a)(3), such personal service corporation may use a September 30 taxable year without making a section 444 election. However, the corporation may, if otherwise qualified, make a section 444 election to use a year ending other than September 30 for its taxable year beginning February 1, 1987.

(4) *Required taxable year.* For purposes of this section, the term "required taxable year" means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable either—

(i) By reason of business purpose (*i.e.*, approved under section 4 or 6 of Rev. Proc. 87–32 or any successor revenue ruling or procedure), or

(ii) As a "grandfathered fiscal year" within the meaning of section 5.01(2) of Rev. Proc. 87–32, or any successor revenue ruling or procedure.

(5) *Termination of section 444 election*—(i) *In general.* A section 444 election is terminated when—

(A) A partnership, S corporation, or personal service corporation changes to its required taxable year; or

(B) A partnership, S corporation, or personal service corporation liquidates (including a deemed liquidation of a partnership under § 1.708–1 (b)(1)(iv)); or

(C) A partnership, S corporation, or personal service corporation willfully fails to comply with the requirements of section 7519 or 280H, whichever is applicable; or

(D) A partnership, S corporation, or personal service corporation becomes a member of a tiered structure (within the meaning of § 1.444–2T), unless it is a partnership or S corporation that meets the same taxable year exception under § 1.444–2T (e); or

(E) An S corporation's S election is terminated; or

(F) A personal service corporation ceases to be a personal service corporation.

However, if a personal service corporation, that has a section 444 election in effect, elects to be an S corporation, the S corporation may continue the section 444 election of the personal service corporation. Similarly, if an S corporation that has a section 444 election in effect terminates its S election and immediately becomes a personal service corporation, the personal service corporation may continue the section 444 election of the S corporation. If a section 444 election is terminated under this paragraph (a)(5), the partnership, S corporation, or personal service corporation may not make another section 444 election for any taxable year.

(ii) *Effective date of termination.* A termination of a section 444 election shall be effective—

(A) In the case of a change to the required year, on the first day of the short year caused by the change;

(B) In the case of a liquidating entity, on the date the liquidation is completed for tax purposes;

(C) In the case of willful failure to comply, on the first day of the taxable year (determined as if a section 444 election had never been made) determined in the discretion of the District Director;

(D) In the case of membership in a tiered structure, on the first day of the taxable year in which the entity is considered to be a member of a tiered structure, or such other taxable year determined in the discretion of the District Director;

(E) In the case of termination of S status, on the first day of the taxable year for which S status no longer exists;

(F) In the case of a personal service corporation that changes status, on the first day of the taxable year, for which the entity is no longer a personal service corporation.

In the case of a termination under this paragraph (a)(5) that results in a short taxable year, an income tax return is required for the short period. In order to allow the Service to process the affected income tax return in an efficient manner, a partnership, S corporation, or personal service corporation that files such a short period return should type or legibly print at the top of the first page of the income tax return for the short taxable year—"SECTION 444 ELECTION TERMINATED." In addition, a personal service corporation that changes its taxable year is required to annualize its income for the short period.

(iii) *Examples.* The provisions of paragraph (a)(5)(ii) of this section may be illustrated by the following example.

Example. Assume a partnership that is 100 percent owned, at all times, by calendar year individuals has historically used a June 30 taxable year. Also assume the partnership makes a valid section 444 election to retain a year ending June 30 for its taxable year beginning July 1, 1987. However, for its taxable year beginning July 1, 1988, the partnership changes to a calendar year, its required year. Based on these facts, the partnership's section 444 election is terminated on July 1, 1988, and the partnership must file a short period return for the period July 1, 1988–December 31, 1988. Furthermore, pursuant to § 1.702–3T(a)(1), the partners in such partnership are not entitled to a 4-year spread with respect to partnership items of income and expense for the taxable year beginning July 1, 1988 and ending December 31, 1988.

(iv) *Special rule for entity that liquidates or is sold prior to making a section 444 election, required return, or required payment.* A partnership, S corporation, or personal service corporation that is liquidated or sold for tax purposes before a section 444 election, required return, or required payment is made for a particular year may, nevertheless, make or continue a section 444 election, if otherwise qualified. (See §§ 1.7519–2T (a)(2) and 1.7519–1T (a)(3), respectively, for a description of the required return and a definition of the term "required payment.") However, the partnership, S corporation, or personal service corporation for a trustee or agent thereof) must comply with the requirements for making or continuing a section 444 election. Thus, if applicable, required payments must be made and a subsequent claim for refund must be made in accordance with § 1.7519–2T(a)(6). The following examples illustrate the application of this paragraph (a)(5)(iv).

Example (1). Assume an existing S corporation historically used a June 30 taxable year and desires to make a section 444 election for its taxable year beginning July 1, 1987. Assume further that the S corporation is liquidated for tax purposes on February 15, 1988. If otherwise qualified, the S corporation (or a trustee or agent thereof) may make a section 444 election to have a taxable year beginning July 1, 1987, and ending February 15, 1988. However, if the S corporation makes a section 444 election, it must comply with the requirements for making a section 444 election, including making required payments.

Example (2). The facts are the same as in example (1), except that instead of liquidating on February 15, 1988, the shareholders of the S corporation sell their stock to a corporation on February 15, 1988. Thus, the corporation's S election is terminated on February 15, 1988. If otherwise qualified, the corporation may make a section 444 election to have a taxable year beginning July 1, 1987, and ending February 15, 1988.

Example (3). The facts are the same as in example (2), except that the new shareholders are individuals. Furthermore, the corporation's S election is not terminated. Based on these facts, the S corporation, if otherwise qualified, may make a section 444 election to retain a year ending June 30 for its taxable year beginning July 1, 1987. Furthermore, the S corporation may, if otherwise qualified, continue its section 444 election for subsequent taxable years.

(6) *Re-activating certain S elections*—(i) *Certain corporations electing S status that did not make a back-up calendar year request.* If a corporation that timely filed Form 2553, Election by a Small Business Corporation, effective for its first taxable year beginning in 1987—

(A) Requested a fiscal year based on business purpose,

(B) Did not agree to use a calendar year in the event its business purpose request was denied, and

(C) Such business purpose request is denied or withdrawn,

such corporation may retroactively re-activate its S election by making a valid section 444 election for its first taxable year beginning in 1987 and complying with the procedures in paragraph (a)(6)(iii) of this section.

(ii) *Certain corporations that revoked their S status.* If a corporation that used a fiscal year revoked its S election (pursuant to section 1362(d)(1)) for its first taxable year beginning in 1987, such corporation may retroactively re-activate its S election (*i.e.* rescind its revocation) by making a valid section 444 election for its first taxable year beginning in 1987 and complying with the procedures in paragraph (a)(6)(iii) of this section.

(iii) *Procedures for re-activating an S election.* A corporation re-activating its S election pursuant to paragraph (a)(6) (i) or (ii) of this section must—

(A) Obtain the consents of all shareholders who have owned stock in the corporation since the first day of the first taxable year of the corporation beginning after December 31, 1986,

(B) Include the following statement at the top of the first page of the corporation's Form 1120S for its first taxable year beginning in 1987—"SECTION 444 ELECTION—RE-ACTIVATES S STATUS," and

(C) Include the following statement with Form 1120S—RE-ACTIVATION CONSENTED TO BY ALL SHARHOLDERS WHO HAVE OWNED STOCK AT ANY TIME SINCE THE FIRST DAY OF THE FIRST TAXABLE YEAR OF THIS CORPORATION BEGINNING AFTER DECEMBER 31, 1986."

(iv) *Examples.* The provisions of this paragraph (a)(6) may be illustrated by the following examples.

Example (1). Assume a corporation historically used a June 30 taxable year and such corporation timely filed Form 2553, Election by a Small Business Corporation, to be effective for its taxable year beginning July 1, 1987. On its Form 2553, the corporation requested permission to retain its June 30 taxable year based on business purpose. However, the corporation did not agree to use a calendar year in the event its business purpose request was denied. On April 1, 1988, the Internal Revenue Service notified the corporation that its business purpose request was denied and therefore the corporation's S election was not effective. Pursuant to paragraph (a)(6)(i) of this section, the corporation may re-activate its S election by making a valid section 444 election and complying with the procedures in paragraph (a)(6)(iii) of this section.

Example (2). The facts are the same as in example (1), except that as of July 20, 1988, the Internal Reverne Service has not yet determined whether the corporation has a valid business purpose to retain a June 30 taxable year. Based on these facts, the corporation may, if otherwise qualified, make a back-up section 444 election as provided in § 1.444–3T(b)(4). If the corporation's business purpose request is subsequently denied, the corporation should follow the procedures in § 1.444–3T(b)(4)(iii) for activating a back-up section 444 election rather than the procedures provided in this paragraph (a)(6 for re-activating an S election.

Example (3). Assume a corporation has historically been an S corporation with a March 31 taxable year. However, for its taxable year beginning April 1, 1987, the corporation revoked its S election pursuant to section 1362 (d)(1). Pursuant to paragraph (a)(6)(ii) of this section, such corporation may retroactivaly rescind its S election revocation by making a valid section 444 election for its taxable year beginning April 1, 1987, and complying with the procedures provided in paragraph (a)(6)(iii) of this section. If the corporation retroactively rescinds its S revocation, the corporation shall file a Form 1120S for its taxable year beginning April 1, 1987.

(b) *Limitation on taxable years that may be elected*—(1) *General rule.* Except as provided in paragraphs (b)(2) and (3) of this section, a section 444 election may be made only if the deferral period (as defined in paragraph (b)(4) of this section) of the taxable year

to be elected is not longer than three months.

(2) *Changes in taxable year*—(i) *In general.* In the case of a partnership, S corporation, or personal service corporation changing its taxable year, such entity may make a section 444 election only if the deferral period of the taxable year to be elected is not longer than the shorter of—

(A) Three months, or

(B) The deferral period of the taxable year that is being changed, as defined in paragraph (b)(2)(iii) of this section.

(ii) *Special rule for certain existing corporations electing S status.* If a corporation with a taxable year other than the calendar year—

(A) Elected after September 18, 1986, and before January 1, 1988, under section 1362 of the Code to be an S corporation, and

(B) Elected to have the calendar year as the taxable year of the S corporation, then, for taxable years beginning before 1989, paragraph (b)(2)(i) of this section shall be applied by taking into account the deferral period of the last taxable year of the corporation prior to electing to be an S corporation, rather than the deferral period of the taxable year that is being changed. Thus, the provisions of the preceding sentence do not apply to a corporation that elected to be an S corporation for its first taxable year.

(iii) *Deferral period of the taxable year that is being changed.* For purposes of paragraph (b)(2)(i)(B) of this section, the phrase "deferral period of the taxable year that is being changed" means the deferral period of the taxable year immediately preceding the taxable year for which the taxpayer desires to make a section 444 election. Furthermore, the deferral period of such year will be determined by using the required taxable year of the taxable year for which the taxpayer desires to make a section 444 election. For example, assume P, a partnership that has historically used a March 31 taxable year, desires to change to a September 30 taxable year by making a section 444 election for its taxable year beginning April 1, 1987. Furthermore, assume that pursuant to paragraph (a)(4) of this section, P's required taxable year for the taxable year beginning April 1, 1987 is a year ending December 31. Based on these facts the deferral period of the taxable year being changed is nine months (the period from March 31 to December 31).

(iv) *Examples.* See paragraph (d)(1) of this section for examples that illustrate the provisions of this paragraph (b)(2).

(3) *Special rule for entities retaining 1986 taxable year.* Notwithstanding paragraph (b)(2) of this section, a partnership, S corporation, or personal service corporation may, for its first taxable year beginning after December 31, 1986, if otherwise qualified, make a section 444 election to have a taxable year that is the same as the entity's last taxable year beginning in 1986. See paragraph (d)(2) of this section for examples that illustrate the provisions of this paragraph (b)(3).

(4) *Deferral period*—(i) *Retentions of taxable year.* For a partnership, S corporation, or personal service corporation that desires to retain its taxable year by making a section 444 election, the term "deferral period" means the months between the beginning of such year and the close of the first required taxable year (as defined in paragraph (a)(4) of this section). The following example illustrates the application of this paragraph (b)(4)(i).

Example. AB partnership has historically used a taxable year ending July 31. AB desires to retain its July 31 taxable year by making a section 444 election for its taxable year beginning August 1, 1987. Calendar year individuals, A and B, each own 50 percent of the profits and capital of AB; thus, under paragraph (a)(4) of this section AB's required taxable year is the year ending December 31. Pursuant to this paragraph (b)(4)(i), if AB desires to retain its year ending July 31, the deferral period is five months (the months between July 31 and December 31).

(ii) *Adoptions of and changes in taxable year*—(A) *In general.* For a partnership, S corporation, or personal service corporation that desires to adopt or change its taxable year by making a section 444 election, the term "deferral period" means the months that occur after the end of the taxable year desired under section 444 and before the close of the required taxable year.

(B) *Special rule.* If a partnership, S corporation or personal service corporation is using the required taxable year as its taxable year, the deferral period is deemed to be zero.

(C) *Examples.* The provisions of this paragraph (b)(4)(ii) may be illustrated by the following examples.

Example (1). Assume that CD partnership has historically used the calendar year and that CD's required taxable year is the calendar year. Under the special rule provided in paragraph (b)(4)(ii)(B) of this section, CD's deferral period is zero. See paragraph (b)(2)(i) of this section for rules that preclude CD from making a section 444 election to change its taxable year.

Example (2). E, a newly formed partnership, began operations on December 1, 1987, and is owned by calendar year individuals. E desires to make a section 444 election to adopt a September 30 taxable year. E's required taxable year is December 31. Pursuant to paragraph (b)(4)(ii)(A) of this section E's deferral period for the taxable year beginning December 1, 1987, is three months (the number of months between September 30 and December 31).

Example (3). Assume that F, a personal service corporation, has historically used a June 30 taxable year. F desires to make a section 444 election to change to an August 31 taxable year, effective for its taxable year beginning July 1, 1987. For purposes of determining the availability of a section 444 election for changing to the taxable year ending August 31, the deferral period of an August 31 taxable year is four months (the number of months between August 31 and December 31). The deferral period for F's existing June 30 taxable year is six months (the number of months between June 30 and December 31). Pursuant to § 1.444–1T(b)(2)(i), F may not make a section 444 election to change to an August 31 taxable year.

(5) *Miscellaneous rules*—(i) *Special rule for determining the taxable year of a corporation electing S status.* For purposes of this section, and only for purposes of this section, a corporation that elected to be an S corporation for a taxable year beginning in 1987 or 1988 and which elected to be an S corporation prior to September 26, 1988, will not be considered to have adopted or changed its taxable year by virtue of information included on Form 2553, Election by a Small Business Corporation. See example (8) in paragraph (d) of this section.

(ii) *Special procedure for cases where an income tax return is superseded*—(A) *In general.* In the case of a partnership, S corporation, or personal service corporation that filed an income tax return for its first taxable year beginning after December 31, 1986, but subsequently makes a section 444 election that would result in a different year end for such taxable year, the income tax return filed pursuant to the section 444 election will supersede the original return. However, any payments of income tax made with respect to such superseded return will be credited to the taxpayer's superseding return and the taxpayer may file a claim for refund for such payments. See examples (5) and (7) in paragraph (d)(2) of this section.

(B) *Procedure for superseding return.* In order to allow the Service to process the affected income tax returns in an efficient manner, a partnership, S corporation, or personal service corporation that desires to supersede an income tax return in accordance with paragraph (b)(5)(ii)(A) of this section, should type or legibly print at the top of the first page of the income tax return for the taxable year elected—"SECTION 444 ELECTION—SUPERSEDES PRIOR RETURN."

(iii) *Anti-abuse rule*—If an existing partnership, S corporation or personal service corporation ("predecessor entities"), or the owners thereof, transfer assets to a related party and the principal purpose of such transfer is to—

(A) Create a deferral period greater than the deferral period of the predecessor entity's taxable year, or

(B) Make a section 444 election following the termination of the predecessor entity's section 444 election, then such transfer will be disregarded for purposes of section 444 and this section, even if the deferral created by such change is effectively eliminated by a required payment (within the meaning of section 7519) or deferral of a deduction (to a personal service corporation under section 280H). The following example illustrates the application of this paragraph (b)(5)(iii).

Example. Assume that P1 is a partnership that historically used the calendar year and is owned by calendar year partners. Assume that P1 desires to make a section 444 election to change to a September year for the taxable year beginning January 1, 1988. P1 may not make a section 444 election to change taxable years under section 444(b)(2) because its current deferral period is zero. Assume further that P1 transfers a substantial portion of its assets to a newly-formed partnership (P2), which is owned by the partners of P1. Absent paragraph (b)(5)(iii) of this section, P2 could, if otherwise qualified, make a section 444 election under paragraph (b)(1) of this section to use a taxable year with a three month or less deferral period (*i.e.*, a September 30, October 31, or November 30 taxable year). However, if the principal purpose of the asset transfer was to create a one-, two-, or three-month deferral period by P2 making a section 444 election, the section 444 election shall not be given effect, even if the deferral would be effectively eliminated by P2 making a required payment under section 7519.

(iv) *Special rules for partial months and 52–53-week taxable years.* Except as otherwise provided in § 1.280H–1T(c)(2)(i)(A), for purposes of this section and §§ 1.7519–1T, 1.7519–2T and 1.280H–1T—

(A) A month of less than 16 days is disregarded, and a month of more than 15 days is treated as a full month; and

(B) A 52–53-week taxable year with reference to the end of a particular month will be considered to be the same as a taxable year ending with reference to the last day of such month.

(c) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

(d) *Examples*—(1) *Changes in taxable year.* The following examples illustrate the provisions of paragraph (b)(2) of this section.

Example (1). A is a personal service corporation that historically used a June 30 taxable year. A desires to make a section 444 election to change to an August 31 taxable year, effective with its taxable year beginning July 1, 1987. Under paragraph (b)(4)(ii) of this section, the deferred period of the taxable year to be elected is four months (the number of months between August 31 and December 31). Furthermore, the deferral period of the taxable year that is being changed is six months (the number of months between June 30 and December 31). Pursuant to paragraph (b)(2)(i) of this section, a taxpayer may, if otherwise qualified, make a section 444 election to change to a taxable year only if the deferral period of the taxable year to be elected is not longer than the shorter of three months or the deferred period of the taxable year being changed. Since the deferral period of the taxable year to be elected (August 31) is greater than three months, A may not make a section 444 election to change to the taxable year ending August 31. However, since the deferral period of the taxable year that is being changed is three months or more, A may, if otherwise qualified, make a section 444 election to change to a year ending September 30, 1987 (three-month deferral period), a year ending October 31, 1987 (two-month deferral period), or a year ending November 30, 1987 (one-month deferral period). In addition, instead of making a section 444 election to change its taxable year, A could, if otherwise qualified, make a section 444 election to retain its June end, pursuant to paragraph (b)(3) of this section.

Example (2). B, a corporation that historically used an August 31 taxable year, elected on November 1, 1986 to be an S corporation for its taxable year beginning September 1, 1986. As a condition to having the S election accepted, B agreed on Form 2553 to use calendar year. Pursuant to the general effective date provided in paragraph (c) of this section, B may not make a section 444 election for its taxable year beginning in 1988. Thus, B must file a short period income tax return for the period September 1 to December 31, 1986.

Example (3). The facts are the same as in example (2), except that B desires to make a section 444 electin for its taxable year beginning January 1, 1987. Absent paragraph (b)(2)(ii) of this section, B would not be allowed to change its taxable year because the deferral period of the taxable year being changed (*i.e.*, the calendar year) is zero. However, pursuant to the special rule provided in paragraph (b)(2)(ii) of this section, B shall apply paragraph (b)(2)(i) of this section by taking into account the deferral period of the last taxable year of B prior to B's election to be an S corporation (four months), rather than the deferral period of B's taxable year that is being changed (zero months). Thus, if otherwise qualified, B may make a section 444 election to change to a taxable year ending September 30, October 31, or November 30, for its taxable year beginning January 1, 1987.

Example (4). The facts are the same as in example (3), except that B files a calendar year income tax return for 1987 rather than making a section 444 election. However, for its taxable year beginning January 1, 1988, B desires to change its taxable year by making a section 444 election. Given that the special rule provided in paragraph (b)(2)(ii) of this section applies to section 444 elections made in taxable years beginning before 1988, B may, if otherwise qualified, make a section 444 election to change to a taxable year ending September 30, October 31, or November 30 for its taxable year beginning January 1, 1988.

Example (5). C, a corporation that historically used a June 30 taxable year, elected on December 15, 1986 to be an S corporation for its taxable year beginning July 1, 1987. As a condition to having the S election accepted, C agreed on Form 2553 to use a calendar year. Although pursuant to paragraph (b)(3) of this section, C would, if otherwise qualified, be allowed to retain its June 30 taxable year, C desires to change to a September 30 taxable year by making a section 444 election. Pursuant to paragraph (b)(2) of this section, a taxpayer may, if otherwise qualified, make a section 444 election to change to a taxable year only if the deferral period of the taxable year to be elected is not longer than the shorter of three months or the deferral period of the taxable year being changed. Given these facts, the deferral period of the taxable year to be elected is 3 months (September 30 to December 31) while the deferral period of the taxable year being changed is 6 months (June 30 to December 31). Thus, C may, if otherwise qualified, change to a September 30 taxable year for its taxable year beginning July 1, 1987, by making a section 444 election. The fact that C agreed on Form 2553 to use a calendar year is not relevant.

Example (6). D, a corporation that historically used a March 31 taxable year, elects on June 1, 1988 to be an S corporation for its taxable year beginning April 1, 1988. D desires to change to a June 30 taxable year by making a section 444 election for its taxable year beginning April 1, 1988. Pursuant to paragraph (b)(2)(i) of this section, D may not change to a June 30 taxable year because such year would have a deferral period greater than 3 months. However, if otherwise qualified, D may make a section 444 election to change to a taxable year ending September 30, October 31, or November 30 for its taxable year beginning April 1, 1988.

Example (7). E, a corporation that began operations on November 1, 1986, elected to be an S corporation on December 15, 1986, for its taxable year beginning November 1, 1986. E filed a short period income tax return for the period November 1 to December 31, 1986. E desires to change to a September 30 taxable year by making a section 444 election for its taxable year beginning January 1, 1987. Although E elected to be an S corporation after September 18, 1986, and before January 1, 1988, paragraph (b)(2)(ii) of this section does not apply to E since E was not a C corporation prior to electing S status. Thus, E may not change its taxable year for the taxable year beginning January 1, 1987, by making a section 444 election.

Example (8). The facts are the same as in example (7), except that E began operations on April 15, 1987, and elected to be an S corporation on June 1, 1987, for its taxable year beginning April 15, 1987. As a condition

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to being an S corporation, E agreed on Form 2553 to use a calendar year. E desires to make a section 444 election to use a year ending September 30 for its taxable year beginning April 15, 1988. Pursuant to paragraph (b)(5)(i) of this section, E's agreement to use a calendar year on Form 2553 does not mean that E has adopted a calendar year. Thus, E's desire to make a section 444 election to use a September 30 taxable year will not be considered a change in taxable year and thus paragraph (b)(2) of this section will not apply. Instead, E will be subject to paragraph (b)(1) of this section. Since a September 30 taxable year would result in only a three-month deferral period (September 30 to December 31), E may, if otherwise qualified, make a section 444 election to use a year ending September 30 for its taxable year beginning April 15, 1987.

(2) *Special rule for entities retaining their 1986 taxable year.* The following examples illustrate the provisions of paragraph (b)(3) of this section.

Example (1). F, an S corporation that elected to be an S corporation several years ago, has historically used a June 30 taxable year. F desires to retain its June 30 taxable year by making a section 444 election for its taxable year beginning July 1, 1987. Pursuant to paragraph (b)(4)(i) of this section, the deferral period of the taxable year being retained is 6 months (June 30 to December 31, F's required taxable year). Absent the special rule provided in paragraph (b)(3) of this section, F would be subject to the general rule provided in paragraph (b)(1) of this section which limits the deferral period of the taxable year elected to three months or less. However, pursuant to paragraph (b)(3) of this section, F may, if otherwise qualified, make a section 444 election to retain its year ending June 30 for its taxable year beginning July 1, 1987.

Example (2). The facts are the same as in example (1), except that F received permission from the Commissioner to change its taxable year to the calendar year, and filed a short period income tax return for the period July 1 to December 31, 1986. F desires to make a section 444 election to use a year ending June 30 for its taxable year beginning January 1, 1987. Given that F had a December 31 taxable year for its last taxable year beginning in 1986, the special rule provided in paragraph (b)(3) of this section does not allow F to use a June 30 taxable year for its taxable year beginning January 1, 1987. Furthermore, pursuant to paragraph (b)(2)(ii) of this section, F is not allowed to change its taxable year from December 31 to June 30 because the deferral period of the taxable year being changed is zero months.

Example (3). G, a corporation that historically used an August 31 taxable year, elected be an S corporation on November 15, 1986, for its taxable year beginning September 1, 1986. As a condition to obtaining S status, G agreed to use a calendar year. Thus, G filed its first S corporation return for the period September 1 to December 31, 1986. G desires to make a section 444 election to use a year ending August 31 for its taxable year beginning January 1, 1987. Since G's last taxable year beginning in 1986 was a calendar year, G cannot use paragraph (b)(3) of this section, relating to retentions of taxable years, to elect an August 31 taxable year. Thus, G is subject to paragraph (b)(2)(i) of this section, relating to changes in taxable year. Although G, if otherwise qualified, may use the special rule provided in paragraph (b)(2)(ii) of this section, G may only change from its current taxable year (*i.e.*, the calendar year) to a taxable year that has no more than a three-month deferral period (*i.e.*, September 30, October 31, or November 30).

Example (4). The facts are the same as in example (3), except that G elected to be an S corporation for its taxable year beginning September 1, 1987, rather than its taxable year beginning September 1, 1986. As a condition to making its S election, G agreed, on Form 2553, to use the calendar year. However, G has not yet filed a short period income tax return for the period September 1 to December 31, 1987. Given these facts, paragraph (b)(3) of this section would allow G, if otherwise qualified, to make a section 444 election to retain an August 31 taxable year for its taxable year beginning September 1, 1987.

Example (5). The facts are the same as in example (4), except that G has already filed a short period income tax return for the period September 1 to December 31, 1987. Pursuant to paragraph (b)(3)(ii)(A) of this section, G may supersede the return it filed for the period September 1 to December 31, 1987. Thus, pursuant to paragraph (b)(3) of this section, G may, if otherwise qualified, make a section 444 election to retain an August 31 taxable year for the taxable year beginning September 1, 1987. In addition, G should follow the special procedures set forth in paragraph (b)(5)(ii)(B) of this section.

Example (6). H, a corporation that historically used a May 31 taxable year, elects to be an S corporation on June 15, 1988, for its taxable year beginning June 1, 1988. H desires to make a section 444 election to use a taxable year other than the calendar year. Since the taxable year in issue is not H's first taxable year beginning after December 31, 1986, H may not use the special rule provided in paragraph (b)(3)(i) and thus may not retain its May 31 year. However, H may, if otherwise qualified, make a section 444 election under paragraph (b)(2)(i) of this section, to change to a taxable year that has no more than a three-month deferral period (*i.e.*, September 30, October 31, or November 30) for its taxable year beginning June 1, 1988.

Example (7). I is a partnership that has historically used a calendar year. Sixty percent of the profits and capital of I are owned by Q, a corporation (that is neither an S corporation nor a personal service corporation) that has a June 30 taxable year, and 40 percent of the profits and capital are owned by R, a calendar year individual. Since the partner that has more than a fifty percent interest in I has a June 30 taxable year, I's required taxable year is June 30. Accordingly, I filed an income tax return for the period January 1 to June 30, 1987. Based on these facts, I may, pursuant to paragraph (b)(5)(ii)(A) of this section, disregard the income tax return filed for the period January 1 to June 30, 1987. Thus, if otherwise qualified, I may make a section 444 election under paragraph (b)(2)(i) of this section to use a calendar year for its taxable year beginning January 1, 1987. If I makes such a section 444 election, I should follow the special procedures set forth in paragraph (b)(5)(ii)(B) of this section.

§ 1.444-2T Tiered structure (temporary).

(a) *General rule.* Except as provided in paragraph (e) of this section, no section 444 election shall be made or continued with respect to a partnership, S corporation, or personal service corporation that is a member of a tiered structure on the date specified in paragraph (d) of this section. For purposes of this section, the term "personal service corporation" means a personal service corporation as defined in § 1.441-4T (d).

(b) *Definition of a member of a tiered structure*—(1) *In general.* A partnership, S corporation, or personal service corporation is considered a member of a tiered structure if—

(i) The partnership, S corporation, or personal service corporation directly owns any portion of a deferral entity, or

(ii) A deferral entity directly owns any portion of the partnership, S corporation, or personal service corporation.

However, see paragraph (c) of this section for certain de minimis rules, and see paragraph (b)(3) of this section for an anti-abuse rule. In addition, for purposes of this section, a beneficiary of a trust shall be considered to own an interest in the trust.

(2) *Deferral entity*—(i) *In general.* For purposes of this section, the term "deferral entity" means an entity that is a partnership, S corporation, personal service corporation, or trust. In the case of an affiliated group of corporations filing a consolidated income tax return that is treated as a personal service corporation pursuant to § 1.441-4T (f), such affiliated group is considered to be a single deferral entity.

(ii) *Grantor trusts.* The term "deferral entity" does not include a trust (or a portion of a trust) which is treated as owned by the grantor or beneficiary under Subpart E, part I, subchapter J, chapter 1, of the Code (relating to grantor trusts), including a trust that is treated as a grantor trust pursuant to section 1301(d)(2)(A) of the Code (relating to qualified subchapter S trusts). Thus, any taxpayer treated under subpart E as owning a portion of a trust shall be treated as owning the assets of the trust attributable to that ownership. The following examples illustrate the provisions of this paragraph (b)(2)(ii).

Example (1). A, an individual, is the sole beneficiary of T. T is a trust that owns 50 percent of the profits and capital of X, a partnership that desires to make a section 444 election. Furthermore, pursuant to Subpart E, Part I, subchapter J, chapter 1 of the Code, A is treated as an owner of X. Based upon these facts, T is not a deferral entity and 50 percent of X is considered to be directly owned by A.

Example (2). The facts are the same as in example (1), except that A is a personal service corporation rather than an individual. Given these facts, 50 percent of X is considered to be directly owned by A, a deferral entity. Thus, X is considered to be a member of a tiered structure.

(3) *Anti-abuse rule.* Notwithstanding paragraph (b)(1) of this section, a partnership, S corporation, or personal service corporation is considered a member of a tiered structure if the partnership, S corporation, personal service corporation, or related taxpayers have organized or reorganized their ownership structure or operations for the principal purpose of obtaining a significant unintended tax benefit from making or continuing a section 444 election. For purposes of the preceding sentence, a significant unintended tax benefit results when a partnership, S corporation, or personal service corporation makes a section 444 election and, as a result, a taxpayer (not limited to the entity making the election) obtains a significant deferral of income substantially all of which is not eliminated by a required payment under section 7519. See examples (15) through (19) in paragraph (f) of this section.

(c) *De minimis rules*—(1) *In general.* For rules relating to a de minimis exception to paragraph (b)(1)(i) of this section (the "downstream de minimis rule"), see paragraph (c)(2) of this section. For rules relating to a de minimis exception to paragraph (b)(1)(ii) of this section (the "upstream de minimis rule"), see paragraph (c)(3) of this section. For rules relating to the interaction of the de minimis rules provided in this paragraph (c) and the "same taxable year exception" provided in paragraph (e) of this section, see paragraph (e)(5) of this section.

(2) *Downstream de minimis rule*—(i) *General rule.* If a partnership, S corporation, or personal service corporation directly owns any portion of one or more deferral entities as of the date specified in paragraph (d) of this section, such ownership is disregarded for purposes of paragraph (b)(1)(i) of this section if, in the aggregate, all such deferral entities accounted for—

(A) Not more than 5 percent of the partnership's, S corporation's, or personal service corporation's adjusted taxable income for the testing period ("5 percent adjusted taxable income test"), or

(B) Not more than 2 percent of the partnership's, S corporation's, or personal service corporation's gross income for the testing period ("2 percent gross income test"). See section 702 (c) for rules relating to the determination of gross income of a partner in a partnership.

See examples (3) through (5) in paragraph (f) of this section.

(ii) *Definition of testing period.* For purposes of this paragraph (c)(2), the term "testing period" means the taxable year that ends immediately prior to the taxable year for which the partnership, S corporation, or personal service corporation desires to make or continue a section 444 election. However, see the special rules provided in paragraph (c)(2)(iv) of this section for certain special cases (*e.g.*, the partnership, S corporation, personal service corporation or deferral entity was not in existence during the entire testing period). The following example illustrates the application of this paragraph (c)(2)(ii).

Example. A partnership desires to make a section 444 election for its taxable year beginning November 1, 1987. The testing period for purposes of determining whether deferral entities owned by such partnership are de minimis under paragraph (c)(2) of this section is the taxable year ending October 31, 1987. If either the partnership or the deferral entities were not in existence for the entire taxable year ending October 1, 1987, see the special rules provided in paragraph (c)(2)(iv) of this section.

(iii) *Definition of adjusted taxable income*—(A) *Partnership.* In the case of a partnership, adjusted taxable income for purposes of paragraph (c)(2) of this section is an amount equal to the sum of the—

(*1*) Aggregate amount of the partnership items described in section 702(a) (other than credits and tax-exempt income),

(*2*) Applicable payments defined in section 7519(d)(3) that are deducted in determining the amount described in paragraph (c)(2)(iii)(A)(*1*) of this section, and

(*3*) Guaranteed payments defined in section 707(c) that are deducted in determining the amount described in paragraph (c)(2)(iii)(A)(*1*) of this section and are not otherwise included in paragraph (c)(2)(iii)(A)(*2*) of this section. For purposes of determining the aggregate amount of partnership items under paragraph (c)(2)(iii)(A)(*1*) of this section, deductions and losses are treated as negative income. Thus, for example, if under section 702(a) a partnership has $1,000 of ordinary taxable income, $500 of specially allocated deductions, and $300 of capital loss, the partnership's aggregate amount of partnership items under paragraph (c)(2)(iii)(A)(*1*) of this section is $200 ($1,000–$500–$300).

(B) *S corporation.* In the case of an S corporation, adjusted taxable income for purposes of paragraph (c)(2) of this section is an amount equal to the sum of the—

(*1*) Aggregate amount of the S corporation items described in section 1366(a) (other than credits and tax-exempt income), and

(*2*) Applicable payments defined in section 7519(d)(3) that are deducted in determining the amount described in paragraph (c)(2)(iii)(B)(*1*) of this section.

For purposes of determining the aggregate amount of S corporation items under paragraph (c)(2)(iii)(B)(*1*) of this section, deductions and losses are treated as negative income. Thus, for example, if under section 1366(a) an S corporation has $2,000 of ordinary taxable income, $1,000 of deductions described in section 1366(a)(1)(A) of the Code, and $500 of capital loss, the S corporation's aggregate amount of S corporation items under paragraph (c)(2)(iii)(B)(*1*) of this section is $500 ($2,000–$1,000–$500).

(C) *Personal service corporation.* In the case of a personal service corporation, adjusted taxable income for purposes of paragraph (c)(2) of this section is an amount equal to the sum of the—

(*1*) Taxable income of the personal service corporation, and

(*2*) Applicable amounts defined in section 280H(f)(1) that are deducted in determining the amount described in paragraph (c)(2)(iii)(C)(*1*) of this section.

(iv) *Special rules*—(A) *Pro-forma rule.* Except as provided in paragraph (c)(iv)(C)(*2*) of this section, if a partnership, S corporation, or personal service corporation directly owns any interest in a deferral entity as of the date specified in paragraph (d) of this section and such ownership interest is different in amount from the partnership's, S corporation's, or personal service corporation's interest on any day during the testing period, the 5 percent adjusted taxable income test and the 2 percent gross income test must be applied on a pro-forma basis (*i.e.*, adjusted taxable income and gross income must be calculated for the testing period assuming that the partnership, S corporation, or personal service corporation owned the same interest in the deferral entity that it owned as of the date specified in paragraph (d) of this section). The

following example illustrates the application of this paragraph (c)(2)(iv)(A).

Example. A personal service corporation desiring to make a section 444 election for its taxable year beginning October 1, 1987, acquires a 25 percent ownership interest in a partnership on or after October 1, 1987. Furthermore, the partnership has been in existence for several years. The personal service corporation must modify its calculations of the 5 percent adjusted taxable income test and the 2 percent gross income test for the testing period ended September 30, 1987, by assuming that the personal service corporation owned 25 percent of the partnership during such testing period and the personal service corporation's adjusted taxable income and gross income were correspondingly adjusted.

(B) *Reasonable estimates allowed.* If the information necessary to complete the pro-forma calculation described in paragraph (c)(2)(iv)(A) of this section is not readily available, the partnership, S corporation, or personal service corporation may make a reasonable estimate of such information.

(C) *Newly formed entities*—(*1*) *Newly formed deferral entities.* If a partnership, S corporation, or personal service corporation owns any portion of a deferral entity on the date specified in paragraph (d) of this section and such deferral entity was not in existence during the entire testing period (hereinafter referred to as a "newly formed deferral entity"), both the 5 percent adjusted taxable income test and the 2 percent gross income test are modified as follows. First, the partnership, S corporation, or personal service corporation shall calculate the percentage of its adjusted taxable income or gross income that is attributable to deferral entities, excluding newly formed deferral entities. Second, the partnership, S corporation, or personal service corporation shall calculate (on the date specified in paragraph (d) of this section) the percentage of the tax basis of its assets that are attributable to its tax basis with respect to its ownership interests in all newly formed deferral entities. If the sum of the two percentages is 5 percent or less, the deferral entities are considered de minimis and are disregarded for purposes of paragraph (b)(1)(ii) of this section. If the sum of the two percentages is greater than 5 percent, the deferral entities do not qualify for the de minimis rule provided in paragraph (c)(2) of this section and thus the partnership, S corporation, or personal service corporation is considered to be a member of a tiered structure for purposes of this section.

(*2*) *Newly formed partnership, S corporation, or personal service corporation desiring to make a section 444 election.* If a partnership, S corporation, or personal service corporation desires to make a section 444 election for the first taxable year of its existence, the 5 percent adjusted taxable income test and the 2 percent gross income test are replaced by a 5 percent of assets test. Thus, if on the date specified in paragraph (d) of this section, 5 percent or less of the assets (measured by reference to the tax basis of the assets) of the newly formed partnership, S corporation, or personal service corporation are attributable to the tax basis with respect to its ownership interests in the deferral entities, the deferral entities will be considered de minimis and will be disregarded for purposes of paragraph (b)(1)(ii) of this section.

(*3*) *Upstream de minimis rule.* If a partnership, S corporation, or personal service corporation is directly owned by one or more deferral entities as of the date specified in paragraph (d) of this section, such ownership is disregarded for purposes of paragraph (b)(1)(ii) of this section if on the date specified in paragraph (d) of this section the deferral entities directly own, in the aggregate, 5 percent or less of—

(i) An interest in the current profits of the partnership, or

(ii) The stock (measured by value) of the S corporation or personal service corporation.

See examples (6) and (7) in paragraph (f) of this section.

(d) *Date for determining the existence of a tiered structure*—(*1*) *General rule.* For purposes of paragraph (a) of this section, a partnership, S corporation, or personal service corporation will be considered a member of a tiered structure for a particular taxable year if the partnership, S corporation, or personal service corporation is a member of a tiered structure on the last day of the required taxable year (as defined in section 444 (e) of the Code) ending within such year. If a particular taxable year does not include the last day of the required taxable year for such year, the partnership, S corporation, or personal service corporation will not be considered a member of a tiered structure for such year. The following examples illustrate the application of this paragraph (d)(1).

Example (1). Assume that a newly formed partnership whose first taxable year begins November 1, 1988, desires to adopt a September 30 taxable year by making a section 444 election. Furthermore, assume that for its taxable year beginning November 1, 1988, the partnership's required taxable year is December 31. If the partnership is a member of a tiered structure on December 31, 1988, it will not be eligible to make a section 444 election for a taxable year beginning November 1, 1988, and ending September 30, 1989.

Example (2). Assume an S corporation that historically used a June 30 taxable year desires to make a section 444 election to change to a year ending September 30 for its taxable year beginning July 1, 1987. If the S corporation can make the section 444 election, it will have a short taxable year beginning July 1, 1987, and ending September 30, 1987. Given these facts, the short taxable year beginning July 1, 1987, does not include the last day of the S corporation's required taxable year for such year (*i.e.*, December 31, 1987). Thus, pursuant to paragraph (d)(1) of this section, the S corporation will not be considered a member of a tiered structure for its taxable year beginning July 1, 1987, and ending September 30, 1987.

(*2*) *Special rule for taxable years beginning in 1987.* For purposes of paragraph (a) of this section, a partnership, S corporation, or personal service corporation will not be considered a member of a tiered structure for a taxable year beginning in 1987 if the partnership, S corporation, or personal service corporation is not a member of a tiered structure on the day the partnership, S corporation, or personal service corporation timely files its section 444 election for such year. The following examples illustrate the application of this paragraph (d)(2).

Example (1). Assume that a partnership desires to retain a June 30 taxable year by making a section 444 election for its taxable year beginning July 1, 1987. Furthermore, assume that the partnership's required taxable year for such year is December 31 and that the partnership was a member of a tiered structure on such date. Also assume that the partnership was not a member of a tiered structure as of the date it timely filed its section 444 election for its taxable year beginning July 1, 1987. Based upon the special rule provided in this paragraph (d)(2), the partnership will not be considered a member of a tiered structure for its taxable year beginning July 1, 1987.

Example (2). Assume the same facts as in example (1), except that the partnership was a member of a tiered structure on the date it filed its section 444 election for its taxable year beginning July 1, 1987, but was not a member of a tiered structure on December 31, 1987. Paragraph (d)(1) of this section would still apply and thus the partnership would not be considered part of a tiered structure for its taxable year beginning July 1, 1987. However, the partnership would be considered a member of a tiered structure for its taxable year beginning July 1, 1988, if the partnership was a member of a tiered structure on December 31, 1988.

(e) *Same taxable year exception*—(*1*) *In general.* Although a partnership or S corporation is a member of a tiered structure as of the date specified in paragraph (d) of this section, the partnership, S corporation may make or continue a section 444 election if the tiered structure (as defined in paragraph (e)(2) of this section) consists entirely of partnerships or S corporations (or both), all of which have the same taxable year as determined under paragraph (e)(3) of this section. However, see paragraph (e)(5) of this section for the interaction of the de minimis rules provided in paragraph (c) of this section with the same taxable year exception. For purposes of this paragraph (e), two or more entities are considered to have the same taxable year if their taxable years end on the same day, even though they begin on different days. See examples (8) through (14) in paragraph (f) of this section.

(2) *Definition of tiered structure*—(i) *General rule.* For purposes of the same taxable year exception, the members of a tiered structure are defined to include the following entities—

(A) The partnership or S corporation that desires to qualify for the same taxable year exception,

(B) A deferral entity (or entities) directly owned (in whole or in part) by the partnership or S corporation that desires to qualify for the same taxable year exception,

(C) A deferral entity (or entities) directly owning any portion of the partnership or S corporation that desires to qualify for the same taxable year exception, and

(D) A deferral entity (or entities) directly owned (in whole or in part) by a "downstream controlled partnership," as defined in paragraph (e)(2)(ii) of this section.

(ii) *Special flow-through rule for downstream controlled partnerships.* If more than 50 percent of a partnership's profits and capital are owned by a partnership or S corporation that desires to qualify for the same taxable year exception, such owned partnership is considered a downstream controlled partnership for purposes of paragraph (e)(2)(i) of this section. Furthermore, if more than 50 percent of a partnership's profits and capital are owned by a downstream controlled partnership, such owned partnership is considered a downstream controlled partnership for purposes of paragraph (e)(2)(i) of this section.

(3) *Determining the taxable year of a partnership or S corporation.* The taxable year of a partnership or S corporation to be taken into account for purposes of paragraph (e)(1) of this section is the taxable year ending with or prior to the date specified in paragraph (d) of this section.

Furthermore, the determination of such taxable year will take into consideration any section 444 elections made by the partnership or S corporation. See examples (10) and (11) in paragraph (f) of this section.

(4) *Special rule for 52–53-week taxable years.* For purposes of this paragraph (e), a 52–53-week taxable year with reference to the end of a particular month will be considered to be the same as a taxable year ending with reference to the last day of such month.

(5) *Interaction with de minimis rules*—(i) *Downstream de minimis rule*—(A) *In general.* If a partnership or S corporation that desires to make or continue a section 444 election is a member of a tiered structure (as defined in paragraph (e)(2) of this section) and directly owns any member (or members) of the tiered structure with a taxable year different from the taxable year of the partnership or S corporation, such ownership is disregarded for purposes of the same taxable year exception of paragraph (e)(1) of this section provided that, in the aggregate, the de minimis rule of paragraph (c)(2) of this section is satisfied with respect to such owned member (or members). The following example illustrates the application of this paragraph (e)(5)(i)(A).

Example. P, a partnership with a June 30 taxable year, owns 60 percent of P1, another partnership with a June 30 taxable year. P also owns 1 percent of P2 and P3, calendar year partnerships. If, in the aggregate, P's ownership interests in P2 and P3 are considered de minimis under paragraph (c)(2) of this section, P meets the same taxable year exception and may make a section 444 election to retain its June 30 taxable year.

(B) *Special rule for members of a tiered structure directly owned by a downstream controlled partnership.* For purposes of paragraph (e)(5)(i)(A) of this section, a partnership or S corporation desiring to make or continue a section 444 election is considered to directly own any member of the tiered structure (as defined in paragraph (e)(2) of this section) directly owned by a downstream controlled partnership (as defined in paragraph (e)(2)(ii) of this section). The adjusted taxable income or gross income of the partnership or S corporation that is attributable to a member of a tiered structure directly owned by a downstream controlled partnership equals the adjusted taxable income or gross income of such member multiplied by the partnership's or S corporation's indirect ownership percentage of such member. The following example illustrates the application of this paragraph (e)(5)(i)(B).

Example. P, a partnership, desires to retain its June 30 taxable year by making a section 444 election. However, as of the date specified in paragraph (d) of this section, P owns 75 percent of P1, a June 30 partnership, and P1 owns 40 percent of P2, a calendar year partnership. P also owns 25 percent of P3, a calendar year partnership. Pursuant to paragraphs (e)(5)(i) (A) and (B) of this section, P may only qualify to use the same taxable year exception if, in the aggregate, P2 and P3 are de minimis with respect to P. Pursuant to paragraph (e)(5)(i)(B) of this section, P's adjusted taxable income or gross income attributable to P2 equals 30 percent (75 percent times 40 percent) of P2's adjusted taxable income or gross income.

(ii) *Upstream de minimis rule.* If a partnership or S corporation that desires to make or continue a section 444 election is a member of a tiered structure (as defined in paragraph (e)(2) of this section) and is owned directly by a member (or members) of the tiered structure with taxable years different from the taxable year of the partnership or S corporation, such ownership is disregarded for purposes of the same taxable year exception of paragraph (e)(1) of this section provided that, in the aggregate, the de minimis rule of paragraph (c)(3) of this section is satisfied with respect to such owning member (or members). See example (12) of paragraph (f) of this section.

(f) *Examples.* The provisions of this section may be illustrated by the following examples.

Example (1). A, a partnership, desires to make or continue a section 444 election. However, on the date specified in paragraph (d) of this section, A is owned by a combination of individuals and S corporations. The S corporations are deferral entities, as defined in paragraph (b)(2) of this section. Thus, pursuant to paragraph (b)(1)(ii) of this section, A will be a member of a tiered structure unless under paragraph (c)(3) of this section, the S corporations, in the aggregate, own a de minimis portion of A. If the S corporations' ownership in A is not considered de minimis under paragraph (c)(3) of this section, A is a member of a tiered structure and will be allowed to make or continue a section 444 election only if it meets the same taxable year exception provided in paragraph (e) of this section.

Example (2). B, a partnership, desires to make or continue a section 444 election. However, on the date specified in paragraph (d) of this section, B is a partner in two partnerships, B1 and B2. B1 and B2 are deferral entities, as defined in paragraph (b)(2) of this section. Thus, under paragraph (b)(1)(ii) of this section, B will be a member of a tiered structure unless B's aggregate ownership interests in B1 and B2 are considered de minimis under paragraph (c)(2) of this section. If B is a member of a tiered structure on the date specified in paragraph (d) of this section, B will be allowed to make or continue a section 444 election only if it

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meets the same taxable year exception provided in paragraph (e) of this section.

Example (3). C, a partnership with a September 30 taxable year, is 100 percent owned by calendar year individuals. C desires to make a section 444 election for its taxable year beginning October 1, 1987. However, on the date specified in paragraph (d) of this section, C owns a 1 percent interest in C1, a partnership. C does not own any other interest in a deferral entity. For the taxable year ended September 30, 1987, 10 percent of C's adjusted taxable income (as defined in paragraph (c)(2)(iii) of this section) was attributable to C's partnership interest in C1. Furthermore, 4 percent of C's gross income for the taxable year ended September 30, 1987, was attributable to C's partnership interest in C1. Under paragraph (c)(2) of this section, C's partnership interest in C1 is not de minimis because during the testing period more than 5 percent of C's adjusted taxable income is attributable to C1 and more than 2 percent of C's gross income is attributable to C1. Thus, C is a member of a tiered structure for its taxable year beginning October 1, 1987.

Example (4). The facts are the same as example (3), except that for the taxable year ended September 30, 1987, only 2 percent of C's adjusted taxable income was attributable to C1. Under paragraph (c)(2) of this section, C's partnership interest in C1 is considered de minimis for purposes of determining whether C is a member of a tiered structure because not more than 5 percent of C's adjusted taxable income during the testing period is attributable to C1. Thus, C is not a member of a tiered structure for its taxable year beginning October 1, 1987.

Example (5). The facts are the same as example (4), except that in addition to owning C1, C also owns 15 percent of C2, another partnership. For the taxable year ended September 30, 1987, 2 percent of C's adjusted taxable income is attributable to C1 and an additional 4 percent is attributable to C2. Furthermore, for the taxable year ended September 30, 1987, 4 percent of C's gross income is attributable to C1 while 3 percent is attributable to C2. Under paragraph (c)(2) of this section, C1 and C2 must be aggregated for purposes of determining whether C meets either the 5 percent adjusted taxable income test or the 2 percent gross income test. Since C's adjusted taxable income attributable to C1 and C2 is 6 percent (2 percent + 4 percent) and C's gross income attributable to C1 and C2 is 7 percent (4 percent + 3 percent), C does not meet the downstream de minimis rule provided in paragraph (c)(2) of this section. Thus, C is a member of a tiered structure for its taxable year beginning October 1, 1987.

Example (6). The facts are the same as example (3), except that instead of determining whether C is part of a tiered structure, the issue is whether C1 is part of a tiered structure. In addition, assume that on the date specified in paragraph (d) of this section, the remaining 99 percent of C1 is owned by calendar year individuals and C1 does not own an interest in any deferral entity. Although C in Example (3) was considered to be a part of a tiered structure by virtue of its ownership interest in C1, C1 must be tested separately to determine whether it is part of a tiered structure. Since C's interest in C1 is 5 percent or less, C's interest in C1 is de minimis with respect to C1. See paragraph (c)(3) of this section. Thus, based upon these facts, C1 is not part of a tiered structure.

Example (7). The facts are the same as example (6), except that the remaining 99 percent of C1 is owned 94 percent by calendar year individuals and 5 percent by C3, another partnership. Thus, deferral entities own 6 percent of C1 (1 percent owned by C and 5 percent owned by C3). Under paragraph (c)(3) of this section, deferral entities own more than a de minimis interest (*i.e.*, 5 percent) of C1, and thus C1 is part of a tiered structure.

Example (8). D, a partnership with a September 30 taxable year, desires to make a section 444 election for its taxable year beginning October 1, 1987. On December 31, 1987, and the date D plans to file its section 444 election, D is 10 percent owned by D1, a personal service corporation with a September 30 taxable year, and 90 percent owned by calendar year individuals. Furthermore, D1 will retain its September 30 taxable year because it previously established a business purpose for such year. Since D is owned in part by D1, a personal service corporation, and the ownership interest is not de minimis under paragraph (c)(3) of this section, D is considered a member of a tiered structure for its taxable year beginning October 1, 1987. Furthermore, although D and D1 have the same taxable year, D does not qualify for the same taxable year exception provided in paragraph (e) of this section because D1 is a personal service corporation rather than a partnership or S corporation. Thus, pursuant to paragraph (a) of this section, D may not make a section 444 election for its taxable year beginning October 1, 1987.

Example (9). The facts are the same as example (8), except that D1 is a partnership rather than a personal service corporation. Based upon these facts, D qualifies for the same taxable year exception provided in paragraph (e) of this section. Thus, D may make a section 444 election for its taxable year beginning October 1, 1987.

Example (10). The facts are the same as example (9), except that D1 has not established a business purpose for a September 30 taxable year. In addition, D1 does not desire to make a section 444 election and, under section 706(b), D1 will be required to change to a calendar year for its taxable year beginning October 1, 1987. Pursuant to paragraph (e)(3) of this section, D and D1 do not have the same taxable year for purposes of the same taxable year exception provided in paragraph (e) of this section. Thus, D may not make a section 444 election for its taxable year beginning October 1, 1987.

Example (11). The facts are the same as example (8), except that D1 is a partnership with a March 31 taxable year. Furthermore, for its taxable year beginning April 1, 1987, D1 will change to a September 30 taxable year by making a section 444 election. Pursuant to paragraph (e)(3) of this section, D1 is considered to have a September 30 taxable year for purposes of determining whether D qualifies for the same taxable year exception provided in paragraph (e) of this section. Since both D and D1 will have the same taxable year as of the date specified in paragraph (d) of this section, D may make a section 444 election for its taxable year beginning October 1, 1987.

Example (12). The facts are the same as example (11), except that instead of the remaining 90 percent of D being owned by calendar year individuals, it is owned 86 percent by individuals and 4 percent by D2, a calendar year partnership. Thus, D, a September 30 partnership, is 10 percent owned by D1, a September 30 partnership, 86 percent owned by calendar year individuals, and 4 percent owned by D2, a calendar year partnership. Under paragraph (e)(5)(ii) of this section, D2's ownership interest in D is considered de minimis for purposes of the same taxable year exception. Since D2's ownership interest in D is considered de minimis, it is disregarded for purposes of determining whether D qualifies for the same taxable year exception provided in paragraph (e) of this section. Thus, since both D and D1 will have the same taxable year as of the date specified in paragraph (d) of this section, D may make a section 444 election for its taxable year beginning October 1, 1987.

Example (13). E, a partnership with a June 30 taxable year, desires to make a section 444 election for its taxable year beginning July 1, 1987. On the date specified in paragraph (d) of this section, E is 100 percent owned by calendar year individuals; E owns 99 percent of the profits and capital of E1, a partnership with a June 30 taxable year; and E1 owns 30 percent of the profits and capital of E2, a partnership with a September 30 taxable year. E owns no other deferral entities. Pursuant to paragraph (b)(1)(i) of this section, E is considered to be a member of a tiered structure. Furthermore, pursuant to paragraph (e) of this section, E does not qualify for the same taxable year exception because E2 does not have the same taxable year as E and E1.

Example (14). The facts are the same as example (13), except that E owns only 49 percent (rather than 99 percent) of the profits and capital of E1. Pursuant to paragraph (e) of this section, E qualifies for the same taxable year exception because E and E1 have the same taxable year. Pursuant to paragraph (e) of this section, E1's ownership interest in E2 is disregarded since E does not own more than 50 percent of E1's profits and capital.

Example (15). Prior to consideration of the anti-abuse rule provided in paragraph (b)(3) of this section, H, a partnership that commenced operations on October 1, 1987, is eligible to make a section 444 election for its taxable year beginning October 1, 1987. Although H may obtain a significant deferral of income substantially all of which is not eliminated by a required payment under section 7519 (since there will be no required payment for H's first taxable year), the anti-abuse rule of paragraph (b)(3) will not apply unless the principal purpose of organizing H was the attainment of a significant deferral of income that would result from making a section 444 election.

Example (16). F, a partnership with a January 31 taxable year, desires to make a section 444 election to retain its January 31 taxable year for the taxable year beginning February 1, 1987. F is 100 percent owned by calendar year individuals. Prior to the date specified in paragraph (d) of this section, F contributes substantially all of its assets to F1, a partnership, in exchange for a 51 percent interest in F1. The remaining 49 percent of F1 is owned by the calendar year individuals owning 100 percent of F. If F is allowed to make a section 444 election to retain its January 31 taxable year, F1's required taxable year will be January 31 since a majority of F1's partners use a January 31 taxable year (see § 1.706-3T). F's principal purpose for creating F1 and contributing its assets to F1 is to obtain an 11-month deferral on 49 percent of the income previously earned by F and now earned by F1. Pursuant to paragraph (b)(3) of this section, F is not allowed to make a section 444 election for its taxable year beginning February 1, 1987.

Example (17). The facts are the same as in example (16), except that F does not create F1 and contribute its assets to F1 until immediately after F makes its section 444 election for the taxable year beginning February 1, 1987. Thus, F is allowed to make a section 444 election for its taxable year beginning February 1, 1987. However, pursuant to paragraph (b)(3) of this section, F will have its section 444 election terminated for subsequent years unless the tax deferral inherent in the structure is eliminated (*e.g.*, F1 is liquidated or the individual owners of F contribute their interests in F1 to F) prior to the date specified in paragraph (d) of this section for subsequent taxable years beginning on or after February 1, 1988.

Example (18). The facts are the same as in example (16), except that F1 is 99 percent owned by F and none of the individual owners of F own any portion of F1. Furthermore, F obtained no tax benefit from creating and contributing assets to F1. Given these facts paragraph (b)(3) of this section does not apply and thus, F may make a section 444 election for its taxable year beginning February 1, 1987.

Example (19). G, a partnership with an October 31 taxable year, desires to retain its October 31 taxable year for its taxable year beginning November 1, 1987. However, as of December 31, 1987, G owns a 30 percent interest in G1, a calendar year partnership. G owns no other deferral entity, and G is 100 percent owned by calendar year individuals. Furthermore, G's interest in G1 does not meet the de minimis rule provided in paragraph (c)(3) of this section. Thus, in order to avoid being a tiered structure, G sells its interest in G1 to an unrelated third party prior to the date G timely makes it section 444 election for its taxable year beginning November 1, 1987. Although the sale of G1 allows G to qualify to make a section 444 election, and therefore to obtain a significant tax benefit, such benefit is not unintended. Thus, paragraph (b)(3) of this section does not apply, and G may make a section 444 election for its taxable year beginning November 1, 1987.

(g) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

§ 1.444-3T Manner and time of making section 444 election (temporary).

(a) *In general.* A section 444 election shall be made in the manner and at the time provided in this section.

(b) *Manner and time of making election*—(1) *General rule.* A section 444 election shall be made by filing a properly prepared Form 8716, "Election to Have a Tax Year Other Than a Required Tax Year," with the Service Center indicated by the instructions to Form 8716. Except as provided in paragraphs (b) (2) and (4) of this section, Form 8716 must be filed by the earlier of—

(i) The 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective, or

(ii) The due date (without regard to extensions) of the income tax return resulting from the section 444 election.

In addition, a copy of Form 8716 must be attached to Form 1065 or Form 1120 series form, whichever is applicable, for the first taxable year for which the section 444 election is made. Form 8716 shall be signed by any person who is authorized to sign Form 1065 or Form 1120 series form, whichever is applicable. (See sections 6062 and 6063, relating to the signing of returns.) The provisions of this paragraph (b)(1) may be illustrated by the following examples.

Example (1). A, a partnership that began operations on September 10, 1988, is qualified to make a section 444 election to use a September 30 taxable year for its taxable year beginning September 10, 1988. Pursuant to paragraph (b)(1) of this section, A must file Form 8716 by the earlier of the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective (*i.e.*, February 15, 1989) or the due date (without regard to extensions) of the partnership's tax return for the period September 10, 1988 to September 30, 1988 (*i.e.*, January 15, 1989). Thus, A must file Form 8716 by January 15, 1989.

Example (2). The facts are the same as in example (1), except that A began operations on October 20, 1988. Based upon these facts, A must file Form 8716 by March 15, 1989, the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective.

Example (3). B is a corporation that first becomes a personal service corporation for its taxable year beginning September 1, 1988. B qualifies to make a section 444 election to use a September 30 taxable year for its taxable year beginning September 1, 1988. Pursuant to this paragraph (b)(1), B must file Form 8716 by December 15, 1988, the due date of the income tax return for the short period September 1 to September 30, 1988.

(2) *Special extension of time for making an election.* If, pursuant to paragraph (b)(1) of this section, the due date for filing Form 8716 is prior to July 26, 1988, such date is extended to July 26, 1988. The provisions of this paragraph (b)(2) may be illustrated by the following examples.

Example (1). B, a partnership that historically used a June 30 taxable year, is qualified to make a section 444 election to retain a June 30 taxable year for its taxable year beginning July 1, 1987. Absent paragraph (b)(2) of this section, B would be required to file Form 8716 by December 15, 1987. However, pursuant to paragraph (b)(2) of this section, B's due date for filing Form 8716 is extended to July 26, 1988.

Example (2). C, a partnership that began operations on January 20, 1988, is qualified to make a section 444 election to use a year ending September 30 for its taxable year beginning January 30, 1988. Absent paragraph (b)(2) of this section, C is required to file Form 8716 by June 15, 1988 (the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective). However, pursuant to paragraph (b)(2) of this section, the due date for filing Form 8716 is July 26, 1988.

(3) *Corporation electing to be an S corporation*—(i) *In general.* A corporation electing to be an S corporation is subject to the same time and manner rules for filing Form 8716 as any other taxpayer making a section 444 election. Thus, a corporation electing to be an S corporation that desires to make a section 444 election is not required to file Form 8716 with its Form 2553, "Election by a Small Business Corporation." However, a corporation electing to be an S corporation after September 26, 1988, is required to state on Form 2553 its intention to—

(A) Make a section 444 election, if qualified, or

(B) Make a "back-up section 444 election" as described in paragraph (b)(4) of this section.

If a corporation electing to be an S corporation fails to state either of the above intentions, the District Director may, at his discretion, disregard any section 444 election for such taxpayer.

(ii) *Examples.* The provisions of this paragraph (b)(3) may be illustrated by the following examples.

Example (1). D is a corporation that commences operations on October 1, 1988, and elects to be an S corporation for its taxable year beginning October 1, 1988. All of D's shareholders use the calendar year as their taxable year. D desires to adopt a September 30 taxable year. D does not believe it has a business purpose for a September 30 taxable year and thus it must make a section 444 election to use such year. Based on these facts, D must, pursuant to the instructions to Form 2553, state on Form 2553 that, if qualified, it will make a section 444 election to adopt a year ending September 30

for its taxable year beginning October 1, 1988. If D is qualified (*i.e.*, D is not a member of a tiered structure on December 31, 1988) to make a section 444 election for its taxable year beginning October 1, 1988, D must file Form 8716 by March 15, 1989. If D ultimately is not qualified to make a section 444 election for its taxable year beginning October 1, 1988, D's election to be an S corporation will not be effective unless, pursuant to the instructions to Form 2553, D made a back-up calendar year election (*i.e.*, an election to adopt the calendar year in the event D ultimately is not qualified to make a section 444 election for such year).

Example (2). The facts are the same as in example (1), except that D believes it can establish, to the satisfaction of the Commissioner, a business purpose for adopting a September 30 taxable year. However, D desires to make a "back-up section 444 election" (see paragraph (b)(4) of this section) in the event that the Commissioner does not grant permission to adopt a September 30 taxable year based upon business purpose. Based on these facts, D must, pursuant to the instructions to Form 2553, state on Form 2553 its intention, if qualified, to make a back-up section 444 election to adopt a September 30 taxable year. If, by March 15, 1989, D has not received permission to adopt a September 30 taxable year and D is qualified to make a section 444 election, D must make a back-up election in accordance with paragraph (b)(4) of this section.

(4) *Back-up section 444 election*—(i) *General rule.* A taxpayer that has requested (or is planning to request) permission to use a particular taxable year based upon business purpose, may, if otherwise qualified, file a section 444 election (referred to as a "back-up section 444 election"). If the Commissioner subsequently denies the business purpose request, the taxpayer will, if otherwise qualified, be required to activate the back-up section 444 election. See examples (1) and (2) in paragraph (b)(4)(iv) of this section.

(ii) *Procedures for making a back-up section 444 election.* In addition to following the general rules provided in this section, a taxpayer making a back-up section 444 election should, in order to allow the Service to process the affected returns in an efficient manner, type or legibly print the words "BACK-UP ELECTION" at the top of Form 8716, "Election to Have a Tax Year Other Than a Required Tax Year." However, if such Form 8716 is filed on or after the date a Form 1128, Application for Change in Accounting Period, is filed with respect to a period that begins on the same date, the words "FORM 1128 BACK-UP ELECTION" should be typed or legibly printed at the top of Form 8716.

(iii) *Procedures for activating a back-up section 444 election*—(A) *Partnerships and S corporations*—(*1*) *In general.* A back-up section 444 election made by a partnership or S corporation is activated by filing the return required in § 1.7519–2T (a)(2)(i) and making the payment required in § 1.7519–1T. The due date for filing such return and payment will be the later of—

(*i*) The due dates provided in § 1.7519–2T, or

(*ii*) 60 days from the date the Commissioner denies the business purpose request.

However, interest will be assessed (at the rate provided in section 6621 (a)(2)) on any required payment made after the due date (without regard to any extension for a back-up election) provided in § 1.7519–2T (a)(4)(i) or (a)(4)(ii), whichever is applicable, for such payment. Interest will be calculated from such due date to the date such amount is actually paid. Interest assessed under this paragraph will be separate from any required payments. Thus, interest will not be subject to refund under § 1.7519–2T.

(*2*) *Special rule if Form 720 used to satisfy return requirement.* If, pursuant to § 1.7519–2T (a)(3), a partnership or S corporation must use Form 720, "Quarterly Federal Excise Tax Return," to satisfy the return requirement of § 1.7519–2T (a)(2), then in addition to following the general rules provided in § 1.7519–2T, the partnership or S corporation must type or legibly print the words "ACTIVATING BACK-UP ELECTION" on the top of Form 720. A partnership or S corporation that would otherwise file a Form 720 on or before the date specified in paragraph (b)(4)(iii)(A)(*1*) of this section may satisfy the return requirement by including the necessary information on such Form 720. Alternatively, such partnership or S corporation may file an additional Form 720 (*i.e.*, a Form 720 separate from the Form 720 it would otherwise file). Thus, for example, if the due date for activating an S corporation's back-up election is November 15, 1988, and the S corporation must file a Form 720 by October 31, 1988, to report manufacturers excise tax for the third quarter of 1988, the S corporation may use that Form 720 to activate its back-up election. Alternatively, the S corporation may file its regular Form 720 that is due October 31, 1988, and file an additional Form 720 by November 15, 1988, activating its back-up election.

(B) *Personal service corporations.* A back-up section 444 election made by a personal service corporation is activated by filing Form 8716 with the personal service corporation's original or amended income tax return for the taxable year in which the election is first effective, and typing or legibly printing the words—"ACTIVATING BACK-UP ELECTION" on the top of such income tax return.

(iv) *Examples.* The provisions of this paragraph (b)(4) may be illustrated by the following examples. Also see example (2) in paragraph (b)(3) of this section.

Example (1). E, a partnership that historically used a June 30 taxable year, requested (pursuant to section 6 of Rev. Proc. 87–32, 1987–28 I.R.B. 14) permission from the Commissioner to retain a June 30 taxable year for its taxable year beginning July 1, 1987. Furthermore, E is qualified to make a section 444 election to retain a June 30 taxable year for its taxable year beginning July 1, 1987. However, as of the date specified in paragraph (b)(2) of this section, the Commissioner has not determined whether E has a valid business purpose for retaining its June 30 taxable year. Based on these facts, E may, by the date specified in paragraph (b)(2) of this section, make a back-up section 444 election to retain its June 30 taxable year.

Example (2). The facts are the same as in example (1). In addition, on August 12, 1988, the Internal Revenue Service notifies E that its business purpose request is denied. E asks for reconsideration of the Service's decision, and the Service sustains the original denial on September 30, 1988. Based on these facts, E must activate its back-up section 444 election within 60 days after September 30, 1988.

Example (3). The facts are the same as in example (1), except that E desires to make a section 444 election to use a year ending September 30 for its taxable year beginning July 1, 1987. Although E qualifies to make a section 444 election to retain its June 30 taxable year, E may make a back-up section 444 election for a September 30 taxable year.

(c) *Administrative relief*—(1) *Extension of time to file income tax returns*—(i) *Automatic extension.* If a partnership, S corporation, or personal service corporation makes a section 444 election (or does not make a section 444 election, either because it is ineligible or because it decides not to make the election, and therefore changes to its required taxable year) for its first taxable year beginning after December 31, 1986, the due date for filing its income tax return for such year shall be the later of—

(A) The due date established under—

(*1*) Section 6072, in the case of Form 1065,

(*2*) § 1.6037–1 (b), in the case of Form 1120S,

(*3*) Section 6072 (b), in the case of other Form 1120 series form; or

(B) August 15, 1988.

The words "SECTION 444 RETURN" should, in order to allow the Service to process the affected returns in an efficient manner, be typed or legibly printed at the top of the Form 1065 or Form 1120 series form, whichever is applicable, filed under this paragraph (c)(1)(i).

(ii) *Additional extensions.* If the due date of the income tax return for the first taxable year beginning after December 31, 1986, extended as provided in paragraph (c)(1)(i)(B) of this section, occurs before the date that is 6 months after the date specified in paragraph (c)(1)(i)(A) of this section, the partnership, S corporation, or personal service corporation may request an additional extension or extensions of time (up to 6 months after the date specified in paragraph (c)(1)(i)(A) of this section) to file its income tax return for such first taxable year. The request must be made by the later of the date specified in paragraph (c)(1)(i)(A) or (c)(1)(i)(B) of this section and must be made on Form 7004, "Application for Automatic Extension of Time To File Corporation Income Tax Return", or Form 2758, "Application for Extension of Time to File U.S. Partnership, Fiduciary, and Certain Other Returns," whichever is applicable, in accordance with the form and its instructions. In addition, the following words should be typed or legibly printed at the top of the form—"SECTION 444 REQUEST FOR ADDITIONAL EXTENSION."

(iii) *Examples.* The provisions of paragraph (c)(1) of this section may be illustrated by the following examples.

Example (1). G, a partnership that historically used a January 31 taxable year, makes a section 444 election to retain such year for its taxable year beginning February 1, 1987. Absent paragraph (c)(1)(i) of this section, G's Form 1065 for the taxable year ending January 31, 1988, is due on or before May 15, 1988. However, if G types or legibly prints "SECTION 444 RETURN" at the top of Form 1065 for such year, paragraph (c)(1)(i) of this section automatically extends the due date of such return to August 15, 1988.

Example (2). The facts are the same as in example (1), except that G desires to extend the due date of its income tax return for the year ending January 31, 1988, to a date beyond August 15, 1988. Pursuant to paragraph (c)(1)(ii) of this section, G may extend such return to November 15, 1988 (*i.e.*, the date that is up to 6 months after May 15, 1988, the normal due date of the return). However, in order to obtain this additional extension, G must file Form 2758 pursuant to paragraph (c)(1)(i) of this section on or before August 15, 1988.

Example (3). H, a partnership that historically used a May 31 taxable year, makes a section 444 election to use a year ending September 30 for its taxable year beginning on June 1, 1987. Absent paragraph (c)(1)(i) of this section, H's Form 1065 for the taxable year beginning June 1, 1987, and ending September 30, 1987, is due on or before January 15, 1988. However, if H types or legibly prints "SECTION 444 RETURN" at the top of Form 1065 for such year, paragraph (c)(1)(i) of this section automatically extends to due date of such return to August 15, 1988.

Example (4). The facts are the same as in example (3), except H desires to further extend (*i.e.*, extend beyond August 15, 1988) the due date of its income tax return for its taxable year beginning June 1, 1987, and ending September 30, 1987. Since August 15, 1988, is 6 months or more after the due date (without extensions) of such return, paragraph (c)(1)(ii) of this section prevents H from further extending the time for filing such return.

Example (5). I, a partnership that historically used a June 30 taxable year, considered making a section 44 election to retain such taxable year, but eventually decided to change to a December 31, taxable year (I's required taxable year). Absent paragraph (c)(1)(i) of this section, I's Form 1065 for the taxable year beginning July 1, 1987, and ending December 31, 1987, is due on or before April 15, 1988. Pursuant to paragraph (c)(1)(i) of this section, if I types or legibly prints "SECTION 444 RETURN" at the top of Form 1065 for such year, paragraph (c)(1)(i) of this section automatically extends the due date of such return to August 15, 1988. In addition, I may further extend such return pursuant to paragraph (c)(1)(ii) of this section.

(*2*) *No penalty for certain late payments*—(i) *In general.* In the case of a personal service corporation or S corporation described in paragraph (c)(1)(i) of this section, no penalty under section 6651 (a)(2) will be imposed for failure to pay income tax (if any) for the first taxable year beginning after December 31, 1986, but only for the period beginning with the last date for payment and ending with the later of the date specified in paragraph (c)(1)(i) or paragraph (c)(1)(ii) of this section.

(ii) *Example.* The provisions of paragraph (c)(2)(i) of this section may be illustrated by the following example.

Example. J, a personal service corporation that historically used a January 31 taxable year, makes a section 444 election to retain such year for its taxable year beginning February 1, 1987. The last date (without extension) for payment of J's income tax (if any) for its taxable year beginning February 1, 1987, is April 15, 1988. However, under paragraph (c)(2)(i) of this section, no penalty under section 6651(a)(2) will be imposed on any underpayment of income tax for the period beginning April 15, 1988 and ending August 15, 1988.

(d) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

Par. 3. Sections 1.7519–0T through 1.7519–3T are added in the appropriate place.

§ 1.7519–0T Table of contents (temporary).

This section lists the captions that appear in the temporary regulations under section 7519.

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§ 1.7519-3T Effective date (temporary).

§ 1.7519-1T Required payments for entities electing not to have required year (temporary).

(a) *In general*—(1) *Applicability.* This section applies to any taxable year that a partnership or S corporation has an election under section 444 in effect (an "applicable election year").

(2) *Returns and required payments.* For each applicable election year, a partnership or S corporation must—

(i) File a return as provided in § 1.7519—2T (a)(2), and

(ii) Make a required payment (as defined in paragraph (a)(3) of this section) as provided in § 1.7519–2T. However, if the required payment for an applicable election year is not more than $500 and the partnership or S corporation has not been required to make a required payment for a prior year, the partnership or S corporation should not make a required payment for such applicable election year.

(3) *Required payment.* The term "required payment" means, with respect to any applicable election year, an amount equal to the excess of—

(i) The product of the applicable percentage of the adjusted highest section 1 rate, multiplied by the net base year income (as defined in paragraph (b)(5) of this section) of the entity over

(ii) The cumulative amount of required payments actually made for all preceding applicable election years (reduced by the cumulative amount of such payments refundable under section 7519(c) for all such preceding years).

Furthermore, the amount of the required payment is determined without regard to the required payment of any other partnership or S corporation. See example (3) in paragraph (d) of this section.

(4) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples.

Example (1). A, a partnership, makes a section 444 election to retain its taxable year ending September 30. For A's first applicable election year, A's required payment, as defined in paragraph (a) (3) of this section, is $400. Thus, A does not have to make a required payment for that year. However, A is required to file the return prescribed by § 1.7519–2T(a)(2).

Example (2). The facts are the same as in example (1), and, in addition to those facts, for A's second applicable election year, the amount determined under paragraph (a)(3)(i) of this section is $900. Because A did not actually make a required payment for A's first applicable election year, A's required payment is $860 for its second applicable election year. Since the required payment is greater than $500, A must make a required payment for its second applicable election year. Furthermore, A must file the return prescribed by § 1.7519–2T(a)(2).

Example (3). The facts are the same as in example (2), and, in addition to those facts, for A's third applicable election year, the amount determined under paragraph (a)(3)(i) of this section is $1,200. Thus, A's required payment is $400 ($1,200 determined under paragraph (a)(3)(i) of this section less $800 determined under paragraph (a)(3)(ii) of this section). Although A's required payment for its third applicable election year is not more than $500, A must make its required payment for such year because the required payment for a preceding applicable election year exceeded $500. A must also file the return prescribed by § 1.7519–2T(a)(2) for its third applicable election year.

(b) *Definitions and special rules*—(1) *Applicable percentage*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section, the term "applicable percentage" means the percentage determined in accordance with the following table:

If the applicable election year of the partnership or S corporation begins during—	The applicable percentage is—
1987	.25
1988	.50
1989	.75
1990 or thereafter	1.00

(ii) *Exception for certain applicable election years beginning after 1987.* [Reserved.]

(iii) *Example.* The provisions of paragraph (b)(1) of this section may be illustrated by the following example.

Example. B is a corporation that has historically used a June 30 taxable year. For its taxable year beginning July 1, 1987, B elects to be an S corporation and elects under § 1.444–1T(b)(3) to retain its June 30 taxable year. Had B changed to a calendar year, its required year under section 1378 would not have been entitled to the 4-year spread under section 806(e)(2)(C) of the Tax Reform Act of 1986 because B was not an S corporation for its taxable year beginning in 1986. Nevertheless, for purposes of determining the required payment for B's applicable election year beginning July 1, 1987, the applicable percentage is 25 percent.

(2) *Adjusted highest section 1 rate*—(i) *General rule.* For any applicable election year, the term "adjusted highest section 1 rate" means the highest rate of tax under section 1 applicable to the period defined in paragraph (b)(2)(ii) of this section, plus 1 percentage point. Notwithstanding the preceding sentence, the adjusted highest section 1 rate is 38 percent for applicable election years beginning in 1987. For purposes of this section, the highest rate of tax is determined without regard to the effect of section 1(g), relating to the phaseout of the 15-percent rate and personal exemptions.

(ii) *Period for determining highest section 1 rate.* For purposes of paragraph (b)(2)(i) of this section, the period for determining the highest rate of tax under section 1 is the 12 month period that—

(A) Ends with the required taxable year for the applicable election year, and

(B) Includes the end of the base year.

For example, assume that a partnership's applicable election year begins on October 1, 1988 and that the required taxable year for such applicable election year is December 31. Based upon these facts, the period for determining the highest section 1 rate is the 12-month period ending December 31, 1988.

(3) *Base year.* The term "base year" means, with respect to any applicable election year, the taxable year of the partnership or S corporation preceding such applicable election year.

(4) *Special rules for certain applicable election years*—(i) *First applicable election year of new entities.* If an applicable election year is a partnership's or S corporation's first year in existence (*i.e.*, the partnership or S corporation is newly formed and therefore does not have a base year), the required payment for such applicable election year is zero.

(ii) *Applicable election years ending prior to the required taxable year.* If a partnership or S corporation makes a section 444 election and the resulting applicable election year (the "first applicable election year") of the partnership or S corporation ends prior to the last day of the required year, the required payment for the first applicable election year is zero. See example (5) in paragraph (b)(5)(vi) of this section.

(5) *Net base year income*—(i) *In general.* Except as provided in paragraph (b)(5)(v) of this section (relating to short base years), the net base year income of a partnership or S corporation is the sum of—

(A) The deferral ratio multiplied by the partnership's or S corporation's net income for the base year, plus

(B) The excess (if any) of—

(*1*) The deferral ratio multiplied by the aggregate amount of applicable payments made by the partnership or S corporation during the base year, over

(*2*) The aggregate amount of such applicable payments made during the deferral period of the base year.

The term "deferral ratio" means the ratio which the number of months in the deferral period (as defined in § 1.444–1T (b)(4)) of the applicable election year bears to 12 months.

(ii) *Partnership net income.* For purposes of paragraph (b)(5)(i) of this section—

(A) *In general.* The net income of the partnership is the amount (not below zero) determined by taking into account the aggregate amount of the partnership's items described in section 702(a), except for—

(*1*) Credits,

(*2*) Tax-exempt income, and

(*3*) Guaranteed payments under section 707(c).

(B) *Treatment of deductions and losses.* For purposes of determining the aggregate amount of partnership items, deductions and losses are treated as negative income. Thus, for example, if under section 702(a) a partnership has $1,000 of ordinary taxable income, $500 of specially allocated deductions, and $300 of capital loss, the net income of the partnership is $200 ($1,000–$500–$300).

(C) *Partner limitations disregarded.* Any limitation on the amount of a partnership item described in section 702(a) which may be taken into account for purposes of computing the taxable income of a partner shall be disregarded in computing the net income of the partnership.

(iii) *S corporation net income.* For purposes of paragraph (b)(5)(i) of this section—

(A) *In general.* The net income of an S corporation is the amount (not below zero) determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits and tax-exempt income). If the S corporation was a C corporation for the base year, the taxable income of the C corporation shall be treated as the net income of the S corporation for such year.

(B) *Treatment of deductions and losses.* For purposes of determining the aggregate amount of S corporation items, deductions and losses are treated as negative income. Thus, for example, if under section 1366(a) an S corporation has $2,000 of ordinary taxable income, $1,000 of deductions described in section 1366(a)(1)(A) of the Code, and $500 of capital loss, the net income of the S corporation is $500 ($2,000–$1,000–$500).

(C) *Shareholder limitations disregarded.* Any limitation on any amount described in section 1366(a) which may be taken into account for purposes of computing the taxable income of a shareholder shall be disregarded in computing the net income of the S corporation.

(iv) *Applicable payments*—(A) *In general.* The term "applicable payment" means any amount deductible in the base year that is includable at any time, directly or indirectly, in the gross income of a taxpayer that during the base year is a partner or shareholder.

(B) *Exceptions.* The term "applicable payment" does not include any guaranteed payments under section 707(c).

(C) *Special rule for corporation electing S status.* If an S corporation was a C corporation for the base year, the corporation shall be treated as if it were an S corporation for the base year for purposes of determining the amount of applicable payments under this section. Thus, amounts deductible by the C corporation in the base year that are includable at any time in the gross income of a taxpayer that is a shareholder during the base year are treated as if from an S corporation, and therefore within the meaning of the term "applicable payments."

(D) *Special rules for certain payments*—(*1*) *Certain indirect payments.* For purposes of paragraph (b)(5)(iv)(A) of this section, an amount is indirectly includable in the gross income of a partner or shareholder of a partnership or S corporation that has a section 444 election in effect (an electing partnership or S corporation) if the amount is includable in the gross income of—

(*i*) The spouse (other than a spouse who is legally separated from the partner or shareholder under a decree of divorce or separate maintenance) or child (under age 14) of such partner or shareholder, or

(*ii*) A corporation more than 50 percent (measured by fair market value) of which is owned in the aggregate by partners or shareholders (and individuals related under paragraph (b)(5)(iv)(D)(*1*)(*i*) of this section to any such partners or shareholders), of the electing partnership or S corporation, or

(*iii*) A partnership more than 50 percent of the profits and capital of which is owned in the aggregate by partners or shareholders (and individuals related under paragraph (b)(5)(iv)(D)(*1*)(*i*) of this section to any such partners or shareholders) of the electing partnership or S corporation, or

(*iv*) A trust more than 50 percent of the beneficial ownership of which is owned in the aggregate by partners or shareholders (and individuals related under paragraph (b)(5)(iv)(D)(*1*)(*i*) of this section to any such partners or shareholders), of the electing partnership or S corporation.

For purposes of this paragraph (b)(5)(iv)(D)(*1*), ownership by any person described in this paragraph (b)(5)(iv)(D)(*1*) shall be treated as ownership by the partners or shareholders of the electing partnership or S corporation. This paragraph (b)(5)(iv)(D)(*1*) does not apply to amounts deductible by a partnership or S corporation that has made a section 444 election (the "deducting partnership") and included in the gross income of a partnership or S corporation defined in paragraphs (b)(5)(iv)(D)(*1*) (*ii*) or (*iii*) of this section (the "including partnership"), if the including partnership has the same taxable year as the deducting partnership and the including partnership has a section 444 election in effect. Furthermore, notwithstanding the general effective date provided in § 1.7519–3T, this paragraph (b)(5)(iv)(D)(*1*) is effective for amounts deductible on or after June 1, 1988.

(*2*) *Payments by a downstream controlled partnership*—(*i*) *In general.* If a partnership or S corporation has made a section 444 election, any amounts

deducted by a downstream controlled partnership will be considered deducted by the partnership or S corporation that has made the section 444 election for purposes of determining the applicable payments of the partnership or S corporation that has made the section 444 election.

(*ii*) *Definition of a downstream controlled partnership.* If a partnership or S corporation that has made a section 444 election owns more than 50 percent of a partnership's profits and capital, such owned partnership is considered a downstream controlled partnership for purposes of paragraph (b)(5)(iv)(D)(*2*)(*i*) of this section. Furthermore, if more than 50 percent of a partnership's profits and capital are owned by a downstream controlled partnership, such owned partnership is considered a downstream controlled partnership for purposes of paragraph (b)(5)(iv)(D)(*2*)(*i*) of this section.

(*3*) *Examples.* The provisions of this paragraph (b)(5)(iv)(D) may be illustrated by the following examples.

Example (1). I1 and I2, calendar year individuals, own 100 percent of the profits and capital of C1, a partnership. In addition to owning C1, I1 and I2 also own 100 percent of the profits and capital of C2, a calendar year partnership. For its taxable years beginning February 1, 1987, 1988, and 1989, C1 has a section 444 election in effect to use a January 31 taxable year. During its base years beginning February 1, 1986, 1987, and 1988, C1 deducted $10,000, $11,000, and $12,000, respectively that was included in C2's gross income. Furthermore, of the $12,000 deducted by C1 for its taxable year beginning February 1, 1988, $7,000 was deducted during the period June 1, 1988 to January 31, 1989. Pursuant to paragraph (b)(5)(iv)(D)(*1*) of this section, the $7,000 deducted by C1 on or after June 1, 1988, and included in C2's gross income is considered an applicable payment for C1's base year beginning February 1, 1988. Amounts deducted by C1 prior to June 1, 1988, are not subject to paragraph (b)(5)(iv)(D)(*1*) of this section.

Example (2). The facts are the same as in example (1), except that I1 and I2 own only 51 percent of C2's profits and capital. Since the two partners in C1 (*i.e.*, I1 and I2) own more than 50 percent of C2's profits and capital, C2 is considered controlled by the partners of C1 pursuant to paragraph (b)(5)(iv)(D)(*1*)(*iii*) of this section. Thus, the conclusions in example (1) are unchanged. Furthermore, if the $7,000 deducted by C1 was included in the income of a partnership more than 50 percent of the profits and capital of which is owned by C2, such $7,000 would be considered an applicable payment for its base year beginning February 1, 1988.

Example (3). The facts are the same as in example (1), except that for its taxable years beginning February 1, 1987, 1988, and 1989, C2 has a section 444 election in effect to use a January 31 taxable year. Since both C1 and C2 have the same taxable year and both have section 444 elections in effect, paragraph (b)(5)(iv)(D)(*1*) of this section does not apply to the $7,000 deducted by C1 for its base year beginning February 1, 1988.

Example (4). I3 and I4, calendar year individuals, own 100 percent of the profits and capital of C3, a partnership. C3 has made a section 444 election to retain a year ending June 30 for its taxable year beginning July 1, 1987. Furthermore, C3 owns more than 50 percent of the profits and capital of C4, a partnership that historically used a June 30 taxable year. Pursuant to § 1.706–3T(b), C4 retains its year ending June 30 for its taxable year beginning July 1, 1987. For its taxable year beginning July 1, 1986, C4 deducted $20,000 that was included in I3's gross income. Pursuant to paragraph (b)(5)(iv)(D)(*2*) of this section, the $20,000 deducted by C4 is considered an applicable payment by C3 for its base year beginning July 1, 1986.

Example (5). The facts are the same as in example (4), except that the $20,000 deducted by C4 is included in the gross income of a calendar year partnership 100 percent owned by I3 and I4. Pursuant to paragraphs (b)(5)(v)(D) (*1*) and (*2*) of this section, the $20,000 deducted by C4 is considered an applicable payment by C3 for its base year beginning July 1, 1986.

Example (6). The facts are the same as in example (4), except that instead of directly owning a portion of C4, C3 owns more than 50 percent of the profits and capital of C5. Furthermore, C5 owns more than 50 percent of the profits and capital of C4. Pursuant to paragraph (b)(5)(iv)(D)(*2*)(*ii*) of this section, both C5 and C4 are considered downstream controlled partnerships of C3. Thus, pursuant to paragraph (b)(5)(iv)(D)(*2*)(*i*) of this section, the $20,000 deducted by C4 is considered an applicable payment by C3 for its base year beginning July 1, 1986.

(v) *Special rule for base year of less than twelve months*—(A) *In general.* If a base year is a taxable year of less than twelve months (a "short base year"), net base year income for such year is an amount equal to the excess, if any, of—

(*1*) The deferral ratio multiplied by the annualized short base year income, over

(*2*) Applicable payments made during the deferral period of the applicable election year following the base year.

(B) *Annualized short base year income.* The annualized short base year income is determined by—

(*1*) Increasing the net income for the short base year by applicable payments deductible in the short base year, and

(*2*) Multiplying the short base year income as increased in paragraph (b)(5)(v)(B)(*1*) of this section by twelve, and dividing the result by the number of months in the short base year.

(vi) *Examples.* The provisions of paragraph (b)(5) of this section may be illustrated by the following examples.

Example (1). D, a partnership, is owned 10 percent by a C corporation with a September 30 taxable year and 90 percent by calendar year individuals. D has historically used a September 30 taxable year. For its taxable year beginning October 1, 1987, D makes a section 444 election to retain its September 30 taxable year. For the base year from October 1, 1986 to September 30, 1987, D has net income of $200,000 and no applicable payments. D's deferral ratio is 9/12 (the ratio of the number of months in the deferral period to 12 months). Based upon these facts, D has net base year income of $50,000 ($200,000 × 9/12).

Example (2). The facts are the same as in example (1) except that D's net income for the base year is $140,000, after applicable payments of $60,000. Of the applicable payments $15,000 were deductible during the deferral period of the base year. Based upon these facts, D has net base year income of $35,000, determined as follows:

Net income multiplied by deferral ratio	$140,000 × 9/12		$35,000
Plus the excess, if any, of applicable payments multiplied by deferral ratio	$60,000 × 9/12	$15,000	
Over aggregate amount of applicable payments deductible during deferral period of base year		$15,000	0
Net base year income			$35,000

Example (3). The facts are the same as in examle (2) except that of the $60,000 applicable payments only $10,000 are deductible during the deferral period of the base year. Based on these facts, D has net base year income of $40,000, determined as follows:

Net income multiplied by deferral ratio	$140,000 x 3/12		$35,000
Plus the excess, if any, of applicable payments multiplied by deferral ratio	$60,000 x 3/12	$15,000	
Over aggregate amount of applicable payments deductible during deferral period of base year		$15,000	0
Net base year income			$35,000

Over aggregate amount of applicable payments deductible during deferral period of base year		$10,000	$5,000
Net base year income			$40,000

Example (4). E is a C corporation that has historically used a January 31 taxable year. For its taxable year beginning February 1, 1987, E makes an election to be an S corporation and also makes a section 444 election to retain its January 31 taxable year. E's taxable income for the taxable year beginning February 1, 1986 to January 31, 1987 is $120,000. Pursuant to paragraph (b)(5)(iii)(A) of this section, the base year for X's first applicable election year is the taxable year beginning February 1, 1986 and ending January 31, 1987. Thus, E's net income for the base year is $120,000. During the base year, E pays its sole shareholder, A, a salary of $5,000 a month plus a $30,000 bonus on January 15, 1987. Thus, under paragraph (b)(5)(iv)(C) of this section, E's applicable payments for the base year are $90,000, of which $55,000 are applicable payments deductible during the deferral period of the base year (February 1 to December 31, 1986). Based upon these facts, E's net base year income is $137,500, determined as follows:

Net income multiplied by deferral ratio	$120,000 x 11/12		$110,000
Plus the excess, if any, of applicable payments multiplied by the deferral ratio	$90,000 x11/12	$82,500	
Over aggregate amount of applicable payments deductible during deferral period of base year		$55,000	$27,500
Net base year income			$137,500

Example (5). E, a corporation that has historically used a taxable year ending July 31, makes an election to be an S corporation for its taxable year beginning August 1, 1987. For that year, E also makes a section 444 election to use a taxable year ending September 30. Thus, E has two applicable election years beginning in 1987, the first beginning August 1, 1987 and ending September 30, 1987, and the second beginning October 1, 1987 and ending September 30, 1988. E's required year under section 1378 is the calendar year. Because E's first applicable election year ends prior to the last day of E's required year (*i.e.*, December 31, 1987), the required payment for E's first applicable election year is zero. However, E is required to file a return for such year as provided in § 1.7519–2T.

Example (6). The facts are the same as in example (5). E's second applicable election year is the year from October 1, 1987 to September 30, 1988, and the base year for the second applicable election year is a period of less than 12 months (i.e., August 1, 1987 to September 30, 1987). Thus, E must compute its net base year income using the special rule for short base years provided in paragraph (b)(5)(v) of this section. Assume E's net income for the short base year is $50,000, and E's applicable payments for the short base year are $15,000. Pursuant to paragraph (b)(5)(v)(B) of this section, E's annualized short base year net income is $300,000 ($85,000 x 12/2). Furthermore, assume E's applicable payments for the deferral period of its second applicable election year are $20,000. Based on these facts, the net base year income for the applicable election year beginning October 1, 1987 is $77,500, computed as follows:

Annualized short base year income multiplied by deferral ratio	$300,000 x 3/12	$97,500
Less: Applicable payments for deferral period		$20,000
Net base year income		$77,500

(c) *Refunds of required payments.* A partnership of S corporation is entitled to make a claim for refund, in accordance with the procedures provided in § 1.7519–2T(a)(6), if—

(1) The amount specified in paragraph (a)(3)(i) of this section is less than the amount specified in paragraph (a)(3)(ii) of this section; or

(2) The partnership or S corporation terminates its section 444 election, within the meaning of § 1.444–1T(a)(5).

(d) *Example.* The provisions of this section may be illustrated by the following examples.

Example (1). G, a partnership, is owned 10 percent by a C corporation with a June 30 taxable year, and 90 percent by calendar year individuals. G has historically used a June 30 taxable year. For its taxable year beginning July 1, 1987, G makes a section 444 election to retain its June 30 taxable year. For the base year from July 1, 1986 to June 30, 1987, G has net income of $300,000 and no applicable payments. G's deferral ratio is 6/12 (the ratio of the number of months in the deferral period to 12 months). Based on these facts, G's net base year income is $150,000 ($300,000 x 6/12). Thus, G's required payment for its first applicable election year is $13,500 ($150,000 of net base year income multiplied by 9 percent (the product of the applicable percentage for 1987, 25 percent, and the highest section 1 rate for 1987, 36 percent)).

Example (2). The facts are the same as in example (1). In addition, G continues its section 444 election for the taxable year beginning July 1, 1988, and G's net base year income for the year beginning July 1, 1987 is $150,000. The required payment for G's second applicable election year is $8,250 ($150,000 of net base year income multiplied by 14.5 percent (the product of the applicable percentage for 1988 applicable election years, 50 percent, and the adjusted highest section 1 rate for 1988, 29 percent) less G's $13,500 required payment for the first applicable election year).

Example (3). H, a partnership with a taxable year ending September 30, desires to make a section 444 election for its taxable year beginning October 1, 1987. H is 15 percent owned by I, a partnership with a taxable year ending September 30, and 85 percent owned by calendar year individuals. Assume H and I are qualified to make section 444 elections as a result of the "same taxable year exception" provided in § 1.444–2T(e). If H and I make section 444 elections, they must each make a required payment (assuming the amount computed under paragraph (a)(3) of this section is greater than $500). Pursuant to paragraph (a)(3) of this section, the required payments of H and I are calculated independent of each other. Thus, in determining the amount of its required payment, I may not exclude its income attributable to H, even though H must also make a required payment on the same income.

Example (4). The facts are the same as in example (1) except that H is 90 percent owned by I and 10 percent owned by calendar year individuals. Pursuant to § 1.706–3T, if I makes a section 444 election to retain its taxable year ending September 30, H's required year will be September 30, because H's majority interest partner will have a September 30 taxable year. Thus, H is not required to make a section 444 election and a required payment in order to use a September 30 taxable year. I, however, must make a required payment.

§ 1.7519–2T Required payments—procedures and administration (temporary).

(a) *Payment and return required*—(1) *In general.* With respect to any taxable year for which a partnership or S corporation has a section 444 election in effect (an "applicable election year"), the partnership or S corporation shall file a return as provided in paragraphs (a) (2) and (3) of this section and make a payment, if required, as provided in paragraph (a)(4) of this section.

(2) *Return required*—(i) *In general.* A return showing the required payment shall be made, even if the required payment for the applicable election year is zero. For an applicable election year

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beginning in 1987, the return shall be made on Form 720, "Quarterly Federal Excise Tax Return." For an applicable election year beginning after 1987, the return shall also be made on Form 720 unless another form is prescribed by the Commissioner.

(ii) *Procedure if amount for applicable election year (and all proceeding years) is not greater than $500.* If a partnership or S corporation is not required to make a payment under section 7519 for an applicable election year, the partnership or S corporation should type or legibly print "zero" on the appropriate line of the prescribed form.

(3) *Time and place for filing return*—(i) *Applicable election years beginning in 1987.* For an applicable election year beginning in 1987, the Form 720 must be filed with the Service Center indicated by the instructions for the Form 720. The date for filing such form is as follows—

(A) *Taxpayers that would otherwise file Form 720 for the second quarter of 1988.* Taxpayers that are required, without regard to this section, to file Form 720 for the second quarter of 1988 (*e.g.*, taxpayers reporting liability for manufacturers excise tax) must file Form 720 by the normal due date of such form for the second quarter of 1988. Thus, such taxpayers must generally file Form 720 on or before July 31, 1988. However, if such taxpayers must also report tax imposed by section 4251 (relating to communications services tax), sections 4261 and 4271 (relating to air transportation tax), or section 4986 (relating to windfall profits tax) for the second quarter of 1988, they must file Form 720 on or before August 31, 1988.

(B) *Other taxpayers.* Taxpayers that are not described in paragraph (a)(3)(i)(A) of this section (*i.e.*, taxpayers that but for this section would not be required to file Form 720 for the second quarter of 1988) must file Form 720 on or before July 31, 1988.

(ii) *Applicable election years beginning after 1987*—(A) *Return made on Form 720.* [Reserved].

(B) *Return made on form other than Form 720.* For an applicable election year beginning after 1987, the return showing the required payment is to be filed with the Service Center indicated by the instructions for the form prescribed for payment. The return must be filed on or before the date prescribed by the instructions to the form.

(iii) *Special rule for back-up section 444 election.* See § 1.444–3T(b)(4)(iii) for a special rule that may extend the due date for filing a return required by paragraph (a)(2) of this section.

(4) *Time and place for making required payment*—(i) *Applicable election years beginning in 1987.* For an applicable election year beginning in 1987, the required payment is due and payable without assessment and notice on or before the date the taxpayer's Form 720 for the second quarter is due (as specified in paragraph (a)(3) of this section). The required payment must be paid by check or money order, and such check or money order must indicate the partnership's or S corporation's taxpayer identification number and must include the statement: "IRS NO. 11 PAYMENT." The check or money order must be sent, together with Form 720, to the Service Center indicated by the instructions for the Form 720.

(ii) *Applicable election years beginning after 1987.* For an applicable election year beginning after 1987, the required payment is due and payable without assessment or notice, on or before May 15 of the calendar year following the calendar year in which the applicable election year begins.

(iii) *Special rule for back-up section 444 election.* See § 1.444–3T(b)(4)(iii) for a special rule that may extend the due date for making a required payment.

(5) *Penalties for failure to pay.* In the case of any failure by a partnership or S corporation to pay the required payment on or before the date prescribed in paragraph (a)(4) of this section, there shall be assessed on such partnership or S corporation a penalty of 10 percent of the underpayment. For purposes of this section, the term "underpayment" means the excess of the amount of the payment required under this section over the amount (if any) of such payment paid on or before the date prescribed in paragraph (a)(4) of this section.

(6) *Refund of required payment*—(i) *In general.* If a partnership or S corporation is entitled to make a claim for refund pursuant to § 1.7519–1T(c), such partnership or S corporation should file a claim for refund, as provided in paragraph (a)(6)(ii) of this section. However, in no event shall a refund be made prior to April 15 of the second calendar year that follows the calendar year in which an applicable election year begins. For example, assume a partnership made a section 444 election to retain its taxable year for its taxable year beginning October 1, 1987, and as a result made a required payment for such year. Further assume that the partnership terminates its election for its taxable year beginning October 1, 1988. Based on these facts, the partnership will be entitled to a refund, but no earlier than April 15, 1989.

(ii) *Procedures for claiming refund.* [Reserved].

(iii) *Interest on refund.* No interest shall be allowed with respect to any refund of a required payment under § 1.7519–1T(C).

(b) *Assessment and collection of payment.* A required payment shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C. Furthermore, no deduction shall be allowable to a partnership or S corporation (or their owners) with respect to the required payment.

(c) *Termination due to willful failure.* See § 1.444–1T(a)(5)(i)(C), which provides that willful failure to comply with the requirements of this section will result in the termination of the section 444 election.

(d) *Negligence and fraud penalties made applicable.* For purposes of section 6653, relating to additions to tax for negligence and fraud, any payment required by this section shall be treated as a tax.

§ 1.7519–3T Effective date (temporary).

The provisions of §§ 1.7519–1T through § 1.7519–3T are effective for taxable years beginning after December 31, 1986.

Par. 4. Section 1.706–3T is added in the appropriate place.

§ 1.706–3T Temporary regulations under the Tax Reform Act of 1986 and the Revenue Act of 1987 (temporary).

(a) *Certain tax-exempt partners disregarded*—(1) *General rule.* In determining the taxable year (the "current year") of a partnership under section 706(b) and the regulations thereunder, a partner that is tax-exempt under section 501(a) shall be disregarded if such partner was not subject to tax, under chapter 1 of the Code, on any income attributable to its investment in the partnership during the partnership's taxable year immediately preceding the current year. However, if a partner that is tax-exempt under section 501(a) was not a partner during the partnership's immediately preceding taxable year, such partner will be disregarded for the current year if the partnership reasonably believes that the partner will not be subject to tax, under chapter 1 of the Code, on any income attributable to such partner's investment in the partnership during the current year.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example.

Example. Assume that partnership A has historically used the calendar year as its taxable year. In addition, assume that A is owned by 5 partners, 4 calendar year individuals (each owning 10 percent of A's profits and capital) and a tax-exempt organization (owning 60 percent of A's profits and capital). The tax-exempt organization has never had unrelated business taxable income with respect to A and has historically used a June 30 fiscal year. Finally, assume that A desires to retain the calendar year for its taxable year beginning January 1, 1987. Under these facts and but for the special rule in paragraph (a)(1) of this section, A would be required under section 706(b)(1)(B)(i) to change to a year ending June 30, for its taxable year beginning January 1, 1987. However, under the special rule provided in paragraph (a)(1) of this section, and assuming the optional effective date provided in paragraph (c) of this section is chosen, the partner that is tax-exempt is disregarded, and A must retain the calendar year, under section 706(b)(1)(B)(i), for its taxable year beginning January 1, 1987.

(b) *Effect of partner elections under section 444.* For purposes of section 706(b)(1)(B), any section 444 election by a partner in a partnership shall be taken into account in determining the taxable year of the partnership. See example (4) of § 1.7519–1T(d).

(c) *Effective date.* The provisions of this section are generally effective for taxable years beginning after December 31, 1987. However, a partnership may, at its option, apply the provisions of this section for taxable years beginning after December 31, 1986.

Par. 5. Section 706–1T is revised by adding a new sentence at the end of paragraph (a)(1) to read as follows:

§ 1.706–1T Taxable years of certain partnerships (temporary).

(a) * * *

(1) * * * See § 1.706–3T(a) for special rules which provide that certain tax-exempt partners are disregarded.

* * * * *

Par. 6. Sections 1.280H–0T—1.280H–1T are added to Part 1 in the appropriate place.

§ 1.280H–0T Table of contents (temporary).

This section lists the captions that appear in the temporary regulations under section 280H.

§ 1.280H–1T Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years (temporary).

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(3) Disallowance of NOL carryback.
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(f) Effective date.

§ 1.280H–1T Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years (temporary).

(a) *Introduction.* This section applies to any taxable year that a personal service corporation has a section 444 election in effect (an "applicable election year"). For purposes of this section, the term "personal service corporation" has the same meaning given such term in § 1.441–4T(d).

(b) *Limitation on certain deductions of personal service corporations*—(1) *In general.* If, for any applicable election year, a personal service corporation does not satisfy the minimum distribution requirement in paragraph (c) of this section, the deduction otherwise allowable under chapter 1 of the Internal Revenue Code of 1986 (the Code) for applicable amounts, as defined in paragraph (b)(4) of this section, shall not exceed the maximum deductible amount, as defined in paragraph (d) of this section.

(2) *Carryover of nondeductible amounts.* Any amount not allowed as a deduction in an applicable election year under paragraph (b)(1) of this section shall be allowed as a deduction in the succeeding taxable year.

(3) *Disallowance inapplicable for certain purposes.* The disallowance of deductions under paragraph (b)(1) of this section shall not apply for purposes of subchapter G of chapter 1 of the Code (relating to corporations used to avoid income tax on shareholders) nor for determining whether the compensation of employee-owners is reasonable. Thus, for example, in determining whether a personal service corporation is subject to the accumulated earnings tax imposed by section 531, deductions disallowed under paragraph (b)(1) of this section are treated as allowed in computing accumulated taxable income.

(4) *Definition of applicable amount*—(i) *In general.* For purposes of section 280H and the regulations thereunder, the term "applicable amount" means, with respect to a taxable year, any amount that is otherwise deductible by a personal service corporation in such year and includable at any time, directly or indirectly, in the gross income of a taxpayer that during such year is an employee-owner. Thus, an amount includable in the gross income of an employee-owner will be considered an applicable amount even though such employee owns no stock of the corporation on the date the employee includes the amount in income. See example (1) in paragraph (b)(4)(iii) of this section.

(ii) *Special rule for certain indirect payments.* For purposes of paragraph (b)(4)(i) of this section, amounts are indirectly includable in the gross income of an employee-owner of a personal service corporation that has made a section 444 election (an electing personal service corporation) if the amount is includable in the gross income of—

(A) The spouse (other than a spouse who is legally separated from the partner or shareholder under a decree of divorce or separate maintenance) or child (under age 14) of such employee-owner, or

(B) A corporation more than 50 percent (measured by fair market value) of which is owned in the aggregate by employee-owners (and individuals related under paragraph (b)(4)(ii)(A) of this section to such employee-owners), of the electing personal service corporation, or

(C) A partnership more than 50 percent of the profits and capital of which is owned by employee-owners (and individuals related under paragraph (b)(4)(ii)(A) of this section to such employee-owners) of the electing personal service corporation, or

(D) A trust more than 50 percent of the beneficial ownership of which is owned in the aggregate by employee-owners (and individuals related under paragraph (b)(4)(ii)(A) of this section to any such employee-owners), of the electing personal service corporation.

For purposes of this paragraph (b)(4)(ii), ownership by any person described in

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this paragraph (b)(4)(ii) shall be treated as ownership by the employee-owners of the electing personal service corporation. Paragraph (b)(4)(ii)(B) of this section will not apply if the corporation has made a section 444 election to use the same taxable year as that of the electing personal service corporation. Similarly, paragraph (b)(4)(ii)(C) of this section will not apply if the partnership has made a section 444 election to use the same taxable year as that of the electing personal service corporation. Notwithstanding the general effective date provision of paragraph (f) of this section, this paragraph (b)(4)(ii) is effective for amounts deductible on or after June 1, 1988.

(iii) *Example.* The provisions of paragraph (b)(4) of this section may be illustrated by the following examples.

Example (1). A is an employee of P, an accrual basis personal service corporation with a taxable year ending September 30. P makes a section 444 election for its taxable year beginning October 1, 1987. On October 1, 1987, A owns no stock of P; However, on March 31, 1988, A acquires 10 of the 200 outstanding shares of P stock. During the period October 1, 1987 to March 31, 1988, A earned $45,000 of compensation as an employee of P. During the period April 1, 1988 to September 30 1988, A earned $60,000 of compensation as an employee-owner of P. If paragraph (b) of this section does not apply, P would deduct for its taxable year ended September 30, 1988 the $105,000 earned by A during such year. Based upon these facts, the $100,000 otherwise deductable amount is considered an applicable amount under this section.

Example (2). I1 and I2, calendar year individuals, are employees of PSC1, a personal service corporation that has historically used a taxable year ending January 31. I1 and I2 also own all the stock, and are employees, of PSC2, a calendar year personal service corporation. For its taxable years beginning February 1, 1987, 1988, and 1989, PSC1 has a section 444 election in effect to use a January 31 taxable year. During its taxable years beginning February 1, 1988, 1987, and 1988, PSC1 deducted $10,000, $11,000, and $12,000, respectively, that was included in PSC2's gross income. Furthermore, of the $12,000 deducted by PSC1 for its taxable year beginning February 1, 1988, $7,000 was deducted during the period June 1, 1988 to January 31, 1989. Pursuant to paragraph (b)(4)(ii)(B) of this section, the $7,000 deducted by PSC1 on or after June 1, 1988, and included in PSC2's gross income is considered an applicable amount for PSC1's taxable year beginning February 1, 1988. Amounts deducted by PSC1 prior to June 1, 1988, are not subject to paragraph (b)(4)(ii)(B) of this section.

Example (3). The facts are the same as in example (2), except that for its taxable years beginning February 1, 1987, 1988, and 1989, PSC2 has a section 444 election in effect to use a January 31 taxable year. Since both PSC1 and PSC2 have the same taxable year and both have section 444 elections in effect, paragraph (b)(4)(ii)(B) of this section does not apply to the $7,000 deducted by PSC1 for its taxable year beginning February 1, 1988.

(c) *Minimum distribution requirement*—(1) *Determination of whether requirement satisfied*—(i) *In general.* A personal service corporation meets the minimum distribution requirement of this paragraph (c) for an applicable election year if, during the deferral period of such taxable year, the applicable amounts (determined without regard to paragraph (b)(2) of this section) for all employee-owners in the aggregate equal or exceed the lesser of—

(A) The amount determined under the "preceding year test" (see paragraph (c)(2) of this section), or

(B) The amount determined under the "3-year average test" (see paragraph (c)(3) of this section).

The following example illustrates the application of this paragraph (c)(1)(i).

Example. Q, an accrual-basis personal service corporation, makes a section 444 election to retain a year ending January 31 for its taxable year beginning February 1, 1987. Q has 4 employee-owners, B, C, D, and E. For Q's applicable election year beginning February 1, 1987 and ending January 31, 1988, B earns $6,000 a month plus a $45,000 bonus on January 15, 1988; C earns $5,000 a month plus a $60,000 bonus on January 15, 1988; D and E each earn $4,500 a month plus a $4,000 bonus on January 15, 1988. Q meets the minimum distribution requirement for such applicable election year if the applicable amounts during the deferral period (*i.e.*, $220,000) equal or exceed the amount determined under the preceding year test or the 3-year average test.

(ii) *Employee-owner defined.* For purposes of section 280H and the regulations thereunder, a person is an employee-owner of a corporation for a taxable year if—

(A) On any day of the corporation's taxable year, the person is an employee of the corporation or performs personal services for or on behalf of the corporation, even if the legal form of that person's relationship to the corporation is that of an independent contractor, and

(B) On any day of the corporation's taxable year, the person owns any outstanding stock of the corporation.

(2) *Preceding year test*—(i) *In general.* The amount determined under the preceding year test is the product of—

(A) The applicable amounts during the taxable year preceding the applicable election year (the "preceding taxable year"), divided by the number of months (but not less than one) in the preceding taxable year, multiplied by

(B) The number of months in the deferral period of the applicable election year.

(ii) *Example.* The provisions of paragraph (c)(2) of this section may be illustrated by the following example.

Example. R, a personal service corporation, has historically used a taxable year ending January 31. For its taxable year beginning February 1, 1987, R makes a section 444 election to retain its January 31 taxable year. R is an accrual basis taxpayer and has one employee-owner, F. For R's taxable year ending January 31, 1987, F earns $6,000 a month plus a $60,000 bonus on January 15, 1987. The amount determined under the preceding year test for R's applicable election year beginning February 1, 1987 is $81,667 ($100,000, the applicable amounts during R's taxable year ending January 31, 1987, divided by 12, the number of months in R's taxable year ending January 31, 1987, multiplied by 11, the number of months in R's deferral period for such year).

(3) *3-year average test*—(i) *In general.* The amount determined under the 3-year average test is the applicable percentage multiplied by the adjusted taxable income for the deferral period of the applicable election year.

(ii) *Applicable percentage.* The term "applicable percentage" means the percentage (not in excess of 95 percent) determined by dividing—

(A) The applicable amounts during the 3 taxable years of the corporation (or, if fewer, the taxable years the corporation has been in existence) immediately preceding the applicable election year, by

(B) The adjusted taxable income of such corporation for such 3 taxable years (or, if fewer, the taxable years of existence).

(iii) *Adjusted taxable income*—(A) *In general.* The term "adjusted taxable income" means taxable income determined without regard to applicable amounts.

(B) *Determination of adjusted taxable income for the deferral period of the applicable election year.* Adjusted taxable income for the deferral period of the applicable election year equals the adjusted taxable income that would result if the personal service corporation filed an income tax return for the deferral period of the applicable election year under its normal method of accounting. However, a personal service corporation may make a reasonable estimate of such amount.

(C) *NOL carryovers.* For purposes of determining adjusted taxable income for any period, any NOL carryover shall be reduced by the amount of such carryover that is attributable to the deduction of applicable amounts. The portion of the NOL carryover attributable to the deduction of applicable amounts is the difference between the NOL carryover computed with the deduction of such amounts and the NOL carryover computed without the deduction of such amounts. For purposes of determining the adjusted taxable income for the deferral period, an NOL carryover to the applicable election year, reduced as provided in this paragraph (c)(3)(iii)(C), shall be allowed first against the income of the deferral period.

(D) *Examples.* The provisons of this paragraph (c)(3)(iii) may be illustrated by the following examples.

Example (1). S is a personal service corporation that has historically used a taxable year ending January 31. For its taxable year beginning February 1, 1987, S makes a section 444 election to retain its taxable year ending January 31. S does not satisfy the minimum distribution requirement for its first applicable election year, and the applicable amounts for that year exceed the maximum deductible amount by $54,000. Under paragraph (b)(2) of this section, the $54,000 excess is carried over to S's taxable year beginning February 1, 1988. Furthermore, if S continues its section 444 election for its taxable year beginning February 1, 1988, and desires to use the 3-year average test provided in this paragraph for such year, pursuant to paragraph (c)(3)(iii)(A) of this section the $54,000 will not be allowed to reduce adjusted taxable income for such year. See also section 280H(e) regarding the disallowance of net operating loss carrybacks to (or from) any taxable year of a corporation personal service election under section 444 applies.

Example (2). T, a personal service corporation with a section 444 election in effect, is determining whether it satisfies the 3-year average test for its second applicable election year. T had a net operating loss (NOL) for its first applicable election year of $45,000. The NOL resulted from $150,000 of gross income less the sum of $96,000 of salary, $45,000 of other expenses, and $54,000 of deductible applicable amounts. Pursuant to paragraph (c)(3)(iii)(C) of this section, the entire amount of the $45,000 NOL is attributable to applicable amounts since the applicable amounts deducted in arriving at the NOL (*i.e.*, $54,000) were greater than the NOL (*i.e.*, $45,000). Thus, for purposes of computing the adjusted taxable income for the deferral period of T's second applicable election year, the NOL carryover to that year is $0 ($45,000 NOL less $45,000 amount of NOL attributable to applicable amounts).

(d) *Maximum deductible amount*—(1) *In general.* For purposes of this section, the term "maximum deductible amount" means the sum of—

(i) The applicable amounts during the deferral period of the applicable election year, plus

(ii) An amount equal to the product of—

(A) The amount determined under paragraph (d)(1)(i) of this section divided by the number of months in the deferral period of the applicable election year, multiplied by

(B) The number of months in the nondeferral period of the applicable election year. For purposes of the preceding sentence, the term "nondeferral period" means the portion of the applicable election year that occurs after the portion of such year constituting the deferral period.

(2) *Example.* The provisions of paragraph (d)(1) of this section may be illustrated by the following example.

Example. U, an accrual basis personal service corporation with a taxable year ending January 31, makes a section 444 election to retain a year ending January 31 for its taxable year beginning February 1, 1987. For its applicable election year beginning February 1, 1987, U does not satisfy the minimum distribution requirement in paragraph (c) of this section. Furthermore, U has 3 employee-owners, G, H, and I. G and H have been employee-owners of U for 10 years. Although I has been an employee of U for 4 years, I did not become an employee-owner until December 1, 1987, when I acquired 5 of the 20 outstanding shares of U stock. For U's applicable election year beginning February 1, 1987, G earns $5,000 a month plus a $40,000 bonus on January 15, 1988, and H and I each earn $4,000 a month plus a $32,000 bonus on January 15, 1988. Thus, the total of the applicable amounts during the deferral period of the applicable election year beginning February 1, 1987 is $143,000. Based on these facts, U's deduction for applicable amounts is limited to $156,000, determined as follows—$143,000 (applicable amounts during the deferral period) plus $13,000 (applicable amounts during the deferral period, divided by the number of months in the deferral period, multiplied by the number of months in the nondeferral period).

(e) *Special rules and definition*—(1) *Newly organized personal service corporations.* A personal service corporation is deemed to satisfy the preceding year test and the 3-year average test for the first year of the corporation's existence.

(2) *Existing corporations that become personal service corporations.* If an existing corporation becomes a personal service corporation and makes a section 444 election, the determination of whether the corporation satisfies the preceding year test and the 3-year average test is made by treating the corporation as though it were a personal service corporation for each of the 3 years preceding the applicable election year.

(3) *Disallowance of NOL carryback.* No net operating loss carryback shall be allowed to (or from) any applicable election year of a personal service corporation.

(4) *Deferral period.* For purposes of section 280H and the regulations thereunder, the term "deferral period" has the same meaning as under § 1.444-1T(b)(4).

(5) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples.

Example (1). V is a personal service corporation with a taxable year ending September 30. V makes a section 444 election for its taxable year beginning October 1, 1987, and incurs a net operating loss (NOL) for such year. Because an NOL is not allowed to be carried back from an applicable election year, V may not carry back the NOL from its first applicable election year to reduce its 1985, 1986, or 1987 taxable income.

Example (2). W, a personal service corporation, commences operations on July 1, 1990. Furthermore, for its taxable year beginning July 1, 1990, W makes a section 444 election to use a year ending September 30. Pursuant to paragraph (e)(1) of this section, W satisfies the preceding year test and the 3-year average test for its first year in existence. Thus, W may deduct, without limitation under this section, any applicable amounts for its taxable year beginning July 1, 1990.

Example (3). The facts are the same as in example (2). For its taxable year beginning October 1, 1990, W incurs an NOL and is not a personal service corporation. Furthermore, W desires to carry back the NOL to its preceding taxable year (a year that was an applicable election year). Pursuant to paragraph (e)(3) of this section, W may not carry back an NOL "to" its taxable year beginning July 1, and ending September 30, 1990, because such year was an applicable election year.

(f) *Effective date.* The provisions of this section are effective for taxable years beginning after December 31, 1986.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 7. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.444–3T . . . 1545–1036."

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

May 12, 1988.

[FR Doc. 88–11664 Filed 5–24–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR–53–88]

Income Taxes; Election of Taxable Year Other Than Required Year By Partnerships, S Corporations and Personal Service Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the election of a taxable year other than the required year by a partnership, S corporation or personal service corporation. Changes to the applicable law were made by the Revenue Act of 1987. In addition, the regulations include conforming and clarifying rules regarding the determination of the taxable year of a partnership under section 706. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The amendments to the regulations are proposed to be effective generally for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by July 26, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–53–88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis III of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566–3918 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citations) in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to provide temporary rules relating to the election by a partnership, S corporation, or personal service corporation to use a taxable year other than the year required (the "required year") under the applicable provision of the Internal Revenue Code of 1986 (the "Code"). The temporary regulations reflect the amendment of the Code by section 10206 of the Revenue Act of 1987 (Pub. L. 100–203, 101 Stat. 1330), which added sections 444, 7519 and 280H. Section 444 provides for the election (a "section 444 election") to use a taxable year other than the required year. A partnership or S corporation that makes or continues a section 444 election must make the payment required by section 7519. A personal service corporation that makes or continues a section 444 election is subject to the deduction limitations imposed by section 280H. This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations explains the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. (T.D. 8205) published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The reporting requirements contained in this notice of proposed rulemaking have been submitted in accordance with the requirements of the Paperwork Reduction Act of 1980 to the Office of Management and Budget (OMB) for review. OMB has approved these requirements (control number 1545–1036).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Arthur E. Davis III of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR 1.7519–OT—1.7519–3T

Income taxes, Administrative and procedure, Miscellaneous, Required payments.

26 CFR 1.701–1—1.771–1

Income taxes, Partnerships.

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–11683 Filed 5–24–88; 8:45 am]

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Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Surface Coal Mining Reclamation Operations; Initial and Permanent Regulatory Programs; Excess Moisture Content Allowance; Reclamation Fees; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Surface Coal Mining Reclamation Operations; Initial and Permanent Regulatory Programs; Excess Moisture Content Allowance; Reclamation Fees

March 18, 1988.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is amending its regulations governing how the weight of each ton of coal produced is determined for reclamation fee purposes. This action is being taken to permit a deduction for excess moisture that is the calculated difference between the estimated inherent moisture in the coal at the time of production and the amount of total moisture estimated to be contained in the coal at the point of fee assessment.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jane E. Robinson, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone 202–343–2826 (Commercial or FIS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments and Description of the Final Rule
III. Procedural Matters

I. Background

Title IV of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1231–1243 (the Act), provides for the collection of a fee from coal mining operators subject to the Act on each ton of "coal produced." The funds are to be used for the reclamation of lands mined and abandoned or left in an inadequate reclamation status before the enactment date of the Act, August 3, 1977. Neither the Act nor the legislative history explicitly defines the term "coal produced" or indicates the Congressional intent as to how the term should be implemented. See *Drummond Coal Company v. Hodel*, 796 F.2d 503 (D.C. Cir. 1986), *cert. denied*, 107 S. Ct. 1593 (1987) (hereafter *Drummond*). As Congress did not determine the point in time at which the reclamation fee should be assessed or what the weight of the coal should include, the Secretary of the Interior (Secretary) has wide discretion to consider a number of alternatives for determining fee liability.

OSMRE first promulgated regulations governing reclamation fee collections on December 13, 1977, at 30 CFR Part 837 (42 FR 62713). Those regulations provided that the fee be paid on each ton of coal produced for sale, transfer, or use and that the fee be determined at the time of initial bona fide sale, transfer of ownership, or use by the operator. The 1977 regulations were later renumbered as Part 870 without any editorial changes (43 FR 49940). On June 30, 1982, OSMRE promulgated regulatory language "to clarify the point in time of fee determination, as well as the value and weight parameters for calculating reclamation fees" (47 FR 28577). The 1982 regulation identifies "the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit" as the point in time of fee assessment (30 CFR 870.12(b)(1)).

The weight of the coal taxed included "impurities, including water, that *have not* been removed prior to the initial bona fide sale, transfer of ownership or use by the operator" (30 CFR 870.12(b)(3)(i) (1982)). Therefore, pursuant to that rule, the fee was collected on the gross weight of all materials, including moisture, extracted with the coal by the process of mining, other than materials removed prior to the first disposition of the coal. In addition, any moisture added to the coal after severance, and not removed prior to the first disposition, was also included in the weight.

The U.S. Court of Appeals for the District of Columbia Circuit held in *Drummond* that the Secretary did not act in an arbitrary or capricious manner in promulgating the prior rule, and that the rule was not inconsistent with the Act or its legislative history. The Supreme Court declined, without explanation, to review this decision.

The proposed rule in this rulemaking was published on May 18, 1987 (52 FR 18680). As explained in the preamble to the proposal, an inconsistency in the taxation of coal weight under various Federal statutes now exists. Although operators are required to include the coal's excess moisture weight in their abandoned mine land (AML) fee liability, under a 1986 Internal Revenue Service (IRS) Revenue Ruling (86–86), operators can reduce their Black Lung tax liability by taking a deduction based upon the weight of the coal's excess moisture content. As this situation is different from the one that existed at the time OSMRE's rule was adopted in 1977 and clarified in 1982, OSMRE decided to reconsider the issue of including the weight of excess moisture in its assessment of the AML fees.

On July 21, 1987, the comment period was reopened and extended until August 7, 1987 (52 FR 27419). OSMRE conducted one public hearing on July 31, 1987, in Birmingham, Alabama. In response to this proposal, OSMRE received numerous comments from State and national coal associations, coal mining operators, public utilities, coal certification laboratories, and an environmental organization.

II. Discussion of Public Comments and Description of the Final Rule

Section 870.5—Definitions.

OSMRE proposed to add a definition for excess moisture to identify the basis on which an operator could estimate a reduction in coal weight for reclamation fee calculation purposes. The proposed rule would have defined "excess moisture" as noninherent water which accumulates in coal after extraction. Inherent water would have been defined in the proposed rule as natural bed moisture contained in the coal.

The final rule defines the term "excess moisture" as being the difference between "total moisture" and "inherent moisture." "Inherent moisture" is defined as moisture that exists as an integral part of the coal seam in its natural state, including water in pores but not that present in macroscopically visible fractures. "Total moisture" is defined as the moisture that is the loss in weight in an air atmosphere under rigidly controlled conditions of temperature, time and air flow.

Several commenters asserted that the proposed definition of excess moisture was misleading, since it allowed for moisture in coal which could be interpreted to include moisture trapped within the fracture planes and surface pores from outside the natural coalification process (e.g. rain, coal-processing moisture, ground water, drilling fluids, etc.) that should not be considered inherent to the coal. One commenter objected to the use of the term "inherent water" and other undefined terms, such as "noninherent water," in the definition, as these terms are not well defined or understood in the industry. This commenter added that these terms are complementary only in an operational sense when it is understood that extraction includes disturbance of the bed (e.g. blasting) that may allow additional water to penetrate the bed from aquifers, and that water released from the aquifer would not be inherent water even though it penetrated the bed.

Another commenter criticized the use of the words "after extraction," stating that the true geological definition of excess moisture must not be limited to moisture accumulated after coal is extracted and that excess or "free" water can be found along the cracks in the in-place coal bed, as well as on the chunks of extracted coal, and can come from water flowing through rock strata, from the surface or ground water systems, into and onto the in-place coal. Another commenter recommended that OSMRE use an independent definition of "inherent moisture" to identify it as the water present at the time of the coal formation, which is intrinsically part of the coal structure, to preclude any surface waters from being interpreted as inherent in the coal.

A majority of the commenters agreed that excess moisture, also known as "surface moisture" and "free moisture," is the difference between total moisture and inherent moisture as those terms are defined by the American Society for Testing and Materials (ASTM). Twenty-two commenters recommended that OSMRE adopt ASTM definitions for inherent moisture and total moisture, as defined in ASTM "Standard Definition of Terms Relating to Coal and Coke," D 121–85, since these terms are well recognized and accepted throughout the coal community. Several commenters noted that ASTM standard definitions and test methods are used by laboratories owned and operated by commercial coal operations as well as by independent laboratories which conduct tests and analyses for coal companies and consumers of coal. One commenter cited the industry-wide recognition of the ASTM for its procedural work and the large amount of time it has devoted to development of precise definitions of inherent and total moisture.

OSMRE has analyzed these comments and agrees that the proposed definition of excess moisture was deficient and could have caused confusion among members of the coal industry. In response to the comments, OSMRE is adopting the recommendation of many commenters by defining the term "excess moisture" as being the difference between "total moisture" and "inherent moisture." Therefore, OSMRE has found it necessary to define the terms "inherent moisture" and "total moisture" as well. The definitions OSMRE has selected are the ASTM definitions which were recommended by almost all of the commenters commenting on the issue. "Inherent moisture" is defined as moisture that exists as an integral part of the coal seam in its natural state, including water in pores but not that present in macroscopically visible fractures. "Total moisture" is defined as the moisture that is the loss in weight in an air atmosphere under rigidly controlled conditions of temperature, time and air flow.

Section 870.12—Reclamation Fee.

Section 870.12 in 30 CFR is the regulatory provision requiring operators to pay reclamation fees. Paragraph (b) of that section specifies how the fee is determined. Section 870.12(b)(3)(i) disallows deductions for impurities that are not removed prior to the time of initial bona fide sale, transfer of ownership or use by the operator. The rule adopted today creates an exception in § 870.12(b)(3)(i) and allows a weight reduction for determining AML fee liability for excess moisture present at the time of initial bona fide sale, transfer of ownership or use by the operator.

The proposed rule would have amended 30 CFR 870.12(b)(3)(i) by deleting the phrase "including water" and adding the phrase "including excess moisture for which a reduction is not taken pursuant to paragraph B of this section" and would have redesignated the section as 30 CFR 870.12(b)(3)(i)(A). This provision provided that excess moisture would be included in the weight of coal for determining AML fee liability unless the operator made the reduction pursuant to the proposed 30 CFR 870.12(b)(3)(i)(B). Paragraph (b)(3)(i)(B) would have specified the terms of the allowable reduction.

The final rule is reorganized from the proposal for editorial convenience. In the final rule, OSMRE has decided not to redesignate 30 CFR 870.12(b)(3)(i). Instead of specifying the parameters for implementing the excess moisture content allowance in 30 CFR 870.12(b)(3)(i)(B) as proposed, OSMRE has added a new Section, 30 CFR 870.18, as an administrative convenience. The provisions of § 870.18 are explained below.

In the final rule, the clause "excluding excess moisture for which a reduction has been taken pursuant to section 870.18" is substituted for the proposed statement "including excess moisture for which a reduction is not taken pursuant to paragraph (B) of this section."

The phrase "excess moisture" is included, rather than the term "water," because the latter could be construed within the context of the rule to include two other types of coal moisture: total moisture and inherent moisture. The new language specifically employs the terms "excess moisture," which is defined in 30 CFR 870.5, to avoid confusion and to ensure consistency in the implementation of the excess moisture content allowance. Thus, under the rule, a reduction may be taken only for excess moisture.

One commenter suggested that the first phrase of proposed 30 CFR 870.12(b)(3)(i)(A) be changed to clarify the intent and relationship between proposed subparagraphs (A) and (B) by "excluding excess moisture for which a reduction has been taken pursuant to subparagraph (B) of this section." OSMRE has incorporated this clarification in 30 CFR 870.12(b)(3)(i), and cites new 30 CFR 870.18, which replaces proposed 30 CFR 870.12(b)(3)(i)(B).

This final rule does not otherwise alter the general rule which requires all impurities not removed from coal to be included in its gross weight for AML fee assessment purposes. It remains the operator's responsibility to seek a calculated weight reduction under 30 CFR 870.18 if an excess moisture content allowance is desired.

Section 870.18—Excess Moisture Content Allowance.

The proposed rule, in § 870.12(b)(3)(i)(B), required an operator seeking the allowance to establish the percentage of excess moisture by standardized laboratory analyses (but did not specify which standard test was to be employed), to retain the results of this testing for a period of six years from the date of the analysis, and to verify the reduction taken by annually updating the documentation of the laboratory analysis. The analysis was to be performed by a certified testing laboratory acceptable to OSMRE.

The final rule has been modified in certain respects from the proposal. Section 870.18 establishes the standards by which an operator may take a calculated weight reduction allowance for the excess moisture in coal. Specific requirements for such a reduction are set forth in § 870.18 (a) through (e), described below. As set forth in the proposal, this allowance is only valid for coal produced on or after the effective date of the rule. For ease in administering the rule and to accord with 5 U.S.C. 553(d), the rule will be effective at the beginning of the first calendar quarter after 30 days from promulgation of this rule.

No Retroactive Applicability

One commenter stated that the rule should be applied retroactively to all coal produced and shipped after January

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1, 1985, to make "excess moisture" deductions for AML fees consistent with Black Lung tax deductions taken pursuant to the decision in *A.J. Taft Coal Co. v. United States*, 605 F.Supp. 366 (N. D. Ala. 1984), *aff'd without opinion*, 780 F.2d 279 (11th Cir. 1985). If the rule were applied retroactively, several commenters stated that operators who have properly calculated the excess moisture portion of these fees and paid them under protest would be rewarded. One commenter asserted that operators in Alabama who have not paid AML fees, or who have deducted an excess moisture allowance from their past AML fees, should be given a credit against future fees, and not have to repay fees assessed after January 1, 1985. This commenter stressed that these operators paid AML fees on their understanding of the law, and that small coal operators in Alabama who have taken an excess moisture allowance over the years may be denied future permits by OSMRE's permit blocking system due to any deficiencies in payment. Another commenter encouraged OSMRE to apply the rule retrospectively, arguing that certain Federal court decisions validate an excess moisture deduction for AML fee determination without the restriction of prospective application.

OSMRE does not agree that the rule should be applied retroactively to 1985. On June 30, 1982, OSMRE amended its regulations to clarify the point in time at which fees are to be assessed, as well as the weight parameters on which fee payments are to be made. The 1982 rules are valid and explicitly require fee payment based on the weight of the coal at the time of initial sale, transfer of ownership, or use. Any operator who took an unauthorized deduction for excess moisture prior to the date this rule becomes effective has failed to comply with the law and will not be excused. No compelling circumstances to the contrary have been provided.

Section 870.18(a)

Section 870.18(a) requires an operator to demonstrate through competent evidence that there is a reasonable basis for determining the existence and amount of excess moisture. OSMRE believes that the final rule clarifies the standard that was implicit in the proposal. It is incumbent upon the operator to be able to provide OSMRE with sufficient documentation to fulfill the purpose of this subsection. For instance, such documentation could include a detailed written narrative description of methods of sampling and analytical procedures used at each mine with an explanation of any deviations made from standard acceptable sampling and analytical procedure. Also, the source or sources of excess moisture should be identifiable. It is incumbent upon the operator to update such documentation as necessary to establish the continuing validity of the excess moisture allowance. This may involve repeated tests for inherent moisture, and will likely involve total moisture measurements for most shipments.

In adopting § 870.18(a), OSMRE has considered a suggestion from the IRS as to the test to use until adequate and fully reliable testing procedures become available. IRS recommended that "[i]n the interim, we would suggest a facts and circumstances test allowing the reduction for excess moisture where the taxpayer can demonstrate through competent evidence that there is a reasonable basis for determining the existence and amount of excess moisture." IRS November 18, 1987 letter, p.2.

Many commenters objected to OSMRE's proposal that standardized laboratory test results be updated annually in order to establish the percentage of excess moisture. Several commenters stated that a "total moisture" test of the coal is performed on every shipment, and that total moisture can vary from shipment to shipment, due to processes employed at the mine. These commenters added that inherent moisture is a property of coal which does not have large variances, and therefore the inherent moisture need not be tested as frequently. One commenter stated the total moisture determination should be a test of relative high frequency. Another commenter stated that a particular coal bed over an area of many square miles should not have an appreciable variance in inherent moisture. Another commenter remarked that annual updates are unnecessary and burdensome for smaller companies that mine in a specific area longer than one year and suggested that updates be made only when there is a geological change in the strata from which the coal is extracted.

One commenter remarked that testing should be performed on an as-needed basis, rather than annually, explaining that the surface moisture component of total moisture is variable, whereas inherent moisture tends to remain constant. Another commenter stated that, due to the significant variability of coal, annual laboratory testing is grossly insufficient. One commenter said that it is reasonable to require any mine claiming this allowance to determine equilibrium (inherent) moisture on a periodic basis, either monthly or when new seam or pit is opened. The commenter stated that many mines do this routinely, and that routine representative samples used to determine other coal characteristics may be used for this purpose.

OSMRE has considered the diverse opinions expressed by these commenters, various options for establishing testing frequency, and the ongoing work of the ASTM Committee on Coal and Coke, which is currently considering which tests have the greatest reliability. Many of the comments have merit. OSMRE will not specify an annual update of the laboratory analysis as proposed because the variability of conditions make it infeasible for the agency at this time to prescribe a specific frequency for testing inherent or total moisture.

Under the final rule, the operator must be able to provide OSMRE with sufficient documentation to sustain the weight reduction. Although the final rule does not specify a uniform frequency for performing tests, the operator must update such documentation as necessary to establish the continuing validity of the excess moisture allowance. For example, to account for the concern that one test may provide different results an operator may need to test for the inherent moisture of a coal seam frequently during the initial period of operation so as to establish sufficient baseline data to develop an accurate estimate of the seam's inherent moisture content. Also, because of the variability of each shipment, an operator may have to test total moisture at the time of each initial bona fide sale, transfer of ownership, or use of the coal by the operator. The operator may choose the time frame from which to sample and test the excess moisture of its coal under the final rule. However, it remains the responsibility of the operator to prove through competent evidence that it has chosen reasonable time frames in which to measure the existence and amount of excess moisture.

The proposed rule did not specify the point or points in time when sampling and testing must be performed. Several commenters stated that the sample should be taken at the point of initial bona fide sale, transfer of ownership, or use by the operator, to facilitate sampling. These commenters asserted that a sample taken at this point would represent the coal in its "as shipped" or "salable product" state. One commenter stated that sampling and testing should take place when the coal is first weighed for invoicing control purposes, prior to sale and shipment. That commenter recommended that this requirement should be in the rule and not merely discussed in the preamble. The same commenter remarked that this "first weighed" approach and the alternative "fresh tipple" sampling technique will result in the use of a proper inherent moisture analysis to reflect the sale and shipment of coal, rather than the coal in place. This commenter advised that this approach would resolve a potential problem for operators who wash some or all of their coal and account for a change in inherent moisture that results from the loss of ash during the washing process. Another commenter stated it the ASTM D 1412–85 method is used to sample inherent moisture on the end-use sample, the results would be representative of the coal at the point of bona fide sale and of the coal shipped.

Under § 870.12(b), reclamation fees are determined by the weight and value at the time of initial bona fide sale, transfer of ownership or use by the operator. This rule is not intended generally to change the practices which OSMRE has accepted as valid with regard to when the operator weighs the coal. What this rule does is allow the operator to take a weight reduction for excess moisture that the coal contains when the weight of the coal is determined. Typically, this will involve determination of both the inherent moisture and the total moisture.

The final rule allows the operator to determine when sampling and testing is needed, so long as the operator can establish by competent evidence the existence and amount of the excess moisture allowance. OSMRE expects to issue guidance to inform operators of the practices which would be acceptable. This guidance will evolve as the agency gains experience on this issue and as reliable testing standards are developed.

One commenter stated the cost to OSMRE would be substantial because of the complexity of enforcing the proposed rule. This commenter stated that certain minimum analyses will now have to be conducted at the point of severance, as well as the point of fee assessment. The commenter added that the rule would increase enforcement problems in assuring proper testing and reporting of assessments, since the agency cannot merely audit transfer operation records (e.g., tipples) or sales records, but would have to investigate the testing of the coal both at point of severance and end use.

OSMRE disagrees with the comment that OSMRE's cost of enforcing the rule will be substantial. OSMRE intends to modify its quarterly Coal Production and Reclamation Fee Report (Form OSM–1) so that each operator who takes an excess moisture weight reduction will have to report the amount of the reduction, as well as the inherent and total moisture percentages upon which the reduction is based. In this manner, OSMRE will be able to keep track of operators taking an excess moisture weight reduction. OSMRE can use its audit resources to monitor documentation retained by operators claiming the allowance. The audit efforts should be able to focus on whether the reduction was taken correctly rather than whether the operator took any allowance for moisture. In each instance, the operator will have to show that the weight reduction was proper and provide the requisite documentation.

Section 870.18(b)

Section 870.18(b) requires inherent and total moisture to be tested using standard laboratory analyses. OSMRE has not adopted in this rule any requirement as to who must perform the analysis or where it has to be performed.

The requirement for standardized laboratory analysis appeared in proposed § 870.12(b)(3)(i)(B), together with a requirement that the analysis be performed by a certified testing laboratory acceptable to OSMRE.

Standard Tests

In the proposed rule, OSMRE solicited comments on the adequacy of procedures for testing the moisture content of coal and ways to ensure the accuracy of excess moisture measurements. One commenter stated that implementation of the proposed rule could lead to inaccurate measurements and a disproportionate allocation of the burden of AML fees to companies using more accurate procedures. The commenter asserted that the proposed rule failed to require an acceptable measurement method, and pointed out that the accuracy of the testing procedures will determine the uniformity of the results obtained from the application of this rule. This commenter asserted that OSMRE's recognition of the ASTM methods in the final rule should help avoid disputes regarding proper measurement of moisture. Many commenters generally agreed that ASTM standard test methods, which specify procedures of the method, as well as its accuracy, are well established in the industry and should be adopted in the final rule.

One commenter questioned the reference in the proposal's preamble to ASTM Standard Test Method for Total Moisture in Coal, D 3302–74, explaining that the proposed rule failed to recognize a second test method, to test for inherent moisture, must also be performed. Another commenter described the proposal to require only one test to calculate excess moisture as clearly insufficient because a test run once provides no comparative data upon which to calculate inherent versus excess moisture. A number of commenters argued that excess moisture, also known as surface moisture and free moisture, can only be established after two tests are performed, a test for inherent or bed moisture, ASTM Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 degrees Centigrade (ASTM D 1412–85), and the ASTM Standard Test Method for Total Moisture in Coal (ASTM D 3302–82). These commenters opined that the existence and amount of excess moisture would be the difference between the ASTM D 302–82 and the ASTM D 1412–85 test results.

Several commenters cautioned that the ASTM D 1412–85 test method may yield erratic results on some subbituminous and lignite coals. One commenter recommended the exclusion of equilibrium moisture test results as estimates of inherent moisture in low rank coal. The same commenter also recommended the elimination of channel samples for determining inherent moisture unless the effect of out-of-seam dilution is taken into account. Another commenter stated that the operator may be able to differentiate between bed moisture and total moisture by performing a test on fresh channel samples for the former, and tippled coal for the latter.

OSMRE recognizes that some low rank coals have equilibrium moisture values below bed moisture, and that the ASTM Committee on Coal and Coke, whose membership includes representatives of the IRS, is currently working to develop and/or confirm precision statements for ASTM D 1412–85, as this test applies to all ranks of coal. OSMRE expects that deviations from standard laboratory test methodologies to account for low rank coals would be noted and fully described in the operator's records. OSMRE will work with the ASTM Committee on Coal and Coke in its effort to further refine an inherent moisture test methodology for all coal ranks.

In its November 18, 1987 letter commenting on the rule, the IRS expressed concern that even use of the ASTM D 1412–85 Equilibrium Moisture Test may have problems. Specifically,

IRS stated that although using such a test "might provide a reasonable measure of inherent moisture for coals of high rank, * * * the results obtained under this test may differ each time the test is run. This problem is particularly evident in coals of low rank where test results are especially erratic." IRS recommended that "the results of the ASTM or a similar study should be received before one test is prescribed for use by all taxpayers." November 18, 1987 letter from the IRS, p.2.

Nevertheless, the amount of total moisture and inherent moisture must be established in order to determine the estimated amount of excess moisture present in a particular coal seam. The operator must be able to show through competent evidence that inherent and total moisture figures used in calculating excess moisture weight deductions are valid and have been derived properly. In most instances, OSMRE will currently accept the standard test methods adopted by the ASTM to determine inherent moisture, ASTM D 1412–85, and total moisture, ASTM D 3302–82, because of the lack of more suitable alternatives. Because existing standard test sampling and analytical methods may not always be reliable for testing inherent moisture of some subbituminous and lignite coal, other testing methods may be needed for certain low rank coals. The agency also acknowledges that other standard laboratory test methods could possibly be used to determine the existence and extent of excess moisture present in the coal. For instance, in certain situations the test for proximate analysis, ASTM D 3172–73, may be appropriately used.

Some commenters expressed concern that OSMRE's discussion regarding moisture found with the coal as removed from the seam suggests that only "pit or channel" sampling, a time-consuming and expensive sampling technique, would be acceptable. These commenters stated that "fresh tipple" sampling is equally valid for inherent moisture testing and should be available as an alternative testing technique. OSMRE agrees that standard acceptable sampling and analytical procedures may allow the operator to use fresh tipple sampling to establish inherent moisture.

One commenter stated that although in theory the inherent moisture subtracted from the total moisture would yield the free or excess moisture, it is inappropriate to compare absolute weights when the calculation to determine the adjusted weight is based on percentages. This commenter recommended that one adjustment factor be applied to the total weight of coal and that the fee be assessed on the adjusted weight. OSMRE disagrees with this commenter's proposal. To ensure a comparable measurement of the estimated amount of inherent and total moisture, OSMRE recommends that weight reductions be based on the weighted average of each.

For instance, if the inherent moisture of a coal seam is measured monthly and varies from month to month and the coal produced during more than one month is commingled, OSMRE would expect that the percentage of inherent moisture of the commingled coal would be based on a weighting factor reflective of the differing monthly amounts of coal produced. Similarly, if one total moisture percentage is applied for a shipment of coal, it should reflect a weighting factor for different total moisture percentages of component batches.

OSMRE recognizes that varying circumstances could require different sampling and testing frequencies and averaging techniques to establish reliable results. OSMRE intends to develop technical guidance to assist operators and to assure fair and consistent application of the excess moisture allowance.

Certified Laboratories Not Required

One commenter asserted that OSMRE's proposal to require that moisture analyses be prepared by independent certified testing laboratories acceptable to OSMRE was unnecessarily restrictive because many large coal producers regularly perform these tests in their own laboratories. Several commenters noted that the ASTM is presently examining how to implement a certification process for coal laboratories. These commenters agreed that some commercial services "certify" laboratories outside the coal industry which are not widely accepted or used by the industry. These commenters stated that it would be costly and burdensome for OSMRE to certify laboratories.

One commenter urged that the operator be allowed to select a sampling and testing laboratory, and to assume the risk that OSMRE will disallow any deduction if the operator is unable to establish the appropriateness of the methodologies, equipment, and training of its own laboratory or any commercial laboratory it selects. Another commenter stated that the rigid ASTM standards provide accurate analysis and that a company should be allowed to certify its own analysis, as the Act provides criminal penalties for false certification. This commenter added that it is unclear what was meant by the proposed phrase "acceptable to the Office," and that Revenue Ruling 66–96 allows a deduction based upon "competent evidence," with no restriction similar to that proposed by OSMRE.

OSMRE agrees with the concerns raised by commenters about only "certified" laboratories being able to perform analyses of coal. Based on the comments, the final rule allows the operator to select who performs the laboratory analysis, but makes the operator responsible for demonstrating that sampling and testing were performed properly.

Section 870.18(c)

Section 870.18(c) requires an operator to test the inherent moisture in each seam mined when coal produced from multiple seams is blended prior to the initial sale, transfer or use by the operator.

Commenters addressed the need to test coal prior to blending where it is produced from different seams and commingled after mining and prior to sale. One commenter suggested that operators engaging in such practices should calculate the variation in inherent moisture, if any, between seams and pits, and, should this variation exceed 10 percent, the operator should also be required to provide separate calculations for the approximate tonnages mined from each seam or pit. OSMRE agrees that an operator who blends coal from multiple seams should determine the inherent moisture of each seam. A weighted average of the inherent moisture test results for each seam should be used to determine the excess moisture allowance where any variation in inherent moisture is found.

The rule does not contain the "10 percent" factor suggested by the commenter, or expressly impose separate testing requirements for each pit. Whether separate inherent moisture tests are required for separate pits in which the same seam is mined depends upon the proximity of the pits and other factors which could cause the percentages to differ from one another.

Section 870.18(d)

Section 870.18(d) requires an operator to retain the results of all laboratory analyses and all other relevant documentation (including the operator's books and records) for not less than six years after the date of each analysis. This provision is similar to the proposed rule which required that analyses be retained for six years.

The operator is responsible for adequate quality control over the sample collection and preparation process, verification of the validity and frequency of all sampling and testing, and maintenance of the documentation for not less than six years. Specification of a minimum six-year retention period is not intended to limit an operator's responsibility to pay, or limit the Secretary's right to collect improperly deducted AML fees after the six-year period.

Section 870.18(e)

Section 870.18(e) cross-references 30 CFR 870.15(c), which allows OSMRE to collect interest upon delinquent AML fee payments. It makes explicit what was implicit in the proposal, namely, that OSMRE can disallow an incorrectly taken weight reduction and compute interest from its point of delinquency.

Discussion of General Comments

OSMRE sought comments on specific economic hardships caused by the prior rule, and the degree to which the proposed rule would alleviate such impacts. Also, OSMRE solicited comments on the likely impact of the proposed rule on the coal industry, as well as information on changes in the industry since 1982.

Many commenters asserted that bituminous and anthracite coal operators were treated differently than lignite coal operators under the prior regulations, because, in their view, for reclamation fee purposes OSMRE excluded water from the computation of tonnage for lignite produced.

There has been no preferential regulatory treatment of lignite operators by OSMRE, as alleged by these commenters. Section 701(30) of the Act defines lignite coal to mean "consolidated lignitic coal having less than 8,300 British thermal units per pound, moist and mineral matter free." Lower-rank coal is classified "according to gross calorific value on the moist basis," as stated in ASTM Standard Classification of Coals by Rank, D 388–84. Under the definition of "lignite coal" in 30 CFR 870.5 the word "moist" refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal. However, once coal is determined to be of the lignite rank, the fee is assessed on the same basis (tonnage or value) as any other coal, although at a lower rate. Thus, prior to the promulgation of this rule, lignite producers were not allowed a moisture deduction.

Commenters stated that foreign countries impose little, if any environmental regulation or taxes on coal production. They argued that the Federal Government should not unnecessarily burden the U.S. coal producer with unfair and illogical fees or taxes. Several commenters viewed the proposed rule as a way to make coal more competitive and reduce the need for foreign oil to meet the energy needs of this country. One commenter thought that the sampling and testing procedures would alleviate economic hardships on coal suppliers by eliminating numerous record retention requirements. However, the rule requires operators to retain all documentation concerning any claimed excess moisture allowance for at least six years.

One commenter noted that purchasers of coal pay for it based on its calorific value (heat content), rather than its delivered gross weight and that this pattern automatically compensates for excess moisture. A public utility commented that AML fees paid on the gross weight of the coal at the point of first disposition, including total moisture, inflate the taxable tonnage by the amount of additional moisture accumulated during mining, processing, and delivery. This commenter, stated that it paid $9 million per year in AML fees, noted that reclamation fees are ultimately "passed through" to the consumers, through open market or contract price adjustment, and estimated that the proposed rule could reduce its annual costs by $350,000. One commenter characterized the market for coal as weaker and more competitive than in 1982, claiming that it is now more difficult for coal producers to pass on reclamation fees to consumers. The commenter suggested that the excess moisture allowance would provide some relief to industry because it would permit operators to use that money in their businesses. All of these comments have been considered in formulating the final rule.

User Fee Not Adopted

At the request of the Office of Management and Budget, OSMRE also requested comments on whether a user fee should be imposed on operators taking the allowance. One commenter remarked that, if OSMRE's "policing" of proposed laboratory certification procedures would be the reason for imposing an operator's user fee, then abandonment of such a procedure would obviate any need for the fee. Another commenter stated that, since the proposed rule would place the burden of documenting the allowance claimed on the producer, OSMRE's costs to administer the allowance claim process should be minimal. Still another commenter asserted that, if the rule proposed that OSMRE perform the calculation, there might be some logic in requiring the payment of a user fee, but that this is not the case. One commenter asserted that there is no statutory authority to require payment of monies because an operator has taken an allowance authorized by regulation, and argued that a user fee would penalize a company for complying with the law. This commenter claimed that most companies would forgo the allowance due to the expense of determining total and inherent moisture, if it would not save them a substantial amount of money. In addition, the commenter stated that such a fee would again require coal producers to make two calculations, only one of which would exclude surface moisture. Finally, a commenter suggested that OSMRE's consider all its user fees together, to ensure consistency and rationality in any user fee schedule it adopts.

OSMRE agrees that its justification for the imposition of a user fee upon operators who take an excess moisture allowance was not fully explained in the proposed rule. Section 412(a) gives OSMRE the authority to impose a user fee to offset the cost of agency services. OSMRE has evaluated the advantages and disadvantages of imposing a user fee on operators who take the allowance. Under final 30 CFR 870.16, an operator is required to establish the basis for the excess moisture allowance through standardized laboratory tests. OSMRE is not required to certify laboratories. The operator must pay for the tests, ensure that they are valid, and retain documentation to support the claimed excess moisture allowance. Therefore, OSMRE's cost to administer the rule should not be substantial and no user fee is needed.

If in the future, OSMRE observes that administrative costs of implementing this rule are significantly higher than currently estimated, OSMRE will propose a rule to establish a user fee.

Regional Effects

OSMRE also sought comments on the regional application of the prior rule and whether the final rule could more equitably address regional differences in climate, business practices, or other factors. One commenter stated that there is no need to apply the rule differently in different regions. The commenter added that the natural geological makeup of coals will compensate for differences in the minerals, and that any differences in mineral constituents is geological, not geographical. Another commenter stated that the rule will only benefit operators

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if the coal is processed prior to marketing, and would have very limited benefit in regions where coal preparation routinely is not required.

Several commenters observed that the amount of tax calculated under the present rule varies from region to region due to variations in climate, the amount of rainfall, and the preparation or washing required for an operator to sell coal. One commenter stated that regional differences in excess moisture content result from the climatic conditions under which the coal is mined, type of mining, proximity to markets, and mode of transportation. Another commenter stated that an operator should not be penalized or required to pay a premium with respect to reclamation fees simply because its operation includes a coal washing operation or because the coal contains additional noninherent moisture from rainfall or other sources. A commenter stated that the proposed rule should be applied on a national basis and that there should be consistency within a mining district or region with regard to the allowable inherent moisture. This commenter recommended the use of uniform standard values for inherent moisture to reduce the need for expensive exploration, sampling, testing, and retention of records. OSMRE generally agrees with these commenters.

The final rule will apply on a national basis. In part, it is intended to reduce regional disparities based upon climatic and other conditions which affect amounts of excess moisture. At this time OSMRE is not willing to specify uniform standard values for inherent moisture and prefers to base the deduction on site-specific determinations. OSMRE recognizes that it may be possible to develop uniform standards that could be valid for particular coal seams in local geographic areas. Such standards would have to evolve over time.

Comments on Congressional Intent

A commenter asserted that Congress chose a 15-year period for the imposition of AML fees "in order to assure the availability of monies for program purposes," and that any reduction in the amount of AML fees would negatively impact the reclamation of eligible lands, contrary to Congressional intent. One commenter stated that there is no Congressional intent to allow any adjustments to be made prior to calculation and assessment of the fee, and that Congressional intent was to assess the fee on the gross weight of coal, including both inherent and excess moisture. The commenter stated that Congress where it intended to differentiate or adjust the fee, such as in the case of lignite, stated so explicitly.

OSMRE disagrees with the commenter's view that Congressional intent can be discerned on this issue. In the *Drummond* case, cited earlier, the court concluded that the Act is ambiguous and the legislative history is silent on the issue. Regarding the Act, the court observed that "Congress, however, did not define 'coal' in the statute—still less the term 'coal produced,' upon which the fee is levied. Like the district court, we do not find the ordinary meaning of that term unambiguous * * *." *Drummond, supra,* at 505. As to the legislative history, the court stated that "[t]he legislative history simply does not disclose the requisite specific intent upon which a court could properly rely to overturn the Secretary's regulations. Congress in fact never addressed the particular issue that we confront in this case." *Id.* at 506 (footnote omitted).

One commenter stated that Congress established the rate of assessment for AML fees based on assumptions which the commenter believed are inconsistent with the proposed rule. The commenter asserted that Congressional projections concerning the yield of the fee were based upon tonnage figures compiled by the U.S. Bureau of Mines, based on a methodology with no reduction of gross weight for excess moisture. The commenter asserts that, had Congress contemplated such a deduction, the matter certainly would have appeared of record since such a deduction would impact the fund by approximately 10 percent, and Congress would likely have offset that deduction by an increase in the assessment rate. The commenter, quoting the Act's legislative history, stated that the projections were "based on the most recent annual coal statistics concerning tonnage."

Again, OSMRE agrees with the court of appeal's conclusion that the legislative history does not address the issue of a moisture deduction. Additionally, OSMRE disagrees with the analysis presented by the commenter. The complete quote, which was not presented by the commenter is: "It is estimated that the reclamation fee adopted by the committee would yield approximately $140–$160 million per year based on the most recent annual coal statistics concerning tonnage, method of mining and estimated average value at the mine." H.R. Rep. 95–218, 95th Cong. 1st Sess. 137 (1977). Thus, more than just tonnage was a factor in setting the fee structure. In fact, actual receipts to the fund, over its ten year history, have been greater than $200 million per year, more than 25 percent higher than Congressional projections. The House Report does include the following principal Congressional considerations concerning the basis for AML fees: "First, to set the fee at such a level that it is not a burden on the industry; second, to provide at the same time sufficient funds for meeting program objectives within a reasonable timeframe; and third, to structure the fee so it would not exert an inflationary influence in the economy." *Id.* There is little evidence that a moisture deduction figured in these considerations.

Coordination With IRS

One commenter asserted that consistency with IRS treatment of Black Lung taxes is insufficient to support OSMRE's policy because the IRS and OSMRE programs are not required to be consistent and serve different purposes.

Under Section 201(c)(12) of the Act, the Secretary is required to cooperate with other Federal agencies to minimize duplication of inspections, enforcement and administration of the Act. As a step towards more consistent treatment, this rule fosters cooperation between OSMRE and IRS and is intended to reduce duplication of both enforcement and administration. In its November 18, 1987 letter to the Department of the Interior, the IRS stated: "The DOI proposed regulation recognizes the importance of consistent positions between the DOI and the IRS rules. We agree that the calculations for the AML fees and the Black Lung tax ideally should be based on the same measurement system * * *."

Although the IRS cannot generally provide information to OSMRE on specific taxpayers, 26 U.S.C. 6103, such information may be disclosed in certain circumstances. For instance, under 26 U.S.C. 6103(c), if a taxpayer consents to such disclosure, the IRS may disclose information to OSMRE. An operator may consent if such information would benefit the operator. Also, under 26 U.S.C. 6103(i), upon request, certain information may be disclosed to OSMRE employees for use in criminal investigations, such as under Section 402(d) of the Act. Moreover, where the two agencies have consistent regulations, the IRS can provide technical advice and training to OSMRE.

OSMRE has been coordinating its AML reclamation fee compliance with IRS Black Lung tax enforcement efforts for years. Since 1982, the Interior Department has had a Memorandum of Agreement with the IRS and routinely sends its audit results to the IRS Assistant Commissioner (Examination).

The importance of the assistance that can be provided to IRS by OSMRE's AML fee auditors was expressly recognized in testimony by the National Wildlife Federation (NWF) on July 14, 1987 before the U.S. House of Representatives Subcommittee on Mining and Natural Resources of the Committee on Interior and Insular Affairs. NWF noted that both the AML fund and the Black Lung Tax are based on payments by coal operators for each ton of coal produced. NWF suggested an expanded use of AML auditors to check whether Black Lung payments are appropriately made.

One commenter stated that the proposed definition of "excess moisture" understates the allowance permitted under Revenue Ruling 86–96. This commenter urged that, to conform to that Revenue Ruling and the *Taft* decision, the allowance must cover all moisture in excess of inherent moisture. The commenter stated that, because proper application of the IRS ruling requires the use of ASTM analytic methods and definitions, OSMRE should substitute the term "free moisture" in coal for "excess moisture." Another commenter noted that coal producers are currently working with the IRS to develop a consensus on the method to be used to measure excess moisture content in coal for Black Lung tax purposes. This commenter suggested that the OSMRE and the IRS explore the possibility of implementing the same testing procedures to avoid confusion.

To the extent the revised rule offers a coal operator an opportunity to reduce an estimated excess moisture amount from the weight of coal tonnages on which a reclamation fee is paid, it is consistent with IRS Revenue Ruling 86–96.

OSMRE considered joint rulemaking with the IRS to prescribe a standard test to calculate excess moisture for both Black Lung tax and AML fee purposes. The IRS advised that it could not use the ASTM D 1412–85 Equilibrium Moisture Test as a universal standard for determining excess moisture due to the controversial nature of that test. Further, the IRS does not plan at this time to prescribe any specific tests or definitions for use in determining excess moisture. They will instead rely on the competent evidence requirement discussed above. Coal operators should be aware that an excess moisture determination accepted or acceptable under this rule for purposes of the AML fee may not meet the IRS requirements for the Black Lung tax.

Relation to 1982 Rule

One commenter pointed out that the current proposal was considered and rejected by the agency in the 1982 revisions to 30 CFR Part 870 (47 FR 28578, June 30, 1982). OSMRE has reevaluated its 1982 statements on this issue. The basis for rejecting an excess moisture deduction in 1982 was the following:

> If moisture deductions were allowed, audit of operator records would be further complicated and laboratory analyses required to document moisture content. Moreover, such deductions could reduce fee collections by many millions of dollars over the 15-year life of the Fund.
>
> 47 FR 28578 (June 30, 1982).

The earlier concerns about auditing can be resolved. Under this final rule and the anticipated change to the OSM–1 Form, operators will have to report the amount of the excess moisture weight reduction and the inherent and total moisture percentages upon which it is based. Although OSMRE auditors will have to examine these factors, § 870.18(a) requires operators to demonstrate that the deduction is properly taken and § 870.18(d) requires the operators to retain the relevant documentation. Thus auditing can be successfully achieved.

As to the requirement for laboratory analysis, alluded to in 1982, that is a cost of taking the deduction. If an operator wishes to avoid laboratory analyses, he or she is not obligated to take an excess moisture weight reduction.

Regarding the concern that an excess moisture weight reduction will reduce fee liability over the life of the AML fund, the prospective nature of this rule will limit its applicability to less than five years. Although this could mean an effect of several million dollars, no overriding reason exists as to why operators should pay a fee on excess moisture. The amount actually lost to the fund will depend on the number of operators who claim the allowance, and the amount of the allowances they claim. All operators will not claim an allowance because coal is not always exposed to conditions under which excess moisture may accumulate prior to the point of bona fide sale, transfer of ownership, or use. Therefore, no one can precisely predict the impact of the final rule on the fund.

In 1982, OSMRE also rejected a proposal which would have allowed operators to take moisture deductions in particular States where similar deductions were allowed for state coal severance tax purposes. OSMRE rejected such an approach because it believed that to be equitable the Federal rules should be applied uniformly. Because of the wide variety of State severance tax approaches, OSMRE was concerned that a rule based upon State taxing mechanisms could result in considerable competition among the States and encourage similar proposals for other deductions. See 47 FR 28578 (June 30, 1982).

One commenter asserted that, because State severance tax programs generally have not changed since 1982 with regard to allowing moisture deductions, OSMRE's earlier concerns about interstate competition and the effect on other programs remain valid.

OSMRE agrees that its earlier concerns are valid, but disagrees that this rule will have such deleterious effects. The competition among states about which OSMRE was concerned would have resulted, not from allowing the moisture deduction generally, but from allowing it only in those states with particular taxing structures. This final rule grants an excess moisture allowance nationwide, and it should not encourage competition among States that might have resulted from a State-by-State allowance. Moreover, OSMRE does not intend to encourage proposals for other deductions.

Although in 1982 the agency rejected the excess moisture allowance contained in this final rule, circumstances have changed. In 1982, the IRS did not recognize the excess moisture weight reduction for Black Lung Tax purposes. Since the *Taft* decision in 1985, cited earlier, and the 1986 revenue ruling, IRS does allow such a reduction.

A moisture deduction is a rational policy choice within the bounds of the Secretary's discretion. Since Congress did not determine what the weight of coal should include, the Secretary has discretion to adopt a reasonable option for determining fee liability. "[I]f the statute is silent or ambiguous with respect to the specific issue, the question * * * is whether the agency's answer is based on a permissible construction of the statute." *Chevron, U.S.A. v. Natural Resources Defense Council,* 467 U.S. 837, 843 (1984). A reviewing court will need not conclude that the agency's interpretation of the statute was the only permissible one, only that it was reasonable, and not arbitrary, capricious, or contrary to law.

In the case of *Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 42 (1983), the court stated that

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"[r]egulatory agencies do not establish rules of conduct to last forever, and that an agency must be given ample latitude to adapt their rules and policies to the demands of changing circumstances." The agency is obliged to articulate a reasonable basis for its current position. It has done so.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in the rule have been approved by the Office of Management and Budget in accordance with 44 U.S.C. 3501 *et seq.* and assigned clearance no. 1029–0090. The information is needed to meet the requirements of section 402 of the Act, and will be used by OSMRE to fulfill its statutory mission to collect reclamation fees. The obligation is imposed to obtain a benefit.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State or local governments. The rulemaking will provide an economic benefit to the fee payer. Therefore, the rule should not add appreciably to the cost of operating a mine in compliance with a regulatory program. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a final environmental assessment (EA) and has determined that the final rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 102(2)(C). A Finding of No Significant Impact has been approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the Administrative Record (see "ADDRESSES"). Because potential impacts of this rule on the AML Fund are speculative and, in any case, not related to any identifiable reclamation projects, the programmatic environmental impact statement, OSM–EIS–2, covering the implementation of program policies should also be consulted for discussions of the impacts of varying allocation approaches.

Authors

The principal authors of this rule are Jane E. Robinson and Dr. Kewal K. Kohli, Office of Surface Mining Reclamation and Enforcement, Address: 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–2826 (Commercial or FTS)

List of Subjects in 30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, Part 870 is amended to read as follows:

Dated: April 13, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 870—ABANDONED MINE LAND RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for Part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

2. Section 870.5 is amended by adding the following definitions of "excess moisture," "inherent moisture," and "total moisture" in alphabetical order:

§ 870.5 Definitions.

* * * * *

Excess moisture means moisture determined to be the difference between total moisture and inherent moisture.

* * * * *

Inherent moisture means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but not that present in macroscopically visible fractures.

* * * * *

Total moisture means the moisture determined as the loss in weight in an air atmosphere under rigidly controlled conditions of temperature, time and air flow.

* * * * *

3. Section 870.12(b)(3)(i) is revised to read as follows:

§ 870.12 Reclamation fee.

* * * * *

(b) * * *

(3)(i) Impurities that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator, excluding excess moisture for which a reduction has been taken pursuant to § 870.18, shall not be deducted from the gross weight.

* * * * *

4. Section 870.18 is added as follows:

§ 870.18 Excess moisture content allowance.

For coal produced on or after July 1, 1988, the operator may take a calculated weight reduction to allow for the weight of excess moisture in the coal, subject to the following requirements:

(a) The operator shall demonstrate through competent evidence that there is a reasonable basis for determining the existence and amount of excess moisture. Documentation shall be updated as necessary to establish the continuing validity of the excess moisture content allowance taken by the operator.

(b) Inherent and total moisture shall be tested using standard laboratory analyses.

(c) The operator shall test for variations in inherent moisture amounts for different seams of coal produced which are blended prior to the initial bona fide sale, transfer of ownership, or use of the coal by the operator.

(d) The operator shall retain the results of all laboratory analyses and all other relevant documentation (including the operator's books and records) for not less than six years after the date of each analysis.

(e) If the Office disallows all or part of the allowance, the operator shall submit the additional fee, together with interest computed under § 870.15(c).

[FR Doc. 88–11632 Filed 5–26–88; 8:45 am]

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federal register

Friday,
May 27, 1988

Part VI

Federal Trade Commission

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Central Air Conditioners and Heat Pumps; Final Rule

VOL 53 ISS 103 MY 27 1988 UMI

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Central Air Conditioners and Heat Pumps

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing the ranges of comparability to be used on required labels for central air conditioners and heat pumps and by updating the annual national average cost figure for electricity to be used in the cost calculation formula required on fact sheets and in directories for consumers to use to calculate their own heating and cooling costs. The Commission also issues an enforcement policy statement regarding delays in complying with the rule's fact sheet/directory requirement.

On December 10, 1987 (52 FR 46888), the Federal Trade Commission amended its Appliance Labeling Rule by extending coverage to central air conditioners and heat pumps. This rule publishes the new range figures for those appliances, which, under §§ 305.10, 305.11, and 305.14 of the rule, must be used in the labeling and advertising of central air conditioners and heat pumps beginning June 7, 1988.

The amendments require manufacturers to provide energy usage disclosure labels on each covered product and to provide additional energy usage and cost disclosure requirements by either preparing fact sheets or by being listed in an industry directory that contains the required information. The Air Conditining and Refrigeration Institute (ARI) is currently producing a directory that will be used by most industry members instead of fact sheets, but it will not be published until nine weeks after the effective date of the amendments. The Notice announces that, in making its enforcement decisions, the Commission will take into account the fact that publication of ARI's Directory will not be possible until August 15, 1988.

The rule also updates the national average cost for electricity that must be used in the cost calculation formulas that manufacturers must provide on fact sheets or in directories.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–326–3035, or Neil J. Blickman, 202–326–3038, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Ranges and Cost Figures

Section 324 of the Energy Policy and Conservation Act of 1975 ("EPCA") [1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances classified as "covered products" by section 322(a) of EPCA: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average costs a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final Rule covering seven of the thirteeen appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.[2]

The Rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels and in retail sales catalogs for all covered products, except furnaces, manufactured on or after May 19, 1980. For furnaces, the energy usage information must be disclosed on separate fact sheets, while the labels on the products disclose energy-saving tips and direct consumers to the fact sheets. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating ("EER") information. The required disclosurers and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

On December 10, 1987 (52 FR 46888), the Federal Trade Commission amended the Appliance Labeling Rule by extending coverage to include a new category of appliances—central air conditioners and heat pumps. For these products the Commission adopted a disclosure scheme that consists of labels showing simple energy efficiency and range information, together with a requirement to disclose further efficiency and cost information by means of either fact sheets or a listing in a general directory containing such information.

Pursuant to § 305.8 of the rule, manufacturers originally submitted reports to the Commission by January 21, 1980. Manufacturers of central air conditioners and heat pumps made their first submission on February 8, 1988. These reports contained information on the estimated annual cost or energy efficiency rating for the eight categories of appliances derived from tests performed pusuant to the DOE test procedures. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From that information, the Commission compiled and published [3] ranges of comparability for each product (except central air conditioners and heat pumps), as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires manufacturers, after filing this initial report, to report annually by specified dates for each product type.[4] Because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability of costs or energy efficiency ratings are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually), if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The figures for the energy efficiency ratings for central air conditioners and heat pumps have been submitted and have been analyzed by the Commission. After analyzing the thousands of individual efficiency figures that were submitted by the industry for the units they produce, the Commission has determined to publish separate sets of ranges for single package units and split system units.[5] Because the decision as to which type to select depends, to a great extent, on the physical setup of the consumer's home, consumers who are shopping for one type of system are not likely to be interested in the other. Since the two categories have differing ranges of efficiencies, the two sets of ranges are necessary to give consumers the best information for their specific purchasing decisions. The new ranges published today are for the two types of systems.

In addition to establishing the ranges for these products, the Notice provides an updated figure for the annual national average cost of electricity. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by the Department of Energy for the industry's use in calculating the cost figures required by the Commission's Rule. The cost figure for electricity must be used in the cost calculation formulas that appear in Appendices H and I. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. The figure that was current when the rule amendments were published was 7.94 cents per kilowatt-hour, and the updated figure, which DOE published on December 23, 1987 (52 FR 48563), is 8.04 cents per kilowatt-hour. The formulas (and calculations) in both Appendices have been changed to reflect this.

II. Enforcement Policy Statement

When the Commission extended the rule's coverage to include central air conditioners and heat pumps, it provided for a disclosure scheme consisting of labels attached to the products that show the efficiency of the individual product and the range of efficiencies of all products of that basic type (split system heat pump, single package air conditoner, etc.). As an additional requirement, manufacturers must disclose cost information. They can accomplish this in either of two ways: by providing fact sheets for each model they sell, or by having each model included in a directory that shows the required information.

Most of the manufacturers of central air conditioners and heat pumps are members of the Air Conditioning and Refrigeration Institute, which produces a directory showing efficiency and cost information for the models its members manufacture and sell. At this point, the only directory that the Commission knows will be used instead of fact sheets is the ARI Director. This means that almost all members of this industry will be disclosing cost information in the AIR Directory, instead of preparing fact sheets.

By letter of March 21, 1988, counsel for ARI requested that there be an accommodation to allow persons covered by the rule until August 15, 1988 to comply with the rule, which will become effective on June 7, 1988. As the result of meetings between Commission staff and ARI representatives since March 21, ARI has refined its request to apply *only* to publication of the ARI Directory on August 15, and *not* to the affixing of labels to products.

In support of its request, ARI noted that the August 15th date would enable manufacturers to come into compliance with the "directory option" to the fact sheet requirement simultaneously with publication of ARI's Directory. ARI explained that coordination between the rule's effective date and the publication date was impossible due to the difficulty in ascertaining, in advance, the exact time of the rule's issuance. ARI also noted that the Directory is a one-inch thick book with detailed entries for tens of thousands of models, and that it would be impossible to move the publication date up to coincide with the effective date of the rule.[6]

In view of the foregoing considerations, the Commission has decided that, in making its enforcement policy decisions concerning compliance with the rule's fact sheet/directory requirements, it will take into account the fact that publication of ARI's Directory will not be possible until August 15, 1988.

III. Amendments

In consideration of the foregoing, the Commission revises Appendices H (1) and (2) and I (1) and (2) of its Appliance Labeling Rule by publishing the following ranges of comparability and cost figures for use in the labeling and advertising of central air conditioners and heat pumps beginning June 7, 1988.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is revised as follows:

1. The authority citation for Part 305 is revised to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), and as amended by the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Appendices H and I of Part 305 are revised to read as follows:

Appendix H.—Cooling Performance and Cost for Central Air Conditioners

1. *Range Information:*

SINGLE PACKAGE UNITS

Manufacturer's rated cooling capacity (BTU/hr.)	Range of EER's	
	Low	High
Central air conditioners (cooling only): All capacities	5.60	10.20
Heat pumps (cooling function): All capacities	6.50	10.50

SPLIT SYSTEM UNITS

Manufacturer's rated cooling capacity (BTU/hr.)	Range of EER's	
	Low	High
Central air conditioners (cooling only): All capacities	5.85	15.00
Heat pumps (cooling function): All capacities	7.25	13.05

2. *Yearly Cost Information:*

For each model, display three annual operating costs, based on 8.04¢ per kilowatt hour, rounded to the nearest $10, corresponding to the three building heat gains from the chart below:

Manufacturers rated cooling capacity (BTU/hr)	Building heat gain (in 1000's BTU's/hr)		
Up to 9,000	3	6	9
9,100 to 15,000	9	12	15

[1] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (Nov. 19, 1979). The Statement of Basis and Purpose for the final Rule describes the reasons the Commission declined to cover the other categories of covered products. *Id.* at 66467–69.

[3] 45 FR 13998 (Mar. 3, 1980), 45 FR 19630 (Mar. 25, 1980), 45 FR 26036 (Apr. 17, 1980), 46 FR 3629 (Jan. 16, 1981).

[4] Reports for clothes washers are due by Mar. 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for central air conditioners and heat pumps are due by July 1 and reports for refrigerators, refrigerator-freezers and freezers are due by Aug. 1.

[5] With single package systems, both of the main components of the system—the compressor and the evaporator coil—are in a single unit. With split systems, the compressor is most commonly outside, while the evaporator coil is inside the ductwork. As published, the rule contemplated separate ranges for single package and split system units.

[6] Because the labels (which will alert consumers to the fact sheet/directory requirements) only have to be placed on products manufactured on and after June 7, and because of the time that it will take for those products to reach the retail level, it is likely that there will be only a short period of time between the appearance of the labels and the availability of the Directory.

Manufacturers rated cooling capacity (STU/hr)	Building heat gain (in 1000's BTU's/hr)		
15,100 to 21,000	15	18	21
21,100 to 27,000	21	24	27
27,200 to 33,000	27	30	33
33,200 to 39,000	33	36	39
39,500 to 45,000	39	42	45
45,500 to 51,000	45	48	51
51,500 to 57,000	51	54	57
57,500 to 63,000	57	60	63
63,500 and over	63	66	69

The values of building heat gain are to be considered cooling capacities in the calculation of annual operating cost in accordance with 10 CFR 430.22 (n)(1)(i).

Include the following note on every fact sheet page that lists annual operating costs.

Note: These figures are based on U.S. Government standard tests and are for national averages of 1200 cooling load hours and 8.04¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given [direct user to location].

The methodology referred to in the note is provided below. This information shall be included a least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this methodology must be provided on or with the unbound fact sheets.

How to Estimate Your Cooling Cost

To estimate your actual cost of operation, find your cooling load hours from the map, your average annual operating cost from the National Average Annual Operating Cost Table, and determine your electrical rate in cents per kilowatt hour (KWH) from your electric bill.

$$\text{Your estimated cost} = \text{Listed average annual operating cost}^{*} \times \frac{\text{Your cooling load hours}^{**}}{1{,}200} \times \frac{\text{Your electrical rate in cents per KWH}}{8.04¢}$$

* From the National Average Annual Operating Cost Table.
** From the map.

Example: If your cooling load hours=1500, and your electric rate is 12.00¢/KWH and your listed annual operating cost is $100, then:

$$\text{Your estimated cost} = \$100 \times \frac{1{,}500}{1{,}200} \times \frac{12.00¢}{8.04¢}$$

Your estimated cost = $100(1.25)(1.5) = $225.
Your estimated cost = $225.

[illegible]

Cooling Load Hour Map

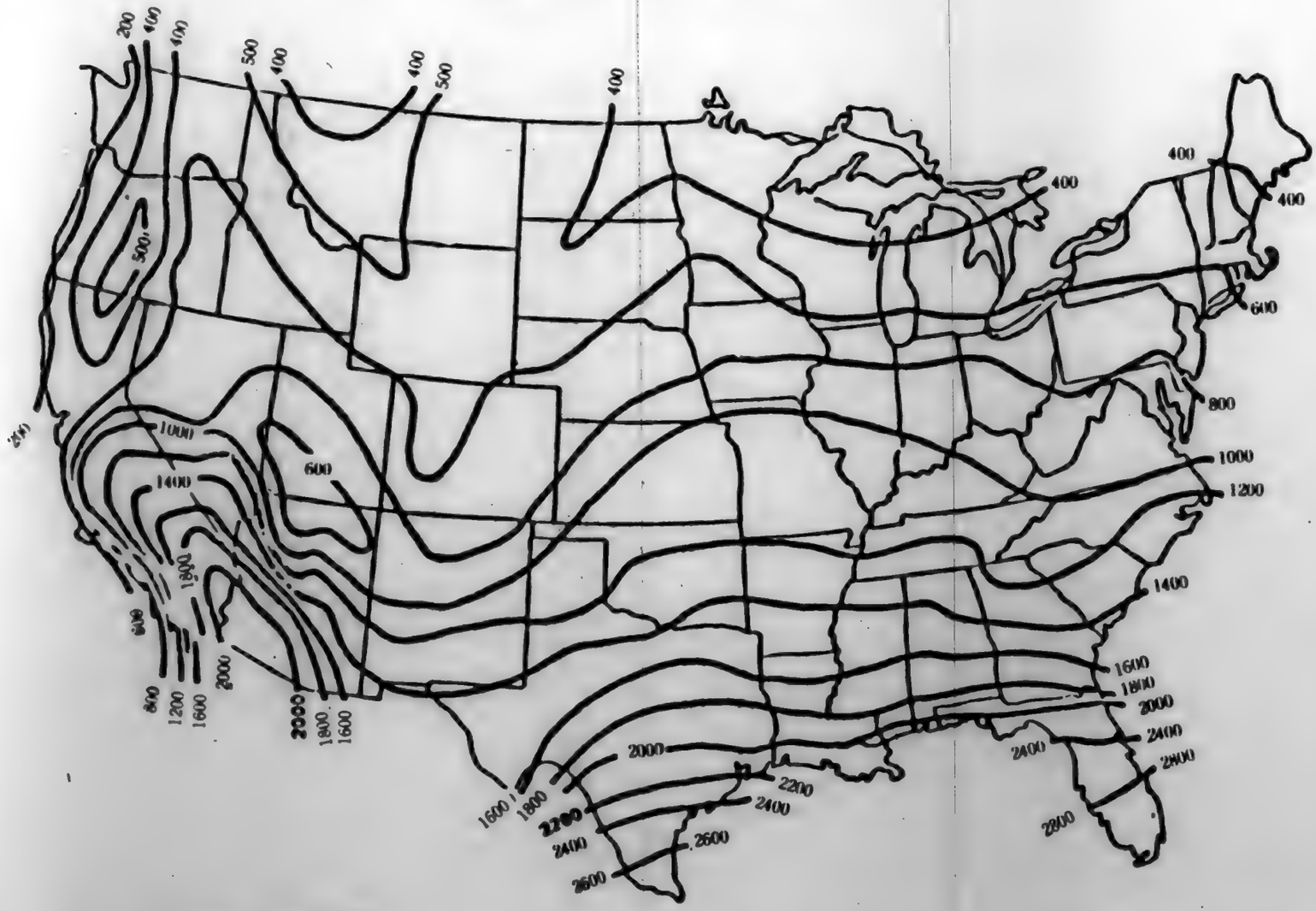

		Cooling	Load	Hours
Alaska	– 0	"	"	"
Canal Zone	– 6,000	"	"	"
Guam	– 6,600	"	"	"
Hawaii	– 2,300	"	"	"
Puerto Rico	– 6,000	"	"	"
Samoa	– 6,600	"	"	"
Virgin Island	– 6,000	"	"	"

This map must be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this map must be provided on or with the separate fact sheets.

AN EXAMPLE OF A FACT SHEET FOR
CENTRAL AIR CONDITIONERS OR FOR ONLY
THE COOLING FUNCTION OF HEAT PUMPS

ENERGYGUIDE

CENTRAL AIR CONDITIONER (Cooling only)

Cooling Capacity

MODELS			
	XXX/C1	31,000	BTU/hr
	XXX/C2	31,400	BTU/hr
	YYY/C3	29,000	BTU/hr
	YYY/C6	29,400	BTU/hr

Comparability Range: 27,200 to 33,000

NOTE Since product-specific labels showing ranges are required on each product, the inclusion of ranges on fact sheets is optional.

COOLING PERFORMANCE

Model XXX/C1
Least Efficient Model 6.00 — This Model 7.70 — Most Efficient Model 12.00
Energy Efficiency Rating (EER)

Model XXX/C2
Least Efficient Model 6.00 — This Model 7.60 — Most Efficient Model 12.00
Energy Efficiency Rating (EER)

Model YYY/C3
Least Efficient Model 6.00 — This Model 8.00 — Most Efficient Model 12.00
Energy Efficiency Rating (EER)

Model YYY/C6
Least Efficient Model 6.00 — This Model 7.90 — Most Efficient Model 12.00
Energy Efficiency Rating (EER)

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings may vary slightly with different coils.

(This is Page 1 of Sample Fact Sheet)

NATIONAL AVERAGE ANNUAL OPERATING COST TABLE ($ PER YEAR)

MODEL	Building Heat Gain (BTU/hour)		
	27,000	30,000	33,000
XXX/C1	$200	$220	$240
XXX/C2	$200	$220	$240
XXX/C3	$190	$210	$230
XXX/C6	$190	$210	$230

NOTE: These figures are based on U.S. Government standard tests and are for national averages of 1000 cooling load hours and 8.04¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is provided on page 2 of this fact sheet.

HOW TO ESTIMATE YOUR COOLING COST:

To estimate your actual cost of operation, find your actual cooling load hours from the map, your average annual operating cost from the National Average Annual Operating Cost Table, and determine your electrical rate in cents per kilowatt hour (KWH) from your electrical bill.

$$\text{Your Estimated Cost} = \text{Listed average annual operating cost*} \times \frac{\text{Your cooling load hours**}}{1000} \times \frac{\text{Your Electrical rate in cents per KWH}}{8.04¢}$$

* From the national average table, above
** From map

Example: If your cooling load hours are 1500, and your electric rate is 12.06¢/KWH, and your listed annual operating cost is $100, then

$$\text{Your Estimated Cost} = \$100 \times \frac{1500}{1000} \times \frac{12.06¢}{8.04¢}$$

$$\text{Your Estimated Cost} = \$100 \times 1.5 \times = \$225$$

Your Estimated Cost = $225

(This is page 2 of sample fact sheet)

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Appendix L—Heating Performance and Cost for Central Air Conditioners

1. *Range Information:*

SINGLE PACKAGE UNITS

Manufacturer's rated heating capacity (BTU/hr.)	Range of EER's	
	Low	High
Heat pumps (heating function): all capacities	5.05	7.80

The EER shall be the Region IV value based on the appropriate average design heat loss from the table below.

SPLIT SYSTEM UNITS

Manufacturer's rated heating capacity (BTU/hr.)	Range of EER's	
	Low	High
Heat pumps (heating function): All capacities	5.30	8.90

The EER shall be the Region IV value based on the appropriate average design heat loss from the table below.

2. *Yearly Heating Cost Information:* For each model, display a regional annual operating cost, based on 8.04¢ per kilowatt hour, rounded to the nearest $10, calculated according to 10 CFR § 430.22(m)(3)(ii) for each region. The heat loss of home values given in the chart below are to be considered standardized design heating requirements in the calculation of annual operating cost in accordance with 10 CFR § 430.22(m)(3)(ii).

Capacity	Region	Average design heat loss (in 1000's Btu's/hr.)	Heat loss of home values used on the grid (in 1000's Btu's/hr.)
Up to 9,000	1	10	5, 10
	2		5, 10, 15
	3		5, 10, 15
	4		10, 15, 20
	5		10, 15, 20
	6		5, 10, 15
9,100 to 15,000	1	20	5, 10, 15
	2		5, 10, 15, 20
	3		10, 15, 20, 25
	4		10, 15, 20, 25, 30
	5		10, 15, 20, 25, 30
	6		5, 10, 15, 20
15,100 to 21,000	1	25	10, 15, 20
	2		10, 15, 20, 25
	3		15, 20, 25, 30
	4		15, 20, 25, 30, 35, 40
	5		15, 20, 25, 30, 35, 40
	6		10, 15, 20, 25, 30, 35
21,100 to 27,000	1	30	10, 15, 20, 25
	2		15, 20, 25, 30
	3		15, 20, 25, 30, 35, 40
	4		20, 25, 30, 35, 40, 50
	5		20, 25, 30, 35, 40, 50, 60
	6		15, 20, 25, 30, 35, 40
27,100 to 33,000	1	35	15, 20, 25, 30
	2		20, 25, 30, 35, 40
	3		20, 25, 30, 35, 40, 50
	4		25, 30, 35, 40, 50, 60
	5		25, 30, 35, 40, 50, 60, 70, 80
	6		20, 25, 30, 35, 40, 50, 60
33,200 to 39,000	1	50	15, 20, 25, 30, 35
	2		25, 30, 35, 40, 50
	3		30, 35, 40, 50, 60
	4		35, 40, 50, 60, 70, 80, 90
	5		35, 40, 50, 60, 70, 80, 90
	6		25, 30, 35, 40, 50
39,500 to 45,000	1	60	20, 25, 30, 35, 40
	2		25, 30, 35, 40, 50, 60
	3		30, 35, 40, 50, 60
	4		40, 50, 60, 70, 80, 90, 100
	5		40, 50, 60, 70, 80, 90, 100, 110
	6		25, 30, 35, 40, 50, 60, 70, 80
46,500 to 51,000	1	70	20, 25, 30, 35, 40
	2		30, 35, 40, 50, 60
	3		35, 40, 50, 60, 70, 80
	4		50, 60, 70, 80, 90, 100, 110
	5		50, 60, 70, 80, 90, 100, 110, 130
	6		30, 35, 40, 50, 60, 70, 80, 90, 100, 110, 130
51,500 to 57,000	1	70	25, 30, 35, 40, 50
	2		35, 40, 50, 60, 70
	3		40, 50, 60, 70, 80, 90
	4		50, 60, 70, 80, 90, 100, 110
	5		50, 60, 70, 80, 90, 100 ,110, 130
	6		35, 40, 50, 60, 70, 80, 90, 100
57,500 to 63,000	1	80	25, 30, 35, 40, 50
	2		35, 40, 50, 60, 70
	3		50, 60, 70, 80, 90
	4		60, 70, 80, 90, 100, 110

Capacity	Region	Average design heat loss (in 1000's Btu's/hr.)	Heat loss of home values used on the grid (in 1000's Btu's/hr.)
63,500 and over	5		60, 70, 80, 90, 100, 110, 130
	6		35, 40, 50, 60, 70, 80, 90, 100
	1	90	30, 35, 40, 50, 60
	2		40, 50, 60, 70, 80
	3		50, 60, 70, 80, 90, 100
	4		70, 80, 90, 100, 110, 130
	5		70, 80, 90, 100, 110, 130
	6		40, 50, 60, 70, 80

Include the following note on every fact sheet page that lists annual operating costs.

Note: These annual heating costs are based on U.S. Government standard tests and on a national average cost of electricity of 8.04¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given [direct user to location].

The methodology referred to in the note is provided below. This information shall be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this methodology must be provided on or with the unbound fact sheets.

How To Estimate Your Heating Costs

To estimate your heating cost, determine your cost of electricity in cents per kilowatt hour (KWH) from your electric bill, your listed average annual heating cost from the National Average Annual Heating Cost Table, and use that number in the following equation:

$$\text{Your estimated cost} = \text{Listed annual heating cost}^{*} \times \frac{\text{Your electric cost in cents per KWH}}{8.04¢/\text{KWH}}$$

*From the National Average Annual Heating Cost Table.

Example: If your electric rate is 12.08¢/KWH and the annual heating cost listed in the chart is $200:

$$\text{Your estimated cost} = \$200 \times \frac{12.08¢}{8.04¢}$$

Your estimated cost = $200 × 1.5 = $300
Your estimated cost = $300

BILLING CODE 6750-01-M

Heating Region Map

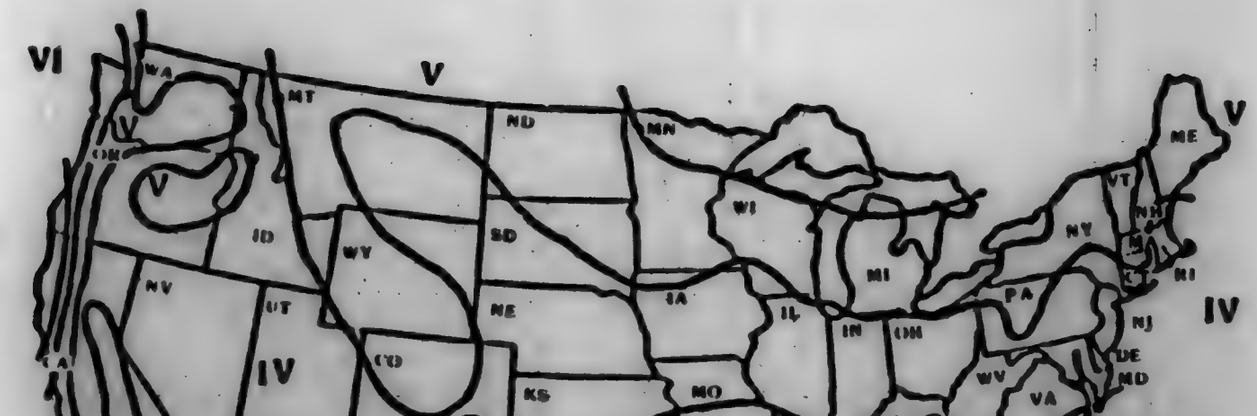

This map must be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this map must be provided on or with the separate fact sheets.

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AN EXAMPLE OF A FACT SHEET SHOWING ONLY

THE HEATING FUNCTION FOR HEAT PUMPS

ENERGYGUIDE

MODEL	HEATING CAPACITY (BTU's/hr.)
XXX/C1	33,000
XXX/C2	35,000

NOTE: Some product-specific labels showing ranges are required on each product the inclusion of ranges on fact sheets is optional.

HEATING PERFORMANCE FOR REGION IV:

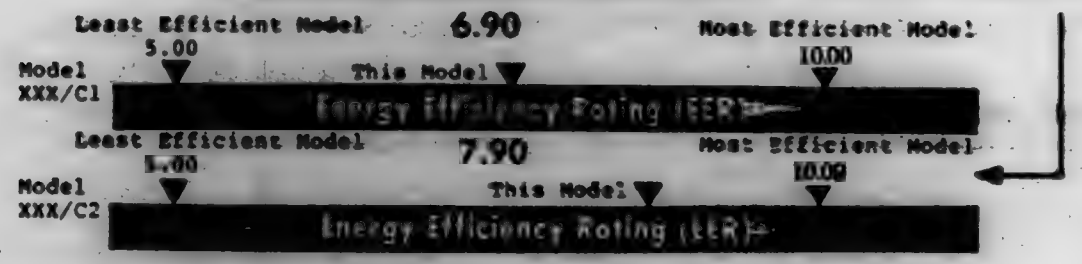

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings will vary slightly with different coils and in different geographic regions.

NATIONAL AVERAGE ANNUAL HEATING COST TABLE ($ per year)

MODEL XXX/C1	Heat Loss of Home (in 1000's Btu's/hr.)									
	15	20	25	30	35	40	50	60	70	80
* Region 1	$60	$80	$100	$120						
• 2		$140	$170	$200	$240	$280				
• 3			$250	$300	$350	$400	$520			
• 4			$350	$410	$480	$550	$710	$910	$1110	$1330
• 5				$560	$660	$750	$970	$1200	$1460	$1720
• 6		$300	$370	$430	$500	$590				

MODEL XXX/C2	Heat Loss of Home (in 1000's Btu's/hr.)									
	15	20	25	30	35	40	50	60	70	80
* Region 1	$50	$70	$90	$110						
• 2		$130	$160	$190	$220	$260				
• 3			$240	$280	$330	$400	$500			
• 4			$330	$400	$450	$520	$580	$880	$1020	$1230
• 5				$540	$640	$730	$940	$1100	$1300	$1620
• 6		$300	$350	$400	$470	$560				

*From Heating Region Map

(This is Page 1 of Sample Fact Sheet)

NOTE: These annual heating costs are based on U. S. Government standard tests and on a national average cost of electricity of 8.04¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given below.

HOW TO ESTIMATE YOUR HEATING COST

To estimate your heating cost, determine your cost of electricity in cents per kilowatt hour (KWH) from your electric bill, your listed average annual heating cost from the National Average Annual Heating Cost Table, and substitute that number in the following equation:

$$\text{Your Estimated Cost} = \text{Listed annual heating cost}^{*} \times \frac{\text{Your electrical cost in cents}}{8.04¢/KWH}$$

* From the National Average Annual Heating Cost Table

Example: If your electric cost is 12.06¢/KWH and the annual heating cost listed in the table is $200:

$$\text{Your Estimated Cost} = \$200 \times \frac{12.06¢}{8.04¢}$$

Your Estimated Cost = $200 X 1.5 = $300

Your Estimated Cost = $300

(This is page 2 of sample fact sheet)

* * * * *

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-11873 Filed 5-26-88; 8:45 am]

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federal register

Friday
May 27, 1988

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Washington and Wisconsin; Final Rule

VOL 53 ISS 103 MAY 27 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-49]

Establishment of Airport Radar Service Areas; Washington and Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Green Bay Austin Straubel Field, WI, and Whidbey Island Naval Air Station (NAS), WA. Each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collison in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 u.t.c., June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 100 ARSA's as published in the Federal Register in the implementation of this NAR recommendation.

On December 22, 1987, the FAA proposed to designate ARSA's at Green Bay Austin Straubel Field, WI, and Whidbey Island Naval Air Station (NAS), WA (52 FR 48484). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

Discussion of Comments

Twenty-five comments were received concerning this rulemaking action. One commenter supported both locations. The Soaring Society of America (SSA), while finding no evidence of any local soaring activity, objected to both locations. Their stated objection was based on a related rulemaking issue, Notice 88-2; Docket 25531. They stated that, in accordance with Pub. L. 100-223, section 209, the final rule would invalidate the ARSA Regulatory Evaluation.

The FAA does not agree. The probable effect of a proposed rule has no bearing on this action until that rule is in effect. In addition, the interpretation of public law is outside the purview of this rulemaking action. If the FAA were to proceed as suggested by the SSA and take no action on airspace matters when there are related issues which may have an effect, it would find that no action could be taken. The FAA does not believe that this is the intent of the SSA.

Green Bay, WI

Three commenters wrote in objection to the Green Bay ARSA. One commenter's objection was based on the floor of the 5-10-mile area. He stated that he would only have 200 feet in which to fly since he must operate 1,000 feet above ground level (AGL) over congested areas. The FAA finds no foundation for raising the 5-10-mile area based on this objection. The FAA has found that pilots will not routinely fly under this area unless they desire to operate at an airport which underlies this area.

Another commenter suggested that there was not enough traffic to warrant taking this airspace and that several small general aviation entities around the sides of the ARSA would be adversely impacted. The FAA finds that Green Bay not only meets the initial National Airspace Review criteria of having a TRSA and being a Level III Facility but also meets the follow-on criteria. Additionally, the ARSA rule made provisions for local agreements with small entities to minimize any potential impact. History has shown that these agreements work very well in reducing or eliminating any impact.

The last commenter objected to the ARSA stating there was no need based on the fine safety record already attained at Green Bay. The commenter stated that the concentric circles ignored the common practice of straight in approaches/departures for the aircraft that operate from Austin Straubie Field. In addition, the commenter suggested this was more airspace than necessary, placing an ever-increasing burden on the private pilots. The FAA finds no foundation to the stated objections. Even with a good safety record, the FAA still has a need to know of all aircraft operating in this close proximity to the airport at these critical altitudes.

Whidbey Island NAS, WA

The FAA received 20 written comments to the Whidbey proposal. One wrote in support of the proposal while the remainder offered objections and/or recommendations.

Three hot air balloon pilots submitted a recommendation that all of the airspace east of the Swinomish Slough be cutout of the ARSA or that they be exempted from the ARSA requirements. The FAA finds a need to know of all aircraft operating at these criteria altitudes in such close proximity to the airport. However, the ARSA rule made provisions for agreements with small entities and the local facility to preclude adverse impacts on these types of organizations.

Three of the commenters suggested that the comment period was too short and should be extended. The FAA believes the period for notice and comment was sufficient to permit full public comment on the proposed rule.

Four commenters wrote in objection stating that Whidbey was not busy enough. The FAA finds that Whidbey NAS had 162,713 instrument operations during calendar year 1987 which far exceeds the ARSA establishment criteria of 75,000 annual instrument operations at the primary airport or 100,000 annual instrument operations at the primary and secondary airports or 250,000 annual enplaned passengers.

One commenter objected stating that there was already protected airspace and restricted Military Operations Areas (MOA) at Whidbey NAS. The FAA does not agree that this relieves the need for the ARSA at this facility. The FAA finds that ARSA's and special use airspace are distinctly different types of airspace. Restricted Areas, for example, which are used for hazardous activity like bombing, preclude certain operations, while MOA's are important as a method of alerting pilots to unusual or heavy military training operations. ARSA's, on the other hand, are established because the air traffic facility has a need to know of all traffic operating in close proximity to the airport. ARSA's are not designed to exclude aircraft but simply to ensure that the air traffic facility has knowledge of all traffic operating in this area.

Several commenters suggested that the floor of the northeast quadrant should be expanded or raised to 2,500 feet or higher. The FAA determined that there was validity to these recommendations and made modifications to the northeast quadrant. The area is expanded around to the 050° bearing from the airport and the floor is raised to 2,000 feet MSL. This rule reflects those changes.

Two commenters suggested that the ARSA would force pilots to fly low over open water. The FAA does not agree. The FAA finds that pilots will not routinely choose to operate under the 5-10-mile area unless they wish to utilize an airport in this area. Pilots may simply choose to circumnavigate to the north and down the I-5 corridor or overfly the ARSA above the ceiling which is only 4,000 feet above airport elevation, or establish two-way radio communication and fly through the ARSA.

Another commenter supported the ARSA and suggested that the FAA should establish climb/descent corridors and chart them so that pilots could locate where high-performance aircraft would be exiting the top of the ARSA. The FAA finds this recommendation is outside the purview of this rulemaking action.

One commenter suggested the ARSA was too small and that the FAA should develop a type of airspace where either Mode C or two-way communication was required but not both. The FAA finds that any new type of airspace is outside the purview of this rulemaking action. The FAA finds that the charged ARSA size simply establishes where mandatory communications are required. The services to which pilots have become accustomed in TRSA's will for the most part still be available outside of the ARSA. Therefore, we find that the ARSA is optimum size and does not place any more burden than necessary on pilots who do not wish to participate.

A couple of commenters suggested that the controllers were already too busy and that there were not enough radio frequencies to handle all of the traffic. The FAA does not agree. As stated by other commenters, the current high rate of participation indicates that there will not be a significant increase in the volume of traffic when the ARSA is implemented. In addition, the facility recognized the need for more frequencies due to existing traffic and has already initiated action to obtain them. The facility and region have instituted action, and the frequencies will be operational prior to the implementation of the ARSA.

Several commenters suggested that the FAA require Mode C in the Whidbey area but retain the voluntary communication and participation. The FAA finds this recommendation to be outside the purview of this rulemaking action, because Mode C is not an equipment requirement for an ARSA and it was not raised in the notice.

Two commenters suggested climb/descent corridors in lieu of the ARSA. The FAA finds that aircraft do not only operate in departure/final approach paths. This recommendation would preclude the facility having knowledge of aircraft operating in the vicinity of the downwind and base legs of the traffic pattern.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement

were to extend down to the surface at these airports, where under current regulations participation in the radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Green Bay Austin Straubel Field, WI, and Whidbey Island Naval Air Station (NAS), WA. Each location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Green Bay Austin Straubel Field, WI [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Green Bay Austin Straubel Field (lat. 44°29'17" N., long 88°16'58" W.); and that airspace extending upward from 1,900 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the airport.

Whidbey NAS, WA [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5 mile radius of Whidbey Island (lat. 48°21'06" N., long. 122°39'12" W.); and that airspace exending upward from 1,300 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport from the 050° bearing from the airport clockwise to the 345° bearing from the airport; and that airspace extending upward from 2,000 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport from the 345° bearing from the airport clockwise to the 050° bearing from the airport.

Issued in Washington, DC., on May 19, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-11936 Filed 5-26-88; 8:45 am]

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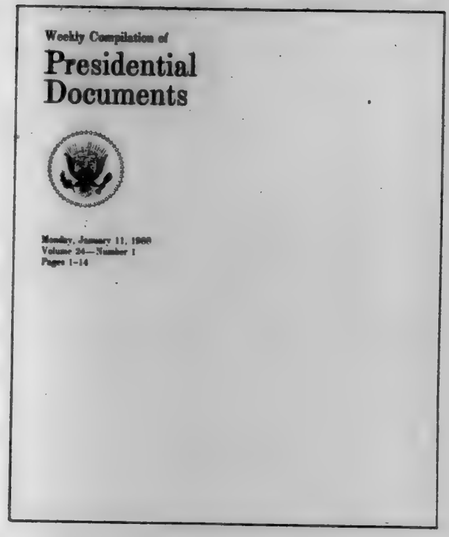

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Rules and Regulations

Federal Register
Vol. 53, No. 104
Tuesday, May 31, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

Federal Employees' Group Life Insurance Program; Continuation of Coverage During Military Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final its interim regulations under the Federal Employees' Group Life Insurance (FEGLI) Program that allow an employee who enters the military on active duty or active duty for training to continue FEGLI coverage for up to 12 months. The regulations implement a statutory change effective January 1, 1987, included in the Federal Employees' Retirement System Act of 1986.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Margaret Randall (202) 632–4634.

SUPPLEMENTARY INFORMATION: On April 15, 1987, OPM published interim regulations in the **Federal Register** (52 FR 12133) with a request for comments from interested parties. No comments were received. The only change from the interim regulations is that the final regulations change several citations for consistency with the new paragraph designations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is adopting as final its interim regulations on 5 CFR Part 870 published on April 15, 1987, at 52 FR 12133, with the followipg changes:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 870.501 [Amended]

2. In § 870.501, the two references to "(e)" in the first sentence of paragraph (d)(4) and the reference to "(e)" in paragraph (d)(6) are revised to read "(d)".

§ 870.601 [Amended]

3. In § 870.601(a)(4) and 870.701(a)(2), references to "§ 870.501(e)" are revised to read "§ 870.501(d)".

[FR Doc. 88–12005 Filed 5–27–88; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 615]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 615 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,000 cartons during the period May 29 through June 4, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 615 (§ 910.915) is effective for the period May 29 through June 4, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on May 24, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13–0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public

interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.915 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.915 Lemon Regulation 615.

The quantity of lemons grown in California and Arizona which may be handled during the period May 29, 1988, through June 4, 1988, is established at 375,000 cartons.

Dated: May 25, 1988

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–12128 Filed 5–27–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1068

[Docket No. AO–178–A41]

Milk in the Upper Midwest Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Upper Midwest order by making reserve supply plants subject to minimum shipping standards during the months of August through December in order to be pool plants under the order. The plants will be required to ship to pool distributing plants 5 percent of the total milk production received from dairy farmers or diverted by the plant operator during each month of August and December, and 8 percent of such receipts during each of the months of September, October and November in order to maintain their pool status. Two or more reserve supply plants will be allowed to have their receipts and shipments to pool plants considered on a combined, or unit, basis to meet the minimum shipping requirements or a "call" by the market administrator for milk supplies needed for Class I, or fluid, use. However each handler in such a unit will have to ship at least 5 percent of its receipts on an individual basis during one month of any August through December period in order to qualify for pool status during the month of December.

All of the changes are based on industry proposals considered at a public hearing held July 7–8, 1988 and are necessary to assure an adequate supply of milk in an orderly manner for Class I (fluid) use in the Upper Midwest marketing area.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Partial Decision: Issued September 2, 1987; published September 9, 1987 (52 FR 33943).

Order amending the Order: Issued September 28, 1987; published October 2, 1987 (52 FR 36909).

Recommended Decision: Issued January 12, 1988; published January 19, 1988 (53 FR 1360).

Final Decision: Issued April 27, 1988; published May 3, 1988 (53 FR 15690).

Correction to Final Decision: Issued May 5, 1988; published May 10, 1988 (53 FR 16558).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings Upon the Basis of the Hearing Record

A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Upper Midwest marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Upper Midwest order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Determinations.

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for 7 CFR Part 1068 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1068.7 Pool plant, amend paragraph (d) by revising (d)(3) and (d)(6), redesignating (d)(5) as (d)(7) and revising new (d)(7), redesignating (d)(4) as (d)(5) and revising new (d)(5), and adding new (d)(4) to read as follows:

§ 1068.7 Pool plant.

* * * * *

(d) * * *

(3) The operator of the plan has filed a request with the market administrator for pool reserve supply status no later than July 15 of each year. Once qualified as a pool plant pursuant to this paragraph, such status shall be effective for August and continue through the following July unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order;

(4) The volume of bulk fluid milk products shipped from the plant to pool distributing plants during each of the months of August and December is 5 percent or more and during each of the months of September, October, and November is 8 percent or more of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant), subject to the following conditions:

(i) These shipping percentages may be decreased by up to five percentage points during the months of August and December, and by up to eight percentage points during the months of September, October and November, by the Director of the Dairy Division if he finds that such revision is necessary to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either on his own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, he shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(ii) A cooperative association that operates a reserve supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1068.13(d);

(5) The operator of the plant supplies fluid milk products to pool distributing plants located within an area designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level of shipments, as further provided below:

(i) The market administrator may require such supplies of fluid milk products from operators of any pool reserve supply plants within the call area whenever he finds that milk supplies for Class I use at pool distributing plants within the call area are needed from plants qualifying under this paragraph. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement;

(ii) For the purpose of meeting any shipping requirement announced by the market administrator;

(A) Qualifying shipments to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler provided that shipments from sources other than the plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1068.9(c) must be in addition to any shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(B) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Qualifying shipments to an other order plant may not be classified pursuant to § 1068.42(b)(3); and

(iii) Failure of a handler to comply with any announced shipping requirement pursuant to § 1068.7(d)(5), including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of pool status for the plant pursuant to § 1068.7(d). A plant losing pool status in this manner or a plant that requests nonpool status may not again qualify as a pool plant pursuant to § 1068.7(d) until the following August;

(6) In order to meet the requirements of paragraphs (d)(4) and (d)(5) of this section, two or more reserve supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which the plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of § 1068.7(d) (4) and (5). Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified; and

(ii) Each handler operating reserve supply plant(s) for which the shipping percentages in § 1068.7(d)(4) are met as part of a unit described in § 1068.7(d)(6) must ship at least 5 percent of the Grade A milk received at its plant(s) from dairy farmers during the month (including milk delivered to the handler's plant(s) from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant(s) by the plant operator but excluding milk diverted to the plant(s) from another pool plant) to pool

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distributing plants in one of the months of August through December in order for the handler's plant(s) to be a reserve supply plant(s) for the month of December.

(7) A plant must have been a pool plant under this order pursuant to § 1068.7 (a), (b) or (d) during each of the preceding months of August through December to be a pool reserve supply plant during the following months of January through July.

Signed at Washington, DC, on May 23, 1988.

Kenneth A. Gilles,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-12100 Filed 5-27-88; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Refund of Interest

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final Amendment.

SUMMARY: Pursuant to NCUA's policy to periodically review each of its regulations, in December, 1987, the NCUA issued a proposed revision of § 701.24 ("Refund of Interest") for public comment. The NCUA Board has now approved the proposal in final form. The final rule eliminates unneeded provisions and grants Federal credit unions more flexibility in making interest refunds.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, NCUA, Office of General Counsel, at the above address, or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: Section 701.24 ("Refund of Interest") implements section 113(9) of the Federal Credit Union Act [12 U.S.C. 1761b(9)], which empowers a Federal credit union ("FCU") board of directors to:

authorize interest refunds to members of record at the close of business on the last day of any dividend period from income earned and received in proportion to the interest paid by them during that dividend period.

Section 701.24 currently provides:

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to classifications of loans established pursuant to 12 CFR 701.21-1(d).

(c) Based upon a determination that such loans have not made a significant contribution to the earnings that make the refund possible, the board of directors may exclude from an interest refund (i) any classification of loans determined in accordance with paragraph (b) of this section, and (ii) all loans delinquent at least two months, or all loans delinquent for such greater period as is determined by the board.

(d) The board of directors' minutes shall document the reasons for any decision to vary interest refund rates or exclude certain loans form a refund.

(e) The board of directors may authorize an interest refund for a dividend period only during such time as it may declare a dividend. However, if in a given calendar year a credit union has dividend periods more frequent than annual and an interest refund was not authorized for one or more dividend periods, the board, during the time permitted for the declaration of the current dividend, may authorize an interest refund for the current dividend period and for any one or more of the omitted dividend periods.

(f) The board of directors shall not authorize an interest refund for any dividend period unless dividends have been declared and paid on share accounts.

(g) An interest refund shall be recorded on the books of the credit union as a reduction of interest income.

On December 3, 1987, the NCUA Board proposed to simplify and clarify this provision (52 FR 46601 (Dec. 9, 1987)):

(a) By eliminating reference in subsection (b) to "12 CFR 701.21-1(d)", since that provision had previously been deleted from the Regulations;

(b) By eliminating subsection (g), since the subject—the required accounting treatment of an interest refund—is already more fully covered in the Accounting Manual and under generally accepted accounting standards;

(c) By eliminating from subsection (d) the Federal paperwork requirement that the board set forth in its minutes the reasons for any variance in interest refund;

(d) By amending subsection (c) to increase FCU board flexibility to exclude classes of loans from an interest refund; and

(e) By deleting subsection (e) and adding a sentence to subsection (a), to simplify an FCU's task of deciding whether it has sufficient dividends to permit an interest refund.

NCUA received three comment letters on its proposed revision: two from credit union trade associations and one from a Federal credit union. Two commenters were in total agreement with the proposal. The third commenter (a credit union trade association) supported maintaining the requirement that the reasons for varying interest refund rates or exclusion of certain loans from interest refunds be documented in the FCU board minutes. This commenter stated that decisions on interest refunds would be made at board meetings; that FCU boards are required by the FCU Act to keep minutes of all meetings [12 U.S.C. 1761b]; and that common law generally requires that official actions taken at a meeting of a board of directors be noted in its minutes.

The NCUA Board does not believe a separate paperwork requirement on this subject in NCUA's Rules and Regulations is appropriate. The legal requirement on an FCU Board does not depend upon the language in the present § 701.24. Moreover, the Board believes including a statement of reasons for any variance in interest refunds would be a wise business decision which an FCU board would do even without legal obligation.

The final rule is effective upon publication (no thirty-day delay) since it relieves current restrictions. It allows for interest refunds based on the interest rate of the loan and eliminates the regulatory requirement that reasons for variations in interest rate refunds be set forth in the board minutes.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This rule eliminates the collection of information requirement found in the present rule (documentation in FCU board meeting minutes of loans excluded from interest refunds). Since the final rule eliminates the collection requirement, the rule need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

This rule does not affect state regulation of credit unions. The rule implements a provision of the FCU Act concerning refunds of interest by Federal credit unions.

List of Subjects in 12 CFR Part 701

Credit unions, Interest refund.

By the National Credit Union Administration Board on May 20, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798.

In addition, § 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1701 and 42 U.S.C. 3601-3610.

2. Section 701.24 is revised to read as follows:

§ 701.24 Refund of Interest.

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period. Interest refunds may be made for a dividend period only if dividends on share accounts have been declared and paid for that period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to the type of extension of credit and the interest rate charged.

(c) The board of directors may exclude from an interest refund:

(1) A particular type of extension of credit;

(2) Any extension of credit made at a particular interest rate; and

(3) Any extension of credit that is presently delinquent or has been delinquent within the period for which the refund is being made.

[FR Doc. 88-11902 Filed 5-27-88; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 701

Fees Paid by Federal Credit Unions; Share, Share Draft, and Share Certificate Accounts

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final amendment.

SUMMARY: This amendment makes certain technical changes to §§ 701.6(a) and 701.35(c) of NCUA's Rules and Regulations. The change to § 701.6(a) conforms the rule of a prior NCUA Board decision to assess its operational fees based on the Agency's fiscal year, rather than the calendar year. The changes in § 701.35(c): (a) Clarify that Federal credit unions ("FCU's") must comply with all applicable Federal laws concerning the types of disclosures, fees or charges, time for crediting of deposited funds, and other matters relating to share, share draft and share certificate accounts; and (b) simplify the provision's wording. The amendments do not alter any existing obligations or liabilities.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Timothy P. McCollum, Assistant General Counsel, or Roy DeLoach, Staff Attorney, Office of General Counsel, at the above address, or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

I. Section 701.6(a)

Section 701.6(a) of NCUA's Rules and Regulations now provides for NCUA's assessment of an operational fee for its "calendar year" costs. On July 16, 1985, however, the Board changed NCUA's accounting of operational fees assessed FCU's to apply to NCUA's fiscal year rather than the calendar year. Notification was sent to all Federal credit unions at that time; and the annual operating fees notification letter states that the fee is for the NCUA fiscal year's operating expenses.

The Board amendment of § 701.6(a) would change reference to "calendar year" to "National Credit Union Administration fiscal year (October 1 to September 30)". The change therefore simply conforms the rule to the Board's prior decision and current practice.

II. Section 701.35(c)

Section 701.35(c) of NCUA's Rules and Regulations (12 CFR 701.35(c)) provides:

A Federal credit union is empowered to determine the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters, not inconsistent with this Section, affecting the opening, maintaining or closing of a share, share draft or share certificate account. To the extent that state law attempts to regulate such activity, it is not applicable. Nothing herein is intended, however, to allow a Federal credit union to amend or modify its contract with a member unilaterally unless it has previously reserved the right to do so.

Under authority granted by Title VI of the Competitive Equality Banking Act of 1987 ("Expedited Funds Availability"), the Federal Reserve Board has issued proposed regulations which would require an FCU to make funds placed in share draft accounts available to members by certain times and disclose its funds availability policy to its members. The Federal Reserve Board expects to issue final rules by June 1988, which will become effective later this year.

The NCUA Board believes a general reference to "other Federal law," which would include these requirements and others that may follow, will be helpful to alert FCU's to the need to look beyond the FCU Act and NCUA's Rules and Regulations in assuring compliance with Federal laws.

The Board has also taken this opportunity to simplify some of the wording in § 701.35(c). The last sentence, regarding the need of an FCU to comply with its contractual obligations, has been deleted, and a similare statement added in the first sentence. The preemption language has also been shortened.

III. Changes Effective Immediately

These changes in no way alter existing FCU authorities or responsibilities. The amendments are therefore being made effective immediately, without request for public comment.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this amendment will not have a significant economic impact on a substantial number of small credit unions because the charges are directed at clarification of present regulations rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The amendment does not contain any collection of information requirements.

Executive Order 12612

The amendment does not affect state regulation of state chartered credit unions. The amendment simplifies, but does not change the substance of, a provision preempting certain state regulation of Federal credit unions. This provision has previously been subject to public notice and comment.

List of Subjects in 12 CFR Part 701

Credit unions, fees paid by Federal credit unions, Share, Share draft, Share certificate accounts, Federal laws.

By the National Credit Union Administration Board on May 20, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its Regulations as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1795.

In addition § 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1761 and 42 U.S.C. 3601–3610.

2. Section 701.6(a) is revised to read as follows:

§ 701.6 Fees Paid by Federal Credit Unions.

(a) *Basis for assessment.* Not later than January 31 of each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (October 1 to September 30) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of June 30 of the preceding year or as otherwise determined pursuant to paragraph (b) this section.

* * * * *

3. Section 701.35(c) is revised to read as follows:

§ 701.35 Share, share draft, and share certificate accounts.

* * * * *

(c) A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosures, fees or charges, time for crediting of deposited funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

* * * * *

[FR Doc. 88–11993 Filed 5–27–88; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Parts 701 and 703

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Interim final amendment.

SUMMARY: This amendment gives Federal credit unions ("FCU's") an additional tool for use solely to reduce risk of loss from interest rate increases between the time the interest rate commitment is made to a member on a real estate loan and the time the loan is sold on the secondary market. This additional tool must be used in accordance with written policies and procedures prepared by the FCU.

Because the seasonal peak in FCU real estate lending is at hand, the amendment has been made effective immediately, without prior public comment, but temporarily requires NCUA Regional Office permission prior to an individual FCU's engaging in the activity, and monthly reporting to NCUA. These temporary requirements are planned to be deleted after public comments have been received and further study has been completed.

EFFECTIVE DATE: This amendment is effective on an interim basis May 31, 1988. Comments must be received on or before August 29, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley or Edward P. Dupcak, Office of Examination and Insurance, at the above address, or telephone: (202) 357–1065; Timothy P. McCollum or Julie Tamulevic, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

I. Loan Production Risks

There are two kinds of risks an FCU must manage from the time a member applies for a loan to the time the loan is sold on the secondary market or included in its loan portfolio as an FCU investment:

a. "Fallout risk," the possibility that a party making a commitment to the FCU on the loan will fail to perform, either because there is no legal obligation to do so or because that obligation is breached. There are two kinds of fallout risk:

1. "Borrower fallout," where the member fails to close on a loan commitment. This may occur, for example, if interest rates decrease after the commitment is made and the member finds a better rate elsewhere; if the member is unable to perform; or, in real estate loans particularly, the seller of the property fails to perform.

2. "Investor fallout," where the party committed to taking the loan as an investment, either the FCU or a purchaser on the secondary market, fails to close. This can occur, for example, if the investor finds a higher-rate loan elsewhere; or if the investor or the FCU itself is without sufficient capital to perform.

b. "Price risk," the possibility that the value of the commitment the FCU makes to the borrower will decrease relative to the value of the FCU commitment to the investor or to the anticipated value to the FCU as an investment. There are three kinds of price risk:

1. Increased interest-rate price risk, where an FCU commits at application to a specified interest rate and rates increase.

2. Decreased interest-rate price risk, where an FCU commits to sell an uncommitted loan at a specified interest rate and rates decrease.

3. Product risk, where unusual characteristics in a loan arrangement—e.g., interest-only payment for an extended term—depress its fair market value.

II. Tools Available to an FCU for Managing Loan Production Risks

A. General

There are, in general, three ways to reduce loan production risks: (1) Asset/liability management; (2) forward sale of loans, on a mandatory or optional basis; and (3) sale or purchase of substitute assets with characteristics similar to a loan in production, on a mandatory or optional basis. As the NCUA Board has previously pointed out (49 FR 12,671 (March 30, 1984)), an FCU presently has authority to use the first two:

> [The] range of business strategies available to FCU's [includes]: (a) not investing or lending at long-term fixed rates; (b) using variable rate lending and floating rate investments; (c) using secondary markets to sell long-term loans to limit or manage the level of exposure; (d) using improved funds management strategies under deregulation to create a "basket" of share maturities which would complement the duration of longer-term assets; and (e) using reserves (established for this purpose) to temporarily cover losses should rising interest rates lead to short-term mismatches.

B. Sale and Purchase of Substitute Assets

Congress recently granted FCU's the power to invert in mortgage-related securities [12 U.S.C. 1757(16)(b)]. Through interest-only ("IO"), principal only ("PO"), and "residual" variations on these investments are sometimes marketed as risk management tools, as explained in Letter to Credit Unions No. 96 and IRPS 88–1, such instruments are so complex, varied, and volatile, there use to manage risk is almost always unwise.

The other kinds of transactions in substitute assets widely available involve futures and options (or standby commitments) on interest-sensitive securities. In 1979, NCUA prohibited both. At that time, it concluded (44 FR 42874 (July 20, 1979):

> Some commenters suggested that Federal credit unions should be permitted to engage in buying and selling standby commitments for authorized securities as a means of hedging against potential losses incurred in the making of real estate loans. The Administration believes that the informal and unorganized nature of the market in standby commitments argues against its use as a hedging device by Federal credit unions.
>
> Since the Administration does not believe that hedging by means of buying and selling standby commitments for authorized securities is necessary to make real estate loans, the final rule contains [a] * * * general ban on standby commitments. However, it does not prohibit a Federal credit union from selling its real estate loans by use of a standby commitment in order to facilitate the making of such loans. This has been accomplished by defining the term "security" as not to include loans to members or residential real estate loans authorized under subsections 701.21–6 and 701.21–8 of Part 701 of the National Credit Union Administration rules and regulations. Such activity would be incidental to the exercise of a Federal credit union's real estate lending authority.

As to futures, the Board stated (44 FR 42876 (July 20, 1979):

> The proposed regulation limited Federal credit union participation in a futures market to the purchase or sale of a futures contract as a hedging device incident to the assembly of a pool of mortgages for sale in the secondary market. The Administration will issue a proposed regulation on that subject. Until that regulation is published in final form, Federal credit unions may not participate in any futures trading.

In 1984, the NCUA Board again considered allowing an FCU to use options and futures as a risk management tool; and again decided to prohibit their use in all circumstances (49 FR 12671 (March 30, 1984)):

> The Board does not consider standby commitments an essential tool to reduce the potential risks that Federal credit unions may have because of maturity mismatches between their assets and liabilities. Because of their complexity and their inherently speculative nature, reliance on standby commitments to offset mismatching can only lead to confusion, uncertainty, and ultimately to safety and soundness problems * * *.
>
> * * * * *
>
> The Board has [also] determined not to authorize investment in futures contracts at this time. To the extent that futures contracts are seen as tools to reduce the interest rate risk that results from a mismatch between asset and liability maturities, the Board believes that there are already a range of other business strategies available to FCU's * * *. Further, it is the opinion of the Board that as long as Federal credit unions take in short-term funds and elect to invest or lend in long-term instruments, there is a risk. No option, including futures or standby commitments, eliminate the risk; they may, at best, just reduce some of the potential costs.

III. Need for Additional Risk Management Tools in Real Estate Loan Production

The tools now available to an FCU for managing interest rate risks have generally worked well. This has been made somewhat easier because traditionally the vast majority of loans originated and held by FCU's have been relatively short-term. Though in 1977, Congress allowed an FCU to make long-term real-estate loans [Pub. L. 95–22, Section 302(a)], FCU's generally maintained their character as consumer lenders.

Particularly in the last two years, however, FCU's have significantly increased real estate lending. In 1987, while total FCU lending grew 16 percent, FCU real estate lending grew 48 percent. By December 31, 1987, real estate loans constituted 27 percent of FCU loan investments; many more such loans were sold in the secondary market.

Real estate loans pose different risk management problems for an FCU. Because of their size and term, to plan properly members need to have the interest-rate set on the day they apply for the loan. The time between application and closing on real estate loans, however, is generally significant—60 days or more. Interest rates on fixed-rate, long-term real estate loans can change dramatically virtually overnight. And many real estate loan applications, for a variety of reasons, do not lead to closing. An FCU is therefore likely to have significantly greater price and fallout risks with its real estate lending then with its consumer lending.

The risk management tools generally applicable to loans and other interest-sensitive assets and liabilities are equally useful to real-estate loan production, particularly if the FCU intends to hold the loans for investment. Mandatory forward commitments to sell loans—a risk management tool presently available—should be the primary means for managing risk for an FCU selling its real estate loan originations in the secondary market; they are relativity inexpensive and offer the most complete risk coverage.

But for an FCU wishing to offer a specific interest rate on the date a member applies for a real estate loan which will be sold on the secondary market, these tools may not be adequate to manage the FCU's increased interest-rate price risk.

Mandatory forward commitments will eliminate price risk for the loan volume certain to close. But their use for the portion of the loans in production which may or may not close, while decreasing price risk, increases the borrower fallout risk, since the FCU will remain liable to deliver the loan committed to the secondary market regardless of whether the member closes. A possible alternative, optional forward commitments, are available from FNMA and FHLMC, but the expensive. Moreover, they are not normally available from reliable parties for VA and FHA loans, which constitute a substantial portion of FCU real estate lending.

IV. Substitute Asset Transactions as a Tool To Manage Increased Interest-Rate Price Risk

A. Cash Market and Futures Transactions in Financial Instruments

One way for an FCU to manage interest rate risk on the portion of an FCU's real estate loan commitments where closing is uncertain is through purchase or sale of readily marketable substitute assets—those which can be expected to respond to changes in interest rates similar to the FCU's loan commitments. Generally, the substitute assets with the closest correlation to FCU real estate loans are GNMA, FNMA, and FHLMC securities, and Treasury notes, and bonds. Properly structured, transactions in these securities, matched to loan commitments which may not close, can provide effective insurance against price and investor fallout risk without increasing borrower fallout risk.

Use of the cash market in these securities, however, would likely require an unrealistic capital commitment. Moreover, as with establishing a short position in the futures market for these securities, an FCU could find it impossible to determine upfront the costs of managing risk. The normal way in which cash and futures markets in substitute assets are used to manage risk of interest rate changes in a loan portfolio is to establish a short position (i.e., to sell securities not owned) and to take an off-setting long position (to purchase securities) later. The difference in the sale and purchase prices, which can only be determined at the end, is the cost of the risk management insurance.

B. Options on Financial Instruments

A more attractive substitute asset transaction for managing increased interest-rate price risk in the real estate loans an FCU is not certain will close are long positions on put options for financial instruments.

An option is a right, but not an obligation, to buy or sell an item at a prearranged price within an agreed-upon period. A "put" option is the right to sell; a "call" option is the right to buy. There are two parties to an option:

1. The "holder" (who is said to enter into a "long position"). This person, in exchange for paying an upfront fee, holds the power to purchase (with a call option) or sell (with a put option), in accordance with the terms of the option contract.

2. The "writer" (who is said to enter into a "short position"). This person, in exchange for receiving an upfront fee, must stand ready to sell (with a call option) or purchase (with a put option) on demand by the holder, in accordance with the terms of the option contract.

A long position on a call option or a short position on a put option for a financial instrument like a GNMA security or a Treasury bond helps manage risk of an interest rate decrease. These are therefore not appropriate tools when used alone for the limited problem faced by FCU's in real estate loan production.

A short position on a call option for one of these financial instruments, used alone, helps manage risk of a interest rate increase, but, like a short position in the cash market or in a future, it exposes the writer to unknown costs if interest rates decrease.

A long position on a put option for one of these financial instruments seems the best substitute asset protection generally available against increased interest-rate price risk: it increases in value as interest rates increase; and the maximum potential cost, the upfront fee, is known at the outset.

C. Risks in Long Put Option Positions

An FCU's establishing long positions in put options can be useful in managing risk only if properly structured. No substitute asset transaction will perfectly match the interest rate sensitivity of an FCU's loans in production. Expectations on real estate loan prepayments can cause the value of an FCU's loans in production to fluctuate differently from Treasuries—these expectations can even cause loans to differ from mortgage-related securities, depending on differences in stated interest-rate and maturity. Prepayment expectations can also cause 30-year real estate loans to perform more like Treasury notes than Treasury bonds. Supply and demand factors for Treasuries may cause them to move out of step with an FCU's loans in production. A one basis point change in yield on a Treasury note does not equal a one basis point yield change in a 30-year loan in production.

Construction of a proper basket of substitute asset transactions to match the loans in production for which interest rate protection is needed requires sophistication and continual monitoring.

V. Section 701.21(i)

Particularly since this expansion of FCU power is being done as an interim final rule without prior public comment, § 701.21(i) is a conservative extension of FCU authority:

a. An FCU is limited to long positions on put options for GNMA, FNMA, and FHLMC securities. As mortgage-related securities, they offer the greatest potential for adequate price risk coverage of an FCU's real estate loans while providing upfront an exact awareness of the maximum insurance cost.

b. An FCU may purchase put options only on an exchange designated by the Commodity Futures Trading Commission or from a primary dealer in Government securities. This limits investor fallout risk. Though no CFTC-designated exchange currently offers options on GNMA, FNMA, or FHLMC securities (or on futures of those securities), plans for one are being developed. The over-the-counter market established by primary dealers is a competitive market.

c. An FCU may purchase put options only to reduce risk of loss from interest rate increases on loans being produced for sale on the secondary market. This rule does not, at this time, permit an FCU to purchase put options to limit risk on loans produced or held in its loan portfolio for investment. An FCU producing loans for sale in the secondary market is likely to be more in need of interest-rate protection since its volume of loans can be significant relative to the FCU's assets. An FCU producing loans for its own long-term investment is limited to available capital. The asset/liability management tools now available to manage risk for loans produced for investment—as well as similar risks for Treasury bonds, GNMA securities and other long-term investments—seem to be adequate.

d. An FCU may engage in put purchases only pursuant to policies approved and supervised by its board of directors.

This amendment empowers an FCU to purchase options in securities permissible for FCU investment, for the sole purpose of reducing risk in loan production; it is therefore authorized by sections 107(5), 107(7), 107(16), and 120(a) of the FCU Act (12 U.S.C. 1757(5), 1757(7), 1757(16), 1766(a)).

VI. Interim Final Rule

FCU real estate lending for all intents and purposes means home mortgage lending. Since the spring and summer are the peak home buying seasons, FCU's need this authority now for use in 1988. By requiring prior NCUA Regional Office permission to engage in this activity and monthly reporting to that Regional Office, risk of loss to the Insurance Fund for this expansion of FCU authority as an interim final rule has been minimized. It is anticipated that these requirements will be deleted when a final rule is issued.

VII. Accounting for Put Option Purchases

Options accounting has not been officially addressed by the Financial Accounting Standards Board ("FASB"). In the absence of specific authoritative accounting advice, guidelines provided in an American Institute of Certified Public Accountants (AICPA) Accounting Standards Division issues paper, "Accounting for Options," issued March 6, 1986, are helpful. Pending further NCUA study, an FCU engaged in purchasing puts as a risk management tool must follow these guidelines. In summary form, these are the relative conclusions of the AICPA as discussed in the issues paper:

(a) For purchased options, the premium is reflected as an asset.

(b) The "time value" part of the premium paid should be charged to income (amortized) over the period the option is open. "Time value" is the difference between the total premium for an option and the option's intrinsic value. "Intrinsic value" is equal to the difference between the exercise price and the market price of the underlying security or commodity.

(c) To quality for hedge accounting, a loan commitment must expose the credit union to unwanted price or interest rate risk and the option reduces that exposure because:

(i) At the time the option is designated as a hedge, it is probable that changes in the market value of the item underlying the option will correlate highly with changes in the market value of the item being hedged, and

(ii) A clear economic relationship exists between the price of the item underlying the option and the price of the item being hedged, and

(iii) The option is designated as a hedge.

(d) If the option qualifies as a hedge of a firm commitment or an anticipated transaction involving an item stated at other than market, the change in the market price of the option should be deferred and included in the measurement of the hedged transaction; however, the recognition of losses should not be deferred if it is estimated that deferral would lead to recognized losses in later periods.

Note.—Under FASB rules for the mortgage banking industry, mortgage loans held for sale should be valued at the lower of cost or market at the balance sheet date.

VII. Request for Comments

The NCUA Board has perceived a need for this expansion of FCU authority, but is not wedded to any particular approach. The Board welcomes comments on all aspects of this interim final rule.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that this interim final amendment will not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This interim final amendment has two recordkeeping requirements: (1) An FCU must prepare written plans and policies for engaging in put purchases for risk management; and (2) an FCU must maintain monthly summaries of its options transactions, and submit a copy to NCUA. At this point, it seems likely that these requirements will affect fewer than ten FCU's; therefore, the requirements of the Paperwork Reduction Act of 1980 do not apply.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal credit unions.

List of Subjects

12 CFR Part 701

Credit unions, Financial options contracts.

12 CFR Part 703

Credit unions, Investments.

By the National Credit Union Administration Board on May 20, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.21 is amended by adding paragraph (i):

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(i) *Put Option Purchases in Managing Increased Interest-Rate Risk for Real Estate Loans Produced for Sale on the Secondary Market*—(1) *Definitions.* For purposes of this § 701.21(i):

(i) "Financial options contract" means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by—

(A) A contract market designated for trading such contracts by the Commodity Futures Trading Commission, or

(B) By a Federal credit union and a primary dealer in Government securities that are counterparties in an over-the-counter transaction.

(ii) "FHLMC security" means obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 and 1455).

(iii) "FNMA security" means an obligation, participation, or any instrument of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association.

(iv) "GNMA security" means an obligation, participation, or any instrument of or issued by, or fully guaranteed as to principal and interest by, the Government National Mortgage Association.

(v) "Long position" means the holding of a financial options contract with the option to make or take delivery of a financial instrument.

(vi) "Primary dealer in Government securities" means:

(A) A member of the Association of Primary Dealers in United States Government Securities; or

(B) Any parent, subsidiary, or affiliated entity of such primary dealer where the member guarantees (to the satisfaction of the FCU's board of directors) over-the-counter sales of financial options contracts by the parent, subsidiary, or affiliated entity to a Federal credit union.

(vii) "Put" means a financial options contract which entitles the holder to sell, entirely at the holder's option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.

(2) *Permitted Options Transactions.* A Federal credit union may, to manage risk of loss through a decrease in value of its commitments to originate real estate loans at specified interest rates, enter into long put positions on GNMA, FNMA, and FHLMC securities:

(i) If the real estate loans are to be sold on the secondary market within ninety (90) days of closing;

(ii) If the positions are entered into:

(A) Through a contract market designated by the Commodity Futures Trading Commission for trading such contracts, or

(B) With a primary dealer in Government securities;

(iii) If the positions are entered into pursuant to written policies and procedures which are approved by the Federal credit union's board of directors, and include, at a minimum:

(A) The Federal credit union's strategy in using financial options contracts and its analysis of how the strategy will reduce sensitivity to changes in price or interest rates in its commitments to originate real estate loans at specified interest rates;

(B) A list of brokers or other intermediaries through which positions may be entered into;

(C) Quantitative limits (e.g., position and stop loss limits) on the use of financial options contracts;

(D) Identification of the persons involved in financial options contracts transactions, including a description of these persons' qualifications, duties, and limits of authority; and description of the procedures for segregating these persons' duties;

(E) A requirement for written reports for review by the Federal credit union's board of directors at its monthly meetings, or by a committee appointed by the board on a monthly basis, of:

(1) The type, amount, expiration date, correlation, cost of, and current or projected income or loss from each position closed since the last board review, each position currently open and current gains or losses from such positions, and each position planned to be entered into prior to the next board review;

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(2) Compliance with limits established in the policies and procedures; and

(3) The extent to which the positions described contributed to reduction of sensitivity to changes in prices or interest rates in the Federal credit union's commitments to originate real estate loans at a specified interest rate; and

(iv) If the Federal credit union has received written permission from the appropriate NCUA Regional Director to engage in financial options contracts transactions in accordance with this § 701.21(i) and its policies and procedures as written.

(3) *Recordkeeping and reporting.* (i) The reports described in § 701.21(i)(2)(iii)(E) for each month must be submitted to the appropriate NCUA Regional Office by the end of the following month.

(ii) The records described in § 701.21(i)(2)(iii)(E) must be retained for two years from the date the financial options contracts are closed.

(4) *Accounting.* A Federal credit union must account for financial options contracts transactions:

(i) In accordance with standards established by the NCUA Board in the *Accounting Manual for Federal Credit Unions*, available from NCUA, Administrative Office, 1776 G St. NW., Washington, DC 20456, or such other instruction as may be deemed appropriate; or

(ii) To the extent not inconsistent with NCUA Board instruction, in accordance with generally accepted accounting standards or principles.

PART 703—[AMENDED]

3. The authority citation for Part 703 is revised to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15), 1766(a), and 1789(a)(11).

4. Section 703.1 is revised to read as follows:

§ 703.1 Scope.

Sections 107(7), 107(8) and 107(15) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8), 1757(15)), set forth those securities, deposits, and other obligations in which Federal credit unions may invest. Included are securities issued or fully guaranteed by the United States Government or any of its agencies, shares of central credit unions and any federally-insured credit union, accounts in other federally-insured financial institutions, certain mortgage and mortgage-related securities, and other specified investments. This part interprets several of the provisions of sections 107(7), 107(8) and 107(15)(B). It also places limits on the types of transactions that Federal credit unions may enter into in connection with the purchase and sale of authorized securities, deposits, and obligations under sections 107(7), 107(8) and 107(15)(B). This part does not apply: to investments in loans to members and related activities, which are governed by §§ 701.21, 701.22 and 701.23 (12 CFR 701.21, 701.22 and 701.23); to the purchase of real estate-secured loans pursuant to section 107(15)(A), which is governed by § 701.23; to investment in credit union service organizations, which is governed by § 701.27 (12 CFR 701.27); or to investment in fixed assets, which is governed by § 701.36 (12 CFR 701.36).

5. Section 703.4(a) is revised to read as follows:

§ 703.4 Prohibited activities.

(a) Except as provided in § 701.21(i), a Federal credit union may not purchase or sell a standby commitment.

* * * * *

[FR Doc. 88-11991 Filed 5-27-88; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 136

Enforcement of Nondiscrimination on the Basis of Handicap in Small Business Administration Programs

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This regulation requires that the Small Business Administration operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a detailed complaint mechanism for resolving allegations of discrimination against the Small Business Administration. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by the Small Business Administration.

EFFECTIVE DATE: July 15, 1988.

FOR FURTHER INFORMATION CONTACT: J. Arnold Feldman, Chief, Office of Civil Rights Compliance, Small Business Administration, 1441 L Street NW.—Rm. 501, Washington, DC 20416, (202) 653-8054 (Voice) or (202) 653-6579 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: On July 3, 1984, the Small Business Administration (SBA) published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap as it applies to programs and activities conducted by the SBA. 49 FR 27184. Comments were received from seven organizations representing individuals with handicaps. Most were the same as those submitted to the Department of Justice on its proposed regulation for its federally conducted programs, concerning the deletion of the regulation's "undue financial and administrative burdens" language, asserting that the Agency was imposing a lesser requirement on itself than on recipients of Federal financial assistance. Commenters also requested that "all agency resources" be considered instead of specific program or activity funding, by the Agency head when deciding whether a contemplated action would result in undue financial and administrative burdens. SBA's responses to the comments will be discussed under the appropriate sections.

Section 504 requires that regulations that apply to programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Agency has today submitted this regulation to the House Education and Labor Committee, the Senate Labor and Human Resources Committee, and the House and Senate Small Business Committees. The regulation will become effective on July 15, 1988.

This rule applies to all programs and activities conducted by the Small Business Administration. Copies of this rule are available on tape for those with impaired vision. Copies may be obtained from the Office of Civil Rights Compliance at the address listed above.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs and activities conducted by the SBA. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, section 119 (Pub. L. 95-602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section

504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> 29 U.S.C. 794 (1978 amendment italicized).

The substantive nondiscrimination obligations of the Agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government shall have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2808, E2670 (daily ed. May 17, 1978) *id.* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting Davis and section 504. *See Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing 504 (for federally assisted programs) are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" *id.* at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with other Federal Agencies' regulations implementing section 504 for federally assisted programs, as they have been interpreted by the Supreme Court. Many of those regulations were issued prior to the interpretations of section 504 by the Court in *Davis*, subsequent lower court decisions interpreting *Davis*, and the Court's decision in *Alexander*. Consequently, their language does not reflect the interpretations of section 504 provided by the Supreme Court and by the various circuit courts. Nevertheless, this interpretation of those regulations must be consistent with the holdings of the Federal courts. SBA believes that there are no significant differences between this rule for federally conducted programs and the judicial interpretations of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice under Executive Order 12250. 45 FR 72995, 3 CFR, 1980 Comp., p. 298. It is an adaptation of the final rule published by the Department of Justice, which reflects recent case law and takes into consideration the various comments received on the Department of Justice NPRM.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067. 43 FR 28967, 3 CFR, 1978 Comp., p. 206. It is not a major rule within the meaning of Executive Order 12291, 46 FR 13193, 3 CFR, 1981 Comp., p. 127, since it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act. 5 U.S.C. 601-612. This rulemaking contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act. 44 U.S.C. Chapter 35.

Section-by-Section Analysis and Response to Comments

Section 136.101 Purpose.

Section 136.101 states the purpose of this rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by the Small Business Administration. No comments were received on this section.

Section 136.102 Application.

This regulation applies to all programs or activities conducted by the Small Business Administration, except programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by the Agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Agency's facilities (*e.g.*, library). Activities in the second category include programs that provide Federal services or benefits (Small Business Development Centers, and conferences or workshops sponsored or cosponsored by the Agency). No comments were received on this section.

Section 136.103 Definitions.

Most of the comments on this section concentrated on the definition of "qualified handicapped person," and requested that "Auxiliary aids be required in all aspects of SBA's federally-conducted programs".

"Agency" is defined as the Small Business Administration.

"Assistant Attorney General." "Assistant Attorney General" refers to

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the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 136.160(a)(1), they may also be necessary to meet other requirements of the regulation. Comments on the definition of auxiliary aids are discussed in connection with § 136.160.

"Complete complaint" is defined to include all the information necessary to enable the Agency to investigate the complaint. This definition is necessary, because the 180 day period for the Agency's investigation, § 136.170(f)(1), begins when the Agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted.

One commenter objected to the omission of the phrase "or interest in such property" from the definition of "facility." The term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the Agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Agency. The term "facility" is used in §§ 136.149, 136.150, and 136.170(d).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs. *See* 28 CFR 41.31. Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs. *See* 28 CFR 41.32.

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modfications in the program that the Agency can demonstrate would result in a fundamental alternation in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

SBA incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Agency. The Agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The definition of "qualified individual with handicaps" has been revised to make it clear that the Agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Agency must follow the procedures established in §§ 136.150(a)(2) and 136.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Administrator or his or her Deputy in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Administrator determines that an action would result in a fundamental alteration, the Agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or services that do not fall under paragraph (1), paragraph (2) of the definition adopts the existing definition of "qualified handicapped person" with respect to services in the coordination regulation for programs receiving Federal financial assistance. *See* 28 CFR 41.32(b). Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that a "qualified individual with handicaps" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §136.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the Agency and not to programs or activities to which it provides Federal financial assistance.

Section 136.110 Self-evaluation.

The Agency shall conduct a self-evaluation of its compliance with Section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance. *See* 28 CFR 41.5(b)(2). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

This final rule uses the same provision adopted by the Department of Justice in its final rule implementing section 504 for its federally conducted programs. 28 CFR 39.110. The Department of Justice determined that this regulatory language was appropriate after it had analyzed the Federal Advisory Committee Act, 5 U.S.C. app., Executive Order 12024, and 41 CFR Part 101–6, the regulation of the General Services Administration implementing the Act.

This final rule provides that the Agency shall provide an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

Section 136.111 Notice.

Section 136.111 requires the Agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 136.111 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § 136.160(d) in the NPRM) that the Agency provide individuals with handicaps with information concerning their rights. Because § 136.111 encompasses the requirements in § 136.160(d) of the NPRM, that later paragraph has been deleted as duplicative from the final rule, and § 136.160(e) of the NPRM has been redesignated as § 136.160(d).

Section 136.130 General prohibitions against discrimination.

Section 136.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance. *See* 28 CFR 41.51. This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule, except for editorial changes to paragraph (c).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 136.130 establish the general principles for analyzing whether any particular action of the Agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 136.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The Agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, persons with impaired hearing or vision, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(3), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility, §§ 136.149–136.151, and communications, § 136.160, are specific applications of this principle.

Despite the mandate of paragraph (i) that the Agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(4), in conjunction with paragraph (i), permits the Agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Agency's programs or activities. Paragraph (b)(4) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (c) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(5) prohibits the Agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(6) prohibits the Agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (d) prohibits the Agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the Agency's programs or activities. The phrase "criteria or methods of administration" refers to official written Agency policies and to the actual practices of the Agency. This paragraph prohibits both blatantly exclusionary policies and practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (e) specifically applies the prohibition enunciated in § 136.130(d) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the Agency. Paragraph (e) does not apply to construction of additional buildings at an existing site.

Paragraph (f) prohibits the Agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (g) prohibits the Agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification, if he or she

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can meet the essential eligibility requirements for receiving the license or certification. *See* § 136.103.

In addition, the Agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the Agency must comply with this requirement when establishing safety standards for the operation of licensees. In that case the Agency must ensure that standards that it promulgates do not discriminate againts the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (g) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certification. However, as noted above, section 504 may affect the content of the rules established by the Agency for the operation of the programs or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Some commenters argued that the regulations should extend to the activities of licensees or certified entities, citing *Community Television of Southern California v. Gottfried*, 459 U.S. 498 (1983). In that case, the Court held that section 504 as applied to federally assisted programs did not require the Federal Communications Commission to prohibit discrimination on the basis of handicap by licensed broadcasters, but that "the policies underlying the Communications Act" might authorize the Commission to issue a regulation governing such discrimination. The Court did not, however, indicate that section 504 itself could serve as the source of such regulatory authority.

The Court has held that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather the words take meaning from the purposes of the regulatory legislation." *National Association for the Advancement of Colored People v. Federal Power Commission*, 425 U.S. 662, 669 (1976). Section 504 does not of itself extend an agency's regulatory authority to the activities of licensees or certified entities.

Some commenters objected to the omission of a paragraph from the regulations for Federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the Agency would provide significant support to an organization, it would constitute Federal finanical assistance, and the organization, as a recipient of such assistance, would be covered by the Agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (h) provides that programs conducted pursuant to Federal statute or Executive Order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (i), discussed above, provides that the Agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with individuals without handicaps to the fullest extent possible.

Section 136.140 Employment

Section 136.140 prohibits discrimination on the basis of handicap in employment by the Agency. One commenter felt that the treatment of employment was not sufficiently comprehensive and wanted this section expanded.

Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. Gardner v. Morris, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 504 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, §136.140 of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, §136.170(b) specifies that SBA will use the existing EEOC procedures to resolve allegations of employment discrimination.

The final rule has not been changed, except that a reference to the Equal Employment Opportunity Commission has been added. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 136.149 Program accessibility: Discrimination prohibited.

Section 136.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 136.150 and 136.151. No comments were received concerning this section.

Section 136.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for program or activities receiving Federal financial assistance, 28 CFR 41.57, with certain modifications. Thus, § 136.150 requires that each Agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Agency is not required to make each of its existing facilities accessible. § 136.150(a)(1). However, § 136.150, unlike 28 CFR 41.57, places explicit limits on the Agency's obligation to ensure program accessibility. § 136.150(a)(2). All commenters sought the deletion of the "undue financial and administrative burdens" language from the regulation. The "undue financial and administrative burdens" language (found at § 136.150(a)(2) and 136.160(d) of the final rule) was based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt, supra; American Public Transit Association v. Lewis* (APTA), *supra.*

Paragraphs (a)(2) and 136.160(d) of the final rule are also supported by the Supreme Court's decision in *Alexander v. Choate*, 419 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefit that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n. 21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alterations(s) in the nature of a program.' " *Id.* at n. 20 (citations omitted).

Alexander supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus the failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This provision is therefore unchanged from the proposed rule.

Some commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligations to comply with section 504. *See also New Mexico Association for Retarded Citizens v. New Mexico*, 678 F.2d 847 (10th Cir. 1982). In addition, the Courts in *Alexander* held that the "administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on handicapped people "would be well beyond the accommodations that are required under *Davis.*" (469 U.S. at 308).

One comment included a lengthy analysis opposing the undue burdens defense. This comment was premised on the assumption that the proposed regulation was substantively inconsistent with the regulations for federally assisted programs. This assumption is incorrect. Judicial interpretations have established that neither section 504 nor the regulations for federally assisted programs establish an unlimited obligation to modify programs or activities to accommodate individuals with handicaps.

This comment also argued that *APTA* is no longer good law, in view of the Supreme Court's decision in *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984) (*Conrail*), in which the Court said that Congress intended through the 1978 amendments to the statute, to codify the HEW regulation. Other commenters also argued that *Conrail* prohibits departures from the language of the federally assisted regulation. The *Conrail* decision addressed only the question of employment coverage under the statute and cannot be read to mean that Congress "codified" other parts of the regulation. Furthermore, the undue burdens defense is not inconsistent with the HEW regulation; in fact, the employment provisions of the HEW regulation—those addressed in *Conrail*—do include an "undue hardship" defense. This position is confirmed by the Supreme Court's decision in *Alexander*. There the Court referred to its previous recognition in *Conrail* of the regulation as "an important source of guidance on the meaning of section 504." *Alexander*, 469 U.S. at 304, n.24, and at the same time, as discussed above, emphasized that section 504 does not mandate extensive costs and administrative burdens.

This paragraph, however, does not establish an absolute defense; it does not relieve the Agency of all obligations to individuals with handicaps. Although the Agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

In developing its final rule, SBA was guided by six principles in its application of the "fundamental alteration" and "undue financial and administrative burdens" language. These principles are as follows: (1) Because of the extensive resources and capabilities that could properly be drawn upon for section 504 purposes, it is acknowledged that, rarely will making a program accessible result in undue burdens; (2) the burden of proving that the accommodation request will result in a fundamental alteration or undue burdens has been placed squarely on the Agency, not on the individual with handicaps; (3) in determining whether financial and administrative burdens are undue, the Agency is to consider all agency resources available for use in the funding and operation of the conducted programs; (4) the "fundamental alteration"/"undue burdens" decision is to be made by the Administrator or Deputy Administrator and must be accompanied by a written statement of reasons for reaching such a conclusion; (5) if a disabled person disagrees with the Administrator's finding, he or she can file a complaint under the complaint procedures established under § 136.170; (6) even if there is a determination that making a program accessible will fundamentally alter the nature of the program or will result in undue financial and administrative burdens, the Agency must still take action that will open participation in the Agency's program to individuals with handicaps and ensure that qualified individuals with handicaps receive the benefits and services of the program.

Some commenters objected to the provision that the "undue burdens" decision would be based on consideration of "all agency resources available for use in the funding and

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operation of the conducted programs," arguing that it should be based on the resources of the Agency as a whole. The Agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the Agency's budget can be earmarked for specific purposes and are simply not available for use in making the Agency's programs accessible to individuals with handicaps. It is expected that, only on very rare occasions, will the Agency be faced with "undue burdens" in meeting the program accessibility or communications requirements of this regulation.

One commenter said that the term "undue hardship" used in regulations for federally assisted programs is more specific and less discriminatory than the term "undue burdens." The term "undue hardship" is a term of art used in connection with employment. The term "undue burdens" is taken from the Supreme Court's opinion in *Davis* and is appropriately included in this regulation.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Agency's program accessible. The Agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or by making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 136.151 Program accessibility: New Construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504, and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157. Section 136.152 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157.

It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 136.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 136.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Agency believes the same program accessibility standard should apply to both owned and leased buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The Agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 136.160 Communications.

Section 136.160 requires the Agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps include procedures for determining when auxiliary aids are necessary under § 136.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits, services and advantages of, the agency's programs or activity as those afforded to others. They also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the Agency. § 136.160(a)(1)(ii). The Agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 136.160(d). That paragraph limits the obligation of the Agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it. *See supra* preamble discussion of § 136.150(a)(2). Unless not required by § 136.160(d), the Agency shall provide auxiliary aids at no cost to the individual with handicaps.

One commenter argued that the communications section should require that communications for individuals with handicaps be "equal" to those for individuals without handicaps, not merely "effective." The regulation requires the Agency to provide auxiliary aids to ensure that individuals with handicaps have "an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency." Where the form of communication is different for individuals with handicaps than for individuals without handicaps (e.g., oral instead of written for blind people, sign language instead of speech for deaf people) the effectiveness of the communication is the only appropriate measurement of equality of treatment.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

In connection with its obligation under section 504 to ensure effective communication, the Agency has issued a policy statement on the provision of reading and interpretive services to individuals with handicaps in SBA programs. (*See* Memorandum from the Acting Deputy Associate Administrator for Management Assistance to Regional Administrators and District Directors concerning Interpreters for the Deaf, dated October 25, 1982.) When deaf or blind persons seek counseling services, the SBA employee is to use individual judgment (within the provision of § 136.160) in considering the use of an interpreter. It may not be necessary to use an interpreter if the client has one or two questions that could be answered through written communications. On the other hand, if extensive counseling appears to be necessary, thus requiring the use of an interpreter, an appointment should be set up with the client for a later time. With respect to training programs, all SBA offices should advertise through their traditional media that interpreter service will be provided at specified workshops and classes upon request.

The Agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Agency. Auxiliary aids in these proceedings must be afforded where necessary to ensure effective communication at the proceedings. When sign language interpreters are necessary, the Agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. § 136.160(a)(1)(ii). For example, the Agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the Agency to provide wheelchairs to persons with mobility impairments.

Some comments suggested that the definition of auxiliary aids should include attendant services that may be needed to aid disabled persons to travel to meetings, and in some cases to achieve program accessibility. This recommendation was not adopted because the services of an attendant for a disabled person are viewed as being generally personal in nature and not directly related to the federally conducted program. To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense.

However, a different conclusion might be reached for Federal employees or other persons traveling for the Agency. Where a disabled person who is unable to travel without an attendant is required to perform official travel, the traveling expenses of an attendant, including per diem and transportation expenses, may be paid by the Agency. *See* 5 U.S.C. 3102(d) (1982).

Paragraph (b) requires the Agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities.

Paragraph (c) requires the Agency to post signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Paragraph (d) provides that the Agency is not required to take any action that would result in a fundamental alteration in the nature of a program or activity or that would impose undue financial or administrative burdens. The Agency bears the burden of proving that a contemplated action would result in such an alteration or burden. The decision must be made by the Administrator or Deputy Administrator and must be accompanied by a written rationale. The discussion of § 136.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens, also applies to this section and should be referred to for a complete understanding of the Agency's obligation to comply with § 136.160.

Section 136.170 Compliance procedures

Section 136.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in the Small Business Administration's programs and activities. In response to a comment, this section is being changed to conform to the substantive requirements of § 39.170 of the DOJ regulation, 28 CFR 39.170, with respect to the filing, processing and investigation of all allegations of discrimination under this part. It designates the Office of Hearings and Appeals of SBA as being responsible for conducting any hearings requested under this regulation, and provides that such hearings will be conducted pursuant to the procedures contained in 13 CFR Part 134.

Paragraph (a) specifies that paragraphs (c) through (i) of this section establish the procedures for processing complaints other than employment complaints.

Paragraph (b) provides that the Agency will process employment complaints according to procedures established in existing regulations of the EEOC, 29 CFR Part 1613, pursuant to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791.

Paragraph (c) provides that any person who believes that he or she has been discriminated against based on his or her handicap may file a complaint within 180 days of the date of the alleged discrimination. Complaints also may be filed by an authorized representative of an individual complainant, or, in the case of alleged class discrimination, by a member of the class or a representative of any member of the class.

Complaints may be mailed or delivered to the Chief, Office of Civil Rights Compliance (OCRC) within 180 days of the occurrence of the alleged discrimination. Complaints under this Part received by any other Agency official shall be forwarded immediately to the Chief, OCRC. The Chief, OCRC, may extend the 180 day time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) the complainant could not reasonably be expected to know of the act or event said to be discriminatory within 180 days. § 136.170(c) (2) and (3).

Paragraph (d) requires the Agency to send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Under paragraph (e)(1), the Chief, OCRC, is required to accept all complete complaints over which the Agency has jurisdiction. If the Chief, OCRC determines that the Agency does not have jurisdiction over a complaint, pursuant to paragraph (e)(3) he or she shall promptly notify the complainant and make reasonable efforts to transfer the complaint to the appropriate entity of the Federal government. The complainant will be advised of the Agency to which the case has been transferred. If a complaint is not complete when it is filed, paragraph

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(e)(2) requires the Chief, OCRC to notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirements of paragraph (c)(2), but the time frames governing the Chief, OCRC's other duties to process the complaint do not begin to run until he or she has received a complete complaint. *See* § 136.170(f)(1) and § 136.170(g).

Within 180 days of receipt of the complete complaint, the Chief, OCRC, is required to investigate the complaint, attempt an informal resolution, and if informal resolution is not achieved, issue a letter of findings. § 136.170(f)(1). Agency employees are required to participate in investigations under this Part and may be called upon to do so during business hours. § 136.170(f)(2). The Chief, OCRC, shall furnish copies of the investigative report to the complainant and the respondent, and offer an opportunity for informal resolution. § 136.170(f)(3). The terms of the agreement of any informally resolved complaint shall be reduced to writing, with copies given to the complainant and the respondent and a copy placed in the complaint file. The written agreement may include a finding on the allegation of discrimination and shall describe the corrective action agreed upon. § 136.170(f)(4).

Paragraph (g) requires that the Chief, OCRC's letter of findings be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if discrimination is found, and notice of the right to appeal and request a hearing. This paragraph also explains that the letter of findings will become the final Agency decision if no appeal is taken by either party and that the Chief, OCRC, will so certify at the close of the time allowed for initiating an appeal under paragraph (h)(1) of this part.

The complainant or respondent may appeal the determination issued by the Chief, OCRC, with or without a request for hearing, to the Director, Office of Equal Employment Opportunity and Compliance (OEEOC), within 30 days of receipt of the letter of findings. § 136.170(h)(1). If a notice of appeal is filed without a request for a hearing, any other party to the proceeding may request a hearing within the 30 days allowed for filing a notice of appeal or within 10 days of receipt of a copy of the notice of appeal, whichever is later. § 136.170(h)(2). If the Chief, OCRC, determines that the notice of appeal is untimely, the party may file an appeal of that decision with the Director, OEEOC. § 136.170(h)(3). Any request for a hearing will be construed as a request for an oral hearing. The complainant's failure to file a timely motion requesting that the matter be scheduled for a hearing, shall constitute a waiver of the right to an oral hearing, but shall not prevent the submission of written information and argument for the record. § 136.170(h)(4).

Paragraph (i) requires the Chief, OCRC, to accept and process any timely appeal. § 136.170(h)(i). If a notice of appeal is filed but no party requests a hearing, the case will be transmitted to the Director, OEEOC, for action. § 136.170(i)(1). If a notice of appeal is filed and a party makes a timely request for hearing, the case will be transmitted to the Office of Hearing and Appeals for assignment to an administrative judge who will conduct the hearing in accordance with the procedures contained in 13 CFR Part 134. § 136.170(i)(2).

Proceedings under 13 CFR Part 134 are intended to produce a reliable and complete record in all cases. All pleadings must be submitted to all parties to the proceeding, including those granted intervenor status, to provide all parties the maximum feasible opportunity to participate in the development of the record. The public will be granted access to all information upon which a decision is based with the exception of that information which is exempt from mandatory disclosure under the Freedom of Information Act or protected by the Privacy Act. The public will also be permitted to attend any hearings conducted, except those proceedings that are closed by the administrative judge for good cause shown. See 13 CFR Part 134 for further explanation of the procedures to be applied in hearings conducted under this part.

Under paragraph (j)(1), if no request for a hearing was made by any party, the Director, OEEOC, shall issue the final Agency decision within 60 days of receipt of the appeal from the Chief, OCRC, or of any response to the notice of appeal by any other party. Where a party requests a hearing, however, the administrative judge shall issue an initial decision of the Agency based on the information in the investigative and hearing record. The initial decision shall set forth the findings, remedial action required, and reasons for the decision, and shall be transmitted by the administrative judge to the parties to the proceeding and to the Director, OEEOC, for review. The initial decision becomes the final Agency decision after 30 days unless a party files a petition for review or the Director, OEEOC, issues an order stating his or her decision to review the initial decision. § 136.170(j)(2). If either event occurs, other parties to the proceeding shall be afforded an opportunity to comment. The Director, OEEOC, shall make the final Agency decision both where a petition for review has been filed and where he or she issues an order stating his or her decision to review the initial decision. The Director, OEEOC's decision shall be based on a review of the entire file, including the investigation report, letter of findings, the hearing record, and the initial decision of the administrative judge. The decision shall be made within 60 days of receipt of the petition for review, the order, or any responses to such petition or order, whichever is later. The Director, OEEOC, will recommend appropriate remedial action if discrimination is found. § 136.170(j)(3). Corrective actions shall be taken promptly, and the Chief, OCRC, shall monitor such corrective actions to ensure compliance with the final decision.

List of Subjects in 13 CFR Part 136

Blind, Buildings, Civil Rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Accordingly, pursuant to section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA hereby adds Part 136 to Title 13 of the Code of Federal Regulations to read as follows:

PART 136—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE SMALL BUSINESS ADMINISTRATION

Sec.

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Sec.

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136.160 Communications.
136.161–136.169 [Reserved]
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136.171–136.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 136.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 136.102 Application.

This part applies to all programs or activities conducted by the Small Business Administration except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 136.103 Definitions.

For purposes of this part, the term—

"Agency" means the Small Business Administration.

"Assistant Attorney General."

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory actions in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) For purposes of employment, a person who qualifies under the definition contained at 29 CFR 1613.702(f), which is made applicable to this Part by § 136.140.

"Respondent" means the organizational unit in which a complainant alleges that discrimination occurred.

"Section 504" means section 504 of the Rehabilitation Act of 1973 ((Pub. L. 93–112, 87 Stat. 394) (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this Part, section 504 applies only to programs or activities conducted by SBA and not to activities of recipients of assistance from SBA.

§§ 136.104–136.109 [Reserved]

§ 136.110 Self-evaluation.

(a) The Agency shall, by July 17, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least three years following the self-evaluation, maintain on file and make available for public inspection:

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(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 136.111 Notice.

The Agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 136.112–136.129 [Reserved]

§ 136.130 General prohibition against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) The Agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(5) Deny a qualified individual with handicaps the opportunity to participate as a member of planning, voluntary (such as SCORE or Ace) or advisory boards; or

(6) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(c) The Agency shall permit a qualified individual with handicaps the opportunity to participate in any of the Agency's programs or activities, despite the existence of permissibly separate or different programs or activities especially designed to accommodate qualified individuals with handicaps.

(d) The Agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose of effect of which would—

(1) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(e) The Agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(1) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Agency; or

(2) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(f) The Agency, in the selection of procurement contactors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(g) The Agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Agency are not, themselves, covered by this part.

(h) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(i) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 136.131–136.139 [Reserved]

§ 136.140 Employment.

(a) No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program, or activity conducted by the Agency.

(b) The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) as established by the EEOC in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 136.141–136.148 [Reserved]

§ 136.149 Program accessibility; Discrimination prohibited.

Except as otherwise provided in § 136.150, no qualified individual with handicaps shall, because the Agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

§ 136.150 Program accessibility: Existing facilities.

(a) *General.* The Agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with § 136.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or Deputy Administrator after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. The Administrator or Deputy Administrator's decision shall be made within 30 days of the initial decision by Agency personnel that an action would result in such an alteration or burdens. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would, nevertheless, ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Agency shall comply with the obligations established under this section by September 13, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by July 15, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, by January 16, 1989, a transition plan setting forth the steps necessary to complete such changes. The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 136.151 Program accessibility; New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf if, or for the use of the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600—101–19.607, apply to buildings covered by this section.

§§ 136.152–136.159 [Reserved]

§ 136.160 Communications.

(a) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(i) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The Agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall provide a sign at each primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with § 136.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or Deputy Administrator after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. The Administrator or Deputy Administrator's decision shall be made within 30 days of the initial decision by Agency personnel that an action would result in such an alteration or burdens. If an action required to comply with this section would result in such as alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 135.161–136.169 [Reserved]

§ 136.170 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Agency.

(b) *Employment complaints.* The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination

prohibited by this part may file a complaint. An authorized representative of such person may file a complaint on his or her behalf. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class, or the authorized representative of a member of that class, may file a complaint.

(2) *Confidentiality.* The Chief, Office of Civil Rights Compliance (OCRC), shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part, or to cooperate with the Office of Inspector General in the performance of its responsibilities under the Inspector General Act of 1978, as amended.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except when this deadline is extended by the Chief, OCRC, for good cause shown. For purposes of determining when a complaint is timely filed under this paragraph, a complaint mailed to the Agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Agency.

(4) *How to file.* Complaints may be delivered or mailed to the Chief, OCRC, Small Business Administration, 1441 L Street NW.—Room 501, Washington, DC 20416. Any other SBA official receiving a complaint under this part shall forward such complaint immediately to the Chief, OCRC.

(d) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157 is not readily accessible to and usable by individuals with handicaps.

(e) *Acceptance of complaint.* (1) The Chief, OCRC, shall accept a complete complaint that is filed in accordance with paragraph (c) of this section and over which the Agency has jurisdiction. The Chief, OCRC, shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Chief, OCRC, receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to furnish the necessary information within 30 days of receipt of this notice, the Chief, OCRC, shall dismiss the complaint without prejudice.

(3) If the Chief, OCRC, receives a complaint over which the Agency does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) *Investigation/Conciliation.* (1) Within 180 days of the receipt of a complete complaint the Chief, OCRC, shall complete the investigation of the complaint and attempt informal resolution. If no informal resolution is achieved, the Chief, OCRC, shall issue a letter of findings.

(2) The Chief, OCRC, may require Agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required to participate in any investigation under this section shall do so as part of their official duties and during regular duty hours.

(3) The Chief, OCRC, shall furnish the complainant and the respondent with a copy of the investigative report and provide the complainant and respondent with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached, the Chief, OCRC, shall, within 180 days of receipt of the complete complaint, notify the complainant, the respondent and the Director, Office of Equal Employment Opportunity and Compliance (OEEOC), of the results of the investigation in a letter sent by certified mail, return receipt requested, and containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right of the complainant and respondent to appeal to the Director, OEEOC; and

(4) A notice of the right of the complainant and respondent to request a hearing.

The letter of findings becomes the final Agency decision if neither party files an appeal within the time prescribed in paragraph (h)(1) of this section. The Chief, OCRC, shall certify that the letter of findings is the final Agency decision on the complaint at the expiration of that time.

(h) *Filing an appeal.* (1) Any notice of appeal to the Director, OEEOC, with or without a request for hearing, shall be filed by the complainant or the respondent in writing with the Chief, OCRC, within 30 days of receipt from him or her of the letter required by paragraph (g) of this section. The notice shall be accompanied by a certificate of service attesting that the party has served a copy of his or her notice of appeal on all other parties to the proceeding. The Director, OEEOC, may extend this time limit for good cause shown pursuant to the procedure in paragraph (h)(3) of this section.

(2) If a timely notice of appeal without a request for hearing is filed, any other party may file a written request for hearing within the time limit specified in paragraph (h)(1) of this section or within 10 days of his or her receipt of such notice of appeal, whichever is later.

(3) A party may appeal to the Director, OEEOC, from a decision of the Chief, OCRC, that an appeal is untimely. This appeal shall be filed with the Director, OEEOC, within 15 days of receipt of the decision from the Chief, OCRC.

(4) Any request for hearing will be construed as a request for an oral hearing. The complainant's failure to file a timely request for a hearing in accordance with this part shall constitute waiver of the right to a hearing, but shall not preclude his or her submitting written information and argument to the Director, OEEOC, in connection with his or her notice of appeal.

(i) *Acceptance of appeal.* The Chief, OCRC, shall accept and process any timely filed appeal.

(1) If a notice of appeal is filed but no party requests a hearing, the Chief, OCRC, shall promptly transmit the complaint file, the letter of findings and the notice of appeal to the Director, OEEOC.

(2) If a notice of appeal if filed and a party makes a timely request for a hearing, the Chief, OCRC, will transmit the notice of appeal, the request for hearing and the investigative file to the Office of Hearings and Appeals which office will assign the case to an administrative judge who will conduct a hearing in accordance with the procedures contained in 13 CFR Part 134.

(j) *Decision.* (1) Where no request for a hearing is made, the Director, OEEOC, shall make the final Agency decision based on the contents of the complaint file, the letter of findings, the notice of appeal, and any responses to the notice of appeal filed by other parties. The decision shall be made within 60 days of receipt of the appeal or any response to the notice of appeal, whichever is applicable. If the Director, OEEOC, determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Director, OEEOC, shall have 60 days from receipt of the additional information or responses to such additional information, whichever is later, to make the decision. The Director, OEEOC, shall transmit his or her decision in writing to the parties. The decision shall set forth the findings, remedial actions, and reasons for the decision.

(2) Where a request for a hearing has been made, the administrative judge shall issue an initial decision, in writing, based on the hearing record, composed of the proposed findings of fact, conclusions of law, and remedies, to the parties and to the Director, OEEOC, within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Director, OEEOC. The decision of the administrative judge shall be deemed to be the final decision of the Agency after 30 days, unless a party files a petition for review with the Director, OEEOC, pursuant to 13 CFR 134.34(a) or the Director, OEEOC, issues an order stating his or her decision to review the initial decision, pursuant to 13 CFR 134.34(b). *See* 13 CFR 134.32(b)(3).

(3) Where a petition for review is filed or a review is ordered by the Director, OEEOC, the Director, OEEOC, shall make the final decision of the Agency based on information in the complaint file, the letter of findings, the hearing record, the initial decision, the petition for review, and any responses to the petition or order. The decision shall be made within 60 days of receipt of the petition for review, the order, or any responses to such petition or order, whichever is later. If the Director, OEEOC, determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Director, OEEOC, shall have 60 days from receipt of the additional information or responses to such additional information, whichever is later, to make the decision. The Director, OEEOC, shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, recommended remedial actions, and reasons for the decision. The decision shall adopt, reject, or modify the initial decision of the administrative judge. If the decision is to reject or modify the initial decision, the decision letter shall set forth in detail the specific reasons for the rejection or modification.

(4) Any respondent required to take action under the terms of the decision of the Agency shall do so promptly. The Chief, OCRC, may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(k) The time limit cited in paragraph (f) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 136.171—136.999 [Reserved]

James Abdnor,

Administrator.

Dated: February 8, 1988.

[FR Doc. 88-12042 Filed 5-27-88; 8:45 am]

BILLING CODE 6025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-10; Amdt. 39-5919]

Airworthiness Directives; Boeing Helicopter Company (Boeing Vertol; Vertol) Model 107-II and Kawasaki Heavy Industries, Ltd., Model KV107-II and KV107-IIA Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Boeing Helicopter Company Model 107-II and Kawasaki Heavy Industries, Ltd., Model KV107-II and KV107-IIA series helicopters imposing a 50-hour repetitive dye penetrant inspection of the lug area of aft main rotor slider guides which have 1,200 or more hours' time in service. This AD is needed to prevent potential separation of the slider guide which could lead to loss of the aft main rotor shaft thrust bearing and subsequently, loss of the helicopter.

DATE: June 2, 1988.

Compliance: Compliance required within the next 10 hours' time in service after the effective date of this AD for parts with 1,200 or more hours' time in service, and every 50 hours thereafter

ADDRESSES: The applicable service information may be obtained from Boeing Helicopter Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. A copy of the documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Chrastil, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone No. (516) 791-6221.

SUPPLEMENTARY INFORMATION: During a routine inspection conducted recently of an aft main rotor shaft slider guide with 2,463 hours' time in service, the two forward hold down lugs (four lugs total) were found cracked. Subsequently two other slider guides with 3,000 and 7,271 hours' time in service, were found cracked in the same area. These cracks were found on Boeing Helicopter Company Model 107-II and Kawasaki Heavy Industries, Ltd. Model KV-107 and KV-107-IIA series helicopters. The lug bores had been modified and split steel bushings installed in accordance with Boeing Vertol Service Bulletin No. 107-359, "Installation of Double Flange Steel Bushings in Aft Slider Guide Assembly Mounting Lugs," dated August 22, 1984. Previous lug bore modifications also had not corrected a cracking problem in this area. This AD requires an initial dye penetrant inspection of the two forward lug areas within 10 hours' time in service for slider guides with 1,200 or more hours' time in service on the effective date of this AD. Thereafter, repetitive inspections are required at an interval not to exceed 50 hours' time in service. It should be noted that the two forward lugs are more highly loaded than the two aft lugs, due to combined vertical and drag loads. The type designs for both the Boeing Vertol and the Kawasaki are the same. Since this condition is likely to exist or develop on other helicopters of the same

type design, an airworthiness directive is being issued which requires a repetitive inspection of the four lug hold-down areas of the aft main rotor slider guide.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Boeing Helicopter Company (Boeing Vertol; Vertol) and Kawasaki Heavy Industries, LTD: Applies to Boeing Helicopter Company Model 107-II and Kawasaki Model KV107-II and KV107-IIA helicopters, certificated in any category (Airworthiness Docket 88-ASW-10).

Compliance is required as indicated, unless already accomplished.

To prevent possible hazards in flight associated with a cracked aft main rotor shaft slider guide, Part Number (P/N) 107R3574-1, accomplish the following:

(a) Within the next 10 hours' time in service from the effective date of this AD, or before the accumulation of 1,200 hours' time in service, whichever comes later, perform a dye penetrant inspection of the two forward lug areas of the aft main rotor shaft slider guide for cracks as follows:

(1) Gain access to the aft rotor shaft slider guide installation.

(2) Remove paint from slider guide lug areas typical in two places.

(3) Apply dye penetrant completely around top and side surfaces of each forward slider guide mounting lug. Allow a five to 15 minute dwell time, depending on ambient temperature.

(4) Remove excess penetrant and apply the developer. Allow a drying time of five to 15 minutes, depending on ambient temperature.

(5) Visually inspect the developed areas for cracks, paying particular attention to the side surfaces of each mounting lug. Positive crack indications are cause for rejection, and require removal of slider guide from the aircraft.

(6) Clean surfaces to remove penetrant and developer. Do not repaint cleaned surfaces.

(7) Close and secure cowling.

Note.—Paragraph 2, "Accomplishment Instructions," Boeing Helicopter Co., Service Bulletin No. 107-370R1, dated September 21, 1987, constitutes an acceptable means of compliance for the inspection requirements of paragraphs (a) (1) through (7), above.

(b) After the initial inspection of paragraph (a), repeat the dye penetrant inspection at intervals not to exceed 50 hours' time in service from the last inspection.

(c) Remove cracked slider guides from service and replace with a serviceable part prior to further flight.

(d) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times specified in this AD.

(e) An alternate method of compliance which provides an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

(f) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

Copies of the applicable service bulletin may be obtained from Boeing Helicopter Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. These documents may be examined at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

This amendment becomes effective June 2, 1988.

Issued in Fort Worth, Texas, on April 29, 1988.

C.R. Melgren, Jr.,

Director, Southwest Region.

[FR Doc. 88-12061 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ANE-18; Amdt. 39-5910]

Airworthiness Directives; Garrett Engine Division (hereinafter called "Garrett"), Allied-Signal Incorporated, Models TPE331-10, -10R, -10U, -10UA, -10UF, -10UG, -10UGR, -10UR, and -11U Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which reduces the low cycle fatigue life of certain second stage turbine rotors from 6,800 to 4,800 cycles. This amendment is needed to prevent the failure of the second stage turbine rotor due to low cycle fatigue cracking which has resulted in an uncontained second stage turbine rotor failure.

DATES: *Effective*—June 6, 1988.

Compliance—As required in the body of the AD.

Comments for inclusion in the docket must be received on or before July 6, 1988.

Incorporation by Reference—Approved by the Director of the Federal Register as of June 6, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 88-ANE-18, 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 88-ANE-18".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable engine manufacturer's service bulletins (SB's) may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225-2548.

A copy of the SB is contained in Rules Docket Number 88-ANE-18, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Federal Aviation Administration, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

SUPPLEMENTARY INFORMATION: The FAA has determined that a Garrett TPE331-10UF engine incurred an uncontained second stage turbine rotor failure due to crack growth from a bore initiation site induced by low cycle fatigue. Inspections of service-returned second stage turbine rotors and supplemental fatigue data analysis confirm that the initial service life limit is too high, and a reduction of the service life limit is therefore warranted.

Since this condition is likely to exist or develop in other engines with rotors of the same type design, this AD requires incorporation of Garrett Service Bulletin (SB) TPE331-A72-0671, dated March 31, 1988, to correct the unsafe condition by reducing the second stage turbine rotor service life from 6,800 to 4,800 cycles.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD, and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 88-ANE-18". The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impractical for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation, if filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

§ 39.13 [Amended]

Garrett Engine Division, Allied-Signal Incorporated (formerly Garrett Turbine Engine Company, formerly AiResearch Manufacturing Company of Arizona): Applies to model TPE331-10, -10R, -10U, -10UA, -10UF, -10UG, -10UGR, -10UR, and -11U turboprop engines equipped with second stage turbine rotors, part numbers 3102106-1, -6, and -8, installed in aircraft certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained engine failure, accomplish the following:

(a) Remove from service the second stage turbine rotor per the schedule below in accordance with the accomplishment instructions of Garrett Alert SB TPE331-A72-0571, dated March 31, 1988:

Second Stage turbine rotor cycles since new (CSN)	Removal schedule
0 to 4,400	Prior to 4,800 cycles since new (CSN).
4,401 to 5,000	Within 400 cycles after the effective date of this AD or 5,200 CSN, whichever occurs first.
5,001 to 5,900	Within 200 cycles after the effective date of this AD or 6,000 CSN, whichever occurs first.
5,901 to 6,800	Within 100 cycles after the effective date of this AD or 6,800 CSN, whichever occurs first.

(b) Remove from service prior to January 1, 1989, all second stage turbine rotors with 4,800 or more cycles since new (CSN), regardless of the schedule provided in paragraph (a) above.

Note.—Garrett SB TPE331-72-0160 Revision 12, dated March 31, 1988, which defines critical component service life limits includes the required life limit and states the cycle definitions.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 4344 Donald Douglas Drive, Long Beach, California 90808.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Los Angeles Aircraft Certification Office, Northwest Mountain Region, may adjust the compliance schedule specified in this AD.

Garrett SB, TPE331–A72–0571, dated March 31, 1988, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the manufacturer's SB may obtain copies upon request to Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034.

This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 88–ANE–18, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on June 6, 1988.

Issued in Burlington, Massachusetts, on April 22, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88–12082 Filed 5–27–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–22–AD; Amdt. 39–5942]

Airworthiness Directives; GQ Security Parachutes, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD), which was previously made effective to all known U.S. parachute lofts and parachute riggers by individual letters. This AD requires the removal from service of GQ Security Parachutes, Inc., parachute canopies, Model No. 79A1684–( ). That action was prompted by reports that certain of these parachute canopies were found to have deteriorating material. This condition, if not corrected, could result in a torn canopy, which could prevent safe descent of the parachute user.

DATES: Effective June 17, 1988.

This AD was effective earlier to all recipients of priority Letter AD 88–05–08, dated March 7, 1988.

ADDRESSES: GQ Security Parachutes, Inc., no longer exists. A copy of all documents applicable to this AD may be examined at the Federal Aviation Administration (FAA), Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Eierman, Aerospace Engineer, Systems & Equipment Section, ANM–173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; telephone (213) 297–1388.

SUPPLEMENTARY INFORMATION: On March 7, 1988, the FAA issued Priority Letter AD 88–05–08, applicable to GQ Security Parachutes, Inc., Model No. 79A1684–( ), parachute canopies approved under TSO C23b, which requires removal of these canopies from service. That action was prompted by reports that several of these canopies were found to have deteriorating material. This condition, if not corrected, could result in a torn canopy, which could prevent safe descent of the parachute user.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive (AD):

GQ Security Parachutes, Inc.: Applicable to Model No. 79A1684–( ) parachute canopies, approved under TSO C23b. Compliance is required as indicated, unless already accomplished.

To prevent the failure of a parachute canopy due to deteriorating canopy material, accomplish the following:

A. Prior to further use, remove or obliterate the TSO C23 by marking from the parachute canopy, and remove the canopy from service.

B. Upon request, an alternate means of compliance with the requirements of this AD, which provides an acceptable level of safety, may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

This amendment becomes effective June 17, 1988.

It was effective earlier to all recipients of Priority Letter AD 88–05–08, issued March 7, 1988.

Issued in Seattle, Washington, on May 20, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–12084 Filed 5–27–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–ASW–48; Amdt. 39–5941]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale Alouette/Lama Model SA 315B, SA 316B, SA 316C, SA 316B, SA 316C, SA 318B, SA 319B, and SA 319C Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Societe Nationale Industrielle Aerospatiale (SNIAS) Alouette/Lama Model SA 315B, SA 316B, SA 316C, SA 316B, SA 316C, SA 318B, SA 319B, SA 319C, SA 316B, SA 316C, and SA 319B helicopters, which supersedes AD 73–13–02, Amendment 39–1686, as amended by Amendment 39–2527. The new AD requires accomplishment of a manufacturer's mandatory service bulletin to improve the sealing on the freewheel and main gear box/freewheel/clutch unit coupling. The new AD is needed to prevent confusion and conflicting maintenance information and inspection intervals between the existing AD and mandatory manufacturer's maintenance instructions.

DATE: *Effective Date:* May 31, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 1988.

Compliance: Required as indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, or may be examined in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel R. Brodie, Department of Transportation, Federal Aviation Administration, Forth Worth, Texas 76193–0110, telephone (817) 624–5116.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD superseding an existing AD on SNIAS Lama and Alouette model helicopters was published in the Federal Register on November 16, 1987 (52 FR 43711).

The proposal was prompted by revisions to the manufacturer's service bulletins which superseded the service bulletins referenced in the current AD contradicting the information contained in AD 73–13–02.

AD 73–13–02, Amendment 39–1686, as amended by Amendment 39–2527, currently requires compliance with certain SNIAS mandatory service bulletins, and also requires recurring inspections of the freewheel shaft on SNIAS Lama and Alouette model helicopters. After issuing AD 73–13–02, the FAA determined that the manufacturer has issued mandatory service bulletins which supersede information contained in AD 73–13–02. Therefore, the FAA is adopting a new AD that supersedes AD 73–13–02 and requires compliance with the manufacturer's new service bulletins on SNIAS Lama and Alouette model helicopters.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation only involves 177 helicopters. The AD will reduce the inspection requirements for the helicopters involved, thereby resulting in reduced maintenance costs and a savings to the fleet of $223,000 per year. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all SNIAS Alouette/Lama Model SA 315B, SA 316B, SA 316C, SA 316B, SA 316C, SA 318B, SA 319B, and SA 319C helicopters, equipped with main gearbox P/N 3160S62–00–0000 or P/N 319A62–00–000; freewheel P/N 3160S60–10–000; and clutch P/N 3160S63–20–000, P/N 3160S63–30–000, or P/N 319A63–00–000, certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent failures of the main drive shaft and freewheel assemblies by ensuring proper operation of the main gearbox oil jet, P/N 3160A62–01–002, and to improve sealing at the freewheel attachment joints, accomplish the following:

(a) Within the next 100 hours' time in service or upon observance of a freewheel coupling and seal oil leak, whichever is earlier, comply with Alouette Service Bulletin 05–61, Issue 2, dated February 14, 1979, or Lama Service Bulletin 05–06, Issue 2, dated February 14, 1979, as applicable.

(b) After compliance with paragraph (a) of this AD, accomplish the following: After the first flight following the installation of a new or overhauled main gearbox, then every 100 hours' time in service, comply with section 1(c) of Alouette Service Bulletin 05–05, dated February 14, 1979, or Lama Service Bulletin 05–14, dated February 14, 1979, as applicable.

Note.—Service Bulletin 05–05 supersedes Service Bulletin 05–42, dated November 10, 1971, and Service Bulletin 05–14 supersedes Service Bulletin 05–01, dated November 10, 1971.

(c) An alternate method of compliance, which provides an equivalent level of safety, may be used when approved by the Manager, Aircraft Certification Division, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0100, or by the Manager, Brussels Aircraft Certification Office, AEU–100, c/o American Embassy, Brussels, Belgium, APO NY 09667.

The procedures shall be done in accordance with Alouette Service Bulletin 05–61, Issue 2, dated February 14, 1979, or Lama Service Bulletin 05–06, Issue 2, dated February 14, 1979, and Alouette Service Bulletin 05–05, dated February 14, 1979, or Lama Service Bulletin 05–14, dated February 14, 1979, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may

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be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005. Copies may be inspected in the Rules Docket, Office of Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment supersedes AD 73-13-02, Amendment 39-1666, as amended by Amendment 39-2527.

This amendment becomes effective May 31, 1988.

Issued in Fort Worth, Texas, on April 15, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-12665 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25612; Amdt. No. 1374]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 13, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 25, 1988

Grand Rapids, MN—Grand Rapids/Itasca Co-Gordon Newstrom Fld, NDB RWY 34, Amdt. 5
St. Paul, NM—Lake Elmo, NDB RWY 3, Amdt. 3
St. Paul, MN—St. Paul Downtown Holman Fld, NDB RWY 30, Amdt. 6
South St. Paul, MN—South St. Paul Muni-Richard E. Fleming Fld, NDB-B, Amdt. 3

. . . Effective July 28, 1988

Brainerd, MN—Brainerd-Crow Wing Co/Walter F. Wieland Fld, VOR RWY 30, Amdt. 11
Brainerd, MN—Brainerd-Crow Wing Co/Walter F. Wieland Fld, VOR/DME RWY 12, Amdt. 7
Brainerd, MN—Brainerd-Crow Wing Co/Walter F. Wieland Fld, NDB RWY 23, Amdt. 4
Brainerd, MN—Brainerd-Crow Wing Co/Walter F. Wieland Fld, ILS RWY 23, Amdt. 4

. . . Effective June 30, 1988

Concord, CA—Buchanan Field, LDA RWY 19R, Amdt. 7
Fullerton, CA—Fullerton Muni, LOC RWY 24, Amdt. 2
Santa Ana, CA—John Wayne Airport-Orange County, VOR RWY 1L, Amdt. 2, *Cancelled*
Santa Ana, CA—John Wayne Airport-Orange County, VOR RWY 19R, Amdt. 23, *Cancelled*
Danbury, CT—Danbury Muni, LOC RWY 6, Orig.
Venice, FL—Venice Muni, VOR/DME-A, Amdt. 4, *Cancelled*
Douglas, GA—Douglas Muni, VOR-A, Amdt. 5
Douglas, GA—Douglas Muni, LOC RWY 4, Amdt. 1
Douglas, GA—Douglas Muni, NDB RWY 4, Amdt. 1
Thomson,GA—Thomson-McDuffie County, NDB RWY 28, Amdt. 6
Kahului, HI—Kahului NDB RWY 20, Amdt. 8
Caldwell, ID—Caldwell Industrial, NDB RWY 30, Amdt. 2
Staples, MN—Staples Muni, NDB RWY 14, Amdt. 4
Kinston, NC—Eastern Rgnl Jetport at Stallings Fld, VOR RWY 23, Amdt. 11
Kinston, NC—Eastern Rgnl Jetport at Stallings Fld, VOR/DME RWY 5, Amdt. 11
Kinston, NC—Eastern Rgnl Jetport at Stallings Fld, NDB RWY 5, Amdt. 9
Kinston, NC—Eastern Rgnl Jetport at Stallings Fld, ILS RWY 5, Amdt. 8
Pohnpei Island, Federated States of Micronesia—Pohnpei Intl, NDB/DME RWY 9, Amdt. 3
Pohnpei Island, Federated States of Micronesia—Pohnpei Intl, NDB-B, Amdt. 3
Pohnpei Island, Federated States of Micronesia—Pohnpei Intl, NDB-C, Amdt. 3
Babelthuap Island, Caroline IS., T.T.—Babelthuap/Koror, NDB RWY 9, Amdt. 2

. . . Effective May 11, 1988

Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, ILS RWY 35, Amdt. 16

. . . Effective May 5, 1988

Sitka, AK—Sitka, NDB-A, Amdt. 1
Soldotna, AK—Soldotna, RNAV RWY 7, Amdt. 3
Soldotna, AK—Soldotna, RNAV RWY 25, Amdt. 3
Chanute, KS—Chanute Martin Johnson, RNAV RWY 36, Amdt. 1

The FAA published an Amendment in Docket No. 25592, Amdt. No. 1372 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 83 Page 15374; dated Friday, April 29, 1988, under Section 97.27 effective June 30, 1988, which is hereby amended as follows:

Winnsboro, SC, Fairfield County, NDB RWY 4, Amdt. 3, effective date changed to 25 AUG 88.

The FAA published an Amendment in Docket No. 25600, Amdt. No. 1373 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 89 Page 16388; dated Monday May 9, 1988, under Section 97 effective June 30, 1988, which is hereby amended as follows:

New Bedford, MA—New Bedford Muni, LOC BC RWY 23, Amdt. 6 is rescinded, Amdt. 5 remains in effect.

New Bedford, MA—New Bedford Muni, NDB RWY 5, Amdt. 10 is rescinded, Amdt. 9 remains in effect.

[FR Doc. 88-12063 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3229]

NEC Home Electronics (U.S.A.), Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Delaware computer corporation with its principal office in Wood Dale, IL, to provide consumer redress and to contact each consumer who purchased a 32K board. The consent order also prohibits the respondent from falsely claiming that any of its computer hardware products currently has a stated memory capacity or other capability and from claiming purchasers of its products have access to a stated memory capacity or other capability unless the respondent has substantiation for the claim.

DATE: Complaint and Order issued May 11, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Jock K. Chung, FTC/S-4631, Washington, DC 20580. (202) 326-2984.

SUPPLEMENTARY INFORMATION: On Wednesday, March 2, 1988, there was published in the **Federal Register**, 53 FR 6667, a proposed consent agreement with analysis In the Matter of NEC Home Electronics (U.S.A.), Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—*Advertising Falsely Or Misleadingly*: § 13.10 *Advertising falsely or misleadingly*; § 13.175 *Quality of product or service.* Subpart—*Corrective Actions And/Or Requirements*: § 13.533 *Corrective actions and/or requirements*; § 13.533-20 *Disclosures*; § 13.533-45 Maintain records; § 13.533-45(e) *Correspondence*; § 13.533-45(k) *Records, in general*; § 13.533-50 *Maintain means of communication*; § 13.533-55 *Refunds, rebates, and/or credits*; § 13.533-57 *Restitution.* Subpart—*Misrepresenting Oneself And Goods—Goods*: § 13.1575 *Comparative data or merits*; § 13.1590-20 *Federal Trade Commission Act*; § 13.1710 *Qualities or properties*; § 13.1755 *Success, use or standing*; § 13.1770 *Unique nature or advantages.*

List of Subjects in 16 CFR Part 13

Computer products and equipment, Trade practices.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88-12040 Filed 5-27-88; 8:45 am]

BILLING CODE 4750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F-0578]

Indirect Food Additive; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of nylon 6/69 polymer, manufactured by the condensation of *epsilon*-caprolactam, hexamethylenediamine, and azelaic acid, for use as the nonfood-contact layer in multilayer structures intended for the cooking and holding of nonalcoholic food at temperatures not to exceed 100 °C (212 °F). This action responds to a petition filed by EMS-CHEMIE AG.

DATES: Effective May 31, 1988; objections by June 30, 1988.

ADDRESS: Written objections are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 30, 1986 (51 FR 3844), FDA announced that a petition (FAP 5B3852) had been filed by EMS-CHEMIE AG, CH-7013 Domat/Ems, Switzerland, proposing that § 177.1390 *High-temperature laminates* (21 CFR 177.1390) be amended to provide for the safe use of a nylon 6/69 polymer manufactured by the condensation of *epsilon*-caprolactam, hexamethylenediamine, and azelaic acid for use in laminates that may contact food at temperatures not to exceed 100 °C (212 °F).

FDA has evaluated the date in the pretition and other relevant material and concludes that the proposed food additive use is safe. However, subsequent to the publication of the filing notice for this petition, the agency established a new food additive regulation in 21 CFR 177.1395, for laminates used at temperatures between 49 °C (120 °F) and 121 °C (250 °F) and changed the section heading of § 177.1390 *High-temperature laminates (21 CFR 177.1390)* to read § 177.1390 *Laminate structures for use at temperatures of 250 °F and above* (52 FR 33574; September 4, 1987). Because 100 °C (212 °F) will be the maximum allowable temperature for laminates containing the nylon 6/69 as a nonfood-contact layer, it is more appropriate to regulate this food additive in new 21 CFR 177.1395 than in 21 CFR 177.1390. The agency is also including a description of the nylon 6/69 resin in 21 CFR 177.1500 *Nylon resins* with a cross-reference to the permitted conditions of use listed in 21 CFR 177.1395.

Additionally, in response to questions received following the publication of new 21 CFR 177.1395, the agency wishes to make clear that substances listed in paragraph (b) of the regulation for use as nonfood-contact layers may, unless otherwise stated, be used without any limitations as nonfood layers at temperatures below 49 °C (120 °F). Based on the knowledge that it has gleaned from reviewing numerous petitions for substances of this type, FDA is confident that there will be virtually no migration of components from nonfood-contact layers at temperatures lower than 49 °C (120 °F). FDA intends to amend § 177.1395 to incorporate this determination in the regulation in the near future.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m. Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before June 30, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1395 is amended by adding a new entry to the list of substances in the table in paragraph (b)(4) to read as follows:

§ 177.1395 Laminate structures for use at temperatures between 120 °F and 250 °F.

* * * * *

(b) * * *

(4) * * *

Substances	Limitations
* *	* * *
Nylon 6/69 resins complying with § 177.1500(b), item 14, of this chapter (CAS Reg. No. 51995-82-1).	For use with nonalcoholic foods under conditions of use B, C, D, E, F, G, and H described in Table 2 of § 176.170 of this chapter. Laminate structures with authorized food-contact materials may contain nylon 6/69 resins provided that the nitrogen content of aqueous extracts of a representative laminate (obtained at 100 °C (212 °F) for 8 hours) does not exceed 15 micrograms per square centimeter (100 micrograms per square inch).

3. Section 177.1500 is amended by adding new paragraph (a)(14), by adding a new column entitled "Viscosity number (mL/g)" and a new entry 14 to the table in paragraph (b), by redesignating paragraph (c)(5) as (c)(5)(i), and by adding (c)(5)(ii) to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(a) * * *

(14) Nylon 6/69 resins (CAS Reg. No. 51995-82-1) are manufactured by the condensation of 49.5+0.5 weight percent *epsilon*-caprolactam, 19.4+0.2 weight percent hexamethylenediamine and 31.2+0.3 weight percent azelaic acid.

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HCl	Viscosity number (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
*	*	*		*	*		*	
14. Nylon 6/69 resins for use only as specified in 21 CFR 177.1395 of this chapter.	1.09 ± 0.02	270-277	.....	>140 using the method described in § 177.1500(c)(5)(ii) of this chapter.	3.0	.....	.....	.....

(c) * * *

(5) *Viscosity number (VN).* (i) * * *

(ii) The viscosity number (VN) for Nylon 6/69 resin in a 99 percent cresol solution (5 milligrams resin per milliliter) shall be determined at 25 °C (77 °F) by method ISO 307-1984(E), "Plastics-Polyamides-Determination of Viscosity Number," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(5)(i) of this section.

Dated: May 6, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12098 Filed 5-27-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Hyaluronate Sodium Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of the new animal drug application (NADA) filed by Fort Dodge Laboratories, Inc., providing for safe and effective use of hyaluronate sodium injection in treating horses intraarticularly for carpal or fetlock joint dysfunction due to acute or chronic noninfectious synovitis associated with equine osteoarthritis.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Inc., Fort Dodge, IA 50501-0518, is sponsor of NADA 140-806 which provides for intraarticular injection of a solution containing 10 milligrams per milliliter of hyaluronate sodium (HYALOVET®) for treating horses for carpal and fetlock joint dysfunction due to acute or chronic noninfectious synovitis associated with equine osteoarthritis. The application is approved and the regulations are amended by adding § 522.1145(c) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.1145 is amended by adding new paragraph (c) to read as follows:

§ 522.1145 Hyaluronate sodium injection.

* * * * * *

(c)(1) *Specifications.* Each milliliter of sterile aqueous solution contains 10 milligrams of hyaluronate sodium.

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(2) *Sponsor.* See 000856 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Amount.* Small and medium-size joints (carpal, fetlock)—20 milligrams.

(ii) *Indications for use.* Treatment of carpal or fetlock joint dysfunction in horses due to acute or chronic noninfectious synovitis associated with equine osteoarthritis.

(iii) *Limitations.* For intraarticular injection in horses only. Treatment may be repeated after 1 or more weeks but not to exceed 2 injections per week for a total of 4 weeks. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 24, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-12097 Filed 5-27-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127, and 128

[Public Notice 1063]

Partial Extension of Compliance Deadline and Clarification of the International Traffic in Arms Regulations (ITAR) Amendments

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of an extension of the grace period for compliance with a provision of, and clarifications to, the Final Rule issued on April 4, 1988 and published in the **Federal Register** on April 7, 1988 (53 FR 11494) regarding the International Traffic in Arms Regulations and Implementation of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Dec. 22, 1987, Pub. L. 100-204, 101 Stat. 1331, 1429).

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph Smaldone, Chief, Licensing Division, Office of Munitions Control, Department of State (202-875-0644), or Miriam Sapiro, Office of the Legal Adviser, Department of State (202-647-7838).

SUPPLEMENTARY INFORMATION: This notice effects (1) an extension of the May 16, 1988 deadline for submission of certain information required by § 126.13(a); and (2) clarifications of the scope of the information required by §§ 122.2(b)(1) and 126.13(a).

The supplementary information contained in the Final Rule issued on April 4, 1988 states that, as of May 16, 1988, the Office of Munitions Control will return applications for licenses or other approvals that omit the information required by § 126.13. Representatives from industry, including trade associations and individual registrants, have expressed concern to the Office of Munitions Control and to members of Congress that applicants have found it difficult, if not impossible, to compile the information required by § 126.13(a) prior to the May 16, 1988 deadline. In response to the concern expressed and the explanations provided by industry, and in light of the Department's interest in obtaining accurate and complete information, the Office of Munitions Control has changed the date to July 1, 1988. The information requried by § 126.13(b) must still be included in all applications submitted after May 16, 1988.

Sections 122.2(b)(1) and 126.13(a) require that intended registrants and applicants, respectively, provide information about the past behavior (e.g., indictment, conviction, or ineligibility to contract with or receive certain licenses or other approvals from a U.S. Government agency) of "the chief executive officer, president, vice-presidents, other senior officers or officials * * * or any member of the board of directors." Questions have arisen regarding the scope of these provisions. For the purposes of these provisions, the persons referred to in these subsections include those U.S. and foreign natural persons who hold such offices: (1) With responsibility for the overall policy or management of the registrant/applicant; or (2) with direct policy or management responsibility for any divisions or subsidiaries of the registrant/applicant in the United States or abroad inyolved in the manufacture or export of defense articles or the furnishing of defense services.

A question has also arisen regarding whether a registrant/applicant must state that any of these persons are ineligible to receive certain licenses or other approvals from a U.S. Government agency solely because the person holding the office is not a U.S. person. Sections 122.2(b)(1)(ii) and 126.13(a)(2) do not require disclosure of ineligibility based solely upon the fact that, pursuant to § 120.1(b), foreign persons other than governmental entities are not eligible to receive licenses or other approvals.

Dated: May 25, 1988.

William B. Robinson,

Director, Office of Munitions Control, Bureau of Politico-Military Affairs.

[FR Doc. 88-12067 Filed 5-27-88; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-88-1399; FR-2526]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Ch. II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA Section 235 insurance programs has been raised from 10.00 percent to 10.50 percent.

Until recently, HUD regulated interest rates not only for the Section 235 Program, but also for fire safety equipment loans insured under Section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the Section 235 Program.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56286 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (l) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

Accordingly, the Department amends 24 CFR Part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.50 percent per annum with respect to mortgages insured on or after May 23, 1988.

* * * * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 10.50 percent per annum with respect to mortgages insured after May 23, 1988.

* * * * * * *

Dated: May 20, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 88-12106 Filed 5-27-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8201]

Income Taxes; Section 904 (f) Transition Rules; Foreign Tax Credits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations that were published in the **Federal Register** for Tuesday, May 17, 1988 (53 FR 17461) as Treasury Decision 8201. The regulations relate to transition rules for implementing the changes made to section 904 (f) of the Internal Revenue Code of 1986 by the Tax Reform Act of 1986.

DATES: These temporary regulations apply to taxable years beginning after December 31, 1986, and are effective after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates, at 202-566-3896 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections provide the public with guidance needed to comply with that Act and will affect individuals and entities claiming the foreign tax credit.

Need for Corrections

As published, Treasury Decision 8201 contains errors in one of its examples. This document corrects those errors.

Correction of Publication

Accordingly, the publication of temporary regulations (T.D. 8201), which was the subject of FR Doc. 88-10921, is corrected as follows:

PART 1—[AMENDED]

On page 17463, second column, Example (2), should read:

§ 1.904(f)-131 [Amended]

* * * * * *

Example (2). The facts are the same as in *Example* (1) except that X has $800 of financial services income, $100 of general limitation income, a $100 dividend from a noncontrolled section 902 corporation and a ($100) shipping loss for its taxable year ending December 31, 1986. Pursuant to paragraph (a)(2) of this section, the rules of section 904 (f)(5) apply before recapture of overall foreign losses. Therefore, the ($100) shipping loss incurred by X will be allocated to its separate limitation income as follows: $80 ($100 × 800/1000) will be allocated to X/'s financial services income, $10 ($100 × 100/1000) will be allocated to its general limitation income and $10 ($100/1000) will be allocated to X's dividend from the noncontrolled section 902 corporation. Accordingly, after allocation of the 1986 shipping loss, X has $720 of financial services income, $90 of general limitation income, and a $90 dividend from the noncontrolled section 902 corporation. Pursuant to section 904 (f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $450. X's overall foreign loss incurred during its 1986 taxable year is recaptured as follows: $80 ($100 × 720/900) of X's financial services income, $10 ($100 × 90/900) of its general limitation income and $10 ($100 x 90/900) of its dividend from the noncontrolled

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section 902 corporation will be treated as U.S. source income. Accordingly, after application of section 904 (f), X has $100 of U.S. source income, $540 of financial services income, $80 of general limitation income and a $30 dividend from the noncontrolled section 902 corporation for its 1988 taxable year. X must establish a separate limitation loss account for each portion of the 1988 shipping loss that was allocated to its financial services income, general limitation income and dividends from the noncontrolled section 902 corporation. X's overall foreign loss account for the 1988 general limitation loss is reduced to zero. X still has a $100 balance in its overall foreign loss account that resulted from the 1987 shipping loss.

* * * * *

Bernard T. Bress,

Senior Technical Reviewer, Associate Chief Counsel (International).

[FR Doc. 88-12120 Filed 5-27-88; 8:45 am]

BILLING CODE 4830-01-M

Fiscal Service

31 CFR Part 358

[Dept. of the Treasury Cir., Public Debt Series No. 26-87]

Regulations Governing Coupons Under Book-Entry Safekeeping (CUBES)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: On November 2, 1987, at 51 FR 44003, the Department of the Treasury published an interim rule with a request for comments. The interim rule established regulations governing the Treasury's Coupons Under Book-Entry Safekeeping ("CUBES") program. The interim rule is being adopted as the final rule without change.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Rochelle F. Granat, Attorney-Adviser, Bureau of the Public Debt, Washington, DC, (202) 447-0859.

SUPPLEMENTARY INFORMATION: One written comment on the interim rule was received. This comment did not address any actual term of the interim rule but urged the Treasury to establish another opportunity for depository institutions to submit coupons stripped from physical Treasury securities for conversion to book-entry form. The Notice published in the **Federal Register** on December 5, 1986 (51 FR 44003), which announced the CUBES program, stated that the CUBES program would provide a one-time opportunity to present physical coupons for conversion to book-entry form. At present the Treasury has no plans to provide another opportunity to present physical coupons for conversion.

Procedural Requirements

This rule is not a "major rule" as defined in Executive Order 12291. A regulatory impact analysis is therefore not required.

The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rule making is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) does not apply to this rule because it does not contain information collection requirements which necessitate approval by the Office of Management and Budget.

List of Subjects in 31 CFR Part 358

Government securities, Federal Reserve System.

Accordingly, the interim rule adding Part 358 to Subchapter B of Title 31, Code of Federal Regulations, Chapter II, which was published at 52 FR 41990-41993 on November 2, 1987, is adopted as final rule without change.

Dated: May 18, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-12055 Filed 5-27-88; 8:45 am]

BILLING CODE 4810-35-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1153 and 1155

Authorities and Delegations and Statement of Organization and Procedures

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board at its March 9, 1988 meeting adopted amendments to its Statement of Organization and Procedures and Authorities and Delegations, which set forth the procedures for Board and Board committee meetings. The amendments to the Statement of Organization and Procedures and the amendments to the Authorities and Delegations were adopted to improve the orderly function of Board and committee operations and to effect the reorganization of the committee structure of the Architectural and Transportation Barriers Compliance Board.

The amendments to the Statement of Organization and Procedures and the amendments to the Authorities and Delegations are being published so that all affected persons will be fully informed about procedures governing the meetings and to implement the act.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Nicholas Chiarkas, General Counsel, Architectural and Transportation Barriers Compliance Board, 1111 18th Street NW., Suite 501, Washington, DC, (202) 653-7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Rehibilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the Architectural and Transportation Barriers Compliance Board (hereinafter ATBCB or the Board) adopted a Statement of Organization and Procedures on September 16, 1975. The Statement was published at 50 FR 1032 (1975) and codified at 36 CFR Part 1155. The Statement was amended by the Board on May 9, 1977; March 14, 1978; May 8, 1978; March 11, 1980; May 10, 1983; May 12, 1986 and on September 16, 1987. Some of the major changes in the revised Statement of Organization and Procedures passed by the ATBCB at its March 9, 1988 meeting are:

(1) All references to the designation "Chairperson" were amended to read "Chair".

(2) The Chair of the Board will set the agenda with the approval of the Executive Committee and proposals for Board action will be submitted to the Chair. The Chair may then submit the item to a committee for action prior to Board action.

(3) The Executive Committee will be composed of six members to include the Chair and Vice-Chair (of the Board), the chairs of each of the two subject matter committees and two at large members. The two at large members shall be elected annually by the Board and shall balance the number of federal and public members. The chair of the Executive Committee shall be the Vice-Chair of the Board.

(4) Except as otherwise stated, use of proxies shall be prohibited at Executive and subject matter committee meetings.

(5) Each subject matter committee shall be composed of seven members. The chair of each committee will be elected by the Board and the Chair of the Board will appoint six additional members to each committee. A quorum shall be four members. In the case of

Federal members, the liaison may represent the Federal member in subject matter committees for the limited purpose of establishing a quorum.

(6) Special Committees shall be governed by the same rules and procedures applicable to subject matter committees unless otherwise prescribed.

(7) References to pay grades "GS" and "GA" shall be amended to read "GM". Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the ATBCB adopted its Authorities and Delegations of July 12, 1983. The Authorities and Delegations were published at 48 FR 33975 (1983) and codified at 36 CFR Part 1153. The ATBCB adopted amendments to the Authorities and Delegations on September 11, 1985 and on March 9, 1988. Some of the major changes in the revised Authorities and Delegations passed by the ATBCB at its March 9, 1988 meeting are:

(1) All references to the designation "Chairperson" were amended to read "Chair".

(2) The Chair of the Board will not appoint the chairs of the subject matter committees or the Executive Committee.

(3) The chair will establish the Board meeting agenda with the approval of the Executive Committee.

(4) The Vice-Chair of the Board shall be the Chair of the Executive Committee.

(5) Subject matter committee chairs will be elected annually by the Board.

(6) The Executive Committee may recommend to the Chair of the Board that an item be placed on Board agenda subject to the approval of the Executive Committee.

(7) The provision that the Executive Committee will ensure the orderly functioning of the committees' work and the process for reviewing matters that are proposed for the Board's consideration has been deleted.

(8) Subject matter committees will report to the Board instead of the Executive Committee.

(9) In § 1153.(e)(1), the word "may" was inserted between "Board" and "in".

(10) References to pay grades "GS" and "GA" shall be amended to read "GM".

List of Subjects

36 CFR Part 1153

Authority delegations (Government agencies), Organizations and functions (Government agencies).

36 CFR Part 1155

Authority delegations (Government agencies), Handicapped organizations and functions (Government agencies).

For the reasons stated in the preamble, Chapter XI of Title 36, Code of Federal Regulations, is amended by revising Parts 1153 and 1155 to read as follows:

PART 1153—AUTHORITIES AND DELEGATIONS

Sec.
1153.1 The Board.
1153.2 Chair.
1153.3 Vice Chair.
1153.4 Executive Director.
1153.5 General Counsel.
1153.6 Committees of the Board.
1153.7 Chief Procurement Officer.
1153.8 Equal employment opportunity.
1153.9 Freedom of information Officer.
1153.10 Delegations records.

Authority: 29 U.S.C. 792, as amended.

§ 1153.1 The Board.

The Board is the governing body of the agency. The composition of the Board and its functions are established by section 502 of the Rehabilitation Act of 1973. The Board has the following duties and responsibilities, including:

(a) To carry out its responsibilities under section 502 of the Rehabilitation Act of 1973, as amended. In carrying out these responsibilities, the Board may hold public hearings throughout the country.

(b) To establish policies and issue regulations in accordance with its statutory mandate.

(c) To resolve issues that are within its jurisdiction.

(d) To determine and adopt a contracting and procurement policy for the agency. In carrying out this responsibility, the Board will enter into contracts only in accordance with its contracting and procurement policy, published in the **Federal Register.**

(e)(1) To effect the prompt and efficient disposition of all matters within its jurisdiction. In carrying out this responsibility, the Board may in accordance with Article VI of its Statement of Organization and Procedures:

(i) By majority vote delegate to the Executive Committee authority to implement its decisions.

(ii) By two-thirds vote delegate to the Executive Committee any other of its authorities, to the extent permitted by law.

(iii) To the extent permitted by law, delegate other duties to its officers, committees, or staff by a vote of two-thirds of the membership of the Board at the time the vote is taken.

(2) A separate delegation is necessary for each action the Board desires the Executive Committee to implement. Unless so permitted in the original delegation, an officer, committee, or staff person shall not redelegate authority.

(f) To make to Congress, at the end of each fiscal year, an annual report of the Board's activities during that fiscal year. The annual report shall include such material as it is required by law to include and such other material as the Board may decide.

(g) To make to the President and Congress such other reports as it is required by law to make, and such recommendations as it considers necessary or desirable to eliminate environmental barriers confronting handicapped individuals.

(h) To allocate funds appropriated by the Congress for such activities as conducting investigations and surveys, initiating public hearings, collecting data on past and current studies, and providing stenographic or other services, as necessary, appropriate, and in accordance with law.

(i) To determine the jurisdiction of each standing committee of the Board.

§ 1153.2 Chair.

The Chair represents the Board as the head of the agency, whenever an applicable Federal statute or regulation imposes a duty or grants a right or authority to the head of the agency. The Chair or his or her designee has the following duties and responsibilities:

(a) To coordinate and organize the work of the Board in such a manner as to promote the prompt and efficient disposition of all matters within the jurisdiction of the Board. In carrying out these responsibilities, the Chair is delegated the authority to:

(1) Supervise the Executive Director.

(2) Direct the Executive Director concerning appropriate action to implement decisions of the Board.

(3) Evaluate the Executive Director's performance, and approve performance evaluations of employees who report directly to the Executive Director. A delegation of this authority may only be made to the Vice-Chair of the Board.

(4) Authorize domestic travel for the Executive Director, which authority may be delegated, and authorize foreign travel for staff, Board members and the Executive Director, which authority may not be delegated.

(5) Make necessary administrative decisions for the agency and direct the Executive Director concerning implementation of such decisions during periods when the Board is not in session.

(6) Review and approve publication of the Board newsletter and press releases

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which contain expressions of Board policy.

(7) Appoint members to the Board's subject matter committees.

(8) Nominate one or more Board members to serve, with their consent, at each public hearing which may be held by the Board.

(9) Request from departments or agencies represented on the Board such technical, administrative, or other assistance as may be required to carry out the Board's activities.

(10) Hire and fire staff at the GM–14 level and above, and approve promotions to the GM–14 level and above, with the consent of the Executive Committee. The authority to fire staff may only be delegated to the extent permitted by applicable Office of Personnel Management regulations.

(11) Nominate the General Counsel, who is to be confirmed by the Board, and appoint division directors, with the consent of the Executive Committee.

(b) To preside at all meetings and sessions of the Board.

(c) To establish the Board meeting agenda subject to the approval of the Executive Committee.

(d) To represent the Board in all matters relating to congressional testimony and legislative reports. However, any other Board member may present his or her own or minority views on supplemental reports.

(e) To represent the Board in all matters involving submissions of comments on agencies' proposed regulations and responses to published directives of the Office of Management and Budget. The Board shall be given advance written notice of any action taken under this authority. The Chair may file comments on agencies' draft notices of proposed rulemaking (NPRMs), published NPRMs, final rules, other notices published in the **Federal Register**, only with advance approval of the Executive Committee.

(f) To call a special meeting of the Board at the request of the Executive Committee, to take action on a request to the Board to enter litigation as amicus curiae.

(g) To maintain ongoing liaisons with constituency groups and other organizations and with staff of interested congressional committees to keep them informed of general Board policies and activities and to obtain information for use by the Board in formulating policy, developing budget requests, and drafting recommended legislative changes.

(h) To carry out other duties and responsibilities as may be delegated by the Board.

§ 1153.3 Vice Chair.

The Vice Chair shall, in the absence of the Chair from a Board meeting, or in the event of his or her death or disqualification, perform the duties and exercise the powers of the Chair, and shall generally assist the Chair and perform such other duties as may be directed by the Chairperson or the Board. The Vice-Chair shall serve as Chair of the Executive Committee.

§ 1153.4 Executive Director.

The Executive Director is appointed by the Board and is responsible to the Board under the supervision of the Chair. He or she has the following duties and responsibilities:

(a) To assist the Chair in carrying out the administrative and executive responsibilities of the Chair in a manner that may be directed by the Chair. These duties may include acting as the administrative head of the agency and in connection therewith assisting in the planning, directing, coordinating, and managing of the administrative affairs of the Board. In carrying out these responsibilities, the Executive Director may exercise authority delegated to him or her in accordance with the Board's contracting and procurement policy published in the **Federal Register**. In addition, the Executive Director is delegated the authority to:

(1) Authorize travel expenses for consultants, specialists, experts, witnesses, and other persons whose presence is deemed essential for attendance at Board meetings, hearings, advisory committee meetings or other functions of the Board.

(2) Reimburse members of the board who are not regular fulltime employees of the United States for travel, subsistence, and other necessary expenses incurred in carrying out their duties.

(b) To recommend to the Chair of the Board, matters that should be considered by the Board or any of its designated committees.

(c) To review with the Board and with heads of the several units and offices, the program and procedures of the Board and to make recommendations thereon as may be necessary to administer section 502 of the Rehabilitation Act of 1973 most effectively in the public interest.

(d)(1) To provide sustained administrative leadership, and supervision and management of staff activities in carrying out the policies and decisions of the Board under the direction and supervision of the Chair. Supervision of staff includes:

(i) Authority to detail, reassign and train all staff, hire and fire staff at the GM–13 level and below, and promote staff to the GM–13 level.

(ii) Making recommendations to the Chair on hiring and firing staff at the GM–14 level and above, and promoting to the GM–14 level and above.

(iii) Evaluating the performance of all staff who report directly to the Executive Director and approving the performance evaluations of all other staff.

(iv) Advance approval of work activities which are outside the normal scope of the employee's job duties.

(v) The utilization and assignment of staff in support of any Board member of Board committee.

(vi) All other utilization and assignment of staff.

(2) In carrying out these responsibilities, the Executive Director is delegated the authority to authorize domestic travel for all staff, within the Board designated levels in the budget. Approval by the Chair of the Board is required for any travel expenditures above those designated levels.

(e) To direct compliance and enforcement activities in accordance with the procedures set forth in 36 CFR Part 1150 including:

(1) Issuing citations and determinations not to proceed.

(2) Conducting negotiations for compliance, and entering into agreements for voluntary compliance.

(3) All other actions authorized by law pertaining to compliance and enforcement not otherwise reserved to the Board by 29 U.S.C. 792.

(4) Issuing staff manuals which have been approved by the Board, to provide guidance to staff in interpreting the Architectural Barriers Act of 1968 and section 502 of the Rehabilitation Act of 1973, as amended, and standards and guidelines issued pursuant to those Acts. Positions taken in any such manuals will not be inconsistent with established Board policy, and administrative and court rulings, to the maximum extent possible. The manuals will be for staff guidance and will be available to the public upon request.

(f) To direct and supervise the development and execution of routine technical assistance and public information programs, as authorized by law. These activities may be carried out in cooperation with state and local government units, other Federal agencies, and interested consumer groups. Public information program initiatives other than routine program activities shall be approved by the Board in advance.

(g) To provide special administrative assistance to the Board at the request of the Chair.

(h) To direct investigation and research of initiatives submitted by staff or Board members regarding technical assistance or other Board functions.

(i) To propose and implement changes in the functional organization of the Board staff offices, following a written notification to the Board of the nature and reasons for the proposed changes. Personnel actions necessary to implement such changes shall not be approved until there has been a meeting of the Board, following the Board's written notification of the changes, and shall be taken consistent with §1153.2(a)(10).

(j) To submit biweekly reports to the Chair.

(k) To incorporate proposed revisions in the minutes if corrections or additions have be submitted, and present both the original and the corrected minutes to the Board for final approval. The Executive Director shall distribute the approved minutes within the (10) days after approval to: (1) Board members; (2) the House Education and Labor Committee, the House Public Works and Transportation Committee, the Senate Labor and Human Resources Committee, and the Senate Environment and Public Works, Committee; and make minutes available to others upon request.

(l) To refer correspondence by the Board which involves a specific department or agency, to that department or agency for reply.

(m) To account to the Board for the administration of program expenditures and keep records which disclose disposition of any funds and the nature and extent of the Board's activities.

(n) To report semi-annually, in writing, to the Board on each procurement regardless of amount entered into the date in the fiscal year, listing each procurement separately with its amount and date. In addition, the report shall list all procurements then in progress that have not been awarded and any procurements being considered for any future time.

(o) To maintain and keep current a separate file containing all delegations of authority, which shall be in writing, and provide copies of all delegations to the Board as they occur.

§ 1153.5 General Counsel.

The General Counsel is nominated by the Chair and confirmed by the Board. He or she is responsible to the Board under the supervision of the Executive Director. The General Counsel has the following duties and responsibilities:

(a) To coordinate and organize the work of the legal staff in order to provide prompt and comprehensive legal advice to the Board.

(b) To provide legal interpretation of statutes, regulations, and rules of procedure for the Board's consideration.

§ 1153.6 Committees of the Board.

(a) *Committee chairs.* The Vice-Chair of the Board shall be the chair of the Executive Committee. The subject matter committee chairs are elected annualy by the Board. They have the following duties and responsibilities:

(1) To preside at all meetings of their respective committees.

(2) To provide, after each committee meeting (with the exception of teleconference meetings), an evaluation of the performance of the Board staff person assigned as liaison to the committee. Providing assistance to the committee shall be included as a critical element in the performance standards of each committee liaison staff person. The evaluations are to be considered by the supervisor of each Board committee liaison staff person in the annual performance evaluation.

(3) The chair of the Planning and Budget committee will ensure that work on each Board budget is begun no later than 21 months prior to the date on which the budget is to become operative.

(b) *Executive Committee.* The Executive Committee has the following duties and responsibilities:

(1) To report directly to the Board on matters submitted to the Executive Committee by members and subject matter committees, and all other matters that are within its jurisdiction:

(2) To review and consider recommendations and proposals from the various subject matter committees, and take appropriate action thereon. This may result in recommending to the Chair of the Board that a proposal be placed on the Board agenda for Board action, or referring it back to the subject matter committee for further refinement of its proposals or revision of its reports, or referring it to another committee for appropriate actions.

(3) To issue recommendations to the Chair of the Board concerning proposals on the agenda.

(4) To review the Board's agenda as established by the Chair of the Board.

(5) To assist the Chair in other circumstances at his or her request.

(6) To arrange joint meetings among the appropriate subject matter committees whenever two or more committees have concurrent jurisdiction over a matter, or other related responsibilities.

(7)(i) To review requests to the Board to enter litigation as amicus curiae.

(ii) In carrying out these responsibilities, the Executive Committee is delegated the authority to disapprove such requests and make recommendations to the Board to approve such requests. Board approval shall be required prior to any amicus filing. The Committee may request the Chair of the Board to call a special meeting of the Board to expedite Board action on the Committee's recommendations.

(8) To review and make recommendations to the Board to amend or approve the Board's statement of organization and procedures, formal policy statements, and authorities and delegations.

(9) To carry out other duties and responsibilities as may be duly delegated by the Board.

(c) *Subject matter committees.* Each subject matter committee studies and reports to the Board on matters that are within the subject matter committee's province, and has the following duties and responsibilities:

(1) To review and consider recommendations or proposals submitted by Board members, committees, and other individuals and entities.

(2)(i) To identify issues and develop policy recommendations for review by the Executive Committee. This includes further refinement of matters that are referred from the Executive Committee, and submission of reports containing recommendations or proposals on which action is to be taken by the Board.

(ii) In carrying out these responsibilities, each subject matter committee is delegated the authority to arrange briefings, and research by designated staff, experts, or Federal member agency staff through requests to the Chair or the Executive Director, whichever is appropriate.

(3) To formulate and present projections of matters to be undertaken by the committee to the Planning and Budget Committee.

(4) To project and formulate the need for staff assistance in performing the committee's functions.

(5) To report, at the direction of the Chair of the Board or the committee, the status of matters that are within the committee's particular jurisdiction.

(6) To advise the Board to forward materials originating within the subject matter committee to another committee with jurisdiction over the matter involved.

(d) *Special Committees.* A Special Committee has the duties and

responsibilities specified by its creator, who shall report the names of its members and chair to the Chair of the Board.

§ 1153.7 Chief Procurement Officer.

The Chief Procurement Officer is designated by the Head of the Procuring Activity in accordance with the Board's contracting and procurement policy published in the Federal Register. He or she has the following duties and responsibilities:

(a) To ensure that staff is provided with equipment and other basic supplies and services that are necessary to perform their duties.

(b) To report to the Head of the Procuring Activity in all other matters pertaining to the agency's needs for supplies and services.

§ 1153.8 Equal employment opportunity.

(a) The Director of Equal Employment Opportunity (EEO Director) is designated by the Chair. The EEO Director has the responsibility on a collateral duty basis, to carry out the functions of the EEO Director, Federal Women's Program Coordinator, Hispanic Employment Program Manager, and Handicap Program Coordinator, in accordance with regulations of the Equal Employment Opportunity Commission.

(b) For the purposes of 29 CFR 1613.221, the Chair of the Board shall make the final decision of the Board on a complaint based on information in the complaint file. The Chair may designate another Board member to discharge this responsibility. A person designated to make the decision for the head of the agency shall be one who is fair, impartial and objective.

§ 1153.9 Freedom of Information Officer.

(a) The Board has the responsibility to disseminate information on matters of interest to the public and to disclose on request all information contained in records in its custody insofar as it is compatible with the discharge of its responsibilities and consistent with the Freedom of Information Act, as amended, 5 U.S.C. 552 and the Board regulations "Public Availability of Information" (36 CFR Part 1120).

(b) The Board designates the Executive Director as the Freedom of Information (FOI) Officer. The FOI Officer has the responsibility for implementing the policies and procedures to ensure compliance with the requirements of the Freedom of Information Act and the Board regulations. The Executive Director may delegate that responsibility.

§ 1153.10 Delegations records.

All delegations authorized by these Authorities and Delegations shall be made in writing. Records of all such delegations will be maintained by the Executive Director in a separate file.

PART 1155—STATEMENT OF ORGANIZATION AND PROCEDURES

Sec.

1155.1 Organization and membership.
1155.2 Board meetings.
1155.3 Committees.
1155.4 General Counsel.
1155.5 Fiscal accountability.
1155.6 Delegations.
1155.7 Amendments to the Statement of Organization and Procedures.
1155.8 Amendments to the Authorities and Delegations.

Authority: 29 U.S.C. 792, as amended.

§ 1155.1 Organization and membership.

(a) *Name and organization.* The name of this organization is the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Board") as provided in section 502 of the Rehabilitation Act of 1973.

(b) *Authorization for the Board.* The statutory authorization for the Board is section 502 of the Rehabilitation Act of 1973, as amended.

(c) *Officers of the Board.* The presiding officers of the Board shall be a Chair and in his or her absence or disqualification a Vice-Chair. The Chair and Vice-Chair shall be elected by a majority of the fixed membership of the Board and shall serve for terms of one year. When the Chair is a member of the general public, the Vice-Chair shall be a Federal official; and when the Chair is a Federal official, the Vice-Chair shall be a member of the general public. Upon the expiration of the term as Chair of a member who is a Federal official, the subsequent Chair shall be a member of the general public; and vice versa. If no new Chair or Vice-Chair has been elected at the end of the one-year term, the incumbents shall continue to serve in that capacity until a successor Chair or Vice-Chair has been elected.

(d) *Membership.* The Board shall be composed of Presidentially appointed public members and the heads of each of the following departments or agencies (or their designees whose positions (or acting positions) are Executive Level IV or higher):

(1) Department of Education;
(2) Department of Health and Human Services;
(3) Department of Transportation;
(4) Department of Housing and Urban Development;
(5) Department of Labor;
(6) Department of Interior;
(7) Department of Defense;
(8) Department of Justice;
(9) General Services Administration;
(10) United States Postal Service; and
(11) Veterans Administration.

(e) *Board vacancies.* (1) If any public member becomes a Federal employee, such member may continue as a member of the Board for not longer than the sixty-day period beginning on the day he or she becomes such an employee.

(2) If any public member is unable to fulfill his or her obligation as a member, the member shall notify the Chair and the President.

(3) A public member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed.

(4) A public member whose term has expired may continue to serve until a successor has been appointed.

§ 1155.2 Board meetings.

Regular meetings of the Board shall ordinarily be held on the Wednesday following the second Tuesday of every other month and shall be planned for four hours duration, except as otherwise provided in paragraphs (a) (2) and (4) of this section. Whenever possible, all business shall be transacted at the regular meeting. The Board may elect to convene in executive sessions.

(a) *Prior notification.* (1) The Chair shall provide a written notice of scheduled Board meetings, and an agenda for the meeting, including supporting materials, to each Board member, ten (10) work days prior to the meeting.

(2) The Chair may cancel a regular meeting of the Board by giving written notice of the cancellation in place of the written notice of the scheduled Board meeting at least ten (10) work days prior to the meeting.

(3) Special meetings of the Board shall be called by the Chair to deal with important matters arising between regular meetings which require urgent action by the Board prior to the next regular meeting. Voting and discussion shall be limited to the subject matter which necessitated the call of the special meeting. All Board members shall be notified of the time, place, and exact purpose of the special meeting a reasonable time in advance.

(4) The Chair may reschedule a regular meeting of the Board to another date, no more than one month earlier or later than the regularly scheduled date.

(b) *Attendance.* (1) If a Board member is unable to attend a regularly scheduled meeting, he or she shall notify the Executive Director at his or her earliest convenience.

(2) A list of Board members present and those Board members absent shall become a part of the permanent record through its inclusion in the minutes.

(3) In order to maintain an orderly meeting, discussion shall be among Board members and the Executive Director. Board staff and Federal member staff may participate in the discussion of a specific issue only at the request of a Board member present at the meeting or the Executive Director, and upon recognition by the Chair.

(c) *Rules for Board meetings.* (1) Meetings of the Board shall be held in accordance with Robert's Rules of Order, except as otherwise prescribed herein.

(2) The Board shall not suspend the rules in taking an action concerning adoption, amendment or rescission of this Statement of Organization and Procedures nor the Board's Authorities and Delegations.

(d) *Quorum.* (1) A quorum shall be the majority (12) of the fixed membership. At least six of the members required for a quorum shall be public members.

(2) Proxies shall not be counted for purposes of establishing a quorum.

(3) The presiding officer shall not call a meeting to order unless a quorum is present. If at anytime during the meeting the Chair or a member notices the absence of a quorum, it shall be his or her duty to declare the fact. However, debate on a question pending may continue after a quorum is not longer present.

(4) In the absence of a quorum the Board members present may move to recess in order to contact absent members and solicit their attendance.

(e) *Voting procedure.* (1) Only Board members or Federal member designees, Executive Level IV or higher, may vote.

(2) Except as otherwise prescribed herein, at a meeting at which there is a quorum a majority vote of the members present in person or by proxy is necessary for action by the Board.

(3) The presiding officer shall have the same right to vote as any other member.

(4) *Proxy voting.* (i) Except as provided in § 1155.2 (d)(2) and (e)(4)(iv) of this section, proxy voting shall be permitted.

(ii) Any member may give his or her directed or undirected proxy to any other Board member or any Federal member designee, Excutive Level IV or higher, present at the meeting.

(iii) Proxies are to be given in writing and submitted to the Chair prior to or at the meeting.

(iv) A directed proxy shall be voided as to a specific issue if the question on which the vote is eventually taken differs from the question to which the proxy is directed.

(5) A requirement of a ⅔ vote shall mean ⅔ of the members present in person or by proxy, at a meeting at which there is a quorum, except as provided in §§ 1155.6(b), 1155.7 and 1155.8 of this part.

(f) *The order of business.* Except as otherwise prescribed herein, a proposal for Board action cannot be considered by the Board unless it is placed on the agenda by the Chair of the Board, with the approval of the Executive Committee.

(g) *The basic procedures.* (1) Any member wishing to submit a proposal for Board action will submit it directly to the Chair of the Board, by delivering copies of the proposal to the Board office, addressed to the Chair of the Board. Upon receiving a proposal from a Board member, the Chair may direct the Executive Director to forward copies of the proposal to appropriate subject matter committee(s) and/or the Executive Committee.

(2) Upon receipt of a proposal from a Board member, or a proposal originating from within a committee, subject matter committees will review the proposal, including determining whether the proposal is within their jurisdiction, and, if so, identifying the issues involved, and refining the proposal. Committees may request a report from staff or the member submitting the proposal. Each committee taking any action on the proposal will submit it with an accompanying report and recommendations to the Chair of the Board.

(3) The Chair may take action on a member's proposal without receiving a report from a subject matter committee when, after reviewing the proposal, he or she determines that the proposal does not need further development for Board consideration. The Chair's review may include requesting a report from staff or the member submitting the proposal, or calling a meeting of the Executive Committee.

(4) When the Chair of the Board receives a recommendation from the subject matter committee, the Chair will review the recommendation and take appropriate action thereon. This may result in placing the recommendation on the next Board agenda or sending it back to the subject matter committee or to another committee, for appropriate action.

(h) *Agenda.* Chair, with the approval of the Executive Committee, places items of business on the Board agenda. A written notice of ten (10) work days to the full Board is required for an item to become part of the Board's agenda. The ten (10) days notice requirement may be waived upon a two-thirds vote by the Board to suspend the rules of order.

(i) *Discharge procedure.* Seventy-five (75) days after a proposal is first received by the Chair of the Board, any member has a right to discharge the proposal. For purposes of this paragraph, a proposal is received by the Chair the day it is delivered to the Chair at the Board office. In order to exercise a discharge, the discharging member must provide written notice to the Chair of the Board, the Executive Committee, appropriate subject matter committee(s) and the Executive Director thirty (30) days prior to the next Board meeting. Upon the Chair's receipt of a timely discharge notice, the proposal must be placed on the next regular Board agenda.

(j) *Request for legal opinion from the Department of Justice.* The Board may, by a majority vote, seek legal advice on any matter from the Office of Legal Counsel, United States Department of Justice. The Board shall not be bound by the opinion of the Office of Legal Counsel.

(k) *Corrections, additions, or approval of Board minutes.* (1) The Executive Director shall send draft minutes of the previous meeting to each Board member within fifty (50) days following the meeting. Any corrections shall be submitted in writing at or before the next Board meeting.

(2) The Board will approve the final minutes after all corrections and additions have been incorporated.

§ 1155.3 Committees.

The Board may, by a two-thirds vote, establish or dissolve standing committees, and change the number, size and jurisdiction of standing committees. Meetings of the committees shall be held in accordance with Robert's Rules of Order, except as otherwise prescribed herein. The use of proxies shall be prohibited at Executive and subject matter committee meetings except as otherwise prescribed herein. A Committee may establish its own additional procedures provided that they do not conflict with the provisions of this Statement, and the Committee informs the Chair of the Board in writing of any additional procedures.

(a) *Executive Committee*—(1) *Composition.* The Executive Committee shall be composed of six members, three Federal and three public members, which shall include the Chair and the Vice-Chair of the Board and the chairs of each of the two subject matter committees and two at-large members. The two at large members shall balance

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the number of federal and public members and shall be elected annually by the Board after the election of the Chair and Vice-Chair of the Board and the chairs of the two subject matter committees. Its chair shall be the Vice-Chair of the Board.

(2) *Quorum.* A quorum in the Executive Committee shall be one-third the actual committee membership. In the absence of a quorum, a meeting can be held only for the purpose of discussion and no vote may be taken.

(3) *Voting.* Only members of the committee may vote in the committee meetings. Any other Board member may attend and participate in the meeting, but may not vote.

(b) *Subject matter committees*—(1) *Composition.* Each subject matter committee shall be comprised of seven members. The Chair of each committee shall be elected annually by the Board. The Chair of the Board will appoint six additional members to each subject matter committee for a total of seven members in each. Each chair of each committee, may appoint an acting chair when the chair is absent.

(2) *Terms.* The members of each committee will serve a term of one year corresponding to that of the chair, and continue their duties until their successors have been appointed.

(3) *Quorum.* A quorum in a subject matter committee shall be four members, present in person or, in the case of Federal members, the liaison may represent the Federal member in subject matter committees for the limited purpose of establishing a quorum. In the absence of a quorum, a meeting may be held only for the purpose of discussion.

(4) *Voting.* Only committee members may vote in the committee meetings. Any other Board member, agency staff and the Board staff may attend and participate in meetings but may not vote.

(c) *Special committees.* The Chair, the Board, or a standing committee may appoint a special committee to carry out a specific task. A special committee shall dissolve upon completion of its task or when dissolved by its creator. A special committee shall be governed by the same rules and procedures applicable to subject matter committees unless otherwise prescribed.

(d) *Minutes.* Each Committee will keep a written record of the proceedings.

§ 1155.4 General Counsel.

(a) The General Counsel is nominated by the Chair and confirmed by the Board. He or she is responsible to the Board under the supervision of the Executive Director.

(b) The General Counsel shall attend Board meetings and provide legal counsel when requested or when he or she deems it advisable and upon recognition by the Chair.

§ 1155.5 Fiscal accountability.

Board funds shall not substitute for resources an agency should spend for activities under its own research and development or other programmatic or adminsitrative authority. However, the Board may augment current studies by additional funding to insure a focus for particular information on barriers confronting handicapped individuals.

§ 1155.6 Delegations.

(a) The Board may—

(1) By majority vote delegate to the Executive Committee authority to implement its decisions, and

(2) By two-thirds vote delegate to the Executive Committee any other of its authorities, to the extent permitted by law. A separate delegation is necessary for each action the Board desires the Executive Committee to implement.

(b) The Board may, to the extent permitted by law, delegate other duties to its officers, committees, or staff by a vote of two-thirds of the membership of the Board at the time the vote is taken.

(c) Unless so permitted in the original delegation, an officer, committee, or staff person shall not redelegate authority.

§ 1155.7 Amendments to the Statement of Organization and Procedures.

In order to adopt and amend the Statement of Organization and Procedures, a vote of two-thirds of the membership of the Board at the time the vote is taken shall be required.

§ 1155.8 Amendments to the Authorities and Delegations.

In order to adopt and amend the Authorities and Delegations, a vote of two-thirds membership of the Board at the time the vote is taken shall be required.

Thomas E. Harvey,

Vice Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 88-12121 Filed 5-27-88; 8:45 am]

BILLING CODE 8150-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Choctaw County (unincorporated areas) (FEMA Docket No. 6821)	
Bogue Chitto River:	
About 700 feet downstream of State Highway 10	*136
About 0.8 mile upstream of County Highway G	*157
Wahalak Creek:	
Just downstream of confluence of Brock Creek	*96
About 1.0 mile upstream of confluence of Brock Creek	*106
Wahalak Creek Tributary No. 1:	
About 2,000 feet upstream of mouth	*94
About 3,850 feet upstream of mouth	*106
Brock Creek:	
At mouth	*97
About 1.8 miles upstream of mouth	*108
Pickett Creek:	
About 1,200 feet downstream of confluence of Pickett Creek Tributary No. 3	*117
Just upstream of confluence of Pickett Creek Tributary No. 3	*118
Pickett Creek Tributary No. 3:	
At mouth	*118
About 900 feet upstream of mouth	*121
Maps available for inspection at the County Courthouse, Butler, Alabama.	
ARIZONA	
Yuma County (unincorporated areas) (FEMA Docket No. 6822)	
Wash A:	
Approximately 2,900 feet west of the intersection of Ken De Fortuna Drive and Annett De Fortuna Avenue	#2
Approximately 1,000 feet downstream of Ken De Fortuna Drive	#3
Approximately 3,600 feet north of Annett De Fortuna Avenue along Ken De Fortuna Drive	#8
Wash B:	
Approximately 1,200 feet east of the corner of Sections 1, 2, 11, and 12 in Township 9S, Range 21W	#1
Approximately 1,200 feet east of Ken De Fortuna Drive	#2
Approximately 2,500 feet west of Ken De Fortuna Drive	#3
Approximately 250 feet south of the corner of Sections 1, 2, 11, and 12 in Township 9S, Range 21W	#4
Wash C:	
At the corner of Sections 11, 12, 13, and 14 in Township 9S, Range 21W	#2
At confluence with Fortuna Wash	#3
Maps available for review at the Yuma County Courthouse, 168 South Second Street, Yuma, Arizona.	
ARKANSAS	
Cleburne County, (unincorporated areas) (FEMA Docket No. 6823)	
Greers Ferry Lake: Entire length of shoreline	*492
Maps available for inspection at the County Courthouse, Heber Springs, Arkansas.	
Horseshoe Bend (city), Izard, Sharp, and Fulton Counties (FEMA Docket No. 6823)	
Diamond Branch:	
At confluence with Bens Creek	*642
Approximately 1.9 miles upstream from confluence with Bens Creek	*642
Approximately 80 feet upstream of East Tri Lakes Drive	*652
Approximately 2.6 miles above confluence with Bens Creek	*714
Bens Creek:	
100 feet downstream of Crown Lake Dam	*641
At approximately 3.4 miles above Crown Lake Dam	*642
At North Little Rock Road	*671
At confluence of Monark Branch	*719
Maps available for inspection at 1301 South Edgewater Road, Horseshoe Bend, Arkansas.	
Howard County (unincorporated areas) (FEMA Docket No. 6823)	
Saline River: At downstream County boundary	*257
Mine Creek:	
At confluence with Saline River	*267
Approximately 3.15 miles above confluence with Dillard Creek	*298
At downstream corporate limits of City of Nashville	*409
Approximately 1.7 miles upstream of corporate limits of City of Nashville	*451
Town Creek:	
Approximately .4 mile downstream of confluence of Town Creek Tributary	*290
At upstream County boundary	*306
Town Creek Tributary:	
Confluence with Town Creek	*293
Upstream side of upstream crossing of Graysonia, Nashville and Ashdown Railroad	*305
Dillard Creek:	
At State Route 27	*310
Approximately .6 mile upstream of State Route 27	*316
Tamperanceville Creek:	
At confluence with Mine Creek	*329
Approximately 79 feet upstream of State Route 27	*334
Mine Creek Tributary:	
Confluence with Mine Creek	*331
Approximately .3 mile upstream of State Route 27	*361
Blue Bayou:	
Approximately .5 mile downstream of confluence of Blue Bayou Tributary # 1	*568
Approximately .3 mile upstream of State Route 26	*601
Center Point Creek:	
At confluence with Blue Bayou	*601
At upstream County boundary	*639
Holly Creek:	
At confluence of Holly Creek Tributary # 1	*396
Approximately 1 mile upstream of confluence of Holly Creek Tributary # 3	*441
Holly Creek Tributary # 1:	
At confluence with Holly Creek	*396
At upstream County boundary	*401
Holly Creek Tributary # 2: At confluence with Holly Creek	*407
Dossatar River:	
At Gillham Dam	*568
At Duckett Road	*569
Maps available for inspection at the Howard County Courthouse, Nashville, Arkansas.	
Logan County, (unincorporated areas) (FEMA Docket No. 6823)	
Greasy Creek:	
At confluence with Petit Jean River	*456
Approximately 183 feet upstream of the Chicago, Rock Island, and Pacific Railroad	*463
Booneville Creek:	
At confluence with Petit Jean River	*440
Approximately 200 feet upstream of the County boundary	*443
Booneville Creek Tributary # 1:	
At confluence with Booneville Creek	*441
At upstream County boundary	*445
Petit Jean River:	
At downstream County boundary	*424
At confluence of Greasy Creek	*456
Arkansas River:	
Approximately 1,200 feet downstream of the downstream County boundary	*341
At upstream County boundary	*373
Greasy Creek Tributary: At confluence with Greasy Creek	*456
Delaware Creek:	
Approximately 925 feet downstream of downstream County boundary	*341
Approximately 2.8 miles upstream of State Route 22	*354
Shoal Creek:	
At confluence with the Arkansas River	*348
Approximately 1 mile upstream of State Route 22	*371
Little Shoal Creek:	
At confluence with Shoal Creek	*349
Approximately .4 mile upstream of State Route 22	*352
Cane Creek:	
Approximately .3 mile downstream of State Route 197	*385
Approximately 165 feet upstream of State Route 109	*396
Maps available for inspection at the Logan County Courthouse, Booneville, Arkansas.	
White Hall (city), Jefferson County (FEMA Docket No. 6823)	
Caney Bayou:	
At Missouri Pacific Railroad	*223
At confluence of Caney Bayou Fork	*239
Caney Tributary No. 1:	
At downstream corporate limits	*229
Approximately 1.45 miles downstream of confluence with Caney Bayou	*249
School Drain:	
80 feet downstream of downstream corporate limits	*227
Approximately 100 feet upstream of Colonial Park Road	*246
Carter Creek:	
At confluence with School Drain	*231
Approximately 900 feet downstream of State Route 365	*250
Approximately 130 feet upstream of State Route 365	*267
Caney Tributary No. 2:	
At downstream corporate limits	*237
Approximately 760 feet downstream of East Holland	*247
Approximately 125 feet upstream of East Holland	*256
Caney Bayou Fork:	
At confluence with Caney Bayou	*236

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,000 feet upstream of U.S. Route 66	*280
Approximately 90 feet upstream of corporate limits	*302
Oakland Heights Creek:	
At confluence with Caney Bayou Fork	*247
At confluence with Oakland Heights Tributary	*265
Approximately 160 feet upstream of corporate limits	*275
Park Creek:	
At confluence with Oakland Heights Creek	*250
Approximately 100 feet upstream of Parkway Drive	*280
Approximately 130 feet upstream of Cooper Street	*300
Oakland Heights Tributary:	
At confluence with Oakland Heights Creek	*265
.45 mile upstream of confluence with Oakland Heights Creek	*275
Henslee Creek:	
At the Union Pacific Railroad	*222
Approximately 260 feet upstream of Cherry Avenue	*253
Gamble Creek:	
At downstream corporate limits	*251
Approximately 580 feet upstream of upstream corporate limits	*275
Industrial Creek: Approximately 0.3 mile east of the abandoned railroad crossing of U.S. Route 65	*293
Maps available for inspection at the City Hall, Wiss Hall, Arkansas.	
CALIFORNIA	
Desert Hot Springs (city), Riverside County (FEMA Docket No. 6988)	
Desert Hot Springs Channel:	
Approximately 2,575 feet downstream of Cholla Drive	*1,118
Approximately 225 feet downstream of West Drive	*1,158
At the confluence with Blind Canyon Channel	*1,297
Approximately 410 feet upstream of Verbena Drive	*1,347
Blind Canyon Channel:	
At confluence with Desert Hot Springs Channel	*1,297
Approximately 1,045 feet upstream of Casa Grande Drive	*1,521
Big Morongo Wash:	
Approximately 1,000 feet northeast of the intersection of Little Morongo Road and San Jacinto Lane	#1
Approximately 2,000 feet southwest of the intersection of Little Morongo Road and Mission Lakes Boulevard	#1
At the intersection of Cholla Drive and Ironwood Drive	#2
Approximately 2,000 feet west of the intersection of Pierson Boulevard and Cholla Drive	#2
Approximately 1,000 feet west of the intersection of Cholla Drive and Twobunch Palms Trail	#3
At the intersection of Eighth Street and Little Morongo Road	#3
Approximately 1,200 feet southwest of the intersection of Little Morongo Road and Mission Lakes Boulevard	#3
Approximately 1,300 feet west of the intersection of Little Morongo Road and Mission Lakes Boulevard	#4
Little Morongo Wash: Approximately 4,300 feet north of the intersection of Little Morongo Road and Mission Lakes Boulevard	#4
Mission Creek: At the intersection of 15th Avenue and Little Morongo Road	#1
Unnamed Stream A: At the intersection of San Ardo Road and Pomelo	#1
Unnamed Stream B:	
Approximately 900 feet east of the intersection of Pierson Boulevard and Sumac Drive	#1
Approximately 1,000 feet north of the intersection of Pierson Boulevard and Miracle Hill Road	#2
Unnamed Stream C: Approximately 200 feet south of the intersection of Skyline Drive and Fernwood Drive	#1

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Long Canyon: Approximately 2,400 feet southeast of the intersection of Hacienda Avenue and Deodar Avenue	#4
Maps are available for review at the City Planning Department, 11-711 West Drive, Desert Hot Springs, California.	
Redlands, (city), San Bernardino County (FEMA Docket No. 6923)	
San Timoteo Creek:	
Just upstream of Timoteo Canyon Road bridge	*1,298
1,900 feet upstream of San Timoteo Canyon Road Ridge	*1,320
5,000 feet upstream of San Timoteo Canyon Road bridge	*1,358
2,300 feet downstream of corporate limits	*1,361
At upstream corporate limits	*1,418
Money Wash: At Alabama Street	#1
The Zanja:	
Upstream of Texas Street	#1
At Tennessee Street	#2
Maps are available for review at City Hall, Building and Safety Department, 30 Cajon Street, Redlands, California.	
Riverside County (unincorporated areas) (FEMA Docket No. 6900)	
Edgemont & North Fork: 700 feet west along Eucalyptus Avenue from intersection with Day Street	*1,549
Big Morongo Wash:	
At intersection of Indian and Western Avenues	#1
At intersection of Mission Lakes Boulevard and Indian Avenue	#3
Little Morongo Wash: Approximately 300 feet west of the intersection of Calimount Boulevard and Leith Avenue	#6
Mission Creek:	
At intersection of Key Road and 14th Avenue	#1
At intersection of Pierson Boulevard and Indian Avenue	#2
Pushawalla Canyon:	
Approximately 3 miles north along Washington Street from intersection with Interstate Highway 10	#3
At northeast corner of Section 24, Range 6 East, Township 4 South	#4
West Maccmber Palms Channel: At northeast corner of Section 30 Range 7 East, Township 4 South	#2
Macomber Palms Channel:	
At northeast corner of Section 32, Range 7 East, Township 4 South	#1
Approximately 1,000 feet north of northeast corner of Section 32, Range 7 East, Township 4 South	#2
Sistra Palms Channel: At northeast corner of northwest quarter of Section 33, Range 7 East, Township 4 South	#1
McVicker Canyon: Approximately 100 feet south of southwest corner of the southwest quarter of Section 34, Range 5 West, Township 6 South	#3
Ortega Wash: At northeast corner of northwest quarter of northwest quarter of Section 14, Range 5 West, Township 6 South	#1
Lake Elsinore: Approximately 300 feet northeast along Russell Street from intersection with Grand Avenue	*1,267
Tripalms East Tributary: At intersection of Berostions and Laura Drives	#1
Blind Canyon Channel:	
Approximately 1,850 feet downstream of Colorado River Aqueduct	*1,497
Approximately 1,200 feet downstream of Colorado River Aqueduct	*1,521
Long Canyon:	
At intersection of 16th Avenue and Bubbling Wells Road	#1
At intersection of Far View Road and Rosemont Avenue	#2
At intersection of Buena Vista Boulevard and Long Canyon Road	#4
Approximately 8,000 feet down canyon from Colorado River Aqueduct	#5

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Stream A (vicinity of Desert Hot Springs): Approximately 3,200 feet downstream from Colorado River Aqueduct	#1
San Jacinto River: At intersection of Ellis Avenue and Trumble Road	*1,420
Salcedo Wash:	
At intersection of Pomona Expressway and Hansen Avenue	#1
At intersection of Wellhill and Hansen Avenue	#2
Saulsbe Wash:	
Approximately 2,700 feet downstream of Cottonwood Creek Avenue	*1,428
At Santa Fe Street Crossing	*1,546
Undefined Wash: Approximately 900 feet southwest of the intersection of Washington Avenue and Meridian Street	#1
Interstate 10 Wash:	
Approximately 800 feet northeast of Interstate Highway 10 and Dale Palm Drive	#2
At intersection of Varner Road and Dale Palm Drive	#4
Thousand Palms Tributary A:	
At intersection of Varner Road and Rio Del Sol	#1
Approximately 9,200 feet north along Rio Del Sol from intersection with Varner Road	#2
Thousand Palms Tributary B:	
Approximately 4,000 feet north of intersection of 30th Avenue and Monterrela Way	#1
Approximately 7,700 feet northwest of intersection of 30th Avenue and Monterrela Way	#2
Thousand Palms Tributary C:	
At intersection of Desert Moon Drive and Ramon Road	#1
Approximately 6,500 feet north of intersection of Calita Bell and Calle Helena Roads	#2
Approximately 1,000 feet east of point on Sierra Del Sol that is 2.3 miles north of Ramon Road	#3
Thousand Palms Tributary D:	
Approximately 4,150 feet east of intersection of Ramon Rd and Desert Moon Drive	#1
Approximately 11,500 feet northeast of intersection of Kubic and Ramon Roads	#2
Thousand Palms Canyon:	
Approximately 1,000 feet north of intersection of Interstate Highway 10 and Washington Street	#2
At the southern terminus of Thousand Palms Road	#3
Approximately 2,112 feet north along Thousand Palms Road from intersection with Ramon Road	#4
Pechanga Creek:	
Approximately 200 feet upstream of confluence with Temecula Creek	*997
At Via Gilberto Extended	*1,080
North Side Wash Valley:	
Approximately 600 feet upstream of, confluence with Temecula Creek	*1,010
Approximately 800 feet north of intersection of Pala and Pechanga Roads	*1,144
Park Hill Drain:	
Approximately 400 feet north on Santa Fe Street from intersection with Midway Street	*1,565
On south side of Devonshire Avenue, 500 feet east of intersection with Yale Street	*1,840
Salt Creek:	
On Atchison, Topeka and Santa Fe Railway approximately 1,500 feet east-northeast of California Avenue	*1,494
Approximately 1,000 feet upstream of Cawston Avenue	*1,522
Perris Valley Storm Drain: Just upstream of Nuevo Road	*1,423
Maps are available for review at Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, California.	
Sacramento County (unincorporated areas) (FEMA Docket No. 6914)	
Morrison Creek:	
At Interstate Highway 5	*14
Just upstream of Elk Grove-Florin Road	*48
Just downstream of Kiefer Boulevard	*75
Approximately 200 feet downstream of Mather Boulevard	*95

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Florin Creek:	
Just upstream of Center Parkway	*20
Just downstream of Stockton Boulevard	*26
Just upstream of McComber Street	*36
At Florin-Perkins Road	*37
Elder Creek:	
Just upstream of State Highway 99	*23
Just upstream of Elk Grove-Florin Road	*45
Just upstream of Bradshaw Road	*60
Just upstream of Excelsior Road	*80
Approximately 1,500 feet upstream of Excelsior Road	*92
Gerber Creek:	
Approximately 1,000 feet downstream of Passe-lis Lane	*46
Just downstream of Central California Traction Railroad	*52
Upstream of Gerber Road 300 feet east of Vineyard Road intersection	*73
Unionhouse Creek:	
Just upstream of Stockton Boulevard	*26
Approximately 1,200 feet upstream of Elk Grove-Florin Road	*43
Strawberry Creek:	
Approximately 250 feet upstream of the confluence with Unionhouse Creek	*21
Just upstream of State Highway 99	*28
Just upstream of Southern Pacific Railroad	*35
Approximately 1,310 feet upstream of Southern Pacific Railroad	*37
North Fork Laguna Creek:	
Just upstream of Brucevile Road	*24
Approximately 120 feet downstream of Stockton Boulevard	*30
Approximately 3,100 feet upstream of State Highway 99	*34
Laguna Creek:	
At Western Pacific Railroad	*14
Just upstream of State Highway 99	*31
Just downstream of Vineyard Road	*57
Just downstream of Excelsior Road	*83
Laguna Creek Tributary 1:	
Approximately 1,500 feet upstream of the confluence with Laguna Creek	*50
Just upstream of Bader Road	*59
Approximately 100 feet upstream of Excelsior Road	*70
Whitehouse Creek:	
At the confluence with Laguna Creek	*26
Just upstream of State Highway 99	*30
Just upstream of Campbell Road	*45
Approximately 1,300 feet upstream of Campbell Road	*48
Elk Grove Creek:	
Just upstream of Elk Grove-Florin Road	*39
Just upstream of Waterman Road	*47
Sacramento River:	
At the intersection of Victory Highway and Emmaton Road on Sherman Island (RD 341)	*7
At the City of Isleton southern corporate limits	*8
At the confluence with Delta Cross Channel	*14
At Interstate Highway 80	*30
Georgiana Slough:	
At the confluence with Mokelumne River	*7
Just upstream of Southern Pacific Railroad	*10
Approximately 900 feet downstream of Walnut Grove-Thorton Road Extended	*13
North Fork Mokelumne River:	
At the intersection of Southern Pacific Railroad and Brunk Road on Tyler Island (RD 563)	*7
At Walnut Grove Thorton Road Extended	*12
At the confluence of Dead Horse Cut	*15
Mokelumne River:	
Approximately 600 feet upstream of the confluence with Dead Horse Cut	*15
Just upstream of New Hope Road	*34
Snodgrass Slough:	
At the confluence with North Fork Mokelumne River	*12
At Southern Pacific Railroad	*15
Delta Cross Channel: On the east side of Southern Pacific Railroad	*15
Sutter Slough:	
At the confluence with Steamboat Slough	*13
Approximately 4,000 feet upstream of Sutter Island Cross Road Extended	*18

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Steamboat Slough:	
Approximately 5,000 feet upstream of the southwestern tip of Grand Island	*9
At State Highway 220 Extended	*12
At State Highway 160, just downstream of the confluence with Sacramento River	*16
Threemile and Sevenmile Sloughs: At the confluence of these two sloughs	*7
Maps are available for review at the Sacramento County Department of Public Works, 827 Seventh Street, Sacramento, California.	
COLORADO	
Sawpit (town), San Miguel County (FEMA Docket No. 6923)	
San Miguel River:	
Approximately 145 feet upstream of western corporate limits	*7,530
Approximately 300 feet upstream of western corporate limits	*7,535
Approximately 250 feet downstream of eastern corporate limits	*7,545
Maps are available for review at the San Miguel County Planning Office, 305 Western Colorado Avenue, Telluride, Colorado.	
Teller County (unincorporated areas) (FEMA Docket No. 6988)	
Fountain Creek:	
Approximately 1,220 feet downstream of Creekside Drive (at Teller County and El Paso County line)	*7,896
Just upstream of Woodland Avenue	*8,125
Teller County and Town of Woodland Park corporate limits	*8,222
Approximately 40 feet downstream of Teller County and Town of Woodland Park corporate limits	*8,239
East Fork Fountain Creek:	
At downstream corporate limits (Teller County and Town of Woodland Park)	*8,313
At upstream corporate limits (Teller County and Town of Woodland Park)	*8,344
Loy Gulch:	
At confluence with Trout Creek	*8,155
At downstream corporate limits (Teller County and Town of Woodland Park)	*8,257
Trout Creek:	
At confluence with Mule Creek	*8,085
At confluence with Loy Gulch	*8,155
Approximately 4,890 feet upstream of the confluence of Loy Gulch	*8,256
Just downstream of the confluence of Jenkins Creek	*8,429
Lowell Gulch:	
At confluence with Loy Gulch	*8,261
Approximately 1,250 feet upstream of Colorado Highway 67	*8,365
At centerline of Ute Trail	*8,497
East Fork Paint Pony Creek:	
Just upstream of Downstream corporate limits (Teller County and Town of Woodland Park)	*8,338
Approximately 625 feet upstream of Main Street	*8,435
Maps are available for review at the Teller County Planning Director's Office, County Planning Department, 220 South Street, Woodland Park, Colorado 80866.	
Westminster (city), Adams and Jefferson Counties (FEMA Docket No. 6920)	
Big Dry Creek:	
Approximately 60 feet upstream of Interstate 25	*5,162
Approximately 50 feet downstream of Huron Street	*5,167
Approximately 20 feet upstream of West 128th Avenue	*5,190
Approximately 200 feet downstream of confluence with with Ranch Creek	*5,208
Just upstream of 112th Avenue	*5,247
Approximately 10 feet downstream of Sheridan Boulevard	*5,253
Approximately 950 feet upstream of confluence with North City Park Creek	*5,264

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 140 feet downstream of U.S. Highway 36	*5,299
Just upstream of Wadsworth Boulevard	*5,358
Approximately 320 feet downstream of the Standley Lake Dam Principal Spillway	*5,392
Tanglewood Creek:	
Approximately 380 feet upstream of Interstate 25	*5,150
Just upstream of West 128th Avenue	*5,220
Approximately 900 feet downstream of West 121st Avenue	*5,310
Approximately 475 feet upstream of West 121st Avenue	*5,340
Ranch Creek:	
Approximately 360 feet upstream of confluence with Big Dry Creek	*5,209
Approximately 40 feet downstream of Jackson Lake Dam	*5,290
Approximately 150 feet downstream of Quivas Way	*5,325
Approximately 160 feet downstream of Huron Street	*5,389
Downstream of Jackson Lake	#1
South Branch Ranch Creek:	
At confluence with Jackson Lake	*5,391
Approximately 150 feet downstream of 112th Avenue	*5,554
Walnut Creek:	
At confluence with Countryside Creek	*5,346
Approximately 550 feet upstream of confluence with Countryside Creek	*5,350
Approximately 75 feet upstream of West 108th Avenue	*5,411
Approximately 50 feet downstream of Simms Street	*5,469
North Branch Walnut Creek:	
Approximately 30 feet upstream of confluence with Walnut Creek	*5,430
Approximately 980 feet downstream of Simms Street	*5,465
Countryside Creek:	
At confluence with Walnut Creek	*5,346
Approximately 1,860 feet upstream of Wadsworth Boulevard	*5,374
Approximately 230 feet downstream of Oak Street	*5,428
Nissen Reservoir Channel:	
At confluence with Big Dry Creek	*5,212
Approximately 40 feet downstream of Lowell Boulevard	*5,236
City Park Channel:	
Approximately 80 feet upstream of 120th Avenue	*5,243
Approximately 520 feet upstream of Sheridan Boulevard	*5,267
Southwest of intersection of Frontage Road and Sheridan Boulevard	#1
North Cotton Creek:	
Approximately 320 feet upstream of Vrain Street	*5,248
Approximately 600 feet upstream of Stuart Street	*5,281
Approximately 2,330 feet upstream of Stuart Street	*5,329
Middle Cotton Creek:	
Approximately 650 feet downstream of Cotton Creek Drive (downstream crossing)	*5,248
Approximately 800 feet downstream of Cotton Creek Drive (upstream crossing)	*5,338
Approximately 1,870 feet upstream of Cotton Creek Drive (upstream crossing)	*5,400
South Cotton Creek:	
At confluence with Big Dry Creek	*5,250
Approximately 1,770 feet upstream of confluence with Big Dry Creek	*5,299
Airport Creek:	
Approximately 900 feet upstream of confluence with Big Dry Creek	*5,282
Approximately 60 feet upstream of 112th Avenue	*5,288
Approximately 1,100 feet downstream of Kendall Street	*5,295
At face downstream of Pierce Street	*5,329
West of Sheridan Boulevard along 112th Avenue	#1
North City Park Creek:	
Approximately 280 feet upstream of the confluence with Big Dry Creek	*5,263

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Approximately 150 feet upstream of Sheridan Boulevard	*5,315
Approximately 1,300 feet upstream of Sheridan Boulevard	*5,560
South City Park Creek:	
At confluence with Big Dry Creek	*5,257
Approximately 250 feet upstream of confluence with Big Dry Creek	*5,277
Approximately 80 feet downstream of Sheridan Boulevard	*5,300
North Branch Hylands Creek:	
Approximately at confluence with Middle Branch Hylands Creek	*5,319
Approximately 2,500 feet downstream of 104th Avenue	*5,410
Approximately 350 feet downstream of 104th Avenue	*5,465
Middle Branch Hylands Creek:	
Approximately 40 feet upstream of confluence with South Branch Hylands Creek	*5,286
Just upstream of Sheridan Boulevard	*5,338
Approximately 50 feet upstream of East 101st Avenue	*5,411
Approximately 1,170 feet upstream of Lowell Boulevard	*5,526
South Branch Hylands Creek:	
At confluence with Big Dry Creek	*5,279
Approximately 2551 feet west of intersection of Eaton Street and 100rd Place	*5,316
Approximately 150 feet downstream of Sheridan Boulevard	*5,368
Tributary 3, Little Dry Creek:	
Approximately 100 feet upstream of Wadsworth Boulevard	*5,456
Approximately 1,300 feet upstream of Allison Street	*5,481

Maps are available for review at the City Engineer's Office, 3031 West 76th Avenue, Westminster, Colorado.

Woodland Park (town), Teller County (FEMA Docket No. 6909)

Fountain Creek:	
Teller County and Town of Woodland Park corporate limits	*8,222
At Aspen Garden Way	*8,277
At Park Street	*8,410
East Fork Fountain Creek:	
At confluence with Fountain Creek	*8,307
Approximately 210 feet upstream of corporate limits (Teller County and Town of Woodland Park)	*8,351
Approximately 455 feet upstream of Pikes Peak Avenue	*8,432
Loy Gulch:	
At Teller County and Town of Woodland Park corporate limits	*8,287
Approximately 2,700 feet upstream of Peaks Trail	*8,445
East Fork Paint Pony:	
At confluence with Paint Pony	*8,329
Just downstream of Teller County and Town of Woodland Park corporate limits	*8,307

Maps are available for review at City Hall, 220 West South Avenue, Woodland Park, Colorado.

CONNECTICUT

Bloomfield (town), Hartford County (FEMA Docket No. 6923)

Farmington River:	
Downstream corporate limits	*108
Approximately 0.85 mile upstream of State Route 187	*116
Upstream corporate limits	*145
North Branch of the Park River:	
Downstream corporate limits	*85
Confluence of Wash & Beamans Brooks	*85
Wash Brook:	
Confluence with Beamans Brook & Branch of the Park River	*85
Upstream side of Tunxis Avenue (second crossing)	*127
Beamans Brook:	
At confluence with Wash Brook and North Branch of the Park River	*85
Approximately 0.22 mile upstream of Filley Street	*95
Tumbledown Brook:	
At confluence with Wash Brook	*116
Upstream side of Simsbury Road	*133
Approximately 300 feet upstream of Mountain Avenue	*165
Approximately 0.24 mile upstream of Mountain Avenue	*218
Tributary A:	
At confluence with Wash Brook	*126
Approximately 400 feet downstream of West Newberry Road	*155
Tributary B:	
At confluence with Tributary A	*136
Just downstream of Woodland Avenue	*160
Tributary C:	
At confluence with Tributary A	*139
Approximately 0.935 mile upstream of confluence with Tributary A	*150
Tributary D:	
At confluence with Beamans Brook	*91
Approximately 200 feet downstream of Blue Hills Flood Water Retarding Dam	*93
Tributary to Tumbledown Brook:	
At confluence with Tumbledown Brook	*117
Approximately 700 feet upstream of Mountain Avenue	*133
Tumbledown Brook Channel:	
At confluence with Tumbledown Brook	*133
Approximately 0.29 mile upstream of Burr Road	*194
Tributary to North Branch of the Park River:	
At downstream corporate limits	*86
Approximately 1.0 mile upstream of downstream corporate limits	*101
Mill Brook:	
At confluence with Barbers Pond	*116
Approximately 1.08 miles upstream of Old Iron Ore Road	*188
Griffin Brook:	
At confluence with Farmington River	*112
Approximately 0.57 mile upstream of Terry Plains Road	*184
Filley Brook:	
At confluence with Wash Brook	*85
Approximately 0.18 mile upstream of Park Avenue	*100

Maps available for inspection at the Town Engineer's Office, Bloomfield, Connecticut.

Canaan (town), Litchfield County (FEMA Docket No. 6850)

Housatonic River:	
Downstream corporate limits	*542
Upstream corporate limits	*645
Hollenbeck River:	
At downstream corporate limits	*642
At confluence of Wangum Lake Brook	*650
At Route 63 (1st stream crossing)	*681
At Route 63 (2nd stream crossing)	*727
At Hollenbeck Dam	*805
At upstream corporate limits	*839
Wangum Lake Brook:	
At confluence with Hollenbeck River	*650
At approximately 150 feet upstream from Under Mountain Road	*690

Maps available for inspection at the Town Clerk's Vault, Falls Village, Connecticut.

Putnam (town), Windham County (FEMA Docket No. 6923)

Quinebaug River:	
At downstream corporate limits	*216
Downstream side of Bridge Street	*237
At upstream corporate limits	*269
Little River:	
At confluence with Quinebaug River	*231
Approximately 1,000 feet upstream of corporate limits	*271
Cady Brook:	
Confluence with Fivemile River	*370
Upstream side of Cady Pond Dam	*434
At upstream corporate limits	*446
Fivemile River:	
At downstream corporate limits	*366
At upstream corporate limits	*387
Little Cass Tavern Brook:	
At confluence with Quinebaug River	*293
Upstream side of State Route 52	*356
Approximately 2,000 feet upstream of State Route 21	*400
Mary Brown Brook:	
At confluence with Fivemile River	*380
Upstream side of Mary Brown Pond Dam	*449
At upstream corporate limits	*466

Maps available for inspection at the Town Clerk's Office, Town Hall, Putnam, Connecticut.

FLORIDA

Fernandina Beach (city), Nassau County (FEMA Docket No. 6923)

Atlantic Ocean:	
About 300 feet west of intersection of Jean Lafitte Avenue and State Road A1A	*18
About 300 feet east of the intersection of 3rd Street and Ocean Avenue	*18

Maps available for inspection at the City Manager's Office, City Hall, Fernandina Beach, Florida.

St. Augustine Beach (town), St. Johns County (FEMA Docket No. 6839)

Atlantic Ocean:	
About 1,000 feet southeast of intersection of 16th Street and State Route A1A	*9
About 1,000 feet east of the intersection of Ocean Avenue and F Street	*14

Maps available for inspection at the City Manager's Office, City Hall, 2110 A1A South, St. Augustine Beach, Florida.

GEORGIA

Brantley County (unincorporated areas) (FEMA Docket No. 6923)

Little Buffalo Creek:	
At mouth	*36
At confluence with Little Buffalo Creek Tributary	*60
Little Buffalo Creek Tributary:	
At mouth	*60
At county boundary	*77
Tributary No. 1:	
At mouth	*60
Just downstream of U.S. Route 84	*76
Tributary A:	
At mouth	*58
About 1,000 feet upstream of Road L	*65
Satilla River:	
Just upstream of CSX railroad	*36
At county boundary	*64
Buffalo Creek:	
About 1,800 feet downstream of County Route 82	*34
Just downstream of CSX railroad	*41
Tributary B:	
At mouth	*59
Just downstream of U.S. Route 84	*60

Maps available for inspection at the Community Office, Brantley County Courthouse, Nahunta, Georgia.

Camden County (Unincorporated areas) (FEMA Docket No. 6923)

Atlantic Ocean:	
About 5,000 feet east of the confluence of Satilla River and Dover Creek	*20
Just west of CSX bridge over Catfish Creek	*6

Maps available for inspection at the Planning and Building Department, Camden County Branch Office, Highway 40 and Gross Road, Kingsland, Georgia.

Centerville (city), Houston County (FEMA Docket No. 6923)

Bay Gall Creek:	
Just upstream of Elberta Road	*371
About 2,800 feet upstream of Pine Glen	*383
Tributary No. 2:	
At mouth	*372

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
About 2,000 feet upstream of Mancie Drive	*397

Maps available for inspection at the City Clerk's Office, City Hall, 500 Houston Lake Boulevard, Centerville, Georgia.

Jekyll Island State Park Authority, Glynn County (FEMA Docket No. 6923)

Atlantic Ocean:	
About 2,000 feet north of the intersection of South Beachview Drive and Morgan	*12
About 600 feet east of the intersection of Major Horton Road and North Beachview Drive	*21

Maps available for inspection at the Office of the Director of Services and Development, 975 Riverview Drive, Jekyll Island, Georgia.

Kingsland (city), Camden County (FEMA Docket No. 6923)

Atlantic Ocean:	
Along Little Catfish Creek about 0.45 mile downstream of Clark Bluff Road	*8
Along Miller Branch about 2,000 feet south southwest of the intersection of Kingsland-St. Marys Road and County Route 76	*8

Maps available for inspection at the Building Inspector's Office, City Hall, Kingsland, Georgia.

St. Marys (city), Camden County (FEMA Docket No. 6923)

Atlantic Ocean/St. Marys River:	
About 3,000 feet east of intersection of Ready Street and Wood Street	*13
At the intersection of Barbot Street and Hall Street	*10

Maps available for inspection at the Planning and Building Inspection Department, City Hall, 412 Osborne Street, St. Marys, Georgia.

Vidalia (city), Toombs and Montgomery Counties (FEMA Docket No. 6913)

Rocky Creek:	
About 1.3 miles downstream of Norfolk Southern Railway	*188
Just downstream of the Norfolk Southern Railway	*196
Just upstream of the Norfolk Southern Railway	*207
About 1.0 mile upstream of Adams Street	*215
Rocky Creek Tributary No. 1:	
About 2,000 feet downstream of North Maple Drive	*207
Just upstream of Meadows Lane	*248
Rocky Creek Tributary No. 1A:	
At mouth	*213
Just upstream of Harris Industrial Boulevard	*230
Rocky Creek Tributary No. 2:	
About 450 feet downstream of Clydette Boulevard	*197
Just downstream of dam	*242
About 1,800 feet upstream of dam	*253
Rocky Creek Tributary No. 3:	
At mouth	*207
Just downstream of CSX railroad	*258
Just upstream of CSX railroad	*264
Rocky Creek Tributary No. 3A:	
At mouth	*228
Just downstream of Seventh Street	*235
Just upstream of Seventh Street	*240
Rocky Creek Tributary No. 4:	
At mouth	*207
Just downstream of Dam No. 1	*234
About 1,300 feet upstream of Dam No. 1	*244
Little Rocky Creek Tributary:	
Just upstream of Ezra Taylor Road	*222
Just downstream of dam	*245
About 1,450 feet upstream of dam	*252
Swift Creek:	
About 1.0 mile downstream of Old Swainsboro Road	*178
About 3,000 feet upstream of Cadillac Drive	*189
Swift Creek Tributary No. 1:	
About 2,650 feet downstream of North Loop Road	*191
Just downstream of dam	*216
Just upstream of dam	*225
Just upstream of Georgia Street	*256
Swift Creek Tributary No. 1A:	
At mouth	*202
Just downstream of North Street	*243
Just upstream of North Street	*249
About 600 feet upstream of North Street	*249
Swift Creek Tributary No. 2:	
About 300 feet upstream of Thompson Pond Road	*196
About 1,780 feet upstream of Thompson Pond Road	*204

Maps available for inspection at the City Hall, Vidalia, Georgia.

Wayne County (unincorporated areas) (FEMA Docket No. 6923)

Buggy Creek:	
Just upstream of State Route 99	*104
Just downstream of dam	*106
Just downstream of County Road 389	*116
Coleman Branch:	
About 3,200 feet downstream of Norfolk Southern Railway	*86
Just upstream of County Road 312	*88
Coleman Branch Tributary:	
At mouth	*82
Just upstream of County Road 3	*91
Little McMillan Creek:	
About 0.95 mile upstream of mouth	*43
About 2,870 feet upstream of Bethlehem Road	*49

Maps available for inspection at the County Commissioners Officer, Wayne County Courthouse, Jesup, Georgia.

Woodbine (city), Camden County (FEMA Docket No. 6923)

Atlantic Ocean:	
At intersection of Georgia Avenue and 8th Street	*11

Maps available for inspection at the City Manager's Office, City Hall, Woodbine, Georgia.

IDAHO

Mountain Home (city), Elmore County (FEMA Docket No. 6923)

Rattlesnake Creek:	
Approximately 100 feet upstream of Twelfth South Street along Profile Baseline	*3,122
Approximately 100 feet downstream of Sixth South Street along the Profile Baseline	*3,130
Approximately 2,900 feet upstream of Eighth North Street at the northern corporate limits	*3,171

Maps are available for inspection at the City Hall, 160 South 3rd East, Mountain Home, Idaho.

Soda Springs (city), Caribou County (FEMA Docket No. 6923)

Soda Creek:	
Approximately 3,300 feet downstream of North Main Street	*3,736
At First North Street	*3,762
Approximately 1,060 feet upstream of First East Street	*3,799
Little Spring Creek:	
Approximately 700 feet upstream of confluence with Big Spring Creek	*3,737
At Fourth South Street	*3,752
Approximately 500 feet upstream of Third South Street	
Approximately 100 feet upstream of Union Pacific Railroad	*3,795
Approximately 1,025 feet upstream of Hooper Avenue	*3,802
Ledger Creek:	
At U.S. Route 30	*3,836
At County Road (Approximately 2,200 feet upstream of U.S. Route 30)	*3,836
Approximately 1,600 feet downstream of Pioneer Drive	*3,881
At Pioneer Drive	*3,901
Maps are available for inspection at the City Hall, Soda Springs Idaho.	

ILLINOIS

Elkhart (village), Logan County (FEMA Docket No. 6839)

Elkhart Slough:	
About 800 feet downstream of Interstate 55	*586
About 1.0 mile upstream of Interstate 55	*590

Maps available for inspection at the Logan County Planning Office, County Highway Department Building, 529 South McLean, Lincoln, Illinois.

Village of Greenview, Menard County (FEMA Docket No. 6839)

Grove Creek:	
About 1,000 feet downstream of Illinois Central Gulf Railroad	*520
About 2,800 feet upstream of County Route 1	*533

Maps available for inspection at the Post Office, Greenview, Illinois.

Iroquois County (unincorporated areas) (FEMA Docket No. 6923)

Iroquois River:	
Just downstream of Iroquois and Kankakee County Boundary	*616
About 2.3 miles upstream of Union Pacific railroad	*632
Sugar Creek:	
At confluence with Iroquois River	*630
About 3,000 feet upstream of CSX railroad	*651
Pigeon Creek:	
About 300 feet downstream of 1300 East Road	*660
Just upstream of Second Street	*664
Pigeon Creek Tributary No. 1:	
At confluence of Pigeon Creek	*664
About 500 feet upstream of Second Street	*685

Maps available for inspection at the planning and Zoning Department, County Courthouse, 550 South 10th Street, Watseka, Illinois.

Logan County (unincorporated areas) (FEMA Docket No. 6839)

Salt Creek:	
Just upstream of Interstate 55	*554
At confluence of Lake Fork	*564
About 3.3 miles downstream of County Route 6	*600
Just upstream of County Route 6	*608
Kickapoo Creek:	
Just upstream of State Route 10	*556
Just downstream of Illinois Central Railroad (upstream crossing)	*594
Brainard Branch:	
At mouth	*565
About 0.86 mile upstream of U.S. Route 66 (upstream crossing)	*579
Elkhart Slough:	
Just downstream of Interstate 55	*586
About 1.0 mile upstream of Interstate 55	*590
Salt Springs Branch:	
At mouth	*560
About 0.47 mile upstream of Illinois Central Gulf Railroad (upstream crossing)	*571

Maps available for inspection at the Lincoln County Planning Office, County Highway Department Building, 529 South McLean, Lincoln, Illinois.

Maywood (village), Cook County (FEMA Docket No. 6923)

Silver Creek: Within community	*621
Des Plaines River:	
Just upstream of Eisenhower Expressway	*618
About 600 feet upstream of confluence of Silver Creek	*621

Maps available for inspection at the Office of Community Development, Public Works Building, 20 Madison Street, Maywood, Illinois

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Howard County (unincorporated areas) (FEMA Docket No. 6828)	
Grave Creek:	
Just upstream of State Route 26	*527
Just downstream of Ferris Access Road	*528
Sangamon River:	
About 1.8 miles downstream of State Route 123	*522
About 1.2 miles upstream of County Route 2	*526
Maps available for inspection at the County Zoning Office, County Courthouse, Pawsburg, Illinois.	
Minooka (village), Grundy and Will Counties (FEMA Docket No. 6828)	
Du Page River:	
About 4,200 feet downstream of Channahon Road	*525
Just downstream of Channahon Road	*527
Maps available for inspection at the Village Hall, 123 Mondamin Street, Minooka, Illinois.	
Morrison (city), Whiteside County (FEMA Docket No. 6823)	
French Creek:	
At mouth	*629
About 1,400 feet upstream of Chicago and North Western railroad	*649
Rock Creek:	
About 2,500 feet downstream of Prairie Center Road	*622
About 0.57 mile upstream of West Lincolnway Street	*632
Maps available for inspection at the City Clerk's Office, Municipal Building, 200 West Main Street, Morrison, Illinois.	
Morton (village), Tazewell County (FEMA Docket No. 6828)	
Prairie Creek:	
About 0.72 mile downstream of Broadway Road	*648
Just downstream of Atchison Topeka & Santa Fe Railway	*707
Salt Run Creek:	
Just upstream of Idlewood Street	*679
About 1,550 feet upstream of East Polk Street	*707
Maps available for inspection at the Public Works Department, Village Hall, 120 North Main Street, Morton, Illinois.	
River Forest (village), Cook County (FEMA Docket No. 6828)	
Des Plaines River:	
Just upstream of Madison Street	*619
Just downstream of North Avenue	*622
Maps available for inspection at the Public Works Department, Village Hall, 400 Park Avenue, River Forest, Illinois.	
Watseka (city), Iroquois County (FEMA Docket No. 6823)	
Sugar Creek:	
At confluence with Iroquois River	*630
About 2,500 feet upstream of Union Pacific railroad	*635
Iroquois River:	
At confluence of Sugar Creek	*629
About 1.8 miles upstream of Union Pacific railroad	*631
Maps available for inspection at the Collector's Office, City Hall, 226 East Walnut Street, Watseka, Illinois.	
Woodland (village), Iroquois County (FEMA Docket No. 6823)	
Sugar Creek:	
About 1,300 feet upstream of North Avenue	*636
About 4,200 feet upstream of Main Street	*642
Maps available for inspection at the Woodland Post Office, Woodland, Illinois.	
KENTUCKY	
Augusta (city), Bracken County (FEMA Docket No. 6828)	
Ohio River:	
About 1.9 mile downstream of confluence of Bracken Creek	*509
About 1.3 miles upstream of confluence of Bracken Creek	*511
Maps available for inspection at the City Hall, 218 Main Street, Augusta, Kentucky.	
Berea (city), Madison County (FEMA Docket No. 6823)	
Walnut Meadow Branch:	
About 1,250 feet downstream of Interstate 75	*986
Just downstream of Interstate 75	*991
Just upstream of Interstate 75	*997
About 1.1 miles upstream of Interstate 75	*919
Silver Creek:	
About 1.1 miles downstream of Glade Road	*995
Just downstream of State Route 21	*941
Brushy Fork:	
At mouth	*916
Just downstream of U.S. Route 25	*976
Maps available for inspection at the City Hall, Berea, Kentucky.	
Mercer County, (unincorporated areas) (FEMA Docket No. 6823)	
Chaplin River:	
Just upstream of Private Road	*721
About 1.5 miles downstream of Corinthville Road	*741
Kentucky River:	
About 9.0 miles downstream of confluence of Landing Run	*507
Just upstream of North Southern Railway	*549
Maps available for inspection at the County Courthouse Annex, Harrodsburg, Kentucky	
Smithland (city), Livingston County (FEMA Docket No. 6828)	
Ohio River:	
About 2,805 feet downstream of confluence of Cumberland River	*343
About 1,950 feet upstream of confluence of Cumberland River	*344
Maps available for inspection at the City Hall, Smithland, Kentucky.	
LOUISIANA	
Livingston Parish (unincorporated areas) (FEMA Docket No. 6823)	
Middle Colyell Creek:	
At confluence with Colyell Creek	*15
Approximately 400 feet north of Drakeford McMorris Road	*28
Approximately 500 feet north of Stash Mud Road	*36
Approximately 1.5 miles upstream of Salt Dome Road	*50
Approximately 800 feet downstream of State Highway 1025	*55
At State Highway 1025	*57
Millers Canal:	
At confluence with Gaga Creek	*32
At Interstate Highway 12	*40
Millers Canal Tributary:	
At confluence with Millers Canal	*38
Approximately 0.4 mile above Interstate Highway 12	*46
Mixer Bayou:	
At confluence with West Colyell Creek	*69
At State Highway 1019	*72
Taylor Bayou:	
At confluence with Middle Colyell Creek	*25
Approximately 1.05 miles upstream of State Highway 447	*34
Colyell Bay:	
At confluence with Amite River	*12
At confluence of Middle Colyell Creek	*15
Colyell Creek:	
At confluence of Middle Colyell Creek	*15
At South Satsuma Road	*54
At approximately 500 feet upstream of Illinois Central Gulf Railroad	*44
Dunphin Creek:	
At confluence of Middle Colyell Creek	*32
Approximately 0.34 mile upstream of Gaylord Road Stretch	*41
Fellows Bayou:	
At confluence with West Colyell Creek	*17
At State Highway 447	*18
At Joe May Road subroad	*39
Approximately 0.38 mile upstream of Gamey Hood Road	*32
Grays Creek:	
At confluence of Amite River	*15
Approximately 350 feet downstream of Schipps Road	*20
Approximately 1.48 miles upstream of Interstate Highway 12	*45
Hornsby Creek:	
At confluence with Colyell Creek	*32
At Illinois Central Gulf Railroad	*44
Little Middlebury River:	
At Illinois Central Gulf Railroad	*36
At State Highway 1064	*50
Allen Bayou:	
At confluence with Amite River	*33
At King Drive	*36
Amite River:	
Approximately 1.2 miles down river of first confluence with Old River	-6
Approximately 0.2 mile downstream of Pipeline Canal	-5
At confluence with Allen Bayou	*33
At approximately 0.76 mile downstream of Hancock Road	*64
Beaver Branch:	
At confluence with West Colyell Creek	*55
At Milton Road	*55
At State Highway 1025	*56
Approximately 10 miles upstream of State Highway 1064 (Market Road)	*68
Beaver Creek:	
At confluence with Amite River	*56
At approximately 600 feet downstream of Hancock Avenue	*62
At State Highway 1064	*57
At State Highway 1019	*76
At approximately 200 feet upstream of State Highway 1022	*73
Blood River (Lower Branch):	
At confluence with Tickfaw River	*7
At confluence with Lizard Creek	*8
Blood River (Upper Reach):	
At U.S. Highway 190	*42
Approximately 0.34 mile downstream of Mary Kinchen Road	*63
Tickfaw River:	
At confluence of Blood River	-7
Approximately 3.05 miles upstream of confluence with Blood River	*8
West Colyell Creek:	
At confluence with Middle Colyell Creek	*16
At State Highway 447	*20
At upstream side of State Highway 1019	*76
Maps available for inspection at the Courthouse Building, Permit Department, 28399 Iowa Street, Livingston, Louisiana	
MAINE	
Damariscotta (town), Lincoln County (FEMA Docket No. 6828)	
Damariscotta River: Entire shoreline within community	*10
Biscay Pond: Entire shoreline within community	*51
Pemaquid Pond: Entire shoreline within community	*51
Maps available for inspection at the Town Office Planning Board, Church Street, Damariscotta, Maine	

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Jefferson (town), Lincoln County (FEMA Docket No. 6823)	
Damariscotta Lacks: Entire shoreline within corporate limits	*56
Dyer Long Pond: Entire shoreline	*135
Clary Lake: Entire shoreline within corporate limits	*154
Maps available for inspection at the Planning Board, Jefferson, Maine.	
MARYLAND	
Church Creek (town), Dorchester County (FEMA Docket No. 6823)	
Church Creek: Entire shoreline	*6
Maps available for inspection at the Church Creek Post Office, c/o Francis Fitzhugh, P.O. Box 52, Church Creek, Maryland.	
MICHIGAN	
Colon (township), St. Joseph County (FEMA Docket No. 6823)	
St. Joseph River:	
About 2,800 feet downstream of Ferrand Road	*843
About 1.1 miles upstream of Stowell Road	*846
Swan Creek:	
About 1.7 miles downstream of Decker Road	*852
About 1.8 miles upstream of Decker Road	*890
Sturgeon Lake: Along shoreline	*844
Palmer Lake: Along shoreline	*852
Maps available for inspection at the Township Hall, 132 North Blackstone Avenue, Colon, Michigan.	
Colon (village), St. Joseph County (FEMA Docket No. 6823)	
St. Joseph River: Within community	*844
Swan Creek:	
At mouth	*844
Just downstream of Swan Creek Dam	*846
Just upstream of Swan Creek Dam	*852
About 1.1 miles upstream of State Street	*852
Palmer Lake: Along shoreline	*852
Sturgeon Lake: Along shoreline	*844
Maps available for inspection at the Village Hall, 110 North Blackstone Avenue, Colon, Michigan.	
MINNESOTA	
Mahnomen (city), Mahnomen County (FEMA Docket No. 6828)	
Wild Rice River:	
About 1.2 miles downstream of the Soo Line Railway	*1,186
About 0.9 mile downstream of the Soo Line Railway	*1,187
Maps available for inspection at the City Hall, Mahnomen, Minnesota.	
Stearns County (unincorporated areas) (FEMA Docket No. 6820)	
Sauk River:	
At City of Cold Spring upstream corporate limits	*1,092
Approximately 2 miles upstream of State Route 22	*1,098
Clearwater River:	
At confluence with Mississippi River	*848
Upstream side of County Route 144	*996
At State Route 55	*1,009
North Fork Crow River (Mud Lake):	
Upstream side of State Route 55	*1,126
Downstream side of Soo Line Railroad	*1,128
North Fork Crow River:	
At State Route 23	*1,143
At upstream County boundary	*1,168
Maps available for inspection at the County Courthouse, St. Cloud, Minnesota.	

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
MISSISSIPPI	
Enterprise (town), Clarke County (FEMA Docket No. 6823)	
Chickasawhay River:	
About 0.66 mile downstream of Bridge Street	*248
About 1,900 feet upstream of Bridge Street	*255
Maps available for inspection at the Town Hall, Enterprise, Mississippi.	
Leakesville (town), Greene County (FEMA Docket No. 6823)	
Chickasawhay River:	
At confluence of Martin Creek	*85
About 2,000 feet upstream of confluence of Blakely Creek	*88
Blakely Creek:	
At mouth	*87
About 0.76 mile upstream of Oak Street	*109
Martin Creek:	
At Mouth	*85
About 0.46 mile upstream of mouth	*106
Martin Creek Tributary:	
At mouth	*95
About 2,400 feet upstream of mouth	*108
Maps available for inspection at the Town Hall, Leakesville, Mississippi.	
MISSOURI	
Maryland Heights (city), St. Louis County (FEMA Docket No. 6817)	
Missouri River:	
Just upstream of Interstate 70	*456
About 7.2 miles upstream of Interstate 70	*463
Creve Coeur Creek:	
About 3.5 feet upstream of mouth	*459
Just upstream of Creve Coeur Mill Road	*462
Dorsett Tributary:	
At mouth	*468
About 700 feet upstream of Rush Creek Way	*486
Fee Fee Creek:	
About 2,300 feet downstream of Creve Coeur Mill Road	*457
Just downstream of Lackland Avenue	*509
East Tributary Fee Fee Creek:	
At confluence with Fee Fee Creek	*496
Just downstream of Lackland Avenue	*514
Midland Creek:	
At confluence with Fee Fee Creek	*475
Just downstream of Adie Road	*529
North Tributary Midland Creek:	
At confluence with Midland Creek	*493
Just downstream of Fee Fee Road	*497
Maps available for inspection at the Building Commissioner's Office, City Hall, 212 Millwell, Maryland Heights, Missouri.	
NEW MEXICO	
Moriarty (city), Torrance County (FEMA Docket No. 6823)	
City Drain:	
At Columbia Street approximately 920 feet south of Interstate Route 40	#1
At Columbia Street approximately 1,400 feet south of Interstate Route 40	#2
At Broadway approximately 720 feet south of Interstate Route 40	#1
At Broadway approximately 880 feet south of Interstate Route 40	#2
At Broadway approximately 1,300 feet south of Interstate Route 40	#3
Duke Country Drain:	
At Linden Avenue approximately 100 feet west of State Route 41	#2
At Girard Avenue approximately 100 feet west of State Route 41	#1
Crossley Drain:	
At Eastern Avenue approximately 600 feet north of Martinez Road	#1
At approximately 100 feet west of Eastern Avenue and approximately 600 feet north of Martinez Road	#2

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Salt Draw:	
At approximately 1, 300 feet downstream of Interstate Route 40	*6,196
At approximately 275 feet upstream of Interstate Route 40	*6,203
At State Route 41	*6,214
At approximately 1,600 feet upstream of State Route 41	*6,218
Maps available for inspection at the City Hall, Moriarty, New Mexico.	
NEW YORK	
Ashland (town), Greene County (FEMA Docket No. 6823)	
Batavia Kill:	
At downstream corporate limits	*1,314
At confluence of Lewis Creek	*1,356
At confluence of West Hollow Brook	*1,415
Approximately 750 feet downstream of Jewett Road	*1,440
At upstream corporate limits	*1,462
Maps available for inspection at the Town Hall, Route, 23, Ashland, New York.	
Chestnut Ridge (village), Rockland County (FEMA Docket No. 6828)	
Pascack Brook:	
At downstream corporate limits	*243
Downstream side of dam	*257
Upstream side of dam	*276
Approximately 60 feet upstream of Lillian Drive	*318
At upstream corporate limits	*329
Pine Brook:	
At downstream corporate limits	*305
Upstream side of Pine Brook Road	*344
Upstream side of Lakeside School Entrance Drive & Dam	*426
Approximately 740 feet upstream of Interstate Route 87	*466
Hungry Hollow Brook:	
At confluence with Pine Brook	*360
Upstream side of 1st Hungry Hollow Road crossing	*407
Upstream side of 2nd Hungry Hollow Road crossing	*461
At upstream corporate limits	*477
Maps available for inspection at the Village Clerk's Office, Chestnut Ridge, New York.	
Seneca Nation of Indians, Allegany, Cattaraugus, Chautauqua, and Erie Counties (FEMA Docket No. 6823)	
Cattaraugus Creek:	
Approximately .44 mile downstream of U.S. Route 20	*580
Approximately 3.05 miles upstream of Interstate Route 90	*605
At upstream corporate limits	*664
Maps available for inspection at the William Seneca Tribal Office Building, 1490 Route 438, Irving, New York.	
Union Vale (town), Dutchess County (FEMA Docket No. 6820)	
Clove Brook:	
Confluence with Pray Pond	*497
Confluence of Seeley Creek	*545
Clove Mountain Creek:	
Confluence with Jackson Creek	*500
Approximately 80 feet upstream of the downstream crossing of West Clove Mountain Road	*541
Approximately 1,660 feet upstream of the downstream crossing of West Clove Mountain Road	*610
Upstream side of the upstream crossing of Clove Mountain Road	*670
Approximately 3,080 feet upstream of the upstream crossing of West Clove Mountain Road	*712
Fishkill Creek:	
Approximately 3,020 feet downstream of Lime Mill Road	*424

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Upstream side of McKinney Pond Dam	*486
Upstream side of Prey Pond Dam	*497
Jackson Creek:	
Approximately 3,280 feet downstream of State Route 55	*421
Upstream side of Wiseman Road	*467
Upstream side of North Perlman Road	*514
Approximately 1,600 feet downstream of downstream crossing of Waterbury Hill Road	*560
Approximately 20 feet upstream of upstream crossing of Waterbury Hill Road	*640
Seeley Creek:	
Confluence with Clove Brook	*645
Approximately 440 feet upstream of County Route 9	*610
Sprout Creek:	
Approximately 1,820 feet downstream of Verbank Village Road	*433
Approximately 40 feet upstream of Verbank Village Road	*509
At County Route 90	*587
Sweezy Creek:	
Confluence with Clove Brook	*500
Approximately 35 feet upstream of County Route 9	*585
Approximately 580 feet upstream of County Route 9	*589
Welsh Creek:	
Confluence with Clove Mountain Creek	*520
Approximately 2,600 feet upstream of confluence with Clove Mountain Creek	*560
Approximately 1,360 feet downstream of Bloomer Road	*641
Approximately 380 feet upstream of Bloomer Road	*697
Willow Brook:	
Confluence with Sprout Creek	*542
Approximately 1,680 feet upstream of Tompkins Road	*590
Upstream side of Waterbury Hill Road crossing	*640
Approximately 450 feet upstream of third upstream crossing of County Route 9	*704

Maps available for inspection at the Town Hall, R.R. 2, Lagrangeville, New York.

Walton (town), Delaware County (FEMA Docket No. 6823)

West Branch Delaware River (Lower Reach):	
300 feet downstream of State Route 10	*1,169
At confluence of Bobs Brook	*1,186
At upstream corporate limits	*1,201
West Branch Delaware River:	
At downstream corporate limits	*1,216
Approximately 1 mile upstream of confluence of Marvin Hollow	*1,232
East Brook:	
At corporate limits	*1,256
Downstream side of East Brook Hollow Road	*1,263
Approximately 0.9 mile upstream of East Brook Hollow Road	*1,296
Third Brook:	
At downstream corporate limits	*1,275
Approximately 1,880 feet upstream of corporate limits	*1,300
Approximately .9 mile upstream of Village of Walton corporate limits	*1,391

Maps available for inspection at the Town Office Building, 109 Delaware Street, Walton, New York.

Wesley Hills (village), Rockland County (FEMA Docket No. 6823)

Willow Tree Brook:	
At downstream corporate limits	*366
Approximately 40 feet upstream of Forshay Road	*477
Approximately 30 feet upstream of West Hill Drive	*544
At upstream corporate limits	*589
Spook Rock Brook:	
At confluence with Willow Tree Brook	*365
At upstream corporate limits	*386

Maps available for inspection at the Office of the Building Inspector, Village Hall, Wesley Hills, New York.

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
NORTH CAROLINA	
Greensboro (city), Guilford County (FEMA Docket No. 6823)	
South Buffalo Creek:	
About 0.7 mile downstream of Interstate 85	*717
Just downstream of Wendover Avenue	*828
Just upstream of Wendover Avenue	*842
About 4800 feet upstream of Big Tree Way	*889
North Buffalo Creek:	
About 2.8 miles downstream of confluence of Muddy Creek	*700
Just downstream of Walker Avenue	*765
Just upstream of Walker Avenue	*786
Muddy Creek:	
At mouth	*712
Just downstream of East Bessemer Avenue	*749
Mile Run Creek:	
At mouth	*729
Just upstream of Ashe Street	*763
Ryan Creek:	
At mouth	*734
Just downstream of Glendale Drive	*776
Twin Lakes Tributary:	
At mouth	*751
About 300 feet upstream of Yow Road (just downstream of dam)	*774
About 460 feet upstream of Yow Road (just upstream of dam)	*785
South Buffalo Creek Tributary A:	
At mouth	*805
Just downstream of Wendover Avenue	*816
Just upstream of Wendover Avenue	*824
Just downstream of Tower Road	*833
Just upstream of Tower Road	*865
About 3,000 feet upstream of Tower Road	*899
South Buffalo Creek Tributary B:	
At mouth	*811
Just downstream of Edwardia Drive	*818
Just upstream of Edwardia Drive	*825
Just downstream of Wendover Avenue	*829
Just upstream of Wendover Avenue	*831
About 1.35 miles upstream of Carnegie Place	*865
North Buffalo Creek Tributary A:	
At mouth	*758
Just downstream of Wendover Avenue	*783
Just upstream of Wendover Avenue	*789
About 2,480 feet upstream of Bryan Boulevard	*899
Horsepen Creek:	
About 750 feet downstream of U.S. Route 220	*728
About 2,500 feet upstream of Mega Coach Trail	*822
East Fork Deep River:	
About 2,500 feet downstream of South Regional Road	*815
About 2,700 feet upstream of South Regional Road	*834
Richland Creek:	
About 5,450 feet downstream of Lawndale Drive	*752
Just upstream of Lawndale Drive	*773
Bull Run Creek:	
About 0.74 mile downstream of confluence of Bull Run Tributary	*769
Just downstream of Carnavia Dam	*783
Just upstream of Concrete Dam	*788
About 3,250 feet upstream of Concrete Dam	*861
Bull Run Tributary:	
At mouth	*776
About 700 feet upstream of Horse Path	*792

Maps available for inspection at the City Hall, Greensboro, North Carolina.

Mitchell County (unincorporated areas) (FEMA Docket No. 6809)

North Toe River:	
About 2.2 miles downstream of U.S. Route 19E	*2,485
Just downstream of Altapass Highway	*2,892
Beaver Creek:	
About 1,350 feet upstream of Beaver Creek Road (upstream bridge)	*2,893
About 1,040 feet upstream of Beaver Creek Road (upstream bridge)	*2,897
Grassy Creek:	
Just downstream of Spicer Pine Lake Dam	*2,582
At confluence of East Fork Grassy Creek	*2,617
East Fork Grassy Creek:	
At confluence with Grassy Creek	*2,617

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
About 1,850 feet upstream of confluence with Grassy Creek	*2,627

Maps available for inspection at the Mitchell County Emergency Management Office, County Administrative Building, Bakersville, North Carolina.

Spruce Pine (town), Mitchell County (FEMA Docket No. 6809)

North Toe River:	
About 1.7 miles downstream of U.S. Route 19E	*2,492
About 350 feet upstream of dam	*2,553
Beaver Creek:	
At mouth	*2,581
About 1,280 feet upstream of Beaver Creek Road (upstream bridge)	*2,668
Grassy Creek:	
At mouth	*2,539
About 1,275 feet upstream of confluence with North Toe River	*2,537

Maps available for inspection at the Town Hall, Spruce Pine, North Carolina.

Stokes County (unincorporated areas) (FEMA Docket No. 6823)

Dan River:	
About 2.1 miles upstream of State Road 89	*745
About 2.9 miles upstream of State Road 89	*750
Crooked Run Creek:	
At county boundary	*882
Just downstream of SR 1165	*884

Maps available for inspection at the Planning Department, County Courthouse, Danbury, North Carolina.

NORTH DAKOTA

Valley City (city), Barnes County (FEMA Docket No. 6823)

Sheyenne River:	
At Sunrise Drive	*1,215
Approximately 900 feet downstream of Interstate 94	*1,218
Approximately 1,150 feet downstream of 3rd Avenue Southeast	*1,232
Approximately 600 feet downstream of 6th Street Northeast	*1,234
Approximately 6,500 feet upstream of 9th Avenue Northeast	*1,236

Maps are available for review at City Hall, 220 Third Street, NE., Valley City, North Dakota.

OHIO

Middlefield (village), Geauga County (FEMA Docket No. 6823)

Tributary A:	
Just upstream of corporate limits	*1,106
Just downstream of Lake Dam	*1,133
Just upstream of Lake Dam	*1,144
About 2,900 feet upstream of Grove Street	*1,169
Tributary B:	
At mouth	*1,116
Just downstream of North State Street	*1,169

Maps available for inspection at the Village Municipal Center, Middlefield, Ohio.

Pedding (village), Pedding County (FEMA Docket No. 6823)

Flat Rock Creek:	
About 2,300 feet downstream of Jackson Street	*716
About 1,600 feet upstream of abandoned railroad	*733

Maps available for inspection at the Village Hall, 206 North Williams Street, Pedding, Ohio.

Port Jefferson (village), Shelby County (FEMA Docket No. 6823)

Great Miami River:	
About 700 feet downstream of Paxon Manna Road	*956

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
About 400 feet upstream of Johnston-Eagle Road	*958

Maps Available for Inspection at the Mayor's Office, Municipal Building, Port Jefferson, Ohio.

Zanesville (city), Muskingum County (FEMA Docket No. 6809)

Muskingum River:	
At downstream corporate limits	*691
At upstream corporate limits	*700
Licking River:	
At confluence with Muskingum River	*684
At upstream corporate limits	*694

Maps available for inspection at the Municipal Building, 401 Market Street, Zanesville, Ohio.

OKLAHOMA

Miami (city), Ottawa County (FEMA Docket No. 6823)

Tar Creek:	
At confluence with Neosho River	*774
At confluence of Quail Creek	*774
Approximately 500 feet downstream of 22nd Avenue	*776
At D Street	*788
Quail Creek:	
At confluence with Tar Creek	*776
At Washington Street	*774
At corporate limits	*779

Maps available for inspection at the Civic Center, 129 5th Street NW., Miami, Oklahoma.

OREGON

Troutdale (city), Multnomah County (FEMA Docket No. 6809)

Sandy River:	
Approximately 1.5 miles downstream of Interstate 84 westbound	*32
Approximately at Interstate 84 eastbound	*32
Approximately at Crown Point Road	*37
Approximately 5,900 feet upstream from Crown Point Road	*43
Beaver Creek:	
Approximately at confluence with Sandy River	*33
Approximately 300 feet upstream of Crown Point Road	*39
Approximately 160 feet upstream of Stark Street	*211
Approximately 650 feet upstream of Stark Street	*212
Approximately 120 feet downstream of Sweetbrier Road	*242

Maps are available for review at City Hall, 104 S.E. Kibling Street, Troutdale, Oregon.

PENNSYLVANIA

Albany (township), Berks County (FEMA Docket No. 6823)

Maiden Creek—Ontelaunee Creek:	
At downstream corporate limits	*379
Approximately 140 feet upstream of upstream corporate limits	*425

Maps available for inspection at the residence of Karen FitzGerald, Township Secretary, R.D. #2, Box 282 H, Kempton, Pennsylvania.

Barrett (township), Monroe County (FEMA Docket No. 6809)

Brodhead Creek:	
At downstream corporate limits	*843
At confluence of Spruce Cabin Run	*907
At confluence of Goose Pond Run	*970
Approximately .5 mile upstream of State Route 390	*1,016
Goose Pond Run:	
At confluence with Brodhead Creek	*970
Approximately 460 feet upstream of Willard Road	*1,601
Middle Branch Tributary:	
At confluence with Brodhead Creek	*1,016
At T-612	*1,601

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Mill Creek:	
Approximately 580 feet downstream of T-571	*1,094
Upstream side of State Route 390	*1,164
At Pleasant Ridge Road	*1,227
Downstream side of dam	*1,276
At T-577	*1,340
Rattlesnake Creek:	
At confluence with Mill Creek	*1,179
Approximately 690 feet downstream of first downstream crossing of Pleasant Ridge Road	*1,250
At second downstream crossing of Pleasant Ridge Road	*1,269
Approximately .3 mile upstream of second downstream crossing of Pleasant Ridge Road	*1,333

Maps available for inspection at the Bernville Township Municipal Building, Route 368, Mountainhome, Pennsylvania.

Bedford (Borough), Bedford County (Fema Docket No. 6809)

Raystown Branch Juniata River:	
At downstream corporate limits	*1,059
Approximately 340 feet upstream of upstream corporate limits	*1,064
Texas Run:	
Approximately 740 feet downstream of West Pitt Street	*1,063
At upstream corporate limits	*1,071

Maps available for inspection at the Borough Building, 224 W. Penn Street, Bedford, Pennsylvania.

Blooming Grove (township), Pike County (FEMA Docket No. 6823)

Billings Creek:	
At confluence of Shohola Creek	*1,200
Approximately .5 mile upstream of LR 51019	*1,291
Blooming Grove Creek:	
At State Route 402	*1,388
Downstream side of LR 54019	*1,430
Approximately .6 mile upstream of confluence of Fairview Outlet	*1,456
Shohola Creek:	
At confluence of McConnell Creek	*1,208
At T-410 (Spring Road)	*1,249

Maps available for inspection at the Township Municipal Building, Route 739, Lords Valley, Pennsylvania.

Carroll Valley (borough), Adams County (FEMA Docket No. 6823)

Toms Creek:	
At downstream corporate limits	*444
Approximately 350 feet downstream of Lion Trail	*515
At the downstream side of Jacks Mountain Road	*587
At most upstream corporate limits	*596
Friends Creek:	
At the confluence with Toms Creek	*452
50 feet upstream of the upstream corporate limits	*486

Maps available for inspection at the Borough Building, 100 Fairfield Road, Carroll Valley, Pennsylvania.

Damascus (Township), Wayne County (FEMA Docket No. 6823)

Delaware River:	
At downstream corporate limits	*697
At T-678 extended	*711
At confluence with Calkins Creek	*725
Downstream side of State Route 371	*734
Upstream side of State Route 1020	*757
At upstream corporate limits	*772
Calkins Creek:	
At confluence with Delaware River	*725
Just downstream of confluence with North Branch Calkins Creek and South Branch Calkins Creek	*745
North Branch Calkins Creek:	
At confluence with Calkins Creek	*746
Approximately 980 feet upstream of confluence with Calkins Creek	*764

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
South Branch Calkins Creek:	
At confluence with Calkins Creek	*746
Approximately 1,270 feet upstream of confluence with Calkins Creek	*769

Maps available for inspection at the Township Municipal Building, Damascus, Pennsylvania.

Greene (township), Pike County (FEMA Docket No. 6823)

East Branch Wallenpaupack Creek:	
Approximately 1,150 feet downstream of State Route 507	*1,301
Approximately 60 feet upstream of Creek Road	*1,360
Wallenpaupack Creek:	
Approximately 1.9 miles downstream of State Route 587	*1,276
Approximately 5.6 miles upstream of State Route 507	*1,386

Maps available for inspection at the Greene Township Municipal Building, Greentown, Pennsylvania.

Liberty (township), Bedford County (FEMA Docket No. 6823)

Raystown Branch Juniata River:	
Approximately 1.1 miles downstream of confluence of Revers Run	*836
Approximately 0.7 mile upstream of confluence of Revers Run	*844
Revers Run:	
At confluence with Raystown Branch of the Juniata River	*841
Approximately 30 feet upstream of Township Route 568	*897

Maps available for inspection at the residence of Dennis Greeko, Township Secretary, 664 16th Street, Sexton, Pennsylvania.

Lincoln (township), Bedford County (FEMA Docket No. 6823)

Bobs Creek:	
Approximately .2 mile downstream of downstream corporate limits	*1,233
Approximately .6 mile upstream of downstream corporate limits	*1,270
Georges Creek:	
Approximately 350 feet downstream of downstream corporate limits	*1,279
Approximately .5 mile upstream of LR 5078	*1,350
Downstream side of T-633	*1,413
Approximately .4 mile upstream of T-633	*1,469

Maps available for inspection at the residence of Ms. Mary Helsel, Township Secretary, Box 756, Alum Bank, Pennsylvania.

Manchester (township), Wayne County (FEMA Docket No. 6823)

Delaware River:	
At downstream corporate limits	*773
At confluence with Cooley Creek	*808
At T-861 extended	*827
Approximately 1.9 miles upstream of T-861 extended	*841
Little Equinunk Creek:	
At confluence with the Delaware River	*817
Approximately .4 mile upstream of Stalker Road	*863
Approximately .9 mile upstream of Stalker Road	*920
South Branch Equinunk Creek:	
Approximately 180 feet above confluence with Delaware River	*911
At downstream side of Equinunk Road	*996
At upstream side of Whitneys Road	*1,000
At downstream side of S.R. 1016	*1,129

Maps available for inspection at the Manchester Municipal Building, R.R. 1, Box 84 AA, Equinunk, Pennsylvania.

Midland (borough), Beaver County (FEMA Docket No. 6823)

Ohio River:	
At downstream corporate limits	*663
At upstream corporate limits	*665

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Midland Borough Building, Midland, Pennsylvania.	
Neville (township), Allegheny County (FEMA Docket No. 6823)	
Ohio River:	
Downstream corporate limits	*717
Upstream corporate limits	*734
Ohio River Back Channel:	
Downstream corporate limits	*717
Upstream corporate limits	*724
Maps available for inspection at the Neville Municipal Building, 3rd and Grand Streets, Pittsburgh, Pennsylvania.	
Paradise (township), Monroe County (FEMA Docket No. 6820)	
Devils Hole Creek:	
At confluence with Paradise Creek	*1,084
At T-559	*1,167
Approximately .4 mile upstream of T-559	*1,233
Forest Hills Run:	
At confluence with Paradise Creek	*795
Downstream side of T-567	*886
Approximately .6 mile upstream of T-567	*948
Upstream side bl LR 45075	*1,003
Approximately .6 mile upstream of LR 45075	*1,075
Downstream side of Golf Cart Road	*1,141
Approximately 400 feet upstream of LR 45100	*1,214
Paradise Creek:	
Approximately 415 feet downstream of T-572	*636
At State Route 191 (most upstream crossing)	*710
Approximately 0.9 mile upstream of most upstream crossing of State Route 191	*795
Approximately .4 mile upstream of LR 45027	*850
Approximately .8 mile upstream of Paradise Drive	*925
Downstream side of LR 45075	*962
Upstream side of T-603 (most downstream crossing)	*1,008
At T-603 (most upstream crossing)	*1,075
At T-559	*1,151
Swiftwater Creek:	
At downstream corporate limits	*969
At upstream corporate limits	*1,044
Maps available for inspection at the Paradise Township Building, Cresco, Pennsylvania.	
Pleasantville (borough), Bedford County (FEMA Docket No. 6823)	
Barefoot Run:	
Approximately 150 feet downstream of State Route 96	*1,212
Approximately 20 feet upstream of Hench Street	*1,222
Approximately 50 feet downstream of Main Street	*1,230
Approximately 320 feet upstream of Main Street	*1,236
Maps available for inspection at the residence of Brenda Webb, Borough Secretary, Alum Bank, Pennsylvania.	
Price (township), Monroe County (FEMA Docket No. 6820)	
Smithfield Creek:	
At downstream corporate limits	*573
Approximately 2 miles upstream from downstream corporate limits	*640
At Alpine Mountain Ski Area access road	*706
Approximately 1.4 miles downstream from Snow Hill Road	*760
At upstream corporate limits	*843
Maps available for inspection at the Municipal Building, Barrea Road, East Stroudsburg, Pennsylvania.	
Rockland (township), Berks County (FEMA Docket No. 6820)	
Saccony Creek:	
At downstream corporate limits	*470
Confluence of Little Saccony Creek	*552
Approximately 0.3 of a mile upstream of confluence of Little Saccony Creek	*562
Little Saccony Creek:	
At confluence with Saccony Creek	*552
Approximately 60 feet upstream of Smokestown Road	*563
Bieber Creek:	
Approximately 120 feet downstream of downstream corporate limits	*406
Approximately .62 mile upstream of downstream corporate limits	*482
Approximately 30 feet downstream of Pricetown Road	*653
At Stimmel Road	*691
Approximately 330 feet upstream of Lyons Road	*781
Maps available for inspection at the Rockland Township Building, Dysher Road, Rockland, Pennsylvania.	
Versailles (borough), Allegheny County (FEMA Docket No. 6823)	
Youghiogheny River:	
At downstream corporate limits	*747
At upstream corporate limits	*750
Long Run:	
At downstream corporate limits	*752
At upstream corporate limits	*774
Maps available for inspection at the Versailles Borough Building, McKeesport, Pennsylvania.	
Washington (township), Northampton County (FEMA Docket No. 6823)	
Martins Creek:	
Approximately 100 feet downstream of State Route 165	*354
Approximately 375 feet upstream of CONRAIL	*466
Approximately 825 feet downstream of LR 48075	*562
At upstream corporate limits	*611
Waltz Creek:	
Approximately 1,350 feet downstream of State Route 191	*473
Approximately 560 feet upstream of State Route 191	*501
Unnamed Tributary to Waltz Creek:	
At confluence with Waltz Creek	*475
Approximately 185 feet upstream of Gravel Dam	*479
Unnamed Tributary to Martins Creek:	
At confluence with Martins Creek	*574
At upstream corporate limits	*611
Maps available for inspection at the Washington Township Building, Ackermanville, Pennsylvania.	
SOUTH CAROLINA	
Atlantic Beach (town), Horry County (FEMA Docket No. 6823)	
Atlantic Ocean:	
At intersection of Atlantic Street and 1st Avenue	*15
Along shoreline	*22
Maps available for inspection at the Town Hall, Atlantic Beach, South Carolina.	
Briarcliffe Acres (town), Horry County (FEMA Docket No. 6823)	
Atlantic Ocean:	
At intersection of Ocean View Drive and Cabana Road	*15
Along shoreline	*22
Maps available for inspection at 79 Cedar Lane, Briarcliffe Acres, South Carolina.	
Conway (town), Horry County (FEMA Docket No. 6823)	
Allmon Branch: Within community	*22
Crab Tree Swamp:	
About 2,900 feet downstream of CSX railroad	*12
About 500 feet upstream of U.S. Route 501	*16
Crab Tree Swamp Tributary:	
At mouth	*12
Just upstream of Sixteenth Avenue	*21
Kingston Lake Swamp: Within community	*12
Run of Plum Branch:	
At mouth	*13
About 3,300 feet upstream of mouth	*24
Waccamaw River:	
About 0.9 mile downstream of U.S. Route 501	*10
About 600 feet upstream of Main Street	*11
Maps available for inspection at the City Hall, Conway, South Carolina.	
Eastover (town), Richland County (FEMA Docket No. 6823)	
Griffins Creek:	
About 3,150 feet downstream of CSX railroad	*166
About 2,800 feet upstream of Main Street	*179
Maps available for inspection at the Town Hall, Eastover, South Carolina.	
Horry County (unincorporated areas) (FEMA Docket No. 6823)	
Allmon Branch:	
At mouth	*16
Just downstream of Dirt Road	*31
Bear Swamp:	
About 1,730 feet downstream of U.S. Route 701	*9
About 2,900 feet upstream of State Route 110	*21
Bear Swamp Tributary:	
At mouth	*11
About 1,460 feet upstream of mouth	*17
Beltz Swamp:	
At mouth	*18
About 4,400 feet upstream of confluence with Bear Swamp	*21
Collins Creek:	
About 2.4 miles downstream of State Route 707	*7
Just downstream of Unnamed Road	*22
Collins Creek Tributary:	
At mouth	*10
About 2,000 feet upstream of mouth	*17
Crab Tree Swamp:	
At mouth	*12
Just upstream of State Route 165	*19
Crab Tree Swamp Tributary 1:	
At mouth	*18
Just upstream of U.S. Route 501	*30
Crab Tree Swamp Tributary 2:	
At mouth	*17
Just upstream of U.S. Route 378	*29
Crab Tree Swamp Tributary 3:	
At mouth	*17
Just upstream of U.S. Route 501	*32
Cross Swamp:	
At mouth	*21
About 1.56 miles upstream of U.S. Route 501	*33
Gras Swamp:	
At mouth	*12
About 0.5 mile upstream of State Route 106	*13
Jenkins Swamp:	
About 1,300 feet downstream of confluence of Jenkins Swamp Tributary	*32
About 1.5 miles upstream of confluence of Jenkins Swamp Tributary	*39
Jenkins Swamp Tributary:	
At mouth	*30
Just downstream of State Route 29	*41
Kingston Lake Swamp:	
At mouth	*12
Just downstream of State Route 19	*24
Run of Plum Branch:	
At mouth	*13
About 1.1 miles upstream of mouth	*29
Sarvance Swamp:	
At mouth	*9
Just downstream of CSX railroad	*22
Waccamaw River:	
About 1.2 miles downstream of confluence of Prince Creek	*5
About 1.1 miles upstream of Unnamed Road	*16
Waccamaw River Tributary 1:	
Just downstream of State Route 544	*24
About 2,850 feet upstream of confluence of Waccamaw River Tributary 2	*37
Waccamaw River Tributary 2:	
At mouth	*20

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
About 1,800 feet upstream of Fox Hollow Subdrive	*37
Waccamaw River Tributary 3:	
Just upstream of Unnamed Road	*13
Just upstream of State Route 544	*37
Waccamaw River Tributary 4:	
At mouth	*18
About 0.93 mile upstream of mouth	*36
Unnamed Stream: About 1,400 feet upstream of U.S. Route 17	*16
Waccamaw River Tributary (near Cox Ferry):	
About 2,800 feet downstream of Unnamed Road	*18
Just downstream of State Route 544	*43
Waccamaw River Tributary (at Ransom's Bluff):	
Just upstream of State Route 136	*8
Just upstream of Dirt Road	*21
Willow Springs Branch:	
At mouth	*12
About 0.93 mile upstream of mouth	*26
Withers Swash:	
Just upstream of 2nd Avenue South	*14
Just downstream of CSX railroad	*17
Withers Swash Tributary 2:	
Just upstream of 8th Avenue North	*21
Just downstream of 10th Avenue North	*23
Withers Swash Tributary 3:	
At mouth	*15
Just downstream of Rale Path Street	*24
Atlantic Ocean/Intercoastal Waterway:	
About 2,000 feet south of intersection of Mill Pond Road and Peach Tree Road	*5
About 400 feet east of intersection of Ocean Boulevard and Cypress Avenue	*25
Maps available for inspection at the County Courthouse, Conway, South Carolina.	
Myrtle Beach (city), Horry County (FEMA Docket No. 6823)	
Atlantic Ocean:	
Just north of the intersection of The King's Boulevard and Ocean Boulevard	*19
Along shoreline	*23
Intercoastal Waterway: Within community	*7
Withers Swash:	
Just upstream of 3rd Avenue South	*14
Just downstream of CSX railroad	*17
Withers Swash Tributary 1:	
Just upstream of 5th Avenue South	*13
About 1,100 feet upstream of 13th Avenue South	*20
Withers Swash Tributary 2:	
At mouth	*15
Just downstream of 10th Avenue North	*23
Withers Swash Tributary 3:	
At mouth	*15
Just downstream of State Route 84	*15
Just upstream of State Route 84	*20
About 1,100 feet upstream of Cannon Road	*22
Singleton Lake: Within community	*13
Maps available for inspection at the City Hall, Myrtle Beach, South Carolina.	
North Myrtle Beach (town), Horry County (FEMA Docket No. 6823)	
Atlantic Ocean:	
At intersection of U.S. Route 17 and 48th Avenue South	*18
Along shoreline	*22
Unnamed Stream:	
About 600 feet upstream of Hillside Drive	*12
Just downstream of U.S. Route 17	*12
Just upstream of U.S. Route 17	*17
About 1,400 feet upstream of U.S. Route 17	*16
Intracoastal Waterway:	
About 500 feet northwest of the intersection of 48th Avenue South and U.S. Route 17	*11
At intersection of U.S. Route 17 and Sea Mountain Highway	*12
Maps available for inspection at the City Hall, 1015 Second Avenue, South, North Myrtle Beach, South Carolina.	
Surfside Beach (town), Horry County (FEMA Docket No. 6823)	
Atlantic Ocean:	
At intersection of Seventh Avenue North and Myrtle Drive	*15
Along shoreline	*23
Maps available for inspection at the Town Hall, 115 U.S. Highway 17, Surfside Beach, South Carolina.	
South Dakota	
Aberdeen (city), Brown County (FEMA Docket No. 6823)	
Foot Creek:	
Approximately 8,200 feet downstream of the confluence with Moccasin Creek	*1,292
At the confluence with Moccasin Creek	*1,293
Approximately 290 feet upstream of the Chicago and Northwestern Railroad	*1,297
Approximately 375 feet upstream of Melgaard Road	*1,298
Approximately 240 feet downstream of the eastbound lane of U.S. Highway 12	*1,306
Moccasin Creek:	
At the confluence with Foot Creek	*1,293
Approximately 200 feet downstream of Melgaard Road	*1,294
At the confluence with Moccasin Creek Tributary	*1,297
Approximately 100 feet downstream of Brown County Highway 13	*1,299
Approximately 5,690 feet upstream of Brown County Highway 13, just downstream of an unnamed county road	*1,300
Moccasin Creek Tributary:	
At the confluence with Moccasin Creek	*1,297
Approximately 150 feet upstream of the Chicago and Northwestern Railroad	*1,301
Approximately 1,900 feet downstream of Brown County Highway 15	*1,301
Maps are available for review at the City Engineer's Office, 104 South Lincoln, Aberdeen, South Dakota.	
Brown County (unincorporated areas) (FEMA Docket No. 6823).	
Moccasin Creek: Approximately 130 feet upstream of an unnamed county road which is located approximately 5,650 feet upstream of Brown County Highway 13	*1,302
Maple River:	
Approximately 120 feet upstream of U.S. Highway 281	*1,365
Approximately 180 feet downstream of Main Street at the Town of Frederick	*1,369
Approximately 170 feet upstream of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Bridge located north of the Town of Frederick	*1,372
James River:	
Approximately 1,000 feet upstream of S34/35, R62W, T125N	*1,291
Approximately 230 feet upstream of 6th Avenue located west of the City of Columbia	*1,293
Maps are available for review at the Brown County Courthouse, 25 Market Street, Aberdeen, South Dakota.	
Tennessee	
Greeneback (city), Loudon County (FEMA Docket No. 6823)	
Baker Creek:	
Just upstream of Sinking Creed Road	*815
Just upstream of County Road	*847
Maps available for inspection at the Community Center, Greenback, Tennessee.	
Henderson County, (unincorporated areas) (FEMA Docket No. 6820)	
Beech River:	
About 2,500 feet downstream of confluence of Owl Creek	*409
At confluence of Brazil Branch	*436
Owl Creek:	
At mouth	*411
Just downstream of Pope Drive	*451
Town Branch:	
At mouth	*415
About 1,750 feet upstream of downstream abandoned railroad grade	*424
Tributary A:	
At mouth	*433
About 700 feet upstream of unnamed road	*496
Chemille Branch:	
At mouth	*435
Just downstream of State Highway 22	*474
Brazil Branch:	
At mouth	*436
Just downstream of county road	*451
Wolf Creek:	
About 500 feet upstream of mouth	*430
Just downstream of Life Road	*431
Maps available for inspection at the County Executive's Office, County Courthouse, Lexington, Tennessee.	
Lexington (city), Henderson County (FEMA Docket No. 6820)	
Beech River:	
Just upstream of confluence of Owl Creek	*411
About 650 feet upstream of State Highway 20	*437
Owl Creek:	
Just upstream of mouth	*411
Just downstream of Pope Drive	*461
Town Branch:	
Just upstream of mouth	*415
About 1700 feet upstream of State Highway 20	*444
About 1200 feet downstream of Madison Avenue	*461
Just downstream of Madison Avenue	*454
Wolf Creek:	
At mouth	*488
Just downstream of Life Road	*431
Tributary A:	
About 700 feet upstream of unnamed road	*436
Just downstream of State Highway 22	*445
Chemille Branch:	
Just upstream of mouth	*435
Just downstream of abandoned railroad	*461
Brazil Branch:	
At mouth	*436
About 700 feet upstream of State Highway 20	*444
Maps available for inspection at the Mayor's Office, City Hall, Lexington, Tennessee.	
TEXAS	
Balmorhea (city), Reeves County (FEMA Docket No. 6823)	
Toyah Creek:	
Approximately 720 feet downstream of the downstream corporate limits	*3,184
Approximately 1,340 feet upstream of the upstream corporate limits	*3,205
Maps available for inspection at the City Hall, San Antonio Street, Balmorhea, Texas.	
Caldwell (city), Burleson County (FEMA Docket No. 6823)	
Davidson Creek:	
Approximately 250 feet downstream of Southern Pacific Railroad	*328
Approximately 0.5 mile upstream from the confluence with Copperas Hollow Creek	*332
Davidson Creek Tributary 2:	
At confluence with Davidson Creek	*331
Approximately 40 feet upstream of Hill Street	*354
Copperas Hollow Creek:	
At confluence with Davidson Creek	*331
Approximately 1.9 miles upstream of State Route 36	*367
Elm Branch:	
At downstream corporate limits	*381
At upstream corporate limits	*396
Elm Branch Tributary 1:	
Approximately 0.8 mile downstream of corporate limits	*381
At downstream side of 8th Street	*377

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
At State Route 21 Limit of Detailed Study	*391
Maps available for inspection at the City Hall, 107 S. Hill Street, Caldwell, Texas.	
Dayton (city), Liberty County (FEMA Docket No. 6866)	
Trinity River:	
Southeast corner of community	*25
Northeast corner of community	*29
Maps available for inspection at the City Hall, 111 North Church Street, Dayton, Texas.	
Hood County (unincorporated areas) (FEMA Docket No. 6933)	
Brazos River:	
Approximately 250 feet downstream of the downstream County boundary	*623
Approximately 2.4 miles upstream of Leonard Bridge	*880
Lake Granbury:	
Approximately 5.3 miles downstream of the confluence of Lusk Branch	*695
Approximately 3.4 miles upstream of the confluence of Long Creek	*711
Lambert Branch:	
Approximately 0.5 miles above confluence with Brazos River	*751
Approximately 60 feet upstream of the most upstream crossing of the City of Granbury corporate limits	*791
Rough Creek:	
Approximately 0.7 mile upstream of the confluence with Lake Granbury	*704
Approximately 1.3 miles upstream of the confluence with Lake Granbury	*724
Stream LB-1:	
At the downstream County boundary	*722
Approximately 0.4 mile upstream of the downstream County boundary	*726
Maps available for inspection at the County Courthouse, Room 7, Granbury, Texas.	
Liberty County (unincorporated areas) (FEMA Docket No. 6866)	
Marsh Branch:	
At confluence with Tarkington Bayou	*114
At State Routes 105 and 321	*127
At downstream crossing of Pelican Road	*131
At upstream side of FM 787	*149
Approximately 1.4 miles upstream of Atchison, Topeka & Santa Fe Railway	*159
Marsh Branch Tributary No. 1:	
At confluence with Marsh Branch	*148
At downstream side of Atchison, Topeka & Santa Fe Railway	*153
Approximately 1.1 miles upstream at Atchison, Topeka & Santa Fe Railway	*156
Menard Creek:	
At confluence with Trinity River	*76
At access road approximately 2.3 miles downstream of State Route 146	*95
At State Route 146	*96
At access road approximately 1.9 miles upstream of State Route 146	*102
At upstream County boundary	*119
Reese Bayou:	
At confluence with Tarkington Bayou	*142
At upstream side of FM 787	*150
At downstream side of Lilley Avenue	*156
At downstream side of southbound U.S. Route 59	*159
At upstream County boundary	*166
Tarkington Bayou:	
At confluence with Luce Bayou	*92
At access road approximately 4.4 miles upstream of confluence with Luce Bayou	*98
At confluence of Marsh Branch	*114
At downstream side of Gulf Road	*120
At upstream side of State Routes 321 and 105	*134
At confluence of Reese Bayou	*142
At upstream side of Atchison, Topeka & Santa Fe Railway	*149
At upstream County boundary	*161
Trinity River:	
At downstream County boundary	*15
At upstream side of Missouri Pacific Railroad	*35
At upstream side of State Route 105	*54
Approximately 530 feet upstream of confluence of Menard Creek	*78
Turtle Bayou:	
Approximately 0.8 mile downstream of Old Railroad Embankment	*30
At access road approximately 3.7 miles upstream of Old Railroad Embankment	*41
Approximately 4.8 miles upstream of Old Railroad Embankment	*44
Twin Ditches:	
Approximately 0.7 mile downstream of Atascocita Road	*51
Approximately 1.2 miles upstream of Atascocita Road	*66
Upper East-Twin Ditch:	
At confluence with Twin Ditches	*66
Approximately 85 feet upstream of access road	*73
West-West Dayton Ditch:	
Approximately 100 feet upstream of FM 1960	*76
Approximately 1.4 miles upstream of FM 1960	*92
West-West Dayton Ditch:	
Approximately 100 feet upstream of FM 1960	*77
Approximately 1.4 miles upstream of FM 1960	*92
Whiskey Branch:	
At confluence with East Fork San Jacinto River	*125
At upstream side of State Route 105	*133
At upstream side of access road approximately 0.3 mile downstream of County boundary	*148
At upstream County boundary	*151
Willow Creek:	
Approximately 2.4 miles downstream of Hogpen Road	*44
At Hogpen Road	*48
Approximately 2.3 miles upstream of confluence of Bull Tongue Creek	*54
Saltes Creek:	
At confluence with Willow Creek	*49
Approximately 1.8 miles upstream of confluence with Willow Creek	*54
Bull Tongue Creek:	
At confluence with Willow Creek	*50
Approximately 0.9 mile upstream of confluence with Willow Creek	*50
Cedar Bayou:	
At southernmost County boundary	*37
Downstream side of Southern Pacific Railroad	*58
At County boundary approximately 0.4 mile upstream of Crosby-Eastgate Road	*64
Approximately 900 feet upstream of Huffman Road	*71
Approximately 0.6 mile upstream of access road approximately 5.5 miles of Huffman Road	*82
Cow Branch:	
At confluence with East Fork San Jacinto River	*100
Approximately 300 feet downstream of upstream County boundary	*111
East Fork San Jacinto River:	
Approximately 1.1 miles downstream of first downstream County boundary	*92
At County boundary approximately 1.4 miles downstream of FM 2090	*90
At confluence of Cow Branch	*100
Downstream side of Southern Pacific Railroad	*121
Downstream side of State Route 105	*132
At upstream County boundary	*142
Hickory Island Gully:	
Approximately 100 feet upstream of County boundary	*36
Approximately 4.2 miles upstream of Hatcherville Road	*53
Luce Bayou:	
At County boundary	*67
Approximately 4.8 miles upstream of County boundary	*80
At confluence with Tarkington Bayou	*92
Approximately 3.2 miles upstream of State route 321	*103
Downstream side of FM 1008	*114
Maps available for inspection at 2103 Cos, Liberty, Texas.	
Roscoe (city), Nolan County (FEMA Docket No. 6933)	
Lower West Playa Segment A: Approximately 1,200 feet south of Texas and Pacific Railroad at west corporate limits	*2,382
Shallow Flooding Area: 600 feet north of Loop 237 at corporate limits	#1
Northwest Sector Playa: Intersection of Cedar Street and 1st Street	*2,384
Shallow Flooding Area: Intersection of Main Street and Second Street	#1
Shallow Flooding Area: Approximately 400 feet southeast of corporate limits on Roscoe Snyder and Pacific Railroad	#1
Shallow Flooding Area: Intersection of Ash Street and Sweetwater Street	#2
Shallow Flooding Area: Approximately 75 feet north of Texas and Pacific Railroad at Oak Street (extended)	#3
Loop 237 Playa: Approximately 200 feet west of the intersection of Cedar and Seventh Streets	*2,384
Shallow Flooding Area: Approximately 50 feet west of Cedar Street and 10th Street	#1
East Playa: Intersection of State Route 608 and 5th Street	*2,388
Shallow Flooding Area: Intersection of State Route 608 and 10th Street	#1
Sanders Addition Playa: Approximately 50 feet south of Interstate 20 at Cypress Street (extended)	*2,392
Maps available for inspection at the City Hall, Roscoe, Texas.	
UTAH	
Provo (city), Utah County (FEMA Docket No. 6933)	
Provo River:	
Approximately 1,140 feet upstream of Center Street	*4,495
Approximately 3,300 feet upstream of Center Street	*4,496
Approximately 140 feet downstream of Interstate Highway 15	*4,529
Approximately 100 feet downstream of Columbia Lane	*4,590
Approximately 100 feet upstream of the northbound lane of University Boulevard	*4,610
Approximately 170 feet upstream of 3700 North Street	*4,691
At 4800 North Street	*4,747
Approximately 100 feet downstream of Carterville Road	*4,785
Rock Canyon Creek:	
Approximately 750 feet east of the intersection of 2820 North Street and Iroquois Drive	*4,960
Approximately 350 feet north of the intersection of 1460 North Street and 2380 North Street	#3
State Canyon Creek:	
Approximately 700 feet east of the intersection of 520 South Street and 1,450 East Street	*4,572
Approximately 1,050 feet east of the intersection of 520 South Street and 1450 East Street	*4,595
Approximately 300 feet east of the intersection of 640 South Street and 1500 East Street	*4,720
Approximately 1,150 feet east of the intersection of 700 South Street and 1500 East Street	None
Maps available for review at the City of Provo Department of Community Development, 351 West Center Street, Provo, Utah.	
VIRGINIA	
Big Stone Gap (town), Wise County (FEMA Docket No. 6933)	
Power River:	
At downstream corporate limits	*1,464
At confluence with S. Fork Powell River	*1,470
At upstream corporate limits	*1,487
South Fork Powell River:	
Approximately 300 feet downstream of U.S. Route 58-A	*1,470
At upstream corporate limits	*1,512

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Town Hall, 112 East 5th Street, Big Stone Gap, Virginia.	
Buchanan County (FEMA Docket No. 6788)	
Levisa Fork:	
Downstream County boundary	*887
Upstream side of State Route 645	*904
Upstream side of State Route 609	*967
Confluence of Looney Creek	*1,005
At downstream Grundy corporate limits	*1,037
Upstream side of State Route 617	*1,093
Upstream side of State Route 83	*1,122
Upstream side of Norfolk and Western Railway (3rd upstream crossing)	*1,169
Approximately 0.72 mile upstream of State Route 684	*1,218
Approximately 1.86 miles upstream of State Route 684	*1,265
Upstream side of State Route 669	*1,321
Approximately 300 feet upstream confluence of Bridge Branch	*1,366
Upstream side of U.S. Route 460	*1,433
Approximately 0.8 mile upstream of U.S. Route 460	*1,475
Knox Creek:	
Approximately 425 feet downstream of State Route 697	*924
Upstream side of State Route 609	*956
Approximately 1.1 miles upstream of State Route 650	*1,011
Upstream side of State Route 643 (2nd upstream crossing)	*1,083
Upstream side of State Route 706	*1,140
Upstream side of State Route 652	*1,171
Approximately 1.13 miles upstream of State Route 652	*1,219
Approximately 2.12 miles upstream of State Route 652	*1,274
Russell Fork:	
Approximately 1.15 miles downstream of State Route 80	*1,432
Approximately 1.7 miles upstream of State Route 80	*1,485
Approximately 2.95 miles upstream of State Route 80	*1,502
Garnet Creek:	
Approximately 1.76 miles downstream of State Route 626	*1,580
Upstream side of State Route 626	*1,600
Approximately 1 mile upstream of State Route 626	*1,617
Approximately 2.15 miles upstream of State Route 626	*1,646
Big Prater Creek/Trace Fork Branch:	
At confluence with Levisa Fork	*1,123
Approximately 1.04 miles upstream confluence with Levisa Fork	*1,170
Approximately 0.57 mile downstream confluence of Big Lick Branch	*1,200
At confluence of Big Lick Branch	*1,244
Approximately 0.60 mile upstream confluence of Big Lick Branch	*1,300
Tug Fork:	
At downstream State boundary	*529
Approximately 1.92 miles upstream of the downstream State boundary	*861
At upstream State boundary	*915
Maps available for inspection at the County Administrator's Office, County Courthouse, Main Street, Grundy, Virginia.	
WASHINGTON	
Almira (town), Lincoln County (FEMA Docket No. 6823)	
Corbett Draw Tributary:	
At downstream corporate limits	*1,899
Just upstream of Main Street	*1,911
Just upstream of Burlington Northern Railroad	*1,919
At upstream corporate limits	*1,930
Maps are available for review at Town Hall, 19 North Third, Almira, Washington.	
Davenport (city), Lincoln County (FEMA Docket No. 6823)	
Cottonwood Creek:	
At downstream corporate limits	*2,358
Just downstream of U.S. Highway 2	*2,375
Just downstream of Harker Street	*2,381
About 75 feet upstream of Third Street	*2,388
At upstream corporate limits	*2,391
Maps are available for review at City Hall, 411 Morgan Street, Davenport, Washington.	
Ephrata (city), Grant County (FEMA Docket No. 6823).	
Dry Creek: On Division Avenue NW	#1
Maps are available for review at City Hall, 121 Alder SW., Ephrata, Washington.	
Grant County (unincorporated areas) (FEMA Docket No. 6823)	
Parker Horn:	
Approximately 240 feet downstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad	*1,053
Approximately 1,410 feet upstream of State Highway 17	*1,057
Crab Creek (near the town of Moses Lake):	
Approximately 1,410 feet upstream of State Highway 17	*1,057
At Gloyd Seeps Water Recreation Area	*1,078
Crab Creek (near the town of Wilson Creek):	
Approximately 2,900 feet downstream of the Kappel Road Bridge	*1,276
Approximately 5,160 feet upstream of the Kappel Road Bridge	*1,281
Maps are available for review at the Grant County Public Works Department, 34 C Street, NW., Ephrata, Washington.	
Lincoln County (unincorporated areas) (FEMA Docket No. 6823)	
Goose Creek:	
Approximately 1,250 feet below downstream corporate limits of Town of Wilbur	*2,156
Approximately 200 feet below downstream corporate limits of Town of Wilbur	*2,157
Davis Creek:	
Approximately 1,100 feet below downstream corporate limits of Town of Almira	*1,887
Approximately 300 feet below downstream corporate limits of Town of Almira	*1,895
Approximately 350 feet above upstream corporate limits of Town of Almira	*1,931
Cottonwood Creek:	
Approximately 200 feet downstream of County Road bridge at Section line 16/17 in T25N, R37E	*2,345
Approximately 200 feet below downstream corporate limits of City of Davenport	*2,355
Approximately 330 feet above upstream corporate limits of City of Davenport	*2,382
Crab Creek:	
Approximately 4,200 feet below downstream corporate limits of Town of Odessa	*1,533
Approximately 350 feet below downsteam corporate limits of Town of Odessa	*1,539
Approximately 400 feet above upstream corporate limits of Town of Odessa	*1,559
Approximately 2,800 feet above upstream corporate limits of Town of Odessa	*1,567
Magno Creek:	
Approximately 1,950 feet below downstream corporate limits of City of Sprague	*1,894
Approximately 150 feet above upstream corporate limits of City of Sprague	*1,903
Maps are available for review at the Lincoln County Engineer's Office, 509 Morgan Street, Davenport, Washington.	
Odessa (town), Lincoln County (FEMA Docket No. 6823)	
Crab Creek:	
At downstream corporate limit	*1,540
Just downstream of Alder Street	*1,545
At centerline of Fifth Street	*1,550
At confluence of Duck Creek	*1,552
Just upstream of Dobson Road	*1,558
Maps are available for review at Town Hall, 21 East First Avenue, Odessa, Washington.	
Sprague (city), Lincoln County (FEMA Docket No. 6923)	
Magno Creek:	
At downstream corporate limit	*1,895
Just downstream of North First Street	*1,898
Approximately 100 feet upstream of First and D Streets intersection bridge	*1,900
At upstream of corporate limits	*1,903
Maps are available for review at the City Hall, Second and C Streets, Sprague, Washington.	
Wilbur (town), Lincoln County (FEMA Docket No. 6923).	
Goose Creek (at Wilbur):	
At downstream corporate limits	*2,157
At centerline of West Street	*2,163
Just upstream of Division Street	*2,168
At centerline of U.S. Highway 2	*2,174
At upstream corporate limit	*2,178
Maps are available for review at Town Hall, 14 NW. Division, Wilbur, Washington.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
ARIZONA	
Mohave County (unincorporated areas) (FEMA Docket No. 6906)	
Colorado River:	
Main Channel, downstream limit of detailed study (River Mile 242.4)	*474
Main Channel, 2650 feet downstream of Needles Bridge (River Mile 245.65)	*479
Main Channel, 16300 feet upstream of Needles Bridge (River Mile 249.2)	*480
Main Channel, upstream limit of detailed study (River Mile 252.4)	*486
At the intersection of Barrackman Road and Plantation Drive	#1
At the southern intersection of Hamilton Drive and Plantation Drive	#2
Topock Marsh:	
Entire area	*480
Maps available for inspection at the Mohave County Courthouse, 401 Spring Street, Kingman, Arizona.	
CALIFORNIA	
Merced County, (unincorporated areas) (FEMA Docket No. 6930)	
Fahrens Creek:	
Approximately 100 feet above northern corporate limit of the City of Merced	*167
Approximately 6,000 feet upstream of confluence with Cottonwood Creek	*173
Approximately 50 feet downstream of Bellvue Avenue	*176
Approximately 100 feet downstream of G Street	*188

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Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,000 feet west of intersection of Cardella Road and G Street	#1
Canal Creek (with Levee):	
Approximately 450 feet downstream of Landram Avenue	*142
Approximately 800 feet downstream of Avenue One	*159
Approximately 200 feet downstream of Avenue Two	*165
Approximately 2,500 feet upstream of Santa Fe Drive	*173
Canal Creek (without Levee):	
Approximately 180 feet upstream of Landram Avenue	*143
Approximately 1,980 feet upstream of Elliot Avenue	*151
Approximately 1,120 feet upstream of State Highway 99 northbound	*155
Approximately 190 feet downstream of Avenue One	*160
Approximately 3,500 feet south of Avenue One and approximately 1,500 feet west of Gurr Road	#1
Approximately 1,000 feet east of the intersection of Fox Road and Cardella Road	#1
Approximately 3,000 feet west of the intersection of Gurr Road and Avenue Two	#1
Black Rascal Creek Reach 1 (with Levee):	
Approximately 75 feet upstream of State Highway 140	*137
Approximately 3,880 feet upstream of State Highway 140	*146
Approximately 210 feet downstream of confluence with Canal Creek	*150
Black Rascal Creek Reach 1 (without Levee):	
Approximately 120 feet upstream of State Highway 140	*140
Approximately 720 feet downstream of confluence with Canal Creek	*147
Black Rascal Creek Reach 2:	
Approximately 270 feet upstream of confluence with Bear Creek	*163
Approximately 1,220 feet upstream of confluence with Bear Creek	*163
Black Rascal Creek Reach 3:	
Approximately 1,100 feet upstream of Santa Fe Drive	*165
Trindade Drain:	
At the intersection of Lobo Avenue and Franklin Road	#1
Bear Creek:	
Approximately 480 feet upstream of State Highway 140	*150
Approximately 640 feet downstream of confluence with Black Rascal Creek, Reach 2	*161
Approximately 350 feet downstream from State Highway 99	*163
Approximately 1,000 feet north of Crocker Dam	#1
At the intersection of McKee Road and Stretch Road	#1
Miles Creek (With Levee):	
Just downstream of Santa Fe Avenue	*229
At Childs Avenue	*234
Approximately 1,800 feet upstream of Childs Avenue	*238
Miles Creek (Overbank):	
Just downstream of Santa Fe Avenue	*228
At the intersection of Stafford Avenue and Sutter Street	*228
Approximately 580 feet east of Kraft Road Extended	*230
Just upstream of Childs Avenue	*233
Approximately 1,925 feet upstream of Childs Avenue	*235
Approximately 4,000 feet east of the intersection of State Highway 140 and Wheeler Road Extended	#6
Livingston Canal:	
Between Avenue Two and Livingston Canal	*168

Maps available for review at the Merced County Planning Department, 2222 M Street, Merced, California.

HAWAII

Hawaii County (FEMA Docket No. 6909)

Waiakea Stream:	
At Kilauea Avenue	*10
Approximately 10 feet downstream of Komohana Street	*213
Approximately 100 feet upstream of Kawaiani Street	*471
Approximately 1580 feet upstream of Kupulau Road	*628
Waiakea Tributary No. 1:	
At confluence with Waiakea Stream	*312
400 feet upstream of Komohala Drive	*366
200 feet upstream of Melanani Place	*395
Approximately 100 feet downstream of Kawaiani Street	*440
Waiakea Tributary No. 2:	
At confluence with Waiakea Stream	*221
At centerline of Komohala Drive	*370
Approximately 3000 feet upstream of Komohala Drive	*441
Waiakea Tributary No. 3:	
Approximately 20 feet upstream of confluence with Waiakea Stream	*381
Approximately 2700 feet upstream of confluence with Waiakea Stream	*402
Approximately 5300 feet upstream of confluence with Waiakea Stream	*475
Palai Stream:	
Approximately 180 feet upstream of confluence with Waiakea Pond	*10
200 feet upstream of West Kawili Street	*41
At Kaheopea Road	*89
At confluence with Four Mile Creek	*140
Approximately 70 feet upstream of Kinoole Street	*197
Palai Stream (Above Halhai Street):	
100 feet upstream of Halhai	*490
50 feet upstream of Leimamo Street	*518
20 feet upstream of Alaloa Road	*560
Approximately 1130 feet upstream of Alaoli Street	*648
Palai Stream A:	
Approximately 1930 feet downstream of Momi Street	*582
80 feet downstream of Momi Street	*630
Approximately 650 feet upstream of Ainaola Drive	*650
Palai Stream B:	
At confluence with Palai Stream	*584
100 feet upstream of Momi Street	*624
Palai Stream C:	
At Halhai Street	*563
Approximately 900 feet upstream of Kupulau Road	*631
Palai Stream D:	
At confluence with Palai Stream	*580
Approximately 2500 feet upstream of confluence with Palai Stream	*680
Palai Stream E:	
At confluence with Palai Stream	*572
Approximately 1200 upstream of Alaloa Road	*649
Palai Stream F:	
At confluence with Palai Stream	*580
840 feet upstream of confluence with Palai Stream	*537
Four Mile Creek:	
240 feet downstream of Kanoelehua Avenue	*184
At confluence of Four Mile Creek Tributary No. 1	*203
540 feet upstream of confluence with Four Mile Creek Tributary No. 2	*285
950 feet upstream of Ainaleko Road	*340
Four Mile Creek Tributary No. 1:	
At confluence with Four Mile Creek	*203
Approximately 1500 feet upstream of confluence with Four Mile Creek	*245
Four Mile Creek Tributary No. 2:	
2000 feet upstream of confluence with Four Mile Creek	#1
Four Mile Creek Tributary No 3:	
At confluence with Four Mile Crek	*527
900 feet upstream of Ainaleko Road	*547
Honokaa Drainage No. 1:	
100 feet downstream of Mamane Street	*1,091
70 feet upstream of Mamalahoa Highway	*1,340
Approximately 980 feet upstream of Mamalahoa Highway	*1,423
Honokaa Drainage No. 2:	
350 feet downstream of Koa Street	*1,012
40 feet upstream of Lehua Street	*1,254
Approximately 100 feet downstream of Hawaii Belt Road	*1,374
Honokaa Drainage No. 3:	
60 feet downstream of Mamane Street	*1,096
Approximately 100 feet downstream of Hawaii Belt Road	*1,457
Honokaa Drainage A:	
90 feet downstream of Mamane Street	*1,088
160 feet upstream of Mamalahoa Highway	*1,569
Honokaa Drainage B:	
75 feet downstream of Mamane Street	*1,095
400 feet upstream of Olia Street	*1,153
Honokaa Drainage C:	
170 feet downstream of Mamane Street	*1,097
180 feet upstream of Mamane Street	*1,112
Honokaa Drainage D:	
Approximately 1380 feet downstream of Mamalahoa Highway	*1,186
Approximately 950 feet downstream of Mamalahoa Highway	*1,228
Keapu Drainageway:	
80 feet downstream of Alii Drive	*9
40 feet upstream of Hawaii Belt Road	*222
Approximately 2380 feet downstream of Mamalahoa Highway	*1,140
Just upstream of Mamalahoa Highway	*1,520
1970 feet upstream of Mamalahoa Highway	*1,814
Keapu Drainageway Overflow:	
410 feet downstream of Alii Overflow Drive	*10
60 feet upstream of Hawaii Belt Road	*167
At divergence from Keapu Drainageway	*563
Hienaloli Drainageway:	
340 feet upstream of Kuakini Highway (State Highway 11)	*49
40 feet upstream of Hawaii Belt Road	*250
15 feet upstream of Mamalahoa Highway	*1,492
3060 feet upstream of Mamalahoa Highway	*1,960
Hienaloli Drainageway Splitflow:	
At confluence with Hienaloli Drainageway	*150
270 feet upstream of Hawaii Belt Road	*262
Waiaha Drainageway:	
Centerline of Alii Drive	*16
80 feet downstream of Hawaii Belt Road	*357
20 feet upstream of Mamalahoa Highway	*1,900
3240 feet upstream of Mamalahoa Highway	*1,978
Waiaha Drainageway Tributary:	
At confluence with Waiaha Drainageway	*1,447
30 feet upstream of Mamalahoa Highway	*1,500
2085 feet upstream of Mamalahoa Highway	*1,805
Waiaha Drainageway Splitflow No. 1:	
At confluence with Waiaha Drainageway	*357
At centerline of Hualalai Road	*432
1820 feet upstream of Hualalai Road	*528
Waiaha Drainageway Splitflow No. 2:	
640 feet downstream of Alii Drive	*11
100 feet upstream of Hawaii Belt Road	*215
At divergence from Waiaha Drainageway	*567
Waiaha Drainageway Splitflow No. 3:	
At confluence with Waiaha Drainageway	*41
50 feet upstream of Kuakini Highway (State Highway 11)	*137
At divergence of Waiaha Drainageway	*186
Holualoa Drainageway:	
45 feet upstream of Alii Drive	*11
60 feet upstream of Hawaii Belt Road	*322
20 feet downstream of Hualalai Road	*969
2935 feet upstream of Mamalahoa Highway	*1,704
Holualoa Drainageway Tributary:	
At confluence with Holualoa Drainageway	*1193
980 feet upstream of Mamalahoa Highway	*1302
Horseshoe Bend Drainageway:	
At confluence with Holualoa Drainageway	*184
70 feet downstream of Hawaii Belt Road	*340
15 feet upstream of Hualalai Road	*876
50 feet upstream of Mamalahoa Highway	*1452
720 feet upstream of Mamalahoa Highway	*1579
Kaumalumalu Drainageway:	
20 feet downstream of Alii Drive	*12
At centerline of Kuakini Highway (State Highway 11)	*452
15 feet upstream of Mamalahoa Highway	*1062
2740 feet upstream of Mamalahoa Highway	*1556
South Kona Watercourse No. 1:	
at mouth	*14
At centerline of Mamalahoa Highway	*1512
Approximately 1090 feet upstream of Mamalahoa Highway	*2184
South Kona Watercourse No. 3:	
At mouth	*14
20 feet upstream of Mamalahoa Highway	*1380
Approximately 7250 feet upstream of Mamalahoa Highway	*2224
South Kona Watercourse No. 7:	
At confluence with South Kona Watercourse No. 8	*449
At centerline of Mamalahoa Highway	*1445
Approximately 5980 feet upstream of Mamalahoa Highway	*2676
South Kona Watercourse No. 8:	
95 feet above mouth	*15
At centerline of Mamalahoa Highway	*1420
Approximately 5620 feet upstream of Mamalahoa Highway	*2714
South Kona Watercourse No. 19:	
At confluence with South Kona Watercourse No. 20	*720
20 feet upstream of Mamalahoa Highway	*964
Approximately 2820 feet upstream of Mamalahoa Highway	*1395
South Kona Watercourse No. 20:	
25 feet upstream of mouth	*10
At centerline of Mamalahoa Highway	*926
Approximately 2750 feet upstream of Mamalahoa Highway	*1340
South Kona Watercourse No. 24:	
At confluence with South Kona Watercourse No. 25	*660
At centerline of Mamalahoa Highway	*866
Approximately 1850 feet upstream of Mamalahoa Highway	*1131
South Kona Watercourse No. 25:	
100 feet upstream of mouth	*9
At centerline of Hookena Road	*400
Approximately 1200 feet upstream of Mamalahoa Highway	*1085

Maps are available for inspection at Hawaii County Department of Public Works, 25 Aupuni Street, Hilo, Hawaii.

MARYLAND

Baltimore (city), Independent City (FEMA Docket No. 6902)

Gwynns Falls (1st Reach):	
At confluence with Middle Branch Patapsco River	*8
Upstream side of Washington Street	*27
At confluence with Gwynns Run	*34
Approximately 1,260 feet upstream of U.S. Route 1	*51
Gwynns Falls (2nd Reach):	
Upstream side of Windsor Mill Road	*171
Approximately 0.5 mile upstream of Windsor Mill Road	*210
Downstream side of dam	*245
Approximately 235 feet upstream of corporate limits	*265
Jones Falls:	
At confluence with Northwest Harbor	*8
Upstream side of Interstate Route 83 culvert	*51
At 28th Street	*83
Upstream side of Falls Road Ramps	*134
Upstream side of CONRAIL (1st upstream crossing)	*170
Approximately 550 feet upstream of Northern Parkway	*194
At upstream corporate limits	*205
Western Run:	
At confluence with Jones Falls	*200
Upstream side of Poplin Avenue	*241
Upstream side of Bonnie View Drive culvert	*276
Upstream side of Pimlico Road	*322
Upstream side of Taney Road	*371
Upstream side of Bancroft Road culvert	*407
Approximately 860 feet upstream of Clarks Lane	*424
Maidens Choice Run:	
Confluence with Gwynns Falls	*47
Upstream side of Williams Avenue culvert	*81
Upstream side of Caton Avenue culvert	*111
Upstream side of Cemetery Road (2nd upstream crossing)	*138
Upstream side of Yale Avenue culvert	*160
Downstream side of Beechfield Avenue culvert	*173
Moores Run:	
At downstream corporate limits	*11
Upstream side of southbound lane of Interstate Route 895	*30
Approximately 30 feet upstream of Radecke Avenue	*57
Approximately 0.5 mile upstream of Radecke Avenue	*91
Gwynns Run:	
Upstream side of Gwynns Falls Parkway culvert	*207
Approximately 1,925 feet upstream of Gwynns Falls Parkway culvert	*258
Stony Run:	
Upstream side of University Parkway	*209
Upstream side of Overhill Road culvert	*236
Upstream side of of Cold Spring Lane culvert	*252
Downstream side of Wyndhurst Avenue	*306
Approximately 0.4 mile upstream of Wyndhurst Avenue	*346
Approximately 0.6 mile upstream of Wyndhurst Avenue	*360
Biddison Run:	
Approximately 40 feet upstream of confluence with Herring Run	*26
Upstream side of Park Drive culvert	*52
Upstream side of Goodnow Road culvert	*78
Approximately 0.6 mile upstream of Goodnow Road culvert	*96

Maps available for inspection at the Planning Department, 222 East Saratoga Street, 6th Floor, Baltimore, Maryland.

TEXAS

Lewisville (city), Dallas and Denton Counties (FEMA Docket No. 6912)

Elm Fork Trinity River (West Side):	
At confluence of Timber Creek	*451
At confluence of Midway Branch	*458
Approximately 400 feet downstream of State Route 121	*481
At confluence of Prairie Creek	*482
Elm Fork Trinity River West Split Flow Area Around Downstream Floodway Landfill:	
At confluence with Elm Fork Trinity River Main Channel	*454
At divergence from Elm Fork Trinity River Main Channel	*459
Lake Lewisville Spillway:	
At confluence with Elm Fork Trinity River	*461
Approximately 1.0 mile upstream of State Route 121	*462
Timber Creek:	
At confluence with Elm Fork Trinity River	*451
Approximately 1,000 feet upstream of downstream crossing of Interstate Route 35E main lanes	*453
At Round Grove Road	*454
Just upstream of upstream crossing of Interstate Route 35E main lanes	*456
Approximately 100 feet upstream of State Route 121	*476
Approximately 0.74 mile upstream of the confluence of Stream TC-1	*485
Upstream side of Valley Parkway	*512
Approximately 400 feet upstream of the confluence of Stream TC-2	*526
Timber Creek Relief Channel:	
At confluence with Timber Creek	*454
At divergence of flooding from Timber Creek	*462
Stream TC-1:	
At confluence with Timber Creek	*477
Upstream side of Bellaire Boulevard	*500
Upstream side of Edmonds Lane	*537
Stream TC-2:	
At confluence with Timber Creek	*534
Approximately 985 feet upstream of confluence with Timber Creek	*535
Prairie Creek:	
At confluence with Elm Fork Trinity River	*462
Upstream side of Interstate Route 35E southbound land	*521
Upstream side of Kirkpatrick Lane	*573
Stream PC-1:	
At confluence with Prairie Creek	*502
Approximately 120 feet downstream of Atchison, Topeka, and Santa Fe Railroad	*521
Approximately 420 feet upstream of the Atchison, Topeka, and Santa Fe Railroad	*532
Stream PC-2:	
At confluence with Prairie Creek	*521
Upstream side of Valley Parkway	*554
Stream PC-3:	
A confluence with Prairie Creek	*542
Approximately 70 feet upstream of Topeka Street	*547
Copperas Branch:	
At confluence with Lake Lewisville	*537
Downstream side of Brazos Boulevard	*547
Approximately 550 feet upstream of Cripple Creek Road	*571

Maps available for inspection at the Department of Public Works, 1000 North Kealey, Lewisville, Texas.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: April 19, 1988.

[FR Doc. 88-11630 Filed 5-27-88; 8:45 am]

BILLING CODE 6718-21-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 056CE, Notice No. 23-ACE-041A]

Special Conditions; GROB Model 115 Series Airplanes; Re-opening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Re-opening of comment period.

SUMMARY: This notice re-opens the comment period for the submission of public comments relating to Notice 23-ACE-041 (53 FR 13283, April 22, 1988) which was to close on May 23, 1988. That notice proposed special conditions for the GROB Model 115 Series Airplanes. The FAA has determined that it would be in the public interest to re-open the comment period for an additinal 90 days to allow coordination with foreign entities.

DATE: Comments must be received on or before August 22, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 056CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 056CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 056CE." The postcard will be data stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice and Notice 23-ACE-041 (previously published in the **Federal Register** on April 22, 1988 (53 FR 13283)) by submitting a request to the Federal Aviation Administration, Standards Office, ACE-110, ATTN: ACE-112, Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106, or by calling (816) 426-5688.

Communications must identify the notice number of this NPRM.

Background

On June 23, 1986, GROB Werke GmbH and Company KG, Flugzeugbau, Am Flugplatz, D-8939 Mattsies, Federal Republic of Germany, made application to the FAA for a type certificate for the GROB Model 115 Airplane. The GROB Model 115 will be a two-place, single-engine airplane with tricycle landing gear, a gross weight of 1674 pounds, and constructed using composite material in the primary structure.

Federal Register

Vol. 53, No. 104

Tuesday, May 31, 1988

The proposed type design of the GROB Model 115 Airplane contains a novel or unusual design feature not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design feature of the GROB Model 115 Airplane.

A notice of proposed special conditions was published in the **Federal Register** on April 22, 1988, 53 FR 13283. The comment period closed May 23, 1988.

The FAA has reviewed this notice of proposed special conditions and determined that the original closing date for the comment period does not allow sufficient time to receive comments from foreign entities and that re-opening the comment period would afford those commenters the opportunity to participate in the development of these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

Extension of Comment Period

In consideration of the coordination required with foreign entities, the FAA concludes that re-opening the comment period for an additional 90 days would serve the public interest. Accordingly, the comment period for Notice 23-ACE-041 is re-opened. The comment period will close August 22, 1988.

The authority citation for this special condition is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Issued in Kansas City, Missouri on May 16, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-12087 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-12-AD]

Airworthiness Directives; Beech Models F33A, A36, and B36TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech Models F33A, A36, and B36TC airplanes which would require removal of the Mortell 931 sound deadener on the aft side of the firewall. The FAA has determined that this sound deadener material may ignite in the event of a fire in the engine compartment. The proposed action will reduce the possibility of injury to the pilot and possible loss of control of the airplane.

DATE: Comments must be received on or before August 1, 1988.

ADDRESSES: Beech Service Bulletin Number 2249, dated April 1988, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Dept. 52, P.O. Box 85, Wichita, Kansas 67201-0085 or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-12-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Federal Aviation Administration, Wichita Aircraft Certification Office, ACE-120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88-CE-12-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Mortell 931 sound deadener material is used on the cabin side of the engine firewall on certain Beech Models F33A, A36, and B36TC airplanes. Recent flammability tests of a firewall with the Mortell 931 material applied to the cabin side revealed the material would ignite when the engine side of the firewall is subjected to a 2000°F flame, the intensity required to substantiate the adequacy of firewall materials to contain an engine compartment fire. In the event an engine compartment fire ignited the Mortell 931 Material, the resulting fire inside the cabin could cause injury to the pilot and a potential loss of airplane control. To prevent such occurrence, Beech has developed Service Bulletin Number 2249 dated April 1988, that defines procedures to remove the Mortell 931 sound deadener from the aft (cabin) side of the firewall. Since the condition described is likely to exist or develop in other Beech Models of the same design, the proposed AD would require certain Beech Models F33A, A36 and B36TC airplanes to comply with Beech Service Bulletin Number 2249, dated April 1988.

The FAA has determined there are approximately 96 airplanes affected by the proposed AD. The cost of modifying those airplanes is estimated to be $1,350 per airplane for a total cost of $127,000. This cost will be absorbed by Beech Aircraft Corporation under warranty provisions specified in the Service Bulletin Number 2249 dated April 1988. Few, if any, small entities, therefore, are expected to own a sufficient number of airplanes that the cost to them will exceed the threshold for Regulatory Flexibility action.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amed § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Beech airplanes listed below, certificated in any category:

Model	Serial No.
F33A	CE-1162 through CE-1223.
A36	E-2383 through E-2405, E-2407 through E-2409.
B36TC	EA-468 through EA-470, EA-472 through EA-474.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent a potential fire in the cabin, accomplish the following:

(a) Remove the Mortell 931 sound deadener material from the aft side of the firewall in accordance with the instructions in Beech Service Bulletin Number 2249 dated April 1988.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the manager, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beechcraft Aero and Aviation Centers; Beech Aircraft

Corporation, Commercial Service, Dept. 52, P.O. Box 85, Wichita, Kansas, 67201-0085, or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 17, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-12070 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-52-AD]

Airworthiness Directives; Boeing Model 737-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Boeing Model 737-100 and -200 series airplanes, which currently requires inspections for cracks in the aft engine mount cone bolt, and replacement, if necessary. This action would require installation of an aft engine mount secondary support, installation of an aft mount cone bolt failure indicator, and continuing inspections of the aft mount indicator. Incorporation of these items would constitute terminating action for the currently required inspections. This action is necessary to prevent separation of an engine in the event of an aft mount cone bolt failure.

DATE: Comments must be received no later than July 22, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-52-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written date, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-52-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On December 24, 1987, the FAA issued AD 88-01-07, Amendment 39-5826 (53 FR 9; January 4, 1988), to require inspection for cracks in the aft engine mount cone bolt, and replacement, if necessary, on Boeing Model 737-100 and 737-200 series airplanes. That action was taken as a result of a cone bolt failure that resulted in an engine separation.

Since issuance of that AD, the FAA has determined that installation of an aft engine mount secondary support, along with an aft mount cone bolt failure indicator, would be necessary to provide an acceptable level of safety and prevent inadvertent engine separation due to a failed cone bolt. These installations, in conjunction with ongoing inspections of the aft amount indicator, will provide terminating action for the inspections currently required.

The FAA has reviewed and approved Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988, which describes procedures for installation of the aft engine mount secondary support and cone bolt failure indicator.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of an aft engine mount secondary support and cone bolt failure indicator, in accordance with the service bulletin previously mentiond, and establishment of procedures for checking for cone bolt integrity.

It is estimated that 432 airplanes of U.S. registry would be affected by this AD, that it would take an average of approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $414,720.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et. seq.*) which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 16, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-01-07, Amendment 39-5826 (53 FR 9; January 4, 1988), to add a new paragraph B., and reidentify existing paragraphs B. and C. as C. and D., respectively, to read as follows:

Boeing: Applies to all Model 737-100 and -200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent separation of the engine from the airplane, accomplish the following:

A. Within the next 300 landings after the effective date of Amendment 39-5826 (which is January 25, 1988), and thereafter at intervals not to exceed 600 landings, inspect for cracks in the aft engine mount cone bolt in accordance with Boeing Alert Bulletin 737-71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the Boeing Alert Service Bulletin previously mentioned, using magnetic particle inspection techniques. Replacement cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 600 landings.

B. Within the next 3,000 landings after the effective date of this amendment, accomplish the following:

1. Install an aft engine mount secondary support (2 per airplane), in accordance with Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988.

2. Install an aft engine mount cone bolt failure indicator, externally, on each engine nacelle, in accordance with Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988.

3. Following the accomplishment of paragraph B.2., above, inspect the aft mount cone bolt indicator at intervals thereafter not to exceed 3 calendar days (72 hours) on in-service airplanes. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced with airworthy parts prior to further flight.

Accomplishment of the requirements of this paragraph constitutes terminating action for the inspection required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on May 20, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12068 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-11-AD]

Airworthiness Directives; MORAVAN Model ZLIN 526L Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to MORAVAN Model ZLIN 526L airplanes, which would require repetitive inspections of certain fuselage welds for cracks. There have been reports of cracks being found near the leveling points in this tubular structure. The proposed AD would assure early detection of these cracks thus precluding a structural failure and possible loss of the airplane.

DATES: Comments must be received on or before July 15, 1988.

ADDRESSES: Mandatory Service Bulletin (MSB) Z526/62, dated July 30, 1987, applicable to this AD may be obtained from MORAVAN National Corp., 765-61 Otrokovice, Czechoslovakia. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-11-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. H. Belderok, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-11-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

There have been at least two reports of cracks being found in certain tubular portions of the airframe at the leveling points located at the foward end of the cockpit area on MORAVAN Model ZLIN 526L airplanes. These cracks are believed to be caused by loads during aerobatic maneuvers. Cracks in the fuselage tubular structure may cause failure of this structure and possible catastrophic loss of the airplane. As a result, MORAVAN National Corp. has issued MSB Z526/62 dated July 30, 1987, which requires repetitive visual inspections for cracks using a 3-power magnifying glass of the tubular structure around the airplane's leveling points at the forward end of the cockpit area. If a crack is found, before further flight a repair scheme must be obtained from MORAVAN. The State Aviation Inspection (SIA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Czechoslovakia, has classified this Service Bulletin (S/B) and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under SAI registration, this action has the same effect as as AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Czechoslovakia combined with FAA review of pertinent

documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity or products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of the SAI and the mandatory classification of this MSB Z526/62, dated July 30, 1987, by the SAI. Based on the foregoing, the FAA believes that the condition addressed by MSB Z526/62 dated July 30, 1987, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the FAA proposes as AD applicable to MORAVAN Model ZLIN 526L airplanes which would require repetitive visual inspections in accordance with MORAVAN MSB Z526L, dated July 30, 1987, every 100 hours time-in-service of the tubular structure around the airplane leveling points at the forward end of the cockpit area. If cracks are found, repair instructions must be obtained from MORAVAN and approved by the Manager, Aircraft Certification Staff, AEU-100.

The FAA has determined there are currently no airplanes of U.S. Registry affected by the proposed AD. The cost of inspecting the tubular structure in the vicinity of the leveling points at the forward end of the cockpit area required by the proposed AD is estimated to be $320 (8 hours at $40 per hour) per airplane. The total cost is estimated to be nil to the private sector. The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend §39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§39.13 [Amended]

2. By adding the following new AD:

MORAVAN: Applies to Model ZLIN 526L (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD and every 100 hours TIS thereafter, unless already accomplished.

To preclude structural airframe failure, accomplish the following:

(a) Visually inspect, using a 3-power magnifying glass, the forward portion of the cabin area tubular structure around the airplane leveling points, for cracks using supplementary lighting as required in accordance with MORAVAN Mandatory Service Bulletin Z526L, dated July 30, 1987. If a crack is found, before further flight repair the crack in accordance with instructions for MORAVAN approved by the Manager, Aircraft Certification Staff, AEU-100.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; MORAVAN National Corp., 765-81 Otrokovice, Czechoslovakia, or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 16, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-12068 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ANE-45]

Airworthiness Directives; Rolls-Royce plc (R-R) (Formerly Rolls-Royce Limited) Dart Mks. 506, 510, 511, 514, 525, 526, 527, 528, 529, 531, 532, and 542 Series Turboprop Engines and All Variants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which imposed reduced life limits on certain high pressrue (HP) and low pressure (LP) impellers on certain R-R Dart turboprop engines. The proposed AD wold supersede AD 73-21-04, Amendment 39-1734 (38 FR 27819), by reducing life limits on certain HP impellers, and restating for clarity existing AD requirements with respect to HP and LP impeller life limits. The proposed AD is needed to prevent low cycle fatigue (LCF) failure of certain HP impellers by imposing a reduced life limit on affected HP impellers.

DATE: Comments must be received on or befoe June 30, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 88-ANE-45, 12 New England Executive Park Burlington, Massachusetts 01803.

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 88-ANE-45".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and aftr the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 88-ANE-45". The postcard will be date/time stamped and returned to the commenter.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

This notice proposes to supersede Amendment 39-1734 (38 FR 27819), AD 73-21-04, which specifies life limits for HP and LP impellers. Since issuing Amendment 39-1734, the FAA has determined that an HP impeller failure resulted from LCF cracking. A stress analysis and a review of service experience has confirmed the need to reduce the life limit on certain HP impellers. The FAA has also determined the need to restate for clarity existing HP and LP impeller life limits which remain unchanged. Therefore, the FAA proposes to supersede Amendment 39-1734 by imposing reduced life limits for certain HP impellers, and restating existing HP and LP impeller life limits for clarity.

Conclusion

The FAA has determined that the proposed regulation invovles 784 engines, with approximately 100 engines affected by the new reduced HP impeller life limits. The approximate cost for those 100 engines is $8,400 per engine. The remaining 684 engines are covered by already existing AD requirements, and therefore no additional costs are incurred. Therefore, I certify that this section: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39 [AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 73-21-04, Amendment 39-1734 (38 FR 27619) as follows:

Rolls-Royce plc: Applies to Rolls-Royce plc (R-R) (Formerly Rolls-Royce Limited) Dart Mks. 506, 510, 511, 514, 525, 526, 527, 528, 529, 531, 532, and 542 series turboprop engines and all variants.

Compliance is required as indicated, unless already accomplished.

To prevent fatigue failure of high pressure (HP) impellers and low pressure (LP) impellers, accomplish the following:

(a) Remove from service HP impellers installed in Dart Mks. 506, 510, 511, 514, and all variants, in accordance with the following schedule:

(1) HP impellers to Mod 844 standard which have accumulated 8,000 or more total flights since new on the effective date of this AD, within the next 400 flights from the effective date of this AD, or within the next 12 calendar months from the effective date of this AD, whichever comes later.

(2) HP impellers to Mod 1455 standard which have accumulated 8,600 or more total flights since new on the effective date of this AD, within the next 400 flights from the effective date of this AD, or within the next 12 calendar months from the effective date of this AD, whichever comes later.

(3) HP impellers to Mod 844 standard which have accumulated less than 8,000 total flights since new on the effective date of this AD, at or prior to accumulating 8,400 total flights since new.

(4) HP impellers to Mod 1455 standard which have accumulated less than 8,600 total flights since new on the effective date of this AD, at or prior to accumulating 9,000 total flights since new.

Notes: Total flights since new is defined as the total number of flights accumulated by the part since first installation in an engine. This total includes all Mod standards the part has operated under. Reference R-R Service Bulletin (SB) DA72-496, June 1986.

(2) This action establishes a new manual life limit for HP impellers as noted in (a) above.

(b) To prevent fatigue failure of HP impellers, remove from service HP impellers installed in Dart Mks. 525, 528, 527, 528, 529, 531, 532, 542, and all variants, on or before the life limits in the following schedule:

LIFE LIMIT IN NUMBER OF FLIGHTS

Dart Mk.	Pre-mod 797	Mod 797 open bore processed	Mod 797 pre-mod 1455	Mod 1455	Mod 1475
525 thru 529	4,500	11,000	14,000	[1] NC	[1] NC
531 and 532	4,500	11,000	14,000	[1] NC	[1] NC
542	[2] NA	[2] NA	12,000	[3] 16,000	14,500

[1] NC—Life limits not covered by this AD. Information relating to these impellers is contained in the manufacturer's appropriate overhaul manual.
[2] NA—Model not applicable to specific impeller.
[3] Since incorp. of mod 1455.

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Note: The above noted HP impeller life limits were published in AD 73-21-04, Amendment 39-1734 (38 FR 27819), and have not changed. This section is only intended to reprint for clarity, already existing AD requirements with respect to current R-R SB information.

(c) To prevent fatigue failure of LP impellers, remove from service LP impellers installed in Dart Mks. 506, 510, 511, 514, 525, 528, 527, 528, 529, 531, 532, 542, and all variants, on or before the life limits in the following schedule:

LIFE LIMIT IN NUMBER OF FLIGHTS

Dart Mk.	Mod 787 open bore proc-essed	Mod 787 pre-mod 1455	Mod 1455
506	10,500	11,250	11,250
510	10,500	11,250	11,250
511	10,500	11,250	11,250
514	10,500	11,250	11,250
525 thru 525	9,000	9,000	9,000
531 thru 532	9,000	9,000	9,000
542	[1] NO	9,000	9,000

[1] NA—Model not applicable to specific impeller.

Notes: (1) LP impellers to Mod 1455 Part 1 standard (manufactured by R-R to this standard) are not affected by this AD. Life limits for this part are quoted in the overhaul manual, Chapter 5, "Time Limits".

(2) The above noted LP impeller life limits were published in AD 73-21-04, Amendment 39-1734 (38 FR 27819), and have not changed. This AD, with respect to LP impeller life limits, is only intended to reprint for clarity, already existing AD requirements with respect to current R-R SB information.

(3) Rolls-Royce Dart Service Bulletin 72-463 also pertains to LP impeller life limits.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA airworthiness inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance schedules specified in this AD.

(f) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment supersedes Amendment 39-1734 (38 FR 27819), AD 73-21-04.

Issued in Burlington, Massachusetts, on May 19, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88-12071 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-13-AD]

Airworthiness Directives; Piper Models PA-23, PA-23-160, PA-23-250, PA-23-235, PA-E23-250 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to all Piper PA-23 Series airplanes, which would require periodic inspection and repair, as required, of the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler comparment covers. Incidents of engine power loss and accidents due to water contamination of the fuel system, caused by defective fuel filler caps and blocked fuel cell vent/drain lines, have occurred on these airplanes. The prescribed action would reduce the possibility of water contamination in the fuel system and resultant engine stoppage due to these conditions.

DATE: Comments must be received on or before August 1, 1988.

ADDRESSES: Piper Aircraft Corporation Service Bulletin No. 340, dated May 24, 1971, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (305) 567-4360. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-13-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-13-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The National Transportation Safety Board (NTSB) has reported that since 1975, Piper Model PA-23 Apache airplanes have been involved in fourteen accidents and a Piper Model PA-23 Aztec airplane has been involved in one accident, all of which occured after water in the fuel system led to engine stoppage. Apache airplanes have been in twenty-three other accidents and Aztec airplanes in seventeen other accidents all involving engine stoppage wherein the reason for engine stoppage was not determined but may have been caused by water in the fuel. At least twenty-two fatalities and four serious injuries resulted from these accidents. Investigation has revealed that due to the recessed design of the fuel filler compartments, blocked fuel cell vent/drain lines will allow water to collect in the fuel filler compartment and that defective fuel cap seals will allow water to enter the fuel cell. Once water gets into the fuel cell, it is very difficult to remove it on the ground. On May 24, 1971, Piper Aircraft Corporation released Service Bulletin No. 340 entitled "Fuel Cell Vent/Drain Lines Inspection" which recommended periodic inspection procedures for the fuel cell caps and fuel filler compartment access covers. These periodic inspections were intended to reduce the possibility of precipitation and/or wash water from entering the fuel filler compartment and leaking into the fuel cell. However, in light of the number of accidents involving water in the fuel system, the FAA has determined that in many instances these inspections are not being performed and consequently, should be made mandatory. Accordingly, an AD is being proposed, applicable to all Piper PA-23 series airplanes, which would require compliance with the periodic inspections specified in Piper Service Bulletin No. 340 regardless of whether or not they have anti-icing fuel cell vents installed. Due to the nature of the problem, the FAA has determined that this inspection should be based on calendar time instead of operating hours as described in Piper Service Bulletin No. 340.

Since the condition described is likely to exist or develop in other Piper Model PA-23 airplanes of the same design, the proposed AD would require inspection of the fuel vent/drain lines to ensure they are not obstructed or deteriorated, and inspection of the thermos type fuel cell caps and fuel filler compartment access covers for sealing integrity.

The FAA has determined there are approximately 7,000 airplanes affected by the proposed AD. The cost of implementing the proposed AD is estimated to be $50 per airplane per inspection. The total cost is estimated to be $3,150,000 to the private sector over the anticipated life of the airplane fleet. The cost of complying with the proposal would not have a significant financial impact on any small entities owning affected airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Piper: Applies to all Model PA-23, PA-23-160, PA-23-250, PA-E23-250 and PA-23-235 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 60 days after the effective date of this AD and at intervals not to exceed 12 calendar months thereafter unless already accomplished.

To reduce the possibility of precipitation and/or wash water from entering the fuel filler compartment and leaking into the fuel cell resulting in engine failure, accomplish the following:

(a) Inspect the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler compartment covers on both main fuel cell systems and, if installed, both auxiliary fuel cell systems in accordance with the instructions in Piper Service Bulletin No. 340, dated May 24, 1971.

(b) If any defects are found, correct them before further flight.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 17, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-12069 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3387-5]

Technical Assistance Grant Program Administrative Services Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of rulemaking; reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA) published in the March 24, 1988 **Federal Register** (53 FR 9736) an Interim Final Rule (IFR) for the Superfund Technical Assistance Grant Program. EPA also published in the same **Federal Register** (53 FR 9753) an advance Notice of Rulemaking (ANRM) soliciting comments regarding a proposal to provide technical assistance grant applicants and recipients with the services of an Administrative Services Contractor (ASC). These services could include both assistance in preparing grant applications and the procurement of techincal assistance, and contract management. To implement the ASC, EPA would acquire contractors on a State, Regional, or National basis to provide services to grant recipients in lieu of cash. The ASC concept is based on EPA's desire to make the Technical Assistance Grant Program easier for groups to use and for EPA to administer. EPA today announces that the comment period on that ANRM is being reopened until June 22, 1988.

DATES: Written comments must be received on or before June 22, 1988.

ADDRESSES: *Comments:* Written comments must be submitted to: Superfund Docket Clerk, Office of Emergency and Remedical Response (WH-548D), Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments on the ANRM must identify the document as follows: "Docket CERCLA 117(e), Technical Assistance Grant Program Administrative Services Contractor." Copies of materials relevant to the ANRM are contained in the Superfund docket located in the

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Lower Garage (Room LC–160) at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays, by appointment only. The docket phone number in Washington, DC is (202) 382–3046. As provided in 40 CFR Part 2, a responsible fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Daphne D. Gemmill, Office of Emergency and Remedial Response, WH–548E, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 at (202) 382–2460 or the RCRA/Superfund Hotline from 9:00 a.m. to 4:30 p.m., Monday-Friday, toll free at 1-(800) 424–9346 or in Washington, DC at 382–3000.

Dated: May 20, 1988.

J.W. McGraw,

Acting Assistant Administrator, Solid Waste and Emergency Response.

[FR Doc. 88–12101 Filed 5–27–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3367–9]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to disapprove a submission by the State of Wisconsin as a revision to the Wisconsin State Implementation Plan (SIP) for ozone. This submission would constitute a permanent relaxation from Wisconsin's reasonably available control technology (RACT) requirements for volatile organic compound (VOC) emissions from a miscellaneous metal parts and products dip coating line at the Gehl Company (Gehl). This facility is located in West Bend, Washington County, Wisconsin.

USEPA today is proposing to disapprove this SIP revision primarily because the State has not demonstrated that the revision will not jeopardize attainment or maintenance of the ozone standard in Washington County and in nonattainment areas in southeastern Wisconsin.

DATE: Comments on this revision and on the proposed USEPA action must be received by June 30, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604;

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1986, the Wisconsin Department of Natural Resources (WDNR) submitted as a proposed revision to the State's ozone SIP a site-specific RACT determination for a miscellaneous metal parts and products dip coating line. This line is located at the Gehl facility in Washington County, Wisconsin.

Under the existing federally approved SIP for Wisconsin, the metal parts and products dip coating line is subject to the control requirements contained in Natural Resources (NR) section 154.13(4)(m)3, Wisconsin Administrative Code, which limits the VOC content of the coatings used to not more than 4.8 pounds per gallon of coatings excluding water, by December 31, 1982, and 3.5 pounds per gallon of coating, excluding water, by December 31, 1985. USEPA approved these rules on January 11, 1980 (45 FR 2319) and June 21, 1982 (47 FR 26822).

WDNR reported that Gehl's spray booths are meeting the 3.5 pounds of VOC per gallon of coating, excluding water, limit. An air dried coating is applied in the dip tank which presently meets the interim limitation of 4.8 pounds of VOC per gallon of coating, excluding water, limitation, but does not meet the final limitation of 3.5 pounds of VOC per gallon of coating. Gehl has maintained that it is not technically and economically feasible to meet the final limitation for the dip tank. It has requested an alternative limitation for the dip tank coating of 4.8 pounds of VOC per gallon of coating, excluding water.

WDNR's submittal discusses the technical and economic feasibility of six types of complying coatings, the economic feasibility of add-on control, and the effect of the relaxation on attainment and maintenance of the ozone NASQS. WDNR's analysis is in turn discussed in USEPA's technical support document dated March 10, 1987.

Washington County, Wisconsin, is designated attainment for ozone under section 107 of the Clean Air Act, 42 U.S.C. 7407. See 40 CFR 81.350. However, recent air quality data for this county show exceedances of the ozone standard. Further, Wisconsin took credit for the RACT-level VOC emission limitations that it now seeks to relax in its demonstration of attainment for the SIP for designated ozone nonattainment areas in southeastern Wisconsin that the state submitted to satisfy Part D of the Act, 42 U.S.C. 7501 *et seq.* USEPA relied on that demonstration in approving the State's Part D plan for those areas.

Evaluation

NAAQS Attainment

Section 110(a)(2)(B) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(B), requires that SIPs for an air pollutant include control measures as are necessary to ensure timely attainment and maintenance of the NAAQS for that pollutant. Section 110(a)(3)(A), 42 U.S.C. 7410 (a)(3)(A), applies the same requirement to plan revisions. USEPA's regulations implementing section 110 assign to the States the burden of demonstrating that their plans satisfy this requirement (40 CFR 51.13(e), 51.14(c)). See also CAA 110(a)(2)(I), 172, 42 U.S.C. 7410(a)(2)(I), 7502 (requiring SIPs that assure timely attainment and maintenance in designated nonattainment areas). Thus, in order to obtain approval of the VOC SIP relaxation for the Gehl Company at issue here, the State must show that the SIP for Washington County will continue, despite the relaxation, to assure timely attainment and maintenance in the county.

Moreover, because Wisconsin takes credit for VOC reductions in Washington County in the attainment demonstration for nonattainment areas in southeastern Wisconsin, the State must also show that the SIP for those nonattainment areas will still assure timely attainment and maintenance in the areas despite the relaxation. Thus, the relaxation comes within the spirit of a policy memorandum dated July 29, 1983, from Sheldon Meyers, former Director of USEPA's Office of Air Quality Planning and Standards. This memorandum states:

> For a State to secure USEPA approval of a relaxation [in a nonattainment area] and continue overall approval status [of its SIP], however, the State would need to show that the SIP as a whole, despite the relaxation, would continue to "provide for" attainment by the end of 1982 in the case of nonextension areas or as expeditiously as practicable, but no later than 1987 in extension areas. For VOC, this generally will require a data base and modeling demonstration consistent with that applied in extension areas.

Here, the State has failed to provide an adequate demonstration that the SIP together with the relaxation would assure timely attainment and maintenance in either Washington County or the nonattainment areas. The reasons for this conclusion appear in the March 10, 1987, technical support document.

Miscellaneous

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before June 30, 1988 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under 5 U.S.C. section 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because the effect of this disapproval is to leave in effect existing emission limitations. Therefore, the disapproval will not result in any change or impact on any source or community. Additionally, it applies to only one major corporation, Gehl.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbon, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: June 24, 1987.

Editorial Note: This document was received at the Office of the Federal Register May 25, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–12103 Filed 5–27–88; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 13)]

Rail Abandonments; Use of Rights-of-Way as Trails; Supplemental Trails Act Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission grants a petition to reopen this rulemaking proceeding, filed by the National Association of Reversionary Property Owners (NARPO), to consider whether the rules implementing section 1247(d) of the National Trails System Act (16 U.S.C. 1247(d)) (*Trails Act*), adopted in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) and *Rail Abandonments—Supplemental Trails Act Procedures*, 4 I.C.C.2d 152 (1987), codified at 49 CFR 1152.29, should be amended to require: (1) Railroads and trail groups to report to the Commission on the outcome of negotiations to transfer railroad rights-of-way for interim trail use and rail banking purposes under section 1247(d); and (2) additional reporting if an interim trail use agreement is reached.

DATE: Comments are due on June 30, 1988.

ADDRESS: Send an original and 10 copies of comments to: Ex Parte No. 274 (Sub-No. 13), Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

(TDD for hearing impaired (202) 275–1721)

SUPPLEMENTARY INFORMATION: When the Commission issues a Certificate (or Notice) of Interim Trail Use or Abandonment pursuant to section 1247(d), the subject right-of-way may be converted to trail use, abandoned, or retained in service. If the abandonment occurs, reversionary interests in the right-of-way generally vest by operation of law. If the line is continued in rail service or converted to trail use under section 1247(d), then the *status quo* is preserved: Reversionary interests do not mature or vest but remain future interests.

The purpose of NARPO's proposal would be to create a Commission record of who holds the present interest in rights-of-way that are the subject of interim trail use and rail banking certificates and notices under section 1247(d) so that persons owning property adjacent to and/or persons holding reversionary interests in such rights-of-way can contact the Commission to find out who is responsible for such rights-of-way in order to protect their property interests.

NARPO states that under section 1247(d), trail use groups are to pay the property taxes on and maintain rights-of-way, but that our rules address neither the quality of maintenance nor how the Commission can know whether the property taxes are paid. According to NARPO, if a right-of-way is poorly maintained, an environmental, esthetic and safety hazard may exist which an adjacent property owner cannot control or remedy. If property taxes on the right-of-way go unpaid, the right-of-way could have a lien placed on it or be sold without the adjacent property owner's knowledge.

NARPO asks the Commission to require timely reporting of trail groups' interests in rights-of-way and require trail groups to identify themselves to persons holding reversionary interests in rights-of-way. NARPO argues that reversionary interest holders cannot adequately protect their property interests without knowing who is using the right-of-way, and that it is the Commission's responsibility to have that information. If the Commission maintained a list of the responsible parties on these rights-of-way, the reversionary interest holders would be able to contact the Commission for that information and protect their interests.

We request comments on the merits of NARPO's reporting proposal and invite parties to propose draft rules or otherwise suggest ways to implement the proposal under the existing regulatory scheme. We also invite comments on whether our rules should address the quality of maintenance on rights-of-way subject to the Trails Act and, if so, what the standards should be and how to incorporate them into the existing regulatory scheme. NARPO also suggests that trail groups be required to notify reversionary interest holders of who they are and where they can be contacted. We request comments on the merits of this proposal and suggestions on implementation.

NARPO asserts that if a trail group dissolves, the ICC would not know of it. However, rules 1152.29(c)(2) and (d)(2) provide that if the trail user intends to terminate trail use, it must send the Commission a copy of the trail use authority (*i.e.*, the Certificate (or Notice) of Interim Trail Use or Abandonment (CITU or NITU, respectively)) and request that it be vacated on a certain

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date. The agency then would reopen the underlying abandonment proceeding, vacate the CITU or NITU and issue an effective abandonment certificate or notice and send a copy to the trail use group, the abandoning railroad, and the owner of the right-of-way. We believe that the existing rules adequately address the situation NARPO describes. Nevertheless, we invite comments on this issue as well.[1]

[1] Reference to the "owner of the right-of-way" in rules 1152.29(c)(2) and (d)(2) refers to the person who possesses the present interest in rights-of-way subject to trail use. That person could be the railroad, the trail group, or some third party who is funding the trail use venture. The term does *not* include persons holding reversionary interests in such rights-of-way.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call 202-275/7428. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Implementing any of these proposals would have no impact on the human environment or energy conservation because it would involve only reporting requirements.

It is certified that these proposals, if adopted, would have have no significant impact on small businesses because only minor reporting requirements would be involved.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Environmental protection, National Trails System, National Resources, Railroads, Recreation, Recreation areas.

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505 and 10903 *et seq.*

Decided: May 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-12060 Filed 5-27-88; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 53, No. 104

Tuesday, May 31, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-88-102]

National Advisory Committee for Tobacco Inspection Services; Correction To Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting; correction.

SUMMARY: This notice changes the address previously published in the Federal Register April 29, 1988, (53 FR 15434), for a public meeting to be held in Lexington, Kentucky, on June 10, 1988, for the National Advisory Committee for Tobacco Inspection Services. The address for the Committee meeting is: Marriott Hotel, Grand Ballroom, 1800 New Town Pike, Lexington, Kentucky 40511.

The date and time for the meeting remain unchanged: June 10, 1988, 1:30 p.m.

Dated: May 26, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-12188 Filed 5-27-88; 8:45 am]

BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS

Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:30 p.m. on June 13, 1988, at the Best Western Senator Inn, the State Room, 284 Western Ave., Augusta, ME 04330. The purpose of the meeting is (1) discuss the proceedings of the 12/2/87 community forum on "Civil Rights Issues in Maine," and (2) plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Shirley Ezzy (207-622-4882) on John L Binkley, Director of the Eastern Regional Division at (202-523-5264) (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-12056 Filed 5-27-88; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Amendment to Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the South Dakota Advisory Committee to the Commission originally scheduled for May 20, 1988, in Sioux Falls, South Dakota, has been rescheduled. The meeting will be held on June 24, 1988. The purpose, time, and location of the meeting remain the same as previously published in 53 FR 14830 (April 26, 1988).

Dated in Washington, DC, May 23, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-12057 Filed 5-27-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Application #85-00002]

Export Trade Certificate Review; Olde South Traders, Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Olde South Traders, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Processed and semi-processed forest products ("forest products"), including but not limited to lumber, treated wood products, wood chips, shavings, and veneer.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Marketing, selling, brokering, shipping, handling, common marking and identification, consulting, international market research, advertising and sales promotion, insurance, product research and design, legal assistance, trade documentation, communication and processing of foreign orders, warehousing, foreign exchange, financing and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in Addition to Applicant)

Daniels Lumber, Inc., Lake City, Florida; Metcalf Lumber Company, Inc., Thomasville, Georgia; T.R. Miller Mill Company, Inc., Brewton, Alabama; Nekoosa Packaging Corporation, Lake Butler, Florida; Rex Lumber Company, Bristol, Florida; and Varn Wood Products Company, Hoboken, Georgia.

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, Olde South is certified to:

1. Enter into exclusive agreements with its Members to act as their Export Intermediary for forest products by providing Export Trade Facilitation Services.

2. Meet with its Members to negotiate and agree on the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market, including, but not limited to, the price at which a Member will sell its forest products and related services for export, and the quantity of products each Member will commit to the foreign sale or bid opportunity. During the course of such meetings, the following information may be exchanged.

a. Information that is already generally available to the trade or public.

b. Information that is specific to a particular Export Market, including but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies and product specifications by geographical area, and by individual customers within the Export Market.

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing).

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market.

e. Information on Olde South's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by customers located in the Export Markets, and reports by foreign sales representatives.

f. Information on supply and demand for forest products in export trade, including, but not limited to, the quantities of particular products desired by export customers, the supply of such products (based on domestic supply and demand) available for export trade, anticipated export prices, quality standards, packaging standards, and primary production schedules.

g. Information on specific prices and quantities involved in specific domestic transactions furnished by each Member individually, and on a confidential basis, to Olde South's manager who will use such information to compute averages and trends regarding domestic prices and quantities for disclosure to the Members in aggregated form. The manager shall not disclose to any Member the specific information furnished by any other Member. The manager shall be an independent employee of the Olde South and not otherwise affiliated with any of the Members.

3. Enter into exclusive agreements with other Export Intermediaries for the sale of forest products in the Export Markets, whereby:

a. The Export Intermediary agrees not to represent competitors of Olde South in the sale of forest products and related services in any Export Market.

b. The Export Intermediary agrees not to buy forest products and related services from Olde South's competitors.

4. Enter into exclusive agreements with foreign customers of forest products and related services offered by Olde South whereby the customer agrees not to purchase forest products and related services from Olde South's competitors.

5. Discuss and agree on with its Members the export prices to be charged by Olde South or its Members for the sale of forest products or related services directed to an Export Market or to a domestic or foreign exporter for ultimate sale in an Export Market.

6. Limit membership in Olde South.

7. Publish and distribute a list of export prices to be charged by Olde South or its Members.

8. Allocate orders for export sales, and divide profits from such sales, among its Members as provided in the membership agreement between Olde South and its Members.

9. Purchase forest products from its Members and non-members for direct export to an Export Market or for sale to a domestic or foreign exporter for ultimate sale in an Export Market.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: May 24, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-12119 Filed 5-27-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat; Petition to Adopt a Special Rule

AGENCY: National Marine Fisheries Service (NMFS), NOAA; Commerce.

ACTION: Notice of receipt of petition.

SUMMARY: NMFS has received a petition to issue an emergency rule which would prohibit commercial whale watching on Atlantic right whales (*Eubalaena glacialis*).

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 (202/673-5348).

SUPPLEMENTARY INFORMATION: On April 19, 1988, NMFS received a petition from GreenWorld to adopt an emergency rule which would prohibit commercial whale watching on Atlantic right whales. The Service is reviewing the petition and will make a determination in accordance with the provisions of the Endangered Species Act of 1973 and the Administrative Procedure Act (5 U.S.C. 553(e)).

Dated: May 24, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-12060 Filed 5-27-88; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISSION

Development of Voluntary Standard for All-Terrain Vehicles; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The major members of the all-terrain vehicle ("ATV") industry have scheduled a meeting on June 2, 1988, for further development of a voluntary safety standard for ATVs. Interested members of the public are invited to attend the meeting and observe or participate in the development of the standard. Persons wishing to attend the meeting or to be notified of future meetings of the committee should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K-107, Costa Mesa, California 92626, phone (714) 241-9256.

DATE: The meeting is scheduled for 9:30 a.m. on June 2, 1988.

ADDRESS: The meeting will be held at The D.C. Dulles Marriott Hotel, 333 West Service Road, Chantilly, Virginia.

FOR FURTHER INFORMATION CONTACT: Carl Blechschmidt, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, phone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

Background

The Commission for some time has been concerned with safety issues associated with the operation of all-terrain vehicles, which are three- and four-wheeled motorized vehicles, generally characterized by large, low pressure tires, a seat designed to be straddled by the operator, and handlebars for steering and which are intended for off-road use by an individual rider on various types of unpaved terrain.

On May 31, 1985, the Commission published an advance notice of proposed rulemaking (ANPR) in the **Federal Register**, 50 FR 23139. In the ANPR, the Commission announced that it was considering a wide range of possible regulatory alternatives to address the safety concerns about ATVs and solicited comments on a number of issues.

On December 30, 1987, the Commission and the major members of the ATV industry filed preliminary consent decrees in *United States* v. *American Honda Motor Co., Inc. et al.*, Civil Action No. 87-3525, in the United States District Court for the District of Columbia. The preliminary consent decrees contained provisions intended to satisfy the Commission's concerns about ATVs and provided that the parties would file proposed final consent decrees, which were filed on March 14, 1988. Both the preliminary consent decrees and the final consent decrees, which were approved by the Court on April 28, 1988, provide that the industry members will attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission, within four months of the Court's approval of the final consent decrees.

The first standard development meeting pursuant to the consent decree was held on May 4, 1988, and technical working group meetings were held on May 19-20. The results of the working group meetings will be reported to the June 2 plenary meeting of the industry representatives, who will make the decisions on the content of proposals for inclusion in the standard.

Commission policy requires that all voluntary standards meetings attended by CPSC staff be open to the public and that interested members of the public have an opportunity to contribute to the development of the standard. Thus, the meeting is open to all members of the public who wish to attend or participate. In order to ensure that the meeting facilities are adequate to accommodate all attendees, persons wishing to attend the meeting should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K-107, Costa Mesa, California 92626, phone (714) 241-9256. In addition, persons who wish to participate in the development of the standard should notify Mr. Golde of that fact, so they can receive notice of additional meetings, etc., as they are scheduled.

The goal of the four-month period provided in the consent decrees for the development of a standard by the industry is to develop at least a general consensus on a standard within that time. Work on some aspects of a standard may continue after that period. Because of the need for the industry to develop the standard within four months, it may not be practical to announce all subsequent meetings of the voluntary standard development committee in the **Federal Register**. However, all persons who indicate a desire to participate in the development of the standard will be notified of such meetings, and other parties may contact the Commission's Office of the Secretary, at (301) 492-6800, to determine when standards development meetings are placed on the Commission's Public Calendar.

The Commission expects that most of the subsequent plenary meetings will be in Washington, DC, metropolitan area. However, some meetings may be in California for the convenience of participants who are located on the west coast or in Japan.

In order to ensure that the meeting proceeds on schedule, it may be necessary for the Chairperson to limit the time and manner allowed for the presentation of comments by each participant and to restrict duplicative comments.

Dated: May 24, 1988.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 88-12090 Filed 5-25-88; 3:09 pm]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Information School Board of Visitors; Renewal

ACTION: Renewal of the Department of Defense Information Schools Board of Visitors.

SUMMARY: Under the provisions of Pub. L. 92-463; "Federal Advisory Committee Act," notice is hereby given that the Defense Information School Board of Visitors has been determined to be in the public interest and has been renewed.

The Defense Information School Board of Visitors provides an external source of expertise on public affairs training to the Assistant Secretary of Defense (Public Affairs) and other Defense Department officials. The Board acts as an important bridge with civilian professional communities and ensures continued reflection on the objectives, operations and policies of the Defense Information School. The scope of the Board's concerns include: course content and quality of instruction in journalism, photojournalism, broadcasting, public affairs and mass communication, as well as institutional growth, student services, faculty development, research, and related educational considerations.

May 25, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-12066 Filed 5-27-88; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 2 June 1988 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1)

of Title 5, United States Code, this meeting will be closed to the public.

May 24, 1988.

Linda M. Bynum,
Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 88-12085 Filed 5-27-88; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Army Science Board

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 22-23 June 1988.
Time: 0900-1700 hours each day.
Place: The Pentagon, Washington, DC.
Agenda: The Army Science Board 1988 Summer Study on Technology Insertion in Army Systems will meet for briefings by AMC and TRADOC agencies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 88-12058 Filed 5-27-88; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 20-21 June 1988.
Time: 0800-1700 hours, daily.
Place: US Army Missle Command, Redstone Arsenal, Huntsville, Alabama.
Agenda: The Army Science Board 1988 Summer Study on Army Testing will meet for the purpose of conducting a detailed review of all testing related to documentation for the AQUILLA and MLRS Weapons Systems. These sessions will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 88-12059 Filed 5-27-88; 8:45 am]
BILLING CODE 3710-08-M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement, Navigation Study; Brunswick Harbor, Brunswick, GA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District, Savannah, Georgia, proposes to prepare a Draft Environmental Impact Statement to update previous studies for the Brunswick Harbor Navigation Project to determine whether modifications of the existing Federal project are needed and, if so, which modifications are most feasible.

FOR FURTHER INFORMATION CONTACT: U.S. Army Engineer District, Savannah, Attn. CESAS-PD-E/ Dr. Charles W. Belin, P.O. Box 889, Savannah, Georgia 31402-0889, Telephone: (912) 944-5836.

SUPPLEMENTARY INFORMATION:

1. Background

The U.S. Army Engineer District, Savannah, Georgia, maintains a Federal Navigation Channel for Brunswick Harbor, Brunswick, Georgia. The FY 1984 Continuing Resolution, Pub. L. 98-151, authorized the reevaluation and updating of previous studies for the Brunswick Harbor Navigation Project to determine if modifications to the existing Federal project are needed and which modifications are most feasible.

2. Proposed Action

The U.S. Army Engineer District, Savannah, Georgia, proposes to prepare a Draft Feasibility Report and Environmental Impact Statement to evaluate possible channel improvements to the Brunswick Harbor Navigation Project and determine what modifications should be recommended to Congress for implementation.

3. Alternatives

The improvements considered are incremental channel deepening from the present 30 feet to a possible 38-foot depth, adding additional maneuvering areas, and/or increasing the channel width. The No Action Alternative will be evaluated.

4. Scoping Process

Scoping meetings were held on 4 and 5 September 1974, 3 December 1974, and 31 July 1975. The inputs provided by the various interest groups at these meetings and during the coordination of the draft reports were used in the development of preliminary plans and in the selection of a plan for recommendation. The scope of this study will follow the recommendations of the 1984 Brunswick Harbor Georgia Navigational Study Reconnaissance Report.

a. A Public Notice will be issued soliciting comments and concerns from the interested public and other agencies. In this notice the public will be advised how they can become involved in the scoping process. All interested and affected Federal, state and local agencies as well as private organizations and individuals are encouraged to provide information for this DEIS.

b. Significant issues in the DEIS. The most significant issue to be analyzed will be the effect of a larger navigational channel and the best method for disposal of maintenance material.

c. The completed DEIS will be coordinated with the appropriate Federal, state and local agencies as well as private organizations and individuals for their input.

d. No further scoping meetings will be planned unless they are requested.

e. The Brunswick Harbor Draft Feasibility Report and Environmental Impact Statement are scheduled to be available for public review in November 1988.

E. Randolph Marshall,
Major, Corps of Engineers, Acting Commander.

[FR Doc. 88-12061 Filed 5-27-88; 8:45 am]
BILLING CODE 3710-KF-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Rossville, KS; Flood Protection Study

AGENCY: US Army Corps of Engineers, Kansas City District, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of this study is to evaluate an array of potential plans to determine the feasibility of providing flood protection to the town of Rossville, Kansas (KS), from flood flows arising on Cross Creek.

INFORMATION: Questions about the proposed study and the DEIS can be answered by Mr. Robert R. Ruf, Chief, Environmental Resources Branch, Corps of Engineers, 700 Federal Building, Kansas City, Missouri 64106. Phone: 816-426-3672.

SUPPLEMENTARY INFORMATION: A Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the town of Rossville, KS, Flood Protection Study was published in the **Federal Register**, Volume 50, No. 60, Thursday, March 28, 1985. However, due to the town of Rossville rejecting the proposed project because of the financial responsibility required of the town as local sponsor of the recommended plan, a Notice to Cancel the Notice of Intent to prepare a Draft Enviornmental Impact Statement for the Rossville, KS project was requested on December 17, 1986. The town of Rossville has reconsidered its financial responsibility for the flood protection project and has requested that the Kansas City District continue its study of flood protection measures for Cross Creek.

1. The purpose of this study is to redetermine the feasibility of providing protection to the town of Rossville, KS, from flood flows arising on Cross Creek.

2. Reasonable alternatives for flood protection that will be studied include:

a. *No Action.* Without Federal involvement, flooding would continue to adversely impact residential units, businesses, churches, a school, and the town's water plant.

b. *Floodwall/Levee Construction.* This plan would consist of two ring levees and a floodwall. One ring levee would be small and encompass the northwest corner of Rossville. The larger ring levee would encircle the remainder of the town. The floodwall would begin where Cross Creek meets the northwest edge of town and end where Cross Creek leaves the southwest corner of town.

c. *Ring Levee Construction and Channel Relocation.* This plan would eliminate the segment of Cross Creek which flows through Rossville. The construction of a relocated channel would allow Cross Creek flood waters to by-pass the town of Rossville. In addition to the channel relocation, there would be a levee built around the entire town using material excavated from the new channel. This plan, and plans 2d-f, would include constructing a new highway and railroad bridge across the relocated channel of Cross Creek.

d. *Alternate Trail Levee and Channel Relocation.* This plan includes the same channel relocation described above; however, levee construction would extend from high ground north of town southwest to the upstream end of the relocated channel. It would then parallel the new channel to where it meets the old channel and extend approximately three-quarters of a mile downstream from the new channel.

e. *Relocated Channel and Trail Levee.* This plan would also involve a relocated channel as in paragraphs 2c-d, however, the start of the new channel would be nearer the northwest edge of Rossville than for plans 2c-d. This plan would involve constructing a trail levee along the north edge of town from Cemetery Hill to the mouth of Ensign Ditch, then south along the new channel. The levee would then trail off south of town approximately three-quarters of a mile downstream from the lower end of the new channel. The levee along the north side of town would require relocating a road and several houses.

f. *Channel Relocation Only.* This plan would allow Cross Creek flood waters to bypass the town of Rossville as described in paragraph 2c and 2d, however, the plan would not include construction of levees. Disposal areas for the excavated material from the new channel could threaten wetland or riparian habitats.

3. *Scoping Process:*

a. *Public Involvement:* A letter from Rossville officials was received on September 8, 1987, in which the town requested that the section 205 Flood Protection Project for Rossville be restarted. A public meeting is not currently scheduled to be held before the Draft Feasibility Report and Draft Environmental Impact Statement are released to the public in July, 1988. A public meeting will be held in late July or early August, 1988 after review of the draft reports. Draft documents, resulting from the Rossville Flood Protection Study, will be distributed to Federal, State, and local agencies, as well as interested members of the public, for review and comment. Since the participation of the public and Governmental agencies has occurred during all stages of the planning process, no formal "scoping" meeting will be held.

b. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and other applicable laws, regulations, and guidelines.

Date: May 16, 1988.

Philip L. Rotert,
Chief, Planning Division.

[FR Doc. 88-12062 Filed 5-27-88; 8:45 am]
BILLING CODE 3710-KH-M

DEPARTMENT OF EDUCATION

Carl D. Perkins Vocational Education Act; Request for Public Comments on Reauthorization

AGENCY: Department of Education.

ACTION: Notice of request for public comments on reauthorization of the Carl D. Perkins Vocational Education Act.

SUMMARY: The Secretary of Education has initiated development of a proposal by the Department of Reauthorization of the Carl D. Perkins Vocational Education Act. The Secretary invites written comments on the current Act and suggestions for changes for consideration by the Department during development of the proposal.

DATE: Written comments should be submitted on or before July 31, 1988.

ADDRESS: Written comments should be addressed to: Perkins Act Reauthorization, 400 Maryland Avenue SW., Reporters Building, Room 620 (Mail Stop 5609), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Perkins Act Reauthorization, 400 Maryland Avenue SW., Reporters Building, Room 620 (Mail Stop 5609), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The Perkins Act has three major components: Basic State Grants, which provide funds to State educational agencies for vocational education program improvement, innovation, and expansion, and to ensure that vocational education opportunities are made available to certain special populations; Special Programs, which provide grants to States for several specific vocational education programs, including consumer and homemaking education and community-based organizations; and National Programs, which provide funding for a variety of vocational education purposes, including bilingual vocational training, Indian and Hawaiian Natives programs, the National Center for Research in Vocational Education, the National Occupational Information Coordinating Committee, and discretionary research activities.

In preparing its reauthorization bill, the Department will undertake a thorough review of evaluation data related to vocational education, and will solicit comments from and consult with those who have an interest in this program. The Secretary wishes to ensure that there is a full and frank discussion of all the issues and that the Department's final proposal reflects the most effective means of improving vocational education and ensuring that

all students have high-quality vocational opportunities.

Need for Reauthorization

The authorization for the Perkins Act expires on September 30, 1989. In order to contribute in a timely manner to the congressional reauthorization discussions, the Secretary is beginning to review the Perkins Act at this time. To ensure an opportunity for public participation, the Secretary invites public comments on the reauthorization.

Issues for Public Comment

Among the issues the Department will consider in developing its reauthorization proposal for the Perkins Act are—

- Whether the Perkins Act, with its reliance on a formula-driven State grant mechanism, is the best vehicle for advancing the Federal role in vocational education, or whether an entirely new approach should be considered;
- How to improve accountability for the effective use of Federal vocational education funds;
- How to encourage the integration of basic skills into vocational education curricula so that vocational students emerge fully competent to deal with changing work environments;
- What strategies will be most effective in ensuring that appropriate vocational education opportunities are made available to the disadvantaged and the handicapped, as well as other special population groups;
- Whether and how to ease the administrative burden caused by the requirements of the current Perkins Act; and
- What national vocational education programs are most needed and what direction the national effort should take.

Format for Comments

This request for comments is designed to elicit views of interested parties on how the current Perkins Act can be improved.

The Secretary requests that each respondent identify his or her role in vocational education. In proposing modifications or alternatives, the respondents may want to address each issue listed under Issues for Public Comment.

The Secretary urges each commentor to be specific regarding his or her suggestions and to include, if possible, the data requirements, procedures, technology, division of responsibility, and actual legislative language changes that the commenter suggests for the Perkins Act programs.

Dated: May 24, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-12088 Filed 5-27-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/JA(EU)-43, for the retransfer of 2.6 grams of uranium enriched to approximately 19.2 percent in the isotope uranium-235 from the Federal Republic of Germany to Japan, for use as a radiation source for calibration of a monitoring detector.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: May 24, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-12142 Filed 5-27-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2387-001 et al.]

Hydroelectric Applications; the City of Holyoke, Gas & Electric Department, et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* New Minor License.

b. *Project No.:* 2387-001.

c. *Date Filed:* March 31, 1987.

d. *Applicant:* The City of Holyoke, Gas & Electric Department.

e. *Name of Project:* Number 2 Hydro Unit.

f. *Location:* First and Second Level Canals of the Holyoke Canal Systems off of the Connecticut River in Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. George E. Leary, The City of Holyoke, Gas & Electric Department, 70 Suffolk Street, Holyoke, MA 01040, (413) 536-9311.

i. *FERC Contact:* Steven H. Rossi, (202) 376-9614.

j. *Comment Date:* July 1, 1988.

k. *Description of Project:* The existing operating project commenced operation in 1938 and was issued an initial license in 1965, which will expire in 1988. The licensee has filed for a new license for the continued operation of the project. The existing project consists of: (1) An intake at the wall of the Holyoke first level canal; (2) two parallel 9-foot-diameter steel penstocks each 240 feet long; (3) one surge tank about 17 feet high and 10 feet in diameter; (4) a powerhouse 60 feet long, 40 feet wide and about 50 feet high, containing one vertical turbine-generator unit rated 800-kW and 1,617-hp; (5) two parallel brick arched tailrace conduits, each 9 feet wide, 10 feet high and 120 feet long, discharging into the Holyoke second level canal; (6) one 4.8-kV transmission line, 600 feet long; and (7) appurtenant facilities. The project generates an average of 4,243.4 MWh annually.

l. *Purpose of Project:* Project power would continue to be sold to the customers of the City of Holyoke, Gas & Electric Department.

m. *This notice also consists of the following standard paragraphs:* B and C.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10524-000.

c. *Date Filed:* December 10, 1987.

d. *Applicant:* North Coast Development Co. Inc.

e. *Name of Project:* Power Creek.

f. *Location:* On Power Creek in Sections 5, 8, 4, 9, and 34 Copper River Meridian near Cordova, Alaska.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Howard T. Harstad, North Coast Development Co. Inc., P.O. Box 98787, Des Moines, WA 98198, (206) 243-8604.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376-9812.

j. *Comment Date:* July 11, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at water surface elevation 490 feet at a 60 acre pond on a side branch of Power Creek; (2) a 7,600-foot-long pressure tunnel; (3) three 50-foot-long, 30-inch-diameter penstocks; (4) a powerhouse containing three generating units each with a rated capacity of 2,000 kW; and (5) a 7-mile-long transmission line. Applicant estimates the average annual energy production to be 30 GWh and the cost of the work to be performed under the preliminary permit to be $225,000.

l. *Purpose of Project:* The power would be sold to the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

3 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10529-000.

c. *Date Filed:* December 23, 1987.

d. *Applicant:* PRODEK, INC.

e. *Name of Project:* Skiatook Dam.

f. *Location:* On Hominy Creek, near Skiatook, Osage County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Flake H. Wells, PRODEK, INC., 2431 East 61st Street, Suite 318, Tulsa, Oklahoma 74136, (918) 749-7749.

i. *FERC Contact:* Michael Dees, (202) 376-9414.

j. *Comment Date:* July 1, 1988.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Skiatook Dam and reservoir and would consist of: (1) A proposed steel penstock 9 feet 9 inches in diameter and 1,073 feet long; (2) a proposed reinforced concrete powerhouse 27 feet by 60 feet housing a 1,040-kW hydropower unit; (3) a proposed tailrace 25 feet long; (4) a proposed 14.4-kV transmission line 600 feet long; and (5) appurtenant facilities. The estimated annual energy production is 5.4 GWh. Project power would be sold to Verdigris Valley Electric Cooperative, Inc. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000 to $90,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application:* Exemption (5MW or less).

b. *Project No.:* 9078-002.

c. *Dated Filed:* October 30, 1987.

d. *Applicant:* Highland Construction.

e. *Name of Project:* Cove Hydroelectric Project.

f. *Location:* On Hatchet Creek in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Contact Person:* Fred Castagna, Mega Renewables, 2578 Hartnell Avenue, Redding, California 96002, Phone: (916) 222-1414.

i. *FERC Contact:* Nanzo T. Coley, (202) 376-9416.

j. *Comment Date:* June 20, 1988.

k. *Description of Project:* The proposed project would consist of: (a) A proposed intake structure; (b) a proposed 4-foot-diameter by 12,000-foot-long steel penstock; (c) a proposed powerhouse containing one generating unit rated at 5,000 kW; (d) a proposed approximately 10,280-foot-long, 13.8 kV transmission line; and (e) appurtenant facilities. The estimated average annual energy output is 14,100,000 kWh.

l. *Purpose of Project:* Power produced at the project would be sold to the Pacific Gas and Electric Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C and D3a.

5 a. *Type of Filing:* Transfer of License.

b. *Project No.:* 3407-010.

c. *Date Filed:* April 6, 1988.

d. *Applicants:* Cook Electric, Inc. and Magic Reservoir Hydroelectric, Inc.

e. *Name of Project:* Magic Dam Project.

f. *Location:* On the Big Wood River in Blaine and Camas Counties, Idaho. The project would occupy lands of the United States administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:*

Warren P. Chapman, Cook Electric, Inc., 2356 Beryl Avenue, P.O. Box 1071, Twin Falls, ID 83303, (208) 734-3252

Jay R. Jackson, Magic Reservoir Hydroelectric, Inc., 2399 S. Orchard Street, Suite 201, Boise, ID 83705, (208) 336-3189

i. *FERC Contact:* Thomas Dean, (202) 376-9562

j. *Comment Date:* June 22, 1988.

k. *Description of Application:* Cook Electric, Inc. (transferor) proposes to transfer its license issued on January 15, 1987, to Magic Reservoir Hydroelectric, Inc.(transferee) in order to facilitate the financing of the licensed project. The transferee is a corporation organized under the Idaho Business Corporation Act. The transferee States that it will comply with all applicable state laws as required by section 9(b) of the Federal Power Act.

l. *This notice also consists of the following standard paragraphs:* B & C.

6 a. *Type of Application:* Surrender of License.

b. *Project No.:* 3285-006.

c. *Dated Filed:* April 13, 1988.

d. *Applicant:* Trinity River Authority of Texas.

e. *Name of Project:* Lake Livingston Hydro Project.

f. *Location:* On the Trinity River in Polk, San Jacinto, Walker and Trinity Counties, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Danny F. Vance, General Manager, Trinity River Authority of Texas, 5300 S. Collins Street, P.O. Box 60, Arlington, TX 76010, (817) 467-4343.

i. *FERC Contact:* Ed Lee on (202) 376-9116.

j. *Comment Date:* July 5, 1988.

k. *Description of Application:* The license for this project was issued on May 22, 1967, for an installed capacity of 50 MW. The licensee state that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. *This notice also consists of the following standards paragraphs:* B and C.

7 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6279-004.

c. *Date Filed:* April 15, 1988.

d. *Applicant:* F. & T. Services Corporation.

e. *Name of Project:* Bayou D'Arbonne Hydroelectric Project.

f. *Location:* On Bayou D'Arbonne, in Union Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Vincent A. Forte, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896, (504) 927-9321.

i. *FERC Contact:* Peter Lyse (202) 376-1850.

j. *Comment Date:* July 5, 1988.

k. *Description of Application:* The license for this project was issued January 31, 1986, for an installed capacity of 1,800 kW. The licensee states that it has determined that the project would be economically

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infeasible. No construction has commenced at the project site.

l. *This notice also consists of the following standards paragraphs:* B and C.

8 a. *Type of Application:* Surrender of License.

b. *Project No.:* 8201–004.

c. *Date Filed:* April 15, 1988.

d. *Applicant:* F and T Corporation.

e. *Name of Project:* Caddo Lake Hydro Project.

f. *Location:* Cypress Bayou at Caddo Lake in Caddo Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896, (504) 927–9321.

i. *FERC Contact:* Ed Lee, (202) 376–9116.

j. *Comment Date:* July 5, 1988.

k. *Description of Project:* The license for this project was issued May 22, 1968, for an installed capacity of 1.5 MW. The licensee state that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. *This notice also consists of the following standard paragraphs:* B and C.

9 a. *Type of Application:* Exemption Under 5 MW.

b. *Project No.:* 9403–001.

c. *Date Filed:* November 27, 1987.

d. *Applicant:* Hoskins Diversified Industries.

e. *Name of Project:* HDI Mascoma Dam.

f. *Location:* On the Mascoma River in the City of Lebanon, Grafton County, New Hampshire.

g. *Filed Pursuant to:* Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. *Applicant Contact:* Mr. Matthew Bonaccorsi, Timothy Buzzell & Associates, Inc., Lebanon, NH 03766, (603) 448–3245.

i. *FERC Contact:* Charles T. Raabe, (202) 376–9778.

j. *Comment Date:* July 5, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing 285-foot-long 21.7 foot-high timber, rock and concrete dam having two 123-foot-long spillway sections with spillway crest elevation 502.7 feet MSL surmounted by 17-inch-high flashboards and separated by a waste-gate section; (2) an existing reservoir having a 5-acre surface area and a 20-acre-foot storage capacity at surface elevation 502.7 feet MSL; (3) an existing intake structure and pressure box; (4) an existing powerhouse, which is an integral part of a mill complex, having an existing 150-kW generating unit to be rehabilitated and a proposed 175-kW generating unit, both to be operated at a 14.4-foot head; (5) an existing 100-foot-long tailrace, to be enlarged having surface elevation 488.3 feet MSL; (6) a proposed 400-foot-long transmission line and a transformer; and (7) appurtenant facilities.

The application was filed during the term of applicant's preliminary permit. Applicant estimates that the annual energy production would be 1,300,000 kWh. The project would be operated run-of-river.

l. *Purpose of Exemption:* An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, D3a.

Standard Paragraphs

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) name in this public notice.

A10. Proposed Scope of Studies under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed prelminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparating of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specifed for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are required, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carryout the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requesed to provided any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 24, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12078 Filed 5–27–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3388–4]

Agency Paperwork Reduction Act Requests Completed by OMB

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces Office of Management and Budget (OMB) action on the Information Collection Request (ICR) submitted by EPA.

Correction

EPA ICR # 1028: Pesticide Manufacturing Facility Census for 1986; OMB action of 4/11/88 (OMB # 2040–0111), was a partial approval. Part A of the questionnaire (Technical Information) was approved; Part B (Financial and Economic Information) was disapproved.

FOR FURTHER INFORMATION CONTACT:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St. SW. Washington, DC 20460, Telephone No. (202) 382–2740,

or

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW. Washington, DC 20503, Telephone No. (202) 395–3084.

Date: May 20, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–12104 Filed 5–27–88; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3388–9]

Water Quality Act of 1987 Implementation; Draft Guidance Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a draft document which describes EPA's "Strategy for Interim Implementation of Sludge Requirements in Permits Issued to POTWs." This notice supplements earlier notices of availability of draft guidance documents designed to implement new requirements created by the Water Quality Act of 1987 ("WQA") (52 FR 33643, September 4, 1987, and 52 FR 35582, September 22, 1987).

DATE: Copies of this document will be available for public comment from EPA Office of Water for a period of 60 calendar days, beginning May 31, 1988.

ADDRESSES: Copies of this document can be obtained by writing to Ms. Debora Clovis, Permits Division, EN–336, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by telephoning her at (202) 475–7052.

All comments should be mailed to Debora Clovis, at the above address.

FOR FURTHER INFORMATION CONTACT: Martha Kirkpatrick, telephone: (202) 475–9529.

SUPPLEMENTARY INFORMATION: The WQA establishes an expanded program by EPA and States for the control of those toxic pollutants in sewage sludge which may adversely affect public health or the environment. EPA is to promulgate standards for sludge use and disposal to control those pollutants and to implement those standards through permits issued to publicly-owned treatment works (POTWs) and other treatment works treating domestic sewage. These technical standards will be proposed in a separate **Federal Register** notice of proposed rulemaking. In another related rulemaking, EPA has proposed rules for including sludge requirements in NPDES permits and for approving State sludge management programs (53 FR 7642, March 9, 1988).

In the interim before promulgation of the technical standards for sewage sludge use and disposal, the WQA directs EPA to include sludge requirements to NPDES permits issued to POTWs or to take other measures to protect public health and the environment. In response, EPA has developed a draft interim implementation strategy for including sludge requirements in permits (re)issued to POTWs. The strategy: (1) Discusses the identification of permitting priorities for sludge, and establishes minimum permit requirements; (2) discusses the role and content of the forthcoming permit writers' guidance for writing interim sludge limits; (3) describes the State and EPA coordination on interim permitting; and (4) provides model documents for use in interim implementation (e.g., boilerplate permit language, State/EPA agreement, etc.).

The Strategy sets forth the framework for including sludge requirements in POTWs' permits in the interim before the technical sludge standards are promulgated. After public comments are received and reviewed, the Strategy will be revised and distributed in final form.

Dated: May 20, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 88–12107 Filed 5–27–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 24, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF–83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following recordkeeping and disclosure requirements, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before June 15, 1988.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

For Further Information Contact: A copy of the request for clearance (SF-83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following

1. Recordkeeping and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment)

Agency Form Number: Not applicable.
OMB Docket Number: OMB No. 7100–0197.
Frequency: On occasion.
Reporters: State member banks.
Annual Burden Hours: 6137.
Small businesses are affected.
General description of report:.
This information collection is mandatory (12 U.S.C. 2901) and is not given confidential treatment.

Regulation BB implements the Community Reinvestment Act and is designed to encourage banks to help meet the credit needs of their communities.

2. Recordkeeping and Disclosure Requirements in Connection With Regulation Z (Truth in Lending)

Agency Form Number: Not applicable.
OMB Docket Number: OMB No. 7100–0199.
Frequency: On occasion.
Reporters: State member banks.
Annual Burden Hours: 1,871,708.
Small businesses are affected.
General description of report:
This information collection is mandatory (15 U.S.C. 1601 *et seq.*) and is not given confidential treatment.

Regulation Z prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts.

3. Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers)

Agency Form Number: Not applicable.
OMB Docket Number: OMB No. 7100–0200.
Frequency: On occasion.
Reporters: State member banks.
Annual Burden Hours: 581,166.
Small businesses are affected.
General description of report:
This information collection is mandatory (15 U.S.C. 1693 *et. seq.*) and is not given confidential treatment.

Regulation E establishes the rights, liabilities, and responsibilities of parties in electronic fund transfers and protects consumers using EFT systems.

4. Recordkeeping and Disclosure Requirements in Connection With Regulation B (Equal Credit Opportunity)

Agency Form Number: Not applicable.
OMB Docket Number: OMB No. 7100–0201.
Frequency: On occasion.
Reporters: State member banks.
Annual Burden Hours: 102,872.
Small businesses are affected.
General description of report:
This information collection is mandatory (15 U.S.C. 1691) and is given confidential treatment.

Regulation B prohibits creditors from discriminating against credit applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information and requires creditors to give applicants a written notification of rejection of an application.

5. Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing)

Agency Form Number: Not applicable.
OMB Docket Number: OMB No. 7100–0202.
Frequency: On occasion.
Reporters: State member banks.
Annual burden hours: 10,024.
Small businesses are affected.
General description of report:
This information collection is mandatory (15 U.S.C. 1601) and is not given confidential treatment.

Regulation M implements the consumer leasing provisions of the Truth in Lending Act.

6. Recordkeeping and Disclosure Requirements in Connection With the Right to Financial Privacy Act

Agency Form Number: Not applicable.
OMB Docket Number: OMB No. 7100–0203.
Frequency: On occasion.
Reporters: State member banks.
Annual burden hours: 11,367.
Small businesses are affected.
General description of report:
This information collection is mandatory (12 U.S.C. 3401-*et seq.*) and is given confidential treatment.

The Right to Financial Privacy Act prescribes a recordkeeping requirement regarding the maintenance of a record of instance in which consumer financial information held by the institution is released to a government agency.

7. Recordkeeping and Disclosure Requirements Associated With Securities Transactions Pursuant to Section 208.8(k) (2,3 and 5) of Regulation H

Agency Form Number: Not applicable.
OMB Docket Number: 7100–0196.
Frequency: On occasion.
Respondents: State-chartered member banks and trust companies.
Annual burden hours: 152,461.
Small businesses are not affected.
General description of requirements:
These requirements are authorized by law (12 U.S.C. 248(a)(1) and 325).

The disclosure and recordkeeping requirements under this section of Regulation H are imposed on state-chartered member banks and trust companies that effect securities transactions for customers. They require customer notification, recordkeeping and written policies and procedures to protect customers, to avoid or settle customer disputes and to protect the bank against potential liability under the "antifraud" and insider trading provisions of the Securities Exchange Act of 1934.

8. Recordkeeping and Disclosure Requirements Associated With Real Estate in Flood Hazard Areas Pursuant to Section 208.8(e) of Regulation H

Agency Form Number: Not applicable.
OMB Docket Number: 7100–0196.
Frequency: On occasion.
Respondents: State-chartered member banks.
Annual burden hours: 6540.
Small businesses are affected.
General description of requirements:
These requirements are authorized by law (12 U.S.C. 325). The disclosure and recordkeeping requirements under this section of Regulation H are imposed on state-chartered member banks to implement requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b) as amended). The regulation forbids banks to make or renew loans secured by real estate located in a flood hazard area unless the property is covered by flood insurance and requires them to keep records in connection with all loans secured by such real estate. It also requires member banks to provide notice to borrowers (1) that the property securing a loan is located in a flood hazard area; and (2) whether, in the event of damage to the property caused by flooding in a federally declared disaster, federal disaster relief assistance will be available for such property.

Board of Governors of the Federal Reserve System, May 24, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88–12047 Filed 5–27–88; 8:45 am]
BILLING CODE 6210–01–M

John L. Cutter; Change in Bank Control Notice; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

The notice corrects previous Federal Register notice (FR Doc. 88–11668) published at page 18903 of the issue for Wednesday, May 25, 1988.

Under the Federal Reserve Bank of Chicago, the date of the end of comment period for First Mil Bank is changed to close on June 1, 1988.

Board of Governors of the Federal Reserve System, May 26, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–12212 Filed 5–27–88; 8:45 am]
BILLING CODE 6210–01–M

Keycorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of the fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 17, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Keycorp,* Albany, New York, and Key Bancshares of Idaho, Inc., Boise, Idaho; to acquire 100 percent of the voting shares of IB&T Corporation, Boise, Idaho, and thereby indirectly acquire Idaho Bank and Trust Company, Pocatello, Idaho, and First Bank of Troy, Troy, Idaho. In connection with this application, Key Bancshares of Idaho, Inc. has applied to become a bank holding company.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 LaSalle Street, Chicago, Illinois 60690:

1. *MAH Bancorp, Inc.,* Orland Park, Illinois; to become a bank holding company by acquiring 99.15 percent of the voting shares of Republic Bank of Chicago, Chicago, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Baden Bancorp, Inc.,* Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of New Baden, New Baden, Illinois, and also merge with Lookingglass Banc Corp., Albers, Illinois, and thereby indirectly acquire Peoples Bank of Albers, Albers, Illinois.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Gustine-DeLeon Bancshares, Inc.,* Gustine, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First State Bank, Gustine, Texas.

Board of Governors of the Federal Reserve System, May 24, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–12045 Filed 5–27–88; 8:45 am]
BILLING CODE 6210–01–M

J.P. Morgan & Co., Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045.

1. *J.P. Morgan & Co. Incorporated*, New York, New York; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's accounts or for the account of others, such as would be made, for example, by the following types of companies: (i) Consumer finance; (ii) credit card; (iii) mortgage; (iv) commercial finance; and (v) factoring; pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the United States and abroad.

B. **Federal Register Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, First Chicago Capital Markets, Inc., Chicago, Illinois, and thereby engage in underwriting and dealing in obligations of the United States pursuant to § 225.25(b)(16) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105.

1. *Wells Fargo & Co.*, San Francisco, California; to engage *de novo* through its subsidiary, Crocker Life Insurance Company, Oakland, California, in underwriting and/or reinsuring home mortgage redemption insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12048 Filed 5-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Program Announcement and Availability of Funds for Fiscal Year 1988 for Epidemiologic Research Studies and the Evaluation of Surveillance of Pediatric Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection

The Centers for Disease Control (CDC) announces a program for competitive cooperative agreement and/or research project grant applications to conduct epidemiologic research studies of AIDS and HIV infection and surveillance of pediatric AIDS. These include studies of: Heterosexual and homosexual transmission; specific high-risk populations such as homosexual and bisexual males; selected pediatric populations; and HIV seroprevalence in select patient populations. The study of these research areas as they pertain to minority populations should be addressed because minorities constitute over 76% of all reported cases among women and children.

I. Authority

These cooperative agreements and/or grants are authorized under sections 301(a), 311, and 318(d) of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR Part 52, entitled "Grants for Research Projects." The Catalog of Federal Domestic Assistance Number is 13.118.

II. Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these grants and/or cooperative agreements.

III. Background

The epidemic of acquired immunodeficiency syndrome (AIDS) continues in the United States with over 55,000 cases reported to CDC as of March 1, 1988. The Public Health Service estimates that more than 1 million Americans are infected with HIV, the etiologic agent of AIDS, and that by 1991, the cumulative cases of AIDS meeting the CDC surveillance definition will total more than 270,000. Almost 60 percent of all reported AIDS cases have died, and the death toll is expected to rise to 179,000 by 1991. Blacks and Hispanics are disproportionately represented in reported cases as over 21,000 or 38% of all cases have been reported in these persons. This number is about twice what it should be if cases were proportional to their representation in the U.S. population. Among almost 900 children reported with AIDS, 54% are black and 22% are Hispanic, and of over 4,000 adult women reported with AIDS, 52% are black and 17% Hispanic. HIV, a human retrovirus, is transmitted sexually, through blood and blood products, through contaminated needles, and perinatally. Studies have found no evidence that AIDS is spread by casual contact with infect person, and the advent of an antibody test for the virus in 1985 has virtually eliminated the risk of acquiring AIDS from donated blood or plasma. Additional studies of the epidemiology of AIDS and HIV infection are needed to guide prevention and control efforts. Such issues as the surveillance of pediatric AIDS, risks of transmission, prevalence and trends in select populations, and the effectiveness of various prevention and control measures need to be studied thoroughly.

IV. Purpose

The purpose of these awards is to assist researchers in the study of important epidemiologic questions concerning risks of transmission, evaluating the surveillance of pediatric AIDS, the prevalence and trends of disease in certain populations, and the development and evaluation of behavioral recommendations for reducing AIDS and HIV infection.

V. Program Requirements

A. Cooperative Agreements

In a cooperative agreement, the CDC will assist the collaborator in conducting epidemiologic research of AIDS and HIV infection as described in section VI. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with the CDC. In addition to the financial support provided, the CDC will provide assistance to the collaborator by: Providing technical assistance in the design and conduct of the research; providing technical guidance in the development of study protocols, consent forms, and questionnaires, including training and pretesting as necessary; assisting in designing a data management system; performing selected laboratory tests; coordinating research activities among the different sites, including laboratories and consultants; and participating in the analysis of research information and the presentation of research findings.

B. Research Project Grants

A research project grant application should be intended and designed to establish, discover, develop, elucidate, or confirm information relating to the epidemiology of AIDS and HIV infection, as described in section VI, including innovative methods, techniques, and approaches for dealing with questions surrounding the epidemiology of AIDS and HIV infection. These studies may generate information that is readily available to solve problems or contribute to a better understanding of the field.

C. Determination of Which Instrument to Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. The funding agency will review the application in accordance with the appropriate criteria. Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

VI. Programmatic Interest

Research concerns of programmatic interest to the health care community and CDC for FY 1988 are listed below. Of special interest are programs that examine these research issues as they impact on minority populations. Those listed are considered to be of significant importance in gaining a greater understanding of the epidemiology of AIDS and HIV infection. However, applications submitted by organizations that are with the purpose set forth in paragraph IV. above will also be accepted and considered for funding. The FY 1988 epidemiologic research issues include:

A. Prospective epidemiologic studies of the sexual transmission of HIV among monogamous couples in order to elucidate the infectivity and transmissibility of HIV by heterosexual or homosexual contact. Couples should be comprised of an infected (seropositive) and an uninfected (seronegative) partner. Studies should address behavioral and/or biologic factors leading to the sexual transmission or nontransmission of the virus. Applicants must be able to demonstrate that: sexual transmission of HIV is occurring in the population to be studied at a rate sufficient to answer the proposed research objectives; and that uninfected partners are exposed to HIV through monogamous sexual intercourse and are not concurrently exposed to HIV through other routes (e.g., intravenous drug use, blood transfusion, etc.). Preference will be given to proposals in which large numbers of couples will be studied; all proposals should include a minimum of ten (10) couples. If prospective longitudinal studies are proposed, appropriate counseling and risk reduction education should be provided to subjects at risk for infection.

B. Epidemiologic study of genital ulcer disease as a risk factor for HIV infection in heterosexual adults. Studies should be designed to determine the behavioral risk factors for and prevalence of HIV infection in persons with recent genital ulcer disease, such as chancroid, syphilis, and herpes simplex virus infection (case patients), and a comparable group of persons without recent genital ulcer disease (control patients).

C. Epidemiologic study to determine whether HIV can be transmitted in settings involving close contact among young children or children who are neurologically handicapped, such as daycare centers, nurseries, institutions, etc. Proposals should address the issues of possible child-to-child transmission and child-to-caretaker transmission, and how other possible risk factors for infection will be excluded in HIV-positive persons.

D. Evaluate to what extent the surveillance definitions used for AIDS in children and the pediatric case reporting systems currently in use by health departments, hospitals and clinicians measure pediatric HIV-related morbidity in their community. This should be done through active surveillance of pediatric HIV infection over a defined time period to determine: The number of symptomatic and asymptomatic children in the study area; the proportion of infected children with AIDS by CDC surveillance definition; and the proportion of children with AIDS actually reported at the beginning and end of the period. The social and economic impact of pediatric HIV infection in the study area may also be examined, by analyzing information on the children identified through the active surveillance, such as daycare or school attendance, foster care placement, or medical care costs. The effect of AIDS on minority children in these areas will be of particular interest. Eligible applicants include health departments or hospitals serving metropolitan regions with more than 10 reported pediatric AIDS cases. Hospitals must document how they will coordinate efforts with their State or local health department. Approved study collaborators will be asked to develop similar research methods so that different geographic sities can be compared.

VII. Availability of Funds

A total of $2 million is available in Fiscal Year 1988 to fund approximately 8 new cooperative agreements and grants. Awards are generally expected to range from $100,000 to $350,000. Applications should be submitted for a 12-month budget period and a 1 to 5-year project period. Continuation awards within project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimates outlined above may vary and are subject to change, depending upon the availability of funds.

VIII. Reporting Requirement

Annual performance and financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of each project period.

IX. Applications

A. Multiple Applications

Applicants may submit more than one application under this announcement. Each application, however, must be complete as it will be evaluated separately without reference to any other application.

B. Copies—Place of Submission

1. Schedule

Application shall be submitted on Form PHS-5161-1 (revised 3-88) and will be accepted in accordance with the following schedule. The schedule also sets forth dates for objective review and *anticipated* award dates:

Deadline date	Objective review	Award date	Start date
July 15	Aug. 15	Sept. 15	Sept. 30
Dec. 1	Feb. 1	March 1	Apr. 1

2. Copies and place of submission

The signed original and two copies must be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, Room 321, Mail Stop E14, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305.

Application forms should be available in the institution's business office or from the above address.

C. Deadlines

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date.

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

D. Late Applications

Applications that do not meet the criteria in either paragraph C.1. or C.2. immediately above are considered late applications and will be considered in the next competition.

E. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

X. Review Criteria

A. Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicants' abilities to meet the following criteria:

1. The plans to develop and implement the study describing how study participants will be identified, enrolled, tested, and followed.

2. The ability to enroll and follow an adequate number of eligible study participants to assure proper conduct of the study. The known or projected prevalence of HIV infection in the population to be studied will be an important area of consideration.

3. The plan to protect the rights and confidentiality of all participants and ensure adequate participation.

4. The applicant's understanding of the research study objectives and their ability, willingness and/or need to cooperate in a study with CDC.

5. The applicant's current activities in AIDS and HIV research and how they will be applied to achieving the objectives of the study. Letters of support from cooperating organizations should be included that demonstrate the nature and extent of such cooperation.

6. The size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the research study.

7. How the project will be administered.

8. The proposed schedule for accomplishing the activities of the research, including time frames.

9. The quality of an evaluation plan which specifies the methods and instruments to be used.

10. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

B. Future continuation awards within the project period will be made on the basis of the following criteria:

1. The accomplishments of the current budget period show that the applicant is meeting its objectives.

2. The objectives for the new budget period are realistic, specific, and measurable.

3. The methods described will clearly lead to achievement of these objectives.

4. The evaluation plan will enable the recipient to monitor whether the methods are effective.

5. The budget requested is clearly explained, adequately justified, reasonable, and consistent with the intended use of funds.

XI. Information

Information on application procedures, copies of application forms, and other material may be obtained from Harvey Rowe, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 842-6575, FTS 236-6575. Technical information and assistance may be obtained from John Narkunas, AIDS Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639-3162, FTS 236-3162.

Dated: May 24, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-12077 Filed 5-27-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88G-0136]

E.I. du Pont de Nemours & Co.; Filing of Petition For Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours & Co. has filed a petition (GRASP 8G0340), proposing that chlorodifluoromethane be affirmed as generally recognized as safe (GRAS) for use as a blowing agent in the production of foamed polystyrene food-contact articles.

DATE: Comments by August 1, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5090.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 8G0340) has been filed by E.I. du Pont de Nemours & Co., c/o 1150 17th Street NW., Washington, DC 20036, proposing that chlorodifluoromethane (CDFM, HCFC-22) be affirmed as GRAS for use as a blowing agent in the production of foamed polystyrene food-contact articles. The petitioner has also proposed that the residual chlorodifluoromethane level in the polystyrene articles shall not exceed 5 parts per million at the time of food-contact use.

The GRAS affirmation petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before August 1, 1988, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12099 Filed 5-27-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Center for Nursing Research; Nursing Science Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, June 22-24, 1988, Building 31A, Conference Room 2, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on June 22 from 9 a.m. to 11 a.m. and on June 24 from approximately 11 a.m. to adjournment. Agenda items to be discussed will include the report of the Director, NCNR, NRRC Chairman's Report, the Executive Secretary's Report, and the meeting of the Task-Force on the Research Career Trajectory. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 22 from 11 a.m. to recess, June 23, 9 a.m. to recess, and June 24 from 9 a.m. to approximately 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Eileen Raizen, Executive Secretary, Nursing Science Review Committee, National Institutes of Health, Building 31A, Room 1E10, Bethesda, Maryland 20892, (301) 496-0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: May 24, 1988.

Betty J. Beveridge,

Committee Management, Officer, NIH.

[FR Doc. 88-12136 Filed 5-27-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Clinical Trials Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, June 28-30, 1988, at the American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, Maryland 20892.

The meeting will be open to the public on June 28, from 7:30 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 28, from approximately 8 p.m. to recess, and from 8 a.m. on June 27 to adjournment on June 30, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4a-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 500B, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 24, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-12133 Filed 5-27-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Purusant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 13 and 14, 1988, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public June 13 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 13 from 1 p.m. to adjournment and again on June 14 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496-7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

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(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: May 24, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88-12130 Filed 5-27-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 16, 1988, Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland. The meeting will be open to public from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public from 9 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 407, Bethesda, Maryland 20892, (301) 496-7320.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C11, Bethesda, Maryland 20892, 301-496-0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: May 24, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-12131 Filed 5-27-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittee B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of Subcommittee B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details for approximately one hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Executive Secretary: Judith M. Podskalny, Westwood Building, Room 417A, National Institutes of Health, Bethesda, Maryland, 20892, Phone: 301-496-7841.

Dates of Meetings: June 29-30, 1988.

Place of Meeting: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 29, 7:30 p.m.-8:30 p.m.

Closed: June 29, 8:30 p.m. to recess, June 30, 8:30 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Executive Secretary: Tommie Sue Tralka, Westwood Building, Room 406, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-8830.

Date of Meeting: June 20, 1988.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: June 20, 8:30 a.m.-9:30 a.m.

Closed: June 20, 9:30 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Executive Secretary: William E. Elzinga, Westwood Building, Room 421, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7546.

Date of Meeting: June 20, 1988.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: June 20, 4:00 p.m.-5:00 p.m.

Closed: June 20, 5:00 p.m. to adjournment.

Dated: May 24, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-12132 Filed 5-27-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Advisory Council on Hazardous Substances Research and Training; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting to be held at the National Institute of Environmental Health Sciences, South Campus Conference Room, Research Triangle Park, North Carolina, on July 12, 1988. The meeting will begin at 8:30 a.m. and end at approximately 4:30 p.m. The meeting is open to the public.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) established a university-based program of basic research and education program and a hazardous waste worker training program with the NIEHS. The purpose of the meeting is to provide the Advisory Council on Hazardous Substances Research and Training the opportunity to learn the status of these programs, which were previously described in the **Federal Register** of November 28, 1986 (51 FR 43089-43092), December 19, 1986 (51 FR 45556-45559) (worker training program), and March 9, 1987 (52 FR 7218-7223) respectively.

Topics to be discussed during the meeting may include but are not limited to: status of the basic research and education grants program, progress under the hazardous waste worker training programs, and research programs of other Federal agencies.

Attendance is limited only by space available. For further information regarding the meeting, please contact Mr. Daniel C. VanderMeer, Executive Secretary, NIEHS, P.O. Box 12233, Research Triangle Park, N.C. 27709 or telephone 919-451-3484 or FTS 629-3483. The official Government representative for this meeting will be Dr. Anne P. Sassaman.

(Catalog of Federal Domestic Assistance Program No. 13.143, NIEHS Superfund Hazadous Substances Basic Research Program, NIH, and Program No. 13.142, NIEHS Hazardous Waste Worker Health and Safety Training, NIH)

Dated: May 24, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-12134 Filed 5-27-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June 1988.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Diffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: A joint meeting of the: Cellular and Molecular Basis of Disease Review Committee; and the Genetic Basis of Disease Review Committee.

Executive Secretary: Ms. Linda Engel, Room 950 Westwood Bldg., Telephone: 301-496-7125.

Dates of Meeting: June 8, 1988.

Place of Meeting: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland.

Open: June 8, 1988, 8:30 a.m.-10:30 a.m.

Closed: June 8, 1988, 10:30 a.m.-adjournment.

Name of Committee: Minority Access to Research Careers Review Committee.

Executive Secretary: Dr. Agnes Donahue, Room 949 Westwood Building, Telephone: 301-496-7585.

Dates of Meeting: June 9-10, 1988.

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

Open: June 9, 1988, 8:30 a.m.-10:30 a.m.

Closed: June 9, 1988, 10:30 a.m.-5:00 p.m., June 10, 1988, 8:30 a.m.-adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Executive Secretary: Dr. Rodney Ulane, Room 952 Westwood Building, Telephone: 301-496-4772.

Date of Meeting: June 20, 1988.

Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

Open: June 20, 1988, 8:30 a.m.-10:30 a.m.

Closed: June 20, 1988, 10:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-880, National Institute of General Medical Sciences, National Institutes of Health)

Date: May 24, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-12135 Filed 5-27-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation to the Administrator, Health Resources and Services Administration (HRSA), on April 11, 1988, by the Assistant Secretary for Health, the Administrator, HRSA, has delegated to the Director, Bureau of Health Care Delivery and Assistance, with authority to redelegate, all the authorities under Part D, Subparts II and III of Title III of the Public Health Service (PHS) Act, as amended, pertaining to the National Health Service Corps, excluding the authorities delegated to PHS Regional Health Administrators. Also excluded was the authority under section 332 pertaining to the designation of health manpower shortage areas.

Provision was made for all delegations and redelegations made to officials with HRSA and PHS Regions to continue in effect providing they were consistent with the delegation.

The above delegation was effective on May 16, 1988.

Date: May 16, 1988.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 88-12049 Filed 5-27-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1808]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Officer of Management and Budget, New

Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: May 19, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for Insurance—Supplementary Loan.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Section 213(j)(1) of the National Housing Act authorizes HUD to insure supplemental loans to cooperatives. The form, Application for Insurance, is submitted by a cooperative. It is needed and used to obtain an additional/supplemental insured loan.
Form Number: HUD–93201A.
Respondents: Business or Other For-Profit and Non-Profit Institutions.
Frequency of Respondents: On occasion.
Estimated Burden Hours: 10.
Status: Extension.
Contact: William Harris, HUD, (202) 755–6223; John Allison, OMB, (202) 395–6880.

Dated: May 13, 1988.

Proposal: Purchase Order and Payment Authorization.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: the National Housing Act, Pub. L. 479, authorizes HUD to rent, renovate, modernize, insure, or sell for cash or credit any properties conveyed to HUD under contracts of mortgage insurance. This form, Purchase Order and Payment Authorization, is used and needed as a purchase order, contract award, contract certification of completion, and Government acceptance certification for payment.
Form Number: HUD–2542.
Respondents:: Businesses or Other For-Profit.
Frequency of Respondents: Quarterly.
Estimated Burden Hours: 15,042.
Status: Reinstatement.
Contact: Audrey G. Sacrey, HUD, (202) 755–9280, John Allison, OBM, (202) 395–6880.

Dated: May 13, 1988.

Proposal: Single Audit Act of 1984, Pub. L. 98–502—OMB Circular No. A–128, Audits of State and Local Governments, dated April 12, 1985.
Office: Inspector General.
Description of the Need for the Information and Its Proposed Use: These audits of State and local governments that receive Federal aid are needed to ensure that their financial statements present the results of operations fairly. They are also used to determine the extent of internal controls and to verify compliance with applicable laws and regulations.
Form Number: None.
Respondents: State or local Governments.
Frequency of Respondents: Recordkeeping and Annually.
Estimated Burden Hours: 257.
Status: Extension.
Contact: Dale C. Williams, HUD, (202) 755–6383, John Allison, OMB, (202) 395–6880.

Dated: May 13, 1988.

Proposal: Fair Housing Initiatives Program Application.
Office: Fair Housing and Equal Opportunity.
Description of the Need for the Information and Its Proposed Use: This information will assist HUD in providing funds to State and local governments and public and private organizations formulating or carrying out programs to prevent or eliminate discriminatory housing practices. HUD needs this information to make awards under the Fair Housing Initiatives Program.
Form Number: None.
Respondents: State or Local Governments, Non-Profit Institutions, and Small Businesses or Organizations.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 17,500.
Status: New.
Contact: Maxine B. Cunningham, HUD, (202) 755–0455, John Allison, OMB, (202) 395–6880.

Dated: May 5, 1988.

[FR Doc. 88–12109 Filed 5–27–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Proposed Boundary Adjustments; Death Valley and Joshua Tree National Monuments; Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management will prepare an environmental impact statement (EIS) for the transfer of five parcels of land to the National Park Service in California.

On May 19, 1988 the Western Region of the National Park Service (NPS) proposed to the California State Office of the Bureau of Land Management (BLM) that five parcels of land currently under BLM jurisdiction be transferred to two adjacent National Monuments, Death Valley and Joshua Tree. Four of the parcels, totaling 242,849 acres, would be transferred to Death Valley National Monument. One parcel, of approximately 35,000 acres, would be transferred to Joshua Tree.

All of the parcels are adjacent to the monuments to which they would be transferred. The acquisitions would provide more manageable boundaries for two monuments, and would eliminate the current split jurisdiction of several mountain ranges, plateaus, valleys, and other topographic features. The Park Service proposal is the result of several months of negotiations between the BLM and NPS, and so is intended to meet the needs of both agencies.

The parcels to be transferred include the following: Parcel 1, North Death Valley (84,369 acres) would extend the Death Valley National Monument northward so that the entire valley comes under NPS administration. Parcel 2, Hunter Mountain (26,687 acres), is a highland plateau on the western side of the monument, a plateau currently split between NPS and BLM administration. Parcel 3, Pyramid Peak (14,268 acres), is located on the eastern side of the monument and includes those portions of Pyramid Peak and Red Amphitheater currently outside the monument. Parcel 4, Greenwater Valley (117,505 acres), is located on the southeastern side of the monument. It would bring the entire eastern slope of the Black Mountains under NPS jurisdiction, and would establish the Greenwater Valley road as a readily identifiable eastern boundary. Parcel 5, Eagle Mountains (30,000 acres), is located on the southeastern side of the Joshua Tree National Monument. It would transfer those portions of the Pinto Basin currently outside the monument to NPS, as well as part of the Eagle Mountains.

Three alternatives will be considered. Alternative A will consider transfer of all of Parcel 4 except approximately 20,000 acres in the Ibex Hills in which the historical interest in mining has been high. Alternative B will consider the transfer of only the Pinto Basin portion of Parcel 5. Alternative C will be the No Action (No Transfer) alternative.

BLM's planning regulations require that all actions must conform to the approved BLM land use plan for the area, in this case the California Desert Plan. "If a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment" (43 CFR 1610.5–3). NPS management will not, in all cases, conform to the provisions of the Desert Plan. As a result, the transfer is being processed through a plan amendment, and a decision will be made only at the conclusion of that process.

The EIS will be the National Environmental Policy Act compliance document necessary to process the transfer and plan amendment. A 90-day public review of the draft EIS will be provided. The document will consider several issues, including wildlife, botany, the future of existing rights, the effect of curtailment of future mineral development, archaeological resources, and wild horses and burros.

Four public scoping meetings will be conducted to identify public comments, concerns, and interests which should be addressed by the EIS. Issues raised during these meetings will be considered to the EIS in addition to those issues which have already been described. Locations and dates follow: All meetings, will begin at 7:00 pm. In addition, a 10:00 am meeting will be held in Riverside.

Date, Time, and Location:

June 14, 1988, 10:00 am—Holiday Inn, Riverside, 1200 University Avenue, Riverside, California

June 15, 1988, 7:00 pm—Rodeway Inn, 1983 North Palm Canyon Drive, Palm Springs, California

June 16, 1988, 7:00 pm—Carriage Inn, 901 North China Lake Blvd., Ridgecreat, California

June 17, 1988, 7:00 pm—Legion Hall, Highway 395 and Kearsarge, Independence, California.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hiller, District Manager, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507.

Hugh Riecken,

Associate District Manager.

Date: May 24, 1988.

[FR Doc. 88–12076 Filed 5–27–88; 8:45 am]
BILLING CODE 4310–40–M

National Park Service

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone 202–395–7313.

Title: Park Use Survey—Carlsbad Caverns National Park.

Abstract: Results of the survey will be used in operational, planning and management activities designed to support actual public use activities and needs.

Bureau Form Number: 10–175B.
Frequency: On occasion.
Description of Respondents: Individuals or households.
Annual Responses: 3,000.
Annual Burden Hours: 376.

Russell K. Olsen,

Chief, Administrative Services Division.

[FR Doc. 88–12095 Filed 5–27–88; 8:45 am]
BILLING CODE 4310–52–M

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, Telephone 202–395–7313.

Title: Park Use Survey (Mount Rainier).

Abstract: The survey will be used in operational, planning and management activities designed to support actual public use activities and needs.

Bureau Form Number: 10–175B.
Frequency: On occasion.
Description of Respondents: Individuals or households.
Annual Responses: 3,480.
Annual Burden Hours: 435.
Bureau Clearane Officer: Russell K. Olsen, 523–5233.

Russell K. Olsen,

Chief, Administrative Service Division.

[FR Doc. 88–12096 Filed 5–27–88; 8:45 am]
BILLING CODE 4310–52–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 21, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 15, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Saline County

Bauxite vicinity, *Rucker House,* AR 183 and Gibbons Rd.

COLORADO

Boulder County

Boulder vicinity, *Walker Ranch Historic District (Boundary Increase)*, 7.5 mi. W of Boulder, off Flagstaff Rd.

Cheyenne County

Cheyenne Wells, *Cheyenne County Jail*, 85 W. Second St.

Denver County

Denver, *Peters Paper Company Warehouse*, 1825–1831 Wazee St.

CONNECTICUT

Hartford County

Granby, *Holcomb, Judah, House*, 257 N. Granby Rd.

Litchfield County

Beaver Meadow Complex Prehistoric Archeological District

New Haven County

Madison, *Meigs-Bishop House*, 45 Wall St.

FLORIDA

Dade County

Coral Gables, *Coral Gables Elementary School*, 105 Minorca Ave.

GEORGIA

Jackson County

Commerce, *Hardman, Governor L.G., House*, 208 Elm St.

MARYLAND

Baltimore (Independent City)

Brick Hill, Seneca St., Oakington St., Parkden Ave.

St. Paul's Cemetery, Redwood St. and Martin Luther King Blvd.

NEW MEXICO

Otero County

Alamogordo vicinity, *White Sands National Monument Historic District, US 70/82*

OHIO

Montgomery County

Dayton, *South Park Historic District (Boundary Increase)*, Roughly bounded by Wayne, Wyoming, Nathan, Oak, Alberta, and Blaine

TEXAS

Bexar County

San Antonio, *Fairmount Hotel, The*, 401 S. Alamo

VIRGINIA

Manassas (Independent City)

Manassas Historic District, Roughly bounded by Quarry Rd., Prescott and Fairview Aves., the Southern RR, and Grant Ave.

Virginia Beach (Independent City)

de Witt Cottage, 1108 Atlantic Ave.

WASHINGTON

Adams County

Othello, *Denver and Rio Grande Western Railroad Business Car No. 101*, Bruce and Lee Rds.

Douglas County

Waterville, *Canton, William J., House*, 305 W. Ash St.

King County

Mercer Island, *Lakeview School (Rural Public Schools in Washington From Early Settlement to 1945 MPS)*, Island Crest Way and S.E. Sixty-eighth St.

Seattle, *Girls' Parental School*, 6612 Sixty-fifth Ave., S.

Seattle, *Pioneer Square—Skid Road Historic District (Boundary Increase)*, 500 blk. of First Ave., S.

[FR Doc. 88–12019 Filed 5–27–88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on the theme: "PVO Effectiveness as Agents of Development." The meeting will be two days: Tuesday, June 21 from 2:00–5:00 p.m. and Wednesday, June 22 from 9:00 a.m.–5:00 p.m. at the Department of State. To enter the building, use C Street (Diplomatic Entrance) between 21st and 23rd Streets NW., Washington, DC.

The meeting is free and open to the public. However, notification by June 17, 1988 through the advisory committee headquarters is required by the Department of State for security purposes.

Any interested person may attend, request to appear before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty-five (25) copies.

Persons wishing to attend the meeting must call (703) 875–4407, or write, not later than June 17 to arrange entrance to the Department of State building. The address is: The Advisory Committee on Voluntary Foreign Aid, Room 906, SA–8, Agency for International Development, Washington, DC 20523.

Date: May 19, 1988.

Thomas A. McKay,

Deputy Assistant Administrator for Private and Voluntary Cooperation, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 88–12054 Filed 5–27–88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Volume No. OP3&5CF–252(A)]

Motor Carrier Applications to Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.5.

Noreta R. McGee,

Secretary.

MC–F–19161, filed May 11, 1988. Carolina Coach Company (Carolina) (P.O. Box 28066, Raleigh, NC 27611)—Leasee—Seashore Transportation Company (Seashore) (P.O. Box 28066, Raleigh, NC, 27611)—Lessor. Representative: Lawrence E. Lindeman, P.C., 805 King St., #400, Alexandria, VA, 22314–3016. Carolina, a motor carrier holding Certificate No. MC–13300 and subnumbers thereunder, to lease the regular route operating authority of Seashore, for a three year period of time. Carolina Associates, Inc., a non-carrier, which owns all of the issued and outstanding stock of both Carolina and Seashore, joins in the application. The operating authority to be leased is contained in Certificate No. MC–28985 (Sub–Nos. 4, 5, 6, 9, 10, 11, 12, 14 (portion), 16(a) and 16(b)), which authorizes the transportation of passengers and package express over a series of regular routes extending generally between Rocky Mount, NC, on the north, and Myrtle Beach, SC, on the south, serving numerous intermediate points, including Raleigh, Fayetteville, Beaufort, Wilmington, and Jacksonville, NC. This does not purport to be a complete description of the operating rights involved. The common control of Carolina and Seashore was approved in No. MC–F–16030.

[FR Doc. 88–11960 Filed 5–27–88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31279]

Chesapeake Western Railway; Trackage Rights Exemption; Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Chesapeake Western Railway Company (CW) between milepost H–112.6 at Elkton, VA, and the north end of Shenandoah Yard, milepost H–105.7 at Shenandoah, VA, a distance of approximately 6.9 miles. The trackage rights became effective on May 16, 1988.

This notice is filed under 49 CFR 1180.2(d)(7).[1] Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 18, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–12137 Filed 5–27–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub–243)]

CSX Transportation, Inc.; Abandonment Between Thrifton and Midland City in Highland, Clinton and Ross Counties, OH; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 29.49-mile rail line between Thrifton (milepost 74.45) and Midland City (milepost 44.96) in Highland, Clinton and Ross Counties, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88–12167 Filed 5–27–88; 8:45 am]

BILLING CODE 7035-01-M

[No. 40154 [1]]

Extension of Expiration Date of Master Tariff Increases; Amendments No. 5 and 12 to Special Tariff Authority

AGENCY: Interstate Commerce Commission.

ACTION: Proposed procedures for incorporation of Master Tariff increases not adopted. Expiration dates of Master Tariff TEA 9000 and TCFB 9500 are extended to September 30, 1991, and reporting requirements imposed.

SUMMARY: By decision served August 27, 1987, and published in the **Federal Register** on August 28, 1987 (52 FR 32611), the Commission issued a notice of proposed procedures for incorporation of Master Tariff increases into basic tariffs. After consideration of the comments filed, the Commission has issued a decision not adopting the proposed procedures. Instead, the expiration dates of Master Tariffs TEA 9000 and TCFB 9500 are extended to September 31, 1991. As conditions in granting the extension, certain reporting requirements are imposed. Within 75 days from the service date of this decision, applicants shall submit a detailed plan and schedule for the completion of the updating process by September 30, 1991. Beginning September 30, 1988, applicant shall submit quarterly reports outlining the updating progress in relation to the plan and schedule.

DATES: The Commission decision is effective June 30, 1988.

FOR FURTHER INFORMATION CONTACT:

John Sado, (202) 275–6449.

Ill or

Joseph H. Dettmar, (202) 275–7245.

[TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

This action will not have a significant impact on a substantial number of small entities.

This decision will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321 and 10762.

Decided: May 19, 1988.

[1] Since NW is controlled by Norfolk Southern Corporation and CW is a wholly-owned subsidiary of NW, the transaction would also qualify as an exempt transaction under 49 CFR 1180.2(d)(3) as a transaction within a corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

[1] This proceeding was originally numbered Amendment No. 12 to Special Tariff Authority No. 80–1748 and Amendment No. 5 to Special Tariff Authority No. 84–8933. By decision served September 29, 1987 and published in the Federal Register on October 2, 1987 (52 FR 37030), it was redocketed as No. 40154 and the date for filing comments was extended 45 days.

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By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Stewart, Simmons, and Lamboley.

Noreta E. McGee,

Secretary.

[FR Doc. 88-12079 Filed 5-27-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

The National Cooperative Research Act of 1984; The Industry/University Cooperative Research Center for Microwave/Millimeter-Wave Computer-Aided Design; Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Industry/University Cooperative Research Center for Microwave/Millimeter-Wave Computer-Aided Design, located at the University of Colorado, Boulder, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Industry/University Cooperative Research Center for Microwave/Millimeter-Wave Computer-Aided Design and its general areas of planned activities, are given below.

The parties to the Industry/University Cooperative Research Center for Microwave/Millimeter-Wave Computer-Aided Design are as follows:

Ball Aerospace Systems Division
Boeing Electronics High Technology Center
Hewlett-Packard
Hughes Microwave Products Division
ITT Corporation/GaAs Technology Center
National Bureau of Standards
Teledyne MMIC
Texas Instruments/Equipment Group
TRW/Electronic Systems Group
US Army LABCOM
Westinghouse/Defense Electronics Center

The objectives of the Industry/University Cooperative Research Center for Microwave/Millimeter-Wave Computer-Aided Design are as follows:

To establish a knowledge base for microwave/millimeter-wave integrated system design methodologies and CAD tools by conducting industrial-relevant research;

To increase the output of engineers in the United States who are equipped with modern engineering practices in the design of microwave/millimeter-wave systems;

To foster a strong collaboration among industry, university and government R&D organizations in microwave/millimeter-wave research.

John W. Clark,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 88-12050 Filed 5-27-88; 8:45 am]

BILLING CODE 4410-01-M

MERIT SYSTEMS PROTECTION BOARD

Temporary Closing of Headquarters Library

AGENCY: Merit Systems Protection Board.

ACTION: Notice that the Board is temporarily closing its library to the public.

SUMMARY: The Merit Systems Protection Board announces that its library will be closed to the public from Tuesday, May 31, 1988 through Friday, June 24, 1988.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Director, Information Services Division, Office of the Clerk of the Board, Merit Systems Protection Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: Due to renovation of the space, the Board's headquarters library will be closed to the public for the limited time indicated. The library will reopen for public use on a daily basis from the hours of 1 p.m. to 5 p.m. on Monday, June 27, 1988.

Date: May 25, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88-12139 Filed 5-27-88; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 30, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503 (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Revised Final Descriptive Report Form for State and Regional Arts Agencies.

Frequency of Collection: Annually.

Respondents: State or local governments; Non-profit institutions.

Use: Information is needed and will be used for monitoring of state and regional arts agency activities; coordination of Endowment activities with those of state and regional arts agencies; and reporting on the types of projects, groups, and localities benefiting from state and regional arts agency support.

Estimated Number of Respondents: 63.

Estimated Hours for Respondents to Provide Information: 252.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-12127 Filed 5-27-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-42, and DPR-60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the Technical Specifications (TSs) to change the protective instrumentation setting for the automatic reactor trip associated with high flux, power range (low setpoint) from equal to or less than 25% of rated power to equal to or less than 40% of rated power. This instrumentation setting applies only for reactor startup protection.

The proposed action is in accordance with the licensee's application for amendment dated November 3, 1987.

The Need for the Proposed Action

The proposed change to the TSs is required to eliminate the potential of scramming the reactor unnecessarily at low power levels (i.e., approximately 33%).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would change the high flux, power range (low setpoint) in Specification 2.3.A.1.b to read "* * * <40% of rated power" rather than "* * * <25% of rated power." This change would apply for low power operations. Since the evaluation demonstrates that the plant does not exceed the acceptable thermal limits, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radio-logical environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TSs involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 25, 1988 (53 FR 9632). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the Prairie Island Nuclear Generating Plant dated May 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 3, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 23rd day of May 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Acting Director, Project Directorate III-1 Division of Reactor Projects III, IV, V & Special Projects.

[FR Doc. 88-12093 Filed 5-27-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 2-4, 1988, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on May 18, 1988.

Thursday, June 2, 1988

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.-9:45 a.m.: ECCS Evaluation Models (Open/Closed)—Review analytical models proposed for Westinghouse PWR upper plenum injection systems for two-loop nuclear power plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the models being proposed.

10:00 a.m.-11:00 a.m.: Standardization of Nuclear Plants (Open)—Briefing and discussion of proposed NRC rule regarding standardization of nuclear power plants.

11:00 a.m.-12:00 noon: International Meetings Regarding Nuclear Power Programs (Open/Closed)—Report of American Society for Quality Control, Planning Meeting for International Conference on Quality, held on May 10, 1988 and report on Regular Bilateral Meeting on Nuclear Regulatory Matters.

Portions of this session will be closed to discuss information provided in confidence by a foreign source.

1:00 p.m.-1:45 p.m.: Emergency Planning (Open)—Briefing regarding proposed final NRC rule on emergency preparedness in the vicinity of fuel cycle facilities and other radioactive material licenses and for low-power operations of nuclear power plants.

1:45 p.m.-2:30 p.m.: Metallurgical Considerations (Open)—Briefing and discussion regarding the quality of fasteners used in nuclear plants and periodic inspection of BWR reactor pressure vessels.

2:45 p.m.-4:15 p.m.: Advanced Reactors (Open)—Discuss proposed

ACRS report/recommendations regarding regulatory requirements for key design features of advanced gas-cooled and liquid-metal cooled nuclear power plants.

4:15 p.m.–6:00 p.m.: Babcock and Wilcox Nuclear Power Plants (Open)—Discuss proposed ACRS report on the safety reassessment of B&W nuclear power plants by the B&W Owners Group.

Friday, June 3, 1988

8:30 a.m.–10:15 a.m.: Prioritization of Generic Issues (Open)—Discussion and comment regarding the proposed prioritization of several new generic issues.

10:30 a.m.–11:30 a.m.: Reactor Operations (Open)—Briefing regarding proposed International Organization of Reactor Operators.

11:30 a.m.–12:00 noon: Future Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

1:00 p.m.–2:30 p.m.: Systems Interactions (Open)—Briefing regarding the proposed resolution of USI A–17, "Systems Interactions in Nuclear Power Plants."

2:30 p.m.–3:00 p.m.: ACRS Subcommittee Activities (Open)—Briefing and discussion regarding the status of the PDA review for the Advanced Boiling Water Reactor.

3:15 p.m.–4:15 p.m.: Radioactive Effluents (Open)—Briefing and discussion regarding proposed changes in 10 CFR Part 20, "Standards for Protection Against Radiation."

4:15 p.m.–5:15 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports on thermal-hydraulic phenomena research activities.

5:15 p.m.–5:45 p.m.: New Members (Closed)—Discuss status of appointment of proposed members and the qualifications of candidates being considered for nomination.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:45 p.m.–6:30 p.m.: ACRS Practices and Procedures (Open)—Discuss proposed cojoining of ACRS subcommittees and procedures regarding members' participation in meetings which are not sponsored by the ACRS.

Saturday, June 4, 1988

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting and the 337th ACRS meeting (May 5–7, 1988).

1:30 p.m.–2:30 p.m.: ACRS Subcommittee Activities (Open)—Reports and discussion of the status of assigned subcommittee activities including NRC regional activities, international meeting on operational safety experience, and bilateral meeting on significant operational events and consideration of severe accidents.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on Ocbober 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), Proprietary Information applicable to the facility being discussed (5 U.S.C. 552b(c)(4)) and Privileged and classified information from a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: May 25, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–12114 Filed 5–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

Cleveland Electric Illuminating Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to the Cleveland Electric Illuminating Company (CEI), the Duquesne Light Company, the Ohio Edison Company, the Pennsylvania Power Company, and the Toledo Edison Company (the licensees) for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio. The licensees' application for amendment was dated April 4, 1988.

The amendment would modify the Technical Specifications (TS) on page 1–7 and in section 6.6.1.a to clarify the definition of REPORTABLE EVENT making it consistent with the requirements of Generic Letter 83–43 dated December 19, 1983.

Another proposed change is a deletion of the organizational charts (Figures 6.2.1–1 and 6.2.2–1), and the addition of statements in section 6.2.1 to compensate for the organization chart deletions. These changes were submitted in response to guidance contained in Generic Letter 88–06 dated March 22, 1988. As such, these changes to delete organization charts are considered administrative.

An additional proposed change to the TS is to delete the exception to TS section 6.3.1 for the Senior Operations Coordinator as this exception is no longer required.

The proposed amendment would also modify TS 6.5.1.2, 6.5.1.3, and 6.5.1.5 to reduce the size and change the membership requirements for the Plant Operations Review Committee (PORC). The definition of QUORUM in TS 6.5.1.5 would also be changed to reflect the above changes. The proposed amendment would further modify TS 6.5.1.6.i and n and 6.5.3.1.f, deleting the requirement for the PORC to submit recommended changes to the Nuclear Safety Review Committee based upon PORC reviews of the Security Plan, Security Contingency Instructions, Emergency Plan and implementing instructions, and Fire Protection Program and implementing procedures.

The proposed amendment would also move the requirements for temporary procedure changes from TS 6.5.3.1.a to a new section 6.8.3. The old section 6.8.3 has been renumbered to 6.8.4.

The proposed amendment would also delete various nonapplicable footnotes, correct typographical errors, reflect organizational title changes and clarify which systems are included in the leakage reduction program for primary coolant sources outside containment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees evaluated the proposed changes with respect to the above three factors, as follows:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes as described above are administrative and as such do not involve a significant increase in the probability or consequence of an accident previously evaluated. The only nonadministrative change is the reorganization of the PORC membership. The function of PORC remains largely the same; to provide advice to the Manager, Perry Plant Operations Department and others on matters relating to safety. By creating a PORC independent from these persons, the licensees argue that the PORC's ability to carry out its function should be enhanced. Therefore, the licensees believe that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The staff has reviewed the licensees' determination and agrees that such changes are primarily administrative in nature and would not involve a significant increase in the probability or consequences of an accident previously evaluated. While the changes related to the size and composition of the PORC would result in a net decrease in experience and expertise of that body, they would not reduce these below the minimally acceptable levels approved for other new plants and should, therefore, not significantly affect that group's ability to carry out its review function. Therefore, these changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, most of the proposed changes are administrative changes which do not create the possibility of any new accident. The proposed changes to PORC memberships also cannot create the possibility of a new or different kind of accident since the overall function of PORC remains the same.

(3) The proposed changes do not involve a significant reduction in the margin of safety.

The majority of these changes are administrative in nature and, as such, do not involve a reduction in the margin of safety. The reorganization of PORC membership, it is argued by the licensees, would enhance safety by creating a truly independent review committee to advise the plant management. While the staff is unable to judge at this time whether in fact the proposed changes would enhance safety, the PORC is designed to function in the absence of some members, hence the quorum requirements of some minimum number of attendees less than the total membership. On this basis, the staff agrees that the proposed changes would not result in a significant reduction in a margin of safety. However, the staff will provide its determination on the acceptability of this change in its safety evaluation on this issue.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 30, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the

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Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 25th day of May 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–12202 Filed 5–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 91 to Facility Operating License No. DPR–6, issued to Consumers Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Big Rock Point Plant (the facility), located in Charlevoix County, Michigan. The amendment is effective as of the date of issuance.

This amendment revises the TSs to reflect the features and terminology used with new out-of-core power range instrumentation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 5, 1988 (53 FR 11150). No request for a hearing or petition for leave to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on May 13, 1988 (53 FR 17128).

For further details with respect to this action, see (1) the application for amendment dated November 9, 1987, (2) Amendment No. 91, to License No. DPR–6, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the North Central Michigan College, 1515 Howard Street, Petosky, Michigan 49770. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 17 day of May 1988.

For the Nuclear Regulatory Commission.

Wayne E. Scott, Jr.,

Project Manager, Project Directorate III–I, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–12091 Filed 5–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Materials License No. 42–26838–01; Docket No. 30–29319; ASLBP No. 88–575–01–CivP]

H & G Inspection Co, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, as presiding officer is designated in the following proceeding:

H & G Inspection Company, Inc.

Material License No. 42–26838–01

E.A 87–145

The presiding officer is being designated pursuant to the Licensee's request for a hearing regarding an Order issued by the Deputy Executive Director for Regional Operations, dated April 7, 1988, entitled "Order Imposing Civil Monetary Penalty."

The presiding officer in this proceeding is the Honorable Morton B. Margulies, Administrative Law Judge.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed with Judge Margulies in accordance with 10 CFR 2.701. His address is: Administrative Law Judge Morton B. Margulies, Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 24th day of May 1988.

[FR Doc. 88–12113 Filed 5–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to Omaha Public Power Distirct (the licensee), for the operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

The proposed amendment would delete Figure 5–1, "OPPD Support Staff" and Figure 5–2, "Fort Calhoun Station Organizational Chart" from the Technical Specifications (TS). Additionally, organizational titles and job responsibilities would be revised to reflect organizational and administrative changes. The proposed amendment supersedes the previous request for amendment dated April 15, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. This amendment request is similar to the example of a purely administrative change to the Technical Specifications. This amendment request is also similar to the example that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Based on the above, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will normally make a final determination unless it receives a request for a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By June 30, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no

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significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to LeBoeuff, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of the petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 24th day of May, 1988.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Project Manager, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–12092 Filed 5–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271–OLA; ASLBP No. 87–547–02–LA]

Vermont Yankee Nuclear Power Corp., (Vermont Yankee Nuclear Power Station); Prehearing Status Conference

May 24, 1988.

Before Administrative Judges: Charles Bechhoefer, Chairman, Glenn O. Bright, Dr. James H. Carpenter.

Notice is hereby given that the Licensing Board will hold a prehearing conference for the purpose of ascertaining the status of this proceeding. The Applicant is requested to report at the conference, *inter alia*, its schedule for submitting additional application documents respecting the fuel pool cooling system. The NRC Staff is requested to report to the conference on its current proposed schedule for issuance of various Staff review documents. All parties are invited to provide suggestions for further activities in this proceeding, including possible settlement.

This status conference will be held at 9:30 a.m. on Tuesday, June 28, 1988, at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 88–12111 Filed 5–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271–OLA–2, (Testing Requirements for ECCS and SLC Systems); ASLBP No. 85–567–04–OLA]

Vermont Yankee Nuclear Power Corp., (Vermont Yankee Nuclear Power Station); Prehearing Conference

May 24, 1988.

Before Administrative Judges: Charles Bechhoefer, Chairman, Glenn O. Bright, Dr. James H. Carpenter.

Notice is hereby given that, in accordance with the Atomic Safety Licensing Board's Memorandum and Order dated May 24, 1988, a prehearing conference in this proceeding, involving a proposed change in technical specifications of the Vermont Yankee Nuclear Power Station operating license, will commence on Tuesday, June 28, 1988, immediately following the status conference notice today in the spent fuel pool operating license amendment proceeding, at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont.

Among matters to be considered at the conference are the intervention petitions submitted by two petitioners for intervention; delineation of the key issues or contentions in the proceeding; the establishment of further schedules; possibilities of settlement of various issues; and such other matters as may aid in the orderly disposition of the proceeding.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at the conclusion of this prehearing conference. Any person not a party to the proceeding or a petitioner for intervention will be permitted to make such a statement, either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence in this proceeding, but may help the Board and/or parties in their deliberations on the extent of the issues to be considered. It is expected that oral limited appearance statements will not be heard until the afternoon of June 28, 1988 (commencing at 2:00 p.m. or later). The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. Written statements may be submitted at any time. Written statements, and requests for oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One While Flint North, 11155 Rockville Pike, Rockville, Maryland 20852. A copy of such a statement or request should also be served on the Chairman, Atomic Safety and Licensing Board.

Documents relating to this application are on file at the Local Public Document Room, located at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301, as well as at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Administrative Judge.

Dated at Bethesda, Maryland, this 24th day of May, 1988.

[FR Doc. 88–12112 Filed 5–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co., Point Beach Nuclear Plant Unit Nos. 1 and 2; Exemption

I

The Wisconsin Electric Power Company (WEPCO, the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities), at a steady state power level not to exceed 1518 megawatts thermal per unit. The facilities are pressurized water reactors located in Manitowoc County, Wisconsin. These licenses provide, among other things, that the facilities are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant.

One of the subsections, III.G, is the subject of the licensee's exemption request. Specifically, Subsection III.G, Part 3.b requires in part the installation of a fixed fire suppression system in plant areas in which redundant trains of systems required for hot shutdown are located.

III

By letter dated June 11, 1986, supplemented by letter dated October 10, 1986, the licensee submitted a request for exemption from the requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 for the Component Cooling Water Heat Exchanger and Boric Acid Tank Room (Fire Zone 237), and the Computer and Instrument Rack Room (Fire Zone 336). The implementation of TMI-related modifications required the rerouting of several redundant safe shutdown instrument cables from the monitor tank area through the Component Cooling Water Heat Exchanger and Boric Acid Tank Room (Fire Zone 237), and the Computer and Instrument Rack Room (Fire Zone 336) to the Control Room. Neither Fire Zone 237 nor Fire Zone 336 has a fixed fire suppression system. This installation is not in compliance with 10 CFR Part 50, Appendix R, Section III.G.3.b, which requires a fixed fire suppression system in areas through which redundant trains of systems required for hot shutdown pass.

The underlying purpose of the rule is to maintain the capability of redundant trains located in the same area, to bring the plants to hot shutdown in the event of a fire in the area, by assuring prompt extinguishing of the fire by the fixed fire suppression system. The licensee has stated that even though Fire Zones 237 and 336 do not have fixed fire suppression systems installed, each fire zone is provided with numerous smoke detectors suitably located within the fire zone to detect fires, and each fire zone is in close proximity to hose reel stations for fire extinguishing. Additionally, the licensee has stated that should the redundant instrument cables transversing these fire zones be destroyed by fire, alternate shutdown capability independent of these fire zones is available.

Section 10 CFR 50.12(a) requires that special circumstances be present before the Commission will consider granting an exemption. Special circumstances were identified by the licensee in its October 10, 1986 letter. Specifically, the licensee stated that application of the regulation would not serve the underlying purpose of the rule. The underlying purpose of the rule is to maintain the capability of redundant trains located in the same area, to bring the plants to hot shutdown in the event of a fire in the same area, by assuring prompt extinguishing of the fire by the fixed fire suppression system. Although fixed fire suppression is not installed in the areas of concern, the licensee has stated that in the event the cables are destroyed by fire, other means, independent of these areas, can be used to shut down the plant. Section 4.3.2 of the licensee's October 28, 1983 letter describes how this alternate shutdown capability is achieved. Specifically, transfer switches were installed to transfer indication of plant parameters from the control room to the charging pump and auxiliary feed pump areas. Therefore, if a fire destroyed the safe shutdown cables in the zones which are the subject of this exemption, indication can be transferred to alternate areas. In addition to this alternate shutdown capability, the fire zones in question are equipped with various fire protection systems. Fire Zone 237 is provided with six photoelectric smoke detectors. Two 1½-inch hose reel stations are located outside the fire zone near the west wall entrances. Additionally, portable fire extinguishers suitable for the hazards present in the fire zone are available. Fire Zone 336 is provided with eight photoelectric smoke detectors. Hose reel stations are located at the foot of the stairway on the 46-foot elevation for manual fire suppression capability. Additionally, portable fire extinguishers suitable for the hazards present in the fire zone are available. For these reasons, the staff concludes that the existing alternate shutdown capability and fire protection systems provide reasonable assurance that a fire in Fire Zones 237 and 336 will not prevent safe shutdown of the plant. Therefore, application of the regulation does not serve the underlying purpose of the rule.

Based on the above, the staff concludes that the existing fire protection features, together with the alternate shutdown capability available for Fire Zones 237 and 336, provide a level of fire protection equivalent to the requirements of Section III.G.3.b of Appendix R to 10 CFR Part 50.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) The exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and (2) special circumstances are present for the exemption in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission grants the exemption from the requirements of Section III.G.3.b of Appendix R to 10 CFR Part 50 to the extent discussed in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 11923, April 11, 1988).

This Exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 23rd day of May, 1988.

[FR Doc. 88-12094 Filed 5-27-88; 8:45 am]

BILLING CODE 7590-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Notice of meeting.

SUMMARY: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, June 15, 1988, at 10:00 a.m..

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation's Conference Room, 1331 Pennsylvania Avenue NW., Suite 1220 North Building, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 CFR Part 901, and is open to the public.

Date: May 23, 1988.

M.J. Brodie,

Executive Director.

[FR Doc. 88-12059 Filed 5-27-88; 8:45 am]

BILLING CODE 7630-01-M

POSTAL RATE COMMISSION

[Docket No. A88-2; Order No. 786]

Rago, Kansas 67128 (Philip W. Unruh, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: May 23, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Docket Number: A88-2.

Name of Affected Post Office: Rago, Kansas 67128.

Name(s) of Petitioner(s): Philip W. Unruh.

Type of Determination: Closing.

Date of Filing of Appeal Papers: May 10, 1988.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one of more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before May 31, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

May 16, 1988—Filing of Petition
May 23, 1988—Notice and Order of Filing of Appeal
June 10, 1988—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
June 20, 1988—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)]
June 30, 1988—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
July 15, 1988—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)]
July 22, 1988—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]
September 12, 1988—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 88-12053 Filed 5-27-88; 8:45 am]

BILLING CODE 1715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25733; File No. SR-Amex-87-31]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On December 18, 1987 the American Stock Exchange, Inc. ("Amex"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change seeking permanent approval of a pilot program which authorized specialists to accept market-at-the-close ("MOC") orders and to report executions of certain MOC orders as stopped stock transactions.

In June 1987, the Commission approved a six-month pilot program to permit Amex specialists to accept MOC orders,[3] and in February 1988, the Commission extended the pilot for 120 days.[4] The pilot also permitted specialists to execute "stopped stock" [5] transactions in those stocks which are included in a stock index on the last business day prior to options and futures contracts' expiration. Amex Rule 109(d) specifically provides that when the aggregate volume of MOC buy and MOC sell orders is equal, such orders may be stopped against each other and executed at the last sale price on the Exchange just prior to the close of trading. Where there is an imbalance of shares to buy (sell) over shares to sell (buy) in MOC orders, the imbalance may be executed, at the close of trading, against the prevailing offer (bid) just prior to the close. The member then may stop the remaining buy and sell orders against each other and pair them off at the price at which the imbalance was executed. By reporting paired-off trades as "stopped stock" transactions, the specialist will be able to alert limit order customers that stopped market orders holding priority over their limit orders have been executed in the market.[6]

The Amex states that the proposed rule change is designed to improve the efficient execution of orders during periods of high volume since floor brokers would no longer be required to remain in the trading crowd during one of the busiest times of the day to represent MOC orders. In addition, the Amex notes that it is not aware of any problems associated with the use of these procedures during the pilot program. In this regard, the Amex noted that since June 1987 there only have been two instances, both involving Lorimar Telepictures stock, when transactions were reported to the tape at the close as stopped stock.[7] Furthermore, since the proposed rule requires the reporting of paired-off trades as "stopped stock" transactions, customers with limit orders are informed that these transactions were executed outside of the regular auction market and that, therefore, their orders may not have participated.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. More specifically, the rule will contribute to the more efficient execution of MOC orders, especially during periods of high volume, by relegating the responsibility of executing such orders to Amex specialists. Since floor brokers would no longer be required to remain in the trading crowd during one of the busier times of the day to represent such orders they would be provided the opportunity to execute transactions in other securities, thereby yielding increased market depth and liquidity. Furthermore, requiring paired-off MOC transactions to be reported as "stopped stock" informs customers with limit orders on the book that market orders with priority have been executed, thereby fostering cooperation and coordination between persons engaged in regulating and facilitating transactions in securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

Dated: May 20, 1988.

[FR Doc. 88-12064 Filed 5-27-88; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982)

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 24618 (June 19, 1987) 52 FR 23808. A market-at-the-close order is a market order which is to be executed at or as near to the close as practicable. *See* Amex Rule 131.

[4] *See* Securities Exchange Act Release No. 25141 (February 9, 1988) 53 FR 4691.

[5] A "stopped stock" transaction is one in which a floor broker or specialist pairs-off buy and sell market-at-the-close orders when holding those orders simultaneously in the same stock.

[6] The New York Stock Exchange ("NYSE") has a comparable rule, NYSE Rule 116.40.

[7] *See* Letter from Mike Cavaller, Assistant General Counsel, Amex, to Joseph Furey, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated May 4, 1988. During the December 18, 1987 Expiration, the Lorimar specialist, faced with a buy imbalance, executed 10,700 shares at the offer and then printed 1,500 shares at the same price as stopped stock. Similarly, during the March 18, 1988 Expiration, the Lorimar specialist, once again faced with a buy imbalance at the close, executed 3,500 shares at the offer and then printed 3,300 shares at the same price as stopped stock.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-25740; File No. 600-23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Temporary Registration as a Clearing Agency

On October 16, 1987, the Government Securities Clearing Corporation ("GSCC") filed an application under section 19(a) of the Securities Exchange Act of 1934 ("Act") [1], for registration as a clearing agency under section 17A of the Act [2] and Rule 17Ab2-1(c) [3] thereunder. That rule authrorizes the Commission to grant registration, for a period of 18 months (or for such longer period as the Commission determines), while exempting GSCC from complying with one or more of the statutory standards contained in section 17A(b)(3) of the Act. Notice of the application appeared in the **Federal Register** on November 20, 1987.[4] No comments were received. This order grants GSCC's application for registration as a clearing agency for a period not to exceed 36 months and exempts GSCC from certain provisions of sections 17A(b)(3) and 17A(b)(4) of the Act.

I. Overview

GSCC was incorporated by the National Securities Clearing Corporation ("NSCC") [5] under the New York Business Corporation Law on November 18, 1986, to provide clearing facilities for transactions in securities issued or guaranteed by the United States, U.S. Government agencies and instrumentalities, and U.S. government-sponsored corporations ("Government Securities"). GSCC is a wholly-owned subsidiary of NSCC. GSCC, however, is in the middle of a private placement of common stock to eligible participants. Upon conclusion of GSCC's initial distribution of common stock, GSCC will be jointly owned by NSCC and GSCC participants.[6]

GSCC is testing its comparison and netting facilities for transactions in Government Securities (except mortgage-backed securities), including zero coupon bonds, and when-issued trading in U.S. Treasury securities.[7] Once registered, GSCC plans to offer comparison services for next-day settling trades in the Government Securities market.[8]

II. Statutory Standards

Section 17A of the Act sets forth registration requirements for a clearing agency. Section 17A of the Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions ("National System"). That Section charges the Commission to act in accordance with specific Congressional findings with due regard for: The public interest; the protection of investors; the safeguarding of securities and funds; and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents.[9] In addition, section 19 of the Act provides procedural standards for clearing agency registration and for continuing regulatory oversight of registered clearing agencies. Rule 17Ab2-1(c) provides for temporary clearing agency registration, for a period of 18 months or for such longer period as the Commission may order, without specifically finding that the temporarily

[1] 15 U.S.C. 78s(a).

[2] 15 U.S.C. 78q-1.

[3] 17 CFR 240.17Ab2-1(c).

[4] Securities Exchange Act Release No. 25129 (November 16, 1987), 52 FR 44659.

[5] NSCC is registered with the Commission as a clearing agency. *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 5107 ("Full Registration Order").

[6] GSCC plans to conclude the initial sale of stock shortly. The initial distribution will provide GSCC with a minimum of $5 million of working capital.

[7] Zero coupon bonds are derived by stripping the interest coupons from a bond and creating a separate security out of each coupon. The payment of face value of the bond at maturity is also sold as a separate security. STRIPS denotes Separate Trading of Registered Interest and Principal of Securities and are generic book-entry Treasury zero coupon bonds.

[8] After the comparison pilot, GSCC plans to offer netting and balance order trade accounting services (*i.e.*, issuance of receive and delivery instructions to members concerning trades submitted to GSCC's accounting system for settlement through the FedWire of the Federal Reserve System ("FedWire Service")). Before implementation of those services, GSCC must file under section 19(b) of the Act for Commission review of the rules and procedures implementing those services.

[9] A "clearing agency" is defined in section 3(a)(23) of the Act to include, among other things, any person who facilitates the reduction or allocation of securities settlement responsibilities and any securities depository that acts as a securities custodian for central handling of securities that are treated as fungible and can be transferred by bookkeeping entry. For the purpose of section 17A and clearing agency registration, the term "security" includes U.S. government and U.S. government agency securities.

registered clearing agency has met the statutory standards.

The Commission has published the Division of Market Regulation's ("Division") clearing agency registration standards ("Standards"),[10] which illustrate specific objectives that a clearing agency's rules, procedures, or systems should achieve to be granted full registration. The Standards provide additional information concerning the Division's interpretation of subparagraphs (A) through (I) of section 17A(b)(3) and also discuss the Division's views on the National System. Specific references to the Standards appear below in applicable sections of the Commission's discussion.[11]

As indicated above, GSCC has filed an application for temporary registration for a period not to exceed 36 months. Rule 17Ab2–1(c) provides that the Commission may grant a clearing agency temporary registration and exempt the registrant from one or more of the requirements under subparagraphs (A)–(I) of section 17A(b)(3). Thus, an applicant clearing agency can commence operations, and the Commission can assess those operations and related safeguards during the temporary registration period to determine whether registration should be continued. On or before the end of the thirty-six month period, the Commission will either grant registration without exemptions from statutory standards or consider whether such exemptions, as the applicant may request, are appropriate under the Act. During the temporary registration period, the applicant is, for all purposes under the Act, a registered clearing agency.[12]

III. Discussion

A. Scope of the Order

This Order concerns the temorary registration of GSCC as a clearing agency under section 17A of the Act for a period not to exceed 36 months and GSCC's proposal to provide comparison services in Government Securities. Although the Commission understands GSCC plans to offer trade accounting and netting services for member trades in Government Securities, those services are not described in GSCC's application for registration and are beyond the scope of this order. The determinations made in this order reflect review of GSCC's application for registration, as amended, including its by-laws, rules and comparison service operating procedures as filed in Form CA–1 on October 16, 1987, and subsequently amended on March 11, 1988.

GSCC expects to expand both its participant base and its operations during the next three years. During that time, the Commission will monitor and oversee GSCC operations through review of Rule 19b–4 submissions,[13] notices to members[14] and disciplinary filings.[15] Before expiration of GSCC's temporary registration, the Commission also will review the determinations enunciated today and consider whether: (1) To exempt GSCC from complying with one or more of the statutory standards; and (2) to grant GSCC permanent registration as a clearing agency.

B. Capacity To Promote Prompt and Accurate Clearance and Settlement and to Safeguard Funds and Securities

Sections 17A(b)(3)(A) and (F) of the Act require that a clearing agency be organized and that its rules be designed to promote prompt and accurate clearance and settlement of securities for which it is responsible and to safeguard funds and securities in its custody or control or for which it is responsible. The Standards require clearing agencies, such as GSCC, that hire facilities managers to perform data or other processing functions to maintain appropriate safeguards to insure the prompt and accurate clearance and settlement of securities transactions. The standards also require such clearing agencies to assure that their facility managers will cooperate fully with clearing agency auditors, Commission examiners, independent public accountants, and any other appropriate regulatory agency, to the same extent as a clearing agency which conducts its own processing functions.[16]

As discussed below, the Commission believes that GSCC meets the requirements of sections 17A(b)(3)(A) and (F) of the Act. The Government Securities market, one of the world's largest securities markets, lacks a centralized, automated clearance system. GSCC's trade comparison service represents a significant step toward building a centralized, automated inter-dealer clearance system for Government Securities. GSCC has a facilities management agreement with NSCC that appears to provide GSCC with the necessary administrative and technical services (including data processing) to operate its trade comparison service. Moreover, GSCC has established adequate facilities and controls to protest its participants against financial losses associated with its proposed comparison service. Finally, GSCC has conducted numerous tests to insure that its system has the capability to provide prompt and accurate trade comparison service.

1. Government Securities Market

Outstanding Government Securities issues exceed $2.5 trillion in principal amount. Approximately 66% are U.S. Treasury securities, 22% are mortgage-backed securities [17] and 12% are government agency securities.[18] U.S. Treasury securities are auctioned to the public through the Federal Reserve System, which serves as the U.S. Treasury Department's fiscal agent. Although investors may submit bids directly at auctions, the majority of U.S. Treasury securities initially are purchased by banks and securities firms operating as Government Securities dealers. Dealers purchase for their own account, on behalf of their customers and for resale to other investors in the secondary market.

In 1987, the value of average daily trading in U.S. Treasury securities among dealers, inter-dealer brokers and investors was approximately $110 billion.[19] Dealers and brokers play a major role in providing liquidity to the secondary market. Dealers provide investors a price at which they can immediately buy or sell securities. Brokers enhance liquidity by enabling dealers and investor customers to trade large quantities of securities quickly and anonymously.[20] Pursuant to the Government Securities Act of 1986, all Government Securities brokers and dealers are subject to registration, examination and financial regulatory requirements.[21]

There are three types of Government Securities dealers: Primary, aspiring primary and nonprimary.[22] Primary dealers voluntarily agree to report their positions to the FRBNY and to buy from or sell securities to the FRBNY, among other things, in connection with FRBNY's (as U.S. fiscal agent) open market transactions.[23] To become a primary dealer, a dealer must agree to meet certain standards and to provide FRBNY the necessary information to monitor compliance with the standards.[24] Aspiring primary dealers are firms attempting to demonstrate their capital resources, trading activities, operational experience and other qualifications to FRBNY in order to become a primary dealer.[25] These firms also regularly provide position and financial information to the FRBNY. Any Government Securities dealer that is neither a primary or an aspiring primary dealer is considered a nonprimary dealer.

Government securities generally are settled the day after trade execution in same-day funds. Inter-dealer trades (including trades between brokers and dealers) are usually settled through clearing agent banks over the automated telecommunication ("FedWire") and book-entry custody systems maintained by FRBNY.[26] Virtually all transfers are effected solely by bookkeeping entries over the FedWire.

The Government Securities market currently operates under decentralized, inefficient physical procedures for comparing and clearing transactions among brokers and dealers. On the morning after trade date (settlement day), Government Securities brokers and dealers attempt to match each trade for settlement (usually after 1:00 p.m.). Brokers and dealers must attempt to match each side of a trade, resolve any discrepancies that result in an uncompared trade, and send delivery and receive instructions to their clearing agents, all within five to six hours. During this time, inter-dealer brokers and primary dealers also attempt to "pair-off," on a bilateral basis, trades in each issue to reduce daily delivery and payment obligations. That process entails identifying purchases and sales with another trading party that can cancel or offset delivery and payment obligations between the same trading parties, agreeing to cancel specific trades and paying the differences. Clearing agent banks must then coordinate the delivery and receipt of funds and securities through the FedWire system.

The current confirmation and trade comparison process is decentralized and may contribute to uncompared trades and increased credit risks in settling Government Securities transactions. Growth in daily trading volume and outstanding U.S. Treasury securities have increased concerns with the operational aspects of clearing and settling Government Securities trades.[27] Indeed, the Commission understands Government Securities dealers and brokers frequently may deliver or pay for securities assuming that if the other party pays for securities or delivers securities for payment, then the trade actually occurred.

2. GSCC's Trade Comparison Service

As noted above, GSCC initially plans to offer Government Securities dealers and brokers a centralized, automated comparison service for transactions in U.S. Treasury securities.[28] The Commission believes that GSCC's formation and its planned services represent a significant step toward reducing the labor-intensive comparison process for Government Securities. The automated comparison system will eliminate the need to manually match trades and allow brokers and dealers to concentrate on the pair-off and reconciliation processes, as well as resolving uncompared trades. Automating comparison may permit brokers and dealers to submit delivery and payment instructions to clearing agent banks earlier in the day, thereby

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[10] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

[11] The Commission notes that the Standards were developed in the context of registration of 10 clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and, to a lesser extent, municipal securities. The Commission recognizes that some of the Standards may not be appropriate for clearing agencies that provide services for other investment products such as Government securities. Accordingly, the Commission intends to apply the Standards flexibly and on a case-by-case basis. In addition, the Standards allow clearing agencies to submit reasons why a particular Standard may be inappropriate and to suggest alternatives that are consistent with the Act.

[12] Thus, for example, the applicant must file for review all changes to its by-laws, rules and procedures with the Commission under section 19 of the Act.

[13] Rule 19b–4 requires proposed rule changes (including changes in rules, services, or procedures) by a self-regulatory organization (including clearing agencies) to be filed with the Commission for review pursuant to section 19(b) of the Act.

[14] Rule 17a–22 requires a registered clearing agency to file with the Commission, within ten days of release, three copies of any material, including manuals, notices, circulars, bulletins, lists or periodicals, issued or made generally available to its participants or to other entities with whom it has a significant relationship.

[15] *See* section 19(d) of the Act.

[16] *See* Standards Release, *supra* note 10.

[17] GSCC has not sought authority to provide clearing agency functions for mortgage-backed securities. For a discussion of mortgage-backed securities, *see* MBS Clearing Corporation's temporary registration order, Securities Exchange Act Release No. 24048 (February 2, 1987) at 12, 52 FR 4215, 4220.

[18] Agency securities are debt obligations of government-sponsored enterprises, which include the Federal Home Loan Banks, the Student Loan Marketing Association and the Federal Credit System. These agencies typically issue securities through groups of dealers who locate purchasers.

[19] Telephone conversation between Commission staff and Federal Reserve Bank of New York ("FRBNY") staff.

[20] Brokers arrange trades without revealing the identities of the buyer and seller to one another. There are two types of brokers: Inter-dealer brokers and retail brokers. Inter-dealer brokers only trade among primary and aspiring primary dealers, only allow primary and aspiring primary dealers access to certain trade information and claim to act only as agents for their customers. Retail brokers trade among all market participants, allow all customers access to trade information shown on the broker screen and, in effect, guarantee all their trades. *See* U.S. General Accounting Office ("GAO"), U.S. Government Securities: An Examination of Views Expressed About Access to Broker's Services, GAO/GGD–88–8 (GAO Report).

[21] *See* Pub. L. 99–571. The law, among other things, authorizes and directs the Secretary of the Treasury to issue financial responsibility, recordkeeping, and financial reporting and audit rules. The Secretary also must regulate the possession and control of customer securities and funds. The law requires clearing agencies that provide centralized clearance and settlement services in Government Securities to register with the Commission under section 17A of the Act and requires dealers and brokers that were previously unregulated to register with the Commission and to join either an exchange or a registered securities association.

The Department of the Treasury has issued financial responsibility rules, including minimum net capital requirements, for Government Securities dealers and brokers that are not subject to the Commission's net capital rule. *See* 52 FR 27910 (July 24, 1987).

[22] For a more comprehensive discussion of the types of dealers and their functions, *see* GAO Report, *supra* note 20.

[23] Through the open market operation, the Federal Reserve System injects or withdraws money from the economy by entering into agreements with primary dealers to buy or sell securities either outright or through so-called repurchase and reverse repurchase transactions.

[24] A primary dealer must adhere to the following requirements: Actively engage in the distribution of U.S. Treasury securities to investors (this includes continuously bidding at Treasury auctions); demonstrate a willingness to make markets at all times in a full range of securities and have an adequate customer base and trading volume; have capable management of proven reputation and character; have sufficient business capacity, trained personnel, managerial controls, and expertise in trading and risk management; have an adequate capital base relative to the risks taken in fulfilling its market making responsibilities; and show a long term commitment to devoting sufficient capital and other resources to the market. *See* GAO Report, *supra* note 20.

[25] The qualification process typically takes at least one year from the time the dealer begins providing FRBNY with information. *See* GAO Report, *supra* note 20, at 15.

[26] Currently, the transfer or pledge of book-entry U.S. Treasury securities through the FedWire has the effect of a delivery in bearer form of such securities. *See* 31 CFR 306.115–306.122 (Subpart O) and 31 CFR 350.4. The Bureau of Public Debt, Fiscal Service, has published a proposal which, upon final adoption, would govern all book-entry marketable U.S. Treasury Securities. The proposal would preempt state law, including the Uniform Commercial Code, with regard to the transfer or pledge of U.S. Treasury securities through the FedWire and amend 31 CFR Part 357. *See* Department of the Treasury Circular, Public Debt Series, No. 2–86, 51 FR 43027.

[27] The national debt has grown from approximately $1.3 trillion in 1983 to approximately $2.5 trillion at the end of 1987. Average daily trading volume in U.S. Treasury Securities has more than doubled since 1983. The 1983 average daily trading volume was approximately $42 billion and the 1987 average daily trading volume was approximately $110 billion. This growth in trading activity has caused a commensurate rise in volume on the FedWire. In part to accommodate the increased volume of deliveries, particularly at the end of the day, FedWire operating hours have routinely been extended.

[28] Under GSCC's proposed comparison procedures, GSCC will accept trade data from participants until 10 p.m. each day. GSCC will then compare the trade data submissions and, at approximately 8:00 a.m., make available to participants reports of compared, uncompared and advisory trades.

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reducing late-day FedWire deliveries. Moreover, automated centralized comparison may help dealers and brokers to identify uncompared trades and resolve those trades before the afternoon settlement period. Overall, centralized automated comparison may help brokers and dealers obtain a better handle on operational aspects and financial risks involved in settling Government Securities transactions.[29]

3. Facilities Management

GSCC has a facilities management arrangement with NSCC, a registered clearing agency and a substantial shareholder of GSCC. Under the NSCC–GSCC agreement, NSCC provides administrative and technical services. Those services include operation of GSCC's comparison system and data processing, financial, support, internal auditing, compliance and legal services.

NSCC has in the past been a responsible clearing agency.[30] NSCC provides comprehensive clearing services to the New York Stock Exchange, American Stock Exchange and over-the-counter markets for corporate equity and debt securities and to the municipal securities market. As a registered clearing agency, NSCC is subject to Commission oversight under the Act, which includes periodic Commission examinations and annual independent accountant review of internal accounting controls.

4. Recordkeeping and Data Processing

The Commission believes that the systems and other controls surrounding GSCC's recordkeeping and data processing functions are adequate to meet the needs of the expanding Government Securities market. In providing the comparison service, GSCC will collect standardized trade data from GSCC members concerning trades with other GSCC members, and compare that data to determine whether the two parties to a trade submitted identical information. If the information matches, then the trade is considered compared. GSCC will notify participants of all compared trades and of unmatched trade data. If the information does not match, participants must resolve the reported differences among themselves.

NSCC's internal audit department, on behalf of GSCC, reviews the adequacy of GSCC's systems and controls. The Audit Committee of GSCC's Board of Directors are composed of non-management directors. The Audit Committee oversees internal audit programs implemented by internal or NSCC auditors, makes a recommendation to the GSCC Board of Directors concerning the selection of GSCC's independent public accountant and reviews the system of internal accounting controls with the independent public accountant. Under GSCC's rules, the independent public accountant performs annually an evaluation of GSCC internal accounting controls, and GSCC must make the accountant's opinion and report available to all participants.

NSCC, through the Securities Industry Automation Corporation ("SIAC"), provides GSCC with redundant computer hardware and software and also provides backup computer capability. GSCC duplicates all incoming data daily and stores them at off-site locations, which enables GSCC to reconstruct quickly its data base in the event of a disaster.[31] GSCC's computer center is operated by SIAC and is equipped with an independent source of power, air conditioning and water to assure a continuous processing environment.

5. Financial Risk Management

The Commission believes that GSCC's rules are adequately designed to protect GSCC and its participants against financial losses associated with its services. GSCC does not interpose itself between two parties to a trade and, at this time, does not provide trade accounting, netting functions or payment and delivery facilities. GSCC reports to participants all matched and unmatched trades. Moreover, participants have a duty to check the matched trades for accuracy, and participants are still responsible for the settlement function through their respective clearing agent banks. Thus, GSCC does not assume any liability for member settlement defaults or member losses associated with those defaults.

Although financial risks to GSCC and its participants are minimized by GSCC's limited role as a central comparison facility, failure to perform that function accurately or in a timely manner could affect adversely GSCC's members' ability to settle securities transactions. GSCC copies all member trade data submissions when received, to permit GSCC to perform the comparison function at another location. In the unlikely event that data were destroyed or GSCC was unable to perform its comparison service, participants, although inconvenienced, could physically compare tickets, as they now do.

6. System Service Capacity

Because of the volume of daily trading activity, the short time frame within which trades must be settled, and the importance of the market for U.S. Treasury securities, the Commission sought assurances that GSCC will perform its functions accurately and on a timely basis under severe market and operational conditions. GSCC and its facilities manager have represented they would be able to meet anticipated market volume peaks, similar to those in October 1987.[32] In addition, GSCC has assured the Commission that, even during a period of unusually high volume, GSCC has the computer and communication capability to receive data from participants, process that data and send processed data to participants within the time frame established by GSCC.

GSCC has successfully tested its comparison system for more than a year.[33] Based on those tests, GSCC expects 90% or more of the trades to match successfully through the automated comparison system. GSCC estimates that its system has the capacity to compare up to 400,000 trades per day. GSCC has tested its operating systems to ensure it can accommodate 50,000 trade sides and 256

[29] GSCC has had numerous conversations with FRBNY's operations officials regarding the operational aspects of its comparison system. The Commission staff also has had conversations with the FRBNY and plans to continue coordinating its efforts with the staff of the Federal Reserve and FRBNY regarding GSCC.

[30] See Full Registration Order, *supra*, Note 5.

[31] GSCC currently does not have off-site backup facilities. GSCC is negotiating with Security Pacific, its software developer, to provide such facilities. In the event of a disaster prior to the conclusion of those negotiations, GSCC believes that Security Pacific would allow GSCC to use Security Pacific facilities. GSCC has agreed to put in place a satisfactory disaster recovery capability as soon as possible. GSCC also understands that such capability must be in place, at least, prior to commencing a netting service.

[32] See letter from Robert A. Schultz, Senior Vice President, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation (March 3, 1988) and from Frederick B. Roemer, First Vice President, GSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation (March 3, 1988), File No. 600–23.

[33] In addition, GSCC twice has tested its netting system successfully. The first netting test was conducted in December 1986 and covered one week's brokered trade data for U.S. Treasury bonds, bills and notes. The test produced a "netting factor" (the percentage of trades that are netted out before settlement or before receive and delivery tickets are produced) of 81% for 51 dealer and 7 broker participants in the test. The second test was conducted in May, 1987 and covered trading in when-issued government securities and secondary trading in Treasury STRIPS and government agency securities (except mortgage-backed securities). The second test produced a netting factor of 82% for regular way trading and 99% for actively-traded when-issued securities for the full month's transactions for 51 dealers and brokers.

communication ports.[34] Within the first few months after commencing operations, GSCC expects to have approximately 60 participants submitting, in the aggregate, approximately 20,000 trade sides per day. Assuming 60 participants use its comparison operation, GSCC believes it will continue to have significant excess capacity.[35]

C. Participation Standards

Section 17A(b)(3)(B) of the Act enumerates certain categories of persons a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services.[36] Section 17A(b)(4)(B) of the Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience and competency standards that are used to accept, deny or condition participation of any participant or any category of participants enumerated in section 17A(b)(3)(B).

GSCC rules provide that persons eligible for GSCC membership and services include all Government Securities dealers, brokers and clearing agent banks and any other entities or persons that can demonstrate to GSCC that their business and capabilities are such that they could reasonably expect material benefit from direct access. GSCC rules require that a participant must have the ability to perform as a clearing member but do not set any specific operational capacity, financial responsibility, experience or competency standards.

In its registration application, GSCC requested an exemption from sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act. As required by section 17A(b)(3)(B) of the Act, GSCC rules do not specifically enumerate certain categories of membership. In addition, GSCC rules do not include applicant and member financial standards as contemplated in section 17A(b)(4)(B) of the Act. GSCC, however, has represented that it will develop appropriate member financial and operational standards in the near future, before it expands its range of services, and, in any event, before it offers trade accounting or netting services.

The Commission believes that temporarily exempting GSCC from sections 17A(b)(3)(B) and 17A(b)(4)(B) is appropriate. Financial and operational membership standards depend, in part, on the extent and manner in which the clearing agency allocates losses resulting from member defaults. GSCC, its members and other interested organizations are still developing the framework for GSCC's netting service, and significant changes in the default loss allocations could require material changes to GSCC's participation standards. Second, GSCC is the first privately-owned central clearance and settlement facility for Government Securities (other than for mortgage-backed securities). Although the Treasury Department recently has established minimum capital requirements for Government Securities brokers and dealers,[37] the Commission recognizes that those requirements may not adequately address the anticipated credit risks associated with clearing agency membership. GSCC's experience may provide guidance in setting financial standards for its members.

In developing these standards, the Commission believes GSCC must ensure that its applicant and continuing membership standards are fair and are necessary to protect the clearing agency and its participants from unreasonable risk.[38] GSCC must file those standards under section 19(b) of the Act. Thus, GSCC's standards will be the subject of public comment and specific proceedings to assure that those standards are consistent with the Act.[39]

D. Standard of Care

Although the Act does not specify the standard of care that must be exercised by registered clearing agencies with respect to non-custodial functions, the statute requires clearing agencies to promote accurate clearance and settlement of securities and to safeguard securities and funds.[40] The Commission reviews non-custodial clearing agency services on a case-by-case basis and, in determining the appropriate standard of care, balances the need for a high degree of clearing agency care with the effect the resulting liabilities may have on clearing agency operations, costs, and safeguarding of securities and funds.[41]

GSCC plans to offer comparison services under a gross negligence standard of care. The Commission believes that this standard of care is consistent with the Act and earlier interpretations of section 17A concerning non-custodial clearing agency functions. Historically, the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with non-custodial, data processing, clearing agency functions, and has approved clearing agency services embodying a gross negligence standard of care. The Commission believes that a gross negligence standard of care may be appropriate for certain non-custodial functions that, consistent with minimizing risk mutualization, clearing agency members, through their Board of Directors, determine to allocate to individual service users.

Nevertheless, the Commission is concerned that GSCC's failure to perform accurately and timely the comparison service could affect adversely the ability of GSCC members to deliver securities and effect trade settlements. Considering the size of the Government Securities market and the next-day time frame for trade settlements, the Commission believes it is appropriate for GSCC to undertake, in the near future, an ordinary negligence standard of care in performing all functions affecting member settlements of Government Securities.

[34] A communication port is a dedicated line in which information can flow between GSCC and the participant. There may be multiple communication hook-ups with one participant. The capacity can be easily expanded to accommodate more participants.

[35] GSCC has tested operating systems extensively, and, among other things, processed successfully as many as 100,000 trade sides.

[36] Those persons include, among others: Registered broker-dealers, other registered clearing agencies, registered investment companies, banks and insurance companies.

[37] See 17 CFR 400.1, 402.1–402.2d, 52 FR 27910 (July 24, 1987). See also 17 CFR 240.15c3–1.

[38] Those rules must be designed to prevent unfair discrimination in the admission of participants and among participants. See Standards Release, *supra* note 10. In this connection, the Commission is very concerned that the initial dealer membership of GSCC is composed entirely of primary (and aspiring primary) dealers. We wish to emphasize that in light of the present financial and examination requirements imposed on all Government Securities dealers, any final credit and operational standards which contain such an arbitrary distinction would be inconsistent with the Act and could not be approved.

[39] Of course, GSCC's exemption from the requirements of sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act does not permit GSCC to discriminate unfairly among applicants for membership or member access to GSCC's comparison service. Moreover, under section 19(g), GSCC must comply with its own rules. As noted above, those rules require GSCC to admit to membership government securities brokers, dealers and clearing agent banks. See GSCC Rule 2.

[40] The Commission believes that, rather than promulgate a specific standard of care for non-custodian functions, the preferable approach is for the clearing agency and its participants to establish their own standard because standards of care represent an allocation of rights and liabilities between a clearing agency and its participants.

[41] See, e.g., Full Registration Order, *supra* note 5; Securities Exchange Act Release No. 22940, 51 FR 7160 (February 28, 1986).

E. Fair Representation

Section 17(b)(3)(C) requires that a clearing agency's rules assure fair representation to its participants and shareholders in the selection of its directors and administration of its affairs. The Commission has interpreted the fair representation standard to require specific clearing agency rules that are designed to facilitate continuing fair representation of clearing agency participants.[43] As discussed below, the Commission is temporarily exempting GSCC from compliance with section 17A(b)(3)(C) of the Act.

The GSCC shareholders' agreement establishes the structure and composition of the GSCC Board of Directors. After the completion of the current stock offering to eligible purchasers, the present GSCC board will be replaced by a 15 member GSCC board comprised of six primary or aspiring primary dealers, three brokers, three clearing agent banks, one management director (GSCC's President) and two NSCC designated directors. That initial Board would serve for three years. For subsequent elections, the twelve participant director positions will be divided into three classes (one class elected for three years, the second for two years and the third for one year). In 1991, each class will be composed of the following categories: Two primary or aspiring primary dealers; one broker, and one clearing agent bank. In subsequent elections, four participant directors will be elected annually regardless of their participation category. Participant directors must, by definition, be shareholders, which initially will be primary and aspiring primary dealers, brokers and clearing banks.

Under the GSCC shareholders' agreement, GSCC will nominate candidates for participant director positions. Any participant may nominate additional candidates by filing with the Secretary of GSCC a petition signed by at least five participants. All nominees will be submitted to all GSCC participants for a vote. Those nominees receiving the greatest number of votes by class and category will be certified to the shareholders for election. Under the shareholders' agreement, shareholders will be required to vote for the selected participant directors.

Under the shareholders' agreement, each participant will be entitled to cast votes based on the participants' use of certain GSCC services. Comparison-only participants will be entitled to two votes and those participants that also use the netting services will be entitled to four votes. The shareholder's agreement also allows for cumulative voting. Thus, a participant may cast all its votes for one nominee or divide its votes among several nominees.

A GSCC management director will be designated by the GSCC Board and will be elected for a one-year term, and will serve at the discretion of the GSCC Board. Two NSCC-designated directors also will be elected for one-year terms and will serve at the discretion of the NSCC Board. Under the shareholders' agreement, shareholders will be required to cast their votes in favor of the non-participant directors so designated.

GSCC believes that electing the entire board to a three-year term is appropriate as GSCC grows and expands its services and participant base. Moreover, GSCC believes the categories for the initial board election reasonably reflect the present membership of GSCC.

The Commission preliminarily believes that the composition of GSCC's Board of Directors reasonably reflects GSCC's anticipated initial membership. Nevertheless, the Commission believes it is appropriate to defer, until a later date, its determination whether the selection process for GSCC's Board of Directors assures participants fair representation, because GSCC plans to expand its services during the temporary registration period and because of the uncertainty in GSCC's final participant base.[44] Thus, the Commission plans to reevaluate the selection process for the Board of Directors before granting full registration as a clearing agency.

F. Other Determinations

1. Capacity To Comply With the Act and Enforce Compliance by Participants

(i) *GSCC Compliance with the Act.* Section 17A(b)(3)(A) of the Act requires that GSCC have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. Commission rules require GSCC to keep and preserve certain records,[45] obtain and retain fingerprints from personnel,[46] and register and participate in the Commission's Lost and Stolen Securities Program.[47] The Commission staff intends to monitor GSCC to assure its compliance with the Act. In addition, the staff has reviewed GSCC's rules and procedures and GSCC's facilities management arrangement with NSCC. Based upon that review and the Commission's experience with NSCC as a registered clearing agency, the Commission believes that GSCC has the capability to comply with the Act and its rules and regulations.

(ii) *GSCC Enforcement of Participant Compliance with GSCC Rules and Procedures.* Section 17A(b)(3)(A) of the Act also requires GSCC to have the capacity to enforce participant compliance with its rules. GSCC's rules must provide GSCC with the ability to impose appropriate sanctions on participants that violate GSCC's rules [47] and must provide fair procedure for the imposition of such sanctions.[48] GSCC's rules provide for disciplinary procedures to enforce compliance with GSCC's rules and the authority to impose appropriate sanctions.

Under GSCC's rules, GSCC may impose a fine of up to $5,000 or expulsion, suspension, limitation of or restriction on activities, functions and operations, or censure or any other fitting sanction. Except when a participant is summarily suspended or summarily prohibited or limited access to services, GSCC rules require GSCC to furnish a written statement of charges to the affected GSCC member before the imposition of any fine or other sanction. Only the Board of Directors or a Board-designated Committee composed of directors may impose a summary action and then only under certain limited conditions in accordance with section 17A(b)(5)(C) of the Act.[49]

The affected participant or applicant has a right to appeal the fine or other sanction (including summary suspension) to an impartial panel of directors. Except for summary actions, a fine or other sanction shall be stayed pending the appeal. Decisions of the panel are final, but the Board of Directors may in its discretion modify any sanction or reverse any decision of the Panel that is adverse to the interested participant. Under the Act, the affected participant may appeal final clearing agency decisions to the Commission or its appropriate regulatory agency. The Commission believes that these procedures substantially fulfill the requirements of the Act.

2. GSCC Fees

Section 17A(b)(3)(D) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues or other charges. Section 17A(b)(3)(E) of the Act provides that clearing agency rules may not impose any schedule of prices or fix rates for services rendered by participants. GSCC's application for registration does not contain account maintenance or comparison service fees for members. The Commission understands that GSCC plans to establish fees in the near future. GSCC must file its proposed fee schedule under section 19(b) of the Act for Commission review before imposing any fees or other charges.

3. Competition

Section 17A(a)(2) of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17A(b)(3)(I) provides that a clearing agency's rules may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed below, the Commission believes that GSCC rules and its registration as a clearing agency will not impose any inappropriate burden on competition.

The Commission believes that GSCC services can make efficient, automated processing available to a wide universe of institutions, thus decreasing the need for each institution to develop its own in-house processing systems, hire personnel and incur other expenses associated with transaction processing. Although GSCC does not have applicable financial responsibility or specific operational standards, as contemplated by section 17A(b)(4)(B), GSCC's rules do not prohibit any Government Securities broker, Government Securities dealer or other institution that will benefit from the use of GSCC's services from joining GSCC, provided the institution has the capacity to provide GSCC all necessary information needed to process transactions. In addition, GSCC is committed to developing appropriate financial responsibility and operational standards consistent with the standards before GSCC begins to provide any service, other than trade comparison, including netting.[50]

The Commission believes that GSCC's registration will not result in any inappropriate burdens on competition among banks or other entities providing clearing services. Banks and other entities providing clearing services can participant in GSCC and likely will continue to perform settlement services for a majority of Government Securities brokers and dealers.

G. GSCC's Request for 36 Month Temporary Registration

GSCC has requested a 36 month temporary registration period. GSCC plans to expand its services and to offer those expanded services to a wider range of participants in the Government Securities market.[51] GSCC believes it needs the next several years to develop and implement those services.

The Commission agrees with GSCC that, given the expansion of the services and participant base, a 36 month temporary registration period is reasonable. The Commission also believes that the 36 month period will allow the Commission time to review GSCC's services in light of the Standards and to review GSCC as a fully functioning clearing agency before the Commission considers whether to grant GSCC full registration as a clearing agency.

IV. Conclusions and Determinations

The Commission has reviewed GSCC's application for registration as a clearing agency pursuant to section 17A(b) and 19(a)(1) of the Act and pursuant to Rule 17Ab2–1 under the Act and GSCC's request for exemption from one or more of the determinations the Commission is directed to make pursuant to subparagraph (A)–(I) of section 17A(b)(3) of the Act.

After reviewing GSCC's application for registration, the Commission has determined that GSCC is organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities and to safeguard funds in its custody or control or for which it is responsible; to comply with the provisions of the Act and the rules and regulations thereunder; to enforce compliance by its participants with the rules of the clearing agency; and to carry out the purposes of section 17A. The Commission also has determined that the GSCC rules are designed to promote prompt and accurate clearance and settlement of securities transactions; to assure the safeguarding of securities and funds which are in the custody or control of GSCC or for which it is responsible; to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions; to prevent unfair discrimination in the admission of participants or among participants in the use of GSCC; and, in general, to protect investors and the public interest. In addition, the Commission has determined that GSCC rules provide for the equitable allocation of reasonable dues, fees and other charges among its participants; do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants; provide for appropriate discipline of participants for violation of any provision of GSCC rules by expulsion, suspension, limitation of activities, functions and operations, fines, censure, or any other fitting sanction; provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by GSCC of any person with respect to access to services offered by the clearing agency; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[43] The Act does not define fair representation or set up particular standards of representation. Instead, it provides that the Commission must determine whether the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders in the selection of directors and the administration of its affairs. With respect to providing participants with a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs, the Standards counsel that each clearing agency's procedures be evaluated on a case-by-case basis. *See* Standards Release, *supra* note 10.

[44] The Commission notes, however, its expectation that GSCC will not place arbitrary barriers to participation by financially qualified government securities brokers and dealers. *See* Standards Release, *supra* note 10.

[45] Rule 17a–1 requires a registered clearing agency to keep and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other records, as are made or received by it in the course of business.

[46] Rule 17f–2 requires a registered clearing agency to obtain and maintain a record of fingerprints of each of its directors, officer and employees who do not qualify for an exemption from fingerprinting contained within the rule. A copy of each set of fingerprints must also be sent to the Federal Bureau of Investigation.

[47] 17f–1 requires a registered clearing agency to register and participate in the Lost and Stolen Securities Program ("Program"). Under the Program, a participant is required to report the discovery of a theft or loss of a security and to inquire with respect to securities which come into its possession whether the security has been reported lost, missing or stolen.

[47] *See* section 17A(B)(3)(C) of the Act.

[48] *See* section 17A(b)(3)(H) of the Act.

[49] *See* GSCC Rule 46. A participant may be suspended summarily if, among other things, the participant is: (1) Expelled or suspended from any self-regulatory organization; or (2) in such financial or operating difficulty that GSCC determines that such action is necessary for the protection of GSCC, its participants, creditors or investors.

[50] In developing additional services and participation standards, GSCC must ensure that standards do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act. *See* Standards Release, *supra* note 10.

[51] *See* letter from Karen L. Saperstein, Associate General Counsel, GSCC, to Jonathan Kallman, Associate Director, Division of Market Regulation (March 18, 1988).

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With regard to GSCC's request for a temporary exemption from the participation requirements, including financial responsibility and operational capability standards, of section 17A(b)(3)(B) and 17A(b)(4)(B) of the Act, the Commission believes that it is appropriate to temporarily exempt GSCC from those participation requirements while it only provides comparison services. GSCC, however, must have participation requirements that comply with section 17A in place and approved by the Commission before offering netting services to its participants. Because of GSCC's planned expansion of services and the uncertainty of GSCC's participant base, once it expands services, the Commission believes it is appropriate to temporarily exempt GSCC from the fair representation requirements of section 17A(b)(3)(C) of the Act. The Commission reserves the right to modify, by order (including such orders as the Commission may issue under section 19(b) of the Act in connection with changes to GSCC's rules), the terms, scope, or conditions of the exemptions from the participation and the fair representation requirements of section 17A of the Act, if it determines such modification is appropriate for the protection of investors or in the public interest.

With regard to the request for a 36 month temporary registration period, the Commission believes that 36 months is an appropriate time period for GSCC to develop and expand its services and participant base within the Government Securities market and to allow the Commission appropriate time to review its determination and to consider whether to grant GSCC full registration as a clearing agency.

It is therefore ordered, pursuant to section 17A(b)(2) and 19(a) of the Act and Rule 17Ab2–1(c)(2) thereunder, that GSCC's registration be and it hereby is granted, and that GSCC hereby is granted exemptions from the participation standard in sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act and the fair representation standard in section 17A(b)(3)(C) of the Act, subject to the terms, exemptions and other qualifications contained in this order, to be effective for not more than 36 months from the date of this order.

By the Commission.

Dated: May 24, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–12123 Filed 5–27–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange, Inc.

May 24, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Atlanta Gas Light Co.
Common Stock, $5.00 Par Value (File No. 7–3461)
Blue Arrow, PLC
American Depositary Shares, No Par Value (File No. 7–3462)
Freeport McMoran Copper Company, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–3463)
Nuveen California Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3464)
Nuveen Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3465)
A.H. Belo Corporation
Common Stock, $1.67 Par Value (File No. 7–3466)
Matrix Corporation (Delaware)
Common Stock, $1.00 Par Value (File No. 7–3467)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 15, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12081 Filed 5–27–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 24, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Barry Wright Corporation
Common Stock, $1.00 Par Value (File No. 7–3468)
C3, Inc.
Common Stock, $0.01 Par Value (File No. 7–3469)
Coachmen Industries, Inc.
Common Stock, No Par Value (File No. 7–3470)
Formica Corporation
Common Stock, $0.01 Par Value (File No. 7–3471)
Lewis Galoob Toys, Inc.
Common Stock, No Par Value (File No. 7–3472)
Hillenbrand Industries, Inc.
Common Stock, No Par Value (File No. 7–3473)
Murray Ohio Manufacturing Company
Common Stock, $2.50 Par Value (File No. 7–3474)
Vestron, Inc.
Common Stock, $0.01 Par Value (File No. 7–3475)
Artic Alaska Fisheries Corporation
Common Stock, $0.01 Par Value (File No. 7–3476)
Atlanta Gas Light Company
Common Stock, $5.00 Par Value (File No. 7–3477)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 15, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12082 Filed 5–27–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 23, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, of unlisted trading privileges in the following securities:

Banner Industries, Inc.
Class A Common Stock, $0.10 Par Value (File No. 7–3454)
Carolina Freight Corporation
Common Stock, $0.50 Par Value (File No. 7–3455)
Dexter Corporation
Common Stock, $1.00 Par Value (File No. 7–3456)
Heilig-Meyers Company
Common Stock, $1.33 Par Value (File No. 7–3457)
Kathy Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–3458)
Koger Properties, Inc.
Common Stock, $0.10 Par Value (File No. 7–3459)
KN Energy, Inc.
Common Stock, $5.00 Par Value (File No. 7–3460)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 15, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12083 Filed 5–27–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending May 20, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45629

Date Filed: May 18, 1988.

Due Date for Anwsers, Conforming Applications, or Motion to Modify Scope: June 15, 1988.

Description: Application of Societe Antillaise De Transports Aeriens, d/b/a Air Guadeloupe pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment of its foreign air carrier permit, to add passenger service to St. Thomas, U.S. Virgin Islands.

Phyllis T. Kaylor,

Chief of Documentary Services Division.

[FR Doc. 88–12117 Filed 5–27–88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held from July 12 through July 15, 1988. Attendance is open to the public, but will be limited to the space available.

FOR FURTHER INFORMATION CONTACT: Mr. Paul H. Strybing, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from July 12, at 9 a.m., through July 15, 1988, at 11:30 a.m., at the Denver Airport Clarion Hotel, Denver, CO. The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 8, 1988. The next quarterly meeting of the FAA ATPAC is planned to be held from October 24 through October 28, 1988, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on May 24, 1988.

Paul H. Strybing,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 88–12072 Filed 5–27–88; 8:45 am]

BILLING CODE 4910-13-M

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Research and Special Programs Administration

[Inconsistency Ruling No. IR-24; Docket IRA-41]

City of San Antonio Regulations Governing Placarding Requirements for Transportation of Hazardous Materials

Applicant: McGil Specialized Carriers, Inc.

City Regulations Affected: City of San Antonio (Texas) Code, section 11-31.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179) issued thereunder.

Mode Affected: Highway.

Issue Date: May 24, 1988.

Ruling: Section 11-31 of the City of San Antonio Code, entitled "Adoption of the Uniform Fire Code," is inconsistent with the HMR to the extent that it adopts section 77.302(j) of the 1979 Edition of the Uniform Fire Code, and, therefore, is preempted, to that extent, under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)).

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Section 11-31 of the City of San Antonio Code, to the extent that it adopts Article 77, section 302(j) (also referred to as section 77.302(j)) of the 1979 Edition of the Uniform Fire Code, is inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201-107.209.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366-4362].

I. Background

A. Chronology

On September 2, 1987, McGil Specialized Carriers, Inc., (McGil) filed an application for an administrative ruling seeking a determination that a certain provision of the City of San Antonio (Texas) Code, adopting the 1979 Edition of the Uniform Fire Code, is, to a limited extent, inconsistent with the HMR. McGil contends that section 11-31 of the San Antonio Code, entitled "Adoption of the Uniform Fire Code," is inconsistent with the HMR to the extent that it adopts section 77.302(j) of the 1979 Edition of the Uniform Code.

McGil contends that, on June 4, 1987, San Antonio cited one of McGil's drivers for failure to display an "Explosives" sign on a motor vehicle in violation of section 77.302(j) of the Uniform Fire Code. The vehicle was transporting a shipment of two skids of "CLS Launches" and two boxes of "Electric Squibb Class C Explosives" from Sunnyvale, California to Titusville, Florida. The vehicle did not have an "Explosives" placard affixed to it, which, McGil alleges, would have been in violation of the HMR.

McGil asserts that section 77.302(j) of the Uniform Fire Code is unduly vauge. section 77.302(j) provides as follows:

> Vehicles transporting explosives shall display explosives signs on both sides, front and rear conforming to the requirements of the Vehicle Code.

McGil alleges that the term "Vehicle Code" is defined neither in the Uniform Fire Code nor in the local ordinance of the City of San Antonio. McGil further claims that there is no provision which qualifies the language of this section to make it consistent with the HMR.

McGil states that the authors of the Uniform Fire Code are considering a proposal by the Institute of Makers of Explosives to change several provisions relating to explosive materials so that they will be consistent with the HMR. McGil states that this proposal would change section 77.302(j) to read:

> Vehicles transporting explosives shall display all placards, lettering or numbering required by the United States Department of Transportation.

McGil contends that section 77.302(j) conflicts with the HMR. It assers that the pertinent sections of the HMR with which there is an inconsistency are, and characterizes them, as follows:

(1) Section 172.504, Table 1 requires that "Explosives A" and "Explosives B" placards be displayed when materials classified under this Table are transported.

(2) Section 172.504, Table 2 requires that "Dangerous" placards be displayed for Class C explosives.

(3) Section 172.504(c) provides that no placard is required when the gross weight of all hazardous materials covered by Table 2 is less than 1,000 pounds.

(4) Section 172.502(a)(2) prohibits the display of any placard other than one which represents a hazard of the hazardous material being transported.

McGil also seeks comparison with sections 172.519 "*et seq.*", 172.521, 172.522, and 172.523. In summary, McGil contends that if "Explosives" signs required by the San Antonio Code provision and the Uniform Fire Code had been displayed, it would have been in violation of these Federal regulations prohibiting such placarding under the allegedly existing circumstances. It urges a finding of inconsistency under both the "dual compliance" and "obstacle" tests.

On November 6, 1987 (52 FR 43016), OHMT published a Public Notice and Invitation To Comment soliciting public comments on the McGil application. Comments supporting the application for a finding of inconsistency were filed by the Institute of Makers of Explosives and the National Tank Truck Carriers, Inc. No comments were filed by the City of San Antonio or any other party in opposition to the application.

II. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in (the HMTA), or in a regulation issued under (the HMTA)." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37-38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action necessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215-107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1976.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement which is such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

III. Public Comments

The only two commenters, the Institute of Makers of Explosives (IME) and the National Tank Truck Carriers, Inc. (NTTC), supported the applicant's request that the Code provision at issue be found inconsistent.

IME, the safety association of the commercial explosives industry in the United States and Canada, represents 27 companies which make over 75% of the four billion pounds of commercial explosives used annually in the U.S.

IME states that portions of section 77 (Explosives) of the Uniform Fire Code are obsolete and/or conflict with Federal regulations and accepted industry practices and standards. IME states that it has submitted recommended changes to correct these deficiencies.

IME concludes by stating that it is unfortunate that section 77 of the Uniform Fire Code has become obsolete and the IME supports any inconsistency application caused by portions of section 77 which are obsolete or conflict with Federal regulations.

NTTC, the national trade association of the tank truck industry, represents over 300 corporations involved in hazardous materials transportation. It supports the concept of a nationally uniform system of hazardous materials transportation regulations.

Because Section 77 of the Uniform Fire Code references and unspecified "Vehicle Code," NTTC contends that both the Uniform Fire Code provision and San Antonio's adoption thereof are inconsistent with the HMR. It further argues that placarding of motor vehicles transporting hazardous materials is an exclusively Federal area of regulation and that deviations from the Federal requirements could produce dangerous confusion in the critical area of emergency response.

As to the San Antonio regulation at issue here, NTTC provides the following specific arguments:

The "Uniform Fire Code", adopted by the City of San Antonio, calls for an "explosives sign". No alert words, pictographic symbols, designation of subclassification, color, size or dimension is specified. A literal reading of the "Code" would suggest that any quantity of any type of explosive is to be "signed" (placarded).

Contrast this with the explicit regulations of the Administrator within Title 49 CFR Part 172. Additionally (and therein), the HMR proscribes certain conditions when vehicles are *not* to be placarded.

Therefore, the "Uniform Fire Code" fails the Administrator's "obstacle test" insofar as it seeks to substitute a generic "all purpose" "sign" in place of the specific placarding system required by the HMR. Accomplishment of the goals of the HMTA could only be frustrated by such substitution.

In addition, the "Uniform Fire Code" fails the Administrator's "dual compliance test" as it would mandate that an otherwise unspecified "explosives sign" be attached to a vehicle transporting less than 1,000 lbs. of materials specified in Table II of 49 CFR 172.504.

In conclusion, NTTC urges that enforcement of section 77.302(j) of the Uniform Fire Code under the San Antonio Code be found inconsistent with the HMTA.

IV. Ruling

Placards and other hazard warning requirements consistently have been determined to constitute an area of exclusive Federal jurisdiction under the HMTA. Therefore, such requirements at the state or local level have been held to be inconsistent if they are in addition to, or different from, the HMR placarding requirements. Inconsistency Ruling No. IR-2 (IR-2), 44 FR 75566 (Dec. 20, 1979); IR-3, 46 FR 18918 (Mar. 26, 1981); *Kappelman v. Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied* 429 U.S. 1061 (1977); *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2nd Cir. 1982); *American Trucking Assns. v. City of Boston*, C.A. 81-628-MA (D. Mass. 1987); *contra:* National Paint & Coatings Assn., Inc. v. City of New York, CV-84-4525 (E.D. N.Y. 1985).

In IR-2, *supra*, a Rhode Island requirement for an illuminated rear bumper sign for certain hazardous materials was found inconsistent because it conflicted with HMR lighting regulations and would divert attention from the HMR-required placards. The rationale set forth for this determination was:

Hazard warning systems are another area where [OHMT] perceives the Federal role to be exclusive. [OHMT] has thoroughly considered this subject and has issued regulations on . . . placarding of vehicles in order to communicate the hazards of the materials contained therein. The effectiveness of these systems depends to a large degree on educating the public, especially emergency response personnel.

Similarly, it was succinctly stated in IR–3, *supra*, that "The area of hazard warnings is essentially an area of exclusive HMTA domain." 46 FR 18924. On that basis, in IR–3 a City of Boston requirement that hazardous materials-carrying vehicles display numbers identifying their hazardous materials contents was found inconsistent; the Boston regulation required number displays no required by the HMR and contradicted exceptions and variations provided in the HMR. Also found inconsistent in IR–3 was a requirement for a sign on vehicles carrying residual quantities of hazardous materials because it specified a form of vehicle marking or placarding that modified the basic hazard warnings of the HMR. The Boston placarding and product identification requirements also were found inconsistent in *American Trucking Assns. v. City of Boston, supra.*

The only exception to this general trend was a preliminary decision in *National Paint & Coatings Assn., Inc. v. City of New York, supra.* There plaintiffs failed to obtain summary judgment because the Court said they had not made a sufficient showing that the HMR placarding provisions were intended to completely occupy the field and preempt New York City hazard warning sign requirements with respect to local deliveries.

It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions.

At issue in this proceeding is the consistency of section 11–31 of the San Antonio Code insofar as it adopts section 77.302(j) (part of Article 77) of the Uniform Fire Code, 1979 Edition, which provides: "Vehicles transporting explosives shall display explosives signs on both sides, front and rear conforming to the requirements of the Vehicle Code."

A significant problem with this section is its vagueness. First, it refers to an apparantely non-existent "Vehicle Code"; the drafters of the Uniform Fire Code possibly intended that jurisdictions adopting that Code have a Vehicle Code specifying requirements for warning signs. The Applicant's unrebutted contention is that neither the San Antonio ordinance adopting the Uniform Fire Code nor that Code defines "Vehicle Code." As a result, it is unclear what "explosive signs" are to be used.

Second, section 77.302(j) does not define the type or quantity of explosives to which it applies. However, the Applicant's unrebutted allegation is that enforcement action under this provision was taken with respect to transportation of less than one pound of Class C explosives. Therefore, it appears that this placarding requirement applies to any quantity or any type of explosive.

This sweeping applicability of the San Antonio regulation clearly exposes its inconsistency with numerous provisions of the HMR. Although section 172.522 specified placarding requirements for Class A explosives and section 172.523 specifies placarding requirements for Class B explosives, there are no placarding requirements for Class C explosives. There provisions, in turn, reflect the fact that Table 1 of section 172.504 requires EXPLOSIVES A and EXPLOSIVES B placards to be displayed when materials so classified are being transported, but Table 2 of section 172.504 requires only a DANGEROUS placard when Class C explosives are being transported.

In addition, section 173.504(c) provides that no placard is required when the gross weight of all hazardous materials covered by Table 2 is less than 1,000 pounds. Finally, section 172.502(a)(2) prohibits the display of any placard other than one representing the hazard of the hazardous material being transported. This language must be interpreted as referring to "hazard" as defined in the HMR because the definition of hazard classes is an exclusively Federal function. IR–5, 47 FR 51991 (Nov. 18, 1982); IR–18, 52 FR 200 (Jan. 2, 1987); IR–20, 52 FR 24398 (June 30, 1987); IR–21, 52 FR 37072 (Oct. 2, 1987); *Missouri Pacific RR Co. v. Railroad Commission of Texas,* 671 F. Supp. 466 (W.D. Tex. 1987).

V. Summary

The San Antonio regulation purports to create a requirement for hazardous materials transportation placarding, a regulatory area which has been fully occupied by the HMR. Also, it creates a requirement which causes confusion and undermines compliance with the HMR's placarding regulations, thereby failing the "obstacle" test for consistency. Finally, by requiring placarding in situations in which the HMR prohibit placarding, the San Antonio regulation also fails the "dual compliance" test because it makes it impossible for a carrier to comply with both the local requirement and the HMR.

VI. Ruling

For the foregoing reasons and on the basis of this record, I find that section 11–31 of the City of San Antonio Code, entitled "Adoption of the Uniform Fire Code," is inconsistent with the HMR to the extent that it adopts section 77.302(j) of the 1979 Edition of the Uniform Fire Code, and, therefore, is preempted, to that extent, under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)).

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on May 24, 1988.

Alan I Roberts,

Office of Hazardous Materials Transportation.

[FR Doc. 88–12073 Filed 5–27–88; 8:45 am]

BILLING CODE 4910–60–M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in April 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4453–X	DOT–E 4453	Independent Explosives Co. of Pennsylvania, Scranton, Pa.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1 and 3)
6309–X	DOT–E 6309	Insta-Foam Products, Inc., Joliet, IL	49 CFR 173.315(a)(1), 174.63(b)	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1 and 2.)
6557–P	DOT–E 6557	U.S. Department of Defense, Falls Church, VA.	49 CFR 175.3, 178.36–4(c), 178.37–4(c), 178.50–4(c).	To become a party to exemption 6557. (Modes 1, 2, 3, 4, 5.)
7616–X	DOT–E 7616	Union Pacific Railroad Co., Omaha, NE.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To renew and to authorize use of electronic shipping papers in lieu of hard copy shipping papers, hard copy will be sent at a future date, both shipping papers include necessary certifications. (Mode 2.)
7616–P	DOT–E 7616	Grand Trunk Western Railroad Co., Detroit, MI.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7616–P	DOT–E 7616	Norfork Southern Corp. and Subsidiaries Norfolk, VA.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
8390–X	DOT–E 8390	Jones-Hamilton Co., Newark, CA	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A60 fiberboard boxes. (Mode 1.)
8526–X	DOT–E 8526	The ServiceMaster Co., L.P., Downers Grove, IL.	49 CFR 177.834(i)(2)(1)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8864–P	DOT–E 8864	Arrow Transportation Co., Portland, OR.	49 CFR 173.245(a), 178.340–10, 178.340–8, 178.341–3, 178.341–4, 178.341–5, 178.341–7.	To become a party to exemption 8864. (Mode 1.)
9213–X	DOT–E 9213	Bulk-Pack, Inc., West Monroe, LA	49 CFR 173.178, 173.182, 173.217, 173.245b, 173.375.	To authorize sodium azide classed as a Class B poison, as an additional commodity. (Modes 1, 2, 3.)
9282–X	DOT–E 9282	Halocarbon Products Corp. N. Augusta, SC.	49 CFR 173.314(c)	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 2, 3.)
9316–X	DOT–E 9316	Fluoroware, Inc., Chaska, MN	49 CFR 173.268, 173.28(k), 173.299, 178.35, 178.35a, Part 173, Subpart F.	To authorize polyethylene overpacks in lieu of the currencly authorized steel overpacks. (Modes 1 and 2.)
9340–X	DOT–E 9340	Pioneer Plastics & Services Co. Ltd., Brampton, Ontario, CN.	49 CFR 173.114a, 173.154, 176.83, 176.19, 178.253, Part 173, Subpart F.	To authorize a flammable liquid as an additional commodity for shipment in non-DOT specification polyethylene portable tanks. (Modes 1, 2, 3.)
9577–X	DOT–E 9577	Altus Corp., San Jose CA	49 CFR 173.206, 173.247	To authorize shipment of batteries containing lithium metal, thionyl chloride and by-products in discharged and depleted states. (Mode 1.)
9656–X	DOT–E 9656	Shadyside Hospital, Pittsburgh, PA	49 CFR 173.316, 173.320, 176.63(b)	To reissue exemption originally issued on an emergency basis to authorize either specification or non-specification packagings (oxygen systems) for use by patients on board a passenger ship. (Modes 1 and 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9738–N	DOT–E 9738	Unocal Corp., Los Angeles, CA	49 CFR 173.245	To authorize shipment of corrosive liquids in DOT Specification MC–308 stainless steel cargo tanks. (Modes 1 and 2.)
9860–N	DOT–E 9860	Hoover Group, Inc., Beatrice, NE	49 CFR 178.82	To authorize manufacture, marking and sale of non-DOT specification stainless steel drum-type container of 55-gallon capacity, conforming to DOT Specification 5B with certain exceptions—for shipment of those materials authorized in a DOT Specification 5B removable head stainless steel drum. (Modes 1, 2, 3.)
9861–N	DOT–E 9861	Degussa Corp., Teterboro, NJ	49 CFR 173.154, 175.3	To authorize shipment of sodium perborate anhydrous (oxoborate), classed as oxidizer, in DOT Specification 44B and 44C bags. (Modes 1, 2, 3, 4.)
9902–N	DOT–E 9902	Purusar Corp., Sunnyvale, CA	49 CFR 173.273	To authorize use of a DOT Specification 3AA cylinder having a capacity greater than one (1) gallon for the transportation of sulfur trioxide, unstabilized. (Mode 1.)
9903–N	DOT–E 9903	Sherwood, Division of Hansco, Lockport, NY.	49 CFR 173.327(a)	To authorize manufacture, marking and sale of specially designed and operated valves to be used on cylinders for shipment of poison A materials. (Mode 1.)
9915–N	DOT–E 9915	Hughes Aircraft Co., Tucson, AZ	49 CFR 172.101, column 6(b), 173.59(a), 175.30.	To authorize shipment of rocket ammunition with explosive projectile, identified as tow missiles, Classed as Class A explosive. (Mode 4.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9626-N	DOT-E 9926	Implementos Agricolas LaLa, N.A., 35070 Gomez Palacio, Durango, Mexico.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(a)(2), 173.3, 178.65-2, 178.65-5.	To authorize manufacture, marking and sale of nonrefillable, non-DOT specification cylinder designed and manufactured in accordance with DOT-39 specification, except for material of construction. (Modes 1, 2, 3, 4, 5.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9211-X	DOT-E 9211	Waterman Steamship Corp., New Orleans, LA.	49 CFR 146.29-35(f)	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3.)
EE 9211-X	DOT-E 9211	Maersk Line, Limited, New York, NY.	49 CFR 146.29-35(f)	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3.)
EE 9941-N	DOT-E 9941	Morton Thiokol, Inc., Huntsville, AL.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize transport of rocket motors in a propulsive state with igniters installed (Mode 1.)
EE 9955-N	DOT-E 9955	International Services Corp., Washington, DC.	49 CFR 173.101, column (6)(b), 175.30.	To authorize transport of ammunition for cannon which is forbidden for shipment aboard cargo aircraft. (Mode 4.)
EE 9956-N	DOT-E 9956	Dixie Petro-Chem, Inc., Houston, TX.	49 CFR 173.277(a)(9), 178.340, 178.343.	To authorize shipment of hypochlorite solution in an unlined non-DOT specification cargo tank constructed of titanium. (Mode 1.)
EE 9957-N	DOT-E 9957	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, 172.420	To authorize transport of lithium batteries containing parallel branches of series connected cells without diodes. (Mode 1.)
EE 9958-N	DOT-E 9956	Burlington Northern Railroad Co., Seattle, WA.	49 CFR 173.29(c)(2), 179.102-2	To authorize a one-time shipment of a tank car which contains a residue of chlorine with a defective liquid valve equipped with a chlorine "C" kit. (Mode 2.)
EE 9959-N	DOT-E 9959	Advanced Technology Materials, Inc., New Milford, CT.	49 CFR 173.276, 175.3	To authorize a one-time shipment of a limited quantity of hydrazine using stainless steel DOT Specification 3E or DOT Specification 3E400 cylinders. (Modes 1 and 4.)
EE 9960-N	DOT-E 9960	Youth With A Mission, Washington, DC.	49 CFR 173.116, 173.21, 175.30, 175.85, Part 107, Appendix B, Part 172, Subparts C, D, E.	To authorize carriage onboard an aircraft of small quantities of a flammable liquid in safety lamp. (Mode 5.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8442-X	Texaco Trading and Transportation Inc., Denver, CO.	49 CFR 172.101, 173.315(a), 173.315(c)(1).	To authorize manufacture, marking and sale of non-vacuum insulated DOT Specification MC-331 cargo tanks for transportation of flammable and nonflammable gases. (Mode 1.)
9341-X	Essex Environmental Industries, Inc., Hurst, TX.	49 CFR 173.3(c)	To authorize manufacture, marking and sale of polyethylene, removable head, salvage drums, for transportation of damaged or leaking packages of hazardous materials. (Modes 1 and 2.)

Denials

9620-N Request by Custom Chemical Packaging Company Springfield, OH to authorize exemption from packaging, labeling, and shipping paper requirements of 49 CFR Part 172 for limited quantities of Corrosive, Flammable and Poison B materials denied April 11, 1988.

9638-N Request by S. & W. Waste, Inc. South Kearny, NJ to authorize exemption from the specification packaging requirements of 49 CFR 173.154 for flammable solids denied April 21, 1988.

Issued in Washington, DC, On May 23, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-12125 Filed 5-27-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 23, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0079.
Form Number: CF 4790.
Type of Review: Reinstatement.
Title: Report of international Transportation of Currency or Monetary Instruments.
Description: The CF 4790 establishes a record, where none previously existed, of currency and negotiable instruments entering and leaving the United States, and has a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings.
Respondents: Individual or households, Businesses or other forprofit, Small businesses or organizations.
Estimated Burden: 26,384 hours.
Clearance Officer: B.J. Simms (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.

Departmental Reports, Management Officer.

[FR Doc. 88-12126 Filed 5-27-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

OMB Number: 1545-0199.
Form Numbers: 5305-SEP.
Type of Review: Extension.
Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.
Description: This form is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS but to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP. The data is used to verify the deduction.
Respondents: Businesses or other for-profit.
Estimated Burden: 26,600 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports, Management Officer.

[FR Doc. 88-12129 Filed 5-27-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Report of New Matching Program

AGENCY: Veterans Administration.

ACTION: Notice of Matching Program—CHAMPVA and DoD CHAMPUS records.

SUMMARY: The Veterans Administration (VA) is providing notice that the Department of Medicine and Surgery (DM&S) will conduct a series of computer matches of VA records of beneficiaries of the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) with similar records of the Department of Defense (DoD). The goal of these matches is to identify individuals who have received medical services paid for under the CHAMPVA and who are not eligible for the Program.

DATE: It is anticipated the matches will commence approximately May 1988.

ADDRESS: Interested individuals may comment on the proposed matches by writing to the Chief Medical Director (136), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Mount, Policies and Procedures Division, Medical Administration Service (136), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, area code 202-233-2143.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: May 23, 1988.

Thomas K. Turnage,

Administrator.

Report of Matching Program

Veterans Administration Records of Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) and Department of Defense Records of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

a. *Authority:* 38 U.S.C. 613.

b. *Program Description.*—(1) *Purpose.* The Department of Medicine and Surgery (DM&S) plans to match the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) file with the Medical Claims History Files of the Department of Defense. Title 38, United States Code, section 613 authorizes health care for the following persons provided they are not eligible for medical care under CHAMPUS or Medicare:

(i) The spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability;

(ii) The surviving spouse or child of a veteran who died as a result of a service-connected disability, or who at the time of death had a total disability, permanent in nature, resulting from a service-connected disability;

(iii) The surviving spouse or child of a person who died while on active duty.

Surviving spouses include those who remarried and the subsequent marriage was terminated. Eligibility for CHAMPVA benefits is determined by the VA and beneficiaries obtain their medical care from private health care providers.

Under an agreement between the VA and the DoD, payment or reimbursement for the costs of CHAMPVA care is under the overall jurisdiction of the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS). Benefits are paid in the same manner and under the same conditions as benefits are provided to the dependents of retirees, and survivors of deceased members of the uniformed services

under CHAMPUS. OCHAMPUS contracts with various private organizations, or fiscal intermediaries, to process and pay CHAMPUS and CHAMPVA claims. The VA reimburses OCHAMPUS on a monthly basis for actual costs of CHAMPVA claims processed by the fiscal intermediaries. The matches will identify claims that have been paid for persons ineligible for CHAMPVA benefits.

(2) *Procedures.* The VA DM&S will perform the match of a VA system of records on CHAMPVA beneficiaries with information provided by DoD from CHAMPUS records of persons who received medical care paid for under CHAMPVA, to determine if there have been overpayments as a result of ineligible persons receiving CHAMPVA benefits.

In the event of a "hit", i.e., a determination through the match that an individual has received care for which he or she is not eligible, the identity of the person and the information will be verified. Where there are reasonable grounds to believe there has been a payment(s) for an ineligible individual, the matter will be investigated and collection action will be initiated where appropriate.

c. *Records to be Matched.* Automated records from the following system of records will be matched:

(1) Veterans Administration—Veteran's Spouse or Dependent Civilian Health and Medical Care Records-VA (54VA136) as set forth on page 793 of the Federal Register publication titled, "Privacy Act Issuances," 1988 Compilation, Vol. V; and

(2) Department of Defense—Medical Claim History Files (DOCHA 07) set forth on page 175 of the Federal Register publication titled, "Privacy Act Issuances," 1988 Compilation, Vol. III.

The disclosure of information from these systems of records, for the purpose of the matching program, is permitted by published routine uses.

d. *Period of Match.* Intermittently from approximately May 1988. The matching may be cyclical or may be repeated periodically.

e. *Safeguards.* Records used in the matches and data generated as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the matches or follow-up actions. All of the material will be stored in locked containers when not in use. The matching file will be used and accessed only to match files in accordance with this notice and will not be used to extract information concerning "non hit" individuals for any purpose.

f. *Retention and Disposition.* Records not resulting in "hits" will be destroyed by burning, shredding or electronic erasing within three months of the completion of the individual match. Records resulting in "hits" will be retained by the DM&S until the completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 88-12048 Filed 5-27-88; 8:45 am]

BILLING CODE 3320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 104
Tuesday, May 31, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 2:00 p.m.–6:00 p.m.

PLACE: African Development Foundation, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC 20036.

DATE: Wednesday, June 8, 1988.

STATUS: Open.

Agenda

1. Chairman's Report.
2. President's Report.
3. Discussion of OTA Report and ADF's Response to Recommendations.
4. Discussion with OTA principle Investigators.
5. Other.

CONTACT PERSON FOR MORE INFORMATION: Ms. Janis McCollim, 673–3916.

Leonard H. Robinson, Jr.,
President.

ADF Agency Number 11016006
ADF BOAC Number 057601

[FR Doc. 88-12207 Filed 5-26-88; 1:23 pm]

BILLING CODE 6116-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 24, 1988, 53 FR 18651.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 25, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added:

Item No., Docket No., and Company

CAG–76
CP84–336–002, CP86–623–000, CP87–409–000,
CP88–52–000 and CP88–84–000,
Transcontinental Gas Pipe Line Corporation

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-12254 Filed 5-26-88 5:56 pm]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

VOL 53 ISS 104 MAY 31 1988 UMI

VOL 53 ISS 104 MY 31 1988 UMI

Corrections

Federal Register
Vol. 53, No. 104
Tuesday, May 31, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 15]

Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Adjustment of Recovery—Excess Resources

Correction

In rule document 88-10353 beginning on page 16542 in the issue of Tuesday, May 10, 1988, make the following correction:

§416.554 [Corrected]

On page 16543, in the third column, in §416.554, in the introductory paragraph, in the 11th line, "no" should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-08-4220-11; GP-08-130; OR-2187, ORE-012982, ORE-015246-A, ORE-012702, OR-011648-A]

Proposed Continuation of Withdrawals; Oregon

Correction

In notice document 88-10056 beginning on page 16917 in the issue of Thursday, May 12, 1988, make the following correction:

On page 16917, in the third column, under "Rogue River National Forest", the last line should read "T. 40 S., R. 1 E., W.M., secs. 16 and 21."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Outer Continental Shelf Minerals and Rights-of-Way Management, General; and Outer Continental Shelf Orders for All Regions of the Outer Continental Shelf

Correction

In rule document 88-6532 beginning on page 10596 in the issue of Friday, April, 1, 1988, and corrected at page 12227 in the issue of Wednesday, April 13, 1988, make the following correction:

§ 250.45 [Corrected]

On page 10712, in § 250.45(e), in the third column, in the table, in the first entry, "25" should appear under the column designated "3".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Deadline for Acceptance of Petitions Requesting Modification of List of Articles Eligible for Duty-Free Treatment Under the GSP and Requests to Review the GSP Status of Beneficiary Developing Countries

Correction

In notice document 88-7585 beginning on page 11580 in the issue of Thursday, April 7, 1988, make the following correction:

On page 11581, in the first column, in the eighth line, after "will" insert "not".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 4

Systemic Diseases, Temporary Total Evaluations Based on Periods of Hospitalization or Surgery, Regular Scheduler Assignment of a Total Evaluation Based on Total Industrial Impairment

Correction

In proposed rule document 88-11272 beginning on page 18099 in the issue of Friday, May 20, 1988, make the following correction:

§ 4.88a [Corrected]

On page 18101, in the third column, in § 4.88a, in diagnostic code 6318, in the fourth line, "military" should read "miliary".

BILLING CODE 1505-01-D

federal register

Tuesday
May 31, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Boeing Model 737 Series Airplanes; Notices of Proposed Rulemaking

VOL 53 ISS 104 MY 31 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-66-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to supersede two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes, which currently require an external inspection of the skin at certain fuselage lap joints for cracks, corrosion, and/or delamination, and repair, if necessary. This action would retain the requirements of the currently existing AD's, but would increase the area to be inspected and intensify the methods of inspection. This proposal is prompted by reports of numerous cracks found during inspections of airplanes that have accumulated more than 40,000 landings. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than July 24, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-66-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing such FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-66-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On October 5, 1987, the FAA issued AD 87-21-08, Amendment 39-5752 (52 FR 38395; October 16, 1987), which requires inspection for cracking, and repair or replacement, if necessary, of the skin along the upper row of fasteners of certain fuselage lap joints. That action was prompted by inspection reports that identified extensive skin cracking found adjacent to lap splice fasteners, and delamination of fuselage tearstraps found in these same areas. This condition, if not corrected, could lead to rapid depressurization of the airplane.

Further, following a recent accident involving a Boeing Model 737-200 series airplane in which a large portion of the upper fuselage separated from the airplane, the FAA issued telegraphic AD T88-10-51 on May 4, 1988, to require certain inspections at all fuselage lap joints.

Recent inspection reports indicate that cracking has been found in several of the longitudinal skin splices where delamination of the cold bond has deteriorated. In addition, cracking in the skin along the stringer (S) 17 crease beam has been reported. Both of these cracking scenarios involve delamination that results in a knife edge condition of countersunk rivets in the skin, which, in turn, may result in early fatigue crack initiation. Disbonded doublers and lap joints, as well as corrosion between skin and doublers, have been reported on several airplanes.

These conditions may exist on airplanes manufactured with the early hot bonded doublers (line number 001 through 464) and the cold bonded lap joint (line number 001 through 291). There has been no service experience to indicate that problems exist with the improved hot bonded doublers beginning at line number 465. It should be noted that, although there have been reports of corrosion and delamination of the skin and doubler at the lap joints of airplanes between line number 292 and 464, there have been no fatigue cracking reported. These airplanes are suspect, however, due to the similarity in the failure mode and the reports of delamination.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, which describes inspection and repair procedures for cracking, corrosion, and delamination in the skin at all the fuselage lap joints; and Boeing Service Bulletin 737-53-1089, dated May 10, 1985, which describes inspection and repair procedures for cracking, corrosion, and delamination in the skin along the S-17 crease beam.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA proposes to supersede AD 87-21-08 and telegraphic AD T88-10-51, with a new AD which would require inspections of the skin and doublers at all fuselage lap joints between BS 259 and BS 1016, and at S-17 between BS 360 and BS 540 and between BS 727 and BS 927, for cracks, corrosion, and/or delamination, and repair, if necessary, in accordance with the service bulletins previously mentioned.

It is estimated that 100 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2,000 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,000,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not maior under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87-21-08, Amendment 39-5762 (52 FR 38395; October 16, 1987), and Telegraphic AD T88-10-51, issued May 4, 1988, with the following new airworthiness directive:

Boeing: Applies to Mode 737 series airplanes, line number 001 through 464, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. For airplanes line number 001 through 291 accomplish the following:

1. Within the next 500 landings after the effective date of this Ad, or prior to the accumulation of 40,000 landings, whichever occurs later, unles previously accomplished within the last 4,000 landings, and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; accomplish the following:

a. Perform a high frequency eddy current inspection for cracks of the skin at fuselage lap joints S-4 and S-10 between body station (BS) 259 and BS 1016, in accordance with Boeing Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988.

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b. Perform a detailed external visual inspection, using a 10x magnifying glass, of the lap splices listed in paragraph A.1.a., above, and all other lap splices between BS 259 and BS 1016, for cracks and evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. Adequate lighting must be used for this inspection. If the paint is irregular or too thick to detect cracks, it must be stripped using an approved chemical stripper.

If cracks or evidence of corrosion or delamination are found in the lap splices at S–14, S–19, S–20, S–24, S–25, or S–28, prior to further flight, perform an eddy current inspection of the entire length of the affected panel for cracks and to determine material loss, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988.

Repair any cracks, corrosion, and delamination found as a result of the inspections required by paragraph A.1.a. or A.1.b., above, prior to further flight (except as permitted by paragraph D., below), in accordance with Boeing Alert Service Bulletin 727–53A1039, Revision 4, dated April 14, 1988.

2. Prior to the accumulation of 80,000 landings or within the next 4 years, whichever occurs first; or within 1 year after the effective date of this AD, whichever occurs later, accomplish the modification described in paragraph E., below.

B. For airplanes line numbers 292 through 464, accomplish the following:

1. Within the next 500 landing after the effective date of this AD, or prior to the accumulation of 60,000 landings, whichever occurs later, unless previously accomplished within the last 4,000 landings, and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; perform a detailed visual inspection, using a 10x magnifying glass, of the skin at all fuselage lap joints between body station (BS) 259 and BS 1016 for cracks and evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. Adequate lighting must be used for this inspection. If the paint is irregular or too thick to detect cracks, is must be stripped using an approved chemical stripper. If cracks or evidence of corrosion or delamination are found, prior to further flight, perform an eddy current inspection of the entire length of the affected panel for cracks and to determine material loss, as necessary, and repair prior to further flight (except as permitted by paragraph D., below), in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988.

C. For airplanes line number 001 through 464 accomplished the following:

1. Within the next 500 landing after the effective date of this AD, or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously accomplished within the last 4,000 landings, and thereafter at intervals of 4,500 langinds or 15 months, whichever occurs first; perform an external detailed visual inspection, using a 10x magnifying glass, of the skin at S–17 between BS 360 and BS 540 and between BS 727 and BS 927 for cracks and evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. Adequate lighting must be used for this inspection. If the paint is irrgular or too thick to detect cracks, is must be stripped using an approved chemical stripper. If cracks or evidence of corrosion or delamination are found, prior to further flight, perform an eddy current inspection of the entire length of the affected panel in accordance with an FAA-approved method, and repair in accordance with Boeing Service Bulletin 737–53–1088, dated May 10, 1988.

2. Within the next 2,250 landings or within the next 6 months after the effective date of this AD, whichever occurs first or prior to the accumulation of 40,000 landings, whichever occurs later, unless accomplished within the last 9,750 landings, and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first; perform an internal visual inspection of all tearstraps (circumferential portion of the bonded waffle doubler which are not mechanically fastened to the skin between BS 259 and BS 1016) for delamination and corrosion. Adequate lighting must be used for this inspection. Inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasteners. Check for disbond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. If disbond or corrosion is found, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Boeing Service Bulletin 737–53–1069, dated May 10, 1988, or Boeing Service Bulletin 737–53–1070, dated October 30, 1986, as appropriate.

D. If corrosion, found as a result of the external inspection required by paragraphs A.1. and B.1., above, does not exceed 5% of the skin thickness, conduct an external detailed visual inspection in accordance with paragraph A.1. or B.1., as appropriate, above, at intervals not to exceed 2,250 landings or 6 months, whichever occurs first, until repair is accomplished. If such corrosion exceeds 5% of skin thickness, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, except change thickness reduction allowables to half those currently permitted by the service bulletin. Following such a repair, resume inspections in accordance with paragraph A.1. or B.1., above, as appropriate.

E. Accomplishment of the following two procedures constitutes terminating action for the inspections required by paragraphs A.1., B.1., C.1., and C.2, above.

1. Accomplish the terminating repair at all lap joints, which includes replacing all upper row fasteners with protruding head fasteners and assuring continued functionality of the tearstraps, by the use of mechanical fasteners, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, except that the mechanical fasteners are required in all tearstrap bays around the fuselage.

2. Accomplish the preventative modification as described in Boeing Service Bulletin 737–53–1069, dated May 10, 1985, along S–17.

F. Within 15 months after the accomplishment of the procedures described in paragraph E., above, and thereafter at intervals not to exceed 15 months, perform an external visual inspection for corrosion at all lap joints in accordance with Boeing Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, and on the skin along S–17 in accordance with Boeing Service Bulletin 737–53–1069, dated May 10, 1985. If corrosion is found which does not exceed 5% of the skin thickness, continue to accomplish these inspections at intervals not to exceed 7 months, until repaired. If such corrosion exceeds 5% of the skin thickness, repair prior to further flight in accordance with these service bulletins, as appropriate.

G. Within 1 month after the completion of any inspection required by this AD, submit a report, in writing, including a complete description of the location and size of all cracks, corrosion, and delamination found, along with the aircraft serial number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. Reports of airplanes found to be free of cracks, corrosion, or delamination are also required.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 24, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–12074 Filed 5–25–88; 2:23 pm]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–67–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require external inspections of the circumferential fuselage splices and internal inspections of the bonded doublers for delamination, cracking, and corrosion. Additionally, it would require an internal corrosion inspection of the lower skin and stringers on airplanes on which a terminating action, in accordance with an existing AD, had been performed. This proposal is prompted by a report of cracking on the circumferential fuselage skin splice on one airplane and several reports of delamination of the bonded doubler. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than July 24, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–67–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124.

This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM–120S; telephone (206) 431–1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–67–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The FAA has received numerous inspection reports concerning Boeing Model 737 series airplanes, that have identified several problem areas which necessitate inspection action. Cracking has been found on the circumferential fuselage skin splice at body station (BS) 360 on a Boeing Model 737–200 with approximately 90,000 flight cycles. While the cause of these cracks is still under investigation, evidence indicates that they may have been caused by delamination of a fail-safe bonded doubler that resulted in a knife edge condition of countersink rivets at the splice, which, in turn, could have resulted in early fatigue crack initiation. Disbonded doublers and corrosion between doublers and skin have been reported on several airplanes.

In addition to the areas described above, AD 82–01–09, Amendment 39–4299, currently requires repetitive inspections of the belly skin and stringers on Model 737 series airplanes, until a terminating modification is installed. This terminating modification comprises replacement of affected skin panels. Since the issuance of that AD, the FAA has determined that, following accomplishment of the terminating modification, routine maintenance may not be sufficient to detect additional corrosion in this area. Therefore, the FAA has determined that continuing inspection of this area is necessary in order to ensure detection of possible corrosion of the skin and stringers.

Failure to detect and repair cracks, corrosion, or delamination in the areas identified above could lead to rapid depressurization of the airplane.

FAA has reviewed and approved Boeing Service Bulletin 737–53–1076, dated October 30, 1986, which describes procedures for inspecting the bonded skin and doubler assemblies and Boeing Alert Service Bulletin 737–53A1042, Revision 4, dated November 5, 1982, which describes inspection procedures for the lower lobe hot bonded skin panel and provides repair and replacement instructions.

Since this condition is likely to exist or develop on other airplanes of the same type design, this action would require external inspections of the circumferential fuselage splices and internal inspections of the bonded doublers for delamination, corrosion, and cracks; and inspection of the belly skin and stringers for corrosion; in accordance with the service bulletin previously mentioned, in order to prevent the potential for rapid depressurization of the airplane.

It is estimated that 100 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2,000 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,000,000.

Information collection requirements contained in this regulation have been approved by the office of management and budget under the provisions of the paperwork reduction act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact,

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positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 404, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent decompression of the airplane, accomplish the following:

A. Within 500 landings after the effective date of this AD, or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously performed within the past 4,000 landings, accomplish the following:

1. Perform a detailed external visual inspection, using a 10x magnifying glass, of the bonded skin panels, excluding tearstrap areas (circumferential portion of the bonded waffle doubler which are not mechanically fastened to the skin between BS 259 and BS 1016) identified in Boeing Service Bulletin 737-53-1078, dated October 30, 1986, with emphasis on the circumferential splices between BS 259 and BS 1016, for cracks and evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. Adequate lighting must be used for this inspection. If the paint is irregular or too thick to detect cracks, it must be stripped using an approved chemical stripper.

2. In addition to the detailed visual inspection above, perform a high frequency eddy current inspection for cracks from S-10R to S-10L in accordance with an FAA-approved method, along the most forward and most aft rivet row of each circumferential splice.

If no cracks, corrosion, or delamination are found as a result of the inspections required by paragraph A.1. or A.2., above, repeat all visual and eddy current inspections at intervals not to exceed 4,500 landings or 15 months, whichever occurs first.

B. In areas where evidence of corrosion, delamination, or cracks are found as a result of the inspections required by paragraph A., above, accomplish the following:

1. If corrosion depth found by the external inspections does not exceed 5% of skin thickness, conduct the repetitive external detailed visual inspections required by paragraph A., above, at intervals not to exceed 2,250 landings or 6 months, whichever occurs first, until repair is accomplished. Following the accomplishment of such a repair, continue to inspect at intervals not to exceed 4,500 landings or 15 months, whichever occurs first, in accordance with paragraph A., above.

2. If corrosion depth exceeds 5% repair prior to further flight, in accordance with Boeing Service Bulletin 737-53-1078, dated October 30, 1986. Following the accomplishment of such a repair, continue to inspect at intervals not to exceed 4,500 landings or 15 months, whichever occurs first, in accordance with paragraph A., above.

C. Within the next 4,500 landings or 15 months, after the effective date of this AD, whichever occurs first or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously performed within the past 7,500 landings, perform an internal inspection of the bonded doublers except for tearstraps (circumferential portion of the bonded waffle doubler which are not mechanically fastened to the skin between BS 259 and BS 1016) for evidence of corrosion or delamination in accordance with Boeing Service Bulletin 737-53-1078, dated October 30, 1986. Using adequate lighting, inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasteners. Inspect for debond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. In addition, perform a general internal visual inspection for corrosion of the skin, frames, and stringers between BS 259 and BS 1016. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. In areas where no evidence of corrosion or delamination is found, repeat the inspection at intervals not to exceed 12,000 landings or 4 years, whichever occurs first. In areas where evidence of corrosion or delamination is found, repair in accordance with the above service bulletin prior to further flight. Following such a repair, continue to inspect at intervals not to exceed 12,000 landings or 4 years, whichever occurs first.

D. For airplanes on which the terminating action for AD 82-01-09 has been accomplished: Within the next 4,500 landings after the effective date of this AD or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously accomplished in the past 7,500 landings; perform an internal corrosion inspection of the lower skin and stringers, in accordance with Boeing Alert Service Bulletin 737-53A1042, Revision 4, dated November 5, 1982. Repeat this inspection at intervals not to exceed 12,000 landings or 4 years, whichever occurs first. If corrosion is found, repair prior to further flight, in accordance with the Boeing Model 737 Structural Repair Manual.

E. Within 1 month after the completion of any inspection required by this AD, submit a report, in writing, of a complete description of the location and size of all cracks, corrosion, and delamination found, along with the aircraft serial number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. Reports of airplanes found to be free of cracks, corrosion, or delamination are also required.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 24, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12075 Filed 5-25-88; 2:23 pm]

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federal register

Tuesday
May 31, 1988

Part III

Federal Trade Commission

16 CFR Part 453

Funeral Industry Practices Trade Regulation Rule; Notice of Proposed Rulemaking

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FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces the Commission's decision to initiate the rulemaking proceeding to review the Funeral Industry Practices Trade Regulation Rule, 16 CFR Part 453 (the "Funeral Rule" or "Rule"), mandated by § 453.10 of the Rule. That section states that the Commission shall initiate a rulemaking amendment proceeding, four years after its effective date, to address whether the Funeral Rule should remain in effect unchanged, or should be amended or repealed. The Commission has made no determination on these issues; all of the Rule's requirements will be reexamined during the proceeding.

This notice sets out the rulemaking procedures to be followed, reference to the legal authority under which this amendment proceeding is proposed, a statement of the Commission's reasons for proposing this review, a list of specific questions and issues upon which the Commission particularly desires written and oral comment, an invitation for written comments, and instructions for prospective witnesses and other interested persons who desire to present oral statements or otherwise participate in this proceeding.

DATES: Written comments must be submitted on or before August 30, 1988.

Notification of interest in questioning witnesses must be submitted on or before July 30, 1988.

Prepared statements of witnesses and exhibits, if any, must be submitted on or before October 3, 1988 for witnesses at the Washington, DC hearings, November 1, 1988 for witnesses at the Chicago, Illinois hearings and December 1, 1988 for witnesses at the San Francisco, California hearings.

Public hearings commence at 9:30 a.m. on November 7, 1988 in Washington, DC, at 9:30 a.m. on December 5, 1988 in Chicago, Illinois and at 9:30 a.m. on January 9, 1989 in San Francisco, California.

ADDRESSES: Written comments, notifications of interest, prepared statements of witnesses and exhibits should be submitted in five copies to Henry B. Cabell, Presiding Officer, Federal Trade Commission Washington, DC, 20580, 202–326–3642. The public hearings will be held in Room 332 Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC, in Room 1437 Chicago Regional Office of the Federal Trade Commission, 55 East Monroe Street, Chicago, Illinois and in Room 570 San Francisco Regional Office of the Federal Trade Commission, 901 Market Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, Ra'ouf M. Abdullah, or Richard Kelly, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC, 20580, 202–326–3291, 202–328–3024, or 202–326–3304.

SUPPLEMENTARY INFORMATION: The Funeral Rule declares it an unfair or deceptive act or practice for funeral providers to: (1) Fail to furnish price information to funeral consumers; (2) require consumers to purchase items they do not desire to buy; or (3) embalm deceased human remains for a fee without authorization. The Rule further declares it a deceptive practice for funeral providers to misrepresent: (1) Requirements for embalming, cremations, and grave vaults or grave liners; (2) legal and cemetery requirements; (3) preservation and protection capabilities of funeral goods and services; or (4) cash advance charges for items obtained by the funeral provider on the consumer's behalf. To prevent these practices and to correct consumers' misimpressions, the Rule sets forth the following remedial requirements.

The Rule requires that funeral providers: (1) Disclose price and other information over the telephone to persons who call the funeral home and ask about its offerings or prices of funeral goods and services; (2) disclose written price information by means of a general price list ("GPL"), casket price list ("CPL"), and an outer burial container price list ("OBC–PL") to persons who inquire in person about funeral arrangements or the prices of funeral goods and services;[1] (3) give purchasers a written statement, after they have selected funeral goods and services, containing the prices for each of the items selected, the total price for the funeral arrangements selected, price estimates or actual costs, if known, for cash advance items, and any legal, cemetery or crematory requirements that compel the purchase of any items or services for the particular funeral; (4) make truthful representations about legal and other requirements that compel the purchase of particular items or services; (5) allow consumers to select and purchase only those goods and services they desire (instead of offering goods and services only in predetermined packages); (6) seek to obtain express approval before embalming the deceased for a fee; (7) make truthful representations about the preservative and protective value of funeral goods and services; (8) disclose that they charge a fee for obtaining cash advance items, if that is the case; and (9) make unfinished wood boxes or alternative containers available for direct cremation, if the provider offers direct cremation.

The Funeral Rule was promulgated on September 24, 1982, and became fully effective on April 30, 1984.[2] The Commission's decision to promulgate the Rule was subsequently affirmed in *Harry & Bryant Co. v. FTC*.[3] Having been duly promulgated, the Funeral Rule enjoys a presumptive validity. The Commission would require substantial evidence in the rulemaking record to justify a determination to amend or repeal the Rule.[4]

[1] The Rule permits providers to incorporate the information from the casket and outer burial container price lists in the general price list. This combined list also must be offered to persons who inquire in person about funeral arrangements or the prices of funeral goods and services.

[2] The Rule had two effective dates. Those portions of the Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537 (Oct. 6, 1983). The remainder of the Rule—the portions imposing affirmative obligations on funeral providers—became effective on April 30, 1984. Id.

N.B. The effective date of § 453.3(b)(1)(ii) of the Rule was changed from January 1, 1984 to April 30, 1984. 49 FR 564 (Jan. 5, 1984).

[3] 726 F.2d 993 (4th Cir. 1984), *cert denied*, 469 U.S. 820 (1984). The Court held that the Funeral Rule did not, as alleged, exceed the Commission's authority under sections 5 and 18 of the FTC Act and did not violate the funeral directors' First Amendment rights of commercial free speech.

[4] Under the requirements of section 18 of the FTC Act, 15 U.S.C. 57a and the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* and 701 *et seq.*, the existence of a duly promulgated rule reflects the status quo, and any change must be justified by a reasonable basis in the record. See *Motor Vehicle Mfrgs. Ass'n. v. State Farm Mut.*, 463 U.S. 29, 40–46 (1984) (the APA requires an administrative agency to provide a reasoned analysis for adopting, modifying or rescinding a regulation); *Ass'n of National Advertisers, Inc. v. FTC*, 617 F.2d 611, 614–615 (D.C. Cir. 1979) (section 18 rulemaking requirements complement, and, to an extent, modify the APA requirements); *Atchison, Topeka & Santa Fe Railway Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 807–808 (1973) (once an agency has settled on a course of action such as a regulation, the agency must set forth a reasonable basis in the rulemaking record for departing from it); *Center for Auto Safety v. Peck*, 751 F.2d 1336, 1343 (D.C. Cir. 1985) (the same standard applies whether the agency is enacting a new rule, or revoking or modifying an old one).

The evidence gathered to date in anticipation of this review is reported in two staff reports to the Commission, dated April 7, 1988 ("BCP Staff Report") and April 1988 ("An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services", or "BE Staff Report") and in two published reports of consumer surveys—a 1981 "baseline" study and a 1987 "replication" study—conducted at staff's request.

Copies of the BCP and BE Staff Reports, the baseline and validation study reports (entitled "FTC, Baseline and Follow-up Studies for Evaluating the Effect of the Funeral rule, Final Report," July 1982) and the replication study report (entitled "Report on the Survey of Recent Funeral Arrangers" FTC, April 1988) may be obtained in person or by mail free of charge from: Public Reference Room (Room 130), Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Section A. Statement of the Commission's Reasons for the Proposed Review

Section 453.10 of the Funeral Rule requires the Commission to initiate this review proceeding. That section states:

> No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(b) (of the FTC Act) [5] to determine whether the rule shall be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceedings.

The Commission announced in its Statement of Basis and Purpose for the Funeral Rule ("SBP") that the purpose of this unique provision was to determine, through an early review, whether there is a need to continue the Rule after it has had a fair opportunity to correct the industry problems it was adopted to remedy.[6] The Commission recognized that the Rule's effects may be evidenced more slowly than in other industries, because a funeral is an infrequent consumer purchase.[7] The Commission nonetheless determined that an early review was necessary to consider (a) whether the Rule appears to be working as expected in reducing barriers to price competition and increasing consumer choice, (b) whether some modification to the Rule is necessary to facilitate those benefits, and (c) whether repeal is warranted as a result of substantially reduced marketplace problems.[8]

At this time, the Commission has not determined whether any changes to the Rule are warranted, or whether the Rule should be retained as is or repealed. Instead, all of the Rule's provisions, including the issue of repeal, are open to debate and inquiry during the rulemaking proceeding. The Commission's decision on these issues shall be based on the rulemaking record viewed as a whole. At this time, the staff reports present evidence that, if the Rule overall warrants retention, several of its provisions may warrant additional scrutiny and may need to be changed. However, the Commission is required to demonstrate that any changes (or revocations) are based on substantial evidence in the rulemaking record.

To assess the Rule's market impact, Commission staff has to date gathered and reviewed information from the following primary sources. In 1981, staff requested Market Facts, Inc., an independent market research organization, to conduct a "baseline" survey ("BLS") of persons who had recently arranged a funeral. The study, which measured purchasers' knowledge of the funeral market and gauged their experience in arranging the recent funeral, was designed to provide "baseline" data on the incidence of those funeral industry practices addressed by the Funeral Rule.[9] In 1987, Market Facts conducted a "replication" study ("RS") of recent funeral arrangers designed to permit comparisons with the earlier study so that the impact of the Rule on consumers' purchasing behavior and knowledge of the funeral market, their funeral expenses, and industry practices and prices could be assessed. Commission staff has reviewed and analyzed the data from these two surveys, which, to our knowledge, comprise the only systematic, empirical information available on the impact of the Rule nationwide.[10]

Staff has also reviewed the responses to the Commission's Advance Notice of Proposed Rulemaking ("ANPR"), which was published in the Federal Register on December 9, 1987.[11] The ANPR sought public comment on how the Rule has affected consumers, funeral providers and others, and on what changes, if any, should be made to the Rule. During the comment period, 324 comments were received from consumers and consumer groups, industry members and observers, and state officials. Commission staff also has reviewed current and prior state laws regulating the funeral transaction to assess whether states have, over time, adopted the protections afforded by the Funeral Rule. The following discussion sets forth the most salient information presented in the staff reports, including suggestions for changes to the Rule made by ANPR commenters.

1. Overall Survey Results

The staff reports present evidence, based on the consumer surveys, that suggests that the Funeral Rule's requirements have not increased consumer shopping or reduced overall consumer expenditures for funerals, although the reports do indicate that more consumers are selecting cremation as the final form of disposition. The reports also present evidence that a majority of funeral providers are complying with most of the Rule's individual requirements, but are not simultaneously complying with three of the Rule's most important provisions.[12]

[5] Section 18(d)(1)(B) of the FTC Act states, in part.: A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection * * *.

[6] 47 FR 42260, 42288 (Sept. 24, 1982).

[7] *Id.*

[8] *Id.*

[9] Market Facts also conducted a validation follow-up study of 250 respondents to the baseline study because it appeared that the baseline study results contradicted much of the rulemaking evidence presented by consumer groups, consumers, and industry members in three areas: (1) Consumers' receipt of funeral price information over the telephone; (2) consumers' receipt of itemized prices and final statements at the funeral home; and (3) consumers' receipt of requests for advance permission to embalm. The follow-up results showed less than a 55% consistency response rate to the key questions in those three areas, and much higher rates in all other areas of the study that were re-tested. Upon its review of the baseline and validation results, the Commission staff, in conjunction with an independent survey analysis expert, concluded that the baseline results in those three areas were subject to serious qualification and differing interpretation. See Memorandum from Funeral Rule Staff to Commission, "Impact Evaluation Survey, Funeral TRR" (July 15, 1982). The Commission upon its review of staff's analysis decided not to reopen the rulemaking record to consider the baseline results; its decision was subsequently upheld in *Harry & Bryant Co. v. FTC* against a challenge of abuse of discretion. 726 F.2d 993, 998 (4th Cir. 1984).

[10] Respondents for these studies were drawn from the population of Market Facts' Consumer Mail Panel, a national sample of more than 220,000 (155,000 in 1981) households that have agreed to respond to mail questionnaires, telephone surveys, and other tests on a continuing basis. From a total pool of available households, balanced national samples were drawn to parallel census data with respect to selected social and demographic factors.

[11] 52 FR 46706 (1987).

[12] Those provisions require funeral providers to: (1) Provide a general price list at the beginning of discussion of funeral arrangements or the selection of funeral goods and services; (2) give consumers a

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The study results further indicate that: (1) Consumers who patronize funeral providers who comply with the Rule spend no less on their funeral arrangements; (2) consumers who receive the Rule-required price lists spend no less on funerals; (3) the proportion of consumers receiving some form of timely price information at the funeral home has increased; (4) purchasers who receive timely price information at the funeral home (but not necessarily a Rule-required price list) spend significantly less on funeral arrangements; and (5) funeral home misrepresentations have decreased somewhat and consumer knowledge about funeral requirements and about funeral goods and services has increased slightly. The Commission will consider these results in assessing whether the Rule should be repealed or retained. Comment on the study findings in requested below.

2. Evidence on Specific Rule Requirements

Telephone Disclosure Requirements

The Rule requires funeral providers to tell persons who call and ask about prices, terms or conditions of funeral arrangements or specific goods and services that price information is available over the telephone. The Rule further requires that providers must give any price information requested that is readily available. The purpose of these provisions was to ensure that consumers could obtain price information easily before selecting a funeral provider.

Some ANPR comments suggest that telephone disclosures are unnecessary and impractical, and the telling consumers that price information is available over the telephone offends some consumers. One industry trade group suggests that the Rule should allow funeral providers to respond to telephone requests for price information by means other than over the telephone, such as by mail, if they choose. Staff, on the other hand, believes that these suggestions for changes to the telephone disclosure provisions require an evaluation of whether individual consumers are generally aware of their right to ask for and receive price information over the telephone. The Commission seeks further comment on this question. The BLS and RS data present evidence that few individual consumers use the telephone to comparison shop among funeral homes or to seek price information. The study results also provide evidence that those consumers who do request price information over the telephone generally receive it.

Other ANPR commenters indicate that various consumer organizations and news reporters rely on the Rule's requirement that price information be given over the telephone to compile and publish comparative reports of local funeral home prices. Another commenter suggests that the telephone is unsuitable for discussions about funeral prices, and that providers should be permitted to provide requested price information by means other than over the telephone, such as by mail, if appropriate. The Commission seeks comment on whether the Rule's affirmative telephone disclosure requirement is accomplishing its intended purposes. In particular, if this provision is not accomplishing its purposes, the Commission solicits comments on whether the provision should be modified or repealed.

Written Price Disclosure Requirements

The Rule requires funeral providers to give consumers who inquire in person about funeral arrangements or prices one or more price lists that show the itemized prices for the following goods and services: direct cremation, immediate burial, forwarding/receiving remains, acknowledgment cards, use of automobile equipment, caskets and alternative containers, embalming, outer burial containers, preparation of the body, professional services of the funeral director and staff, use of facilities, and transportation of the deceased. The Rule does not require a specific format for these lists. Providers must offer these lists to consumers upon beginning discussion of funeral arrangements or the selection of funeral goods and services (general price list) or before the goods are shown (casket and outer burial container price lists). Consumers can keep the general price list.

The lists must also contain several disclosures regarding consumers' right to purchase only those goods and services they desire, and concerning the need for embalming and other potentially required goods and services. A principal purpose of all of these requirements is to avoid economic injury that consumers might incur as the result of either purchasing items or services they may not want or use or paying higher than competitive prices for those items and services.

The BE staff report indicates that the 1987 RS results provide no evidence that the offering to consumers of the rule-required price lists reduce consumers' overall expenditures for funerals.[18] That data indicate that consumers who received the lists spent no less on their arrangements than those who did not receive them. In addition, the results also provide evidence that purchasers who received timely price information that was not necessarily a rule-required price list spent significantly less for their arrangements; comparison with the 1981 BLS results indicates that the proportion of consumers receiving some type of oral or written price information early at the funeral home has increased. The RS results also present evidence that most consumers who receive the price lists say they are important in making selections of goods and services, and that most consumers keep the lists when they are offered by providers.

Some ANPR commenters say that price lists may not be useful to consumers because they are confusing. Several commenters suggest that the Rule should require a standard format for the general price list to correct that problem. Other commenters suggest that the timing, availability and itemization requirements regarding the general price list pose difficulties for providers, particularly because the offering of price lists may offend consumers who do not wish to discuss prices at the time the list is given to them. Two commenters suggest that, to remedy these alleged problems, providers should only be required to make the general price list available at the funeral home upon beginning discussion of prices or the selection of goods and services; consumers who make known to the provider their desire to keep the list would be able to do so. Several commenters further suggest that the Rule should permit providers to include a separate, non-declinable basic facilities charge on the general price list. Still other ANPR commenters raise the question whether the Rule's listing requirements cause providers to charge for items they might provide to consumers at no cost. The Commission is particularly interested in receiving comment on issues related to the efficacy of the required price lists, and poses several questions in Section C. below to help focus that comment.

Misrepresentation Provisions. The Rule prohibits funeral providers from misrepresenting that state or local law requires consumers to purchase embalming, caskets for cremation, grave liners or grave vaults, or any other funeral goods or funeral services. The Rule also prohibits providers from misrepresenting the preservative or protective value of funeral goods and services and from misrepresenting whether consumers will be charged for services in obtaining cash advance items. The Rule requires written and oral disclosures intended to prevent misrepresentations and to correct consumers misimpressions.

The BLS and RS results present evidence that misrepresentations prohibited by the Rule cause consumers to purchase goods and services they otherwise might not buy. This survey data also indicate that provider misrepresentations, which the results do not show to be currently widespread, have decreased and consumers' knowledge about funerals and funeral goods and services has increased somewhat. On the other hand, the survey results and other information in the ANPR comments present evidence that some proscribed misrepresentation is still occurring, and that many consumers still incorrectly believe that embalming is always required by law and that sealed caskets preserve human remains for an indefinite time. The Commission seeks comment on whether the misrepresentation provisions of the Rule should be modified or repealed.

Other information presented by the ANPR comments indicates that the disclosure regarding direct cremations, required by § 453.3(b)(2) of the Rule, may be confusing and inapposite where the provider does not stock unfinished wood boxes, but offers other alternative containers for use in direct cremations as permitted by the Rule. One ANPR commenter suggests that, to correct this situation, the disclosure should delete references to an unfinished wood box so that no distinction is made, for purposes of the Rule, between an unfinished wood box and other types of alternative containers.

Anti-Tying Provisions. The Rule prohibits funeral providers from requiring consumers to purchase unwanted goods and services as a condition of obtaining other items, except as required by law or permitted by the Rule. The Rule also requires itemization of funeral components and forbids providers from requiring finished caskets for cremation. The Rule further requires providers who arrange direct cremations to make available unfinished wood boxes or alternative containers for use in those dispositions.

The 1987 study results discussed earlier in the section regarding price lists provide no evidence that the specific, rule-required itemization reduces consumers' total funeral bill. The results do present evidence, however, that consumers spend less when they receive timely price information in other forms. And the results provide further indication that consumers find the price lists helpful and keep them when they are offered. The BCP staff report presents evidence that the proportion of cremation purchasers buying caskets has significantly decreased since 1981. Also, the 1987 results indicate that consumers are more knowledgeable about casket for cremation requirements.

Also, the BCP staff report discusses some evidence presented in the ANPR comments suggesting that the effectiveness of the anti-tying provisions may be weakened by some providers who charge high handling fees when consumers supply their own merchandise, such as caskets purchased from third-party casket sellers. Other ANPR commenters state that handling fees are necessary for providers to recoup overhead costs and profits lost on the sale of the casket. The Commission seeks comment below on the handling fee and other issues concerning the rule's anti-tying provisions.

Embalming Provisions. The Rule requires funeral providers to seek to obtain prior, express approval before charging consumers for embalming services. The Rule further prohibits providers from misrepresenting the need for embalming and requires them to disclose in writing the reasons why it is necessary if they represent to consumers that embalming is non-declinable.

The BCP staff report presents some evidence from the RS study that providers request prior approval for embalming in about half of the cases, and that about two-thirds of consumers who purchase embalming authorize it at some point in the transaction. The RS results, when compared to the BLS results, further suggest that embalming in arguably inappropriate cases—direct cremations or cremations with services where the body is not present—have decreased since 1981.

The BCP staff report discusses the views expressed by some ANPR commenters that the prior approval provision is difficult and impractical for providers, and that efforts to obtain approval can often be upsetting to consumers, particularly where the provider is removing the body from a hospital or nursing home. Two commenters suggest that, to remedy those alleged problems, the Rule should be changed to require only that providers obtain approval, before or after the service is performed, in order to charge a fee. Some information is presented in the comments that such a change may not result in economic injury to consumers, but might cause potentially severe emotional injury to religious groups or others who may not want embalming performed under any circumstances. The Commission is particularly interested in receiving comment on this issue.

Definition of Funeral Provider. The Rule covers only "funeral providers," defined in the Rule as any person, partnership or corporation that sells or offers to sell funeral goods *and* funeral services to the public. The Rule defines funeral goods as those goods sold directly to the public for use in connection with funeral services. The Rule defines funeral services as: (1) Those services used to care for and prepare deceased human bodies for burial, cremation, entombment of other final disposition; and (2) those services used to arrange, supervise or conduct a funeral ceremony or the final disposition of human bodies. Persons or firms that sell or offer to sell only funeral goods or only funeral services are not considered funeral providers for purposes of the Rule and thus are not subject to its requirements and prohibitions. For example, parties that sell only caskets or outer burial containers (grave liners and vaults) are not required under the Rule to disclose price information because they are not subject to its provisions.

The BCP staff report discusses some ANPR comments reporting alleged unfair or deceptive acts or practices by cemeteries, crematories and other sellers of funeral goods or funeral services not currently subject to the Rule. Other ANPR commenters suggest that funeral providers covered by the Rule may be placed at a competitive disadvantage because their actual or potential competitors are not subject to the Rule's requirements. Several ANPR commenters suggest that, to remedy this reported situation, the Rule's coverage should be expanded to include all providers that sell either funeral goods *or* funeral services. The Commission requests comment on the extent to which these reported practices are occurring and whether the Rule should cover these other providers.

The BCP Staff Report considered suggestions made in the ANPR comments that the rulemaking should include issues concerning minimum standards for pre-need contracts and cremation practices, and state pre-need regulations. The staff recommended against inclusion of these issues in the rulemaking as beyond the scope of the

sufficiently itemized statement of goods and services selected at the end of the arrangements conference; and (3) make no misrepresentations about casket for cremation or embalming requirements.

[18] The Commission takes no position at this time on the findings in the BE Staff Report and particularly requests comment on that Report.

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mandate set forth in § 453.10 of the Funeral Rule. The Commission concurs with this recommendation and, therefore, has not included those issues in the questions for comment.

Funeral Expenses and Funeral Prices. The BE staff report presents evidence, based on the BLS and RS, that consumers' total expenditures for funerals have increased more than the general rate of inflation ("real expenses") between 1981 and 1987, by as much as 9%. BE staff reports, however, that the study data cannot resolve whether that increase is due to an increase in real prices for funeral goods and services, or to an increase in the quantity (or quality) of items purchased, or some combination of those factors.

The ANPR comments present other information, based on data compiled by the Federated Funeral Directors of America, that real prices for funerals may have increased by as much as 4.2%–7.6% since December, 1983. Several ANPR commenters presented views and some data that funeral prices have increased since the Rule's promulgation; some attribute the price rise to the Rule, while others suggest that it may be due, at least in part, to the fact that providers may be "trading up" consumers so that purchasers buy additional or more expensive items. Other commenters present views that price increases are not harmful, because consumers are now exercising their informed choice. The Commission in its Statement of Basis and Purpose for the Funeral Rule recognized that funeral providers might decide to raise prices in response to the Rule's itemization requirements.[14] The Commission is particularly interested in receiving comment on the relation between any increases in real expenses for funerals and real funeral prices.

Compliance Issues. In judging whether the Funeral Rule warrants retention or repeal, the Commission will consider whether the Rule itself is sufficiently in place in the market. That is, are enough providers substantially complying with the Rule's requirements to permit accurate judgments about the costs and benefits of the Rule?

The staff reports present evidence from the 1987 RS data that 31% (and perhaps less) of funeral providers are *simultaneously* providing a general price list early in the arrangements conference and a sufficiently itemized statement of items selected, and making no misrepresentations about embalming and casket for cremation requirements, in accordance with the Rule. Viewing each Rule provision individually, the data also indicate that a majority of funeral providers are complying with most of the Rule 's individual requirements. The data further indicate, however, that about one-quarter of providers may be giving the general price list to consumers at the beginning of discussion of funeral arrangements, as required by the Rule. Other, less formal surveys presented in the ANPR comments suggest varying rates of provider compliance with individual Rule provisions. The Commission seeks comments below on whether the 1987 replication study data accurately reflect the actual level of industry compliance with the Rule, and on what level of compliance is sufficient to permit judgments about the costs and benefits of the Rule.

State Regulations. The Commission recognizes that state action to prevent any industry abuses may have benefits over regulation at the Federal level. However, when the Commission considered promulgation of the Rule in 1982, few states had adopted any of the individual provisions contained in the proposed Rule, and it appeared that no state had enacted a regulatory price disclosure scheme similar to the proposed Rule.[15] Staff has conducted a review of current state regulations to determine whether any significant changes in state regulation have occurred since that time. Staff reports that, although as many as thirteen (13) to twenty-five (25) states have adopted at least one of the Rules salient provisions, the majority of the states still have not incorporated into their laws a regulatory scheme similar to the Funeral Rule.

Conclusion. The Commission has carefully considered the staff reports and the comments received in response to the Advance Notice of Proposed Rulemaking. Based on § 453.10 of the Funeral Rule and the evidence presented to date, the Commission believes that the initiation of a rulemaking amendment proceeding would be in the public interest.

The public is advised that the Commission has not adopted any findings or conclusions of the staff. All findings in this proceeding shall be based solely on the rulemaking record. Accordingly, the Commission invites comment on the issues raised by the staff reports and the evidence presented to date.

The Commission's Rules of Practice shall govern the conduct of the rulemaking proceeding, except that, to the extent that this notice differs from the Rules of Practice, the provisions of this notice shall govern. This alternative form of proceeding is adopted in accordance with § 1.20 of those rules (16 CFR 1.20).

Section B. Invitation to Comment

All interested persons are hereby notified that they may submit data, views, or arguments on any issue of fact, law or policy which may have bearing upon the Rule review. Such comments may be either in writing or orally. Written comments will be accepted until August 30, 1988 and should be addressed to Henry Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202 326–3642. To assure prompt consideration, comments should be identified as "Funeral Rule Review Rulemaking Comments." Please furnish five copies of all comments. (Instructions for persons wishing to present their views orally are found in Sections E. and F. of this notice).

While the Commission welcomes comments on any issues which you feel may have bearing upon the proposed Rule review, questions on which the Commission particularly desire comments are listed in Section C. below. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the Funeral Rule being discussed. Comments should include reasons and data for the position. Comments opposing retention of the Rule or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve consumers than the Funeral Rule. Comments should include a full discussion of all the relevant facts and be based directly on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed Rule review.

The Commission emphasizes that the purpose of soliciting comments on the various issues is to determine whether the provisions of the Rule are operating as expected, and whether they have achieved the objectives and benefits envisioned by the Commission at the time they were enacted. Accordingly, the Commission requests commenters to provide information and data in the form of surveys, expert testimony, or anecdotal experience that reflects actual experience with the operation of the provisions of the Rule. Comment on the BE Staff Report's econometric analysis would particularly be appreciated.

[14] SBP at 42281.

[15] SBP at 42200, n. 95.

Section C. Questions and Issues

The Commission has decided to employ a modified version of the rulemaking procedures specified in § 1.13 of the Commission's Rules of Practice, proceeding with a single Notice of Proposed Rulemaking and the "no designated issues" format. Set forth below is a list of specific questions and issues upon which the Commission particularly desires comment and testimony. The list of questions is not intended to be a list of "disputed issues of material fact that are necessary to resolve," and any right to cross-examine will be determined with reference to the criteria set forth in the Commission's Rules of Practice.

Interested persons are urged to consider carefully the following questions. The Commission retains its authority to promulgate a final rule which differs from the current Rule in ways suggested by these questions and based upon the rulemaking record.

1. Should the Commission retain the Rule unchanged? Should the Commission retain the Rule but change some of its provisions? If so, which of its provisions should be changed, and how should they be changed? Whether you support or oppose retention, the Commission will give more weight to those comments that provide a statement of the costs and benefits to consumers and funeral providers that could reasonably be expected to result from retention or alteration of the Rule.

2. Should the Commission repeal the Rule? Whether you support or oppose repeal, the Commission will give more weight to those comments that provide a statement of the costs and benefits that could reasonably be expected to result from repeal of the Rule.

3. The replication study asked consumers who had arranged funerals whether, and at what time in the funeral transaction, they received information on prices and arrangements from the funeral provider. What are the advantages and disadvantages of relying on consumer recall and assessing the degree of compliance with the Rule and the Rule's impact on the funeral market? What evidence is there that consumers might not accurately report their experiences?

4. The replication study suggests that: (1) Approximately half of funeral providers give purchasers a general price list early in their meetings at the funeral home (before selection of a casket); (2) a majority of funeral providers give purchasers a properly itemized, written final statement at the conclusion of their arrangements conferences; (3) a majority of funeral providers do not misrepresent casket for cremation or embalming requirements; and (4) a minority (about 30%) of funeral providers are simultaneously complying with all of three of the preceding provisions of the Rule. Do these findings accurately reflect the level of industry with these Rule provisions? What other evidence exists on the level of industry compliance with these, and other, provisions of the Rule? Are these levels of compliance sufficient to permit accurate judgments about the impact of the Rule on funeral consumers and funeral providers? If not, what level of compliance would be sufficient?

5. Most of the replication study respondents made funeral arrangements about three years after the Rule took effect. What are the advantages and disadvantages of reviewing the Rule after that time? In particular, has there been adequate time to assess accurately the impact of the Rule on the funeral market?

6. The survey evidence suggests that consumers' total expenditures on individual funeral arrangements, adjusted for inflation, have increased over time. Still, that evidence cannot establish whether the increase in expenditures was due to an increase in the real prices of individual funeral goods and services, and increase in the quantity (or quality) of funeral goods and services purchased, or some combination of the two. What other evidence exists on the changes in real consumer expenditures and real funeral prices since promulgation of the Rule? To the extent such changes have occurred, what are the reasons for those changes? Could increases in funeral providers' costs of doing business be an explanation? (See Question 16 also). Are there studies or other analyses of real consumer expenditures and real funeral prices that show the effects of the Rule by isolating them from the effects of other factors?

7. The replication study results suggest thatm few consumers use the telephone to comparison shop among funeral providers or to seek price information. If this is the case, is there any reason to retain the Rule's affirmative telephone disclosure requirement that providers tell callers who inquire about the prices, terms, or conditions of funeral arrangements that price information is available over the telephone? Are consumers generally aware of their right to ask for and receive price information for funeral goods and services over the telephone? What other evidence exists on the extent to which consumers comparison shop before selecting a funeral home? Is compliance with the telephone provisions of the Rule costly?

8. The Rule requires providers to reasonably answer, from the price lists and other readily available information, consumers' telephone requests for information about providers' funeral offerings or prices. Have any substantial costs arisen from this provision? If so, how do these costs compare to the provision's benefits? What problems, if any, have providers or consumers encountered as a result of this requirement? Is there any reason to believe that providers would not continue to provide requested price information over the telephone if the provision were repealed?

9. The preliminary analysis of the 1987 survey evidence indicates that: (1) Purchasers who received the price lists and the final statement required to be given or shown to consumers by the Rule spent no less on their funerals than purchasers who did not receive those documents; and (2) purchasers who received other forms of price information early in their arrangements conferences spent less on their funerals than individuals who did not receive that information early. Is this analysis correct? (To the extent feasible, the public is urged to comment on the underlying assumptions used in the analysis and on the validity of the econometric model itself.) What other evidence exists on the effects of the documents required to be given to consumers by the Rule on consumer expenditures and consumer choices? What other evidence exists on the effects of the provision of price information other than the documents required by the Rule on consumer expenditures and consumer choices?

10. Do consumers use the general price list in their selection of funeral goods and services? How do they use it? Do general price lists currently used by providers vary significantly in length, format, or the use of terminology? Would the adoption of a required standard format for the general price list change the way consumers or funeral providers use the lists in the funeral transaction? If so, how would their use change? The model general price list reproduced at the end of this section is intended to help focus your answer. Would such a required format impose any additional costs on providers? If so, what costs? What costs, if any, would be imposed on consumers? What, if any, are the benefits of a standardized format for the general price list, assuming that few consumers currently use the general price list to comparison

shop? (See "Model General Price List," which appears following Question 18.

11. Many ANPR commenters suggested expanding the Rule's scope of coverage to all providers of funeral goods *or* services. Staff has received few complaints about the practices of cemeteries, crematories, or other sellers of funeral goods or funeral services currently not subject to the Rule. What evidence exists on the extent to which unfair or deceptive acts or practices proscribed by the Rule are committed by providers not currently subject to the Rule? What, if any, competitive disadvantage do providers covered by the Rule experience because actual or potential competitors not subject to the Rule engage in the provision of funeral goods and services covered by the Rule?

12. Some commenters suggest that the Rule should require that funeral providers offer the general price list upon beginning discussion of "prices or the selection of goods and services" instead of upon beginning of discussion of "funeral arrangements or the selection." Those commenters state that strict compliance with the term "funeral arrangements" can result in the GPL being offered at moments when consumers may not wish to discuss funeral arrangements, such as during removal of the body from the place of death. Would the suggested change alter in any material way the obligations of funeral providers or the rights of consumers under the Rule? If so, how? Is there any evidence that funeral providers have different interpretations of the term "funeral arrangements?" If so, please provide that evidence.

13. The Rule requires that the general price list that must be given to consumers contain several affirmative statements that provide detailed information concerning the goods and services offered. In each case, the exact language to be used is specified. Is there a need to retain the precise language currently required by the Rule for those disclosures? Should the Rule permit providers to use alternative language of their choosing, as long as the language discloses the substance of the information now required by the Rule? What are the costs and benefits of such a change?

14. Some commenters suggest that providers may charge high handling fees for arrangements where consumers supply their own caskets purchased from third-party casket sellers. How prevalent is this practice? What evidence is there that handling fees are necessary for providers in such cases to recoup fixed and overhead costs or profits lost on the sale of the casket? Should the Rule address this practice? If so, how?

15. Some commenters suggest eliminating the requirement that providers obtain *prior* approval for embalming, stating that it is often difficult to comply with. What difficulties have providers encountered in seeking prior approval and how often have those difficulties occurred? What adverse effects, if any, have those difficulties had on the provision of funeral goods and services to consumers?

16. How have funeral providers' costs changed since the promulgation of the Rule? To what extent can these changes be attributed to the Rule?

17. Considerable time has passed since the close of the record on which the Rule was based. What studies, expert opinion, or anecdotal evidence exists concerning the relative degree of pre-purchase funeral information that is now available to consumers? To what extent, if any, does the availability of such information obviate the need for the Rule or any of its provisions?

18. To what extent do funeral providers comply with the casket and outer burial container price disclosure provisions by: (1) Preparing separate price lists that individuals can take with them when they leave the funeral home? (2) including detailed casket and outer burial container price information on the general price list? (3) preparing notebooks or binders that purchasers can review at the funeral home? What are the advantages and disadvantages of permitting funeral providers flexibility in complying with the provisions relating to casket and outer burial container price information?

Model General Price List (See Question 10)

ANY NAME FUNERAL HOME
100 Main Street
Yourtown, USA
(123) 456-7891

GENERAL PRICE LIST

(These Prices are Effective as of Month, Day, Year)

The goods and services shown below are those we can provide to our customers. *You may choose only those items you desire.* (However, any funeral arrangements you select will include a charge for our services.) If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for these items will be shown on your bill or the statement describing the funeral goods and services you selected. [We charge you for our services in buying these items.]**

Forwarding of remains to another funeral home ..... $____
This charge includes:
*removal of remains
*services of staff
*necessary authorizations
*embalming
*local transportation (but not shipping charges)
Receiving of remains from another funeral home ..... $____
This charge includes:
*services of staff
*care of remains
*transportation of remains to cemetery or crematory
Direct cremations: $____ to $____
Our charge for a direct cremation (without ceremony) includes
*removal of remains and transportation to crematory
*cremations
*necessary services of staff and authorizations
If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without outside covering), or pouches of canvas.
1. Direct Cremation with container provided by purchaser ..... $____
2. Direct Cremation with alternative container ..... $____
3. Direct Cremation with unfinished pine box ..... $____

*If a consumer may not decline a charge for the services of funeral director and staff this sentence must be included here. Please see the compliance guides for a further explanation.

**This sentence should be omitted if the funeral director does not make a service charge or does not receive and retain a rebate, commission or trade or volume discount upon a cash advance item.

Immediate burials: $____ to $____
Our charge for an immediate burial (without ceremony) includes:
*removal of body
*local transportation to cemetery
*necessary services of staff and authorizations
1. Immediate burial with container provided by purchaser ..... $____
2. Immediate burial with unfurnished pine box ..... $____
3. Immediate burial with beige cloth-covered soft wood casket with beige interior ..... $____
Funeral arrangements:
Transfer of Remains to Funeral Home (within 50 mile radius) ..... $____
Embalming ..... $____

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as a direct cremation or immediate burial.
Other Preparation of Body ..... $____
Use of Facilities for Viewing:
Main Stateroom (per day) ..... $____
Smaller Stateroom (per day) ..... $____
Use of Facilities for Funeral Ceremony:
Chapel ..... $____
Smaller Stateroom ..... $____
Other Use of Facilities:
Tent and chairs for graveside service ..... $____
Hearse ..... $____
Limousine ..... $____
Other Automotive Equipment:
Flower car ..... $____
Family car ..... $____
Acknowledgement Cards ..... $____
Caskets ..... $____ to $____
(a complete price list will be provided at the funeral home.)
Outer Burial Containers ..... $____ to $____
(A complete price list will be provided at the funeral home.)
Other:
Pallbearers (6) ..... $____
Burial clothing ..... $____ to $____
Service of Funeral Director and Staff ... $____
Our charge includes arrangement of funeral and consultation with the family and clergy, preparation and filing of necessary notices, and authorizations and consents. This fee for our services will be added to the total cost of the funeral arrangements you select. (Such a fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

Section D. Public Hearings

Three sets of public hearings will be held on this proposed trade regulation rule review. The first will commence on November 7, 1988 at 9:30 a.m. in Room 332, 6th Street and Pennsylvania Avenue NW., Washington, DC. The second will commence on December 5, 1988 at 9:30 a.m. in Room 1437, 55 East Monroe Street, Chicago, Illinois. The third will commence on January 9, 1989 in Room 570, 901 Market Street, Suite 570, San Francisco, CA. Tentatively scheduled are 7 days of public hearings at each site.

Persons desiring to present their views orally at the hearings should advise Henry Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202-326-3642, as soon as possible.

The Presiding Officer appointed for this proceeding shall have all powers prescribed in 16 CFR 1.13(c), subject to any limitations described in this notice.

Section E. Instruction to Witnesses

1. Advance Notice

If you wish to testify at the hearings, please notify the Presiding Officer immediately by letter or telephone of your desire to appear and file with him your complete, word-for-word statement no later than October 3, 1988 for witnesses at the Washington, DC hearings, November 1, 1988 for witnesses at the Chicago, Illinois hearings and December 1, 1988 for witnesses at the San Francisco, California hearings. [You may testify at only one of the hearings.] This advance notice is required so that other interested persons can determine the need to ask you questions and have an opportunity to prepare. Any cross-examination that is permitted may cover any of your written testimony, which will be entered into the record exactly as submitted. Consequently, it will not be necessary for you to repeat this statement at the hearing. You may simply appear to answer questions with regard to your written statement or you may deliver a short summary of the most important aspects of the statement within time limits to be set by the Presiding Officer. As a general rule, your oral summary should not exceed twenty minutes.

Prospective witnesses are advised that they may be subject to questioning by designated representatives of interested parties and by members of the Commission's staff. Prospective witnesses are also advised that they may be questioned about any data they have that supports or was used as a basis for general statements made in their testimony. Such questioning will be conducted subject to the discretion and control of the Presiding Officer and within such time limitations as he may impose. In the alternative, the Presiding Officer may conduct such examination himself or he may determine that full and true disclosure as to any issue or question may be achieved through rebuttal submissions or the presentation of additional oral or written statements. In all such instances, the Presiding Officer shall be governed by the need for a full and true disclosure of the facts and shall permit or conduct such examination with due regard for relevance to the factual issues raised by the proposed rule and the testimony delivered by each witness.

2. Use of Exhibits

Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the period of submission of written comments so that can be studied by other interested persons. If those documents are unavailable to you during this period you must file them as soon as possible thereafter and not later than the deadline for filing your prepared statement. Mark each of the documents with your name, and number them in sequence, (e.g., Jones Exhibit 1). Please also number all pages of each exhibit. The Presiding Officer has the power to refuse to accept for the rulemaking record any hearing exhibits that you have not furnished by the deadline.

3. Expert Witnesses

If you are going to testify as an expert witness, you must attach to your statement a curriculum vitae, biographical sketch, resume or summary of your professional background and a bibliography of your publications. It would be helpful if you would also include documentation for the opinions and conclusions you express by footnotes to your statements or in separate exhibits. If your testimony is based upon or chiefly concerned with one or two major research studies, copies should be furnished. The remaining citations to other works can be accomplished by using footnotes in your statement referring to those works.

4. Results of Surveys and Other Research Studies

If in your testimony you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present as an exhibit or exhibits all of the following information that is available to you.

(a) A complete report of the survey or other research study and the information and documents listed in paragraphs (b) through (e) below if they are not included in the report.

(b) A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

(c) Copies of all completed questionnaires or interview reports used in conducting the survey or study if respondents were permitted to answer questions in their own words rather than required to select an answer from one or more answers printed on the

questionnaire or suggested by the interviewer.

(d) A description of the methodology used in conducting the survey or other research study including the selection of and instructions to interviewers, introductory remarks by interviewers to respondents, and a sample questionnaire or other data collection instrument.

(e) A description of the statistical procedures used to analyze the data and all data tables which underlie the results reported.

Other interested persons may wish to examine the questionnaires, data collection forms and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information, along with computer tapes that were used to conduct analyses, should be made available (with appropriate explanatory data) upon request of the Presiding Officer. The Presiding Officer will then be in a position to permit their use by other interested persons or their counsel.

5. Identification, Number of Copies, and Inspection

To assure prompt consideration, all materials filed by prospective witnesses pursuant to the instructions contained in paragraphs 1 through 4 above should be identified as "Funeral Rule Review Rulemaking Statement" ("and Exhibits," if appropriate), submitted in five copies when feasible and not burdensome, and should include the name, title, address, and telephone number of the prospective witness.

6. Reasons for Requirement

The foregoing requirements are necessary to permit us to schedule the time for your appearances and that of other witnesses in an orderly manner. Other interested parties must have your expected testimony and supporting documents available for study before the hearing so they can decide whether to question you or file rebuttals. If you do not comply with all of the requirements, the Presiding Officer has the power to refuse to let you testify.

7. General Procedures

These hearings will be informal and courtroom rules of evidence will not apply. You will not be placed under oath unless the Presiding Officer so requires. You also are not required to respond to any question outside the area of your written statement. However, if such questions are permitted, you may respond if you feel you are prepared and have something to contribute. The Presiding Officer will assure that all questioning is conducted in a fair and reasonable manner and will allocate time according to the number of parties participating, the legitimate needs of each group for full and true disclosure, and the number and nature of the factual issues discussed. The Presiding Officer further has the right to limit the number of witnesses to be heard if the orderly conduct of the hearing so requires.

The deadlines established by this notice will not be extended and hearing dates will not be postponed unless hardship can be demonstrated.

Section F Notification of Interest

If you wish to avail yourself of the opportunity to question witnesses you must notify the Presiding Officer by July 30, 1988 of your position with respect to the proposed rulemaking proceeding. Your notification must be in sufficient detail to enable the Presiding Officer to identify groups with the same or similar interests respecting the general questions and issues provided in Section C. of this notice. The Presiding Officer may require the submission of additional information if your notification is inadequate. If you fail to file an adequate notification in sufficient detail, you may be denied the opportunity to cross-examine witnesses.

Before the hearings commence, the Presiding Officer will identify groups with the same or similar interests in the proceeding. These groups will be required to select a single representative for the purpose of conducting direct or cross-examination. If they are unable to agree, the Presiding Officer may select a representative for each group. The Presiding Officer will notify all interested persons of the identity of the group representatives at the earliest practicable time.

Group representatives will be given an opportunity to question each witness on any issue relevant to the proceeding and within the scope of the testimony. The Presiding Officer may disallow any questioning that is not appropriate for full and true disclosure as to relevant issues. The Presiding Officer may impose fair and reasonable time limitations on the questioning. Given that questioning by group representatives and the staff will satisfy the statutory requirements with respect to disputed issues, no such issues will be designated by the Presiding Officer.

Section G. Post-Hearing Procedures

The Presiding Officer will establish the time that you will be afforded after the close of the hearings to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions which are essentially additional written comments rather than rebuttal. The rebuttal period will include the time consumed in securing a complete transcript.

Within a reasonable time after the close of the rebuttal period, the staff shall release its recommendations to the Commission as required by the Commission's Rules of Practice. The Presiding Officer's report shall be released not later than 30 days thereafter and shall include a recommended decision based upon his or her findings and conclusions as to all relevant and material evidence. Post record comments, as described in § 1.13(h) of the Rules of Practice, shall be submitted not later than 60 days after the publication of the Presiding Officer's report.

Section H. Rulemaking Record

In view of the substantial rulemaking records that have been established in prior trade regulation rulemaking proceedings (and the consequent difficulty in reviewing such records), the Commission urges all interested persons to consider the relevance of any material before submitting it for the rulemaking record.

While the Commission encourages comments on its proposed review of the Funeral Rule, the submission of material that is not generally probative of the issues posed by the review merely overburdens the rulemaking record and decreases its usefulness, both of these reviewing the record and to interested persons using it during the course of the proceeding. The Commission's rulemaking staff has received similar instruction.

Material that the staff has obtained during the course of its investigation prior to the initiation of the rulemaking proceeding but that is not placed in the rulemaking record will be made available to the public to the extent that it is considered to be nonexempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

The rulemaking record, as defined in 16 CFR 1.18(a), will be made available for examination in Room 130, Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC.

Section I. Preliminary Regulatory Analysis

I. Need for, and Objectives of, the Proposed Review

Section 453.10 of the Federal Trade Commission's (FTC) Funeral Industry Practices Trade Regulation Rule ("Funeral Rule" or "Rule") require the FTC to conduct a rulemaking amendment proceeding to determine whether the Rule should be retained as is, amended, or repealed. That section states:

> No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(B) to determine whether the rule should be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceeding.

The current Rule essentially requires funeral providers to: (1) Disclose prices, available options and other information regarding funeral arrangements to consumers in person and over the telephone; (2) make truthful representations regarding legal and other requirements concerning funeral arrangements; (3) permit consumers to select and purchase only those goods and services they desire; (4) seek to obtain express permission before embalming the deceased for a fee; (5) make truthful representations about the preservative and protective value of funeral goods and services; and (6) disclose whether they charge a fee for arranging cash advance purchases. The Commission has authorized publication of a Notice of Proposed Rulemaking, which appears in the Federal Register concurrently with this preliminary regulatory analysis.

The FTC proposes to review whether the Funeral Rule appears to be working as expected in reducing barriers to price competition and increasing consumer choice in the funeral market, whether some modification is necessary to facilitate those benefits, and whether repeal is warranted as a result of substantially reduced marketplace problems. The Commission has decided to leave all of the Rule's requirements, including the issue of repeal, open to question during the rulemaking proceeding. This decision is based on the fact that, unlike other proposed rulemaking proceedings, this amendment proceeding is mandated by the Funeral Rule itself. Detailed information regarding the evidence collected and reviewed in anticipation of this review proceeding is contained in sections of the Notice of Proposed Rulemaking that precede this document and that is incorporated by reference into this analysis, in two survey reports entitled "FTC, Baseline and Follow-up Studies for Evaluating the Effect of the Funeral Rule, Final Report" (July 1982) and "Report on the Survey of Recent Funeral Arrangers," Market Facts, Inc., Report to the FTC (April 1988) and in two staff reports to the Commission dated April 7, 1988 and April 1988, which have been placed on the rulemaking record. This body of information presents evidence on the Rule's market impact that will be considered by the FTC in conjunction with all other evidence contained in the rulemaking record as a whole.

II. Legal Authority

The Commission has reason to believe that the amendment proceeding is in the public interest and proposes to review the Funeral Rule in accordance with section 18 of the Federal Trade Commission Act. 15 U.S.C. 57a.

III. Alternatives Considered by the Commission

The Commission can take several different forms of action. It can repeal the Rule, modify or repeal specific Rule provisions, or retain the Rule unchanged. The Commission discusses below the costs and benefits of repeal and no action. It is not able at this time to discuss the costs and benefits of each possible modification to the Funeral Rule's many provisions, because the available information presents some evidence to support and refute arguments that certain provisions' costs outweigh their benefits, and because it is unclear at this time whether the Rule is sufficiently in place in the market to permit accurate judgments about costs and benefits. Of course, the Commission shall consider those costs and benefits when it takes final action on this review.

1. Repeal the Rule

Under this option, the Commission would delete the Funeral Rule from the Body of trade regulation rules currently contained in the Code of Federal Regulations.

2. Take No Action

Under this option, the existing Rule would remain unchanged.

IV. Cost-Benefit Analysis

The two major groups that would be affected by repeal of the Funeral Rule are the funeral consumers who use the services and goods of funeral providers to make funeral arrangements, and the funeral providers themselves.

The funeral industry is a major industry in the United States, composed primarily of small businesses. According to industry estimates, there are currently slightly less than 22,000 funeral homes in the nation, about 50,000 licensed funeral directors and embalmers, and several hundred crematories geographically dispersed throughout the country. The number of deaths is about two million annually, and individual funeral homes conduct on average about 94 funerals a year. Consumers' current annual expenditures for funeral services is estimated by industry observers at approximately $4 billion, not including other funeral-related expenditures, such as cemetery charges and incidental items purchased for most individual funerals from third parties. These latter costs may raise consumers' funeral costs by as much as $2 billion or more. The Rule does not currently cover cemeteries that do not also operate funeral homes, sellers of only funeral goods, such as retail sellers of caskets, or sellers of only funeral services, such as direct cremation firms that do not sell funeral goods. The Rule's beneficiaries are consumers who use the services of funeral homes and crematories that provide services *and* sell funeral goods directly to the public.

A. Repeal the Current Rule

The Commission has considered the issue of repeal, and has decided to leave the issue open to question during the proceeding. The benefits of repealing the Rule are the savings incurred by avoiding the costs of the Rule's continued implementation, and the cost of repealing it equals the lost benefits from continued implementation.

Projected Benefits—1. Benefits to Funeral Providers: If the Rule is rescinded, providers may be able to realize savings from elimination of certain expenses associated with compliance with the Rule. These costs fall primarily into five categories.

a. *Making Telephone Disclosures.* The Rule requires providers to provide telephone callers with readily available information that answers callers' requests for price information. To the extent the Rule causes increased telephone requests for price information, it thus results in increased time spent by funeral home personnel in giving that information. If the Rule does not cause more such requests, it does not impose any excess personnel costs.

b. *Recordkeeping Costs.* The Rule requires providers to retain for one year copies of general price lists distributed to consumers and copies of required statements of items selected given to consumers for each funeral. The Rule thus imposes increased management

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and labor costs associated with maintaining those files.

c. *Reproduction Costs.* The Rule requires providers to give the general price list to consumers for their retention. It therefore imposes copying costs that permit copies of the lists to be provided to consumers.

d. *Updating Price Lists.* Providers must, under the Rule, update the rule-required price lists as their prices or offerings change. To the extent that providers already recalculate their prices whenever their costs or offerings change, the Rule imposes only those costs associated with the time necessary to transpose those prices to the price lists.

e. *Seeking Embalming Approval.* The Rule requires providers to seek to obtain express prior approval from a family member or other authorized person before embalming deceased human remains for a fee. To the extent the Rule causes providers to spend additional time seeking embalming authorization, it imposes the costs of that additional time.

2. *Benefits to Consumers:* Because any increased cost of doing business under the Rule is passed on to the consumer, the cost savings to providers from the Rule's repeal (discussed above) may benefit the consumer in the form of lower prices or improved services.

Costs and Adverse Economic Effects

1. *Cost to Providers:* No costs or adverse economic effects to providers would be expected from repeal of the Rule.

2. *Costs to Consumers:* Repeal of the Funeral Rule would eliminate any economic or emotional benefits that consumers presently derive from the Rule. Assuming that the Rule is operating as the Commission expected in promulgating it, the Rule generates two types of benefits for consumers.

a. *Price Competition Benefits.* The Rule is designed to alert consumers that price information is relevant and available at the critical moment of choosing a funeral provider, and to ensure that consumers can obtain sufficient price information to comparison shop among different funeral providers. Comparison shopping, by individual consumers or by groups such as memorial societies on consumers' behalf, may stimulate price competition among funeral providers so that consumers are better able to get the maximum for their money.

b. *Itemization Benefits.* The Rule is designed to give consumers, once they have selected a provider, the opportunity to consider various options and purchase only those items they desire.

B. Take no Action

The Commission could choose to take no action and leave the current Rule unchanged. In this case, the costs and benefits currently generated by the Rule would continue. The costs of the Rule are described in the previous section discussing the benefits of repeal. The benefits of the Rule are described in the previous section discussing the costs of repeal.

V. Summary and Explanation of Why the Commission Proposes to Review the Rule

The Commission has considered the options summarized in Part III of this analysis, and the costs and benefits of each. The Commission has concluded, based on the unique mandate of § 453.10 of the Rule, that a rulemaking amendment proceeding leaving all issues open to question would best serve the public interest by facilitating further exploration of these and any other options available in determining whether the Rule should be retained, amended, or repealed.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

By direction of the Commission.
Emily H. Rock,
Secretary.
[FR Doc. 88-12041 Filed 5-27-88; 8:45 am]
BILLING CODE 6750-01-M

federal register

Tuesday
May 31, 1988

Part IV

Education Department

Pell Grant, Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs; Revision of the Need Analysis Systems for the 1988–89 Academic Year; Notice of Revision to the Congressional Methodology and Family Contribution Schedule Methodology for the 1989–90 Award Year

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DEPARTMENT OF EDUCATION

Pell Grant, Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs; Revision of the Need Analysis Systems for the 1988–89 Academic Year

AGENCY: Department of Education.

ACTION: Notice of revision to the Congressional Methodology and the Family Contribution Schedule methodology for the 1989–90 award year.

SUMMARY: The Secretary of Education announces the annual updates to tables used in the need analysis methodologies that an institution of higher education must use in calculating expected family contributions for the 1988–89 award year under the Pell Grant, campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant), and Guaranteed Student Loan programs. The Secretary takes this action under the authority of Title IV of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Leibovitz, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB–3), Washington, DC 20202. Telephone (202) 732–4888.

SUPPLEMENTARY INFORMATION: The need analysis methodologies are used to determine student eligibility for assistance under Title IV of the Higher Education Act of 1965, as amended (HEA). There are two need analysis methodologies used under the above programs for determining a student's expected family contribution. One methodology, the Family Contribution Schedule, is used to calculate a student's expected family contribution for the Pell Grant Program. In the Pell Grant Program, a student's expected family contribution is also known as the Student Aid Index (SAI). The other methodology, the Congressional Methodology, is used to calculate a student's expected family contribution for the campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant) and Guaranteed Student Loan programs. Both of these methodologies are established by statute.

The HEA provides for the following annual updates:

I. Pell Grant Family Contribution Schedule

Sections 411A through 411F of the HEA specify the criteria, data elements, calculations, and tables used to calculate expected family contributions for the Pell Grant Program. For award years after the 1988–89 award year, the Secretary is required to publish revised Family Size Offset Tables. The Family Size Offset is an offset against income for the family's basic living expenses and it varies by family size.

Based on the most recent and relevant information (March 1987–88), the Secretary must revise the tables by increasing (or decreasing) the comparable amount for the preceding academic year by a percentage equal to the percentage increase (or decrease) in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, and rounded to the nearest $100. The Consumer Price Index for Wage Earners and Clerical Workers was 111.0 in March 1987 and 115.1 in March 1988. Accordingly, for the 1989–90 award year for the Pell Grant Program, the Family Size Offset Tables are revised as follows:

Family size offsets

Family members:	Amount
1	$5,500
2	6,900
3	8,400
4	10,800
5	12,300
6	14,300

Note.—Plus $1,800 for each additional family member.

Dependent student offsets

Marital status:	Amount
Single	$3,600
Married	5,300

II. Congressional Methodology

Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables for a schedule of expected family contributions for the campus-based and GSL programs. In addition, Part F requires that four of the tables, the Standard Maintenance Allowance, the Adjusted Net Worth of a Business or Farm, the Asset Protection Allowance, and the Assessment Schedules and Rates, be adjusted each year to take into account inflation that has taken place after December 31 of the previous year based, in general, upon increases in the Consumer Price Index.

For award year 1989–90, the Secretary is charged with updating the four tables to account for inflation that took place between December 1987 and December 1988. However, since the Secretary must publish these tables before December 1988, the increases in the tables must be based upon an estimate of the increase in the Consumer Price Index for 1988.

The Secretary estimates that the increase in the Consumer Price Index for the period December 1987, through December 1988, will be 4.5 percent. Therefore, for the 1989–90 award year for the campus-based and Guaranteed Student Loan Programs, the tables set forth in Part F have been updated as follows in sections 1 through 4 in accordance with this estimate and the other relevant provisions of Part F.

Part F also requires the Secretary to increase the maximum value for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described below in section 5.

1. Standard Maintenance Allowance

This allowance is an offset against income for the family's basic living expenses, and it varies by family size. The standard maintenance allowances for dependent students and independent students with dependents for award year 1989–90 are:

Family size [1]	Number in college—				
	1	2	3	4	5
2	$9,930	$7,410			
3	11,130	9,600	$8,080		
4	13,740	12,220	10,690	$9,170	
5	16,210	14,690	13,170	11,640	$9,050
6	18,960	17,440	15,920	14,390	12,870

[1] Including student.

Note.—For each additional family member add $2,140. For each additional college student subtract $1,520.

2. Adjusted Net Worth (NW) of a Business or Farm

A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since: (1) The income produced from such assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for dependent students, independent students without dependents, and independent students with dependents.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1 to $85,000	$0+40% of NW
$85,001 to $190,000	$26,000+50% of NW over $85,000
$190,001 to $320,000	$66,500+60% of NW over $190,000
$320,001 or more	$144,500+100% of NW over $320,000

3. Asset Protection Allowance

This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary education expenses. There are three asset protection allowance tables, one each for parents of dependent students, independent students without dependents, and independent students with dependents.

DEPENDENT STUDENTS

If the age of the older parent is—	And there are	
	Two parents	One parent
	Then the asset protection allowance is—	
25 or less	0	0
26	$2,200	$1,600
27	4,300	3,200
28	6,500	4,900
29	8,600	6,500
30	10,800	8,100
31	13,000	9,700
32	15,100	11,300
33	17,300	13,000
34	19,400	14,600
35	21,600	16,200
36	23,800	17,800
37	25,900	19,400
38	28,100	21,100
39	30,200	22,700
40	32,400	24,300
41	33,300	24,900
42	34,100	25,400
43	34,800	26,000
44	35,700	26,500
45	36,600	27,100
46	37,600	27,800
47	38,800	28,500
48	39,800	29,000
49	40,800	29,700
50	41,900	30,400
51	43,200	31,200
52	44,300	32,100
53	45,800	32,900
54	47,200	33,700
55	48,700	34,500
56	50,200	35,500
57	51,800	36,300
58	53,400	37,400
59	55,400	38,500
60	57,100	39,600
61	58,100	40,700
62	60,900	41,900
63	63,100	43,100
64	65,300	44,300
65 or more	67,500	45,700

Independent students without dependents

If the age of the student is—	Then the asset protection allowance is—
25 or less	0
26	$1,600
27	3,200
28	4,900
29	6,500
30	8,100
31	9,700
32	11,300
33	13,000
34	14,600
35	16,200
36	17,800
37	19,400
38	21,100
39	22,700
40	24,300
41	24,900
42	25,400
43	26,000
44	26,500
45	27,100
46	27,800
47	28,500
48	29,000
49	29,700
50	30,400
51	31,200
52	32,100
53	32,900
54	33,700
55	34,500
56	35,500
57	36,300
58	37,400
59	38,500
60	39,600
61	40,700
62	41,900
63	43,100
64	44,300
65 or more	45,700

INDEPENDENT STUDENTS WITH DEPENDENTS

If the age of the student is—	And the student is—	
	Married	Unmarried
	Then the asset protection allowance is—	
25 of less	0	0
26	$2,200	$1,600
27	4,300	3,200
28	6,500	4,900
29	8,600	6,500
30	10,800	8,100
31	13,000	9,700
32	15,100	11,300
33	17,300	13,000
34	19,400	14,600
35	21,600	16,200
36	23,800	17,800
37	25,900	19,400
38	28,100	21,100
39	30,200	22,700
40	32,400	24,300
41	33,300	24,900
42	34,100	25,400
43	34,800	26,000
44	35,700	26,500
45	36,600	27,100
46	37,600	27,800
47	38,800	28,500
48	39,800	29,000
49	40,800	29,700
50	41,900	30,400
51	43,200	31,200
52	44,300	32,100
53	45,800	32,900
54	47,200	33,700
55	48,700	34,500
56	50,200	35,500
57	51,800	36,300
58	53,400	37,400
59	55,400	38,500
60	57,100	39,600
61	58,100	40,700
62	60,900	41,900
63	63,100	43,100
64	65,300	44,300
65 or more	67,500	45,700

4. Assessment Schedules and Rates

Three schedules, one each for dependent students, independent students without dependents, and independent students with dependents are used to determine the expected contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from the parents' adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. The parents' contribution for a dependent student is computed according to the following schedule:

If the AAI is—	Then the contribution is—
Less than −$3,409	−$750
−$3,409 to $8,000	22% of AAI
$8,001 to $10,000	$1,780+25% of AAI over $8,000
$10,001 to $12,000	$2,280+28% of AAI over $10,000
$12,001 to $14,100	$2,840+34% of AAI over $12,000
$14,101 to $16,100	$3,553+40% of AAI over $14,100

$15,101 or more	$4,354+47% of AAI over $15,100

For independent students without dependents, and increasing percentage of their available taxable income (ATI) is included in the expected contribution. The ATI is adjusted gross income minus allowances for Federal, State and local income taxes and social security taxes. The contribution from the ATI for an independent student without dependents is computed according to the following schedule:

If the ATI is—	Then the contribution is—
Less than $9,200	70% of ATI
$9,201 or more	$6,440+90% of ATI over $9,200

For independent students with dependents, the expected contribution is derived from the adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. The contribution for an independent student with dependents is computed according to the following schedule:

If the AAI is—	Then the contribution is—
Less than −$3,409	−$750
−$3,409 to $8,000	22% of AAI
$8,001 to $10,000	$1,760+25% of AAI over $8,000
$10,001 to $12,000	$2,260+29% of AAI over $10,000
$12,001 to $14,100	$2,840+34% of AAI over $12,000
$14,101 to $15,100	$3,554+40% of AAI over $14,100
$15,101 or more	$4,354+47% of AAI over $15,100

5. Employment Expense Allowance

This allowance for employment-related expenses, that is used for dependent students and independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. The employment expense allowance for dependent students and independent students with dependents is the lesser of $2,130 or 35 percent of earned income.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program)

Dated: May 20, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

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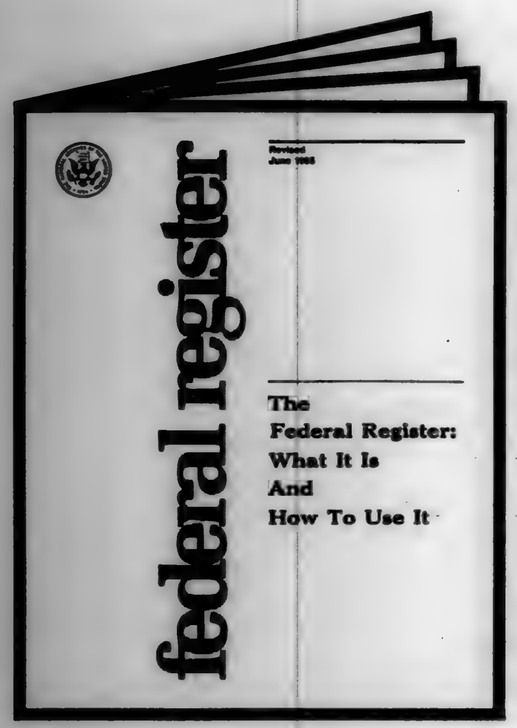

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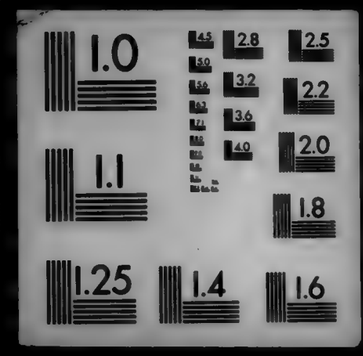

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Vol. 53, No. 105
Wednesday, June 1, 1988

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 987 for the 1988–89 crop year established for that order. The rule is needed for the committee to incur operating expenses during the 1988–89 crop year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: October 1, 1988 through September 30, 1989 (§ 987.333).

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular crop year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The California Date Administrative Committee unanimously recommended 1988–89 crop year expenditures of $394,500 and an assessment rate of $1.30 per hundredweight of assessable dates shipped under M.O. 987. In comparison, 1987 fiscal year budgeted expenditures were $411,287 and the assessment rate was $1.30 per hundredweight.

The major expenditure item this year is $350,000 for continuation of the committee's market promotion program. A total $40,000 of this amount will be used to cover the salary and other expenses of the executive director hired to manage that program and the remaining $310,000 will be used to cover the cost of the promotion program. The industry is faced with a serious oversupply of product dates and the committee considers this program necessary to stimulate sales.

The rest of the anticipated expenditures are for program administration which are budgeted at about last year's amounts. Revenue for the 1988–89 season is expected to total $394,500. Such revenue consists of $390,000 in assessments based on shipments of 30,000,000 pounds of dates and $4,500 in interest.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1987–88 crop year be placed in its reserve. The committee expects any excess funds to be minimal and result in a reserve well within the maximum authorized under the order.

A proposed rule inviting comments on the California Date Administrative Committee's 1988–89 expenses and assessment rate was published in the Federal Register on May 5, 1988 (53 FR 16131). The comment period ended May 16, 1988. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found that the budget of expenses and assessment rate are reasonable and will tend to effectuate the declared policy of the Act. Prompt approval is necessary so that the committee can finalize its 1988–89 promotion program. Programs of this sort require a substantial amount of lead time for planning.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, dates, California.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

For the reasons set forth in the preamble, § 987.333 is added as follows:

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 987.333, is added to read as follows:

(Note: This section will not appear in the Code of Federal Regulations):

§ 987.333 Expenses and assessment rate.

Expenses of $394,500 by the California Date Administrative Committee are authorized, and an assessment rate of $1.30 per hundredweight of assessable dates is established for the crop year ending September 30, 1989. Unexpended funds from the 1987–88 crop year may be carried over as a reserve.

Dated: May 26, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–12269 Filed 5–31–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1987–88 Crop Year for Certain Varietal Types

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is adopting without modification as a final rule, the provisions of an interim final rule which established final free and reserve percentages for Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins from California's 1987 raisin crop production. These percentages are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Raisin Administrative Committee (Committee), the administrative agency responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free raisins.

EFFECTIVE DATES: August 1, 1987 through July 31, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of California raisins subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amounts of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. While this action may restrict the amount of raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the projected oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and to be released under the final percentages, the order specifies methods to make available additional raisins to handlers by authorizing sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, export sales, and school lunch programs.

The U.S. Department of Agriculture's (Department) *Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders* specify that 110 percent of recent years' sales be made available to primary markets each season. This requirement is met by the establishment of these final percentages which release 100 percent of the computed trade demand for each varietal type, and the additional release of such raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous sales of reserve pool raisins which are made available to handlers each season. For each such offer, at least 10 percent of the prior year's shipments are made available for free use.

Pursuant to § 989.54(a), the Committee met on August 13, 1987, to review shipment data, inventory data, and other matters relating to the supply of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might have been recommended using a formula prescribed in that paragraph. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for the 1987–88 crop year shall be 60,000 tons for Natural Seedless and 1,500 tons for Dipped Seedless and Oleate and Related Seedless raisins. The carryin tonnages used for adjusting the trade demands were 91,854, 4,177, and 2,659 tons, respectively, for Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins.

In accordance with these provisions, the Committee computed and announced a trade demand of 236,105 tons for Natural (sun-dried) Seedless raisins, 4,501 tons for Dipped Seedless raisins, 994 tons for Oleate and Related Seedless raisins, 12,983 tons for Golden Seedless raisins, 439 tons for Sultanas, —69 tons for Muscat raisins, 3,489 tons for Zante Currant raisins, and 1,210 tons for Monukka raisins.

As required under § 989.54(b), the Committee met on October 5, 1987, and computed and announced preliminary crop estimates and preliminary free and reserve percentages for: Natural (sun-dried) Seedless of 320,836 tons and 48 percent free, 52 percent reserve; Dipped Seedless of 5,531 tons and 53 percent free, 47 percent reserve; and Oleate and Related Seedless of 1,910 tons and 34 percent free, 66 percent reserve. Handlers operate under the preliminary percentages until the industry is able to obtain a more accurate estimate of the raisin production for that year. The field price for all three varietal types had been established. Hence, in accordance with § 989.54(b), the preliminary free and reserve percentages computed and announced by the Committee for the three varietal types released 65 percent of each varietal type's computed trade demand. Preliminary percentages were not announced for the other varietal types; therefore, the total available supply was released for each.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release up to 99 percent of the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. On November 30, 1987, for Oleate and Related Seedless raisins, interim percentages of 90 percent free and 10 percent reserve were adopted. Interim percentages for Natural (sun-dried) Seedless of 66 percent free and 34 percent reserve and for Dipped Seedless of 72 percent free and 28 percent reserve, were computed and announced on January 21, 1988, when final percentages were recommended. The interim percentages for Natural (sun-dried) Seedless and Dipped Seedless released 99 percent of their computed trade demands, while for Oleate and Related Seedless raisins 97 percent of the trade demand was released.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. At that time, the Committee has more information available, including the final crop estimate and other information, on which to base the determination of final free and reserve percentages.

On January 21, 1988, the Committee met and recommended final free and reserve percentages for the 1987–88 crop year and made its final production estimates for Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins.

The Committee's final estimate of 1987–88 production of Natural (sun-dried) Seedless raisins totaled 350,630 tons, which included the 1987 diversion tonnage of 30,000 tons (29,794 tons more than its preliminary estimate). Dividing the computed trade demand of 236,105 tons by the final estimate of production resulted in a final free percentage of 67.33 percent. The Committee rounded that percentage to 67 percent which resulted in a final reserve percentage of 33 percent.

For Dipped Seedless raisins, the Committee's final estimate of 1987–88 production totaled 6,150 tons (619 tons more than its preliminary estimate). Dividing the computed trade demand of 4,501 tons by the final estimate of production resulted in a final free percentage of 73.18 percent. The Committee rounded that percentage to 73 percent which resulted in a final reserve percentage of 27 percent.

For Oleate and Related Seedless raisins, the Committee's final estimate of 1987–88 production totaled 1,071 tons (839 tons less than its preliminary estimate). Dividing the computed trade demand of 994 tons by the final production estimate resulted in a free percentage of 92.81 percent. The Committee rounded that percentage to 93 percent which resulted in a final reserve percentage of 7 percent.

An interim final rule establishing these percentages was issued on March 18, 1988, and was published in the **Federal Register** on March 23, 1988 (53 FR 9429). Comments were solicited from interested persons through April 22, 1988. No comments were received. Thus, the percentages as established by that interim final rule are adopted without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1987–88 crop year apply to all Natural (sun-dried) Seedless, Dipped Seedless and Oleate and Related Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1987–88 crop raisins of these varietal types and this action must be taken promptly to achieve its purpose of making the full trade demand quantities computed by the Committee for these varietal types available to handlers; (3) an interim final rule established these final percentages which are being adopted by the Department without change; and (4) handlers are aware of this action which was recommended by the Committee at an open meeting and need no additional time to comply with these percentages.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 989 is taken:

Note.—This section will not appear in the Code of Federal Regulations.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 989.240 [Amended]

2. Accordingly, the interim final rule adding § 989.240, which was published at 53 FR 9429 on March 23, 1988, is adopted as a final rule without change.

Dated: May 26, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–12268 Filed 5–31–88; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1425

Cooperative Marketing Associations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on March 8, 1988 (53 FR 7370), amending the regulations at 7 CFR Part 1425 is adopted as a final rule without change. The proposed amendment: (1) Allowed producers to place commodities in a pool of eligible commodities which may then be pledged by a cooperative as collateral for a Commodity Credit Corporation (CCC) price support loan without the cooperative being required to distribute the loan proceeds within 15 days of their receipt, if the commodities are redeemed within 15 days of such date; and (2) deleted a repetitive provision found at 7 CFR 1425.19.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Head, Cooperative & Analysis Section, Price Support Branch, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447-0689.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Departmental Memorandum 1512-1 and Executive Order 12291, and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, no Environmental Assessment or Environmental Impact Statement is needed.

The title and number of the Federal Domestic Assistance Program to which this proposal rule applies are: Title—Commodity Loans and Purchases: Number 10.051; as found in the Catalog of Federal Domestic Assistance. This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Proposed Rule: A rule proposing to amend the regulations found at 7 CFR Part 1425 was published in the **Federal Register** on March 8, 1988, at 53 FR 7370. The proposed rule provided for a 30-day comment period.

Background: The regulations at 7 CFR 1425.16(b)(1)(iii) currently provide that a cooperative must exclude commodities delivered by members for marketing from a pool of commodities which are eligible to be pledged as collateral for price support loans until the members delivering such commodities agree to accept an initial payment from the cooperative with respect to such commodities. Because of tax considerations, cooperative members delivering such commodities frequently want to defer the receipt of initial payments until the next tax year. Cooperatives receiving such commodities from their members hold the commodity in an ineligible pool until the members agreed to accept the initial payment normally after the first day of the next tax year.

On October 13, 1987, the Internal Revenue Service (IRS) issued Revenue Ruling 87-103 which provides that a producer who receives a CCC price support loan in a year and uses a commodity certificate to obtain the grain which had been pledged as collateral for the loan in the same year shall recognize as income in that year the amount by which the value of the loan exceeds the amount of the certificates which are used in the exchange. When the commodity is sold, the producer recognizes the gain for the full amount received on the sale of the commodity. Accordingly, under the IRS ruling, individual producers are permitted to pledge commodities as collateral for a CCC price support loan and immediately obtain such commodities through the exchange of such certificates and defer the income from the sale of the commodity for tax purposes until the next tax year. Cooperatives with members delivering a commodity on which they wished to defer the income until the next tax year were unable to utilize the certificates in the same manner as individual producers.

Also, the CCC regulations at 7 CFR 1425.17(a) currently provide that net loan proceeds, less authorized charges, must be distributed to eligible pool members within 15 days from the receipt of such loan proceeds from CCC. Provisions of the Food Security Act of 1985 amended the Agricultural Act of 1949 with respect to the CCC price support program to allow producers, including cooperatives which obtain price support on behalf of their members, to pledge eligible commodities as collateral for a CCC loan and redeem the commodity at an announced rate that has been less than the original loan rate. Prior to the enactment of these provisions, cooperatives did not normally pledge all of these commodities as collateral for CCC price support loans because of processing and marketing commitments. Since cooperatives now frequently pledge all of their eligible commodities for such CCC loans, the requirement that net loan proceeds less authorized charges must be distributed to eligible pool members within 15 days of receipt forces cooperatives to borrow additional funds for longer periods in order to meet the 15-day requirement. However, individual producers may use the loan funds received when the commodity was pledged as collateral for loan redemption purposes which are associated with the exchange of commodity certificates.

General Summary of Comments: Written comments were received with respect to the proposed rule from the following: (1) A honey marketing cooperative; (2) an association of cooperatives; (3) a honey dealer association; (4) an individual honey producer-dealer; (5) an association of individual honey producers; (6) six individual honey dealers and (7) three written comments from the counsel for the honey dealer association. In addition, an April 7, 1988, meeting of honey producers, dealers and their counsel was held with U.S. Department of Agriculture officials. A summary of comments received and responses follows:

1. Extension of comment period. The honey dealer association, its counsel and other persons attending the April 7 meeting, requested an extension of the comment period. The honey dealer association's counsel felt an extension of the comment period was needed since there did not appear to be any written documents to form a basis for the proposed rule. In addition, two individual honey dealers felt an extension of the comment period was needed to reconsider the proposed rule.

The 30 day period form March 8, 1988 to April 6, 1988, provided adequate time for the preparation of comments by all interested parties on the proposed rule. Accordingly, the length of the comment period will not be extended.

2. Marketing flexibility. The honey producer-dealer and four honey dealers were concerned that cooperative marketing associations would have an unfair advantage in the market place because of "interest-free loans." Lower interest costs could result from a cooperative's coordination of its processing requirements with the redemption of the commodity pledged as collateral for a CCC price support loan. Also, these commenters expressed concern that the difference between the loan amount and the loan repayment amount could be used to finance the cooperative's operations.

One of the six individual honey dealers felt that competition and equitable program administration benefits the entire industry. The honey dealer believed the proposed rule would be unfair to other producers and packers.

The counsel for the honey dealer association also stated that the proposed change would only benefit a few producers large enough to take advantage of tax deferral benefits that the proposal makes possible.

The honey marketing cooperative and the association of cooperatives stated that the proposed rule would be more consistent in the treatment of members of the cooperative and individual producers. Under honey and some other price support programs utilizing marketing loan procedures, individual producers can now pledge commodities as collateral for price support loans and redeem such commodities at a lower rate by using the loan proceeds without having to borrow funds from other sources. By cooperatives not having to distribute loan proceeds if the loan is redeemed within 15 days, the cooperative member would have the same marketing flexibility as the individual producer.

The honey marketing cooperative also supported the adoption of the proposed rule for the following reasons:

(a) The proposed rule will promote the 1985 Food Security Act's purpose of maintaining the competitiveness of honey in domestic and export markets and reducing the cost incurred by the federal government in storing honey;

(b) The proposed rule will make the loan eligibility requirement aspects of the honey price support program more consistent with the purposes of the present marketing loan provisions of the honey price support program; and

(c) The proposed rule is reflective of industry practice and in accord with the wishes of the association's producer-members, as reflected in present contractual agreements between the association and its producer-members.

The association of individual honey producers stated that the implementation of the proposed rule would simplify the procedures necessary for cooperatives to participate in CCC price support programs. The association also noted that it would be much easier for a cooperative to participate in such programs and individual cooperative members have endorsed the proposed rule. In a subsequent comment, the association wanted to rescind this comment and be considered as having made no comment.

The amendments to 7 CFR 1425.16 and 1425.17 will give cooperative marketing associations the same flexibility as individual producers with respect to the pledging of eligible commodities as collateral for a CCC price support loan. Accordingly, these provisions are adopted without change.

3. Competitiveness in the industry. The individual honey producer-dealer stated that, with today's keen competition in the industry, even the smallest advantage, such as the actions which would be permissible under the proposed rule, would be unfair to the cooperative's competitors. The producer-dealer believes that a cooperative could obtain a loan with respect to one of its member's production and use those funds to finance the cooperative's operations while the member would be paid at some later date.

The counsel for the honey dealer association believed the proposed rule would give the honey cooperative the unrestricted use of interest free money from the producer's loan proceeds to finance its operations. The counsel also stated that this would provide a discriminatory competitive advantage for the cooperative. Because of these impacts and recent changes by the cooperative in its relationship with honey producers, the counsel felt that honey should be excluded from any changes to 7 CFR Part 1425.

Producers have the option of delivering their commodity to marketing cooperatives or to their competitors in the industry. If the producer decides to deliver the commodity to a cooperative, the regulations at 7 CFR 1425.13 require the cooperative to have a uniform marketing agreement with each of its members who delivers a commodity to an eligible pool. The regulations at 7 CFR 1425.17(b) provide that all pool proceeds must be distributed to eligible pool participants. Any savings resulting from a reduced need to borrow funds would be passed on to eligible pool members similar to the benefit that individual producers now have. Accordingly, all members of the cooperative would be treated equitably. While the actions which would be permissible under the rule may provide greater marketing opportunities to cooperative members, such actions will provide producers who are members of a cooperative marketing association the same marketing flexibility as non-members. Accordingly, the rule will be adopted as a final rule without change.

Accordingly, the regulations at 7 CFR Part 1425 are amended as follows:

PART 1425—[AMENDED]

1. The authority citation for 7 CFR Part 1425—Cooperative Marketing Associations is revised to read as follows:

Authority: 15 U.S.C. 714b, 714c, and 714j; 7 U.S.C. 1444(a), 1441, 1446d, 1447, 1421(a).

2. 7 CFR 1425.16(b)(1)(iii) is revised to read as follows:

§ 1425.16 Eligible commodity and pooling.

* * * * *

(b) *Eligible pool.* * * *

(iii) Except with respect to a quantity of a commodity pledged as collateral for a price support loan and which is redeemed within 15 days from the date the cooperative receives the proceeds from CCC, all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the cooperative with respect to such commodity in accordance with § 1425.17(a).

* * * * *

3. 7 CFR 1425.17(a)(1) is revised to read as follows:

§ 1425.17 Distribution of proceeds.

(a) *CCC loans and purchases.* (1) If CCC makes available price support loans or purchases with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or purchases shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in the pool less any authorized charges for services performed or paid by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Except with respect to commodities which are pledged as collateral for a

price support loan and which are redeemed within 15 days from the date the cooperative receives the loan proceeds from CCC, such proceeds shall be distributed within 15 days from such date.

* * * * *

§ 1425.19 [Amended]

4. 7 CFR 1425.19(c) is removed.

Signed at Washington, DC on May 25, 1988.

Milt Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-12256 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-05-M

FARM CREDIT ADMINISTRATION

12 CFR Part 606

Enforcement of Nondiscrimination on the Basis of Handicap

AGENCY: Farm Credit Administration.

ACTION: Final Rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts final regulations prohibiting discrimination on the basis of handicap in programs and activities conducted by the Farm Credit Administration (FCA or agency). These regulations provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to the programs and activities conducted by the FCA.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On December 18, 1985, the Farm Credit Administration published a notice of proposed rulemaking (50 FR 51540) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended. The prohibitions against discrimination on the basis of handicap contained in the proposed regulation applied only to those Farm Credit Administration programs and activities which are available to members of the general public. The proposed regulations also stated that the Farm Credit Administration did not have to take any action to accommodate individuals with handicaps if such action would result in a fundamental alteration in the nature of the program or activity or in undue financial and administrative costs. The deadline for receiving comments on the proposed regulation was February 17, 1986. Five comments were received in response to the notice, three from organizations representing handicapped persons and two from other Federal entities, the Department of Justice and the Equal Employment Opportunity Commission (EEOC). In general, one commenter expressed disappointment that the agency proposed an adaptation of the prototype regulation prepared by the Department of Justice. The Board has determined that FCA's programs and activities do not require unique regulatory language and that these regulations are, therefore, appropriate for FCA. The commenters objected to the limitation of the application of the proposed regulations to only those programs and activities in which the general public participates and to the use of the fundamental alteration and undue burdens defenses in areas which they argued are inappropriate. A complete analysis of the comments and of the changes made to the proposed regulation is provided below.

The Board has determined that these regulations are not a major rule within the meaning of Executive Order 12291, and therefore a regulatory impact analysis has not been prepared. One commenter expressed the belief that small entities should comply with the rule because of their substantial number and the fact that they do affect a considerable number of individuals. The Board notes that the Regulatory Flexibility Act (5 U.S.C. 601-612) requires that an agency must undertake certain analyses of proposed rules which may have an impact on small business entities and disclose the results of such analyses in its notice of proposed rulemaking. Because these regulations regarding nondiscrimination on the basis of handicap are applicable solely to the programs and activities of the Farm Credit Administration, the Board has again determined these regulations do not impact on small business entities and are, therefore, not subject to the Regulatory Flexibility Act.

Section-by-Section Analysis and Response to Comments

Section 606.601 Purpose.

This section describes the general purpose of the regulation which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973, to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. No comments were made to the regulation and it is unchanged.

Section 606.602 Application.

In the proposed regulation this section stated that Part 606 applies to all programs or activities conducted by the Farm Credit Administration which are available to members of the general public but listed the "programs and activities" which constitute the "programs and activities" of the FCA for purposes of the regulation.

One commenter to the regulation stated that the FCA erroneously excluded "the regulation, supervision, and examination of Farm Credit System institutions" from this regulation. The commenter believed that these FCA functions not only constitute an FCA program or activity but also will likely involve contact with the public, and that the regulation should be amended accordingly. In addition, it objected to the assertion in the regulation that the programs and activities listed therein constitute the sole "programs and activities of the FCA," as being far too narrow. It recommended that the regulation be amended to describe the list of "programs and activities" as illustrative only and not exhaustive. The proposed section also provides that the institutions of the Farm Credit System (System), which are supervised, regulated, and examined by the FCA, are not governed by this regulation. The commenter agreed with this provision in the regulation.

The section has been modified in response to the comments received and now states that this rule applies to all activities and programs conducted by the FCA. Since this rule will most likely apply to the programs and activities which are open to the members of the general public, the final regulation retains the list of such programs and activities that was contained in the proposed rule to provide notice to interested persons. However, the regulation has been amended to provide that the list contains examples of such programs and activities of the FCA, and that an omission does not necessarily mean that the activity is not covered. The FCA has added language to paragraph (b) which specifically states that FCA personnel will comply with this part in their interaction with employees of System institutions and employees of other Federal agencies during the discharge of their official FCA duties. The exclusion from coverage of System institutions that are regulated or examined by the FCA remains unchanged except that the word "supervised" has been deleted consistent with the Farm Credit Amendments Act of 1985 (Pub. L. 99-205).

Section 606.603 Definitions.

The regulation defines the significant terms used in Part 606. "Auxiliary aids" is defined to mean services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and benefit from the agency's activities, and provides examples of commonly used auxiliary aids. One commenter suggested that attendant services should be added to the "laundry list" of auxiliary aids appearing in the regulation. It was suggested that this would remove any confusion for those individuals required to comply with this regulation, since attendant services might be necessary to achieve program accessibility, even where all the requirements to accessibility have been met. Another commenter suggested that auxiliary aid should be expanded to include attendant services needed to aid severely disabled persons traveling during the course of their work. The FCA Board has declined to incorporate attendant services in the definition of "auxiliary aids" since such services are generally personal in nature and thus they are properly outside the scope of "auxiliary aids." Nevertheless, to the extent that attendant services are not personal in nature and are directly related to a program or activity of the FCA, such service may be provided when necessary. A wheelchair is considered a personal aid and has been excluded from this definition. However, FCA may choose to provide wheelchairs on occasion as a special benefit. This same commenter also stated that the term "auxiliary" implies something that is extra or discretionary and recommended that FCA change the section to "Aids for Reasonable Accommodation." This suggestion has not been adopted. The FCA Board believes the term "reasonable accommodation" is a term of art applicable to discrimination in employment under the Rehabilitation Act. The use of the term in Part 606 would be inappropriate and confusing, since Part 606 covers more than employment programs and activities.

One commenter suggested that the regulation should be amended to clarify that auxiliary aids are required in all aspects of the FCA programs and to remove any ambiguity that the FCA has an obligation to make programs accessible and overcome barriers that may not be related to communication. This suggestion has not been adopted as the FCA Board believes that the term "auxiliary aids" adequately indicates what is intended and what is required.

"Complete Complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary to enable the agency to determine the beginning of its obligations to investigate a complaint.

"Facility" is defined similar to that in the section 504 Coordination Regulation for Federally Assisted Programs (28 CFR 41.3(f)), except that certain inapplicable phrases have been deleted and the phrase "rolling stock or other conveyances" has been added. The definition does, however, apply to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. One commenter objected to the omission of the phrase "or interest in such property" from the definition of "facility." As used in this regulation, the term "facility" refers to structures, and does not include intangible property rights. The phrase has been omitted because the requirement that a facility be accessible would have no meaning if applied to such things as a lease, life estate, mortgage, etc. This definition has not changed.

"Individual with handicaps" is defined identical to the definition of "handicapped person" appearing in the section 504 Coordination Regulation for Federally Assisted Programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statue as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

The definition of "qualified individual with handicaps" is the same as the definition of "qualified handicapped person" with respect to services appearing in the section 504 Coordination Regulation for Federally Assisted Programs (28 CFR 41.32(b)). The definition provides that a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements of participation in the program or activity. One commenter noted that the FCA had used the Department of Justice "Federally Assisted" guidelines as a model for its definition for "qualified handicapped individual." But the commenter stated that the FCA had not addressed the extent to which the agency must provide aids or accommodations to ensure that such person has equal opportunity to participate in and benefit from the program. The commenter questioned why the agency had omitted "reasonable accommodation" from the language in the definition. The commenter referred FCA to the regulations of the Federal Election Commission and to the Supreme Court decision in *Alexander v. Choate*, 469 U.S. 287 (1985) as support for its position that applicants for employment were to be provided reasonable accommodation. The FCA Board has determined that § 606.640 adequately addresses this commenter's concerns. However, the Board has amended the regulation to include a sentence that indicates that a qualified individual with handicaps with respect to employment is a qualified handicapped person as defined in 29 CFR 1613.702(f), which is made applicable to this part by § 606.640. The addition of this language does not change existing regulations applicable to employment.

"Section 504" means section 504 of the Rehabilitation Act of 1973, as amended. This definition has not been changed except that a reference to the 1986 Amendment has been added.

One commenter on a technical matter stated that the numbering used by the agency is not consistent with proper **Federal Register** format. This has been corrected in the final regulation.

Section 606.610 Self-evaluation.

The regulation provides that the agency shall conduct self-evaluation of its compliance with section 504 within one year of the effective date of the regulation. The regulation has been changed to eliminate references to consultation but provides that the self-evaluation process shall include an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process and the development of transition plans by submitting comments (both oral and written).

One commenter welcomed the requirement that the agency maintain "a list of the interested persons consulted" in the performance of the self-evaluation. Experience has shown that self-evaluation is a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504. This final rule has been amended to utilize language that provides an opportunity for interested persons to participate in the process consistent with the Federal Advisory Committee Act (5 U.S.C. app.).

Section 606.611 Notice.

The regulation requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504. The regulation leaves to the agency the discretion to use whatever manner the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

One commenter suggested that notification of the FCA policy regarding nondiscrimination should also be included in the regulation and distributed in recruitment materials as well as in general information. The commenter also suggested that the FCA should make available to the persons enumerated in the regulation information regarding the provisions of this part and its applicability to the programs and activities of the FCA. Another commenter suggested the FCA amend the regulation to provide that the information "effectively" apprise persons of their rights and protections against discrimination. In this manner, the commenter believed the agency would be in a position to test the methods it selected to accomplish the purposes of notification.

The Board has not adopted these suggestions. In allowing the agency to have the flexibility to determine the best method by which information may be conveyed to various interested parties, the agency is in the best position to specifically target its audience to fully inform such persons of their protections against discrimination.

With respect to the suggestion of the inclusion of the term "effectively" in the regulation, the Board believes this is already addressed in the regulation. The regulation provides that information shall be made available to persons in the manner the agency finds necessary to apprise them of their rights. A method of communication that does not make this information available in an accessible form to individuals with handicaps would not comply with the regulation. The regulation has not been changed.

Section 606.630 General prohibitions against discrimination.

The regulation is an adaptation of the corresponding section of the section 504 Coordination Regulation for Federally Assisted Programs (28 CFR 41.51). Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in the regulation establish the general principles for analyzing whether any particular action of the agency violates the mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found here. Where there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from a program simply because the person is handicapped. The preamble to the proposed regulation states that such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligiblity for employment as an operator of an agency vehicle; but it may not be permissible to disqualify automatically all those who are blind in just one eye. Two commenters objected to the use of the irrebuttable presumption in applying the FCA regulations. One commenter believed such presumption is never justified, while the other commenter noted that the mere possession of a handicap is not permissible grounds for assuming an inability to function in a particular context. While the Board agrees that such a presumption would be valid only in extremely narrow circumstances, it does not agree that it may never be used. The Board believes that the agency may utilize the presumption in appropriate circumstances. Paragraph (b) also prohibits the agency from directly, or through other arrangements, undertaking actions the purpose or effect of which would be to discriminate against individuals with handicaps on the basis of their handicap or defeat or substantially impair a program or activity especially targeted at individuals with handicaps.

Paragraph (c) provides that the exclusion of nonhandicapped persons from the programs specially targeted at individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program targeted at another class of individuals with handicaps is not prohibited by this part.

Paragraph (d) states that the agency shall conduct its programs and activities in the most integrated setting, appropriate to the needs of qualified individuals with handicaps.

Two commenters objected to the FCA's omission of the section of the section 504 Coordination Regulation for Federally Assisted Programs, which would have prohibited the FCA from aiding or assisting an agency, organization, or person that discriminates on the basis of handicap in providing an aid, benefit, or service to the beneficiaries of the recipient's program. FCA does not provide such assistance and the Board has determined that including such language in this regulation would be inappropriate.

One commenter believed that the United States Supreme Court's decision in *Community Television of South California v. Gottfried*, 459 U.S. 498 (1983), permits Federal agencies, through their rulemaking procedures, to impose upon prospective licensees or certified entities a duty not to discriminate against individuals with handicaps. Section 504 does not, of itself, extend an agency's regulatory authority to the activities of entities subject to its regulation. Contrary to the assertion of the commenter, *Community Television* does not support the exercise of such authority, as the focus of the decision is on the underlying regulatory statute. The Court does not indicate that section 504 itself could serve as a source of such regulatory authority. Neither the Farm Credit Act of 1971, as amended, nor any other statute provides the FCA with a clear grant of statutory authority to enforce section 504 against the Farm Credit System institutions.

One commenter noted that construction of additional buildings at an existing site should not be excluded from the coverage of this section. The Board has determined that such an inclusion would be redundant as § 606.650 addresses this issue.

A Federal agency commenter suggested inclusion of provisions regarding participation of a qualified individual with handicaps as a member of a planning or advisory board, and for not otherwise limiting a qualified individual with handicaps in the enjoyment of some right or privilege given to others receiving aid, benefit, or service from the agency. These two sections were inadvertently omitted from the proposed regulation and have been incorporated in the final version.

Section 606.640 Employment.

Section 640 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981); *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304.

Accordingly, § 606.640 of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the EEOC at 29 CFR Part 1613. In addition to this section, § 606.670(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067, 3 CFR, 1978 Comp. p. 206. Under this authority, the EEOC established Governmentwide standards on nondiscrimination in employment on the basis of handicap.

Although one commenter argued that this section is too brief and weak and one commenter requested a list of examples of reasonable accommodations, the Board has adopted the EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference to the Governmentwide EEOC rules is sufficient. The final rule has not been changed except that a reference to the EEOC has been added.

Section 606.649 Program accessibility: Discrimination prohibited.

This regulation states the general nondiscrimination principle underlying the program accessibility requirements of §§ 606.650 and 606.651. No comments were received to the regulation and the regulation is unchanged.

Section 606.650 Program accessibility: Existing facilities.

The proposed regulation adopts the program accessibility concept found in the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 606.650 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 606.650(a)(1)). However, § 606.650, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 606.650(a)(2)). The "undue financial and administrative burdens" language found at § 606.650(a)(2) is based on the Supreme Court's statement in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412.

This interpretation is supported by the Supreme Court's decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299. *Alexander* supports the position, based on *Davis* and earlier lower court decisions, that in some situations, certain accommodations may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Two commenters objected to the use of the fundamental alteration and undue financial and administrative burdens language in the regulation. One commenter stated that the agency is interpreting the *Davis* case too broadly. It suggested that the alteration and burdens language be deleted, and that "undue hardship" be utilized as more specific, less discriminatory, and a more positive term than "burden." The other commenters stated that by adopting this language the FCA has failed to parallel rules for federally assisted programs, contrary to the intent of Congress. It believed the agency's interpretation of the *Davis* case is inaccurate. It criticized the case law cited by the agency and stated that a number of more recent cases support the commenter's position.

In the alternative, two commenters suggested that, should the regulation contain the fundamental alteration and burdens language, the budget of the agency as a whole should be the standard for determining whether an accommodation is burdensome. They believed that, without this approach, every accommodation is likely to be unduly burdensome, and that as all of the resources of the agency are taxpayers' monies, none may be used to support discrimination. One commenter noted as support for its position that the Department of Labor adopted a similar regulation and suggested that the FCA pattern the regulation after the Department of Labor.

The Supreme Court in *Davis* was not explicit in specifying what constitutes an "undue burden." The Board notes that subsequent court decisions have not given equal weight to each factor and have focused on the total impact the requested modification would have on the program or activity in question. See, e.g., *Alexander v. Choate*, supra; *Dopico v. Goldschmidt*, 518 F. Supp. 1161 (S.D.N.Y. 1981) rev'd on other grounds, 687 F.2d (2d Cir. 1982), *American Public Transit Assn. v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981). However, the Board believes its interpretation of *Davis* is both proper and consistent with the lower courts' interpretation of *Davis*. The commenters cited no case law overturning *Davis* or other regulations which include the fundamental alteration or undue burdens language. The case law cited by the FCA remains valid. Accordingly, the Board rejects the suggestions of the commenters.

For the record, the Board wishes to emphasize that the agency is not funded by taxpayers' monies but rather the

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agency is funded by assessments on the institutions of the Farm Credit System. An accommodation that results in an excessive financial burden on the agency, causing an increase in assessments to System institutions, could be challenged by those institutions. Accordingly, the Board believes that the fundamental alteration an undue burdens language is reasonable and necessary.

The Board does not agree with the commenter's suggestion that the relevant inquiry is whether there would be an undue hardship based on the resources of the agency as a whole. Were the agency to consider the entire budget, diverting funds from one program to another could result in the agency's being unable to carry out its statutorily mandated functions. The agency has a strong and vigorous commitment to section 504 and these regulations. The Board expects the agency to consider all reasonable approaches for providing accommodations to individuals with handicaps and expects that the agency will assert the undue burdens defense only where it is clear that no reasonable alternatives exist. The Board disagrees with the commenter's assertion that every accommodation is likely to be defined as unduly burdensome.

Section 606.650(b) sets forth the means by which program accessibility may be achieved and specifies that in choosing methods, the agency shall give priority to those methods that provide the most integrated setting appropriate. In the interest of effective and cost efficient accommodations, the Board has adopted the suggestion of one commenter that the agency provide an opportunity for the person to be accommodated to provide input regarding accommodations to be made. Sections 606.650(a)(2) and 606.660(d) of the regulation have been amended accordingly. Another commenter suggested that the agency have wheelchairs on hand to accommodate disabled, elderly, or weary persons. It is the agency's policy to maintain the necessary auxiliary aids to assist individuals with handicaps with whatever their disability may require. However, wheelchairs are considered a personal aid and not an auxiliary aid as defined in this regulation. Therefore, FCA has no obligation to provide this benefit but may choose to do so as a special service.

Paragraphs (c) and (d) establish time periods for complying with the accessibility requirements and state that aside from structural changes, all other necessary steps to achieve compliance shall be taken within 60 days. Where structural modifications are required, they shall be made as soon as practicable, but in no event later than 3 years after the effective date of the regulation. Paragraph (d) of the regulation has been amended to provide an opportunity for interested persons to participate consistent with the Federal Advisory Committee Act (5 U.S.C. app.).

Section 606.651 Program accessibility: New construction and alterations.

Section 606.651 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607.

The proposed regulation adopts the existing Architectural Barriers Act (42 U.S.C. 4151–4157) standard for section 504 compliance, as applicable to agency buildings. As the buildings subject to this regulation would also be subject to the Architectural Barriers Act, adopting this standard will avoid duplicative and possibly inconsistent standards. However, existing buildings leased by the agency after the effective date of the regulation are not required to meet the new construction standard. It should be noted, however, that the requirement of § 606.650 do apply to such structures. Two commenters objected to excluding buildings leased by the FCA after the effective date of the regulation. One commenter stated that such buildings leased after August 7, 1984, the effective date of the Uniform Federal Accessibility Standards, should be required to meet the new construction standards. The other commenter stated that the decision in *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985) held that leased buildings are required to meet the new construction standard. In addition, the commenter suggested that the final regulation should clarify the fact that leased buildings are require to comply with the Architectural Barriers Act. It notes that such clarification has already been made by 16 other agencies and that FCA action on this matter will both reflect and accepted practice and prevent confusion about the reach of the Architectural Barriers Act.

In *Rose v. United States Postal Service*, the Ninth circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after litigation is completed.

Section 606.660 Communications.

The regulation contains the standards by which the FCA will ensure effective communication with participants in its programs and activities. One commenter suggested that the FCA add a provision to the regulation that would require the agency to provide captioning on its flims and vedeotapes. The Board believes it is unnecessary to specify a particular manner of compliance with the regulation and has rejected this suggestion. One commenter reiterated its comments made to § 606.650 regarding the use of the fundamental alteration/undue burdens defenses by the FCA. For the reasons set forth in regard to § 606.650, the Board believes the retention of the language is appropriate and the regulation has not been changed.

Section 606.670 Compliance procedures

The regulation establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in FCA's programs and activities in violation of section 504. One commenter recommended expanding this section to include (1) a provision for obtaining the expertise of the Architectural Barriers Compliance Board to help resolve deficiencies in construction or location of facilities; (2) a provision for judical review; (3) a provision to ensure that all other regulations, forms, and directives issued by the FCA are susperseded by the nondiscrimination requirements of this regulation; (4) a provision for the award of attorney's fees in administrative procedures; and (5) a provision for the availability of compensation to the prevailing party. The Board has not adopted these suggestion as they go beyond the requirements of section 504. The Board believes the existing provisions in the regulation fully protect the rights of individuals with handicaps and carry out both the letter and spirit of section 504.

One commenter noted the FCA proposed rules failed to inform complainants of the address to which complaints should be sent and recommended this be included in the final regulation. The regulation has been amended to include the address and to correct the title of the designated official.

Another suggestion related to the language in paragraph (e) of the regulation which states that the agency shall make reasonable efforts in referring a complaint over which it does not have jurisdiction. The commenter stated that FCA's obligation to refer these complaints is absolute and recommended the agency adopt language similar to that contained in the Federal Election Commission's final regulation. The Board has not adopted this suggestion because the agency may not always be able to refer a complaint, e.g., when no Federal agency would have jurisdiction or insufficient information was provided.

One commenter requested that the FCA amend the regulation to provide notice to the complainant if a decision is made to dismiss the complaint without prejudice. The commenter also suggested that the FCA amend its regulations to provide that a complainant is able to pursue a private right of action in the courts without invoking the FCA's internal procedures, or after preliminary but not final findings have been issued by the FCA. The commenter was concerned that the existence of an administrative hearing process may result in the waiver of an individual complainant's right to have his or her action heard in court.

This commenter expressed concern that the regulation provide that any person be allowed to file on behalf of an individual or class of persons when the complainant has been subjected to discrimination. It was pointed out that this procedure may be necessary in the case of individuals with handicaps because, due to their disability, such persons may be unable to fully effectuate their rights. Having someone else file on their behalf would ensure that their rights are protected. The commenter also questioned the absence of any statement regarding the availability of compensatory damages to a complainant. The commenter believed it is very difficult for an agency employee or an applicant for benefits or services to successfully sue a Federal agency. It was argued that such compensatory relief would encourage agency compliance with the regulations and would result in the agency responding in a more expeditious manner to those complaints than the agency might otherwise. It believed there is no reason why the "make whole" philosophy in all compensatory relief situations should not apply to enforcement under these regulations.

With respect to the commenter's concern regarding the availability of a complainant's right to obtain direct judicial relief, the Board notes that the Administrative Procedures Act, 5 U.S.C. 554–557, provides a Federal court jurisdiction to review an agency's final decision. It is beyond the Board's jurisdiction to specify that a de novo review is available to complainants seeking judical review of final agency decisions. This issue is for the courts to decide. That is also true for the issue of availability of a private right of action, either without invoking FCA's compliance procedures or after issuance of letters of findings.

In response to the question of the commenter regarding who may file a complaint, the Board notes the definition of "complete complaint" and that the regulation provides that the agency is required to accept and investigate all complete complaints. The Board believes it is not necessary to amend the regulation in this regard. One commenter made the suggestion that the agency notify a complainant when a complaint is incomplete and provide an opportunity to remedy the defect. The Board believes that it is unnecessary to provide for this in the regulation as a rejection of the complaint as incomplete serves this purpose.

In a technical suggestion, a Federal agency commenter suggested that wording be inserted in paragraph (b) to clarify that the regulations governing the filing of employment-related complaints are those established by the EEOC. The regulation has been amended to include this reference.

List of Subjects in 12 CFR Part 606

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Chapter VI, Title 12, of the Code of Federal Regulations is amended by adding Part 606 as follows:

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

Sec.

606.601 Purpose.
606.602 Application.
606.603 Definitions.
606.604—606.609 [Reserved]
606.610 Self-evaluation.
606.611 Notice.
606.612—606.629 [Reserved]
606.630 General prohibitions against discrimination.
606.631—606.639 [Reserved]
606.640 Employment.
606.641—606.648 [Reserved]
606.649 Program accessibility: Discrimination prohibited.
606.650 Program accessibility: Existing facility.
606.651 Program accessibility: New construction and alterations.
606.652—606.659 [Reserved]
606.660 Communications.
606.661—606.669 [Reserved]
606.670 Compliance procedures.
606.671—606.909 [Reserved]

Authority: 29 U.S.C. 794.

§ 606.601 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.602 Application.

(a) This part applies to all programs or activities conducted by the agency. For example, members of the public may participate in the following "programs and activities" of the FCA:

(1) Attending open meetings of the Farm Credit Board.

(2) Making inquiries or filing complaints.

(3) Using the FCA library in McLean, Virginia.

(4) Seeking employment with FCA.

(5) Attending any meeting, conference, seminar, or other program open to the public.

This list is illustrative only and failure to include an activity does not necessarily mean that it is not covered by this regulation.

(b) This regulation does not apply to the institutions that are regulated or examined by the FCA. However, this regulation governs the conduct of FCA personnel, in their interaction with employees of such institutions and employees of other Federal agencies, while discharging their official FCA duties.

§ 606.603 Definitions.

For purposes of this part, the term:

(a) "Agency" means the Farm Credit Administration.

(b) "Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(c) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to

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participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDDs), interpreters, note-takers, written materials, and other similar services and devices.

(d) "Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(e) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(f) "Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one more major life activities.

(4) "Is regarded as having an impairment" means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (f)(1) of this definition but is treated by the agency as having such an impairment.

(g) "Qualified individual with handicaps" means an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity conducted by the agency. With respect to employment, a qualified individual with handicaps is one who meets the definition of "qualified handicapped person" set forth in 29 CFR 1613.702(f), which is made applicable to this part by § 606.640 of this rule.

(h) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810).

§§ 606.604–606.609 [Reserved]

§ 606.610 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons who commented, with copies of comments received;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 606.611 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 606.612–606.629 [Reserved]

§ 606.630 General prohibitions against discrimination.

(a) No qualified individual with handicaps, on the basis of handicap, shall be excluded from participation in, be denied the benefits of, or otherwise, be subjected to discrimination under any program or activity of the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual or other arrangments, on the basis of handicap:

(i) Deny a qualified individual with handicaps the oportunity to participate in or benefit from the activity, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs of activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 606.631–606.639 [Reserved]

§ 606.640 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in the agency.

§§ 606.641–606.648 [Reserved]

§ 606.649 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 606.650, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 606.650 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not:

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. In preparing the report, the agency shall make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide relevant information. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section, and if the time period

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of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups who commented on the plan.

§ 606.651 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act [42 U.S.C. 4151–4157], as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 606.652–606.659 [Reserved]

§ 606.660 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in and enjoy the benefits of a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDDs) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. In preparing the report, the agency shall make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide relevant information. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 606.661–606.669 [Reserved]

§ 606.670 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office of Administration, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by this paragraph. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Equal Employment Opportunity Manager, or his/her designee, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 606.671—606.999 [Reserved]

May 23, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-12201 Filed 5-31-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 444

Trade Regulation Rule; Credit Practices; California

AGENCY: Federal Trade Commission.

ACTION: Exemption from Provision of Trade Regulation Rule on Credit Practices (16 CFR 444.3) granted to the State of California.

SUMMARY: The Federal Trade Commission hereby publishes its decision to grant the State of California an exemption from § 444.3 of the Commission's trade regulation rule on credit practices, 16 CFR Part 444 (1984) ("Credit Practices Rule" or "Rule") for all credit transactions subject to California law. The Commission has determined that the application by the State of California for exemption from § 444.3 of the Rule meets the standards for such exemptions as set out in § 444.5 of the Rule. The exemption will remain in effect for so long as state law continues to afford protection substantially equivalent to that provided by § 444.3 of the Rule and for so long as the state effectively administers and enforces its law.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: David G. Grimes, Jr., Division of Credit Protection, Practices, Bureau of Consumer Federal Trade Commission, Washington, DC 20580, (202) 326–3175.

SUPPLEMENTARY INFORMATION: Section 444.3 of the Credit Practices Rule states that it is a deceptive practice for a creditor in a transaction subject to the Rule [1] to misrepresent the nature or extent of cosigner liability to any person, and an unfair practice for such a creditor to obligate a cosigner without first informing that cosigner of the nature of his or her liability as a cosigner. The section further requires that a particular notice, prescribed therein, be given to each cosigner before the cosigner becomes obligated. A creditor who furnishes the prescribed notice does not violate the prohibition against unfair and deceptive practices concerning the cosigner's liability.

The Credit Practices Rule provides (at 16 CFR 444.5) that if a state applies for an exemption from a provision of the Rule, such exemption will be granted if the Commission determines that: (1) There is in effect a state requirement or prohibition that applies to any transaction to which a provision of the Credit Practices Rule applies; and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Rule's provision. Such an exemption will continue for so long as the state effectively administers and enforces its law. The result of the exemption is that the exempted provision of the Credit Practices Rule is not in effect in that state.

The State of California has filed a petition for exemption from § 444.3 of the Rule. California asserts that the California Civil Code and the California Business and Professions Code, and the State enforcement scheme meet the standards for exemption contained in the Rule. The request was published in the **Federal Register** for 60 days of public comment.[2]

After evaluating the request and the comments received, the Commission has determined to grant the exemption.

As set forth in § 444.5, the Commission evaluated, in the context of an exemption proceeding, the California petition for exemption to determine whether the level of protection to consumers under the state law is substantially equivalent to the protection afforded by the Credit Practices Rule and whether the state law is administered and enforced effectively. The exemption proceeding was conducted pursuant to section § 1.16 of the Commission's Rules of Practice.

As indicated in the Rule's Statement of Basis and Purpose, the requirement in § 444.5 that a comparable state requirement be "substantially equivalent" to the Commission's Rule provision does not, in the Commission's view, require that the state requirement mirror exactly the Rule provision. Any differences that exist, however, should be so minor as not to deprive consumers of the level of protection guaranteed by the Rule nor to complicate significantly compliance by interstate creditors. In determining whether an exemption is warranted, the Commission also considers factors such as the resources committeed by the state to enforce its provisions and the extent of private rights of action available to aggrieved consumers.

Contents of the California Submission

The Attorney General of the State of California provided copies of the relevant state statutes and a narrative statement comparing provisions of state law with § 444.3 of the Credit Practices Rule and explaining how state law and these Rule provisions would apply to the same transaction. The Attorney General also provided a discussion of the enforcement capabilities of state, county, and local prosecutors to assure compliance with the applicable provisions of California law. The application was signed by the Deputy Attorney General on behalf of the Attorney General, who has authority to enforce such law. By letter of July 28, 1987, the Deputy Attorney General submitted additional discussion and material for inclusion in the record, relating to the Rule's requirement that the cosigner notice be provided to individuals who cosign for their spouses.

Comments

The Bank of America and the California Bankers Association both submitted comments recommending that California's application be granted as requested. No other comments were submitted.

Provisions of California Law and Section 444.3 of the Rule

A. Summary of Provisions of California Law

The California Civil Code, section 1799.91, contains a requirement that a "Notice to Cosigner" be given to certain persons who enter into consumer credit contracts. Sections 1799.95 and 1799.99 provide that no action may be brought and no security interest enforced against any cosigner who is entitled to receive a cosigner notice and does not receive it, in connection with any consumer credit contract subject to the Code or any other transaction subject to § 444.3 of the Credit Practices Rule.

The California Business and Professions Code, section 17200, prohibits unfair competition, a term defined to include unlawful and unfair business practices, as well as unfair or deceptive advertising. Actions for injunctions and civil penalties are provided for in sections 17204 and 17206. Section 17500 prohibits false or misleading statements and sections 17535 and 17536 provide for injunctive relief and civil penalties.

[1] The Federal Trade Commission does not have jurisdiction over banks or federally-chartered or insured savings and loan associations, so transactions by those creditors are not subject to the Rule. However, the Federal Reserve Board and the Federal Home Loan Bank Board have adopted substantially similar rules for those institutions. These rules became effective January 1, 1988. The FRB's rule and the FHLBB's rule may be found at 50 FR 11695 (April 29, 1985) and 50 FR 19325 (May 8, 1985), respectively. The State of California has requested an exemption from those rules as well.

[2] 51 FR 30675, August 29, 1986.

B. Comparison of Cosigner Notice Requirements

Section 1799.91 of the California Civil Code requires that each "creditor" who obtains the signature of more than one person on a transaction subject to § 444.3 of the Credit Practices Rule deliver a notice that is identical to the text of the notice contained in § 444.3(c) of the Credit Practices Rule [3] to each person unless the persons are married to each other or unless each person in fact receives any of the money, property, or services that are the subject of the transaction.

1. Parties Required To Give the Notice

The California Civil Code requires that the notice be given by each "creditor," defined as any person or entity who enters into or arranges for consumer credit contracts (including lease purchase arrangements), "in the ordinary course of business." The Credit Practices Rule applies to any "lender" and any "retail installment seller," as defined in § 444.1(a) and 444.1(b), respectively, within the Commission's jurisdiction.[4] California states that its law covers the same parties that the Rule covers. In maintains further that the term "consumer credit contract" under California law includes all of the retail installment sales and virtually all of the loans covered by the Rule.

The Commission agrees with the conclusion of the California Attorney General that the parties (*i.e.*, lenders and retail installment sellers) required to give the Rule's notice are also covered by California law. Although the term "retail installment seller" (as defined in § 444.1(b)) does not have the "in the ordinary course of business" limitation that specifically narrows the definition of "creditor" under the California Civil Code, the Commission considers this difference to be of no significance.

The Commission also agrees with the California Attorney General's view that the term "consumer credit contract" (as defined in § 1799.90(a) of the California Civil Code) includes all of the retail installment sales and virtually all of the loans covered under the Rule's cosigner provision. Moreover, as noted by the California Attorney General, § 1799.99 of the California Civil Code mandates that the California cosigner notice be given for all transactions covered by the Rule, unless the persons signing the credit obligation are married to each other. Accordingly, the Commission concludes that California law requires that its cosigner notice be given by the same parties and in connection with the same types of transactions [5] as does the Rule.

2. Inclusion of the California Notice in the Contract

The Rule requires that the cosigner notice be on a separate document but there is no type size requirement. California law requires that the notice be placed either on a separate document or on the contact or other document establising the cosigner's liability in at least 10-point type. California notes that the Commission's stated purpose (at 49 FR 7778) for requiring that the notice be given on a separate document is to assure that the cosigner will actually be aware of the notice before becoming obligated. California contends that its law meets this objective by requiring that any cosigner notice not actually on a separate document be placed on the document that contractually obligates the cosigner and must appear in a box with a bold border immediately above the signature line or immediately above or adjacent to other statutorily required notices. California maintains that the notice will not be lost in the verbiage of the contract because the notice must appear on the side of the contract that has the signature line.

California law also contains the express requirement, not in the Rule, that the cosigner receive a copy of the cosigner notice. California law prohibits obtaining a cosigner's signature on a contract containing blank spaces to be filled in later and requires that each person entitled to the cosigner notice also receive a copy of the debt instrument and any security agreement or deed of trust evidencing the consumer credit contract.

The Commission has concluded that the provision of California law permitting placement of the California notice in the contract provides protection that is equivalent to that provided by the Rule. The requirements that the California notice be in at least 10-point type, and that any notice included in a contract be placed on the document establishing liability on the page with the signature space, in a box with a bold border, assures that the cosigner will actually be aware of the notice before becoming obligated.

3. Provision of the Notice to Spouses

The Rule requirement that the cosigner notice be given to cosigners includes spouses who are cosigners. California law excludes spouses. The Commission has concluded, however, for reasons cited below, that California law affords consumers protection that is substantially equivalent to that afforded by the Rule, notwithstanding the fact that spouses are not entitled to the California cosigner notice.

California argues persuasively that, under its law, spouses would rarely be cosigners within the meaning of the Rule. California also contends that the Rule notice misleads spouses concerning the liability of their community property under California's marital property law and that it would be impractical to modify it.[6] California believes that a modified notice, even if accurate, would be ineffective because of its complexity and that such a notice would rarely be of value to spouses.

The Commission has concluded that California law offers protection that is substantially similar to that afforded by the Rule because, under California law, a spouse could almost never become a cosigner within the meaning of the Rule. Although the Rule includes spouses as cosigners in order to comply with the ECOA's requirement that spouses be treated no less favorably than other cosigners, the Commission does not believe that granting the California petition for exemption will lead to violations of the ECOA, but believes that California's exclusion of spouses from the definition of cosigner would result in few, if any, cosigners being deprived of the protection of the Rule.

California is a community property state. Under California's community property law, the proceeds of a transaction subject to the Rule involving spouses will almost always be community property. The California Bankers Association has stated that, in a joint management and control community property state such as California, each spouse, by definition, receives the benefit of goods purchased by, or money lent to, the other. The California Attorney General has also noted that all real property in California and all personal property acquired by either spouse during marriage is community property, citing Civil Code Section 5110.[7] Under California law, money or property acquired by either spouse on the credit of community property or the personal credit of either spouse is presumed to be community property.[8]

To be a cosigner under the Rule, a spouse must become liable for the debt of another person "without compensation." A person (such as a joint applicant) who benefits from the transaction cannot be a cosigner. Thus, a spouse in California whose signature is required in a transaction subject to the Rule will generally not be a cosigner under the Rule. The spouse will have received "compensation" as a result of the transaction because the proceeds of the transaction are generally community property under California law. Community property benefits both spouses because it is available under California law (Civil Code § 5120.110(a)) to satisfy debts incurred by either spouse before or during marriage, regardless of whether one or both spouses are parties to the debt, and regardless of which spouse has management and control of the property. As California points out in its supplemental submission, both spouses are legally entitled to enjoy, use, manage, and control community property (see Civil Code section 5125). Accordingly, neither can be a "cosigner" for the other under § 444.1(k) of the Rule in California.

Another issue concerns credit transactions where the immediate proceeds are services (as contrasted with property, such as money or goods) directed solely to one spouse; these "proceeds" may not be community property under California law. Compensaion for the cosigner spouse as a result of the transaction, therefore, is less apparent. What benefits one spouse, however, almost always benefits the community under California law. Moreover, no cosigner notice would be required under the Rule, in light of California law, where the services (or goods) that are the proceeds of the transaction constitute the "necessaries of life" for one spouse. Under California law, both spouses are liable for a debt for necessaries, and the separate property of either may be applied to the satisfaction of the debt (Civil Code § 5120.140). Therefore, both spouses would benefit if the proceeds of a loan were used to obtain them. Again, spouses wo receive compensation cannot be cosigners under the Rule.

A final circumstance in which the spouse might not receive compensation from the transaction occurs when the applicant is relying wholly on separate property to repay the obligation. In such a situation, the proceeds would not be community property. However, it appears that such transactions are rare. The California Attorney General believes that most married persons' assets and earninga in California consist largely or entirely of community property. The Commission staff has concluded that extremely few transactions of this sort are likely to occur.

Providing the Rule's cosigner notice to spouses in California may also be misleading since it is doubtful the notice could be modified to reflect state law without substantially reducing its effectiveness. The Commission concurs with California's assertion that the Rule notice is not an accurate statement of a married person's liability for his or her spouse's debts under California law. As noted above, under California law, a married California resident's share of community property is liable for the debts of the resident's spouse, regardless of whether the resident is a cosigner; the resident is also personally liable for debts of the resident's spouse for the necessaries of life. California contends that the Rule's cosigner notice implies falsely that a person solicited to cosign a debt can avoid all liability for the debt by refusing to cosign.[9] California maintains that a married person cannot avoid all liability for his or her spouse's debts by refusing to cosign if some (or all) of the person's property is community property. That property will be liable for the debts of that person's spouse, regardless of whether the person becomes a cosigner. California's argument casts doubt upon the utility of the cosigner notice, suggesting that it would be of little, if any, benefit to spouses.

In sum, because most spouses in California will not be cosigners under the Rule and, therefore, will not be entitled to the Rule's notice, the fact that California law excludes spouses is of no consequence insofar as California's exemption request is concerned. With respect to those few spouses who would be entitled to the notice, the Rule notice may be misleading. Therefore, the Commission has concluded that California law provides consumers who are spouses with protection that is at least equivalent to that provided by the Rules.

4. Other Parties Entitled To Receive the Notice

California maintains that its law offers protection to a greater range of cosigners than does the Rule. The California Code requires that a cosigner notice be given to a person whose collateral is at risk, unless that person actually uses the money, property, or services that are the subject of the transaction. Under § 444.1(k) of the Rule, the term "cosigner" is defined to mean "a natural person who renders himself or herself *liable* for the obligation of another person without compensation" (emphasis added).

California also maintains that its law offers protection to certain cosigners of open-end credit plans to multiple obligors as joint applicants, each of whom has the theoretical right to credit. Under California law, the cosigner notice would have to be given unless the creditor disclosed clearly and conspicuously in the credit application or agreement that each applicant has the right to receive unlimited credit and that each applicant may be liable for credit extended to any applicant. The creditor would also have to issue each applicant the credit cards or other devices needed to access the credit plan in order to avoid being required to give the cosigner notice.

As to parties entitled to receive the Rule's notice, the Commission agrees with the conclusion of the California Attorney General that California law provides protection at least equivalent to the protection provided by the Rule.

5. Language of the Notice

In its Statement of Basis and Purpose, the Commission noted (at 49 FR 7778) that the cosigner notice should be provided in the same language as that in

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[3] The text of the cosigner notice is as follows:

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used aginst the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

[4] Under the Rule, the term "lender" (§ 444.1(a)) denotes one who engages "in the business" of lending money to consumers, and the term "retail installment seller" (§ 444.1(b)) denotes one who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement.

[5] But see discussion of "Provision of the Notice to Spouses," *infra*.

[6] California argues that the cosigner notice may mislead a married person to believe he or she will not be liable for his or her spouse's debt unless the person signs the obligation.

[7] The exceptions (*e.g.*, gifts, inherited property) are not pertipent here.

[8] *See e.g.*, Cal. Civ. Code section 5110; *In re Marriage of Fischer*, 78 Cal. App. 3d 556, 561, 146 Cal. Rptr. 561 (1978); *Ford* v. *Ford*, 276 Cal. App. 2d 9, 12–13, 80 Cal. Rptr. 435 (1969), cited in letter of May 1, 1987 from California Attorney General John K. Van De Kamp to Adrienne Hurt, Federal Reserve Board.

[9] The notice says, for example, "This notice is not the contract that makes you liable for the debt."

which the underlying loan contract is written, a matter not specifically addressed in the Rule itself. California requires that a prescribed, Spanish language translation of the notice accompany the English version, and that the notice be translated into the language in which the underlying contract is written, if other than English or Spanish. California maintains that the language requirements for its notice are consistent with the Commission's statement that the cosigner notice should be given in the same language used in the underlying credit agreement.

The Commission agrees with the California Attorney General's conclusion that the requirements of California law as to the language of the cosigner notice afford consumers a level of protection at least equivalent to that afforded by the Rule.

C. Comparison of Prohibitions Against Misrepresentations of Cosigner Liability

Section 444.3(a)(1) of the Rule provides that it is a deceptive act or practice within the meaning of section 5 of the Federal Trade Commission Act for a lender or retail installment seller to misrepresent to any person, directly or indirectly, the nature or extent of cosigner liability. Section 444.3(a)(2) of the Rule provides that it is an unfair act or practice within the meaning of section 5 of the Federal Trade Commission Act for a lender or retail installment seller to obligate a cosigner, directly or indirectly, unless the cosigner is informed of the nature of his liability as a cosigner prior to becoming obligated.

California law does not specifically prohibit misrepresentations of cosigner liability. However, such a cause of action can be found in section 17500 of the California Business and Professions Code, which does proscribe the dissemination of untrue and misleading statements in order to dispose of goods or services. Proof of actual deception, the intent of the disseminator, the customer's knowledge of or reliance on the statement or damages are unnecessary to establish a violation. Sections 17200, 17203, and 17207 of the California Business and Professions Code also prohibit a wide range of practices constituting unfair competition which includes unlawful, unfair, or fraudulent business practices. This law protects consumers as well as businesses.

The Commission agrees with the California Attorney General's conclusion that provisions of California law proscribing the dissemination of untrue and misleading statements to dispose of goods or services afford consumers protection that is substantially equivalent to that afforded by the Rule's provisions proscribing misrepresentations to cosigners about the nature or extent of their liability.

D. Enforcement and Remedies

California contends that its enforcement capabilities, as well as the remedies provided by its law, afford consumers more protection than does the Rule. The Rule provides for penalties of $10,000 per violation, but failure to comply with the Rule does not alter the underlying obligation. The Commission may sue to enforce the Rule, but the Rule provides no private right of action.

Under California law, private parties may bring an action for injunction, restitution, and other equitable relief for California law violations, even if they are not directly aggrieved by the violations. Such actions may also be brought by the Attorney General or any of 58 district attorneys and local prosecutors, all of whom may seek a civil penalty of up to $2,500 for each statutory violation (which could result in a $5,00 penalty for a deceptive statement that violates two provisions of the Code) and up to $6,000 per day for each violation of an injunction issued pursuant to the Business and Professions Code. District and city attorneys maintain active consumer protection divisions. The petition demonstrates California's willingness and ability to enforce the provisions of its cosigner law.

If a consumer credit contract does not comply with California law, a creditor is prohibited from bringing any action or enforcing any security interest against anyone who signed the contract, did not receive any proceeds from the contract, was entitled to receive the cosigner notice and did not receive it.[10] Finally, a party injured through misrepresentation of cosigner liability has a cause of action under California law pursuant to traditional tort theories, such as fraud, deceit, negligent misrepresentation, or mistake, and is entitled to appropriate traditional remedies that might include actual and punitive damages, rescission, or reformation.

The Commission has concluded that the remedies available under California law afford consumers protection that is at least equivalent to the protection afforded by the Rule. The Commission also agrees with the conclusion of the California Attorney General that state authorities in California have the means to enforce effectively the provisions of California law relating to unfair or deceptive cosigner practices.

Action Taken

Based on the submission by the California Attorney General in support of the California application for an exemption and upon the comments received, the Commission concludes that the State of California has in place, and is enforcing, comprehensive consumer credit regulations containing protections against the specific abuses that § 444.3 of the Rule is intended to eliminate. The Commission has determined to grant the requested exemption on that basis. As contemplated in the staff guidelines, the exemption will remain in effect for so long as state law continues to afford protection substantially equivalent to that provided by § 444.3 of the Rule and for so long as the state effectively administers and enforces its law. To ensure that the conditions for an exemption continue to be met, the Commission requires the State of California to provide notice to the Commission of any change in its law, policies or procedures, including court decisions, that would significantly affect whether the state law continues to afford substantially equivalent protection and whether the state is effectively enforcing the Act. The Commission reserves the right to revise this reporting requirement at a later date if circumstances warrant or to request additional information if the Commission determines that this is needed.

List of Subjects in 16 CFR Part 444

Consumer credit, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-12147 Filed 5-31-88; 8:45 am]

BILLING CODE 6750-01-M

[10] This prohibition does not affect the rights of a bona fide purchaser for value of property sold pursuant to enforcement of a security interest, if such purchase was made without notice of any facts constituting a violation.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 132

[T.D. 88-27]

Elimination of Duplicative Procedures by Customs Personnel

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule; conforming change.

SUMMARY: This document amends the Customs Regulations by eliminating a procedure which has been required of Customs officers, but which is now redundant. Section 132.13(a)(2), Customs Regulations, now requires Customs personnel to note on each entry summary or withdrawal, for consumption, presented for quota purposes, the exact date, hour, and minute of presentation. On September 8, 1987, a Customs Directive was issued which requires brokers to utilize time stamping machines when presenting these entry summaries or withdrawals, for consumption. Because of this requirement, the information which is required by the regulation to be noted on the documents by Customs personnel is already on the documents. Therefore, this change will not result in the loss of any information to Customs regarding the time of entry of merchandise. The amendment will not change the requirement that Customs personnel inform Headquarters of the data contained in an entry summary or withdrawal, for consumption, and the precise time and date of the document's submission. The change will clarify existing policy and eliminate a duplication of effort. The change is nonsubstantive and is essentially procedural.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: J.R. Dorsett, Office of Trade Operations, U.S. Customs Service, (202) 343-8649.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the U.S. Customs Service policy of continually striving to expedite and facilitate the orderly flow of entry documentation, the U.S. Customs Service issued Customs Directive No. 3550-24, on September 8, 1987. That directive provided that members of the public presenting entry summaries for quota merchandise would no longer have to wait for a receipt to be issued by Customs, but would utilize time-stamping machines which would be made available for their use.

Section 132.13(a)(2), Customs Regulations (19 CFR 132.13(a)(2)), provides that Customs officers note the exact date, hour and minute of the presentation on each entry summary or withdrawal, for consumption. That requirement had been placed on the Customs officers prior to the establishment of the current policy. Because this information will now be on the entry documents when they are presented to the Customs officials, retaining the requirement that the official enter the same data is unnecessary and duplicative.

Accordingly, the requirement that the Customs official note the exact date, hour and minute of presentation on the entry document will be eliminated. The requirement that this information be reported to Headquarters will be retained.

This amendment will not place any additional requirement on the members of the public, and it will not result in the loss of required information to the Customs Service.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. are not required.

Public Notice Requirement

Inasmuch as the amendment concerning the acts of Customs officials is merely to avoid duplication in the collection of information and conforms to preexisting directives, and because no new regulatory burdens are imposed on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 132

Customs duties and inspection, Imports, Quotas.

Amendment To The Regulation

Part 132, Customs Regulations (19 CFR Part 132) is amended as set forth below.

PART 132—[AMENDED]

1. The authority citation for Part 132 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Headnote 11), and 1624.

2. Section 132.13 is amended by revising the subheading of paragraph (a)(2) and its text to read as follows:

§ 132.13 Quotas after opening.

(a) * * *

* * * * *

(2) *Report of time of presentation.* The date, hour and minute that an entry summary for consumption or withdrawal for consumption is presented at a port of entry must be indicated on the document by a method deemed acceptable by Customs. The appropriate Customs officer shall report this information to Headquarters.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: May 11, 1988.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 88-12221 Filed 5-31-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-88-1804; FR-2515]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the mortgage limits in Washington, Providence, Bristol, Kent and Newport Counties, Rhode Island; Saratoga County, New York; Pueblo, Arapahoe, Jefferson and Douglas Counties, Colorado; Clark County, Nevada; Bucks County, Pennsylvania; Mecklenburg County, North Carolina; and the Montgomery, Alabama MSA; and adding "high-cost" mortgage limits for Erie County, New York. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: June 1, 1988.

FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, Room 9160; telephone (202) 755-6880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710–1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On March 3, 1988 (53 FR 6922), the Department published its most recent annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and their applicable limits for each area.

This Document

Today's document increases high-cost mortgage amounts for Washington, Providence, Bristol, Kent and Newport Counties, Rhode Island; Saratoga County, New York; Pueblo, Arapahoe, Jefferson and Douglas Counties, Colorado; Clark County, Nevada; Bucks County, Pennsylvania; Mecklenburg County, North Carolina; and the Montgomery, Alabama MSA; and adds "high-cost" mortgage limits for Erie County, New York.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D). Combination Manufactured Home and Lot (Excluding Alaska, Guam and Hawaii)

To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Erie County (New York) has a one-family limit of $78,850. The combination home and lot loan limit for Erie County is $78,850 x .80, or $63,080.

B. Section 2(b)(1)(E): Lot Only (excluding Alaska, Guam and Hawaii);

To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Erie County (New York) has a one-family limit of $78,850. The lot-only loan limit for Erie County is $78,850 X .20, or $15,770.

C. Section 2(b)(2). Alaska, Guam and Hawaii Limits

The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 X 140%).
2. For combination manufactured homes and lots: 75,600. ($54,000 X 140%).
3. For lots only: $18,900. (13,500 X 140%).

II. Title II:

UPDATING OF FHA SECTIONS 203(B), 234(C) AND 214 AREA WIDE MORTGAGE LIMITS

REGION I

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Providence Office				
State of Rhode Island	$101,250	$114,000	$138,000	$160,500

REGION II

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Buffalo Office				
Erie County, NY	$78,850	$88,800	$107,900	$124,500
HUD Field Office—Albany Office				
Saratoga County, NY	$101,250	$114,000	$138,000	$160,500

REGION III

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Philadelphia Office				
Bucks County, PA	$100,350	$113,000	$137,300	$158,450

REGION IV

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Greensboro Office				
Mecklenburg County, NC	$101,250	$114,000	$138,000	$160,500
HUD Field Office—Birmingham Office				
Montgomery, AL MSA: Atauga County Elmore County Montgomery County	$84,500	$95,150	$115,650	$133,400

REGION VIII

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Denver Office				
Arapahoe County, CO	$101,250	$114,000	$138,000	$160,500
Jefferson County, CO	101,250	114,000	138,000	160,500
Douglas County, CO	101,250	114,000	138,000	160,500
Pueblo County, CO	73,550	82,850	100,650	116,150

REGION IX

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Las Vegas Office				
Las Vegas, NV MSA: Clark County, NV	$101,250	$114,000	$138,000	$160,500

Date: May 23, 1988.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-12229 Filed 5-31-88; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 885

[Docket No. R-88-1391; FR-2477]

Loans for Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's regulations governing projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the United States Housing Act of 1937. This rule amends 24 CFR Part 885 to incorporate loan interest rate provisions contained in the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988).

DATES: This rule is effective on July 11, 1988. Comments are due July 31, 1988.

ADDRESS: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Assisted Elderly and Handicapped Housing Division, Room 6118, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Purpose

HUD's regulations at 24 CFR Part 885 govern projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance payments under Section 8 of the United States Housing Act of 1937. On February 5, 1988, President Reagan approved the Housing and Community Development Act of 1987 (Pub. L. 100–242) ("the Act"). This Act revises the section 202 program in several ways.

The purpose of this rulemaking is to implement immediately the statutory changes governing the section 202 loan interest rate. These changes were effective on enactment and require little regulatory elaboration. Other statutory changes affecting the section 202 program cannot be implemented immediately and will be incorporated in a related rule to be published later this year.

II. Statutory provisions

Before the recent amendment, section 202(a)(3) provided that the rate of interest on section 202 loans shall not exceed "a rate determined by the Secretary of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made, adjusted to the nearest one-eighth of one per centum, plus an allowance adequate in the judgment of the Secretary to cover

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administrative costs and probable losses under the program."

In recent years, Congress has imposed a statutory ceiling on the section 202 interest rate. Section 223(a)(1) of the Housing and Urban-Rural Recovery Act of 1983 provided that the interest rate plus the allowance for loans made during Fiscal Year 1984 could not exceed 9.25 percent per annum. Congress continued to impose this ceiling on loans made during Fiscal Years 1985–88.

Section 161 of the Act revises the interest rate provisions in section 202(a)(3) in several ways:

—Statutory Formula. Section 161(c)(1)(B) revises the formula for the section 202 interest rate calculation. The new act provides that the interest rate on section 202 loans shall not exceed a rate determined by the Secretary of HUD "taking into consideration the average yield during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States" adjusted to the nearest one-eighth of one percentum, plus an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program.

—Statutory Ceiling. Section 161(c)(2) makes the 9.25 percent ceiling permanent.

—Optional interest rate. Under section 161(c)(1)(C) of the Act, the Borrower is given the option to have the section 202 interest rate determined at the time that a request is submitted to HUD for a conditional or firm commitment. This interest rate is calculated by using the formula and statutory ceilings described above, except that the time period for determining the average yield on the most recently issued 30-year marketable obligations of the United States is modified. The statute provides that the loan may be made either: (1) at an interest rate that does not exceed the average yield of such obligations for the one-month period prior to the month in which the request for commitment is made; or (2) at an interest rate that does not exceed the average yield of such obligations for the three-month period immediately preceding the fiscal year in which the request for commitment is made.

III. Regulatory Implementation

The interim rule revises § 885.410(g) to incorporate the new interest rate calculation provisions. Provisions governing the calculation of the annual interest rate are found at paragraph (g)(1). The optional rate is addressed at paragraph (g)(2). These provisions reflect the statutory language and, except as noted below, require no further explanation in this preamble. The interim rule also makes conforming changes to existing provisions governing the request for direct loan financing and approval of such requests (§§ 885.400 and 885.405) and makes appropriate modifications to existing § 885.410(h).

The following provisions of the interim rule require further explanation:

A. Date of submission of the request for commitment.

As noted above, the computation of the optional rate depends, in part, on the date that the request for conditional commitment or the date that the request for firm commitment is submitted to HUD. Borrowers often submit requests for commitment that are incomplete or otherwise unacceptable. To make sure that there is no confusion concerning the date of submission of such requests, the rule provides that the date of submission of a request is the date that the Borrower submits a complete and acceptable request to HUD under § 885.400.

Many requests for conditional or firm commitment are reprocessed. Where reprocessing has occurred, there may be confusion concerning the exact date that the request for commitment is submitted. The rule provides that the date of the submission of the request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

B. Withdrawal of election of the optional rate.

To make it clear that the optional rate is applicable at the election of the Borrower, the interim rule permits the Borrower to withdraw its election of the rate at any time before initial loan closing. (See § 885.410(g)(2)(iii).) If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under § 885.410(g)(1), unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (g)(1).

C. Cancellation of optional rate by HUD.

HUD must ensure that section 202 projects are completed and put into operation as expeditiously as possible. Accordingly, under existing § 865.230, HUD may cancel a fund reservation at any time if it can be established that the Borrower is not making satifactory progress toward the start of construction, rehabilitation, or acquisition. Moreover, under this same section, HUD may cancel any reservation of section 202 loan funds for projects for which the construction, substantial rehabilitation, or acquisition with or without rehabilitation is not begun *within 18 months after the notice of section 202 Fund Reservation is issued,* unless an extension of time not to exceed six months is requested of, and granted by, HUD.

The statutory provisions contained in the Act do not provide an expiration date for the optional interest rate. However, HUD believes that it would be contrary to the goal of encouraging reasonable progress toward project operation to permit the optional rates to apply for the duration of an *extended* fund reservation. While we will continue to provide appropriate extensions of time for fund reservations, we do not believe that it is appropriate to permit Borrowers to receive the benefit of an optional rate during the period of the extension.

Accordingly, § 885.410(g)(2)(iv) provides that if the initial loan closing has not occurred within 18 months after issuance of the notice of section 202 fund reservation, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined in accordance with § 885.410(g)(1).

D. Notification of interest rate.

Currently, the Secretary annually publishes a notice of the loan interest rate in the **Federal Register.** Today's interim rule retains this **Federal Register** publication requirement for loan interest rate determinations that are based on the average yield of the most recently issued 30-year obligations during the 3-month period immediately preceding the fiscal year in which the loan is made. (See § 885.410(h)(1).)

Because the optional interest rate may fluctuate monthly, depending on the average yield for 30-year marketable obligations during the one-month period immediately before the month that the borrower submits its commitment request, it would be impossible for HUD to arrange for the timely publication of these monthly interest rate calculations in the **Federal Register.** Moreover, even if HUD could issue timely publications, HUD believes that the continuation of this requirement would generate an excessive and potentially confusing number of **Federal Register** publications. In light of the recent statutory changes, HUD believes that a more effective way of notifying borrowers of the optional interest rate for section 202 loans is to provide the information upon the Borrower's request. (See § 885.410(h)(2).)

III. FY–1988 Section 202 Loan Interest Rates

A. Calculation of the FY–1988 interest rate.

The Conference Report states that the new interest rate formulae are intended to apply to all section 202 loans that are closed after the enactment date (House Report No. 100–426, 100th Cong., 1st Sess. 182). Based on information contained in the Federal Reserve Board of Governor's Statistical Release H–15, the average yields on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding FY–1988 were: 8.64 percent for July, 1987; 8.97 percent for August 1987; and 9.59 percent for September, 1987. Based on these rates, the average yield for such obligations during the three-month period immediately preceding FY–1988 was 9.07 percent. Rounded to the nearest one-eighth of one percent, the average yield would be 9.125. This rounded rate, plus the .25 percent allowance to cover administrative costs and probable losses under the program,[1] would provide a section 202 interest rate of 9.375 percent per annum. Thus, under the new formula, the maximum loan interest rate that HUD could set for the section 202 loans would be the statutory ceiling of 9.25 percent.

On November 2, 1987 (52 FR 41989), HUD established a 9 percent per annum interest rate for section 202 loans made during FY–1988. This interest rate was based on the interest rate formula in effect before the enactment of the Act. While the Conference report stated that the new interest rate formulae were intended to apply to all section 202 loans closed after the enactment date, HUD believes that the conferee's intent was to provide a lower interest rate for section 202 Borrowers, rather than to enable HUD to increase the loan interest rate. Since the interest rate determination under the new Act is a *maximum* limit on the section 202 loan interest rate, HUD believes that it is more consistent with the congressional intent to maintain the announced 9 percent interest rate for FY–1988.

[1] Existing § 885.410(g)(1) states that the Secretary of HUD has determined that the allowance to cover administrative costs and probable losses under the program is .25 percent per annum for both the construction and permanent loan periods.

B. Calculation of the optional rate.

1. Optional rate for Borrowers funded in FY–1987 that submitted a request for commitment before February 5, 1988, and where initial loan closing did not occur before February 5, 1988.

The Conference Report stated that the conferees intended "that the provisions giving the borrower the option to lock in a rate at the time a commitment request is submitted apply to requests submitted prior to enactment if the loan is closed after the enactment date." (House Report No. 100–426, 100th Cong., 1st Sess. 182.) HUD does not believe that the conferees intended to give Borrowers the opportunity to elect section 202 interest rates based on average yields computed during the one-month period immediately before the month in which the request for commitment was *originally* submitted, or based on the three-month period immediately preceding the fiscal year in which the request for commitment was *originally* submitted. Such a conclusion would treat similarly-situated Borrowers inequitably and would impose an enormous administrative burden on the Department. In order to comply with the conferees' intent, HUD has decided to provide an optional rate to this class of Borrowers based upon applicable market yields on the enactment date (February 5, 1988).

HUD has determined that the optional percent rate for such Borrowers is 9 percent, based on the following factors:

—The average yield on 30-year marketable obligations of the United States issued during the three-month period immediately preceding FY–1988, plus an allowance for administrative costs and probable losses under the program. As noted above, this rate is 9.375 percent per annum, but was capped at 9 percent per annum in order to give effect to the conferee's intention to benefit section 202 borrowers with the better of the two rates.

—The average yield on 30-year marketable obligations of the United States issued during the one-month period immediately preceding the enactment date, plus an allowance for administrative costs and probable losses. Based on information contained in the Federal Reserve Board of Governor's Statistical Release H–15, the average yield on the most recently issued 30-year marketable obligations of the United States during the month of January 1988 was 8.83 percent per annum. This yield, rounded to the nearest one-eighth of one percent (8.875 percent) plus the .25 percent allowance for administrative costs and probable losses, would provide an interest rate of 9.125 percent per annum.

—The statutory ceiling of 9.25 percent.

HUD will assume that all Borrowers that made a request for commitment before February 5, 1988 but did not go to initial loan closing before February 5, 1988 will elect the optional rate, as calculated above. In order to lock in the 9 percent rate, however, each affected Borrower must file a written election of the rate within 30 days of the publication of this rule. (These Borrowers may withdraw this election at any time before initial loan closing.)

2. Optional rate for Borrowers funded in FY 1987 that submitted a request for commitment after February 5, 1988 but before the effective date of this rule.

If initial loan closing has not occurred before the effective date of this rule, HUD will take the following steps. HUD will notify each Borrower of its right to elect the optional interest rate, and will give the Borrower 30 days to file a written election of the optional rate. The Borrower may withdraw this election at any time before loan closing.

If the initial loan closing occurs before the effective date of this rule, HUD will take the following steps. If the optional interest rate fell below 9 percent in the month preceding the month in which the Borrower made its request for commitment, HUD will contact the Borrower and will make appropriate loan modifications to reflect the lower rate for such Borrowers.

IV. Findings and Certifications

In the Conference Report cited above, the conferees expressly stated their intent that the section 202 interest rate provisions contained in the Act become effective immediately. Accordingly, the Department regards the underlying statutory changes as mandatory and self-executing and has determined that good cause exists for making this rule effective as soon after publication as possible. However, public comments are invited for 60 days following publication of this interim rule. These comments will be considered in the adoption of a final rule.

Under 24 CFR 50.20(1), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters categorically excluded from the environmental requirements of 24 CFR Part 50.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the

rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides HUD with additional flexibility in adjusting section 202 interest rates in periods of low market interest rates, and may result in lower section 202 interest rates for some Borrowers. The effect of these changes on small entities, however, should be minor.

This rule was listed in the Department's Semiannual Agenda of Regulations published April 25, 1988 (53 FR 13854, 13879) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects in 24 CFR Part 885

Aged, Grant programs: housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

Accordingly, the Department amends 24 CFR Part 885 to read as follows:

PART 885—HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for 24 CFR Part 885 continues to read as follows:

Authority: Section 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 885.400, the introductory paragraph and paragraphs (a), (b), and (c) are redesignated as paragraphs (a), (b), (c), and (e), respectively, the reference to paragraph (a) in redesignated paragraph (c) is revised to refer to paragraph (b), and a new paragraph (d) is added to read as follows:

§ 885.400 Request for direct loan financing.

* * * * *

(d) When the request for conditional or firm commitment for direct loan financing is submitted, the Borrower may request that the loan interest rate be computed at the optional interest rate as provided under § 885.410(g)(2). If the Borrower makes such a request, the loan interest rate used for the processing of the request for conditional or firm commitment under paragraph (b) or (c) shall be the optional loan interest rate. If the Borrower does not make a request for the optional rate, the interest rate used for processing the request shall be the interest rate computed under § 885.410(g)(1).

* * * * *

3. In § 885.405, new paragraphs (a)(8) and (b)(4) are added, to read as follows:

§ 885.405 Approval of requests for direct loan financing.

* * * * *

(a) * * *

(8) The interest rate used in the processing of the request.

(b) * * *

(4) The interest rate used in the processing of the request.

* * * * *

4. Paragraphs (g) and (h) of § 885.410 are revised to read as follows:

§ 885.410 Amount and terms of financing.

* * * * *

(g) *Loan interest rate.* The loan is made on the date of the initial loan closing under § 885.415. Loans shall bear interest at a rate determined by HUD in accordance with this section.

(1) *Annual interest rate.* Except as provided under paragraph (g)(2), loans shall bear interest at the rate in effect at the time the loan is made. The loan interest rate shall not exceed:

(i) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program; and

(ii) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses.

(2) *Optional interest rate.* The borrower may elect an optional loan interest rate. To elect the optional rate, the Borrower must request that HUD determine the loan interest rate at the time of the Borrower's request for conditional or firm commitment for direct loan financing under § 885.400.

(i) If the borrower elects the optional loan interest rate, the loan interest rate shall not exceed:

(A) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probably losses under the program;

(B) The average yield on the most recently issued 30-year marketable obligations of the United States during the one-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and

(C) Any applicable statutory ceiling on the loan interest rate including an allowance to cover administrative costs and probable losses under the program.

(ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD under § 885.400. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

(iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (g)(1), unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (g)(1) of this section.

(iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (g)(1) of this section.

(3) *Allowance for administrative costs and probable losses.* For the purpose of computing the loan interest rate under paragraphs (g) (1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(h) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (g)(1) of this section by publishing notice of the rate in the **Federal Register**. The **Federal Register** notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (g)(2) of this section.

* * * * *

Date: April 29, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-12230 Filed 5-31-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Approval of Amendments to the Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of proposed amendments submitted by the State of Arkansas as modifications to its permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments provide the Arkansas Department of Pollution Control and Ecology (ADPCE) with the authority to require an applicant for a mining permit to collect additional data and/or take mitigative or protective measures to minimize adverse impacts on historic properties or archeological resources. These amendments are in response to the revised rules promulgated by OSMRE regarding protection of historic properties and archeological resources.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Arkansas program on November 21, 1980. Information pertinent to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning program amendments are identified at 30 CFR 904.10 and 904.15.

II. Submission of Program Amendments

On February 10, 1987, OSMRE promulgated revised regulations concerning the consideration which must be accorded historic properties or archeological resources during the permitting of surface coal mining operations (52 FR 4244). These rules respond to the decisions rendered by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144, facilitate implementation of OSMRE's responsibilities under the National Historic Preservation Act of 1966 (NHPA), as amended, and clarify the responsibilities of OSMRE, State regulatory authorities and applicants for permits to conduct surface coal mining operations and coal explorations.

In accordance with the provisions of 30 CFR 732.17(d), OSMRE notified Arkansas, by letter dated June 9, 1987, (Administrative Record No. AR-328), of the changes necessary to ensure that the approved regulatory program was in accordance with SMCRA and no less effective than its implementing regulations, as revised since November 21, 1980, when the Arkansas program was originally approved. To comply with the requirements of 30 CFR 732.17(f)(1), the State of Arkansas submitted proposed program amendments to OSMRE on November 4, 1987 (Administrative Record No. AR-329).

OSMRE announced receipt of the amendments in the December 14, 1987, **Federal Register** (52 FR 47411) and in the same notice, initiated a 30-day public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendments. No public comments were received by January 13, 1988, the close of the comment period, and because no one requested an opportunity to testify, no public hearing was held.

The amendment contains additions and/or revisions to the following parts of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC): Part 776, General requirements for coal exploration operations; Part 779, Surface mining permit applications—minimum requirements for information on environmental resources; Part 780, Surface mining permit applications—minimum requirement for reclamation and operation plan; and Part 786, Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

In the November 4, 1987 letter, Arkansas submitted a policy statement affirming that ASCMRC 761.11(c) and 761.12(f)(1) will protect all privately owned National Register Sites.

Arkansas added language to ASCMRC 776.12(a)(3)(i), giving the Director of ADPCE authority to require any information regarding known or unknown historical sites when reviewing an application for coal exploration.

Language was added to ASCMRC 779.12(b) regarding permit application requirements for information on environmental resources. The new regulation gives the Director of ADPCE authority to require additional information regarding historic and archeological resources that may be listed on, or eligible for listing on, the National Register of Historic Places (NRHP).

The State of Arkansas rewrote ASCMRC 780.31 with regard to the permit application requirements for reclamation and operation plans. The new regulation provides the Director of ADPCE authority to require an applicant to take appropriate measures to protect historic or archeological properties listed on or eligible for listing on NRHP.

With the addition of ASCMRC 786.19(p), a new required finding has been added to the list of written findings that the Director of ADPCE must make prior to approving any permit application or application for a significant revision of a permit. The finding will state that the Director has taken into account the effect of the proposed permitting action on properties listed on or eligible for listing on NRHP.

III. Director's Findings

In general, the revised regulations are identical to the corresponding Federal regulations, with minor changes to improve specificity and to replace Federal references and terms with State references and terms.

Finding No. 1: ASCMRC 776.12(a)(3)(i), Coal Exploration

Arkansas made additions to ASCMRC 776.12(a)(3)(i) that correspond to the

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Federal regulation at 30 CFR 772.12(b)(i)(iv). The differences between the State and Federal regulations are minor, nonsubstantive wording changes.

The regulation gives the Director of ADPCE authority to require any information regarding known or unknown historical sites when reviewing an application for coal exploration. The Director finds this proposed amendment no less effective than the Federal regulations.

Finding No. 2: ASCMRC 779.12(b), Environmental Resources

Language identical to the Federal regulation at 30 CFR 779.12(b)(2) was added to ASCMRC 779.12(b). With regard to permit application requirements for information on environmental resources, the new regulation will give the Director of ADPCE authority to require additional information regarding historic and archeological resources that may be listed on or eligible for listing on NRHP. The Director finds that the proposed amendment is no less effective than the Federal regulations.

Finding No. 3: ASCMRC 780.31, Reclamation Plans

Arkansas rewrote ASCMRC 780.31 identical to the corresponding Federal regulation at 30 CFR 780.31. The regulation provides the Director of ADPCE authority to require an applicant to take appropriate measures to protect historic or archeological properties listed on or eligible for listing on NRHP as a part of the proposed reclamation plan. The Director finds this proposed amendment to be no less effective than the Federal regulations.

Finding No. 4: ASCMRC 786.19(p), Required Findings

The addition of ASCMRC 786.19(p) parallels the Federal regulations at 30 CFR 773.15(c). A new required finding is being added to the list of written findings that the Director of ADPCE must make prior to approving any permit application or application for significant revision of a permit. The finding will state prior to approval of any application that the Director has taken into account the effect of the proposed permitting action on properties listed on, or eligible for listing on NRHP. The Director finds this proposed amendment to be no less effective than the Federal regulations.

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendments, as submitted on November 4, 1987, are no less stringent than the requirements of SMCRA and no less effective than the corresponding Federal regulations, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and his ongoing oversight of the Arkansas program.

IV. Public Comment

The Director solicited public comment on the proposed amendment and provided opportunity for public hearing (52 FR 47411). No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were also solicited from various State and Federal agencies.

30 CFR 732.17(h)(4) requires all amendments that may have an effect on historic properties be provided to the State Historic Preservation Officer (SHPO) and to the Advisory Council on Historic Preservation for comment. These offices were solicited for comment. The Advisory Council on Historic Preservation made no response. This was taken as no comment.

The Arkansas State Historic Preservation Officer responded with two comments (Administrative Record No. AR–337). First, the SHPO noted that all references to the National Register for Historic Places should be changed to read the National Register *of* Historic Places. Arkansas noted the incorrect references are typogrpahical errors that will be corrected when the State adopts the amendment.

The second comment concerned the lack of reference to Section 106 of the National Historic Preservation Act of 1966 or compliance with the Federal regulations found at 36 CFR Part 800. Although such a reference would be appropriate, the State's wording is in accordance with the Federal regulations and the reference to the above mentioned Act or regulations is not required.

No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted to OSMRE by Arkansas on November 4, 1987, provided that Arkansas promulgates these regulations in identical form, with the exception of typographical errors, to that November 4, 1987 submission. The Director is amending 30 CFR Part 904 to codify the approval of this amendment. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to the section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 25, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 904.15 is amended by adding a new paragraph (e) as follows:

§ 904.15 Approval of amendments to State regulatory program.

* * * * *

(e) The following amendments to the Arkansas Surface Mining and Reclamation Code, as submitted to OSMRE on November 4, 1987, are approved effective June 1, 1988. Revisions to Arkansas regulations are at sections: 776.12(a)(3)(i), 779.12(b), 780.31, and 786.19(p). This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSMRE's review and approval with the exception of typographical errors.

[FR Doc. 88–12170 Filed 5–31–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[DoD Directive 5400.7]

DoD Freedom of Information Act Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule publishes a revision of DoD Directive 5400.7, which is the authority document for the publication of DoD 5400.7–R. DoD 5400.7–R (32 CFR Part 286) was published as a final rule on July 10, 1987 (Vol. 52, No. 132) pursuant to the Freedom of Information Reform Act of 1986, section 1801–1804 (Pub. L. 99–540); and section 954 of the National Defense Authorization Act for FY 1987 (Pub. L. 99–661). This final rule merely addresses nonsubstantive administrative changes to DoD Directive 5400.7 to make it consistent with DoD 5400.7–R.

EFFECTIVE DATE: May 13, 1988.

ADDRESS: Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, the Pentagon, Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: C. Talbott, telephone (202) 697–1180.

SUPPLEMENTARY INFORMATION: 32 CFR Part 285 was published as a proposed rule on Tuesday, December 22, 1987 (Vol 52, No. 245).

List of Subjects in 32 CFR Part 285

Freedom of Information.

Accordingly, Title 32, Chapter I, is amended to add Part 285 as follows:

PART 285—DOD FREEDOM OF INFORMATION ACT PROGRAM

Sec.

285.1 Reissuance and purpose.
285.2 Applicability and scope.
285.3 Definitions.
285.4 Policy.
285.5 Responsibilities.
285.6 Information requirements.
285.7 Effective date and implementation.

Authority: Pub. L. 99–570, secs. 1801–1804; Pub. L. 99–661, sec. 2326; 5 U.S.C. 552.

§ 285.1 Reissuance and purpose.

(a) This part:

(1) Reissues DoD Directive 5400.7.[1]

(2) Establishes policies and procedures for the implementation of the DoD Freedom of Information Act (FOIA) Program under 5 U.S.C. 552.

(3) Delegates authorities and responsibilities for the effective administration of the program.

(b) This part also authorizes, consistent with DoD 5025.1–M [2] the publication of DoD 5400.7–R [3] the single DoD regulation on the FOIA Program.

§ 285.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified Commands, the Defense Agencies, and the DoD Field Activities. For the purpose of this Directive, OSD, OJCS, the Unified Commands, and the DoD Field Activities are considered a single "DoD Component." The other DoD Components referred to herein are the Military Departments, Defense Communications Agency (DCA), Defense Contract Audit Agency (DCAA), Defense Intelligence Agency (DIA), Defense Investigative Service (DIS), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), Defense Nuclear Agency (DNA), and the National Security Agency/Central Security Service (NSA/CSS).

(b) The NSA/CSS records are subject to this part unless the records are exempt under Pub. L. 86–36.

§ 285.3 Definitions.

The terms used in this part are defined in 32 CFR Part 286.

§ 285.4 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public on the operation and activities of the Department of Defense, consistent with DoD's responsibility to ensure national security.

(b) Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by 32 CFR Part 286, those records that are requested by a member of the general public who cites the FOIA.

(d) Answer promptly all other requests for information, records, objects, and articles under established procedures and practices.

(e) Release records to the public unless those records are exempt from mandatory disclosure as outlined in Subpart C of 32 CFR Part 286.

(f) Process requests by individuals for access to records about themselves under the "Privacy Act" procedures as implemented by 32 CFR Part 286a and procedures outlined in this part as amplified by 32 CFR Part 286.

§ 285.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Public Affairs)* (ADS(PA)) shall:

(1) Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

(2) Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(3) Internally administer the FOIA Program for the OSD, the OJCS and, as an exception to DoD Directive 5100.3 [4] the Unified Commands (the Specified Commands remain under the Military Departments for FOIA matters).

(4) As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities identified in ASD(PA) supplementing instructions.

(b) The *General Counsel, Department of Defense* (GC, DoD) shall provide uniformity in the legal interpretation of this Directive.

(c) The *Heads of DoD Components* shall:

(1) Publish in the **Federal Register** any instructions necessary for the internal administration of this part within a DoD Component that are not prescribed by this part or by other issuances of the ASD(PA). For the guidance of the public,

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5256 Port Royal Road, Springfield, VA 22161.

[3] See footnote 2 to § 285.1(b).

[4] See footnote 1 to § 286.1(e).

the information specified in 5 U.S.C. 552(a)(1) shall be published in accordance with 32 CFR Part 296.

(2) Conduct training on the provisions of this part and 5 U.S.C., as amended, for officials and employees who implement the FOIA.

(3) Submit the reports prescribed in Chapter VII of DoD 5400.7–R.

(4) Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the Federal Register, the records specified in 5 U.S.C. 552(a)(2) unless such records are published and copies are offered for sale.

(5) Maintain and make available for public inspection and copying current indices of these records.

§ 285.6 Information requirements.

The reporting requirements in Chapter VII of DoD 5400.7–R have been assigned Report Control Symbol DD–PA(A)1365.

§ 285.7 Effective date and implementation.

This part is effective May 13, 1988. Forward one copy of implementing documents to the Assistant Secretary of Defense (Public Affairs) within 120 days.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1988.

[FR Doc. 88–12300 Filed 5–31–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–88–08]

Special Local Regulations; Budweiser Thunderboat Championship, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Budweiser Thunderboat Championship Race to be held on the Detroit River. This event will be held on 9, 10, 11, and 12 June 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 9 June 1988 and terminate on 12 June 1988.

FOR FURTHER INFORMATION CONTACT: CWO Patrick M. Farrell, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 05 May, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for many years and no negative comments concerning it have been received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are CWO Patrick M. Farrell, project officer, Office of Search and Rescue and LCDR M. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Budweiser Thunderboat Championship Race will be conducted on the Detroit River on 9, 10, 11, and 12 June 1988. This event will have an estimated 60 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0906 to read as follows:

§ 100.35–0906 Budweiser Thunderboat Championship Race—Detroit River.

(a) *Regulated Area.* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bound on the west by the Belle Isle Bridge and on the east by a north-south line drawn through the Waterworks Intake Crib Light (LL 1022).

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 7:30 a.m. (local time) until 9:30 p.m. on 9, 10, 11, and 12 June 1988.

(2) An escape zone for recreational craft will also be established from the Rooster Tail Marina out to Lake St. Clair.

(3) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Effective Dates: These regulations will become effective on 9 June 1988 and terminate on 12 June 1988.

Dated: May 19, 1988.

A.M. Danielsen,

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 88–12148 Filed 5–31–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3606/R961; FRL–3388–8]

Pesticide Tolerance for 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity succulent peas. This regulation to establish the maximum permissible level for residues of the herbicide in or on the commodity was requested pursuant to a petition by the International Research Project No. 4 (IR–4).

EFFECTIVE DATE: June 1, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 8E3606/R961], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of April 28, 1988 (53 FR 15237), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3606 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Georgia, Idaho, Illinois, Oklahoma, Oregon, and Washington.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on the raw agricultural commodity succulent peas at 0.1 part per million (ppm). The petition was later amended to propose a tolerance for succulent peas at 0.05 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 23, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.425 is amended by adding and alphabetically inserting the raw agricultural commodity succulent peas, to read as follows:

§ 180.425 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodities	Parts per million
Peas (succulent)	0.05

* * * * *

[FR Doc. 88–12102 Filed 5–31–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6791]

Suspension of Community Eligibility; Iowa

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an approprate public body shall have adopted adequate floodplain

management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revised their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised flooplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the NFIP serving contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Iowa	Alta Vista, city of	Chickasaw	190065	June 3, 1988.
Do	Alvord, city of	Lyon	190197	Do.
Do	Anita, city of	Cass	190046	Do.
Do	Aredale, city of	Butler	190035	Do.
Do	Bagley, city of	Guthrie	190700	Do.
Do	Baldwin, city of	Jackson	190426	Do.
Do	Bedford, city of	Taylor	190263	Do.
Do	Brayton, city of	Audubon	190020	Do.
Do	Cambridge, city of	Story	190255	Do.
Do	Charlotte, city of	Clinton	190067	Do.
Do	Cherokee, city of	Cherokee	190063	Do.
Do	Clarksville, city of	Butler	190336	Do.
Do	Clive, city of	Polk	190486	Do.
Do	Cutler, city of	Tama	190514	Do.
Do	Correctionville, city of	Woodbury	190286	Do.
Do	Defiance, city of	Shelby	190246	Do.
Do	Earling, city of	Shelby	190247	Do.
Do	East Peru, city of	Madison	190450	Do.
Do	Elk Run Heights, city of	Black Hawk	190019	Do.
Do	Fertile, city of	Worth	190301	Do.
Do	Fort Atkinson, city of	Winneshiek	190284	Do.
Do	Fort Madison, city of	Lee	190164	Do.
Do	Garber, city of	Clayton	190076	Do.
Do	Gilbertville, city of	Black Hawk	190021	Do.
Do	Gladbrook, city of	Tama	190516	Do.
Do	Guthrie Center, city of	Guthrie	190135	Do.
Do	Hamburg, city of	Fremont	190133	Do.
Do	Hiawatha, city of	Linn	190441	Do.
Do	Hinton, city of	Plymouth	190224	Do.
Do	Hornick, city of	Woodbury	190291	Do.
Do	Inwood, city of	Lyon	190588	Do.
Do	Irwin, city of	Shelby	190249	Do.
Do	Janesville, city of	Black Hawk and Bremer.	190023	Do.
Do	Kirkman, city of	Shelby	190250	Do.
Do	Kiron, city of	Crawford	190098	Do.
Do	Lamoni, city of	Decatur	190110	Do.
Do	Lawton, city of	Woodbury	190292	Do.
Do	Lehigh, city of	Webster	190310	Do.
Do	Little Sioux, city of	Harrison	190145	Do.
Do	Unincorporated Areas	Louisa	190103	Do.
Do	Lowden, city of	Cedar	190054	Do.

State	Community name	County	Community No.	Effective date
Iowa	Manning, city of	Carroll	190045	June 3, 1988.
Do	Lytton, city of	Sac and Calhoun	190759	Do.
Do	Lucas, city of	Lucas	190196	Do.
Do	Mapleton, city of	Monona	190208	Do.
Do	Maquoketa, city of	Jackson	190160	Do.
Do	Marquette, city of	Clayton	190182	Do.
Do	Maxwell, city of	Story	190257	Do.
Do	Melrose, city of	Monroe	190465	Do.
Do	Moville, city of	Woodbury	190293	Do.
Do	Newell, city of	Buena Vista	190334	Do.
Do	Oakland, city of	Pottowattamie	190237	Do.
Do	Osterdock, city of	Clayton	190083	Do.
Do	Pleasant Hill, city of	Polk	190489	Do.
Do	Portsmouth, city of	Shelby	190507	Do.
Do	Riverside, city of	Washington	190548	Do.
Do	Roland, city of	Story	190513	Do.
Do	Russel, city of	Lucas	190546	Do.
Do	Sageville, city of	Dubque	190122	Do.
Do	Sheldon, city of	O'Brien	190216	Do.
Do	Sibley, city of	Osceola	190218	Do.
Do	Sioux Center, city of	Sioux	190658	Do.
Do	Smithland, city of	Woodbury	190300	Do.
Do	Spencer, city of	Clay	190071	Do.
Do	Story city, city of	Story	190256	Do.
Do	Sumner, city of	Bremer	190029	Do.
Do	Unionville, town of	Appanoose	190823	Do.
Do	Vail, city of	Crawford	190101	Do.
Do	Victor, city of	Iowa and Poweshiek	190426	Do.
Do	Wall Lake, city of	Sac	190504	Do.
Do	Winfield, city of	Henry	190656	Do.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: May 25, 1988.

[FR Doc. 88-12162 Filed 5-31-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6790]

Suspension of Community Eligibility; New York et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed

in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 USC 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region II—Minimal Conversions				
New York:				
Durham, town of. Greene County	360269	July 22, 1975, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	June 1, 1988.
Livonia, village of. Livingston County	361458	Aug. 30, 1976, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Roseboom, town of. Otsego County	361421	Feb. 10, 1976, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Westford, town of. Otsego County	361262	Oct. 12, 1976, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Windham, town of. Greene County	361401	Dec. 5, 1980, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Worcester, town of. Otsego County	361263	Jan. 26, 1977, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Region IV				
Tennessee: White House, city of. Sumner County	470339	June 13, 1975, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Region V				
Minnesota: Koochiching County. Unincorporated areas	270233	July 1, 1974, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Wisconsin: Brokaw, village of. Marathon County	550247	Jan. 16, 1975, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Region VI				
Arkansas: Winslow, village of. Washington County	050300	Aug. 7, 1975, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Texas:				
Frankston, city of. Anderson County	480003	Feb. 1, 1977, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Idalou, town of. Lubbock County	480916	May 19, 1978, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.	6-1-88	Do.
Region I—Regular Conversions				
Connecticut:				
Lebanon, town of. New London County	090155	May 27, 1976, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	June 3, 1988.
Voluntown, town of. New London County	090143	July 17, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Washington, town of. Litchfield County	090057	July 24, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Maine:				
Norridgewock, town of. Somerset County	230176	May 7, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
West Paris, town of. Oxford County	230100	June 24, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Massachusetts: Concord, town of. Middlesex County	250186	June 9, 1972, Emerg.; June 15, 1979, Reg.; June 3, 1988, Susp.	6-3-88	Do.
New Hampshire: Meredith, town of. Belknap County	330006	Aug. 4, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Vermont: Grand Isle, town of. Grand Isle County	500223	Aug. 25, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Region III				
Pennsylvania:				
Bethel, town of. Armstrong County	421300	Aug. 8, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
New Florence, borough of. Westmoreland County	420890	Feb. 25, 1977, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
West Virginia: Barboursville, village of. Cabell County	540017	May 13, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Region IV				
Florida:				
Arcadia, city of. DeSoto County	120073	Aug. 12, 1975, Emerg.; June 3, 1988, Reg., June 3, 1988, Susp.	6-3-88	Do.
DeSoto County. Unincorporated areas	120072	Aug. 26, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Tennessee: Huntington, town of. Carroll County	470022	Mar. 10, 1975, Emerg., June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Region V				
Ohio: Muskingum County. Unincorporated areas	390425	Apr. 28, 1976, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.	6-3-88	Do.
Region X				
Oregon:				
Baker County. Unincorporated areas	410001	Sept. 12, 1974, Emerg., June 3, 1988, Reg., June 3, 1988, Susp	6-3-88	Do.
Baker, city of. Baker County	410002	July 25, 1974, Emerg., Apr 17, 1984, Reg., June 3, 1988, Susp	6-3-88	Do.
Sumpter, city of. Baker County	410007	Dec 13, 1977, Emerg., Sept 24, 1984, Reg., June 3, 1988, Susp	6-3-88	Do.
Region I—Regular Conversions				
Maine: Oakland, town of. Kennebec County	230242	Sept. 16, 1975, Emerg., June 15, 1988, Reg., June 15, 1988, Susp	6-15-88	June 15, 1988
Vermont:				
Norwich, town of. Windsor County	500295	June 7, 1974, Emerg., June 15, 1988, Reg., June 15, 1988, Susp	6-15-88	Do
St. Albans, town of. Franklin County	500219	Feb. 5, 1976, Emerg., June 15, 1988, Reg., June 15, 1988, Susp.	6-15-88	Do.
Underhill, town of. Chittenden County	500042	June 10, 1975, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Weathersfield, town of. Windsor County	500156	Sept. 22, 1975, Emerg.; Sept. 15, 1985, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Wells, town of. Rutland County	500271	June 25, 1975, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Windsor, town of. Windsor County	500158	Aug. 16, 1974, Emerg.; Sept. 28, 1979, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Region V				
Ohio: Moreland Hills, village of. Cuyahoga County	390118	June 1, 1979, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Wisconsin:				
Neosho, village of. Dodge County	550104	June 9, 1975, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Princeton, city of. Green Lake County	550171	June 26, 1975, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Region VI				
Louisiana: Many, town of. Sabine Parish	220158	Aug. 5, 1974, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Region II—Minimal Conversions				
New York: Milport, village of. Chemung County	360155	Aug. 26, 1975, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Region III				
West Virginia: Romney, town of. Hampshire County	422496	Apr. 25, 1975, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Region IV				
Georgia: Haralson County. Unincorporated areas	130495	Jan. 16, 1987, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.
Region VII				
Kansas: Mitchell County. Unincorporated areas	200225	Nov. 3, 1975, Emerg.; June 15, 1988, Reg.; June 15, 1988, Susp.	6-15-88	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 88-12161 Filed 5-31-88; 8:45 am]
BILLING CODE 4718-21-M

BEST COPY AVAILABLE

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-283; RM-5684]

Radio Broadcasting Services; Holyoke, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 222C2 to Holyoke, Colorado, as that community's first local broadcast service, in response to a petition filed by Virginia Cutforth. With this action, the proceeding is terminated.

DATES: Effective July 8, 1988; The window period for filing applications on Channel 222C2 at Holyoke, Colorado, will open on July 11, 1988, an close on August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-283, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended by adding Holyoke, Channel 222C2, under Colorado.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12185 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-259; RM-5693]

Radio Broadcasting Services; Steamboat Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed on behalf of Steamboat Springs Broadcasting, Inc., this document substitutes Channel 245C2 for Channel 244A at Steamboat Springs, Colorado, and modifies the license of Station KSBT(FM) accordingly, thereby providing that community with its first expanded coverage FM service. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-259, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Colorado, by substituting Channel 245C2 for Channel 244A at Steamboat Springs.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12184 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-416; RM-5770]

Radio Broadcasting Services; Cannelton, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275A to Cannelton, Indiana, as that community's first local FM service, in response to a petition filed by Martin L. Hensley. With this action, the proceeding is terminated.

DATES: Effective July 8, 1988; The window period for filing applications on Channel 275A at Cannelton, Indiana, will open on July 11, 1988, and close on August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-416, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Cannelton, Channel 275A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12189 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-509; RM-6056]

Radio Broadcasting Services; Lisbon, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Montpelier Broadcasting, Inc., allocates Channel 244A to Lisbon, New Hampshire, as the community's first local FM service. Channel 244A can be allocated to Lisbon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44-12-48 and West Longitude 71-54-48. Canadian concurrence has been received since Lisbon is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 8, 1988. The window period for filing applications will open on July 11, 1988, and close on August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-509, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for New Hampshire is amended by adding Lisbon, Channel 244A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12186 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-510; RM-6057]

Radio Broadcasting Services; Canton, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Craig L. Fox, allocates Channel 288A to Canton, New York, as the community's second local FM service. Channel 288A can be allocated to Canton in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.5 miles) southeast to avoid a short-spacing to Station CHEQ-FM, Channel 286C1, Smiths Falls, Ontario, Canada, and to Station CBOF7F, Channel 271A, Brockville, Ontario, Canada. The coordinates for this allotment are North Latitude 44-33-35 and West Longitude 75-05-54. Canadian concurrence in the allotment has been received since Canton is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 8, 1988. The window period for filing applications will open on July 11, 1988, and close on August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-510, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the FM Table of Allotments is amended by revising the entry for Canton, New York, to add Channel 288A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12187 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-279; RM-5823]

Television Broadcasting Services; Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 59- to Lewisburg, West Virginia, as that community's first commercial television service, at the request of Sid Shumate. The Commission has imposed a freeze in specified metropolitan areas on applications for new television stations pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting. This proposal is not affected by the freeze. With this action this proceeding is terminated.

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-279, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S C. 154, 303.

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§ 73.606 [Amended]

2. § 73.606(b), the Table of Allotments is amended by adding Channel 59 for Lewisburg, West Virginia.

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 88-12183 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 30

[Docket No. 45632 Notice No. 88-7]

Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; Request for comments.

SUMMARY: This rule implements provisions in the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100-202, section 109(a) and the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223, section 115, that prohibit the expenditure of Federal funds for procuring construction services and products for U.S. public works projects from Japanese firms (and, potentially, nationals of other countries).

DATES: This final rule is effective June 1, 1988. Comments should be received by July 18, 1988. Late-filed comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to Docket Clerk, Docket No. 45632, U.S. Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC, 20590. Comments may be reviewed by the public at this location from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Roberta Gabel, Deputy Assistant General Counsel for Environmental, Civil Rights, and General Law (202-366-9161), or Michael Jennison, Office of the Assistant General Counsel for International Law (202-366-5621), Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Near the close of its first session, the 100th Congress enacted provisions affecting competition for public works contracts, the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100-202, section 109(a) (signed December 22, 1987) [the Continuing Resolution] and the Airport and Airways Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223, section 115 (signed December 30, 1987) [the Airport Safety Act]. In brief, these two statutes prohibit the use of certain Federal funds for procuring construction services and products for U.S. public works projects from Japanese firms (and, potentially, nationals of other countries). The purpose of this final rule is to govern application of the restrictions to procurements made by grantees of DOT modal administrations.

Section 109(a) of the Continuing Resolution provides as follows:

> None of the funds appropriated for fiscal year 1988 by this Resolution or any other law may be obligated or expended to enter into any contract for the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative [as denying fair and equitable market opportunities for products and services of the United States in procurement or bidding].

Section 115 of the Airport Safety Act provides as follows:

> No funds made available under this Act may be used to fund any project which uses any product or service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative [as denying fair and equitable market opportunities for products and services of the United States in procurement or bidding].

These statutory restrictions are wide-ranging, affecting many millions of dollars of public works projects. This regulation is intended to give the statutes uniform implementation throughout DOT assisted programs. The restrictive provisions in the two statutes differ in only minor respects from each other.

The Continuing Resolution on the FY 1988 budget combined into one package all FY 1988 appropriation bills for the entire Federal government. Section 109(a) prohibits the obligation or expenditure of funds appropriated for FY 1988 by the Continuing Resolution or any other law for any contract for the construction, alteration, or repair of any public building or public work in the United States with any contractor or subcontractor of a foreign country that is identified by the United States Trade Representative (U.S.T.R.) or by the Continuing Resolution as discriminating against U.S. firms in conducting procurements for public works projects. Similarly, section 115 of the Airport Safety Act prohibits use of any funds made available by it to fund any project, whether in the United States or overseas, that uses any product or service of a foreign country that is identified by the U.S.T.R. as discriminating against U.S. firms in conducting procurements for public works projects.

On December 30, 1987, U.S.T.R. published an initial list that identified one country, Japan, as denying fair and equitable market opportunities to U.S. firms. 52 FR 49,244 (1987). U.S.T.R. has recently conducted an initial survey and determined not to add any other countries to the list. 53 FR 2140 (1988). U.S.T.R. will conduct another survey after 180 days and, if appropriate, add other countries.

The effect of the U.S.T.R. list is that for the rest of FY 1988 contractors or subcontractors of Japan and any other country that may subsequently be listed will be barred from Federal or federally-funded public works procurements, including projects funded by the Airport Safety Act. Countries on the list may be removed from it through procedures specified in the two statutes; if there were no country on the list, these rules would have no effect.

The Department interprets the restriction in the Continuing Resolution as commencing December 22, 1987, and expiring September 30, 1988. In contrast, the restrictions in the Airport Safety Act are tied to the funds made available by that Act. The applicability of the two restrictions, however, is not mutually exclusive, and the restriction in the Continuing Resolution applies by its terms to all Federally funded airport and airway projects and contracts entered into after December 22, 1987.

Both provisions cover not only foreign firms but also foreign-owned U.S. firms and U.S. firms that are directly or indirectly foreign-controlled. They also cover supplies and products produced in foreign countries that are incorporated into public works projects.

This regulation defines the projects to which the restrictions apply and provides guidelines for determining whether ownership or control of a contractor or subcontractor is by citizens of a country subject to the restrictions. Once it has been determined that the restrictions apply to a particular public works project, the Department, subject to certain exceptions discussed below, will give them the same substantive effect, regardless of whether it is the Continuing Resolution, the Airport Safety Act, or both that triggers them.

On March 17, 1988, the Office of Federal Procurement Policy, in the Office of Management and Budget, issued guidance to all agencies concerning the implementation of section 109 of the Continuing Resolution. This regulation comports to that guidance.

Description of Key Sections

Section 30.3

This section describes the applicability of the two statutes to DOT programs. Section 109(a) of the Continuing Resolution extends to all DOT agencies and all recipients of DOT funds. It applies to all projects for which funds are obligated or contracts are awarded during fiscal year 1988, including projects and contracts under all DOT financial assistance programs. Because the Department is interpreting the restriction to apply to funds appropriated in previous fiscal years but obligated or expended in FY 1988 (see discussion of § 30.7 below), it is also interpreting the restriction as ending at the close of FY 1988. Section 109(a) applies by its terms only to public buildings and public works projects in the United States, its territories and possessions. It also applies to FAA-funded airport and airway construction projects. U.S. overseas bases, installations, and embassies are not subject to the restriction.

Section 115 of the Airport Safety Act, on the other hand, extends to all projects for which funds are made available by that Act, whether or not the contract is awarded during fiscal year 1988 and whether or not the project is located within the United States. It applies to all contracts entered into under grants authorized by the Airport Safety Act. It covers both products and services.

The restrictions cover all architect, engineering, and construction services for public projects and public works, under the terms of the statutes. They also include all products or goods used during the construction, alteration, or repair of public projects and public works. Note, however, that the restrictions do not cover construction equipment or vehicles that are provided to the project but that do not become part of a delievered structure, product, or project. Moreover, the restrictions of the Continuing Resolution (and it differs in this respect from the Airport Safety Act) do not apply to vehicles to be used in the operation of the finished project. For the purposes of this rule, the Department considers rail rolling stock and buses, for example, to be detachable equipment that can be moved from one project to another, and thus not subject to a restriction aimed at *construction contractors.*

Section 30.5

The provisions contained in the Continuing Resolution prohibit the Department from obligating or expending funds for entering into contracts or subcontracts after December 22, 1987, and before October 1, 1988, with contractors or subcontractors of Japan and any other country that may be subsequently listed by the U.S.T.R. The Department is only authorized to waive this restriction when the President or the Secretary, on a case-by-case basis, determines a waiver to be in the public inerest. Notice of waivers granted will be published in the **Federal Register.** To the extent prohibited contracts were entered into after December 22, 1987, and prior to the promulgation of these regulations, the Department is statutorily prohibited from utilizing its appropriations to pay contractors or to reimburse its grantees for their payments under such contracts.

In implementing this restriction, the Department sees only the following alternatives to be available to a grantee who has entered into a contract that is prohibited by section 109(a): 1) the prohibited contract may be canceled at no cost to the Government; 2) a Secretarial waiver may be requested; or 3) the grantee may choose to forego Federal reimbursement for costs associated with the particular contract, subcontract, or product.

Section 30.7

The Continuing Resolution applies to funds "appropriated for fiscal year 1988 by [that] Resolution or any other law." In paragraph (a) of this section, the Department interprets the word "appropriation" to include trust fund moneys for which Congress sets obligation ceilings. This is consistent with general principles of fiscal law. The Comptroller General has held that a statute that authorizes the collection and credit of money to a particular fund for specified purposes, and that makes the fund available for obligation and expenditure as authorized, constitutes an appropriation. In addition, the legislative history of section 109(a) clearly demonstrates that Congress intended the provision to apply to Federally funded transit and airport projects. Many of these projects can be funded through the use of either general fund or trust fund moneys. It would be inconsistent with Congressional intent and arbitrary to apply this provision only to projects that happen to be funded out of the General funds of the Treasury and not apply it to similar projects that happen to be trust funded.

The Department also considered whether the term "appropriated for fiscal year 1988" should apply only to funds that were specifically appropriated for FY 1988 or should also apply to funds appropriated in earlier years and still available for obligation or expenditure. The Department has decided that the latter interpretation is appropriate. The limitation applies to funds appropriated by "any other law" as well as to funds appropriated in the Continuing Resolution for FY 1988. Prior years' appropriations appear to be such "other laws." The legislative history of section 109(a) also makes clear that Congress intended that immediate action be taken in order to encourage the Japanese government to open up its public works construction projects to U.S. construction firms. As most of the Department's funds that are used for public works construction are multi-year, many contracts will be entered into during FY 1988 utilizing funds that were appropriated in prior years but that are still available for obligation or expenditure. It would frustrate Congressional intent to interpret the language as only applying to funds specifically appropriated in FY 1988. Finally, while the Department interprets the Continuing Resolution as allowing the unrestricted expenditure of funds that were appropriated in prior years and obligated under contracts entered into prior to December 22, 1987, the Department interprets the restriction as nonetheless applying to any new subcontracts entered into under those contracts during the effective period of the restrictions, that is, after December 22, 1987, and before October 1, 1988.

In paragraph (f) of this section the Department used 50 percent of the value of total cost of the product as the level at or above which a product is considered to have its origin in a foreign country because the 50 percent figure is mentioned in the legislative history of section 109(a). In executing their certification clauses, the Department expects contractors and suppliers of goods and services to exercise due diligence and good faith in determining the origin of products subject to this rule.

Section 30.9

The key provision of section 30.9 is that a firm 50 percent or more of which is owned by a firm from Japan or another country designated by U.S.T.R. is considered to be foreign-owned for the purpose of the contracting restrictions of this part. The Department has chosen 50 percent as the cutoff for ownership by citizens of countries on the U.S.T.R. list; in order to provide some predictability and certainty of application.

In addition to the 50 percent ownership requirement, the Department has decided to deem a partnership to be controlled, directly or indirectly, by a citizen of a foreign country if any general partner is a citizen of that country, because a partnership can be bound, under fundamental principles of agency, by any general partner.

A corporation will be regarded as being of a foreign country if it is organized under the laws of the foreign country or if the number of its directors necessary to constitute a quorum are citizens of the foreign country. Corporate control can be considered to reside in differing blocks of stock for differing purposes. We have chosen to define corporate control as residing in a foreign national or citizen if one or more foreign nationals or citizens control 50 percent or more of the outstanding stock or voting power. This standard is consistent with the definition of control under the Small Business Act.

Although the law of business associations does not generally recognize the joint venture as a separate, distinct category of business entity, many bidders for public works construction contracts are joint ventures, whether partnerships, unincorporated associations, or nonpublicly-traded corporations. Treating a joint venture in the same way as a publicly traded corporation could result in anomalous situations; for example, a foreign-owned corporation might qualify as a joint venturer because it had less than 50 percent of the total project, but could not do the same work as a subcontractor. To avoid that result, the Department will treat all such forms of business essentially as partnerships.

Sections 30.11–15

Section 30.15 provides a model implementing clause, the substance of which is to be inserted in public works contracts. Section 30.13 provides a comparable model provision to be placed in solicitations. Section 30.11 specifies when the two model provisions are to be used.

Section 30.19

In accordance with Congressional intent expressed in the legislative history of the Continuing Resolution, the rule specifies that the restrictions imposed by it are in addition to any other restrictions contained in Federal law, such as the Buy America Act, 41 U.S.C. §§ 10a–10d.

Regulatory Process Matters

This rule is not a major rule under Executive Order 12291, since we do not anticipate that its cost (*i.e.*, the differential in project expenditures using non-Japanese goods and services where Japanese goods and services would otherwise have been used) would exceed $100 million per year. While the rule may increase costs in project expenditures somewhat in the short term, it establishes a framework for retaliating against countries that close their markets to foreign competition. Its objective, therefore, is to provide an incentive for other countries to eliminate their trade barriers, so that they may be removed from the list of countries whose firms will be barred from public works procurements. Ultimately, increased competition among contractors in worldwide markets will increase the productivity and efficiency of contractors doing business in the United States, and create benefits for the economy as a whole.

The rule is a significant rule under the Department's Regulatory Policies and Procedures. Since there is no notice of proposed rulemaking for this rule, the Regulatory Flexibility Act does not apply.

This regulation is likely to have a Federalism impact, under the terms of Executive Order No. 12612, because it will restrict the normal discretion of states and localities to award Federally-assisted contracts in accordance with state and local contracting laws and regulations. For example, a state that normally awards highway contracts to the lowest responsive and responsible bidder will be precluded from awarding the contract to such a bidder if it is Japanese-owned or controlled. This prohibition can increase costs for states, since they would then have to award the contract to a higher bidder. This impact on Federalism is mandated by statute, however, and the Department lacks discretion to avoid it. Consequently, the Department certifies that this regulation has been assessed in light of the principles, criteria, and requirements of Executive Order No. 12612.

The statutes requiring this regulation were enacted and became effective in December 1987. Since that time, it has been contrary to statute for the Department's funds to be used to contract with Japanese-owned or controlled firms. It is essential that the Department publish these regulations quickly, in order to avoid or dispel confusion over the applicability of the statutory requirement to particular contracts and particular firms. A number of contracting actions are currently being delayed because of this problem, and it is necessary in the public interest to end these delays. In addition, this rule concerns public grants and contracts. For these reasons, the Department has determined under 5 U.S.C. 553(a)(2) and 553(b)(B) that notice and a prior opportunity for public comment are not needed for this rule and under 5 U.S.C. 553(d)(3) that the rule may be made effective immediately.

Nevertheless, the Department is requesting comment on the final rule. The Department will consider the comments received and will subsequently publish, as appropriate, amendments to these rules and/or a notice responding to the comments.

List of Subjects in 49 CFR Part 30

Government Contracts.

Issued in Washington, DC, on May 23, 1988.

Jim Burnley,

Secretary of Transportation.

Accordingly, Subtitle A of Title 49, Code of Federal Regulations, is amended by adding to it new Part 30 as follows:

PART 30—DENIAL OF PUBLIC WORKS CONTRACTS TO SUPPLIERS OF GOODS AND SERVICES OF COUNTRIES THAT DENY PROCUREMENT MARKET ACCESS TO U.S. CONTRACTORS

Sec.

30.1 Purpose.
30.3 Applicability.
30.5 Effective Dates.
30.7 Definitions.
30.9 Citizenship—Direct or Indirect Control.
30.11 Use of Solicitation Provisions and Contract Clauses.
30.13 Restrictions on Federal Public Works Projects—Certification.
30.15 Restrictions on Federal Public Works Projects.
30.17 Waivers.
30.19 Buy American Act.

Authority: 49 U.S.C. 322(a); Continuing Resolution on the Fiscal Year 1988 Budget 109(a), Pub. L. No. 100-202; Airport and Airways Safety and Capacity Expansion Act of 1987, 115, Pub. L. No. 100-223.

§ 30.1 Purpose.

The rules in this part implement section 109(a) of the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100–202 (signed December 22, 1987) [the Continuing Resolution], and section 115 of the Airport and Airways Safety and Capacity Expansion Act of 1987, Pub. L. No. 100–223 (signed December 30, 1987) [the Airport Safety Act]. These rules are intended to give uniform implementation to these statutes throughout DOT procurement and grant programs.

§ 30.3 Applicability.

(a) The restrictions imposed by section 109(a) of the Continuing Resolution extend to all DOT agencies as well as all recipients of DOT funds. The restrictions apply to all projects for which funds are obligated or contracts or subcontracts are awarded during fiscal year 1988, including projects and contracts under all DOT financial assistance programs. The prohibition applies to public buildings and public works projects everywhere in the United States or any territory or possession of the United States. U.S. overseas bases, installations, and embassies are not subject to this part.

(b) The restrictions imposed by section 115 of the Airport Safety Act extend to all projects for which funds are made available by that Act, whether or not the contracts are awarded during fiscal year 1988. The restrictions apply to all contracts entered into under grants authorized by the Airport Safety Act.

(c) This part applies to projects covered by section 109(a) of the Continuing Resolution, section 115 of the Airport Safety Act, or both. Whether one or the other statute or both apply, the effect on the project shall be the same, subject to paragraph (e) of this section.

(d) In addition to construction, alteration, and repair contracts, the restrictions of this part cover all architect, engineering, and other services related to the preparation and performance of construction, alteration, and repair of public projects and public works.

(e) The restrictions of this part also apply to all products used in the construction, alteration, or repair of public projects and public works; *provided, however,* That

(1) The restrictions of this part do not apply to construction equipment or vehicles that do not become part of a delivered structure, product, or project and

(2) Notwithstanding paragraph (c) of this section, the restrictions of section 109(a) of the Continuing Resolution do not apply to vehicles to be used by the project, including, but not limited to, buses, trucks, automobiles, rail rolling stock, and aircraft.

§ 30.5 Effective dates.

The provisions of section 109(a) of the Continuing Resolution apply to contracts (or new subcontracts under existing contracts, whether or not subject to the restriction) entered into after December 22, 1987, its date of enactment, and before October 1, 1988. The provisions of section 115 of the Airport Safety Act apply to contracts funded by the Act and entered into after December 30, 1987, its date of enactment; the restrictions remain effective so long as money provided by the Airport Safety Act is used. Accordingly, any contracts or subcontracts subject to the restrictions of this part entered into with contractors or subcontractors owned or controlled by citizens of subject countries, as defined by §§ 30.7 and 30.9 of this part, since December 22, 1987 shall be canceled at no cost to the Government, subject to the waiver provisions of § 30.17 of this part. All public works or public buildings contracts entered into after December 22, 1987, shall include, or be modified to include, a provision prohibiting subcontracting with citizens of subject countries, as defined by §§ 30.7 and 30.9 of this part.

§ 30.7 Definitions.

(a) "Funds appropriated for FY 1988 by this resolution or any other law," as used in this part with reference to section 109(a) of the Continuing Resolution, means all appropriated and trust funds available to DOT, its modal administration, or their grantees for expenditure or obligation in fiscal year 1988, regardless of the fiscal year in which the funds were appropriated.

(b) "Funds made available by this Act," as used in this part with reference to section 115(a) of the Airport Safety Act, means all funds, including trust funds, made available to DOT, its modal administrations, or their grantees by that Act, whether or not the contracts to be funded are awarded during fiscal year 1988.

(c) "Contractor and subcontractor" means any person, other than a supplier of products, performing any architectural, engineering, or other service directly related to the preparation for or performance of the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States.

(d) "Contractor or subcontractor of a foreign country" means any contractor or subcontractor that is a citizen or national of a foreign country, or is controlled directly or indirectly by one or more citizens or nationals of a foreign country.

(e) "Service of a foreign country" means any service provided by a person that is a citizen or national of a foreign country, or is controlled by one or more citizens or nationals of a foreign country.

(f) "Product of a foreign country" means construction materials, i.e., articles, materials, and supplies brought to the construction site for incorporation into the public works project. A product is considered to have been produced in a foreign country if more than fifty percent of the total cost of the product is allocable to production or manufacture in the foreign country.

(g) "Foreign country" means a country included in the list of countries that discriminate against U.S. firms published by the U.S.T.R.

§ 30.9 Citizenship—direct or indirect control.

A contractor, subcontractor, or person providing a service shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country, within the meaning of this part.

(a) If 50 percent or more of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(b) If the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligation in favor of one or more citizens or nationals of the foreign country;

(c) If 50 percent or more of the voting power in the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(d) In the case of a partnership, if any general partner is a citizen or national of the foreign country;

(e) In the case of a corporation, if the number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(f) In the case of a contractor or subcontractor that is a joint venture, if any participant meets any of the criteria in paragraphs (a) through (e) of this section.

§ 30.11 Use of solicitation provisions and contract clauses.

(a) Unless the President or the Secretary waives the restrictions imposed by section 109(a) of the Continuing Resolution in accordance with § 30.17 of this part, the contracting officer shall insert a clause similar to the clause at § 30.15, Restrictions on Federal Public Works Projects, in contractions and solicitations, if—

(1) The contract is awarded on or after December 22, 1987, and before October 1, 1988; and

(2) The contract obligates funds appropriated for use in FY 1988 by the Continuing Resolution or any other law; and

(3) The contract is for the acquisition of construction, alteration and repair, architectural, engineering, or other services directly related to the preparation for, or performance of, construction, alteration, and repair for Federal public works projects inside the United States, U.S. territories, or U.S. possessions.

(b) Unless the Secretary waives the restrictions imposed by section 115 of the Airport Safety Act in accordance with § 30.17 of this part, the contracting officer shall insert a clause similar to the clause at § 30.15, Restrictions on Federal Public Works Projects, in contracts and solicitations relating to any project for which funds, including grant funds, are made available by that Act, whether or not the contract is awarded during fiscal year 1988.

(c) Any contract already awarded that should have contained the clause prescribed in paragraph (a) or (b) of this section, but did not, shall be modified to include the clause. In the event that the contracting officer is unable to modify such contract, the contract shall be canceled at no cost to the Government, unless a waiver is granted in accordance with § 30.17 of this part.

(d) Contracting officers shall insert a provision similar to the solicitation provision at § 30.13 of this part, Restrictions on Public Works Projects—Certification, in solicitations containing the clause at § 30.15 of this part, Restrictions on Federal Public Works Projects.

(e) Any solicitation issued before December 22, 1987, that will result in the award of a contract covered by paragraph (a) of this section after December 22, 1987, and before October 1, 1988, and that should have contained a provision similar to that § 30.13 of this part, but did not, shall be amended to include the provision if the contract has not yet been awarded.

§ 30.13 Restriction on Federal public works projects—certification.

As prescribed in § 30.11(c) of this part, the contracting officer shall insert the following provision in solicitations containing the clause at § 30.15, *Restrictions on Federal Public Works Projects:*

Restrictions on Federal Public Works Projects—Certification

(a) Definitions. The definitions pertaining to this provision are those that are set forth in 49 CFR 30.7–30.9.

(b) Certification. By signing this solicitation, the Offeror certifies that with respect to this solicitation, and any resultant contract, the Offeror—

(1) Is [ ] is not [ ] a contractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (U.S.T.R.);

(2) Has [ ] has not [ ] entered into any contract or subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; and

(3) Has [ ] has not [ ] entered into any subcontract for any product to be used on the Federal public works project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

(c) Applicability of 18 U.S.C. 1001. This certification in this solicitation provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(d) Notice. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(e) Restrictions on contract award. No contract will be awarded to an offeror (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list; unless a waiver to these restrictions is granted by the President of the United States or the Secretary of Transportation. (Notice of the granting of a waiver will be published in the Federal Register.]

(f) System. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (b) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(g) Subcontracts. The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this solicitation provision, including this paragraph (g), in each solicitation issued under such contract.

[end of provision]

§ 30.15 Restrictions on Federal public works projects.

The contracting officer shall insert the following clause in solicitations and contracts as prescribed at § 30.11(a) through (b) of this part:

Restrictions on Federal Public Works Projects

(a) *Definitions.* The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7–30.9

(b) *General.* This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100–202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. No. 100–223.

(c) *Restrictions.* The Contractor shall not knowingly enter into any subcontract under this contract: (1) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.); or (2) for the supply of any product for use on the Federal Public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

(d) *Certification.* The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminates against U.S. firms published by the U.S.T.R. and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., unless the contractor has knowledge that the certification is erroneous.

(e) Erroneous certification. The certification in paragraph (b) of the provision entitled "Restriction on Federal Public Works Projects—Certification," is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may cancel this contract for default at no cost to the Government.

(f) Cancellation. Unless the restrictions of this clause are waived as provided in paragraph (e) of the provision entitled "Restriction on Federal Public Works Projects—Certification," if the Contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contracting Officer may cancel this contract for default, at no cost to the Government.

(g) Subcontracts. The Contractor shall incorporate this clause, without modification, including this paragraph (g) in all solicitations and subcontracts under this contract:

Certification Regarding Restrictions on Federal Public Works Projects—Subcontractors

(1) The Offeror/Contractor, by submission of an offer and/or execution of a contract certifies that the Offeror/Contractor is (i) not an Offeror/Contractor owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(2) The Offeror shall provide immediate written notice to the Contractor if, at any time, the Offeror learns that its certification was erroneous by reason of changed circumstances.

(3) The Contractor shall not knowingly enter into any subcontract under this contract: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The contractor may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.

(4) Unless the restrictions of this clause have been waived under the contract for the Federal public works project, if a contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Government Contracting Officer may direct, through higher-tier contractors, cancellation of this contract at no cost to the Government.

(5) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7–30.9.

(6) The certification in paragraph (g)(1) of this clause is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Government Contracting Officer may direct, through higher-tier Contractors, cancellation of this subcontract at no cost to the Government.

(7) The Contractor agrees to insert this clause, without modification, including this paragraph, in all solicitations and subcontracts under this clause.

[end of clause]

§ 30.17 Waivers.

(a) The Secretary may waive the restrictions imposed by section 115 of the Airport Safety Act on the use of a product or service in a project if the Secretary determines that:

(1) Application of the restriction to such product, service, or project would not be in the public interest;

(2) Products or services of the same class or kind are not produced or offered in the United States, or in any foreign country that is not listed by the U.S.T.R. in sufficient and reasonable available quantities and of a satisfactory quality; or

(3) Exclusion of such product or service from the project would increase the cost of the overall project contract by more than 20 percent.

(b) The President or the Secretary may waive the restrictions imposed by section 109(a) of the Continuing Resolution with respect to an individual contract if the President or the Secretary determines that such action is necessary in the public interest, on a contract-by-contract basis. The Secretary may apply the factors listed in paragraphs (a)(2) and (a)(3) of this section in determining whether a waiver is in the public interest.

(c) The authority of the President or the Secretary to issue waivers may not be delegated. The Department shall publish notice of any waiver granted pursuant to this part by the President or the Secretary in the Federal Register within ten days. The notice shall describe in detail the contract involved, the specific reasons for granting the waiver, and how the waiver meets the criteria of this section.

§ 30.19 Buy American Act.

The restrictions of this part are in addition to any other restrictions contained in Federal law, including the Buy American Act, 41 U.S.C. 10a–10d, and Buy American provisions in legislation governing DOT provisions. Normal evaluation methods for implementing the provisions of the Buy American Act in contracts for the construction, alteration, or repair of public buildings or public works will be applied after determining the offeror's eligible for award on the basis of application of the provisions in this part.

[FR Doc. 88–12118 Filed 5–31–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Addition of Species by the Governments of Thailand and Honduras to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service adds 24 species of wildlife to 50 CFR 23.23, pursuant to their addition to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These additions were initiated at the requests of Honduras and Thailand. Appendix III comprises species subject to regulation in particular party nations that have requested the cooperation of other Parties in controlling trade in such species.

DATES: These additions to Appendix III became effective on April 13, 1987 (Honduras), as previously announced, and December 7, 1987 (Thailand). Therefore, this rule is effective June 1, 1988.

ADDRESSES: Send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: 527, Matomic Building; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the above address, or telephone 202–653–5948.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild

Fauna and Flora (Convention) regulates international trade in certain species of animals and plants. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes native species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Trade in Appendix III species, including any readily recognizable part or derivative, requires the issuance of either an export permit, a re-export certificate, or a certificate of origin. Export permits are required if the shipment originates from the nation that has added the species in Appendix III. Export to or from other Party nations requires presentation of "certificates of origin," or, in the case of re-export, "certificates from the nation of re-export," which show that the specimen was processed in that nation and/or is being re-exported.

This rule includes in the Code of Federal Regulations additions to Appendix III requested by the Governments of Honduras and Thailand, pursuant to Article XVI, paragraph 1 of the Convention. Honduras requested the addition of six species of mammals, seven of birds, and nine of reptiles, and Thailand requested the addition of two species of birds (names are given below under "Regulation Promulgation"). The Convention's Secretariat notified all Party nations of the additions of Honduras on January 13, 1987, and of the additions of Thailand on September 8, 1987. In accordance with Article XVI, paragraph 2 of the Convention, these additions took effect 90 days after notification—April 13, 1987, for those of Honduras, and December 7, 1987, for those of Thailand.

Any Party may enter a reservation at any time on any species added to Appendix III, thereby exempting itself from implementing the Convention for that particular species. The limitations on the effect of reserving in alleviating importers and exporters from permit requirements was thoroughly discussed in a previous **Federal Register** document (52 FR 43924, November 17, 1987). The U.S. Fish and Wildlife Service (Service) announced the additions to Appendix III by Honduras and requested public comments on whether to enter reservations for any of the involved species (52 FR 35741; September 23, 1987). Comments were not previously solicited for reservations on the additions requested by Thailand, in accordance with the procedural change discussed in the next section of this document.

Public Comments

No comments were received in response to the Service's announcement and consideration of reservations on the addition of species to Appendix III by Honduras (52 FR 35741). As previously proposed (52 FR 43924; November 17, 1987) and adopted (53 FR 9945; March 28, 1988, with printing errors corrected in 53 FR 12497; April 14, 1988), the Service has made a procedural change to usually request comments on reservations only at the time Appendix III additions of species to the Convention are included in the Code of Federal Regulations. With regard to the addition of the two species of pittas, the Service does not perceive any significant biological, trade, or legal issue that would warrant recommending the entering of a reservation, and thus, it is unlikely comments on reservations would be received or reservations taken, as discussed more fully in the March 28, 1988, **Federal Register** (53 FR 9945) notice on the procedural change. For these reasons and because reservations can be entered at any future time if deemed appropriate, good cause exists to omit the proposed rule notice and public comment process, because it would be unnecessary and contrary to the public interest (5 U.S.C. 553(b)).

Therefore, the Service announces for the first time the listing of the two species of pittas by Thailand. The Service does not propose to recommend a reservation and would consider doing so only if valid and compelling reasons are presented to show that implementation of the listing would be contrary to the interests or laws of the United States. Inasmuch as reservations to Appendix III can be entered *at any time*, the Service solicits comments on taking of reservations, especially on the listing of the *Pitta* spp. for which no opportunity for comment was previously provided. The Service will consider any comments received and recommend entering reservations if appropriate.

Because the species covered in this notice have already been added to Appendix II of the Convention, and because of other reasons mentioned above, the Service finds that good cause exists for making this rule effective upon publication (5 U.S.C. 553 (d)).

Note.—The Department has determined that amendments to the Convention's Appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that this list action is not a rule for purposes of Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Notices on Appendix III species listings do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This document was prepared by Ron Nowak, Staff Zoologist, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons set forth above, the Service amends § 23.23 of Title 50, Code of Federal Regulations, as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

§ 23.23 [Amended]

2. Amend § 23.23(f) by revising the existing entries for particular species on the list to read as follows:

* * * * *

(f) * * *

Species	Common name	Appendix	Date listed (month/day/year)
CLASS AVES:	BIRDS:		
Order Anseriformes:	Duck, Geese, Swans, Screamers:		
Dendrocygna bicolor (=D. fulva)	Fulvous whistling duck	III (Ghana and Honduras)	2/26/76
Order Galliformes:	Pheasants, Curassows, Megapodes, Hoatzins:		
Crax rubra	Great curassow	III (Costa Rica, Guatemala, and Honduras)	10/28/76
Ortalis vetula	Plain chachalaca	III (Guatemala, and Honduras)	4/23/81

3. Amend § 23.23(f) by adding the following species of animals in alphabetical order under the appropriate taxonomic category:

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
Order Rodentia:	Rodents:		
Agouti (=Dasiprocta) paca	Greater paca, spotted cavy	III (Honduras)	4/13/87
Dasyprocta punctata	Common agouti	III (Honduras)	4/13/87
Sphiggurus mexicanus (=Coendou mexicanus)	Middle American prehensile-tailed porcupine (coendou)	III (Honduras)	4/13/87
Order Carnivora:	Carnivores: Cats, Bears, etc.		
Eira barbara	Tayra	III (Honduras)	4/13/87
Nasua nasua (=N. narica)	Common coati, coatimundi	III (Honduras)	4/13/87
Potos flavus	Kinkajou	III (Honduras)	4/13/87
CLASS AVES:	BIRDS:		
Order Anseriformes:	Ducks, Geese, Swans, Screamers:		
Cairina moschata	Muscovy duck	III (Honduras)	4/13/87
Dendrocygna autumnalis	Black-bellied whistling duck	III (Honduras)	4/13/87
Order Falconiformes:	Hawks, Falcons, Vultures, Eagles:		
Sarcoramphus papa	King Vulture	III (Honduras)	4/13/87
Order Galliformes:	Pheasants, Curassows, Megapodes, Hoatzins:		
Penelope purpurascans	Northern crested guan	III (Honduras)	1/13/87
Order Passeriformes:	Perching Birds:		
Pitta guajana	Blue-tailed pitta, Banded pitta	III (Thailand)	12/7/87
Pitta gurneyi	Gurney's pitta	III (Thailand)	12/7/87
CLASS REPTILIA:	REPTILES:		
Order Squamata:	Lizards, Snakes:		
Agkistrodon bilineatus	Cantil	III (Honduras)	4/13/87
Bothrops asper	Terciopelo	III (Honduras)	4/13/87
Bothrops nasutus	Rainforest hognosed pit-viper	III (Honduras)	4/13/87
Bothrops nummifer	Jumping pit-viper	III (Honduras)	4/13/87
Bothrops ophryomegas	Slender hognosed pit-viper	III (Honduras)	4/13/87
Bothrops schlegelii	Eyelash palm pit-viper	III (Honduras)	4/13/87
Crotalus durissus	Tropical rattlesnake, cascabel	III (Honduras)	4/13/87
Micrurus diastema	Atlanta coral snake	III (Honduras)	4/13/87
Micrurus nigrocinctus	Black-banded coral snake	III (Honduras)	4/13/87

Dated: May 19, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-12215 Filed 5-31-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 71146-8001]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) for flounder in the Eastern Regulatory Area has been reached. The Secretary of Commerce (Secretary) is therefore prohibiting further retention of flounder in this area. This action is necessary to limit the harvest of flounder by U.S. fishermen to the amount specified for TAC. It is intended to comply with the existing regulatory regime authorized under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective May 27, 1988, 12 Noon, Alaska Daylight Time. Comments are invited for June 10, 1988.

ADDRESS: Comments should be addressed to James W. Brooks, Acting Regional Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was developed by the North Pacific Fishery Management Council (Council). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20 of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska, which is further divided annually into TACs for each of the target groundfish species and species groups. Under § 672.20(c)(1), preliminary domestic annual processing (DAP) will be the amount harvested during the previous year plus any

additional amount the Secretary finds will be harvested by the U.S. fishing industry for delivery to U.S. processors in 1988. For 1988, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts (53 FR 890, January 14, 1988).

Section 672.2 of the regulations defines the Eastern Regulatory Area in the Gulf of Alaska. The TAC for flounders in this area is 100 mt. The DAP for flounders was set equal to TAC. This amount was approved by the Secretary following recommendations made by the Council at its December 8–11, 1987, meeting. These recommendations were based on a NMFS-conducted survey of U.S. processors as to how much DAP will be harvested in 1988. The survey indicated that only 100 mt would be harvested. The Secretary approved this amount, which was based on the best available information.

Fishermen have been conducting trawl fisheries in the Eastern Regulatory Area mainly for various rockfish species. Some flounder species have also been caught, which have either been discarded or retained. The 100-mt TAC for flounders has been reached.

Under § 672.20(c)(2)(i), if the Regional Director determines that the TAC for any target species has been reached, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species and declaring such species to be a prohibited species under § 672.20(e). The Secretary, therefore, is prohibiting fishing for flounder in the Eastern Regulatory Area, effective 12:00 noon Alaska Daylight Time on May 27, 1988, and is declaring flounder to be a prohibited species until 12:00 midnight, Alaska Standard Time, December 31, 1988.

In making this determination, he has considered the following information as required under § 672.20(c)(2)(iii):

(A) The ABC for flounder in the Eastern Regulatory Area is 66,700 mt, based on the 1988 Resource Assessment Document for the Gulf of Alaska Groundfish Fishery. The currently specified TAC of 100 mt is only 0.1 percent of the ABC. The condition of the flounder stock is good and, therefore, no risk of biological harm to flounder will occur as a result of non-retainable incidental catches while trawling for other species.

(B) Some costs will be imposed on authorized users of flounder species as a result of flounder being declared a prohibited species. The Regional Director, however, in discussing the closure with segments of the affected industry, has determined that the costs will be small relative to earnings in the ongoing directed fisheries.

(C) No impact will occur on the socioeconomic well-being of the other domestic fisheries, because no restraints are being imposed on them as a result of this closure other than costs associated with sorting and discarding at sea further catches of flounder.

This closure is effective after it has been publicized for 48 hours through an agreement between the United States government and the Alaska Department of Fish and Game, but no earlier than May 27, 1988, Noon, Alaska Daylight Time. Public comments on this notice may be submitted to the Regional Director at the address above until June 10, 1988.

Classification

This action is taken under §§ 672.20 and 672.22 and is in compliance with Executive Order 12291. NOAA finds for good cause that providing prior opportunity for public comment on this notice is impractical and contrary to the public interest. Immediate effectiveness of this notice is necessary to prevent the TAC amount specified for flounder from being grossly exceeded and its effective date should not be delayed.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 26, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-12233 Filed 5-28-88; 3:57 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 105
Wednesday, June 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. 2]

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would amend, for the 1988 through 1990 crops of peanuts, the requirements with respect to the furnishing of letters of credit by handlers to insure their compliance with the regulations governing handling and use of additional peanuts. The proposed rule sets forth standards for determining the amount of increase required in letters of credit based on performance record.

DATES: Comments must be received on or before July 1, 1988.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–382–0152.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Dometic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject mater of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 359(p)(3) of the Agricultural Adjustment Act of 1938 requires that a handler submit adequate financial guarantees to ensure the handler's compliance with the obligation to export additional peanuts. Section 1446.106 of the regulations set forth the requirements for the submission by handlers of letters of credit, and the minimum amounts thereof, dependent upon whether the handler selects physical or nonphysical supervision. The regulations provide for increasing the amount of letter of credit required for a handler who has a history of violations of the provisions of the regulations, but no guidelines are set for determining the amount of the increase.

This rule proposes amending § 1446.106 to set forth such guidelines.

The proposed rule would leave minimum letter of credit levles unchanged. The minimum, when the handler selects nonphysical supervision, would remain equal to the difference in the average support levels for quota and additional peanuts for the crop year multiplied by the pounds equal to 15 percent of the pounds of additional peanuts shown on contacts submitted by the handler for approval. If physical supervision were selected, the minimum would stay at the support differential multiplied by 10 percent of the pounds contracted.

The proposed rule would require the amount of letter of credit to be increased for handlers in accordance with the following procedure: Generally, the percentage of contracted pounds to which the support differential would be applied would be increased by 10 percent for each of the preceding three years in which the handler, or a related individual or entity, was asessed a penalty for violations of the regulations. Thus, if there were violations for all three preceding years, and the handler chose nonphysical supervision, the support differential would be multiplied by 45 percent (15 percent plus 3 times 10 percent) of the pounds of additional peanuts shown on contracts submitted by the handler for approval.

There would be several exceptions.

First, where the penalties have been paid, violations for a particular preceding crop year would not be considered if, for all violations for that year: (1) The violations were not substantive (as defined in the proposal), or (2) the total pounds of additional peanuts involved in the violation was less than 100,000 pounds.

Second, the increase in the contracted pounds percentage would be 5 percent instead of 10 percent for crop years in which, for all violations for that crop year: (1) The penalties were reduced by the Executive Vice President, CCC, and paid, or (2) less than 120 days had passed since the penalty assessments were made by the CCC Contracting Officer.

Third, the amount of the letter of credit otherwise required would be increased by the amount of any unpaid penalty for any violation for any crop

year, which had been outstanding n than 120 days since the initial assessment by the Contracting Officer. However, increases for non-payment could be waived if adequate security for payment is presented.

Letter of credit determinations would, under the proposal, be made based on the facts as they are determined by CCC to exist on June 1 of the relevant crop year. However, the amount required could be reduced, if subsequent developments warranted.

It has been determined, pending comment, that this system for increasing the amount of the required letter of credit will provide for reasonable differentiation between handlers based on their performance record and adequately discourage misuse of contract additional peanuts.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse, Handlers.

Proposed Rule

For the reason set out in the preamble, Title 7, Subtitle B, Chapter XIV, Part 1446, Subpart-Peanut Warehouse Storage Loans and Handler Operations for the 1986 through 1990 Crops, is proposed to be amended as follows.

PART 1446—[AMENDED]

1. The authoraity citation for Subpart-Peanuts Warhouse Storage Loans and Handler Operations for the 1986 through 1990 Crops is revised to read as follows:

Authority: 15 U.S.C. 714b and c; 7 U.S.C. 1441, 1421 *et seq.*; 7 U.S.C. 1359, 1375.

2. Section 1446.106 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1446.106 Letter of credit.

* * * * *

(b) *Increased letter of credit based on performance record.* For the 1986 through 1990 crop years, the amount of the letters of credit required to be submitted under paragraph (a) of this section by any handler who has a poor performance record, as evidenced by previous penalty assessments for violataions of the provisions of this part, or who is associated with another handler who has such a record shall be increased to an amount CCC determines necessary to assure compliance with this part, such amount of increase to be determined in accordance with the guidelines set forth in paragraph (c) of this section.

(c) *Guidelines for increasing letter of credit.* If the handler and/or related entity was assessed penalties for program violations for any of the previous three crop years, the percentage of the pounds of contaract peanuts, to which the support differential specified in paragraph (a) of this section shall be applied, shall be increased by 10 percent except that:

(i) Previous penalty assessments which have been paid shall not be considered for:

(A) Violations other than violations involving the importation of additional peanuts, or the failure to properly disposed of, or document, the disposal of additional peanuts; and

(B) Violations for any crop year in which the total violations by the handler and/or related individuals or entities involved less than 100,000 pounds of peanuts.

(ii) The increase in the percentage of contracted peanuts to which the support differential is applied which is attributable to violations for a particular crop shall be 5 percent rather than 10 percent if, for all violations for the crop year:

(A) The penalties were reduced by the Executive Vice President, CCC, and paid; or

(B) Less than 120 days, or such further period as established by the Executive Vice President, have passed since the penalty assessment was made by CCC Contracting Officer.

(2) If there are penalties assessed against the handler and/or related individual or entity for any crop year for any violation of this part of any kind (including, but not limited to those identified in paragraph (c)(1)(i) of this section) which remain unpaid more than 120 days after the assessment was made by the CCC Contracting Officer, the amount of the letter of credit otherwise required by this paragraph for the 1986 and subsequent crops shall be increased by the unpaid amount.

(3) Reference in this paragraph to unpaid penalties shall include associated unpaid interest and unpaid late payment charges.

(4) Letter of credit determinations under this paragraph for the 1988 and subsequent crop years shall be made based upon the facts as they exist on June 1 of the calendar year in which the letter of credit is to be supplied. However, the Executive Vice President, CCC, in his discretion, may waive this requirement upon the presentment of adequate security.

* * * * *

Signed at Washington, DC on May 25, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-12104 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1944

Revision of Part 1944, Subpart J, Section 504 Rural Housing Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulation for Section 504 loans and grants. This action is necessary to update the regulation and incorporate revisions to the Agency's authorizing statutes made by the 1983 Housing Amendments. The intended effect of the proposed revision is to increase the total amount of assistance available, expand loan purposes and eligibility requirements, allow for the payment of application packaging fees, authorize a waiver of personal resources, and, for assistance over $7500, require appraisals, property insurance, credit investigations, title clearance and loan closings.

DATES: Comments must be received on or before July 31, 1988.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 22053.

FOR FURTHER INFORMATION CONTACT: James A. Weibel, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250, Telephone 202-382-1485.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor, because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State or local competition, employment, investment, productivity, innovation, or on the ability of United States—based enterprises to compete with foreign—based enterprises in domestic or export markets.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, Mr. Vance L. Clark, Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because, in terms of the total number of rural communities, less than 100 will be affected annually.

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.417. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 19115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance wtih the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Background

The Housing Amendments of 1983 revised the Agency's authorizing statutes for the Section 504 Rural Housing Loan and Grant program. The proposed regulation updates and incorporates those revisions to comply with the law and congressional intent.

The statute changes authorize providing assistance to improve or modernize dwellings independent of the removal of hazards, and allows the Secretary to determine the appropriate maximum amount of assistance available. Also, the requirement that the applicant be unable to qualify for a Section 502 loan was deleted. Subsequently, the proposed regulation changes involve increasing the total amount of assistance available, expanding loan purposes and broadening eligibility requirements.

Other major changes and revisions include requiring credit reports, appraisals, property insurance, title clearance and loan closings when the loan amount is over $7500. Numerous definitions have been deleted, and unless otherwise specified, are defined in 7 CFR Part 1944, Subpart A. Also, there is the addition of a provision for a waiver of the amount of personal resources needed, and the loan or grant purposes are expanded to include payment of reasonable application packaging fees.

While the entire regulation is rewritten and being published, many sections are not changed. The revised or added sections which effect program objectives and intent are discussed in the following material.

Discussion

1. In § 1944.451, loan objectives and purposes are expanded to allow for repairs to improve or modernize houses without the removal of health or safety hazards.

2. In § 1194.453, numerous definitions are deleted and the terms used are defined in CFR Part 1944, Subpart A, unless otherwise specified.

3. A provision is added in § 1194.456 to allow a reasonable packaging fee as an authorized loan or grant purpose.

4. In § 1194.457, the total life-time assistance available for loans is increased from $7,500 to $15,000. Total grant assistance, however, remains at $5,000.

5. In § 1944.458, program eligibility requirements are broadened by deleting the requirement that applicants be unable to obtain assistance through the Agency's Section 502 rural housing program and the requirement eased regarding the amount of personal resources needed to authorize waivers wehn applicants are experiencing unusually high medical expenses.

6. As a result of the increased amount of loan assistance, requirements are added for credit investigations (§ 1944.467(c)), appraisals (§ 1944.463(d)), property insurance (§ 1944.464(b)), title clearance and loan closings (§ 1944.463).

List of Subjects in 7 CFR Part 1944

Aged, Grant programs—Housing and community development, Loan programs—Housing and community development.

For reasons set out in the preamble, FmHA proposes to amend Chapter XVIII, Title 7 of the Code of Federal Regulations as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart J—Section 504 Rural Housing Loans and Grants

2. As proposed §§ 1944.451–1944.500 are revised to read as follows:

Subpart J—Section 504 Rural Housing Loans and Grants

Sec.

1944.451 General.
1944.452 Equal Credit Opportunity.
1944.453 Definitions.
1944.454–1944.455 [Reserved]
1944.456 Loan and grant purposes.
1944.457 Loan and grant restrictions.
1944.458 Eligibility requirements.
1944.459–1944.460 [Reserved]
1944.461 Security and other requirements.
1944.462 Rates and terms.
1944.463 Techical services.
1944.464 Insurance requirements.
1944.465–1944.466 [Reserved]
1944.467 Processing applications.
1944.468 Loan or grant approval.
1944.469 Loan closing or grant settlement.
1944.470–1944.471 [Reserved]
1944.472 Subsequent Section 504 loans and/or grants.
1944.473 Unauthorized loans and/or grants.
1944.474 Exception authority.
1944.475–1944.500 [Reserved]

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.451 General.

This subpart sets forth the policies and procedures and delegates authority for making initial and subsequent Rural Housing (RH) loans and/or grants to individuals under Section 504(a) of Title V of the Housing Act of 1949, as amended. The objective of the Section 504 loan/grant program is to assist eligible, very low income, owner-occupants repair single family homes located in rural areas. Repairs may be made to improve or modernize the home, to make it safer and more sanitary, or to remove health and safety hazards. Grants are only available for repairs that remove health or safety hazards. Homes repaired with Section 504 loan or grant funds must be modest in size and design.

§ 1944.452 Equal Credit Opportunity.

Farmers Home Administration (FmHA) assistance and services will not be denied to any person based on race, sex, national origin, color, religion,

marital status, age, handicap (provided the applicant possesses the capacity to enter into a legally binding contract), receipt of income from public assistance, or because an applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

§ 1944.453 Definitions.

The terms used in this subpart are defined in Subpart A of Part 1944 of this chapter unless otherwise specified.

(a) *Hazard.* A condition of the home or site which jeopardizes the health or safety of the occupants and/or the members of the community.

(b) *Major hazard.* A condition of the home or site so severe that it is unfit for habitation.

(c) *Mobile Home.* A mobile home is an older manufactured unit often referred to as a "trailer," designed to be used as a dwelling but built prior to the enactment of Pub. L. 96–399 (October 8, 1980).

§§ 1944.454–1944.455 [Reserved]

§ 1944.456 Loan and grant purposes.

Section 504 grant funds may be used only to pay costs for repairs and improvements which will remove identified health or safety hazards. Dwellings repaired with Section 504 loan or grant funds need not be brought to agency development standards or thermal performance standards, nor must *all* of the existing hazards be removed provided the dwelling does not continue to have major health or safety hazards after the planned repairs are made. All work shall be in accordance with local codes and standards. When potentially hazardous equipment or materials (e.g. woodburning stoves) are being installed, all materials and installations shall be in accordance with applicable development standards of Subpart A of Part 1924 of this chapter. Authorized loan and grant purposes include but are not limited to the following:

(a) Installation or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements. Water supply and sewage disposal systems should be determined acceptable under Subparts A and C of Part 1924 of this chapter. However, those requirements may be waived by the State Director provided:

(1) The County Supervisor determines that the identified health hazard is severe and that the requirements in paragraph (a) of this section cannot be met, and

(2) The State Director agrees with the determination of the County Supervisor that the planned work is necessary and the requirements of paragraph (a) of this section (other than local health department requirements) are impractical.

(b) Payment of reasonable connection fees or prorata installation costs for utilities (i.e., water, sewer, electricity or gas) which are required to be paid by the applicant and which cannot be paid from other funds.

(c) Energy conservation measures such as:

(1) Insulation; and

(2) Combination screen-storm windows and doors.

(d) Repair or replacement of the heating system including installing alternative systems such as woodburning stoves or space heaters, when appropriate.

(e) Electrical wiring.

(f) Repair of, or provision for, structural supports.

(g) Repair or replacement of the roof.

(h) Replacement of deteriorated siding.

(i) Payment of incidental expenses such as surveys, title clearance, loan closing, and architectural or other technical services.

(j) Necessary repairs to mobile/manufactured homes provided:

(1) The applicant owns the home and site and has occupied the home prior to filing an application with FmHA.

(2) The mobile/manufactured home is on a permanent foundation or will be put on a permanent foundation with Section 504 funds. A permanent foundation will be either:

(i) A full below-grade foundation, or

(ii) A home on blocks, piers, or some similar type foundation, with skirting, and anchoring with tie-downs.

(3) The mobile/manufactured home is in need of repairs to remove health or safety hazards.

(k) Additions to dwellings with grant funds (conventional, manufactured or mobile) only when it is clearly necessary to remove health or safety hazards to the occupants.

(l) Payment of application packaging fees if all of the following conditions are met:

(1) The services provided results in significant financial savings to the Government, either directly or by reducing the workload involved in processing applications or loans/grants,

(2) The charges are reasonable, considering,

(i) The amount and purpose of the assistance,

(ii) The repayment ability of the recipient, and

(iii) The cost of similar services in the same or a similar rural area; and

(3) The packager is not receiving other compensation for the services, such as, a real estate commission, grant funds, etc.

§ 1944.457 Loan and grant restrictions.

(a) *Maximum loan or grant.*

(1) Lifetime assistance to any individual for initial or subsequent Section 504 loans may not exceed a cumulative total of $15,000.

(2) Lifetime assistance to any individual for initial or subsequent Section 504 grants may not exceed a cumulative total of $5,000.

(3) Transferees assuming Section 504 loans are limited in the same manner to subsequent loans in amounts not to exceed the difference between the unpaid principal balance of the debt assumed and $15,000.

(4) Document the amount of assistance provided each borrower/grantee on a list of Section 504 recipients and retain it in the office operational file. Maintenance of the list will permit destruction of closed Section 504 assistance case folders as prescribed in § 2033.10(b)(4)(i) of FmHA Instruction 2033–A (available in any FmHA office). The list must include the following information recorded at the time a Section 504 loan/grant is made.

(i) Borrower or grantee name, address, and case number.

(ii) Name of co-owner(s), if any.

(iii) Amount of the loan and/or grant.

(iv) Date loan and/or grant was made.

(b) *Limitation on use of loan or grant funds.* Section 504 loan or grant funds may not be used to:

(1) Assist in the construction of a new dwelling.

(2) Make repairs to a dwelling of such poor condition that when the repairs are completed, the dwelling will continue to be a major hazard to the safety and health of the occupants.

(3) Move a mobile/manufactured home from one site to another.

(4) Pay for any off-site improvements except for those purposes in § 1944.456(b) of this subpart.

(5) Refinance any debt or obligation of the borrower/grantee other than obligations incurred for items covered by § 1944.456 of this subpart entered into after date of application.

(c) *Limitation on use of grant funds.* In addition to the restrictions in paragraph (b) of this section, section 504 grant funds may not be used to make changes to the dwelling for cosmetic or convenience purposes, unless the work is directly related to the removal of hazards. Cosmetic and convenience changes might include, but are not limited to:

(1) Painting;

(2) Paneling;

(3) Carpeting;

(4) Improving clothes closets or shelving;

(5) Improving kitchen cabinets;

(6) Air conditioning; or

(7) Landscape plantings.

§ 1944.458 Eligibility requirements.

Section 504 applicants must meet the following requirements:

(a) Meet the requirement of §§ 1949.9 (c) and (d) of Subpart A of this part.

(b) Meet the requirements of § 1944.9(f) of Subpart A of this part. However, general credit requirements may be less stringent than those for Section 502 loans. For example, very low-income applicants often have higher short-term debt loans in relation to income than persons with higher incomes, and many times this will cause more late payments to be shown in their credit history. Such a fact does not necessarily show lack of credit worthiness. Such a determination will depend on the particular situation involved and the amount of assistance requested.

(c) Own and occupy a single family dwelling located in a rural area that is in need of repair. Evidence of ownership will be presented as outlined in § 1944.459 (a) of this subpart.

(d) Be unable to obtain financial assistance from other non FmHA credit or grant sources, and lack personal resources that can be utilized to meet their needs. Personal resource such as cash, stocks, bonds, certificates of deposit, real estate assets, etc., will be considered in the following manner:

(1) Evaluation of personal resources will exclude the dwelling and a minimum adequate site, personal automobile, household goods, and liquid assets up to $5000.

(2) In cases where the family is experiencing unusually high medical expenses, the District Director may waive requiring the use of liquid assets down to $5000.

(3) Personal assets which the applicant's livelihood are dependent upon (a major source of income essential to pay basic living expenses) or assets that are not economically feasible to liquidate may be exempted by the District Director.

(e) Have an adjusted annual income at the time of loan/grant approval, as defined in § 1944.8 of Subpart A of this part, which does not exceed the applicable very low-income limits in Exhibit C of Subpart A of this part (available in any FmHA office).

(f) Have sufficient and dependable income to repay the Section 504 loan. An applicant whose income is not sufficient to fully meet the loan payments may obtain as a co-signer(s) a person(s) with dependably available income which will be sufficient to repay the loan. Form FmHA 431–3, "Household Financial Statement and Budget," will be prepared for Section 504 applicants to the extent necessary to determine repayment ability, and/or when it appears the applicant needs credit counseling.

(g) For any grant involved, be an applicant/co-applicant(s) that is 62 years of age or older and unable to repay a Section 504 loan amoritzed over the maximum number of years for that cost of the repairs. In all cases involving a Section 504 grant, Form FmHA 431–3 will be completed before approval to determine loan repayment ability, and grant amount. The budget must evidence the applicant's lack of repayment ability for that part of the assistance to be received as a grant.

§§ 1944.459–1944.460 [Reserved]

§ 1944.461 Security and other requirements.

(a) *Evidence of ownership.* Applicants must submit evidence of ownership for retention in the case file. This evidence may be a certified or photocopy of the original ownership instrument. County Supervisors may seek advice from the Regional Attorney when necessary to determine the validity or adequacy of the evidence of ownership.

(1) The following will represent ownership:

(i) Full marketable title.

(ii) A land purchase contract.

(iii) An undivided interest in the property to be repaired when:

(A) The County Supervisor has no reason to believe the applicant's position of owner/occupant will be jeopardized as a result of the improvements to be made with loan/grant funds.

(B) In the case of a loan to be secured by a mortgage, any co/owner living or planning to live in the household will sign the mortgage.

(C) In the case of a grant, any co-owner living or planning to live in the household will sign the repayment agreement.

(iv) A leasehold interest in the property to be repaired. When the applicant's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the case file. The unexpired portion of the lease must not be less than 1½ times the term of the Promissory Note or, in the case of a grant, a period of not less than 5 years. The lease must also meet the requirements of § 1944.15(a)(iv) of Subpart A of this part.

(v) A life estate, with the right of present possession, control, and beneficial use of the property.

(vi) Grazing permits or land assignments may be accepted only for unsecured loans or grants made to Indians living on a reservation, when historically the documents have been used by the Tribe and have had the comparable effect of a life estate.

(2) The following may also be accepted as evidence of ownership:

(i) Any instrument, whether or not recorded, which is commonly considered evidence of ownership.

(ii) Evidence that the applicant is listed as the owner of the property by the local taxing authority and that real estate taxes for the property are paid by the applicant.

(iii) Affidavits by others in the community that the applicant has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

(b) *Real estate mortgage.* A Section 504 loan of $2,500 or more will be secured by a mortgage on the property (or any leasehold interest or land purchase contract) being improved with the loan. The total of all debts secured by the property may not exceed the value of the security. In the case of possessory rights on an Indian reservation or State-owned land, exceptions to the usual security requirements must be made in accordance with § 1944.18(b) (2) or (3) of Subpart A of this part.

(1) *Subsequent loans.* Subsequent loans will be secured by a mortgage when the subsequent loan plus any outstanding loan balance is $2,500 or more. When a real estate mortgage is required, each outstanding promissory note will be described in the mortgage.

(2) *Undivided ownership interest.* Security on an undivided ownership interest may exclude mortgaging the co-owner's interests when:

(i) One or more of the co-owners are not legally competent, cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all interests to be mortgaged;

(ii) The interests excluded do not represent more than 50 percent of all ownership interests;

(iii) All legally competent co-owners using or occupying the dwelling sign the mortgage; and

(iv) The loan does not exceed the portion of market value of the property

represented by the interests of the owners who sign the mortgage.

(3) *Life estates.* Security on a life estate ownership interest may exclude mortgaging the remaindermen's interests when:

(i) One or more of the remaindermen are not legally competent, cannot be located, or the remainder rights are divided among such a large number of remaindermen that it is not practical to obtain the signatures of all remaindermen;

(ii) The interests excluded do not represent more than 50 percent of all remainder interests;

(iii) All legally competent remaindermen using or occupying the dwelling sign the mortgage; and

(iv) The loan does not exceed the portion of market value of the property represented by the interests of the remaindermen who sign the mortgage.

(4) *Mobile/manufactured homes.* State Directors will, after obtaining the assistance of the Regional Attorney, issue a State Supplement outlining the procedure necessary to obtain adequate security when making a loan of $2,500 or more on a property which includes a mobile/manufactured home.

(c) *Note only.* Loans of less than $2,500 may be unsecured. In such cases, only a promissory need be obtained.

(d) *Repayment agreement.* (1) Grant recipients will be required to sign a repayment agreement (see Exhibit A of this subpart, which is available in any FmHA office) which requires that if the property is sold by the grantee or the grantee's heirs or estate before the end of a three-year period, the full amount of the grant will be repaid to the Government. When ownership is a life estate interest, or an undivided ownership interest in the property, all co-owners living or planning to live in the household must sign the repayment agreement.

(2) In the event the property is sold before the expiration of the three-year period the County Supervisor will service the account to the extent possible and practical, to protect the Government's interest and promote FmHA's recovery of grant funds.

§ 1944.462 Rates and terms.

(a) The interest rate for all Section 504 loans is one (1) percent per annum.

(b) Loan terms will not exceed 20 years and should be based on the borrower's repayment ability. Loans made in combination with grants should be amortized for 20 years, thereby maximizing the loan amount while minimizing the grant amount.

§ 1944.463 Technical services.

(a) *Planning and performing development work.* Cost estimates or bid prices for the removal of health or safety hazards will be based on the list of essential repairs prepared by the FmHA representative after an inspection visit of the property. Exhibit B of this subpart of a similar format will be used to submit bids or cost estimates. Borrower-method construction dockets will contain written cost estimates describing materials and specifications with a complete cost breakdown on materials and labor for each item of development. For development work covered by contract, Form FmHA 1924–6, "Construction Contract", and Form FmHA 1924–2, "Description of Materials," will be used. In the case of substantial rehabilitation or new construction, Form FmHA 1924–19, "Builder's Warranty," is required.

(1) Specifications of materials must include details such as quantity, quality, sizes, grades, styles, model numbers, etc., as appropriate. Each item developed must be described specific enough to clearly identify the work and material to be furnished.

(2) Contractors, builders, or tradespersons must be competent to peform the specified development work. If the County Supervisor is unfamiliar with the work of the selected contractor-repairer, she/he will contact homeowners who recently had development work completed by the Contractor regarding their satisfaction with the job, and if possible, inspect the work. Inquiries or inspections concerning contractors' performance will be made only to protect FmHA security interests.

(b) *Development plans.* The County Supervisor will prepare Form FmHA 1924–1, "Development Plan," according to § 1924.5(b) of Subpart A of Part 1924 of this chapter.

(c) *Inspections.* In addition to the initial property inspection, the authorized FmHA representative will make development inspections of work in place as follows:

(1) On new construction, such as room additions, make inspections in compliance with § 1924.9 of Subpart A of Part 1924 of this chapter.

(2) Make a final inspection on individual major items of development before issuing payment.

(3) Make a final inspection on all Section 504 loan and grant development work before payment-in-full.

(4) Record all development inspections on Form FmHA 1924–12, "Inspection Report."

(d) *Appraisal.* An appraisal of the real estate or leasehold interest is required when the total indebtedness (including land sale contracts) is more than $7,500, or when the County Supervisor or loan approving official is uncertain of the adequacy of the security for the loan. When an appraisal is not made, the County Supervisor will document the estimated market value of the property in the case file.

(1) When a mortgage will be taken on a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, an appraisal of the security will be made in acordance with Subpart C of Part 1922 of this chapter. A small farm for the purpose of this subpart is a farm as defined in § 1944.2(g) of Subpart A of this part which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

(2) When a mortgage will be taken on farm tract or leasehold interest in a farm tract an appraisal of the security will be made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(e) *Title clearance requirements.*

(1) Total FmHA indebtedness of $7,500 or less, secured with a real estate mortgage, need not meet the title requirements of Part 1807 of this chapter (FmHA Instruction 427.1). In those cases the County Supervisor will use all practical means to verify that title and lien information is complete and accurate. In most cases, this can be accomplished by a search of the courthouse records.

(2) Total FmHA indebtedness or more than $7,500, secured with a real estate mortgage, title clearance and legal services for making and closing the loan will be provided in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

§ 1944.464 Insurance requirements.

All applicants will be counseled and encouraged to have adequate hazard and flood insurance.

(a) *National flood insurance.* Repairs of less than $7,500 under this subpart are considered nonsubstantial improvements under the National Flood Insurance Program, and, therefore, flood insurance is not required.

(b) *Real property insurance.* Buildings on the property which are to be taken as security for assistance of more than $7,500 will be insured in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 428.1).

§§ 1944.465–1944.466 [Reserved]

§ 1944.467 Processing applications.

(a) *Application.* Application for Section 504 assistance will be made on Form FmHA 410–4, "Application for Rural Housing Loan Assistance (Non Farm Tract)," or Form FmHA 410–1, "Application for FmHA Services," which are available at local County Offices, and processed in accordance with Subpart A of Part 1910 of this chapter.

(1) When the request for assistance involves the removal of health or safety hazards with grant funds, the County Supervisor must visit the property to determine and identify what repairs are essential.

(2) The visit will be made prior to the applicant's eligibility determination, unless the applicant is clearly not eligible, and will be documented in the running case record identifying the existing hazards and essential repairs needed.

(b) *Family budget.* (1) Form FmHA 431–3 will be prepared for Section 504 applicants when:

(i) Grant eligibility determinations are made; or

(ii) The application form does not contain sufficient information to determine whether or not the applicant has repayment ability; or

(iii) Credit counseling is needed.

(2) When determining repayment ability, the budget will consider and account for items such as:

(i) Non-cash benefits (food stamps, scholarships, free clothing, meals on wheels, free transportation, etc.) which help reduce the applicant's budgeted expenses. Receipt of benefits will be properly documented, and the appropriate budgeted expenses will be reduced to reflect these benefits.

(ii) Income from sources not used to determine adjusted income such as earnings from employment of minors or from a full-time student, who is neither the applicant nor spouse, foster care payments, or any similar income. These sources of income will be considered to the extent that they are used to offset budgeted expenses even though not included in "annual income."

(c) *Credit investigation.* Credit reports will be used for all loans of more than $7,500, and will be ordered in accordance with Subpart B of Part 1910 (available in any FmHA office). For loans of $7,500 or less it is the policy not to order credit reports, if the County Supervisor determines a credit report is necessary, it will be ordered at no cost to the applicant. Credit reports will not be used for grant assistance.

(d) *Verification of income.* Income from employment will be verified by use of Form FmHA 1910–5, "Request for Verification of Employment." Income from Social Security (SS), Supplemental Security Income (SSI), welfare, pension and other similar sources will be verified by the most convenient method for reasonable accuracy.

(e) *Cost estimates.* Written cost estimates will be required as outlined in § 1944.463 of this subpart for all work to be performed. If, in the judgement of the County Supervisor the cost estimates are not competitive, additional cost estimates will be obtained. All cost estimates will be prepared and submitted according to § 1944.463(a) of this subpart.

(f) *Use of packagers.* Non-profit groups, churches, civic organizations, Community Action Programs (CAP) or other special interest organizations may package Section 504 loan and grant applications. Each County Supervisor should actively seek the assistance of these organizations and provide adequate orientation and training concerning the responsibilities of a packager and the information required to package applications.

(g) *Determination of eligibility.* Eligibility for all Section 504 loan and grant applicants will be determined under § 1944.458 of this subpart.

(h) *Notification.* Give notification of eligibility or adverse action to all applicants under § 1910.6 of Subpart A of Part 1910 of this chapter. Adverse actions will be processed under Subpart B of Part 1900 of this chapter.

§ 1944.468 Loan or grant approval.

(a) Section 504 loans or grants will be approved in accordance with Subpart A of Part 1901 or this chapter.

(b) The loan/grant approving official is responsible for reviewing the case file to determine that the proposed loan/grant complies with established policies and regulations, and that funds are available. Income and financial information used in eligibility determinations or loan/grant approvals must not be over 90 days old.

(c) At loan approval, the loan/grant approving official will prepare Forms FmHA 1940–1, "Request for Obligation of Funds," and 1944–2, "Single Family Housing Fund Analysis," and complete Form FmHA 1940/41, "Truth in Lending Disclosure Statement," using the actual terms of the transaction, and deliver it to the applicant. For transactions that are subject to cancellation, all property owners with the right to cancel will receive Form FmHA 1940–43, "Notice of Right to Cancel."

§ 1944.469 Loan closing or grant settlement.

All grants and loans of $7,500 or less may be closed or settled by the County Supervisor or designee.

(a) *Effective date of loan closing or grant settlement.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases, the loan and/or grant is closed or settled when the promissory note or repayment agreement and any other required instrument is executed by the borrower/grantee.

(b) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be used for each loan made under this subpart. The note will be prepared and signed according to Part 1807 of this chapter (FmHA Instruction 427.1) and § 1944.453(c) of this subpart concerning co-signers. Each promissory note will be prepared for monthly payment.

(c) *Repayment agreement.* Exhibit A of this subpart, prepared in original and one copy, will be used for grant assistance. The original signed document will be retained in position 2 of the County Office case file, and a copy given to the grantee.

(d) *Mortgage.* Form FmHA 427–1, "Real Estate Mortage for (*State*)," will be used for each loan to be secured by a real estate mortgage. Each change made in the text by deletion, substitution or addition (excluding filling in the blanks) will be initialed in the margin by each person signing the mortgage and by the FmHA official making the change. Mortgages for loans on leasehold interests will be taken according to § 1944.18(b)(5) and § 1944.15(a)(5) (iv) and (v) of Subpart A of this part. For loans secured by a real estate mortgage subject to the right to cancel, Form FmHA 1940–43 will be given at closing to all entitled individuals according to Subpart I of Part 1940 of this chapter.

(e) *Supervised bank accounts.* A supervised bank account will be established in accordance with Subpart A of Part 1902 of this chapter, unless all the proceeds are disbursed to a supplier or contractor at closing. Funds from other sources deposited in supervised bank accounts will be accounted for by using columns 5 through 14 of Form FmHA 402–2, "Statement of Deposits and Withdrawals."

(f) *Disbursement of funds.* Loan funds secured by a real estate mortgage may not be disbursed until the right to cancel time period has expired. Funds will be disbursed as follows:

(1) Payments for work completed will be in accordance with § 1924.8 of Subpart A of Part 1924 of this chapter.

(2) Funds deposited in supervised bank accounts will be disbursed in the following order of priority:

(i) Applicant contribution;

(ii) Funds from sources other than FmHA;

(iii) FmHA Section 504 loan funds;

(iv) FmHA Section 504 grant funds.

(g) *Unused funds.* Unused Section 504 grant funds will be handled as follows:

(1) When all planned development has been completed, remaining funds may be used for any additional authorized purposes, as agreed upon by the recipient and FmHA. If so such agreement can be reached, the funds will be returned to the Finance Office.

(2) The funds also will be returned to the Finance Office when:

(i) All planned development cannot be completed because the contractor is unable or unwilling to do so and the recipient—even with the assistance of the County Supervisor—is unable to obtain another contractor; or

(ii) The purpose of the loan/grant cannot be accomplished because the borrower/grantee no longer resides in the dwelling.

(3) Funds will be returned to the Finance Office in the following manner:

(i) Any funds returned shall first be applied to reducing a grant. When returning grant funds to the Finance Office, the collecting office will enter payment code 21 (other) on Form FmHA 451–2, "Schedule of Remittances," with a brief explanation ("Recovery of Section 504 Housing Repairs Grants") and forward with check to the Finance Office.

(ii) If a grant was not involved or the amount of any grant has already been returned, then remaining funds shall be returned to the Finance Office and applied to the borrower's loan account as a refund.

(h) *Deceased borrower/grantee.*

(1) When a borrower/grantee dies prior to disbursement of funds for development work performed, payment may be authorized when:

(i) There is evidence the recipient or their authorized representative accepted the work as complete and satisfactory; and

(ii) An inspection of the development work is completed by an authorized FmHA representative.

(2) When a loan is secured by a real estate mortage, the State Director may withdraw funds to pay commitments for goods delivered or services performed, in accordance with § 1902.15(d)(1)(iii) of Subpart A of Part 1092 of this chapter.

(3) In any other instance not covered by paragraph (1) or (2), the funds will be returned to the Finance Office.

§§ 1944.470–1944.471 [Reserved]

§ 1944.472 Subsequent Section 504 loans and/or grants.

Subsequent Section 504 loans or grants may be made for the same purposes and under the same conditions and limitations as initial Section 504 loans and grants.

§ 1944.473 Unauthorized loans and/or grants.

Unauthorized loans and/or grants are those where it is determined the recipient was not eligible for the assistance received or where the loan and/or grant was approved for unauthorized purposes. Cases of these types will be serviced according to Subpart M of Part 1951 of this chapter.

§ 1944.474 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the Assistant Administrator, Housing. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1944.475–1944.500 [Reserved]

Date: April 12, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–12280 Filed 5–31–88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Initial Low-Power Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: The Nuclear Regulatory Commission has published proposed amendments to its regulations to establish more clearly what emergency planning and preparedness requirements are needed for fuel loading and low power operation of nuclear power plants. 53 FR 16435, May 9, 1988. The notice of proposed rulemaking stated that the comment period would expire on June 8, 1988.

The Commission has received several requests for the extension of the comment period. After considering the requests, and the reasons stated therein, the Commission has decided to extend the comment period for an additional fifteen days.

DATES: The comment period has been extended and now expires on June 23, 1988. Comments filed after this date will be considered if practical to do so, but only those comments filed on or before June 23 can be assured of consideration.

ADDRESSES: Comments may be sent to the Secretary of the Commission, Attention: Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered either to the Office of the Secretary, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between the hours of 7:30 a.m. and 4:15 p.m. weekdays or the Public Document Room, 1717 H Street, NW., Washington, DC 20555, between the hours of 7:45 a.m. and 4:30 p.m..

FOR FURTHER INFORMATION CONTACT: James R. Wolf, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–1641, or Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–3918.

Dated at Rockville, Maryland, this 25th day of May, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–12225 Filed 5–31–88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 871 0049]

Patrick S. O'Halloran, M.D., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, five Rhode Island obstetricians from dealing with any government health care program on collectively determined terms or collectively refusing to deal with any government health care program.

DATE: Comments must be received on or before July 31, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Gee, FTC/S–3115, Washington, DC 20580. (202) 326–2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Obstetricians, Trade practices.

In the matter of Patrick S. O'Halloran, M.D., Donald A. Guadagnoli, M.D., Nasser Chahmirzadi, M.D., James C. Gedney, M.D., Douglas G. Wilson, M.D.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, Donald A. Guadagnoli, M.D., and others, and it now appearing that respondent is willing to enter into an agreement containing an Order to cease and desist from engaging in the use of the acts and practices being investigated,

It is hereby agreed by and between respondent and counsel for the Federal Trade Commission that:

1. Respondent is a physician licensed and doing business under and by virtue of the laws of the State of Rhode Island. Respondent's mailing address is 333 Valley Road, Middletown, Rhode Island 02840.

2. Respondent admits all of the jurisdictional facts set forth in the draft of complaint here attached.

3. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to respondent's address stated in this agreement shall constitute service. Respondent waives any right he may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the Order, and no agreement, understanding, reprentation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Respondnet has read the proposed complaint and Order contemplated hereby. He understands that once the Order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the Order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the Order after the Order becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

"Respondent" means Donald A. Guadagnoli, M.D., his employees, agents and respresentatives.

"Governmental health care program" means any governmental program that reimburses for, purchases, or pays for health care services provided to any person.

"Integrated joint venture" means a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

II

It is ordered, that respondent, directly, indirectly or through any device, in connection with the provision of medical services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from agreeing, attempting or threatening to agree, or continuing any agreement or understanding, either express or implied, with any phsician (1) to deal with any governmental health care program on collectively determined terms, or (2) to refuse or threaten to refuse to deal with, or otherwise coerce, any governmental health care program.

Provided that nothing in this Order shall prohibit respondent from:

(1) Entering into any agreement with any physicians with whom respondent practices medicine in partnership or in a professional corporation, or who is employed by the same person as respondent; or

(2) Entering into any agreement with any physician as a participant in an

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integrated joint venture , as long as the physician participants in the joint venture remain free to deal with any governmental health care program other than through the joint venture.

III

A. *It is further ordered,* that within thirty (30) days after service of this Order, respondent shall mail a copy of this Order and the accompanying complaint to the Governor of the State of Rhode Island and to the President of Newport Hospital.

B. *It is further ordered,* that respondent shall, within sixty (6) says after service of this Order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied and is complying with this Order.

C. *It is further ordered,* that respondent shall promptly notify the Commission of any change in his business address.

Concurring Statement of Chairman Daniel Oliver Patrick S. O'Halloran, M.D., et al.

I have voted to issue the consent order in this matter for public comment. However, I would have preferred an order that included a provision for automatic termination after ten years. In my view, an antitrust conduct order should be preserved only so long as its benefits outweigh its costs. Maintaining an order such as this in perpetuity is not ordinarily appropriate. Its procompetitive remedial benefits can be expected to decline over time, and it may also begin to have adverse effects on certain procompetitive practices.

With respect to orders in merger cases, the Commission has already concluded that "order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years."[1] The Commission determined that such provisions will in most cases have served their remedial purposes after ten years, and "the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time." [2] For similar reasons, I believe that the consent order at issue here should automatically terminate after ten years.

Newport, Rhode Island Obstetricians—Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to proposed consent orders from the five obstetricians who practice in Aquidneck Island, Rhode Island, where the city of Newport is located. The agreements which have been placed on the public record have been signed by Patrick S. OHalloran, M.D., Donald A. Guadagnoli, M.D., Nasser Chahmirzadi, M.D., James C. Gedney, M.D., and Douglas G. Wilson, M.D. ("proposed respondents"). The agreements with the proposed respondents would settle charges by the Federal Trade Commission that they violated Section 5 of the Federal Trade Commission Act by combining or conspiring to threaten the State of Rhode Island with a boycott if the State did not raise the level of Medicaid payment for obstetrical services.

The proposed consent orders have been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed orders. It alleges that the proposed respondents constitute all of the obstetricians practicing on Aquidneck Island and that they participated in a combination or conspiracy to force the State to raise the level of Medicaid payment for obstetrical services by concertedly threatening to refuse to accept new Medicaid patients after February 15, 1987 if prompt action were not taken by the State. The proposed respondents communicated this threat by means of letters sent to the Governor of Rhode Island.

The complaint alleges that, as a result of this combination or conspiracy, four days before the deadline set by the obstetricians, the State announced that the Medicaid payment level for the package of services provided in connection with a routine obstetrical delivery would be more than doubled.

The complaint further alleges that the purpose, effects, tendency, or capacity of the combination or conspiracy have been to restrain trade unreasonably and hinder competition in the provision of obstetrical services on Aquideck Island, and to deprive consumers of the benefits of competition in the following ways, among others:

A. By restraining competition among obstetricians on Aquidneck Island;

B. By fixing or increasing the prices that respondents charged for providing obstetrical services to Medicaid patients; and

C. By depriving the State of Rhode Island and the Medicaid-eligible people on Aquidneck Island of the benefits of competition among obstetricians on Aquidneck Island.

The Proposed Consent Orders

The terms of the proposed consent orders are identical. Part II describes the conduct prohibited by the orders. They would prevent the proposed respondents from agreeing, attempting or threatening to agree, or continuing any agreement, express or implied, (1) to deal with any governmental health care program on collectively determined terms or (2) to refuse or threaten to refuse to deal with, or otherwise coerce, any governmental health care program. Part II also provides that the orders do not prohibit respondents from (1) entering into agreements with physicians with whom they are partners, who are members of the same professional corporation, or who are employed by the same person as respondent or (2) entering into agreements with physicians as participants in an integrated joint venture, as long as the physician participants are free to deal with any governmental health care program other than through the joint venture. "Integrated joint venture" is defined as a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

Part III.A. requires each proposed respondent, within 30 days after service of the order, to mail a copy of the order and the accompanying complaint to the Governor of Rhode Island and to the President of Newport Hospital.

Part III.B. requires each proposed respondent to file a compliance report 60 days after service of the order and at such times as the Commission may require.

Part III.C. requires each proposed respondent to notify the Commission of any change in his business address.

The purpose of this analysis is to facilitate public comment on the proposed orders, and is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

The proposed consent orders have been entered into for settlement purposes only and do not constitute admissions by the proposed respondents that the law has been violated as alleged in the complaint.

Emily H. Rock,

Secretary.

[FR Doc. 88-12146 Filed 5-31-88; 8:45 am]

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[1] *Hercules, Inc.*, 100 F.T.C. 531 (1982) (modifying order); *see also, e.g., MidCon Corp.*, 107 F.T.C. 48, 58 (1986) (consent order) (ten years); *Hospital Corp. of America*, 106 F.T.C. 361, 524 (1985) (ten years), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 107 S.Ct. 1975 (1987); *Columbian Enterprises, Inc.*, 105 F.T.C. 551, 584 (1985) (consent order) (five years).

[2] *Hercules, Inc.*, 100 F.T.C. at 551.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Proposed Interpretive Rule Relating to Classification of Motor Vehicles as Automobile Trucks

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Customs is reviewing the criteria it considers in determining the classification of certain motor vehicles as "automobile trucks" under item 692.02, Tariff Schedules of the United States. This document requests comments from the public as to the types of features or accessories in a vehicle which should be considered by Customs in distinguishing, for tariff classification purposes, between automobile trucks and other motor vehicles for the transport of persons or articles.

DATE: Comments must be received on or before July 31, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John L. Valentine, Commercial Rulings Division, (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

The Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), provide in Subpart B, Part 6, Schedule 6, for the classification and rate of duty for motor vehicles imported into the U.S. Automobile trucks valued at $1,000 or more are classified in item 692.02, TSUS, and pursuant to a temporary rate increase under item 945.69, TSUS, are dutiable at 25 percent ad valorem. Motor vehicles for the transport of persons or articles, other than motor buses (item 692.04), and trucks specifically described in item 692.02, TSUS, are classified in item 692.10, TSUS, and are dutiable at 2.5 percent ad valorem.

Generally, the distinction on which Customs focuses in determining whether a vehicle should be classified as an automobile trucks is that automobile trucks are designed for the transport of articles while other motor vehicles are primarily designed for the transport of persons. Developments in motor vehicle design, reflecting market demnds, have blurred the distinctions between automobile trucks and other automobiles. For example, small four-wheel drive vehicles, constructed with off-the-road capability, built on rugged chassis that were designed for truck applications, and rated at a gross vehicle weight rating (GVWR) of approximately 4,500 pounds, have become a major product in the automotive industry since 1985.

Decisions issued by Customs have generally held that these vehicles, if imported without rear seating and without certain accessories or combinations of accessories, such as carpeting, headliners, insulation, decorative side panels, ashtrays, and similar items, are classifiable as trucks. However, because these criteria often permit manipulation of the classification by the relatively simple addition or deletion of interior furnishings, Customs is reviewing whether other, more structural features should be considered in defining the meaning of the term "automobile truck" for purposes of the TSUS.

Example of Difficulty in Classifying

Sport utility vehicles and certain small vans are examples of the types of vehicles which Customs must examine closely to determine whether they are classifiable as automobile trucks. These vehicles can have a distinct cargo-carrying capability, especially when the rear seats are not attached at the time of entry. In many cases, the rear seats can be added or removed by a simple process of bolting to preexisting, recessed anchors. These seats can also be folded or removed in order to increase the ability of the vehicles to transport articles.

These vehicles also often have features that indicate they are designed for purposes other than the transport of articles. Such features include: relatively small size; four-wheel drive with off-the-road capability; an easily attached rear seat that meets Department of Transportation safety requirements; full windows in the rear area; and passenger-type side doors in the rear area. These features appear to attract a class of users or market that identifies the vehicles as "designed for" special or multipurpose operations rather than the transport of articles. Customs classification of a specific vehicle will vary depending on the features that the vehicle has upon importation.

The purpose of this notice is to solicit comments as to whether there are other criteria which will better serve Customs in defining, for tariff classification purposes, a motor vehicle under the provision for automobile trucks valued at $1,000 or more in item 692.02, TSUS.

Comments

Customs will consider any written comments timely submitted in its review of the criteria for classification of motor vehicles under the provision for automobile trucks valued at $1,000 or more in item 692.02, TSUS. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11, Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days at the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information

The principal authority of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: May 19, 1988.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 88-12222 Filed 5-31-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Withdrawal of a Proposed Rulemaking To Amend the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Withdrawal of proposed amendments.

SUMMARY: OSMRE is announcing the withdrawal of proposed rulemaking for amendments submitted by Oklahoma as modifications to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment was withdrawn by Oklahoma in a letter dated May 5, 1988 (Administrative Record No. OK–841).

DATES: This withdrawal is effective June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of 30 CFR 732.17 (d) through (f), OSMRE notified Oklahoma by letter, (Administrative Record No. OK–661), of the changes necessary to ensure that the State's Act was no less stringent than SMCRA and that its regulations were no less effective than the Federal regulations, as revised since January 19, 1981, when the program was originally approved. To comply with this notification, Oklahoma rewrote part of its regulations and submitted amendments to OSMRE in three parts. These were submitted August 19, 1986 (Administrative Record No. OK–717), August 29, 1986 (Administrative Record No. OK–749), and January 16, 1987 (Administrative Record No. OK–780).

On October 15, 1986 (51 FR 36405) and February 25, 1987 (52 FR 5550), OSMRE published a notice in the Federal Register announcing receipt of the submitted amendments and inviting public comment on whether the material submitted should be approved and incorporated into the Oklahoma program.

OSMRE reviewed the proposed changes and sent two separate letters (Administrative Record No. OK–804) to Oklahoma identifying those proposed amendments that were not as effective as the Federal rules. Oklahoma revised parts of the amendment and resubmitted the entire package for review to OSMRE on September 16, 1987, (Administrative Record No. OK–824).

On February 3, 1988, OSMRE published a notice in the Federal Register announcing the receipt of the proposed amendments and the reopening and extension of public comment period.

On May 5, 1988, Oklahoma sent a letter to OSMRE to withdraw the entire package. Oklahoma expects to submit an entire modified package soon. When Oklahoma submits the modified proposal, OSMRE will announce another comment period.

Therefore, the proposed Oklahoma program amendments announced in the Federal Registers dated October 15, 1986; February 25, 1987; and February 3, 1988; are withdrawn and Part 936 of Title 30 of the Code of Federal Regulations is not amended.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 17, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–12231 Filed 5–31–88; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3368–5]

Ocean Dumping; Proposed Designation of Sites Located Offshore of New Jersey and Long Island, New York

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA today proposes to designate eight dredged material disposal sites located offshore of New Jersey and Long Island, New York. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material. The proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to ensure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before July 18, 1988.

ADDRESS: Send comments to:

Mario P. Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, New York 10278.

The file supporting this proposed rulemaking is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (Rear), 401 M Street Southwest, Washington, DC, 20460.

EPA Region II Library, Room 402, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Mario P. Del Vicario, (212) 264–5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("This Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Ch. I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on August 19, 1985. (50 FR 33338). That list established the New Jersey/Long Island, New York sites as interim sites and extended their period of use until December 31, 1988, or until final rulemaking is completed, whichever is sooner. This site designation is being published as proposed rulemaking in accordance with Section 228 of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions

significantly affecting the quality of the human environment. The objective of NEPA is to build into the agency decision-making process careful consideration of all environmental aspects of proposed action. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this.

On November 18, 1983, a notice of availability of the draft EIS for public review and comment was published in the Federal Register. The public comment period on this draft EIS closed on January 2, 1984. The final EIS and this proposed rule will be published concurrently.

Primary commenters on the draft EIS were the New Jersey Department of Environmenal Protection (NJDEP), National Marine Fisheries Service (NMFS), the Corps of Engineers, and the U.S. Department of the Interior (DOI), Office of the Secretary, Mid-Atlantic Region. Both NJDEP and NMFS commented that the final designation of the dredged material deposal sites are subject to the consistency provisions of the Coastal Zone Management Act. EPA reviewed this comment and determined that site designation is not subject to the CZMA. In *Chemical Waste Management v. U.S. Department of Commerce, et al., Civil Action No. 86–624,* (United States District Court For The District Of Columbia, 1986). The court determined that neither the Coastal Zone Management Act (CZMA) nor the National Oceanic and Atmospheric Administration (NOAA) regulations implementing the CZMA authorize a State to impose conditions unilaterally on EPA as part of the consistency certification. Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) authorizes the Administrator to designate sites and times for dumping (33 U.S.C. section 1412(c)). The State of New Jersey is pre-empted from exercising authority over ocean dumping, including site designation (Section 106 (d) of MPRSA).

The NMFS, Office of the Secretary, expressed concerns over the quality of the dredged material and that the designation of these sites would lead to the preference of disposing the dredged material at the designated sites rather than utilizing the material for beach nourishment. Beach nourishment is the EPA's preferred method of disposal, and it is recommended wherever needed and economically feasible. Use of the dredged material for beach nourishment at any site is not precluded by the designation of an ocean disposal site. The feasibility of beach nourishment must be examined for all dredging projects and is examined on a case-by-case basis during the permitting process. At that time, a grain size analysis is performed and the quality of the dredged material is analyzed to ensure the suitability of the material proposed for disposal as beach nourishment.

Material which will "significantly degrade the waters of the United States" will not be permitted to be ocean disposed at any site. EPA, in conjunction with the U.S. Army Corps of Engineers (CE), will monitor ambient water quality trends at the site and in adjacent areas to ensure that unacceptable levels of toxic constituents are not transported outside of the site. Should monitoring surveys indicate that transport outside of the site is occurring, appropriate measures to modify or withdraw site designation are available to the Agency.

Some of the proposed sites, (Rockaway, East Rockaway, Shark River, Manasquan, and Cold Spring) are located within existing shellfish closure areas, thereby making the shellfish unharvestable. The closures were the result of bacterial contamination and not the result of dredged material disposal operations. The NMFS commented that as mandated by the Clean Water Act, water quality in these areas is expected to improve. It is not expected that the final designation of these dredged material disposal sites will contribute to decreased water quality in these areas. Although sediment suspension would be unavoidable, the increase in ambient turbidity would be short-term. In addition, because the sediment is predominantly sand it would sink rapidly and minimize resuspension.

Shellfish living in areas listed as "condemned" still provide a brood stock. However, the shellfish living in these proposed sites do not comprise a significant portion of the population, therefore the effects on the population as a whole will be minimum.

Based upon the information reported in the final EIS, EPA proposes to designate the existing Interim Designated New Jersey/Long Island, New York Dredged Material Disposal Sites for continuing use for the ocean disposal of dredged material where applicants have demonstrated compliance with EPA's ocean dumping criteria. The EIS is available for inspection at the address above.

The action discussed in the EIS is the designation for continuing use of eight ocean disposal sites for dredged material located in the Atlantic Ocean, offshore of New Jersey and Long Island, New York. The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the inlets (Rockaway Inlet, East Rockaway Inlet, Jones Inlet, and Fire Island Inlet, in New York and Shark River Inlet, Manasquan Inlet, Absecon Inlet, and Cold Spring Inlet in New Jersey) nearby the Sites. The appropriateness of ocean disposal is determined by the federal review agencies on a case-by-case basis during the permit processing period.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designation

The first proposed site, Rockaway, is located approximately 2 nautical miles southeast of Rockaway Inlet, Long Island, New York and occupies an area of approximately 0.38 square nautical miles. Water depths within the site range from 8–11 meters. The corner coordinates of the site are as follows:

40°32′30″ N., 73°55′00″ W.
40°32′30″ N., 73°54′00″ W.
40°32′00″ N., 73°54′00″ W.
40°32′00″ N., 73°55′00″ W.

The second proposed site, East Rockaway, is located approximately 1.3 nautical miles southwest of East Rockaway Inlet and occupies an area of approximately 0.81 square nautical miles. Water depths within the site range from 6 to 9 meters. The corner coordinates are as follows:

40°34′36″ N., 73°49′00″ W.
40°35′06″ N., 73°47′06″ W.
40°34′10″ N., 73°48′36″ W.
40°34′12″ N., 73°47′17″ W.

The third proposed site, Jones, is located approximately 1.5 nautical miles southwest of Jones Inlet, Long Island, New York and occupies an area of approximately 1.19 square nautical miles. Water depths within the site range from 7 to 10 meters. The corner coordinates of the site are as follows:

40°34′32″ N., 73°39′14″ W.
40°34′32″ N., 73°37′06″ W.
40°33′48″ N., 73°37′06″ W.

40°33'48" N., 73°39'14" W.

The fourth proposed site, Fire Island, is located approximately 1.7 nautical miles southwest of Fire Island Inlet, Long Island, New York and occupies an area of approximately 1.09 square miles. Water depths within the site range from 7 to 10 meters. The corner coordinates of the site are as follows:
40°36'49" N., 73°23'50" W.
40°37'12" N., 73°21'30" W.
40°36'41" N., 73°21'20" W.
40°36'10" N., 73°23'40" W.

The fifth proposed site, Shark River, is located approximately 0.4 nautical miles northeast of Shark River Inlet. New Jersey and occupies an area of approximately 0.6 square nautical miles. Water depth within the site is 12 meters. The corner coordinates of the site are as follows:
40°12'48" N., 73°59'45" W.
40°12'44" N., 73°59'06" W.
40°11'36" N., 73°59'28" W.
40°11'42" N., 74°00'12" W.

The sixth proposed site, Manasquan, is located approximately 0.3 nautical miles northeast of Manasquan Inlet, New Jersey and occupies an area of approximately 0.11 square nautical miles. Water depths within the site are 18 meters. The corner coordinates are as follows:
40°06'36" N., 74°01'34" W.
40°06'19" N., 74°01'39" W.
40°06'18" N., 74°01'53" W.
40°06'41" N., 74°01'51" W.

The seventh proposed site, Absecon, is located approximately 0.5 nautical miles southeast of Absecon Inlet, New Jersey and occupies an area of approximately 0.28 square nautical miles. Water depth within the site is approximately 7 meters. The corner coordinates are as follows:
39°20'39" N., 74°18'43" W.
39°20'30" N., 74°18'25" W.
39°20'03" N., 74°18'43" W.
39°20'12" N., 74°19'01" W.

The eighth proposed site, Cold Spring, is located approximately 1 nautical mile southwest of Cold Spring Inlet, New Jersey and occupies an area of approximately 0.13 nautical miles. Water depth within the site is approximately 9 meters. The corner coordinates are as follows:
38°55'52" N., 74°53'04" W.
38°55'37" N., 74°52'55" W.
38°55'23" N., 74°53'27" W.
38°55'36" N., 74°53'36" W.

All of the dredged materials disposed at the designated sites will be from dredging operations in the adjacent inlets. Maximum quantities of dredged material to be disposed of at this site are to be determined by both EPA and the Corps of Engineers. If at any time disposal operations at the site cause unacceptable advese impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as: (1) To minimize interference with other marine activities, (2) to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, (3) to permit effective monitoring to detect any adverse impacts at an early stage, (4) where feasible, locations off the Continental Shelf are chosen, and (5) if at any time disposal at an Interim Site causes unacceptable adverse impacts, the use of that site will be terminated as soon as a suitable alternate disposal site can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to ensure that the general criteria are met.

The eight proposed sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria except for the preference of sites located off the Continental Shelf. EPA has determined, based on the information presented in the final EIS, that a site off the Continental Shelf is not practicable and that no environmental benefit would be obtained by selecting such a site instead of the sites proposed in this action. As a result of technical and economical constraints associated with the selection of a site off the Continental Shelf, the environmental benefits associated with relocating the disposal sites to a site off the Continental Shelf would not sufficiently outweigh the safety problems and increased costs that would result from increasing distance of the disposal site from the Inlets. Historical use at all eight sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment (Appendix A).

There are clear disadvantags to designating dredged material disposal sites in deepwater locations. One of the criteria in selecting a dredged material disposal site is its ability to contain the dredged material within the site's boundaries. Deepwater sites subjected to offshore currents that would transport the dredged material outside of the site are not as environmentally acceptable as nearshore sites that could contain the material.

The location of the disposal sites has been chosen to minimize the interference of disposal activities with other activities in the marine environment. All sites are located inshore of the major shipping lanes, with the exception of Rockaway which is located within a precautionary zone. Temporary perturbations in water quality from dredged material disposal may occur, but conditions can be expected to return to ambient levels before reaching any beach, shoreline or known geographically limited fishery or shellfishery [Section 228.5(b)]. Based upon disposal site evaluation studies presented in the EIS, the sites proposed for designation satisfy the criteria for site selection set forth in §§ 228.5–228.6 [§ 228.5(c)]. EPA established the 11 specific factors [§ 228.6] to constitute an environmental assessment of the impact of disposal at the sites. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the existing sites are reviewed below in terms of these 11 factors.

D.1. Rockaway

D.1.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]

The proposed site is approximately 0.38 square nautical miles in size. Its corner coordinates are given above. Water depth ranges from 8 to 11 meters. The site is located approximately 2 nautical miles southeast of Rockaway Inlet, Long Island, New York, and is approximately 0.4 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 93.5% sand, 1.1% silt, 3.6% clay, and 1.8% gravel.

D.1.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2).]

The site does not encompass any known unique breeding, spawning, nursing, or passage areas or nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight for any of these species. Furthermore, both the proposed site and Rockaway Inlet are located within shellfish closure zones.

D.1.3. Location in Relation to Beaches and Other Amenity Areas

The proposed site is approximately 0.4 nautical miles offshore. Rockaway Inlet and the nearby beach do provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines, public health or aesthetics. Furthermore, the amount of material to be disposed of at this site is not significant. It is estimated from past dredging projects that only 200,000 cubic yards of material will be disposed of at this site every 50 years. The New York District of the Army Corps of Engineers has in the past scheduled its dredging projects during periods of low recreational activity (September to January) so as not to interfere with recreation activities.

D.1.4. Types and Quantities of Wastes Proposed to be Disposed of, and proposed Methods of Release, Including Methods of Packing the Waste, If Any. [40 CFR 228.6(a)(4)]

In the past, this site has received approximately 200,000 cubic yards of material every 50 years. The dumping occurs primarily by hopper dredge. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet disposed of at this site in the past has been approximately 98% sand.

D.1.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.1.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any [40 CFR 228.6(a)(6)]

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Rockaway Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the dgree or resuspension and increase in turbidity. Generally, nearshore curent flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.1.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)]

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. An EPA contractor's survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.1.8. Interference with Shipping, Fshing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean. [40 CFR 228.6(a)(8)].

Rockaway is not located within a major shipping lane; however, it is within a precautionary zone. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.1.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)].

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.1.10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10)].

Previous disposal at the proposed Rockaway site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.1.11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance [40 CFR 228.6(a)(11)]

No such areas have been identified at the proposed Rockaway site or in areas likely to be affected by dredged material disposal at the site.

D.2 East Rockaway

D.2.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]

The proposed site, East Rockaway, is approximately 0.81 square nautical miles in size. Its corner coordinates are given above. Water depths range from 6 to 9 meters with an average of 6.9 meters. The site is located approximately 1.3 nautical miles southwest of East Rockaway Inlet, Long Island, New York, and is approximately 0.4 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 96.1% sand, 1.4% silt, 1.6% clay, and 0.9% gravel.

D.2.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)]

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was

selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight for any of these species. Furthermore, both the proposed site and East Rockaway Inlet are located within shellfish closure zones.

D.2.3. Location in Relation to Beaches and Other Amenity Areas

The proposed site is approximately 0.4 nautical miles offshore. East Rockaway Inlet and the nearby beach do provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or aesthetics.

D.2.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any [40 CFR 228.6(a)(4)]

In the past, this site has received approximately 100,000 cubic yards of material every year. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. The dumping occurs primarily by hopper dredged. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been 98% sand.

D.2.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.2.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)].

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from East Rockaway Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.2.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)].

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.2.8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)].

East Rockaway is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.2.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)].

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.2.10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10)].

Previous disposal at the proposed East Rockaway site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.2.11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance [40 CFR 228.6(a)(11)].

No such areas have been identified at the proposed East Rockaway site or in areas likely to be affected by dredged material disposal at the site.

D.3. Jones

D.3.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)].

The proposed site, Jones, is approximately 1.19 square nautical miles in size. Its corner coordinates are given above. Water depths range from 7 to 10 meters. The site is located approximately 1.5 nautical miles southwest of Jones Inlet, Long Island, New York, and is approximately 0.5 nautical mile offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 88.1% sand, 5.5% silt, 6.1% clay, and 0.3% gravel.

D.3.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)].

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.3.3. Location in Relation to Beaches and Other Amenity Areas

The proposed site is approximately 0.5 nautical mile offshore. Jones Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or esthetics.

D.3.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any [40 CFR 228.6(a)(4)].

In the past, this site has received approximately 175,000 cubic yards of material every year. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been 99% sand.

D.3.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)].

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required by dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.3.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)].

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Jones Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.3.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)].

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.3.8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)].

The proposed site, Jones, is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.3.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)].

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jeresey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.3.10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10)].

Previous disposal at the proposed Jones site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.3.11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Featur of Historical Importance [40 CFR 228.6(a)(11)].

No such areas have been identified at the proposed Jones site or in areas likely to be affected by dredged material disposal at the site.

D.4. Fire Island

D.4.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)].

The proposed site, Fire Island, is approximately 1.09 square nautical miles in size. Its corner coordinates are given above. Water depths range from 7 to 10 meters. The site is located approximately 1.7 nautical miles southwest of Fire Island Inlet, Long Island, New York, and is approximately 0.5 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 89.8% sand, 5.9% silt, and 4.3% clay.

D.4.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)].

The site does not encompass any known unique breeding spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.4.3. Location in Relation to Beaches and Other Amenity Areas.

The proposed site is approximately 0.5 nautical miles offshore. Fire Island Inlet and nearby beaches provide important recretional areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines, public health, or aesthetics.

D.4.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any. [40 CFR 228.6(a)(4)]

In the past, this site has received approximately 1.5 million cubic yards of material every year. The dumping occurs primarily by pumping onto beach from hydraulic pipeline. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been 99% sand.

D.4.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.4.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)]

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Fire Island Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension gnd increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.4.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)]

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.4.8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)]

The proposed Fire Island site is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.4.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)]

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The survey revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.4.10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10)]

Previous disposal at the proposed Fire Island site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.4.11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance [40 CFR 228.6(a)(11)]

No such areas have been identified at the proposed Fire Island site or in areas likely to be affected by dredged material disposal at the site.

D.5 Shark River

D.5.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]

The proposed site, Shark River, is approximately 0.6 square nautical mile in size. Its corner coordinates are given above. Water depths are approximately 12 meters. The site is located approximately 0.4 nautical mile northeast of Shark River Inlet, New Jersey, and is approximately 0.25 nautical mile offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 60.9% sand, 27.7% silt and clay, and 11.4% gravel.

D.5.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)]

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.5.3. Location in Relation to Beaches and Other Amenity Areas

The proposed site is approximately 0.25 nautical miles offshore. Shark River Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines public health or aesthetics. Furthermore, Shark River Inlet and the proposed site are located within shellfish closure areas.

D.5.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any [40 CFR 228.6(a)(4)]

In the past, this site has received approximately 42,000 cubic yards of material every five years. The dumping occurs primarily by pumping onto beach from hydraulic pipeline. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been 88 to 96% sand.

D.5.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to assure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.5.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)]

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Shark River Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction to tidal currents.

D.5.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)]

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.5.8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)]

The proposed Shark River site is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalinatioin does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.5.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)]

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operatons.

D.5.10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10)]

Previous disposal at the proposed Shark River site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.5.11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance [40 CFR 228.6(a)(11)]

No such areas have been identified at the proposed Shark River site or in areas likely to be affected by dredged material disposal at the site.

D.6 Manasquan

D.6.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]

The proposed site, Manasquan, is approximately 0.11 square nautical miles in size. Its corner coordinates are given above. Water depth is approximately 7 meters. The site is located approximately 0.3 nautical miles northeast of Manasquan Inlet, New Jersey, and is approximately 0.25 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 89.9% sand, 8.5% silt and clay, and 1.6% gravel.

D.6.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)]

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not consititute a unique site within the Bight or any of these species.

D.6.3. Location in Relation to Beaches and Other Amenity Areas

The proposed site is aproximately 0.25 nautical miles offshore. Manasquan Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines public health or aesthetics. Furthermore, Manasquan Inlet and the proposed site are located within shellfish closure areas.

D.6.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any [40 CFR 228.6(a)(4)]

In the past, this site has received approximately 80,000 cubic yards of material bi-annually. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All

dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been at least 80% sand.

D.6.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to assure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.6.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)]

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Manasquan Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.6.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)]

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the site.

D.6.8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)]

The proposed Manasquan site is not located within a major shipping lane. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.6.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)]

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survivie future disposal operations.

D.6.10. Potentiality for the Development or recruitment of nuisance species in the disposal site. [40 CFR 228.6(a)(10)]

Previous disposal at the proposed Manasquan site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.6.11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance [40 CFR 228.6(a)(11)]

No such areas have been identified at the proposed Manasquan site or in areas likely to be affected by dredged material disposal at the site.

D. 7 Absecon

D.7.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]

The proposed site, Absecon, is approximately 0.28 square nautical miles in size. Its corner coordinates are given above. Water depth is approximately 18 meters. The site is located approximately 0.5 nautical miles southeast of Absecon Inlet, New Jersey, and is approximately 5.5 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 92.8% land, 7.0% silt and clay, and 0.2% gravel.

D.7.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)]

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.7.3. Location in Relation to Beaches and Other Amenity Areas

The proposed site is approximately 5.5 nautical miles offshore. Absecon Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or aesthetics.

D.7.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any [40 CFR 228.6(a)(4)]

In the past, this site has received approximately 200,000 cubic yards of material every year. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been at least 80% sand.

D.7.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider.

Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.7.6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any [40 CFR 228.6(a)(6)]

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Absecon Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.7.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)]

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.7.8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean. [40 CFR 228.6(a)(8)]

The proposed Absecon site is not located within a major shipping lane. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.7.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or baseline surveys [40 CFR 228.6(a)(9)]

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.7.10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10)]

Previous disposal at the proposed Absecon site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.7.11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance [40 CFR 228.6(a)(11)]

No such areas have been identified at the proposed Absecon site or in areas likely to be affected by dredged material disposal at the site.

D.8 Cold Spring

D.8.1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]

The proposed site, Cold Spring, is approximately 0.13 square nautical miles in size. Its corner coordinates are given above. Water depth is approximately 9 meters. The site is located approximately 1.0 nautical miles southwest of Cold Spring Inlet, New Jersey, and is approximately 0.7 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 96.5% sand, 2.7% silt and clay, and 0.8% gravel. Furthermore, Cold Spring Inlet and the proposed site are located within shellfish closure zones.

D.8.2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)]

The site does not encompass any known unique breeding, spawning, nursery, or passages areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.8.3. Location in Relation to Beaches and Other Amenity Areas

The proposed site is approximately 0.7 nautical miles offshore. Cold Spring Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or aesthetics. Furthermore, Cold Spring Inlet and the proposed site are within shellfish closure areas.

D.8.4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any. [40 CFR 228.6(a)(4)]

In the past, this site has received approximately 50,000 cubic yards of material bi-annually. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been primarily sand.

D.8.5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports

of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.8.6 Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)].

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Cold Spring Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.8.7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6)(a)(7)]

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the site.

D.8.8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)]

The proposed Cold Spring site is not located within a major shipping lane. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.8.9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Survey [40 CFR 228.6(a)(9)]

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benethic community was dominated by deposited-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.8.10. Potentiality for Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10)]

Previous disposal at the proposed Cold Spring site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.8.11 Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance [40 CFR 228.6(a)(11)]

No such areas have been identified at the proposed Cold Spring site or in areas likely to be affected by dredged material disposal at the site. E. Proposed Action

E. Proposed Action

The EIS concludes that the proposed sites may appropriately be designated for use. The proposed sites are compatible with the general criteria and specific factors used for site evaluation.

The designation of the Rockaway, East Rockaway, Jones, Fire Island, Shark River, Manasquan, Absecon, and Cold Spring sites as EPA approved ocean dumping sites is being published as proposed rulemaking. Management of these sites will be designated to the Regional Administrator of Region II.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at a site may commence, the U.S. Army Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to peform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executivef Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory flexibility analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, the rule does not necessitate the preparation of a regulatory impact analysis.

The proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: May 18, 1988.

Christopher J. Daggett,

Regional Administrator for Region II.

In consideration of the foregoing, subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 288—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing the following entries from the "Dredged Material Site" list in paragraph (a)(3): Rockaway Inlet, Long Island, New York; East Rockaway Inlet, Long Island, New York; Jones Inlet, Long Island, New York; Fire Island Inlet, Long Island, New York; Shark River Inlet, New Jersey; Manasquan Inlet, New Jersey; Absecon Inlet, New Jersey; Cold Spring Inlet, New Jersey; and by removing and reserving paragraph (a)(1)(i)(G) and adding paragraphs (b)(60) through (b)(67) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(60) Rockaway Inlet, Long Island, New York Dredged Material Disposal Site—Region II

Location: 40°32'30" N, 73°55'00" W; 40°32'30" N, 73°54'00" W; 40°32'30" N, 73°54'00" W; 40°32'30" N, 73°55'00" W.
Size: Approximately 0.38 square nautical miles
Depth: Ranges from 8 to 11 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Rockaway Inlet, Long Island, New York.

(61) East Rockaway Inlet, Long Island, New York Dredged Material Disposal Site—Region II

Location: 40°34'36" N, 73°49'00" W; 40°35'06" N, 73°47'06" W; 40°34'10" N, 73°48'36" W; 40°34'12" N, 73°47'17" W.
Size: Approximately 0.81 square nautical miles
Depth: Ranges from 6 to 9 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from East Rockaway Inlet, Long Island, New York.

(62) Jones Inlet, Long Island, New York Dredged Material Disposal Site—Region II

Location 40°34'32" N, 73°39'14" W; 40°34'32" N, 73°37'06" W; 40°33'48" N, 73°37'06" W; 40°33'48" N, 73°39'14" W.
Size: Approximately 1.19 square nautical miles
Depth: Ranges from 7 to 10 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Jones Inlet, Long Island, New York.

(63) Fire Island Inlet, Long Island, New York Dredged Material Disposal Site—Region II

Location 40°36'49" N, 73°23'50" W; 40°37'12" N, 73°21'30" W; 40°36'41" N, 73°21'20" W; 40°36'10" N, 73°23'40" W.
Size: Approximately 1.09 square nautical miles
Depth: Ranges from 7 to 10 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Fire Island Inlet, Long Island, New York.

(64) Shark River, New Jersey Dredged Material Disposal Site—Region II

Location 40°12'48" N, 73°59'45" W; 40°12'44" N, 73°59'06" W; 40°11'36" N, 73°59'28" W; 40°11'42" N, 74°00'12" W.
Size: Approximately 0.6 square nautical miles
Depth: Approximately 12 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Shark River Inlet, New Jersey.

(65) Manasquan, New Jersey Dredged Material Disposal Site—Region II

Location 40°06'36" N, 74°01'34" W; 40°06'19" N, 74°01'39" W; 40°06'18" N, 74°01'53" W; 40°06'41" N, 74°01'51" W.
Size: Approximately 0.11 square nautical miles
Depth: Approximately 7 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Manasquan Inlet, New Jersey.

(66) Absecon Inlet, New Jersey Dredged Material Disposal Site—Region II

Location 39°20'39" N, 74°18'43" W; 39°20'30" N, 74°18'25" W; 39°20'03" N, 74°18'43" W; 39°20'12" N, 74°19'01" W.
Size: Approximately 0.28 square nautical miles
Depth: Approximately 18 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Absecon Inlet, New Jersey.

(67) Cold Spring Inlet, New Jersey Dredged Material Disposal Site—Region II

Location 38°55'52" N, 74°53'04" W; 38°55'37" N, 74°52'55" W; 38°55'23" N, 74°53'27" W; 38°55'36" N, 74°53'36" W.
Size: Approximately 0.13 square nautical miles
Depth: Approximately 9 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Cold Spring Inlet, New Jersey.

[FR Doc. 88-12197 Filed 5-31-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 763

[OPTS-62036F; FRL-3390-6]

Asbestos; Release of Information for Public Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: This notice extends the period for public comment on eight documents supporting the final rule to ban and phase out the use of asbestos. The eight documents, which are set forth in the Supplementary Information, were added to the public docket on April 1, 1988 and on May 4, 1988. EPA has received several requests to extend the comment period and has decided to extend the comment period on all eight documents.

DATE: Comments on the documents should be received by June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202 554-1404).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) proposed a rule to ban and phase out the use the use of asbestos that was published in the **Federal Register** on January 29, 1988 (51 FR 3738). Since that time, the Agency has reviewed numerous comments on the proposal and testimony from the legislative hearings and the cross-examination proceedings. As a result of this process EPA has updated the data base and analyses that will be used to support the final rule.

On April 1, 1988, EPA placed the following documents in the public rulemaking docket: the Asbestos Exposure Assessment, the Asbestos Modeling Study, the Nonoccupational Asbestos Exposure Report, and the Regulatory Impact Analysis (53 FR 10548). EPA allowed interested persons until May 31, 1988, to comment on these four documents, which were primarily updates of documents previously released for public comment in conjunction with the January 29, 1988 proposed rule.

On May 4, 1988, four additional documents were placed in the public docket: the Health Hazard Assessment of Non-Asbestos Fibers, the Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers, the Durable Fiber Exposure Assessment, and the Durable Fiber Industry Profile and Market Outlook (53 FR 15857). These documents updated the factual information on fibers that are substitutes for asbestos. The Agency established June 14, 1988 as the deadline for public comment on these four latter documents.

EPA has received several requests for an extension of the comment period on the grounds that, among other reasons, the time period for comment was insufficient in light of the amount of information in these documents. The Agency believes the time allowed for comment is adequate and reasonable in view of the nature of these records, but in the interest of receiving informed

comment, EPA has decided to extend the comment period to June 30, 1988 on all documents related to the asbestos ban and phase out rule which were recently placed in the public docket.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Asbestos.

Dated: May 26, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-12361 Filed 5-27-88; 2:54 pm]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

Transportation Documentation and Audit; Revision of Standard Form 1170, Redemption of Unused Tickets

AGENCY: Federal Supply Service, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations, Part 101-41 by revising Standard Form (SF) 1170, Redemption of Unused Tickets, to make it suitable for automated preparation. Currently, the SF 1170 is 3¼ by 7⅜ inches and consists of an original and three copies assembled in snapout carbon-interleaved sets. The original and the last copy are of buff-punched-card stock and the remaining copies are of white paper stock. Although the present card stock form is durable and easy to file, it is difficult to prepare using electronic data processing (EDP) printers. The GSA proposes to make the SF 1170 available in both standard 8½ by 11-inch paper stock (as pin-fed sets of three), and in EDP format, thereby enabling form preparation on either typewriters or automated printers.

DATE: Comments must be received no later than July 1, 1988.

ADDRESS: Comments should be sent to the General Services Administration (FWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits, (Commercial 202-786-3065 or FTS 786-3065).

SUPPLEMENTARY INFORMATION: GSA proposes that the current punched-card format SF 1170 be replaced with: (a) Pre-printed set of three SF 1170's on standard 8½ by 11-inch, four part carbon-interleaved paper with ½-inch pin-fed strips on the margins, and with perforations between each form, and (b) a prescribed SF 1170-EDP format for use on blank 8½ by 11-inch, four part carbon-interleaved computer paper with positioning instructions. Both replacements, like the current SF 1170, would be suitable for mailing in a standard window envelope. The positioning instructions would read as follows: "Name and address of carrier must begin at line 13, column 9, and must be no longer than 31 characters and 5 lines. Name and address of agency to which refund is to be made must begin at line 13, column 48, and must be no longer than 31 characters and 5 lines. Fold marks must be located at line 22 and line 45."

The GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96-511, the Paperwork Reduction Act of 1980, and FIRMR 201-45.0.

List of Subjects in 41 CFR Part 101-41

Accounting, Air Carriers, Claims, Passenger service, Transportation.

GSA proposes to amend 41 CFR Part 101-41 as follows:

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for Part 101-41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

Subpart 101-41.2—Passenger Transportation Services Furnished for the Account of the United States

2. Section 101-41.202 is amended by adding paragraph (h) to read as follows:

§ 101-41.202 Standard forms relating to passenger transportation.

* * * * *

(h) SF 1170-EDP (Electronic Data Processing), Redemption of Unused Tickets, (Computer-generated).

3. Section 101-41.202-2 is revised to read as follows:

§ 101-41.202-2 SF 1170, Redemption of Unused Tickets.

(a) SF 1170 and SF 1170-EDP (computer-generated) consist of an original and three copies which are carbon-interleaved for simultaneous preparation.

(b) Three SF's 1170 are printed on standard 8½ by 11-inch, four part carbon-interleaved paper with ½-inch pin-fed strips on the margins, and perforations between each form.

(c) SF 1170-EDP (computer-generated) must be printed on standard 8½ by 11-inch, four part carbon-interleaved paper with ½-inch pin-fed strips on the margins. SF 1170-EDP must be positioned so that the name and address of the carrier begin at line 13, column 9, and must be no longer than 31 characters and 5 lines. The name and address of the agency to which the refund is to be made must begin at line 13, column 48, and must be no longer than 31 characters and 5 lines. Fold marks must be located at line 22 and line 45. The SF 1170-EDP must conform to the exact wording as the approved Standard Form.

4. Section 101-41.202-5 is amended by revising paragraph (a) as follows:

§ 101-41.202-5 Procurement of standard forms by agencies and carriers.

(a) Agencies may obtain supplies of SF 1169 and SF 1170 assemblies from GSA by submitting a requisition in FEDSTRIP/MILSTRIP format to GSA's Federal Supply Service, Furniture Commodity Center (FCNI), Washington, DC 20406. With respect to the GTR assemblies, FCNI maintains a record of the serial numbers imprinted on the forms and the names and mailing addresses of the receiving agencies. Where feasible, agencies should request that the name and address of the office to be billed for payment of charges be preprinted on each SF 1169 and that the name and address of the office to receive the refund be preprinted on each SF 1170. No other overprinting on SF 1169, SF 1170, or SF 1170-EDP (computer-generated) is permitted unless specifically approved in writing by the Director, Office of Transportation Audits (FW), GSA.

* * * * *

§ 101-41.4901-1170 [Revised]

5. Section 101-41.4901-1170 is revised.

(Note: SF 1170 is being revised; however, it will not be published in the final rule. A facsimile of the proposed three set SF 1170 and the proposed EDP format SF 1170 are illustrated in Attachment A of this proposed rule.)

Dated: May 10, 1988.

Donald C. J. Gray,

Commissioner, Federal Supply Service.

BILLING CODE 6820-24-M

Attachment A

SF 1170, Redemption of Unused Tickets

REDEMPTION OF UNUSED TICKETS — *Original*

GOVERNMENT TRANSPORTATION REQUEST (GTR) No. ▶

DATE | APPROPRIATION | DATE GTR ISSUED | PLACE ISSUED

FILE REFERENCE

ORIGIN | DESTINATION

FORM NO	TICKET NO	NO. OF PASSENGERS OR NO. & TYPE OF ACCOMMODATIONS	UNUSED FROM	UNUSED TO	FOR CARRIER'S USE ONLY: AMOUNT OF REFUND
REMARKS				TOTAL	

[Name and address of carrier] | [Name and address of agency to which refund is to be made]

Attention: Refund is requested for unfurnished passenger transportation services indicated above. Any unused tickets involved are attached.

● See detailed instructions on reverse | 1170-108 | STANDARD FORM 1170 (REV. 11-85) PRESCRIBED BY GSA, FPMR (41 CFR) 101-41.2

REDEMPTION OF UNUSED TICKETS — *Original*

GOVERNMENT TRANSPORTATION REQUEST (GTR) No. ▶

DATE | APPROPRIATION | DATE GTR ISSUED | PLACE ISSUED

FILE REFERENCE

ORIGIN | DESTINATION

FORM NO	TICKET NO	NO. OF PASSENGERS OR NO. & TYPE OF ACCOMMODATIONS	UNUSED FROM	UNUSED TO	FOR CARRIER'S USE ONLY: AMOUNT OF REFUND
REMARKS				TOTAL	

[Name and address of carrier] | [Name and address of agency to which refund is to be made]

Attention: Refund is requested for unfurnished passenger transportation services indicated above. Any unused tickets involved are attached.

● See detailed instructions on reverse | 1170-108 | STANDARD FORM 1170 (REV. 11-85) PRESCRIBED BY GSA, FPMR (41 CFR) 101-41.2

REDEMPTION OF UNUSED TICKETS — *Original*

GOVERNMENT TRANSPORTATION REQUEST (GTR) No. ▶

DATE | APPROPRIATION | DATE GTR ISSUED | PLACE ISSUED

FILE REFERENCE

ORIGIN | DESTINATION

FORM NO	TICKET NO	NO. OF PASSENGERS OR NO. & TYPE OF ACCOMMODATIONS	UNUSED FROM	UNUSED TO	FOR CARRIER'S USE ONLY: AMOUNT OF REFUND
REMARKS				TOTAL	

[Name and address of carrier] | [Name and address of agency to which refund is to be made]

Attention: Refund is requested for unfurnished passenger transportation services indicated above. Any unused tickets involved are attached.

● See detailed instructions on reverse | 1170-108 | STANDARD FORM 1170 (REV. 11-85) PRESCRIBED BY GSA, FPMR (41 CFR) 101-41.2

Attachment A

SF 1170-EDP (Electronic Data Processing)
Redemption of Unused Tickets, (Computer-generated)

REDEMPTION OF UNUSED TICKETS - ORIGINAL

DATE | APPROPRIATION | CONTROL NO.

FILE REFERENCE | GOVERNMENT REQUEST (GTR) TRANSPORTATION NO. | DATE GTR ISSUED | PLACE GTR ISSUED

(NAME AND ADDRESS OF CARRIER) — (NAME AND ADDRESS OF AGENCY TO WHICH REFUND IS TO BE MADE)

GENTLEMEN: REFUND IS REQUESTED FOR UNFURNISHED TRANSPORTATION SERVICES INDICATED BELOW: ANY UNUSED TICKETS INVOLVED ARE ATTACHED.

ORIGIN | DESTINATION | FOR CARRIER'S USE ONLY

FORM NO. REFUND	TICKET NO.	PAX/ACCOM.*	UNUSED FROM	UNUSED TO	AMOUNT OF REFUND

*NO. OF PASSENGERS OR NO. & TYPE OF ACCOMMODATION | TOTAL $

REMARKS

INSTRUCTIONS

1. CARRIERS SHOULD NOT EFFECT ADJUSTMENT BY CREDITING THE VALUE OF UNUSED TICKETS IN PRESENTING CHARGES ON OTHER BILLS. 2. CARRIERS SHOULD NOT REQUEST THE AGENCY TO FURNISH ANY PAYMENT OR BILLING IDENTIFICATION OF THE BILL WHICH COVERED THE CHARGES ON THE U.S. GOVERNMENT TRANSPORTATION REQUEST INVOLVED. 3. THE VALUE OF EACH UNUSED TICKET THAT APPEARS IN THE LISTING SHOULD BE INSERTED BY THE CARRIER ON THE ORIGINAL COPY OF THIS FORM IN THE COLUMN CAPTIONED "AMOUNT OF REFUND." 4. THE ORIGINAL COPY SHOULD BE RETURNED TO THE AGENCY SPECIFIED ABOVE WITH THE CHECK COVERING THE REFUND DUE. CHECK MAY BE MADE PAYABLE TO THE AGENCY OR THE "TREASURER OF THE UNITED STATES."

NOTICE

THIS DEBT IS NOW DUE. PAYMENT SHOULD BE MADE PROMPTLY. INTEREST ON THIS DEBT ACCRUES FROM THE DATE OF THIS NOTICE. SUCH INTEREST BECOMES PAYABLE AND THIS DEBT BECOMES SUBJECT TO ADMINISTRATIVE COSTS AND PENALTY CHARGES, IF IT IS NOT PAID WITHIN 30 DAYS OF THE DATE OF THIS NOTICE. IN ORDER TO AVOID SUCH INTEREST, ADMINISTRATIVE COSTS, AND PENALTY CHARGES, THE AMOUNT DUE MUST BE PAID WITHIN 30 DAYS OF THE DUE DATE OF THIS NOTICE. IF NECESSARY, IT IS THE INTENTION OF THE AGENCY TO WHICH REFUND IS TO BE MADE TO COLLECT THIS CLAIM BY ADMINISTRATIVE SETOFF. YOU MAY INSPECT AND COPY AGENCY RECORDS PERTINENT TO THIS DEBT, OBTAIN AN AGENCY REVIEW OF THE DECISION RELATED TO THE DEBT, AND PROPOSE A WRITTEN AGREEMENT WITH THE AGENCY FOR THE REPAYMENT OF THE DEBT.

STANDARD FORM 1170-EDP (1/88)
PRESCRIBED BY GSA, FPMR (41 CFR)101-41.2

NOTE: Name and address of carrier must begin at line 13, column nine, and must be no longer than 31 characters and five lines. Name and address of agency to which refund is to be made must begin at line 13, column 48, and must be no longer than 31 characters and five lines. Fold marks must be located at line 22 and line 45.

[FR Doc. 88-11546 Filed 5-31-88; 8:45 am]
BILLING CODE 6820-34-C

VOL 53 ISS 105 JE 1 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 440, and 441

[BERC-389-P]

Medicaid Program; Home and Community-Based Services and Respiratory Care for Ventilator-Dependent Individuals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would revise the regulations for home and community-based services as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Omnibus Budget Reconciliation Act of 1986. Also, this proposal would provide for respiratory care services as medical assistance under State plans in accordance with the Omnibus Budget Reconciliation Act of 1986.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 31, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-389-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-389-P. Comments received timely will be available for public inspection as they are received, which generally begins approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Thomas Hoyer (301) 966-4607
Home and Community-Based Waivers

Marinos T. Svolos (301) 966-4451
Post-Eligibility Treatment of Income and Resources

SUPPLEMENTARY INFORMATION:

I. Background

A. Home and Community-Based Services Waivers

Until the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) was enacted on August 13, 1981, the Medicaid program (Title XIX of the Social Security Act (the Act)) provided little coverage for long term care services in a noninstitutional setting. Many elderly, disabled, and chronically ill persons were living in institutions not for medical reasons, but because of the paucity of health and social services available to them in their homes and communities. Further, even where the necessary services were available outside the institution, individuals were sometimes unable to pay for them and they were not covered by Medicaid.

Section 2176 of Pub. L. 97-35 added new section 1915(c) to the Act to encourage the provision of services to Medicaid recipients in noninstitutional settings. This section authorizes the Secretary to waive Medicaid statutory requirements to enable a State to cover a broad array of home and community-based services. These services must be furnished pursuant to an individually written plan of care and can be furnished only to persons who would otherwise require the level of care provided in a skilled nursing facility (SNF), an intermediate care facility (ICF), or an intermediate care facility for the mentally retarded (ICF/MR), the cost of which could be reimbursable under the State's plan.

The statute requires the State to provide us with specific assurances before we can approve a home and community-based services waiver. The original statute provides that a home and community-based services waiver can include waivers of "statewideness" (section 1902(a)(1) of the Act), which requires a State plan for medical assistance to be in effect throughout the State, and "amount, duration, and scope" of services (section 1902(a)(10) of the Act), which sets forth certain Medicaid eligibility and service coverage requirements.

The original statute provides that approved home and community-based services waivers are granted for an initial term of three years and can be extended for additional three-year periods. We may approve waiver extensions if a State requests an extension, the extension request meets the waiver requirements for the extended period, and we determine that the State met all the required assurances for the term of the initial waiver.

Home and community-based services are those services provided under the waiver that are not otherwise available under the State's Medicaid plan. Prior to the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), on April 7, 1986, and of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) on October 21, 1986, the waiver allowed a State to receive Federal matching funds (that is, Federal financial participation (FFP) under Title XIX of the Act) for case management, homemaker services, home health aide, personal care, adult day health care, habilitation, respite care, and "other" services as requested by the State and approved by the Secretary.

We issued regulations for home and community-based services (42 CFR Parts 435, 440, and 441) in the Federal Register in an October 1, 1981 interim final rule (46 FR 48532). We subsequently revised those regulations in a March 13, 1985 final rule (50 FR 10013).

B. Respiratory Care Services

Until the enactment of Pub. L. 99-509, the Medicaid statute did not permit payment for respiratory therapy services in a patient's home as a separate and distinct State plan service. Such services could only be provided as a component of other State plan services or as a home and community-based service under a section 1915(c) waiver. For example, respiratory therapy services at home were available when provided as a medically necessary component of covered home health nursing services. States also had the option of providing respiratory therapy services as an element of three other optional Medicaid benefits; medical or remedical care provided by a licensed practitioner, private duty nursing, or rehabilitative services. Thus, when respiratory care has been available previously under the Medicaid State plan, it was provided as a part of a broader coverage authority. Because these authorities do not allow respiratory care services to be directed only to a specific population but require that such services be made available to all beneficiaries, very few States have been providing coverage for respiratory care services. Moreover, while respiratory care services could be provided to a specific population under a home and community-based services waiver, State use of this vehicle to provide coverage has also been limited.

II. Legislation

Section 9502 of Pub. L. 99-272, and sections 9408 and 9411 of Pub. L. 9-509, made various revisions to the home and community-based services provisions in section 1915(c) of the Act and provided

for coverage of respiratory therapy care services.

A. Consolidated Omnibus Budget Reconciliation Act of 1985

The statutory changes made by Pub. L. 99-272 are as follows:

1. Explicit inclusion of certain prevocational and educational services.

Section 9502(a) of Pub. L. 99-272 added a new section 1915(c)(5) to the Act. This new provision allows a State to request HCFA's approval to include certain services in its definition of "habilitation services" for individuals who receive waiver services directly after discharge from an SNF or ICF (including ICF/MR). Habilitation services are defined as services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. The services may now include prevocational, educational, and supported employment services but do not include—

- Special education and related services, as defined in section 4(a)(4) of the 1975 Amendments to the Education of the Handicapped Act (Pub. L. 94-142) (now located at 20 U.S.C. 1401 (16) and (17)), that are otherwise available to the individual through a local educational agency; and
- Vocational rehabilitation services that are otherwise available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

2. Permitting hospital level of care for certain recipients.

Section 9502(b) of Pub. L. 99-272 amended section 1915(c)(1) and (c)(2)(C) of the Act. These amendments allow States to provide home and community-based services to individuals who are dependent on a ventilator and who, but for the provision of home and community-based services, would continue to receive inpatient hospital, SNF, ICF, or ICF/MR services under the State's Medicaid plan. Thus, this section of the Act authorized waiver payments for individuals who are at an inpatient hospital level of care if they enter the waiver program directly from a hospital and are ventilator-dependent. Prior to this legislation, only persons requiring an ICF, ICF/MR, or SNF level of care were covered. (As discussed below, this provision was subsequently rescinded by section 9411(a)(1) of Pub. L. 99-509 and replaced with a broader authority to permit States to extend home and community-based services to individuals requiring hospital level of care.)

3. Prohibiting impoaition of certain regulatory limits.

Section 9502(c) of Pub. L. 99-272 amended section 1915(c)(2)(D) of the Act and added a new section 1915(c)(6). The amendment emphasized that the cost-neutrality test for a home and community-based services waiver is 100 percent or less of the cost of services without the waiver. This new section also abolished the expenditure limitation on Federal financial participation (FFP) in waiver expenditures as originally specified in § 441.302(e)(2) and § 441.310(a)(2) of the Medicaid regulations.

4. Computation of expenditures for certain disabled patients.

Section 9502(d) of Pub. L. 99-272 added a new section 1915(c)(7) to the Act. This provision allows States that have or wish to establish a separate waiver program for institutionalized, physically disabled individuals, who are directly discharged from SNFs, ICFs, or ICFs/MR, into the waiver program, to determine the average per capita Medicaid expenditure for such physically disabled individuals differently than in other types of waiver requests. The determination may be made separately from the expenditures for all other individuals in SNFs, ICFs, and ICFs/MR, to meet the required test for waiver cost-effectiveness. As discussed below, this authority was rescinded by section 9411(a)(3) of Pub. L. 99-509 and replaced with a broader authority to include specific cost comparisons in waivers directed at persons with any specific illness or condition who are presently inpatients of hospitals, SNFs, ICFs, or ICFs/MR.)

5. Permitting flexibility in establishing maintenance income standards.

Section 9502(e) of Pub. L. 99-272 and section 9435(a) of Pub. L. 99-509 amended section 1915(c)(3) of the Act. These amendments provide that a State may allow, in its waiver, a higher income limit for an individual's maintenance needs than the maximum amount that can be disregarded under the regulations in effect on July 1, 1985.

6. Waiver extensions.

Section 9502(f) of Pub. L. 99-272 provides that the Secretary shall, upon a State's request, extend any home and community-based services waiver that expired on or after September 30, 1985 and before September 30, 1988, subject to the State's meeting all requirements for the waiver. The extension granted must be for a period of not less than one year nor more than five years.

7. Waiver renewals.

Section 9502(g) of Pub. L. 99-272 amended section 1915(c)(3) of the Act. This amendment, effective for waiver renewals approved on or after September 30, 1986, revised the periods of time for which a waiver may be renewed from additional three-year periods to additional five-year periods.

8. Coordinated services between maternal and child health programs and home and community-based services programs.

Section 9502(h) of Pub. L. 99-272 added a new section 1915(c)(8) to the Act. This addition allows the State agency that administers the Medicaid plan to make cooperative arrangements, whenever appropriate, with the State agency responsible for administering the program for children with special health care needs under the Maternal and Child Health Program (Title V of the Act).

9. Substitution of participants.

Section 9502(i) of Pub. L. 99-272 added a new section 1915(c)(9) to the Act. This addition provides that when a waiver contains a limit on the number of individuals who can receive home and community-based services, the State may substitute additional individuals to replace any recipients who die or become ineligible for further services under the State plan.

B. Omnibus Budget Reconciliation Act of 1986

In addition to making various revisions to the home and community-based services provisions in section 1915(c) of the Act, Pub. L. 99-509 also provided for a new optional respiratory therapy care benefit under the Medicaid State plan by amending sections 1902(a)(10), 1902(e), 1902(j) and 1905(a) of the Act. The pertinent statutory changes are as follows:

1. Permitting States to Offer Home and Community-Based Services to Certain Low-Income Individuals.

Section 9411(a)(1) of Pub. L. 99-509 amended section 1915(c)(1) of the Act. This amendment authorizes States to provide home and community-based services to individuals who, but for the provision of such services, would require the level of care provided in a hospital. As we stated above, section 9502(b) of Pub. L. 99-272 had authorized payments for home and community-based services for individuals dependent on ventilator support and who were inpatients of a hospital prior to receiving home and community-based services. This more limited authority is no longer applicable. Prior to the enactment of Pub. L. 99-272, there was no explicit statutory authority to approve home and community-based services for individuals who otherwise required a hospital level of care.

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Section 9411(a)(2) of Pub. L. 99–509 amended section 1915(c)(2)(B) of the Act to require the State to provide, for an individual, an evaluation of the need for inpatient hospital services prior to permitting the provision of home and community-based services as an alternative to the level of care provided in a hospital.

Section 9411(a)(3) of Pub. L. 99–509 amended section 1915(c)(7) of the Act to allow States the option of using an alternative method for estimating costs under section 1915(c)(2)(D) of the Act. For waivers that apply to individuals with a particular illness or condition, who are inpatients in hospitals, SNFs, ICFs, or ICFs/MR, the State may determine the average per capita expenditure that would have been made in a fiscal year for these individuals under the State plan separately from the expenditures for other individuals who are inpatients of the respective facilities. Alternatively, States may continue to use the usual method of estimating average per capita expenditures, that is, include the utilization and cost of all Medicaid recipients. Section 9502(d) of Pub. L. 99–272 authorized such separate estimates but only for physically disabled recipients who were directly discharged from SNFs, ICFs, or ICFs/MR into the waiver program.

Section 9411(c) of Pub. L. 99–509 amended section 1915(c)(3) of the Act to clarify that the Medicaid State plan requirement, which may be waived under section 1915(c), is limited to "comparability" of covered services, that is, that covered services be equal in amount, duration and scope for certain Medicaid recipients. Previously, all of section 1902(a)(10) of the Act could be waived by the Secretary if requested by States, but no, only section 1902(a)(10)(B) may be waived. By specifically indicating section 1902(a)(10)(B) of the Act, Congress narrowed the scope of this particular waiver option. Specifically, section 1902(a)(10)(B) of the Act requires that the medical assistance made available to any categorically eligible individual may not be less in amount, duration or scope that the medical assistance made available to any other categorically needy individual and may not be less in amount, duration or scope than the medical assistance made available to other individuals (medically needy). Regulations implementing section 1902(a)(10)(B) are located at § 440.240.

Section 9411(d) of Pub. L. 99–509 amended section 1915(c)(4)(B) of the Act by adding day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, to the list of services specifically enumerated as home and community-based services in 1915(c)(4)(B) of the Act. Therefore, effective October 21, 1986 (the date of enactment of Pub. L. 99–509), States may request that any of the above services be provided under a waiver for persons diagnosed as chronically mentally ill.

2. Respiratory therapy care services.

Section 9406(a) of Pub. L. 99–509 amends section 1902(e) of the Act to provide that, at the option of the State, its State Medicaid plan may be amended to include respiratory care services as medical assistance for an individual who: (1) Is medically dependent on a ventilator for life support at least six hours per day; (2) has been dependent on ventilator support for at least 30 consecutive days as an inpatient (or the maximum number of days of inpatient care authorized under the State plan, if less than 30 days); (3) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, SNF, ICF, or ICF/MR, and would be eligible to have payment made for inpatient care under the State plan; (4) has adequate social support services to be cared for at home; and (5) wishes to be cared for at home. A continuous stay in one or more hospitals, SNFs, ICEs, or ICFs/MR would satisfy the requirement in item two above. Under this provision, respiratory care services are services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State). The services under this benefit may not be included within other items and services furnished to these individuals as medical assistance under the State Medicaid plan. Section 9408(c) of Pub. L. 99–509 includes respiratory care services (as defined in section 1902(e)(9)(C)) of the Act under the definition of medical assistance in section 1905(a) and makes other technical conforming amendments.

Section 9408(b) of Pub. L. 99–509 amends section 1902(a)(10) of the Act to provide that a State is not required to make respiratory care services (as defined in section 1902(e)(9) of the Act) available, or available in the same amount, duration and scope, to individuals who do not meet the criteria set forth in section 1902(e)(9)A) of the Act. However, if the State provides this benefit, it is required to make respiratory care services available in the same amount, duration, and scope to all Medicaid recipients who do meet the criteria in that section of the Act.

III. Discussion of Proposed Changes

A. Home and Community-Based Services Waivers

We are proposing the following revisions to the home and community-based services regulations in 42 CFR Parts 435, 440, and 441. We believe that these changes will make the regulations consistent with the statutory changes to section 1915(c) of the Act made by Pub. L. 99–272 and Pub. L. 99–509. Certain changes not specifically related to the statutory amendment are also being made.

1. Prevocational, educational, and supported employment services and respite care services.

We are proposing to revise §§ 440.180, 441.302 and 441.303 to provide for inclusion of prevocational, educational, and supported employment services under a home and community-based waiver, as specified in section 1915(c)(5) of the Act. This section of the Act, as added by section 9502(a) of Pub. L. 99–272, defines these services as qualifying "habilitation services" and indicates that Congress intends to allow States to claim FFP under limited circumstances when they provide certain deinstitutionalized individuals with these services under a waiver. The regulations implement the provision by providing in § 440.180 that these services consist of services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization and adaptive skills necessary to reside successfully in the home or in community-based settings. The regulations also stipulate that certain services for which FFP has not previously been available may now be included amoung these services.

The statutory language of section 9502(a) of Pub. L. 99–272 describes the services included in "habilitation services". That section, by reference to the Federal educational and vocational training statutes (cited above in section II.A. of this preamble) under which those services are most often provided to individuals, describes the services that may not be included under the waiver if available under other authorities. As discussed below, we believe the basic intent of Congress was to assure that there be Medicaid funding in those instances where the programs offered under other programs do not actually reach individuals who are receiving services under Medicaid waivers. Specifically, Medicaid funding is limited to cases in which the services described in these educational and vocational training statutes are not available to deinstitutionalized individuals.

We would note that proper implementation of these educational and vocational training programs under Federal and State law and regulations would virtually assure that eligible individuals under age 22 will have the services funded. Thus, we would expect that the additional coverage provided by this provision (that is, section 9502(a) of Pub. L. 99–272) would primarily be applicable to individuals over age 22.

For purposes of section 1915(c) of the Act (as amended by section 9502(a) of Pub. L. 99–272); deinstitutionalized means an individual who has been discharged on or after April 7, 1986 from a Medicaid certified hospital, SNF, ICF or ICF/MR directly into a waiver program, which is authorized under section 1915(c) of the Act or who has been deinstitutionalized into such a program after October 1, 1981 and who has been receiving the expanded form of habilitation services since discharge. Prior to enactment of Pub. L. 99–272, FFP was not available to a State for providing prevocational and educational services. Because existing waivers that dealt with the mentally retarded or developmentally disabled were approved without inclusion of such services, we would now require either a new waiver request or an amendment to an existing waiver from any State that wishes to include prevocational, educational, or supported employment services or a combination of these services under its definition of "habilitation services". FFP is not available for prevocational, educational, and supported employment services provided prior to April 7, 1986, the effective date of section 9502(a) of Pub. L. 99–272, nor is it available on behalf of recipients deinstitutionalized before that date unless the recipients were deinstitutionalized directly into a home and community based waiver after October 1, 1981 and have received prevocational, educational, or supported employment services since discharge.

Thus, although payment is not available for the expanded forms of habilitation services until on or after April 7, 1986, we believe the requirement that individuals must be deinstitutionalized to receive these or waiver services may be interpreted to extend to periods before April 7, 1986 for individuals who needed and received such services upon discharge but did not claim FFP for the services.

In determining whether services are prevocational or vocational in nature, the issue to be considered will be whether the services being provided are directly related to preparing the individual for paid or unpaid employment (vocational) or are instead provided to increase the overall level of functioning of the individual (prevocational). Examples of prevocational services include teaching an individual such concepts as compliance with instructions, attendance requirements, task completion, problem solving, and safety. For deinstitutionalized individuals, these prevocational services would be eligible for inclusion under a State's definition of habilitation services when provided pursuant to the plan of care, unless included under another program funded under State of Federal law.

For purposes of these regulations, the term "education services" means special education and related services as defined in section 4(a)(4) of the 1975 Amendments to the Education of the Handicapped Act (Pub. L. 94–142) (now located at 20 U.S.C. 1401(16) and (17)).

Under Pub. L. 94–142, the term "special education" generally means specially designed instruction, at no cost to parents or guardian, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. Related services will consist of transportation and such developmental, corrective, and other supportive services as may be required to assist a handicapped child to benefit from special education.

Under Pub. L. 98–527, the term "supported employment" is generally defined as paid employment that is—

- Designed for persons with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;
- Conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and
- Supported by any activity needed to sustain paid work by persons with disabilities, including supervision, training, and transportation.

Prevocational, educational, and supported employment services may now be included in the definition of "habilitation services" if the services are—

- Not funded under another State or Federal program;
- Provided pursuant to the individual's plan of care; and
- Requested by the State in the waiver request, and the request is approved by HCFA.

The language of section 1915(c)(5)(C) of the Act clearly reflects congressional intent that duplication of Federal expenditures must be avoided. The law specifies that States may not cover prevocational, educational, and supported employment services under a home and community-based services waiver, if these services *otherwise are available* to an individual through (1) a local educational agency (as services under the Education of the Handicapped Act), or (2) a program funded under section 110 of the Rehabilitation Act of 1973. The House Energy and Commerce Committee Report on Pub. L. 99–272 (H.R. Rep. No. 265, 99th Cong., 1st Sess. 60 (1985)) provides that the phrase "otherwise are available" should be interpreted in such a manner that coverage would be denied under a waiver only if (1) an individual has been determined eligible for the special educational or vocational rehabilitation services offered by other agencies, and (2) the individual is actually receiving, or will actually receive, the services under those other programs. Thus, we believe that States wishing to provide services under the expanded definition of "habilitation" services must ascertain that these services are not otherwise available and explain why they are not available.

In addition, for purposes of the expanded habilitation definition, incentive payments, subsidies, or unrelated vocational training expenses such as the following may not be included:

- Incentive payments made to an employer of beneficiaries to encourage or subsidize its participation in a supported employment program.
- Payments that are passed through to beneficiaries of supported employment programs.
- Payments for vocational training that is not directly related to a beneficiary's supported employment placement.

The committee report also provides that Congress expects the relevant State Medicaid, vocational rehabilitation, and local educational agencies to coordinate their efforts and, as a result, to maximize the number of individuals receiving these services under either a home and community-based services waiver or other Federally-assisted programs (H.R. Rep. No. 265, 99th Cong., 1st Sess. 60 (1985)). We note, too, that on page 59 of the report, the committee clearly states that although habilitation services may now include prevocational, educational, and supported employment services, these three types of services—

• Are limited, under a waiver, to deinstitutionalized individuals who are discharged from Medicaid certified institutions; and

• Cannot be applied to individuals who enter the waiver program from the community.

Thus, we believe that States electing the expanded definition of "habilitation services" must describe the process by which they will assure that the expanded waiver services will be provided only to the narrowly defined target population.

Apart from coverage of habilitation services, we are also proposing that a limitation be imposed on the amount of institutional respite care services provided to any individual under a waiver program. We believe that no reasonable benefit could be derived from receiving institutional respite care as a service necessary to prevent institutionalization for a period of longer than 30 days a year. Institutional respite care may be provided in facilities approved by the State such as hospitals, nursing homes, foster homes, or community residential facilities. Noninstitutional respite care is furnished in a private residence and may not include room and board included in the facilities' per diem rates. We note that this limitation is consistent with the level of utilization of respite care in typical waiver programs approved to date. A State, of course, is free to set a limit of less than 30 days, or not cover respite care at all.

A State may include both institutional and noninstitutional settings in its definition of respite care services. Since § 441.301(b)(1)(ii) specifically prohibits waiver services being provided to inpatients of hospitals, SNFs, and ICFs, we believe that respite care in institutional settings for periods longer than the 30-day limit described above should be considered institutional care, not respite care, and therefore should be excluded from payment under a waiver. Also, institutional respite care may include payment for room and board, which is precluded from payment for all other waiver services. For these reasons and because respite care is generally viewed as a short-term service to allow the primary care-giver (for example, a family member providing care at home) relief from those duties, we would revise § 440.180 to require States to include limitations of 30 days per waiver year on the amount of institutional respite care provided on behalf of each recipient. We are not proposing to place a limit on noninstitutional respite care but we would closely review all waiver applications that request noninstitutional respite care in excess of 30 days per recipient per waiver year. The State must fully document the need for more than 30 days of noninstitutional respite care because we believe that, generally, respite care should be a short-term service.

In accordance with section 1915(c)(5) of the Act, and the limitation on respite care described above, we propose to—

• Revise § 440.180 to provide for the expanded definition of habilitation services and the new limits on respite care;

• Add a new § 441.302(h) to require the necessary State assurances concerning the provision of prevocational, educational, and supported employment services under a waiver; and

• Add a new § 441.303(h) to require the supporting documentation to support the assurances required by § 441.302(h).

Our revisions to §§ 440.180, 441.302 and 441.303 pertaining to prevocational, educational, and supported employment services would be effective, as specified in section 9502(j) of Pub. L. 99–272, for services furnished on or after April 7, 1986, in a waiver modified by the State and approved by HCFA to cover these additional services. Although the changes concerning habilitation services are effective with services furnished on or after April 7, 1986, States that wish to expand their definition of "habilitation services" in an approved waiver must submit an amendment request and received HCFA's approval prior to being eligible to receive FFP for prevocational, educational, or supported employment services, or a combination of these services. The new respite care limitation would be applied on the effective date of the final rule.

2. Day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services.

We are proposing to revise §§ 440.180, 441.302, 441.303 and 441.310 to provide for the inclusion of day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services, for individuals with chronic mental illness as specified in section 1915(c)(4)(B) of the Act. We are interpreting this section of the Act, as amended by section 9411(d) of Pub. L. 99–509, to allow States to claim FFP for these services if they are specifically requested and approved by HCFA for inclusion in a home and community-based services waiver program, and provided to individuals diagnosed as chronically mentally ill.

The following discussion of partial hospitalization, psychosocials, and clinic services is presented solely for the purpose of providing suggestions regarding the definition of the new services available for the chronically mentally ill. States continue to have flexibility in defining the nature of services to be covered under the waiver programs and will be required to provide a complete definition of each service in their waiver application.

"Partial hospitalization" is a formal program of care in a hospital or other institution for perods of less than 24 hours a day, including services usually provided to outpatients. The formal program is designed to reduce or control the patient's psychiatric symptoms so as to prevent relapse or hospitalization and improve or maintain the patient's level of functioning. "Clinic services" are preventive, diagnostic, therapeutc, rehabilitative, or palliative items or services that are provided to outpatients by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients furnished by or under the direction of a physician or dentist (§ 440.60). Clinic services for the chronically mentally ill may be covered under a home and community-based waiver whether or not furnished in a facility. Thus, services may be provided by clinic staff in a recipient's home or other type of facility but may not be duplicative of other services provided in that particular setting. For example, clinic services such as therapeutic services may be provided in a residential facility as long as staff of that facility or other appropriate providers are not rendering and receiving medical reimbursement for the same services.

"Psychosocial rehabilitation services" are generally community support groups in nonmedical settings designed for social interaction.

Coverage under the Medicaid State plan is very limited for the institutionalized chronically mentally ill. Section 1905(a)(21) of the Act indicates that, except for individuals 21 and under in psychiatric hospitals (in States that have opted to include the optional benefit), medical assistance does not include payment for care or services for any individual under 65 years of age who is an inpatient in an institution for mental diseases (IMD). (Payment for individuals 65 and over is limited to those States that have opted to include that benefit in their Medicaid State plans.) In other words, inpatient hospital, SNF, and ICF services for individuals aged 65 and older in an IMD, and inpatient psychiatric hospital services for individuals under age 21, are optional Medicaid services.

Therefore, if a State has not opted to include these services under its State plan, no inpatient IMD coverage is included for Medicaid recipients in that State. Therefore, such States may not receive approval to provide home and community-based waiver services to these individuals. However, such States may be permitted to provide home and community-based waiver services if they provide a written assurance that, absent a waiver, the individual would be appropriately placed in an institutional setting, other than an IMD, that would receive Medicaid reimbursement on the beneficiary's behalf under its State plan.

In accordance with section 1915(c)(4)(B) of the Act, as amended by section 9411(d) of Pub. L. 99–509, we propose to—

• Revise § 440.180 to provide for day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

• Add a new § 441.302(i) to require the necessary State written assurance that home and community-based services will not be provided to those individuals in need of inpatient care in an IMD the cost of which is not reimbursable under the State plan.

• Add a new § 44.303(i) to require the documentation needed to support the written assurance required by § 441.302(i).

3. Pub. L. 99–509 changes permitting hospital level of care of certain participants.

Section 9411(a) of Pub. L. 99–509 amended section 1915(c)(1) to give States the option of providing home and community-based services to individuals who, but for the receipt of these services, would require the level of care provided in a hospital. Prior to the enactment of Pub. L. 99–509, States were authorized under section 9502(b) of Pub. L. 99–272 to request waivers only for ventilator dependent individuals deinstitutionalized only from hospitals. Pub. L. 99–509 extends coverage to individuals requiring a hospital level of care without this restriction.

Accordingly, we are proposing to extend home and community-based services coverage to individuals who would otherwise need inpatient hospital, SNF, ICF, or ICF/MR care. The following regulations sections would be affected by the proposal:

• Section 441.301 (a)(3)(i) and (b)(1) (iii).

• Section 441.302 (c)(1), (c)(1)(ii), (c)(2)(i), (e), (f), and (i).

• Section 441.303 (f) (1), (2), (4), (5) and (i).

4. Prohibiting imposition of certain regulatory limits.

We are proposing to revise or delete the following sections of the regulations to clarify the statutory limitation on home and community-based services expenditures and to eliminate or modify the current additional regulatory limitation:

• Section 441.302(e)(1), (2) and (3).

• Section 441.304(d) (1) and (2).

• Section 441.310(a)(2) and (b).

Section 9502(c)(1) of Pub. L. 99–272 amended section 1915(c)(2)(D) of the Act to specify that, under a home and community-based services waiver, the average per capita expenditure estimated by the State for individuals under the waiver cannot exceed *100 percent* of the average per capita expenditure that the State reasonably estimates would have been made for such individuals without the waiver. We would make this change in § 441.302(e). (We note that we have always interpreted section 1915(c)(2)(D) of the Act in this manner and previously implemented the applicable regulations accordingly.) The cost estimate formula is located in regulations at § 441.303(f)(1).

Section 9502(c)(2) of Pub. L. 99–272 added a new section 1915(c)(6) to the Act that directs the Secretary to abolish the regulatory limitation concerning home and community-based services waiver expenditures. This expenditure limitation currently appears in §§ 441.302(e)(2) and 441.310(a)(2) and requires a State to provide satisfactory assurance that actual total expenditures for home and community-based services and the State's claim for FFP for the services will not exceed the State's approved estimates for waiver services. Under the current regulations, expenditures that exceed the State's approved estimates would not have been eligible for FFP. We previously implemented this limit because we believed it would provide States with an incentive either to contain expenditures within approved waiver estimates or to request an approval for revised expenditure estimates. We still believe that it is incumbent upon States to request an amendment of their waiver estimates when they anticipate substantially exceeding their approved estimates rather than unilaterally incurring additional Medicaid costs.

We also believe that the statutory requirement for eliminating the home and community-based services expenditure limitation in no way diminishes our responsibility to ensure that a State's cost estimates are reasonable before approving or renewing a waiver. We will continue to monitor waiver expenditures and exercise our option to terminate waivers or deny requests for renewals when unauthorized waiver service cost increases have invalidated a State's assurance of cost-effectiveness.

5. Waiver of comparability requirement.

We are proposing to revise § 441.301(a)(2) to provide that when States request a waiver of comparability requirements they are specifically limited to receiving a waiver of section 1902(a)(10)(B) of the Act.

Section 9411(c) of Pub. L. 99–509 amended section 1915(c)(3) of the Act. Prior to Pub. L. 99–509, section 1915(c)(3) stated only that home and community-based waivers may include waivers of "statewideness" (section 1902(a)(1)), and section 1902(a)(10). Congress has now provided that the only part of section 1902(a)(10) of the Act for which a State may receive a waiver under section 1915(c)(3) is section 1902(a)(10)(B). HCFA has been approving home and community based waivers with the broad section citation of section 1902(a)(10), and thus, the waiver has been applicable to amount, duration and scope of services. (Section 1902(a)(10) refers to amount, duration and scope of services.) Section 1902(a)(10)(B) deals with comparability. Therefore, only section 1902(a)(10)(B) will now be waived.

Section 1902(a)(10)(B) of the Act states that the medical assistance made available to categorically needy recipients shall not be less in amount, duration and scope than that made available to any other categorically eligible recipient and shall not be less in amount, duration and scope than that made available to other eligible Medicaid recipients. The provision becomes effective with waivers and renewals of waivers approved on or after October 21, 1986.

6. Computation of expenditure for certain disabled patients.

As discussed above, section 1915(c)(2)(D) of the Act directs us to ensure that the average per capita expenditure estimated by a State for waiver individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made for these individuals without the waiver. The House Energy and Commerce Committee, in reviewing the computations that States must use regarding this requirement, indicated that Congress believes the physicially disabled population must be viewed as

completely different from other categories even though the physically disabled and the other categories of individuals happen to reside in the samne SNFs or ICFs. (See H.R. Rep. No. 265, 99th Cong., 1st Sess. 60 (1985).) As an example, the committe explained that it is inappropriate to include costs relating to elderly SNF or ICF patients in a cost calculation for a waiver targeted at physically disabled young adults. Further, the committee stated that in this situation, the use of statewide averages for SNF and ICF expenditures is inappropriate when, by the waiver's own terms, it is limited to a particular county.

Forty-seven regular waivers and 19 model waivers have been approved that include the aged and disabled, and which may include the aged and disabled, and which may include the physically disabled. We have, in fact, covered this eligibility group, but not on a separate, exclusive basis. HCFA has and will continue to accept from States new proposals that deal exclusively with the deinstitutionalized physically disabled, (as well as persons with any particular illness or condition, as authorized by Pub. L. 99–509, discussed below), but approval of the new request would be on a prospective basis under § 441.304(a). Further, States may not separate this eligibility group from an existing approved waiver before receiving HCFA approval of a waiver amendment.

7. Computation of expenditures for individuals with a particular illness or condition.

We are proposing to revise, §§ 441.302(e)(3) and 441.303(f) (1), (4), and (5) to provide that in the case of waivers that apply only to individuals with a particular illness or condition, who are inpatients in hospitals, SNFs, ICFs, or ICFs/Mr, the State may determine the average per capita expenditure that would have been made in each waiver year for those individuals under the State plan separately from the expenditures for other inpatients of the respective certified facilities.

Section 9411(a)(3) of Pub. L. 99–509 amends 1915(c)(7) of the Act and permits States the option of determining average per capita cost expenditure estimates for waivers that are directed to individuals with specific illnesses or conditions (who are inpatients in hospitals, SNFs, ICFs, or ICFs/MR) on a different basis than is usual. States may estimate expenditures based on the costs of these particular individuals regardless of the costs of other inpatients in the respective certified facilities.

On pages 400–403 of the Conference Report of Pub. L. 99–509 (H.R. Rep. No. 99–1012, 99th Cong., 2d Sess. 400 (1986)), Congress indicated its intention that "illness" (or diagnosis) meant, for example, acquired immune deficiency syndrome (AIDS) or AIDS-related condition (ARC), and that "condition" meant, for example, chronic mental illness, ventilator dependency, etc. Thus, for waivers directed to any such specified group, States may now make expenditure estimates specific to that group of patients who are inpatients of hospitals, SNFs, ICFs, or ICFs/MR, distinguished by illness or condition. This provision applies to current inpatients of Medicaid certified facilities and is effective for new waivers and renewals of waivers approved on or after October 21, 1986.

As with all home and community-based waivers, States must furnish reasonable and verifiable statewide cost estimates for waivers dealing with individuals with a specific illness or condition. Approval of any such waiver requests will be on a prospective basis as indicated in § 441.304(a).

8. Permitting flexibility in establishing maintenance income standards.

We are proposing to revise §§ 435.726 and 435.735 to provide that, under a home and community-based services waiver, a State may allow individuals a higher post-eligibility income limit for maintenance needs than the amount that can be disregarded under these sections as of July 1, 1985. Currently, § 435.726 limits the post-eligibility amount for an individual's maintenance needs to the highest of (1) the Supplemental Security Income (SSI) standard under Title XVI of the Act, (2) the optional State supplement standard, or (3) the medically needy income standard (§§ 436.811–436.814). A parallel rule at § 435.735 applies in States that apply more restrictive requirements for Medicaid eligibility than SSI.

If a State chooses to exercise this option, it would have to establish a maximum deduction amount which would not be exceeded for any individual covered by the waiver. These changes would be consistent with section 1915(c)(3) of the Act, as amended by section 9602(e) of Pub. L. 99–272 and section 9435(a) of Pub. L. 99–509.

In its report (H.R. Rep. No. 265, 99th Cong., 1st Sess. 61 (1985)), the House Energy and Commerce Committee voiced congressional concern that the lack of adequate income to maintain oneself at home may prevent the participation of appropriate individuals in home and community-based services waiver programs. The committee further explained that there appears to be no good reason for the imposition of arbitrary post-eligibility income limits considering the budget neutrality requirements for home and community-based services waivers. The committee reasoned that the more money a State allows an individual to keep for maintenance needs, the less patient income there will be available to reduce Medicaid expenditures, and the higher the Medicaid average per capita cost. In effect, the State faces a direct trade-off between Medicaid expenditures and income contributed by the patient. The committee pointed out that if costs rise to the point where the State could no longer demonstrate budget neutrality, we would, of course, deny or terminate the waiver as appropriate.

These proposed changes would apply to waivers and waiver renewals approved before, on, or after April 7, 1988, as specified in section 9502(j) of Pub. L. 99–272.

9. Waiver extensions.

We are proposing to revise § 441.304(a) to change waiver extension periods, as specified by sections 9502 (f) and (g) of Pub. L. 99–272. The former revision became effective upon enactment of the statute while the latter revision became effective on September 30, 1986, as specified by section 9502(j) of Pub. L. 99–272.

Section 9502(f) provides that a State may request an extension of any home and community-based services waiver that expires on or after September 30, 1985 and before September 30, 1988. The State must receive an extension of from one to five years at the discretion of the Secretary for each waiver that expires during that time period. Approval would be subject only to our determination that the requirements of the waiver are being met (section 1915(e)(1) of the Act). Section 9502(g) of Pub. L. 99–272 amends section 1915(c)(3) of the Act and provides that approval of waiver renewals on or after September 30, 1986 will be for five-year periods. Section 1915(c)(3) of the Act previously provided for extensions for three-year periods, as is currently provided in § 441.304(a) of the regulations. We are proposing changes to § 441.304(a) to reflect the new statutory requirement.

10. Coordinated services between maternal and child health programs and home and community-based services programs.

We are proposing to add a new § 441.306 (and redesignate the current § 441.306 as §441.308) to provide that, whenever appropriate, cooperative arrangements may be made between the State agency administering a Maternal and Child Health program (Title V of the Act) and the agency administering the Medicaid home and community-based services waiver. These waivers include children with special health care needs. This change would be effective as of April 7, 1988, as specified in section 9502(j) of Pub. L. 99–272. These cooperative arrangements would facilitate the provision of home and community-based services and other necessary services to children (individuals under 18 years old). This change would be consistent with section 9502(h) of Pub. L. 99–272, which added new section 1915(c)(8) to the Act.

11. Substitution of participants.

We are proposing to add a new § 441.305 (and redesignate the current § 441.305 as § 441.307), and add § 441.303(b) to provide that a State may substitute additional individuals to replace those under a home and community-based services waiver who die or become ineligible for waiver services, when the waiver contains a Federally imposed limit on the number of individuals receiving waiver services. This change would be effective Apri 7, 1988, as specified in section 9502(j) of Pub. L. 99–272.

In its report (S. Rep. No. 146, 99th Cong., 1st Sess. 321 (1985)), the Senate Finance Committee indicated concern that a State's estimate of utilization of services would be based on unduplicated recipient counts. The committee believed that the use of unduplicated counts prohibited a State from replacing, under an approved waiver, individuals who die or become ineligible with new eligible individuals during the same year. As a remedy, Congress enacted section 9502(i) of Pub. L. 99–272, which added a new section 1915(c)(9) to the Act.

We believe that the use of unduplicated recipient counts in regular waiver programs permits States to fill vacancies with qualified individuals during the same year in which the vacancies occur. However, because Congress indicated concern that unduplicated recipient counts do not allow States the opportunity to replace recipients who die or who lose eligibility for State plan services, we are adding a new paragraph (f)(6) to § 441.303 that would require that States indicate the number of unduplicated recipients included in its estimates who are expected to be replaced due to death or loss of eligibility for State plan services during each year of the waiver. The replacements for these individuals would be included in the State's estimate of the total number of unduplicated recipients who would receive waiver services in each year of the waiver.

The model waiver program (50 FR 10021, March 13, 1985), which was designed to assist States in receiving expedited review through a preprint process, has been operating differently from regular waiver programs. We have been limiting the number of individuals covered under the model waiver to the number specifically requested by the State, up to the maximum allowable number of 50 unduplicated individuals per year. We have not been allowing States to fill subsequent vacancies during the same year that these vacancies occur. However, after the year in which a vacancy occurs has ended, we have allowed States to replace recipients up to the maximum number requested, or up to 50 recipients.

Our proposed new § 441.305 would remove the model waiver restriction. However, we would continue to require that at no time during the term of the model waiver may the number of recipients receiving waiver services exceed the specified number approved in the model waiver, or 50 recipients, the maximum allowed in this program. States would be permitted to replace recipients who leave the program due to death or loss of eligibility for services under the State plan. We emphasize that unlike the model waiver program no such general Federal restriction exists for regular home and community-based services waivers because all waiver estimates already account for client turnover in their required cost and utilization estimates. States are expected to stay within their estimates and should request HCFA approval of an amendment of their waiver estimates when they exceed those approved, whether this is due to high turnover or other factors.

12. Expansion of "Contents of Request For a Waiver".

We would expand § 441.301(b)(4) to indicate that States, in defining waiver services, must reasonably relate the described waiver services to commonly accepted definitions of the terms used and avoid open ended definitional statements such as "a service includes but is not limited to * * *." We would require that each specific service be separately defined and that multiple services that are commonly considered separate services not be packaged as a single comprehensive service (for example, personal care services and habilitation services could not be combined as "habilitation").

13. Expansion of "Supporting Documentation Required".

We would amend § 441.303(c) to require States that propose the use of a level of care evaluation form other than that used for nursing home placement—

- To submit a copy of the form; and
- If the form differs from that used for nursing home placement—

—To explain how and why the form differs; and

—To provide an assurance that the alternative form is fully comparable to that used for placement in nursing homes.

B. Respiratory care services.

To implement section 9408 of Pub. L. 99–509, we would add new §§ 440.185 and 440.250(n). Section 440.185, titled "Respiratory Therapy for Ventilator-Dependent Individuals", has been added to the list of services included in the term "medical assistance". This adds such services to those that a State may elect to cover under its approved Medicaid State plan. It also includes the specific conditions of coverage that were enumerated by the statute. These conditions are as follows:

1. Services must be provided in the patient's home;

2. The services are not otherwise available to the client under the Medicaid State plan;

3. The services are provided on a part-time basis by a respiratory therapist or other health care professional trained in respiratory therapy as determined by the State;

4. The recipient is medically dependent on a ventilator for life support at least six hours a day;

5. The recipient has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient in one or more hospitals, SNFs, ICFs, or ICFs/MR;

6. But for the availability of respiratory care services, the recipient would require respiratory care as an inpatient in a hospital, SNF, ICF, or ICF/MR, and would be eligible to have payment made for that inpatient care under the State plan;

7. The recipient has adequate social support services to be covered at home; and

8. The recipient wishes to be cared for at home.

Because of the specificity of the statute, we have elected not to elaborate further on these criteria but would welcome public comment with regard to areas that may require clarification or expansion.

We would also add a new § 440.259(o) to the list of limitations to the

comparability of service requirement. Following the statutory language, we would indicate that respiratory care services for ventilator-dependent individuals are exempt from the general comparability requirement that services be provided in equal amount, duration and scope to any eligible group under the State plan. We have, however, required that comparability requirements be observed with regard to these services among those Medicaid eligible persons in the State satisfying the explicit conditions of coverage for these services.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in—

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 1915(c)(2)(D) of the Act, the estimated average per capita expenditure under a home and community-based waiver may not exceed 100 percent of the estimated average per capita expenditure that the State reasonably estimates would have been made if the waiver had not been granted. All States have assured HCFA of this as a condition of waiver approval. Thus, under the law, this proposed rule is expected to be techincally budget netural. However, section 9502 of Pub. L. 99–272 and sections 9406 and 9411 of Pub. L. 99–509 have negligible costs associated with them overall. Although we do not expect aggregate Medicaid expenditures to increase, the percentage of long term care patients served in waivers is growing and now constitutes approximately three percent of the aged/disabled Medicaid population and 23 percent of the mentally retarded/developmentally disabled Medicaid population. It is difficult to determine and may be impossible to assess precisely whether these proposed changes would substantially affect the rate of growth in Medicaid expenditures.

We do not expect that adoption of this proposed rule would result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies in any geographic regions. This regulation would be beneficial in that waivers encourage competition, which provides alternative means for receiving services. Employment in institutional care is more capital intensive; home and community services are more labor intensive. Thus, although there may be adverse impact on institutional providers, it probably will be offset by increased business for providers who offer home and community-based services.

We expect a favorable impact because new programs may be added as alternatives to institutionalization as a result of this regulation. Costs or losses of revenue may be experienced by providers (both their owners and employees) that formerly served institutionalized recipients. However, although an institutional provider of services may be adversely effected by the existence of a waiver in its area, it may then choose to provide services covered under a home and community-based waiver and may thus not be adversely effected.

In conclusion, waivers generally may result in services being furnished in different settings, often by different providers, with possibly some losses in revenue by some providers offset by increases to other providers. We do not consider this redistributive effect to be significant. We do expect to benefit from a deinstitutionalized life and from the services that may be provided under the waiver.

For these reasons, we have determined that these proposed regulations do not meet the criteria for a major rule under E.O. 12291.

B. Regulatory Flexibility Act

For proposed regulations we prepare and publish an initial regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all providers to be small entities. Thus, both those providers that deinstitutionalize patients into the home or community and the home and community-based providers of services that receive such patients/recipients are small entities. This proposed rule would also affect States and Medicaid recipients, but they are not considered small entities under the RFA.

Any impact upon providers would be the result of individual State decisions as developed in waiver requests. Due to the positive reception of the home and community-based waiver program, we believe that this regulation will be well-received by those concerned with such programs. This regulation would generally benefit States and providers. It offers broader service coverage than current reules and may result in new waiver applications and expansion of existing waivers. Thus, there may be more funds flowing through waivers. As discussed earlier, because of the appeal of the program to States, the proportion of Medicaid expenditures flowing through home and community-based waivers is growing. This regulation may contribute to that growth, but we cannot predict how much. It is unlikely that we would be able to isolate the effects of these proposals from other factors affecting the growth of waivers.

The broader coverage made possible under this proposal is one factor that offers opportunity for further growth. Waivers also would be approved for longer periods, which may increase the aggregate magnitude of granted waivers.

Notwithstanding State assurances to the contrary, it should be noted that implementation of these proposals could possibly result in increasing overall program expenditures. This could result if services furnished under the waivers are in addition to, rather than substitutes for, institutional and other services that would otherwise have been provided. Since this is clearly not contemplated under the statute, we will be carefully reviewing the operation of waivers to assess the extent to which this may occur.

If this regulation resulted in a substantial increase in the growth of waivers, it could affect small entities. Most entities would benefit, contingent upon States' decisions that cannot be predicted. Although these changes would generally tend to ease approval of an increased volume of waivers, we do not expect the regulation in itself to increase waivers to the extent that a demonastrable significant economic impact would result. we have therefore determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a a substantial number of small rural hospitals.

V. Other Required Information

A. Recordkeeping and Reporting Requirements

Sections 440.180, 441.301 and 441.303 of the proposed rule contain inforamtion collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for HCFA."

B. Responses to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in developing the final rule, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Supplemental Security Income (SSI).

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

We are proposing to amend 42 CFR Chapter IV, Subchapter C, as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

A. Part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.726, the introductory language of paragraph (c) is republished; and paragraph (c)(1) is revised to read as follows:

§ 435.726 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

* * * * *

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility):

(1) An amount for the maintenance needs of the individual that the State may set at any level, as long as the following conditions are met:

(i) The deduction amount is based on a reasonable assessment of need.

(ii) The State establishes a maximum deduction amount that will not be exceeded for any individual under the waiver.

* * * * *

3. In § 435.735, the introductory language of paragraph (c) is republished; and paragraph (c)(1) is revised to read as follows:

§ 435.735 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

* * * * *

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility):

(1) An amount for the maintenance needs of the individual that the State may set at any level, as long as the following conditions are met:

(i) The deduction amount is based on a reasonable assessment of need.

(ii) The State establishes a maximum deduction amount that will not be exceeded for any individual under the waiver.

* * * * *

B. Part 440 is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Part 440, Subpart A, is amended by adding the title of new § 440.185 to read as follows:

Subpart A—Definitions

Secs.

* * * * *

440.185 Respiratory care for ventilator-dependent individuals.

3. Section 440.180 is revised to read as follows:

§ 440.180 Home or community-based services.

(a) *Description and requirements for services.* "Home or community-based services" means services, not otherwise furnished under the State's Medicaid plan, that are furnished under the provisions of Part 441, Subpart G of this chapter.

(1) These services may consist of any or all of the services listed in paragraph (b) of this section, as those services are defined by the agency and approved by HCFA.

(2) The services must meet the standards specified in § 441.302(a) of this chapter concerning health and welfare assurances.

(3) The services are subject to the limits on FFP described in § 441.310 of this chapter.

(b) *Included services.* Home or community-based services may include the following services, as they are defined by the agency and approved by HCFA:

(1) Case management.

(2) Homemaker.

(3) Home health aide.

(4) Personal care.

(5) Adult day health.

(6) Habilitation services. Beginning with services furnished on or after April 7, 1986, an agency may request HCFA's approval to include in its home or community-based services waiver habilitation services as they are described in paragraphs (c) and (d) of this section.

(7) Respite care services that, effective on [effective date of final rule], are subject to appropriate limits on utilization of care that may not exceed 30 days of institutional respite care per recipient per waiver year.

(8) Day treatment or other partial hospitalization services, psychosocial

rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

(9) Other services requested by the agency and approved by HCFA as cost effective and necessary to avoid institutionalization.

(c) *Additional habilitation services effective April 7, 1986.*—(1) *General rule.* As of the effective date of a new waiver or amendment to an existing waiver that includes the specific additional habilitation services described in paragraph (c)(2) of this section, an agency may claim FFP under the new or amended waiver only for those services provided to—

(i) Recipients who have been discharged on or after April 7, 1986 from a Medicaid-certified SNF, ICF, or ICF/MR directly into such a waiver; or

(ii) Recipients who have been deinstitutionalized on or after October 1, 1981 from a Medicaid certified SNF, ICF, or ICF/MR directly into a Medicaid home and community-based services waiver program and who have received habilitation services, which include prevocational, educational, and supported employment services, since discharge.

(2) *Services included.* Among the services the agency may include as habilitation services under this paragraph are the following services:

(i) Prevocational services, which means services that are aimed at preparing an individual for paid or unpaid employment, and that are not job-task oriented but which are aimed at a generalized result. These services may include, for example, teaching an individual such concepts as compliance, attendance, task completion, problem solving and safety.

(ii) Educational services, which means special education and related services (as defined in section 4(a)(4) of the 1975 Amendments to the Education of the Handicapped Act) (Pub. L. 94–142) (20 U.S.C. 1401 (16 and 17)) to the extent they are not prohibited under paragraph (c)(3)(i) of this section.

(iii) Supported employment services, which facilitate paid employment, that are—

(A) Provided to persons with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

(B) Conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and

(C) Defined as any combination of special supervisory services, training, transportation, and adaptive equipment that the State demonstrates are essential for developmentally disabled persons to engage in paid employment and that are not normally required for nondisabled persons engaged in competitive employment.

(3) *Services not included.* For purposes of this paragraph (c), the following services may not be included in habilitation services:

(i) Special education and related services (as defined in section 4(a)(4) of the 1975 Amendments to the Education of the Handicapped Act) (Pub. L. 94–142) (20 U.S.C. 1401 (16 and 17)) that are otherwise available to the individual through a State or local educational agency.

(ii) Vocational rehabilitation services that are otherwise available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (Pub. L. 93–112) (29 U.S.C. 730).

(d) *Additional services for the chronically mentally ill.*—(1) *Services included.* FFP is available for services indicated in paragraph (b)(8) of this section when provided to individuals who have been diagnosed as being chronically mentally ill. Such services must have been requested by the agency as part of either a new waiver request or a renewal and approved by HCFA on or after October 21, 1986.

(2) *Services not included.* For purposes of this paragraph, any home and community-based service, including those indicated in paragraph (b)(8) of this section, may not be included in home and community-based service waivers for the following individuals diagnosed as chronically mentally ill:

(i) For individuals aged 22 through 64 who, absent the waiver, would require inpatient care in an institution for mental diseases (see § 435.1009 of this chapter).

(ii) For individuals, regardless of age, who, absent the waiver, would require inpatient care in an institution for mental diseases in those States that have not opted to include the benefits defined in §§ 440.140 or 440.160.

4. Section 440.185 is added to read as follows:

§ 440.185 Respiratory care for ventilator-dependent individuals.

"Respiratory care for ventilator-dependent individuals" means services that are not otherwise available under the State's medicaid plan, provided on a part-time basis in the recipient's home by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State) to an individual who—

(a) Is medically dependent on a ventilator for life support at least six hours per day;

(b) Has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient in one or more hospitals, SNFs, ICFs, and ICFs/Mr;

(c) But for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, SNF, ICF, or ICF/MR and would be eligible to have payment made for inpatient care under the State plan;

(d) Has adequate social support services to be cared for at home; and

(e) Wishes to be cared for at home.

5. In § 440.250, new paragraphs (m) and (n) are reserved, and a new paragraph (o) is added to read as follows:

§ 440.250 Limits on comparability of services

* * * * *

(m) [Reserved]

(n) [Reserved]

(o) If the agency makes respiratory care services available under § 440.185, the services need not be made available in the same amount, duration, and scope to any individual not satisfying the conditions for coverage under that section. However, the services must be made available in the same amount, duration, and scope to all individuals satisfying the conditions of coverage under that section.

C. Part 441 is amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for Part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Part 441, Subpart G is amended by redesignating §§ 441.305 and 441.306 as § 441.307 and § 441.308, respectively, and by adding new § 441.305 and § 441.306 to read as follows:

Subpart G—Home and Community-Based Services: Waiver Requirements

Secs.

* * * * *

441.305 Replacement of recipients in approved waiver programs.

441.306 Cooperative arrangements with the Maternal and Child Health program.

* * * * *

3. In § 441.301, paragraph (a) is revised; the introductory language of paragraph (b) is revised; the introductory language of paragraph (b)(1) is republished; paragraph (b)(1)(ii) is revised; a new paragraph (b)(1)(iii) is added; and paragraph (b)(4) is revised to read as follows:

§ 441.301 Contents of request for a waiver.

(a) A request for a waiver under this section must consist of the following:

(1) The assurances required by § 441.302 and the supporting documentation required by § 441.303.

(2) When applicable, requests for waivers of the requirements of section 1902(a)(1) or (10)(B) of the Act, which concern statewide application of Medicaid and comparability of services.

(3) A statement explaining whether the agency will refuse to offer home or community-based services to any recipient if the agency can reasonably expect that the cost of the services would exceed the cost of an equivalent level of care provided in—

(i) A hospital (as defined in § 440.10 of this chapter);

(ii) An SNF (as defined in § 440.40 of this chapter); or

(iii) An ICF or ICF/MR (as defined in § 440.150 of this chapter) if applicable.

(b) If the agency furnishes home and community-based services, as defined in § 440.180 of this chapter under a waiver granted under this subpart, the waiver request must—

(1) Provide that the services are furnished—

* * * * *

(ii) Only to recipients who are not inpatients of a hospital, SNF, ICF or ICF/MR; and

(iii) Only to recipients who the agency determines would, in the absence of these services, require the Medicaid covered level of care provided in—

(A) A hospital (as defined in § 440.10 of this chapter);

(B) An SNF (as defined in § 440.40 of this chapter); or

(C) An ICF (as defined in § 440.150 of this chapter);

* * * * *

(4) Describe the services to be furnished so that each service is separately defined. Multiple services that are generally considered to be separate services may not be consolidated under a single definition. Commonly accepted terms must be used to describe the service and definitions may not be open ended in scope.

* * * * *

4. In § 441.302, the introductory paragraph is revised; paragraphs (c) and (e) are revised; paragraph (f) is redesignated as paragraph (g) and republished; and new paragraphs (f), (h), and (i) are added to read as follows:

441.302 State assurances.

Unless the Medicaid agency provides the following satisfactory assurances to HCFA, HCFA will not grant a waiver under this subpart and may terminate a waiver already granted.

* * * * *

(c) *Evaluation of need.* Assurance that the agency will provide for the following:

(1) *Initial evaluation.* An evaluation of the need for the level of care provided in a hospital, SNF, or ICF (as defined in § 440.10, 440.40, and 440.150 of this chapter, respectively) when there is a reasonable indication that a recipient might need the services in the near future (that is, a month or less) unless he or she receives home or community-based services. For purposes of this section, "evaluation" means a review of an individual recipient's condition to determine—

(i) Whether he or she requires the level of care provided in a hospital, SNF, or ICF as defined by §§ 440.10, 440.40, and 440.150, respectively; and

(ii) That the individual would otherwise be institutionalized in such a facility.

(2) *Periodic reevaluations.* Reevaluations, at least annually, of each recipient receiving home or community-based services to determine whether he or she continues to need the level of care provided and would otherwise be institutionalized in one of the following institutions:

(i) A hospital.

(ii) An SNF.

(iii) An ICF.

(iv) An ICF/MR

* * * * *

(e) *Average per capita expenditures.* Assurance that the average per capita fiscal year expenditures under the waiver will not exceed 100 percent of the average per capita expenditures that would have been made in the fiscal year for the level of care provided in a hospital, SNF, or ICF, or ICF/MR under the State plan had the waivers not been granted.

(1) These expenditures must be reasonably estimated and documented by the agency.

(2) The estimate must be on an annual basis and must cover each year of the waiver period.

(3) In making estimates for a waiver that applies only to individuals with a particular illness (for example, acquired immune deficiency syndrome (AID)) or condition (for example, chronic mental illness) who are inpatients in a hospital, SNF, or ICF, the State may estimate the average per capita expenditures for such individuals without including expenditures for other individuals who are inpatients of applicable hospitals, SNFs, ICF s, or ICFs/MR.

(f) *Actual total expenditures.* Assurance that the agency's actual total expenditures for home and community-based and other Medicaid services provided to recipients under the waiver will not, in any year of the waiver period, exceed 100 percent of the amount that would be incurred by the State's Medicaid program for these individuals, absent the waiver, in—

(1) A hospital;

(2) An SNF; or

(3) An ICF; or

(4) An ICF/MR, if applicable.

(g) *Reporting.*—Assurance that annually, the agency will provide HCFA with information on the waiver's impact. That information must be consistent with a data collection plan designed by HCFA and must address the waiver's impact on—

(1) The type, amount, and cost of services provided under the State plan; and

(2) The health and welfare of recipients.

(h) *Habilitation services.* Assurance that prevocational, educational, or supported employment services, or a combination of these services, if provided as habilitation services under the waiver, are—

(1) Not otherwise available to the individual under the Education of the Handicapped Act (Pub. L. 94–142) (29 U.S.C. 1401 (16 and 17)) or as services under the Rehabilitation Act of 1973 (Pub. L. 93–112) (29 U.S.C. 730); and

(2) Furnished only to individuals who have been deinstitutionalized on or after April 7, 1986 from a Medicaid-certified SNF, ICF, or ICF/MR directly into a home and community-based services waiver program authorized and financed under section 1915(c) of the Act; or

(3) Furnished to individuals who have been deinstitutionalized on or after October 1, 1981 from a Medicaid-certified SNF, ICF, or ICF/MR directly into a home and community-based services waiver program authorized and financed under section 1915(c) of the Act, and also have received prevocational, educational, or supported employment services since discharge.

(i) *Day treatment or partial hospitalization, psychosocial rehabilitation services, and clinic services for individuals with chronic mental illness.* Assurance that FFP will not be claimed in expenditures for waiver services including, but not limited to day treatment/partial hospitalization, psychosocial rehabilitation services and clinic

services provided as home and community-based services to individuals with chronic mental illnesses if these individuals are—

(1) Age 22 to 64 and in need of impatient care in an institution for mental diseases (IMD);

(2) Age 65 and older and the State has not included the optional Medicaid benefit cited in § 440.140; or

(3) Age 21 and under and the State has not included the optional Medicaid benefit cited in § 440.160.

5. In § 441.303, the introductory language of the section is revised; the introductory language of paragraph (c) is republished; paragraph (c)(2) is revised; the introductory language and certain equation factors in paragraph (f)(1) are revised; paragraphs (f)(2) and (f)(3) are revised; paragraph (f)(4) is redesignated as paragraph (f)(5); a new paragraph (f)(4) is added; and newly redesignated paragraph (f)(5) is revised; a new paragraph (f)(6) is added; paragraph (g) is revised; and new paragraphs (h) and (i) are added to read as follows:

§ 441.303 Supporting documentation required.

The agency must furnish HCFA with sufficient information to support the assurances required by § 441.302. Except as HCFA may otherwise specify for particular waivers, the information must consist of the following:

* * * * *

(c) A description of the agency's plan for the evaluation and reevaluation of recipients, including—* * *

(2) A copy of the evaluation form to be used; and if it differs from the form used in placing recipients in nursing homes, a description of how and why it differs and an assurance that the outcome of the new evaluation form is reliable, valid, and fully comparable to the form used for nursing home placement;

* * * * *

(f) * * *

(1) The annual average per capita expenditure estimate of the cost of home and community-based and other Medicaid services under the waiver must not exceed 100 percent of the annual average per capita expenditures of the cost of services in the absence of a waiver. The estimates are to be based on the following equation:

* * * * *

A=the estimated annual number of unduplicated beneficiaries who would receive the level of care provided in a hospital, SNF, ICF, or ICF/MR with the waiver. (For waivers that apply only to individuals with a particular illness or condition who are inpatients of hospitals, SNFs, ICFs, or ICFs/MR, the State is not required to use the entire patient population. The estimate may be based on only the number of such individual inpatients of the hospitals, SNFs, ICFs, or ICFs/MR who are comparable to the waiver group but not expected to be included in the waiver program.)

B=the estimated annual Medicaid expenditure for hospital, SNF, ICF, or ICF/MR care per eligible Medicaid user with the waiver.

C=the estimated annual number of unduplicated beneficiaries who would receive home and community-based services under the waiver, including model waivers.

* * * * *

F=the estimated annual number of beneficiaries who would likely receive the level of care provided in hospital, SNF, ICF, or ICF/MR in the absence of the waiver.

* * * * *

C'=the estimated annual number of beneficiaries referred to in C who would receive any of the acute care services and other noninstitutional long-term care services otherwise provided under the State plan.

D'=the estimated annual Medicaid expenditure per eligible Medicaid user of the acute care and other noninstitutional long-term care services referred to in C'.

* * * * *

(2) For purposes of the equation, acute care services means all services otherwise provided under the State plan that are neither hospital, SNF, ICF, or ICF/MR services, nor the noninstitutional, long-term care services referred to in H.

(3) Data on the estimated annual number of beneficiaries and expenditures for those who would otherwise receive a hospital, SNF, ICF, or ICF/MR level of care is required for all these types of institutions only if the waiver request provides that each of these groups will be offered home and community-based services. For example, if the request does not include persons, who would otherwise receive an ICF/MR level of care, the State is not required to furnish data on that group.

(4) In making estimates of average per capita expenditures for a waiver that applies only to individuals with a particular illness or condition who are inpatients of hospitals, SNFs, ICFs, or ICFs/MR, the agency may determine the average per capita expenditures for these individuals absent the waiver without including expenditures for other individuals in the affected hospitals, SNFs, ICFs, or ICFs/MR.

(5) The data must show the estimated annual number of beneficiaries who will be deinstitutionalized from certified hospitals, SNFs, ICFs or ICF/MRs as applicable, because they would receive home and community-based services under the waiver, and the estimated annual number of beneficiaries whose admission to such institutions would be diverted or deflected because of the waiver services. For the latter group, the State's evaluation process required by § 441.303(c) must provide for a more detailed description of their evaluation and screening procedures for recipients to assure that waiver services will be limited to persons who would otherwise receive the level of care provided in a hospital, SNF, ICF, or ICF/MR as applicable.

(6) The data must show the estimated annual number of unduplicated waiver beneficiaries who are expected to be replaced in the waiver during each year due to death or loss of eligibility for services under the State plan. This estimate must be separate from the State's estimates of the total number of unduplicated beneficiaries who would receive waiver services in each year of the waiver (factor "C" in the cost formula set forth in paragraph (f)(1) of this section). The State's estimate for factor C must include replacements for those beneficiaries who die or become ineligible for State plan services.

(g) Except as HCFA may otherwise specify for particular waivers, the agency must provide for an independent assessment of its waiver that evaluates the quality of care provided, access to care, and cost-effectiveness. The results of the assessment must be submitted to HCFA at least 90 days prior to the expiration date of the approved waiver period and cover the period up to the final year of the waiver.

(h) For States offering habilitation services that include prevocational, educational, or supported employment services, or a combination of these services, consistent with the provisions of § 440.180(b) of this chapter, an explanation of why these services are not available as special education and related services under the Education of the Handicapped Act (Pub. L. 94–142) (20 U.S.C. 1401 (16 and 17)) or as services under the Rehabilitation Act of 1973 (Pub. L. 93–112) (29 U.S.C. 730);

(i) For States offering home and community-based services for individuals diagnosed as chronically mentally ill, an explanation of why such individuals would not be placed in an institution for mental diseases (IMD)

absent the waiver, and the age group of such individuals.

6. In § 441.304, paragraphs (a) and (d) are revised to read as follows:

§ 441.304 Duration of a waiver.

(a) The effective date for a waiver of Medicaid requirements to provide home and community-based services approved under this subpart is established by HCFA prospectively on or after the date of approval and after consultation with the State agency.

(1) The initial approved waiver continues for a three-year period from the effective date. If the agency requests it, the waiver may be extended for additional periods unless—

(i) HCFA's review of the prior waiver period shows that the assurances required by § 441.302 were not met; and

(ii) HCFA is not satisfied with the assurances and documentation provided by the State in regard to the extension period.

(2) Under section 1915(c)(3) of the Act, HCFA has extended, upon request by the States, waivers that expired on or after September 30, 1985, and before September 30, 1986. These extensions were for a period of not less than one year nor more than five years.

(3) Waivers extended on or after September 30, 1986 are for a period of five years.

* * * * *

(d) If HCFA finds that an agency is not meeting any of the requirements for a waiver contained in this subpart, the agency is given a notice of HCFA's findings and an opportunity for a hearing to rebut the findings. If HCFA determines that the agency is not in compliance with this subpart after the notice and any hearing, HCFA may terminate the waiver. For example, the waiver may be terminated if HCFA finds that the agency's actual total expenditures for home and community-based and other Medicaid services provided to individuals under the waiver exceed, for any year of the waiver period, 100 percent of the amount that would be incurred by Medicaid for these individuals in a hospital, SNF, ICF, or ICF/MR, in the absence of a waiver.

§ 441.307 [Redesignated from § 441.305]

7. Section 441.305 is redesignated as § 441.307 and a new § 441.305 is added to read as follows:

§ 441.305 Replacement of recipients in approved waiver programs.

(a) State estimates of the number of individuals who may receive home and community-based services must include those who will replace beneficiaries who leave the program for any reason. States may replace beneficiaries who leave the program due to death or loss of eligibility under the State plan without regard to any Federally-imposed limit on utilization, but must maintain a record of beneficiaries replaced on this basis.

(b) Although an approved model waiver contains a Federally-imposed limit on the number of individuals who may receive home and community-based services, the agency may replace any individuals who die or become ineligible for State plan services and maintain a count up to the number specified by the State and approved by HCFA. The count may not exceed 50 recipients at any one time, which is the maximum allowed in a model waiver.

§ 441.308 [Redesignated from § 441.306]

8. Section 441.306 is redesignated as § 441.308 and a new § 441.306 is added to read as follows:

§ 441.306 Cooperative arrangements with the Maternal and Child Health program.

Whenever appropriate, the State agency administering the plan under Medicaid may enter into cooperative arrangements with the State agency responsible for administering a program for children with special health care needs under the Maternal and Child Health program (Title V of the Act) in order to ensure improved access to coordinated services to meet the needs of such children.

9. Section 441.310 is revised to read as follows:

§ 441.310 Limits on Federal financial participation (FFP).

(a) FFP for home and community-based services listed in § 440.180 (b) and (c) of this chapter is not available in expenditures for the following:

(1) Services provided in a facility subject to the health and welfare requirements described in § 441.302(a) during any period in which the facility is found not to be in compliance with the applicable State standards described in that section.

(2) The cost of room and board except when provided as part of respite care in a facility approved by the State that is not a private residence. For purposes of this provision, "board" means three meals a day or any other full nutritional regimen and does not include meals provided as part of a program of adult day health services.

(3) Prevocational, educational, or supported employment services, or any combination of these services, as part of habilitation services that are—

(i) Provided prior to April 7, 1986;

(ii) Provided in approved waivers that include a definition of "habilitation services" but which have not included prevocational, educational and supported employment services in that definition;

(iii) Provided to recipients deinstitutionalized before April 7, 1986 unless the recipients were deinstitutionalized on or after October 1, 1981 from a Medicaid-certified SNF, ICF, or ICF/MR directly into a home and community-based services waiver program authorized and financed under section 1915(c) of the Act, and also have received prevocational, educationl, or supported employment services since discharge; or

(iv) Otherwise available to the recipient under either special education and related services as defined in section 4(a)(4) of the 1975 Amendment to the Education of the Handicapped Act (Pub. L. 94–142) (now located at 20 U.S.C. 1401 (16) and (17)) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (Pub. L. 93–112) (29 U.S.C. 730).

(4) For waiver applications and renewals approved on or after October 21, 1986, home and community-based services provided to individuals aged 22 through 64 diagnosed as chronically mentally ill who would be placed in an institution for mental diseases. FFP would also be denied for such services provided to individuals aged 65 and over and 21 and under if the State does not include the appropriate optional Medicaid benefits cited at §§ 440.140 and 440.160 of this chapter in its State plan.

(b) On or after June 11, 1985, the limits specified in paragraph (a)(1) of this section are applicable to all existing and future waiver programs under this part.

(Catalog of Federal Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 5, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88–11903 Filed 5–31–88; 8:45 am]

BILLING CODE 4120-01-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants; Enforcement and Hearing Procedures; Tourism Guidelines

AGENCY: National Science Foundation.

ACTION: Notice of public hearing.

SUMMARY: This notice announced a public hearing to examine possible tourism guidelines and revisions or additions to the National Science Foundation ("NSF") regulations concerning the Antarctic Conservation Act of 1978, Pub. L. 95–541. The present regulations at 45 CFR Part 670 implement many provisions of the Antarctic Conservation Act ("Act"). Experience with these regulations over the past several years indicates that additional detail and examples of prohibited acts may be necessary to keep the public adequately informed of its obligations. Enforcement and hearing procedures for individuals violating the Act or NSF regulations also appear warranted in view of the increasing number of visitors to the area.

Issued to be discussed include (1) guidelines for tourism in the Antarctic, including notification to domestic and international tourist agencies and potential visitors of all applicable laws, regulations, and penalties, (2) type of administrative hearing procedures to enforce the Act and NSF regulations, (3) the NSF's jurisdictional authority over U.S. companies, individual U.S. citizens or residents, or foreign nationals, (4) the factors to be considered in referral of criminal violations for possible prosecution, (5) additional details and examples of the prohibited acts described in NSF's existing regulations, and (6) any other issues concerning the subject matter of this hearing.

DATE: The public hearing will be held on Friday, July 15, 1988, at 9:00 a.m.

ADDRESSES: Written requests to participate in the public hearing must be mailed to the Office of General Counsel, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. Requests must include the information specified below and be received no later than 5:00 p.m. on Tuesday, July 5, 1988.

Hearing Location: National Science Foundation, Room 540, 1800 G St., NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, Deputy General Counsel, Office of General Counsel, (202) 357–9435, or Dr. Anton L. Inderbitzen, Head of Antarctic Staff, Division of Polar Programs, (202) 357–7817, National Science Foundation, at the above address.

SUPPLEMENTARY INFORMATION: The National Science Foundation ("NSF") is concerned that increasing tourism in Antarctica may adversely affect the conservation and protection of the region's fauna and flora, as well as the ongoing science program and activities conducted by NSF. In a report issued by the National Science Board Committee on the NSF Role in Polar Regions, June 1967 (NSB–87–128), the Committee noted some of the adverse consequences of increased tourism, and recognized the need for a "voluntary, responsible set of guidelines for tourism in the Antarctic." The Committee also recommended that health, safety, and environmental protection practices for polar research programs, especially the Antarctic Program, be studied and upgraded where necessary.

The Division of Polar Programs, together with the Office of General Counsel, is holding this public hearing to address some of these concerns, particularly in the context of the Antarctic Conservation Act of 1978 ("Act"). The issues to be discussed at the hearing include possible tourism guidelines and revisions or additions to the regulations which implement the Act.

Although existing regulations at 45 CFR Part 670 implement many provisions of the Act, they do not provide for agency enforcement or hearing procedures if an individual violates either the Act or NSF regulations. The Act presently makes it unlawful, unless authorized by regulation or permit issued under the Act, to take native animals or birds, introduce species, enter certain special areas, or discharge pollutants. The term "take", as defined by the Act, means to harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, or capture, or to attempt to engage in any such conduct. The Act also provides for civil and criminal penalties of up to $10,000 and 1 year imprisonment. In view of the increasing number of tourists visiting the region, NSF believes that enforcement and hearing procedures may be necessary if unacceptable or illegal activities occur which jeopardize the environment or NSF's ongoing science program. Such procedures, in addition to possible tourism guidelines, will be the focus of the hearing.

The following issues may be addressed at the hearing: (1) The need for tourism guidelines (content, scope, and distribution), including notification to domestic and international tourist agencies and potential visitors of applicable laws, regulations, and penalties, (2) type of administrative hearing procedures to enforce the Act and NSF regulations, including notice requirements, whether unintentional, negligent, or intentional violations should be treated differently, and whether administrative appeals should be provided, (3) the NSF's jurisdictional authority over U.S. companies, individual U.S. citizens or residents, or foreign nationals, and the possibility of referrals to the State Department, (4) the factors to be considered in referral of criminal violations for possible prosecution, (5) additional details and examples of the prohibited acts described in NSF's existing regulations, including examples of what constitutes "taking" or "discharge" of any pollutant, and (6) any other issues concerning the subject matter of this hearing.

Persons wishing to participate in the hearing should sent a written request to the Office of General Counsel, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, to be received no later than close of business Tuesday, July 5, 1988. This requirement is necessary in order to provide sufficient time to acknowledge receipt of the notices and enable alternative arrangements to be made for the hearing location if additional room is needed.

The request to participate must include the following information: (1) The name of the witness, (2) the name of the organization or association the witness is representing, and (3) a brief summary of the witness' remarks. Depending on the number of requests received, participants may be limited to a fifteen- minute oral presentation. Supplemental written submissions will be welcome.

By the National Science Foundation.

May 23, 1988.

Robert M. Andersen,

Deputy General Counsel.

[FR Doc. 88–12157 Filed 5–31–88; 8:45 am]

BILLING CODE 7515-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–217; RM–6169]

Radio Broadcasting Services; Port St. Lucie, FL

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: This document requests comments on a petition by St. Lucie Radio Corporation, which proposes to allot Channel 267A to Port St. Lucie, Florida, as a first FM service.

DATE: Comments must be filed on or before July 15, 1988, and reply comments on or before August 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Miller and Fields, P.C. P.O. Box 33003, Washington, DC 20033 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–217, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules govering permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 88–12193 Filed 5–31–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–366; RM–5746]

Radio Broadcasting Services; Murray, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: This document dismisses the request of West Kentucky Broadcasting Associates proposing to allot Channel 284A to Murray, Kentucky, as a second FM service. No party expressed an interest in applying for authority to operate on Channel 284A at Murray in response to the *Notice* (52 FR 35933; September 24, 1987). With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–366, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–12190 Filed 5–31–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–199, RM–6306]

Radio Broadcasting Services; Fairbury, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Siebert Communications, Inc. proposing the substitution of Channel 257C1 for Channel 257A at Fairbury, Nebraska, and the modification of its license for Station KUTT(FM) to specify the higher powered channel. Channel 257C1 can be allocated to Fairbury in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 40–08–18 and West Longitude 97–10–48. In accordance with section 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Fairbury will not be accepted.

DATES: Comments must be filed on or before July 15, 1988, and reply comments on or before August 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Rick Siebert, President, Siebert Communications, 414 Fourth Street, Fairbury, Nebraska 68352 (petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–199, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-12192 Filed 5-31-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-200, RM-6124; RM-6195]

Radio Broadcasting Services; Dunn, NC et al.

AGENCY: Federal Communications Commission.
ACTION: Proposed Rule.

SUMMARY: This document requests comments on two mutually exclusive petitions for rule making. MECA Broadcasting, Inc. requests: the substitution of Channel 280C2 for Channel 280A at Fuquay-Varina, North Carolina, as the community's first local wide coverage area FM service and the modification of its license for Station WAZZ to specify the higher powered channel; the substitution of Channel 279A for Channel 280A at Topsail Beach, North Carolina; and the recission of petitioner's outstanding construction permit for Station WKKE, Williamston, North Carolina, specifying Class C1 facilities in lieu of its present Class C2 facilities. Channel 280C2 can be allocated to Fuquay-Varina in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.3 kilometers (14.5 miles) southeast to accommodate petitioner's desired transmitter site. Channel 279A can be allocated to Topsail Beach in compliance with the Commission's minimum distance separation requirements without a site restriction and can be used at the sites specified by the applicants therefor. Landsman-Webster Communications of North Carolina, Inc. alternatively requests the substitution of Channel 278C2 for Channel 276A at Dunn, NC, and the modification of its license for Station WKDS to specify the higher powered channel. In addition, it requests the substitution of Channel 283A for unoccupied but applied for Channel 278A at Hope Mills, NC. Both parties are requested to further demonstrate why their community should receive the higher class allotments. In particular, the Commission requests a gain area showing indicating the population and square kilometers of the increased area to be served. Pursuant to Section 1.420(g) of the Commission's Rules, competing expressions of interest in use of the higher powered channel at Fuquay-Varina and Dunn will not be accepted and MECA's license for Station WAZZ, Fuquay-Varina, and Landsman-Webster's license for Station WKDS, Dunn, can be modified without requiring the demonstration of an additional equivalent channel for use by other interested persons. Since no upgrade in facilities is proposed for the Topsail Beach and Hope Mills allotments, the applicants will be permitted to amend their applications to specify the new channel, if allocated, and retain their cut-off status.

DATES: Comments must be filed on or before July 15, 1988, and reply comments on or before August 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Morton L. Berfield, Esq., Lewis I. Cohen, Esq., Cohen & Berfield, P.C., 1129 20th Street NW., Washington, D.C. 20036 (Counsel to MECA Broadcasting, Inc.) and John Wells King, Esq., Haley, Bader & Potts, 2000 M Street, NW., Suite 600, Washington, DC 20036 (Counsel to Landsman-Webster Communications of North Carolina, Inc.)

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-200, adopted April 14, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Bradley P. Holmes,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-12191 Filed 5-31-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contracting by Negotiation; Commercial Pricing Certificates for Spare or Repair Parts

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering an addition of DFARS 215.813, DFARS 252.215-7004 and DFARS 252.215-7005 to implement section 101(c) of Pub. L. 99-591, now codified at 10 U.S.C. 2323.

DATE: Comments must be received by the DAR Council at the address shown below on or before July 31, 1988 to be considered in developing a final rule.

ADDRESS: Interest parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon Washington, DC 20301-3062. Please cite DAR Case 85-72D in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DFARS revisions are required by the 1987 Omnibus Appropriations Continuing Resolution (Pub. L. 99-591). Under the proposed coverage offerors/contractors in certain noncompetitive acquisitions are required to certify that the prices offered to the Government for spare or repair parts that the contractor also offers to the general public, are no higher than the lowest commercial price at which such parts were sold during the most recent regular period of not less than 30 days duration, or submit a written justification of the difference. This proposed rule is being considered for the purpose of implementing 10 U.S.C. 2323. Comments received on this proposed rule will be considered in formulating the final rule.

B. Regulatory Flexibility Act

The proposed rule adds DFARS 215.813, DFARS 252.215-7004 and 252.215-7005 to implement Section 101(c) of Pub. L. 99-591. Under the new coverage, offerors/contractors in certain noncompetitive acquisitions are required to certify that the prices offered for spare or repair parts that the contractor offers for sale to the general public are no higher than the lowest commercial price at which such parts were sold during the most recent regular monthly, quarterly, or other period of not less than 30 days in duration, for which sales data are reasonably available. Such coverage is not expected to have a significant impact on a substantial number of small entities because the information required should be readily available to small businesses since they are less likely to have decentralized sales records and the large volume of sales transactions normally associated with larger businesses. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act

The rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. DoD is preparing for submission to OMB a request for review and approval of a new information collection.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.
Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 215 and 252 as follows:

1. The authority citation for 48 CFR Parts 215 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Sections 215.813 through 215-813-6 are added to read as follows:

215.813 Commercial pricing certificates for spare or repair parts.

215.813-1 Definitions.

(a) "Lowest commercial price," as used in this section, means the lowest price at which a sale was made to the general public of a particular part. Such term does not include the price at which a sale was made—

(1) To any agency of the United States;

(2) To any customer for resale after such customer performs a service or function in connection with such part that increases the cost of the part, unless the agency procuring the part can demonstrate that the agency is procuring the part before such service or function has been performed by any such customer (see 215-813-5(b));

(3) To a subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity;

(4) To any customer at a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part; or

(5) To a customer located outside the United States.

(b) "Spare or repair part," as used in this section, means any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself.

215.813-2 Policy.

The Government should not purchase spare or repair parts offered for sale to the general public at a price that exceeds the lowest commercial price at which such parts are sold by the contractor unless the price difference is clearly justified by the seller, or unless exempt under 215.813-4. To this end, 10 U.S.C. 2323 requires an offeror to certify that the price offered is not more than its lowest commercial price, or to submit a written statement specifying the amount of any difference and providing justification for that difference. Because the forces of the competitive marketplace should ensure that the Government does not pay too high a price for commercial spare or repair parts, commercial pricing certificates are necessary only when these forces are not present in a particular contract action.

215.813-3 Applicability.

Except as provided in 215.813-4, the contracting officer shall request that a commercial pricing certificate be submitted in connection with any offer/proposal covering spare or repair parts which is submitted in connection with any of the following:

(a) Contracts awarded using other than competitive procedures, that is, those procedures under which an agency enters into contracts pursuant to other than full and open competition (see Subpart 206.3).

(b) Contract modifications including contract modifications for additional items but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause (but see paragraph (e) of this section), or funding and other administrative changes.

(c) Noncompetitive orders under the provisioning line item of a contract or under a Basic Ordering Agreement or under a similar arrangement.

(d) Definitization of price or a letter contract, unpriced order, or other contract, modification, or order awarded without a definitive price. The commercial pricing certificate is not required prior to the initial award, but rather will be submitted with the offer or proposal to definitize.

(e) Any modification issued pursuant to the Changes clause which results in the providing of new or different commercial spare or repair parts.

215.813-4 Exemptions from commercial pricing certificates.

The contracting officer shall not request that a commercial pricing certificate be submitted when—

(a) Using the simplified small purchase procedures of Part 213;

(b) An order is placed under an indefinite delivery type contract. (A certificate is required in connection with the award without full and open competition of an indefinite delivery type contract.);

(c) The contracting officer determines that obtaining the commercial pricing certificate is not appropriate because of:

(1) National security considerations, or

(2) Significant differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms;

(d) An order is placed under the procedures established by the General Services Administration for its multiple award schedule program.

(e) Using the sealed bid procedures of Part 214.

215.813-5 Procedures.

(a) When commercial pricing certificates are required in accordance with 215.813-3, the contracting officer shall request the certificate as set forth

in paragraph (b) of the clause at 252.215–7004, Certification of Commercial Pricing for Spare or Repair Parts, and ensure that the certificate is submitted at the appropriate time. The certificate may be requested through the use of a solicitation provision such as the one at 252.215–7005. Circumstances may make advance agreements desirable between an offeror/contractor and a contracting officer in areas such as detailed repetitive justifications, determinations to include sales to persons or corporations for resale and the time period covered by the certificate. Provided the Government's interests are adequately protected, contracting officers may consider these types of arrangements as a means of lessening the administrative burdens of certificates of commercial pricing.

(b) A contracting officer may make a determination that the definition of "lowest commercial price" in the clause at 252.215–7004 shall include the price at which a sale was made to any person or corporation for resale by the person or corporation. In making this determination, the contracting officer must be able to demonstrate that the spare or repair parts are being procured by the contracting officer under the same terms and conditions at which a sale was made to the person or corporation for resale.

(c) The contracting officer shall request submission of a new certificate when the validity of the certificate originally submitted with an offer/proposal becomes doubtful prior to award due to submission of a new or revised proposal or as a result of discussions.

(d) If, before agreements on price, the contracting officer learns that the certificate is inaccurate, incomplete, or misleading, the contracting officer shall immediately bring the matter to the attention of the offeror/contractor, request a revised certificate, and negotiate accordingly.

(e) If, after award or agreement on price, the contracting officer learns or suspects that a certificate was inaccurate, incomplete, or misleading, the contracting officer shall request, as appropriate, an audit under authority of paragraph (c) of the clause at 252.215–7004. If the contracting officer determines that a certificate was inaccurate, incomplete, or misleading, the Government is entitled to an equitable price adjustment (see paragraph (d) of the clause at 252.215–7004).

(f) Individual or class determinations made under 215.813–4(c) and advance agreements and determinations under this subsection, shall be documented in the contract file.

(g) Possession of a contractor's Certificate of Commercial Pricing is not a substitute for examining and analyzing a contractor's proposal and determining that the prices offered are fair and reasonable. Notwithstanding the submission of a Certificate of Commercial Pricing, Subpart 215.8 must be complied with. Particular attention should be paid to FAR 15.804–3(c) with regard to items which are substantially similar to commercial items sold in substantial quantities at established catalog or market prices.

215.813–6 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 252.215–7004, Certification of Commercial Pricing for Spare or Repair Parts, in all solicitations and contracts when a commercial pricing certificate is required in accordance with 215.813–3, unless exempt under 215.813–4.

(2) The contracting officer shall use the clause at 252.215–7004 with its Alternate I when a determination has been made in accordance with 215.813–5(b).

(b) The contracting officer may use the provision at 252.215–7005, Spare or Repair Parts Pricing Certifications, in solicitations when a certificate is required. The provision may also be appropriately modified and included as a clause in contracts that provide for subsequent noncompetitive ordering of spare and repair parts and for which certificates will be required.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7004 is added to read as follows:

252.215–7004 Certification of Commercial Pricing for Spare or Repair Parts.

As prescribed in 215.813–6(a) insert the following clause:

Certification of Commercial Pricing for Spare or Repair Parts

(Date)

(a) Definitions.

(1) "Lowest commercial price," as used in this clause, means the lowest price at which a sale was made to the general public of a particular part. Such term does not include the price at which a sale was made—

(i) To any agency of the United States;

(ii) To any customer for resale by such customer after such customer performs a service of function in connection with such part that increases the cost of the part, unless the agency procuring the part can demonstrate that the agency is procuring the part before such service or function has been performed by any customer;

(iii) To a subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity;

(iv) To any customer at a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part; or

(v) To a customer located outside the United States.

(2) "Spare or repair part," as used in this clause, means any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself.

(b) When requested by the Contracting Officer in accordance with the requirements of sections 215.813–3 and 215.813–4, the Offeror/Contractor shall execute and submit the following certificate:

Certificate of Commercial Pricing

(1) Unless justified in paragraph (b)(2) below, the Offeror/ Contractor certifies to the best of its knowledge and belief that the prices offered for those spare or repair parts (whether identified as separate line items or on an exhibit or attachment) that the Contractor offers for sale to the general public are no higher that the lowest commercial price at which such parts were sold, during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available: *Provided,* That in no event shall this period be less than 30 days in duration.

(2) All items for which prices offered are higher than the commercial sales price referred to in paragraph (b)(1) above are identified below (including the amount(s) by which such offered prices are higher) and a written justification for the differences is attached. .

Items and Price Differences

_____

_____

_____

_____

(list as necessary)

Offer/Proposal No. _____

Time period for sales data _____

Firm _____

Name _____

Signature _____

Title _____

Date _____

(End of certificate)

(c) The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all directly pertinent records of sales, including contract terms and conditions, necessary to verify the validity of any certificate executed in accordance with paragraph (b) above. The Contractor shall make these records, books, data and documents available for examination, audit, or reproduction until three (3) years after the date the certificate set forth in paragraph (b) above is executed. Nothing contained in this paragraph shall require the submission of cost or pricing data not otherwise required by law or regulation.

(d) If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under this contract has increased because the certification in paragraph (b)(1) of the Certificate or the information provided as justification in paragraph (b)(2) of the Certificate was inaccurate, incomplete, or misleading, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

Alternate I (Date). Delete subparagraph (a)(1)(ii) and renumber (iii), (iv) and (v) as (ii), (iii) and (iv) respectively.

4. Section 252.215–7005 is added as follows:

252.215–7005 Spare or repair parts pricing certifications.

As prescribed in 215.613–6(b) insert the following provision:

Spare or Repair Parts Pricing Certifications

(Date)

Line Items _____ of this solicitation are being procured as spare and repair parts under conditions that require the submission of a Commercial Pricing Certificate. The Offeror/Contractor shall comply with the clause entitled "CERTIFICATION OF COMMERCIAL PRICING FOR SPARE OR REPAIR PARTS (DATE)" (DFARS 252.215–7004) and execute and submit a certificate with its offer/proposal.

(End of Provision)

[FR Doc. 88–12226 Filed 5–31–88; 8:45 am]
BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 6)]

Regulations Governing Fees for Services Performed In Connection With Licensing and Related Services; 1988 Update

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is required by the regulations in 49 CFR 1002.3 to update user fees annually. In this decision the Commission is announcing the 1988 fee update, which is based on the revised update formula that was adopted in Ex Parte No. 246 (Sub No. 5), *Regulations Governing Fees For Services Performed—1987 Update,* 4 I.C.C.2d 137 (1987).

The Commission is proposing to increase various fees which were set at less than full cost in our 1984 major fee program revision. Also, the cost data for fee item (100) relating to applications for the Commission's Practitioner Exam has been modified, and the Commission proposes to increase that fee so that the Commission's current costs for processing requests to take the exam are covered.

DATE: Comments are due on July 1, 1988.

ADDRESS: Send an original and 15 copies of comments to: Ex Parte No. 246 (Sub-No. 6), Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Kathleen M. King, 202–275–7428.

For Costing Information:

William W. England, 202–275–7472 or Michael A. Stolica, 202–275–7765.

TDD for the hearing impaired: (202–275–1721.)

SUPPLEMENTARY INFORMATION: The Commission is required by its regulations at 49 CFR 1002.3 to update user fees annually. The 1988 update factors are as follows:

FY–1988 General Pay Increase	2 percent
Government Fringe Benefits	47.05 percent
Operations Overhead	7.97 percent
Office General & Administrative Expenses	19.64 percent
Commission General & Administrative Expenses	10.48 percent

The fees which will increase are a direct result of the 1988 update are identified below with double stars (**). The Commission has determined that previous policy decisions to set some fees at less than fully distributed costs should be reconsidered. See *Regulations Governing Fees For Services,* 1 I.C.C.2d 60 (1984) and *Regulations Governing Fees For Services Performed—1987 Update,* 4 I.C.C.2d 137 (1987).

Accordingly, the Commission is proposing to increase the capped/ reduced fee for the fee items which are identified below with a single star (*).

A copy of the Commission's full decision in this matter is available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, [202–275–7428];

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

The Commission does not believe that the proposal to increase the capped or reduced fees will have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for waiver of filing fees for entities which can make the required showing of financial hardships.

The decision will not have a significant impact upon the quality of the human environment or conservation of energy resources. *It is ordered:*

Title 49 of the Code of Federal Regulations is proposed to be amended as set forth below.

Decided: May 25, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley.

Noreta R. McGee,
Secretary.

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1002—FEES

1. The authority citation for this part is proposed to continue to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount "$17.00" in paragraph (b) would be revised to read "$18.00".

3. In § 1002.1, the dollar amount of "$30.00" in paragraph (e)(3) would be revised to read "$45.00".

4. In § 1002.1, the table in paragraph (f)(6) would be revised to read as follows:

GS–1	$5.33
GS–2	5.80
GS–3	6.54
GS–4	7.34
GS–5	8.21
GS–6	9.15
GS–7	10.17
GS–8	11.26
GS–9	12.44
GS–10	13.70
GS–11	15.05
GS–12	18.04
GS–13	21.45
GS–14	25.35
GS–15 & above	29.82

§ 1002.2 [Amended]

5. In § 1002.2, paragraph (a) would be revised to read as follows:

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in paragraph (a)(2) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract or other document is tendered for filing.

(2) When emergency temporary operating authority applications (Item 9) and emergency temporary operating authority extensions (Item 10) are initiated by telegram or telephone, the fee or fees are due when the OP–MCB–95 application is submitted to the appropriate Commission regional office.

(3) Fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or credit cards (Visa or Master Card).

* * * * *

6. In § 1002.2, paragraph (f) is proposed to be revised to read as follows:

(f) *Schedule of filing fees.*

Type of proceedings	Fees
Part I—Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64	2,000
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite or the change of a highway name or number	30
*(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	150
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107 through 1160.114	200
(7) An application for authority to deviate from authorized regular route authority 49 U.S.C. 10923(a)	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	90
(9) An application for motor carrier emergency temporary authority 49 U.S.C. 10928(c)(1)	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	17
**(11) Request for name change of carrier, broker, or household goods freight forwarder	6
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling incuding an updated notice required by 49 CFR 1167.4	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	60
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	20
(16) [Reserved]	
Part II—Non-Rail Applications To Discontinue Transportation	
**(17) A notice or petition to discontinue ferry service 49 U.S.C. 10908	8,200
*(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved]	
Part III—Non-Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
**(20) An application for the pooling or division of traffic	1,600
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	750
**(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706	10,100
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(24) An applicatrion for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	150
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	200
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d)	150
(27) A petition for exemption under 49 U.S.C. 11343(e)	200
(28) [Reserved]	
(29) [Reserved]	
(30) [Reserved]	
(31) [Reserved]	
(32) [Reserved]	
Part IV—Rail Applications For Operating Authority	
(33)(a) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	2,600
(33)(b) Exempt transaction under 49 CFR 1150.31	550
(34) Feeder LIne Development Program application filed unrier 49 U.S.C. 10910(b)(1)(A)(i)	3,200
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	1,900
(36) [Reserved]	
(37) [Reserved]	
Part V—Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Cnsolidated Rail Corporation pursuant to the North East Rail Service Act, bankrupt railroads or exempt abandonments under 49 CFR 1152.50)	2,100
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	150
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	650
**(41) Exempt abandonment. 49 CFR 1152.50	500
**(42) A notice or petition to discontinue passenger train service	8,200
(43) [Reserved]	
Part VI—Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
**(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	6,900
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	4,700
*(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343:	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exempt transaction (49 CFR 1060.2(d))	550
(v) Responsive application	2,300
*(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exempt transaction (49 CFR 1060.2(d))	550
(v) Responsive application	2,300
*(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exempt transaction (49 CFR 1060.2(d))	550
(v) Responsive application	2,300
*(49) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exempt transaction (49 CFR 1060.2(d))	550
(v) Responsive application	2,300
*(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b)	27,000
**(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	25,500
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	250
(54)(a) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for exemption for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175. 49 U.S.C. 11301	1,200
(54)(b) An exempt transaction under 49 CFR Part 1175	550
(55) A petition for exemption (other then a rulemaking) filed by rail carriers. 49 U.S.C. 10505	550
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40–1180.49, 45 U.S.C. 915	1,400
(57) [Reserved]	
(58) [Reserved]	
(59) [Reserved]	
Part VII—Formal Proceedings	
*(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods	5,200
*(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A)	3,200
*(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	2,500
(ii) All other petitions for declaratory order	1,800
**(63) Requests for nationwide and regional collectivity filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increase	5,500
(64) A petition for exemption for filing tariffs by water and bus carriers	150
**(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	2,600
*(66) Petition for review of state regulation of interstate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501	1,000
*(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501	1,000
[68] [Reserved]	
(69) [Reserved]	
(70) [Reserved]	
(71) Reserved]	
Part VIII—Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster	400
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	40
(74) The filing of tariffs, rate schedules and contracts including supplements	[1] 7
(75) Special docket application from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less)	50
*(76) Informal complaint about rail rate application	200
*(77)(a) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD)	2,700
*(77)(b) An application for original qualification as self-insurer for cargo insurance	250
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a broker surety bond)	[2] 10
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR Part 1057	300
**(80) A petition for reinstatement of revoked operating authority	50
(81) [Reserved]	
(82) [Reserved]	
*(83) Petition for reinstatement of a dismissed operating rights application	250
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	[3] 13
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	1,000
(86) Informal opinions about rate applications (all modes)	40
(87)—(95) [Reserved]	
Part IX—Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	[4] 10
(97) Request for service list for proceedings	[5] 7
(98) Requests for copies of the one-percent carload waybill sample	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	[6] 14
*(100) Application fee for Interstate Commerce Commission Practitioners' Exam	60

Editorial Notes:

* All single starred fee items are capped or reduced fees which are proposed to be increased.

** All double starred fee items are proposed to be increased as a direct result of the 1988 Update.

[1] Per series transmitted.

[2] Per accepted certificate or other instrument submitted in lieu of a broker surety bond.

[3] Per document.

[4] Per delivery.

[5] Per list.

[6] Per movement verified.

[FR Doc. 88–12168 Filed 5–31–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80334–8034]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Withdrawal of Proposed Rule

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: In response to a request by the Pacific Fishery Management Council, NOAA proposed regulations to be implemented under the emergency authority of section 305(e) of the Magnuson Act to (1) alter, during the 1988 season, the schedule in the 1984 framework amendment to the Fishery Management Plan for the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP), which allocates coho and chinook salmon between non-Indian commercial and recreational ocean fisheries north of Cape Falcon, Oregon, and (2) increase inseason management flexibility in 1988 to allow the total ocean quotas to be harvested. Following public comment, the Secretary of Commerce denied the Council's request for implementation by emergency authority and recommended that the Council pursue implementation through the fishery management plan amendment process. Therefore, NOAA withdraws the proposed rule.

DATE: This withdrawal is effective June 1, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: On March 14, 1988, NOAA proposed regulations (52 FR 8234) to be implemented under the emergency authority of section 305(e) of the Magnuson Act, 16 U.S.C. 1855(e), as amended, which would (1) alter, during 1988, the schedule in the 1984 framework amendment to the FMP, which allocates coho and chinook salmon between non-Indian commercial and recreational ocean fisheries north of Cape Falcon, Oregon, and (2) increase inseason

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management flexibility in 1988 to allow the total ocean quotas to be harvested. Public comments on the proposed regulations were requested and accepted through March 23, 1988. The revised allocation schedule and inseason flexibility provisions were recommended by the Pacific Fishery Management Council (Council) at its January 13–14, 1988, meeting, following an extensive developmental process beginning in April 1987. While the Council asked that the Secretary of Commerce (Secretary) implement these provisions for the 1988 fishing season by emergency authority, it is also preparing an amendment to the FMP for implementation through the normal plan amendment process. Additional details relevant to the development of the Council's recommendation are contained at 53 FR 8234 (March 14, 1988).

Following evaluation of the proposed regulations and review of the substantial number of public comments received, the Secretary denied the Council's recommendation for implementation of the proposed regulations by emergency authority on March 29, 1988. The Secretary concluded that, in the absence of a clear showing of economic effectiveness and adequate biological justification or quantifiable social or ecological factors, the measure did not qualify for implementation using the special emergency authority of section 305(e) of the Magnuson Act. The decision to deny implementation of the allocation plan by emergency authority for the 1988 season has no bearing on the approvability of any future FMP amendment, which may address the same issues. More specific reasons for denial are discussed below:

1. Negative economic effects. The most recent economic analyses prepared by the Council comparing the proposed interim allocation schedule to the current framework allocation schedule showed negative net economic values and negative community impacts at some low levels of ocean harvest similar to those that were under consideration by the Council for the 1988 fishing season. This analysis casts substantial doubt that the proposed interim allocation plan, as described at 53 FR 8234 (March 14, 1988), would be effective for improving coastal economies when the total allowable ocean harvests are as low as expected in 1988. In short, it appeared that the allocation plan might not achieve its stated purpose because critical assumptions on which it was originally based seemed no longer valid.

2. Inadequately specified inseason flexibility. The proposed inseason management flexibility language did not provide sufficient detail concerning the criteria and conditions under which inseason adjustments could be taken to best meet the allocation goal.

3. Elimination of preseason flexibility. The Council requested that its interim allocation plan replace, in its entirety, Appendix II.B.2(a) of the framework regulations. As a result, the proposed rule would have deleted current preseason framework flexibility to shape fisheries by substituting species. It also would have deleted certain limitations on species substitutions and geographic transfers of species quotas, which are contained in the current regulations.

The Council did not provide any rationale for deleting these provisions of the current regulations. Such rationale is important because it appears that deletion of part of these provisions would be inconsistent with the need expressed by State fishery managers to use the preseason trade provision to shape ocean fisheries in 1988.

4. Public comments. The majority of comments received during the public comment period opposed implementation by emergency authority, citing the closeness of the Council's vote (7–5), noting the lack of any impact analysis available to the Council before its vote, and questioning the validity of a socioeconomic emergency. The Secretary shared those concerns.

Other Matters

The Secretary supports the Council's efforts to devise a management system that maximizes net benefits to coastal communities, but does not believe that it was adequately shown that the proposed allocation plan would meet this objective under the conditions prevailing in 1988. In the long term, a revised allocation plan with greater preseason and inseason management flexibility may provide benefits to fishermen and coastal communities. For the reasons cited above, NOAA has withdrawn the proposed rule, published at 53 FR 8234 (March 14, 1988).

Subsequent to the Secretary's denial of the Council's January request, the Council requested another emergency rule to implement management measures for the 1988 fishing season. The season measures proposed by the Council required several deviations from the existing framework FMP, and needed to be implemented by the first of May, thereby necessitating an emergency interim rule. The deviations from the existing terms of the FMP and implementing regulations affecting the area north of Cape Falcon included: (1) retention of the FMP's existing allocation schedule for coho and chinook north of Cape Falcon, unlike the rule proposed at 53 FR 8234, (March 14, 1988), but modification of the preseason constraint on species substitution in the recreational and commercial fisheries as a means of ensuring full harvest of available quotas and (2) adoption of a provision for the area north of Cape Falcon to reallocate any unharvested commercial chinook quota at season's end to the recreational fishery. The Secretary approved this Council request since the measures were justified by documented economic and biological benefits addressing the emergency conditions in the fishery, were supported by a strong Council majority and represented compromises negotiated among numerous user groups. This emergency interim rule was effective May 1, 1988 and published at 53 FR 16002 (May 4, 1988).

Dated: May 26, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–12232 Filed 5–31–88; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 53, No. 105
Wednesday, June 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly; Plenary Session

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92–463, that the membership of the Administrative Conference of the United States will meet in Plenary Session on Thursday, June 9, 1988, at 1:15 p.m., and Friday, June 10, 1988, at 9:30 a.m., in the Amphitheatre of the Federal Home Loan Bank Board, Second Floor, 1700 G Street NW., Washington, DC. The Conference makes recommendations to administrative agencies, the President, Congress, and the Judical Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs.

The Conference will consider, not necessarily in the order stated, proposed recommendations of the following subjects:

1. Presidential Transition Workers' Standards of Conduct.
2. Indemnification of Government Contractors.
3. The Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act.
4. Deferred Taxation of Gains From Conflict-of-Interest Divestiture.
5. Forum for Judicial Review of Preliminary Challenges to Agency Action.
6. Agency Use of Statement Judges.
7. Statement on Dispute Resolution Procedures in Reparations and Similar Cases.

Plenary Sessions are open to the public. Further information of the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., Suite 500, Washington, DC 20037, telephone (202) 254–7020.

Jeffrey S. Lubbers,

Research Director.

May 27, 1988.

[FR Doc. 88–12375 Filed 5–31–88; 8:45 am]

BILLING CODE 6110–01–M

AFRICAN DEVELOPMENT FOUNDATION

Advisory Council Meeting

Time: 10:00–12:00 p.m.
Place: African Development Foundation, 1625 Massachusetts Avenue, NW., Washington, DC 20036.
Date: Wednesday, 08 June 1988.
Status: Open.

Agenda

1. Chairman's Report
2. President's Report on OTA Assessment
3. Discussion: Establishment of "ADF Friends" throughout the U.S.
4. Video presentation of ADF projects.

CONTACT PERSON FOR MORE INFORMATION: Ms. Janis McCollim, 673–3916.

Leonard H. Robinson, Jr.,

President.

[FR Doc. 88–12206 Filed 5–31–88; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB–88–101]

Flue-Cured Tobacco Advisory Committee; Committee Renewal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of committee renewal.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has renewed the Flue-Cured Tobacco Advisory Committee for an additional period of 2 years.

DATES: The Committee's present charter runs from May 6, 1988 through May 6, 1990.

ADDRESS: The Committee reports to the Director, Tobacco Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), 300 12th Street, SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Sam E. Story, Deputy Director, Tobacco Division, AMS, USDA, 300 12th Street, SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7235.

SUPPLEMENTARY INFORMATION: The Committee recommends opening dates and selling schedules for the flue-cured marketing area which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the flue-cured tobacco industry and meets at the call of the Secretary. The Secretary has determined that renewal of this Committee is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App. I).

Dated: May 26, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–12265 Filed 5–31–88; 8:45 am]

BILLING CODE 3410–02–M

[TB–88–100]

National Advisory Committee for Tobacco Inspection Services; Committee Renewal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of committee renewal.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has renewed the National Advisory Committee for Tobacco Inspection Services for an additional period of 2 years.

DATES: The Committee's present charter runs from March 10, 1988 through March 10, 1990.

ADDRESS: The Committee reports to the Director, Tobacco Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), 300 12th Street, SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Sam E. Story, Deputy Director, Tobacco

Division, AMS, USDA, 300 12th Street, SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7235.

SUPPLEMENTARY INFORMATION: The Committee consists of 14 producers of tobacco representing all production areas and meets at the call of the Secretary. Authority for this Committee is section 5 of the Tobacco Inspection Act, as amended (7 U.S.C. 511d).

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App. I).

Dated: May 26, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-12296 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

1988-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determinations.

SUMMARY: This notice sets forth the final determinations with respect to the level of price support and the lower loan repayment provisions for the honey price support program for the 1988 crop of honey. These determinations are made pursuant to section 201(b) of the Agricultural Act of 1949, as amended hereinafter referred to as the "1949 Act").

EFFECTIVE DATE: This notice of determinations is effective for the 1988 crop of honey.

ADDRESS: Dr. Orval Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 2741, South Building P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jane K. Phillips, Agricultural Economist, Commodity Analysis Division, USDA, Room 3754 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-7602. The Final Regulatory Impact Analysis describing the actions taken in this notice of final determinations and their impact is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determinations has been made under USDA procedures implementing Executive Order 12291 and Departmental Regulations 1512-1 and has been classified "not-major." It has been determined that these determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which these determinations apply are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of final determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 2015, Subpart V, published at 47 FR 29115 (June 24, 1983).

Section 201(b) of the Agricultural Act of 1949 (the "1949 Act"), as amended, provides that the support level shall be 63 cents per pound for the 1987 crop of honey and for the 1988 crop of honey shall be 95 percent of the price support rate for the previous year's crop, but not less than 75 percent of the simple average price received by producers of honey for the preceding 5 crop years, excluding the high and low years. The Omnibus Budget Reconciliation Act of 1987 amended section 201(b) of the Act to require that once the support levels have been determined using the above method, the 1987 and 1988 rates must be reduced by 2 cents and 0.75 cents per pound, respectively.

The price support loan rate for the 1987 crop of honey was 63 cents per pound which, when reduced by 5 percent, equals 59.85 cents per pound. Seventy-five percent of the simple average price received by producers in the 5 preceding crop years, excluding the highest and lowest years, is 35.1 cents per pound. Therefore, since the established loan rate (59.85 cents per pound) is in excess of that amount, 59.85 cents per pound is reduced by 0.75 cents per pound, resulting in a price support loan rate for 1988 crop honey of 59.1 cents per pound.

In accordance with section 403 of the 1949 Act, the loan rate for the 1988 crop of honey may be adjusted to reflect floral source, color, class and grade, and other market differentials which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the 1949 Act the Secretary may permit producers who have obtained price support loans with respect to the 1986-1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

Accordingly, on March 15, 1988, a notice of proposed determinations was published in the **Federal Register** (53 FR 8478) requesting comments concerning the conduct of the price support program for honey through the use only of loans and not purchase agreements, providing adjustments to the loan rate based on color, class and grade, and other market differentials, and permitting repayment of such loans at the lesser of the loan level for such crop or at a level determined by the Secretary or his designee.

Discussion of Comments

Four written comments were received in response to the notice of proposed determinations. One respondent recommended that price support for honey be terminated. This is not possible since the price support program for honey is required by law. The three other respondents agreed that a honey support program was necessary and vital to the industry. They also favored continuing the option permitting loan repayments at levels lower than the established loan rates.

After taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the price of honey for the 1988 through 1990 marketing years, the following final determinations are made with respect to the honey price support program for the 1988-crop:

Final Determinations

(a) The 1988-crop honey price support program will be a loan program with a loan rate of 59.10 cents per pound.

(b) The 1988-crop honey loan rate has been adjusted as follows to reflect floral source, color, class and grade, and other market differentials under which honey is marketed. White or lighter honey will be supported at 62.02 cents per pound; extra light amber, 58.22 cents per pound; light amber, 53.66 cents per pound; and amber and non-table honey, 48.06 cents per pound.

(c) Producers with price support loans for the 1988-crop honey will be permitted to repay such loans at the lesser of the loan level for such crop or at a level which the Secretary or a designee shall determine. The repayment level shall be a level which will minimize the number of loan forfeitures, not result in excessive total stocks of honey, reduce the costs incurred by the Federal Government in storing honey, and maintain the competitiveness of honey in domestic and export markets. The Secretary, or a designee, shall publicly announce the repayment levels for each color and class of honey on a weekly basis. Interest shall not be assessed on price support loans which are repaid at the lower repayment level announced by the Secretary or his designee.

Honey pledged as collateral for a price support loan which is redeemed at the lower repayment level shall not be eligible to be pledged as collateral for a new price support loan.

Signed at Washington, DC, on May 25, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-12255 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Designation Renewal of the Sioux City (IA) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Sioux City Inspection and Weighing Agency, Inc. (Sioux City) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Sioux City's designation terminates on June 30, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the December 31, 1987, **Federal Register** (52 FR 49460). Applications were to be postmarked by January 29, 1988. Sioux City was the only applicant for designation and it applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant named in the March 1, 1988, **Federal Register** (53 FR 6167) and requested comments on the applicant's designation. Comments were to be postmarked by April 15, 1988; none was received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and , in accordance with section 7(f)(1)(B), determined that Sioux City is able to provide official services in the geographic area for which the Service is renewing its designation. Effective July 1, 1988, and terminating June 30, 1991, Sioux City will provide official inspection services in its specified geographic area, previously described in the December 31 **Federal Register.**

Interested persons may obtain official services by contacting the agency at the following telephone number: (712) 255-8073.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: May 26, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-12270 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Louisville (KY), Minot (ND), and Tri-State (OH) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State).

DATE: Comments to be postmarked on or before July 18, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:
TO: Lewis Lebakken
TLX: 7607351, ANS:FGIS UC.

All comments received wil be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Bebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the March 31, 1988, **Federal Register** (53 FR 10411). Applications were to be postmarked by May 2, 1988. Louisville and Tri-State were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency. There were two applicants for the Minot designation. Minot applied for designation renewal in the entire area currently assigned to that agency, except for Farmers Elevator Company, Bottineau, Bottineau County; and Farmers Union, Rugby, Pierce County. Grand Forks Grain Inspection Department, a neighboring official agency, in whose territory these two grain elevator facilities are located, applied for designation only for those two points.

This notice provides interested persons the opportunity to present their comments concerning the applicants'

designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 26, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-12271 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Idaho (ID) and Lewiston (ID) Agencies, and the State of Utah (UT)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Idaho Grain Inspection Service (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and Utah Department of Agriculture (Utah).

DATE: Applications to be postmarked on or before July 1, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Idaho, located at U.S. Highway 30 West, Pocatello, ID 83201; Lewiston, located at 1450 3rd Avenue North, Lewiston, ID 83501; and Utah, located at 350 North Redwood Road, Salt Lake City, UT 84116; were each designated under the Act as an official agency to provide inspection functions on December 1, 1985.

Each official agency's designation terminates on November 30, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Idaho, in the State of Idaho, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows: The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Lewiston, in the State of Idaho, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows: The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Utah, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Utah.

Interested parties, including Idaho, Lewiston, and Utah, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning December 1, 1988, and ending November 30, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 26, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-12272 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Doe Ridge Golf Course; Environmental Impact Statement; Inyo National Forest; CA and NV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture Forest Service will prepare an environmental impact statement for the proposed Doe Ridge Golf Course development within the Mammoth Range District

A range of alternatives for this development will be considered. One of these will be non-development of a golf course. Other alternatives will consider a variety of golf course designs.

Federal, State, and local agencies; potential users of the area; and other individuals or organizations who may be interested in, or affected by, the decision will be invited to participate in the scoping process. Much of the scoping process was conducted as a part of the previously prepared draft environmental assessment. The scoping process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the area.

Dennis W. Martin, Inyo National Forest Supervisor, is the responsible official.

The analysis is expected to take only two months due to the previous work accomplished as a part of the draft environmental assessment. The environmental impact statement is expected to be filed with the Environmental Protection Agency and to be available for review by July 15, 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the **Federal Register**. The final environmental impact statement is scheduled to be completed by January 1989.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact should be directed to Dean McAlister, District Ranger, Mammoth Ranger District, Inyo National Forest, phone 205-934-3151.

Dated: May 20, 1988.

Dean J. McAlister,

District Ranger, Mammoth Range District, Inyo National Forest.

[FR Doc. 88-12218 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-11-M

Lightning Peak Mine; Environmental Impact Statement; Payette National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for a proposal to develop the Lightning Peak Mine on the Krassel Ranger District, Payette National Forest, Valley County, Idaho. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by June 16, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Earl Kimball, District Ranger, Krassel Ranger District, P.O. Box 1026, McCall, ID 83638 with a "Reply to Lightning Peak" written on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Barry Stata, Payetee Supervisors Office, P.O. Box 1026, McCall, ID 83638, phone 208-634-8151.

SUPPLEMENTARY INFORMATION: Coeur-Thunder Mountain, Inc. of Boise, Idaho, a subsidiary of Coeur d'Alene Mines Corporation of Coeur d'Alene, Idaho has submitted a proposed operating plan which involves an open-pit mine, waste rock dump, and haul road on National Forest System lands. The proposed project would involve surface mining of approximately 13 to 15 acres near Lightning Peak. Mining would be conducted by conventional drill, blast, load, and haul techniques. Based on currently available information, approximately 750,000 to 1,000,000 tons of ore would be mined. The anticipated waste quantity will approximate 1,900,000 to 2,200,000 tons. The waste dump is expected to occupy approximately 15 to 17 acres. The Lightning Peak haul road would disturb approximately 9 acres. The entire proposal would occur immediately adjacant to the existing mining/processing facilities constructed on patented claims for Coeur's Sunnyside Project in the Thunder Mountain Mining District approximately 90 miles northeast of Cascade, Idaho, the county seat of Valley County.

A range of alternatives and mitigation measures will be considered to evaluate and minimize adverse impacts on National Forest System surface resources. The selected alternative must protect the statutory right of the operator to develop the mineral resource within reasonable environmental constraints.

Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. All previous comments received during the initial scoping period which ended March 7, 1988 will be retained in the record and therefore it will not be necessary to respond again. The Forest Service is now seeking any additional comments which may assist the scoping process including:

1. Further identifying potential issues.
2. Further identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmetal effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the potential activity site.

Veto J. LaSalle, Forest Supervisor, Payettee National Forest, McCall, Idaho, is the responsible official.

The analysis is expected to take 6 months. The draft environmental impact statement should be available for public review by November 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. The final environmental impact statement is scheduled to be completed by February 1989.

Dated: May 23, 1988.

Veto J. LaSalle,

Forest Supervisor.

[FR Doc. 88-12219 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Deposting of Stockyards; Louisiana Horse Palace, Inc., et al.

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
LA-139—Louisiana Horse Palace, Inc., Elm Grove, LA.	Dec. 13, 1960.
MI-112—Coopersville Livestock Sale, Coopersville, MI.	Apr. 29, 1959.
NB-128—Ewing Livestock Market, Ewing, NE.	Jan. 25, 1950.
NJ-106—Community Livestock Auction Co., Inc., Woodstown, NJ.	Dec. 21, 1959.
OH-148—The Ambrosia Coal and Construction Co., Elkton, OH.	June 29, 1983.
PA-112-G&M Livestock Market, Duncansville, PA.	Dec. 3, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register**. This notice shall become effective upon publication in the **Federal Register**.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*)

Done at Washington, DC, this 24th day of May, 1988.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 88-12165 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-KD-M

Posted Stockyards; Pacific Livestock Auction, et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
AZ-114—Pacific Livestock Auction, Chandler, AZ.	Nov. 25, 1986.
CA-180—Golden Valley Ranch, Bakersfield, CA.	Jan. 11, 1988.
GA-196—Sunny Farm Stables, Cumming, GA.	Nov. 19, 1987
GA-198—Barrett Livestock Barn, Alto, GA.	Feb. 20, 1988.
GA-199—Circle M Stables Corp., Forsyth, GA.	Feb. 6, 1988.
GA-200—Pony Express Stock Yards, Covington, GA.	Mar. 12, 1988.
MN-183—Auction Center Livestock, Frazee, MN.	May 1, 1987
MN-184—Northern Minnesota Cattle Yards, Hines, MN.	Mar. 9, 1988.
MS-163—Peoples Livestock Auction, Houston, MS.	Feb. 6, 1988.
MO-266—MFA Farmers Livestock Market, Maryville, MO.	Mar 12, 1988.
NC-159—Stegall's Livestock and Auction Barn, Concord, NC.	apr 8, 1988.
SC-143—Walterboro Horse Auction, Inc., Walterboro, SC.	Feb. 1, 1988.
SD-169—Alexandria Livestock Market, Inc., Alexandria, SD.	Sept. 3, 1987
TX-333—Erath County Sales & Livestock Commission, Stephenville, TX.	Sept. 3, 1987
TX-334—Ellis County Livestock, Inc., Waxahachie, TX.	Nov. 8, 1987
VA-157—Springlake Livestock Market, Inc., Moneta, VA.	Dec. 1, 1987

Done at Washington, DC, this 24th day of May, 1988.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 88-12166 Filed 5-31-88; 8:45 am]

BILLING CODE 3410-KD-M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: June 15, 1988.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC

Type of Meeting: Closed.

Contact: Colonel William C. Golbitz, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC 20451. (202) 647-5178.

Purpose of Advisory U.S. Committee: To advise the Director of the Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific arms control and related treaty issues; an Executive session will be held.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated April 27, 1988, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management.

[FR Doc. 88-10184 Filed 5-31-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review; Belgium et al.

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or §355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than June 30, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
ANTIDUMPING DUTY PROCEEDING	
Belgium: Sugar (A-423-077)	06/01/87-05/31/88
Canada: Red Raspberries (A-122-401)	06/01/87-05/31/88
Canada: Oil Country Tubular Goods (A-122-506)	06/01/87-05/31/88
Federal Republic of Germany: Precipitated Barium Carbonate (A-428-081)	06/01/87-05/31/88
Federal Republic of Germany: Sugar (A-428-082)	06/01/87-05/31/88
France: Large Power Transformers (A-427-030)	06/01/87-05/31/88
France: Sugar (A-427-078)	06/01/87-05/31/88
Italy: Large Power Transformers (A-475-031)	06/01/87-05/31/88
Italy: Viscose Rayon Staple Fiber (A-475-079)	06/01/87-05/31/88
Japan: 64K DRAMS (A-588-503)	06/01/87-05/31/88
Japan: Fishnetting of Man-Made Fiber (A-588-029)	06/01/87-05/31/88
Japan: Large Power Transformers (A-588-032)	06/01/87-05/31/88
Mexico: Elemental Sulphur (A-201-034)	06/01/87-05/31/88
People's Republic of Hungary: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-437-601)	02/08/87-05/31/88
People's Repbulic of China: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-570-601)	02/06/87-05/31/88

	Period
Socialist Republic of Romania: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-485-602)	11/07/86-05/31/88
Sweden: Stainless Steel Plate (A-401-040)	06/01/87-05/31/88
Taiwan: Bicycle Tires and Tubes (A-583-401)	05/01/87-09/04/87
Taiwan: Carbon Steel Plate (A-583-080)	06/01/87-05/31/88
Taiwan: Fireplace Mesh Panels (A-583-003)	05/01/87-04/30/88
Taiwan: Oil Country Tubular Goods (A-583-505)	01/06/87-05/31/88
Taiwan: Polyvinyl Chloride Sheet and Film (A-538-061)	06/01/87-05/31/88
COUNTERVAILING DUTY PROCEEDING	
Canada: Oil Country Tubular Goods (C-122-505)	01/01/87-12/31/87
France: Industrial Nitrocellulose (C-427-016)	01/01/86-04/28/86
Mexico: Carbon Black (C-201-012)	01/01/87-12/31/87

Seven copies of the request should be submitted to the Acting Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1988.

If the Department does not receive by June 30, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: May 25, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-12249 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Boston University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-104R. Applicant: Boston University, Boston, MA 02215. Instrument: Rapid Kinetics Accessory for UV-Visible Spectrophotometer, Model SFA-11. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: See notice at 52 FR 7916, March 13, 1987.

Comment: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (November 24, 1986).

Reasons: The foreign article directly delivers mixed reagent solutions to the observation cell of an existing spectrophotometer. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value of the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12237 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Accessories for Foreign Instrument; Department of Commerce

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-096. Applicant: U.S. Department of Commerce, NOAA, Woods Hole, MA 02543 Instrument: Height/Temperature Sensor, Model S40-HJ60-T303. Manufacturer: SCANMAR, Norway. Intended Use: See notice at 53 FR 9958, March 28, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12247 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Mount Sinai School of Medicine, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-202R. Applicant: Mount Sinai School of Medicine, New York, NY 10029. Instrument: Laser Microprobe Mass Analyzer. Manufacturer: Leybold-Heraeus GmbH, West Germany. Intended Use: See notice at 52 FR 2250, January 21, 1987.

Reasons for this Decision: The foreign instrument provides a lateral resolution of 1.0 micron, elemental detection limits in the range of 1.0 part per million, and unequivocal identification of the cell under analysis. Advice submitted by: National Institutes of Health, March 29, 1988.

Docket Number: 88-004. Applicant: The Children's Surgical Foundation, Inc., Chicago, IL 60614. Instrument: Cryo-Microtome, Model LKB 2250-041, with accessories. Manufacturer: PWV, Palmstiernas Mekaniska Verkstad, Sweden. Intended Use: See notice at 52 FR 43219, November 10, 1987.

Reasons for this Decision: The foreign instrument can produce uniform sections as large as 450 × 150 mm through both hard and soft tissue. Advice submitted by: National Institutes of Health, March 29, 1988.

Docket Number: 88-006. Applicant: Pennsylvania State University, University Park, PA 16802. Instrument: Mass Spectrometer, Model MS50TC. Manufacturer: Kratos Scientific

Instruments, United Kingdom. Intended Use: See notice at 52 FR 43219, November 10, 1987.

Reasons for this Decision: The foreign instrument provides: (1) Resolution to 150 000, (2) mass range to 10 000, (3) scan speed to 0.1 second per decade, and (4) FAB capability. Advice submitted by: National Institutes of Health, March 29, 1988.

Docket Number: 88–054. Applicant: The University of Texas Medical Branch, Galveston, TX 77550. Instrument: Inductively Coupled Plasma/Mass Spectrometer, Model VG PlasmaQuad. Manufacturer: VG Instruments, United Kingdom. Intended Use: See notice at 53 FR 1811, January 22, 1988.

Reasons for this Decision: The foreign instrument provides an inductively-coupled plasma ionization source with detection limits to 0.1 nanogram per millimeter. Advice submitted by: National Institutes of Health, March 29, 1988.

Docket Number: 88–062. Applicant: University of Alabama, Mobile, AL 36688. Instrument: GC/Mass Spectrometer Data System, Model MM70–250. Manufacturer: VG Analytical, United Kingdom. Intended Use: See notice at 53 FR 1811, January 22, 1988.

Reasons for this Decision: The foreign instrument provides: (1) Resolution to 50 000, (2) mass range to 11 000 at 3 kV accelerating potential, and (3) scan speed of 0.1 second per decade. Advice submitted by: National Institutes of Health, March 29, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advise that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–12230 Filed 5–31–88; 8:45 am]

BILLING CODE 3510–DS–M

Southern Research Institute, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constituion Avenue NW., Washington, DC.

Docket Number: 88–075. Applicant: Southern Research Institute, Birmingham, AL 35255–5305. Instrument: Electron Microscope, Model H–600–3. Manufacturer: Hitachi, Japan. Intended use: See notice at 53 FR 8483, March 15, 1988. Instrument ordered: July 1, 1987.

Docket Number: 88–089. Applicant: Florida Department of Agriculture and Consumer Services, Kissimmee, FL 32742. Instrument: Electron Microscope, Model EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 53 FR 6028, February 29, 1988. Instrument ordered: November 9, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, is being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or nay other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–12248 Filed 5–31–88; 8:45 am]

BILLING CODE 3510–DS–M

University of Alaska, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–261R. Applicant: University of Alaska, Fairbanks, AK 99775–1260. Instrument: JEFRI High Pressure Recombination Apparatus and High Temperature High Pressure Miscibility Apparatus. Manufacturer: D.B. Robinson & Associates, Canada. Intended use: See notice at 52 FR 32824, August 31, 1987.

Reasons for this Decision: The foreign instrument permits direct observation of cell contents allowing visual determinatins of phase conditions and provides an isolation piston permitting the use of various displacement fluids.

Docket Number: 87–263R. Applicant: University of Alaska, Fairbanks, AK 99775. Instrument: Phase Behavior PVT System. Manufacturer: D.B. Robinson & Associates, Canada. Intended use: See notice at 52 FR 32824, August 31, 1987.

Reasons for this Decision: The foreign instrument provides a maximum operating pressure of 10,000 psi (70 M*a), temperature to 400 °F (200 °C) and interior cell volume free of pressure distortion permitting accurate density measurements without having to calibrate cell volume of different pressures.

Docket Nunber: 88–087. Applicant: Iowa State University, Ames, IA 50011. Instrument: FT–IR Spectrometer, Model IFS 120 HR. Manufacturer: Bruker Analytische Messtechnik GmbH, West Germany. Intended use: See notice at 53 FR 6028, February 29, 1988.

Reasons for this Decision: The foreign instrument provides an unapodized resolution of 0.002 cm^{-1}.

Docket Number: 88–097. Applicant: Kansas State University, Manhattan, KS 66506. Instrument: Fourier Transform Interferometric Spectrophotometer System, Model D A2. Manufacturer: BOMEM, Canada. Intended use: See notice at 53 FR 9958, March 28, 1988.

Reasons for this Decision: The foreign article provides an unapodized resolution of 0.025 cm^{-1}.

Docket Number: 88–098. Applicant: The University of Texas at Dallas, Richardson, TX 75083–0688. Instrument: Mass Spectrometer, Model MAT 261V. Manufacturer: Finningan MAT GmbH, West Germany. Intended use: See notice at 53 FR 9958, March 28, 1988.

Reasons for this Decision: The foreign instrument provides automated multicollection and precise simultaneous analysis of data on small samples of Ph, Nd and Rb/Sn ratios.

Docket Number: 88–100. Applicant: USDA–ARS, Beckley, WV 25801–0867. Instrument: Root Length Scanner. Manufacturer: Hawker de Havilland Victoria Limited Australia. Intended use: See notice at 53 FR 9959, March 28, 1988.

Reasons for this Decision: The foreign instrument is capable of measuring root size diameter from 0.1 to 2 mm on a root sample size of 0 to 155m with an accuracy of ±5% for 15 to 60m sample range.

Comments: none received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–12235 Filed 5–31–88; 8:45 am]

BILLING CODE 3510–DS–M

University of Alaska, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–262R. Applicant: Unversity, Fairbanks, AK 99775–1260. Instruments: JEFRI High Pressure Recombination Apparatus and High Temperature High Pressure Miscibility Apparatus. Manufacturer: D.B. Robinson, Canada. Intended use: See notice at 52 FR 32824, August 31, 1987.

Reasons for this Decision: The foreign article provides a guaranteed operating temperature range to 400°F and constant pressure mode of injection.

Docket Number: 88–024R. Applicant: Virginia Polytechnic Institute and State University, Blacksburg, VA 24061. Instrument: FTIR Interferometer, Model DA3.16. Manufacturers: Bomem, Canada. Intended use: See notice at 52 FR 46639, December 9, 1987.

Reasons for this Decision: The foreign instrument provides an unapodized resolution of 0.002cm^{-1}.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–12236 Filed 5–31–88; 8:45 am]

BILLING CODE 3510–DS–M

University of California—Riverside, et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88–023. Applicant: The Regents of University of California, Riverside, CA 92521. Instruments: Accessories for Mass Spectrometer. Manufacturer: Vacuum Generators Micromass, United Kingdom. Intended use: See notice at 52 FR 46639, December 9, 1987.

Docket Number: 88–029. Applicant: University of Southwestern Louisiana, Lafayette, LA 70504. Instrument: Scanning Attachment for H–600 Electron Microscope, Model H–6010. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 52 FR 46813, December 10, 1987.

Docket Number: 88–080. Applicant: Texas A & M Research Foundation, College Station, TX 77843–3578. Instrument: Multi-Mixing Stopped-Flow Attachment and Anaerobic Kit. Manufacturer; Hi-Tech Scientific Ltd., United Kingdom. Intended use: See notice at 53 FR 4867, February 18, 1988.

Advice Submitted by: The National Institutes of Health, May 3, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–12246 Filed 5–31–88; 8:45 am]

BILLING CODE 3510–DS–M

The University of Chicago, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 87–045R–2. Applicant: The University of Chicago, Chicago, IL 60637. Instrument: CD Spectropolarimeter, Model J–600A. Manufacturer: JASCO, Japan. Intended Use: See notice at 53 FR 1813, January 22, 1988. Reasons for This Decision: The foreign instrument provides: (1) A guaranteed noise figure of 0.3 millidegree RMS at 185 nanometers and (2) a time constant of 0.5 millisecond. Instrument Ordered: September 4, 1986.

Docket No. 88–074. Applicant: The University of Akron, Akron, OH 44325. Instrument: Rotating Anode X-Ray Generator System, Model RU–200H. Manufacturer: Rigaku Corporation, Japan. Intended Use: See notice at 53 FR 4886, February 18, 1988. Reasons for This Decision: The foreign instrument provides up to 12 kW output power and 12 kW of brilliance with a power density of 12kW/mm^2. Instrument Ordered: September 25, 1987.

Comments: None received.

Decision: Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, was being manufactured in the United States at the time the foreign instruments were ordered.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and we know of no instrument or apparatus of equivalent scientific

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value to either of the foreign instruments for the applicant's intended use which was being manufactured in the United States at the time the foreign instruments were order.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12238 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Nevada, Reno, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 87-245. Applicant: University of Nevada, Reno, NV 89557-0047. Instrument: Friction Hoist Test Rig. Manufacturer: Hattam Engineering Ltd., United Kingdom. Denial Without Prejudice to Resubmission: January 22, 1988.

Docket No. 87-266. Applicant: Williams College, Williamstown, MA 01267. Instrument: Rapid Kinetics Accessory, Model SFA-11. Manufacturer: Hi-Tech Scientific Instrument Division, United Kingdom. Denial Without Prejudice to Resubmission: December 9, 1987.

Docket No. 87-266. Applicant: Georgia Institute of Technology, Atlanta, GA 30452. Instrument: GDS Stress Path Triaxial Testing System. Manufacturer: GDS Instruments, Inc., United Kingdom. Denial Without Prejudice to Resubmission: December 7, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12241 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Nevada School of Medicine, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 88-011. Applicant: University of Nevada School of Medicine, Reno, NV 89557. Instrument: Rapid Filtration Device, Model RFS-4. Manufacturer: BioLogic, France. Intended Use: See notice at 52 FR 43219, November 10, 1987. **Reasons for This Decision:** The foreign instrument provides microprocessor-controlled filtration in the millisecond range using small samples of membrane.

Docket No. 88-014. Applicant: Department of Commerce, National Bureau of Standards, Boulder, CO 80303. Instrument: Optical Streak Camera. Manufacturer: Hamamatsu Corp., Japan. Intended Use: See notice at 52 FR 46030, December 9, 1987. **Reasons for This Decision:** The foreign instrument provides temporal resolution of 2.0 picoseconds and S1 photo-emissive surface.

Docket No. 88-040. Applicant: New York University, New York City, NY 10003. Instrument: Stopped Flow Module, Model SFM-3. Manufacturer: BioLogic, France. Intended Use: See notice at 52 FR 48557, December 23, 1987. **Reasons for This Decision:** The foreign instrument is capable of mixing liquids from three different syringes in a broad range of volume ratios and provides a fluorescence dead time of 1.0 ms over a 0.8 mm path length for 13μl (volume).

Docket No. 88-046. Applicant: University of Iowa, Iowa City, IA 52242. Instrument: Stopped-Flow Module, Model SFM-3. Manufacturer: BioLogic, France. Intended Use: See notice at 52 FR 46851, December 28, 1988. **Reasons for This Decision:** The foreign instrument is capable of mixing liquids from three different syringes in a broad range of volume ratios and provides a fluorescence dead time of 1.0 ms over a 0.8 mm path legnth for 13μl (volume).

Docket No. 88-059. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Preparative Quench and Stopped Flow Spectrometer, Model PQ/SF-53. Manufacturer: Hi-Tech Ltd., United Kingdom. Intended Use: See notice at 53 FR 1811, January 22, 1988. **Reasons for This Decision:** The foreign instrument provides stopped flow and rapid channel quench with an aging time from 0.5 ms to hours measured accurately to the ms.

Docket No. 88-091. Applicant: Brown University, Providence, RI 02912. Instrument: Preparative Quencher, Model PQ-53. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: See notice at 52 FR 6028, February 29, 1988. **Reasons for This Decision:** The foreign article is an accessary providing 0.5 ms to hours rapid chemical and freeze quench capabilities and are aging time from 0.5 ms up to hours.

Comments: None received.

Decision: Approved. Not instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advise in its memoranda dated May 3, 1988, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12240 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Nevada-Reno; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 88-166R. Applicant: University of Nevada, Reno, NV 89557. Instrument: Circular Dichroism Spectropolarimeter, Model J-500A with Accessories. Manufacturer: JASCO, Japan. Intended Use: See notice at 51 FR 16729, May 6, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (April 25, 1988).

Reasons: The foreign instrument provides measurement of magnetic circular dichroism spectra.

The National Institutes of Health advises in its memoranda dated August 18, 1987, that (1) the capabilities is pertinent to the applicant's intended purposes and (2) it know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12242 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Texas Christian University; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 88-190. Applicant: Texas Christian University, Department of Physics, Box 32915, Fort Worth, TX 76129. Instrument: Fourier Transform Interferometer, Model DA3.16. Manufacturer: BOMEM, Canada. Intended Use: A wide range of studies in molecular and chemical physics, including ultraviolet, visible, near, mid-, and far infrared spectroscopy of free radicals and transient molecular species; infrared and far infrared spectroscopic characterization of petroleum, coals, tar sands, and oil shales; infrared and far infrared spectroscopy on sol-gel glasses and other amorphous materials; and infrared spectroscopy of collision induced effects on molecules. In addition, the instrument will be used by undergraduate and graduate students in their B.S., M.S., and Ph.D. degree programs in physics courses. Application Received by Commissioner of Customs: April 26, 1988.

Docket No. 88-191. Applicant: University of Massachusetts, Amherst, Department of Polymer Science and Engineering, Graduate Research Center, Amherst, MA 01003. Instrument: NMR Spectrometer, Model MSL-300. Manufacturer: Bruker Instruments, Inc., West Germany. Intended Use: The instrument will be used for pure scientific research in polymer science including studies in the areas: (1) Structure and morphology of the conducting polymer polyphenylene vinylene and (2) specific interactions responsible for miscibility in high performance polymer blends. The instrument will also be used for the education of graduate students in polymer science. Application Received by Commissioner of Customs: April 27, 1988.

Docket No. 88-192. Applicant: Children's Hospital Research Foundation, 700 Children's Drive, Columbus, OH 43205. Instrument: Isotope Ratio Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: The instrument will serve as a focal point in research projects involving stable (non-radioactive) isotopes in infants, children, and adults, studies of carbohydrate absorption (^{13}C-labeled lactose), acetate production and oxidation, and carbon dioxide production in premature infants and in adult volunteers. Application Received by Commissioner of Customs: April 29, 1988.

Docket No. 88-193. Applicant: Tufts University School of Medicine, Department of Anatomy and Cell Biology, 136 Harrison Avenue, Boston, MA 02111. Instrument: Electron Microscope with Accessories, Model EM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: Studies of biological materials of all types. Research will encompass interests as varied as cell culture, in vitro studies, in vivo studies, molecular biology, cell biology, cell pathology, immunology, etc. Application Received by Commissioner of Customs: May 2, 1988.

Docket No. 88-194. Applicant: Utah State University, Purchasing Services, 1330 East 700 North, Logan, UT 84322-8300. Instrument: Rapid Kinetics Accessory and Stopped Flow Attachments for Spectrometer, Model SFA-11. Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom. Intended Use: The instrument will be used for stopped-flow kinetics experiments using a custom-made detection system. Application Received by Commissioner of Customs: May 2, 1988.

Docket No. 88-195. Applicant: University of Nebraska, Department of Physics and Astronomy, Lincoln, NE 68588-0111. Instrument: Slevin Atomic Hydrogen Source. Manufacturer: Leisk Engineering Ltd., United Kingdom. Intended Use: The instrument will be used for studies of ionization of atomic hydrogen by proton impact. Experiments will consist of bombarding a jet of atomic hydrogen with a proton beam from the accelerator and measuring the energy and angular distribution of electrons produced in order to compare measured differential cross sections with those calculated theoretically. In addition, the instrument will be used for education purposes in the course Physics 999, Doctoral Dissertation. Application Received by Commissioner of Customs: May 2, 1988.

Docket No. 88-196 and 88-197. Applicant: The University of Tulsa, 600 South College Ave., Tulsa, OK 74104. Instrument: Scanning Electron Microscope, Model S-2300-2 and Electron Microscope, Model H-7000. Manufacturer: Hitachi, Japan. Intended Use: The instruments will be used for the study of a wide variety of research phenomena in the areas of morphology, immunology, genetics, cellular and molecular biology. In addition, the instrument will be used for educating undergraduate students, graduate students and faculty who have not utilized these techniques in the past in the entire spectrum of electron microscopy including preparation techniques, utilization of the scope, and then proper processing of the photographs obtained from the microscopes. Application Received by Commissioner of Customs: May 2 and 3, 1988.

Docket No. 88-198. Applicant: State University of New York at Buffalo, Department of Chemistry, Buffalo, NY 14214. Instrument: X-Ray Generator. Manufacturer: Rigaku, Japan. Intended Use: The instrument will be used in highly accurate diffraction studies of solid state materials including inorganic and organic superconductors. Application Received by Commissioner of Customs: May 11, 1988.

Docket No. 88-199. Applicant: Duke University Medical Center, Division of Pediatrics, Genetics and Metabolism, Box 3028, Durham, NC 27710. Instrument: Mass Spectrometer, Model MM70S. Manufacturer: VG Analytical,

Ltd., United Kingdom. Intended Use: The instrument is intended to be used for studies of human physiological fluids (urine, blood, cerebrospinal fluid, amniotic fluid), tissues (muscle, liver, heart, kidney), human cell cultures, synthetic biochemicals, natural compounds with biological activity and the products of chemical and biochemical reactions. The following major experiments will be conducted:

1. Qualitative and quantitative analysis of disease-specific acylcarnitines,
2. Qualitative and quantitative analysis of abnormal (disease specific) and normal organic acids,
3. Development of new enzyme assays and
4. Characterization of synthetic and natural organic compounds.

Application Received by Commissioner of Customs: May 11, 1988.

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 88-12243 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Vanderbilt University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm., in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 87-277. Applicant: Vanderbilt University, School of Medicine, Nashville, TN 37232. Instrument: Dental Implant System. Manufacturer: Nobelpharma, Sweden. Intended Use: See notice at 52 FR 32825, August 31, 1987. Reasons for this Decision: The foreign instrument optimizes geometric structure and titanium purity for success in osseointegration. Advice Submitted By: National Institutes of Health, March 15, 1988.

Docket No. 88-006. Applicant: University of Wisconsin-Madison, Madison, WI 53706. Instrument: Photometer. Manufacturer: Sigma Instruments GmbH, West Germany. Intended Use: See notice at 52 FR 43219, November 10, 1987. Reason for This Decision: The foreign instrument provides measurement of picomolar amounts of metabolite in one cell with two wavelengths and as sensitivity in the milliabsorbance unit range (0.001 AU). Advice Submitted by: National Institutes of Health, April 19, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director Statutory Import Programs Staff.

[FR Doc. 88-12244 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Willis-Knighton Medical Center, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 88-005. Applicant: Willis-Knighton Medical Center, Shreveport, LA 71103. Intended Use: See notice at 52 FR 43219, November 10, 1987. Instrument Ordered: March 14, 1985.

Docket No. 88-056. Applicant: Scott and White Memorial Hospital, Temple, TX 76508. Intended Use: See notice at 53 FR 1811, January 22, 1988. Instrument Ordered: February 24, 1987.

Instrument: Extracorporeal Shock Wave Lithotripter (ESWL).

Manufacturer: Dornier System GmbH, West Germany.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

Reasons: There was no domestic manufacturer of lithotripters or of comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to each application that there are no known domestic instruments now available which are equivalent to the Dornier ESWL.

We know of no equivalent instrument that is being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments for the purposes for which the instrument is intended to be used. (See also 52 FR 22512, June 12, 1987.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12245 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Molecular Vaccines Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Molecular Vaccines Inc. having a place of business in New York, NY, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Synthetic Peptides which Induce Cellular Immunity to the AIDS Virus and AIDS Viral Protein," U.S. Patent Application No. 6-947,935. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-12214 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Czechoslovakia

May 25, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Textile Agreement between the Governments of the United States and the Czechoslovak Socialist Republic is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 25, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 25 and July 22, 1988 between the Governments of the United States and the Czechoslovak Socialist Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 435 and 443, produced or manufactured in Czechoslovakia and exported during the twelve-month period which begins on June 1, 1988 and extends through May 31, 1989, in excess of the following levels of restraint:

Category	12-mo restraint limit
435	7,141 dozen.
443	73,452 numbers.

Imports charged to the category limits for the periods June 1, 1987 through May 31, 1988 for Category 435 and June 1, 1987 through December 31, 1987 and January 1, 1988 through May 31, 1988 for Category 443 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by the previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Czechoslovak Socialist Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12200 Filed 5-31-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Use of Commercial Components in Military Equipment; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Use of Commercial Components in Military Equipment will meet in open session on June 16 at TRW, Fairfax, Virginia and on June 17, 1988 at the Defense Logistics Agency, Building 3, Commander's Conference Room, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will receive briefings from the private sector regarding their views.

Persons interested in giving a presentation should call Mr. Rich Mirsky, (703) 756-2340, to register their intention to present by June 3, 1988. Presenters should be prepared to leave a copy of their remarks and any visual aids, backup material, etc. with Mr. Mirsky at the time of the presentation. One copy is sufficient, but providing thirty copies will expedite getting material into the hands of the DSB Task Force members. Presentation should be limited to thirty minutes. An additional fifteen minutes will be allocated for questions and answers after the presentation.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1988.

[FR Doc. 88-12299 Filed 5-32-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13 and 14 June 1988.

Time of Meeting: 0830-1600 hours.

Place: The Society of American Engineers (S.A.M.E.), 607 Prince Street, Alexandria, VA.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Belvoir Research, Development and Engineering Center effectiveness review will meet in a working session to assimilate information from panel members, discuss conclusions, and develop a draft report. Discussions will be held with a representative from the U.S. Army Laboratory Command concerning relationship with the Belvoir Research, Development and Engineering Center. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board

Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-12302 Filed 5-31-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for Enlarging the Inner Channel At Canaveral Harbor; Brevard County, FL

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a Draft Environmental Impact State (DEIS).

SUMMARY: The Jacksonville District U.S. Army Corps of Engineers intends to prepare an Environmental Impact Statement on the feasibility of enlarging a portion of the entrance channel at Canaveral Harbor, Brevard County, Florida. The existing channel has a controlling depth of 35 feet m.l.w. In order for the port to accommodate larger ships with a deeper draft, the channels and the turning basin would need to be deepened.

The following alternatives are being considered:

a. No action.

b. Deepening the channel and turning basin.

Scoping has been accomplished by letter with those individuals and organizations that have expressed interest or are known to have an interest and by the solicitation of comments from affected Federal, State, and local agencies.

Consultation will be accomplished with the U.S. Fish and Wildlife Service and the National Marine Fisheries in accordance with Section 7 of the Endangered Species Act as well as the State Historic Preservation Officer in accordance with the Archeological and Historic Preservation Act. Discharges of materials into waters of the United States will be specified by application of the criteria of section 404(b) of the Federal Water Pollution Control Act or Section 103 of the Marine Protection, Research, and Sanctuaries Act.

The DEIS will be made available to the public upon completion.

Questions concerning the DEIS can be answered by: Mr. Rea Boothby, CESAJ-PD-ES, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232-0019, Telephone: (904) 791-3453.

Robert L. Herndon,

Colonel, Corps of Engineers, District Engineer.

Dated: May 19, 1988.

[FR Doc. 88-12228 Filed 5-31-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Superconductivity will meet on June 22-23, 1988. The meeting will be held at the Center for Naval Analyses, Room 669, 4401 Ford Avenue, Alexandria, VA. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on June 22; and commence at 8:00 a.m. and terminate at 4:00 p.m. on June 23, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on benefits, barriers and strategies related to superconducting materials for naval applications. The agenda will include discussions on the naval consortium for superconductivity, propulsion, IR and magnetometer/gradeometer systems and materials research. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4879.

Date: May 26, 1988

J.M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve Alternate Federal Register Liaison Officer.

[FR Doc. 88-12274 Filed 5-31-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-27-NG]

CU Energy Marketing Inc.; Application To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 5, 1988, of an application filed by CU Energy Marketing Inc. (CUEM) requesting blanket authorization to export up to 50 Bcf of natural gas to Canada on a short-term and spot basis over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 1, 1988.

FOR FURTHER INFORMATION:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: CUEM, a Delaware corporation with its principal office in Calgary, Alberta, Canada, is a wholly-owned subsidiary of ATCOR Ltd. which, in turn, is a wholly-owned subsidiary of CU Enterprises Inc. ATCOR Ltd. is a direct marketer of natural gas to utilities and industrial consumers in Canada. CUEM proposes to resell the gas on its own behalf to Canadian purchasers or to act as an agent on behalf of these purchases. The gas would be supplied from a variety of domestic sources.

The terms of each arrangement would be negotiated in response to market conditions. CUEM intends to use existing transmission systems and would not require the construction of new or separate facilities in order to export the natural gas. CUEM also intends to comply with ERA's reporting requirements.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate by the Administrator, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that current excess gas supplies evidence a lack of need for this gas to serve regional and national markets. The applicant further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this export it may permit the export of the gas at any existing point of exit and through any existing transmission system.

CUEM requests that an authorization be granted on an expedited basis. An ERA decision on CUEM's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be take on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-078, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., July 1, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CUEM's application is available for inspection and copying in the Natural Gas Division Docket Room GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 24, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-12175 Filed 5-31-88; 8:45 am]

BILLING CODE 6455-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-283-000 et al.]

Gulf Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Gulf Power Company

[Docket No. ER88-283-000]

May 23, 1988.

Take notice that on May 18, 1988, Gulf Power Company tendered for filing a response to the Commission staff's April 18, 1988 deficiency letter regarding Gulf Power's March 7, 1988 filing of a transmission service agreement between Gulf Power and Bay Resource Management, Inc. (BRMI). The response includes an interconnection agreement between Gulf Power and BRMI referred to in the transmission service agreement, as well as certain additional information and explanation of the transmission service agreement.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Empire Energy-HRD Cogeneration, Inc.

[Docket No. QF88-378-000]

May 23, 1988.

On May 10, 1988, Empire Energy-HRD Cogeneration, Inc. (Applicant), of 2546 Vestal Parkway East, P.O. Box 797, Vestal, New York, 13851-0797, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the site of the existing Harrison Radiator Division of General Motors Corporation in the Town of Lockport, New York. The facility will consist of three combustion turbine generators, three heat recovery steam generators (HRSG's) and one condensing steam turbine generator. The thermal output of the facility, in the form of steam, will be used by the Harrison Radiator Division for process use and space heating. The primary energy source will be natural gas. The electric power production capacity of the facility will be 155.8 MW. The facility is expected to be operational in the third quarter of 1990.

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Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Catalyst Old River Limited Partnership

[Docket No. ES88-37-000]

May 25, 1988.

Take notice that on May 12, 1988, Catalyst Old River Limited Partnership filed with the Commission an application to undertake construction financing for the Old River Hydroelectric Project. The construction loan in the amount of not more than $375 million will be applied solely to finance the construction of the hydroelectic project previously licensed by the Federal Energy Regulatory Commission as Project No. 2854. The construction loan will have a maturity date of December 31, 1990.

Comment date: June 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. The Cheshire Medical Center

[Docket No. QF88-377-000]

May 25, 1988.

On May 10, 1988, The Cheshire Medical Center (Applicant), of 580 Court Street, Keene, New Hampshire 03431, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Keene, New Hampshire and will consist of a reciprocating engine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used for domestic hot water production, space heating, laundry processing and sterlization. The net electric power production capacity of the facility will be 620 kw. The primary source of energy will be No. 2 fuel oil. The facility is expected to begin operation in December, 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12257 Filed 5-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-28-002 et al.]

Texas Eastern Transmission Company et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP87-28-002, et al.]

May 23, 1988.

Take notice that on May 18, 1988, Texas Eastern Transmission Corporation (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87-28-002 an amendment to its original application filed on October 16, 1986 in Docket No. CP87-28-000, pursuant to section 7(b) and 7(c) of the Natural Gas Act, to reflect a revision in the cost of facilities to be constructed and operated and rates for which authorization is requested, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that, in the original application, Applicant sought authorization to render a firm storage delivery and transportation service to Consolidated Edison Company of New York, Inc. and to construct and operate certain pipeline facilities in Pennsylvania which would be required to render such service. Applicant further states that it had intended to commence construction activities in order to render the firm delivery service commencing with the 1987-88 winter season. Applicant submits that such service is now proposed to commence November 1, 1988.

Applicant indicated that the total capital cost of the pipeline facilities which Applicant originally proposed was estimated at $13,436,000.

Applicant requests that the original application be amended to reflect minor changes in the proposed facilities cost and a revision to the rates previously proposed. Applicant requests that the original application be amended to reflect a revised estimated total capital cost of $14, 211,000. Applicant indicates that the increase of $773,000 in the estimated facilities cost represent a minor change of approximately 5.8 percent. The revised estimated total capital cost is shown in revised Exhibit K to the amended application. Applicant states that it is not proposing any changes in the facilities for which authorization has been requested but is merely seeking to supplement the original filing to reflect increased facilities cost estimates.

Applicant requests that the original application be amended to reflect the changes in the rates Applicant would charge for the proposed services. Applicant estimates that the revised firm demand charge would be $6.37 per dt which represents a reduction of $1.67 per dt from the estimated firm demand charge in the original application. Applicant states that the revised rates are attached in Exhibit P of the amended application.

Applicant states that, in addition to the proposed revision to facility, the cost of service and rates proposed reflect:

1. An updated cost of service for existing SS-II facilities from Applicant's recent rate case filing in Docket No. RP88-67.
2. Income taxes in accordance with the Tax Reform Act of 1986.
3. Depreciation rates of 2.9 percent for transmission plant and 4.4 percent for general plant.
4. Rate base investment using beginning balances for gas plant and accumulated deferred income taxes.

Comment date: June 6, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-389-000]

May 25, 1988.

Take notice that on May 12, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-389-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of LTV Steel Company, Inc. (LTV), under the authorization issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for LTV, an industrial end-user, pursuant to a gas transportation agreement dated February 5, 1988, as amended February 10, 1988. The term of the transportation agreement is from the date of execution and would remain in full force and effect for a term of one year and month to month thereafter and may be terminated by either party upon 30 days written notice. Tennessee proposes to transport on a peak day 21,000 dekatherm; on an average day 470 dekatherm; and on an annual basis 171,550 dekatherm of natural gas for LTV. Tennessee proposes to receive the subject gas from various existing points of receipt on its system in Texas, Louisiana, Mississippi, Alabama, New York, Kentucky, Pennsylvania, and Offshore Louisiana. Tennessee would then transport and redeliver the subject gas to points of delivery in West Virginia, New York, Ohio, Pennsylvania, Massachusetts, and Louisiana. The location of the ultimate delivery point of the gas is Ohio.

Tennessee states that it would perform such transportation for LTV pursuant to its Rate Schedule IT. Tennessee would charge the legally effective GRI fund unit where applicable. It is stated that LTV would compensate Tennessee for fuel and losses associated with the transportation service in accordance with the IT Rate Schedule.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.233(a)(1) of the Commission's regulations. Tennessee commenced such self-implementing service on April 13, 1988, as reported in Docket No. ST88-3513-000.

Comment date: July 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No CP88-390-000]

May 25, 1988.

Take notice that on May 12, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-390-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Intercon Gas, Inc. Intercon). Tennessee explains that service commenced April 9, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3521. Tennessee further explains that the peak day quantity would be 500,000 dekatherms, the average daily quantity would be 5,955 dekatherms, and that the annual quantity would be 2,173,575 dekatherms. Tennessee explains that it would receive natural gas for Intercon's account in the states of Louisiana, Kentucky, Texas, Mississippi, West Virginia Alabama, Tennessee and Offshore Louisiana. Tennessee states that the points of delivery are located in the states of Alabama, Tennessee, Mississippi, and West Virginia. Tennessee further explains that locations of the ultimate delivery point of the gas are in the states of Indiana, Iowa, Ohio, Virginia, Illinois, Kentucky, Michigan, Wisconsin, Tennessee, Pennsylvania, Massachusetts, Maryland, West Virginia, New Hampshire, Texas, Arkansas, Louisiana, South Carolina, Georgia, Delaware, Connecticut, Rhode Island, New York, Washington, DC and New Jersey.

Comment date: July 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88-395-000]

May 25, 1988.

Take notice that on May 16, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252 filed in Docket No. CP88-395-000 a request pursuant to § 284.223 the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Tejas Power Corporation (Tejas). Tennessee explains that service commenced April 6, 1988 under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3517. Tennessee further explains that the peak day quantity would be 75,000 dekatherms, the average daily quantity would be 9,500 dekatherms, and that the annual quantity would be 3,467,500 dekatherms. Tennessee explains that it would receive natural gas for Tejas' account in the states of Louisiana, Texas, and Offshore Texas and Louisiana. Tennessee states that the points of delivery are located in the states of Alabama, Tennessee, Mississippi, and West Virginia. Tennessee further explains that locations of the ultimate delivery point of the gas are in the states of Ohio, Virginia, Tennessee, Pennsylvania, Massachusetts, Maryland, West Virginia, Louisiana, Georgia, New York, Alabama, Mississippi, New Jersey, and Connecticut.

Comment date: July 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12258 Filed 5-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9534-001 et al.]

Big Sky Limited Partnership, et al.; Surrender of Preliminary Permits and Exemptions

May 25, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Big Sky Limited Partnership

[Project No. 9534-001]

Take notice that Big Sky Limited Partnership, Permittee for the Willow Creek Project No. 9534, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9534 was issued April 14, 1988, and would have expired March 31, 1989. The project would have been located on Willow Creek in Madison County, Montana.

The Permittee filed the request on April 28, 1988.

2. Big Sky Limited Partnership; Montana

[Project No. 9537-001]

Take notice that Big Sky Limited Partnership, Permittee for the Ruby River Project No. 9537, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9537 was issued April 9, 1988, and would have expired March 31, 1989. The project would have been located on the Ruby River in Madison County, Montana.

The Permittee filed the request on April 28, 1988.

3. Tongue River Limited Partnership; Montana

[Project No. 9536-002]

Take notice that Tongue River Limited Partnership, Permittee for the Tongue River Project No. 9536, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9536 was issued April 1, 1988, and would have expired March 31, 1989. The project would have been located on the Tongue River in Big Horn County, Montana.

The Permittee filed the request on April 28, 1988.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12259 Filed 5-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-595-001]

Diamond Shamrock Offshore Partners Limited Partnership; Application for Extension of a Blanket Limited-Term Certificate With Pregranted Abandonment

May 26, 1988.

Take notice that on May 11, 1988, Diamond Shamrock Offshore Partners Limited Partnership (Applicant) of 717 North Harwood Street, Dallas, Texas 75201, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and Parts 154 and 157 of the Commission's Regulations requesting extension of its blanket limited-term certificate with pregranted abandonment which expires August 4, 1988, for an unlimited term. Applicant's certificate authorizes the sale of previously uncommitted gas from Block 700, Matagorda Island Area, Offshore Texas. The application is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 13, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12261 Filed 5-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-174-000]

Dynasty Gas Marketing, Inc., Complainant; v. Northern Border Pipeline Co., Respondent; Complaint

May 25, 1988.

Take notice that on May 16, 1988, Dynasty Marketing Inc. (Dynasty) of 4800 Sugar Blvd., Suite 290, Stafford, Texas 77477, filed a complaint [1] in the above-referenced proceeding which challenges Northern Border Pipeline Company's (Northern Border) creditworthiness requirements for shippers who request transportation under Rate Schedule T-1 for firm service and Rate Schedule IT-1 for interruptible service, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

On April 30, 1987, the Commission authorized Northern Border to provide open-access transportation under a blanket certificate of public convenience and necessity pursuant to section 7(c) of Natural Gas Act and section 284.221 of the regulations.[2] According to Dynasty, Northern Border on November 11, 1987 began transporting gas under the blanket certificate and receiving transportation requests. Dynasty contends that, if Northern Border received transportation requests during a two-week open season which exceeded its capacity, Northern Border would reduce the transportation requests on a *pro-rata* basis. Dynasty asserts that Northern Border in January of this year actually received transportation nominations during the open season from November 2, 1987 to November 16, 1987 for approximately 16 times its maximum capacity.

Dynasty states that, prior to the commencement of transportation, Northern Border requires all shippers to advance credit in an amount equal to the nominations reflected in the transportation requests, even though the requests may be reduced on a *pro-rata* basis due to capacity constraints. Dynasty contends that this credit requirement is contrary to the intent of Order Nos. 436 and 500 because it is grossly excessive, unduly favors large shippers (who are better able to absorb the excessive credit requirement), and discourages small shippers (like Dynasty) from competing with large shippers for the limited capacity. Dynasty therefore requests that Northern Border be prohibited from requiring shippers to advance an amount of credit which exceeds three times the monetary value of the actual volumes transported and that all open-access transportation on the Northern Border system be suspended until Dynasty's creditworthiness concerns are resolved.

Any person desiring to be heard or to make protest with reference to said complaint should on or before June 23, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to proceeding or to participate as a party in an hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12263 Filed 5-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-388-000]

Fina Oil and Chemical Co.; Application for Conditional Certificate

May 26, 1988

Take notice that on March 29, 1988, Fina Oil and Chemical Company (Fina) of P.O. Box 2159, Dallas, Texas 75221, filed an application pursuant to section 7 of the Natural Gas Act for a conditional certificate of public convenience and necessity to authorize the sale of natural gas to El Paso Natural Gas Company (El Paso) from certain wells in the San Juan Basin of New Mexico. Fina requests that a conditional permanent certificate be issued and held in abeyance until such time as Fina notifies the Commission that deliveries will commence under the permanent certificate on a well-by-well basis. Fina states that this filing is necessary because El Paso has asserted a right to reassign the working interests in these certain wells and is seeking to establish that right as a result of litigation initiated by El Paso against Fina. Fina goes on to say that El Paso has filed with the Commission a Petition for Issuance of Commission Order, Docket No. CI88-331-000, and has asserted therein that the reassignment of working interest to Fina is currently effective. Fina's application is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 13, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Fina to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12262 Filed 5-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST88-2549-000 et al.]

Northern Natural Gas Co. et al.; Self-Implementing Transactions

May 25, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LSA)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

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[1] The pleading was originally styled as a "motion for declaratory relief under section 5 of the Natural Gas Act." However, we shall treat the pleading as a complaint filed pursuant to Rule 206, 18 CFR 385.206. That rule permits any person to file a "complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction."

[2] Northern Border Pipeline Company, 39 FERC ¶61,104 (1987), *reh'g denied*, 41 FERC ¶61,275 (1987).

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

BEST COPY AVAILABLE

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2549	Northern Natural Gas Co	Intercon Gas, Inc	03-01-88	G-S		
ST88-2550	do	Salmon Resources, Ltd	03-01-88	G-S		
ST88-2551	Natural Gas Pipeline Co. of America	Interstate Power Co	03-01-88	G		
ST88-2552	do	Northern Indiana Public Service Co	03-01-88	B		
ST88-2553	Wintershall Pipeline Corp., et al	Southeast Indiana Gas Co., et al	03-01-88	C	07-29-88	10.77
ST88-2555	Louisiana Interstate Gas Corp		03-01-88	C	07-29-88	27.44/32-44
ST88-2556	Tennessee Gas Pipeline Co	Riverside Pipeline Co	03-01-88	B		
ST88-2557	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	03-01-88	B		
ST88-2558	do	do	03-01-88	B		
ST88-2559	do	do	03-01-88	B		
ST88-2560	do	do	03-01-88	B		
ST88-2561	do	do	03-01-88	B		
ST88-2562	Southern Natural Gas Co	City of Dora	03-01-88	B		
ST88-2563	do	City of Douglas	03-01-88	B		
ST88-2564	do	SNG Intrastate Pipeline, Inc	03-01-88	B		
ST88-2565	do	City of Cordele	03-01-88	B		
ST88-2566	South Georgia Natural Gas Co	Woodward Pipeline, Inc	03-01-88	B		
ST88-2567	do	City of Cordele	03-01-88	B		
ST88-2568	do	City of Douglas	03-01-88	B		
ST88-2569	Southern Natural Gas Co	Woodward Pipeline, Inc	03-01-88	B		
ST88-2570	do	Atlanta Gas, Light Co	03-01-88	B		
ST88-2571	do	City of Wrens	03-01-88	B		
ST88-2572	do	Atlanta Gas Light Co	03-01-88	B		
ST88-2573	do	South Carolina Pipeline Corp	03-01-88	B		
ST88-2574	do	SNG Intrastate Pipeline, Inc	03-01-88	B		
ST88-2575	do	Supenn Pipeline Co	03-01-88	B		
ST88-2576	do	SNG Intrastate Pipeline, Inc	03-01-88	B		
ST88-2577	do	Atlanta Gas Light Co	03-01-88	B		
ST88-2578	do	South Carolina Pipeline Corp	03-01-88	B		
ST88-2579	do	Atlanta Gas Light Co	03-01-88	B		
ST88-2580	do	Alabama Gas Corp	03-01-88	B		
ST88-2581	do	SNG Intrastate Pipeline, Inc	03-01-88	B		
ST88-2582	do	Eastex Gas Transmission Co	03-01-88	B		
ST88-2583	ANR Pipeline Co	Consumers Power Co	03-01-88	B		
ST88-2584	do	Cokinos Natural Gas Co	03-01-88	B		
ST88-2585	do	Consumers Power Co	03-01-88	B		
ST88-2586	do	CSX Intrastate Gas Co	03-01-88	B		
ST88-2587	do	Llano, Inc	03-01-88	B		
ST88-2588	Southern Natural Gas Co	Sabine-Desoto Pipeline Co., Inc	03-01-88	B		
ST88-2589	Seagull Shoreline System	Northern Natural Gas Co	03-02-88	C	07-30-88	08.50
ST88-2590	Trunkline Gas Co	Consumers Power Co	03-02-88	B		
ST88-2591	do	do	03-02-88	B		
ST88-2592	do	do	03-02-88	B		
ST88-2593	do	do	03-02-88	B		
ST88-2594	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	03-02-88	B		
ST88-2595	do	Northern Indiana Public Service Co	03-02-88	B		
ST88-2596	do	do	03-02-88	B		
ST88-2597	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	03-01-88	C		
ST88-2598	do	Natural Gas Pipeline Co. of America	03-01-88	C		
ST88-2599	do	Transwestern Pipeline Co	03-01-88	C		
ST88-2600	do	Natural Gas Pipeline Co. of America	03-01-88	C		
ST88-2601	do	Arkla Energy Resources	03-01-88	C	07-29-88	35.00
ST88-2602	Northern Natural Gas Co	Wisconsin Power and Light Co	03-02-88	B		
ST88-2603	do	Phoenix & Chemical Co	03-02-88	G-S		
ST88-2604	do	Natgas U.S. Inc	03-02-88	G-S		
ST88-2605	do	Osage Municipal Utilities	03-02-88	B		
ST88-2606	Transcontinental Gas Pipe Line Corp	City of Union	03-02-88	B		
ST88-2607	do	South Carolina Pipeline Corp	03-02-88	B		
ST88-2608	do	City of Monroe	03-02-88	B		
ST88-2609	do	City of Madison	03-02-88	B		
ST88-2610	do	Philadelphia Electric Co	03-02-88	B		
ST88-2611	do	City of Social Circle	03-02-88	B		
ST88-2612	do	Tri-County Natural Gas Co	03-02-88	B		
ST88-2613	do	City of Wadley	03-02-88	B		
ST88-2614	do	City of Linden	03-02-88	B		
ST88-2615	do	City of Rockford	03-02-88	B		
ST88-2616	do	City of Roanoke	03-02-88	B		
ST88-2617	do	City of Royston	03-02-88	B		
ST88-2618	do	City of Sugar Hill	03-02-88	B		
ST88-2619	do	Southwestern Virginia Gas Co	03-02-88	B		
ST88-2620	do	City of Toccoa	03-02-88	B		
ST88-2621	do	UGI Corp	03-02-88	B		
ST88-2622	do	United Cities Gas Co	03-02-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2623	do	Washington Gas Light Co	03-02-88	B		
ST88-2624	do	City of Wedowee	03-02-88	B		
ST88-2625	do	Commission of Public Works, Lauren	03-02-88	B		
ST88-2626	do	Maplesville Water & Gas Board	03-02-88	B		
ST88-2627	do	City of Thomaston	03-02-88	B		
ST88-2628	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	03-03-88	B		
ST88-2629	Cavallo Pipeline Co	Amoco Gas Co	03-03-88	C		
ST88-2630	Northern Natural Gas Co	TPC Pipeline Co	03-03-88	B		
ST88-2631	Texas Gas Transmission Corp	Central Illinois Public Service Co	03-03-88	B		
ST88-2632	do	Victoria Gas Corp	03-03-88	B		
ST88-2633	ANR Pipeline Co	Wisconsin Natural Gas Co	03-03-88	B		
ST88-2634	do	Wisconsin Gas Co	03-03-88	B		
ST88-2635	do	Wisconsin Natural Gas Co	03-03-88	B		
ST88-2636	do	Michigan Consolidated Gas Co	03-03-88	B		
ST88-2637	do	Excel Intrastate Pipeline Co	03-03-88	B		
ST88-2638	do	do	03-03-88	B		
ST88-2639	Transcontinental Gas Pipe Line Corp	City of Commerce	03-03-88	B		
ST88-2640	do	City of Covington	03-03-88	B		
ST88-2641	do	City of Bowmen	03-03-88	B		
ST88-2642	do	City of Butler	03-03-88	B		
ST88-2643	do	City of Kings Mountain	03-03-88	B		
ST88-2644	do	Blacksburg Natural Gas System	03-03-88	B		
ST88-2645	do	City of Winder	03-03-88	B		
ST88-2646	do	City of Hartwell	03-03-88	B		
ST88-2647	do	Frederick Gas Co	03-03-88	B		
ST88-2648	do	East Central Alabama Gas District	03-03-88	B		
ST88-2649	do	City of Elberton	03-03-88	B		
ST88-2650	do	City of Clanton	03-03-88	B		
ST88-2651	do	City of Bessemer City	03-03-88	B		
ST88-2652	do	Delhi Gas Pipeline Corp	03-03-88	B		
ST88-2653	do	Public Service Electric and Gas Co	03-03-88	B		
ST88-2654	do	Channel Industries Gas Co	03-03-88	B		
ST88-2655	do	City of Liberty	03-03-88	B		
ST88-2656	do	City of Alexander City	03-03-88	B		
ST88-2657	do	City of Lawrenceville	03-03-88	B		
ST88-2658	do	Comm. of Public Works, City of Greer	03-03-88	B		
ST88-2659	do	City of Fountain Inn	03-03-88	B		
ST88-2660	do	City of Buford	03-03-88	B		
ST88-2661	Natural Gas Pipeline Co. of America	Washington Gas Light Co., et al	03-04-88	B		
ST88-2662	do	Winnie Pipeline Co	03-04-88	B		
ST88-2663	do	Gulf South Pipeline Co	03-04-88	B		
ST88-2664	Crosstex Pipeline Co	United Gas Pipeline Co	03-04-88	C		
ST88-2665	do	Gulf States Gas Corp	03-04-88	C		
ST88-2666	do	United Gas Pipeline Co	03-04-88	C		
ST88-2667	Colorado Interstate Gas Co	Southern California Gas Co	03-04-88	B		
ST88-2669	El Paso Natural Gas Co	Phillips Natural Gas Co	03-04-88	B		
ST88-2670	do	Southern California Gas Co	03-04-88	B		
ST88-2671	do	do	03-04-88	B		
ST88-2672	United Gas Pipe Line Co	Associated Intrastate Pipeline Co	03-04-88	B		
ST88-2673	Trunkline Gas Co	Consumers Power Co	03-04-88	B		
ST88-2674	do	do	03-04-88	B		
ST88-2675	do	do	03-04-88	B		
ST88-2676	do	do	03-04-88	B		
ST88-2677	do	do	03-04-88	B		
ST88-2678	do	do	03-04-88	B		
ST88-2679	do	do	03-04-88	B		
ST88-2680	do	do	03-04-88	B		
ST88-2681	do	do	03-04-88	B		
ST88-2682	Algonquin Gas Transmission Co	North Attleboro Gas Co	03-07-88	B		
ST88-2683	do	Southern Connecticut Gas Co	03-07-88	B		
ST88-2684	do	do	03-07-88	B		
ST88-2685	Transcontinental Gas Pipe Line Corp	Wisconsin Southern Gas Co., et al	03-07-88	B		
ST88-2686	Columbia Gulf Transmission Co	Columbia Gas of Ohio, Inc., et al	03-07-88	B		
ST88-2687	do	Mobile Gas Service Corp., et al	03-07-88	B		
ST88-2688	Channel Industries Gas Co	Northern Natural Gas Co	03-07-88	C		
ST88-2689	Houston Pipe Line Co	Tennessee Gas Pipeline Co	03-07-88	C		
ST88-2690	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	03-07-88	C		
ST88-2691	Oasis Pipe Line Co	El Paso Natural Gas Co	03-07-88	C		
ST88-2692	do	Tennessee Gas Pipeline Co	03-07-88	C		
ST88-2693	do	El Paso Natural Gas Co	03-07-88	C		
ST88-2694	do	Northern Natural Gas Co	03-07-88	C		
ST88-2695	do	Cabot Gas Supply Corp	03-07-88	C		
ST88-2696	do	Northern Natural Gas Co	03-07-88	C		
ST88-2697	do	Southern California Gas Co	03-07-88	C		
ST88-2698	do	El Paso Natural Gas Co	03-07-88	C		
ST88-2699	do	do	03-07-88	C		
ST88-2700	do	Pacific Gas and Electric Co	03-07-88	C		
ST88-2701	do	Cabot Gas Supply Corp	03-07-88	C		
ST88-2702	do	San Diego Gas & Electric Co	03-07-88	C		
ST88-2703	Houston Pipe Line Co	Pacific Gas and Electric Co	03-07-88	C		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2704	do	Cabot Gas Supply Corp	03-07-88	C		
ST88-2705	do	San Diego Gas & Electric Co	03-07-88	C		
ST88-2706	do	El Paso Natural Gas Co	03-07-88	C		
ST88-2707	do	Natural Gas Pipeline Co. of America	03-07-88	C		
ST88-2708	do	Trunkline Gas Co	03-07-88	C		
ST88-2709	do	Northern Natural Gas Co	03-07-88	C		
ST88-2710	do	Texas Eastern Transmission Corp	03-07-88	C		
ST88-2711	Trunkline Gas Co	Consumer Powers Co	03-08-88	B		
ST88-2712	do	do	03-08-88	B		
ST88-2713	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	03-08-88	B		
ST88-2714	do	Union Electric Co	03-08-88	B		
ST88-2715	Tennessee Gas Pipeline Co	Polaris Corp	03-08-88	B		
ST88-2716	do	Delmarva Power & Light Co., et al	03-08-88	B		
ST88-2717	Natural Gas Pipeline Co. of America	Pacific Gas & Electric Co., et al	03-08-88	B		
ST88-2718	Seagull Shoreline System	Northern Natural Gas Co	03-08-88	C	08-05-88	08.50
ST88-2719	Valero Interstate Transmission Co	Valero Transmission, L.P	03-09-88	B		
ST88-2720	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	03-09-88	B		
ST88-2721	do	Washington Gas Light Co	03-09-88	B		
ST88-2722	do	Public Service Electric and Gas Co	03-09-88	B		
ST88-2723	do	Consolidated Edison Co. of NY, Inc	03-09-88	B		
ST88-2724	do	North Carolina Natural Gas Corp	03-09-88	B		
ST88-2725	do	Brooklyn Union Gas Co	03-09-88	B		
ST88-2726	do	UGI Corp	03-09-88	B		
ST88-2727	do	Lynchburg Gas Co	03-09-88	B		
ST88-2728	do	Long Island Lighting Co	03-09-88	B		
ST88-2729	do	Public Service Co. of N. Carolina	03-09-88	B		
ST88-2730	Mountain Fuel Resources, Inc	Northwest Natural Gas Co	03-09-88	B		
ST88-2731	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	03-09-88	B		
ST88-2732	do	do	03-09-88	B		
ST88-2733	do	do	03-09-88	B		
ST88-2734	do	do	03-09-88	B		
ST88-2735	do	do	03-09-88	B		
ST88-2736	do	do	03-09-88	B		
ST88-2737	do	do	03-09-88	B		
ST88-2738	do	Eastex Gas Transmission Co	03-09-88	B		
ST88-2739	do	Bowling Green Gas Co	03-09-88	B		
ST88-2740	do	Central Illinois Light Co	03-09-88	B		
ST88-2741	do	do	03-09-88	B		
ST88-2742	do	do	03-09-88	B		
ST88-2743	do	do	03-09-88	B		
ST88-2744	do	do	03-09-88	B		
ST88-2745	Tennessee Gas Pipeline Co	Eastern Shore Natural Gas Co., et al	03-10-88	B/G		
ST88-2746	Valero Transmission L.P	Trunkline Gas Co	03-10-88	C		
ST88-2747	do	Tennessee Gas Pipeline Co	03-10-88	C		
ST88-2748	do	do	03-10-88	C		
ST88-2749	do	Transwestern Pipeline Co	03-10-88	C		
ST88-2750	Cabot Pipeline Corp	El Paso Natural Gas Co	03-11-88	C	08-08-88	32.00
ST88-2751	Northern Natural Gas Co	NGC Intrastate Pipeline Co	03-11-88	B		
ST88-2752	do	Southern California Gas Co	03-11-88	B		
ST88-2753	do	Bridgeline Gas Distribution Co	03-11-88	B		
ST88-2754	do	Pogo Producing Co	03-11-88	G-S		
ST88-2755	El Paso Natural Gas Co	Cabot Pipeline Corp	03-11-88	B		
ST88-2756	Transcontinental Gas Pipe Line Corp	Cranberry Pipeline Corp	03-11-88	B		
ST88-2757	do	do	03-11-88	B		
ST88-2758	do	do	03-11-88	B		
ST88-2759	ANR Pipeline Co	Bridgeline Gas Distribution Co	03-10-88	B		
ST88-2760	United Gas Pipe Line Co	Entex, Inc	03-11-88	B		
ST88-2761	Panhandle Eastern Pipe Line Co	Macon Municipal Utilities	03-11-88	B		
ST88-2762	do	Columbia Gas of Ohio, et al	03-11-88	B		
ST88-2763	Mountain Fuel Resources, Inc	Public Service Co. of Colorado	03-14-88	B		
ST88-2764	ANR Pipeline Co	Memphis Light, Gas and Water Division	03-10-88	B		
ST88-2765	do	Louisville Gas & Electric Co	03-14-88	B		
ST88-2766	Trunkline Gas Co	Columbia Gas of Ky, et al	03-14-88	B		
ST88-2767	do	Exxon Co., U.S.A	03-14-88	G-S		
ST88-2768	do	Panhandle Eastern Pipe Line Co	03-14-88	G		
ST88-2769	do	Consumers Power Co	03-14-88	B		
ST88-2770	do	do	03-14-88	B		
ST88-2771	Colorado Interstate Gas Co	Kansas Gas Supply Corp	03-14-88	B		
ST88-2772	ANR Pipeline Co	Coastal States Gas Transmission Co	03-14-88	B		
ST88-2773	do	Sun Gas Transmission Co., Inc	03-14-88	B		
ST88-2774	do	Peoples Natural Gas Co	03-14-88	B		
ST88-2775	do	Cincinnati Gas and Electric Co	03-14-88	B		
ST88-2776	Northwest Pipeline Corp	Intermountain Gas Co	03-14-88	B		
ST88-2777	do	Washington Water Power Co	03-14-88	B		
ST88-2778	do	Northwest Natural Gas Co	03-14-88	G		
ST88-2779	do	Washington Natural Gas Co	03-14-88	B		
ST88-2780	do	Intermountain Gas Co	03-14-88	B		
ST88-2781	do	Northwest Natural Gas Co	03-14-88	B		
ST88-2782	do	Southwest Gas Corp	03-14-88	B		
ST88-2783	do	Llano, Inc	03-14-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2784	do	Intermountain Gas Co	03-14-88	B		
ST88-2785	Tennessee Gas Pipeline Co	Bay State Gas Co	03-15-88	B		
ST88-2786	do	City of Richmond, et al	03-15-88	B/G		
ST88-2787	Natural Gas Pipeline Co. of America	Transamerican Gas Transmission Corp	03-15-88	B		
ST88-2788	do	Public Service Electric & Gas, et al	03-15-88	B		
ST88-2789	do	Iowa Southern Utilities Co	03-15-88	B		
ST88-2790	do	Dean Foods Co	03-15-88	G-S		
ST88-2791	do	Illinois Power Co	03-15-88	G-S		
ST88-2792	Northern Border Pipeline Co	Mobil Gas Co., Inc	03-15-88	G-S		
ST88-2793	Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co	03-15-88	D		
ST88-2794	Columbia Gulf Transmission Co	Natural Gas Pipeline Co. of America	03-15-88	G		
ST88-2795	South Georgia Natural Gas Co	City of Donaldsonville	03-15-88	B		
ST88-2796	do	City of Montezuma	03-15-88	B		
ST88-2797	do	City of Nashville	03-15-88	B		
ST88-2798	do	City of Havana	03-15-88	B		
ST88-2799	do	City of Cuthbert	03-15-88	B		
ST88-2800	do	Water, Gas & Light Commission of Albany	03-15-88	B		
ST88-2801	do	do	03-15-88	B		
ST88-2802	Southern Natural Gas Co	Atlanta Gas Light Co	03-15-88	B		
ST88-2803	do	do	03-15-88	B		
ST88-2804	do	Pickens County Natural Gas District	03-15-88	B		
ST88-2805	do	City of Donaldsonville	03-15-88	B		
ST88-2806	do	Bishop Pipeline Corp	03-15-88	B		
ST88-2807	do	Atlanta Gas Light Co	03-15-88	B		
ST88-2808	do	do	03-15-88	B		
ST88-2809	do	City of Manchester	03-15-88	B		
ST88-2810	do	City of Trion	03-15-88	B		
ST88-2811	do	South Carolina Pipeline Corp	03-15-88	B		
ST88-2812	do	Dalton Utilities	03-15-88	B		
ST88-2813	do	Atlanta Gas Light Co	03-15-88	B		
ST88-2814	do	do	03-15-88	B		
ST88-2815	do	SNG Intrastate Pipeline, Inc	03-15-88	B		
ST88-2816	do	City of Havana	03-15-88	B		
ST88-2817	do	Atlanta Gas Light Co	03-15-88	B		
ST88-2818	do	City of Warner Robins	03-15-88	B		
ST88-2819	do	City of Cuthbert	03-15-88	B		
ST88-2820	do	Water, Gas & Light Commission of Albany	03-15-88	B		
ST88-2821	do	Mississippi Valley Gas Co	03-15-88	B		
ST88-2822	do	do	03-15-88	B		
ST88-2823	do	City of York	03-15-88	B		
ST88-2824	do	Raleigh Natural Gas Corp	03-15-88	B		
ST88-2825	do	United Cities Gas Co	03-15-88	B		
ST88-2826	do	City of Warner Robins	03-15-88	B		
ST88-2827	do	South Carolina Pipeline Corp	03-15-88	B		
ST88-2828	do	City of Nashville	03-15-88	B		
ST88-2829	do	City of Montezuma	03-15-88	B		
ST88-2830	do	Water, Gas & Light Commission of Albany	03-15-88	B		
ST88-2831	Natural Gas Pipeline Co. of America	Central Illinois Light Co	03-16-88	B		
ST88-2832	do	Northern Indiana Public Service Co	03-16-88	B		
ST88-2833	do	International Paper Co	03-16-88	G-S		
ST88-2834	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	03-16-88	C	08-13-88	35.00
ST88-2835	Northwest Pipeline Corp	Cascade Natural Gas Corp	03-16-88	B		
ST88-2836	Trunkline Gas Co	Consumers Power Co	03-16-88	B		
ST88-2837	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	03-17-88	B		
ST88-2838	do	do	03-17-88	B		
ST88-2839	Natural Gas Pipeline Co. of America	Southern California Gas Co	03-17-88	B		
ST88-2840	do	Peoples Gas Light & Coke Co	03-17-88	B		
ST88-2841	do	International Paper Co	03-17-88	G-S		
ST88-2842	Valero Transmission L.P	Natural Gas Pipeline of America	03-17-88	C		
ST88-2843	Northern Natural Gas Co	Minnegasco, Inc	03-16-88	B		
ST88-2844	Tennessee Gas Pipeline Co	Monterey Pipeline Co	03-16-88	B		
ST88-2845	do	Winterhall, Louisiana Corp	03-16-88	B		
ST88-2846	do	CNG Transmission Co	03-16-88	G		
ST88-2847	do	Southern Connecticut Gas Co	03-16-88	B		
ST88-2848	do	Columbia Gas of Pennsylvania, Inc	03-16-88	B		
ST88-2849	do	Peoples Natural Gas Co., et al	03-16-88	B		
ST88-2850	CNG Transmission Corp	Niagara Mohawk Power Corp	03-17-88	B		
ST88-2851	do	East Ohio Gas Co	03-17-88	B		
ST88-2852	do	Rochester Gas & Electric Corp	03-17-88	B		
ST88-2853	do	Niagara Mohawk Power Corp	03-17-88	B		
ST88-2854	do	Rochester Gas & Electric Corp	03-17-88	B		
ST88-2855	do	do	03-17-88	B		
ST88-2856	Colorado Interstate Gas Co	MGTC, Inc	03-25-88	B		
ST88-2857	Northwest Pipeline Corp	San Diego Gas & Electric Co	03-17-88	B		
ST88-2858	do	Coastal States Gas Transmission Co	03-17-88	B		
ST88-2860	Sandy Hook Pipeline Inc	United Gas Pipeline Co	03-17-88	C	08-14-88	09.47
ST88-2861	Northern Natural Gas Co	Virginia Minnesota Dept. of Public Util	03-17-88	B		
ST88-2862	do	Northern States Power Co	03-17-88	B		
ST88-2863	Tennessee Gas Pipeline Co	Catamount Natural Gas, Inc	03-16-88	G-S		
ST88-2864	do	CNG Transmission Corp	03-16-88	G		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2865	Natural Gas Pipeline Co. of America	Winnie Pipeline Co	03-18-88	B		
ST88-2866	do	City of Sullivan	03-18-88	B		
ST88-2867	do	Northern Illinois Gas Co	03-18-88	B		
ST88-2868	do	North Shore Gas Co	03-18-88	B		
ST88-2869	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	03-18-88	G		
ST88-2870	do	National Fuel Gas Distribution Corp	03-18-88	B		
ST88-2871	do	Niagara Mohawk Power Corp., et al	03-18-88	B		
ST88-2872	do	Elizabethtown Gas Co., et al	03-18-88	B		
ST88-2873	Transcontinental Gas Pipe Line Corp	Delmarva Power & Light Co., et al	03-18-88	B		
ST88-2874	do	Baltimore Gas & Electric Co., et al	03-18-88	B		
ST88-2875	do	Consumers Power Co., et al	03-18-88	B		
ST88-2876	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	03-18-88	B		
ST88-2877	do	Lake Shore Pipeline Co	03-18-88	B		
ST88-2878	Northern Natural Gas Co	Wisconsin Power and Light Co	03-18-88	B		
ST88-2879	do	City of Hawarden	03-18-88	B		
ST88-2880	ANR Pipeline Co	Atlanta Gas Light Co	03-18-88	B		
ST88-2881	Valero Transmission, L.P	Valero Interstate Transmission Co	03-21-88	C		
ST88-2882	do	do	03-21-88	C		
ST88-2883	Questar Pipeline Co	Cascade Natural Gas Corp	03-21-88	B		
ST88-2884	Trunkline Gas Co	Yankee Pipeline Co	03-21-88	B		
ST88-2885	do	do	03-21-88	B		
ST88-2886	do	Amoco Production Co	03-21-88	G-S		
ST88-2887	do	Southeastern Michigan Gas Co	03-21-88	B		
ST88-2888	do	World Color Press	03-21-88	G-S		
ST88-2889	do	Olympic Pipeline Co	03-21-88	B		
ST88-2890	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	03-21-88	B		
ST88-2891	Natural Gas Pipeline Co. of America	Olin Corp	03-21-88	G-S		
ST88-2892	do	Texline Gas Co	03-21-88	B		
ST88-2893	do	Northern Illinois Gas Co	03-21-88	B		
ST88-2894	do	Enogex Inc	03-21-88	B		
ST88-2895	Delhi Gas Pipeline Corp	ANR Pipeline Co	03-21-88	C		
ST88-2896	Sabine Pipe Line Co	Amax Oil & Gas Inc	03-21-88	G-S		
ST88-2897	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	03-21-88	B		
ST88-2898	do	Southern Gas Pipeline Co	03-21-88	B		
ST88-2899	do	Michigan Consolidated Gas Co., et al	03-21-88	B		
ST88-2900	do	Cameron Gas Company	03-21-88	B		
ST88-2901	ANR Pipeline Co	Ohio Gas Co	03-21-88	B		
ST88-2902	do	Michigan Consolidated Gas Co	03-21-88	B		
ST88-2903	do	do	03-21-88	B		
ST88-2904	Transcontinental Gas Pipe Line Corp	United Cities Gas Co., SC Div	03-21-88	B		
ST88-2905	Louisiana Intrastate Gas Corp	Texas Eastern Transmission Corp	03-22-88	C	06-10-88	27.44
ST88-2906	Arida Energy Resources	Commonwealth Gas Services	03-22-88	B		
ST88-2907	do	Terre Haute Gas Corp	03-22-88	B		
ST88-2908	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	03-22-88	C		
ST88-2909	do	Northern Natural Gas Co	03-22-88	C		
ST88-2910	do	do	03-22-88	C		
ST88-2911	do	Tennessee Gas Pipeline Co	03-22-88	C		
ST88-2912	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	03-22-88	B		
ST88-2913	do	Northern Illinois Gas Co	03-22-88	B		
ST88-2914	do	Northern Indiana Fuel & Light Co	03-22-88	B		
ST88-2915	do	Central Illinois Light Co	03-22-88	B		
ST88-2916	do	Consumers Power Co	03-22-88	B		
ST88-2917	do	do	03-22-88	B		
ST88-2918	Panhandle Gas Co	Northern Natural Gas Co	03-22-88	D		
ST88-2919	Oasis Pipe Line Co	do	03-22-88	C		
ST88-2920	do	Southern California Gas Co	03-22-88	C		
ST88-2921	Houston Pipe Line Co	Seagull Interstate Corp	03-22-88	C		
ST88-2922	do	Northern Natural Gas Co	03-22-88	C		
ST88-2923	Natural Gas Pipeline Co. of America	Winnie Pipeline Co	03-23-88	B		
ST88-2924	do	Southern California Gas Co	03-23-88	B		
ST88-2925	do	Spindletop Gas Distribution System	03-23-88	B		
ST88-2926	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	03-22-88	C		
ST88-2927	Northern Natural Gas Co	NGC Intrastate Pipeline Co	03-22-88	B		
ST88-2928	Colorado Interstate Gas Co	MGTC, Inc	03-22-88	B		
ST88-2929	Panhandle Eastern Pipe Line Co	Consumers Power Co	03-23-88	B		
ST88-2930	Columbia Gulf Transmission Co	Transcontinental Gas Pipe Line Corp	03-23-88	G		
ST88-2931	do	Louisiana Intrastate Gas Corp	03-23-88	B		
ST88-2932	Delhi Gas Pipeline Corp	Transcontinental Gas Pipe Line Corp	03-23-88	C		
ST88-2933	Panhandle Eastern Pipe Line Co	KPL Gas Service Co	03-24-88	B		
ST88-2934	do	Central Illinois Public Service Co	03-24-88	B		
ST88-2935	do	Central Illinois Light Co	03-24-88	B		
ST88-2936	do	Western Gas Supply Co	03-24-88	B		
ST88-2937	do	Central Illinois Light Co	03-24-88	B		
ST88-2938	do	do	03-24-88	B		
ST88-2939	do	do	03-24-88	B		
ST88-2940	do	Columbia Gas of Ohio, Inc	03-24-88	B		
ST88-2941	do	Southeastern Michigan Gas Co	03-24-88	B		
ST88-2942	Texas Gas Transmission Corp	Western Kentucky Gas Co	03-24-88	B		
ST88-2943	do	do	03-24-88	B		
ST88-2944	do	do	03-24-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2945	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	03-24-88	B		
ST88-2946	Tennessee Gas Pipeline Co	Nashville Gas Co	03-24-88	B		
ST88-2947	ANR Pipeline Co	Consumers Power Co	03-24-88	B		
ST88-2948	do	Mountaineer Gas Co	03-24-88	B		
ST88-2949	El Paso Natural Gas Co	Southern California Gas Co	03-25-88	B		
ST88-2950	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	03-25-88	G		
ST88-2951	do	do	03-25-88	G		
ST88-2952	Northern Natural Gas Co	Emmetsburg Municipal Gas Works	03-25-88	B		
ST88-2953	Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	03-25-88	B		
ST88-2954	Arkla Energy Resources	Arkansas Louisiana Gas Co	03-25-88	B		
ST88-2955	do	do	03-25-88	B		
ST88-2956	do	do	03-24-88	B		
ST88-2957	do	Amalgamated Pipeline Co	03-25-88	B		
ST88-2958	Northwest Pipeline Corp	Northwest Natural Gas Co	03-25-88	B		
ST88-2959	do	Victoria Gas Corp	03-25-88	B		
ST88-2960	do	Southwest Gas Corp	03-25-88	B		
ST88-2961	do	Intermountain Gas Co	03-25-88	B		
ST88-2962	do	Essex Gas Transmission Co	03-25-88	B		
ST88-2963	do	San Diego Gas & Electric Co	03-25-88	B		
ST88-2964	Transcontinental Gas Pipe Line Corp	Pennsylvania and Southern Gas Co	03-28-88	B		
ST88-2965	do	do	03-28-88	B		
ST88-2966	Natural Gas Pipeline Co. of America	Lawrenceburg Gas Co	03-28-88	B		
ST88-2967	do	Wisconsin Southern Gas Co., Inc	03-28-88	B		
ST88-2968	do	Indiana Gas Co., Inc	03-28-88	B		
ST88-2969	do	Venture Pipeline Co	03-28-88	B		
ST88-2970	Valero Transmission, L.P	El Paso Natural Gas Co	03-28-88	C		
ST88-2971	Texas Gas Transmission Corp	Public Service Electric and Gas Co	03-28-88	B		
ST88-2972	do	Wintershall Louisiana Corp	03-28-88	B		
ST88-2973	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al	03-28-88	B		
ST88-2974	Colorado Interstate Gas Co	Coastal States Gas Transmission Co	03-28-88	B		
ST88-2975	Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	03-28-88	B		
ST88-2976	Panhandle Eastern Pipe Line Co	KPL Gas Service Co	03-28-88	B		
ST88-2977	do	Ohio Gas Co	03-28-88	B		
ST88-2978	do	Northern Indiana Fuel & Light Co	03-28-88	B		
ST88-2979	do	Central Illinois Light Co	03-28-88	B		
ST88-2980	do	do	03-28-88	B		
ST88-2981	do	do	03-28-88	B		
ST88-2982	Tennessee Gas Pipeline Co	Pennsylvania and Southern Gas Co	03-29-88	B		
ST88-2983	do	Intercon Gas, Inc	03-29-88	G-S		
ST88-2984	Supenn Pipeline Co	United Gas Pipe Line Co	03-29-88	C	06-26-88	11.00
ST88-2985	Tennessee Gas Pipeline Co	City of Clarksville	03-29-88	B		
ST88-2986	do	City of Portland	03-29-88	B		
ST88-2987	do	City of Springfield	03-29-88	B		
ST88-2988	do	Mountaineer Gas Co	03-29-88	B		
ST88-2989	Transwestern Pipeline Co	Iowa Public Service Co	03-29-88	B		
ST88-2990	Northern Natural Gas Co	Public Service Electric and Gas Co	03-29-88	B		
ST88-2991	do	Seagull Louisiana Intrastate Pipeline Co	03-29-88	B		
ST88-2992	do	Florida Gas Transmission Co	03-29-88	G		
ST88-2993	Panhandle Eastern Pipe Line Co	Cimarron River Pipeline System Div	03-29-88	B		
ST88-2994	do	Illinois Power Co	03-29-88	B		
ST88-2995	do	Cimarron River Pipeline System Div	03-29-88	B		
ST88-2996	United Gas Pipe Line Co	Chevron U.S.A	03-29-88	G-S		
ST88-2997	do	do	03-29-88	G-S		
ST88-2998	Natural Gas Pipeline Co. of America	Monarch Gas Co	03-29-88	B		
ST88-2999	do	Osage Natural Gas Company	03-29-88	B		
ST88-3000	do	City of Salem	03-29-88	B		
ST88-3001	do	Kaskaskia Gas Company	03-29-88	B		
ST88-3002	do	City of Nebraska City	03-29-88	B		
ST88-3003	do	Southern Union Gas Co	03-29-88	B		
ST88-3004	do	City of Perryville	03-29-88	B		
ST88-3005	do	City of Pinckneyville	03-29-88	B		
ST88-3006	do	Union Electric Co	03-29-88	B		
ST88-3007	Tennessee Gas Pipeline Co	Quivira Gas Co	03-30-88	B		
ST88-3008	Tekas Corp	Northern Natural Gas Co	03-30-88	C		
ST88-3009	Columbia Gulf Transmission Co	Brooklyn Union Gas Co., et al	03-30-88	B		
ST88-3010	Katy Interchange Service		12-09-87	C	05-08-88	03.16
ST88-3011	Columbia Gulf Transmission Co	Philadelphia Gas Works, et al	03-30-88	B		
ST88-3012	do	Transcontinental Gas Pipe Line Corp	03-30-88	G		
ST88-3013	ANR Pipeline Co	TPC Pipeline Co	03-30-88	B		
ST88-3014	do	Baltimore Gas and Electric Co	03-30-88	B		
ST88-3015	do	do	03-30-88	B		
ST88-3016	do	Wisconsin Fuel and Light Co	03-30-88	B		
ST88-3017	do	Wisconsin Public Service Co	03-30-88	B		
ST88-3018	do	Washington Gas Light Co	03-30-88	B		
ST88-3019	do	Wisconsin Gas Co	03-30-88	B		
ST88-3020	do	NGC Intrastate Pipeline Co	03-30-88	B		
ST88-3021	do	Wisconsin Gas Co	03-30-88	B		
ST88-3022	do	Wisconsin Public Service Co	03-30-88	B		
ST88-3023	do	Madison Gas & Electric Co	03-30-88	B		
ST88-3024	Natural Gas Pipeline Co. of America	Lear Gas Transmission Co	03-31-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST88-3025	do	Delhi Gas Pipeline Corp	03-31-88	B		
ST88-3026	do	ONG Transmission Co	03-31-88	B		
ST88-3027	do	Enogex Inc	03-31-88	B		
ST88-3028	El Paso Natural Gas Co	Eastex Gas Transmission Co	03-31-88	B		
ST88-3029	do	Southwest Gas Corp	03-31-88	B		
ST88-3030	Columbia Gulf Transmission Co	Northern Illinois Gas Co., et al	03-31-88	B		
ST88-3031	ONG Transmission Co	Getty Gas Gathering, Inc	03-31-88	C	06-28-88	24.32
ST88-3032	Trunkline Gas Co	Michigan Gas Utilities Co	03-31-88	B		
ST88-3033	do	Chevron U.S.A	03-31-88	G-S		
ST88-3034	Texas Gas Transmission Corp	Western Kentucky Gas Co	03-31-88	B		
ST88-3035	do	Peoples Natural Gas Co	03-31-88	B		
ST88-3036	Tennessee Gas Pipeline Co	Columbia Gas of Ohio, Inc., et al	03-31-88	B		
ST88-3037	do	Nycotex Gas Transport	03-31-88	B		
ST88-3038	do	Columbia Gas of Md., Inc., et al	03-31-88	B		
ST88-3039	Transcontinental Gas Pipe Line Corp	Alabama Gas Corp., et al	03-31-88	B		
ST88-3040	do	Wintershall Louisiana Corp	03-31-88	B		
ST88-3041	do	Alabama Gas Corp., et al	03-31-88	B		
ST88-3042	do	Tri-County Natural Gas Co	03-31-88	B		
ST88-3043	United Gas Pipe Line Co	Victoria Gas Corp	03-31-88	B		
ST88-3044	do	Louisiana State Gas Corp	03-31-88	B		
ST88-3045	do	Madison Gas and Electric, et al	03-31-88	B		
ST88-3046	do	Woodward Pipeline, Inc	03-31-88	B		
ST88-3047	do	LGS Interstate, Inc	03-31-88	B		
ST88-3048	do	Louisiana Gas Marketing, et al	03-31-88	B		
ST88-3049	do	Jale Pipe Line Corp	03-31-88	B		
ST88-3050	Southern Natural Gas Co	Atlanta Gas Light Co	03-31-88	B		
ST88-3051	do	City of Dalton	03-31-88	B		
ST88-3052	do	City of Wrens	03-31-88	B		
ST88-3053	do	City of Livingston	03-31-88	B		
ST88-3054	do	City of Columbiana	03-31-88	B		
ST88-3055	do	New Orleans Public Service, Inc	03-31-88	B		
ST88-3056	do	City of Lanett	03-31-88	B		
ST88-3057	do	Dalton Utilities	03-31-88	B		
ST88-3058	ANR Pipeline Co	Wisconsin Power and Light Co	03-31-88	B		
ST88-3059	do	Northern Indiana Public Service Co	03-31-88	B		
ST88-3060	do	Wisconsin Gas Co	03-31-88	B		
ST88-3061	do	Wisconsin Public Service Co	03-31-88	B		
ST88-3062	do	Michigan Gas Utilities Co	03-31-88	B		
ST88-3063	do	Madison Gas & Electric Co	03-31-88	B		
ST88-3064	do	Iowa Southern Utilities Co	03-31-88	B		
ST88-3065	do	Consumers Power Co	03-31-88	B		
ST88-3066	do	Ohio Gas Co	03-31-88	B		
ST88-3067	do	Commonwealth Gas Services	03-31-88	B		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-12124 Filed 5-31-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of December 4 Through December 11, 1987

During the Week of December 4 through December 11, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,
Director, Office of Hearings and Appeals.

May 24, 1988.

List of Cases Received by the Office of Hearings and Appeals

[Week of December through December 11, 1987]

Date	Name and location of applicant	Case No.	Type of Submission
Dec. 7, 1987	Multinational Legal Services, P.C., Washington, DC.	KFA-0150	Appeal of an Information, Request Denial. If granted: The November 20, 1987, Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded and Multinational Legal Services would receive access to documents regarding process specifications which prescribe the disposal of trichloroethylene.
Dec. 7, 1987	Nuclear Data, Inc., Schaumberg, IL	KFA-0149	Appeal of an Information, Request Denial. If granted: The November 13, 1987, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Nuclear Data, Inc. would receive access to the results of Rockwell International RFO No. 05569GM and 07211 HG.
Dec. 7, 1987	Glen Milner, Seattle, WA	KFA-0150	Appeal of an Information, Request Denial. If granted: The November 24, 1987, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Glen Milner would receive access to a complete copy of a document regarding the Trident nuclear warhead.
Dec. 11, 1987	Arkansas, Little Rock, AR	KER-0037	Request for Modification/Rescission. If granted: The June 26, 1987 Decision and Order issued to Arkansas (Case No. KEG-0010) would be rescinded and Arkansas' proposal for the use of the Stripper Well funds would be approved.
Dec. 11, 1987	Belcher Oil Company, Inc., Murray, KY	KXE-0158	Exception to the Reporting Requirements. If granted: Belcher Oil Company, Inc. would continue to receive the relief previously granted in the December 24, 1986 Decision and Order (Case No. KEE-0065).

Refund Applications Received

[Week of December 4 to December 11, 1987]

Date received	Name of Refund Proceeding, Name of Refund Applicant	Case No.
12/04/87	Amoco II/North Carolina	RQ251-416
12/04/87 thru 12/11/87.	Crude Oil Refund Applications Received	RF272-12881 thru RF272-15526
12/04/87 thru 12/11/87.	Gulf Oil Refund Applications Received	RF300-4130 thru RF300-4318
06/29/87	HY-Grade Oil Company	RF265-2589
06/29/87	HY-Grade Oil Company	RF265-2590
11/06/86	Astroline Corporation	RF265-2588
11/24/87	Shamrock Wholesale	RF253-42
12/09/87	Laclede Steel	RD272-2686
12/09/87	Granite City Steel	RF272-01106
12/09/87	Central Foundry Company	RD272-0475
12/09/87	Armco Eastern Steel Division	RF272-0394

[FR Doc. 88-12171 Filed 5-31-88; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed; Week of February 26 Through March 4, 1988

During the Week of February 26 through March 4, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 24, 1988.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 26 through March 4, 1988]

Date	Name and location of applicant	Case No.	Type of Submission
Feb. 11, 1988	Mobile/Friendly Service Oil Co., Fredericktown, MO.	RR225-17	Request for Modification/Rescission. If granted: The January 22, 1988 determination issued to Friendly Service Oil Company (Case NO. RF225-10917) regarding the firm's application for refund in the Mobil Oil proceeding would be rescinded.
Feb. 11, 1988	Mobil/Kirkland Oil Co., Jacksonville, TX	RR225-14	Request for Modification/Rescission. If granted: The January 22, 1988 determination issued to Kirkland Oil Company (Case No. RF225-10938) regarding the firm's Mobil Oil refund application would be rescinded.
Feb. 11, 1988	Mobil/Lakewood Oil Co., Lakewood, NJ	RR225-16	Request for Modification/Rescission. If granted: The January 22, 1988 determination issued to Lakewood Oil Company (Case No. RF 225-10934) regarding the firm's Mobil Oil refund application would be rescinded.
Feb. 11, 1988	Mobil/Larko, Inc., Spokane, WA	RR225-15	Request for Modification/Rescission. If granted: The January 22, 1988 determination issued to Larko, Inc. (Case No. RF 225-10935) regarding the firm's Mobil Oil refund application would be rescinded.
Feb. 19, 1988	Mobil/E.E. Holub, Waco, TX	RR225-13	Request for Modification/Rescission. If granted: The February 5, 1988 Decision and Order issued to E.E. Holub (Case No. RF225-5776) regarding E.E. Holub's application in the Mobil Oil proceeding would be modified.
Feb. 29, 1988	The Herald, Dublin, CA	KFA-0165	Appeal of an Information Request Denial. If granted: The February 22, 1988 Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded and the Herald would receive access to all correspondence regarding the X-ray laser program.
Mar. 4, 1988	Indiana, Indianapolis, IN	KER-0039	Request for Modification/Rescission. If granted: The November 10, 1987 Decision and Order issued to the State of Indiana (Case No. KEG-0019) regarding Indiana's use of stripper well monies for a project previously disapproved by the Assistant Secretary for Conservation and Renewable Energy would be modified.

REFUND APPLICATIONS RECEIVED

[Week of February 26 to March 4, 1988]

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
03/02/88	Tesoro Petroleum/DeMemmo-Kerdoon	KRO-0630
03/03/88	King Petroleum, Inc. *et al*	KRO-0640
02/26/88 thru 03/04/88.	Crude Oil Refund Applications Received	RF272-47521 thru RF272-48225
02/26/88 thru 03/04/88.	Gulf Oil Refund Applications Received	RF300-5573 thru RF300-5763
02/26/88 thru 03/04/88.	Crude Oil Refund Applications Received	RF272-47521 thru RF272-48225
02/26/88 thru 03/04/88.	Gulf Oil Refund Applications Received	RF300-5573 thru RF300-5763
10/28/85	Gulf Oil Corporation	RF189-23
02/29/88	James Wesdick	RF299-79
04/03/87	Sires Oil Company	RF265-2610
07/09/87	Gas 'N Save, Inc	RF225-10977
07/09/87	Gas 'N Save, Inc	RF225-10978
08/01/86	W. B. Tripp, Inc	RF225-10979
08/01/86	W. B. Tripp, Inc	RF225-10980
07/22/86	Norman A. Cozens Mobil Dist	RF225-10981
08/01/86	Peoples Oil Company, Inc	RF225-10982
08/01/86	Collis Oil Company	RF225-10983
08/01/86	Lipp Motors	RF225-10984
04/21/88	R. M. Bunstock Oil & Supply	RF225-10985
08/01/86	C & W Enterprises, Inc	RF225-10986
08/01/86	Marshall Distributing Co., Inc	RF225-10987
09/03/86	Lott Oil Company	RF225-10988
09/03/86	Miller Oil, Inc	RF225-10989

REFUND APPLICATIONS RECEIVED—Continued

[Week of February 26 to March 4, 1988]

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
05/05/86	Wenatchee Petroleum Company	RF225-10990
05/05/86	Dirr & Biler Oil Company	RF225-10991
08/01/86	A.P. Stephenson Oil Company	RF225-10992
05/05/86	Templin Oil Company	RF225-10993
09/02/86	Fuller Oil Company, Inc	RF225-10994
02/29/88	A. Duda and Sons, Inc	RD272-12662
02/29/88	Sidemar Di Navigazione S.P.	RD272-12683
02/29/88	Grace Development Company	RD272-12669
02/29/88	Brewer Chemical	RD272-12810
02/29/88	Embiricos Shipping Agency	RD272-12844
02/29/88	Osceola Farms Company	RD272-12844
02/29/88	Trapp Rock Industries	RD272-13164
02/29/88	Continental Grain Company	RD272-13180
02/29/88	Kimberly-Clark Corporation	RD272-13188
02/29/88	Thos. & Jas. Harrison Ltd	RD272-13607
02/29/88	Statler Tissue Company	RD272-13913
02/29/88	Helmsley-Spear, Inc	RD272-13928
02/29/88	The West End Brewing Company	RD272-13973
02/29/88	Barrett Mobile Home	RD272-13994
02/29/88	Apcon Corporation	RD272-14010
02/29/88	Samson Management	RD272-14034
02/29/88	Internat'l Flavors & Fragrance	RD272-14036
02/29/88	Amstar Sugar Corporation	RD272-14141
02/29/88	H-K Contractors	RD272-14150
02/29/88	Thorson, Inc	RD272-14343
02/29/88	Scrivner, Inc	RD272-14537
02/29/88	Walker-Williams Lumber Co	RD272-14529
02/29/88	Carolina Freight Carriers Corp	RD272-14554
02/29/88	W. Hodgman & Sons	RD272-14575
02/29/88	Speedway Transportation	RD272-14593
02/29/88	C.W. Matthews Contracting	RD272-14608
02/29/88	NL Industries, Inc	RD272-14948
02/29/88	Compagnie Belge D'Affretemen	RD272-14968
02/29/88	Royal Caribbean Cruise Liner	RD272-14995
02/29/88	Wiecassett Mills Company	RD272-15061
02/29/88	The Tanner Companies	RD272-15068
02/29/88	J. R. Simplot Company	RD272-15267
02/29/88	Overseas Enterprises, Inc	RD272-15357
02/29/88	Constellation Line	RD272-15363
02/29/88	Buffalo Bituminous	RD272-15419
02/29/88	Thunderbird Motor Freight Line	RD272-15498
02/29/88	Genesee Leroy Stone Corporation	RD272-15509
02/29/88	Fenton Farms, Inc	RD272-15570
02/29/88	Masquette Transportation Company	RD272-15755
02/29/88	Blacktop Construction Company	RD272-15800
02/29/88	Mead Paper-Publishing Paper	RD272-15878
02/29/88	Admiral Cruises, Inc	RD272-15947
02/29/88	Liedtka Trucking, Inc	RD272-15999
02/29/88	Corn Construction Company	RD272-16007
02/29/88	Fraser Paper, Limited	RD272-16209
02/29/88	Collins & Aikman Corporation	RD272-16210
02/29/88	Lincoln Pulp & Paper Co., Inc	RD272-16285
02/29/88	Doech-King Company	RD272-16291
02/29/88	Stepan Company	RD272-16336
02/29/88	J.E. Morgan Knitting Mills, Inc	RD272-16340
02/29/88	Brown Bakeries, Inc	RD272-16343
02/29/88	Great Salt Lake Minerals	RD272-16370
02/29/88	P & O Lines, Ltd	RD272-16374
02/29/88	Dunlop Tire Corporation	RD272-16583
02/29/88	Eastern Fine Paper, Inc	RD272-16591
02/29/88	Magic City Trucking Service	RD272-16638
02/29/88	Pfizer, Inc	RD272-16661
02/29/88	A. Teichert & Sons	RD272-16736
02/29/88	N-C Paving	RD272-16819
02/29/88	Lewis Brothers Bakeries, Inc	RD272-17079
02/29/88	Bauerly Bros., Inc	RD272-17251
02/29/88	Whirlpool Corporation	RD272-15977
02/29/88	Dresser Industries, Inc	RD272-15859
02/29/88	Bituminous Materials Company	RD272-15459

REFUND APPLICATIONS RECEIVED—Continued

[Week of February 26 to March 4, 1988]

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
02/29/88	Westinghouse Electric	RD272-16739
02/29/88	American Standard, Inc	RD272-16177
02/29/88	Ethan Allen, Inc	RD272-16157
02/29/88	Cooper Tire & Rubber Company	RD272-10651
02/29/88	Chicago Pacific Corporation	RD272-16017
02/29/88	Edward M. Chadbourne, Inc	RD272-17354
02/29/88	Coca Cola USA	RD272-17315
02/29/88	Gerald N. Stamp	RD272-17300
02/29/88	A. C. Widenhouse, Inc	RD272-8329
02/29/88	Thomaston Mills, Inc	RD272-8199
02/29/88	Austin Paving Company	RD272-8212
02/29/88	Warbird Transp. Inc	RD272-8334
02/29/88	Milford Management Corporation	RD272-8337
02/29/88	Iceland Steamship Co., Inc	RD272-8344
02/29/88	Rissler & McMurray Company	RD272-8737
02/29/88	Standard Products Co., Inc	RD272-8750
02/29/88	American Fructose Decatur, Inc	RD272-8865
02/29/88	Gulf States Asphalt	RD272-8868
02/29/88	C. S. McCrossan, Inc	RD272-9078
02/29/88	Stone Container Corporation	RD272-9294
02/29/88	Airborne Express, Inc	RD272-9331
02/29/88	Delta Woodside Industries, Inc	RD272-9616
02/29/88	Leif Hoegh & Company	RD272-9646
02/29/88	White's Mines, Inc	RD272-9681
02/29/88	Cascade Construction	RD272-9879
02/29/88	Hardrives, Inc	RD272-9880
02/29/88	W. H. Johns, Inc	RD272-9835
02/29/88	York Shipping Corporation	RD272-9883
02/29/88	The Upjohn Company	RD272-9891
02/29/88	Kuwait Maritime Corporation	RD272-9908
02/29/88	Colonia Motor Freightlines	RD272-9892
02/29/88	Mount Vernon Mills, Inc	RD272-9900
02/29/88	Fred Weber, Inc	RD272-9991
02/29/88	Owens-Corning Fiberglas	RD272-10027
02/29/88	CPC International, Inc	RD272-10163
02/29/88	Woods Management Company	RD272-10164
02/29/88	Simpson Paper Company	RD272-10168
02/29/88	Roseau Transport, Inc	RD272-10181
02/29/88	Bangladesh Shipping Corporation	RD272-10192
02/29/88	A. P. Green Refractories, Company	RD272-10456
02/29/88	Nekoosa Papers, Inc	RD272-10485
02/29/88	Fort Edward Express Co., Inc	RD272-10488
02/29/88	Pacific Steam Navigation Company	RD272-10502
02/29/88	Houlder Brothers & Company, Ltd	RD272-10503
02/29/88	Furness Withy (Chartering)	RD272-10504
02/29/88	Peter Kiewit Sons	RD272-10505
02/29/88	Winkles Trucks, Inc	RD272-10669
02/29/88	National Spinning Company, Inc	RD272-10777
02/29/88	Al Johnson Construction	RD272-10906
02/29/88	Carlisle Companies, Inc	RD272-11111
02/29/88	Interstate Container Corporation	RD272-11116
02/29/88	J. L. Healy Construction	RD272-11138
02/29/88	Uniroyal Holding, Inc	RD272-11140
02/29/88	Graniteville Company	RD272-11241
02/29/88	James River Corporation	RD272-11244
02/29/88	Nabisco Brands, Inc	RD272-11245
02/29/88	Brostrom Shipping Co., Ltd	RD272-11300
02/29/88	Dundee Mills, Inc	RD272-11454
02/29/88	A. Leander McAllister Trucking	RD272-11493
02/29/88	Henry S. Bristow	RD272-11690
02/29/88	Owens-Illinois	RD272-11705
02/29/88	Central Transport, Inc	RD272-11952
02/29/88	Lehman-Roberts Company	RD272-11977
02/29/88	Walnut Grove Products	RD272-12140
02/29/88	Wilson Freight & Strickland	RD272-12162
02/29/88	E. L. Murphy Trucking Company	RD272-12164
02/29/88	Boes-Linco Lines, Inc	RD272-12183
02/29/88	Sam Wood	RD272-12249
02/29/88	Champion International Corporation	RD272-12261

REFUND APPLICATIONS RECEIVED—Continued

[Week of February 26 to March 4, 1988]

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
02/29/88	K & K Transport Corporation	RD272-12307
02/29/88	G. G. Parsons Trucking Company	RD272-11290
02/29/88	Duininck Companies	RD272-12349
02/29/88	Dean Foods Company	RD272-12577
02/29/88	Premark International	RD272-08625
02/29/88	United Technologies Corporation	RD272-09183
02/29/88	Arizona Electric Power	RD272-09358
02/29/88	Arch Mineral	RD272-09491
02/29/88	Ethyl Corporation	RD272-09858
02/29/88	Colowyo Coal Company	RD272-09955
02/29/88	Koppers Company, Incorporated	RD272-10162
02/29/88	J. M. Huber Corporation	RD272-10928
02/29/88	Trapper Mining Incorporated	RD272-11482
02/29/88	Mack Trucks, Incorporated	RD272-11984
02/29/88	Ohio Coal & Construction Corp	RD272-12126
02/29/88	Missouri Mining, Incorporated	RD272-12127
02/29/88	Deere & Company	RD272-13135
02/29/88	Liquid Carbonic Industries	RD272-13159
02/29/88	Ingersoll-Rand Company	RD272-13170
02/29/88	Kerite Company	RD272-13176
02/29/88	Pennwalt Corporation	RD272-13486
02/29/88	Scripps Howard	RD272-13524
02/29/88	Firestone Tire & Rubber Company	RD272-13927
02/29/88	Hallmark Cards	RD272-14135
02/29/88	Hanson Industries	RD272-15000
02/29/88	Advance Publications, Inc	RD272-15364
02/29/88	Liggett & Myers Tobacco Company	RD272-15458
02/29/88	Ben Franklin Store, Inc	RD272-15494
02/29/88	Conwood Company	RD272-15118
02/29/88	Armstrong Tire Company	RD272-15953
02/29/88	Morton Thiokol Incorporated	RD272-16063
02/29/88	Hartz Mountain Corporation	RD272-16586
02/29/88	Kawneer Company, Inc	RD272-16752
02/29/88	National Standard Company	RD272-17314
02/29/88	Cyprus Yampa Valley Coal Company	RD272-17358
03/04/88	Cone Mills Corporation	RF299-80
05/05/88	Templin Oil Company	RF225-10995
01/19/88	Haney Oil Company	RF225-10996
01/19/88	Haney Oil Company	RF225-10997
01/19/88	Haney Oil Company	RF225-10998
01/19/88	Franklin County Oil Company	RF225-10999
01/19/88	Franklin County Oil Company	RF225-11000
01/19/88	Lunde Fuel & Oil Supply	RF225-11001
01/19/88	Lunde Fuel & Oil Supply	RF225-11002
01/19/88	Lunde Fuel & Oil Supply	RF225-11003
03/03/88	Chesapeake & Potomac Tel. Co	RF272-8718
03/03/88	Amax Copper, Inc	RF272-9615
03/03/88	Kennecott Corporation	RF272-12164

[FR Doc. 88-12172 Filed 5-31-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 29 Through March 4, 1988

During the week of February 29 through March 4, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Terranova, Seeger & Galeziowski, 3/2/88, KFA-0163

The DOE issued a Decision and Order granting Appellant Terranova, Seeger and Galeziowski's appeal from a denial of a Freedom of a Information Act request issued to it by the Idaho Operations Office (Idaho). That determination stated that the requested documents are not contained in the files at Idaho. Because the original request stated Appellant's belief that the documents are contained in the files at the Oak Ridge Operations Office (Oak Ridge), the matter was referred to the Freedom of Information Office at Oak Ridge.

Remedial Order

Elk Trading Company and Neal Davis, 2/29/88, HRO-0286

Elk Trading Company (Elk) and Neal Davis (Davis) objected to a PRO issued jointly to them by the Economic Regulatory Administration (ERA) on March 11, 1985. After considering the respondents' objections, the DOE found that the firm had violated the layering regulations set forth in 10 CFR 212.186 by reselling crude oil at increased prices

without providing the services traditionally and historically associated with the resale of crude oil. In addition, the DOE found Neal Davis personally liable for the overcharges, because he conducted, directed and controlled Elk and personally benefitted from the layered transactions. Accordingly, the DOE concluded that the Proposed Remedial Order should be issued as a final order and directed Elk and Davis to remit $11,473,148.92, plus interest, to the DOE.

Interlocutory Order

Economic Regulatory Administration, Kenneth Walker, Southwestern States Marketing Corp., 3/388, KRZ-0071, KRR-0034, KRZ-0072, KRZ-0070, KRZ-0068, KRZ-0074, KRX-0041, and KRX-0042

The Office of Hearings and Appeals issued a consolidated decision ruling on a number of motions that had been filed by the Economic Regulatory Administration, Kenneth Walker and Southwestern States Marketing Corp. in an enforcement proceeding based on a Proposed Remedial Order issued jointly to Walker and Southwestern States. After disposing of a number of minor procedural motions, OHA analyzed the voluminous documentary evidence Walker had submitted in support of his contention that he should not be held personally liable for any overcharges allegedly caused by Southwestern States. Walker maintained that the evidence showed that he was not the "central figure" involved in the alleged overcharges. OHA concluded that Walker's documentary evidence failed to rebut the *prima facie* case established by the ERA. However, OHA determined that there was a factual dispute on certain aspects of the nature of Walker's role in the firm during the audit period. The OHA ordered, *sua sponte*, that an evidentiary hearing be convened at which Walker could testify concerning the factual dispute about the nature of his role in Southwestern's crude oil reselling activities, and whether he was the "central figure" as alleged in the PRO. Provision was also made for the presentation of oral arguments on the other contested issue at the conclusion of the evidentiary hearing.

Refund Applications

A.F. Rodrigues Orchard, et al., 3/1/88, RF272-2158, et al.

The DOE issued a Decision and Order approving 33 Applications for Refund from crude oil overcharge funds. The 33 claimants were farmers who used either contemporaneous records or the USDA formula to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $645 was approved in this Decision and Order.

Brown Trucking Co. et al., 3/1/88, RF272-6, et al.

The DOE issued a Decision and Order granting refunds to 45 claimants who filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As end-users of petroleum products, the claimants were presumed to have been injured as a result of the crude oil overcharges. The refunds granted totalled $14,021.

C.L. Richardson, et al., 3/4/88, RF272-2155, et al.

The DOE issued a Decision and Order approving 4 Applications for Refund from crude oil overcharge funds. The 4 claimants were farmers who used different USDA formula (gallons/acre/year) to derive the number of gallons of petroleum products they used to cultivate various crops during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $57 was approved in this Decision and Order.

Charles Butterfield et al., 2/29/88, RF272-4856, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed, and therefore was presumed injured. The sum of the refunds granted in this Decision is $950. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Getty Oil Company/Harold's Skelly, et al.; 3/3/88, RF265-1905, et al.

The DOE issued a Decision and Order concerning 23 Applications for Refund filed by resellers, retailers and end-users of products covered by a Consent Order that the DOE entered with Getty Oil Company. Each applicant submitted information indicating the volume of Getty jobbers/distributors during the consent order period. In 20 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining three cases, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $71,370, representing $35,213 in principal and $36,157 in accrued interest.

Getty Oil Company/Sheet's Getty, et al., 3/3/88, RF265-1174, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that were indirectly purchased from Getty jobbers/distributors during the consent order period. In 48 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining two cases, the applicant elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $132,333, representing $65,290 in principal and $67,043 in accrued interest.

Harold Ritter, et al., 3/1/88, RF272-4250, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 45 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim by estimating its consumption based on the acres it farmed utilizing the USDA's national average of 23.8 gallons/acre/year of petroleum. Each applicant was an end-user of the products, and therefore is presumed to have been injured. The sum of the refunds granted in this determination is $1,134.

Hill House Apartments et al., 2/29/88, RF272-4869, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 26 apartment buildings based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of petroleum products, and calculated its claim either by consulting actual purchase records or by estimating its consumption based on annual usuage or partial records. As end-users, each applicant was presumed injured. The sum of the refunds granted in this Decision is $4,505. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become eligible.

Larry L. Gee, et al., 3/3/88, RF272-3326, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed, and therefore was presumed injured by the DOE. The sum of the refunds granted in this Decision is $941. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Lawrence R. Hlad, et al., 3/1/88, RF272-3810, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 31 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed, and therefore was presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,971.

Marathon Petroleum Co./John H. White, 3/3/88, RF250-2456, RF250-2457

The DOE issued a Decision and Order concerning two Applications for Refund from the Marathon Petroleum Company consent order fund filed by John H. White d/b/a Port Oil Company. White, a reseller of Marathon motor gasoline and middle distillates, elected to file its refund applications based upon the 35 percent presumption of injury methodology set forth in the order implementing procedures for disbursing the Marathon fund. Because White sold its operations to Marathon in April 1979, it was eligible for a refund based only on its purchases of Marathon product prior to that time. The total refund granted was $55,068, representing $47,985 in principal and $7,063 in interest.

Mobil Oil Corp./Featherstone Service Station, Inc., Kenneth W. Boyd, Gas 'N Save, Inc., 3/3/88, RF225-9216, RF225-9217, RF225-9377, RF225-9378, RF225-9379, RF225-9380, RF225-10860, RF225-10977, RF225-10978,

The DOE issued a Decision and Order granting three Applications for Refund from the Mobil Oil Corporation escrow account filed by resellers of Mobil refined petroleum products. In the Mobil proceeding, applicants may choose to either rely on the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985) (*Mobil*), or they may choose to submit documentation demonstrating that they were injured to a greater extent than the average reseller. In the cases of the three claimants, each elected to submit additional documentation in an effort to demonstrate injury. The DOE, however, did not accept the approximated banks of unrecouped increased product costs submitted by the firms, finding that the annual data underlying these banks was inadequate. In *Mobil*, however, applicants who are unable to rebut the presumptions of injury and who do not conclusively demonstrate that they were injured are still eligible for a refund. The DOE therefore reviewed the present applications to insure that all necessary information had been provided for a refund under the level-of-distribution presumption, and found that it was. Accordingly, the three Applications for Refund were granted. The total amount approved in the Decision and Order was $11,218, representing $8,965 in principal plus $2,163 in interest.

Mobil Oil Corp./Peninsula Fuel Company, 3/2/88, RF225-10963

The DOE issued a Decision and Order approving a refund application in the Mobil Oil Corporation special refund proceeding filed by Peninsula Fuel Company, a reseller of Mobil middle distillates during the consent order period. OHA adjusted Peninsula's claim to exclude the gallons of middle distillates it purchased after the decontrol date of that product. In accordance with the procedures outlined in the *Mobil Oil Corporation*, 13 DOE ¶85,339 (1985), the OHA determined that Peninsula should receive a refund totalling $2,619 ($2,110 in principal plus $509 in accrued interest).

Norbert Robben et al., 3/1/88, RF272-5270, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 15 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant determined its volume claim either by utilizing actual purchase records from the crude oil price control period or by estimating its petroleum consumption during that period based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $755.

Our Own Hardware et al., 3/2/88, RF272-4498, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 9 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities or in operating small businesses. Each applicant determined its volume claim either by utilizing actual purchase records from the crude oil price control period or by estimating its petroleum consumption during that period. Each applicant was an end-user of the products it claimed, and therefore was found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $232.

Phillips Brothers et al., 3/4/88, RF272-4726, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 44 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and calculated its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and therefore was found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,454.

Roger Kratzke, et al., 3/3/88, RF272-3864, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 31 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and calculated its claim either by consulting actual purchase records or by estimating its consumption based on the acres it

farmed. Each applicant was an end-user of the products it claimed, and therefore was found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,244.

Standard Oil Co. (Indiana)/North Carolina, 3/2/88, RQ251-416

The DOE issued a Decision and Order regarding an Application for Refund in the Standard Oil Co. (Indiana) (*Amoco II*) second-stage refund proceeding filed by the State of North Carolina. In its application, North Carolina proposed to spend $540,000 of its Amoco monies on three programs: An advertising program designed to promote the State's fuel oil tune-up rebate program; a plan to produce 30,000 information packets on fuel-efficient driving for distribution at car care clinics; and a program of workshops, seminars, and technical assistance to improve the fuel-efficiency of farm machinery on North Carolina farms. In reviewing North Carolina's proposed plan, the DOE found that each program proposed by the State was restitutionary in that it would either promote energy conservation or reduce energy costs to injured consumers of petroleum products, or both. Accordingly, North Carolina was granted $540,000 ($482,143 principal plus $57,857 interest) in *Amoco II* monies for the programs.

Standard Oil Co. (Indiana)/Rosebud Sioux Tribe, 3/2/88, RQ21-432

The DOE issued a Decision regarding a second-stage refund application filed by the Rosebud Sioux Tribe in the Standard Oil Co. (Indiana) (Amoco) second-stage refund proceeding. In its application, the Rosebud Sioux Tribe proposed to spend Amoco monies to supplement its Low Income Home Energy Assistance Program. The DOE determined that the Tribe's proposed plan would provide restitution to tribal members injured in their purchases of refined petroleum products during the period of price controls. Accordingly, the DOE granted the Rosebud Sioux Tribe a refund of $3,080 from the Standard Oil Co. (Indiana) escrow account.

Wayne Corporation, 3/4/88, RF272-1285

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981 (the Settlement Period). To estimate its purchase volume between 1973 and 1977, the applicant extrapolated from actual purchase data that was available for the years 1978 through 1981. The refund granted in this Decision is $356.

Dismissals

The following submissions were dismissed:

Name	Case No.
B.C. Shuchart, Inc	RF225-1000
L.J. Novak Oil Co	RF225-10211
McCall Oil & Chemical Corp	RF252-1
Middletown Oil Co	RF225-10975, RF225-10976
Reliable Fuel Supply Co	RF225-10023
Scoby Ratcliff, d/b/a Middletown Oil Co.	RF263-37

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 24, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-12173 Filed 5-31-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 7 Through March 11, 1988

During the week of March 7 through March 11, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

U.S. West Information Systems, 3/11/88, KFA-016

U.S. West Information Systems filed an Appeal from a partial denial by the Freedom of Information Officer of the Idaho Operations Office of a Request for Information Act. In considering the Appeal, the DOE found that an adequate search had been made and that the documents sought do not exist.

Petition for Special Redress

Texas, 3/7/88, KEC-0036

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the State of Texas. The State sought permission to use Stripper Well monies for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy had held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE disapproved Texas' proposal to use 3.9 million to conduct research supporting Texas' bid to have the Super Conducting Supercollider (SSC) located in Texas. In reaching this determination, the DOE found that Texas should not be permitted to use Stripper Well funds for SSC site research, because site research would not yield energy-related benefits for injured Texans, and because Stripper well funds should not be used for advocacy purposes. Accordingly, Texas' Petition for Special Redress was denied.

Motion for discovery

LaJet, Inc., et al., Economic Regulatory Administration, 3/10/88, KRD-0470, KRD-0471

LaJet, Inc. (LaJet), LaJet Petroleum Company (LPC) and Texas Napco, Inc. (Texas Napco) filed a Motion for Discovery in connection with their Statement of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to them on January 22, 1987. The DOE denied the respondents' request for information contained in OHA proceedings involving Kern County Refinery, Inc., based on the fact that the requested material had not been shown to be relevant. The DOE also denied the respondents access to documents pertaining to an affidavit of Neal Myers, President of Mellon Energy Products Company, which was used by the ERA to support the findings made in the PRO. The DOE found that the respondents had not demonstrated that there was a compelling need to probe the deliberative processes of agency officials involved in the preparation of the affidavit. The DOE rejected as unnecessary the respondents request for additional materials explaining the PRO's calculations of overcharges. The respondents' requests for contemporaneous construction discovery of 10 CFR 211.67 (e) and (d), and § 205.202 were denied on the grounds that they had not demonstrated that these regulations were so ambiguous that this discovery was relevant and necessary. Accordingly, respondents' Motion for Discovery was denied.

The DOE also denied a Motion for Discovery submitted by the ERA. If found that the ERA had already established by a preponderance of the evidence that LPC continued LaJet's refining business. It therefore concluded that it was not necessary to grant the ERA discovery on this issue.

Refund Application

Apco Oil Corp./Two States Petroleum Co., Inc., 3/10/88, RF83-137

The DOE issued a Decision and Order concerning an Application for Refund filed by Two States Petroleum Company, Inc. Two States, a motor gasoline and distillate fuel oil reseller, sought a portion of the settlement fund obtained by the DOE through a consent ordered entered into with Apco Oil Corporation. The DOE granted Two States a refund of $8,915, representing $5,743 in principal plus $3,172 in interest, based upon the firm's motor gasoline purchases. That portion of Two States' claim which was based upon its distillate fuel oil purchases was denied, because it was not supported by a demonstration of injury.

Daughterty Coal Company, Inc., 3/8/88, RF272-3250

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds. The applicant was a coal mining company that used fuel invoices to determine the amount of petroleum products it purchased during the period August 19, 1973 through January 27, 1981. As an end-user, the applicant was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is $590.

Fred Potteiger, et al., 3/10/88, RF272-5529, et al.

The DOE issued a Decision and Order granting refunds to 56 claimants that filed Applications for Refund in OHA's Subpart crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products it purchased during the period August 19, 1973 through January 27, 1981. As agricultural end-users of petroleum products, all the claimants were presumed have been injured as a result of the overcharges. The refunds granted totalled $1,675.

George Verhoeven Feed Co., 3/8/88, RF272-907

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981 (the settlement period). To estimate its fuel purchase volume, the Applicant divided its mileage figure for the settlement period by a fuel efficiency estimate of 5 miles per gallon for its trucks and 15 miles per gallon for its automobiles. The refund granted in this Decision is $174.

Getty Oil Company/Howell Oil Company, 3/10/88, RF265-1031, RF265-1032

The DOE issued a Decision and Order concerning two Applications for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline and middle distillates during the consent order period. OHA determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline/middle distillates and therefore was injured by Getty's actions. The total refund approved in this Decision is $730, representing $360 in principal and $370 in accrued interest.

Getty Oil Company/Utica & I Service Station, et al., 3/09/88, RF265-758, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed by resellers and retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In one of these cases, the applicant was eligible for a claim below the $5,000 small claims threshold. In the remaining 13 cases, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $73,198, representing $36,114 in principal and $37,084 in accrued interest.

Good Hope Refineries/Kent Oil & Trading Company, Good Hope Refineries/Apex Oil Company, Saber Energy, Inc./Apex Oil Company, Saber Energy, Inc./ Gulf States Oil & Refining, 3/9/88, RF189-22, RF189-15, RF193-15, RF193-19

The DOE issued a Decision and Order concerning four Applications for Refund in the Good Hope Refineries and Saber Energy, Inc. special refund proceedings. All the applicants were spot purchasers from either one or both of the consent order firms. After examining the evidence and supporting documentation, the DOE concluded that all the applicants had failed to refute the presumption that spot purchasers were not injured by the alleged violations of the consent order firms. Accordingly, all four applications were denied.

Lean Dewindt, et al., 3/8/88, RF272-4251, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim by estimating its consumption based on local fuel supplier records or sales receipts. Each applicant was an end-user of the products and therefore is presumed to have been injured. The sum of the refunds granted in this determination is $922.

M.W. McKie, et al., 3/8/88, RF272-5200 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities or in operating small businesses. Each applicant calculated its volume claim either by consulting actual purchase records or consumption records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed, and therefore was found injured based upon the end-user presumption injury. The sum of the refunds granted in this Decision is $2,761.

Mobil Oil Corporation/A. Tarricone, Inc., et al., 3/7/88, RF225-5762 et al.

The DOE issued a Decision granting 15 Applications for Refund filed by retailers and resellers of Mobil refined petroleum products from the Mobil Oil Corporation escrow account. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $29,693 ($23,893 in principal plus $5,770 interest).

Mobil Oil Corporation/Cove Oil Supply Corp., 3/7/88, RF225-6777, RF225-6780

The DOE issued a Decision granting two Applications for Refund from the Mobil Oil Corporation escrow account filed by Cove Oil Supply Corp. (Cove Oil), a retailer and reseller of Mobil refined petroleum products. Cove Oil elected to limit its claim to the $5,000 small claims threshold as set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $6,206 (representing $5,000 in principal plus $1,206 in interest).

Mobil Oil Corporation/E.F. Hall Distributing Co., et al., 3/7/88, RF225-0061, et al.

The DOE issued a Decision granting 15 Applications for Refund from the Mobil Oil Corporation escrow account

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filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $20,306 ($16,402 principal plus $3,958 interest).

Mobil Oil Corp./Herzog & Hopkins, Inc., 3/7/88, RF225–145

The DOE issued a Decision and Order approving a refund application in the Mobil Oil Corporation special refund proceeding filed by Mark S. Hopkins on behalf of Herzog & Hopkins, Inc., a reseller of No. 2 Fuel Oil. Although Mr. Hopkins has since sold his firm, the OHA found that his right to this refund was not among the assets transferred in the sale. Mr. Hopkins elected to limit his claim to the $5,000 presumption of injury level. Therefore, in accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Mr. Hopkins was granted a refund totalling $6,206 ($5,000 in principal plus $1,206 in accrued interest).

Mobil Oil Corporation/J.M. Wiggins, et al., 3/7/88, RF252789, et al.

The DOE issued a Decision granting eight Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $42,429 ($34,183 in principal plus $8,246 in interest).

Mobil Oil Corp./NGL Supply, Inc., 3/8/88, RF225–10749

The DOE issued a Decision and Order granting, in part, an Application for Refund filed on behalf of NGL Supply, Inc. in the Mobil Oil Corp. refund proceeding. The DOE first determined that NGL Supply's purchases of butane from Mobil were spot purchases and therefore do not qualify for refund. In reaching that conclusion, the DOE rejected arguments raised by NGL Supply that the DOE has previously granted refunds in similar cases and that the DOE should consider its application on the basis of NGL Supply's overall business relationship with Mobil, not on a product-by-product basis. The DOE rejected that argument. The DOE, however, approved a refund based upon NGL Supply's purchases of propane and natural gasoline in the amount of $5,203 ($4,192 in principal and $1,011 in interest).

Mobil Oil Corporation/Walter Davenport Son, Inc., 3/7/88, RF225–9819–RF225–9823

The DOE issued a Decision granting five Applications for Refund from the Mobil Oil Corporation escrow account filed by Walter Davenport Son, Inc. (Davenport), a retailer and reseller of Mobil refined petroleum products. Davenport elected to limit its claim to the $5,000 small claims threshold as set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $6,206 (representing $5,000 in principal plus $1,206 in interest).

Parker's Texaco, 3/10/88, RF275–1069

The DOE issued a Decision and Order denying Parker's Application for Refund from crude oil overcharge funds. Parker's was a gasoline retailer during the period August 19, 1973 through January 27, 1981. Because Parker's did not demonstrate that it was injured due to the crude oil overcharges, it was ineligible for a crude oil refund.

Plusa, Inc., et al., 3/10/88, RF272–828, et al.

The DOE issued a Decision and Order granting 10 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant determined the volume of its fuel purchases by consulting actual purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $3,978.

Suburban Propane Gas Corporation, Hy-Grade Oil Company, 3/10/88, RF299–12

The DOE issued a Decision granting an Application for Refund from the Suburban Propane Gas Corporation escrow account filed by Hy-Grade Oil Company, a retailer of Suburban propane. The firm elected to apply for a refund based upon the presumptions set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987). The DOE granted Hy-Grade a refund of $169 (representing $151 in principal and $18 in interest).

Sylvester Stauber, et al., 3/9/88, RF272–2808, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed, and therefore was presumed injured by the DOE. The sum of the refunds granted in this Decision is $734.

Velma J. Uhl., et al., 3/8/88, RF272–4628, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 38 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used various actual records and/or conservative estimates to report their gallonage claims. Each applicant was an end-user of the products it claimed and therefore was presumed injured. The sum of the refunds granted in this Decision is $6,036. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Woodrow Beck et al., 3/9/88, RF272–559, et al.

The DOE issued a Decision and Order granting refunds to 50 claimants that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As an agricultural end-user of petroleum products, each claimant was presumed to have been injured as a result of the crude oil overcharges. The refunds granted totalled $1,485.

Dismissals

The following submissions were dismissed:

Name	Case No.
Bay Valley Oil Co	RF225–9078
Brown Construction Co	RF272–24054
City of Daytona Beach Shores	RF272–18414
Conlee Oil Co	RF225–9570
Glenview Mobil Service	RF225–9545
Kimberly-Clark Corp	RF272–13188
McCracken County Board of Education.	RF272–20347
Superior Oil Co. of Muskegon	RF225–9837, RF225–9838
Wenatchee Petroleum Co	RF225–9815

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 24, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–12174 Filed 5–31–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–3385–a]

Control of Air Pollution from New Motor Vehicle Engines; Federal Certification Test Results for 1988 Model Year

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 206(e) of the Clean Air Act, as amended August 1977, directs the Administrator of the Environmental Protection Agency to announce in the Federal Register the availability of the results of certification tests. These tests are conducted on new motor vehicles and new motor vehicle engines to determine vehicles/engines' conformity with Federal standards for the control of air pollution caused by motor vehicles. The Federal Certification Test Results for the 1988 model year are now available and may be obtained by writing: U.S. Environmental Protection Agency, Office of Mobile Sources, Certification Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Melinda Shaffer, Certification Division, U.S. Environmental Protection Agency, Office of Mobile Sources, Certification Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4286.

Dated: May 25, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–12199 Filed 5–31–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180278; FRL–3386–7]

Emergency Exemptions; Harmony, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 18 States listed below and two crisis exemptions initiated by the Florida Department of Agriculture and Consumer Service and the Washington Department of Agriculture. Also listed are two denials from EPA of requests for specific exemptions from the California Department of Food and Agriculture and Mississippi Department of Agriculture. These exemptions, issued during the months of February and March, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific or crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of Harmony on wheat to control wild garlic; February 4, 1988, to April 15, 1988. (Robert Forrest)

2. California Department of Food and Agriculture for the use of triadimefon on tomatoes to control powdery mildew; March 1, 1988, to February 28, 1989. (Jim Tompkins)

3. Delaware Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; March 10, 1988, to September 15, 1988. (Gene Asbury)

4. Delaware Department of Agriculture for the use imazethapyr (Pursuit) on snap beans and lima beans to control weeds; March 16, 1988, to September 30, 1988. Since Pursuit contains an active ingredient which is not yet registered by the Agency, a notice of receipt was published in the Federal Register of February 24, 1988 (53 FR 5465); no comments were received. This exemption was granted on the basis that no registered alternatives can provide adequate control, conditions for an emergency exist, available data show that the use is toxicologically supported, and the use is not expected to adversely affect any endangered or threatened species. (Robert Forrest)

5. Delaware Department of Agriculture for the use of imazethapyr (Pursuit) on green peas to control weeds; March 16, 1988, to September 30, 1988. Since Pursuit contains an active ingredient which is not yet registered by the Agency, a notice of receipt was published in the Federal Register of February 24, 1988 (53 FR 5465), no comments were received. This exemption was granted on the basis that no registered alternatives can provide adequate control, conditions for an emergency exist, available data show that the use is toxicologically supported, and the use is not expected to adversely affect any endangered or threatened species. (Robert Forrest)

6. Florida Department of Agriculture and Consumer Services for the use of thiophanate-methyl on potatoes to control *Sclerotinia sclerotiorum* (white mold); March 16, 1988, to March 31, 1988. A Special Review Document notice was published in the Federal Register of October 20, 1982 (47 FR 46747). A notice of receipt for solicitation of public comment was published in the Federal Register of February 18, 1988, no comments were received. This exemption was authorized on the following basis:

a. There are no registered alternative pesticides which will provide adequate control of this pest on potatoes.

b. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $4,000,000.

c. Residues of thiophanate-methyl, its oxygen analogue, and its benzimidazole containing metabolites will not exceed 0.2 ppm in or on potatoes. This Agency has determined that this level is adequate to protect the public health.

d. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

7. Florida Department of Agriculture and Consumer Services for the use of cyromazine on tomatoes grown for the fresh fruit makat to control leafminers; March 17, 1988, to December 31, 1988. (Donald Stubbs)

8. Florida Department of Agriculture and Consumer Services for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; March 25, 1988, to August 1, 1988. (Gene Asbury)

9. Georgia Department of Agriculture for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; March 25, 1988, to August 1, 1988. (Gene Asbury)

10. Idaho Department of Agriculture for the use of Harmony on wheat and barley to control weeds; March 25, 1988, to May 1, 1988. (Robert Forrest)

11. Idaho Department of Agriculture for the use of dinoseb on dry peas, chickpeas, and lentils to control broadleaf weeds; March 14, 1988, to July 15, 1988, or upon issuance of an order concluding the dinoseb cancellation. The Administrator suspended all uses of dinoseb on October 7, 1986. Subpart D hearings were held with respect to the above uses in 1987, and the Administrator modified his suspension order to allow these uses under section 18 of FIFRA.

A notice of receipt for solicitation of public comment was published in the **Federal Register** of February 18, 1988 (53 FR 4885). Two comments were received, one in favor of the uses and the other against. Both were taken into consideration during the review of these requests.

The Agency authorized these uses of dinoseb on the basis that an emergency situation existed with respect to broadleaf weeds in dry peas, chickpeas, and lentils. In accordance with Subpart D Hearings held in 1987, the Agency found that the benefits of these uses outweighed the potential risks. (Donald Stubbs)

12. Kentucky Department of Agriculture for the use of Harmony on wheat to control wild garlic; February 5, 1988, to April 30, 1988. (Robert Forrest)

13. Massachusetts Department of Food and Agriculture for the use of metalaxyl on cranberries to control *Phytopthora cinnamomic;* March 11, 1988, to December 1, 1988. (Robert Forrest)

14. Montana Department of Agriculture for the use of fenvalerate on small grains (barley, oats, and wheat) to control pale western and army cutworms; March 23, 1988, to June 30, 1988. (Gene Asbury)

15. Mississippi Department of Agriculture and Commerce for the use of Harmony on wheat to control wild garlic; February 5, 1988, to April 1, 1988. (Robert Forrest)

16. Missouri Department of Agriculture for the use of Harmony on wheat to control wild garlic; March 3, 1988, to August 31, 1988. (Robert Forrest)

17. New Jersey Department of Environmental Protection for the use of imazethapyr on green peas to control weeds; March 16, 1988, to July 1, 1988. (Robert Forrest)

18. New Jersey Department of Environmental Protection for the use of imazethapyr on snap beans and lima beans to control weeds; March 22, 1988, to July 30, 1988. (Robert Forrest)

19. Oregon Department of Agriculture for the use of dinoseb on dry peas, chickpeas, and lentils to control broadleaf weeds; March 14, 1988, to July 15, 1988, or upon issuance of an order concluding the dinoseb cancellation. The Administrator suspended all uses of dinoseb on October 7, 1986. Subpart D hearings were held with respect to the above uses in 1987, and the Administrator modified his suspension order to allow these uses under section 18 of FIFRA.

A notice of receipt for solicitation of public comment was published in the **Federal Register** of February 18, 1988 (53 FR 4885). Two comments were received, one in favor of the uses and the other against. Both were taken into consideration during the review of these requests.

The Agency authorized these uses of dinoseb on the basis that an emergency situation existed with respect to broadleaf weeds in dry peas, chickpeas, and lentils. In accordance with Suppart D Hearings held in 1987, the Agency found that the benefits of these uses outweighed the potential risks. (Donald Stubbs)

20. Oregon Department of Agriculture for the use of Harmony on wheat and barley to control weeds; March 25, 1988, to June 1, 1988. (Robert Forrest)

21. South Carolina, Clemson University, College of Agricultural Sciences for the use of Harmony on wheat and barley to control wild garlic; February 5, 1988, to April 10, 1988. (Robert Forrest)

22. South Carolina, Clemson University, College of Agricultural Sciences, for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; March 25, 1988, to August 1, 1988. (Gene Asbury)

23. South Carolina, Clemson University, College of Agricultural Sciences, for use of acephate on tomatoes grown for the fresh market to control stinkbugs; March 4, 1988, to July 31, 1988. (Donald Stubbs)

24. Tennessee Department of Agriculture for the use of Harmony on wheat to control wild garlic; March 10, 1988, to April 15, 1988. (Robert Forrest)

25. Virginia Department of Agriculture and Consumer Services for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; March 10, 1988, to August 31, 1988. (Gene Asbury)

26. Washington Department of Agriculture for the use of dinoseb on dry peas, chickpeas, and lentils to control broadleaf weeds; March 14, 1988, to July 15, 1988, or upon issuance of an order concluding the dinoseb cancellation. The Administrator suspended all uses of dinoseb on October 7, 1986. Subpart D hearings were held with respect to the above uses in 1987, and the Administrator modified his suspension order to allow these uses under section 18 of FIFRA.

A notice of receipt for solicitation of public comment was published in the **Federal Register** of February 18, 1988 (53 FR 4885). Two comments were received, one in favor of the uses and the other against. Both were taken into consideration during the review of these requests.

The Agency authorized these uses of dinoseb on the basis that an emergency situation existed with respect to broadleaf weeds in dry peas, chickpeas, and lentils. In accordance with Subpart D Hearings held in 1987, the Agency found that the benefits of these uses outweighed the potential risks. (Donald Stubbs)

27. Washington Department of Agriculture for the use of Harmony on wheat and barley to control weeds; March 25, 1988, to June 1, 1988. (Robert Forrest)

28. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of Fluazifop-p-butyl on mint to control annual and perennial grasses; March 25, 1988, to June 15, 1988. (Libby Pemberton)

29. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of fluazifop-p-butyl on celery to control annual and perennial grasses; March 18, 1988, to September 1, 1988. (Libby Pemberton)

30. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of mancozeb on ginseng to control *Phytophthora cactorum* and *Alternaria panax;* March 8, 1988, to April 30, 1988. A Decision Document announcing the initiation of a Special Review for ethylene bisdithiocarbamate (EBDC) pesticides which includes mancozeb was published in the **Federal Register** of July 17, 1987 (52 FR 27172). The Registration Standard for mancozeb was issued in April 1987. The Registration Standard outlines data to be required by the Agency. A notice of solicitation of public comment was published in the **Federal Register** of February 10, 1988 (53 FR 3938). Six comments were received, and all favored the issuance of this section 18. (Robert Forrest)

31. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of metalaxyl on ginseng to control root rot; February 23, 1988, to August 30, 1988. (Robert Forrest)

Crisis exemptions were initiated by the:

1. Florida Department of Agriculture and Consumer Service on February 11, 1988, for iprodione on cabbage to control *Sclerotinia sclerotiorum.* This program has ended. (Libby Pemberton)

2. Washington Department of Agriculture on March 8, 1988, for the use of cyfluthrin on pears and apples to control pear psylla. This program has ended. (Libby Pemberton)

EPA has denied requests from the:

1. California Department of Food and Agriculture for the use of pronamide on marigolds to control annual weeds. The Agency has denied this request on the basis that avaialble data are inadequate to evaluate residues in or on animal commodities and treated marigolds were to be used as an animal feed. (Gene Asbury)

2. Mississippi Department of Agriculture for the use of tricyclazole on rice to control Pyricularia oryzae. A notice of receipt was published in the **Federal Register** of March 9, 1988 (53 FR 7570). The Agency has denied this request because of insufficient data for it to make the appropriate evaluation of the risks from the proposed use. No progress on section 3 registration can be expected. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: May 17, 1988.

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

[FR Doc. 88-11983 Filed 5-31-88; 8:45 am]

BILLING CODE 6560-50-M

OPP-180780; FRL-3388-7]

Receipt of Application for an Emergency Exemption From New York To Use Metolachlor; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the New York State Department of Environmental Conservation (hereafter referred to as "Applicant") to use the herbicide metolachlor (CAS 51218 45 2) to treat 8,000 acres of cabbage for pretransplant or early postemergent control of yellow nutsedge and hairy galinsoga.

EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before June 16, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180780," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment converning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of metolachlor for control of yellow nutsedge and hairy galinsoga in transplanted cabbage.

Information in accordance with 40 CFR Part 166 was submited as part of this request. According to the Applicant, metolachlor is labeled for use on corn, pod crops, potatoes in New York State.

The Applicant states the herbicides currently registered on cabbage (Treflan, Dacthal, Devrinol) have not provided control of yellow nutsedge and hairy galinsoga.

The Applicant proposes to make a single application of the product Dual 8E, EPA Reg. No. 100-597, with ground application equipment at a maximum rate of 2 pounds active ingredient per acre at the beginning of the growing season.

A specific exemption was granted for this use of metolachlor on cabbage to the Applicant in 1986 and 1987 and to other states in at least two previous years.

The registration of metolachlor on cabbage is an ongoing IR-4 project. Residue data has been collected and is awaiting analysis by IF-4. IR-4 expects to submit a petition for tolerance sometime in the summer of 1988.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a chemical for which an emergency exemption has been requested or granted for the use in any previous three years, and a complete application for registration of that use and or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-12106 Filed 5-31-88; 8:45]

BILLING CODE 6560-50-M

[OPP-36160; FRL-3387-7]

Publication of Addenda on Data Reporting to Pesticide Assessment Guidelines; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Addenda to the Pesticide Assessment Guidelines for certain studies have been finalized and are now available to the public from the National Technical Information Service (NTIS). The studies involved are: Product Chemistry, Confined Accumulation Studies on Rotational Crops, Laboratory Studies of Pesticide Accumulation in Fish, and Directions for Use. The addenda supersede paragraphs in the

BEST COPY AVAILABLE

Guidelines on data reporting and provide a format for the preparation of study reports by those submitting data to EPA. While these Guidelines are not mandatory at this time, data submitters are strongly encouraged to follow the formats so that reports will be consistent, thereby increasing the efficiency of pesticide registration and other regulatory activities.

This is the second part of the fourth set of Data Reporting Guidelines published by the Agency. Publication of the previous sets were announced in the **Federal Register** of November 26, 1986 (51 FR 42931); September 23, 1987 (52 FR 35766); January 28, 1988 (53 FR 2535); and April 13, 1988 (53 FR 12166). These documents were reviewed by the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA. They underwent public comment announced in the **Federal Register** of March 25, 1987 (52 FR 9536). The documents were revised to reflect consideration of these comments and the public comments are addressed in the documents.

Orders may be placed by mail or telephone. All orders should specify whether the document is requested in hard copy or microfiche form since prices vary for hard copy but are a consistent $6.95 for the microfiche. There is an additional $3.00 handling charge for each order. Payment may be made by charging against an NTIS deposit account; charging to VISA, MasterCard, or American Express; or by check or money order. In all orders, the document title, NTIS order number of the document, desired form of the document (microfiche or hard copy), and the price must be stated.

Data Reporting Guidelines for the remaining major studies in the Pesticide Assessment Guidelines will also be published. Publication will be announced in the **Federal Register**.

Dated: May 20, 1988.

Stephen L. Johnson,

Acting Deputy Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 88-11984 Filed 5-31-88; 8:45 am]

BILLING CODE 6560-50-M

ADDRESS: Guidelines can be ordered from: National Technical Information Service, Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

FOR FURTHER INFORMATION CONTACT:

Elizabeth M.K. Leovey, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 703B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2162).

SUPPLEMENTARY INFORMATION: The specific addenda currently available from NTIS, with NTIS order number and price, are as follows.

Document title	NTIS accession No.	EPA document No.	Hardcopy [1] price
Pesticide Assessment Guidelines, Subdivision D, Product Chemistry; Series 61, 62, 63, and 64; Addendum 1 on Data Reporting.	PB88-191705	540/09-88-048	$9.95
Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate; Series 165-1, Confined Accumulation Studies on Rotational Crops; Addendum 7 on Data Reporting.	PB88-191721	540/09-88-050	12.95
Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate; Series 165-4, Laboratory Studies of Pesticide Accumulation in Fish; Addendum 8 on Data Reporting.	PB88-191739	540/09-88-051	19.95
Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry; Series 171-3, Directions for Use; Addendum 6 on Data Reporting.	PB88-191713	540/09-88-049	12.95

[1] Also available in microfiche at $6.95 each.

[OPP 36157; FRL-3388-6]

Pesticide Assessment Guidelines; Proposed Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: The EPA is proposing to revise the Pesticide Assessment Guidelines, Subdivision E—Hazard Evaluation: Wildlife and Aquatic Organisms. These revisions would expand the scope of Subdivision E to include guidelines for testing on reptiles, amphibians, and insect pollinators, and would provide for major changes in the areas of wild mammal testing and field testing. This would improve the overall evaluation of the potential ecological effects of pesticides.

DATE: Comments should be received on or before July 31, 1988.

ADDRESS: Copies of the revised guidelines are available from the address below. Please submit three copies of written comments, identified with the document control number "OPP 36157," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, deliver comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not market confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Allen W. Vaughan, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 815-D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703 557-0763).

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines describe protocols for performing tests to support the registration of pesticides under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. A description of the organization of these Guidelines and their relationship to data requirements, along with the necessary information for ordering them from the National Technical Information Service, appears in 40 CFR 158.115, published in the **Federal Register** of October 24, 1984 (49 FR 42856). Major changes in this revision include: the addition of testing guidelines for pollinators (transferred from Subdivision L of the Guidelines); the addition of testing guidelines for reptiles and amphibians; substantial revision of the section on wild mammal testing; revision of terrestrial field testing—guidelines to reflect monitoring requirements; and, revision of aquatic field testing guidelines to reflect developments in mesocosm testing. These revisions have been made in Subdivision E to bring these guidelines in line with current policy and to reflect advances in the science of risk assessment.

The public is hereby requested to comment on this revised guidelines package. Comments on this document will be considered by the Agency in preparing a final version which will be published by the National Technical Information Service.

Dated: May 13, 1988.

Anne L. Barton,

Acting Division, Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 88-12105 Filed 5-31-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3385-1]

Underground Injection Control Program: Establishment of Maximum Allowable Injection Pressure for Rule Authorized Wells in the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Notice and Interim Final Notice and Request for Comments on New Proposal Only.

SUMMARY: EPA Region VIII has developed and published with notice for public comment on December 30, 1987, sand-face fracture gradients and a maximum allowable surface injection pressure formula for oil and gas-bearing formations in the State of Montana where enhanced recovery injection wells operate under the Underground Injection Control (UIC) program's rule authorization. EPA has reviewed public comments on the proposed fracture gradients, none of which were a request for a hearing, and is today publishing the final notice in accordance with 40 CFR 147.1354(a).

EFFECTIVE DATE: The maximum injection pressure fracture gradients included in today's final notice become effective upon publication. The two newly proposed fracture gradients included in the interim final notice become effective thirty (30) days after today's publication date unless specific comments are received thereon.

FOR FURTHER INFORMATION CONTACT: Laura Clemmens, Section Chief, Ground Water Section, U.S. EPA, Region VIII, 999-18th Street, Suite 500, Denver, Colorado 80202-2405, telephone (303) 293-1417.

SUPPLEMENTARY INFORMATION:

A. Public Comments and Response on Proposed Fracture Gradients

EPA received comments from twelve Montana operators on the proposed fracture gradients for injection formations. A number of comments were from operators of salt water disposal wells which were not subject to the proposed fracture gradients and were so advised.

Comments, including applicable fracture pressure data, were received from two operators whose wells were not addressed in the December 30, 1987, notice. On the basis of the data submitted by these two operators, EPA is proposing interim final fracture gradients for the:

—Homestake Sunburst Sand Unit, Sunburst Field, operated by Enhanced Production Operations, Inc.; and

—Ash Creek Shannon Sand Unit, Ash Creek Field, operated by Pecos Development Corporation.

The proposed fracture gradient for each of these operations is included in Table I. The proposed fracture gradients will become final thirty (30) days after this publication data unless EPA receives comments that the proposed gradients are not appropriate.

Comments, including more recent applicable fracture pressure data, were received from two operators. The updated information applies to five different enhanced recovery unit operations. On the basis of the data submitted by these two operators, EPA is revising fracture gradients for the:

—Ragged Point Tyler "A" Sand Unit, Ragged Point Field, operated by Buttes Resources;

—SE Sumatra Tyler Sand Unit, Southeast Sumatra Field, and adjacent Tyler Sand Unit, Sawyer Field, operated by Buttes Resources; and

—Cat Creek Sand Units #1 and #2, First and Second Cat Creek Sands, Cat Creek Field, operated by CENEX.

The fracture gradient for each of these operations is included in Table I.

B. Final Fracture Gradients for Montana

TABLE I.—FINAL SAND-FACE FRACTURE GRADIENTS (MONTANA)

Oil field/unit/operator	Producing formation	Fracture gradient, psi/ft.
Keg Coulee/Buttes	Tyler Sandstone	0.630
Ragged Point/Buttes	Tyler Sandstone	1.145
Sawyer/Buttes	Tyler Sandstone	1.006
SE. Sumatra/Buttes	Tyler Sandstone	1.006
Sumatra/Buttes	Tyler Sandstone	.723
Cat Creek/Units #1 & #2/Cenex	1st & 2nd Cat Creek Sand	1.300
Cat Creek/Amaden & Swift/Cenex	Amaden & Swift (Ellis)	1.200
Sumatra/Grebe/Cenex	Tyler Sandstone	.674
Flat Lake East/Chevron	Ratcliffe Lime	.770
Flat Lake West/Chevron	Ratcliffe Lime	.770
W. Sumatra/TSU/Conoco	Tyler Sandstone	.870
N. Cut Bank/Croft	Cut Bank Sandstone	1.360
Homestake/Sunburst/EPO (Enhanced Production Operations, Inc.) [1]	Sunburst Sandstone	1.200
W. Sumatra/Kincheloe/Exster	Tyler Sandstone	.870
Red Creek/Exxon	Madison Limestone	1.070
Red Creek/Exxon—Interim Final [1]	Cut Bank Sandstone	1.370
Bell Creek/Ranch Creek Unit and Units A, B, C, D, and E/GWOP	Muddy Sandstone	.907
Cat Creek/Ellis Sand Unit/Hoes	Ellis Sandstone	1.070
Graben Coulee/Cut Bank Sand Unit/Monte Grande	Cut Bank Sandstone	1.262

TABLE I.—FINAL SAND-FACE FRACTURE GRADIENTS (MONTANA)—Continued

Oil field/unit/operator	Producing formation	Fracture gradient, psi/ft
Highview/Madison/Mountain States	Madison Limestone	.860
Ash Creek/Shannon/Pecos[1]	Shannon Sandstone	.793
SW. Ragged Point/Tyler A/Pet.—Lewis	Tyler A Sandstone	.750
N. Cut Bank Sand Unit/Phillips	Cut Bank Sandstone	1.440
SW. Cut Bank Sand Unit/Phillips	Cut Bank Sandstone	1.330
Dwyer/Charles/Phillips	Charles Limestone	.780
Flat Coulee/Swift/Phillips	Swift Sandstone	1.170
SW. Cut Bank/Two Medicine Unit/Wold	Cut Bank Sandstone	1.290
Cabin Creek, Gas City, Little Beaver, E. Little Beaver, Monarch, Pennel, Lookout Butte-Coral Creek, N. Pine, S. Pine, and Pine Units/SWEPI.	Siluro-Ordovician	.76[2]
Winnette Junction/Tyler/Templeton	Tyler Sandstone	1.110
Big Wall/Tyler B/Texaco—Interim Final[1]	Tyler B Sandstone	1.110
Bowes/Sawtooth/Texaco	Sawtooth Sandstone	1.110
Central Sumatra/Tyler/Texaco	Tyler Sandstone	1.020
NE. Sumatra/Tyler/Texaco	Tyler Sandstone	1.020
N. Sumatra/Tyler/Texaco	Tyler Sandstone	1.020
Sunburst Sand Unit/Texaco	Sunburst Sandstone	1.110
Stensvad/Lower Tyler Unit/Tomahawk	Lower Tyler Sandstone	.886
Cut Bank/S. Central Cut Bank Sand Unit/Union	Cut Bank Sandstone	1.434
S. Central Cut Bank Sand Unit/Union	Cut Bank Sandstone	1.434
Cut Bank/Madison Unit/Union	Madison Limestone	.860
Reagan Unit/Union	Madison Limestone	.890
Moulton Unit/Union (terminated)	Moulton Sandstone	.000
Jim Coulee/Tyler Sand Unit/Union—Texas	Tyler Sandstone	.821
Jim Coulee/Tyler Sand Unit, Well #BNI 33-3/Union—Texas	Tyler Sandstone	1.272
Kelly Unit/Union—Texas	Tyler Sandstone	.686
S. Little Wall/Tyler Sand Unit/Union—Texas	Tyler Sandstone	.700

C. Calculation of Maximum Allowable Surface Injection Pressure Using Final Fracture Gradients

The maximum allowable surface injection pressure (Pmax) formula to be used for each field unit with enhanced recovery wells authorized by rule is as follows:

Pmax = [Fracture Gradient—(0.433)(Sp.Gr.)] × [Well Depth, shallowest in project]

When the operator calculates the (Pmax) values, the fresh water hydrostatic pressure gradient (0.433 psi/ft) must be multiplied by the Specific Gravity of the appropriate injection fluid (Sp.Gr., unitless) before being subtracted from the established sand-face fracture gradient (psi/ft). The well depth to be used in the calculation of the maximum allowable surface injection pressure shall be that depth to the top of the injection perforations of the shallowest well in the injection formation in a rule authorized project. This value shall then apply to all injection wells in that field and/or unit. This procedure provides a safety margin because the use of a deeper well depth for these calculations could lead to significantly higher, possibly excessive, injection pressures in projects with highly dipping beds.

If a sufficient data base was not available to determine an appropriate sand-face fracture gradient for an injection formation/field as a part of this notice, EPA Region VIII has not herein listed a specific fracture gradient. In this case, EPA Region VIII will require the use of the previously established fracture gradient value of 0.733 psi/ft, as identified in the UIC Rules promulgated in 49 FR 20161 on May 11, 1984, and the attendant state-specific preamble. Therefore, for all of those geologic formations/fields not listed in Table I, but being used for the enhanced recovery of oil or gas, the formula for determining the maximum allowable surface injection pressure is as follows:

Pmax = [0.733-(0.433)(Sp.Gr.)] × [Well Depth, shallowest in project]

D. Subsequent Revisions of Final Fracture Gradients

Subsequent to today's notice of fracture gradients and maximum allowable injection pressures, an operator may obtain authority to inject at a pressure greater than these established herein only by submitting a written request to EPA. Any such request must be addressed to the Regional Administrator and must demonstrate that the requested injection pressure will not initiate new fractures or propagate existing fractures in the confining zone, or cause movement of fluids into an USDW. Any such request will be approved only after notice, opportunity for comment and opportunity for a public hearing, in accordance with Subpart A of Part 124 of this chapter (Ch. I).

Anyone wishing to review the supporting information which led to the development of this notice may do so at the EPA Region VIII office.

Dated: May 13, 1988.

James J. Scherer,

Regional Administrator, EPA Region VIII.

[FR Doc. 88-12198 Filed 5-31-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Catskill Broadcasting Co. et al.

1: The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.
A. Malcolm Kahn *et al*, d/b/a Catskill Broadcasting Company (a general partnership); Catskill, NY.	BPH-870430NG	88-252
B. John Jay Iselin; Catskill, NY..	BPH-870430NH	
C. Carmine A. Pizza, General Partner, Catskill FM, Ltd., a limited partnership; Catskill, NY.	BPH-870430NI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental, A
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-12179 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B.
2. 307(b), All applicants
3. Contingent Comparative, All applicants
4. Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-12176 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Daystar Radio, Ltd., et al

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, city, and state	File No.	MM Docket No.
A. Daystar Radio, Ltd.; Breen, Colorado.	BMP-881016AC	88-248
B. Frank Elwood and Wanda Jean Elwood; Kirtland, New Mexico.	BP-870302AG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, C
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. If there is any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-12177 Filed 5-31-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Franklin Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.
A. Charles E. Franklin, d/b/a Franklin Broadcasting; Johnsonville, S.C.	BPH-860306ME	88-251
B. Hemingway Broadcasting Company, Inc.; Johnsonville, S.C.	BPH-860314ML	
C. William H. Burckhalter & Cynthia B. Merrithew Johnsonville, S.C.	BPH-860407MF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding

Applications for Consolidated Hearing; Albert E. Gary et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.
A. Albert E. Gary; Killington, Vermont.	BPH-851029MH	88-240
B. Killington Broadcasting, Ltd.; Killington, Vermont.	BPH-851030MN	
C. Killington Community Broadcasting Corporation; Killington, Vermont.	BPH-851030MO	
D. Mountain Broadcasting Limited Partners; Killington, Vermont.	BPH-851030MP	
E. Elf Broadcasting Company; Killington, Vermont.	BPH-851030MQ	
F. Radio Group, Inc.; Killington, Vermont.	BPH-851030MR	
G. Bruce Lyons; Killington, Vermont.	BPH-851030MX	
H. Killington, Ltd.; Killington, Vermont.	BPH-851030MZ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding

headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, D
2. Environmental Impact, A,B,C,D,E,F,H
3. Comparative, A–H
4. Ultimate, A–H

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–12178 Filed 5–31–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Panhandle Communications, Inc., et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MMDocket No.
A. Panhandle Communications, Inc.; Port Saint Joe, FL.	BPH–850709MD	88–250
B. PH Radio Company, Port Saint Joe, FL.	BPH–850711MS	
C. Dee Wetmore; Port Saint Joe, FL.	BPH–850712U7	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental, A
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–12180 Filed 5–31–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Southland Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.
A. Southland Broadcasting Company, Inc.; Dothan, AL.	BPH–870709MG	88–247
B. (Stephen G. McGowan *et al.*, d/b/a) Broadcast Associates; Dothan, AL.	BPH–870710MG	
C. Dothan Radio Joint Venture (Mignon C. Smith and Ellis J. Parker, General Partners); Dothan, AL.	BPH–870710MH	
D. (Francis E. Busby d/b/a) Bee Broadcasting; Dothan, AL.	BPH–870710NG	
E. Houston L. Pearce; Dothan, AL.	BPH–870710NJ	
F. Albert E. Smith; Dothan, AL.	BPH–870710NL	
G. Jerry Townsend; Dothan, AL.	BPH–870710NM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Multiple Ownership, B
2. Air Hazard, D
3. Comparative, All Applicants
4. Ultimate, All Applicants

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–12181 Filed 5–31–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Wabash Valley Community Radio Corp. et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File No.	MM Docket No.
A. Wabash Valley Community Radio Corporation; Delphi, IN.	BPH–880611MD	88–246
B. Whitcar Regional Broadcasting Co., Inc.; Delphi, IN.	BPH–880702MG	
C. James R. Bricker; Delphi, IN.	BPH–880707NN	
D. Dennis J. Kelly, d/b/a Carroll County Broadcasting Company; Delphi, IN.	BPH–880707OF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A,B,C,D
2. Ultimate, A,B,C,D

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 88–12182 Filed 5–31–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–009847–019.
Title: U.S. Atlantic Coast/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
American Transport Lines, Inc.

Synopsis: The proposed amendment would establish a ceiling on pool payments for the pool period October 1, 1987, through December 31, 1988.

Agreement No.: 202–010829–002.
Title: Eurocorde Discussion Agreement.
Parties:
North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference
Evergreen Marine Corp. (Taiwan), Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions. The parties have requested a shortened review period.

Agreement No.: 206–011139–001.
Title: Europact Agreement.
Parties:
North Europe-United States Pacific Freight Conference
North Europe-U.S. Gulf Freight Association
North Europe-U.S. Atlantic Conference

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions. The parties have requested a shortened review period.

Agreement No.: 206–011140–001.
Title: Amercorde Agreement.
Parties:
Pacific Coast European Conference
Gulf-European Freight Association
U.S. Atlantic-North Europe Confernce

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: May 26, 1988.

[FR Doc. 88–12253 Filed 5–31–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–002758–008.
Title: Port of Oakland Terminal Agreement.
Parties:
City of Oakland
American President Lines, Ltd. (APL)

Synopsis: The agreement amendment extends the basic agreement's term to July 31, 2001 and provides APL the right to extend the agreement for two additional periods of seven years, each subject to modification. It also provides for the Port's option to purchase certain APL container cranes.

Agreement No.: 224–002758C–002.
Title: Port of Oakland Terminal Agreement.
Parties:
City of Oakland
American President Lines, Ltd. (APL)

Synopsis: The agreement amendment extends the basic agreement's term to July 31, 2001 and provides APL the right to extend the agreement for two additional periods of seven years, each subject to modification.

By Order of the Federal Maritime Commission.
Dated: May 25, 1988.
Joseph C. Polking
Secretary.

[FR Doc. 88–12143 Filed 5–31–88; 8:45 am]

BILLING CODE 6730–01–M

Listing of Controlled Carriers Under the Shipping Act of 1984

Dated: May 26, 1988.

AGENCY: Federal Maritime Commission.

ACTION: Amendments to list of controlled carriers.

SUMMARY: The Federal Maritime Commission is removing Flota Mercante Gran Centro Americana S.A. and National Galleon Shipping Corporation from the list of controlled carriers. Information received by the Commission indicates that these two carriers have ceased operation, and therefore no longer meet the definition of a controlled carrier pursuant to section 3(8) of the Shipping Act of 1984. Also, the Commission is adding Ceylon Shipping Corporation, Compagnie Marocaine de Navigation, Compania Anonima Venezolana de Navegacion, Far East Enterprising Co. (H.K.), Ltd. and Nigerian National Shipping Line Limited

to the list of controlled carriers subject to the advance tariff filing and other regulatory requirements of section 9 of the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Sections 3(8) and 9 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702(8) and 1708, provide for the identification and regulation of certain state-controlled carriers in the foreign commerce of the United States. The Commission has determined that because Flota Mercante Gran Centro Americana S.A. and National Galleon Shipping Corporation have ceased operation, they should no longer be considered controlled carriers as defined by section 3(8) of the 1984 Act. Therefore, the Commission is deleting Flota Mercante Gran Centro Americana S.A. and National Galleon Shipping Corporation from its list of non-exempt controlled carriers.

Further, the Commission has determined that Ceylon Shipping Corporation, Compagnie Marocaine de Navigation, Compania Anonima Venezolana de Navegacion, Far East Enterprising Co. (H.K.), Ltd. and Nigerian National Shipping Line Limited meet the definition of a controlled carrier under section 3(8) of the 1984 Act, and are, therefore, added to the list of controlled carriers.

Upon inquiry by the Commission, Far East Enterprising Co. (H.K.), Ltd. admitted its controlled status, and Compagnie Marocaine de Navigation and Nigerian National Shipping Line Limited provided no response to the inquiry.

Ceylon Shipping Corporation claimed exemption for the connecting carrier agreement between Ceylon Shipping Corporation and United Arab Shipping Company under section 9(f)(3) of the 1984 Ac,t 46 U.S.C. app. 1708(f)(3). This claim was rejected by the Commission on the grounds that the connecting carrier agreement does not constitute a ratemaking body under section 9(f)(3).

Compania Anonima Venezolana de Navegacion took the position that it should be exempt from the controlled carrier provisions because its operations in all U.S. trades are covered by an agreement or agreements effective under section 6 of the 1984 Act. The fact that it operates under a conference agreement in certain trades was found not to entitle it to a general exemption from the controlled carrier classification.

The Commission's list of controlled carriers was previously published in the **Federal Register** on May 15, 1987 [52 FR 18451]. The amended list is shown below:

Baltic Shipping Co.—U.S.S.R.
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—U.S.S.R.
Black Star Line—Ghana
Ceylon Shipping Corporation—Sri Lanka
China Ocean Shipping Co.—People's Republic of China
China Resources Transportation & Godown Co., Ltd.—People's Republic of China
Compagnie Maritime Zairoise—Zaire
Compagnie Marocaine de Navigation (COMANAV)—Morocco
Compagnie Nationale Algerienne de Navigation—Algeria
Compagnie de Navegacao Loide Brasileiro—Brazil
Compania Anonima Venezolana de Navegacion (Venezuelan Line)—Venezuela
Compania Peruana de Vapores (Peruvian State Line)—Peru
Egyptian National Line—Egypt
Empresa Maritima del Estado (Empremar Line)—Chile
Far East Enterprising Co. (H.K.), Ltd. (Farenco)—People's Republic of China
Far Eastern Shipping Co.—U.S.S.R.
Flota Bananera Ecuatoriana S.A.—Ecuador
Guangdong International Shipping Co., Ltd.—People's Republic of China
MISR Shipping Company—Egypt
Murmansk Shipping Co. (Arctic Line)—U.S.S.R.
National Shipping Corporation of the Philippines—Philippines
Nauru Pacific Line—Nauru
Neptune Orient Lines—Singapore
Nigerian National Shipping Line Limited—Nigeria
P. T. Djakarta Lloyd—Indonesia
Pakistan National Shipping Corporation—Pakistan
Pharaonic Shipping Co. (S.A.E.)—Egypt
Polish Ocean Lines—Poland
Romanian Shipping Company Constanta (NAVROM)—Romania
Shipping Corporation of India—India
Sudan Shipping Line Limited—Sudan
Transportes Navieros Ecuatorianos (Transnave)—Ecuador
Zhu Sheng Transportation Co., Ltd.—People's Republic of China

The process of identification and classification of controlled carriers is continuous. The list as shown will be amended as circumstances warrant.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-12144 Filed 5-31-88; 8:45 am]

BILLING CODE 6730-01-M

Cancellation of Inactive Tariffs

By notice served March 15, 1988, and published in the **Federal Register** on March 18, 1988, the Federal Maritime Commission notified 13 marine terminal operators (MTOs) of its intent to cancel their individual tariffs 30 days thereafter, in the absence of a showing of good cause why such tariffs should not be cancelled.

The notice was served on the 13 MTOs on March 15, 1988, and no responses have been received. It is misleading to the public, potentially unfair to competing MTOs, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of the 13 MTOs listed in the Appendix to this notice that failed to respond to the March 15, 1988, notice will be cancelled.

Now, therefore it is ordered, That the tariffs of the 13 MTOs listed in the Appendix be cancelled.

It is further ordered, That a copy of this Order be sent by certified mail to the last known address of the MTOs listed in the Appendix.

It is further ordered, That this notice be published in the **Federal Register.**

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by § 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert S. Drew,

Director, Bureau of Domestic Regulation.

Appendix—Federal Maritime Commission Inactive Terminal Operators

Alltrans Express U.S.A., Inc., P.O. Box 7880, San Francisco, CA 94120
Coakley Terminals, 70 Erieside Avenue, Cleveland, OH 44114
Containerfreight Terminals Company, 1730 Third Street, San Francisco, CA 94107
Full Service Distribution, 2850 NW 31st Avenue, Portland, OR 97210
International Shipping Co., Inc., 1001 Connecticut Avenue NW., Suite 620, Washington, DC 20036
Koppel Incorporated Grain, c/o Koppel Terminal, P.O. Box 2330, Long Beach, CA 90801
W. W. Lynch, Inc., 1500 West 8th Street, Long Beach, CA 90813
NWT Distribution Services, 215 SE Morrison, Portland, OR 97214
Ocean Cargo Facilities, Inc., 85 Grand Canal Drive, Suite 309, Miami, FL 33144
Omni Overseas Freighting, Inc., 3001 S. Ridgeland Avenue, Berwyn, IL 60402
Riverway Terminal Inc., 2995 N.W. So. River Drive, Miami, FL 33125
Sea-Tac International Warehouse, Inc., 22 So. Idaho Street, Seattle, WA 98134
Tulane Fleeting, Inc., 201 Evans Rd., Suite 409, Harahan, LA 70123.

[FR Doc. 88-12145 Filed 5-31-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banca Commerciale Italiana, S.p.A.; Formation of, Acquisition by, or Merger of Bank Holding Companies, and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Banca Commerciale Italiana, S.p.A.*, Milan, Italy; to acquire up to 63.3 percent of the voting shares of Irving Bank Corporation, New York, New York, and thereby indirectly acquire Irving Trust Company, New York, New York; The Bank of Lake Placid, Lake Placid, New York; Bank of Long Island, Babylon, New York; Central Trust Company, Rochester, New York; Dutchess Bank & Trust Company, Poughkeepsie, New York; Endicott Trust Company, Endicott, New York; The First National Bank of Hancock, Hancock, New York; The First National Bank of Moravia, Moravia, New York; The Fulton County National Bank & Trust Company, Gloversville, New York; Hayes National Bank, Clinton, New York; The Merchants National Bank & Trust Company of Syracuse, Syracuse, New York; Nanuet National Bank, Nanuet, New York; Union National Bank, Albany, New York; and Scarsdale National Bank and Trust Company, Scarsdale, New York.

In connection with this application, Applicant proposes to indirectly acquire Irving Business Center, Inc., and thereby engage in marketing the product and services of Irving Trust Company pursuant to § 225.25(b)(1) and (b)(5); Irving Financial Centers, Inc., and thereby engage in consumer lending and commercial lending to local businesses pursuant to § 225.25(b)(1); Irving Life Insurance Company, and thereby engage in providing credit-related life, mortgage, and health insurance to consumers of IBC's bank and nonbank subsidiaries pursuant to § 225.25(b)(8); Irving Trust Company California, and thereby engage in the nondeposit trust company business, including providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); Irving Trust Company Florida, and thereby engage in the nondeposit trust company business, including providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); One Wall Street Brokerage, Inc., and thereby engage in the discount brokerage business, including the purchase and sale of stocks, bonds, options, zero coupons and other securities, for customers of the banking subsidiaries of IBC pursuant to § 225.25(b)(15); Irving Services Corporation, and thereby engage in servicing loans primarily related to credit card purchases and providing data processing services to others pursuant to §§ 225.25(b)(1) and (b)(7); and Liberty Brokerage, Inc., and thereby engage in providing intended brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12151 Filed 5-31-88; 8:45 am]

BILLING CODE 6210-01-M

Eastern Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 22, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostina, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Eastern Bancshares, Inc.*, Romney, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Romney, Romney, West Virginia.

B. Federal Reserve Bank of Chicago (David S. Epstein Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Danville Bancshares, Inc.*, Danville, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of Danville State Savings Bank, Danville, Iowa. Comments on this application must be received by June 20, 1988.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sooner Southwest Bankshares, Inc.*, Bristow, Oklahoma; to acquire 81.7 percent of the voting shares of Anadarko Bancshares, Inc., Bristow, Oklahoma, and thereby indirectly acquire Anadarko Bank and Trust Co., Anadarko, Oklahoma.

Board of Governors of the Federal Reserve System, May 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12152 Filed 5-31-88; 8:45 am]

BILLING CODE 6210-01-M

Alan E. Johnson; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1871(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 15, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Alan E. Johnson*, Jacksonville, Florida; to retain 9.33 percent of the voting shares of Bank of St. Petersburg, St. Petersburg, Florida.

2. *John F. Mercurio*, West Palm Beach, Florida; to acquire an additional 3.73 percent of the voting shares of Suburban Bankshares, Inc., Lake Worth, Florida, and thereby indirectly acquire Suburban Bank, Lake Worth, Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Robert L. Carrell*, Gloria J. Carrell, Steven J. Carrell, Julie L. Carrell, and Debra K. Ditsworth, all of Spirit Lake, Iowa; to acquire 100 percent of the voting shares of Waymar Bancorporation, Spirit Lake, Iowa.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Calvin W. Clark*, to retain control of 17.8 percent of the voting shares of Pine City Bancorporation, Inc., Pine City, Minnesota, and thereby indirectly retain shares of Pine City State Bank, Pine City, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charles L. Epstein*, Malvern, Pennsylvania; to acquire 33.3 percent of the voting shares of Commercial Bank Investment Company, Denver, Colorado, and thereby indirectly acquire Commercial Bancorporation of Colorado, Denver, Colorado; Century Bank at Orchard Road, Englewood, Colorado; Bank of Colorado, Colorado Springs, Colorado; Century Bank—Academy at Hancock, Colorado Springs, Colorado; Century Bank North, Denver, Colorado; Century Bank and Trust Company, Denver, Colorado, Century Bank Southeast, N.A., Englewood, Colorado; Rocky Mountain Bank and Trust Co., Fort Collins, Colorado; Century Bank at Broadway, Littleton, Colorado; and Commercial Savings Bank of Sterling, Sterling, Colorado.

2. *Wade V. Robinett, M.D.*, Kansas City, Missouri; to acquire an additional 8.60 percent of the voting shares of Superior Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Superior National Bank, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, May 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12153 Filed 5-31-88; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire Trust Company of Naples, Naples, Florida, and thereby engage in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12154 Filed 5-31-88; 8:45 am]

BILLING CODE 6210-01-M

Sturm Investment Company, Inc.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Sturm Investment Company, Inc.*, Omaha, Nebraska; to engage *de novo* in the issuance and holding of secured promissory notes pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12155 Filed 5-31-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Anesthetic and Life Support Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on May 1, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: May 24, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12159 Filed 5-31-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0202]

Drug Export; Nitropflaster Ratiopharm-5 and 10

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hercon Laboratories Corp., a Subsidiary of Health-Chem Corp., has filed an application requesting approval for the export of the human drug Nitropflaster Ratiopharm-5 and 10 to the Federal Republic of Germany.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Hercon Laboratories Corp., a Subsidiary of Health-Chem Corp., Research & Development Laboratories, 200B Corporate Ct., Middlesex Business Center, South Plainfield, NJ 07080, has filed an application requesting approval for the export of the drug Nitropflaster Ratiopharm-5 and 10, to the Federal Republic of Germany. This drug is used for prophylaxis and long-term treatment of angina pectoris associated with coronary heart disease (circulatory disturbances of the myocardium). The application was received and filed in the Center for Drug Evaluation and Research on May 19, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (expect that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 13, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 20, 1988.

D. Hicks,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-12150 Filed 5-31-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0218]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® Renu Lubricant and Rewetting Drops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of BAUSCH & LOMB® ReNu Lubricant and Rewetting Drops for use to lubricate and rewet soft (hydrophilic) contact lenses during lens wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of March 18, 1988, of the approval of the supplemental application.

DATE: Petitions for administrative review by July 1, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On October 23, 1987, Bausch & Lomb Optics Center, Rochester, NY 14602, submitted to CDRH a supplemental application for premarket approval of BAUSCH & LOMB® Renu Lubricant and Rewetting Drops. BAUSCH & LOMB® Renu Lubricant and Rewetting Drops is indicated for use to lubricate and rewet soft (hydrophilic) contact lenses during wear.

On January 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On March 18, 1988, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the BAUSCH & LOMB® Renu Lubricant and Rewetting Drops states that the solution is indicated for use to lubricate and rewet soft (hydrophilic) contact lenses during wear. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft (hydrophilic) contact lens, the manufacturer of each lens or PMA holder shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 1, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 23, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-12160 Filed 5-31-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of a Partial Disapproval of a Washington State Plan Amendment

May 25, 1988.

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 12, 1988, in Seattle, Washington to reconsider our decision to partially disapprove Washington State Plan Amendment 87-11.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4470.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a portion of a Washington State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The State of Washington has submitted a plan amendment which amended eligibility and coverage portions of its State plan as required by HCFA Program Memorandum Transmittal 87-4. One portion of the amendment reflected the State's revisions to its community property law to include a "one-way" provision for purposes of determining financial eligibility. The one-way rule provides that if the income received under the community property rules in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant. The effect of the change, coupled with the community property rules, is that income available to the nonapplicant spouse is always maximized, and income available to the applicant spouse is always minimized.

The State of Washington believes that the one-way rule should be approved because it was cited in the Ninth Circuit Court of Appeals decision ordering the Secretary to approve Washington 84-20. The State also maintains that the one-way rule should be approved because it is protected under section 2373(c) of the Social Security Act of 1984.

The issues in this matter are whether: (1) The one-way rule violates SSI regulations at 20 CFR Part 416, section 1902(a)(10)(C)(i)(III) of the Act, and regulations at 42 CFR 435.723; (2) approval of the one-way rule is required by the Ninth Circuit Court of Appeals decision on Washington 84-20; and (3) the one-way rule is protected under section 2373(c) of the Deficit Reduction Act of 1984.

Section 1902(a)(10) of the Act requires, in general, that States use the cash assistance methodologies and practices in determining eligibility for Medicaid. Section 1902(a)(10)(C)(i)(III) specifically requires that in determining eligibility for the aged, blind, and disabled medically needy, the methodology of the SSI program will be used. Regulations at 20 CFR Part 416 specify the SSI methodology which States must apply in determining what is income and how it affects eligibility as well as how spousal income affects eligibility; i.e., deeming of income. HCFA has concluded that Washington's one-way rule does not comply with the requirements of 20 CFR Part 416, which include no provisions for apportioning income such as Washington proposes in its one-way rule. As such, Washington's one-way rule is contrary to the requirements of 20 CFR Part 416.

In addition, regulations at 42 CFR 435.723 prescribe the financial responsibility of spouses in determining Medicaid eligibility. These regulations include specific requirements concerning the circumstances under which spousal income is considered available to an applicant or recipient. These regulations also include no provisions such as Washington proposes in its one-way rule for apportioning income. Thus, HCF found that Washington's one-way rule is contrary to the requirements of 42 CFR 435.723.

HCFA does not believe that the one-way rule falls within the scope of the Ninth Circuit Court of Appeals decision on Washington 84-20. While the one-way rule was mentioned in that decision, the Court did not order the Secretary to approve the one-way rule; it only ordered the Secretary to approve SPA 84-20, and the one-way rule was not a part of SPA 84-20. In addition, HCFA believes that the one-way rule provisions are only protected by the DEFRA moratorium to the extent that they apply to eligibility groups covered under sections 1902(a)(10)(A)(ii)(IV), (V), or (VI), or 1902(a)(10)(D) of the Act.

The notice to Washington announcing an administrative hearing to reconsider our partial disapproval of its State plan amendment reads as follows:

Mr. Ron W. Kero,

Director, Division of Medical Assistance, Washington Department of Social and Health Services, Mail Stop HB-41, Olympia, Washington 98504

Dear Mr. Kero: This is to advise you that your request for reconsideration of the decision to disapprove a portion of Washington 87-11 was received on April 28, 1988.

Washington, 87-11 would reflect, in the State's Medicaid plan, amendments to its community property laws to include a one-way provision for purposes of determining financial eligibility.

You have requested a reconsideration of whether this provision of the plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are three issues in this matter: (1) whether the one-way rule violates SSI regulations at 20 CFR Part 416, section 1902(a)(10)(C)(i)(III) of the Act, and regulations at 42 CFR 435.723; (2) whether approval of the one-way rule is required by the Ninety Circuit Court of Appeals decision on Washington 84-20; and (3) whether the one-way rule is protected under Section 2373(c) of the Deficit Reduction Act of 1984.

I am scheduling a hearing on your request to be held on July 12, 1988, at 10:00 a.m. in Room 470-472, 2901 third Avenue, Seattle, Washington. If this is not acceptable, we would be glad to set a date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4470.

Sincerely yours,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 25, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-12252 Filed 5-31-88; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

[BHR-003-N]

Hearings by Administrative Law Judges of Certain Medicare Claims

AGENCY: Health Care Financing Administration (HCFA), HHS. Social Security Administration (SSA), HHS.

ACTION: General notice.

SUMMARY: This notice is to advise the public that the Social Security Administration's Office of Hearings and Appeals (SSA, OHA) has recently been given temporary jurisdiction over Medicare Part B, Supplementary Medical Insurance, Administrative Law Judge (ALJ) hearings. Medicare Part A, Hospital Insurance, ALJ hearings and Medicare entitlement matters continue under SSA, OHA's jurisdiction.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth Stewart, (703) 235–1060.

Prior to the enactment of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), the Social Security Act (the Act) contained no provisions for Administrative Law Judge (ALJ) hearings or judicial review for claims arising under Medicare Part B, the Supplementary Medical Insurance program under title XVIII of the Act, except for certain matters arising under section 1876 of the Act pertaining to health maintenance organizations (HMOs) and competitive medical plans (CMPs). Instead, as specified in section 1842(b)(3)(C) of the Act and regulations located at 42 CFR Part 405, Subpart H, Medicare carriers performed reviews of initial claims and provided carrier hearings for individuals enrolled under Medicare Part B. If an individual beneficiary, or a physician or supplier that accepted assignment, disagreed with an initial determination of a claim under Medicare Part B, he or she could obtain a review by the carrier which denied the claim and, if the amount in controversy was $100 or more, a new determination by a hearing officer appointed by the carrier which denied the claim.

Section 9341 of OBRA 86 revised sections 1869 (a) and (b) of the Act to grant further administrative review rights under Medicare Part B, effective for services furnished on or after January 1, 1987. Medicare carriers will continue to perform initial claims review and to provide hearings in accordance with section 1842(b)(3)(C) of the Act and procedures set forth at 42 CFR Part 405, Subpart H. These further review rights provided under section 9341 of OBRA 86 include the right to an ALJ hearing for claims where $500 or more is in controversy, and the right to judicial review following an ALJ hearing if at least $1,000 remains in controversy.

With the additional review rights granted by OBRA 86, claimants under Part B now have essentially the same appeals rights as claimants under Part A. Since the inception of the Medicare program, ALJ hearings for Part A claimants have been conducted by ALJs from the SSA, OHA according to regulations at 20 CFR Part 404, Subparts J and R, and 42 CFR Part 405, Subpart G. Given the additional workload created by expansion of appeal rights under Part B, the committee report accompanying OBRA 86 suggested that the Secretary of Health and Human Services consider either establishing a separate Office of Hearing and Appeals in the Health Care Financing Administration (HCFA) to hear both Part A and Part B beneficiary appeals, as well as certain other Medicare appeals, or designating certain ALJs in SSA, OHA to specialize in Medicare appeals.

The Secretary determined that HCFA should assume responsibility for hearing all Medicare appeals. Accordingly, HCFA planned to establish its own Office of Hearings and Appeals, including a new corps of ALJs, and to draft proposed regulations for appeals under Part A and Part B. Among other things, these draft regulations included a proposal to permit ALJ hearings by telephone. Congress, however, believing that additional study is needed on the use of telephone hearings, directed the Secretary to prepare a report on telephone hearings, and ordered SSA, OHA to conduct hearings on claims under Part B in the same manner as hearings are conducted under section 205(b)(1) of the Act until the earlier of submission of the report to Congress or September 1, 1988 (Section 4037(a), Pub. L. 100–203).

Since SSA, OHA has temporary jurisdiction over Part B appeals, but will be required to hold hearings before promulgation of regulations governing Part B appeals, OHA has determined that these hearings should be conducted according to the existing regulations governing Part A appeals until such time as regulations governing Part B are promulgated.

In conducting these hearings, SSA, OHA will use the following procedures:

- Parties must complete the carrier administrative review process set forth in 42 CFR Part 405, Subpart H. ALJ hearings will be held for Medicare Part B claims which meet the amount in controversy requirement established by section 9341 of OBRA 86.
- Medicare Part B ALJ hearings and any subsequent administrative review of such cases by SSA, OHA's Appeals Council will be conducted in accordance with existing procedures as provided in 20 CFR Part 404, Subparts J and R, except where the language of these regulations may conflict with specific provisions of the Act, as amended.
- Parties to ALJ decisions or dismissals will have the right to request administrative review of the ALJ's action.

(Catalog of Federal Register Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program) (No. 13.802, Social Security-Disability Insurance; No. 13.803, Social Security-Retirement Insurance; No. 13.804, Social Security-Survivors Insurance; No. 13.807, Supplemental Security Income)

Dated: April 12, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Dated: April 28, 1988.

Dorcas R. Hardy,

Commissioner, Social Security Administration.

[FR Doc. 88–12251 Filed 5–31–88; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of Neurological and Communicative Disorders and Stroke; Solicitation of Public Comments for the Interagency Head Injury Task Force

Notice is hereby given that the Interagency Head Injury Task Force plans to solicit public comments so that it can increase its knowledge and understanding of the needs of the traumatic brain injured. Information from the scientific community and other interested groups or individuals may be shared in connection with a public hearing on September 8 and 9, 1988, from 9:30 a.m. until 5:00 p.m. It will be held in the Department of Health and Human Services, Conference Room 800, 200 Independence Avenue SW., Washington, DC.

As a result of language in the House Appropriations Committee Report No. 100–256 (page 71), the Secretary of Health and Human Services established an Interagency Head Injury Task Force. The Senate Appropriations Committee Report No. 100–189 (page 103) also encouraged increased coordinative efforts with other Federal agencies in the area of traumatic head injury.

The Task Force consists of representatives from the National Institute of Neurological and Communicative Disorders and Stroke, the Department of Defense, the Department of Education, the Department of Transportation, the Veterans Administration, the National Science Foundation, the National Institute of Mental Health, the National Center for Health Statistics, the Food and Drug Administration, the Centers for Disease Control, the Health Resources and Services Administration, the National Center for Health Services Research/Health Care Technology Assessment, and the Health Care Financing Administration. The Interagency Task Force will prepare a report with recommendations on traumatic head injury causing brain damage. It will have a broad focus on research, on training and on service delivery in the area of the traumatic brain injured. Attention will also be given to the range of concerns from acute trauma management to rehabilitation programs as well as related data coordination.

The attendance and the number of presentations during the meeting will be limited to the time and space available. Thus, all individuals who wish to attend or present statements at the meeting should notify in writing Mr. Joseph J. Culhane, Executive Secretary, Interagency Head Injury Task Force, National Institute of Neurological and Communicative Disorders and Stroke, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 8A03, Bethesda, Maryland 20892, by June 20, 1988. Notification should indicate complete name, affiliation, address, and telephone number.

Those who wish to make a presentation must file a written statement or detailed summary of their presentation with the Executive Secretary before 5:00 p.m., July 11, 1988. Only speakers discussing subjects relevant to the mission of the Interagency Task Force will be scheduled.

Each speaker will be limited to 10 minutes to summarize or highlight the written statement. Those who cannot attend the meeting but would like to submit a written statement are encouraged to do so. Statements longer than three pages must also contain a succinct summary.

Date: May 25, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–12234 Filed 5–31–88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-08-4212-13]

Arizona; Yuma District Resource Management Planning; Resource Management Amendment/Decision Record, Arizona Availability and Public Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Yuma District Resource Management Plan Amendment, decision record, and public comment period.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017 (for Needles lands), and Sue Richardson, Area Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300 (for Yuma lands).

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, a draft Resource Management Plan (RMP) Amendment/Environmental Assessment (EA) has been prepared for the Yuma District. The proposed amendment modifies the Land Ownership Adjustment section of the Yuma District RMP by adding the statement: This decision is modified to allow approximately 432 acres in the following locations to be available for disposal through exchange: within the city limits of Needles, California, on the south side of town described as T. 8 N., R. 23 E., SBM, sec. 4, lot 4, SW¼NW¼, N½SW¼, SE¼SW¼, N½SW¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼SW¼, SE¼SW¼SW¼SW¼, W½SW¼SE¼; approximately 10 miles south of Yuma, Arizona, described as T. 10 S., R. 23 W., G&SRM, sec. 18, lot 10, NE¼NW¼NW¼, SE¼SW¼NW¼, E½NW¼SW¼, SW¼NE¼SW¼; approximately 15 miles east of Yuma along Highway 95 described as T. 8 S., R. 21 W., G&SRM, sec. 16, lots 7 and 9, E½SE¼SW¼; approximately 6 miles east of Ehrenberg, Arizona, just south of Interstate 10, described as T.3 N., R. 21 W., G&SRM, sec. 3, lot 9. This will increase the acreage designed for disposal to 56,192 acres.

Copies of the amendment are available upon request from the Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300. Written comments should be sent to the District Manager at the above address.

Robert V. Abbey,

Acting District Manager.

Date: May 23, 1988.

[FR Doc. 88–12216 Filed 5–31–88; 8:45 am]

BILLING CODE 4310-32-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31277]

West Shore Railroad Corp.; Operation Exemption; Lines of Richard Sanders

West Shore Railroad Corporation (West Shore) has filed a notice of exemption to operate certain lines of railroad being purchased by Richard Sanders (Sanders). The involved lines, comprising a total of approximately 9.67 miles all in Union County, PA, are: (1) That portion of the Milton Industrial Track (MIT) from milepost 161.4 at Winfield to milepost 169.8 at Weston Milton; (2) that portion of the Limekiln Branch in Winfield from its connection with the MIT at milepost 161.75 (milepost 0.0) to milepost 0.4; (3) that portion of the Nail Mill Branch in Lewisburg from its connection with the (MIT) at milepost 166.07 (milepost 0.0) to milepost 0.5; and (4) that portion of the Penitentiary Branch in Lewisburg from its connection with the MIT at milepost 167.25 (milepost 0.0) to milepost 0.37. In Docket No. AB–167 (Sub-No. 488 N), *Conrail Abandonment in Northumberland and Union Counties, PA* (not printed), served May 3, 1988, Consolidated Rail Corporation (Conrail) has applied to abandon these lines. Sanders has entered into an agreement with Conrail to purchase the property after abandonment, and West Shore has entered into an agreement with Sanders to operate the rail service on the property. The transaction was expected to be consummated on May 9, 1988. Any comments must be filed with the Commission and served on: William P. Quinn and Eric M. Hocky, Rubin Quinn Moss & Heaney, 510 Walnut Street, Philadelphia, PA 19106.

West Shore must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901,* 1 I.C.C. 2d , served February 17, 1988.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 17, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–11959 Filed 5–31–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities

under the Paperwork Reduction U.S.C. Chapter 35), considers c on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Assistant Secretary for Policy
(Department Management) Pretest of the National SAS Farmworker Survey (Seasonal Agricultural Services)
Annually
Individuals or households; Farms
Businesses or other for profit
100 responses; 100 hour; 1 form.

The Immigration and Nationality Act (INA) as amended by Immigration Reform and Control Act (IRAC) requires the DOL and the USDA to estimate the departure rate from Seasonal Agricultural Services (SAS) agriculture and to analyze information about wages, working conditions and recruitment practices. This pretest survey will gather data necessary to make these estimates and carry out these analyses.

Signed at Washington, DC, this 26th day of May, 1988.

Marizetta L. Scott,

Acting Department Clearance Officer.

[FR Doc. 88–12296 Filed 5–31–88; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Altair Int'l et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 13, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 13, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 23rd day of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Altair Int'l, Plant #7 (Workers)	Mt. Clemens, MI	5/23/88	5/3/88	20,684	Electrical Connectors.
Champion Lighting (Workers)	Hialeah, FL	5/23/88	5/5/88	20,685	Residential & Commercial Lighting.
Hialeah Industries (Workers)	Miami Lakes, FL	5/23/88	5/13/88	20,686	Pilot Suits.
J.T. Sportswear (ILGWU)	Quincy, MA	5/23/88	5/9/88	20,687	Ladies' Shirts.
KY. Pants (Workers)	Glasgow, KY	5/23/88	5/9/88	20,688	Men's Work Pants.
Key Tronic Corp. (Workers)	Spokane, WA	5/23/88	4/22/88	20,689	Keyboards.
Lincoln Underwear Co. (Workers)	Pottstown, PA	5/16/88	5/5/88	20,690	Men's & Boys T-Shirts.
Oxnard Frozen Foods (Company)	Oxnard, CA	5/23/88	5/10/88	20,691	Processed Frozen Vegetables.
Stackpole Carbon Co. (IUE)	St. Marys, PA	5/23/88	5/10/88	20,692	Resistors, Bulk Graphite, Carbon Brushes, Electric Contacts & Relays, Graphite Brushes.
Transfer Machine, Inc. (UAW)	Troy, MI	5/23/88	5/10/88	20,693	Special Machine Tools.
Philips Consumer Electronics Group (IUE)	Greeneville, TN	5/23/88	5/6/88	20,694	Televisions.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Philips ECG, Incorp. (Workers)	Altoona, PA	5/23/88	5/10/88	20,695	Vaccuum Receiving Tubes.

[FR Doc. 88–12297 Filed 5–31–88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; W.D.H. Co. et al.

In accordance with section 223 of the Trace Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 16, 1988—May 20, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decrased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,574; W.D.H. Company, Farmingdale, NJ

TA–W–20,545; Allegheny Drop Forge Co., Pittsburgh, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,536; P.B.M. Machining, Inc., Muncie, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,572; Shape Systems, South Portland, ME

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,542; Toland & Johnson, Inc., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,529; Airco Carbon, Niagara Falls, NY

U.S. imports of carbon and graphite electrodes declined absolutely and relative to domestic shipments in 1987 compared to 1986.

TA–W–20,594; General Electric Co., Drive Systems Operations, Salem, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,531; Energy Data Search, Inc., Oklahoma City, OK

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,546; Beckley Coal Mining Co., Beckley Coal Mine, Glen Daniel, WV

U.S. imports of metallurgical coal are negligible.

TA–W–20,564; Florsheim Shoe Co., West Belmont Street, Chicago, IL

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,564A; Florsheim Shoe Co., South Canal Street, Chicago, IL

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,609; General Motors Corp., CPC Oklahoma City, Oklahoma City, OK

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,568; LTV Steel Co., Chicago Works, Chicago, IL

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–20,630; Tanoma Mining Co., Tanoma Mine & Preparation Plant, Marion Center, PA

U.S. imports of steam and metallurgical coal is negligible.

Affirmative Determinations

TA–W–20,530; Baxter Healthcare Corp., Eaton, OH

A certification was issued covering all workers engaged in the production of powder-free vinyl gloves separated on or after January 1, 1988 and before April 30, 1988.

TA–W–20,539; Sterling Engineered Products, Wisconsin Rapids, WI

A certification was issued covering all workers on or after March 8, 1987.

TA–W–20,548; Clover Knitting Mills, Inc., Philadelphia, PA

A certification was issued covering all workers on or after March 11, 1987.

TA–W–20,490; Milan Sportswear, Milan, TN

A certification was issued covering all workers on or after April 30, 1987.

TA–W–20,593; Florsheim Shoe Co., (Capaha Plant) Cape Girardeau, MO

A certification was issued covering all workers on or after December 1, 1987 and before May 1, 1988.

TA–W–20,543; Washington Manufacturing Co., McMinnville, TN

A certification was issued covering all workers on or after March 10, 1987.

TA–W–20,617; Scholze Tannery, Chattanooga, TN

A certification was issued covering all workers engaged in the production of leather separated on or after March 18, 1987.

TA–W–20,595; Gilbert & Bennett Manufacturing Co., Georgetown, CT

A certification was issued covering all workers engaged in the production of wire fencing products separated on or after March 29, 1987.

TA–W–20,550; Dalton Industries, Inc., Corporated Headquarters and Warehouse, Willoughby, OH

A certification was issued covering all workers separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,551; Dalton Industries, Inc., Willoughby, OH

A certification was issued covering all workers on or after May 31, 1987 and before May 31, 1988.

TA–W–20,552; Dalton Industries, Inc., Rochester, NY

A certification was issued covering all workers on or after March 11, 1987 and before May 31, 1988.

TA–W–20,553; Dalton Industries, Inc., Pittsburgh, PA

A certification was issued covering all workers separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,554; Dalton Industries, Inc., Pigeon Forge, TN

A certification was issued covering all workers of the firm separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,555; Dalton Industries, Inc., Mystic, CT

A certification was issued covering all workers separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,556; Dalton Industries, Inc., Lorain-Amherst, OH

A certification was issued covering all workers of the firm separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,557; Dalton Industries, Inc., Hilton Head, SC

A certification was issued covering all workers separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,558; Dalton Industries, Inc., Erie, PA

A certification was issued covering all workers of the firm separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,559; Dalton Industries, Inc., Columbus, OH

A certification was issued covering all workers separated on or after March 31, 1987 and before May 31, 1988.

TA–W–20,560; Dalton Industries, Inc., Canton, OH

A certification was issued covering all workers of the firm separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,561 Dalton Industries, Inc., Buffalo, NY

A certification was issued covering all workers separated on or after March 31, 1987 and before May 31, 1988.

TA–W–20,562 Dalton Industries, Inc., Bedford, OH

A certification was issued covering all workers of the firm separated on or after March 11, 1987 and before May 31, 1988.

TA–W–20,563; Dalton Industries, Inc., Asheville, NC

A certification was issued covering all workers separated on or after March 31, 1987 and before May 31, 1988.

I hereby certify that the forementioned determinations were issued during the period May 16, 1988—May 20, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance. Dated 5/24/88.

[FR Doc. 12298 Filed 5–31–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–97–C]

Amax Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Amax Coal Company, 251 North Illinois Street, P.O. Box 987, Indianapolis, Indiana 46201–0987 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Wabash Mine (I.D. No. 11–00677) located in Wabash County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, a petitioner proposes to clean out and plug oil and gas wells using specific techniques and procedures as outlined in the petition.

3. In addition, petitioner proposes to mine through the plugged oil or gas well. Prior to mining through, the petitioner would confer with the MSHA District Manager for approval of the specific mining procedures, and appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official. In addition:

(a) Drivage sites would be installed; firefighting equipment, roof support and ventilation materials would be available;

(b) The quantity of air would be not less than 9000 cubic feet per minute to ventilate the face;

(c) Equipment would be checked for permissibility and serviced prior to mining through the well. The working place would be free from accumulations of coal dust and coal spillages, and rock-dusted to within 20 feet of the face;

(d) Methane monitors would be calibrated prior to the shift and tests would be made during mining approximately every 10 minutes; and

(e) When the wellbore is intersected, all equipment would be de-energized and safety checks would be made before mining would continue in by the well a sufficient distance to permit adequate ventilation around the area of the wellbore.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 25, 1988.

[FR Doc. 88–12278 Filed 5–31–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–76–C]

Arch of Kentucky, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch of Kentucky, Inc., P.O. Box 767, Lynch, Kentucky 40855 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Highsplint No. 2 Mine (I.D. No. 15–16004) and its No. 33 Mine (I.D. No. 15–02007) both located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that cabs or canopies be installed on the mine's electric face equipment.

2. The mines range from 19- to 51 inches in height with consistent ascending and descending grades creating dips in the coal bed. The roof of each mine is very uneven.

3. Petitioner states that the use of cabs or canopies on its 820 Simmons-Rand coal haulers and its S&S scoops would result in a diminution of safety resulting from impaired vision and from being required to operate in cramped positions.

Impaired vision and cramped positions cause the following hazards:

(a) Ingress and egress from the cab is limited and effectively prevents quick escape when mining conditions warrant such escape;

(b) Equipment operators severely damage power cables by running over them or the canopies catch those cables that are hung, with similar hazards occurring;

(c) Miners operate the machinery exposing their bodies and appendages creating the chances of being crushed between the machine and rib;

(d) Due to ascending and descending grades, the cabs or canopies would get against the roof and destroy roof supports; and

(e) The cabs or canopies would destroy or pull down ventilation controls (curtains) affecting mine ventilation.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88–12279 Filed 5–31–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–79–C]

Castle Gate Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Castle Gate Coal Company, P.O. Box 449, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 3 (I.D. No. 42–00165) located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trailing cables be 500 feet.

2. Development in the 10th East panel will be by means of a three-entry system with crosscuts and entries on 104-foot by 140-foot centers and 140-foot by 100-foot centers. The size of the coal blocks is required due to the geological characteristics of the property. The size of the coal blocks requires the use of either longer trailing cables or distribution boxes. Longer trailing cables would be more easily protected from mechanical damage than distribution boxes. Distribution boxes are difficult to protect due to 16-foot-wide entries dictated by roof conditions and due to pitched seam and water problems.

3. As an alternate method, petitioner proposes to use 800 feet of No. 6 AWG (portable) trailing cables on shuttle cars and roof bolting machines.

4. Petitioner states that increasing the length of the shuttle car, and roof bolter cables to 800 feet would eliminate the need for backspooling and the addition of junction boxes. Backspooling causes undue wear and damage to the trailing cable which results in premature failure and/or breakdown of the cable. This cable damage creates a greater potential for fire and shock hazards to occur. Elimination of junction boxes reduces required system maintenance and also eliminates another potential source of fire and shock hazards.

5. Petitioner further states that no voltage-drop, motor overheating, dropping out of contractors, or starting problems due to low-voltage have been encountered with the machines.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 24, 1988.

[FR Doc. 88–12280 Filed 5–31–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–67–C]

Duquesne Light Co.; Petition for Modification of Application of Mandatory Safety Standard

Duquesne Light Company, R.D.#1, Box 282A, Greensboro, Pennsylvania 15338 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Warwick No. 3 Mine (I.D. No. 36–02374) located in Green County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The petitioner states that electrical installations (combination boxes, belt starter boxes, switch houses, and permanent pumps) at various locations throughout the mine are located such that all entries close to them are maintained as intake airways. There are no return airways in the immediate vicinity for ventilating such areas.

3. As an alternate method, the petitioner proposes that—

(a) The electric installations would be of the dry type and contain no flammable cooling fluid or flammable hydraulic oil;

(b) The electrical installations would be housed in fireproof enclosures;

(c) No combustible material would be stored or allowed to accumulate in the fireproof enclosure;

(d) A signal, activated by a suitable sensor, would be located so that it could be heard or seen by a responsible person;

(e) The fireproof enclosure would be installed with fireproof doors to provide proper ventilation. These fire doors would be secured open by a flammable cord so that if a fire occurred, the cord would be severed and the doors would close automatically;

(f) Firefighting equipment would be provided on the outside of the fireproof structure; and

(g) The electrical equipment would be examined and maintained by a qualified person.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12281 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-34-C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.701 (abandoned areas, adjacent mines; drilling of boreholes) to its Federal No. 2 Mine (I.D. No. 46-01456) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, boreholes are required to be drilled to a distance of at least 20 feet in advance of the working face of such working place and continually maintained to a distance of at least 10 feet in advance of the advancing working face.

2. The 17 Right, 3-South section of the Federal No. 2 Mine is presently being mined in the direction of Loveridge Mine. The mining plan calls for the 17 Right, 3-South section to be driven at a 90 degree angle off of the 3-South Mains and parallel to the northernmost entry of the Loveridge Mine at a distance of 120 feet.

3. Petitioner states that compliance with the standard would require drilling two rib holes towards the Loveridge Mine, in addition to the center hole, allowing a 16-foot cut. This procedure would require three major pieces of equipment to be moved in and out of the working place before a cut of coal would be mined. To complete development of a 100-foot block under this procedure, a minimum of twenty-one machine moves would be made, thereby exposing the operating crew to a greater number of caught-by and struck-by hazards.

4. As an alternate method, petitioner proposes to drill one long rib hole, which would allow completion of the entry development with no intermediate equipment moves as the entry would be roof bolted off the mining machine. An additional hole would be drilled in the rib as noted to maintain the hole minimum of 14.2 feet inside the rib at all times. The entire face drilling operation would be completed when mining takes place in the adjacent entries. Upon completion of mining in the No. 1 entry, the entire drilling procedure would be repeated.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 29, 1988.

[FR Doc. 88-12282 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-53-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Orient No. 6 Mine (I.D. No. 11-00599) located in Jefferson County, Illinois. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entires not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use intake air coursed through the belt haulage entries to ventilate active workings upon development of three and four entry longwall panels and during the retreat phase of the longwall. In support of this request, petitioner states that:

(a) The belt entry would be separate from the aircourse designated as the intake escapeway with permanent stopping and overcasts;

(b) A carbon monoxide monitoring system has been installed with specific conditions and equipment as outlined in the petition, and in accordance with an approved "Automatic Fire Sensor and Warning Device System Plan";

(c) Petitioner proposes to develop three or four entry longwall panels. These panels would be developed with the belt haulage entry on an outside entry next to the solid block of coal. The intake entry would be on the center followed by the returns; and

(d) Coursing intake air through the belt haulage entry would ensure that the air within contains only minimum amounts of methane. Petitioner would be able to utilize the extra quantity of air from the belt haulage entry to control methane and responsible dust along the longwall face.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 24, 1988.

[FR Doc. 88-12284 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-88-C]

Hawkeye Services Corp.; Petition for Modification of Application of Mandatory Safety Standard

Hawkeye Services Corporation, 1093 North Mayo Trail, Suite 256, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 77.811 (movement of portable substations and transformers) to its No. 3 Surface Mine (I.D. No. 15-09965) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns that requirement that portable substations and transformers be deenergized before they are moved from one location to another.

2. As an alternate method, petitioner proposes to use a rubber-tired, trailer-mounted, portable generator, connected with a short length of trailing cable and pulled by a tractor truck, to move large electric mining shovels and draglines, using specific equipment and safety procedures as outlined in the petition.

3. In support of this request, petitioner states that by avoiding the need to deenergize a portable substation, establish ground fields, and use longer length trailing cable the alternate method would eliminate excessive exposure of personnel to energized trailing cable, which could be damaged from being dragged by equipment over long distances.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12283 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-90-C]

Inferno Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Inferno Coal Company, Inc., P.O. Box 1270, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 6 (I.D. No. 15-16320) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the fire clay seam, the thickness of the seam ranges from 40 to 44 inches. The bottom is soft shale and varies from flat and dry to wet and uneven.

3. Petitioner states that the use of cabs or canopies would result in a diminution of safety because the cabs or canopies would limit the equipment operator's visibility and seating position causing fatigue; thereby increasing chances for an accident. Due to uneven roof and very soft bottom, the cabs or canopies could strike and dislodge roof supports. The cabs or canopies could also strike and dislodge electrical cables creating an electrical or fire hazard.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: May 23, 1988.

[FR Doc. 88-12285 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-58-C]

LAR Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

LAR Mining, Inc. Route 2, Box 199, Evarts, Kentucky 40828, has filed a petition to modify the application of 30 CFR 75.1200 (conventional roof support) to its No. 1 Mine (I.D. No. 15-13085) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner proposes to use a 28-foot width in the belt entry, a 24-foot width in the crosscuts and a 22-foot width in the aircourses.

3. In support of this request, petitioner states that the mine is using conventional roof control with the specified widths along with spot bolting and cribbing for adverse conditions. Full bolting is highly impractical in the mine's seam which averages 28 inches in most areas. In heights of 28 inches, it is difficult to transport miners and supplies. Bolting would take 1½ inches to 2 inches of the available clearance, creating an unsafe condition due to equipment snagging on protruding roof bolts.

4. Petitioner further states that the mining equipment used is an auger type continuous miner. This system is not designed to operate in 20-foot widths, which does not allow enough space to maneuver in the petitioner's mine. A 20-foot width would restrict the mobility of the miners and would also be detrimental to their safety.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12286 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

BEST COPY AVAILABLE

[Docket No. M-88-61-C]

Manor Mining and Contracting Corp.; Petition for Modification of Application of Mandatory Safety Standard

Manor Mining and Contracting Corp., P.O. Boc 368, Bigler, Pennsylvania 16825 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its No. 44 Mine (I.D. No. 36-01226) located in Clearfield County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that the width of openings be limited to 20 feet, the spacing of roadway roof supports not exceed 5 feet, and supports be installed within 5 feet of an undercut face.

2. As an alternate method, the petitioner proposes to use: a 24-foot width in th belt entry on a 50-foot center; a 24-foot width in the crosscut on a 75- to 85-foot center; a 30-foot width in the room on a 150- to 170-foot center; a 24-foot width in the room crosscut, on a 75- to 85-foot center; a 20- to 24-foot width in the pillar split; and a 12-foot minimum for the pillar fender of the primary split.

3. In support of this request, the petitioner states that the mine is using the conventional method of operating through the use of a continuous miner. This method of mining in 20-foot widths would result in a diminution of safety to the miners affected because it would congest the working area and place the miners in a greater risk of being pinched against the continuous miner or against the conveyor belt.

4. For these reasons, the petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12287 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-62-C]

Mountain Spur Coals and Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mountain Spur Coals and Energy, Inc., P.O. Box 429, Pennington Gap, virginia 24277 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its No. 1 Mine (I.D. No. 15-14235) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner proposes to use a 26-foot width in the belt entry, a 28-foot width in the crosscuts and a 20-foot width in the aircourses.

3. Petitioner currently uses Mark 20 Pivot Jack Miners, which are equipped with two twenty ton hydraulic jacks that hold the back of the miner down and keeps the back of the miner from traveling against the opposite rib that is being cut. This also provides support for the face area directly over the back of the miner operator.

4. The Wilcox 20 miner is 28 feet long and does not have a swivel section on it, which makes it almost impossible to operate in a 20-foot place. When the miner is in use, the back of it sometimes gets against the rib and in a 20-foot area this would not allow enough room for a miner to get by in case of an emergency.

5. Petitioner states that mining in 26-foot widths with four rolls of timber is much safer than mining in 20-foot widths with two rolls of timber. The miner has room to maneuver, the miners can work more comfortably and the curtains can stay-up at all times in 26-foot widths.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 20, 1988.

[FR Doc. 88-12288 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-65-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 2339, Zanesville, Ohio 43701 has filed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Broken Aro Mine (I.D. No. 33-00949), Sediment Pond No. 47 (I.D. No. 1211OH80070-06) located in Coshocton County, Ohio.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment or slurry impoundments be examined by a qualified person designated by the person owning, operating or controlling the impounding structure at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions.

2. As an alternate method, petitioner proposes to examine the sediment pond No. 47, at their closed Broken Aro Mine, annually and following major precipitation.

3. In support of this request, petitioner states that the facility has been inspected weekly since construction in 1980 and there has been no geometric change. The structure has an excellent vegetative cover, no erosion problems have appeared; no signs of instability have appeared; there are no downstream hazards to miners or to the public; and the nearest building is a barn approximately a half-mile downstream. There are no miners employed at the mine except the dam inspector once a week. the dam is locked, access is blocked by cable, and the inspector has the only key.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12289 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-63-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420-1990 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Camp No. 1 Mine (I.D. No. 15-02709), its Camp No. 2 Mine (I.D. No. 15-02705) both located in Union County, Kentucky and its Martwick Mine (I.D. No. 15-14074) located in Muhlenberg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install an early warning fire detection system, in lieu of heat point sensor devices. A low-level carbon monoxide (CO) detection system will be installed in all belt entries, at each belt transfer point and at intervals not to exceed 2000 feet along each conveyor belt entry. The velocity of air in the belt conveyor entry will be 50 feet per minute or greater and have a definite and distinct movement in the designated direction. The low-level CO system will be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed. The CO system will initiate the fire alarm signals at an attended surface location where there is two-way communication. The person will be located so that the signal can be seen if CO levels reach 10 parts per million (ppm) and heard at 15 ppm above the ambient level for the mine. The person will be trained in the operation of the CO monitoring system and in the proper procedures to follow in the event of an emergency or malfunction. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect electrical malfunctions.

3. The CO monitoring system will be visually examined at least once each shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

4. If the CO monitoring system is deenergized for routine maintenance or for failure of sensor unit the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 27, 1988.

[FR Doc. 88-12290 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-90-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trailing cables not exceed 500 feet.

2. The mine is developing Mains, Submains, and Longwall development panels using place change mining which utilizes 100-foot by 100-foot blocks to maintain adequate roof support, and in place mining which utilizes 200-foot blocks, whenever possible, for increased roof control and abutment pressure control. Ventilation is also improved by using 200-foot blocks by limiting the number of stoppings and the resultant pressure losses.

3. As an alternate method, petitioner proposes to increase the maximum length of trailing cables, supplying shuttle cars from 480 volt alternating current systems, to 800 feet. In support of this request, petitioner states that—

(b) The shuttle car trailing cables would be 800 feet;

(c) All circuit breakers used to protect #4 AWG shuttle car trailing cables exceeding 600 feet in length would have instantaneous trip units calibrated to trip at 500 amperes. The trip setting of these circuit breakers would be sealed, and these circuit breakers would have permanent labels;

(d) The tolerance of replacement instantaneous trip units would be calibrated to trip at 500 amperes and this setting would be sealed;

(e) The shuttle car trailing cables would be visually examined daily to ensure safe operating conditon; and

(f) Any shuttle car trailing cable that is not in safe operating condition would be removed from service immediately and repaired or replaced.

4. Petitioner states that the proposed alterante method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 19, 1988.

[FR Doc. 88-12291 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-54-C]

Saginaw Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Saginaw Mining Company, P.O. Box 275, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.319-1 (merchanized mining section) to its Saginaw Mine (I.D. No. 33-00941) located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the term "mechanized mining section' means an area of a mine in which coal is mined with one set of production equipment.

2. As an alternate method, petitioner proposes to use one set of mining equipment for production of material while another set is being repositioned or maintained in or inby the last open breakthrough for preparation of production after the first set of equipment has completed its mining cycle.

In support of this request, petitioner states that:

(a) The methane liberation for the Saginaw Mine as of December 4, 1987, was 126,000 cubic feet in 24 hours;

(b) Both sets of mining equipment are maintained in permissible condition; and

(c) Only one set of mining equipment will be used at a time for production of material.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12292 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-43-C]

S&R Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

S&R Coal Company R.D. #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its No. 2 Slope (I.D. No. 36-06448) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be supported by employing the full box method.

3. In support of this request, petitioner states that in Anthracite Mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In the harder pitch mines 60 degrees and up, the breasts are driven full. In the full box method, manways are timbered 30-inches wide and loose coal supports every square inch of roof between the manway timber.

4. Petitioner further states that roof bolts would create a hazard in the hard pitch mines, because they would be installed at 30 degrees to as little as 2° degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12293 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-44-C]

Sure Fire Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sure Fire Coals, Inc., P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 4A Mine (I.D. No. 15-14977) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine has a coal bed height of 38 inches. However, the floor consists of 3 inches fireclay; 3½ inches sandstone and 8 inches fireclay.

3. Petitioner states that during the mining cycle the sandstone is broken up causing specific modification to the mining equipment. All of the equipment was equipped with cabs and canopies until the floor clearance had to be increased, because of stated conditions. At this time, the cabs and canopies had to be removed in order for the equipment to function properly.

4. In further support of this request, petitioner states that the mine has no history of roof falls and employs the resin grout method of bolting.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 23, 1988.

[FR Doc. 88-12294 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-46-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 128, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Dotiki Mine (I.D. No. 15-02132) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, the petitioner proposes to install one sensor at every belt drive and belt conveyor tailpiece combination, where a belt drive discharges onto a belt conveyor tailpiece.

3. In support of this request, the petitioner states that—

(a) The head roller of each combination drive is positioned in the same area and airflow as the tailpiece and one sensor would give adequate protection for both the belt drive and tailpiece;

(b) Where belt drives are set at angles to the main line belts, and the tailpiece is greater than fifty feet from the header, a sensing device would be provided for both the tailpiece and belt drive; and

(c) Air off the belt lines would not be used for face ventilation. Temporary stoppings would be erected in the first pillar line outby each section tailpiece and belt line air would be vented to the return.

4. The Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 24, 1988.

[FR Doc. 88-12295 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-128]

Class Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of extension of authority for information collection requests.

SUMMARY: This document contains a notice informing interested persons that the Office of Management and Budget has approved an extension of the information collection requests under the Paperwork Reduction Act of 1980 contained in Prohibited Transaction Exemption 88-128 (51 FR 41686). Prohibited Transaction Exemption 88-128 allows persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions under certain circumstances. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met.

EFFECTIVE DATES: The paperwork requests contained in Prohibited Transaction Exemption 88-128, effective February 12, 1987, have been approved through March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523-8596 (not a toll free number) or Mark A. Greenstein, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-7901 (not a toll free number).

SUPPLEMENTARY INFORMATION: On November 18, 1986, the Department of Labor (the Department) published a notice in the **Federal Register** (51 FR 41686) containing the grant of Prohibited Transaction Exemption 88-128, which exempts certain transactions from the restrictions of section 406(b) of the Employee Retirement Income Security Act of 1974, and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of Code section 4975(c)(1) (E) or (F).

On March 19, 1987, the Department published a notice in the **Federal Register** (52 FR 8676) given notice of the effective date of Prohibited Transaction Exemption 88-128 as February 12, 1987. In addition, that notice stated that the Office of Management and Budget had approved the paperwork collection requests contained in the exemption for use through February 29, 1988.

Pursuant to a request from the Department, the Office of Management and Budget has now approved the information collection requests of the exemption for use through March 31, 1991.

Notice of Effective Date

Notice is hereby given that the Office of Management and Budget (OMB) has approved the information collection requests under the Paperwork Reduction Act of 1980 for Prohibited Transaction Exemption 88-128 (published at 51 FR 41686, November 18, 1986), which exempts certain transactions from the restrictions of section 406(b) of the Employee Retirement Income Security Act of 1974 and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of Code section 4975(c)(1) (E) or (F). The date of OMB approval was March 1, 1988. The information collection requests under Porhibited Transaction Exemption 88-128 have been assigned OMB control number 1210-0059 and are approved for use through March 31, 1991.

Signed at Washington, DC, this 24th day of May 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-12277 Filed 5-31-88; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 88-47; Exemption Application No. D-1316 et al.]

Grant of Individual Exemptions; Wake Surgical Consultants, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Wake Surgical Consultants, Inc., Money Purchase Pension Plan and Trust (the Plan), Located in Raleigh, North Carolina

[Prohibited Transaction Exemption 88–47; Exemption Application No. D–7316]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of an 18.3% interest (the Interest) in a joint venture, Beechnut Development Co., by Dr. John P. Goodson to his individual account in the Plan for $167,500 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13354.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Radiology and Imaging Services, Inc., Profit Sharing Plan and Trust (the Plan) Located in Akron, Ohio

[Prohibited Transaction Exemption 88–48; Exemption Application No. D–7362]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain real property (the Real Property) by the individual account in the Plan belonging to Richard D. Patterson, M.D. (Dr. Patterson) to Dr. Patterson, a participant in and party in interest with respect to the Plan, provided that the sale price be no less than the greater of the fair market value of the Real Property on the date of sale as established by an independent qualified appraiser, or the total outlay by Dr. Patterson's individual account in the Plan in connection with its acquisition and holding of the Real Property to the date of sale to Dr. Patterson.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13355.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Salter, Cameron and Snowden, Orthopaedic Associates, P.A., Profit Sharing Plan and Trust (the Plan), Located in Pensacola, Florida

[Prohibited Transaction Exemption 88–49; Exemption Application No. D–7429]

Exemption

The restrictions of Section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash by the individual account in the Plan belonging to Joseph T. Saiter, M.D. (Dr. Saiter) of certain real property (the Real Property) to Dr. Saiter, a participant in and party in interest with respect to the Plan, provided that the sale price be no less than the fair market value of the Real Property on the date of sale as established by an independent qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13358.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Williams, Taylor & Schmits Profit Sharing Plan and Williams, Taylor & Schmits Target Benefit Plan (the Plans) Located in Indianapolis, Indiana

[Prohibited Transaction Exemption 88–50; Exemption Application Nos. D–7449 and D–7450]

Exemption

The restrictions of section 406(a), 406(b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Lease (the Lease) by the individual accounts in the Plans of Jerry Williams of a copier (the Copier) to Williams, Taylor & Schmits, Professional Corporation, the Plans' sponsor (the Plans' Sponsor) and party in interest with respect to the Plans, and to the sale (the Sale) of the Copier to the Plans' Sponsor at the end of a five year period, provided that the Lease and Sale be for no less than fair market value at the time of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13358.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of May 1988.

Robert J. Doyle,

Acting Associate Director, for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–12273 Filed 5–31–88; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on June 15, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, June 15, 1988—8:30 a.m. until the conclusion of business.*

The Subcommittee will be briefed by RES on the current status of the Maintenance Rule.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. herman Alderman (telephone 202/634–1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 24, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–12223 Filed 5–31–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance; Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on June 14, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, June 14, 1988—8:30 a.m. until the conclusion of business.*

The Subcommittee will be briefed on the final outcome of the Equipment Qualification-Risk Scoping Study. An update on the implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Nuclear Power Plants," is also planned.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named

individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 24, 1988.

Morton W. Libarkin,

Executive Director for Project Review.

[FR Doc. 88-12224 Filed 5-31-88; 8:45 am]

BILLING CODE 7590-01-M

Issuance and Availability, Proposed Resolution for Public Comments, Unresolved Safety Issue (USI) A-40, Seismic Design Criteria

The U.S. Nuclear Regulatory Commission (NRC) staff is issuing for public comment the proposed resolution for Unresolved Safety Issue (USI) A-40, "Seismic Design Criteria." The following documents are included in the proposed resolution: (1) Proposed Revision 2 to sections 2.5.2. (Vibratory Ground Motion), 3.7.1 (Seismic Design Parameters), 3.7.2 (Seismic System Analysis), and 3.7.3. (Seismic Subsystem Analysis) of NUREG-0800, Standard Review Plan (SRP); (2) Draft NUREG-1233, "Regulatory Analysis for USI A-40, "Seismic Design Criteria", (3) NUREG/CR-1161, "Recommended Revisions to Nuclear Regulatory Commission Seismic Design Criteria"; and (4) NUREG/CR-3480, "Value/Impact Assessment for Seismic Design Criteria." In addition, public comments are solicited on specific questions on Soil-Structure Interaction (SSI).

USI A-40 was initiated in 1977 with the following objectives: (1) To investigate selected areas of the seismic design sequence and quantify margins, if any, in the design process; and (2) to modify criteria in the SRP if changes were found to be justified. Early activities for USI A-40 consisted of specific technical studies which concentrated on improvements in seismic design criteria. A technical overview and specific recommendations for changes to seismic design criteria are documented in NUREG/CR-1161. Based on the recommendations made in NUREG/CR-1161, NUREG/CR-3480, and additional staff work discussed in Draft NUREG-1233, the staff has proposed Revisions to the SRP section 3.7.1, 3.7.2, and 3.7.3. The proposed SRP sections will be used in review of new construction permits and operating license applications. In addition to the SRP revisions, the staff has also proposed review of large above-ground vertical tanks at some operating nuclear plants. Methods and procedures for such review are included in the proposed implementation plan in Draft NUREG-1233. Change to SRP section 2.5.2 are also included to reflect current staff review practice (since about 1980). Comments are being solicited from interested organizations, groups, and individuals. The staff will evaluate comments received and address them as appropriate in the final documents.

Significant results have recently become available from the joint EPRI/NRC/Taiwan Power Company (TPC) soil-structure interaction Lotung experiment in Taiwan. These results were presented in an EPRI/NRC/TPC-sponsored workshop in December 1987. The SRP revisions being issued for comment do not reflect results of the Lotung experiments. The NRC has formulated specific questions on the Lotung results and is soliciting comments on them during the public comment period. If further modification to SRP sections 3.7.1, 3.7.2, and 3.7.3 are warranted as a result of the Lotung data, it will be done following the public comment period.

Copies of the documents included in the proposed resolution to USI A-40 are available for inspection, or copying for a fee, at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Copies are being sent directly to utilities, utility industry groups and associations, and environmental and public interest groups. A free single copy of draft NUREG-1233 is available to the extent of supply by writing to the U.S. Nuclear Regulatory Commission, ATTN: Distribution Section Stop P-522, Washington, DC 20555. Copies of NUREG/CR-1161 and NUREG/CR-3480 are available for purchase from the U.S. Government Printing Office, Post Office Box 37082, Washington, DC. 20013-7082. Copies will be made available upon request at a Commission's Local Public Document Room located in the vicinity of a nuclear power plant. To request that copies be placed in a Local Public Document Room, contact: the Local Public Document Room Program Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone toll free (800) 638-8081.

Comments should be sent to Mr. Robert Baer, Division of Engineering, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 by July 29, 1988.

Dated at Rockville, Maryland, this 16th day of May 1988.

For the Nuclear Regulatory Commission.

Robert J. Bosnak,

Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 88-12204 Filed 5-31-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric & Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing; Correction

On May 23, 1988, the NRC published a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing (53 FR 18364). The date in the first sentence of the last paragraph on page 18364 should read "June 22, 1988" instead of "June 20, 1988" as the date by which the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Dated at Bethesda, Maryland, this 25th day of May 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-12205 Filed 5-31-88; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 9, 1988 through May 20, 1988. The last biweekly notice was published on May 18, 1988 (53 FR 17776).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: April 6, 1988

Description of amendment request: The proposed amendment consists of changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for PVNGS Units 1, 2, and 3 respectively).

Technical Specification (TS) 3/4 3.3.6 specifies the operability requirements for the radioactive gaseous effluent monitoring instrumentation channels. TS 3/4.11.2.5 specifies limits for the concentration of oxygen in the waste gas holdup system whenever the hydrogen concentration exceeds 4 per cent by volume, and also specifies surveillance requirements for determining the hydrogen or oxygen concentrations. The proposed change will make the assumption that the hydrogen concentration is always greater than 4 per cent, and will delete requirements to analyze the waste gas holdup system for hydrogen. The requirement to sequentially analyze the Chemical and Volume Control System (CVCS) tanks and the Waste Gas Decay Tank (WGDT) for oxygen will also be deleted. By continously monitoring the header to the Surge Tank for oxygen concentration, the intent to monitor each of the CVCS tanks is satisfied.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have provided a discussion of the proposed changes they as relate to these standards; the discussion is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The design basis accident with respect to the Gaseous Radwaste System is a rupture of a WGDT. It is assumed that the cause is either an explosion or an operator error. The probability of an explosion occurring does not increase since the source of the gases (Surge Tank) pumped to the WGDT is still being monitored with dual analyzers for an explosive mixture. It will be assumed that the Surge Tank contains greater than 4 per cent by volume hydrogen and the applicable action statements will be implemented based upon the sensed oxygen concentration as measured by the oxygen analyzers. Furthermore, upon receiving a high oxygen concentration alarm (2 per cent by volume) chemistry will be required to obtain a grab sample of the online WGDT for oxygen concentration. Since the WGDT's are pressurized, air inleakage is improbable from any source other than the Waste Gas compressors. Section 11.3.1.1.4 of the FSAR maintains "only in the unlikely event of simultaneous failure of both diaphragms of the compressors does the potential for leakage exist." Therefore, deleting the requirement of sampling the WGDT does not increase the probability of the accident occurring.

The chances of an event initiated by operator error does not change since the proposed change does not affect operator actions as they are presently being performed. All sampling is done automatically and will continue to be automatic. The number of valve lineups will not change nor will the extent of the valve lineups change.

An additional event to consider is the rupture of the Holdup Tank (HUT). The HUT, which is vented to atmosphere, will no longer be monitored periodically by the sampling system. By considering the volumes of unstripped water necessary to bring the HUT atmosphere to an explosive mixture, it is improbable that the explosive limit would ever be reached. Calculations show that it would require the addition of 300,000 gallons of unstripped RCS water. The calculation assumes that the hydrogen content in the water is 50cc/kg, (the maximum concentration maintained in the RCS, and that the HUT remains a closed system during the RCS) addition.

In reality the HUT is vented to the Fuel Building HVAC system which maintains a slight negative pressure in the tank. Also, there's no way to add that amount of water with a hydrogen overpressure to the HUT. The main influent of hydrogen saturated water is letdown, which is controlled by RCS makeup requirements of dilution evolutions. In the case of dilutions, the maximum amounts will occur at end of core life with the additions of 5,000 gallons being the largest. Other periods of excessive letdown occur when a plant heatup is conducted. In going from an average temperature of 200 degrees to 593 degrees, a volume change occurs in the RCS of about 15,000 gallons. This could conceivably all be directed around the Gas Stripper and to the HUT, but is insignificant in comparison with the amount necessary to reach an explosive mixture.

In all cases the rupture of the HUT is bounded by a rupture of the Refueling Water Tank (RWT) which is the limiting accident in the accident analyses per Section 15.7.2 of the FSAR. The probability of RWT rupture is in no way affected by this proposed change.

The consequences of a WGDT rupture will not change since the proposed change does not affect the concentrations of radionuclides assumed present in the accident analysis. Therefore, the probaility or consequences of an accident previously evaluated will not be increased.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The main purpose of the waste gas holdup system is to contain radioactive gases for a sufficient amount of time in order to allow for decay. Therefore, the malfunction or accident of concern would be an event that would release the radioactive gas to the environment. This has already been analyzed in Chapter 15 of the FSAR.

The Chapter 15 analysis assumes the initiating event of a WGDT rutpure is an explosion or operator error. A dispersal to the environment of a freshly filled WGDT or Surge Tank is the only accident or malfunction possible and is already analyzed and bounded by the Chapter 15 analysis of a WGDT rupture. Therefore, the possibility of a new or different accident from any accident previously evaluated will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety. The proposed change increases the margin of safety as defined in the basis of the Technical Specifications since it will be assumed that the waste gas holdup system always has a hydrogen concentration greater than 4 per cent by volume when in service. The applicable action statement will be complied with whenever measured oxygen concentration exceeds 2 per cent or 4 per cent respectively. Therefore, the existing margin of safety ensured by the TS is not reduced by this proposed change.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: Mr. George W. Knighton

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: March 10, 1988, supplement April 21, 1988

Description of amendments request: The amendments would revise Technical Specifications to reduce the composition of the Onsite Nuclear Safety Group from four members to three members.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change reduces the composition of the Onsite Nuclear Safety Group (ONSG) from four members to three members. This changes does not modify the mission of the ONSG, but allows the licensee to be more efficient in performing its audit, surveillance, and information gathering functions. As a result, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not include any physical changes or modifications to the facility. As such, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Since the ONSG will continue to perform its defined mission, this change does not affect the margin of safety.

Therefore, based upon the previous analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Leif J. Norrholm

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 20, 1988

Brief description of amendment: The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle Units 1 and 2 Technical Specifications by providing additional requirements for monitoring core performance and other actions to be taken by the reactor operator in the high power/low flow region of the power-to-flow map. These changes are a result of NRC concerns due to the March 9, 1988 dual recirculation pump trip at LaSalle Unit 2. These changes are unique to LaSalle and are an interim solution to NRC concerns until power-to-flow stability issues arising from the event at LaSalle are resolved. The proposed amendments add a new specification for recirculation system thermal hydraulic stability. They also clarify the specification on the reactor recirculation system and revise the bases to reflect these changes. The new specification, as well as the clarifications, follows the guidance of General Electric SIL-380 and similar approaches in other standardized Technical Specifications. These specifications are similar for Units 1 and 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the stability monitoring provisions contained herein are more restrictive (conservative) than the presently approved specification, and as such, increase the margin of safety during operation of the plant. The proposed revisions assure increased operator awareness of the core, neutron flux and thermal hydraulic status.

Significantly more conservative actions are dictated than previous specifications, including reactor scram under certain specified conditions. These actions are evaluated to bound all existing safety requirements and therefore will not increase the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed revisions do not authorize operation in any new regions or configurations, but only provide for increased stability monitoring and reduced time in configurations of possible instability. No changes to the operational modes of plant systems are involved in these Technical Specifications changes.

3. Involve a significant reduction in the margin of safety because the specification revisions increase the margin of safety by reducing the allowable time inside regions of possible reactor instabilities. No significant changes to acceptance criteria for operation are involved. The provisions of these changes are consistent or more conservative than previously approved Technical Specifications for thermal hydraulic stability monitoring.

Local Public Document Room location: Public Library of Illinois, Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Acting Director: Leif J. Norrholm

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: December 2, 1986, as supplemented November 5, 1987 and April 11, 1988

Description of amendment requests: In accordance with the requirements of 10 CFR 73.55, the Florida Power and Light Company submitted amendments to the Physical Security Plan for the St. Lucie Plant, Units No. 1 and No. 2 to reflect recent changes to that regulation. The proposed amendments would modify paragraph 2.D of Facility Operating Licenses No. DPR-67 and NPF-16 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised Plan on December 2, 1986, as supplemented November 5, 1987 and April 11, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised Plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and example of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii), "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment requests: December 2, 1986, as supplemented November 12, 1987 and April 13, 1988

Description of amendment requests: In accordance with the requirements of 10 CFR 73.55, the Florida Power and Light Company submitted amendments to the Physical Security Plan for the Turkey Point Plant, Units No. 3 and No. 4 to reflect recent changes to that regulation. The proposed amendments would modify Facility Operating Licenses Nos. DPR-31 and DPR-41 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised Plan on December 2, 1986, as supplemented November 12, 1987 and April 13, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised Plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and example of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii), "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 31, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete the requirement that both emergency diesel generators (EDG's) must be operable before the Standby Gas Treatment and Standby Filter Unit systems are considered operable, and to add a requirement that certain auxiliary AC power sources and emergency filtration systems be available during core alterations. An additional proposed change to extend the EDG inspection interval from 1 year to 18 months was the subject of a separate action.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to Specifications 3.7.B.1, 3.10.A.1 and their associated Bases to delete the requirement that both EDG's be operable before the Standby Gas Treatment System (SGTS) or Standby Filter Units (SFU's) are considered operable is consistent with existing DAEC TS definitions of "Operable-Operability" and "Limiting Conditions for Operation," Sections 3.6.5.3 and 3.7.2. of the Standard Technical Specifications, (STS) and the conditions assumed in the Final Safety Analysis Report (FSAR).

Section 15.6.6 of the licensee's FSAR addresses a complete loss of normal AC (offsite) power coincident with a design basis loss-of-coolant accident (LOCA). The most severe nuclear system effects and the greatest release of radioactive material to the primary containment result from the design basis LOCA. According to Section 15.7.2.2 of the licensee's FSAR, only one train of the SGTS and SFU systems is needed to mitigate the radiological effects of a LOCA, and one EDG can provide the power required for operation of these systems.

The licensee has also added Specification 3.9.D to require that certain auxiliary AC power sources and emergency filtration systems be available during core alterations. The addition of this Specification ensures that at least one normal offsite power source, one onsite emergency source (one EDG) and the associated emergency filtration systems are available when required.

Since the design and operation of the SGTS and SFU's will be unchanged, and a single EDG is sufficient to provide emergency power to these systems, the licensee concludes that the probability or consequences of a previously evaluated accident are not significantly increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to Specifications 3.7.B.1, 3.10.A.1 and their associated Bases to delete the requirement that both EDG's be operable before the SGTS or SFU's are considered operable are consistent with existing DAEC TS definitions of "Operable-Operability" and "Limiting Conditions for Operation," Sections 3.6.5.3 and 3.7.2 of the STS, and the conditions assumed in the FSAR (the design basis of the plant). Furthermore, no changes are being made to the design, operation or setpoints of these systems. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of new Specification 3.9.D requiring that certain auxiliary AC power sources and emergency filtration systems be available during core alterations is conservative and does not create the possibility of a new or different kind of accident than any previously evaluated. The addition of the Specification ensures that at least one normal offsite power source, one onsite emergency power source (one EDG) and the required emergency filtration systems are available when required. One EDG has sufficient capacity to start and carry the loads required to maintain the plant in a safe condition.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes to Specifications 3.7.B.1, 3.10.A.1 and their associated Bases to delete the requirement that both EDG's be operable before the SGTS or SFU's are considered operable are consistent with existing DAEC TS definitions of "Operable-Operability" and "Limiting Conditions for Operation" and Sections 3.6.5.3 and 3.7.2 of the STS. Although the licensee proposes to delete the present requirement that two EDG's be operable before the SGTS or SFU's are considered operable, the addition of new Specification 3.9.D ensures that at least one EDG, one offsite power source and one train of both the SGTS and SFU system will be available during core alterations. Secondary containment integrity is required during core alterations, and the SGTs and SFU systems are required whenever secondary containment integrity is required. The licensee is proposing that one EDG (instead of two) be available when the SGTS and SFU systems are required. Ensuring the availablity of one EDG and one offsite power source assures that the conditions assumed in the FSAR are met and is also consistent with Sections 3.6.1.2 and 3.7.2 of the STS as well as the accident analysis in FSAR Section 15.7, "Radioactive Release from a System or Component." Therefore, there is no reduction in any margin of safety.

Based on an evaluation of the above licensee analysis, the Commission's staff has made a proposed determination that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Kenneth E. Perkins.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 29, 1988

Description of amendment request: The amendment would modify the Technical Specifications Limiting Conditions for Operation, Surveillance Requirements and Bases to (1) revise relief valve setpoints for the Standby Liquid Control System (SLCS), (2) change the sodium pentaborate solution volume-concentration limits, (3) change the system pressure against which the minimum flow rate is verified and (4) clarify that pump suction is from the SLCS Storage Tank during surveillance testing.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include "A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations."

The proposed Technical Specifications changes are associated with SLCS modifications being implemented for conformance with 10 CFR 50.62 (ATWS Rule). The purpose of the SLCS modifications is to provide an increased rate of boron injection by the SLCS. The staff has previously evaluated the modifications and confirmed that they will result in compliance with the ATWS Rule. The proposed amendment is necessary to assure the modified SLCS is maintained operable and is therefore within the scope of the example cited above.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 3, 1988

Description of amendment request: The amendment would modify the Technical Specifications to the setpoint limits for the undervoltage relays and timers for the emergency electrical power distribution system. The revised setpoints would be more conservative and provide increased safety margins in event of degraded grid voltage conditions.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: e.g., "a more stringent surveillance requirement."

The revised setpoints follow a plant modification in which solid-state relays replace induction-disk relays. The replacement relays have improved operating characteristics which permit the use of more conservative settings and reduced setpoint tolerances. Because the Limiting Conditions for Operation requirements will be revised to reflect the more stringent performance which the replacement instrumentation is capable, the proposed amendment is within the scope of the example.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: March 7, 1988, as supplemented April 13, 1988.

Description of amendment request: The proposed amendment would revise Technical Specification sections 3.1.2 and 4.1.2 for the Liquid Poison System to incorporate changes required by 10 CFR 50.62, "Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants."

The proposed amendment is in accordance with the licensee's application of March 7, 1988, as supplemented April 13, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes will not involve a significant increase in the probability or consequences of an accident for the following reasons.

The proposed changes will incorporate the equivalency equation for determining the concentration of sodium pentaborate solution enriched in the boron-10 isotope. These changes will allow the plant to operate in conformance with the requirement of 10 CFR 50.62(c)(4) by injecting sufficient boron into the reactor to bring the reactor to a hot shutdown in the event the control rods fail to insert. The changes will also meet the original design basis requirement to bring the reactor to cold shutdown, 3 percent delta k subcritical (0.97 k_{eff}) from 1850 megawatts thermal. Therefore, these changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

Injection of liquid poison solution into the reactor has been considered in the system design. Changing the enrichment level of boron-10 isotope does not change any chemical or other physical characteristics of the solution. Consequently, this change does not create the possibility of a new or different kind of accident.

The proposed changes will not involve a significant reduction in a margin of safety for the following reasons.

The Liquid Poison System must be able to inject sufficient neutron-absorbing boron-10 isotope to bring the reactor from the full design rating of 1850 megawatts thermal to greater than 3 percent delta k subcritical (0.97 k_{eff}) considering the combined effects of control rods, coolant voids, temperature change, fuel doppler, xenon, and samarium.

Injecting a minimum volume of 985 gallons of sodium pentaborate enriched with sufficient boron-10 isotope meets the requirements of the ATWS equivalency formula and satisfies the original design requirement to bring the reactor subcritical. Consequently, the margin of safety is not reduced by this change.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: March 18, 1988

Description of amendment request: The proposed amendment would revise Trojan Technical Specification (TS) Section 6.3 "Facility Staff Qualifications" by retitling the position "Radiation Protection Supervisor" to "Radiation Protection Branch Manager."

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (i) is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Amendment No. 140 to Facility Operating License NPF-1 dated April 11, 1988 in part, approved the retitling of the Radiation Protection Supervisor to "Radiation Protection Branch Manager," as related to Figure 6.2-2, "Facility Organization." The proposed change involving the retitling of the position "Radiation Protection Supervisor" to "Radiation Protection Branch Manager" with respect to TS 6.3.1 is required to achieve consistency within TS Section 6.0, "Administrative Controls."

As such, the staff proposes to determine that the proposed request does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: December 7, 1987

Description of amendment request: The proposed amendment would clarify the license conditions governing receipt and possession of radioactive materials, as stated in Sections 2.B.(4) and 2.B.(5) of the Operating License. Currently, these sections do not explicitly address the receipt, possession, and use of radioactive equipment such as apparatus, components, and tools. Permission to receive, possess and use radioactive equipment is implicitly granted by the Operating License. The proposed clarification would minimize difficulties previously encountered when radioactive tools were transferred to the licensee from other utilities.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination, the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed amendment does not involve changes to the operation of the plant, procedural changes, or any physical changes to the plant's safety related structures, systems or components. The amendment only would clarify the license conditions which govern the receipt, possession, and use of radioactive apparatus, components, and tools needed for or produced by plant operation. The types and quantities of radioactive material in use at the plant would remain unchanged. Therefore, the analyses of previously evaluated accidents remain valid and the proposed amendment does not involve a significant increase in the probability or consequences of previously evaluated accidents. Additionally, since the proposed amendment would not change the types or quantities of radioactive material on hand at the facility, the probability of improper handling or use of these materials, or an unmonitored release, would not be increased. Therefore, the proposed amendment would not create the possibility of a new or different kind of accident.

Similarly, since the change is administrative in nature and only clarifies the license conditions for receipt, possession, and use of radioactive materials, no safety margins are affected. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Because it has been established that plant operation in accordance with the proposed amendment would satisfy the three above stated criteria, the staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 7, 1988

Description of amendment request: The proposed amendment would delete license condition 2.C.(3). This license condition grants relief from certain pump and valve testing requirements of 10 CFR 50.55a(g) as requested in the Hope Creek Inservice Testing (IST) Program, Revision 0 that was submitted by letter dated July 12, 1985. This license condition grants the relief requested in the Revision 0 IST Program until April 11, 1988 or until a detailed review of this IST Program has been completed, which ever comes first.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Prior to the staff's detailed review of the July 12, 1985, Revision 0, Hope Creek IST Program, PSE&G, by letter dated September 21, 1987 submitted Revision 1 to this IST Program. It stated that this revision supersedes the July 12, 1985 Revision 0 IST Program. The licensee augmented the September 21, 1987 submittal with additional information by letters dated January 14 and February 11, 1988. It requested that the NRC conduct a review and provide interim approval of this revised program until a complete review can be accomplished. This revised program incorporates the requirements of the 1983 Edition of ASME Code Section XI through summer 1983 addenda. It deletes some of the previous relief requests and adds some new relief requests. It also deletes some components from the program and incorporates some additional components not previously identified with the program.

The staff and its consultant, EG&G, Idaho, performed a preliminary review of this revision, with emphasis on requests for relief from the Code requirements. This review was documented in the staff's letters to the licensee dated December 7, 1987 and February 23, 1988. The review concluded that the program is reasonably complete with respect to all but five relief requests. Three of these relief requests were denied and two were determined to be unnecessary by the staff.

This preliminary review was not intended to replace a complete component-by-component review to ensure that all proposed tests in the program are in accordance with the Code requirements. A more thorough review will be conducted later and could result in further denials of relief requests or the need for additional components to be added to the program. The purpose of the preliminary review was to provide an assessment of the acceptability of Revision 1 to the Hope Creek IST Program for the period of time until the staff's review of the program is completed.

Based on this preliminary review, the staff concluded that, except for the above mentioned five relief requests, PSE&G should follow Revision 1 of the Hope Creek IST program to establish pump and valve operability for its plant operation until the final SER is issued. The staff also concluded that license condition 2.C.(3) which refers to Revision dated July 12, 1985 is no longer applicable and should be deleted. Since the license condition is no longer applicable, its deletion would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: March 8, 1988

Description of amendment request: On March 8, 1988, the licensee proposed an amendment to revise Sections 3.9.12, 5.3.1 and 5.6 of the Technical Specifications (TS). The proposed amendment would modify Figures 3.9-1 and 3.9-2 contained in Section 3.9.12, "Spent Fuel Assembly Storage," Section 5.3.1, "Fuel Assemblies," and Section 5.6, "Fuel Storage," to reflect the new storage limitations for the Vantage-5 fuel to be utilized in the core during the 5th cycle at the Virgil C. Summer Nuclear Station. The proposed change is necessary to place the required restrictions on the storage of fuel to ensure inadvertent criticality does not occur.

Figures 3.9-1 and 3.9-2 of Section 3.9.12 would be revised to indicate the minimum required fuel exposure as a function of initial enrichment to permit storage of fuel assemblies in Regions 2 and 3, respectively, of the spent fuel assembly storage racks. Section 5.3.1 would be revised to allow fuel of the Westinghouse Optimized Fuel Assembly (Vantage-5) design with a maximum enrichment of 4.25 w/o U-235 to be used. Existing TS allow a maximum enrichment of 4.3 w/o U-235. Section 5.6.1 is being revised to be consistent with the changes to Figures 3.9-1 and 3.9-2 and TS Section 5.3.1. TS 5.6.1 is proposed to be modified to reflect the new maximum enrichment of 4.25 w/o U-235 and to allow a minimum burnup of 10,000 megawatt days per metric ton uranium (MWD/MTU) in Region 2 and 39,750 MWD/MTU in Region 3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Section 3.9.12 of the Virgil C. Summer Nuclear Station Technical Specifications provides the requirements for initial enrichment and cumulative exposure of spent fuel stored in the different regions of the multi-region spent fuel pool. Region 1 racks are highly poisoned racks, which can accept fuel initially enriched to the maximum licensed level with no restrictions on burnup. An analysis of the burnup history of each assembly is required prior to placement in either Region 2 or 3. A record of this analysis is maintained for the time period that the spent fuel assembly remains in that region of the pool. Figures 3.9-1 and 3.9-2 graphically depict the enrichment versus burnup requirements for Regions 2 and 3, respectively. The specification is applicable whenever fuel assemblies are stored in the spent fuel pool.

Section 5.3.1 of the Design Features portion of the Technical Specifications describes the physical attributes of the fuel assemblies utilized at the Virgil C. Summer Nuclear Station. Section 5.6 addresses fuel storage and specifically the criticality analyses for the storage racks utilized at the plant.

The licensee and the staff have determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not increase initial fuel enrichment or increase region average discharge burnups for the different regions of the fuel storage racks at the Virgil C. Summer Nuclear Station. The amendment request is the result of evaluations performed to support the utilization of Vantage-5 fuel for the 5th fuel cycle. These evaluations determined the requirements necessary to ensure the probability or consequences of previously analyzed accidents were not significantly increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed amendment does not involve any physical changes to the existing fuel racks currently installed at the plant. The amendment only reduces the enrichment presently allowed in the Station's Technical Specifications and the minimum allowable burnup in Regions 2 and 3 of the spent fuel pool.

The licensee has also determined that:

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed amendment is requested to ensure the design basis for preventing inadvertent criticality in the fuel storage areas is preserved. Therefore, the changes do not involve a significant reduction in the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: April 28, 1988 (TS 88-07)

Description of amendment requests: TVA proposes to modify SQN Units 1 and 2 technical specifications to revise Table 3.6-2, "Containment Isolation Valves," to delete flow control valves (FCVs) 77-16 and 77-17. Table 3.6-1, "Bypass Leakage Paths to the Auxiliary Building," is also amended to delete penetration X-81 from the table.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

FCVs 77-16 and 77-17 were determined to not be environmentally qualified for their application as containment isolation valves. These valves are currently maintained in the closed position with power removed from the solenoid valves and control air disconnected. When valve replacement was evaluated, it was determined that there were no requirements to continually monitor the reactor coolant drain tank (RCDT) cover gas and little information to be obtained from sampling the cover gas. The RCDT is described in Section 11.2.3.1 of the SQN Final Safety Analysis Report (FSAR). The relative location of the RCDT in the waste disposal system is shown in FSAR Figure 11.2.2-1. The waste gas analyzer is described in FSAR Section 11.3.2, and its associated flow diagrams are the 11.2.3 series FSAR figures.

The RCDT serves as a collection point for reusable reactor coolant grade water from inside containment. The collected water is normally routed to the chemical and volume control system (CVCS) holdup tanks (HUTs) or the tritiated drain collector tank for processing. In the case, water chemistry is the concern, not cover gas chemistry.

The RCDT is operated with a nitrogen cover gas. The cover gas is provided by the nitrogen supply system described in FSAR Section 11.3.2. Also, the RCDT is normally aligned to the waste gas vent header (FSAR Figure 11.2.2-1). This alignment provides the ability to sample and analyze the RCDT cover gas. This is done by sampling the waste gas decay tank which is aligned to the waste gas compressors. The RCDT cover gas could also be sampled from the pressurizer relief tank (PRT) because pressure control valve (PCV) 68-301 (FSAR Figure 5.1-1) is normally open and the two cover gas atmospheres are in communication. Therefore, for normal operation the ability exists to sample the RCDT cover gas without relying on the gas analyzer sample line.

For post-accident conditions, the cover gas chemistry of the RCDT is not needed. No information of value would be obtained. In addition, all of the sampling lines isolate on a phase A isolation signal, and sampling is not possible.

In summary, the RCDT cover gas is not routinely sampled. Provisions do exist for sampling the cover gas, if necessary, without relying on the waste gas analyzer sample line from the RCDT. Under accident conditions, the sampling line is isolated, and RCDT cover gas chemistry is not determined. Therefore, instead of replacing the containment isolation valves, the valves will be removed and the sample line isolated.

Containment integrity will be provided by a welded cap in the annulus on a short section of the sample line after FCVs 77-16 and 77-17 are no longer required as containment isolation valves. A "mini" Type A test (Integrated Containment Leakage Rate) will be performed as a post-modification test to ensure containment leakage rates remain acceptable. The penetration will then be included in the scope of the Type A testing required by surveillance requirement 4.6.1.2. Because the penetration will terminated at the welded cap in the annulus, the potential for bypass leakage to the auxiliary building is eliminated. This allows penetration X-81 to be deleted from Table 3.6-1.

In conclusion, FCVs 77-16 and 77-17 may be removed because sampling of the RCDT cover gas is not prevented by removing the sample line to the waste gas analyzer. The valves will not be required for containment isolation because integrity will be provided by a welded cap on the sample line in the annulus. This allows the valves to be deleted from Table 3.6-2. Terminating the line in the annulus eliminates the potential bypass leakage path to the auxiliary building through its penetration. This allows the deletion of penetration X-81 from Table 3.6-1.

In its conclusion the licensee addressed the issue of no significant hazards consideration as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Removal of containment isolation valves FCV-77-16 and FCV-77-17 and capping of the line from the RCDT to the gas analyzer will not degrade the function of any safety-related system. The ability exists to sample the cover gas if needed, without relying on the waste gas analyzer sample line. Additionally, the valves to be removed are not environmentally qualified and as such cannot be guaranteed to retain position for containment isolation purposes. These valves are currently maintained in the closed position with power removed from the solenoid valves and control air disconnected. Permanent closure of the line will ensure containment integrity. This will be verified by periodic Type A containment leak rate testing. The removal of these valves allows them to be deleted from Table 3.6-2. Because the penetration will terminate in the annulus, the potential bypass leakage path associated with it is eliminated and the entry is removed from Table 3.6-1. Because the function of all systems will remain intact and containment isolation is ensured, there is no increase in the probability or consequences of a previously evaluated accident.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Because the basic control, logic, and function of all safety-related equipment is unchanged and there is no potential for abnormal plant conditions because of the removal of the valves and capping of the line, the possibility of a new accident is not created.

(3) Does the proposed amendment involve a significant reduction in margin of safety?

No. The margin of safety for the SQN isolation scheme is established by the specification of containment isolation valves in Technical Specification Table 3.6-2. Capping of the sample line following removal of containment isolation valves FCV-77-16 and FCV-77-17 will ensure that containment isolation for that line is maintained at all times. This is verified by periodic Type A containment leak rate testing. Therefore, removal of these valves from Table 3.6-2 will not reduce the margin of safety of the containment isolation plan. The deletion of penetration X-81 from Table 3.6-1 will also not reduce the margin of safety. The entry is deleted to reflect that a bypass leakage path is no longer associated with this penetration because the line is capped in the annulus.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County

Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Robert A. Hermann

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: November 25, 1986, December 7, 1987 and May 6, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Yankee Nuclear Power Station to reflect recent changes to that regulation. The proposed amendments would modify paragraph 2.C(3) of Facility Operating License DPR-3 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 25, 1986, December 7, 1987 and May 6, 1988, to satisfy the requirements of the amended regulations. The Commission proposed to amend the license to reference the revised plan. In Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (vii) "a change to conform a license to changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: April 8, 1988

Brief description of amendments: The amendments revise Section 5.3.1 of the Technical Specifications for each unit to provide for limited substitution of fuel rods by filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, if justified by a cycle specific reload analysis. Specification 5.3.1 for Unit 1 is also revised to reflect a limitation on fuel storage previously established in Amendment No. 24 to NPF-41.

Date of issuance: May 20, 1988

Effective date: May 20, 1988

Amendment Nos.: 34, 21 and 8

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1988 (53 FR 12736) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: February 12, 1988, as supplemented on March 21, March 25 (2 letters) and April 14, 1988.

Brief description of amendment: The amendment would make the following changes:

1. Modify Technical Specification (TS) Limiting Condition for Operation (LCO) 3.1.1.4 by adding a figure that provides the upper limits for moderator temperature coefficient (MTC) and increases this MTC limit for thermal power levels above 70% rated thermal power (RTP) from less positive than 0.2 E-4 delta k/k/° F to the linear equation where the MTC limit is less positive than +[(.9 + 4 (1-P))/3] E-4 delta k/k/° F where P is the fraction of RTP. Thus, at 70% RTP, MTC must be less positive than 0.7 E-4 delta k/k/° F and at 100% RTP MTC must be less positive than +0.3 E-4 delta k/k/° F.

2. Increase the minimum required shutdown margin of TS LCO 3.1.1.1 above the currently required +3.5 delta k/k in accordance with the linear progression where the shutdown margin limit shall be greater than or equal to +[3.5 + 1.5(P)] delta k/k/ where P is the fraction of core life. Thus, at beginning of cycle the shutdown margin limit is +3.5 delta k/k but at end of cycle the limit is +5.0 delta k/k.

3. Change the TS Figure 3.1-2, "CEA Group Insertion Limits vs. Fraction of Allowable Thermal Power for Existing RCP Combination," Bank 5 Transient Insertion Limit from the linear progression with values of 25% insertion at 90% RTP and 35% insertion at 100% RTP to a constant insertion limit of 35% between 90% and 100% RTP.

4. Reduce unnecessary Axial Shape Index (ASI) trips below 70% RTP and provide additional operation flexibility by:

a. modifying TS Figure 2.2-1, "Peripheal Axial Shape Index vs. Fraction of Rated Thermal Power," by increasing the acceptable operation region below 70% RTP to the area bounded by the linear equations for the ASI limits, where:

(1) ASI limit = ±[.6 + 2/3 (.4-P)] (P is the fraction of RTP) between 40% and 100% RTP, and

(2) ASI limit = ±0.6 at powers below 40% RTP.

The current ASI limits are ±0.4 at powers below 70% TRTP;

b. expanding the acceptable operation region of TS Figure 3.2-2, "Linear Heat Rate Axial Flux Offset Control Limits," and TS Figure 3.2-4, "DNB Axial Flux Offset Control Limits," by increasing the negative ASI limit below 50% RTP from the current value of -0.3 to

(1) the linear equation limit, between 15% and 50% RTP, of the negative ASI limit = -[0.3 + 3/7 (.5-P)], where P is the fraction of RTP;

(2) below 15% RTP, the negative ASI limit = -0.45.

5. Reflect the lowering of the departure from nucleate boiling ratio (DNBR) limit to 1.15 due to the incorporation of an extended statistical combination of uncertainties methodology through modifying Figures 2.2-2, "Thermal Margin/Low Pressure Trip Setpoint Part 1 (ASI v. A_1)," and 2.2-3, "Thermal Margin/Low Pressure Trip Setpoint Part 2 (Fraction of Rated Thermal Power v. QR_1)," by

a. changing the equation for the pressure variable trip from

P (TRIP VAR) = 2061 (Q_{DNB}) + 15.85 (T_{IN}) - 8915 to

P (TRIP VAR) = 2892 Q_{DNB} + 17.16 (T_{IN}) - 10682;

b. changing Q_{DNB}, which equals QR_1 X A_1, by increasing QR_1 from the values of:

QR_1 = .235 + (628/7810) P between 0% and 78.1% RTP

QR_1 = .863 + (109/191)x(P-.781) between 78.1% and 97.2% RTP

QR_1 = P above 97.2% RTP

to

QR_1 = .3 + (11/12)P between 0% and 60% RTP

QR_1 = .85 + (3/8)x(P-.6) between 60% and 100% RTP

QR_1 = P above 100% RTP

where P is the fraction of RTP.

Date of issuance: May 16, 1988

Effective date: May 16, 1988

Amendment No.: 130

Facility Operating License No. DPR-53. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1988 (53 FR 12618) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: January 14, 1988

Brief Description of amendment: Revision to Technical Specifications to allow submittal of a supplement to the January semi-annual release report, correction of numbering and the elimination of a page.

Date of issuance: May 10, 1988

Effective date: May 10, 1988

Amendment No.: 116

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5486) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: November 26, 1986 and September 23, 1987

Description of amendments: These amendments modify the License Condition in Operating License DPR-71 by deleting sections 2.D(1), 2.D(2) and 2.D(3) and by adding a new License Condition as section 2.D., and the License Condition in Operating License DPR-62 by deleting sections 2.C(6), 2.C(7) and 2.C(8) and adding a new License Condition under section 2.C(6) to require compliance with the amended Physical Security Plan.

Date of issuance: May 18, 1988

Effective date: May 18, 1988

Amendment Nos.: 118 and 152

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revised the Licenses.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11366) The Commission's related evaluation of the amendments is contained in a Safeguards Evaluation Report dated May 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Caroline at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: December 14, 1987

Brief description of amendment: This amendment revises Technical Specification 5.2.1(b) to allow inclusion of all reloads of the "I" fuel design. Past practice has been to identify each cycle reload individually and routinely change the Technical Specifications even though fuel design was not being altered. This change permits future reloads of "I" fuel to be performed by the licensee under 10 CFR 50.59. Any future reloads containing fuel with a design other than the "I" fuel would require a Technical Specification amendment.

Date of issuance: May 17, 1988

Effective date: May 17, 1988

Amendment No.: 90

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7589) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, (LACBWR) La Crosse, Wisconsin

Date of application for amendment: September 24, 1987 as revised March 28 and April 28, 1988.

Brief description of amendment: This amendment revises the Physical Security Plan (which includes the Security Force Training and Qualification Plan and the Safeguards Contingency Plan) for LACBWR. The proposed amendment to this plan reflects a reduction in scope to cover only the storage of spent fuel. The basis for the change is premised on LACBWR being permanently shutdown on April 30, 1987, and the licensee's letter dated May 22, 1987 (LAC-12234) which requested that Provisional License No. DPR-45 for LACBWR be amended to a possession-only status. On June 12, 1987, all fuel had been removed from the reactor and stored in the Fuel Element Storage Well. The licensee's request for a possession-only status was approved by the NRC as reflected in License Amendment No. 56 which was issued on August 4, 1987.

The proposed amendment only eliminates areas, equipment, systems and procedures that have been deemed unnecessary for a nuclear power facility which has been permanently shutdown and requires the licensee to implement certain security measures commensurate with the risks associated with the storage of spent fuel.

Date of issuance: May 18, 1988

Effective Date: May 18, 1988

Amendment No.: 61

Provisional License No. DPR-45: This Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1988 (53 FR 11150) The Commission's related evaluation of the amendment is contained in Safety Evaluation dated May 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 15, 1985, as supplemented August 7 and November 6, 1985, March 7, April 14, and September 18, 1986, March 16 and August 11, 1987, and April 7, 1988.

Brief description of amendments: The amendments modified the Technical Specifications to increase the interval for surveillance of the ice condenser lower inlet doors.

Date of issuance: May 9, 1988

Effective date: May 9, 1988

Amendment Nos.: 44 and 37

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36087) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 5, 1988

Brief description of amendments: The amendments revised the Technical Specifications to delete the minimum fuel rod weight limit of 1766 grams of uranium.

Date of issuance: May 9, 1988

Effective date: May 9, 1988

Amendment Nos.: 81 and 62

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11368) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 14, 1988

Brief description of amendments: The amendments change the Technical Specifications by removing obsolete text regarding the Upper Head Injection System.

Date of issuance: May 10, 1988

Effective date: May 10, 1988

Amendment Nos.: 82 and 63

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11369) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 10, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 12, 1985, as supplemented April 14 and September 18, 1986, March 16 and August 11, 1987, and April 7, 1988.

Brief description of amendments: The amendments modified the Technical Specifications to increase the interval for surveillance of the ice condenser lower inlet doors.

Date of issuance: May 11, 1988

Effective date: May 11, 1988

Amendment Nos.: 83 and 64

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30569) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duquesne Light Company, Docket Nos. 50-334, and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: February 5, 1988

Brief description of amendments: The amendments correct a number of administrative errors, make editorial changes and clarify certain requirements in the existing Technical Specifications.

Date of issuance: May 13, 1988

Effective date: May 13, 1988

Amendment Nos. 125 (for Unit 1) and 2 (for Unit 2)

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9502) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application of amendment: July 2, 1986, as supplemented February 6 and 9, March 2 and 27, and April 28, 1987.

Brief description of amendment: The amendment permitted Unit No. 1 spent fuel to be transferred from the Unit No. 1 spent fuel pool to the Unit No. 2 spent fuel pool.

Date of Issuance: May 10, 1988

Effective Date: May 10, 1988

Amendment No.: 30

Facility Operating License No. NPF-16: Amendment revised the License.

Date of initial notice in **Federal Register:** October 20, 1986 (51 FR 37242). Additional information was submitted since the initial notice in the **Federal Register**. The additional information did not alter, in any way, the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: March 17, 1988, as supplemented on March 28, 1988 and April 22, 1988.

Brief description of amendment: Removes corporate and unit organization charts from the Technical Specifications.

Date of Issuance: May 13, 1988

Effective date: May 13, 1988

Amendment No.: 139

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11372). The March 28, 1988 and April 22, 1988 submittals proposed minor changes to conform with Generic Letter No. 88-06 on the same subject and issued on March 22, 1988. This was after the original GPU Nuclear submittal. The supplemental submittals do not change the scope of this amendment and does not alter the staff's initial no significant hazards consideration finding. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: February 18, 1988 as revised March 22, 1988

Brief description of amendment: This amendment modifies Technical Specification 3.4.2.1. to change the setpoint tolerance of the safety valve function of the safety relief valves from ±1% to (+)0(-)2% of the set pressure.

Date of issuance: May 10, 1988

Effective date: May 10, 1988

Amendment No.: 22

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11372) The March 22, 19888 submittal corrected an editorial error and did not alter the staff's proposed no significant hazards consideration issued on April 6, 1988.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: September 4, 1987

Brief description of amendment: The amendment revises Table 4.3.6-1 of the TSs to (1) delete the daily channel functional test of the rod pattern control system low power setpoint and high power setpoint, and (2) clarify that the surveillance for the high power setpoint is applicable to Operational Condition 1, greater than the low power setpoint.

Date of issuance: May 10, 1988

Effective date: May 10, 1988

Amendment No.: 23

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47784). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: November 2, 1987

Brief description of amendments: The amendments add incinerated oil surveillance and radioactive release requirements to the Radiological Environmental Technical Specifications (RETS).

Date of issuance: May 19, 1988

Effective date: May 19, 1988

Amendments Nos.: 115, 110

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47785). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 15, 1987

Brief description of amendments: Technical Specification changes related to effluent monitoring sampling pump and cooling tower blowdown instrumentation.

Date of issuance: May 3, 1988

Effective date: Units 1 and 2 are effective upon issuance, and are to be implemented prior to Unit 2 startup (currently scheduled for May, 1988)

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following the second refueling and inspection outage.

Amendment Nos.: 80 and 46

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9510) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 21, 1986 and September 24, 1987.

Brief description of amendments: These amendments modified paragraph 2.D of the licenses to require compliance with the amended Physical Security Plan.

Date of issuance: May 16, 1988

Effective date: May 16, 1988

Amendment Nos.: 81 and 47

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised License.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5494) The Commission's related evaluation of the amendments is contained in a letter to Pennsylvania Power and Light Company dated May 16, 1988 and a Safeguards Evaluation Report dated May 16, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: April 8, 1988

Brief description of amendment: Technical Specification changes reflecting cancellation of drywell fan modifications

Date of issuance: May 17, 1988

Effective date: May 17, 1988

Amendment No.: 48

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1988 (53 FR 12625) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: August 16, 1985, as revised December 19, 1986 and April 20, 1988.

Brief description of amendment: The amendment permits relief from LCO 3.0.4 for Technical Specification (TS) Sections 3.2.4, 3.9.2, 3.9.7, 3.9.9, and 3.9.11.

In addition, this amendment documents that PGE instituted changes to Appendix A, Technical Specification Section 6.9, and Appendix B, Environmental Protection Plan Technical Specification Section 5.4 regarding written communications, as authorized by the Commission (See Federal Register (51 FR 40303), November 6, 1986).

Date of issuance: May 11, 1988

Effective date: May 11, 1988

Amendment No.: 142

Facility Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1988 (53 FR 3958). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 2, 1986 and September 4, 1987.

Brief description of amendment: The amendment modified paragraph 2.E of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: May 10, 1988

Effective date: May 10, 1988

Amendment No. 17

Facility Operating License No. NPF-57. This amendment revised the License.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9512) The Commission's related evaluation of the amendment is contained in a letter to Public Service Electric and Gas Company dated May 10, 1988. and a Safeguards Evaluation Report dated May 10, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: January 14, 1988 (TS 237)

Brief description of amendments: The amendments modify Technical Specification Tables 3.2.B and 4.2.K to correct identified inconsistencies.

Date of issuance: May 4, 1988

Effective date: May 4, 1988, and shall be implemented within 60 days

Amendments Nos.: 148, 144 and 119

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9517) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 17, 1987 (TS 87-33)

Brief description of amendments: The amendments add a new definition, "Bypass Leakage Paths To The Auxiliary Building," and make other related administrative changes to LCO 3.6.1 and Table 3.6-1.

Date of issuance: May 18, 1988

Effective date: May 18, 1988

Amendment Nos.: 71, 63

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42371) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 12, 1987 (TS 87-15)

Brief description of amendments: These amendments add two valves to Table 3.6-2 which were inadvertently omitted and correct typographical errors.

Date of issuance: May, 16, 1988

Effective date: May 16, 1988

Amendment Nos.: 70, 62

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34020) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339 North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of application for amendments: December 16, 1986, as supplemented October 14, 1987 and February 14, 1988

Brief description of amendments: The amendment modified paragraph 2.E. of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: May 9, 1988

Effective date: May 9, 1988

Amendment Nos.: 100 and 87

Facility Operating License Nos. NPF-4 and NPF-7: Amendment revised the License.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11378) The Commission's related evaluation of the amendment is contained in a letter to Virginia Electric and Power Company dated May 9, 1988 and a Safeguards Evaluation Report dated May 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 3, 1988

Brief description of amendments: The amendments revised the NA-1&2 TS 3.4.7.14 regarding the operational status of NA-1&2 and the 18-month surveillance requirement for the diesel-driven fire pump. The changes allow operation of both units when conducting the surveillance by requiring the establishment and demonstration of operability of the backup fire suppression system when the diesel-driven fire pump is inoperable for performance of the 18-month inspection.

Date of issuance: May 9, 1988

Effective date: May 9, 1988

Amendment Nos.: 101 and 88

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9518) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: January 5, 1988

Brief description of amendment: The amendment adds surveillance requirements to the Technical Specifications related to the 480 volt emergency buses.

Date of issuance: May 18, 1988

Effective date: May 18, 1988

Amendment No.: 107

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 17, 1988 (53 FR 8826) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01310.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: May 9, 1988

Description of amendment request: The amendment changed the Technical Specifications to increase the maximum allowed drop time for control element assemblies (control rods) from 3.0 to 3.2 seconds.

Date of issuance: May 10, 1988

Effective date: May 10, 1988

Amendment No.: 84

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with State of Arkansas, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 16, 1988.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of application for amendment: March 10, 1988, as revised March 22 and 29, 1988.

Brief description of amendment: The amendment revised steam generator tube plugging criteria to allow tubes with defects in the rolled region of the tube sheet to remain in service until the next refueling outage, provided that the first inch of rolled tube contains no imperfections. This amendment grants the licensee's request in part, authorizing operation in the interim until the next refueling outage. A separate Notice addresses permanent change of the Technical Specifications relating to steam generator tube plugging criteria.

Date of issuance: May 6, 1988

Effective date: May 6, 1988 until the next refueling outage

Amendment No.: 101

Provisional Operating License No. DPR-13: Amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards consideration: Yes, April 3, 1988 *Orange County* (California) *Register*

Comments received: No. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of California and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 6, 1988.

Attorneys for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

NRC Project Director: George W. Knighton

Dated at Rockville, Maryland, this 26th day of May, 1988.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 88-12203 Filed 5-31-88; 8:45 am]

BILLING CODE 7590-01-D

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/State of Florida Office of the Auditor General

AGENCY: United States Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/State of Florida Office of the Auditor General.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate as a source agency in a continuing computer matching program to detect fraud, waste, and abuse in the programs of Aid to Families with Dependent Children (AFDC) and food stamps administered by the State of Florida. The match will compare the Postal Service's Payroll System File (050.020, Finance Records—Payroll System) with the file of recipients of these benefits, as maintained by the Division of Public Assistance Fraud, State of Florida Office of the Auditor General.

DATE: The first match under this continuing program is expected to begin about June 1988.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 8121, Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office (202) 268-5161.

SUPPLEMENTARY INFORMATION: On January 6, 1987, the Postal Service published notice (52 FR 480) of a one-time computer match to assist the Division of Public Assistance Fraud, State of Florida Office of the Auditor General (F-OAG), in its efforts to identify postal employees in Florida receiving AFDC and food stamp benefits through the State of Florida to which they were not entitled. The F-OAG has investigatory responsibility for these public assistance programs which are administered by the State of Florida Department of Health and Rehabilitative Services. That match resulted in the identification and removal of several employees from the benefit rolls, measures to improve state agency procedures/data, and a recoupment of monies substantially in excess of the cost of the match. The F-OAG has asked the USPS to conduct these matches on an annual basis. The USPS has agreed to participate in these matches so long as they prove to be cost effective and in compliance with the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). Set forth below is the information required by paragraph 5.f.(1) of those Guidelines. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and State of Florida Office of the Auditor General (F-OAG)

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the USPS will submit to the F-OAG a computer tape of the names and social security account numbers (SSANs) of postal employees in the State of Florida. The F-OAG will match that tape, using name and SSAN, against its tape of recipients of AFDC and food stamp benefits in the State of Florida. The purpose of this match is to identify postal employees who are receiving benefits to which they are not entitled under these public assistance programs. In instances where SSANs match, i.e., "hits," the USPS will disclose to the F-OAG the following information from its payroll file: name, SSAN, date of birth, home address, facility where employed, and gross wage information.

The validity of "matched" employee/benefit recipient information will be verified by the F-OAG using State of Florida Department of Health and Rehabilitative Services' (F-HRS) files. Subsequent actions may include the collection of outstanding debts owed for past benefit overpayments; the reduction, suspension or termination of benefit payments; and other appropriate

action against those employees fraudulently receiving benefits, but only after the individual has been afforded due process. Where there are reasonable grounds to believe there has been a violation of criminal law, the matter may be referred for Federal or State prosecution. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match:* The first match is expected to begin about June 1988. The matching program will be performed on a continuing, once-a-year, basis so long as the program proves cost effective.

d. *Security:* The F–OAG/F–HRS personnel who perform and verify the match will: (a) have the only access to the USPS computer tape; (b) use it solely for the purpose of the match as officially stated and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, information on benefit recipients disclosed to the USPS will be used by authorized personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching program will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The F–OAG will neither retain nor copy the tape provided by the USPS and will return it to the USPS within six months from the date of its receipt or upon completion of the actual computer run (comparison), whichever is sooner. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88–12160 Filed 5–31–88; 8:45 am]

BILLING CODE 7715–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25728; File No. SR–DTC–88–5]

Self Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1988, the Depository Trust Company ("DTC") filed a proposed rule change to establish fees for among other things, its underwriting service to distribute new issues of medium-term notes ("MTN's"). The Commission is publishing this notice to solicit comment on the rule change.

DTC recently expanded its Same-Day Funds Settlement Service to include medium-term notes as eligible corporate securities. Because of the variable terms of MTN issues and the short turnaround time on MTN issuances (frequently they settle on the next-day), DTC in conjunction with the MTN sales agents, has developed a system that provides for book-entry-only issuance and delivery of the securities. DTC states in its filing that the proposed fees are based on DTC's costs of providing these services. The underwriting fee will be charged to the sales agent or, in the absence of a sales agent, the issuing agent. These fees are to be effective for services provided after March 31, 1988.

The proposal establishes new fees for the following services:

(1) Maintenance of long positions; for each book-entry-only issue a monthly charge of $0.40 per issue, per month will be charged;

(2) Corporate issue underwritings; $205.00 plus $3.00 per million with a total maximum fee of $2,000.00 and any unusual expenses;

(3) Book-entry-only issues; $205.00 and any unusual expenses;

(4) Certificates of deposit; $105.00 and any unusual expenses; and

(5) Medium-term notes; $20.00 for each tranche and any unusual expenses.

DTC believes that the proposed rule change is consistent with the requirements of the Act in that it has adopted the proposed rule change pursuant to section 17A(b)(3)(D) which authorizes it to adopt reasonable fees for the services which it provides.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–88–5.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 20, 1988.

[FR Doc. 88–12208 Filed 5–31–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25741; File No.SR–PCC–88–01]

Proposed Rule Change by Pacific Clearing Corp.; Relating to the Number of Directors Required To Serve on the Board of Directors of PCC

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1988, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing will amend Article II, section 2.2(a) of the Bylaws of PCC to reduce the minimum and the maximum number of directors required to serve on the PCC Board of Directors. The minimum number of directors required shall be reduced from ten to five, and the maximum shall be reduced from thirteen to seven.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to reduce the number of directors required to serve on the Board of Directors of Pacific Clearing Corporation ("PCC").

As Article II, section 2.2(a) now reads, the minimum number of directors required for the Board is ten, and the maximum is thirteen. PCC has resolved to reduce the minimum to five, and the maximum to seven. In other words, the number of directors would be between five and seven, rather than between ten and thirteen.

PCC is a wholly owned subsidiary of the Pacific Stock Exchange Incorporated ("PSE"). PCC, since its incorporation, offered its services to all self-clearing broker/dealers and banks who met PCC requirements. Thus, PCC offered its services to approximately 175 broker/dealers and banks, and 78 PSE specialists posts.

During 1987, PCC determined that its best interest would be served by repositioning its activities, and it resolved, (a) to reduce its customer base and, (b) to reduce the scope of the services it provided.

PCC now offers clearing services to approximately 74 PSE specialists posts, and only with respect to ex-clearing transactions, i.e., transactions not cleared by National Securities Clearing Corporation ("NSCC").

The substantial reduction in the activities of PCC warrants a similar reduction in its directorship.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PCC does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 22, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

May 24, 1988.

[FR Doc. 88–12209 Filed 5–31–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25742; File No. SR–PSDTC–88–01]

Proposed Rule Change by Pacific Securities Deposit Trust Corp.; Relating to the Number of Directors Required To Serve on the Board of Directors of PSDTC

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1988, the Pacific Securities Deposit Trust Corporation ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing will amend Article II, section 2.2.(a) of the Bylaws of the PSDTC to reduce the minimum and the maximum number of directors required to serve on the PSDTC Board of Directors. The minimum number of directors required shall be reduced from ten to five, and the maximum shall be reduced from thirteen to seven.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to reduce the number of directors required to serve on the Board of Directors of Pacific Securities Deposit Trust Corporation ("PSDTC").

As Article II, section 2.2.(a) now reads, the minimum number of directors required for the Board is ten, and the maximum is thirteen. PCC has resolved to reduce the minimum to five, and the maximum to seven. In other words, the number of directors would be between

five and seven, rather than between ten and thirteen.

PSDTC is a wholly owned subsidiary of the Pacific Stock Exchange Incorporated ("PSE"). PSDTC, since its incorporation, offered its services to all self-clearing broker/dealers and banks who met PSDTC requirements. Thus, PSDTC offered its services to approximately 175 broker/dealers and banks, and 78 PSE specialists posts.

During 1987, PSDTC determined that its best interests would be served by repositioning its activities, and it resolved, (a) to reduce its customer base and, (b) to reduce the scope of the services it provided.

PSDTC now offers depository services to approximately 74 PSE specialists posts and only with respect to ineligible securities, i.e., securities not eligible for deposit at Depository Trust Company.

The reduction in the activities of PSDTC warrants a similar reduction in its directorship.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSDTC does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 22, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12210 Filed 5-31-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16373]

Application and Opportunity for Hearing; US Air, Inc.

May 25, 1988.

Notice is hereby given that US Air, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under eighteen indentures between the Company and the Bank, eight dated as of May 16, 1988 (the "May Indentures"), four dated as of March 1, 1988 (the "March Indentures") and six dated as of November 30, 1987 (the "November Indentures"), each of which were heretofore qualified under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of the Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the May Indentures, the Company will issue $166,400,000 aggregate principal amount of its Equipment Trust Certificates (the "May Certificates"), Series A–L (the "May Series"), respectively. Series A–L will be issued, each under a May Indenture, in the principal amount of $20,800,000. The May Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the May Indentures were qualified under the Act.

(2) Pursuant to the March Indentures, the Company has issued $78,498,000 aggregate principal amount of its Equipment Trust Certificates (the "March Certificates"), Series A–D (the "March Series"). Series A and B have been issued, each under a March Indenture, in the principal amount of $19,828,000. Series C and D have been issued, each under a March Indenture, in the principal amount of $19,421,000. The March Certificates were registered under the 1933 Act and the March Indentures were qualified under the Act.

(3) Pursuant to the November Indentures, the Company has issued $124,800,000 aggregate principal amount of its Equipment Trust Certificates (the "November Certificates"), Series A–F (the "November Series"). A Series has been issued under each November Indenture in the principal amount of $20,800,000. The November Certificates were registered under the 1933 Act and the November Indentures were qualified under the Act. (Collectively, the May Certificates, the March Certificates and the November Certificates are referred to herein as the "Certificates" and the May Series, the March Series and the November Series are referred to herein as the "Series.")

(4) There is no default under any of the Indentures.

(5) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property.

(6) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under any of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all

persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22–16373, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than June 18, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12211 Filed 5-31-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16404; 812-6962]

Equitable Capital Partners, L.P., et al.; Application

May 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Equitable Capital Partners, L.P. (the "Enhanced Yield Fund"), Equitable Capital Partners (Retirement Fund), L.P. (the "Enhanced Yield Retirement Fund") (each a "Partnership" and collectively the "Partnerships") and Equitable Capital Management Corporation ("Equitable Capital").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act.

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of each Partnership are not "interested persons" of such Partnership or of Equitable Capital by reason of being general partners of the Partnership and co-partners of Equitable Capital, (ii) the Independent General Partners of a Partnership will not be deemed to be "interested persons" of such Partnership by virtue of their service as Independent General Partners of the other Partnership, and (iii) persons who become limited partners (the "Limited Partners") of a Partnership who own less than 5% of the limited partnership interests in such Partnership will not be "affiliated persons" of the Partnership or any of its other partners solely by reason of their status as Limited Partners.

Filing Dates: The application was filed on February 1, 1988 and amended on May 13, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 6, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019, Attention: James P. Pappas, Esq.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the above referenced application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Partnership is a recently-formed limited partnership organized under Delaware law. Each Partnership has elected to be a business development company and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. The Partnerships will terminate no later than September 30, 1998 or 10 years from the final closing, if later, unless extended for up to two additional one-year periods.

2. The Partnerships filed a joint registration statement on Form N–2 (File No. 33–20093) under the Securities Act of 1933 with respect to an aggregate offering by the Partnerships of up to 300,000 units of limited partnership interest in the Partnerships (collectively, for both Partnerships, the "Units"). Merrill Lynch, Pierce, Fenner & Smith Incorporated will act as the selling agent for the Units on a "best efforts" basis.

3. The General Partners of each Partnership will consist initially of three (and in the future may be increased to nine) Independent General Partners (defined to be individuals who are natural persons and who are not "interested persons" of such Partnership within the meaning of the 1940 Act) and Equitable Capital, as managing general partner (the "Managing General Partner"). A majority of the General Partners must be Independent General Partners. Each Partnership Agreement provides that if at any time the number of Independent General Partners is less than a majority of the General Partners, then within 90 days thereafter, the remaining Independent General Partners shall designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners. The Managing General Partner will be responsible for purchasing investments for a Partnership which have been approved by the Independent General Partners, for providing administrative services to the Partnership and for the admission of additional or assignee Limited Partners to the Partnership. Equitable Capital, as Managing General Partner, may subcontract with a third party for the provision of administrative services to the Partnerships. Equitable Capital will also act as the investment adviser to each Partnership pursuant to an investment advisory agreement (the "Advisory Agreement") between Equitable Capital and each Partnership. Under each Advisory Agreement, Equitable Capital will be responsible for the identification of all investments to be made by the respective Partnership and will perform other functions carried out by the investment adviser to a business development company. Equitable Capital, an indirect, wholly owned subsidiary of The Equitable Life Assurance Society of the United States, is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

4. Each Partnership will be managed solely by the Independent General

Partners thereof, except with regard to those specific activities of such Partnership for which Equitable Capital, in its capacity as the Managing General Partner or as the investment adviser of such Partnership, will be responsible. The Independent General Partners of a Partnership will provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of a corporation. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a registered investment company.

5. The Limited Partners of a Partnership have no right to control such Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement, including voting rights and the giving of consents and approvals provided for in such Partnership Agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. It is the opinion of counsel to the Partnership, which is relying on the opinion of Delaware counsel, that the existence of these voting rights does not subject the Limited Partners to liability as General Partners under The Revised Uniform Limited Partnership Act of the State of Delaware. In addition, each Partnership Agreement will obligate the General Partners of such Partnership to take all such action which may be necessary or appropriate to protect the limited liability of the Limited Partners. An insurance policy to provide coverage to persons who become Limited Partners in the Partnerships has not been obtained. The Indepdentent General Partners of each Partnership will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicants' Legal Analysis

1. Applicants request that each Partnership and the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of a Partnership or of Equitable Capital as the Managing General Partner and investment adviser of a Partnership because such Independent General Partners are general partners of a Partnership and "co-partners" of Equitable Capital. Each Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

2. The Independent General Partners of a Partnership may be deemed to be "interested persons" of such Partnership by virtue of their service as Independent General Partners of the other Partnership. Applicants believe that service by the same individuals as Independent General Partners of both Partnerships, a relationship similar to one in which an individual serves as a director of multiple investment companies in the same complex, will be beneficial to both Partnerships. Thus, Applicants further request that the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) to the extent that they would otherwise be deemed to be "interested persons" of such Partnership solely by virtue of their service as Independent General Partners of the other Partnership.

3. Applicants request further that under section 2(a)(3)(D) of the 1940 Act any Limited Partner owning less than 5% of the Units of a Partnership not be deemed an "affiliated person" of such Partnership, any other Limited Partner, any of the Independent General Partners or Equitable Capital merely because such Limited Partner is a partner of the Partnership or a partner with any of such other persons in the Partnership. Since such Limited Partners have no exclusion under the Act comparable to that provided under section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnerships on a footing more equal with investments in business development companies organized as corporations.

4. Applicants submit that the request for an order exempting the Independent General Partners of each Partnership from the provisions of section 2(a)(19) and certain Limited Partners from the provisions of section 2(a)(3)(D) of the 1940 Act is consistent with the provisions, policies and purposes of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants agree that the Partnerships will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under each Partnership Agreement, a Partnership is authorized to make in-kind distributions of portfolio securities to its Partners. Applicants agree not to make any in-kind distributions of securities to Partners of a Partnership until such Partnership has either obtained a no-action letter from the staff of the SEC or, alternatively, has obtained an order pursuant to section 206A of the Advisers Act permitting such distribution.

3. Applicants will obtain an opinion of counsel satisfactory to the Independent General Partners of each Partnership that the distributions and allocations to the Managing General Partner of each Partnership can be paid in accordance with section 205 of the Advisers Act. Applicants do not request SEC review or approval of such opinion letter.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-12276 Filed 5-31-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-039]

Chemical Transportation Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Friday, July 22, 1988 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 9:30 a.m. and end at 4:00 p.m.

The agenda for the meeting follows:

1. Call to order.
2. Introduction of CTAC/USCG Members
3. Opening Remarks
4. U.S. Coast Guard Initiatives
5. Presentation of New Members
6. Committee Activities
7. Report of the Subcommittee on Vapor Control
8. Report of the Subcommittee on Marine Occupational Safety and Health
9. Report of the Subcommittee on Tank-Filling Limits
10. Report on Survey of Tank Vent Requirements
11. Future Subcommittee Tasks
12. Coast Guard Presentations:
    a. International Activities
    b. IMO Subcommittee on Bulk Chemicals
    c. IMO Subcommittee on The Carriage of Dangerous Goods
    d. IMO Subcommittee on Containers and Cargos
13. Other Business
14. Closing Remarks
15. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Commander R. W. Tanner, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC, 20593, (202) 267-1577.

Dated: May 24, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-12149 Filed 5-31-88; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Saab-Scania of America, Inc. (Saab) for an exemption from the parts-marking requirements of the vehicle theft prevention standard for the Saab 9000 car line. The agency grants this exemption under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements.

DATE: The exemption granted by this notice will become effective beginning with the 1989 model year.

SUPPLEMENTARY INFORMATION: This agency received a submission dated December 21, 1987 from Saab-Scania of America, Inc. (Saab) seeking an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to the requirements of 49 CFR Part 543, *Petitions for Exemption From the Vehicle Theft Prevention Standard.* NHTSA believed that Saab did not sufficiently address reasons for Saab's belief that the antitheft device will be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. On January 19, 1988, Saab was contacted and asked to provide the supplemental information. NHTSA received the required supplemental information on January 27, 1988.

The agency reviewed the December 21, 1987 and January 27, 1988 submissions and concluded that, together, they constituted a complete petition. Accordingly, January 27, 1988 is the date on which the statutory 120 day period for processing Saab's petition began. The agency further decided to grant the company's request under 49 CFR Part 512 to treat new product plans for Model Year 1989 and certain design specifications as confidential business information.

In its petition, Saab described a Saab 9000 antitheft system that is activated by locking the driver's door with the same key used for the ignition switch. The ignition key is designed so that the Saab 9000 door locks are difficult to pick. Once armed, the antitheft alarm system is triggered by vehicle motion-vibration or when an attempt is made to open any passenger door or the engine compartment hood. When triggered, the alarm activates a loud siren and flashes the front and rear parking lamps. The vehicle's engine starting system is also disabled. A special antitheft system for Saab 9000 radios is also provided.

Based on substantial evidence, the agency has determined that installing Saab's device in the Saab 9000 car line is likely to be as effective in reducing and deterring vehicle theft as compliance with the Part 541 marking requirements. This determination is based on the information Saab submitted with its petition and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Saab has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Saab provided on its device. This information included a description of reliability and functional test procedures prescribed by Saab's engineering department for the antitheft system and its components. Saab noted also that the function and design of its antitheft device are almost identical to those of other devices that the agency has considered likely to be at least as effective as complying with Part 541 would be.

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts-marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Saab wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimus.* Therefore, NHTSA suggests that if Saab contemplates making any changes the effects of which might be characterized as *de minimus,* then the company should consult the agency before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: May 26, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-12227 Filed 5-31-88; 8:45 am]

BILLING CODE 8110-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations; In Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The American Political Process: International Trade: The Office of Private Sector Programs will assist in supporting a 14-day study tour to bring a delegation of trade officials and parliamentary leaders from several Western European countries to the United States. This program will highlight the nature of the American political process using trade-related issues as case studies. It will take place in late fall of 1988 or early spring of 1989 and include travel to Washington, DC and two other locations.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials marked "International Trade Project"—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials. Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Programs) United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

Dated: May 18, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-12156 Filed 5-31-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 105
Wednesday, June 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 15771.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., May 26, 1988.

CHANGE IN THE MEETING: The Financial rule enforcement review will be held on June 1, 1988 instead of May 26th as previsouly scheduled.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12349 Filed 5-27-88; 1:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 3, 1988.

PLACE: 2033 K St., NW., Washington DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO E CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12350 Filed 5-27-88; 1:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 17, 1988.

PLACE: 2033 K St., NW., Washington DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12351 Filed 5-27-88; 1:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 24, 1988.

PLACE: 2033 K St., NW., Washington DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12352 Filed 5-27-88; 1:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 10, 1988.

PLACE: 2033 K St., NW., Washington, DC, 6th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12356 Filed 5-27-88; 1:12 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Tuesday, May 24, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to the possible closing of certain insured banks.

Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Application of New Hampshire Savings Bank South, Nashua, New Hampshire, a state chartered stock savings bank in organization, for Federal deposit insurance, for consent to merge, under its charter and title, with First Federal Bank, FSB, Nashua, New Hampshire, and for consent to establish the four branches of First Federal Bank, FSB as branches of New Hampshire Savings Bank South.

Recommendations with respect to the initiation or conduct of administrative enforcement proceedings against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof.

Recommendation regarding the Corporation's corporate activities.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Personnel matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c) (2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: May 27, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-12400 Filed 5-27-88; 3:12 pm]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Thursday, June 2, 1988, 11:00 a.m.

PLACE: 1776 G Street NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan Hausman, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8405.

MATTERS TO BE CONSIDERED: Closed personnel matter.

Date sent to Federal Register: May 26, 1988.

Maud Mater,

Secretary.

[FR Doc. 88-12275 Filed 5-26-88; 4:54 pm]

BILLING CODE 6720-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 26, 1988

TIME AND DATE: 10:00 a.m., Wednesday, May 25, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission considered and acted upon the following:

2. Rivco Dredging Corporation, Docket No. KENT 88-23-R, etc. (Issues include consideration of a petition for discretionary review.)

It was determined by an unanimous vote of Commissioners that a closed meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 6532-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88-12346 Filed 5-27-88; 11:25 am]
BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 26, 1988

TIME AND DATE: 10:00 a.m., Thursday, June 2, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor v. Union Oil Company of California,* (Issues include whether the administrative law judge erred in concluding that a violation of 30 C.F.R. § 57.5001, involving overexposure to vanadium fume, was not significant and substantial.) WEST 86-1-M.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

TIME AND DATE: Immediately following oral argument on June 2, 1988.

STATUS: Closed [Pursuant to 3 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above item.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88-12347 Filed 5-27-88; 11:25 am]
BILLING CODE 6735-01-M

NUCLEAR REGULATORY COMMISSION

SUNSHINE FEDERAL REGISTER NOTICE

DATE: Weeks of May 30, June 6, 13, and 20, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 30

Tuesday, May 31

2:00 p.m.
Briefing on Human Factors Program and NRC Views of NAS Recommendations (Public Meeting)

Wednesday, June 1

2:00 p.m.
Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, June 3

10:00 a.m.
DOE Briefing on LLW Program, West Valley Demonstration Project and Uranium Mill Tailings Remedial Action Project (Public Meeting)

Week of June 6—Tentative

Thursday, June 9

10:00 a.m.
Briefing on Status of Pilgrim (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 13—Tentative

Thursday, June 16

2:00 p.m.
Briefing on Advanced Light Water Reactors by EPRI (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 20—Tentative

Monday, June 20

1:00 p.m.
Discussion of Management—Organization and Internal Personnel Matters (Closed—Ex. 4)
2:30 p.m.
Briefing on Technical Specification Revisions (Public Meeting)

Tuesday, June 21

2:00 p.m.
Briefing on Options Paper on QA Requirements for Medical Applications of Radioactive Isotopes (Public Meeting)

Thursday, June 23

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

Andrew L. Bates,
Office of the Secretary.
May 26, 1988.

[FR Doc. 88-12398 Filed 5-27-88; 3:12 pm]
BILLING CODE 7590-01-M

federal register

Wednesday
June 1, 1988

Part II

Environmental Protection Agency

Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA); Notice

VOL 53 ISS 105 JE 1 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62063; FRL-3389-4]

Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the data of enactment of this title which qualify for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determines are consistent with the Model Plan and which will qualify a contractor for accreditation. This Federal Register notice includes the cumulative third list of course approvals. In addition, the list includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3790.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Contractor Accreditation Plan by April 20, 1987. The plan was issued on April 20, and was published in the Federal Register of April 30, 1987 (52 FR 15875), as Appendix C to Subpart E, 40 CFR Part 763.

To conduct asbestos-related work in schools, persons must receive accreditation in order to inspect school buildings for asbestos, develop management plans, and design or conduct response actions. Such persons can be accredited by States, which are required to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Contractor Accrediatation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the Federal Register of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR Part 763, Subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The new rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course, and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR Part 763, Subpart E, Appendix C.I.1. A through E.

In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of asbestos courses and tests which the Administrator determined were consistent with the Model Plan and which qualify a contractor for accreditation. The Federal Register notice of October 30, 1987, included the initial list of course approvals. In addition, the list included State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. The second Federal Register notice of February 10, 1988 (53 FR 3982), was a cumulative listing of EPA course approvals and EPA-approved State accreditation programs.

Three types of EPA approvals are included in the Federal Register notices. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses EPA approval of training courses for interim accreditation. Lastly, Unit IV provides the list of State accreditation programs and training courses approved by EPA as of April 1988. Subsequent Federal Register notices will add other State programs and training courses to this third cumulative list.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA is able to approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval. EPA can also approve State training programs that do not fully meet the Model Plan's requirements but do meet the requirements for interim accreditation.

As listed in Unit IV, Arkansas, Kansas, Massachusetts, New Jersey, and Rhode Island have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the State of Massachusetts has received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for that discipline. Current lists of training courses approved by Massachusetts, New Jersey, and Rhode Island are listed under Unit IV. Arkansas and Kansas have no separate provider listings because neither State has independently approved any additional courses.

Each State accreditation program may have different requirements for State accreditation. For example, New Jersey requires participants of their courses to take the State exam. Therefore, those New Jersey approved course sponsors who are contemplating presenting the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination to the Regional Asbestos Coordinator in their region for EPA approval.

EPA has also approved a number of State programs for purposes of providing interim accreditation for persons who have met the training and exam requirements of these State programs. Persons meeting such requirements in these States have completed a training course and exam similar to the Model Plan's requirements before December 14, 1987. However, these individuals must become fully accredited within the time period specified in the Model Plan.

States that have approval for interim accreditation purposes for abatement contractors, supervisors and workers include Alaska, Arkansas, Kansas, and Washington. Michigan and Illinois have approval for interim accreditation purposes for abatement workers only. Recently, Arkansas and Kansas that have had programs suitable only for interim accreditation of abatement contractors, supervisors and workers have upgraded their accreditation programs to be at least as stringent as the Model Plan. Both States are now fully approved in these disciplines. Persons with interim accreditation in these States are eligible to conduct work during the time period specified in the Model Plan. However, these persons must eventually become fully accredited.

As stated above, the Alaska and Washington programs clearly meet EPA's interim accreditation requirements. Currently, EPA is conducting a review to determine whether one or both State programs are at least as stringent as the Model Plan. One or both programs may receive full approval after EPA's review is complete. All State programs nationwide that do not fully meet the Model Plan's requirements must be upgraded within the time period specified in TSCA Title II to be at least as stringent as the Model Plan.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA are listed under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. Courses approved for interim accreditation will be discussed in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not effect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered, although several sponsors offer their courses in various locations in the United States.

EPA-approved State accreditation programs have the authority to have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation or are seeking accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered by several universities before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being fully approved. It should be noted that persons who have successfully completed these courses are fully accredited; they are not limited only to being accredited on an interim basis.

III. EPA Approval of Training Courses for Interim Accreditation

TSCA Title II enables EPA to permit persons to be accredited on an interim basis if they have attended previous EPA-approved asbestos training and have passed (or pass) an asbestos exam. As a result, the Agency has approved training courses offered previously for purposes for accrediting persons on an interim basis. Only those persons who have taken training courses since January 1, 1985, will be considered under these interim accreditation provisions. In addition, EPA will not grant interim accreditation to any person who takes an equivalent training course after the date on which the asbestos-in-schools rule took effect (i.e., December 14, 1987). This accreditation is interim since the person shall be considered accredited for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model Plan. If the State does not adopt an accreditation program within the time period required by Title II, persons with interim accreditation must become fully accredited within 1 year after the date the State was required to have established a program.

For purposes of the Model Plan, an equivalent training course is one that is essentially similar in length and content to the curriculum found in the Model Plan. In addition, and equivalent examination must be essentially similar to the examination requirements found in the Model Plan.

Persons who have taken equivalent courses in their discipline for purposes of interim accreditation, and can produce evidence that they have successfully completed the course by passing an examination, are accredited on an interim basis under TSCA Title II. Evidence of successful completion of a course would include a certificate or photo identification card that showed the person completed the training course on a certain date and passed the examination.

For persons who took one of the EPA-approved courses for interim accreditation listed under Unit IV, but did not take the course's examination, these persons may become accredited on an interim basis by passing an examination at an EPA-funded training center. These EPA-funded training centers are listed under Unit IV. Before taking the exam, persons must provide evidence to the EPA-funded center that they previously had taken one of the training courses listed under Unit IV that is approved by EPA for interim accreditation.

New York City Department of Environmental Protection, Bureau of Air Resources has a training program for asbestos abatement workers and

contractors/supervisors that does meet the requirements for EPA approval of training courses for interim accreditation (See Unit IV, Region II). As a result, persons who have met the training and exam requirements of the New York City Abatement Worker (i.e., "handler") or Contractor/Supervisor program between April 1, 1987 and December 14, 1987, are accredited as listed under Unit IV on an Interim basis.

Courses approved by EPA as of April 1988 for interim accreditation are listed under Unit IV. Examinations offered by these courses also are approved for purposes of interim accrediation. EPA expects to approve additional courses for interim accrediation purposes, and will list these courses in subsequent Federal Register notices. Training course vendors that believe their courses offered since January 1, 1985, are suitable sources for interim accreditation should contact their EPA Regional Asbestos Coordinator.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

Below is the third cumulative listing of EPA-approved State accreditation programs and training courses. As discussed above, periodic notifications of EPA approval of State accreditations programs and EPA approval of training courses will be published in subsequent Federal Register notices. The closing date for the acceptance of submissions to EPA for inclusion in this third notice was late April. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes). Unless otherwise specified by an alternative date, interim approvals are issued from January 1, 1985.

All five of the EPA-funded asbestos information centers and the three EPA-funded satellite training centers are using or will incorporate the EPA model inspector and management planner course recently developed with EPA funds. All of the EPA-funded training facilities have received approvals for inspection and management planning courses offered beginning in October 1987. Currently, almost all EPA-funded centers and all satellite centers have inspection and management planning courses that EPA has fully approved. The University of Kansas has received contingent appproval of its inspector and management planner courses. The five centers are: The Georgia Institute of Technology in Atlanta, Georgia; the University of Kansas in Overland Park, Kansas; Tufts University in Medford, Massachusetts; the University of Illinois at Chicago, and the University of California in Berkeley, California. The three satellite centers are: The University of Texas at Arlington; the Robert Wood Johnson Medical School in Piscataway, New Jersey; and Temple University in Philadelphia, Pennsylvania.

As of May 2, 1988, a total of 141 training providers are offering 240 EPA-approved training courses for accreditation under TSCA Title II. There are 83 asbestos abatement worker courses, 70 inspector/management planner courses, 5 inspector only courses, and 4 project designer courses. Nine States have either interimly or fully approved State accreditation programs.

The recently developed ERA-funded model course for inspectors and management planners, and an earlier course developed with EPA funding for asbestos abatement contractors and supervisors are available in final form for interested parties that plan to offer training courses. Interested parties should contact the following firm to receive copies of the training courses: ATLIS, Suite 600, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468–1916.

A fee for each course will be charged to cover the reproduction costs for the written and visual aid materials. The model inspector/management planner course curriculum is now final. All who have paid for the draft student manual will automatically receive the instructor manual and the accompanying slides.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

(1)(a) *State:* Alaska.
State Agency: Department of Labor
Address: P.O. Box 1148, Juneau, AK 99802
Contact: Richard Arab
Phone: (907) 465–4856

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim).
Contractor/Supervisor (interim).

(c) *Effective date of regulation:* 10/1/85.

(2)(a) *State:* Arkansas.
State Agency: Arkansas Dept. of Pollution Control and Ecology
Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209
Contact: Wilson Tolefree
Phone: (501) 562–7444

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full and interim).
Contractor/Supervisor (full and interim).

(c) *Effective date of regulation:* full from 1/22/88 interim from 11/22/85.

(3)(a) *State:* Illinois.
State Agency: Illinois Dept. of Public Health
Address: 525 West Jefferson St., 3rd. Floor, Springfield, IL 62702
Contact: Don Anderson
Phone: (217) 782–5830

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim).

(c) *Effective date of regulation:* 11/29/85.

(4)(a) *State:* Kansas.
State Agency: Kansas Dept. of Health and Environment, Environmental Toxicology Section
Address: Forbes Field Building 321, Topeka, KS 66620–7430
Contact: John C. Irwin
Phone: (913) 296–1500

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full and interim).[1]
Contractor/Supervisor (full and interim).

(c) *Effective date of regulation:* full from 12/16/87, interim from 11/6/86.

(5)(a) *State:* Massachusetts.
State Agency: Massachusetts Department of Labor & Industries; Division of Occupational Hygiene
Address: 1001 Watertown St., West Newton, MA 02165
Contact: Dick Levine
Phone: (617) 727–3567

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full).
Contractor/Supervisor (full).
Inspector (full).
Inspector/Management Planner (full).
Project Designer (full).

(c) *Effective date of regulation:* 10/30/87.

[1] Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

Massachusetts Department of Health, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspector/Management Planners, and Project Designers

(i)(a) *Training Provider:* Abatement Technical Corp c/o ECO Systems Inc.
Address: 5 North Meadow Rd., Medfield, MA 02052
Contact: Joseph C. Mohen
Phone: (609) 795–7834

(b) *Approved Course:* Contractor/Supervisor.
(c) *Date of Certification:* 4/28/88.

(ii)(a) *Training Provider:* Asbestos Workers Union Local #6.
Address: 1725 Revere Beach Pwy., Everett, MA 02149
Contact: James P. McCourt
Phone: (617) 387–2679

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/25/88.

(iii)(a) *Training Provider:* Astoria Industries.
Address: 538 Stewart Ave., Brooklyn, NY 11222
Contact: Gary DiPaolo
Phone: (718) 387–0011

(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 4/8/88.

(iv)(a) *Training Provider:* BCM Engineering
Address: 1 Plymouth Meeting, Plymouth Meeting, PA 19462
Contact: Peter R. Charrington
Phone: (215) 825–3800

(b) *Approved Courses:* Inspector/Management Planner, Project Designer.
(c) *Date of Certification:* 4/28/88.

(v)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028
Contact: Brenda Bolduc
Phone: (413) 525–1198

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker, Inspector/Management Planner.
(c) *Date of Certification:* 2/25/88.

(vi)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 35 Industrial Highway, Woburn, MA 01880
Contact: Joan Ryan
Phone: (617) 932–9400

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/8/88.

(vii)(a) *Training Provider:* Environmental Training Services.
Address: 12 Walnut Hill Pk., Woburn, MA 01801
Contact: Kenneth P. Martin, Jr.
Phone: (617) 389–0348

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/8/88.

(viii)(a) *Training Provider:* Howard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115
Contact: Wiliam A. Burgass
Phone: (617) 732–1171

(b) *Approved Courses:* Contractor/Supervisor, Inspector/Management Planner.
(c) *Date of Certification:* 2/25/88.

(ix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4340 West 15th St., Lawrence, KS 66046
Contact: Alice Hart
Phone: (800) 346–2660

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker, Inspector/Management Planner, Project Designer.
(c) *Date of Certification:* 4/25/88.

(x)(a) *Training Provider:* JF Walton & Company
Address: 201 Marginal St., Chelsea, MA 02150
Contact: Richard King
Phone: (617) 884–0350

(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 3/28/88.

(xi)(a) *Training Provider:* Kaselaan and D'Angelo Associates
Address: 515 Grove St., Haddon Heights, NJ 08035
Contact: Paul Heffernan
Phone: (212) 213–1188

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 2/25/88.

(xii)(a) *Training Provider:* N.A.A.C.O.
Address: 757 A Turnpike St., North Andover, MA 01845
Contact: Jerome W. Vitta
Phone: (617) 681–3711

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 3/18/88.

(xiii)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748–2699
Contact: James Merloni, Jr.
Phone: (617) 435–6316

(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 2/25/88.

(xiv)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155
Contact: Brenda Cole
Phone: (617) 381–3531

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker, Inspector/Management Planner.
(c) *Date of Certification:* 3/16/88.

(xv)(a) *Training Provider:* National Training Fund of Sheetmetal & Air Conditioning Industry/Workers Institute for Safety & Health.
Address: 1126 16th St., NW., Washington, DC 20036
Contact: Matthew Gillen
Phone: (202) 887–1980

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/28/88.

(xvi)(a) *Training Provider:* Institute for Environmental Education.
Address: 206 West Cummings Pk., Woburn, MA 01801
Contact: Mary Beth Carver
Phone: (617) 935–7370

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker, Inspector/Management Planner.
(c) *Date of Certification:* 4/28/88.

(6)(a) *State:* Michigan.
State Agency: State of Miohigan Dept. of Public Health.
Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909
Contact: Bill DeLiefde
Phone: (517) 335–8186

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim).

(c) *Effective date of regulation:* 7/2/88.

(7)(a) *State:* New Jersey
State Agency, State of New Jersey Dept. of Health.
Address: CN 360, Trenton, NJ 08625–0360
Contact: James Brownlee
Phone: (609) 984–2193

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full).
Contractor/Supervisor (full).

(c) *Effective date of regulation:* 6/18/85.

New Jersey Department of Health, EPA-Approved Courses for Abatement Workers and Contractor/Supervisors

(i)(a) *Training Provider:* Alternative Ways.
Address: 100 Essex Ave., Bellmawr, NJ 08031
Contact: John Smith
Phone: (609) 933–3300

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/25/85.

(ii)(a) *Training Provider:* National Asbestos Training Institute.

Address: 1043 Broadway, West Long Branch, NJ 07764
Contact: Doris Adler
Phone: (201) 229–4367

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/3/85.
(iii)(a) *Training Provider:* Asbestos Training Academy.
Address: 218 Central Highway, Pennsauken, NJ 08109
Contact: Marianne Brady
Phone: (609) 488–9200

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/1/85.
(iv)(a) *Training Provider:* Kaselaan and D'Angelo Associates.
Address: 215 White Horse Pike, Hadden Heights, NJ 08035
Contact: Elizabeth Vanek
Phone: (609) 547–6500

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/8/85.
(v)(a) *Training Provider:* Princeton Testing Laboratory.
Address: Rt. 1 Princeton Serv. Ctr, Princeton, NJ 08540
Contact: Anne Coogan
Phone: (609) 452–9060

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/8/85.
(iv)(a) *Training Provider:* A and S Insulation Co., Inc.
Address: 2213 North Delsea Dr., Vineland, NJ 08360
Contact: William Clark
Phone: (609) 692–0883

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/20/85.
(vii)(a) *Training Provider:* Northeastern Analytical.
Address: 234 Route 70, Medford, NJ 08055
Contact: Skip Harris
Phone: (609) 654–1441

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/20/85.
(viii)(a) *Training Provider:* New York/New Jersey White Lung Assoc.
Address: 12 Warren St., New York, NY 10007
Contact: Beth Garner
Phone: (212) 619–2270

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/21/85.
(ix)(a) *Training Provider:* Hunter College of Health Sciences.
Address: 425 East 25th St., New York, NY 10010
Contact: Dr. Jack Caravanos
Phone: (212) 481–4352

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/23/85.
(x)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705
Contact: Marian Meiselman
Phone: (301) 369–3900

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 6/12/85.
(xi)(a) *Training Provider:* Building Laborers of N.J.—Training Center.
Address: P.O. Box 163, Jamesburg, NJ 08831
Contact: Emmanuel Riggi
Phone: (201) 521–0200

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 7/19/85.
(xii)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 14.
Address: 6513 Bustleton Ave., Philadelphia, PA 19149
Contact: James Aikens
Phone: (215) 533–0395

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 8/9/85.
(xiii)(a) *Training Provider:* IT Corporation.
Address: 336 West Anaheim St., Willmington, CA 90744
Contact: Dan Solliday
Phone: (213) 830–1720

(c) *Date of Certification:* 8/29/85.
(xiv)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 42.
Address: 1186 River Rd., New Castle, DE 19720
Contact: Robert Holden
Phone: (302) 328–4203

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 10/30/85.
(xv)(a) *Training Provider:* E.I. du Pont de Nemours & Co.
Address: Chamber Works, Deepwater, NJ 08023
Contact: Charles Battle
Phone: (609) 540–2434

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/1/87.
(xvi)(a) *Training Provider:* International Association of Heat and Frost Insulators and Asbestos Workers Local No. 89.
Address: 2733 Nottingham Way, Trenton, NJ 08619
Contact: Charles DeBronzo
Phone: (609) 587–0092

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/13/86.
(xvii)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.
Address: 675 Hoes Lane, Piscataway, NJ 08854
Contact: Lee Laustsen
Phone: (201) 463–4500

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 7/1/86.
(xviii)(a) *Training Provider:* National Asbestos Council.
Address: 2786 North Decatur Rd., Decatur, GA 30033
Contact: Tom Laubenthal
Phone: (404) 292–0629

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 1/13/87.
(xix)(a) *Training Provider:* Asbestos Training Institute—HRF, Inc.
Address: 247 Hayler St., South Hackensack, NJ 07606
Contact: Robert Tetzlaff
Phone: (201) 489–3200

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 3/4/87.
(xx)(a) *Training Provider:* LOMA Environmental, Inc.
Address: 717 Fellowship Rd., Mount Laurel, NJ 08054
Contact: Laurence Ferrier
Phone: (609) 778–5757

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/13/87.
(xxi)(a) *Training Provider:* Asbestos Worker Local No. 32.
Address: 870 Broadway, Newark, NJ 07104
Contact: Paul Islmini
Phone: (201) 485–3620

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 5/8/87.
(xxii)(a) *Training Provider:* Advanced Design and Technology Corp.
Address: 1300 Macdade Blvd., Folsom, PA 19033
Contact: Greg Santo
Phone: (215) 583–0660

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 6/27/87.
(xxiii)(a) *Training Provider:* Association of Wall and Ceiling Industries.
Address: 25 K St. NE, Washington, DC 20002
Contact: Carol Paquin
Phone: (202) 783–2824

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 6/17/87.
(xxiv)(a) *Training Provider:* BCM Eastern, Inc.
Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462
Contact: Robert Ferguson
Phone: (215) 825–3800

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 6/7/87.
(xxv)(a) *Training Provider:* Certified Abatement Technologies, Inc.
Address: 47 Midland Ave., Elmwood Park, NJ 07407
Contact: Daniel Curtin
Phone: (201) 796–9589

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 6/3/87.
(8)(a) *State:* Rhode Island.
State Agency: State of Rhode Island & Providence Plantations, Department of Health
Address: 206 Cannon Bldg. 75 Davis St. Providence, RI 02908
Contact: James C. Hickey
Phone: (401) 277–3601

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (full).
Contractor/Supervisor (full).
(c) *Effective date of regulation:* 2/4/88.

Rhode Island Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155
Contact: Brenda Cole
Phone: (617) 381–3531

(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 7/1/86.
(iii)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St., Hopkinton, MA 07148
Contact: James Merloni
Phone: (617) 435–6316

(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 7/1/86.
(ii)(a) *Training Provider:* Georgia Tech Research Institute Environmental Health & Safety Division.
Address: Room 128 O'Keefe Building, Atlanta, GA 30332
Contact: Mark Demyanek
Phone: (404) 894–3806

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 7/22/86.
(iv)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028
Contact: Brenda Bolduc
Phone: (413) 525–1198

(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 3/1/86.
(v)(a) *Training Provider:* National Asbestos Council.
Address: 2786 North Decataur Rd., Decatur, GA 30033
Contact: Tom Laubenthal
Phone: (404) 292–0629

(b) *Approved Course:* Abatement Worker.
(c) *Date of Certification:* 9/5/86.
(vi)(a) *Training Provider:* National Surface Cleaning, Inc.
Address: 49 Danton Dr., Methuen, MA 01844
Contact: Anthony Mesiti
Phone: (617) 686–6417

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 10/3/86.
(vii)(a) *Training Provider:* Heat Frost and Asbestos Union Local #6.
Address: 1725 Revere Beach Pwy., Everett, MA 02149
Contact: Bud McCort
Phone: (617) 387–0909

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 12/8/86.
(viii)(a) *Training Provider:* Analytical Testing Services.
Address: 180 Weeden St., Pawtucket, RI 02860
Contact: Robert Weisberg/Marie Stoeckel
Phone: (401) 723–7973

(b) *Approved Courses:* Contractor/Supervisor.
(c) *Date of Certification:* 12/10/86.
(ix)(a) *Training Provider:* Covino Environmental Consultants, Inc.
Address: 12 Walnut Hill Pk., Woburn, MA 01801
Contact: Sam Covino
Phone: (617) 933–2555

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 1/15/87.
(x)(a) *Training Provider:* Community College of Rhode Island.
Address: 1762 Louisquisset Pk., Lincoln, RI 028865
Contact: Americo Ottavino
Phone: (401) 333–7060

(b) *Approved Courses:* Abatement Worker.
(c) *Date of Certification:* 11/13/87.
(xi)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Pk., Woburn, MA 01801
Contact: Marybeth Carver
Phone: (617) 935–7370

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 9/9/87.
(xii)(a) *Training Provider:* National Training Fund of Sheetmetal & Air Conditioning Industry/Workers' Institute For Safety & Health.
Address: 1126 Sixteenth Street NW, Washington, DC 20036
Contact: Mat Gillan
Phone: (202) 887–1980

(b) *Approved Courses:* Abatement Worker.
(c) *Date of Certification:* 2/2/88.
(xiii)(a) *Training Provider:* NAACO, Inc.
Address: 757 A Turnpike St., North Andover, MA 01845
Contact: Martin Levitt
Phone: (617) 681–8711

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/28/88.
(xiv)(a) *Training Provider:* Quality Control Service, Inc.
Address: 1 Andrew Circle, North Andover, MA 01845
Contact: Ajay Pathak
Phone: (506) 475–0623

(b) *Approved Courses:* Contractor/Supervisor, Abatement Worker.
(c) *Date of Certification:* 4/27/88.
(9)(a) *State:* Washington.
State Agency: State of Washington Dept. of Labor and Industries, Division of Industrial Safety and Health
Address: 805 Plum SR, Olympia, WA 98504
Contact: Steve Cant
Phone: (206) 753–6497

(b) *Approved Accreditation Program Discipline:*
Abatement Worker (interim).
Contractor/Supervisor (interim).
(c) *Effective date of regulation:* 11/21/85.

EPA-Approved Training Course

Region I—Boston, MA

Regional Asbestos Coordinator: Alison Roberts, EPA, Region I, Air and Management Division (APT–231), JFK Federal Building, Boston, MA 02203. (617) 565–3273 (FTS) 835–3273.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for

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Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Technology Corporation
Address: 1 Boston Pl., Suite 1025, Boston, MA 02106
Contact: Scott Keyes
Phone: (617) 723–3100

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(2)(a) *Training Provider:* Con-Test.
Address: P.O. Box 591, East Longmeadow, MA 01028
Contact: Brenda Bolduc
Phone: (413) 525–1198

(b) *Approved Courses:*
Abatement Worker (contingent).
Abatement Worker Refresher Course (contingent).
Contractor/Supervisor (contingent).
Contractor/Supervisor Refresher Course (contingent).
Inspector/Management Planner (contingent).
Inspector/Management Planner Refresher Course (contingent).

(3)(a) *Training Provider:* Environmental Training Services.
Address: 12 Walnut Hill Pk., Woburn, MA 01801
Contact: Kenneth P. Martin
Phone: (617) 398–0348.

(b) *Approved Course:*
Abatement Worker (contingent).

(4)(a) *Training Provider:* Hygientics Inc.
Address: 150 Causeway St., Boston, MA 02114
Contact: John W. Cowdery
Phone: (617) 723–4664

(b) *Approved Course:*
Inspector (contingent).

(5)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Commings Pk., Woburn, MA 01801
Contact: Thomas Kirlin
Phone: (617) 935–7370

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (full from 9/18/87).
Inspector/Management Planner (contingent).

(6)(a) *Training Provider:* Maine Labor Group on Health, Inc.
Address: P.O. Box 5, Augusta, ME 04330
Contact: Dianna White
Phone: (207) 289–2770

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(7)(a) *Training Provider:* New England Laborers' Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748
Contact: Jim Merloni, Jr.
Phone: (617) 435–8316

(b) Approved Course:
Abatement Worker (contingent).

(8)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155
Contact: Brenda Cole
Phone: (617) 381–3531

(b) *Approved Courses:*
Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

Region II—Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 10, Edison, NJ 08837. (201) 321–6668, (FTS) 340–6671.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Safety Training Institute (ASTI).
Address: 323 West 39th St., New York, NY 10018
Contact: Jay Sall
Phone: (212) 629–8400

(b) *Approved Course:*
Inspector/Management Planner (full from 3/21/88).

(2)(a) *Training Provider:* Alternative Ways, Inc.
Address: 100 Essex Ave., Bellmawr, NJ 08031
Contact: Robert C. Hasiuk
Phone: (609) 933–3300

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Asteco, Inc.
Address: P.O. Box 2204, Niagara University, Niagara, NY 14109
Contact: John Larson
Phone: (716) 297–5992

(b) *Approved Course:*
Abatement Worker (full from 4/13/88).

(4)(a) *Training Provider:* Astoria Industries Inc.
Address: 538 Stewart Ave., Brooklyn, NY 11222
Contact: John Gajeski
Phone: (718) 387–0011

(b) *Approved Course:*
Abatement Worker (contingent).

(5)(a) *Training Provider:* Hygeia of New York Inc.
Address: P.O. Box 206, 100 Oriskany Blvd, Whitesboro, NY 13492
Contact: Richard A. Gigliotti
Phone: (315) 736–8990

(b) *Approved Course:*
Abatement Worker (full from 4/13/88).

(6)(a) *Training Provider:* Kaselaan and D'Angelo Associates, Inc.
Address: 515 Grove St., Grove Plaza, Haddon Heights, NJ 08035
Contact: Lance Fredericks
Phone: (212) 213–1188

(b) *Approved Course:*
Inspector/Management Planner (full from 3/7/88).

(7)(a) *Training Provider:* Laborer's Local No. 91 Educational and Training Fund.
Address: 2556 Seneca Ave., Niagara Falls, NY 14305
Contact: Joel Cicero
Phone: (716) 297–0253

(b) *Approved Course:*
Abatement Worker (full from 7/27/87).

(8)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center, UMDNJ Robert Wood Johnson Medical School.
Address: 675 Hoes Lane, Piscataway, NJ 08854–5635
Contact: Lee Laustsen
Phone: (201) 463–4500

(b) *Approved Courses:*
Abatement worker (full from 7/28/88).
Contractor/Supervisor (full from 7/28/88).
Inspector/Management Planner (full from 11/16/87).

(9)(a) *Training Provider:* National Institution Abatement Science & Technology (NIAST).
Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607–1780
Contact: Glenn W. Phillips
Phone: (800) 422–2836

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(10)(a) *Training Provider:* Niagara County Community College.
Address: 3111 Saunders Settlement Rd., Sanborn, NY 14132
Contact: Eugene Zinni
Phone: (716) 731–3271

(b) *Approved Courses:*
Abatement Worker (full from 1/25/88).
Contractor/Supervisor (full from 2/19/88).

(11)(a) *Training Provider:* Princeton Testing Laboratory, Inc.

Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543
Contact: Anne Coogan
Phone: (609) 452–9060

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(12)(a) *Training Provider:* Safe Air Environmental Group, Inc.
Address: P.O. Box 457, Depew, NY 14043
Contact: Reza Farrokh
Phone: (800) 634–8234

(b) *Approved Courses:*
Abatement Worker (full from 4/4/88).
Contractor/Supervisor (full from 4/4/88).

(13)(a) *Training Provider:* Tri-Cities Laborers Training Program
Address: 5 Lombard St., Schenectady, NY 12304
Contact: Joseph Zappone
Phone: (518) 370–3483

(b) *Approved Course:*
Abatement Worker (full from 3/21/88).

(14)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).
Address: 450 Grider St., Buffalo, NY 14215
Contact: Jeanne Reilly
Phone: (716) 897–2110

(b) *Approved Course:*
Abatement Worker (full from 1/24/88).

Region III—Philadelphia, PA

Regional Asbestos Coordinator: Pauline Levin, EPA, Region III (3HW–40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597–9859, (FTS) 597–9859.

List of Approved Courses: The following training courses have been approved by EPA.The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.
Address: P.O. Box 687, Hunt Valley, MD 21030
Contact: D.R. Twilley
Phone: (301) 785–5615

(b) *Approved Courses:*
Abatement Worker (full from 7/14/87).
Contractor/Supervisor (full from 7/14/87).
Inspector/Management Planner (full from 3/31/88).

(2)(a) *Training Provider:* Alice Hamilton Center for Occupational Health, Committees on Occupational Safety and Health.
Address: 801 Pennsylvania Avenue SE., Washington, DC 20003–2155
Contact: Brian Christopher
Phone: (202) 543–0005

(b) *Approved Courses:*
Abatement Worker (full from 1/16/88).
Contractor/Supervisor (full from 1/16/88).
Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Asbestos Abatement Council of the Association of Wall & Ceiling Industries.
Address: 25 K Street NE., Suite 300, Washington, DC 20002
Contact: Carol Paquin
Phone: (202) 783–2924

(b) *Approved Courses:*
Abatement Worker (full from 5/19/87).
Contractor/Supervisor (full from 5/19/87).

(4)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705
Contact: Marian F. Meiselman
Phone: (301) 369–3900

(b) *Approved Courses:*
Abatement Worker (full from 10/1/87).
Contractor/Supervisor (full from 10/1/87).

(5)(a) *Training Provider:* Delaware Technical & Community Colleges.
Address: P.O. Box 897, Dover, DE 19903
Contact: David Stanley
Phone: (302) 736–4821

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(6)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104
Contact: Robert Ross
Phone: (215) 895–2156

(b) *Approved Courses:*
Abatement Worker (full from 6/9/88).
Contractor/Supervisor (full from 6/9/88).
Inspector/Management Planner (contingent).

(7)(a) *Training Provider:* Hazard Abatement Training Center.
Address: 101 East Lancaster Ave., Wayne, PA 19087
Contact: Robert Mautner
Phone: (215) 971–0830

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(8)(a) *Training Provider:* IND TRA CO., A Subsidiary of WACO, Inc.
Address: 5450 Lewis Rd., P.O. Box 830, Sandston, VA 23150
Contact: William Belanich
Phone: (804) 222–8440

(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Contractor/Supervisor (full from 9/15/87).

(9)(a) *Training Provider:* Jenkins Professionals, Inc.
Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236
Contact: Larry Jenkins
Phone: (301) 529–3553

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(10)(a) *Training Provider:* Laborers' District Council, Education Training Fund of Philadelphia & Vicinity.
Address: 500 Lancaster Ave., Exton, PA 19341
Contact: Jerry Roseman
Phone: (215) 836–1175

(b) *Approved Courses:*
Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent).

(11)(a) *Training Provider:* Medical College of Virginia, Virginia Commonwealth University, Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298
Contact: Leonard Vance, Phd
Phone: (804) 786–9785

(b) *Approved Courses:*
Contractor/Supervisor (full from 11/2/87).
Inspector/Management Planner (full from 2/29/88).

(12)(a) *Training Provider:* NOVATEC, Inc.
Address: 505 Drury Lane, Baltimore, MD 21229
Contact: Robert Olcerst
Phone: (301) 566–0659

(b) *Approved Course:*
Abatement Worker (contingent).

(13)(a) *Training Provider:* National Training Fund of Sheetmetal & Air Conditioning Industry/Workers' Institute for Safety & Health.
Address: 1126 Sixteenth St. NW., Washington, DC 20036
Contact: Scott Schneider
Phone: (202) 887–1960

(b) *Approved Courses:*
Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (full from 9/18/87).
Contractor/Supervisor (interim from 11/1/86 to 8/1/87).

Contractor/Supervisor (full from 9/18/87).
(14)(a) *Training Provider:* Oneil M. Banks, Inc.
Address: 336 South Main St., Bel Air, MD 21014
Contact: Oneil M. Banks
Phone: (301) 879-4676
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector (contingent).
(15)(a) *Training Provider:* Paskal Environmental Services.
Address: 1400 South Joyce St., Suite C 1701, Arlington, VA 22202
Contact: Steven Paskal
Phone: (703) 920-6653
(b) *Approved Course:*
Abatement Worker (contingent).
(16)(a) *Training Provider:* Safety Management Institute.
Address: P.O. Box 2267, Altoona, PA 16603
Contact: Christopher Tate
Phone: (814) 946-8778
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(17)(a) *Training Provider:* Temple University College of Engineering.
Address: 12th & Norris Sts., Philadelphia, PA 19122
Contact: Lester Levin
Phone: (215) 787-6479
(b) *Approved Courses:*
Abatement Worker (full from 9/28/87).
Contractor/Supervisor (full from 9/28/87).
Inspector/Management Planner (full from 10/13/87).
(18)(a) *Training Provider:* University of Pittsburgh Graduate School of Public Health.
Address: Department of Industrial Environmental Health Services, Pittsburgh, PA 15261
Contact: Dietrich A. Weyel
Phone: (412) 624-3850
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
(19)(a) *Training Provider:* White Lung Association.
Address: 1114 Cathedral St., Baltimore, MD 21201
Contact: James Fite
Phone: (301) 727-8029
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/15/88).
(20)(a) *Training Provider:* William L. James Enterprises, Inc.
Address: 710 Capouse Ave., Scranton, PA 18509
Contact: William L. James
Phone: (717) 346-2837
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

Region IV—Atlanta, GA

Regional Asbestos Coordinator: Jim Littell, EPA Region IV, 345 Courtland St. NE, Atlanta, GA 30365. (404) 347-3864, (FTS) 257-3864.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* A.T.C., Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303
Contact: David L. Elam, Jr.
Phone: (205) 826-8232
(b) *Approved Course:*
Inspector (contingent).
(2)(a) *Training Provider:* AHP Research, Inc.
Address: 1501 Johnsons Ferry Rd., Suite 230, P.O. Box 71926, Marietta, GA 30007
Contact: Dwight Brown
Phone: (404) 565-0061
(b) *Approved Courses:*
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).
(3)(a) *Training Provider:* ATI Environmental Services.
Address: P.O. Box 3044, Louisville, KY 40201
Contact: Tim Ellis
Phone: (502) 589-5306
(b) *Approved Courses:*
Abatement Worker (full from 1/12/88).
Contractor/Supervisor (full from 1/12/88).
(4)(a) *Training Provider:* Asbestos Consultants, Inc.
Address: P.O. Box 9054, Greensboro, NC 27408
Contact: Thomas Petty
Phone: (919) 275-3907
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(5)(a) *Training Provider:* BCM Engineers, Inc.
Address: 106 St. Anthony St., P.O. Box 1784, Mobile, AL 36633
Contact: Gail Conner
Phone: (205) 433-3981
(b) *Approved Courses:*
Inspector/Management Planner (full from 11/11/87).
Project Designer (full from 12/8/87).
(6)(a) *Training Provider:* DPC General Contractors.
Address: 250 Arizona Ave., NE., Building A, Atlanta, GA 30307
Contact: Glen Kahler
Phone: (404) 373-0561
(b) *Approved Course:*
Abatement Worker (contingent).
(7)(a) *Training Provider:* Georgia Tech. Research Institute, Environmental Health & Safety Division.
Address: Room 029, O'Keefe Building, Atlanta, GA 30332
Contact: Mark Demyanek
Phone: (404) 894-3806
(b) *Approved Courses:*
Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (contingent).
Inspector/Management Planner (full from 10/1/87).
(8)(a) *Training Provider:* Howard L. Henson Training Institute.
Address: 3592 Flat Shoals Rd., Decatur, GA 30034
Contact: Stephen Henson
Phone: (404) 243-5107
(b) *Approved Course:*
Abatement Worker (full from 2/16/88).
(9)(a) *Training Provider:* Laborers' District Council of Southeast Florida.
Address: 799 Northwest 62nd St., Miami, FL 33150
Contact: Albert Houston
Phone: (305) 754-2859
(b) *Approved Course:*
Abatement Worker (full from 3/15/88).
(10)(a) *Training Provider:* National Asbestos Council (NAC) Training Department.
Address: 2786 North Decatur Rd., Decatur, GA 30033
Contact: Tom Laubenthal
Phone: (404) 292-0629
(b) *Approved Courses:*
Abatement Worker (interim from 7/1/86 to 6/1/87).
Abatement Worker (full from 7/1/87).
(11)(a) *Training Provider:* South Carolina Research and Training Center.
Address: 300 Gervais St., Annex III, Columbia, SC 29201
Contact: Jan Temple
Phone: (803) 737-2060

(b) *Approved Courses:*
Contractor/Supervisor (full from 3/8/88).
Inspector/Management Planner (full from 3/1/88).
(12)(a) *Training Provider:* The Environmental Institute.
Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067
Contact: Eva Clay
Phone: (404) 425-2000
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (full from 2/1/88).
Inspector/Management Planner (full from 1/25/88).
Project Designer (full from 2/9/88).
(13)(a) *Training Provider:* University of Alabama, College of Continuing Studies, Division of Environmental & Industrial Programs.
Address: P.O. Box 2967, Tuscaloosa, AL 35486-2967
Contact: William Weems
Phone: (205) 348-3033
(b) *Approved Course:*
Contractor/Supervisor (full from 12/14/87).
(14)(a) *Training Provider:* University of Alabama—Birmingham Deep South Center.
Address: Birmingham, AL 35294
Contact: Elizabeth Lynch
Phone: (205) 934-7032
(b) *Approved Course:*
Inspector/Management Planner (full from 3/21/88).
(15)(a) *Training Provider:* University of Florida, TREEO Center.
Address: 3900 South West 63rd Blvd., Gainesville, FL 32608
Contact: Sandra Scaggs
Phone: (904) 392-9570
(b) *Approved Courses:*
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (full from 2/15/88).
(16)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.
Address: 305 Slone Bldg., Lexington, KY 40506-0053
Contact: A.B. Broderson
Phone: (606) 257-4300
(b) *Approved Course:*
Inspector/Management Planner (full from 2/15/88).
(17)(a) *Training Provider:* University of North Carolina Chapel Hill, Occupational Safety & Health, Educational Resource Center.
Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514
Contact: Ted Williams
Phone: (919) 962-2101
(b) *Approved Course:*
Inspector/Management Planner (full from 11/9/87).
(18)(a) *Training Provider:* Williams and Associates, Inc., Environmental Training Center.
Address: 460 Tennessee St., Memphis, TN 38103
Contact: Ruth Williams
Phone: (901) 521-9030
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

Region V—Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA Region V, 536 S. Clark St., Chicago, IL 60604. (312) 886-6879, (FTS) 886-6879.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* Abatement Training Institute, Inc.
Address: P.O. Box 28835, Columbus, OH 43228-0835
Contact: Steven Ritchie
Phone: (614) 267-0906
(b) *Approved Course:*
Abatement Worker (contingent).
(2)(a) *Training Provider:* Asbestos Management, Inc. (AMI).
Address: 36700 South Huron, Suite 104, New Boston, MI 48164
Contact: Kary S. Amin
Phone: (313) 961-6135
(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/2/88).
(3)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).
Address: 809 East 11th St., Michigan City, IN 46360
Contact: Bruce H. Connell
Phone: (219) 874-7348
(b) *Approved Course:*
Abatement Worker (contingent).
(4)(a) *Training Provider:* BDN Industrial Hygiene Consultants.
Address: 8105 Valleywood Lane, Portage, MI 49002
Contact: Keith Nichols
Phone: (616) 329-1237
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/15/88).
(5)(a) *Training Provider:* Clayton Environmental Consultants, Inc.
Address: 22345 Roethel Dr., Novi, MI 48050
Contact: Michael Coffman
Phone: (313) 344-1770
(b) *Approved Course:*
Inspector/Management Planner (full from 2/26/88).
(6)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.
Address: 505 King Ave., Columbus, OH 43201-2693
Contact: John Simpkins
Phone: (614) 424-6424
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(7)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.
Address: P.O. Box 31, Oregon, WI 53573-0031
Contact: Alice J. Seeliger
Phone: (608) 835-5761
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(8)(a) *Training Provider:* DeLisle Consulting & Laboratories, Inc.
Address: 2401 East Milham Ave., Kalamazoo, MI 49002
Contact: Mark DeLisle
Phone: (616) 343-9698
(b) *Approved Courses:*
Contractor/Supervisor (full from 10/20/87).
Inspector/Management Planner (full from 12/22/87).
(9)(a) *Training Provider:* Environmental Professionals, Inc.
Address: 1405 Newton St., Tallmadge, OH 44278
Contact: Timothy E. Walsh
Phone: (216) 633-4435
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(10)(a) *Training Provider:* Foley Occupational Health Consulting.
Address: 4060 Echo Cove, Manitou Beach, MI 49253
Contact: E.D. Foley, Jr.
Phone: (517) 547-7399
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(11)(a) *Training Provider:* Heat and Frost Insulators, Local 17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60609
Contact: John P. Shine
Phone: (312) 247-1007

(b) *Approved Courses:*
Abatement Worker (full from 11/8/87).
Contractor/Supervisor (contingent).
(12)(a) *Training Provider:* I.P.C. Chicago.
Address: 4309 West Henderson, Chicago, IL 60641
Contact: Robert G. Cooley
Phone: (312) 975–3495
(b) *Approved Course:*
Abatement Worker (contingent).
(13)(a) *Training Provider:* Illinois Laborers' & Contractors' Training Program, Training Trust.
Address: Rural Route 3, Mount Sterling, IL 62353
Contact: Tony Romolo
Phone: (217) 773–2741
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Contractor/Supervisor (full from 3/14/88).
(14)(a) *Training Provider:* Indiana Laborers' Training Trust Fund.
Address: P.O. Box 758, Bedford, IN 47421
Contact: Richard Fassino
Phone: (812) 279–9751
(b) *Approved Course:*
Abatement Worker (full from 2/22/88).
(15)(a) *Training Provider:* Industrial Environmental Consultants.
Address: 2875 Northwind, Suite 113, East Lansing, MI 48823
Contact: James C. Fox
Phone: (517) 332–7026
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(16)(a) *Training Provider:* Kemron Environmental Services.
Address: 32730 Northwestern Hwy., Farmington Hills, MI 48018
Contact: Thomas J. Martin
Phone: (313) 626–2426
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(17)(a) *Training Provider:* Michigan Laborers Training Institute.
Address: 11155 South Beardslee Rd., Perry, MI 48872
Contact: Edwin H. McDonald
Phone: (517) 625–4919
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
(18)(a) *Training Provider:* Midwest Health Training.
Address: 3920 Central, Western Springs, IL 60558
Contact: H.C. Brown
Phone: (312) 246–9527
(b) *Approved Course:*
Abatement Worker (contingent).
(19)(a) *Training Provider:* Morraine Valley Community College.
Address: 10900 South 88th Ave., Palos Hills, IL 60465
Contact: Richard Kukac
Phone: (312) 974–4300
(b) *Approved Course:*
Inspector/Management Planner (full from 2/9/88).
(20)(a) *Training Provider:* Nova Environmental Services.
Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318
Contact: Steven B. Cummings
Phone: (612) 448–8888
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(21)(a) *Training Provider:* Nova Environmental, Inc.
Address: 704 Wesley, Ann Arbor, MI 48103
Contact: Kary S. Amin
Phone: (313) 769–3585
(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(22)(a) *Training Provider:* Ohio Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206
Contact: Larry Briley
Phone: (513) 221–5969
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(23)(a) *Training Provider:* Professional Service Industries.
Address: 510 East 22nd St., Lombard, IL 60148
Contact: W.K. Swartzendruben
Phone: (312) 691–1490
(b) *Approved Course:*
Inspector (contingent).
(24)(a) *Training Provider:* S.Z. Mansdorf & Assoc., Inc.
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223–1323
Contact: A.L. Lott
Phone: (216) 928–5434
(b) *Approved Course:*
Contractor/Supervisor (full from 1/26/88).
(25)(a) *Training Provider:* Safety Training of Illinois.
Address: 1515 South Park, Springfield, IL 62704
Contact: S. David Parris
Phone: (217) 787–9091
(b) *Approved Course:*
Abatement Worker (full from 12/18/87).
(26)(a) *Training Provider:* South East Michigan Committee on Occupational Safety and Health SEMCOSH.
Address: 1550 Howard St., Detroit, MI 48216
Contact: Barbara Boylan
Phone: (313) 961–3345
(b) *Approved Course:*
Abatement Worker (contingent).
(27)(a) *Training Provider:* University of Cincinnati Medical Center, Institute of Environmental Health Kettering Laboratory.
Address: 3223 Eden Ave., Cincinnati, OH 45267–0056
Contact: Susan L. Millman
Phone: (517) 872–5733
(b) *Approved Courses:*
Contractor/Supervisor (full from 10/20/87).
Inspector/Management Planner (full from 11/16/87).
(28)(a) *Training Provider:* University of Illinois at Chicago M.A.I.C. School of Public Health.
Address: 2035 Taylor, Chicago, IL 60612
Contact: Tony Billotti
Phone: (312) 996–5762
(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (full from 4/5/88).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/21/87).
(29)(a) *Training Provider:* University of Wisconsin-Extension.
Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703
Contact: Neil DeClercq
Phone: (608) 262–2111
(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 2/22/88).

Region VI—Dallas, TX

Regional Asbestos Coordinator: John West, 6t–Pt, EPA, Region VI, 1445 Ross Avenue, Dallas TX 75202–2733. (214) 655–7244, (FTS) 255–7235.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* Asbestos Surveys and Training, Inc.
Address: Three Riverway, Suite 760, Houston, TX 77056
Contact: Jesse Ashley
Phone: (713) 623–0025
(b) *Approved Course:*
Abatement Worker (full from 10/22/87).
(2)(a) *Training Provider:* CERL, Inc.
Address: 1611 Calle Lorca, Suite B, Santa Fe, NM 87501
Contact: Michael Curtis
Phone: (505) 988–4143
(b) *Approved Courses:*
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(3)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.
Address: 4202 Argentina Cir., Pasadena, TX 77504
Contact: Maurice Hoffpowier
Phone: (713) 487–3155
(b) *Approved Course:*
Abatement Worker (contingent).
(4)(a) *Training Provider:* Critical Environmental Training.
Address: 5815 Gulf Fwy., Houston, TX 77023
Contact: Charles M. Flanders
Phone: (713) 921–4600
(b) *Approved Courses:*
Abatement Worker (full from 4/14/88).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(5)(a) *Training Provider:* Environmental Institute.
Address: P.O. Box 270276, Dallas, TX 75227
Contact: R. Michael Wheeler
Phone: (214) 324–0774
(b) *Approved Courses:*
Contractor/Supervisor (full from 1/11/88).
Inspector/Management Planner (full from 1/25/88).
(6)(a) *Training Provider:* GEBCO Associates, Inc.
Address: 805–A Elizabeth Dr., Bedford, TX 76022
Contact: Ed Kirch
Phone: (817) 268–4006
(b) *Approved Courses:*
Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
(7)(a) *Training Provider:* International Association of Heat and Frost Insulators, Asbestos Workers Union Local 22.
Address: 3219 Pasadena Blvd., Pasadena, TX 77503
Contact: Owen Tilley
Phone: (713) 473–0888

(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker Refresher Course (contingent).
Contractor/Supervisor (contingent).
(8)(a) *Training Provider:* Lamar University, Hazardous Materials Program.
Address: P.O. Box 10008, Beaumont, TX 77710.
Contact: Marion Foster
Phone: (409) 880–2369
(b) *Approved Course:*
Contractor/Supervisor (contingent).
(9)(a) *Training Provider:* Louisiana State University Agricultural and Mechanical College.
Address: 361 Pleasant Hall, Baton Rouge, LA 70803–1520
Contact: George Smith
Phone: (504) 388–6621
(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (full from 1/18/88).
(10)(a) *Training Provider:* Moore-Norman Area Vocational Training School.
Address: 4701–12th Ave. NW, Norman, OK 73069
Contact: Frank Coulter
Phone: (405) 364–5763
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(11)(a) *Training Provider:* Texas Engineering Extension Service, Building Codes Inspection Training Div.
Address: Texas A&M University System, College Station, TX 77843–9000
Contact: Richard Thompson
Phone: (409) 845–6682
(b) *Approved Courses:*
Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Inspector/Management Planner (full from 10/19/87).
(12)(a) *Training Provider:* Tulane University, School of Public Health and Tropical Medicine, Dept. of Environmental Health Sciences.
Address: 1430 Tulane Ave., New Orleans, LA 70112
Contact: Dr. Shau-Wong-Chang, PhD, CIH
Phone: (504) 588–5374
(b) *Approved Courses:*
Contactor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
(13)(a) *Training Provider:* University of Arkansas at Little Rock, Biology Department.
Address: 33rd & University, Little Rock, AR 72204
Contact: Phyllis Moore
Phone: (501) 569–3270
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(14)(a) *Training Provider:* University of Texas at Arlington, Bureau of Engineering Research.
Address: P.O. Box 19020, Arlington, TX 76019
Contact: Ernest C. Crosby
Phone: (817) 273–2557
(b) *Approved Courses:*
Contractor/Supervisor (full from 7/14/88).
Inspector/Management Planner (full from 10/19/87).

Region VII—Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236–2834, (FTS) 757–2834.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Regional VII training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* AGC—Eastern Missouri Laborers' Joint Training Fund.
Address: Rt. 1 Box 79H, High Hill, MO 63350
Contact: Jerald Pelker
Phone: (314) 585–2391
(b) *Approved Course:*
Abatement Worker (contingent).
(2)(a) *Training Provider:* Aerostat Asbestos Engineering Consulting, Inc.
Address: P.O. Box 12037, Kansas City, KS 66112
Contact: Damir Joseph Stimac
Phone: (913) 788–3307
(b) *Approved Course:*
Inspector/Management Planner (contingent).
(3)(a) *Training Provider:* Asbestos Consulting Testing (ACT).
Address: 15001 West 101st Ter., Lenexa, KS 66215
Contact: Jim Pickel
Phone: (913) 492–1346
(b) *Approved Courses:*

Abatement Worker (full from 1/25/88).
Contractor/Supervisor (full from 1/25/88).

(4)(a) *Training Provider:* Des Moines Health Associates.
Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322
Contact: Mary A. Finn
Phone: (515) 276–3642

(b) *Approved Courses:*
Abatement Worker (full from 11/17/87).
Contractor/Supervisor (full from 11/17/87).
Inspector/Management Planner (full from 2/22/88).

(5)(a) *Training Provider:* Environmental Inspection Services.
Address: 902 Cherokee St., St. Louis, MO 63118
Contact: Leo P. Mann, Jr.
Phone: (314) 776–4000

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(6)(a) *Training Provider:* Environmenal Technology, Inc.
Address: 4315 Merriam Dr., Overland Park, KS 66203
Contact: Mike Franano
Phone: (913) 236–5040

(b) *Approved Course:*
Abatement Worker (full from 2/29/88).

(7)(a) *Training Provider:* Greater Kansas City Laborers Training Trust Fund.
Address: 8944 Kaw Dr., Kansas City, KS 66111
Contact: James D. Barnett
Phone: (913) 441–6100

(b) *Approved Course:*
Abatement Worker (contingent).

(8)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., Lawrence, KS 66046
Contact: Alice Hart
Phone: (913) 749–2381

(b) *Approved Courses:*
Abatement Worker (full from 8/17/87).
Contractor/Supervisor (full from 8/17/87).
Inspector/Management Planner (full from 8/17/87).
Project Designer (full from 8/17/87).

(9)(a) *Training Provider:* Iowa Laborers District Council Training Fund.
Address: 5606 Meredith Dr., Des Moines, IA 50322
Contact: Jack G. Jones
Phone: (515) 272–6965

(b) *Approved Course:*
Abatement Worker (contingent).

(10)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.
Address: 2430 Marlatt Ave., Manhattan, KS 66502
Contact: Fred Tipton
Phone: (913) 539–7902

(b) *Approved Course:*
Abatement Worker (contingent).

(11)(a) *Training Provider:* MI–TON Inc.
Address: P.O. Box 1562, Branson, MO 65616
Contact: Tony Williams
Phone: (417) 335–6743

(b) *Approved Course:*
Inspector/Management Planner (full from 3/14/88).

(12)(a) *Training Provider:* Mahew Environmental Training Associates, Inc. (META).
Address: P.O. Box 1961, Lawrence, KS 66044
Contact: Brad Mahew
Phone: (913) 842–6382

(b) *Approved Courses:*
Abatement Worker (full from 1/25/88).
Contractor/Supervisor (full from 1/25/88).
Inspector/Management Planner (full from 2/8/88).

(13)(a) *Training Provider:* Maple Woods Community College.
Address: 10771 Ambassador Dr., Kansas City, MD 64133
Contact: James C. Lauer
Phone: (816) 436–6500

(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Contractor/Supervisor (full from 3/28/88).
Inspector/Management Planner (contingent).

(14)(a) *Training Provider:* University of Kansas, Division of Continuing Education.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211
Contact: Lani Himegarner
Phone: (913) 648–5790

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (interim from 6/1/85 to 9/9/87).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).

Region VIII—Denver, CO

Regional Asbestos Coordinator: David Combs, [8AT–TA], EPA, Region VIII, 1 Denver Place, 999–18th St., Suite 500, Denver, CO 80202–2413. (303) 293–1744, (FTS) 564–1744.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Colorado State University, Dept. of Industrial Sciences.
Address: Fort Collins, CO 80523
Contact: Birgit Wolff
Phone: (303) 491–1551

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(2)(a) *Training Provider:* Hager Laboratories, Inc.
Address: 11234 East Caley Ave., Englewood, CO 80111
Contact: Steve Herron
Phone: (303) 790–2727

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).

(3)(a) *Training Provider:* Industrial Health, Inc.
Address: 640 East Wilmington Ave., Salt Lake City, UT 84106
Contact: Donald E. Marano
Phone: (801) 466–2223

(b) *Approved Course:*
Contractor/Supervisor (contingent).

(4)(a) *Training Provider:* Major Safety Inc.
Address: 1510 Glen Ayr St., Suite 200, Lakewood, CO 80215
Contact: Tom Major
Phone: (303) 252–9515

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).
Inspector/Management Planner (contingent).
Project Designer (contingent).

(5)(a) *Training Provider:* NATEC International.
Address: 2761 West Oxford Ave. #7, Englewood, CO 80110
Contact: James Maxwell
Phone: (303) 825–6513

(b) *Approved Course:*
Abatement Worker (contingent).

(6)(a) *Training Provider:* Northern Engineering and Testing, Inc.
Address: 600 South 25th St., P.O. Box 30615 Billings, MT 59107
Contact: Kathleen Smit
Phone: (406) 248–9161.

(b) *Approved Course:*
Abatement Worker (full from 12/8/87).

(7)(a) *Training Provider:* Rocky Mountain Center for Occupational and Environmental Health, University of Utah.
Address: Building 512, Salt Lake City, UT 84112
Contact: Jeffery Lee
Phone: (801) 581–5710.

(b) *Approved Courses:*
Contractor/Supervisor (full from 11/16/87).
Inspector/Management Planner (full from 2/8/88).

Region IX—San Francisco, CA

Regional Asbestos Coordinator: Joanne Semones, [T–52], EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974–7290, (FTS) 454–7290.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* ABMS, Inc.
Address: 5506 San Pablo Ave., Oakland, CA 94608
Contact: Otis Wong
Phone: (415) 547–7144

(b) *Approved Course:*
Abatement Worker (contingent).

(2)(a) *Training Provider:* Dan Napier and Associates.
Address: 15342 Hawthorne Blvd., Suite 207, Lawndale, CA 90260–2105
Contact: Dan Napier
Phone: (214) 316–1058

(b) *Approved Course:*
Abatement Worker (contingent).

(3)(a) *Training Provider:* Environmental Sciences.
Address: 375 South Meyer, Tucson, AZ 85701
Contact: Paula Keyes
Phone: (602) 792–0097

(b) *Approved Course:*
Inspector/Management Planner (full from 10/5/87).

(4)(a) *Training Provider:* International Technology Corporation.
Address: 336 West Anaheim St., Wilmington, CA 90744
Contact: Keith Soebe
Phone: (213) 830–1761

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(5)(a) *Training Provider:* MED–TOX Associates, Inc.
Address: 1431 Warner Ave., Suite A, P.O. Box 2054, Tustin, CA 92681
Contact: Susan Patnode
Phone: (714) 259–0620

(b) *Approved Courses:*
Abatement Worker (contingent)
Contractor/Supervisor (contingent).

(6)(a) *Training Provider:* National Abatement Technology Employment Center (NATEC).
Address: 13692 Newhope Ave., Garden Grove, CA 92643.
Contact: Ronald Sandlin
Phone: (714) 530–0407

(b) *Approved Courses:*
Abatement Worker (contingent).
Contractor/Supervisor (contingent).

(7)(a) *Training Provider:* National Institute for Asbestos Training
Address: 1019 West Manchester Blvd., Inglewood, CA 90301
Contact: Jim McFarland
Phone: (213) 645–4516

(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Contractor/Supervisor (full from 12/7/87).

(8)(a) *Training Provider:* Pacific Asbestos Information Center U.C. Extension.
Address: 2223 Fulton St., Berkeley, CA 94720.
Contact: Debra Dobin
Phone: (415) 643–7143

(b) *Approved Courses:*
Contractor/Supervisor (full from 2/2/87).
Inspector/Management Planner (full from 11/16/87).

(9)(a) *Training Provider:* University of Southern California & University Associates, Ltd., Institute of Safety & Systems Management.
Address: Safety Science Dept., 3500 South Figueroa St., Suite 202, Los Angeles, CA 90007
Contact: John D. Repko
Phone: (213) 743–6523

(b) *Approved Course:*
Inspector/Management Planner (full from 1/11/88).

Region X—Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave., Seattle, WA 98101. (206) 442–2870, (FTS) 399–2870.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.
Address: 911 Western Ave., Suite 206, Seattle, WA 98104
Contact: Eileen Kirkpatrick
Phone: (206) 783–0506

(b) *Approved Course:*
Inspector (contingent).

(2)(a) *Training Provider:* Engineering Continuing Education, University of Washington
Address: GG–13, Seattle, WA 98195
Contact: Creighton Depew
Phone: (206) 543–5339

(b) *Approved Course:*
Inspector/Management Planner (full from 2/8/88).

(3)(a) *Training Provider:* Environmental Health Sciences, Lake Washington Vo-Tech.
Address: 11605 132nd Ave., NE, Kirkland, WA 98304
Contact: Dave Rodewald
Phone: (206) 828–5643

(b) *Approved Course:*
Inspector/Management Planner (full from 4/11/88).

(4)(a) *Training Provider:* Hazcon, Inc., Health Hazard Control Services
Address: 5950 6th Ave., S, Suite 216, Seattle, WA 98108
Contact: Mike Krause
Phone: (206) 763–7364

(b) *Approved Course:*
Inspector/Management Planner (full from 4/4/88).

(5)(a) *Training Provider:* Northwest Envirocon, Inc.
Address: 181 A St., Washougal, WA 98671
Contact: Randy Hall
Phone: (206) 835–8576

(b) *Approved Course:*
Inspector/Management Planner (contingent).

(6)(a) *Training Provider:* PBS Environmental Building Consultant, Inc.
Address: 1220 South West Morrison, Portland, OR 97205
Contact: John Perkins
Phone: (503) 248–1939

(b) *Approved Course:* Inspector/Management Planner (full from 3/14/88).

(7)(a) *Training Provider:* University of Alaska, Mining and Petroleum Training Services.
Address: 155 Smith Way, Suite 104, Soldotna, AK 99669
Contact: Dennis D. Steffy
Phone: (907) 262–2788

(b) *Approved Course:* Inspector/Management Planner (full from 4/11/88).

Dated: May 24, 1988.
John A. Moore,
Assistant Administrator for Pesticides and Toxic Substances.
[FR Doc. 88–12195 Filed 5–31–88; 8:45 am]
BILLING CODE [illegible]

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Part III

Department of Defense

Department of the Navy

Record of Decision to Operate the Electromagnetic Pulse Radiation Environment Simulator for Ships [Second Generation] EMPRESS II in the Virginia Capes Operating Area in International Waters of the Atlantic Ocean; Notice

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DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision to Operate the Electromagnetic Pulse Radiation Environment Simulator for Ships [Second Generation] EMPRESS II in the Virginia Capes Operating Area in International Waters of the Atlantic Ocean

Pursuant to section 102(2)(c) of National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to operate the EMPRESS II facility in International Waters in the Virginia Capes (VACAPES) Operating Area, approximately 15 miles offshore from Currituck Light, North Carolina with an anchor point at 36°28'00" N/75°32'30"W.

The action consists of the operation of the EMPRESS II facility during its lifetime, associated support operations, and actions necessary to establish and operate the test site. The concept employed by EMPRESS II incorporates a barge mounted electromagnetic pulse (EMP) simulator to provide a towable facility for the purpose of assessing the vulnerability/survivability of Navy ships' electrical/electronic equipment to EMP exposure.

In April 1983, the Navy gave notice of its intent to prepare an Environmental Assessment (EA) for the proposed operation of the Electromagnetic Pulse Radiation Environmental Simulator for Ships, second generation (EMPRESS II). Official notice was given August 10, 1984 in the **Federal Register** (Vol. 49, No. 156) of the intent to upgrade the EA and the file an Environmental Impact Statement (EIS). On September 21, 1984, a public notice was given in the **Federal Register** (Vol. 29, No. 185) of the availability of the Draft Environmental Impact Statement (DEIS). A series of technical information exchange meetings was initiated in 1985 to inform Federal and State agencies of the ongoing studies that were initiated to gain additional information regarding the potential effects of EMPRESS II on the environment. On December 19, 1986, a Supplemental Draft Environmental Impact Statement was filed. Public hearings were held in Maryland, Virginia, and North Carolina in January 1987. The Final Environmental Impact Statement was completed and filed with the Environmental Protection Agency in April 1988.

Alternative concepts to EMPRESS II that were considered included no action, analysis and computer modeling, laboratory testing, upgrade of EMPRESS I, upgrade of EMPRESS I with relocation to a new land-based site, and the use of a fixed offshore facility.

The Alternative concepts were not acceptable for the reasons indicated in the following sentences. *No Action* would result in a continued inadequate EMP survivability validation capability. *Analysis and Computer Modeling* is deemed inefficient and unsatisfactory due to the complexity of the problem. *Laboratory Testing is not sufficient by itself without validation with empirical data from full-scale EMP testing of ships. Upgrade EMPRESS I* was ruled out as it would require extensive dredging and replacement of the Point Patience vehicle bridge. An *Upgrade of EMPRESS I with Relocation to a New Land-Based Site* was ruled out after a survey of 97 potential sites found none to be acceptable. The construction of a *Fixed Offshore Facility* such as a platform or artificial island is prohibitively expensive.

Alternative operating areas that were considered in the final analysis included three sites in the Chesapeake Bay (Windmill Point (37°,35' N/76°,06' W), Tangier Island (37°40' N/76°02' W) and Bloodsworth Island (38°09' N/76°12' W); Guantanamo Bay, Cuba; and the proposed VACAPES Operating Area offshore site (36°28'00" N/75°32'30" W), 15 miles offshore from Currituck Light, North Carolina. There is no documented impact on the human environment/ natural resources at any of the alternative operating areas.

Intensive laboratory and free-field tests and observations conducted on a variety of plankton, shellfish, finfish, turtles, and birds over an 18-month period indicated that the organisms under test exhibited no increased mortality nor significant behavioral modification as a result of multiple exposures to EMP. The reports documenting these tests were compiled in an unedited form and filed as a Supplemental DEIS (December 1986). EMPRESS II operations will not present any danger to human health or safety of recreational boaters/fisherman. EMPRESS II will not interfere with land based communication equipment such as telephone, police and emergency radios, etc.

The VACAPES site has been selected as the sole operating site for a variety of reasons. It offers access to a full range of ships in an area monitored and controlled by the Fleet Area Control and Surveillance Facility. It can be utilized to test deep draft ships which do not have unrestricted access to the Chesapeake Bay. The site presents minimal conflict with other users in the area.

Operations will be conducted at the VACAPES site during the summer months of June through August. The public will be notified of the EMPRESS II schedule and the associated restrictions by appropriate entries in "Notice to Mariners" and "Notice to Airmen". Additionally, notifications of the operating schedule will be provided to area news media for further dissemination.

The restrictions consist of a two-nautical-mile radius exclusion zone around EMPRESS II. extending from the surface to an altitude of 6000 feet. The exclusion zone restriction will mitigate any adverse effects that could occur to shipboard and aircraft electronics if they were exposed to high levels of EMP which occur ner the EMPRESS II vessel. The Navy will attempt to minimize (mitigate) the effects of the exclusion zone by coordinating, when possible, pulsing operations with other users of the test area. The site does not contain any fishing hot spots and is not located in any major shipping lanes. The Navy will provide a vessel(s), to observe and patrol the exclusion area, in order to prevent inadvertent incursion into the operating area. Additional support will be provided by Fleet Area Control and Surveillance Facility, (FACSFAC VACAPES OPS AREA) Virginia Beach, VA for controlling exclusion zone airspace. Ordnance which can be affected by electromagnetic radiation will removed from the test ships. Human health guidelines published as Appendix EE in the SDEIS will be followed.

The Navy, in an effort to further document and quantify the conclusions drawn during the EIS process, will provide for an independent Field Observation Program, conducted by known experts in the field of marine science (such as the North Carolina Museum of Natural History, University of Maryland, and the Virginia Institute of Marine Science). The independent scientists will observe for any adverse effects on marine life and any changes to the ecosystem. As with previous environmental research related to EMPRESS II, the final reports will be available to the public.

Date: May 31, 1988.

Jane M. Virga, LT. JAGC, USNR,

Alternate Federal Register Liaison Officer.

[FR Doc. 88-12458 Filed 5-31-88; 11:00 am]

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Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Part 274a

Control of Employment of Aliens; Final Rule

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274a

[INS Number 1023-88]

Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule stays and suspends § 274a.14(c) of Title 8 of the Code of Federal Regulations. 8 CFR § 274a.14(c) provides that all temporary employment authorization granted prior to June 1, 1987 shall automatically terminate on the date specified by the Service on the document issued to the alien, or on June 1, 1988, whichever is earlier. Any document issued by the Service prior to June 1, 1987 that authorizes temporary employment for a period beyond June 1, 1988 will become null and void on June 1, 1988. The alien must surrender the document to the Service on the date the document expires or on June 1, 1988, whichever is earlier.

This rule stays and suspends the effective date contained in 8 CFR § 274a.14(c) for automatic termination of temporary employment authorization. The automatic termination date for temporary employment authorization granted prior to June 1, 1987 is suspended indefinitely while the Service explores the technology to standardize employment authorization documents. This action is necessary to allow the Service to perfect a standardized employment authorization document. This rule also permits those individuals granted temporary employment authorization prior to June 1, 1987, and whose authorization would have been terminated by the operation of 8 CFR § 274a.14(c), to maintain their authorization for employment and to continue to be authorized for employment in the United States on their present employment authorization document until the date of expiration reflected on the document.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Walter D. Cadman, Deputy Assistant Commissioner, Investigations Division, Immigration and Naturalization Service, 425 Eye Street NW., Washington, DC 20536, Telephone: (202) 633-2997.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, was enacted on November 6, 1986. The Immigration and Nationality Act (Act), as amended by IRCA, provides that it is unlawful for a person or entity, after November 6, 1986, to knowingly hire, recruit or refer for a fee, for employment in the United States, an alien, knowing that the alien is not authorized to work in the United States. It is also unlawful for a person or entity to continue to employ an alien, hired after November 6, 1986, knowing that the alien is or has become unauthorized for employment in the United States. The Act and its augmenting regulations require employers, recruiters and referrers for a fee to verify the identity and employment eligibility of persons hired, recruited or referred.

All individuals hired after November 6, 1986 for employment in the United States must produce documentary proof of identity and employment eligibility. For aliens who are required to apply for employment authorization, as set forth in 8 CFR § 274a.12(c), the Service issues an employment authorization document evidencing that the alien is authorized to be employed in the United States.

8 CFR § 274a.14(c) currently provides that any temporary employment authorization granted prior to June 1, 1987, pursuant to 8 CFR 109.1(b) or its redesignation as § 274a.12(c), shall automatically terminate on the date specified by the Service on the document issued to the alien, or on June 1, 1988, whichever is earlier. Any document issued by the Service prior to June 1, 1987 that authorizes temporary employment beyond June 1, 1988 will become null and void on June 1, 1988, and must be surrendered to the Service on the date of the document's expiration or on June 1, 1988, whichever is earlier. The public was advised that no notice of intent to revoke or other Service advisory was necessary to effectuate the termination.

The Service is dedicated to the creation of a secure, standardized employment authorization system. Both the public and the INS will benefit from the implementation of such a system. Uniform employment authorization documents will assist employers in accurately ad expeditiously completing the employment eligibility verification requirements contained in 8 U.S.C. 1324a(b) and 8 CFR 274a.2. Furthermore, the issuance of uniform employment authorization documents will insure that only eligible aliens receive this benefit, and will increase the Service's ability to detect fraudulent employment authorization documents. The Service is actively investigating available technologies in order to select a system designed to fulfill these goals. Therefore, in order to promote clarity in the issuance of employment authorization documents, the automatic termination date for temporary employment authorization issued prior to June 1, 1987 will be extended indefinitely. This amendment allows individuals who received temporary employment authorization prior to June 1, 1987, and whose authorization would have been terminated by the operation of 8 CFR 274a.14(c), to continue to be authorized for employment in the United States on their present employment authorization document until the date of expiration reflected on the document.

Other than staying and suspending the date that temporary employment authorization granted prior to June 1, 1987 would have automatically terminated pursuant to 8 CFR 274a.14(c), the remainder of § 274a.14 remains unchanged.

Justification for Final Rule

The Immigration and Naturalization Service is invoking the "good cause" exception to the notice and comment rulemaking procedures established by the Administrative Procedures Act [5 U.S.C. 553 (b) and (d)]. Notice of this rule and related public comment procedures would be contrary to the public interest since the time that would be required for comment would delay implementation of the rule. Expeditious implementation of a final rule is necessary to officially notify the public of the stay of automatic termination of temporary employment authorizations issued prior to June 1, 1987. In addition, a delay in implementing this change might cause unnecessary employment conflicts for those aliens whose work authorization would have been automatically terminated by the operation of this regulation.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 274a

Administrative Practice and Procedure, Aliens, Employment.

Accordingly, for the reasons set out in the preamble, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for Part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a.

2. Section 274a.14(c) is stayed and suspended until further notice.

§ 274a.14 [Amended]

8 CFR §274a.14(c) is stayed and suspended until further notice.

Dated: May 25, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-12470 Filed 5-31-88; 12:09 pm]

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Revisions of User Fees for Cotton Classification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as final rule the provisions of the proposed rule which decreased user fees for cotton classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act. The revision in user fees is being made in accordance with the provisions of the Uniform Cotton Classing Fees Act of 1987.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Garry L. Lewicki, Cotton Division, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, D.C. 20090–6456.

SUPPLEMENTARY INFORMATION: A proposed rule which detailed the reduced user fees for cotton classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was published in the **Federal Register** on March 25, 1988 (53 FR 9774). The proposed rule stated that the reduced user fees were determined by applying the formula contained in the Uniform Cotton Classing Fees Act of 1987.

A 30-day comment period was provided to interested persons to submit their views on the proposed user fee reductions. The comment period ended April 25, 1988, with one comment received from a cotton producer trade organization, the Arizona Cotton Growers Association. This comment supported the fee reductions as being beneficial to cotton producers.

The user fee charged to cotton producers for manual cotton classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act was $1.20 per sample during the 1987 harvest season (52 FR 35219), as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The changes cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This rule decreases the fee for manual classification charged to producers from $1.20 to $1.03. This new fee is calculated by using the 1987 base fee adjusted for the rate of inflation, the projected size of the crop and the addition of a surcharge necessary to maintain an adequate operating reserve. The 1987 base fee is $1.11. A 3.3 percent increase due to the implicit price deflator amounting to an increase of 4 cents is added to the $1.11 resulting in a 1988 base fee of $1.15. The 1988 crop is currently estimated at 13,944,720 bales. The base fee is decreased by 15 percent based on the estimated size of the 1988 crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales). This percentage factor amounts to 17 cents and would be subtracted from the base fee of $1.15 resulting in a fee of $0.98. There is a surcharge of 5 cents added to the $0.98 fee since the projected operating reserve is less than 25 percent. The projected operating reserve is 13.94 percent. This establishes the fee at $1.03. No further adjustments are warranted under the formula.

Therefore, the fee for this service during the 1988 harvest season is $1.03. The additional fee for High Volume Instrument (HVI) classification is 50 cents per sample (resulting in a total fee of $1.70 for 1987). The fee for HVI classification is revised to $1.53 per sample. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5 cent per sample discount continues to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 also is decreased from $1.20 to $1.03 per sample since this fee is the same as the original classification fee. For the same reason the fee for HVI review classification is decreased from $1.70 to $1.53 per sample.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fees are decreased, thereby, lessening any impact on the affected persons; (2) the cost decrease will not affect competition in the marketplace; (3) the use of classification services is voluntary. The revisions reflect the Secretary's authority under the Cotton Statistics and Estimates Act to recover the costs, as nearly as practicable, of providing classification services under the provisions of the Uniform Cotton Classing Fees Act of 1987.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the user fees should be made effective July 1, 1988, to be in effect at the beginning of the classing season so that the reduced fees are made applicable to all cotton classed this season.

List of Subjects in 7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for Subpart D of Part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

2. Paragraph (b) of § 28.909 would be revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of manual cotton classification service to producers is § 1.03 per sample.

* * * * *

3. Section 28.911 would be revised to read as follows:

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.03 per sample. The fee for HVI review classification is $1.53 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to § 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

Dated: May 31, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–12552 Filed 6–1–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 2003

Functional Organization of Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations to reflect a reorganization of Divisions and Staffs reporting to the Assistant Administrator, Farmer Programs, to reflect additional programs under the Community Facilities Division in the Office of the Assistant Administrator—Community and Business Programs, to reflect a change of reporting with respect to controlled and jacketed correspondence from Administrative Services Division to the Deputy Administrator Program Operations, to reflect the establishing of the National Appeals Staff, and to reflect additional responsibilities of the Planning and Analysis Staff. The intended effect of this action is to provide a more efficient utilization of Agency personnel resources. This publication provides the functional statements for the affected organizational units.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ryan, Director, Personnel Division, Farmers Home Administration, Room 6900 South Building, 14th and Independence SW., Washington, DC 20250; Telephone (202) 382–1056.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This rule, however, relates only to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required.

Specific Changes Included in This Document Are:

(1) Reorganize the Office of Assistant Administrator, Farmer Programs, by abolishing two Divisions (the Farm Real Estate and Production Division and the Emergency Division), and establishing two Divisions (the Loan Making Divison and the Loan Servicing and Property Management Division) as well as establishing the Emergency Designation Staff and the Program Development Staff.

(2) Expand the existing responsibility of the Planning and Analysis Staff, responsibile to the Administrator, to include internal control responsibilities according to OMB Circular A–123 and the Federal Managers' Financial Integrity Act.

(3) Transfer administrative responsibility for response to controlled and jacketed correspondence from Administrative Services Division (responsible to the Assistant Administrator for Administration) to the Deputy Administrator for Operations, responsible to the Administrator.

(4) Transfer administration of certain types of loans and to add administration of certain types of loans to the Community Facilities Division, which is responsible to the Assistant Administrator—Community and Business Programs.

(5) Establish the National Appeals Staff, reporting to the Administrator, to both conduct appeals and review appeals hearings. The Staff is being established to comply with a recently enacted amendment to the Consolidated Farm and Rural Development Act to establish a "national appeals division."

These programs and activities are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal Action significantly affecting the quality of human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 2003

Organization and Functions (government agencies).

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for Part 2003 continues to read as follows:

Authority: 7 U.S.C. 1981 and 1989; 42 U.S.C. 1471 and 1480; 5 U.S.C. 301 and 552; 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

2. Section 2003.1 is revised to read as follows:

§ 2003.1 General.

Organization charts are made to show responsibilities and authorities. All officials must know the structure of the Farmers Home Administration (FmHA) organization. Exhibit A shows the assignment of functions for the National Office and the field. Exhibit B (available in any FmHA office) is the organization chart showing the FmHA structure.

3. Exhibit A to Subpart A of Part 2003 is revised to read as follows:

Exhibit A—U.S. Department of Agriculture, Farmers Home Administration

07 01 Office of the Administrator

A. Assignment of Functions

Responsible for:

1. The management and administration of the programs and support functions of the Farmers Home Administration (FmHA) which provide assistance to rural Americans and their communities in:

(a) Owning and operating family farms.

(b) Obtaining adequate, affordable housing.

(c) Having access to needed community facilities.

(d) Improving economic opportunity through business and industrial development.

2. Assisting the Secretary in carrying out the Secretary's responsibility for leadership and coordination of National and local rural development efforts.

B. Availability of Information

The Legislative Affairs and Public Information Staff, Washington, DC 20250, will handle all inquiries for information concerning FmHA programs. Freedom of Information inquiries are handled by the Administrative Services Division.

C. Regulations

Regulations governing FmHA programs are found in Title 7, Code of Federal Regulations, Parts 1804 through 2054.

D. Historical Documents

1. Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 et seq).

2. Title 5, Housing Act of 1949, as amended (42 U.S.C. 1471 et seq).

07 01 State Offices

Assignment of Functions

Provides overall direction of FmHA program operations at the State level, ensures adherence to program plans approved for the State by the Administrator, and renders staff advisory and manpower support to frontline operating personnel in the District and County offices. Has full responsibility for making and servicing business and industry loans.

07 01 District Offices

Assignment of Functions

Provides overall direction of FmHA program operations at the District level, ensures adherence to program plans approved for the District by the State Director and renders supervisory and advisory support to frontline operating personnel in the County Offices. Has full responsibility for making and servicing multi-family housing and community program loans and grants.

07 01 County Offices

Assignment of Functions

Executes the FmHA programs and activities in one or more counties or portions of counties, with major responsibility for conducting individual farm and home ownership programs.

07 01 00 0001 Legislative Affairs and Public Information Staff

Assignment of Functions

1. Advises the Administrator, or represents the Administrator in assisting and advising other Agency and Departmental officials, in policy matters relating to the development of legislation and development of regulations to implement legislation, and response to or relations with members and committees of Congress and the public.

2. Coordinates Agency preparation for Congressional hearings, including arrangement for witnesses and preparation of statements and other materials to be presented.

3. Serves as control point for securing and expediting Agency response to requests for legislative reports on bills introduced in Congress.

4. Maintains information files on legislation pending or enacted. Performs special fact finding work as assigned.

5. Responds to Congressional inquiries received by telephone or mail relating to Agency operations, programs and status of applications; coordinates Agency response to Congressional correspondence; handles or expedites response to inquiries which require same day service.

6. Provides the Administrator and the Agency with fast, accurate service in production of briefing material, speeches, Congressional testimony, and any other material requested; produces an inhouse newsletter "FYI", which provides Agency information to all FmHA employees, and FmHA publications generally, except for personnel and program instruction; assists State Directors and field offices with information efforts.

7. Maintains liaison and working relationship with the Office of Governmental and Public Affairs, the Office of the General Counsel and other Departmental units involved in Congressional relations and public information.

07 01 00 0002 Equal Opportunity Staff

Assignment of Functions

1. Responsible to the Administrator for the development and institution of plans, procedures and policies necessary for eliminating discrimination in FmHA programs and employment because of race, color, religion, sex, national origin, age, marital status, or handicap, and for such other activities as the Administrator may prescribe from time to time.

2. Administers laws, statutes, executive orders and Departmental regulations that assure equal opportunity in program participation and employment, including Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), Title VII of the Civil Rights Act of 1964 (amended by the Equal Employment Act of 1972), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90–284), Equal Credit Act of 1975 (also Equal Credit Opportunity Regulations B (12 CFR Part 202) effective March 23, 1977), and Executive Orders 11246 and 11478.

3. Provides research data to USDA Office of Minority Affairs and Office of Governmental and Public Affairs; works with the Justice Department, Department of Labor, Office of Personnel Management, Equal Employment Opportunity Commission and USDA's Office of Personnel and Minority Affairs on training and program coordination.

07 01 00 0003 Planning and Analysis Staff

Assignment of Functions

1. Responsible to the Administrator for the development and institution of plans, procedures, and policies necessary for the efficient and orderly management of activities related to program evaluation, management plans, audit liaison, internal control, and loan classification evaluation, and for such other activities as the Administrator may prescribe from time to time.

2. Develops policy, procedures, and guidance for the Agency-wide programs of Evaluation Reviews, Program Review Assistant (PRA) Reviews, Coordinated Assessment Reviews and Vulnerability Assessments to serve as management tools in evaluating county, district, state and National Office effectiveness and efficiency; conducts comprehensive analyses of the effectiveness of FmHA programs in the accomplishment of specific missions, makes evaluation of cost effectiveness and participates in special studies to resolve program issues; field tests new program evaluation methodologies to assure that programs can be successfully evaluated.

3. Formulates and develops Agency-wide management plans, the purpose of which is to plan and project the effective utilization of the Agency's resources; provides policy direction and accountability, and measures the performance and effectiveness of the Agency; monitors and assists County Offices, District Offices, State Offices, and units within the Finance Office and the National Office in executing the Agency's activities in meeting the needs of rural America; measures and evaluates the performance of the Agency in meeting the goals of the Administration through receipt and review of quarterly status reports from the State and National Offices.

4. Develops, implements, and monitors the operation of FmHA's internal control system in compliance with OMB Circular A–123 and the Federal Managers' Financial Integrity Act. Develops policy and procedure on sound management controls and internal control reviews. Tracks the resolution of recommendations for corrective actions resulting from internal control reviews, Office of the Inspector General (OIG) and Government Accounting Office (GAO) reviews, PRA Reviews, Coordinated Assessment Reviews and Agency evaluation reviews, and assures compliance with all tracking and followup requirements. Analyzes audit and review findings and trends and recommends changes for Agency-wide improvement.

5. Provides guidance and assistance to program staffs in the development of loan classification systems for providing management with information on loan quality, risks involved, and loss exposure.

6. Maintains liaison and working relationship with USDA Office of the Inspector General, Office of Budget and Policy Analysis, and the General Accounting Office; consults with professional accounting associations such as the American Institute of Certified Public Accountants and Association of Licensed Public Accountants.

07 01 00 0004 National Appeals Staff

Assignment of Functions

Responsible to the Administrator to assure development, implementation, monitoring and evaluation of operation of the National

Appeals program, and to perform such other activities as the Administrator may prescribe from time to time.

1. Plans, formulates and recommends broad current and long range plans, policies, and procedures for administering the appeals program.

2. Develops, prepares, and processes new regulations and policy issuances on assigned functions. Reviews FmHA State Directives for conformance with laws, regulations, and National Office procedures. Develops draft legislation and regulatory proposals and develops legislative reports. Responds to Government Accounting Office and Office of the Inspector General reports.

3. Conducts hearings to uphold, reverse, or modify applicable administrative decisions of an FmHA decision maker which adversely affect an applicant/borrower (or lender if a guaranteed loan is involved) and which the applicant/borrower/lender has appealed.

4. Reviews appeal hearings (hearing officer notes, tapes of transcripts, and docket contents) to ensure that time limitations have been observed, that the reasons for the decision are valid and clearly explained, that relevant facts are cited to support the decision, and that FmHA regulations are properly cited and utilized.

5. Evaluates the planning, developing, and conducting training programs by Staff employees in terms of regulatory coverage, presentation, subject matter coverage, and effectiveness.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the appeal program requirements or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 00 Deputy Administrator Program Operations

Assignment of Functions

1. Serves as top policy advisor to the Administrator on all program matters, directs the development or change and institution of plans, procedures and policies necessary for the efficient and orderly management of all assigned programs, and performs such other activities as the Administrator may prescribe from time to time.

2. Has primary responsibility for the overall operation and management of a broad and complete range of Farm, Family and Rural Development programs, with responsibility for the work of Agency program units in the areas of Community Programs and Business and Industry, Environment and Technology, Farmer Programs, and Single and Multi-Family Family Housing; provides advice and guidance to superiors, Assistant Administrators, Division Directors, and State Directors on all loan and grant making and servicing activities.

3. Maintains active liaison with all appropriate USDA and other Federal agencies that impact or have an interest in assigned program areas; cooperates and assists in areas of mutual concern; develops and maintains good, businesslike relations with a broad range of community and public interest groups, professional associations, advocate groups, and suppliers of materials and services.

4. Maintains good working relations with the Office of the General Counsel; stays currently informed on legal aspects of program operations and operates programs accordingly; keeps informed on environmental and technological matters relating to program operations; responds to Congressional inquiries on an accurate, timely, and professional basis and keeps appropriate members and staffs informed as needed on the conduct of assigned programs; directs the processing and control of jacketed correspondence; participates in budget, oversight and other designated hearings.

5. Establishes good, business-like working relationships with Assistant Administrators and Division Directors and provides them with sound, consistent advice and counsel. Maintains active interest in all program areas and keeps staff currently informed on policy items and other areas of interest.

07 02 00 0001 Program Support Staff

Assignment of Functions

1. Responsible to the Deputy Administrator Program Operations for recommending and maintaining policies and standards that are environmentally and technically sound, ensures compliance with objectives of enabling legislation and requirements of regulatory authorities relating to these issues as they affect FmHA programs. Incorporates proven technological advances into FmHA financial assistance programs and ensures those projects funded by FmHA are cost-effective, safe, and healthful, and will adequately met the needs of the owners. Reviews field operations to determine the appropriateness of current or proposed policies and standards to provide for more effective environmental and technical operations. Assists in developing an organizational structure necessary to ensure appropriate environmental and technical input into Agency operations.

2. Provides environmental and technical assessment of requests for Agency financial assistance and coordinates environmental and technical reuqirements and policies across the program divisions in order to maintain consistency. Keeps the Deputy Administrator and program personnel advised of the latest regulatory and state-of-the art approaches to proper design and construction.

3. Provides specialized professional advice and assistance to the Deputy Administrator and appropriate program officials in areas of architecture, engineering, land use planning, environmental analysis and all technical aspect of FmHA programs as required concerning loan-making, account servicing, management of inventory property, etc. Keeps appropriate program officials currently informed of pending requests and coordinates responses with such officials.

4. Serves as Agency contact and authority on specialized matters such as OMB Circular A-95, suspension and debarment, dam safety, historic preservation, National Environmental Policy Act, floodplains and wetlands, Secretary's Memoranda concerning Land Use Policy, and other major environmental laws and regulations, relocation and real property acquisition, Department of Labor construction contract provisions, handicapped accessibility, etc.; maintains a library of technical standards and references essential to the orderly operation of FmHA programs, makes recommendations to implement these matters and acts as a clearinghouse for distribution of these standards to staff personnel on a nationwide basis working in close cooperation with appropriate program officials.

5. Maintains liaison and working relationship with technical standards organizations, assists in coordinating technical changes in FmHA regulations with private and public interest groups affected; and participates in professional organization activities and seminars to maintain state-of-the art knowledge in the various areas of responsibility.

6. Assures that all activities affecting program matters will be closely coordinated with the appropriate program personnel.

07 02 01 Assistant Administrator—Housing

Assignment of Functions

Responsible to the Administrator and Deputy Administrator Program Operations for the development and implemention of plans, procedures and policies necessary for the efficient and orderly management of the Agency's total housing program, which extends housing credit to rural an small town people of limited resources, thus providing an opportunity to have decent housing in an acceptable environment, and for such other activities as the Administrator or Deputy Administrator may prescribe from time to time.

1. Provides executive leadership, formulates and coordinates policies and provides direction in carrying out single and multiple family housing and technical assistance programs in all States, the Pacific Trust Territories, Guam, Puerto Rico, and the Virgin Islands.

2. Administers and manages the sections 502 and 504 single family housing programs, section 515 rural rental program, rural housing site loans, rural cooperatives housing loans, farm labor housing loan and grant program, self-help technical assistance grant program and technical and supervisory assistance grant programs.

3. Administers and monitors the single family housing loan and grant operations through two divisions (Single Family Housing Processing Division and Single Family Housing Servicing and Property Management Division), and provides guidance and direction for conducting multiple family programs through two divisions (Multi-Family Housing Processing Division and Multi-Family Servicing and Property Management Division).

4. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss program requirements in general or to explain or defend the agency position taken on housing issues or anticipated policy changes.

5. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0001 Single Family Housing Processing Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for administering the Agency's single family housing rural loan and grant programs, and for such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for administering the loan making and related activities in the single family housing program which provides direct loans and grants to low income applicants, insured loans to low and moderate income families, and guaranteed loans to above moderate income families, also including special housing programs such as mobile home loans, individual condominiums, weatherization loans, single family housing programs under agreements with other departments, and special studies, projects and surveys related to single family housing.

2. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan making policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to the field organizations, and provides technical advice and assistance to National, State, and local FmHA employees.

4. Initiates planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

5. Reviews, analyzes, and recommends action to be taken on loan making cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Housing Program loan making requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0002 Single Family Housing Servicing and Property Management Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for servicing the Agency's multi-billion dollar portfolio of single-family housing loans and the management and sale of housing properties acquired by the agency, and for such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for servicing actions on outstanding loans, including resolution of borrower complaints about construction and problems with builders and developers; administers the Agency's compensation for construction defects program; counsels borrowers in financial management, budgeting, and in wise use of credit; conducts orderly servicing of real estate taxes, property insurance, and actions by third parties which jeopardize the interests of the borrower or the Government; oversees collection of loan payments, granting of interest credit and moratorium as necessary to be responsive to borrowers' change of circumstance and related appeals, graduation to other credit sources, assumption of loans or sale of property (including recapture of subsidy granted on the loans), and any other problems which arise during a borrower's ownership.

2. Liquidates loans when servicing actions have been ineffective in solving problems, including handling foreclosure appeals and securing repair, maintenance, management, lease, and sale of acquired property. Provides guidance to State and county office personnel in effective management of acquired property and contracting for procurement of supplies and services for repair and maintenance of inventory property.

3. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan servicing policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

4. Incorporates policy issuances into existing procedures. Prepares notices and amendments of issuance to the field organization, and provides technical advice and assistance to National, State, and local FmHA employees.

5. Initiates the planning, developing, implementing, and conductng training programs for State and local FmHA employees on assigned programs.

6. Reviews, analyzes, and recommends action to be taken oh loan making cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Housing Program loan servicing and property management requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0003 Multi-Family Housing Processing Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for the efficient and orderly management of a nationwide program of rural rental housing loans, rural cooperative housing loans, congregate housing loans, labor housing loans and grants, rural housing site loans, self-help technical assistance grants, technical and supervisory assistance grants, and rental assistance programs, and such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for administering the multi-family housing program and evaluating the effectiveness of Agency goals and objectives; maintains a high level of knowledge of the statutes authorizing the respective programs, regulations, and circulars governing operation of the programs and of proposed changes on those statutes, regulations and circulars. Provides direction and guidance to State Office personnel in resolving complex problems of program administration. Maintains knowledge of social, economic, and general real estate and rural credit conditions, trends, and problems existing throughout the nation's rural areas. Reviews and provides guidance and authorization to State Directors on loans and grants of a complex and precedent setting nature and in excess of the State Director's approval authority.

2. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan making policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to the field organizations, and provides technical advice and assistance to National, State, and local FmHA employees.

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4. Initiates the planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

5. Reviews, analyzes, and recommends action to be taken on cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Housing Program loan making requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0004 Multi-Family Housing Servicing and Property Management Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for the efficient and orderly management of a nationwide program of servicing, recordkeeping and account servicing, real estate appraisals, and program evaluation of all multi-family housing programs, and for such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for administering the servicing of all rural rental housing loans, labor housing loans and grants, and rural housing site loans; and the operation and review of multi-family housing appraisal functions.

2. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan servicing policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to the field organization, and provides technical advice and assistance to National, State, and local FmHA employees.

4. Initiates planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

5. Reviews, analyzes, and recommends action to be taken on loan making cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Multi-family Housing Program loan servicing requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 02 Assistant Administrator Farmer Programs

Assignment of Functions

Plans, organizes, directs, and controls the Agency's Farmer Programs. As such:

1. Responsible to the Deputy Administrator Program Operations for the development and institution of plans, procedures, and policies for effective, efficient, and orderly management of Farmer Programs (FP) responsibilities; provides leadership to ensure execution of policies and procedures by the Loan Making Division, Loan Servicing and Property Management Division, Emergency Designation Staff, Program Development Staff, and support functions, and for such other activities which the Administrator may prescribe from time to time.

2. Oversees administration and management of insured and guaranteed farm loan programs which includes making and servicing farm ownership loans (including nonfarm enterprise loans); farm operating (including youth) loans; natural disaster emergency loans; management and servicing of loans no longer authorized or funded.

3. Monitors, inspects, and evaluates the administration of loan programs as executed by FmHA field personnel on a nationwide basis; analyzes problems and takes action to implement corrective measures; develops and manages an equitable system of allocation of loan funds to States.

4. Develops and initiates action to implement cost reduction techniques for nationwide application in operation of loan programs; coordinates implementation of the debt management program and Presidential and Departmental directives to reduce loan losses as they apply to Farmer Programs.

5. Develops priorities for assisting Farmer Programs loan applicants and borrowers in the areas of farm management, supervision and planning, security servicing, collection of accounts, property management, loan making and other related aspects; develops and implements procedures that will preserve and strengthen the family owner-operator system of agriculture; ensures that borrower graduation policies are adhered to by field personnel.

6. Directs the preparation of budget estimates and projections for program operations; directs the drafting of legislation and legislative reports involving the farm loan programs.

7. Develops, monitors, and evaluates contracts for Farmer Programs activities. Recommends action on use of contracts to achieve effective program administration.

8. Maintains liaison and working relationship with key officials of the agency and institutions such as bankers, investment groups, agricultural credit firms and farm organizations; collaborates with the Secretary's Office, officials of other agricultural agencies, State agricultural colleges, non-Federal credit institutions, professional appraisal societies, and others, on matters of mutual concern; consults with and informs State and local Government officials on program matters; confers and works with the Office of the General Counsel, Office of the Inspector General, Office of Management and Budget, General Accounting Office, and others on program issues and matters of mutal concern; represents the Agency on Departmental, interdepartmental, and interagency task forces for developing public policy for improving services to the public.

07 02 02 0001 Farmer Programs Program Development Staff

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to assure development, implementation, monitoring and evaluation of program operations of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Plans, formulates and recommends current and long range plans, policies, and procedures for administering the direct and guaranteed FmHA farm loan making, servicing, and property management programs.

2. Develops, prepares, and processes new regulations and policy issuance on Farmer Program functions. Reviews FmHA State Directives for conformance with laws, regulations, and National Office procedures. Recommends corrections or modifications required for conformance. Develops draft legislation and regulatory proposals and develops legislative reports. Responds to Government Accounting Office and Office of the Inspector General reports.

3. Evaluates the planning, developing, and conducting training programs of Farmer Programs for FmHA employees in terms of regulatory coverage, presentation, subject matter coverage, and effectiveness.

4. Performs special studies and analyses relating to the farm loan making, loan servicing, and property management functions. Monitors, evaluates, and makes recommendations relative to Farmer Programs contracting activities.

5. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the program requirements in general or to explain or defend the agency position taken on loan making decisions or anticipated policy changes.

6. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

7. Monitors, evaluates, and makes field office staffing and reorganization recommendations directed toward more efficient and effective program administration.

07 02 02 0002 Farmer Programs Emergency Designation Staff

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to plan, organize, direct, and control the emergency designation function of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures for administering the FmHA emergency designation program.

2. Conducts the emergency disaster process for Presidential major disaster and emergency declarations, for Secretarial emergency area designation requests, and for FmHA State Director authorizations.

3. Participates in state-wide loan program evaluations to ensure that emergency designation procedures are being effectively carried out and are consistent with National and State procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective actions to be taken. Follows up with field offices to assure accomplishment of corrective action.

4. Reviews complaints resulting from emergency designation actions taken by Agency headquarters or those taken at the State or lower level.

5. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on the emergency designation program operations.

6. Provides technical advice and assistance to National, State and local FmHA employees.

7. Reviews and analyzes emergency designation cases requiring prior clearance of the National Office. Recommends the disposition of cases submitted for technical review.

8. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public to discuss emergency designation requirements in general or to explain or defend the agency position taken on emergency designation issues or anticipated policy changes.

9. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters have interrelated application or mutual concern.

07 02 02 0003 Farmer Programs Loan Making Division

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to plan, organize, direct, and control the Loan Making function of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures for administering the direct and guaranteed FmHA farm loan making programs.

2. Conducts state-wide farmer loan program evaluations to ensure that program operations are being effectively carried out as planned and are consistent with National and State loan making policies and procedures and professional agricultural financial and production management methods and techniques. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective actions to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to field organizations.

4. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on the Farmer Programs loan making program operations.

5. Provides technical advice and assistance to National, State and local FmHA employees.

6. Reviews, analyzes, and recommends action to be taken on loan making cases requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss loan making requirements in general or to explain or defend the agency position taken on loan making issues or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 02 0004 Farmer Programs Loan Servicing And Property Management Division

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to plan, organize, direct, and control the Loan Servicing and Property Management function of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures for administering the direct and guaranteed FmHA farm loan servicing and property management programs.

2. Conducts nationwide and state-wide farmer loan program evaluations to ensure that program operations are being effectively carried out as planned and are consistent with National and State loan servicing and property management policies and procedures and professional agricultural financial and production management methods and techniques. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective actions to be taken. Follows up with field offices to ensure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notice and amendments for issuance to field organizations.

4. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on Farmer Programs loan servicing and property management program operations.

5. Provides technical advice and assistance to National, State and local FmHA employees.

6. Reviews, analyzes, and recommends action to be taken on loan servicing and property management cases requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss program requirements in general or to explain or defend the agency position taken on loan servicing and property management issues or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 03 Assistant Administrator—Community and Business Programs

Assignment of Functions

Is responsible to the Deputy Administrator for Program Operations to plan, organize, direct, and control the Agency's Community and Business Programs. As such:

1. Develops and institutes plans, procedures, and policies for the effective, efficient, and orderly management of Community and Business Programs responsibilities; provides leadership to ensure execution of policies and procedures by the Business and Industry Division, Water and Waste Division, Community Facilities Division, and support functions, and performs other activities as the Administrator or Deputy Administrator may prescribe from time to time.

2. Oversees administration and management of a broad and complex range of Community and Business and Industry type programs including water and waste disposal loans and grants, technical assistance and training grants, community facility loans, industrial development grants, watershed and flood prevention loans, resource conservation and development loans, recreation loan servicing, energy impact

assistance grants, nonprofit National Corporation loans and grants, irrigation and drainage loans, Grazing Association loans, Indian tribal acquisition loans, unincorporated EO cooperative loans, shift in land use loans, Timber Development Organization loans, area development assistance planning grants, rural development loan fund loans, incorporated EO cooperative loans, and business and industrial loans.

3. Monitors, inspects, and evaluates the administration of loan and grant programs as executed by FmHA field personnel on a nationwide basis; analyzes problems and takes action to implement corrective measures; develops and manages an equitable system of allocation of loan funds to states.

4. Develops and initiates action to implement cost reduction techniques for nationwide application in operation of loan programs; coordinates implementation of the debt management program and Presidential and Departmental directives to reduce loan losses as they apply to assigned programs.

5. Develops priorities for assisting Community and Business Programs loan applicants and borrowers in the areas of supervision and planning, security servicing, collection of accounts, property management, loan making and other related aspects; develops and implements procedures that will preserve and strengthen the development of rural America; ensures that borrower graduation policies are adhered to by field personnel.

6. Directs the preparation of budget estimates and projections for program operations; directs the drafting of legislation and legislative reports involving the community and business loan programs.

7. Develops, monitors, and evaluates contracts for community and business activities. Recommends action on use of contracts to achieve effective program administration.

8. Maintains liaison and working relationship with key officials of the agency and institutions such as bankers, and investment groups; collaborates with the Secretary's Office, officials of other agencies, professional societies, and others, on matters of mutual concern; consults with and informs State and local Government officials on program matters; confers and works with the Office of the General Counsel, Office of the Inspector General, Office of Management and Budget, General Accounting Office, and others on program issues and matters of mutual concern; represents the Agency on Departmental, interdepartmental, and interagency task forces for developing public policy for improving services to the public.

07 02 03 0001 Water And Waste Division

Assignment of Functions

Responsible to the Assistant Administrator Community and Business Programs to plan, organize, lead, and direct the Water and Waste Division of Community and Business Programs, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures necessary for the efficient and orderly management of a nationwide program of water and waste disposal loans and grants and technical assistance and training grants in rural areas.

2. Oversees nationwide authority of FmHA to make loans and/or grants for development of new water and waste disposal systems or needed improvements to existing facilities and technical assistance and training grants to private nonprofit corporations. Develops and maintains regulations directing the processing, approving, and servicing of loans and grants. Reviews large unusually complex loan dockets and rejects or concurs with State Office recommendation for approval, or for liquidations or other servicing actions. Maintains knowledge of the statutes authorizing the respective programs and drafts proposed legislative revisions. Maintains knowledge of social, economic, and credit conditions in rural areas.

3. Participants in the planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

4. Provides technical advice and assistance to National, State and local FmHA employees.

5. Reviews, analyzes, and recommends action to be taken on loan dockets requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss water and waste disposal requirements in general or to explain or defend the agency position taken on loans and grants or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 03 0002 Community Facilities Division

Assignment of Functions

Responsible to the Assistant Administrator Community and Business Programs to plan, organize, lead, and direct the Community Facilities Division of Community and Business Programs, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures necessary for the efficient and orderly management of a nationwide progam of community facilities loans, industrial development grants, recreation loans, watershed and flood prevention loans, energy assistance impact grants, resource conservation and development loans, nonprofit National Corporation loans and grants, irrigation and drainage loans, Grazing Association loans, Indian tribal acquisition loans, unincorporated EO cooperative loans, shift in land use loans, Timber Development Organization loans, area development assistance planning grants.

2. Oversees nationwide authority of FmHA to make and service assigned loans and grants. Develops and maintains regulations directing the processing, approving, and servicing of loans and grants. Reviews large or unusually complex loan dockets and rejects or concurs with State Office recommendation for approval, or for liquidations or other servicing actions. Maintains knowledge of the statutes authorizing the respective programs and drafts proposed legislative revisions and of social, economic, and credit conditions in rural areas.

3. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

4. Provides technical advice and assistance to National, State and local FmHA employees.

5. Reviews, analyzes, and recommends action to be taken on loan dockets requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss water and community facilities requirements in general or to explain or defend the agency position taken on loans and grants or anticipated policy changes, and to assist with development of interagency agreements.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 03 0003 Business and Industry Division

Assignment of Functions

Responsible to the Assistant Administrator Community and Business Programs to plan, organize, lead, and direct the Business and Industry Division of Community and Business Programs, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures necessary for the efficient and orderly management of a nationwide program of business and industry loans and grants.

2. Oversees nationwide authority of FmHA to make and service assigned loans and grants. Develops and maintains regulations directing the processing, approving, and servicing of loans and grants. Reviews large or unusually complex loan dockets and rejects or concurs with State Office recommendations for approval, or for liquidations or other servicing actions. Maintains knowledge of the statutes authorizing the respective programs and drafts proposed legislative revisions. Works with lenders, financial consultants, and corporate executives in structuring and developing commercial loan packages.

3. Administers a loan portfolio consisting of 38 Rural Development Fund (RDLF) loans that were transferred from the Department of Health and Human Services on June 9, 1986. These RDLF loans were made in 21 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Administers Incorporates Economic Opportunity Loans.

4. Participates in the planning, development, implementation, and conducting training programs for State and local FmHA employees on assigned programs.

5. Provides technical advice and assistance to National, State and local FmHA employees.

6. Reviews, analyzes, and recommends action to be taken on loan dockets requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss business and industry requirements in general or to explain or defend the agency position taken on loans and grants or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 06 Deputy Administrator for Management

Assignment of Functions

Responsible to the Administrator or Associate Administrator for the formulation of policy for the Agency in all areas of support services for the Agency's programs, and performs such other activities as the Administrator may prescribe from time to time.

1. Provides overall supervision and direction the Agency's staff support activities including administrative planning, accounting, budgeting, personnel, systems development, use of ADP, administrative services, information resources management, organization, financial matters, and management improvement.

2. Directs and supervises subordinate organizational activities consisting of the Assistant Administrator for Automated Information Services; the Assistant Administrator, Finance Office; the Assistant Administrator for Administration; the Budget Staff; and the Financial and Management Analysis Staff.

3. Maintains liaison and working relationship with the Department's Management Council; works with the Assistant Secretary for Administration and associated staff offices, the Office of Budget and Program Analysis, the Office of Management and Budget, the Office of Personnel Management, General Services Administration, the Department of Treasury, Congressional staffs, and others as necessary to carry out assigned responsibilities.

07 06 09 0001 Financial and Management Analysis Staff

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for debt management initiatives, cash management initiatives, management analysis, and for management, financial, and productivity improvement programs, and such other activities as the Deputy Administrator may prescribe from time to time.

1. Develops and manages FmHA debt collection efforts, including compliance with the Debt Collection Act. Monitors FmHA debt management systems to assess effectiveness and impact. Develops and manages FmHA's program for offsetting salary of Federal employees who are delinquent on FmHA loans. Initiates pilots or tests of new or innovative methods, techniques, and processes in debt management.

2. Develops and manages FmHA cash management initiatives. Monitors FmHA cash management systems to assess effectiveness and impact. Initiates pilots or tests of new and innovative methods, techniques and processes in cash management.

3. Responsible for FmHA's management analysis function. Initiates and performs all types of management improvement, productivity improvement, efficiency, and effectiveness studies and analyses. Serves as an in-house consultant and troubleshooter for management problems and concerns.

4. Responsible for FmHA's implementation of OMB Circulars A–76, A–70, and A–129, and for other management, financial, and productivity improvement programs, including Presidential management initiatives.

5. Maintains liaison and working relationship with the USDA Financial Council, the Office of Management Reform, Office of Finance and Management (OFM), OMB, Department of Treasury, and other appropriate Federal Agencies and private sector establishments that impact on or have an interest in the assigned program areas.

07 06 09 0002 Budget Staff

Assignment of Functions

Responsible to the Administrator and Deputy Administrator for Management for FmHA's budget, travel, borrowing, and interest rate management, and for such other activities as the Deputy Administrator may prescribe from time to time.

1. Develops plans and procedures for the formulation, presentation, and execution of the total FmHA budget; on the basis of financial and budgetary planning, assists the Deputy Administrator and program officials in support of decision-making activities and establishment of policy necessary for efficient and effective management of FmHA programs. Recommends reprogramming and policy changes to meet FmHA goals and objectives; recommends budgetary levels, budget strategy and program implementation.

2. Provides leadership and direction for planning, formulation, justification, presentation, execution, control and review of the total FmHA budget effort. Prepares FmHA budget estimates in order to develop the FmHA budget submission to the Secretary's Office, OMB, and Congress. Establishes and maintains control over program and administrative funds to assure compliance with Agency policy, approved apportionments, Congressional interest and applicable laws and regulations.

3. Maintains liaison and working relationship with program and administrative officials, FmHA State Directors and other field personnel. Participates in State meetings, conferences and other sessions and gives advice and counsel on budget operations and operating levels. Serves as FmHA liaison for budget and financial programs with Congressional Committees and staff, OMB, GAO, the Secretary's office, OGC, OIG, and other USDA agencies, Department of Treasury, Department of Housing and Urban Development (HUD), and other agencies, news reporters, public and private interest groups and the general public.

4. Responsible for the total Agency budget effort from planning and formulation to execution control and review. Reviews and recommends changes in operating levels for personnel, travel, overtime, contracts, and other reprogramming of funds.

5. Responsible for travel procedures in FmHA. Develops and recommends travel policies, prepares travel regulations, and reviews and evaluates travel programs of FmHA. Administers the Diners Club travel card program, use of travel agencies, and the employee relocation service.

6. Responsible for revolving fund analysis related to cash forecasting, timing of sale of notes inventory, Treasury borrowings, outlay planning and analysis, and management of FmHA interest rates and interest projections.

07 06 01 Assistant Administrator—Finance Office

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for the development of policies that affect the operation of the accounting system, and for such other activities as the Deputy Administrator may prescribe from time to time.

1. Manages the day-to-day operation of the accounting system, including system maintenance. Prepares all financial reports required by management and for the FmHA budget based on data in the accounting system. Maintains the supplies warehouse and meets the needs of field offices for equipment and supplies within funds available for the purpose and under the general direction of the Administrative Services Division. Maintains necessary obligation and related funds control.

2. Directs and supervises subordinate organizational activity consisting of the Fiscal and Accounting, Operations, and Administrative Support functions of the Finance Office.

3. Maintains liaison and working relationship with the Department data

processing manage to provide Automated Data Processing support for the accounting operation, and with GAO on audit matters relating to the accounting system.

4. Prepares Finance Office budget plans. Monitors and controls approved budgets including authorized personnel staffing.

5. Administers the overall Departmental excess personal property coordination functions for disposal of personal property outside the Washington, DC area, the object of which is to effect reutilization or disposal of personal property Departmentwide. Maintains liaison with Departmental staff offices and agencies, GSA, and state and local governments.

07 06 03 Assistant Administrator For Administration

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for the overall management of the FmHA personnel, organization, and administrative services policies, and for performing such other activities as the Deputy Administrator may prescribe from time to time.

1. Provides executive leadership, formulates and coordinates policies, and provides direction in carrying out assigned programs to subordinate organizational activities consisting of the Personnel Division and Administrative Services Division.

2. Develops procedures for and carries out a personnel program for FmHA, including recruitment, evaluation, classification, employee relations, position management, training, career development and grievance appeals. Analyzes and reviews organizational relationships and makes recommendations on changes.

3. Establishes and maintains a directives system for FmHA to cover the clearance, approval and maintenance of formal regulations, administrative notices, and procedural announcements.

4. Provides for FmHA space analysis and review services, forms management activities, mail management, communications system operations, printing and reproduction requirements, property management, contracting programs and records management.

5. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

6. Develops a budget for the training program for FmHA within overall budget constraints. Provides major input to the administrative budget for FmHA and coordinates that budget with the responsibilities of the Finance Office.

07 06 03 0001 Personnel Division

Assignment of Functions

Responsible to the Assistant Administrator for Administration for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the FmHA nationwide personnel management, organizational management, and training programs, and conducts such other activities as the Assistant Administrator may prescribe from time to time.

1. Plans, develops, and implements programs and activities related to employment, placement, merit promotion, organization, position management, position classification, performance appraisal, incentive awards, employee recognition, employee and labor management relations (including adverse action, conduct, discipline, grievances, and appeals), employee compensation and benefits, employee safety and health, training and career development.

2. Provides direct operating services involving personnel management and training for employees of the National Office, and those operating services which have not been specifically delegated to State Offices and the Finance Office for employees in the field. Provides technical direction, oversight, and guidance to State Offices and the Finance Office on organization, personnel management, and training programs and activities conducted at the field level. Maintains and administers or directly oversees at the field level, FmHA and USDA personnel and training information systems (including ADP based systems), procedures and personnel action processing operations.

3. Monitors and evaluates the effectiveness of assigned programs at all levels of the Agency and recommends improvements. Collects and analyzes data, conducts organizational, occupational, and other staff studies on personnel management and training issues, identifies the need for program changes, operations/processing systems and procedures, and develops options and recommendations for management decision.

4. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 03 0002 Administrative Services Division

Assignment of Functions

Responsible to the Assistant Administrator for Administration for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the FmHA directives systems and the provision of administrative services to the Agency, including implementation of the Freedom of Information and Privacy Acts, and conducts such other activities as the Assistant Administrator may prescribe from time to time.

1. Reviews all Agency directives issuances and public participation functions, including publication of regulations and legal notices in the Federal Register. Coordinates real and personal property, space, procurement, printing, reproduction control, communications and mail management, forms, record retention and disposition and tort claims activities. Coordinates National Office review of requests under Freedom of Information Act and provides technical advice as to matters covered by the Privacy Act.

2. Maintains liaison and working relationship with other USDA agency Administrative Services Divisions and participates in the Department Administrative Services Administration and Office of Managment and Budget. Provides policy direction and serves as liaison with the Administrative Support Division in the Finance Office.

3. Prepares substantial input to administrative budget plans as required and administers administrative budgets within administrative responsibilities.

07 06 04 Assistant Administrator for Automated Information Systems

Assignment of Functions

Responsible to the Deputy Administrator for Management for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the information resources management functions of FmHA, for identifying and applying ADP and other systems technology, and conducting such other activities as the Assistant Administrator may prescribe from time to time.

1. Directs and supervises subordinate organizational activity consisting of the Financial Systems Division, Management Systems Division, Accounting System Planning Division, and the Information Resources Management Division.

2. Identifies financial and management information needs, and initiates actions to capture and report such information. Provides the policies, procedures systems and ADP technology necessary to implement new and enhanced systems for the Agency by designing, gathering data for the initiating reports of management information. Determines and manages the ADP software and hardware needed to serve the Agency most effectively and efficiently.

3. Maintains liaison and working relationship with the USDA Office of Information Resources management. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 04 0001 Financial Systems Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Systems for the development, implementation, and evaluation of plans, policies, and procedures necessary for the development of new ADP systems applications projects needed to support program policy implementation, and performs such other activities as the Assistant Administrator may prescribe from time to time.

1. Develops ADP systems applications to support policy implementation for loan making, loan servicing, cash and debt management, and program accounting activities for the Agency, including modifications to the existing financial systems.

2. Assures automated modifications are consistent with regulatory requirements, changes in law and changes in technology, and are structured to provide maximum efficiency and effectiveness of Agency operations.

3. Designs, develops, and tests new program financial systems and modifications to existing program financial systems.

4. Provides the centralized data base administration function for the Agency and provides technical support necessary to ensure user availability of the FmHA nationwide network of terminal and microprocessors.

5. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others and collaborates on matters of mutual concern. Represents the Agency on departmental interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 04 0002 Management Systems Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Services for the development of policies, methods, procedures, and strategies for Automated Data Processing (ADP) support systems for non-financial administrative and program systems and for office automation, and such other related activities as the Assistant Administrator may prescribe from time to time.

1. Designs, develops, tests, implements, documents, maintains, monitors, and supports agencywide automated management systems. Provides agency managers and their employees with data and tools to enable them to achieve program and administrative goals. Provides technical service and support to agency managers relating to requirements analysis, systems design, software and documentation development, system testing, and systems implementation, monitoring and control.

2. Cooperates with program managers by evaluating and analyzing the utilization of and data generated by such automated systems to identify problem areas and recommend solutions. Provides technical advice and support to FmHA managers relating to requirements analysis, systems design, software and documentation development, system testing and systems implementation, monitoring and control.

3. In cooperation with administrative and program managers oversees the planning, design, development and implementation of administrative, management and office automation systems utilizing contractor and government resources. Provides ADP technical and timesharing support to FmHA personnel.

4. Manages equipment and services contracts and special projects which require delicate coordination among private and public entities (including other Federal organizations) with a view of more uniform coordination and administration of complex Federal automation system.

5. Provides ADP procurement support for equipment and software agencywide. Monitors performance of contractors, making recommendations regarding contract modifications and approval or rejection of contractor products. Negotiates with contractors, USDA Office of Information Resources Management and other USDA agencies regarding areas of unsatisfactory contractor or product performance to arrive at mutually agreeable solutions.

6. Analyzes and recommends new, revised or alternative automation products and management systems. Recommends and justifies major expenditures of FmHA funds for ADP equipment, software and contractor assistance.

7. Provides long-range strategic ADP planning on management systems and office automation.

8. Maintains liaison and effective working relationships with FmHA program and administrative personnel, Departmental staff offices and other Federal and professional ADP organizations as necessary to perform assigned responsibilities.

07 06 04 0003 Accounting Systems Planning Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Systems for the development, implementation, and evaluation of plans, policies, and procedures necessary for the development of functional specifications related to the design and development of new or modified automated accounting systems projects, and performs such other activities as the Assistant Administrator may prescribe from time to time.

1. Establishes plans and develops functional specifications for new accounting systems and modifications to existing accounting systems for the Agency which support the regulatory and policy agenda of the Agency in the areas of loan making and loan servicing.

2. Coordinates the establishment of priorities for implementing proposed accounting systems and enhancements to existing automated systems.

3. Develops and carries out the formulation of alternative development configurations in support of accounting system efforts and directs cost-benefit analyses of several such ADP configurations which could be adopted by the Agency.

4. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 04 0004 Information Resources Management Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Systems for the development, implementation, and evaluation of plans, policies, and procedures necessary for ensuring that all Departmental Information Resources Management regulations, and other Federal IRM-related regulations are complied with within the agency, and for performing such other activities as the Assistant Administrator may prescribe from time to time.

1. Develops policies, agency regulations, standards and guidelines for all program activities. Coordinates and serves as liaison with other Federal organizations, inside and outside of the agency, concerning program policies, OMB circulars, GSA regulations and other regulations to perform assigned functions.

2. Manages the long range planning process and IRM budget development for FmHA, including development of the annual plan for submission to the Department of Agriculture. Provides policies, procedures, and coordination of the IRM Review Boards. Develops and maintains FmHA telecommunications policies.

3. Provides the data administration function, including controlling of reports, inventories, standards, and electronic information holdings reviews. Develops and maintains FmHA reports management policy and procedures. Administers the weekly and monthly production of a variety of program reports.

4. Provides a focal point and coordination for FmHA participation in USDA cooperative processing initiatives and information sharing initiatives. Provides the single point of contact with USDA for all technical approval requests, IRM Standards and IRM Reviews.

5. Provides the liaison function between the National Office and the Finance Office for review and clearance of FmHA regulations, policies, and procedures.

Dated: May 9, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-12440 Filed 6-1-88; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 331 and 381

[Docket No. 88-005F]

Termination of Designation of the State of Montana With Respect to the Inspection of Meat and Poultry Products and Special Purposes

AGENCY: Food Safety and Inspection Service, USDA.

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ACTION: Final rule and termination of designation.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations by terminating the designation of the State of Montana under Titles I, II, and IV of the Federal Meat Inspection Act and sections 1–4, 6–11 and 12–22 of the Poultry Products Inspection Act.

DATES: This notice of termination of designation is effective June 6, 1988. The effective date of this amendment is June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald R. Snyder, Director, Federal-State Relations (202) 447–6313 or Mr. Robert W. Gonter, Assistant Deputy Administrator, Compliance Program (202) 447–7745, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC. 20250.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Terminating the designation of the State of Montana will provide for the State to assume the responsibility, previously held by the Federal Government, of administering the meat and poultry inspection program for intrastate operations and transactions and for ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. The State of Montana will be required to administer the inspection program in a manner that is at least equal to administration by the Federal Government.

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). As stated above, the State of Montana is assuming the responsibility, previously held by the Federal Government, of administering the meat and poultry inspection program for intrastate meat and poultry operations and transactions. No additional requirements are being imposed on small entities.

Background

Section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) authorize the Secretary of Agriculture to designate a State as one in which the provisions of Titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA shall apply to operations and transactions wholly within the State after he has determined that requirements at least equal to those imposed under the Acts have not been developed and effectively enforced by the State.

On December 2, 1970 (35 FR 13695) and March 27, 1971 (36 FR 5794), notices were published in the **Federal Register** announcing that the Secretary of Agriculture was designating the State of Montana, under paragraph 5(c) (21 U.S.C. 454(c)) of the PPIA and paragraph 301(c) (21 U.S.C. 661(c)) of the FMIA respectively, as a State in which the Federal Government is responsible for providing meat and poultry inspection at eligible establishments and for otherwise enforcing the applicable provisions of the PPIA and FMIA with respect to intrastate activities in the State.

In addition, on January 31, 1975 (40 FR 4646), a notice was published in the **Federal Register** announcing that, effective on that date, the Federal Government would assume the responsibility of administering the authorities provided for under sections 202, 203, and 204 (21 U.S.C. 642, 643, 644) of the FMIA and sections 11 (b) and (c) (21 U.S.C. 460 (b) and (c)) of the PPIA regarding certain categories of processors of meat and poultry products.

The aforementioned designations were undertaken by the Department when it was determined that the State of Montana was not in a position to enforce inspection requirements under State laws for product in intrastate commerce that are at least "equal to" the requirements of the FMIA and PPIA enforced by the Federal Government.

The Governor of the State of Montana has advised this Department that effective June 6, 1988, the State of Montana will be in a position to administer a State meat and poultry inspection program which includes requirements at least "equal to" those imposed under the Federal meat and poultry inspection program for products in interstate commerce.

Section 301(c)(3) of the FMIA and Section 5(c)(3) of the PPIA provide that whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State meat and poultry inspection requirements at least "equal to" those imposed by the Federal Government under the FMIA and PPIA, with respect to intrastate operations and transactions within the State, he shall terminate the designation of such State. The Secretary has determined that the State of Montana has developed and will enforce such a State meat and poultry inspection program in accordance with the said provisions of the FMIA and PPIA. In addition, the Secretary has determined that the State of Montana is also in a position to enforce effectively the provisions of sections 202, 203, and 204 of the FMIA and section 11(b), (c), and (d) of the PPIA. Therefore, the designations of the State of Montana under Titles I, II and IV of the FMIA and sections 1–4, 6–11, and 12–22 of the PPIA are hereby terminated.

List of Subjects in 9 CFR Parts 331 and 381

Meat inspection, Poultry and poultry products.

Accordingly, Part 331 of the Federal meat inspection regulations (9 CFR Part 331) is amended to read as follows:

PART 331—[AMENDED]

1. The authority citation for Part 331 continues to read as follows:

Authority: Secs. 21 and 301, 81 Stat. 584, 588, 592, 593, 595 (21 U.S.C. 621, 661).

§ 331.2 [Amended]

2. The Table in § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is hereby amended by deleting "Montana" from the "State" column and by deleting the date which was added on the line with Montana.

3. The authority citation for § 331.6 is revised to read as follows:

Authority: Secs. 21 and 205, 34 Stat. 1260, as amended; 81 Stat. 584 (21 U.S.C. 621, 645).

§ 331.6 [Amended]

4. Section 331.6 of the Federal meat inspection regulations (9 CFR 331.6) is hereby amended by deleting "Montana" from the "State" column in all three places and by deleting the dates which were added on the lines with Montana in all three places.

Further, Part 381 of the poultry products inspection regulations (9 CFR 381) is revised as following:

PART 381—[AMENDED]

1. The authority citation for § 381.221 continues to read as follows:

Authority: Secs. 5(c) and 14, 71 Stat. 441, as amended (21 U.S.C. 454(c), 463).

§ 331.221 [Amended]

2. Section 381.221 (9 CFR 381.221) is hereby amended by deleting "Montana" from the "State" column and by deleting the date which was added on the line with Montana.

3. The authority citation for § 381.224 continues to read as follows:

Authority: Secs. 11(e) and 14, 71 Stat. 441, as amended, 82 Stat. 791, 21 U.S.C. 460(e), 463.

§ 381.224 [Amended]

4. Section 381.224 (9 CFR 381.224) is hereby amended by deleting "Montana" from the "State" column in both places and by deleting the dates which were added on the lines with "Montana" in both places.

These amendments of the Federal meat and poultry products inspection regulations are necessary to reflect the determination of the Secretary of Agriculture under sections 205 and 301 (c)(3) of the Federal Meat Inspection Act and sections 5(c)(3) and 11(e) of the Poultry Products Inspection Act. Further, it does not appear that public participation in this matter would make additional relevant information available to the Secretary. As mentioned above, the Governor of the State of Montana has determined that the State of Montana will be in a position to administer a State meat and poultry inspection program with requirements at least "equal to" those imposed under the Federal meat and poultry inspection program beginning June 6, 1988. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary, and good cause is found for making the amendments effective less than 30 days after publication in the **Federal Register**.

Done at Washington, DC, on May 13, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88–12264 Filed 6–1–88; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–15; Amdt. 39–5915]

Airworthiness Directives; GROB-WERKE GmbH & Co. KG (Burkhart Grob) Model G103 Twin Series Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Grob-Werke GmbH G103 TWIN SERIES gliders which requires a visual inspection and relocation of the aft tow-hook knob. This action was prompted by the determination that the knob can fall from vibrational loads into the control system. This condition, if not corrected, could result in the loss of glider control.

DATES: Effective—June 9, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the **Federal Register** as of June 9, 1988.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Grob Systems, Inc., Aircraft Division, I–75 and Airport Drive, Bluffton, Ohio 45817.

A copy of the service bulletin is contained in the Rules Docket, Docket Number 88–ANE–15, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts, 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium, Telephone 513.38.30 ext. 2710, or Mr. C. Kallis, ANE–173, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6428.

SUPPLEMENTARY INFORMATION: Grob-Werke GmbH has determined that wear may develop in the aft tow-hook knob and create a potential danger, if this knob falls into the control stick boot during flight. The manufacturer has issued technical information contained in Service Bulletin (SB) TM 315–32, dated June 12, 1987, which requires inspection and possible relocation of this knob if the existing location is at a position where it can fall into the controls. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of SB TM 315–32, on gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Grob SB TM 315–32 and the issuance of Airworthiness Directive No. 87–140 Grob by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Grob SB TM 315–32 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Applicability information was provided because not all aircraft serial numbers of the named models were affected by the AD.

Therefore, an AD is being issued to require a visual inspection and relocation of the aft tow-hook knob, if it is located at the position where it can fall into the controls.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The regulation set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under

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DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Air transportion, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

GROB WERKE GmbH and Co. KG (Burkhart Grob): Applies to the following models certificated in any category.

G103 TWIN ASTIR, Serial Numbers 3000 through 3291.

G103 TWIN II, Serial Numbers 3501 through 3678.

G103A TWIN II ACRO, Serial Numbers 3501 through 3678 with Supplement "K" in the number.

Compliance is required as indicated, unless already accomplished.

To prevent the tow-hook knob from dropping into the control stick boot during flight and obstructing control stick movement, accomplish the following:

(a) If the guide-sleeve cutout is located at the bottom left hand (LH) corner of the instrument panel, as shown in Fig. 1 and Fig. 2 of Grob Service Bulletin (SB) TM 315-32, within the next 10 hours time-in-service after the effective date of this AD, visually inspect the aft tow-hook knob in the area of the guide sleeve for wear, cracks or looseness of the tow-hook knob.

(b) If wear, cracked sleeve or looseness is determined, before further flight, unless already accomplished, relocate the position of the tow-hook knob in accordance with Instruction 2 in Grob SB TM 315-32, dated June 12, 1987.

(c) If the inspection of (a) determines that no wear, crack or looseness of any part in the tow-hook knob exist, accomplish the relocation of the knob as indicated in (b) within the next 20 hours time-in-service after the effective date of this AD.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium, Telephone No. 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6580.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Grob SB TM 315-32, dated June 12, 1987, including Repair Instructions No. 315.32, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Grob Systems, Inc., Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45617. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 88-ANE-15, between the hours of 8:00 a.m. and 4:30 p.m., Monday thru Friday, except Federal holidays.

This amendment becomes effective on June 9, 1988.

Issued in Burlington, Massachusetts on April 28, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88-12313 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-7]

Transition Area Alteration; Alliance, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to reflect the name change of Miller Airport, Alliance, OH, to Berlin Airpark Airport, Alliance, OH and an update to the airport coordinates. This action involves no other changes.

EFFECTIVE DATE: 0901 UTC, August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will alter the Alliance, OH, transition area by changing the airport name from Miller Airport to Berlin Airpack Airport where it appears in the transition area description. The adjustment of coordinates is from lat. 40°59'00" N., long. 81°02'30" W. to lat. 40°59'05" N., long. 81°02'32" W.

The alterations will affect only the published description and will cause no change to aeronautical operations as currently conducted or to the general configuration of the airspace.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore -(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Alliance, OH [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Berlin Airpack Airport, Alliance, Ohio (lat. 40°59'05" N., long. 81°02'32" W.), and within a 5.5 mile radius of Tri-City Airport, Sebring, Ohio (lat. 40°54'22" N., long. 81°00'02" W.).

Issued in Des Plaines, Illinois, on May 20, 1988.

John H. Bacon,

Acting Manager, Air Traffic Division.

[FR Doc. 88-12314 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 25583; Amdt. No. 343]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: The FAA published an Amendment in Docket No. 25593, Amdt. No. 343 to Part 95 of the Federal Aviation Regulations (53 FR 83 15364; April 29, 1988). In that amendment, a typographical error listed the effective date incorrectly. This action corrects that error and changes the effective date to May 5, 1988.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on May 20, 1988.

Robert L. Goodrich,

Director of Flight Standards.

[FR Doc. 88-12312 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3350-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to Syntex Agribusiness, Inc., for certain solid wastes to be generated at the Denney Farm site in McDowell, Missouri by the EPA Mobile Incineration System. This action responds to a delisting petition received by the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude wastes on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: June 2, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (Sub-basement), Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-SSEF-FFFFF." The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Syntex Agribusiness, Inc. (Syntex), located in Springfield, Missouri, petitioned the Agency to exclude from hazardous waste control certain waste it intends to generate. After evaluating the

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petition, on September 3, 1987, EPA proposed to exclude Syntex's waste from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32, conditional upon Syntex meeting certain monitoring, sampling, and analysis requirements (see 52 FR 33439). Syntex's petition was for an "upfront" exclusion. A petitioner may request an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. An upfront delisting petition (when treatment is planned) allows an exclusion to be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. The exclusion would include batch testing requirements, such as analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may specify verification testing limitations (i.e., the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion; when the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

C. Other Related Exclusions

Today's exclusion represents the third exclusion related to EPA's Mobile Incineration System. The first exclusion was granted to EPA's Releases Control Branch (RCB) on July 25, 1985 (see 50 FR 30271). That exclusion covered the residues from the incineration of several categories of liquid wastes from dioxin-decontamination activities at the Syntex facility in Verona, Missouri, as well as various related contaminated solids. That exclusion was a conventional exclusion (in contrast with Syntex's upfront exclusion granted in today's rulemaking) which was based on the evaluation of residues from the MIS's trial burn demonstration.

The second exclusion for residues from the MIS was granted to RCB on March 11, 1988 (see 53 FR 7903) for residues from the incineration of dioxin-contaminated cancellation pesticides (i.e., 2,4,5–T and Silvex). That exclusion was an upfront exclusion which was based on RCB's characterization of the untreated pesticides and identification of potential products of incomplete combustion. The March 11, 1988 exclusion was made conditional upon specific monitoring, sampling, and analysis requirements which were designed to confirm that the residues are non-hazardous.

II. Disposition of Petition

A. Syntex Agribusiness, Inc.

1. Proposed Exclusion

Syntex petitioned the Agency for an upfront exclusion from EPA Hazardous Waste No. F020 of incineration residues from the treatment of wastewater treatment sludge, previously held in a lagoon at Syntex's Springfield, Missouri facility, in the EPA Mobile Incineration System (MIS). Syntex based its petition on the expected low concentrations of the listed constituents in the incineration residues. In the proposed rule, the Agency concluded that data submitted by Syntex, in conjunction with the verification testing conditions which the Agency proposed to require as part of a final exclusion, substantiated Syntex's claim that the listed constituents of concern would not be present in the incineration residues at or above levels of regulatory concern. Furthermore, Syntex submitted data on other non-listed hazardous constituents expected to be present in the sludge and potentially present in the incineration residues as products of incomplete combustion. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the incineration residues at or above levels of regulatory concern. See 52 FR 33439, September 3, 1987, for a more detailed explanation of why EPA proposed to grant Syntex's petition for these incineration residues.

2. Agency Response to Public Comments

General. The Agency received public comments on the proposed rule from six different interested parties. The commenters were generally in favor of the Agency's proposed decision to exclude the incineration residues from the treatment of Syntex's lagoon sludge. As will be discussed in more detail below, several commenters submitted detailed comments arguing that the proposed testing requirements and accompanying delisting levels were too conservative.

Several commenters stated that the conditions of the proposed exclusion were so conservative that the impact of the exclusion would be to discourage future incineration of similar dioxin-contaminated materials, despite clear Congressional preference for permanent treatment of hazardous waste. The Agency strongly disagrees. EPA believes that the successful incineration of the lagoon sludge and upfront exclusion of the resultant incineration residues will encourage an otherwise reluctant commercial hazardous waste management industry to step into the dioxin management business. EPA also believes that the conservative approach to the exclusion of these materials demonstrates a commitment to meeting statutory requirements to ensure protection of human health and environmental safety while encouraging permanent treatment solutions.

Two commenters stated that the proposed low delisting levels for certain organics, particularly dioxin, would require the MIS to operate with extended residence times to ensure destruction of these constitutents to the delisting levels. The commenters believed that this is unnecessary and will (1) effectively reduce the capacity of the MIS, (2) significantly increase operating costs, and (3) deter future thermal treatment of hazardous wastes. One commenter questioned whether the MIS would be able to achieve the low delisting levels for dioxin when operating at capacity. One commenter also questioned whether the Agency could justify imposing higher operating costs when health-based standards for dioxin are uncertain.

The Agency acknowledges that effective hazardous waste treatment and detoxification can be quite expensive and time-consuming. The Agency also recognizes that its conservative approach to protecting human health and the environment may cause increased treatment costs compared with less protective approaches. Notwithstanding, the Agency believes that the availability of upfront exclusions, even with conservative conditions, will encourage such treatment. The Agency also believes that the conservative conditions applicable to today's exclusion are necessary to protect human health and the environment, can be realized by the MIS, will permit treatment of these wastes, and will serve to demonstrate that the MIS can generate non-hazardous residues when incinerating the Syntex lagoon sludge. (Information is in the docket reflecting the 1985 Denney Farm trial burn and process descriptions of the MIS and demonstrating the likely ability of full-scale operations to meet delisting levels.)

Two commenters stated that the Agency failed to provide an adequate opportunity to comment on the proposal. The commenters believed that the administrative record for the proposal was inadequate to evaluate: the conservative assumptions employed and calculations used in deriving health

based numbers and delisting levels; the presence of certain constitutents; and the difference in approach from the 1985 exclusion and other Agency activities. Although EPA believes that the record was and is fully adequate to support the proposal and final action, the Agency has provided in today's rulemaking preamble additional information to address specific concerns raised by this and other commenters. This information includes historical background on the 1985 exclusion for the MIS and on the evolution of the Delisting Program's rulemaking activities and criteria over the past three years. Because many of the health-based levels used to set delisting levels have been published in previous delisting decisions and were available in the docket, and because the Delisting Program's analytical approach and the MIS technology have been subject to extensive public notice and comment and were fully referenced in the notice of proposed rulemaking, the Agency believes that the administrative record was replete with necessary and sufficient information upon which the interested parties could comment. Further, the Agency believes that the proposal, the documents referenced therein, and the background documents contained in the regulatory docket contained adequate information upon which to evaluate the likely presence of constitutents of concern. These documents included the calculations, equations, health-based regulatory levels, and solubilities used to determine the maximum allowable treatment residue concentrations.

One commenter noted that the proposed rule did not indicate where the incineration residues will be disposed. The commenter was concerned that if the residues are disposed of at the Syntex Springfield site, several endangered or threatened species could be impacted and recommended that the Agency coordinate with the Fish and Wildlife Service to determine if impacts to specific fish and wildlife resources could occur. In response to these comments, the Agency notes that the specific disposal sites for the incineration residues were not identified because the disposal scenarios had not been finalized at the time of the proposal. In addition, petitioners are responsible for complying with all relevant federal, state and local regulations. States may also enforce more stringent requirements than the Federal RCRA program, and may choose not to delist listed wastes. Further, petitioners are also independently responsible for complying with any applicable regulations or controls established by the Fish and Wildlife Service regarding endangered species.

The Agency believes, in response to the commenter's specific concern with the potential impact of the petitioned wastes on fish and wildlife, that the environmentally conservative maximum allowable treatment residue concentrations established in today's rule should be protective of the environment, including fish and wildlife. The excluded waste volumes are finite and relatively small, which will minimize any potential impacts. Further, the impact on fish are expected to be virtually nonexistent due to the dilution of the finite volume of wastewater by a fish-bearing stream or river that might receive the waste. The chronic value for 2,3,7,8-TCDD (one of the major constitutents of concern in the petitioned waste) in rainbow trout is $<0.001 \mu g/l$ (Ambient Water Quality Criteria for 2,3,7,8-Tetrachlorodibenzo-p-dioxin, U.S. EPA, Office of Water Regulations and Standards, February, 1984) in comparison with the maximum allowable wastewater concentration of 0.002 ppt ($2x10^{-6} \mu g/l$) established in today's rule.

The remainder of this section addresses specific aspects of the proposal on which the Agency received comment, including differences from previous related exclusions, EPA's modeling approach, and specific comments on the proposed conditions. In responding to comments and in considering approaches to and criteria for the proposed and final exclusions, the Agency has kept an open mind and has applied its best, current technical judgment.

a. *Differences from 1985 Exclusion.* One commenter characterized the proposal as "a startling and largely unexplained departure" from the approach used in the original exclusion for the MIS in 1985 (see 50 FR 30272, July 25, 1985). The commenter noted that the materials covered by the 1985 exclusion fall into the same categories of dioxin-contaminated wastes (F020, F022, F023, F026, F027, and F028) and will be processed in the same incinerator as the Syntex waste, yet are subject to different delisting criteria.

The Agency's approach to the evaluation of petitions has evolved since the 1985 exclusion. Since that time, for example, the Agency has adopted the organic leachate model (OLM) as an analytical tool in reviewing delisting petitions (see 51 FR 41084, November 13, 1986). The OLM allows the Agency to evaluate the potential mobility of hazardous organic constituents. In addition, the Agency has implemented the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA) that the delisting process consider all factor (including additional constituents) which could cause a waste to be hazardous rather than only those factors for which a waste was listed. EPA has also published a guidance manual (see "Petitions to Delist Hazardous Wastes — A Guidance Manual", U.S. EPA, Office of Solid Waste, (EPA/530-SW-003), April 1985) which outlines the information needed in a delisting petition. Further, the recent cancelled pesticides final rule (see 53 FR 7903) and today's final rule are examples of the Agency's current ability to evaluate and to grant "upfront" exclusions.

One of the major differences between the 1985 exclusion and the Syntex proposal is that the Syntex proposal was for an "upfront" exclusion; that is, the treatment residues from the incineration of the Syntex lagoon sludge have not yet been generated and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues for the EP toxic metals and hazardous organic compounds (identified in the petition as potential constituents of concern), including dioxin. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. Because similar data for the Syntex treatment residues do not yet exist, the Agency is requiring as part of this final exclusion extensive verification sampling and analysis of the incineration residues when generated.

A second difference is that the materials to be incinerated in these two cases are different, i.e., contaminated soils and solvents versus wastewater treatment sludge. A comparison of the constituents of concern for the two matrices shows differences in the constituents of concern, as well as varying concentrations of constituents of concern, as well as varying concentrations of constituents common to both matrices. As a result of these inherent differences, the exclusions for the two matrices are slightly different.

The levels of regulatory concern for the metals differ for the two petitions due to application of the vertical and horizontal spread (VHS) model (see 50 FR 48896, November 27, 1985). As discussed in the preamble to Syntex's proposed exclusion, the VHS model results in a scale which suggests that a large volume of waste exhibiting a particular extract level could be considered hazardous, while a smaller

volume of the same waste could be considered non-hazardous (see 52 FR 33441). Because the waste volumes of the two petitions vary, levels of concern for metals in these wastes also vary.

Further discussions of specific differences between the 1985 exclusion and the Syntex proposal, as well as discussions of the differences between the cancelled pesticide final exclusion and the Syntex proposal, are provided later in today's notice in Sections II.A.2.c. ii, iv, and v.

Thus, differences between these actions properly reflect differences in the petitioned wastes and the Agency's evolving technical expertise in assessing the hazards of wastes proposed for exclusions. These differences have been publicly noticed in numerous post-1985 actions that appeared in the Federal Register and were fully referenced in the proposal. The Agency believes strongly that it should be able to apply superior methods of analysis or more accurate information when they become available to ensure protection of human health and the environment. Of course, commenters are encouraged to assess the Agency's evolving methodologies and to comment on specific criteria where proposed. Specific challenges to the analysis for the proposed exclusion of the Syntex sludge are described below.

In light of the public comments on the differences between the recent and the 1985 exclusions for the MIS, the Agency has reevaluated the data submitted in 1985, as well as data collected more recently on the MIS residues in order to respond to public comment. These evaluations confirmed the ability of the MIS to generate non-hazardous residues complying with the conditions specified in today's exclusion when treating materials listed in the 1985 rule. Thus, the Agency continues to believe that the differences between the 1985 exclusion and the recent exclusions for the MIS are appropriate and that the 1985 exclusion is protective of human health and the environment.

b. *Comments on the Use of the OLM and VHS Models.—General.* One commenter was concerned that the proposed delisting criteria were generated from the VHS model with no adjustments of the criteria made on the basis of actual health effects. The commenter stated that the extreme range of levels of concern suggested by the model (i.e., 15 percent toluene in the solid residues and 0.002 ppt dioxin in the wastewater) indicate that adjustments be considered to reflect the "real issues" of protecting human health and the environment, while encouraging the use of proven technology.

In response to this comment, the Agency notes that its evaluation was based on a reasonable worst-case disposal scenario for the petitioned wastes. In particular, the Agency looked at the potential health effects due to the ingestion of contaminated groundwater. The range of delisting criteria are a function of the significant differences in constituent toxicities. The Agency has also considered other exposure scenarios and models, and the validity of the assumptions and evaluations made using the VHS and OLM models. As will be discussed later, the Agency has eliminated certain constituents from the testing requirements because the Agency has determined that they cannot realistically be expected to be present in the incineration residues at the levels of regulatory concern. The Agency has also responded to certain comments regarding the method of estimating the levels of concern and has adjusted the VHS model calculations accordingly. Further details are provided later in today's notice.

The Agency also believes that the Delisting Program, particularly through the implementation of upfront exclusions, provides incentives for waste treatment using proven technologies. The identification of target levels of concern that operators can use for process design and optimization will encourage permanent treatment while protecting human health and the environment.

Appropriateness of Modeling Approach. Three commenters expressed concern regarding the Agency's use of the OLM and VHS models as factors in setting the delisting levels, criticizing the conservative assumptions and parameters of the models. For the purposes of today's rule, EPA has considered the appropriateness of the OLM/VHS model approach and of the models' parameters. First, the Agency determined that a reasonable worst-case approach would be appropriate before relieving a waste from the protective management constraints of RCRA Subtitle C. Second, the Agency decided that a landfill exposure scenario would be appropriate. EPA assessed the nature of the solid residues which will be generated by the MIS and concluded that landfilling is the most reasonable worst-case disposal scenario. (Due to the lack of organic content in the residues following incineration, land treatment would probably not be used. Similarly, management in an impoundment is not expected.) In terms of the liquid residues, EPA determined that the groundwater dilution of constituents afforded by application of the VHS model was appropriate, given past management practices for the MIS's scrubber water (i.e., land application).

The Agency further considered whether the OLM/VHS model was the landfill model of choice. The primary criteria in this evaluation were (1) the need to apply a generic model (i.e., non-site specific), and (2) the need to apply an environmentally conservative model. Further, the Agency believes that a conservative approach is particularly warranted in regard to upfront exclusions, because the petitioner has not yet generated any residues and therefore has not provided any waste characterization.

One commenter disagreed with the Agency's application of the OLM and VHS models to this particular waste, noting that these models "assume a worst case disposal of a waste in a municipal landfill with aggressive leachate at pH 5.2 because of the degradation of the municipal solid waste". The commenter believed that it is highly unlikely that the residues would be accepted by a municipal landfill and that the residues will most likely be buried in a capped site designed to minimize water contact and infiltration. The Agency, however, cannot rule out a municipal landfill as a reasonable worst-case disposal scenario because delisted wastes are not subject to Subtitle C controls. Further discussion of other models considered and constituent mobility is provided below.

Consideration of Other Models. The Agency considered the appropriateness of other exposure assessment models which have been developed specifically for dioxin as alternatives to the OLM/VHS model approach. An approach developed by the Center for Diseases Control (CDC) was considered as an alternative (see Kimbrough, R.D., H. Falk, P. Stehr, 1984, Health Implications of 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) Contamination of Residential Soil, *J. Tox. Env. Health*, 14:47–93). The CDC concluded through its modeling effort that concentrations of 2,3,7,8-TCDD above 1 ppb in residential soil are unsafe. Several commenters believed that the Agency should adopt the CDC 1 ppb standard rather than the proposed delisting levels, which they claimed were excessively conservative.

The major differences between the CDC approach and the VHS model are summarized below:

- The CDC used a significantly different unit cancer risk (a factor used to compute a regulatory dose) from that used by EPA to set the health-based regulatory level. Because the CDC unit risk factor is lower, a higher concentration could be set for the same degree of overall risk than if EPA's factor were used.
- The CDC approach considers exposures to dioxin contaminated soil via ingestion, dermal absorption, and inhalation, while the VHS model considers ingestion of ground water.
- The CDC analysis was originally meant to specify acceptable levels of contamination which have become fixed to residential soils. The delisting levels determined by the VHS model represent raw waste concentrations.

The 1 ppb action level for residential soils recommended by CDC corresponds to an acceptable dose level of 636 femtograms/kilogram/day (fg/kg/day). CDC calculated that the Virtually Safe Dose (equivalent to a cancer risk of 10^{-6}) for dioxin falls within the range of 28 fg/kg/day to 1,428 fg/kg/day, but justified the chosen value of 636 fg/kg/day as acceptable in the context of their specific analysis. If the unit cancer risk of 6.4 fg/kg/day calculated by EPA (Health Assessment Document for Polychlorinated Dibenzo-p-dioxins, U.S. EPA, 1985) is used in the methodology presented by CDC, the resultant "action level" would be about 100-fold less than the 1 ppb level, i.e., on the order of 10 ppt (see the docket to this notice for the calculations supporting this estimation). Despite the numerous differences in the exposure scenarios and modeling approaches, this level is comparable to the levels of concern predicted by the OLM/VHS model analysis for solids. (Additional discussion on challenges to the Agency's unit cancer risk used in the proposal and today's rulemaking as being overly conservative is presented in Section II.A.2.c.v.)

In general, the exposure scenarios considered in the CDC approach are appropriate for dioxin. However, the use of EPA's unit risk number with the CDC assumptions results in a similar, conservative level of concern as the use of the OLM/VHS model. Furthermore, the CDC analysis did not take into account other routes of exposure, including ground water and food chain bioaccumulation. Under certain circumstances, the Agency believes that bioaccumulation may be an equally significant exposure route as those addressed in the CDC approach.[1] The Agency also notes that a number of assumptions used in the CDC approach, including estimated soil ingestion rates, have been revised or have been the subject of serious scientific debate since the development of the CDC action level. Based on the uncertainty associated with the underlying assumptions of the CDC approach and the difference in unit cancer risk levels, the Agency decided that the CDC approach is not a preferable alternative to the VHS model for evaluating this petition at this time. Furthermore, EPA does not believe that the values obtained by employing the VHS model, as confirmed by the modified CDC approach, are excessively conservative.

The Agency also considered application of developmental work by EPA's Office of Research and Development (ORD) for the evaluation of dioxin-related delisting petitions. ORD is currently preparing a detailed exposure assessment document for dioxin. One portion of this work evaluates a variety of potential exposure routes for dioxin-contaminated soils and assigns estimated risk levels to these exposure routes for a given scenario. The Delisting Program has evaluated the merits of this approach and believes that, when finalized, this approach will be a valuable tool. ORD's work, however, has not been released for use at this time and is undergoing extensive peer and Science Advisory Board (SAB) review. Given the preliminary nature of this approach, the Agency has determined that the ORD approach should not be used at this time. However, application of ORD's draft document to the facts of this case supports the low levels of concern predicted by the OLM/VHS model approach (i.e., low ppt level). (This information has also been placed in the docket.)

Migration and Attenuation. Two commenters submitted comments regarding the appropriateness of the VHS model for setting delisting levels for dioxin, insoluble organics, and metals. Specifically, the commenters noted that the VHS model does not include consideration of actual migration potential of a compound because the model does not account for attenuative mechanisms (such as sorption) which would retard the flow of hydrophobic compounds (such as dioxin) in ground water. The commenters believe that the omission of a migration factor in the VHS model will result in an overestimation of receptor concentrations of dioxin, other organic constituents, and metals. One commenter specifically listed hydrogeological conditions which affect the mobility of metals, such as pH, redox conditions, ionic strength, mineralology, and solid-phase surface area. One commenter also cited draft studies and experiments which attempt to demonstrate low mobility of dioxins.

The Agency acknowledges that sorption effects can play an important part in the migration of contaminants through ground water. Sorption effects, however, are highly variable from site to site and are dependent on many factors, such as soil characteristics and other hydrogeologic conditions. In keeping with the reasonable worst case approach, the Agency has determined not to consider site-specific sorption variables in applying the VHS model to these wastes. An important aspect of this reasonable worst-case scenario is that soil and aquifer conditions would not favor the attenuation of contaminants. Given the known existence of mobilizing factors such as infiltration of acidic leachate or precipitation, leachate mounding, and exceedance of soil attenuation capacity, the Agency continues to believe that this conservative approach is appropriate for the purposes of delisting hazardous wastes. Thus, sorption effects, in fact all attenuative effects including degradation, are assumed to have no effect on the receptor concentrations of ground-water contaminants. For very hydrophobic compounds, this assumption is very conservative. The Agency notes, however, that this assumption becomes significantly less conservative when the hydrophobic compounds are codisposed or leached with solvents which tend to mobilize hydrophobic compounds.

One commenter also stated that the time frame for dioxin to reach the compliance point in the VHS model scenario is on the order of tens of thousands of years and that the dioxin is likely to degrade before actually reaching the receptor. However, the length of time required for contaminants in an aquifer to reach a potential receptor may be highly variable; full analysis of dioxin mobility would necessarily require a substantial amount of site-specific information. As discussed above, the Agency does not believe it appropriate to consider site-specific information in this analysis, especially when the Agency cannot discount the possibility that the wastes may be exposed to solubilizing agents which will tend to mobilize any dioxin remaining in the residues. For these

[1] Rappe, C., H.R. Buser, D.L. Stalling, L.M. Smith, and R.C. Dougherty, 1981. Identification of Polychlorinated Dibenzofurans in Environmental Samples. *Nature*, 292:534–538.

Kuehl, D.W., P.M. Cook, A.R. Batterman, D.B. Lothenback, B.C. Butterworth and D.L. Johnson, 1985. Bioavailability of 2,3,7,8-Tetrachlorodibenzo-p-dioxin from Municipal Incinerator Fly Ash to Freshwater Fish. *Chemosphere*, 14:427–437.

Jensen, D.J., R.A. Hummel, N.H. Mahle, C.W. Kocher and H.S. Higgins, 1981. A Residue Study on Beef Cattle Consuming 2,3,7,8-tetrachlorodibenzo-p-dioxin. *J. Agric. Food Chem.*, 29:285–288.

reasons, the Agency has assumed in using the VHS model that (1) attenuation is insignificant, and (2) soil and aquifer conditions do not favor the degradation of contaminants en route to the receptor point.

Waste Volume. One commenter disagreed with the solids waste volume that the Agency used in the VHS model calculations to determine the levels of concern listed in Conditions (3), (4), and (5) of the proposal. The solids volume used in the proposal included the volume of soils covered by the 1985 exclusion that the petitioner indicated might be co-incinerated with the sludge. The commenter stated that the soil volume should not be incorporated in the VHS model calculation because the soils are currently covered by the 1985 exclusion and the rulemaking only sought an exclusion for the residues from the incineration of Syntex's 775 cubic yards of sludge.

The Agency uses the maximum waste volume estimated by petitioners to calculate the maximum allowable constituent concentrations (i.e., the waste-specific delisting levels) against which the waste residue or its leachate must be tested. Generally, lower waste volumes result in higher (less stringent) delisting levels for individual constituents. The Agency has considered various ways to respond to this comment and has selected an approach which (1) adopts a solids waste volume based solely on sludge incineration, and (2) prohibits co-incineration of sludge and soil. The Agency believes that it would be inappropriate to grant the commenter's full request to allow co-incineration and to promulgate an exclusion based on sludge volumes alone. If co-incineration were to occur, the resultant mixed residues could not be segregated (for the purposes of analysis or disposal) into the volume derived from the sludge and the volume derived from the soils. Thus if the VHS model results used in the exclusion are derived from a sluge-only waste volume, it is not appropriate to allow co-incineration which would result in the generation of a different waste volume. Condition (1) of today's exclusion, presented later in this notice, has been modified to include a prohibition of co-incineration.

The Agency does not believe that this prohibition will be burdensome to the petitioner for a number of reasons. First, the original basis for co-incineration was that 1985 MIS trial burn data suggested that co-incineration with diluent soils might facilitate sludge feed and minimize particle size during combustion. In addition, the soils would also provide a heat sink for the sludge (a heat sink is needed in cases where the heat content of a material to be incinerated exceeds the heat capacity of the incinerator). These concerns have been mitigated by the recent modifications to the MIS described in the proposal to this rule (and available in the docket) which have improved the MIS's ability to successfully treat wastes such as the Syntex sludge. Specifically, an oxygen enriched burner has been added to the kiln. This modification has reduced air flow through the secondary combustion chamber and thus allows for the incineration of high heat content wastes such as the Syntex sludge without the addition of soil to act as a heat sink. In addition to recent changes to the MIS, the Syntex sludge has dried over the past three years which will facilitate feeding this material to the MIS without the use of diluent soils. Thus, based on the MIS modifications and best engineering judgment, the Agency believes that co-incineration is unnecessary and that it is appropriate to revise the waste volume used in the evaluation of Syntex's petition.

The Agency originally calculated a maximum expected volume of residues based on Syntex's estimation of (1) the sludge volume reduction due to incineration, and (2) a maximum sludge to soil mixing ratio. Syntex estimated that 775 cubic yards of sludge would be incinerated and would undergo a 63–67 percent volume reduction during incineration. The Agency accepted this volume reduction estimate as reasonable given the water and organic content of the sludge. (However, the Agency conservatively assumed a 60 percent sludge volume reduction in subsequent calculations.) The Agency's original calculations assumed that, prior to incineration, the sludge would be mixed with diluent soils in a ratio of one pound of sludge to 3.5 pounds of soil. The Agency is now discounting this added volume since co-incineration will be prohibited under Condition (1). The revised maximum volume of solid residues is now estimated to be 310 cubic yards, that is, 40 percent of the original sludge volume (i.e., 775 cubic yards x 0.4).

The resultant revisions to Conditions (3), (4), (5), and (6) are presented later in today's notice. (Condition (2) was not affected by this change because it covers wastewaters.) A new Condition (4) has been added in section II.A.2.c.iii below. As a result, proposed Conditions (4)–(7) have been renumbered (5)–(8), respectively.

Leaching. One commenter stated that the organic leachate model (OLM) is inappropriate for predicting the leaching capacity of highly insoluble compounds because (1) highly insoluble compounds are not well represented in the OLM leaching data base, (2) the insoluble compounds that are represented show a poor correlation with the adopted model, and (3) actual leaching data from municipal incinerator ash show that the OLM overpredicts dioxin leaching levels by a factor of 100.

In response to these comments, some background information on the OLM is appropriate. The OLM was constructed using 353 data pairs representing 53 wastes bearing 73 different constituents. A number of the wastes sampled were bound in hydrophobic matrices (e.g., lumpy oil refinery sludge, viscous chemical manufacturing sludge, and tar/dirt mixtures from production of methyl ethyl ketone), other wastes were bound in inorganic matrices, and one waste type represented incinerator ash (API sludge/incinerator ash). The commenter is correct that the correlation coefficient determined solely for the low solubility constituents in the leaching data base is low. However, the correlation coefficient for any general subset of data studied in a regression analysis will be lower than the correlation coefficient for the overall data set. Part of what the commenter noticed is due to the fact that the low correlation coefficient was generated from a small data set.

The Agency agrees, however, that the variability of leaching data in general is partly responsible for the low correlation. In keeping with the reasonable worst-case approach, the Agency is taking a conservative stance in regard to the high variability in the leaching data on mobility of hydrophobic compounds. For this reason, the municipal incinerator ash data cannot be considered by itself. Even if the municipal incinerator ash data were added to the leaching data base, the paucity of these data would result in little or no effect on the general correlation coefficient.

VHS Model Assumptions. One commenter stated that the VHS model is overly conservative because it assumes that the exposed individual ingests all of his or her water from a drinking water well directly downgradient from the disposal site and that the well is only 500 feet from the disposal site. The commenter did not, however, suggest any data supporting different assumptions.

The Agency agrees that the model assumption that the receptor well is directly downgradient from the disposal site is a worst case assumption. It is not, however, an impossible configuration. Instances of drinking well contamination from municipal landfills are plentiful (see 50 FR 48902, November 27, 1985 for several specific examples). The Agency, therefore, continues to believe that a receptor point situated to receive the highest concentration of contaminant is not unlikely. Further, the Agency often assumes in risk assessment of ingestion scenarios that the exposed 70 kg individual ingests 2 liters a day from a contaminated source over a 70 year life span and continues to believe that this assumption is appropriate. For example, see the notice of data availability for the Water Quality Criteria (45 FR 79318, November 28, 1980), the proposed drinking water standards (50 FR 46936, November 13, 1985), and the proposed expansion of the toxicity characteristic for hazardous wastes (51 FR 21648, June 13, 1986). While these exposure assumptions will not be true for all exposed individuals or all exposure scenarios, the Agency continues to believe that they are appropriate reasonable worst case assumptions.

Conservation of Mass. One commenter disagreed with the application of the VHS model for dioxin because it does not, in general, conserve mass. That is, due to the simplifying assumptions used in the VHS model, the initial velocity of a contaminant entering the aquifer is determined only by the velocity of the ground water, the vertical dispersivity of the aquifer, and the width of the disposal unit. The commenter claimed that this initial velocity is also affected by the properties of the waste materials and net infiltration into the ground water. The commenter stated that, by not considering these factors, the VHS model can overestimate or, more likely, underestimate the dilution that may occur in an aquifer.

EPA acknowledges that the VHS model is more likely to overpredict (rather than underpredict) the receptor concentration of contaminants in any given waste due to the conservative nature of the assumptions underlying the model. EPA also recognizes that all models do not always predict factual values accurately. Notwithstanding, EPA believes that the VHS model provides a useful analytical tool for the evaluation of the hazards posed by these wastes. EPA has considered and rejected the use of alternative models and approaches for this specific petition, as described above. Commenters may, however, demonstrate that more specific alternatives are scientifically valid and adequate to replace such assumptions.

c. *Specific Comments on Proposed Verification Conditions.*—i. *Condition 1—Compliance with Permit Conditions.* The purpose of Condition (1) is to ensure efficient destruction of the constituents of concern by monitoring the operation of the MIS. In response to public comment, the condition has been modified and clarified from the proposal to require compliance with specific permit conditions rather than test burn parameters.

During the time period when EPA was preparing this final rule, the Agency was also finalizing the exclusion for the residues from the incineration of the cancelled pesticides. Very similar comments were received on the two proposed exclusions, many from the same commenter. In preparing responses to these comments, the Agency's approach to upfront exclusions has been refined. Consequently, the Agency is modifying the language in the conditions to improve their clarity.

The revised condition addresses one commenter's concern that, as previously worded, EPA may have been requiring repeated demonstrations of the MIS's ability to achieve the required destruction and removal efficiency (DRE) (see 40 CFR 264.343(a)(2)). This was not the Agency's intent since the DRE demonstration occurs as part of the permitting process rather than through delisting. Further, the MIS has successfully demonstrated its ability to achieve the required DRE for a number of waste matrices and thus additional demonstrations would be unnecessary.

The modified condition requires that the petitioner analyze any residues generated whenever the MIS is operating outside of the limits relevant to the mechanical operation of the incinerator as specified in its permit. The Agency is specifically concerned with a hypothetical situation where the MIS experiences a mechanical system failure (i.e., failure of the secondary combustion chamber (SCC) or the air pollution control system, failure of the kiln to fire, etc.) after Syntex has made a successful demonstration under Condition (7) of the exclusion and has terminated the daily analytical testing specified in Conditions (2) through (6). Although the Agency does not expect these failures to occur, the modified condition requires Syntex to conduct verification testing on the incinerator residues should such a scenario occur.

In addition, the modified condition prohibits co-incineration of the Syntex sludge and diluent soil, as discussed above.

Revised Condition

Condition (1): The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, Syntex must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (6), regardless of whether or not the demonstration in Condition (7) has been made. Co-incineration of the Syntex sludge and diluent soils is prohibited under this exclusion.

ii. *Conditions (2) and (3)—Metals Analyses.—Differences between Syntex Proposal and 1985 Exclusion.* One commenter questioned why the proposal imposed more stringent maximum allowable leachate and treatment residue concentrations for mercury, chromium, and selenium than the 1985 rule, as well as limitations for the remainder of the EP toxic metals, nickel, and cyanide that have no counterpart in the 1985 rule. As discussed earlier, the Agency is requiring in this exclusion that the residues be tested for all of the EP toxic metals, nickel and cyanide because the Syntex proposal is for an upfront exclusion of treatment residues that have not yet been generated or characterized. A similar approach was taken for the development of conditions for the exclusion for the cancelled pesticides. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. No such data exist for the Syntex or cancelled pesticides treatment residues since they were not generated at the time of proposal.

The commenter also questioned why the specific delisting levels for chromium, mercury, and selenium proposed for Syntex are different than the levels listed in the conditions for the 1985 exclusion. As discussed earlier, the delisting levels have been determined by back-calculating from the health-based regulatory levels through the VHS model and are a function of the waste volume. Since the waste volume covered by the 1985 exclusion differs from the volume covered by the Syntex proposal (as well as the expected waste volume from the treatment of the cancelled pesticides), the dilution factors differ and the resultant delisting levels also differ.

Differences between Syntex Proposal and Other EPA Program Levels for Metals. The commenter requested an

explanation of why the proposed delisting levels are lower than the EP Toxicity characteristic limits. The general purpose of the hazardous waste characteristics, such as the EP Toxicity characteristic, is to regulate the worst, rather than all, of the hazardous wastes exhibiting a given characteristic. Wastes leaching concentrations of the EP toxic metals at levels below the EP Characteristic (100 times the National Primary Drinking Water Standards) are not necessarily non-hazardous. Rather, such wastes may be listed as hazardous if, pursuant to the criteria for listings contained in 40 CFR 261.11 of the regulations, these lesser concentrations in combination with other factors are deemed to pose substantial present or potential threats to human health and the environment. Thus, levels established by application of delisting criteria (e.g., the VHS model) that are below the EP Toxicity characteristic levels may properly be considered to be an indication of a waste's hazardousness.

One commenter questioned whether the levels of concern specified in proposed Conditions (2) and (3) are higher than indigenous levels of metals in soils in Missouri. While specific response to this comment is not possible because the commenter did not provide data on actual native soil concentrations of metals, the Agency believes that the commenter may be inappropriately comparing total metal concentrations in soils with the leachable or mobile metal concentrations listed in the conditions of this exclusion. Nevertheless, the Agency is constrained by (1) its legislative mandates to consider *wastes* (which do not include uncontaminated native soils) and their potential risk to human health and the environment, and (2) the delisting petition evaluation which currently does not consider site-specific factors such as background soil levels because the wastes, once excluded, are no longer subject to Subtitle C control.

The commenter also questioned why the levels of concern specified in proposed Conditions (2) and (3) for metals are significantly lower than levels established by the U.S. Department of Agriculture (USDA) for regulating land application of municipal sludge and lower than other levels suggested for cattle feed or compost growing soil. While it is unclear which levels the commenter is referencing, differences in statutory requirements and goals among different regulatory programs and agencies, will, in some cases, result in different levels of concern. Where possible, when programmatic goals and assumptions are similar, EPA attempts to coordinate with other agencies and similar internal programs. For example, maximum contaminant levels (MCLs) established under the Safe Drinking Water Act are used as health-based regulatory levels in delistings. The agency believes that the health-based levels set for the landfill/groundwater reasonable worst-case scenario employed here are necessary to protect human health and the environment in accordance with the mandates of RCRA.

The commenter also questioned why the Agency is requiring such rigorous treatment when data from municipal incinerators indicates that ash from such incinerators can exceed the MIS's delisting levels for both dioxins listed in proposed Condition (5) and the metals listed in proposed Conditions (2) and (3). The Agency believes that the levels of metals and dioxins commonly found in municipal incinerator ash are not relevant to Syntex's delisting petition. Issues related to the presence of metals and dioxin in municipal incinerator ash will be considered in the Agency's overall decision on appropriate management standards for such ash.

Health-based Regulatory Levels. One commenter submitted specific comments on the MCLs which the Agency used in the proposed exclusion as the health-based regulatory levels for the EP toxic metals. The commenter argued that the drinking water standards (MCLs) should not have been used by EPA in establishing the proposed Syntex delisting levels for metals. The commenter claimed that the MCLs are based on chronic exposure scenarios, and would necessarily overestimate the adverse health impact under a scenario where "the MCL is reached only transiently".

The Agency believes that the steady-state VHS model provides a reasonable worst case evaluation of this petition for constituents of concern at a receptor well. In most cases, the concentration of a constituent in the leachate represents only a small fraction of the total mass of the constituent in the waste. Sustained leaching of the constituent is possible, which would lead to chronic exposure to the chemical over long time periods. Therefore, the Agency believes that use of health-based standards (such as MCLs) derived for chronic exposures is valid for evaluation of the Syntex petition.

The commenter also raised a variety of questions concerning the bases of the MCLs for a number of the metals. The Agency's response to these comments is available in the docket to today's rule (see "Response to Public Comments on Health-based Levels Used in the Syntex Proposed Exclusion", May, 1988). The Agency is in the process of revising the MCLs, and all of the points raised by the commenter were acknowledged by EPA in a proposed rule (50 FR 46936, November 13, 1985). As discussed in the docket, EPA does not believe that the questions raised warrant the use of different health-based levels for these constituents in this rulemaking.

The same commenter also challenged the health-based levels used to establish delisting levels for nickel and cyanide. The commenter further questioned why analysis of these constituents was necessary since neither nickel nor cyanide were detected in the untreated sludge. This commenter, in providing comments on the proposed exclusion for the cancelled pesticides, also identified a number of differences in the health-based regulatory levels used for the Syntex and cancelled pesticides proposals. The commenter correctly attributed these differences to updates in the health-based regulatory levels and requested that the Syntex exclusion be finalized using the revised values.

The Agency notes that the nickel standard used to calculate the maximum allowable nickel leachate levels in the incineration residues has been revised from the 0.35 ppm value used in the proposal to 0.5 ppm, to reflect the current reference dose for nickel and in direct response to the commenter's request to use the more current and appropriate values. The bases for the health-based levels are described in detail in a proposed rule establishing restriction levels for the land disposal of "California List" metals and cyanide (see 52 FR 29994, August 12, 1987). These proposed health-based levels were established for the same exposure route as the MCLs (i.e., drinking water), and the Agency believes these levels are adequate for setting delisting levels in this rule. For both chemicals, the commenter noted the uncertainty in the bioavailability of these chemicals when ingested in food or water. The Agency agrees that some uncertainty exists in this area, but believes that the safety factors incorporated into the health-based levels appropriately address these (as well as other) uncertainties.

In response to the commenter's statement regarding the absence of nickel and cyanide in the untreated sludges, the Agency notes that the petitioner did not submit total constituent or leaching data for either nickel or cyanide in the untreated sludge. The commenter's claim that these constituents are absent in the sludge is therefore unsubstantiated.

Furthermore, cyanide is a possible product of incomplete combustion which may form during the incineration process and was listed in Attachment A of the petitioner's March 9, 1987 submittal as a potential constituent of concern. For these reasons, EPA believes that the requirement for analyses of nickel and cyanide in the treatment residues is justified.

Revised Condition. As described below, Conditions (2) and (3) have been modified to address concerns raised by public comment regarding their ambiguity, the waste volume used in the calculation of the maximum acceptable levels for solids, and an update to the nickel standard. Following EPA's refined approach to upfront exclusions, the conditions have been changed to clarify the sampling requirements and to revise the maximum acceptable solid treatment residue concentrations. The technical subject matter of the conditions has not been changed except as specifically discussed.

One commenter expressed confusion regarding the sampling frequency for the wastewater in Condition (2) and the materials to be sampled in Condition (3). The conditions, as presented below, have been modified to address these comments.

One commenter requested that the sampling requirements for Condition (3) be modified so that Syntex can combine the three solid residues (i.e., kiln ash, cyclone ash, and separator sludge) and analyze one sample rather than three (as originally proposed). The Agency has decided to allow proportional compositing of the kiln and cyclone ash due to their expected similarities. The Agency is continuing to require separate analysis of the separator sludge, however, due to known matrix differences and potential compositional differences between the sludge and the ashes which would be masked by compositing. The separator sludge may contain higher concentrations of the more volatile toxic metals and will also contain salts and other compounds which may affect the hazardousness and analysis of the waste. The conditions have been modified accordingly as presented below.

One commenter questioned why proposed Conditions (2) and (3) in the proposal were not subject to the same termination provisions as the organics and dioxin testing conditions (i.e., proposed Conditions (4) and (5), respectively). As will be discussed later in more detail in the context of Condition (7), the Agency agrees with the commenter that Conditions (2) and (3) should be subject to termination under certain circumstances and has modified the exclusion to terminate Conditions (2) and (3) if Syntex can demonstrate that four consecutive batches (one batch of residue from each eight hour burn) of the petitioned residues are non-hazardous with respect to the respective delisting levels of the EP toxic metals, nickel, and cyanide.

The Agency notes that Condition (2) in the proposal contained a typographical error in the maximum allowable wastewater levels for arsenic chromium, lead and silver (see 52 FR 33443). The level of concern should have been *0.61 ppm* rather than 0.061 ppm. The final exclusion contains the corrected value.

The maximum allowable solid treatment residue concentrations in Condition (3) have been recalculated, as discussed earlier, to account for the revised solid treatment residue volume. The revised conditions are presented below:

Revised Conditions

Condition (2): Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal, the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.61 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed according to SW–846 methodologies.

Condition (3): One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed according to SW–846 methodologies. Any residue which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations.

Constituents	Maximum allowable solids treatment residue EP leachate concentrations [1] (mg/l)
Arsenic	1.6
Barium	32
Cadmium	0.32
Chromium	1.6
Lead	1.6
Mercury	0.065
Nickel	16
Selenium	0.32
Silver	1.6
Cyanide	6.5

[1] Corresponds to a maximum waste volume of 310 cubic yards.

iii. *Condition (4)—MEP Test Method for Stabilized Incineration Residues.* One commenter expressed concern that existing data generated by the MIS under the 1985 exclusion show chromium, mercury, and selenium levels which exceed both the levels established in the 1985 exclusion and the levels proposed for Syntex. The Agency acknowledges that the MIS, at times, can generate residues with hazardous levels of mobile metals. The significant degree of toxicity reduction which occurs during incineration is, under certain circumstances, accompanied by an increase in the mobility and concentration of toxic metals in resultant incineration residues. This is due to the oxidative atmosphere found in incinerator kilns. This phenomenon is the basis for the Agency requirement that Syntex test each batch of wastes for certain mobile metal concentrations.

In an amendment to its petition, Syntex has indicated that it intends to stabilize incineration residues that contain hazardous levels of mobile metals using a Portland cement-type stabilization. The Agency recognizes that management of incineration residues often includes chemical treatment of the solid waste matrices to bind mobile metals. The resultant stabilized wastes are frequently created by mixing the solid incineration residues with Portland cement or other similar products. The Agency has previously granted petitions for stabilized wastes. See, for example, 50 FR 37365, September 13, 1985; 51 FR 41310, November 14, 1986; and 53 FR 15422, April 29, 1988. Similarly, incineration followed by ash stabilization was recently proposed as Best Demonstrated Available Technology (BDAT) for certain hazardous petroleum refining wastes (which contain a combination of certain organics and metals) under 40

CFR Part 268 (i.e., the land disposal restrictions rules) (see 53 FR 11742, April 8, 1988). Data from previous delisting petitions and data gathered as part of the development of the land disposal restriction rules indicate that stabilization can be an effective means of reducing the mobility of toxic metals.

For chemically stabilized wastes, the appropriate method to test for concentrations of toxic metals in waste leachate is the Multiple Extraction Procedure (MEP), rather than the Extraction Procedure. See SW–846, Method 1320. Thus, if Syntex stabilizes its ash or sludge residues, it must use the MPE and compare the resultant leachate concentrations to the delisting levels of concern listed in Condition (3). Thus, Condition (4) has been added to require the appropriate test method in the event that Syntex stabilizes any of the solid incineration residues. (Proposed Conditions (4)–(7) have been renumbered (5)–(8), respectively.)

The Agency assumed a maximum waste volume of 400 cubic yards as input to the VHS model to determine the maximum acceptable MEP concentrations in the stabilized waste. This volume assumes worst case conditions that all of the solid treatment residues will be stabilized and that stabilization will result in a 30 percent volume increase. This worst case volume resulted in the same maximum allowable treatment residue concentrations as listed in Condition (3) because the VHS model predicts similar dilution effects for all waste volumes under 475 cubic yards. Thus, Condition (4) requires that the petitioner meet the delisting levels specified for metals in Condition (3). Additionally, Condition (4) is subject to termination provisions similar to those for Condition (3), i.e., Syntex may discontinue testing (upon EPA approval), except that Syntex must continue to stabilize subsequent batches in order to avoid future testing. This requirement is necessary to ensure that future batches, after testing for mobile metals has terminated, are not hazardous due to leachable metal levels.

If Syntex chooses to stabilize the solid residues, the Agency is requiring that the sampling and analyses for organics and dioxins listed in Conditions (5) and (6) be conducted on the residues prior to stabilization. The basis for this requirement is twofold: (1) For organics (including dioxin), analysis of the incinerator solid residues is much easier than the analysis of stabilized residues and thus lower and more protective analytical quantitation limits would be achieved, and (2) analysis of the unstabilized residues is more environmentally conservative because it discounts any dilution of constituent concentrations which may occur during stabilization. Further, stabilization is currently used primarily to minimize the mobility of metals and is not well demonstrated for organics. For these reasons, the Agency believes that the appropriate sampling point for organics analysis is prior to stabilization, if used.

Additional Condition

Condition (4)—If Syntex stabilizes any of the kiln and cyclone ash or seperator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in Condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed according to SW–846 methodologies. Any residue which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized the analyses required in this condition supercede the analyses required in Condition (3).)

iv. Condition (5)—Organics Analyses. One commenter claimed that the sampling conditions were too ambiguous to provide notice upon which to comment. Although the Agency disagrees, several minor modifications have been made to Condition (5) to clarify the condition. Specifically, the sampling requirements have been clarified to refer to the more specific language of revised Conditions (2) and (3), the termination language (i.e., removal of batch testing requirements) has been moved to Condition (7), the calculation of the solids levels has been revised because of the change in estimated waste volume discussed earlier, and revised health-based regulatory levels have been used to calculate the levels of concern for a number of constituents. These changes, which are discussed in more detail below, do not alter the technical effect of the conditions except as specifically discussed.

Differences between Syntex Proposal and 1985 Exclusion. One commenter believed that the Maximum waste residue concentrations proposed for organics are excessively low and are not necessary to protect human health and the environment. The commenter questioned why any testing for organics is necessary, because the 1985 exclusion did not require batch testing for organics. The Agency refers the commenter to the discussions earlier in this notice regarding the differences between the 1985 exclusion and the upfront exclusions proposed in 1987 and 1988 for Syntex and the cancelled pesticides.

Differences between Syntex Proposal and Other EPA Program Levels for Organics. One commenter questioned why the maximum allowable waste concentrations for the organics are less than the levels proposed by EPA for the expanded Toxicity Characteristic (see 51 FR 21648, June 13, 1986). As was discussed earlier with respect to a similar question about the delisting levels for metals and the EP toxicity characteristics levels, the Agency believes it is appropriate that the delisting criteria be more conservative than the hazardous waste characteristics.

Health-based Regulatory Levels. One commenter on the proposed exclusion for the cancelled pesticides pointed out a number of differences in the health-based regulatory levels used for the Syntex and cancelled pesticides proposals. The commenter correctly attributed these differences to updates in the health-based regulatory levels and requested that the Syntex exclusion be finalized using the revised values. In direct response to this comment, the Agency has updated the health-based regulatory levels to use the more current and appropriate values for four constituents of concern, specifically, choloroform, 1,2-dichloroethane, dichloroemethane, and 2,3,4,6-tetrachlorophenol. Slight modifications (due to the application of a consistent policy on the use of significant figures) were also made to the health-based regulatory levels for dibenz[a,h]anthracene, toluene, 2,4,5-trichlorophenol, and 2,4,6-trichlorophenol. The references for the revised numbers are available in the docket.

One commenter stated that it was impossible to comment on the acceptability of the proposed delisting levels because the health-based regulatory levels were not published in the proposal. These health-based regulatory levels were, however, placed in the docket to the notice and were thus available for review to substantiate any comment. Although the Agency believes that availability of such information in the docket fully complies with applicable requirements for notice, the Agency intends to publish such numbers in future proposals.

One commenter objected to the Agency's intention, as stated in the proposal, to add new constituents to the list of constituents in proposed Conditions (4). The Agency has not added any additional constituents to the list in condition (5) (proposed condition (4)).

Constituents of Concern. One commenter believed that the proposal was unclear as to how the list of constituents required to be analyzed as a condition for exclusion was developed since the list did not exactly match the combined lists in Tables 1 and 2 of the proposal. The Agency notes that benz(a)anthracene was inadvertently omitted in Table 2 of the proposal. Table 2 presented potential products of incomplete combustion and other hazardous constituents of concern identified in Table 4 of the 1985 proposed exclusion (see 50 FR 23725) and should have included benz(a)anthracene. Additionally, as was stated in the Syntex proposal, a number of constituents were not included in the condition because health-based regulatory levels are not available.

In response to a comment discussed earlier which stated that the Agency should consider actual health effects, the Agency has eliminated the testing requirements for toluene, 2,3,4,6-tetrachlorophenol and 2,4,5-trichlorophenol in the solid residues since the maximum allowable treatment residue concentrations exceed 1,000 ppm. As discussed in the cancelled pesticide proposal (see 52 FR 7903), the Agency believes that it is highly unlikely that these constituents could be present at such high levels following incineration in the MIS. This conclusion is supported by (1) analytical test results on residues generated previously by the MIS (see Tables 4 and 5, 50 FR 23725, June 5, 1985 and additional data in the docket to this notice); and (2) the MIS's demonstrated ability to achieve 99.9999 percent destruction and removal efficiency (DRE) as required by 40 CFR 264.343(a)(2).

Calculation of Maximum Allowable Residue Concentrations. One commenter requested clarification on how the Agency calculated the maximum allowable treatment concentrations. While this information was provided in the proposal and in the docket to the proposal, the process used in these calculations is reiterated here. The maximum allowable concentrations represent the maximum waste concentrations which could be managed in the reasonable worst case scenario described by the VHS model and would not exceed the Agency's health-based regulatory level at a drinking water well (i.e., compliance point) 500 feet downgradient from the hypothetical disposal site. The maximum allowable levels were back-calculated from the health-based regulatory levels for the constituents of concern through the VHS and OLM models. The maximum expected waste volume of the solid residues was used to determine the aquifer dilution which would occur as the landfill leachate moved through the aquifer to the compliance point. The health-based regulatory levels were divided by this dilution factor to calculate the maximum allowable leachate concentrations for each of the constituents of concern. These maximum allowable leachate concentrations were in turn used in the OLM (which predicts leachate concentrations from total waste concentrations and constituent solubilities) to back-calculate the maximum allowable solid waste concentration. The calculations for the maximum allowable wastewater concentrations assumed that the leachate concentrations would be equivalent to the total wastewater concentrations, that is, the wastewater itself would be introduced directly into the aquifer.

Revised Condition

As a result of the comments and factors discussed above, the condition has been modified:

Condition (5): Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed according to SW–846 methodologies. Any solid or liquid residues which exceed any of the applicable levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations.

Maximum Allowable Wastewater Concentrations (ppm):

Constituents	Concentrations [1]
Benz(a)anthracene	1×10−4
Benzo(a)pyrene	4×10−5
Benzo(b)fluoranthene	2×10−4
Chloroform	0.07
Chrysene	0.002
Dibenz(a,h)anthracene	9×10−6
1,2-Dichloroethane	0.05
Dichloromethane	0.08
Indeno(1,2,3-cd)pyrene	0.002
Polychlorinated biphenyls	1×10−4
1,2,4,5-Tetrachlorobenzene	0.13

—Continued

Constituents	Concentrations [1]
2,3,4,6-Tetrachlorophenol	12
Toluene	120
Trichloroethylene	0.04
2,4,5-Trichlorophenol	49
2,4,6-Trichlorophenol	0.02

[1] Assumes 3,000,000 pounds of wastewater will be generated.

Maximum Allowable Solid Treatment Residue Concentrations (ppm):

Constituents	Concentrations [2]
Benz(a)anthracene	1.1
Benzo(a)pyrene	0.43
Benzo(b)fluoranthene	1.8
Chloroform	5.4
Chrysene	170
Dibenz(a,h)anthracene	0.083
Dichloromethane	2.4
1,2-Dichloroethane	4.1
Indeno(1,2,3-cd)pyrene	300
Polychlorinated biphenyls	0.31
1,2,4,5-Tetrachlorobenzene	720
Trichloroethylene	6.6
2,4,6-Trichlorophenol	3.9

[2] Corresponds to a maximum waste volume of 475 cubic yards.

v. *Condition (6)—Dioxin Analyses.* In response to public comment, EPA has made several modifications to proposed Condition (5). These include: Revised maximum allowable solid treatment residue concentrations to account for the revised treatment solids waste volume, use of Method 8290 instead of the RegionVII High Resolution Gas Chromatography/High Resolution Mass Spectrometry (HRGC/HRMS) method for dioxin analysis, and specification of practical quantification limits (PQLs). These modifications, as well as other issues of concern to the commenters, are discussed in more detail in the following subsections.

Differences between Syntex Proposal and 1985 Exclusion. One commenter objected to the inclusion of testing for dioxin because it is inconsistent with the 1985 exclusion and because the commenter did not believe these levels were accurate. As stated earlier, the conditional testing requirements have been added to verify that the MIS can treat Syntex's sludge as successfully as the petitioner claims it can. If the petition were a conventional petition instead of an upfront petition, the conditional testing requirements may not have been needed. One commenter also claimed that the sampling conditions were too ambiguous to provide notice upon which to comment.

Although the Agency disagrees, several minor modifications have been made to Condition (6) to clarify the condition.

One commenter referenced the 1985 exclusion, pointing out that explicit limits were not set for dioxin at that time, and that the Agency should be consistent and apply similar criteria to the Syntex petition. As stated earlier in the Agency's response to general comments, the Agency's general approach to dioxin and that of the delisting program have developed considerably since the 1985 exclusion was promulgated, and the 1985 exclusion was not an upfront exclusion. Quantitative evaluation criterion, such as the OLM/VHS modeling approach, were not available at the time of the 1985 exclusion. It is, therefore, not appropriate to apply the same criteria to the Syntex petition as were used in 1985.

One commenter noted that the dioxin levels in the proposal are significantly more conservative than the levels considered in the 1985 exclusion. The commenter further noted that the Agency indicated in 1985 that the 1985 detection limit levels for dioxin in solids and aqueous media were not of regulatory concern, even though lower levels were achievable. In 1985, the Agency viewed the determination of dioxins by HRGC/HRMS as an experimental method. The Agency now believes that the better detection limits that are available (see discussion below on Method 8290), and the more conservative levels proposed for this exclusion, are more consistent with the Agency's unit cancer risk values and with the evolution of its reasonable worst case modeling approach. The agency also believes that the development of a more conservative approach is a reasonable means of ensuring protection of human health and the environment.

One commenter submitted a catalog of thermal treatment units which have treated dioxin-contaminated materials in the U.S. and claimed that few of these units have achieved the dioxin delisting levels specified in the proposed exclusion. The Agency has examined the commenter's catalog and has concluded that the referenced thermal treatment units may indeed have actually achieved the delisting levels of concern, as each unit achieved non-detectable levels of dioxin in their ash. Without more information, there is no means to know whether the units did or did not achieve the delisting levels. Notwithstanding, the Agency notes that in some cases the detection limits achieved were equivalent to or below the PQLs finalized in today's exclusion.

The agency also notes that if the data presenting detected levels of TCDD in the 1985 exclusion from the then experimental HRGC/HRMS analysis were re-evaluated using the Delisting Program's current evaluation criteria, the detected levels of 2,3,7,8–TCDD and TCDDs in the 1985 petitioned residues would have fallen below current levels of concern. Specifically, Table 8 of the proposal for the 1985 exclusion (see 50 FR 23727, June 5, 1985) presented uncertified analytic results of 0.7 ppt of 2,3,7,8,–TCDD and 2.6 ppt of TCDDs in the kiln ash. Using the Toxicity Equivalent Factors currently in use by EPA and presented in the Syntex proposal (Risk Assessment Forum, "Interim Procedures for Estimating Risk Associated with Exposure to Mixtures of Chlorinated Dibenzo-p-Dioxins and Dibenzofurans (CDDs and CDFs)", October, 1986), these levels are equivalent to 0.72 ppt TCDD equivalents (0.7 ppt + (2.6 ppt — 0.7 ppt)x(0.001) = 0.72 ppt). This TCDD equivalent value, when evaluated in the OLM/VHS model with the estimated solids volume of 2.4 million pounds for the 1985 exclusion, results in a compliance point concentration of 0.1 parts per quadrillion (ppq), which is below the health-based regulatory level of 0.2 ppq. Therefore, the 1985 exclusion, if reevaluated today, would pass the same analysis required for the Syntex (and for the cancelled pesticides) petition.

One commenter expresses confusion regarding the Agency's discussion of the calculation of the 2,3,7,8–TCDD toxicity equivalent on p. 33444 of the proposed rule. The sentence of concern to the commenter should have read "The toxicity equivalent levels *are calculated by multiplying the factors listed below by any detected levels of tetra-, penta-, or hexachlorodibenzo-p-dioxin or -furan* and summing the values for comparison to the equivalent levels set in Condition (5)." The *underlined* text was inadvertently omitted in the proposal.

Health Based Regulatory Levels and Differences between Syntex Proposal and Other EPA Program Levels for Dioxin. One commenter noted that the levels of concern in the proposed exclusion are higher than standards proposed by the State of Missouri and that the higher levels proposed by EPA may thus have adverse impacts on fish and wildlife resources. While the commenter did not identify specific constituents of concern or standards from the State of Missouri, the Agency assumes that the commenter was referring to the State's zero discharge criteria for dioxin under the National Pollution Discharge Elimination System (NPDES) program. The Agency believes that the level of concern finalized in today's rule of 0.002 ppt of 2,3,7,8–TCDD equivalents in the petitioned wastewater is not of concern because the finite volume of wastewater to be generated would be subject to significant in-stream dilution which would occur if the waste were discharged directly. The Agency notes, however, that petitioners who successfully petition the EPA for an exclusion for their wastes are still responsible for compliance with any more stringent state and local regulations which may be applicable.

In contrast, as stated above, several commenters objected to the proposed dioxin delisting levels as being unreasonably low in light of the Center for Disease Control (CDC) level of 1 ppb for residential soils. Another commenter stated that the proposed delisting levels for dioxin are far more restrictive than the levels currently used in Missouri (i.e., the CDC's 1 ppb level) to designate residential properties as "dioxin sites". This commenter believes that, if the CDC level is in fact correct, other property where potential exposure to the public would be equal to or less than exposure for residential use should be "delisted" at 2,3,7,8–TCDD levels below 1 ppb. One commenter believes that the proposed delisting level of 0.5 ppt for solids is unnecessary to protect the public health and that the decrease in risk between 1 ppb and 0.5 ppt will be very small and difficult to quantify.

As discussed earlier, the Agency believes that the CDC and VHS model approaches result in similar levels of concern when equivalent health-based levels are used as the basis for the analyses. The Agency believes that reasonable worst case assumptions, including the use of conservative health-based levels, are appropriate in establishing protective delisting levels for this exclusion.

One commenter challenged the Agency's unit cancer risk value used to derive the dioxin health-based regulatory level for the VHS model groundwater exposure scenario in this exclusion. The Agency acknowledges that the value used is conservative, but continues to believe that this conservative unit cancer risk value is appropriate for the purposes of this delisting evaluation. The Agency's full response to these comments is available in the docket to this rule (see "Response to Public Comments on Health-Based Levels Used in the Syntex Proposed Exclusion", April 1988).

Maximum Allowable Dioxin Treatment Residue Concentrations.

Some commenters on the Syntex proposal expressed confusion about the presentation of the dioxin delisting levels and the discussion of the detection limits. A number of commenters were concerned that the Agency was requiring that the petitioner achieve detection limits that are as low as the delisting levels. As stated in the Syntex proposal, the Agency recognizes that analytic results at the delisting levels are not currently achievable using available technology and rather intended that the petitioner use the best available analytical method. Further discussion on detection limits is presented later in this section.

The revised maximum allowable solid treatment residues concentration is 5 ppt due to the revised solid residue volume.

Required HRGC/HRMS Method. One commenter stated that the Agency should only require the petitioner to use Method 8280, which is a high resolution gas chromatography, low resolution mass spectrometry (HRGC/LRMS) method, since the Agency granted an exclusion for the 1985 petition on the basis of Method 8280 results. The commenter stated that it is arbitrary of the Agency to require HRGC/HRMS analysis now when HRGC/LRMS was adequate before. Although the Agency stated in 1985 that "in evaluating the detection limits set for kiln ash, CHEAF media, and other solids for the CDDs and CDFs, the Agency does not consider these levels to be of concern", this statement and the means by which the Agency evaluated concerns reflected the technological limits on abilities to detect constituents. Given the levels of concern predicted by the delisting modeling tools, EPA believes that the petitioned residues should be analyzed by the best available method which achieves practical quantitation limits which are as close as possible to the delisting levels. The modeling tools used to determine the maximum allowable treatment residue concentrations were not available at the time of the 1985 exclusion. In addition, HRGC/HRMS methods were experimental technology at that time and no sufficiently refined and established for routine use. Given the current availability of the delisting modeling tools which predict that low levels of dioxin may be of concern, and the availability of HRGC/HRMS analysis, the Agency believes that it is appropriate to make improvements in the methodology used in 1985 in order to develop environmentally and technically responsible exclusions.

The Syntex proposal stated that the Region VII HRGC/HRMS analytical method would be used when analyzing the petitioned residues for dioxin. As previously noted, subsequent to the publication of the Syntex proposal, the Agency proposed and granted an exclusion for the residues from the incineration of dioxin-contaminated cancelled pesticides. Very similar comments were received on the two proposed exclusions and on the analytical method for detecting dioxin, many from the same commenter (Syntex). In preparing responses to these comments, the Agency's approach to upfront exclusions has been refined. Subsequently the Agency has determined to modify Syntex's exclusion to require use of Method 8290 (which is very similar to the Region VII HRGC/HRMS method). Method 8290, as described in the cancelled pesticides proposed and final exclusion, has been subjected to a rigorous development and single laboratory validation process by the EPA Office of Solid Waste (OSW) and the Environmental Monitoring and Systems Laboratory in Las Vegas (EMSL/LV). A full description of the method is available in the docket to this notice.

One commenter protested the Agency's proposed requirement that a HRGC/HRMS method be used to analyze the residues for dioxin. The commenter objected to the use of a method which is complex, costly, has not been subject to general notice and comment through rule-making, and is not in final form. The commenter further stated that laboratories are inexperienced in detecting dioxin homologs other than the 2,3,7,8-TCDD homolog. As stated in the cancelled pesticides proposal and further discussed in the cancelled pesticides final rule, Method 8290 has been subjected to single laboratory validation (see ORD Publication EPA 600/4–86–004, "Protocol for the Analysis of 2,3,7,8-Tetrachlorodibenzo-p-dioxin by High Resolution Gas Chromatography/High Resolution Mass Spectrometry", January, 1986). HRGC/HRMS analysis has been available for several years, and while it is a sophisticated method, it is no longer an experimental procedure. Contrary to the commenter's concerns, a number of Agency and commercial laboratories have participated in the development of this method and are skilled in the detection of a variety of dioxin and furan homologs. As described above, EPA is using Method 8290 in response to challenges to the use of the Region VII HRGC/HRMS method. EPA has received comment on the operation and use of Method 8290 on the cancelled pesticides proposal. Further, SW–846 methods can be used as regulatory requirements in delistings by incorporation into actual rulemakings. This was proposed to be done for the Region VII method, and is being done for Method 8290 in response to the challenges to the Region VII method.

The commenter also expressed concern with the ambiguity associated with the Agency's stated intent to evaluate analytical data to ascertain whether the analytical methods have been conducted properly. The Agency's evaluation of the sufficiency of chemical analyses is multifaceted and readers are referred to SW–846 and the written protocol for individual methods for further discussion of quality assurance procedures. Generally, the Agency considers the results of accuracy and precision QA/QC data as measures of the usefulness of analytical results.

One commenter expressed confusion regarding the Agency's evaluation of detected homologs at levels below the maximum allowable treatment residue concentrations. In response, all detected homologs will be included in the calculation of the 2,3,7,8-TCDD toxic equivalent concentration, regardless of whether the individual homolog is detected above or below the applicable maximum allowable concentration for 2,3,7,8-TCDD equivalents listed in Condition (6).

One commenter recommended that toluene be used instead of benzene in the extraction phase of the analysis. As presented in the protocol for Method 8290, toluene is an acceptable extraction solvent for soil matrices and thus can be used in the analysis.

The Agency acknowledges that there are complications associated with the use of HRGC/HRMS methods. Nevertheless, the Agency is responsible for choosing an analytical method which is best suited for measuring the potential hazardousness of the Syntex incineration residues, not the method which is most convenient and inexpensive. Given the need for high analytical sensitivity to assure careful analyses of residue constituents, the Agency has selected Method 8290. Additionally, the Agency notes that there are a number of laboratories which are familiar with and experienced in the conduct of Method 8290 and therefore would know how to evaluate dioxin homologs properly and whether the method was properly being implemented. Many of these laboratories participated in the development of the method and should be able to provide analytical services with a minimal turn-around and adequate quality control.

Practical Quantitation Limits (PQLs). Several commenters objected to the detection limits specified in the proposal, claiming that they could not be achieved. Further, one commenter objected to the use of these levels and the HRGC/HRMS approach because it would produce false positive results. To further clarify proposed Condition (5) in response to these comments, EPA is specifying in Condition (6) that the petitioner achieve certain practical quantitation limits (PQLs) when analyzing the petitioned residues for dioxin. Several commenters suggested that routinely achievable detection limits (i.e., PQLs) be specified in the exclusion. EPA currently believes that laboratories that are performing Method 8290 on incineration matrices (which are fairly free of interferences) should be able to achieve PQLs of 15 ppt for solids and 120 ppq for wastewaters. The Agency will require these PQLs as the maximum acceptable PQLs. As discussed previously in the cancelled pesticides proposal and final rule, EPA will specify in exclusions involving dioxin that petitioners provide PQLs rather than minimum detection limits (MDL) for the following reasons:

- PQLs provide a reasonable degree of certainty that true values, rather than false negatives (or false positives), are presented. (If the true sample concentration is equal to the MDL, the analytical results will not be quantitative, *i.e.* will be reported as "less than the MDL" on about 50 percent of all analyses.)
- The PQL takes into account a number of factors that are generally difficult to control and that contribute to the uncertainty associated with the MDL, such as high background levels, significant matrix interference, and operator and instrument variability. PQLs therefore provide a greater degree of certainty as to the actual constituent concentrations.

Other examples of instances where the Agency suggests the use of PQLs or is proposing to establish PQLs (rather than MDLs) include a proposed rulemaking for setting PQLs for volatile organic contaminants in drinking water (*see* 50 FR 46902, November 13, 1985) as well as SW-846 Methods 8240 and 8270 for gas chromatography/mass spectrometry (GC/MS) measurements of organic contaminants.

PQLs are usually determined through interlaboratory studies of the analytical methods. In the absence of rigorous interlaboratory studies, the Agency has estimated PQLs to be from approximately 3 to 10 times the MDL. Based on data submitted by a number of EPA laboratories which have routinely conducted Method 8290, the MDL for 2,3,7,8–TCDD is generally below 5 ppt for solids and 40 ppq for wastewaters. Using a factor of three to determine the resultant PQL, most highly qualified laboratories should be able to achieve PQLs for 2,3,7,8–TCDD of 15 ppt for solids and 120 ppq for wastewaters. The Agency believes these PQLs are also appropriate for all tetra- and pentachlorinated dibenzo-p-dioxins and dibenzofurans (TCDFs and PeCDFs), while PQLs for the hexachlorinated homologs (HxCCDs and HxCDFs) should be 37 ppt for solids and 300 ppq for wastewaters. The basis for the use of these low PQLs for dioxin is that the petitioned residues to be analyzed will be relatively free of interferences due to the incineration process.

Revised Condition

In response to public comment, the condition has been modified as follows:

Condition (6): Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo- p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels must be less than 2 ppq for the wastewaters and less than 5 ppt for the solid treatment residues. Any residues with a detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and pentachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters.

vi. *Condition (7)—Termination Provision and Data Submittal Requirements.* Several commenters approved of the concept of termination of the verification testing after an appropriate demonstration. One commenter suggestd that the Agency develop a statistical approach to determine the appropriate time to stop testing. The Agncy agrees that upfront exclusions for certain wastes (specifically, wastes that are variable) may require a different type of termination provision since analytical data from four consecutive batches may not be representative of constituent variability within the total waste volume. Syntex, however, made an adequate demonstration that the untreated sludge is uniform and the Agency therefore determined that the minimum number of samples specified in 40 CFR 260.22(h) (i.e., four) would be adequate to support the termination provision with the cavet that the four samples (of each residue) be taken from consecutive batches and all samples pass the delisting criteria.

In response to public comment, proposed Condition (6) has been modified to include the termination language which was originally incorporated as part of proposed Conditions (4) and (5), and to apply to Conditions (2), (3), and (4) (which discuss testing requirements for the EP toxic metals, nickel, and cyanide and have been modified and added), to provide for termination upon demonstration of four consecutive clean batches. While Syntex has not substantiated the abuse of these metals and cyanide in the waste to be incinerated, the Agency believes that the verification testing required will be adequate to insure that the incineration residues will not contain hazardous levels of these substances. If hazardous levels are in fact detected, continuous testing would be necessary and all hazardous batches would need to be retreated or disposed in accordance with Subtitle C.

Revised Condition

Condition (7): (A) The test data from Conditions (1), (2), (3), (4), (5) and (6) must be kept on file by Syntex for inspection purposes and must be compiled, summarized, and submitted to the Section Chief, Variances Section, PSPD/OSW (WH–563), US EPA, 401 M Street, S.W., Washington, D.C. 20460 by certified mail on a monthly basis and when the treatment of the lagoon sludge is concluded. All data submitted will be placed in the RCRA docket.

(B) The testing requirements for Conditions (2), (3), (4), (5), and (6) will continue until Syntex provides the Section Chief, Variances Section, with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable treatment residue concentrations listed in these conditions and the Section Chief, Variances Section, notifies Syntex that the conditions have been lifted.

vii. *Condition (8)—Certification Provisions.* No comments were received on proposed Condition (7) and no modifications were made except to renumber it as Condition (8).

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the incineration residues from the treatment of the Syntex lagoon sludge, when subject to the verification testing requirements specified in the exclusion, should be removed from hazardous waste control. The Agency, therefore, is granting a conditional final exclusion to Syntex Agribusiness, Inc. for the incineration residues generated from the treatment of lagoon sludge from Syntex's Springfield, Missouri site in the EPA Mobile Incineration System. These wastes are listed as EPA Hazardous Waste No. F020 and will be generated at the Denney Farm site in McDowell, Missouri. The exclusion remains in effect unless the wastes or waste volumes vary from those described in the petition, proposal, and this notice. The facility would require a new exclusion if the treatment process is altered, and accordingly would need to file a new petition. The facility must treat any such wastes as hazardous unless and until a new exclusion is granted.

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation and the fact that a 6-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA, regulaory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*ie.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: May 26, 1988.

Jeffery Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1008, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following waste stream in alphabetical order to Table 1 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Syntex Agribusiness	Springfield, MO	Kiln ash, cyclone ash, separator sludge, and filtered wastewater (except spent activiated carbon) (EPA Hazardous Waste No. F020 generated during the treatment of wastewater treatment sludge by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri after June 2, 1988, so long as: (1) The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevent to the mechanical operation of the incinerator, Syntex must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (6), regardless of whether or not the demonstration in Condition (7) has been made.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.91 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed according to SW-846 methodologies. (3) One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the following maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Maximum Allowable Solids Treatment Residue EP Leachate Concentrations (mg/L) Arsenic—1.6 Barium—32 Cadmium—0.32 Chromium—1.6 Lead—1.6 Mercury—0.065 Nickel—16 Selenium—0.32 Silver—1.6 Cyanide—6.5 (4)—If Syntex stabilizes any of the kiln and cyclone ash or separator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in Condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized, the analyses required in this condition supercede the analyses required in Condition (3).) (5) Syntex must generate, prior to disposal of residues, verification data from each eight hour run from each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed according to SW-846 methodologies. Any solid or liquid residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Maximum Allowable Wastewater Concentrations (ppm): Benz(a)anthracene—1×10^{-4} Benzo(a)pyrene—4×10^{-5} Benzo(b)fluoranthene—2×10^{-4} Chloroform—0.07 Chrysene—0.002 Dibenz(a,h)anthracene—9×10^{-6} 1,2-Dichloroethane—0.06 Dichloromethane—0.06 Indeno(1,2,3-cd)pyrene—0.002 Polychlorinated biphenyls—1×10^{-4} 1,2,4,5-Tetrachlorobenzene—0.13 2,3,4,6-Tetrachlorophenol—12 Toluene—120 Trichloroethylene—0.04 2,4,5-Trichlorophenol—49 2,4,6-Trichlorophenol—0.02 Maximum Allowable Solid Treatment Residue Concentrations (ppm): Benz(a)anthracene—1.1 Benzo(a)pyrene—0.43 Benzo(b)fluoranthene—1.8 Chloroform—5.4 Chrysene—170 Dibenz(a,h)anthracene—0.063 Dichloromethane—2.4 1,2-Dichloroethane—4.1 Indeno(1,2,3-cd)pyrene—330 Polychlorinated biphenyls—0.31 1,2,4,5-Tetrachlorobenzene—720 Trichloroethylene—6.6 2,4,6-Trichlorophenol—3.9

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels for wastewaters must be less than 2 ppq and less than 5 ppt for the solid treatment residues. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and pentachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters. (7)(A) The test data from Conditions (1), (2), (3), (4), (5) and (6) must be kept on file by Syntex for inspection purposes and must be compiled, summarized, and submitted to the Section Chief, Variances Section, PSPD/OSW (WH-563), US EPA, 401 M Street, S.W., Washington, D.C. 20460 by certified mail on a monthly basis and when the treatment of the lagoon sludge is concluded. All data submitted will be placed in the RCRA docket. (B) The testing requirements for Conditions (2), (3), (4), (5), and (6) will continue until Syntex provides the Section Chief, Variances Section, with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable treatment residue concentrations listed in these conditions and the Section Chief, Variances Section, notifies Syntex that the conditions have been lifted. (8) Syntex must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

[FR Doc. 88-12362 Filed 6-1-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 566

[Docket No. 71.1; Notice 3]

Manufacturer Identification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects two citation references in 49 CFR Part 566, *Manufacturer Identification.* Part 566 requires motor vehicle and motor vehicle equipment manufacturers to supply NHTSA with information identifying themselves, and describing their products.

DATES: This correction is effective June 2, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Tilghman, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street NW., Washington, DC, 20590, (202) 366-2992.

SUPPLEMENTARY INFORMATION: On November 2, 1971, NHTSA published a final rule adding Part 566, *Manufacturer Identification,* to title 49 of the Code of Federal Regulations (CFR). (36 FR 20977, November 2, 1971.) This Part requires a manufacturer of motor vehicle or motor vehicle equipment to supply NHTSA with information identifying the manufacturer, and describing its products.

It has come to the agency's attention that § 566.6 incorrectly refers to § 566.4 in two instances. In the first instance, there is a reference to manufacturers required to submit information under § 566.4. In the second instance, there is a reference to information specified under paragraphs (a) through (c) of § 566.4. In both instances, the correct reference is § 566.5, not § 566.4.

These technical corrections to Part 566 impose no new duties or obligations on any party, nor alter existing ones. Making these amendments simply ensures that the public will have a correct copy of Part 566 requirements. For the preceding reasons, NHTSA finds that notice and comment on this correction notice are unnecessary, and that there is good cause for making the amendments effective in less than 30 days.

Therefore, 49 CFR 566.6 is amended as follows:

PART 566—[AMENDED]

1. The authority citation for Part 566 continues to read as follows:

Authority: Secs. 112 and 119, National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401 and 1407); delegation of authority at 49 CFR 1.50.

2. Section 566.6 is amended as follows:

§ 566.6 Submittal of information.

In § 566.6, remove internal references to "§ 566.4" and add in its place, "§ 566.5."

Issued on May 26, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-12320 Filed 6-1-88; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces an inseason adjustment to the recreational ocean salmon management measures in the subarea from the Queets River to Klipsan Beach, Washington. The adjustment modifies the southern boundary of this subarea (currently at

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Klipsan Beach) to Leadbetter Point, Washington, during July 3–10, 1988. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife (ODFW), that the adjustment is necessary to prevent a shift in fishing effort into this subarea and to prolong the recreational fishery. This action is intended to maximize the harvest of chinook and coho salmon in this subarea without exceeding the ocean share of chinook salmon allocated to the recreational fishery.

EFFECTIVE DATE: Effective on May 27, 1988. Comments on this adjustment will be received until June 13, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. From the U.S.-Canada border to the Queets River, Washington (northern subarea) and from the Queets River to Klipsan Beach, Washington (central subarea), the season will open on July 3. From Klipsan Beach to Cape Falcon, Oregon (southern subarea), the season will open on July 11. The seasons in all three subareas will continue through the earliest of September 5, attainment of subarea coho quotas, or attainment of an overall quota of 29,800 chinook salmon for the area between the U.S.-Canada border to Cape Falcon, Oregon.

A shift in fishing effort of vessels that normally operate in the southern subarea into the central subarea is anticipated during July 3–10, the period when the central subarea is open and the southern subarea is still closed. According to the best available information, this increase in fishing effort could likely result in earlier closure of the recreational fishery north of Cape Falcon due to a more rapid attainment of the overall chinook quota, with a large portion of the quota of 50,000 coho salmon for the central subarea remaining unharvested. By moving the southern boundary of the central subarea, which is currently at Klipsan Beach, northward to Leadbetter Point, Washington, the shift in fishing effort should be prevented. This boundary modification is intended to prolong the recreational fishery and to maximize the available harvest of chinook and coho salmon in the central subarea as established in the preseason announcement of the 1988 management measures.

Therefore, NOAA issues this notice to adjust the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Klipsan Beach, Washington, by modifying the southern boundary of this subarea (currently at Klipsan Beach) to Leadbetter Point, Washington (46°38'10" North latitude) from 0001 hours local time July 3, 1988 through 2400 hours local time July 10, 1988. The closure from 6 to 200 nautical miles of shore remains in effect (53 FR 16002). Beginning at 0001 hours on July 11, 1988, the southern boundary of the central subarea will again be at Klipsan Beach (46°28'12" North latitude).

This notice must be issued as soon as possible to provide immediate notification to fishermen and charter boat operators and to prevent scheduling difficulties or inopportune charter trip bookings. The Secretary has determined, therefore, that good cause exists to issue this notice immediately without affording a prior opportunity for public comment. Therefore, this notice is effective on the date of filing for public inspection with the Office of the Federal Register. Public comments on this notice will be received at the above address for a period of 15 days after the effective date.

Federal regulations at § 661.21(b)(1)(v) authorize the modification of management boundaries if certain findings are made as described in the appendix to 50 CFR Part 661, Section III.B. Accordingly, the Regional Director has determined this inseason adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the ocean salmon fishery management plan as revised by the emergency rule implementing the 1988 management measures. This inseason adjustment is based on consideration of the predicted sizes of salmon runs, harvest quotas, and hooking mortality limits for the area and total allowable impact limitations, and predicted fishing effort for the area to the end of the scheduled season.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, WDF, and ODFW regarding an adjustment of the recreational fishery between the Queets River and Klipsan Beach, Washington. The representative of WDF confirmed that Washington will manage the recreational fishery in state waters adjacent to this subarea of the EEZ in accordance with this federal action.

Other Matters

This action is authorized by § 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–12421 Filed 5–27–88; 4:57 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 106
Thursday, June 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 928

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 905 and 928 (oranges, grapefruit, tangerines, tangelos (Florida), and papayas (Hawaii) for the 1988–89 fiscal year established for each order. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture (USDA) for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by June 13, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 447–3818.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; and 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos, and 122 handlers of Hawaiian papayas subject to regulations under their respective orders, and approximately 13,000 Florida oranges, grapefruit, tangerine and tangelo producers, and 344 Hawaiian papaya producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Citrus Administrative Committee met on May 3, 1988, and unanimously recommended 1988–89 marketing order expenditures of $190,000 and an assessment rate of $0.003 per 4/5 bushel carton of fresh oranges, grapefruit, tangerines, and tangelos shipped under M.O. 905. In comparison, 1987–88 fiscal year budgeted expenditures were $239,375 and the assessment rate is $0.00375 per 4/5 bushel carton. Most of the expenditure categories in the 1988–89 budget are for program administration. Assessment income for 1988–89 is expected to total $186,000, based on shipments of 62,000,000 cartons (4/5 bushel) of oranges, grapefruit, tangerines, and tangelos.

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Interest income will amount to approximately $4,000.

The Papaya Administrative Committee met on April 20, 1988, and unanimously recommended 1988–89 marketing order expenditures of $743,360 and an assessment rate of $0.007 per pound of fresh papayas. In comparison, 1987–88 fiscal year budgeted expenditures were $828,140 and the assessment rate was $0.007 per pound. Major expenditure categories in the 1988–89 budget are $350,000 for advertising and promotion and $60,000 for research, with most of the remainder for program administration. Total income for 1988–89 is expected to amount to $743,360, with assessment income at $476,000 based on shipments of 68,000,000 pounds of papayas. Additional estimated income includes $150,000 from the Hawaii Department of Agriculture, $83,360 from the USDA's Foreign Agricultural Service, and $54,000 from miscellaneous sources.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budgets and assessment rate approvals for these programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 905 and 928

Marketing agreements and orders, Oranges, Grapefruit, Tangerines, Tangelos (Florida), Papayas (Hawaii).

For the reasons set forth in the preamble, it is proposed that new §§ 905.227 and 928.218 be added as follows:

1. The authority citation for 7 CFR Parts 905 and 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 905.227 and 928.218 are added to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.227 Expenses and assessment rate.

Expenses of $190,000 by the Citrus Administrative Committee are authorized, and an assessment of $0.003 per 4/5 bushel carton of assessable fruit is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.218 Expenses and assessment rate.

Expenses of $743,360 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.007 per pound of assessable papayas is established for the fiscal year ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 26, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-12367 Filed 6-1-88; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed revisions to regulation.

SUMMARY: The NCUA Board is proposing to revise Part 704 (Corporate Credit Unions) of its Rules and Regulations. The proposal, which is intended to clarify the regulation, results from NCUA's policy to periodically review each of its regulations. The proposed changes are to the following sections: Section 704.2 includes a definition of "average daily assets" in the regulation. Section 704.3 clarifies items that may be excluded from the assets prior to the reserve transfer computation. Section 704.5 specifies that the annual CPA audit be an opinion audit.

DATE: Comments must be received on or before August 1, 1988.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Linda K. Groth, Corporate Credit Union Specialist, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

Part 704 of NCUA Rules and Regulations, Corporate Credit Unions, was promulgated in 1977 to define a corporate credit union and to establish reserve account for corporate credit unions. The regulation was revised in 1979 and again in 1984 to provide additional requirements pertaining to operations of corporate credit unions. The NCUA Board, in its recent review of the regulation, has determined some minor amendments to the regulations may be appropriate. The following section-by-section analysis describes the proposed changes to the regulation. The NCUA Board requests comment on the proposed changes and any other suggestion modifications to the regulation.

Section-By-Section Analysis

Proposed Section 704.1 Scope.

This section, which has not been modified, states that special rules and authorities have been implemented for corporate credit unions. Section 120(a) of the Federal Credit Union Act provides such authority to the NCUA Board. This section also identifies that state chartered federally insured corporates are covered by § 704.3—Corporate Reserves.

Section 704.2 Definitions.

Paragraphs (a), (b) and (c) have not been changed. Paragraph (a) states the purpose of Corporate Federal credit unions and the criteria for defining a credit union as a Corporate Federal credit union. Paragraph (b) sets forth which federally insured state chartered corporate credit unions must comply with the Corporate Reserve section of this regulation. Paragraph (c) defines "Undivided Earnings" in a corporate credit union. Paragraph (d) defining "Average Daily Assets" is being added to clarify the definition of average daily assets for reserve computation purposes in § 704.3. Corporate credit unions may elect either of two methods of calculating average daily assets. This is not a new requirement. The definition was formerly included only in the preamble to the regulation.

Section 704.3 Corporate reserve.

This section concerns establishment and maintenance of a corporate reserve against loan and certain investment losses. It is proposed to clarify the definition of assets for the purpose of computing reserve transfers. Subtraction of Central Liquidity Facility (CLF) stock subscriptions and reverse repurchase transactions, under the program developed by U.S. Central Credit Union and the corporate network, from assets stated on the balance sheet prior to computing reserve transfers was included in the preamble to the regulation. It is now being included in the regulation as a clarification. CLF stock subscriptions are pass-through entries from U.S. Central Credit Union as part of the agent group membership in the CLF. Reverse repurchase transactions on behalf of the members of a corporate credit union using the U.S. Central Credit Union/corporate network program have been given a previous exemption. The corporate credit unions act primarily as a pass-through to forward the securities to U.S. Central Credit Union. The principal risks and primary benefits are shared by U.S. Central Credit Union and the natural person credit unions that own the securities. NCUA does not intend this specific exemption to become a precedent for all reverse repurchase transactions. The NCUA Board believes that, generally, reverse repurchase transactions are financing arrangements that can and do involve factors that should be subject to standard reserve requirements.

Section 704.4 Representation.

This section, which has not been changed, provides that any representative of a member organization is eligible to be elected as an official to the corporate credit union.

Section 704.5 Annual audit.

This section requires an annual audit of each Corporate Federal credit union by an independent, licensed CPA. It is clarified in the proposal by changing "annual audit" to "annual opinion audit" by an independent, duly licensed CPA, as was the intent of this section of the regulation.

Section 704.6 Programs and services.

The purpose of this section is to grant Corporate Federal credit unions the power to offer innovative programs and services to their members in the areas of investments, liquidity management, payment systems and correspondent services subject to applicable provisions of law, regulation, bylaws and any orders of the NCUA Board. To clarify this section of the regulation, the reference to section 120(a) of the Federal Credit Union Act does not expand the authority of Corporate Federal credit unions in the area of programs and services. The NCUA Board has the power to grant additional authority and may, at some later date, do so through regulation. Programs involving the four activities incidental to the operation of corporate credit unions must still satisfy safety and soundness concerns of the NCUA Board. It is the responsibility of the officials of each corporate credit union, prior to implementation of a new service, to perform a review to ensure that the above requirements are met. Otherwise, the NCUA Board has purposely determined not to impose regulatory detail. Because technology, regulation and various financial groupings and networks are all changing rapidly, the staff believes corporate credit unions can be most responsive in a dynamic environment with the approach outlined above rather than with a specifically authorized list. In the event questions do arise about new services or programs, NCUA is ready and willing to review any proposed activity for legality prior to implementation.

Section 704.7 Prepayment penalties.

There are no changes on this portion of the regulation which specifies the conditions under which a Corporate Federal credit union may assess prepayment penalties on loans.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because all corporate credit unions have assets of at least $1,000,000. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

Section 704.3 of the proposed regulation (corporate reserve requirements) is applicable to corporate federally insured state chartered credit unions (Corporate FISCU's). This is not a new requirement. Corporate FISCU's must reserve according to § 704.3 only if their state law requires lower reserves or allows for charges to reserves other than loan and investment losses provided by § 704.3. NCUA has imposed this requirement on Corporate FISCU's as a condition of National Credit Union Share Insurance Fund Coverage. The Provision has previously been subject to public notice and comment.

List of Subjects in 12 CFR Part 704

Corporate Credit Unions.

By the National Credit Union Administration Board on May 20, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

It is proposed that Part 704 be revised to read as follows:

PART 704—CORPORATE CREDIT UNIONS

Sec.
704.1 Scope.
704.2 Definitions.
704.3 Corporate reserve.
704.4 Representation.
704.5 Annual audit.
704.6 Programs and services.
704.7 Prepayment penalties.

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

§ 704.1 Scope.

This part establishes certain special rules applying to Corporate Federal credit unions and grants certain additional authorities to such credit unions. Section 704.3—Corporate Reserve—has applicability to both Corporate Federal credit unions and federally insured state-chartered corporate credit unions.

§ 704.2 Definitions.

(a) "Corporate Federal credit union" means a Federal credit union:

(1) That is operated primarily for the purpose of serving other credit unions and

(2) Whose total dollar amount of outstanding loans to member credit unions plus shares issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares.

(b) For purposes of § 704.3, a federally insured state-chartered credit union shall be deemed a federally insured state-chartered corporate credit union when its total dollar amount of outstanding loans to member credit unions plus shares and deposits issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares and deposits.

(c) "Undivided earnings" means all forms of retained earnings except

Corporate Reserves (or regular or statutory reserves, as applicable) and, except for valuation allowances established to meet full and fair disclosure requirements of § 702.3.

(d) "Average daily assets" means the daily average of assets calculated on the basis of assets at the beginning and end of the period or, if available, on assets at the close of each day in the period.

§ 704.3 Corporate reserve.

(a) This section concerns the establishment and maintenance of a corporate reserve against loan losses and certain investment losses. For Corporate Federal credit unions, this section applies in lieu of § 702.2 of NCUA's regulations (12 CFR 702.2). For federally insured state-chartered corporate credit unions, this section applies to the extent that applicable state law and regulations:

(1) Require the transfer of a lesser amount to reserves for loan and investment losses than this section or

(2) Allow charges to reserves for other than loan and investment losses as permitted by this section.

(b) At the end of each dividend cycle and prior to paying a dividend (or, at the option of the credit union, on a monthly basis if dividends are paid more frequently than monthly), sums shall be set aside in a Corporate Reserve in accordance with the following schedule:

(1) When the credit union's Corporate Reserve and undivided earnings are less than 2 percent of assets, less Central Liquidity Facility (CLF) stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, at the end of the transfer period, the credit union shall set aside an amount equal to .0015 times the credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365.

(2) When the Corporate Reserve and undivided earnings are equal to or greater than 2 percent but less than 4 percent of assets, less CLF stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, the credit union shall set aside an amount equal to .0010 times the credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365.

(c) Charges may be made to the Corporate Reserve for loan losses and for investment losses caused by factors other than trading losses or market fluctuations. No other charges shall be made except as may be authorized in writing by the NCUA Board or its designee. Charges shall be made in accordance with full and fair disclosure requirements as described in the Accounting Manual for Federal Credit Unions.

§ 704.4 Representation.

An organizational member (i.e., a member other than a natural person) of a Corporate Federal credit union may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend meetings, to vote and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same Corporate Federal credit union.

§ 704.5 Annual audit.

(a) The supervisory committee of a Corporate Federal credit union shall cause an annual opinion audit to be made by an independent, duly licensed CPA and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the appropriate regional office of the National Credit Union Administration within 30 days after receipt by the board of directors.

§ 704.6 Programs and services.

Pursuant to section 120(a) of the Federal Credit Union Act (12 U.S.C. 1766(a)), and subject to other applicable provisions of law, regulation, bylaws, and any orders of the NCUA Board, a Corporate Federal credit union may provide, to its members, services involving investments, liquidity management, payment systems and correspondent services.

§ 704.7 Prepayment penalties.

If provided for in the loan contract, a Corporate Federal credit union is authorized to assess prepayment penalties on loans made at fixed rates and for specified maturities to member credit unions or other organizations.

[FR Doc. 88-12374 Filed 6-1-88; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-88-4]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 1, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 24, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of petition
25591	United States Ultralight Association, Inc.	Part 103	To amend the regulations for powered, fixed-wing ultralight vehicles in order to modify the definition; to establish mandatory airmen certification, vehicle registration and marking; and, in the case of two-place ultralights, to establish standards for pilot's knowledge, experience, medical fitness; and for the airworthiness of the vehicle.

[FR Doc. 88-12317 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-ASW-19]

Proposed Change to Time of Designation for Restricted Area R-6312; Cotulla, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the time of designation of Restricted Area R-6312 Cotulla, TX, by adding the statement "other times by NOTAM" to the existing published hours. This provision would enable use of R-6312 for nighttime fighter training missions.

DATES: Comments must be received on or before July 18, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-19, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Send comments on environmental and land use aspects to: Headquarters, AFSC/DEMV, Andrews AFB, MD 20334-5000; telephone: (301) 981-2863. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to permit expanded use of R-6312 by adding the provision "other times by NOTAM" to the current published time of designation. Training scenarios for the fighter units utilizing R-6312 have become highly sophisticated and one scenario used by two of these units requires that the entire mission be flown at night. The existing R-6312 time of designation is listed as "sunrise to sunset" which prevents any nighttime activity in the area. Because of this limitation, flight crews must use restricted areas located outside the state of Texas. By designating R-6312 for use after sunset, fighter units based at Kelly Air Force Base and Bergstrom Air Force Base could complete all required night training locally, resulting in annual savings approaching one million dollars in fuel and travel costs alone.

If designated for use after sunset, it is projected that R-6312 would be used approximately three nights per week, two hours per night. Procedures have been refined to maintain very precise scheduling control of the area and to release the airspace to Houston Air Route Traffic Control Center when not required for military training. The U.S. Navy has installed a VHF radio site at R-6312 which allows nonparticipating pilots to receive absolute real-time status information about the area. Section 73.63 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R-6312 Cotulla, TX [Amended]

By removing the current time of designation and substituting the following:

Time of designation. Sunrise to sunset; other times by NOTAM.

Issued in Washington, DC, on May 25, 1988.

Sheldon Wagaller,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-12316 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 88-ASW-11]

Proposed Alteration of Jet Route J-17

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to alter the description of Jet Route J-17 located in the vicinity of Abilene, TX. The FAA proposed to realign J-17 by adding a west dogleg between Abilene and San Antonio, TX. This action would provide increased safety by providing improved course guidance in the vicinity of Brownwood, TX, Military Operations Area (MOA).

DATE: Comments must be received on or before July 15, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-11, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-17 via a west dogleg between Abilene and San Antonio. The Fort Worth Air Route Traffic Control Center has requested the alteration to provide improved course guidance in that area, thereby increasing safety in the vicinity of the Brownwood MOA. This action would enhance safety by adding a dogleg in an area where military activity is concentrated. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-17 [Amended]

By removing the words "via Abilene, TX;" and substituting the words "INT San Antonio 323°T(315°M) and Abilene, TX, 180°T(170°M) radials; Abilene;"

Issued in Washington, DC, on May 19, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-12315 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 881-0076]

American Stores Co. et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that American Stores Company, a Dublin, California corporation, that operates supermarkets, divest, in each of certain areas of California, or either (1) a store or stores acquired by American from Lucky Store, Inc.; or (2) a store or stores currently operated by American.

DATE: Comments must be received on or before August 1, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum FTC/S-3302, Washington, DC 20580. (202) 326-2629.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14).

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

Agreement Containing Consent Order

In the matter of American Stores Co., a corporation and Alpha Beta Acquisition Corp., a corpporation.

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of common stock of Lucky Stores, Inc. ("Lucky") by Alpha Beta Acquisition Corporation, a wholly-owned subsidiary of American Stores Company (hereinafter collectively "American"), and it now appearing that American is willing to enter into an Agreement Containing a Consent Order ("Agreement") to divest certain assets and cease and desist from certain acts:

It is hereby agreed by and between American, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Lucky is a corporation organized and existing under the laws of the State of Delaware, with its executive offices located at 6300 Clarke Avenue, Dublin, California 94568.

2. American Stores Company, which owns 100 percent of the voting securities and controls Alpha Beta Acquisition Corporation, is a corporation organized and existing under the laws of the State of Delaware with its executive offices located at 444 East 100 South, Salt Lake City, Utah 84111.

3. Alpha Beta Acquisition Corporation is a corporation organized and existing under the laws of the State of Delaware with its executive offices located at 19100 Von Karman, Irvine, California 92715.

4. American has been furnished with a draft complaint, here attached, that the Bureau of Competition will present to the Commission for its consideration, which, if issued by the Commission, would charge American with violations of the Clayton Act and Federal Trade Commission Act.

5. American admits all jurisdictional facts set forth in the attached draft of the complaint.

6. American waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

7. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify American, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by American that the law has been violated as alleged in the draft of complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to American, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to American Stores Company's address as stated in this agreement shall constitute service. American waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. American has read the proposed complaint and order contemplated hereby. American understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. American further understands that it may be liable for civil penalties in the amount

provided by law for each violation of the order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

(a) "American" means American Stores Company, its parents, subsidiaries (including Alpha Beta Acquisition Corporation), divisions, and groups controlled by American and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(b) "Lucky" means Lucky Stores, Inc., its parents, subsidiaries, divisions and groups controlled by Lucky and their respective directors, officers, employees, agents and representative and their respective successors and assigns.

(c) "Acquisition" means American's acquisition of the issued and outstanding common stock of Lucky.

(d) "California Operation" means the 362 grocery stores of Lucky located in California or Nevada, inventory, trademarks and trade names, warehouse distribution and manufacturing facilities and all related property and facilities.

(e) "Retail grocery store" means any full-line retail food store of 10,000 or more square feet and which sells primarily a wide variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits) and which often sells delicatessen items, bakery items, fresh fish or other specialty items.

(f) "Assets to be divested" means the assets described in Paragraph II (A), also known as "II (A) properties."

(g) "To be acquired store" means any retail grocery store in the California Operation.

(h) "Commission" means the Federal Trade Commission.

(i) "Eagle Food Centers, L.P." means Eagle Food Centers, L.P., a Delaware limited partnership.

(j) "Odyssey Partners" means Odyssey partners, a New York limited partnership.

II

It is ordered that:

(A) If American acquires a majority (more than 50%) of the outstanding voting shares of Lucky, American shall, within six (6) months from the date this Order becomes final, divest, absolutely and in good faith,

(1) Either a to be acquired store or a grocery store presently operated by American in each of Camarillo, California; Cathedral City, California; Fallbrook, California; Indio or Coachella, California; La Mesa, California; Lemon Grove, California; Mill Valley or San Rafael, California; Novato, California; Petaluma, California; Point Loma, California; Santa Barbara, Montecito or Goleta, California; Santee, California; Spring Valley, California; and in the area south of Chula Vista, California and north of the Mexican border; and

(2) Two grocery stores, either or both of which may be a to be acquired store or a grocery store presently operated by American, in the area that includes the cities and towns of Canyon County, Newhall, Saugus and Valencia, California; and

(3) Three stores, any or all of which may be a to be acquired store or a grocery store presently operated by American, in the area of San Mateo County, California from and including San Mateo to Menlo Park; and

(4) Six stores, any or all of which may be a to be acquired store or a grocery store presently operated by American, in Alameda County, California north of the Santa Clara County line up to and including San Leandro, California; and

(5) Grocery stores with aggregate average weekly sales in 1987 of $1.8 million, any or all of which may be a to be acquired store or a grocery store presently operated by American, in Santa Clara County, California

(such stores are hereinafter referred to as the II(A) properties). The II(A) properties are to be divested only to an acquiror or acquirors, and ony in such manner, that receives the prior approval of the Commission.

The Agreement to Hold Separate, attached hereto as Appendix A and made a part hereof, shall continue in effect until such time as such stores have been divested, and American shall comply with all terms of said agreement. The purpose of the divestiture of such stores is to ensure their continuation as ongoing, viable enterprises engaged in the same business in which they are presently engaged and to remedy the lessening of competition alleged in the Commission's complaint.

Within ten (10) days of obtaining control of Lucky's board of directors, American also shall cause Lucky to sell to Odyssey Partners Lucky's entire common limited partnership interest in Eagle Food Centers, L.P.

(B) If American acquires less than a majority (50% or less) of the outstanding voting shares of Lucky, American shall divest on the New York Stock Exchange or in privately negotiated transactions absolutely and in good faith all its interest in such shares within six (6) months from the date this Order becomes final. Pending such divestiture, American shall not, directly or indirectly, (i) exercise dominion or control over, or otherwise seek to influence, the management, direction, or supervision of the business of Lucky, (ii) seek or obtain representation on the Board of Directors of Lucky, (iii) exercise any voting rights attached to the shares, (iv) seek or obtain access to any confidential or proprietary information of Lucky, or (v) take any action or omit to take any action in a manner that would be incompatible with the status of American as a passive investor in Lucky. If American acquires less than a majority (50% or less) of the outstanding voting shares of Lucky, American shall be bound by only Parts II(B), VII and IX of this Order.

III

It is further ordered that within ten (10) days of obtaining control of Lucky's board of directors American will appoint Arthur Andersen & Co. ("A.A."), or such other person as the Commission may approve, who will receive, in the place and stead of Lucky, any information which might otherwise be given by Eagle Food Centers, L.P. ("EFCLP") and said person shall provide to American only that information necessary to prepare public filings or tax returns, or evaluate the terms of the sale of such interest. In no event will such information be other than historical in natute and in no event will such information relate to EFCLP's pricing or marketing practices or expansion plans.

Within ten (10) days of obtaining control of Lucky's board of directors American will cause Lucky to waive any right to serve on any advisory board of EFCLP, or otherwise have access to the books and records of EFCLP. Nothing herein contained shall present A.A., or such other person, from providing to American such information as may be necessary to inform American as to the value of its interest in EFCLP, nor shall anything contained herein prevent A.A., or such other person, from providing requested information to third party purchasers of Lucky's interest in EFCLP. In no event will such information be other than historical in nature and in no event will such information relate to EFCLP's pricing or marketing practices or expansion plans.

Within ten (10) days of obtaining control of Lucky's board of directors American will also cause Lucky to notify EFCLP of Lucky's intention to terminate Lucky's obligations under the Management Information Services Agreement (the "MIS Agreement") entered into between Lucky and EFCLP on November 10, 1987.

Pending termination of the MIS Agreement, no information delivered by EFCLP to Lucky for processing pursuant to the terms of the MIS Agreement shall be disclosed or otherwise made available except to those employees of Lucky as shall be necessary for Lucky to perform its obligations under the MIS Agreement. No information delivered by EFCLP to Lucky under the MIS Agreement shall be disclosed or otherwise made available to officers or employees of American or any of its affiliates (other than to employees of Lucky in accordance with the first sentence of this paragraph). American shall provide written notice to the Lucky employees who will receive or have access to the information provided to Lucky by EFCLP pursuant to the MIS Agreement that such information may not be disclosed or made available to any person except in accordance with the terms of this Order.

IV

It is further ordered that, pending divestiture, American shall maintain the viability and marketability of the II(A) properties and shall not cause or permit the destruction, removal or impairment of any assets or business of the II(A) properties except in the ordinary course of business and except for ordinary wear and tear.

V

It is further ordered that the II(A) properties shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of American.

VI

It is further ordered that:

(A) If American has not divested the II(A) properites within the six month period from the date the Order becomes final, American shall consent to the appointment of a trustee by the Commission to divest the II(A) properties. In the event that the Commission brings an action pursuant to section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), or any other statute enforced by the Commission, American shall consent to the appointment of a trustee to divest the II(A) properties. The appointment of a trustee shall not constitute a waiver by the Commission of its right to seek civil penalties and other relief available to it for any violation of this Order.

(B) If a trustee is appointed by a court or the Commission pursuant to Part VI(A) of this Order, American shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of America, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the power and authority to divest the II(A) properties that have not been divested by American within the time period for divestiture in Part II. The trustee shall have nine (9) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the nine-month period the trustee has submitted a plan of divesture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court for a court-appointed trustee; provided, however, that the Commission, or the court for a court-appointed trustee, may only extend the divestiture period two (2) times.

3. If, at the end of the divestiture period as extended pursuant to paragraph VI(B)(2) above, the trustee has not secured approval of divestiture as required by paragraph II(A), the trustee may, if the Commission determines in order to accomplish the divestiture, add such other assets as are required to effectuate the divestiture of the II(A) properties.

4. The trustee shall have full and complete access to the personnel, books, records and facilities of American and Lucky. American shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. American shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

5. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to American's absolute and unconditional obligation to divest at no minimum price and the purposes of this divestiture as stated in Part II.

6. The trustee shall serve without bond or other security at the cost and expense of American on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to retain at the cost and expense of American such consultants, accountants, attorneys, business brokers, appraisers and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to American and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the II(A) properties. Nothing herein shall be construed to limit the trustee's compensation to an amount not in excess of monies derived from the sale.

7. Within fifteen (15 days) after appointment of the trustee and subject to the approval of the Commission and, if the trustee was appointed by a court, subject also to the prior approval of the court, American shall execute a trust agreemet that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the II(A) properties.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as in Part VI.

9. The trustee shall report in writing to American and the Commission every sixty (60) days from the date the trust agreement is executed concerning the trustee's efforts to accomplish divestiture.

VII

It is furthered ordered that, within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with Part II of this Order, American shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. American shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of the II(A) properties, including the identity of all parties contacted. American also shall include in compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

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VIII

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, American shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, (i) five or more retail grocery stores, within any one year period from the date this Order becomes final, including any facilities that have been operated as a retail grocer store(s) within six months of the date of the offer to purchase the facilities, or any interest in five or more retail grocery stores or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates five or more retail grocery stores, in Los Angeles and Orange Counties, California (excluding those cities and towns identified in subsection (iii) of this Part VIII), or (ii) two or more retail grocery stores, within any one year period from the date this Order becomes final, including any facilities that have been operated as a retail grocery storer(s) within six months of the date of the offer to purchase the facilities, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates two or more retail grocery stores, in the Bay Area comprised of the following cities or towns:

Alameda, California
Albany, California
Belmont, California
Benicia, California
Berkeley, California
Burlingame, California
Campbell, California
Castro Valley, California
Cupertino, California
Daly City, California
El Cerrito, California
El Sobrante, California
Emeryville, California
Foster City, California
Fremont, California
Hayward, California
Hercules, California
Los Altos, California
Los Gatos, California
Menlo Park, California
Millbrae, California
Milpitas, California
Mountain View, California
Newark, California
Oakland, California
Pacificia, California
Palo Alto, California
Pinole, California
Redwood City, California
Richmond, California
San Bruno, California
San Carlos, California
San Francisco, California
San Jose, California
San Leandro, California
San Lorenzo, California
San Mateo, California
San Pablo, California
Santa Clara, California
Saratoga, California
South San Francisco, California
Sunnyvale, California
Union City, California
Vallejo, California

or (iii) any retail grocery store, including any facility that has been operated as a retail grocery store within six months of the date of the offer to purchase the facility, or any interest in a retail grocery store or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a retail grocery store, in the following cities or towns:

Bakersfield, California
Camarillo, California
Canyon Country, Newhall, Saugus, or Valencia, California
Capitola, California
Cathedral City, Coachella, Indio, Palm Desert, Palm Springs, or Rancho Mirage, California
Concord, California
Danville, California
Encinitas, California
Escondido, California
Fallbrook, California
Fontana, California
Las Vegas, Nevada
Napa, California
Novato, California
Ontario, California
Oxnard, California
Palmdale or Lancaster, California
Petaluma, California
Pleasanton, California
Redlands, California
Rialto, California
Riverside, California
Salinas, California
San Bernardino, California
San Diego, California, South of the Miramar Naval Air Station
San Juan Capistrano or San Clemente, California
San Marcos, California
San Rafael, Mill Valley, Fairfax, Greenbrae, Larkspur, San Anselmo, or Sausilito, Tiburon, California
San Ramon, California
Santa Barbara, Montecito, or Goleta, California
Santa Maria, California
Santa Rosa, California
Simi Valley, California
Thousand Oaks, California
Upland, California
Vacaville, California
Vista, California
Walnut Creek, California

Provided, however, that these prohibitions shall not relate to the construction of new facilities by American or the leasing by American of facilities not presently operated as a retail grocery store in those locations.

One year from the date this Order becomes final and annually thereafter for nine (9) more years, American shall file with the Commission a verified written report of its compliance with this paragraph. Such reports shall include a listing of all acquisitions made by American without prior approval of the Commission in any area listed in this Part VIII.

IX

It is further ordered that, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to American made to its principal office, American shall permit any duly authorized representative or representatives of the Commission:

(A) Access during the office hours of American and Lucky, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of American or Lucky relating to compliance with this Order;

(B) Upon five (5) days' notice to American and without restraint or interference from them, to interview officers or employees of American or Lucky, who may have counsel present, regarding any such matters.

X

It is further ordered that American shall notify the Commission at least thirty (30) days prior to any proposed change in the organization such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

Dissenting Statement of Commissioner Azcuenaga

American Stores Company, File No. 881-0076

I dissent from the decision of the Commisison majority to accept for public comment from American Stores Company ("American") this proposed consent order because the order is not sufficiently broad to resolve the potential anticompetitive effects of American's acquisition of Lucky Stores, Inc. ("Lucky"). Based on the information now available, the levels of concentration, conditions of entry, and other facts that bear on the state of competition in the supermarket industry in discrete California markets indicate that the Commission should require the divestiture of a greater number of stores to protect competition in markets in which American and Lucky now compete. I would welcome comment on the scope of the divestiture provision.

I also oppose the highly unusual and curious provision in the order in which the Commission at once takes from and returns to American its ability to reduce competition by acquiring stores in the Bay Area. Simply explained, the Order requires American to divest from 15 to 21 stores in the Bay Area (with the exact number depending on the sales volume of the divested stores) within six months, but allows American to acquire one store per year (without reference to sales volume) in the same area without prior Commission review or approval. If, as the divestiture provision implies, the majority has determined that divestiture of at least 15 stores is needed to preserve competition in the Bay Area, then the acquisisiton of another store in the same area or, as permitted under the order, the reacquisition of one of the same stores required to be divested may equally pose a competitive danger. If, however, the majority is permitting the acquisition of one store per year without prior approval because of doubts about the long-term need for this level of divestiture, then it would be simpler and more efficient simply to lower the number of stores to be divested. The Commission should not require divestiture unless it is certain that the remedy is necessary, but once it is found to be necessary, it should not be diluted. The Commission's mechanism for prior approval of future acquisitions that are competitively unobjectionable is the appropriate way to deal with future changes in circumstances.

Analysis to Aid Public Comment on Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from American Stores Company an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by American Stores Company ("American") of the issued and outstanding shares of Lucky Stores, Inc. ("Lucky"). American and Lucky are competitors in the operation of supermarkets in areas of California and Nevada. In addition, Lucky holds a limited partnership interest in Eagle Food Centers, L.P., which operates supermarkets in competition with American in areas of Illinois, Indiana, and Iowa. Both American and Lucky also operate various warehouses and manufacturing facilities in support of their retail operations.

The agreement containing consent order would, if issued by the Commission, settle the portions of the complaint that allege an anticompetitive effect in the retail sale of groceries by supermarkets in ten areas in California, including: Fallbrook; Santa Barbara, Montecito, and Goleta; Camarillo; South San Diego County; Santa Clarita Valley; Coachella Valley; Novato; Petaluma; San Francisco Bay Area; and the southern portion of Marin County. In addition, the consent order would settle the portions of the Complaint that allege an anticompetitive effect in the retail sale of groceries in areas in Illinois, Indiana, and Iowa.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the retail sale of groceries by supermarkets in the areas described above, and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect.

The Order accepted for public comment contains provisions requiring the divestiture, in each of the areas described above, of either: (1) A store or stores acquired by American from Lucky; or (2) a store or stores currently operated by American. In addition, the Order requires American to sell Lucky's common interest in Eagle Food Centers, L.P., and to provide protection against the receipt by American of competitively sensitive information from Eagle Food Centers, L.P.

Under the terms of the Order, American must complete the required divestitures within six months of the date the Order becomes final. If American fails to complete the required divestitures within the six-month period, American shall consent to the appointment of a trustee, who would have nine additional months to divest the Lucky assets. After the initial nine-month period, if the trustee is not able to find purchasers for the assets, the trustee would have discretion, if the Commission finds it necessary, to sell any other assets of Lucky, up to and including all of the assets of Lucky, in order to effectuate a sale of the stores in the ten areas described above. Any proposed divestiture must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons.

For a period of ten years from its effective date, the Order would also prohibit American from acquiring, without prior Commission approval, assets of or interest in five or more retail grocery stores or any company operating five or more retail grocery stores in Los Angeles or Orange Counties, assets of or any interest in two or more retail grocery stores or any company operating two or more retail grocery stores in the San Francisco Bay Area, or assets of or any interest in any retail grocery store or any company operating a retail grocery store in numerous cities and towns in California and Nevada. Both American and Lucky operate retail grocery stores in the areas comprised of these cities and towns.

It is anticipated that the provisions of this Order would resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the order contained in the agreement.

Emily H. Rock,
Secretary.

[FR Doc. 88-12372 Filed 6-1-88; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 13

[File No. 881-0036]

The Vons Companies et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that The Vons Companies, a El Monte, California corporation, that operates supermarkets, divest, in each of certain areas of

California, of either (1) a store or stores acquired by Vons from Safeway; or (2) a store or stores currently operated by Vons.

DATE: Comments must be received on or before August 1, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum FTC/S–3302, Washington, DC 20580. (202) 326–2629.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

Agreement Containing Consent Order

In the matter of The Vons Companies, Inc., a corporation, SSI Associates, L.P., a limited partnership, and Safeway Stores, Incorporated, a corporation.

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of the outstanding shares of capital stock of certain subsidiaries of SSI Associates, L.P.'s ("SSI") subsidiary Safeway Stores, Incorporated by The Vons Companies, Inc. ("Vons"), and it now appearing that SSI, Safeway Stores, Incorporated and Vons are willing to enter into an Agreement Containing Consent Order ("Agreement"), to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and among Vons, SSI and Safeway Stores, Incorporated, by their duly authorized officers, and counsel for the Commission that:

1. Safeway Stores, Incorporated is a corporation organized and existing under the laws of the State of Delaware with executive offices located at Fourth and Jackson Streets, Oakland, California 94660; and

SSI Associates, L.P., which owns 98.4 percent of the voting securities of Safeway Stores, Incorporated and controls it, is a limited partnership organized and existing under the laws of the State of Delaware with executive offices located c/o Kohlberg Kravis Roberts & Company, 101 California Street, San Francisco, California 94111 (hereinafter SSI and Safeway Stores, Incorporated will be referred to collectively as "Safeway"); and

Vons is a corporation organized and existing under the laws of the State of Michigan with executive offices located at 10150 Lower Azusa Road, El Monte, California 91731.

2. Vons and Safeway have been furnished a draft of complaint, attached hereto as Exhibit A, that the Bureau of Competition will present to the Commission for its consideration, which, if issued by the Commission, would charge Vons and Safeway with violations of section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

3. Vons and Safeway admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Vons and Safeway waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law:

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All rights under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Vons and Safeway, in which event it will take such action as it may consider appropriate, including, but not limited to, an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

This Agreement and the draft of complaint attached hereto shall be placed on the public record for a period of thirty (30) days.

6. This Agreement is for settlement purposes only and does not constitute an admission by Vons or Safeway that the law has been violated as alleged in the draft of complaint here attached.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Vons or Safeway, (a) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist from certain acts in disposition of the proceeding, and (b) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivered by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Vons and Safeway at their addresses as stated in this Agreement shall constitute service. Vons and Safeway waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Vons and Safeway have read the proposed draft of complaint and the Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one to more compliance reports showing that they have fully complied with the Order. Vons and Safeway further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

9. In the event the Order contemplated by this Agreement is not issued by the Commission within ninety (90) days of the date on which this Agreement is placed on the public record, Vons and Safeway may, at their joint option, terminate this Agreement by both delivering written notices of termination of this Agreement to the Commission. The termination shall be effective ten (10) days after the Commission's receipt of such notices of termination, and this Agreement shall thereafter be of no further force and effect. The Commission may, after receipt of the notices of termination from Vons and Safeway under this Paragraph 9, take such action as it may consider

appropriate, including, but not limited to, an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

Order

I.

As used in this Order, the following definitions shall apply:

(A) "Vons" means The Vons Companies, Inc., its subsidiaries, divisions and groups controlled by Vons, and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) "Safeway" means Safeway Stores, Incorporated, its subsidiaries, divisions and groups controlled by Safeway, and their respective directors, officers, employees, agents and representatives and their respective successors and assigns. "Safeway" also means SSI Associates, L.P., its subsidiaries, divisions and groups controlled by SSI Associates, L.P., and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) "Acquisition" means Vons' acquisition of the outstanding shares of the capital stock of certain subsidiaries of Safeway, specifically, Safeway Stores 23, Inc., Safeway Stores 27, Inc., Safeway Stores 29, Inc., and Safeway Stoes 30, Inc. (hereinafter referred to collectively as the "Safeway Subsidiaries").

(d) "Assets to be divested" means the assets described in Paragraph II(A) of the Order, also known as the "II(A) properties."

(E) "To be acquired store" means any retail grocery store in the Safeway Subsidiaries.

(F) "Eligible Person" means Federated Department Stores, Inc., dba Ralphs Grocery Company ("Ralphs"), Albertson's, Inc., Hughes Markets, Inc. ("Hughes"), Certified Grocers of California, Ltd., Big Bear Super Markets #3, and Stater Bros. Inc. ("Stater Bros.") and their respective successors, assigns, subsidiaries, divisions and groups.

(G) "Retail grocery store" means any full-line retail food store of 10,000 or more square feet, and which sells primarily a wide variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits), and which often sells delicatessen items, bakery items, fresh fish or other specialty items.

(H) "Commission" means the Federal Trade Commission.

II.

It is ordered that:

(A) Vons or Safeway, as the case may be, shall divest, absolutely and in good faith, prior to consummating the Acquisition, the number of retail grocery stores (either any of the to be acquired stores, retail grocery stores presently operated by Vons, or any combination thereof) set forth below, and the grocery businesses operated therein, in each of the following locations.

(1) One store in Barstow, California;

(2) One store in Yucca Valley, California;

(3) One store in Santa Clarita, California;

(4) One store in Camarillo, California;

(5) One store in Palm Springs, California;

(6) Two store in Santa Barbara, California (including Goleta and Montecito), but not to include Safeway Store No. 384;

(7) One store in Clairemont, California;

(8) One store in Ocean Beach, California;

(9) One store in the La Presa-Paradise Hills area of San Diego, California;

(10) One store in Chula Vista, California; and

(11) One store in the North Park area of San Diego, California.

Such divestitures shall be (i) to an acquiror or acquirors and only in such a manner that receives the prior approval of the Commission, or (ii) to an Eligible Person.

Notwithstanding the definition of Eligible Person, Ralphs shall not be considered an Eligible Person for the store to be divested in Camarillo, Hughes shall not be considered an Eligible Person for the store to be divested in Santa Clarita and Stater Bros. shall not be considered an Eligible Person for the stores to be divested in Barstow and Yucca Valley.

(B) The Agreement to Hold Separate is attached hereto as Exhibit B and made a part hereof.

(C) In effecting the divestitures, Vons and/or Safeway, as the case may be, shall divest all rights to occupy the premises being divested and to operate a retail grocery business therein and shall retain no control or influence over the retail grocery business to be conducted after the divestiture. The purpose of the divestiture of such stores and this Agreement (including the Agreement To Hold Separate) is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the retail sale of groceries and to remedy the lessening of competition alleged in the Commission's draft of complaint.

(D) The divestitures required by Paragraph II(A) may take place at any time after this Order becomes final, but in no event shall Vons consummate the Acquisition before such divestitures have been made.

(E) In the event that the Commission brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, for any violation of this Order, Vons shall consent to the appointment of a trustee by the Commission to divest the II(A) properties. If the Commission seeks appointment of a trustee by the court in such action, Vons shall consent to the appointment of a trustee by the court. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Vons to comply with Paragraphs II(A) through VI of this Order.

If a trustee is appointed by the Commission or a court pursuant to Paragraph II(E) of this Order, Vons consents to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to Vons consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest any properties listed in Paragraph II(A) and such other properties as are identified in Paragraph II(E)(3) below in any location listed therein in which a store has not been divested as required in Paragraph II(A). The trustee shall have six (6) months from the date the trust agreement is executed to accomplish the divestiture, which shall be subject to the prior approval of the Commission, and subject also to the prior approval of the court if the trustee is appointed by a court.

(3) If, at the end of the six (6) month period, the trustee has not secured approval of the Commission or of the court of divestiture as required by Paragraph II(A), the trustee may, if the Commission determines in order to accomplish the divestiture, add such other assets as are required to effectuate the remedial purposes of this Order.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities of any retail grocery store that the trustee has the duty to divest, and Vons shall develop such financial or other information relevant to the assets to be divested as

such trustee may reasonably request. Vons shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(5) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Vons' absolute and unconditional obligation to divest at no minimum price and the purposes of the divestiture as stated in Paragraph II.

(6) The trustee shall serve without bond or other security at the cost and expense of Vons on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to retain at the cost and expense of Vons such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or court, as the case may be, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Vons and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the II(A) properties and any other assets to be divested in accordance with Paragraph II(E)(3) of this Order.

(7) Within twenty (20) days of the appointment of the trustee, Vons shall, subject to the prior approval of the Commission, and subject to the approval of the court if the trustee was appointed by the court, and consistent with the provisions of this Order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as in Paragraph II of this Order.

(9) The trustee shall report in writing to the Commission and Vons every sixty (60) days, from the date the trust agreement is executed, concerning the trustee's efforts to accomplish divestiture.

III.

It is further ordered that, within sixty (60) days after this Order becomes final, and every sixty (60) days thereafter until Vons and Safeway have fully complied with the provisions of Paragraph II of this Order, Vons and Safeway shall each submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply with, or have complied with Paragraph II of the Order. Vons and Safeway shall include in their respective compliance reports, among other things that may be required from time to time, a full description of contracts or negotiations for the divestiture of the II(A) properties, including the identity of all parties contacted. Vons and Safeway also shall include in their respective compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning the mandated divestitures.

IV.

It Is Further Ordered that:

(A) For a period commencing on the date this Order becomes final and continuing for ten (10) years thereafter, Vons shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six (6) months of the date of the offer by Vons to purchase the facility, or any interest in a retail grocery store, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a retail grocery store, in the following cities or towns:

Las Vegas, Nevada
Bakersfield, California
Santa Clarita, California
Camarillo, California
Ventura, California
Thousand Oaks, California
Victorville, California
Barstow, California
Coachella Valley, California (an area including the cities and town of Palm Springs, Palm Desert, Indian Wells, Indio, Cathedral City, Rancho Mirage, La Quinta, and Coachella)
Yucca Valley, California
Solana Beach, California
Carlsbad, California
Vista, California
Escondido, California
Poway, California
Rancho Bernardo, California
South San Diego County, California (that portion of San Diego County, California that is south of the Miramar Naval Air Station)
Santa Barbara, Montecito and Goleta, California
Palmdale, California
Lancaster, California
Simi Valley, California
Moreno Valley, California

Provided, however, that this Paragraph IV(A) shall not be deemed to require prior approval of the Federal Trade Commission of the construction of new facilities by Vons or the purchase or lease by Vons of a facility that has not been operated as a retail grocery store at any time during the six (6) month period immediately prior to the purchase or lease by Vons in those locations.

(B) For a period commencing on the date this Order becomes final and continuing for ten (10) years thereafter, Vons shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six (6) months of the date of the offer to purchase the facility, or any interest in a retail grocery store, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates any retail grocery store in: (1) The city of San Bernardino, California; or (2) the city of Riverside, California; or (3) the counties of Los Angeles and Orange, California; provided, however, that upon thirty (30) days prior written notice to the Commission, Vons may acquire, directly or indirectly, through subsidiaries or otherwise, any such retail grocery stores, so long as, in any twelve (12) month period, commencing on the date this Order becomes final end continuing thereafter for ten (10) years, the number of such retail grocery stores acquired, directly or indirectly, does not exceed: (1) Two in the city of San Bernardino, California; (2) two in the city of Riverside, California; and (3) ten in the countries of Los Angeles and Orange, California. Provided further, however, that these prohibitions shall not relate to the construction of new facilities by Vons or the purchase or lease by Vons of a facility that was not operated as a retail grocery store at any time during the six (6) month period immediately prior to the purchase or lease by Vons in those locations.

(C) One year from the date this Order becomes final and for each of the nine (9) years thereafter, Vons shall file with the Commission a verified written report of its compliance with this paragraph. Such reports shall include a listing of all acquisitions of retail grocery stores made by Vons without prior approval of the Commission in my area listed in this Paragraph IV.

V.

It is further ordered that, for the purposes of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to Vons or Safeway made to their principal offices, Vons and Safeway shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Vons or Safeway relating to compliance with this Order; and

(B) Upon five (5) days' notice to Vons or Safeway and without restraint or interference from them, to interview directors, agents, representatives, officers or employees of Vons or Safeway, who may have counsel present, regarding such matters.

VI.

It is further ordered that Vons shall notify the Commission at least thirty (30) days prior to any change in its corporate structure that may affect compliance obligations arising out of this Order including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

Dissenting Statement of Commissoner Azcuenaga

Vons Companies, Inc., File No. 881-0036

I dissent from the decision of the Commission majority to accept for public comment from Vons Companies, Inc. ("Vons") this proposed consent order because the order is not sufficiently broad to resolve the potential anticompetitive effects of Vons' acquisition of the southern California stores of SSI Associates, L.P. ("Safeway"). Based on the information now available, the levels of concentration, conditions of entry, and other facts that bear on the state of competition in the supermarket industry in discrete southern California markets indicate that the Commission should reqire the divestiture of a greater number of stores to protect competition in markets in which Vons and Safeway now compete. I would welcome comment on the scope of the divestiture provision.

Analysis to Aid Public Comment on Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from The Vons Companies, Inc. and SSI Associates, L.P. an agreement containing consent order. This agreement has been placed on the public record for thirty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. The Commission will review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by The Vons Companies, Inc. ("Vons") of the capital stock of the Southern California Division of Safeway Stores, Incorporated ("Safeway"). SSI Associates, L.P. owns 98.4 percent of the voting securities of Safeway. Vons and Safeway are competitors in the operation of supermarkets in areas of Southern California and Nevada. Both Vons and Safeway also operate various warehouses and manufacturing facilities in support of their retail operations. Vons proposes to acquire 172 Safeway stores and attendant warehouse and distribution facilities in southern California.

The agreement containing consent order would, if issued by the Commission, settle the portions of the complaint that allege an anticompetitive effect in the retail sale of groceries by supermarkets in seven areas in California, including: Barstow; Yucca Valley; Santa Barbara, Montecito, and Goleta; Camarillo; South San Diego County; Santa Clarita; and Coachella Valley, including the cities of Palm Springs, Palm Desert, Cathedral City, Indio, Coachella, Rancho Mirage and La Quinta.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the retail sale of groceries by supermarkets in the areas described above, and would violate section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect.

The Order accepted for public comment contains provisions requiring the divestiture, in each of the areas described above, of either: (1) A store or stores acquired by Vons from Safeway; or (2) a store or stores currently operated by Vons. By the terms of the Order, Vons may divest stores either to any person or persons approved by the Commission, or to one of six different eligible persons, including Ralph's Grocery Company, Albertson's, Hughes Markets, Inc., Big Bear Super Markets, Stater Bros. Markets, or Certified Grocers of California, Ltd. If a store is divested to one of the six eligible persons, there will be no separate comment period. If the store will be sold to another purchaser, the thirty day comment period will apply.

Vons and Safeway have agreed that they will not close the proposed acquisition until a final Order is issued and the required divestitures have been made. If a final Order has not been issued within ninety days after the date that the proposed agreement has been placed on the public record, the parties have the option of closing the proposed transaction after giving the Commission ten days notice of their intent to close. The Order provides that if Vons consummates the acquisition before completing the required divestitures, or if the Commission brings any action against Vons under section 5(1) of the Federal Trade Commission Act for violation of the Order, or pursuant to any statute enforced by the Commission, Vons shall consent to the appointment by either the Commission or a court of a trustee, who would have six additional months to divest the acquired assets. After the initial six-month period, if the trustee is not able to find purchasers for the assets, the trustee would have discretion, if the Commission finds it necessary, to sell any other assets of Safeway that were acquired by Vons, up to and including all of the assets of Safeway acquired by Vons, in order to effectuate a sale of the stores in the seven areas described above.

For a period of ten years from its effective date, the Order would prohibit Vons from acquiring, without prior Commission approval: (1) Assets of or interest in eleven or more retail grocery stores or any company operating eleven or more retail grocery stores in Los Angeles or Orange Counties; (2) assets of or any interest in three or more retail grocery stores or any company operating three or more retail grocery stores in the city of San Bernardino; (3) assets of or any interest in three or more retail grocery stores or any company operating three or more retail grocery stores in the city of Riverside; or (4) assets of or any interest in any retail grocery store or any company operating a retail grocery store in numerous cities and towns in California and Nevada where both Vons and Safeway currently operate retail grocery stores. In addition, the Order would provide that for those areas in which prior approval is not required for the acquisition of a specified limited number of stores in any twelve (12) month period, Vons must give thirty (30) days prior notice to the Commission. These areas are: (1) Los Angeles or Orange County; (2) the city of San Bernardino; or (3) the city of Riverside.

It is anticipated that the provisions of this Order would resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the order contained in the agreement.

Emily H. Rock
Secretary

[FR Doc. 88-12442 Filed 6-1-88; 8:45 am]
BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 205

Employee Representative

AGENCY: Railroad Retirement Board.
ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to replace current part 205 of its regulations with a new Part 205 which clarifies the definition of an employee representative, identifies the factors considered in determining whether an individual meets the definition of an employee representative, clarifies the legal significance of a determination that an individual is an employee representative, and explains the procedure for reporting and crediting compensation and service under the Railroad Retirement Act for an employee representative.

DATE: Comments must be submitted on or before August 1, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Lori A. Watkins, General Attorney, Railroad Retiremennt Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4567 (FTS 386-4567).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act (45 U.S.C. 231, *et seq.*) provides a system of retirement and disability benefits for railroad employees, their spouses, children, and survivors, who meet certain eligibility requirements under that Act. These benefits are financed by payroll taxes levied under the Railroad Retirement Tax Act (26 U.S.C. 3201, *et seq.*) on covered employers and employes. The Railroad Retirement Tax Act is administered by the Internal Revenue Service. In order to receive benefits under the Railroad Retirement Act an individual must perform railroad service as an employee or an employee representative. Service as an employee representative is reported to the Board purusant to section 9 of the Railroad Retirement Act (45 U.S.C. 231h) and is used by the Board to determine benefits under that Act.

The proposed Part 205 provides a more complete explanation of factors to be considered in determining whether an individual is an employee representative, and how that individual must report his or her service and compensation to the Board, than the current Part 205.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, the information collections imposed by this rule have been approved by the Office of Management and Budget under control number 3220-0014.

List of Subjects in 20 CFR Part 205

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II of Title 20 of the Code of Federal Regulations is proposed to be amended by revising Part 205 to read as follows:

PART 205—EMPLOYEE REPRESENTATIVE

Sec.
205.1 Introduction.
205.2 Definition of employee representative.
205.3 Factors considered in determining employee representative status.
205.4 Claiming status as an employee representative.
205.5 Reports of an employee representative.
205.6 Service of an employee representative.
205.7 Termination of employee representative status.

Authority: 45 U.S.C. 231, 45 U.S.C 231f, 45 U.S.C. 231h.

§ 205.1 Introduction.

This part sets out the various factors considered in determining an individual's status as an employee representative under section 1(b)(1) of the Railroad Retirement Act, and discusses the procedure for reporting and crediting of compensation and service as an employee representative under that Act. An employee representative is considered to be a covered employee under the provisions of the Railroad Retirement Act.

§ 205.2 Definition of employee representative.

(a) An individual shall be an employee representative within the meaning of the Railroad Retirement Act if he or she is an officer or official representative of a railway labor organization, other than a labor organization included in the term "employer" within the meaning of Part 202 of these regulations, who before or after August 29, 1935, was in the service of an "employer" within the meaning of Part 202 of these regulations and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended.

(b) An individual is also considered to be an employee representative within the meaning of the Act if he or she is regularly assigned to or regularly employed by an individual described in paragraph (a) of this section in connection with the duties of the office of employee representative of said individual.

(c) *Example.* A is employed by railroad R as a carman. He is also employed as recording secretary for the local chapter of union U, which has been recognized as the collective bargaining representative of the carmen of R. Although U represents some railroad employees, it is not a railway labor organization as described in Part 202 of these regulations. A is an employee represenative. His service for U is treated as employee service under the Railroad Retirement Act.

§ 205.3 Factors considered in determining employee representative status.

The following factors, among others, are considered by the Board in determining an individual's status as an employee representative:

(a) The name of the last railroad or other employer under the Act by which the individual was employed, and the period of employment;

(b) The present official name of the organization by which the individual is employed, as well as any other name(s) under which that organization operated previously;

(c) The date on which the organization was founded;

(d) The title of the position held by the individual within the organization, and the duties of said position;

(e) The method by which the individual, or the person to whom he or she is regularly assigned or by whom he or she is regularly employed, was authorized to represent members of the organization in negotiating with their employers, the date on which the individual was so authorized, and the time period covered by said authorization;

(f) The purpose or business of the organization as reflected by its constitution and by-laws;

(g) The extent to which the organization is, and has been recognized as, representative of crafts or classes of employees in the railroad industry;

(h) The extent to which the purposes and businesses of the organization are and have been to promote the interests of employees in the railroad industry as indicated by:

(1) The specific employee group(s) represented; and

(2) The proportion of members that are employed by railroad employers in relation to those members that are employed by non-railroad employers;

(i) Whether the organization has been certified by the National Medication Board as a representative of any class of employees of any company;

(j) If the organization has not been certified as representative of any class of employees, the manner and method by which the organization determined that it was the duly authorized representative of such employees;

(k) Whether the organization participates or is authorized to participate in the selection of labor members of the National Railroad Adjustment Board;

(l) Whether the organization was assisted by any carrier by railroad, express company, or sleeping car company, directly or indirectly, in its formation, in influencing employees to join the organization, financially, or in the collection of dues, fees, assessments, or any contributions payable to the organization.

§ 205.4 Claiming status as an employee representative.

An individual who claims status as an employee representative shall file a report in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220-0014.)

§ 205.5 Reports of an employee representative.

An annual report of creditable compensation shall be made by an employee representative in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220-0014.)

§ 205.6 Service of an employee representative.

Service rendered as an employee representative is creditable in the same manner and to the same extent as though the organization by which the employee representative was employed were an employer under the Railroad Retirement Act. (Creditable railroad service is discussed under Part 210 of the Board's regulations.)

§ 205.7 Termination of employee representative status.

The employee representative status of any individual shall terminate whenever the individual or the organization by whom he or she is employed loses any of the characteristics essential to the existence of employee representative status.

Dated: May 23, 1988.
By Authority of the Board.
For the Board.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 88-12301 Filed 6-1-88; 8:45 am]
BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1010

[Docket No. 86N-0211]

Performance Standards for Electronic Products; General; Variances From Performance Standards

AGENCY: Food and Drug Administration.
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing minor clarifying changes in the variance regulations. FDA is also proposing to discontinue its procedure of publishing in the Federal Register notices of the availability of approved variances from performance standards for electronic products.

DATES: Written comments by August 1, 1988. FDA proposes that any final rule based on this proposal be effective 30 days after its date of publication in the Federal Register.

ADDRESS: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arlene Underdonk, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of July 14, 1981 (46 FR 36333), FDA announced the agency's plan for conducting a systematic review of its rules and asked the public to comment on those FDA regulations that are perceived to be the most burdensome. The purpose of the review was to identify regulations that impose unnecessary burdens on the public generally or on specific segments of the public such as small business and, for such regulations, to explore alternative measures for protecting the public health. FDA's review of its regulations was initiated in response to the Regulatory Flexibility Act (Pub. L. 96-354), which requires all regulatory agencies to initiate a review of any regulations which can have a significant impact on small manufacturers, and to Executive Order 12291, which requires agencies to examine new and existing regulations for possible significant impacts on the industry as a whole. Subsequently, as a result of the assessment of public comments received in response to FDA's notice and of other available information, the agency published a notice in the Federal Register of July 2, 1982 (47 FR 29004), that identified the rules initially selected for highest priority review. The July 2, 1982, notice also advised that FDA intended to select other rules for review.

Although the July 2, 1982, notice did not identify the regulation concerning the procedure used to grant variances from performance standards for electronic products, FDA's experience in implementing the regulation since 1974 indicated a need for its review. Therefore, FDA conducted a comprehensive review of this regulation in light of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Order 12291, and FDA's experience in implementing the regulation for the past 14 years.

II. The Variance Regulation

In the Federal Register of April 18, 1974 (39 FR 13879), FDA published its procedures for granting variances from performance standards for electronic products (21 CFR 1010.4). FDA issued the regulation under the authority of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f).

Since publishing the 1974 regulations FDA has published several corrections and amendments to the variance regulation to provide consistency with other regulations (46 FR 8957; January 27, 1981, and 50 FR 7518; February 22, 1985). On August 17, 1979, FDA published in the Federal Register an amendment to eliminate a requirement that FDA publish a notice of issuance of a variance and allow a 30-day objection period (44 FR 48190).

The current variance regulation (21 CFR 1010.4) consists of four paragraphs:

Paragraph (a), *Criteria for variances,* determines when FDA will grant a variance;

Paragraph (b), *Applications for variances,* specifies the contents of an application for a variance;

Paragraph (c), *Ruling on applications,* explains FDA's procedures for approving, denying, amending, or withdrawing a variance and informing the applicant and the public of its actions on an application for a variance;

Paragraph (d), *Certification of equipment covered by the variance,* describes labeling changes to be made by manufacturers (1) to state that the product conforms to the performance standard except for the characteristics covered by the variance; (2) to state that the product conforms to the variance; and (3) to provide for the inclusion of the assigned number and effective date of the variance.

III. Review of the Regulation

FDA initiated a retrospective review of this regulation by analyzing regulatory actions taken as a result of its requirements. The agency also reviewed the costs, benefits, and other effects of the regulation. The purpose of the review was to identify any changes which would minimize unproductive disruption of the marketplace while maintaining an optimum level of public health protection.

As a result of the review, FDA has determined that the regulation continues to serve the purpose for which it was developed; that is, the criteria for granting a variance, the specific contents of an application for the variance, the procedures for FDA to grant or withdraw a variance, and the appropriate labeling changes to accommodate a variance have served FDA's goal of assuring that electronic products are reasonably safe and effective while relieving manufacturers of some unnecessary requirements on a case-by-case basis. Therefore, FDA is not proposing any substantive changes in the requirements of the regulation.

Based upon review of correspondence and applications for variances received from manufacturers of electronic products, FDA is proposing clarifying changes to help applicants to more readily understand the requirements and thus to expend fewer resources in submission of applications.

Also, the agency is proposing to remove the requirement in the variance procedure (§ 1010.4(c)(2)) that a notice of availability of the approved variance be published in the **Federal Register**. The agency believes that publication of the notice of approval is no longer necessary. FDA also believes there is a lack of public interest in the variance procedure, as evidenced by a complete absence of responses to published notices of availability of approved variances.

Interested persons have suggested that FDA announce its approval of variances in publications such as trade journals and FDA's own publications rather than in the **Federal Register**. FDA may adopt this procedure.

If FDA issues a final rule upon its proposal to amend the regulation so as to remove the requirement that the agency announce variance approval in the **Federal Register**, FDA would continue to maintain the administrative record of each variance action as it now does. The agency would continue to file the applications for variance and for amendments and extensions of a variance as well as all correspondence on the applications with the Dockets Management Branch and make them and nonconfidential background information available under the Freedom of Information Act (5 U.S.C. *et seq.*). Removing the requirement for announcement of the approval of variances in the **Federal Register** would not speed up approval of variances, because approval of variances takes place before FDA's publication of notices of availability of the variances. The proposed change in procedure would, however, conserve FDA's resources.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact is required.

V. Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of the Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

VI. Submission of Comments

FDA invites comments from the public and regulated industry regarding to proposed amendments to the regulation. Intrested persons may submit written comments, data, or information to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Written comments are to be submitted by August 1, 1988; however, comments received after that date will be considered, if possible. Any comments data, and information submitted in response to this notice will be available for inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exports, Radiation protection.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 1010 be amended as follows:

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

1. The authority citation for 21 CFR Part 1010 continues to read as follows:

Authority: Sec. 358, 82 Stat. 1177; 42 U.S.C. 263f.

2. Section 1010.4 is amended by revising paragraph (a), by removing paragraph (c)(2) and redesignating prographs (c)(3) and (4) as paragraphs (c) (2) and (3), respectively, to read as follows:

§ 1010.4 Variances.

(a) *Criteria for variances.* (1) Upon application by a manufacturer (including an assembler), the Director, Center for Devices and Radiological) Health, Food and Drug Administration, may grant a variance from one or more provisions of any performance standard under Subchapter J of this chapter for an electronic product subject to such standard when the Director determines that granting such a variance is in keeping with the purposes of the Radiation Control for Health and Safety Act of 1968 and:

(i) The scope of the requested variance is so limited in its applicability as not to justify an amendment to the standard, or

(ii) There is not sufficient time for the promulgation of an amendment to the standard.

(2) The issuance of the variance shall be based upon a determination that:

(i) The product utilizes an alternate means for providing radiation safety or protection equal to or greater than that provided by products meeting all requirements of the applicable standard, or

(ii) The product performs a function or is intended for a purpose which could not be performed or accomplished if required to meet the applicable standards, and suitable means for assuring radiation safety or protection are provided, or

(iii) One or more requirements of the applicable standard are not appropriate, and suitable means for assuring radiation safety or protection are provided.

* * * * *

Dated: May 2, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12335 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3390-3]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Amendment to Method 7A; Nitrogen Oxide Emission Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice is to announce the amending of Method 7A, "Determination of Nitrogen Oxide Emissions from Stationary Sources—Ion Chromatographic Method," of Appendix A of 40 CFR Part 60. A recent reevaluation of the method and testing data has shown that problems exist and unacceptable accuracy and precision are obtained. The problem appears to be linked to the acid strength of the absorbing solution. A study has shown that acceptable accuracy and precision may be obtained by substituting the Method 7 absorbing solution, which has a higher acid strength, for the solution currently used in Method 7A. In light of these findings, all future Method 7A testing should be performed in this manner. This amendment will be discussed in further detail in a subsequent notice.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch, Technical Support Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1063.

Date: May 25, 1988.

Don R. Clay,

Acting Assistant Administrator.

[FR Doc. 88-12363 Filed 6-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3390-1; TN-037]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Two Ozone Nonattainment Areas in Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a request by Tennessee that Bradley County and Hamilton County be redesignated from nonattainment to attainment for ozone. The redesignation of these counties to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 per year and on implementation of EPA-approved control stragegies.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before July 5, 1988.

ADDRESSES: Written comments should be addressed to Melinda Privott of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Custom House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Chattanoogga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407.

FOR FURTHER INFORMATION CONTACT: Melinda Privott, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1987, **Federal Register** (43 FR 8962), EPA designated Bradley County and Hamilton County as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that Bradley County and Hamilton County had experienced oxidant violations. Several areas in Tennessee were designated nonattainment for ozone and the State was therefore required to revise their state implementation plan (SIP) for ozone. Tennessee drafted and adopted statewise regulations for controlling volatile organic compound (VOC) emissions from stationary sources. Through the Federal Motor Vehicle Control Program and through implementation of Group I and Group II VOC regulations, Tennessee demonstrated attainment of the ozone standard in Bradley County and Hamilton County. EPA approved Tennessee's ozone SIP on August 13, 1980, (45 FR 53813). Tennessee has requested that EPA change the attainment status of Bradley County and Hamilton County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 per year. In the event that three years of ozone data is not available, the most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy.

Tennessee's request for redesignation is based on three years of ambient ozone data. Specifically, the most recent three years of air quality data (1983, 1984, and 1985 for Bradley County—1984, 1985, and 1986 for Hamilton County) for each county show the number of expected exceedances to be less than or equal to 1.0 per year, as is summarized below:

	Exceedances (ppm)	Number of expected exceedances [1]	NAAQS ozone [2]
Bradley County			
1983	none	0.00	0.12 ppm
1984	none		
1985	none		
(Total:	0 exceedances)		
Hamilton County			
VAAP:			
1984	none	0.33	0.12 ppm
1985	.126		
1986	none		
(Total:	1 exceedances)		
Sequoyah:			
1984	none	0.70	0.12 ppm
1985	none		
1986	.127, .128		
(Total:	2 exceedances)		

[1] Three-year average.
[2] Not to be exceeded more than once per year.

Evidence submitted by the State and the Region IV Air Compliance Branch files have been reviewed to determine if the sources in Bradley County and Hamilton County to which the VOC regulations apply are fully implementing the EPA-approved control strategy. This review confirms that all sources in Hamilton County and Bradley County subject to the VOC regulations have either installed and are operating RACT controls or are on an enforceable compliance schedule.

For a more detailed discussion, please refer to the Technical Support document which is available for inspection at the EPA Region IV office.

Proposed Action: Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA proposes to redesignate Bradley County and Hamilton County from ozone nonattainment to attainment.

The public is invited to participate in this rule making by submitting written comments on these proposed actions.

Evidence reviewed by EPA indicates that the sources in Bradley County and Hamilton County to which the VOC regulations apply are fully implementing the EPA-approved control strategy.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action: Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA proposed to redesignate Bradley County and Hamilton County from ozone nonattainment to attainment.

The public is invited to participate in this rule making by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), the Administrator has certified that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

(Authority: 42 U.S.C. 7401–7642.)

Dated: June 24, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 88–12306 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[FRL–3390–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Infectious Waste Management

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comment.

Editorial Note: This document was received at the Office of the Federal Register on May 27, 1988.

SUMMARY: The Agency today is publishing a notice of data availability and request for comment on issues pertaining to infectious waste. In particular, EPA is announcing the availability of several documents which provide current information on infectious waste definition and management issues. In addition, in response to recent public concern over potential hazards posed by mismanagement of infectious wastes, the Agency is requesting comment on several issues concerning the management and disposal of infectious waste.

DATES: EPA will accept public comments on the issues posed in this notice until August 1, 1988.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket (S–201) (WH–562), 401 M Street SW., Washington, DC 20460.

Place "Docket number F–88–IWMA–FFFFF" on your comments. The Office of Solid Waste (OSW) docket is located in the sub-basement at the above address, and is open from 9:00 to 4:00, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials at (202) 475–9327. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346, or at (202) 382–3000. For additional information contact Denise Zabinski, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7458.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background
II. Availability of Data
III. Issues Presented for Public Comment
A. Definition of Infectious Waste
B. Nature of the Problem Posed by Infectious Waste
C. EPA's Role in Infectious Waste Management
D. Tracking System for Infectious Waste
E. Exemptions From an Infectious Waste Control Program
List of Subjects in 40 CFR Part 261

I. Background

Today's Notice is in response to increased recent interest regarding infectious waste handling, treatment, and disposal. The purpose of this Notice is to make Agency information on the safe management of infectious wastes available to the public and to solicit public comment on a number of issues pertaining to infectious waste and the possible need for further governmental action. The Agency believes that the proper management of infectious waste is crucial to ensure that any potential hazards to the public and to individual workers are avoided.

By way of background, on December 18, 1978, the Agency proposed regulations under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580 (Oct. 21, 1976)), which would classify certain infectious wastes as hazardous waste. These wastes included infectious waste generated by certain departments in health care facilities and veterinary hospitals, by laboratories handling etiologic agents, and by sewage treatment facilities, unless these wastes were sterilized or incinerated in accordance with specified methods. (December 18, 1978, 43 FR 58946, 58956.)

The Agency proposed to list these wastes as hazardous because the Agency believed at that time that if they were improperly managed, they could pose a substantial hazard to human health and the environment. It should also be noted that the statutory definition of hazardous waste specifically cited infectiousness as one of the properties that the Agency should consider in its evaluation in defining wastes as hazardous; see section 1004(5), where it states "the term hazardous waste means a solid waste, or combination of solid wastes which because of its quality, concentration, or physical, chemical, or infectious characteristics, may . . .". Significant comments were received on the proposal; based upon these comments infectious waste was not identified or listed as a hazardous waste when the regulations were made final on May 19, 1980. See 45 FR 33087. Instead, the Agency initiated several activities to collect information and assess the problems posed by infectious waste management and disposal. This information was then used by the Agency to develop a draft guidance document in 1982 (on which comment was solicited) on infectious waste management. EPA then brought in professionals from the health care industry to provide additional information in preparing a final guidance document which was published in 1986. This document outlined a prescriptive program for the management of infectious waste. See "EPA Guide for Infectious Waste Management", described in further detail in Part II, below. Additional guidance on the management of infectious waste has also been provided. See "Hospital Waste Combustion Study", also in Part II below, for a more detailed discussion.

In addition to publishing guidance in May 1986, the Agency has taken an active role in training health care professionals regarding the responsible management of infectious waste. Staff from the Agency have participated as faculty or professional experts at symposia sponsored by the American Hospital Association and the American Society for Hospital Engineering.

Furthermore, in November of 1987, as a result of several isolated incidents of improper management and disposal of infectious wastes and growing public concern about the potential threat of infectious waste to human health and the environment, the Agency called together a panel of experts to discuss the definition of, proper management, and risks posed by infectious wastes (see Part II for further discussion of this meeting).

Today's notice of data availability and request for public comment is a further effort to (1) make available to the public and those persons responsible for managing infectious waste the EPA guidance manual, and (2) solicit comment on issues of concern regarding the proper management of infectious waste. The Agency believes that the proper management of infectious wastes can significantly reduce the risks associated with these wastes. The Agency, with this Notice, will reevaluate and assess the problems posed by infectious wastes to determine if further Federal governmental action is necessary.

II. Availability of Data

As already indicated, the agency has not promulgated regulations controlling the management of infectious waste; instead, a number of guidance documents have been prepared to assist the states and others interested in the management of infectious waste. These documents are: (1) "EPA Guide for Infectious Waste Management", U.S. EPA, Office of Solid Waste and Emergency Response, EPA/530–SW–86–014, May, 1986; and (2) "Hospital Waste Combustion Study, Data Gathering Phase, Final Draft Report", prepared by Radian Corporation, Research Triangle Park, NC for U.S. EPA, Office of Air Quality Planning and Standards, EPA Contract No. 68–02–4330, October, 1987. Each of the these documents is included in the RCRA public docket, at the address listed above. The following is a brief description of each document and includes further information on how the public can obtain copies:

(1) The "EPA Guide for Infectious Waste Management" outlines the EPA perspective on environmentally acceptable techniques for managing infectious wastes. Topics covered include a definition of infectious waste, the various categories of waste included under the definition, and recommended practices for packaging, transportation, treatment, storage, and disposal of these wastes. In particular, the document discusses various types of treatment alternatives and describes the suggested treatment methods for each waste category. The document is intended to provide guidance to persons responsible for infectious waste management. State and local regulatory agencies also will find this manual useful as resource material. Copies are available as publication No. PB86.199130 from the National Technical Information Service (NTIS), Port Royal Road, Springfield, Virginia (703) 478–4650. This document is also available in the RCRA public docket.

(2) The "Hospital Waste Combustion Study", October, 1987, summarizes readily available information on the hospital waste combustion industry including waste characterization, industry technology, multipollutant air emissions data, emission control technologies, current regulation and control strategies, and hospital waste combustor population characteristics, including suggested model plant parameters for use in exposure modeling. The study was initiated by EPA's Office of Air Quality Planning and Standards in response to increasing concerns over the potential public health impacts from the disposal of hospital wastes, including incineration and other methods of disposal. This document is available in the RCRA public docket.

In addition to the development of these documents, the Agency held a meeting last November to discuss issues pertaining to infectious waste management. The primary purpose of this meeting was to discuss and evaluate the nature and extent of the risks to human health and the environment posed by wastes that

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contain infectious materials. The meeting was held in response to growing concerns about infectious waste management and to assist EPA in determining whether the Agency should undertake any additional action under the Resource Conservation and Recovery Act. Infectious waste issues were discussed by a group of experts representing health care professionals and practitioners from government, academia, industry and professional and trade associations called together by the EPA. The proceedings of this meeting have been made available to the public. (See "Report on the Proceedings of the EPA Infectious Waste Management Meeting, November 12, 1987, EPA Headquarters, Washington, D.C.", available in the RCRA public docket).

The Agency also has examined a recent survey, entitled, "State Infectious Waste Regulatory Programs", assembled for the Council of State Governments, which summarizes the current status of state infectious waste regulations. This document is available from the Council of State Governments and a copy has been placed in the RCRA public docket for this notice.

III. Issues Presented for Public Comment

Several recent incidents involving infectious waste mismanagement have resulted in a number of infectious waste issues being presented to the Agency. The Agency is offering today, for public comment, issues concerning infectious waste. These issues are intended to solicit information which will help the Agency to better understand the problems posed by infectious waste, to identify additional sources of information, and to determine whether further guidance or rules should be developed by EPA. Each of these issues is presented below, introduced by a brief discussion and followed by specific questions for comment.

A. Definition of Infectious Waste

EPA currently defines infectious waste as waste capable of causing infectious disease. This definition requires the consideration of several factors contributing to the risk of introduction of disease. As described in EPA's guidance manual, these factors include: (1) Presence of a pathogen of sufficient virulence; (2) dose of the pathogen; (3) portal of entry; and (4) resistance of host. For a waste to be infectious, it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in infectious disease. EPA has identified in the Guidance Document six infectious waste categories, including: (1) Isolation wastes; (2) cultures and stocks of infectious agents and associated biologicals; (3) human blood and blood products; (4) pathological wastes; (5) contaminated sharps; and (6) contaminated animal carasses, body parts and bedding.

The Center for Disease Control (CDC) under the Department of Health and Human Services has also issued guidelines on infectious waste. Both EPA and CDC define infectious waste according to both waste characteristics and waste type. The CDC guidelines differ only slightly from EPA's guidelines in how they define infectious waste. In particular, both Agencies consider microbiological waste, pathological waste, blood, and contaminated sharps as infectious waste. EPA considers communicable disease isolation wastes as infectious, while CDC recommends such waste be treated according to hospital policy. EPA also has identified certain wastes such as surgery and autopsy wastes, dialysis unit wastes, and contaminated equipment, which the Agency lists as optional infectious wastes, and thus may require special handling. CDC does not consider these optional wastes infectious. Also, CDC's guidelines only pertain to hospitals while EPA's guidance deals with a wider variety of sources.

The state tend to classify infectious waste in one of three ways: (1) As a hazardous waste; (2) as a special waste; or (3) as a solid waste. The trend is to classify infectious wastes as special or solid wastes. Current state regulations vary with respect to how they define infectious waste. Approximately two-thirds of the states have definitions in place or are currently adding to or amending their definitions of infectious waste. Of the 19 states that have definitions in place which are not undergoing amendment, approximately half include the four common EPA/CDC infectious wastes in their definitions. While there exists a certain amount of variation among the States' regulations, there appears to be some general agreement among the states as to the basic definition of infectious waste.

The Agency is requesting comment on the following issues concerning defining infectious waste: Is EPA's current definition of infectious waste appropriate? If not, how should infectious waste be defined? Should this definition be based on waste characteristic, waste type, waste source, or a combination of these factors? Are there different categories of infectious waste that warrant differing degrees of control?

B. Nature of the Problem Posed by Infectious Waste

Infectious wastes are generally disposed of through incineration, landfilling, or disposal in public sewers. Treatment of these wastes may or may not occur prior to disposal in landfills or sewers. Such treatment if it occurs, is called pretreatment, and for infectious waste normally involves some form of sterilization of the waste, either through steam, chemical or other method or process of sterilization. The goal of pretreatment is to greatly reduce, if not eliminate, any infectious characteristic. Approximately 56 percent of the states require or are considering requiring pretreatment before land disposal. At least twelve states currently allow, under certain conditions, land disposal of infectious waste without pretreatment.

Current literature indicates that the risks posed by infectious waste are primarily occupational, potentially affecting those people who encounter these wastes from the point of generation to the point of disposal. Two occupations that regularly encounter infectious waste are hospital employees and waste disposal workers. The Agency, therefore, is interested in the risks posed to these two groups, as well as any risks posed to the general public.

The risks posed to these groups may be specific to certain wastes, such as contaminated sharps (e.g., scalpels and hypodermic needles), or to certain management practices. The Agency also is interested in how proper packaging of these wastes can curtail occupational risks posed to the groups mentioned above. Proper packaging of these wastes reduces the potential for exposure which is a necessary factor for transmission of these diseases. This point is recognized in that 15 states currently impose packaging/handling requirements on infectious waste generators, and 16 states are considering imposing such requirements.

The Agency requests comment on the following issues: What are the risks and problems posed by exposure to infectious waste? To what extent is the mismanagement of these wastes a problem? If fully implemented, are the current pretreatment and packaging practices capable of reducing the risks posed by infectious waste or are additional requirements necessary? Should specific disposal requirements be placed on specific wastes (i.e., sharps)?

C. EPA's Role in Infectious Waste Management

As already discussed, EPA does not regulate infectious wastes as a hazardous waste. Under RCRA, the Agency has the authority to regulate these wastes as hazardous. As discussed above, the Agency has chosen to issue guidelines on proper infectious waste management. In addition, infectious wastes are subject to regulation as non-hazardous solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

Many states have developed or are currently developing legislation and regulations to address infectious wastes. These state initiatives are relatively recent efforts, stimulated by the growing concern over infectious waste management. There is considerable variation in the scope and level of stringency among the various state efforts. Currently 39 states have some form of infectious waste regulation. Five of the states without such regulations plan on developing them soon. Currently, 88 percent of the states are, or will soon be, regulating infectious waste. This compares with 57 percent of the states that regulated infectious wastes in 1986.

It has been suggested that one alternative to Federal regulation of infectious waste is the development of a model state program. A model state program is a comprehensive management program designed to provide guidance to states which are developing similar programs. The model programs serve to make the expertise of the Agency available to states and localities that may need assistance in developing comprehensive and effective programs. Such models can provide useful information and guidance to those states developing programs, but also provide state with the flexibility to tailor the model to their individual state needs.

The Agency is requesting comment on the following issues concerning EPA's role in infectious waste management: What roles should EPA and/or the states play in the management of infectious waste? Should there be a Federal regulatory structure for infectious waste management or should the Federal role be one of providing technical assistance and guidelines for state infectious waste programs? Should EPA's role be in the transfer of information on infectious waste to states, localities, and the public? Is a model state program for regulation of infectious wastes necessary or helpful? If so, are there particular areas on which such a program should concentrate?

D. Tracking System for Infectious Waste

Several instances of improper disposal of infectious waste have been documented. It has been suggested that a tracking system may alleviate the possibility of such improper disposal. Tracking a waste can serve to improve the accountability of the parties involved in the management and disposal of that waste. In this way, tracking has the potential to improve compliance with management and disposal regulations.

Currently, infectious wastes are not subject to any Federal tracking requirements. If these wastes were simply classified as hazardous wastes by Federal regulations, they would be subject to the manifesting requirements of RCRA Subtitle C regulations. The manifest tracking requirement of Subtitle C relies on exception reporting for tracking of waste. Exception reporting requires generators of regulated wastes who do not receive proper copies of the manifest from the disposal facility to report this noncompliance to a designated authority.

Some tracking of infectious waste is currently being implemented at the state level. A number of states have or are considering imposing transportation and recordkeeping requirements on infectious waste generators and haulers. In some states the types of shipping papers required are specified. Where tracking is addressed in these state regulations, the tendency is to require the generator to maintain records on site, rather than submit manifests to the State.

The Agency requests comment on the following tracking issues: What type of tracking system would be most appropriate for infectious wastes? Which infectious wastes should be tracked? Should exception reporting be required?

E. Exemptions From an Infectious Waste Control Program

Although much of the infectious waste that is generated comes from hospitals and large laboratories, there are many small generators in the form of private offices, clinics, and smaller labs which may become subject to regulation, if not otherwise exempted. Under current Subtitle C regulations, small quantity generators of hazardous waste are subject to certain conditional exclusions. Presently, all but six states have or are considering regulations pertaining to infectious waste. The majority of states identify hospitals as the target generator for regulation of infectious waste. Many of the states that regulate hospitals also regulate clinics. Approximately half of the states that regulate hospitals also regulate doctors and dentists offices, and animal care facilities. Five states currently exempt small quantity generators from some or all infectious waste requirements.

The Agency requests comments on the following issues concerning exemptions from infectious waste controls: Should any generators of infectious waste be exempted from management controls? Do small health care operations pose less risk because of the amount of waste they produce? If no generators are exempted, how many generators would be subject to infectious waste controls?

The Agency specifically requests comments on all of the issues included in today's notice. Comments on additional issues related to infectious waste will also be accepted. Once the Agency has reviewed all of the public comments, the Agency plans to evaluate the need for additional information, to collect and examine such information; and to ultimately develop an effective Federal program addressing infectious waste. Upon evaluating the comments solicited in today's notice the Agency will also reevaluate the status of the existing EPA guidance document on infectious waste.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: May 27, 1988.

J. Winston Porter,

Assistant Administrator.

[FR Doc. 88-12367 Filed 6-1-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) intends to develop additional simplified (type A) procedures for assessments of natural resource damages resulting from a discharge of oil or release of a hazardous substance. The Department is

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requesting public comment and technical information to assist in this endeavor. The Department has already promulgated two types of assessments regulations: A standard procedure for simplified assessments requiring minimal field observation (type A procedures), and procedures for detailed assessments (type B procedures) for use in individual cases. The type A procedure published by the Department of March 20, 1987 (52 FR 9042), provides a simplified assessment procedure, including a computer model, for coastal and marine environments. At that time, the Department stated that, when possible, it would develop additional type A procedures for other environments and natural resources. This Notice is to announce the Department's intent to begin the process of developing a type A procedure for the Great Lakes environment and to request specific technical data to assist in this effort. The Department is also requesting information to assist in determining the scope and technical feasibility of developing type A procedures for other enviroments and natural resources. The natural resource damage assessment regulations are being developed pursuant to Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA).

DATE: Comments will be accepted through July 18, 1988.

ADDRESS: Office of Environmental Project Review, ATTN: NRDA Regulations, Room 4230, Department of the Interior, 1801 C Street NW., Washington, DC 20240 (Regular business hours 7:45 a.m to 4:15 p.m., Monday through Friday)

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343–1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act).

Section 107 of CERCLA provides that, in addition to cost-recovery for response and cleanup actions, natural resource trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under sections 107(f) and 111(b) of CERCLA. Indian tribes may commence an action as natural resource trustees under section 126(d). Natural resources are generally defined by CERCLA to be: Land, fish, wildlife, biota, air, water, ground water, and drinking water supplies. The damages that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance.

Section 301(c), as revised by the Superfund Amendments and Reauthorization Act of 1986 (SARA), calls for the natural resource damage assessment regulations in the following terms:

> (c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under Section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and Section 311(f)(4) and (5) of the Federal Water Pollution Control Act. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after enactment of the Superfund Amendments and Reauthorization Act of 1986.
>
> (2) Such regulations shall specify: (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover

Responsibilities contained in section 301(c) were delegated to the Secretary of the Interior (Executive Order 12316 of August 14, 1981, replaced by Executive Order 12580 of January 23, 1987). The Department published a final rule that provides the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases, otherwise known as the "type B" procedures (August 1, 1986, 51 FR 27674). Five final type B technical information documents have been prepared in conjunction with the development of the type B assessment procedures (Notice of Availability issued on November 16, 1987, 52 FR 43763). The Department has published a final rule that contains standard procedures for simplified assessments, known as the "type A" procedures (March 20, 1987, 52 FR 9042). The type A procedure in that final rule is for use in coastal and marine environments and includes the use of a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). The final rule to amend 43 CFR Part 11 to conform with amendments to CERCLA brought about by SARA was published by the Department on February 22, 1988 (53 FR 5166). Finally, technical corrections to the NRDAM/CME were published on March 25, 1988 (53 FR 9769). These rules together comprise the natural resource damage assessment regulations, codified at 43 CFR Part 11.

II. Discussion

The Department is announcing its intent to initiate the development of a type A procedure for the Great Lakes environment that is consistent in concept to that which has been developed for coastal and marine environments. The Department is requesting specific technical information pertinent to the natural resources and environments of the Great Lakes to assist in this endeavor. The Department is also proceeding to evaluate the scope and technical feasibility of additional type A procedures that could be developed. The Department is, therefore, seeking public comment on the need for further type A procedures, the environments and natural resources of concern to the public, and the availability of technical data necessary to support such type A procedures. Over the course of developing the natural resource damage assessment regulations, beginning with the Advance Notice of Proposed Rulemaking published in January of 1983 (see 48 FR 1064), the Department has received numerous general comments on the issue of developing type A procedures for various environments and natural resources. These comments have contributed to decisions to date and need not be repeated.

For reference in preparing comments, the Department is providing a brief summary of the natural resource damage assessment process and specific discussion regarding the current type A procedure for use in coastal and marine environments. It should be noted that the natural resource trustee has the option of using the rules or of performing an assessment based on some other procedure. However, assessments performed by Federal or State natural resource trustees in accordance with 43 CFR Part 11 will be given a rebuttable presumption in an action to recover damages. The rules, as codified at 43 CFR Part 11, use a planned and phased approach to the assessment of natural resource damages. This approach is designed to ensure that all procedures used in an assessment performed pursuant to the rule are appropriate, necessary, and sufficient to assess damages for injuries to natural resources. The major phases in the assessment process for both type A and type B procedures are: (1) The Preassessment phase; (2) the Assessment Plan phase; (3) the Assessment phase; and (4) the Post-assessment phase. The discussion that follows describes the progression of these phases through a type A assessment using the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME).

The Preassessment phase usually begins with the notification to the natural resource trustee of a discharge or release, although it may begin with the detection by the natural resource trustee of a discharge or release. During the Preassessment phase, the trustee must perform a preassessment screen to establish that a CERCLA or CWA-covered incident has occurred and that resources of the trustee may have been affected. A preassessment Screen Determination is required to determine whether to proceed with further assessment actions.

If the Preassessment Screen Determination indicates that further actions are warranted, the trustee may proceed to the Assessment Plan phase. The trustee must develop an Assessment Plan before initiating an assessment. The trustee is also required to coordinate with other co-trustees, to make reasonable efforts to identify and involve the potentially responsible party, and to offer the public an opportunity to review the Assessment Plan. The Assessment Plan must document the decision to conduct a type A natural resource damage assessment, including, but not limited to, the specific parameter values to be used as data inputs in the application of the NRDAM/CME. For the NRDAM/CME, these parameter values include, for example, the mass of the material spilled, depth of the water column, wind speed and direction, and quantity of material cleaned up. Other parameter values are also required that define the boundaries of the study area and its ecological characteristics.

After the trustee develops the Assessment Plan, he may proceed with the assessment phase, which, for type A assessments, is carried out by the NRDAM/CME, based upon the user input parameter values identified in the Assessment Plan and the interactive technical data bases contained within the NRDAM/CME. The NRDAM/CME consists of interactive submodels for physical fates, biological effects, and economic damages. The interaction of the physical fates and biological effects submodels determines injury. the NRDAM/CME determines injury as a result of: (1) Direct mortality to adult, juvenile, and larval biota due to toxic concentrations of the spilled substance; and (2) indirect mortality to adult, juvenile, and larval biota due to a loss of foodstuff from the food web. The biological data base within the NRDAM/CME provides data on the biological populations within the ecological system of the NRDAM/CME study area. The submodel calculates losses to biological populations through the period of resource recoverability.

The economic damages submodel calculates dollar amounts for compensation for injuries based on use values. An economic data base is contained in the NRDAM/CME that uses both market and nonmarket prices for the services provided by the natural resources. The NRDAM/CME calculates damages for losses resulting from both direct and indirect mortality to biota. The NRDAM/CME also calculates damages due to the closure of a fishing area, hunting area, or public beach due to the discharge or release. The extent of an area subject to closure is a data input made by the user of the NRDAM/CME, based upon the actual area closed due to the discharge or release.

Upon completion of the NRCAM/CME computations, the user is returned to the general natural resource damage assessment process. The NRDAM/CME provides a printed output that summarizes the mathematical computations performed to derive the damage amount. The printed output of the NRDAM/CME provides the documentation of the results of the assessment and is to be included within the Report of Assessment.

When the natural resource damage assessment is complete, several post-assessment actions are required. A Report of Assessment is compiled that includes the documentation of all determinations made during the assessment, data collected, and the printout of the NRDAM/CME application(s). The Report of Assessment becomes the administrative record of the natural resource damage assessment. The trustee then presents a demand for damages to the potentially responsible party (PRP), and the PRP is given the opportunity to respond to the demand. Any damage awards are to be placed in a separate account for use by the trustee to restore or replace the natural resources injured by the discharge or release. The Trustee must develop a Restoration Plan to document the actions that are planned to restore or replace the injured resource. The Plan must be developed based on the amount of the damage award.

A detailed explanation of the NRDAM/CME and its data bases has been provided in the technical report "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," Volumes I and II (referred to as the NRDAM/CME technical document, and available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB87–142485; ph: (703) 487–4650). Additional discussion of the NRDAM/CME, as well as its applications and limitations, has been given in the preamble to the final type A rule published at 52 FR 9042 (March 20, 1987).

III. Conclusion

This Notice is to announce the Department's intent to begin the process of developing a type A procedure for the Great Lakes environment. In order to facilitate the development of a type A procedure for the Great Lakes, the Department is requesting specific information and data pertinent to the environments of the Great Lakes. Of particular interest are those studies and available data bases regarding the biological populations and other natural resources of the Greak Lakes systems, studies and data concerning services provided by the natural resources of the Great Lake systems, studies and data on the economic values of the identified natural resources, relevant chemical and physical properties of the Great Lakes, and pertinent chemical, physical, and toxicological properties of oils and hazardous substances in Great Lakes waters. Commenters are encouraged to review the chemical, biological, and economic data bases contained in Volume II of the NRDAM/CME

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technical document when considering the types of data that may be pertinent to a type A procedure for the Great Lakes environment.

The Department is also seeking public comment on: (1) The need for further type A procedures; (2) the environments and natural resources of concern; and (3) the availability of technical information and data necessary to support the development of additional type A procedures. These three areas for comment are explained in greater detail in the following paragraphs.

Over the past several years, the Department has received numerous general comments pointing to a need for the development of additional type A procedures for other environments and natural resources. Although type A procedures are intended to be simple to use, the development of such procedures is complex, requiring a significant commitment of effort by the Department. In undertaking the commitment to develop additional type A procedures for other environments and natural resources, the Department wishes to be assured that such an effort incorporates the needs expressed by and is of benefit to the public. This is of particular concern as the type A procedures developed are for optional use by the natural resource trustee. Accordingly, the Department is requesting comment in this regard.

The Department is asking for suggestions as to other environments and natural resources for which additional type A procedures may be developed. For example, it may be feasible to develop type A procedures for riverine environments, for lake or wetland fresh water environments, for ground water environments, for soil environments, or for air environments. If the Department proceeds with the development of further type A procedures, it will probably utilize an incremental approach to the time and costs involved. Accordingly, comments would be welcomed about which environments and natural resources would be most amenable to a type A procedure.

The development of efficient and cost-effective type A procedures is dependent upon the availability of pertinent data, information, and methodologies upon which to base those procedures. These items might include, for example, the chemical and physical properties of different oils and hazardous substances, natural resource data such as biological populations of concern, information and studies on the economic values of different resources, and available information on modeling pertinent aspects of the ecological systems and natural resources. It may also be possible to develop a procedure to interactively link or couple different environmental type A procedures together into a common assessment procedure. Commenters should address the availability of such data, information, and methodologies, and, where possible, should forward this data and information to the address given at the front of this Notice.

While evaluating the information received, the Department will proceed with the development of a type A procedure for the Great Lakes environment.

Dated: May 27, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-12348 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-RG-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[CC Docket No. 88-245; RM-6013; FCC 88-169]

Allocation Method for Unrouted Ship-to-Overseas INMARSAT Telex Traffic

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes the adoption of a new mechanism for the allocation of ship-to-overseas telex traffic transmitted over the facilities of the International Maritime Satellite Organization (INMARSAT). Currently, ship-to-overseas telex messages that are not designated for transmission by a particular U.S. carrier are allocated equally among U.S. carriers that have an interconnection agreement with the Communications Satellite Corporation (Comsat). The NPRM proposes to replace this equal, rotation allocation method with a proportionate-return mechanism. Under this scheme, the amount of telex traffic allocated to a carrier would be dependent upon the volume of INMARSAT traffic the carrier delivered from overseas points to ships at sea. The Commission tentatively concluded that a proportionate-return allocation method based on the volume of overseas-to-ship INMARSAT traffic a carrier generates would create a more fair allocation environment and reward those carriers that develop the maritime telex market.

DATES: Interested parties may file comments on or before July 11, 1988, and reply comments by July 26, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl Sarreals, International Facilities Division, Common Carrier Bureau, (202) 632-7834.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in Common Carrier Docket No. 88-245, FCC 88-169, RM No. 6013 adopted May 9, 1988, and released May 20, 1988.

The full text of this Commission decision is available for inspection and copying during business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M. Street, NW., Suite 140, Washington, DC 20037.

Summary of NPRM

1. MCI Communications Corporations (MCI) filed a petition for rulemaking requesting that the Commission adopt a new mechanism for the allocation of unrouted ship-to-oveseas telex traffic transmitted over the facilities of the INMARSAT. In a 1979 Memorandum Opinion and Order, 71 F.C.C. 2d 1069, the Commission determined that the shipboard originator of a ship-to-overseas telex message should have unrestricted choice of the U.S. carrier that will transmit its message to an overseas point. In those situations where the customer did not choose a carrier, we directed Comsat, the entity responsible interconnecting contracting U.S. service providers with the INMARSAT system, to handle unrouted traffic "in a nondiscriminatory fashion." As a result, Comsat began allocating telex transit minutes among participating carriers on a rotating basis, with each entity receiving an equal share of the unrouted traffic. At that time, we concluded that there was not enough unrouted telex traffic to justify the imposition of a routing mechanism. We stated, however, that we would consider initiating a rulemaking to determine the best allocation method if a significant amount of traffic materialized in the future.

2. Under the approach proposed by MCI, the amount of unrouted ship-to-overseas traffic allocated to a carrier would be dependent upon the volume of INMARSAT traffic the carrier delivered from overseas points to ships at sea.

MCI argued that the rotational method creates little incentive for carriers to develop the market for INMARSAT telex or to keep prices low.

3. Under the present system, shipboard customers originating ship-to-overseas telex messages have the ability to choose among United States carriers on the basis of competitive situations. However, approximately 96 per cent of this traffic is currently unrouted. Shipboard originators of ship-to-overseas telex messages are not availing themselves of the choice among competing United States carriers. Therefore, we conclude that the present volume of unrouted ship-to-overseas telex traffic is sufficient to warrant institution of a rulemaking proceeding to determine an allocation method for future distribution of traffic among carriers interconnecting with Comsat. We note that the concern we expressed in 1979 over the possible additional operational and administrative costs which might stem from the implementation of a Commission imposed traffic allocation method has been ameliorated somewhat by Comsat's desire to rid itself of the operational complexity, transactional costs and unnecessary administrative burdens of the existing rotational traffic allocation mechanism.

4. We tentatively conclude that in the future, unrouted ship-to-overseas telex traffic transiting the United States and handled via INMARSAT space segment should be distributed among participating carriers in proportion to the volume of overseas-to-ship INMARSAT telex traffic each carrier handles. Adoption of MCI's proposal, would make each carrier's competitive success in the marketplace a major factor in the determination of the volume of unrouted ship-to-overseas telex traffic each carrier would receive. Distribution of unrouted ship-to-overseas telex traffic in this manner will reward the carriers' success in the marketplace and, therefore, will provide an incentive for the carriers to increase their competitive efforts. Such a result is consistent with our procompetitive policy.

5. We also seek comment on whether the distribution of unrouted ship-to-overseas telex traffic should be in proportion to the total amount of ship-to-shore telex traffic handled by each participating carrier. Total ship-to-shore telex traffic would include U.S. originating-to-ship telex traffic as well as overseas-to-ship telex traffic transiting the United States. In order to facilitate our consideration of this issue, we request that Comsat provide in its comments the volume of U.S. originated-to-ship telex traffic for the same periods and in the same format and detail as it provided in its ship-to-overseas traffic statement submitted in support of MCI's petition.

6. We request further, that parties indicate whether there is any other unrouted telex traffic handled by United States carriers via the INMARSAT system. If such traffic exists, we request that parties address the question of whether such unrouted traffic also should be distributed on a proportionate basis. Finally, we request parties that address the question of how often the share of unrouted ship-to-overseas telex traffic of each participating carrier should be recalculated.

7. The action herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 20 U.S.C. 1221-1223, and found to impose no new or modified information collection requirements on the public.

8. We have determined that section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, does not apply to this rulemaking proceeding because if promulgated it would not have a significant economic impact on a substantial number of small entites.

Ordering Clauses

9. Accordingly, It Is Ordered that a rulemaking proceeding on the captioned matter is instituted under section 4(i) and 303(r) of the Communications Act of 1934, as amended, section 504 of the Interational Maritime Satellite Telecommunications Act, 47 U.S.C. 752(b)(6), section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and §§ 1.407 and 1.411 of the Commission's rules, 47 CFR 1.407 and 1.411, to determine the appropriate mechanism for allocating unrouted INMARSAT telex traffic among interconnecting U.S. carriers.

10. It Is Further Ordered that, pursuant to § 1.415 of the Commission's Rules, interested parties may file comments on the matter raised in this notice by July 11, 1988, and reply comments by July 26, 1988. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five copies of all statements, briefs, comments and reply comments shall be filed with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. All such filings will be available for public inspection in the docket reference room at the Commission's Washington, DC offices. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration ideas and information not contained in comments, provided that such information or a writing indicating its nature and/or source is placed in the public file, or is otherwise publicly available, and provided that the Commission's reliance on such information is noted in the Order.

11. It Is Further Ordered that the Secretary of the Commission shall cause a summary of this Notice of Proposed Rulemaking to be published in the **Federal Register.**

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-12388 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383, 391, and 392

[FHWA Docket No. MC-128]

RIN 2125-AB79

Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers; Correction of Proposed Rule Preamble; Public Information Forums

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction of preamble to notice of proposed rulemaking; public information forums.

SUMMARY: This document corrects a statement made in the preamble to the notice of proposed rulemaking which defines 0.04 percent as the blood alcohol concentration (BAC) level at or above which a commercial motor vehicle (CMV) operator would be disqualified from operating a CMV. This action is necessary to correct an error in the description of State laws. Also, this document announces two public forums to solicit comments from interested persons on proposed revisions to §§ 383.5, 383.51, 391.15, 391.3 and 292.5 of the Federal Motor Carrier Safety Regulations (FMCSRs) that respond to the Commercial Motor Vehicle Safety Act of 1986 (the Act). The revisions would define 0.04 percent as the blood alcohol concentration (BAC) level at or above which a commercial motor vehicle (CMV) operator would be disqualified from operating a CMV under Section 12008 of the Act. The proposal would also require CMV operators with any measured positive BAC to be placed out-of-service for a 24-

hour period in accordance with Section 392.5 of the FMCSRs. Sections 12009 and 12011 of the Act require States to adopt the final sanctions prescribed by the FHWA for CMV operators in order to avoid a withholding of Federal-aid highway funds.

DATES: The correction to the preamble is effective June 2, 1988. See Supplementary Information for public forum dates.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. John Viner, Office of Safety and Traffic Operations, Research and Development, (703) 285–2419, Ms. Jill L. Hochman, Office of Motor Carriers, (202) 366–4001, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:25 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986 (the Act) (Pub. L. 99–570, Title XII, 100 Stat. 3207, 3207–170) was signed into law by the President.

The following correction is made in the preamble that appeared at page 16660 in the **Federal Register** of Tuesday, May 10, 1988 (53 FR 16656) in FR Doc. 88–10462 under the subheading "State Compliance" at the end of the second column: The sentences that read "All States have illegal per se laws have with BAC limits of 0.10 percent or lower, except for one. This State, however, has a presumptive law with a BAC level of 0.10." are revised to read, "All States have illegal per se or presumptive laws with BAC limits of 0.10 percent or lower."

The public forums will be held at 10:00 a.m. (local time) in the following locations:

June 15—Department of Transportation, Room 4234, 400 Seventh Street, SW., Washington, DC 20590

June 21—Denver Federal Center, Lecture Hall A—Building 25, Lakewood, Colorado 80228

Anyone interested in discussing the proposal at the public forums should contact James Griffin at the Federal Highway Administration, Office of Motor Carriers, 400 Seventh Street, SW., Room 3404, Washington, DC 20590 (telephone 202–366–2797).

If possible, persons making statements at the public forums should supply, at the time of the forum, 25 copies of their written statements.

(Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 C.F. R. 1.48)

Issued on: May 31, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88–12516 Filed 6–1–88; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 53, No. 106
Thursday, June 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 11:00 a.m. on Thursday, June 9, 1988, at the office of Covington and Burling, 1201 Pennsylvania Avenue NW., Washington, DC (Conference Room 1214).

The Committee will meet to discuss a study by Professor Henry H. Perritt, Jr., of Villanova University School of Law, on computer-aided transmission and handling of regulatory documents.

For further information concerning this meeting, contact David Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC. (Telephone: 202–254–7065).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Jeffrey S. Lubbers,

Research Director.

May 27, 1988.

[FR Doc. 88–12376 Filed 6–1–88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 27, 1988

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Marketing Agreement for Vegetables Grown in Texas
One-time reporting
Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 110 responses; 11 hours; not applicable under 3504(h)
Virginia M. Olson (202) 447–5057

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 88–12439 Filed 6–1–88; 8:45 am]

BILLING CODE 3410-01-M

Office of International Cooperation and Development

Cooperative Agreements; Georgia Tech University

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Georgia Tech University to provide partial support funding for collaborative international assignment in support of agricultural development in the Philippines.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Georgia Tech University to collaborate in international agricultural development in the Philippines. The scope of the effort will include the participation of the International Technology Development office within the Georgia Institute of Technology. It is anticipated that Georgia Tech will be able to assess the efficacy of certain experimental methodologies used in agriculture sector analysis.

Approximately $22,000 will be available in FY1988 to Georgia Tech to conduct collaborative analysis under the auspices of the Mission of the Agency for International Development in the Philippines.

Assistance will be provided only to the Georgia Tech, which is contributing resources and experience to conduct the analyses. Funds provided by OICD will be used to supplement costs of supplies, communications, analyses, a technology specialist, and travel. OICD and USAID/Manila will provide partial housing support in the Philippines. The Ministry of Agriculture in Manila will provide access to data and liaison with the Philippines agricultural sector.

Based on the above, this is not a formal request for application. Funds estimated at $22,000 will be available in FY1988 to support this work. This constitutes funds believed to be sufficient for the entire cooperative effort. Funds in future fiscal years will not be required.

Information on proposed Agreement #58–319R–8–029 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250–6300.

Nancy J. Croft,
Contracting Officer.

Date: May 27, 1988.

[FR Doc. 88–12373 Filed 6–1–88; 8:45 am]

BILLING CODE 3410–DF–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 19–88]

Foreign-Trade Zone 29, Louisville, KY; Application for Subzone for Hitachi and Auto Components Plant, Harrodsburg, KY; Extension of Comment Period

The period for comments on the above case, involving proposed special-purpose foreign-trade subzone status for the auto components manufacturing plant of Hitachi Automotive Products (USA), Inc., in Harrodsburg, Kentucky (53 FR 12051, April 12, 1988, is extended to June 28, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. The public record will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 26, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88–12409 Filed 6–1–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–122–401]

Red Raspberries From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 25, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on red raspberries from Canada. The review covers three processors/exporters of this merchandise covered by the order and the period December 18, 1984 through May 31, 1986.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the petitioner and the respondents. Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results with respect to Mukhtiar & Sons Packers, Ltd. and Clearbrook Packers, Inc. and are unchanged with respect to Jesse Processing, Ltd.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Dionne C. Calloway or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1934) the preliminary results of its administrative review of the antidumping duty order on red raspberries from Canada (50 FR 26019, June 24, 1985). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are currently classified under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA. These products are currently classifiable under Harmonized System item numbers 0810.20.90, 0810.20.10 and 0811.20.20.

The review covers three processors/exporters of fresh and frozen red raspberries to the United States, Jesse Processing, Ltd. ("Jesse"), Mukhtiar & Sons, Ltd. ("M&S"), Clearbrook Packers, Inc. (Clearbrook"), and the period December 18, 1984 through May 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioners and the respondents.

Comment 1: The respondents argue that the Department failed to make a distinction between juice stock raspberries and jam stock raspberries. Differences in production of the two grades result in different costs of production. Therefore, in determining whether there are sales below cost, the price of juice (or jam) stock should only be compared with the cost to produce juice (or jam) stock.

Department's Position: We disagree. We consider the claim to be untimely. Moreover, the respondents' assertion that no processing costs are associated with juice stock berries is unsubstantiated. Therefore, we have not calculated separate costs of production for the two types of berries.

The respondents first raised this argument in their prehearing brief. The Department cannot now adjust for differences in physical characteristics which respondents did not claim prior to the preliminary determination.

The above notwithstanding, the respondents' request that we recognize cost differences between juice stock and jam stock raspberries is unsubstantiated. In calculating the cost of production, the Department cannot accept, without evidence, that the bulk of processing costs is associated with the production of jam stock raspberries rather than juice stock raspberries. Our decision is consistent with the Court of International Trade's remand which stated that "Without evidence indicating that cost of production was affected by a cost distinction allocated between the two grades of raspberries at the grower level, the court cannot conclude that the ITA did not act in accordance with law by comparing that cost of production with the average price Jesse received on home market sales of the lower-grade berries." *Washington Red Raspberry Commission v. United States*, Slip Op. 87–74 at 5 (June 26, 1987). However, where possible, we have compared prices of juice (jam) stock to juice (jam) stock as explained in the response to comment 3.

Comment 2: The respondents assert that income related to a processor's or farm's raspberry growing or processing operations should be used to offset expenses. They maintain that during the fair value investigation it was decided that offsetting expenses with income obtained from such activities as rentals and sales of buildings, equipment and packing materials used in raspberry operations was allowed. The respondents also assert that income to a farm from crop insurance was specifically used to offset expenses.

Department's Position: We disagree. Since the respondents failed to demonstrate how income from crop insurance as well as other sources of income were directly related to raspberry production, as distinguished from strawberry or blueberry production, we did not allow this offset nor any others that were not substantiated. It is the Department's policy to place the burden on the respondent to tie income and expenses to the production of the particular commodity under review. The respondent should also detail with clarity and specificity the exact nature of the offset claimed.

During the fair value investigation, income from the Farm Insurance Income Program (FIIP) and government wage rebate benefits were included as offsets to cost since these benefits were directly attributable to raspberry production at that time. In contrast, the Department excluded other income which was not considered directly related to raspberry production, such as income from the sale of fertilizer and chemicals and income from property rentals (50 FR 19769, May 10, 1985).

Comment 3: Clearbrook maintains that the Department erred in comparing one August 1985 U.S. sale of juice stock raspberries with a monthly weighted average price of jam stock raspberries in the home market. Clearbrook argues that the Department should either make an adjustment for physical differences or alternatively, using the "90 back, 60 forward" rule, compare the August 1985 U.S. sale to a September 1985 home market sale of juice berries.

Department's Position: We agree. Where possible, the Department has compared U.S. sales of juice stock raspberries with such berries in the home market. To determine contemporaneous sales in the home market, the "90 days back, 60 days forward" rule was used. For Clearbrook, the Department compared the August 1985 U.S. sale of juice stock raspberries with a September 1985 home market sale of juice stock raspberries.

Comment 4: Jesse argues that the Department committed an error in methodology when it did not compare Jesse's November 1985 juice stock sale in the U.S. with a September 1985 juice stock sale in the home market. Alternatively, Jesse maintains that if a weighted average of sales from one crop year were used, an average of Jesse's August and September juice stock sales could have been used for the home market comparison.

Department's Position: We disagree. The Department did not compare Jesse's November 1985 juice stock sale in the U.S. with the September 1985 juice stock sale in the home market because the September sale's price fell below the cost of production and was therefore disregarded. Since there were no contemporaneous above-cost sales, foreign market value for the November 1985 sale was based on constructed value. Moreover, the Department did not compare the November 1985 sale to a weighted average of sales from a particular crop year since all home market weighted averages are calculated on a monthly, not on a yearly basis, which is the Department's normal methodology in administrative reviews.

Comment 5: Jesse contends that the Department made an error in computation when calculating the cost of production. Packing cost should not have been added to cultivation and harvesting costs for Jesse Farms and then added a second time to processing costs for the processor.

Department's Position: We agree. Packaging costs, since they are a part of processing costs, should only have been added to the processor's cost of production and not to that of the farm. Therefore, we reduced our cost of production figure by the double-counted amount. Despite this correction, the result was that there was no change in the original weighted-average margin computed for Jesse. The sales that fell below the cost of production figure as the Department calculated it initially, still fall below the revised cost of production figure. These sales were again disregarded in our analysis as only sales above cost were used to determine the foreign market for red raspberries.

Comment 6: Jesse argues that the Department erred when it failed to use costs incurred in 1984 for sales made before July 1985. Since raspberries are harvested during the month of July, any sales made before July are of berries harvested the previous year. Jesse maintains that in comparing cost of production with home market sales prices, care must be taken to compare costs to produce 1984 berries with prices received for 1984 berries.

Department's Position: The Department cannot analyze information which is not on the record prior to the preliminary determination. Jesse did not provide any information detailing the cost of production berries sold before July 1985, until it filed its brief, after the preliminary determination. The Department, therefore, utilized the cost data Jesse provided in its questionnaire response as the best available information.

Comment 7: Jesse maintains that in the case of its exporter's sale price sales, the Department should deduct home market selling expenses to compute foreign market value since selling expenses were deducted from U.S. prices.

Department's Position: We agree. The Department did deduct home market selling expenses in its computation of foreign market value.

Comment 8: M&S argues that the Department erred when it failed to adjust constructed value for differences in circumstances of sale. Since the Department deducted credit and selling expenses from certain U.S. sales, credit and selling expenses should also have been deducted from the constructed value when the sales were compared.

Department's Position: We agree. The Department has adjusted the constructed value for a portion of finance expenses attributable to costs of providing credit to purchasers and for cold storage fees.

Comment 9: The respondents argue that the "10%–90%" rule is inappropriate in this case and that a rule designating that 50% of below-cost sales be the benchmark for disregarding those sales is more appropriate. They maintain that in the case of red raspberries, which are a perishable agricultural product, the Department should not have assumed that a producer who sells his product below the cost of production cannot recoup his costs in a reasonable period of time in the normal course of trade.

Department's Position: We disagree. When producers lack the ability to control output, at least in the short-term because they cannot store their production, the Department has disregarded below-cost home market sales when such sales constituted 50% of more of a grower's total sales of the produce under consideration. In the red raspberry market, in contrast to markets for fresh vegetables, fall-harvested white potatoes, or fresh cut flowers where the 50% rule was used, processors/growers do have the ability to and often do control the sale of their output, at least in the short-term, by storing their output in a frozen state. Therefore, the Department used 10% in lieu of 50% as the benchmark for determining if below-cost sales were in substantial quantities.

The respondents submitted sales and cost data for the period of review. Since agricultural costs depend on yields and since future yields are unpredictable because they depend on unforeseeable

variables such as weather and disease, recovery of costs over time is unpredictable. Moreover, since these costs are associated only with production during the crop year, rather than being incurred for the benefit of future years' production, they should be recovered during the current crop year.

Comment 10: The petitioners contend that the Department may not disregard the actual prices that Jesse and M&S paid to their related growers for raspberries because the Department is bound by the holding of the Court of International Trade ("CIT") in *Washington Red Raspberry Commisison v. United States*, 657 F. Supp. 537 (CIT 1987).

Department's Position: We disagree. In *Washington Red Raspberry Commission*, the Department explained that it could not use the transaction prices paid by Jesse and M&S because these processors had no sales from unrelated growers to use as a benchmark for market prices. The Court did not dispute the Department's legal reasoning; it merely decided that the record showed there were transactions between unrelated parties with which to compare the prices Jesse and M&S paid to their related growers.

The Department has since reconsidered its approach to cost of production, however, and has determined that it makes more sense from an economic standpoint, to use related parties' costs instead of transfer prices. First, pricing between related parties may be an internal decision not dictated by market forces. Second, such prices, if they do reflect market values, could include profit, which should accrue, at least in part, to the related purchaser who produces the end product. Thus, using the growers' cost insures that profits are not included in the cost of production.

There is nothing in the statute that precludes this methodology. The law does not mandate testing related party prices against market prices when the Department calculates cost of production, in contrast to the statutory requirements for constructed value calculations. *Compare* 19 U.S.C. 1677(b) and 19 U.S.C. 1677b(e). Contrary to the petitioners' argument, this issue has not been finally decided by any court and the Department is not bound by the cited decision.

Comment 11: The petitioners assert that the Department is bound by the CIT's holding that the drums and pails in which the raspberries are contained are an integral part of the product and must be included in the cost of raspberries.

Department's Position: The Department has appealed the CIT's decision with respect to the treatment of pails and drums. The Department does not consider container costs to be costs of materials under section 773(e)(1)(A) of the Act, as seeds, water, and fertilizer would be. Rather, the Department considers costs of pails and drums to be costs of packing the raspberries for shipment to the United States under section 773(e)(1)(c) of the Act. Until the Court of Appeals decides this issue, the Department is not following the CIT ruling.

Final Results of Review

Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results of review for M&S and Clearbrook and remain unchanged for Jesse. We determine that the following margins exist for the period December 18, 1984 through May 31, 1986.

Processor/exporter	Weighted-average margin (percent)
Jesse Processing, Ltd	7.65
Mukhtar & Sons Packers, Ltd	.28
Clearbrook Packers, Inc	.002

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margins for M&S and Clearbrook are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit for these firms.

For any shipments from the remaining known processors and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the antidumping duty order for each of those firms (50 FR 26019, June 24, 1985). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments of red raspberries occurred after May 31, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 7.65 percent shall be required.

These deposit requirements are effective for all shipments of Canadian fresh or frozen red raspberries entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 28, 1988.

[FR Doc. 88-12410 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of California, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Material's Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-176. *Applicant:* University of California, San Diego, Department of Medicine, M013-J, La Jolla, CA 92093. *Instrument:* Cardiac Ventricular Volume Measuring Device Via Conductance, Model SIGMA-5. *Manufacturer:* Leycom, The Netherlands. *Intended Use:* The instrument will be used to quantitate cardiac ventricular volume during a series of regional function studies. Intervention will include ischemia and assorted positive and negative ionotropic agents. Experiments will involve acute dogs as an animal model, and involve placement of a cardiac conductance catheter in order to make volumetric calculations. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88-177. *Applicant:* The Johns Hopkins University, School of Hygiene and Public Health, Department of Biochemistry, 615 North Wolfe Street, Baltimore, MD 21205. *Instrument:* Rapid-Mix-Rapid-Quench Apparatus, Model PQ-53. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of yeast pyruvate decarboxylase (PDC), Thiamine pyrophosphate (TDP) and pyruvate. Experiments will involve using isotope probes to determine whether C(2)-proton transfer from thiamine (TDP) to form the thiazolium ylide or ylide addition to substrate is rate limiting for PDC. Analysis of enzymic and nonenzymic kinetic isotope effects provides details about the relative properties of sequential transition states. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88-178. *Applicant:* Children's Hospital, Neuroscience Department, Enders 2, 300 Longwood Ave., Boston, MA 02173. *Instrument:* Electron Microscope, JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is intended to be used to study the ultrastructure, development, growth and alterations in the nervous system. The experiments will be conducted in order to understand how neuroanatomical structure relates to the function of the nervous system in combination with biochemical and physiological experiments performed prior to fixation and preparation for electron microscopy. In addition, the instrument will be used to train several graduate students, residents and postdoctoral fellows on a one-to-one basis in use of the instrument for their studies of the nervous system. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88-179. *Applicant:* North Carolina State University, Box 7212, Raleigh, NC 27695. *Instrument:* Isotope Ratio Mass Spectrometer, Model Delta E. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* The instrument is intended to investigate the processes which control the isotopic composition of methane. Dissolved methane and methane fluxing from coastal sediments will be analyzed. Natural variations in $^{13}C/^{12}C$ and H/D ratios will be correlated with rates of specific processes such as methane oxidation, CO_2 reduction and acetate cycling. The second research initiative will involve methods development of inter- and intramolecular C and N isotope measurements. Such measurements will be used as a method of identifying the sources and fates of organic compounds in marine sediments. The primary application of the measurement will be to study the processes responsible for the preservation and burial of organic matter in the marine environment. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88-180. *Applicant:* State University of New York at Buffalo, Department of Chemistry, Main Street, Ascheson Hall, Buffalo, NY 14214. *Instrument:* Stainless Steel Chambers. *Manufacturer:* Technoscience, France. *Intended Use:* The instrument will be used for the study of the production of intense beams of molecular clusters. Ions will be generated via excitation from an excimer laser within these clusters and their chemistry will be studied. Study of chemistry within clusters will show the direct effect solvation has on chemical dynamics. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88-181. *Applicant:* Virginia Commonwealth University, Medical College of Virginia, Department of Physiology, Room 3-012B, Sanger Hall, 1101 E. Marshall Street, Box 551, Richmond, VA 23298-0551. *Instrument:* Micoforge, Model MF-83. *Manufacturer:* Narishige Scientific instrument Laboratory, Japan. *Intended Use:* The instrument will be used for studies of electrical activity of isolated heart cells. Experiments will be conducted to determine single ionic channel permeabilities and ion distribution with patch clamp technique in order to understand how ionic distributions are related to electrical activity of the heart. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88-182. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* High Resolution Ion Energy Analyzer and High Precision Sample Manipulator. *Manufacturer:* High Voltage Engineering Europa, The Netherlands. *Intended Use:* Studies of the atomic structure of surfaces of metals, semiconductors and insulators, both in their atomically clean form and after deposition of small amounts of adatoms. In addition, the instrument will be used by graduate students, post-doctoral candidates and undergraduates for their training and for doing their thesis research. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88-183. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* 400 kV Heavy Ion Accelerator. *Manufacturer:* High Voltage Engineering Europa, The Netherlands. *Intended Use:* Channeling and blocking studies of the atomic structure of surfaces of metals, semiconductors and insulators, both in their atomically clean form and after deposition of small amounts of adatoms. There will also be back scattering studies of thin films on such surfaces and ion implantation. In addition, the instrument will be used by graduate students, post-doctoral candidates and undergraduates for their training and for doing their thesis research. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88-184. *Applicant:* University of Hawaii, Biological EM Facility, PBRC, Synder 110, 2538 The Mall, Honolulu, HI 96822. *Instrument:* Cryo Stage and Transfer System. *Manufacturer:* Carl Zeiss, Inc., West Germany. *Intended Use:* The instrument will be used in various studies to view viruses, isolated cellular organelles and vesicles, liposomes and sections of whole cells in an artifact-free state. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88-185. *Applicant:* Geisinger Clinic, Weis Center for Research, North Academy Avenue, Danville, PA 17822-2600. *Instrument:* Electron Microscope, Model JEM-1200/EX/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of heart, blood vessel, nerve and other cells and purified macromolecules derived from these cells. Experiments are aimed at answering specific basic questions about the structure, function or regulation of various cell types or organ systems. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88-186. *Applicant:* Texas A&M Research Foundation, Box 3578, College Station, TX 77843. *Instrument:* Spectrascan Accessory, MG-3000. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument is an accessory to an existing stopped-flow spectrophotometer which will be used to monitor rapid spectral changes upon initiation of enzyme-catalyzed reactions. Studies will involve investigations of the reactions catalyzed by a bacterial luciferase, carbamyl phosphate synthetase and D-ala, D-ala ligase. Typical stopped-flow mixing experiments will be conducted to elucidate the mechanisms of enzyme action. This will be accomplished by measuring the rate constants for the formation and decay of reaction intermediates and the chemical identification of reaction intermediates via the spectral changes. In addition, the instrument will be used in Chemistry 491 and 691 to teach students to solve

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problems of a biochemical nature and to elucidate the molecular details of enzyme catalyzed reactions. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88-187. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. *Instrument:* NMR Spectrometer, Model MSL. *Manufacturer:* Bruker Analytik GmbH, West Germany. *Intended Use:* Studies of solutions of organic, inorganic and biological molecules and solid state materials such as polymers, composites and geological samples. The investigations will provide rapid, nondestructive analysis of high sensitivity for a broad spectrum of materials. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88-188. *Applicant:* University City Science Center, 3624 Market Street, Philadelphia, PA 19104. *Instrument:* Mortar and Pestle Mill System with Accessories. *Manufacturer:* The Pascall Engineering Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of trimmed, superficially fat-free beef heart. Experiments will involve the study of the mechanism of electron transport and thus energy produced in normal and in diseased tissue, especially in malignant tissue in which the growth is uncontrolled. The energy from these is mostly derived from electron transfer. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88-189. *Applicant:* Lamont-Doherty Geological Observatory of Columbia University, Route 9W, Palisades, NY 10964. *Instrument:* Thermal Ionization Double-Focusing Mass Spectrometer, Model VG Isolab 120. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* The instrument will be used for measurement of abundance of naturally-occurring radiogenic and non-radiogenic isotopes, and enriched-isotope spikes added to natural samples for determination of element concentrations using stable-isotope dilution techniques. The materials under study are natural rock and mineral samples; chemically separated elements including but not limited to K, Tb, Sc, Ba, Sr, Rare earth elements, U, Th, Pb, Re, Os. In addition, the instrument will be used for the training of graduate students in methods of geochemical analysis. *Application Received by Commissioner of Customs:* April 26, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-12408 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DS-M

Materials Technical Advisory Committee; Open Meeting

A Meeting of the Materials Technical Advisory Committee will be held June 23, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises of Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda: General Session

1. Opening Remarks by the Chairman and Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Introduction of New Committee Members.
5. Presentation by General Electric Company on State-of-the-Art of High Temperature Materials in the Aircraft Industry.
6. Presentation by Alcoa on Use of Aluminum Powder and the Equipment and Technology Necessary for Its Production.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: May 27, 1988.

Betty A. Ferrall,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-12377 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Applications; Columbus, OH; Correction of Closing Date

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice of correction of closing date.

SUMMARY: This notice corrects the closing date for applications to operate a MBDC in the Columbus, Ohio Standard Metropolitan Statistical Area (SMSA) previously published in the Federal Register May 16, 1988, (Volume 53, Number 94, pages 17236, 17237.

The new closing date is July 1, 1988.

Date: May 26, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 88-12349 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet Tuesday, June 28, 1988, from 8:30 a.m. to 5:30 p.m., and Wednesday, June 29, 1988, from 8:30 a.m. to 1:30 a.m., in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Maryland; from 3:00 p.m. to 4:00 p.m. in Room 5854, Department of Commerce, Washington, DC.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301-975-2411.

Date: May 26, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-12336 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program and National Estuarine Research Reserve; Availability of Findings

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Florida, Pennsylvania, Rhode Island, New Hampshire, and New York Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)-(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone 202/673-5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: May 27, 1988.

John J. Casey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-12414 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-08-M

Intent To Evaluate State Coastal Zone Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Michigan Coastal Management Program (CMP); and New Jersey CMP; and the Ohio (Old Woman Creek) National Estuarine Research Reserve (NERR); California (Elkhorn) NERR; Rhode Island NERR (Narraganset); and North Carolina NERR; through September 30, 1988. Evaluation of coastal management program will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. Evaluation of the National Estuarine Research Reserves will be conducted pursuant to section 315(f) of the CZMA which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, State and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the Federal Register announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673-5104).

Federal Domestic Assistance Catalog 11.419)

Date: May 27, 1988.

John J. Casey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-12415 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-08-M

Endangered and Threatened Species; Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Reopening of comment period; reconsideration of petition to list Sacramento River Winter-Run Chinook Salmon under the Endangered Species Act.

SUMMARY: NMFS is reconsidering its decision not to list the Sacramento River winter-run chinook salmon as a threatened species under the Endangered Species Act. To ensure consideration of the best scientific and commercial data available, the comment period is being reopened for a period of 30 days. Comments are requested on all relevant data, including information generated before and after the decision and new information concerning the status of the species and any present or potential threats to the species.

DATE: Comments must be received by July 5, 1988.

ADDRESS: Comments should be mailed to Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NMFS, NOAA, Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Patricia Carter (Office of Protected Resources, F/PR2, NMFS, Washington, DC 20235, 202-673-5351) or James Lecky (NMFS, Southwest Region, 300 S. Ferry St., Terminal Island, CA 90731, 213-548-8684).

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1985, the American Fisheries Society (AFS) petitioned NMFS to add the winter run of chinook salmon *(Oncorhynchus tshawytscha)* in the Sacramento River in California to the U.S. List of Endangered and Threatened Species. The Assistant Administrator for Fisheries, NOAA, accepted the petition and conducted a status review to determine whether a listing was warranted. Comments were

received through April 14, 1988. The results of the status review, along with a Notice of Determination, were published on February 27, 1987 (52 FR 6041). The Notice stated NMFS' belief that the primary threat to the species is the barrier to upstream migration presented by the Red Bluff Diversion Dam (RBDD), which prevents a majority of the run from reaching preferred spawning grounds above the dam. Based on an agreement with the Bureau of Reclamation, U.S. Department of the Interior, to raise the gates at RBDD to facilitate fish passage during the period that winter-run are migrating upstream and taking into consideration recovery and conservation measures that other affected State and Federal resource agencies agreed to adopt and implement, NMFS determined that listing was not warranted. In response to NMFS' decision, the Sierra Club Legal Defense Fund, Inc., on behalf of the AFS, filed suit seeking an order from the court to list the winter-run as threatened.

Since the original determination was made, significant new data concerning Sacramento River winter-run chinook salmon have become available. These data include: (1) Recently issued water forecasts for the upcoming water year which predict conditions highly unfavorable for salmon survival; (2) recently published information identifying previously unknown winter-run spawning habitat in proximity to RBDD; (3) an evaluation of dam operations on winter-run habitat and spawning success; (4) the results of the first monitoring report on the effects of raising the gates at RBDD; and (5) recent analysis of climatic events described in the paragraph below.

During the 1987 water-year, drought resulted in elevated water temperatures. Suitable water temperatures are an essential requirement for successful salmon reproduction. Drought conditions during 1987 caused water temperatures to rise to the degree that conditions were lethal to early life stages of the winter-run population. The California Department of Fish and Game estimated that about 10 percent of the winter run spawn was affected by the elevated temperatures.

Based on these and related factors, NMFS has determined that a substantial basis exists for reconsideration of the AFS petition. This action will encompass a complete review and appropriate update of the status of the species and a reassessment of the factors affecting the species including: (1) A review of all new information that has become available since the initial decision, (2) the results of any actions that have been taken or that are underway to reverse the population decline, and (3) an evaluation of the status of any proposed recovery measures or conservation practices to restore the population or that will affect its recovery, including: Construction, pollution control, dam operation, gravel mining, bank riprapping, fish hatchery planning, water temperature control and other studies, programs and relevant activities. Upon completion of this process, the agency will make a new determination as to whether listing is warranted. Notice of the new decision will be published in the **Federal Register**, along with an evaluation of the reasons for the decision and a summary of the data on which it is based.

Dated: May 26, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-12416 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Drs. Kenneth S. Norris and William T. Doyle (P20I)

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicants:* Dr. Kenneth S. Norris and Dr. William T. Doyle, Long Marine Laboratory, University of California, 100 Shaffer Road, Santa Cruz, California 95060.

2. *Type of Permit Requested:* The applicants request authorization to capture and temporarily maintain two Atlantic bottlenose dolphins *(Tursiops truncatus)* for cognition research. They will be maintained at Long Marine Laboratory for approximately six (6) years, then returned to Florida and released at the original capture site.

3. *Period of Activity:* One (1) year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: May 27, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-12417 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 16 June, 1988 at 10:00 a.m. at the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, May 23, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88-12324 Filed 6-1-88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: May 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 331 is being increased for carryforward and swing.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 24504, published on July 1, 1987; 52 FR 49465 and 52 FR 49668, published on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on January 1, 1988 and extends through June 30, 1988.

Effective on May 27, 1988, the directive of December 28, 1987 is hereby amended to adjust the limit for cotton textile products in Category 331 to 283,147 dozen pair [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia.

The Committee for the Implementation of the Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12380 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 3, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: In conformity with the Interim Category System, the 1988 limits for certain wool and man-made fiber textile products in Group II are being adjusted under the terms of the current bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 62 published in the **Federal Register** on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 3, 1988, the directive of December 30, 1987 is amended to include adjustments to the previously established restraint limits for wool and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of November 18, 1982, as amended and extended.

Category	Adjusted 12-month limit [1]
Sublevels within Group II	
433	12,844 dozen.
435	20,412 dozen.
442	38,224 dozen.
443	48,036 numbers.
444	181,020 numbers.
447/448	17,681 dozen.
633/634/635	1,552,493 dozen of which not more than 1,036,840 dozen shall be in Categories 633/634 and not more than 748,726 dozen shall be in Category 635.
642	633,614 dozen.
643	576,120 numbers.
644	2,066,952 numbers.
647	2,591,354 dozen.
648	3,063,771 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12379 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Requirements for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in Sri Lanka

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Issuing a directive to the Commissioner of Customs amending export visa requirements.

EFFECTIVE DATE: June 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The existing export visa arrangement between the Governments of the United States and Sri Lanka is being amended further to provide for the use of visas for part and merged category designations for certain cotton and man-made fiber apparel products exported from Sri Lanka on or after June 1, 1988.

A copy of the current export visa arrangment is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 44 FR 36221, published on June 21, 1979.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 15, 1978, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which established export visa requirements for certain cotton, wool and man-made fiber apparel products, produced or manufactured in Sri Lanka.

Effective on June 1, 1988 for goods exported on or after June 1, 1988, the existing export visa requirements established in the directive of June 15, 1978, as amended, are hereby further amended to include the following part and merged category designations:

PART CATEGORIES

Category	Description	TSUSA Number
338-S/339-S.	Knit shirts, other than T-shirts and tank tops.	Only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.5610, 381.8506, 381.924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2618, 384.2930, 384.2U70, 384.3437 in Category 338-S; and only TSUSA numbers 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2834, 384.2835, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339-S.
338-O/339-O.	Other	All remaining TSUSA numbers in Categories 338/339.
340-Y	Shirts made of two or more colors in the warp and/or the filling.	Only TSUSA numbers 381.6522, 381.5500, 381.5610, 381.5625, 381.5637 and 381.5660.
340-O	Other	All remaining TSUSA numbers in Category 340.

PART CATEGORIES—Continued

Category	Description	TSUSA Number
341-Y	Shirts and blouses made of two or more colors in the warp and/or the filling.	Only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4809, 384.4810, 384.4812 and 384.4788.
341-O	Other	All remaining TSUSA numbers in Category 341.
359-C/659-C.	Coveralls and overalls.	Only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359-C; and only TSUSA numbers 381.3025, 381.9805, 384.2205, 384.2530, 384.8006, 384.8607 and 384.9710 in Category 659-C.
359-O	Other	All remaining TSUSA numbers in Categories 359.
369-D	Dishtowels	Only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2630, 366.3540, 366.2420, 366.2440 and 366.2660.
369-S	Shoptowels	Only TSUSA number 365.2640.
369-O	Other	All remaining TSUSA numbers in Category 369.
659-O	Other	All remaining TSUSA numbers in Category 659.

Merged Categories

331/631
333/633
335/635
337/637
338/339
342/642/842
345/845
347/348/847
350/650
351/651
352/652
359-C/659-C
445/446
836/838
836/839/838
845/646
647/648

Accordingly, you are directed to prohibit effective for shipments of cotton and man-made fiber apparel products in the foregoing categories entered for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after June 1, 1988 from Sri Lanka for which the Government of Sri Lanka has not issued an appropriate visa with the correct part and/or merged category designation. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (i.e., Categories 331/631 may be visaed as Categories 331/631 or if the shipment consists solely of Category 331 merchandise, the shipment may be visaed as Category 331, but not as Category 631).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12378 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before July 5, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 27, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Revision.
Title: Continuation Application for Grants under the Strengthening Historically Black Colleges and Universities Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 99.
Burden Hours: 1,485.
Recordkeeping:
Recordkeepers: 99.
Burden Hours: 297.
Abstract: This form will be used by institutions of higher education to apply for funding under the Strengthening Historically Black Colleges and Universities. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for Grants under the Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships.
Frequency: Annually.
Affected Public: Businesses or other for-profit.
Reporting Burden:
Responses: 188.
Burden Hours: 3,760
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by institutions of higher education to apply for funding under the Patricia Roberts Harris Fellowships Program. The Department will use the information to make grant awards.

[FR Doc. 88-12441 Filed 6-1-88; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

San Francisco Operations Office; Financial Assistance Award; Grant; Special Energy Projects

AGENCY: U.S. Department of Energy (DOE); San Francisco Operations Office.

ACTION: Territorial Assistance Program Grant Award.

SUMMARY: DOE announces that it plans to conduct a competitive solicitation among the U.S. Territories and Compact Nation Governments inviting them to submit proposals for special energy projects. It is anticipated that the total amount of funding available for this program shall be $200,000. The Statutory Authority for use of a grant award is Pub. L. 95-91, DOE Organization Act, and Pub. L. 96-597.

Grant Number: DE-FG03-88SF17581.

The DOE will issue a competitive solicitation among the U.S. Territories and Compact Nation Governments. Applications will be submitted for projects to address priority needs and opportunities as identified in the 1982 Territorial Energy Assessment, prepared by DOE in response to a mandate in the Omnibus Territories Act, Pub. L. 96-057. The actual work to be accomplished will be determined by the projects to be selected for awards. All projects selected will be in the general categories of promoting the use of proven technologies that employ indigenous renewable resources or serve to reduce the costs and dependencies of the territories on imported fuels.

FOR FURTHER INFORMATION CONTACT: Sandra R. Silva, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, May 17, 1988.

James S. Hirahara,

Director, Contracts Management Division.

[FR Doc. 88-12396 Filed 6-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-122-007]

Colorado Interstate Gas Co.; Refund and Compliance Filing

May 27, 1988.

Take notice that on May 20, 1988, Colorado Interstate Gas Company (CIG) filed a refund report and compliance filing, and made refunds in Docket No. RP85-122. The filing and refunds were made to comply with Opinion No. 290 and Opinion No. 290-A, as well as the notice of extension of time issued December 10, 1987 in this docket. CIG states that its refund report and compliance filing is based on the cost of service derived from the Commission Opinion Nos. 290 and 290-A, and also reflects certain cost allocation and rate design changes required by those opinions.

CIG also states that the filing contains the derivation of non-gas rates under Opinion Nos. 290 and 290-A and the derivation and computation of refunds that were paid to CIG's jurisdictional customers contemporaneously with the filing of the refund report.

Copies of CIG's filing have been served on CIG's jurisdictional customers, interested state commissions, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12429 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-176-000 and TQ88-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 27, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on May 20, 1988 certain revised and alternate revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective June 1, 1988.

ESNG states that it is making the tariff filing in compliance with § 154.310 of the Commission's Regulations, which contain the Transition Rules applicable to the Commission's new Purchased Gas Adjustment (PGA) regulations adopted in Order Nos. 483 and 483-A. The filing includes tariff sheets containing (1) a PGA clause pursuant to § 154.308 of the Regulations; (2) an initial current adjustment rate computed under § 154.310(b) of the Regulations; and (3) the existing surcharge rate pursuant to § 154.310(c) of the Regulations. ESNG also states that it is making this filing in the alternative because it does not know at this time what action the Commission will take on ESNG's pending PGA filing to be effective May 1, 1988 in Docket No. TA88-2-23-000.

ESNG state that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12430 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-6-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 27, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on May 16, 1988, tendered for filing Corrected Substitute Thirteenth Revised Sheet Nos. 57(i), Second Substitute Thirteenth Revised Sheet Nos. 57(i) and 57(ii), and Original-A Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1 to be effective May 1, 1988.

Corrected Substitute Thirteenth Revised Sheet No. 57(i) is being filed to replace Substitute Thirteenth Revised Sheet No. 57(i) which was filed on May 9, 1988. This tariff sheet contained a transposition of numbers related to the Commodity-Purchased Gas Cost for Rate Schedule CQ-3. This tariff sheet, while effective May 1, 1988, will be superseded by the revised pricing agreement stated below, which is also effective May 1, 1988.

Second Substitute Thirteenth Revised Sheet Nos. 57(i) and 57(ii) reflect changes, which are effective May 1, 1988, in the price of gas purchased by Great Lakes from TransCanada PipeLines Limited ("TransCanada") for resale to Northern Minnesota Utilities ("NMU"). Great Lakes states that the change in price is in accordance with revised gas pricing provisions that have been negotiated between NMU and TransCanada. The revised pricing provision will change the commodity charge from $1.50 to $1.30 per MMBtu for purchases up to 100% of daily contract quantity and from $1.463 to $1.30 per MMBtu for purchases in excess of 100% of daily contract quantity.

Original-A Sheet No. 57(v) reflects the current purchased gas cost adjustment to Rate Schedules T-19 and T-20 for the month of May, 1988. This change is made in conjunction with a related change in Rate Schedule T-4 effective May 1, 1988.

Great Lakes requests waiver of the 30 day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations and any other necessary waivers so as to permit Corrected Substitute Thirteenth Revised Sheet Nos. 57(i), Second Substitute Thirteenth Revised Sheet Nos. 57(i) and 57(ii) and Original-A Sheet No. 57(v) to become effective on May 1, 1988.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-12431 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP76-111-002 et al.]

Questar Pipeline Co.; Redesignation

May 27, 1988

On April 15, 1988, Questar Pipeline Company filed in Docket No. CP76-111-002, *et al.*, a request that it be designated as certificate holder, respondent, or party under its new name in lieu of its former name, Mountain Fuel Resources, Inc. In accordance with a corporate name change the jurisdictional natural gas operations are to be conducted under the name of Questar Pipeline Company.

A list of authorizations and pending proceedings is set forth in the appendix hereto, and the authorizations and proceedings are redesignated as requested, as well as the FERC Gas Tariff on file with the Commission.

This action is taken pursuant to 18 CFR 375.302(s) of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

Questar Pipeline Company—Pending Proceedings and Existing Authorizations.

CP76-111
CP76-265
CP80-274
CP81-325-000
CP83-17-000
CP84-29-000
CP84-530-000
CP84-628-000
CP84-684-000
CP84-750-000
CP85-234-000
CP85-299-000
CP85-385-000
CP85-439-000
CP84-443-000
CP85-617-000
CP85-618-000
CP85-883-000
CP85-894-000
CP86-215-000
CP86-457-000
CP86-516-000
CP87-143-000
CP87-336-000
CP87-530-000
CP88-239-000
RP86-67-000
RP86-164-000
RP87-46-000
RP87-100-000
RP88-40-000
ST87-729-000
ST87-976-000
ST87-1033-000
ST87-1617-000
ST87-3208-000
ST88-176-000
ST88-213-000
ST88-226-000
ST88-1385-000
ST88-1386-000
ST88-1709-000
ST88-1869-000
ST88-2010-000
ST88-2011-000
ST88-2042-000
ST88-2043-000
ST88-2414-000
ST88-2730-000
ST88-2763-000
ST88-2883-000

[FR Doc. 88-12434 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-80-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 27, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 20, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, the proposed effective date of which is April 1, 1988:

Second Substitute First Revised Sheet No. 52
Second Substitute First Revised Sheet No. 53
Second Substitute First Revised Sheet No. 54
Second Substitute First Revised Sheet No. 55
Second Substitute First Revised Sheet No. 482

Texas Eastern states that the above listed tariff sheets are being filed in compliance with the Commission's order dated April 21, 1988 in Docket No. RP88-80-000 and to track the modifications approved by the Commission on May 16, 1988 in Docket No. RP88-27. Workpapers underlying the allocation factors used in the filing are included as Attachment A. Texas Eastern also filed alternate tariff sheets in the event the Commission elects not to accept the tariff sheets listed above.[1]

[1] Texas Eastern states that the alternate tariff sheets reflect the elimination of all interruptible sales volumes in the determination of the base and deficiency period volumes for all customers. Workpapers for the alternate tariff sheets setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are included in Attachment B of the filing.

Texas Eastern states that although the Commission's order was not issued until May 16, 1988, United billed its customers on May 10, 1988 for the months January through April and that Texas Eastern's payment is due on May 20, 1988. Contemporaneously with the filing of these tariff sheets, Texas Eastern is billing, pursuant to the existing effective Section 31 provisions of its tariff, to recover from Texas Eastern's customers the amount payable by Texas Eastern to United. To the extent that the amounts billed by Texas Eastern in its May 20, 1988 billing may differ from the amount which would have been billed if the tariff sheets proposed herein were effective, Texas Eastern will credit any such overpayment and debit any such underpayment with interest on future bills upon approval of the tariff sheets proposed herein.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties of record in Docket No. RP88-80.

Any person desiring to be heard or to protest said filing should file on motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12432 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-175-000]

Texas Eastern Transmission Corp.; Petition for Declaratory Order

May 27, 1988.

Take notice that on May 17, 1988, Texas Eastern Transmission Corporation (Texas Eastern) filed a petition for declaratory order to determine whether requests for transportation similar to that submitted by Tejas Power Corporation (Tejas) do or do not qualify for implementation

BEST COPY AVAILABLE

pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Texas Eastern states that Tejas in its May 2, 1988 motion for emergency clarification of the order issued on April 22, 1988 in Docket No. RP88–61–000, failed to enlighten the Commission on the specific details of the transportation desired by Tejas which Texas Eastern determined did not qualify for implementation under section 311 of the NGPA. Texas Eastern states that the Tejas transportation request sets forth a transaction structure which, Texas Eastern submits, has not been directly addressed by the Commission in prior cases.

Texas Eastern states that the Commission has previously determined that a single person or corporate entity can qualify as both an interstate and intrastate pipeline for purposes of self-implementing transportation. Similarly Texas Eastern submits that an entity which is qualified as an intrastate pipeline in one state (*e.g.*, Texas) may not necessarily be acting in that intrastate pipeline capacity when it conducts business in another state (*e.g.*, Louisiana). Texas Eastern states that in the factual circumstances of the Tejas transaction, the intrastate pipeline entity is not acting in its capacity as an owner of an intrastate pipeline.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12430 Filed 6–1–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3389–8]

Georgia, Mississippi, South Carolina, and Tennessee; FY 88 Grant Performance Reports

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed midyear evaluations of three state air pollution control programs (Georgia Environmental Protection Division, Mississippi Bureau of Pollution Control and South Carolina Department of Health and Environmental Control), and of one local program in Tennessee (Knox County Department of Air Pollution Control). These midyear audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. The audits were also conducted as part of the National Air Audit System (NAAS) established by EPA in an effort to assure nationwide consistency in the evaluation of state and local air pollution programs. EPA Region IV has prepared reports for the four agencies identified above and these NAAS/§105 reports are now available for public inspection.

ADDRESS: The reports may be examined at the EPA's Region IV office, 345 Courtland Street NE., Atlanta, GA 30365, in the Air, Pesticides & Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Walter Bishop at 404/347–2864 (FTS: 257–2664).

Dated: May 23, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88–12368 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3390–2]

Integrated Risk Information System (IRIS); Health Risk Assessment; Guidelines, etc.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; availability of the Integrated Risk Information System (IRIS).

SUMMARY: The Integrated Risk Information System (IRIS) is an electronic on-line database of the U.S. Environmental Protection Agency (EPA) that provides risk assessment and regulatory information on chemical substances. This notice describes IRIS and provides information on how to access this health risk information database.

EFFECTIVE DATE: April 15, 1988.

FOR FURTHER INFORMATION CONTACT: IRIS User Support, USEPA, Office of Research and Development, Environmental Criteria and Assessment Office, MS–114, Cincinnati, OH 45268, Telephone (513) 569–7254 or FTS 684–7254.

SUPPLEMENTARY INFORMATION:

Description

IRIS is a primary source of EPA health hazard assessment and related information on chemicals of environmental concern. It is intended to serve as a guide for the hazard and dose-response assessment steps of EPA assessments. IRIS was created in response to requests for Agency risk information; its purpose is to provide a vehicle for the communication of chemical-specific information necessary to develop EPA risk assessments. IRIS is intended to make chemical-specific risk information readily available to those who must perform risk assessments and also to increase consistency in risk management decisions. EPA staff and EPA contractors are expected to use the risk information for those chemicals in the IRIS database. The information contained in IRIS is intended for users without extensive training in toxicology, but with some knowledge of health science. Therefore, IRIS is not an exhaustive toxicological database, nor a risk assessment methodology resource. IRIS presents only summaries of hazard and dose-response assessments, but provides reference citations and EPA contacts for further information.

The IRIS database includes the following sections (Service Codes); these Service Codes are menu options:

(1) Chemical files which sumarize data on each chemical

(2) Alphabetical and CAS number listings of chemicals in IRIS

(3) List of revisions made to existing chemical files

(4) Introductory overview of IRIS and IRIS User's Guide

(5) Background documents on methodologies

(6) Instructional case study and sample chemical files

(7) Glossary of terms and acronyms used in IRIS

(8) Status of chemicals scheduled for the IRIS review process.

Each of the chemical files contains a chronic health hazard assessment for noncarcinogenic effects and/or for carcinogenic effects as relevant. Information on less-than-lifetime health hazard assessments, established in Drinking Water Health Advisories, is included in the chemical files. The chemical files also provide summaries of EPA regulatory decisions, such as Water Quality Criteria, Clean Air Act regulations, Pesticide Registration Standards, and Reportable Quantities developed for Superfund.

Supplementary information, such as acute toxicity summaries and physical-chemical properties data, are included when available. Apart from the chemical files, background documents in the database describe the basic concepts and limitations of IRIS, as well as the risk assessment procedures and assumptions used in developing the IRIS health hazard database assessment information.

The health assessment information contained in IRIS, except as specifically noted, has been reviewed and agreed upon by inter-disciplinary review groups of EPA scientists. These scientists have extensive experience in risk assessment. Thus, the information in IRIS represents and expert Agency consensus. This Agency-wide agreement on risk information is one of the most valuable aspects of IRIS.

As the inter-disciplinary review groups of EPA scientists continue to review and verify risk assessment information, additional chemical files will be added to IRIS. If you wish to obtain information on the status of this review for a particular chemical, call IRIS User Support at (513) 569–7254 or FTS 684–7254.

Accessing IRIS

IRIS is available electronically from the following three sources:

(1) DIALCOM Inc. IRIS is on DIALCOM Inc.'s Electronic Mail, the computer-based electronic communication system to which EPA subscribes. To obtain a DIALCOM Inc. account, contact Mike McLaughlin, (202) 488–0550, or write to: DIALCOM Inc., 600 Maryland Avenue SW., Suite 307, Washington DC 20024.

(2) Public Health Network (PHN). PHN is the communication network of the Public Health Foundation. The Foundation serves member state health departments and will provide IRIS on PHN to state and local health departments. Contact Paul Johnson, (202) 898–5600.

(3) National Technical Information Service (NTIS). Although IRIS accounts will not be available through NTIS, a floppy disk version of IRIS will be provided by NTIS for a fee. Write to: Stu Wiseman, NTIS, 5285 Port Royal Road, R32, Springfield, VA 22161, or call (703) 487–4807.

There are two hardware-software options accessing IRIS. Both options use common hardware and software. The first option requires a personal computer (PC), as standard 1200 baud Bell 212A compatible or 2400 baud asynchronous modem, a phone line, and PC communication software as CROSSTALK XVI. Many other communication software packages may also be used. To determine if your communication software is compatible, contact Mike McLaughlin at (202) 488–0550. The second option requires an ASCII communicating dumb computer terminal, a standard 1200 baud Bell 212A compatible or 2400 baud asynchronous modem, and a phone line. The necessary communication settings are: parity—NO; 8 bits, 1 stop bit; full duplex.

At this time, IRIS chemical files are only available electronically. Users are strongly encouraged to view or print on-line information to ensure use of the most up-to-date chemical information.

Cost

The user must pay only for the cost of accessing IRIS. The user will be billed by DIALCOM, Inc. there is a $25.00 monthly minimum which is applied against a usage fee of $25.00 per hour. In addition to the usage fee, there is a $.05 charge per computer screen accessed. There is no EPA charge for using IRIS.

Those choosing to access IRIS via the Public Health Network will be charged under a different set of fees. Contact the Public Health Foundation at (202) 898–5600 for information.

Limitations of IRIS Information

The information in IRIS is most useful if applied in the larger context of risk assessment as outlined by the National Academy of Sciences [National Research Council, 1983]. IRIS supports the first two steps of the risk assessment process (as summarized in Service Code 4); namely, the hazard identification and dose-response assessment steps. The primary qualitative and quantitative risk data on IRIS, the reference dose and carcinogenicity assessments, can serve as guides in evaluating potential health hazards and selecting a reponse to alleviate a potential risk to human health.

The REFERENCE DOSE (RfD) can be used to estimate a level of environmental exposure at or below which no adverse effect is expected to occur. The RfD is an ESTIMATE (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. The RfDs are based on an assumption of lifetime exposure and may not be appropriately applied to less-than-lifetime exposure situations. RfDs are derived for the noncarcinogenic effects of substances that may also be carginogencic.

The CARCINOGENICITY ASSESSMENTS on IRIS begin with a qualitative weight-of-evidence judgment in the form of a classification as to the likelihood that an agent may be a carcinogen for humans. This judgment is made independent of consideration of the agent's potency. A quantitative assessment, including slope factor and unit risks, is then presented. The slope factor is an upper-bound ESTIMATE of the cancer risk for humans per mg of agent/kg body weight/day. The unit risk, which is calculated from the slope factor, is an ESTIMATE in terms of either risk per µg/L of drinking water, or risk per µg/cu.m of air concentration.

In general, risk values, such as those on IRIS, cannot be used to predict the acutal incidence of human disease or the type of effects chemical exposures may have on humans. This is due to the numerous UNCERTAINTIES involved in risk assessment, including those associated with extrapolations from animal data to humans and from high experimental doses to lower environmental exposures. The organs affected and the types of adverse effects resulting from chemical exposure may differ between study animals and humans. In addition, many factors besides exposure to a chemical influence the occurrence and extent of human disease.

Each RfD and carcinogen assessment is derived by using consistent chemical hazard identification and dose-response assessment methods. These methods are outlined in Background Documents 1 and 2, found in Service Code 5. The application of altered IRIS RfD or carcinogen assessment values (for example, the use of more or fewer Uncertainty Factors than were applied to arrive at an RfD) in estimating the potential health risk posed by a chemical exposure is not endorsed by

the inter-disciplinary review groups of EPA scientists. The risk information in IRIS will be REVISED by these work groups when additional health effects data become available and new developments in risk assessment methods arise.

Information Submission

The IRIS Information Submission Desk (address provided at the end of this notice) will receive all information submissions regarding IRIS. To facilitate the handling of this information, all submissions must adhere to the following format. All submissions must include a cover letter and issue page, as well as any supporting documents.

The cover letter should:

- State that the correspondence is an IRIS information submission. If the issue raised in an information submission is not chemical-specific, this should be clearly stated:
- Describe in general terms the purpose of the information submission for each issue abut IRIS being addressed (if more than one issue is being raised, each should be described); and
- Include the name, address and phone number of the individual sending the information submission.

The issue page should:

- Identify the chemical by name and CAS number;
- State the type of IRIS information (for example, oral reference dose, inhalation carcinogenicity assessment, etc.) that is being addressed;
- State, in appropriate detail, the issue being addressed;
- Describe briefly the information and/or supporting documents being provided;
- Explain how and why the information submission could change what is in IRIS; and
- State any claims for confidential treatment of part or all of the submission, with appropriate justification for such claims.

If more than one chemical or type of IRIS information is being addressed, prepare a separate issue page for each chemical.

Notes regarding supporting documents:

- Parties submitting health effects studies for existing chemicals on IRIS should include, for each study submitted, a specific explanation of how and why the study results could change a quantitative risk value or relevant IRIS narrative.
- Parties submitting health effects studies for those chemicals scheduled for consideration by the inter-disciplinary review groups of EPA scientists should include, for each study submitted, an explanation of the significance of the study results to a potential RfD, carcinogen assessment value, etc.
- Two copies of all documents referenced should be included in the submission.
- Documents (or sections thereof) claimed to be confidential should be so marked. Any documents not marked may be made available to the public without further notice to the submitter. Any claim to confidentiality should be explained on the relevant issue page.

Because IRIS is designed to be a publicly available database, any submitted studies or documents considered by EPA and used to revise any part of IRIS will be summarized and cited in IRIS. This information may be made available to an external peer review panel and to the public upon request.

- Any material that cannot be made available to a peer review panel or to the public upon request may receive limited consideration.

Comments on Drinking Water Health Advisories will not be considered by the IRIS Information Submission Desk unless they identify an inconsistency between the Health Advisory summarized in IRIS and the actual USEPA Office of Drinking Water Health Advisory. Questions about the substance of Drinking Water Health Advisories should be addressed to the Safe Drinking Water Hotline, 1–800–426–4791. Although EPA regulations are summarized in IRIS, comments on the content of regulations will not be considered by the IRIS Information Submission Desk, but should be addressed to the EPA program office with the statutory responsibility for the regulatory action.

Questions about IRIS should be made to IRIS User Support, (513) 569–7254 or FTS 684–7254, and not the IRIS Information Submission Desk.

Information submissions should be sent to: IRIS Information Submission Desk, USEPA, Environmental Criteria and Assessment Office, MS–114, 26 Martin Luther King Drive, Cincinnati, OH 45268.

Date: May 25, 1988.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88–12370 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3389-6]

Science Advisory Board; Radiation Advisory Committee, Dose and Risk Subcommittee, and Sources and Transport Subcommittee; Three Open Meetings

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of meetings of the Science Advisory Board's Radiation Advisory Committee and two of its Subcommittees. The Dose and Risk Subcommittee will meet June 20, 1988. The Radiation Advisory Committee will meet June 27–28, 1988. The Sources and Transport Subcommittee will meet July 13–15, 1988. All three meetings will be held at the U.S. Environmental Protection Agency in the Administrator's Conference Room 1103 West Tower. The meetings will begin at 9:00 a.m. on the first day and adjourn no later than 5:30 p.m. of the last day.

On June 20, 1988 the Dose and Risk Subcommittee will review risk estimates for radiation developed by the Agency. The estimates are for different types of radiation and are presented in terms of ranges of risk. The Agency is considering using the new estimates for a variety of applications including the regulation of radionuclides as a hazardous air pollutant and possible regulations for the disposal of low-level radioactive waste. The risk estimates are set forth in "ORP Low-LET Risk Estimate for Regulatory Purposes", February 25, 1988 and "EPA Radon Risk Estimates" expected shortly. Both documents are available from Dr. Jerome Puskin at the Office of Radiation Programs (ANR–461), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202/475–8640).

The Radiation Advisory Committee meeting June 27–28, 1988 will have four purposes: To hear the report of the Dose and Risk Subcommittee, to hear the report of the Randon Measurement Subcommittee, to discuss issues relevant to the Sources and Transport Subcommittee review, and to be briefed on other radiation-related activities of the Environmental Protection Agency.

On July 13–15, 1988 the Sources and Transport Subcommittee meeting will review those portions of the technical basis for the revised radionuclides NESHAP (national emissions standard for hazardous air pollutants) which relate to relevant source of radiation and its transport through the environment. Most of this technical basis is set forth in *Radionuclides: Background Information Document for Final Rules*, EPA 520/1–84–022–1, October 1984; the remainder will be presented in memoranda from the Office of Radiation Programs. These materials can be obtained from Mr. Terrence McLaughlin at the Office of Radiation Programs (ANR–460), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–8010.

The meetings are open to the public. Any member of the public wishing to attend, present information, or receive further details should contact Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A–101F), Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC Telephone 202/382–2552 or FTS 8–382–2552. Written comments will be accepted and can be sent to Mrs. Conway at the address above by 12:00 Noon each Friday before the meetings.

Date: May 24, 1988.

Donald G. Barnes,

Acting Director, Science Advisory Board.

[FR Doc. 88–12369 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3389-7]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Cannons Engineering Corp. et al.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

DATE: Comments must be provided on or before July 5, 1988.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In Re the Cannons Engineering Corporation Sites in Bridgewater, Massachusetts and Plymouth, Massachusetts, the Gilson Road Site in Nashua, New Hampshire, and the Tinkham's Garage Site in Londonderry, New Hampshire, U.S. EPA Docket No. 1–88–1034 (March 10, 1988).

FOR FURTHER INFORMATION CONTACT: Audrey Zucker, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC–2203, J.F.K. Building, Room 2203, Boston, Massachusetts 02203, (617) 565–3441.

Notice of De Minimis Settlement

In accordance with section 122(i)(1) of the Comprehensive Environmental Reponse, Compensation and Liability Act of 1986, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Cannons Engineering Corporation hazardous waste sites in Bridgewater and Plymouth, Massachusetts, the Tinkham's Garage hazardous waste site in Londonderry, New Hampshire, and the Gilson Road hazardous waste site in Nashua, New Hampshire. The terms of this proposed agreement are identical to the terms contained in the first proposed agreement concerning these sites which was published for comment on February 11, 1988, 53 FR 4070. The settling parties to this second proposed agreement were unable to participate in the first settlement for administrative reasons. This second settlement agreement has been proposed for approval by the Regional Administrator for EPA Region I on May 23, 1988. Below are listed the parties who have executed Binding Letters of Intent committing to participate in this settlement:

Abington Junior High School; Ark-Less Switch Corp.; Benjamin Moore; Coppercraft Guild; Davol Inc.; Foster Metals; Manchester Union Leader; Ocean State Finishing Corp.; Orleans Elementary School; PFW; Richardson Company; St. John The Baptist Rectory; St. Patrick's School; Stearns Express Co.; Taunton Savings Bank; Tremont Nail Co.; U.S. Post Office Group; U.S. Dept. of Commerce; U.S. Air Force Group; U.S. Coast Guard Group; Vulplex, Inc.

These 21 parties will pay an estimated $541,466.94 in settlement payments under the agreement.

EPA is entering into the agreement under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the Cannons case who are responsible for less than one percent of the waste volume at each of the four sites with which they are associated.

Settling Parties will be required to pay their volumetric shares of the governments' response costs at the four sites, including costs incurred by the government to date and the costs expected to be incurred at the sites in the future.

Settling Parties will also be required to pay a settlement premium in addition to their respective volumetric shares of the expected response costs at each site to compensate for the risks that are posed by settling before all costs are known. The amount of each Settling Party's premium payment is calculated by multiplying .60 times the Party's volumetric share of the total response costs at the four sites.

Finally, Settling Parties will be required to pay a base settlement charge to reimburse the government for transaction costs incurred in conducting the settlement negotiations leading up to this proposal.

In exchange for these settlement payments, the governments covenant not to sue for further civil or administrative liabilities in connection with the four Cannons sites. The covenant also extends to all federal and state natural resource damage liabilities with the exception that Settling Parties may be called upon to fund assessments of damages to natural resources under the trusteeship of the National Oceanic and Atmospheric Administration (NOAA) at the Bridgewater, Plymouth and Nashua sites if data gathered by June 30, 1990 does not eliminate the need for damage assessements.

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Boston, Massachusetts 02203. Additional backgound information relating to the settlement is available for review at the EPA's Region I Office of the Regional Counsel.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88–12371 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

May 20, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0085

Title: Employment Inquiry

Form No.: FCC 65

A revised and reinstated employment inquiry form has been approved for use

through 4/30/91. It will be implemented when copies of the form are available.

OMB No.: 3060-0407

Title: Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit

Form No.: FCC 307 (Data formerly submitted on FCC 701)

A new application form FCC 307 has been approved for use through 3/31/91. This form will be used by broadcast applicants only. The existing form FCC 701 (April 1965 edition) will remain in use until this new form is available. At that time, a Public Notice will be issued containing information on availability and implementation for broadcast applicants.

OMB No.: 3060-0035

Title: Application for Renewal of Auxiliary Broadcast License (Short form)

Form No.: FCC 313-R

A revised application form FCC 313-R has been approved for use through 3/31/91. The April 1986 edition with a previous expiration date of 3/31/88 will remain in use until revised forms are available.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-12387 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CL-88-111]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 2 Cellular RSAs

May 20, 1988.

During the months of July and August, 1988 applications for block 2 cellular RSAs will be accepted for filing. Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (Enter market number), P.O. Box 371995M, Pittsburgh, PA 15250-7995.

Applications shipped via common carrier or hand carried must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Format of Applications

Applications must consist of: (1) A completed transmittal sheet, a copy of which is attached hereto (see also page 4); (2) a $200 fee; and (3) a sealed 5"×7" envelope containing two microfiche copies of the application.

The two microfiche copies of each application shall be prepared in accordance with § 22.913(c) of the Commission's rules.

- Each fiche must be labeled at the top with the Applicant's Name, Market Number, Market Name, and Frequency Block. For Example: Jones, Robert Market #336. California 1—Del Norte Frequency Block A
- One microfiche jacket must be labled "Original" and the other jacket must be labeled "Copy".
- The fiche must be black & white (the purple or blue fiches are unacceptable as they do not produce readable paper copies), and the "original" microfiche copy must be archival quality.
- The information required by § 22.913(b)(2) must be placed on the 5"×7" microfiche envelope. The 5"×7" microfiche envelope, therefore, must be clearly labeled with the Applicant's Name, Market Number, Market Name, and Frequency Block.
- the information on the microfiche envelope must match the information on the transmittal sheet.
- The completed transmittal sheet, the $200 fee and the microfiche envelope must be placed in a 9"×12" envelope. The market number of the market being applied for must be placed in the lower left hand corner of all envelopes delivered to the Strip Commerce Center facility.

The certification required under § 22.913(b)(3) is included on the transmittal sheet and will no longer be the first page in the application itself. The applicant chosen in each market will be required to submit its original application and two copies thereof within seven (7) days of the public notice announcing the winning applicant in each market.

Receipt Copies

Applicants wishing stamped receipts must provide an additional copy of the transmittal sheet for each application submitted.

- Such applications that are mailed or shipped via common carrier must contain a self-addressed business-sized (approximately 4.5"×9.5") stamped envelope along with the extra copy of the transmittal sheet. Both the extra copy and the envelope must be attached to the application inside the 9"×12" outere envelope.
- Applications that are hand delivered must not include the receipt copy of the transmittal sheet inside the outer envelope. The receipt copy shall be presented to the acceptance clerk with the 9"×12" envelope containing the application and will be stamped at that time.

Points to Remember

1. Each application, with associated material (transmittal sheet, check or money order, and 5"×7" microfiche envelope) must be separately packaged in a 9"×12" outer envelope.
2. A separate $200 fee must be submitted with each application.
3. A separate completed transmittal sheet is required with each application.
4. The label on the microfiche envelope must agree with the information on the transmittal sheet and the information on the top of each fiche.
5. The transmittal sheet must be signed in ink (preferably not black ink).
6. No extraneous material (such as transmittal letters) should be submitted; it will only serve to impede the processing of the application.
7. The market name and market number must watch.
8. A single check of money order in the amount of $200 (made payable to the Federal Communications Commission) must be included. Cash is strongly discouraged.
9. For applications sent via the U.S. Postal Service, the market number of the market being applied for must appear at the end of the second line in the address.
10. For applications delivered by any means other than the U.S. Postal Service, the market number must appear in the lower left hand corner of the 9"×12" outer envelope.
11. The 9"×12" outer envelope may be placed inside a shipping envelope when applications are shipped by couriers which use special shipping envelopes.
12. Do not submit FAA Form 7640-1 to the Federal Aviation Administration at the time of filing this application. *See Public Notice* (Report No. CL-88-33, Mimeo No. 726, released November 27, 1987).
13. The application must include a firm financial commitment, as required by § 22.917 of the Commission's Rules.

DIRECTIONS TO STRIP COMMERCE CENTER

From Greater Pittsburgh International Airport and Interstate 79

Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh.

Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.

Take Liberty Avenue to 28th Street (28 blocks).

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

From Pennsylvania Turnpike

Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).

Proceed on Grant Street to Liberty Avenue (Approximately 6-7 blocks).

Bear right on to Liberty Avenue.

Take Liberty Avenue to 28th Street.

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

Transmittal Sheet

Attached is a copy of the transmittal sheet which must be filed with each cellular application. You may make copies of the attached form for your use. Only a limited number of transmittal sheets will be available to the public through the forms room located at 1919 M Street, NW. in room B-10.

Notice

A copy of this Public Notice (excluding the transmittal sheet) will be placed in the Federal Register.

ACCEPTANCE OF APPLICATIONS FOR CELLULAR RSAs IN BLOCK 2

July 13-15, 1988

Alaska

315. Alaska 1—Wade Hampton
316. Alaska 2—Bethel
317. Alaska 3—Haines

Hawaii

385. Hawaii 1—Kauai
386. Hawaii 2—Maui
387. Hawaii 3—Hawaii

July 20-22, 1988

California

336. California 1—Del Norte
337. California 2—Modoc
338. California 3—Alpine
339. California 4—Madera
340. California 5—San Luis Obispo
341. California 6—Mono
342. California 7—Imperial
343. California 8—Tehama
344. California 9—Mendocino
345. California 10—Sierra
346. California 11—El Dorado
347. California 12—Kings

July 27-29, 1988

Arizona

318. Arizona 1—Mohave
319. Arizona 2—Coconino
320. Arizona 3—Navajo
321. Arizona 4—Yuma
322. Arizona 5—Gila
323. Arizona 6—Graham

Washington

693. Washington 1—Clallam
694. Washington 2—Okanogan
695. Washington 3—Ferry
696. Washington 4—Grays Harbor
697. Washington 5—Kittitas
698. Washington 6—Pacific
699. Washington 7—Skamania
700. Washington 8—Whitman

August 3-5, 1988

Nevada

543. Nevada 1—Humboldt
544. Nevada 2—Lander
545. Nevada 3—Storey
546. Nevada 4—Mineral
547. Nevada 5—White Pine

Utah

673. Utah 1—Box Elder
674. Utah 2—Morgan
675. Utah 3—Juab
676. Utah 4—Beaver
677. Utah 5—Carbon
678. Utah 6—Piute

Wyoming

718. Wyoming 1—Park
719. Wyoming 2—Sheridan
720. Wyoming 3—Lincoln
721. Wyoming 4—Niobrara
722. Wyoming 5—Converse

August 10-12, 1988

Oregon

606. Oregon 1—Clatsop
607. Oregon 2—Hood River
608. Oregon 3—Umatilla
609. Oregon 4—Lincoln
610. Oregon 5—Coos
611. Oregon 6—Crook

Idaho

388. Idaho 1—Boundary
389. Idaho 2—Idaho
390. Idaho 3—Lemhi
391. Idaho 4—Elmore
392. Idaho 5—Butte
393. Idaho 6—Clark

New Mexico

553. New Mexico 1—San Juan
554. New Mexico 2—Colfax
555. New Mexico 3—Catron
556. New Mexico 4—Santa Fe
557. New Mexico 5—Grant
558. New Mexico 6—Lincoln

August 17-19, 1988

Colorado

348. Colorado 1—Moffat
349. Colorado 2—Logan
350. Colorado 3—Garfield
351. Colorado 4—Park
352. Colorado 5—Elbert
353. Colorado 6—San Miguel
354. Colorado 7—Saguache
355. Colorado 8—Kiowa
356. Colorado 9—Costilla

Montana

523. Montana 1—Lincoln
524. Montana 2—Toole
525. Montana 3—Phillips
526. Montana 4—Daniels
527. Montana 5—Mineral
528. Montana 6—Deer Lodge
529. Montana 7—Fergus
530. Montana 8—Beaverhead
531. Montana 9—Carbon
532. Montana 10—Prairie

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

BILLING CODE 6712-01-M

"FOR FCC USE ONLY"

CLASSIFICATION	FEE CONTROL #
☐ #1 (001-699)	☐ 1. Untimely
☐ #2 (700-799)	☐ 2. Fee Error
☐ #3 (800-899)	☐ 3. Transmittal illegible/missing
☐ #4 (900-999)	☐ 4. Incomplete transmittal
BATCH #	☐ 5. Fiche Envelope(s) missing
	☐ 6. Fiche Envelope(s) wrong label
	☐ 7. Fiche Envelope name ≠ Transmittal name
	☐ 8. Market name and # mismatch
	☐ 9. No signature
	RECEIPT DATE

TRANSMITTAL SHEET FOR CELLULAR APPLICATIONS

(Instructions On Reverse Side Must Be Followed)

• 1 ____ MARKET # • 2 ☐ A - nonwireline, ☐ B - wireline

3 MARKET NAME _____

• 4 APPLICANT'S NAME If person, list last name first _____

• 5 MAILING STREET ADDRESS or P.O. BOX LINE 1 _____

• (6) APPLICANT'S ADDRESS LINE 2 _____

• 7 CITY _____ • 8 ____ STATE • 9 _____ ZIP CODE

• (10) (____) ____ - ____ AREA CODE PREFIX NUMBER

CERTIFICATION

11 I hereby certify, under penalties of perjury, that this application for an initial cellular authorization is complete in every respect and contains all of the information required by FCC Form 401 and the Commission's cellular application rules. I acknowledge that if, upon Commission inspection, this certification is shown to be incorrect, this application shall be dismissed without further consideration.

I also certify that the applicant is the real party in interest in this application and there are no agreements or understandings, other than those specified in this application, which provide that someone other than the applicant shall have an indirect or direct ownership interest. It is also certified that the applicant intends to construct and operate the station as proposed and that there are no agreements or understandings that are inconsistent with that intent.

I declare, under penalties of perjury, that I am the authorized representative of the above-named applicant in the above entitled matter; that I have read the foregoing certification; and that the matter and things therein stated are true and correct.

Executed on _____ [date].

_____ Signature

_____ TYPE/PRINT NAME

_____ TYPE/PRINT TITLE

Any Correspondence Regarding This Application Should Be Directed To:

☐ Same as Line 4 above

(12) CONTACT REPRESENTATIVE'S NAME, if applicable _____

CONTACT REPRESENTATIVE'S MAILING STREET ADDRESS or P.O. BOX LINE 1 _____

CONTACT REPRESENTATIVE'S ADDRESS LINE 2 _____

CITY _____ STATE _____ ZIP CODE _____

— THIS TRANSMITTAL SHEET MAY BE REPRODUCED —

INSTRUCTIONS FOR COMPLETING TRANSMITTAL SHEET FOR CELLULAR APPLICATIONS

1. Provide three digit code for market number.
2. Check box "A" for non-wireline; "B" for wireline.
3. Type/Print market name, allowing space between words, if market name contains more than one word. **Do not abbreviate.**
4. Type/Print applicant name, using the name of the applicant as it appears on Form 401, Schedule A.
5. Type/Print address of applicant, using street address as it appears on Form 401, Schedule A.
6. This line can be used for further identification, or if additional space is needed.
7. Type/Print city.
8. Type/Print state code in two spaces, as prescribed by the Post Office.
9. Type/Print zip code using appropriate five or nine-digit code, as prescribed by the Post Office.
10. Provide telephone number of applicant (Item 4), including area code, prefix, and telephone number. This telephone number will be used in producing the Lottery Notice only.
11. CERTIFICATION:

Individual Applicants: If the application is for an individual, he/she should sign the individual name and, for the area marked "title", enter "applicant" or "owner".

Group or Partnership: If the application is composed of two or more individuals, or is a partnership, the signature of any one individual or partner is acceptable. For groups of individuals, the title of "co-applicant" or "co-owner" should be entered. For partnerships, the title "partner", "general partner" or "limited partner" (as applicable) should be entered.

Corporations: If the applicant is a corporation, the signature of an officer or duly authorized employee of that corporation is acceptable. The signator should enter an appropriate title in the space provided.

12. Check box if no contact representative is being used. If contact representative is being used, type/print Item 12 completely (name, address, city, state, zip code).

— THIS TRANSMITTAL SHEET MAY BE REPRODUCED —

[FR Doc. 88-12388 Filed 6-1-88; 8:45 am]
BILLING CODE 6712-01-C

[General Docket No. 86-337]

Oral Proceeding in the Matter of an Automatic Transmitter Identification System (ATIS) for Video Satellite Uplinks

On May 16, 1988, pursuant to an April 16, 1988 Public Notice, an Oral Proceeding was held in the above docket as an adjunct to the Further Notice of Proposed Rulemaking in that docket adopted on June 10, 1987. Interested parties presented views and information on issues related to ATIS that were specified in the April 6, 1988 Public Notice

The entire Oral Proceeding was recorded on video tape. That recording has been associated with Docket 86-337. Copies of the video tape may be ordered and purchased from the Commission's contractor, PRISM, at (202) 686-8250.

Thirty additional days are now being provided for the filing of written comments concerning any of the issues and matters discussed in the Oral Proceeding. Any such written comments should be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554 and be filed prior to June 30, 1988.

A copy of this notice is being mailed to all parties of record in this proceeding.

For further information please contact Barbara Jones, at (202) 632-7090.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-12383 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

A Closed Circuit Test of the Emergency Broadcast System During the Week of June 20, 1988

May 27, 1988.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of June 20, 1988. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-12384 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-41]

Window Notice for the Filing of FM Broadcast Applications

Release: May 23, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning May 23, 1988 and ending June 20, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—227 A

El Dorado, AR
Chowchilla, CA
Marianna, FL
Fairfield, ME
Cassville, MO
Avon, NY
New Paltz, NY
Meyersdale, PA
White Sulphur Spring, WV

Channel—282 A

Orange Cove, CA
Sibley, IA
LaRose, LA
Southwest City, MO
Delhi, NY
Elloree, SC
Pawley's Island, SC
Petersburg, VA

Channel—228 A

Hawthorne, NV
Barnesville, OH

Channel—282 B1

Champaign, IL

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-12381 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-40]

Window Notice for the Filing of FM Broadcast Applications

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning May 12, 1988 and ending June 16, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—276 A

Window Rock, AZ
Firebaugh, CA

Channel—235 A

Millen, GA
Reserve, LA
Benton Harbor, MI
Wurtsmith, MI
Stewartville, MN [1]
Holly Springs, MS
Ada, OH
Oliver, PA
Port Allegany, PA

Channel—235 C2

Columbus, MS

Channel—269 A

Sierra Vista, AZ [2]

Edna, TX

Channel—284 A

Hardy, AR
Texarkana, AR
Bushnell, IL
Nashville, IL
Washington, LA
Chaffee, MO
Rose Hill, NC

Channel—284 C2

Greenville, MS
Roswell, NM

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-12382 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1730]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

May 25, 1988.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are

[1] A proposal in MM Docket 87-306 request substitution of Channel 239C2 for this allotment. If the proposal is adopted applicants will be required to amend their applications to specify the higher class channel, and will be afforded cut-off protection against any applications not filed during this window.

[2] Due to Commission error in the allotment of this channel, we are imposing a modification of site restriction 1.53KM (1 Mile) north of the city. The restricted site coordinates are 31-34-08 and 110-17-42.

available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed on or before June 17, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 90, Subparts M and S of the Commission's Rules. (PR Docket No. 86-404) Number of petitions received: 2.

Subject: Amendment of the Rules Regarding Control and Security Alarm Devices Under Part 15. (Gen Docket No. 86-422, RM's 4637 & 4813) Number of petitions received: 1.

Subject: Regulatory Policies and International Telecommunications. (CC Docket No. 86-494) Number of petitions received: 4.

Subject: Amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel and 900 MHz Multiple Address Frequencies.

Amendment of § 94.65(a)(1) of the Rules to Revise Footnote 3 in the Frequency Table to Make the Frequencies Available for use by any Part 94 Eligible.

Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) Footnote 3 of the Rules to Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625-952.8375 MHz Band.

Amendment of Part 94 of the Rules to Permit Intrasystem Communications Among Multiple Address System Master Stations (PR Docket No. 87-5, RM's 5206, 5362, 5178 & 5363) Number of petitions received: 5.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Pella, Iowa) (MM Docket No. 87-365, RM-5777) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Emporia, Kansas) (MM Docket No. 87-616, RM-6075) Number of petitions received: 1.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-12385 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200121.
Title: Greater Lafourche Port Commission Terminal Agreement.
Parties:
Greater Lafourche Port Commission
Fourchon International Shipping Terminal (FIST)

Synopsis: The agreement provides for FIST to lease certain property at Port Fourchon, Louisiana to be operated as a public marine terminal that will be governed by the Port Commission's terminal tariff.

Agreement No.: 244-200122.
Title: Port of Houston Terminal Agreement.
Parties:
Port of Houston Authority
I.T.O. Corporation (ITO)

Synopsis: The agreement designates ITO to perform or have performed freight handling and car loading/unloading services at the Port Authority's Barbours Cut Terminal.

Agreement: 224-003975-002.
Title: Port of Longview Terminal Lease Agreement.
Parties:
Port of Longview
Continental Grain Company

Synopsis: The proposed agreement amends the leased premises, and provides for construction and use of railroad trackage, and grants Lessee non-exclusive easements over other Port properties.

Agreement No.: 224-033975-003.
Title: Port of Longview, Washington Lease Agreement.
Parties:
Port of Longview
Continental Grain Company

Synopsis: The agreement grants Lessee the right to renew this Lease for seven additional one-year terms upon furnishing to the Port a notice in writing of its intention to do so not less than ninety days prior to expiration of the initial term.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: May 27, 1988.

[FR Doc. 88-12360 Filed 6-1-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 29, 1988.

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 29, 1988.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests some moderation in the expansion of economic activity in the current quarter from the rapid pace in the fourth quarter; the continuing expansion has been supported by a sharp pickup in domestic final sales while the accumulation of inventories appears to have slowed. Total nonfarm payroll employment rose substantially over the first two months of the year, although employment growth slowed somewhat in the manufacturing sector. The civilian unemployment rate fell slightly to 5.7 percent in February. Growth in industrial production moderated in early 1988 from a brisk pace during the second half of 1987. Consumer spending strengthened in January and February, buoyed by higher sales of motor vehicles. Indicators of business capital spending pointed to substantial gains in the first quarter. Housing starts rebounded in February but were still somewhat below the reduced fourth-quarter average. The nominal U.S. merchandise trade deficit changed little in January and was significantly below the fourth-quarter average. In recent months the rise in consumer and producer prices has been relatively modest on balance, reflecting developments in food and energy prices, and wage trends have shown little change.

Most interest rates were up somewhat on balance since the Committee's meeting in February, with the largest increases concentrated in bond markets. The trade-weighted foreign exchange value of the dollar

[1] Copies of the Record of policy actions of the Committee for the meeting of March 29, 1988, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551.

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in terms of the other G–10 currencies fluctuated in a relatively narrow range over most of the intermeeting period, but declined somewhat in recent days.

After strengthening in January, growth of M2 and M3 remained relatively robust in February and in the first part of March. Thus far this year expansion of these two aggregates appears to have been in the upper portion of the ranges established by the Committee for 1988. M1 has grown moderately on balance since the fourth quarter. Expansion in total domestic nonfinancial debt appears to be continuing at a pace close to that in 1987.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established growth ranges of 4 to 8 percent for both M2 and M3, measured from the fourth quarter of 1987 to the fourth quarter of 1988. The monitoring range for growth in total domestic nonfinancial debt was set at 7 to 11 percent for the year.

With respect to M1, the Committee decided in February not to establish a specific target for 1988. The behavior of this aggegate in relation to economic activity and prices has become very sensitive to changes in interest rates, among other factors, as evidenced by sharp swings in its velocity in recent years. Consequently, the appropriateness of changes in M1 this year will continue to be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressure.

In the implementation of policy for the immediate future, the Committee seeks to increase slightly the degree of pressure on reserve positions. The Committee agrees that the current more normal approach to open market operations remains appropriate; still sensitive conditions in financial markets and uncertainties in the economic outlook may continue to call for some flexibility in operations. Taking account of conditions in financial markets, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable depending on the strength of the business expansion, indications of inflationary pressures, developments in foreign exchange markets, as well as the behavior of the monetary aggregates. The contemplated reserve conditions are expected to be consistent with growth in M2 and M3 over the period from March through June at annual rates of about 6 to 7 percent. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, May 25, 1988.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 88–12333 Filed 6–1–88; 8:45 am]

BILLING CODE 6210–01–M

Bank South Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 23, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank South Corporation*, Atlanta, Georgia; to merge with C&P Bank Corporation of Pensacola, Pensacola, Florida, and thereby indirectly acquire The Citizens & Peoples National Bank of Pensacola, Pensacola, Florida.

2. *Bank South Pensacola, Inc.*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens & Peoples National Bank of Pensacola, Pensacola, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Minnesota-Wisconsin Bancshares, Inc.*, Newport, Minnesota and its subsidiary, Town & Country Bancshares, Inc., Newport, Minnesota; to acquire 100 percent of the voting shares of Roseville Bancorp, Inc., Roseville, Minnesota, and thereby indirectly acquire Mid America Bank, N.A., Roseville, Minnesota.

Board of Governors of the Federal Reserve System, May 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–12334 Filed 6–1–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for Demonstration of Screening for Urinary Albumin Excretion Rate Among Diabetic Patients To Identify Risk for Cardiovascular and Renal Disease; Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for competitive applications for a cooperative agreement to develop more effective intervention strategies to identify those at hish risk for renal and cardiovascular disease by screening diabetes patients for urinary albumin excretion rate (UAER).

Authority

This project is authorized under the Public Health Service Act: Section 301(a) (42 U.S.C. 241(a)), as amended; and section 317 (42 U.S.C. 247b(k)), as amended. The Catalog of Federal Domestic Assistance Number is 13.988.

Eligible Applicants

Eligible applicants are universities, public and private not-for-profit organizations and the official health agencies of State or local government, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and American Samoa.

Background

Three quarters of patients with insulin dependent diabetes mellitus (IDDM) die prematurely of cardiovascular and renal disease. Compared to the general population, the mortality rate of those without clinical proteinuria (a marker of diabetic kidney disease) is approximately 3 to 4 times higher, while the rate is 60 times higher for those with proteinuria, primarily from cardiovascular and renal causes. Since approximately 40 percent of IDDM patients develop proteinuria after 30 years of diabetes, it is apparent that the vast majority of excess deaths occur among this subgroup.

High risk patients can be identified before they develop irreversible clinical proteinuria. Modern radioimmunoassay (RIA), nephelometric, and ELISA techniques afford the opportunity to identify patients with increased UAER. Although the risk associated with increased UAER appears to be continuous, greater than 50 mg/24 hrs or 30 ug/min has been suggested as a threshold for IDDM. Approximately 90 percent of the IDDM patients with increased UAER will develop clinical proteinuria within ten years.

Intensive control of blood pressure can reduce the rate of decline of the glomerular filtration rate, the best single indicator of the need for dialysis or transplantation. Normalization of blood glucose, low protein diets, and angiotensin converting enzyme inhibitors may also enhance the renal prognosis, but are less well established preventive strategies. Because the group at high risk for cardiovascular disease can now be detected early, there is a major opportunity for risk reduction, e.g., smoking cessation, blood pressure and cholesterol control, focused on this group.

End-stage renal disease (ESRD) costs Medicare over $2.8 billion annually. Diabetes accounts for 30 percent of all new patients requiring end-stage renal disease treatment in the United States. Approximately one-half of these, 15% of the total, are IDDM. UAER screening in patients with IDDM identifies those likely to develop ESRD, providing an opportunity to postpone or prevent costly ESRD care.

The prevalence and consequences of increased UAER in the much larger group of patients with non-insulin-dependent diabetes mellitus (NIDDM) have not been as well studied. Increased UAER associated with NIDDM appears to be predictive of cardiovascular and kidney disease.

A workshop of international experts in the prevention of kidney disease of diabetes mellitus, cosponsored by CDC, was held in December 1987 in conjunction with the University of Michigan School of Public Health, National Institutes of Health, the American Diabetes Association, and the National Kidney Foundation. The workshop suggests that increased UAER be defined in patients with NIDDM as greater than 150 mg/24 hrs, and encouraged further evaluation of UAER screening and appropriate interventions in public health and primary care settings.

Purpose

The purpose of this cooperative agreement is to determine the distribution of increased UAER and clinical proteinuria in diabetic populations and to demonstrate the feasibility and short term efficacy of preventive interventions based on this risk marker.

Cooperative Activities

1. Recipient Activities

A. Demonstrate the feasibility of UAER screening in selected diabetic populations.

B. Determine the prevalence of increased UAER and proteinuria, and associations with demographic and other risk factors, including duration of diabetes and hypertension.

C. Implement a program of risk reduction among patients identified with increased UAER and proteinuria targeted at primary renal and cardiovascular risk factors (e.g., hypertension, smoking, hyperlipidemia, protein intake) and glycemic control.

D. Evaluate the efficacy of programs to reduce associated risk factors and improve clinical status (including level of UAER).

E. Develop recommendations for expanded implementation of UAER screening in diabetic populations and management of patients with increased UAER and clinical proteinuria.

F. Publish and disseminate results.

2. CDC Activities

A. Provide technical assistance in the overall planning, implementation, and evaluation of project activities.

B. Provide assistance in development of study design and protocol development with the recipient.

C. Assist in the selection of method and quality control of measurement of UAER.

D. Assist in the design and evaluation of risk reduction measures.

E. Provide assistance in publishing and disseminating results.

Availability of Funds

Approximately $100,000 is available in Fiscal Year 1988 to fund one cooperative agreement. The cooperative agreement will be funded in 12 month budget periods within a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates may vary and are subject to change.

Use of Funds

These funds may be used to implement UAER screening, preventive interventions, and evaluation; they are not for routine primary care.

Review and Evaluation Criteria

1. Initial Application

The initial application for a new project period will be reviewed and evaluated according to the following criteria.

A. The need for support.

B. The extent to which professional personnel to be assigned to this project are qualified and committed to this project.

C. The adequacy of the plan for project administration.

C. The extent of the applicant's capacity to achieve functional objective and perform activities similar to those proposed in this project.

E. The extent of the recent experience the applicant has had working with diabetic populations.

F. The extent to which the study population is well-suited to the goals of the project.

G. The degree to which the objectives are consistent with the purpose of the cooperative agreement and are specific, measurable, and time-phased.

H. The degree to which the proposed methods of achieving the objectives are likely to be successful.

I. The adequacy of plans to evaluate the project.

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

2. Continuation Application

Continuation awards within the project period will be made on the basis of the following criteria.

A. The degree to which accomplishments in the prior budget period show that the applicant is meeting the objectives.

B. The extent to which the objectives for the new budget period are consistent with the purpose of the cooperative agreement, the long-term objectives, and are specific, measurable, and time-phased.

C. The extent to which proposed changes in the need for support, long-term objectives, methods of operation, evaluation plans or personnel are likely to enhance the success of the project.

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

Reporting Requirements

Annual financial status and progress reports are required and are due 90 days after the end of each budget period. The final financial status and progress reports are due 90 days following the end of the project period.

Application Submission and Deadline

The original and two copies of the application (PHS 5161–1, revised 3/86) must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grant Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305, on or before July 15, 1988.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarked shall not be acceptable as proof of a timely mailing.)

2. Late Applications

Applications which do not meet the criteria in either 1.A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. (60 day reviews.)

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggans, Grant Management Specialist, Grants Management Branch, Procurement and Grant Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, (404) 842–6575 or FTS 236–6575.

Technical assistance may be obtained from Jeffrey Newman, M.D., MPH, EIS Officer, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639–1044 or FTS 236–1844.

Dated: May 25, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–12341 Filed 6–1–88; 8:45 am]

BILLING CODE 4160–18–M

Availability of Fiscal Year 1988 Funds To Coordinate, Develop, and Exchange Information on the Relative Efficiency and Cost-Effectiveness of Dental Caries Preventive Measures

Introduction

The Center for Disease Control (CDC) announces the availability of Fiscal Year 1988 funds for a grant to provide support for review of existing data in order to coordinate, develop, and exchange information on the relative efficiency and cost-effectiveness of dental caries preventive measures.

Authority

This project is authorized under the Public Health Service Act: Section 301(a) (42 U.S.C. 242(a)), as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Eligible Applicants

Eligible applicants for this program include nonprofit and for profit organizations. Thus, universities, colleges, public and private organizations, including State and local governments and small, minority and/or woman-owned businesses are eligible to apply.

Background

During the past 30 years, epidemiological data from both longitudinal and cross-sectional studies of community water fluoridation have reported that drinking optimally fluoridated water from birth can reduce dental caries by 50 to 65 percent. Because of relatively low cost and universal application, adjusting the fluoride level of community water supplies to optimum has become the preferred foundation for community-based programs to prevent dental caries.

More recently, other caries prevention measures have been implemented, both to augment water fluoridation, and to compensate for it in nonfluoridated communities. Programs utilizing weekly mouthrinsing in schools, prescription of fluoride supplements, application of pit-and-fissure sealants, modification of dietary habits, supervised brushing, education, or combinations of these measures have been developed, both in fluoridated and nonfluoridated communities.

Comparisons of the cost-effectiveness of these other measures with water fluoridation, however, are based on knowledge which is becoming increasingly dated. Observers have expressed concern over continued use of older data for such comparisons, in light of changing patterns of dental caries. This lack of current data becomes particularly serious, given the changing patterns of smooth surface, pit-and-fissure, and root caries, documented by researchers during the past decade.

The findings and conclusions resulting from this project should provide essential information regarding current relative efficiency and cost-effectiveness of various preventive measures, singly and in combination. This information will fill a serious void, thereby enabling physicians, dental professionals, and public health officials to determine the most cost-effective means of providing caries preventive measures to children and adults.

Purpose

The purpose of this grant is to provide support to identify, select, develop, and analyze information regarding current relative efficiency and cost-effectiveness of the various dental caries preventive measures, both singly and in combination, for adult and child populations; convene a conference to exchange, further develop, and gain agreement on information to be published and disseminated for use by physicians, dental professionals, and State and local public health officials with responsibility for oral health programs.

Availability of Funds

Approximately $65,000 is available in Fiscal Year 1988 to provide support for one grant. It is expected that the award will begin on or about September 1, 1988, and will be for one 12-month budget/project period. The funding estimate outlined above may vary and is subject to change.

Review and Evaluation Criteria

1. Extent to which the applicant provides evidence of need and the rationale for including particular measures to prevent dental caries, singly and in combination;

2. Degree to which the applicant provides evidence of an ability to carry out the proposed project using in-house experts as well as consultants from the fields of public health and dental research from multiple institutions and/or organizations;

3. Extent to which the applicant institution demonstrates capability to achieve objectives similar to those of this project;

4. Extent to which in-house professional personnel and outside consultants involved in this project are qualified, including evidence of past achievements appropriate to this project;

5. Degree to which proposed objectives are clear, realistic, measurable, time-phased, and related to the purpose of this project;

6. Adequacy of plans to evaluate the objectives; and

7. Adequacy of plans for administering the project.

In addition, consideration will also be given to the extent to which the budget request is clearly explained, reasonable, and consistent with the purpose of the project.

Application Submission and Deadline

The original and two copies of the application (PHS form 5161–1) must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 15, 1988.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applicants

Applications which do not meet the criteria in 1.A. or B. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, telephone (404) 852–6575 or FTS 236–6575.

Technical assistance may be obtained from Lawrence J. Furman, Chief, Dental Disease Prevention Activity, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639–1830 or FTS 236–1830.

Dated: May 25, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–12342 Filed 6–1–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 85D–0172]

Microbial Products Intended To Be Directly Fed to Animals; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7126.41 entitled "Direct-Fed Microbial Products." The CPG describes the agency's enforcement policy regarding products containing live (viable) microorganisms intended to be directly fed to animals.

ADDRESS: Compliance Policy Guide 7126.41 is available for public examinations at, and written requests for single copies may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fisher Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301–443–3336.

SUPPLEMENTARY INFORMATION: Fermentation and yeast products have been marketed as ingredients in animal feeds for many years. Such products are defined in the Association of American Feed Control Officials (AAFCO) Official Publication, Chapters 36 and 96. Recently, some manufacturers have developed and started commercial distribution of products that are purported to contain live microorganisms and that are intended to be fed or administered directly to animals. These direct-fed microbial products (sometimes called probiotic products) are considered by FDA to be a subclass of fermentation and yeast products because they are made using similar processes.

In the last few years, the marketing of direct-fed microbial products has increased greatly. Claims for these products are unproven. Some claims may be considered advertising puffery; however, FDA is concerned about the increasing use in labeling of claims for the treatment of significant animal disease conditions or for increased productivity.

In response to the proliferation of direct-fed microbial products and of the claims made in their labeling, FDA has developed and is making available CPG 7126.41 describing the agency's enforcement policy regarding such products. The CPG states that FDA may regulate a direct-fed microbial product as a new animal drug, a food additive, or an animal food, depending upon the kind of microorganisms it contains, its labeling, and other factors.

Written comments and requests for single copies of CPG 7126.41 should be identified with the docket number found in brackets in the heading of this notice and sent to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. CPG 7126.41 and any comments submitted will be available for public examination at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. The comments submitted will be used to determine whether any revisions of the CPG are warranted.

Dated: May 27, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–12395 Filed 6–1–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Review Criteria for Grants for Centers for Excellence (Fiscal Year 1988)

The Health Resources and Services Administration announces the final review criteria for Centers for Excellence authorized under the authority of section 788A of the Public Health Service Act as established by Pub. L. 100–97, the Excellence in Minority Health Education and Care Act.

The Department of Health and Human Services Appropriations Act, 1988, as contained in Pub. L. 100–202, specifies that any university which awards a

graduate degree in the health professions and which has a majority enrollment of minority students is eligible to apply and compete for a grant. It is estimated that there are 15 universities which meet these eligibility requirements and are eligible to apply for a grant. The legislative history clarifies that the intent of this program is not to duplicate support for schools which are directly funded by Federal appropriation, such as Howard University.

Section 788A specifies that Grants for Centers for Excellence may be used by a grantee school for the following purposes:

(1) To develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals;

(2) To improve the capacity of the school to recruit the retain faculty;

(3) To provide improved access to the library and information resources of the school;

(4) To establish, strengthen, or expand programs to enhance the academic performance of students in the school;

(5) To establish, strengthen, or expand programs to increase the number and quality of applicants for admission to the school; and

(6) To develop curricula and carry out faculty training programs in order to enable the school to become, for the nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome (AIDS).

Proposed review criteria were published in the Federal Register of March 24, 1988 (53 FR 9703). One comment was received during the 30-day comment period. However, this comment was not relevant to the review criteria.

Therefore, the following review criteria will be retained and applied in the review of applications in Fiscal Year 1988:

(1) The degree to which the applicant can arrange to continue the proposed project beyond the Federally funded project period,

(2) The degree to which the proposed project meets three or more of the purposes stated in the legislative authorization (see above);

(3) The relationship of the objectives to the implementation plan to achieve institutional improvements;

(4) The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

(5) The adequacy of the staff and faculty to carry out the program;

(6) The soundness of the budget for assuring effetive utilization of great funds;

(a) Delineation of specific objectives which are consistent with the legislative purposes; where applicable, objectives should be measurable (e.g. improvement in student and faculty attrition rate);

(b) Description of a methodology which corresponds to the objectives and provides specific details on the activities, projects, or services which will be implemented to achieve the objectives; time frame for implementing the activities, projects or services; target population; responsible staff; and facilities which will be used to accomplish the objectives;

(c) Description of a comprehensive evaluation plan inclusive of all objectives and activities;

(8) The number of individuals who can be expected to benefit from the project; and

(9) The overall impact the project will have on strengthening the school's capacity to train minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

This program is listed at 13.157 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: May 26, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-12394 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-15-M

Final Funding Priority Review Criteria for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

The Health Resources and Services Administration announces the final funding priority and review criteria which will govern the distribution of grant awards in Fiscal Year 1988 for Grants for Faculty Training Projects in Geriatric Medicine and Denistry authorized by section 788(e) of the Public Health Service Act, as amended by the Omnibus Health Act of 1988, Pub. L. 99-660 enacted on November 14, 1986, and Pub. L. 100-177, the Public Health Service Amendments of 1987.

Section 788(e) authorizes the award of grants to accredited public or private nonprofit schools of medicine or osteopathy, public or private nonprofit teaching hospitals or graduate medical education programs to provide support, including traineeships and fellowships, to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry. One-year retraining programs, one/year fellowship programs and two-year fellowship programs are eligible for support.

The Public Health Service Act requires that geriatrics training be provided through one or both of the following training options:

(1) A one-year retraining program in geriatrics for physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and

(2) A one-year or two-year internal medicine or family medicine fellowship program with emphasis in geriatrics, which shall provide training in clinical geriatrics and geriatric research for physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine, and dentists who have completed postdoctoral dental education programs.

The Act further requires each project for which a grant is made under this provision to include the following:

(a) Be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

(b) Be staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

(c) Be based in a graduate medical education program in internal medicine or family medicine, or a department of geriatrics in existence as of December 1, 1987;

(d) Provide participants in the project with exposure to a diversified population of elderly individuals; and

(e) Provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals.

A proposed funding priority and proposed review criteria were published in the Federal Register of March 22, 1988 (53 FR 9370) for public comment. No comments were received during the 30-day comment period. Therefore, as proposed, the following review criteria and funding priority have been retained as follows:

Review Criteria

The Secretary, after consultation with the National Advisory Council on Health Professions Education will approve or disapprove all applications, taking into consideration the following review criteria:

(1) The extent to which the proposed training program will prepare physicians and dentists to perform the research, teaching, administrative and clinical duties of a faculty member specializing in geriatrics;

(2) The degree to which the project plan adequately provides for meeting the project requirements including (a) through (e) as set forth above;

(3) The administrative, management and resource capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The potential for the applicant to continue the program without Federal support after completion of the approved project period; and

(5) The extent to which the project will increase the number of training opportunities available for individuals who want to prepare for academic careers in geriatric medicine and dentistry.

These general criteria are consistent with other Title VII programs. The criteria specific to the program are designed to meet the legislative intent for increased opportunities for physicians and dentists to acquire skills and knowledge necessary to teach geriatric medicine and dentistry.

Funding Priority

A funding priority will be given in the review process to applicants who propose substantial specific efforts to recruit minority trainees. The need to increase training opportunities for minorities in health professions continues to be a top national priority. This priority is consistent with funding considerations in other Title VII programs.

This program is listed at 13.156 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 26, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-12393 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-15-M

Availability of Funds for Project Grants for Health Services to the Homeless Population

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of fund availability.

SUMMARY: The Health Resources and Services Administrations (HRSA) announces that noncompeting continuation applications are being accepted for a program to provide primary health care services and substance abuse services to homeless populations. In FY 1988 Congress appropriated approximately $14 million for this purpose, and each grant award will range from $50,000-$1,200,000. The grants will be administered under the provisions of section 340 of the Public Health Service Act. HRSA awarded $46 million, from FY 1987 appropriations, to 109 grantees for the provision of health care services to homeless individuals. The FY 1988 levels of appropriations of $14 million will allow the provision of services in some of the previously funded areas; therefore, eligible applicants are limited to those grantees who received awards from FY 1987 monies, as authorized under the Stewart B. McKinney Act.

DATE: To receive consideration, applications must be received in the HHS regional office, at the designated contact in the attachment, as of July 15, 1988. Applications will be considered "on-time" if they are either received on or before the established deadline date, or sent on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly receipt form a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant.

ADDRESS AND FURTHER INFORMATION: Application kits (Form PHS-5161 with revised face sheet DHHS Form 424, as approved by the Office of management and Budget (OMB) under control number 0348-0006) and additional information may be obtained from, and completed applications should be sent to, the appropriate Regional Administrator (see Appendix). Additional information about the program may be obtained from Mr. Harold Dame, Director, Health Care to the Homeless Program, 5600 Fishers Lane, Room 7A-55, Rockville, Maryland, 20857, (301) 443-1050.

SUPPLEMENTARY INFORMATION: To continue to recieve funding under this program, grantees must demonstrate successful project performance during the first budget period, i.e., provision of primary health care and substance abuse services at locations accessible to homeless individuals; arrangement for the provision of emergency health services, referral services for inpatient hospital services; outreach services; and provision of aid in establishing eligibility for and obtaining services form entitlement programs. Other factors to be considered include: Remaining unobligated balance of grant funds from the first grant award; merits of the budget request for the second budget period; and assurance provided by the applicant that the 25 percent matching requirement can be met.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372, allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by the Department of Health and Human Services will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Regional Health Administrator.

Catalog of Federal Domestic Assistance

In the OMB Catalog of Federal Domestic Assitance the Health Services to the Homeless Population Grant Program is liested as number 13.151.

VOL 53 ISS 106 JE 2 1988 UMI

Dated: April 28, 1988.
David N. Sundwall,
Administrator.

Appendix

Regional Health Administrators

Edward J. Montminy, Regional Health Administrator, DHHS Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 565–1420
Vivian Chang, M.D., Regional Health Administrator, DHHS Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–2560
William Lassek, M.D., Regional Health Administrator, DHHS Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637
John Whitney, Acting Regional Health Administrator, DHHS Region IV, 101 Marietta Tower, Suite 1202, Atlanta, Georgia 30323, (404) 331–2316
E. Frank Ellis, M.D., Regional Health Administrator, DHHS Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353–1385
John M. Dyer, M.D., Regional Health Administrator, DHHS Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 767–3879
Mr. Youn Bock Rhee, Regional Health Administrator, DHHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291
Audrey H. Nora, M.D., Regional Health Administrator, DHHS Region VIII, 1961 Stout Street, Denver, Colorado 80294, (303) 844–6165
Sheridan L. Weinstein, M.D., Regional Health Administrator, DHHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5610
Ms. Dorothy H. Mann, Regional Health Administrator, DHHS Region X, 2901 Third Avenue, Mail Stop 501, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 88–12337 Filed 6–1–88; 8:45 am]
BILLING CODE 4160–15–M

Program Announcement and Study Areas Under Fellowship Eligibility Criteria for Nursing Post-baccalaureate Faculty Fellowship Grants

The Health Resources and Services Administration announces the acceptance of applications for a second cycle in Fiscal Year 1988 and the study areas to be included under the eligibility criteria for Post-baccalaureate Faculty Fellowship Grants authorized by section 830(b) of the Public Health Service Act, as amended.

Approximately $430,000 is expected to be available from the approximately $901,000 authorized by the Department of Health and Human Services Appropriations Act, 1988. Of the amount, it is expected that an additional 65 awards averaging $6,552 will be made.

Purpose

Section 830(b) of the Public Health Service Act, as amended by the Nurse Education Amendments of 1985, Pub. L. 99–92, authorizes grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate faculty fellowships to enable faculty to carry out studies in areas specified by the legislation or by the Secretary, Department of Health and Human Services.

Applicants

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees and, in some instances, stipends for currently employed faculty who would qualify for a post-baccalaureate faculty fellowship. Only one application will be accepted from any one school of nursing. A school with separate departments or more than one type of program must submit a combined request. A school may request fellowship support for more than one faculty member.

Faculty Eligibility

To qualify for a fellowship a faculty member must:

(1) Hold a baccalaureate degree.

(2) Be licensed to practice as a registered nurse in a State.

(3) Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.

(4) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1989 or sooner.

(5) Undertake a reported study, thesis or a dissertation focusing on:

a. An investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or

b. Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; or

c. Factors within the practice setting associated with retention of nursing personnel; or

d. Acute and long-term nursing care of patients with infectious diseases, particularly illness caused by the human immunodeficiency virus (HIV).

The subject areas (c) and (d) had been proposed because they represent national health problems considered by the Secretary to require investigation.

These subject areas which expand the eligibility criteria were published in the Federal Register of March 11, 1988, (53 FR 7977 and 7978).

No comments were received during the 30 day comment period. Therefore, as proposed, these study areas are being retained as part of the eligibility criteria.

Funding preference

In addition, a funding preference will be given to those schools that have been successful in recruiting or retaining minority faculty. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

The standard application form and general instructions, Form PHS 6025–1, HRSA Competing Training Grant Application and supplement for this program have been approved by the Office of Management and Budget. The OMB clearance number is 0915–0060.

Requests for application materials should be directed to: Grants Management Officer (A–23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

For technical assistance and other information regarding this program, contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333.

To receive consideration, applications must meet a deadline of July 1, 1988.

Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline; or

(2) *Postmarked on* or before the deadline date, and received in time for submission to the review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.147 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 26, 1988.
David M. Sundwall,
Administrator, Assistant Surgeon General.

[FR Doc. 88–12382 Filed 6–1–88; 8:45 am]
BILLING CODE 4160–15–M

Public Health Service

Committee to Coordinate Environmental and Health Related Programs (CCEHRP) and CCEHRP Ad Hoc Subcommittee; Annual Report on Carcinogens Meeting

Notice is hereby given of a meeting to be held at the Hubert H. Humphrey Building Auditorium (Room 107), 200 Independence Avenue SW, Washington, DC, on July 7, 1988. The Meeting is open to the public.

Background

The CCEHRP Ad Hoc Subcommittee is reviewing the criteria used in selecting the compounds for the *Fifth Annual Report on Carcinogens* in light of the purpose of the listing, as well as the process for preparation of the report.

The Annual Report on Carcinogens is a Congressionally-mandated listing of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed. To date, four reports have been published. The *Fifth Annual Report on Carcinogens* is now under preparation by the National Toxicology Program (NTP). On April 21, 1987, the NTP held an open meeting on the process used to prepare the Annual Reports on Carcinogens. The Subcommittee already has access to materials submitted in conjunction with that meeting, as well as other materials and information pertinent to its review.

The purpose of the July 7 meeting is to receive public comment on the criteria used in selecting the compounds for the *Fifth Annual Report on Carcinogens* and on the process for preparation of the report. Comments on the use of the list by the public and by State agencies are also invited. However, comments on the appropriateness of the individual compounds proposed for inclusion in the *Fifth Annual Report on Carcinogens* or on the scientific decisions leading to the selection of these compounds will not be considered, since such issues are outside the scope of the CCEHRP review.

Following opening remarks by the Subcommittee and Federal officials, presentations from the audience will be invited. Each presentation will be limited to 10 minutes. Members of the Subcommittee may address questions to those making presentations. Oral presentations should be supported by written comments that can be left with Mr. Ronald F. Coene at the meeting. Alternatively, persons unable to attend the meeting may submit written comments which will be considered by the Subcommittee in its review if received by Mr. Coene by July 9 (see address below). The Chairperson of the Subcommittee urges groups that have similar interests to consolidate their comments and present them through a single representative.

In order to accommodate as many people wishing to speak as possible, persons wishing to make oral presentations should contact Mr. Coene at the address below no later than June 24, 1988.

Mr. Ronald F. Coene, Executive Secretary, CCEHRP, Room 14–101, 5600 Fishers Lane, Rockville, MD 20857.

The Chairperson may allow interested persons attending the meeting who did not submit a notice of participation to make oral presentations at the conclusion of the meeting, time permitting.

Attendance is limited only by space available. For further information regarding the meeting, please contact Mr. Coene at the above address or telephone 301–443–3155 or FTS 443–3155.

Date: May 26, 1988.
Ronald F. Coene,
Executive Secretary.

[FR Doc. 88–12391 Filed 6–1–88; 8:45 am]
BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Acquisition and Property Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department's clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Category 3 Proposal Information
Abstract: Category 3 proposal provisions require bidders and offeror to provide specific information in their responses to solicitations which are unique to the specific requirements of the acquisition. Examples of Category 3 information provisions include: (a) Qualification and performance history statements and (b) organizational conflict of interest disclosures.
Bureau Form Number: None.
Frequency: One time, with each bid or proposal.
Description of Respondents: Contractors bidding on solicitations containing the information requirements.
Annual Responses: 27,000
Annual Burden Hours: 54,000
Departmental Clearance Officer: John Strylowski, 202–343–5345.

Jerry B. Vance,
Director, Office of Acquisition and Property Management.

May 13, 1988.

[FR Doc. 88–12304 Filed 6–1–88; 8:45 am]
BILLING CODE 4310–RF–M

Bureau of Indian Affairs

Cheyenne River Sioux Tribe of South Dakota; Ordinance Amending Alcohol Beverages Control Law

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 585, 18 U.S.C. 1161. I certify that Resolution No. 58–88–CR—Ordinance No. 48—amending the Cheyenne River Sioux Tribal Liquor Ordinance was duly adopted by the Cheyenne River Tribal Council on March 1, 1988. The ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor in the area of Indian Country under the jurisdiction of the Cheyenne River Sioux Tribe, South Dakota and amends Ordinance No. 15 (1953), which was published in the Federal Register on November 21, 1953, 18 FR 7478. Section 1–1–2 and 1–1–3(B) apply to tribal liquor ordinance to all lands within the reservation boundaries. There is no

reference to the two exemptions to the Tribe's jurisdiction as described in 18 U.S.C. 1154(c). However, the existence of land entitled to either of the two exemptions, fee patented lands in non-Indian communities or rights-of-way through Indian reservations, is a factual question to be decided by the courts. Therefore, my certification is not a decision on whether there are exemptions to the Tribe's jurisdiction. The ordinance reads as follows:

Ralph E. Reeves,

Assistant Secretary-Indian Affairs.

Resolution No. 53-88-CR

Whereas, The Cheyenne River Sioux Tribe of South Dakota is an incorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984), and

Whereas, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-laws, and

Whereas, the Cheyenne River Sioux Tribe has chosen to regulate the introduction, sale and use of alcoholic beverages for the protection of the health, welfare and social standards of the residents of the Cheyenne River Reservation, and

Whereas, it is the considered judgment of the Cheyenne River Sioux Tribe that the introduction, sale and use of alcoholic beverages has severe health, social and economic impacts on the lives of the residents of the Cheyenne River Reservation, and

Whereas, the Cheyenne River Sioux Tribe has recognized the adverse health, social and economic costs inflicted by the use of alcoholic beverages on the residents of the Cheyenne River Reservation, and

Whereas, Article IV, Section 1(k) of the Constitution duly authorized and empowers the Cheyenne River Sioux Tribe to promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the Cheyenne River Reservation, and

Whereas, 18 U.S.C. 1161 provides that the Cheyenne River Sioux Tribe may duly adopt an ordinance regulating the introduction, sale and use of intoxicating liquor on the Cheyenne River Sioux Reservation, and

Whereas, the Tribal Council of the Cheyenne River Sioux Tribe during a Special Session on February 17, 1988 passed Resolution No. 54-88-CR adopting a liquor ordinance, and

Whereas, upon further review of the tribal liquor ordinance and upon recommended changes from the Bureau of Indian Affairs, Field Solicitor's Office in Minneapolis, Minnesota, the tribal liquor ordinance passed on February 17, 1988 has thereby included those recommended changes and additions, now

Therefore Be It Resolved, the Cheyenne River Sioux Tribe hereby adopts the Cheyenne River Sioux Tribe's Alcoholic Beverages Control Law (See attached Ordinance), and

Be It Further Resolved, the Cheyenne River Sioux Tribe hereby rescinds Resolution No. 54-88-CR, and

Be It Further Resolved, the Cheyenne River Sioux Tribe hereby directs the Tribal Secretary to submit the attached Alcoholic Beverages Control Law Ordinance No. 48 to the Secretary of the Interior for publication in the Federal Register as required by law for the purpose of fulfilling the notice requirements.

Certification

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 14, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 1st day of March, 1988; Regular Session and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 12 for, 0 against, 3 not voting (including Vice-Chairman) and 0 absent.

Arlene Thompson,

Secretary, Cheyenne River Sioux Tribe.

Ordinance No. 48, Alcoholic Beverages Control Law, Cheyenne River Sioux Tribe of South Dakota

Section 1. General Provisions and Definitions

Sec. 1-1-1. *Statement of Purpose.* The purpose of this Alcoholic Beverages Control Law is to regulate the activities of the manufacture, distribution, sale and consumption of liquor on the Cheyenne River Sioux Reservation. Any person desiring to engage in the possession, sale, trade, transport or manufacture of alcoholic beverages on the Cheyenne River Sioux Indian Reservation shall comply with the rules and regulations set forth in this Alcoholic Beverages Control Law. This Ordinance shall be cited as the "Cheyenne River Sioux Alcoholic Beverages Control Law" and, pursuant to the constitutional and inherent sovereignty of the Cheyenne River Sioux Tribe, shall be deemed an exercise of the Tribe's powers for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Cheyenne River Sioux Reservation. All the provisions of this Ordinance shall be liberally construed to accomplish the above declared purpose. It is the Cheyenne River Sioux Tribe's intent in enacting this Ordinance to prohibit all traffic in liquor on the Cheyenne River Sioux Reservation except to the extent allowed and permitted under the express terms of this Ordinance.

Sec. 1-1-2. *Applicability.* This Ordinance shall apply to all persons engaged in the activities described herein on any and all lands and areas within the exterior boundaries of the Cheyenne River Sioux Reservation, including lands held in fee, and all other lands subject to the jurisdiction of the Cheyenne River Sioux Tribe.

Sec. 1-1-3. *Definitions.* The terms used in this Alcoholic Beverages Control Law, unless the context plainly otherwise requires, shall mean:

(A) "Alcoholic beverage," any distilled spirits, wine and malt beverages as defined in this Ordinance.

(B) "Cheyenne River Indian Reservation" shall include any and all lands within the exterior boundaries of the Cheyenne River Sioux Reservation established by the Act of March 2, 1889, 48 Stat. 886, whether said lands are trust, allotted or lands held in fee patent status.

(C) "Tribal Council" shall mean the governing body of the Cheyenne River Sioux Tribe.

(D) "Distilled spirts," ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use containing not less than one-half of one percent of alcohol by volume.

(E) "Malt beverage," beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by volume, and commonly referred to as beer or ale.

(F) "Distiller" means any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending, or bottling of intoxicating liquor other than beer.

(G) "Sale," the transfer, for a consideration, of title to any alcoholic beverage.

(H) "Package" means the bottle or immediate container of any alcoholic beverage.

(I) "On Sale," the sale of any alcoholic beverage for consumption only upon the premises where sold.

(J) "Off Sale," the sale of any alcoholic beverage, for consumption off the premises where sold.

(K) "Wholesaler" means any person who sells alcoholic beverages to retailers for resale.

(L) "On-Sale dealer," any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

(M) "Manufacturer," means any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any facility which produces alcoholic beverages.

(N) "Package dealer," any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

(O) "Retail license," an on- or off-sale license issued under the provisions of this Ordinance.

(P) "Retailer," or "retail dealer" any person who sells alcoholic beverages for other than resale.

(Q) "Transportation company," or "transporter," any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverage destined to be delivered to the Cheyenne River Sioux Reservation, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside of the state.

(R) "Wine" any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent of alcohol by volume but not more than twenty-four percent of alcohol by volume.

(S) "Person" means any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

(T) "Revenue Department" means the Cheyenne River Sioux Tribal Revenue Department.

(U) "Solicitor" means any peson employed by a licensed wholesaler within or without the territorial limits of the Cheyenne River Sioux Reservation, or by any distiller or manufacturer within or without the Reservation, who solicits orders of intoxicating liquor from wholesale or retail dealers within the Reservation.

(V) "Treasurer" means the duly elected and acting Treasurer of the Cheyenne River Sioux Tribe.

Section 2. Licensing Policies and Procedures

Sec. 2-1-1. *Granting of License.* Any person authorized to sell, trade, transport or manufacture alcoholic beverages on the Cheyenne River Sioux Reservation shall make application for a license and present the completed application to the Cheyenne River Sioux Revenue Department. The liquor license fees shall be in annual payments, due prior to the 1st day of January of each calendar year, for the following prescribed fees:

Sec. 2-1-2. *Wholesale Licensing.* The fee for an annual wholesale license shall be set by Tribal Council resolution at no less than Two Hundred Dollars ($200.00) and no more than Three Thousand Dollars ($3,000.00).

Sec. 2-1-3. *Retail Licensing.* The fee for an annual retail license shall be set by Tribal Council resolution at not less than One Hundred Dollars ($100.00) and no more than Twenty-Five Hundred Dollars ($2,500.00).

Sec. 2-1-4. *Transport Licensing.* The fee for an annual transport license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than One Thousand, Five Hundred Dollars ($1,500.00).

Sec. 2-1-5. *Operating of a plant distilling intoxicating liquor.* The fee for an annual distilling plant shall be set by Tribal Council resolution at not less than One Thousand Dollars ($1,000.00) and no more than Five Thousand Dollars ($5,000.00).

Sec. 2-1-6. *Solicitors.* The fee for an annual solicitors license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than Seven Hundred Fifty Dollars ($750.00).

Sec. 2-1-7. *Qualifications for License.* No license shall be issued unless the applicant shall be twenty-one years of age, has filed a sworn application, accompanied by the required fee, showing the following qualifications and subject to the following standard:

(A) An applicant, other than a corporation, must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, partnership, joint venture, association, municipal corporation, estate, trust, business receiver or firm, the manager of the licensed premises must be a resident of the United States and a person of good moral character. Officers and directors of corporations, and partners, and directors of corporations, and partners, joint venturers, principals of associations and municipal corporations, trustees, business receivers and members of firms must be legal residents of the United States and persons of good moral character. Corporate applicants must also be registered with the Cheyenne River Sioux Tribe as entitled to do business on the Cheyenne River Sioux Reservation.

(B) The Tribal Council may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

(C) The Tribal Council shall issue a license only if the qualifications set forth herein are satisfied and if it concludes, within its discretion, that the best interests of the Reservation community shall be served.

Sec. 2-1-8. *Public Comments.* Before the issuance of any tribal liquor license, the Cheyenne River Sioux Tribe shall allow comments from the public. The Tribal Council, acting in its executive capacity when hearing and determining matters within the terms and conditions of this Ordinance shall be the determining authority for the granting of any tribal liquor license.

Section 3. Prohibitions

Sec. 3-1-1. *General Prohibition.* It shall be unlawful to manufacture for sale, sell, or offer or keep for sale or transport alcoholic beverages on the Cheyenne River Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

Sec. 3-1-2. *Disposal Prohibited on Certain Days.* No license of any class shall sell intoxicating liquor on Sunday, Memorial Day, and Christmas Day.

Sec. 3-1-3. *Prohibition as to Persons Under Twenty-One Years of Age.* No licensee of any class shall sell intoxicating beverages to any person under the age of twenty-one years of age.

Sec. 3-1-4. *Disposal Prohibited During Certain Hours.* No licensee shall sell or give liquor to any person on the licensed premises between the hours of two o'clock a.m. and seven o'clock a.m., Mondays through Saturdays. The off-sale dealers shall not sell alcoholic beverages to any person between the hours of Twelve o'clock a.m. (midnight)

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and seven o'clock a.m., Mondays through Saturdays.

Section 4. Penalties Imposed For Violations Of Ordinance

Sec. 4–1–1. *General Penalties.* Anyone violating this Ordinance shall be subject to civil penalties and/or suspension or revocation of their tribal license according to a schedule of penalties established by the Tribal legal Department and approved by the Tribal Council, which schedule shall be available to anyone upon request.

Sec. 4–1–2. *Hearing on Alleged Violations.* Anyone having information that a person has violated any provisions of this Ordinance may file with the Tribal Council or Revenue Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Revenue Department shall set the matter for a hearing not later than the next regular meeting of the Tribal Council. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than five days before the hearing. A record of such hearing will be made by stenographic notes or by the use of an electronic recording device. The person shall have the rights to be represented by counsel, question witnesses and examine the evidence against him as well as to present evidence and witnesses in his own defense.

Sec. 4–1–3. *Suspension or Revocation of License.* If after such hearing the Tribal Council finds the violation set forth in the affidavit has been proved by a preponderance of the evidence, an order shall be served on the licensee revoking or suspending the license for a period of time and imposing such other civil penalties as are consistent with a policy established by the Tribal Legal Department and approved by the Tribal Council. Such action may be appealed to the Tribal Court, except that the order revoking or suspending the license, or imposing other penalties, shall be effective while the appeal is pending.

Sec. 4–1–4. *Other Penalties.* The Tribal Council may impose other civil penalties, including forfeiture of property, according to a policy established by the Tribal Legal Department and approved by Council, for any violation of this Ordinance including the failure to apply for or to possess the appropriate tribal license. Such tribal action imposing such penalties on any person may be appealed to Tribal Court, except that the imposition of the penalties shall be effective while the appeal is pending.

Sec. 4–1–5. *Powers of Tribal Chairman.* The Tribal Chairman, or his designee, at a hearing under this Ordinance shall have the power to administer oaths and subpoena and examine witnesses.

Sec. 4–1–6. *Appeal Rights.* In any appeal to the Tribal Court concerning the denial of an application for license, the suspension or revocation of a license, or the imposition of any civil penalty hereunder, the Tribal Court shall not grant a *de novo* review. The Tribal Council's actions shall be upheld unless the Court concludes it has acted arbitrarily, capriciously, in abuse of its discretion, or not in accordance with this law.

Section 5. Exceptions

Sec. 5–1–1. *Exceptions to this Ordinance.* The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use, for the following purposes:

(A) For scientific research or manufacturing products other than liquor;

(B) By a physician, medical or dental clinic, or hospital;

(C) In preparations not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts;

(D) By persons exempt from regulation in accordance with the laws of the United States; or

(E) For sacramental use such as wines delivered to priests, rabbis, and ministers.

Section 6. Miscellaneous Provisions

Sec. 6–1–1. *Agreement by Licensee to Grant Access for Inspection Purposes.* Every licensee under this Ordinance, as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Tribal Council. These inspections shall be conducted by a duly appointed designee of the Tribal Council, or tribal or federal police. All books and records dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the duly authorized tribal authorities.

Sec. 6–1–2. *Transferrability.* No license issued pursuant to this Ordinance shall be transferrable; provided, however, upon death of an individual licensee, the personal representative of the estate may operate under a valid license for thirty (30) days after the licensee's death, so long as said personal representative shall apply to the Tribe for a new license within said thirty (30) day period.

Section 7. Severability

Sec. 7–1–1. *Severability.* If for any reason, or circumstances, any provision(s) or section(s) of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections shall not be affected in the application of this Ordinance or to any person covered by this Ordinance.

Section 8. Effective Date; Repeal

Sec. 8–1–1. *Ordinance Nos. 15 and 16.* Ordinance Nos. 15 and 16 adopted by the Cheyenne River Sioux Tribe, and duly published in the Federal Register, relating to the sale of liquor on the Cheyenne River Sioux Reservation, respectively, including all amendments thereto, are hereby repealed upon publication of this Ordinance here in the Federal Register. Any person now operating subject to a license issued pursuant to Ordinance 15 or 16 may continue to so operate until that license expires on December 31, 1988. Thereafter, renewals shall be subject to the terms and conditions of this Ordinance. Any person subject to license pursuant to Ordinance 15 or 16, but who does not currently possess a license, shall become immediately subject to the terms of this Ordinance upon its publication in the Federal Register.

Certification

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribal Council, certify that the Tribal Council is composed of fifteen (15) members, of whom 15, constituting a quorum, were present at a meeting, duly and regularly called, noticed and convened and held in Eagle Butte, South Dakota; and that the foregoing ORDINANCE NO. 48 was duly adopted at such meeting by an affirmative vote of 12 for, 0 against, 3 abstaining (including Vice-Chairman) and 0 absent, on March 1, 1988, Regular Session.

Arlene Thompson,
Secretary of the Cheyenne River Sioux Tribe.

[FR Doc. 88–12401 Filed 6–1–88; 8:45 am]
BILLING CODE 4310–02–M

Bureau of Land Management

[AK–965–4213–15; F–14339–B]

Alaska Native Claims Selection; Stebbins Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Stebbins Native Corporation for 78.16 acres. The lands involved are in the vicinity of Stebbins, Alaska.

U.S. Survey No. 6000, Alaska, situated approximately ¾ mile northwesterly of Stebbins, Alaska, on the most northwesterly portion of Cape Stephens, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 5, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary K. Seitz,
Chief, Branch of Northwest Adjudication.

[FR Doc. 88–12437 Filed 6–1–88; 8:45 am]
BILLING CODE 4310–JA–M

[OR–096–08–6332–02; GP8–144]

Temporary Closure of Public Lands; Lane County, OR

ACTION: Temporary closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation, camping, shooting, hiking and sightseeing, from August 1, 1988 through December 31, 1988. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W.,
Sec. 19: SE¼SE¼, excluding the right-of-way of Oregon State Highway 58
Containing approximately 36 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the contractor authorized to construct the Lake Creek Falls Fish Ladder project and their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7 which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points public access.

The purpose of this temporary closure is to provide for public safety and the protection of property and equipment during the mobilization, construction and de-mobilization phases of the Lake Creek Falls Fish Ladder project.

EFFECTIVE DATE: August 1, 1988 through December 31, 1988.

ADDRESS: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregan 97440.

FOR FURTHER INFORMATION CONTACT: Wayne E. Elliott, Coast Range Area Manager, Eugene District Office, at (503) 683–6999.

Dated: May 24, 1988.

Wayne D. Elliott,
Area Manager.

[FR Doc. 88–12339 Filed 6–1–88; 8:45 am]
BILLING CODE 4310–33–M

[WY–040–08–4300–90]

Intent To Prepare a Revised Environmental Impact Statement; Rock Springs District, WY

May 20, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a revised Environmental Impact Statement (EIS) for the Wilderness Study Areas in the Rock Springs District, Wyoming.

SUMMARY: This notice is to inform the public that the Bureau of Land Management is preparing a revised draft EIS for wilderness in the Rock Springs District, which will supersede a draft EIS prepared in 1983. Scoping was completed during the preparation of the first draft EIS in 1983. A public hearing will be scheduled after release of the revised draft EIS, currently scheduled for August 1988. The purpose of the proposed action is to fulfill BLM's responsibilities under the Federal Land Policy and Management Act of 1976 to identify areas suitable for wilderness designation.

DATES: The revised draft EIS is scheduled to be completed in August 1988. A public hearing will be scheduled at least 30 days after release of the revised draft EIS.

ADDRESS: For further information contact the Bureau of Land Management at Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869.

FOR FURTHER INFORMATION CONTACT: All inquiries and comments should be directed to Alan Stein, Wilderness EIS Team Leader, Rock Springs District Office, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869.

SUPPLEMENTARY INFORMATION: The revised draft EIS will analyze the environmental impacts of designation or nondesignation of 13 wilderness study areas (WSAs) in the Rock Springs District. A draft EIS was issued for these WSAs in February 1983. The 13 WSAs cover a total of 219,308 acres. This revised draft EIS will supersede the February 1983 draft EIS. The only comments that will be addressed in the preparation of the final EIS will be comments received during the public comment period on the revised draft EIS.

Several changes have occurred since the original draft EIS was published, resulting in a need to prepare and circulate a revised draft EIS. These changes include: (1) Oil and gas leases issued before the passage of the Federal Land Policy and Management Act have expired; (2) new Partial Wilderness alternatives were developed for 3 of the WSAs; (3) the recommendation for 4 of the WSAs were changed from those in the 1983 draft EIS; and (4) five years have passed since the 1983 draft EIS was issued.

Hillary A. Oden,
State Director.

[FR Doc. 88–12338 Filed 6–1–88; 8:45 am]
BILLING CODE 4310–22–M

[OR-933-88-4333-02; GP8-138]

Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of combined U.S. Geological (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" for the following Wilderness Study Areas (WSAs). These WSAs have been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Owyhee Canyon WSA (OR-003-135), Malheur County, Oregon (USGS Bulletin 1718-E);

2. High Steens and Little Blitzen Gorge WSAs (OR-002-085F, and OR-002-086F), Harney County, Oregon (USGS Bulletin 1740-A);

3. Pueblo Mountains WSA (OR-002-081/NV-020-042), Harney County, Oregon, and Humboldt County, Nevada (USGS Bulletin 1740-B);

4. Honeycombs WSA (OR-003-77A), Malheur County, Oregon (USGS Bulletin 1741-A);

5. North Sisters Rocks WSA (OR-012-008), Curry County, Oregon (USGS Open-File Report 88-12); and

6. Devils Garden Lava Bed, Squaw Ridge Lava Bed, and Four Craters Lava Bed, WSAs (OR-001-002, OR-001-003, and OR-001-022), Lake County, Oregon (USGS Bulletin 1738-A).

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to USGS/USBM. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness designation are made.

Copies of the mineral survey reports are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236-7476.

DATE: The public review of the mineral survey reports named in this notice shall conclude on August 12.

ADDRESS: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Durga N. Rimal, Division of Minerals at (503) 231-6951 or David Harmon, Division of Lands and Renewable Resources at (503) 231-6823, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas. There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. These 6 reports are the first of approximately 45 combined mineral survey reports that will be prepared by USGS/USBM. The next batch of mineral survey reports will be available for public review during the fall or winter of 1988.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are considered by Congress prior to making its final wilderness suitability decision. BLM will review the public comments and will forward to USGS/USBM any significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGHS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc. should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and *marked confidential* will be treated as proprietary data and will not be released to the public without consent.

Dated: May 19, 1988.

Paul M. Vetterick,

Deputy State Director.

[FR Doc. 88-12305 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Project Agreement and Amendment.

Abstract: The Service administers grant-in-aid programs under the Federal Aid in Fish and Wildlife Restoration Act, the Anadromous Fish Conservation Act, and Endangered Species Acts. The program Agreement is used by State fish and wildlife agencies (grantees) to submit an estimate of grant projects cost and cost sharing for a specified period, usually annually. The Service uses the Agreement to obligate funds and as a commitment by both parties (Federal/State). The Amendment is used to revise an approved agreement.

Service Form Number(s): 3-1552 (Project Agreement); 3-1902 (Project Agreement Amendment).

Frequency: Annually.

Description of Respondents: State and local Governments.

Annual Responses: 56.

Annual Burden Hours: 1,456.

Service Clearance Officer: James E. Pinkerton, 202-653-7500, Room 859 Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: April 25, 1988.

Ronald E. Lambertson,

Assistant Director, Fish and Wildlife Enhancement.

[FR Doc. 88-12305 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Report on Implementation of Title VIII of the Alaska National Interest Lands Conservation Act; Availability

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a final 1987 report on the implementation of the subsistence management and use provisions of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3121, for submission to the President of the Senate and the Speaker of the House of Representatives. In accordance with the provisions of section 813, the report is being made available to the public.

FOR FURTHER INFORMATION CONTACT: Ron Thuma, Subsistence Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3371.

Copies of the section 813 report have been sent to all participating Federal and State agencies, local advisory committees and regional council members. Additionally, all others who have already requested copies have been added to the mailing list. Others wanting copies of the report should contact Mr. Thuma. Copies of the report are also available in the Anchorage regional office of the Service at the above address.

SUPPLEMENTARY INFORMATION: The U.S. Fish Wildlife Service has produced the 1987 periodic report to Congress on Subsistence management and use of fish and wildlife on Federal lands, as required by section 813 of ANILCA. The Service produced this comprehensive document in consultation with other Federal land managing agencies in Alaska, and with the Alaska Department of Fish and Game. The report provides an overview of subsistence management and use in Alaska, based on consultations with various public agency personnel and information from existing literature and studies.

As required by section 813, the report includes:

(1) An evaluation of the results of the monitoring undertaken by the Secretary pursuant to suction 808 of ANILCA.

(2) The status of fish and wildlife populations on public lands that are subject to subsistence uses.

(3) A description of the nature and extent of subsistence uses and other uses of fish and wildlife on public lands.

(4) The role of subsistence uses in the economy and culture of rural Alaska.

(5) Comments on the Secretary's report by the State, the local advisory committees and regional advisory councils and other appropriate persons and organizations.

(6) A description of those actions taken, or which may need to be taken, to permit the opportunity for continuation of subsistence activities on public lands.

(7) Such other recommendations the Secretary deems appropriate.

A draft of the report was distributed for public review. Eleven different organizations provided comments including: Five federal agencies; three state agencies; and three private or Native organizations. Changes were made in the report to reflect comments concerning substantive errors or misrepresentations. All comments were appended in their entirety in the final report. The report will now be submitted to the President of the Senate and the Speaker of the House.

Dated: April 13, 1988.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-12300 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-717563]

Applicant: Dave Chovanic, Sandusky, OH

The applicant requests a permit to export and reimport the following captive-born animals: one male leopard (*Panthera pardus*), six male Bengal tigers (*Panthera tigris*), and three male and two female Siberian tigers (*Panthera tigris altaica*). The animals will be exhibited in a manner designed to educate the public regarding their ecological roles and conservation needs.

[PRT-688708]

Applicant: Waimea Arboretum Foundation, Haleiwa, HI

The applicant requests a permit to remove and reduce to possession (take) from federal lands in Hawaii, endangered and threatened species of plants for export and re-import for the purposes of scientific research and propagation of the species.

[PRT-727512]

Applicant: John Wildman, Washington, DC

The applicant requests a permit to purchase in interstate commerce one male and two female scarlet-chested parakeets (*Neophema splendida*) from Pet Depot, Rockford, Michigan, for the purpose of enhancement of propagation.

[PRT-728040]

Applicant: St. Louis Zoological Park, St. Louis, MO

The applicant requests a permit to export up to four separate shipments of plasma samples taken from one live captive born female cheetah (*Acinonyx jubatus*) to the University of British Columbia, Health Service Center Hospital, Vancouver, BC, Canada for determination of bromovinyldeoxyuridine (BVDU) analysis. This drug is to be used in an attempt to treat feline herpesvirus.

Applicant: Duke University Primate Center, Durham, NC

[PRT-728008]

The applicant requests a permit to import two male and two female diademed sifakas (Propithecus diadema), to be captured in the wild in Madagascar, for the purpose of enhancement of the propagation and survival of the species through captive propagation. The applicant presently houses a male and female of this species. These presently are the only individuals in captivity.

[PRT-728010Z]

Applicant: Glasshouse Works, Stewart, OH

The applicant requests a permit to sell in interstate and foreign commerce and export artificially propagated specimens of the Arizona agave (*Agave arizonica*).

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, of data to the Director at the above address. Please refer to the appropriate

PRT number when submitting comments.

Date: May 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-12345 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-727645]

Applicant: F.M. "Cotton" Gordon, Lake George, CO

The applicant sequests a permit to import a sport-hunted trophy of one male bonetbok (*Damaliscus dorcas dorcas*), to be called from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

[PRT-727606]

Applicant: Phoenix Zoo, Phoenix, AZ

The applicant requests a permit to purchase in interstate commerce from International Animal Exchange one male and two female Parma wallabies (*Macropus parma*) that will be imported into the U.S. by International Animal Exchange (PRT-734754). The wallabies are to be imported from the Wellington Zoo in Wellington, New Zealand for enhancement of the propagation of the species. They were born in captivity at the Wellington Zoo.

[PRT-727708]

Applicant: The Peregrine Fund, Boise, ID

The applicant requests a permit to export ten captive-born Mauritius kestrals (*Falco punctatus*) born in the United States, to the Conservator of Forests, Forestry Department, Curepipe, Mauritius for release into the wild for the purpose of enhancement of propagation of the species.

[PRT-727416]

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to take, import, export and purchase in interstate or foreign commerce blood, semen, other tissues or whole carcasses from any endangered wildlife throughout the world for scientific research (genetic, reproductive and other biomedical evaluation). The tissues are to be obtained from animals in the wild and in captivity.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 405, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: May 17, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-12340 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Chicago Zoological Society

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant

[File No. PRT-728111]

Name: Chicago Zoological Society Brookfield Zoo

Address: 3300 Golf Road Brookfield, IL 60513

Type of Permit: Public Display

Name of Animals: Walrus (Odobenus rosmarus) One

Summary of Activity to be Authorized: The applicant proposes to import this animal from the Copenhagen Zoo, Denmark, for the purpose of public display.

Source of Marine Mammals for Public Display: Copenhagen Zoo; animal removed from wild in USSR in 1983.

Period of activity: July 1 through December 1988.

Concurrent with the publication of this notice in the Federal Register, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 27329, Washington, DC 20038-7329, within 30 days of the publication of this notice.

Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 K Street, NW., Washington, DC 20005.

Dated: May 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-12344 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on The Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1508.9) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator and location	Date
Samedan Oil Corporation, structure removal operations, ES/SR 87-026A; West Cameron Area, Block 67, Lease OCS-G 3256, 10 miles south of Cameron Parish, LA.	Feb. 22, 1988.
Chevron U.S.A. Inc., structure removal operations, ES/SR 87-028; Grand Isle Area, South Addition, Block 86, Lease OCS-G 5699, 39 miles south of Fourchon Beach, LA.	Feb. 10, 1988.
Shell Offshore Inc., structure removal operations, ES/SR 87-038; Eugene Island Area, Block 116, Lease OCS G478, 24 miles south of Atchafalaya Bay, LA.	May 4, 1988.
Diamond Shamrock Offshore Partners Limited, structure removal operations, ES/SR 87-040/040A; Vermilion Area, South Addition, Block 394, Lease OCS-G 3683, 75 miles south of Vermilion Parish, LA.	Feb. 10, 1988.
Shell Offshore Inc., structure removal operations, ES/SR 87-041; Mobile Area, Block 899, Lease OCS-G 5872, 15 miles south of Dauphin Island, AL.	Feb. 25, 1988.

Activity/Operator and location	Date
Texaco USA, structure removal operations, ES/SR 88-001; West Cameron Area, South Addition, Block 547, Lease OCS-G 4408, 103 miles south of Sabine PASS, TX.	Feb. 4, 1988.
TXP Operating Company, structure removal operations, ES/SR 88-002; East Cameron Area, South Addition, Block 283, Lease OCS-G 3299, 90 miles south of Cameron Parish, LA.	May 3, 1988.
ODECO Oil & Gas Company, structure removal operations, ES/SR 88-005; West Cameron Area Block 153, Lease OCS-G 4756, 22 miles south of Cameron Parish, LA.	Jan. 22, 1988.
Tenneco Exploration & Production, structure removal operations, ES/SR 88-006; South Marsh Island Area, North Addition, Block 257, Lease OCS-G 2303, 22 miles south of Iberia Parish, LA.	May 5, 1988.
Mobil Exploration & Producing U.S. Inc., structure removal operations, ES/SR 88-007; West Cameron Area, Block 33, Lease OCS 0265, 4 miles south of Cameron Parish, LA.	Jan. 29, 1988.
Mobil Exploration & Producing U.S. Inc., structure removal operations, ES/SR 88-008A; West Cameron Are, Block 33, Lease OCS 0265, 4 miles south of Cameron Parish, LA.	May 5, 1988.
CNG Petroleum, structure removal operations, ES/SR 88-021; High Island Area, South Addition, Block A-495, Lease OCS-G 6229, 100 miles southeast of Galveston, TX.	Feb. 25, 1988.
Texaco USA, structure removal operations, ES/SR 88-035; Breton Sound Area, Block 56 (N/2), Lease OCS-G 4123, 65 miles south of Biloxi, MS.	Apr. 29, 1988.
Texaco Producing, three exploratory wells, SEA No. N-2670; Pensacola Area, Block 996, Lease OCS-G 6396, 22 miles south of Walton County, FL.	Feb. 26, 1988.
Marathon Oil Company geophysical exploration using explosives, SEA No. L87-105; South Pass Blocks 89 and 88, 21 miles offshore Louisiana.	Mar. 7, 1988.
Chevron U.S.A. Inc., structure removal operations, ES/SR 88-045; Eugene Island Area, Block 238, Lease OCS-G 0982, 68 miles south of St. Mary Parish, LA.	May 10, 1988.
Sohio Petroleum Company, six exploratory wells, SEA No. N-2661/2268; Destin Dome Area, Blocks 81 and 82, Leases OCS-G 6408/6409, respectively, 22 miles southwest of Panama City, FL.	Feb. 29, 1988.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2304, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Date: May 20, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12332 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5453, Block 395, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration-Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, putsuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, the Notice is to inform the public, pursuant to §930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12327 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Pelto Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pelto Oil Company has submitted a DOCD describing the activities it

proposes to conduct on Lease OCS-G 5853, Block 58, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 23, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12306 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Texas Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum, Unit Operator of the South Timbalier Block 185 Federal Unit Agreement No. 14-08-0001-12335, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 185 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on May 17, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2860.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12307 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Texas Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9536, Block 28, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intercoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12326 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on June 23-24, 1988 in Room 105 of The River Inn, 924-25th Street, NW., Washington, DC. Topics for discussion will be "Educational Technologies in Basic Education in Developing Countries" and "Coastal and Inland Fisheries Research." The Committee will also continue discussion on A.I.D.'s future linkages and relationships with advanced developing countries, which was a topic at the March 31 meeting.

The meeting will begin at 9:00 a.m. on both days and adjourn at 5:30 p.m. on June 23 and 12:00 noon on June 24. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875-4005 or Room 309, 1801 North Kent Street, Rosslyn, Virginia.

Date: May 19, 1988.

Curtis R. Jackson,

A.I.D. Representative Research Advisory Committee.

[FR Doc. 88-12326 Filed 6-1-88; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-268]

Certain High Intensity Retroreflective Sheeting; Commission Determination Not To Review Initial Determination and Schedule For Filing of Written Submissions on Remedy, The Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination finding a violation of section 337 of the Tariff Act of 1930 and request for submission of written comments.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1107.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

On April 15, 1988, the presiding administrative law judge (ALJ) issued an ID finding a violation of section 337 in the unauthorized importation and sale of certain high intensity retroreflective sheeting with the effect and tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Petitions for review were filed by the respondents in the investigation and by the Commission investigative attorney. No comments were received from other Government agencies.

Having examined the record, the Commission has concluded that the ID does not warrant review.

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on June 13, 1988. Reply submissions on these issues must be filed no later than the close of business on June 20, 1988. Interested government agencies and members of the public may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on

June 20, 1988. No further submissions will be permitted.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this matter.

Additional Information

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on July 15, 1987 (52 FR 26577).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: May 26, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–12403 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–240]

Certain Laser Inscribed Diamonds and Method of Inscription Thereof; Institution of Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Institution of enforcement proceeding for violation of a consent order pursuant to 19 CFR 211.56(c).

SUMMARY: Notice is hereby given that a complaint was docketed with the U.S. International Trade Commission on May 25, 1988 pursuant to sections 333 and 337 of the Tariff Act of 1930 (19 U.S.C. 1333 and 1337) instituting an enforcement proceeding to determine the extent of a violation of a consent order entered in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1577.

Authority: The authority for institution of this proceeding is contained in sections 333 and 337 of the Tariff Act of 1930 and in § 211.56 of the Commission's Rules of Practice and Procedure (19 CFR 211.56).

SUPPLEMENTARY INFORMATION: On February 6, 1986, the Commission instituted Investigation No. 337–TA–240 pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) based upon a complaint filed by Lazare Kaplan Inc. ("Lazare Kaplan") alleging that I.B. Goodman Mfg. Co., Inc. ("Goodman") and Sears, Roebuck and Co. ("Sears") were engaged in the importation into and sale in the United States of certain laser-inscribed diamonds that were inscribed by a process which, if practiced in the United States, would infringe U.S. Letters Patent 4,392,476 ("the '476 patent") owned by Lazare Kaplan. 51 FR 6181 (February 20, 1986). After institution of the investigation, Aharon Schwartz & Sons ("Schwartz"), a corporation organized and existing under the laws of the state of Israel, was added as a respondent. 51 FR 16236 (May 1, 1986).

On July 22, 1986, the complainant, all three of the respondents (Sears, Goodman, and Schwartz), and the Commission Investigative Attorney moved to terminate the investigation on the basis of a Consent Order Agreement, a Consent Order, and a Settlement Agreement. On August 19, 1987, the presiding administrative law judge issued an Initial Determination (Order No. 12) granting the joint motion to terminate the investigation. On September 15, 1986, the Commission determined not to review the Initial Determination and issued the Consent Order, thereby terminating the investigation. 51 FR 33935 (September 24, 1986).

The Consent Order requires, *inter alia*, respondent Schwartz to submit quarterly certifications to the Office of Unfair Import Investigations ("OUII" or "staff") that the laser inscribed diamonds imported by Schwartz are inscribed by a particular process and destined for Goodman. Schwartz notified the staff on September 15, 1987, that two of the four quarterly certifications that it had previously submitted, those dated April 27, 1987, and July 28, 1987, were erroneous and that it had imported 200–500 diamonds in violation of the Consent Order. Complainant contends, based on its review of sample diamonds provided by Schwartz, that violations of the Consent Order may have occurred in 1986 as well 1987 and that more than 200 to 500 stones were imported in violation of the consent order.

In accordance with § 211.56 of the Commission's Rules of Practice and Procedure (19 CFR 211.56), responses to the complaint must be filed by the parties within fifteen (15) days after the date of receipt of the complaint.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1810.

By order of the Commission.

Issued: May 25, 1988.

Kenneth R. Mason,

Secretary

[FR Doc. 88–12404 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–279]

Certain Plastic Light Duty Screw Anchors; Commission Decision Not To Review an Initial Determination Amending Complaint and Notice of Investigation To Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination amending complaint and notice of investigation to add a respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge amending the complaint and notice of investigation in the above-captioned investigation to add Hsin Chang Industrial Hardware Corp. as a respondent.

FOR FURTHER INFORMATION CONTACT: Mitchell Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 252–1087.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On April 22, 1988, the Commission investigative attorney filed a motion (Motion No. 279–9) to amend the notice of investigation to add Hsin Chang Industrial Hardware Corp. as a respondent. The presiding administrative law judge issued an ID (Order No. 16) granting the motion on May 12, 1988. No petitions for review of the ID or government agency comments were received.

Copies of the ID and other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1802. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 25, 1988.

[FR Doc. 88–12405 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision Not To Review an Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent International CMOS Technology, Inc. on the basis of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 95) issued by the presiding administrative law judge (ALJ) terminating respondent International CMOS Technology, Inc. (ICT) from the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202–252–1093.

SUPPLEMENTARY INFORMATION: On May 6, 1988, the presiding ALJ issued an ID (Order No. 95) terminating respondent ICT from the investigation on the basis of a consent order. No petitions for review or comments from government agencies or the public were received.

Termination of the investigation as to respondent ICT will further the public interest by conserving Commission resources as well as those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53.)

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 25, 1988.

[FR Doc. 88–12406 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–281]

Certain Recombinant Erythropoietin; Commission Decision Not To Review an Initial Determination Conditionally Allowing The Upjohn Co. To Intervene as a Respondent in the Second Phase of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination conditionally allowing The Upjohn Company to intervene as a fully participating respondent in the second phase of the investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 10) issued by the presiding administrative law judge (ALJ) conditionally granting in part a motion of The Upjohn Company (Upjohn) to intervene in the above-captioned investigation as a fully participating respondent.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104.

SUPPLEMENTARY INFORMATION: On March 7, 1988, Upjohn filed a motion to intervene in the investigation. Upjohn sought intervention based on a memorandum of intent to form a joint venture with Chugai Pharmaceuticals, Ltd. and Chugai U.S.A. (collectively Chugai), respondents in this investigation. Upjohn asserted that under the joint venture agreement Upjohn would be the exclusive U.S. distributor of Chugai's products. On March 31, 1988, the ALJ denied Upjohn's motion in Order No. 6 because he determined, *inter alia*, that under the memorandum of intent Upjohn's status as an exclusive distributor in the United States of Chugai's product was uncertain and remote.

On April 12, 1988, Upjohn filed a motion for reconsideration of Order No. 6, stating that the ALJ's interpretation of the memorandum of intent was incorrect. Upjohn asserted that its appointment as exclusive distributor of Chugai's recombinant erythropoietin (EPO) in the United States is not uncertain and remote, but in a practical sense completed, and awaits only formalization.

The ALJ's ID conditionally grants in part Upjohn's motion for reconsideration. Under the ID, Upjohn may participate in the economic phase of the investigation only if Upjohn can demonstrate that it has become the exclusive distributor or sub-distributor of Chugai's EPO product by the time that the economic phase of the investigation is scheduled to begin.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 20, 1988.

[FR Doc. 88–12407 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-282]

Certain Venetian Blind Components; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the United States International Trade Commission on April 28, 1988, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by Hunter Douglas Inc., 2 Park Way and Route 17 South, Upper Saddle River, New Jersey 07458. A supplement to the complaint was filed on May 18, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain venetian blinds components into the United States, or in their sale, by reason of alleged (1) direct infringement of claims 1–3 of U.S. Letters Patent 4,235,408; (2) direct infringement of claims 1–4 and 6, and contributory and induced infringement of claim 6 of U.S. Letters Patent 4,245,687; (3) direct infringement of claims 1 and 3–9 and contributory and induced infringement of claims 7–9 of U.S. Letters Patent 4,245,686; (4) direct infringement of claims 1–6, and contributory and induced infringement of claims 3–6 of U.S. Letters Patent 4,352,285; (5) false designation of origin or false description of source and infringement of common law trademark in violation of section 43(a) of the Lanham Act, 15 U.S.C. 1125(a); (6) contributory infringement of federally registered Trademark No. 522,365; (7) contributory infringement of federally registered Trademark No. 1,083,551; (8) contributory infringement of federally registered Trademark No. 1,384,984; and (9) contributory infringement of federally registered Trademark No. 1,385,250, and (10) contributory infringement of common law trademark. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation:

Having considered the complaint, as supplemented, the U.S. International Trade Commission, on May 24, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain venetian blind components into the United States, or in their sale, by reason of alleged (1) direct infringement of claims 1–3 of U.S. Letters Patent 4,235,408; (2) direct infringement of claims 1–4 and 6 of U.S. Letters Patent 4,245,687; (3) direct infringement of claims 1 and 3–9 of U.S. Letters Patent 4,245,686; (4) direct infringement of claims 1–6 of U.S. Letters Patent 4,352,285; (5) common law trademark infringement or false representation of source; (6) contributory infringement of federally registered Trademark No. 522,365; or (7) contributory infringement of common law trademark, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Hunter Douglas, Inc., 2 Park Way and Route 17 South, Upper Saddle River, New Jersey 07458.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

W & P Company, 380 Switt Avenue, South San Francisco, California 94080;
A. J. Boyd Industries, Inc., Whitehall Road, Andover, New Jersey 07821;
Vogue Hardware Products, 1322 Bell Avenue, Unit 1–D, Tustin, California 92680.

(c) Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1805.

By order of the Commission.
Issued: May 27, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-12402 Filed 6-1-88; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31207]

Florida Crushed Stone Co.; Continuance in Control Exemption; Chemical Lime, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from requirements of 49 U.S.C. 11343 the continuance in control by Florida Crushed Stone Co. of Chemical Lime, Inc. subject to standard labor protection conditions.

DATES: This exemption is effective July 2, 1988. Petitions to stay must be filed by June 13, 1988, and petitions for reconsideration must be filed by June 22, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31207 to:

(1) Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Dickson R. Loos, Esq., Holland & Knight, 888 17th St. NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4537/4539 (DC metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

By the Commission.

Noreta R. McGee,
Secretary.

[FR Doc. 88-12359 Filed 6-1-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; Reichhold Chemicals, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 23, 1988, a proposed consent decree in *United States* v. *Reichhold Chemicals, Inc.*, Civil Action No. 88-30168-WS, was lodged with the United States District Court for the Northern District of Florida. The Complaint filed by the United States alleged that defendant Reichhold Chemicals, Inc. generated and arranged for the transportation or disposal of hazardous substances at the Pioneer Sand Company Site; that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The complaint sought injunctive relief to require the defendant to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint further sought the reimbursement of $598,486.34, which amount was incurred by the United States in responding to the actual or threatened releases.

The consent decree requires the defendant to implement the remedy selected by the Environmental Protection Agency as set forth in the Record of Decision, dated September 28, 1986, and further requires defendant to pay past costs in the amount of $598,486.34.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Reichhold Chemicals, Inc.*, D.J. Ref. 90-11-2-235.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Florida, 100 N. Palafox Street, Rm. 307, Pensacola, Florida, 32501, and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resouces Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States* v. *Reichhold Chemicals, Inc.*, D.J. Ref. 90-11-2-235, and enclose a check in the amount of $4.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12331 Filed 6-1-88; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act, Susan Bates, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 19, 1988, a proposed Consent Decree in *United States* v. *Susan Bates, Inc.*, Civil Action Number H-88-119 AHN, was lodged with the United States District Court for the District of Connecticut. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act of 1976, as amended. Defendant Susan Bates, Inc. owns and operates a knitting needle and crochet hook manufacturing facility in Chester, Connecticut; electroplating processes at the facility involve the generation and disposal of hazardous wastes. Defendant violated the Resource Conservation and Recovery Act and the regulations passed thereunder by, *inter alia*, operating without a final permit to treat, store or dispose of hazardous wastes, failing to comply with applicable financial responsibility requirements, failing to close its land disposal units in accordance with an appropriate closure plan, and failing to implement a comprehensive groundwater monitoring plan.

The Consent Decree provides that the defendant shall pay a civil penalty of $197,287.00 and shall implement a groundwater assessment plan.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Susan Bates, Inc.* D.J. No. 90-7-1-330.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 250, Federal Building, 450 Main Street, Hartford, Connecticut 06103, at the Region I office of the Environmental Protection Agency, Office of Regional Counsel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street, and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Susan Bates, Inc.*, D.J. No. 90-7-1-330, and include a check for $3.70 (10 cents

per page reproduction charge) payable to the United States Treasury.

Roger J. Marcello,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12323 Filed 6-1-88; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; International Partners in Glass Research

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), International Partners in Glass Research ("IPGR") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IPGR advised that one of its members, Brockway Research Incorporated, has become a wholly-owned subsidiary of O-I Brockway Glass, Inc., which is an affiliate of Owens-Illinois.

On March 12, 1985, IPGR filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on April 10, 1985, 50 FR 14175. On November 18, 1986, IPGR filed an additional written notification. The Department published a notice in response to this additional notification on January 6, 1987, 52 FR 488.

John W. Clark,
Deputy Director of Operations, Antitrust Division.

[FR Doc. 88-12320 Filed 6-1-88; 8:45 am]
BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* (the "Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed additional written notifications simultaneously with the Attorney General and the Federal Trade Commission on April 15, 1988 and May 5, 1988 concerning the identities of the members of NCMS and the nature and objectives of NCMS. The additional written notifications were filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The NCMS is a nonprofit public benefit corporation organized under the laws of the State of California. Its principal place of business is at 900 Victors Way, Ann Arbor, Michigan 48106.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act, in response to which the Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375.

In its April 15, 1988 notification, the NCMS disclosed that it has further clarified its research agenda to include the areas of production equipment design, analysis, testing and control, manufacturing data and factory control, manufacturing processes and materials, manufacturing operations, information and technology transfer and strategic issues.

The April 15, 1988 notification also disclosed that the following parties had become members of the NCMS:

Airborn, Incorporated
Amphion, Inc.
Aries Technology, Inc.
American Telephone & Telegraph Co.
Automation Intelligence, Inc.
The Bodine Corporation
The Cincinnati Gilbert Machine Tool Company
Consilium, Inc.
Control Technology, Inc.
The Cross Co.
DeVlieg Machine Company
Digital Equipment Corporation
Erie Press Systems (an EFCO Company)
Extrude Hone Corporation
Fabreeka Products Company
Ford Motor Company
Gearhart Industries, Inc.
General Motors Corporation
Gilbert/Commonwealth, Inc. of Michigan
The Gleason Works
Hardinge Brothers, Inc.
Haworth, Inc.
Hougen Manufacturing Company, Inc.
Hufcor, Inc.
S.E. Huffman Corp.
Huron Companies, Inc.
International Cybernetics Corporation
Kasper Machine Co.
Kaysex Spitfire, a unit of General Signal Corporation
Kinefac Corporation
Kingsbury Machine Tool Corp.
H.R. Krueger Machine Tool, Inc.
The M.D. Larkin Company
Len Industries, Inc.
Litton Industrial Automation Systems, Inc.
Manufiex Corporation
Masco Machine, Inc.
Master Chemical Corporation
Mattison Machine Works
Mayday Manufacturing Co.
Measurex Automation Systems, Inc.
Mechanical Technology, Incorporated
Medar, Inc.
Met-Coil Systems Corporation
Microfab Technologies, Inc.
Modern Engineering Service Company
Moore Special Tool Co. Inc.
Murdock Engineering Company
The National Machinery Company
Newcor Bay City, Division of Newcor, Inc.
Parker-Majestic, Inc.
Perceptron, Inc.
Plainfield Tool and Enginering, Inc. (d/b/a/ Plainfied Stamping-Illinois Incorporated)
Radian Corporation
R & B Machine Tool Company
Recognition Equipment Incorporated
RF Monolithics, Inc.
Rockwell International Corporation
Savoir
Sheffield Machine Tool Company
SpeedFam Corporation
Sybase, Inc.
The Taft-Pierce Manufacturing Company
Technology Integration, Inc.
Teledyne Inc.
Texas Instruments Incorporated
Transform Logic Corporation
Turchan Enterprises, Inc.
United Technologies Corporation
The Vulcan Tool Company
Walker Magnetics Group, Inc.
The Warner & Swasey Co.
Weldon Machine Tool, Inc.
Wizdom Systems, Inc.

In its May 5, 1988 notification, the NCMS disclosed that the following additional parties had become members:

Advanced Controls, Inc.
Aircraft Engines Engineering Division, General Electric Company
Raycon Textron, Inc.
Valisys Corporation.

John W. Clark,
Deputy Director of Operations, Antitrust Division.

[FR Doc. 88-12330 Filed 6-1-88; 8:45 am]
BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-64]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on the Next Generation Fighter (NGF).

DATE AND TIME: June 21, 1988, 9 a.m. to 5 p.m., and June 22, 1988, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 647, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Kirkpatrick, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2803.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. the Ad Hoc Review Team on the Next Generation Fighter, chaired by Mr. William Webb, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

TYPE OF MEETING: Open.

Agenda

June 21, 1988

9 a.m.—Opening Remarks.
9:15 a.m.—General Discussion.
1 p.m.—Weapons Briefing.
2 p.m.—NASA Briefing.
3 p.m.—General Discussion.
5 p.m.—Adjourn.

June 22, 1988

9 a.m.—General Discussion.
1 p.m.—General Discussion.
5 p.m.—Adjourn.

May 25, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-12322 Filed 6-1-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts wil be held on June 17, 1988, from 9:00 a.m. — 5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be guidelines and policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,
Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-12411 Filed 6-1-88; 8:45 am]
BILLING CODE 7537-01-M

Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (Local Programs Section) to the National Council on the Arts will be held on June 16, 1988, from 9:00 a.m.—5:30 p.m. and on June 17, 1988, from 9:00 a.m.—5:00 p.m., in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 16, 1988, from 9:00 a.m.—12:00 noon, for a guidelines and policy issues discussion.

The remaining sessions of this meeting on June 16, 1988, from 1:30 p.m.—5:30 p.m. and on June 17, 1988, from 9:00 a.m.—5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,
Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-12412 Filed 6-1-88; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corp. Draft Supplement 3 to the Programmatic Environmental Impact Statement Related to TMI-2 Cleanup; Extension of Comment Period

On April 27, 1988, a Notice of Availability of Draft Supplement 3 to the Programmatic Environmental Impact Statement on the TMI-2 Cleanup was published in the Federal Register (53 FR 15160). The Notice stated that comments on the Draft Supplement must be received before June 15, 1988. Since several interested persons, as well as the Commission Advisory Panel for the Decontamination of Three Mile Island Unit 2, have requested an extension, the NRC is hereby extending the comment period for this Draft Supplement until August 1, 1988.

Comments should be forwarded to Dr. Michael T. Masnik, Project Directorate 1-4, Office of Nuclear Reactor

Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 25th day of May 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11969 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

The amendments would revise the Technical Specifications [TS] of the operating licenses to update the LOCA—Limited Maximum Allowable Linear Heat Rate, (Figure 3.5.2–1b) to reflect the B&W Owners Group Topical Report, BAW–2001P, "Low Pre-Pressure Fuel Rood Program." BAW–2001P presents the results of a series of analyses concerning low pre-pressure fuel rods. These fuel rods are the standard Mark-B design in which the pre-pressure (fill gas pressure) has been reduced. This reduction will extend burnup capabilities. The overall burnup limit would be extended by 4,000 MWD/MTU. LOCA margins were improved enough that the two-foot core elevation peak power limit can be raised from 14.0 to 14.5 KW/ft for the generic lowered loop configuration plant. BAW–2001P is currently under staff review.

Changes in the LOCA margin were evaluated by analyzing the most restrictive LOCA case. This is the peak power at the two-foot level of core elevation at beginning-of-life (BOC) conditions. This analysis performed generically for the lowered-loop configuration plants has resulted in an LHR of 14.0 KW/ft for the standard Mark-B design. When redone for the reduced pre-pressure design, this analysis verified that a limit of 14.5 KW/ft was achievable. Power histories used in both types of analyses were more realistic (i.e. less conservative) than those used previously for similar studies. This analysis has been reported to result in an LHR of 14.0 KW/ft with a peak cladding temperature in conformance with the acceptance criteria of 10 CFR Part 50.46.

The design change of some psi reduction in the fuel rod pre-pressure will result in a reduction to the internal pin pressure during plant operation. A two-fold effect will be realized; the reduced internal pin pressure will: (1) Allow for longer burnup periods (fuel cycles), and (2) delay rupture during a LOCA. A preliminary evaluation indicated that the pin pre-pressure reduction would delay rupture by a time increment, equal to a rise in the LHR of 0.5 KW/ft. There are direct relationships between the LHR (fuel stored energy), the internal pin pressure, the cladding rupture time and the cladding temperature response. An increase in the LHR will shorten the time to rupture, thereby increasing the peak cladding temperature. A decrease in internal pin pressure lengthens the time to rupture, effective decreasing the peak cladding temperature. Therefore, the reduced pin pressure design should allow for an increase in the LHR while maintaining acceptable cladding temperature results. The LOCA analysis, therefore, utilized a LHR of 14.5 KW/ft as compared to the 14.0 KW/ft current generic LOCA limit at the two-foot core elevation. This analysis is described in the Topical Report.

The proposed revisions are in accordance with the licensee's application dated January 22, 1988. The licensee states that this application supplements the June 1, 1987 submittal. However, the staff considers the two applications to deal with separate issues and is reviewing them separately. The June 1, 1987 letter proposed to update Figure 3.5.2–1b to reflect NUREG–0630, "Cladding Swelling and Rupture Models for LOCA Analysis" and BAW–1915P, "Bounding Analytical Assessment of NUREG–0630 Models of LOCA KW/ft Limits With Use of FLECSET."

By July 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days for the notice period, it is required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Unit at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification number 3737 and the following message addressed to David B. Matthews, Director, Project Directorate II–3 (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of the Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW. Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a futher notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 22, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 25th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3 Division of Reactor Projects—I/II.

[FR Doc. 88-12354 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-250-OLA-2 & 50-251-OLA-2]

Florida Power and Light Co., (Turkey Point Plant, Units 3 and 4); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this spent fuel pool expansion proceeding:

Alan S. Rosenthal, Chairman
Christine N. Kohl
Howard A. Wilber

G. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: May 26, 1988.

[FR Doc. 88-12307 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas and Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Kansas Gas and Electric Company, Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc., (the licensees), for operation of the Wolf Creek Generating Station, Unit No. 1 located in Coffey County, Kansas.

The amendment would revise Technical Specifications 5.3.1 and 5.6.1.1 to allow storage of fuel assemblies of up to 4.5 weight percent U–235 which is an increase from the current limit of 3.5 weight percent U–235. Technical Specification 5.6.1.1 is also being revised to reflect the actual spent fuel pool storage rack nominal cell pitch of 9.236 inches. In addition, the Acceptable/Unacceptable regions of Figure 5.6–1 and Figure 3.9–1 are being changed on the Burnup versus Enrichment graphs to reflect the higher possible enrichments.

The amendment would be in response to the licensees' February 26, 1988 submittal and is needed before the licensees would be allowed to store the 4.5 weight percent U–235 fuel in the Wolf Creek spent fuel storage pool. Due to a misunderstanding on the part of the NRC staff regarding the licensees' earliest date for receipt of fuel on site, insufficient time now exists for the Commission's usual 30-day notice. The delay that would result from issuing the 30-day notice would cause the licensees to store the 4.5 weight percent U–235 fuel in the new fuel storage facility on an interim basis until the 30-day notice period expires and then move the fuel assemblies to the spent fuel pool for transfer to the fuel transfer system for underwater transfer to the refueling pool in the reactor building. The interim storage of the new fuel assemblies in the new fuel storage facility pending the expiration of the 30-day notice would result in a series of unnecessary and duplicative fuel movements that do not increase the safety of the process and may expose the fuel assemblies to the possibility of mechanical damage due to the extra transfer movements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

(1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. An increase to a maximum enrichment of 4.5 weight percent for the spent fuel and new fuel storage pools does not involve a significant increase in the probability or consequence of an accident or other adverse conditions over previous evaluations. The small increase in fuel enrichment has only a very minimal effect on the fuel handling accidents described in the Updated Safety Analysis Report. Because of the conservative techniques and assumptions used to evaluate the maximum possible neutron multiplication factor, there is more than reasonable assurance that no significant hazards considerations are involved in storing fuel assemblies of up to and

including 4.5 weight percent in the fuel storage racks under both normal and postulated accident conditions.

For example, ignoring the 2,000 ppm soluble boron in the spent fuel pool calculations results in conservative values of the multiplication factor. Storing fresh fuel in Region 1 configuration at an enrichment of 4.5 weight percent would result in a maximum multiplication factor of 0.9472 including all uncertainties. Adherence to the curves generated for Figure 3.9–1 in the new Technical Specifications would assure fuel storage in Region 2 to be at or below the limit of 0.9150 multiplication factor (including uncertainties and additional margins).

In the extreme case of loading Region 2 with fresh 4.5 weight percent fuel for example, and taking credit for 2,000 ppm soluble boron results in a maximum multiplication factor of 0.9408. In all cases, the values of multiplication factor are below the required limit of 0.95.

The spent fuel pool storage rack nominal cell pitch is being revised to reflect actual dimensions as shown on design drawings. The analysis provided was performed using a value of 9.235 inches for nominal cell pitch.

(2) This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. An increase to a maximum enrichment level of 4.5 weight percent does not create the possibility of a new or different kind of accident nor condition from previous evaluations. An increase in the enrichment level to 4.5 weight percent from 3.5 weight percent involved extending the previous evaluations to cover more realistic situations. The same calculational techniques and computer codes were used. The proposed amendment does not alter the configuration of the plant or the way in which it is operated.

(3) This proposed amendment does not involve a significant reduction in a margin to safety. An increase in the maximum enrichment to 4.5 weight percent does not involve a significant reduction in a margin of safety. As discussed above, in all cases the multiplication factors for worst case approximations fall considerably below the regulatory limit and do not represent significant reductions in a margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

This Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and should cite the publication date and page number of the Federal Register notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 16, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an apppropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 26, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland, this 25th day of May, 1988.

For the Nuclear Regulatory Commission.

Emil W. O'Connor,

Project Manager, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-12356 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82, issued to the Pacific Gas and Electric Company (PG&E or the licensee) for operation of the Diablo Canyon Nuclear Power Plant (DCPP) Units 1 and 2 located in San Luis Obispo County, California.

The amendments would revise the technical specifications (TS) relating to section 6.0, Administrative Controls, by removing the organization charts and changing the titles of certain management personnel. The proposed amendments were requested by the licensee's letter of May 20, 1988.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. These three criteria are discussed in detail below.

(1) The NRC staff proposes to determine that the proposed amendments do not involve a significant increase in the probability of consequences of an accident previously evaluated because title changes and removal of the organization charts from the technical specifications are administrative in nature and do not affect plant operations or the number of members, composition, or function of the Plant Staff Review Committee. As in the past, the NRC will continue to be informed of organizational changes through other required controls. 10 CFR 50.34(b)(5)(i) requires that the applicant's organizational structure be included in the Final Safety Analysis Report (FSAR).

Chapter 13 of the DCPP FSAR Update provides a description of the organization and detailed organization charts. The organization charts in the FSAR Update are more detailed than those presently in the technical specifications. As required by 10 CFR 50.71(e), the licensee submits annual revisions to the FSAR Update.

(2) The NRC staff proposes to determine that the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no physical alternation to any plant system, nor is there a change in the method in which any safety related system performs its function. The proposed changes are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The NRC staff proposes to determine that because the proposed revision is administrative in nature, it therefore will not reduce any margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland

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from 8:15 a.m. to 5:00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing or petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issuance the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-8700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 26 day of May, 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12356 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 58 to Facility Operating License No. NPF-21, issued to Washington Public Power Supply System (the licensee), which revised the Technical Specifications for operation of the Nuclear Project No. 2 (WNP-2), located in Benton, County, Washington.

The amendment was effective as of the date of issuance.

The amendment revised Technical Specification Table 3.6.3-1, "Primary Containment Isolation Valves," and Table 3.3.2-1, "Isolation Actuation Instrumentation" to allow operation of WNP-2 with automatic isolation controls for valve RHR-V-8 bypassed when control of this value is transferred to the Alternate Remote Shutdown Panel and the value is locked in the isolated position.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on March 14, 1988 (53 FR 8291). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 5, 1988 and supplemental letters dated February 12 and March 15, 1988, (2) Amendment No. 58 to License No. NPF-21, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. The application submitted on January 12 requested the amendment to allow operation with control of the value transferred to the Alternate Remote Shutdown Panel (ARSP), bypassing the isolation signals and interlocks. The supplement to the application submitted on February 12 set forth more explicitly which isolation signals and interlocks are bypassed when control of the valve is transferred to the ARSP. That supplement also set forth compensatory measures which would be taken to preclude inadvertent opening of the valve from the ARSP. The supplement submitted on March 15 revised the proposed wording to the technical specifications to make it clear that the isolation signals and interlocks would be reestablished when control of the valve is transferred back to the control room. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgage Streets, Richland, Washington 99352. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 26th day of May 1988.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12357 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25738; File Nos. SR-AMEX-87-13, CBOE-87-27, and Phlx-87-32]

Self-Regulatory Organizations; American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., and Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes

On June 1, June 24, and September 24, 1987, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"),[1] and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b-4 thereunder,[3] proposed rule changes to provide for a two-year pilot program during which certain hedged positions will be exempt from equity options position and exercise limits.[4]

The proposed rule changes were noticed in Securities Exchange Act Releases No. 24669 (July 1, 1987), 24701 (July 14, 1987), and 24971 (September 30, 1987), 52 FR 26108 (July 10, 1987), 52 FR 27269 (July 20, 1987), and 52 FR 37563 (October 7, 1987), respectively. No comments were received by the Commission on the proposed rule changes.

I. Introduction

The purpose of the proposed rule changes is to increase position and exercise limits for stock options by creating a limited exemption for the four most commonly used hedged positions. The current Amex, CBOE, and Phlx position limit rules circumscribe the number of option contracts on the same side of the market (*i.e.*, short calls and long puts or long calls and short puts) that an investor may control. Position limits for equity options are determined in accordance with a three-tiered system (*i.e.*, 3,000, 5,500, or 8,000 contracts) based on the number of shares of the underlying security outstanding and/or the underlying security's trading volume.[5] Exercise limits correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, only the number of option contracts set forth as the position limit.[6]

During the two-year pilot program, the proposals will allow an automatic exemption from equity option position and exercise limits for accounts that have established one of the four most commonly used hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). The four hedged positions, which combine stock and options on a one-for-one basis, are: long stock and short call; long stock and long put; short stock and long call; and short stock and short put. Under the proposal, the maximum position limit (including the allowed exemptions) may not exceed twice the present position limit.

The proposal contemplates that exercise limits will correspond to position limits. Therefore, investors will be allowed to exercise, during any five consecutive business days, the same

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[1] On September 4 and September 10, 1987, respectively, the Amex and CBOE filed Amendment No. 1 to their proposals clarifying the situation where an options contract has been adjusted to reflect a stock distribution, stock split, or stock dividend. In such a case, each option contract must be hedged by the same number of shares represented by the adjusted option contract. *See* letter from Claire P. McGrath, Staff Attorney, Amex, to Joseph Furey, Esq., Branch of Options Regulation, Commission, dated September 3, 1987; letter from Nancy R. Crossman, Associate General Counsel, CBOE, to Joseph Furey, Esq., Division of Market Regulation, Commission, dated September 10, 1987. The Phlx addressed this situation in its original proposal.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1987).

[4] Position limits impose a ceiling on the number of options contracts of each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of puts or calls in a particular underlying security within five consecutive business days.

[5] *See* Amex Rule 904, CBOE Rule 4.11, and Phlx Rule 1001.

[6] *See* Amex Rule 905, CBOE Rule 4.12, and Phlx rule 1002.

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number of contracts set forth as the position limit for that option, including those that are hedged (*i.e.*, if the position limit for an option is 5,500 contracts and an investor has established a hedged position of 6,500 contracts, the investor could exercise all 6,500 option contracts during any five consecutive business days).

In their rule filings, the exchanges stated that the proposed rule change is a response to requests by institutional investors for the ability to hedge greater amounts of stock holdings than they can under the current position limit rule. The CBOE notes that in some instances it has been necessary to grant market participants exemptions for existing equity option position limits. The proposed exemptions for long stock positions will provide investors the ability to protect or hedge twice as many shares of stock as they can under the current position limit rule with long puts or short calls. Similarly, the proposed hedged exemption for short stock positions will permit investors to offset such positions with either long calls or short puts. If either of these options positions is exercised, the shares of stock acquired or sold pursuant to the exercise will reduce the stock position and, therefore, will not add to the investor's total position in the underlying stock.

II. Background

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market.[7] In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[8]

The Commission previously has indicated that, in establishing position and exercise limits, it has attempted to balance two competing concerns. On the one hand, limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options disproportionate to the deliverable supply and average trading volume of the underlying security. On the other hand, limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[9]

In 1978, the Report of the Special Study of the Options Market, while recognizing the important functions served by position and exercise limit rules, set forth some of the deleterious effects of the 1,000-contract position and exercise limits then in effect.[10] In particular, the *Options Study* suggested that position limit rules by completely reviewed and their future elimination or relaxation, particularly for hedged positions, be considered.[11]

In October 1980, The Commission approved proposed rule changes by the CBOE, the Amex, the Phlx, and the Pacific Stock Exchange, Inc. to increase position and exercise limits from 1,000 to 2,000 contracts for all options classes.[12] In July 1983, the Commission approved a further increase in position and exercise limits for individual stock options based on a tiering approach.[13] Limits for options on stocks with the greatest trading volume and public float were increased to 4,000 contracts and limits on all other options classes were increased to 2,500 contracts. In approving the increased limits under a two-tiered approach, the Commission recognized that securities with active and deep trading markets, as well as broad public ownership, are more difficult to disrupt than securities having less active and deep markets and having smaller public floats. Accordingly, the Commission believed that the tiering approach to position and exercise limits was appropriate because it would increase the depth and liquidity of the stock options markets without significantly increasing concerns regarding manipulation and disruption of the market for the underlying securities. The Commission noted that the absence of discernible manipulation problems under the current limits was an indication that modest additional increases were justified. In addition, the Commission noted that tiering was consistent with the gradual evolutionary approach that the Commission and the options exchanges have adopted in increasing position and exercise limits.

In April 1985, the Commission approved a three-tier structure that established position and exercise limits of either 3,000, 5,500, or 8,000 contracts for individual stock options depending on certain criteria related to the trading volume and the number of shares outstanding of the underlying stock.[14] In approving the proposals, the Commission concluded that the proposed increases, based on a three-tiered approach, would further increase the potential depth and liquidity of the individual stock options market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or underlying securities. The Commission noted, as it previously had noted in its 1983 Release, that securities with active and deep trading markets, as well as broad public ownership, are more difficult to manipulate or disrupt than those securities that are less active with smaller public floats. In this connection, the Commission believed, in particular, that the proposal to create a third tier, with a limit of 8,000 contracts, for options on the most actively traded, widely held securities, permitted the Commission to avoid placing unnecessary retraints on those options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, likely would be the greatest. The Commission noted the absence of discernible manipulation or disruption problems under the two-tiered limits in concluding that the proposed increases were warranted.

[7] A mini-manipulation is conducted by effecting transactions in the underlying security to profit a previously established options position (e.g., purchasing stock to increase its price and, as a result, the value of call options), and then closing out the options position at a profit. Because of the substantial leverage provided by options contracts, a trader would be capable of accumulating a large enough position to result in substantial profit from relatively small movements in the price of the underlying stock. Corners and squeezes could involve the purchase of call options at a time when the option holder also has a substantial or even controlling interest in the underlying securities. The options would then be exercised, forcing uncovered options writers assigned to deliver stock on the exercises to buy the stock at increasingly higher prices because of the unavailability of the stock. The person effecting the corner or squeeze would profit either by closing out his options position at a premium or selling the underlying securities at inflated prices.

[8] Securities Exchange Act Release No. 21927 (March 29, 1985), 50 FR 13440 (approving three-tiered position and exercise limits for individual stock options).

[9] *Id.*

[10] H.R. Rep. No. 1FC–3, 95th Cong., 1st Sess. at 189–91 (Comm. Print 1978) ("Options Study").

[11] The *Options Study* pointed out that, under rules promulgated by the Commodity Futures Trading Commission ("CFTC"), positions that are deemed to be bona fide hedging transactions (as defined) are exempted from position limit rules.

[12] Securities Exchange Act Release No. 17327 (October 22, 1980), 45 FR 71488.

[13] Securities Exchange Act Release No. 19975 (July 15, 1983), 49 FR 22390 ("1983 Release").

[14] Securities Exchange Act Release No. 21927 (April 3, 1985), 50 FR 13440.

III. Discussion

The Commission has concluded that the CBOE, Amex, and Phlx proposals to increase position limits for individual equity options in circumstances where those excess positions are hedged fully with offsetting stock positions will further increase the depth and liquidity of the stock options market without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market. In particular, the Commission believes that the proposals will provide greater depth and liquidity to institutional customers seeking to hedge stock portfolios by trading stock options. These investors will be able to hedge twice the amount of underlying shares of stock than they currently can, and thus will be better able to protect their large stock portfolios from market declines.

The Commission also believes that the Amex, CBOE, and Phlx proposals are consistent with the Commission's general approach to position and exercise limits. That approach balances the benefits derived from increased position and exercise limits against the potential for increased market disruptions and manipulations. The Commission does not believe that the exemption from position and exercise limits will disrupt the options or equity markets or substantially increase the possibility of manipulation in the underlying stocks or options. In this regard, the Commission notes that the position and exercise limit exemption is a limited one (*i.e.*, the exemption is limited to accounts that have established one of four hedged positions). Moreover, because any option positions in excess of current position limits must be hedged fully, market disruption concerns are lessened. In situations where the option position is hedged fully with an offsetting stock position, potential disruptions in the underlying stock market are lessened because the entity with the options position is not required to enter the market to buy or sell the stock if the options are exercised or assigned. In addition, the Commission believes that a maximum position of double the existing position and exercise limits will help to ensure that any potential market disruptions are minimal. Finally, to the extent that an options position is hedged fully with stock, it is more difficult to profit from an intermarket manipulation because an increase in the value of the options position usually will be accompanied by a corresponding decrease in the value of the stock position.

Nevertheless, larger options positions do raise the incentive to engage in intermarket manipulations by providing a greater potential gain from the derivative position. This is especially relevant to the CBOE, Amex and Phlx proposals in that the hedge exemptions will be available to market professionals. In this regard, the Commission is confident that Amex, CBOE, and Phlx surveillance capabilities are sufficient to detect and deter trading abuses arising from the increased position and exercise limits. Each exchange generates daily an automated position limit report. If an entity is identified as exceeding the existing position limit in a specific security, the surveillance staff will discern immediately whether an offsetting stock position exists. If the excess options position is not hedged fully on a one-to-one basis, the entity loses the exemption, will be precluded from effecting additional opening transactions, and will be required to close out those positions in excess of the current position limit. In addition, the exchanges can proceed with whatever disciplinary action is appropriate under their rules. The Amex, CBOE, and Phlx also have noted that their surveillance departments will cross reference their position limit reports with their manipulation reviews to ensure that any unusual options or stock trading, whether fully hedged or not, will be identified and investigated thoroughly.[15] In addition, the exchanges have indicated that any excess option positions must be liquidated prior to or contemporaneously with a decrease in the hedged stock position or a violation of position limits will be deemed to have occurred.[16] The Commission also notes that the exchanges have proposed a two-year pilot program for the equity option hedge exemption. During the two-year pilot the exchanges and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[17]

The Commission also notes that there does not appear to be any regulatory reason to differentiate among the three tiers of current position and exemption is concerned. Although the position and exercise limits for options in the lowest two tiers are based on securities with a lower number of outstanding shares and/or with a lower trading volume, all securities underlying options contracts traded on the Amex, the CBOE or the Phlx must meet certain minimum outstanding share and trading volume criteria.[18] Because any position in excess of the existing limit on the same side of the market must be hedged fully by an offsetting stock position, market disruptions, regardless of differences in the trading of the underlying stock, would be unlikely, and profits derived from one position would be offset by losses associated with the other position. The Commission believes, therefore, that so long as there is significant trading volume and adequate public interest in the security to permit options trading, it is appropriate to allow an exemption from position and exercise limits for accounts that have established one of the four hedged positions with options that have a current 3,000, 5,500, or 8,000 contract position limit.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules

[15] Letter from Nancy R. Crossman, Associate General Counsel, CBOE, to Joseph Furey, Esq., Division of Market Regulation, Commission, dated September 10, 1987; letter from Claire P. McGrath, Staff Attorney, Amex, to Joseph Furey, Esq., Branch of Options Regulation, Commission, dated September 3, 1987; telephone conversation between Howard Baker, Senior Vice President, Options Division, Amex, and Joe Furey, Branch Chief, Division of Market Regulation, Commission, October 6, 1987; telephone conversation between Michele Berkowitz, Staff Counsel, Phlx, and Mary Revell, Attorney, Commission, May 4, 1988.

[16] *See* letter from Nancy Crossman, Associate General Counsel, CBOE, to Joseph Furey, Branch Chief, Division of Market Regulation, Commission, dated October 9, 1987; letter from Claire P. McGrath, Staff Attorney, Amex, to Joseph Furey, Branch Chief, Division of Market Regulation, Commission, dated October 9, 1987; and telephone conversation between Michele Berkowitz, Staff Counsel, Phlx, and Mary Revell, Attorney, Commission, May 4, 1988. In this regard, the CBOE, Amex, and Phlx will conduct surveillance to detect any such violations.

[17] The Commission expects the exchanges to determine from their monitoring programs information including, but not limited to, the following: the investors who use the exemption; how often the exemption is used; the stock positions hedged; the amount and timing of trading in the stock by the investor while he is using the exemption; the options used to hedge the stock positions; and the size (number of contracts) of the options positions held pursuant to the exemption. The exchanges also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption rule.

[18] Generally, these requirements are: (1) A minimum of 6,000 holders of record; (2) a minimum of 7,000,000 shares outstanding; (3) trading volume of at least 2,400,000 shares in the preceding 12 months; and (4) a minimum value of $10 per share for the underlying stock. *See* Amex Rule 915: Criteria for Underlying Stocks; CBOE Rule 5.3: Approval of Underlying Securities; and Phlx Rule 1009.

and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, [19] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [20] that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Dated: May 24, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12428 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25738; File No. SR-CBOE-87-25]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On May 27, 1987, the Chicago Board Option Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for a one year pilot program during which public customers may apply for a "hedge exemption" from broad-based index option position limits.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 24803 (June 17, 1987), 52 FR 23731 (June 24, 1987). No written comments were received by the Commission on the proposed rule change.

I. Introduction

The purpose of the proposal is to provide public customers who wish to hedge large stock portfolios relief from existing broad-based stock index option position limits. The CBOE believes that the existing limits are not sufficient to hedge the portfolios of large institutional investors. For example, under the current index option position limit of 25,000 contracts [4] in the CBOE's Standard and Poor's 100 Index option ("OEX"), if the value of OEX is 240, a position at the limit would have an index value of $620 million. Many portfolio managers, however, handle stock portfolios valued far in excess of that size. OEX can not be used effectively by those managers to hedge their portfolios. Rather, they must be index futures contracts, where larger position limits and various exemptions to positions limits exist.

The CBOE proposed rule change provides for a one year pilot program during which public customers may request Exchange approval for a "hedge exemption" from position limits on broad-based index options traded on the CBOE. The exemption is designed for customer portfolio management and thus is limited to public customers, *i.e.*, those customers whose trades would be eligible for placement on the public limit order book under CBOE Rule 7.4.

Under the proposal, the Exchange may exempt from its position limits any positions in broad-based index options traded on the Exchange that are hedged against qualified long portfolios of stock. Such options positions would be comprised of short calls or long puts, combinations thereof, or such equivalent positions as are approved in advance by the Exchange. To be qualified, a short portfolio must at all times be composed of net long positions in common stocks in at least four industry groups and contain at least 20 stocks, none of which accounts for more than 15% of the value of the portfolio. The maximum size of the exempt position cannot exceed the unhedged value of the qualified stock portfolio, and no position can exceed 75,000 contracts, regardless of the size of the stock portfolio. The unhedged value is determined by totalling the values of the net long positions for each of the stocks of the qualified portfolio and subtracting the value of any short calls and long puts in any broad-based index options, any short positions in stock index futures or options on such futures, and any economically equivalent positions in stock index options or futures.[5]

The index options hedge exemption may not be used for arbitrage in stock baskets and overlying stock index options. In addition, the hedge exemption customer will commit to initiation and liquidation of options and stock positions in an orderly fashion and in a manner calculated not to cause unreasonable fluctuations or price changes, and to liquidation of options positions that would be rendered excessive by a decrease in the hedged value of the qualified portfolio prior to or contemporaneously with a decrease in the qualified portfolio's hedged value. The customer also will commit to provide promptly to the Exchange all pertinent information concerning the customer's stock portfolio, any stock index futures positions, and current hedged and aggregate options positions and to notify the Exchange promptly of material changes in stock portfolio or futures positions. The customer must also abide by prevailing exercise limits, without regard to the hedge exemption provision, except in expiring series from the last business day prior to expiration until expiration.[6] Accordingly, no more than 15,000 contracts in OEX or CBOE's Standard and Poor's 500 Index Option ("SPX") may be exercised over any five day period, except in expiring series on the business day prior to expiration. Exercise limits on expiration will not be restricted in order to allow index option hedge exemption customers who hold expiring positions to roll their hedge positions into forward months without affecting their stock positions.[7] Any violation of the hedge exemption provisions may result in the customer losing its exemption, and, if warranted, in disciplinary action against a member that aided or abetted the violation.

II. Background

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits for stock index options are designed to minimize the potential for mini-manipulations,[8] and serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

The Commission previously has indicated that, in establishing position and exercise limits, it is necessary to balance two competing concerns. On the one hand, limits must be sufficiently low to prevent investors from disrupting the market for the underlying security. On the other hand, limits must not be established at levels that are so low as to discourage unnecessarily participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[10]

III. Discussion

The Commission has concluded that the proposed hedge exemption from broad-based index option position limits will allow more effective hedging of large stock portfolios and may increase the depth and liquidity of the stock index options market. At the same time, the Commission does not believe that allowing a public customer hedge exemption from broad-based index option position limits to the level proposed by the CBOE will increase substantially these products' susceptibility to manipulation or increase the potential for disruption in the markets for the underlying securities.

As noted above, because OEX and SPX are cash settled and comprised of a large number of securities, they are not as likely to disrupt the markets in their underlying securities or be as readily susceptible to manipulation as individual options.[11]

In addition, the CBOE proposal has additional safeguards that will make it difficult to use the exempted positions to disrupt or manipulate the market. In this regard, the qualified stock portfolio must be broad-based, and correspond in value to the value of the options hedge so that the increased positions could not be used in a leveraged manner in any type of manipulative scheme. Both the options and stock positions must be initiated and liquidated in an orderly manner. The requirement that a reduction in the options position must occur at or before the corresponding reduction in the stock portfolio position should ensure that the stock transactions are not used to impact the market so as to benefit the options positions. Moreover, because the exemption may not be used for arbitrage in stock baskets and overlying stock index options, the proposed exemption will not aggravate stock market volatility.[12]

To the extent any potential for manipulation or disruption might increase because of the higher limits, the Commission believes the Exchange's surveillance procedures will be adequate to detect as well as deter such activity. In particular, the CBOE will monitor a hedge exemption customer's options position daily to determine if the position is being maintained within the allowable limits.[13] The daily establishment and liquidation of options hedge positions also will be monitored to detect apparent rule violations (*e.g.*, mini-manipulation, frontrunning). For index option surveillance, on the Wednesday prior to expiration the firm carrying the customer's position will be required to telefax data to the Exchange regarding the status of the account's portfolio (*i.e.*, the current option position, futures position, options on futures position, and any changes made to the stock portfolio since the filing of the application for exemption from index option position limits and/or the last update). Although exercise limits on expiration will not be restricted, exercises in excess of 15,000 contracts by holders of hedge exemptions will be closely examined, as will any related activity in equity securities.[14] In the event that the holder of a hedge exemption exercises in excess of 15,000 contracts on expiration and liquidates a substantial amount of stock on the last trading day prior to expiration, the CBOE will presume that the hedge exemption holder violated subsection (g)(2) of the proposed rule for failing to liquidate options and stock positions in an orderly fashion or in a manner not calculated to cause unreasonable price fluctuations or unwarranted price changes or for engaging in stock index arbitrage, which is specifically prohibited by the proposal.[15] The holder, of course, will be provided an opportunity to rebut the presumption.[16] A finding, however, that a violation of the rule has occurred will result in revocation of the hedge exemption.

The Commission believes that the CBOE's surveillance procedures will enable the Exchange to detect unusual selling by a hedge exemption customer, and then take steps to withdraw the exemption if violations are found. The Commission also notes that the Exchange has proposed a one year pilot program for customers to apply for the hedge exemption. During the one year pilot the Exchange and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[17]

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[19] 15 U.S.C. 78f (1982).

[20] 15 U.S.C. 78s(b)(2) (1982).

[21] 17 CFR 200.30-3(a)(12) (1987).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] Position limits impose a ceiling on the number of option contracts of the same class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[4] The CBOE's proposal to increase position limits for broad-based index options from 15,000 contracts to 25,000 contracts, with no more than 15,000 contracts to be held in the near-term, expiring month, was approved by the Commission in Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22892.

[5] The proposed rule also requires the options hedge position to be held in an account of a member of the Exchange, which account must comply with all rules and regulations of the Exchange. Requiring that the positions clear into an approved hedge account carried at a member firm will assure that the Exchange has the ability to conduct adequate surveillance of exempt positions.

[6] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of puts or calls in a particular underlying security within five consecutive business days.

[7] Letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated August 25, 1987.

[8] A mini-manipulation is conducted by effecting the transactions in the underlying security to profit a previously established options position (*e.g.*, purchasing stock to increase its price and, as a result, the value of call options), and then closing out the options position at a profit. Because of the substantial leverage provided by options contracts, a trader would be capable of accumulating a large enough position to result in substantial profit from relatively small movements in the price of the underlying stock.

[9] Securities Exchange Act Release No. 21907 (March 28, 1985), 50 FR 13440 (approving three-tiered position and exercise limits for individual stock options).

[10] *Id.*

[11] Under rules promulgated by the Commodity Futures Trading Commission ("CFTC"), futures positions that are deemed to be bona fide hedging transactions (as defined) are exempted from position limit rules. Largely because of hedging exemptions in the futures markets, institutions are able to offset much larger equity positions using index futures products than they currently might using index options. The increased position limits should provide institutions with a broader choice in their use of index products. Commodity Exchange Act, section 4a, 7 U.S.C. 6a (1982) (bona fide hedging transactions exception to position limits); CFTC Rule 1.3(z), 17 CFR 1.3(z) (1988) (definition of bona fide hedging transaction). *See also* CFTC Rule 1.61, 17 CFR 1.61 (1988) (Speculative Position Limits).

[12] The stock market has experienced short term volatility related to the establishment and unwinding of stock-index arbitrage positions, both at quarterly expirations when index options, futures, and individual options expire simultaneously (so-called "triple-witching" expirations) and also on certain non-expiration days. *See* SEC Division of Market Regulation's Report on the October 1987 Market Break (February 1988 ("Market Break Report"), at 1-7 to 1-10 and 3-17. The CBOE's proposed rule specifically provides that the hedge exemption may not be used for stock-index arbitrage.

[13] *See* letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Mary Revell, Attorney, Division of Market Regulation, Commission, dated June 25, 1987 (Surveillance Procedures for OEX and SPX Customer Hedge Exemptions).

[14] Letter from Frederic H. Krieger, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated August 25, 1987.

[15] *Id.*

[16] *Id.*

[17] The Commission expects the CBOE to determine from the monitoring program information including, but not limited to, the following: the persons who use the exemption; how often the exemption is used; the size (dollar value) of any portfolios hedged; the number of stocks represented in these portfolios and the quantity of each stock held; positions held by the portfolios in stock index futures, stock index options on futures, or any other stock index option contracts; and the size (number of contracts) of the index options positions held pursuant to the exemption. The CBOE also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of any of the provisions of the hedge exemption rule.

The Commission believes that the CBOE proposal is a viable approach to allowing more efficient hedging of large stock portfolios. The Commission further believes the proposal will increase the depth and liquidity of index option trading and will better accommodate the hedging needs of portfolio managers.

Since the introduction of index-related derivative products, their use by institutions as hedging vehicles has increased substantially. Index products allow institutions to hedge the risks associated with holding diversified equity portfolios. Currently, some institutions utilize a variety of index option products and strategies, such as the purchase of protective index puts, to hedge diversified equity portfolio (market) risk.[19] Institutions, however, are generally constrained in their ability to hedge large portfolios with index options by current position limits.[20] As a result, many utilize financially equivalent index futures products to the competitive disadvantages of the options exchanges.[20] In addition, many institutions attempted to implement various dynamic hedging strategies [21] (*e.g.*, portfolio insurance) with stock index futures during the October 1987 market break, which placed enormous liquidity demands on the markets.[22] The public customer hedge exemption proposed by the CBOE should provide institutions with an alternative to various dynamic hedging strategies that does not require purchases during volatile market periods and that may be less disruptive to the equity markets.[23]

[19] A protective put strategy entails purchasing index puts as a hedge against a diversified long equity position. In a declining market, the risk of losses in the equities may be offset by purchasing put options which increase in cash value as the overall market declines.

[20] *See* Siler, The Crisis of Confidence in Options, *N.Y. Times*, April 24, 1988, at F1.

[20] Largely because of hedging exemptions in the futures markets, institutions are able to offset much larger equity positions there than they currently might using index options. There are, however, a variety of reasons unrelated to position limits, such as lower transaction and market impact costs, that may account for institutions utilizing index futures products as hedging vehicles more extensively than they use index options.

[21] Dynamic hedging involves rebalancing a market portfolio to increase or decrease the proportion of equity exposure depending on market movements.

[22] *See* the Division of Market Regulation's Market Break Report at 3-13—3-18. *See also* Stanley Shopkorn, speech delivered at Trading on the Future, a Center for National Policy Symposium (Mar. 4, 1988).

[23] *See* S. Grossman, An Analysis of the Implications for Stock and Future Price Volatility of Program Trading and Dynamic Hedging Strategies (Working Paper, CSFM-#158, June 1987).

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[24] and the rules and regulations thereunder. The Commission believes that the CBOE proposal strikes an appropriate balance between the needs of market participants and the regulatory purposes position and exercise limits are designed to serve. In particular, the proposal will enable portfolio managers who wish to hedge large stock portfolios to use the CBOE's broad-based stock index options for that purpose. At the same time, the proposal is unlikely to increase manipulation or disruption concerns.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Dated: May 24, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12427 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[24] 15 U.S.C. 78f (1982).

[25] 15 U.S.C. 78s(b)(2) (1982).

[26] 17 CFR 200.30-3(a)(12) (1987).

[Release No. 34-25748; File No. SR-PHLX 88-17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to AUTOM Transaction Fees

Pursuant to section 91(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1988, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act") submits a proposed rule change amending the PHLX's Options Charges Schedules for the purpose of including Automated Options Market System Charges. All other fees and charges on these schedules will remain the same. The text of the proposed changes includes the following (additions are underscored, deletions are in brackets):

Equity Options Charges

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own members firms or for transactions executed over the AUTOM System.

Value Line Option Charges

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own members firms.

Foreign Currency Option Charges

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own member firms.

European Currency Unit

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own member firms.

A copy of the current Summary of Charges and Fees is attached hereto.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to amend the Exchange's options charges to include a transaction fee that will be imposed on transactions performed via the Phlx's new options order delivery system.

The Automated Options Market System ("AUTOM") is the Phlx's new automated order delivery and reporting system which is designed to route member firm orders directly to the options trading floor. This new system went into effect on a pilot basis on April 8, 1988. It is designed to enable member firms to transmit orders from off-the-floor over remote communication lines directly to options specialists on the Exchange floor. Thus the AUTOM system eliminates the need for a broker-dealer to use any floor personnel for the execution of eligible orders.

The Exchange assesses fees on all trades brokered on the options floor. For orders handled by an independent floor broker, a fee equal to 5% of the broker's net income is assessed. For orders executed by a member firm's own brokers, a commission is not charged, so the 5% fee is inapplicable. Instead, a charge of $.05 per contract is assessed. An independent floor broker also is not used for AUTOM trades. Thus, the proposed rule change makes it clear that the $.05 per contract assessment will apply to transactions effected over the AUTOM System.

To insure that all users understand that the fee applies whether a transaction is executed by a firm's own floor broker or through AUTOM, the exchange is changing the name of the fee from Floor Broker Transaction Fee to Options Floor Transaction Fee. All other fees and charges on these schedules will remain the same.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on this proposed rule change have been solicited or received.

III. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-88-17 and should be submitted by June 23, 1988.

IV. Commission Findings and Trimng for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(4) in that the proposed fees constitute an equitable allocation of reasonable fees among members and member firms using its facilities. The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12428 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16413; File No. 811-5211]

Application; The Advest Advantage Investment Trust

May 26, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION. Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Advest Advantage Investment Trust.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 29, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Advest Advantage Investment Trust, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Cindy J. Rose, (202) 272-2058, or Special Counsel David Goldstein, (202) 272-3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is a business trust which was organized under the laws of the Commonwealth of Massachusetts on June 11, 1987. The Applicant is an open-end diversified management investment company, registered under the 1940 Act on Form N-1A. The registration statement was declared effective on July 29, 1987 under the Securities Act of 1933.

2. The Applicant consists of five series, The Advest Advantage Money Market Fund, The Advest Advantage Special Fund, The Advest Advantage Growth Fund, The Advest Advantage Government Securities Fund, and The Advest Advantage Income Fund.

3. Shares of beneficial interest in the Applicant ("Shares") were sold only to Hartford Life Insurance Company's Advest Variable Annuity Separate Account (the "Separate Account") to provide an investment vehicle for certain variable annuity contracts (the "Contracts") issued by the Hartford Life Insurance Company through its Separate Account. The Separate Account began offering the Contracts in July 1987.

4. The sale of Contracts was not as successful as the Hartford Life Insurance Company and the Applicant had hoped and, consequently, the assets of the Applicant did not increase significantly as a result of investment through the Contracts.

5. The Applicant determined that continued efforts to effect new sales of the Contracts were not in the best interests of the Contractholders, the Separate Account or the Applicant.

6. By letter dated January 28, 1988, the outstanding Contractholders for the Separate Account, the sole shareholder of the Applicant, were offered the option of either surrendering their Contracts in exchange for the fully-appreciated net asset value of the Contracts with no surrender or redemption fee charged or using such net asset value to effect an exchange of the Contracts for another Hartford Life Insurance Company annuity contract.

7. As of January 28, 1988, there were issued and outstanding 17,561 shares of The Advest Advantage Growth Fund, having a net asset value of approximately $1.01 per share and 22,281 shares of The Advest Advantage Income Fund having a net asset value of approximately $1.00 per share.

8. As of March 4, 1988, all of such outstanding Contractholders had exercised one of such options and there were no outstanding securityholders of the Separate Account.

9. As of March 4, 1988, the Separate Account had exercised its right to redeem all of its Shares of The Advest Advantage Growth Fund and The Advest Advantage Income Fund, the only two of the five series funds of the Applicant that had any outstanding Shares. Once the Separate Account redeemed all its Shares, there were no outstanding Shares, and consequently, no outstanding shareholders, of the Applicant.

10. As of March 31, 1988, after considering the inactive state and the lack of any remaining shareholders or assets of the Applicant, the entire number of Trustees then in office resolved by written consent pursuant to sections 2.3, 8.2 and 8.4 of the Applicant's Declaration of Trust to terminate the Applicant, to request an order under section 8(f) of the 1940 Act declaring the Applicant has ceased to be an investment company and to file a Certificate of Termination with the Commonwealth of Massachusetts and the City of Boston, Massachusetts.

11. The Applicant currently has no assets and no shareholders.

12. Applicant is not a party to any litigation or administrative proceeding.

13. After the termination of the Applicant was approved by the Trustees, the Applicant ceased to engage in any business other than that necessary for the winding up of its affairs.

14. All expenses of liquidation and all expenses related to deregistration under the Securities Act of 1933 and the 1940 Act have been paid by Advest, Inc. or Boston Security Counsellors, Inc., the investment adviser to the Applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12434 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16411; 812-6986]

Application; Cheval/Alliance U.S. Equity Fund; Investment Company Deregistration

May 25, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order declaring that applicant has ceased to be an investment company.

Applicant: Cheval/Alliance U.S. Equity Fund.

Relevant 1940 Act Section: Order requesting deregulation under section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order under section 8(f) declaring that Applicant, which registered under the 1940 Act as an open-end diversified management investment company, has ceased to be an investment company.

Filing Date: The application was filed on March 23, 1988 and amended on May 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the appropriate Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney, (202) 272-3026 or Brion R. Thompson, Special Counsel (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (Maryland (301) 253-4300).

Applicant's Representation

1. Applicant was organized as a Massachusetts Business Trust. On January 28, 1987, Applicant registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, managment investment company.

2. Applicant registered an indefinite number of its par value $.01 shares of beneficial interest. Applicant, however, never made a public offering of its securities.

3. Applicant has not transferred any of its assets to a separate trust within the last 18 months. Applicant has not retained any assets for any purpose.

4. Applicant is not a party to any litigation or administrative proceedings, and is not now nor does not propose to engage in any business activities other than those necessary to affectuate the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12423 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24651]

Application, Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 25, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 20, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Middle South Utilities, Inc., et al. (70-7119)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a post-effective amendment to their declaration pursuant to section 12(b) of the Act and Rule 45 promulgated thereunder.

By order dated May 26, 1988 (HCAR No. 24107), Middle South was authorized to guarantee certain obligations in connection with leasing of two IBM 3090/200 computer systems by MSU System Services, Inc. ("Services"), a wholly owned service company subsidiary of Middle South, for use at its data processing center in Gretna, Louisiana, and the upgrading of both computer systems. The computer systems were leased under a Master Lease Agreement, dated May 9, 1980, and two separate Equipment Schedules ("Schedule 36" and "Schedule 41"), dated November 4, 1985 and January 20, 1986, respectively, at monthly rental payments of $175,893 through December 31, 1989 for Schedule 36 and $176,737 through March 31, 1990 for Schedule 41. Middle South was further authorized to guarantee Services' lease obligations with regard to the upgrading of the computer systems at an aggregate acquisition cost not to exceed $9,280,000, for a term in each case coterminous with Schedule 36 and Schedule 41, at monthly rental payments to be guaranteed by Middle South not to exceed $175,893 and $127,000, respectively.

Middle South now proposes to guarantee Services' lease obligations for Schedule 41 equipment upgrading, without recourse to Services first being required. Schedule 36 equipment has been leased back to the lessor, Comdisco, Inc. ("Comdisco"), at rental payments equal to Services' corresponding rental payments over the remaining initial term of the lease. Schedule 41 equipment has been upgraded to provide Services with additional computer capacity at an aggregate monthly rental of approximately $169,829 through September 30, 1991. It is stated that the upgraded Schedule 41 equipment is sufficient to meet Services' computer capacity needs and, therefore, Schedule 36 computer capacity is no longer required. Further, the subleasing of Schedule 36 equipment and the upgrading of Schedule 41 equipment has resulted in cost savings and in efficiencies associated with the utilization of a single computer system and related upgrading.

Ohio Power Company et al. (70-7387)

Ohio Power Company ("OPCo"), a wholly owned subsidiary of American Electric Power Company, Inc., a registered holding company, and OPCo's subsidiaries, Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company, and Windsor Power House Coal Company (collectively with OPCo, the "Applicants"), all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated June 16, 1987 (HCAR No. 24413), the Applicants were authorized to enter into renewable Master Leasing Agreements with a nonaffiliate, the Connecticut Bank and Trust Company ("Connecticut"), whereby Connecticut will least to the coal mining subsidiaries, between July 1, 1987 and June 30, 1988, mining equipment with a total aggregate acquisition cost not exceeding $22 million for term of four, six and eight years. OPCo was further authorized to execute a guaranty agreement to unconditionally and irrevocably guarantee COCCo's payment obligations in connection with such leasing arrangements. Because Applicants will extend such leasing arrangement to October 1, 1988, OPCo is requesting authorization to extend its guaranty of such payment obligations of COCCo to October 1, 1988.

Eastern Utilities Associates (70-7521)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration pursuant to sections 6(a)(2) and 7 of the Act.

On February 7, 1979 (HCAR No. 20916), EUA was authorized, in relevant part, to issue and sell $22.5 million of unsecured 10¼% Senior Notes, due March 1, 1999 ("Senior Notes"), pursuant to the terms and conditions set forth in a Note Agreement dated May 23, 1979 between EUA and each of five institutional investors ("Note Agreement").

Following the issuance and sale of the Senior Notes, EUA: (1) Consolidated Brockton Edison Company and Fall River Electric Company into a single, wholly owned electric operating company, Eastern Edison Company; (2) acquired EUA Power Corporation ("Power") as a wholly owned utility subsidiary; (3) acquired and organized EUA Cogenex Corporation ("Cogenex") and EUA Energy Investment Corporation ("Energy"), wholly owned non-utility subsidiaries; and (4) organized EUA Ocean State Corporation ("Ocean State") to be a 25% equity partner in Ocean State Power partnership ("Partnership") which is in the process of constructing a gas-fired generating plant in Rhode Island.

EUA states that it will be required to guarantee the making of capital contributions by Ocean State to the Partnership, that it may be asked to provide guarantees or other assurances in conjunction with the activities of Cogenex, Energy or other present or future subsidiaries, and that certain provisions contained in the Note Agreement hamper EUA system's ability to take full advantage of the business potential available from investments in present or future EUA subsidiaries.

The failure of an EUA subsidiary, including EUA Power, to make a payment due on its outstanding notes, or such subsidiary's admission in writing of its inability to pay its debts as they become due, or assignment for benefit of creditors, or appointment of a receiver or filing or consent to a filing of a petition in bankruptcy, is a default under EUA's Note Agreement. Consequently, EUA proposes to eliminate EUA Power from the cross-default provisions of the Note Agreement.

EUA thus proposes to amend the Note Agreement to: (1) Modify section 10.5 by excluding from the definition of Consolidated Funded Debt for purposes of that section all guarantees given by subsidiaries other than those guarantees expressly assumed or guaranteed by EUA and those consisting of a direct, express guarantee of payment of any indebtedness, liability or other

obligation represented by a note, bond, debenture or similar security; (2) eliminate from section 10.6 a limitation on guarantees by EUA of the indebtedness liabilities and other obligations of any subsidiary; (3) amend section 12.1 to provide that the cross-default provisions of subsections (e), (f), (g), (h) and (i) thereof shall not apply to Power; (4) eliminate Power from the definition of subsidiary which applies with respect to covenants included in sections 10.2 and 10.4; (5) exclude from the definition of Funded Debt in section 11.1 all indebtedness of Power other than indebtedness which has been expressly assumed or guaranteed by EUA; (6) exclude from the definition of Total Capitalization in section 11.1 any and all equity investments in Power.

In order to obtain the required approval of 75% in aggregate principal amount of the outstanding Senior Noteholders to the proposed amendments, EUA also proposes to increase the annual interest rate on the Senior Notes from 10¼% to 10¾%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-12425 Filed 6-1-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 1124; File No. 801-23047]

Intention to Cancel the Registration of TSC Investment Management, Inc.

May 25, 1988.

Notice is hereby given that the Securities and Exchange Commission intends to issue an order pursuant to section 208(h) of the Investment Advisers Act of 1940 cancelling the registration of TSC Investment Management, Inc. ("TSC Investment"). Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person.

On January 14, 1988, Katherine Williams McGuire ("Williams"), through counsel, submitted to the Commission, her intention, as sole officer and shareholder of TSC Investment, to withdraw the investment adviser registration of TSC Investment. Further, Williams stated that the corporate existence of TSC Investment is being terminated and that TSC Investment is and had been inactive as an investment adviser since at least July 28, 1987.

In view of these circumstances, the Commission believes that reasonable grounds exist to support a finding that the registrant is no longer in existence or is not engaged in business as an investment adviser.

Notice is given that any interested person may, not later than thirty days after the date of this publication, submit to the Commission in writing a request for a hearing on the matter, accompanied by a statement as to the nature of his interest, the reasons for such request, and the request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order cancelling the registrant of TSC Investment upon the basis of the information stated therein unless an order for hearing on said cancellation shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-12422 Filed 6-1-88; 8:45 am]
BILLING CODE 8010-01-M

[CM-8/1194]

DEPARTMENT OF STATE

Shipping Coordinating Committee; Open Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 pm. on June 13, 1988, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 60th Session of the Council of the International Maritime Organizations (IMO) which is scheduled for June 20–24, 1988 in London. In particular, the SHC will discuss the development of U.S. positions dealing with, inter alia, the following topics:

—Reports of the Major Committees.
—Financial Matters.
—Personnel Matters.

Members of the public may attend up to the seating capacity of the room. Interested persons may seek information by contacting Mr. G.P. Yoest, U.S. Coast Guard Headquarters, (G-CPI), 2100 Second Street, SW., Washington, DC 20593; Tel: (202) 267-2260.

Date: April 29, 1988.

Peter E. Keller,
Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-12325 Filed 6-1-88; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21-EPC; Extending a Production Certificate to Include a Facility Located in a Foreign Country

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of availability of proposed Advisory Circular 21-EPC and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed Advisory Circular (AC) 21-EPC, Extending a Production Certificate to include a Facility Located in a Foreign Country. The proposed AC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) Part 21, Certification Procedures and Products and Parts, concerning the production of completed products, (i.e., aircraft, engines, propellers), and major modifications to aircraft. This ntoice announces the availability of proposed AC 21-EPC for review and comments.

DATE: Comments must identify the AC file number, P8-220-070, and be received by September 1, 1988.

ADDRESSES: Copies of the proposed AC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AWS-220, Aircraft Manufacturing Division, Office of Airworthiness, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frank P. Paskiewicz, Production Certification Branch, AWS-220, Aircraft Manufacturing Division, Room 333, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

This proposed AC provides information and guidance concerning holders of FAA production certificates, that have entered into coproduction agreements with partners located in foreign countries. The proposed AC delineates the criteria to determine the viability of such programs, the manufacturers role and responsibilities, and the FAA's responsibilities.

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final AC.

Comments received on the proposed AC may be examined, before and after the comment closing date in Room 333, FAA Headquarters Building (FOB-10A) 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Sandy DeLucia,
Manager, Aircraft Manufacturing Division.

[FR Doc. 88-12319 Filed 6-1-88; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-88-18]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 22, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132..

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 24, 1988.

Denise D. Hall,
Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25300	Atlantic Southeast Airlines, Inc	14 CFR 121.441 and Appendix F of Part 121.	To allow petitioner's pilots to use a Phase I simulator to meet the requirements for initial and recurrent pilot testing and for instrument proficiency checking for pilots in command.
25507	Marsh Aviation Co. and the California Department of Forestry.	14 CFR 21.73 (a) or (c) and 21.213 (a) or (c).	To allow the California Department of Forestry to operate a modified Grumman TS-2A aircraft under the provisions of a Class I Provisional Type Certificate until the engine modifications have been approved by the FAA.

[FR Doc. 88-12318 Filed 6-1-88; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Announcing the Third Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to coordinate motor vehicle safety research and avoid duplication of effort. At this meeting the Committee will consider specific research related to rollover crash protection for occupants of passenger cars, light trucks, and vans; biomechanics of injury; and the use of "Information Age" electric technologies to improve vehicle safety in the traffic of tomorrow.

DATE AND TIME: The meeting is scheduled to begin at 10:30 a.m. on June 14, 1988, and conclude at 5:00 p.m. on June 15.

ADDRESS: The meeting will be held in Room 2230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1967, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, and participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88-01) has been established to contain the products of the Committee and will be

open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366-4862.

Issued on May 26, 1988.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88-12321 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 106
Thursday, June 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 7, 1988.

PLACE: 2033 K St. NW., Washington DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12502 Filed 5-31-88; 3:03 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 28, 1988.

PLACE: 2033 K St. NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Mercantile Exchange for designation as a contract market in 5,000-Troy Ounce Silver futures contracts

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12503 Filed 5-31-88; 3:03 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, June 28, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Reviews
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-12504 Filed 5-31-88; 3:03 pm]

BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Tuesday, June 7, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. FY 1989 Qualification Criteria for the TERO Program
4. Proposed FY 1989 Funding Principles for the State and Local Fair Employment Practices Agencies

Closed Session

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634-6748.

Date: May 26, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88-12418 Filed 5-27-88; 4:15 pm]

BILLING CODE 6750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 18948, Wednesday, May 25, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Wednesday, June 1, 1988.

CHANGE IN THE MEETING:

Closed Session

Litigation Authorization: General Counsel Recommendation has been added to the agenda

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634-6748.

Date: May 26, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued May 26, 1988.

[FR Doc. 88-12419 Filed 5-27-88; 4:14 pm]

BILLING CODE 6750-06-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88-11431.

PREVIOUSLY ANNOUNCED DATE AND TIME Thursday, May 26, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Revised Draft AO 1988-16—Michael A. Nemeroff on behalf of the American Medical Association and the American Medical Political Action Committee.

* * * * *

DATE AND TIME: Tuesday, June 7, 1988, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 9, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Status of Presidential Audits.
Draft AO 1988-24—H. Lee Halterman on behalf of The Committee for Congressman Dellums.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88-12496 Filed 5-31-88; 3:00 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 6, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12430 Filed 5-27-88; 4:49 am]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, June 7, 1988.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Capsizing and Sinking of the U.S. Fishing Vessel LARK, Atlantic Ocean, Nantucket Island, Massachusetts, October 8, 1987.
2. Railroad Accident Report: Head-on Collision of two CSX Freight Trains, East Concord, New York, February 6, 1987.
3. Recommendations A-87-116 through -120: Flight Restrictions Over Hazardous Materials Spills and Other Disasters. (Calendared by Chairman Burnett.)

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

May 27, 1988.

[FR Doc. 88-12445 Filed 5-31-88; 11:35 am]

BILLING CODE 7533-01-M

federal register

Thursday
June 2, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 8

Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities; Final Rule

Delegation and Re-Delegation of Authority; Notices

VOL 53 ISS 106 JE 2 1988 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 8

[Docket No. R-88-528; FR-770]

Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development. The rule implements section 504 of the Rehabilitation Act of 1973, as amended.

EFFECTIVE DATE: July 11, 1988, except for §§ 8.21(c)(4), 8.24(d), 8.25(c), 8.51, and 8.55(b), that contain information collection requirements. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

FOR FURTHER INFORMATION CONTACT: Robert Ardinger, Section 504 Program Manager, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-5404. A telecommunications device for deaf persons (TDD) is available at (202) 755-1734. These are not toll free numbers. This rule will be available on tape for persons with vision impairments in the Office of the Rules Docket Clerk, Room 10268 at the above address.

SUPPLEMENTARY INFORMATION:

Background of the Rule

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides that "No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *."

On May 6, 1983, HUD published an interim rule establishing procedures and policies to ensure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department (48 FR 20638, republished at 48 FR 22470, May 18, 1983). On June 15, 1983, the Department revoked the notice of effective date of the interim rule (48 FR 27528) and issued a notice that it was treating the published interim rule as a proposed rule and extending the comment period to September 6, 1983 (48 FR 27529).

HUD received a total of 1,273 comments on the proposed rule. The Department read and analyzed each comment, whether received before or after the formal comment period expired on September 6, 1983. Over 800 of these comments consisted of six groups of form comments, leaving over 400 separate comments, many of which are lengthy and detailed. The Department prepared a comprehensive summary of the public comments for its internal use in reviewing and considering the numerous comments received in preparation of the final rule. Because the issues raised in both the proposed rule and the comments are complex and because there is a diversity of interests affected by this rule, the Department made the 55-page summary prepared for internal use available to the public free of charge (48 FR 56798, December 23, 1983). Approximately 700 copies of the summary were requested and distributed to interested persons.

The Department formed a Section 504 Task Force to consider the public comments received in preparation of the final rule. This Task Force was composed of high level representatives of the major elements of the Department. A group of major disability organizations on two occasions requested meetings with the Task Force. The first such meeting was held on August 25, 1983 and the second on November 2, 1984. At these meetings the representatives of the disability groups represented provided oral comments on the proposed rule. The Department also received important and valuable written comments from housing providers around the country. The issues raised by all of the comments received in response to the proposed rule received careful consideration in the preparation of the final rule.

Section-by-Section Analysis and Response to Public Comments

Preamble

The preamble of the proposed rule was discussed in 206 of the comments received. Many of these commenters stated without explanation that the preamble "misuses civil rights case law." Only six commenters provided explanations of their criticisms. This much smaller number of commenters understood the preamble to state that section 504 requires *only* that "modest affirmative steps" be taken to prevent discrimination against disabled persons. However, the preamble in fact states that court decisions "have confirmed that section 504 requires *at least* "modest affirmative steps to accommodate handicapped persons." 48 FR 22477 (emphasis supplied).

Subpart A—General Provisions

Section 8.1

Four commenters expressed concern over the sentence in § 8.1(a) of the proposed rule which stated that compliance with 24 CFR Part 8 "does not assure compliance with requirements for accessibility by the physically handicapped imposed pursuant to the Architectural Barriers Act of 1968, as amended, (41 U.S.C. 4151 *et seq.*) where applicable." These commenters expressed some confusion as to the relationship between HUD's Architectural Barriers Act rule (24 CFR Part 40) and HUD's section 504 rule. These comments are discussed along with other similar comments received on § 8.30 of the proposed rule which proposed standards for facility accessibility or dwelling unit accessibility when applicable.

HUD has amended § 8.1 to add that the rule also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). Section 109 prohibits discrimination in the Community Development Block Grant (CDBG) Program. Section 109 provides that any prohibition of discrimination with respect to other qualified individuals with handicaps as provided in section 504 shall also apply to the CDBG program.

Section 8.2

Section 8.2 of the proposed rule, which described the applicability of the rule, has been substantially rewritten from the wording of the proposed rule. However, the language was changed only to make the section easier to understand; the revised language does not alter the scope of the rule.

Section 8.3

A total of 985 comments were received on § 8.3, the definitions section of the proposed rule.

Three different definitions of the term "accessible" were proposed. The first definition of the term accessible in the proposed rule stated that "accessible", when used with respect to a program or activity, means that such program or activity is conducted, delivered, or offered in such a way that qualified handicapped persons can benefit from and participate in the program or activity. The Department is deleting this definition from the final rule because it is vague and unnecessary in view of § 8.20 of the rule which sets forth the general requirement concerning program accessibility.

The second definition of "accessible" which appeared in the proposed rule has been revised to state that the term, when used with respect to the design, construction or alteration of a facility or a portion of a facility, other than an individual dwelling unit, means that such facility or portion thereof, when designed, constructed or altered, can be approached, entered and used by individuals with handicaps. A facility that complies with the standards prescribed by § 8.32 of the final rule, the Uniform Federal Accessibility Standards (UFAS), satisfies this definition of the term accessible. The revision of this definition of "accessible" means that under the final rule UFAS is not the *sole* means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible.

The third definition of the term "accessible" relates to the design, construction, or alteration of individual dwelling units. The first sentence of this definition has been revised from the proposed rule to make it consistent with the concept of adaptability and to clarify the definition. The first sentence of the definition now provides that "accessible", when used with respect to the design, construction, or alteration of an individual dwelling unit, means that such unit is located on an accessible route and when designed, constructed, altered, or adapted, can be approached, entered, and used by individuals with physical handicaps. Again, UFAS is not the *sole* means of achieving accessibility. Furthermore, the definition in the final rule, as did the definition in the proposed rule, makes it clear that an adaptable unit on an accessible route is an "accessible" unit for purposes of this rule.

The term "adaptable" in the proposed rule has been changed to "adaptability" in the final rule and minor editorial changes have been made to clarify the definition.

The definition of the term "applicant for assistance" has been revised for clarity. The revised definition provides that an "applicant for assistance" is one who submits an application, request, plan or statement required to be approved by a Department official or by a primary recipient as a condition to becoming eligible for Federal financial assistance. An application means such a request, plan or statement.

A definition of the term "auxiliary aids" has been added to the final rule in light of the addition of § 8.6, dealing with communications. Section 8.6 is discussed in more detail below.

The definition of "Federal financial assistance" has been clarified. The revised definition also explicitly states that the term "Federal financial assistance" includes proceeds from guaranteed loans in the Community Development Block Grant program. *See* 24 CFR 570.602 (a) and (c).

The final rule contains definitions of the terms "historic preservation programs or activities" and "historic properties." The term "historic properties" is used in § 8.31 of the final rule. The definition appeared in § 8.29 of the proposed rule. It has not been changed substantively. The term "historic preservation programs or activities" is used in § 8.21(c) of the final rule. An historic preservation program or activity is a HUD-assisted program having preservation of historic properties as a primary purpose.

Section 103(d) of the Rehabilitation Act Amendments of 1988 changed the statutory term "handicapped individual" to "individual with handicaps." Accordingly, the final rule refers to "individual with handicaps" and "qualified individual with handicaps," instead of "handicapped person" and "qualified handicapped persons," respectively. The definition of "individual with handicaps" is identical to the definition of handicapped person appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. In particular, although the term "individual with handicaps" as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged, except for the addition of language relating to alcoholics or drug abusers which was part of the definition of "qualified handicapped persons" in the proposed rule and one other change made as a result of the enactment in 1988 of the Civil Rights Restoration Act. These two changes are discussed below.

The definition of "qualified individuals with handicaps" ("qualified handicapped persons" in the proposed rule) has been revised in a number of respects from the definition the Department proposed in 1983. The proposed rule contained one definition with respect to employment and another definition with respect to programs or activities other than employment. While the distinction between employment and non-employment programs has been retained in the final rule, the Department has added a definition of "qualified individual with handicaps" with respect to any program or activity under which a person is required to perform services or to achieve a level of accomplishment. This addition is an adaptation of the definition of "qualified individual with handicaps" in the Department of Justice revised prototype for Federally conducted programs (§ ____.103). In a program or activity under which a person is required to perform services or to achieve a level of accomplishment a "qualified individual with handicaps" is defined as an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature.

In the proposed rule, the definition of "qualified handicapped persons" with respect to employment stated that the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. This language is derived from a 1978 amendment to the Rehabilitation Act. 29 U.S.C. 706(7)(B), as amended by section 122(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendment of 1978. In the final rule, this language has been deleted from the definition of "qualified individual with handicaps" and added to the definition of "individual with handicaps" to more closely follow the statutory language.

The portion of the definition of "qualified handicapped persons" with respect to programs or activities in § 8.3 of the proposed rule was criticized because of the phrase excluding from that definition "any individual whose

current use of alcohol or drugs would constitute a direct threat to the property or safety of others." A number of commenters believe that this phrase should be deleted because the Rehabilitation Act only makes an express distinction relating to drug and alcohol use for purposes of employment. Although this statutory language does not apply expressly in contexts other than employment, it is clear that individuals whose participation, by reason of current alcohol or drug abuse, would constitute a direct threat to the property or safety of others are not "individuals with handicaps" for purposes of section 504. Therefore, this language has, with some clarification, been retained in the final rule. However, as previously explained, it has been moved to the definition of "individual with handicaps."

The Department also wishes to stress that the fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored by recipients in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified. For example, a person's participation in an alcoholics anonymous group does not, in and of itself, disqualify the person from the definition of "individual with handicaps."

With respect to the employment of a drug addict or alcoholic, if the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider for all applicants, including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage of alcoholics and drug addicts are two-fold: First, no person with handicaps, whether or not related to drug addiction or alcoholism, may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause interference with the operation of the program, the condition may be taken into consideration. Thus, an owner may not exclude an addict or alcoholic as a tenant on the basis of addiction or alcoholism if the recipient determines that the person can successfully participate in the housing program and complies with the rules of the program and if his or her behavior does not constitute a direct threat to property or the safety of others.

There was strong reaction to the portion of the definition of "qualified handicapped persons" (now "qualified individuals with handicaps") that proposed to define the term "essential eligibility requirements:" Most commenters criticized the phrase in the proposed rule indicating that handicapped persons must comply "with all obligations of occupancy, including the obligation to conduct himself or herself in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodation * * *." The basic criticism of this language was that it would impose a "double standard" because non-handicapped persons are not required to prove that their behavior will not disturb neighbors.

The quoted language was not intended to impose a "double standard." All applicants for and tenants of HUD-assisted housing have an obligation not to disturb their neighbors' peaceful enjoyment of their accommodations. For example, and as some commenters recognized, the model lease for many HUD programs requires that tenants agree not to "make or permit noises or acts that will disturb the rights or comfort of neighbors." In addition, HUD's tenant selection criteria for public housing require that Public Housing Agencies (PHAs) establish criteria "reasonably related to whether the conduct of the applicant in present or prior housing has been such as would not be likely to interfere with other tenants *in such a manner as to diminish their enjoyment of the premises* * * *." 24 CFR 960.205(b) (emphasis supplied). Thus, the "peaceful enjoyment" language included in the definition of "essential eligibility requirements" for programs or activities other than employment does not impose a requirement on handicapped housing applicants that is not imposed on non-handicapped housing applicants. Rather, it is merely an illustration and application of the requirement that in order to be considered a "qualified individual with handicaps" an individual must meet the "essential eligibility requirements" of the program. In this regard, a number of commenters supported the "peaceful enjoyment" language as consistent with the professional management of housing.

Nonetheless, the large number of comments critical of the quoted language indicates that the language could be misinterpreted and misapplied by recipients. Consequently, the Department is deleting the "peaceful enjoyment" language in the final rule. The deletion of this language does not, however, alter the requirement that in order for a handicapped person to be a "qualified individual with handicaps" he or she must meet all of the stated and inherent essential eligibility requirements of the program in question.

There was also criticism of the portion of the definition of "essential eligibility requirements" which requires that an occupant of multifamily housing be capable of independent living. Some commenters feel that the language should be omitted altogether because disabled persons can determine for themselves whether or not they can live independently. Other commenters suggested that the rule should provide standards, criteria and procedures for evaluating whether or not an applicant is capable of independent living. Still other commenters supported the definition as proposed.

After carefully considering the comments received regarding the phrase "capable of independent living" in § 8.3 of the proposed rule the Department has determined to delete the phrase from the definition. Instead, the definition as revised focuses upon an occupant of multifamily housing being capable of complying with all obligations of occupancy either without supportive services or with supportive services provided by persons *other than* the recipient. Such a person is qualified for housing.

In a housing program, an individual with handicaps is "qualified" if the person meets the basic eligibility requirements that govern eligibility for admission, care, or service normally provided to others. For example, in a section 202 project a person is ineligible for housing for elderly persons if the person does not meet the age requirement for admission to the program. On the other hand, an individual with handicaps is "qualified," for example, for public housing, if the person meets current eligibility requirements such as income as well as implicit requirements inherent in the nature of the program, such as that an occupant be capable of complying with all obligations of occupancy. Accordingly, persons with handicaps can be denied program benefits, such as occupancy of a dwelling unit in a HUD-assisted housing project, on the basis of failure to meet legitimate eligibility criteria that are applied to individuals both with and without handicaps. For example, an individual with handicaps can be denied occupancy on the basis of a record of disturbance of neighbors, or destruction of property that may adversely affect other residents, or failure to meet rent obligations, even if the behavior is related to the person's handicap. HUD recipients will have to make decisions as to whether each applicant is qualified on a case-by-case basis in the course of their ordinary eligibility determinations. In making these determinations, a presumption in favor of the individual's own assessment of his or her capabilities is warranted in the absence of substantial evidence to the contrary.

At the same time, a recipient is not required to provide supportive services, *e.g.*, counseling, medical, or social services that fall outside the scope of its housing program. A recipient is required to make modifications in order to enable a qualified applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the recipient does not offer. For example, in a housing program a recipient is not required to provide supportive services to enable an individual with handicaps to participate in the program unless the purpose of the program is, at least in part, to provide supportive services. See § 8.24(b). In a program in which supportive services are not contemplated, providing them would result in a fundamental alteration in the program—*e.g.*, to an intermediate care program. In this example, if the individual does not require supportive services from the recipient, the individual would be qualified, provided that he or she meets the essential eligibility requirements for the program. Of course, all services (e.g., routine medical check-ups or social services) that are provided as part of the program must be provided on a nondiscriminatory basis. The rule also provides that recipients need not take any action that would result in undue financial and administrative burdens.

It should be noted that some projects are designed specifically for persons who are *not* capable of living completely "independently", *see, e.g.*, 24 CFR 882.102 (definition of "Independent Group Residence"). However, most HUD-assisted housing projects do not offer support services. In a project that does not provide support services it is not legally significant whether the obligations of tenancy are met by the individual alone or with assistance which he or she arranges. However, the Department wishes to stress that a recipient is not required to provide support services to meet the needs of an individual with handicaps if these services are not part of the original program. Such action would constitute a fundamental alteration in the nature of the program, which is not required by section 504. *Southeastern Community College v. Davis*, 442 U.S. 397 (1979).

A number of other definitions have been added to § 8.3 of the rule.

A definition of the term "program or activity" has been added to the rule as a result of the enactment of the Civil Rights Restoration Act of 1987 (Pub. L. 100–259). Section 4 of the Civil Rights Restoration Act amended section 504 to add a definition of the term "program or activity" as that term is used in section 504. The definition of the term "program or activity" in the final rule restates the definition in the Civil Rights Restoration Act.

Section 9 of the Civil Rights Restoration Act amended section 7(8) of the Rahabilitation Act of 1973, 29 U.S.C. 708(8), to add a new subparagraph (C) which states that for purposes of section 504, as it relates to employment, the term individual with handicaps "does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job." This language has been added to the definition of "individual with handicaps" in the rule in order to conform the rule to the statute, as amended by Congress.

The Civil Rights Restoration Act also amended section 504 to add a provision relating to "small providers." It states that "small providers" are not required by section 504 to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The Civil Rights Restoration Act further provides that the terms used in the subsection relating to small providers "shall be construed with reference to the regulations existing on the date of the enactment of this subsection." The Civil Rights Restoration Act does not contain a definition of the term "small provider." The Department is considering publishing a proposed rule which would amend Part 8 to add a definition of "small provider" and otherwise implement the provision of the Civil Rights Restoration Act relating to small providers.

A definition of the term "primary recipient" has been added to the final rule. A "primary recipient" is defined to mean any person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

The final rule defines the term "replacement cost of the completed facility." The term, which is used in § 8.23(a) of the final rule, is defined as the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities. This definition, which did not appear in the proposed rule, has been added so the meaning of the term "replacement cost of the completed facility" will be clear. The definition in the final rule is based upon the definition of the term "prototype costs" as the term is used in the public housing program. *See* 24 CFR 941.204.

A definition of the term "substantial impairment" has also been added to § 8.3 as it relates to historic facilities. Substantial impairment is defined to mean a significant loss of the integrity of finished materials, design quality or special character resulting from a permanent alteration. The term is used in § 8.31 of the final rule which relates to historic facilities.

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Section 8.4

A large number of commenters opposed the deletion in § 8.4(a) of the proposed rule of the words "or benefits from" from the phrase "any program or activity that receives *or benefits from* Federal financial assistance" that appears in the DOJ Coordination Regulation. 28 CFR 41.51(a) (emphasis supplied). In the preamble to the proposed rule (48 FR 22474) the Department explained that the deletion of the phrase "or benefits from" was made to conform the regulatory language to that of the statute and was not intended to alter the jurisdictional reach of section 504. The Department further stated in the preamble of the proposed rule that while the phrase "or benefits from" may be critical in the context of certain other government programs it is not aware of a context involving HUD programs where the phrase would make a difference. The Department invited comments as to specific contexts in which an issue as to the jurisdictional reach may be seen as arising based upon this language.

The Department received only a few examples in response to its request. The examples received express concern that deletion of the "or benefits from" language would mean that only direct recipients of HUD assistance would be covered by section 504. However, the commenters seem to be confusing two situations: Those in which programs *indirectly receive* actual Federal financial assistance, and those in which entities merely "benefit from," but do not receive, the assistance. The first are covered by section 504; the second are not. The definition of "recipient" in § 8.3 expressly includes any instrumentality of a State or its political subdivision, any private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or *through another recipient* * * *." Thus, the rule expressly covers subrecipients.

The Department also received a large number of comments stating that the Department should not have omitted from § 8.4(b)(4) of the proposed rule language in the Department of Justice Coordination Regulation stating that recipients may not utilize criteria or methods of administration that "have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap." 28 CFR 41.51(b)(3). These commenters pointed out that this language is important because intentional discrimination is often difficult to prove. Furthermore, the Supreme Court recently assumed, without actually deciding, that section 504 "reaches at least some conduct that has an unjustifiable disparate impact upon the handicapped." *Alexander v. Choate*, 469 U.S. 287, 299 (1985). The Court, in its analysis, reviewed the legislative history of section 504 and concluded that "[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect." *Id.* at 295 (footnote omitted). For these reasons, the Department has added language to § 8.4(b)(4) of the final rule making it clear that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the purpose or the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap. In addition, the Department has added language to § 8.4(b)(5) making it clear that applicants for assistance and recipients may not, in determining the site or location of a facility, make selections the purpose or effect of which would exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives Federal financial assistance.

Section 8.4(b)(4) prohibits the use of criteria or methods of administration that have the effect of discriminating against individuals of a particular handicap. However, not all instances of disparate impact signal the existence of illegal discrimination. If a neutral policy that causes a desparate effect is manifestly related to the accomplishment of a program objective, it does not violate this provision.

Section 8.4(b)(5) prohibits discriminatory site selection. Paragraph (b)(6) of the proposed rule would have allowed HUD to exempt a recipient from the requirement of paragraph (b)(5) if compliance would have rendered the facility "financially infeasible" or if the alternative to compliance would be "nonparticipation" in the program. The Department has deleted the exemption in § 8.4(b)(6) of the proposed rule because it is unnecessary. The final rule makes it clear that the rule's program accessibility requirements never require a recipient to take any action that would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Furthermore, the Department of Justice has consistently interpreted provisions similar to § 8.4(b)(5) as *not* prohibiting a recipient that has facilities located on hilly terrain, for instance, from erecting any new facilities at its present site. Furthermore, the deletion of paragraph (b)(6) makes HUD's final rule consistent with the Department of Justice Coordination Regulation. *See* 28 CFR 41.51(b)(4).

HUD has also added to § 8.4 a new paragraph (b)(6) prohibiting discrimination in facilities constructed with Federal funds. Finally, HUD has added to § 8.4(b)(1) a new subparagraph (§ 8.4(b)(1)(vii)) which prohibits a recipient from denying a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available. This provision makes it clear that a recipient may not refuse to rent or sell to an otherwise qualified individual because that individual resides, or intends to reside, with a person who is handicapped.

Section 8.4(c)(1) of the proposed and final rules provides that the exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this rule. An example of such a Federal program is found in section 202 of the Housing Act of 1959, 12 U.S.C. 1701 ("section 202"). The section 202 program provides Federal financial assistance to private sponsors who provide housing for the elderly and/or handicapped. There are three distinct categories of eligible handicapped persons in the section 202 program: Those who are physically handicapped; developmentally disabled; and chronically mentally ill. Thus, including elderly persons (age 62 or over) there are actually four separate groups of persons eligible from section 202 assistance, and each group has distinct needs. Accordingly, section 202 developments are custom tailored to the specific client population or populations the sponsor was approved by HUD to serve. For instance, many section 202 projects are lawfully limited to elderly and physically handicapped persons. It follows that developmentally disabled and chronically mentally ill persons who are not also elderly or physically handicapped, are not "otherwise qualified individuals with handicaps" for projects designed and approved for elderly and physically handicapped persons and cannot be admitted to them. As § 8.4(c)(1) makes clear, such a denial does not violate section 504. HUD's policy with regard to section 202 projects has been upheld in the courts. For example, in *Brecker v. Queens B'nai B'rith*, 607 F. Supp. 428 (E.D.N.Y. 1985), *aff'd*, 798 F.2d 52, 57 (2d Cir. 1986), the court stated that "[s]ection 504 may not be used to expand the delivery of benefits awarded under another statute if that statute otherwise restricts the delivery of benefits." *Id.* at 436 (citations omitted). *See also Knutzen v. Eben Ezer Lutheran Housing Center*, 815 F.2d 1343 (10th Cir. 1987); and *Edge v. Pierce*, No. 82–51, slip op. (D.N.J. May 22, 1984).

Two new paragraphs have been added to § 8.4. Section 8.4(e) deals with the relationship between this rule and inconsistent State or local laws. Paragraph (e) makes it clear that the obligation to comply with this rule is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

Paragraph (f) makes it clear that the enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of § 8.4 does not limit the general prohibition on discrimination in paragraph (a).

Section 8.4(e) of the proposed rule contained a requirement that recipients "take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired hearing." The final rule substitutes for § 8.4(e) a separate, more comprehensive and detailed section on communications (§ 8.6). Section 8.6 is adapted from the Department of Justice's regulation for federally conducted programs. Section 8.6 of the final rule explicitly requires the provision of auxiliary aids where necessary to ensure that qualified individuals with handicaps are provided opportunities to benefit from housing and nonhousing programs that are as effective as that provided to individuals without handicaps. Auxiliary aids are often critically needed in these programs. For example, to ensure effective communication with applicants, participants, and members of the public who are hearing- or speech-impaired, a recipient may be required to install in its office a telecommunication device to allow an individual with impaired hearing or speech to call directly to the recipient's office without the need for an interpreter. To provide persons with impaired vision with information as to the existence and location concerning its programs or activities, and facilities, a recipient may be required to tape record, print written material in large print or transcribe in Braille certain information concerning its programs or activities. A recipient may be required to provide devices such as auxiliary alarms for persons with hearing or vision impairments or a decoding device to equip a television in a public area to provide closed-captioning service, so that participants with hearing impairments receive benefits that are as effective as those provided to participants without handicaps. However, a recipient need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. For example, a recipient need not provide eye glasses or hearing aids to applicants or participants in its programs or activities. Similarly, the rule does not require a recipient to provide wheelchairs to persons with mobility impairments.

Subpart B—Employment

Section 8.11

Fifteen (15) comments discussed § 8.11, which requires that recipients make reasonable accommodation to the known physical or mental limitations of qualified handicapped applicants and employees. Five of these commenters suggested that § 8.11(b) be amended to require that an employer place handicapped persons in the job best suited to their individual handicaps. On the other hand, one commenter feels that section 504 does not require any job restructuring, even in the form of shifting non-essential duties to other employees. Section 8.11 strikes a balance in between these two positions. Paragraph (b) of § 8.11 makes clear that reasonable accommodation is intended to include, but is not limited to, the modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting non-essential duties to other employees. However, this does not mean that an employer is required to place a handicapped person in any one particular position. Rather, § 8.11 requires only that an employer make reasonable accommodation where necessary to help handicapped persons overcome difficulties they may have in performing the essential elements of a particular position. In addition, two commenters praised the examples of reasonable accommodation in § 8.11(b).

Section 8.13

Six comments were received on § 8.13 dealing with preemployment inquiries, two of which were of a detailed nature. One commenter expressed concern that the limitations on requiring a medical examination in § 8.13(c) would create problems for some large employers. Paragraph (c) proposed to allow an employer to condition an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty if two conditions are met. The commenter explained that it is not uncommon for multi-location corporations operating a central employment office to maintain large applicant pools, in some instances numbering as high as 300 applicants. These applicant pools enable employers to respond quickly to request for large numbers of employees needed for particular projects and the success of these pools depends upon an ability to match expeditiously applicant skills and qualifications with job requirements. The ability to respond quickly, it is argued, is lost if medical examinations can be given only after an applicant has already been conditionally hired and referred. On the other hand, another commenter feels that § 8.13 does not go far enough. This commenter specifically objected to allowing a mandatory medical examination unless *all* employees, and not just those in a particular job category, are required to take the examination. On balance the Department believes that § 8.13 should remain unchanged from the proposed rule. While the first commenter's concern is legitimate, allowing medical examination before an offer of employment (conditional or unconditional) is actually made creates a significant potential for discrimination against handicapped applicants. Furthermore, such discrimination would often be difficult to prove. The Department also believes that adoption of the second commenter's recommendation that the Department delete the phrase "in that category of job classification" from § 8.13(c)(1) would impose an unnecessary burden and expense on employers. For example, an employer may require medical examinations for positions involving physical labor but not for other types of positions. Such distinctions are reasonable and non-discriminatory. The Department see no reason to place section 504 recipients in the position of having to choose between requiring medical examinations in their federally assisted programs for all job classifications or foregoing medical examinations altogether. Of course, a recipient may only use the results of the medical examination in accordance with the requirements of this part. The results of a medical examination may not be used to deny employment to a

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handicapped person who, with reasonable accommodation, can perform the job unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

Section 8.14

Because of several Federal Circuit court decisions, § 8.14 of the proposed rule provided that subpart B would not be enforced in certain states unless the primary objective of the Federal financial assistance was to provide employment. After the publication of the proposed rule the Supreme Court ruled that section 504 prohibits employment discrimination even if the recipient of Federal financial assistance receives no aid the primary purpose of which is to promote employment. *Consolidated Rail Corp. v. Darrone*, 104 S.Ct. 1248 (1984). Accordingly, § 814 of the proposed rule has been deleted in the final rule; subpart B will be enforced nationwide with respect to all HUD-assisted programs and activities.

Subpart C—Program Accessibility

Section 8.20

Section 8.20 proposed a general requirement concerning program accessibility. It provided that each program or activity that receives Federal financial assistance from HUD shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified individuals with handicaps. For the sake of consistency, HUD has revised § 8.20 to follow the general statement concerning program accessibility appearing in the Department of Justice Coordination Regulation. *See* 28 CFR 41.56. Accordingly, § 8.20 has been revised to provide that, except as otherwise provided in §§ 8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

Section 8.21

Section 8.21 proposed a program accessibility requirement with regard to non-housing facilities. The section as proposed did not deal separately with new construction, alterations and existing non-housing facilities. For the sake of clarity, the final rule does so. Section 8.21(a) of the final rule provides that newly constructed non-housing facilities shall be readily accessible to and usable by individuals with handicaps. A non-housing facility designed and constructed in accordance with UFAS satisfies this requirement.

Paragraph (b) of § 8.21 provides that alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. A recipient is not required by paragraph (b) to make a non-housing facility accessible if doing so would impose undue financial and administrative burdens on the operation of the recipient's program or activity.

Paragraph (c) of § 8.21 relates to existing non-housing facilities not being altered and requires that recipients operate non-housing programs or activities receiving HUD assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. Paragraph (c) of the final rule also provides, as did paragraph (b) of the proposed rule, that a recipient is not necessarily required to make each of its existing non-housing facilities readily accessible to and usable by individuals with handicaps. Paragraph (c) of the final rule also states that a recipient is not required to take any action that it can demonstrate would result in a "fundamental alteration" in the nature of its program or activity or in "undue financial and administrative burdens."

Most of the 88 comments the Department received on § 8.21 related to the "fundamental alteration" and "undue financial or administrative burden" language in the proposed rule. One group of commenters objected to this language on the ground that a civil right should not be thwarted by the excuse of administrative burden. Other commenters fear that the language is too broad and susceptible of loose interpretation. The "fundamental alteration" and "undue financial or administrative burden" language in the proposed rule was based upon the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and in the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Thus, section 504 does not create an absolute right to access. *See also, Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983). *Davis* has been followed in the circuit courts. *Dopico v. Goldschmidt*, 687 F.2d 644 (2nd Cir. 1982); *American Public Transit Association v. Lewis* (APTA), 655 F.2d 1272 (D.C. Cir. 1981). In addition, the Department of Justice, the agency responsible for coordinating the implementation and enforcement of section 504 throughout the Federal government, has, with one minor exception, adopted this very same standard in its section 504 regulation governing the Department of Justice's Federally conducted programs, 28 CFR 39.150 (Program accessibility: Existing facilities), and in its prototype rule for other agencies' programs, § ___.150. The Department of Justice regulation refers to "undue financial *and* administrative burdens" instead of the "undue financial *or* administrative burdens" language used in HUD's proposed rule. In order to conform the Department's regulation to *Davis* and the Department of Justice section 504 regulation governing federally conducted programs the final HUD rule refers to "undue financial *and* administrative burdens." Moreover, since the "fundamental alteration" and "undue financial and administrative burdens" limitations codify recent case law the Department does not see any legal basis for omitting them from the rule as suggested by some commenters. The Department notes that, since *Davis*, circuit courts have applied the "undue financial and administrative burdens" limitation on a showing that only one of the two "undue burdents" would be created as a result of the modification sought to be imposed under section 504. *See e.g., Dopico v. Goldschmidt, supra; APTA, supra.* However, the Department wishes to stress that the limitations in paragraph (c) are not intended, as some commenters suggested, to render meaningless the accessibility requirements of § 8.21, and they cannot be fairly read as doing so.

Paragraph (c)(3) of § 8.21 follows the Department of Justice Coordination Regulation in setting a time period for compliance. The final rule provides that the recipient shall comply with the requirements of § 8.21 within sixty days of July 11, 1988, except where structural changes in facilities are undertaken. If structural changes are undertaken, they must be made within three years of July 11, 1988, and a transition plan must also be prepared.

Section 8.22

The Department received 338 comments on § 8.22 which proposed accessibility requirements for newly constructed housing. The proposed rule

provided that a minimum of five percent of the total dwelling units in a project containing not less than 15 dwelling units (but not less than one unit in any such project) be made accessible for persons with mobility impairments and an additional two percent be made accessible for persons with hearing and vision impairments. After carefully considering the comments received on the proposed rule the Department has determined, for the reasons set forth below, not to change the five percent accessibility requirement. The Department has also retained the requirement that an additional two percent of the units (but not less than one unit) in a covered project be accessible for persons with hearing or vision impairments. A unit which is accessible for persons with hearing impairments must have an auxiliary (*i.e.*, visual) emergency alarm. The Department has, however, deleted the requirement in the proposed rule that a project have 15 or more units before the five percent requirement takes effect. The Department believes that the five percent (or at least one unit) minimum should apply to all HUD-assisted multifamily housing projects.

A multifamily housing project is defined as a project with five or more dwelling units. This definition is consistent with the definition of multifamily housing project in section 207(c) of the National Housing Act, 12 U.S.C. 1713. A project is defined as the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site. Thus, a multifamily housing project includes, for example, three separate two-family structures (i.e., six dwelling units) which are covered by a single contract for Federal financial assistance, or application for assistance, or are treated as a whole for processing purposes, whether or not the structures are located on a common site.

The five percent requirement has been accepted by the Architectural and Transportation Barriers Compliance Board (ATBCB) as well as the four standard setting agencies (the General Services Administration, the Departments of Housing and Urban Development and Defense, and the United States Postal Service) as satisfying the requirements of the Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157. The Architectural Barriers Act requires certain Federal and Federally funded buildings to be constructed or altered in accordance with accessibility standards. The applicable accessibility standards, called the Uniform Federal Accessibility Standards (UFAS), were issued on August 7, 1984 by the four agencies responsible for setting standards under the Architectural Barriers Act, 49 FR 31528. Specifically, the UFAS requires that five percent of the units (or at least one unit, whichever is greater) be accessible in newly constructed Federally-assisted projects of 15 or more dwelling units. A different percentage may be set by the appropriate Federal agency following a local needs assessment conducted by local governmnent bodies or states under applicable regulations. UFAS ¶4.1.4(11)(b). (As explained in the preceding paragraph, this final rule applies accessibility requirements to projects of five or more units; and the rule allows a higher, but not a lower percentage to be set by HUD as explained below. The Department of Justice requested these two changes. This approach has been followed in § 8.32(d) as well.) The five percent requirement was accepted by the ATBCB and the four standard setting agencies based upon a reading of the legislative history of the Architectural Barriers Act which finds Congressional intent clear that 100 percent accessibility of dwelling units was not contemplated. In the absence of discussion of this issue in the legislative history of section 504, this stands as the Congressional intent with regard to accessibility in residential facilities. Furthermore, the Department of Justice, as the agency responsible under Executive Order 12250 for coordinating enforcement of section 504, has recommended that agencies provide in their section 504 regulations for Federally assisted programs, that with respect to new construction and alterations, compliance with the UFAS shall be deemed compliance with section 504. In addition, Departmental experience has shown the five percent requirement to be adequate.

Section 8.22(b) of the proposed rule would have allowed a sponsor or developer of a multifamily project otherwise subject to § 8.22(a) to request a waiver of the five percent requirement upon demonstrating to the reasonable satisfaction of HUD that the provision of additional accessibile units would exceed the need for such units in the housing market area. Paragraph (c) of § 8.22 of the proposed rule would have allowed HUD to prescribe a higher percentage or number than required by the five percent requirement in § 8.22(b) of the final rule for any area upon request therefor by any State of local government or agency thereof based upon a local needs assessment. Paragraph (b) of § 8.22 of the proposed rule has been deleted. In view of the low cost of making units accessible in newly constructed multifamily housing projects HUD sees no need ever to waive the five percent requirement in the context of new construction. Even if there is no unmet need at the time of construction, there may be a need for additional accessible units over the life of the project. It would be far more expensive to retrofit units at a later date. In addition, an adaptable unit is, for purposes of this rule, equivalent to a fully accessible unit.

Section 8.22(c) of the final rule continues to provide that HUD may prescribe a higher percentage or number than that prescribed in §8.22(b) of the final rule upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD or a need for a higher percentage or number based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such a request, HUD will take into account the expected needs of eligible persons with and without handicaps.

Paragraph (c) of § 8.22 of the proposed rule also provided that, except for group homes or independent living complexes for handicapped persons, in no event shall more than 15 percent of the units in any project be required to be accessible to persons with mobility impairments. A number of commenters objected to this limitation. The Department considered this provision important in order to avoid the segregation of the handicapped. This provision was designed to implement the principle in § 8.4(a) that programs and activities be administered in the most integrated setting appropriate to the needs of qualified individuals with handicaps. However, in view of the comments received, including comments from the Department of Justice, the Department reconsidered the need for a 15 percent ceiling and has deleted this provision from the final rule. The Department believes that a reasonable distribution of accessible dwellings units can be achieved by recipients without imposing on them an absolute ceiling. Recipients

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are nonetheless required to administer their programs in the most integrated setting appropriate. In this regard, § 8.26 requires that accessible dwelling units be distributed throughout projects and sites. The 15% ceiling has also been deleted in §§ 8.23 and 8.25 of the final rule for the same reasons.

Section 8.22 has also been revised so that the applicable accessibility standards (i.e., UFAS) are not the *sole* means of designing and constructing accessible units. Section 8.22(a) allows any design to be used as long as the resulting facility is "readily accessible to and usable by individuals with handicaps."

Section 8.23

Section 8.23 of the proposed rule proposed to apply the new construction accessibility standard to facilities containing 25 or more units if the cost of the alterations is 75 percent or more of the replacement cost of the completed facility. Section 8.23 also proposed a more limited accessibility requirement to apply where the 25 units/75 percent of replacement cost threshold is not met. In such cases the proposed rule provided that alterations to common areas be accessible "to the extent feasible." The Department also proposed that alterations to dwelling units where the 25 units/75 percent threshold is not met be made accessible, to the extent feasible, if, as a result of such alterations, the unit could be made accessible for persons of identifiable types or degrees of disability or impairment.

Section 8.23 prompted 290 comments, many of which complained that the 25 units/75 percent standard is so rigorous as to practically eliminate accessibility requirements when altering buildings and suggested that a 10 unit/50 percent standard would be preferable. Many commenters also criticized the section's reliance upon the "replacement cost of the completed project" rather than the fair market value of the completed facility, pointing out their belief that replacement cost is almost always higher than the market value of the building. These comments appear to assume that if the 25 units/75 percent threshold is not met, that there is no accessibility requirement, even though this is not what was proposed.

The Department has carefully considered these comments and has made three changes to § 8.23. First, the Department has lowered the 25 unit threshold to 15 units. Second, even though the Department has retained the 75 percent of replacement cost threshold, HUD has clarified and strengthened the accessibility requirement where the 15 units/75 percent threshold is *not* met. Specifically, § 8.23(b)(1) of the final rule provides that, subject to § 8.23(b)(2) (which is identical to § 8.22(c)), if the 15 units/75 percent threshold in paragraph (a) is *not* met, then, to the maximum extent feasible, alterations to dwelling units in a multifamily housing project (including public housing) must be made to be readily accessible to and usable by individuals with handicaps. Beyond this, if alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of the entire dwelling unit (*e.g.*, alteration of bathroom, kitchen and entryways), then the entire dwelling unit must be made accessible. Once five percent of the dwelling units in a project are accessible, then no additional elements or entire dwelling units need to be made accessible under this paragraph. However, if there is a demonstrated need, HUD may, under § 8.23(b)(2), require that more than 5% of the units being altered be made accessible, to the maximum extent feasible. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities also must, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. This provision is important because in order for a unit to be "accessible" it must be on an accessible route. Otherwise, a mobility impaired person will not be able to get into or out of the unit. The Department has also clarified the phrase "to the maximum extent feasible" so it is clear that a recipient is never required to undertake to provide a degree of accessibility which would impose undue financial and administrative burdens on the operation of the multifamily housing project. At the same time, the Department wishes to stress that when covered alterations are undertaken accessibility must be provided *up to* the point of infeasibility or undue financial and administrative burdens.

The Department does not consider it appropriate to lower the 75 percent of replacement cost threshold to 50 percent because the threshold triggers the accessibility standard applicable to new construction and this standard should apply only to the alteration of existing housing facilities when those alterations are extensive enough to be considered tantamount to new construction. The Department believes that when the cost of alterations is 75 percent or more of the current replacement cost of the completed facility, then the alterations are tantamount to new construction. A lower threshold might well require some recipients to incur extensive costs beyond what is required by section 504. The Supreme Court in *Davis, supra,* made it clear that section 504 does not place such a burden on recipients. In any event, even where the 15 units/75 percent of replacement cost threshold is not met a recipient nonetheless must comply with § 8.23(b).

Twenty-one comments suggested that at least three percent of rehabilitated housing be set aside for persons with mental handicaps. The purpose of § 8.23 is to provide for physical access as required by section 504. Persons with mental handicaps do not require special features in their units and therefore, have, if they are otherwise qualified, access to any unit. As a result, the Department believes that a three percent set aside for this particular type of handicap would be inappropriate.

Section 8.23(b) of the proposed rule provided that the requirements of § 8.23 do not apply to an individual who borrows or receives funds to rehabilitate a dwelling unit in which he or she resides or intends to reside. This paragraph has been deleted from the final rule because the Department, upon further reflection, considers it unnecessary. A person who alters a unit for his or her own use is a beneficiary and not a recipient of Federal financial assistance and therefore is not subject to the requirements of this part.

Section 8.24 (Final Rule)

Section 8.24 of the final rule sets forth program accessibility requirements with regard to existing housing programs. Program accessibility in the public housing program (including multi-family Indian housing) is specifically covered in § 8.25. Additional program accessibility requirements for the section 8 existing housing certificate and housing voucher programs are set forth in § 8.28 of the final rule. Section 8.24 applies to the rental rehabilitation and the section 8 moderate rehabilitation programs. An additional program accessibility requirement for the rental rehabilitation program is in a new § 8.30.

Section 8.24 of the final rule is similar to § 8.22 of the Department's 1978 proposed rule. 43 FR 16658. Section 8.24 also closely follows 28 CFR 41.57 which is part of the Department of Justice Coordination Regulation. Paragraph (a) of § 8.24 provides that a recipient shall operate each existing housing program or activity so, when viewed in its entirety, it is readily accessible to and usable by individuals with handicaps. However, paragraph (a) also states that § 8.24 does not necessary require a recipient to make each of its existings facilities accessible to an usable by

individuals with handicaps. Moreover, a recipient is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If a recipient has insufficient accessible dwelling units, it may need to undertake structural changes within the time period in paragraph (c) in order to comply with § 8.24. In addition, recipients have a continuing obligation to comply with § 8.24. For example, if an otherwise qualified individual with handicaps requiring an accessible unit is next in line for a unit and the only unit available is not accessible, then the recipient must make the unit accessible unless it can demonstrate that doing so would result in undue financial and administrative burdens.

Paragraph (b) provides that a recipient is not required to make structural changes in existing housing facilities where other methods are effective in achieving compliance with § 8.24. However, in choosing among available methods for achieving program accessibility, recipients must give priority to those methods that offer housing to qualified individuals with handicaps in the most integrated setting appropriate, i.e., in a setting that enables qualified individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Paragraph (c) sets a time period for achieving compliance with § 8.24. Recipients must comply with the requirements of § 8.24 within sixty days of July 11, 1988, except where structural changes are undertaken. Except in the public housing program, if structural changes are undertaken they must be made within three years of July 11, 1988. In a public housing program where structural changes in facilities are undertaken, such changes must be made within the timeframes established in § 8.25(c), which is discussed below.

If structural changes are to be undertaken to achieve program accessibility, a recipient (except as provided in § 8.25(c)) is required by paragraph (d) to develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan must be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps.

Proposed section 8.24 (Final Rule section 8.25)

Section 8.25 of the final rule sets forth the program accessibility requirements for the public housing program, including multi-family Indian housing. Section 8.25 of the final rule corresponds to § 8.24 of the proposed rule.

Paragraph (a) of § 8.24 of the proposed rule proposed that newly constructed public housing be required to comply with the standards applicable to residential structures, under 24 CFR 40.4 (i.e., UFAS). Paragraph (a)(1) of § 8.25 of the final rule provides more generally that the requirements of § 8.22 shall apply to all newly constructed public housing. Consistent with other sections of the final rule, § 8.32 of the final rule makes it clear that compliance with UFAS is not the *sole* means of achieving accessibility. Of course, public housing programs must also comply with the Architectural Barriers Act and the requirements of 24 CFR Part 40 in addition to the requirements of this part.

Public housing is not only developed through new construction; it is also developed through the rehabilitation of existing housing and through the purchase of existing properties. Existing public housing also is modernized from time to time. Paragraph (a)(2) of § 8.25 of the final rule provides that § 8.23, relating to the alteration of existing housing facilities, applies to public housing acquired through rehabilitation and to the alteration of public housing. In addition, alterations to public housing projects are covered by the Architectural Barriers Act. *See also,* 24 CFR Part 40.

Paragraph (a)(3) of § 8.25 provides that in developing public housing through the purchase of existing properties PHAs shall give priority to facilities which are readily accessible to and usable by individuals with handicaps.

Most of the comments the Department received on § 8.24 of the proposed rule objected to the provision in paragraph (c) (relating to the modernization of public housing) that PHAs not be required to make more than five percent of the units covered by any modernization projects accessible. These commenters viewed this as a "ceiling" applying to the construction and alteration of all public housing and noted that the figure in the proposed rule for other HUD-assisted housing was 15 percent. However, paragraph (c) of proposed § 8.24 dealt only with public housing covered by a modernization program and did not propose to set a five-percent ceiling on the construction and alteration of public housing. Furthermore, after careful consideration and consultation with the Department of Justice, the Department has eliminated the five-percent ceiling which it proposed in connection with modernization programs. This change is described in more detail below.

Section 8.25(a)(1) of the final rule (as did § 8.24(a) of the proposed rule) makes § 8.22 applicable to all newly constructed public housing. Section 8.22 of the final rule in turn allows up to 100 percent of the units (provided there is evidence of a need greater than five percent) in any project to be made accessible to persons with mobility impairments. Section 8.23 of the final rule applies to public housing units which are being altered (including public housing developed through rehabilitation) by virtue of § 8.25(a)(2) of the final rule. Section 8.23 in turn allows that more than five percent of the units being altered or modernized be made accessible if there is a need as described in § 8.23(b)(2).

Paragraphs (b) and (c) of § 8.25 of the final rule revise and clarify paragraphs (b) and (c) of § 8.24 of the proposed rule. Paragraphs (b) and (c) of § 8.25 of the final rule set forth accessibility requirements with regard to existing public housing, whether or not the dwelling units are covered by a modernization program. Paragraph (b) of § 8.25 provides simply that the requirements of § 8.24(a) shall apply to public housing programs. PHAs are thus required by § 8.25(b) to operate each of their programs or activities so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This does not necessarily mean that a PHA must make each of its existing facilities readily accessible to and usable by individuals with handicaps. A PHA is also not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or in undue financial and administrative burdens.

Paragraph (c) of § 8.25 requires each PHA to assess, as soon as possible, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation, Section 8 Existing Housing or Housing Vouchers). If the needs assessment shows no need for additional accessible dwelling units or that the need will be met within four years through other means, such as new construction and/or alterations otherwise contemplated, no further action is required by the PHA. PHA needs assessments may be reviewed by HUD in connection with section 504 compliance reviews and complaint investigations. If, on the other

hand, the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The needs assessment and transition plan, if one is necessary, shall be completed as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA is required to complete structural changes necessary to achieve program accessibility as soon as possible but in any event within four years of July 11, 1988. However, the final rule allows up to two extensions of time. First, the Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four-year period for a period not to exceed two years on a case-by-case determination by both Assistant Secretaries that compliance with that period would impose undue financial and administrative burdens on the operation of the recipient's public housing program. Second, the Secretary or the Undersecretary may further extend this time period in extraordinary circumstances, for a period not to exceed one year. If a PHA for any reason fails to achieve program accessibility within the timeframes in § 8.25(c) it is *not* thereby relieved of its responsibility to achieve program accessibility as expeditiously as possible. The transition plan must be developed with the assistance of interested persons including individuals with handicaps or organizations representing individuals with handicaps. The provision in § 8.24(c) of the proposed rule that PHAs shall not be required to make more than five percent of the units covered by any modernization project accessible has been deleted. If a properly done needs assessment demonstrates a need for more accessible units they may be provided. The 15 percent project cap also has been deleted to allow accessible units to be provided as needed.

Paragraph (c) of § 8.25 of the final rule also requires a PHA to describe in detail the methods that will be used to make its facilities accessible. Section 8.25(c) states that a PHA may, if necessary, provide in its transition plan that it will seek HUD approval, under 24 CFR Part 968, of a modernization program to meet the needs of eligible individuals with handicaps.

A large number of commenters were critical of the portion of § 8.24(c) of the proposed rule which allows a PHA to request a waiver of the requirement to make additional units accessible if the alterations required to do so would result in a determination under 24 CFR 968.3 that the project is not financially feasible. This provision has been deleted from the final rule. However, it should also be noted that a PHA seeking modernization funds in whole or in part for the purpose of making units accessible must meet all of the requirements applicable to the modernization program.

One commenter stated that the requirement in § 8.24 of the proposed rule that PHAs assess the needs of current tenants and applicants is inadequate because dissemination of information on the availability of accessible units is not a reliable indicator of real demand. Paragraph (c) of § 8.24 of the proposed rule specifically recognized this problem by proposing that if a PHA determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified handicapped persons on the PHA's waiting list is not fairly representative of the number of persons in the area, the PHA's assessment shall be required to include the needs of eligible qualified handicapped persons in the PHA's jurisdiction. Paragraph (c) of § 8.25 of the final rule retains this requirement and strengthens it by allowing either HUD *or* a PHA to determine that information regarding the availability of accessible units has not been communicated sufficiently. Such a determination by either HUD or the PHA requires the PHA to conduct a broader needs assessment than it would otherwise have to conduct.

Proposed section 8.25 (Final Rule section 8.26)

Section 8.25 of the proposed rule (§ 8.26 of the final rule), which dealt with the distribution of accessible dwelling units, was the subject of 215 comments. Section 8.26 of the final rule, which is substantially unchanged from the proposed rule, applies the "most integrated setting" concept of § 8.4(d), as well as the prohibition of § 8.4(b)(viii) against limiting the enjoyment of opportunities by a qualified individual with handicaps, solely on the basis of handicap, to the housing context.

A majority of the commenters objected to the provision in the section which provides for the distribution of accessible units throughout projects and sites "subject to reasonable health and safety requirements." These commenters consider this provision to be vague and fear that it will be applied arbitrarily. The purpose of this provision is to protect the interests of qualified individuals with handicaps. For example, it would not be reasonable to distribute all of the accessible units in a particular high-rise project on an upper level floor because this could create a safety hazard for tenants with mobility impairments in the event of a fire or some other emergency. On the other hand, this provision does not allow the unnecessary segregation of qualified individuals with handicaps. Rather, the section requires that, to the maximum extent feasible, accessible units be distributed throughout projects and sites.

A majority of the commenters on this section also criticized the final sentence of § 8.25 of the proposed rule (§ 8.26 of the final rule) which proposed that an elevator not be required in any multifamily housing project solely for the purpose of permitting the location of accessible units above or below the accessible grade level. These commenters interpreted this sentence as *prohibiting* the provision of an elevator for the sole purpose of providing access. However, the final sentence of § 8.26 of the final rule does not contain a complete prohibition against the provision of an elevator. It states only that § 8.26 shall not be construed as *requiring* the provision of an elevator solely for the purpose of allowing a broader distribution of the accessible units to be included in a particular project. A recipient may choose to provide an elevator in a particular project for any number of reasons. However, § 8.26 of the final rule cannot be used to justify the provision of an elevator, because the Department believes that an acceptable distribution of accessible dwelling units can be achieved without incurring the considerable additional expense of providing an elevator. It should also be noted that § 8.26 of the final rule does not affect the number of accessible units to be in a particularl project. Section 8.26 deals only with *the distribution* of accessible dwelling units.

Proposed section 8.26 (Final Rule section 8.27)

Sixty-two (62) of the comments received on the proposed rule are in reaction to § 8.26 (§ 8.27 of the final rule) which requires owners and managers of multifamily projects having accessible units to adopt suitable means to assure that information regarding the availability of accessible units reaches

qualified handicapped persons and to take steps to maximize the utilization of accessible units by qualified individuals with handicaps. Twenty-one of these comments urged that three percent of the Federally financed new or remodeled housing be set aside for the mentally handicapped. The Department has not adopted this suggestion for the reasons explained in response to similar comments received on § 8.23. Specifically, no set-aside is needed for mentally handicapped persons because mentally handicapped persons are, if otherwise qualified, eligible and able to live in any unit.

Other commenters considered the section vague suggesting that HUD establish procedures that will more clearly promote efficient use of the units. The proposed rule would have allowed an owner or manager to offer an accessible unit to an eligible qualifed applicant on the waiting list requiring the accessibility features of the vacant unit "provided that such preference is not likely to delay unreasonably the availability of a unit for the applicant at the head of the waiting list." After carefully reviewing the rule in light of these comments the Department has revised § 8.26 of the proposed rule in order to maximize the use of accessible units by otherwise qualified individuals with handicaps requiring the features of those units. The final rule (§ 8.27) provides that when an accessible unit becomes vacant it *shall* be offered first to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features. If no such occupant exists, the unit shall be offered to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit. Therefore, unlike the proposed rule, the final rule requires an owner or manager to offer a vacant accessible unit to a person requiring the features of the unit unless no otherwise qualified individual with handicaps has applied for or requested such a unit. In light of this change, designed to maximize the occupancy of accessible units with persons requiring the features of these units, the Department has deleted the second sentence in § 8.26(b) of the proposed rule. Section 8.26(b) of the proposed rule stated that, if reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, an owner or manager shall not be required "to hold an accessible unit vacant for a longer than normal period" in order to locate an eligible individual with handicaps having disabilities or impairments requiring the accessibility features of the vacant unit. This provision would have been difficult to apply and enforce because it would not have been clear how long an owner or manager would have had to hold a unit vacant. Moreover, this provision is no longer necessary in view of the requirement in the final rule that an owner or manager fill a vacant accessible unit with an individual or family needing its features, regardless of that individual of family's position on the waiting list. Finally, § 8.27(b) of the final rule continues to provide, as did § 8.26(b) of the proposed rule that, when offering an accessible unit to an applicant not having handicaps requiring the accessibililty features of the unit, the owner or manager *may* require the applicant to agree (and *may* incorporate this agreement in the lease) to move to a non-accessible unit when available.

Proposed section 8.27 (Final Rule section 8.28)

Section 8.27 of the proposed rule, which proposed section 504 requirements for the Section 8 Existing Housing Certificate Program and the Housing Voucher Program, has been renumbered as § 8.28 of the final rule. This section has not been substantively changed from the proposed rule, except that it now applies to the Housing Voucher program as well as to the Section 8 certificate program; it requires that, where necessary, recipients assist families with an individual with handicaps to find an accessible unit; and it requires assurances of nondiscrimination in recipients' contracts with participating owners.

This section was the subject or 207 comments. Most of these comments criticized the section believing that it exempted participating owners from program access requirements under the Section 8 and Housing Voucher programs. The Department has carefully considered these comments and has found that they have some merit. The Department believes that as revised, § 8.28 of the final rule, in conjunction with §§ 8.24 and 8.26, satisfies the program accessibility mandate of section 504 with regard to these programs. Neither the proposed rule nor the final rule "exempts" the Section 8 Existing Housing Certificate and Housing Voucher programs from section 504.

After thorough consideration, the Department has clarified that entities (usually PHAs) receiving annual contributions from HUD are recipients and that owners receiving housing assistance payments from a recipient are contractors with respect to units used under these programs, not recipients. Thus, in addition to being subject to the specific requirements contained in § 8.28 of the final rule, a PHA or other entity receiving annual contributions directly from HUD is, as a recipient, subject to the nondiscrimination requirements of subpart A of the rule. The recipient must ensure that it operates in a nondiscriminatory manner in its dealings with participating owners and must insist that those owners make available to tenants units within the funded program on a nondiscriminatory basis. Section 8.4(b)(1). Thus, a PHA cannot deny the participation of owners in the Section 8 certificate or housing voucher programs on the basis of handicap, and can insist by explicit contractual provision, that owners, as a condition of their participation, act in like manner as to each of its federally subsidized units.

The Department has strengthened the rule by explicitly applying the program accessibility provisions of §§ 8.20, 8.24, and 8.26 to recipients covered by § 8.28. Thus, the recipient (usually a PHA) must ensure that its program, when viewed in its entirety, is accessible; this will entail analyzing the needs of eligible tenants and taking steps, short of those that would impose undue burdens or cause a fundamental alteration in the nature of the program or activity, to make available an adequate number and variety of accessible units consistent with §8.26. Section 8.28 imposes numerous outreach responsibilities in furtherance of this end; in addition, HUD will expect a PHA to request an exception to the Fair Market Rents under 24 CFR 882.106(a) when necessary to allow section 8 certificate holders to rent accessible units (§ 8.28(a)(5)) or to take other steps to increase its accessible housing stock if necessary. The Department has added a new § 8.28(b) requiring that recipients obtain assurances of nondiscrimination from participating owners.

It is the responsibility of the PHA, as recipient, to ensure that an owner-contractor is carrying out the PHA's program in a manner consistent with the nondiscrimination requirements of this regulation, and to terminate from the program those who are not doing so, as well as to ensure that the PHA is operating the program as a whole in compliance with section 504. HUD will enforce both elements of the PHA's obligation under section 504.

Proposed section 8.28 (Final Rule section 8.29)

There were ten comments on § 8.28 of the proposed rule (§ 8.29 of the final rule) which deals with the impact of section 504 on four homeownership programs: Sections 235(i) and 235(j), Turnkey III and Indian Mutual Self-Help Programs. One commenter interpreted § 8.28 of the proposed rule as proposing to allow a housing unit to be made accessible only if the buyer himself is handicapped. This commenter states that accessibility should also be requestable if other members of the family are disabled. Although § 8.29 of the final rule necessarily requires that the request that a housing unit be made accessible come from the buyer, the buyer's request may be based upon there being a handicapped person who will live in the house. The buyer himself need not be handicapped. The final rule has been revised to make this clear.

Other commenters felt that § 8.28 of the proposed rule reinforces an incorrect message that creating accessible or adaptable housing is expensive and difficult and suggested that the section either be omitted from the regulation or revised. The omission of § 8.28 from the final rule would limit or make more difficult the participation of qualified individuals with handicaps in the four homeownership programs covered by the section and would be inconsistent with the purposes of section 504. On the other hand, requiring as some commenters suggested that all housing units be made accessible would cause an increase in the cost of homeownership to all participants, even to those who do not need an accessible dwelling. The Department believes this would go beyond what is required by section 504.

Section 8.30 (Final Rule)

Section 8.30 of the final rule is new and deals with the Department's rental rehabilitation program. Under the rental rehabilitation program HUD makes grants to cities, urban counties and States to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. In order to promote accessibility in the rental rehabilitation program and to encourage an increase in the nation's accessible housing stock § 8.30 requires each grantee or State recipient in the rental rehabilitation program to give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps. This priority is subject and subordinate to the priority in 24 CFR 511.10(1) for units in substandard condition that are occupied by very low-income families. The priority in § 8.30 is also subject to all of the other requirements in 24 CFR Part 511.

Proposed section 8.29 (Final Rule section 8.31)

Section 8.29 of the proposed rule contained accessibility requirements regarding historic facilities. The section as revised appears as § 8.31 of the final rule. This section of the rule prompted 29 comments. The National Trust for Historic Preservation praised this section of the proposed rule as allowing some flexibility where historic properties are involved. A number of other commenters were critical of the section. One commenter read the section as creating a "blanket exemption" for historic facilities. This is not the case. Historic facilities must be made accessible unless such accessibility would substantially impair the historic features of the property or result in undue financial and administrative burdens. Several commenters suggested deletion of the "undue financial and administrative burdens" language. As previously stated, the Department believes that this language is appropriate in light of the Supreme Court decision in *Davis*.

The wording of the historic facilities section has been changed in a number of respects from the proposed rule. First, the definition of "historic properties" has been deleted from the section and added to § 8.3 ("*Definitions*"). Second, the proposed rule contained a requirement that if historic facilities become subject to alteration to which this part applies and the provision of accessibility would substantially impair the historical or architectural integrity of the property, comments shall be obtained when required by section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and 36 CFR Part 800 prior to commencement of alterations. Since the comment requirement is contained in UFAS § 4.1.7(1), it has been deleted from the section in favor of a reference to the applicable section of the UFAS for all programs except the Urban Development Action Grant (UDAG) program. In the case of the UDAG program the historic preservation requirements at 36 CFR Part 801 shall apply. These requirements relate specifically to the UDAG program. Third, the Department has added to the definitions section a definition of "substantial impairment." Substantial impairment is defined to mean a significant loss of the integrity of finished materials, design quality, or special character resulting from permanent alteration.

Proposed section 8.30 (Final Rule section 8.32)

Section 8.30 of the proposed rule would have made the American National Standards Institute ANSI A117.1–1980 (ANSI) the accessibility standard for housing facilities or units to which HUD's Minimum Property Standards apply, subject to any conflict with a specific provision of the Minimum Property Standards, in which case the latter would have governed. Under the proposed rule, ANSI would have been the standard for non-housing accessibility and for housing to which the Minimum Property Standards are not applicable. However, HUD stated in the preamble of the proposed rule that "[u]pon issuance of Uniform Federal Accessibility Standards by the standard-setting agencies under the Architectural Barriers Act, the Department will consider the extent to which those standards should be adopted for Section 504 compliance purposes." 48 FR 22480. The Uniform Federal Accessibility Standards were issued by the four agencies (including HUD) responsible for establishing standards under the Architectural Barriers Act of August 7, 1984 (49 FR 31528).

The Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157, requires certain Federal and federally funded buildings to be constructed or altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and of Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. In addition, section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978, the Rehabilitation Act was amended to require the ATBCB to issue minimum guidelines and requirements for the standards to be issued by the standard-setting agencies. These minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190. *See* 24 CFR Part 40 for HUD and Subpart 101–19.6 for GSA. In order to ensure uniformity, the UFAS was designed to be consistent with the ATBCB's minimum guidelines and requirements as well as with the ANSI standards. ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. The ANSI standards

are frequently used in private practice and by State and local governments.

As previously explained with regard to the five percent accessibility requirement, the Department of Justice, as the agency responsible under Executive Order 12250 for coordinating enforcement of section 504, has recommended that agencies provide in their section 504 regulations for federally assisted programs that, with respect to new construction and alterations, compliance with the UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alterations requirements under section 504 are also subject to the Architectural Barriers Act, government-wide reference to the UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with the UFAS by Federal agencies and States will reduce potential conflicts where a building is subject to the section 504 regulations of more than one Federal agency and also where it is subject to State or local accessibility requirements as well.

Apart from the Justice Department recommendation, the Department received many comments in response to the proposed rule suggesting that the UFAS be made the standard for purposes of section 504 compliance in the final rule. A number of commenters also expressed confusion regarding the relationship between the Minimum Property Standards (MPS) and the ANSI standards. In an effort to promote consistency the Department, on August 11, 1986 revised the MPS to reference the UFAS rather than the ANSI standards as the design and construction standard to be used where the MPS apply, (51 FR 28696, 98).

For these reasons, § 8.30 of the proposed rule has been revised (and renumbered as § 8.32) to provide that the design, construction, or alteration of buildings in conformance with sections 3–8 of UFAS shall be deemed to comply with §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. In addition, the rule allows departures from particular technical and scoping requirements of UFAS by the use of other methods so long as the other methods employed result in substantially equivalent or greater access to and usability of the building in question. In addition to complying with UFAS, the alteration of housing facilities must also comply with the additional scoping requirements contained in this part.

Paragraph (b) of § 8.32 of the final rule, at the suggestion of the Department of Justice, modifies the effect of UFAS § 4.1.6(1)(g), which provides an exception to UFAS § 4.1.6, "*Accessible buildings: alterations.*" Section 4.1.6(1)(g) of the UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly, after the development of specific UFAS provisions for housing alterations and additions, the Justice Department believes that this UFAS provision could be read to exempt alterations of privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal government for subsidized housing programs. This exception, however, would not be appropriate under section 504, which protects beneficiaries of housing provided as part of a Federally assisted program. Consequently, paragraph (b) of § 8.32 of the final rule provides for purposes of this section, § 4.1.6(1)(g) of the UFAS shall be interpreted to exempt from the requirements of the UFAS only spaces that, because of their intended use, will not require accessibility to the public or handicapped residents or employees.

Paragraph (c) of the final rule makes it clear that § 8.32 does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. Such an alteration would go beyond what is required by section 504.

UFAS § 4.1.4(11) contains scoping provisions for newly constructed housing. The UFAS requires for Federally assisted housing that five percent of the total, or at least one unit, whichever is greater, be accessible in projects of 15 or more dwelling units. Section 8.22 of the final rule does not contain the 15 or more dwelling unit minimum. Accordingly, paragraph (d) of § 8.32 of the final rule provides that UFAS § 4.1.4(11) shall not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

Under paragraph (e) of § 8.32 of the final rule, the accessibility requirements for facilities in Subpart C would apply to facilities that are designed, constructed or altered after July 11, 1988. The date of construction or alteration is defined as the date bids are solicited. This language in the final rule more closely follows the language in the DOJ Coordination Rule than did the language in the proposed rule. However, the Department is making an exception for the Urban Development Action Grant (UDAG) program. For the UDAG program, the Department continues to believe that the appropriate point to make the accessibility requirements effective is the date applications are submitted. The federal grant under the UDAG program is awarded only upon a determination that the project would not be made without the grant. The grant amount is the least amount necessary to make the project feasible based upon projected costs. Making the accessibility requirements apply to UDAG projects which have not begun construction or alteration before July 11, 1988 would result in a change to the HUD approved facility and budget with the possibility that the grant would not be sufficient to cover any changes necessitated by the accessibility requirements and the project would become infeasible. Therefore, the accessibility requirements are made applicable to applications submitted after July 11, 1988, so that UDAG applicants will know of the requirements and include all necessary costs in the application. However, if the UDAG application was submitted before July 11, 1988, the applicable accessibility provisions in subpart C apply to the maximum extent practicable, as determined by the Department.

Section 8.33 (Final Rule)

Section 8.33 of the final rule ("*Housing adjustments*") at the suggestion of the Department of Justice adds a new paragraph to clarify section 504 obligations applied to housing policies and practices. These obligations are separate from, and in addition to, those imposed by §§ 8.22–8.31. Section 8.33 requires recipients of HUD assistance to make such modifications to its housing policies and practicies as are necessary to ensure that they do not discriminate, on the basis of handicap, against qualified individuals with handicaps in Federally assisted programs or activities. In certain circumstances a recipient may be required to adjust its policies and practices in order to comply with the provisions of this part. For example, a recipient might need to transfer a tenant with a heart condition to a ground-floor apartment if medical reasons would require such a transfer so that benefits of the housing can remain available or permit a tenant with a hearing impairment to install light signalers so that the tenant may be notified of a caller and answer the door. It should be emphasized that in all cases housing requirements that can be

demonstrated by the recipient to be essential to its housing program need not be adjusted in accordance with this subpart if the adjustments would result in a fundamental alteration in the nature of a program or undue financial and administrative burdens.

Subpart D—Enforcement

Two hundred ninety-nine (299) general comments were received on Subpart D. The largest number of these general comments (161 form comments) are critical of the subpart because it does not impose a self-evaluation requirement on recipients. Consistent with these comments, the Department of Justice Coordination Regulation provides that each agency regulation should include a requirement that recipients conduct a self-evaluation of their compliance with section 504. 28 CFR 41.5(b). Consequently, the Department is adding a self-evaluation requirement to the final rule.

Section 8.51 (Final Rule)

Under § 8.51 of the final rule each HUD recipient is required, within one year of July 11, 1988, to evaluate its current policies and practices to determine whether they meet the requirements of this part. Any policies and practices that do not meet the requirements of this part must be modified. Furthermore, the recipient must take appropriate corrective steps to remedy any discrimination revealed by the self-evaluation. This three-part self-evaluation is to be conducted following consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps. Finally, recipients with 15 or more employees must maintain on file, make available for public inspection, and provide to the responsible civil rights official upon request: (1) A list of the interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made and of any remedial steps taken. The requirements of § 8.51 should not be confused with the physical accessibility requirements of §§ 8.24 and 8.25. Section 8.51 relates to policies and practices and not physical accessibility.

Section 8.50

Section 8.50, requiring the submission of assurances, has been revised in order to clarify the section.

Proposed section 8.51 (Final Rule section 8.54)

Section 8.51 of the proposed rule would have required recipients to take appropriate steps to notify relevant persons and organizations that it does not discriminate on the basis of handicap in its HUD-assisted programs and activities. The notice section in the final rule is more specific in its requirements. It appears as § 8.54 of the final rule. Paragraph (a) of § 8.54 requires recipients employing 15 or more persons to take appropriate initial and continuing steps to notify relevant parties that it does not discriminate on the basis of handicap in violation of this part. The paragraph goes on to describe what the notification must state. The Department believes it would be unduly burdensome to impose a notification requirement on recipients employing fewer than 15 persons.

Paragraph (b) of § 8.54 provides that if a recipient publishes or uses recruitment materials or publications containing general information that it makes available to relevant parties it shall include in those materials or publications a statement of the policy described in paragraph (a).

Paragraph (c) requires that recipients ensure that members of the population eligible to be served or likely to be affected directly by a HUD-assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program.

Section 8.52 (Final Rule)

Section 8.52 of the final rule, relating to remedial and affirmative action, is new. It was added at the suggestion of the Department of Justice. It is patterned after the comparable provision of the section 504 regulation of the Department of Health and Human Services. 45 CFR 84.6.

Paragraph (a) of § 8.52 deals with remedial action. Generally, it provides that if the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient is obligated to take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination. Furthermore, the responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (1) with respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or (2) with respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.

Paragraph (b) of § 8.52 of the final rule relates to voluntary action that a recipient can take where the responsible civil rights official has not found that it has discriminated against persons on the basis of handicap in violation of section 504 or this part. Under § 8.52(b) a recipient may take nondiscriminatory steps to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.

Section 8.53 (Final Rule)

Section 8.53 of the final rule is also new and also was added at the suggestion of the Department of Justice. Paragraph (a) requires each recipient that employs fifteen or more persons to designate at least one person to coordinate its efforts to comply with this rule.

Paragraph (b) of § 8.53 of the final rule requires recipients employing fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this rule. However, such procedures need not be established with respect to complaints from employees or from applicants for admission to housing covered by this part. Applicants who are denied admission to HUD-assisted housing generally have a right to be notified of the reason for their ineligibility and have an opportunity to have the decision reviewed. *See, e.g.*, 24 CFR 880.603(b)(3) (Section 8 New Construction); § 881.603(b)(3) (Section 8 Substantial Rehabilitation); § 882.216 (Section 8 Existing Housing); § 960.207 (Public Housing). These procedures are available in addition to the complaint procedures provided elsewhere in this subpart.

* * * * *

Throughout subparts D and E of the proposed rule, the term "responsible Department official" was used to refer to individuals who will perform various different functions. For purposes of clarification the Department has substituted the following terms to identify the individuals. "Award official" is the official that has been assigned principal responsibility for administration of the law extending Federal financial assistance (e.g., the Assistant Secretary for Housing, the Assistant Secretary for Public and Indian Housing and the Assistant Secretary for Community Planning and Development). The "responsible civil rights official" is the official within HUD designated to oversee the civil rights functions. The "responsible civil rights official" will work closely with "award officials" in order to ensure compliance with this rule. "Reviewing civil rights official" is the person within HUD assigned to accept appeals from determinations of the responsible civil rights official.

Proposed section 8.52 (Final Rule section 8.55)

Section 8.52 of the proposed rule related to compliance information. It appears as § 8.55 of the final rule. A number of editorial changes were made. They do not affect the substance of the rule.

Proposed section 8.53 (Final Rule section 8.56)

The Department has substantially revised § 8.53 of the proposed rule, dealing with the conduct of investigations, in the final rule. It appears as § 8.56 of the final rule. At the second meeting of the HUD Section 504 Task Force with representatives of major organizations representing disabled persons it was suggested that the Department review the Department of Justice Federally-conducted rule (28 CFR Part 39) to see if any of its provisions should apply to Federally-assisted programs. In reviewing the Justice Department rule the Department found that 28 CFR 39.170, which establishes a detailed complaint processing procedure, contains a number of provisions which would be appropriate and useful in the context of this rule. Accordingly, the Department has amended § 8.53 of the proposed rule.

Paragraph (a) of § 8.53 of the proposed rule, providing for periodic compliance reviews, has been clarified. Paragraph (a) of § 8.56 of the final rule provides that the responsible civil rights official or designee may periodically review the practices of recipients to determine whether they are complying with this part and, where he or she has a reasonable basis to do so, may conduct on-site reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify on-site investigation in selected circumstances. Such programmatic matters may include, but are not limited to, circumstances where the recipient has structural changes planned or underway and failure to review on-site could result in completion of construction without required accessibility. The final rule also requires that HUD initiate an on-site review by sending to the recipient a letter advising the recipient of the practices to be reviewed, the programs affected by the review, and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review.

Paragraph (b) of the final rule requires HUD to make a prompt investigation whenever a compliance review, report, complaint or any other information indicates a possible failure to comply with this part.

Paragraph (b) of the proposed rule (paragraph (c) of the final rule), setting forth the procedures for filing complaints with the Department, has been expanded in line with 28 CFR 39.170(d). Paragraph (c)(1) of the final rule provides that any person who believes that he or she has been subjected to discrimination prohibited by this part may file a complaint. In addition, any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint.

Paragraph (c)(2) of the final rule (*"Confidentiality"*) provides that the responsible civil rights official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or proceeding under this part.

Paragraph (c)(3) of the final rule (*"When to file"*), like the proposed rule, requires that complaints be filed within 180 days of the alleged act of discrimination unless this time limitation is extended by the responsible civil rights official. The final rule clarifies that an extension may be granted for good cause shown. Good cause could be found, for example, (1) if the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) if the complainant could not reasonably be expected to know of the act or event said to be discriminatory. The final rule also clarifies that a complaint mailed to the Department shall be deemed filed on the date it is postmarked. Any complaint delivered other than by mailing shall be deemed filed on the date it is received by the Department.

Paragraph (c)(4) (*"Where to file complaints"*) provides that complaints may be filed with any HUD office. As a general matter complaints will be investigated by the HUD Regional Office having jurisdiction over the place where the discrimination is alleged to occur.

Paragraph (c)(5) (*"Contents of complaints"*) specifies that a complaint should contain the complainant's name and address, the name and address of the recipient alleged to have violated this part and a description of the recipient's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of this part.

Paragraph (c)(6) (*"Amendments of complaints"*) allows for the amendment of complaints at any time. Further, amendments to complaints such as clarification and amplification of allegations in a complaint or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to have been made as of the original filing date.

Paragraph (d) of the final rule (*"Notification"*) adds a requirement that the responsible civil rights official notify the complainant and the recipient of HUD's receipt of the complaint within ten (10) calendar days. Time limitations have been added here and throughout § 8.56 of the final rule as suggested by a number of commenters.

Paragraph (e) of the final rule (*"Complaint processing procedures"*) provides that after acknowledging receipt of a complaint, the responsible civil rights official will immediately initiate complaint processing procedures. A preliminary investigation may be necessary in order to determine if HUD has jurisdiction to accept the complaint. Normally, this determination will be made by the responsible civil rights official within 20 calendar days of acknowledgement of the complaint. If the complaint is accepted, the responsible civil rights official will notify the complainant, the award official and the recipient. The applicant or recipient will then have an opportunity to respond to the complaint in writing within 30 calendar days of receiving it. The responsible civil rights official is authorized to attempt to resolve complaints informally whenever possible.

If the investigation reveals no violation of this rule, paragraph (f) of the final rule (*"Dismissal of complaint"*) provides that the responsible civil rights official will dismiss the complaint and notify the complainant and recipient.

If an informal resolution of the complaint is not reached, paragraph (g) of the final rule (*"Letter of findings"*) requires the responsible civil rights official, within 180 days of receipt of the complaint, to notify the recipient and the complainant of the results of the investigation.

Paragraph (h) of the final rule (*"Right to review of the letter of findings"*) creates a right to review the letter of findings within 30 days of its receipt provided there is supplementary information. The reviewing civil rights official will, within 60 days of the request for review, either sustain or modify the letter of findings. If neither party requests that the letter of findings be reviewed, formal written determination of compliance or noncompliance will be issued within fourteen (14) calendar days of the expiration of the period within which a request for review of the letter of findings could have been made.

Paragraph (i) of the final rule (*"Voluntary compliance time limits"*) allows a recipient ten (10) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, HUD shall proceed under § 8.57.

Paragraph (j)(1) of the final rule (*"Information resolution/voluntary compliance"*) states the Department's policy of encouraging the informal resolution of matters and provides that the responsible civil rights official may attempt to resolve a matter through informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil rights official must then attempt to resolve the matter by informal means.

Paragraph (j)(2) of the final rule (*"Objectives of informal resolution/voluntary compliance"*) states that in attempting informal resolution, the responsible civil rights official shall attempt to achieve a just resolution of the matter and, where appropriate, obtain assurance that the recipient will satisfactorily remedy any violations of the rights of any complainant and will take such action as will assure the elimination of any violation of this part or the prevention of such violation in the future. The terms of an informal resolution shall be reduced to a written voluntary compliance agreement, to be signed by the recipient and the responsible civil rights official. The purpose of voluntary compliance agreements is to protect the interest of the complainant, other persons similarly situated, and the public interest.

The following are examples of the types of remedies that may be sought, as appropriate, in order to protect the interest of the complainant:

(1) Equitable monetary relief (e.g., out-of-pocket expenses; backpay);

(2) The dwelling at issue or the next available one;

(3) The job at issue or the next available one;

(4) A reasonable accommodation; and

(5) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the complainant.

The following are the types of provisions that the Department will seek, as appropriate, for the public interest:

(1) Elimination of violations of this part;

(2) Prevention of future violations of this part (e.g., through training);

(3) Changes in policy;

(4) Reporting requirements; and

(5) Monitoring and enforcement activities.

Paragraph (k) prohibiting intimidatory or retaliatory acts is unchanged (except for minor editorial changes) from the proposed rule where it was designated paragraph (e).

Proposed section 8.54 (Final Rule section 8.57)

Section 8.54 of the proposed rule relating to the procedure for effecting compliance appears as § 8.57 of the final rule. The section has not been substantially changed.

Proposed section 8.55 (Final Rule section 8.58)

A typographical error in § 8.55 of the proposed rule dealing with hearings has been corrected. Section 8.55 of the proposed rule appears as § 8.58 of the final rule. The second paragraph in paragraph (d)(2) of § 8.58 of the final rule now provides that the "administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence." Other minor editorial changes have also been made to the section.

Proposed section 8.56 (Final Rule section 8.59)

Section 8.56 of the proposed rule dealt with decisions and notices. The section appears as § 8.59 of the final rule. A new paragraph realting to judicial review has been added to the section. Paragraph (g) of § 8.59 of the final rule provides that a final decision rendered under § 8.58 constitues final action under section 704 of the Administrative Procedure Act (5 U.S.C. 704) and, to the extent it is not barred by other provisions of law, such a final decision is subject to judicial review under section 706 of the Administrative Procedure Act (5 U.S.C. 706). Consequently, paragraphs (g) and (h) of the proposed rule appear as paragraphs (h) and (i) of the final rule. Minor editorial changes were also made throughout the section. In addition, the final rule more clearly identifies the HUD officials involved in the decision notification process.

Subpart E—Practice and Procedures for Hearings

No comments were received on subpart E. Editorial changes were made throughout the subpart. All but two of these changes clarify the subpart but do not alter it substantively.

Section 8.62(b)(3) of the proposed rule would have allowed any amicus curiae to request that the presiding officer propound specific questions to witnesses. The Department has deleted this provision in the final rule. Upon further consideration, the Department does not consider it appropriate for an amicus curiae to be able to participate in a hearing to this extent. However, the final rule (§ 8.62(b)(2)) continues to provide that an amicus curiae may submit a statement of position to the administrative law judge before the hearing and may submit a brief on each occasion that a decision is to be made or a prior decision is subject to review.

Subpart E also has been revised to provide that the presiding officer at a hearing will always be an administrative law judge. Given the importance of such hearings, the Department believes that the hearing should always be conducted by an administrative law judge.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The regulation allows recipients to adopt the least costly means of achieving compliance where existing facilities are inaccessible. In addition, employers are required to make accommodations for qualified individuals with handicaps only if those accommodations do not cause an undue economic hardship.

The Department of Justice has reviewed and approved this rule under Executive Order 12250. The Equal Employment Opportunity Commission has reviewed and approved this rule under Executive Order 12067.

This rule was listed as item No. 1009 in the Department's semiannual Agenda of Regulation published on April 25, 1988 (53 FR 13854, 13887) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments relating to information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Mangement and Budget, Washington, DC 30503, Attention: Desk Officer for HUD. After OBM review and approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this rule.

List of Subjects in 24 CFR Part 8

Administrative practice and procedure, Alcoholism, Architectural barriers, Blind, Buildings, Community development block grants, Community facilities, Historic preservation, Housing, Handicapped, Civil rights, Reporting and recordkeeping requirements, Equal employment opportunities, Low and moderate income housing, Public housing, Privacy, Rent subsidies, Telecommunications, Loan programs: housing and community development, Grant programs: housing and community development.

Accordingly, 24 CFR Subtitle A, is amended by adding a new Part 8 to read as follows:

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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8.2 Applicability.
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8.5 [Reserved]
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Subpart B—Employment

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Subpart C—Program Accessibility

8.20 General requirement concerning program accessibility.
8.21 Non-housing facilities.
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8.50 Assurances required.
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Subpart E—Practice and Procedure for Hearings

8.60 General information.
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8.62 Parties.
8.63 Form, execution, service and filing of documents.
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8.65 Proceedings prior to hearing.
8.66 Responsibilities and duties of administrative law judge.
8.67 Hearing procedures.
8.68 The record.
8.69 Posthearing procedures, decisions.
8.70 Judicial standards of practice.
8.71 Post-termination proceedings.

Appendix A—Federal Financial Assistance from the Department of Housing and Urban Development to Which This Part Applies.

Appendix B—Statutory Definitions of Handicapped Persons.

Authority: Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Sec. 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 8.1 Purpose.

(a) The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), to the end that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This part also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). This part does not effectuate section 504 as it applies to any program or activity conducted by the Department. Compliance with this part does not assure compliance with requirements for accessibility by physically-handicapped persons imposed under the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157; 24 CFR Part 40).

(b) The policies and standards for compliance established by this part are established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in Subparts D and E (including, without limitation, judicial enforcement under § 8.57(a)).

§ 8.2 Applicability.

This part applies to all applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance. Such assistance includes, but is not limited to, that which is listed in Appendix A of this part.

§ 8.3 Definitions.

As used in this part:

"Accessible", when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit,

means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase "accessible to and usable by" is synonomous with accessible.

"Accessible", when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is "accessible" within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

"Adaptability" means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

"Alteration" means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

"Applicant for assistance" means one who submits an application, request, plan, or statement required to be approved by a Department official or by a primary recipient as a condition of eligibility for Federal financial assistance. An application means such a request, plan or statement.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Department" or "HUD" means the Department of Housing and Urban Development.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

"Federal financial assistance" means any assistance provided or otherwise made available by the Department through any grant, loan, contract or any other arrangement, in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in or use of such property, including:

(1) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

"Federal financial assistance" includes community development funds in the form of proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct Federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty.

"Handicap" means any condition or characteristic that renders a person an individual with handicaps.

"Historic preservation programs or activities" means programs or activities receiving Federal financial assistance that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(a) "Physical or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (d)(1) of this section but is treated by a recipient as having such an impairment.

"Multifamily housing project" means a project containing five or more dwelling units.

"Primary recipient" means a person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program or activity.

"Program or activity" means all of the operations of:

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other post-secondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraphs (a), (b), or (c) of this section;

any part of which is extended Federal financial assistance.

"Project" means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.

"Qualified individual with handicaps" means:

(a) With respect to employment, an individual with handicaps who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to any non-employment program or activity which requires a person to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature; or

(c) With respect to any other non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Essential eligibility requirements" include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically metally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not be "qualified" for a project lacking such services.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments.

"Replacement cost of the completed facility" means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

"Secretary" means the Secretary of Housing and Urban Development.

"Section 504" means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§ 8.4 Discrimination prohibited.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.

(b) (1) A recipient, in providing any housing, aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:

(i) Deny a qualified individual with handicaps the opportunity to participate in, or benefit from, the housing, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in, or benefit from, the housing, aid, benefit, or service that is not equal to that afforded to others;

(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps from that provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.

(v) Aid or perpetuate discrimination against a qualified individual with handicaps by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any housing, and, benefit, or service to beneficiaries in the recipient's federally assisted program or activity;

(vi) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vii) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available; or

(viii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other qualified individuals receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) A recipient may not deny a qualified individual with handicaps the opportunity to participate in any federally assisted program or activity that is not separate or different despite the existence of permissibly separate or different programs or activities.

(4) In any program or activity receiving Federal financial assistance from the Department, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination solely on the basis of handicap;

(ii) Defeat or substantially impair the accomplishment of the objectives of the recipient's federally assisted program or activity for qualified individuals with a particular handicap involved in the program or activity, unless the recipient can demonstrate that the criteria or methods of administration are manifestly related to the accomplishment of an objective of a program or activity; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would:

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from the Department, or

(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with handicaps.

(6) As used in this section, the housing, aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any housing, aid, benefit, or service provided in or through a facility that has been constructed, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c)(1) Non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain Department programs operate under statutory definitions of "handicapped person" that are more restrictive than the definition of "individual with handicaps" contained in § 8.3 (see Appendix B). Those definitions are not superseded or otherwise affected by this regulation.

(d) Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 8.5 [Reserved]

§ 8.6 Communications.

(a) The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.

(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.

(ii) The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.

(b) The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.

(c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.

Subpart B—Employment

§ 8.10 General prohibitions against employment discrimination.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.

(b) A recipient may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified applicants with handicaps or employees with handicaps to discrimination prohibited by this subpart. The relationships referred to in this paragraph (d) include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

§ 8.11 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees accessible to and usable by individuals with handicaps and

(2) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 8.12 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless:

(1) The recipient demonstrates that the test score or other selection criterion, as used by the recipient, is job-related for the position in question; and

(2) The appropriate HUD official demonstrates that alternative job-related tests or criteria that tend to screen out fewer individuals with handicaps are unavailable.

(b) A recipient shall select and administer tests concerning employment to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 8.13 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not make a preemployment inquiry or conduct a preemployment medical examination of an applicant to determine whether the applicant is an individual with handicaps or the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is undertaking affirmative action efforts, voluntary or otherwise, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, if the following conditions are met:

(1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations, or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential (as provided in paragraph (d) of this section), that refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty if all entering employees in that category of job classification must take such an examination regardless of handicap, and the results of such examination are used only in accordance with the requirements of this part.

(d) Information obtained under this section concerning the medical condition or history of the applicant is to be collected and maintained on separate forms that are accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of individuals with handicaps and informed of necessary accommodations;

(2) First aid and safety personnel may be informed if the condition might require emergency treatment; and

(3) Government officials investigating compliance with section 504 shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 8.20 General requirement concerning program accessibility.

Except as otherwise provided in §§ 8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

§ 8.21 Non-housing facilities.

(a) *New construction.* New non-housing facilities shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) *Alterations to facilities.* Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a recipient make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the recipient's program or activity.

(c) *Existing non-housing facilities.* (1) General. A recipient shall operate each non-housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(i) Necessarily require a recipient to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps;

(ii) In the case of historic preservation programs or activities, require the recipient to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(iii) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration of such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(2) *Methods.*—(i) *General.* A recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as location of programs or services to accessible facilities or accessible portions of facilities, assignment of aides to beneficiaries, home visits, the addition or redesign of equipment (e.g., appliances or furnishings) changes in management policies or procedures, acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis, or any other methods that result in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(ii) *Historic preservation programs or activities.* In meeting the requirements of § 8.21(c) in historic preservation programs or activities, a recipient shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §§ 8.21(c)(1)(ii) or (iii), alternative methods of achieving program accessibility include using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or adopting other innovative methods.

(3) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988, except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(4) *Transition plan.* If structural changes to non-housing facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in details the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(iv) Indicate the official responsible for implementation of the plan; and

(v) Identify the persons or groups with whose assistance the plan was prepared.

§ 8.22 New Construction—housing facilities.

(a) New multifamily housing projects (including public housing projects as required by § 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

(c) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

§ 8.23 Alterations of existing housing facilities.

(a) *Substantial alteration.* If alterations are undertaken to a project (including a public housing project as required by § 8.25(a)(2)) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of § 8.22 shall apply.

(b) *Other alterations.* (1) Subject to paragraph (b)(2) of this section, alterations to dwelling units in a multifamily housing project (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

(2) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b)(1) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

§ 8.24 Existing housing programs.

(a) *General.* A recipient shall operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* A recipient may comply with the requirements of this section through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. A recipient is not required to make structural changes in existing housing facilities where other methods are effective in achieving compliance with this section or to provide supportive services that are not part of the program. In choosing among available methods for meeting the requirments of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988 except that—

(1) In a public housing program where structural changes in facilities are undertaken, such changes shall be made within the timeframes established in § 8.25(c).

(2) In other housing programs, where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(d) *Transition plan and time period for structural changes.* Except as provided in § 8.25(c), in the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 8.25 Public housing (including multi-family Indian housing).

(a) *Development and alteration of public housing.* (1) The requirements of § 8.22 shall apply to all newly constructed public housing.

(2) The requirements of § 8.23 shall apply to public housing developed through rehabilitation and to the alteration of public housing.

(3) In developing public housing through the purchase of existing properties PHAs shall give priority to facilities which are readily accessible to and usable by individuals with handicaps.

(b) *Existing public housing—general.* The requirements of § 8.24(a) shall apply to public housing programs.

(c) *Existing public housing—needs assessment and transition plan.* As soon as possible, each PHA shall assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations

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otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing or Housing Vouchers). If the PHA currently has no accessible units or if the PHA or HUD determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified individuals with handicaps on the waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall include the needs of eligible qualified individuals with handicaps in the area. If the PHA determines, on the basis of such assessment, that there is no need for additional accessible dwelling units or that the need is being or will be met within four years through other means, such as new construction, Section 8 or alterations otherwise contemplated, no further action is required by the PHA under this paragraph. If the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The PHA shall complete the needs assessment and transition plan, if one is necessary, as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA shall complete structural changes necessary to achieve program accessibility as soon as possible but in any event no later than four years after July 11, 1988. The Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four year period for a period not to exceed two years, on a case-by-case determination that compliance within that period would impose undue financial and administrative burdens on the operation of the recipient's public housing program. The Secretary or the Undersecretary may further extend this time period in extraordinary circumstances, for a period not to exceed one year. The plan shall be developed with the assistance of interested persons including individuals with handicaps or organizations representing individuals with handicaps. A copy of the needs assessment and transition plan shall be made available for public inspection. The transition plan shall, at a minimum—

(1) Identify physical obstacles in the PHA's facilities (e.g., dwelling units and common areas) that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the PHA's facilities accessible. A PHA may, if necessary, provide in its plan that it will seek HUD approval, under 24 CFR Part 968, of a comprehensive modernization program to meet the needs of eligible individuals with handicaps;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 8.26 Distribution of accessible dwelling units.

Accessible dwelling units required by § 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 8.27 Occupancy of accessible dwelling units.

(a) Owners and managers of multifamily housing projects having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-handicapped applicant shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 8.28 Housing certificate and housing voucher programs.

(a) In carrying out the requirements of this subpart, a recipient administering a Section 8 Existing Housing Certificate program or a housing voucher program shall:

(1) In providing notice of the availability and nature of housing assistance for lower-income families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps;

(2) In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;

(3) When issuing a Housing Certificate or Housing Voucher to a family which includes an individual with handicaps include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

(4) Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers; and

(5) If necessary in order to achieve compliance with this subpart, request under 24 CFR Part 882, an exception to the Fair Market Rents to allow section 8 certificate holders to rent accessible units.

(b) In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of nondiscrimination.

§ 8.29 Homeownership programs (Sections 235(i) and 235(j), Turnkey III and Indian Housing Mutual Self-Help programs).

Any housing units newly constructed or rehabilitated for purchase or single family (including semi-attached and attached) units to be constructed or rehabilitated in a program or activity receiving Federal financial assistance shall be made accessible upon request of the prospective buyer if the nature of the handicap of an expected occupant so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by § 8.32, those features shall comply with the standards prescribed in § 8.32. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific handicap. The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320.)

§ 8.30 Rental rehabilitation program.

Each grantee or state recipient in the rental rehabilitation program shall, subject to the priority in 24 CFR 511.10(1) and in accordance with other requirements in 24 CFR Part 511, give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps.

§ 8.31 Historic properties.

If historic properties become subject to alterations to which this part applies the requirements of § 4.1.7 of the standards of § 8.32 of this part shall apply, except in the case of the Urban Development Action Grant (UDAG) program. In the UDAG program the requirements of 36 CFR Part 801 shall apply. Accessibility to historic properties subject to alterations need not be provided if such accessibility would substantially impair the significant historic features of the property or result in undue financial and administrative burdens.

§ 8.32 Accessibility standards.

(a) Effective as of July 11, 1988, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101–19.6 for general-type buildings and appendix A to 24 CFR Subpart 40 for residential structures) shall be deemed to comply with the requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part

(b) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical handicaps.

(c) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) For purposes of this section, section 4.1.4(11) of UFAS may not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

(e) Except as otherwise provided in this paragraph, the provisions of §§ 8.21 (a) and (b), 8.22 (a) and (b), 8.23, 8.25(a) (1) and (2), and 8.29 shall apply to facilities that are designed, constructed or altered after July 11, 1988. If the design of a facility was commenced before July 11, 1988, the provisions shall be followed to the maximum extent practicable, as determined by the Department. For purposes of this paragraph, the date a facility is constructed or altered shall be deemed to be the date bids for the construction or alteration of the facility are solicited. For purposes of the Urban Development Action Grant (UDAG) program, the provisions shall apply to the construction or alteration of facilities that are funded under applications submitted after July 11, 1988. If the UDAG application was submitted before July 11, 1988, the provisions shall apply, to the maximum extent practicable, as determined by the Department.

§ 8.33 Housing adjustments.

A recipient shall modify its housing policies and practices to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The recipient may not impose upon individuals with handicaps other policies, such as the prohibition of assistive devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in the recipient's federally assisted housing program or activity in violation of this part. Housing policies that the recipient can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

Subpart D—Enforcement

§ 8.50 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance to HUD, or in the case of a subrecipient to a primary recipient, on a form specified by the responsible civil rights official, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another

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purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 8.51 Self-evaluation.

(a) Each recipient shall, within one year of July 11, 1988, and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps:

(1) Evaluate its current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of this part;

(2) Modify any policies and practices that do not meet the requirements of this part; and

(3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.

(b) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (a)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) A list of the interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

§ 8.52 Remedial and affirmative action.

(a) *Remedial action.* (1) If the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination.

(2) The responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action—

(i) With respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or

(ii) With respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take nondiscriminatory steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.

§ 8.53 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employees fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.

§ 8.54 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 8.53. A recipient shall make the initial notification required by this paragraph within 90 days of July 11, 1988. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The recipient shall ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

§ 8.55 Compliance information.

(a) *Cooperation and assistance.* The responsible civil rights official and the award official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible civil rights official or his or her designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible civil rights official or his or her designee may determine to be necessary to enable him or her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department data showing the extent to which individuals with handicaps are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible civil rights official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible civil rights official finds necessary to apprise such persons of the protections against discrimination assured them by this part.

§ 8.56 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible civil rights official or designee may periodically review the practices of recipients to determine whether they are complying with this part and where he or she has a reasonable basis to do so may conduct on-site reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify on-site investigation in selected circumstances. The responsible civil rights official shall initiate an on-site review by sending to the recipient a letter advising the recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review. In addition, each award official shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.

(b) *Investigations.* The responsible civil rights official shall make a prompt investigation whenever a compliance review, report, complaint or any other information indicates a possible failure to comply with this part.

(c) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint with the responsible civil rights official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the responsible civil rights official.

(2) *Confidentiality.* The responsible civil rights official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the responsible civil rights official waives this time limit for good cause shown. For purposes of determining when a complaint is filed under this paragraph, a complaint mailed to the Department shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Department.

(4) *Where to file complaints.* Complaints may be filed by mail with the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, or any Regional or Field Office of the Department.

(5) *Contents of complaints.* Each complaint should contain the complainant's name and address, the name and address of the recipient alleged to have violated this part, and a description of the recipient's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of this part.

(6) *Amendmens of complaints.* Complaints may be reasonably and fairly amended at any time. Amendments to complaints such as clarification and amplification of allegations in a complaint or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(d) *Notification.* The responsible civil rights official will notify the complainant and the recipient of the agency's receipt of the complaint within ten (10) calendar days.

(e) *Complaint processing procedures.* After acknowledging receipt of a complaint, the responsible civil rights official will immediately initiate complaint processing procedures.

(1) Preliminary investigation.

(i) Within twenty (20) calendar days of acknowledgement of the complaint, the responsible civil rights official will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the responsible civil rights official will notify the complainant and the award official. The responsible civil righs official will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient an opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the responsible civil rights official a response to the notice of complaint within thirty (30) calendar days of receiving it. With leave of the responsible civil rights official, an answer may be amended at any time. The responsible civil rights official will permit answers to be amended for good cause shown.

(2) Informal resolution. In accordance with paragraph (j) of this section, the responsible civil rights official shall attempt to resolve compleints informally whenever possible.

(f) *Dismissal of complaint.* If the investigation reveals no violation of this part, the responsible civil rights offical will dismiss the complaint and notify the complainant and recipient.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached the responsible civil rights official or his or her designee shall, within 180 days of receipt of the complaint, notify the recipient and the complainant (if any) of the results of the investigation in a letter sent by certified mail, return reaceipt requested, containing the following:

(1) Preliminary findings of fact and a preliminary finding of compliance or noncompliance;

(2) A description of an appropriate remedy for each violation belived to exist;

(3) A notice that a copy of the Final Investigative Report of the Department will be made available, upon request, to the recipient and the complainant (if any); and

(4) A notice of the right of the recipient and the complainant (if any) to request a review of the letter of findings by the reviewing civil rights official.

(h) *Right to review of the letter of findings.* (1) A complainant or recipient may request that a complete review be

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made of the letter of findings within 30 days of receipt, by mailing or delivering to the reviewing civil rights officials, Office of Fair Housing and Equal Opportunity, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information.

(2) The reviewing civil rights official shall send by certified mail, return receipt requested, a copy of the request for review to the other party, if any. Such other party shall have 20 days to respond to the request for review.

(3) The reviewing civil rights official shall either sustain or modify the letter of findings within 60 days of the request for review. The reviewing civil rights official's decision shall constitute the formal determination.

(4) If neither party requests that the letter of findings be reviewed, the responsibile civil rights official shall, within fourteen (14) calendar days of the expiration of the time period in paragraph (h)(1) of this section, send a formal written determination of compliance or noncompliance to the recipient and copies to the award official.

(i) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, HUD shall proceed under § 8.27.

(j) *Informal resolution/voluntary compliance*—(1) *General.* It is the policy of the Department to encourage the informal resolution of matters. The responsible civil rights official may attempt to resolve a matter through informal means at any stage of processing. A matter may be resolved by informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil righs official shall attempt to resolve the matter by informal means.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the responsible civil rights official shall attempt to achieve a just resolution of the matter and to obtain assurances where appropriate, that the recipient will satisfactorily remedy any violations of the rights of any complainant and will take such action as will assure the elimination of any violtion of this part or the prevention of the occurrence of such violation in the future. The terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the recipient and the responsible civil rights official, and be made part of the file for the matter. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similary situated, and the public interest.

(k) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of investigation, hearing or judicial proceeding arising thereunder.

§ 8.57 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by other means authorized by law. Such other means may include, but not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;

(2) The initiation of debarment proceedings pursuant to Part 24 of this title; and

(3) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 8.50.* If an applicant or a recipient of assistance under a contract which is extended or amended on or after July 11, 1988, fails or refuses to furnish an assurance required under § 8.50 or otherwise fails or refuses to comply with the requirements imposed by that section, Federal financial assistance may be refused under paragraph (c) of this section. The Department is not required to provide assistance during the pendency of the administrative proceeding under such paragraph (c), except where the assistance is due and payable under a contract approved before July 11, 1988.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The responsible civil rights official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed under this part;

(3) The action has been approved by the Secretary; and

(4) The expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate, or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5318) has failed to comply with a requirement of this part with respect to a program or activity funded in whole or in part with such assistance, the Secretary shall notify the Governor of the State or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. The notice shall be given at least sixty days before:

(1) An order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective under paragraph (c) of this section; or

(2) Any action to effect compliance by any other means authorized by law is taken under paragraph (a) of this section.

(e) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) The responsible civil rights official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) At least 10 days have elapsed since the mailing of such notice to the applicant or recipient. During this period, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate. However, this paragraph shall not be construed to prevent an award official from utilizing appropriate procedures and sanctions established under the program to assure or secure compliance with a specific requirement of the program designed to effectuate the objectives of this part.

§ 8.58 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.57(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. The notice shall:

(1) Fix a date not less than 20 days after the date of the notice for the applicant or recipient to request the administrative law judge to schedule a hearing, or

(2) Advise the applicant or recipient that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under § 8.57(c) and consent to the making of a decision on the basis of available information.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the administrative law judge unless the administrative law judge determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before an administrative law judge designated in accordance with 5 U.S.C. 3105 and 3344.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 and in accordance with subpart E of this part relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient are entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the administrative law judge conducting the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted under this part. Rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied by the administrative law judge conducting the hearing where reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the evidence is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs or activities to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings, and for the application to such hearings of rules of procedure consistent with this part. Final decisions in such cases shall be made in accordance with § 8.59.

§ 8.59 Decisions and notices.

(a) *Decision by person other than the Secretary.* The administrative law judge shall make an initial decision, if so authorized, or shall certify the entire record including recommended findings and a proposed decision to the Secretary for a final decision and shall mail a copy of the initial decision or certification to the applicant or recipient by certified or registered mail, return receipt requested. Where the initial decision is made by the administrative law judge, the applicant or recipient may, within the period provided for in subpart E of this part, file with the Secretary exceptions to the initial decision, with reasons therefor. In the absence of exceptions, the Secretary may, within 45 days after the initial decision, serve on the applicant or recipient and complainant (if any) a notice that the Secretary will review the decision. Upon the filing of exceptions or service of a notice of review, the Secretary shall review the initial decision and issue a decision thereon including the reasons therefor. In the absence of exceptions or a notice of review, the initial decision is the final decision of the Secretary. A copy shall also be sent to the complainant (if any).

(b) *Decisions on record or review by the Secretary.* When a record is certified to the Secretary for decision, the Secretary reviews the decision of an administrative law judge under paragraph (a) or (c) of this section, or the administrative law judge conducts a hearing, the applicant or recipient shall be given reasonable opportunity to file briefs or other written statements of its contentions. A copy of the final decision of the Secretary shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived under § 8.58(a)(2), the decision of an administrative law judge shall be based on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of an administrative law judge shall rule on each finding, conclusion, or exception presented. The decision shall identify any requirements, if any, imposed under this part with which the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the involved program or activity. The final decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of this part, including provisions designed to assure that no Federal financial assistance will be extended for the program or activity to the applicant or recipient determined to be in default in its performance of an assurance given

by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until the applicant or recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Posttermination proceedings.* (1) Any applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered under paragraph (e) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the Secretary determines that those requirements have been satisfied, the Secretary shall restore such eligibility.

(3) If the Secretary denies any request under paragraph (f)(2) of this section, the applicant or recipient may submit a written request for a hearing specifying why the denial of the request is in error. The applicant or recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with subpart E. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

(g) *Judicial review.* A final decision rendered under this section constitutes final action under section 704 of the Administrative Procedure Act (5 U.S.C. 704) and, to the extent it is not barred by other provisions of law, such a final decision is subject to judicial review under section 706 of the Administrative Procedure Act (5 U.S.C. 706).

(h) *Forms and instruction.* The responsible civil rights official shall assure that forms and detailed instructions and procedures for effectuating this part are issued and promptly made available to interested persons.

(i) *Supervision and coordination.* The Secretary may periodically assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of the department or agency, responsibilities under this part (other than responsibility for final decision as provided in § 8.59). Such responsibilities may include the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of this part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this paragraph shall have the same effect as if the action has been taken by the responsible civil rights official of this Department.

Subpart E—Practice and Procedure for Hearings

§ 8.60 General information.

(a) *Scope of rules.* The rules of procedure in this subpart supplement subpart D and govern the practice for hearings, decisions, and administrative review conducted by HUD, including each of its organizational units, under this part.

(b) *Records to be public.* All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights docket clerk during regular business hours. Inquiries may be addressed to the Civil Rights docket clerk, Department of Housing and Urban Development, Washington, DC 20410.

(c) *Use of number.* As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa.

(d) *Suspension of rules.* The administrative law judge with respect to pending matters may modify or waive any rule in this subpart upon a determination that no party will be unduly prejudiced and the ends of justice will be served, and upon notice to all parties.

§ 8.61 Appearance and practice.

(a) *Appearance.* A party may appear in person or by counsel and participate fully in any proceeding. A State agency or any instrumentality thereof, a political subdivision of the State or instrumentality thereof, or a corporation may appear by any of its officers or employees duly authorized to appear on its behalf. Counsel must be members in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

(b) *Authority for representation.* Any individual acting in a representative capacity in any proceeding may be required to show authority to act in the capacity.

(c) *Exclusion from hearing for misconduct.* Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before an administrative law judge shall constitute grounds for immediate exclusion of the person from the hearing by the administrative law judge.

§ 8.62 Parties.

(a) *Parties; General Counsel a party.* (1) The term party shall include an applicant or recipient, or other person who has been served with a notice of hearing or opportuntiy for hearing naming him or her as respondent.

(2) The General Counsel of HUD shall be a party to all proceedings.

(b) *Amici curiae.* (1) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. The petition shall be filed before the prehearing conference or, if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The administrative law judge may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, and that the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceeding. An amicus curiae is not a party and may not introduce evidence at a hearing.

(2) An amicus curiae may submit a statement of position to the administrative law judge before the hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion that a decision is to be made or a prior decision is subject to review. The briefs shall be filed and served on each party within the time limits applicable to the party that the amicus curiae supports; or if the amicus curiae does not support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) *Complainants not parties.* A person filing a complaint under § 8.58(c) of this part is not a party to the proceedings under this subpart, but may petition, after proceedings are initiated, to become an amicus curiae. In any event a complainant shall be advised of the time and place of the hearing.

§ 8.63 Form, execution, service and filing of documents.

(a) *Form of documents to be filed.* Documents to be filed under the rules of this subpart shall be dated, the original signed in ink, shall show the docket description and title of the proceeding and the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

(b) *Signature of documents.* The signature of a party, authorized officer, employee or attorney constitutes a certificate that he or she has read the document, that to the best of his or her knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

(c) *Filing and service.* All notices by the administrative law judge, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to the administrative law judge from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights docket clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8:45 a.m to 5:15 p.m, e.s.t. or d.s.t., whichever is effective in the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 8.69(f).

(d) *Service—how made.* Service shall be made by personal delivery of one copy to each person to be served or by registered or certified mail, return receipt requested, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed.

(e) *Date of service.* The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

(f) *Certificate of service.* The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his or her attorney or representative. The certificate of service shall state that service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

§ 8.64 Time.

(a) *Computation.* In computing any period of time under this subpart or orders issued under this subpart, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Extension of time or postponement.* Requests for extension of time shall be served on all parties and set forth the reasons for the request. Requests may be granted upon a showing of good cause by the applicant. From the designation of an administrative law judge until the issuance of his or her decision, such requests should be addressed to him or her. Answers to such requests are permitted if made promptly.

(c) *Reduction of time to file documents.* For good cause, the administrative law judge with respect to pending matters may reduce any time limit prescribed under this subpart, except as provided by law or other provisions in this part.

§ 8.65 Proceedings prior to hearing.

(a) *Notice of hearing or opportunity for hearing.* Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient under this part.

(b) *Answer to notice.* The respondent, applicant, or recipient may file an answer to the notice within 20 days after service. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the responding party is without knowledge, in which case the answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice that are not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

(c) *Amendment of notice or answer.* The General Counsel may amend the notice of hearing or opportunity for hearing once before an answer is served. Each respondent may amend his or her answer once not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his or her original answer. Otherwise a notice or answer may be amended only by leave of the administrative law judge. A respondent shall file an answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period is longer, unless the administrative law judge otherwise orders.

(d) *Request for hearing.* Within 20 days after service of a notice of opportunity for hearing that does not fix a date for hearing, the respondent, either in the answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of all right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.

(e) *Consolidation.* The administrative law judge may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

(f) *Motions.* Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the administrative law judge may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the administrative law judge. A repetitious motion will not be entertained.

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(g) *Responses to motions and petitions.* Within 8 days after a written motion or petition is served, or such other period as the administrative law judge may fix, any party may file a response. An immediate oral response may be made to an oral motion.

(h) *Disposition of motions and petitions.* The administrative law judge may not sustain or grant a written motion or petition before expiration of the time for filing responses, but may overrule or deny such motion or petition without awaiting responses: *Provided, however,* that prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the administrative law judge, and not disposed of in separate rulings or in their respective decisions, will be deemed denied. Oral argument shall not be held on written motions or petitions unless the administrative law judge in his or her discretion expressly so orders.

§ 8.66 Responsibilities and duties of administrative law judge.

(a) *Responsibility to preside.* An administrative law judge shall preside over all proceedings held under this subpart.

(b) *Designation of administrative law judge.* The designation of an administrative law judge shall be in writing, shall specify whether the administrative law judge is to make an initial decision or to certify the entire record, including his or her recommended findings and proposed decision, to the Secretary, and may fix the time and place of hearing. A copy of such designation shall be served on all parties. After service of the designation of an administrative law judge, and until the administrative law judge makes the decision, motions and petitions shall be submitted to him or her. In the case of the death, illness, disqualification, or unavailability of the designated administrative law judge, another administrative law judge may be designated to take his or her place.

(c) *Authority of administrative law judge.* The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(1) Arrange and issue notice of the date, time and place of hearings or, upon due notice to the parties, change the date, time and place of hearings previously set.

(2) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him or her.

(6) Regulate the course of the hearing and the conduct of counsel therein.

(7) Examine witnesses and direct witnesses to testify.

(8) Receive, rule on, exclude, or limit evidence.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him or her.

(10) Issue initial or recommended decisions.

(11) Take any action authorized by the rules in this subpart or in conformance with the provisions of 5 U.S.C. 551–559 (the Administrative Procedure Act).

§ 8.67 Hearing procedures.

(a) *Statements of positions and trial briefs.* The administrative law judge may require parties and amici curiae to file written statements of position before a hearing, to submit trial briefs, and to participate in conferences to settle, simplify, or fix the issues in a proceeding.

(b) *Evidentiary purpose.* (1) The administrative law judge is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the administrative law judge. Brief opening statements, which shall be limited to statement of the party's position and what he or she intends to prove, may be made at hearings.

(2) Hearings for the receipt of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of this part. Where the respondent's answer to the notice of hearing or opportunity for hearing, his or her failure timely to answer, or from his or her admissions or stipulations in the record, indicate that there are no matters of material fact in dispute, the administrative law judge may enter an order so finding, vacating any hearing date and fixing the time for filing briefs under § 8.69(a). Thereafter the proceedings shall go to conclusion in accordance with § 8.69 of this part. The administrative law judge may allow an appeal in accordance with paragraph (p) of this section.

(c) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. The administrative law judge, in his or her discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record. Unless authorized by the administrative law judge, witnesses will not be permitted to read prepared testimony into the record. Except as provided in paragraphs (e) and (f) of this section, witnesses shall be available at the hearing for cross-examination.

(d) *Exhibits.* Proposed exhibits shall be exchanged at the pre-hearing conference, or otherwise before the hearing if the administrative law judge so requires. Proposed exhibits not exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged before hearing will be deemed admitted unless written objection is filed before the hearing, or unless good cause is shown at the hearing for failure to file such written objection.

(e) *Affidavits.* An affidavit is not inadmissible as such. Unless the administrative law judge fixes other time periods, affidavits shall be filed and served on the parties not later than 15 days before the hearing. Not less than seven days before the hearing, a party may file and serve written objection to any affidavit on the ground that it is necessary to test the truth of assertions therein at hearing. In this event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the administrative law judge determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

(f) *Depositions.* Upon such terms as the administrative law judge determines to be just, and for the convenience of the parties or of the Department, the administrative law judge may authorize or direct the testimony of any witness to be taken by deposition.

(g) *Admissions as to facts and documents.* Not later than 15 days before the scheduled date of the hearing except for good cause shown, or such earlier date as the administrative law judge may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request (not less than ten days after service thereof, or within such further time as the administrative law judge may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered in the proceeding, and shall not constitute an admission by him or her for any other purposes or be used against him or her in any other proceeding or action.

(h) *Evidence.* Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

(i) *Cross-examination.* A witness may be cross-examined on any matter material to the proceeding.

(j) *Unsponsored written material.* Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

(k) *Objections.* Objections to evidence shall be timely and briefly state the ground relied upon.

(l) *Exceptions to rulings of administrative law judge unnecessary.* Exceptions to rulings of the administrative law judge are unnecessary. It is sufficient that a party, at the time the ruling of the administrative law judge is sought, makes known the action which he or she desires the administrative law judge to take, or his or her objection to an action taken, and his or her grounds therefor.

(m) *Official notice.* Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

(n) *Public document items.* Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

(o) *Offer of proof.* An offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy such evidence shall be marked for identification and shall accompany the record as the offer of proof.

(p) *Appeals from ruling of administrative law judge.* Rulings of the administrative law judge may not be appealed to the Secretary before consideration of the entire proceeding, except with the consent of the administrative law judge and where he or she certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expenses, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the Secretary within such period as the administrative law judge directs. No oral argument will be heard unless the Secretary directs otherwise. At any time before submission of the proceeding for decision, the Secretary may direct the administrative law judge to certify any question or the entire record to him or her for decision. Where the entire record is certified, the administrative law judge shall recommend a decision.

§ 8.68 The record.

(a) *Official transcript.* The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the administrative law judge may authorize corrections to the transcript which involve matters of substance.

(b) *Record for decision.* The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

§ 8.69 Posthearing procedures, decisions.

(a) *Posthearing briefs: Proposed findings and conclusions.* (1) The administrative law judge shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law and, if permitted, reply briefs.

(2) Briefs should include a summary of the evidence relied upon, together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

(b) *Decisions following hearing.* When the time for submission of posthearing briefs has expired, the administrative law judge shall certify the entire record, including recommended findings and proposed decision, to the Secretary or, if so authorized, shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

(c) *Exceptions to initial or recommended decisions.* Within 30 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the Secretary. Any other party may file a response thereto within 45 days after the mailing of the decision. Upon the filing of such exceptions, the Secretary shall review the decision and issue a decision thereon.

(d) *Final decisions.* (1) The Secretary shall make the final decision in all proceedings under this part after expiration of all applicable time limits provided in paragraph (a) or (c) of this section.

(2) Where the hearing is conducted by an administrative law judge who makes an initial decision, if no exceptions thereto are filed within the 30-day period specified in paragraph (c) of this section, such initial decision shall become the final decision of the

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Secretary upon his or her approval thereof and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of paragraph (d)(3) of this section.

(3) The final decision of the Secretary is an "order" within the meaning of 5 U.S.C. 551(6) (formerly section 2(d) of the Administrative Procedure Act).

(4) All final decisions shall be promptly served on all parties, and amici, if any.

(e) *Oral argument.* (1) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, or upon review on initiative of the Secretary, he or she shall make such request in writing. The Secretary may grant or deny such requests in his or her discretion. If granted, notice of oral argument will be served on all parties. The Notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Civil Rights docket clerk not later than seven days before the date set for oral argument.

(2) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidation of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(3) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Civil Rights docket clerk at least seven days before the argument.

(f) *Service on amici curiae.* All briefs, exceptions, memoranda, requests, and decisions referred to in § 8.69 shall be served upon amici curiae at the same time and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 8.67(a) shall be served on amici.

§ 8.70 Judicial standards of practice.

(a) *Conduct.* Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his or her best effort to restrain his or her client from improprieties in connection with a proceeding.

(b) *Improper conduct.* With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the administrative law judge or Secretary by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his or her staff. It is improper that such interested persons or any members of the Department's staff or the administrative law judge give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer having responsibility for a decision in the proceeding, or his or her staff. It is improper for any person to solicit communications to any such officer, or his/her staff, other than proper communications by parties or amici curiae.

(c) *Ex parte communications.* Only persons employed by or assigned to work with the administrative law judge or Secretary who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the administrative law judge, the Secretary, or any employee or person involved in the decision process in such proceedings with respect to the merits of that or a factually related proceeding The administrative law judge, the Secretary or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons who are employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

(d) *Expeditious treatment.* Requests for expeditious treatment of matters pending before the administrative law judge are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

(e) *Matter not prohibited.* A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights docket clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by paragraph (c) of this section. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the administrative law judge or the Secretary with respect to securing such respondent's voluntary compliance under § 8.56 of this part are not prohibited.

(f) *Filing of ex parte communications.* A prohibited communication in writing received by the Secretary, or by the administrative law judge shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he or she considers the memorandum to be incorrect.

§ 8.71 Post-termination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings under this part may request the Secretary for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such requests shall be in writing and shall affirmatively show that, since entry of the order, it has brought its program or activity into compliance with the requirements of this part, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the Secretary denies such request, the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the Secretary to have been in error. The request for such a hearing shall be addressed to the Secretary and shall be made within 30 days after the applicant or recipient is informed that the Secretary has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested under paragraph (a) of this section, the hearing procedures established by this subpart shall be applicable to the proceedings, except as otherwise provided in this section.

Appendix A.—Federal Financial Assistance From the Department of Housing and Urban Development to Which This Part Applies

(The number in parenthesis following each program description is the program number found in the Catalogue of Federal Financial Assistance.)

Community Planning and Development Programs

Community development block grant entitlement program. Title I of the Housing and Community Development Act of 1974, as amended; 42 U.S.C. 5301. (14.218)

Community development block grants/small cities program. Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301. (14.219)

Community development block grants/state program. Title I of the Housing and Community Development Act of 1974, as amended 42 U.S.C. 5301. (14.228)

Community development block grants/Secretary' discretionary fund. Section 107 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5307. (14.225; 14.227)

Section 108 loan guarantees. Section 108 of the Housing and Community Development Act of 1974, as amended. 42 U.S.C. 5308.

Rental rehabilitation grants. Section 17, United States Housing Act of 1937, as amended, 42 U.S.C. 1437(o). (14.230)

Rehabilitation loan program. Section 312, Housing Act of 1964, 42 U.S.C. 1452b. (14.220)

Urban Homesteading. Section 810 of the Housing and Community Development Act of 1974, 12 U.S.C. 1706e. (14.222)

Supportive Housing Demonstration. Pub. L. 100–77, 101 Stat. 482.

Emergency Shelter Grants. Pub. L. 100–77, 101 Stat. 482.

Supplemental Assistance Grants. Pub. L. 100–77, 101 Stat. 482.

Urban Development Action Grants. Section 119 of the Housing and Community Development Act of 1977, 42 U.S.C. 5318. (14.221)

Grants for new community development programs, (excluding assistance in the form of guarantees). Title VII, Housing and Urban Development Act of 1970, 42 U.S.C. 4511.

Housing Programs

Lower-income housing assistance payments program. (Section 8.) Section 8, United States Housing Act of 1937, as amended, 42 U.S.C. 1437f. (14.156)

Housing Voucher program. Section 8(o), United States Housing Act of 1937, as amended, 42 U.S.C. 1437f(o). (14.156)

Housing development grants. Section 17, United States Housing Act of 1937, as amended, 42 U.S.C. 1437(o). (14.174)

Lower-income public housing (including operating subsidies, modernization and Indian housing). United States Housing Act of 1937, 42 U.S.C. 1437. (14.850)

Public housing—Comprehensive Improvement Assistance Program (Public Housing Modernization). United States Housing Act of 1937, as amended, 42 U.S.C. 1437l. (14.852)

Operating assistance for troubled multifamily housing project (Troubled Projects Program (Flexible Subsidy)). Housing and Community Development Amendment of 1978, 12 U.S.C. 1715z–1. (14.164)

Technical assistance to contractors or subcontractors. Section 911(b), Housing and Urban Development Act of 1970, 15 U.S.C. 694(a), Note.

Nonprofit sponsor assistance program. Section 106(b) of the Housing and Urban Development Act of 1968.

Homeownership for lower income families, with assistance. Section 235(i), National Housing Act, 12 U.S.C. 1715z.

Homes released from rehabilitation project mortgage, with assistance, section 235(j) National Housing Act, 12 U.S.C. 1715z.

Rental and cooperative housing for lower income families. Section 236, National Housing Act, 12 U.S.C. 1715z–1.

Direct loans for housing for the elderly or handicapped. Section 202, Housing Act of 1959, 12 U.S.C. 1701g. (14.157)

Assistance for Housing in Alaska, section 1004 Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.

Technical assistance and interest subsidies to State housing finance and development agencies (Section 802). Section 802, Housing and Community Development Act of 1974, 42 U.S.C. 1440.

Emergency mortgage relief loan program. Section 106 of the Emergency Homeowner's Relief Act, 12 U.S.C. 705.

Rent supplements. Section 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s. (14.149)

Counseling for homebuyers, homeowners and tenants. Section 106, Housing and Urban Development Act of 1968, as amended by section 903(a), Housing and Urban Development Act of 1970, 12 U.S.C. 1701x. (14.169)

Lower-income housing—homeownership opportunities for lower-income families (turnkey III—mutual help for Indian areas). United States Housing Act of 1937, 42 U.S.C. 1437.

Community services for tenants. Section 3, U.S. Housing Act of 1937, 42 U.S.C. 1437a.

Congregate Housing Services Program, Title IV. Housing and Community Development Act of 1978, 42 U.S.C. 8001–8009. (14.170)

Surplus land for low and moderate income housing. Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 454b.

GNMA

Management and Liquidating. Sections 305 and 313, National Housing Act, 12 U.S.C. 1720, 1723e.

Policy Development and Research

Research and technology, (excluding contracts for procurement). Title V, Housing and Urban Development Act of 1970, 42 U.S.C. 1701z–1 [including the following current programs: Modular Integrated Utility System (MIUS), Tenant Management Program, Urban Observatory, and Urban Reinvestment Task Force]. (14.506)

Solar heating and cooling demonstration program. Solar Heating and Cooling Act of 1974, 42 U.S.C. 5501. (14.550)

Fair Housing and Equal Opportunity

Fair housing assistance program. Title VIII of the Civil Rights Act of 1968; as amended, 42 U.S.C. 3601. (14.401)

Community Housing Resource Board Program, 42 U.S.C. 3601. (14.403)

Solar Energy and Energy Conservation Bank

Solar Energy and Energy Conservation Bank—financial assistance. Title V, Energy Security Act, 12 U.S.C. 3601–20.

Appendix B—Statutory Definitions of Handicapped Persons

The following programs operate under the statutory definition of handicapped person in section 202(d)(4) of the Housing Act of 1959, as amended, 12 U.S.C. 1701q(d)(4): Homes released from rehabilitation project mortgage (section 221(h), National Housing Act); Condominium units released from a section 221(d)(3) mortgage (section 221(i), National Housing Act); Housing for the Elderly or Handicapped (section 202, Housing Act of 1959); and Rental and Cooperative Housing for Lower Income Persons (section 236(j)(2)(B) and section 236(i)(4), National Housing Act). This definition reads as follows:

The term "elderly or handicapped families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in Section 102(a)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950.

The following programs operate under a definition of handicapped person found in section 3(b)(3), United States Housing Act of 1937, as amended: Lower-Income Public Housing; and section 8, U.S. Housing Act of 1937, Housing Assistance Payments Program. This definition reads as follows:

The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 223 of the Social Security Act or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 or is handicapped * * *. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which is expected to be of long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions.

The two statutory definitions (i.e., section 202(d)(4) of the Housing Act of 1959 and section 3(b)(3) of the U.S. Housing Act) are essentially the same except that the latter definition includes a person who "is under a disability as defined in section 223 of the Social Security Act" and the former does not. The criteria for determining whether a person is handicapped are the same in both statutes: An impairment which (i) is expected to be of long-continued and indefinite duration; (ii) substantially impedes his/her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions.

Dated: May 24, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-12141 Filed 6-1-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-876; FR-770]

Delegation of Authority Under Section 504 of the Rehabilitation Act of 1973, as Amended and 24 CFR Part 8

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: HUD today published in the **Federal Register** a final rule adopting procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development (24 CFR Part 8). The rule, which implements section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), uses the terms "responsible civil rights official" and "reviewing civil rights official." The "responsible civil rights official" is the person within HUD delegated the authority to oversee civil rights functions relating to section 504. The "reviewing civil rights official" is the person within HUD assigned to accept appeals from certain determinations of the responsible civil rights official. The Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity, the authority to act as the "responsible civil rights official" under 24 CFR Part 8. The Assistant Secretary for Fair Housing and Equal Opportunity may redelegate the authority to act as "responsible civil rights official" to the Regional Directors of Fair Housing and Equal Opportunity and to the Director of the Office of Program Compliance, except the authority to issue a preliminary finding of non-compliance under 24 CFR 8.56(g)(1). The Secretary is delegating to the Under Secretary the authority to act as "reviewing civil rights official."

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Ardinger, Section 504 Program Manager, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-5904 (voice or TDD).

Delegation of Authority

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Fair Housing and Equal Opportunity authority to act as the "responsible civil rights official" as set forth in 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development." The Assistant Secretary for Fair Housing and Equal Opportunity may redelegate the authority to act as "responsible civil rights official" under 24 CFR Part 8 to the Regional Directors of Fair Housing and Equal Opportunity and to the Director of the Office of Program Compliance, except the authority to issue a preliminary finding of non-compliance under 24 CFR 8.56(g)(1).

The Secretary of Housing and Urban Development delegates to the Under Secretary authority to act as the "reviewing civil rights official" as set forth in 24 CFR Part 8.

Dated: May 24, 1988.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 88-12139 Filed 6-1-88; 8:45 am]

BILLING CODE 4210-32-M

Office of Fair Housing and Equal Opportunity

[Docket No. D-88-877; FR-770]

Re-Delegation of Authority Under Section 504 of the Rehabilitation Act of 1973, as Amended and 24 CFR Part 8

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of re-delegation of authority.

SUMMARY: HUD today published in the **Federal Register** a notice of delegation of authority under section 504 of the Rehabilitation Act of 1973, as amended and 24 CFR Part 8. Under that delegation the Secretary of HUD delegated to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) the authority to act as the "responsible civil rights official" under 24 CFR Part 8. The Secretary of HUD also authorized the Assistant Secretary for FHEO to redelegate the authority to act as "responsible civil rights official" to the Regional Directors of FHEO and to the Director of the Office of Program Compliance, except the authority to issue a preliminary finding of non-compliance under 24 CFR 8.56(g)(1). The Assistant Secretary for FHEO is delegating to the Regional Directors of FHEO and to the Director of the Office of Program Compliance the authority to exercise and perform certain of the authorities and responsibilities of the "responsible civil rights official" in 24 CFR Part 8.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Ardinger, Section 504 Program Manager, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh St., SW., Washington, DC 20410. Telephone: (202) 755-5904 (voice or TDD).

Re-Delegation of Authority

The Assistant Secretary for Fair Housing and Equal Opportunity delegates the authority to act as the "responsible civil rights official" as set forth in 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development" to the Regional Directors of Fair Housing and Equal Opportunity in the following specific circumstances only:

1. The authority to request a copy of the documents described in 24 CFR 8.51(b).

2. The authority to receive compliance reports submitted by recipients under 24 CFR 8.55(b).

3. The authority to conduct periodic compliance reviews under 24 CFR 8.56(a) and the authority to conduct an investigation under § 8.56(b).

4. The authority to notify the complainant and the recipient of HUD's receipt of a complaint under 24 CFR 8.56(d), the authority to process a complaint in accordance with 24 CFR 8.56(e) and the authority to dismiss a complaint under 24 CFR 8.56(f).

The Assistant Secretary for Fair Housing and Equal Opportunity delegates the authority to act as the "responsible civil rights official" as set forth in 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development" to the Director

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of the Office of Program Compliance in the following specific circumstances only:

1. The authority to waive the time limit for filing a complaint in accordance with 24 CFR 8.56(c)(3).

2. The authority to issue a preliminary finding of compliance under 24 CFR 8.56(g)(1).

3. The authority to issue a formal written determination of compliance under 24 CFR 8.56(h)(4).

Dated: May 24, 1988.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-12140 Filed 6-1-88; 8:45 am]

BILLING CODE 4210-62-M

federal register

Thursday
June 2, 1988

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Plan for Fiscal Year 1988; Notice of Publication

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Plan for Fiscal Year 1988

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of publication of the Office of Juvenile Justice and Delinquency Prevention Program Plan for Fiscal Year 1988.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing its Program Plan for Fiscal Year 1988 in order to inform the public and potential fund recipients of the program priorities that the Office will pursue during the current fiscal year.

FOR FURTHER INFORMATION CONTACT: D. Elen Grigg, Information Specialist, Office of Juvenile Justice and Delinquency Prevention, Telephone: (202) 724-7573.

SUPPLEMENTARY INFORMATION:

Overview

Legislative Mandate and Mission

The Juvenile Justice and Delinquency Prevention Act of 1974 established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) as the Federal government's primary agency for addressing the issue of juvenile crime and related problems in a systematic and comprehensive manner. The mission of the OJJDP is to provide leadership and resources to states and localities in implementing the mandates and goals of the JJDP Act, as defined by Congress, within the appropriations provided for the program annually, and in a manner consistent with the policies and directions established by the Executive Branch of government.

The Act authorizes OJJDP to coordinate Federal juvenile delinquency programs, provide formula grants to states, provide information, training and technical assistance, develop and implement effective programs, and conduct research on juvenile delinquency and child victimization.

Organization and Functions

To implement the legislation and systematically confront the problems of juvenile delinquency and missing and exploited children, OJJDP conducts research, develops programs, demonstrates promising approaches, and disseminates information and resources. OJJDP also coordinates Federal juvenile delinquency programs as well as programs for missing and exploited children.

OJJDP FY 1988 Program Priorities

Each fiscal year, the Office of Juvenile Justice and Delinquency Prevention funds programs targeted at those issues deemed most critical in the juvenile justice field. To ensure the development of well planned, cost-effective programs, and fiscal accountability, OJJDP used a strategic planning process to garner input from the field, establish program priorities, and ensure that decisions on the allocation of staff and resources reflect the direction of the Office.

The following describes the four FY 1988 priority program areas developed by OJJDP:

Illegal Drug Use Among High-Risk Youth

Programs will be based on the concept of accountability of youth, their families, and communities—to promote zero tolerance for illegal drug use. Prevention and control of youth gang drug trafficking will be a major focus. Prototype programs for each component of the juvenile justice system will be developed. Community-wide strategies will be designed to promote system coordination, and research will continue to increase understanding of the risk factors for youth involvement in illegal drugs to guide communities in combatting this problem.

Serious Juvenile Crime

Programs in this area focus on the individual components of the juvenile justice system that impact on serious crime (e.g., law enforcement). In addition, a major emphasis is coordination across local system components to more effectively concentrate and direct resources to respond to serious juvenile crime. Demonstration and training programs promote the implementation of community-wide strategies to impact on serious juvenile crime and develop coordinated, consistent responses by all components of the justice system. Research will also continue on patterns of delinquent and criminal careers and the implications for prevention and control, which will assist local communities in developing more effective programs.

Missing and Exploited Children

Programs in this area are designed to reduce the incidence of crimes against children, particularly abduction and sexual exploitation, and to improve the responses of agencies that are responsible for dealing with these crimes. Priority will be given to providing information, training, and technical assistance to juvenile justice and other decisionmakers regarding effective strategies to address missing and exploited children. There will be a continued emphasis on responding to missing children and their families who have been victims of abduction and/or sexual exploitation. Efforts to develop better information on the scope and nature of the problem to inform policy and program development will continue.

Jail Removal

The Juvenile Justice and Delinquency Prevention Act, as amended, calls for the removal of juveniles from adult jails and lockups as a condition of receiving formula funds. OJJDP discretionary programs are aimed at developing information on appropriate alternatives to jails for different types of juveniles, and on assisting states and local jurisdictions to systematically plan and implement strategies to remove juveniles from adult jails and lockups.

OJJDP Management Priorities

Significant steps were taken in the previous fiscal year to improve the management of the Office in order to ensure the efficient development of technically sound and cost-effective programs. The focus of these efforts was the development and implementation of a program planning process, a program development process, and a monitoring process to ensure careful and effective implementation of both the discretionary and formula awards. As a result of these efforts in FY 1987, approximately 62 discretionary programs were awarded totaling $28,280,970 to address all components of the juvenile justice system: prevention, law enforcement, adjudication, supervision and missing and exploited children.

This fiscal year the management priorities will be to continue to:

- Promote better planning between the discretionary and formula grant programs to assist communities in developing innovative programs and providing better services;
- Improve communication and procedures between the Office and other state and local juvenile justice agencies, grantees and contractors;
- Initiate new methods and procedures for monitoring grants and contracts as well as tracking the use of formula funds and states' compliance with the legislative mandates; and,
- Aggressively enhance the knowledge and skills of professionals in the field by training, technical assistance, and dissemination of information in a timely fashion regarding the best practices and latest

information on office activities and programs.

OJJDP Program Development

OJJDP programming is guided by a conceptual framework that defines the primary purpose of a program in terms of its contribution to building a comprehensive strategy in preventing and controlling delinquency. As a result, the Office is assisting the field by defining each of the components of the system, its operations and its relationship to other components, as a basis for developing programs to improve service delivery to youth.

The programs that comprise the comprehensive strategy address three concepts:

- *Systemwide Development*—Program development is focused on one or more specific components of the juvenile justice system (prevention, law enforcement/prosecution, adjudication, and supervision). The purpose is to develop state-of-the-art approaches to respond to specific problems or issues, and to increase the effectiveness of each component of the juvenile justice system in providing services to juveniles.
- *System Coordination*—Program development emphasizes community organization and planning strategies within programs focused on specific topics (e.g., arson, gangs, etc.), as well as promotes systemwide program development and implementation efforts (e.g., SHOCAP, Effective Strategies Systemwide). These programs promote system coordination within one component area (e.g., prevention) as well as among system components (e.g., prevention, law enforcement, and adjudication) and guide communities in implementing comprehensive strategies that maximize the use of resources.
- *System Operations*—Program development is designed to enhance how the system components function individually and cooperatively with regard to decisionmaking, information collection analysis, and utilization, as well as resources management and assessment (e.g., Law Enforcement Handling of Juvenile Offenders and Juvenile Court Management Training). Each system component must understand its own operations and decisionmaking processes in order to effectively participate in systemwide program development and coordination. Through promoting systematic decisionmaking, information collection, resource management, and utilization, these programs enhance system operation and service delivery to youth and their families.

The OJJDP approach to program development calls for research to develop new information; the application of research to the development of prototypes/program models; field testing or demonstration of prototypes in selected sites; and dissemination of prototypical programs and processes to states and communities nationwide through training and technical assistance.

This approach to program development allows OJJDP to systematically track the development of programs; to monitor financial obligations and project future expenditures; to ensure the information needs of future stages or phases of the project are considered in program development; and to periodically reassess its resource commitments to a program at the completion of each developmental stage.

FY 1988 Program Planning Activities

As with the previous fiscal year, the program planning process consisted of an internal review of existing programs as well as external input from a variety of sources: juvenile justice policymakers and practitioners from the State and local levels, OJJDP grantees and contractors, State planning agencies and advisory groups, human service organizations and professional associations with interests in juvenile justice and related issues.

The intenal planning process focused on the effectiveness of existing programs and projects to determine whether they should be continued, expanded, reoriented to another purpose or terminated. This process involved input from the staff and management personnel.

OJJDP engaged in five primary activities that comprised the external planning process for fiscal years 1987 and 1988:

- Program Development Seminar—convened to provide information regarding critical juvenile justice issues from the perspectives of practitioner experts.
- Program Development Workshop—convened to identify key juvenile justice issues and develop specific program strategies utilizing the talents of a diverse group comprised of practitioners, researchers, policy analysts, information specialists, planners.
- State Advisory Group Conference—to garner ideas from the field on the priority issues and program needs of States and state juvenile justice practitioners.
- Training sessions, conferences, and other activities related to various OJJDP programs that provided an opportunity to review specific issues with a variety of juvenile justice professionals.
- Program Development Workshop on High Risk Youth—convened to review specific issues and strategies to prevent, intervene and provide treatment to the youth at most risk of becoming involved in illegal drug and alcohol use.

These activities guided the selection of the four priority areas for FY 1988 (illegal drug use, serious juvenile crime, missing and exploited children, and jail removal), as well as decisions concerning the scope and direction of continuation programs.

The following sections consist of brief summaries of each of the programs planned for FY 1988.

Prevention

Total Allocation: $11,528,000

Continuation Programs

Cities in Schools

The purpose of this program is to develop state and local public/private partnerships designed to establish educational and social programs that provide comprehensive services to youth at risk of becoming involved in delinquency and illegal drug use. It prevents youth from dropping out of school and provides alternative education services.

Law-Related Education (LRE)

The purpose of this program is to provide training and materials to encourage and guide the establishment of LRE delinquency prevention programs, for state and local school jurisdictions to incorporate into the curriculums of grades kindergarten through 12. It assists schools in helping children to understand the law and its role in society.

National School Safety Center

The purpose of this program is to provide information on school safety, identify methods to diminish crime, violence, and illegal drug use in schools and on campuses, and develop innovative crime prevention and school descipline programs. It assists schools in implementing a variety of strategies to create a safe environment.

Super-Teams

This program is designed to enhance the ability of schools to prevent drug and alcohol use by teaching resistance and alternative behavioral skills to students. It will contribute to ensuring that youth remain drug-free.

Reduction of School Crime

The purpose of this program is to test promising desciplinary and crime control policies and procedures designed to reduce school crime and disorder. It will identify effective methods of instituting consistent policies that contribute to reducing discipline and crime problems in schools.

Law Enforcement Explorers

The Law Enforcement Exploring program of the Boy Scouts of America presents an opportunity for America's young people to assess their interest in and potential for a career in the criminal justice system. This apprenticeship-type program provides direct assistance to law enforcement agencies. The mutual understanding it creates among practitioners, teenagers and the general public contributes to delinquency prevention and control. Special attention is given to prevention of illegal drug use.

National Congress of Black Churches Anti-Drug Abuse Program

This development project will involve the design and implementation of a community capacity building and mobilization program. It will assist communities in developing comprehensive strategies to prevent and intervene in illegal drug use among youth.

Effective Strategies Systemwide

The purpose of this program is to demonstrate a planning and organization strategy for communities to assess and respond to their current juvenile drug abuse problems and needs. It will strengthen community efforts to eliminate illegal drug use among youth by coordination and targeting resources.

Investigation of the Causes and Correlates of Juvenile and Adult Criminality in the Life Experiences of the 1958 Philadelphia Birth Cohort: Follow-Up

The purpose of this program is to expand the knowlege of factors that contribute to involvement in crime, and transition from juvenile to adult youth criminal activities. A sample of the 1958 Philadelphia birth cohort will be interviewed to obtain information on a variety of relevant life experiences. It will facilitate the identification of serious, chronic offenders and crucial intervention points in the development of a criminal career.

Juvenile Drug Abuse Among Minority Populations

The purpose of this program is to increase understanding of the etiology and patterns of drug abuse among ethnic minority populations. This information will be used as a basis for developing more effective prevention programming for these groups.

Causes and Correlates of Delinquency

This program is designed to improve our understanding of the development of positive, delinquent, and drug abuse behavior patterns in the context of the community, family and the individual. It will identify risk factors that must be addressed in risk classification, and in designing effective interventions for all types of youth.

Juvenile Justice and the Learning Disabled

This project consists of four to five day regional training programs for juvenile justice practitioners to provide an overview of the data, research and programs related to learning disabilities and juvenile delinquency. It is designed to assist system practitioners in identifying and making appropriate referrals for juveniles with learning disabilities.

Patterns of Drug Abuse and Delinquency Among Inner City Youth

The purpose of this project is to describe patterns of drug use and delinquency, and to identify factors that influence involvement in delinquency and drug use and sales among high risk populations. The study will be based on black males in the ninth and tenth grades in Washington, DC high schools serving primarily inner city, lower income areas. It will provide communities greater information about the factors which impact black, high school aged, inner city youth, enabling communities to develop appropriate prevention and intervention services.

Support Programs

National Criminal Justice Reference Service

The purpose of this dissemination program is to provide information services to the juvenile justice community, as mandated in the JJDP Act of 1974, as amended. The Juvenile Justice Clearinghouse enable all sectors of the juvenile justice field to receive current information on advanced practices and techniques as it becomes available.

Juvenile Justice Resource Center

The purpose of this effort is to provide technical assistance and support to OJJDP/NIJJDP, grantees, the Coordinating Council of Juvenile Justice and Delinquency Prevention, and the Advisory Board on Missing Children in all research, program development, evaluation, training, and research utilization activities.

New Programs

National Public Awareness Campaign: High Risk Youth

The purpose of the program is to aggressively communicate the message that illegal drug use will not be tolerated and that everyone—youth, families, and communities—will be held accountable. It will promote attitudinal changes and the message that communities should mobilize resources and develop comprehensive strategies to eliminate illegal drug use among high risk youth.

National Information Package: High Risk Youth

The national information package will provide guidance to states and communities in identifying the scope of their youth drug problem and in identifying effective strategies to respond to the problem. Additionally, it will encourage communities to concentrate and direct resources to implement those strategies.

Prevention and Intervention Program for High Risk Youth

The purpose of this program is to design and promote prevention programs for youth at high risk for illegal drug use and the potential consequences, including contracting AIDS. It will involve developing an outreach education and referral component aimed at difficult to reach youth populations. It will improve the capability of the community to reach these juvenile populations most at risk for illegal drug use by providing guidance regarding prevention and intervention strategies.

Drug Abuse Prevention and Intervention in Public Housing

The purpose of this program is to demonstrate effective strategies to reduce the supply and demand for illegal drugs among high risk youth in public housing. It will provide local communities with a comprehensive approach to provide intensive services to high risk youth and their families within public housing settings using public and private resources.

Reaching At-Risk Youth in Public Housing

The purpose of this program is to establish Boys and Girls Clubs in selected housing projects. This will be accomplished by providing training and technical assistance to personnel from both the public housing authority and the sponsoring Boys and Girls Clubs. The program is designed to assist local communities in providing alternatives to substance abuse involvement (e.g. recreation, education, and referral services) for at risk youth in public housing projects.

State and Local Training Regarding the OJJDP Discretionary Program and the Coordinating of Block Funds for Drug Programs for High Risk Youth

The purpose of this program effort is to provide information to states and localities about OJJDP discretionary programs and funding, emphasizing their relationship to block grant and local discretionary efforts within state and local jurisdictions. Special attention will be given to the coordination of the use of funds from multiple Federal, state, and local sources to develop long-term strategies for preventing and reducing drug abuse among high risk youth. It will enable communities, through improved information, to target funding resources from multiple sources to develop immediate and long-term strategies.

Education, Employment and Tuition Program: A Public/Private Venture

The purpose of this program will be to promote a national scope venture between the public and private sector to impact on youth who are at high risk of involvement in illegal drug use and/or delinquency. It will provide intensive alternative education, social services and vocational education, as well as immediate employment for high risk youth.

1988 Citizenship—Washington Focus 4–H Justice Fellows Program

The purpose of this program is to provide information to 4–H club leaders about the priority programs of the Office, school safety and crime prevention so that they may initiate club projects in their home communities.

Law Enforcement/Prosecution

Total Allocation: $6,425,000

Continuation Programs

National Center for the Prosecution of Child Abuse

The purpose of this program is to provide training, technical assistance and information to promote more informed and vigorous prosecution of child abuse and to minimize the trauma experienced by children whose cases are handled by the criminal justice system. It will improve the capability of communities to develop swift, effective legal responses to child abuse.

Serious Habitual Offender Comprehensive Assistance Program

The purpose of this program is to provide intensive training and technical assistance to a select number of communities in order to promote specific policies and practices among the primary components of the juvenile justice system. It will improve the capability of the system to efficiently identify, adjudicate and provide appropriate supervision and services for the serious habitual juvenile offender.

Juvenile Justice Training for State and Local Law Enforcement, School Administration, Prosecution, and Probation Personnel

The purpose of this program is to train school, law enforcement, prosecution and probation personnel how to share information, develop complementary policies and programs in order to improve school safety, and to provide effective supervision and delinquency prevention services. It assists schools in establishing safe, drug-free environments for learning.

National College of District Attorneys (NCDA)

The purpose of this program is to provide training for juvenile prosecutors regarding practical trial and case handling skills. It will assist prosecutors in prioritizing delinquency cases and processing them more efficiently.

Juvenile Justice Training for State and Local Law Enforcement Personnel (Glynco)

The purpose of this program is to assist State and local law enforcement personnel in improving decision-making and to provide them with a better understanding of the juvenile justice system. Emphasis is placed on increasing the effectiveness of child abuse investigations. It guides police in making decisions regarding the arrest and disposition of juveniles.

New Programs

Effective Strategies for Juvenile Justice Decision-Makers: High Risk Youth

The purpose of this program is to enhance the role of law enforcement and court personnel and other appropriate decision-makers in processing drug-related case from arrest through disposition development and implementation as well as in reducing illegal drug use among youth within their communities. It will guide communities in providing predictable consequences and appropriate services for youth involved in illegal drugs.

Practitioner Symposiums on Juvenile Gangs

The purpose of this program is to inform key juvenile and criminal justice personnel, community-based organizations, and school officials, about the nature and scope of youth gang activity in cities with emerging and chronic gangs. It will provide a forum for professionals from cities with chronic youth gang problems to inform the emerging cities throughout the United States about promising strategies.

Youth Gang Demonstration Initiative: Neighborhood Reclamation

This program is designed to develop and implement a comprehensive multi-agency strategy focused on a specific neighborhood area in Los Angeles, CA, in an effort to control and prevent illegal juvenile gang behavior. The purpose is to empower the community to establish its role in the development of healthy, productive, law-abiding youth.

Jail Removal Initiative II

The purpose of this program is to assist specific states eligible for FY 1988 formula funds not in substantial compliance in achieving full compliance with section 223(a)(14) of the JJDP Act requiring the states to remove juveniles from adult jails and lockups. It will assist states in identifying appropriate alternative placements for juveniles under the jurisdiction of the juvenile justice system.

Adjudication

Total Allocation: $2,707,000

Continuation Programs

Juvenile Justice Data Archive

The purpose of this program is to collect, process, analyze, and disseminate available data concerning cases handled by the nation's juvenile courts through the maintenance of a National Juvenile Court Data Archive. It provides direct assistance to jurisdictions in analyzing their juvenile court data in order to better manage their caseflow and allocate resources more effectively.

Court Appointed Special Advocates

The purpose of this program is to provide training and technical assistance to local juvenile courts to promote the development and use of

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adult volunteers as court appointed special advocates for youth under the jurisdiction of the court. It assists the court in providing appropriate support to youth under its jurisdiction.

Juvenile Court Management Training

The purpose of this program is to provide management training to juvenile justice personnel. It assists juvenile court managers in making better intake, detention and disposition decisions as well as in developing productive working relationships with other parts of the system.

Technical Assistance for Juvenile Courts

The purpose of this program is to provide technical assistance to the nation's juvenile courts and court-related agencies. It improves juvenile court information development and utilization, use of automated information systems and resource allocation through individualized assistance.

Juvenile Court Training and Technical Assistance

The purpose of this program is to provide training and technical assistance for juvenile and family court judges and other court related personnel providing them with current information on pertinent case law, disposition and treatment options. It provides new personnel with the basic skills needed to perform their court-related duties and apprises juvenile court judges of the most recent legal, social and managerial developments in the field so they can improve court services to youth.

Permanency Planning

The purpose of this program is to prevent delinquency through improved judicial decisionmaking for children under consideration for out-of-home placement and ensure that placements are periodically reviewed.

New Programs

Drug-Related Accountability Package

The purpose of this program is to provide states and local jurisdictions with state-of-the-art information about effective legislation and programs that support user accountability for illegal drug use among families and youth. This project will involve the identification of state statutes, policies and programs that promote user accountability and provide a training and technical assistance package for juvenile justice system policymakers and practitioners.

Supervision

Total Allocation: $5,729,000

Continuation Programs

Evaluation of Private Sector Corrections

The purpose of this program is to evaluate the capability of private organizations to operate effective correction programs for chronic serious juvenile offenders. It will provide guidance to the public and private sector corrections community in determining the type of services that should be provided to serious offenders.

Management Training and Technical Assistance for Private Non-Profit Organizations

The purpose of this project is to provide training in all aspects of organizational leadership and management for managers and directors of private, not-for-profit youth serving agencies. It is designed to enhance the effectiveness of the organizations in their provision of services and, as a result, strengthen their roles as resources in the juvenile justice system.

Restitution Education, Specialized Training and Technical Assistance

The purpose of this program is to promote the use of restitution as a disposition by providing training, technical assistance and information about restitution to courts and juvenile justice practitioners. It helps communities to initiate or improve their existing restitution programs.

Technical Assistance to States

The purpose of this project is to provide assistance to states in developing and implementing comprehensive plans for the use of JJDP formula grant funds; including assistance in achieving compliance with the mandates of the Juvenile Justice and Delinquency Prevention Act, as amended.

Training and Technical Assistance for Juvenile Detention and Corrections

The purpose of this program is to provide training and technical assistance to managers and administrators of state and local juvenile detention and corrections programs. It assists communities in improving their pre- and post-adjudicatory services, and in achieving and maintaining compliance with mandates of the JJDP Act.

Children in Custody

The purpose of this program is to provide information on the characteristics and population of the nation's juvenile detention, correctional and shelter care facilities by focusing on the completion of analytical reports based on the 1984/85 census; the fielding of the 1986/87 census; and the completion of necessary feasibility and pilot tests relating to a survey of juveniles in custody. It will assist the juvenile justice community in assessing existing institutionalization practices as well as the nature and level of service provision to selected populations in secure confinement.

Deinstitutionalization of Status Offender Research

The purpose of this project is to evaluate the effects of deinstitutionalization on the juvenile justice system, other youth-serving agencies, and on youth involved in status offenses. It will guide community and state programs and legislative activities in providing services to this population.

Insular Area Support

The purpose of this program is to provide supplemental financial support to the Virgin Islands, Guam, American Samoa, the Freely Associated States of the Pacific Islands and the Commonwealth of the Northern Mariana Islands, in accord with section 224 of the JJDP Act, as amended.

Non-Participating State Initiative

The purpose of this program is to make funds available to non-participating states in accordance with section 223(d) of the JJDP Act, as amended.

New Programs

National Information Package; AIDS in Juvenile Corrections

The purpose of the national information package is to provide guidance to juvenile corrections practitioners in understanding the scope and nature of the problem of AIDS among youth, identifying appropriate policies and strategies to respond to the problem, and mobilizing resources to implement those strategies.

Testing for Illegal Drug Use

The purpose of this program is to determine the types of drug use among detention populations and to promote the use of drug testing in detention programs. This program will involve the identification of existing testing programs, conduct an analysis of drug testing data, and develop operational manuals for drug testing in detention facilities. It will assist communities in identifying and responding to the immediate needs of youth involved in the juvenile justice system.

Drug Testing Guidelines

The purpose of this program is to develop and disseminate drug testing guidelines for juvenile justice agencies. The guidelines will focus on the criteria for determining who should be tested, testing procedures (how and when), and by whom and how the test results should be used. It will guide the use of limited resources from pre-adjudicatory intake through post-adjudicatory classification for effective and necessary testing of detained or adjudicated youth.

Drug Identification Program for Juvenile Probation and Parole Personnel

The purpose of the program is to train probation and parole officers in the sophisticated drug evaluation and classification process developed by the law enforcement field. It will be used as an additional tool in supervising probationers and parolees who are ordered to remain drug free as a condition of their release into the community.

Electronic Monitoring

The purpose of this program is to design and disseminate guidelines for the use of electronic hardware as one component of a supervision strategy for serious juvenile offenders. It will guide the use of such techniques as components or alternatives to detention or pre- and post-supervision activities at the local level.

Missing and Exploited Children

Total Allocation: $4,999,000

Continuation Programs

National Study of the Incidence of Missing Children

The purpose of this research is to respond to the need for more accurate information regarding the number of missing children and the characteristics of the events. It will provide the most comprehensive and reliable data to serve as a basis for policy and program development.

National Center for Missing and Exploited Children

The purpose of this program is to provide national clearinghouse services and technical assistance in the area of missing and exploited children. It assists the criminal justice system, public and private agencies, families, parents, and guardians to better coordinate information and activities related to missing and exploited children.

Management Training and Technical Assistance for Private Voluntary Organizations Involved with Missing and Exploited Children

The purpose of this program is to provide training and technical assistance in administration and management to private voluntary organizations to more efficiently respond to the problem of missing and exploited children.

The Child Victim as a Witness

The purpose of this program is to test different techniques for improving the handling of child victims who participate as witnesses in court proceedings. It will improve the fairness and efficiency of the justice process and reduce the trauma for child victims.

Law Enforcement Handling of Missing Children

The purpose of this research is to improve understanding of the role of law enforcement in responding to reports of missing children, including runaways and children abducted by parents or non-family members, and in handling the runaway/street youth. It will provide guidance to police agencies in implementing more effective policies and procedures to locate missing children.

State Clearinghouses

The purpose of this program is to provide financial support to state missing children clearinghouses. It will assist these organizations in better allocating resources to locate missing children, and in assisting local jurisdictions in responding to missing children.

New Programs

National Conference on Child Sexual Exploitation

The purpose of this effort is to increase awareness of the problem of child sexual exploitation by providing information on: Activities in other communities; methods for strengthening collaboration among community agencies and organizations involved with child sexual exploitation; assisting communities in Federal and local resource identification and utilization. This will result in strengthening the community, by mobilizing resources, to effectively combat child sexual exploitation.

Missing and Exploited Children Comprehensive Action Program

The purpose of this program is to design and implement a community organization and planning strategy to guide comprehensive program development focused on missing and exploited children. It will enable communities to implement strategies to guide comprehensive program development, and effectively mobilize system resources.

Training for Juvenile Justice System Decision Makers: Missing Children and Child Sexual Exploitation

The purpose of this program is to enhance the role of court personnel and other appropriate decision-makers in the order-making, review, monitoring, and enforcement of missing children and child sexual exploitation cases, from initial report to intake and investigation, court processing, disposition development and implementation. It will result in better information for system decision-makers about missing children and child sexual exploitation, allowing more informed decisions within the juvenile justice system.

Reunification of Missing Children

The purpose of this program is to identify promising strategies for helping families of missing children adjust to the return of a missing child. It will help ease the psychological trauma experienced by families whose missing child is returned.

Assistance to Missing and Exploited Children Private Voluntary Organization

The purpose of this program is to provide one-time financial assistance to private voluntary organizations involved in locating and providing services to missing children and their families. This program will expand the service base available to missing children and their families resulting in the likelihood of greater identification and reunification.

Curriculum Standards

The purpose of this initiative is to develop curriculum standards for educators to help insure the safety of all children. The curriculum standards will focus on preventing child abduction and exploitation. This will assist school systems to develop curricula to prevent children from becoming victims of abduction and exploitation.

Child Sexual Exploitation Training

The purpose of this project is to enhance the Law Enforcement Coordinating Council seminars that deal with child sexual exploitation. The seminars will train Federal, state, and local prosecutors on prosecuting and investigating child sexual exploitation cases. It will result in better, more

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informed prosecutions, thereby increasing the likelihood of conviction.

Parental/Family Abductions

The purpose of this project is to address the legal, jurisdictional, and administrative issues faced by prosecutors in cases of parent/family abductions. It will guide community activities to control, prevent, and respond to the consequences of abduction.

Dated: May 26, 1988.

Verne L. Speirs,

Administrator, OJJDP.

[FR Doc. 88-12311 Filed 6-1-88; 8:45 am]

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Thursday
June 2, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Final Rule; Request for Comments

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This action revises the procedures for operation of aircraft in the airspace above the Grand Canyon up to an altitude of 14,500 feet above mean sea level (MSL). The regulations are adopted to comply with recent legislation requiring additional FAA regulations based on the recommendations of the U.S. Department of the Interior. The rule implements the recommendations of the Department of the Interior, with some modifications. The rule: (1) Establishes a Special Flight Rules Area from the surface to but not including 14,500 feet MSL in the area of the Grand Canyon; (2) prohibits flights below a certain altitude in each of five sectors of this area, with certain exceptions; (3) establishes flight-free zones from the surface to 14,500 feet MSL above large areas of the Park; (4) provides for routes for commercial tour operators and transient operators through the canyon area; and (5) retains certain existing terrain avoidance and communications requirements for flights in the area.

DATES: *Effective date:* September 22, 1988.

Comment date: Comments must be received on or before August 1, 1988.

Expiration date: Special Federal Aviation Regulation No. 50-2 expires on June 15, 1992.

ADDRESSES: Comments on the proposed permanent rule regulation may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25149, 800 Independence Avenue SW., Washington, DC 20591.

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this rule is final, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire on any portion of the rule. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25149." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3479. Communications must identify the special rule number of the document.

Background

On June 5, 1987, the FAA issued SFAR 50-1 (52 FR 22734, June 15, 1987), a special federal aviation regulation establishing flight regulations in the vicinity of the Grand Canyon National Park. That rule remains in effect until the effective date of the rule adopted in this action.

On August 18, 1987, legislation was enacted to require a study of aircraft noise impacts at a number of national parks and to impose flight restrictions at 3 parks: Grand Canyon National Park, Yosemite National Park in California, and Haleakala National Park in Hawaii. (Pub. L. 100-91).

Section 3 of Pub. L. 100-91 required the Secretary of the Interior to submit to the Administrator recommendations for action necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations were to provide for substantial restoration of the natural quiet and experience of the park. With limited exceptions, the recommendations were to prohibit the flight of aircraft below the rim of the Canyon and to designate zones that were flight free except for purposes of administration of underlying lands and for emergency operations.

Public Law 100-91 further required the Administrator of the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. The plan was to implement the recommendations of the Secretary without change unless the Administrator determined that implementing the recommendations would adversely affect aviation safety. In that event, the FAA was required, in consultation with the Secretary and after notice and opportunity for hearing, to revise the DOI recommendations to resolve the safety impacts and issue regulations implementing the revised recommendations in the plan.

Department of Interior Recommendations

Pursuant to section 3(b)(1) of Pub. L. 100-91, the Office of the Secretary of the Interior in December 1987 transmitted recommendations to the FAA for an aircraft management plan at the Park. The recommendations submitted included both rulemaking and nonrulemaking actions. The Department of the Interior (DOI) recommendations which were regulatory in nature and which could have required rulemaking action by the FAA for implementation may be summarized as follows:

1. Establish special use airspace (SUA), designated as the "Grand Canyon Special Flight Rules Area" and classified as prohibited airspace, over the geographical boundaries of the Grand Canyon from the surface to as high as 14,500 feet MSL.

2. Establish within the Grand Canyon Special Flight Rules Area three types of zones:

a. *Below Rim Level Zone.* Aircraft flight would be prohibited below the rim of the canyon with limited exceptions for NPS administrative flights; flights to Supai and Hualapai Indian reservations; and certain flights transporting persons to or from boat trips on the Colorado River. Rim level elevation of the Canyon will be considered as follows: (1) 6,000 feet MSL for the eastern section from Lees Ferry to Boundary Ridge, where the Grand Canyon visibly begins to widen; (2) 7,500 feet MSL from Boundary Ridge to Tuweep (outside the flight-free zones); (3) 6,500 feet MSL from Tuweep to Diamond Creek; and (4) 5,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

b. *Flight-free Zones.* Flight would be prohibited, with the exception of the categories of flights excepted from flight below the rim, in 4 large areas together encompassing 530,000 acres or 44 percent of the total park area. The areas are set forth in detail in Notice 88-3 issued by the FAA on February 29.

c. *Above Rim Level Zone.* Flight above rim level and outside of flight-free zones, to 14,500' MSL, would be subject to special route and altitude regulations for separation of aircraft. In some cases, the space between flight-free zones is limited to 2-mile wide corridors in which any air tours and transient general aviation operations would be confined.

3. Retain the existing prohibition on operation of aircraft within 500 feet of any terrain or structure within the canyon.

4. Consider adoption of the "hemispherical rule" (§ 91.109), which specifies different altitudes for eastbound and westbound aircraft, for aircraft operation outside of the flight-free zones.

5. Modify or eliminate low-altitude Federal airways V-257, V-293, and V-210 to avoid the flight-free zones and preferably the entire Special Flight Rules Area. On a temporary basis while the matter is being studied, NPS recommended that V-257 and V-293 be relocated to travel between the Page VOR and the Tube City VOR, and that V-210 be moved 5 miles south of its present location in the vicinity of the Park.

Exceptions to the restrictions contained in the recommendations would be allowed only in an emergency, in the case of inclement weather, or if otherwise necessary for safety of flight. The Manager of the FAA Las Vegas Flight Standards District Office (FSDO) and the Superintendent, GCNP will jointly develop procedures to address these exceptions.

DOI also recommended that the FAA undertake several items that would not require rulemaking action at the present time. The action which the FAA will take in response to those recommendations is discussed in Notice 88-3.

Notice of Proposed Rulemaking 88-3

In order to provide public notice of and opportunity for comment on the DOI recommendations, as those recommendations would be implemented by FAA regulation, the FAA issued Notice of Proposed Rulemaking 88-3 on February 29, 1988 (53 FR 7066; March 4, 1988). The FAA proposal substantially accepted the area boundaries, altitudes, and flight restrictions contained in the DOI recommendations.

However, the FAA's preliminary review identified certain aspects of the recommended plan which could have safety ramifications for aircraft operations. The proposal described the safety concerns and requested public comment on potential safety problems. The notice contained a proposed rule which differed from the DOI recommendations in some respects, notably the number and configuration of flight corridors, as a proposed means of resolving the safety problems discussed. Comments were requested on all aspects of the DOI recommendations and the FAA proposal.

FAA Finding of Adverse Impact on Safety. On March 30, the FAA issued a formal finding that certain elements of the recommendations submitted by DOI, if adopted as received, would have an adverse impact on aviation safety. The FAA noted that the findings involved only a relatively small portion of the total recommendations made by DOI and that the FAA had accepted the DOI plan substantially as received.

A copy of the March 30 finding has been placed in the public docket. The FAA's safety concerns were summarized in the finding as follows:

1. A single, 2-mile-wide corridor ("Dragon corridor") is provided for southbound routing of all "circle" tours operating from Grand Canyon Airport and for a large number of tour flights operating from Las Vegas. DOI assumed, and the FAA agrees, that under the DOI plan the Grand Canyon Airport local tours would operate in a counter-clockwise direction, proceeding north through the Zuni Point Corridor, west across the Kaibab Plateau, and south through the Dragon corridor. Tours from Las Vegas would continue to cross Havasu Canyon and would then either proceed directly to Grand Canyon Airport or would turn northeast through the Fossil Canyon Corridor and south through the Dragon corridor. As a result, westbound circle tour traffic would meet a large proportion of eastbound Las Vegas traffic at the north end of the Dragon corridor. Opposite-direction flights would be turning into the same narrow strip of airspace. The direction of the turn would make observation of other aircraft difficult for pilots while in the turn, particularly from low-wing aircraft.

2. As a result of the reliance on the Dragon corridor and the configuration of that corridor, traffic exiting the corridor (near Cocopa Point) would merge with the Las Vegas traffic proceeding direct to Grand Canyon Airport from Havasu Canyon. These two streams of traffic include the large majority of arrivals at the Grand Canyon Airport, so the potential for traffic conflict in this area is significant.

3. The recommended plan eliminates the current route for straight-in approaches to Grand Canyon Airport Runway 21 from the northeast. As a result, more than 90 percent of arriving traffic would arrive at the edge of the airport traffic area in the same general location, with limited opportunity for altitude separation. (Terrain is approximately 7,000 feet MSL and air tour operations are limited to 10,000 feet MSL and below by passenger oxygen requirements.) This area is bounded on the north by the Bright Angel Flight Free Zone and, for practical purposes, is limited on the south by southwest departures during the typical Runway 21 operation. The funneling of arriving traffic (as many as 80 aircraft per hour in peak periods) into the same airspace west of the airport traffic not only would concentrate this traffic in a see-and-avoid environment but also would present the Grand Canyon Airport Air Traffic Control Tower with a problem in handling these arrivals.

4. The 2-mile width of the Zuni Point and Dragon corridors limits the room for separation of aircraft using those corridors. While not strictly a safety issue, navigation within the narrow corridors by transient pilots may not be practically attainable given the limited visual landmarks and lack of electronic navigation aids in certain areas of the canyon.

5. The Thunder River/Toroweap Flight-Free Zone has the effect of diverting north- and southbound traffic around the east or west ends of the zone. In the east, these flights would conflict with Las Vegas tour traffic using the western corridor northbound. On the west, the north/south traffic would conflict with operations into and out of Tuweep and Whitmore Airports. The fact that the frequency of the affected north/south flights may not be high does not diminish the importance of resolving the potential conflict.

6. The specification of a 7,500-foot MSL minimum flight attitude from Toroweap to Supai Point eliminates an additional flight stratum, from 6,500 feet MSL to 7,500 feet MSL, which would otherwise be available in this area. This airspace could be used to route flights to and from the Indian reservations, including river runner pickup operations, at an altitude different than that used by tour operations.

7. Application of the special rules to IFR operations, and relocation of the

three affected Federal airways, would impact IFR access to Grand Canyon Airport and IFR transient traffic. It cannot be determined whether a satisfactory alternate route structure can be developed until potential routings off other VOR stations in the area have been planned and flight-checked.

For each of the above issues, possible solutions to the problem identified that did not involve modification of the recommended plan were found to be either not feasible or to present a different safety impact. Accordingly, some revision of the recommended measures was determined to be necessary to resolve these issues.

FAA-Department of Interior Consultation. In addition to continuing informal contacts, representatives of the FAA and the National Park Service met on April 27 to discuss the elements of a final rule. The regulation adopted by the FAA reflects the agreements reached at that meeting. On May 17, the Office of the Secretary of the Interior sent a letter to the FAA Administrator outlining DOI's understanding of the agreement, and noting that only one area of difference remained—the use of the Tuckup Corridor by commercial air tour operations. The final rule adopted establishes the Tuckup Corridor, but, as explained more fully below, the FAA will not authorize air tour routes through that corridor. Accordingly, the FAA and DOI are in agreement on the content of the final regulation adopted.

Comments on Notice 88-3. More than 100 comments were received on the NPRM. Comments received for a brief period after the comment period closing date of March 25, as well as those received during the comment period, were considered in the adoption of this rule.

Most comments expresses either an interest in reducing aircraft noise at the Grand Canyon National Park or an interest in avoiding unnecessary flight restrictions for aircraft operations. The comments are discussed below by general issue.

I. *Compliance with Pub. L. 100-91.* Many commenters stated that the FAA proposal was inconsistent with the purposes of Pub. L. 100-91, in that it reduced the area of flight-free zones and, consequently, the size of the area in which the "natural quiet" of the canyon would be restored. Some of these commenters were critical of DOI, for making any accommodation for aircraft overflight of the canyon, and requested that all flights over the Grand Canyon be banned.

The FAA agrees that the intent of Pub. L. 100-91 can be considered the creation of flight-free areas to make large areas of the Grand Canyon National Park substantially free of aircraft noise. The rule adopted achieves this purpose. However, it was not the intent of the legislation to ban aircraft from overflying the Grand Canyon. In this regard, the FAA believes that viewing of the canyon from the air is a legitimate and valuable means of appreciating the beauty of the Grand Canyon. This policy is supported by the legislative history of Pub. L. 100-91 and the objectives stated by DOI in its December recommendations to the FAA. The agency further believes that the resources of the canyon can be protected without an exclusion of aircraft, which would have a major adverse impact on air travel through this area of the southwest. It is the intent of the rule adopted to permit the continuation of aerial viewing of the canyon, and air travel through the area, in a manner consistent with the stated purposes of section 3 of Pub. L. 100-91 to substantially restore the natural quiet of the Grand Canyon within the boundaries of the national park.

II. *General configuration of the Special Flight Rules Area (SFRA).* Few comments objected to the area boundaries recommended by the DOI or those proposed by the FAA, which were identical in most respects. Several commenters objected to the FAA proposal to establish the northern boundary of the SFRA at the Grand Canyon National Park boundary. DOI recommended a boundary further to the north, which included lands outside of the park and well north of the canyon's north rim. Other commenters supported the FAA boundary, to minimize the restriction on flights through the area.

Because the Forest Service and the Bureau of Land Management have not objected to the recommended boundary, with suitable provisions for access, the FAA has adopted the northern boundary as recommended.

Several commenters objected to the inclusion of a large area around Marble Canyon, in the northeast part of the Grand Canyon National Park. Objections were that the area unnecessarily restricted flight operations in the area, particularly in and out of Marble Canyon and Cliff Dwellers Lodge Airports, even though there are no identified aircraft noise problems or complaints in this area. The FAA believes that the SFRA must extend to the northern limit of the Grand Canyon National Park as recommended. However, the FAA agrees that the width of the area originally recommended by DOI, which extends the SFRA beyond the boundaries of the canyon proper or the National Park, should be reduced to facilitate aerial access to the two airports and transit through the area. This action will have no effect on the prohibition of low-altitude flight above the canyon and no impact on noise-sensitive areas.

Several commenters objected to the general ceiling of 14,499 feet MSL, proposed by the FAA to coincide with the top of the flight-free zones recommended by DOI. Because flight is prohibited to that altitude only within the flight-free zones, this subject is discussed in more detail below in connection with those zones. Alternate altitudes suggested were 9,500 feet MSL and 11,500 feet MSL. The FAA continues to believe that while flight through the SFRA should be permitted (outside of the flight-free zones and above the minimum flight levels), general rules for the transit of air tour and transient aircraft through this airspace should be provided by special rule. Accordingly, the ceiling of 14,499 feet MSL proposed in the NPRM is adopted, to provide a uniform ceiling to the entire area and to designate an area in which special operating rules will apply.

III. *Flight-free zones.* A large number of commenters favored the flight-free zones recommended by DOI, and a small number requested larger zones to further restrict aircraft flight. A common comment was that the zones, in order to be effective in providing noise-free areas within the canyon, must be large. The flight corridors proposed by the FAA, it was argued, resulted in a large number of smaller zones that did not provide central noise-free areas, since no part of the canyon was far from aircraft flight paths. Specific comments on the flight-free zones primarily related to the flight corridors between them, which are discussed below. One commenter requested elimination of the Shinumo Flight-Free Zone altogether, because the zone substantially restricts aviation in that area with little environmental benefit, in consideration of the small number of persons that use the area.

It is the FAA's intent to adopt the DOI flight-free zones as recommended, subject only to adjustment of the adjacent flight corridors as necessary to assure safe aircraft operations. In the rule adopted, the flight-free zones are substantially identical to those recommended by DOI, and the flight corridors proposed by the FAA have been eliminated and/or modified to achieve large flight-free zones. In the case of the Toroweap/Thunder River Flight-Free Zone, an area 1½ miles in radius has been extended around the south side of Tuweep Overlook to provide a noise buffer to that point.

Flight-free zones: ceiling. FAA proposed the altitude recommended by DOI for the ceiling of the flight-free zones—14,499 feet MSL—specifying a limit one foot lower than 14,500 feet in order to permit use of that altitude. Some aviation commenter objected to the altitude as too high for safe operation and discriminatory toward general aviation operators, and suggested alternatives of 9,500 feet MSL and 11,500 feet MSL.

The FAA does not agree that the 14,499-foot altitude itself will result in unsafe operation. The altitude is simply too high for the performance and oxygen equipment of a large percentage of general aviation aircraft. Rather than encourage marginal operations over the top of the flight-free zones, therefore, the ceiling will, as DOI intended, require these aircraft to deviate around the zones. While potentially burdensome, particularly for transient general aviation operations, this requirement is not inherently unsafe and has been adopted.

In areas of the SFRA outside of the flight-free zones, the minimum altitudes range from 5,050 feet MSL to 10,000 feet MSL to permit transient operation through the area at altitudes separated from congested commercial tour routes.

IV. *Flight corridors.* The five 4-mile-wide flight corridors proposed by the FAA were addressed in virtually all of the comments received. Many commenters supported the three 2-mile-wide corridors recommended by DOI, and objected to the additional and wider corridors proposed by the FAA. Most of the comments on the FAA corridors were directed toward the "Shoshone Point Corridor" extending northeast from Grand Canyon Airport across the canyon. Several commenters suggested that alignment with VOR radials was not necessarily a benefit, since VOR signals often cannot be received at lower altitudes near the canyon due to terrain and distance from the stations. The FAA agrees and has reconfigured the corridors to rely on prominent terrain features as well as VOR signals, where possible.

Shoshone Point Corridor. Many commenters vehemently objected to the Shoshone Point Corridor because it crossed the canyon south rim near noise-sensitive overlooks, and because it passed over the canyon near popular trails used by a large number of Park visitors. The proposed corridor was in the center of the large Bright Angel Flight-Free Zone recommended by DOI, and would have diminished the noise benefits to be realized from that zone.

Pilots, aircraft operators and aviation organizations supported the purpose of the Shoshone Point Corridor—to relieve traffic conflicts at the north and south ends of the Dragon Corridor and to prevent an unacceptable concentration of arriving traffic at the western edge of the Grand Canyon Airport Traffic Area. Some of these commenters supported the Shoshone Point Corridor either without restriction, or with limitations to mitigate noise impact, including a limitation to one-way traffic descending for arrival at the airport from a relatively high altitude at low power settings.

Others commented that while there was a need to resolve the identified traffic conflicts to the west, the proposed Shoshone Point Corridor was simply too close to an environmentally sensitive area. One suggested alternative was a corridor that crossed Shoshone Point but extended much further to the east, to avoid the Bright Angel Trail and Phantom Ranch areas. This alternative is operationally feasible but was still objectionable to DOI because there would continue to be aircraft overflight of the central canyon area. Another alternative suggested was for aircraft proceeding southbound through the Dragon corridor to turn toward the airport after crossing the Colorado River. In conjunction with a widening of the north end of the Dragon Corridor, this would contribute to resolution of the conflicts identified by the FAA.

The rule adopted does not include the Shoshone Point Corridor. The FAA believes that, while the Shoshone Point Corridor was an ideal operational solution to certain safety problems with the DOI recommendations (in the Dragon Corridor and the approach to the airport traffic area), those problems can be resolved by alternate means. The alternate measures include a reconfiguration of the Dragon Corridor and special air traffic control procedures for arrivals and departures at Grand Canyon Airport. If at any time in the future it becomes apparent to the FAA that the alternate measures are insufficient to assure safety, the FAA would consider the option of approving airport approaches from the northeast over Shoshone Point until a new procedure could be developed.

Zuni Point Corridor. The FAA proposal placed a flight corridor between the Desert View and Bright Angel Flight Free Zones, as recommended by DOI, but modified the corridor by describing it in terms of VOR radials and DME arcs off the Grand Canyon VOR. Comments favored the simpler and more direct corridor recommended by DOI, and that version has been adopted in the final rule.

Dragon Corridor. Most of the aviation commenters had some comment on the Dragon Corridor ("Cocopa Point Corridor" in the NPRM). A number of commenters supported the FAA concern with conflicting traffic at the north end of the corridor, where eastbound and westbound traffic would meet head on while turning south into the 2-mile wide corridor, and at the south end of the corridor, where traffic exiting the corridor met flights inbound from Supai Point Grand Canyon Airport. Commenters suggested several solutions to the problems identified, including use of the Shoshone Point Corridor; widening the north end of the Dragon Corridor; widening the entire Dragon Corridor; and routing traffic southbound in the Dragon Corridor direct to the Grand Canyon Airport after crossing the Colorado River. Some non-aviation commenters stated that any safety problems could be resolved within the configuration recommended by DOI, and that no changes to the corridor should be made.

The FAA believes that traffic can be accommodated in the general routing plan recommended by DOI, with modifications to the Dragon Corridor as recommended. First, the northern entry to the corridor will be centered on the Dragon rock formation. Both eastbound and westbound aircraft will be required to turn before reaching the Dragon, assuring that opposing direction flights will remain separated throughout the turn into the corridor. Tour operators are required to announce reaching the Dragon on a common radio frequency, so pilots will be aware of other flights in the corridor at the same altitude. Fixed-wing air tour flights will be limited to one-way southbound operations, and transient traffic will be limited to altitudes of 10,500 feet MSL or higher. Helicopter operations will be able to operate in 2-way traffic at a different altitude from any fixed-wing traffic.

Aviation commenters also supported the FAA's concern that exit from the south end of the corridor presented two related problems—the mixing of corridor traffic with other traffic arriving from Las Vegas, and the concentration of virtually all traffic arriving at Grand Canyon Airport at the same general location on the west side of the airport traffic area. Of the alternatives suggested, the FAA believes that with the elimination of the Shoshone Point Corridor, the only practical solution is to route traffic southbound in the Dragon Corridor direct to the Grand Canyon Airport from the Colorado River.

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effectively adding a small area to the corridor across the south canyon rim near Hermit's Rest (rather than Cocopa Point).

While this will result in an increase in aircraft noise in that area, there is a net benefit to the Park from the elimination of the Shoshone Point Corridor and the creation of a large Bright Angel Flight-Free Zone as recommended. Also, FAA will establish a dual procedure for air tour aircraft southbound in the Dragon Corridor. All arriving aircraft will contact the Grand Canyon Airport Tower as they cross the Colorado River. If traffic is light, the aircraft will be directed to continue in the corridor across Cocopa Point. If traffic is congested, the aircraft will be directed to proceed over the Hermit's Rest exist for a north base entry to the airport. Finally, because helicopters would operate between the airport and the south rim at an altitude below arriving fixed-wing traffic, helicopter operators could exist the Dragon Corridor at Cocopa Point and would not be permitted to proceed across Hermit's Rest. Therefore, operations in the Hermit's Rest area will be limited to the minimum number necessary for safe operation.

One commenter requested that the Dragon Corridor be configured so as to provide the maximum protection for Point Sublime, on the north Canyon rim. The FAA and DOI have agreed on a new configuration of the Dragon Corridor that serves the aviation objectives described above, but which prevents aircraft from approaching closer than one mile to Point Sublime.

Finally, the Dragon Corridor will consist of two levels. A 2-mile-wide corridor centered on the Dragon at the north end and Cocopa Point at the south end, with the cutoff over Hermit's Rest, will be established from 7,500 feet MSL to 10,499 feet MSL for tour routes. A 4-mile-wide corridor centered on the Page VOR 205° radial will be established from 10,500 feet MSL to 14,499 feet MSL for transient operations. The distinct corridors permit precise navigation by tour operators based on prominent geographical features, with which they are familiar, and permit navigation by VOR by transient pilots who would not always be familiar with terrain features.

Fossil Canyon Corridor. DOI recommended, and the FAA proposed, the "Fossil Canyon Corridor" between Fossil Canyon and Timp Point near Steamboat Mountain. A few commenters suggested the corridor was unnecessary. However, the majority of commenters supported the corridor either because it was part of the DOI proposal, or because it was necessary for certain tour routes from Las Vegas. The final rule adopts this corridor as recommended by DOI.

Tuckup Canyon Corridor. The additional corridor through the Thunder River/Toroweap Flight-Free Zone proposed in the NPRM was opposed by commenters who supported the DOI recommendations. Aviation comments tended to be divided according to interest in north-south operations in this area. General aviation pilots and at least one tour operator expressed the need for a route through the area, while tour operators who would not personally use such a route commented that it was unnecessary. Information developed at the public hearings and submitted in the docket also indicated that the area is used by only a very few persons on an annual basis.

The FAA continues to believe there is a safety interest in routing north-south traffic directly through this area, to keep this traffic clear of activity around Toroweap Airport and the narrow northern end of the Fossil Canyon Corridor. The FAA agrees with comments that the corridor should be aligned on a north-south direction, to minimize the area affected and to avoid the Tuckup Canyon and Kanab Creek areas, which are used on occasion by back country hikers. Accordingly, the Tuckup Corridor is adopted in a configuration which involves less area and which avoids noise-sensitive areas to the extent possible.

DOI, while agreeing that a corridor would improve safety for transient operations, opposed the use of the Tuckup Corridor for air tour flights. FAA believes that the transit of commercial air tour operations in the area can be safely accommodated by other measures, and will not authorize air tour routes through the corridor.

Width of the flight corridors. FAA proposed a corridor width of 4 miles, in contrast to the 2-mile width recommended by DOI. Many commenters objected to the wider corridors because of the corresponding reduction in the size of the flight-free zones, and the fact that aircraft would be somewhat closer to the noise sensitive areas that DOI was seeking to protect. One tour operator supported the 2-mile-wide corridors, but virtually all other aviation commenters supported a width of 4 miles, or in several cases 5 or 8 miles. Commenters acknowledged that air tour pilots familiar with the canyon would have no difficulty navigating a 2-mile corridor, but argued that clouds, turbulence, and other weather conditions made it a practical necessity to have room to maneuver. Commenters representing transient pilot operations favored 4-mile or wider corridors because of the difficulty of locating a 2-mile-wide corridor over the canyon terrain.

Because air tour operations can normally be navigated within a 2-mile-wide corridor, the FAA is adopting corridors that will be 2 miles wide from the floor to 10,500 feet MSL and 4 miles wide from 10,500 feet MSL to 14,499 feet MSL. In general, 10,500 feet MSL is the lowest altitude that may be used by transient operations in the corridors and 9,500 feet MSL is the highest used by air tour operators. Air tour operators will be authorized to deviate from their routes if necessary to maintain safety of flight, but in general must operate within the 2-mile corridors.

The flight corridors will be charted as 4 miles wide with a floor of 10,500 feet MSL, since the charts are intended for the use of transient and general aviation operations. The 2-mile-wide corridors at lower altitudes will be included in tour operator operations specifications but will not otherwise be charted.

V. *Minimum flight altitudes.* A number of comments were received on DOI's and FAA's respective designations of rim level elevations in various sections of the Grand Canyon. In the NPRM, the FAA found that the rim level was slightly lower than the DOI recommended figures in 3 of the 4 sectors of the canyon. However, the DOI figures were adopted as minimum flight levels in all cases except between Toroweap and Supai Point, where the FAA level of 6,500 feet MSL was adopted in lieu of the DOI figure of 7,500 feet MSL.

A number of commenters objected to the FAA proposal for permitting flights below the canyon rim. Since the FAA proposal did not, in fact, propose to allow flights below the rim, the FAA assumes the commenters were reacting to some other party's characterization of the proposal and not to the FAA document itself.

Many commenters supported the higher DOI elevations, and two commenters requested levels higher than recommended by DOI in the Marble Canyon and west canyon areas. Aviation commenters supported the FAA rim level designations or, in some cases, altitudes lower than designated by the FAA, and requested that minimum flight altitudes be set at the designated rim level.

The FAA continues to believe that the rim level elevations proposed in the NPRM, with one change, are appropriate for aviation purposes. The exception is the area north of Boundary Ridge, where DOI found the rim level to be 6,000 feet MSL and FAA found it to be 5,500 feet MSL. One commenter noted, correctly, that the terrain slopes downward to the north along Marble Canyon, and that the area is more appropriately divided into two zones—6,000 feet MSL from Boundary Ridge to North Canyon; and 5,000 feet MSL from North Canyon to Lees Ferry. The FAA agrees with the comment, and the rim level determination is revised accordingly.

The higher altitudes recommended by DOI are adopted as minimum flight altitudes, without regard to rim elevation, with two exceptions. First, as proposed in the NPRM, the minimum flight altitude between Toroweap and Supai Point is 6,500 feet MSL rather than the 7,500 feet MSL recommended by DOI. This is in recognition of the lower terrain elevation in this area and the need for additional flight stratum to safely accommodate air tour, transient, and river runner pickup operations that occur in this part of the canyon.

Second, a minimum flight altitude of 5,000 feet MSL is established for the area between North Canyon and Lees Ferry. Rim level elevation in this area varies from approximately 3,500 feet MSL to 5,000 feet MSL, and a minimum flight altitude higher than 5,000 feet MSL would interfere with safe access to Cliff Dwellers Lodge and Marble Canyon Airports. As it is, special procedures will be necessary to permit operations below "rim" level to land and take off at these airports. The minimum flight altitude of 6,000 feet MSL between Boundary Ridge and North Canyon is adopted as recommended.

VI. *Flight restrictions: general.* In general, commenters supported the restrictions recommended by DOI and proposed by the FAA—basically, no flights below minimum flight levels or within the flight-free zones except for certain operations necessary for emergency services, park maintenance, and access to Indian reservation lands. The FAA is adopting the general restrictions as proposed in the NPRM, with certain exceptions based on requests that specific provisions apply in certain circumstances or certain areas of the SFRA.

Helicopters. Helicopter operators and pilots commenting on the proposal made a number of requests for special provisions in the rule or associated procedures, including a revised Shoshone Point Corridor to the east of the corridor proposed by the FAA; 2-way traffic in flight corridors at the same altitude for helicopters; and designation of the lowest available altitudes for helicopters. As discussed above under "Flight Corridors," a Shoshone Point Corridor was rejected in favor of revisions to the Dragon Corridor and special procedures in the Grand Canyon Airport traffic area.

Two-way traffic at the same altitude is generally not permitted under the procedures adopted, in consideration of the general value of separating opposite-direction traffic and the narrowness of the corridors recommended by DOI. However, there is a safety benefit for helicopters, in that this procedure permits them to cross the canyon and return to the south rim without the necessity of crossing the north rim. The high terrain of the north rim presents an obstacle, particularly to aircraft whose performance begins to degrade at that altitude, and this procedure avoids one-way traffic toward the north rim at low altitude. The adopted procedure also will permit helicopter air tour operators to use a discrete altitude during all phases of flight on operations from Tusuyan, thereby avoiding potential conflict with fixed-wing traffic.

Accordingly, the FAA will specify 2-way same-altitude traffic only for helicopter air tour operations and only for operations to, from, and in the Dragon Corridor and Zuni Point Corridor. This procedure may be conducted safely due to the low airspeed and high visibility of helicopters, and due to the fact that the procedure will be authorized for only 2 commercial operators (at present) whose pilots are experienced with the operation and are in continuous communication on a common radio frequency.

The lowest available flight altitude in the part of the canyon traversed by the Dragon Corridor is 7,500 feet MSL. Fixed-wing tour flights will be entering the corridor only from the north, over the north canyon rim, and, therefore, will be at altitudes of at least 8,500 feet MSL. Accordingly, the altitude of 7,500 feet MSL is available for helicopter tours in the Dragon Corridor. It should be noted that this procedure will contain helicopter tours totally within an area and at an altitude specified for air tours in the original DOI recommendations.

Winter operations in the vicinity of the north rim. The Bright Angel Flight-Free Zone recommended by DOI, and adopted by the FAA, requires flights that now operate over the canyon to operate over the high terrain of the canyon's north rim area. Both fixed-wing and helicopter operators noted that clouds and low visibility above the north rim in the winter season make winter operation above that area undesirable. These operators urged that the FAA adopt a winter procedure permitting tour flights to operate at the same altitudes but slightly south of the north rim over the canyon, to avoid the terrain in low-visibility conditions. The commenters noted that, at that time of year, the north rim is inaccessbile and the canyon floor is virtually unused; therefore, there is no noise impact of operations above the canyon for that limited time.

The National Park Service has noted that operations south of the north rim, over the canyon, would have a noise impact on the south rim, which is used throughout the year. Accordingly, NPS opposes the adjusted winter route through the canyon. Therefore, the FAA is not formally adopting a different procedure for winter tour operations. The FAA notes that the rule provides for deviations from the route, for purposes of safety, where unforeseen weather conditions prevent continued legal VFR operation on the approved route.

Provisions for general aviation/transient flights. Several general aviation commenters suggested that the plan recommended by DOI was discriminatory toward general aviation, because the 14,500-foot MSL ceiling of the flight-free zones effectively eliminated most general aviation aircraft from the area. The FAA agrees that that is the effect of the recommended ceiling. However, while the flight-free zones do interfere with flight through the area, the longer flight routes that result do not present a safety problem. Accordingly, the FAA has adopted the flight-free zones to the altitude recommended even though many aircraft will not be able to operate over the tops of the zones.

Several commenters requested that general aviation operators have access to the SFRA equivalent to that of commercial air tour operators, although not necessarily in the same airspace. Some tour operators specifically requested that general aviation and air tour flights be assigned separate altitudes and/or routings.

The final rule adopted provides a high degree of access for transient flight through the area, at altitudes that will keep transient and commercial tour operators in separate airspace. Within the flight-free zones, general aviation operations are subject to the same restrictions as commercial tour operations. Outside of the flight-free zones, the rule adopted provides separate altitudes for the use of commercial air tour aircraft and transient aircraft in the four flight corridors and in most other areas. The FAA estimates that approximately 85% of the flights throught the SFRA are commercial air tours, using specific procedures approved by the FAA Flight Standards District Office. Transient

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pilots cannot in all cases be expected to navigate the corridors with the precision of the air tour pilots, or to be as familiar with potential emergency landing sites. The FAA continues to believe, therefore, that assignment of the lower flight altitudes to the air tour operators and the next higher altitudes to transient operators is a fair and reasonable allocation of the limited airspace available.

Both air tour and transient flight altitudes have been adjusted upward as a result of the higher minimum flight altitudes recommended by DOI. The minimum altitudes that may be provided for tour operators in their operations specifications are as discussed above under "Minimum Flight Altitudes." Minimum altitudes for transient operations are 8,000 feet MSL west of Diamond Creek; 9,000 feet MSL from Diamond Creek to Supai Point; 10,000 feet MSL from Supai Point to Boundary Ridge; and the same as for tour operations from Boundary Ridge to Lees Ferry (6,000 feet MSL south of North Canyon and 5,000 feet MSL north of North Canyon). Minimum altitudes charted will be those applicable to transient operations.

Above these altitudes, and outside of corridors and flight-free zones, transient operations are not restricted to any particular route while in the SFRA. The FAA specifically requests comments on whether the rules adopted provide sufficient access through the area for transient operators, and at the same time provide sufficient separation of transient and air tour operations.

Flights to and over areas outside the Grand Canyon National Park. DOI recommended a SFRA similar to that in effect under SFAR 50–1, which includes areas outside of the National Park boundaries. Comments were received from the two Indian tribes whose reservations are partly within the SFRA, and from the Bureau of Land Management (BLM) of the Department of the Interior, which administers land north of the Grand Canyon. Legal counsel for the Havasupai Tribe objected to the routing of tour flights over the reservation that results from the prohibition of flights over the Park. The tribe requested continued air access to the reservation for limited purposes within the control of the tribe.

The Truxton Canyon Agency of the Bureau of Indian Affairs, on behalf of the Hualapai Indian Tribe, objected to any limitation on flights above the Hualapai Reservation for purposes of the management objectives of the Grand Canyon National Park. The tribe requested unrestricted air access to the reservation for flights sanctioned by the tribe. BLM commented that inclusion of its lands within the SFRA, under the restrictions contained in the proposal, would adversely affect the ability of BLM and other affected Federal agencies to meet mandatory management responsibilities.

With respect to tour routes over the Havasupai Reservation, the FAA does not anticipate that tour routes under the rule adopted will be significantly different from those currently in use over the reservation area. However, the FAA invites tribal representatives to contact the Flight Standards District Office to provide information on areas of the reservation in which the tribe objects to overflights. To the extent practically consistent with safety, these preferences will be incorporated in the tour routes specified in the operators' operations specifications.

On the issue of aerial access to lands within the SFRA, it is the intent of the FAA to ensure access to lands outside of the Grand Canyon National Park at the discretion of the landowner or responsible land administration agency. Aircraft operated by or under contract to the tribe or agency will have access to all points within the affected lands, under an authorization issued by the Flight Standards District Office. The authorization would normally specify direct entry and exit routes and would limit flights within flight-free zones to those necessary. Agencies such as BLM and the U.S. Forest Service, with aerial surveillance responsibilities, would be authorized for general unrestricted overflight by agency or contractor aircraft.

Limitation on the number of tour flights. Several commenters suggested that FAA limit the number of flights in the vicinity of the Park, either as a means of reducing aircraft noise or as a solution to the safety problems discussed in the NPRM. DOI did not include a recommendation to limit or reduce the number of flights, and the FAA does not find any independent justification for such a program, which would be difficult to administer. Also, a reduction in the number of flights (short of a total ban, which was not contemplated by Congress or DOI) is not an adequate solution to the safety problems identified.

Access to GCN. Several aviation commenters objected to any restriction on access to Grand Canyon National Park Airport. The Bright Angel Flight-Free Zone recommended by DOI creates a 7,000 foot barrier 5 miles north of the airport, from approximately the 300° radial on the northwest to the 070° radial on the northeast. The restriction on access to the airport from the north was intended by DOI, to provide noise mitigation to the south rim overlooks and the heavily used areas of the central canyon. To the extent the recommended restriction was an inconvenience for aircraft arriving from the north (or on air tours from the west), but not unsafe, Pub. L. 100–91 required that the recommendation be adopted without change.

The safety problem with the recommendation identified by the FAA was not with the existence of the flight-free zone itself, but rather with the side-effect of requiring all arriving traffic to approach the airport from the remaining unrestricted quadrants. In actuality, virtually all arriving traffic comes from Las Vegas or other points to the west. Deprived of the option of circling over the canyon and approaching the airport from the northeast, on a straight-in approach to Runway 21, these flights will enter the airport traffic area from the west side. The airspace used by these arrivals is limited on the north by the 300° radial, which defines the Bright Angel Flight-Free Zone, and on the south by the departure traffic taking off from Runway 21 (approximately the 210° radial). Usable altitudes are similarly limited by the high terrain.

The Shoshone Point Corridor proposed by the FAA in Notice 88–3 would be a simple and effective solution to this situation. However, in view of objections to the corridor by DOI and many public commenters, due to its potential noise impact on the central canyon area, the FAA has adopted an alternate solution. First, as discussed above, the Dragon Corridor will be reconfigured to bring fixed-wing tour aircraft into the airport traffic area over the Hermits Rest area.

Second, special procedures will be applied for commercial operators approaching the Grand Canyon Airport. Each commercial operator authorized to conduct air tours in the SFRA will be required to enter into a letter of agreement with the Grand Canyon Air Traffic Control Tower for arrival and departure procedures. The operator's operations specifications will incorporate this requirement and incorporate the resulting agreement by reference. The procedures thus established will not be burdensome for operators, but will ensure that: (i) Arriving flights contact the tower in advance of arriving at the airport traffic area, for sequencing; (ii) arriving flights will be distributed in a pattern that permits efficient handling by the tower; and (iii) there is no conflict between arrival and departure patterns.

Because transient operations are a relatively small portion of total Grand Canyon Airport operations, no special procedures will be established for transient arrivals at this time. However, if the need arises, the FAA may establish such procedures in the future.

Airways/IFR. In the NPRM, the FAA Proposed to apply the recommended restrictions to Instrument Flight Rules (IFR) operations, but deferred a decision on the relocation of Federal Airways that currently cross the Grand Canyon. Many commenters supported the DOI recommendations and urged that the airways be moved. Aviation commenters generally requested that the airways be retained and that IFR operations not be affected by new rules. Some of these commenters felt strongly that surface exposure to aircraft noise (at altitudes of more than 9,000 feet MSL or 7,000 feet above the surface) did not justify elimination of IFR operations through the area.

DOI has affirmed its interest in relocation of the airways to avoid overflight of certain areas of the Grand Canyon National Park. The FAA is not rejecting the recommendation, but is unable to alter the airway structure within the time frame required for this rulemaking by Pub. L. 100–91. In order to revise the airway structure as requested, the FAA will need to determine whether alternate airways can meet IFR traffic needs in this area. If not, relocation of the airways would require that FAA develop and flight-check alternate routes off existing VOR stations and/or establish one or more additional VOR stations to support new airways.

Not all routes between facilities in this area are available, because terrain and magnetic disturbances render signals unusable. Accordingly, the FAA is unable to determine the feasibility of relocating all airways as requested. At this time, however, the FAA intends to begin processing three new airways: (i) Between the Page VOR and Tuba City VOR, to provide a low-altitude alternate to Airway V–293 that does not pass through the SFRA; (ii) between Tuba City VOR and Grand Canyon VOR with a slight dogleg to the south to avoid the Desert View Flight-Free Zone; and (iii) between Peach Springs VOR and St. George VOR.

In the interim, the FAA has adopted a regulation that is applicable to IFR operations, with an exception for pilots who are complying with ATC instructions. This provision is intended primarily to permit the descent through 14,500 feet MSL by aircraft approaching Las Vegas, and under the control of Las Vegas Approach Control. Descents would normally not be below 14,500 feet until west of Rent Intersection.

The rule would require transient IFR operations using one of the 3 airways through the area to remain at altitudes of 14,500 feet MSL or higher. Aircraft unable to use these altitudes would be required to file for a different route to avoid the SFRA. The effective date of the applicability of the rule to IFR operations will be March 19, 1989, to permit time for the alternate airways to be established. The delayed effective date will have little environmental impact because of the small number of transient low-altitude IFR operations through the area in the winter months.

Military operations. The Department of the Air Force, through the Representative to the FAA Western Pacific Region, concurred with the general purpose and concept of the DOI recommendations, but noted specific problems for the Air Force that would result. Specifically, the SFRA and flight-free zones would prohibit or require modification of several low-level military training routes through the area. These routes generally pass along the edge of the canyon area and not over central or especially noise-sensitive locations. The Air Force requested an exemption or waiver of the rules to permit some degree of military training on or near existing routes.

It is FAA's understanding that DOI is in agreement that some level of military training on the periphery of the regulated area is highly important to the military and will have no significant effect on noise levels in the Park. Accordingly, the FAA is in the process of discussions with DOI and the Air Force on the Air Force's request.

Weather deviations. Several commenters, including both helicopter and fixed-wing aircraft operators, noted the special problems with operating an aircraft in the canyon area presented by weather conditions characteristic of the area. Examples cited were strong gusty winds and thermals; thunderstorms and rain squalls; and in winter, snow squalls and low visibility. In the absence of flight restrictions, pilots have the flexibility to maneuver to avoid unforeseen conditions. SFAR 50–1 substantially retained this flexibility by permitting flight on an east-west route above the central canyon area. The restrictions recommended by DOI, by eliminating the east-west route and requiring most flights to cross the north rim, and by restricting flights to 2-mile-wide flight corridors, greatly reduce the ability of pilots to avoid weather conditions.

The FAA has essentially adopted the configuration of the flight-free zones and flight corridors recommended by DOI, and there will be no east-west flight route over the canyon area below 14,500 feet MSL. The rule maintains safety in two ways. First, helicopter air tours will be permitted to reverse direction in the Dragon Corridor and return to the south rim at the same altitude, avoiding the necessity of climbing over the north rim. Second, the rule provides that pilots may deviate from course to maintain safety of flight in the avoidance of other aircraft or unsafe weather conditions.

VII. *Public process.* Several commenters objected to the relatively brief comment period (24 days) and to the issuance of the notice only one day prior to the hearings. The expedited rulemaking timetable in this case was necessitated by the relatively brief time period provided by Pub. L. 100–91. Notice of the public meetings was provided by publication in the Federal Register, on February 8, as early as the reservation of facilities could be confirmed. Also, the comment period was open as long as possible before the next agency action was required under Pub. L. 100–91, on March 28.

VIII. *Effective date.* Several commenters requested that the effective date of the final rule be delayed until September or October 1988, to avoid a substantial change in the tour routes and procedures in the middle of the busy summer season.

The FAA agrees that a changeover in the tour routes and transient procedures in the summer would not be consistent with safety. Also, the next sectional aeronautical chart that includes the Grand Canyon area will not be published until late September, so it would not be feasible to provide notice to transient pilots of the new procedures before that time. It would be unacceptable from a safety standpoint to implement a substantial change in flight procedures before the new procedures could be shown on charts.

Finally, the implementation of certain aspects of the regulation adopted will require additional time. Each of the tour operators will need to submit to the Flight Standards District Office its proposed tour routes under the new rules. The FSDO must then reconcile the routes and, in coordination with the operators, determine the final tour routes that will be specified in each operator's operations specifications. Also, each of the major tour operators will be required to enter into a letter of agreement with the Grand Canyon Airport Control Tower. Development of the letters of agreement cannot be made

final until operators are relatively certain of the details of their respective tour routes. Accordingly, both the PSDO and the air traffic personnel will benefit from the time to develop adequate procedures.

In consideration of the above, the FAA is making the regulation effective on September 22, 1988, coincident with publication of the sectional chart including the new regulations and procedures. As noted above, the effective date for applicability of the rule to IFR operations will be April 6, 1989.

The Special Federal Aviation Regulation

In consideration of the comments received in response to Notice 88-3, and after extensive consultation with the Office of the Secretary of the Interior in accordance with Section 3.(b)(2) of Pub. L. 100-91, the FAA is adopting an amendment to Special Federal Aviation Regulation (SFAR) 50-1 to implement recommendations submitted by the Department of the Interior pursuant to Section 3.(b)(1) of that law. To the extent the rule adopted varies from the DOI recommendations, the FAA has sought to develop alternative measures which are acceptable to DOI and which promote the purposes of Pub. L. 100-91. DOI has participated in this effort, and the final rule has received the general approval of the Office of the Secretary of the Interior. In summary, the amendments will do the following:

1. Raise the ceiling of the Grand Canyon National Park Special Flight Rules Area from 9,000 feet MSL to but not including 14,500 feet MSL. The restrictions that apply in the airspace will be essentially as requested by DOI.

2. Alter the boundaries of the existing Special Flight Rules Area to include the northeast extension of the canyon to Lees Ferry.

3. Prohibit operation by aircraft below certain minimum altitudes, with specific exceptions that provide for the limited exceptions contained in Pub. L. 100-91: (a) NPS administrative flights; (b) flights required for the transportation of persons and supplies to and from Supai Village and the lands of the Havasupai Indian Tribe of Arizona, and (c) flights that operate on a direct route between a point on the North Rim outside of the Park and locations on the Hualapai Indian Reservation (as designated by the tribe) and whose sole purpose is transporting individuals to or from boat trips on the Colorado River and any guide of such a trip.

Minimum allowable flight altitudes in each of 5 sectors of the canyon are (1) 5,000 feet MSL for the eastern section from Lees Ferry to North Canyon; (2) 6,000 feet MSL from the North Canyon to Boundary Ridge, where the Grand Canyon visibly begins to widen; (3) 7,500 feet MSL from Boundary Ridge to Supai Point (Yumitheska Point); (4) 6,500 feet MSL from Supai Point to Diamond Creek; and (5) 5,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

Higher minimum flight altitudes are specified for transient general aviation operations outside of flight-free zones and flight corridors between Grand Wash Cliffs to Boundary Ridge: (1) 10,000 feet MSL from Boundary Ridge to Supai Point (Yumitheska Point); (2) 9,000 feet MSL from Supai Point to Diamond Creek; and (3) 8,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

4. Prohibit operation in four "flight-free zones" unless necessary for the purposes enumerated in paragraph 3 above for flight altitudes. The flight-free zones are:

(a) *Desert View Flight Free-Zone.* An area around the Desert View Overlook. The area between the Desert View and Bright Angel/Shinumo Flight-Free Zones is designated the "Zuni Point Corridor."

(b) *Bright Angel Flight-Free Zone.* An area substantially identical to the Bright Angel Flight-Free Zone recommended by DOI.

(c) *Shinumo Flight-Free Zone.* An area substantially identical to the Shinumo Flight-Free Zone recommended by DOI. The Dragon Corridor would be in the same location as the central flight corridor recommended by DOI, but would be widened at the north end and would incorporate an additional routing from the Colorado River southeast over Hermits Rest.

(d) *Toroweap/Thunder River Flight Free Zone.* An area nearly identical to the Toroweap/Thunder River Flight-Free Zone recommended by DOI, except for an additional north-south flight corridor west of Havasu Canyon. ("Tuckup Canyon Corridor"). The flight corridor between the Bright Angel/Shinumo and Toroweap/Thunder River Flight-Free Zones ("Fossil Canyon Corridor") would be retained substantially as recommended by DOI.

A total of four corridors for aircraft flight above minimum flight altitudes are provided through or between the zones. The description of the zones in some cases has been modified to use aviation terminology and references to navigation aids, where possible. Except for the Tuckup Corridor west of Havasu Canyon, and the modifications to the Dragon Corridor, the boundaries and area coverage of the zones are essentially as recommended by DOI.

5. Specify routes and altitudes for operation in the four corridors between and through the flight-free zones and outside of the zones. The procedures replace the transient routes contained in SFAR 50-1.

6. Retain the existing prohibition on flight closer than 500 feet to any terrain or structure in the canyon, except when necessary or when specifically authorized for certain purposes.

7. Retain the existing requirement to monitor a common frequency in each sector of the canyon. The requirement for air tour operators and other specially authorized flights to make position reports is deleted from the rule as unnecessary, because it is included in the authorizations for these operators.

Comment Period

This action is a final rule. However, because the rule includes specific details that were discussed only by general subject in the notice, a comment period is being provided. Comments received will be used in any consideration of future changes to the rule. Comments on the rule are due by August 1, 1988. Comments may be sent to the address listed under "ADDRESSES" above.

Environmental Review

An environmental assessment of the rule adopted and a Finding of No Significant Impact have been placed in the rules docket. In summary, the assessment concluded that, as a result of the rule adopted, certain areas of the Grand Canyon will receive less aircraft noise than under existing regulations, and others, in particular the Hermits Rest area of the south canyon rim, would receive a slight increase in perceived aircraft noise. However, in consideration of the volume of traffic, the altitude of flight routes, and the noise characteristics of the aircraft typically used in canyon flights, the FAA has determined that no significant environmental impact will result from the new rules.

Economic Evaluation

The Department of the Interior, in developing the recommendations submitted under Pub. L. 100-91, prepared a cost-benefit analysis of the proposal. This analysis was submitted with the DOI recommendations on December 29 and has been included in the FAA public docket for this rulemaking. The DOI analysis concluded that, on balance, in view of the minimal cost expected to the air tour operators and the significant benefits to park resources and visitors, the rules recommended by DOI would be cost-beneficial.

FAA Evaluation

The FAA does not have quantitative information that would tend to either support or alter the conclusions of the DOI analysis. Several air tour operators commented that the DOI recommendations, if implemented, would have an adverse economic effect on their business.

The FAA may not consider economic impact in this rulemaking. Accordingly, comments on the economic impacts of the proposed regulation have been included in the docket but have not been addressed.

Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires agencies to identify rules that will have a significant economic impact on small entities, including small businesses. The annualized threshold of significant economic impact for a Part 135 air taxi with 9 or fewer aircraft is considered by the FAA to be $3,700 (in 1986 dollars). On information currently available, the FAA cannot certify that the proposed rule would not have a significant effect on a substantial number of small entities. However, the FAA has not conducted a regulatory flexibility analysis of the proposed rule because the provisions of Pub. L. 100-91 preclude the adoption of alternative measures.

For the reasons set forth above, the FAA has determined that this proposed amendment (1) is not a major rule under Executive Order 12291, and (2) is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Parts 91 and 135

Aircraft, Aviation safety, Air taxi and commercial operators, Grand Canyon.

The Proposed Special Federal Aviation Regulation

For the reasons set out above, the Federal Aviation Administration is amending 14 CFR Parts 91 and 135 as follows:

PARTS 91 AND 135—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421, 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

3. By redesignating Special Federal Aviation Regulation No. 50-1 as Special Aviation Regulation 50-2 and revising it to read as follows:

Special Federal Aviation Regulation No. 50-2

Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

Section 1. *Applicability.* This rule prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area:

That airspace extending upward from the surface up to but not including 14,500 feet MSL within an area bounded by a line beginning at lat. 36°09'30" N., long. 114°03'00" W.; northeast to lat. 36°14'00" N., long. 113°09'50" W.; thence northeast along the boundary of the Grand Canyon National Park to 36°22'55" N., long. 112°52'00" W.; to lat. 36°30'30" N., long. 112°36'15" W. to lat. 36°21'30" N., long. 112°00'00" W. to lat. 36°35'30" N., long. 111°53'10" W., to lat. 36°53'00" N., long. 111°36'45" W. to lat. 36°53'00" N., long. 111°33'00" W.; to lat. 36°19'00" N., long. 111°50'50" W.; to lat. 36°17'00" N., long. 111°42'00" W.; to lat. 35°59'30" N., long. 111°42'00" W.; to lat. 35°57'30" N., long. 112°03'55" W.; thence counterclockwise via the 5 statute mile radius of the Grand Canyon Airport airport reference point (lat. 35°57'09" N., long. 112°08'47" W.) to lat. 35°57'30" N., long. 112°14'00" W.; to lat. 35°57'30" N., long. 113°11'00" W.; to lat. 35°42'30" N., long. 113°11'00" W.; to lat. 35°36'30" N., long. 113°27'30" W.; thence counterclockwise via the 5 statute mile radius of the Peach Springs VORTAC to lat. 35°41'20" N., long. 113°36'00" W.; thence to the point of beginning.

Section 2. *Definitions.* For the purposes of this special regulation.

"Flight Standards District Office" means the FAA Flight Standards District Office with jurisdiction for the geographical area containing the Grand Canyon.

"Park" means the Grand Canyon National Park.

"Special Flight Rules Area" means the Grand Canyon National Park Special Flight Rules Area.

Section 3. *Aircraft operations: general.* Except in an emergency, no person may operate an aircraft in the Special Flight Rules Area under VFR on or after September 22, 1988, or under IFR on or after April 6, 1989, unless the operation—

(a) Is conducted in accordance with the following procedures:

Note: THE FOLLOWING PROCEDURES DO NOT RELIEVE THE PILOT FROM SEE-AND-AVOID RESPONSIBILITY OR COMPLIANCE WITH FAR 91.79.

(1) Unless necessary to maintain a safe distance from other aircraft or terrain—

(i) Remain clear of the areas described in Section 4; and

(ii) Remain at or above the following altitudes in each sector of the canyon:

Eastern section from Lees Ferry to North Canyon and North Canyon to Boundary Ridge: as prescribed in Section 5.

Boundary Ridge to Supai Point (Yumitheska Point): 10,000 feet MSL.

Supai Point to Diamond Creek: 9,000 feet MSL.

Western section from Diamond Creek to the Grand Wash Cliffs: 8,000 feet MSL.

(2) Proceed through the four flight corridors described in Section 4 at the following altitudes unless otherwise authorized in writing by the Flight Standards District Office:

Northbound

11,500 or
13,500 feet MSL

Southbound

10,500 or
12,500 feet MSL.

(b) Is authorized in writing by the Flight Standards District Office and is conducted in compliance with the conditions contained in that authorization. Normally authorization will be granted for operation in the areas described in Section 4 or below the altitudes listed in Section 5 only for operations of aircraft necessary for law enforcement, firefighting, emergency medical treatment/evacuation of persons in the vicinity of the Park; for support of Park maintenance or activities; or for aerial access to and maintenance of other property located within the Special Flight Rules Area. Authorization may be issued on a continuing basis.

(c) Is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operator's Part 135 operations specifications and approved by the Flight Standards District Office.

(d) Is a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center.

(e) Is conducted within 3 nautical miles of Whitmore Airstrip, Pearce Ferry Airstrip, North Rim Airstrip, Cliff Dwellers Airstrip, or

Marble Canyon Airstrip at an altitude less than 3,000 feet above airport elevation, for the purpose of landing at or taking off from that facility. *Or*

(f) Is conducted under and IFR clearance and the pilot is acting in accordance with ATC instructions. And IFR flight plan may not be filed on a route or at an altitude that would require operation in an area described in Section 4.

Section 4. *Flight-free zones.* Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft in the Special Flight Rules Area within the following areas:

(a) *Desert View Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 35°59'30" N., Long. 111°46'20" W. to 35°59'30" N., Long. 111°52'45" W.; to Lat. 36°04'50" N., Long. 111°52'00" W.; to Lat. 36°06'00" N., Long. 111°46'20" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 mile of the western boundary of the zone. The area between the Desert View and Bright Angel Flight-Free Zones is designated the "Zuni Point Corridor."

(b) *Bright Angel Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 35°59'30" N, Long. 111°55'30" W; to Lat. 35°59'30" N, Long. 112°04'00" W; thence counterclockwise via the 5-statute-mile radius of the Grand Canyon Airport point (Lat. 35°57'09" N., Long. 112°08'47" W.) to Lat. 36°01'30"N., Long. 112°11'00" W; to Lat. 36°06'15" N., Long. 112°12'50" W.; to Lat. 36°14'40" N., Long. 112°08'50" W.; to Lat. 36°14'40" N., Long. 111°57'30" W.; to Lat. 36°12'30" N., Long. 112°53'50" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 mile of the eastern boundary between the southern boundary and Lat. 36°04'50" N.; and not including the airspace at and above 10,500 feet MSL northwest of a line 1.4 nautical miles southeast of the centerline of the Page VOR 216° True radial. The area bounded by the Bright Angel and Shinumo Flight-Free Zones is designated the "Dragon Corridor."

(c) *Shinumo Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 36°04'00" N., Long. 112°16'40" W; northwest along the park boundary to a point at Lat. 36°11'45" N., Long. 112°32'15" W.; to Lat. 36°21'15" N, Long. 112°20'20" W.; east along the park boundary to Lat. 36°21'15" N., Long. 112°13'55" W.; to Lat. 36°14'40" N., Long. 112°11'25" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL southeast of a line 2.6 nautical miles northwest of the centerline of the Page VOR 216° True radial. The area between the Thunder River/Toroweap and Shinumo Flight Free Zones is designated the "Fossil Canyon Corridor."

(d) *Toroweap/Thunder River Flight-Free Zone.* Within an area bounded by line beginning at Lat. 36°22'45" N., Long. 112°20'35" W.; thence northeast along the boundary of the Grand Canyon National Park to Lat. 36°15'00" N., Long. 113°03'15" W.; to Lat. 36°15'00" N., Long. 113°07'10" W.; to Lat. 36°10'30" N., Long. 113°07'10" W.; thence east along the Colorado River to the confluence of Havasu Canyon [Lat. 36°16'40" N., Long. 112°45'45" W.;) including that area within a 1.5-nautical-mile radius of Toroweap Overlook (Lat. 36°12'45" N., Long. 113°03'30" W.); to the point of origin; but not including the following airspace designated as the "Tuckup Canyon Corridor": (i) at or above 6,500 feet MSL within an area bounded by Lat. 36°22'55" N., Long. 112°47'40" W.; to Lat. 36°22'55" N. Long. 112°50'00" to Lat. 36°17'10" N., Long. 112°50'00" W., to Lat. 36°17'10" N., Long. 112°47'40" W., to the point of origin, and (ii) at or above 10,500 feet MSL within 1 mile of the eastern and western boundaries of the corridor defined in (d)(i) of this section.

Section 5. *Minimum flight altitudes.* Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft in the Special Flight Rules Area at an altitude lower than the following:

(a) Eastern section from Lees Ferry to North Canyon: 5,000 feet MSL.

(b) Eastern section from North Canyon to Boundary Ridge: 6,000 feet MSL.

(c) Boundary Ridge to Supai (Yumitheska) Point: 7,500 feet MSL.

(d) Supai Point to Diamond Creek: 6,500 feet MSL.

(e) Western section from Diamond Creek to the Grand Wash Cliffs: 5,000 feet MSL.

Section 6. *Commercial sightseeing flights.*

(a) Notwithstanding the provisions of Federal Aviation Regulations § 135.1(b)(2), nonstop sightseeing flights that begin and end at the same airport, are conducted within a 25-statute-mile radius of that airport, and operate in or through the Special Flight Rules Area during any portion of the flight are governed by the provisions of Part 135.

(b) No person holding or required to hold an operating certificate under Part 135 may operate an aircraft in the Special Flight Rules Area except as authorized by operations specifications issued under that part.

Section 7. *Minimum terrain clearance.* Except in an emergency, when necessary for takeoff or landing, or unless authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft within 500 feet of any terrain or structural located between the north and south rims of the Grand Canyon.

Section 8. *Communications.* Except when in contact with the Grand Canyon National Park Airport Traffic Control Tower during arrival or departure or on a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center, no person may operate an aircraft in the Special Flight Rules Area unless he monitors the appropriate frequency continuously while in that airspace.

Section 9. *Termination date.* This Special Federal Aviation Regulation expires on June 15, 1992.

Authority: 49 U.S.C. 1303, 1348, 1354(a), 1421, and 1422; 16 U.S.C. 228g; Pub. L. 100-91, August 18, 1987; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Issued in Washington, DC on May 27, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-12413 Filed 5-27-88; 5:06 pm]

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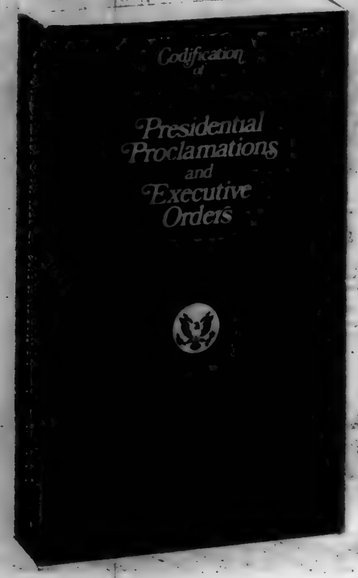

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federal register

Friday
June 3, 1988

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Federal Register
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Friday, June 3, 1988

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Revision of User Fees and Other Administrative Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is increasing the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary one and all costs are covered by user fees. The higher fees, including an increase in the current base rate of $19.00 to $33.00 per hour, reflect the increased program costs that have occurred since the fees were last adjusted in November 1977.

Other changes in the program's regulations will: (1) Permit the Agency to reject an application for grading service if any payments by the applicant for prior services have not been paid within 30 days of the billing, rather than 60 days as now; (2) delete the requirements of a surety bond for certain prospective industry licensees; (3) modify the list of individual tests in the laboratory analysis schedule for which these are charges; (4) increase the charges made for such laboratory analysis; (5) delete the charge to applicants of an administrative charge equal to an additional 10 percent of actual travel expenses; and (6) establish the same hourly rate charge for the "assistant" inspector or grader in resident programs as for the inspector or grader in charge. The increased laboratory charges recognize increased program costs and the other changes will result in more efficient program operations and reflect greater fiscal responsibility.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/Dairy Division, Dairy Grading Section, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456. (202) 382–8381.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "non-major" rule under the criteria contained therein.

This final rule has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that it will not have a significant economic impact on a substantial number of small entities. The Agricultural Marketing Service estimates that overall this rule will yield an additional two million dollars per year over current fees. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the fees for grading and other program services.

The current fees for program services have been in effect for over 10 years (since November 1977). During the early 1980's requests for services increased significantly due to increases in milk production. While program expenses did increase, revenues increased at a higher rate. Accordingly, the program began accumulating increased operating reserves. During those years, it was necessary for all personnel qualified to carry out grading and inspection work (including many supervisors) to be fully occupied with revenue-producing work. By the end of fiscal year 1983, the program had accumulated a reserve of $6.2 million—sufficient revenue to cover nine months of operating expenses.

More recently, the volume of grading work has been declining, with an accompanying decline in revenue. At the same time, operating costs have continued to increase, due largely to increases in salaries, travel reimbursements, and other administrative and supervisory costs. Fees remained unchanged and the reserve was reduced. In fiscal years 1984 through 1987, the program's financial reserves were reduced by about $4 million (with annual operating deficits of up to $2.3 million). At the end of fiscal year 1987, the reserve was $2.1 million—less than the 4 months of operating reserves (about $3 million) that are considered appropriate for the program.

Normal operating costs are continuing to increase. In addition, the Agency has identified three vital areas that require improvement and added resources—training, supervision and automation.

The workload decrease that began in 1986 and continued into 1987 stemmed from the Dairy Termination Program and the resulting decline in Government purchases of dairy products under the price support program. The workload for 1988 will probably be similar to that of 1987.

For the above reasons, fee increases are imperative. Without the increases, the program will lose more than $2 million during fiscal year 1988, which would deplete the operating reserve. The Agricultural Marketing Act of 1946, which authorizes the inspection and grading program, requires that fees cover the cost of the services provided.

The fee increases (ranging from 18 percent to 74 percent above the current rates) are lower than the 86 percent increase in the Consumer Price Index that occurred during the 10-year period (1977 to 1987) in which grading fees remained unchanged.

2. Redefines when service may be rejected due to late payment.

The grading program regulations now state that "an application for inspection or grading service may be rejected by the Administrator when payment of fees is delinquent over 60 days." Current good commercial practice for billing and collection classifies payments not made within 30 days of billing as delinquent. This final rule permits the Agency to reject an application for grading service if any fees previously billed to the applicant were not paid within 30 days. The change will encourage the timely payment of fees.

3. Deletes the requirement of bonding industry personnel involved in USDA grade label programs.

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Current regulations require a surety bond from prospective licensees who are not Federal or State employees and who are not under immediate USDA resident grader supervision. In the dairy grading program, this requirement applies to those plant employees who have been selected as supervisors of packaging for USDA grade labeled products. A recent review of the administration of the program has shown that the surety bond is an unnecessary requirement. No claims have been made by the Agency against existing bonds for violations by licensed and bonded plant employees in the performance of their duties. This final rule eliminates the surety bond requirement for plant employees.

4. Deletes laboratory fees for tests which are no longer provided by the Dairy Division. Add laboratory fees for new tests that are available.

In addition to the increase in fees for each of the listed laboratory tests, four other laboratory-related changes are adopted to reflect current Dairy Division activities:

(a) The test for "Corn-Soya-Milk" is deleted because the authority for the sampling and testing of this product was transferred to the Federal Grain Inspection Service on October 6, 1983.

(b) "Meat and Related Products" are added to properly identify the specific tests that the Dairy Division is performing for the Agency's Livestock and Seed Division.

(c) A fee for antibiotic testing is added for dry milk and related products.

(d) A fee for testing process cheese for meltability is added for cheese and related products. This test is required by the Department's Agricultural Stabilization and Conservation Service for cheese-conversion and direct-purchase contracts for pasteurized process cheese.

5. Changes the method for determining travel expenses.

The current regulations provide that, in addition to travel costs, per diem and other expenses, applicants are to be charged an additional 10 percent of those expenses "to cover administrative costs of AMS." The fee increases include administrative and supervisory costs associated with the program. Therefore, the additional 10 percent charges are no longer necessary. This final rule eliminates the additional 10 percent requirement.

6. Changes the method for calculating the rate for determining continuous resident service.

Current regulations provide a two-tiered rate schedule for the inspector or grader in charge of a resident program and an assistant inspector or grader. Current operational costs do not justify a lower charge for the assistant as now provided in the regulations. This final rule will establish the same charge for any assistant resident inspector or grader as for the inspector or grader in charge.

7. Makes miscellaneous non-substantive changes to clarify several of the provisions.

Response to Industry Comments

A rulemaking document proposing the changes discussed above was published in the **Federal Register** on February 17, 1988 (53 FR 4639). A 30-day comment period was provided so that interested persons could submit their views and comments. At the request of industry members, the comment period was extended 14 days, to April 1, 1988.

The Agency received comments from 11 parties, including proprietary processors, dairy cooperatives, and nationwide industry organizations. The comments and the Agency's responses are set forth below.

Many of the comments focused on the economic impact that the proposed increase in program fees would have on processors of dairy products and on milk producers. It was contended that the magnitude of the increases would make it difficult for processors to pass these additional costs along through the marketing chain. Processors claimed that they would have to absorb the fee increases or reduce their pay prices to the dairy farmers supplying them with milk.

With respect to other comments in opposition to the fee increases, one commenter believed that the current efforts to automate program operations should yield offsetting savings. Another party stated that the fee increases were in excess of the current rate of inflation. It was also suggested that the quality of service has declined. Other commenters indicated that the program needed to be operated more efficiently and that the staffing level should be reduced. One commenter stated that the Agency should have increased its fees more frequently, thus avoiding fee increases of the magnitude that was being proposed.

In another comment, it was urged that the fee increases be phased in over a two-year period. The commenter proposed that during this phase-in period the Agency undertake an extensive study of how to operate the program more efficiently.

The concerns about the size of the fee increases are understandable. The increases are substantial and undoubtedly will have an impact on those processors using the program's services. In this regard, processors will have to decide how best to assimilate these additional costs into their operations. Some may even conclude that it is no longer desirable to use the inspection and grading program.

As stated earlier in this document, the Agricultural Marketing Act of 1946 requires that the cost of the grading program be borne through user fees. It is thus necessary to set the fees at a level that assures that the program costs are covered. As noted, the program has been operating for some time at a loss because of inadequate fees. However, higher fees were not instituted earlier because of the excess financial reserves that were generated by the heavy workload during the period of unusually heavy milk supplies. With the reserve fund nearly depleted, it is imperative that the program fees be increased immediately by the amounts adopted herein. The program cannot continue to operate at a deficit.

The Agency will continue to make every effort to operate the program as efficiently as possible. Program operations, such as staffing, automation, and quality of services, are continuously under review by program managers, and operating costs are monitored closely. The intent is to have a program that is cost-effective and at the same time responsive to the needs of the industry and the need for program integrity.

Several commenters indicated that they believe that there is a need for industry input into the operation of the inspection and grading program. It was their position that a concerted effort should be made to find ways of improving the efficiency of the program and reducing program costs.

The Agency is committed to the effective implementation and efficient management of the program. It is prepared to participate in dialogue with individuals and groups on such matters.

A number of parties expressed concern about the program costs associated with the testing of dairy products. It was suggested that testing costs could be reduced through the centralization of laboratories or by contracting out testing activities to private laboratories. It also was suggested that any laboratory fee increases be delayed until a cost comparison could be made regarding commercial vs. Agency laboratories.

For the reasons already described, it is necessary to implement the fee increases as soon as possible. However, the Agency is willing to explore the laboratory issue with the industry to ascertain whether there are more cost-effective means of providing the testing

services desired by industry members. In addition, the Agency is currently reviewing the operation of all Agency laboratories to determine if changes are desirable. These include the possible centralization of laboratories and more extensive overnight.

It was requested that implementation of the fee increases be delayed so that processors would not become subject to higher fees during existing processing contracts. The concern was that processors could not recover from their market outlets an increase in fees that occurs during the course of a contract.

As indicated, an immediate increase in fees is needed to stem the current operating losses. Thus, there should be no delay in the fee increases. However, in view of the time needed to complete this rulemaking action, the new fees will not become effective until June 19, 1988. The should provide most members of the industry with the opportunity to reflect the higher fees in bids on future contracts. It also is noted that the industry was forewarned about possible fee increases. This occurred through industry publications, various industry meetings, and the proposed rule that was published in the Federal Register on February 17, 1988.

Several commenters were concerned about having to absorb an increase in fees under the inspection and grading program. To help offset the fee increases, they requested that the Department increase the "make allowance" under the dairy price support program. Through this means, processors presumably would be able to recover more of their operating costs, which includes grading fees, through the value of the products sold under the support program.

Grading fees are established pursuant to the Agricultural Marketing Act of 1946 which authorizes the Agricultural Marketing Service inspection and grading program and requires that such fees cover the cost of services provided. The price support program is administered by the Agricultural Stabilization and Conservation Service which estimates industry costs of manufacturing butter, cheese and nonfat dry milk. This estimate, or "make allowance," is then used as one of several factors in setting the purchase prices under the support program for surplus dairy products. Since the price support program is administered by another Agency pursuant to different authority, the commenters suggestion is outside the scope of this rulemaking and cannot be included herein.

One commenter was concerned about the recent decision by the Agency to require additional inspectors/graders at certain plants. Although not specifically stated in the comments, it is presumed that the concern stems from the additional costs that these plants would incur in using the additional inspection and grading services.

The decision to require additional Agency employees at certain plants was based on the determination that this is necessary to assure the integrity of the inspection and grading program. In some cases, it is not possible for one inspector to monitor a plant's processing activities to the extent the Agency considers necessary. This may be because the plant's operations are simply too large for one person to monitor, or the plant has extended hours of operation, or the various activities to be monitored are spread out over several areas of the plant. The Agency decided in some situations that additional staffing was necessary to assure that the purpose of the services being provided was in fact being carried out. This, of course, means additional costs to the processors who are affected by this decision.

Certain commentors asked that the Agency provide the industry with additional information concerning costs under the inspection and grading program. The requests were as follows: (1) Provide an up-to-date benchmark of cost per hundredweight of grading as an industry average to assist the industry in evaluating individual plant costs, and (2) provide the percentage of revenues being allocated for training, overhead, computer processing, and other support elements under the program.

The Agency is willing to work with the industry in developing information regarding program costs. A dialog between the Agency and industry members on this issue will facilitate the compilation of data that will be most useful to the industry.

One commenter objected to the fee increases partly because the fees do not recognize regional differences in labor costs. It was claimed that labor costs in his area were much lower than in other areas of the country and that the program fees were too high relative to the salaries of the State employees who are doing the program work in his area for the Agency.

It is impractical to recognize in the fees charged a particular plant the salary and related benefits associated with each individual inspector or grader who provides service to the plant. The salaries and benefits of employees frequently vary. Also, employees are often rotated among plants. The Agency believes that a uniform fee structure represents a fair system for charging processors for the services provided.

In the proposed rule, the Agency recommended a change in the conditions under which an application for service could be rejected by the Agency. Currently, an application for inspection or grading service may be rejected if any fees previously billed to the applicant were not paid within 60 days. It was proposed that this time period be reduced to 30 days. Certain commentors contended that while they recognized the need for the prompt payment of fees, the 30-day limit was more stringent than what the U.S. Government abides by when paying processors for dairy products purchased under the price support program. The parties urged that the 60-day limit be retained.

The Agency has the responsibility for operating the inspection and grading program in a prudent manner. The 30-day limit is in keeping with this responsibility and will foster the timely payment of fees.

Information Collection Requirements and Recordkeeping

Information collection requirements and the recordkeeping provision contained in 7 CFR Part 58, Subpart A, have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0126.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the Federal Register. The Agricultural Marketing Act of 1946 requires that fees cover the cost of the services provided under the inspection and grading program. The present fees are not covering the cost of such services, and the program's financial reserves are being depleted. An immediate increase in fees is essential to the operation of the program.

The provisions of this final rule are known to interested parties. A proposed rule setting forth the fee increases and other administrative changes adopted herein were published in the Federal Register on February 17, 1988. The changes effected by this final rule will not require extensive preparation or substantial changes in operation by those persons using the program's services.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

For the reasons set forth in the preamble, 7 CFR Part 58, Subpart A is amended as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for Part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.12 is amended by revising paragraph (h) to read as follows:

§ 58.12 When application may be rejected.

* * * * *

(h) When fees billed are not paid within 30 days; or

* * * * *

3. Section 58.33 is revised to read as follows:

§ 58.33 Who may be licensed.

Any person processing proper qualifications, as determined by an examination for competency, held at such time and in such manner as may be prescribed by the Administrator, may be licensed to perform specified inspection or grading service. Each license issued shall be signed by the Administrator.

4. Section 58.42 is revised to read as follows:

§ 58.42 Travel expenses and other charges.

Charges shall be made to cover the cost of travel and other expenses incurred by AMS in connection with the performance of any inspection or grading service.

5. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in this section and §§ 58.38 through 58.47, charges shall be made for inspection, grading, and sampling service at the hourly rate of $33.00 for service performed between 6 a.m. and 6 p.m., and $36.40 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

6. Section 58.44 is revised to read as follows:

§ 58.44 Fees for laboratory analysis.

Except as otherwise provided in this section and § 58.45, charges shall be made for laboratory analysis at the hourly rate of $24.00 for the time required to perform the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued. The following minimum rates per test, which are based on the average time required to perform the test specified, shall apply unless the actual time required to perform the test is greater than the minimum set forth:

(a) Dry milk and related products:

Total fat (either extraction)	$4.35
Moisture	3.35
Titratable acidity	1.65
Solubility index	2.25
Scorched particles	2.25
Bacterial plate count	4.35
Bacterial direct microscopic count	6.50
Flavor	1.15
Whey protein nitrogen	10.95
Vitamin A	21.70
Alkalinity of ash	24.00
Dispersibility	10.95
Coliform (solid media)	4.35
Salmonella	24.00
Phosphatase	24.00
Oxygen	13.00
Density	1.65
Antibiotic	8.05

(b) Condensed milk and related products:

Fat (fat extraction)	$6.50
Total solids	4.35
Sugar (sucrose)	24.00
Net weight (per can)	2.65
Flavor, color, body, texture	1.65

(c) Cheese and related products:

Moisture	$4.35
Moisture in duplicate	8.50
Total fat (either extraction)	7.65
Moisture and fat (dry basis) complete	12.00
Meltability (Process cheese)	4.35

(d) Butter and related products:

Moisture	$4.35
Fat	8.65
Salt	4.35
Complete Kohman analysis	13.00
Fat and moisture (same sample)	10.95
Flavor, odor, body, texture	2.25
Peroxide value	24.00
Free fatty acid	10.95
Yeast and mold	5.50
Proteolytic count	5.50

(e) Meat and related products:

Fat (hamburger)	$11.25

7. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) or grader(s) assigned to a continuous resident program shall be made at the hourly rate of $24.60 for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tours of duty shall be made at a rate of 1½ times the rate stated in this section.

8. Section 58.47 is revised to read as follows:

§ 58.47 Fees for continuous nonresident service.

Irrespective of the fees and charges provided in §§ 58.39, 58.42 and 58.43, charges for continuous nonresident service shall be made at the hourly rate of $36.00 for services performed between 6 a.m. and 6 p.m., and $39.40 for services performed between 6 p.m. and 6 a.m., for the number of hours each inspector or grader is assigned, including the travel time at the beginning and end of the period. Travel expenses are included in the hourly rates. The charge for holiday, Saturday or Sunday work or overtime (work in excess of each eight-hour shift Monday through Friday) shall be at $52.50 per hour.

Signed at Washington, DC on May 27, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–12438 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–02–M

Federal Crop Insurance Corporation

7 CFR Part 405

[Amdt. No. 1; Doc. No. 5332S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Wednesday, January 20, 1988, at 52 FR 1467. The interim rule amended the Apple Crop Insurance Regulations (7 CFR Part 405), by adding a new section, 7 CFR 405.9, Pilot Sunburn Option Amendment.

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, January 20, 1988, FCIC published an interim rule, in the **Federal Register** at 52 FR 1467, amending the Apple Crop Insurance Regulations (7 CFR Part 405), by adding a new section, 7 CFR 405.9, Pilot Sunburn Option Amendment.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 405

Crop insurance, Apple crop insurance regulations.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Wednesday, January 20, 1988, at 52 FR 1467, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on May 31, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–12541 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 440

[Amdt. No. 1; Doc. No. 5539S]

Texas Citrus Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1989 crop year. The intended effect of this final rule is to maintain the effectiveness of the present Texas Citrus Tree Crop Insurance Regulations only through the 1988 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.134, Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter

IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 440 will be effective only through the end of the 1988 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Texas Citrus Tree Endorsement will be published as an endorsement to 7 CFR Part 401 (401.134, Texas Citrus Tree Endorsement), and become effective for the 1989 and succeeding crop years.

Upon final publication, the provisions of the Texas Citrus Tree Crop Insurance Regulations, now contained in 7 CFR Part 440, would be superseded. Therefore, FCIC amends the subpart heading to provide that 7 CFR Part 440 be effective for the 1987 and 1988 crop years only.

On Tuesday, February 16, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 4413, to maintain the effectiveness of the present Texas Citrus Tree Crop Insurance Regulations only through the 1988 crop year. The public was given 30 days in which to submit written comment, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 53 FR 4413 is herewith adopted as final.

List of Subjects in 7 CFR Part 440

Crop insurance, Texas citrus tree.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Subpart heading to the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), as follows:

PART 440—[AMENDED]

1. The Authority citation for 7 CFR Part 440 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 440 is revised to read as follows:

Subpart—Regulations for the 1987 and 1988 Crop Years

Done in Washington, DC on May 31, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-12542 Filed 6-2-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 1421, 1413 and 1470

Price Support and Production Adjustment Programs

AGENCY: Agricultural Stabilization and Conservation Service; Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends 7 CFR Part 1421 by combining as one subpart the subparts currently contained in Part 1421 which set forth the price support loan and purchase program regulations for the 1988 and subsequent crops of barley, corn, sorghum, oats, farm-stored peanuts, rice, rye, soybeans, and wheat. These amendments will provide greater uniformity in program administration and delete repetitive provisions. This interim rule also amends Part 1421 by revising: (1) The date by which a producer must reapply for a price support loan in the event the Commodity Credit Corporation ("CCC") has not disbursed the loan proceeds within a specified time; (2) the manner in which price support rates are determined when adjoining towns in different counties are considered to be one shipping point; (3) the information which must be entered on a warehouse receipt in order for such receipt to be used in obtaining a price support loan; and (4) the grade requirements which must be met by commodities pledged as collateral for a warehouse-stored price support loan. These amendments will provide for greater program uniformity.

DATE: Effective June 3, 1988. Comments must be received on or before July 5, 1988 in order to be assured of consideration.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jackie Stonfer, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447-4704.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to the interim rule since Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporations (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have not significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Currently the regulations which set forth the terms and conditions of the CCC production adjustment programs are set forth at 7 CFR Part 713 and the terms and conditions under which CCC may make payments in a form other than cash are set forth at 7 CFR Part 770. Generally, those regulations which are set forth in Chapter VII of Title 7 of the Code of Federal Regulations pertain to the functions of ASCS, including the functions which relate to the implementation and administration of CCC programs. The regulations which are set forth in Chapter XIV of Title 7 of the Code of Federal Regulations pertain to the functions of CCC. Therefore, it has been determined that those regulations which are currently set forth at 7 CFR Parts 713 and 770 are more properly suited for codification in Chapter XIV of Title 7 of the Code of Federal Regulations since the activities which are governed by these regulations are CCC functions. Accordingly, it would be more appropriate and clearer to interested persons to have these regulations within Chapter XIV, Commodity Credit Corporation, Department of Agriculture. The new section numbers for each of the existing sections are provided in the table below:

Old Section	New Section
713.1-713.157	1413.1-1413.157
770.1-770.7	1470.1-1470.7

The regulations which are set forth at 7 CFR Part 1421 set forth the terms and conditions under which CCC will make available price support loans and purchase agreements for barley, corn, farm-stored peanuts, oats, rye, sorghum, soybeans, rice and wheat. Currently, the regulations which are applicable to all such commodities are set forth in §§ 1421.1-1421.30 and all other regulations are set forth in individual subparts which are applicable to each such commodity. Since the program provisions which govern price support loans and purchase agreements for these commodities are identical in many instances, it has been determined that it would be more efficient to have all loan and purchase agreement provisions codified in one subpart of 7 CFR Part 1421.

The regulations at 7 CFR 1421.6(a)(2) currently provide that if CCC does not disburse price support loan proceeds by the last day of the calendar month following the month in which the loan application is made, the producer must reapply for the loan. Based upon the current level of price support loan activity and the time needed by CCC to process loan applications, it has been determined that producers should not be required to reapply for such loans during such a short period of time. Accordingly, in order to alleviate the need for most producers to reapply for such a loan, this interim rule amends 7 CFR 1421.6(a)(2) to provide that a producer must reapply for a price support loan only if the loan has not been disbursed within 30 days of the final loan availability date, or such other date as may be announced by CCC.

The regulations at 7 CFR 1421.59, 1421.99, 1421.219, 1421.254, 1421.344, 1421.374, and 1421.470, provide for the adjustment of the basic county support price for barley, corn, sorghum, oats, rye, soybeans and wheat, respectively, in the event two or more CCC-approved warehouses are located in the same or adjoining towns which have the same freight rate even though such warehouses are located in the same county. In such an event, the support rate is the highest of the support rates involved. Due to the deregulation of most freight rates, and due to changes in commodity marketing, it has been determined that it is no longer appropriate to adjust the basic county support price for these commodities under these circumstances. Accordingly, these provisions are not included in the revised price support loan and purchase provisions of 7 CFR Part 1421.

The regulations at 7 CFR 1421.18(c)(3) currently set forth some of the terms and conditions with respect to the reconcentration of grain pledged as collateral for price support loans. The reconcentration of certain commodities results in an adjustment to the basic county loan rate to reflect costs incurred in movement of loan collateral. CCC recently amended the regulations at 7 CFR Part 1421 to provide for a more uniform administration of CCC's policies with respect to increasing basic county loan rates to reflect costs incurred in the movement of CCC loan collateral. (See 53 FR 6131, dated March 1, 1988). Accordingly, in order to conform to this previous amendment, this interim rule deletes references in 7 CFR 1421.18(c)(3) with respect to the method used by CCC in adjusting basic county loan rates when the reconcentration of CCC loan collateral is approved.

The regulations at 7 CFR 1421.9 currently set forth the information which must be specified on warehouse receipts which are tendered to CCC in connection with a price support loan or purchase agreement. This interim rule amends 7 CFR 1421.9 by setting forth with greater specificity those entries which must be included on such a warehouse receipt. This amendment will provide greater uniformity in the administration of CCC price support programs and will assist CCC in determining with greater accuracy the quality and location of: Grain pledged as collateral for price support loans; grain acquired through price support purchase agreements; and grain acquired through price support loan forfeitures.

The individual commodity subparts for barley, corn, sorghum, oats, rice, rye, soybeans and wheat set forth the grade requirements which must be met by commodities pledged as collateral for warehouse-stored CCC price support loans. This interim rule combines these provisions at 7 CFR 1421.18, and also incorporates new grading requirement terminology which is currently used by the Federal Grain Inspection Service.

In addition, this interim rule makes changes throughout 7 CFR Part 1421 for purposes of grammar and clarity.

Since producers will soon be pledging as collateral for CCC price support loans 1988-crop commodities, it has been determined that this interim rule will become effective upon publication in the **Federal Register**. Comments, however, are requested and will be taken into consideration in developing the final rule.

List of Subjects

7 CFR Part 713

Feed grain, Rice, Upland and extra long staple cotton, wheat and related programs.

7 CFR Part 770

Commodity certificates, In kind payments, other forms of payment.

7 CFR Part 1413

Feed grain, Rice, Upland and extra long staple cotton, and wheat and related programs.

7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, warehouses.

Accordingly, Title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1421—[AMENDED]

1. Part 1421 is amended by revising the subpart heading "Subpart-General Regulations Governing Price Support for the 1987 and Subsequent Crops" to read "Price Support Regulations for the 1988 and Subsequent Crops of Wheat, Feed Grains, Rice, Soybeans, and Farm-Stored Peanuts".

2. The authority citation for Part 1421 is revised to read as follows:

Authority: Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); sections 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 90 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 91 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441-1, 1444b, 1445b-2, 1445c-2, 1445e, 1446, 1447, 1421, 1423, and 1425).

3. The table of contents for Subpart-Price Support Regulations for the 1988 and Subsequent Crops of Wheat, Feed Grains, Rice, Soybeans, and Farm-Stored Peanuts of Part 1421 is revised to read as follows:

Subpart-Price Support Regulations for the 1988 and Subsequent Crops of Wheat, Feed Grains, Rice, Soybeans, and Farm-Stored Peanuts

Sec.

1421.1 Applicability.
1421.2 Administration.
1421.3 Definitions.
1421.4 Eligible Producers.
1421.5 General eligibility requirements.
1421.6 Maturity and expiration dates.
1421.7 Adjustment of basic support rates.
1421.8 Approved storage.
1421.9 Warehouse receipts.
1421.10 Warehouse charges.
1421.11 Liens.
1421.12 Fees, charges, and interest.
1421.13 Insurance on farm-stored loans.

Sec.
1421.14 Setoffs.
1421.15 Loss or damage to the commodity.
1421.16 Liability of producer.
1421.17 Farm-stored loans.
1421.18 Warehouse-stored loans.
1421.19 Liquidation of loans.
1421.20 Release of the commodity loan under loan.
1421.21 Purchase agreements.
1421.23 Settlement.
1421.23 Foreclosure.
1421.24 Protein determinations.
1421.25 Rice marketing loans and marketing certificates.
1421.26 Transfer of farm-stored loan to warehouse-stored association loan.
1421.27 Producer-handler purchases of additional peanuts under loan.
1421.28 Required producer-handler records and supervision of farm-stored additional peanuts under loan or purchased by producer-handler from loan.
1421.29 Death, incompetency, or disappearance.
1421.30 Recourse loans.
1421.31 Handling payments and collections not exceeding $2.50.
1421.32 Paperwork Reduction Act assigned numbers.

3. Sections 1421.1 and 1421.2 are revised to read as follows:

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1988 and subsequent crops of barley, corn, oats, peanuts, rice, rye, sorghum, soybeans, and wheat. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement and the purchase agreement which must be executed by a producer in order to receive price support. With respect to warehouse-stored loans for peanuts, such loans shall be made in accordance with Part 1425 of this chapter.

(b) Basic county price support rates, the schedule of premiums and discounts, and forms which are used in administering the price support program for a crop of a commodity are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively).

(c) Price support loans and purchase agreements shall be available only with respect to rice produced in the continental United States. Farm-stored price support loans and purchase agreements shall be available only with respect to farmer stock peanuts, as defined in Part 1446 of this chapter, which are produced in the United States which are of a type specified in Part 729 of this title. Price support loans and purchase agreements shall be available with respect to all other eligible commodities produced in the United States. Price support loans and purchase agreements shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1421.2 Administration.

(a) The price support program which is applicable to a crop of a commodity shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or (2) require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1421.4 [Removed]

§ 1421.3 [Redesignated as § 1421.4]

4. Section 1421.4 is removed and current § 1421.3 is redesignated as § 1421.4.

5. A new § 1421.3 is added as follows:

§ 1421.3 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Parts 719 and 1413 of this title shall also be applicable.

(b) "Basic support rate" means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

(c) "Charges" means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

6. In newly redesignated § 1421.4 paragraphs (a), (d), (g), (h), and (i) are revised to read as follows:

§ 1421.4 Eligible producer.

(a) *Producer.* An eligible producer of a crop of commodity shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this Part; and

(3) Meets the requirements of Parts 12, 718, and 1413 of this title. Producers who are members of an approved marketing cooperative must furnish the cooperative a completed Form CCC–822, Certificate of Eligibility, before the cooperative may request price support with respect to the producer's commodity.

* * * * *

(d) *Joint loans.* (1) Two or more producers may obtain a single joint loan with respect to commodities which are stored in the same farm storage facility. Two or more producers may also obtain individual loans with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form CCC–665 which provides that such producers shall obtain the permission of a representative of the county committee prior to removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities which have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities.

(2) Two or more producers may obtain a single joint loan with respect to commodities which are stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

* * * * *

(g) *Approved cooperative.* A cooperative marketing association which has been approved in accordance with Part 1425 of this chapter may obtain price support on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subpart, the term "producer" includes an approved cooperative marketing association.

(h) *Peanut producer.* With respect to peanuts tendered to CCC for price support, a producer must also meet the provisions of 7 CFR 1446.63. Prior to obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler in accordance with Part 729 of this title.

(i) *Restrictions in the use of agents.* A producer shall not delegate to any person (or any agent or representative of such person), except to a farm manager, who has an interest in storing, processing, or merchandising any commodity which is eligible to receive price support in accordance with this subpart the authority to exercise on behalf of the producer any of the producer's rights which arise in accordance with this subpart.

7. Section 1421.5 is revised to read as follows:

§ 1421.5 General eligibility requirements.

(a) *Application for price support.* A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with Part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC or at the county office for the county in which the principal office of the cooperative is located. All note and security agreements, purchase agreements and related documents necessary for the administration of price support programs shall be determined by CCC and are available at State and county offices. In order to receive price support for a crop of a commodity, a producer must execute a note and security agreement or purchase agreement on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: Quota peanuts pledged as collateral for a farm-stored loan; barley; oats; rye; and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; and

(4) May 31 of the year following the year in which the following crops are normally harvested: Corn, sorghum; rice; and soybeans.

(b) *Quality and quantity.* (1) Commodities must be tendered to CCC by an eligible producer and must be in existence at the time of disbursement of loan or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances posionous to humans or animals. Such commodities must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat or one percent or more by weight of kernels visibly damaged by weevils or other insects.

(2) With respect to barley, corn, oats, sorghum, soybeans, rice, rye, and wheat, the determination of class, grade, grading factors, milling yields, and other quality factors shall be based upon the Official Grain Standards of the United States and the Official Rice Standards of the United States as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC. With respect to peanuts, the determination of type, quality, and quantity shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn. If the collateral is ear corn, the producer must: (i) Before delivery to CCC, shell such corn without cost to CCC; and (ii) before shelling, have the approval of CCC. Corn pledged as collateral for a warehouse-stored loan or tendered in accordance with a purchase agreement must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of corn free of dockage;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be in tons and tenths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of rye shall be 56 pounds of rye free of dockage;

(vii) A bushel of soybeans shall be 60 pounds of soybeans that contain no more than one percent foreign material.

(viii) A bushel of sorghum shall be 56 pounds of sorghum free of dockage; and

(ix) A bushel of wheat shall be 60 pounds of wheat free of dockage.

(5) With respect to farm-stored loans and purchase agreements, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC.

(c) *Beneficial interest.* (1) To be eligible to receive price support, a producer must have the beneficial interest in the commodity which is tendered to CCC. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan or purchase agreement shall be eligible to receive price support whether

succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this Part. Such succeeding producer must assume a substantial interest in and responsibility for production of the commodity. Mere purchase or inheritance of a crop prior to harvest without the acquisition of any additional interest in the farm on which the crop is produced shall not constitute succession of a beneficial interest.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer enters into a contract to sell or gives an option to buy the commodity if, under the contract or option the producer retains control, risk of loss and title to the commodity subject to such agreement and retains control of the production of the commodity. Commodities obtained by purchase shall not be eligible to be tendered to CCC for price support.

(3) Notwithstanding the provisions of paragraphs (c) (1) and (2) of this section, a producer may pledge as collateral for a loan commodities in which the producer does not have a beneficial interest if CCC determines that the producer has a quantity of a commodity which is eligible to receive price support and that the commodities tendered to CCC will receive price support in an amount not to exceed the amount which would have been provided with respect to the eligible commodities. If CCC approves such a request for price support, the producer shall not otherwise receive price support with respect to the eligible commodity, except as may be determined and announced by CCC. Any such request must be made in the manner prescribed by CCC and must be made at the county office which is authorized to make a price support loan to the producer.

(4) If price support is made available to producers through an approved marketing cooperative in accordance with Part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the cooperative except as otherwise provided in this subsection. Commodities delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in Part 1425 of this chapter.

(d) *Redeemed loan collateral.* Except with respect to commodities which have been acquired in accordance with Part 1470 of this chapter and with respect to commodities which have been redeemed at a rate which is less than the original price support level, a producer may, before the final date for obtaining a price support loan for a commodity, reoffer as collateral for such a loan any commodity that had been previously pledged as collateral for a price support loan. The subsequent loan shall have the same maturity date as the original loan.

8. Section 1421.6 is revised to read as follows:

§ 1421.6 Maturity and expiration dates.

(a) *Loans.* (1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) If the loan proceeds are not disbursed within 30 days after the final loan availability date or such other date which is determined and announced by CCC, the producer must reapply for the loan.

(3) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated maturity date.

(b) *Purchase agreements.* (1) With respect to all commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated expiration date.

9. Section 1421.7 is revised to read as follows:

§ 1421.7 Adjustment of basic support rates.

(a) *General.* Basic support rates may be established on a State, regional, or county basis and shall be adjusted in accordance with the schedule of premiums and discounts which is applicable to the commodity and as otherwise provided in this section.

(b) *Weed control laws.* If CCC determines that State, district, or county weed control laws affect the value of a commodity, the basic support rate shall be reduced to reflect the reduction in value of the commodity unless the producer or storing warehouseman furnishes a certification from the appropriate weed control official that the commodity complies with weed control laws. The storing warehouseman must also agree to hold CCC harmless for any loss or penalty which arises from the violation of such laws. The certification by the warehouseman shall be in substantially the following form:

Certification

This is to certify that the commodity evidenced by warehouse receipt No. ____ issued to ____ is not subject to seizure or other action under weed control laws or regulations in effect at the point of storage. It is further certified and agreed that if such commodity is acquired by CCC in settlement of a loan or purchase agreement, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt. (Signature) ____

(c) *Basic support rates for farm-stored loans.* (1) With respect to all commodities except peanuts, farm-stored loans shall be disbursed at the basic county support rate for the county where the commodity is stored adjusted for weed control law discounts.

(2) With respect to quota and additional peanuts, farm-stored loans shall be disbursed at the basic support rates established by CCC for such peanuts.

(d) *Basic support rates for warehouse-stored loans and purchases.* (1) With respect to all commodities except peanuts, warehouse-stored loans and purchase agreement payments shall be made on the basis of the basic county rate for the commodity adjusted for:

(i) Weed control law discounts; and

(ii) The schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to quota and additional peanuts, payments made in accordance with a purchase agreement shall be at the basic support rate established by CCC for such peanuts.

(e) *Adjustment of basic county support rates.* (1) This subsection is applicable to corn pledged as collateral for farmer-owned reserve loans and for barley, oats, rye, sorghum and wheat pledged as collateral for regular price support loans and farmer-owned reserve loans.

(2) The applicable basic support rate for commodities pledged as collateral for a warehouse-stored loan that were received by rail or combination barge-rail shall be the basic support rate established for the county from which the commodity was shipped. The

support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Assistance; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(3) The applicable basic county support rate for commodities delivered by truck by the producer to a warehouse at a normal delivery point shall be the support rate for the county where the commodity is stored, adjusted for the premiums and discounts determined by CCC. The basic county support rate for commodities delivered by truck by the producer to (i) an in-line warehouse, or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which the commodity was shipped, adjusted for premiums and discounts determined by CCC. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Assistance; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(4)(i) Supplemental certificates must be issued by the warehouse which receives commodities which have been removed in accordance with paragraphs (e) (2) and (3) of this section. Such certificates must show:

(A) The rate of freight paid into the storage point;

(B) The amount of any penalty for backhaul or out-of-line movement;

(C) The applicable normal trade channel market that would be used in commercial channels of trade; and

(D) Any other information which may be prescribed by CCC.

(ii) The warehouseman shall be responsible for the accuracy of such information and shall be liable for any cost incurred by CCC for the failure to comply with the provisions of this paragraph. After the acquisition of the warehouse receipt by CCC, such costs shall be determined in accordance with the provisions of the Uniform Grain Storage Agreement which has been executed by the warehouseman.

10. Section 1421.8 is revised to read as follows:

§ 1421.8 Approved storage.

(a) *Farm Storage.* Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) which is determined by CCC to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

(b) *Warehouse Storage.* Approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State and county offices.

11. In §1421.9 paragraphs (a), (e) through (i) are revised to read as follows:

§ 1421.9 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC with respect to a loan or purchase agreement must meet the provisions of this section and all other provisions of this part.

* * * * *

(e) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f) *Entries.* (1) Each warehouse receipt, or a supplemental certificate (in duplicate) which properly identifies the warehouse receipt, must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The date the grain was deposited or received;

(vi) The date to which storage has been paid or the storage start date;

(vii) Whether the grain was received by rail, truck or barge;

(viii) The amount per bushel or hundredweight of prepaid in or out charges;

(ix) The signature of the warehouse operator or the authorized agent; and

(x) For warehouses operating under a merged warehouse code agreement (KCFL–614), the location and county to which the producer delivered the grain.

(2) In addition to the information specified in paragraph (f)(1) of this section, the following information must be provided with respect to the specified commodity:

(i) Barley:

(A) Gross weight in pounds and net bushels;

(B) Class and subclass;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(ii) Corn:

(A) Kind of Corn;

(B) Gross weight in pounds, and net bushels;

(C) Class;

(D) Grade (including special grades);

(E) Test weight;

(F) Moisture;

(G) Broken corn and foreign material; and

(H) Any other grading factor when such factor (not test weight) determines the grade.

(iii) Oats:

(A) Net weight and bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture; and

(E) Any other grading factor when such factor (not test weight) determines the grade.

(iv) Peanuts: Any information required of a warehouseman in accordance with Part 1446 of this chapter.

(v) Rice:

(A) Grade;

(B) Net weight and net hundredweight;

(C) Class;

(D) Grading factors;

(E) Milling yield;

(F) Moisture; and

(G) If the rice is stored commingled.

(vi) Rye:

(A) Gross weight and net bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture;

(E) Dockage; and

(F) Any other grading factor when such factor (not test weight) determines the grade.

(vii) Sorghum:

(A) Gross weight in pounds and net weight in hundredweight;

(B) Class;

(C) Grade;

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(viii) Soybeans:

(A) Net weight and bushels;

(B) Gross weight and bushels;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Percentage of foreign material; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(ix) Wheat:
(A) Gross weight and net bushels;
(B) Class and Subclass;
(C) Grade;
(D) Test weight;
(E) Moisture;
(F) Dockage;
(G) Protein content; and
(H) Any other grading factor when such factor (not test weight) determines the grade.

(g) *Warehouse recepts showing "Infested", excess moisture, or both.* If a warehouse receipt indicates that the commodity tendered for price support grades "Infested" or contains excess moisture, or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to receive price support. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "Infested" and the commodity has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iii) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending. Such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(A) Barley: 14.5 percent;
(B) Corn: 15.5 percent;
(C) Oats: 14.0 percent;
(D) Rye: 14.0 percent;
(E) Sorghum: 14.0 percent;
(F) Soybeans: 14.0 percent;
(G) Wheat: 13.5 percent; and
(H) Rice: 14.0 percent;

(h) *Liens* (1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouseman against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts which are stored in an approved warehouse which is operating in accordance with a Uniform Grain Storage Agreement ("UGSA") or a Uniform Rice Storage Agreement ("URSA") may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouseman be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) *Freight certificate requirements.* Warehouse receipts representing commodities which have been shipped by rail or by barge, utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission, from a country shipping point to a normal trade channel market or to a storage point and stored in transit to a normal trade channel market must be accompanied by supplemental certificates. Such certificates must be representative as to origin and date of movement of the commodity and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line hauling. Such certifications shall be made and signed by the warehouseman on a form approved by CCC.

§ 1421.11 [Removed]

§ 1421.10 [Redesignated as § 1421.11]

12. Section 1421.11 is removed and current § 1421.10 is redesignated as §1421.11.

13. A new § 1421.10 is added to read as follows:

§ 1421.10 Warehouse charges.

(a) *Approved handling and storage rates.* CCC-approved handling and storage rates that may be deducted from loan and purchase proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted that:

(1) Storage charges through the maturity or expiration date have been prepaid; or

(2) The producer has arranged with the warehouseman for the payment of storage charges through the maturity or expiration date and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

> Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the commodity represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity or expiration date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt.

(b) *Storage costs.* The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

14. Section 1421.12 is revised to read as follows:

§ 1421.12 Fees, charges, and interest.

(a) *Loan service fees.* A producer shall pay a nonrefundable loan service fee of:

(1) $10 for each farm-stored loan that is disbursed and $1 for each bin in excess of one bin; and

(2) $6 for each warehouse-stored loan that is disbursed and $1 for each warehouse receipt in excess of one receipt that is submitted to CCC.

(b) *Delivery charges.* (1) A delivery charge shall be paid by a producer with respect to all commodities delivered to CCC at the following rates:

(i) One-half cent per bushel with respect to commodities handled on a bushel basis,

(ii) One cent per hundredweight with respect to commodities handled on a hundredweight basis;

(iii) 20 cents per each whole short ton with respect to peanuts.

(2) Delivery charges shall be paid at the time of settlement with respect to:

(i) Farm-stored loans;

(ii) Warehouse-stored loans; and

(iii) Purchase agreements.

With respect to warehouse-stored loans, delivery charges shall be deducted from the loan proceeds.

(c) *Interest.* Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

15. Sections 1421.16 (a), (b), and (d) are revised to read as follows:

§ 1421.16 Liability of the producer.

(a) *Fraud related to loans and unauthorized disposition of loan collateral.* (1) If a producer:

(i) Makes any fraudulent representation in obtaining, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan;

(B) Any additional amounts paid by CCC with respect to the loan;

(C) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts. The payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral, the value of such collateral shall be determined by CCC on the following basis:

(i) With respect to farm-stored loans, the lower of:

(A) The market value of the commodity, as determined by CCC, as of the date of delivery to, or removal by, CCC; or

(B) The loan settlement value of the commodity.

(ii) With respect to warehouse-stored loans, the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(iii) Notwithstanding the provisions of paragraphs (a)(2) (i) and (ii) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b) *Fraud relating to purchases.* (1) If a producer makes any fraudulent representation with respect to obtaining a purchase agreement or delivery of a commodity in accordance with such an agreement, the producer shall be liable for:

(i) The purchase amount paid to the producer by CCC;

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation; and

(iii) Interest on such amounts.

The payment of such amounts may not be satisfied by the delivery, in accordance with such an agreement, of commodities to CCC with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation, the value of the commodity shall be the lowest of the following, as determined by CCC:

(i) The market value of the commodity, as determined by CCC, at the close of the market on the date of delivery to CCC;

(ii) The sales price of the commodity less any costs incurred by CCC if the commodity is sold by CCC in order to determine the market value of the commodity; or

(iii) The basic support rate applicable to the commodity.

* * * * *

(d) *Overdisbursement.* If the amount disbursed under a loan or purchase agreement, or in settlement thereof, exceeds the amount authorized by this Part, the producer shall be liable for repayment of such excess, plus interest.

* * * * *

16. Section 1421.17 is amended by revising the heading; revising the introductory text of paragraph (a)(2); adding a new sentence to paragraph (b); and adding a new paragraph (j) to read as follows:

§ 1421.17 Farm-stored loans.

(a) *Quantity for loan.* (1) * * *

(2) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan. With respect to ear corn, the loan percentage may not exceed 90 percent. With respect to all other commodities, the State committee may establish a loan percentage, which does not exceed a percentage established by CCC, each year for each commodity on a Statewide basis or for specified areas within the State. The factors to be considered by the State committee in determining loan percentages shall include but are not limited to:

* * * * *

(b) * * * Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(j) *Quantity delivered.* The quantity of a commodity acquired by CCC in accordance with a farm-stored loan shall be determined on the basis of the weight of the commodity at the time of delivery to CCC.

* * * * *

§ 1421.20 [Removed]

§ 1421.18 [Redesignated as § 1421.20]

17. Section 1421.20 is removed and current § 1421.18 is redesignated as § 1421.20.

18. A new § 1421.18 is added to read as follows:

§ 1421.18 Warehouse-stored loans.

(a) *Quantity for loan.* The quantity of a commodity which may be pledged as collateral for a loan shall be the quantity delivered to, or acquired by, CCC at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) *Grade requirements.* (1) In order to be eligible to be pledged as collateral for a loan, the commodity must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley may grade "Sample Grade" on the factors of test weight or damaged kernels (total), except for heat damage exceeding 3 percent or both; and

(ii) The barley may have the following special grade designations: "Bright"; "Stained"; "Garlicky"; and, in Alaska only, "Tough";

(iii) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iv) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Bleached.

(C) Ergoty.

(D) Smutty.

(3)(i) Corn must grade No. 3 or better except that:

(A) The corn may grade No. 4, No. 5, or "Sample Grade" on either the factors of test weight or damaged kernels (total) or both; and

(B) The corn may have the following special grade designations: "Flint", "Flint and dent" or "Waxy";

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better, except that:

(A) The oats grade No. 4 or "Sample Grade" on the factors of test weight or because of being badly stained or materially weathered or both; and

(B) The oats may have the special grade designation "Garlicky";

(ii) The oats must not grade "Smutty"; "Ergoty"; "Bleached"; "Thin"; "Tough" or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better, except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3, No. 4 or "Sample Grade" on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light Garlicky"; and;

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with §1421.9.

(7)(i) Sorghum must grade No. 4 or better except that:

(A) The sorghum may grade "Sample Grade" on the factors of test weight and or damaged kernels (total); and

(B) The sorghum may have the special grade designation of "Smutty"; and

(ii) The sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better except that the soybeans may grade "Sample Grade" on any or all of the following factors if all other eligibility requirements are met:

(A) Test weight;

(B) Damaged Kernels (total);

(C) Foreign material;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent; and

(iii) The soybeans may not grade "Garlicky".

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(9)(i) Wheat must grade No. 5 or better, except that the wheat may grade "Sample Grade" on the factors of test weight or damaged kernels (total) or both;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat may have the special grade designations "Garlicky", "Smutty", or "Light Smutty";

(iv) The wheat must not grade "Ergoty", or "Treated"; and

(v) The wheat must not grade "Infested" or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

19. Sections 1421.19 (a) and (b) are revised to read as follows:

§ 1421.19 Liquidation of loans.

(a) *General.* If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral. With respect to farm-stored loans, the producer shall deliver the collateral for such loan, or other eligible commodities of the same kind, in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of the larger of:

(1) 110 percent of the quantity pledged as collateral for such a loan; or

(2) A sufficient quantity having a settlement value equal to the loan amount.

(b) *Delivery by the producer.* If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC-681, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with Part 1403 of this chapter.

* * * * *

20. In newly redesignated § 1421.20 in paragraph (a)(1) the reference to "§ 1421.51(b)" is revised to read "§ 1421.4(i)" and paragraph (c)(3) is revised to read as follows:

§ 1421.20 Release of the commodity under loan.

* * * * *

(c) * * *

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC: (i) The principal amount of the loan, plus interest and applicable charges, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with §§ 1421.733 and 1421.753. The maturity date of the new warehouse storage loan shall be the maturity date applicable to the original warehouse storage loan.

* * * * *

21. Section 1421.21(a) is revised to read as follows:

§ 1421.21 Purchase agreements.

(a) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not pledged as collateral for a price support loan. A producer who has executed a price support purchase agreement may execute a price support loan with respect to the same commodities prior to the final loan availability date. In such event, the loan shall have a maturity date which is last day of the ninth calendar month following the month in which the loan application is made. CCC will not accept delivery of any quantity in excess of 110 percent of the quantity stated in the purchase agreement. Settlement of the quantity not in excess of 110 percent of the quantity stated in the purchase agreement shall be made in accordance with § 1421.22.

* * * * *

22. Section 1421.22 is revised to read as follows:

§ 1421.22 Settlement.

(a) *General.* The settlement of loans and purchase agreements shall be made by CCC on the basis of the grade, quality, and quantity of the commodity delivered to CCC by the producer.

(b) *Commodities stored in approved warehouses.* Settlements made by CCC with respect to eligible commodities which are acquired by CCC and which

are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c) *Commodities stored in facilities other than approved warehouses.* (1) All eligible commodities which are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to barley, corn, oats, rye, sorghum, soybeans, and wheat which are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut support rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, price support shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with Part 729 of this title.

(iv) The support rate for additional peanuts shall be used for all peanuts which do not grade "Segregation 1" at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the undermarketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates. If rice is pledged as collateral for a farm-stored loan in an area where a location differential is in effect and such rice is delivered to CCC in an area where a differential is not applicable, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the area in which delivery is made.

* * * * *

23. Section 1421.24 is revised to read as follows:

§ 1421.24 Protein determinations.

(a) *Protein content determinations for warehouse-stored wheat.* With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC which is stored in an approved warehouse producers must obtain official protein content determinations or protein content determinations arrived at by mutual agreement between the producer and the warehouseman. Costs of such determinations shall not be paid by CCC.

(b) *Protein content determinations for farm-stored wheat.* A producer may request a CCC determination of the protein content of wheat pledged as collateral for a farm-stored loan. Such a request must be made at the county office and the producer must pay a fee, as determined by CCC, for each bin which is tested. For purposes of loan disbursements, the basic support rate shall be adjusted to reflect the protein content. However, settlement of the loan shall be made by CCC on the basis of the protein content of the wheat at the time of delivery to CCC.

§ 1421.25 [Redesignated as § 1421.31]

24. Section 1421.25 is redesignated as § 1421.31.

25. A new § 1421.25 is added to read as follows:

§ 1421.25 Rice marketing loans and marketing certificates.

(a) *Marketing loans.* A producer may repay a loan at a level that is the lesser of:

(1) The loan level determined for a crop; or

(2) The higher of:

(i) The loan level determined for such crop multiplied by 60 percent for the 1988 crop; and 70 percent for the 1989 and 1990 crops; or

(ii) The prevailing world market price, as determined by CCC. As a condition of permitting a producer to repay such a loan, CCC may require the producer to purchase CCC commodity certificates equal in value to an amount that does not exceed one-half the difference between the principal amount of the loan and the loan repayment amount.

(b) *Commodity certificates.* If CCC determines that, at anytime between August 1, 1986 and July 31, 1991, the world market price of a class of rice, as determined by CCC, is below the current loan repayment rate for a class of rice, CCC shall issue commodity certificates to persons who have entered into an agreement with CCC with respect to the issuance and exchange of such certificates. The value of such certificates shall be based upon the difference between:

(1) The loan repayment rate for such class of rice; and

(2) The prevailing world market price for such class of rice, as determined by CCC.

(c) *Payments.* Payments made in accordance with this section shall be made in a manner determined by CCC.

§§ 1421.26 and 1421.28 [Removed]

26. Sections 1421.26 and 1421.28 are removed.

§§ 1421.27 and 1421.29 [Redesignated as §§ 1421.29 and 1421.32 Respectively]

27. Sections 1421.27 and 1421.29 are redesignated as §§ 1421.29 and 1421.32, respectively.

§§ 1421.287, 1421.289 and 1421.290 [Redesignated as §§ 1421.26, 1421.27 and 1421.28 Respectively]

28. Sections 1421.287, 1421.289 and 1421.290 are redesignated as §§ 1421.26, 1421.27 and 1421.28, respectively.

29. Redesignated § 1421.27(a)(2) is revised to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts under loan.

(a) * * *

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(2) For edible export, at the sales price determined and announced by CCC.

* * * * *

§ 1421.28 [Amended]

30. Redesignated § 1421.28(d) is amended by revising the reference "§ 1421.286" to read "§ 1421.27".

§ 1421.322 [Amended]

31. In § 1421.322, the reference "7 CFR 1421.302" is revised to read "this Part".

32. The following subparts set forth in Part 1421 are removed:

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Barley

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Corn

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Sorghum

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Oats

Subpart—1987 and Subsequent Crops Peanut Farm-stored Loan and Purchase Program

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Rice

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Rye

Subpart—Loan and Purchase Program for the 1987 and Subsequent Crops Soybeans

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Wheat

PART 713—REDESIGNATED AS PART 1413

33. Title 7 of the Code of Federal Regulations is amended by redesignating Part 713 consisting of §§ 713.1–713.157 as Part 1413—Wheat, Feed Grains, Upland and Extra Long Staple Cotton, and Rice Production Adjustment Programs for the 1988 and Subsequent Crop Years consisting of §§ 1413.1–1413.157.

34. The table of contents and authority citation for 7 CFR 713.1 through 713.157 are transferred to Part 1413. The section numbers 713.1 through 713.157 in the table of contents are redesignated as §§ 1413.1 through 1413.157, respectively.

PART 770—REDESIGNATED AS PART 1470

35. Title 7 of the Code of Federal Regulations is amended by redesignating Part 770 consisting of §§ 770.1 through 770.7 as Part 1470 Commodity Certificates, in Kind Payments, and Other Forms of Payments consisting of §§ 1470.1–1470.7.

36. The table of contents and authority citation for 7 CFR 770.1 through 770.7 are transferred to Part 1470. The section numbers §§ 770.1 through 770.7 in the table of contents are redesignated as §§ 1470.1 through 1470.7, respectively.

Signed at Washington, DC on May 13, 1988.

Milt Hertz,

Executive Vice President, Commodity Credit Corporation, Administrator, Agricultural Stabilization and Conservation Service.

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Agricultural Marketing Service

7 CFR Part 998

Marketing Agreement Regulating the Quality of Domestically Produced Peanuts and Implementing Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule contains the provisions of the peanut marketing agreement which became effective on July 12, 1965, and the incoming and outgoing quality and indemnification regulations established under that program. Although the marketing agreement and regulations have been published in the Federal Register, they have not been codified in the Code of Federal Regulations. The purpose of this action is to effect such codification.

EFFECTIVE DATE: These regulations are being added to the Code of Federal Regulations June 3, 1988. The provisions of the peanut agreement hereinafter codified as 7 CFR Part 998 have been effective since July 12, 1965, (30 FR 9403, July 28, 1965). The implementing regulations which apply to 1987 crop peanuts have been effective since July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: The purpose of this action is to publish in the Federal Register a currently effective Marketing Agreement Regulating the Quality of Domestically Produced Peanuts and its Implementing Regulations so that the marketing agreement and regulations will be codified in the Code of Federal Regulations as 7 CFR Part 998. The marketing agreement and implementing regulations that are to be codified were issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

Because this action is administrative in nature relating to internal agency management and procedure to accomplish codification of a currently effective marketing agreement and its regulations, the provisions of Executive Order 12291 and Departmental Regulation 1512–1 do not apply. For the same reasons, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) do not apply.

This action publishes the provisions of the peanut marketing agreement which became effective on July 12, 1965, and the incoming and outgoing quality and indemnification regulations established under that program.

The "Marketing Agreement Regulating the Quality of Domestically Produced Peanuts" was published in the proposed rulemaking section of the Federal Register on May 12, 1965, (30 FR 6529). On July 28, 1965, a notice was published in the Federal Register that the agreement became effective on July 12, 1965 (30 FR 9403). The agreement has, and regulations which have undergone numerous amendments have, never been codified in the Code of Federal Regulations. The purpose of this action is to effect such codification.

This action imposes no change in regulatory requirements including record keeping and reporting requirements. The information collection requirements of the marketing agreement and regulations have been approved previously by the Office of Management and Budget under OMB Control No. 0581–0087. Because this action is administrative in nature relating to internal agency management and procedure, the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply and because the marketing agreement and regulations are currently in effect good cause is found for not postponing the effective date of this action until 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 998

Market agreement, Peanuts.

1. For the reasons set forth in the preamble, 7 CFR Part 998 is added to read as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

Definitions

Sec.

998.1 Secretary.
998.2 Act.
998.3 Person.
998.4 Area.
998.5 Peanuts.
998.6 Producer.
998.7 Handle.
998.8 Handler.
998.9 Crop year.
998.10 Production areas.
998.11 Area association.

Peanut Administrative Committee

998.15 Establishment and membership.
998.16 Eligibility.
998.17 Term of office.
998.18 Initial committee.
998.19 Nomination.
998.20 Selection.
998.21 Failure to nominate.
998.22 Qualify by acceptance.
998.23 Alternate members.
998.24 Vacancies.
998.25 Compensation and expenses.
998.26 Procedure.
998.27 Powers.
998.28 Duties.

Marketing Policy

998.30 Marketing policy.

Quality Regulation

998.31 Incoming regulation.
998.32 Outgoing regulation.
998.33 Inspection, certification and identification.
998.34 Modification.
998.35 Above parity situations.
998.36 Indemnification.

Reports, Books and Records

998.40 Confidential information.
998.41 Reports of acquisitions and shipments.
998.42 Other reports.
998.43 Records.
998.44 Verification of reports.

Expenses and Assessments

998.47 Expenses.
998.48 Assessments.

Miscellaneous Provisions

998.50 Rights of the Secretary.
998.51 Personal liability.
998.52 Separability.
998.53 Derogation.
998.54 Duration of immunities.
998.55 Agents.
998.56 Effective time.
998.57 Suspension or termination.
998.58 Procedure upon termination.
998.59 Effect of termination or amendment.
998.60 Counterparts.
998.61 Additional parties.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Definitions

§ 998.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

§ 998.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 998.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 998.4 Area.

"Area" means all States with commercial production of peanuts and includes the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Tennessee, Missouri, Louisiana, Oklahoma, Texas, New Mexico, Arizona, and California.

§ 998.5 Peanuts.

"Peanuts" means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled other than those marketed by the producer in green form for consumption as boiled peanuts.

(a) *Farmers Stock.* "Farmers stock peanuts" means picked and threshed peanuts which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the form in which customarily marketed by producers.

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers stock peanuts with more than 2 percent but not more than 4 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers stock peanuts with more than 4 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(e) The definitions set forth in paragraphs (b), (c), and (d) of this section may be modified by the Secretary pursuant to § 998.34.

§ 998.6 Producer.

"Producer" means any person engaged within the area in a proprietary capacity in the production of peanuts for sale.

§ 998.7 Handle.

"Handle" means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided,* That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further,* That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 998.8 Handler.

"Handler" means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling, and who is a party to this agreement.

§ 998.9 Crop year.

"Crop year" is synonymous with "fiscal year" and means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year.

§ 998.10 Production areas.

"Production areas" mean (a) The Southeastern Area consisting of the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(b) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(c) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

§ 998.11 Area association.

"Area association" means for the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers Association, Gorman, Texas; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Virginia.

Peanut Administrative Committee

§ 998.15 Establishment and membership.

A Peanut Administrative Committee (hereinafter referred to as committee) is hereby established to administer the terms and provisions of this agreement. Such committee shall consist of 18 members of whom 9 shall represent producers and 9 shall represent handlers. The producer representation shall be 3 for the Southeastern area, 3 for the Southwestern area, and 3 for the Virginia-Carolina area of which one of the 3 in each production area shall represent the respective area association. The handler representation shall also be 3 for each of the designated areas. For each member there shall be an alternate member.

§ 998.16 Eligibility.

Each producer member of the committee and alternate member, shall be, at the time of his selection and during his term of office, a producer, or an officer or employee of an area association, in the area for which selected and shall cease to be a member or alternate upon engaging in the handling of peanuts either in a proprietary capacity or as a director, officer, or employee of other than a cooperative association. Each handler member of the committee, and his alternate, shall be, at the time of his selection, a handler or an officer or employee of a handler in the area for which selected and shall throughout his term of office so continue to be a handler.

§ 998.17 Term of office.

Members and alternate members of the committee shall serve for terms of 3 years ending on April 30 but initial members and alternates shall be selected for terms of 1, 2, or 3 years so that one-third of the producer and handler representatives in each area may be replaced each year. Each member and alternate member shall continue to serve until his successor is selected and has qualified.

§ 998.18 Initial committee.

The initial members of the committee and their respective alternates shall be as follows:

Southeastern area:

Producers	Member	Alternate member	Term of office years
Area Assn	D.H. Harden	W.G. Miller	3
At Large	James E. Mobley	T. Lewis Knox	2
At Large	Emmett Reynolds	Billy Newberry	1
Handlers	Member	Alternate member	
	Don W. Sands	Tom Chandler	3
	James Anderson	J.B. Roberts	2
	R.C. Singletary, Jr.	Robert Pender	1

Southwestern area:

Producers	Member	Alternate member	
Area Assn	Ross Wilson	B.D. Green	3
At Large	D.B. Warren	E.A. Walker	2
At Large	Barton Scott	Jesse Leach	1
Handlers	Member	Alternate member	
	John Haskins	Pat Cagle	3
	Melvin Shell	Ellis L. Ganey	2
	John Burroughs	R.L. Borden	1

Virginia-Carolina area:

Producers	Member	Alternate member	
Area Assn	S. Womack Lee	J.F. Turner, Sr	3
At Large	Joe S. Sugg	Minton Beach, Jr.	2
At Large	Wm. V. Rawlings	G.B. Ligon	1
Handlers	Member	Alternate member	
	H.R. Birdsong	W.J. Spain, Jr.	3
	T.J. White	W.P. Woodley	2
	B.E. Parker	William D. Shaw	1

§ 998.19 Nomination.

Producers and handlers may nominate their successor representatives to those named in § 998.18 at meetings held in each area except that each area association representative shall be nominated by the association. The committee shall hold and shall give reasonable publicity to nomination meetings and may use the respective area associations to convene meetings of the producers. Only persons eligible to serve shall be eligible to vote. Each producer and each handler shall have but one vote, but a handler may vote in each production area in which he is a handler and if engaged in peanut production, may vote in his capacity as a producer. The person receiving the largest number of the votes cast for a position shall be the nominee. All nominations shall be certified by the committee to the Secretary no later than April 5 preceding the commencement of the term of office.

§ 998.20 Selection.

The Secretary shall select successor producer and handler members and alternate members of the committee in the numbers and with the qualifications specified in this agreement. Such selections may be made from the nominations certified by the committee or from other eligible producers and handlers.

§ 998.21 Failure to nominate.

In the event a nominee for any member or alternate member position is not certified pursuant to and within the time specified, the Secretary may select an eligible person to fill such position without regard to nomination.

§ 998.22 Qualify by acceptance.

Each person selected by the Secretary as a member or as an alternate member shall, prior to serving, qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

§ 998.23 Alternate members.

An alternate for a member shall act in the place and stead of such member:

(a) During his absence, or

(b) In the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

§ 998.24 Vacancies.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member or alternate, or any need to select a successor through failure of any person selected as a member or alternate member to qualify, and which is not recognized by the committee certifying to the Secretary a new nominee within 40 calendar days, may be filled pursuant to § 998.21.

§ 998.25 Compensation and expenses.

The members of the committee, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses, actual or per diem as approved by the committee.

§ 998.26 Procedure.

All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present except that a change of a quality regulation shall require approval of 75 percent of the members. Meetings, or portions of meetings, concerned with marketing policy or quality regulation shall be open to all members of the peanut industry. All votes in an assembled meeting shall be cast in person and a quorum must be present for a valid decision. A quorum shall consist of not less than 50 percent of the producer members and 50 percent of the handler members. The committee may vote by mail or telegram upon due notice to all members, but any proposition so voted upon first shall be explained accurately, fully, and identically by mail or telegram, to all such members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption. Failure of any member, or alternate acting for a member, to vote within a prescribed time shall be held to be a dissenting vote.

§ 998.27 Powers.

The committee shall have the following powers:

(a) To administer the agreement in accordance with its terms and provisions;

(b) To receive, investigate, and report to the Secretary, complaints of violations of this agreement; and

(c) To recommend to the Secretary amendments to this agreement.

§ 998.28 Duties.

The committee shall have the following duties:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions and these shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and marketing of peanuts;

(d) To submit to the Secretary such available information with respect to peanuts as he may request and such other information as the committee may deem desirable and pertinent;

(e) To select from among its members a chairman and other officers and to adopt such by-laws for the conduct of its business as it may deem advisable;

(f) To appoint or employ such persons as it may deem necessary and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by a certified public accountant at least once each crop year and at such other times as the committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(h) To prepare and submit to the Secretary quarterly statements of the financial operations of the committee and to make such statements together with the minutes of the meetings of said committee available for inspection at the offices of the committee by producers and handlers;

(i) To give the Secretary the same notice of meetings of the committee as is given to members;

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this agreement; and

(k) To establish with the approval of the Secretary such rules and regulations as are necessary or incidental to administration of this agreement, as are consistent with its provisions, and as would tend to accomplish the purposes of this agreement and the act.

Marketing Policy

§ 998.30 Marketing policy.

Prior to May 31, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting and storage conditions, probable quality of crop, grading and treatment methods, inspection capability, demand for peanuts in domestic and foreign markets, the basis of handler indemnification, the probable assessable tonnage for the purposes of § 48 and such other factors as may have a bearing on the peanut quality regulation or the administration of this agreement. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

Quality Regulation

§ 998.31 Incoming regulation.

No handler shall receive or acquire peanuts, either from a producer or other person, unless such peanuts were determined pursuant to § 998.33 to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than

Segregation 1: *Provided*, That a handler may.

(a) Receive or acquire and deliver for seed purposes farmers stock peanuts with not more than 3 percent damaged kernels nor more than 10 percent moisture if such peanuts were produced under the auspices of a State agency which regulates or controls the production of seed peanuts;

(b) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from handlers subject to this agreement, or from buyers who have purchased such peanuts from such handlers or from CCC, if the lot has been certified as meeting the requirements of § 998.32(a) and the identity is maintained;

(c) Perform services for an area association pursuant to a peanut receiving and warehouse contract; and

(d) If a crusher, acquire peanuts of a lower quality than Segregation 1 as oil stock upon such conditions as the committee, with the approval of the Secretary, may prescribe.

Segregation 2 peanuts which are wholesome relative to mold damage may be acquired from peanuts held by CCC or an area association when released by the Secretary as needed to fill demand. In the situation of § 998.35, the Secretary may authorize handlers to acquire Segregation 2 peanuts from producers or intermediaries. The acquisition of loose shelled kernels or their removal from farmers stock peanuts shall be in accordance with such procedures as the committee, with the approval of the Secretary, may establish.

§ 998.32 Outgoing regulation.

(a) No handler shall dispose of for human consumption, peanuts which fail to meet such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness as the committee, with the approval of the Secretary, may specify including the tolerance for moldy peanuts, time in storage, or other pertinent factors. No inspection certificate issued pursuant to § 998.33 shall be effective if unacceptable to the committee or for more than such period of time as the committee, with the approval of the Secretary, may prescribe. Peanuts which fail to meet the requirements specified pursuant to this section shall be disposed of by delivery to the Commodity Credit Corporation or in such manner as may be prescribed by the committee with the approval of the Secretary.

(b) Notwithstanding the restrictions contained in this section, and handler may transfer peanuts from one plant owned by him to another plant owned by him or to commercial storage without having an inspection made as provided for in § 998.33. No such transfers shall be made except in accordance with such procedures as the committee, with the approval of the Secretary, may prescribe for movement within each production area, to another production area or to points outside thereof.

§ 998.33 Inspection, certification and identification.

Each handler shall, at his own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether they meet the applicable grade requirements effective pursuant to this agreement and shall comply with such identification requirements as the committee, with the approval of the Secretary, may prescribe. Such handler shall obtain a certificate that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the committee. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary.

§ 998.34 Modification.

The requirements of §§ 998.31 and 998.32 and definitions set forth in § 998.5, (b), (c), and (d) may be modified by the Secretary, upon recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the objectives of this agreement.

§ 998.35 Above parity situations.

Minimum standards established under §§ 998.31 and 998.32, the grading and inspection requirements, and the provisions of this agreement relating to administration and indemnification shall continue in effect irrespective of whether or not the estimated season average price for peanuts is in excess of the parity level specified in section 2(1) of the Act.

The committee shall, upon such terms and conditions as it may establish with the approval of the Secertary, indemnify any handler, to the extent specified, for losses incurred by him on peanuts which have been milled for sale for human consumption and which meet the applicable grade and other requirements but which are determined by the committee or the U.S. Food and Drug Administration to be unsuitable for human consumption because of aflatoxin including such peanuts returned, resold or rejected to a handler by a purchaser. Any peanuts for which the handler is indemnified pursuant to this paragraph shall be delivered to the committee or disposed of as the committee may direct. Funds for such indemnification shall be obtained pursuant to § 998.48. The period of indemnification on any crop may extend to December 31 of the calendar year following the year in which the crop was produced.

Reports, Books and Records

§ 998.40 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such information to no person except the Secretary. Nothwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this agreement.

§ 998.41 Reports of acquisitions and shipments.

Each handler shall file such reports of his acquisitions and shipments of peanuts, as may be requested by the committee.

§ 998.42 Other reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this agreement.

§ 998.43 Records.

Each handler shall maintain such records of peanuts received, held and disposed of by him, as will substantiate any required reports and will show performance under this agreement. Such records shall be retained for at least 2 years beyond the crop year of their applicability.

§ 998.44 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this agreement, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed of by him.

Expenses and Assessments

§ 998.47 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this agreement, determine to be appropriate.

§ 998.48 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to peanuts received by him, including his own production, his pro rata share of all expenses, indemnification and other, which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired other than those peanuts described in § 998.31 (c) and (d). During a crop year the Secretary may not increase the rate of assessment to cover a deficit in the indemnification fund but may assess for a deficit in a subsequent year. An assessment rate may be increased to cover a deficit in the administrative fund.

(b) In order to provide funds to carry out the functions of the committee, the committee may borrow money or may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) *Indemnification reserve.* The committee, with the approval of the Secretary, may establish and maintain during one or more crop years a monetary reserve in an amount approximating anticipated expenses for indemnification pursuant to § 998.36.

(d) *Refunds.* Administrative funds held by the committee at the conclusion of the crop year in excess of the crop year's expenses, other than indemnification funds, may be used to defray expenses for no more than the ensuing four months, and thereafter within a reasonable time the committee shall credit the aforesaid administrative excess to handlers who contributed to such excess: *Provided*, That the excess due any handler shall be applied, in whole or in part, by the committee to any outstanding obligation due the committee from such handler. Should any handler discontinue handling peanuts, such excess shall be refunded to him. A handler's share of such excess funds shall be the amount of such assessments he paid in excess of his actual pro rata share of the administrative expenses of the committee. Upon termination of this agreement any indemnification money in possession of the committee shall be turned over to any successor committee or disposed of, with the approval of the Secretary, for projects of benefit to the peanut industry and any residual together with any administrative money shall be distributed in such manner as the Secretary may direct: *Provided*, That, to the extent practicable, such residual funds shall be returned pro rata to the persons from whom collected.

Miscellaneous Provisions

§ 998.50 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 998.51 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 998.52 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 998.53 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 998.54 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 998.55 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this agreement.

§ 998.56 Effective time.

The provisions of this agreement, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 998.57.

§ 998.57 Suspension or termination.

(a) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this agreement, whenever he finds that such provisions do not tend to effectuate the declared policy of the act. Moreover, if the provisions of the CCC price support program relating to purchases from shellers are discontinued, or change appreciably, consideration shall be given to termination of this agreement.

(b) *Referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of peanuts who during the crop year have been engaged in the production of peanuts for market: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such peanuts produced for market within the area, but such termination shall be effective only if announced on or before June 1 of the then current crop year.

(c) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the act authorizing them cease to be in effect.

§ 998.58 Procedure upon termination.

Upon the termination of this agreement, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this agreement. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ 998.59 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this agreement or any regulation issued thereunder, or

(b) Release or extinguish any violation of this agreement or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

§ 998.60 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 998.61 Additional parties.

After the effective date of this agreement, any handler may become a party hereto if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and such party has complied with assessment obligations and the quality regulations applicable to the current crop. The benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting part.

2. The center heading "IMPLEMENTING REGULATIONS" is added to Part 998 after § 998.61 along with §§ 998.100, 998.200, and 998.300. The center heading and three sections read as follows:

Implementing Regulations

Sec.

998.100 Incoming quality regulation—1987 crop peanuts.

998.200 Outgoing quality regulation—1987 crop peanuts.

998.300 Terms and conditions of indemnification—1987 crop peanuts.

Implementing Regulations

§ 998.100 Incoming quality regulation—1987 crop peanuts.

The following modify § 998.5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) *Modification of § 998.5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of § 998.5 of the peanut marketing agreement are modified for the purposes of this section as to farmers' stock peanuts to read respectively as follows:

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers' stock peanuts with visible *Aspergillus flavus.*

(b) *Moisture and foreign material.*—(1) *Moisture.* Except as provided under paragraph (e) *Seed peanuts,* and for field dried farmers' stock peanuts produced in the Southwestern area which are delivered to the buying station in bags, no handler shall receive or acquire peanuts containing more than 10.00 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.00 percent moisture prior to storing or milling, and Southwestern-area-field-dried peanuts delivered to the buying station in bags may contain up to 10.49 percent moisture. On farmers' stock, such moisture determinations shall be rounded to the nearest whole number, except, that when the moisture determination is 10.01 percent to 10.49 percent, the determinations shall be recorded the same as is prescribed for shelled peanuts. On shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers' stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers' stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers' stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* (1) Handlers may separate from the loose shelled kernels received with farmers' stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{13}/_{64}$ x 1 inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided,* That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the Outgoing Quality Regulation (§ 998.200). If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

(2) Each handler shall be required to submit to the Committee a flow chart for each plant operation diagraming the procedures and equipment used in the removal of loose shelled kernels and in the processing of splits. Upon any subsequent changes in such flow, procedures, or equipment, the handler shall submit to the Committee a revised flow chart reflecting those changes.

(e) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers' stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus,* and, in addition, the following moisture content, as applicable:

(1) For such seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and

(2) For seed peanuts produced in the Southwestern area, they may contain up to 10.49 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers' stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee as requested the weight of each lot of farmers' stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers' stock) seed peanuts or from another sheller or producer who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets, and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation (§ 998.200).

(f) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of § 998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers' stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers' stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers' stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation (§ 998.200) which failed to meet the requirements for human consumption pursuant to paragraph (a) of the Outgoing Quality Regulation (§ 998.200): *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation (§ 998.200). Further disposition or commingling of such peanuts shall be only as provided in paragraph (l) of the Outgoing Quality Regulation. (§ 998.200). Handlers who acquire farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers' stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(g) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers' stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(h) *Farmers' stock storage and handling facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers' stock peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers' stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers' stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers' stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers' stock storage and handling facilities and farmers' stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(i) *Shelled peanuts.* Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Any lot of such peanuts must

be accompanied by a valid inspection certificate for grade factors, an aflatoxin assay certificate, and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation (§ 998.200).

(j) *Inedible quality shelled peanuts for disposition to animal feed.* Handlers may receive or acquire from other handlers, for further milling and/or processing and subsequent disposition for use as domestic animal feed, shelled peanuts that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Any lot of such peanuts received or acquired for such further disposition shall be positive lot identified and covered by a valid grade inspection certificate issued by a Federal or Federal-State Inspector. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts received or acquired pursuant to this paragraph shall be held, milled, and/or processed separate and apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided for in paragraph (m)(2) of the Outgoing Quality Regulation (§ 998.200).

§ 998.200 Outgoing quality regulation—1987 crop peanuts.

The following modify or are in addition to the peanut marketing agreement restrictions of § 998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this section, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than—

(1) A total of 1.50 percent unshelled peanuts and damaged kernels;

(2) A total of 2.50 percent unshelled peanuts and damaged kernels and minor defects except for "No. Two Virginia," which may not exceed 3.00 percent;

(3) 9.00 percent moisture; or

(4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade.

The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that in peanuts other than "No. Two Virginia" fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits." The term "fall through" as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph 9a) shall be as follows:

Type	Screen Openings		
	Split and Broken Kernels		Whole Kernels
Runners	13/64 inch round.	———	13/64 × 3/4 inch slot.
Spanish and Valencia.	15/64 inch round.	———	15/64 × 3/4 inch slot.
Virginia except "No. 2 Virginia".	15/64 inch round.	———	15/64 × 1 inch slot.
"No. 2 Virginia".	———	15/64 inch round only for split, broken and whole kernels.	

("No. Two Virginia" means Virginia type peanuts that meet requirements of U.S. No. 2 Virginia grade peanuts except for tolerances for: Damage or unshelled peanuts and minor defects; and sound peanuts and portions of peanuts which pass through the prescribed screen. Such tolerances shall be the same as those listed heretofore in this paragraph. Runners, Spanish, or Virginia "with splits" means shelled peanuts which do not contain more than 15 percent splits; for Spanish, 2.00 percent whole kernels which will pass through 13/64 × 3/4 inch slot screen; for Runners, 3.00 percent whole kernels which will pass through 13/64 × 3/4 inch slot screen; and for Virginias, 3.00 percent whole kernels which will pass through 15/64 × 1 inch slot screen; and otherwise meet specification of U.S. No. 1 grade).

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts.* Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1," "Sample #2," and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1–CD." Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 96 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground Subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB." Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at his expense. The cost of assay on Subsample 1–AB and a portion of the cost (specified by the Committee) of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB to the laboratory shall be for the account of the buyer. However, if the handler elects to pay for these costs, the handler shall charge the buyer the amount specified by the Committee when the handler invoices the peanuts and, if more than one buyer, on a pro rata basis. Any remaining costs of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB shall be for the account of the handler and shall be shown on the grade analysis certificate covering the lot. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler who shall promptly cause notice to be given to the buyer, of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose shelled kernels, fall through and pickouts.* (1) Loose shelled kernels which do not ride screens with the following slot openings: Runner—13/64 x 3/4 inch; Spanish and Valencia—13/64 x 3/4 inch; Virginia—15/64 x 1 inch; and fall through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph (g)(3) or paragraph (m) of this section, hereinafter. For the purpose of this regulation: The term "non-edible quality peanuts" described in this paragraph means loose shelled kernels, fall through, and pickouts; the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers' stock peanuts or those which fail to ride the screens prescribed in paragraph (d)(1) of the Incoming Quality Regulation (§ 998.100); the term "fall through" has the same meaning as in paragraph (a) of this section; and the term "pickouts" means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new bags or clean used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3)(i) In addition to disposition outlets specified in paragraph (g)(1) of this section, such peanuts (loose shelled kernels, fall through, and pickouts) may be disposed of, with prior approval by the Committee for each such disposition, for use in research projects performed by institutions which are supported or sponsored with State or Federal funds. Fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Each category of non-edible quality peanuts described in paragraph (g)(1) of this section and identified as prescribed in paragraph (g)(2) of this section may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this section or

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they may be moved to another handler for such disposition. Sales or transfer of such peanuts, to exporters who are not handlers under the marketing agreement, shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(1) of this section to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) of this section which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing but may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (l)(2) of this section. Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) of this section are exported or crushed in commingle with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

(ii) Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Handlers or crushers may detoxify positive tested meal, have it retested, and if such meal is found negative as to aflatoxin content, it may be disposed of for feed use. Handlers may also move "restricted" meal to a licensed operator, approved by USDA, FDA, or other government agencies, for detoxification. Such meal may also be used for research purposes, subject to the approval of the Executive Subcommittee. However, loose shelled kernels, fall through, and pickouts and meal from such peanuts, in specifically identified lots not exceeding 200,000 pounds may be sampled by the Federal or Federal-State Inspection Service or by the Area Association if authorized by the Committee, and tested for aflatoxin in laboratories approved by the Committee or by a USDA laboratory, at handler's or crusher's expense, and if such meet Committee standards, the meal may be disposed of for feed use.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation (§ 998.100), a handler may transfer non-edible quality peanuts described in paragraph (g)(1) of this section to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts failing quality requirements.* (1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section. Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation (§ 998.100) shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched positive identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided*, That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Handlers who move such peanuts to a blancher, shall report to the Committee, on a form furnished by the Committee, movement of each such lot and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after, blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certification determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation (§ 998.200); *or* in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or a Committee approved exporter. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation (§ 998.200): To domestic crushing, to export to countries other than Canada and Mexico, provided they meet fragmented requirements, to crushers who are not handlers but are approved by the Committee, to other handlers for crushing or fragmenting and exportation, or to domestic animal feed use or to other handlers for such disposition, pursuant to paragraph (m) of the Outgoing Quality Regulation (§ 998.200). Sales or transfer of such peanuts to exporters who are handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Each lot of such peanuts shall have been positive lot identified as prescribed in paragraph (d) of this section. Handlers may dispose of such peanuts as "unrestricted": *Provided*, That each lot has been sampled and assayed for aflatoxin as specified in paragraph (c) of this section and determined to be negative as to aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)(1) of this section. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted." Therefore, the disposition of such peanuts to export or domestic crushing shall be as "restricted." However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2) of this section. Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation (§ 998.200): *Provided*, That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and an aflatoxin assay certificate and must be positive lot identified. Handlers who move such peanuts to an approved remiller shall report to the Committee, on a form furnished by the Committee, the movement of each such lot. The title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions shall be bagged and red-tagged and disposed of to domestic crushing by the approved remiller or they may be returned to the handler for disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation (§ 998.200). Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers' stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation §998.100) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers' stock. Likewise, any such residuals received or acquired from a handler of non-handler, shall be held and milled separate and apart in the same manner. Residuals that meet requirements of the Outgoing Quality Regulation may be disposed of by sale to human consumption outlets or to another handler and any portion in positive identified lots not meeting such requirements: (a) May be handled and disposed of pursuant to the provisions of paragraph (h) of this section; or (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g) of this section.

(j) *Segregation 2 and 3 farmers' stock disposition.* (1) Handlers who have acquired Segregation 2 and 3 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation (§ 998.100) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and farmers' stock peanuts may be moved or disposed of in bags or bulk: To other handlers for shelling, fragmenting, or crushing, or to crushers who are not handlers but are approved by the Committee. Handlers may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags: To other handlers for fragmenting or crushing, or to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter the paragraph (l)(2) of this section for "restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (l)(1) of this section and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the Area Association and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingling and domestic crushing. All movement and disposition of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation (§ 998.100) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be moved or disposed of in bulk or bags: To other handlers for shelling, fragmenting, or crushing, or to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: To another handler for fragmenting or crushing; or to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in

paragraph (l)(1) of this section. Prior to exportation the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (l)(1) of this section. If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(k) *Segregation 1 farmers' stock disposition.* (1) In addition to milling (shelling, cleaning, etc.) Segregation 1 farmers' stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers' stock peanuts to export or to other handlers for such dispostion. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), of this section handlers may dispose of Segregation 1 farmers' stock peanuts in bags or bulk to other handlers for shelling, fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers' stock peanuts with Segregation 2 farmers' stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to others handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting, and disposition of such Segregation 1 farmers' stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing shall be milled and disposed of pursuant to paragraph (j)(2) of this section in lieu of the provisions specified in paragraphs (a), (b), (c), (d), (g), (h), and (i) of this section. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as prescribed by the Committee.

(l) *Handling commingling, and disposition of shelled peanuts not meeting quality requirements for human consumption.* (1) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "unrestricted".

(i) The entire mill production of shelled peanuts from Segregation 1 farmers' stock pursuant to paragraph (k)(2) of this section.

(ii) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers' stocks pursuant to paragraph (j)(2) of this section.

(iii) Positive lot identified lots of shelled "peanuts failing quality requirements" determined negative as to aflatoxin pursuant to paragraph (h)(3) of this section.

(iv) Positive lot identified lots of loose shelled kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraphs (g)(1), (2), and (3) of this section.

(v) Positive lot identified lots of loose shelled kernels, fall through and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g)(2), and (3) of this section.

(vi) Positive lot identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i) of this section.

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: With any other category of peanuts described in this paragraph, and with any category of "unrestricted" shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term "fragmented" means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish 15/64 x 3/4 inch slot; Runner 15/64 x 3/4 inch slot; and Virginia 15/64 x 1 inch slot. Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher: With any other category of peanuts described in this paragraph, and with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted disposition (crushing or export), such peanuts, before commingling and after commingling shall be kept separate and apart from all "restricted" peanuts. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "restricted:"

(i) The entire mill production of shelled peanuts from Segregation 1 farmers' stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation (§ 998.200),

(ii) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers' stock pursuant to paragraph (j)(2) of this section.

(iii) The entire mill production of shelled peanuts from Segregation 3 or commingled Segregation 2 and 3 farmers' stock pursuant to paragraph (j)(1) of this section.

(iv) Positive lot identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3) of this section.

(v) Positive lot identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g) (1), (2), and (3) of this section.

(vi) Positive lot identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g) (2). and (3) of this section.

(vii) Positive lot identified lots of seed peanut residuals pursuant to paragraph (i) of this section.

Handlers who acquire, from other handlers, or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph (l)(2) of this section may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted." Prior to such exportation, the peanuts shall be certified as meeting the fragmented requirements and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain alfaxoin." Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (l)(2) of this section and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "restricted" domestic crushing. Meal produced from peanuts disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use, pursuant to the provisions of paragraph (g)(3) of the section. Shelling, fragmenting, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segregation 1 peanuts handled pursuant to paragraph (k) of this section, shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(m) *Disposition of shelled peanuts for use as domestic animal feeds.* (1) Handlers may sell to or contract with other handlers, for further milling and/or processing for use in domestic animal feed, shelled peanuts which fail to meet requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Lots of peanuts disposed of in this manner must be positive lot identified and accompanied by a valid grade inspection certificate. Transactions made in this manner shall be reported to the Committee by both the seller and the buyer, on a form provided by the Committee. Any such peanuts acquired by the receiving handler for disposition to use as domestic animals feed shall be held and milled separate and apart from peanuts destined to human consumption outlets, and further disposition shall be regulated as provided for in paragraph (m)(2) of this section, hereinafter.

(2) Handlers may dispose of, for use as domestic animal feeds, shelled peanuts which fail to meet requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulations (§ 998.200): *Provided*, That each lot of peanuts so disposed of is treated with a coloring or dyeing solution approved and prescribed by the Committee; handled and shipped under positive lot identification procedures, (except for bulk loads, red tags shall be used and marked, "For Animal Feed-Not for Human Consumption"); assayed for aflatoxin and covered by a valid "negative" aflatoxin certificate; and inspected by the Federal or Federal-State Inspection Service and a certification made as to moisture, foreign material content, and that a minimum of 80 percent of the peanuts must show evidence of the dye or coloring agent, which is the Committee's requirement specified for dyeing or coloring. Each lot of inedible quality peanuts disposed of for use as domestic animal feed shall be reported to the Committee by the handler as prescribed by the Committee on a form provided by the Committee, and the handler's bill of lading and this invoice covering the shipment of each such lot shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption."

§ 998.300 Terms and conditions of indemnification—1987 crop peanuts.

(a) For the purpose of paying indemnities on a uniform basis pursuant to § 998.36 of the peanut marketing agreement effective July 12, 1965, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled to the outgoing quality requirements and into one of the categories listed in the final paragraph of these terms and conditions, on which the handler has withheld shipment or storage or the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of chemical assay.

(b) If the chemical assay results on samples drawn prior to shipment pursuant to paragraph (c) of the Outgoing Quality Regulation (§ 998.200) are so high in aflatoxin content that a lot of peanuts should be handled pursuant to these Terms and Conditions, the handler shall certify to the Committee within ten (10) days of the date shown on the aflatoxin certificate whether the milling of the peanuts in the lot was supervised by the Area Association as "additional peanuts." For the purposes herein, the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

(c) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements of the agreement, shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the Outgoing Quality Regulation (§ 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on assays to date or further assays, that the lot is so high in aflatoxin that it should be handled pursuant to these Terms and Conditions, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification. If the lot is covered by a sales contract, the lot may be rejected to the handler.

(d) In an effort to make such eligible peanuts suitable for human consumption, and to minimize indemnification costs, the Committee

and the Agricultural Marketing Service shall, prior to disposition for crushing cause all suitable lots to be remilled or custom blanched or both. "Custom blanching" means the process which involves blanching peanuts, and the subsequent removal of damaged peanuts for the purpose of eliminating aflatoxin from the lot. The process may be applied to either an original lot or the new lot which results from remilling. Custom blanching shall be performed only by those firms determined by the Committee to have the capability to remove the aflatoxin and who agree to such terms, conditions and rates of payment as the Committee may find to be acceptable.

(e) If the Committee and the Agricultural Marketing Service conclude that such lot is not suitable for remilling or custom blanching, the lot shall be declared to crushing and shall be disposed of by delivery to the Committee at such point as it may designate. The indemnification payment for "quota peanuts" so disposed of shall be 43 cents per pound, or the indemnification value of the lot of peanuts as hereinafter provided for "quota peanuts," less five cents per pound, whichever is lower. The indemnification payment for "additional peanuts" so disposed of shall be the indemnification value as hereinafter provided for "additional peanuts," less three cents per pound. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. Payment shall be made to the handler as soon as practicable after delivery of the peanuts to the Committee. The salvage value for peanuts declared for crushing shall be paid to, and retained by, the Committee to offset indemnification expenses.

(f) If it is concluded that the lot should be remilled or custom blanched, expenses shall be paid by the Committee on those lots which, on the basis of the inspection occurring prior to shipment, contained not more than 1.00 percent damaged kernels other than minor defects. Lots with damage in excess of 1.00 percent on such inspection shall be remilled without reimbursement from the committee for milling or freight, but otherwise shall be indemnifiable the same as lots with not more than 1.00 percent damage.

(g) The indemnification value of peanuts delivered to the Committee for indemnification shall be as listed in the third from the last paragraph of these terms and conditions.

(h) The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall include an allowance for remilling of two and one-half cents per pound on the original weight. The indemnification payment on the pounds of peanuts removed in the process and not cleared for human consumption shall be: for "quota peanuts," 43 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts," whichever is lower; and for "additional peanuts," the indemnification value as hereinafter provided for "additional peanuts." Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plus the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and 43 cents per pound or the applicable indemnification value, whichever is lower, of the weight of reject peanuts removed from the lot. On lots which are custom blanched without remilling, the indemnification payment shall be determined in the same manner.

(i) Claims for indemnification on current crop year peanuts may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay, to the extent of the raw peanut equivalent value of the peanuts used in the product so withheld, such claims as it determines to be valid.

(j) Payment shall be made to the handler claiming indemnification or receiving the rejected lot as soon as practicable after receipt by the Committee of such evidence of remilling or custom blanching and clearance of the lot for human consumption as the Committee may require and the delivery of the peanuts not cleared for human consumption to the delivery point designated by the Committee. If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched, or both, the Committee shall declare the entire lot for indemnification, and the indemnification payment rate on "quota peanuts" shall be 43 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts," less five cents per pound, whichever is lower, plus other applicable costs authorized heretofore, and the indemnification payment for "additional peanuts" shall be the indemnification value for "additional peanuts" as hereinafter provided for "additional peanuts," less three cents per pound, plus other applicable costs authorized heretofore. However, the Committee shall refuse to pay indemnification on any lot(s) where it has reason to believe that the rejection of the peanuts arises from failure of the handler to use reasonable measures to receive and withhold from milling for edible use those Segregation 3 peanuts tendered to him either directly by a producer or by a country buyer, commission buyer or other like person. Furthermore, any misrepresentation by a handler in reporting acquisition, composition or disposition of any lot or lots of peanuts by such handler shall cause indemnification payments with respect to any such claim filed with the Committee by the handler on current crop year peanuts to be withheld unless the Committee finds that such action was inadvertent.

(k) Remilling may occur on the premises of any handler signatory to the marketing agreement or at such other plant as the Committee may determine. However, if the Committee orders remilling of a lot which has been found to contain aflatoxin prior to shipment from the locality of original milling, the Committee shall not pay freight costs should the handler move said lot to another locality for remilling.

(l) Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee no later than November 1, following the end of the current crop year.

(m) Each handler shall include, directly or by reference, in his sales contract the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an "appeal" inspection for aflatoxin. Results of the "appeal" inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the "appeal" sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller, and such peanuts shall be reoffered to the buyer to satisfy the covering contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot if he elects to do so. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the "appeal" sample test results, otherwise the buyer agrees that he forfeits the right to reject the lot and return it to the seller.

(2) If the buyer's or receiver's name is shown on the certificates covering a lot which, upon the pretesting sampling procedure prescribed in paragraph (c) of the Outgoing Quality Regulation (§ 998.200), exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot, if he elects to do so.

(3) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. The laboratory costs shall be for the account of the buyer and buyer agrees to pay them when invoiced by the laboratory or, in the event the seller has paid them, by the seller.

(n) Any handler who fails to include such provisions in his sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(o) In addition, should any handler enter into any oral or written sales contract which fixes the level of aflatoxin at which rejection may be made and hence conflicts with these terms and conditions, the handler doing so will not be eligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts on or after the filing date of a claim under such contract, except upon the Committee's finding that acceptance of such contract was inadvertent; and for purposes of this provision a claim shall be deemed to be filed when notice of possible rejection is first given to the Committee.

(p) Any handler who fails to conform to the requirements of paragraph (h) of the Incoming Quality Regulation (§ 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(q) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the Outgoing Quality Regulation (§ 998.200), shall be ineligible for any indemnification payments until such violation is corrected to the satisfaction of the Committee.

(r) Any handler who fails to remove, hold, or dispose of loose shelled kernels pursuant to paragraph (d)(1) of the 1987 Incoming Quality Regulation (§ 998.100) or paragraph (g) of the 1987 Outgoing Quality Regulation (§ 998.200) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee and/or any complaints of violations made by the Committee to the Secretary are resolved.

(s) Categories eligible for indemnification are as follows:

(1) *Cleaned inshell peanuts*

(i) U.S. Jumbos

(ii) U.S. Fancy Handpicks

(iii) Valencia-Roasting Stock[1]

(2) *U.S. Grade shelled peanuts*

(i) U.S. No. 1

(ii) U.S. Splits

(iii) U.S. Virginia Extra-Large

(iv) U.S. Virginia Medium

(3) *Shelled peanuts "with splits"*

(i) Runners with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a $^{15}/_{64} \times ^{3}/_{4}$ slot screen.

(ii) Spanish with splits which do not contain more than 15 percent splits or 2 percent whole kernels which will pass through a $^{15}/_{64} \times ^{3}/_{4}$ slot screen.

(iii) Virginias with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a $^{15}/_{64} \times ^{3}/_{4}$ 1 slot screen.

(4) *Shelled Spanish jumbos.*—Spanish having not more than 5 percent kernels which fall through an $^{15}/_{64} \times ^{3}/_{4}$ slot screen and which otherwise meet the grade requirements of U.S. No. 1 Spanish.

(t) However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) Were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation (§ 998.100) and paragraph (i) of the Outgoing Quality Regulation (§998.200); (2) failed the Outgoing Quality Regulation due to excessive damage and minor defects and such peanuts were subsequently blanched to remove such excess damage and minor defects pursuant to paragraph (h) of such regulation; (3) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects; and (4) were received or acquired from another handler pursuant to paragraph (i) of the Incoming Quality Regulation and were milled to meet requirements of the Outgoing Quality Regulation pursuant to paragraph (h) of such regulation.

(u) For the purpose of paying indemnification beginning August 1, of the current crop year, the domestic market price for each category of peanuts shall be determined by averaging the price(s) listed in the Peanut Market News, per category, during the most recent four week period. Such weekly price calculations shall extend to May 31, of the current crop year and the average price per category

[1] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

as of May 31, 1988, shall be applied during the remainder of the crop year.

(v) For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA–ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

(w) The indemnification value for each category of "quota peanuts" eligible for indemnification, except U.S. Splits of all types, shall be the domestic market price established during the averaging period, whether at the time the notice of claim is first filed with the Committee, or at the time of disposition of the peanuts, less two cents per pound (on the pounds indemnified) or the most recent price category listed in the Peanut Market News, whichever is lower. The indemnification values of U.S. Splits categories shall be the domestic market price established during the averaging period, whether at the time the notice of claim is first filed with the Committee, or at the time of disposition of the peanuts, less three cents per pound, or the most recent price listed for the U.S. Splits category, whichever is lower.

(x) The indemnification value for "additional peanuts" shall be equal to 45 percent of either 43 cents per pound or the established indemnification value, per category, of "quota peanuts," whichever is lower.

(y) The grade categories to which the indemnification values shall be applied are as follows:

Runners[1]	Virginias	Spanish
Jumbo	U.S. Extra Large	Spanish Jumbo.
Medium	U.S. Medium	U.S. No. 1
Select	U.S. No. 1	Spanish with Splits.
No. 1 (–18+16 screens)	Virginias with Splits	U.S. Splits.
Mail run with or without Splits	U.S. Splits	
U.S. Splits		

[1] Southeastern Peanut Association grades.

Dated: May 23, 1988.

Robert C. Keeney,

Director, Fruit & Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–11917 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 88–092]

Restrictions on Importation of Horses From Switzerland

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations by adding Switzerland to the list of countries in which contagious equine metritis (CEM) exists. Because Switzerland is no longer free of CEM, we are restricting the importation of certain horses from that country to prevent the livestock of the United States from contracting the disease.

Stallions and mares from Switzerland that are older than 731 days will not be permitted into the United States under standard 3-day quarantine and testing procedures. Instead, they must be tested and treated in accordance with procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

DATES: Interim rule effective May 27, 1988. Consideration will be given only to comments postmarked or received August 2, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket Number 88–092. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including contagious equine metritis (CEM), into the United States CEM, a venereal disease, affects horses' fertility and breeding.

Section 92.2(i)(1) lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries and horses that have been in any of those countries within the 12 months immediately preceding their export to the United States.

In reponse to information from Swiss animal health officials, confirming their finding of CEM on April 28, 1988, we are adding Switzerland to the list of countries in which CEM exists.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists warranting publication of this rule without prior opportunity for public comment. Immediate action is necessary to prevent carriers of CEM from introducing it into the United States.

Because prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Stallions and mares from Switzerland that are older than 731 days must undergo testing and treatment in Switzerland and the United States that is more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the horses' importation into this country; it will therefore increase the cost to importers of horses from Switzerland. However, of the approximately 22,000 horses imported into the United States in 1987, only 56 came from Switzerland. We estimate that fewer than half of these would fall into the category of animals affected by this interim rule. We therefore expect this rule to have little or no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this interim rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they would import horses from any CEM-free country.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. Section 92.2, paragraph (i)(1), is amended by adding "Switzerland," immediately after "Sweden,".

Done in Washington, DC, this 27th day of May, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12494 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–34–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5529/R859; FRL–3391–1]

Pesticide Tolerances for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes permanent tolerances for residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on certain food and feed items. BASF Wyandotte Corp. petitioned EPA to establish these tolerances.

EFFECTIVE DATE: May 25, 1988.

ADDRESS: Written objections, identified by the document control number [FAP 7H5529/R859], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 29, 1988 (53 FR 15407), in which it was announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, had submitted adequate studies to establish permanent tolerances for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on raisins at 30 parts per million (ppm) and in or on dry grapes at 42 ppm.

This document establishes permanent tolerances for vinclozolin that were originally issued as temporary tolerances in the **Federal Register** of May 13, 1987 (52 FR 17941).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

A related final rule [PP 1E3457/R900], that establishes a permanent tolerance for vinclozolin in or on grapes at 6 ppm in 40 CFR 180.380(b) is published elsewhere in this issue of the **Federal Register**.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 193 and 561

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 346.

§ 193.137 [Amended]

b. In § 193.137 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending paragraph (b) in the first sentence by removing the phrase "until May 13, 1988."

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 346.

§ 561.440 [Amended]

b. In § 561.440 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending the introductory text by removing the phrase "until May 13, 1988."

[FR Doc. 88-12527 Filed 6-2-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8208]

Income Taxes; Definition of Functional Currency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the definition of a taxpayer's functional currency. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, Washington, DC 20224, attention: CC:LR:T (INTL-982-86) (202-634-5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary income tax regulations under section 985 of the Internal Revenue Code of 1986. This section was added to the Code by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2590). Section 985 introduces a new statutory concept that requires all Federal income tax determinations to be made in a taxpayer's functional currency.

Prior Law

Prior to the Act, there were no statutory rules permitting the selection of a currency other than the United States dollar (dollar) as the currency used to determine the amount of income or loss (or earnings and profits) of a foreign operation. However, various methods of translating such amounts into dollars were provided in regulations and revenue rulings.

Statutory Provisions

Section 985(a) requires that, unless otherwise provided in regulations, all determinations for United States income tax pruposes must be made in a taxpayer's functional currency. Section 985(b)(1) provides that a taxpayer's functional currency is either (1) the dollar or, (2) in the case of a qualified business unit (QBU) (as defined in section 989(a)), the currency of the economic environment in which a significant part of the QBU's activities are conducted, provided the books and records are kept in such currency. Section 985(b)(2) provides that the dollar shall be the functional currency of any QBU whose activities are primarily conducted in the dollar. Section 985(b)(3) allows a taxpayer, to the extent provided in regulations, to elect to use the dollar as the functional currency for certain QBUs. The election cannot be revoked without the consent of the Commissioner. Finally, section 985(b)(4) provides that any change in functional currency shall be treated as a change in the taxpayer's method of accounting.

Immediate guidance is needed by taxpayers who must make their income tax determinations in functional currency for taxable years beginning after December 31, 1986. For this reason it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Explanation of Temporary Regulations

Section 1.985-1T(a) provides that a taxpayer and each QBU must make all determinations for United States income tax purposes in their respective functional currency. This section also provides that the regulations set forth in sections 1.985-1T through 5T are effective for taxable years beginning after December 31, 1986.

Section 1.985-1T(b) provides that the dollar shall be the functional currency of the following: (1) Any taxpayer that is not a QBU; a QBU that conducts its activities primarily in dollars; (3) a QBU that has the United States as its residence; (4) a QBU that elects to use, or is otherwise required to use, the dollar as its functional currency under § 1.985-2T; and (5) a QBU that does not keep books and records in the economic environment in which a significant part of its activities are conducted.

Section 1.985-1T(c)(1) provides that the functional currency of a QBU that is not required to use the dollar under § 1.985-1T(b) shall be the currency of the economic environment in which a significant part of the QBU's activities are conducted, provided the QBU keeps (or is presumed to keep under § 1.985-1T(c)(3)) books and records in such currency. Under § 1.985-1T(c)(2), the economic environment in which a significant part of a QBU's activities are conducted is determined by taking into account all the facts and circumstances. These facts and circumstances include, but are not limited to, the following factors: (1) The currency of the country in which the QBU is a resident as determined under section 988(a)(3)(B); (2) the principal currency of the QBU's cash flows: (3) the principal currency in which the QBU generates revenues and incurs expenses; (4) the principal currency in which the borrowing or lending of the QBU is conducted; (5) the currency of the QBU's principal sales market; (6) the duration of the QBU's business operations; and (7) the significance and/or volume of the QBU's independent activities. The rate of inflation is not a relevant factor.

Section 1.985-1T(c)(3) provides that a QBU shall be presumed to maintain books and records in the currency of the economic environment in which a significant part of its activities are conducted.

Section 1.985-1T(c)(4) provides that if a QBU is not required to have a dollar functional currency and more than one currency could qualify as the QBU's functional currency under the facts and circumstances test of section 1.985-1T(c)(1), the QBU may choose any such currency as its functional currency.

Section 1.985-1T(c)(5) provides that ordinarily the currency that a foreign QBU uses for purposes of United States generally accepted accounting principles (GAAP) will be accepted as the functional currency of the QBU for income tax purposes, if the GAAP determination is based on facts and circumstances substantially similar to those set forth in § 1.985-1T(c)(2).

Various determinations under the Code, such as the determination of subpart F income or the amount of a distribution that constitutes a dividend, require that a foreign corporation must have a single functional currency. Thus, where a foreign corporation has one or more QBUs that do not have the same functional currency § 1.985-1T(d) provides that the single functional currency of the foreign corporation is determined by applying the rules set forth in § 1.985-1T(b) and (c) to the corporation's activities as a whole. Once the foreign corporation determines its functional currency, each QBU branch of the foreign corporation having a different functional currency will apply the principles of section 987 (relating to branch transactions) to translate its income or loss or earnings or profits into the foreign corporation's functional currency. Examples (8), (9), (10), (11), and (12) in § 1.985-1T(f) illustrate these rules.

Section 1.985-1T(e) provides, generally, that all nonfunctional currency transactions shall be translated into the QBUs functional currency on a separate transactions basis. Thus, if a QBU has a functional currency other than the dollar, the QBU must translate dollar or other nonfunctional currency transactions into its functional currency on a transaction-by-transaction basis. The separate transactions method is required in computing nonfunctional currency transactions even in situations where the QBU has no dollar books and records but is required to use the dollar as its functional currency because its economic environment is primarily the dollar. The Service is interested in receiving comments from taxpayers on the efficacy of requiring the use of a separate transactions method in all circumstances where a QBU has the dollar as functional currency under section 985(b) (1) and (2) and section 1.985-1T.

Section 1.985-1T(f) provides examples illustrating the provisions of § 1.985-1T.

In general, section 985(b)(3) provides an election to use the dollar as the functional currency to QBUs whose operations would otherwise require it to use a nondollar functional currency. The election, however, is available only to the extent provided in regulations. Section 1.985-2T(a) provides that only an eligible QBU may elect to use the dollar as its functional currency under section 985(b)(3). Section 1.985-2T(b) defines the term "eligible QBU" to mean a QBU whose functional currency is a hyperinflationary currency absent the dollar election. Generally, the term "hyperinflationary currency" means the currency of any country where there is cumulative inflation of at least 100% for a specified 36 calendar month period.

Section 1.985-2T(c) provides rules concerning the time and manner for making the dollar election. Section 1.985-2T(c)(1) provides that eligible QBUs that are branches of United States persons shall make the election by attaching a statement to the United States person's federal income tax return for the taxable year the election is made.

Section 1.985-2T(c)(2) provides election rules for eligible QBUs that are controlled foreign corporations or branches of controlled foreign corporations. Section 1.985-2T(c)(2)(i) provides that in such a case the election may be made either by the foreign corporation or by the controlling United States shareholder on behalf of the foreign corporation by filing a written statement with the Internal Revenue Service and a written notice to United States shareholders. The written statement requirement and the written notice requirement are set forth in § 1.985-2T(c)(2) (ii) and (iii), respectively.

Section 1.985-2T(c)(3) provides rules for making the election in the case of eligible QBUs that are noncontrolled foreign corporations or branches of noncontrolled foreign corporations. The dollar election must be made by the corporation or the majority domestic corporate United States shareholders on behalf of the corporation. The written statement and the written notice rules applicable to controlled foreign corporations also generally apply.

Section 1.985-2T(d) describes the effect of the dollar election. Section 1.985-2T(d)(1) provides that if a dollar election is made by or on behalf of an eligible QBU, the QBU shall be deemed to have the dollar as its functional currency. One effect of this rule is that each United States person that owns stock of an electing foreign corporation must make all of its federal income tax calculations with respect to the foreign corporation using the dollar as the corporation's functional currency.

Section 1.985-2T(d)(2) provides that, in general, any eligible QBU that elects to have a dollar functional currency must compute profit and loss or earnings and profits in dollars using the dollar approximate separate transaction method described in § 1.985-3T. An eligible QBU that has a dollar functional currency may use a separate transaction method only if the QBU demonstrates to the satisfaction of the Commissioner that it can properly employ such method.

Section 1.985-2T(d)(3) provides that if a dollar election is made then the dollar shall be the functional currency of any related person, or branch of any related person, that is an eligible QBU. The term "related person" means any person with the relationship defined in section 267(b) to the electing QBU (or to the United States or foreign person to which the electing QBU is a part). Further, if a dollar election is made for a QBU branch of any person, each eligible QBU branch of such person shall have the dollar as its functional currency.

Section 1.985-2T(d)(4) provides that in, general, if an eligible QBU's functional currency changes due to a dollar election, such change shall be deemed for purposes of § 1.985-4T (relating to method of accounting) to be consented to by the Commissioner. No adjustments under section 481(a) shall be required solely because of the change. However, the QBU must make the adjustments, if any, required by § 1.985-5T (relating to adjustments required upon a change in function currency). If a dollar election is not made by or on behalf of a QBU for its first taxable year beginning after December 31, 1986 in which it is an eligible QBU, any subsequent election will require the taxpayer to make adjustments to income and/or earnings and profits that must be accounted for over a specified four-year period. Generally, the adjustments are the differences that occur by recomputing a QBU's functional currency as the dollar. The differences shall retain their character for all purposes as if earned or incurred in the year of recomputation.

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Section 1.985–2T(d)(5) provides examples illustrating § 1.985–2T.

Section 1.985–3T sets forth the United States dollar approximate separate transactions method. Section 1.985–3T(a) provides that, in general, the dollar approximate separate transactions method must be used to compute profit and loss or earnings and profits of a QBU that has elected the dollar as its functional currency pursuant to § 1.985–2T.

Section 1.985–3T(b) provides that under the dollar approximate separate transactions method of accounting, profit and loss or earnings and profits of a QBU shall be determined under the following four-step approach: (1) Preparing a profit and loss statement in the QBU's hyperinflationary currency; (2) Making the adjustment necessary to conform this profit and loss statement to United States accounting and tax principles; (3) Translating the amount of hyperinflationary currency as shown on such adjusted statement into dollars in accordance with § 1.985–3T(c); and (4) Adjusting the resulting dollar profit and loss or earnings and profits to reflect the amount of currency gain or loss as determined under § 1.985–3T(3)(d).

Section 1.985–3T(c) provides that, in general, the amounts shown on the profit and loss statement shall be translated into dollars at the average exchange rate for the translation period to which they relate. Special rules are provided for translating items of inventory, cost of good sold, depreciation, depletion, amortization, and prepaid items.

Section 1.985–3T(c)(2) describes the specific rules for translating items of inventory and cost of goods sold. Section 1.985–3T(c)(3) provides that amounts representing allowance for depreciation, depletion, or amortization shall be translated at the average exchange rate for the translation period in which the cost of the underlying asset was incurred. Section 1.985–3T(c)(4) provides that prepaid expenses or income shall be translated at the average exchange rate for the translation period during which they were paid or received.

Section 1.985–3T(c)(5) provides that the average exchange rate for any translation period is the average of the daily exchange rates within the translation period. Section 1.985–3T(c)(6) provides that, in general, a translation period shall be each month within a QBU's taxable year. However, if a QBU computes its profit or loss or earnings and profits using translation periods that are less than a month, the QBU can elect to divide its taxable year into translation periods that are less than a month.

Section 1.985–3T(c)(7)(i) provides that no currency gain or loss is permitted with respect to dollar transactions. Thus, any transaction in which the amount that a QBU is entitled to receive is either denominated in terms of the dollar or is determined by reference to the value of dollar, must be computed in dollars on a separate transaction method. Section 1.985–3T(c)(7)(iii) provides that any transaction involving a third country currency shall be computed in dollars on a separate transactions method. A third country currency is defined as any currency other than either the hyperinflationary currency of the QBU or the dollar.

Section 1.985–3T(c)(8) provides examples illustrating section 1.985–3T.

Section 1.985–3T(d)(1) provides that currency gain or loss determined in accordance with § 1.985–3T(d)(2) shall increase or decrease the amount of dollar profit and loss or earnings and profits as determined pursuant to § 1.985–3T (a), (b), and (c).

In addition, section 1.985–3T(d)(1) provides that the amount of currency gain or loss determined under § 1.985–3T(d)(2) shall be from sources outside the United States.

Regulations under section 904(d) will provide rules allocating the amount of currency gain or loss computed under § 1.985–3T(d)(2). Generally, the amount of an eligible QBU's currency gain or loss will be allocated on a gross to gross basis (before application of its section 904(d)(2)(A)(iii)(III) exception from passive income for high-taxed income) among the foreign source income of the eligible QBU in each section 904(d) separate limitation category.

Regulations under section 954 or 952 will also provide rules for allocating the amount of currency gain or loss computed under § 1.985–3T(d)(2) against subpart F and nonsubpart F income. Generally, this will be accomplished by allocating the currency gain or loss among gross subpart F and gross nonsubpart F income of the eligible QBU in each section 904(d) separate limitation category after such amount has first been allocated for section 904(d) purposes.

Section 1.985–3T(d)(2) provides that the currency gain or loss of an eligible QBU, other than currency gain or loss attributable to third currency transactions, shall be the amount equal to: (1) The retained earnings for the taxable year as determined under § 1.985–3T(d)(4); plus (2) the amount of any distributions made during the taxable year translated at the average rate for the translation period or periods during which such distributions were made, minus (3) the amount representing retained earnings for the preceding taxable year as determined under § 1.985–3T(d)(4), minus (4) the amount of dollar profit (or plus the dollar loss) as determined for the taxable year pursuant to § 1.985–3T(b) (1), (2) and (3). Section 1.985–3T(d)(3) provides that all currency gain or loss computed under § 1.985–3T(d)(2) ordinary income or loss.

Section 1.985–3T(d)(4) provides that retained earnings for any taxable year shall be determined by first: (1) Preparing a balance sheet as of the end of such year from the QBU's books and records as recorded in the QBU's hyperinflationary currency; (2) making those adjustments necessary to conform this balance sheet to United States accounting and tax accounting principles; (3) translating the amount shown on the balance sheet into United States dollars in accordance to § 1.985–3T(d)(5). Retained earnings shall be the dollar amount equal to the excess of the aggregate dollar amount representing assets on the balance sheet (after adjustments and translation) over the aggregate dollar amount representing liabilities, reserves, and paid-in-capital on the balance sheet (after adjustments and translation).

Section 1.985–3T(d)(5) provides rules for translating amounts shown on the balance sheet (as adjusted) into dollars. Rules are provided for translating amounts representing inventory, depreciation and similar reserves, bad debts reserves, paid-in-capital, prepaid income or expenses, hyperinflationary cash, physical assets, long-term liabilities, and other assets and liabilities into dollars on the balance sheet.

Section 1.985–3T(d)(6) provides that dollar transactions shall be reflected as dollars on the balance sheet and third currency transactions shall be translated directly into dollars for purposes of the balance sheet.

Section 1.985–3T(c)(7) provides examples illustrating § 1.985–3T(d).

Section 1.985–4T(a) provides that the adoption of a functional currency is a method of accounting that cannot be changed without the consent of the Commissioner. Section 1.985–4T(b) provides that, generally, permission to change functional currencies will not be granted unless significant changes in the facts and circumstances occur.

Section 1.985–5T pertaining to adjustments required upon change in functional currency is reserved.

Non-applicability of Executive Order 12291

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Analysis

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been sumitted to the Office of the Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–1051.

Drafting Information

The principal authors of these temporary regulations are David Rosenberg and F. Scott Farmer of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign Investments in U.S., Foreign tax credit, FSC, Sources of Income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended to read as follows:

Income Tax Regulations

PART 602—[AMENDED]

Paragraph 1. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 602.101(c) is amended by inserting in the appropriate places in the table § 1.985–2T . . . 1545–1051.

PART 1—[AMENDED]

Par. 3. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.985–0T through 1.985–5T are also issued under the authority of 26 U.S.C. 985.

Par. 4. New §§ 1.985–0T through 1.985–5T are added immediately after § 1.981–3 to read as follows:

§ 1.985–0T Outline of regulation.

§ 1.985–1T Functional currency.

(a) Applicability and effective date.
(b) Dollar functional currency.
(c) Functional currency of a QBU that is not required to use the dollar.
(d) Single functional currency for a foreign corporation.
(e) Translation of nonfunctional currency transactions
(f) Examples.

§ 1.985–2T Election to use the United States dollar as the functional currency of a QBU.

(a) Background and scope.
(b) Eligible QBU.
(c) Time and manner for dollar election.
(d) Effect of dollar election.

§ 1.985–3T United States dollar approximate separate transactions method.

(a) Scope.
(b) In general.
(c) Translation into United States dollars.
(d) Currency gain or loss.

§ 1.985–4T Method of accounting.

(a) Adoption or election.
(b) Condition for changing functional currencies.
(c) Relationship to certain other income tax sections.

§ 1.985–5T Adjustments required upon change in functional currency. [Reserved]

§ 1.985–1T Functional currency.

(a) *Applicability and effective date*—(1) *Purpose and scope.* These regulations provide guidance with respect to defining the functional currency of a taxpayer and each qualified business unit (QBU), as defined in section 989(a). A taxpayer and each QBU must make all determinations under subtitle A of the Code (relating to income taxes) in their respective functional currency. This section sets forth rules for determining when the functional currency is the United States dollar (dollar) or a currency other than the dollar. Section 1.985–2T provides an election to use the dollar as the functional currency for certain QBUs that absent the election would have a functional currency that is a hyperinflationary currency, and explains the effect of making the election. Section 1.985–3T sets forth the accounting method electing QBUs must use to compute their profit and loss or earnings and profits. Section 1.985–4T provides that the adoption of a functional currency is a method of accounting and sets forth conditions for a change in functional currency. Finally, § 1.985–5T provides adjustments that are required to be made upon a change in functional currency.

(2) *Effective date.* The regulations set forth in § 1.985–1T through 5T are effective for taxable years beginning after December 31, 1986.

(b) *Dollar functional currency.* The dollar shall be the functional currency of a taxpayer or QBU described in any subparagraph of this paragraph (b) regardless of the currency used in keeping its books and records (as defined in section 989(a)).

(1) A taxpayer that is not a QBU.

(2) A QBU that conducts its activities primarily in dollars. A QBU conducts its activities primarily in dollars where the currency of the economic environment in which the QBU conducts its activities is primarily the dollar. The facts and circumstances set forth in paragraph (c)(2) of this section shall apply in making this determination.

(3) A QBU that has the United States as its residence (as defined in section 988(a)(3)(B)).

(4) A QBU that elects to use, or is otherwise required to use, the dollar as its functional currency under § 1.985–2T.

(5) A QBU that does not keep books and records in the currency of any economic environment in which a significant part of its activities is conducted. Whether a QBU keeps such books and records is determined in accordance with paragraph (c)(3) of this section.

Regardless of any change in circumstances, a QBU described in any subparagraph of this paragraph (b) may not change its functional currency unless the permission of the Commissioner is granted under § 1.985–4T.

(c) *Functional currency of a QBU that is not required to use the dollar*—(1) *General rule.* The functional currency of a QBU that is not required to use the dollar under paragraph (b) of this section shall be the currency of the economic environment in which a significant part of the QBU's activities is conducted, if the QBU keeps its books and records, or is presumed under paragraph (c)(3) of this section to keep its books and records, in such currency.

(2) *Economic environment.* For purposes of section 985 and the

regulations thereunder, the economic environment in which a significant part of a QBU's activities is conducted shall be determined by taking into account all the facts and circumstances.

(i) *Facts and circumstances.* The facts and circumstances that are considered in determining the economic environment in which a significant part of a QBU's activities is conducted include, but are not limited to, the following:

(A) The currency of the country in which the QBU is a resident as determined under section 988(a)(3)(B);

(B) The principal currency of the QBU's cash flows;

(C) The principal currency in which the QBU generates revenues and incurs expenses;

(D) The principal currency in which the borrowing or lending of the QBU is conducted;

(E) The currency of the QBU's principal sales market;

(F) The duration of the QBU's business operations; and

(G) The significance and/or volume of the QBU's independent activities.

(ii) *Rate of inflation.* The rate of inflation (regardless of how it is determined) shall not be a factor used to determine a QBU's economic environment.

(iii) *Consistency.* A taxpayer must consistently apply the facts and circumstances test set forth in this paragraph (c)(2) in evaluating the economic environment of its QBUs, *i.e.*, its branches, that engage in the same or similar trades or businesses.

(3) *Books and records presumption.* A QBU shall be presumed to keep books and records in the currency of the economic environment in which a significant part of its activities are conducted. The presumption may be overcome only if the QBU can demonstrate to the satisfaction of the district director that a substantial nontax purpose exists for not keeping any books and records in such currency.

(4) *Multiple currencies.* If a QBU has more than one currency that satisfies the requirements of paragraph (c)(1) of this section, the QBU may choose any such currency as its functional currency.

(5) *Relationship of United States accounting principles.* If a QBU has its residence outside the United States (as determined under section 988(a)(3)(B)), the currency of the QBU for purposes of United States generally accepted accounting principles (GAAP) will ordinarily be accepted as the functional currency of the QBU for income tax purposes if the GAAP determination regarding such currency is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section.

(6) *Effect of changed circumstances.* Regardless of any change in circumstances, a QBU may not change the functional currency determined under this section (c) unless the permission of the Commissioner is granted under § 1.985–4T or considered to have been granted under § 1.985–2T(d)(4).

(d) *Single functional currency for a foreign corporation*—(1) *General rule.* This paragraph (d) applies to foreign corporations that have two or more QBUs all of which do not have the same functional currency. The foreign corporation shall be treated as having a single functional currency for the corporation as a whole that may be different from the functional currency of one or more of its QBUs. The determination of a foreign corporation's functional currency shall be made by first applying paragraph (d)(1)(i) and then paragraph (d)(1)(ii) of this section.

(i) *Step 1.* Each QBU of the foreign corporation determines its functional currency in accordance with the rules set forth in paragraphs (b) and (c) of this section and § 1.985–2T.

(ii) *Step 2.* The foreign corporation determines its functional currency applying the principles of paragraphs (b) and (c) of this section to the corporation's activities as a whole. Thus, if a foreign corporation has two branches, the corporation shall determine its functional currency by applying the principles of paragraphs (b) and (c) of this section to the combined activities of the corporation and the branches.

For purposes of this paragraph (d)(1), if a QBU of a foreign corporation has the dollar as its functional currency under § 1.985–2T (relating to the dollar election), the QBU's activities shall be considered dollar activities of the corporation.

(2) *Translation of income or loss of QBUs having different functional currencies than the foreign corporation as a whole.* Where the functional currency of a foreign corporation as a whole differs from the functional currency of one or more of its QBUs, each such QBU shall determine the amount of its income or loss or earnings and profits (or deficit in earnings and profits) in its functional currency under the principles of section 987 (relating to branch transactions). The amount of income or loss or earnings and profits (or deficit in earnings and profits) of each QBU in its functional currency shall then be translated into the foreign corporation's functional currency using the appropriate exchange rate as defined in section 989(b)(4) for purposes of determining the corporation's income or earnings and profits.

(e) *Translation of nonfunctional currency transactions.* Except for a QBU using the dollar approximate separate transactions method described in § 1.985–3T, each QBU shall translate each of its nonfunctional currency transactions using the separate transactions method—that is, gain or loss must be computed relative to a QBU's functional currency on a transaction-by-transaction basis.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example (1). P, a domestic corporation, operates a branch, X, in foreign Country A. X is a QBU within the meaning of section 989(a). The currency of Country A is the LC. All of X's purchases, sales, and expenses are in the LC. The laws of A require X to keep books and records in the LC. It is determined that the LC is the currency of X under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, the functional currency of X is the LC.

Example (2). P, a domestic bank, operates in branch form in foreign Country R. The branch is a QBU within the meaning of section 989(a). The currency of Country R is the LC. The laws of R require the branch to keep books and records in the LC. The branch customarily loans dollars and LCs. In the case of a LC loan, the branch fixes the terms of the loan by reference to a contemporary London Inter-Bank Offered Rate (LIBOR) on dollar deposits. For instance, the interest on the amount of the outstanding LC loan principal might equal LIBOR plus 2 percent and the amount of the outstanding LC loan principal would be adjusted to reflect changes in the dollar value of the LC. The branch is typically funded with dollar-denominated funds borrowed from related and unrelated parties. Under these facts, the branch's activities are primarily conducted in dollars. Thus, although the branch keeps its books and records in LCs, the branch's functional currency is the dollar.

Example (3). S, a foreign corporation organized in T, is wholly-owned by P, a domestic corporation. The currency of T is the LC. S's books and records are maintained in the LC. S purchases most of the products it sells from P. These purchases are made in dollars. In addition, most of S's gross receipts are generated by transactions denominated in dollars. S's only LC activities are paying local taxes, employee wages, and local expenses such as rent and electricity. It is determined that the LC is the currency of S under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, S's activities are primarily conducted in dollars. Thus, although S maintains books and records in LCs and uses the LC as its currency under United States generally accepted accounting principles, S's functional currency is the dollar.

Example (4). S, a foreign corporation organized in U, is wholly-owned by P, a domestic corporation. The currency of U is the LC. S's sole function is acting as a financing vehicle for P and domestic corporations that are affiliated with P. All borrowing and lending between S and P and its domestic affiliates are in dollars. Furthermore, primarily all of S's other borrowings are dollar denominated. S's only LC activities are paying local taxes, employee wages, and local expenses such as rent and electricity. S keeps its books and records in the LC. Under these facts, S's activities are primarily conducted in dollars. Thus, although S keeps its books and records in LCs, S's functional currency is the dollar.

Example (5). S, a foreign corporation organized in A, is wholly owned by P, a domestic corporation. The currency of A is the LC. S's sole function is holding portfolio stock of Country A corporations and debt instruments denominated in LCs. The stock and the debt instruments could readily be held by P. S funds these investments primarily with contributions made by P. All dividends and interest paid to S are currently remitted to P. S performs no significant activities in A, has no employees, and no office or other fixed place of business. S's only other LC activity is paying local taxes. S keeps its books and records in the LC. Under these facts, S's activities are primarily conducted in dollars. Thus, although S keeps its books and records in LCs, S's functional currency is the dollar because its activities are primarily in the dollar. The result in this example would be the same if rather than holding portfolio stock of Country A corporations and debt instruments denominated in LCs, S's sole function was holding stock in domestic corporations and debt instruments denominated in dollars that could readily be held by P.

Example (6). S, a foreign corporation organized in A, is wholly-owned by P, a domestic corporation. The currency of A is the LC. S invests in a wide variety of stock and securities for its own account. S has a fixed place of business in A, employs portfolio managers, and has the independent authority to invest its earnings, finance its transactions, and manage its portfolio. S's activities are primarily funded through its earnings and third party loans. S conducts most of its borrowing and investment activity in the LC. S maintains its books and records in the LC. It is determined that the LC is the currency of S under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, S's functional currency is the LC.

Example (7). D is a domestic corporation whose primary activity is the extraction of natural gas and oil through a branch operation in foreign country Y. The branch is a QBU within the meaning of section 989(a). The currency of Y is the LC. The branch bills a significant amount of its natural gas and oil sales in dollars and a significant amount in LCs. The branch also incurs significant LC and dollar expenses and liabilities. The laws of country Y require the branch to keep its books and records in the LC. It is determined that the dollar is the currency of the branch under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Absent other factors indicating that the branch primarily conducts its activities in the dollar, D could choose either the dollar or the LC as the branch's functional currency because it has significant activities in both the dollar and the LC, provided the branch maintains books and records in both currencies.

Example (8). S, a foreign corporation organized in Country X, is wholly owned by P, a domestic corporation. S conducts all of its operations through two branches. Branch A is located in Country F and branch B is located in country G. S, A, and B are QBUs within the meaning of section 989(a). The currency of Country F is the FC and the currency of Country G is the LC. The functional currencies of S, A, and B are determined in a two step procedure.

Step 1: The functional currency of branches A and B. Branch A and branch B both conduct all activities in their respective local currencies. The FC is the currency of branch A and the LC is the currency of branch B under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, the functional currency of branch A is the FC and the functional currency of branch B is the LC.

Step 2: The functional currency of S. S's functional currency is determined by disregarding the fact that A and B are branches. When A's activities and B's activities are viewed as a whole, S determines that it only conducts significant activities in the LC. Therefore, S's functional currency is the LC. See examples (10), (11), and (12) for examples of how the earnings and profits of a foreign corporation, which has branches with different functional currencies, are determined.

Example (9). Assume the same facts as in example (8), except that S does not exist and P conducts all of its operations through branch A and branch B. In this instance P's functional currency in Step 2 is the dollar, regardless of the fact that its branches' activities viewed as a whole are in LC, because P is a taxpayer whose residence is the United States under section 988(a)(3)(B)(i). Therefore, while the functional currency of branch A is the FC and the functional currency of branch B is the LC, the functional currency of P is the dollar because its residence is the United States.

Example (10). The facts are the same as in example (8). In addition, assume that in 1987 branch A has income of 100 FC and branch B has income of 100 LC as determined under section 987. The weighted average exchange rate for the year is 1 FC/2 LC. Branch A's income is translated into 200 LC for purposes of computing S's income and earnings and profits in 1987. Thus, the total earnings and profits of S from branch A and branch B for 1987 is 300 LC.

Example (11). X, a foreign corporation organized in Country W, is wholly owned by P, a domestic corporation. Both X and P are calendar year taxpayers that began business during 1987. X operates exclusively through two branches, A and B, both of which are located outside of Country W. The functional currency of X and A is the LC, while the functional currency of B is the DC. The income of B must be computed under section 987, relating to branch transactions. In 1987, A earns 900 LCs of nonsubpart F income and B earns 200 DCs of nonsubpart F income. Under section 904(d)(2), A's income is financial service income and B's income is general limitation income. In order to determine X's earnings and profits, B's income must be translated into LCs (the functional currency of X). The weighted average exchange rate for 1987 is 1 LC/2 DC. Thus, in 1987 X's current earnings and profits (and its post-1986 undistributed earnings) are 1000 LCs consisting of 900 LC's of financial services income earned by A and 100 LCs (200 DC/2) of general limitation income earned by B. Neither A nor B make any remittances during 1987.

In 1988, neither A nor B earns any income or generate any loss. On December 31, 1988, A remits 50 LCs directly to P. The remittance to P is considered to be remitted by A to X and then immediately distributed by X as a dividend. The 50 LC remittance does not result in an exchange gain or loss under section 987 to X because the functional currency of X and A is the LC. See section 987(3). Under section 904(d)(3)(D), the 50 LC dividend is treated as income in a separate category to the extent of the dividend's pro rata share of X's earnings and profits in each separate limitation category. Thus, 90 percent, or 45 LCs, is treated as financial services income, and 5 percent, or 5 LCs, is treated as general limitation income. After the dividend distribution, X has 950 LCs of accumulated earnings and profits consisting of 855 LCs of financial service limitation income and 95 LCs of general limitation income.

Example (12). The facts are the same as in example (11) except that A makes no remittance during 1988 but B remits 120 DCs to X on December 31, 1988, which X immediately converts into LCs, and X makes no dividend distribution during 1988. Assume that the appropriate exchange rate for the remittance is 1 LC/3 DCs. B's remittance triggers exchange loss to X. See section 987(3). Under section 987, the exchange loss on the remittance is 20 LCs calculated as follows: 40 LCs, which is the LC value of the 120 DC remittance (120 DCs/3), less 60 LC, their LC basis (120 DCs/2). Under section 987(3)(B), the 20 LC loss is allocated solely to X's general limitation income. At the end of 1988, X's accumulated earnings and profits (and post-1986 undistributed earnings) are 980 LCs (1000 LCs − 20 LCs). The 980 LCs consist of 900 LCs of financial services income and 80 LCs (100 LCs − 20 LCs) of general limitation income.

§ 1.985–2T Election to use the United States dollar as the functional currency of a QBU.

(a) *Background and scope.* Section 985(b)(3) of the Code provides that a qualified business unit ("QBU") with a functional currency other than the United States dollar (the "dollar") under section 985(b) (1) and (2) may, to the extent provided in regulations, elect to use the dollar as its functional currency. Pursuant to the regulatory authority provided by section 985(b)(3), this section permits an eligible QBU to elect to use the dollar as its functional currency. An election to use a dollar functional currency is not permitted for a QBU other than an eligible QBU. Paragraph (b) of this section defines an eligible QBU. Paragraph (c) of this section describes the time and manner for making the dollar election, and paragraph (d) of this section describes the effect of making the election. For the definition of a QBU, see section 989(a).

(b) *Eligible QBU*—(1) *In general.* The term "eligible QBU" means a QBU whose functional currency is a hyperinflationary currency absent the dollar election. See § 1.985–1T to determine the functional currency of a QBU absent the dollar election.

(2) *Hyperinflationary currency.* The term "hyperinflationary currency" means the currency of a country in which there is cumulative inflation during the base period of at least 100 percent as determined by reference to the consumer price index of the country listed in the monthly issues of "International Financial Statistics" or a successor publication of the International Monetary Fund. Base period means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year.

(c) *Time and manner for dollar election*—(1) *QBUs that are branches of United States persons.* If an eligible QBU is a branch of a United States person, the dollar election shall be made by attaching a statement to the United States person's—

(i) Timely filed federal income tax return (including extensions) for the taxable year the election is made, or

(ii) Amended return for the first taxable year beginning in 1987 filed within 180 days after the date this Temporary Regulation is promulgated in the Federal Register, in the case of an election for the person's first taxable year beginning in 1987.

The statement shall identify the election as a "Dollar Election" and describe the country where the principal place of business of the eligible QBU is located.

(2) *Eligible QBUs that are controlled foreign corporations or branches of controlled foreign corporations*—(i) *In general.* If an eligible QBU is a controlled foreign corporation (as described in section 957), or a branch of a controlled foreign corporation, the election may be made either by the foreign corporation or by the controlling United States shareholders on behalf of the foreign corporation by—

(A) Filing the written statement described in paragraph (c)(2)(ii) of this section at the time and in the manner prescribed therein, and

(B) Providing the written notice required by paragraph (c)(2)(iii) of this section at the time and in the manner prescribed therein.

The term "controlling United States shareholders" means those United States shareholders (as defined in section 951(b)) who, in the aggregate, own (within the meaning of section 958(a)) greater than 50 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote. If the foreign corporation is a controlled foreign corporation (as described in section 957) but the United States shareholders do not, in the aggregate, own the requisite voting power, the term "controlling United States shareholders" means all the United States shareholders (as defined in section 951(b)) who own (within the meaning of section 958(a)) stock of the controlled foreign corporation.

(ii) *Written statement.* The written statement required by paragraph (c)(2)(i)(A) of this section shall be jointly executed by the controlling United States shareholders (or by an officer or director of the foreign corporation with the authority to act for the foreign corporation, if the election is made by the corporation). The statement shall be filed with the Director of the Internal Revenue Service Center, 11601 Roosevelt Blvd., Philadelphia, Pennsylvania 19155, within 180 days after the close of the taxable year of the foreign corporation with respect to which the dollar election is made (or 270 days in the case of the foreign corporation's first taxable year beginning in 1987, if the dollar election is made for such year). The statement shall set forth: The name and country of organization of the foreign corporation; the country where the principal place of business of each eligible QBU that is a branch of the foreign corporation is located; the names, addresses, taxpayer identification numbers and stock interest of the controlling United States shareholders (or all the United States persons known by the foreign corporation who own (within the meaning of section 958(a)) stock in the corporation, if the election is made by the foreign corporation); that the dollar election is being made by or for the foreign corporation (or an eligible QBU branch of such corporation); the names, addresses, taxpayer identification numbers of all United States persons notified of the dollar election; and such other information as the Commissioner may by forms or otherwise require.

(iii) *Notice.* Prior to filing the written statement described in paragraph (c)(2)(ii) of this section, the controlling United States shareholders (or the foreign corporation, if the dollar election is made by the corporation) shall provide written notice of the dollar election made to all United States persons known to be shareholders who own (within the meaning of section 958(a)) stock of the foreign corporation. Such notice shall also include all information set forth in the written statement (as described in paragraph (c)(2)(ii) of this section).

(iv) *Reasonable cause exception.* Failure of the controlling United States shareholders (or the foreign corporation, if the dollar election is made by the corporation) to timely file the written statement required by paragraph (c)(2)(i)(A) of this section or to provide written notice to a United States person required to be notified by paragraph (c)(2)(iii) of this section shall not invalidate the dollar election made, if it is established to the satisfaction of the district director that reasonable cause existed for such failure.

(3) *Eligible QBUs that are noncontrolled foreign corporations or branches of noncontrolled foreign corporations.* If an eligible QBU is a noncontrolled foreign corporation (a foreign corporation not described in section 957), or a branch of a noncontrolled foreign corporation, the dollar election must be made by the corporation or the majority domestic corporate shareholders on behalf of the corporation by applying the rules provided in paragraph (c)(2)(i) (A) and (B), (ii), (iii), and (iv) of this section substituting "majority domestic corporate shareholders" for "controlling United States shareholders" wherever it appears therein. The term "majority domestic corporate shareholders" means those domestic corporate shareholders (as described in section 902(a)) who, in the aggregate, own (within the meaning of section 958(a)) greater than 50 percent of the total combined voting stock of all classes of stock of the noncontrolled foreign corporation entitled to vote that is owned (within the meaning of section 958(a)) by all the domestic corporate shareholders.

(d) *Effect of dollar election*—(1) *General rule.* If a dollar election is made (or considered made under paragraph (d)(3) of this section) by or on behalf of an eligible QBU, the QBU shall be deemed to have the dollar as its functional currency. Since the use of a dollar functional currency pursuant to this § 1.985–2T is an accounting method of the foreign corporation, each United States person that owns (within the meaning of section 958(a)) stock of the foreign corporation must take all of its federal income tax calculations with respect to the foreign corporation using the dollar as the corporation's functional currency (regardless of when ownership was acquired or whether the United States person received the written notice required by paragraph (c)(2)(i)(A) of this section).

(2) *Computation*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, any eligible QBU that pursuant to this § 1.985–2T has a dollar functional currency must compute profit and loss or earnings and profits (or deficits in earnings and profits) in dollars using the dollar approximate separate transactions method described in § 1.985–3T.

(ii) *Separate transactions method.* An eligible QBU that has a dollar functional currency pursuant to this § 1.985–2T may use a separate transactions method only if the QBU demonstrates to the satisfaction of the Commissioner that it can properly employ such method. For the definition of a separate transactions method, see § 1.985–1T(e).

(3) *Conformity*—(i) *General rule.* If a dollar election is made under § 1.985–2T for an eligible QBU ("electing QBU"), then the dollar shall be the functional currency of any related person, or branch of any related person, that is an eligible QBU. For purposes of the preceding sentence, the term "related person" means any person with a relationship defined in section 267(b) to the electing QBU (or to the United States or foreign person of which the electing QBU is a part). In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c).

(ii) *Branches of United States and foreign persons.* If a dollar election is made for a QBU branch of any person, each eligible QBU branch of such person shall have the dollar as its functional currency.

(4) *Required adjustments*—(i) *In general.* Except as provided in paragraph (d)(4)(ii) of this section, if an eligible QBU's functional currency changes due to a dollar election, or to the conformity requirements of paragraph (d)(3) of this section, such change shall be deemed for purposes of § 1.985–4T to be consented to by the Commissioner. No adjustments under section 481(a) shall be required solely because of the change. However, the QBU must make the adjustments, if any, required by § 1.985–5T.

(ii) *Additional adjustments required in certain circumstances*—(A) *In general.* If a dollar election is not made by or on behalf of a QBU for its first taxable year beginning after December 31, 1986 in which it is an eligible QBU, then any dollar election made by or on behalf of the QBU, or considered made under the conformity rules of paragraph (d)(3) of this section, that results in a change in the QBU's functional currency shall be treated as having been made with the consent of the Commissioner. In such a case, however, the taxpayer must make adjustments required by paragraph (d)(4)(ii)(B) of this section.

(B) *Adjustments.* The adjustments required by this paragraph shall be computed for the period beginning with the first taxable year in which the QBU was an eligible QBU and ending with the taxable year prior to the year to which the dollar election is made (whether the QBU is an eligible QBU in the intervening years is irrelevant). The adjustments shall be taken into income and/or earnings and profits ratably in each of the four taxable years beginning with the year of the dollar election. The adjustments are the differences that occur by recomputing the QBU's functional currency as the dollar for each year within the period involved. The differences shall retain their character for all purposes as if earned or incurred in the year of recomputation.

(5) *Illustrations.* The provisions of this section are illustrated by the following examples.

Example (1). X is a calender year domestic corporation that in 1987 establishes a branch, A, in Country Z. A's functional currency under section 985 (b)(1) and (2) and 1.985–1T is the "h", the currency of Country Z. The cumulative inflation in Country Z exceeds 100 percent for the thirty-six months prior to January 1988 as measured by the consumer price index of Country Z listed in the monthly issues of the "International Financial Statistics". Accordingly, A is an eligible QBU in 1987 because the h is a hyperinflationary currency. Thus, X may elect the dollar as the functional currency of A for 1987.

Example (2). The facts are the same as in example (1) except X does not elect the dollar as the functional currency of A for 1987. Rather, X elects the dollar as the functional currency of A for 1991. The h was hyperinflationary currency for 1987, 1988, 1989, 1990, and 1991. The election constitutes a change in A's functional currency that is made with the consent of the Commissioner. However, because A was an eligible QBU in 1987, adjustments under § 1.985–2T (d)(4)(ii)(B) must be made for taxable years 1987 through 1990.

Example (3). The facts are the same as in example (2) except that the h was a hyperinflationary currency in 1987 and 1991 but not for 1988, 1989, and 1990. The results in example (2) are the same since the status of A as an eligible QBU in the intervening years of 1988, 1989 and 1990 is irrelevant.

Example (4). X is a domestic corporation that establishes A, an eligible QBU branch. X is wholly owned by domestic corporation Y. Y has an eligible QBU branch, B. Both X and Y are calendar year taxpayers. X makes a dollar election for A in 1987. Thus, A is an electing QBU. X and Y are related persons as defined in section 267(b) (*i.e.*, Y has a relationship under section 267(b)(3) to X, the corporation of which A is a part). Therefore, the dollar election by X for A in 1987 results in B, the eligible QBU branch of Y, also having the dollar as its functional currency for 1987.

Example (5). The facts are the same as in example (4), except that Y does not have an eligible QBU branch but owns all the stock of C, a calendar year controlled foreign corporation, which is not itself an eligible QBU but which has an eligible QBU branch, D. X and C are related persons as defined in section 267(b) (*i.e.*, C has a relationship under section 267(b0(3) to X, the corporation of which A is a part). Therefore, the dollar election by X for A in 1987 results in D, the eligible QBU branch of C, also having the dollar as its functional currency for 1987.

§ 1.985–3T United States dollar approximate separate transactions method.

(a) *Scope.* This section describes the United States dollar (dollar) approximate separate transactions method of accounting. Except as provided in § 1.985–2T(d)(2)(ii), this method of accounting must be used to compute profit and loss or earnings and profits (or deficits and earnings and profits) of a QBU (as defined in section 989(a) of the Code) that has the dollar as its functional currency pursuant to § 1.985–2T.

(b) *In general.* Under the dollar approximate separate transactions method of accounting, profit and loss or earnings and profits (or deficits in earnings and profits) of a QBU for its taxable year shall be determined in dollars by—

(1) Preparing a profit and loss statement from the QBU's books and records (within the meaning of section 989(a)) as recorded in the QBU's

hyperinflationary currency (as described in § 1.985–2T(b)(1));

(2) Making the adjustments necessary to conform such statement to those United States accounting and tax principles as provided by the appropriate Code section, such as section 987 or sections 986 and 964(a);

(3) Translating the amounts of hyperinflationary currency as shown on such adjusted statement into dollars in accordance with paragraph (c) of this section; and

(4) Adjusting the resulting dollar profit and loss or earnings and profits (or deficits in earnings and profits) in accordance with paragraph (d) of this section to reflect the amount of currency gain or loss as determined thereunder.

(c) *Translation into United States dollars*—(1) *In general.* Except as provided in paragraphs (c) (2), (3), and (4) of this section, the amounts shown on the profit and loss statement, as adjusted under paragraph (b)(2) of this section, shall be translated into dollars at the average exchange rate (as defined in paragraph (c)(5) of this section) for the translation period (as defined in paragraph (c)(6) of this section) to which they relate.

(2) *Cost of goods sold*—(i) *In general.* Amounts representing items of inventory reflected in the cost of goods sold or in closing inventory shall be translated—

(A) To the extent that such amounts represent items included in the opening inventory balance, so as to obtain the same amount of dollars which represented such items in the closing inventory balance for the preceding taxable year,

(B) To the extent that such amounts represent items purchased or otherwise first included in inventory during the taxable year, at the average exchange rate for the translation period in which the cost of such items was incurred, and

(C) To the extent that such amounts represent items included in the closing inventory balance, at the average exchange rate for the translation period in which the cost of such items was incurred. However, if amounts representing items included in closing inventory balance are either valued at market or written down to market value, they shall be translated at the exchange rate existing on the last day of the taxable year. For purposes of determining lower of cost or market, items of inventory included in the closing inventory balance shall be translated into dollars at the average exchange rate for the translation period in which the cost of such items was incurred and compared with market as determined in the QBU's hyperinflationary currency translated into dollars at the exchange rate existing on the last day of the taxable year.

(ii) *Determination of translation period.* The method used to determine the translation period of amounts representing items of inventory reflected in cost of goods sold or closing inventory may be based upon reasonable approximations and averages, including rates of turnover, provided the method is consistently used from year to year.

(3) *Depreciation, depletion, and amortization.* Amounts representing allowances for depreciation, depletion, or amortization shall be translated at the average exchange rate for the translation period in which the cost of the underlying asset was incurred.

(4) *Prepaid expenses or income.* Amounts representing expense or income paid or received in a prior taxable year shall be translated at the average exchange rate for the translation period during which they were paid or received.

(5) *Average exchange rate.* The average exchange rate for any translation period is the average of the daily exchange rates within the translation period.

(6) *Translation period*—(i) *In general.* Except as provided in paragraph (c)(6)(ii) of this section, a translation period shall be each month within a QBU's taxable year.

(ii) *Election.* A QBU can elect to divide its taxable year into translation periods that are less than a month. The election is made if the QBU computes its profit or loss or earnings and profits using translation periods that are less than one month. The translation period elected may not be changed without the consent of the district director.

(7) *Dollar and third country currency transactions.* Notwithstanding § 1.985–3T(b)(2) or any other provisions of paragraph (c) of this section, the following rules apply.

(i) *Dollar transactions.* No currency gain or loss is permitted with respect to dollar transactions since the dollar is the functional currency of the QBU. Thus, the amount of any payment or receipt of dollars shall be reflected in the profit and loss statement by the amount of such dollars. Also, any transaction in which the amount that a QBU is entitled to receive (or is required to pay) by reason of such transaction is either denominated in terms of the dollar or is determined by reference to the value of the dollar, must be computed in dollars on a separate transactions method. See § 1.985–1T(e) for the definition of a separate transactions method.

(ii) *Third country currency transactions.* A third country currency is any currency other than either the hyperinflationary currency of the QBU or the dollar. Any transaction involving a third country currency shall be computed in dollars on a separate transactions methods. Thus, any payment or receipt of third country currency shall be reflected in the profit and loss statement in dollars on a separate transactions method. Also, any transaction in which the amount that a QBU is entitled to receive (or is required to pay) by reason of such transaction is either denominated in terms of a third country currency, or is determined by reference to the value of one or more third country currencies, must be computed and reflected in the profit and loss statement in dollars on a separate transactions method.

(8) *Example.* The provisions of this paragraph (c) are illustrated by the following examples.

Example (1). S is an accrual basis eligible QBU that makes a dollar election for its first taxable year beginning in 1987. S's hyperinflationary currency is the "h". At the end of 1987, S has an account receivable for 100 dollars (*i.e.*, the account receivable is payable in dollars). Because this is a dollar transaction under paragraph (c)(7)(i) of this section, S's profit and loss for 1987 shall reflect the 100 dollars (not the hyperinflationary value of such dollars when accrued). If the account receivable were for 120 British pounds, rather than 100 dollars, the account receivable would be a third currency transaction under paragraph (c)(7)(ii) of this section. Therefore, S's profit and loss would reflect the dollar value of the 120 British pounds when accrued.

Example 2. S is an accrual basis eligible QBU that makes the dollar election for its first taxable year beginning in 1987. S has the "h" as its hyperinflationary currency (its functional currency absent the dollar election). During 1987, S's sales amounted to 240,000,000h, its currently deductible expenses were 26,000,000h, and its total inventory purchases amounted to 100,000,000h. During January and February of 1987, S purchased depreciable assets for 80,000,000h. At the end of 1987, S's closing inventory was 23,000,000h. No election to use a translation period other than the month is made, S had no transactions described in paragraph (c)(7) of this section, and S's closing inventory was computed on the first-in, first-out inventory method. S's adjusted profit and loss statement for 1987 is translated into United States dollars as follows:

Sales	Hyperinflationary currency	Exchange rate	United States dollars
(Jan-Feb)	10,000,000h	[1] 20:1	500,000
(Mar-Apr)	20,000,000	[1] 21:1	952,381
(May-Jun)	50,000,000	[1] 22:1	2,272,727
(July)	50,000,000	23:1	2,173,913
(August)	20,000,000	26:1	769,231
(Sept.)	20,000,000	28:1	714,286
(Oct.)	20,000,000	29:1	689,655
(Nov.)	20,000,000	30:1	666,667
(Dec.)	30,000,000	31:1	967,742
Total	240,000,000h		9,706,602
Cost of Goods Sold:			
Opening Inventory	0		0
Purchases:			
(Jan-Feb)	15,000,000h	[1] 20:1	750,000
(Mar-Apr)	10,000,000	[1] 21:1	476,190
(May-Jun)	30,000,000	[1] 22:1	1,363,636
(July)	20,000,000	23:1	869,565
(August)	10,000,000	26:1	384,615
(Sept.)	5,000,000	28:1	178,571
(Oct.)	5,000,000	29:1	172,414
(Nov.)	2,500,000	30:1	83,333
(Dec.)	2,500,000	31:1	80,645
Less Closing Inventory	(23,000,000)	[2]	(822,655)
	77,000,000h		3,536,314

[1] The average exchange rate for each month is the same.

[2] Since S uses the first-in, first-out inventory method, the closing inventory is assumed in normal circumstances to consist of purchases made during the most recent translation period as follows:

	Hyperinflationary currency	Exchange rate	United States dollars
December	2,500,000h	31:1	80,645
November	2,500,000	30:1	83,333
October	5,000,000	29:1	172,414
September	5,000,000	28:1	178,571
August	8,000,000	26:1	307,692
Total	23,000,000h		822,655
Non-Capitalized Exp.			
(Jan-Feb)	4,000,000h	[1] 20:1	200,000
(Mar-Apr)	2,500,000	[1] 21:1	119,048
(May-Jun)	2,500,000	[1] 22:1	113,636
((July)	2,000,000	23:1	86,957
(August)	3,000,000	26:1	115,385
(Sept.)	3,000,000	28:1	107,143
(Oct.)	2,000,000	29:1	68,966
(Nov.)	3,000,000	30:1	100,000
(Dec.)	4,000,000	31:1	129,032
Total	26,000,000h		1,040,167
Deprec.	4,000,000h	20:1	200,000
Total Cost & Exp.	107,000,000h		4,776,481
Operating Profit	133,000,000h		4,930,121

[1] The average exchange rate for each month is the same.

(d) *Currency gain or loss*—(1) *In general.* Currency gain or loss determined in accordance with paragraph (d)(2) of this section shall increase or decrease the amount of dollar profit and loss or earnings and profits as determined pursuant to paragraphs (a), (b), and (c) of this section. For the manner in which the currency gain or loss is allocated against Subpart F income, see sections 952 and 954 and the regulations thereunder. For the manner in which the currency gain or loss is treated under section 904(d), see section 904(d) and the regulations thereunder. The amount of currency gain or loss determined under paragraph (d)(2) of this section shall be from sources outside the United States.

(2) *Determination of currency gain or loss.* Currency gain or loss of a QBU, other than currency gain or loss attributable to a third currency transaction as described in paragraph (c)(7)(i) of this section, shall be the amount which equals—

(i) The retained earnings for the taxable year as determined under paragraph (d)(4) of this section, plus

(ii) The amount of any distributions (*e.g.*, remittances, dividends, returns of capital, foreign income taxes paid by a QBU branch elected to be credited under section 901 and other non-deductible expenses) made during the taxable year translated at the average exchange rate for the translation period or periods during which such distributions were made (or taken into account in accordance with paragraph

(c)(7) of this section, if applicable), minus

(iii) The amount representing retained earnings for the preceding taxable year as determined under paragraph (d)(4) of this section, minus

(iv) The amount of dollar profit (or plus the amount of any dollar loss) as determined for the taxable year pursuant to paragraph (b) (1) through (3) of this section.

(3) *Character.* The amount of currency gain or loss determined under paragraph (d)(2) of this section shall be ordinary income or loss.

(4) *Retained earnings.* Retained earnings for any taxable year shall be determined by first—

(i) Preparing a balance sheet as of the end of such year from the QBU's books and records (within the meaning of section 989(a)) as recorded in the QBU's hyperinflationary currency;

(ii) Making adjustments necessary to conform such balance sheet to United States accounting and tax principles as provided by the appropriate Code section, such as section 987 or sections 988 and 964(a) (including adjustments for accrued foreign income taxes of a QBU branch if elected to be credited under section 901);

(iii) Translating the amounts shown on the balance sheet (other than the amounts representing retained earnings) into United States dollars in accordance with paragraph (d)(5) of this section. Retained earnings shall be the dollar amount equal to the aggregate amount representing assets on the balance sheet (as adjusted and translated under this paragraph (d)(4) (ii) and (iii)) less the aggregate amount representing liabilities, reserves (other than reserves out of current or accumulated profits and earnings), and paid-in capital on the balance sheet (as adjusted and translated under this paragraph (d)(4) (ii) and (iii)).

(5) *Translation of balance sheet.* Amounts shown on the balance sheet as adjusted pursuant to paragraph (d)(4)(ii) of this section (other than amounts representing retained earnings) shall be translated into dollars as follows:

(i) *Inventory.* Amounts representing items of inventory included in the closing inventory balance shall be translated in accordance with paragraph (c)(2)(i)(C) of this section.

(ii) *Bad debt reserves.* Amounts representing bad debt reserves shall be translated at the average daily exchange rate for the taxable year.

(iii) *Paid-in capital.* Amounts representing paid-in capital shall be translated at the average exchange rate for the translation period in which such capital was paid in.

(iv) *Prepaid income or expense.* Amounts representing expenses or income paid or received in a prior taxable year shall be translated in accordance with paragraph (c)(4) of this section.

(v) *Hyperinflationary cash.* Amounts representing hyperinflationary cash on hand or in a checking or savings account shall be translated at the average exchange rate for the last translation period of the taxable year.

(vi) *Physical assets*—(A) *In general.* Amounts representing plant, property, equipment, goodwill, patents and other intangibles shall be translated at the average exchange rate for the translation period in which the cost of the asset was incurred.

(B) *Adjustment to physical assets.* Amounts representing depreciation, depletion, and amortization reserves shall be translated in accordance with paragraph (c)(3) of this section.

(vii) *Long-term liabilities.* Amounts representing long-term liabilities shall be translated at the average exchange rate for the translation period in which incurred.

(viii) *Other assets and liabilities*—(A) *In general.* Except as provided in paragraph (d)(5)(viii)(B) of this section, amounts representing assets and liabilities other than those specifically described in paragraphs (d)(5) (i) through (vii) of this section shall be translated at the average exchange rate for the translation period in which the cost of the asset was incurred or for the translation period in which the amount of the liability was incurred. For purposes of the preceding sentence, the method used to determine the translation period in which the cost of an asset or amount of a liability was incurred may be based upon reasonable approximations and averages, including rates of turnover and aging of accounts, provided the method is consistently used from year to year.

(B) *Accounts payable.* Amounts representing accounts payable shall be translated at the average rate for the last translation period; except, if the taxpayer establishes to the satisfaction of the district director that any such amounts relate to a different translation period, then the average exchange rate for that translation period shall apply.

(6) *Dollar and third currency transactions.* Notwithstanding any other provisions of this paragraph (d), where the amount representing an item shown on the balance sheet reflects a transaction described in paragraph (c)(7) of this section, such transaction shall be taken into account in accordance with that paragraph.

(7) *Illustration.* The provisions of this paragraph (d) are illustrated by the following example.

Example. S, an accrual method calendar year foreign corporation, makes the dollar election. S's hyperinflationary currency (its functional currency absent the dollar election) is the "h". For 1988, S's operating profit is 81,340,000h, or $2,038,200. S made a 5,000,000h distribution in April and December of 1988. S's translation period is the month. None of S's assets or liabilities reflect a transaction described in paragraph (c)(7) of this section. The average exchange rate for each month in 1988 is as follows:

January	32h:$1
Feb.-Mar.	33:1
April-May	34:1
June	35:1
July	36:1
Aug.-Sept.	37:1
Oct.	38:1
Nov.	39:1
Dec.	40:1

At the end of 1988, S's balance sheet, as adjusted and translated pursuant to this paragraph (d)(4) (ii) and (iii), is as follows:

	Hyperinflationary	Exchange rate	U.S. dollar
Hyperinflationary cash on hand	40,000h	40:1	$1,000
Checking account	400,000	40:1	10,000
Accounts Receivable—30 Day Accounts	20,000,000	[1] 40:1	500,000
60 Day Accounts	25,000,000	39:1	641,025
Inventory	65,000,000	[2]	2,500,000
Fixed assets—Property	90,000,000	27:1	3,333,333
Plant	190,000,000	[3]	6,785,714
Accumulated Depreciation	(600,000)	[2]	21,428
Equipment	10,000,000	[4]	340,000
Accumulated Depreciation	(400,000)	[4]	13,333
Common Stock—Stock A	500,000	34:1	14,706
Stock B	400,000	26:1	15,385
Preferred Stock	1,000,000	32:1	31,250
C.D.s	5,000,000	39:1	128,205
Total Assets	406,340,000		14,335,379
Accounts Payable	35,000,000	40:1 [5]	875,000
Long-term liabilities—A	150,000,000	27:1	5,555,556
Liability B	80,000,000	29:1	2,758,621
Liability C	30,000,000	36:1	833,333
Paid-in-Capital	40,000,000	26:1	1,538,462
Retained Earnings	71,340,000		2,774,407
Total Liabilities and Net Worth	406,340,000h		$14,335,379
The exchange gain or loss of S for 1988 is computed as follows:			
Retained Earnings—1988			$2,774,407
Plus—1988 Distributions—April		$147,059	
December		125,000	272,059
Pre-Distribution Earnings			3,046,466
Less—Retained Earnings—1987		$1,708,033	
Operating Profit—1988		2,038,200	3,746,233
Exchange Loss			($699,767)

[1] S ages its account receivable and groups them into two categories—those outstanding for 30 days and those outstanding for 60 days.
[2] Translated the same as closing inventory under paragraph (c)(2)(i)(C).
[3] The cost of S's plant was incurred in several translation periods. Therefore, the dollar cost reflects several translation rates.
[4] S has a variety of equipment. Therefore, S's dollar basis represent the sum of the hyperinflationary cost of each, translated according to the average exchange rate for the translation period incurred.
[5] S has no accounts payable outstanding for greater than 30 days.

§ 1.985–4T Method of accounting.

(a) *Adoption or election.* The adoption of, or the election to use, a functional currency shall be treated as a method of accounting. The functional currency shall be used for the year of adoption (or election) and for all subsequent taxable years unless permission to change is granted by the Commissioner.

(b) *Condition for changing functional currencies.* Generally, permission to change functional currencies shall not be granted unless significant changes in the facts and circumstances of the QBU's economic environment occur. If the determination of the functional currency of the QBU for purposes of United States generally accepted accounting principles (GAAP) is based on facts and circumstances substantially similar to those set forth in paragraph (d)(2) of this section, then ordinarily the Commissioner will only grant a taxpayer's request to change its functional currency (or the functional currency of its branch that is a QBU) to a new functional currency if the taxpayer (or its QBU) also changes to the new functional currency for purposes of GAAP.

(c) *Relationship to certain other income tax sections.* Nothing in this section shall be construed to override the provisions of any other sections of the Code that require the use of consistent accounting methods. Such provisions must be independently satisfied separate and apart from the identification of a functional currency. For instance, while separate geographical divisions of a taxpayer's trade or business may have different functional currencies, such geographical divisions may nevertheless be required to consistently use other methods of accounting.

§ 1.985–5T Adjustments required upon change in functional currency. [Reserved]

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved April 22, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–12562 Filed 6–2–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100 and 110

[CGD 05–88–12]

Special Anchorage Areas in Waterside Area of Elizabeth River Between Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes special anchorage areas to be used during events when the special local regulations in 33 CFR 100.501 are in effect. 33 CFR 100.501 applies to special events held throughout the year in the Waterside Area of the Elizabeth River between Norfolk and Portsmouth, Virginia.

EFFECTIVE DATE: This rule becomes effective on June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: On March 30, 1988, the Coast Guard issued a notice of proposed rulemaking concerning the establishment of special anchorage areas to be used as spectator anchorage areas during events when the special local regulations 33 CFR 100.501 are in effect, which was published in the **Federal Register** on April 7, 1988 (53 FR 11515). Interested persons were requested to submit comments and no comments were received.

Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the **Federal Register.** Delaying the effective date is unnecessary. Without the rule vessels under sixty five feet in length would be required to display anchor lights and shapes while anchored in the spectator anchorages during Harborfest 88.

Drafting Information

The drafters of this rule are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Rule

This rule establishes special anchorage areas to be used as spectator anchorages during events when the special local regulations 33 CFR 100.501 are in effect. These special anchorage areas are required to accommodate spectator craft during the special events

held throughout the year in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. The rule also amends 33 CFR 100.501 to permit vessels to remain in the regulated area established by that regulation without the permission of the Patrol Commander, if the vessels are anchored within one of the special anchorage areas. These special anchorage areas will only be in effect when an event regulated by 33 CFR 100.501 is being held. The regulations in 33 CFR 100.501 are normally in effect during the annual Harborfest, fireworks display throughout the year, marine parades, and various boat races. Vessels of not more than 65 feet in length, when at anchor in a special anchorage area are not required to carry or exhibit the white anchor lights required by the Inland Navigation Rules, 33 U.S.C. 2001 *et seq.*

Economic Assessment and Certification

The rule is considered to be non-major under Executive Order 12291 on Federal regulations and non-significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. No commercial entities will be affected by the establishment of these limited duration special anchorage areas. Since the economic impact of this rule is expected to be so minimal, the Coast Guard certifies that, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water).

33 CFR Part 110

Special anchorage areas, Anchorage grounds.

Final Regulations

In consideration of the foregoing, Parts 100 and 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

PART 110—ANCHORAGE REGULATIONS

2. Section 100.501 is amended by adding paragraph (b)(5) to read as follows:

§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia.

* * * * *

(b) * * *

(5) Vessels anchored in the special anchorage areas described in § 110.72aa(a) of this title may remain in the regulated area without the permission of the Patrol Commander.

* * * * *

PART 110—[AMENDED]

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

4. Section 110.72aa is added to read as follows:

§ 110.72aa Elizabeth River Spectator Vessel Anchorage Areas, between Norfolk and Portsmouth, Virginia.

(a) *Special Anchorage Areas.* (1) The waters of the Elizabeth River bounded by the shore and a line drawn between Hospital Point at latitude 36°50'50.5" North, longitude 76°18'09.0" West, and the tip of the channelside pier at the Holiday Inn Marina at latitude 36°50'29.5" North, longitude 76°17'52.5" West.

(2) The waters of the Elizabeth River adjacent to the Port Norfolk Reach section of the Elizabeth River, bounded by the shore and a line drawn between Hospital Point at latitude 36°50'50.55" North, longitude 76°18'14.508.0" West, and the tip of the southern most railroad pier at Port Norfolk at latitude 36°51'14.5" North, longitude 76°18'44.0" West.

(b) *Effective period.* These special anchorage areas in paragraph (a) are only in effect when the regulations in § 100.501 of this title are in effect.

Dated: May 26, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-12547 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 05-88-13]

Drawbridge Operation Regulations, Berkley Bridge, Eastern Branch of the Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the operation of the Berkley drawbridge during Harborfest 88, which will be held in Norfolk, Virginia, on June 3, 4, and 5, 1988, and other special marine events that are regulated under 33 CFR 100.501.

EFFECTIVE DATE: These regulations become effective on June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: On March 22, 1988, the Coast Guard issued a notice of proposed rulemaking concerning this amendment, which was published in **Federal Register** on April 7, 1988 (53 FR 11517). Interesting persons were requested to submit comments and no comments were received. Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the Federal Register. Delaying the effective date could effect the safety of the participants, during Harborfest 88.

Drafting Information

The drafters of this rule are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Rule

This rule amends the regulations governing the operation of the Berkley drawbridge during Harborfest 88, which will be held in Norfolk, Virginia, on June 3, 4, and 5, 1988, and other special marine events that are regulated under 33 CFR 100.501. The amendment will enhance the Patrol Commander's authority to restrict vessel traffic by limiting access to the regulated area from the Eastern Branch of the Elizabeth River. 33 CFR 100.501 authorizes the Patrol Commander to control vessel traffic in the Waterside area of the Elizabeth River. (The Waterside area of the Elizabeth River includes the waters between Town Point Park, Norfolk, Virginia; the mouth of the Eastern Branch of the Elizabeth River; and Hospital Point, Portsmouth, Virginia.) The Berkley bridge in the closed position is an effective barrier to larger vessels attempting to enter this area from the Eastern Branch. This rule will also help reduce vehicular traffic congestion before, during, and after the events by reducing the number of possible bridge openings during the events and within one hour of the start and ending of the events.

Economic Assessment and Certification

The amendment is considered to be non-major under Executive Order 12291 on Federal regulations and non-significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the amendment will not affect commercial navigation or industries on the Eastern Branch of the Elizabeth River, since their access between the Elizabeth River and its Eastern Branch will be regulated by the Coast Guard Patrol Commander under 33 CFR 100.501. Generally, commercial vessels will be allowed to pass through the bridge between scheduled events, except at times of peak traffic flows. Since the economic impact of this amendment is expected to be so minimal, the Coast Guard certifies that, this amendment will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117:

Bridges.

Final Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1007 is amended by adding paragraph (c) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

* * * * *

(c) The draw of the Berkley Bridge mile 0.4. at Norfolk, shall remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic.

Dated: May 26, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-12516 Filed 6-2-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3390-7]

Approval and Promulgation of Implementation Plans, Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final rulemaking disapproving a revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to a temporary variance from the requirements of Title 35 of the ILLINOIS ADMINISTRATIVE CODE (IAC) 212.462(e) until December 4, 1989, for Demeter Incorporated (Demeter). USEPA's action is based upon a revision which was submitted by the State under Section 110 of the Clean Air Act.

The USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to process TSP SIP revisions which were in process at the time the new (PM_{10}) standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), USEPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceeding the approval of state plans specifically aimed at PM_{10}. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, USEPA's general policy is to approve it. It is USEPA's judgment that the regulations in this action would decrease the stringency of the TSP plan and are, therefore, likely to result in worse control of PM_{10} as well. Thus, USEPA is disapproving this TSP SIP revision.

EFFECTIVE DATE: This final rulemaking becomes effective on July 5, 1988.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 220 Churchill Road, Springfield, Illinois 62706.

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On January 29, 1988, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to the Illinois SIP for Demeter which operates a grain elevator in unincorporated Winnebago County. Winnebago County is classified as better than the National Ambient Air Quality Standards (NAAQS) for the pollutant TSP.

The proposed SIP revision, would have allowed Demeter a variance from the requirements of 35 IAC 212.462(e)[1] until December 4, 1989. Rule 35 IAC 212.462(e) requires Demeter to file applications for construction and operating permits and to comply with the dump pit control requirements of 35 IAC 212.462(b) [2]. This is because the firm's annual grain throughput increased 150 percent from the 1984 annual grain throughput on which the original permit was based. This increase exceeds the rules' threshold value of a 30 percent increase.

In granting a variance from the requirements for Demeter's dump pit,

[1] 35 IAC 212.462(e) was incorporated in the Illinois SIP as 203(d)(8)(F) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(F) because this is the regulation incorporated in the SIP.

[2] 35 IAC 212.462(b) was incorporated in the Illinois SIP as 203(d)(8)(B) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(B)(ii) because this is the regulation incorporated in the SIP.

the Illinois Pollution Control Board (IPCB) believes that the requirement for Demeter to install a grain dust control system on its dump pit immediately would subject the firm to unreasonable hardship because of Demeter's low profitability over the prior several years. The IPCB Opinion and Order of the Board is only a temporary variance, which requires Demeter to install a dust control system to comply with the regulations by December 4, 1989.

USEPA has reviewed this requested SIP revision for consistency with USEPA's policy on source specific SIP revisions.[5] This policy requires that for a State to secure USEPA approval of a relaxation of a SIP in an attainment area and yet continue the overall approval status of its plan, the State must demonstrate that the SIP as a whole, despite the relaxation, will continue to provide for maintenance of the NAAQS. This policy, in effect, requires a current modeling analysis, using reference modeling techniques and best available data.

The State's submittal in this matter did not include such a modeling analysis. On November 7, 1988 (51 FR 40447), USEPA proposed to disapprove this requested SIP revision for Demeter, because the State has not demonstrated that the revision will not jeopardize attainment and maintenance of the TSP NAAQS if the SIP revision were finally approved.[6]

Public comment was solicited on the proposed SIP revision and on USEPA's proposed disapproval of the incorporation of it into the SIP.

One public comment was received in response to USEPA's proposed rulemaking. It was from Demeter. Demeter's comment discussed the economic hardship of complying with the dump pit control requirements of 35 IAC 212.462(b). While this comment may be valid, a modeling analysis remains necessary.

Upon considering the public comment received, the State's submittal and the criteria for a SIP relaxation, USEPA announces its final rulemaking action to disapprove the incorporation of this temporary variance for Demeter into the Illinois SIP. The State has failed to demonstrate that this variance will not interfere with attainment and maintenance of the NAAQS.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: May 27, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-12539 Filed 6-2-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 1E2457/R960; FRL-3380-9]

Pesticide Tolerance for 3-(3, 5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2, 4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a permanent tolerance for residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2, 4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on grapes. BASF Wyandotte Corp. petitioned EPA to establish this tolerance.

EFFECTIVE DATE: May 25, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 1E2457/R960], may be submitted to: Hearing Clerk (A–110) Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of April 22, 1988 (53 FR 13146), in which it was announced that BASF Wyandotte Corp., Agricultural Chemical Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted adequate studies to establish permanent tolerances for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on grapes at 6 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

This amendment establishes a permanent tolerance for vinclozolin that was originally issued as a temporary tolerance in the Federal Register of May 13, 1987 (52 FR 17955).

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

A related final rule, [FAP 7H5529/R959], that establishes permanent levels for vinclozolin in or on raisins at 30 ppm in 21 CFR 193.137(b) and in or on dry grapes at 42 ppm in 21 CFR 561.440 appears elsewhere in this issue of the Federal Register.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.380 [Amended]

2. In § 180.380 *3-(3-,5-Dichlorophenyl)-5-ethenyl-5-methyl-1-2, 4-oxazolidinedione; tolerances for residues,* by amending paragraph (b) by removing the phrase "until May 13, 1988," from the first sentence.

[FR Doc. 88–12528 Filed 6–2–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 70905–8087]

Interjurisdictional Fisheries

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement the Interjurisdictional Fisheries Act of 1986 (Act). The Act establishes a formula-based financial assistance program, the purposes of which are (1) to promote and encourage State activities in support of the management of interjurisdictional fishery resources, and (2) to promote the management of interjurisdictional fishery resources throughout their range. This rule provides guidelines with regard to State eligibility, apportionment and Federal matching mechanisms.

EFFECTIVE DATE: June 30, 1988.

ADDRESS: Copies of the Act and its legislative history may be obtained from Austin Magill, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Austin Magill, 202–673–5272.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements Title III of Pub. L. 99–659, the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4101 *et seq.*) which became effective October 1, 1987. This Act replaces and repeals Pub. L. 88–309, the Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779 *et seq.*) as amended. The Act establishes a formula-based financial assistance program for interjurisdictional fishery research projects and requires that these projects promote and encourage State activities in support of management of interjurisdictional fishery resources.

Proposed regulations were published November 23, 1987 (52 FR 44922). Comments were invited through December 23, 1987. The preamble to the proposed rulemaking contained a description of, and outlined the purposes of, the Act. This background information is not repeated here.

Comments and Responses

Comments were received from 15 States, the three Interstate Marine Fisheries Commissions, and the American Fisheries Society. The major concerns and comments raised are addressed below.

Enforcement Issues

One commenter was concerned that no funds are earmarked for enforcement, and that those funds available for that purpose are insufficient to accomplish regular annual State/Federal cooperative law enforcement. The commenter asked if the enforcement money could be set up as a dedicated line item in the budget.

NOAA does not believe setting up a dedicated line item is appropriate because the States have the option of using or not using the available money to fund enforcement activities. Since the money is considered part of an individual State's apportionment, the State may use it for enforcement or for other projects.

Comments from several States referred to the vagueness of the language or asked for clarification of what constitutes an enforcement agreement. The definition of an enforcement agreement has been clarified. Another commenter questioned whether State and Federal regulations must be compatible to qualify for funding. Issues regarding compatibility or disparity of State and Federal regulations will have to be resolved to the satisfaction of both signatories prior to signing the enforcement agreement.

Disaster Assistance

Several commenters were concerned about the definition of a commercial fishery failure and thought that the language under the disaster assistance section would preclude projects to restore bivalve resources. NOAA believes the intent of the Act is to continue disaster assistance as established under Pub. L. 88–309, when a disaster occurs due to natural or undetermined causes. The subsection on disaster assistance funds at § 253.5(a) has been revised to specify that any commercial fishery resource utilized under the apportionment formula will qualify for funding.

Eligibility Issues

Many commenters did not think the inland States with non-marine resource should qualify for funds under the Act. Under the Act, an inland state with non-marine resource qualifies for funding if the State meets any of the criteria specified in section 304(c)(3) of the Act.

A commenter from an inland State contends that, as a signatory of an interstate compact that is involved in protecting fishery resources, that state should qualify for matching funds for commercial fisheries resources landed from the body of water involved. We agree, since the Act in section 304(c)(3)(A) establishes this as a qualifying criterion.

Other Comments

Section 308(c) of the Act makes available non-matching funds to the three Interstate Marine Fisheries Commissions for use in developing interstate fishery management plans. There was concern from several commenters that the proposed rule contains no guidelines or proposal-review procedures. NOAA agrees and has added a subsection, "Other Funds" at § 253.5(b). One commenter questioned whether data collection should be an activity allowed in developing interstate fishery management plans. We believe the definition of an interstate fishery management plan under these regulations is broad enough to include data collection, especially since the definition specifies that it can be a plan that contains information regarding the status of fishery resources. Concern was also expressed as to whether the purpose and scope of the Act allowed

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[5] It should be noted that in USEPA's November 7, 1988, notice of proposed rulemaking (51 FR 40447) on page 40447, in the third column, it was incorrectly stated that the relevant USEPA policy is contained in a July 20, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, to the Directors of the Air Management Divisions. This is not the case. The memorandum cited concerns only source specific SIP revisions relaxing a SIP in nonattainment areas. The cited policy does not consider relaxations for sources located in attainment areas. Since Demeter is located in an attainment area, the Sheldon Meyers memo does not apply. EPA, at 40 CFR 51.110(a), however, requires that any relaxation be accompanied by a demonstration that it will not interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

[6] On date July 2, 1987 (52 FR 24694) USEPA promulgated a PM_{10} standard. In that promulgation, USEPA stated that it would not relax TSP SIPs without a demonstration of attainment. Today's disapproval action is consistent with that statement.

for information and education projects. We believe that such activities should be allowed, but only to the extent that they support a primary project. Effective regulation and enforcement of laws requires informing those affected as to the need for, and the benefits to be derived from, the regulations. Therefore, a definition for fisheries management is added, and data collection and information dissemination activities are included.

It was suggested that the word "adopted" used in reference to a State "adopting" an interstate fishery management plan be defined. A definition for "adopt" has been added in § 253.2.

The equation for calculating the apportionment formula was printed incorrectly in the **Federal Register**. A correction notice was published December 17, 1987 (52 FR 47990). The correct language for § 253.3(b)(1) is

$$\frac{\text{"Volume of X State}}{\text{Volume of all States}} = \text{A percent"}$$

not "value of all States" as it originally appeared. There was also some confusion in the way the formula was presented. It should read:

$$\frac{\text{"[A percent + B percent]}}{2} = \text{Apportionment Percentage"}$$

Changes From the Proposed Rule

In addition to the revisions discussed above, several of the sections have been reworded and renumbered for clarity. The changes are technical and non-substantive.

Classification

This section is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Under Secretary for Oceans and Atmosphere has determined that this final rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This action will not impose costs on the industry but will provide benefits through improved management, because the Act prescribes criteria for evaluating projects, requires that these projects promote and encourage State activities in support of management of interjurisdictional resources, and provides for the distribution of funds for projects. Therefore, a Regulatory Flexibility Analysis was not prepared.

There will be no additional reporting requirements imposed upon the State agencies over those required for Pub. L. 88-309. The reporting requirements of Pub. L. 88-309 were approved under OMB Control Number 0648-0102.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR PART 253

Fisheries, Financial assistance, Recordkeeping and reporting requirements.

Dated: May 31, 1988.

James E. Douglas, Jr.

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 253 is revised to read as follows:

PART 253—INTERJURISDICTIONAL FISHERIES

Sec.
253.1 Purpose and scope.
253.2 Definitions.
253.3 Apportionment.
253.4 State projects.
253.5 Other funds.
253.6 Administrative requirements.

Authority: 16 U.S.C. 4101 *et seq.*

§ 253.1 Purpose and scope.

(a) The purpose of this part is to implement Title III of Pub. L. 99-659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(b) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resource in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

§ 253.2 Definitions.

As used in this part, terms have the meaning ascribed in this section.

Act means the Interjurisdictional Fisheries Act of 1986, Pub. L. 99-659 (Title III).

Adopt means to implement an interstate fishery management plan by State action or regulation.

Commercial fishery failure means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(a) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise, or

(b) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement, signed and dated, between a State agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and State laws pertaining to the protection of interjurisdictional fishery resources.

Federal fishery management plan means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Fisheries management means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(a) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more States and the EEZ; or

(b) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(c) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

Interstate Commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or more States, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate Fisheries Research Program means research conducted by two or more State agencies under a formal interstate agreement.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by the member States of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the

States to conserve and manage the fishery resource.

Landed means the first point of offloading fishery resources.

NMFS Regional Director means the Director of any one of the five National Marine Fisheries Service regions.

Project means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his designee.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Northern Mariana Islands.

State Agency means any department, agency, commission, or official of a State authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

Value means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed, at the first point of landing.

§ 253.3 Apportionment.

(a) Apportionment formula. The amount of funds apportioned to each State is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such State during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the States during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = \text{A percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[\text{A percent} + \text{B percent}]}{2} = \text{State percentage used to determine State's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each State's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct Regional Directors to promptly notify states of funds' availability.

(b) Beginning with fiscal year 1989, no State, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) is less than one-third of one percent, that State may receive funding if the State:

(1) Is signatory to an interstate fishery compact; or

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior; or

(3) Borders one or more of the Great Lakes; or

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any State that has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraphs (c) (1), (2), (3), (4) or (5) of this section may receive an apportionment for any fiscal year which is not less than one half of one percent of the total amount of funds available for apportionment for such fiscal year.

(e) No State may receive an apportionment under this section for any fiscal year which is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) Unused apportionments. Any part of an apportionment for any fiscal year to any State:

(1) That is not obligated during that year;

(2) With respect to which the State notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the State, may not be considered to be appropriated to that State and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a State referred to in this subsection is irrevocable.

§ 253.4 State projects.

(a) *General.* (1) Designation of State agency. The Governor of each State shall notify the Secretary which agency of the State government is authorized under its laws to regulate commercial fisheries and is therefore designated to submit applications and to enter into financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with State law to commit the State to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(2) States which choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any State may, through its State agency, submit to the NMFS Regional Director a proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate State(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any State, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to:

(1) Soundness of design;

(2) Possibilities of securing productive results;

(3) Minimization of duplication with other research projects in supporting management of interjurisdictional fishery resources and carried out under this title or under any other law or regulation;

(4) Organization and management of the project;

(5) Methods proposed for monitoring and evaluation of the success or failure of the project, and

(6) Consistency of the project with the purposes specified in § 253.1.

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this title, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The State has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The State has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies; in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval, to the State agency submitting the proposal or, if the proposal is submitted through an Interstate Commission, to such Commission and the State.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the State as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this title may be applied only to projects for which a proposal has been evaluated under § 253.4(b) and approved by the Secretary, except that up to $25,000 each fiscal year may be awarded to a State out of the State's regular apportionment to carry out an enforcement agreement, as defined under § 253.2. An enforcement agreement does not require State matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable State laws or regulations except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

§ 253.5 Other funds.

(a) *Funds for disaster assistance.* The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the States amount under the apportionment formula in § 253.3(a) will qualify for funding under this section.

(b) *Funds for Interstate Commerce.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions. The Commissions may submit proposals for these funds. Activities involved in the development of Interstate fishery management plans include, travel, support, meeting costs, research, or other general activities related to the development and maintenance of inter-State fishery management plans.

§ 253.6 Administrative requirements.

All grants and cooperative agreements made as a result of the Act are subject to Federal policies and guidance on financial assistance contained in Executive Orders, OMB circulars and regulations; Department of Commerce regulations and directives, NOAA directives; and terms and conditions of the awards.

[FR Doc. 88-12557 Filed 5-31-88; 5:05 pm]
BILLING CODE 3510-22-M

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50 CFR Part 301

[Docket No. 80111-8013]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement certain allocative regulations governing fishing for halibut in the Bering Sea as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to provide economic protection for the developing Pacific halibut fisheries carried out by persons who land their total annual catch of Pacific halibut at ports within Regulatory Areas 4C and 4E. Such persons generally are those who live on the Pribilof Islands and in communities on the west coast of Alaska including Nelson and Nunivak Islands.

EFFECTIVE DATE: June 1, 1988.

ADDRESSES: Copies of documents supporting this rule may be obtained from James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953 and amended in 1979. The Convention is carried out by the International Pacific Halibut Commission (IPHC).

Until 1987, all regulations governing the Pacific halibut fishery were developed by the IPHC and, for United States fishermen, recommended to the Secretary of State for approval and published at 50 CFR Part 301. However, section 5(c) of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c(c), Pub. L. 97-176) provides for the appropriate Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act (Magnuson Act, Pub. L. 94-265) to develop regulations, including limited access regulations, governing the United States portion of Convention waters and applicable to nationals or vessels of the United States which are in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as their primary

purpose will be developed by the Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California.

The Council, after soliciting halibut allocation regulatory proposals from the public, decided to consider only those allocative regulations adopted in 1987 by the IPHC for Regulatory Areas 4C and 4E. The Council's specified objective in taking this action was to maintain the allocative effects of previous IPHC regulations for both regulatory areas. The Council's Halibut Management Team (MT) prepared a draft environmental assessment and regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) that assessed the potential environmental and economic effects of all reasonable alternatives considered by the Council as required by the National Environmental Policy Act of 1969, Executive Order 12291 and NOAA policy. A notice of availability of that document was published in the Federal Register on October 28, 1987 (52 FR 41485).

At its December 8–11, 1987 meeting, the Council considered public testimony and the recommendations of its Advisory Panel (AP) and Scientific and Statistical Committee (SSC). The Council then voted to adopt preferred alternatives and solicit public comment on the proposed rule. The MT revised the EA/RIR/IRFA accordingly (revised draft dated January 1988). A proposed rule containing the Council's preferred alternative and request for comment was published in the Federal Register on March 16, 1988 (52 FR 8038). Description of and principal reasons for the proposed regulatory amendment are presented in the proposed rule.

Public Comments

A total of 12 letters of comment were received before the end of the public comment period on April 14, 1988. Of this total, eight letters came from fishing industry representatives, two came from State of Washington representatives to the U.S. Congress, one came from the State of Washington Department of Fisheries, and one came from two State of Alaska legislators. Briefly, nine of the comments received opposed specific allocations of the Pacific halibut resource as proposed for Regulatory Area 4B. Two commenters expressed dissatisfaction with the fact that no specific allocations were recommended by the Council for Regulatory Area 4B. One commenter was supportive of the proposed allocative measures, especially for Regulatory Area 4C. A summary of all comments received and a response to each follows.

Comment: All opposing commenters expressed the opinion that the proposed allocation of 80 percent of the Pacific halibut quota in Regulatory Area 4E to local fishermen (i.e. those who land their total annual halibut catch at a port within Area 4E, or within the closed area) violated National Standard 4 of the Magnuson Act by discriminating against out-of-state fishermen. They were also opposed, as a matter of policy, because of their concern that this approach would encourage future partitioning of halibut and other fishery resources among coastal communities.

Response: Without addressing legal and policy questions, the proposed "80-percent" provision is not approved and is not included in this final rule because it is superfluous in achieving the Council's stated halibut allocation objectives in Regulatory Area 4E. The "80-percent" provision would be redundant in combination with current vessel clearance regulations described in § 301.13 (53 FR 10540, April 1, 1988) and trip limit provisions (§ 301.10(c)) of this final rulemaking since 85 percent of the total Area 4E halibut harvest was achieved by "local fishermen" in 1987 with the vessel clearance provision, only. The added assurance sought by the Council that the same relative distribution of the Area 4E halibut catch will occur in 1988 can be achieved by combining only the trip limit and vessel clearance provisions. This combination is similar to one previously used by the IPHC for Area 4C.

Comment: One commenter questioned the quality of the EA/RIR/IRFA analysis. The commenter claimed that few data on which environmental and economic impact conclusions are based were presented, and that quantitative findings indicating an economic loss under the proposed alternative were dismissed by qualitative and unsupported statements.

Response: Paucity of data on which to base environmental and economic impact conclusions is a chronic problem in the analyses of the potential effects of fishery regulatory actions. For this reason, the Council and NOAA must often base their impact projections on certain explicit and reasonable assumptions about the future behavior of a fishery. The EA/RIR/IRFA analysis of this regulatory action made such assumptions. Further, the Council's analytical methodology was governed in part by the intent to maintain the allocative effects of the 1987 IPHC regulations in Areas 4C and 4E and was correctly limited to the marginal effects of alternatives relative to the status quo.

Limited data and the use of assumptions unquestionably increase the qualitative aspects of an analysis. The fact that qualitative information may be taken into account in determining net benefits to society underscores the importance of the public review and comment process through which the Council develops its regulatory recommendations. Opposing views should be made known during this process so that analyses can be reconsidered and changed if necessary. An early draft of the EA/RIR/IRFA analysis was made available for public comment on October 28, 1987 (52 FR 41485) and comments were invited until November 27, 1987. The Council received additional public comments at its December 1987 meeting. The analysis was subsequently redrafted and submitted for Secretarial review on January 11, 1988 at which time it was available for additional public review until the end of the comment period on the proposed rule on April 14, 1988.

Comment: Three commenters expressed the opinion that the Council procedure under which the proposed regulations for Areas 4C and 4E were developed was flawed because of insufficient scientific review by the SSC.

Response: A notice of availability and request for comments on a draft of the EA/RIR/IRFA analysis was published in the Federal Register on October 28, 1987 (52 FR 41485). However, the minutes of the December 1987 Council meeting indicate that the SSC did not comment on the EA/RIR/IRFA analysis due to inadequate review time. The minutes indicate also that this constraint did not prevent the AP and nine individuals and organization representatives, including scientific staff of the IPHC, from commenting on the alternatives and the analysis before the Council voted on its Pacific halibut fishery regulatory recommendations to the Secretary. The SSC's failure to comment, while regrettable, does not prevent adoption of the rule.

Comment: Two comments were indirectly related to the proposed rule. They expressed concern that requests to the Council for allocative regulations benefiting local fishermen from Atka, Alaska in Regulatory Area 4B were denied by the Council. Subsequent similar requests to the IPHC also were denied. The commenters requested clarification on which was the proper management authority to receive their request for allocative regulations.

Response: The original proposal of the Atka Fishermen's Association (Association) requested an exclusive registration area within Regulatory Area 4B. This proposal was correctly submitted to the Council because of the purely economic allocative benefits being sought. When the Association submitted a similar proposal to the IPHC, it was deferred to the Council as being principally within their purview. The Association's confusion is unfortunate. The following background may be helpful to eliminate that confusion in the future.

Although Regional Fishery Management Councils were provided authority to develop allocative regulations governing United States halibut fishermen under the Halibut Act of 1982, all halibut fishery regulations were developed by the IPHC through 1987. After reviewing comments made by the Fishing Vessel Owners Association of Seattle, Washington, and reviewing the fishery management system, NOAA decided that the Council process provided more opportunity for public involvement and was the better forum for deciding halibut allocation issues. In 1987, therefore, the NOAA Administrator requested the appropriate Regional Fishery Management Councils to address halibut allocation issues rather than the IPHC.

The Council chose to develop regulations which would have the same allocative effect in Regulatory Areas 4C and 4E as did 1987 halibut fishery regulations developed by the IPHC. The Council made this choice after considering 73 regulatory proposals, including the Association's, and hearing recommendations of the public and Council advisory bodies. A principal difference between the Council's action regarding Regulatory Areas 4C and 4E and the Association's proposal for 4B is that the Council considered, but chose not to develop, allocative measures for areas not previously affected by such measures.

Comment: One comment expressed gratitude for the Council's decisions regarding Regulatory Areas 4C and 4E. The commenter claimed that without the allocative measures recommended by the Council, local fishermen in these areas using relatively small vessels (32 feet in length or less) would have a disadvantage in capturing their fair share of the 4C and 4E Pacific halibut catch limits in competition with larger fishing vessels. A future limited entry or a quota share system based on past participation would be difficult for local fishermen to accept unless they have a fair opportunity to fish competitively against the non-local fleet.

Response: The comment is noted with the observation that deletion of the 80-percent provision for Area 4E in the final rule is not likely to affect the overall distribution of the halibut catch among local and non-local fishermen in that area.

Changes from the Proposed Rule in the Final Rule

The Assistant Administrator for Fisheries, NOAA, on behalf of the IPHC, published a notice of regulations promulgated by the IPHC and approved by the United States Government to govern U.S. fishermen fishing for Pacific halibut on April 1, 1988 (53 FR 10536). For reasons set out in the preamble of that notice, certain changes were made in the numbering and heading of sections of 50 CFR Part 301. Hence, section numbering and headings in the regulatory text of this final rule are different from the proposed rule (53 FR 8938, March 18, 1988) as follows:

Proposed as:

§ 301.9 Trip limits
§ 301.12 Vessel clearance and hold inspection
§ 301.15 Fishing gear.

Final rule codified as:

§ 301.10 Fishing period limits
§ 301.13 Vessel clearance and hold inspection
§ 301.16 Fishing gear.

Also, several other changes from the proposed rule to the final rule are necessary because the 1988 IPHC regulations were published before this final rulemaking. Regulatory text for § 301.9 (a) and (b) in the proposed rule has been changed to § 301.10 (b) and (c), respectively, in this final rule. The reference to § 301.8(a) within the regulatory text of § 301.9(a) in the proposed rule has been changed to § 301.9(a) within the regulatory text of § 301.10(b) of the final rule. Within § 301.13 of this final rule which was § 301.12 of the proposed rule, the following changes have been made: (1) New paragraphs (d) and (f) are added to agree with regulations published on April 1 (53 FR 10536), and (2) § 301.12(d) has been changed to § 301.13(e), § 301.12(e) is changed to § 301.13(g), § 301.12(f) is changed to § 301.13(h), § 301.12(g) is changed to § 301.13(i), and § 301.13(h) is changed to § 301.13(j). The reference to § 301.7 within § 301.12(a) of the proposed rule is changed accordingly to § 301.8 within § 301.13(a) of this final rule. The reference to § 301.7 within § 301.12(c) of the proposed rule is changed to § 301.8 within § 301.13(c) of this final rule. The reference to § 301.4 (h) and (j) within § 301.15(h) of the proposed rule is changed to § 301.5 (h) and (j) within § 301.16(h) of this final rule.

Classification

This rule is published under section 5(c) of the Halibut Act and is implemented with the approval of the Secretary who has determined that it is consistent with the Halibut Act and other applicable law.

The Council prepared an environmental assessment in combination with a regulatory impact review and initial regulatory flexibility analysis for this regulatory amendment. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA/RIR/IRFA may be obtained from the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA. Based on the same document, the Under Secretary also concluded that this rule may have significant effects on small entities. Virtually no economic effect of this action is anticipated relative to 1987 because the rule is specifically designed to maintain and assure the same relative distribution of the halibut harvest as in 1987 among fishermen who land their total annual halibut catch in Regulatory Areas 4C and 4E (i.e. local fishermen). However, compared to no action, this rule is anticipated to have the effect of shifting halibut fishing revenues to local fishermen in Regulatory Areas 4C and 4E from non-local fishermen who otherwise could have had larger halibut catches in these areas. This allocation will provide competitive advantages to local fishermen who operate small vessels more limited by severe weather conditions than non-local fishermen. Although non-local fishermen are expected to harvest a smaller proportion of the halibut catch limits for these areas than they would without this action, these fishermen have the capability to fish in other areas not subject to the allocation measures with larger vessels that can operate in a variety of weather conditions.

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for

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review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator for Fisheries, NOAA, finds that because the first open fishing period in Regulatory Area 4E begins on June 1, 1988 and the allocative aspects of the existing halibut fishing regulations would be infirm without the provisions of this final rule in place at that time, and because this action already has received ample public review and comment, it is impracticable and contrary to the public interest to delay for 30 days the effective date of these regulations under the provision of section 553(d) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: May 27, 1988

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 772–773k.

2. Section 301.10 is amended by adding paragraphs (b) and (c) to read as follows:

§ 301.10 Fishing period limits.

* * * * *

(b) Vessels fishing in Area 4C will be limited to a maximum catch of 10,000 pounds of halibut per fishing period until 50 percent of the catch limit for Area 4C specified in § 301.8 (a) of this part has been taken, and thereafter will be limited to a maximum catch of 20,000 pounds of halibut per fishing period.

(c) Vessels fishing in Area 4E will be limited to a maximum catch of 6,000 pounds of halibut per fishing period.

3. In § 301.13, paragraphs (a), (b), (c), (e), (g), (h), (i) and (j) are repromulgated (republished) without change as follows:

§ 301.13 Vessel clearance and hold inspection.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.8 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut within Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.8 of this part may fish for halibut within Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

* * * * *

(e) The vessel clearance and hold inspections required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

* * * * *

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 will be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) No halibut may be on board at the time of inspection required by paragraph (g) of this section.

(i) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 may be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(j) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

4. In § 301.16, paragraph (h) is repromulgated (republished) without change as follows:

§ 301.16 Fishing gear.

* * * * *

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period will not apply to persons and vessels fishing for halibut during the fishing periods in Areas 4C and 4E as described in § 301.5 (h) and (j) of this part.

* * * * *

[FR Doc. 88-12539 Filed 6-31-88; 5:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 107
Friday, June 3, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 21; Doc. No. 49318]

General Crop Insurance Regulations; Frost/Freeze Potato Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section, 7 CFR 401.130, to be known as the Frost/Freeze Potato Option. The intended effect of this rule is to provide the regulations containing the provisions for frost/freeze crop insurance protection on potatoes as an option to the Potato Crop Insurance endorsement (7 CFR 401.128).

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 5, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.130, the Frost/Freeze Potato Option, effective for the 1989 and succeeding crop years, to provide the provisions for insuring potatoes against damage from frost or freeze.

The frost freeze option is a new program for 1989 crop year. It is a modification of the frost/freeze chart used in conjunction with the 1988 loss adjustment procedures. Effective for the 1989 crop year, the frost/freeze provisions will be applicable to the Northern Potato Endorsement, proposed to be added to the General Crop Insurance Regulations (7 CFR Part 401), as 7 CFR 401.128.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Frost/freeze potato option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.130 Frost/Freeze Potato Option, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.130 Frost/Freeze Potato Option.

The provisions of the Frost/Freeze Potato Option for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Frost/Freeze Potato Option

Upon our approval this amendment is applicable only for the _____ crop year.

1. You must have a Federal Crop Insurance General Policy and Potato Endorsement in force. The Endorsement provides guaranteed production on a hundredweight (cwt.) basis only.

2. You must submit a signed Frost/Freeze Option Amendment to us on or before the final date for accepting applications each crop year. Failure to submit a Frost/Freeze Option for each crop year will result in your potatoes being insured under the terms and conditions of the General Policy and Endorsement without the provision of the option.

3. If you elect this option, all acreage of potatoes insured under the General Policy and Potato Endorsement must be insured under this option.

4. In lieu of subsection 7b. of the Endorsement, the mature production (cwt.) to

count for a unit damaged by frost or freeze will be adjusted according to the following chart:

Percent damage due to frost or freeze	Percent production to count
0–5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production will then be counted against your production guarantee to determine the amount of loss. We must be allowed to inspect the production prior to harvest in order to determine the amount of frost or freeze damage.

If the frost or freeze damage is 20 percent or more at the time of harvest and we give you permission, you may destroy the crop and it will be considered a total loss. You will be indemnified accordingly. You may, however, also elect to market or store the crop and apply the total harvested production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day we determine the potatoes to be 20 percent or more frost or freeze damaged.

Done in Washington, DC on May 25, 1988.

John Marshall,

Manager Federal Crop Insurance Corporation.

[FR Doc. 88–12543 filed 6–2–88; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 401

[Amdt. No. 27; Doc. No. 5549S]

General Crop Insurance Regulations; Malting Barley Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401) to revise and reissue the Malting Barley Option (7 CFR 401.135), effective for the 1989 crop year. The intended effect of this rule is to provide that: (1) Acceptable sales records of malting barley varieties may be substituted for a malting barley contract in obtaining a malting barley option; (2) matling barley units, in accordance with provisions of the barley endorsement, will be allowed; (3) if this option is elected, *all* barley acreage planted to any approved malting variety must be insured under this option; (4) the malting barley price election used to determine liability and indemnity will be contained on the actuarial table; (5) production to count will include all harvested and appraised production accepted by a buyer or meeting applicable malting barley standards provided in the option; (7) quality adjustment determinations for mature malting barley production will be based on a comparison of the malting barley price election to the local market value for the local market value for No. 2 basic barley if the damaged malting barley grades higher than the endorsement standards, or if not, the value of such basic barley of similar quality; and (8) the date for contract changes will be September 1.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 5, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Additional minor editorial changes have been to improve compatibility with the General Crop Insurance Policy. These changes do not affect the meaning or intent of such provisions. The principal proposed changes in the Malting Barley Option are:

1. A malting barley contract is no longer essential to obtain the option. Acceptable records of the sale of malting varieties for malting purposes may be used as a substitute.

2. Multiple malting barley units according to the provisions of the barley endorsement will be allowed.

3. If this option is chosen, then all barley acreage planted to any approved malting variety must be insured under this option. All other barley will be insured as basic barley under the endorsement.

4. The malting barley price election (only 1) used in determining liability and indemnities will be contained on the actuarial table.

5. Production to count will include all harvested and appraised production which is accepted by a buyer or meets applicable malting barley standards provided in the option.

6. Quality adjustment determinations for mature malting barley production will be based on a comparison of the malting barley price election to the local market value for No. 2 non-malting barley if the damaged malting barley grades higher than the basic barley endorsement standards, or if the damaged malting barley does not grade higher than the endorsement standards, the value of such non-malting barley of similar quality.

7. Several new definitions have been added while others have been revised.

8. The date by which changes to the option are to be available in the service office is now included in the option.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Malting barley option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), to revise and reissue the Malting Barley Option (7 CFR 401.135), proposed to be effective for the 1989 and succeeding crop years, as follows

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to revise and reissue the Malting Barley Option, (7 CFR 401.135) effective for the 1989 and succeeding crop years, to read as follows:

§ 401.135 Malting Barley Option.

The provisions of the Malting Barley Option for the 1989 and subsequent crop years are as follows:

United States Department of Agriculture, Federal Crop Insurance Corporation, Barley Insurance Malting, Barley Option

(This is a continous Option. Refer to Section 15 of the General Crop Insurance Policy)

Insured's Name
Contract No.

Crop Year

Address
Identification No.

SSN

Tax

It is hereby agreed to amend the Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement under, and in accordance with, the following terms and conditions:

1. The option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this option.

2. You must have a Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement ("Basic Policy") in force.

3. You must provide by the acreage reporting date:

a. Acceptable records of the sale of malting barley for malting purposes for 3 of the previous 5 crop years; or

b. A binding written contract with a buyer of malting barley for malting purposes, which states the quantity contracted and purchase price or method for determining such price.

4. All barley acreage in the county planted to an approved malting variety in which you have a share, will be insured under this option ("Malting Barley"). All barley acreage of any non-malting variety will be insured under the terms of the Basic Policy ("Basic Barley"). Malting barley and basic barley acreage will be separate units. Further unit division may be allowed in accordance with the provisions of the basic policy.

5. You must elect the highest price election provided for basic barley.

6. Your premium rate for malting barley will be provided by the actuarial table.

7. In lieu of Section 7.b.(1) and (2) of the Barley Endorsement:

a. Mature malting barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each one tenth (.1) percentage point of moisture in excess of 13.0 percent; or

b. Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley (see 10.c.), will be adjusted by:

(1) Dividing the value per bushel for the insured malting barley (see 10.d.) by the price election for malting barley; and

(2) Multiplying the result (not to exceed one (1.0)) by the number of bushels of such barley.

c. All grade determinations must be made by a grader licensed to grade barley under the United States Grain Standards Act from samples obtained by a licensed sampler or our loss adjuster. Any production which is not sampled and graded as provided by this section will be considered as malting barley meeting the applicable standards.

8. All provisions of the basic policy not in conflict with this option are applicable.

9. Contract changes will be available at your service office by September 1 preceding the cancellation notice.

10. As used in this option:

a. *"Applicable standards"* for two-rowed and six-rowed malting barley are defined in the Official United States Grain Standards.

b. *"Approved malting variety"* means the varieties specified in the actuarial table or approved in writing by us.

c. *"Buyer"* means any business enterprise regularly engaged in the malting of barley or brewing of malt beverages for human consumption, or its representative which is authorized to engage in the purchase of malting barley on behalf of or for sale to the malting or brewing company.

d. *"Value per bushel"* for the insured malting barley means;

(1) The local market price of U.S. No. 2 barley (basic barley) if the insured mature malting barley production, due to insurable causes, has a test weight of greater then 40 pounds per bushel and, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains; more than 85 percent sound barley; less than 8 percent damaged kernels, less than 35 percent thin barley; less than 5 percent black barley; and does not grade smutty, garlicky, or ergoty; or

(2) The local market price of basic barley of the same quality as the insured malting barley, if such malting barely does not meet all the standards in 10.d.(1).

The local market price for basic barley as identified in 10.d.(1) and (2) above will be the price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

e. *"Injured-by-frost/mold kernels"* means kernel damage by frost or mold up to and including .4 percent.

f. *"Front/mold-damaged kernels"* means frost/mold damage kernels in excess of .4 percent.

Insured's Signature

Date

Corporation Representative's Signature and Code Number

Date

Done in Washington, DC on May 10, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–12544 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 401

[Amdt. No. 23; Doc. No. 4942S]

General Crop Insurance Regulations; Quality Potato Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section 7 CFR 401.132, to be known as the Quality Potato Option. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on potato quality as an option to the Northern Potato Endorsement (7 CFR 401.126).

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 5, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.132, the Quality Potato Option, effective for the 1989 and succeeding crop years, to provide the provisions for insuring potatoes against loss of quality.

Upon publication of 7 CFR 401.132 as a final rule, the provisions for insuring potatoes contained therein will be applicable to the Northern Potato Endorsement to be issued as 7 CFR 401.128.

The Quality Potato Option provisions contained herein are a combination of the provisions for coverage against frost/freeze and loss of quality and will be applied against mature production (hundredweight) (cwt.) to count under both reduction methods.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Quality potato option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.132 Quality Potato Option, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.132 - Quality Potato Option.

The provisions of the Quality Potato Option for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Quality Potato Option

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

Upon our approval this amendment is applicable for the _____ crop year.

1. You must have a Federal Crop Insurance Potato Endorsement in force. The Endorsement provides guaranteed production on a hundredweight (cwt.) basis only.

2. You must submit a signed Quality Potato Option to us on or before the final date for accepting applications each crop year. Failure to submit a Quality Potato Option for each crop year will result in your potatoes being insured under the terms and conditions of the General Policy and Endorsement without the provisions of the Option.

3. If you elect this Option, all acreage of potatoes insured under the General Policy and Potato Endorsement must be insured under this amendment.

4. In lieu of subsection 7.b. of the Endorsement, the mature production (cwt.) to count for a unit will be based on the following reduction method that results in the least production to count:

a. The potato crop will be adjusted for frost or freeze damage according to the following chart:

Percent damage due to frost or freeze	Percent production to count
0–5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production will then be counted against your production guarantee to determine the amount of loss. We must be allowed to inspect the production prior to harvest in order to determine the amount of frost or freeze damage.

If the frost or freeze damage is 20 percent or more at the time of harvest and we give you permission, you may destroy the crop and it will be considered a total loss. You will be indemnified accordingly. You may, however, elect to market or store the crop and apply the total harvest production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day we determine the potatoes to be 20 percent or more frost or freeze damaged; or

b. Include all harvested and appraised production as follows:

(1) The production to count for any unharvested appraised mature production will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of such potatoes.

(2) The production to count for any potatoes stored:

(a) Without an acceptable inspection will be 100 percent of the gross weight of these potatoes; or

(b) With an acceptable inspection will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of stored potatoes.

(3) Any sold production which due to insurable causes, contains a portion of potatoes which grade less than U.S. No. 2 [1] will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the hundredweight of sold potatoes.

5. Your premium rate for quality potatoes will be set by the Actuarial Table.

6. *"Percentage factor"* means the actual average percentage of potatoes grading U.S. No. 2 [1] or better, determined from your records. If more than four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained on the actuarial table. The Actuarial Table may provide for percentage factors by type.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

Done in Washington, DC on May 25, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–12545 Filed 6–2–88; 8:45am]

BILLING CODE 3410–08–M

[1] The actuarial table may provide U.S. No. 1.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Eighth Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Eighth Meeting.

SUMMARY: The Nuclear Regulatory Commission will hold the eighth meeting of the High-Level Waste Licensing Support System Advisory Committee on June 29–30, 1988. The Committee, established under the Federal Advisory Committee Act, is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). The Committee is attempting to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding.

DATE: The eighth meeting of the HLW Licensing Support System Advisory Committee will be held June 29–30, 1988.

ADDRESS: The location of the June 29–30, 1988, meeting of the HLW Licensing Support System Advisory Committee is the Best Western Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publication Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: The eighth meeting of the HLW Licensing Support System Advisory Committee ("negotiating committee") is scheduled to include continued discussion of substantive issues related to a high-level waste licensing support system.

Dated at Bethesda, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

David L. Mayer,

Division of Freedom of Information and Publication Services, Office of Administration and Resources Management.

[FR Doc. 88–12486 Filed 6–2–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175, 176, 177, and 178

[Docket No. 80N–0428]

Colorants for Polymers; Postponement of Final Date for Submission of Environmental Data and Additional Comments

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the final date for the submission of comments on the tentative final rule on colorants for polymers. The new date is August 5, 1988. This action responds to requests by several manufacturers for additional time to compile the requested environmental data and to prepare comments.

DATE: The new final date for the submission of comments and environmental data in this proceeding is August 5, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 6, 1988 (53 FR 11402), FDA published a tentative final rule on the safe use of substances as colorants for polymers. In this tentative final rule, the agency requested information for use in assessing the environmental impact of expanded use of certain of these colorants and of certain listed color additives as colorants. The agency established June 6, 1988, as the final date for submission of comments and environmental data.

The agency received several comments that requested a postponement of that final date. The comments indicated that compiling the information that FDA had requested would take longer than the original final date of June 6, 1988, and the comments requested extensions that ranged from 30 to 60 days.

To ensure that respondents have a full opportunity to provide the agency with the information it needs, the agency is postponing the date for the submission of comments and environmental data on colorants for polymers until August 5, 1988.

Dated: May 27, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–12459 Filed 6–2–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

Preparation of Rolls of Indians

March 4, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend the regulations contained in 25 CFR Part 61 governing the preparation of rolls of Indians. The Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987 directs the

Secretary of the Interior to prepare within 365 days of the date of the Act a tribal membership roll in accordance with the regulations contained in 25 CFR Part 61. The regulations in Part 61 provide general enrollment procedures that can be made applicable to the preparation of a specific roll of Indians by amending the regulations to include the qualifications for enrollment and the deadline for filing applications for the particular roll. The BIA is proposing to amend Part 61 by adding a paragraph (e) to § 61.4 to include the qualifications for enrollment and the deadline for filing applications so that the procedures contained in Part 61 will govern the preparation of the tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians.

DATE: Comments must be received on or before July 5, 1988.

ADDRESS: Written comments should be directed to the Branch of Tribal Enrollment Services, Bureau of Indian Affairs, Room 2609 Main Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Slover, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs, Room 2609 Main Interior Building, 1951 Constitution Avenue NW., Washington, DC 20245, telephone number: (202) 343-1702 (FTS: 343-1702).

SUPPLEMENTARY INFORMATION: This proposed amendment to a rule is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

The Cow Creek Band of Umpqua Tribe of Indians was awarded judgment funds in docket numbered 53-81L by the United States Claims Court. Funds to satisfy the award were appropriated by Congress. The Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, authorized the use and distribution of the judgment funds.

Section 5 of the Act of October 26, 1987, directs the Secretary to prepare within 365 days of the date of the Act a tribal membership roll of the Cow Creek Band of umpqua Tribe of Indians in accordance with the regulations contained in 25 CFR Part 61. The Act further directs that the tribal membership roll by published in the Federal Register.

Section 6 of the Act of October 26, 1987, directs the Secretary to determine the eligibility of two additional categories of individuals who do not qualify for tribal membership, but who do meet certain other requirements specified in the Act. These nontribal members will be eligible to participate along with tribal members in certain tribal programs funded by the judgment award. The BIA will use the procedures contained in this part 61 to process applications from these two additional categories of nontribal members. However, the rulemaking action amending Part 61 to provide procedures to process applications from these nontribal members under section 6 of the Act was determined to be a rule of agency procedure or practice and was being published separately as a final rule in this issue of the Federal Register on Wednesday, April 6, 1988. 53 FR 11271.

Section 5 of the Act of October 26, 1987, states that the Secretary is to prepare a tribal membership roll comprised of "Indian individuals" who were not members of any other federally recognized Indian tribe on July 30, 1987, and (1) who are named on a tribal roll dated September 13, 1960 (the so-called Interrogatory No. 14 roll); (2) who were born on or prior to October 26, 1987, and are descendants of persons named on the so-called Interrogatory No. 14 roll; or (3) who are decendants of persons considered to be members of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 19, 1853. The enrollment requirements stated in the Act are ambiguous. Controversy has arisen as to whether person named on the so-called Interrogatory No. 14 roll automatically qualify for enrollment on the tribal membership roll being prepared by the Secretary and can be denied enrollment only if the BIA can prove that they are nonIndians or whether those persons must prove Cow Creek Indian ancestry to be included on the tribal membership roll.

The Department has concluded, based on a review of the legislative history and consistent with the scope and purpose of the Act, that all individuals, including those persons whose names appear on the so-called Interrogatory No. 14 roll, must establish that they possess Cow Creek Indian ancestry to qualify for enrollment on the tribal membership roll being prepared by the Secretary. An early version of the proposed legislation did contain specific language granting a "rebuttable presumption" of eligibility for those persons whose names were listed on the so-called Interrogatory No. 14 roll, but that provision was removed from the legislation as enacted. Consequently, among other requirements for enrollment, the proposed amendment requires all persons to establish that they possess Cow Creek Indian ancestry.

To establish eligibility for enrollment the proposed amendment requires all persons to file or have filed on their behalf an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, by the deadline specified in proposed § 61.4(e)(2). Applications received after that date will be rejected for failure to file on time regardless of whether the applicants otherwise meet the qualifications for enrollment.

In addition to general public notice, to provide actual notice of the preparation of the roll to as many potentially eligible beneficiaries as possible, the Superintendent, Siletz Agency, Bureau of Indian Affairs, shall send notices in accordance with § 61.5(c) to all persons whose names appear on the Interrogatory No. 14 roll at their last available address. Notices shall advise individuals of the preparation of the roll and the relevant procedures to be followed, including the qualifications for enrollment and the deadline for filing applications forms. An application form will be mailed with each notice.

The primary author of this document is Kathleen L. Slover, Tribal Enrollment Specialist, Branch of Tribal Enrollment Services, Bureau of Indian Affairs.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed amendment.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in this Part 61 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected and those individuals who are determined eligible to be enrolled on the tribal membership roll will be participating in the programs of one tribal entity funded by a relatively small judgment award granted the Cow Creek Band by the United States Claims Court.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the limited applicability as stated above.

The Department of the Interior has determined that this rule is not a major Federal action signficantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 25 CFR Part 61

Indians—claims, Indians—enrollment.

Accordingly, it is proposed that Part 61 of Subchapter F of Chapter I of Title 25 of the Code of Federal Regulations be amended as shown.

PART 61—[AMENDED]

1. Authority citation for Part 61 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; Pub. L. 93-134, 87 Stat. 466, as amended (25 U.S.C. 1401 *et seq.*); Pub. L. 100-139.

2. Section 61.4 is amended by adding a new paragraph (e) to read as follows:

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

* * * * *

(e) *Cow Creek Band of Umpqua Tribe of Indians.* (1) Pursuant to section 5 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, a tribal membership roll is to be prepared comprised of all persons who are able to establish that they are of Cow Creek Indian ancestry based on any rolls or records acceptable to the Secretary and were not members of any other federally recognized Indian tribe on July 30, 1987; and:

(i) Who are named on the tribal roll dated September 13, 1960, the so-called Interrogatory No. 14 roll;

(ii) Who are descendants of individuals named on the tribal roll dated September 13, 1960, the so-called Interrogatory No. 14 roll, and were born on or prior to October 26, 1987; or

(iii) Who are descendants of individuals who were considered to be members of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the Treaty entered between such Band and the United States on September 19, 1853.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380 by August 2, 1988. Applications forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

* * * * *

Ralph R. Reeser,
Acting Assistant Secretary—Indian Affairs.
[FR Doc. 88-12499 Filed 6-2-88; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-962-86]

Income Taxes; Definition of Functional Currency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the definition of a taxpayer's functional currency. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986.

DATES: The regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by August 2, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-962-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 Attention: CC:LR:T (INTL-962-86) (202-634-5406), not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new §§ 1.985-0T through 1.985-5T to Part 1 of Title 26 of the Code of Federal Regulations. Final regulations are by this document proposed to the basis of the temporary regulations. Section 985 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2090). For the text of the temporary regulations, see FR Doc. 88-12562 [T.D. 8208]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Non-Applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefor is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal authors of these proposed regulations are David Rosenberg and F. Scott Farmer of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

Paperwork Reduction Act

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Comments and Requests for a Public Hearing

Before these temporary and proposed regulations are adopted as final regulations, consideration will be given any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held,

notice of the time and place will be published in the Federal Register.

List of Subjects in 26 CFR 1.861-1—1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary regulations, FR Doc. 88-12562 [T.D. 8208] published in the Rules and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under section 989 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-12563 Filed 6-2-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Reopening and Extension of Public Comment Period; Proposed Amendments; Louisiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: By letter dated January 25, 1988, the State of Louisiana submitted proposed amendments to its permanent regulatory program (hereinafter referred to as the Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revisions to the Louisiana regulations which would partially replace those regulations now implementing the Louisiana program. OSMRE published a notice in the March 14, 1988 Federal Register (53 FR 8222) announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments.

In response to comments received in the State rulemaking process, the State submitted revised amendments on March 8, 1988; April 5, 1988; and May 11, 1988. Accordingly, OSMRE is reopening and extending the comment period for Louisiana's January 25, 1988 proposed amendments as modified on March 8, 1988; April 5, 1988; and May 11, 1988. This action is being taken to provide the public with an opportunity to consider the adequacy of the revised proposed amendments.

DATES: Written comments, relating to Louisiana's proposed modification of its program not received on or before 4:00 p.m., c.s.t. on June 20, 1988, will not necessarily be considered in the Director's decision to approve or disapprove the amendments.

ADDRESSES: Written comments should be mailed or hand delivered to: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581-6430.

Copies of the Louisiana program, the proposed modification to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, listed above, at OSMRE Headquarters Office, and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive free of charge, one copy of the proposed amendment by contacting OSMRE's Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430.

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 "L" Street NW., Washington, DC 20240; Telephone: (202) 343-5492.

Louisiana Office of Conservation, Department of Natural Resources, P.O. Box 94275, Baton Rouge, Louisiana 70804; Telephone: (504) 342-5500.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Louisiana program was conditionally approved by the Secretary of the Interior on October 10, 1980. Information pertinent to the general background, revisions, modifications, and amendments to the Louisiana program submission as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Louisiana program can be found in the October 10, 1980, Federal Register (45 FR 67340). Subsequent actions taken with regard to Louisiana's approved program amendments and required amendments can be found at 30 CFR Part 918.10, 918.16, and 918.20.

II. Proposed Amendments

By letter dated January 25, 1988, (Administrative Record No. LA-263), Louisiana submitted a package of proposed amendments to OSMRE. The amendments consist of proposed modifications to Louisiana regulations concerning numerous aspects of the Louisiana program. OSMRE announced receipt of the proposed amendments and initiated a 30-day public comment period on March 14, 1988 (53 FR 8222). The comment period closed on April 13, 1988.

By letters dated March 8, 1988 (Administrative Record No. LA-269), April 5, 1988 (Administrative Record No. LA-270), and May 11, 1988 (Administrative Record No. LA-271), Louisiana submitted revised amendments to resolve concerns raised in the Louisiana rule development process. The full text of the revised amendment package is available for review at the locations listed above under "ADDRESSES". OSMRE is now seeking comment on the March 8, 1988; April 5, 1988; and May 11, 1988 proposed amendments. If the Director determines that the proposed amendments are no less stringent than SMCRA and no less effective than the Federal regulations, the amendments will be approved and become part of the approved regulatory program for the State of Louisiana.

List of Subjects in 30 CFR Part 918

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: May 20, 1988.

[FR Doc. 88-12471 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 944

Proposed Amendments to Utah's Permanent Regulatory Program; Reopening and Extension of Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSMRE is reopening the public comment period on the substantive adequacy of an amendment submitted by the State of Utah to change the rule governing the determination of the existence of negligible impact to alluvial valley floors from mining activities. OSMRE published a notice in the Federal Register on November 13, 1987 (52 FR 43622) to announce the opportunity for public comment and hearing. The comment period closed December 14, 1987. During its review of Utah's proposed amendments, OSMRE identified some concerns relating to the length of time for which the significance of impacts of mining to farm production on alluvial valley floors should be considered. OSMRE notified Utah of these concerns, and Utah responded by revising its proposed amendment.

OSMRE is now reopening the comment period to allow the public to comment on the additional material received.

DATES: Written comments realting to Utah's proposed modifications of its program not received by 4 p.m., m.d.t. on June 20, 1988 will not necessarily be considered in the Director's decision to approve or disapprove the amendments.

ADDRESSES: Written comments may be mailed or hand-delivered to Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102.

Copies of the Utah program, the proposed amendments to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, 8 a.m. to 4 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed herein under the heading "ADDRESSES." The aforementioned documents are available for review at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102, Telephone (505) 766-1486

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180-1203, Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102 Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Utah program under the Surface Mining Control and Reclamation Act (SMCRA) for the regulation of surface coal mining operations on January 21, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program, can be found in the January 21, 1981 Federal Register (46 FR 5899). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 944.12, 944.15, and 944.16.

II. Submission of Amendments and Discussion of Alluvial Valley Floor Issue

On September 24, 1987, Utah submitted a proposed amendment to the Utah program (Administrative Record No. UT-462) for OSMRE's review and approval. The proposed amendments at SMC/UMC 785.19(e)(2) would delete the last sentence of subsection (e)(2) which states, "The effect of the proposed operations on farming will be concluded to be significant if they would remove from production, over the life of the mine, a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm."

The proposed rule change was announced in the Federal Register on November 13, 1987 (52 FR 43622). This public notice (Administrative Record No. UT-476) announced the opportunity for the public to submit comments concerning the proposed amendment to the Utah Program.

In the course of its review of Utah's proposed amendments, OSMRE determined that the current Federal Permanent Program rules require that impacts on alluvial valley floors be based on the life-of-mine period.

Because Utah had deleted this life-of-mine criterion from its proposed amendments, OSMRE sent an issue letter (Administrative Record No. UT-481) to Utah on March 7, 1988, notifying Utah that its proposed regulations were not as effective as the counterpart Federal Regulations. Utah responded on April 6, 1988 (Administrative Record No. UT-483) by adding the life-of-mine timeframe to the proposed amendment.

The full text of the proposed program amendment submitted by Utah is available for public inspection at the locations listed under "ADDRESSES," or a copy of the proposed amendment can be obtained as described under the same section.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Utah satisfies the requirements of 30 CFR 732.15 for approval of State program amendments. If the amendment is deemed adequate, it will become part of the Utah program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking decisions process or included in the Administrative Record for this proposed rulemaking.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 20, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-12465 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162 and 165

[CGD 05-88-17]

Special Anchorage Areas, Anchorage Grounds, and Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to completely revise the anchorage regulations in 33 CFR 110.168 and the regulated navigation area (RNA) regulations in 33 CFR 165.501 for Hampton Roads, Virginia. Our actions are intended to promote safe navigation in Hampton Roads by revising the present anchorage boundaries to conform with present navigational conditions, establishing new boundaries for the regulated navigation area, and clarifying the general provisions for both

the anchorage grounds and the regulated navigation area. The need for revision to the anchorage ground regulations stems primarily from several construction and navigation improvement projects that have been completed, are in progress, or are planned for Hampton Roads. The need for revision to the regulated navigation area regulations stems from a regulatory project being undertaken by Coast Guard Headquarters that will revise all of the Coast Guard's anchorage regulations, and separate out those regulations that regulate vessel operations outside of specified anchorage grounds. Those provisions not related to specific anchorage grounds are being moved to Part 165. In addition to many substantative changes, we intend to remove out-dated and confusing language, redesignate anchorages in a consecutive manner, and make the regulations easier to understand.

DATES: Comments must be received on or before July 18, 1988.

ADDRESSES: Comments should be mailed to Commander (mpv), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23704–5004. Comments will be available for inspection and copying at the office of the Commander (mpv), Fifth Coast Guard District, Room 408–A, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23704–5004. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address. Charts with the revised anchorage areas highlighted are available for viewing at the above office.

FOR FURTHER INFORMATION CONTACT: Lieutenant D.T. Ormes, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth Virginia, 23704–5004, (804) 398–6181.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking was published in the **Federal Register** on March 22, 1984 (49 FR 10678). Five comments were received in response to that notice.

Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD5 88–17) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information: The drafters of this notice are Lieutenant W.J. Wetzel and Lieutenant D.T. Ormes, Project Officers, Port and Vessel Safety Branch, Fifth Coast Guard District, Lieutenant (jg) Jeff G. Anderson, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, and Commander R.J. Reining, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion: An advance notice of proposed rulemaking, which outlined the proposed changes to the anchorage regulations, was published in the **Federal Register** on March 22, 1984 (49 FR 10678). That notice alerted the public to the need for certain changes in the existing regulations and solicited comments and suggestions from the general public, users of these waters, and interested local and Federal agencies. Five comments were received from the Corps of Engineers and various Navy sources. This notice is based on that input, as well as other needs that have been identified since the advanced notice was published through our regular consultations with maritime interests.

The objective of this proposal is to update the regulations and to make them easier to understand. The proposed changes include redefining the geographic boundaries to which both the anchorage and regulated navigation area regulations apply, revising the explosives anchorage regulations, setting controls on the use of deep-draft anchorages, removing many restrictions that apply to most smaller vessels, relocating the Quarantine Anchorage, redesignating anchorages in a consecutive manner, and clarifying the general regulations.

There are also several construction and improvement projects taking palce in Hampton Roads that necessitate amending or removing some of the present anchorages. The more important of these are the construction of the Interstate 664 bridge-tunnel between Newport News and Suffolk, Virginia, and the deepening and realignment of certain dredged channels in conjunction with the 55-foot channel deepening project. The U.S. Navy has also requested that a new anchorage area be established near Cape Henry for use during military exercises.

Because of the large number of changes that are being proposed, the major changes will be discussed separately. Reference will be made to both the current anchorage designations and the proposed redesignations.

1. *Geographic boundaries.* The present regulations apply generally to the Hampton Roads area, but there are no precisely defined geographic boundaries. The boundaries for the current Regulated Navigation Area (RNA) will be extended to include the entrance to Chesapeake Bay, the lower Chesapeake Bay south of a line between Hampton, Virginia and Cape Charles, Virginia, Hampton Roads proper, the James River east of the Route 17 highway bridge, and the various branches of the Elizabeth River in and around Norfolk, Virginia.

2. *Applicability.* The current anchorage regulations prohibit any vessel within the Hampton Roads area from anchoring outside of a designated anchorage area. This prohibition extends even to the smallest pleasure vessels. Many of the designated anchorages also cover large areas unsuitable for anchoring, either because of the depth of water, obstructions, or underground cables. We propose to eliminate most of the regulations applicable to vessels 65 feet or less in length. Vessels over 65 feet in length and any vessel carrying dangerous cargo or military explosives, as defined in these regulations, will be required to anchor in designated anchorage areas. However, all vessels, including vessels that are 65 feet or less in length, will be prohibited from anchoring in maintained channels and in the vicinity of the bridge-tunnels.

Coast Guard Headquarters is currently working on a regulatory project that will revise all of the anchorage regulations in Part 110 of Title 33, Code of Federal Regulations. That project will transfer the regulations controlling the anchoring of vessels outside of established anchorages from Part 110 to Part 165. In anticipation of that change, we are expanding the current boundaries of the current Hampton Roads RNA and revising those regulations to include restrictions on anchoring vessels outside of designated anchorages. This revision of the Hampton Roads RNA will also include a consolidation of other vessel control measures such as the naval aircraft carrier and liquified petroleum gas ship safety zone regulations.

3. *Deep-draft anchorages.* At the request of the Corps of Engineers we have proposed new restrictions on the use of the principal deep-draft anchorages. These restrictions are based primarily on vessel length and draft. They also vary depending upon the size, depth, and location of the particular anchorage. Our purpose is to ensure that these anchorages are available for and used only by those vessels that actually require deeper water.

4. *Anchorage F.* Because the U.S. Navy no longer requires this anchorage for mooring explosives laden barges, this anchorage will be discontinued. Those portions of Anchorage F that will not be lost to the I–664 bridge-tunnel will be incorporated into Anchorages I, J, and K.

5. *Explosives Anchorage.* Anchorage F–1 will be discontinued as an explosive anchorage. It will be incorporated into new Anchorage E, a general commercial anchorage. Because we believe there is a need to maintain a separate explosives anchorage for commercial vessels, a new explosives anchorage will be designated at the eastern and of Anchorage E, which is located in lower Chesapeake Bay. This location is accessible to large ships. It is located in a semi-protected area that is removed from populated areas and other anchorages.

6. *Explosives and dangerous cargoes.* This proposal identifies vessels that are required to use the explosives anchorage by defining explosives and other dangerous cargoes in terms consistent with current hazardous material regulations.

7. *Quarantine Anchorage.* The Quarantine Anchorage will be relocated from old Anchorage A to new Anchorage K. At present, this anchorage is seldom used for quarantine purposes. It is a naturally deep and well-located anchorage that is better suited for other purposes. The deep waters in Anchorage F will be used as the primary deep-draft commercial anchorage in Hampton Roads. Moving the Quarantine Anchorage to Anchorage K will still provide vessels with an accessible quarantine anchorage.

8. *Naval Anchorage G (formerly anchorage B).* The proposal adds new requirements for handling of explosives in Anchorage G. New minimum separation distances between explosives-laden vessels and the Navy barge mooring facility, other vessels at anchor, and navigation channels are proposed. This proposal is based on standards set by the Department of Defense for military vessels.

9. *Naval Anchorage A.* At the request of the U.S. Navy, a new anchorage near Cape Henry south of the main ship channel is included in the proposal. This anchorage will be used by military and military support vessels engaged in military exercises at Fort Story.

10. *Anchorage U (formerly Anchorage N–1).* This anchorage is traditionally used by vessels 65 feet or less in length. Because of the scenic location of this anchorage, regulations on its use will continue.

11. *Anchorage R and S (formerly anchorage P).* Since Anchorage P crosses the entry channel to the Pinners Point piers and encompasses area unsuitable for anchoring, it is being divided into two anchorages.

12. *Anchorages G–1, G–2, J–1, J–2, M, Q, S–1 and S–2.* These anchorages are being eliminated, since the principal users, shallow draft vessels, will no longer be required to anchor in designated anchorages. Also, portions of the areas included in these anchorages are unsuitable for anchoring vessels.

13. *Channel realignments.* Dredging activities to deepen and realign Newport News Channel and Norfolk Harbor Entrance Reach require adjustments to the boundaries of Anchorages G, H, J, and K to conform to the new deeper channels. The shift of these channels is minor and has virtually no effect upon the amount of space available for anchoring vessels.

14. *Anchorage T–6.* This anchorage is being eliminated. It was established for vessels involved with the construction of piers at the Norfolk Naval Base, and is no longer needed for that purpose.

15. *Fairway for shallow-draft vessels and tows.* The proposal eliminates the fairway that extends from Norfolk Harbor Reach near buoy "10" to Newport News Channel near buoy "9." This fairway can be better used as an anchorage. Its elimination will not significantly affect the operation of vessels that now use it.

16. *Protection of bridge-tunnels.* The boundaries of the anchorages adjacent to the I–664 bridge-tunnel are being amended so they are no closer than 500 yards to the bridge-tunnel. No vessels will be allowed to anchor within this 500 yard buffer zone. The buffer zone should minimize the possibility of damage to the bridge by vessels in adjacent anchorages that drag their anchors. A similar buffer zone is being created for the Chesapeake Bay Bridge Tunnel.

17. *Redesignation of anchorages.* All of the anchorages have been renamed. The anchorages have been lettered in a consecutive manner starting at the outermost anchorage.

18. *Anchorage permits.* The proposal includes new regulations that allow the Captain of the Port to issue permits to vessels for remaining in an anchorage for extended periods.

19. *Speed limit regulations.* The speed limit regulations governing the Southern Branch of the Elizabeth River and Fishermans Cove (Northwest Branch of Little Creek) in 33 CFR 162.55 and 162.60 have been consolidated into the Regulated Navigation Area regulations.

20. *Aircraft carrier and LPG carrier safety zone regulations.* The safety zone regulations governing the movements on aircraft carriers and LPG carriers in 33 CFR 165.505 and 165.506 have been consolidated into the Regulated Navigation Area regulations. The regulations on aircraft carrier movements have been expanded to cover the movement of other large naval vessels, such as Helicopter Landing Ships, that have limited maneuverability in confined waters.

21. *Thimble Shoal Channel Restrictions.* Due to the large volume of vessel traffic in the lower Chesapeake Bay, the need arose, as a matter of safety, to restrict the use of Thimble Shoal Channel. To meet this need, the Thimble Shoal North and South Auxiliary Channels were designated for use by those vessels with drafts of 25 feet and less. Comments received from the Virginia Pilots Association during Coast Guard analysis indicated a desire to have the limits of Thimble Shoal Auxiliary Channels extended. This proposal enlarges the size of these channels. Vessel safety should be enhanced by this measure. In addition, the Coast Guard's analysis indicated a need to relocate the buoys in Thimble Shoal Channel. (**Note:** This proposal indicates the locations where the buoys will be located if the proposal is adopted, not current locations of the buoys.)

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. A particular effort has been made to eliminate as many of the current regulations as possible to reduced the burden on commercial and recreational vessel operators. As a result, anchoring in most of the Hampton Roads' area is less restrictive than before; smaller vessels are free to anchor in many more areas than they were previously permitted. The only adverse effect expected from this regulation is the loss of the use of a small portion of the medium and

shallow depth anchorage ground available in Hampton Roads. This results from the construction of the bridge-tunnel. Sufficient anchorage ground will be available for vessels that, in the past, have used the anchorage grounds that will be discontinued. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Waterways.

33 DFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Title 33, Code of Federal Regulations as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.168 of Part 110 is revised to read as follows:

§ 110.168 Hampton Roads, Virginia, and adjacent waters.

(a) *Anchorage Grounds*—(1) *Cape Henry anchorage.* Anchorage A (Naval anchorage): The water enclosed by a line beginning at latitude 36°–55′–33.0″N, longitude 76°–02′47.0W thence to latitude 36°–57′–02.8″N, longitude 76°–03′–02.6″W, thence to latitude 36°–56′–45.0″N, longitude 76°–01–30.0″W, thence to latitude 36°–55′–52.8″N, longitude 76°–01′–37.0″W, thence along the shoreline to the beginning.

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages.—(i) Anchorage B (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–57′–58.0″N, longitude 76°–06′07.0″W, thence to latitude 36°–57′–11.0″N, longitude 76°–03′–02.1″W, thence to latitude 36°–56′–46.8″N, longitude 76°–03′–14.0″W, thence to latitude 36°–56′–31.8″N, longitude 76°–06′–07.0″W, thence to latitude 36°–57′–04.0″N, longitude 76°–06′–07.0″W, thence to latitude 36°–57′–08.5″N, longitude 76°–06′–24.5″W, thence to the beginning.

(ii) *Anchorage C (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–58′–54.8″N, longitude 76°–09′–41.5″W, thence to latitude 36°–59′–15.0″N, longitude 76°–10′–56.8″W, thence to latitude 36°–58′–18.8″N, longitude 76°–10′–54.0″W, thence to latitude 36°–58′–04.0″N, longitude 76°–10′–00.0″W, thence to the beginning.

(iii) *Anchorage D (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–58′–04.0″N, longitude 76°–10′–02.1″W, thence to latitude 36°–57′–31.2″N, longitude 76°–07′–54.8″W, thence to latitude 36°–55′–24.1″N, longitude 76°–10′–28.8″W, thence along the shoreline to latitude 36°–55′–57.1″N, longitude 76°–06′–36.1″W, thence to the beginning.

(iv) *Anchorage E (Explosive Anchorage).* The water enclosed by a line beginning at latitude 36°–59′–58.7″N, longitude 76°–13′–47.0″W, thence to latitude 36°–59′–08.2″N, longitude 76°–10′–33.8″W, thence to latitude 36°–58′–13.0″N, longitude 76°–10′–51.8″W, thence to latitude 36°–59′–02.0″N, longitude 76°–14′–10.2″W, thence to the beginning.

(A) Anchorage Berth E–1 (Explosives Anchorage Berth): The area within a circle having a radius of 500 yards centered at latitude 36°–59′–05.0″N, longitude 76°–11′–23.0″W.

(3) *Hampton Roads Anchorages.*—(i) *Anchorage F, Hampton Bar.* The water enclosed by a line beginning at latitude 36°–59′–51.6″N, longitude 76°–19′–12.0″W, thence to latitude 36°–59′–09.0″N, longitude 76°–18′–51.0″W, thence to latitude 36°–58′–53.6″N, longitude 76°–19′–36.0″W, thence to latitude 36°–59′–25.0″N, longitude 76°–20′–07.0″W, thence to the beginning.

(A) Anchorage Berth F–1—the area within a circle having a radius of 400 yards centered at latitude 36°–59′–13.0″N, longitude 76°–19′–36.5″W.

(B) Anchorage Berth F–2—the area within a circle having a radius of 400 yards centered at latitude 36°–59′–27.5″N, longitude 76°–19′–12.0″W.

(ii) *Anchorage G, Hampton Flats (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–59′–25.0″N, longitude 76°–20′–07.0″W, thence to latitude 36°–58′–53.6″N, longitude 76°–19′–38.0″W, thence to latitude 36°–57′–40.0″N, longitude 76°–21′–16.0″W, thence to latitude 36°–57′–35.5″N, longitude 76°–21′–28.8″W, thence to latitude 36°–57′–34.0″N, longitude 76°–22′–02.2″W, thence to latitude 36°–57′–58.07″N, longitude 76°–22′–03.0″W, thence to latitude 36°–58′–54.8″N, longitude 76°–21′–42.6″W, thence to the beginning.

(A) Anchorage Berth G–1—the area within a circle having a radius of 500 yards centered at latitude 36°–57′–50.0″N, longitude 76°–21′–37.0″W.

(B) Anchorage Berth G–2—the area within a circle having a radius of 500 yards centered at latitude 36°–58′–14.0″N, longitude 76°–21′–01.5″W.

(C) Anchorage Berth G–3—the area within a circle having a radius of 500 yards centered at latitude 36°–58′–34.5″N, longitude 76°–20′–31.0″W.

(D) Anchorage Berth G–4—the area within a circle having a radius of 500 yards centered at latitude 36°–58′–53.4″N, longitude 76°–20′–05.0″W.

(iii) *Anchorage H, Newport News Bar.* The water enclosed by a line beginning at latitude 36°–56′–07.0″N, longitude 76°–22′–03.0″W, thence to latitude 36°–57′–34.0″N, longitude 76°–22′–02.2″W, thence to latitude 36°–57′–23.2″N, longitude 76°–24′–13.5″W, thence to latitude 36°–57′–38.3″N, longitude 76°–24′–20.0″W, thence to latitude 36°–57′–51.8″N, longitude 76°–22′–31.0″W, thence to the beginning.

(4) *James River anchorages.*—(i) *Anchorage I, Newport News.* The water enclosed by a line beginning at latitude 36°–57′–06.0″N, longitude 76°–24′–47.5″W, thence to latitude 36°–56′–22.6″N, longitude 76°–24′–28.0″W, thence to latitude 36°–56′–03.0″N, longitude 76°–24′–37.0″W, thence to latitude 36°–57′–53.7″N, longitude 76°–26′–41.5″W, thence to latitude 36°–58′–23.0″N, longitude 76°–27′–11.0″W, thence to latitude 36°–58′–48.5″N, longitude 76°–27′–11.0″W, thence to latitude 36°–58′–36.0″N, longitude 76°–26′–44.8″W, thence to latitude 36°–57′–50.0″N, longitude 76°–26′–03.8″W, thence to latitude 36°–57′–31.5″N, longitude 76°–25′–39.0″W, thence to the beginning.

(A) Anchorage Berth I–1—the area within a circle having a radius of 400 yards centered at latitude 36°–57′–08.5″N, longitude 76°–25′–21.6″W.

(B) Anchorage Berth I–2—the area within a circle having a radius of 400 yards centered at latitude 36°–57′–22.4″N, longitude 76°–25′–47.7″W.

(ii) *Anchorage J, Newport News Middle Ground.* The water enclosed by a line beginning at latitude 36°–57′–22.1″N, longitude 76°–22′–23.4″W, thence to latitude 36°–56′–46.5″N, longitude 76°–22′–39.3″W, thence to latitude 36°–56′–25.3″N, 76°–23′–48.0″W, thence to 36°–57′–13.1″N, 76°–24′–09.9″W, thence to the beginning.

(iii) *Anchorage K, Newport News Middle Ground.* The water enclosed by a line beginning at latitude 36°–57′–55.0″N, longitude 76°–20′–32.0″W, thence to latitude 36°–57′–06.0″N, longitude 76°–20′–32.2″W, thence to latitude 36°–57′–01.2″N, longitude 76°–20′–22.1″W, thence to latitude 36°–56′–47.4″N, longitude 76°–20′–23.2″W, thence to latitude 36°–56′–00.0″N, longitude 76°–22′–11.7″W, thence to latitude 36°–56′–00.0″N, longitude 76°–24′–00.0″W, thence to latitude 36°–56′–25.3″N, longitude 76°–23′–48.0″W, thence to latitude 36°–56′–46.5″N, longitude 76°–22′–39.3″W, thence to latitude 36°–57′–22.1″N, longitude 76°–22′–23.4″W, thence to latitude 36°–57′–28.0″N, longitude 76°–21′–11.1″W, thence to the beginning.

(A) Anchorage Berth K–1—The waters enclosed by a line beginning at latitude 36°–57′–55.0″N, longitude 76°–20′–32.0″W, thence to latitude 36°–57′–08.0″N, longitude 76°–20′–32.2″W, thence to latitude 36°–57′–28.0″N, longitude 76°–21′–11.1″W, thence to the beginning.

(B) Anchorage Berth K–2—The waters enclosed by a line beginning at latitude 36°–57′–24.0″N, longitude 76°–22′–01.0″W, thence to latitude 36°–57′–28.0″N, longitude 76°–21′–11.1″W, thence to latitude 36°–57′–16.0″N, longitude 76°–20′–43.2″W, thence to latitude 36°–57′–02.1″N, longitude 76°–21′–09.5″W.

(C) Anchorage Berth K–3 (Quarantine Anchorage)—The area within a circle having a radius of 300 yards centered at latitude 36°–57′–13.2″N, longitude 76°–22′–15.0″W.

(iv) *Anchorage L, Craney Island Flats.* The water enclosed by a line beginning at latitude 36°–56′–47.4″N, longitude 76°–20′–23.3″W, thence to latitude 36°–56′–04.1″N, longitude 76°–20′–27.5″W, thence to latitude 36°–56′–00.0″N, longitude 76°–22′–11.7″W, thence to the beginning.

(5) *Norfolk Harbor Channel anchorages*—(i) *Anchorage M.* The water enclosed by a line beginning at latitude 36°–55′–37.7″N, longitude 76°–19′–48.1″W, thence to latitude 36°–55′–22.1″N, longitude 76°–18′–46.1″W, thence to latitude 36°–55′–20.8″N, longitude 76°–20′–11.1″W, thence to latitude 36°–55′–37.0″N, longitude 76°–20′–09.6″W, thence to the beginning.

(ii) *Anchorage N.* The water enclosed by a line beginning at latitude 36°–54′–35.3″N, longitude 76°–19′–47.5″W, thence to latitude 36°–54′–03.9″N, longitude 76°–19′–45.0″W, thence to latitude 36°–53′–56.0″N, longitude 76°–20′–09.0″W, thence to latitude 36°–54′–31.4″N, longitude 76°–20′–15.1″W, thence to latitude 36°–54′–45.8″N, longitude 76°–20′–14.0″W thence to the beginning.

(iii) *Anchorage O.* The water enclosed by a line beginning at latitude 36°–53′–28.0″N, longitude 76°–19′–16.3″W, thence to latitude 36°–53′–00.0″N, longitude 76°–19′–29.9″W, thence to latitude 36°–53′–04.0″N, longitude 76°–19′–57.6″W, thence to latitude 36°–53′–28.0″N, longitude 76°–19′–57.6″W, thence to the beginning.

(6) *Elizabeth River anchorages.*—(i) *Anchorage P, Lambert's Point.* The water enclosed by a line beginning at latitude 36°–52′–41.0″N, longitude 76°–20′–07″W, thence to latitude 36°–52′–39.5″N, longitude 76°–20′–37.8″W, thence to latitude 36°–52′–18.8″N, longitude 76°–20′–34.3″W, thence to latitude 36°–52′–22.2″N, longitude 76°–20′–03.8″W, thence to the beginning.

(ii) *Anchorage Q.* The water enclosed by a line beginning at latitude 36°–52′–17.8″N, longitude 76°–19′–38.8″W, thence to latitude 36°–52′–01.1″N, longitude 76°–19′–15.5″W, thence to latitude 36°–51′–56.7″N, longitude 76°–19′–21.4″W, thence to latitude 36°–52′–13.3″N, longitude 76°–19′–44.7″W, thence to the beginning.

(iii) *Anchorage R, Port Norfolk.* The water enclosed by a line beginning at latitude 36°–51′–52.8″N, longitude 76°–19′–32.9″W, thence to latitude 36°–51′–44.7″N, longitude 76°–19′–21.2″W, thence to latitude 36°–51′–37.8″N, longitude 76°–19′–24.3″W, thence to latitude 36°–51′–32.5″N, longitude 76°–19′–31.1″W, thence to latitude 36°–51′–40.7″N, longitude 76°–19′–37.3″W, thence to latitude 36°–51′–45.8″N, longitude 76°–19′–31.5″W, thence to the beginning.

(iv) *Anchorage S, Port Norfolk.* The water enclosed by a line beginning at latitude 36°–51′–41.0″N, longitude 76°–19′–15.5″N, thence to latitude 36°–51′–33.1″N, longitude 76°–19′–04.7″W, thence to 36°–51′–31.9″N, longitude 76°–19′–17.0″W, thence to the beginning.

(v) *Anchorage T, Hospital Point.* The water enclosed by a line beginning at latitude 36°–51′–05.2″N, longitude 76°–18′–23.0″W, thence to latitude 36°–50′–49.5″N, longitude 76°–18′–00.0″W, thence to latitude 36°–50′–36.7″N, longitude 76°–17′–52.8″W, thence to latitude 36°–50′–33.6″N, longitude 76°–17′–58.8″W, thence to latitude 36°–50′–49.3″N, longitude 76°–18′–09.0″W, thence to latitude 36°–50′–50.3″N, longitude 76°–18′–07.8″W, thence to latitude 36°–50′–56.2″N, longitude 76°–18′–12.5″W, thence to latitude 36°–51′–01.8″N, longitude 76°–18′–32.3″W, thence to the beginning.

(7) *The Hague.* Anchorage U. The water of the basin known as "The Hague", north of the Brambleton Avenue Bridge, except for the area within 100 feet of the bridge span that provides access to and from the Elizabeth River.

(b) *Definitions.* As used in this section:

(1) "Dangerous cargo" means "certain dangerous cargo" as defined in section 160.203 of this title.

(2) "Military explosives" means "military explosives as defined in 46 CFR 146.29–11.

(c) *General Regulations.* (1) Except as otherwise provided, this section applies to vessels over 65 feet in length and vessels carrying or handling dangerous cargo or military explosives while anchored in an anchorage ground described in this section.

(2) Except as otherwise provided, no vessel may occupy an anchorage for more than 30 days, unless the vessel obtains a permit from the Captain of the Port.

(3) Except in an emergency, no vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels, may occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may upon application assign a vessel to a specific berth within an anchorage for a specific period of time.

(5) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of a berth. Only the vessel that holds the revocable permit may use the berth during the period that the permit is in effect.

(6) The Commander, Fifth Coast Guard District, may authorize the establishment and placement of temporary mooring buoys within a berth. Placement of a fixed structure within an anchorage may be authorized by the District Engineer, U.S. Army Corps of Engineers.

(7) If the application is for the long-term lay up of a vessel, the Captain of the Port may establish special conditions in the permit that the vessel must comply with.

(8) Upon notification by the Captain of the Port to shift its position within an anchorage, a vessel at anchor shall get underway at once or signal for a tug. The vessel shall move to its new location in a prompt manner.

(9) The Captain of the Port may prescribe specific conditions for anchoring vessels within the anchorages described in this section, including the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(10) A vessel that does not have a sufficient crew on board to weigh anchor at any time shall have two anchors in place with a mooring swivel, unless the Captain of the Port shall waive this requirement. Members of the crew may not be released until the required anchors have been set.

(11) No vessel at anchor or at mooring within an anchorage may transfer oil to another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.116 of this title.

(12) Barges may not anchor in the deeper portions of anchorages or interfere with the anchoring of deep-draft vessels.

(13) Barges towed in tandem to an anchorage shall be nested together when anchored.

(14) Any vessel anchored or moored in an anchorage adjacent to the Chesapeake Bay Bridge-Tunnel or I–664 Bridge-Tunnel shall be capable of getting underway within 30 minutes with sufficient power to keep free of the bridge-tunnel complex.

(15) A vessel may not anchor or moor in an anchorage adjacent to the Chesapeake Bay Bridge-Tunnel or I–664 Bridge-Tunnel if its steering or main propulsion equipment is impaired.

(d) *Regulations for Vessels Carrying or Handling Dangerous Cargoes or Military Explosives.* (1) This paragraph applies to any vessel, other than a naval vessel, carrying or handling dangerous cargoes or military explosives.

(2) Unless otherwise directed by the Captain of the Port, a vessel, handling or carrying dangerous cargoes or military explosives must be anchored or moored within the Anchorage Berth E–1.

(3) Any vessel used in connection with loading or unloading dangerous cargo or military explosives in an anchorage, including tugs and stevedore boats, must carry a written permit issued by the Captain of the Port.

(4) The Captain of the Port may require every individual having business on board a vessel that is being loaded with dangerous cargo or military explosives while in an anchorage, other than members of the crew, to have a pass issued by the Captain of the Port or other form of identification prescribed by the Captain of the Port.

(5) Every individual having business on board a vessel that is being loaded with dangerous cargo or military explosives while in an anchorage, other than members of the crew, shall present the pass or identification prescribed in paragraph (d)(4) of this section to any Coast Guard boarding officer who requests it.

(6) The Captain of the Port may revoke a pass to be on board a vessel that is loaded with dangerous cargo or military explosives at any time.

(7) A non self-propelled vessel carrying dangerous cargo or military explosives shall have a tug in attendance at all times while at anchor.

(8) A vessel that is carrying or handling dangerous cargo or military explosives while at anchor shall display by day a red flag in a prominent location and at night a fixed red light.

(e) *Quarantine Anchorage Regulations.* (1) Anchorage Berth K–3 is the "Quarantine Anchorage".

(2) Any vessel that requires examination by quarantine, customs, or immigration authorities, but whose draft or size prevents it from using Anchorage Berth K–3, may anchor in another anchorage that it is otherwise authorized to use, if the vessel notifies the Captain of the Port and the agency that ordered the vessel to the "Quarantine Anchorage".

(f) *Regulations of Specific Anchorages.*—(1) *Anchorage A.* Except for a naval vessel, military support vessel, or vessel in an emergency situation, no vessel may anchor in Anchorage A without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage A.

(2) *Anchorages B and C.* Except for a naval vessel, no vessel may anchor in Anchorage B or C without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage B or C.

(3) *Anchorage D.* Except for a naval vessel or vessel in an emergency situation, no vessel may anchor in Anchorage D without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage D.

(4) *Anchorage E.* (i) No vessel may anchor in Anchorage E without a permit issued by the Captain of the Port.

(ii) The Captain of the Port shall give commercial vessels priority over naval and public vessels.

(iii) The Captain of the Port may revoke a permit to anchor in Anchorage E, issued under paragraph (f)(4)(i) of this section, at any time.

(iv) A vessel may not anchor in Anchorage Berth E–1 unless the vessel is carrying or handling dangerous cargo or military explosives.

(v) No vessel may anchor within 500 yards of Anchorage Berth E–1, without the permission of the Captain of the Port, if the berth is occupied by a vessel carrying or handling dangerous cargo or military explosives.

(5) *Anchorage F.* A vessel less than 700 feet in length or having a draft less than 40 feet may not anchor in Anchorage F without the permission of the Captain of the Port.

(6) *Anchorage G.* (i) Except for a naval vessel, no vessel may anchor in Anchorage G without the permission of the Captain of the Port.

(ii) When handling or transferring military explosives in Anchorage G, a naval vessel must comply with Department of Defense Ammunition and Explosives Safety Standards, or the standards in this section, whichever are the more stringent.

(iii) When barges and other vessels carrying military explosives are berthed at the Ammunition Barge Mooring Facility, located at latitude 36°-58'-34"N, longitude 76°-21'-12"W, no other vessel, except a vessel that is receiving or offloading military explosives, may anchor within 1,000 yards of the Ammunition Barge Mooring Facility.

(iv) Whenever a vessel is handling or transferring military explosives while at anchor in Anchorage G, no other vessel may anchor in Anchorage G without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Base Norfolk, before granting a vessel permission to anchor in Anchorage G.

(v) No vessel located within Anchorage G may handle or transfer military explosives within 400 yards of Norfolk Harbor Entrance Reach.

(vi) No vessel may handle or transfer military explosives within 850 yards of another anchored vessel, unless the other vessel is also handling or transferring military explosives.

(vii) No vessel may handle or transfer military explosives within 850 yards of Anchorages F or H.

(7) *Anchorage I.*—(i) *Anchorage Berths I–1 and I–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berths I–1 or I–2 without the permission of the Captain of the Port.

(8) *Anchorage K.* (i) Anchorage Berths K–1 and K–2. No vessel less than 500 feet in length or having a draft less than 30 feet may anchor in Anchorage Berths K–1 or K–2 without the permission of the Captain of the Port.

(ii) A vessel that is arriving from or departing for sea and requires an examination by public health, customs, or immigration authorities may anchor in the Anchorage Berth K–3.

(iii) Unless directed by the Captain of the Port, a vessel that does not require an examination by public health, customs, immigration authorities may not anchor in the Anchor Berth K–3.

(iv) Every vessel using Anchorage Berth K–3 shall be prepared to move promptly under its own power to another location when directed by the Captain of the Port, and shall promptly vacate Anchorage Berth K–3 after being examined and released by authorities.

(v) When any vessel using Anchorage Berth K–3 is under the charge of a pilot, the pilot shall remain on board while the vessel is in Anchorage Berth K–3.

(vi) Any non-self-propelled vessel using Anchorage Berth K–3 shall have a tugboat in attendance while undergoing examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

(9) *Anchorage P.* (i) No vessel waiting to be loaded may remain in this Anchorage P over 48 hours, except when non-availability of loading facilities, inclement weather, ice conditions, or other circumstances beyond the vessel's control prohibit the vessel from moving.

(ii) No vessel loaded with cargo may remain in Anchorage P for over 12 daylight hours without permission from the Captain of the Port.

(10) *Anchorage T.* (i) Portions of this anchorage are a special anchorage area under § 110.72aa during marine events regulated under § 100.501 of this title.

(11) *Anchorage U.* (i) A vessel may not anchor in Anchorage U, unless the vessel is a recreational vessel.

(ii) No float, raft, lighter, houseboat, or other craft may be laid up for any reason in Anchorage U without the permission of the Captain of the Port.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

3. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§§ 162.55 and 162.60 [Removed]

4. Sections 162.55 and 162.60 are removed.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

5. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

6. Section 165.501 is revised to read as follows:

§ 165.501 Chesapeake Bay Entrance and Hampton Roads, Virginia and Adjacent Waters—Regulated Navigation Area.

(a) *Regulated Navigation Area.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) A line drawn across the entrance to Chesapeake Bay between Cape Charles Light and Cape Henry Light.

(2) A line drawn across Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(3) A line drawn across the James River along the eastern side of the U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(4) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(5) A line drawn across the Nansemond River along the northern side of the Miles Godwin (U.S. Route 17) highway bridge, Suffolk, Virginia.

(6) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(7) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk bridge, Portsmouth, Virginia.

(8) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I–64 highway bridge, Chesapeake, Virginia.

(9) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(10) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(11) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) bridge, Norfolk, Virginia.

(12) A line drawn across Lynnhaven Inlet along the northern side of the Shore Drive (U.S. Route 60) bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:

(1) "CBBT" means the Chesapeake Bay Bridge Tunnel.

(2) "Thimble Shoals Channel" consists of the waters enclosed by a line beginning at Thimble Channel Lighted Bell Buoy 1TS at latitude 36°–56'–59.0"N, longitude 76°–01'–26.5W, thence to Lighted Buoy 21 at latitude 37°–00'–02.9"N, longitude 76°–17'–10.1"W, thence to Lighted Buoy 22 at latitude 37°–00'–02.7"N, longitude 76°–18'–01.5"W, thence to Lighted Buoy 2 at latitude 36°–57'–09.0"N, longitude 76°–01'–22.0"W, thence to the beginning.

(3) "Thimble Shoals North Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Lighted Buoy 2, at latitude 36°–57'–09.0"N, longitude 76°–01'–22.0"W, to Lighted Buoy 18, at latitude 37°–00'–39.3"N, longitude 76°–14'–57.6"W.

(4) "Thimble Shoal South Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Lighted Bell Buoy 1TS, at latitude 36°–56'–59.0"N, longitude 76°–01'–26.5"W, to Lighted Buoy 21 at latitude 37°–00'–02.9"N, longitude 76°–17'–10.1"W.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law Enforcement.

(2) Servicing aids to navigation.

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations.*—(1) *Anchoring restrictions.* (i) No vessel over 65 feet in length may anchor or moor in this Regulated Navigation Area outside an anchorage designated in section 110.168 of this title, unless:

(A) The vessel has the permission of the Captain of the Port.

(B) The vessel is carrying explosives for use on river or harbor works or on other work under permit issued by the District Engineer, and the vessel is anchored in or near the vicinity of the work site. The District Engineer shall prescribe the quantities of explosives allowed on the vessel and the conditions under which the vessel may store or handle explosives. The vessel may not anchor unless a copy of the permit and instructions relating to the carriage and handling of explosives from the Corps of Engineers to the vessel or contractor are provided to the Captain of the Port before the vessel anchors.

(ii) With the permission of the Captain of the Port, a vessel may anchor in a channel if the vessel is authorized by the District Engineer, Corps of Engineers, to engage in the recovery of sunken property, lay or repair a legally established pipe line or cable, or engage in dredging operations.

(iii) A vessel engaged in river and harbor improvement work under the supervision of the District Engineer may anchor in a channel, if the District Engineer notifies the Captain of the Port in advance of the start of the work.

(iv) Except as provided in paragraphs (d)(1)(ii) and (iii) of this section, a vessel may not anchor in a channel, unless the vessel is unable to proceed without endangering the safety of individuals, property, or the environment.

(v) A vessel that is anchored in a channel, because the vessel is unable to proceed without endangering the safety of individuals, property, or the environment, shall:

(A) Not anchor, if possible, within a cable or pipe line area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Anchor near the edge of the channel, if possible.

(D) Not interfere with the free navigation of a channel.

(E) Not obstruct the approach to any pier.

(F) Not obstruct aids to navigation or interfere with range lights.

(G) Move to a designated anchorage or get underway as soon as possible or when directed by Captain of the Port.

(2) Secondary Towing Rig Requirements. (i) No vessel over 100 gross tons may be towed in this Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessels' hulls.

(3) *Anchoring Detail Requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I–664 Bridge-Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(4) *Draft Limitations.* A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Channel crossings shall be made as perpendicular to the channel axis as possible.

(5) *Traffic Directions.* (i) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal South Auxiliary Channel shall proceed in an eastbound direction.

(6) *Restrictions On Vessels With Impaired Maneuverability.*—(i) *Before entry.* No vessel over 100 gross tons, whose ability to maneuver is impaired by hazardous weather, defective steering equipment, defective main propulsion machinery, or other damage may enter the Regulated Navigation Area, without the permission of the Captain of the Port, unless the vessel is attended by one or more tugboats with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area.

(ii) *After entry.* The master of a vessel over 100 gross tons, which is underway in the Regulated Navigation Area, shall, as soon as possible, do the following, if the vessel's ability to manuever becomes impaired for any reason:

(A) Report the impairment to the Captain of the Port.

(B) Unless the Captain of the Port waives this requirement, have one or more tugboats, with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area, attend the vessel.

(7) *Requirements for Navigation Charts, Radars, and Pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area unless:

(i) The vessel has on board:

(A) Corrected Charts of the Regulated Navigation Area.

(B) An operative radar during periods of reduced visibility, OR

(C) A pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(8) *Emergency Procedures.* (i) Except as provided in paragraph (d)(7)(iii) and (iii) of this section, any vessel, in an emergency, may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of individuals, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is within two nautical miles of the CBBT or I–664 Bridge-Tunnel (other than a self-propelled vessel that is capable of getting underway in 30 minutes, has sufficient power to avoid any bridge, tunnel island, or vessel, and whose maneuverability is not impaired by a steering equipment or main propulsion defect):

(A) Shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(B) May not anchor outside of an anchorage designated in section 110.168 of this title, unless the vessel is unable to proceed to an anchorage without endangering the safety of individuals, property, or the environment.

(C) Shall make arrangements for one or more vessels to attend the vessel, with sufficient power to keep the vessel in position.

(iii) If the vessel over 100 gross tons must anchor outside an anchorage because the vessel is unable to proceed without endangering the safety of individuals, property, or the environment, the vessel shall:

(A) not anchor, if possible, within a cable or pipe line area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Not interfere with the free navigation of a channel.

(D) Not obstruct the approach to any pier.

(E) Not obstruct aids to navigation or interfere with range lights.

(F) Move to a designated anchorage or get underway as soon as possible or when directed by the Captain of the Port.

(9) *Vessel Speed Limits on Little Creek.* No vessel may proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(10) *Vessel Speed Limits on Southern Branch of the Elizabeth River.* No vessel may proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad bridge between Chesapeake and Portsmouth, Virginia.

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* (i) Except for a vessel that is moored at a marina, wharf, or pier or is anchored, no vessel may come within or remain within 500 yards from a naval aircraft carrier or other large naval vessel, which is restricted in its ability to maneuver in the confined waters, while transiting the Elizabeth River between the Norfolk Naval Base, Norfolk, Virginia, and the Norfolk Naval Shipyard, Portsmouth, Virginia, without the permission of the Captain of the Port.

(ii) Permission may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or the Coast Guard patrol commander.

(iii) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by this subparagraph.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* (i) Except for a vessel that is moored at a marina, wharf, or pier or is anchored and which remains moored or at anchor, no vessel may come within or remain within 250 yards from the port and starboard sides and 300 yards from the bow and stern of a vessel that is carrying liquefied petroleum gas in bulk as cargo, while the gas carrier transits between the Thimble Shoals Lighted Buoy # 3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River, without the permission of the Captain of the Port.

(ii) Permission may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or the Coast Guard patrol commander.

(iii) A vessel that has carried liquefied petroleum gas in a tank is carrying the liquefied petroleum gas as cargo for the purposes of paragraph (d)(12) (i) of this section, unless the tank has been gas freed since the liquefied petroleum gas was last carried as cargo.

(iv) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by this subparagraph.

(e) *Waivers.* (1) The Captain of the Port may, upon request, waive any regulation in this section, if the Captain of the Port finds that the vessel can be operated safely.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of Vessels Within the Regulated Navigation Area.* (1) When necessary to prevent damage, destruction, or loss of any vessel, the I–664 Bridge Tunnel, or CBBT, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed to further the maritime or commercial interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any order or directions issued to the master's vessel by the Captain of the Port.

§§ 165.505 and 165.506 [Removed]

7. Sections 165.505 and 165.506 are removed.

Dated: May 20, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88–12519 Filed 6–2–88; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88–2]

Extension of Comment Period; Inquiry on Assessment of Interest on Underpaid Cable Copyright Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office is extending the period of public comment for its Notice of Inquiry (RM 88–2) into issues relating to the assessment of interest on underpaid cable copyright royalties under the cable compulsory license of 17 U.S.C. 111. The National Cable Television Association requested additional time to comment.

DATE: Comments should be received on or before June 30, 1988. Reply comments should be received on or before July 10, 1988.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287–8380.

SUPPLEMENTARY INFORMATION: On May 10, 1988, the Copyright Office published a Notice of Inquiry (53 FR 16567) inviting public comment in response to a petition from the Motion Picture Association of America, supported by other representatives of copyright owners, requesting that the Copyright Office assess interest on underpaid cable copyright royalties.

By letter of May 23, 1988, the National Cable Television Association requested a time extension of three weeks to respond to the Inquiry, in view of other proceeding before the Copyright Office in which NCTA expects to file and which overlap the assessment of interest inquiry.

To facilitate full and adequate public comment, the Copyright Office hereby extends the time for filing in RM 88–2 to June 30, 1988 for initial comments, and establishes a reply comment period, for which the deadline is July 10, 1988.

List of Subjects in 37 CFR Part 201

General provision on copyrights, Cable television, Cable compulsory license.

Dated: May 26, 1988.

Ralph Oman,

Register of Copyrights.

[FR Doc. 88–12546 Filed 6–3–88; 8:45 am]

BILLING CODE 1410–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3389–8; GA–015]

Approval and Promulgation of Implementation Plans; Georgia; Part D New Source Review (NSR) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 15, 1986, the Georgia Department of Natural Resources Environmental Protection Division submitted to EPA amendments to Georgia Air Quality Control Rules 391–3–1–.01, Definitions, and 391–3–1–.03, Permits. Georgia Rule 391–3–.01, Definitions, was amended to incorporate and adopt by reference the definitions contained in 40 CFR 51.165(a)(1) (i)-(xviii) as amended for application in officially designated nonattainment areas. Georgia Rule 391–3–1–.03, Permits, was amended to add new paragraphs to meet the requirements of 40 CFR 51.165(a)(3)(i), 40 CFR 51.165(a)(3)(ii) (c)-(d), 40 CFR 51.165(a)(3)(ii) (f)-(g), and 40 CFR 51.165(a)(4) (a)-(aa). Due to the recodification of existing federal regulations for the development of State Implementation Plans (SIPs) accomplished on November 7, 1986 (51 FR 40656), all references to 40 CFR 51.18(j) in Georgia's submittal of these amendments were interpreted in this proposal to refer to 40 CFR 51.165(a). These new paragraphs are identical to or more stringent than the federal regulations mentioned.

DATES: Comments must be received on or before July 5, 1988.

ADDRESSES: Comments may be mailed to Pamela E. Adams, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the EPA Regional Office listed above and at the Georgia Department of Natural Resources, Suite 1252, 205 Butler Street, SE., Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams at (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On October 9, 1986, the Georgia Department of Natural Resources held a public hearing to consider amendments to Chapter 391-3-1 of their rules, Rules for Air Quality Control. Among the considered amendments were amendments to Georgia Air Quality Control Rules 391-3-1-.01, Definitions, and 391-3-1-.03, Permits. These amendments were adopted by the Georgia Department of Natural Resources on December 3, 1986. They were submitted to EPA on December 15, 1986, as State Implementation Plan (SIP) revisions.

Georgia Rule 391-3-1.01, Definitions, was amended to incorporate and adopt by reference the definitions contained in 40 CFR 51.165(a)(1)(i)-(xviii) as amended for application in officially designated nonattainment areas. The definitions contained in the federal rules include definitions for the following: Stationary source; building, structure, facility, or installation; potential to emit; major stationary source; major modification; net emissions increase; emissions unit; secondary emissions; fugitive emissions; significant; allowable emissions; actual emissions; lowest achievable emission rate; federally enforceable; begin actual construction; commence; necessary preconstruction approvals or permits; and construction. Currently, our nonattainment designations correspond with Georgia's. If at any time in the future Georgia does not apply the federal designations, EPA will issue a SIP call and possibly effect construction bans.

The federal definition of "net emissions increase" states in part, "An increase or decrease in actual emissions is creditable only if: It occurs within a reasonable period to be specified by the reviewing authority * * *." The Georgia Department of Natural Resources' Environmental Protection Division specified that this period be three (3) years prior to a permit application. This was specified in the "Summary of comments received at October 9, 1986, public hearing on air quality control rule revisions and new asbestos removal rules," which will be incorporated into the rulemaking page of the final approval notice.

Georgia Rule 391-3-1.03, Permits, was amended to add six new paragraphs to meet the requirements of 40 CFR 51.165(a)(3)(i), (3)(ii) (c)-(d), (3)(ii) (f)-(g), and (4) (a)-(aa). The new paragraph of 391-3-1.03 specified as paragraph six meets the requirements of 40 CFR 51.165(a)(3)(i). Paragraph six is more stringent than the latter in stating that "the offset baseline for determining credits for emission reductions at a source is the applicable emission limits in this Chapter or the actual emission at the time application to construct is filed, whichever is less." Regulation 40 CFR 51.165(a)(3)(i) simply states that "the baseline for determining credit for emission reductions is the emissions limit under the applicable State Implementation Plan in effect at the time application to construct is filed." except in certain cases specified in the regulation where the offset baseline must "be the actual emissions of the source from which the offset credit is obtained." In addition, paragraph six incorporates the stipulation that "creditable reductions must occur within two years prior to the filing of the permit application and the time the newly permitted source emissions commence."

Georgia Rule 391-3-1.03, paragraph seven is almost identical to 40 CFR 51.165(a)(3)(ii)(c) except for very slight wording differences. Both paragraphs are identical in meaning except that paragraph seven specifies that "shutdown or curtailment of production" must occur "less than one year prior to the date of permit application" in order to be used for offset credits. Regulation 40 CFR 51.165(a)(3)(ii)(c) is less stringent than paragraph seven in stating that shutdowns or production curtailments must occur "after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier" in order to be used for offset credits.

Paragraph eight of Georgia Rule 391-3-1-.03 states, "No emission offset credit may be allowed for replacing one VOC compound with another of less reactivity."

This paragraph is more stringent than the federal regulation on the same topic, 40 CFR 51.165(a)(3)(ii)(d) which allows the exception "except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314 July 8, 1977).

Paragraph nine of Georgia Rule 391-3-1-.03 is identical to 40 CFR 51.165(a)(3)(ii)(f). Paragraph ten, although worded differently, is identical in meaning to 40 CFR 51.165(a)(3)(ii)(g). Paragraph eleven is identical in meaning to 40 CFR 51.165(a)(4)(a)-(aa), but stated in a different manner.

In the **Federal Register** of July 8, 1986 (50 FR 27892), EPA published final regulations to implement Section 123 of the Clean Air Act, which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit a source can claim while setting emissions limitations. The dispersion techniques include the use of stack heights greater than 65 meters and the use of other techniques to increase the dispersion of emissions rather than reduce the emissions of a source. Georgia has adopted their own stack height regulations which EPA has reviewed. EPA is in the process of preparing an approval notice for those regulations. Approval of the amendments discussed in this proposal will not be finalized until Georgia's stack height regulations are approved.

Georgia's regulation adopts the definition of "stationary source" which was promulgated on June 25, 1982 (47 FR 27554), by EPA. This definition excludes all vessel emissions from the definition for purposes of determining if the source is major. On January 17, 1984, the Court of Appeals for the District of Columbia Circuit overturned and remanded to EPA for further consideration this vessel emissions exemption portion of EPA's new source review regulations. EPA has not yet completed its reconsideration of how vessel emissions are to be treated. However, Georgia has submitted a written statement specifying that no waterways that are deep enough and wide enough to afford passage of ships and barges are located within the Atlanta nonattainment area, the only such area in Georgia. Therefore, EPA is proposing approval of the amendments to Georgia Rules 391-3-1-.01 and 391-3-1-.03.

The Georgia Environmental Protection Division is aware that these NSR regulations, as submitted to EPA, have no provisions for source responsibility (40 CFR 51.165(a)(5)(ii)). The Division has agreed to adopt provisions for source responsibility at its next public hearing. Georgia has been notified that EPA will not finalize approval on these NSR regulations until Georgia completes rulemaking to adopt the source responsibility requirements (40 CFR 51.165(a)(5)(ii)).

On October 14, 1981, the Environmental Protection Agency (EPA) revised the new source review (NSR) regulations in 40 CFR Part 51 to give states the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This defintion provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant, then there would be no net increase in emissions at the plant and therefore no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition [or a definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]. Under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 **Federal Register** notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766-50769). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, the Act provided for reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the states under the demands of Part D eventually would have adequate State Implementation Plans (SIPs) in place.

For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767 col. 2].

EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirter processes and hence retard not ony economic growth, but also progress toward clean air. EPA also pointed out that under the plantwide definition, new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans, and at best the potential for air quality improvements driven by the marketplace.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767-50769).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. *Chevron, U.S.A. Inc. v. NRDC, Inc.*, 104 S. Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S. Ct. at 2792). EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision. Further, EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

There has been, however, a material change in circumstances from those surrounding the 1981 rulemaking. In 1981, EPA assumed that nonattainment areas already had or shortly would have Part D SIP's in place that would bring about RFP and attainment by the applicable statutory deadline. Now, however, many nonattainment areas that were to be free of NAAQS violations by the end of 1982 are still experiencing them and have yet to respond adequately to EPA's calls for SIP revisions. See generally EPA's policy on Compliance with the Statutory Provisions of Part D of the Act, 48 FR 50686 (November 2, 1983). Simiarly, many areas that were to be free of violations by the end of 1987 still do not have fully approved Part D plans and, at this point, could not be free of the violations by then without the imposition of draconian measures [(see, e.g., 51 FR 34428, 34431-34435 (September 26, 1986)].

In light of this history of SIP development and implementation, EPA will now approve adoption of the plantwide definition into SIP's for nonattainment areas that still lack adeaquate plans only if the state has shown that it is making, and will continue to make, reasonable efforts to adopt and submit a complete plan for RFP and timely attainment. Specifically the state must submit written assurances that it is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development (including dates for the completion of an emissions inventory and subsequent increments of progress) stated in the submission or previously forwarded to EPA. In adopting and defending the plantwide definition, EPA relied in large measure on its confidence that the Act would operate independently to generate adequate attainment plans, so as to make manageable whatever risks were posed by the use of the plantwide definition. The assurances described above are necessary to restrengthen EPA's confidence with respect to this specific state plan.

The SIP revision being proposed for approval today would substitute a plantwide definition for a dual definition in Georgia's existing NSR program. The one nonattainment area to which this program applies (Atlanta area for ozone and carbon monoxide) has a Part D plan previously approved by EPA, but nevertheless is still experiencing violations of the ozone NAAQS. In response to a 1984 SIP call, Georgia recently submitted a SIP addressing the nonattainment situation. Although this SIP purportedly demonstrates attainment by 1992, Region IV has not yet reviewed this SIP to determine whether or not it is approvable. Georgia has also committed in its section 105 FY 1988 grant commitments to complying with EPA's post-87 carbon monoxide and ozone policy which may include an

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additional SIP call. Therefore, the State has submitted assurances that it is making, and will continue to make, reasonable efforts to adopt and submit the necessary additional SIP revisions. The State has shown that in obtaining EPA approval of its original Part D SIP it did not rely on any emission reductions from the operation of its existing NSR program.

Therefore, EPA here proposes to approve the switch to a plantwide definition, in accordance with its 1981 action.

All of the amendments to Georgia Rules 391-3-1-.01 and 391-3-1-.03 are identical to or more stringent than corresponding federal regulations. Therefore, they will adequately protect the National Ambient Air Quality Standards (NAAQS) and meet all requirements of the Clean Air Act (CAA).

Although the revisions to Georgia's rules being proposed for approval today are in accordance with EPA regulations, it is noted that, under EPA's program for correctly violations of the ozone standard after the statutory deadline of December 31, 1987, EPA is currently reviewing previously approved new source review regulations for all ozone nonattainment areas, including those in Georgia. As a result of that review, Georgia may be required to revise any previously approved portions of their new source review rule which are not in accordance with EPA's regulations.

Proposed Action

EPA is today proposing to approve these amendments to the Georgia rules since they make these rules identical to or more stringent than corresponding federal regulations. Therefore, no adverse effects are anticipated.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control,
Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Date: June 25, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88–12365 Filed 6–2–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[FRL-3385-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Primary Treatment Sludge From Petroleum Refineries

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comment; Notice of correction; and Notice of extension of comment period.

SUMMARY: The purpose of this notice is to correct a typographical error in the Agency's April 13, 1988 notice of data availability (53 FR 12162) and to extend the public comment period on that notice. That notice of data availability announced the availability of additional information in support of the Agency's November 12, 1980 proposal to expand the scope of the listings for API Separator Sludge and Dissolved Air Flotation Float (45 FR 74893). The notice of data availability requested comment on that data and its relevance to two possible clarifications to the scope of the proposed listings.

In the April 13, 1988 notice of data availability, the Agency stated that "* * * the Soxhlet residue of Method 3540 * * *" should be used to determine the percent solids for the dry basis oil determination (see 53 FR 12166, column 3, lines 13 and 14). Interested parties, desiring to see an exact copy of the protocol being recommended, were then referred to the docket. The Notice of Data Availability should be amended to read "* * * the Soxhlet residue of Method 1330 * * *".

EPA has received several requests for an extension of the comment period. The basis for these requests was that more time was needed to adequately evaluate the large volume of data presented and then respond to the associated issues. Commentors also were simultaneously preparing responses to the proposed land disposal restrictions rule. This presented a problem for the commentors since the same personnel were involved in the review of both rules. Therefore, to ensure that commentors have adequate time to prepare their comments, we are taking this opportunity to lengthen the comment period by 30 days, from May 31, 1988 to June 30, 1988.

DATES: The deadline for submitting written comments on the April 13, 1988 notice is extended by 30 days, from May 31, 1988 to June 30, 1988.

ADDRESSES: One original and three copies of all comments, identified by the docket number F–88–PTSA–5F, should be sent to the following address: EPA RCRA Docket (S–212) (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346 toll-free or (202) 382–3000.

For information on specific aspects of this proposed rule contact: Ben Smith, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4721.

Dated: May 25, 1988.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 88–12529 Filed 6–2–88; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 53, No. 107
Friday, June 3, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Projects in the State of New York; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of Funds; VISTA Projects in New York.

ACTION Region 2 announces the availability of funds for fiscal year 1988 for new VISTA program grants authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) in the State of New York. Applications not approved by ACTION for fiscal year 1988 may, at the discretion of the agency, be retained for consideration for fiscal year 1989. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation are available from: Joe Gallick, ACTION Region 2, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212–466–2936.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteer live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

B. Objectives

ACTION Region 2 will be awarding grants for the placement of VISTA Volunteers in New York in the following emphasis areas:

1. Unemployment—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. Homelessness—Development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counseling programs for at risk youth; and job-training services for shelter residents.

3. Drug & Alcohol Abuse—Prevention and education programs directed primarily at low-income youth; and development of low-income parent support groups.

4. Economic Development—Appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; planning and organization of self-help strategies for low-income residents of "enterprise/job zones"; and entrepreneurial development and management training for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are Federal, State, or local agencies, or private nonprofit organizations.

D. Scope Of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers

the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by the total number of VISTA Volunteers, cannot exceed $8,000. Grants of 10–15 Volunteers will range from $80,000–$120,000 in Federal funds.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, a 50%, non-Federal match of the supervisor's salary and fringe benefits is mandatory. The supervisor of the VISTA project must serve on a full-time basis.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria for Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of new VISTA program grants. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project efforts.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available to volunteers to perform their task.

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from particpating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Region 2 will review and evaluate all eligible applications prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to Joe Gallick, ACTION Region 2, 6 World Trade Center, Room 758, New York, NY 10048–0206. The deadline for receipt of applications is 5:00 P.M. local time July 29, 1988. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421 B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. A list of the Board of Director members which includes their professional affiliations.

Signed at Washington, DC this 27th day of May, 1988.

Donna M. Alvarado,

Director.

[FR Doc. 88–12548 Filed 6–2–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forest Service

Stansbury Mining Corporation—Western Vermiculite Project; Bitterroot National Forest, Ravalli, County, MT; Intent To Prepare an Environmental Impact Statement Revision

The Bitterroot National Forest and the Montana Department of State Lands are extending the formal scoping comment period for the proposed Stansbury Mining Corporation—Western Vermiculite Project Environmental Impact Statement.

The Notice of Intent, published in the **Federal Register** of April 27, 1988, stated that the comment period would end 30 days after the date of that publication. The scoping comment period date is hereby extended to June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Oliver, Project Coordinator, Darby Ranger District, P.O. Box 286, Darby, MT 59829; telephone 406–821–3913.

Date: May 25, 1988.

Robert S. Morgan,

Forest Supervisor.

[FR Doc. 88–12574 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–11–M

National Agricultural Statistics Service

Livestock Report Date Changes

Notice is hereby given that the National Agricultural Statistics Service (NASS) plans to publish all major livestock reports on Fridays beginning in 1989. This proposal is in response to comments from the livestock industry.

The publication date of the following reports will be scheduled for release on Fridays: *Cattle, Cattle on Feed, Hogs and Pigs, Sheep and Goats,* and *Livestock Slaughter.* When Friday is a holiday, the report will be issued on the next earlier workday.

Comments from interested parties regarding this action should be sent to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division; Room 5906–S, NASS/USDA; Washington, DC 20250. Comments should be forwarded within 30 days of this notice.

Dated: May 27, 1988.

Charles E. Caudill,

Administrator.

[FR Doc. 88–12485 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–087]

Portable Electric Typewriters From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers 11 manufacturers and/or exporters of this merchandise to the United States and various periods from April 1, 1981 through April 30, 1986 (but generally from May 1, 1982 through April 30, 1986). The review indicates the existence of dumping margins for certain firms during particular periods.

As a result of the review the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1504) the final results of its last administrative review of the antidumping duty order on portable electric typewriters from Japan (45 FR 30618, May 9, 1980). We began the review of the order for the May 1, 1981 through April 30, 1984 periods for various firms under our old regulations. After the promulgation of our new regulations the petitioner and respondents requested that we complete the administrative review in accordance with § 353.53a(a) of the Commerce Regulations. The petitioner and respondents also requested that we conduct an administrative review of the May 1, 1984 through April 30, 1985 period in accordance with the Commerce Regulations.

We published a notice of initiation of the antidumping duty administrative review for various periods from May 1, 1981 through April 30, 1985 on July 9, 1986 (51 FR 24883). The petitioner and respondents requested that we conduct an administrative review of the antidumping duty order for the period May 1, 1985 through April 30, 1986 in accordance with § 353.53a(a) of the Commerce Regulations. We published a notice of initiation of the antidumping duty administrative review for this period on June 23, 1986 (51 FR 22843). The Department has now conducted the administrative review for the above periods in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of non-automatic portable electric typewriters from Japan that do not incorporate a calculating mechanism, in accordance with the scope determination made in the final results of our last administrative review. On March 18, 1988, the Department submitted to the Court of International Trade the final results of a revised determination with respect to the scope of the antidumping duty order pursuant to a remand order from the Court in *Smith Corona Corporation v. United States* (Slip Op. 87–145 December 31,

1987). In that revised determination we determined that non-automatic portable electric typewriters incorporating a calculating mechanism are within the scope of the antidumping duty order. After this decision is finally affirmed by the courts, we will separately review unliquidated entries of non-automatic portable electric typewriters incorporating a calculating mechanism for the companies and periods listed in the preliminary results of this review.

The review covers 11 manufacturers and/or exporters of Japanese portable electric typewriters to the United States and various periods from May 1, 1981 through April 30, 1986.

The Department initiated reviews for Tokyo Electric Company, Ltd. ("TEC"), Fujitsu Ltd., Panasonic, Fuji Xerox, and Olympia, for the period May 1, 1985 to April 30, 1986. We determined that TEC, Fujitsu Ltd. and Panasonic did not have sales to the United States of merchandise included in the scope of the antidumping duty order during the period. Fuji Xerox does not manufacture portable electric typewriters. Olympia is not an exporter of Japanese portable electric typewriters. Olympia U.S.A. is an importer of portable electric typewriters, and imports by Olympia U.S.A. are covered in the analysis of sales by the Japanese manufacturer.

We initiated a review on "Avanti" on June 23, 1986. However, we have discovered that the Avanti is a typewriter model and not a Japanese manufacturer and/or exporter subject to review. The Avanti models are produced by Tokyo Juki Industrial Co., Ltd. ("Tokyo Juki"), a Japanese manufacturer of portable electric typewriters which is covered in this review.

One firm, Ricoh, did not respond to the Department's request for information, and two other firms, Sharp Electronics Corporation and Towa Sankiden Corporation, did not respond, adequately to the Department's request for information. Therefore, for these three firms we have used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is the highest rate for a responding firm during each review period, or the prior rate for the non-responding firm, whichever is higher.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, insurance, U.S. and foreign inland freight, U.S. and foreign brokerage fees, handling charges, discounts, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

On February 18, 1988, Brother submitted data for previously unreported U.S. sales for three models for the May 21, 1984 through April 30, 1985 period. Because the submission was untimely, we applied the best information available to these sales. The best information available was based on sales for which Brother reported timely information.

Foreign Market Value

In calculating foreign market value for Brother, Silver Seiko Ltd., ("Silver"), and Canon Inc. ("Canon"), the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, commissions to unrelated parties, rebates, warranty, advertising, credit costs, differences in physical characteristics of the merchandise, and differences in packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses for ESP calculations. No other adjustments were claimed or allowed.

For one model sold by Canon there were no contemporaneous sales in the home market of such or similar merchandise to compare with any U.S. sales; therefore, constructed value, as defined in section 773(e) of the Tariff Act, was used. The constructed value was calculated by adding the cost of materials, labor, factory overhead, general expenses, profit and packing. Actual costs for SG&A and actual profit figures were used in the constructed value since they exceeded the ten percent and eight percent respective statutory minimums. For Brother, when, for any U.S. sale, there were no contemporaneous home market sales of such or similar merchandise, the Department used the best information available, since constructed value information was untimely submitted. The information was received considerably after the deadline for submission had expired, and too near the completion of the preliminary results for consideration.

In calculating foreign market value for Nakajima All Co., Ltd. ("Nakajima") and Tokyo Juki, the Department used sales to third countries since there were insufficient sales of such or similar merchandise in the home market. Third country price was based on the packed, delivered price to unrelated purchasers in the third countries. We made adjustments, where applicable, for inland freight, brokerage fees, credit costs, differences in physical characteristics of the merchandise and differences in packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses for ESP calculations. No other adjustments were claimed or allowed. When, for any U.S. sale, there were no contemporaneous third country sales of such or similar merchandise made at prices at or above the cost of production, constructed value was used. The constructed value was calculated by adding the cost of materials, labor, factory overhead general expenses, profit and packing for SG&A and profit we used the statutory ten and eight percent minimums, respectively, when the actual costs and profit were less than the statutory minimums.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/ Exporter	Time period	Margin (percent)
Brother Industries, Ltd	05/21/82-05/20/83	1.39
	05/21/83-05/20/84	4.73
	05/21/84-04/30/85	5.82
	05/01/85-04/30/86	4.76
Canon, Inc	05/01/85-04/30/86	5.47
Nakajima All Co., Ltd	05/01/82-04/30/83	0.66
	05/01/83-04/30/84	0.29
	05/01/84-04/30/85	1.00
	05/01/85-04/30/86	1.96
Silver Seiko, Ltd	04/01/83-03/31/83	0.05
	04/01/83-03/31/84	0.37
	04/01/84-04/30/85	5.02
	05/01/85-04/30/86	6.98
Tokyo Juki Industrial Co., Ltd	05/01/85-04/30/86	2.40
Towa Sankiden Corp	05/01/85-04/30/86	6.58
Panasonic	05/01/85-04/30/86	[1] 4.92
Fujitsu, Ltd	05/01/85-04/30/86	[1] 6.58
Tokyo Electric Co., Ltd	05/01/85-04/30/86	[1] 4.92

Manufacturer/ Exporter	Time period	Margin (percent)
Ricoh Corp	05/01/81-04/30/82	4.92
	05/01/82-04/30/83	4.92
	05/01/83-04/30/84	4.92
	05/01/84-04/30/85	5.82
	05/01/85-04/30/86	6.58
Sharp Electronics Corp	05/01/85-04/30/86	6.58

[1] No shipments during the period.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 day after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted Not later than 25 days after the date of publication. Rebuttal briefs are rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisment instructions on each exporter directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Japanese portable electric typewriters. For any shipments of this merchandise manufactured or exported by any new manufacturer and/or exporter, whose first shipments occurred after April 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 6.58 percent shall be required. These deposit requirements are effective for all shipments of Japanese portable electric typewriters entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53 (a)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 26, 1988.

[FR Doc. 88-12540 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certification of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-A0010."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #87-00010, issued on October 5, 1987 (52 FR 37816, October 9, 1987).

Applicant: The North Dakota Export Trading Company, P.O. Box 1078, Grand Forks, North Dakota 58206.

Contact: Clare Carlson, Assistant Manager, telephone: (701) 795-7273.

Application No.: 87-A0010.

Date Deemed Submitted: May 18, 1988.

Summary of the Application

The North Dakota Export Trading Company (NDETC) seeks to amend its certificate to:

1. Add the following additional companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Minn-Dak Grower's Association, Grand Forks, ND, and North Central Commodities, Grand Forks, ND and its controlling entity, Johnstown Bean Company, Johnstown, ND.

2. Expand the list of examples of Products to be covered by the certificate. The revised listing is proposed as follows: Agricultural products, including, but not limited to, wheat, durum, corn, soybeans, edible beans, sunflower seeds, crude and refined sunflower oil, seed and commercial potatoes, livestock, barley, buckwheat, mustard, flaxseed, millet, field peas, triticale, safflower, processed pasta products, rapeseed, oats, honey, semolina, wheat flour, wheat by-products, and processed forms of these products; and agricultural machinery, equipment, and supplies.

3. Revise the "Export Trade Activities and Methods of Operation" section of its certificate to better reflect the interactions among the NDETC and its Members, and to include new activities, items (10) and (11) below. The revised section is proposed as follows: The NDETC and its Members may:

(1) Enter into joint discussions and negotiations with foreign buyers concerning:

a. Standardized production specifications, standardized commodity quality standards, quantities, prices, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreing buyer, the NDETC, and its Members and suppliers;

b. Standardized tender terms in a manner which will allow the NDETC and its Members to compete; and

c. Standardized bidding procedures acceptable to foreign buyers.

(2) Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, including chartering of vessels for the NDETC and any or all of its Members and suppliers, and including negotiations for the inland transportation of Products in the course of being exported.

(3) Enter into agreements among themselves and with individual suppliers on the terms of supplier participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for Products in the course of being exported.

(4) Refuse to deal with an individual or a company with respect to the export of any Product to a foreign buyer.

(5) Refuse to deal with any Member or supplier, with respect to the export of any Product to a foreign buyer, not complying with the standards or other terms of export trade set by the NDETC and/or its Members.

(6) Exchange information among themselves and with individual suppliers concerning the extent of individual supplier and Member participation in specific export transactions in which the NDETC participates. The information to be exchanged upon which agreement may be made includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the Export Markets;

(c) Information on costs specific to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulations affecting sales to Export Markets;

(e) Information about the price, quality, quantity, source, and delivery dates of Products available from suppliers and Members for export; and

(f) Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by the NDETC, its Members, and/or suppliers.

(7) Enter into exclusive or nonexclusive agreements with Export Intermediaries to appoint an Export Intermediary to act for the NDETC and its Members and suppliers, whereby each Export Intermediary agrees not to represent the NDETC's competitors in the sale of Products to any Export Market and not to buy any Products from any of the NDETC's competitors for resale in any Export Market.

(8) Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer agrees not to purchase Products from the NDETC's competitors.

(9) Act as an Export Intermediary for individual suppliers and enter into exclusive or nonexclusive agreements with Export Intermediaries, marketing agents, international banks, suppliers, and others for the provision of export trade facilitation services such as shipping, credit, financial, marketing, and other services.

(10) Enter into discussions and negotiations and make agreements with Members and suppliers regarding the price at which the NDETC determines the supplier or Member will sell exported Products to a foreign buyer.

(11) Enter into exclusive or non-exclusive agreements with suppliers and Members, whereby the supplier and Member agree not to sell a specified product for export to the NDETC's competitors.

(12) Limit eligibility to participate as a shareholder in the NDETC to businesses operating in North Dakota and to North Dakota residents.

(13) Enter into joint ventures with and/to purchase Products from individual suppliers and Members that meet quality, quantity, and price specifications for transactions. When taking title to Products, the NDETC will engage in price, quantity, quality, and other negotiations directly with the foreign buyer.

Date: May 27 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-12472 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

May 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 6, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 334, 335, 347/348 and 847 are being increased by application of swing. The limit for Category 846pt. is being reduced to account for the swing being applied to the foregoing categories. As a result, the limit for Category 847, which is currently closed, will re-open.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 31, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manfactured in the People's Republic of China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 6, 1988, the directive of December 30, 1987 is hereby amended to adjust the current limits for cotton, silk blend and other vegetable fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the people's Republic of China:

Category	Adjusted 12-mo limit [1]
334	255,085 dozen.
335	295,250 dozen.
347/348	2,169,300 dozen.
846pt.[2]	33,717 dozen.
847	1,059,561 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 846pt., only TSUSA numbers 361.3576, 361.8557, 364.2734 and 364.7762.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12507 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: June 2, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1988 announcement of a Special Access Program.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: During negotiations held between the Governments of the United States and the Dominican Republic, agreement was reached, effected by a Memorandum of Understanding dated May 20, 1988, to establish a new bilateral agreement beginning on June 1, 1988 and extending through May 31, 1992. The agreement establishes specific limits for the period June 1, 1988 through May 31, 1989 and guaranteed access levels for the periods June 1, 1988 through November 30, 1988 and June 1, 1988 through May 31, 1989.

In addition, effective on December 1, 1988, the agreement also establishes guaranteed access levels for Categories 338/638, 339/639, 340/640, 342/642 and 347/348/647/648 for the prorated period beginning on December 1, 1988 and extending through May 31, 1989.

The specific limits established for the June 1, 1988 through May 31, 1989 period have been adjusted to cover shipments qualifying for entry under the Special Access Program which are being charged to the specific limits pending implementation of the guaranteed access levels on December 1, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 48858, published on December 28, 1987 and 52 FR 12715, published on April 18, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 31, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding of May 20, 1988, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 2, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on June 1, 1988 and extending through May 31, 1989, in excess of the following levels of restraint:

Category	12-mo restraint limit
338/638	650,000 dozen.
339/639	850,000 dozen.
340/640	475,000 dozen.
342/642	450,000 dozen.
347/348/647/648	1,300,000 dozen of which not more than 700,000 dozen shall be in Categories 347/348 and not more than 900,000 dozen shall be in Categories 647/648.
644	850,000 numbers.

Textile products in Categories 338/638, 339, 640, 342/642, 647/648 and 644 which have been exported to the United States prior to June 1, 1988 shall be subject to this directive.

Textile products in Categories 338/638, 339, 640, 342/642, 647/648 and 644 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under the directive.

Imports charged to the category limits for the periods beginning on June 1, 1987 and January 1, 1988 and extending through May 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Additionally, pursuant to the Memorandum of Understanding of May 20, 1988 and under the terms of the Special Access Program, as set forth in 51 FR 21206 (June 10, 1986) and 52 FR 26057 (July 11, 1987), effective on June 2, 1988, guaranteed access levels have been established again for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton which are exported from the Dominican Republic during the periods which begin, in the case of Categories 340 and 347/348, on June 1, 1988 and extends through November 30, 1988; and in the case of Category 644, on June 1, 1988 and extends through May 31, 1989:

Category	Guaranteed access level
340	500,000 dozen
347/348	1,000,000 dozen
644	2,400,000 numbers

In carrying out the above directions, the Commissioner of Customs should construe into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Faroc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12505 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in India

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: May 27, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Categories 347/348 is being increased for carryforward and special allowance provided for under the agreement for 100 percent cotton garments made of handloomed fabrics.

A description of the textile categories in terms of T.S.U..S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 58, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 27, 1988, the directive of December 30, 1987 is hereby amended to adjust to 295,636 dozen[1] the limit for cotton textile products in Categories 347/348, as provided under the terms of the current bilateral agreement between the Governments of the United States and India.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12506 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 5, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 11, March 25, and April 8, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 7963, 53 FR 9796, and 53 FR 11694) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1988:

Commodities

Enamel, Aerosol
- 8010-01-060-8461
- 8010-00-935-7156
- 8010-00-159-4519
- 8010-00-159-4520
- 8010-00-159-4521
- 8010-00-159-4522

Lacquer, Aerosol
- 8010-00-598-5455
- 8010-00-936-8369
- 8010-00-936-8371

Services

Computer Tape Verification, Tinker Air Force Base, Oklahoma

Repair of Strap, Air Cargo (1670-00-725-1437), Robins Air Force Base, Georgia.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-12523 Filed 6-2-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before July 5, 1988.

ADDRESS: Committee for Purchase form the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Paper, Toilet Tissue
- 8540-00-530-3770 (GSA requirements for destinations in Maine, Vermont, New Hamsphire, Connecticut, Massachusetts, New York, and New Jersey only)
- 8540-01-055-6094.

Service

Janitorial/Custodial, Federal Building and Interagency Motor Pool, Louisville, Kentucky.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-12524 Filed 6-2-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Extended and Expanded Home Care Demonstration.

SUMMARY: Section 8071 of the FY 88 Defense Appropriation Act, authorizes the Department of Defense, OCHAMPUS, to conduct an expanded Home Health Care Demonstration as part of an individualized case-managed and cost-effective range of benefits in up to four geographic areas for exceptionally serious, long-range, costly and incapacitating conditions. Outside the selected demonstration areas, the Home Health Care Demonstration directed and implemented in FY 1986 and 1987 shall be continued. This notice sets forth the general criteria for eligibility and approval under the expanded HHC Demonstration henceforth described as Project Coordinate Appropriate Resources Effectively—CARE.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Major Maureen Connors Potter, USA, Chief, Project CARE, Public and Beneficiary Relations Division, OCHAMPUS, Aurora, CO 80045-6900, (303) 361-4439.

SUPPLEMENTARY INFORMATION: Since 1986, OCHAMPUS has been conducting a demonstration of home health care as an alternative to hospitalization for active duty family members. A key feature of this demonstration has been individualized management of a patient's health care needs. OCHAMPUS has worked directly with patients, families, providers, and funding sources to develop a coordinated plan of care that meets patients' needs at less cost to the government. This process is known as case management and has become a common method used by private sector employers or a third-party payers to reduce the cost of health care for catastrophically ill patients.

Over the course of the Home Health Care Demonstration, a number of beneficiaries with very complex, high cost conditions who could have benefited from case management were identified who did not meet the restrictive criteria of the Home Health Care Demonstration.

In Fiscal Year 1988, Congress authorized an expansion of the Home Health Care Demonstration that permits CHAMPUS to broaden the criteria for accepting patients and to include all CHAMPUS beneficiaries—military retirees and their family members as well as active duty family members. Project Coordinate Appropriate Resources Effectively (CARE) represents the expansion of the Home Health Care Demonstration. It is intended to be a highly individualized and locally-based program that brings together the care coordination of case management with a greatly expanded provider and community relations activity not only to develop a cost-effective plan of care for catastrophically ill patients, but also to identify those providers and military and community resources that are willing and available to serve CHAMPUS beneficiaries, whether catastrophically ill or not.

Project CARE will develop and evaluate a model for case management, beneficiary and provider education, and appropriate resource utilization initially in a large urban area, a rural region, and a state offering significant state-funded services.

Although the statutory authority for this demonstration permits the expansion of the Home Health Care Demonstration in up to four geographic areas, Project CARE will be limited initially to three areas. The three demonstration areas are the Washington, DC, metropolitan area (including the State of Maryland, the District of Columbia and northern Virginia); the "Fitzsimons Region" (including the states of Colorado, Wyoming, South Dakota, North Dakota, Utah, Nebraska, Missouri, and Kansas); and Washington State.

A CARE Office will be located at each military hospital located within the demonstration area. The CARE Office will be supported by a case manager(s) and staffed full or part time with a health care resource manager (HCRM), and clerical support. Where possible, the CARE Office will be collocated with the CHAMPUS/Health Benefits Advisor(s) (HBA) to promote coordination of the services provided by these personnel.

Under Project CARE, case management is a system in which an individualized treatment plan is developed, implemented and evaluated in the context of a managed care system in the individual's community by a local or regionally-based case manager in coordination with the direct care system and the community-based multidisciplinary team of health care providers. Project CARE will provide case management services for high cost catastrophic conditions and serious chronic illness with complex medical needs. Mental disorders are specifically excluded from this demonstration as they are being addressed through a separate project.

In coordination with OCHAMPUS, the Fiscal Intermediaries (FI) may contract for case management services with a firm specializing in case management and provide HCRM personnel support, or the FI may provide the case management services directly through qualified and experienced in-house personnel.

The case manager will be community or regionally-based with a supportive network for consultation, supervision, quality assurance, utilization review and data anasysis. The case manager will provide goal-directed activities that organize, coordinate, and monitor service delivery based on measurable objectives intended to meet the needs of complex chronically or catastrophically ill individuals and their families. In order to accomplish this, the case manager will be a registered nurse or similarly qualified health care professional with clinically based knowledge and experience in working with multidisciplinary providers. The case manager will have demonstrated case management experience, to develop a community-based treatment plan which best meets the patient's and family's needs in the most cost-effective manner.

In addition to identifying new admissions with catastrophic and serious chronic illness conditions, potential Project CARE patients will be identified through the following mechanisms:

Patients who have reached the catastrophic cap.

Cases identified through routine utilization review.

DRG long-stay and cost outliers.

Lengths of stay in excess of 30 days.

Where the primary or secondary diagnosis indicates serious complications.

Recurrent admissions or repeat admission(s) within a 60-day interval.

When total charges are expected to be or are in excess of $50,000 per fiscal year.

A CHAMPUS beneficiary who otherwise qualifies for the Program for the Handicapped may be transferred to Project CARE case management if the transfer is necessary and appropriate and if the sponsor or parent agrees to the transfer.

Patients will be accepted into case management when there is a reasonable expectation that the case manager can develop a plan of care, including all medically necessary services and supplies required by the beneficiary, that will be cost-effective compared to the usual CHAMPUS program including coordination of benefits with other health insurance. Patients not accepted into case management will be referred promptly to the HCRM for assistance with alternative resources.

If the case manager determines the case is not appropriate for case management, this decision is final; there is no appeal. The formal appeals process will not be available for Project CARE since care will continue under the CHAMPUS Program and there is no loss of an entitlement as otherwise covered services are not affected.

The case management treatment plan will be developed in collaboration with the primary care physician, multidisciplinary team of the hospital and community-based providers and the beneficiary or family. This treatment plan will be developed utilizing a standardized comprehensive protocol and will be implemented in a timely and appropriate manner.

Case managers may authorize payment for certain services, supplies, and equipment which are not otherwise covered when the alternative is cost-effective.

Medical and other durable equipment is authorized when ordered by a physician as necessary in the treatment of a beneficiary requiring transition from inpatient care to home or community-based care. Economy (rental versus purchase) will be given primary consideration in reviewing requests for equipment. Equipment may be provided while the patient is still an inpatient if a period of training is necessary before the transition can be accomplished.

Physician's services and case management authorized services will be paid as billed up to the prevailing limit, when available.

Cost-share will be based on the patient's actual inpatient or outpatient status at the time the care is provided. All home care, whether or not in lieu of hospitalization, will be cost-shared as outpatient care. Cost-shares for case-managed services will apply to the catastrophic cap.

Case managers will attempt in all cases to authorize care only from preferred providers. If an appropriate preferred provider is not available, the case manager will coordinate with the HCRM in attempting to negotiate a favorable price on a patient-specific basis.

In order to implement the program effectively, case management must be supported by a local resource serving as the critical link between beneficiaries, the military treatment facility (MTF), the civilian health care community and case management. The HCRM acting as an extension of the Fiscal Intermediary (FI) field representative, will facilitate early identification and referral of beneficiaries who may be eligible for case management. Additionally, the HCRM becomes the focal point for those beneficiaries not qualifying for or requiring case management. The HCRM conducts community liaison with local, state, and federal agencies responsible for financing alternatives which our beneficiaries may be entitled to receive. This enables the HCRM to assist our beneficiaries with the financing of care not available from the MTF or as a benefit of CHAMPUS. The HCRM is responsible for knowing how to access and utilize military and local, state, and federal health and financing resources in the community. The HCRM is responsible for obtaining signed agreements from preferred providers (those who agree to discount their fees for military beneficiaries) and participating providers (those who agree to accept the CHAMPUS-determined allowable charge as payment in full) and for maintaining and providing listings of these providers and resources to case management, beneficiaries, and the MTF comanders. The HCRM as a local on-site FI representative will work extensively with providers to encourage participation and assist with problem resolution.

Case management and HCRM should provide a combination which effectively manages resources through the use of a case management system and specific efforts to identify preferred and participating providers. This approach supports coordination of services and resources with the MTF and the civilian community. These strategies are intended to improve provider access, reduce administrative tasks for our beneficiaries, increase beneficiary satisfaction and improve cost-effectiveness with emphasis on high-cost catastrophic and serious chronic illnesses.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1988.

[FR Doc. 88-12539 Filed 6-2-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review; Request for Verification of Birth

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Request for Verification of Birth; DD Form 372; and OMB Control Number 0704-0006.

Type of Request: Extension.

Annual Burden Hours: 13,016.

Annual Responses: 156,200.

Needs and Uses: Title 10, 505, U.S. Code restricts enlistment into the U.S. Armed Services, to able bodied persons not less than 17 years of age and not more than 35 years of age. If an applicant is unable to provide a birth certificate the "Verification of Birth" form is dispatched to the respective Bureaus of Vital Statistics. This occurs for approximately one of every two applicants for enlistment into the U.S.Armed Services.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1988.

[FR Doc. 88-12537 Filed 6-2-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review; DoD FAR Supplement

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable form, and Applicable OMB Control Number: DoD FAR Supplement, Part 70, Acquisition of Computer Resources; Part 52.270; DD Form 1851; and OMB Control Number 0704-0254.

Type of Request: Revision.

Annual Burden Hours: 124,990.

Annual Responses: 6,362.

Needs and uses: The required reporting requirements from the clauses at 252.270 are required for the acquisition of computer resources. The required reporting requirement on DD Form 1851 is needed to determine if Automated Equipment can be acquired through the AE Reutilization Program.

Affected Public: Businesses or other for profit; Non-profit institutions; and Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1988.

[FR Doc. 88-12538 Filed 6-2-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 16 June 1988 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34-R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 3 June 1988.

Date: May 20, 1988.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88-12462 Filed 6-2-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Innovative Control Technology Advisory Panel; Clean Coal Technologies Inventory Subcommittee; Open Meeting

Name: Clean Coal Technologies Inventory Subcommittee of the Innovative Control Technology Advisory Panel (ICTAP).

Date and Time: June 17, 1988—9:00 a.m.–1:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Sandy Guill, Office of Environment, Safety and Health, Washington, DC 20585, (202) 586-4628.

Purpose of the Parent Board

To advise the Secretary of Energy and provide recommendations concerning innovative control technologies that will broaden cost-effective and efficient options for controlling precursor emissions associated with acid deposition.

Purpose of Panel

The Clean Coal Technologies Inventory Subcommittee is a subgroup of ICTAP and reports to the parent board. The panel will identify gaps in technology development and deployment. Specifically, this study will include an inventory of U.S. and foreign technologies and projects. The study will contain assessments of applicability, economic viability and environmental performance.

Tentative Agenda

9:00 a.m.—Discussion and Presentations Regarding Inventory of U.S. and Foreign Technologies and Projects.

12:50 p.m.—Public Comment (10 minute rule).

1:00 p.m.—Adjourn.

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting

Available for public review and copying at the Freedom of Information

Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,
Deputy Advisory Committee Management Officer.

[FR Doc. 88–12515 Filed 6–2–88; 8:45 am]
BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–09–NG]

Bonus Gas Processors, Inc.; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Bonus Gas Processors, Inc. (Bonus), blanket authorization to import natural gas. The order issued in ERA Docket No. 88–09–NG authorizes Bonus to import up to 219 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 27, 1988.

Constance L. Buckley,
Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–12514 Filed 6–2–88; 8:45 am]
BILLING CODE 6450–01–M

[ERA Docket No. 88–24–NG]

Western Gas Marketing U.S.A. Ltd.; Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 20, 1988, of an application filed by Western Gas Marketing U.S.A. Ltd. (Western) to import up to 300 Bcf of Canadian natural gas and export up to 100 Bcf of natrual gas over a two-year term beginning on the date of first delivery after expiration of Western's existing blanket import authorization. Western is currently authorized to import up to 300 Bcf of Canadian natural gas through November 30, 1988. Western, a Delaware corporation, is a wholly-owned subsidiary of TransCanada PipeLines Limited (TransCanada). Western would import or export gas for its own account or act as a broker for both U.S. and Canadian purchasers and suppliers. Western intends to utilize existing pipeline facilities for transportation of the volumes to be imported or exported. Western also proposes to submit quarterly reports detailing each transaction.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 5, 1988.

FOR FURTHER INFORMATION:

Stanley Vass, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9480.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Under the new blanket import and export authority sought, Western intends to make natural gas sales to either United States or Canadian customers on both a firm and interruptible spot basis. The specific terms of each import or export sale would be negotiated on an individual basis, including price and volume. Western asserts that the sale of Canadian natural gas imports will be made pursuant to terms reflecting existing market conditions and the needs of individual purchasers and that surplus natural gas supplies will be exported to Canada on the basis of their competitiveness and need by U.S. purchasers. Western also asserts that the proposed import will encourage a bidirectional flow of natural gas across the U.S./Canada border at competitive prices and help achieve a more competitive distribution of supplies between the U.S. and Canada. Western's prior quarterly reports with the ERA indicate that approximately 23,731 Bcf of natural gas were imported under Western's current import authorization as of December 31, 1987.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the import authority and on the domestic need for the gas in their responses on the requested export authority. The applicant asserts that this import and export arrangement will be in the public interest in that the pricing terms for each import or export sale must be competitive in the U.S. and Canadian gas markets served or no sales will be made. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import and export, it may permit the import or export of the gas at any existing point of entry or exit and through any existing transmission system. In addition, the ERA will condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to his notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RC–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., July 5, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Western's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 25, 1988.

Constance L. Buckley,
Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–12494 Filed 6–2–88; 8:45 am]
BILLING CODE 6450–01–M

[Docket No. ERA–CAE–88–3; OFP Case No. 51025–6363–20–22]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Ft. Pierce Utility Authority

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: On January 6, 1988, Ft. Pierce Utility Authority (Ft. Pierce or petitioner), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42. U.S.C. 8301 *et seq.*) for a 34.5 megawatt combined cycle cogeneration facility located in Ft. Pierce, Florida. Title II of the Act prohibits the use of petroleum and natural gas as a primary energy source in a new powerplant and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found in 10 CFR 503.32

Pursuant to section 212(g) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at Ft. Pierce's H.D. King Generating Station.

The basis for ERA's Order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on August 2, 1988.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs (RG–22), Department of Energy, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–6824.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A–113, Washington, DC 20585, Telephone (202) 586–6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent powerplant exemption to use natural gas or oil as a primary energy source in its facility located in Ft. Pierce, Florida.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on February 1, 1988 (53 FR 2776), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

Copies of the petition were provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 701(f) and 313(b)(2) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on March 17, 1988; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(g) of FUA,

ERA hereby grants the petitioner's permanent exemption for the powerplant to be installed at its facility in Ft. Pierce, Florida, permitting the use of natural gas or oil as a primary energy source in the unit. Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on May 18, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-12495 Filed 6-2-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP88-1-000]

Division of Producer Regulation v. Phillips 66 Natural Gas Co.; Complaint

May 31, 1988.

On October 2, 1987, the Commission's Division of Producer Regulation (Staff) filed a complaint pursuant to 18 CFR 271.1105(d)(2) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Staff alleges that Phillips 66 Natural Gas Company (Phillips) has calculated and received reimbursement for production-related costs in excess of that permitted by § 271.1104 and by the applicable gas sales contract. Specifically, Staff disputes Phillips' collection of a contract allowance for gathering and compression calculated on total quantities of gas delivered at the outlet of a gas processing plant in lieu of being calculated on a well-by-well basis. Staff requests the Production-Related Costs Board (Board) to find that Phillips' method of calculating production-related costs is in violation of § 271.1104 and to order refunds.

Staff states that Phillips is selling gas to Panhandle Eastern Pipe Line Company (Panhandle) under Phillips' contract No. GCF 6088 (Contract) dated March 6, 1979. The Contract provides that Panhandle will pay Phillips 24.0 cents per Mcf, plus compressor fuel, as an allowance for gathering and compression, for all volumes of gas delivered at either of two locations. During an audit of Phillips, Staff discovered that many wells were assigned a section 110 allowance in excess of the 24.0 cents rate permitted by the contract. When contacted by Staff, Phillips stated that the intent of the contract is that the 24.0 cents rate applies to total volumes delivered. Panhandle concurs with Phillips.

Staff asserts thatPhillips has been collecting a price for production-related costs in excess of the 24.0 cents contract rate for certain wells. In addition, Staff states that if by using the generic approach on a well-by-well basis a well is entitled to less than the 24.0 cents rate, then § 271.1104 permits Phillips to collect only the lesser generic rate.

In support of its claim, Staff states that § 271.1104(f) requires production-related cost charges to be described on a well-by-well basis. Further, § 271.1104(d)(1) makes it clear that the amount necessary to recover a production-related expense is the lesser of an expressly authorized contract amount or the generic allowances as specified in § 271.1104(d)(1)(i)–(iv). In addition, Staff claims that responses from Phillips acknowledge that generic allowances in excess of 24.0 cents per Mcf had been calculated and assigned to some wells.

Staff claims that correspondence with Phillips has produced unsatisfactory results concerning the proper amounts which may be collected for production-related costs under the contract and that Phillips has concluded that no refunds are due. Additionally, Staff states that Phillips has requested the right to participate, with full rights as a party, in any hearing that may arise if the matter is referred to the Board. Therefore, Staff requests the Board to determine that Phillips is in violation of § 271.1104 and issue an order requiring Phillips to refund amounts collected for production-related costs in excess of that permitted by the Regulations.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Phillips must file an answer to Staff's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Phillips shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12512 Filed 6-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS88-51-000, et al.]

VAC Petroleum Co., Inc., et al.; Applications for Small Producer Certificate [1]

June 1, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessarity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date Filed	Applicant
CS88-51-000....	[1] 4-18-88	VAC Petroleum Co., Inc., P.O. Box 780106, Wichita, KS 67278-0106.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date Filed	Applicant
CS88-59-000....	[1] [2] 5-25-88	Sloan Group c/o Baker & Botts, 555 13th Street, N.W., Suite 500 East, Washington, DC 20004-1109.
CS88-61-000....	4-21-88	Fasbion Oil & Gas Corp., Suite 4490, 333 Clay Street, Houston, TX 77002.
CS88-62-000....	[4] 4-22-88	James A. Gibbs, 1106 One Energy Square, Dallas, TX 75206.
CS88-64-000....	[5] 5-9-88	Canal Oil & Gas (U.S.) Inc., 350, 708—11th Avenue S.W., Calgary, Alberta, Canada T2R OE4.
CS88-65-000....	4-29-88	Maple Properties Corp., P.O. Box 5427, T.A. Denver, Co 80217-5427.
CS88-66-000....	5-4-88	L&M Oil Co., 1144 Two Energy Square, Dallas, TX 75206.
CS88-67-000....	[6] 5-6-88	Agree Oil Co., *et al.*[7] 401 W. Texas, Suite 810, Midland, TX 79701.
CS88-68-000....	5-17-88	Holliday Drilling, Inc., P.O. Box 3489, Midland, TX 79702.

[1] Application received March 7, 1988. Filing date is date of receipt of filing fee.

[2] Additional material received April 20 and May 10, 1988.

[3] Applicant states that the Sloan Group is comprised of Anna Lou Horne; Anne Lou Horne Emmerson; Teresa Horne; Jean E. Keyser; Cassandra Keysen and James Montague and Anna May Colwell, Co-Executors of the Estate of Charles W. Colwell, who are affiliated for the purposes of 18 CFR 157.40(a)(3).

[4] Application was initially filed under the name of Five States Limited—1987. By letter dated May 11, 1988, received may 18, 1988, the application was amended to reflect James A. Gibbs as the applicant for small producer certificate.

[5] Application received April 12, 1988. Filing date is date of receipt of filing fee.

[6] Additional material received May 17, 1988.

[7] The *et al* parties are: R.S. Guenther; John P. Oil Company; CEB Oil Company; EAB Oil Company; PVB Oil Company; Black Bear Oil & Gas Co.; Ben K. Smith; Audrey Baker; Argee Oil Company, Trustee; James R. Leeton, Jr. and Mary E. Leeton.

[FR Doc. 88-12513 Filed 6-2-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3391-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 16, 1988 through May 20, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP. No. D-AFS-K61092-CA, Rating EC2, Mr. Shasta Ski Area Development, Special Use Permit, Shasta-Trinity National Forest, Mt. Shasta Ranger District, Siskiyou County, CA.

Summary

EPA has concerns about the on-site disposal of wastewater, and requests further information on the cumulative impacts of the project.

ERP. No. D-AFS-L65117-OR, Rating EC2, Williamette National Forest, Land and Resource Management Plan, Implementation, Clackamas, Lane, Douglas, Jefferson, Linn and Marion Counties, OR.

Summary

EPA's primary concern with this document is that Standards and guidelines for water and a water quality monitoring plan needs to be more fully developed in the final.

ERP. No. D-AFS-L65120-OR, Rating EC2, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR.

Summary

EPA's primary concern with this project is that the Standards and Guidelines for water and a water quality monitoring plan needs to be more fully developed in the final EIS/plan.

ERP. No. DA-COE-A36304-LA, Rating LO, Lake Pontchartrain and Vicinity Hurricane Protection Project, Fish and Wildlife Mitigation Plan, Implementation, Jefferson, St. John the Baptist, St. Charles, Orleans and St. Bernard Parishes, LA.

Summary

EPA expresses no objections to the proposed alternative as described in the draft EIS. EPA supports the implementation of Plan 0, the Tentatively Selected Plan for mitigation.

ERP. No. D-MMS-A02222-00, Rating EC2, 1989 North Atlantic Planning Area Outer Continental Shelf (OCS) Oil and Gas Sale No. 96, Lease Offerings, MA, NH, ME, RI, CT, NY and NJ.

Summary

EPA recommended that certain deferral areas (additional canyon heads, traffic safety fairways, waters deeper than 2,000 meters, and areas in the shelf-break zone) be eliminated from this sale. EPA also strongly recommends that any development and production from this or future North Atlantic lease sales be preceded by development and production EISs.

(Note: The above summary should have appeared in the 5-20-88 FR Notice.)

ERP. No. D-SFW-L64038-AK, Rating EC2, Arctic National Wildlife Refuge, Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, AK.

Summary

EPA has concerns that this document provides no discussion of how the Comprehensive Conservation Plan implementation might change if federal and state funding are less than required. Secondly, the impacts to threatened and endangered species are not evaluated as a separate resource category. EPA feels because of uncertainty about what future activities will be allowed under the preferred alternative, the final EIS needs to commit to a NEPA public review process if major changes to the CCP are considered during periodic reviews in the future.

ERP No. D-SFW-L64039-AK, Rating LO, Alaska Maritime National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Implementation and Wilderness Recommendations, Forrester Island to near Barrow on the Arctic Ocean, AK.

Summary

EPA has no objections to the proposed activities as described in this document. The preferred alternative would provide reasonable protection for refuge resources and values while providing flexibility for a variety of uses in localized areas that are already experiencing more intensive human use.

ERP No. D-USA-F11013-MN, Rating EC2, Camp Ripley Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Morrison County, MN.

Summary

EPA's concerns relate to the project's potential impacts upon wetlands and air quality. EPA seeks a commitment to prepare additional environmental documents for public review for individual projects affecting wetlands. EPA would also like to review the upcoming detailed study regarding

future handling of solid waste at the Camp.

Final EISs

ERP No. F–AFS–L65107–OR, Bull Run Blowdown, Wind Damage Trees Management Plan, Implementation, Mt. Hood National Forest, Clackamas, Hood River and Multnomah Counties, OR.

Summary

EPA has no objections to the project as proposed.

ERP No. F–BLM–J02012–WY, Sohare Creek Unit Exploratory Oil Well No. 1–35, Approval and Permits, Bridger-Teton National Forest, Teton County, WY.

Summary

EPA notes satisfactory responses to some issues raised in the review of the draft EIS, but concerns remain on plans/measures/thresholds to document water quality standards compliance; documentation for the cumulative impacts analysis and determinations of no significant impacts to fisheries; and the Forest Service policy for restoration of in-stream impacts. Contrary to the cover sheet of the EIS, EPA was not a cooperating agency.

ERP No. F–FAA–B51012–CT, Groton-New London Airport Runway 5 Medium Intensity Approach Lighting System Installation, Funding, City and Town of Groton, CT.

Summary

EPA has found this project to be satisfactory.

ERP No. F–NPS–J70015–00, Fishing Bridge Developed Area, Development Concept Plan, Implementation, Yellowstone National Park, Fremont County, ID, Park and Gallatin Counties, MT and Park and Teton Counties, WY.

Summary

EPA has no objections to the project for reducing human/bear confrontations as proposed.

ERP No. F–UAF–K21002–GU, Uruno Beach (Urunao Beach) Cleanup Program, Implementation, Guam.

Summary

EPA requests that the Record of Decision consider the proposed action's compliance with several U.S. and Guam laws governing hazardous substances, and that the ROD contain a commitment that all Federal and Guam Environmental Protection requirements will be followed if hazardous substances are discovered in the project area.

Dated: May 31, 1988.

Anne Norton Miller,

Acting Director, Office of Federal Activities.

[FR Doc. 88–12590 Filed 6–2–88; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3391-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed May 23, 1988 Through May 27, 1988 Pursuant to 40 CFR 1505.9

EIS No. 880164, Draft, AFS, CA, South Fork Fire Recovery and Salvage Project, August Thru October 1987, South Fork Roadless Area Land and Resource Management Plan, Implementation, Shasta-Trinity National Forest, Trinity County, CA, Due: July 18, 1988, Contact: Dan Angello (916) 628–5227.

EIS No. 880165, Draft, SCS, NV, East Walker Watershed Project, Water Management Improvement and Sediment Deposition Reduction, Funding and Implementation, Lyon County, NV, Due: July 18, 1988, Contact: Charles R. Adams (704) 784–5563.

EIS No. 880166, Draft, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Coastal Plain/Piedmont National Forests and Grasslands Vegetation Management Plan, Implementation, US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS, and TX, Due: August 25, 1988, Contact: Steve McCorquodale (404) 347–7076.

EIS No. 880167, DSuppl, SEW, AK, Kanai National Wildlife Rufuge Comprehensive Conservation Management Plan, Wilderness Recommendations, Designation or Nondesignation, Kenai Peninsula Borough, AK, Due: July 18, 1988, Contact: David Heffernan (202) 343–1014.

EIS No. 880168, Draft, COE, CA, Ox Mountain Sanitary Landfill Expansion, Apanolio Canyon Site, 404 Permit, Apanolio Creek, San Mateo County, CA, Due: July 18, 1988, Contact: Barney Opton (415) 974–0442.

EIS No. 880169, DSuppl, COE, WA, Chehalis River Flood Control Project, South Aberdeen and Cosmopolis, Design Modifications, Implementation, Grays Harbor County, WA, Due: July 18, 1988, Contact: Forest Brooks (206) 764–3456.

EIS No. 880170, DSuppl, UPS, NY, Manhattan General Mail Facility Complex Development, Additional Alternative Analysis Study, Implementation, New York City, New York County, NY, Due: July 18, 1988, Contact: Charles Vidich (203) 285–7254.

EIS No. 880171, Final, COE, IA, Des Moines Recreational River and Greenbelt Area Development, Operation and Maintenance, Implementation, Webster, Hamilton, Boone, Dallas, Polk, Warren, Marion, Jasper and Mahaska Counties, IA, Due: July 5, 1988, Contact: Mike Cockerill (309) 788–6361.

EIS No. 880172, Draft, FHW, OH, OH–297/Whippe Avenue Improvement, US 30 Interchange at Raff Road/Whippe Avenue/OH–297 to I–77 Interchange at Everhard Road, Funding, Stark County, OH, Due: July 18, 1988, Contact: James Steele (614) 469–6896.

Dated: May 31, 1988.

Anne Norton Miller,

Acting Director, Office of Federal Activities.

[FR Doc. 88–12591 Filed 6–2–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–000015–007

Title: Port of New Orleans Terminal Agreement

Parties: Board of Commissioners of The Port of New Orleans Continental Grain Company (Continental)

Synopsis: The agreement amends the basic agreement to terminate Continental's first call on berth privilege affecting the barge mooring area at Westwego, Louisiana.

Agreement No.: 224–200123

Title: South Carolina State Ports Authority Terminal Agreement

Parties: South Carolina State Ports Authority (SCSPA) Sea-Land Service, Inc. (Sea-Land)

Synopsis: Pursuant to this agreement SCSPA grants Sea-Land exclusive use of 40 acres to be used for container shipping operations and preferential use of a container berth and up to three container cranes for specified days of the week.

By Order of the Federal Maritime Commission

Dated: May 31, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–12553 Filed 6–2–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Clyde Financial Corp., et al.; Formation of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 27, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Clyde Financial Corporation,* Clyde, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples State Bank, Clyde, Texas.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Commercial Bancshares, Inc.,* Jasper, Alabama; to merge with Cahaba Bancorp, Trussville, Alabama; and thereby indirectly acquire Cahaba Bank & Trust, Trussville, Alabama.

Board of Governors of the Federal Reserve System, May 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–12463 Filed 6–2–88; 8:45 am]

BILLING CODE 6210–01–M

Delhi Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act 12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, cush as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Delhi Bancshares, Inc.,* Traer, Iowa; to become a bank holding company by acquiring Manchester Insurance Service, Manchester, Iowa; and thereby engage in property and casualty insurance, accident and health insruance, crop and hail insurance, and life insurance and annually products, pursuant to §§ 225.25(b)(8)(iii) and 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–12464 Filed 6–2–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 27, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. Provider for Reimbursement Manual, sections 2721, 2722, and 2725 Requests for Exception to End Stage Renal Disease Composite Rates—0938–0396—sections 2721, 2722 and 2725 provider reimbursement manual describes the information that End Stage Renal Disease facilities must submit to justify an exception request to their composite rate. Respondents: Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 150; Frequency of Response: One-time; Estimated Annual Burden: 7,200 hours.

2. End Stage Renal Disease Facility Survey—0938–0447—This form is completed annually by all Medicare approved ESRD facilities. The form is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients. Respondents: Businesses or other for-profit. Number of Respondents: 1,701; Frequency of

Response: Annually; Estimated Annual Burden: 2,551 hours.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Certification by Religious Group—0960–0093—The informaiton is needed to determine whether or not a specific religious group and it's members qualify for the self-employment tax exemption. Respondents: Individuals or households, Non-profit institutions. Number of Respondents: 180; Frequency of Response: One-time; Estimated Annual Burden: 45 hours.

2. Statement of Self-Employment Income—0960–0046—The information is needed to determine if an applicant will have at least the minimum amount of self-employment income for 1–4 quarters of coverage in the current year. Respondents: Individuals or households. Number of Respondents: 5,000; Frequency of Response: One-time; Estimated Annual Burden: 416 hours.

3. Application for Lump-Sum Death Payment—0960–0013—The information is used to determine the eligibility of an applicant for the lump-sum death payment and to whom it should be paid. Respondents: Individuals or households. Number of Respondents: 735,000; Frequency of Response: One-time; Estimated Annual Burden: 122,500 hours.

4. Claimant's Statement when Request for Hearing is Filed and the Issue is Disability—0960–0316—The information is needed to determine a claimant's eligibility for disability insurance benefits. The affected public is comprised of individuals who request a hearing before an Administrative Judge and the issue is disability. Respondents: Individuals or households. Number of Respondents: 276,000; Frequency of Response: One-time; Estimated Annual Burden: 69,000 hours.

5. Residual Functional Capacity Assessment—Mental Residual Functional Capacity Assessment—0960–0431—The data on these forms provides the State Agency medical consultants with information they need to properly assess a claimant's mental or physical ability to perform work-related functions. This information is used by the consultants to help them make disability determinations for SSA. Respondents: State or local governments. Number of Respondents: 55; Frequency of Response: Occasionally; Estimated Annual Burden: 447,315 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

1. FY 1988 Summer Grantee Survey of the Low Income Home Energy Assistance Program—0970–0076—This survey obtains updated estimates of Federal and non-Federal funding sources, uses of funds, and households to be assisted during FY 1988. The information will be displayed in tables for an information memorandum to Congress. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: Annually; Estimated Annual Burden: 102 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

1. Teenage Parent Demonstration Case Manager Questionnaire—NEW—This survey will be administered to all case managers in the teenage parent demonstration programs and will provide information with which to assess the importance of the backgrounds, and experiences of case managers to the success of the intervention. Respondents: State or local governments. Number of Respondents: 70; Frequency of Response: Single-time; Estimated Annual Burden: 35 hours.

OMB Desk Officer: Elaina Norden.

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415)

1. Case Plan, section 475(5)(A) of the Social Security Act—0960—0140—Provides incentive payments to States which meet specific foster care protections described in section 475(5)(A). Among those protections is implementation and operation of a case plan which is designed to achieve placement in a more family like setting. Respondents: State or local governments. Number of Respondents: 270,000; Frequency of Response: One-time; Estimated Annual Burden: 1,080,000 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

National Institutes of Health

1. Survey of Physician's Practice Behaviors Related to the Prevention of Lung Disease—NEW—A random sample of physicians practicing in five specialties will complete mailed questionnaires concerning their assessment and intervention behaviors regarding lung "diseases." Analysis of collected data will produce a model of physicians' intervention behaviors for NHLBI use in developing physician and public educational programs to reduce lung disease morbidity and mortality. Respondents: Non-profit institutions, Small businesses or organizations. Number of Respondents: 2,000; Frequency of Response: Single-time; Estimated Annual Burden: 1,000 hours.

Food and Drug Administration

1. Human Factors Regarding the Use of Glucose Monitoring Equipment—NEW—FDA needs information regarding diabetic and educational user operation of portable, electronic blood glucose meters. Medical Device Reporting System suggests problems in operation of equipment attributable to inadequacies in assessing problem areas and making recommendations for improved procedures and new equipment design. Respondents: Individuals or households. Number of Respondents: 628; Frequency of Response: One-time; Estimated Annual Burden: 707 hours.

Health Resources Services Administration

1. Survey of Health Education Assistance Loan (HEAL) Defaulters—NEW—The HEAL Defaulters survey will be used to provide information on the factors that affect HEAL recipients' ability to repay their loans. Respondents: Individuals or households. Number of Respondents: 2,500; Frequency of Response: One-time; Estimated Annual Burden: 625 hours.

Centers for Disease Control

1. National Ambulatory Medical Care Survey—NEW—Data collected from office-based physicians concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health manpower assessment, epidemiologic studies, and other medical care utilization research. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 2,600; Frequency of Response: Occasionally; Estimated Annual Burden: 3,683 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. ATTN: (Name of OMB Desk Officer).

Dated: May 31, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–12531 Filed 6–2–88; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Cooperative Agreements Project Grants for Chronic Disease Control Program Announcement and Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for competitive applications for cooperative agreements and/or project grants for the development of demonstration Chronic Disease Control Programs. The demonstration projects will address planning, development, integration, coordination, or evaluation of programs to control chronic disease(s). The project may address more than one activity or disease.

Authority

These cooperative agreements and/or grants are authorized by section 301 (a) (42 U.S.C. 241(a) and section 317(k)(3) (42 U.S.C. 247b(K)(3) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of States, and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Background

Chronic diseases are the leading cause of death and long-term disability in industrialized societies. The impact of chronic disease in terms of death rates, years of potential life lost, hospitalization, and selected measures of disability and economic burden is well documented. Effective preventive measures could avert a substantial portion of the burden of chronic diseases. Community cardiovascular disease interventions, screening programs for early detection and treatment of breast and cervical cancer, smoking cessation programs, school health curricula, and diabetes control programs to name a few, have all demonstrated the potential to reduce the impact of chronic diseases.

The key to successful efforts directed at chronic diseases is the effective and integrated application of: Surveillance, applied epidemiology, laboratory sciences, evaluation, and health education; dynamic and productive relationships with state and local organizations; training; and extensive applied management of effective disease control programs.

Ideally, an integrated program should comprehensively address all major chronic diseases. Similarly, primary prevention efforts should encompass all modifiable major risk factors. For some diseases and risk factors, effective interventions currently exist that should form the basis for initial programmatic efforts. However, interventions available for certain critical risk factors are of limited effectiveness. Moreover, for some chronic diseases, neither modifiable risk factors nor effective preventive measures are known. Clearly different diseases and risk factors are at different steps in the process of translation from research into applied prevention practice; some areas are ready for implementation and evaluation, while significant applied research is necessary to effectively address other important chronic disease problems. For still others we must await the results of ongoing basic research.

Setting priorities among the many conditions defined as "chronic," includes using, for example, estimates of disease burden and severity (mortality, morbidity, disability days, etc.) and preventability (primary, secondary, and tertiary). For the purposes of this announcement, the applications should focus on:

1. High priority chronic diseases, e.g., cancers (lung, breast, or cervical); cardiovascular disease (ischemic heart disease, cerebrovascular); diabetes and its complications; chronic obstructive lung disease; etc.

2. The key modifiable risk factors for high priority disease, e.g., smoking, hypertension, hyperlipidemia, sedentary lifestyle, etc.

or

3. General capacity building for strong chronic disease programs in such areas as surveillance, integration of currently fragmented activities, and the building of coalitions/advisory groups to address high priority conditions or risk factors.

Purpose and Programmatic Interest

The purpose of this cooperative agreement/project grant program is to promote the ability within State public health agencies to prevent and control chronic disease. Projects should address one or more of the following goals for the selected disease(s) and/or their related risk factors:

A. To foster and mobilize a coalition of public and private agencies committed to a common agenda for the prevention and control of one or more chronic diseases or chronic diseases in general. The coalition should operate at the state and/or local level(s) and should include professional, voluntary, and/or other private sector organizations, as well as State and local public health agencies. The coalition should assist the state and local health agencies in setting priorities, planning interventions, and in evaluating the effectiveness of chronic disease programs.

B. To conduct chronic disease surveillance of local or state trends in morbidity and mortality to identify and rank public health efforts, generate hypotheses relevant to their prevention and control, and evaluate the effectiveness of intervention programs. This can be aimed at a single disease, although multiple data sources should be used.

C. To conduct applied research such as epidemiologic studies, operational research, and laboratory investigations to identify opportunities for preventive actions.

D. To demonstrate the impact and/or evaluate the effectiveness of chronic disease intervention programs in collaboration with other State and local agencies and other appropriate groups. Demonstrations which emphasize an integrated approach to diseases risk factors and which plan for institutional changes to sustain programs over time will be given priority.

E. To provide education for health professionals to facilitate widespread

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implementation of effective intervention strategies.

F. To conduct directed information and education programs for the prevention and control of chronic diseases. This should be targeted toward specific high risk groups, e.g. minorities, specific age groups, etc. and should include evaluation.

G. To develop and implement a chronic disease program which addresses more than one of the above listed goals.

H. To develop and test marketing strategies designed to improve utilization of services directed at the prevention and control of chronic diseases or risk factors.

Program Requirements

A. Cooperative Agreement

In a cooperative agreement, CDC will assist the State in conducting the project. The application should be presented in a manner that demonstrates the applicant's ability to conduct the activity in a collaborative manner with CDC.

1. Recipient Activities

Due to the nature of the cooperative agreement, and the diversity of projects that may be approved, activities may vary. For example, a project that will demonstrate an intervention directed at a single chronic disease will have different activities than a project that will utilize an advisory committee to assist the State in developing its own priorities in the control of chronic diseases. However, some general activities would be expected for any applicant. These include:

a. Identify sufficient appropriately trained staff to conduct the proposed activities.

b. Conduct the activities described in its application in a manner that will ensure accomplishment of objectives.

c. Where appropriate, conduct a strong, scientifically based evaluation designed to determine the effectiveness of the activities.

2. Centers for Disease Control Activities

In addition to the financial support provided, CDC can provide assistance to the State by:

a. Collaborating in the design and development of methods for data collection and data analysis that can be adapted to future programs.

b. Collaborating in the data analysis and evaluation of projects.

c. Providing consultation and guidance in the development of study protocols, consent forms, training and questionnaires as necessary.

d. Providing consultation in describing the epidemiology of the specific disease(s) selected.

e. Serving in an advisory capacity to coalitions, in community intervention programs, etc.

B. Project Grant

A project grant application should be designed to improve the core capacity of the State Health Agency to prevent and control chronic disease, as described in "Purpose and Programmatic Interest." As is described in the PHS Grants Policy Statement, the applicant should not expect substantial programmatic involvement from CDC during the project. The application should be presented in a manner that demonstrates the applicant's ability to conduct the project without substantial involvement from CDC.

C. Determination of Which Instrument To Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. CDC will review the applications in accordance with the appropriate criteria. Projects funded through a cooperative agreement that involve collection of information from 10 or more respondents will be subject to review under the Paperwork Reduction Act.

Availability of Funds

Approximately $600,000 to $1,500,000 will be available in Fiscal Year 1988 to fund up to 10 projects. Individual awards will range from $35,000 to $125,000. It is expected that the cooperative agreements/projects grants will begin on or about September 1, 1988. Depending on the availability of funds, it is expected that further awards will be made in subsequent years. Cooperative agreements/project grants are usually funded in 12-month budget periods within a 1–5 year project period. Funding estimates may vary and are subject to change.

Projects are intended to be short term and address specific problems as noted in "Purpose and Programmatic Interest." Non-federal funding sources should provide greater shares of support in any later budget period.

Use of Funds

Cooperative agreement/project grant funds shall not be used for treatment or treatment services.

Review and Evaluation Criteria

Applications will first be grouped by the chronic disease(s) they address. Applications will be reviewed and ranked with other applications in that specific chronic disease category. A separate category will be established for projects addressing multiple diseases. Applications will be reviewed and evaluated based upon the following criteria:

1. Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement/project grant.

2. Consistency of the application with the stated programmatic interests of the CDC.

3. The consistency of the measureable objectives with the stated purpose of the cooperative agreement/project grant and the ability to meet the objectives and timetable within the specified period.

4. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.

5. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement/project grant funds.

6. The applicant's capability to provide the staff and resources necessary to perform and manage the project.

Application Submission and Deadline

The original and two copies of the application form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 1, 1988.

A. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or;

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications: Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, International Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, telephone (404) 842–6575 or FTS 236–6575.

Technical assistance may be provided by several Centers, Institutes, and Program Offices within CDC, this effort is being coordinated by Charles Gollmar, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, telephone (404) 639–1851 or FTS 236–1851.

Dated: May 26, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–12469 Filed 6–2–88; 8:45 am]

BILLING CODE 4160–18–M

A Workshop on Prevention of Health and Ergonomic Problems in VDT/Office Work; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: August 8–11, 1988.

Time:
August 8–7:00 am–9:00 pm
August 9–8:00 am–5:00 pm
August 10–8:00 am–5:00 pm
August 11–8:00 am–12:00 noon

Place: Marcum Conference Center, Miami University, Oxford, Ohio.

Purpose: To identify proven techniques that can be applied for the control of health and ergonomic problems arising from VDT/office work.

Additional information may be obtained from: Steven L. Sauter, Ph.D., Chief, Motivation and Stress Research Section, Applied Psychology and Ergonomics Branch, 4676 Columbia Parkway, Mail Stop C–24, Cincinnati, Ohio 45226, Telephones: FTS: 684–8293, Commercial: 513/533–8293.

Or

Marvin Dainoff, Ph.D., Department of Psychology, Miami University, Oxford, Ohio 45056, TELEPHONE: 513/529–2414.

Dated: May 27, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–12467 Filed 6–2–88; 8:45 am]

BILLING CODE 4160–19–M

"Symposium on Assessing Reproductive Hazards in the Workplace"; Open Meeting

The following symposium will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: June 16–17, 1988.

Time: 8 a.m.–5 p.m., June 16–17, 1988.

Place: OMNI Netherland Plaza, 35 W. 5th Street, Cincinnati, Ohio 45202.

Purpose: The topics that will be discussed will include: Completed studies assessing reproductive indicators in both male and female workers; potentially useful new methodologies for the analysis of reproductive effects; evaluation of potential reproductive toxicants by the National Toxicology Program (NTP), Environmental Protection Agency (EPA), and NIOSH; and regulation of reproductive toxicants by the EPA, Food and Drug Administration (FDA), and Occupational Safety and Health Administration (OSHA).

Additional information may be obtained from: Dr. Steven Schrader, Ph.D., National Institute for Occupational Safety and Health, Robert A. Taft Laboratories (C–23), 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8210, Commercial: (513) 533–8210.

Dated: May 27, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–12468 Filed 6–2–88; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 78G–0310]

General Bioscience, Inc.; Denial Without Prejudice of GRAS Affirmation Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying without prejudice a petition (GRASP 8G0212) proposing that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 7, 1978 (43 FR 51845), FDA published a notice that it had filed a petition (GRASP 8G0212) from Krey Packing Co., 3607 North Florissant St., St. Louis, MO 63107, and Shared Technology, Inc., 721 Olive St., Suite 1111, St. Louis, MO 63101, jointly proposing that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is GRAS. In the Federal Register of October 3, 1980 (45 FR 65675), FDA also published a notice that these two companies had no further interest in pursuing the petition and a new company, General Bioscience, Inc., 214 North Sarah St., St. Louis, MO 63108, had assumed responsibility for the petition.

The agency informed General Bioscience, Inc., on March 3, 1981, that the firm needed to submit specific additional information in order for the agency to continue its review of the petition. However, the company has not responded to FDA's request for the additional information needed to determine that the petitioned use of chlorine dioxide is safe.

Because the petitioner has failed to provide the information requested, FDA finds that it is unable to affirm this use of chlorine dioxide as GRAS and thus is denying the petition. However, this denial is without prejudice to the future filing of a petition that is supported by adequate information under either the GRAS (21 CFR 170.35) or food additive (21 CFR 171.1) procedure.

Dated: May 24, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–12460 Filed 6–2–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–965–4213–15; F–14932–A]

Alaska Native Claims Selection; Shaktoolik Native Corp

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec.

14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Shaktoolik Native Corporation for approximately .23 acre. The lands involved are in the vicinity of Shaktoolik, Alaska, within Sec. 9, T. 13 S., R. 13 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the NOME NUGET. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 5, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary K. Seitz,

Chief, Branch of Northwest Adjudication.

[FR Doc. 88–12584 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–JA–M

[NM–010–08–4121–02]

Albuquerque District, New Mexico; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Albuquerque District Advisory Council Meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Advisory Council will meet on Monday, June 20, 1988 at 8:30 a.m. at the Sagebrush Inn in Taos, New Mexico.

The Council will receive reports on the results of public meetings on the El Malpais National Conservation Area management plan currently being developed, and on the status of the New Mexico Wilderness effort. A representative from the Environmental Protection Agency will present information about EPA's responsibilities on public lands, and the Council will consider a resolution addressing hazardous materials problems on public lands.

The formal meeting will adjourn at approximately 11:30 a.m. to be followed by a tour of various issues in the BLM's Taos Resource Area.

The public is invited to attend the meeting and time will be provided for public comment. The Albuquerque District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting. For additional information, contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 766–4504.

Michael F. Reitz,

Associate District Manager.

[FR Doc. 88–12581 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–040–07–4322–02]

Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Safford District Grazing Advisory Board will be held.

DATE: Friday, July 1, 1988, 9:00 a.m.

ADDRESS: Cluff Ranch Wildlife Area, Pima, Arizona.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Time Control Grazing, Management Updates, and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, June 30, 1988.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Date: May 27, 1988.

Ray A. Brady,

District Manager.

[FR Doc. 88–12589 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–08–4111–15; W–109367]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

May 27, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–109367 for lands in Campbell County, Wyoming, was timely filed and was accompained by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–109367 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis

Chief, Leasing Section.

[FR Doc. 88–12583 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–08–4212–13; MTM 59144]

Order Providing for Opening to the Mining Law of Certain Public Land in Missoula and Granite Counties, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* (FLPMA), to the operation of the mining laws. The lands have been open to the operation of the public land laws since July 8, 1987.

DATE: 9 a.m., July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Edward Croteau, Chief, Lands Adjudication Section, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION: At 9 a.m. on July 18, 1988, the following described lands will be open to location and entry under the United States mining laws:

Principal Meridian, Montana

T. 12 N., R. 15 W.,
Sec. 1, E½SW¼, W½SE¼;
Sec. 12, NW¼NE¼, NW¼, NE¼SW¼, W½SW¼;
Sec. 13, W½NW¼.

Aggregating 500 acres, more or less.

Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

May 27, 1988.

[FR Doc. 88–12586 Filed 6–2–88; 8:45am]

BILLING CODE 4310–DN–M

[AZ–940–08–4212–13; A–22792]

Exchange of Public and Private Lands in Cochise, Maricopa, and Santa Cruz Counties, Arizona

May 25, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange of Land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Talley Realty Development, Inc., a Delaware Corporation. The United States transferred 569.33 acres in Maricopa County to Talley Realty Development, Inc., and in exchange accepted 3,365 acres in Cochise and Santa Cruz Counties.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Arizona State Office, Post Office Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: On December 1, 1987, the Bureau of Land Management transferred the following described land by Patent No. 02–88–0011, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 E.,
Sec. 27, S½SW¼, NW¼SW¼, S½NE¼SW¼, NW¼NE¼SW¼;
Sec. 33, N½NE¼;
Sec. 34, NW¼, N½SW¼, SW¼SW¼, W½SE¼SW¼.
T. 4 N., R. 1 E.,
Sec. 3, lot 4.

Containing 569.33 acres in Maricopa County.

In exchange, 3,365 acres were conveyed to the United States to be administered by the Bureau of Land Management. A complete description of these lands is available for public examination at the Arizona State Office.

The purpose of this notice is to inform the public and interested State and local government officials of this exchange of public and private land.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–12585 Filed 6–3–88; 8:45 am]

BILLING CODE 4310–32–M

[CA–010–08–4212–13; CA 22535]

Exchange of Public and Private Lands in El Dorado County, California

AGENCY: Bureau of Land Management (BLM), Interior.

REALTY ACTION: Exchange of public and private lands in El Dorado County, California.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Selected Public Land

El Dorado County, California

T. 9 N., R. 11 E., MDM,
Sec. 14: NW¼SW¼.

Aggregating 40 acres, more or less.

In exchange for the above parcel, the United States will acquire the following described private land from Alan and Cindi Ehrgott:

Offered Private Land

El Dorado County, California

T. 11 N., R. 9 E., MDM,
Sec. 10: those portions of the S½NE¼ and the SE¼NW¼ lying south of the centerline of the South Fork of the American River.

Aggregating 10 acres, more or less.

The purpose of this exchange is to improve the Bureau's management capabilities along a very popular section of the South Fork of the American River. The United States will be acquiring a 10 acre parcel situated right on the river; the parcel also joins a 320 acre tract of public land. The Federal land to be exchanged is of limited value to the public in that it is land-locked and completely inaccessible to the public. This action is consistent with the Bureau's land use plans and regulations and is considered to be in the public interest.

The values of the properties to be exchanged are approximately equal. The action involves both the surface and mineral estates.

The Federal land to be transferred will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (U.S.C. 945).

(2) Archeological clearance on the Federal land shall be granted prior to conveyance of title.

SUPPLEMENTARY INFORMATION: Publication of this notice in the Federal Register segregates the public lands from settlement, location and entry under the public land laws and the mining laws for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION CONTACT: Mike Kelley, Folsom Resource Area Office, (916) 985–4474, at the address listed below. Also available for review is the environmental assessment/land report.

DATE: For a period of 45 days from the first date of publication of this notice in the Federal Register, interest parties may submit comments to the Area Manager, Folsom Resource Area.

ADDRESS: Comments should be sent to the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985–4474. Any adverse comments will be forwarded to and evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

Dated: May 26, 1988.

David N. Harris,

Acting Area Manager.

[FR Doc. 88–12587 Filed 6–3–88; 8:45 am]

BILLING CODE 4310–40–M

[OR–943–08–4530–12; GP8–146]

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 10 S., R. 12 E.,
T. 4 S., R. 4 E.

The above listed plats were accepted April 29, 1988 and officially filed May 10, 1988.

The above listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, OR 97208.

Dated: May 24, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-12582 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-33-M

[CO-940-08-54220-11; C-28282]

Proposed Continuation of Withdrawal; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, propose that the order which withdrew lands for an indefinite period of time for two administrative sites be modified and the withdrawal be continued for 20 years insofar as it affects 15 acres of National Forest System land. The land will continue to be closed to the mining laws, but not to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Secretarial Order dated November 6, 1907, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

New Mexico Principal Meridian

Uncompahgre National Forest

T. 49 N., R. 13 W.,
Sec. 20, W½NE¼NW¼SW¼ and NW¼NW¼SW¼.

The area described aggregates 15 acres in Montrose County.

The purpose of this withdrawal is for the administration and protection of the Mesa Administrative Site. No change is proposed in the purpose of this withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-12588 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-08-4212-11; N-30596]

Classification Termination; Nevada

May 24, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes N-30596 was classified effective July 24, 1981. This notice terminates a portion of that Recreation and Public Purposes classification.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-784-5481.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6(a), the Bureau of Land Management hereby terminates Recreation and Public Purposes classification N-30596 as it pertains to the following described lands:

Mount Diablo Meridian, Nevada

T. 12 N., R. 21 E.,
Sec. 18, NE¼NW¼.

The area described contains 40 acres in Douglas County.

The land has been designated as a material community pit under the authority of 43 CFR Part 3604.

At 10:00 a.m. on July 5, 1988, the land will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, pending lawsuits, and requirements of applicable law. All valid applications received prior to or at 10:00 a.m., on July 5, 1988, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m. on July 5, 1988, the land will also be open to the operation of the mining laws. The community pit creates a superior right to remove material as against any subsequent mining claim or entry on the land (43 CFR 3604.1(b)). Mining claims may be located, but claimant's rights do not attach until the community pit is terminated. Location of claims under the general mining laws on lands prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts. The land remains open to the mineral leasing and material sale laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 88-12452 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-08-4111-15; W-107262]

Proposed Reinstatment of Terminated; Oil and Gas Lease

May 25, 1988.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-107262 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-107262 effective January 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88-12457 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-22-M

[CO-050-08-4212-13; C-46391]

Realty Action; Canon City District, Royal Gorge Resource Area, Fremont County, CO

AGENCY: Bureau of Land Management, Interior, Canon City District, Royal Gorge Resource Area.

ACTION: Notice of realty action, Exchange of public and private land in Fremont County, Colorado, C-46391; and segregation from all forms of appropriation under the public land laws.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 18, S., R. 71 W.,
Sec. 19: W½SE¼NW¼, W½NE¼SW¼, N½NE¼SE¼;
Sec. 20: NW¼SW¼, E½SW¼SW¼.

Totaling 120 acres in Fremont County.

In exchange, the United States proposes to acquire from the John Adamic Estate the following private land:

Sixth Principal Meridian

T. 19 S., R. 72 W.,
Tract 41.

Totaling 160 acres in Fremont County.

DATE: Comments must be received on or before July 18, 1988.

ADDRESSES: Submit comments to: District Manager, Bureau of Land Management, Canon City District Office, 3170 East Main, P.O. Box 311, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, CO 81212, Phone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to dispose of public land identified for disposal in the Royal Gorge Management Framework Plan and in return acquire private land that lies within a large block of public land, part of which is the Lower Grape Creek Wilderness Study Area. The fair market values are approximately equal; acreage adjustments or cash equalization payments may be needed following formal appraisal.

Conveyance of the above public lands including mineral estate will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945, Act of August 30, 1980.

2. All valid existing rights of record.

The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for two years from publication of this notice.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 88-12455 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-08-4212-13; C-44720]

Realty Action; Canon City District, Royal Gorge Resource Area; Teller and Fremont Counties, CO

AGENCY: Bureau of Land Management, Interior, Canon City District, Royal Gorge Resource Area.

ACTION: Notice of realty action, exchange of public and private land in Teller and Fremont Counties, Colorado, C-44720; and segregation from all forms of appropriation under the public land laws.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 16 S., R. 68 W.,
Sec. 5: E½SW¼, W½SE¼, NE¼SE¼;
Sec. 6: NE¼SE¼;
Sec. 8: E½NW¼.

Totaling 320 acres in Teller County.

In exchange, the United States proposes to acquire from David and Jane Hall the following private land:

Sixth Principal Meridian

T. 16 S., R. 68 W.,
Sec. 7: Lots 2-4, SE¼NW¼, NE¼SW¼;
Sec. 20: E½NE¼, NE¼SE¼;
Sec. 21: NW¼SW¼.

Totaling 332 acres in Fremont and Teller Counties.

DATE: Comments must be received on or before July 18, 1988.

ADDRESSES: Submit comments to: District Manager, Bureau of Land Management, Canon City District Office, 3170 East Main, P.O. Box 311, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, CO 81212 Phone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to dispose of public land identified for disposal in the Royal Gorge Management Framework Plan and in return acquire private land that lies within or adjacent to a large block of public land, part of which is the Beaver Creek Wilderness Study Area. The fair market values are approximately equal; acreage adjustments or cash equalization payments may be needed following formal appraisal.

Conveyance of the above public lands including mineral estate will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945, Act of August 30, 1890.

2. All valid existing rights of record.

The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for two years from date of publication.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 88-12456 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-JB-M

[NV-030-08-4410-08]

Decision on Management Planning; Lahontan Resource Area; Carson City District, NV

May 27, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision on management planning for the Bravo-20 Bombing Range in the Lahontan Resource Area, Carson City District, Nevada.

SUMMARY: In accordance with the provisions of Pub L. 99-606, the Nevada State Director, BLM, has determined that no Management Plan is necessary for the Department of the Navy's Bravo-20 Bombing Range withdrawal. The Range is used for live ordance practice and is closed to the public.

SUPPLEMENTARY INFORMATION: The Military Lands Withdrawal Act of 1986 (Pub. L. 99-606) provided for the withdrawal of lands for military purposes in four states, including 21,577 acres in Churchill County, Nevada, for the Fallon Naval Air Station's "Bravo-20" Bombing Range. The Bravo-20 area is located in an alkali flat in the northeast portion of the Carson Sink (See **Federal Register** Notice, Vol. 52, No. 21, P. 3176, February 2, 1987, for the legal description of the affected lands and **Federal Register** notice, Vol. 52, No. 40, p. 6227, March 2, 1987, for a correction of the legal description).

The Act also directed the Secretary of the Interior to develop plans for the management of the withdrawal areas for grazing, wildlife habitat, predator control, recreation and fire control.

Since Bravo-20 is used for a live ordnance practice and jettison area and contains a vast amount of unexploded ordnance, it is closed to public access by the Department of the Navy and is not available for the above management uses. Therefore, it has been determined that no plan for the management of surface resources is necessary. This determination is in accordance with Pub. L. 99-606, section 3(c)(2).

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, James M. Phillips, Area Manager, Lahontan Resource Area, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701 (phone: 702-882-1631).

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-12483 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-HC-M

[AA-063484]

Disclaimer of Interest To Issue; Alaska

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of proposed issuance of recordable disclaimer of interest by the Bureau of Land Management for certain lands within the Kodiak Townsite.

DATE: Comments should be received by September 1, 1988.

ADDRESS: Comments should be sent to: Deputy State Director for Conveyance Management, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Jeanne L. Kosonen, Alaska State Office, (907) 271-3231.

SUMMARY: Pursuant to section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 and *Gamble v. Sault Ste. Marie*, 10 L.D. 375 (March 31, 1890), the Bureau of Land Management will issue a recordable disclaimer of interest for certain cemetery lands in Kodiak townsite affecting the following described lands:

Block 9, Lot 12, USS 2538-B
(Also surveyed as: Block 13, Lot 27 by the City of Kodiak)
Containing approximately 1.42 acres.

1. The Bureau of Land Management has reviewed the official records and has determined that the United States has no claim to or interest in the above described lands and that the issuance of a recordable disclaimer of interest will help to remove a cloud on the title to the land.

2. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed disclaimer may present their views in writing to the Deputy State Director for Conveyance Management, in the Alaska State Office.

3. Accordingly, the recordable disclaimer of interest will be issued no sooner than ninety days after the date of this publication.

Terry R. Hasset,

Chief, Branch of KCS Adjudication.

[FR Doc. 88-12650 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

[DES 88-29]

Availability of Draft Supplemental Environmental Impact Statement; Kenai National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a Draft Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Kenai National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared for public review a Draft Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Kenai National Wildlife Refuge, Alaska, pursuant to section 3(d) of the Wilderness Act of 1964, section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act), and section 102(2)(C) of the National Environmental Policy Act of 1969. The Draft Supplemental Environmental Impact Statement analyzes the impacts of five alternative wilderness proposals for the Kenai National Wildlife Refuge.

DATES: Comments on the draft document must be submitted on or before July 22, 1988, to receive consideration in the preparation of the Final Supplemental Environmental Impact Statement. A public hearing to meet the requirements of the Wilderness Act of 1964 will be held in Anchorage, Alaska, in the First Floor Conference Room of the U.S. Fish and Wildlife Service Regional Office, 1011 E. Tudor Road beginning at 7:00 p.m. on Wednesday, July 6, 1988.

ADDRESS: Comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the supplemental environmental impact statement may be obtained by contacting Mr. Knauer.

Copies of the Draft Supplemental Environmental Impact Statement are also available for review at the Office of the Regional Director, address as listed previously, as well as at the Office of the Kenai National Wildlife Refuge, Soldotna, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, Main Interior Bldg., 18th and C Streets, NW., Washington, DC 20240;
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232;
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue, SW., Albuquerque, NM 87103;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;
U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, SW., Atlanta, GA 30303;
U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and
U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

The Draft Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Kenai National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, to fulfill the requirements of section 1317(a) of the Alaska Lands Act. This section requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all lands in refuges in Alaska not Congressionally designated as wilderness as to their suitability or nonsuitability for preservation as wilderness and report Department recommendations to the President.

Although large tracts of land in the refuge were found to meet the criteria of the Wilderness Act for designation as wilderness, not all of these lands were proposed for wilderness designation because of management strategies that will be used to meet refuge purposes. As a result, a range of wilderness alternatives were evaluated subsequent to the Service's selection of its proposed management alternative. Five wilderness proposals, ranging from recommending all suitable refuge lands for wilderness designation to recommending no additional lands for wilderness designation, were examined in the Kenai Refuge Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review. The proposed alternative in the plan recommended that an additional 195,500 acres be proposed for designation as wilderness.

The wilderness review in the Kenai Refuge Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review discussed the wilderness suitability of lands on the refuge, but did not clearly outline which of these lands the Fish and Wildlife Service would propose for inclusion in the President's wilderness recommendations to Congress. To ensure full compliance with the Wilderness Act, the Fish and Wildlife Service has prepared this Supplemental Environmental Impact Statement; clearly discussing the proposal for wilderness designation on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the Final Supplemental Environmental Impact Statement.

Dated: May 23, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88-12389 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Mark Producing

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mark Producing has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 7663 and 6443, Block 297 and 300, respectively, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 26, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 26, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12454 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Mobil Exploration and Producing U.S. Inc.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5322, Block 421, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 24, 1988. Comments

must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 735-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 25, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12453 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-405 (Preliminary)]

Sewn Cloth Headwear From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-405 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of sewn cloth headwear [1] and visors provided for in items 702.08, 702.08, 702.12, 702.14, 702.20, 702.32, 703.05, 703.10, 703.16 and part 6F of Schedule 3 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 11, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 26, 1988

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-252-1190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 26, 1988, by counsel on behalf of the Headwear Institute of America, New York, New York.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commissions rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 16, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-252-1190) not later than June 13, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before June 20, 1988, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.8 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 31, 1988.

[FR Doc. 88-12444 Filed 6-2-88; 8:45 am]

BILLING CODE 7020-01-M

[1] For purposes of this investigation, sewn cloth headwear refers to hats, caps, visors, and other headwear, whether or not ornamented, each comprising cut-and-sewn woven or knit fabric of vegetable fibers (including cotton, flax, and ramie), of man-made fibers, or of blends thereof, provided for in the cited provisions of the tariff schedules.

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations; Motor Carriers

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.

1. Parent corporation and address of principal office:

Occidental Petroleum Corporation, 10889 Wilshire Boulevard, Los Angeles, California 90024 (Incorporated in the State of Delaware)

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

i. OXY USA Inc., 110 West Seventh Street, P.O. Box 300, Tulsa, Oklahoma 74119 (Incorporated in the State of Delaware)

ii. MidCon Corp., 701 East 22nd Street, P.O. Box 1207, Lombard, Illinois 60148 (Incorporated in the State of Delaware)

iii. Exeter Drilling Company, Corporation Trust Company of Nevada, One East First Street, Reno, Nevada 89501 (Incorporated in the State of Nevada)

iv. Occidental Chemical Corporation, Occidental Tower, 5005 LBJ Freeway, Dallas, Texas 75244 (Incorporated in the State of New York)

v. Occidental International Exploration and Production Company, 10889 Wilshire Boulevard, Los Angeles, California 90024 (Incorporated in the State of California)

vi. Island Creek Corporation, 2355 Harrodsburg Road, Lexington, Kentucky 40504 (Incorporated in the State of California)

B.

1. Parent corporation and address of principal office:

Spancrete Industries, Inc., 10919 W. Bluemound Road, Wauwatosa, Wisconsin 53226

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Spancrete, Inc.—Wisconsin
(ii) Spancrete of Illinois, Inc.,—Illinois
(iii) Waukesha Block Company, Inc.—Wisconsin
(iv) WBC Corporation—Wisconsin
(v) Spancrete Machinery Corporation—Wisconsin
(vi) American Concrete Pipe Company, Inc.—Wisconsin

Noreta R. McGee,

Secretary.

[FR Doc. 88-12360 Filed 6-2-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-No. 57)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment, Johnson, Wyandotte and Leavenworth Counties, KS; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka and Santa Fe Railway Company to abandon its 23.85-mile rail line between Wilder Junction, KS (milepost 0.0) and Leavenworth, KS (milepost 23.85) in Johnson, Wyandotte and Leavenworth Counties, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-12520 Filed 6-2-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Absolute Fire Protection Co., et al.*, Civil No. 88-2067, was lodged with the United States District Court for the District of New Jersey on May 16, 1988.

The proposed consent decree, filed simultaneously with a complaint against approximately 225 parties, concerns the recovery of government response costs incurred in relation to the Kin-Buc hazardous waste landfill in Edison, New Jersey pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*

The proposed decree requires the defendants to pay the amount of $4,980,398.00 to the United States in settlement of the United States claims for past costs incurred under CERCLA.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Absolute Fire Protection Co., et al.*, D.J. Ref. No. 90-5-1-1-883.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102; at the Region II office of the

Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.50 ($.10 per page) payable to the Treasurer of the United States for copying.

Roger J. Marzulla

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12450 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Cercla; Alloy Corp. et al.

In accordance with Department policy notice is hereby given that on May 23, 1988, a proposed consent decree in *United States v. Alloy Corporation et al.*, Civil Action No. 88-C-550, was lodged with the United States District Court for the Western District of Wisconsin. The proposed consent decree resolves a judicial enforcement action brought by the United States against ten defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERECLA").

The proposed consent decree requires the ten defendants to reimburse to the United States $543,641.50. This amount respresents the total cost incurred by the United States in response to the release or threat of release of hazardous substances into the environment from the Rodgers Laboratories Inc. facility located in Milwaukee, Wisconsin.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Alloy Products, et al.*, D.J. Ref. 90-11-3-237.

The proposed consent decree may be examined at the office of the United States Attorney, 320 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202 and at the Office of Regional Counsel, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12577 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Dean Sack and Frank Eret

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 24, 1988, a proposed consent decree in *United States of America v. Dean Sack and Frank Eret*, Civ. No. 87-L-252, was lodged with the United States District Court for the District of Nebraska.

The proposed consent decree resolves a judicial enforcement action brought by the United States against Dean Sack ("Sack") and Frank Eret ("Eret") for violations of the Clean Air Act. The complaint filed by the United States alleged that defendants violated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos during demolition and renovation activities that took place at Defendant Sack's Odd Fellows Home in York, Nebraska.

The proposed consent decree enjoins defendants from violating the asbestos NESHAP in the future. The proposed consent decree also requires defendants to pay a civil penalty of $15,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. Dean Sack and Frank Eret*, D.O.J. Ref. 90-5-2-1-976.

The proposed consent decree may be examined at the office of the United States Attorney, District of Nebraska, 520 Federal Building, 100 Centennial Mall North, Lincoln, Nebraska, 68508, and at the Region VII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Henry F. Rompage, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice.

Thomas E. Hookano,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12580 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and Nippon Hoso Kyokai ("NHK") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NHK is a Japanese corporation with its principal place of business at 1-10-11, Kinuta, Setagaya-Ku, Tokyo 157, Japan.

Bellcore and NHK entered into an agreement effective April 1, 1988 to collaborate in research in the area of High Definition TV (HDTV), such research to include signal processing for the transmission of HDTV signals over broadband networks and the demonstration of feasibility of research concepts by experimental prototypes and experimental systems thereof. Such research will have application to

exchange and exchange access telecommunications.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-12578 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and David Sarnoff Research Center ("Sarnoff") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Sarnoff is a Delaware corporation with its principal place of business at CN 5300, Princeton, New Jersey 08543-5300.

Bellcore and Sarnoff entered into an agreement effective March 1, 1988 to collaborate in research with respect to securing a scientific understanding of the physical and chemical principles underlying the structure and the electrical and other properties of high temperature superconducting materials and to better understand their application in microwave and high speed systems for exchange and exchange access services and for uses of interest to the defense of the United States of America.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-12579 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

George C. Daniel, M.D.; Revocation of Registration

On April 6, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to George C. Daniel, M.D., of 11610 Milbern Drive, Potomac, Maryland 20854 proposing to revoke his DEA Certificate of Registration AD2730706 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Daniel's continued registration with DEA would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

On February 24, 1988, Dr. Daniel was declared to be a fugitive from justice. Since Dr. Daniel could not be located, notice of DEA's proposed action was given by publishing the Order to Show Cause in the **Federal Register**. See 53 FR 12087 (April 12, 1988). In addition, a copy of the published Order to Show Cause was sent to Dr. Daniel's last known address by registered mail, but was ultimately returned to DEA unclaimed. More than thirty days have passed since the Order to Show Cause was published in the **Federal Register** and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), George C. Daniel, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that the Drug Enforcement Administration initiated an investigation of Dr. Daniel's prescribing practices after receiving information that Dr. Daniel was issuing prescriptions for Schedule II controlled substances for no legitimate medical purpose. On September 15, 1987, a DEA Special Agent, acting in an undercover capacity, was introduced to Dr. Daniel by a confidential informant. This meeting occurred inside Dr. Daniel's car which was parked at a local subway station. On this occasion, the undercover agent purchased a prescription for 30 Percodan tablets, a Schedule II controlled substance, from Dr. Daniel for $75.00. At no time during this visit was any medical history taken nor were any medical problems discussed.

On September 25, 1987, the undercover agent again met Dr. Daniel inside his car which was parked at the same subway station. On this occasion, Dr. Daniel issued the undercover agent a prescription for 30 Percodan tablets. In addition, Dr. Daniel wrote a prescription for 30 Dilaudid tablets, also a Schedule II controlled substance, in the name of an individual who was not only not present during this meeting, but was also unknown to Dr. Daniel. The udnercover agent gave Dr. Daniel $100.00 for each of these prescriptions. Neither of these prescriptions were issued for a legitimate medical purpose.

On October 8, 1987, the undercover agent went to Dr. Daniel's residence/office. The undercover agent was accompanied by another DEA Special Agent, also acting in an undercover capacity. During the course of this visit, Dr. Daniel wrote the undercover agents four prescriptions for Schedule II controlled substances in exchange for $400.00. Two of these prescriptions were written for individuals who were not present during this visit. None of these prescriptions were issued for a legitimate medical purpose.

Finally, on October 30, 1987, a third DEA Special Agent, acting in an undercover capacity, went to Dr. Daniel's residence/office. During the course of this visit, Dr. Daniel wrote the undercover agent four prescriptions for Schedule II controlled substances for $400.00. Three of these prescriptions were written for individuals who were not present during this visit. None of these prescriptions were written for a legitimate medical purpose.

On November 6, 1987, Dr. Daniel was indicted in the United States District Court for the District of Maryland and charged with eleven counts of knowingly and intentionally attempting to unlawfully dispense or distribute a Schedule II controlled substance in violation of 21 U.S.C. 841(a)(1) and 846. Dr. Daniel as arrested on November 10, 1987, and was held without bond until January 1988 when he was released on $200,000.00 bond.

On Feburary 22, 1988, Dr. Daniel was scheduled to appear for trial in the United States District Court for the District of Maryland, however, he failed to appear. DEA declared Dr. Daniel a fugitive from justice on Feburary 24, 1988. Attempts to locate Dr. Daniel have been unsuccessful.

The Administrator concludes, based upon the conduct described above, that the continued registration of Dr. Daniel would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that Dr. Daniel's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AD2730706, previously issued to George C. Daniel,

M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective immediately.

Dated: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-12509 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-7]

Murray Pharmacy, Denial of Application

On December 15, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Murray Pharmacy, Ogden, Utah (Respondent), proposing to deny the pharmacy's application for registration executed on February 23, 1987. The statutory basis for the denial is that the registration of the pharmacy would be inconsistent with the public interest based upon the conviction of LaMoine F. Murray, owner of Murray Pharmacy, in the United States District Court for the District of Utah on January 13, 1983, for omitting material information from required documents, a felony relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause in a letter dated January 14, 1988. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On January 21, 1988, Judge Bittner issued an order directing the agency to file a prehearing statement on or before February 10, 1988, and Respondent to file a prehearing statement on or before March 2, 1988. In the Order for Prehearing Statements, Judge Bittner stated that, "Respondent is cautioned that failure to timely file a prehearing statement as directed above may be considered a waiver of hearing and an implied revocation of a request for hearing." Agency counsel timely filed its prehearing statement, however, Respondent never submitted such a filing. Judge Bittner terminated the proceedings by order dated March 29, 1988. The Administrator finds that Respondent pharmacy has waived its right to a hearing by failing to file its prehearing statement, and now enters his final order in this matter without a hearing and based on the record before him. 21 CFR 1301.57.

The Administrator finds that LaMoine F. Murray, R.Ph. is the owner of Respondent pharmacy. Mr. Murray was convicted on January 13, 1983, in the United States District Court for the District of Utah of two counts of omitting material information from required documents in violation of 21 U.S.C. 843(a)(4)(A), felonies relating to controlled substances. This conviction arose from an investigation which revealed that from September 1981 through May 1982, Mr. Murray provided controlled substances to a young woman in exchange for sexual favors. An audit of Respondent pharmacy disclosed a shortage of Percodan tablets. Respondent's controlleld substance records were not complete and accurate. He did not have prescriptions for the controlled substances that he provided to the young woman.

The DEA Certificate of Registration for Respondent pharmacy was revoked effective August 22, 1984. 49 FR 29686 (1984). On March 26, 1985, the Utah Division of Registration, Board of Pharmacy, revoked Respondent's license as a dispensary of controlled substances. Respondent was without authority to handle controlled substances in the State of Utah. On January 7, 1986, Respondent pharmacy submitted an application for registration to DEA. This application was denied, without a hearing, based on Respondent's lack of state authority to handle controlled substances. 52 FR 7672 (March 12, 1987).

Effective February 9, 1987, Respondent pharmacy's license as a dispensary of controlled substances was reinstated by the Director of the Division of Occupational and Professional Licensing of the State of Utah. The license is in probationary status for three years.

The Administrator finds that although Respondent pharmacy is now currently authorized to handle controlled substances in the State of Utah, neither Respondent nor Mr. Murray, its owner, have provided any mitigating evidence which would contrast with the nature of Mr. Murray's past conduct and his felony conviction relating to controlled substances. Without such evidence, the Administrator is compelled to conclude that registration of the pharmacy would be inconsistent with the public interest.

DEA has consistently held that the registration of a pharmacy may be revoked, suspended or denied as a result of the controlled substance handling practices of the pharmacy's owner, majority shareholders, officers, managing pharmacist or other key employee. See, *White's Best Buy Drugs*, Docket No. 87-41, 53 FR 7251 (1988); *Unarex of Plymouth Road, d.b.a. Motor City Prescription Center* and *Unarex of Dearborn, d.b.a. Motor City Prescription Center*, Docket Nos. 84-1 and 84-2. 50 FR 6077 (1985); *Bourne Pharmacy, Inc.*, Docket No. 83-32, 49 FR 32816 (1984); and cases cited therein. Respondent's owner, Mr. Murray, and convicted of a controlled substance-related felony. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that the application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration submitted by Murray's Pharmacy on February 23, 1987, be, and it hereby is, denied. Any other outstanding applications for registration submitted by Respondent are denied. This order is effective June 3, 1988.

Dated: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 12508 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-53]

James B. Rivers, D.M.D.; Revocation of Registration

On May 6, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to James B. Rivers, D.M.D. (Respondent) of 9355 Park West Boulevard, Knoxville, Tennessee 37923 proposing to revoke his DEA Certificate of Registration BR0321896 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration with the Drug Enforcement Administration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Nashville, Tennessee on November 3, 1987. On February 16, 1988, the Administrative Law Judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, Respondent filed exceptions to Judge Bittner's opinion and recommended ruling. On March 21, 1988, Judge Bittner

transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a practicing oral and maxillofacial surgeon. On May 31, 1983, the Health Related Boards Division of the Tennessee Department of Health and Environment (Health Related Boards) received information from the Tennessee State Board of Pharmacy that area pharmacists had reported that individuals of questionable character were presenting prescriptions written by Respondent for Schedule II controlled substances including Demerol, Percodan and Dilaudid. As a result of this information, on January 6, 1984, an investigator with the Health Related Boards questioned Respondent regarding these prescriptions. Respondent told the investigator that approximately two years earlier, he had begun treating an individual who, in his opinion, had legitimate medical problems, but who was also addicted to some type of narcotic. At the conclusion of the interview, the investigator advised Respondent that he may have violated Federal regulations by maintaining an individual's drug addiction. Respondent then stated that he would no longer treat the individual and did not anticipate prescribing any medication for him in the future.

In July and August 1984, the investigator received information from area pharmacists and from the Tennessee State Board of Pharmacy which indicated that Respondent continued to prescribe controlled substances to the individual. Respondent testified at the hearing in this matter that he prescribed controlled substances for the individual because the individual was harassing and intimidating Respondent and his family.

On April 21, 1985, Respondent retained an attorney to help him terminate the contact between himself and the individual. Respondent testified that the initial attempts by Respondent and his attorney to get the individual to leave Respondent alone were unsuccessful.

On October 4, 1985, the investigator with the Health Related Boards, who was then employed by DEA as an investigator, interviewed Respondent after determining that the DEA number which Respondent was using had been retired for approximately ten years. At this meeting, Respondent was advised of the procedures for applying for a new DEA Certificate of Registration. In addition, Respondent was told that he was not authorized to prescribe, dispense, administer or otherwise handle controlled substances and that should he do so, he would be intentionally violating Federal law. The investigator further advised Respondent that once he obtained a new Certificate of Registration, he could not prescribe controlled substances to a drug addict to maintain his addiction. Respondent admitted during the course of the interview that he knew that the individual was a drug addict and that he was maintaining the individual's addiction. Respondent noted that his attorney had been aware of the situation between Respondent and the individual for at least the previous six months.

After the investigator's visit on October 4, 1985, Respondent's attorney prepared a letter dated October 8, 1985, which Respondent gave to the individual. Among other things, the letter stated that, "Dr. Rivers' DEA number is no longer valid as of October 4, 1985, and he will not write any further prescriptions." On October 21, 1985, the investigator learned that a local pharmacy received a prescription written by Respondent for another individual for Tylenol #4, a Schedule III narcotic controlled substance.

On November 25, 1985, Respondent telephoned the investigator to ask whether he should list his retired DEA number when applying for the renewal of his state dental license. The investigator once again advised Respondent that he did not have a valid DEA registration. During this conversation, Respondent told the investigator that he was not prescribing controlled substances.

On April 30, 1986, Respondent's attorney filed a complaint and obtained an injunction against the individual. Respondent testified at the hearing that he had not seen the individual since the injunction was issued. Respondent introduced evidence at the hearing that in 1986 he advised a county prosecutor and the head of the Knoxville-Knox County Metro Drug Unit of his difficulties with the individual.

In December 1986, and January 1987, another DEA investigator conducted a survey of 14 of the 136 pharmacies in the Knoxville area. The investigation revealed that Respondent had written at least 11 prescriptions for controlled substances subsequent to October 4, 1985, when he was told he was not registered with DEA, but before March 11, 1986, when his new DEA Certificate of Registration was issued. A compilation of prescriptions found in the pharmacies surveyed revealed that Respondent had written prescriptions for over 17,000 dosage units of controlled substances, primarily Schedule II substances, between January 30, 1981 and March 21, 1986, all for the previously mentioned individual. These prescriptions were written not only in the individual's name, but also in names which Respondent admitted that he knew were fictitious.

The Administrative Law Judge concluded that Respondent's continued registration with DEA is inconsistent with the public interest. Respondent maintained the individual's drug addiction for at least five years. He often issued the individual prescriptions for controlled substances using fictitious names. Respondent continued to write prescriptions for controlled substances even after he was told that he was not authorized to do so.

Respondent testified that after his October 4, 1985 meeting with the investigator, he thought that his registration was in "limbo", and that he could continue to use his DEA number to issue prescriptions. The Administrative Law Judge stated in her opinion that she put no credence in this testimony. Judge Bittner noted that Respondent was not a particularly credible witness since he appeared to tailor much of his testimony to support his defenses rather than to present an accurate portrait of events. Second, the DEA investigator was a credible witness who testified that he specifically told Respondent on October 4, 1985, that he was not registered with DEA and therefore could not lawfully prescribe controlled substances. Third, any claim that Respondent did not understand the investigator's October 4, 1985 warning is contradicted by the statement in the letter written by Respondent's lawyer on October 8, 1985, which specifically stated that Respondent's DEA number was no longer valid and he would not write any further prescriptions for controlled substances. Finally, in November 1985, the investigator again told Respondent that he did not have a valid DEA registration.

Respondent contends that he wrote the prescriptions for controlled substances for the individual because the individual intimidated him. However, Judge Bittner noted in her opinion, that the purported "intimidation" went on for a substantial period of time before Respondent took meaningful steps to atempt to eliminate it.

The Administrative Law Judge concluded that the evidence presented in this matter demonstrates that

Respondent does not appreciate the enormous responsibility which accompanies DEA registration. Registrants under the Controlled Substances Act are required to prevent the diversion of controlled substances into the illicit market. Respondent's conduct reflects a failure to take adequate action to protect the public health and safety. Respondent has failed to provide any satisfactory assurance that a situation such as the one he alleges occurred with the individual is unlikely to recur. Judge Bittner noted that Respondent's failure to stop prescribing controlled substances as soon as he was advised that he had no authority to so prescribe indicates a cavalier attitude toward Federal regulation of controlled substances. Consequently, the Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. Respondent's registration must be revoked. The Administrator, in reaching this conclusion, carefully considered Respondent's exceptions to Judge Bittner's opinion. However, nothing in Respondent's exceptions persuaded the Administrator that Respondent should remain registered with DEA.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration BR0322180O, previously issued to James B. Rivera, D.M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective July 5, 1988.

Date: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-12510 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-40]

Carl Suchar, D.O.; Revocation of Registration

On March 31, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Carl Suchar, D.O. (Respondent) of 611 Orvid Road East, Suite 510, Clearwater, Florida 33516 proposing to revoke his DEA Certificate of Registration AS1718723 and to deny any pending applications for registeration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Adminsitrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Tampa, Florida on October 20 and 21, 1987. On February 23, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, Government counsel filed exceptions to Judge Young's opinion and recommended ruling and Respondent filed a repsonse to these exceptions. On March 25, 1988, Judge Young transmitted the record of these proceedings, including the Government's exceptions and Respondent's response thereto, to the Adminstrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on May 19, 1986, a confidential informant advised the Clearwater, Florida Police Department that since December 1985, she had been obtaining prescriptions for controlled substances from the Respondent in exchange for fulfilling his sexual fantasy wherein he wanted to be dominated by a female. The confidential informant stated further that she often met Respondent at his office after office hours. During each visit, Respondent would be chained to a chair wearing a locked chastity belt. On several occasions, Respondent wrote prescriptions for Tussionex, a Schedule III controlled substance, for the confidential informant. The confidential informant advised the Clearwater Police officers that Respondent also allowed her unlimited access to controlled substance samples that he had in his office.

Following the initial interview of the confidential informant, a detective went to area pharmacies to attempt to locate prescriptions written by Respondent for the confidential informant. He located several such prescriptions for Tussionex. Upon further investigation, it was learned that the confidential informant had altered several of these prescriptions to increase the number of dosage units.

On June 4, 1986, after agreeing to cooperate with the Clearwater Police Department, the confidential informant went to Respondent's office after office hours. When she arrived at his office, Respondent was chained to a chair. Respondent would not write the confidential informant a prescription for controlled substances since he felt that area pharmacists were getting suspicious of any prescriptions he wrote for her. However, Respondent did allow the confidential informant to take whatever she wanted from his controlled substance samples and further assured her that he would ask the drug company representatives to bring him samples of certain controlled substances which she indicated she wanted.

The confidential informant again went to Respondent's office on June 6, 1986. On this occasion she was accompanied by an undercover police officer who posed as her friend. When they arrived at Respondent's office, Respondent was chained to a chair wearing a locked chastity belt. The undercover officer and the confidential informant had access to Respondent's patient records and to Respondent's controlled substance sample. Both the confidential informant and the undercover officer filled their pockets and purses with controlled substance samples. During this visit, Respondent entered into a written slave contract with the confidential informant whereby he undertook to become her slave and agreed to do anything she requested. Also during this visit, Respondent wrote a prescription for Tenuate Dospan, a Schedule IV controlled substance, for the undercover officer for no legitimate medical purpose. Respondent wrote the prescription for twice the number of dosage units than he normally would so that the undercover officer and the confidential informant could share the drugs obtained pursuant to the prescription.

On June 18, 1986, a search warrant was executed at Respondent's office and he was arrested and charged with delivery of a controlled substance and failure to maintain required records both in violation of the laws of the State of Florida. At that time, Respondent admitted that he prescribed controlled substances for both the confidential informant and the undercover officer for no legitimate medical purpose. On January 19, 1987, Respondent entered a plea of *nolo contendere* to the criminal charges. Adjudication of guilt was withheld and Respondent was placed on three years probation and fined.

During the execution of the search warrant, a number of violations of Federal controlled substance laws and regulations were discovered. Respondent did not properly store controlled substances in violation of 21 CFR 1301.75. Respondent was not registered with DEA to handle Schedule III controlled substances, yet he maintained Schedule III controlled substance samples at his office, dispensed them and wrote prescriptions for them. Also, Respondent did not maintain any records of receipt of controlled substances in violation of 21 U.S.C. 827 and 21 CFR 1304.21.

Respondent suffers from a psychosexual disorder which requires long-term intensive treatment. Respondent is presently being treated by a psychiatrist for this disorder. Treatment will be required for at least two more years and could very well be required for ten years. Respondent's psychiatrist testified that in his opinion, Respondent can safely practice medicine and handle controlled substances. The psychiatrist's prognosis for Respondent's recovery is optimistic provided he continues treatment. Testimony also revealed that Respondent participates in the Impaired Professionals Program in the State of Florida.

Based on the evidence presented at the hearing, the Administrative Law Judge believes that there is little chance of Respondent repeating his previous behavior and, therefore, recommended that Respondent be permitted to remain registered with DEA, provided he continues in therapy and there are no further violations of drug control laws or regulations. The Administrative Law Judge specifically recommended that Respondent be permitted to retain his DEA Certificate of Registration, Schedule III included, provided that at six month intervals he provide the approriate DEA field office with a certification from his therapist that Respondent is still undergoing regular therapy and is making signficant progress towards recovery.

The Administrator agrees with the Administrative Law Judge's findings of fact, however disagrees with Judge Young's conclusion and recommended decision. Respondent prescribed and dispensed controlled substances for no legitimate medical purpose; failed to maintain required records relating to controlled substances; and handled Schedule III controlled substances when he was not authorized to do so. Respondent exhibited a total disregard for his duties as a health care professional to prevent the diversion of controlled substances. The egregiousness of his actions indicate a lack of awareness of the tremendous responsibility which accompanies DEA registration. The Administrator notes that Respondent is currently undergoing treatment for his psychosexual disorder. However, he has only been in treatment for one year and Respondent's psychiatrist testified that his treatment will take at the very least another two years. Respondent's progress in therapy to date is not sufficient to assure that he would not continue to be a danger to the public health and safety.

The Administrator concludes that at this time, Respondent's continued registration would be inconsistent with the public interest. After successful completion of treatment, the Adminstrator will give serious consideration to granting Respondent a DEA registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS1718723, previously issued to Carl Suchar, D.O., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective July 5, 1988.

Date: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-12511 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

Antitrust Division

Petroleum Environmental Research Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants of the Petroleum Environmental Research Forum ("PERF") Project No. 88-01, titled "Premix Surface Combustion (PSC) Burner Demonstration Program", have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to Project 88-01 and (2) the nature and objective of the research program to be performed in accordance with said project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in Project No. 88-01 together with the nature and objective of the research program are given below.

The current parties to Project 88-01 identified by this notice are: Atlantic Richfield Company; Chevron U.S.A. Inc.; and Union Oil Company of California. The objective of this project and its members and the area of planned activity in this project is to demonstrate the NO_x reduction capability of certain premix surface combustion burners and their mechanical and performance characteristics as retrofit burners in actual refinery heater service. Participation in this project will remain open until September 30, 1988, and the parties intend to file additional written notification disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from Chevron Corporation, P.O. Box 7141, San Francisco, California 94120-7141.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-12451 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extentions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Concrete, Concrete Forms, and Shoring
Occupational Safety and Health Administration
Recordkeeping
Businesses or Other Profit, Small Businesses or Organizations.
70,000 Responses; 11,667 Hours

Construction firms engaged in erection of concrete formwork are required to have a copy of the formwork plans or drawings available. The plans or drawings are necessary to provide detailed specifications and instructions for erecting the formwork. Failure to follow the plans or drawings may result in a formwork collapse.

Signed at Washington, DC this 31st day of May, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-12573 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-20, 370AT]

Health-Tex, Inc., Cranston, RI; Termination of Certification of Eligibility To Apply for Adjustment Assistance

In accordance with section 223(d) of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-20, 370A-T: investigation regarding termination of certification of eligibility to apply for worker adjustment assistance as prescribed in section 223(d) of the Act.

On March 29, 1988 workers at the Cranston office and warehouse in Cranston, Rhode Island were certified as eligible to apply for trade adjustment assistance. The Notice of Certification was pubished in the Federal Register on April 11, 1988 (53 FR 11921).

The investigation regarding termination was initiated on April 27, 1988 to determine whether the workers at the subject location continue to meet the group eligibility requirements of section 222 of the Act. The Notice of Investigation was published in the Federal Register on May 9, 1988 (53 FR 16478). No public hearing was requested and none was held.

Whenever, it becomes evident that any of the Group Eligibility Requirements of section 222 of the Trade Act of 1974 are no longer met, the certification as issued must be revised to include a termination date.

Without regard as to whether the other criteria are satisfied, the investigation reveals that the decreased employment criterion of the Group Eligibility Requirements of the Trade Act of 1974 is no longer being met with respect to workers of Health-Tex, Inc., Cranston, Rhode Island.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that the total or partial separation of workers at the Cranston office and warehouse of Health-Tex, Inc., Cranston, Rhode Island are no longer attributable to the conditions specified in section 222 of the trade Act of 1974.

In accordance with section 223(d) of the Act, I hereby revise the certification of March 29, 1988 as follows:

All workers of Health-Tex, Incorporated, in Cranston, Rhode Island who became totally or partially separated from employment on or after December 23, 1986 and before June 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-12572 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-30-M

Apprenticeship 2000 Initiative Research Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor's Employment and Training Administration announces a program of research in support of its Apprenticeship 2000 initiative. The research plan includes both short term issue papers and longer-term projects. The research is a major component in the Department's review of the apprenticeship training concept to determine its most effective role in meeting future needs for a highly skilled work force.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Acting Director, Bureau of Apprenticeship and Training, Employment and Training Administration, Room N-4649, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 535-0540.

SUPPLEMENTARY INFORMATION: The Department of Labor has devoted substantial resources over the last two years to identifying changes in the work place that are likely to occur during the remaining years of this century and into the next. From this effort, the Employment and Training Administration (ETA) is focusing on issues relating to the American work force and its training needs.

The Apprenticeship 2000 initiative is a review of the apprenticeship training concept to determine its proper and most effective role in meeting future skilled training needs. The basic premise is that the apprenticeship concept of structured on-the-job training combined with related classroom instruction merits serious consideration as a major vehicle for preparing workers for skilled jobs.

Two key components of this initiative are (1) a public dialogue and (2) a two phased research program. The first phase consists of short term research papers; the second phase will involve longer-term projects.

The purpose of the first phase of the research program is to carefully analyze a number of key issues and to develop and support recommendations for the future direction of apprenticeship. These short-term projects will be completed in time for use in preparing the report of findings and recommendations which will conclude the first stage of the initiative. They will be more in the nature of research papers rather than traditional quantitative research.

The second phase of the research program, the longer-term projects, will likely be demonstration projects and may include such features as testing the feasibility of expanding apprenticeship to new industries, testing alternative delivery systems, and testing expansion to targeted groups. The exact nature of the longer-term projects depends upon the findings and recommendations from the first stage of the initiative.

Specific topics for the shorter-term research have been identified. To help focus both the research and the next stages of the apprenticeship review, three broad objectives have been identified. These objectives were developed after reviewing public comments received in response to two earlier Federal Register notices. They are intended to be working guidelines rather than outcomes of the apprenticeship review. Each objective with related issue papers follows:

Objective 1: Develop an expanded apprenticeship program which is adaptable to new occupations and expanding industries.

- Examine issues relating to expansion of apprenticeship to other industries.
- Review issues and barriers relating to women in apprenticeship.
- Examine the issue of how many apprentices should be assigned to any one journeyman on a site.
- Examine the reasons why individuals drop out or only partially complete apprenticeship training.
- Review the financial and non-financial incentives that might be used to encouraged expansion of apprenticeship.

Objective 2: Create a program structure which encompasses consistent standards as well as high-quality, flexible, portable, variable length and competency-based apprenticeship programs.

- Review current types of apprenticeship training programs to identify best features which could be adapted to new programs.
- Examine the feasibility of developing variable length apprenticeship programs which include copetency-based features and the acceptability/credibility associated with existing apprenticeship programs.
- Examine the issues around making apprenticeship credentials transferrable across programs and state lines.
- Review the current role of the Bureau of Apprenticeship and Training in accrediting apprenticeship programs and the accrediting methods used by other education and training systems and examine ways in which the apprenticeship accreditation process could be strengthened.
- Determine the feasibility of using the apprenticeship concept in upgrading or retraining workers at various points in their careers.

Objective 3: Develop a delivery and oversight structure to effectively carry out alternatives developed as a result of the apprenticeship initiative.

- Explore the feasibility of using the vocational education system as a school-based feeder mechanism for existing and expanded apprenticeship training.
- Examine the Bureau's role in Equal Employment Opportunity (EEO) enforcement in apprenticeship programs which are already covered under other EEO enforcement activities and determine whether such responsibilities might be changed.
- Examine the current operations of the State Apprenticeship Councils and make recommendations for the changes necessary to promote expansion of the apprenticeship concept.

In addition to these very specific projects, the ETA plans to examine the basic authority for the national apprenticeship system—the legislation and regulations. Options for change will be identified. Any specific recommendations for change to either regulations or legislation will await the outcome of the public dialogue and the short-term research papers.

Work on the short-term research papers will begin in early summer and conclude in the fall of 1988. As indicated, these papers will be used to develop and support recommendations for the future role of apprenticeship in developing a highly skilled work force. Plans are to issue these recommendations in late fall in the form of a comprehensive report of findings and recommendations. Following issuance of the report, a phased-in implementation period combined with the longer term research projects will commence. These projects may last one or 2 years depending upon the project. Findings from the longer-term research could be implemented beginning in late 1990 or early 1991.

Signed at Washington, DC, this 31st day of May, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor for Employment and Training.

[FR Doc. 88-12568 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Addition to List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the labor surplus area list is effective June 1, 1988.

SUMMARY: The purpose of this notice is to announce an addition to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: TEESS; Telephone: 202-535-0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation (FAR) Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Orders 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation (FAR) Part 25 (48 CFR Part 25) implements Executive Order 12260. Executive agencies should refer to FAR Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Order 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor

surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 27, 1987, (52 FR 41338).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is added to the list of labor surplus areas, effective June 1, 1988.

The following addition to the list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on May 25, 1988.
Roberts T. Jones,
Acting Assistant Secretary of Labor.

ADDITION TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[June 1, 1988]

Labor surplus area	Civil jurisdiction included
Wisconsin: Door County	Door County

[FR Doc. 88-12567 Filed 6-2-88; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a party of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT88-1 (Jan. 8, 1988)—p. 62
New York:
NY88-11 (Jan. 8, 1988)—pp. 782-784; pp. 786-788
NY88-18 (Jan. 8, 1988)—p. 830
Rhode Island:
RI88-1 (Jan. 8, 1988)—p. 1018

Volume II:

Illinois:
IL88-1 (Jan. 8, 1988)—p. 70
IL88-3 (Jan. 8, 1988)—p. 114
Indiana:
IN88-1 (Jan. 8, 1988)—p. 237
IN88-2 (Jan. 8, 1988)—p. 249
IN88-4 (Jan. 8, 1988)—pp. 278-280
IN88-5 (Jan. 8, 1988)—pp. 291-292
IN88-6 (Jan. 8, 1988)—pp. 300, 304

Volume III:

California:
CA88-1 (Jan. 8, 1988)—p. 34
CA88-4 (Jan. 8, 1988)—pp. 70-102a

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
(202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of May 1988.
Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 88-12446 Filed 6-2-88; 8:45 am]
BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act fo 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a state plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the Federal Register (38 FR 21628) of the approval of the Alaska plan and the adoption of subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of state standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at leas as effective status of the state program, a program change supplement to a state plan shall be required.

In response to Federal standards changes, the state has submitted by letter dated May 21, 1981 form Edmund N. Orbeck, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, state standards revocation amendments comparable to 29 CFR Part 1910 Revocation of Selected General and Special Industry Safery and Health Standards, as published in the Federal Register (43 FR 49744) and (43 FR 49764) on October 24, 1978.

Regional review revealed discrepancies in the state's responses. On January 5, 1984, the submission was returned to the state for corrective action. On January 4, 1985, a corrective amendment which addressed OSHA's corrective amendments to the Revocation of Selected General and Special Industry Safety and Health Standards as appears in the Federal Register (43 FR 51750 and 51760) on November 7, 1978 was received by OSHA Region X. Regional and state review of the corrective amendment revealed discrepancies. On May 17, 1985, the submission was forwarded to the OSHA National Office for review. On August 21, 1985 the National Office directed that additional corrections be made.

On November 4, 1986, the state submitted a second corrective amendment to its revocations.

These state standards which were originally contained in Alaska Administrative Codes AAC 01. General Safety Code; AAC 02. Occupational and Industrial Structures Code; AAC 03. Electrical Code; AAC 04. Occupational Health and Environmental Control Code; AAC 11. Laundry Machinery and Operations Code; and AAC 12. Bakery Code, received OSHA approval during the state's developmental period commencing on April 25, 1973 through Certification on September 14, 1977.

The state's revocations were adopted on July 24, 1980 with an effective date of August 23, 1980 after public notification of the comment period was published in statewide media on June 16, 23, and 30, 1980. The public comment period was open for thirty days by Edmund N. Orbeck, Commisisoner, under authority vested by AS 19.60.020. No requests for a hearing were received. Subsequently, the state's Corrective Amendment was adopted on August 31, 1983 with an effective date of September 30, 1983 after public notification of the comment period was published in statewide media on February 25 and March 4, 1983. The public comment period was open for thirty days by Jim Robinson, Commissioner, under authority vested by AS 19.60.020. No requests for a public hearing were received.

On November 4, 1986, a second corrective amendment, adopted on May 10, 1985 with an effective date of June 9, 1985, was forwarded to Region X for inclusion in the state's submittal for revocations. Public notification for the comment period was published in the statewide media on March 6 and 13, 1985. The public comment period was open for thirty days by Jim Robinson, Commissioner, under authority vested by AS 19.69.020. No requests for a hearing were received.

The state has retained several of the OSHA revoked standards. They are: 1910.25(c)(1)(iii)(d)/AAC 01.1105(c)(1)(C)(iv), Stepladder Side Rail Computations; 1910.25(c)(5)(v)/AAC 01.1105(c)(5)(E), Ladder Locking Device; 1910.25(d)(1)(v)/AAC 01.1105(d)(1)(D) through 1910.25(d)(1)(ix)/AAC 01.1105(d)(1)(H), Care of Wooden Ladders; 1910.66(c)(7)(i)(a)/AAC 01.0203(c)(7)(A)(i), Sign Criteria; 1910.98(b)(5)/AAC 04.0105(b)(5), Calendar Quarters; 1910.106(h)(2)(i)/AAC 01.0306(h)(2)(A), Classification of Processing Vessels; 1910.109(a)(5)/AAC 09.109(a)(34), Definition of Inhabited Building; 1910.109(a)(9)/AAC 09.120(a)(53), Definition of Public Conveyance; 1910.109(a)(11)/AAC 09.120(a)(55), Definition of Railway; 1910.109(a)(20)/AAC 09.109(a)(20), Definition of D.O.T. Specifications; 1910.109(c)(3)(viii)/AAC 09.210(d)(2)(A)(viii), Explosive Magazine Security; 1910.109(d)(1)(ii)/AAC 09.230(a)(4), Transportation of Explosives; 1910.109(d)(2)(ii)/AAC 09.230(b)(2), Transportation of Explosives; 1910.109(e)(4)(i)/AAC 09.310(c)(2), Electric Blasting Caps; 1910.109(g)(2)(i)/AAC 09.410(b)(1), Mixing of Explosives; 1910.109(g)(6)(v)/AAC 09.230(a)(4), Transportation of Explosives; 1910.109(g)(6)(vii)/AAC 09.230(a)(1), Transportation of Explosives; 1910.109(g)(6)(viii)/AAC 09.230(b)(2), Transportation of Explosives; 1910.109(h)(3)(i)(a)/AAC 09.420(c)(1), Mixing of Explosives; 1910.109(h)(3)(i)(b)/AAC 09.420(c)(1), Mixing of Explosives; 1910.109(j)(3)(ii)/AAC 09.225(c)(2), Storage of Explosives; 1910.109(j)(4)(ii)/AAC 09.225(d)(2), Storage of Explosives; 1910.110(c)(5)(iv)(b)/AAC 01.0310(c)(5)(D)(ii), Liquid Petroleum Gas (LPG) Containers; 1019.141(c)(2)(ii)/AAC 02.106(c)(2)(B), Sanitation Facilities; 1910.141(c)(2)(iii)/AAC 02.106(c)(2)(C), Sanitation Facilities; 1910.157(a)(8)/AAC 01.1302(a)(8), Mounting of Fire Extinguishers; 1910.157(c)(1)(iii)/AAC 01.1302(c)(1)(C), Fire Extinguisher Requirements; 1910.160(c)(1)(iii)/AAC 01.1305(c)(1)(C), Inspection Reports; 1910.213(s)(10)/AAC 01.1803(s)(10), Maintenance of Band Resaws; 1910.217(a)(1), (a)(2) and (a)(3)/AAC 01.1807(a)(1), Mechanical Power Press Installation; 1910.219(b)(4)/AAC 01.0809(b)(4), Governor Balls; 1910.219(d)(5)/AAC 01.0809(d)(5) Composition and Wood Pulleys;

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1910.243(d)(3)(ii)/AAC 01.0903(d)(3)(B), Identification of Power Tool Loads; 1910.243 Table P–1/AAC 01.0903 Table 9–1, Identifiction of Caseloads; 1910.252(a)(5)(v)(b)/AAC 01.1002(a)(5)(E)(ii), Identification of Compressed Fuel Gas Hoses; 1910.252(a)(5)(vi)(d)/AAC 01.1002(a)(5)(F)(iv), Inspection of Regulator Fittings; 1910.252(c)(5)/AAC 01.1002(c)(5), Job Hazard Analysis; 1910.261(K)(23)/AAC 07.370(u)(1), Clearance of Stack Reels; 1910.264(f)(1)/AAC 11.110(b), Incorporation by Reference; 1910.265(c)(20)(iv)/AAC 07.215(v)(4), Sawmill Exhaust Pipe Criteria; 1910.266(d)(2)(ii)/AAC 07.180(d)(2)(B), Mobile Equipment Canopy Criteria; 1910.266(e)(1)(ii)/AAC 07.180(e)(1)(B), Flagman Requirement; 1910.266(e)(9), AAC 07.180(e)(d), Log Truck Binder Inspection.

The following standards were not amended in order to preserve certain protections and to be consistent with the state's retained standards: 1910.28(v)/AAC 01.1108(a), Scope of Scaffolding Section; 1910.109(b)(1)/AAC 09.110(b), Explosives Handling; 1910.109 Table H–21/AAC 09.210 Appendix A, Table of Distances; 1910.109(c)(1)(viii)/AAC 09.210(c)(5), Explosive Magazines; 1910.109(c)(2)(iii)/AAC 09.210(e)(20), Explosive Magazine Signs; 1910.109(c)(4)(iii)/AAC 09.210(d)(2)(B)(ii), Indoor Explosive Magazine Construction Criteria; 1910.109(c)(5)(viii)/AAC 09.210(e)(1), Explosive Magazine Competent Person; 1910.109(d)(3)(i)/AAC 09.230(c)(1), Transportation of Explosives; 1910.109(d)(3)(ii)/AAC 09.230(c)(2), Transportation of Explosives; 1910.109(e)(1)(iii)/AAC 09.310(a)(5), Blasting Protection; 1910.109(g)(5)(i)(c)/AAC 09.210(d)(2)(E), Transportation of Explosives; 1910.109(g)(5)(ii)(a)/AAC 09.410(d)(6), Storage of Explosives; 1910.109(g)(5)(iii)/AAC 09.410(e), Explosives Storage Supervision; 1910.109(g)(6)(ii)/AAC 09.230(c)(1), Transportation of Explosives; 1910.110(g)(1)/AAC 01.310(g)(1), Paragraph Application; 1910.252(a)(7)(ii)(c)/AAC 01.1002(a)(7)(B)(iii), Storage of Calcium Carbide; 1910.252(c)(3)(iii)/AAC 01.1002(c)(3)(C), Trolley Clevis Criteria; 1910.252(f)(1)(v)(b)/AAC 01.1002(f)(1)(E)(ii), Brazing with Cadmium; 1910.261(d)(4)(iv)/AAC 07.335(e)(5)(D), Portable Roll Chocks.

2. Decision

The above state standards have been reviewed and compared with the relevant Federal standards revocations. OSHA has determined that the state's standard continue to be at least as effective as the comparable Federal standards, as required by section 18(c)(2) of the Act. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska state plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of state law which included public comment and further public participation would be repetitious.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91–596, 84 Stat. 6106 (29 U.S.C. 667)).

Signed at Seattle, Washington this 15th day of December, 1987.

James W. Lake,

Regional Administrator.

[FR Doc. 88–12568 Filed 6–2–88; 8:45 am]

BILLING CODE 4510–26–M

Maryland State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18 (C) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated February 17, 1988, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.266(c) pertaining to revisions to Telecommunications Training Records as published in the **Federal Register** of September 28, 1987 (52 FR 36387); and (2) 29 CFR 1926.550, 1926.552 and 1926.703 pertaining to revisions to the Construction Industry Test and Inspection Records as published in the **Federal Register** of September 28, 1987 (52 FR 36381). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after a public hearing on January 6, 1988. These standards were effective on February 22, 1988.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, Room N–3700, Third Street and Constitution Avenue, NW., Washington DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal Law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements or State law and further participation would be unnecessary.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667.)

Signed at Philadelphia, Pennsylvania this 1st day of March, 1988.

Linda R. Anku,

Regional Administrator.

[FR Doc. 88–12569 Filed 6–2–88; 8:45 am]

BILLING CODE 4510–26–M

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards, the State has submitted by letter dated January 27, 1988, from John A. Pompei, Administrator, Accident Prevention Division, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State rules OAR 437, Division 307, comparable to 29 CFR Part 1917, Marine Terminals, as published in the **Federal Register** (48 FR 30886) on July 5, 1983 and as amended and published in the **Federal Register** (49 FR 28550) on July 23, 1984.

Regional review of Oregon's initial submission, dated March 30, 1984, revealed several discrepancies. The submission was returned to the State for corrections on May 20, 1984.

On October 17, 1984, the State submitted a corrective amendment in response to Federal OSHA's amendment appearing in the **Federal Register** (49 FR 28550) on July 23, 1984. The corrective amendment did not address the identified discrepancies of the March 30, 1984 initial submission.

On March 13, 1985, the State submitted its second corrective amendment addressing an error in the State's scope of coverage of its Marine Terminals rules. This second corrective amendment did not address the identified discrepancies of the March 30, 1984 initial submission. Subsequently, on March 27, 1986, the State's submissions were forwarded to the OSHA National Office for review. On June 18, 1986, the National Office directed that additional corrections be made.

The State's initial submission was adopted and made effective on January 23, 1984 after the notice of proposed amendment of rules was mailed on January 5, 1984 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–60–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for a public hearing.

The State's first corrective amendment was adopted on September 24, 1984 with an effective date of September 25, 1984 after the notice of proposed amendment of rules was mailed on August 10, 1984 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–60–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for public hearing.

The State's second corrective amendment was adopted on February 22, 1985 with an effective date of March 1, 1985 after the notice of proposed amendment of rules was mailed on December 31, 1984 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–60–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for public hearing.

On January 27, 1988, a third corrective amendment, adopted on December 18, 1987 with an effective date of December 31, 1987, was forwarded to Region X for inclusion in the State's submittal for OAR 437, Division 307, Marine Terminals after the notice of proposed amendment of rules was mailed on August 26, 1987 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–60–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for public hearing.

2. Decision

Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standard is substantially identical. The State standard contains some differences that are related to the scope of coverage, incorporation of the State rules numbering system, references to other State rules, and editorial changes. The State standard covers only public sector employment in marine terminal operations, in accordance with the scope of the State's authority, as specified in its Operational Status Agreement. The above standard has been reviewed and compared with the relevant Federal standard. OSHA has determined that the State standard is at least as effective as the comparable Federal standard, as required by section 18 (c)(2) of the Act. OSHA thereby approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Board, Labor

and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The State's rules are at least as effective as those amended by the Federal standard which were promulgated in accordance with Federal law including meeting requirements for public participation. The standards were adopted in accordance with the procedural requirement of State law which included opportunity for public hearings and comment and further public participation would be repetitious.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington this 11th day of March 1988.

James W. Lake,

Regional Administrator.

[FR Doc. 88-12570 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-26-M

Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as state Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adoption by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.
5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OHSA publication in the Federal Register, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to Federal review and approval. By letter dated February 3, 1988, from John T. Chambers, Assistant Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's Construction Standards (29 CFR 1926.58: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Corrections and Information Collection Requirements Approval, 52 FR 17752, May 12, 1987).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, Section 27-11-105(a)(viii).

State standards for 29 CFR 1926.58: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite were adopted by the Health and Safety Commission of Wyoming on August 14, 1987 (effective October 13, 1987), pursuant to Wyoming Statute 1977, Section 27-11-105. The State standards on Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite are substantially identical to the federal standards action, with the only exceptions being paragraph numbering and minor wordage appropriate only to the Wyoming statutes.

2. Decision

The above State Standards have been reviewed and compared with the relevant Federal Standard. It has been determined that the State standards are substantially identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado this 3d day of March, 1988.

Byron R. Chadwick,

Regional Administrator.

[FR Doc. 88-12571 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

Copyright Office

[Docket RM 88-5]

Compendium of Copyright Office Practices

AGENCY: Copyright Office, Library of Congress.

ACTION: Invitation to comment.

SUMMARY: This is to invite written comment by the public on two new chapters of the Compendium of Copyright Office Practices which the Copyright Office intends to issue.

DATE: Written comments on the proposed chapters should be received on or before August 2, 1988.

ADDRESSES: The location in the Copyright Office where the proposed new chapters are available for public inspection and copying is Room LM-401 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, DC.

Ten copies of written comments should be addressed if sent by mail to: Richard E. Glasgow, Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, Room LM-407 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard E. Glasgow, Assistant General Counsel, Copyright Office, Library of Congress, Washington, DC. 20559. Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Copyright Office intends to amend the Compendium of Copyright Office Practices, designated as Compendium II, by adding thereto two new chapters: Chapter 600 entitled REGISTRATION PROCEDURES and Chapter 1900 entitled RECORDS, INDEXES, AND DEPOSITS OF THE COPYRIGHT OFFICE; INSPECTION, COPYING, ADDITIONAL CERTIFICATES, AND OTHER CERTIFICATIONS.

Chapter 600 and Chapter 1900 are available for public inspection and copying at the Copyright Office. Following the expiration of the comment period, the Copyright Office intends to consider any comments received, make such changes as are appropriate, and issue the new chapters as a part of Compendium II. Copies of Compendium II are available for purchase from the Superintendent of Documents, United States Government Printing Office, as a looseleaf publication. The new chapters will be published by the Superintendent of Documents in the form of additions to Compendium II.

Dated: May 25, 1988.

Ralph Oman,

Register of Copyrights.

[FR Doc. 88-12547 Filed 6-2-88; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on these infomation collections must be submitted by July 5, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administration Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Adminstrative Serivces Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revisions of two currently approved collections. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Dance Application Guidelines for FY 1990.

Frequency of collection: One time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated number of respondents: 1,100.

Estimated hours for respondents to provide information: 14,230.

Title: Literature Application Guidelines for FY 1990.

Frequency of collection: One time.

Respondents: Individuals and households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated number of respondents: 2,078.

Estimated hours for respondents to provide information: 6,005.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-12466 Filed 6-2-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-3055; License No. SNM-1981]

Georgia Power Co. et al., Burke County, Georgia; Finding of No Significant Impact, Issuance of Special Nuclear Material

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1981 to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the applicants) for the Vogtle Electric Generating Plant, Unit 2, located in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action: The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear material in the form of unirradiated fuel assemblies. In addition, the license would authorize the applicants to receive, possess, inspect, and use fission chambers containing enriched U-235. Because the fission chambers are sealed and contain only small amounts (gram

quantities) of nuclear material, storage and use of these materials will pose no threat to the environment. Therefore, the discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel at Vogtle, Unit 2.

The Need for the Proposed Action: The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel and to finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action: Once at Vogtle, Unit 2, the new fuel may be temporarily stored in its shipping containers prior to placement in the designated storage locations: The new fuel storage racks and the spent fuel storage racks located in the fuel handling building. No more than 40 loaded shipping containers will be temporarily stored at one time in the receiving area of the auxiliary building. This temporary storage of assemblies in their shipping containers will present no significant environmental impact or significant radiation exposure to plant workers.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for external contamination. The fuel is then transferred to its designated location. Criticality safety in the storage locations is maintained by limiting interaction between adjacent fuel assemblies. The staff has evaluated the new fuel area and the spent fuel pool and found both to be critically safe for all conditions of water moderation and/or reflection. The design of these storage locations, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel either under normal or abnormal conditions.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For a low-enriched uranium fuel bundle (<4 percent U-235 enrichment), the exposure rate at 1 foot from the surface is normally less than 1mR/hr; therefore, it is estimated that the exposure level of workers handling the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. Because of the low radiation exposure levels associated with the requested materials and activities and GPC's radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupational dose to workers or radiological impact to the environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packing material) is expected to be generated during fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

In the event that assemblies must be returned to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR Part 71. The package used for transport of the assemblies meets NRC approval requirements for normal conditions of transport and hypothetical accident conditions. No significant external radiation hazards are associated with the unirradiated assemblies because the radiation level from the clad fuel pellets is low and because the shipping packages must meet the external radiation standards in 10 CFR Part 71. Therefore, any shipment of unirradiated fuel by the applicants or any other authorized party is expected to have an insignificant environmental impact.

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is highly unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

Conclusion: The environmental impacts associated with the handling and storage of new fuel at Vogtle, Unit 2, are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action: The principal alternatives would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at Vogtle, Unit 2. Although denial of the special nuclear material license for Vogtle, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–1087) dated March 1985 related to this facility.

Agencies and Persons Consulted: The Commission's staff reviewed the applicants' request of January 22, 1988, and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM–1981. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the January 22, 1988 application related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland this 26th day of May, 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-12467 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3 located in Oconee County, South Carolina.

The proposed amendments would revise the Station's current Technical Specifications (TS) to include operability and surveillance requirements for inadequate core cooling (ICC) instrumentation. The proposal includes revisions to the Table of Contents, Limiting Conditions for Operation and surveillance of ICC instrumentation.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II–3; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice of public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 15, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 27th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12468 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 45 to Facility Operating License No. NPF–35 and Amendment No. 38 to Facility Operating License No. NPF–52 issued to Duke Power Company, et al. (the Licensee) which revised the Technical Specifications for operation of the Catawba Nuclear Station, Units 1 and 2 (the facility) located in York County, South Carolina. The amendments were effective as of the date of issuance.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the Federal Register on April 20, 1988 (53 FR 14874). No request

for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 19859) related to the action and has concluded that an environmental impact statement is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to the action see (1) the application for amendments dated March 23, 1988, (2) Amendment No. 45 to License No. NPF-35 and Amendment No. 38 to License No. NPF-52 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Caroline 29730. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 27th day of May 1988.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12469 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment To Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The amendment would change §§ 3.2, 4.2 and 6.9 of the Technical Specifications to reflect the use of an enriched sodium pentaborate solution in the Standby Liquid Control System (SLCS).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designed by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 200 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 10, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 27th day of May, 1988.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12490 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-57 and NPF-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The licensee proposes to amend the Technical Specifications (TS) in response to Generic Letter 88-06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements." The proposed amendment replaces TS Figure 6.2.1-1, "Offsite Organization," TS Figure 6.2.2-1, "Unit Organization," and Environmental TS Figure 5.2-1, "Organization Structure Related to Environmental Activities" with more general organization requirements. These general requirements capture the essential organizational aspects that are contained in the TS Figures 6.2.1-1, and Environmental TS Figure 5.2-1.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change involves no physical alteration of the plant or changes to setpoints or operating parameters. The change does not affect operation, maintenance, or testing of the plant. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. A new or different kind of accident could therefore not result.

3. The proposed change does not significantly reduce a margin of safety. The general organization requirements being added to the Technical Specifications will assure that those organizational features necessary for safe plant operation will continue to be maintained. Details of the organizational structure will be maintained in the Final Safety Analysis Report and updated regularly. Margins of safety are therefore not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission to determine that the proposed change involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearings. Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC the filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall

be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street NW Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street NE, Atlanta, Georgia 30043, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 27th day of May 1988.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Project Directorate II-3, Division of Reactor Projects, I/II.

[FR Doc. 88-12401 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-68, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensee), for operation of the Vogtle Electric Generating Plant, Unit 1, located in Burke County, Georgia.

The licensee proposes to amend the Technical Specifications (TS) by replacing TS Figure 6.2-1, "Offsite Organization" with more general organizational requirements. These general requirements capture the essential aspects of the organizational structure that are defined by the TS Figures 6.2-1, and 6.2-2. These changes are consistent with the guidance provided in Generic Letter 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements." This amendment request was dated May 6, 1988, and supersedes the amendment request dated December 28, 1987 noticed in the Federal Register on March 9, 1988 (53 FR 7592).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change involves no physical alteration of the plant or changes to setpoints or operating parameters. The change does not affect operation, maintenance, or testing of the plant. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. A new or different kind of accident could therefore not result.

3. The proposed change does not significantly reduce a margin of safety. The general organization requirements being added to the Technical Specifications will assure that those organizational features necessary for safe plant operation will continue to be maintained. Details of the organizational structure will be maintained in the Final Safety Analysis Report and updated regularly. Margins of safety are therefore not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject faiclity operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition shall specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no signficant hazards consideration, the Commission may issue the amendment and make it effective, nowithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstnaces change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Burke County Public Library, 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 27th day of May, 1988.

For the Nuclear Regulatory Commission.
Jon B. Hopkins,
Project Manager, Project Directorate I/II, Division of Reactor Projects, I/II.
[FR Doc. 88-12408 Filed 6-2-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-388]

License; Issuance of Amendment to Facility Operating License; Pennsylvania Power and Light Co.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 49 to Facility Operating License No. NPF-22, issued to Pennsylvania Power and Light Company (the licensee), which revised the Technical Specifications for operation of the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

The amendment was effective upon startup following Unit 2 second refueling outage expected in May 1988 except for those changes which have been marked (*) to indicate that they will be effective upon startup following Unit 2 third refueling outage expected at the end of November 1989.

The amendment modified the SSES, Unit 2 Technical Specifications' Table 3.6.3-1 related to "Primary Containment Isolation Valves."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the Federal Register on March 17, 1988 (53 FR 7985). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 23, 1987, and supplemented March 11 and 24, 1988 (2) Amendment No. 49 to License No. NPF-22, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 24th day of May 1988.

For the Nuclear Regulatory Commission.
Walter R. Butler,
Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation
[FR Doc. 88-12403 Filed 6-2-88; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25753; File No. SR-MSE-88-4]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Increased Floor Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

MSE is proposing to increase the monthly trading floor space rental and equipment fees. The proposal would also establish two new fees for post space and booth space.[1]

[1] In its filing, the MSE included the proposed schedule of fees which is available from the Commission at the address noted in Section III below or from the MSE.

II. Self-Regulatory Organization's Statement on the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purposes of, and Statutory Basis for, the Proposed Rule Change

The MSE has revised its schedule of fees for trading floor space and equipment rental. The floor rental fees are based on actual floor space costs, including rent and utilities. The new monthly charges for the equipment will pass through to members who use the equipment the actual maintenance costs and provide for approximately 50% of the actual cost of the equipment. In general, the revised fees will more accurately reflect the actual costs of the equipment and space.

The revised fee schedule is consistent with Section 6 of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSE's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-88-4 and should be submitted by June 24, 1988.

IV. Commission Findings and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(4) in that the proposed fees constitute an equitable allocation of reasonable fees among members and member firms using its facilities. As noted above, the increased and new fees are related to the acutal cost of equipment and space on the MSE floor. The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 25, 1988.

Jonathan G. Katz,
Secretary.
[FR Doc. 88-12473 Filed 6-2-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

May 26, 1988

The Midwest Stock Exchange, Inc. ("MSE") on May 6, 1988, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-3490	DRAM	Micron Technology Inc. Common, $.10 Par Value.
7-3491	ORCL	Oracle Systems Corp. Common $.01 Par Value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-3482	PGULF	Pegasus Gold, Inc. Common No Par Value.
7-3483	SHON	Shoney's Inc. Common $1.00 Par Value.

The MSE applied to withdraw UTP on Pegasus Gold, Inc. because it was recently listed on the American Stock Exchange and is thus ineligible to be traded on a UTP basis. The MSE applied to withdraw UTP in Shoney's Inc. because the issuer will soon undergo a recapitalization that will significantly reduce the value of the security.

Comments

Interested persons are invited to submit on or before June 16, 1988, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are requested to address whether they believe the requested withdrawal of UTP would be consistent with section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under section 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 88-12479 Filed 6-2-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-25754; File No. SR-NYSE-88-15]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has established fees for its new Trading Floor Telephone System that will become effective immediately on filing with the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At the turn of the century, concomitant with the construction of a new Trading Floor, the Exchange installed telephones in the booth spaces of members and member organizations located around the periphery of the Floor. These telephones were designed

for the Exchange for its particular needs associated with the operation of the Floor and could accommodate up to four private telephone lines. Each instrument was equipped with dual handsets so that two people could talk on the same or different lines at the same time.

Some 25–30 years ago, as volume on the Exchange increased, the Exchange had new telephones designed that could handle first five, and then six private lines with dials or touch-tone "pads" as an optional, add-on feature. However, six lines per space was found to be incapable of meeting the needs of the Exchange's membership in terms of communication. To help meet these needs, the Exchange installed two telephones in a space when requested to do so by the space holder.

In the fall of 1985, the Exchange appointed a number of committees to look at all aspects of systems and operations for its new trading area known as the "Expanded Blue Room" (EBR) which was opened in January of this year.

In recognizing the fact that its telephone system was not adequate to meet the needs of the membership and the anticipated volume that was forecast for the future, it appointed a Communications Committee to review previous telephone designs and the needs of members who handle specific types of brokerage business, including retail, institutional, arbitrage and hedging functions. The result of this committee's work and the Exchange staff's own efforts has been to design a totally new telephone system that will replace an interim telephone system in the EBR beginning in mid-August of this year, and eventually replace all of the telephones used at the booth spaces and Trading Posts in the other three trading areas.

Up to the present time, the Exchange has provided a telephone instrument at no cost to a spaceholder. Because of the significant research, development and anticipated operational costs associated with the new telephone system, the Exchange can no longer underwrite the cost of the Trading Floor telephone system and proposes to implement appropriate charges for it. If approved, these charges will apply to both the interim telephone system operating in the EBR and the new system as it is expanded to the remainder of the Floor.

Some of the salient features of the new Trading Floor Telephone System are as follows:

- Rugged case and electronics that can withstand heavy use
- 40-line capability
- Speed Dialing
- Keypad locking to prevent unauthorized use
- Conference Calling
- Adjustable volume control
- Handset Confidencer
- "Trouble Desk" to constantly monitor system operation
- Push-button "trouble key" eliminates the need to utilize a dial line to notify the "Trouble Desk" of a problem

The Exchange contends that, while members will be incurring new fees from the Exchange, if approved, they will achieve offsetting savings as a result of no longer having to pay outside vendors for many telephone services.

A list of the proposed charges is set forth below:

INSTRUMENT CHARGES

Instrument	Proposed monthly charge
30 Line Booth Phone	$160.00
5 Line Post Phone	20.00
Single Line Phone	10.00

Service Charges

Task	Proposed price[1]
Install Multi-Line Phone	$250.00
Install Single Line Phone	150.00
Move Multi-Line Phone in Booth	100.00
Move Single Line Phone in Booth	50.00
Relocate Multi-Line Phone	300.00
Relocate Single Line Phone	100.00
Remove Phone	50.00
Program Multi-Line Phone	50.00
Install Volume Control Handset	[2] 125.00
Install Phone Handset Confidencer	[3] 75.00
Install Phone Line	100.00
Rewire Phone Line	150.00
Disconnect Phone Line	50.00
Install Bridged Line Appearance	150.00
Remove Bridged Line Appearance	50.00
Change Phone Line Subscriber	50.00
Damaged Phone Equipment	[4] 0
Miscellaneous Telephone Charge	[5] 0

(1) The Exchange will make all efforts to perform services during the hours covered by the maintenance contract, however, tasks performed during over-time hours will be billed at a rate of 25% above the normal service charge.
(2) Includes price of handset.
(3) Includes price of confidencer.
(4) Cost of equipment plus 33% (plus labor when applicable).
(5) To be billed at $60 per hour in 15 minute increments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–88–15 and should be submitted by June 24, 1988.

IV. Commission Findings and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(4) in that it constitutes an equitable allocation of reasonable charges among the members of the Exchange using the improved telephone facilities. We also note that previously members had to pay outside vendors for servicing of telephones and equipment. Under the proposed rule, the NYSE will now be providing these services, for a fee, to members.

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12474 Filed 6–2–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Lawter International, Inc.
Common Stock, $1.00 Par Value (File No. 7–3478)

Lincoln National Convertible Securities Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7–3479)

La Quinta Motor Inns, Inc.
Common Stock, $0.10 Par Value (File No. 7–3480)

Liggett Group, Inc.
Common Stock, $0.10 Par Value (File No. 7–3481)

Lomas Mortgage Corporation
Common Stock, $0.01 Par Value (File No. 7–3482)

Luby's Cafeterias, Inc.
Common Stock, $0.32 Par Value (File No. 7–3483)

MAI Basic Four, Inc.
Common Stock, $0.25 Par Value (File No. 7–3484)

MEI Diversified, Inc.
Common Stock, $0.05 Par Value (File No. 7–3485)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 15, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12477 Filed 6–2–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Foote, Cone & Belding Communications, Inc.
Common Stock, $0.33 ⅓ Par Value (File No. 7–3486)

The Marcade Group, Inc.
Common Stock, $0.10 Par Value (File No. 7–3487)

Mark IV Industries, Inc.
Common Stock, $0.01 Par Value (File No. 7–3488)

McLean Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–3489)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 15, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12478 Filed 6–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25747; File No. SR–Phlx–88–3]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposal Rule Change

On January 28, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a rule change that would amend the Exchange's Rule 722, which establishes the maintenance margin [3] requirements for margin accounts.[4]

The proposed rule change was noticed in securities Exchange Act Release No. 25416, 52 FR 7617 (March 9, 1988). No comments were received on the proposal.

The proposal is designed to conform Rule 722 with the 1984 revisions to Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T")[5], and to coordinate with the recently approved New York Stock Exchange ("NYSE") proposed revision to its margin rule, NYSE Rule 431.[6] The changes to Phlx Rule 722 track those recently approved by the Commission with regard to NYSE Rule 431.

The Phlx's proposal does not affect customer initial [7] or maintenance

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240. 19b–4 (1988).

[3] Maintenance margin is the amount of equity required to be maintained in a customer's account, and will fluctuate depending on market value of the securities in the account.

[4] Subsequent to its initial filing, the Phlx made some clarifying modifications to the proposal. *See* letter to Sharon L. Itkin, Staff Attorney, Division of Market Regulation from Michele R. Berkowitz, Staff Counsel, Philadelphia Stock Exchange, Inc. (February 29, 1988).

[5] 15 CFR Part 220 (1988). Regulation T establishes the amount of credit that can be extended by broker-dealers for purchases and short sales of securities, other than exempted securities.

[6] *See* SR–NYSE–88–4, Release No. 34–22875, (February 27, 1987).

[7] Initial margin is the amount of equity required to be deposited in a customer's account upon purchase or short sale of a security.

margin requirements for equity securities; those remain at 50% and 25% of market value, respectively. The proposal modifies maintenance margin requirements for debt securities, including U.S. government securities, municipal securities, and non-convertible corporate debt securities.

The proposal would change the current maintenance margin requirement on U.S. government obligations from 5% of principal amount of the obligation to a sliding scale of 1% to 6% of the current market value of the obligation based on maturity date.[8] In addition, zero coupon bonds with five years or more to maturity would have a minimum requirement of 3% of the principal amount.

Maintenance margin requirements for municipal securities, currently the lower of 25% of market value or 15% of principal amount, would be changed to the greater of 15% of the current market value of 7% of the principal amount.[9] This change would lower margin requirements for municipal securities purchased below par and raise the requirements for those purchased above par.

The proposal would change the margin requirements for noncovertible corporate debt securities from the current 25% of market value to the greater of 20% of market value or 7% of principal amount.[10] In addition, the proposal would provide for specific margin requirements for Mortgage Related Securities.[11] As stated in the approval order for the NYSE's proposal, these privately issued Mortgage Related Securities are not eligible for lower maintenance margin rate for government securities. Therefore, like the NYSE, Phlx now proposes to establish a margin requirement of 5% of market value for Mortage Related Securities that are carried in certain exempt accounts as defined by the rule. For mortgage-back securities that do not meet the statutory definition, or those not carried in defined exempt accounts, the maintenance margin rates for noncovertible corporate debt securities would continue to apply.

The proposal also would permit the use of accrued interest as an offset to the maintenance margin required to be maintained for exempted securities and marginable corporate debt.

Further, the proposal would impose a net capital deduction on member firms when one or more accounts is guaranteed by another account and the margin deficiences guaranteed by any guarantor are in excess of 10 percent of the member organization's excess net capital.[12]

The Phlx proposal also amends the requirements for collection of margin deficiencies in customer accounts. Currently, section (c)6 of Rule 722 provides that the required amount of maintenance margin must be obtained * * * "within a reasonable time." The Exchange proposes to change section (c)6 to provide that the required maintenance margin be obtained within 15 business days of the date of the deficiency, unless the Phlx has granted an extension of time.

Additionally, the proposal provides for a Section (e) which would define specific terms used in the Rule at the end of the rule rather than within the text itself. Finally, the Exchange proposes to reword the rule where appropriate to conform to the Current Regulation T.

The Exchange states that because most of the significant changes relate to margin on debt securities, the proposed amendments to rule 722 do not strongly impact products traded on the Phlx. Therefore, the Phlx believes that these amendments should not impose any significant effect on members at this time. Nevertheless, the exchange has provided that voluntary compliance with the proposal will be permitted 3 months after Commission approval of the rule change and compliance will be mandatory 6 months after such approval.

The Phlx contends that the rule proposal is designed to protect investors and the public interest, and is consistent with section 6 of the Act by ensuring that margin requirements reflect current regulatory and credit risk concerns. In addition, the Exchange states that the rule change is consistent with section 7(a) of the Act and the rules and regulations of the Board of Governors of the Federal Reserve System enacted pursuant to that provision, in that it is designed for the purpose of preventing the excessive use of credit for the purchase or carrying of securities.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6, [13] and the rules and regulations thereunder. The proposal, virtually identical to current NYSE rules, generally would lower maintenance margin requirements for government, municipal and certain non-convertible corporate debt securities. The Commission believes that the proposed rates appear to be reasonable and to provide member organizations adequate protection against adverse short-term market movements of securities in customer margin accounts.

In addition, that portion of the proposal that would allow member firms the discretion to use accrued interest on all debt securities to offset maintenance margin requirements appears consistent with the Act. As set forth in the Commission's approval order for SR-NYSE-88-4, accrued interest on debt securities may be used only to satisfy calls for maintenance margin deficiencies and not to finance additional purchases. In addition, the Commission expects member firms to assess carefuly whether under certain circumstances a higher margin requirement would be necessary.[14]

With regard to that portion of the proposal which would provide 15 business days in which to collect margin deficiencies in customer accounts, the Commission is concerned that too lengthy a time period in which to collect margin might expose member firms to increased risk. As discussed in the approval order for SR-NYSE-88-4, the Commission believes that seven business days appears to provide more than ample time in which to collect maintenance margin deficiencies. In SR-NYSE-88S-4, the NYSE initially proposed a seven business day time period for the collection of deficiencies, but later lengthened the period to 15 business days in response to membership opposition. Both the NYSE and Phlx maintain that a 15 business day provision should eliminate any uncertainty over what length of time would be deemed "reasonable." The Commission, in approving SR-NYSE-88-4, determined that it would be prudent to approve the maintenance margin collection provision on a two year pilot basis, in conjunction with an exchange monitoring program to provide comprehensive information with which to assess whether member firms require three weeks to collect margin deficiencies. The Commission believes it appropriate to accord the Phlx the same pilot treatment. In order to coordinate with the NYSE's pilot, and assess both programs at approximately the same time, the Commission is approving this portion of the Phlx's proposal for one year from the date of this approval order. During the one year pilot the Exchange will monitor compliance with the time limit and review the circumstances under which the member firms incurred net capital charges for customer margin deficiencies.[15] At least one month prior to the conclusion of the one year pilot, the Commission expects Phlx to submit a report which includes data regarding compliance with the time limit. The data obtained through the exchange's monitoring program will enable the Commission to determine whether seven business days is sufficient time in which to collect maintenance margin deficiencies, or whether it is necessary to allot 15 business days for such purposes. The Phlx should submit at the conclusion of the pilot a proposed rule change either to retain or modify the proposed 15 business day margin collection period based on the findings from its monitoring program.

As stated in the approval of the NYSE's proposal, the Commission believes that the proposed margin requirement for mortage related securities that meet the definition in section 3(a)(41) of the Act and that are carried in certain defined exempt accounts is consistent with the Act because it appears to protect adequately a broker-dealer against the risks of carrying these securities and will apply only to those relatively more creditworthy and sophisticated accounts.

The Commission finds for the reasons discussed above that the Phlx's proposal is consistent with section 6 of the Act and the rules thereunder applicable to a national securities exchange, and with section 7 of the Act, in that the proposal is consistent with the requirements in Regulation T.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the Phlx rule proposal be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

Dated: May 25, 1988.

[FR Doc. 88-12476 Filed 6-2-88; 8:45 am]
BILLING CODE 8010-01-M

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[8] *See* section (b)2a of Phlx Rule 722. The change would lower margin requirements for shorter term U.S. government securities while increasing requirements for longer term U.S. government securities.

[9] *See* section (b)2b of Phlx Rule 722.

[10] This amendment would reduce the requirements for nonconvertible corporate debt securities eligible for "good faith" margin under Regulation T. *See* section (b)2c of Phlx Rule 722.

[11] As defined in section 3(a)(41) of the Act, a Mortgage Related Security represents an ownership interest in, or is secured by, first lien mortgages on residential property. These securities must be rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

[12] Excess net capital is the amount of net capital that exceeds minimum net capital required by Commission or self-regulatory organization rule. *See* proposed section (c)(4) of Phlx Rule 722.

[13] 15 U.S.C. 78f (1982).

[14] As described in SR-NYSE-88-4, Release No. 25575, one such situation would be where there is potential for accrued interest on some low grade bonds to offset a significant percentage of a margin deficiency.

[15] The Commission's net capital rule requries a broker-dealer to deduct from its net capital the amount of cash required to satisfy a call for margin deficiency in a customer's account outstanding more than five business days. *See* Rule 15c3-1(c)(2)(xii) (17 CFR 240.15c3-1(c)(2)(xii) (1988)).

[Rel. No. IC-16412; 811-1056]

Capital Southwest Corp.; Deregistration

May 25, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of declaration of deregistration under the Investment Company Act of 1940 (the "1940 Act").

Registrant: Capital Southwest Corporation ("Registrant").

Relevant 1940 Act Sections: Sections 8(f) and 54(a).

Summary of Notice: The SEC proposes to declare by order on its own motion that Registrant has ceased to be an investment company.

Hearing or Notification of Hearing: If no hearing is ordered, the motion will be granted. Any interested person may request a hearing on this motion, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Registrant, with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Registrant, c/o William R. Thomas, 12900 Preston Rd., Suite 700, Dallas, Texas 75230.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847 or Brion R. Thompson, Special Counsel (202 272-3106 (Division of Investment Management).

Statement of Facts:

1. Information contained in the files of the SEC indicate that Registrant registered under the 1940 Act as a closed-end, non-diversified, management investment company on May 1, 1961. Registrant is a corporation organized under the laws of the State of Texas and has its principal place of business in Texas.

2. On March 29, 1988, Registrant elected to be regulated as a business development company pursuant to section 54 of the 1940 Act. Thus, Registrant is excluded from the definition of an investment company under section 6(f) of the 1940 Act and is exempted from registration as an investment company under section 8 of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-12475 Filed 6-2-88; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Business Development Counseling Record.

Form Nos.: SBA 1062.
Frequency: When client assisted.
Description of respondents: The form provides information which is used to plan, monitor and control programs of assistance and to provide data to Congress and OMB on that assistance.
Annual Responses: 300,000.
Annual Burden Hours: 45,000.

Title: For Profit Cosponsored Training Program.
Form Nos.: Questionnaire.
Frequency: On occasion.
Description of Respondents: The SBA was granted authority to cosponsor training programs with for profit organizations under Pub. L. 98-302. The purpose of the questionnaire is to ascertain client reaction to these programs.
Annual Responses: 30,000.
Annual Burden Hours: 5,000.

Title: Loan Guaranty Agreement.
Form Nos.: SBA 1175.
Frequency: Quarterly.
Description of Respondents: Guaranty loans are made to financial institutions. Participants are required to report quarterly on whether the accounts are current or not and the outstanding principal balance.
Annual Responses: 18,588.
Annual Burden Hours: 18,588.

Title: Pollution Control: Procedures for Guarantee Application.
Form Nos.: SBA 1136, 1136A.
Frequency: Once per application determination
Description of Respondents: Small businesses requesting Federal assistance to aid in pollution control financing are required to provide the appropriate business and historical information for determining project feasibility and creditworthiness.
Annual Responses: 12.
Annual Burden Hours: 660.

Title: SBIC Financial Reports.
Form Nos.: SBA 468.1, SBA 468.2, SBA 468.3, SBA 468.4.
Frequency: Annually.
Description of Respondents: To properly administer the Small Business Investment Act, as amended, it is essential that complete financial statements, with supporting schedules be submitted for review of regulatory compliance and for credit analysis prior to providing financing to the SBIC.
Annual Responses: 521.
Annual Burden Hours: 6773.

Title: Management Development Plan.
Form Nos.: SBA 1108.
Frequency: On occasion.
Description of Respondents: Used to assess the level of assistance and clients needs and to identify problem areas that should be addressed.
Annual Responses: 50,000.
Annual Burden Hours: 50,000.

William Cline,
Chief, Administrative Information Branch.
[FR Doc. 88-12500 Filed 6-2-88; 8:45 am]
BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-64]

Termination of Section 301 Investigation; Korea's Restrictions on Access to its Cigarette Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to terminate an investigation under section 301.

SUMMARY: On Feb. 16, 1988, the U.S. Trade Representative initiated an investigation of the Republic of Korea's policies and practices with respect to the importation, distribution and sales of cigarettes. On May 27, 1988, the United States and the Republic of Korea reached agreement on providing non-discriminatory access to the Korean market for foreign manufactured cigarettes. In light of this agreement, the investigation under section 301 of the Trade Act of 1974, as amended, has been terminated.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra Kristoff, Deputy Assistant U.S. Trade Representative, (202) 395-4755, or Catherine Field, Associate General Counsel, (202) 395-3432, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On Jan. 22, 1988, the United States Cigarette Export Association filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Government of the Republic of Korea (Korea) and its instrumentality, the Korean Monopoly Corporation, engage in acts, policies and practices that are unreasonable or discriminate against imports and burden or restrict U.S. commerce.

On Feb. 16, 1988, the U.S. Trade Representative initiated an investigation of the Korean government's policies and practices affecting efforts to obtain fair and equitable access to the Korean cigarette market (53 FR 4926). The United States and Korea have concluded an agreement providing non-discriminatory and open access to the Korean cigarette market, which will take effect on July 1, 1988. Since this dispute has been satisfactorily resolved, we have terminated the investigation.

Judith Hippler Bello,
General Counsel.
[FR Doc. 88-12611 Filed 6-2-88; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Amherst County/City of Lynchburg, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a draft environmental impact statement will be prepared for a proposed highway project to be located in Amherst County and the City of Lynchburg, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone (804) 771-2362.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), Lynchburg District Office, will prepare a draft environmental impact statement (DEIS) on a proposal to improve Route 29 in Amherst County and the City of Lynchburg Virginia. The proposed improvement would involve construction of a four to six-lane limited access bypass route of Madison Height and Lynchburg, Virginia from existing Route 501 in the City of Lynchburg, Virginia to Amherst, Virginia, for a distance of approximately 15.0 miltes.

Improvements to the existing corridor are considered necessary to provide for the safe and efficient movement of existing and projected traffic and provide relief from heavy congestion on the existing Route 29. This proposal will include the construction of a bridge crossing the James River and new interchanges and connector routes for existing Route 210 and Route 130 in Amherst County.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management improvements to existing four-lane roadway (improve existing street); (3) mass transit; (4) constructing a four to six-lane, limited access bypass on new location. The various build alternatives will incorporate variations of vertical and horizontal grade alignment of roadway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public informational meetings, location and design meetings and public hearings will be held between June 1988 and December 1989. Public notice will be given indicating the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project.

Issued on May 25, 1988.

Robert B. Welton,
District Engineer, Richmond, Virginia.
[FR Doc. 88-12576 Filed 6-2-88; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement; Blue Earth, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Blue Earth County, Minnesota.

FOR FURTHER INFORMATION CONTACT: James A. Chesthem, District Engineer, Federal Highway Administration, Suite 490, Metro Square Building, St. Paul, Minnesota 55101, Telephone: (612) 290-3243.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve T.H. 14 in Blue Earth County, Minnesota. The proposed project would include either 2-lane or 4-lane construction along new alignment or along the existing Trunk Highway (T.H.) 14 alignment from Mankato to east of the east junction (jct.) of T.H. 60. Alternatives being considered at this time include 2-lane and 4-lane reconstruction on the existing alignment, construction of a 2-lane or 4-lane roadway on new alignment north of Eagle Lake (7 alternative alignments), construction of a 2-lane or 4-lane roadway on new alignment south of Eagle Lake (2 alternative alignments), construction of a 2-lane or 4-lane facility which would begin at the North Mankato-Mankato Bypass but would tie into the existing T.H. 14 alignment west of the City of Eagle Lake and a no-build alternative. Several of these alternatives may be dropped from consideration or others may be added as a result of the scoping process. The length of the project will depend on the alignment selected but will be between 7 and 10 miles. This project will involve a crossing of the Dakota, Minnesota and Eastern Railroad.

A Scoping Document providing information about the project including potential alternatives and their impacts was prepared and distributed to interested parties and agencies in July of 1987. A scoping meeting to receive agency and public comments as part of the EIS scoping process was held at the Legion Hall in Eagle Lake, Minnesota on August 27, 1987. To receive any additional comments since that meeting, the comment period will remain open until 30 days after publication of this notice in the Federal Register. Information was sent to federal, state and local agencies that may have an interest in this project and scoping meeting, to solicit their comments and to give them an opportunity to voice their concerns. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on May 25, 1988.

James A. Chesthem,
District Engineer, St. Paul, Minnesota.
[FR Doc. 88-12448 Filed 6-2-88; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement; Pinellas and Pasco Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Pinellas and Pasco Counties, Florida.

FOR FURTHER INFORMATION CONTACT: D.B. Luhrs, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to improve U.S. 19 (S.R. 55) in Pinellas and Pasco Counties, Florida. The proposed improvement would involve the reconstruction of U.S. 19 (S.R. 55) from Gandy Boulevard (S.R. 694) in Pinellas County, to Alternate U.S. 19 (S.R. 595) in Pasco County. Total project length is 24.6 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternates under consideration include: (1) Taking no action; and (2) widening to provide a 6- and 8-lane expressway with frontage roads, plus interchanges at major cross roads, grade separations at minor cross roads.

Federal, State, and local agencies have contributed early coordination comments through the State advance-notification process. Additionally, a project planning team developing this project has contacted State, Federal, and local agencies for information relative to land-use planning and local planning needs. A public information workshop was held to solicit public comment. In addition, a public hearing will be held. Public notice will be given of the time and place for the public hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions

are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on May 23, 1988.

Dennis B. Lohrs,

District Engineer, Tallahassee, Florida.

[FR Doc. 88-12447 Filed 6-2-88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before July 18, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Steamtown Museum

(Waiver Petition Docket Number RSGM-87-6)

The Steamtown Museum seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. These locomotives operate over approximately 12 miles of former Erie-Lackawanna track between Scranton and Moscow, Pennsylvania. Steamtown states that the operation is through mostly rural countryside, where vandalism has not been a problem. The carrier indicates that its excursion trains operate at 15 mph and does not foresee track improvements permitting faster speeds in the future.

Delta-Western (Indi-Bel, Inc.)

(Waiver Petition Docket Number RSGM-87-19)

The Delta Western (Indi-Bel, Inc.) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates an average of three times per week from April to November yearly over approximately 1,000 feet of Columbus and Greenville Railroad tracks near Indianola, Mississippi. There have been no incidents of vandalism since the locomotive was purchased in March 1987.

Wisconsin and Calumet Railroad Company, Inc.

(Waiver Petition Docket Number RSGM-87-20)

The Wisconsin and Calumet Railroad Company (WICT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. The locomotives operate over approximately 270 miles of track between Prairie Du Chien and Waukesha, Wisconsin, and between Madison and Scroto Mills, Wisconsin. The operation is predominately through rural areas and small agricultural communities. The WICT has been operating four other locomotives and two cabooses under an existing FRA glazing waiver, RSGM-85-28, over approximately 152 miles of its railroad.

Keokuk Junction Railway

(Waiver Petition Docket Number RSGM-87-21)

The Keokuk Junction Railway (KJRY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate over approximately 29 miles of track between Keokuk, Iowa, and La Harp, Illinois. The carrier states that there have not been any acts of vandalism, rock throwing, or shooting at trains operating on the KJRY.

Dodge City, Ford and Bucklin Railroad Company

(Waiver Petition Docket Number RSGM-87-22)

The Ford County Historic Railroad Preservation Foundation, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five passenger coaches. The petitioner is planning to operate these coaches as a historic passenger train on approximately 26 miles of former Rock Island trackage near Dodge City, Kansas. The operation will be established as the Dodge City, Ford and Bucklin Railroad Company.

Mississippi Delta Railroad

(Waiver Petition Docket Number RSGM-87-23)

The Mississippi Delta Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and one caboose. The carrier states that the area of operation is located in rural Mississippi. The carrier indicates that they are unaware of any incidents of vandalism, or unusual safety hazards that have occurred on the property, that would warrant replacement of glazing.

Pee Dee River Railway

(Waiver Petition Docket Number RSGM-87-24)

The Pee Dee River Railway seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates on approximately 15 miles of track from McColl to Marlboro, South Carolina. The petitioner states that the area of operation is rural. Since it began operations in October 1987, the carrier has not experienced any incidents of vandalism concerning its equipment. The carrier feels that the installation of certified glazing would be an unnecessary financial burden to its operating costs.

Indiana and Ohio Rail Corporation

(Waiver Petition Docket Number RSGM-87-25)

The Indiana and Ohio Rail Corporation seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. One locomotive is operated on approximately 51 miles of track near Chillicothe, Ohio, by the Indiana and Ohio Eastern Railroad. The other three locomotives are operated by the Indiana and Ohio Central Railroad on approximately 44 miles of track between Logan and Columbus, Ohio. Both areas of operation are located in rural settings, and neither operations have had any instances of trains being stoned or other acts of vandalism. The carrier feels that the installation of certified glazing would be an unnecessary cost.

The Great Western Railway Company

(Waiver Petition Docket Number RSGM-87-26)

The Great Western Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for seven passenger coaches. The passenger coaches operate on approximately 80 miles of track, through rural areas. The coaches are operated two to three times per month on two excursion routes. One route is from Longmont to Eaton, Colorado. The second route is from Loveland to Johnstown, Colorado. The carrier has not experienced any injuries due to broken glazing or damage due to vandalism and feels that the installation of certified glazing is unnecessary.

Cedar Rapids and Iowa City Railway Company

(Waiver Petition Docket Number RSGM-87-27)

The Cedar Rapids and Iowa City Railway Company (CIC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 233) for three locomotives. The locomotives operate over a total of approximately 87 miles of track: about 31 miles between Cedar Rapids and Hills, Iowa; about 18 miles between Cedar Rapids and Homestead, Iowa; and the balance in switching tracks in Cedar Rapids and Iowa City. The carrier has been operating seven additional locomotives under an existing FRA glazing waiver (RSGM-80-09) for several years without any reported incidents of injuries due to broken glass or acts of vandalism.

Issued in Washington, DC on May 25, 1988.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-12443 Filed 6-2-88; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8800.
Type of Review: New.
Title: Application for Additional Extension of Time to File Return for a U.S. Partnership or for Certain Trusts.
Description: Form 8800 is used by partnerships and by certain trusts to request an additional extension (of up to 3 months) of time to file Form 1065, Form 1041, or Form 1041s. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.
Respondents: Farms Businesses or other for-profit, Small business or organizations.
Estimated Burden: 4,606 hours.

OMB Number: 1545-0153.
Form Number: IRS Form 3209.
Type of Review: Extension.
Title: Information Statement by United Kingdom Withholding Agents Paying Dividends from United States Corporations to Residents of the U.S. and Certain Treaty Countries.
Description: Used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the U.S. has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax was withheld.
Respondents: Businesses or other non-profit.
Estimated Burden: 2,069 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 88-12480 Filed 6-2-88; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T. D. 88-29]

Conditional Approval of a Commercial Gauger; Gulf Coast Independent Marine Surveyors, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Conditional Approval of a Commercial Gauger.

SUMMARY: Pursuant to 151.13, Customs Regulations (19 CFR 151.13), Gulf Coast Independent Marine Surveyors, Inc., 3331 Taft (P.O. Box 1410), Groves, Texas 77619, applied to Customs for approval to gauge imported petroleum and petroleum products and bulk liquid organic chemicals.

Customs has determined that the application is complete and acceptable. Therefore, under the provision of 151.13(c), Gulf Coast Independent Marine Surveyors, Inc., is conditionally approved to guage imported petroleum and petroleum products and bulk liquid organic chemicals in all Customs districts.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories & Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: May 26, 1988

John B. O'Loughlin,

Director, Office of Laboratories Scientific Services.

[FR Doc. 88-12462 Filed 6-2-88; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 88-28]

Conditional Approval of a Commercial Gauger; Unimar, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Conditional Approval of a Commercial Gauger.

SUMMARY: Pursuant to 151.13, Customs Regulations (19 CFR 151.13), Unimar, Inc., 10100 East Freeway, Suite 101, Houston, Texas 77029, applied to Customs for approval to gauge imported

BEST COPY AVAILABLE

petroleum and petroleum products and bulk liquid organic chemicals.

Customs has determined that the application is complete and acceptable. Therefore, under the provision of 151.13(c), Unimar, Inc., is conditionally approved to gauge imported petroleum and petroleum products and bulk liquid organic chemicals in all Customs districts.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories & Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2440).

Dated: May 26, 1988.

John B. O'Loughlin,

Director, Office of Laboratories & Scientific Services.

[FR Doc. 88–12461 Filed 6–2–88; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Tuesday, June 21, 1988, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Voice of America, 330 Independence Avenue, SW., Washington, DC 20547. The meeting will begin at 10 a.m. on June 21 and will continue through 4 p.m. Point of contact for the meeting is Cathy Haynes, telephone (202) 485–8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the procurement and testing of high frequency broadcasting antennas, the status of negotiations with other governments and major construction projects, and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to negotiations with other governments will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 USC 552b(c)(1)).

Date: May 25, 1988.

Charles Z. Wick,

Director.

[FR Doc. 8812449 Filed 6–2–88; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 27, 1988.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Trainee Interview Sheet.
3. VA Form 22–8662.
4. This form is used during the performance of compliance surveys at all non-college degree schools and training establishments where veterans and/or eligible persons are pursuing programs of education and training.
5. On occasion.
6. Individuals or households.
7. 7,500 responses.
8. 1,875 hours.
9. Not applicable.

[FR Doc. 88–12532 Filed 6–2–88; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Automated Data Processing Systems; Establishment

Under the Federal Advisory Committee Act (Pub. L. 92–463) and after consultation with the Administrator, General Services Administration, the Administrator of Veterans Affairs has determined that the establishment of the Advisory Committee on Automated Data Processing Systems is necessary and in the public interest.

The Committee is being established to review and render expert advisory opinions and make recommendations to the Administrator's staff concerning the operation, expansion and improvements of the VA's automated data processing systems. The Committee will be composed of a broad selection of outside experts noted for their roles in automated data processing and telecommunications technology and its application in health care, business, and the Federal sector.

Comments of interested persons concerning the establishment of the Committee or recommendations for membership may be submitted to David A. Cox, Associate Deputy Administrator for Management (004), Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC, 20420, phone (202) 233–5458.

Dated: May 24, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Associate Deputy Administrator for Public Affairs.

[FR Doc. 88–12533 Filed 6–2–88; 8:45 am]

BILLING CODE 8320–01–M

Career Development Committee; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Career Development Committee has been renewed for a two year period beginning May 13, 1988 through May 13, 1990.

Dated: May 19, 1988.

By direction of the Administrator.

Rose Maria Fanizzo,

Committee Management Officer.

[FR Doc. 88–12534 Filed 6–2–88; 8:45 am]

BILLING CODE 8320–01–M

Scientific Review and Evaluation Board for Health Services Research and Development; Meetings

The Veterans Administration gives notice under Pub. L. 92–463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Service Research and Development will be held at the Hotel Union Square, 114 Powell Street, San Francisco, California, on June 27, 28 and 29, 1988. The meetings will convene at 8 a.m. on June 27 and 28 and adjourn at 5 p.m. The meeting on June 29, 1988 will begin at 1 p.m. and adjourn at 5 p.m. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Assistant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the June 27th session for approximately one hour to cover administrative matters and to discuss the general status of the program.

The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(b) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue, NW., Washington, DC, 20420, (phone: 202/233–5385) at least 5 days before the meeting.

Dated: May 24, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Associate Deputy Administrator for Public Affairs.

[FR Doc. 88–12535 Filed 6–2–88; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 442 of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC 20420, June 21 and 22, 1988. The sessions will begin at 9:00 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202–233–2868) prior to June 16, 1988.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m. on June 22, 1988.

Dated: May 27, 1988.

By direction of the Administrator.

Donald R. Smith,

Director, News Service, Office of Public Affairs.

[FR Doc. 88–12536 Filed 6–3–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 107
Friday, June 3, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, June 7, 1988, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Methylene Chloride Petition

The staff will brief the Commission on petition HP 88-1 from the Consumer Federation of America requesting that the Commission commence a proceeding under Section 2(q)(1)(B) of the Federal Hazardous Substances Act to ban products containing methylene chloride.

Closed to the Public

2. Enforcement Matter OS #3705

The Commission will consider issues related to enforcement matter OS #3705.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 31, 1988.

[FR Doc. 88-12637 Filed 6-1-88; 1:53 pm]
BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 7, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,213-NR
The First National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma

Memorandum and resolution regarding an extension of time for compliance with that portion of Part 340 of the Corporation's rules and regulations, entitled "Foreign Banks," which limits the exposure of insured domestic branches of foreign banks to borrowers in the country in which the foreign bank parent is chartered to 200 percent of the branch's required capital equivalency ledger account and 100 percent for all other countries.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendment to the Corporation's rules and regulations in the form of new Part 324, entitled "Agricultural Loan Loss Amortization," which amendment implements Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans.

Discussion re: Imposition of penalties for failure to file timely Reports of Condition and Income.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 31, 1988.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-12549 Filed 5-31-88; 5:06 pm]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 7, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Central National Bank of New York, New York City (Manhattan), New York (5804) (Memo dated April 27, 1988)
Audit Report re:
Houston Consolidated Office, Cost Center—405 (Memo dated April 28, 1988)
Audit Report re:
LAMIS Audit Report (Memo dated May 11, 1988)

Discussion Agenda:

Application for Federal deposit insurance:

Entrust Bank, a proposed new bank to be located at 13610 Plank Road, Baker, Louisiana.

Memorandums regarding the Corporation's corporate activities.

Memorandum regarding proposed revisions to the Division of Liquidation's delegations of authority.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Memorandum regarding the Corporation's supervisory activities.

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 31, 1988.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-12550 Filed 5-31-88; 5:06 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 18654, May 24, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, May 31, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Government in the Sunshine consideration of a personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: May 31, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-12554 Filed 5-31-88; 5:07 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on May 27, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 6, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Policy proposals regarding a drug testing program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: May 31, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-12555 Filed 5-31-88; 5:07 pm]
BILLING CODE 6210-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: June 14-15, 1988.

PLACE: Embassy Suites Hotel, Crystal Ballroom A, 1881 Curtis Street, Denver, Colorado 80202.

STATUS:

June 14, 1988, 9:00 a.m.-10:00 a.m.—Closed
Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703
June 14, 1988, 10:00 a.m.-6:15 p.m.—Open
June 15, 1988, 9:00 a.m.-3:30 p.m.—Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of April 21, 1988 Minutes
Executive Director's Report
—FY 88 Third Quarter Program Report
—Administrative Report
Vice Chairman's Report
National Advisory Committee Presentation on Support for Minimum Equipment
Chief Officers of State Library Agency Report, Wayne Johnson, Wyoming
State Library Reports—
Wyoming, Wayne Johnson
Colorado, Nancy Bolt
Oklahoma, Robert Clark
1990 NCLIS Programs—Report and Discussion
Film on School Library Guidelines Teleconference
NCLIS Committee Reports
—Budget and Finance
—International
—Legislative
—Public Affairs
—White House Conference
Privatization of NTIS
FOIA Related Activities
Library Statistics Collection Program
Information Age Issues
Special Population Literacy Programs
NCLIS 1989 Meeting Sites
Information for Governance Program Report

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Daniel Carter, NCLIS Acting Executive Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036 (202) 254-3100.

Dated: May 31, 1988.
Jane McDuffie,
Staff Assistant.
[FR Doc. 88-12656 Filed 6-1-88; 2:41 pm]
BILLING CODE 7527-01-M

Corrections

Federal Register
Vol. 53, No. 107
Friday, June 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-08-4212-13;A-23254]

Realty Action; Exchange of Public Lands; Maricopa, Mohave, Pima and Santa Cruz Counties, AZ

Correction

In notice document 88-7478 beginning on page 11142 in the issue of Tuesday, April 5, 1988, make the following correction:

On page 11142, in the second column, the 13th line should read "Township 15 South, Range 14 East.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-38]

Revision of Transition Area; Jacksonville, TX

Correction

In rule document 88-11199 beginning on page 17919 in the issue of Thursday, May 19, 1988, make the following correction:

§ 71.181 [Corrected]

On page 17920, in the first column, in § 71.181, under **Jacksonville, TX**, in the seventh line, the longitude should read "95°12'55" W.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-53]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, and 212 Helicopters

Correction

In proposed rule document 88-7697 beginning on page 11678 in the issue of Friday, April 8, 1988, make the following corrections:

§ 39.13 [Corrected]

1. On page 11679, in the first column, in § 39.13, under **Bell Helicopter Textron, Inc. (BHTI)**, in the third paragraph, in the second line, "P/N 204-011-105-450" should read "P/N 204-011-450"; in the third line, remove "P/N"; remove the entire fourth line; and remove "rotor trunnion," from the fifth line.

2. On the same page, in the same column, in paragraph (a), the third line should read "for the main rotor mast, P/N 204-011-450 (all dash numbers), and main rotor trunnion, P/N 204-011-105-001,".

3. On the same page, in the same column, in paragraph (b), in the second line, "14,000" should read "14,900".

BILLING CODE 1505-01-D

federal register

Friday
June 3, 1988

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdictions; Interim Rule With Request for Comments

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdictions

AGENCY: Food and Nutrition Services, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule will amend the Food Distribution Program regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; and (3) revising provisions for the renewal of agreements. Those provisions relative to the processing of donated food which appeared on July 1, 1986 (51 FR 23719–24130) and July 2, 1987 (52 FR 24937–24978) in the Federal Register are included to provide for a complete version of the Food Distribution Program regulations.

DATES: Interim rule effective July 5, 1988, comments must be received on or before November 30, 1988. Comments are not being solicited on §§ 250.11(a), 250.15(c), 250.15(f)(1), 250.16(a)(4) (last sentence), 250.17(c), 250.17(b), 250.18(b), 250.18(c), 250.19(b)(2) and 250.30 and the definitions of "contract value of the donated foods," "Federal acceptance service," "multi-State processor," "refund application," "substituted food" and "substitution" as contained in § 250.3.

ADDRESS: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, Park Office Center, Alexandria, Virginia 22302.

Comments in response to this interim rule may be inspected at the address above during normal business hours (8:30 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Susan E. Proden, Chief, Program Administration Branch (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The OMB approval numbers are noted at the relevant point of the regulations.

The Department is issuing this rule as an interim rule rather than a final rule. The Department has already solicited and considered public comments concerning this rulemaking effort. In a typical rulemaking, the Department would now issue a final rule. However, because this rulemaking involves extensive modifications to program operations, the Department has determined that additional public comments would be beneficial. Therefore, we are issuing this rule as an interim rule in order to provide distributing agencies and recipient agencies with the opportunity to comment based on actual operating experience with the new regulations.

Since the provisions that pertain to processing were published in final on July 1, 1986 (51 FR 23719–24130) the Department is not soliciting comments on §§ 250.17(b), 250.17(c), 250.18(b), 250.18(c), 250.19(b)(2) and 250.30 and the definitions of "contract value of the donated foods," "Federal acceptance service," "multi-State processor," and "refund application" as contained in Section 250.3 of this rule. Similarly, since comments have already been solicited on the provisions concerning the substitution of concentrated skim milk for nonfat dry milk under State processing contracts which were published as an interim rule on July 2, 1987 (52 FR 24973–24978), no additional comments are being solicited on the last sentence of § 250.16(a)(4) and the definitions of "substituted food" and "substitution" as contained in § 250.3 of this rule. In addition, § 250.15(c) (claims), § 250.15(f)(1) (use of funds accruing from claims) and § 250.21 (civil rights) were reserved in the proposed rule. The current regulatory provisions concerning claims and use of funds accruing from claims have been inserted into this rule at these sections to provide a complete version of Food Distribution Program regulations. However, any changes to these two provisions will be addressed in a separate rulemaking. Since these provisions reflect the current regulation, no comments are being solicited on them at this time.

The civil rights section has been amended to provide cross references to the Departmental regulations on civil rights. Comments on this section and all other provisions of this rule will be considered in the development of final regulations.

The Department also wishes to point out that this rule does not reflect any of the changes required by the recently enacted Commodity Distribution Reform Act of 1987 (Pub. L. 100–237). The Department will be issuing regulations concerning this Act in the near future.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. [7 CFR Part 3015, Subpart V, and final rule related notice 48 FR 29114 (June 24, 1983)].

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of the Food and Nutrition Service (FNS) and distributing agencies concerning the distribution and use of federally donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the child nutrition programs and nutrition programs for the elderly, charitable institutions, nonprofit summer camps for children, and certain low-income households and disaster organizations.

Analysis of Comments

On August 19, 1985, FNS published a proposed rule in the Federal Register (50 FR 33470) to amend the Food Distribution Regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; and (3) revising provisions for the renewal of agreements; and

strengthening provisions for the processing of donated foods.

In an effort to assist FNS in revising Part 250, comments were solicited on the proposed changes. The proposed revision encompassed nearly all provisions contained in Part 250. Comments were not solicited on the regulations regarding the National Commodity Processing Program, which were subsequently moved to 7 CFR Part 252 and three provisions, claims (§ 250.15(c)), use of funds accruing from claims (§ 250.15(f)(1)), and civil rights (§ 250.21) were reserved for further consideration and development prior to proposal.

The general public was given 90 days for comment on the proposed revision. A total of 305 comment letters was received from various sources such as distributing agencies, recipient agencies, processors, distributors of processed end products, the American School Food Service Association, the National Association of State Agencies for Food Distribution and the American Institute of Certified Public Accountants.

Restructuring

In an effort to simplify the organization of Part 250, the proposed rule set forth the provisions under one part with separate subparts for: (1) General, (2) General Operating Provisions, (3) Processing and Labeling of Donated Foods, and (4) Eligible Recipient Agencies and Programs. The restructuring was intended to provide greater ease in reading and understanding of the regulations and to eliminate the need for a significant amount of repetition. The commenters overwhelmingly supported the restructuring of the regulations, as proposed. Thus, the interim rule is issued in the same format as the proposed rule.

The excerpts of legislative provisions were deleted in the proposed rule. However, summaries of section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended; sections 6 and 14 of the National School Lunch Act, as amended; section 32 of Pub. L. 74–320, as amended; section 311 of the Older Americans Act of 1965, as amended; section 416 of the Agricultural Act of 1949, as amended; and section 709 of the Food and Agriculture Act of 1965, as amended; were included under definitions. These are the primary legislative provisions authorizing the purchase and donation of food items. A few commenters were concerned about the elimination of the legislative quotations. It is the Department's opinion that a lengthy list of the full text of these provisions is unnecessary since a summary of the primary provisions relative to the purchase and donation of food for distribution to eligible recipient agencies is being retained under the definitions section. FNS will, however, make available a summary of all legislative authorities upon request.

Definitions

"Distributing agency"—Although the Department has always considered Indian tribal organizations (ITOs) to be inherent in the definition of a "distributing agency," the Department is concerned that confusion may result from the lack of specific reference. In order to clarify this matter, the interim rule definition specifically refers to ITOs. "Nonresidential Child Care Centers"—In § 250.3 of the proposed rule the term "nonresidential child care centers" included reference to child care centers, day care homes and sponsoring organizations. In the interim rule, reference is made to "institution" instead. This term more accurately describes the entities which participate in the Child Care Food Program. The proposed definition unnecessarily included day care homes, which can only participate under the auspices of a sponsoring organization and failed to include outside-school-hours care centers.

"School"—is amended by revising the definition to reflect recent changes to the term in the National School Lunch Program. The changes consist of clarifying the eligibility of preprimary classes for the National School Lunch Program, and clarifying that school means an education unit of high school grade or under which is recognized as part of the education system in the State.

"Tuition"—As a result of the elimination of tuition limitation by Pub. L. 100–71, the tuition limitation in the definition of "school" and the definition of "tuition" have been deleted.

"School food authority"—is amended to reflect changes to the definition in the National School Lunch Program regulations which were necessary to recognize special accommodations between public schools and private schools or residential child care institutions, when approved by FNS.

"Substituted food" and "Substitution"—are new or expanded terms that appeared in the interim concentrated skim milk substitution rule which was published July 2, 1987 at 52 FR 24973. These terms are included in this rule to provide a complete text. No comments are being taken on these definitions in this rulemaking.

Eligibility Determinations for Recipient Agencies and Recipients

Section 250.11 of the proposed rule required that distributing agencies determine the eligibility of all applicants, enter into agreements with those which were determined to be eligible and make donated foods available.

A total of twenty comments was received on this requirement. Ten commenters were opposed to the provision. They maintained that requiring the distributing agency to determine the eligibility of and make donated foods available to all eligible organizations which apply for participation in the Temporary Emergency Food Assistance Program (TEFAP) was not feasible due to the limited amounts of donated foods which are currently being provided. The Department did not intend for this provision to apply to TEFAP. Agreements between distributing agencies and emergency feeding organizations are governed by § 251.2 of this subchapter, not § 250.11.

Commenters also recommended that they be allowed to impose minimum size requirements on recipient agencies. That is, commenters said they should have the authority to reject applications from very small organizations since the cost of administering the program to such organizations could be very high compared to the amount of commodities to be received. The Department does not believe that it is appropriate for a distributing agency to reject any recipient agency by establishing a minimum number of persons which a recipient agency must serve in order to receive donated foods. Rather, the Department considers the recipient agency's past performance practices to be the only justification for denying participation. Thus, this provision is retained in Section 250.11 of the interim rule with the clarification that in determining recipient agency eligibility that the agency's past performance be a factor in the determination.

The Department published a new § 250.11 regarding the verification of recipient agency eligibility on June 30, 1986 (51 FR 23518). However, the terms "State distributing agency" and "State agency" were inadvertently used in this section rather than "distributing agency." Since the Part 250 regulations use the term "distributing agency," we are replacing the words "State distributing agency" and "agency" with "distributing agency" to maintain consistency. The provisions of the June 30, 1986 rule and the proposed § 250.11

have been redesignated as § 250.11 (a) and (b), respectively.

Agreements

Agreements with Department—Section 250.12(a) of the proposed rule required distributing agencies to enter into an agreement with the Department prior to the beginning of a distribution program. The agreement was to be completed by September 30 of each year and be effective for no longer than one year. The same requirement applies to State Agencies on Aging which receive any cash in lieu of commodities in connection with nutrition programs for the elderly.

A total of eight comments was received from distributing agencies regarding this provision. Five commenters opposed the requirement on the basis that the provision generated more paperwork and that the completion date conflicted with most school calendars.

Since agreements are currently required annually, the only change in the proposal was that agreements be completed by September 30. As noted in the preamble of the proposed rule, the September 30 requirement was added to make the term of these agreements coincide with the fiscal year, facilitating compliance with reporting requirements which are generally on a fiscal year basis. Therefore, § 250.12(a) of this interim rule retains the provision as proposed.

Distributing Agency Agreement—Section 250.12(b) of the proposed regulations required that the agreements between distributing agencies, subdistributing agencies, recipient agencies, warehouses, carriers, etc. be in writing and be effective for no longer than one year.

Forty-three comments were received on this proposal. Thirty one commenters indicated that the requirement for an annual agreement would be time consuming, substantially increase workload and paperwork, tax an already insufficient staff, and detract from operational flexibility. Distributing agencies administering more than one program indicated that they need the flexibility of writing one agreement to cover a variety of programs.

In response to the commenters concerns, § 250.12(b) of the interim rule has been modified to permit the one year agreements to be extended at the option of both parties, for two additional one-year periods. As a part of each extension, the party contracting with the distributing agency must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. In order to ensure program integrity in light of the three-year contract cycle, contracts must include a termination clause whereby either party may terminate the agreement for cause with 30 days notice.

The provision regarding two one-year extensions of contracts does not apply to existing contracts. It applies only to contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively. In the case of agreements with subdistributing agencies and recipient agencies, the two extension options will reduce paperwork and workload. In the case of agreements for warehouses, etc., the option for two one-year extensions will mean that the distributing agency will need to engage in procurement procedures for that contract only once every three years. The Department believes that this three-year bidding cycle will reduce paperwork and provide added stability with respect to the contracted services, while maintaining adequate assurances that the procurement is conducted in a manner that provides open and free competition.

Also a new sentence has been added to § 250.12(b) to clearly specify the distributing agencies' ongoing responsibility for ensuring program integrity at the subdistributing agency level, and below.

Food Service Management Company Agreement—Section 250.12(c) of the proposed regulations required that recipient agencies enter into written agreements with food service management companies and that the agreements be effective no longer than one year.

Nine comments were received on this proposal. Commenters were concerned that this requirement to limit the agreement to one year was inconsistent with the National School Lunch Program (NSLP) regulations with respect to the duration of food service management company contracts.

The Department did not intend to create inconsistencies with existing regulations concerning food service management companies. Instead, the objective was to ensure accountability when food service management companies use donated foods in the preparation of meals under their contracts with recipient agencies. In the case of food service management company agreements with recipient agencies which participate in the Child Nutrition Programs, this provision was intended only to add some requirements concerning the use of commodities and not to create an inconsistency concerning the length of contracts. Therefore, this interim rule has been revised to limit the provision concerning contract length to those recipient agencies which do not participate in the Child Nutrition Programs: nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly. In addition, the interim rule has been modified to permit the one-year agreements to be extended at the option of both parties, for two additional one-year periods. As a part of each extension, the recipient agency and food service management company must update all pertinent information and demonstrate that the full value of all donated foods received during the previous contract period have been accounted for. In order to ensure program integrity in light of the potential three-year contract cycle for charitable institutions, nutrition programs for the elderly and nonprofit summer camps for children, agreements with these recipient agencies must include a termination clause whereby either party may terminate the agreement for cause with 30 days notice. The provision regarding two one-year extensions of contracts does not apply to existing contracts with food service management companies. It applies only to food service management company contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively. Finally, a cross-reference to the review requirements in § 250.19(b) has been added.

Transfer of Donated Foods

Section 250.13(a)(1) of the proposed rule required that recipient agencies receive authorization from the distributing agency and the appropriate FNSRO prior to transferring donated foods which have been provided as part of an approved food package or authorized program level of assistance and continued to require distributing agency approval of all other transfers. In addition, the proposed rule required all transfers to be documented on the FNS–155 or FNS–152.

Eighty-six comments were received on this proposed requirement. Some commenters felt the provision was overly burdensome and costly. Other commenters felt that the dual authorization requirement could result in food spoilage before the transfer could be made. Commenters recommended among other things that: (1) FNSRO approval be required only for those transfers made to recipient agencies not originally authorized to receive that particular donated food; (2) approval not be required for transfers made between like recipient agencies; (3) approval be based on the value of the donated food being transferred; and (4) documentation be made available during reviews in lieu of requiring advance approval.

Subsequent to the proposed rule, sections 1504(a) and 1561 of Pub. L. 99–198 (the Food Security Act of 1985) authorized the Secretary to use commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) in the Temporary Emergency Food Assistance Program and amended section 32 to permit the transfer of section 32 commodities among the agencies originally receiving those donated foods. On May 13, 1987 (52 FR 17928), the Department published a final rule amending both the Food Distribution and TEFAP regulations regarding the transfer of section 32 commodities. This rule permits the transfer of section 32 commodities from Part 250 recipient agencies to Part 251 emergency feeding organizations and vice versa. Such transfers must be approved by both the distributing agency and the State agency administering the TEFAP, and must be documented in a manner that provides an audit trail.

In light of the concerns raised by the commenters on this provision, the Department is revising § 250.13(a)(1) in this interim rule to allow for transfer of donated foods which have been provided as part of an approved food package or authorized program level of assistance between like recipient agencies (schools to schools) with prior approval by only the distributing agency. The Department believes that permitting transfers of this class of donated foods between like recipient agencies with only the distributing agency's approval will give the distributing agency flexibility in administering the program while ensuring that ineligible recipient agencies do not receive the donated foods. However, the transfer of donated foods which have been provided as part of an approved food package or authorized program level of assistance between unlike recipient agencies (schools to charitable institutions), must be approved by the appropriate FNSRO. This rule adopts the provision of the proposed rule that transfers of donated food which are provided *in addition* to the authorized program level of assistance may be transferred between recipient agencies with the prior authorization of the distributing agency alone.

The necessary authorization for the transfer of section 32 commodities will depend on whether the section 32 commodities have been provided as a part of the authorized program level of assistance. The transfer of section 32 commodities from recipient agencies to TEFAP emergency feeding organizations will continue to be governed by the requirements set forth in the May 31, 1987 rule and incorporated into this rule (prior authorization of the distributing agency and the TEFAP State agency and documentation sufficient to provide an audit trail).

It has also come to the Department's attention that there is some confusion regarding the conditions on the transfer of commodities by summer camps at the end of the camping session. While the Department anticipates that there would be no commodities remaining at the end of the camping session, it should be noted that should there be remaining commodities, these may be transferred to other recipient agencies with the approval of the distributing agency.

In an effort to reduce the paperwork burden which would result from the requirement of the proposed rule that all transfers be documented on FNS–155 or FNS–152, the interim regulation requires only that transfers be documented in any manner that provides an audit trail. Such documentation must be retained in accordance with the recordkeeping requirements of §§ 250.16 and 251.10(a).

In addition, section 1506 of Pub. L. 99–198 amended section 4(b) of the Food Stamp Act to eliminate the current ban on the distribution of Federally donated foods directly to households in jurisdictions that operate the Food Stamp Program. Accordingly, this prohibition has been deleted from § 250.13(a)(1) of this interim rule.

Storage Facilities

Standards—Section 250.14(a) of the proposed rule outlined general standards for storage facilities and required distributing agencies, subdistributing agencies and recipient agencies responsible for the contracting of storage facilities to ensure that warehouse facilities meet existing Federal, State or local health department standards, whichever were more stringent.

Fifty-seven comments were received on the proposed provision. Forty-six commenters opposed the provision on the basis that it would increase workload and cost. The majority of the commenters stated that it is not feasible to expect agencies to compare Federal, State and local health department standards to determine which particular standard is more stringent for every requirement associated with storage practices. Several commenters recommended that the Department develop minimum standards in lieu of referring to Federal, State or local standards.

It appears that these commenters have misinterpreted the Department's intent concerning this requirement. This requirement does not mean that the agency contracting for the storage must itself conduct inspections to insure compliance with applicable Federal, State or local health standards. Nor did the Department intend that the distributing, subdistributing, recipient agency or the Department develop their own standards regarding proper storage. The Department believes that existing Federal, State and local regulations of the health conditions of storage facilities should provide sufficient protection of the Department's donated foods. However, the Department wishes to ensure that these storage facilities have actually received any inspection and/or approvals required under existing laws and regulations. As a result, § 250.14(a) has been revised to emphasize that the responsibility of the agency contracting for the storage facility is to ensure that the storage facility has obtained all required inspections and/or approvals and that they are current. This can be accomplished by reviewing documentation provided to the storage facility by the Federal, State and/or local health departments or by contacting the regulatory agencies for confirmation.

Several commenters recommended that the requirement regarding the use of pallets be deleted. Since the size of some storage areas does in fact prevent the use of pallets, § 250.14(a) of this rule requires that donated foods be stored off the floor in a manner that provides for adequate ventilation.

Reviews—Section 250.14(b) of the proposed rule required that distributing agencies ensure that an on-site review of the storage facilities be conducted prior to entering into or renewing a contract for the storage, handling and distribution of foods.

Forty comments were received concerning this requirement. Thirty-five of the commenters recommended that the requirement be revised or deleted because commenters felt there were insufficient staff and/or funds to conduct the reviews. Several of the commenters recommended that the review be conducted during the contract period as part of the management evaluation review and that the Department clarify that subdistributing agencies and recipient agencies are responsible for reviews of their respective storage facilities.

The Department believes that the review of storage facilities is essential for accountability. Distributing agencies can prevent claims by ensuring that storage facilities adhere to program regulations. Furthermore, the Department believes that oversight review of storage facilities is important, because improper storage is the primary cause of food loss claims. Clearly, it is essential that commodities be stored in a safe environment. Consequently, § 250.14(b) of this interim rule requires that all distributing agency level storage facilities be reviewed annually. In addition, distributing agencies must ensure that subdistributing and recipient agencies conduct annual reviews of their respective storage facilities. Documentation that will reflect compliance as well as documentation of corrective action taken in cases of noncompliance must be maintained on file at the distributing agency or local level as appropriate.

Contracts—Section 250.14(c) of the proposed rule required that distributing agencies, subdistributing agencies and recipient agencies enter into annual written contracts for the leasing of storage facilities.

Eighty-four comments were received on this proposal. Seventy commenters recommended that the requirement be deleted or revised. Several of the commenters expressed concern about the adverse effects such a requirement would have. For example, commenters indicated that: (1) Substantial savings are realized when contracts are entered into for longer periods of time; (2) in instances when contracts are entered into through the competitive bidding process, States would not only be required to go through this process every year but the requirement could also necessitate annual transfers between storage facilities; (3) this would eliminate free storage and adversely affect temporary or short-term storage.

The Department believes that a written contract is essential to clearly establish the liability between the two parties involved. Without such a contract, establishing claims when losses occur can be problematic. Therefore, this interim rule provides for an annual contract. In recognition of the benefits of a longer contract cycle, the interim rule has been modified to permit the one-year agreements to be extended at the option of both parties, for two additional one-year periods. As a part of each extension, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for.

The provision regarding two one-year extensions of contracts does not apply to existing contracts with storage facilities. It applies only to storage facility contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively.

In addition, the Department is limiting to distributing agencies and subdistributing agencies the requirements in § 250.14(d) that storage facility contracts be in writing and be subject to a maximum three year bidding cycle. A corresponding change has been made to § 250.12(d). Recipient agencies have been exempted from this requirement because of the heavy paperwork burden involved in such a requirement, particularly in light of the typically small amount of commodities stored by recipient agencies. As pointed out by the commenters, these requirements could adversely affect the ability of recipient agencies to find temporary or short-term storage. The Department also agrees with the commenters' concern that the contract requirements might limit the availability of low-cost or free storage arrangements sometimes offered as a service to schools or other recipient agencies. For these reasons, the requirement for a written storage contract subject to a three-year bidding cycle has been limited to distributing agency and subdistributing agency storage contracts. However, there is nothing to prohibit the distributing agency from requiring recipient agencies to have a written contract.

With respect to the assurances the contract must contain, the interim rule requires (1) annual rather than semi-annual inventories as proposed (2) reconciliation of the annual physical inventory with the inventory records, and (3) termination of the contract for cause by either party upon 30 days notice, rather than for any reason and with 60 days notice as proposed. The changes involving the inventories are discussed in the next section. The Department believes that the changes in the time for notice prior to the termination and the reasons therefore is necessary in light of the potential three year periods which will be permitted between bidding for contracts.

Physical Inventory—Accountability and monitoring of donated foods are two areas that have been under close scrutiny as a result of nationwide audits conducted both by the Department's Office of Inspector General (OIG) and the General Accounting Office (GAO). OIG found that the system presently in use is inefficient for monitoring levels of donated foods.

To ensure that inventory controls and accountability of donated foods, § 250.14(d) of the proposed rule required distributing agencies, subdistributing agencies, and recipient agencies to conduct semi-annual physical inventories of all storage facilities being used for the handling, storage and distribution of donated foods by June 30 and December 30 of each year. The physical inventory information was to be submitted to the appropriate FNSRO as part of the monthly inventory report for the months of June and December.

Eighty-five comments were received regarding this proposed requirement. Seventy-five of the commenters expressed concern that the requirement would increase costs and that there were insufficient staff to conduct such inventories. Commenters made the following recommendations: (1) Delete the semi-annual physical inventory requirement; (2) conduct physical inventories annually; (3) limit inventories to facilities owned or used by distributing agencies and recipient agencies; (4) limit inventories to distributing agency contracted facilities; or (5) review inventories during management evaluation reviews.

In recognition of the points raised by commenters while taking into consideration the concerns of the Office of the Inspector General (OIG) and recommendations of the General Accounting Office (GAO), § 250.14(d) of this interim rule requires that during the annual review required by § 250.14(b) a physical inventory be taken of the storage facility and reconciled with the storage facility's inventory records and that the reconciliation be kept on file by the agency which contracted with or maintained the storage facility. While a perpetual inventory is not specifically required by this rule, in the Department's view a daily accounting of the usage of each donated food is an essential part of good management practice. A perpetual inventory record should show: (1) Dates of all transactions; (2) quantities withdrawn; and (3) balance of food in storage. The physical inventory will then serve as a check on the accuracy of the inventory records. Any major differences in the two inventories, however, must be investigated thoroughly. Corrective action must be taken immediately and reported to the distributing agency. Since this rule requires that the physical inventory information be maintained on file, § 250.17(b) which required submission of this information to the FNSRO, has been deleted in this interim rule.

Excessive inventories—Section 250.14(e) of the proposed rule limited the inventory level of distributing agencies, subdistributing agencies and recipient agencies to a six month supply, unless a justification for a higher level was approved.

A total of eighty comments was received on this provision. Seventy-four commenters recommended that the provision be deleted or revised for the following reasons: (1) Some products are offered only once a year; and (2) the Department's policy for shipping only truckload lots gives some States a year's allotment at one time. However, several commenters endorsed the requirement, as proposed.

The provision limiting the inventory level to a six-month supply, unless justification for a higher level is approved, is retained in § 250.14(e) of this interim rule. Audits by OIG and GAO have disclosed major problems associated with excessive inventory levels. The reports indicated that excessive inventories resulted in increased storage costs, greater potential for infestation and spoilage and difficulty in effectively using the product. In addition, in instances when a food item may be offered only once, the limited supply of a food item is sufficient justification for either the distributing agency or FNSRO to approve a higher inventory level. Also, the Department is trying to eliminate inconsistencies in the commodity program whenever possible. Retaining the six-month inventory level provision will make the Food Distribution Program consistent with the current inventory limitations on processors participating under the National Commodity Processing System and State processing contracts.

Financial Management

Section 813 of Pub. L. 100-77 extended the date for prohibiting the assessment of fees for the interstate cost of storage and transportation under Part 251 of this chapter through September 30, 1988. Accordingly, this nondiscretionary requirement has been included in § 250.15(a)(2) of this interim rule.

Claims for Improper Distribution, Loss of, or Damage to Donated Foods and Use of Funds Accruing from Claims

Section 250.6(m) of the current regulations requires the distributing agencies to pursue claims arising in their favor immediately upon receipt of information regarding commodity loss, damage, or improper distribution. Certain exemptions from claims actions are provided for in instances of minimal inventory shortages or losses. Section 250.6(k) of the current regulations contains provisions concerning the use of funds accruing from claims, as well as the use of funds accruing from other aspects of program operations. At the time the overall revisions to Part 250 were proposed, a determination was made that further consideration should be given to the procedures for pursuing claims and the use of funds accrued as a result of such claims action. Thus, §§ 250.15(c) and (f)(1) were reserved in the proposed rule. Because a proposed rule soliciting comments on these procedures has not been published, the provisions specified in § 250.6(m) and (k) of the current rule have been incorporated into this interim rule. Since these provisions are merely being incorporated from the current regulations, no comments are being solicited at this time. The Department intends to publish a proposed rule addressing these provisions at a later date.

Use of Program Funds

Allowable Administrative Expenses—Section 250.15(f)(2) of the proposed rule listed some examples of unallowable expenses and also referenced the Office of Management and Budget (OMB) Circular A-87, which outlines in more detail the expenditures for which program funds cannot be used. Since this circular describes allowable expenses the Department did not believe it was necessary to repeat the entire listing in the proposed rule.

A total of nine comments was received on this provision. The majority of commenters were in favor of the provision. Some commenters recommended that OMB Circular A-122 also be included since distributing agencies have contracts with private nonprofit organizations.

Although the proposed rule referenced OMB Circular A-87, the Department recognizes that it is more appropriate to reference the portion of the Department's Uniform Federal Assistance regulations, 7 CFR Part 3015, Subpart T, which implements the OMB Circulars concerning Cost Principles, including A-87 and A-122. Therefore, this interim rule references 7 CFR Part 3015, Subpart T rather than the circulars. This provision has also been redrafted to make clear that the list of unallowable costs is not exhaustive.

Excess Funds—There are two ways which funds can accrue to distributing agencies as a result of program operations: (1) Through the collection of distribution charges; and (2) through the sale of containers, salvage of donated foods, insurance collection or recoveries from loss or damage claims. Currently the regulations specifically spell out the uses of these two categories of funds. Distributing agencies are required to review at least once each fiscal year the receipt and expenditure of funds to ensure that fund balances are not in excess of program needs. If funds are found to be excessive, the distributing agency is required to reduce such funds. If excess funds accumulate as a result of collection of distribution charges, such excess funds should be used to reduce such charges or be returned to the contributor. If excess funds accrue from the sale of containers, salvage of donated foods, insurance or other recoveries from loss or damage claims, such funds shall be used to reduce distribution charges, purchase additional foods or be paid to the Department.

Section 250.15(f)(3) of the proposed regulations provided precise guidelines for determining what constitutes "excess funds". Since distributing agencies use these funds for different purposes, no specific dollar limit was proposed. The term "excess funds" was defined as funds exceeding the previous three month's expenditures. The total expenditures for the previous three months is the "maximum" amount of funds which the distributing agency may have in its account. Funds which exceed this amount were considered in excess of program needs unless the distributing agencies provided justification of the need for such funds and the justification was approved by FNSRO. In some instances, the FNSRO may have considered funds equal to or less than the expenditures for the previous three months to be in excess of what was needed. In such instances the distributing agency was required to reduce such funds. Expenditures of a nonrecurring nature were not included in the determination of total expenditures for the previous three months.

A total of forty-four comments was received on the proposed definition. Three commenters were in favor of the definition of excess funds, while forty-one commenters were opposed. Generally, commenters contended that basing the definition on the previous three months' expenditures might be too restrictive. Commenters provided a wide range of timeframes on which to base this definition. The main concern was that distributing agencies must have enough funds to conduct normal business during the months of high expenditures and low revenues.

In order to provide distributing agencies with more flexibility,

§ 250.15(f)(3) of the interim rule defines excess funds differently depending on the source of the funds. As stated above, there are several ways distributing agencies can accrue funds; through the collection of distribution charges and through the sale of containers, salvage of donated foods, insurance collection or recoveries from loss or damage claims. Since the allowable uses of the funds depends on the source of the funds, in this interim rule distributing agencies are required to maintain separate accounts for the two types of funds: an operating account based on distribution charges and a salvage account based on the sale of containers, salvage and claims, etc. At a maximum, the operating account funds shall not exceed the sum of the previous year's highest three-month expenditures. Funds exceeding this maximum shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. The FNSRO may determine that funds equal to or less than the expenditures for the previous year's highest three months are in excess of what is needed. In such instances, the distributing agency shall also reduce such funds. As required in the proposed rule, if excess funds accumulate by reason of collection of distribution charges, such funds shall be used to reduce such charges or shall be returned to the contributors.

The salvage account fund will normally have irregular deposits and irregular expenses. Since nonrecurring unbudgeted expenditures will be made out of the salvage account, the interim rule sets no limit on this account. FNSRO must, however, give prior approval to each deposit or expenditure which is in excess of $2,500. Since the interim rule does not set a limit on the amount of funds which can accrue from the sale of containers, salvage of donated foods, insurance collection or recoveries of claims for the loss or damage of donated foods, the portion of the proposed rule concerning the use of excess funds of this type has been deleted. The use of the salvage account funds is governed by paragraph (f)(1) and (f)(2).

Maintenance of records

The proposal in § 250.19(a)(4) required processors or other entities which contract with a distributing agency, subdistributing agency or recipient agency to keep records. While the Department considers food service management companies and warehouses to fall in the category of "other entities", to avoid confusion the interim rule has been amended to specifically name these two groups.

Distributing agency-sponsored audits. Section 250.18(b) of the proposed rule required each distributing agency to provide for audits of all food distribution program operations that include examination of records pertaining to donated food acquisition, storage, distribution, processing activities within the State (except for that of multi-State processors) and financial information.

Fifty-three comments were received on this requirement. Fifty-one commenters opposed the provision. The majority of the commenters were concerned that the cost outweighed the benefits and that the audits served no useful purpose since they were mainly fiscal in nature. Most commenters recommended that the requirement be deleted.

In response to the comments received, this interim rule eliminates the distributing agency-sponsored audit provision. The Department has determined that strengthening the review requirements (§ 250.19(b)), which focus on program operations, is a much more effective means of ensuring appropriate oversight of program administration. Fiscal matters will continue to be reviewed in audits conducted under the Single Audit Act.

Reviews

The current regulations contain minimal monitoring provisions applicable only to distributing agencies and State Agencies on Aging. Section 250.19 of the proposed rule strengthened the monitoring provisions to ensure increased accountability.

Section 250.19(b) of the proposal required to FNS to establish evaluation procedures to determine whether distributing agencies have carried out the provisions of this Part and FNS guidelines and instructions. Since this requirement involves internal departmental procedures, rather than the review requirements for distributing agencies, it has been removed from this interim rule. The Department will, however, be providing further assistance and guidance to distributing agencies to ensure that the procedures established for reviews will encompass all operations covered by this Part. As a result of the deletion of this requirement, proposed § 250.19(c) and (d) have been redesignated in the interim rule as § 250.19(b) and (c), respectively.

Section 250.19(c) of the proposed rule required annual reviews by the distributing agency of all distributing agency level storage facilities, all processors (other than multi-State processors), and most food service management companies; the proposed rule also required periodic reviews of recipient agencies that received donated food but were not subject to reviews under the other FNS program regulations. Thus, the distributing agency would review charitable institutions, nonprofit summer camps for children, and nutrition programs for the elderly. Because of variances within States, the proposed rule did not establish minimum review frequencies for these recipient agencies but specifically requested that commenters make recommendations about the frequency of reviews required for adequate coverage.

Forty-five comment letters were received on the requirement for a formal State monitoring system, and all but three expressed opposition to one of more provisions. The most frequent objection was that the added responsibilities for distributing agencies would increase costs for activities for which no Federal administrative funds are provided. Nevertheless, twenty-eight commenters saw the need for some degree of periodic monitoring of recipient agencies. However, none recommended that more than 50 percent of the outlets in any category be reviewed each year. Of the seventeen comment letters expressing views on the frequency of onsite visits to recipient agencies, nine recommended that charitable institutions, nutrition programs for the elderly and summer camps all be placed on a 4-year review cycle for the Food Distribution Program similar to that required for the Assessment Improvement and Monitoring System (AIMS) under the regulations for the National School Lunch Program (7 CFR Part 210). Alternate recommendations were that reviews of these recipient agencies be conducted every 2 years, 3 years or 5 years.

Based on the commenters' recommendations and the Department's experience with reviews for other programs, § 250.19(b) of the interim rule establishes a 4-years cycle for review of charitable institutions, nonprofit summer camps and nutrition programs for the elderly with annual on-site visits required for not less than 25 percent each year. The 25 percent of the recipient agencies chosen to be reviewed each year must result in all recipient agencies being reviewed once every four years. The interim rule also clarifies the scope of these reviews. Sections 250.19(b)(1)(i) and (iv) require reviews to include on-site reviews of storage facilities used by these recipient agencies and a review of all contracts between the recipient agency and food service management companies.

Several commenters were concerned about the omission from the proposed rule of a monitoring requirement for Child Nutrition Program outlets. These commenters pointed out that, while program regulations under Part 210, 225, and 226 require periodic reviews of schools and institutions receiving commodities, there is no requirement to review the commodity activities of those recipient agencies. Such a review should include an examination of ordering, storage, use and accountability procedures. The commenters recommended that these outlets be required to be reviewed periodically by distributing agencies.

The Department recognizes this concern and upon re-evaluation may decide to require that these Child Nutrition Programs be reviewed. However, since the proposed rule omitted such requirements, the Department will address this matter in a proposed rule or other means to ensure that these outlets are monitored.

The provision of § 250.19(c)(1) of the proposed rule required an annual review of all food service management companies except those contracting with schools. Because of commenters' concerns, the final rule requires a biennial review.

The interim rule retains the requirement for an annual review of all distributing agency level storage facilities as also reflected in § 250.14(b). The interim rule also clarifies that these reviews must be conducted on-site. As required by § 250.14(b), the distributing agency shall ensure that local-level storage facilities are reviewed by appropriate recipient agency personnel.

Section 250.19(b) also requires distributing agencies to conduct review of single State processors once every two years rather than annually as proposed. The Department determined that the frequency of once every two years will provide sufficient control based on reconsideration of the value of commodities going to the processors. If, in the performance of its review functions the distributing agency discovers deficiencies or potential problems, corrective action should be taken to eliminate the deficiency immediately.

Nondiscrimination—Section 250.21 of the proposed rule was reserved for the program's nondiscrimination provisions. The Department determined that further consideration be given to developing expanded provisions on prohibitions against discrimination on the grounds of age, sex, or handicap as required by Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Upon reconsideration the Department has determined that there is no need to publish a separate Food Distribution Program rule covering these prohibitions since there are Department-wide regulations (7 CFR Parts 15, 15a and 15b) already in place that are binding on all programs. Therefore, § 250.21 of this interim rule states the applicable prohibitions against discrimination on the grounds of age, sex, handicap, race, color or national origin and provides reference to the Department's regulations and instructions concerning civil rights.

State Processing of Donated Foods

As discussed above in the Supplementary Information section, the Department published in the Federal Register two regulations concerning State processing of donated food. Since comments have already been taken on these rules, the Department is not accepting any further comments pursuant to this rulemaking. These provisions are only included to provide a complete version of the Food Distribution Program regulations for reference purposes.

Nonprofit Summer Camps for Children

Section 1562 of Pub. L. 99-198 amended section 4(b) of the Agriculture and Consumer Protection Act of 1973 to change the age limit of children from "under 16" to "18 years of age and under". Accordingly, this nondiscretionary requirement has been included in § 250.40(a)(2) of the interim rule. This change in law is also reflected in a change in the definition of adults from persons 18 years of age and over to persons 19 years of age and over.

Section 250.40(a)(1)(xi) of the proposed rule required that the agreement between the camp and distributing agency include an assurance that excess commodity inventory be returned to the distributing agency. A total of eight comments were received and all of the commenters opposed the provision. Commenters suggested that remaining inventories be redonated at the distributing agency to other recipient agencies at the end of the camping session. Commenters also suggested that foods be transferred per instructions of the distribution agency.

Section 250.40(a)(3) as proposed required distributing agencies to transfer all donated foods remaining in summer camps at the end of the camping session to other recipient agencies. The Department notes, however, that some confusion may have resulted from the use of the terms "transfer" and "redonate." Section 250.13 uses the term transfer when commodities are moved from one recipient agency to another within a State and redonate when a distributing agency is unable to use the commodities and requests the FNSRO to move them to another distributing agency. To be consistent with this usage, § 250.40(a)(1)(xi) has been revised to require summer camps, at the distributing agency's option, to transfer any remaining commodities in accordance with § 250.13(a) or to return them to the distributing agency for redonation. A parallel change has been made to § 250.40(a)(3), including cross references to the transfer and redonation provisions in § 250.13.

In addition, § 250.40(a)(1)(x) has been changed to require assurance that a reconciliation of the physical inventory will be conducted at the end of the camping session. This change is necessary to be consistent with the annual reconciliation requirement of § 250.14(d).

Charitable Institutions

Under section 416 of the Agricultural Act of 1949, as amended, charitable institutions are eligible to receive commodities to the extent that they serve needy persons.

Section 250.41 of the proposed rule established a uniform means of determining the needy population of charitable institutions. In order to eliminate the varying and often unreliable methods for determining the number of needy persons served by a charitable institution, the proposed regulations required the distributing agency to determine the number of needy persons by: (1) Determining the percentage of subsidized income by dividing the subsidized income by total subsidized and nonsubsidized income; and (2) multiplying that percentage by the average daily number of participants. For the purpose of this section "subsidized income" was defined as income from public tax funds which is provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax-exempt contributions which provide for the care of participants the institution has determined to be in need of financial assistance. "Nonsubsidized income" was defined as all other income,

including payments made by institutional participants for services received and payments made on behalf of participants by persons legally responsible for their support. At a minimum, any time the number of participants in an institution or the amount of income increased or decreased by ten percent, the institution was required to notify the distributing agency. The distributing agency was then to revise financial and participation data to reflect such changes.

A total of thirty-two comments were received on the minimum requirement for reporting changes in the population or income of an institution. A few commenters recommended that hospital and nursing home caseloads be determined by Medicaid patient count as an alternative to the percent of subsidized income method. Twenty-eight commenters opposed the provision on the basis that it was unrealistic, unmanageable, too time consuming and that it would increase cost, paperwork and workload.

In response to commenters' concerns, the Department has decided to permit an alternative method to determine the needy population of charitable institutions. This alternative method allows institutions to count the number of people receiving benefits under a means-tested program. For example, if an institution had 100 patients and 10 of those patients were receiving benefits under a means-tested program, i.e. Medicaid, then that number will be the basis for determining the amount of donated foods that institution will receive. Thus, the interim rule requires distributing agencies to determine the number of needy persons being served in a charitable institution by using the subsidized income formula or by counting the number of needy persons receiving benefits under another means-tested program.

The Department is also eliminating the requirement for reporting ten percent changes in the population or income. The income and average daily participation figures reflected in the agreement shall be used in determining the number of needy persons being served by the institution in accordance with the above formulas. These figures will be based on the institution's financial and participation data for the previous year.

Section 250.41 of the proposed rule also required that the agreement include assurance that the tax exempt status be maintained. Upon reconsideration the Department has decided to delete this provision since verification of tax exempt status is included in the updated information the distributing agency obtains from the charitable institution each year.

In addition, the definition of "charitable institution" in Section 250.3 of the proposed rule required that a charitable institution not only be nonprofit, but also operate a nonprofit meal service. A total of thirty-four comments was received. Four commenters agreed with the provision while thirty commenters objected for reasons such as the increased administrative burden associated with the review of an organization's financial records which would have to be done in order to determine if the meal service is nonprofit. Based on the commenters' concerns, the Department has re-evaluated its position on this provision and has deleted the nonprofit meal service language from the definition and deleted the definition of "nonprofit meal service".

Some commenters recommended that Veteran Administration (VA) hospitals and post-secondary schools be included in the definition of charitable institutions. Since donated foods are provided by the Commodity Credit Corporation directly to the VA hospitals, these hospitals are not included in the definition. The Department has no legislative authority to provide commodities to post-secondary schools.

Correctional Institutions—There is no specific legislative authority for USDA food donations to nonfederal, adult correctional institutions. However, the Department has determined that institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions" within the intent of section 416 of the Agricultural Act of 1949, as amended. In order to distinguish between eligible correctional institutions and ineligible penal institutions, Section 250.41(a)(2) of the proposed rule adopted the eligibility criteria for adult correctional institutions to receive food donations as contained in FNS Instruction 708-3. In order to receive donated foods, adult correctional facilities must conduct rehabilitation programs which are (1) available to a majority of inmates and (2) of sufficient scope to permit participation (for a minimum of 10 hours per week per inmate) by either a majority of the total inmate population or a majority of sentenced inmates.

A total of six comments was received on this requirement. Four commenters opposed the provision, suggesting that the ten hour per week rehabilitative program be eliminated.

As stated in the program rule, in the absence of express legislative authority for USDA food donations to nonfederal adult correctional institutions, the Department determined that such institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions". The Department believes that this is consistent with the requirements of section 416 of the Agriculture Act of 1949, as amended. Thus, § 250.41(a)(2) is retained as proposed.

Nutrition Program for the Elderly

The first sentence in § 250.42(e) of the proposed rule stated that distributing agencies shall enter into an agreement with the State Agency on Aging responsible for administering programs funded under Titles III or VI of the Older Americans Act of 1965 in accordance with § 250.12(b) unless the State Agency on Aging has elected to receive all cash in lieu of donated foods. As commenters pointed out, the election of cash in lieu does not prevent the State Agency on Aging from obtaining certain commodities in addition to the cash in lieu of the per meal rate of donated food. Therefore, this sentence has been deleted.

In addition, § 250.42 of the proposed regulations specified that no adjustments in commodity allocations would be made on the basis of meal reports or estimates received after the close of the third Federal fiscal quarter of the year to which they pertain. Only two comments were received on this provision; one in favor and one opposed. The Department is retaining the provision as proposed so as to avoid overallocation or underallocation of food.

Finally, § 250.42(b) has been amended to reflect the change to the authorized level of assistance made by section 122(c) of Pub. L. 100-175 (enacted on November 29, 1987).

Emergency Food Assistance

Disaster Assistance—Section 250.43 and 250.44 of the proposed rule clarified the responsibilities of the distributing agency and disaster organizations in the use of donated foods during a major disaster, emergency or other situations of distress.

Section 250.43 of the proposed rule described the procedures for obtaining donated foods in instances when the Secretary has determined that a major disaster or emergency exists. The section also revised the procedures set forth in FNS Instruction 708-2 regarding household distribution of commodities on Indian reservations in cases of a major disaster or emergency. Under the instruction, Indian tribal organizations could receive donated foods for household distribution in any instance

of major disaster or emergency, without meeting some of the requirements for disaster assistance in other areas in which the Food Stamp Program is in operation. Under § 250.43(c) of the proposed rule, Indian tribal organizations would have to meet the same criteria as those set forth for other jurisdictions where the Food Stamp Program is in operation before receiving donated foods for household distribution.

A total of nine comments were received. The commenters opposed various provisions in the section regarding the distribution of commodities during disaster and emergency situations. Commenters felt that it was time consuming to fill out applications especially in an emergency and it was not efficient for States to wait for approval from the Secretary in order to meet specific needs. Commenters also felt that in an emergency all displaced persons should be considered in need regardless of income or social status.

Section 250.43 has been revised in the interim rule to make clear that it is the President who declares major disasters and emergencies pursuant to the Disaster Relief Act of 1974, but it is the Secretary who determines that, as a result of the major disaster or emergency, the type of assistance in the form of donated foods that is necessary. In addition, the interim rule provides that disaster assistance may continue as long as the Secretary deems necessary, rather than only for the duration of the major disaster or emergency. This change parallels the language of section 409 of the Disaster Relief Act.

Finally, the Department has decided to retain the limitation on the household distribution of donated foods in areas where the Food Stamp Program is in operation. The proposed rule permitted the distribution of donated foods to households in areas served by the Food Stamp Program only so long as the Secretary finds that the commercial channels of trade have been disrupted. This limitation originated from a former provision of section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)) which permitted the distribution of commodities to households in areas in which the Food Stamp Program was in operation only on a temporary basis under programs authorized by law to meet disaster relief need. This limitation, together with the provision of section 5(h) of the Food Stamp Act of 1977 (7 U.S.C. 2014(h)), which permits the distribution of food stamps to disaster victims only after the normal channels or trade have been disrupted and then resumed, gave rise to the policy contained in the proposed rule.

As noted earlier in the preamble, the general prohibition on household distribution of donated food has been deleted from section 4(b) of the Food Stamp Act of 1977. However, the Department believes that it is duplicative to permit the continuation of the household distribution of donated food once emergency food stamps become available. Therefore, the limitation on the distribution of commodities for household use to the period in which normal channels of trade are disrupted is being retained in § 250.43(a) of this interim rule.

With respect to the commenters' concern that delays would result from the need to obtain approval by the Secretary prior to commencing household distribution of commodities, the Department wishes to point out that § 250.43(c) required only the prior approval of the FNSRO. The Department believes that any delay would be insignificant and that the advance approval is necessary to ensure accountability.

Section 250.43(b)(2) of the interim rule has also been amended to clarify the authority of the distributing agency to use donated foods from any sources within the State in a disaster. The Department believes that it is imperative that distributing agencies have the right to use donated foods so that they can coordinate and direct all intrastate donation of food during a disaster.

Situations of Distress—Section 250.44 described the procedures for obtaining donated foods in situations of distress in which the need for food assistance cannot be met under other provisions of Part 250. Donations under this section may only be made for special group food assistance.

Section 250.44 of the proposed rule expanded the current regulations to clarify the responsibilities of the distributing agency in the use of donated foods during situations of distress. In addition, a limit was placed on the distribution period to no longer than 30 days and required that the donated foods is provided only to groups which are composed predominantly of needy persons.

Six comments were received on this provision. The majority of the commenters misunderstood the provision believing that if referred to disasters. One commenter recommended that the current language be retained.

The Department has reevaluated its position on this provision because in situations of distress, it is extremely difficult to determine who is needy and to determine how long the situation will last. In reviewing the proposed language on situations of distress, the Department determined that it was unclear what situations were "distress situations" and which would be considered "disasters." Revisions (as previously noted) have been made to the sections on disaster assistance to make those disaster provisions more explicit. In the case of situations of "distress", the Department feels that the language in the current rule more clearly depicts the difference between a disaster and situations of distress. Finally, the proposed rule limited the duration of food assistance in a distress situation to no more than 30 days. The Department, however, believes that such a restriction is unnecessary since the Secretary has the authority to determine the duration of the food assistance provided. Therefore, Section 250.44 is being revised to contain the provisions appearing in Section 250.10 of the current rule.

Food Distribution Program on Indian Reservations

The Department proposed in § 250.47(a) that distributing agencies which operate a food distribution program on an Indian reservation comply with § 250.30 regarding State processing of donated food. This section was inadvertently included in the proposal. Compliance with § 250.30 has been removed from this interim rule since distributing agencies for Indian reservations receive only approved food packages for distribution to households. Paragraph (a) has also been revised to clarify that if there is a conflict between the cited Part 250 section and Parts 253 and 254 that the Parts 253 and 254 will take precedence.

Paragraph (b) of this interim rule includes a reference to Part 254 Food Distribution Program for Indian Households in Oklahoma. Reference to Part 254 was inadvertently omitted in the proposal. However, since this part also sets the conditions for Food Distribution Program administration by eligible Oklahoma tribes, reference to Part 254 is included in this interim rule.

School Food Authorities

All references to schools in § 250.48 of the interim rule have been changed to school food authorities. This is being done to clarify the rule because school food authorities, not schools, are the ones that sign agreements with the distributing agency and which administer the program at the school level.

Proposed paragraph (b)(1) *Quantities* required the distributing agency to

develop a system to update and review caseload information by June 30 and December 30. The provision has been changed to require that an estimate of the average daily number of meals be submitted as early as practicable each school year but not later than September 1. This change merely incorporates the requirement as provided in 7 CFR 210.29(b).

Offer and Acceptance System—Section 250.48(e)(2) of the proposed rule prohibited the refusal of donated foods in instances when an offer-and-acceptance system is being maintained. Use of the offer-and-acceptance system permits school food authorities to order only the amounts and varieties of donated foods they desire for the school lunch program on the basis of advance notification by the distributing agency. Thus, the refusal provision is not warranted in instances when an offer-and-acceptance system is being maintained.

A total of fifteen comments was received on this provision. Nine commenters opposed the requirement and indicated that a refusal clause is needed to help discourage waste. Other commenters expressed concern that the requirement would result in increased storage costs.

The interim rule retains this provision as proposed. The Department believes that if the offer-and-acceptance system is utilized correctly that schools will not need the 20 percent refusal provision.

Nonresidential Childcare Institutions

Section 250.49(b) of the proposed rule required the distributing agency to develop a system to update and review caseload information by June 30 and December 30 of each year. The provision has been revised in this interim rule to require that an estimate of the average daily number of meals be submitted by the State agency to the distributing agency by June 1 of each year. This change is necessary to maintain consistency with the requirement for reporting the average daily number of meals as contained in 7 CFR 226.6(g).

Service Institutions

Section 250.50(b) of the proposed rule required that service institutions submit the most recent written caseload information by April 30 of each year. This date has been changed in the interim rule to June 1 to incorporate the requirement as provided in 7 CFR 225.5(b).

Special Supplemental Food Program for Women, Infants and Children (WIC) Program

State agencies which administer the WIC program are eligible to receive donated foods from the Department. Section 250.51 of the proposed rule outlined the procedures by which State agencies may request the donated foods for distribution to WIC Program participants. Those donated foods which are included in the WIC food package must be paid for by the State agencies with funds allocated to the State for the WIC Program. Donated foods which are provided to participants in addition to the quantities authorized for the food package are made available to the State agency free of charge. Since no comments were received on this provision, § 250.51 is retained in this interim rule as proposed.

List of Subjects in 7 CFR Part 250

Aged, Agricultured commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Chapter II is amended by revising Part 250 to read as follows:

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

Subpart A—General

Sec.

250.1 General purpose and scope.
250.2 Administration.
250.3 Definitions.

Subpart B—General Operating Provisions

250.10 Eligible distributing and subdistributing agencies.
250.11 Eligibility determination for recipient agencies and recipients.
250.12 Agreements and contracts.
250.13 Distribution and control of donated foods.
250.14 Storage facilities.
250.15 Financial management.
250.16 Maintenance of records.
250.17 Reports.
250.18 Audits.
250.19 Reviews.
250.20 Sanctions.
250.21 Civil rights.
250.22 Complaints.

Subpart C—Processing and Labeling of Donated Foods

250.30 State processing of donated foods.

Subpart D—Eligible Recipients Agencies and Programs

250.40 Nonprofit summer camps for children.
250.41 Charitable institutions.
250.42 Nutrition programs for the elderly.
250.43 Disaster organizations.
250.44 Special food assistance programs.
250.45 Commodity Supplemental Food Program.
250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.
250.47 Food Distribution Program on Indian Reservations.
250.48 School food authorities and commodity schools.
250.49 Nonresidential child care institutions.
250.50 Service institutions.
250.51 Special Supplemental Food Program for Women, Infants, and Children.

Subpart E—Where to obtain information

250.60 Program information.

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 238, 239 (42 U.S.C. 1755, 1758); Sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); Sec. 402, Pub. L. 81–666, 68 Stat. 843 (22 U.S.C. 1922); Sec. 310, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); Sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); Sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); Sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); Secs. 408, 416, Pub. L. 95–266, 86 Stat. 157 (42 U.S.C. 5178, 5180); Sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); Sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1786); Sec. 1304(a) Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); Sec. 311, Pub. L. 95–478, 92 Stat. 1538 (42 U.S.C. 3030a); Sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 1114(a), Pub. L. 97–98, 95 Stat. 1289 (7 U.S.C. 1431e); Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301), unless otherwise noted.

Subpart A—General

§ 250.1 General purpose and scope.

This part prescribes the terms and conditions under which donated foods may be obtained from the Department by Federal, State and private agencies for use in any State in child nutrition programs, nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, the Commodity Supplemental Food Program, the Special Supplemental Food Program for Women, Infants, and Children, the Food Distribution Programs on Indian Reservations and the assistance of needy persons.

§ 250.2 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of

the program. FNS will provide assistance to distributing agencies and evaluate all levels of program operations to assure that the goals of the program are achieved in the most effective and efficient manner possible.

(b) *Delegation to distributing agency.* The distributing agency is responsible for effective and efficient administration of program operations within its jurisdiction and shall administer the program in accordance with the requirements of this Part and FNS guidelines and instructions. Distributing agencies may impose additional requirements for participation that are not inconsistent with the provisions of this Part, except that this provision shall not apply to distribution to households on all or part of an Indian reservation which is participating in the Food Distribution Program under Part 253 and Part 254 of this chapter. The distributing agency shall provide guidance to subdistributing agencies and recipient agencies on all aspects of program operations.

(c) *Personnel.* Each distributing agency shall provide adequate personnel, to administer the program in accordance with this part.

§ 250.3 Definitions.

"Charitable institutions" means:

(a) A nonpenal, noneducational public (Federal, State or local) institution,

(b) A nonprofit, tax exempt, private hospital, or

(c) Any other nonprofit, noneducational, tax exempt private institution organized to provide charitable or public welfare services in the same place without marked changes and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a meal service on a regular basis. Charitable institutions include any institution defined as "service institution"; "nonresidential child care institution"; or "school" which is not a commodity school or does not participate in a child nutrition program. For purposes of this paragraph, tax exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered "noneducational" even though educational courses are given, where such courses are incidental to the primary purpose of the charitable institution.

"Child nutrition program" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program (Parts 210, 220, 225, and 226 respectively of this chapter).

"Commodities" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Donated Foods").

"Commodity school" means a school that does not participate in the National School Lunch Program under Part 210 of this chapter but which operates a nonprofit school food service under agreement with the State educational agency or FNSRO as provided for under Part 210 of this Chapter and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under Part 240 of this Chapter for processing and handling of the donated foods.

"Contract value of the donated foods" means the price assigned by the Department to a donated food which shall reflect the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Contracting agency" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

"Department" means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is the donor under the pertinent legislation.

"Disaster organizations" means organizations authorized by appropriate Federal or State officials to assist disaster victims.

"Disaster victims" means persons who, because of acts of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

"Discount system" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contract value of the donated foods contained in the end products.

"Distributing agency" means a State, Federal or private agency, or Indian Tribal Organization (ITO) which enters into an agreement with the Department for the distribution of donated foods to eligible recipient agencies and recipients and the Food and Nutrition Services of the Department when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies pursuant to the National Commodity Processing System. A distributing agency may also be a recipient agency.

"Distributor" means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

"Donated foods" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Commodities").

"Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, health, and safety or to avert or lessen the threat of a disaster.

"End product" means a product containing any amount of donated foods which have been processed.

"Federal acceptance service" means the acceptance service provided by:

(a) The applicable grading branches of the Department's Agricultural Marketing Service (AMS),

(b) The Department's Federal Grain Inspection Service, and

(c) The National Marine Fisheries Service of the U.S. Department of Commerce.

"Fiscal year" means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following year.

"FNS" means the Food and Nutrition Service of the Department of Agriculture.

"FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department of Agriculture.

"Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.12(c) of this part or in accordance with Parts 210, 220, 225, or 226 of this chapter.

"Household" means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual living alone.

"In-kind replacement" means replacement of lost donated foods with a quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the Department's cost of replacing the lost foods.

"Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974 (42 U.S.C. 5121), above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (This definition is taken from the Disaster Relief Act of 1974.)

"Multi-State processor" means:

(a) A processor which has entered into a processing contract with contracting agencies in more than one State, or

(b) A processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which either the processor's plant or business office is located.

"Needy persons" means:

(a) Persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance,

(b) All the members of a household who are certified as in need of food assistance, and

(c) Disaster victims.

"Nonprofit school food service" means all food service operations conducted by the school food authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food services.

"Nonprofit summer camps for children" means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761), and in which, during the months of May through September, meal services are conducted for children of high school grade and under.

"Nonresidential child care institution" means any institution (as defined in Part 226 of this chapter) which participates in the Child Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

"Nutrition program for the elderly" means a project conducted by a recipient of a grant or contract under Title III or Title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3020a).

"Offer-and-acceptance system" means a procedure whereby a school food authority is given the opportunity to order only the amounts and varieties of donated foods it desires for its school lunch program on the basis of advance notification by the distributing agency.

"Performance supply and surety bond" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

"Processing" means:

(a) The conversion of a donated food or donated foods into a different end product or

(b) The repackaging of a donated food or donated foods.

"Processing fee" means the amount charged to a contracting agency for a processor's services.

"Processor" means a commercial facility, other than a food service management company, which processes donated foods.

"Program" means the Food Distribution Program.

"Recipient agencies" means nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, disaster organizations, school food authorities, schools, nonresidential child care institutions, service institutions, and welfare agencies receiving foods for their own use or for distribution to eligible recipients.

"Recipients" means the needy persons receiving commodities for household consumption.

"Refund application" means an application by a recipient agency in any form acceptable to the processor which certifies purchase of end products and requests a refund of the contract value of the donated foods contained in the end products purchased.

"Refund system" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the contract value of the donated foods contained in the end products.

"School" means:

(a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when recognized as part of the education system of the State;

(b) Any public or nonprofit private classes of preprimary grade when they are conducted in those schools defined in paragraph (a) of this definition having classes of primary or of higher grade;

(c) Any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or

(d) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"School food authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit school food service therein or otherwise approved by FNS to operate the NSLP.

"School year" means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"Secretary" means the Secretary of Agriculture.

"Section 4(a)" means section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). Section 4(a) authorizes the purchase of foods for distribution to maintain the traditional level of assistance for food assistance programs as are authorized by law, including institutions, supplemental feeding programs, disaster areas, summer camps for children, the Trust Territory of the Pacific Islands, and Indians whenever a tribal organization requests distribution of federally-donated foods under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)).

"Section 6" means section 6 of the National School Lunch Act, as amended (42 U.S.C. 1758). Section 6 authorizes the purchase of foods for distribution to schools and institutions participating in child nutrition programs under the National School Lunch Act and specifies the level of assistance which is to be provided.

"Section 14" means section 14 of the National School Lunch Act, as amended (42 U.S.C. 1762a). Section 14 authorizes the purchase of foods for distribution to maintain the annually programmed level of assistance for programs carried on under the National School Lunch Act, the Child Nutrition Act of 1966, and Title III of the Older Americans Act of 1965.

"Section 32" means section 32 of Public Law 74-320, as amended (7 U.S.C. 612c). Section 32 authorizes the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.

"Section 311" means section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a). Section 311 authorizes the purchase of commodities for nutrition programs for the elderly.

"Section 416" means section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). Section 416 authorizes the Department to donate basic nonperishable foods acquired through Federal price-support operations for use by needy persons, for use in nonprofit school lunch programs and nonprofit summer camps for children, and for use in charitable institutions to the extent that needy persons are served.

"Section 708" means section 708 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a-1). Section 708 authorizes the purchase of adequate supplies of dairy products to meet the requirements of schools, domestic relief distribution, and other programs authorized by law when the stocks of the Commodity Credit Corporation are insufficient to meet those requirements.

"Service institutions" means camps or sponsors (as those terms are defined in Part 225 of this Chapter) which participate in the Summer Food Service program authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761).

"Similar replacement" means replacement of lost donated foods with a quantity of similar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods. Such replacement shall be subject to the approval of the FNSRO.

"State" and "United States" means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State Agency on Aging" means:

(a) the State agency that has been designated by the Governor and approved by the United States Department of Health and Human Services (DHHS) to administer nutrition programs for the elderly under Title III of the Older Americans Act of 1965, as amended or

(b) The Indian tribal organization which has been approved by DHHS to administer nutrition programs for the elderly under Title VI of such act.

"Students in home economics" means students in regular classes wherein they are taught general home economics including food preparation, cooking, serving, nutrition, food purchasing, child care and health.

"Subdistributing agency" means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency.

"Substituted food" means domestically produced food that is purchased or manufactured by a processor and is substituted for donated food.

"Substitution" means:

(a) The replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality (i.e. cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or

(b) In the case of donated nonfat dry milk, substitution as defined under (a) of this definition or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

"Welfare agency" means a public (Federal, State or local) or private agency offering assistance on a charitable or welfare basis to needy persons, who are not residents of an institution, and to Tribal councils designated by the Bureau of Indian Affairs.

Subpart B—General Operating Provisions

§ 250.10 Eligible distributing and subdistributing agencies.

(a) *State and Federal agencies.* Federal agencies and such State agencies as are designated by the Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated food on a State-wide basis and which apply directly to FNS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

§ 250.11 Eligibility determination for recipient agencies and recipients.

(a) *Verification of recipient agency eligibility.* Distributing agencies at the request of FNS shall:

(1) Verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have a current agreement with the distributing agency to receive donated food in accordance with § 252.1(c) and

(2) Report the results of such verification to FNS within timeframes determined by FNS.

(b) *Eligibility of recipient agencies and recipients.* Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Distributing agencies shall consider the past performance of recipient agencies when approving applications for participation. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with § 250.12(b) and make donated food available. Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however:* That the State agency or FNSRO administering the applicable program shall determine the eligibility under this Part of school food authorities participating under Part 210 or Part 220, or sponsors participating in the Summer Food Service Program for Children under Part 225, of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under Part 226 of this chapter.

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§ 250.12 Agreements and contracts.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this Part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements. The agreements shall be effective for no longer than one year and must be completed by September 30 of each year. In addition, agreements between the Department and State Agencies on Aging which elect to receive cash in lieu of commodities shall also be affective for no longer than one year and must be completed by September 30 of each year.

(b) *Distributing agency agreements.* Distributing agencies shall enter into written agreements with all subdistributing agencies, recipient agencies, warehouses, carriers, or other entities to which distributing agencies deliver donated foods under their distribution program. Distributing agencies shall be responsible for ensuring that program integrity is maintained by all entities with whom agreements are entered into. All agreements shall contain such terms and conditions as the distributing agency deems necessary to ensure that:

(1) The distribution and use of donated foods is in accordance with this Part.

(2) Subdistributing agencies, recipient agencies, warehouses, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence.

(3) Subdistributing agencies and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and

(4) Subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to, donated foods.

To the extent that bills of lading and warehouse receipts satisfy the above-stated criteria, the distributing agency may consider such documents as appropriate agreements. The agreement shall be in effect for not longer than one year and shall provide that it may be extended at the option of both parties for two additional one year periods. Agreements may be terminated for cause by either party upon 30 days notice. At the time the agreement is extended, the party contracting with the distributing agency must update all pertinent information and must demonstrate that all donated food received during the prior contract period has been accounted for.

(c) *Food service management company agreements.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. In instances when a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company which shall expressly provide that:

(1) Any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation and it is the responsibility of the recipient agency to demonstrate that the full value of all donated foods is used solely for the benefit of the recipient agency; and

(2) The books and records of the food service management company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the fiscal year to which they pertain.

All food service management contracts shall be subject to review by the distributing agency for compliance with requirements of this section in accordance with § 250.19(b)(1). In the case of nonprofit summer camps for children, charitable institutions and nutrition programs for the elderly, the contract shall be in effect for no longer than one year and shall provide that it may be extended at the option of both parties for two additional one-year periods. Contracts may be terminated for cause by either party upon 30 days notice. At the time the contract is extended, the nonprofit summer camp for children, charitable institution or nutrition program for the elderly must update all pertinent information and must demonstrate that all donated food received during the previous contract period has been accounted for.

(d) *Storage facility contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into a written contract for the lease of storage facilities in accordance with § 250.14(c).

(e) *Processing contracts.* When contracting for the processing of donated foods, contracting agencies shall enter into agreements with processors in accordance with § 250.30(c).

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods.* (1) *Availability and use.* Donated foods shall be available only for distribution and use in accordance with the provisions of this Part and, with respect to distribution to households on all or part of an Indian reservation, of Part 253 and 254 of this chapter. Donated foods not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. Donated foods which are provided as part of an approved food package or authorized program level of assistance may be transferred between like recipient agencies with only prior authorization of the distributing agency Donated foods which are provided in addition to the State's authorized program level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (schools to charitable institutions), which have been provided as part of an approved food package or authorized program level of assistance, must be approved by the appropriate FNSRO. Food donation under section 32 of Pub. L. 74-320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under 7 CFR Part 251. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP. All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§ 250.16 and 251.10(a).

(2) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food in addition to the general terms and conditions set forth herein.

Every attempt shall be made to deliver the donated foods in accordance with requested schedules. However, the Department shall not be responsible for delay in delivery or for nondelivery of donated foods due to any cause.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(4) *Quantities.*

(i) The quantity of donated foods to be made available for donation under this Part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(5) *Demonstrations and tests.* Notwithstanding any other provision of this Part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonostrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(b) *Processing and other costs.* The Department shall pay such processing, reprocessing, transporting, handling and other charges accruing up to the time of transfer of title to distributing agencies as is deemed in the best interest of the Department.

(c) *Transfer of title.* Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.

(d) *Distribution of donated foods to recipient agencies or recipients*—(1) *Distribution.* Donated foods shall be distribute only to recipient agencies an recipients eligible to receive them under this part (see Subpart D). Distributing agencies shall require that welfare agencies and disaster organizations distributed donated foods only to recipients eligible to receive them under this part. It shall not be deemed a failure to comply with the provisions of this part if recipient agencies serve meals containing donated foods to persons other than those who are eligible under this part, when such persons share common preparation, serving or dining facilities with eligible persons (needy persons, children, participants in nutrition programs for the elderly) and at least one of the following is true:

(i) Such other persons are common beneficiaries with the eligible persons of the program of the recipient agency, or

(ii) Such other persons are few in number compared to the eligible persons and receive their meals as an incident of their service to the eligible persons.

Such other persons include, but are not limited to teachers, disaster relief workers, and staff members. Nothing in this paragraph shall be construed as authorizing allocation or issuance of donated foods to recipient agencies in greater quantity than that authorized for the assistance of persons eligible under this part.

(2) *Normal food expenditures.* Section 416 donated foods shall not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods.

(e) *Improper distribution, loss of or damage to donated foods.* (1) If a distributing agency improperly distributes or uses any donated foods or causes loss of or damage to a donated food through its failure to provide proper storage, care or handling, the provisions set forth in § 250.15(c) shall apply.

(2) In instances when it is determined by a distributing agency that a claim exists against a subdistributing agency, recipient agency, warehouse, carrier, processor or other person, the distributing agency shall pursue claims in accordance with § 250.15(c).

(f) *Disposition of damaged or out-of-condition foods.* Donated foods which are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. Such instructions may direct that unfit donated food be:

(1) Sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department;

(2) Sold in a manner prescribed by the Department with the proceeds thereof retained for use in accordance with the provisions of § 250.15(f);

(3) Used in such manner as will serve a useful purpose as determined by the Department; or

(4) Destroyed in accordance with applicable sanitation laws and regulations.

Upon a finding by the Department that donated food are unfit for human consumption at the time of delivery to the distributing agency and when the Department or appropriate health officials require that such donated foods be destroyed, the Department may pay to the distributing agency any expenses incurred in connection with such donated foods as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated foods.

(g) *Redonations.* Whenever a distributing agency has any donated food on hand which it cannot efficiently utilize, it shall immediately make a request to the appropriate FNSRO, in writing, for instructions as to the disposition of such donated food. Distributing agencies requesting authority from the Department to make redonation of any donated foods shall, upon the Department's request, have such donated foods federally inspected. Expenditures incurred by the distributing agency as a result of redonation shall be handled in accordance with § 250.15(e).

(h) *Embezzlement, misuse, theft, or obtainment by fraud of donated foods and donated food-related funds, assets, or property.* Notwithstanding paragraph (c) of this section concerning transfer of title to donated foods, whoever embezzles, willfully misapplies, steals, or obtains by fraud, donated foods or any funds, assets, or property deriving from donated foods or whoever receives, conceals, or retains such donated foods, funds, assets, or property for his/her own use or gain, knowing such donated foods, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended (42 U.S.C. 1760(g)) or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). For the purpose of this paragraph "funds, assets, or property" include, but are not limited to funds accruing from the sources identified in § 250.15(f) (1) and (2), donated foods which have been processed into different end products as provided for under Subpart C of this part, and the containers in which donated foods have been received from the Department. Distributing agencies shall immediately notify FNSRO of any

suspected violation of section 12(g) or section 4(c) to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 12(g) or section 4(c) is warranted. Prosecution of violations by the Federal Government shall not relieve any distributing agency of its obligation to obtain recovery for improperly distributed or lost donated foods, as required by § 250.15(c).

§ 250.14 Storage facilities.

(a) *Standards for storage facilities.* Distributing agencies, subdistributing agencies and recipient agencies shall provide facilities for the handling, storage and distribution of donated foods which:

(1) Are sanitary and free from rodent, bird, insect and other animal infestation;

(2) Safeguard against theft, spoilage and other loss;

(3) Maintain foods at proper storage temperatures;

(4) Stock and space foods in a manner so that USDA-donated foods are readily identified;

(5) Store donated food off the floor in a manner to allow for adequate ventilation; and

(6) Take other protective measures as may be necessary.

Distributing agencies, subdistributing agencies and recipient agencies shall ensure that storage facilities have obtained all required Federal, State and/or local health inspections and/or approvals and that such inspection/approvals are current.

(b) *Reviews.* All distributing agency-level storage facilities shall be reviewed annually. Distributing agencies shall ensure that subdistributing and recipient agencies conduct annual reviews of their respective storage facilities. Documentation shall be maintained on file at the distributing agency or local level as appropriate to reflect compliance with this section, including documentation of corrective action in cases of noncompliance. Corrective action must be taken immediately on all deficiencies identified in the review and the result of the corrective action must be forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(c) *Contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into written contracts to be effective for no longer than one year. The contract may be extended at the option of both parties for two additional one year periods. At the time the contract is extended, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. The contract shall, at a minimum, contain the following:

(1) Assurance that the storage facilities will be maintained in accordance with the standards specified in paragraph (a) of this section;

(2) Evidence that donated food shall be clearly identified;

(3) Assurance that an inventory system shall be maintained and an annual physical inventory will be conducted, and reconciled with the inventory records;

(4) Beginning and ending dates of the contract;

(5) A provision for immediate termination of the contract due to noncompliance on the part of the warehouse management;

(6) A provision allowing for termination of the contract for cause by either party upon 30 days written notification;

(7) The amount of any insurance coverage, which has been purchased to protect the value of food items which are being stored; and

(8) Express written consent for inspection and inventory by the distributing agency, subdistributing agency, recipient agency, the Comptroller General, the Department or any of their duly authorized representatives.

(d) *Physical inventory.* During the annual review required by § 250.14(b), distributing agencies, subdistributing agencies and recipient agencies shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency which contracted with or maintained the storage facility. Food items which have been lost, stolen or found to be out-of-condition shall be identified during the physical inventory and reported by the subdistributing or recipient agency to the distributing agency. Potential excessive inventory, as described in paragraph (e) of this section, shall be reported by the subdistributing or recipient agency to the distributing agency. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective actions forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(e) *Excessive inventories.* (1) The distributing agency shall determine if a subdistributing or recipient agency's inventories are excessive based on:

(i) The rate of distribution;

(ii) Anticipated distributions; and

(iii) Other concerns such as logistical and economic considerations.

(2) In no case may the inventory level of each donated food in storage exceed a six-month supply unless sufficient justification for additional inventory has been submitted and approved. Subdistributing agencies and recipient agencies shall submit justification to the distributing agency in instances where more than a six-month inventory is needed. Justification shall be submitted by the distributing agency to the FNSRO for approval in instances where more than a six-month inventory is needed at the distributing agency level.

(3) The distributing agency shall take corrective action to ensure that excess inventories at all levels are eliminated and shall document actions taken to reduce excessive inventories.

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Except as provided in paragraph (a)(2) of this section, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by the distributing or subdistributing agencies. Any system of assessment operated by the distributing or subdistributing agency shall have the prior approval of and be subject to review by the FNSRO. The charges assessed shall be used solely in accordance with the provisions of paragraph (f) of this section.

(2) For the period May 1, 1983, through September 30, 1988, whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under Part 251 of this chapter.

(3) Under no circumstances shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited (except for the nutrition programs for the elderly) in connection with the receipt of donated foods for any purpose.

(b) *Sale of containers.* When containers or packing materials in which donated foods are received are disposed of by sale, the proceeds of such sale shall be used solely in accordance with

the provisions of paragraph (f)(2) of this section.

(c) *Claims.* If a distributing agency improperly distributes or uses any donated foods, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, the distributing agency shall, at the Department's option,

(1) Replace the donated food in its distribution program in kind, or, in the case of section 6 donated foods, where replacement in kind may not be practicable, with other similar foods, or

(2) Pay to the Department the value of the donated food as determined by the Department.

Upon the happening of any event creating a claim in favor of a distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, for the improper distribution, use, or loss of, or damage to, a donated food, the distributing agency shall take action to obtain recovery. All amounts collected by such action shall, at the Department's option, be used in accordance with the provisions of paragraph (c)(1) of this section, or, except for amounts collected on claims involving section 6 donated foods, shall be expended for program purposes in accordance with the provisions of paragraph (f) of this section. Determinations by a distributing agency that a claim has or has not arisen in favor of the distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, shall, at the option of the Department, be approved by the Department prior to the distributing agency taking action thereon. Where prior approval has not been given by the Department, a distributing agency's claim determinations shall be subject to review by the Department. In the case of an inventory shortage, when the loss of any one commodity does not exceed one percent of the total quantity of the donated food distributed or utilized from any single storage facility during the fiscal year in which the loss occurred, or during the period for which an audit was conducted by representatives of the Department, or, if approved by FNS, during the period for which an audit was conducted by the distributing agency, if the distributing agency finds that: (i) The cause of the shortage cannot be established, (ii) the lost donated foods were held in non-commercial storage or other facilities owned or operated by the distributing agency, a subdistributing agency or a recipient agency, and (iii) there is no indication that the loss was the result of negligence or continued inefficiency in operations, the distributing agency need not take any further claims action, but the factual basis for not taking further claims action shall be subject to review by the Department. Furthermore, distributing agencies shall not be required to file or pursue a claim for a loss which does not exceed an amount established by State law, regulations, or procedure as a minimum amount for which a claim will be made for State losses generally, but no such claim shall be disregarded where there is evidence of violation of Federal or State statutes. Distributing agencies which fail to pursue claims arising in their favor, or fail to provide for the right to assert such claims, or fail to require their subdistributing agencies and recipient agencies to provide for such rights in accordance with § 250.12(b), shall be responsible to the Department for replacing the donated foods or paying the value thereof in accordance with the provisions of paragraph (c)(1) or (2) of this section. Distributing agencies which pursue claims arising in their favor, but fail to obtain full restitution shall not be liable to the Department for any deficiency unless the Department determines that the distributing agency fraudulently or negligently failed to take reasonable action to obtain restitution. The Department may, at its option, require assignment to it of any claim arising from the distribution of donated foods.

(d) *Demurrage.* Demurrage or other charges which accrue after a car or truck has been placed for unloading by the delivering carrier, or which accrue because placement of a car or truck is prevented, shall be borne by the distributing agency, except that demurrage or other charges may be borne by the Department where such charges accrue because of actions by the Department and without the fault or negligence of the distributing agency.

(e) *Redonation expenditures.* In accordance with § 250.13(g), whenever a distributing agency requests authority to make redonation of any donated foods and the Department requests that the donated foods be federally inspected, these inspections will be made at the expense of the distributing agency. Any donated foods which the Department determines are acceptable for redonation shall be moved at the distributing agency's expense to the closest point within the FNS region in which the State is located where it can be utilized, or to a closer point outside the region, if such a transfer is mutually agreed to by the Department and the distributing agency. In those instances in which the distributing agency satisfactorily demonstrates to the Department that the need for any redonation resulted from no fault or negligence on its part, the Department shall assume such transportation costs as it determines to be proper. Whenever a redonation is made at the request of the Department, the Department shall pay all transportation and handling costs in connection with such redonation and shall pay to the distributing agency all storage and handling costs accrued on the donated foods at the time of redonation, as determined by the Department, except when the request is made as a result of negligence on the part of the distributing agency.

(f) *Use of funds accruing in operation of the program.* (1) *Funds accruing from claims.* Funds accruing from recoveries from loss or damage claims (which are authorized under paragraph (c) of this section to be expended for program purposes) shall be used only for the payment of expenses of the food distributing program, including transportation, storage and handling or donated foods, salaries of persons directly connected with the program, and other administrative expenses. In accordance with paragraph (f)(4) of this section, the receipt and expenditure of funds so accrued shall be reviewed by the distributing agency to determine that fund balances are not in excess of program needs.

(2) *Other funds.* Funds accruing from the sale of containers, packing materials, salvage of donated foods, distribution charges, or insurance shall be returned to the Department or used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage and handling of donated foods, salaries of persons directly connected with the program and other program-related expenses. Funds accruing from the collection of distribution charges which are determined to be in excess of program needs pursuant to paragraph (f)(4) of this section shall be used in accordance with that paragraph. Funds accruing from the operation of the program shall not be used for those costs which are unallowable under the cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart T. These unallowable costs include, but are not limited to:

(i) Bad debts;

(ii) Contingencies;

(iii) Contributions and donations;

(iv) Entertainment;

(v) Fines and penalties;

(vi) Governor's expenses;

(vii) Interest and other financial costs;

(viii) Legislative expenses; and
(ix) Losses on other grants.

(3) *Segregation of funds.* Distributing agencies and subdistributing agencies shall maintain two separate accounts for funds accruing from program operations. Funds accruing from the collection of distribution charges shall be maintained in an operating account. Funds accruing from the sale of containers, salvage of foods, insurance and recoveries of claims for the loss or damage of donated foods shall be maintained in a salvage account.

(4) *Excess funds.* The distributing agency shall review the receipt and expenditures of funds annually to ensure that fund balances are not in excess of program needs. At a maximum, the operating account fund shall not exceed the sum of the previous year's highest three-month expenditures. Funds exceeding this maximum shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. FNSRO may determine that funds equal to or less than the expenditures for the previous year's highest three months are in excess of what is needed. In such instances, the distributing agency shall reduce the excess funds in the operating account by reducing distributing charges or returning the funds to the contributor. The salvage account will have no set limit. FNSRO must, however, give prior approval to each deposit to or expenditure from the salvage fund which is in excess of $2,500. The distributing agency shall impose upon subdistributing agencies and recipient agencies similar provisions for the use of such funds accruing from the operation of their programs.

§ 250.15 Maintenance of records.

(a) *General requirements.* (1) Accurate and complete records shall be maintained with respect to the receipt, distribution/use and inventory of donated foods including:

(i) End products processed from donated foods and

(ii) The determination made as to liability for any improper distribution, use of, loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency.

Such records shall also be maintained with respect to the receipt and disbursement of funds arising from the operation of the distribution program, including the determination as to the amount of payments to be made by any processor, upon termination of processing contracts.

(2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, distribution/disposal and inventory of donated foods, including end products processed from donated foods, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with § 250.30(k).

(3) Unless a distributing agency maintains an offer-and-acceptance system in accordance with § 250.48(a), the distributing agency shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities. School food authorities shall also be required to maintain such records of refusals.

(4) Each processor, food service management company, warehouse, or other entity which contracts with a distributing agency, subdistributing agency or recipient agency shall be required to keep accurate and complete records with respect to the receipt, distribution/disposal, storage and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which permit an accurate determination of the donated-food inventory. The processor shall also be required to keep formula, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency. Processors must maintain records which will permit a determination regarding compliance with the contracting provisions required by § 250.30(f) (3) and (4) as well as maintain records used as the basis for compiling the processor performance reports required by § 250.30(m).

(5) All recipient agencies shall be required to keep accurate and complete records showing the data and method used to determine the number of eligible persons served by that agency.

(6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, food service management company, warehouse or other entity to maintain records required by this Section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.13(e).

(b) *Length of maintenance.* All records required by this Section shall be retained for a period of three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.

§ 250.17 Reports.

(a) *Monthly Report of Receipt and Distribution of Donated Foods (FNS–155).* Distributing agencies shall complete and submit to the FNSRO monthly inventory reports covering the receipt and distribution of donated foods on Form FNS–155 or other format approved by FNS. The report shall be submitted no later than 30 calendar days after the end of the reporting month. The distributing agency shall submit a list of individual food orders received for each food item delivered by the Department as an attachment to the FNS–155.

(b) *Processing inventory reports.* Distributing agencies shall complete and submit a quarterly processing inventory report in accordance with § 250.30(o).

(c) *Performance reports.* Monthly reports of performance shall be submitted by processors to distributing agencies in accordance with § 250.30(m).

(d) *Other reports.* Distributing agencies shall complete and submit other reports relative to distribution operations in such form as may be required from time to time by the Department.

(Reporting requirements contained in paragraph (a) approved by the Office of Management and Budget under control number 0584–0001. Reporting requirements contained in paragraph(d) approved by the Office of Management and Budget under control numbers 0584–0029, 0584–0109, 0584–0288 and 0584–0293).

§ 250.19 Audits.

(a) *Right of inspection and audit.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements of this Part at any reasonable time. Subdistributing agencies, recipient agencies, processors, food service management companies and warehouses shall be required to permit similar inspection and audit by such entities or their representatives. Fiscal matters shall continue to be reviewed in audits under the Single Audit Act (31 U.S.C. 7501–07) and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(b) *Independent CPA audits of multi-State processors.* (1) For any year in which a multi-State processor receives more than $250,000 in donated foods, the processor shall obtain an independent CPA (certified public accountant) audit for that year. Multi-State processors which receive $75,000 to $250,000 in donated food each year shall obtain an independent CPA audit every two years and those which receive less than $75,000 in donated foods each year shall obtain an independent CPA audit every three years. Those multi-State processors which are in the two or three-year audit cycle shall move into the next audit cycle at the point in time in which the value of donated foods received reaches $75,000 or $250,000 in any year. In instances in which the Department determines that the audit is not acceptable or that the audit has disclosed serious deficiencies, the processor shall be subject to additional audits at the request of FNS.

(2) Audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I) and the FNS Audit Guide for Multi-State Processors. At the discretion of FNS, auditors will be required to attend training sessions conducted by the Department.

(3) The costs of the audits, including those costs associated with training, shall be borne by the processors.

(4) Audit findings relative to those elements associated with the processing of donated food shall be submitted to the processor and to FNS concurrently.

(5) Noncompliance with the audit requirements in paragraph (b)(1) of this section will render the processor ineligible to enter into another processing contract with any contracting agency until the required audit has been conducted and deficiencies corrected.

(6) *Processor response.* Multi-State processors shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include:

(i) Corrective action which has already been taken to eliminate the deficiency;

(ii) Corrective action which the processor proposes to take to eliminate the deficiency;

(iii) The timeframes for the implementation and completion of the corrective action;

(iv) A determination of what caused the deficiency; and

(v) Deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

Multi-State processors shall submit a written response to FNS in accordance with timeframes established by FNS.

§ 250.19 Reviews.

(a) *General.* Each distributing agency shall establish a review system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations.

(b) *Responsibilities of distributing agencies.* (1) Each distributing agency shall establish review procedures encompassing eligibility, food ordering procedures, storage practices, inventory controls, reporting and recordkeeping requirements and compliance with nondiscrimination provisions. The procedures shall include:

(i) An on-site review of all charitable institutions, nutrition programs for the elderly and nonprofit summer camps for children under agreement in accordance with § 250.12(b) at least once every 4 years, with not fewer than 25 percent of each of these recipient agency categories being reviewed each year. These reviews shall also include on-site reviews of storage facilities to ensure compliance with § 250.14(a);

(ii) An on-site review at least once every 2 years of all processors except those that are multi-State processors as defined in § 250.3, with no fewer than 50 percent being reviewed each year;

(iii) An annual on-site review of each storage facility utilized by the distributing agency. On-site reviews conducted by FNS may be considered as contributing to the fulfillment of the minimum coverage required by this paragraph; and

(iv) A biennial review of all food service mangement companies under contract with recipient agencies in accordance with § 250.12(c) which are not under contract with a school participating in the National School Lunch Program or a Commodity School under Part 210 of this chapter, or a school participating in the School Breakfast Program under Part 220 of this chapter.

(2) Each distributing agency shall design and implement a system to verify sales of end products to all recipient agencies under that distributing agency's authority in instances when a processor transfers end products to a distributor and the distributor sells the end product to the recipient agencies at a discount and the distributor receives a refund from the processor. At a minimum, such a system must:

(i) Provide for the quarterly review of a statistically valid sample of sales information of all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors;

(ii) Support the projection of a claim against the processor when, in the review of the sample, it is determined that the value of donated foods has not been passed on to recipient agencies or when end products have been improperly distributed; and

(iii) Provide for the assessment of claims against the processor in accordance with FNS Instruction 410–1 Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified. Distributing agencies may delegate the responsibility of sales verification to processors. In such instances, the distributing agency must establish guidelines which the processor must follow in conducting sales verification. These guidelines must ensure that a statistically valid sample of sales is verified quarterly. Processors shall report their findings to the distributing agency on a quarterly basis in accordance with § 250.30(m).

Distributing agencies must review the processor's sales verification system and the processor's findings for adequacy and submit a copy of the review report of the system findings to the appropriate FNSRO.

(3) The distributing agency shall submit a report of review findings to each entity reviewed. The report shall include:

(i) Each deficiency found;

(ii) The factors contributing to each deficiency;

(iii) Recommendations for needed corrective action, including timetables for completion and/or claims action to be pursued, if any; and

(iv) Provisions for evaluating effectiveness of corrective actions.

A copy of each processor review report shall be provided to the appropriate FNSRO.

(4) Distrfbuting agencies shall monitor progress toward completion and the effectiveness of corrective actions taken in eliminating program deficiences.

(5) In addition to the review requirements of paragraph (b)(1) of this section, each distributing agency shall make a continuing evaluation of all recipient agencies, and processors by monitoring performance reports, food

requests, participation data, and data regarding refunds and discounts to recipient agencies and distributors for the receipt of end products.

(6) Distributing agencies shall, where applicable, require that subdistributing agencies monitor and review their operations in accordance with this paragraph.

(c) *Responsibilities of State Agencies on Aging.* State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of § 250.42(c) shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods of U.S. origin for such programs.

§ 250.20 Sanctions.

Any distributing agency which has failed to comply with the provisions of this Part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

§ 250.21 Civil rights.

Distributing agencies, subdistributing agencies and recipient agencies shall comply with the Department's nondiscrimination regulations (7 CFR Parts 15, 15a, and 15b) and the FNS civil rights instructions to ensure that in the operation of the program no person is discriminated against because of race, color, national origin, age, sex or handicap.

§ 250.22 Complaints.

Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain or file evidence of such investigations and actions. The Department also reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled. Complaints alleged on the basis of race, color, national origin, age, sex or handicap shall be handled in accordance with § 250.21.

Subpart C—Processing and Labeling of Donated Foods

§ 250.30 State processing of donated foods.

(a) *General.* This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for the processing of donated foods and prescribes the minimum requirements to be included in such contracts. This section does not pertain to food service management companies.

(b) *Permissible contractual arrangements.* (1) A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system.

(2) A distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may receive end products made from those foods and produced under such processing contracts by virtue of the distributing agency—recipient agency agreement required by § 250.12(b). Under this arrangement and subject to the approval of the distributing agency:

(i) Processors shall utilize either a discount or a refund system as defined in § 250.3 when they sell end products directly to recipient agencies, or

(ii) When selling end products through a distributor, processors shall utilize either a refund system or a system which provides refunds to distributors and discounts to recipient agencies through a distributor in accordance with paragraph (e) of this section.

(3) Distributing agencies shall permit subdistributing agencies and recipient agencies to enter into processing contracts with a processor under arrangements similar to those described in paragraph (b) (1) or (2) of this section.

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and be reviewed by the appropriate FNSRO. Processing contracts shall terminate no later than one year after they have been entered into and shall not be extended without being renegotiated. Distributing agencies shall develop criteria for use in evaluating and selecting processing contracts. The selection criteria shall be used in selecting or rejecting processors in a manner that ensures equitable treatment of processors. The selection criteria shall, at a minimum, include:

(i) The nutritional contribution which the end product will provide;

(ii) The marketability of the end product;

(iii) The distribution method which the processor intends to utilize;

(iv) Price and yield schedule data;

(v) Any applicable labeling requirements; and

(vi) The ability of the processor to meet the terms and conditions set forth in the regulations.

These criteria will be reviewed by the appropriate FNSRO during the management evaluation review of the distributing agency. Distributing agencies and subdistributing agencies which enter into contracts on behalf of recipient agencies but which do not limit the types of end products which can be sold or the number of processors which can sell end products within the State are not required to follow the selection criteria. In addition to utilizing these selection criteria, when a contracting agency enters into a contract both for the processing of donated food and the purchase of the end products produced from the donated food, the procurement standards set forth in Attachment O to OMB Circular A–102 must be followed. Recipient agencies which purchase end products produced under Statewide agreements are also required to comply with Attachment O of OMB Circular A–102. Contracting agencies shall not enter contracts with processors which cannot demonstrate the ability to meet the terms and conditions of the regulations and the distributing agency agreements; furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit or an escrow account in an amount sufficient to protect the contract value of donated food on hand and on order; demonstrate the ability to distribute end products to eligible recipient agencies; provide a satisfactory record of integrity, business ethics and performance and provide adequate storage.

(2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.

(3) The contract shall be signed for the processor by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows:

(i) In a sole proprietorship, the owner shall sign the contract;

(ii) In a partnership, a partner shall sign the contract;

(iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) At a minimum, each processing contract shall include:

(i) The names and telephone numbers of the contracting agency and processor;

(ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated foods provided to the processor must be physically contained in the end products, with no allowable tolerance;

(iii) The contract value of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, weight or measure of the end products to be delivered;

(iv) A provision for:

(A) Termination of the contract upon thirty days written notice by the contracting agency or the processor and

(B) Immediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor;

(v) In the event of contract termination, a provision for disposition of donated foods and end products in the processor's inventories or payment of funds in accordance with paragraph (j) of this section;

(vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraphs (g) and (h) of this section;

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (f) of this section shall be delivered only to recipient agencies eligible to receive such foods;

(viii) Provisions that the processor shall:

(A) Fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains fully accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (k) of this section or to distributing agencies in accordance with paragraph (n)(2) of this section;

(B) Furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is sufficient to protect the contract value of all donated foods. Since the distributing agency is held liable by FNS for any donated foods provided to a processor the distributing agency shall determine the dollar value of the performance supply and surety bond, irrevocable letter of credit or the escrow account taking into consideration the

(*1*) Value of donated foods on hand;

(*2*) Value of donated foods on order and

(*3*) Anticipated usage rate during the contract period;

(C) Use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency;

(D) Apply as credit against the processing fee or return to the contracting agency:

(*1*) Any funds received from the sale of containers, and

(*2*) The market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;

(E) Substitute donated foods with commercially purchased foods only in accordance with paragraph (f) of this section;

(F) Meet the requirements of paragraph (i) of this section for labeling end products;

(G) Maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with § 250.18;

(H) Submit processing performance reports in accordance with paragraph (m) of this section; and

(I) Submit annual reconciliation reports and make payments to distributing agencies for any outstanding refund applications or excessive inventories in accordance with paragraph (n)(2) of this section;

(ix) A provision that approval of the contract by distributing agency shall not obligate that agency or the Department to deliver donated foods for processing;

(x) A description of the processor's quality control system and assurance that an effective quality control system will be maintained for the duration of the contract;

(xi) In instances when the processor is a multi-State processor as defined in § 250.3, a provision that the processor agrees to obtain an independent audit by a certified public accountant in accordance with § 250.18(b);

(xii) A requirement that inventory drawdowns shall be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss shall be obtained from non-donated foods;

(xiii) In instances when end products are sold through a distributor a description of the system which will be utilized for the sale of the end products to a recipient agencies;

(xiv) In instances when the distributing agency has delegated the responsibility for sales verification for end products provided by a distributor to recipient agencies at a discount, assurance that the processor will submit sales verification data to the distributing agency in accordance with § 250.30(m)(l); and

(xv) A provision that the contracting agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(d) *End products sold by processors.* When recipient agencies pay the processor for end products, the processing contract shall include:

(1) The processor's established wholesale price schedule for quantity purchases of specified units of end products, and

(2) An assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section.

(e) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be under either a refund

system as defined in § 250.3 or a system which provides refunds to distributors and discounts to recipient agencies. The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

(f) *Substitution of donated foods with commercial foods.* (1) The processing contract may provide for substitution of donated foods as defined in § 250.3. If the provision allowing substitution is included, the contract shall stipulate that:

(i) Only butter, cheese, corn grits, corn meal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil, spaghetti, and such other food as FNS specifically approves may be substituted (substitution of meat and poultry items shall not be permitted),

(ii) All components of commercial foods substituted for those donated must be of U.S. origin and be identical or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service, and

(iii) Substitution is allowed without advance approval by the distributing agency only when:

(A) It is necessary to replace donated food with commercial food to meet the 100 percent yield requirement; or

(B) The donated and commercial foods have been commingled through the use of joint storage tanks or bins; or

(C) The processing contract permits the use of concentrated skim milk which has been purchased or manufactured by the processor for donated nonfat dry milk.

(2) Documentation must be maintained by both parties in accordance with § 250.16. When there is substitution, the donated foods shall be used by the processor and shall not otherwise be sold or disposed of in bulk form. The applicable Federal acceptance service shall, upon request by the Department, the contracting agency or the distributing agency determine if the quality analysis meets the requirements set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods and, in the case of concentrated skim milk replacing donated nonfat dry milk, determine if the concentrated skim milk contains the amount of milk solids as specified in the contract. When donated foods are nonsubstitutable, the applicable Federal acceptance service shall ensure against unauthorized substitutions, and verify that quantities of donated foods used are as specified in the contract.

(3) When concentrated skim milk is used to replace donated nonfat dry milk, the contract shall also specify (in addition to the requirements in paragraph (c) of this section):

(i) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(ii) The weight ratio of concentrated skim milk to donated nonfat dry milk;

(A) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids;

(B) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(C) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(iii) The processor's method of verifying that the milk solids content of the concentrated skim milk is as stated in the contract;

(iv) A requirement that inventory drawdowns of donated nonfat dry milk shall be limited to an amount equal to the amount of concentrated skim milk, based on the weight ratio, used to produce the end product;

(v) A requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of nonfat dry milk, based on the weight ratio of the two foods;

(vi) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by the appropriate regulatory authority for the processing of Grade A milk products; and

(vii) A requirement that documentation sufficient to substantiate compliance with the contract provisions shall be maintained in accordance with § 250.16(a)(4).

(4) Except as specified in paragraph (f)(iii) of this section, processors must receive approval from the distributing agency prior to any substitution. Distributing agencies may approve a processor's request for substitution only when the distributing agency's inability to maintain the necessary inventory of donated food at the processor would disrupt the production of end products.

(5) Title to the substituted food shall transfer to the contracting agency upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this part.

(g) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to FSIS inspection, all donated meat and poultry processing shall be performed under AMS acceptance service grading. The cost of this service shall be borne by the processor. In the event the processor can demonstrate that grading is impractical, exemptions in the use of acceptance services shall be approved by the distributing agency prior to processing each order. Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the processor can demonstrate:

(1) That even with ample notification time, the processor cannot secure the services of a grader,

(2) That the cost for a grader would be unduly excessive relative to the value of foods being processed and that production runs cannot be combined or scheduled to enable prorating of the costs of services among the purchasers of end products, or

(3) The documented urgency of the recipient agency's need for the end product precludes the use of acceptance services.

Prior to approving a processor's request to waive the acceptance service requirement the distributing agency shall ensure, based on the processor's past performance, that the quality of the end product produced will in no way be adversely affected as a result of waiving the requirement.

(h) *Certification by acceptance service.* (1) All processing activities of donated foods shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service in addition to the requirements set forth in paragraph (g) of this section.

(2) In the case of substitutable donated foods, in deciding whether to require acceptance and certification, the contracting agency should consider the dollar value of the donated foods delivered to the processor.

(3) When contracting agencies require certification in accordance with paragraph (h) (1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and volume of the donated foods and anticipated value of end products to be processed. The cost of this service shall also be borne by the processor.

(i) *Labeling end products.* (1) Except when end products contain donated foods that are substituted under paragraph (f) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled "Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies."

(2) Labels on all end products shall meet applicable Federal labeling requirements.

(3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Inspection Service of the Department, the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(j) *Termination of processing contracts.* (1) When contracts are terminated or completed and the processor has commodities remaining in inventory, the processor shall be directed, at the option of the distributing agency and the FNSRO, to do the following:

(i) With respect to nonsubstitutable commodities, the processor shall:

(A) Return the commodities to the contracting agency;

(B) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(C) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract;

(ii) With respect to substitutable commodities, the processor shall:

(A) With the concurrence of any affected contracting agencies, transfer the donated foods to the accounts of other contracting agencies with which the processor has contracts;

(B) Return the foods donated to the contracting agency;

(C) Replace the commodities with the same foods of equal or better quality as certified in accordance with paragraph (f)(2) of this section and deliver such foods to the contracting agency;

(D) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(E) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract.

(2) When a processor's contract is terminated at the processor's request or due to noncompliance or negligence on the part of the processor and commodities remaining in the processor's inventory are transported pursuant to paragraph (j)(1)(i)(A), (j)(1)(ii)(B) or (j)(1)(ii)(C) of this section, the processor shall pay the transportation costs.

(3) Funds received by distributing agencies upon termination of contracts shall be used in accordance with FNS Instruction 410–1, Non-Audit Claims, Food Distribution Program.

(k) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraph (d) or (e) of this section, each recipient agency shall submit refund applications to the processor within 60 days of the date of purchase of end products in order to receive benefits. The recipient agency shall also forward a copy of the refund application to the distributing agency at the same time.

(2) In instances when refunds are to be provided to distributors which have sold end products to recipient agencies at a discount, distributors shall submit refund applications to processors within 60 days of the date of sale to recipient agencies in order to receive benefits.

(3) Not later than 10 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency or distributor equal to the stated contract value of the donated foods contained in the purchased end products covered by the application. Copies of requests for refunds and payments to recipient agencies and/or distributors shall be forwarded to the appropriate distributing agency by the processor.

(l) *Contract approvals.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processors, forward a copy of the contract to the appropriate FNSRO, and retain a copy for its files.

(m) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include:

(i) A list of all recipient agencies purchasing end products under the contract;

(ii) Donated-food inventory at the beginning of the reporting period;

(iii) Amount of donated foods received during the reporting period;

(iv) Amount of donated foods transferred to and/or from existing inventory;

(v) Number of units approved end products delivered to each eligible recipient agency during the reporting period and the number of pounds of each donated food represented by these delivered end products;

(vi) Donated food inventory at the end of the reporting period;

(vii) Number of pounds of each donated food represented in sales to distributors;

(viii) List of all contracting agencies and their locations with which the processor has processing contracts;

(ix) In instances in which sales verification has been delegated to the processor pursuant to § 250.19(b)(2), sales verification findings shall be reported as an attachment to the September, December, March and June performance reports in whatever format the distributing agency deems necessary; and

(x) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products for State processing contracts and that the processor has on hand or on order adequate quantities of foods purchased commercially to meet the processor's production requirements for commercial sales.

(2) In addition to reporting the information identified in paragraph (m)(1) of this section, processors which substitute concentrated skim milk for donated nonfat dry milk shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and

(ii) The number of pounds of concentrated skim milk, and the percent of milk solids contained therein, used in end products sold to recipient agencies.

(3) Distributing agencies shall review and analyze reports submitted by processors to ensure that performance under each contract is in accordance with the provisions set forth in this section.

(n) *Inventory controls.* (1) Distributing agencies shall monitor processor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of donated foods ordered by the contracting agency for processing purposes be in excess of anticipated usage or beyond the processor's ability to accept and store the donated foods at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits until such inventories have been reduced.

(2) For processors substituting concentrated skim milk for donated nonfat dry milk, distributing agencies shall review the processors' monthly performance reports to ensure that:

(i) Donated nonfat dry milk inventory is being drawn down based on the amount of milk solids contained in the concentrated skim milk which was used in end products sold to eligible recipient agencies;

(ii) An amount of milk solids equivalent to the amount in the donated nonfat dry milk is contained in end products sold to eligible recipient agencies; and

(iii) Donated nonfat dry milk is not being sold in bulk form.

(3) Processors shall complete and submit annual reconciliation reports to distributing agencies within 90 days following the end of the contract period. As a part of this annual reconciliation, processors shall pay distributing agencies for the contract value of donated foods.

(i) For any donated foods for which a timely refund application has not been submitted in accordance with paragraph (k) of this section and

(ii) For inventories in excess of a six-month supply.

In instances when the distributing agency has assigned an inventory level other than a six-month level, the processor shall pay the contract value of any donated food in excess of that level.

(4) Distributing agencies shall certify the accuracy of the annual reconciliation report and forward it to the FNSRO. All monies shall be used in accordance with FNS Instruction 410-1, Non-Audit Claims, Food Distribution Program.

(5) Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for product promotion or sales expansion.

(o) *Processing inventory reports.* (1) Distributing agencies shall submit to the FNSRO not later than 60 days following the close of each Federal fiscal quarter a report showing separately for each processor under agreement with contracting agencies within the State:

(i) The donated food inventory at the beginning of the previous quarter;

(ii) Amount of donated foods received during the quarter;

(iii) Amount of donated foods transferred to and/or from existing inventory;

(iv) Amounts of donated foods used during the quarter;

(v) Inventory at the close of the quarter;

(vi) Each contracting agency and its location with which the processor has processing contracts.

(2) In addition to reporting the information identified in paragraph (o)(1) of this section, for each processor which substitutes concentrated skim milk for donated nonfat dry milk the distributing agency shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to nonprogram outlets; and

(ii) The number of pounds of concentrated skim milk and the percent of milk solids contained therein used in end products sold to recipient agencies.

(p) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by:

(1) Giving that agency an opportunity to review all such contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR Parts 210, 225, and 226) or are otherwise suitable for use in such program;

(2) Consulting with the agency with regard to the labeling requirements for the end products; and

(3) Otherwise requesting technical assistance as needed from that agency.

(q) *FNSRO review of contracts and inventory reports.* The FNSRO shall:

(1) review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section;

(2) Allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section;

(3) Review and analyze the processing inventory reports required by paragraph (o) of this section to ensure that no additional donated foods shall be distributed to processors with excess inventories until such inventories have been reduced;

(4) Assist distributing agencies in reducing such inventories; and

(5) Review annual reconciliation reports required by paragraph (n) of this section and ensure that payments for outstanding refund applications or excessive inventories have been made.

(r) *Availability of copies of processing contracts.* Contracts entered into in accordance with this Section are public records and FNS will provide copies of such contracts to any person upon request. The FNSRO will retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the Federal fiscal year to which they pertain.

(s) *Processing activity guidance.* Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material shall be provided to contracting agencies, recipient agencies and processors at the time of the approval of the initial agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual shall include, at a minimum, statements of the distributing agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applications.

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Subpart D—Eligible Recipient Agencies and Programs

§ 250.40 Nonprofit summer camps for children.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those summer camps which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the summer camp shall provide verification of its tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), the written agreement shall, at a minimum, include:

(i) The name and location of the summer camp(s);

(ii) Number of camps or sites;

(iii) Number of sessions to be offered during camping season;

(iv) Number of adults and children participating in the activities of the summer camp at each session;

(v) Total number of days meals will be served;

(vi) Total number of meals to be served daily;

(vii) Assurance that tax exempt status will be maintained;

(viii) Indication of whether the summer camp(s) will employ the services of a food service management company;

(ix) Assurance that a brochure or public announcement of open admission policy will be provided and that the summer camp agrees to maintain racial/ethnic data;

(x) Assurance that a physical inventory will be conducted and reconciled at the end of the camping session; and

(xi) Assurance that any excess inventory will, at the distributing agency's option, be returned to the distributing agency for redonation or transferred in accordance with § 250.13(a)(1).

(2) Distributing agencies shall distribute donated foods only after determining that the number of adults participating in camp activities, as compared with the number of children 18 years of age and under, is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 19 years of age and over, including program directors, counselors and others who engage in recreational, educational, and direct administrative functions, are to be considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance or similar support functions are not considered as adults participating in summer camp activities. In addition, persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(3) Distributing agencies shall authorize the transfer or redonation of all donated foods remaining in summer camps at the end of the camping season in accordance with § 250.13 (a) or (g) respectively.

(4) Nonprofit summer camps for children may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities and value of donated foods.* Distribution of donated food to eligible summer camps shall be made on the basis of the average number of meals to be served daily to children as evidence by the most recent written caseload factor information contained in the agreement.

(c) *Types of donated foods authorized for donation.* Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

§ 250.41 Charitable institutions.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those charitable institutions which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the charitable institution shall provide verification of the institution's tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include:

(i) The name and location of the charitable institution;

(ii) Total number of days meals will be served;

(iii) Average daily number of participants;

(iv) Total number of meals by type to be served daily to needy persons;

(v) Data that shows the number of needy persons receiving benefits under another means-tested program or financial data that show the total annual amount of funds received by the institution that are derived, respectively, from (A) subsidized income and (B) nonsubsidized income. For the purpose of this Section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax exempt contributions which are provided for the care of participants which the institution had determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made on behalf of participants by persons legally responsible for their support;

(vi) Indication of whether the charitable institution will employ the services of a food service management company to conduct its food service operations;

(vii) Assurance that proper inventory controls will be maintained; and

(viii) Assurance that all reports will be submitted as required by the distributing agency.

(2) Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent that needy persons are served, if they conduct rehabilitation programs that are:

(i) Available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates; and

(ii) Of sufficient scope to permit participation for a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates.

Prior to entering into an agreement for donation of foods to an adult correctional institution, the distributing agency shall require the institution's director or other responsible official to provide a written statement certifying that the institution conducts such rehabilitation programs. The statement shall be reviewed annually and maintained as part of the agreement.

(3) Charitable institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities of donated foods.* Distribution of donated foods to eligible charitable institutions shall be made on the basis of the average number of meals served daily to needy persons. To determine the number of needy persons being served, the distributing agency

shall determine the proportion of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income (as defined in paragraph (a)(1) of this section) and multiplying that number by the average daily number of participants as required in § 250.41(a)(1)(v), or by simply counting the number of participants that receive benefits under another a means-tested program. The distributing agency shall use the income and average daily participation figures reflected in the agreement in determining the number of needy persons being served by the institution in accordance with the above formula. Income and participation figures shall be based on the institution's records for the previous year. The distributing agency shall obtain updated pertinent information by September 30 of each fiscal year.

(c) *Types of donated foods authorized for donation.* Charitable institutions are eligible to receive donated foods under section 416, section 32, section 4(a), and section 709.

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§ 250.42 Nutrition programs for the elderly.

(a) *Distribution.* Distributing agencies shall distribute donated foods only to nutrition programs for the elderly which have entered into an agreement for donation of commodities in accordance with § 250.12(b). Food service management companies may be employed to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities and value of donated foods.* (1) *Quantities.* Distribution of donated foods to nutrition programs for the elderly shall be based on the level of assistance per meal as required by the Older Americans Act of 1965, as amended, and on the number of eligible meals served within the State as evidenced by written caseload factor information provided by the State Agency on Aging.

(2) *Value.* (i) For the fiscal years 1988 through 1991, the quantity of donated foods to be made available to each State Agency on Aging for distribution to nutrition programs for the elderly shall be valued at not less than 58.75 cents for each meal which such State Agency on Aging, in accordance with regulations and guidelines authorized by the Commissioner on Aging, United States Department of Health and Human Services, reports as having been served or, where necessary, estimates will be served within the State or to Indian Tribal Organizations during the year: *Provided, however,* That:

(A) This quantity will be reduced to the extent that a State Agency on Aging elects to receive cash in lieu of donated foods in accordance with paragraph (c) of this section and

(B) The quantity of donated foods to be provided to any State Agency on Aging for any fiscal year shall not be adjusted on the basis of meal reports or estimates submitted after July 1 of such fiscal year.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, in any fiscal year in which compliance with paragraph (b)(2)(i) of this section costs more than the amounts authorized to be appropriated under the Older Americans Act of 1965, as amended for that fiscal year, the Secretary shall reduce the cents per meal level determined pursuant to paragraph (b)(2)(i) of this section for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year. If such action is necessary, the per meal level will be reduced uniformly for each meal served during that fiscal year.

(c) *Cash in lieu of donated foods.* (1) Any State Agency on Aging may, for the purposes of the programs authorized by Titles III and VI of the Older Americans Act of 1965, as amended, elect to receive cash payments in lieu of all or any portion of the donated foods that it would otherwise receive under paragraph (b) of this section during any fiscal year.

(2) When a State Agency on Aging elects to receive cash payments in lieu of donated foods, that election shall be binding on the State Agency on Aging for the entire fiscal year to which it pertains, and FNS shall make cash payments to the State Agency on Aging equivalent in value to the donated foods that would otherwise have been provided. Cash payments shall be made for each fiscal quarter by means of Letters of Credit issued by FNS through the appropriate U.S. Treasury Regional Disbursing Office or, where applicable, by means of U.S. Treasury checks, based on the best data available to FNS as to the number of meals to be served by nutrition programs for the elderly administered by each State Agency on Aging during that fiscal quarter.

(3) In instances when it is necessary to reduce the annual level of assistance specified in paragraph (b)(2)(i) of this section, the level will be reduced in accordance with paragraph (b)(2)(ii) of this section. Once it has been established that the reduced per meal level will be sufficient to avoid any further adjustment, any remaining funds (up to the level of assistance specified in paragraph (b)(2)(i) of this section) will be disbursed so that each State will receive an equal amount on a per meal basis.

(4) To be eligible for reimbursement by FNS, claims for cash payment for meals served by nutrition programs for the elderly shall be submitted by State Agencies on Aging and Indian Tribal Organizations no later than 90 days following the close of the Federal fiscal quarter for which payment is claimed.

(5) The State Agency on Aging desiring to receive funds under this paragraph shall enter into a written agreement with FNS pursuant to § 250.12(a) to:

(i) Promptly and equitably disburse any cash it receives in lieu of donated foods to nutrition programs for the elderly after consideration of the needs of such programs and the availability of other resources, including any donated foods available under paragraph (b) of this section;

(ii) Establish such procedures as may be necessary to ensure that the cash disbursements are used by nutrition programs for the elderly solely for the purpose of purchasing U.S. agricultural commodities and other foods of U.S. origin for their food service operations;

(iii) Maintain and retain for 3 years from the close of the Federal fiscal year to which they pertain complete and accurate records of:

(A) All amounts received and disbursed under paragraph (c) of this section and

(B) The manner in which consideration was given to the needs and resources as required by paragraph (c)(5)(i) of this section; and

(iv) Permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time.

(6) Funds provided under paragraph (c) of this section shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(d) *Types of donated foods authorized for donation.* Nutrition programs for the elderly are eligible to receive donated foods under section 416, section 32, section 311, section 709, and section 14.

§ 250.43 Disaster organizations.

(a) *Eligibility.* In instances in which the President has declared a major disaster or emergency pursuant to section 301 of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5141) and the Secretary has determined that as a result of the major disaster or emergency low-income households are unable to purchase adequate amounts of nutritious food, disaster organizations may be eligible to receive donated foods for congregate meal service or household distribution to disaster victims. Disaster organizations shall remain eligible for disaster assistance for as long as the Secretary determines necessary, taking into consideration the consequences of the major disaster or emergency on the earning power of the disaster victims; *Except*, that in areas where the Food Stamp Program is in operation, donated foods may be distributed for household use only so long as the Secretary finds that the commercial channels of trade have been disrupted because of a major disaster or emergency. Prior to providing donated foods to disaster organizations, the distributing agency shall require the disaster organization to make application for the receipt and distribution of donated foods in accordance with paragraphs (b) and (c) of this section. Such applications shall be confirmed in writing and maintained in accordance with the recordkeeping requirements of this part.

(b) *Distribution of donated foods for use in providing congregate meal service.* (1) In order to obtain donated foods for use in providing congregate meal service, disaster organizations shall request approval from the appropriate distributing agency, giving the following information to the extent possible:

(i) Description of major disaster or emergency situation;

(ii) Number of people requiring meals and congregate meal service period;

(iii) Quantity and types of food needed for congregate meal service; and

(iv) Number and location of sites providing congregate meal service.

(2) Following its approval of the request for donated foods, the distributing agency is authorized and shall make appropriate donated foods available from any sources within the State to the disaster organization and within 24 hours shall report to the appropriate FNSRO the information listed in paragraph (b)(1) of this section.

(c) *Household distribution.* In order to obtain donated foods for household distribution in areas served by the Food Stamp Program when commercial food distribution channels are disrupted, the distributing agency shall request prior approval by the appropriate FNSRO. In the request, the distributing agency shall cite the following information:

(i) Description of major disaster or emergency situation;

(ii) Number of households affected;

(iii) Anticipated distribution period;

(iv) Method of distribution available; and

(v) Quantity and types of food needed for distribution.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible disaster organizations based on the caseload factor information provided by the disaster organization.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing major disaster or other emergency food assistance under this Part are eligible to receive donated foods under section 416, section 32, section 709, section 4(a) and sections 409 and 410 of the Disaster Relief Act of 1974 (42 U.S.C. 5181–82), as amended.

(f) *Summary report.* Within 30 days following termination of the disaster assistance, the distributing agency shall provide a summary report to the appropriate FNSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* To the extent donated foods are available, FNS will replace donated foods used from the States' stocks for major disaster and emergency assistance. The distributing agency shall request the replacement of foods used for major disaster and other emergency food assistance, in writing to FNSRO, no later than 30 days following termination of the disaster assistance.

§ 250.44 Special group food assistance programs.

In situations of distress in which needs for food assistance cannot be met under other provisions of this part, a distributing agency may, upon request to and approval by the Secretary, distribute donated foods to any institution, or to any association of persons engaged in charitable activities, for use in conducting special group-feeding programs on a temporary basis for persons in need of such food assistance. Such distributions shall not exceed 30 days. The distributing agency, and any such institution or association, shall conduct any distribution under this Section in accordance with such instructions as the Secretary may specify, and any such institution or association shall give to the distributing agency an assurance that feeding programs will be conducted in accordance with the instructions.

§ 250.45 Commodity Supplemental Food Program.

(a) *Distribution.* The distributing agency shall distribute donated foods to the State agency which is designated by the State to administer the Commodity Supplemental Food Program for that State and which has entered into a written agreement with the Department for the administration of that program in accordance with 7 CFR Part 247, the regulations for that program. The State agency administering the Commodity Supplemental Food Program shall distribute donated foods to local agencies for use by eligible recipients in accordance with the provisions of 7 CFR Part 247 and with the provisions of this Part, and may enter into an agreement with the distributing agency for use of the distributing agency's facilities for distribution.

(b) *Quantities of donated foods.* Distribution of donated foods to the designated State agencies for the Commodity Supplemental Food Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies distributing donated foods through the Commodity Supplemental Food Program are eligible to receive such foods under section 32, section 416, section 709 and section 4(a).

§ 250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.

(a) *Distribution.* The distributing agency shall make donated foods available for distribution to households in the Trust Territory of the Pacific Islands by those welfare agencies which certify households in accordance with a plan of operation approved by FNS, as required by paragraph (d) of this section. Distribution of donated foods to households shall be made in accordance with the approved plan of operation.

(b) *Quantities and value of donated foods.* Distribution of donated foods shall be based on the actual number of households in need of food assistance.

(c) *Types of donated foods authorized for donation.* Agencies which make distribution to needy persons are eligible to receive foods under section 416, section 32, section 709 and section 4(a).

(d) *Plan of operation.* Prior to making distribution to agencies or households, the distributing agency shall submit a plan of operation for approval by the appropriate FNSRO. Such plans shall incorporate the procedures and methods to be used in certifying households in need of food assistance, in making distribution to households, and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of

operation of the distributing agency shall be made without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. The distributing agency shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the plan of operation. At a minimum, the plan shall include the following:

(1) The name of the public welfare agency or agencies which will be responsible for certification of households;

(2) The manner in which donated food will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing;

(3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards establishes by the distributing agency for use by welfare agencies in determining the eligibility of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standard is required or approved by FNS;

(4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification;

(5) Provisions for periodically reviewing the certifications of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period;

(6) Provisions for identifying each person who has been designated to receive donated foods for a household;

(7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination against recipients of donated foods because of race, color, national origin, sex, age or handicap;

(8) Assurance that:

(i) Citizenship or durational residence requirements shall not be imposed as a condition of eligibility and

(ii) Recipients shall not be required to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose;

(9) The manner in which the distributing agency plans to supervise the program; and

(10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (third edition).

(e) *Operating expense funds*—(1) *Application for funds.* To receive administrative funds, the distributing agency shall submit Form AD–623, "Application for Federal Assistance," to the appropriate FNSRO at least three months prior to the beginning of the Federal fiscal year. Approval of the application by FNS shall be a prerequisite to payment of any funds to the distributing agency. The Department will make payments to the distributing agency to assist it in meeting operating expenses incurred in administering food distribution for needy persons.

(2) *Availability of funds.* FNS will review and evaluate the budget information submitted by the distributing agency in relationship to the distributing agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures are reasonable and justified. FNS will give written notification to the distributing agency of:

(i) Its approval or disapproval of any or all of the estimated expenditures; and

(ii) The amount of funds which will be made available.

(3) *Payment of funds.* Payments shall be made to the distributing agency through a Letter of Credit or an advance by Treasury Check. These payments will be issued in accordance with Treasury Department procedures, Treasury Circular No. 1075 and through the appropriate Treasury Regional Disbursing Office (RDO).

(4) *Use of funds.* The distributing agency shall make every reasonable effort to ensure the availability of a food distribution program for needy persons in households and shall assign priority in the use of any funds received under this Section to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to needy households. Such funds may be used for any costs which are not disallowed under Office of Management and Budget Circular A–87 (a copy of which may be obtained from FNS) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefore is claimed or made available from any other Federal source.

(5) *Accounting for funds.* The distributing agency which receives administrative funds under this Section shall establish and maintain an effective system of fiscal control and accounting procedures. The accounting procedures maintained by the distributing agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the distributing agency. Any budget revisions by the distributing agency which require the transfer of funds from an FNS approved cost category to another shall be in accordance with the budget revision procedures set forth in 7 CFR Part 3015 and shall be approved by FNS prior to any transfer of funds.

(6) *Return, reduction and reallocation of funds.* (i) FNS may require the distributing agency to return prior to the end of the Federal fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to the distributing agency if FNS determines that:

(A) The distributing agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this Part;

(B) The amount of funds which the distributing agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of program needs; or

(C) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purposes of this Part.

(ii) The distributing agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under paragraph (e) of this section which are obligated at that time.

(7) *Financial reports.* The distributing agency shall submit quarterly and annual reports to FNS on Form SF–269 concerning the obligations, expenditure and status of funds received under this Section. In addition, the distributing agency receiving funds under paragraph (e) of this section shall submit any other reports in such form as may be required from time to time by the Department.

(f) *Records, reports and audits.* The distributing agency shall:

(1) Maintain and retain for three years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under paragraph (e) of this section,

(2) Keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this Section, and

(3) Permit representatives of the Department and of a General Accounting Office of the United States to inspect, audit and copy such records and accounts at any reasonable time.

§ 250.47 Food Distribution Program on Indian Reservations.

Distribution. (a) Distributing agencies which operate a food distribution program on Indian reservation shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), §§ 250.14 and 250.15 to the extent that these provisions are not inconsistent with the regulations cited in paragraph (b) of this section. (b) In addition to complying with the provisions identified in paragraph (a) of this section, distributing agencies shall also comply with the provisions set forth in Part 253, Food Distribution Program on Indian Reservations or Part 254, Food Distribution Program in Oklahoma, as applicable.

§ 250.48 School food authorities and commodity schools.

(a) *Distribution.* School food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter or the School Breakfast Program under Part 220 of this chapter are eligible to receive donated foods. The distributing agency shall distribute donated foods only to those school food authorities whose eligibility for participation in the program has been confirmed in writing by the State agency or FNSRO administering the applicable program. Lists of participating school food authorities which have been provided to the distributing agency by the administering State agency or FNSRO may serve as written confirmation of eligibility. School food authorities may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Parts 210 and 226 of this chapter.

(b) *Quantities and value of donated foods.*—(1) *Quantities.* Distribution of donated foods to school food authorities which participate in the National School Lunch Program or as commodity school under Part 210 shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the National School Lunch Program under Part 210 of this chapter, as evidenced by the most recent estimate of the average daily numbers of meals which must be provided by the administering State agency or FNSRO to the distributing agencies as early as practicable each school year but not later than September 1, as revised to reflect additions or deletions of eligible schools and any necessary adjustment in the number of meals served.

(2) *Value.* (i) For each school year, the national average value of donated foods to be made available to States for distribution to school food authorities participating in the National School Lunch Program (7 CFR Part 210), or where applicable, cash payments in lieu thereof, shall not be less than 11 cents for each lunch and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by Section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective as of the beginning of each school year. Not less than 75 percent of the food distribution assistance shall be in the form of donated foods.

(ii) For each school year, the national average value of donated foods to be provided to States for distribution to commodity schools shall not be less than the amount specified in paragraph (b)(2)(i) of this section, plus an amount equal to the national average payment established under section 4 of the National School Lunch Act, as amended, for each lunch served by such schools: *Provided, however:* That this amount shall be reduced to the extent that FNS provides up to 5 cents per lunch of this value in cash in lieu of donated foods for donated food processing and handling expenses on behalf of such school food authorities in accordance with Part 240 of this chapter.

(c) *Cash in lieu of donated foods for schools.* Where a State has phased out its food distribution facilities prior to July 1, 1974, such State may, in accordance with Part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in school lunch programs which participate in the National School Lunch Program under Part 210 of this chapter.

(d) *Types of donated foods authorized for donation.* School food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. School food authorities which participate in the School Breakfast Program under Part 220 are eligible to receive donated foods under section 416, section 32, section 709 and section 14.

(e) *Refusal of donated foods by school food authorities.* (1) Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent that they are available during the school year: *Provided, however:* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusal of more than 20 percent of such value is feasible and practical. Prior to making distribution to school food authorities, distributing agencies shall notify each school food authority of its right to refuse delivery and to receive other donated foods, if available, in lieu of those refused. Notification of donated food refusal rights shall be provided by means of a letter or by an addendum to the agreement required by § 250.12(b) to each school food authority prior to the beginning of each school year.

(2) If the distributing agency demonstrates on the basis of existing records that it is maintaining an effective offer-and-acceptance system as defined in § 250.3, there can be no refusal of donated foods as provided in paragraph (e)(1) of this section.

(f) *Use of donated foods in home economics courses.* School food authorities receiving donated foods under this Part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. Home economics includes classes in general home economics, food

purchases, nutrition, food preparation, cooking, child care and health.

§ 250.49 Nonresidential child care institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those nonresidential child care institutions whose eligibility for participation in Child Care Food Program has been confirmed in writing by the State agency of FNSRO administering the program, where applicable. Lists of participating nonresidential child care institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Nonresidential child care institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Part 226 of this chapter.

(b) *Quantities and value of donated foods.* (1) *Quantities.* Distribution of donated foods to nonresidential child care institutions shall be made on the basis of the average daily number of lunches and suppers to be served which meet the meal-type requirements prescribed in the regulations for the Child Care Food Program under Part 226 of this chapter, as evidenced by the most recent written caseload factor information which must be provided by the administering State agency or FNSRO to the distributing agency not later than June 1 each year.

(2) *Value.* For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu thereof, shall not be less than 11 cents for each lunch and supper and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective at the beginning of each school year.

(c) *Cash in lieu of donated foods.* In accordance with Part 240 of this chapter, State agencies may elect to receive cash payments in lieu of donated foods for use by institutions which participate in the Child Care Food Program under Part 226 of this chapter.

(d) *Types of donated foods authorized for donations.* Nonresidential child care institutions which participate in the Child Care Food Program under Part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

§ 250.50 Service institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those service institutions whose eligibility to receive donated foods for use in the Summer Food Service Program for Children under Part 225 of this chapter has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating service institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility.

(b) *Quantities and value of donated foods.* Distribution of donated foods to service institutions shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the Summer Food Service Program for Children under Part 225 of this chapter as evidenced by the most recent written caseload factor information which must be provided by the State agency or FNSRO administering the program to the distributing agency by June 1 of each year.

(c) *Types of donated foods authorized for donation.* Service institutions which participate in the Summer Food Service Program for Children under Part 225 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, and section 14.

§ 250.51 Special Supplemental Food Program for Women, Infants and Children.

(a) *Distribution.* At the request of the State agency responsible for administering the Special Supplemental Food Program for Women, Infants and Children (WIC Program) under part 246 of this chapter and with approval of the Department, donated foods may be made available for distribution to program participants. In instances when donated foods are made available, State agencies shall pay the Department using funds allocated to the State for the WIC Program for those donated foods which are provided to participants as part of the food package. Donated foods which are provided to participants in addition to the quantities authorized for the food package will be made available to the State agency free of charge.

(b) *Quantities and value of donated foods.* Distribution of donated foods to State agencies for the WIC Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies participating in the WIC Program under Part 246 of this chapter are eligible to receive donated foods under section 416 and section 32.

Subpart E—Where to Obtain Information

§ 250.60 Program information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

(a) Northeast Region, Food and Nutrition Service, USDA, 10 Causeway Street, Boston, Massachusetts 02222–1065 for the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

(b) Mid-Atlantic Region, Food and Nutrition Service, USDA, Mercer Corporate Park, Corporate Blvd., CN 02150, Trenton, New Jersey 08650, for the following States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands and West Virginia.

(c) Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street, NW, Atlanta, Georgia 30367, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

(d) Midwest Region, Food and Nutrition Service, USDA, 50 East Washington Street, Chicago, Illinois 60602, for the following States: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

(e) Mountain Plains Region, Food and Nutrition Service, USDA, 2420 West 26th Avenue, Room 430–D, Denver, Colorado 80211, for the following States: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

(f) Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242, for the following States: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

(g) Western Region, Food and Nutrition Service, USDA, 550 Kearney Street, Room 400, San Francisco, California 94108 for the following States: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory and Washington.

Dated: May 25, 1988.

Anne Kondratas,

Administrator.

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Friday
June 3, 1988

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 431, 435, 440, 442, and 483

Medicaid Program; Conditions for Intermediate Care Facilities for the Mentally Retarded; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 435, 440, 442, and 483

[BERC-366-F]

Medicaid Program; Conditions for Intermediate Care Facilities for the Mentally Retarded

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule revises the format, location and content of the standards for intermediate care facilities for the mentally retarded and persons with related conditions (ICFs/MR). (The standards are those requirements that ICFs/MR must meet in order to participate in the Medicaid program). The new format will be that of "conditions of participation" and will make the regulations for ICFs/MR consistent with the organization of the Medicare and Medicaid regulations for skilled nursing facilities. The new location will be under a new Part 483, "Conditions of participation for long term care facilities". Revisions to the content of the regulations are designed to increase the focus on the provision of active treatment services for clients, clarify Federal requirements, and maintain essential client protections. The major outcome of these regulations will be to align Federal standards with contemporary care practices for residential care services for persons with mental retardation or other developmental disabilities. We also are making several technical changes and cross-references to achieve consistency with other existing regulations.

EFFECTIVE DATE: The regulations are effective on October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Samual Kidder, (301) 966-4629.

SUPPLEMENTARY INFORMATION:

I. Background

General

Section 1905(a)(15) of the Social Security Act (the Act) authorizes optional Medicaid coverage for services in intermediate care facilities (ICFs). These are facilities that provide health-related care to individuals who do not need the degree of care commonly provided in hospitals or skilled nursing facilities, but who do require care and services above the level of room and board that can only be made available to them through institutional facilities. Section 1905(d) of the Act indicates that the term "intermediate care facility services" may include services in a public institution for the mentally retarded or persons with related conditions (ICF/MR). (Private facilities may also participate as ICFs/MR.)

Fifty States and jurisdictions currently cover ICF care; 49 of these include ICF/MR care and serve over 154,000 individuals in over 3,600 ICFs/MR, ranging in size from 4 beds to almost 1,500 beds.

ICF/MR Standards—Current Regulations

Current standards for ICFs/MR are found at 42 CFR Part 442, Subpart G. These standards were published in 1974 and are based primarily on the 1971 voluntary standards of the Accreditation Council for Facilities for the Mentally Retarded (AC/FMR), now renamed the Accreditation Council on Services for People with Developmental Disabilities (ACDD). The standards are the requirements that ICFs/MR must meet in order to participate in the Medicaid program. They were developed on the assumption that they would be used for the most part in large, public institutions which served as the principal source of out of the home placement of persons with mental retardation at the time the standards were published. Since the early 1970s, litigation, legislation, research and technological advances have influenced the way in which clients are identified, assessed, and provided services. The size of institutions has steadily decreased and the provision of a broad spectrum of services to clients in community settings has expanded greatly in the last 10 years.

Despite these changes, the standards have not been significantly revised since they were originally published in 1974. On March 4, 1988, we published in the Federal Register (53 FR 7520) a proposed revision of the standards. The changes we proposed were designed to increase the focus on the provision of active treatment services to clients, clarify Federal requirements, maintain essential client protections, and to provide State survey agencies with a more accurate mechanism for assessing quality of care.

II. Provisions of the Proposed Regulations

We based our proposal, particularly the Active Treatment Services section of our proposed standards, primarily on the accreditation standards published in 1983 by the ACDD. We based our revisions on the following general principles:

- The standards should enable both the facility and monitoring agencies (State survey agencies and Federal reviewers) to form judgments about whether individuals needs are being properly assessed and appropriate interventions planned and delivered.
- The standards should be applicable to all of the various sizes of facilities that provide services to persons with mental retardation and should provide these facilities with greater flexibility in the administration of their programs.
- The standards should focus more on client and staff performance rather than on compliance with processes and paper requirements.
- The standards should provide for individual client protections, given the vulnerability and frequent isolation of many clients in ICFs/MR.

The major organizational and structural proposed revisions to the standards were as follows:

- We proposed to reorganize the standards into four major sections in order to eliminate duplicative language and provide the facilities and surveyors with a logical, accountable method of determining compliance. The four sections that we proposed were: administrative services; active treatment services; physical environment; and, safety and sanitation.
- We proposed revisions to much of the detailed language of the current standards to give facilities greater ability to administer their programs, while recognizing their widely varying sizes, locations and organizational structure. We proposed retaining appropriate detail in the areas of needed client protections.
- We proposed rewording much of the language contained in the current regulations to reflect contemporary terminology in the field of developmental disabilities. For example, we proposed to substitute the term "client" for "resident" throughout the standards.
- We proposed to retain necessary emphasis on health services, but included revisions that would reflect the wide diversity in health care delivery systems utilized by ICFs/MR.
- The proposed standards emphasized the development of the individual client in defining the active treatment process. We used the ACDD standards for active treatment as a guide and proposed to link professional qualifications and duties to the active treatment process.
- We proposed to clarify numerous existing standards that have created problems for providers and reviewers (for example, qualifications for the qualified mental retardation professional, thermostatically controlled water faucets, self-administration of medications, and the application of State nursing home health and sanitation standards).

III. Discussion of Comments

We received 236 timely items of correspondence in response to the proposed notice. Comments were received from individuals, associations, State health departments and Medicaid providers of services (primarily, ICFs/MR). With few exceptions, HCFA's efforts to develop a performance based regulation were commended by commenters as a "step in the right direction". Yet, many of these same commenters offered suggestions that would have the effect of increasing the amount of prescriptive, process oriented requirements we sought to eliminate in the proposal. One commenter, representing a large number of small providers, noted that "we are particularly appreciative of efforts to offer more flexibility to service providers in the proposed rules, and it is with a sense of irony that we find we will be recommending a diminution of that flexibility * * *".

Our experience with the ICF/MR regulations, first published in 1974, has provided sufficient evidence of the failure of essentially prescriptive, process oriented regulations to work effectively in behalf of the developmental, health, social, and behavioral needs of clients. We remain committed to the principles on which we based the proposal and have rejected many of the suggestions that we think only "reload" prescriptive requirements that we sought to eliminate. Thus, our response to many comments in the following sections will say simply that we rejected them as being "too prescriptive". While we appreciate the thoughtfulness and sincerity of the commenters, we disagree with the rationale behind many of these suggestions. A summary of the comments and our responses to them, follows.

A. Condition of Participation Format

Comment: We requested comments on the issue of organizing these regulations into the condition of participation format. Approximately 50 commenters expressed views on the issue. Under such an approach, State agencies would survey for compliance with the conditions of participation. We note that a condition is often made up of several "standards". In order for the condition to be met, all or a majority of the standards must be met. Thus, a facility is found to meet *all* the conditions of participation; it would be eligible for Medicaid certification. If a facility meets all the conditions of participation, but has deficiencies in one or more of the standards comprising a condition of participation, it has up to 12 months to achieve compliance in conformity with a corrective plan of action (provided that the deficiencies do not immediately jeopardize the health and safety of the facility's clients, in which case the facility's certification must be terminated as set forth under § 442.117).

About two thirds of the commenters on this issue were in favor of the condition of participation format. Almost all of these commenters favored the condition format because they believed that it would lead to more enforceable requirements. However, many deplored the idea that a facility could operate for 12 months with standard level deficiencies simply by having a plan of correction in existence.

The other third of the commenters on this issue opposed the condition of participation format because they believe that the structure of the condition format is such that the change for deficiencies to result in adverse action is increased. Thus, the commenters believe the condition format would sharply increase the facility's vulnerability to adverse action. They asserted that since there is no empirical basis for establishing minimum thresholds of compliance within any of the suggested conditions, the decision of the surveyor would be no less subjective under the condition of participation than under the standards format, but the potential penalty would be greater.

Response: We have adopted the condition of participation format in these final regulations. While we appreciate the view that an empirical basis for deciding when a standard or a condition is out of compliance is conceptually possible, we believe that approach could lead to an even less desirable circumstance. If minimum requirements for taking adverse action were established, very little professional judgment would be necessary and compliance decisions could be made without regard to the human factors or circumstances of the clients. For example, a requirement that 25 percent of the clients meet 40 percent of the objectives established in their individual plans of care, does not take into consideration the fact that the failed objectives may not have been the most important for those clients. Judgment of the quality of human services will always be to some extent subjective. While we will continue to strive to develop clear and precise regulations and survey techniques, we always will need to rely heavily upon surveyors who can make judgments about the human factors or circumstances relative to a consensus standard established as administrative law.

The condition of participation format, which originated in the Medicare program, is a format structured to assure that facilities that do not meet at least minimum requirements do not participate in the program. The condition of participation format enables us to define the critical major requirements for participation. If the facility is performing so poorly as to warrant a determination that one or more conditions of participation are not met, then we believe the facility does not meet the requirements for participation in the ICF/MR program, namely that the facility is providing needed services in a safe and healthful environment.

In developing the conditions of participation format, we decided that the conditions for ICFs/MR would be located most appropriately in 42 CFR Subchapter E, "Standards and Certification". Subchapter E currently includes the conditions of participation for hospitals and specialized providers. In this final rule, we have established under Subchapter E a new Part 483, "Conditions of Participation for Long Term Care Facilities". The outline of the condition of participation format that we have adopted in this final rule follows. In the outline, we have indicated which sections of the proposed rule were used in establishing the conditions.

§ 483.400 Basis and purpose.
§ 483.410 Condition of Participation: Governing body and management
(a) Standard: Governing body (proposed § 442.412)
(b) Standard: Compliance with Federal, State and local laws (proposed § 442.416)
(c) Standard: Client records (proposed § 442.432)
(d) Standard: Provision of needed services (proposed § 442.418)
§ 483.420 Condition of Participation: Client protections
(a) Standard: Protection of clients' rights (proposed § 442.401)
(b) Standard: Client finances (proposed § 442.410)
(c) Standard: Communication with clients, parents and guardians (proposed 442.414)
(d) Standard: Staff treatment of clients (proposed § 442.424)
§ 483.430 Condition of Participation: Facility staffing
(a) Standard: Qualified mental retardation professional (proposed § 442.450(a))
(b) Standard: Professional program services (proposed § 442.460)

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(c) Standard: Facility staffing (proposed § 442.426)
(d) Standard: Direct care staff (proposed § 442.428)
(e) Standard: Staff training program (proposed § 442.430)
§ 483.440 Condition of Participation: Active treatment services
(a) Standard: Active treatment (proposed § 442.440)
(b) Standard: Admissions, transfers and discharge (proposed § 442.442)
(c) Standard: Individual program plan (proposed § 442.444)
(d) Standard: Program implementation (proposed § 442.446)
(e) Standard: Program documentation (proposed § 442.448)
(f) Standard: Program monitoring and change (proposed § 442.450(b), (c), (d) and (e))
§ 483.450 Condition of Participation: Client behavior and facility practices
(a) Standard: Facility practices—conduct toward clients (proposed § 442.452 Behavior management policies and procedures)
(b) Standard: Management of inappropriate client behavior (proposed § 442.454 Behavior modification programs)
(c) Standard: Time-out rooms (parts of proposed § 442.452, Behavior management, and proposed § 442.454, Behavior modification)
(d) Standard: Physical restraints (proposed § 442.456)
(e) Standard: Drug usage (proposed § 442.458)
§ 483.460 Condition of Participation: Health Care Services
(a) Standard: Physician services (proposed § 442.462)
(b) Standard: Physician participation in the individual program plan (proposed §§ 442.464 and 442.466)
(c) Standard: Nursing services (proposed § 442.468)
(d) Standard: Nursing staff (proposed § 442.470)
(e) Standard: Dental services (proposed § 442.472)
(f) Standard: Comprehensive dental diagnostic services (proposed § 442.474)
(g) Standard: Comprehensive dental treatment (proposed § 442.476)
(h) Standard: Documentation of dental services (proposed § 442.478)
(i) Standard: Pharmacy services (proposed § 442.480)
(j) Standard: Drug regimen review (proposed § 442.482)
(k) Standard: Drug administration (proposed § 442.484)
(l) Standard: Storage and recordkeeping (proposed § 442.486)
(m) Standard: Labeling (proposed § 442.488)
(n) Standard: Laboratory services (proposed § 442.490)
§ 483.470 Condition of Participation: Physical environment
(a) Standard: Client living environment (proposed § 442.500)
(b) Standard: Client bedrooms (proposed § 442.502)
(c) Standard: Storage space in bedrooms (proposed § 442.504)
(d) Standard: Client bathrooms (proposed § 442.506)
(e) Standard: Heating and ventilation (proposed § 442.508)
(f) Standard: Floors (proposed § 442.510)
(g) Standard: Space and equipment (proposed § 442.512)
(h) Standard: Emergency plans and procedures (proposed § 442.550)
(i) Standard: Evacuation drills (proposed § 442.552)
(j) Standard: Fire protection (proposed § 442.554)
(k) Standard: Paint (proposed § 442.556)
(l) Standard: Infection control (proposed § 442.436)
§ 483.480 Condition of Participation: Dietetic services
(a) Standard: Food and nutrition services (proposed § 442.558)
(b) Standard: Meal services (proposed § 442.560)
(c) Standard: Menus (proposed § 442.562)
(d) Standard: Dining areas and services (proposed § 442.564)

B. Basis and Purpose (Proposed § 442.402; Final § 483.402)

Comment: One commenter objected to the word "facility" in the statement that describes the Secretary's authority to prescribe standards for "intermediate care facility services". The commenter thought the word facility focused too much on physical plant issues rather than on client services.

Response: In this context, the word facility is used as it appears in the statute (section 1905(d) of the Act) that establishes the ICF/MR benefit under the Medicaid program. The context in which it appears makes it clear that it is "facility services" that are covered, and it is clearly services that are emphasized in these regulations.

Comment: Several commenters wanted to maintain the provisions of the current regulations at § 442.402 that require a facility to establish philosophy, objectives and goals, and § 442.407 that requires a facility to have policy and procedure manuals.

Response: In the proposal and in these final regulations, we have emphasized the outcomes of care for the client. The facility's philosophy, policies, and procedures are essential to its successful operation. However, we intend to measure facility performance, and this is what we expect to see reflected in client outcomes.

C. Protection of Clients Rights (Proposed § 442.401; Final § 483.420(a))

Comment: Several commenters recommended that paragraphs (f), (j) and (k) of the proposed § 442.401 concerning the protection of client rights be modified by replacing the word "permit" with the phrase "ensure that". The commenters believed that this would emphasize that the rights discussed in these paragraphs are basic and that the facility does not have the right to deny them as the word "permit" suggests.

Response: We accept this recommendation and have revised the regulations accordingly.

Comment: Commenters expressed a variety of opinions regarding the absence in the proposed regulations of the existing requirement at § 442.405 that states that a qualified mental retardation professional may determine if a client is incapable of understanding his or her rights. Many commenters also suggested that the proposed § 442.401(a) that lists the individuals a facility must inform of clients' rights, be amended to include a legal advocate as one who must be informed. Similarly, others stated that it should be mandated that when a client is adjudicated incompetent, a legal guardian be appointed. Still others wanted to expand the proposed section by adding a new subsection detailing clients' rights in obtaining a legal advocate.

Response: The reason that the proposal and this final rule delete the authorization for a qualified mental retardation professional to determine a client's competency is that this determination involves a judicial process that goes beyond a clinical process. With respect to the issue of informing a legal advocate of a client's rights, there is nothing in the proposal or the final rule to preclude notification. Regarding the mandating of a legal guardian in the case of incompetency, this is a matter traditionally regulated under State laws. Finally, neither the proposal nor the final rule precludes a facility from obtaining a legal advocate for a client, but we have no authority to mandate his or her appointment.

Comment: Several commenters asked whether the proposed § 442.401(b), which would require a facility to inform each client, parent or guardian of the attendant risks of treatment, referred to medical treatment exclusively or other modalities as well.

Response: The term "attendant risks of treatment" refers to all treatment.

Comment: Two commenters asked if there was conflict between the proposed § 442.401(b), which would establish a client's right to refuse treatment, and the facility's mandate to provide active treatment.

Response: We will explain in interpretive guidelines that a client refusing a particular treatment must be offered acceptable alternatives to the treatment being refused if acceptable alternatives are available (for example, drug therapy). If the client refuses the alternative treatment as well, or if no alternative exists to the treatment that was refused, the facility must consider whether it can continue to treat the client consistent with these regulations.

Comment: Commenters suggested that the proposed § 442.401(i) that would establish a client's right to send and receive mail be modified to indicate that a client has a right to send and receive unopened mail.

Response: We agree and have modified the regulations to indicate that a client has this right.

Comment: One commenter suggested that the proposed § 442.401(g) that would require a facility to provide each client with the opportunity for personal privacy be expanded to indicate the locations where privacy is a client right.

Response: We believe this is conceptually self-evident. We cannot enumerate all of the types of living environments that lend themselves to client privacy, so we cannot practically comply with this recommendation. However, we have modified the regulations to emphasize the need for privacy during treatment procedures and care of the personal needs of the client.

D. Client Finances (Proposed § 442.410; Final § 483.420(b))

Comment: Most commenters on the requirement to keep a full and complete accounting of clients personal funds were concerned that a minutely detailed accounting by the facility should not be required. Clients' personal funds include funds for "incidental" expenses (such as ice cream and bus fares), funds that a capable client handles without assistance, funds dispensed to a client under a program to train the client in money management, and funds that are not entrusted to the facility (for example, that are paid directly to the client's representative payee).

Response: The Conference Report (H.R. Rep. No. 673, 95th Cong., 1st Sess. 49 (1977)) on the bill that enacted section 1861(j)(14) of the Act, the provision that requires skilled nursing facilities to account for patients' funds, states that: 'Such system must provide for separate and discrete accounting for each patient with a complete accounting of income and expenditures.' The requirement for ICFs to account for patients' funds was incorporated into the Medicaid statute at section 1905(c) of the Act, by section 9(a) of Pub. L. 95–282.

However, we agree with the commenters who maintain that the facility should not be held responsible for personal funds used for incidental expenses or "pocket money". Consequently, we have restated the requirement, now at § 483.420(b)(1)(i) to clarify that the facility is only responsible for the personal funds of which it has custody on behalf of the client.

Comment: Some commenters suggested that specific emphasis be placed on the facility's responsibility to encourage and teach clients to manage their own funds to the extent possible.

Response: We believe that the need to encourage and train clients in managing their own funds to the extent possible was reflected in the proposed § 442.401(d) that would require the facility to allow each client to manage his or her own financial affairs and to teach him or her to do so to the extent of the client's capabilities. Consequently, we have made no change to the proposed requirement in this final rule. We note that the requirement is located at § 483.420(a)(4) in this final rule.

Comment: Other commenters recommended that we retain the requirement in current regulations at § 442.404(a)(4) that the facility inform the client in writing of available services and any applicable charges.

Response: The ICF/MR is required to provide its clients with the package of services specified in these regulations. Further, Medicaid regulations at § 447.15 provide that, except for any recipient cost-sharing requirements specified by the State plan, a Medicaid provider must accept the amount paid by the State Medicaid program as payment in full. Thus, the facility is effectively precluded from charging the client for services that it provides as part of the required ICF/MR package, making a list of applicable charges unnecessary.

Comment: Concerning the proposed § 442.410(a), which would preclude the commingling of a client's funds with any funds other than those of another client, two commenters suggested the commingling of clients' funds in a shared trust fund, noting that small, individual client savings accounts can be depleted by bank charges. However, they added that it would be impossible to maintain individual running accounts of interest accrued to each client in a shared account.

Response: The proposed rule that would prohibit the commingling of clients' funds with facility funds is required by section 1905(c)(4) of the Act, which incorporates section 1861(j)(14) of the Act. Section 1861(j)(14) of the Act precludes the commingling of clients' funds in skilled nursing facilities that are approved for Medicare participation. Thus, under section 1905(c)(4), this provision applies to ICFs. There is nothing in the Act that requires the facility to maintain clients' personal funds in financial institutions in accounts separate from other client accounts, or to maintain these funds in interest bearing accounts (although it would ordinarily be prudent to do so). However, if the facility elects to pool clients' funds in an interest bearing account, it is expected to know the interest separately accrued by each client, as part of its required accounting of funds.

Comment: One commenter questioned the need for any commingling of clients' funds, and opposed any system that could allow personal funds to lose their individual identity, or allow access to them without consent of the client or guardian. Another suggested allowing combined funds within a shared bank account but mandatory, separate accounting cost centers for each client. Still another commenter noted a potential conflict between Federal law and a particular State's law requiring interest from a patient's trust account to be deposited into a common recreational fund account.

Response: Section 1905(c)(4) of the Act, the proposed regulations, and these final regulations neither require nor prohibit the commingling of a client's funds with those of other clients in accounts in financial institutions, nor do they require that funds, when deposited, be deposited in interest bearing accounts. With regard to the potential conflict between State and Federal law, we would have to examine the specifics of the State law to determine whether, in fact, it conflicts with the Federal Medicaid statute.

Comment: In regard to the proposed § 442.410(b), which would require a written financial record that includes management of all funds handled by the facility on the client's behalf, one commenter suggested including a signed statement that the facility management of funds is done at the client's option, and another expressed support for the requirement for a written financial record.

Response: We believe the issue of a client authorizing the facility to manage his or her funds was already adequately addressed in the proposed § 442.401(d) concerning clients' rights. That section would require that the client be allowed to manage his or her own financial affairs as much as possible, and implied that facility management of the client's funds is possible only if the client elects it. We have made no changes to this provision that now is located at § 483.420(a)(4). We believe that the requirement in the introductory

paragraph of the proposed § 442.410, for a full and complete accounting of funds, by its nature necessitates maintenance of a written record. Therefore, we believe that the language in the proposed § 442.410(b) that would specifically require a written record is unnecessary, and we have deleted it.

Comment: With respect to the proposed provision regarding availability of the financial record (§ 442.410(c) of the proposal), eight commenters recommended that the word "and" in the phrase "to the client and his or her parents or guardian" be changed to "or", noting that a parent or guardian should not have automatic access to the financial record of an adult client who can manage his or her own finances. Several additional commenters suggested that instead of changing "and" to "or", the words "as appropriate" be added to the end of the sentence. It was noted that even a client who has been adjudicated as incompetent should have the opportunity to examine his or her own financial record. Requiring the record to be made available to the client "or" the parent or guardian might be interpreted as precluding this opportunity.

Response: We agree with the commenters who point out that parents should not have automatic access to the financial records of adult clients who can manage their own finances. Therefore, we are revising the last part of the sentence to read "* * * client, parents (if the client is a minor), or legal guardian". This wording adequately addresses the general issue of access to the client's financial records.

Comment: Some commenters suggested requiring the facility to furnish the client and family with an annual financial statement.

Response: We do not believe it is necessary to require a facility to furnish an annual financial statement to the client or the client's family, since the facility is already required to make the financial record available at any time upon request. Requiring an annual statement could create the erroneous impression that the facility need only make the record available once a year and may impose, as well, a reporting burden not desired by family members or guardians.

Comment: Other commenters recommended requiring the financial record to be available, at the client's request, to a designated advocate and requiring that financial records be made available to those with a legal right to the information (which would not necessarily include the parent or guardian) and to the client "unless contraindicated".

Response: We do not believe that it is necessary to make explicit reference to third parties designated by clients to represent them, such as advocates. The facility already is required to make the record available to the client who, in turn, can elect to make it available to any other individual of the client's choice. This election also can be made by the client's parents (if the client is a minor) or legal guardian on the client's behalf.

E. Governing Body (Proposed § 442.412; Final § 483.410(a))

Comment: Most of the comments on this section concerned the provision in the proposed paragraph § 442.412(b) that would require "knowledge in the field of developmental disabilities" as one of the qualifications of the facility administrator. Many commenters requested clarification on how possession of this knowledge can be established (degree, years of experience, etc.). Some questioned the need for this requirement and expressed the belief that organizational skills, as well as managerial/administrative experience and training, are the most important qualifications for the administrator.

Response: After reviewing the comments regarding this requirement, we have decided to delete it. It would be difficult to formulate definitive, all-inclusive criteria for demonstrating this type of knowledge and experience. We believe that the presence of sufficient knowledge, experience and managerial skills in the field of developmental disabilities will be reflected in the quality of care furnished to clients in the facility. Therefore, the most appropriate indicators in assessing this factor will be outcome-oriented; that is, the quality of care that the clients actually receive.

Comment: One commenter requested that we revise the regulations to clarify that it is permissible for more than one facility to share a common administrator or governing body.

Response: Neither the proposed nor these final regulations preclude such an arrangement as long as the administrator adequately fulfills the functions and responsibilities required to manage each facility (or, in the case of a governing body, as long as the governing body meets the specific requirements set out in the standard for governing bodies at § 483.410(a) for each of the facilities involved).

Comment: One commenter requested that we keep the requirement in current regulations at § 442.406 for a management audit plan.

Response: We did not include the requirement for a management audit plan in the proposal or in this final rule. The reason is that we believe that the existence of a plan is not an appropriate measure of whether its function has been fulfilled and that each facility should determine for itself, either in advance or continously, the manner in which it monitors its own performance.

F. Communications With Clients, Parents, and Guardians (Proposed § 442.412; Final § 483.420(c))

Comment: Several commenters suggested that we maintain the provision in current regulations at § 442.414(a)(1) that requires a facility to notify parents or guardians of any significant in the client's condition.

Response: This requirement was addressed in the proposed § 442.434 that would require the facility to notify the client's parents or guardian promptly of any significant incidents. In the final regulations, this provision is located at § 483.420(c)(6). It requires facilities to notify promptly the client's parents or guardian of any significant incidents or changes in the client's condition. For a further discussion of the provision, see section III.P. of this preamble.

Comment: The proposed § 442.414 included an introductory statement that would require the facility to have an active program of communication with the client, parents, and guardian. Some commenters suggested that the word "and" be change to "or", to allow for direct communication between the facility and a competent adult client rather than through the client's parents.

Response: The proposed introductory statement was not intended to establish an explicit requirement, but rather to set the general tone of the requirements that follow it. Since it causes confusion as to its intent, we have revised it to say simply, "The facility must—". As in the proposed rule, the introductory statement of this final rule is followed by specific requirements.

Comment: Other commenters suggested that we replace the word "permit" as used in this section with "promote," to indicate a more active facility role in enabling clients to exercise their basic rights.

Response: We agreed with the commenters and, in this standard, have replaced the word "permit" with "promote" to emphasize the facility's active role in the communications process. We plan to issue interpretive guidelines that will clarify that this revised wording places a higher degree of responsibility on the facility in this area.

Comment: The proposed § 442.414(a) would require the facility to permit participation of parents and guardians

in the active treatment process specified in the proposed § 442.440, unless that participation is unobtainable or inappropriate. Many commenters requested clarification of the term "inappropriate" and of the process by which parental or guardian participation in the client's active treatment plan would be determined to be inappropriate or unobtainable. Additional commenters asked whether the term "active treatment" in this context is synonymous with "individual program plan".

Response: In this final rule, we have deleted the cross-reference to § 442.440 concerning active treatment, and have revised the language to refer to "the process of providing active treatment to a client". This is to clarify that the facility must promote parent/guardian participation in the entire range of activities connected with the provision of active treatment, from client assessment through delivery. Regarding the terms "inappropriate" and "unobtainable", we plan to issue interpretive guidelines to clarify that, for example, it would be inappropriate for an individual to attend interdisciplinary team meetings if his or her behavior is so disruptive or uncooperative as to preclude effective participation by anyone else. Similarly, the term "unobtainable," as used in this standard, means that the facility had made a bona fide effort to *seek* parental participation in the client's active treatment process, even though the effort may ultimately be unsuccessful (for example, the parent may be impossible to locate, or may prove unwilling or unable to participate).

Comment: Several commenters expressed concern that unannounced visits to the client (proposed at § 442.414(c)) or to areas of the facility that provide direct client care services (proposed at § 442.414(d)) should not be allowed to interfere with or disturb the privacy and rights of that or any other client.

Response: We share this concern, and have amended the language to provide for visits "consistent with the right of that client's and other client's privacy".

Comment: Over half the commenters addressing the proposed § 442.414(e) noted that, although the proposed regulations would require facilities to permit frequent and informal leaves of absence, State Medicaid programs often make no or very limited payment to reserve the client's bed in the facility during the leave of absence.

Response: Under the Medicaid program, payment during a leave of absence is a matter for each State to decide. The Medicaid regulations governing payment during leaves of absence (at § 447.40) provide that each State is free to determine whether and to what extent it will make payment in these situations. Of course, Federal matching funds are available whenever a State decides to make such payments under the regulations.

Comment: Other commenters suggested that a leave of absence should not be permitted in situations in which the interdisciplinary team determines that it would be inconsistent with the client's program goals (such as when a home visit would be potentially harmful).

Response: The proposed regulations would and these final regulations do require the facility to permit clients to go on visits and trips. A facility is not required to sponsor such trips or to allow the client to take a particular type of trip that is contraindicated. If a specific type of trip is contraindicated by a particular circumstance (for example, child abuse by a parent), then the facility is not required to permit such trips. However, as with any right that may need to be modified or limited, the client should be provided with the least restrictive and most appropriate alternative available. We note that in the final rule under the standard concerning the protection of clients' rights at § 483.420(a)(3), we have clarified the proposed requirements on a client's exercise of rights, by including the example of a client's right to due process.

Comment: Some commenters suggested deletion of the word "frequent" with reference to leaves of absence, to make clear that the regulations do not apply to facilities that provide only part-time, non-residential care.

Response: We are retaining the word "frequent", since these regulations apply only to inpatient facilities and, therefore, clearly do not include those facilities which provide only part-time care.

G. Compliance With Federal, State, and Local Laws (Proposed § 442.416; Final § 483.410(b))

Comment: A number of commenters expressed approval of the inclusion of civil rights requirements in this provision. However, there were also questions as to whether the applicability of civil rights requirements included accessibility for the handicapped under section 504 of the Rehabilitation Act of 1973.

Response: The provisions of section 504 of the Rehabilitation Act of 1973, including accessibility for the physically handicapped, apply to all programs receiving Federal funds. The Office for Civil Rights of the Department of Health and Human Services administers the regulations implementing section 504 relative to building accessibility for the physically handicapped and is routinely involved in the certification process for ICFs/MR. Because the proposed regulations text at § 442.416 gave the appearance that HCFA would be enforcing civil rights and research requirements, we have deleted these requirements from the text. However, we have added a new § 483.405 which describes the relationships between these regulations and those administered by other HHS agencies (for example, nondiscrimination on the basis of age administered by the Office of Civil Rights). Violations of these regulations, while not a condition of participation, may result in the termination or suspension of, or refusal to grant or continue, Federal financial assistance.

Comment: One commenter believes that there is an inconsistency between the proposed standard at § 442.416, which would require that the facility comply with all applicable Federal, State and local laws, and the proposed revision in the regulations at § 442.252 that would exempt ICFs/MR from meeting State nursing home regulations.

Response: The current § 442.252 requires all ICFs to meet State imposed safety and sanitation standards for nursing homes. These State-imposed nursing home requirements are not always appropriate to ICFs that serve the mentally retarded. Thus, we proposed to limit the applicability of § 442.252 to ICFs other than ICFs/MR. We see no inconsistency between the proposed amendments to § 442.252 and the proposed § 442.416 that would require facility compliance with Federal, State and local laws that are "applicable" to ICFs/MR. In order to further clarify that these regulations do not require State-imposed safety and sanitation standards for nursing homes to be applied to ICFs/MR, we considered moving § 442.252 from Part 442, Subpart E that applies to all facilities, to Subpart F that applies only to ICFs other than ICFs/MR. However, the current rules under Subpart F already address safety and sanitation laws at § 442.315(c). Therefore, in this final rule, we are deleting § 442.252. Thus, these regulations do not require States to apply State nursing home requirements with regard to safety and sanitation standards to ICFs/MR. However, a State continues to be free to apply State ICF/MR standards and, if it does, the facility is required by § 483.410(b) of these regulations to

comply with those State requirements. These regulations impose Federal safety and sanitation requirements on ICFs/MR at § 483.470 and elsewhere.

Comment: One commenter asked how to determine which provision would be controlling in situations where two or more applicable requirements conflict.

Response: We believe the commenters may be referring to a perceived conflict between the proposed § 442.416, which requires compliance with Federal, State and local laws, and the proposed § 442.460, which describes personnel qualifications. It is possible that a State may require one level of qualification for personnel (for example, doctoral) and the Federal regulations require a lower level (for example, bachelors). In fact, this does not represent a conflict because the regulations represent the basic minimum participation requirements. If a State permits licensure with lower requirements, these Federal regulations control for purposes of Medicaid certification. If, on the other hand, a State imposes higher requirements, the facility must in effect meet the higher of the two requirements.

H. Provision of Needed Services (Proposed § 442.418; Final § 483.410(d))

Comment: Approximately 45 commenters expressed views about the provision in this section that would require the facility to provide the following services directly through its own staff: the services of a qualified mental retardation professional; direct care services; nursing services; development and monitoring of active treatment programs; and living quarters. The majority of the commenters objected to the provision because it would require the facility to employ staff directly and prohibited them from "arranging for" staff on an as needed basis. The most frequent objection dealt with the employment of nursing staff for clients with medical care plans. Many commenters believe it is unreasonable to require a facility to employ directly a nurse for clients with medical care plans when a client may have such a plan infrequently and then, only for a short period of time. They felt that employment of nurses on a temporary basis, perhaps through a home health agency, would be a better alternative.

Other objections came from a State which by law requires case management and assessment to be conducted by county government and not the facility. The proposed requirement for providing active treatment monitoring services "directly" would seriously conflict with this local law. Another State provides the qualified mental retardation professional function, nursing services and the development and monitoring of active treatment programs through a centralized client services management agency. This arrangement has allowed for the development and support of small community-based facilities that could not exist without it.

Another commenter objected to requiring direct provision of living quarters because it precluded the facility from leasing space to provide services in small community-based facilities.

Response: The basic objective in specifying which services had to be provided directly by the facility was to assure that a facility would not create an ICF/MR "on paper" and contract out all the essential services, thereby escaping any real responsibility for their quality. The commenters on this requirement have pointed out the considerable difficulty this would cause for existing arrangements and for initiatives to establish more community based facilities. The commenters also pointed out how this requirement conflicts with our stated objective of providing more flexibility with greater emphasis on the outcome. As a consequence, we have deleted the requirement for direct provision of these services while retaining the requirements a facility must meet when it arranges to obtain a service from an outside resource. These requirements are: (1) For a written agreement specifying the conditions under which the services are provided and that the facility is responsible for assuring that the outside services meet Federal standards for quality; and (2) that the facility, itself, assure that the services meet client needs. If a facility fails to meet any of these requirements (for example, if the facility fails to assure the quality of the services provided under an arrangement), it is subject to the same sanctions as if it had provided the services directly.

I. Personnel Policies (Proposed § 442.420; Final § 483.420(d))

Comment: A significant number of commenters raised objections about the proposal to require facilities to develop and implement personnel policies. Some insisted that to be meaningful these policies should be in writing. Others wanted personnel policies to be reviewed annually. Another commenter wanted to distinguish the term "job description" from "job classification".

Response: Because of the significant interpretive problems raised by commenters, because we do not view the availability of job descriptions and written personnel policies as a significant client care issue, and because written job description and personnel policies are regulated by State law, especially for the small provider, we have withdrawn the proposed requirements at § 442.420(a) for personnel policies and § 442.420(b) for job descriptions. We note that the remaining provisions of this proposed section have been moved. The proposed § 442.420(c) dealing with communicable disease has been modified as indicated in the following comment and response, and incorporated into the provisions relating to infection control (§ 483.470(1)(4) of this final rule). The proposed § 442.420(d) that would prohibit employment of individuals with a history of child abuse has been incorporated into the provisions relating to staff treatment of clients at § 483.420(d) of this final rule.

Comment: Many commenters were concerned about the proposed regulations that would prohibit employees with signs and symptoms of communicable disease from working. They were concerned about the definition of the phrase "communicable disease" and suggested the requirement be changed to apply only to those employees who have contact with clients.

Response: We agree and have changed the regulations to prohibit employees with symptoms or signs of a communicable disease from "direct contact" with clients and their food (§ 483.470(1)(4) of this final rule).

Comment: Many commenters expressed concern about the problem of employing those with a history of child abuse, neglect or exploitation, indicating that a "history" of abuse was vague and nonspecific. Several of these commenters suggested that the proposed requirement be modified to prohibit employment by those convicted of child abuse, neglect or exploitation.

Response: We agree in part and have modified the requirement to prohibit employment of individuals who have been "convicted" of one of the mentioned abuses. However, we have retained the proposed prohibition against the employment of individuals with a "history" of such abuses but have defined "history" as "prior employment history". We do not believe that it would be an unreasonable task for the facility to obtain references from previous employers to determine if a prior history of child abuse, neglect or exploitation exists.

J. Licensure and Professional Standards (Proposed § 442.422; Deleted in Final)

Comment: Seven commenters objected to the provision that would require the facility to meet the same professional licensure requirements that the State has established for comparable positions in the community. Commenters stated that this requirement would have the effect of superseding State laws that specifically allow less qualified individuals to practice in State institutions (that is, ICFs/MR) than in community facilities. Three of the commenters asked us to amend the regulations so that it would not supersede State law in those States that allow a lower standard in State institutions. One commenter specifically asked that we add the words "unless specifically provided for under State law and regulation".

Two commenters suggested that we clarify the regulations because the proposed § 442.460(e)(5) would allow a masters level psychologist, but the proposed § 442.422 would require a doctoral level if the facility was in a State that required the doctoral level degree for community practice.

Response: We agree with the commenters who would like to amend this section so that these regulations would not supersede State laws that specifically allow lower personnel requirements in public institutions (that is, ICFs/MR). These laws are usually based on the theory that the setting of larger State institutions imposes a level of supervision that is not present in independent practice. To amend this section as commenters wish would be to require the facility to meet the personnel credentialling requirements of State law. We have deleted the proposed § 442.422 from the final rule because the proposed § 442.416 (§ 483.410(b) of this final rule) that would require the facility to meet applicable State laws meets their concerns on this issue.

The deletion of § 442.422 answers the concerns that the proposed personnel requirements for psychologists at § 442.422 were inconsistent with the proposed requirements under the standard for professional program services (§ 442.460(e)(5) of the proposed, § 483.430(b)(5) of the final).

K. Staff Treatment of Clients (Proposed § 442.424; Final § 483.420(d))

Comment: Many commenters suggested that to be useful the policies and procedures that prohibit mistreatment, neglect and abuse should be in writing.

Response: We agree that policies and procedures on prohibition of mistreatment, neglect and abuse should be in writing and have amended the regulations accordingly. Since these policies and procedures are directly related to the protection of clients' rights, health and safety, we want everyone in a facility to know exactly what policies and procedures exist in this regard.

Comment: Many commenters objected to the five day time frame for investigations of alleged incidents of mistreatment, neglect or abuse. Some commenters indicated that five days is too short a period to conduct an investigation while others said that five days is an excessive amount.

Response: The current regulations at § 442.430(c)(2) allow 24 hours for this reporting. In the proposed rule, we increased this reporting time to five working days because we wanted to allow sufficient time for a reasonably thorough investigation. While incidents of this nature will vary widely in their degree of severity, and thus require a wide variation in time necessary to investigate them, we believe that five working days is a good balance for most cases. Further, we do not preclude the facility from conducting such investigations in a shorter period of time.

Comment: One commenter stated that the regulations should state the specific kinds of reporting mechanisms that are acceptable to meet the proposed requirements for reporting mistreatment, abuse or neglect of clients.

Response: We believe that the proposed regulations adequately address the broad objective the facility much achieve. We do not believe it necessary to specify detailed reporting mechanisms. We also believe that a facility should be free to develop its own specific procedures as long as documentation exists that shows that alleged violations are investigated and appropriate action taken.

Comment: One commenter suggested that this section be expanded to prohibit client exploitation as well as mistreatment, neglect and abuse.

Response: We do not agree with this suggestion because we believe that "mistreatment" would include the exploitation of a client. We will explain in interpretive guidelines that mistreatment includes exploitation.

Comment: One commenter suggested clarification of the term "appropriate corrective action" as it pertains to the actions of the administrator once an alleged violation has been verified.

Response: We can not attempt to describe all the potential abuses and the degrees to which they may occur. Thus we cannot attempt to define "appropriate corrective action". The facts of the situation will have to be evaluated by the surveyor and a judgment made about appropriateness.

Comment: Several commenters suggested that this section could be strengthened by clearly stating that the facility's immediate responsibility in the event of an allegation of abuse or neglect is to ensure no further harm to the client.

Response: We agree and have modified the regulations to require the facility to take steps to prevent any further potential abuse while alleged abuses are being investigated.

Comment: Several commenters suggested that the facility should be required to investigate abuse or injuries caused by another client, self-abuse, or incidents by an unknown source.

Response: We have accepted this comment and, at § 483.420(d)(1) of this final rule, have changed the proposed provisions to require the facility to prohibit neglect or abuse by any individual. We also have modified the proposed provisions to include a requirement that the facility investigate injuries of unknown sources regardless of the source.

Comment: One commenter suggested that the report of an investigation into alleged violations of mistreatment, abuse and neglect should be a preliminary report.

Response: We do not agree with this suggestion. We have already extended the period in which a report may be prepared from 24 hours to five working days. To allow the report to be preliminary would unnecessarily weaken the requirement.

Comment: Several commenters suggested that the proposed regulations be modified so that "alleged violations of policies are reported" is changed to "alleged violations of abuse and neglect are reported". Other commenters asked that we simply delete the words "of policies" so that the focus would be on the violation, not on policy.

Response: We agree with the commenters that the focus of the requirement is the reporting of mistreatment, abuse and neglect. Therefore, we have changed the regulations accordingly.

Comment: One commenter requested that we define "working days" as it is used in the proposal requiring a facility to report investigations of alleged violations of mistreatment, abuse and neglect within five working days.

Response: We will define this term in intepretive guidelines by stating that it refers to Monday through Friday excluding State and Federal holidays.

Comment: One commenter indicated that there should be a way to bypass the administrator if he or she is the abuser.

Response: We agree with this commenter and have modified the regulations so that the results of an investigation may be reported to the administrator or to "other officials". (The interpretive guidelines will expalin that when a report of known or suspected abuse or neglect involves the acts or omissions of the administrator, a different properly constituted authority outside of the facility must receive and investigate the report and take appropriate protective and corrective action.)

Comment: One commenter noted that it would be appropriate to incorporate into this standard the prohibition of verbal, physical and sexual abuse proposed under the standard "Behavior Management—policies and procedures" at § 442.452(c).

Response: We have deleted the reference to verbal, physical or sexual abuse from the standard concerning behavior management and will explain in interpretive guidelines that the prohibition of these forms of abuse are encompassed under the standard concerning staff treatment of clients.

Comment: One commenter stated that this section also should mandate that facilities have an appropriate procedure to deal with situations when clients are missing.

Response: We agree with this commenter. However, provision already was made for addressing the issue of missing clients under the proposed § 442.550 that concerns emergency plans and procedures and that would require the facility to develop and implement written plans and procedures to deal with missing clients. This provision has been incorporated into the final rule at § 483.470(h).

Comment: One commenter expressed concern that measures be taken to protect the rights of employees as well as clients.

Response: While it is true that employee rights are a significant issue in allegations of client abuse, these regulations are designed to protect and treat clients of the facility. We expect State and local law, employment contracts, and union contracts to address issues of employee protections.

L. Facility Staffing (Proposed § 442.426; Final § 483.430(c))

Comment: One commenter expressed an opinion on the proposed requirement at § 442.426(a) that the facility must not depend upon clients or volunteers to perform direct care services for the facility. In their view, the phrase "must not depend" is unclear. They asked whether this means that clients or volunteers cannot perform client care services and whether this would eliminate forster grandparents.

Response: The intent of the regulations is that the facility may not entirely rely upon volunteers for routine staffing. The interpretive guidelines for these regulations will explain that volunteers may provide supplementary services but that the facility may not rely exclusively upon them to perform direct care services. Facilities cannot depend on volunteers to fill required staff positions.

Comment: There are fifteen comments on § 442.426 (b) and (c) of the proposed regulations. The intent of both these sections is that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties. Most of the commenters felt that the wording in the proposed paragraph (b) (which states that direct care staff must not be required to provide housekeeping, laundry or other support services to the extent that these duties interfere with the exercise of their primary direct client care duties) precluded any flexibility in management. In their view, there are, at times, legitimate reasons for direct care staff to perform such duties. For example, at times, staff in group homes do housework while training residents. The commenters preferred the wording in the proposed paragraph (c) that states, "The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

Response: We have accepted the comments, recognizing that the proposed paragraphs (b) and (c) of § 442.426 are duplicative. Since the commenters preferred the wording of paragraph (c), we have deleted the proposed paragraph (b) and retained the language of the proposed paragraph (c).

Comment: There were seventeen commenters on the proposed requirement at § 442.426(c) that in each residential living unit housing clients for whom a physician has ordered a medical care plan, or clients who are aggressive, assaultive or security risks, or one that houses more than 16 persons, there must be responsible direct care staff on duty and awake when clients are present to take prompt, appropriate action in case of injury, illness, fire or other emergency. Many of the commenters felt that the term medical care plan was unclear and needed to be defined. Several commenters also questioned whether or not the proposed requirement meant that there must be responsible direct care staff on duty and awake when clients are present in group homes with live-in houseparents.

Response: We have accepted the comments requesting clarification of the term "medical care plan". This also was a significant issue in the comments on the proposed § 442.404, Physician Participation (see Section III.AA. of this preamble). Thus, we have clarified under § 483.430(a) concerning physician services that a physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client whose health needs are so severe as to require 24-hour licensed nursing supervision. With regard to group homes with live-in houseparents, the proposed regulations would require and the final regulations require responsible direct care staff on duty and awake when clients are present in each of the situations stated in the proposed regulation; that is, when the residential building houses more than 16 clients or when the residential living unit houses clients for whom a physician has ordered a medical care plan, or clients who are aggressive, assaultive or security risks. In these situations, clients are high risk individuals in terms of their vulnerability to emergency situations such as fires, injuries or health emergencies (for example, aspiration, cardiac or respiratory failure, seizures). Such vulnerability also increases as the number of clients in a facility increase. Thus, in these situations, a responsible direct care staff person on duty and awake has been retained as a requirement.

Comment: There were five comments on the proposed requirement at § 442.426(d) that in each defined residential living unit housing clients for whom a physician has not ordered a medical care plan and that houses 16 or fewer clients, there must be a responsible direct care staff person immediately accessible to clients on a 24-hour basis. The majority of the commenters felt that the term "immediately accessible" should be defined. One commenter felt that the regulation should read, "there must be a responsible direct care staff person on the premises and immediately accessible".

Response: We have revised the regulations to read that staff must be "on duty" rather than immediately accessible. Interpretive guidelines will explain that the intent of the regulation is that at all times a staff person is in a position to help if client need arises. We will explain that on-duty staff, for purposes of this provision, need not be awake. We also will explain that the provision (located in the final rule at § 483.430(c)(2)) has been modified to assure that 16 or fewer clients located in units of multi-unit buildings must have staff on duty and "awake". This provision is necessary because multi-unit buildings are usually of such size and configuration that the opportunity for staff to detect and react to client problems is excessively limited.

Comment: Commenters felt that the term "support staff" was unclear in the proposal at § 442.426(e) that would require the facility to provide sufficient support staff so that direct care staff are not required to perform support services to the extent that those duties interfere with the exercise of their primary direct client care duties.

Response: We have accepted these comments and will include the following definitions in the interpretive guidelines for the regulation: Support staff include all personnel hired by the facility that are not either direct care staff or professional staff. For example, support staff include, but are not limited to, housekeepers, maintenance and laundry personnel. Direct care staff are those personnel managing and supervising the daily needs of clients in their living quarters.

Comment: Thirty-one comments were received on the proposed requirement at § 442.426(f) that the facility must employ a qualified dietitian, who is registered or eligible for registration by the American Dietetic Association, either on a full-time, part-time or on a consultant basis. The majority of the comments suggested that the regulation should be more specific with regard to the number of hours a qualified dietitian should be employed by the facility. Most of the commenters felt that the number of hours should depend on facility size. There was no consensus among the commenters, however, as to how specific guidelines could relate facility size to the number of hours needed from a qualified dietitian. Several commenters felt that the regulations should allow more flexibility by stating that the facility should employ a qualified dietitian for sufficient time to meet the needs of residents. Some of the commenters also believed that the requirements regarding dietitian personnel in the proposed § 442.426 (f) and (g) should be moved to the proposed standard at § 442.558, concerning food and nutrition services.

Response: We have accepted the comments suggesting that the regulations be flexible enough to allow facilities to employ a qualified dietitian for sufficient time to meet the needs of residents. We also have accepted the comments suggesting that facility requirements for employing a dietitian should be moved from the standard concerning facility staffing to the standard concerning food and nutrition services. Additionally, to ensure that all professional qualifications are consolidated, we have moved the qualifications for a professional dietitian to the professional program services standard. Thus, in this final rule, the standard for food and nutrition services at § 483.480(a)(2) will state that "A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion."

Comment: Twenty-one comments were received concerning the proposed requirement that if a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services. Many of the commenters felt that qualifications for a non-dietitian food service director need to be added. Additionally, several commenters believed that the regulations should be expanded to specify the duties of the food service supervisor.

Response: We have not accepted the comments requesting that the qualifications and duties of the designated director of food services who is not a qualified dietitian be added to the regulations. The outcomes of good food and nutrition services were outlined under the proposed standards at § 442.480 Meal Services, § 442.562 Menus, and § 442.564 Dining Areas and Service, and have been adopted into this final rule under the condition of participation concerning dietetic services at § 483.480. An example of an outcome is nutritional foods served in appropriate quantities and at appropriate temperatures. The intent of the regulations is that the specified outcomes be met. If the outcomes are achieved, the qualifications and duties of the person performing the services do not need to be specified in regulations.

M. Direct Care Staff (Proposed § 442.428; Final § 483.430(d))

Comment: Approximately 60 commenters expressed views on the proposal to prescribe various staff to client ratios depending on the needs of the clients (for example, one staff member to 3.2 clients with severe disabilities; one staff member to four clients with moderate disabilities; and one staff member to six clients with mild disabilities).

In essence, the commenters had two clear reactions to the proposal: (1) They uniformly thought that the ratios were inadequate to provide active treatment and barely adequate to provide custodial care, and many commenters thought that we needed a requirement for "sufficient" direct care staff to supplement the ratios as they were proposed; and (2) the commenters thought the ratios needed clarification. Commenters asked for clarification of the following: what staff are included in calculating the ratios; was it permissible to have part-time staff serve when the number of clients dictated less than a full-time staff; and, are staff necessary when there are no clients in the living unit such as when all clients are at workshops or school. Finally, commenters expressed a preference for ratios based on shifts, as described in the preamble to the proposed rule, rather than on a 24-hour basis as proposed in the regulations text.

Response: We have retained the ratios as proposed, which would require staffing levels comparable to those in existing regulations at § 442.445(c), but in accordance with public comments, we have made the following changes in order to strengthen and clarify the regulations.

1. We have decided to retain the proposed ratios, which are based on a 24-hour time frame, in order to provide the facility as much flexibility in staffing as possible.

2. We have added a requirement that the facility provide "sufficient direct care staff to manage and supervise clients in accordance with the individual program plans". This standard clearly establishes "sufficient staff" as the optimal requirement and subsumes the ratios as the minimal standard. We believe the addition of the "sufficient direct care staff" provision is an effective means of addressing the commenters' opinions that the stated ratios are inadequate, since the new provision is tied to implementation of client objectives and therefore assessable in an outcome oriented survey process.

3. We will define in interpretive guidelines that direct care staff are those staff who manage, supervise and provide direct care to clients in their residential living units. This staff could include professional staff (for example, registered nurses, social workers) or other support staff if their primary assigned, daily shift function is to provide management, supervision and direct care of clients' daily needs (for example, bathing, dressing, feeding, toileting, recreation, and support and reinforcement of active treatment objectives) in their living units. However, professional staff who simply work with clients in a living unit on a periodic basis cannot be included. Also, supervisors of client care staff can be

counted only if they share in the actual work of the direct care of clients. Supervisors whose principal assigned function is to supervise other staff cannot be included.

4. We have added a provision that stipulates that when no client is present in the living unit, no staff need to be present. This will satisfy commenters who objected to staffing a facility when all the clients were away at workshops or school. However, we have included a requirement for a responsible staff person to be available by telephone in case one of the clients needs to return to the living unit (§ 483.430(d)(4)).

5. We will make it clear in interpretive guidelines that when only one client is in a living unit, there must be at least one staff person on-duty. As did the proposed regulations, the final regulations require a minimum of one staff person to be on duty when clients are present in a facility housing 16 or fewer clients (§ 483.430(c)(3)), and a minimum of one staff person to be on-duty and awake when clients are present in a facility housing more than 16 clients (§ 483.430(c)(2)).

N. Staff Training Program (Proposed § 442.430; Final § 483.430(e))

Comment: Many commenters expressed support for the proposed changes regarding staff training since we emphasized performance rather than meeting paper requirements. However, other commenters indicated that the proposed standard was too general and that a greater degree of specificity was needed indicating the kinds of training required, the number of hours required for training, documentation of inservice curricula, etc.

Response: We believe that the proposed standard would allow a degree of flexibility to a staff training program that would be lost by establishing specific criteria. The training needs of facilities vary from facility to facility, with such factors of facility size and staff experience being important elements in determining training needs. We believe that specific criteria would be counterproductive to the intent of the standard.

Comment: Several commenters expressed concern about the requirement in the proposed § 442.430(c) that states that staff must be able to demonstrate the skills and techniques needed in client care. Concern was focused on the means of establishing that the requisite skills have been learned. It was suggested that interpretive guidelines be issued that would define more clearly the expectations of achieving this requirement.

Response: We believe the standard is clearly stated. Essentially, staff must know how to do what the facility has committed itself to do in behalf of each client's active treatment objective. This is the essence of an outcome oriented requirement. If staff do not know how to do their jobs, clients cannot achieve stated objectives in their plans. We will assess in surveys whether staff can show us how to implement active treatment programs and to treat clients.

Although not in response to a particular comment, we have made one clarifying change to the standard. We have changed the provision of the proposed § 442.430(c) from, "Staff must be able to demonstrate skills and techniques necessary to implement the individual program plans for each client under their care," to "each client for whom they are responsible".

O. Client Records (Proposed § 442.432; Final § 483.410(c))

Comment: There were several comments on the proposed regulation at § 442.432(a) that would require the facility to develop and maintain a recordkeeping system. Most of the commenters suggested that the current regulations found at § 442.501(b) requiring specific client data and § 442.501(c) requiring a discharge summary be added.

Response: Necessary elements of the current regulations at § 442.501 (b) and (c) were included in the proposed regulations. The requirement for specific client data was included at the proposed § 442.448(a) (§ 483.440(a)(1) of this final rule); the requirement for a discharge summary was included at the proposed § 442.442(c)(4) (§ 483.440(b)(5)(ii) of this final rule); relevant health-related information was included at the proposed § 442.448(b) (§ 483.420(c)(1) of the final rule); relevant restraint information was included at the proposed § 442.456 (c), (e) and (h) (§ 483.420(c)(2) and § 483.450 (c)(4) and (d)(2), (4) and (6) of the final rule); relevant behavioral and family-related information was included at the proposed § 442.448(a) (§ 483.440(e) (1) and (2) of the final rule); and relevant social and legal information was included at the proposed § 442.432 (a) and (c) (§ 483.420(c) (1) and (3) of the final rule).

Comment: There were 11 commenters on the proposed regulations at § 442.432 (b) and (c) that deal with the confidentiality and release of information in clients' records. All of the commenters believed that the regulations should specify that confidentiality and release of information does not apply to government agencies and advocacy groups.

Response: We agree with the thrust of the commenters suggestions that government agencies and advocacy groups be allowed to review client records when appropriately trying to evaluate the information that such records contain. However, we have not revised the regulations. To state in the regulations that advocacy groups have access to information without receiving the necessary consent from a client or his or her parents or legal guardian violates the rights of the client.

Comment: There were three comments on the proposed requirement at § 442.432(d) that any individual who makes an entry in a client's record must make it legibly, date it, and sign it. All of the commenters believed that the requirement that each record be signed is obsolete in the days of automated data systems.

Response: We have not accepted these comments. Even though computerization is routine in many areas of client records, the purpose of any routinization of information that is involved is to save the time of professionals. The signature on the client's record however, indicates that the information in the record has been individualized and the professionals take responsibility for the information it contains. However, interpretive guidelines will permit the use of electronic signatures in cases in which the facility has created the option for medical records to be maintained by computer rather than in hard copy.

Comment: There were five comments on the proposed requirement at § 442.432(f) that the facility must provide each identified residential living unit with appropriate aspects of each client's record. All of the commenters believed that the regulation was too vague and that the terms "appropriate aspects" should be clarified.

Response: We will define the term "appropriate aspects" in interpretive guidelines as meaning the active treatment, social as well as health aspects of the plan.

P. Emergencies or Death of a Client (Proposed § 442.434; Final § 483.420(c)(6))

Comment: There were eleven comments on the proposal to require facilities to notify promptly the client's parent or guardian of any significant incidents including serious illness, accident or death, and autopsy findings if requested. Many of the commenters felt that examples of significant incidents, in addition to serious illness, accident or death, should be included. Some of their suggestions were unauthorized absence from the facility and allegations of abuse. An additional group of commenters thought that autopsy findings should not be included because many facilities do not do autopsies or receive autopsy reports.

Response: In this final rule, we have included abuse and unauthorized absences as examples of significant incidents. Also, we will issue interpretive guidelines that will state other examples, including those the commenters suggested.

We note that we have moved this standard into the standard concerning communications with clients, parents, and guardians. Thus, in the final regulations, it is located at § 483.420(c)(6). Additionally, we have accepted the comments requesting that autopsy findings be removed from the regulations.

Q. Infection Control (Proposed § 442.436; Final § 483.470(l))

Comment: Three commenters recommended that we define in the regulation the term "active program" as it was used in the proposed provision to require an active program for the prevention, control, and investigation of infection and communicable diseases.

Response: We have not accepted these comments to include this level of specificity in the regulations. However, interpretive guidelines will define an active program as one that includes the direct care staff routinely washing their hands after working with a client who has an infectious disease, the continuous use of aspectic technique when appropriate, an on-going program of communicable disease control and investigation of infections.

Comment: Five commenters expressed an opinion on the proposal to require facilities to maintain a log of incidents and corrective actions related to infections. Several of the commenters believed that the maintenance of a log could be burdensome and would be of no use to the facility. Additionally, some commenters felt that the term "record" should replace the term "log".

Response: We have changed the word "log" to "record". However, we have not removed the requirement to maintain such records. Without such records, public health officials have no evidence with which to conduct epidemiological investigations. Such investigations are necessary to establish the causation upon which corrective action must be based.

R. Active Treatment (Proposed §§ 435.1009 and 442.440; final §§ 435.1009 and 483.440(a))

Comment: Forty-three commenters submitted their opinions about the proposed definition of active treatment provided at §§ 442.440 and 435.1009. In general, commenters expressed clear support for the concept underlying the proposed defintion. Twenty-one commenters expressed specific support that active treatment explicitly include those services intended to prevent client regression. However, commenters stated that in their opinion, the language of the proposed definition was still unclear. Objections expressed by the majority of commenters focused on four issues: (1) The definition of active treatment included the term "active treatment", thus active treatment was defined as being an "active treatment program"; (2) the difference in meaning of the terms "behavioral", "developmental" and "social" skills, as used in the definition, was insignificant, and technically imprecise; (3) services intended to "decelerate" the rate of regression of clients who have degenerative conditions (for example Muscular dystrophy, or Alzheimer's disease) were not included as "active treatment"; and (4) the phrase, "For dependent clients where no further positive growth is demonstrable", as used in the proposed definition, was perceived to be stigmatizing, did not identify criteria useful in making such determinations, and authorized a facility unintentionally, to provide "custodial care" if client potential for growth was uncertain, or not easily measurable. Commenters submitted suggested revisions to the proposed language to be considered for inclusion.

Response: We found the comments pertaining to active treatment to be helpful, and agree that the proposed definition (at § 435.1009) and requirements (at § 442.440) could be strengthen with some of the modifications suggested. Therefore, we have made several revisions. First, in § 435.1009, of this final rule we stated that active treatment is treatment that meets the requirements specified in the standard concerning active treatment at § 483.440(a). Second, we have revised the regulations to include at § 483.440 a condition of participation entitled "Active treatment services". The standard at § 483.440(a) now specifies that active treatment is the aggressive, consistent implementation of a program of specialized and generic training, treatment, health and related services, as described in 42 CFR Part 483, Subpart D. Third, since the use of the terms "behavioral", "developmental", and "social" to modify the word "skills" was technically imprecise, we have revised the standard concerning active treatment to require that each client's program must be directed toward the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible. Fourth, although the proposal had been intended to include services to decelerate the regression of clients with degenerative conditions, we have revised the regulations (now at § 483.440(a)(1)(ii)) to include this statement as an explicit requirement. Lastly, we have deleted the qualifier phrase, "For dependent clients where no further positive growth is reasonably considered possible", since the language of the regulation, "active treatment includes services to prevent or decelerate regression or loss of current optimal status" embodies our original intent.

Comment: One commenter criticized the proposed definition of active treatment because it did not mandate that clients be placed in the "least restrictive alternative" available. This commenter stated that, for the definition of active treatment to be consistent with accepted standards in the field of mental retardation and developmental disabilities, it should include this requirement at §§ 435.1009(a)(1) and 442.440(a)(1).

Response: We appreciate the suggestion of the commenter, and agree that placing clients in the "least restrictive alternative" available is an important principle in the field of mental retardation and developmental disabilities. It is our belief, however, that requiring this as a part of the active treatment program, and thus making it a requirement for FFP, would go beyond the statutory intent of Congress in authorizing ICF/MR services. There is nothing in the statutory language at 1905(d) of the Act, which authorizes ICF/MR services, that suggests that the size or the location of a facility, or whether a facility is the least restrictive alternative, should determine whether or not a facility qualifies for FFP. The only statutory requirement is that a client receive active treatment at the facility. Therefore, we have not accepted this suggestion for change. However, we have revised these regulations to include the application of this concept to other provisions, especially with regard to imposition of restrictive or intrusive techniques to change client behavior as discussed in § 483.450(b)(1)(iii) of this final rule.

Comment: A few commenters criticized the proposed definition, because in their opinion it implies that only "some" clients can benefit from active treatment. These commenters stated that all individuals can benefit from active treatment, since it means training or education.

Response: We agree that the term "active treatment" is defined by many professionals in the field of mental retardation and developmental disabilities, to mean habilitation, education and training services. Also, active treatment is often considered to be synonymous with life-long learning. However, the purpose of the proposed definition of active treatment was not to include all the meanings that may be given to the term, but to provide a definition of active treatment that specifically encompasses those services that clients must require and receive, in order to be certified as needing ICF/MR care under the Medicaid benefit. We believe the definition of active treatment included in the final rule achieves that purpose. Nevertheless, we recognize that there are other definitions of active treatment. As we noted, we have set forth a definition of active treatment in the final rule at § 435.1009 that cross-refers the reader to the standard for active treatment at § 483.440(a).

Comment: A few commenters criticized the proposed definition of active treatment because in their opinion it did not identify the specific "outcomes" toward which active treatment is to be directed. Other commenters suggested that we amend the definition to require that clients must not only receive active treatment, but that they also must benefit from active treatment, as well.

Response: We agree that active treatment should be outcome oriented. But, we do not agree that we should include this additional requirement. We believe the state-of-the-art is such that we can hold providers accountable to implement, review and continually modify the strategies they use to impove client functional abilities. However, we recognize that there are legitimate reasons why a client may not gain a desired objective. Thus, active treatment is measured more in terms of how aggressively, competently and consistently the ICF/MR pursues objectives in behalf of clients.

Comment: Several commenters stated that the provision of habilitation services is the cornerstone of active treatment. Therefore, they recommended specifically that the proposed definition be amended to include the term "habilitation", as it is used in the context of the Home and Community-Based Services Waiver program (as provided in section 1915(c)(5) of the Act, that was added by section 9502(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272).

Response: We do not agree that the term habilitation, as defined for purposes of the home and community-based waiver program, should be included in the definition of active treatment at § 435.1009. Although Congress provided a definition of habilitation services in section 1915(c)(5) of the Act, that definition focuses on clients who otherwise would have been institutionalized rather than strictly those currently in an ICF/MR. By its own terms, it refers to "individuals who receive such services after discharge from a skilled nursing facility or intermediate care facility," and not to inpatients. While active treatment may include some services that are defined as being habilitative, we do not believe that it is feasible to attempt to identify in our definition of active treatment every type of service that must be provided to ICF/MR residents to assist them to reach maximum possible independence. Nevertheless, we believe our definition of active treatment is sufficient in scope to encompass the whole range of services necessary for clients to achieve maximum possible independence.

Comment: Conversely, other commenters objected to the proposed definition of active treatment, because in their opinion it meant that active treatment was limited only to habilitation services. Twenty-two commenters suggested that the definition of active treatment also should include vocational, educational, rehabilitational, medical, behavioral, social, and personal care services; and any other services necessary to meet the client's needs as identified by the comprehensive functional assessment. These commenters recommended that clients should be provided with any of these services that are needed to help them achieve a developmental goal related to their individual program plans (IPPs).

Response: Such services may be among those embraced by some within the term "active treatment". However, as stated before, we do not agree with the commenters that we should attempt to identify specifically in the regulations all the various services that can be considered to be active treatment. We do not believe that this would be feasible because there are many contingencies that may effect whether or not a specific service constitutes active treatment for a particular client. However, we believe the definition of and standard for active treatment in this final rule does encompass the whole range of services necessary for the client to achieve as much individual independence as possible.

Comment: Several commenters recommended that we identify within the definition of active treatment, those active treatment services that are reimbursable by Medicaid. These commenters stated that the regulations should provide a clear distinction between those services for which FFP is available, and those vocational and educational services that are not covered by Medicaid. Also, commenters believed that interested groups and citizens should be given the opportunity to offer comments and suggestions on how these distinctions would be made. Although HCFA has used guidelines for this purpose, the commenters asserted that regulations are preferable.

Response: We disagree. First, the source of payment for services a facility provides does not govern the requirements relating to the provision of services. Thus, all "active treatment" services, although necessary as a condition of participation, may not be reimbursable as medical assistance or rehabilitative services under Medicaid. A facility must meet the requirements of these regulations to participate in the Medicaid program regardless of the payment status of individual services. Also, the distinction between payors is often as much a function of Federal and State education and vocational training laws as it is related to the nature of the services themselves. Thus substantive distinctions between types of services are not within the purview of this regulation. Regulations addressing the exclusion of FFP for vocational training and educational activities in ICFs/MR already are contained at § 441.13(b).

With respect to the commenters' concern about HCFA guidelines used to interpret § 441.13(b), we note that the State Medicaid Manual (SMM) is the official medium by which HCFA interprets or clarifies issues and sets forth procedures that States are required to follow in implementing the regulations. Guidelines that are issued as part of the SMM are official interpretations of the law and regulations. Thus, these guidelines are not a substitute for the regulations, but a guide to States on compliance with the requirements in the regulations.

Comment: Several commenters stated that we should revise the requirements for active treatment to encompass directly all of the services described in §§ 442.442 through 442.460 of the proposed regulations, since these sections more clearly describe the whole active treatment process than our proposed definition does.

Response: We agree in part with the commenter. In restructuring the regulations in the condition format, we have established a condition of participation concerning active treatment services (§ 483.440). Under that condition, we have included as standards (a) through (f) the standards that we had proposed as § § 442.440 through 442.450:

(a) Standard: Active treatment (proposed as § 442.440).
(b) Standard: Admissions, transfers and discharges (proposed as § 442.442).
(c) Standard: Individual program plan (proposed as § 442.444).
(d) Standard: Program implementation (proposed as § 442.446).
(e) Standard: Program documentation (proposed as § 442.448).
(f) Standard: Program monitoring and change (proposed as § 442.450 (b), (c), (d), and (e).

We have not included the proposed standards at §§ 442.452 through 442.460 under the condition of participation concerning active treatment. We believe that the proposed standards at §§ 442.452 through 442.458 are grouped more appropriately under the condition concerning client behavior and facility practices (§ 483.450 of this final rule), and the proposed standard at § 442.460 concerning professional program services is placed more appropriately under the condition for facility staffing (§ 483.430 of this final rule).

Comment: Some commenters requested that we clarify the meaning of the proposed rule at §§ 442.440(b) and 435.1009(b) that state that "Active treatment does not include maintenance of generally independent clients who are able to function with little supervision or who require few if any of the significant active treatment services described in 42 CFR Part 442." Commenters suggested that either we define what we mean by the phrases "generally independent clients", "significant active treatment services", "little supervision", and "few if any"; substitute other terms; or specify the amount and intensity of services necessary to qualify a client as being eligible for ICF/MR level of care.

Response: A determination that a particular client does not need active treatment, because he or she is sufficiently independent, is a decision that has to be made on an individual basis. Therefore, to allow room for professional judgment on the part of surveyors and providers, and because of the limitations of the current state-of-the-art, we believe it is necessary to describe the requirement in general terms. However, for purposes of clarity, we have revised the proposed rule, so that the regulations now describe these clients as being "able to function with little supervision or in the absence of a continuous active treatment program". We will issue interpretive guidelines that will describe the characteristics of clients who should be reviewed closely by surveyors for inappropriate placement in an ICF/MR setting. Generally, inappropriately placed clients are those clients who can become increasingly more independent without aggressive and consistent training. These clients are usually able to apply skills learned in training situations to other settings and environments. These clients would generally be able to take care of most of their personal care needs, to make known to others their basic needs and wants, and to understand simple commands. They generally would be capable of working at a productive wage level, and, to some extent, would be able to engage appropriately in social interactions. Also, usually they would be able to conduct themselves appropriately when allowed to have time away from the facilities' premises. Facilities serving these types of clients, who are by definition inappropriately placed, will be carefully evaluated for inappropriate certification as an ICF/MR.

Comment: Ten commenters objected to the active treatment program described in the proposed § 442.440(d), because it did not include the maintenance of generally independent clients. Commenters objected to this exclusion because they believe that without the programmatic structure provided in an ICF/MR, some of these clients would not be able to continue to function independently and would regress rapidly.

Response: We believe that some clients need the help of an ICF/MR to continue to function independently because they have learned to depend upon the programmatic structure it provides. We believe these clients should be trained to overcome this learned "dependency" through a carefully designed active treatment program aimed at its elimination. Active treatment for such a client should be directed toward the client acquiring skills that are self-initiated and increasingly more self-directed. It should not include the "maintenance programming" of skills already developed or providing the client with mere protective oversight. Therefore, we do not agree that the prohibition against "maintenance programming" should be deleted. On the other hand, we also believe that the commenters may be misinterpreting our intentions. If "independence" may only be maintained by means of constant interventions by ICF/MR staff through a program of active treatment, then under the terms of this regulation, the client is not independent.

Comment: One commenter inquired whether planned activities that allow a client to use a newly acquired skill for the purpose of maintaining the client's skill level, could be considered to be active treatment. The commenter suggested that to enhance and support a client's progress, active treatment should include maintaining the client's use of a newly acquired skill for a period of time in order to maximize independence as much as possible.

Response: We agree that in addition to helping a client acquire a new skill, a training program must also include a period of time during which the client has the opportunity to demonstrate that the new skill has been acquired. Assisting a client in using and improving an acquired skill is part of providing active treatment on a continuous basis, as required by § 483.440(d)(1), which is the standard relating to program implementation.

Comment: One commenter expressed concern about the proposed definition of active treatment because it includes services to prevent regression. The commenter believes that this will inappropriately allow facilities to provide, as active treatment, services to clients who function at the "brain stem" level, or whose care is geared primarily towards prevention of physical regression.

Response: We disagree. It would not be acceptable to establish an active treatment program in such a way as to preclude services from being provided to certain individuals because they have certain diagnostic labels. Moreover, current knowledge is not sufficiently advanced to allow us to preclude automatically clients with certain diagnoses from receiving active treatment because they have very severe physical or medical disabling conditions that limit their ability to understand, perceive, or to respond to their surroundings.

Comment: A few commenters did not understand how the proposed rule could allow FFP for services to "prevent regression", and yet deny FFP for services to "maintain generally independent clients". Commenters requested us to explain this apparent inconsistency.

Response: These regulations describe the types of services that constitute active treatment programs that an ICF/MR must furnish. Thus, it establishes the bases for determinations of whether or not a facility can be certified as an ICF/MF and qualify for FFP. The purpose of active treatment is to build continuously on skills already acquired and to teach new skills that will assist the client to function at higher levels of independence. This requires an active process of intervention. Since maintenance services essentially constitute a passive process, we proposed to exclude from the standard for active treatment those maintenance services which are for the purpose of providing generally independent clients with mere protective oversight (see § 442.440(b) of the proposal). As the presence of mere maintenance services increases and goal-directed learning for clients decreases, the overall nature of the facility shifts from an ICF/MR to a custodial care facility. Therefore, to be consistent with statutory intent, those facilities predominantly providing the services that we consider to be maintenance services and that are described at § 483.440(a)(2) of this final rule will not be considered to be providing active treatment and will not qualify, therefore, as an ICF/MR.

In recognition of the potential impact severe physical or medical disabilities can have on a client's ability to learn new skills, we proposed at § 442.440(a)(2) (§ 483.440(a)(1)(ii) in the final rule) to include those active interventions necessary to prevent or decelerate regression in the requirements for active treatment. An example of this is the application of specific stimulation techniques to the area of the mouth of a client with severe physical and medical disabilities. If this active intervention helps the client retain the ability to take food by mouth and decelerates the client's rate of reliance on tube feedings, then we will consider this a component of the active treatment program as described under these regulations.

Comment: Eleven commenters requested that we publish, in a timely manner, interpretive guidelines to explain how these regulations will be implemented. Also, they requested that we give greater emphasis to training both providers, and State and Federal surveyors. These commenters, although they supported the intent of the proposed rule, expressed concern that unless we provided needed training on the regulations, an acceptable balance would not be achieved between holding providers accountable for the program, and at the same time, allowing them the flexibility afforded by the new rule.

Response: We agree that training on the new regulations is essential for surveyors, and this is planned. Surveyors will need more detailed instructions concerning the meaning of the new rules and how they affect the survey process. Also, we plan to issue interpretive guidelines and surveyor procedures pertaining to these regulations.

Comment: One commenter objected to the proposed definition of active treatment because it did not include the terms "prognosis" or "professionally developed and supervised activities, experiences, or therapies". These terms are a part of the definition of active treatment that is used in the current rule at § 435.1009. The commenter stated that the use of these terms in the definition of active treatment would ensure that the development of active treatment programs would be based on state-of-the-art input, and would make clearer that professional staff are expected to participate in the treatment of clients.

Response: We did not use the term "prognosis" in the new standard for active treatment (at § 483.440(a)), because it is directly related to the medical model. We wanted to emphasize the developmental model and the importance of stressing client outcomes.

The phrase "professionally developed and supervised activities, experiences, or therapies" was not used verbatim in the new rule. However, the same requirement, in different language, is contained within the standards of this final rule relating to active treatment (§ 483.440(a)), individual program plans (§ 483.440(c)), program implementation (§ 483.440(d)), program and monitoring and change (§ 483.440(f)), and physician services (§ 483.460(a)).

Comment: One commenter asked for clarification concerning what was expected of a facility, in terms of the resources it would have to expend, in meeting the proposed requirement to assist clients in reaching their "maximum possible independence". The commenter wished to know if there was a limit on the amount of resources that a facility would have to expend in assisting a client to reach his or her maximum potential.

Response: A facility must meet all the requirements of the regulations. If a facility admits a particular client, it makes a commitment to meet that client's needs as determined by that client's assessment and IPP.

Comment: One commenter asked whether the certification survey that is conducted for an ICF/MR, also would include an evaluation of the programs provided to clients during the day if the programs were obtained by the facility from another agency. The commenter suggested that it would be fairer to the ICFs/MR if the day programs that they obtain from other agencies, are certified separately.

Response: We disagree. A facility is afforded flexibility by the regulations in determining the sources it will use to provide active treatment. It can provide services directly or obtain them from other qualified resources that are available in the community. If the facility obtains services from an outside source, the regulations require that it ensure that these services are effective and consistent with the client's overall plan. Therefore, services provided by outside sources must be coordinated by the ICF/MR to ensure that they are supportive of and consistent with services provided in the facility. Thus, the facility, as the discrete unit to be certified, will be held responsible for ensuring that all the services provided to its clients, including services such as day programs, provided by outside sources, meet the conditions specified in these regulations.

Comment: One commenter could not determine, from the proposed definition of active treatment, whether services, not included in the IPP, but which are needed to treat unforeseen or emergency health problems or behavioral disorders that interrupt or alter the IPP, could be considered to be active treatment.

Response: If an emergency occurs that affects the client's behavior or medical condition and a client's usual active treatment program cannot be implemented, the services that a facility must provide to address that emergency could be considered to be active treatment.

Comment: One commenter inquired how compliance with the proposed active treatment definition would be assessed in the following situations: (1) Clients are so severely disabled that they "seem" to be relatively inactive in their treatment; (2) clients are too active, and initiate too much in their treatment; or (3) clients participate actively in unacceptable day programs. This commenter expressed concern that the proposed definition of active treatment would result in providers devoting an extraordinary amount of energy to making worthwhile services "look right" in order to satisfy surveyors and maintain a viable funding source.

Response: Compliance with active treatment is not assessed in a vacuum. It can only be done as part of a process that considers every aspect of the client's behavior from the functional assessment phase, up to and including, on-site observations of the client in structured and unstructured environments. Therefore, to address adequately the specific situations that the commenter describes, we would have to study a client's assessment and other relevant circumstances affecting the client's behavior.

We believe the regulations clearly require facilities to use resources to improve the skill levels of their clients and not merely to make services "look right". Throughout the regulations, we have emphasized the importance of results and outcomes, and have placed minimal importance on required processes.

S. Admissions, Transfers and Discharges (Proposed § 442.442; Final § 483.450(b))

Comment: Twenty-two commenters objected to the proposed requirement to allow a facility to admit only those clients for whom it can provide needed active treatment services. Several commenters expressed concern that the proposed standard could cause an adverse effect on clients in the following situations: court ordered commitments, emergency admissions, emergency respite cases, and delayed discharges due to lack of available alternative placements. Some suggested that the existing standard at § 442.418(c) that allows inappropriate admissions on a temporary basis should be retained. Others suggested that exceptions to the proposed standard should be allowed for up to 90 days.

Response: The statute at 1905(d)(2) of the Act stipulates that for FFP to be available for services provided to a client in an ICF/MR, the client must be receiving active treatment. Therefore, we are retaining in this final rule the proposed requirement that a facility must admit only those clients for whom it can privide needed active treatment services. We recognize that a facility may be required to admit individuals based on the order of a court. Although we do not have the jurisdiction to prevent the courts from ordering placements of clients who do not need active treatment in ICFs/MR, there is no implication that these clients automatically must be classified by Medicaid as being eligible for the ICF/MR benefit.

We must emphasize that the presence of any group of clients could call into question the overall nature of the services provided. If the primary purpose of the facility is no longer to provide services to the persons with mental retardation or related conditions, the facility would no longer qualify as an ICF/MR.

Comment: Several commenters recommended that the rule allow facilities to provide clients with active treatment services either directly or through administrative arrangements.

Response: We agree. Therefore, we have deleted the reference to clients "for whom the facility can provide needed services" that appeared in the proposed rule at § 442.440(b) so that the final rule at § 483.410(d) allows facilities the flexibility to provide or arrange for the provision of needed active treatment services. However, the facility remains responsible for all services furnished to its clients.

Comment: Eight commenters objected to the proposal to require that the preadmission evaluation must be completed or updated no more than 90 days before admission. Some of these commenters suggested alternative time frames such as: 365 days for developmental assessments, and 180 days for any assessment conducted on a severely or profoundly retarded individual. Others recommended that we eliminate any specific time frame, and only require that the facility use current assessment data.

Response: The intent of the proposed standard was to ensure that admission decisions were based on current and valid information. However, we recognize that to require that this information be updated or completed no more than 90 days before admission is somewhat arbitrary. Therefore, in accordance with our commitment to stress result-oriented standards, we have deleted the 90 day timeframe and have modified the rule, so that the final regulations require that admission decisions be based on currently valid assessments.

Comment: A few commenters expressed concern because the proposed rule did not specifically mention nutritional status as one of the items that must be evaluated as part of the client's comprehensive assessment. In their opinion, an evaluation of nutritional status should be included because it is essential to understanding the client's physical status.

Response: It was our intent that an evaluation of the client's nutritional status would be included as part of the comprehensive assessments. However, we agree that unless nutritional status is specifically mentioned in the rule, it may not be included as part of the client's assessment. Therefore, we have revised the regulations to state explicitly that nutritional status is one of the items that must be evaluated as part of the client's assessment that is used by the facility in making admission decisions. We note that in the final rule, we refer to this assessment as a "preliminary", not a "comprehensive", assessment since it is completed before the client's admission to a facility. Also, in the final rule, we have referred to the assessments conducted after admissions by the interdisciplinary team (proposed in § 442.444(c)) as comprehensive assessments.

Comment: About one-third of the commenters objected to the proposed rule at § 442.442(b)(3) and § 442.464(a)(1) because it would require that a physician be involved in the development of each client's IPP. Some of these commenters stated that physician involvement in the development of a client's IPP should be required only if it is determined that it is "appropriate" or "needed". Other commenters thought a nurse should be able to serve as a representative for the physician. Several commenters stated that physicians should be able to participate by means of a written report, or through the review and approval of the IPP within 7 days of its development. Finally, some commenters felt that this requirement was too aligned to the medical model and would increase the costs of the program without providing any significant benefit to the client.

Response: Section 1903(g)(1)(B) of the Act requires, in part, that services provided to Medicaid recipients in ICFs must be furnished under a plan established and periodically reviewed and evaluated by a physician. The regulations implementing the statute are at § 456.380. This section specifically requires a physician to establish a written plan of care for each applicant or recipient before he or she is admitted or before payment may be authorized. Consistent with the statute and § 456.380, this rule requires that a physician must participate in the establishment of a client's IPP.

In developing an IPP, the team must study all of the client's needs, both medical and non-medical, and how these needs are interrelated. Therefore, participation by a physician is required to ensure that an assessment of the client's medical status is thoroughly considered and addressed by the team as it develops the IPP. Thus, the intent of the rule is to require that a physician must have input into the development of the IPP, rather than merely review or approve the IPP. This input may be by means of written reports, evaluations, and recommendations. However, the input must be from the physician, and not from a person, such as a nurse, who

is serving as the physician's representative.

As the commenters pointed out, the requirement that a physician be involved in the development of each client's IPP appeared in two of the proposed standards. In order to eliminate duplication, we have deleted this provision under the standard concerning admissions, transfers and discharges and retained it under the standard concerning physician participation (§ 483.460(b)).

Comment: Thirty-one commenters requested clarification concerning how many days the facility has to develop the client's initial IPP. Twenty-eight commenters said it was unclear because the proposed standard at § 442.442(b)(3) would require that at the time of admission, a physician must be involved in the development of the initial IPP and seemed to conflict with the proposed rule at §442.444(d) that would allow up to 30 days after admission for the interdisciplinary team to develop the IPP.

Response: "At the time of admission" means during the admission process which extends from when the client is admitted to the time the initial IPP is completed.

Comment: Several commenters requested clarification of the meaning of the terms "transfers", "discharges" and "good cause".

Response: Interpretive guidelines will explain that transfer means the temporary movement between facilities or permanent movement between living units of the same facility. Discharge means the permanent movement of a client to another residence that is not under the jurisdiction of the facility's governing body.

Moving a client for "good cause" means for any reason that is in the best interest of the client. Also, we believe the client, family, or guardian should be provided with sufficient time to prepare for any move (except in emergencies). The exact amount of time cannot be specified, since it will depend upon the reasons for the move, the effect it will have on the client and the client's family or guardian, and the type of adjustments that will have to be made to prepare for the change. Moreover, the family and client usually should be involved in the initial stages of any decision to move a client, since these decisions generally should be part of a team process that includes the client and his or her family or guardian. Also, if a client has an advocate, the advocate should participate in the decision making process. We recognize that the decision to move a client often results in disagreements, uncertainties and conflicting interests. Therefore, we believe that it is important to require that there must be a good reason for deciding to move a client, and that the decision takes into consideration what best serves the interests and the needs of the client.

Comment: Several commenters asked if the facility is responsible for implementing the post-discharge plan. Other commenters asked if the client or guardian refuses to consent to the release of the client's discharge summary, would this prevent a client from being discharged. These commenters also asked whether a doctor's order was needed to discharge a client.

Response: A facility is required to develop a discharge plan of care for every client for whom it will no longer have responsibility as a result of the person moving to a new living environment. However, for purposes of certification, the facility would not be responsible for implementing this plan of care, since the client would be living in a new environment over which the facility has no authority or administrative control.

Discharge summaries are required to facilitate a client's transition to a new living environment. Therefore, if appropriate consent is given, a discharge summary should be made available to the new agency. However, failure to obtain consent for release of the discharge summary should not preclude a client from being discharged. Also, although an agency may decide to secure a physician's order before discharging a client, this is not required by the regulations.

T. Individual Program Plan (Proposed § 442.444; Final § 483.440(c))

Comment: Ten commenters requested further clarification concerning who should be appointed to the interdisciplinary team required by the proposed rule at § 442.444(a). They believe HCFA should specify the minimum number and type of individuals who must participate on an interdisciplinary team.

Response: In accordance with the proposed and final rules, a facility must establish for each client an interdisciplinary team that consists of those individuals who have the expertise required to design an effective plan that meets the needs of the client. Thus, the expertise that must be represented on a team is a case-by-case determination based on each client's needs as identified by the current comprehensive functional assessment. Therefore, we do not agree that the regulations should include more specific requirements regarding who should serve on an interdisciplinary team.

Comment: One commenter objected to the proposal at § 442.444 (c) and (d) that would require that the initial assessment of the client and the development of the IPP must be completed within 30 days after admission. This commenter suggested that 45 days after admission would be a more reasonable time frame for completing the initial assessment and the IPP.

Response: We disagree. The required time frame for completing the initial assessment and the IPP has been within 30 days after admission since the inception of the ICF/MR program. The 30 day requirement also is currently used in the ACDD standards. We believe it is commonly held by those who work in the field of mental retardation that 30 days is a reasonable length of time to complete the initial assessment and IPP for a newly admitted client.

Comment: Section 442.444(c)(5) of the proposed rule would require a facility to provide clients, "as applicable", with certain developmental assessments (including for example, assessments of affective development, vocational skills, and independent skills). Two commenters objected to the phrase, "as applicable", since they believe that all clients need to receive these assessments. Another commenter objected to this proposed provision because it would require an assessment of the independent living skills of all clients, even if it appears that the client will never be able to live in the community. An additional commenter wanted clarification as to what extent the team should identify a client's needs, if the services necessary to meet those needs are not available in the community.

Response: With respect to the use of the phrase "as applicable", we agree that it did not clearly convey what we intended. Therefore, we have moved it so that it only modifies the "vocational skills" assessment category.

Regarding the requirement to assess a client's needs, our intent is to ensure that each client receives a comprehensive functional evaluation that identifies all of his or her developmental needs, regardless of the availability of services to meet those needs. Thus, each client must receive a full and comprehensive assessment, irrespective of the availability of services to meet the client's needs, or the costs that would be involved in providing the services. Also, we believe that it is necessary to assess a client's independent living skills, even if it may

seem that the client will never be able to live in the community. This part of the assessment is important in order for the team to have a complete and comprehensive evaluation that identifies all of the client's needs and strengths. It has been our experience that facilities, which assess clients' independent living skills, often unexpectedly discover that clients may already possess some of these skills, having learned them prior to initial residential placement.

Comment: Sixteen commenters expressed concern that the list of assessment categories in the proposed rule at § 442.444(c)(5) did not include all of the categories needed to ensure that the assessments would be comprehensive. Thirteen of the commenters recommended that the following assessment categories be added to the list: feeding and menu planning by a registered dietitian; leisure and interpersonal communication skills; psychosocial skills; and social work needs. Also, one commenter recommended that the rule should require that the team must use only assessment procedures that have been demonstrated to be empirically reliable and valid.

Response: We do not agree that it is necessary to include in the rule all the additional assessment categories suggested by the commenters. However, to ensure that the assessments are comprehensive, we have amended the proposed language to include the following two additional assessment categories: nutritional status and social development. With the addition of these two categories, we believe the items listed will ensure that the clients receive comprehensive assessments. Also, it is our intent by this standard to require that the assessment data used by the team must be relevant and valid, and that the skills, abilities, and training needs identified by the assessment correspond to the client's actual status. Even though it is implicitly required that facilities must use assessment procedures that accurately describe the client's current status, we have amended the regulation at § 483.440(c)(3) explicitly to require accurate assessments.

Comment: Seven commenters asked whether the proposed requirement that the IPP state specific objectives for individual needs at § 442.444(d) meant that a separate IPP objective must be developed for each of the client's needs identified by the assessment or only for those needs that have been given priority. Two commenters stated that, because of the contingencies involved, projected completion dates could not be assigned accurately to IPP objectives. Therefore, they believed that the proposed standard at § 442.444(d)(2) should be changed to require review dates instead.

Response: The intent of the standard is to require that for each of the client's identified needs, there should be a corresponding IPP objective designed to meet that need. After all the objectives have been established, they should be ranked in order of importance as determined by the client's developmental needs. Objectives considered to be most important, or that need to be implemented before others can be accomplished, should be assigned priority. For each objective given priority, the team should assign a projected date by which it believes it can accomplish the desired outcome. Also, at least annually the team should review all of the client's performance data and the projected dates of completion for each objective, so that it can make any necessary revisions to ensure the accuracy of the plan. We believe developing projected dates of completion is an integral part of the planning process because it requires the team to determine what a client must do to accomplish a particular IPP objective, and to assess the client's potential for achieving a desired outcome.

Comment: One person objected to the proposal at § 442.444(d)(1) to require that IPP objectives be stated separately, in terms of a single behavioral outcome, since this would be too limiting. Two other commenters expressed concern that the proposal to require that the organization of IPP objectives reflect developmental progressions would force facilities to adhere strictly to child development standards.

Response: We have retained the requirement that IPP objectives be stated in terms of single outcomes because if multiple outcomes are used, client performance cannot always be clearly monitored or recorded. The requirement that IPP objectives be organized to reflect a developmental progression does not mean that clients must "learn" skills in the same sequence as children do as they grow up. The proposal specified and these final regulations will specify that the objectives be organized to reflect a developmental progression "appropriate to the individual".

Comment: Section 442.444(d) of the proposed rule would require that the IPP must include specific objectives that meet the client's individual needs. A few commenters suggested that we revise this section to require a facility to identify also the purpose or outcome it plans to achieve by accomplishing a series of IPP objectives. Another commenter suggested that the term "accomplishment" should be used in place of the word "performance" in the proposal to require that IPP objectives be expressed in behavioral terms that provide measurable indices of performance. This commenter suggested that by replacing the word "performance" with the word "accomplishment", we would require facilities to provide more exact indices for measuring the client's rates of progression or regression.

Response: We do not agree that a facility should be required to identify the outcome or purpose it plans to achieve by accomplishing a series of IPP objectives. We believe such a requirement would be too prescriptive. However, we propose to require, and the final rule retains the provision, that the IPP must state what planned sequence of specific objectives has been established to meet the client's needs. For the facility to establish a planned sequence of objectives for each client, it will have to consider the outcomes and goals it plans to achieve. Also, we do not agree with the suggestion that the term "accomplishment" be substituted for the term "performance". We believe that the term "performance" adequately conveys the concept that a facility must be able to measure accurately a client's progress or regression.

Comment: One commenter objected to the proposal at § 442.444(d)(6) to require that the IPP include the programs and strategies to be used in achieving plan objectives. This commenter suggested that, since the IPPs are not always found in locations accessible to direct care staff, we should require instead that the programs and strategies be available to direct care staff, rather than require that they be included or located in the IPP.

Response: We agree that the strategies and programs that are to be used to achieve IPP objectives should be kept in a location that is readily accessible to staff. This was our intent in requiring that the strategies and programs be included within the IPP. However, as a result of the comments, we have deleted the requirement that the progarms and strategies must be included within the IPP. The final regulations at § 483.440(c)(6)(ii) will require that program strategy information be available to relevant staff and that the IPP identify where this information can be found. It will be left to the discretion of the facility to arrive at an effective means of accomplishing this.

Comment: One commenter expressed concern about the proposed rule at § 442.444(e) that would require a facility to emphasize personal care skills in IPPs. The commenter mentioned that some clients, because of extreme and permanent physical limitations, might never be able to achieve the physical dexterity necessary to perform personal care skills. In these cases, the commenter suggested that for a client to describe or communicate his or her basic needs to a caretaker, may be the highest level of independence and self-help that the client can achieve.

Response: We agree. The proposed list of examples of personal care skills (bathing, self feeding, etc.) that must be included in the IPP, for those clients who lack them, did not include "communication of basic needs". Therefore, we have added this skill to the list.

Comment: Eighteen commenters questioned the proposed regulation at § 442.444(e) that would require individual program plans to emphasize personal care skills. These commenters stated that personal care skills are not the only types of skills or training that should be emphasized in the IPP. Moreover, they believed the rule should require that the IPP must include any skill necessary to help the client achieve greater independence. They also questioned what was meant by the term "developmentally incapable" as used in the proposed requirement that the IPP emphasize personal care skills until it has been demonstrated that the client is developmentally incapable of acquiring them.

Response: To ensure that all the items included in an IPP are given sufficient importance, we have modified the proposed language. Although in the final rule, we will not require that emphasis be placed on personal care skills, we will require that the IPP include training in personal care skills for those clients who lack them. Also, we have retained the proposed language that identifies those personal care skills that are most fundamental to a person's dignity, privacy, and independence, and that must be taught to those clients who are capable of acquiring them.

We have revised the proposed rule at § 442.444(e) (§ 483.440(c)(6)(iii) of this final rule), which would have required that a client must be trained in personal care skills until he or she has acquired these skills or it has been demonstrated that he or she is developmentally incapable of acquiring them. The phrase, "until the client has acquired these skills," has been deleted, because the single concept that we wanted to convey was that clients, should receive training in personal care skills until it has been demonstrated that they are "developmentally incapable" of acquiring them. The demonstration that a client is "developmentally incapable" of acquiring personal care skills, we believe must be made by the interdisciplinary team based on its assessment of the client's developmental strengths and needs.

Comment: Seven commenters expressed concern about the proposed requirement at § 442.444(b) that parents or guardians must participate in the interdisciplinary team meetings unless their participation is unobtainable or inappropriate. Some commenters felt that participation by parents or guardians should be encouraged rather than required. Other commenters suggested that the team should be required to discuss with parents what is to be included in the IPP, but that parents should not be required to attend team meetings.

Response: The purpose of active treatment is to assist the client is achieving maximum possible independence. For this to be done successfully, we believe that direct participation in team meetings by the client, the client's parents (if the client is a minor) or appointed legal guardian should be required, unless inappropriate. If the client is a minor or an adult who has been adjudicated incompetent, then direct participation by the parent or an appointed legal guardian is essential to ensuring that the client's interests are given sufficient consideration. In the interest of the client, the participation of the parents of minors, and the legal guardians of those adjudicated incompetent, should be solicited to the maximum extent possible. Our experience has shown that clients are generally willing to have their parents participate in the planning process. However, if the client is an adult who is competent to make decisions and who is not adjudicated, parents may not participate in the interdisciplinary process if their participation is opposed by the client.

Comment: Four commenters expressed concern that the proposed rule at § 442.444(d), which would require the IPP to state specific objectives, only referred to training objectives. Therefore, it would not require that other special activities and interventions needed by the client be specified in the IPP.

Response: We have revised the proposed language so that the final rule, at § 483.440(c)(6), requires the IPP to describe all the relevant interventions that are needed to support the client towards independence.

Comment: Three commenters made recommendations about the proposed rule at § 442.444(g), which would require that a copy of the IPP must be made available to all relevant staff and to the client's family or guardian. One commenter suggested that a written explanation or interpretation of the contents of the IPP, using clear and non-technical language, should be sent by the social worker to the client's family. Another commenter stated that a copy of the IPP should be made accessible only to those families requesting it. One commenter recommended that the rule require that facilities must comply with State and Federal privacy laws when making information available to staff or families.

Response: We have retained the proposed language that would require that a copy of each client's IPP must be made available to the client's parents or guardian. We also have added a requirement to the final rule that the IPP also must be made available to the client. While the suggestion to send an explanation or interpretation of the IPP to the family has merit, we believe that as a requirement in the regulations, it would be too prescriptive. Nevertheless, although it is not required, an agency may mail a copy of the IPP to them. We do not believe it is necessary to make an additional reference to State and Federal privacy laws, since these regulations at § 483.410(b) require compliance with all applicable Federal, State and local laws.

Comment: Two commenters expressed concern about the proposed rule at § 442.444(f), which would require multihandicapped clients to spend a major portion of each day out of their beds and outside the bedroom area, moving about by various methods and devices whenever possible. The commenters stated that this requirement should be waived if contraindicated by the qualified mental retardation professional or by the physician.

Response: We disagree. We believe that except for those clients who are acutely ill (such as those who are hospitalized or incapacitated by a short term illness), all clients should be out of bed and outside their bedroom area for as long as possible each day. Mentally retarded or developmentally disabled people are not sick because they are mentally retarded or developmentally disabled. Therefore, they should not be treated as sick people unless they become ill. Consistent with the developmental model, to the extent possible, the routines and schedules of a client's day should resemble those of any non-handicapped person.

U. Program Implementation (Proposed § 442.446; Final § 483.440(d))

Comment: The proposed regulation at § 442.446(a) would require a facility to implement a "continuous" active treatment program for each client. Forty-seven commenters requested a clarification concerning what is meant by a "continuous active treatment program." These commenters expressed concern that this phrase seemed to mean that facilities would be required to provide every client with 24 hours of structured programming each day, and that the clients would have no time during the day for recreation and unstructured activities. They stated that such a requirement was unreasonable and would make it impossible for clients to live by a normal schedule. Therefore, they recommended that we delete the word "continuous," and instead specify the minimum number of hours per day that active treatment must be provided.

Response: We disagree. The word "continuous," as used in the proposed rule, was meant to convey the principle that active treatment is not the mere provision of structured training and treatment services within certain scheduled time intervals. The word "continuous" was used to convey the concept that active treatment is not a static program, but an ongoing process that provides clients with needed training and treatment through appropriate and competent interactions and interventions that are applied to the client's structured and unstructured activities, in both formal and informal settings, and in sufficient number and frequency to assist the client effectively in accomplishing IPP objectives. Because active treatment is an ongoing and continuous process, it is not possible to specify the minimum number of hours per day that active treatment is required, or the maximum length of time allowed between active treatment interventions.

Comment: Two commenters asked what time frame was intended by the proposal at § 444.446(a) to require the facility to begin implementing active treatment as soon as the interdisciplinary team has formulated a client's IPP. They were uncertain whether implementation had to begin immediately following the IPP meeting, or whether the facility could wait until the IPP document had been written.

Response: The facility must begin implementing an active treatment program for a client as soon as the client's team has determined the type of program or plan of action that the client needs. Our intent is to ensure that a client begins receiving active treatment as soon as possible after the team identifies the client's needs through a comprehensive assessment. Thus, a facility should not delay implementation of active treatment because the written document identifying the contents of the IPP has not been completed.

Comment: One commenter requested us to amend the proposed rule to require, between the time of admission and the initial IPP meeting, a daily structured program for each newly admitted client.

Response: We disagree. The time immediately following admission should be primarily for the purpose of assisting the client to become adjusted and acclimated to his or her new living environment, and for the facility to conduct the comprehensive functional assessment of the client's status as required by § 483.440(c). Therefore, we do not believe it would be appropriate to require a daily structured program during this period of time.

Comment: Several commenters asked how the active treatment schedule, required by the proposed regulations at § 442.446(c), is different from the IPP. Ten commenters objected to the proposed rule at § 442.446(c) that would require that the active treatment schedule be attached to and distributed with the IPP. They stated that an active treatment schedule is meaningless unless it is updated continually, and the amount of paperwork that would be required to distribute copies of the active treatment schedule and continually to update these copies would be excessive and counterproductive.

Response: The IPP is the vehicle that a facility must use to develop, structure and implement an active treatment program for a particular client. It states the specific objectives and behavior outcomes that the team plans for the client to achieve. As an adjunct to and in support of the IPP, the team also must establish an active treatment schedule that shapes the basic structure of the clients experience throughout the day. The schedule gives form to the program and guides the work of the staff and clients and is, therefore, a vital organizational tool in the process of implementing an active treatment program.

Also, as recommended by the commenters, we are no longer requiring that the active treatment schedules be distributed with the IPPs. Instead, in keeping with our intent to use outcome oriented standards, we have modified the proposed language, so that the final rule at § 483.440(d)(2) will require that active treatment schedules must be readily available for review by all relevant staff.

Comment: Eleven commenters objected to the proposal at § 442.446(d) to require that an IPP be implemented by all staff who work with the client. These commenters stated that every staff member who works with a client is not qualified to implement every portion of the client's IPP. Therefore, the rule should require only that there be an "awareness" of the IPP by all staff.

Response: We cannot accept this comment. The intent of the regulation is to require that all staff who have regular contact with clients, be knowledgeable of the IPPs for these clients and participate in implementing them. For example, if a client spends time regularly with any staff member, then the facility is responsible for ensuring that during this time, the staff member is able to provide needed interventions or reinforce acquired skills in accordance with the IPP. This is how the facility can implement a *continuous* active treatment program.

Comment: To ensure that direct care staff are knowledgeable about how to implement the IPPs, one commenter suggested that we require them to meet with the qualified mental retardation professionals to discuss and review the IPPs.

Response: While we agree that direct care staff should be as knowledgeable as possible about the IPPs, we believe the commenter's suggestion of requiring meetings between the qualified mental retardation professionals and direct care staff is too prescriptive.

V. Program Documentation (Proposed § 442.448; Final § 483.440(e))

Comment: Several commenters requested clarification concerning the proposed requirement at § 442.448(a) that client performance in relationship to the IPP was to be documented in measurable terms. These commenters could not determine whether the regulation required documentation consisting of raw data, progress notes, or data summaries. Furthermore, eight commenters asked how often this documentation was to be completed.

Response: The intent of the proposal was to require that raw data be kept on each client's performance that would indicate whether or not IPP objectives were accomplished. However, the comments indicate that this intent was not clearly conveyed. Therefore, the proposed language has been revised to include the word data. The final regulation at § 483.440(e)(1) will require that "Data relative to accomplishment of the criteria specified in client IPP

objectives must be documented in measurable terms." Nevertheless, in addition to the raw data, a facility may decide to use supplementary methods, such as progress summaries, to document client performance. Also, we believe that the facility should determine how often to document the data, as long as the data are documented frequently enough to measure effectively a client's performance.

Comment: One commenter asked what specific types of client performance data had to be collected to meet the proposed program documentation requirements at § 442.448(a).

Response: The facility has the flexibility to determine the type of data it wishes to collect, as long as the data are relevant and can be used to measure effectively the accomplishment of the objectives specified in each client's IPP.

Comment: One commenter inquired whether or not the data required by the proposal are to be collected on all IPP objectives or only on those for which training is currently being conducted.

Response: Since the purpose of the data is to measure client performance, data must be collected only on those objectives for which training is being currently provided.

Comment: Twenty-six commenters objected to the proposed language at § 442.448(b) that states "the facility must document that significant developmental, behavioral and social objectives . . . have taken place." Some of the commenters thought this language was confusing and submitted examples of substitute language which they felt would clarify the meaning of the proposed requirement.

Response: The proposed language has been revised to clarify our meaning. The final regulation at § 483.440(e)(2) will require that the facility must document significant events that are related to the client's IPP and assessments, and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

W. Program Monitoring and Change (Proposed § 442.450; Final §§ 483.430(a) and 483.440(f))

Comment: Fifty-two commenters expressed opinions about the qualifications we proposed at § 442.450(a), for the position of qualified mental retardation professional. The proposed regulations state that each qualified mental retardation professional must have at least one year of experience working directly with individuals with mental retardation or other developmental disabilities, and be either a physician, a registered nurse, or have at least a bachelor's degree in one of the professional service categories listed in the proposed regulations at § 442.460(e). One commenter felt that a master's degree should be the minimum requirement for any qualified mental retardation professional, since they are responsible for monitoring the quality of professional services provided to clients. Another commenter suggested that any educational degree, accompanied by acceptable work experience, would be sufficient to qualify an individual to perform qualified mental retardation professional duties. Typical of another group of commenters was the strong opinion that requiring "artificial" credentials did not guarantee acceptable performance, and demonstration of competencies should be stressed instead.

Response: We believe that a certain level of professional qualification is required for qualified mental retardation professionals because of their important role in supervising the delivery of care and assisting clients in meeting their developmental, behavioral and social needs. Thus, we have retained the proposed requirements for a qualified mental retardation professional. However, in the final rule, we have specified, in order to clarify our intent, that doctors of osteopathy are qualified to be qualified mental retardation professionals as well as doctors of medicine.

Comment: Fourteen commenters objected to the proposed requirement at § 442.450(c)(1) that the interdisciplinary team must approve all changes made to the objectives of a client's IPP. These commenters expressed concern that this requirement would increase administrative processing time and costs without resulting in any significant gains for the clients.

Response: The intent of the proposed rule was to ensure that the IPP would be reviewed regularly and that the team would approve any changes that were made to the individual objectives of a client's IPP. We agree that this proposed requirement could be too prescriptive, especially since we have retained the proposed requirement (at § 483.440(f)(1) of this final rule) that the IPP be reviewed and revised whenever a client accomplishes an objective, or is regressing or losing skills, or failing to progress. Therefore, we have revised the proposed language. The final rule will designate the qualified mental retardation professional as the agent responsible for reviewing and revising the IPP as necessary. This is consistent with the qualified mental retardation professional's responsibility to integrate, coordinate and monitor the IPP. However, the interdisciplinary team, in accordance with the final rule at § 483.440(f)(2), is responsible for revising each client's IPP, as appropriate, and for reviewing each client's comprehensive functional assessment for relevancy, at least annually, and for updating it as needed.

Comment: Twelve commenters objected to the proposed regulation at §442.450(c) because it does specify how often the IPP should be reviewed between the required annual reviews. These commenters asserted that facility staff could not be depended on to initiate reviews or revisions of the IPP when necessary (such as when objectives have been completed or when strategies are proven ineffective), unless the regulation requires them to do so. They suggested several examples of specific time intervals that they thought should be included in the rule to indicate how often IPPs must be reviewed.

Response: We do not believe it would be appropriate to specify in the rule how often the IPP must be reviewed between the required annual reviews, since the number of times an IPP should be reviewed depends on many factors. As stated earlier in this preamble, § 483.440(f)(1) of this final rule will require the qualified mental retardation professional to review and revise the IPP as necessary, including, but not limited to, when the client has successfully completed an objective, or is regressing or losing skills, or is failing to progress, or is being considered for training towards new objectives. Thus, because there are many factors that determine when a review is needed, we do not agree with the commenters' suggestion.

Comment: Nine commenters objected to the proposal at §442.456(a)(1) to require qualified mental retardation professionals to be employees of the facility. These commenters expressed the view that it may be cost prohibitive for facilities, which serve very few clients, to hire someone full-time for this function, especially when the service of a qualified mental retardation professional could be obtained more cost effectively through suitable arrangements with an outside agency.

Response: We agree. Although the qualified mental retardation professional occupies a key position in terms of monitoring and overseeing a client's IPP, and we believe this role is central to the statutory active treatment requirements, we do not believe it is administratively feasible or cost efficient to require that the qualified mental retardation professional be directly employed by the facility.

Comment: Seventeen commenters expressed numerous opinions about the requirement proposed at § 442.450(e)(1), that a specially designed outside committee must approve individual behavior management programs that involve a potential risk to the client. Comments ranged from suggestions for deleting this requirement totally, to giving the committee more authority and autonomy to do its job and requiring the committee to perform its oversight function at least quarterly. However, the concern expressed most frequently by commenters was that the membership of the committee should include individuals who have the expertise necessary to make appropriate decisions regarding the facility's practices and programs.

Response: The intent of the proposed regulation was to require a facility to establish a committee or committees that would serve as an advocate for the protection of the rights of individual clients, especially as they may be affected by behavior management programs. Under the proposed rule, membership was to include representatives from the facility's staff, clients, parents, and persons with no ownership or control interest in the facility. However, we agree that the committee also should include a person or persons who are knowledgeable about current practices for controlling inappropriate client behavior. Therefore, we have revised the proposed language, so that the final rule at § 483.440(f)(3), will require that the facility must include on the committee the participation of a qualified person or persons who have either experience or training in contemporary practices to change inappropriate client behavior.

Comment: A few commenters inquired whether the required outside committee have to review *all* IPP programs, or only those IPP programs that posed a potential risk to the client.

Response: The final rule will require the specially constituted committee to review at least those programs and facility practices that pose a potential risk to clients. However, as stated in the final rule, the committee is free to review any area it believes needs to be addressed.

Comment: One commenter wanted to know if a behavior management program that involved potential risks for a client, could be implemented *before* it was approved by the outside committee.

Response: The intent of the regulation is to require the approval of the outside committee before such programs are implemented. This is to ensure that if there are risks to the client that are unwarranted, the programs will not be implemented.

Comment: One commenter inquired whether or not access to confidential client information by the outside committee's non-staff members would place the facility out of compliance with the proposed rule at § 442.432(b) that would require the facility to keep all client information confidential.

Response: The committee needs to know relevant client information to function properly. Therefore, the facility could ask members to sign an agreement to maintain confidentiality if there is a concern in this regard.

Comment: Fourteen commenters requested clarification about the proposed language at § 442.450(e)(2) that would authorize the outside committee to review, monitor and make suggestions concerning any areas that it believes need to be addressed. Some of these commenters expressed concern that the committee might try to run the facility or that it might duplicate the role of other existing facility committees. Other commenters suggested that the role of the outside committee should be limited to "client risk" issues exclusively.

Response: The proposed rule would require a facility to establish a "specially constituted committee or committees," to protect client rights. The intent was to allow a facility the flexibility to decide whether to use one advisory committee or to use as many committees as it chooses, as long as at least one committee was established to protect client rights. As intended by the proposed regulation, the role of the outside committee or committees, was not to dictate facility policy or control management. Rather, the role of the committee was to review facility practices and programs in order to make recommendations concerning the protection of client rights. To clarify our intent in this area, the final rule at § 483.440(f)(3)(i) states that the role of the committee is to review, monitor and make suggestions to the facility about its practices and programs. It also requires that individual programs that involve risks to client protections and rights must be approved by the committee.

Comment: Three commenters supported the proposed rule at § 442.450(f) that would allow the requirement for an outside committee to be waived if State law or regulations provide equivalent client protection and consultation. However, the commenters suggested that the rule also should allow this requirement to be waived if an applicable court decree requires oversight mechanisms which result in equivalent client protections. These commenters pointed out that, in some instances, the oversight mechanisms established by judicial decrees are far more stringent than those required by the proposed rule.

Response: We agree. We have amended the proposed rule so that the final regulation at § 483.440(f)(4) states that the provisions of the rule that pertain to the specially constituted committee may be modified, if, in the judgment of the survey agency, a court decree provides for equivalent client protection and consultation.

Comment: Six commenters objected to the proposed rule at § 442.450(d) that would require the facility, at least annually, to reassess the client and make revisions to the IPP. These commenters stated that it would be wasteful to require an annual assessment if the client's status had not changed since the last assessment. They suggested that we allow the team to determine how often it is necessary to reassess the client.

Response: We agree. The language of the proposed rule did not convey clearly out intent to allow the team to determine whether a client needs a new assessment. To clarify out intent, the final rule at § 483.440(f)(2) will state that, at least annually, the assessment of each client must be *reviewed* by the interdisciplinary team for relevancy and updated as needed.

Comment: One commenter inquired whether the annual review of the IPP required by the proposed rule at § 442.450(d) has to be conducted on the 365th day after the last review, by the 365th day after the last review, or within some other time interval.

Response: The interpretive guidelines will explain that to meet this requirement, the annual review of the assessment and the IPP generally must be completed by the 365th day after the last review. This is consistent with current regulations on utilization control at § 456.360(b)(2)(i).

Comment: Four commenters requested that HCFA specify in the rule the maximum number of clients that a facility would be allowed to assign to the caseload of a qualified mental retardation professional. These commenters felt that caseloads have been overextended in the past. They suggested that unless we specified what we consider to be an acceptable ratio of qualified mental retardation professionals to clients, we would continue to perpetuate paperwork as the primary function of the qualified mental retardation professional.

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Response: We disagree. Each client's active treatment program must be effectively integrated, coordinated, monitored, reviewed, and revised, as necessary, by a qualified mental retardation professional. The number of qualified mental retardation professionals that a facility requires to provide these services effectively will vary depending on several factors including, but not limited to, how many clients it has, the needs of these clients, the number and qualifications of additional staff members, and other duties that may be assigned to the qualified mental retardation professionals. Thus, since these types of factors must be considered on an individual basis before a determination can be made, we do not believe it is feasible to attempt to specify in the rule the maximum number of clients that may be assigned to a qualified mental retardation professional. However, in the final rule, we have stated at § 483.430(b)(2) concerning professional program services that qualified professional staff must be sufficient in number to implement the IPP.

Comment: One commenter wished to know if a client's individual program plan could be coordinated and monitored by more than one qualified mental retardation professional.

Response: The interpretive guidelines will explain that a client's IPP may be coordinated and monitored by more than one qualified mental retardation professional. However, there must be one qualified mental retardation professional who is assigned primary responsibility for coordinating the client's IPP. This qualified mental retardation professional is responsible for serving as the primary advocate for the client and for ensuring that monitoring functions delegated to other qualified mental retardation professionals are completed appropriately.

Comment: One commenter asked if the regulations required that a person designated as a qualified mental retardation professional had to do the duties of a qualified mental retardation professional exclusively, or could the person be allowed to perform other professional staff duties in addition to the qualified mental retardation professional duties.

Response: We believe that it is up to the facility to allocate staff resources in whatever manner it believes is necessary as long as it ensures that the qualified mental retardation professional function is performed effectively for each client.

X. Behavior Management (Proposed §§ 442.452, 442.454, 442.456, 442.458; final § 483.450)

The four sections of the proposed rule dealing with management of client behavior, §§ 442.452 through 442.458, received the largest volume of comments overall. Pertaining to these four sections, we received comments from 83 different commenters. Most of the individual commenters raised issues that apply to several of the proposed sections. Due to the cross-cutting nature of these issues, we have grouped these four proposed sections together for the purpose of responding to public comments.

Comment: A significant number of commenters expressed concern that the way the proposed §§ 442.452 through 442.458 were organized was confusing and lacking sufficient safeguards to protect clients and ensure good practice. Several of these commenters submitted suggested language that would substantially revise the entire four sections. Many of the commenters also referred to the statement in the preamble of the NPRM, that our intent, in issuing new regulations, was to be consistent with accreditation standards published in 1983 by the Accreditation Council on Services for People with Developmental Disabilities (ACDD). They suggested that to the extent possible, we use the language of the ACDD standards in the regulations.

Response: We agree that the requirements of these four sections needed to be revised for purposes of clarification. To express our intent more clearly, we have reorganized the four standards pertaining to the management of client behavior into five. These are grouped under the condition of participation at § 483.450 of the final rule. In revising the proposed rule, we used in some instances the language of the ACDD directly, and in other instances, we borrowed heavily from the commenters.

Comment: Six commenters criticized §§ 442.452 through 442.458 of the proposed rule because in their opinion, the techniques mentioned in these sections (for example, time-out devices, aversive conditioning, drugs for behavior management, and physical restraints) did not reflect the "state of the art" technology used in the field of mental retardation and developmental disabilities.

Response: We made no attempt to determine what constitutes state-of-the-art techniques in the field of mental retardation. Instead, we attempted to ensure that whatever techniques are utilized by facilities to protect clients from abusive or neglective practices are appropriate.

Comment: Nine commenters objected to §§ 442.452 through 442.458 of the proposed rule because they believe these sections are too negative. They stated that the use of positive approaches, including positive reinforcement, known to be effective in managing inappropirate client behavior, was not required nor emphasized sufficiently. They also requested that the rule include a description of those positive principles that a facility should follow in the development of its policies, procedures and specific programs regarding the management of inappropriate client behavior.

Response: The purpose of the entire active treatment section of the final rule is to require facilities to provide positive environments and training methodologies that will result in clients acquiring more adaptive behavior. Also, the final rule incorporates several suggestions that were made by commenters on how to strengthen and emphasize the use of positive approaches to behavior management. For example, § 483.450(a)(ii) of the final rule regarding conduct toward clients, requires the facility to emphasize and accommodate client choice, self-determination, and self-management in the daily decision-making process. Also, in the final rule § 483.450(b), regarding management of inappropriate client behavior, requires not only that the facility guarantee that it will use the least restrictrive/least intrusive techniques that are effective to manage client behavior, but also that the client's safety, welfare, and human rights will be adequalty protected at the same time.

Comment: One commenter objected to the proposed rule because it allows use of aversive techniques to manage client behavior. The commenter stated that research evidence does not support the efficacy of aversive, behavioral interventions. Also, the use of aversives to manage client behavior raises disturbing legal and ethical issues, and diminishes the dignity of the client. Furthermore, the commenter suggested that HCFA specifically prohibit the use of any technique to manage inappropriate client behavior that would deprive clients of nutritional food or hydration, or that would inflict pain, whether physical or psychological, or that would use chemical restraint in place of programming.

Response: Varying opinions exists on the efficacy of these techniques. Rather than prohibiting techniques, our role is to ensure that if aversives are used, adequate safeguards are included.

Sometimes these techniques are more successful in halting severe, self-injurious behavior and other grotesque behaviors, than more positive methods would be. However, we do believe that client protections are necessary to safeguard clients against the misuse of these techniques. As originally proposed, to ensure that these techniques are properly used, the final rule at § 483.420(d)(1)(ii) prohibits staff from disciplining a client by withholding adequate food or hydration. The final rule at § 483.450(b)(3) will require that any technique used to manage inappropriate client behavior (including drugs) cannot be used as a substitute for an active treatment program. The final rule at § 483.450(e)(2) will require that drugs used for control of inappropriate behavior must be used only as an integral part of an IPP. It also will prohibit at § 483.420 (a)(5) and (d)(1)(i) physical, verbal, sexual or psychological abuse or punishment.

Comment: Seventeen commenters criticized our interchangeable use of the terms "behavior management" and "behavior modification," since the terms are not synonymous. These commenters stated that behavior modification is only one specific model within the field of behavior management, yet as used throughout the proposed § 442.454, behavior modification appears to encompass every type of program designed to alter or shape behavior. For example, in the proposal, § 442.454(b) refers to the use of drugs for "behavior modification purposes", and § 442.458(b) refers to "drugs used for behavior management".

Response: We agree that the two terms are not synonymous, and as used throughout the proposed rule, could cause confusion. Our intent in the proposed § 442.452 was to regulate "conduct toward clients by facility staff," and our intent in the proposed § 442.454 was to regulate the "management of inappropriate client behavior." Thus, we have renamed these standards accordingly. Also, in the final rule, the terms "behavior management" and "behavior modification" are not used in these specific standards, and other editorial changes have been made to describe our intent more clearly.

Comment: Seven commenters urged HCFA to include provisions in the final rule that would prohibit facilities from using restrictive techniques as part of an ongoing "program" or from making routine "programmatic usage" of these techniques, unless there is evidence to justify such usage. These commenters believe that such ongoing "programs" or "programmatic usages" of restrictive techniques are viewed by staff as a "standing order," to allow these techniques to be used. Therefore, they believe such "programs" are used to justify putting clients back into restrictive devices, even though their behavior does not warrant this. They believe also that the use of such "programs" makes it almost impossible to track the effectiveness of less restrictive techniques; and encourages teams to use aversive techniques in anticipation of behavior that may never happen or may happen only infrequently.

Response: We agree with the commenters' concerns. Restraining devices and time-out rooms should not be used to suit the convenience of the staff, to accommodate staffing shortages, or to substitute for effective active treatment. Therefore, we have revised the proposal to state at § 483.450(b)(3), that techniques to manage inappropriate client behavior must never be used for staff convenience or as a substitute for an effective active treatment program. Also, the final rule, at § 483.450(b)(5), will prohibit the use of standing or as needed programs to control inappropriate behavior; at § 483.450(d)(4) it will require that clients must be released from restraining devices as quickly as possible; and at § 483.450(d)(1)(ii), it will stipulate that restraints may not be used as an emergency measure unless the client's behavior threatens self or others.

Comment: Some commenters requested that, for purposes of emphasis, we move to the beginning of § 442.454, the requirement proposed at § 442.454(f), that less restrictive methods of managing behavior must be attempted and documented to have failed before more restrictive techniques, are employed. They believed that changing the location of this requirement would highlight for facilities that the use of positive behavior shaping techniques should always be the first method of choice.

Response: We agree that emphasis should be focused on the importance of using positive means for changing behavior. Thus, the proposal has been revised so that the standard at § 483.450(b) concerning the management of inappropriate client behavior will include the requirement that a facility must rank all the interventions it wishes to use to manage inappropriate client behavior along a hierarchy ranging in order from the most positive or least intrusive procedures, to the least positive or most intrusive procedures, and then implement them in that order. Moreover, a program using more restrictive techniques may not be used before programs using less intrusive techniques have been demonstrated to be ineffective.

Comment: Three commenters felt that the proposed rule at § 442.454(f), which requires facilities to demonstrate that more positive, less intrusive techniques are ineffective, before using more intrusive procedures, was too strict and did not allow a facility to use state-of-the-art technology to manage client behavior. Commenters suggested that this requirement should be waived if the team determines that less restrictive techniques of managing behavior would be unlikely to succeed.

Response: We agree that the team should determine what techniques are to be used with clients. However, the intent of the final rule, at § 483.450(b), is to protect clients' rights, and to ensure that the least restrictive technique, which can effectively change the client's behavior, is employed. Thus, the team is responsible to establish sufficient documentation and clear evidence to justify the use of a more restrictive technique. This standard does not take away the team's discretion, it only requires that there be evidence to support the team's decision not to use a less restrictive technique.

Comment: Sixteen commenters requested that we include a section in the final rule to define the techniques relevant to managing client behavior and specify the conditions under which these techniques can or cannot be used. Examples of techniques that commenters suggested be included in this section are: time-out; aversive conditioning; aversive techniques; physical restraints; drugs for behavior management; corporal punishment; psychological punishment; behavior modification; and behavior management.

Response: We do not agree that the regulations should specify what techniques a facility may use to manage client behavior. However, in the interpretive guidelines, we plan to provide more information concerning the meaning and use of behavioral management techniques. It should be noted that some of the terms that the commenters have requested us to define, have been deleted from the final rule.

Comment: Thirty commenters objected to our use of the term "physical restraint" throughout the proposed § 442.456 dealing with physical restraints. Commenters expressed concern that unless the term "physical restraint" was defined, the requirements pertaining to the use of physical

restraints could be applied inappropriately to devices that assist in the positioning of clients or facilitate the implementation of time-limited medical procedures. The commenters suggested that we define the term "physical restraint" and that separate provisions be included for positioning and medical restraining devices.

Response: Interpretive guidelines will define a physical restraint as any physical or mechanical device that the client is unable to remove easily, and that either restricts the free movement of the client, or the movement or normal function of a portion of the client's body, or deprives the client access to a portion or portions of the client's body. It was not our intent that the proposed physical restraint requirements should be applied to devices used for client positioning or for medical procedures. Therefore, we have accepted the commenters' criticism that this needs to be clarified, and we have made two revisions. In the final rule, § 483.440(c)(6)(iv) concerning IPPs specifically provides for the use of mechanical supporting devices. The other revision is located at § 483.450(d)(1)(iii) of the final rule, which allows facilities to use restraints as time-limited, physician prescribed, health-related, protective devices.

Comment: Two commenters requested clarification concerning who can authorize the use of physical restraints for a client. The commenters suggested that only a physician, or a physician together with a qualified mental retardation professional, should be allowed to authorize the use of physical restraints.

Response: We have modified the proposed requirement that the facility identify who can authorize restraints. The final rule at § 483.450(d) allows the interdisciplinary team to authorize the use of physical restraints as part of an IPP. The rule also recognizes that on occasion, emergency usage of restraints might need to occur. We believe that it would be too prescriptive to dictate to a facility who the authorizing person must be for emergency usage.

Comment: Nine commenters objected to the proposed rule at § 442.456(c) because they believe that written authorizations for restraints not used as part of a behavior modification program, should not be allowed to be in effect for up to 12 hours. These commenters also objected to the proposed rule at § 442.456(h), because they believe facilities should be required to release clients for more than a ten minute period for each two hours that a restraint is applied. They maintain that any client placed in a restriant for two straight hours, would forget why the restraint had been applied. They were especially concerned about how this would affect a client who was placed in a restraint for two or more consecutive two hour periods. They thought that such consecutive restraint applications would constitute punishment. They opposed allowing written authorization for restraints not used as part of an integrated program, to be in effect for up to 12 hours, because they believe such authorizations should be used only in the case of an emergency, and emergencies generally do not last for that length of time.

Response: We believe that allowing an authorization for the emergency use of a physical restraint to be in effect for up to 12 hours is appropriate. A 12-hour authorization does not mandate that a client must be placed in a physical restraint for 12 hours. It means that a client's situation is so unstable that the facility has determined that the continued or intermittent use of a physical restraint might be needed, and that official authorization for usage can occur for a 12-hour period. We also do not agree with the commenter's who preferred more frequent releases of restraints (for example, release for 10 minutes every hour rather than every two hours as was proposed). We note that the ACDD in their past and recently released new standards require release for ten minutes every two hours. We do not believe that it is appropriate to require a more stringent standard than that developed by experts. Also, to ensure the appropriate use of restraints, the final rule at § 483.450(d)(4) requires that a client must be released from a restraint as quickly as possible, and must be checked every 30 minutes while the restraint is applied.

Comment: Five commenters objected to the proposed rule at § 442.456(e) because they believe that clients placed in restraints shold be checked more often than every 30 minutes. They expressed concern that a 30-minute interval between checks was too long and that it may be traumatizing for some clients to be left alone for that length of time. Commenters' suggestions ranged from requiring checks every 15 minutes, to requiring "continuous" observation by staff.

Response: We do not agree that the interval should be shortened. The proposed rule stated and this final rule states that a client must be checked at least every 30 minutes by staff. We believe that to ensure a client's physical safety, it is sufficient to check a client at least once every 30 minutes. However, we recognize that in some cases a client's psychological and physical well being might be enhanced by more frequent checks, and for some of these clients continuous visual supervision might be appropriate. It is also true that for some manipulative clients, constant visual supervision or very frequent checks would serve to reinforce inappropriate behavior and thereby reduce the clinical effectiveness of using the restraint. Therefore, constant or very frequent monitoring may be helpful for some clients and contraindicated for others. Our purpose is not to address every particular case, but to stipulate that, as a minimum requirement, all clients in restraints must be checked at least every 30 minutes. In the final rule, this requirement is found at § 483.450(d)(4).

Comment: Four commenters requested us to modify the proposed rule at § 442.456(h) that would require that the opportunity for motion and exercise must be provided for a period of not less than 10 minutes during every two hours that a restraint is applied. Commenters suggested that if a restraint was worn by a client all night long, it would be unreasonable to wake the client to take the restraint off for 10 minutes every two hours. They suggested that we add to the regulations that the opportunity for 10 minutes of motion every two hours must be provided only when a client is wearing the restraint and awake.

Response: We do not agree. First, the burden of proof would fall on the facility to be able to justify why the continued usage of restraint is necessary during sleeping hours, as on the surface, it would seem that most clients, while asleep, would not do damage to self or others. However, some clients may awaken during the night and engage in assaultive or aggressive behavior. If restraints are used to replace staff shortages or in place of an active treatment program aimed at eliminating this behavior, then the rule forbids the practice. For those very small numbers of clients, whose behavior might warrant the use of a restraint during the night, the provisions pertaining to motion and exercise apply. Opportunity for motion and exercise for those clients, who wear physical restraints that limit their free movement, is necessary to maintain blood circulation and to ensure that clients do not become stiff or lose any range of motion. Thus, we have kept the proposed requirement, since a restraint can cause loss of range of motion to occur whether the person is awake or asleep. However, if a restraint is worn to deprive a client of access to a portion or portions of his or her body, and does not restrict range of motion, then exercise of the "restrained" area would not be needed.

Comment: A few commenters objected to the proposed rule at § 442.456(i) because it would allow a client to be placed in a totally enclosed device. Commenters suggested that if we allowed this practice, it would appear that we condone "putting a person in a cage", which would be demeaning and dehumanizing for the client, and potentially pose a fire hazard.

Response: We agree that the practice of putting an individual in a barred or totally enclosed device is very restrictive, and presents special fire safety problems. Therefore, we have deleted the provision proposed at § 442.456(i) regarding totally enclosed cribs. Also, it should be noted, that we have retained in the final regulations at § 483.450(d)(7) the provisions proposed at § 442.456(j) which prohibit the use of barred enclosures that have tops.

Comment: Twenty-seven commenters objected to the proposed regulations at § 442.452(d) because they would allow staff to place a client unobserved in a room or other area from which egress is prevented as part of systematic time-out program that meets all applicable standards. Commenters expressed concern that the proposed rule would allow facilities to use "seclusion" inappropriately, since it does not identify the "applicable standards" that must be met for the practice to constitute a proper use of time out. The commenters recommended that the regulations clarify that for "seclusion" to constitute a proper use of time out, it must be a procedure in which the client, due to inappropriate behavior, is removed from a situation that positively reinforces that behavior, in order to decrease the frequency of the behavior. Commenters also suggested that we use the language of the corresponding ACDD standard pertaining to the use of time-out rooms, to distinguish the use of "time out", from the practice of "seclusion".

Response: Our intent was to adopt the criteria used by the ACDD in addressing the issues pertaining to the use of time-out and seclusion since its criteria are widely accepted as reasonable standards. However, the comments indicate that we need to use clearer language in our attempt to adopt the criteria used by the ACDD to distinguish "seclusion" from "time-out". Therefore, in this final rule at § 483.450(c), we have consolidated in one standard all the requirements that must be met for a time-out activity to qualify as an acceptable procedure, and have used revised language to clarify our meaning.

Comment: Commenters were evenly divided in their opinions regarding whether or not the requirements pertaining to the use of time out, which were proposed at §§ 442.452(d), 442.454(b), and 442.454(e) (1) and (2), should apply to all time-out procedures, or only to those which use "devices" as part of the time out.

Response: The intent of the proposed rule was to prohibit seclusion, and to regulate the use of devices that are employed as part of a time-out procedure. As discussed, due to the volume of comments, we have reorganized the proposed rule and have included in this final rule a separate standard at § 483.450(c) that specifies the requirements that must be met in using time-out rooms. In addition to rooms, physical restraints are also devices that can be used for the purpose of providing time out. Physical restraints, including those that are used for purposes of time out, must meet the pertinent requirements in the standard concerning physical restraints located at § 483.450(d) of this final rule.

Comment: Opinions were expressed that were evenly divided concerning whether or not locks should be allowed on time-out rooms. Fifteen favored the use of locks, and fourteen were opposed. In addition, twenty-seven commenters stated that they could not support the proposal on the use of time-out rooms unless it included basic safeguards regarding the supervision and observation of clients, time limitations, training of staff, and room safety.

Response: We agree with the last group of commenters. Therefore, this final rule specifies the following: (1) A client may be placed in a time-out room only if placement is part of an approved program aimed at eliminating the behavior for which time out is employed; (2) emergency placement in a time-out room must not occur; (3) the client in a time-out room must be under the direct, constant, visual supervision of staff; (4) the door to the room must require constant physical pressure by staff to remain closed; (5) placement must not exceed one hour; and (6) clients must be protected from hazardous conditions while placed in time-out rooms. The final rule also includes other requirements (such as, the need for informed consent, outside committee approval, trained staff, and documentation on the effectiveness of previously tried techniques) that apply to the use of time-out rooms, as well as to the use of any restrictive technique.

Comment: Several commenters objected to the proposed rule at § 442.454(d) that would allow a professional staff member, under extraordinary circumstances, to approve placing a client in a time-out room for longer than one hour. Commenters expressed concern because they believe the term "extraordinary circumstances" is too vague to be used as a standard to regulate technique that is so intrusive to personal liberties. Also, they believe that being placed in a time-out room for longer than an hour would do no more for the client than serve as a punishment.

Response: One hour can be a very long period of time for a client to be kept in a time-out room and to be removed from positive reinforcement. We have found that most clients leave time-out rooms within a very short period of time after being placed there (usually within five to fifteen minutes) although some remain for much longer periods of time, usually on average around 45 to 60 minutes. Allowing time intervals beyond an hour, we agree invites potential for abuse. Therefore, in this final rule, we have deleted the provision that would have allowed a professional staff member to approve, in extraordinary instances, the use of time out for longer than an hour.

Comment: Some commenters objected to the requirement proposed at § 422.456(b) that drugs used for behavior management must be used only as an integral part of the client's IPP which is directed toward the reduction of, and eventual elimination of, the behaviors for which the drugs are employed. Commenters stated that this requirement is too idealistic because there are some individuals whose inappropriate behavior will never be totally eliminated and who will always need the support of drugs at a maintenance level. They suggested that the rule include separate requirements for those clients who are prescribed drugs for psychiatric disorders.

Response: We disagree. Our concern is that there must be an aggressive program to reduce and eliminate the behaviors for which the drugs are employed, regardless of the source or the nature of the diagnosis that is the basis for prescribing psychoactive medications. Thus, the facility must examine all the factors that might relate to the client's need for drugs. This includes the client's behavior, the staff's conduct toward the client, the family, the environment, and other factors that might influence the client's need for drugs, as well as the diagnosis and the medication regimen. Based on an evaluation of these factors, an active treatment program aimed at the acquisition of appropriate behavior by the client, and the eventual elimination of the need for drugs must be pursued within the context of a team process that draws on the expertise of all of its

members, including that of the physician.

Comment: Several commenters objected to our proposed standard at § 442.458 on drug usage, because in their opinion it did not adequately address issues pertaining to the need to obtain informed consent from the client regarding the use of drugs. Also, they believed that the standard did not adequately deal with issues pertaining to the prescription, monitoring, and review of psychotropic medications. Commenters stated that the misuse, and the inadequate monitoring and evaluation of psychotropic medications in mental retardation facilities has been well known and documented for years. They referred to a report from the American Psychiatric Association (APA) that medication to control inappropriate behavior may be prescribed for as many as 56 percent of those with developmental disabilities, despite research evidence that seriously questions the effectiveness of these drugs in treating behavioral disorders. They stated that the APA report indicates that physicians usually do not adequately evaluate the effectiveness of the medications, prescribe them for too long a period of time, and do not monitor their side effects or interactions with other medications.

Response: The purpose for this proposed standard was to prohibit the uninformed, misguided use of chemical agents to suppress and manipulate client behavior. Although guidance and information are available from psychopharmacologists, psychologists, and other professionals, on how to use medications in a facilitative rather than in an oppressive way, facilities have been slow to consult with these individuals in determining how best to utilize drugs for their clients. Therefore, to strengthen this standard in the final rule, we have included several additional provisions to safeguard clients and control the use of drugs in ICFs/MR.

The standard for drug usage in the final rule, at § 483.450(e) requires the following: (1) That drugs used in the control of inappropriate behavior must be approved by the interdisciplinary team; (2) that drugs prescribed to control inappropriate behavior must be monitored closely for desired responses and adverse consequences by facility staff; (3) that these drugs be gradually withdrawn at least annually, unless documented clinical evidence indicates that this is contraindicated because of the client's condition. Additionally, the final rule requires that, before approving the use of a drug, the interdisciplinary team must document that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drug. Also, in accordance with the final rule at § 483.440(f)(3)(ii), informed consent regarding the use of drugs is required from the client, parents (if the client is a minor), or legal guardian.

Comment: The proposed drug standard would require that a facility must not use drugs as punishment, for staff convenience, as a substitute for active treatment, or in doses that interfere with a client's IPP. Twelve commenters asked if these regulations would apply to all drugs, or only drugs prescribed to modify client behavior. These commenters suggested that they should apply only to drugs prescribed for a client's inappropriate behavior.

Response: We do not agree that these provisions should apply only to drugs prescribed to modify behavior. Historically, many types of medications used in the care of mentally retarded individuals, including laxatives and anti-convulsants, have been used inappropriately. Therefore, these requirements apply to all medications.

Comment: The proposed rule at § 442.456(k) would require that a physical restraint used as a time-out device must be used only during behavior modification exercises. Two commenters requested that we define what we mean by "behavior modification exercises".

Response: The intent of the proposed regulation was to ensure that a restraint used as a time-out device (like any other time-out device) would be used as part of a formal training or behavior shaping program and to prohibit the emergency use of time-out devices.

To clarify what we meant by "behavior modification exercises", the final rule at § 483.450(d)(1) states that a facility may employ physical restraints only as an integral part of an IPP.

Comment: Seven commenters requested clarification of the proposed requirement at § 442.454(e)(2) that restrictive programs to manage inappropriate client behavior cannot be implemented until written consent of the client or his or her parents or legal guardian, if available, has been obtained. Commenters expressed concern about obtaining informed written consent from minor clients, who do not have parents, or adults who are clearly incompetent, but do not have a legal guardian assigned because they have not yet completed formal adjudication procedures. These commenters suggested that for these clients, the outside committee required by the proposed rule at § 442.450(e), or the State's protection and advocacy agency should be responsible for providing consent to the use of restrictive procedures.

Response: It was our intent to require consent, if available, for the use of aversive techniques from either the client, or his or her "parents" (if the client is a minor), or a "legal guardian". Ordinarily, it is one of these three persons who can act in a client's behalf unless someone else had been designated to do so by the State. Thus, by listing these three persons, we did not intend to limit the State's authority to designate someone else to represent the client. Also, we are aware that in some instances a client's legal status may not yet have been adjudicated, even though the client is not able to give informed consent. That is why the proposed rule stipulated that consent was required, "if available". Nevertheless, we believe that the use of the phrase, "if available", has only confused the meaning of this requirement. Therefore, it has been deleted. For those clients who are minors, or who are clearly incompetent but have no appointed legal guardian, interpretive guidelines will explain that written consent for these clients should be obtained from someone designated by the State to represent the client. However, in many cases, a facility would serve as an advocate for these clients by trying to facilitate the timely adjudication of their legal status.

Comment: Several commenters submitted additional opinions on the proposed requirement, at § 442.454(e)(2), that would prohibit restrictive programs from being implemented until consent was given. Some objected to requiring that consent be obtained only if it is available. They felt that this requirement was so vague that it would allow a facility to implement an intrusive program without making a sufficient effort to obtain consent. For example, if a guardian was not "available" to give consent by phone, a facility might not make any additional efforts to obtain consent. Also, a few commenters felt that a legally competent adult would never consent to receiving aversive conditioning. Others believed that it was unreasonable for us to require for incompetent clients, who do not have a legal guardian because their status had not been adjudicated, that legal guardianship must be established in order to obtain required consent. One commenter requested us to state explicitly in the final rule, that failure by a client to give consent to a restrictive program, would not be grounds for discharge from the facility.

Response: As discussed in the previous response, we have deleted from the rule the phrase, "as available", because of the confusion it had caused. Also, the final rule does not require that legal guardianship be established for an adult client, or a minor child without parents, who is unable to give informed consent, but whose legal status has not yet been adjudicated. In these cases, we believe it is sufficient for someone designated by the State as the client's representative, to approve the use of intrusive treatment until the client's status has been adjudicated and a guardian appointed. Also, we know that clients are not only able to, but do in fact, give informed consent for intrusive programs to be conducted. However, we believe that the more salient issue is whether or not refusal to give consent for a restrictive procedure would be automatic grounds for discharge from the facility. When a client refuses to give consent to an aversive procedure, the facility must first review its documentation to ensure that all techniques that are more positive or less intrusive have been tried and demonstrated to be ineffective. If all less intrusive techniques have been proven to be ineffective, then the facility must decide how, if at all, it can continue to meet the active treatment needs of the client. If a facility believes that it cannot meet the active treatment needs of the client, unless it provides the intrusive technique for which consent has been refused, this could constitute grounds for discharge. However, should the client want to contest the discharge, he or she has the right to pursue legal redress.

Comment: One commenter suggested that the proposed rule at § 442.454(e)(2), which would allow restrictive programs to be conducted only with written consent, be amended to require "informed" written consent.

Response: It was our intent to require informed consent. However, to ensure that this is clearly understood, the final rule at § 483.440(f)(3)(ii) specifically states that informed written consent is required.

Comment: Four commenters suggested that we mandate that physicians and behavior management specialists must participate on the interdisciplinary teams of those clients who need programs to change inappropriate behavior. Commenters stated that this is necessary, because the development of effective programs to manage inappropriate client behavior, which may necessitate addressing such problems as drug usage and determining whether organicity is the cause of the client's behavior, should only be done by qualified and experienced personnel.

Response: We appreciate the intent of the commenters. We believe the proposed requirement at § 442.444(a) would ensure adequately that those professionals who are needed to develop effective programs, would participate on each client's team. However, to further clarify our intent, the language of the final rule at § 483.440(c)(1) requires that a client's interdisciplinary team must represent those professions and disciplines relevant to each client's needs as identified in the client's comprehensive assessment, and to the design of programs to meet the client's needs. Moreover, we do not agree that it is necessary for those professionals named by the commenters to participate on the team of every client who needs a program to manage inappropriate behavior. Whether or not these professionals are needed will depend on the particular behavior management needs of the client. Also, participation on the team may vary at times contingent upon whether the task the team is completing pertains to the design, implementation or review of the client's IPP.

Comment: Five commenters were concerned that we did not require staff who implement restrictive programs to be trained. A few of these commenters specifically stressed the importance of requiring training for staff who implement restraint programs.

Response: It was our belief that this issue was addressed by the proposed provisions at § 442.430(c), which would mandate that staff must be able to demonstrate the skills and techniques necessary to implement the IPPs for each client under their care, and the proposed provisions at § 442.458(e) which would require that staff applying restraints must be trained in their use. However, we have concluded that it was necessary to add a provision in the final rule at § 483.430(e)(3) to require staff training on all techniques to manage inappropriate behavior, as well.

Comment: Two commenters recommended that the regulation require that baseline data be kept on all programs which are for the purpose of managing inappropriate client behavior, so that the pattern and frequency of such behavior can be assessed.

Response: We agree that such data should be kept. The facility is required by the final regulations at § 483.450(b)(1)(iii) to demonstrate the ineffectiveness of all previously tried behavior shaping techniques prior to the use of more restrictive techniques. Therefore, it is already implicitly required that baseline data must be maintained. The facility would not be able to evaluate, without baseline data, the effectiveness of previously tried programs and techniques to manage inappropriate behavior. Furthermore, § 483.440(e) of the final rule requires that data pertaining to the accomplishment of criteria specified in IPP objectives must be documented in measurable terms.

Comment: One commenter requested that we specify how often programs designed to manage inappropriate client behavior must be reviewed for effectiveness. This commenter believes that since we have deleted the existing requirement that client IPPs be reviewed monthly, we no longer have a mechanism to ensure that restrictive and intrusive programs will be reviewed and revised as often as needed.

Response: We appreciate the commenters' concern, but believe it would be to prescriptive to specify how often these programs must be reviewed. In accordance with the final rule, a client's IPP (including any IPP objective targeted to eliminate maladaptive behavior) must be revised as needed. We believe that the facility should develop its own process for ensuring that this is accomplished effectively.

Comment: Two commenters suggested that we should not require facilities to describe in a client's IPP all the methods that are used to manage inappropriate client behavior, such as the application of "house rules" or "standard contingencies" that apply to all clients in a residence.

Response: We do not agree. In applying "house rules" or "standard contingencies," which pertain to *all* clients in a residence, the facility must still take into account the individual needs of each client, and ensure that if any contingencies result in the abrogation of client rights or protections, that this does not amount to neglect or abuse. All the objectives for which the client is being trained must be included in the IPP. If it is in a client's best interest to participate in a program, in which contingencies are applied based on the client's behavior, then there should be a corresponding behavioral objective in the client's IPP, so that the effects of the program on the client, and the use of the contingencies, can be evaluated by the team.

Comment: One commenter recommended that the proposed requirement at § 442.444(d)(6), that an IPP must include the written strategies which are to be used to reach the objectives, should be waived for those

objectives that are designed to eliminate maladaptive behaviors. The commenter stated that these written strategies are usually very long (two to six pages). Therefore, if they are included as part of the IPP, they would make the document too bulky.

Response: As discussed earlier in this preamble, the proposed rule has been revised and the final regulations at § 483.440(c)(6)(ii) no longer require that the IPP include the strategies to be used, but only that it identify the location where program strategy information can be found.

Comment: A few commenters recommended that we require each facility to have a "behavior management" review committee in addition to the specially constituted committee required by the proposed rule at § 442.450(e). These commenters felt that the rule should require each facility to establish a separate committee consisting of members with expertise in behavior management in order to ensure that proposed restrictive and aversive programs were technically appropriate, and that a client's rights were not abridged.

Response: We appreciate the concern of the commenters, but we believe that it would be too prescriptive to require the establishment of another committee in addition to the one required by the final rule at § 483.440(f)(3). However, as mentioned before, we have included in the final rule at § 483.440(f)(3) that a qualified person or persons who have either experience or training in contemporary practices to change inappropriate client behavior must be on the outside committee.

Comment: One commenter expressed confusion about the meaning of the term "punishment", as used in the proposed rule at § 442.458(a) that would prohibit the use of drugs as a punishment. The commenter could not determine if our intent was to use it in a generic sense, to mean "discipline", or to use it as it is clinically defined.

Response: The word "punishment", as used for example, in the proposed rule concerning physical restraints and drug use at §§ 442.456(g) and 442.458(a), respectively, means the application of very intrusive measures (such as physical restraints) in order to "discipline" a client. To clarify our intent, we have referred to "disciplinary purposes" in the final rule at § 483.450(b)(3), instead of punishment.

Comment: A few commenters felt that the proposed requirement at § 442.452(c), which would prohibit staff from using corporal punishment, or verbal, physical, or sexual abuse, would have been given greater importance if it was relocated to the standard concerning staff treatment of clients at § 442.424.

Response: We agree. We have made revisions so that the standard for staff treatment of clients in the final rule at § 483.420(d) now includes the provisions on the mistreatment of clients that were originally proposed at § 442.452(c).

Comment: One commenter recommended that we require facilities to have special procedures to review their behavior management programs that result in contingencies that may abridge clients' rights or protections.

Response: We do not agree that this is necessary. The outside committee, which is required by the final rule at 483.440(f)(3), already has the responsibility of ensuring that client rights are protected.

Y. Professional Program Services (Proposed § 442.460; Final § 483.430(b))

Comment: Several commenters criticized the proposed requirements at § 442.460 (e)(1) through (e)(9), regarding professional qualifications. These commenters stated that our emphasis on "credentials", such as requirements pertaining to academic degrees, work experience, or membership in professional associations, did not guarantee provision of quality services, and was extremely prescriptive and inconsistent with our stated intent to develop outcome-oriented standards. They suggested instead that work performance should be stressed. They also stated that if employment credentials were required for certain positions, that they should be the same as those specified in State licensure and certification standards. Others recommended that State licensure requirements should be waived for those unlicensed professional and paraprofessional staff who work under the direct supervision of licensed professional personnel.

Response: One of the most important requirements in the ICF/MR regulation is that each client's active treatment program must be developed and implemented by qualified staff. However, we agree that requiring staff, who meet State licensure requirements, to meet additional qualifications, is too "process" oriented. Therefore, we have amended the proposed rule so that only staff who do not fall under the jurisdiction of State licensure or certification requirements must meet the professional qualifications listed in the final regulation at § 483.430(b). Moreover, if there is no conflict with State licensure and certification requirements, we will now allow facilities to utilize professionals who do not meet the qualifications specified in the final rule at § 483.430(b)(5)(i) through (5)(x), if it can be demonstrated that clients' IPPs are being successfully implemented. Regardless, there must be a foundation of knowledge that can be drawn upon in the facility, and we believe that setting qualifications for professionals helps to ensure (but does not guarantee) that needed knowledge is available. Also, we have consolidated into a single requirement, at § 483.430(b) of the final rule, the various references in the proposed rule to the standard that professional staff must be licensed, certified, or registered if required by State law. It is important to note that the final regulations do not specify qualifications for positions, but rather set qualifications for those who are referred to as "professional" staff.

Comment: A few commenters stated that the educational qualifications required by the proposed rule at § 442.460(e)(6) would decrease the number of social workers eligible to provide professional services in ICFs/MR. Commenters suggested that we either retain the requirements of the current rule, or include a "grandfather" clause to allow those who meet the existing requirements to continue in their present positions.

Response: We disagree. Under the final rule, for a person to be designated as a "social worker", the person must meet the qualification requirements at § 483.430(b)(5)(vi), or be licensed or certified as a social worker by the State. However, while a person who is not qualified as a social worker may not be referred to as a social worker per se; nevertheless, such a person may be able to provide social services in an ICF/MR if there is no conflict with State law and as long as the clients' needs are being met. The final rule at § 483.430(b)(5)(xi) allows facilities to utilize staff to provide professional services who do not meet the qualifications specified at § 483.430(b) (5)(i) through (5)(x), if it can be demonstrated that clients' IPPs are being successfully implemented. Furthermore, the proposed rule does not raise the standards that must be met by those who function as qualified mental retardation professionals. In accordance with the existing regulations, those individuals who have a bachelor's degree in a human services field, and who have three years of experience working under the supervision of a social worker, can function as qualified mental retardation professionals. Under the new rule, these persons can still function as qualified mental retardation professionals, because the final rule at § 483.430(a) does not require qualified mental retardation professionals to meet one of the standards at § 483.430(b) (5)(i) through (x), which apply to specific categories of professional program staff, since staff who meet the requirements at paragraph (5)(x) of the section may also qualify as qualified mental retardation professionals.

Comment: A few commenters criticized the proposed required qualifications for professional program staff, at § 442.460(e), as being too lax. Commenters stated that, generally, graduates from most professional educational programs have no training or experience in working with persons with mental retardation or developmental disabilities. Therefore, they suggested that all professional program staff should be required to have the equivalent of one year of either completing coursework pertaining to mental retardation or other developmental disabilities, or working directly with the ICF/MR population.

Response: We disagree. We believe the commenters' suggestion pertaining to required coursework and work experience is too prescriptive, and would interfere with a facility's ability to recruit qualified professional staff. We agree that many professional training programs do not include distinct coursework on the nature of mental retardation or developmental disabilities, and many graduates from these programs have no experience working with this population. However, we believe that most professional educational programs in the field of human services, provide training that can be adapted by graduates to enable them to work effectively, as professionals, in ICFs/MR. Therefore, since the commenters' suggested change would not allow facilities to hire those individuals for professional positions, we have not included it in the final rule. Nevertheless, we believe that a facility should recruit and hire the most experienced and knowledgeable professional staff that it can. Also, in connection with this comment, under the final regulation at § 483.430, a facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

Comment: A few commenters criticized the proposed qualifications at § 442.460(e) because, in some instances, a professional was required only to "be eligible for" certification, rather than be certified or registered by the applicable professional association. These commenters stated that this standard was too lenient, and that the regulation should require that these professionals be certified within a specified period of time.

Response: For the regulations to require that staff must be certified with a particular professional association, rather than to require them to be eligible for certification, would mean that HCFA was mandating that certain ICF/MR staff must be members of or affiliated with specific professional associations. We do not believe that it would be appropriate for HCFA to include such a requirement in the regulation.

Comment: Some commenters found the proposed requirements at § 442.450 that specify the experience qualifications of a qualified mental retardation professional and at § 442.460 that state the academic requirements for a qualified mental retardation professional, to be duplicative and unclear. A few commenters suggested that we identify the titles of those professional positions which may qualify a person to be a qualified mental retardation professional, and specify the required credentials for these positions. Other commenters suggested that all provisions relating to the qualifications of qualified mental retardation professionals, located in the proposed § 442.450, should be relocated to § 442.460.

Response: We do not agree that the changes suggested would improve the readability or clarity of the regulations. We believe that the rule, without the suggested changes, clearly identifies the professional requirements that must be met for a person to qualify as a qualified mental retardation professional. These requirements are contained in the final regulations at § 483.430(a).

Comment: A few commenters questioned the need of establishing required job qualifications for some paraprofessional positions (that is, occupational therapy assistants and physical therapy assistants), while not including required qualifications for others, such as teacher assistants and recreation assistants. These commenters suggested that to be consistent, we should either establish required qualifications for all paraprofessional positions, or for none of them.

Response: Qualifications were included in the proposed regulations for occupational and physical therapy assistants because national standards exist for these two positions that have been established by their national associations. We have not included teacher assistant standards because we do not believe that there are national employment standards established for the position of teacher assistant, or for any other paraprofessional position that is frequently employed in ICFs/MR. It should be noted, however, that if these "assistants" have less than a bachelor's degree, they cannot serve as qualified mental retardation professionals.

Comment: A few commenters, including the applicable national professional association, criticized the proposed professional standards for occupational therapists at § 442.460(e)(1), and occupational therapy assistants at § 442.460(e)(2) that would require that individuals in these positions be eligible for certification by their national association, or a graduate of a program accredited by that association. The commenters asserted that these two requirements are redundant, since a graduate of a program accredited by the American Occupational Therapy Association, would also be eligible for certification by that association. Therefore, the commenters suggested that we delete the proposed provisions requiring graduation from an accredited program.

Response: We agree. The proposed provisions requiring graduation from an accredited program have not been included in this final rule.

Comment: The proposed professional qualifications at § 442.460(e)(5), that would require that a person must have at least a master's degree in psychology in order to be designated as a psychologist, elicited widely varying comments. Suggestions for changes included various combinations of requirements regarding the type of degree, the credentials of the person who supervises the psychologist, and the number of years of experience necessary to be "qualified." For example, one commenter stated that a person with a bachelor's degree in psychology should be allowed to practice as a psychologist if his work is supervised by a psychologist with a master's or doctoral degree. Another commenter suggested that to be consistent with other Federal programs (such as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Social Security Disability Insurance (SSDI), and the Federal Employee Health Benefits Program) only Ph.D. level psychologists should be considered qualified to provide psychological services to clients of ICFs/MR.

Response: Licensure or certification requirements in most States require psychologists to have at least a master's degree in order to provide professional services. Requiring psychologists to have at least a master's degree to qualify to provide psychological services is a widely accepted standard. Thus, in

those States where there are no applicable State licensure requirements, we believe it is appropriate to require a master's degree as a minimum qualification for a person to be designated as a psychologist.

Comment: One commenter pointed out that the proposed regulation at § 442.460(e)(5), which would require a psychologist to have a master's degree from an accredited program, is not an appropriate requirement because the American Psychological Association accredits only doctoral level programs. The commenter suggested that we delete the word "program" and substitute the word "school".

Response: We agree. In the final rule, at § 483.430(b)(5)(v) we now use the word "school" rather than the word "program".

Comment: One commenter criticized the proposed rule at § 442.460(e)(6)(iii) because it would allow a person with a bachelor's degree in social work to practice as a professional social worker. The commenter believes a master's degree should be required.

Response: We disagree. Technically, a person with a bachelor's degree might not be as qualified to provide social services, as a person with a master's degree. However, the Council on Social Work Education accredits professional training programs at the bachelor's degree level. Therefore, we do not believe it is necessary to stipulate standards in excess of that.

Comment: Several commenters recommended that we amend the proposed rule at § 442.460(e)(7)(i) requiring that speech and language pathologists or audiologists must be eligible for certification by the American Speech, Language, and Hearing Association (ASHA), in accordance with the requirements that the Association has in effect at the time of this rule's publication. Commenters stated that by using the proposed language, the regulation would be out-of-date as soon as ASHA's requirements changed. They suggested that this would be avoided if the rule referred to ASHA's "current requirements", instead.

Response: We agree with the commenters' recommendation and have deleted the reference to the time of publication of the regulation (see § 483.430(b)(5)(vii) of the final rule). We have not, however, made a specific reference to "current requirements". HCFA keeps abreast of changes that are made to the professional standards of organizations and will amend this regulation as appropriate.

Comment: Several commenters objected to the proposed language at § 442.460(e)(8) that would allow an individual to qualify as a professional recreation staff member by having a degree either in recreation or in a specialty area such as art, dance, music, physical education, or recreation therapy. Commenters stated that an individual with a degree in recreation receives much less training and experience in working with the disabled population than individuals who have a degree in one of the creative art specialty areas named in the proposed rule. Therefore, because of the distinct differences in the training and experience they receive, the commenters recommended that the qualification standards for professional recreation staff members should be completely separate from those that apply to individuals training in one of the creative art specialty areas. Some commenters also objected to the proposed language at § 442.460(e)(8) because it would allow a person with a fine arts degree in music, art, or dance to qualify as a professional staff member in an ICF/MR, even though the individual may not have had training in how to work with special populations. Therefore, they suggested that the regulation specifically require that individuals trained in music, art, or dance must have degrees in music therapy, art therapy, or dance therapy, to qualify as professional staff members.

Response: We have retained the proposed language in these final regulations. We believe that the thrust of the comments is that, within the universe of individuals appropriate to serve as recreation staff, distinctions can be drawn based on education and training. None of the commenters suggested that the universe of individuals covered under the language of the proposal would not be suitable as recreation staff. Since our objective in these regulations is to provide flexibility to the extent feasible, we see no useful purpose in drawing additional distinctions within the universe. We expect that ICFs/MR will employ those individuals necessary to achieve the desired outcomes.

Comment: Some commenters criticized the proposed rule at § 442.460(e)(8) because it would require professional recreation staff members to have a bachelor's degree. These commenters stated that this was too strict a requirement and would decrease the number of people who could qualify for this position. They suggested that we either retain the qualification requirements for recreation staff members contained in existing regulations, or that we include a "grandfather" provision to allow those who occupy this position currently, to continue to do so under final regulations.

Response: Under current regulations at section § 442.493(b), a person with sufficient experience and proficiency may qualify to conduct the recreation program for an ICF/MR, even though the person does not have a bachelor's degree in recreation. Under this final rule, these persons may still qualify to perform this function, because the rule at § 483.430(b)(5)(xi) does not require that a person has to be designated as a professional recreation staff member to provide these services to clients. Nevertheless, if they are not licensed or certified in their State, these persons would not be able to call themselves "professional recreasstion staff" members unless they have a bachelor's degree in recreation. However, we do not believe that "grandfathering" is necessary, because the new rule, and the existing rule, allow individuals who have sufficient experience and proficiency to conduct recreation programs for ICFs/MR.

Comment: Several commenters expressed concern that since the professional qualifications for dietitians were included in the proposed standard for facility staffing, at § 442.426(f) instead of in the proposed standard for professional program services, at § 442.460, dietitians would not qualify as qualified mental retardation professionals. This would happen because the proposed rule at § 442.450(a)(3)(iii) would include individuals who hold a bachelor's degree in a professional category listed at § 442.460 among those who qualify to be qualified mental retardation professionals. Therefore, they suggested that we relocate the qualifications for dietitians to the standard on professional program services, at § 442.460.

Response: We agree and have transferred the provisions of the regulation regarding the required qualifications for professional dietitians to the standard for professional program services contained in final regulations at § 483.430(b)(5)(ix).

Comment: Twenty commenters criticized the proposed rule at § 442.460(e)(9) because it would not allow persons with a bachelor's degree in psychology to function as human services professionals. The proposed rule at § 442.460(e)(9) states that a human services professional must be a person with at least a bachelor's degree in a human services field, other than those mentioned in § 442.460(e)(1) through (e)(8) of this section. The proposed § 442.460(e)(5) specifically

mentioned psychology and would require that a psychologist have a master's degree. The commenters objected because they believe that a person with a bachelor's degree in psychology would be as qualified to be a human services professional as a person with a bachelor's degree in any of the disciplines mentioned at proposed § 442.460(e)(9), such as sociology, special education, rehabilitation counseling. Therefore, the commenters suggested that the rule be amended to allow individuals with a bachelor's degree in psychology to qualify as human services professionals, since psychology provides detailed training in principles directly related to active treatment and human behavior.

Response: We agree and have modified the proposed rule. The amendment is contained in the final rule at § 483.430(b)(5)(x). As discussed earlier in the preamble, the purpose for including in the regulation a human services professional category was to expand the number and types of persons who could qualify as qualified mental retardation professionals, while still maintaining acceptable professional standards. However, our intention also was to clarify that a person who qualifies as a "human services professional" does not necessarily meet the qualifications necessary to practice as a psychologist, social worker, etc. To further clarify our intent, we have revised the proposed rule to include the language suggested by one commenter. This revision is reflected in § 483.430(b)(5) of the final rule. Normally, for each specific professional discipline listed in § 483.430(b)(5)(i) through (5)(x), we have added the phrase, "To be designated as . . .". This phrase means that to function as a psychologist, social worker, etc., one must meet certain qualifications that are more specific than those that must be met to function as a "human services professional".

Comment: Some commenters criticized the propose rule for not specifying what qualifications must be met by professionals in the fields of special education and rehabilitation counseling. The commenters objected because they believe that a degree in these two fields of study requires more specialized training in mental retardation and developmental disabilities, than is required for a degree in the other disciplines for which the rule does list required professional qualifications. These commenters submitted suggested language to include in the final rule, as distinct and separate requirements, the qualification standards for these two disciplines.

Response: We disagree. The particular professions for which required qualifications were proposed at § 442.460, are the professions most commonly employed by ICFs/MR. Special education teachers and rehabilitation counselors are employed mostly by other types of programs such as special school districts which are not part of the ICF/MR, rather than by ICFs/MR. Also, it would not be practical to specify in the regulations, the required qualifications for every type of professional position found in an ICF/MR. However, to acknowledge the very specialized training in developmental disabilities that is required for a degeee in special education or rehabilitation counseling, we have specifically identified in the final rule at § 483.430(b)(5)(x) these disciplines as examples of academic degrees that could qualify a person as a human services professional.

Comment: Several commenters objected to the proposed rule at § 442.460(e)(9) because it mentions only sociology, special education, and rehabilitation counseling, as types of degrees that would qualify a person to be a human services professional. These commenters interpreted the proposed rule to mean that a person would have to have a degree in one of these three fields to qualify as a human services professional.

Response: Our intent, at proposed § 442.460(e)(9), was to give examples of acceptable human services degrees. To clarify that the three disciplines listed are intended only as examples and not as a complete list, we use in the final rule at § 483.430(b)(5)(x) the phrase "including, but not limited to".

Comment: A few commenters inquired whether or not, under the proposed rule, a professional staff member, who met the proposed requirements at § 442.460(e)(9), but did not meet State licensure requirements, could qualify as a human services professional.

Response: We do not believe that there are any applicable State licensure or certification requirements that must be met to be designated as a human services professional. Thus, in accordance with the final rule at § 483.430(b)(5)(x), anyone with a bachelors degree in a human services field can qualify as a human services professional. If that person has at least one year's experience working directly with mentally retarded or developmentally disabled individuals, then he or she could also qualify as a qualified mental retardation professional.

Comment: A few commenters criticized the human services professional category proposed at § 442.460(e)(9) because in their opinion the language was too vague and thus, subject to misinterpretation by providers and surveyors. They suggested that we define the term "human services field"; identify all the human service degrees that are acceptable; or, include in the meaning of human services, any discipline related to the type of services provided in ICFs/MR.

Response: We do not believe it would be practical to attempt to catalogue in regulations all the human service degrees that are acceptable. Also, in some instances, in taking into consideration a facility's needs and the type of training and coursework that a person has completed, it will be necessary for the facility and the surveyors to exercise judgment to determine what constitutes an acceptable human services degree.

The final rule also contains the provision at § 483.430(b)(5)(xi), which allows a facility, if it is able to implement clients' IPPs successfully, to use professional program staff, including human service professionals, who do not meet the qualifications stipulated in the regulation, as long as there is compliance with State licensure requirements.

We also have modified § 483.430(b)(5)(xi), which excuses providers from personnel qualification requirements under certain circumstances, to make it clear that it does not apply to the provision at § 483.430(b)(2) requiring enough staff to carry out the interventions necessary to achieve the objectives and goals of the IPP.

Comment: Additional commenters expressed various opinions about the proposed required qualifications at § 442.460(e)(9) for the human services professional category. Opinions ranged from statements that we were "too strict", to those that we were "too lax". For example, one commenter stated that the educational requirements should be deleted and replaced by some measurement of ability based on an examination. Another commenter stated that requiring a bachelor's degree in any field, plus three years of work experience in the field of developmental disabilities, would be more acceptable than the proposed standard. One commenter suggested that we delete the entire proposed category, because its inclusion in the rule decreased the level

of professionalism required of program staff in ICFs/MR.

Response: The proposed qualifications for the human services professional category generated a wide variety of comments. However, the majority of the commenters supported retaining this category in the regulation. Thus, we have decided to retain a separate human services professional category in the final rule at § 483.430(b)(5)(x), including the revisions to this category that were previously discussed in the preamble.

Comment: A few commenters stated that because of the proposed qualifications for professional personnel at § 442.460 (e)(1) through (e)(9), some professional staff members in ICFs/MR who are currently able to qualify as qualified mental retardation professionals will no longer be able to do so. Commenters suggested that we either retain the existing regulation as it applies to qualified mental retardation professionals, or that we establish a "grandfather" provision, which would allow any staff member currently functioning as a qualified mental retardation professional to continue in that position.

Response: We do not believe there are any substantive differences between the requirements contained in existing regulations and those in the proposed rule regarding the qualifications that must be met by a qualified mental retardation professional. Therefore, we are making no changes and believe that, generally, anyone who is qualified to function as a qualified mental retardation professional under the existing regulations also would be qualified under the regulations contained in this final rule.

Comment: Eleven commenters requested clarification about the proposed rule at § 442.460(c) which would require professional program staff to participate as team members in relevant aspects of the active treatment process. Commenters inquired whether "participation" could be obtained through written reports and recommendations, or whether the professionals would be required to be physically present at team meetings.

Response: The purpose of the interdisciplinary team process is to provide team members with the opportunity to review and discuss face-to-face, information and recommendations relating to the client's needs, and to reach decisions as a team rather than individually on how to best address those needs. Should a designated member of a particular client's team be unable or unwilling to participate in any meeting, the team should obtain the absent members' input through alternative means.

Comment: One commenter expressed concern that facilities would not be able to recognize when there is a need for special professional input regarding a particular client, and they would not be sufficiently knowledgeable about the services available from the various professional disciplines.

Response: We believe that for a facility to be able to perform adequately the comprehensive client assessments that are required by the regulations, its staff would have to be sufficiently knowledgeable about the services offered by the various professional disciplines. Generally, we believe that facilities that are able to assess client needs effectively also are able to assemble the expertise needed to develop and implement an effective program for their clients. We also believe that our outcome-oriented survey protocol identifies those facilities that are unable to perform effective assessments.

Comment: Five commenters were opposed to the proposed rule at § 442.460(a) that would require professionals to work directly with clients. They interpreted this section of the rule to mean that professional program staff must work directly with all clients on a daily basis. These commenters stated that this would be too costly and that the primary duty of professional personnel should be to direct the activity of paraprofessional and nonprofessional staff. Also, the commenters stated that many clients in ICFs/MR do not need direct professional contact, that often they only need programs that are developed and monitored by professionals, but which can be implemented by nonprofessional staff. They suggested that we revise the proposed rule so that it requires professional staff to work directly with clients only "as needed".

Response: We agree that there are clients residing in ICFs/MR who can often have their needs effectively met without having direct contact with professional program staff on a daily basis. The needs of these clients can often be met by competent nonprofessional staff who are supervised or directed by professionals. The intent of the rule is not to require that professionals work directly with clients on a daily basis, but only as often as a client's needs indicate that direct professional contact is necessary. The amount and degree of direct care that professionals must provide will depend on the needs of the clients and the ability of other staff to train and direct clients on a day-to-day basis. However, to have an effective program, professionals must evaluate clients, make recommendations, set planned outcomes, develop strategies, implement interventions, train staff, monitor the implementation of strategies, and review the effectiveness of programs.

Comment: One commenter stated that staff should not be allowed to provide services or implement interventions unless they are competent to do so, and suggested that this be included as a requirement.

Response: We agree. The proposed rule at § 442.430(c) would require that anyone providing services to a client should be able to demonstrate competency. This requirement has been kept in the final rule and is now contained in § 483.430(e).

Comment: One commenter requested that we specify the minimum professional staff-to-client ratios that must be met by a facility to ensure that its professional services are being adequately provided.

Response: We believe requiring specific professional staff to client ratios would be overly prescriptive. What constitutes an acceptable professional staff-to-client ratio in a particular facility is determined by the needs of its individual clients.

A facility must evaluate each of its clients, and then determine how many professional staff are necessary to provide the direct and indirect services required in order to meet their needs adequately.

Z. Physician Services (Proposed § 442.462, Final § 483.460)

Comment: Nine commenters objected to the proposed regulation at § 442.462(a) that would require facilities to provide or arrange for the provision of physician services 24 hours a day. They were concerned that the provision of physician services 24 hours a day could be interpreted to mean that the physician must be on the premises.

Response: We have accepted these comments and included revised language in the final regulations at § 483.460. Section 483.460 specifies that "the facility must ensure the availability of physician services 24 hours a day." This should make it clear that the physician does not need to be on the premises. The revised wording, however, does not negate the fact that facilities not having a physician directly employed must have a formal arrangement for physician services. With respect to these arrangements, the final rule at § 483.410(d)(2), concerning services provided through outside arrangements, requires that services not provided directly must be provided under a written agreement.

In revising this regulation, it came to our attention that the proposed regulations contained some redundancy with regard to physician services. Both the proposed § 442.462 concerning physician services, and the proposed § 442.466 concerning comprehensive health services had statements requiring physician services 24 hours a day. To eliminate this repetition, as well as make other changes that will be explained in subsequent sections of the preamble, we have reorganized the material that was contained in the three proposed sections: § 442.462, "Physician services"; § 442.464, "Physician participation"; and, § 442.466, "Comprehensive health services". In the final rule, we have incorporated them into two sections: § 483.460(a), "Standard: Physician services", and § 483.460(b), "Standard: Physician participation in the individual program plan". The revised statement regarding 24 hours a day availability of physician services is contained in the final rule under standard § 483.460(a), Physician services.

AA. Physician Participation (Proposed § 442.464, Final § 483.460(b))

Comment: Nineteen commenters objected to the requirement that physicians develop a medical care plan on clients when they determine such a plan is necessary. The commenters felt that the regulations should include a more precise definition of when a medical care plan is required.

Response: We agree with these comments and have modified the language contained in proposed regulations to now state that a medical care plan is necessary when 24 hour licensed nursing care is needed. This revised language is located in the final rule at § 483.460(a), "Standard: Physician services".

BB. Comprehensive Health Services (Proposed § 442.466; Final § 483.460(a))

Comment: Eight commenters expressed an opinion on the components of the physical examination required under proposed § 442.466(b). These annual physicals require examinations of vision and hearing; routine immunizations and tuberculosis control; screening laboratory examinations as determined necessary by the physician, and special studies if needed. Some commenters preferred the words "evaluate" vision and hearing rather than "examination" of vision and hearing. Additionally, some commenters preferred the language as it appears in current regulations at § 442.477, over the language in the proposed rule. The current § 442.477 requires the physician to use the guidelines of the Public Health Service Advisory Committee on Immunization Practices and the American Academy of Pediatrics regarding immunizations and the American College of Chest Physicians or the American Academy of Pediatrics regarding tuberculosis control. It also requires the reporting of communicable diseases and infections in accordance with law.

Response: We have accepted these comments and have made revisions in the final regulations. We will use the term "evaluate" vision and hearing rather than "examination" of vision and hearing. We also have reinstated the language of current regulations § 442.477 that urges physicians to follow the guidelines of the Public Health Service and the American Academy of Pediatrics with regard to immunizations and the American College of Chest Physicians or the American Academy of Pediatrics regarding tuberculosis control. However, we have not incorporated into the final rule that part of the current regulations at § 442.477 that requires the reporting of communicable diseases. We believe this requirement is well established in State law, compliance with which is required by § 483.410(b) of these final regulations.

Also, in making the changes recommended by the commenters, we have incorporated into the condition concerning health care services under § 483.460 of the final rule, the material that was contained in the three proposed sections: § 442.462, "Physician services", § 442.464, "Physician participation" and § 442.466, "Comprehensive health services". Section 483.460(a) of the final rule contains the standard for physician services, and paragraph (b) contains the standard for physician participation in the IPP.

In the final rule, the standard for physician services at § 483.460(a) will retain the requirement for the availability of physician services 24 hours a day as well as the requirement that to the extent permitted by State law the facility may utilize physician assistants and nurse practitioners. The material regarding the development of a medical care plan previously under proposed § 442.464, has been moved to this section. Additionally, the requirement for general medical and preventive health services as well as annual physical examinations previously under the standard for comprehensive health services at the proposed § 442.466 has been moved to this section. Also, as mentioned in the response to the comments on section § 442.466, the components of the physical examination have been revised to include the same general requirement of current regulations § 442.477.

The new standard at § 483.460(b) concerning physician participation in the individual program plan will contain two of the requirements previously found under the proposed standard for physician participation at § 442.464. These are the requirements for physician participation in the establishment of each newly admitted clients' IPP as well as physician participation in the review and update of the IPP as appropriate.

CC. Nursing Services (Proposed § 442.468, Final § 483.460(c))

Comment: Thirty-one commenters objected to the proposed regulations at § 442.468(a) that would require nursing services to include the development, review, and update of an IPP as part of the interdisciplinary team process. They recommend that the regulations specify that nurses participate in the IPP process only when clients have nursing needs.

Response: We have accepted these comments. We have revised the regulations to read nursing services must include participation as appropriate in the development, review, and update of an IPP as part of the interdisciplinary team process.

Comment: Six commenters expressed views on the proposed regulations at § 442.468(c) that would require an onsite, direct physical review at least quarterly by licensed nurses for clients who do not have a medical care plan. Specific comments were: The direct physical review does not necessarily need to take place in the facility and therefore the word onsite should be removed; the term direct physical review should be defined; and finally a quarterly review may not be frequent enough for some clients.

Response: We have revised the regulations to omit the word onsite. The

purpose of the direct physical review is to identify any health problems that might need medical intervention or any potential health problems that could be prevented. We have, however, retained the word "direct" which means that the nurse must review the client directly and not through another staff member such as a member of the direct care staff or through a medical record review.

We have also revised the regulations to read "direct physical examination" rather than "direct physical review". We will explain in interpretive guidelines that this means a visual review of the body as well as any tactile examination that might be necessary. A paper review of the patient's medical record and health statistics is not a direct physical examination.

We agree with the commenters that a quarterly physical review of each client by licensed nurses may not be frequent enough for some clients. Although the proposed regulation reads "at least quarterly", we have emphasized the fact that this is a minimal requirement by rephrasing the regulations to read "on a quarterly or more frequent basis". This will mean that the facility will have to conduct quarterly reviews on all clients, but potentially more frequent reviews on clients who may require more frequent nurse surveillance.

In making the above revisions, we realized that the proposed §§ 442.468(c) and 442.470(d) contained duplicative requirements for health surveillance of clients on a quarterly basis. The only difference between the requirements is that the proposal at § 442.470(d) would require that licensed nursing personnel conduct the health surveillance. In this final rule, we have eliminated the duplication. The requirement for the quarterly health surveillance of clients by a licensed nurse appears in final regulations at § 483.460(c).

Comment: There were two comments on the proposed regulation that would require nurses to participate in training clients and staff as needed in appropriate health and hygiene methods. The commenters questioned whether or not the topics of health and hygiene included sex education.

Response: It is the intent of the proposed regulation that training in health and hygiene methods include the topic of sex education. This will be made clear in the interpretive guidelines.

DD. Nursing Staff (Proposed § 442.270, Final § 483.460(d))

Comment: Twenty commenters objected to the provision in § 442.470(c) requiring a facility to employ a licensed nurse on one full shift 7 days a week. Seventeen of the twenty felt that the requirement was too costly; one felt that job-sharing should be recognized as an appropriate means to accomplish the full-time equivalency; one suggested that contractual arrangements be recognized as an appropriate means of providing nursing services; one commenter felt the requirement should be changed to require a licensed nurse at least 16 hours a day, 7 days a week with a licensed nurse "on call" during the remaining 8 hours.

Response: We have accepted these comments except for the one requesting that facilities be required to provide 16 hours of licensed nursing time per day, 7 days a week. Since they had the same basic intent, we have combined the proposed requirements at § 442.470 (b) and (c) and incorporated them into the final rule at § 483.460(c) to state that the facility must employ or arrange for licensed nursing services sufficient to care for clients health needs including those clients with medical care plans. This gives each facility more freedom to determine what nursing services are required for its particular client population. Also, there is nothing in these final regulations which prohibit the use of job-sharing to meet the nursing personnel requirement.

Comment: The proposed § 442.460(d) would require facilities that use only licensed practical or vocational nurses to have a formal arrangement with a registered nurse for consultation. One commenter suggested that the consultation be a monthly activity with a flexible amount of time. Another commenter requested that the frequency of consultation and amount of time for consultative activities be specified. Finally, one commenter suggested that four hours of R.N. consultation per week be required in facilities with 16 or fewer beds.

Response: We disagree with the general thrust of these comments because we believe that the consultation needs of each facility cannot be specified in regulations. The nursing care needs of clients vary considerably from facility to facility. The amount of R.N. consultation time should be based on the needs of the clients. Thus, we have allowed facilities flexibility by not prescribing in regulations the number of R.N. consultation hours they must provide.

The proposed § 442.460(d) that would require a quarterly nurse surveillance of each client without a medical care plan was duplicative of the material in the proposed § 442.468(c). Therefore, it has been removed. (See the discussion under the response to comments regarding the proposed § 442.468(c), Nursing services.)

EE. Dental Services (Proposed § 442.472, Final § 483.460(e))

Comment: Twenty commenters objected to the proposed regulation that would require dental professionals to participate as appropriate in the development, review, and update of the IPP as part of the interdisciplinary process. The majority of the commenters requested clarification on how the dentist is expected to participate. Most of the commenters felt that the dentist should be able to submit a written report to the interdisciplinary team.

Response: We have accepted these comments. We agree that participation of the dentist can be through a written report. We therefore have modified the regulation to read: If appropriate, dental professionals must participate in the development, review, and update of an IPP as part of the interdisciplinary process either in person or through a written report to the interdisciplinary team.

Comment: One commenter requested that we retain current regulations found at § 442.459, "Education and training". These regulations require the facility to provide education and training in the maintenance of oral health.

Response: We have accepted the commenter's suggestion and have added a provision to final regulations § 483.460(e)(3) to require the facility to provide education and training in the maintenance of oral health.

FF. Comprehensive Dental Treatment (Proposed § 442.476, Final § 483.460(f))

Comment: Several commenters expressed views on the proposed requirement for comprehensive dental treatment services including dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health. In their view, reimbursement for comprehensive services is not available in every State and the regulations should not require services for which there is no reimbursement.

Response: Dental services are included in the ICF/MR benefit, even though a particular State may elect not to cover them separately for *non*-ICF/MR recipients. The law and regulations require that States make adequate payments (see § 447.253(b)(i)). The Medicaid statute (at section 1902(a)(13)(A)) states, in part, that payment rates for ICF/MR services must be "* * * reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards * * *". Thus, we would expect a State's ICF/MR payment rates reasonably to reflect the various items and services which constitute the ICF/MR benefit.

Comment: Four commenters expressed opinions on the proposed regulation that would require the provision of emergency dental treatment on a 24-hour-a-day basis by a licensed dentist. In their view, it is the availability of the services that is at issue, not the provision.

Response: We have accepted these comments and have amended the regulation to require that comprehensive dental treatment services include the availability of emergency dental treatment on a 24-hour-a-day basis by a licensed dentist.

GG. Documentation (Proposed § 442.478; Final § 483.460(h))

Comment: Three commenters expressed an opinion on the proposed standard that would require the facility to provide a copy of the dental record (if available) or the most recent dental summary to the client, his parents, or guardian upon discharge from the facility. In their view, the requirement is not necessary and increases program costs.

Response: We agree with the commenter and have deleted this requirement entirely. A general requirement found in these final regulations at § 483.410(c)(3) addresses the general issue of confidentiality of client records and requires the facility to develop policies and procedures for the release of client information.

HH. Pharmacy Services (Proposed § 442.480; Final § 483.460(i))

Comment: Thirteen commenters expressed approval of this standard because it would place the responsibility for the provision of drugs and biologicals on the facility whether the facility does so directly or through arrangement. One commenter objected to the requirement that would allow facilities to use "off site" pharmacies because they would not be able to meet the *immediate needs* of ICF/MR clients.

Response: Current regulations allow a facility to obtain pharmaceutical services from an outside resource, and we believe that these final regulations should continue that practice especially with the growth of small facilities with 16 or fewer beds that could not realistically operate their own pharmacies.

II. Drug Regimen Review (Proposed § 442.482; Final § 483.460(j))

Comment: A number of commenters objected to the proposed requirement that would involve the pharmacist, as appropriate, in the development of the IPP. Many did not feel that the participation of the pharmacist was necessary. Others thought the pharmacist's participation could take place by means of written comment. Still others thought that the pharmacist should have input from the indisciplinary group instead of the pharmacist participating, as appropriate, in the development of the client's IPP.

Response: We have accepted the suggestion of the commenters who thought the pharmacist could participate in the IPP by means of a written report and have revised the regulations accordingly at § 483.460(j)(5). We also agreed with the commenter who suggested that the pharmacist reviewer must conduct reviews with input from the interdisciplinary team and have added this provision to the final rule at § 483.460(j)(1).

Comment: We received only one public comment on the issue of requiring a pharmacist rather than a registered nurse to conduct quarterly drug regimen reviews. However, we received many comments on this issue in response to a proposed rule published on May 16, 1986 (51 FR 17997) concerning drug regimen reviews in skilled nursing and intermediate care facilities. In that proposal, we again had stated that we would allow either a pharmacist or a nurse to conduct these reviews. Approximately 100 commenters objected stating that they believed that only a pharmacist should conduct the reviews. The commenters stated that registered nurses did not have the time or the knowledge base to conduct the reviews adequately. As a result of the public comments concerning drug regimen reviews in skilled nursing and intermediate care facilities, we issued, on June 15, 1987 (52 FR 22638), a final regulation that permits only a pharmacist to conduct these reviews in skilled nursing and intermediate care facilities.

Response: In response to the public comments received on the May 16, 1986 rule, and in order to achieve consistency in the regulations, and because we believe that the proper conduct of these reviews can best be assured by requiring that a pharmacist perform them, we have modified the final rule to permit that only a pharmacist may conduct these reviews.

JJ. Drug Administration (Proposed § 442.484; Final § 483.460(k))

Comment: There were 49 commenters who expressed opinions on this proposed standard. A significant number of these commenters objected to the requirement at the proposed § 442.484(b) for administering drugs without error. Many felt this standard was unrealistic and asked that it be deleted. Others believed that medication errors should be addressed but some tolerance should be allowed. Others wished to defer to State law on this issue, and some complained that the facility should not be held responsible for clients who make errors while "on pass" from the facility. Finally, one commenter complained that the facility would modify records to cover-up medication errors.

Response: We have carefully reviewed these comments and our current survey procedures for identifying medication errors and have decided not to modify the proposed regulation. The current surveyor procedure for medication errors relies on an observation technique and not on records. It allows an overall tolerance of five percent for non-significant medication errors but faults the facility for any one error considered a threat to the health and safety of an individual client. This medication error detection methodology has been in use for several years and has demonstrated its ability to change the behavior of the facility so that errors are identified and a genuine effort is made to reduce their incidence. The surveyor procedure used to detect medication errors does not include the observation of drugs administered while clients are "on pass" from the facility. Since medication errors have been shown to be a significant problem in a wide variety of health care facilities, we are retaining this requirement unchanged.

Comment: A significant portion of the commenters also expressed concern about the provision at the proposed § 484.484(g) that would require a pharmacist to package and label all drugs used by the client while the client is not under the direct control of the facility. This proposal was an effort to assure proper labeling and packaging of the drugs that clients must possess while enroute to and at various off-site workshops, classes, and home visits. Many commenters expressed concern about the availability of the pharmacist to perform this task on short notice as is the case with many home visits. Another commenter emphasized that some States now have standards that allow facility

personnel under specific circumstances to repackage and label drugs for clients "on pass".

Response: We were convinced by these arguments and have modified the final regulation (§ 483.460(k)(7)) to state that such drugs are "packaged and labeled in accordance with State law" instead of "packaged and labeled by the pharmacists".

Comment: Several commenters complained that medication errors and adverse drug reactions when they do occur should be reported only to a physician and not to the registered nurse as would be allowed under the proposed § 442.484(i).

Response: We have accepted this comment. We are not including registered nurses among those to whom these events can be reported.

Comment: There was general support for the use of unlicensed personnel to administer drugs if State law permits. However, some commenters expressed concern about the proposed regulation at § 442.484(c) that would require a registered nurse to teach unlicensed personnel about the facility-specific aspects of drug administration.

Response: The original objective of this training was to assure that the unlicensed personnel have training in the unique aspects of a particular facility's drug distribution system. Because this requirement may present interpretive problems and because the objective is basically covered under the standard for staff training at § 483.430(e) of this final rule, it has been deleted as a specific requirement under the standard for drug administration.

KK. Drug Storage and Record Keeping (Proposed § 442.486; Final § 483.460(l))

Comment: One commenter wanted to add a requirement to the proposal to require the pharmacist to inspect drug storage areas in the facility.

Response: We have no objections to a pharmacist periodically inspecting drug storage areas and reporting problems to the facility. However, we do not believe that it is necessary to mandate this through regulation.

Comment: One commenter suggested that the receipt and disposition of controlled drugs be reconciled on a routine basis (for example, every shift or everyday) rather than on a sample basis as required by the proposed rule at § 442.486(d).

Response: We do not wish to mandate a routine reconciliation of controlled drugs unless a sample reconciliation indicates a more frequent reconciliation is necessary (for example, in the case of missing controlled drugs). We believe it is unnecessary to require a facility to perform routine checks for missing controlled drugs unless there is a good reason to do so.

LL. Labeling (Proposed § 442.488; Final § 483.460(m))

Comment: One commenter objected to the requirement at proposed § 442.488(b) that would prohibit the facility from retaining outdated drugs or drugs with missing or torn labels. The commenter suggested that such drugs be removed from use.

The same commenter suggested that drugs discontinued by the physician be "immediately removed from the client's current medication supply" rather than the wording at proposed § 442.488(c) that states that such drugs must "not be available for administration".

Response: We have accepted both of these comments and have incorporated the new language into these final regulations.

MM. Laboratory Services (Proposed § 442.489; Final § 483.460(n))

Comment: There were seven commenters on the proposed requirement at § 442.489(d)(1) that the laboratory director must be either a pathologist or a doctor of medicine or osteopathy with training and experience in clinical laboratory services; or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services. Most of the commenters felt that the requirements were unnecessarily high. Commenters had a variety of suggestions for changing the provision, such as requiring: a baccalaureate degree with a major in a physical, chemical, or biological science plus appropriate experience; a laboratory technologist certified by the American Society of Clinical Pathologists; a trained laboratory technologist with regular consultations from a Clinical Pathologist. One commenter said the requirement should be guided by State law.

Response: We have not adopted the comments requesting lower qualifications for the position of laboratory director. However, currently the Department has underway a thorough review of all clinical laboratory regulations. During the next year, the Department will be proposing regulation changes and other reforms intended to remove inconsistencies and eliminate unnecessary credentialing requirements while continuing to ensure patient health and safety. We have adopted the request that the requirement be guided by State law when State laws address the qualification requirements for directors of laboratory services.

Comment: Two commenters felt that requirements for laboratory services in ICFs/MR should be the same as the conditions for coverage of services of independent laboratories found at 42 CFR Part 405, Subpart M.

Response: The proposed requirements for laboratory services in ICFs/MR are fundamentally the same as the conditions for coverage of services of independent laboratories currently found in Subpart M. For example the requirements contained in Subpart M at §§ 405.1314(a), 405.1316 and 405.1317 were incorporated into the proposed regulations by the cross reference found in § 442.489 (c), (e) and (f). This cross-reference was retained in the final rule. The personnel requirements in both the proposed and final laboratory standards are considerably less detailed than those found in Subpart M. As stated in our response to the previous comment, the Department has currently underway a thorough review of all clinical laboratory regulations including personnel requirements. Following this review, changes to the regulations may be proposed that would impact on laboratory services, including laboratory services in ICFs/MR.

Comment: Two commenters felt that it may be necessary to limit laboratory testing in small institutions of under 50 beds. Additionally one of the commenters recommended prohibiting on-premises testing in those facilities with 16 or fewer beds.

Response: We cannot accept the comment regarding limiting laboratory testing in small institutions because there is no consensus as to what tests should and should not be performed in smaller facilities. We also did not accept the comment recommending prohibiting on-premises testing in those facilities with 16 or fewer beds. This prohibition is unnecessary because we believe that such small facilities would not attempt to meet the laboratory services requirements in order to do the few tests their clients might require. The new regulations will, however, require small facilities that collect their own specimens to refer those specimens for testing to laboratories that are approved for participation in the Medicare program.

Comment: Several commenters felt that the proposed regulations were unclear with regard to when or if facilities are to provide laboratory services.

Response: We agree with the commenters that the proposed regulations were unclear on these points. The proposed § 442.489(b) stated, "If an ICF/MR that meets the requirements of this subpart operates its own laboratory, the laboratory must * * *". The intent of the proposal was to permit facilities to choose whether or not they wish to provide laboratory services. If a facility does wish to provide these services, it must meet the proposed requirements of § 442.489. To make this point clear, we have incorporated in the final regulations at § 483.460(n) language that reads, "If a facility chooses to provide laboratory services", the laboratory must meet the specified requirements.

Comment: Commenters stated that it was unclear whether or not the laboratory is simply to be used as a drawing station for the collection of specimens which are then sent out to an independent laboratory for study.

Response: The proposed requirements for laboratory services were not intended for a laboratory that operates only as a drawing station. We indicated in the proposal at § 442.489(a) that for purposes of this section, "laboratory" would mean a facility for the performance of specified laboratory tests. Nothing in the proposed or final regulations, however, prohibits an ICF/MR from operating a drawing station; that is, the referral of specimens to other laboratories. We have attempted to make this clear in the regulation by requiring that if the facility chooses to refer specimens for testing to a laboratory, the referral laboratory must be approved by the Medicare program either as a hospital laboratory or an independent laboratory.

Comment: Section 442.416 of the proposed regulations would require that facilities must be in compliance with all applicable provisions of Federal, State and local laws. The proposed regulations at § 442.489(b)(1) would require that a laboratory be licensed or approved according to State law if it is located in a State that provides for the licensing or approval of laboratories. Commenters stated that this is duplicative and therefore should be removed.

Response: We have accepted this comment and have removed this provision from the standard on laboratory services.

NN. Client Living Environment (Proposed § 442.500; Final § 483.470(a))

Comment: Several commenters noted that there is an apparent contradiction in the proposed § 442.500 between paragraph (a), which would prohibit a facility from housing together clients of grossly different ages, developmental levels, and social needs unless the housing promotes their mutual growth and development, and paragraph (b), which would prohibit segregating clients on the basis of physical handicaps and requires integration of physically handicapped clients with others of comparable social and intellectual development.

Response: We note that a client living pattern which takes into account such factors as age, developmental levels, and social needs (paragraph (a)) is not equivalent to a client living pattern based on physical handicap (paragraph b)). Paragraph (a), in referring to "grossly different ages," is intended to ensure, for example, that very young children are not inappropriately housed together with much older, adult clients. While it can be argued that a certain degree of client mix promotes normalization, extreme differences may in some instances actually impede appropriate training and pose a threat to the safety of younger, more vulnerable clients. If clients of grossly different ages, developmental levels, or social needs are housed in close proximity, the facility must demonstrate that it has planned this housing to promote the clients' mutual growth and development. Paragraph (b), on the other hand, prohibits segregation on the basis of physical handicap: that is, housing clients together only because they have physical disabilities. This paragraph indicates that the facility should house its clients based on common skill levels; that is, comparable social and intellectual levels of development, rather than by physical disability. Therefore, we do not believe that there is any contradiction between paragraphs (a) and (b).

Comment: A number of commenters asserted that the proposed prohibition of segregation by handicap under § 442.500(b) of the proposed rule potentially conflicts with other important objectives, such as the ability to address individual clients' specialized training needs; fire safety (for example, placement of wheelchair-bound clients near fire exits); and the ability to establish specialized ICFs/MR for clients with specific developmental disabilities.

Response: We do not believe that clients with a common physical disability necessarily must be housed together in order to meet their specialized training needs. Such housing would be appropriate only if all of the clients with a particular disability also happened to be at the same skill level and, thus, had identical training needs. Again, in this situation, the facility should look to the client's skill level, rather than physical disability, in determining appropriate housing patterns.

Regarding the comment about the possible effect of housing patterns based on concerns for fire safety, we note that housing of non-ambulatory individuals currently is permitted in facilities such as community group homes, as long as the facility meets applicable fire safety requirements. Also, we do not believe that the provisions of this section of the regulations prevent the establishment of specialized ICFs/MR for clients with specific developmental disabilities, since it does not deal with the types of individuals that a facility admits, but only with the housing of clients once they are admitted.

Comment: Some commenters suggested that, in the proposed § 442.500(b), the term "handicaps" should be replaced with "disabilities," and the term "epileptic" should be replaced with "persons with seizure disorders".

Response: We accept these comments, and have revised the final regulations accordingly.

Comment: One commenter suggested that, in implementing these regulations, a distinction should be made between large facilities and small homes.

Response: The basic purpose of this provision is to establish the general principle that the facility should house together clients who are at comparable developmental levels, and to permit housing of disparate clients together only if it promotes their mutual growth and development. We believe that a special distinction regarding small facilities is unnecessary, since the population in such settings normally tends to be more homogeneous. Also, we note that even in small facilities, these regulations do not preclude housing clients at different developmental levels in close proximity, as long as the housing promotes their mutual growth and development.

OO. Client Bedrooms (Proposed § 442.502; Final § 483.470(b))

Comment: We received comments suggesting that various provisions of current regulations §§ 442.436 (Personal possessions); 442.442 (Resident clothing); and 442.404(g)(6) (permitting married couples to share a room) relating to individual rights should be retained.

Response: Section 442.401(k) of the proposed regulations (final § 483.420(a)(11)) already addressed two of the commenters' concerns in that it would require that clients be permitted to retain and use personal possessions and appropriate clothing. We are

restoring the provision regarding married couples sharing a room to the section on protection of clients' rights (final regulations at § 483.420(a)(12)).

Comment: Two commenters suggested adding a requirement for an appropriately sized window to the proposal at § 442.502(a)(1) that would require each room to have at least one outside wall.

Response: This requirement was already addressed in the proposed § 442.508(a)(1) that would require each bedroom to have at least one window to the outside, and in the proposed § 442.502(b) that would require that the window in a below-grade bedroom be usable as a second means of escape. In the final rule, these provisions are located at § 483.470(b)(1) and (2)(i).

Comment: Several commenters requested us to define "newly certified," as used in the proposed § 442.502(a)(5) that would require floor-to-ceiling walls in all "newly certified" facilities.

Response: We are revising the final regulations at § 483.470(b)(1)(v) to clarify our intent. In the final rule, we have used the word "initially" instead of "newly", and have modified the regulation so that all facilities "initially certified" on or after the effective date of these regulations must have walls that extend from floor to ceiling. This regulation affects only those facilities "initially certified" after the effective date of the regulations. A facility that is certified for participation in Medicaid after a period of non-participation (because its certification had been terminated or voluntarily withdrawn) is considered an "initial certification" and will be required to install floor to ceiling walls.

We note that the proposed rule did not address the issue of floor to ceiling walls when an ICF/MR carried out new construction, renovation or conversion. To address this issue, we have modified the regulation so it requires a facility to install floor to ceiling walls in newly constructed portions and during major renovations or conversions. We will explain in interpretive guidelines that, in our view, "new construction and major renovations or conversions take place if: (1) Clients must vacate the facility; (2) no Medicaid billing takes place; (3) a resurvey is required before clients return.

Comment: Several commenters requested clarification of proposed § 442.502 paragraph (b) that would permit below-grade bedrooms and provide specifications for windows in them. Points requiring clarification included: ground level versus floor level windows; requiring that windows be usable as a means of escape by the client occupying the room; and, that window measurements are taken from the sill.

Response: We are revising the final regulations at § 483.470(b)(2) to clarify that, in a below-grade level bedroom, the window must be no more than 44 inches above floor level (for facilities surveyed under the Health Care Occupancy Chapter of the Life Safety Code, the window must be no more than 36 inches above the floor); that the window must be usable as a second means of escape by the client occupying the room; and, that floor-to-window measurements are taken to the sill.

Comment: Since the proposed § 442.502(c) mentions only a medical basis for granting a variance to permit more than four clients per bedroom, a physician, rather than psychologist, should make this determination.

Response: We agree with this comment, and will delete the words "or psychologist" from the language describing the type of individual that can grant a variance to the limit of four clients per bedroom (final regulation § 483.470(b)(3)).

Comment: One commenter suggested granting a variance to the four-client-per-bedroom limit for behavioral as well as medical problems; still others suggested eliminating the variance provision altogether, or granting a variance only with the interdisciplinary team's approval. Other commenters recommended a maximum of two, rather than four, clients per bedroom.

Response: We are retaining the variance provision. While we do not regard broadening the variance procedure (for example, to include behavioral problems) as appropriate, we also believe that eliminating the variance altogether would pose serious problems for some facilities.

Comment: A number of commenters requested clarification of the proposal at § 442.502(d)(2) that would require a "fire safe" mattress. Several indicated that a mattress which is literally fire safe is impossible to obtain or, at best, is uncomfortable, expensive, and inappropriate for use in a health care facility. Others suggested requiring instead a "fire resistant" mattress cover or simply a reference to applicable Life Safety Code or National Fire Protection Association standards.

Response: The Consumer Product Safety Commission (CPSC) administers regulations that prohibit the sale of mattresses that have not passed their requirements for Flammability of Mattresses (and Mattress Pads) (16 CFR Part 1632). These regulations prohibit the sale of mattresses manufactured or imported in the United States unless they have passed a standard test for cigarette ignition, which is generally regarded as being one of the leading causes of mattress fires. These requirements became effective June 22, 1973. Thus, all mattresses purchased by ICFs/MR after that date were subject to CPSC requirements. As facilities replace mattresses, we expect this potential risk to diminish (a CPSC study of hotels and similar occupancies showed that about ⅔ of the mattresses have been replaced since June 22, 1973). Because CPSC enforces these regulations, there is no need for HCFA to establish separate standards defining fire safe mattresses. Therefore, in these final regulations we have deleted the reference to fire safe mattresses.

Comment: One commenter requested that the proposed requirement at § 442.502(d)(3) for appropriate bedding be clarified specifically to permit the use of a single bedspread year-round if it is appropriate for all seasons. Several others suggested that the proposal at § 442.502(d)(4), which would require an individual closet for each client, be changed to allow the alternative of individual space in a shared closet.

Response: With regard to bedspreads, we believe that interpretative guidelines would be a more appropriate vehicle for making this clarification, and we will include it in the guidelines when they are published.

With regard to closets, we are clarifying the final regulations at § 483.470(b)(4)(iv) by requiring the facility to provide each client with individual closet space in the client's bedroom. This permits the facility either to provide the client with an individual bedroom closet or with a designated area in a shared bedroom closet, but precludes the use of clothing bins in a facility clothing room.

Comment: Some commenters indicated that the proposed § 442.502(d)(4), in describing bedroom furniture, should simply require furniture "as appropriate to the needs of the client" rather than requiring a desk for a client who cannot use it. Another commenter suggested that a night table be required rather than a table or desk, as being closer to normal bedroom furniture.

Response: Regarding the types of "appropriate" furniture described in this provision, we note that these items are mentioned as illustrative examples only; we did not intend this language to require a particular type of furniture, such as a desk, for a client who is unable to use it, or for whom it is otherwise contraindicated. Rather, each client should have furniture, appropriate to his or her needs, that is used by the client alone. However, in order to avoid possible confusion, we are deleting the examples and revising the final regulations at § 483.470(b)(4)(iv) to require that the facility furnish each client with functional furniture appropriate to that client's needs. We use the descriptive term "functional" furniture to distinguish these items from the use of decorative "furnishings," such as plants, pictures, etc., which, though encouraged as being an appropriate and desirable aspect of a normalized living environment, cannot serve as a substitute for appropriate furniture.

PP. Storage Space in Living Units (Proposed § 442.504; Final § 483.470(c))

Comment: One commenter requested that we define "living unit" as used in the proposed §§ 442.504, 442.508 and 442.510.

Response: We are deleting this term where it appears in the proposed regulations, and substituting the terms "bedroom" and "area used by clients", as appropriate.

Comment: One commenter suggested that proposed § 442.504(b) should provide not only for storage of the client's personal possessions, but for the safety of these possessions as well.

Response: We believe that the safety of the possessions is implied in the requirement that there be "suitable" storage space, therefore, no change is being made.

Comment: Another commenter on proposed § 442.504 paragraph (b) advocated limitations on accessibility of personal possessions under a behavior modification program or when the interdisciplinary team determines that access would endanger the client or others.

Response: We agree that limitations on accessibility of personal possessions can be appropriate in certain situations. However, we do not believe that prescriptive regulations are necessary in order to permit this. Proposed paragraph (b) merely requires that the client have access to the space in which his or her personal possessions are ordinarily stored. While this implies access to the possessions themselves, it does not require unrestricted access in situations where this is precluded by an active treatment program designed to eliminate inappropriate behavior or in which the interdisciplinary team determines that unrestricted access would endanger the client or others.

Comment: The proposed § 442.504(c) would require adequate clean linen and dirty linen storage areas. Several commenters said that small facilities should not be required to have separate storage rooms for clean and dirty laundry; rather, it would be sufficient to require specific procedures to prevent contamination and unsanitary practices. Others suggested that we permit a bedroom hamper, if sanitary and odor-free, to be used for dirty laundry storage.

Response: The laundry storage requirement in this provision requires clean linen and dirty linen storage "areas" rather than "rooms." This means that clean linen and dirty linen must be stored separately, but need not be stored in different rooms. A bedroom hamper would be an acceptable dirty linen storage "area" if kept clean and odor-free, consistent with the infection control requirements of final regulations at § 483.470(l).

QQ. Client Bathrooms (Proposed § 442.506; Final § 483.470(d))

Comment: One commenter suggested that under the provisions of the proposed § 442.508 each bathroom should be equipped with a mirror and sink/toothbrush training area.

Response: We believe that this is already implied in proposed § 442.506(a)'s requirement for "bathing facilities appropriate * * * in design to meet the needs of the clients".

Comment: Several commenters expressed concern about the proposed requirement for bathroom privacy unless contraindicated by the client's condition. One commenter stated that any contraindications to bathroom privacy should be determined by the interdisciplinary team and should be indicated in the client's individual program plan.

Response: We agree with those commenters who stated that individual privacy in toilets, bathtubs, and showers does not preclude assistance given from the facility's staff when necessitated by the individual client's condition. Accordingly, we have deleted the provision "unless contraindicated by the client's condition" from the final rule at § 483.470(d)(2). However, we do not think that the regulations should attempt to identify every situation that can conceivably be placed in the individual program plan. Placement of this information in the IPP should be at the discretion of the facility.

Comment: Other commenters stated that exceptions to privacy should be programmatic rather than incorporated in the physical plant and asserted that locked bathroom doors should be encouraged when appropriate.

Response: As noted above, the provisions of the regulations already assure bathroom privacy. We do not believe it is necessary to include prescriptive provisions in the regulations regarding structural design or use of locked bathroom doors.

Comment: Another commenter stated that privacy should extend through the entire living unit, not just the bathroom.

Response: We agree with the general objective of providing for privacy, whenever possible, in the client's living unit; however, this objective must be balanced against the need for a reasonable degree of interpersonal contact and interaction, in order to approximate more closely a normalized environment. In this context, we believe that the client's general right to privacy is already sufficiently ensured by final regulations at § 483.420(a)(7) that require that each client is provided with the opportunity for personal privacy.

Comment: A number of comments were received on proposed § 442.508(c), which restricts water temperature from hot water taps to 110 degrees F. or less in areas of the facility serving clients who have not been trained to regulate water temperature. Several of these commenters expressed support for the exception to the temperature restriction for suitably-trained clients, noting that this offers a more normalized setting; others noted that the regulations need to be flexible enough to address facilities where clients are participating in (but have not yet completed) a training program to regulate water temperature.

Response: We believe that the issue of clients who are in the process of being trained to regulate water temperature can be addressed in interpretive guidelines, which would be based on the assumption that such clients are under direct supervision while being trained to operate hot water temperature controls.

Comment: One commenter suggested a waiver of the water temperature restriction when the program director can demonstrate that client safety is addressed by means other than a control valve.

Response: The regulations require only that water from the hot water tap be maintained at or below a prescribed temperature if clients have not been trained to regulate temperature, but do not prescribe the specific method (such as a control valve) for doing so.

Comment: One commenter asserted that having hot water temperatures below 120 degrees F. results in the water temperature being too cold for showers.

Response: We believe that the longstanding limit of 110 degrees F. represents an acceptable balance between comfort and safety factors, and should be retained. A hot water tap that is limited to this temperature, when appropriately operated in conjunction with the cold water tap, should produce

sufficiently warm water temperatures to ensure comfort without posing a threat to the safety of clients who have not been trained to regulate water temperature.

RR. Heating and Ventilation in Living Units (Proposed § 442.508; Final § 483.470(e))

Comment: One commenter suggested that the proposed § 442.508(a)(1) that would require each client bedroom to have at least one outside window, be changed to at least one outside window or door (that is, allow a door to be used for room ventilation in lieu of an outside window).

Response: Since a door serves primarily to provide egress rather than to perform the ventilation and aesthetic functions of an outside window, we do not believe the language in the proposed rule should be changed. In addition, the outside window serves in an emergency as an alternate means of escape from a below-grade bedroom (see final regulations § 483.470(b)(2)(i)).

Comment: Three commenters requested that we include a definition of the term "normal comfort range" in the proposed § 442.508(b)(1).

Response: We plan to address this issue in interpretive guidelines, which would define a normal comfort range in most instances as not going below a temperature of 68 degrees F. or exceeding a temperature of 81 degrees F. However, the term could also be interpreted to include temperatures that exceed the upper range of 81 degrees F. for facilities in geographic areas of the country (primarily at the northernmost latitudes) where that temperature is exceeded only during rare, brief episodes of unseasonably hot weather. This interpretation would apply in cases where it does not adversely affect client health and safety, and would enable facilities in areas of the country with relatively cold climates to avoid the expense of installing air conditioning equipment that would only be needed very infrequently.

SS. Floors in Living Units (Proposed § 442.510; Final § 483.470(f))

Comment: Regarding the proposed requirement at § 442.510(a) for floors with a "slip-resistant" surface, one commenter noted that any surface is slippery when wet. Regarding the proposal at § 442.510(b) for "nonabrasive" carpeting in carpeted areas serving clients who crawl, this commenter noted that additional factors should be considered as well, such as mobility, sanitation, and safety. The commenter suggested that we require only that attention be given to floor coverings in living units based on the needs of the clients living therein.

Response: We note that the regulations do not require that floors be "slip-free," but merely "slip-resistant;" there is a presumption that the floor surface will ordinarily be dry and when wet, precautions taken. Regarding the comment concerning mobility, sanitation, and safety, we are adding a requirement to final regulations at § 483.470(f)(3) for exposed floor surfaces and floor coverings to promote mobility and maintenance of sanitary conditions.

Comment: One commenter suggested rewording of proposed § 442.510(b) that would require nonabrasive carpeting (if the floors are carpeted) for clients who crawl. The commenter thought the phrase "clients who crawl" should be replaced with "clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor."

Response: We agree with this comment, and have revised the final regulations at § 483.470(f)(2) to include this language.

TT. Space and Equipment in Dining, Health Services and Program Areas (Proposed § 442.512; Final § 483.470(g))

Comment: Regarding the proposed § 442.512(a), that describes space and equipment requirements for various activities, two commenters suggested that we specifically mention recreation and leisure activities.

Response: We agree with this comment, and have added in final regulations the word recreation to the list of areas (for example, dining, program areas) for which the facility must provide sufficient space and equipment.

Comment: One commenter suggested that the space and equipment requirement be relocated under the nursing services section of the active treatment provisions.

Response: We believe that this requirement is appropriately located as proposed, in the section dealing with physical environment. Issues directly involving health services are already adequately dealt with elsewhere in these regulations.

Comment: The proposed rule at § 442.512(b) would require the facility to furnish, maintain in good repair, and encourage the use of devices such as dentures, eyeglasses, hearing and other communications aids, and braces needed by clients. Almost all of the comments we received on this paragraph stressed that the facility should be responsible for furnishing these items only if Medicaid will pay for them; if Medicaid will not cover these items, the facility should only be required to facilitate their acquisition or assist clients in purchasing them.

Response: We note that, under these regulations, the above items are included in the ICF/MR benefit, even though a particular State may elect not to cover them separately for non-ICF/MR recipients. The Medicaid statute (at section 1902(a)(13)(A)) states, in part, that payment rates for ICF/MR services must be "* * * reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards * * *". Thus, we would expect a State's ICF/MR payment rates reasonably to reflect the various items and services which constitute the ICF/MR benefit.

Comment: With respect to dentures, eyeglasses, etc., one commenter asked us to define the terms "furnish" and "maintain in good repair".

Response: The term "furnish" in this context indicates that the facility is responsible (including financial responsibility) for obtaining these items, and is responsible for making any necessary arrangements to enable the client actually to receive them. (If an item is available free of charge, the facility would satisfy this requirement simply by making the necessary arrangements for the client to receive it.) The term "maintain in good repair" indicates that the facility is responsible for ensuring that these items are kept in good working order, and is responsible for any resulting expense that may be incurred. As noted above, we would expect a State's ICF/MR payment rate to reflect reasonably these items and services.

UU. Emergency Plan and Procedures (Proposed § 442.550; Final § 483.470(h))

Comment: One commenter stated that the proposed regulation at § 442.550, that would require a facility to make its plan for emergencies available to staff, should also require that staff be trained in implementation of the plan.

Response: As we had proposed, the facility is charged (see final regulations at § 483.470(b)(2)) with the responsibility of training the staff in use of the emergency plan and procedures.

Comment: One commenter requested clarification of the term "periodically review", as it was used in the proposed § 442.550(b), that would require that a facility periodically review its plan to meet emergencies and disasters.

Response: We will explain in interpretive guidelines that the periodicity of this review is a judgment made by the facility based on the circumstances of the facility. If the facility changes its physical plant or if changes external to the facility necessitate a review of the disaster plan, then the facility is responsible for carrying out that review.

VV. Evacuation Drills (Proposed § 442.552; Final § 483.470(i))

Comment: One commenter suggested that the proposed rule at § 442.552 that requires evacuation drills include provisions for the non-evacuation of those whose health precludes evacuation during drills.

Response: We do not agree with this comment. The drills required by this section are not only for fire but for other disasters such as hurricanes, tornadoes, floods, etc. In these circumstances, the entire occupancy may have to be evacuated. Thus, the entire occupancy must practice these drills.

Comment: The proposed rule reserved § 442.554. One commenter suggested that we use the reserved section to include explicit requirements on building accessibility for the physically handicapped.

Response: The issue of building accessibility is covered by civil rights laws which are invoked under final regulations at § 483.410(b), Compliance with Federal, State and local laws. The Office for Civil Rights implements Department-wide regulations (see 45 CFR 84.22 and 84.23) relative to building accessibility for the physically handicapped and HCFA does not wish to duplicate or conflict with those regulations.

Comment: One commenter proposed adoption of the "buddy system" of evacuation and was concerned that drills not be conducted in sub-zero weather without assistance.

Response: There is nothing in the proposed regulation that would preclude the use of the "buddy system". The regulations do require drills to be conducted under varied conditions but we would not expect drills to be conducted in sub-zero weather.

Comment: The proposed § 442.552(a) would require evacuation drills to be conducted under "varied conditions". One commenter suggested that the term "varied conditions" be defined.

Response: We will explain in interpretive guidelines that the term "varied conditions" principally refers to different times of the day and night and location of clients in respect to rooms in the building. It also refers to weather conditions since quarterly drills would necessitate varied weather conditions.

Comment: One commenter expressed concern that fire safety standards not be used to exclude persons with physical handicaps.

Response: The adoption of the 1985 Life Safety Code (see Federal Register, Friday, April 18, 1986, page 13224) incorporates chapter 21 of the Code that defines three levels of physical plant requirements depending on the ability of clients and staff to evacuate the building in the event of fire. This new chapter of the Life Safety Code may enable individuals with physical disabilities to reside in the facility depending on the disability, the staff in the facility and the physical plant characteristics. We expect that the adoption of Chapter 21 of the Code will allow many more clients with physical disabilities to reside in small facilities than was previously the case.

Comment: One commenter suggested that each facility be required to have at least one fire extinguisher per floor.

Response: The Life Safety Code specifies extinguishment requirements for various types of occupancies. As a consequence of the adoption of the 1985 Life Safety Code (see Federal Register, Friday, April 18, 1986, page 13224) HCFA has adopted the extinguishment requirements of that Code.

Comment: Several commenters expressed concern that requirements for evacuation drills do not allow a client to move to a "safe area" or from one smoke barrier to another as current regulations allow.

Response: We have modified the final regulation at § 483.470(i)(2)(v) to allow for evacuation to "safe areas" in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code (note that current regulations found at 42 CFR 442.506(b)(1) allow evacuation to a safe area).

Comment: One commenter stated there should be greater emphasis on staff training for fire evacuation drills. Another commenter thought that clients should have evacuation drills as part of their IPP.

Response: We believe that the proposal is adequate in the number of training drills it requires staff to conduct. Additionally, it could be very appropriate to include evacuation drills as part of an IPP if the interdisciplinary team, as a result of the client's comprehensive functional assessment, determined that improved performance during evacuation drills was of high priority for the client to learn. In any case, the final rule at § 483.440(c) (3) and (4) requires that objectives, reflective of a client's needs, be included as part of the IPP.

Comment: One commenter thought that the time it takes clients to evacuate a building would determine what fire safety requirement the facility must meet. That is, the slower the clients exit the building the more fire safe it must be.

Response: Evacuation drills conducted by the facility will not be the criteria for deciding which physical plant requirements a facility must meet in order to comply with Life Safety Code requirements. The State surveyor will determine the level of fire safety requirements on the basis of an objective assessment of the clients, the staff and characteristics of the physical plant.

Comment: One commenter asked whether these regulations should contain a reference to the Life Safety Code.

Response: We have included in final regulations at § 483.470(j) requirements for meeting the Life Safety Code. These requirements are located in current regulations at § 442.508.

Comment: Several commenters indicated that the distinction made in the proposed § 442.552(b) between clients who can cooperate and cannot cooperate in an evacuation is confusing and open to different interpretations. Another commenter did not feel that the proposed requirement for three evacuation drills per year was satisfactory for clients who could not cooperate.

Response: We have deleted in final regulations the reference to clients who can and cannot cooperate. Instead, we are retaining the language of current regulations at § 442.506 that require all clients actually to evacuate during at least one drill each year on each shift.

Comment: One commenter indicated that fire drills should be unannounced.

Response: Good practice dictates that actual, full drills be unannounced, since real emergencies (fire, tornadoes, gas clouds), are immediate and unexpected. However, in order to train staff and clients in evacuation procedures, it is often necessary to practice evacuations without the element of surprise. Thus, it is not possible or advisable simply to require that all drills be unannounced. Rather, by requiring the drills, we meet Life Safety Code requirements and still leave to the facility needed flexibility in how the drills are accomplished.

WW. Paint (Proposed § 442.556; Final § 483.470(k))

Comment: One commenter suggested that a new requirement stating that

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clients cannot be housed in buildings that contain asbestos ceilings or insulation be added to the proposed § 442.556 that contained requirements concerning lead paint.

Response: We fully appreciate the importance of ensuring protection from the hazards of exposure to asbestos fibers within buildings. We note that Congress also is concerned with this issue, as evidenced by its enactment last year of the Asbestos Hazards Emergency Response Act. This legislation established a program under which the Environmental Protection Agency (EPA) sets standards to inspect for, identify, and abate hazardous asbestos in schools. Congress is currently considering legislation that would direct the EPA to expand these activities to include nonschool buildings. In view of this pending legislation, and EPA's experience and technical expertise in this area, we do not believe it would be appropriate for HCFA unilaterally to impose its own standards on asbestos abatement.

Comment: One commenter suggested the proposed regulation be modified to state that paint or plaster containing lead must be removed rather than "removed or covered"

Response: We believe this suggestion would create an unnecessary hardship on facilities. We believe that client safety and health will be assured by requiring the facility either to remove or cover interior paint containing lead.

Comment: One commenter indicated that in the past there was a requirement that paints be non-flammable, and asked if this requirement was still applicable.

Response: We were unable to locate a Federal ICF/MR regulation that prohibited the use of flammable paints.

XX. Food and Nutrition Services (Proposed § 442.558; Final § 483.480(a))

Comment: Several commenters indicated that the proposed § 442.558(a) would unnecessarily restrict facilities because it would require that the facility actually provide each client with a nourishing, well balanced diet. They note that while clients are in "day care" programs the facility cannot be held responsible for the food served.

Response: We agree that emphasis should be placed on the client outcome of receiving an appropriate diet rather than on the facility's provision of it and have amended final regulations by indicating that each client must receive an adequate diet even though the facility does not provide it directly. However, responsibility for the food served to clients by outside programs continues to remain with the ICF/MR, as the legally responsible entity.

Comment: One commenter suggested that the regulation be modified to require a nourishing, well-balanced diet to "meet the individual needs of the clients".

Response: We do not agree that addition of this phrase is necessary. The final regulations at § 483.480(a)(1) include language that states that "each client must receive a nourishing, well-balanced diet". A diet cannot be nourishing nor well balanced for each client unless his or her individual needs have been addressed.

Comment: One commenter suggested that a new section be added to indicate that if behavior modification programs include the use of food, such programs must be reviewed by a registered dietitian to assure provision of a nutritional diet.

Response: We agree with this comment and have revised final regulations to include a provision at § 483.480(a)(4) that requires the interdisciplinary team, including the physician and the dietitian to participate in decisions that include the provision of food as part of a program to manage inappropriate client behavior.

Comment: One commenter suggested that all facilities be required to maintain a current diet manual, and that the manual be approved by the dietitian and medical director and be kept in a convenient location for use in preparing diets.

Response: We believe this suggestion is too prescriptive and believe that the requirement stating that diets be prepared in accordance with the Food and Nutrition Board of the National Research Council, National Academy of Sciences will help to assure the provision of nutritionally sound diets.

Comment: One commenter suggested that the proposed requirement in § 442.558 that would require diets to be prepared in accordance with the Food and Nutrition Board of the National Research Council be modified to provide flexibility for individual choice in food for those clients in independent cooking programs.

Response: These regulations do not preclude a facility from providing individual food choice for clients participating in an independent cooking program.

Comment: One commenter asked whether every facility would be required to obtain a copy of the dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

Response: If a facility can prepare meals in accordance with the standards specified without having a copy (for example, through its dietitian), then it need not possess a copy.

Comment: One commenter pointed out that the standards set by the Food and Nutrition Board of the National Research Council, National Academy of Sciences represent minimum guidelines and not a maximum, and that the nutritional needs of some clients may not be met by compliance with a minimum standard.

Response: We agree and have modified final regulations accordingly. As amended, the language of the final rule at § 483.480(a)(6) requires that diets must be prepared *at least* in accordance with the Food and Nutrition Board standards.

Comment: Two commenters expressed concern that the proposed regulation contains no provisions regarding safety and sanitation in food storage, food preparation or food service.

Response: We believe that these are issues that are well covered by existing State and local laws. Under the final regulations at § 483.410(b), a facility is required to adhere to State and local laws; therefore, we believe there is no need for the suggested change since it would be duplicative.

Comment: One commenter suggested that the duties of the dietitian should be expanded in this regulation to include being responsible for providing annual nutrition assessments and conducting periodic follow-up menu reviews, providing guidance to the food service operations, and being included in the interdisciplinary assessment of client feeding problems.

Response: There is nothing in this section that would preclude the dietitian from performing these functions; however, we believe it is best that each facility utilize personnel according to the facility's individual needs.

Comment: A number of commenters expressed views about the proposed requirement for physician and dietitian participation in decisions about modified and special diets. One commenter wanted other appropriate team members to be involved in decisions about these diets, another questioned the need for a physician and a dietitian to participate in these decisions, and another wanted the interdisciplinary team to make decisions about these diets. Another commenter wanted the physician and dietitian to participate in decisions about the caloric levels and nutritional adequacy of diets. Finally, one commenter wanted the word "participation" to be defined in regulation and another wanted a definition of "modified and special diets".

Response: We do not believe these regulations should specify who should develop modified and special diets as long as the physician and dietitian participate in those decisions. The physician's and dietitian's participation should assure the necessary quality of modified and special diets, but we do not believe it is necessary to regulate their involvement in caloric levels. The facility as a whole is held responsible for nutritional adequacy as required by § 442.558(a) of the proposed regulations. The words "participates in decisions about" contained in proposed § 442.558(b) have been deleted from final regulations. Instead, the final regulations at § 483.480(a)(4) now require the physician and dietitian, as part of the interdisciplinary team, to prescribe all modified and special diets. Finally, we will define "modified and special diets" in the interpretive guidelines as diets that are needed to enable the clients to eat (for example, food that is chopped, pureed, etc.) or diets that are intended to correct or prevent a nutritional deficiency or health problem.

Comment: One commenter suggested that meals be developed by a Food and Nutrition Unit.

Response: We do not believe it necessary to require a Food and Nutrition Unit. However, there is nothing to preclude the establishment of a Food and Nutrition Unit if an individual facility so desires.

Comment: One commenter suggested that a dietitian-to-client ratio be established in these standards.

Response: We believe that to establish dietitian-to-client ratios would be unnecessarily prescriptive.

Comment: One commenter asked that the dietitian be a part of the "feeding team" and another commenter asked that the dietitian be a part of the "infection control team".

Response: The regulations do not require the establishment of either of these teams. However, if a facility chooses to establish such teams, there is nothing that would preclude a dietitian's participation on these teams.

Comment: One commenter suggested that the "nutrition unit" be required to conduct nutrition education programs for direct care personnel, clients and their families.

Response: Section 483.430(e) of final regulations mandates staff training. We believe that this requirement is sufficient to assure that staff is trained. There is nothing in this regulation that precludes the kind of training suggested by the commenter for clients and their families.

YY. Meal Services (Proposed § 442.560; Final § 483.480(b))

Comment: Several commenters objected to the proposed requirement at § 442.560(a) for actually serving three meals a day to clients, since many clients eat lunch at day care programs.

Response: We agree with these commenters and have modified final regulations to incorporate language at § 483.480(b)(1) that specifies that each client must receive at least three meals each day. This would maintain the facility's responsibility to see to it that clients receive three meals a day without requiring them actually to serve the meals themselves.

Comment: Several commenters stated that the prohibition under § 442.560(a)(1) of the proposed regulations that breakfast be served no longer than 14 hours after the evening meal unnecessarily restricted clients' eating habits on weekends and holidays. They noted that this requirement did not allow clients to sleep in on weekends and holidays.

Response: We agree with the comments and, while we have retained the 14 hour meal span requirement, we have included in final regulations at § 483.480(b)(1) an exception allowing an extension to 10 hours on weekends and holidays if a nourishing snack is served at bedtime.

Comment: Several commenters suggested a change to the proposed standard that requires discarding food that has been served and uneaten. They wanted wording that would allow reuse of food served "family style".

Response: We agree with this comment and have changed the final regulations to include language at § 483.480(b)(3) that requires that when food is served "to clients individually" it must be discarded.

Comment: One commenter objected to the deletion in the proposed rule of a provision in current regulations that requires food to be served under sanitary conditions.

Response: We of course agree that it is important that food be served under sanitary conditions; however, we believe this can best be accomplished by relying on local and State laws. Section 442.416 of the proposed rule, now incorporated into § 483.410(b) of final regulations requires compliance with these laws.

Comment: One commenter suggested that the proposed § 442.560(b) regarding the serving of food be revised to require that food be served in sufficient quality as well as quantity.

Response: The issue of quality was dealt with in proposed section § 442.558 (final § 483.480(a)) that requires a nourishing and well balanced diet for each client.

Comment: One commenter proposed adding a new subsection that would mandate: attention being paid to clients' reasonable food preferences; maintaining records of each client's likes, dislikes, and food allergies; and observing each client to determine acceptance of diet.

Response: While we believe that the ends sought in this comment are laudable, we believe that it is too prescriptive to specify these details in the regulations. We note, however, that the final rule at § 483.440(c)(3)(v) requires that the comprehensive functional assessment of each client must identify the client's nutritional status.

Comment: One commenter suggested adding a new subsection (d) to proposed § 442.560 pertaining to recipes, detailing the number of clients to be served from each recipe and the methods used in recipe preparation to assure nutritional value, texture, flavor and appearance, etc.

Response: We believe these suggestions are too prescriptive in nature to be beneficial.

ZZ. Menus (Proposed § 442.562; Final § 483.480(c))

Comment: One commenter stated that the provision in proposed § 442.562 to include average portion sizes for menu items was not necessary.

Response: We do not believe this requirement should be deleted since it can be used as a tool to help determine adequacy of diet.

Comment: Three commenters indicated that we should require that menus be prepared at least one week in advance of their usage.

Response: We believe this to be overly prescriptive in nature. This is an area where the facility should have flexibility.

Comment: Four commenters wanted a requirement for menu approval by a dietitian for nutritional adequacy and for therapeutic corrections of modified diets.

Response: We believe that the concerns addressed in this comment are addressed in proposed § 442.558, Food and Nutrition Services that requires diets to be nourishing and well-balanced and requires a dietitian and a physician to participate in decisions about modified and special diets.

Comment: One commenter indicated the desire to see a prohibition against

"fast food/junk food" appearing on the menu.

Response: The requirement contained at the proposed § 442.558(a) (final § 483.460(a)) that would mandate that each client receive nourishing, well-balanced meals to assure that clients' dietary needs are met. Whether the foods are considered "fast or junk foods" is not a concern so long as the client is receiving a nutritious and well-balanced diet. Therefore, we have not made this change.

Comment: The remainder of the commenters on this section suggested a variety of additions. One wanted retention of an existing regulation requiring the facility to maintain food purchase records. Another wanted menus to be posted in cooking and serving areas. One commenter wanted a regulation on between-meal feedings. Another commenter wanted a section stipulating that modified diets be accurately written and correctly served. Finally, one commenter suggested greater flexibility for clients trained in food purchases and preparations.

Response: We have not modified the proposed regulations to incorporate these comments. It is our view that these requirements are too restrictive, and that sufficient client protections relative to these issues are already contained in the final regulations at § 483.460 and other sections of the final rule.

AAA. Dining Areas and Service (Proposed § 442.564; Final § 483.460(d))

Comment: One commenter suggested that the proposed requirement for provision of table service to all clients who can and will eat at a table be changed to encompass several levels of client functioning.

Response: We do not believe the regulation should be modified to designate table service classifications by client functional status. Clients of grossly different ages, developmental levels and social needs generally are not allowed to be housed together (see final regulations at § 483.470(a)(1)). We do not believe it necessary to extend this requirement to table service as well.

Comment: One commenter suggested that a new subsection be added that would require the facility to provide enough staff trained in appropriate feeding techniques and client positioning.

Response: The final regulations at § 483.430 (c) through (e) already make provisions for sufficient staff and for the training of that staff. We believe these requirements adequately address these issues.

Comment: Section § 442.564 of the proposed rule would require the facility to serve meals to clients in dining areas unless otherwise specified by the interdisciplinary team or a physician. Two commenters suggested that a dietitian also be allowed to exempt clients from this general rule. Another commenter wanted physicians deleted from the list.

Response: We have not changed this standard. The fundamental reason a client would not eat in a dining area relates to the existence of a medical care plan or because of a behavioral or developmental problem that either the interdisciplinary team or the physician would have knowledge of. If the problem relates to a significant dietary problem, the dietitian would be on the interdisciplinary team as a consequence of that problem and would provide input by that means.

Comment: One commenter believes that the provision in current regulations § 442.472(c) requiring clients to eat in an upright position, unless medically contraindicated, should be retained.

Response: Our final regulations at § 483.480(d)(2) require the facility to provide table service to all clients that can and will eat at a table. They also require at § 483.480(d)(1) that the facility serve all clients in dining areas unless exceptions are made by the interdisciplinary team or a physician. It was our intent that these provisions should be sufficient to assure that clients are fed in an upright position unless medically contraindicated. however, to ensure that our intent is clearly understood, we have mentioned it explicitly in the final rule at § 483.480(d)(5).

Comment: One commenter suggested a new standard be established for food service sanitation that would indicate that sanitary standards must be in compliance with State and local laws.

Response: Such a standard would be redundant since § 483.410(b) of the final regulations requires that facilities must be in compliance with all applicable provisions of Federal, State and local laws pertaining to health, sanitation, safety and research.

Comment: One commenter prescribed a series of requirements that a facility's diet services must include. Among these were requirements relating to specifications for supplies and equipment, standards to assure proper storage of food, and other health and safety features.

Response: In general, we believe these requirements would be too prescriptive and would unnecessarily interfere with the effective management of the facility. Additionally, those suggestions relating to food storage and food health issues are best addressed, we believe, by State and local enforcement of applicable regulations and laws.

Comment: One commenter suggested that paragraph (a) of the proposed § 442.564 should be more flexible since not all meals are served in dining areas; for example, picnics and parties.

Response: We will specify in interpretive guidelines that on special occasions such as picnics and parties, clients would not have to be served in established "dining areas".

IV. Provisions of the Final Rule

We are adopting the provisions set forth in the NPRM with the exception of the changes noted in the "Discussion of Comments" (section III above), including the reorganization of the proposed standards into a condition format and the redesignation of these as a new Part 483. As a result of adopting the conditions format and the redesignation, we are making several conforming changes thoughout the regulations. We also are making many technical and clarifying changes.

The conforming changes that we are making will change references to the standards for ICFs/MR to read "conditions of participation". These changes are located at §§ 442.117, 442.118, 442.119 and 442.254. Other conforming changes at §§ 440.150, 442.30, 442.100, 442.101, 442.105, 442.117, and 442.254 will reflect the move from Part 442, Subpart G to Part 483, Subpart D.

We also are making changes to clarify our policies concerning provider agreements and facility certifications. In § 442.13(c), we are adding language to clarify that it is acceptable for a provider to submit a correction plan only if it meets any applicable conditions of participation. This is consistent with our policy that under conditions of participation, a provider agreement may not be entered into with a facility that has deficiencies at the condition-level. A facility may obtain a provider agreement under certain circumstances with deficiencies at the standard-level. We also are revising §§ 442.101, 442.105 and 442.110 to clarify that a facility may be certified by the survey agency with deficiencies at the standard-level only. (Note: Section 442.110 was previously § 442.111. HSQ-127-F, Correction and Reduction plans for Intermediate Care Facilities for the Mentally Retarded (53 FR 1984) redesignated the section.) We are further revising § 442.101 (d) and (e) to clarify which subparts contained the requirements that each type of facility (that is, SNFs, ICFs and ICFs/MR) must meet.

In many cases, the regulations use the phrase "Federal standards" in a general sense; that is, the phrase refers to both standards and conditions of participation. In order to avoid confusion and to maintain the distinction between standards and conditions of participation, we are changing several of these general references to "requirements". These changes are located at §§ 431.610, 442.13, 442.14, 442.16, and 442.30. We also are deleting the general reference to standards used, and intermediate care facilities for the mentally retarded in § 442.1. That section refers to requirements for facility certification which we believe encompasses facility standards and conditions of participation.

Additionally, throughout the proposed regulation, we included language that stated that "The facility must provide * * *" or "The facility must develop * * *". In this final rule, we have changed that language in many instances to "Each client must receive * * *". We believe that this change clarifies our intent to emphasize client needs.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result.

While we believe that the regulations will accomplish these results, for several reasons we are not able to state the economic impact in quantitative terms. First, current cost reporting requirements do not provide data broken down by cost centers that would allow us to determine the impact of either our present or future health and safety requirements on facility expenditures. Second, ascribing cost of care is difficult because of the variations among facilities in terms of facility size and type, and diversity in per diem rates within a State. Third, the variety of client characteristics makes it difficult to ascribe costs of care based on these characteristics.

Nonetheless, we have found no available data or analyses that indicate that these changes would have an annual economic impact of $100 million, or meet the other thresholds specified in the Executive Order. For these reasons, we have determined that a regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

1. Introduction

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ICFs/MR as small entities. Because many facilities may be significantly affected by these final regulations, we have prepared the following regulatory flexibility analysis.

2. Affected Entities

As of December 1986, there were about 3,660 certified ICFs/MR ranging in size from four to approximately 1500 beds, as follows:

Number of beds	Number of ICFs/MR	Percent of total
4 to 15	2,785	76
16 to 100	754	21
Over 100	121	3
Total	3,660	100

Nonprofit ICFs/MR comprise about 54 percent of certified ICFs/MR, for-profit facilities about 23 percent, and governmental facilities about 24 percent.

We expect restructuring of the requirements in this regulation will have a substantial effect on facility performance. These revised regulations de-emphasize paper work and focus on the active treatment of clients. Initially, facilities may experience more deficiency findings from surveys. However, we do not expect more terminations to result because we expect facility performance to change in ways that would improve compliance and quality of care.

Although we anticipate significant changes on the part of facilities as they focus more on the provision of active treatment to clients, we do not expect a substantial increase in their costs. By publishing these rules, we are giving facilities both the notice and the incentive to refocus their attention. Under these provisions, as under the existing rules and survey protocols, deficiencies will commonly result in plans of correction that afford an adequate opportunity for facilities to come into compliance. The new rules will create the opportunity and the incentive for facilities to reallocate their resources more efficiently and effectively, thus increasing emphasis on the provision of active treatment.

We believe that affected facilities will benefit by the new conditions of participation because of the reduced paperwork burdens and costs, and increased administrative flexibility. While some paperwork is legally and programmatically necessary and important, much of it is performed only to meet specific and discrete requirements specified in current regulations. The final regulations' emphasis on staff and client performance, rather than paper compliance, could reduce the production of paper significantly in some of the large public facilities. However, State licensing requirements and internal facility policies and practices, by retaining some of the same requirements, may also affect the extent to which potential savings are realized under these conditions.

There is an established trend to smaller ICFs (that is, facilities with fewer than 16 beds). These regulations afford these facilities the flexibility they need to operate more effectively. While these facilities will benefit from reduced paperwork and increased focus on client outcomes, because of their size they typically experience fewer of the administrative and programmatic problems in delivering and accounting for services to clients which result from the prescriptive, generally inflexible standards contained in the current regulations.

Specific provisions of this regulation which may significantly affect individual facilities include:

(a) Physician services—To the extent allowed by State law, physician assistants (PAs) and nurse practitioners (NPs) may perform physician functions. This provision could result in significant savings for those facilities that can use PAs and NPs for routine health care.

(b) Nursing personnel—Those facilities that serve 16 or fewer persons and that do not now require professional nursing services will be required to arrange for nursing personnel to conduct an in-person health review of each client at least quarterly. This may represent an increased cost over present requirements for affected facilities because we cannot calculate the expected offset in savings that will occur under these conditions. However, this requirement will be balanced by a decrease in costs because facilities that serve 16 or more clients, none of whom have a medical care plan ordered by a physician, will not need a licensed nurse on duty.

(c) Dental services—The new provisions make explicit that which was always intended; that is, comprehensive

dental treatment including emergency care and annual check-ups are required. Some facilities may experience a cost increase, depending on the extent to which they have met the existing standards.

(d) Client bedrooms (floor to ceiling walls)—For facilities initially certified, or in buildings constructed or with major renovations or conversions on or after October 3, 1988, walls must extend from the floor to the ceiling between living quarters. Clients benefit by increased privacy and a slight degree of increased safety by the containment of possible spreading fires. Since this provision reflects state-of-the-art design and construction practices, we expect the economic impact of this requirement on new facilities planning to come into the program to be negligible. Very few new facilities planning to come into the program would not already meet this requirement. Although the requirement for floor to ceiling walls would have an economic impact on facilities undergoing major renovation or conversion, we do not anticipate that many facilities will be affected due to the trend toward smaller facilities.

(e) Client bedrooms (variance to the four-to-a-bedroom rule)—This regulation limits the conditions under which a facility can claim variance to the rule that no more than four persons may be allowed per bedroom. Only physicians may order this arrangement for clients with severe health problems that require continuous monitoring during sleeping hours. For those facilities that have relied on this variance in existing standards, this provision may represent significant increased capital expenditures. Alternatively, facilities (or buildings) affected could face the loss of certification in the ICF/MR program.

(f) Laboratory services—These final regulations will require that ICFs/MR that choose to provide directly inhouse laboratory services must now meet the requirements of § 483.460(n). We had stated in the NPRM that we had identified 110 public ICFs/MR that used inhouse labs and that would be affected by this provision. A more recent survey showed 80 ICFs/MR that operate their own labs. We believe the difference may be because separate labs in other than ICFs/MR were not included in the more recent survey. We are unable to determine the economic impact upon these ICFs/MR because these labs have not been surveyed previously and we do not know to what extent they would meet the requirements of these final rules. However, we believe that any impact upon the ICFs/MR resulting from an attempt to meet these requirements would be offset by increased accuracy of testing and quality of care received by the facility's clients.

(g) Use of interdisciplinary team—We expect that provisions specifying an interdisciplinary team to coordinate and establish one plan of treatment per client will result in increased quality of care and reduced administrative burden.

3. Effect on Clients

We expect that clients will benefit by better quality of care, by more attention to clients' rights, and by more opportunity for self determination. The net result of these revised regulations will be to focus much more attention on the active treatment of individual clients. Instead of multiple treatment plans developed and implemented by different disciplines, there will be a single treatment plan coordinated and integrated by one interdisciplinary team. The individual treatment plan will establish client objectives and set priorities for those objectives into a meaningful progression of treatment activities and programs with a single professional, the qualified mental retardation professional directly furnishing services for the facility, in charge. Client rights have been made more explicit by clearly stating in positive language the rights that each client has and by establishing explicit standards for staff treatment of clients that reaffirm each of these clients' rights.

C. Conclusion

The actual impact on an individual ICF/MR would represent the extent of the incremental difference between a facility's current level of compliance with our regulations and the effort and cost, if any, required to meet these revisions. Overall, we believe that most facilities will be able to improve performance at lower cost and will have greater flexibility to administer their programs. As explained above, smaller facilities already have substantial flexibility, so that the net gain is not expected to be substantial for most of these facilities. Nonetheless, we expect that the quality of care in smaller facilities will be enhanced.

VI. Paperwork Burden

Sections 483.410 (c) and (d); 483.420(d); 483.440 (b) through (f); 483.450 (a) and (b); 483.460 (a), (b), (c), (e), (f), (h), (j), (k) and (l) and, 483.470 (b), (h), (i) and (l) of this final rule contain information collection requirements. The public is not required to comply with the information collection requirements until the Executive Office of Management and Budget approves these requirements under Section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV is amended as set forth below:

A. The table of contents for Chapter IV, Subchapter E is amended by adding a new Part 483 to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * * *

SUBCHAPTER E—STANDARDS AND CERTIFICATION

Part

* * * * * *

483 Conditions of participation for long term care facilities

* * * * * *

PART 431—STATES ORGANIZATION AND GENERAL ADMINISTRATION

B. Part 431 is amended as follows:

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

§ 431.610 [Amended]

2. In § 431.610(f)(1), remove the word "standards" and add in its place the word "requirements".

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

C. Part 435 is amended as follows:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.1009, the introductory language is republished and the definition of "Active treatment in institutions for the mentally retarded" is revised as follows:

§ 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

"Active treatment in intermediate care facilities for the mentally retarded" means treatment that meets the requirements specified in the standard concerning active treatment for intermediate care facilities for persons with mental retardation under § 483.440(a) of this subchapter.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

D. Part 440 is amended as follows:

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.150 [Amended]

2. Section 440.150(c)(3) is amended by removing the phrase "defined in § 435.1009" and adding in its place the phrase "specified in § 483.440".

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

E. Part 442 is amended as set forth below:

1. In the table of contents, § 442.252 and the entire Subpart G (consisting of §§ 442.400—442.516) are removed; and, the titles of §§ 442.105 and 442.110, and the authority citation for Part 442 are revised to read as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Sec.

* * * * * *

442.105 Certification with standard-level deficiencies: General provisions.

* * * * * *

442.110 Certification period: Facilities with standard-level deficiencies.

* * * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 442.1(a), the first sentence is revised to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements and facility certification relating to the provision of services furnished by skilled nursing facilities and intermediate care facilities to Medicaid recipients. * * *

* * * * * *

3. In § 442.13(b)(1), remove the word "standards" and add in its place the word "requirements", and revise paragraph (c) to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(c) *All Federal requirements are not met on the date of the survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements.

(2) The date on which the provider is found to meet all applicable conditions of participation and submits a correction plan for other deficiencies to the State survey agency or an approvable waiver request, or both.

§ 442.14 [Amended]

4. Section 442.14(b)(3) is amended by removing the word "standards" and adding in its place the word "requirements".

§ 442.16 [Amended]

5. Section 442.16(b) is amended by removing the word "standards" and adding in its place the word "requirements".

6. In § 442.30(a), the introductory language is republished and paragraphs (a)(1) and (4) are revised to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

(1) The survey agency failed to apply the applicable certification requirements under Subpart D, E, or F of this part or Subpart D of Part 488, which sets forth the conditions of participation for ICFs/MR;

* * * * * *

(4) The survey agency failed to use the Federal requirements and the forms, methods and procedures prescribed by HCFA in current general instructions, as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

* * * * * *

7. Section 442.100 is revised to read as follows:

§ 442.100 State plan requirements.

A State plan must provide that the requirements of this subpart and Part 483 are met.

8. In § 442.101, paragraphs (d) and (e) are revised to read as follows:

§ 442.101 Obtaining certification.

* * * * * *

(d) The notice must indicate that one of the following provisions pertains to the facility:

(1) The facility meets the applicable requirements:

(i) A SNF meets the requirements in Subpart D of this part and each of the conditions of participation in Part 405, Subpart K of this chapter.

(ii) A ICF meets the requirements in Subparts E and F of this part.

(iii) A ICF/MR meets the requirements of Subpart E of this part and each of the conditions of participation in Part 483, Subpart D of this chapter.

(2) The facility is considered to meet applicable requirements based on waivers or variances granted by HCFA or survey agency if such waivers or variances are allowed under the applicable subpart.

(3) The facility has been certified with deficiencies in accordance with the following:

(i) An ICF has been certified if deficiencies are covered by an acceptable plan of correction.

(ii) An SNF or ICF/MR has been certified with standard-level deficiencies if—

(A) All conditions of participation are found met; and

(B) The facility submits an acceptable plan of correction covering the remaining deficiencies, subject to other limitations specified in § 442.105.

(e) For SNFs and ICFs/MR, the failure to meet one or more of the applicable conditions of participation is cause for termination or non-renewal of the provider agreement.

9. Section 442.105 is amended by revising the title and the introductory paragraph to read as follows:

§ 442.105 Certification with standard-level deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards specified under Subpart D, E or F of this part or under Subpart D of Part 483, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

10. Section 442.110 is amended by revising the title to read as follows:

§ 442.110 Certification period: Facilities with standard-level deficiencies.

11. In § 442.117(a), the introductory paragraph is republished and paragraph (a)(1) is revised to read as follows:

§ 442.117 Termination of certification: facilities whose deficiencies pose immediate jeopardy.

(a) A survey agency must terminate a facility's certification if it determines that—

(1) The facility no longer meets applicable conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs) specified under Subpart D, E, and F of this part or Part 483, Subpart D of this chapter; and

* * * * *

§ 442.118 [Amended]

12. In § 442.118, paragraph (b)(1) is amended by adding the phrase "ICFs/MR" after "SNFs", and paragraph (b)(3)(i) is amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR or standards (for ICFs)."

§ 442.119 [Amended]

13. In § 442.119, paragraphs (a)(2) and (b)(1) are amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" and adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs)".

§ 442.252 [Removed]

14. Subpart E is amended by removing § 442.252.

15. Section 442.254(b) is revised to read as follows:

§ 442.254 Standards for hospitals and SNF's providing ICF services.

* * * * *

(b) If a hospital or SNF participating in Medicare or Medicaid is also a provider of ICF/MR services, it must meet each of the conditions of participation specified in Part 482, Subpart D of this chapter.

§§ 442.400–442.516 [Removed]

16. Subpart C, (Consisting of §§ 442.400–442.516) is removed.

F. A new Part 483 is added to Subchapter E to read as follows:

PART 483—CONDITIONS OF PARTICIPATION FOR LONG TERM CARE FACILITIES

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

Sec.
483.400 Basis and purpose.
483.405 Relationship to other HHS regulations.
483.410 Condition of participation: Governing body and management.
483.420 Condition of participation: Client protections.
483.430 Condition of participation: Facility staffing.
483.440 Condition of participation: Active treatment services.
483.450 Condition of participation: Client behavior and facility practices.
483.460 Condition of participation: Health care services.
483.470 Condition of participation: Physical environment.
483.480 Condition of participation: Dietetic services.

Authority: Secs. 1102, 1905(c) and (d) of the Social Security Act (42 U.S.C 1302, 1396d(c) and (d)).

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

§ 483.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe regulations for intermediate care facility services in facilities for the mentally retarded or persons with related conditions.

§ 483.405 Relationship to other HHS regulations.

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR Part 80), nondiscrimination on the basis of handicap (45 CFR Part 84), nondiscrimination on the basis of age (45 CFR Part 91), protection of human subjects of research (45 CFR Part 46), and fraud and abuse (42 CFR Part 455). Although these regulations are not in themselves considered conditions of participation under this Part, their violation may result in the termination or suspension of, or the refusal to grant or continue, Federal financial assistance.

§ 483.410 Condition of participation: Governing body and management.

(a) *Standard: Governing body.*

The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must—

(1) Exercise general policy, budget, and operating direction over the facility;

(2) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility; and

(3) Appoint the administrator of the facility.

(b) *Standard: Compliance with Federal, State, and local laws.*

The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, and sanitation.

(2) *Standard: Client records.*

(1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

(d) *Standard: Services provided under agreements with outside sources.*

(1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in § 483.470 (a) through (g), (j) and (k).

§ 483.420 Condition of participation: Client protections.

(a) *Standard: Protection of clients' rights.* The facility must ensure the rights of all clients. Therefore, the facility must—

(1) Inform each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility;

(2) Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process;

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(5) Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail;

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(11) Ensure clients the opportunity to participate in social, religious, and community group activities;

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(13) Permit a husband and wife who both reside in the facility to share a room.

(b) *Standard: Client finances.* (1) The facility must establish and maintain a system that—

(i) Assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients; and

(ii) Precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.

(c) *Standard: Communication with clients, parents, and guardians.* The facility must—

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(2) Answer communications from clients' families and friends promptly and appropriately;

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(6) Notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(d) *Standard: Staff treatment of clients.* (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

(i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

§ 483.430 Condition of participation: Facility staffing.

(a) *Standard: Qualified mental retardation professional.* Each client's active treatment program must be integrated, coordinated and monitored by a qualified mental retardation professional who—

(1) Has at least one year of experience working directly with persons with mental retardation or other developmental disabilities; and

(2) Is one of the following:

(i) A doctor of medicine or osteopathy.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category specified in paragraph (b)(5) of this section.

(b) *Standard: Professional program services.*—(1) Each client must receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff must work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(2) The facility must have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance

with the stated goals and objectives of every individual program plan.

(3) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff must be licensed, certified, or registered, as applicable, to provide professional services by the State in which he or she practices. Those professional program staff who do not fall under the jurisdiction of State licensure, certification, or registration requirements, specified in § 483.410(b), must meet the following qualifications:

(i) To be designated as an occupational therapist, an individual must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

(ii) To be designated as an occupational therapy assistant, an individual must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

(iii) To be designated as a physical therapist, an individual must be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

(iv) To be designated as a physical therapy assistant, an individual must be eligible for registration by the American Physical Therapy Association or be a graduate of a two year college-level program approved by the American Physical Therapy Association or another comparable body.

(v) To be designated as a psychologist, an individual must have at least a master's degree in psychology from an accredited school.

(vi) To be designated as a social worker, an individual must—

(A) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(B) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

(vii) To be designated as a speech-language pathologist or audiologist, an individual must—

(A) Be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language-Hearing Association or another comparable body; or

(B) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(viii) To be designed as a professional recreation staff member an individual must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

(ix) To be designated as a professional dietitian, an individual must be eligible for registration by the American Dietetics Association.

(x) To be designated as a human services professional an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).

(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5) (i) through (x) of this section are not required—

(A) Except for qualified mental retardation professionals;

(B) Except for the requirements of paragraph (b)(2) of this section concerning the facility's provision of enough qualified professional program staff; and

(C) Unless otherwise specified by State licensure and certification requirements.

(c) *Standard: Facility staffing.* (1) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing—

(i) Clients for whom a physician has ordered a medical care plan;

(ii) Clients who are aggressive, assaultive or security risks;

(iii) More than 16 clients; or

(iv) Fewer than 16 clients within a multi-unit building.

(3) There must be a responsible direct care staff person on duty on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing—

(i) Clients for whom a physician has not ordered a medical care plan;

(ii) Clients who are not aggressive, assaultive or security risks; and

(iii) Sixteen or fewer clients.

(4) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(d) *Standard: Direct care (residential living unit) staff.* (1) The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients; clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks; or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(ii) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(iii) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(4) When there are no clients present in the living unit, a responsible staff member must be available by telephone.

(e) *Standard: Staff training program.* (1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

§ 483.440 Condition of participation: Active treatment services.

(a) *Standard: Active treatment.* (1) Each client must receive a continuous active treatment program, which includes aggressive, consistent

implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward—

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) *Standard: Admissions, transfers, and discharge.* (1) Clients who are admitted by the facility must be in need of and receiving active treatment services.

(2) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation must contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility must—

(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must—

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

(c) *Standard: Individual program plan.* (1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to—

(i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and

(ii) Designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and must—

(i) Identify the presenting problems and disabilities and where possible, their causes;

(ii) Identify the client's specific developmental strengths;

(iii) Identify the client's specific developmental and behavioral management needs;

(iv) Identify the client's need for services without regard to the actual availability of the services needed; and

(v) Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section, and the planned sequence for dealing with those objectives. These objectives must—

(i) Be stated separately, in terms of a single behavioral outcome;

(ii) Be assigned projected completion dates;

(iii) Be expressed in behavioral terms that provide measurable indices of performance;

(iv) Be organized to reflect a developmental progression appropriate to the individual; and

(v) Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan must specify:

(i) The methods to be used;

(ii) The schedule for use of the method;

(iii) The person responsible for the program;

(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) The inappropriate client behavior(s), if applicable; and

(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan must also:

(i) Describe relevant interventions to support the individual toward independence.

(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.

(iii) Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

(v) Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(vi) Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan must be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

(d) *Standard: Program implementation.* (1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility must develop an active treatment schedule that outlines the

current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

(e) *Standard: Program documentation.* (1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measureable terms.

(2) The facility must document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(f) *Standard: Program monitoring and change.* (1) The individual program plan must be reviewed at least by the qualified mental retardation professional and revised as necessary, including, but not limited to situations in which the client—

(i) Has successfully completed an objective or objectives identified in the individual program plan;

(ii) Is regressing or losing skills already gained;

(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(iv) Is being considered for training towards new objectives.

(2) At least annually, the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to—

(i) Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(ii) Insure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian; and

(iii) Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.

§ 483.450 Condition of participation: Client behavior and facility practices.

(a) *Standard: Facility practices—Conduct toward clients.* (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures must—

(i) Promote the growth, development and independence of the client;

(ii) Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(iii) Specify client conduct to be allowed or not allowed; and

(iv) Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients must participate in the formulation of these policies and procedures.

(3) Clients must not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(b) *Standard: Management of inappropriate client behavior.* (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures must be consistent with the provisions of paragraph (a) of this section. These procedures must—

(i) Specify all facility approved interventions to manage inappropriate client behavior;

(ii) Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(iii) Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(iv) Address the following:

(A) The use of time-out rooms.

(B) The use of physical restraints.

(C) The use of drugs to manage inappropriate behavior.

(D) The application of painful or noxious stimuli.

(E) The staff members who may authorize the use of specified interventions.

(F) A mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual program plan, in accordance with § 483.440(c) (4) and (5) of this subpart.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

(c) *Standard: Time-out rooms.* (1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(i) The placement is a part of an approved systematic time-out program as required by paragraph (b) of this section. (Thus, emergency placement of a client into a time-out room is not allowed.)

(ii) The client is under the direct constant visual supervision of designated staff.

(iii) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(2) Placement of a client in a time-out room must not exceed one hour.

(3) Clients placed in time-out rooms must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of time-out activities must be kept.

(d) *Standard: Physical restraints.* (1) The facility may employ physical restraint only—

(i) As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(ii) As an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(iii) As a health-related protection prescribed by a physician, but only if absolutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency must be:

(i) In effect no longer than 12 consecutive hours; and

(ii) Obtained as soon as the client is restrained or stable.

(3) The facility must not issue orders for restraint on a standing or as needed basis.

(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(5) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(7) Barred enclosures must not be more than three feet in height and must not have tops.

(e) *Standard: Drug usage.* (1) The facility must not use drugs in doses that interfere with the individual client's daily living activities.

(2) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(3) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(4) Drugs used for control of inappropriate behavior must be—

(i) Monitored closely, in conjunction with the physician and the drug regimen review requirement at § 483.460(j), for desired responses and adverse consequences by facility staff; and

(ii) Gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

§ 483.460 Condition of participation: Health care services.

(a) *Standard: Physician services.* (1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan must be integrated in the individual program plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(i) Evaluation of vision and hearing.

(ii) Immunizations, using as a guide the recommendations of the Public Health Service Advisory Commitee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(iii) Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

(iv) Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

(b) *Standard: Physician participation in the individual program plan.* A physician must participate in—

(1) The establishment of each newly admitted client's initial individual program plan as required by § 456.380 of this chapter that specified plan of care requirements for ICFs; and

(2) If appropriate, physicians must participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(c) *Standard: Nursing services.* The facility must provide clients with nursing services in accordance with their needs. These services must include—

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(3) For those clients certified as not needing a medical care plan, a review of their health status which must—

(i) Be by a direct physical examination;

(ii) Be by a licensed nurse;

(iii) Be on a quarterly or more frequent basis depending on client need;

(iv) Be recorded in the client's record; and

(v) Result in any necessary action (including referral to a physician to address client health problems).

(4) Other nursing care as prescribed by the physician or as identified by client needs; and

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(i) Training clients and staff as needed in appropriate health and hygiene methods;

(ii) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(iii) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(d) *Standard: Nursing staff.* (1) Nurses providing services in the facility must have a current license to practice in the State.

(2) The facility must employ or arrange for licensed nursing services sufficient to care for clients health needs including those clients with medical care plans.

(3) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(4) If the facilty utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or onsite consultation to the licensed practical or vocational nurse.

(5) Non-licensed nursing personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

(e) *Standard: Dental services.* (1) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental

hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals must participate, in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(f) *Standard: Comprehensive dental diagnostic services.* Comprehensive dental diagnostic services include—

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within twelve months before admission);

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(3) A review of the results of examination and entry of the results in the client's dental record.

(g) *Standard: Comprehensive dental treatment.* The facility must ensure comprehensive dental treatment services that include—

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(2) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(h) *Standard: Documentation of dental services.* (1) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

(i) *Standard: Pharmacy services.* The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(j) *Standard: Drug regimen review.* (1) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly.

(2) The pharmacist must report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist must prepare a record of each client's drug regimen reviews and the facility must maintain that record.

(4) An individual medication administration record must be maintained for each client.

(5) As appropriate the pharmacist must participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

(k) *Standard: Drug administration.* The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(1) All drugs are administered in compliance with the physician's orders;

(2) All drugs, including those that are self-administered, are administered without error;

(3) Unlicensed personnel are allowed to administer drugs only if State law permits;

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(6) No client self-administers medications until he or she demonstrates the competency to do so;

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law; and

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(l) *Standard: Drug storage and recordkeeping.* (1) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self administer drugs in accordance with § 483.460(k)(4) may have access to keys to their individual drug supply.

(3) The facility must maintain records of the receipt and disposition of all controlled drugs.

(4) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*, as implemented by 21 CFR Part 308).

(5) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs.

(m) *Standard: Drug labeling.* (1) Labeling of drugs and biologicals must—

(i) Be based on currently accepted professional principles and practices; and

(ii) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility must remove from use—

(i) Outdated drugs; and

(ii) Drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.

(n) *Standard: Laboratory services.* (1) For purposes of this section, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory must—

(i) Meet the management requirements specified in § 405.1316 of this chapter; and

(ii) Provide personnel to direct and conduct the laboratory services.

(A) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must meet licensing or other qualification standards established by the State with respect to directors of clinical laboratories. For those States that do not have licensure or qualification requirements pertaining to directors of clinical laboratories, the director must be either—

(*1*) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(*2*) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(B) The laboratory director must provide adequate technical supervision of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(C) The laboratory director must ensure that the staff—

(*1*) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(*2*) Is sufficient in number for the scope and complexity of the services provided; and

(*3*) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(D) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory must meet the proficiency testing requirements specified in § 405.1314(a) of this chapter.

(4) The laboratory must meet the quality control requirements specified in § 405.1317 of this chapter.

(5) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved by the Medicare program either as a hospital or an independent laboratory.

§ 483.470 Condition of participation: Physical environment.

(a) *Standard: Client living environment.* (1) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility must not segregate clients solely on the basis of their physical disabilities. It must integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders, etc., with others of comparable social and intellectual development.

(b) *Standard: Client bedrooms.* (1) Bedrooms must—

(i) Be rooms that have at least one outside wall;

(ii) Be equipped with or located near toilet and bathing facilities;

(iii) Accommodate no more than four clients unless granted a variance under paragraph (b)(3) of this section;

(iv) Measure at least 80 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(v) In all facilities initially certified, or in buildings constructed or with major renovations or conversions on or after [*the effective date of these regulations*], have walls that extend from floor to ceiling.

(2) If a bedroom is below grade level, it must have a window that—

(i) Is usable as a second means of escape by the client(s) occupying the room; and

(ii) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(3) The survey agency may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified mental retardation professional—

(i) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) Documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

(4) The facility must provide each client with—

(i) A separate bed of proper size and height for the convenience of the client;

(ii) A clean, comfortable, mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the client's needs, and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.

(c) *Standard: Storage space in bedroom.* The facility must provide—

(1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety; and

(2) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(d) *Standard: Client bathrooms.* The facility must—

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(2) Provide for individual privacy in toilets, bathtubs, and showers; and

(3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110° Fahrenheit.

(e) *Standard: Heating and ventilation.* (1) Each client bedroom in the facility must have—

(i) At least one window to the outside; and

(ii) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(2) The facility must—

(i) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(ii) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

(f) *Standard: Floors.* The facility must have—

(1) Floors that have a resilient, nonabrasive, and slip-resistant surface;

(2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(3) Exposed floor surfaces and floor coverings that promote mobility in areas used by clients, and promote maintenance of sanitary conditions.

(g) *Standard: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by this subpart and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

(h) *Standard: Emergency plan and procedures.* (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(2) The facility must communicate, periodically review, make the plan available, and provide training to the staff.

(i) *Standard: Evacuation drills.* (1) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(i) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(ii) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(iii) Evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility must—

(i) Actually evacuate clients during at least one drill each year on each shift;

(ii) Make special provisions for the evacuation of clients with physical disabilities;

(iii) File a report and evaluation on each evacuation drill;

(iv) Investigate all problems with evacuation drills, including accidents, and take corrective action; and

(v) During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities must meet the requirements of paragraphs (i)(1) and (2) of this section for any live-in and relief staff they utilize.

(j) *Standard: Fire protection.* (1) *General.* (i) Except as specified in paragraph (j)(2) of this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 1985 edition, which is incorporated by reference.[2]

(ii) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(iii) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds, must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(2) *Exceptions.* (i) For facilities that meet the LSC definition of a health care occupancy:

(A) The State survey agency may waive, for a period it considers appropriate, specific provisions of the LSC if—

(*1*) The waiver would not adversely affect the health and safety of the clients; and

(*2*) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(B) The State survey agency may apply the State's fire and safety code instead of the LSC if the Secretary finds that the State has a code imposed by State law that adequately protects a facility's clients.

(C) Compliance on November 28, 1982 with the 1967 edition of the LSC or compliance on April 18, 1986 with the 1981 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

(ii) For facilities that meet the LSC definition of a residential board and care occupancy and that have more than 16 beds, the State survey agency may apply the State's fire and safety code as specified in paragraph (j)(2)(B) of this section.

(k) *Standard: Paint.* The facility must—

(1) Use lead-free paint inside the facility; and

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

(l) *Standard: Infection control.*

(1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

§ 483.480 Condition of participation: Dietetic services.

(a) *Standard: Food and nutrition services.*

(1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(b) *Standard: Meal services.* (1) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(i) Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(ii) Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under paragraph (b)(1)(i) of this section.

(2) Food must be served—

(i) In appropriate quantity;

(ii) At appropriate temperature;

(iii) In a form consistent with the developmental level of the client; and

(iv) With appropriate utensils.

(3) Food served to clients individually and uneaten must be discarded.

(c) *Standard: Menus.* (1) Menus must—

(i) Be prepared in advance;

(ii) Provide a variety of foods at each meal;

(iii) Be different for the same days of each week and adjusted for seasonal changes; and

(iv) Include the average portion sizes for menu items.

(2) Menus for food actually served must be kept on file for 30 days.

(d) *Standard: Dining areas and service.*

The facility must—

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs;

(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level; and

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: September 4, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 31, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-12250 Filed 6-2-88; 8:45 am]

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[2] Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA 101) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass.

If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register

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Part IV

Department of Energy

10 CFR Part 625

Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions; Revised Appendix to Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 625

Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions

AGENCY: Procurement and Assistance Management Directorate, Assistant Secretary for Management and Administration, DOE.

ACTION: Revised appendix to final rule.

SUMMARY: On December 21, 1983, the Department of Energy (DOE) published in the Federal Register a final rule governing price competitive sales of petroleum from the Strategic Petroleum Reserve (SPR) in the event that the SPR is drawn down to respond to a severe energy supply interruption or to meet obligations of the United States under the Agreement on an International Energy Program (IEP). This final rule provided for the publication in the Federal Register, as an appendix thereto, of Standard Sales Provisions (SSPs) containing or describing contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be applicable to a particular sale of SPR petroleum. On June 16, 1987, draft revisions to the January 20, 1984 interim final SSPs were published in the Federal Register. As provided in the rule, DOE is now issuing those revised SSPs for use in an SPR drawdown.

EFFECTIVE DATE: As of June 3, 1988 these SSPs are adopted for use in the price competitive sale of SPR petroleum.

FOR FURTHER INFORMATION CONTACT:
Fred A. Hutchinson, PE-422, Office of Strategic Petroleum Reserve, U.S. Department of Energy, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4734.
R. Grant Garrison, GC-41, Office of Assistant General Counsel, International Affairs, U.S. Department of Energy, Room 6A-167, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.
Robert W. Law, MA-442, Procurement and Assistance Management Directorate, U.S. Department of Energy, Room 1M-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8234.

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A. The Strategic Petroleum Reserve Drawdown Plan
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I. Background

A. The Strategic Petroleum Reserve Drawdown Plan

The Strategic Petroleum Reserve (SPR) was established by the Energy Policy and Conservation Act of 1975 (EPCA, Pub. L. 94-163) to store up to one billion barrels of petroleum to diminish the impact of disruptions on petroleum supplies and to carry out obligations of the United States under the International Energy Program. The EPCA required the preparation of an "SPR Plan" detailing proposals for the development of the SPR; this SPR Plan was to include a Distribution Plan setting forth the methods for drawing down and distributing the SPR in the event of an emergency. The mandated SPR Plan, which was submitted to Congress and subsequently took effect on April 16, 1977, indicated that the Distribution Plan was still being formulated. On October 21, 1979, a detailed Distribution Plan was transmitted to Congress as Amendment No. 3 to the SPR Plan and became effective on November 15, 1979. This Distribution Plan set out a number of alternative distribution methods, ranging from allocation to price competitive sales.

In the Energy Emergency Preparedness Act of 1982 (EEPA), Pub. L. 97-229, Congress required that a new "Drawdown" (Distribution) Plan be transmitted to the Congress. The EEPA provided that this amendment to the SPR Plan would take effect on the date transmitted, without Congressional review. The new Distribution Plan, SPR Plan Amendment No. 4, was transmitted to Congress on December 1, 1982, and took effect on that date. The new Plan provided that the principal method of distributing SPR oil will be price competitive sale.

On March 16, 1983, DOE published a notice of proposed rulemaking (48 FR 11125) to establish a framework for implementing the policies and procedures set out in Amendment No. 4. For a discussion of the statutory authority for the SPR and the regulatory background of the proposed rule, *see* the preamble to the proposed rule at 48 FR 11125.

B. The Final Rule

The purpose of the SPR sales rule (48 FR 56541, December 21, 1983) is to facilitate the sales process during a drawdown of the SPR by providing for the establishment of Standard Sales Provisions (SSPs), containing contract terms and conditions developed in accordance with the rule which, it is expected, will be contained in contracts for the sale of SPR petroleum. The rule calls for the publication of the SSPs in the Federal Register and the Code of Federal Regulations as an appendix to the rule. The rule also provides for the periodic review and republication of the SSPs in the Federal Register, including any revisions to such provisions.

Upon a Presidential decision to draw down the SPR, DOE would issue a Notice of Sale, announcing the amounts, types, and locations of the SPR petroleum to be sold, the delivery points, and other pertinent information. The rule provides that the Secretary of Energy or his designee would specify in the Notice of Sale, by referencing the Federal Register and the Code of Federal Regulations in which the latest version of the SSPs was published, which of the terms and conditions in the SSPs would or would not apply to a particular sale. In the Notice of Sale, the Secretary also could revise such terms and conditions, or add new ones which would apply to that particular sale. The rule provides that no contract could be awarded to an offeror who had not unconditionally agreed to all contractual provisions and responsibility measures made applicable by the Notice of Sale. The rule also provides a mechanism for excluding purchasers that fail to perform their contractual obligations from future participation in SPR sales.

C. The Standard Sales Provisions

1. Publication of the SSPs

As provided in the SPR sales rule, draft SSPs were published on June 15, 1983 (48 FR 27482) for public comment. The draft SSPs underwent significant revision and were adopted as interim final procedures on January 20, 1984 (49 FR 2692); additional public comment was sought on the interim final SSPs. As the result of the public comments on the interim final SSPs, internal DOE exercises, the addition of the ARCO Terminal as a new distribution point for SPR petroleum, the National Petroleum Council (NPC) report to the Secretary of Energy, *The Strategic Petroleum Reserve, A Report on the Capability to Distribute SPR Oil* (December 1984), and the SPR test sale held by DOE from November 1985 to January 1986, on June 16, 1987 (52 FR 22960) DOE published draft revisions to the interim final SSPs for public comment. DOE is now issuing the revised SSPs for use in the event of a drawdown of the SPR.

2. General Sales Objectives

The procedures and provisions contained in the SSPs are designed to balance and achieve two objectives of SPR Plan Amendment No. 4, i.e., to provide that SPR price competitive sales will be open to all interested buyers, but to establish measures to assure purchaser performance under the resulting contracts.

In order to maximize competition by the widest possible universe of offerors, DOE made the SSPs as unrestricted and nonjudgmental as possible. As required by Amendment No. 4, price is to be the determining factor in the award of SPR petroleum sales contracts.

The measures included in the SSPs to ensure the offeror's fulfillment of its responsibilities include:

a. Requirement for offer guarantee;
b. Requirement for letter of credit or cash deposit to guarantee payment and performance;
c. Assessment of liquidated damages for failure to lift oil in accordance with the contract; and
d. Possible termination for default.

An offer or contract to acquire SPR oil thus would involve a substantial commitment to the implementation of SPR drawdown and distribution in a manner consistent with the purposes of the SPR. For a more complete discussion of the responsibility measures, *see* the preamble to the interim final SSPs at 49 FR 2693-94.

3. General Sales Procedures

The SPR sales process starts with the issuance of a Notice of Sale which would indicate the amount, characteristics and location of the petroleum being sold, the delivery dates and the procedures for submitting offers, as well as providing other information pertinent to a particular sale; in addition, it would specify what contractual provisions and performance and financial responsibility measures are applicable.

Over the course of an SPR drawdown, a number of Notices of Sale may be issued, each covering a sales period of 1 to 2 months. Initially, Notices of Sale issued during SPR drawdown could allow an extremely short lead time for offers and deliveries. It is contemplated that offerors might be given as little as 7 days from the issuance of the Notice of Sale until offers are due, and as little as 30 days from the time of such issuance until oil delivery starts, with a less compressed schedule becoming more feasible after the initial stages of drawdown. Because of the possible short lead time, the SSPs provide for the establishment of a list of prospective offerors, to whom the Government would furnish copies of all Notices of Sale.

The next step in the sales process is the preparation by prospective purchasers of their offers, which must be submitted before a time specified in the Notice of Sale. The SSPs require that the offeror: unconditionally accept all terms and conditions made applicable to that sale by the Notice of Sale; include an offer guarantee; and offer at least the minimum price, if any, specified in the Notice of Sale.

Following the receipt of offers, the Government would evaluate the offers to select the "apparently successful" offerors. The evaluation process is structured so that the highest offerors could select the method by which the SPR petroleum is to be transported, up to the limits of the SPR distribution systems. Specific delivery arrangements are to be negotiated later.

Under the SSPs, all apparently successful offerors would be required, within as little as 5 days, to provide a letter of credit or a cash deposit as a guarantee of performance and of payment of amounts due under the contract. Upon timely receipt of the guarantee, and upon a final determination by the Contracting Officer that the offer is responsive and the offeror responsible, the Government would issue the Notice of Acceptance.

The only other bases in the SSPs upon which the Contracting Officer could make a finding of nonresponsibility, other than nonperforming purchasers that had been excluded from SPR sales under the procedures established by the sales rule, are: (i) the offeror is on either DOE's or the Federal Government's list of debarred, ineligible, and suspended bidders; (ii) evidence of an offeror's conduct or activity which represents a violation of law or regulation, or Executive Order having the force and effect of law; or (iii) evidence which shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, and which would substantially diminish the Contracting Officer's confidence in the offeror's performance.

II. Discussion of Major Comments

A. Comments on the Draft Revised SSPs

In response to the request for comments on the draft revisions to the SSPs, five sets of comments were received, four from refiners and one from an oil industry trade association. In general, all five commenters favored the revisions, stating that the revised provisions now conform more closely with standard industry practices. However, the five did propose additional changes.

The proposed revisions limited the circumstances in which a purchaser that failed to perform in accordance with the terms of the contract would be liable for liquidated damages. No. C.29 assesses liquidated damages of one percent per day for each day of delay in taking delivery of SPR oil up to a maximum assessment of 30 percent. The proposed revisions would not assess liquidated damages until three days after the end of the scheduled loading window and would excuse purchasers for nonperformance by transportation subcontractors provided that the subcontractor is not an affiliate and the services could not be obtained in a timely fashion from other sources. Three commenters objected that even with the changes, the liquidated damages were an unreasonable burden on the purchaser. DOE disagrees. A purchaser's failure to honor an SPR petroleum sales contract could hinder attainment of the desired drawdown rate, with possible adverse effects on the Nation. The liquidated damages are compensation for the damages incurred by the country when a buyer fails to comply with the contractually agreed delivery schedule. Therefore, the revised SSPs continue to assess liquidated damages for unexcused delays in accepting delivery of the petroleum. One commenter suggested that the relief from liability for the failure of non-affiliated transportation subcontractors to perform be extended to apply to affiliated subcontractors. The relief was proposed because DOE had determined that the actions of non-affiliated transportation subcontractors are likely to be beyond the control of the purchasers of SPR oil; such would not be the case with affiliated transportation firms.

Four commenters expressed concern relating to Jones Act waivers. Two commenters recommended that, if no waiver is granted, an offeror should be allowed to withdraw his offer without penalty if it can be shown that the purchaser made a good faith effort to charter a coastwise-qualified vessel. Two commenters recommended that the time period in which vessels could be initially nominated or substitute vessels be named be extended to allow for a decision on a Jones Act waiver request. The Notice of Sale will announce any general waiver of the Jones Act. The case-by-case Jones Act waiver procedures which DOE has developed with the Maritime Administration and the U.S. Customs Service provide for a response to a waiver request in two

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days. Therefore, DOE believes that there will be sufficient time to obtain vessels to transport the oil and that further exculpatory provisions are not required.

Three commenters suggested that the proposed new provision on demurrage excluded too many events from the calculation of laytime and demurrage. There is no standard industry practice with respect to how to calculate laytime and time on demurrage. DOE, after review of several commercial charter parties, believes that the Government's liability under these SSPs falls within the range of commercial practice.

Two commenters suggested that a system similar to that used to designate categories of petroleum for "Superfund" tax purposes be used to designate petroleum as belonging to various categories, e.g., Naval Petroleum Reserve crude oil or Alaskan North Slope crude oil, to assist in determining which export restrictions are applicable to crude oil delivered to a particular buyer. Enforcement of the export control laws is the responsibility of the Department of Commerce, beyond the scope of these SSPs, and therefore no such categorical designations will be made by DOE.

One commenter suggested that, to conform more closely with commercial terms, DOE should be liable for the purchaser's cost in preparing to perform the contract should the Government terminate the contract for its convenience due to a sovereign decision of the United States, such as a Presidential decision to terminate the drawdown. However, it is a long-established principle of Government contracting that the Government is not liable under its contracts for its sovereign decisions impacting those contracts.

One commenter suggested that notwithstanding the procedures for giving preference to the scheduling requests of offerors with the highest priced offers, exceptions to that system should be allowed in unique situations when it is in the best interest of DOE, or the purchaser, such as a refinery that is about to run out of petroleum. DOE agrees that scheduling flexibility is desirable; SSP No. C.5(c), which allows purchasers to schedule deliveries prior to the start of the contract delivery period on a first-come, first served basis unless unacceptable costs would be incurred or schedules disrupted, should accommodate most of these unique situations.

One commenter was concerned that a purchaser would be required to accept oil tendered for delivery regardless of characteristics, and which might be hazardous to load or transport. As the specifications in the Exhibits to the SSPS make clear, the petroleum now in storage in the SPR contains no such hazards and DOE's purchase specifications and quality assurance procedures would preclude such crude oil from being acquired. As the petroleum is delivered directly to the purchaser without being commingled with other crude oil streams, the delivery of unsuitable petroleum to a purchaser is improbable.

One commenter suggested that the amount of time during which an offer must remain valid should be reduced from 10 days to 3 days after the date offers are due. DOE disagrees. Offers must remain valid long enough for DOE to evaluate them, notify the apparently successful offerors, receive the payment and performance guarantees (generally 5 days will be allowed to furnish the guarantees) and to notify the next winning offeror if any apparently successful offeror defaults. Three days are insufficient to accomplish these events.

One commenter was concerned that the two business days deemed for receipt of a mailed notification from DOE are inadequate. DOE believes, however, that given the availability of overnight mail services and telex communication, two business days are adequate. The Contracting Officer may extend that period in individual cases.

Finally, one commenter suggested several clarifying definitions and citations relating to quantity and quality measurement standards, most of which have been incorporated into the text of provisions C.15 and C.16.

B. Comments on SPR Plan Amendment No. 4

Three comments were received which suggested that sales be restricted to U.S. domestic refiners, their purchasing agents, and other traditional suppliers so that the sales procedures could be streamlined to accepted commercial terms.

Section 161(c) of the Energy Policy and Conservation Act explicitly provides that drawdown and distribution must be in accordance with the SPR Plan in effect at that time. Consequently, DOE cannot adopt any SSPs that are inconsistent with SPR Plan Amendment No. 4, which provides that "all interested buyers will be eligible to bid for and purchase SPR oil ...."

III. The Revised Standard Sales Provisions

No substantive changes have been made to the draft revised SSPs published in the **Federal Register** on June 16, 1987. For a discussion of the major changes to the interim final SSPs proposed by the draft revisions, *see* 54 FR 22360.

Several of the draft revised SSPs, however, have been slightly revised to clarify meaning, correct citations, or give additional factual or procedural information. There follows a provision-by-provision discussion of the noteworthy revisions.

SSP No. B.3 Requirements for vessels - caution to offerors

This provision has been amended to make clear that all costs for the disposal of vessel sludge, oily bilge water wastes, and oily ballast will be the responsibility of the vessel.

SSP No. B.4 "Superfund" tax on SPR petroleum - caution to offers

This provision has been revised to clarify that the 1.3 cents per barrel tax to fund the Oil Spill Liability Trust Fund was never enacted. The Notice of Sale will advise purchasers of their "Superfund" tax liability.

SSP No. B.23 Offeror's certification of acceptance period

This provisions has been revised to clarify that only the prices for the apparently successful line items must remain valid for 30 days after receiving a notification of Apparently Successful Offeror.

SSP No. C.5 Delivery and transportation scheduling

1. The procedures for the scheduling of deliveries have been changed to provide that all purchasers must propose a delivery schedule in writing no later than 15 days prior to the earliest delivery date offered in the Notice of Sale. In the event that conflicting requests are received, preference will be given to the highest priced offer. The SPR/PMO will respond to the purchasers no later than 10 days prior to the start of deliveries either to confirm the schedule or propose an alternative schedule. The purchaser will have two days to request reconsideration of any proposed alternative schedule but DOE's decision on reconsideration is final.

SSP No. C.8 Vessel loading procedures

1. The minimum average loading rate requirement for vessels has been reduced from 20,000 to 15,000 barrels per hour.

2. A vessel's Notice of Readiness for loading shall be tendered upon arrival at berth or at the customary anchorage (any anchorage from which the vessel can reach the SPR dock within six hours). Customary anchorages for each SPR terminal are listed in Exhibit E.

3. Allowable berth time for vessels with capacities larger than 500,000 barrels is increased one hour for each 20,000 barrels to be loaded in excess of 500,000 barrels.

SSP No. C.9 Vessel laytime and demurrage

The citations to the tanker rate schedules to be used for calculating applicable demurrage rates have been corrected and the applicable reference period has been identified for each.

SSP No. C.15 Determination of quality of petroleum

This provision now states that, for the samples from which crude oil quality is determined, preference will be given to samples collected by means of an inline sampler, when one is available and operational.

Exhibit E

1. Customary anchorages have been identified for each SPR terminal.

2. Phillips Terminal's permission to berth vessels less than 32,000 deadweight tons is no longer required.

3. The draft restriction at the DOE St. James Terminal has been increased to 45 feet.

IV. Procedural Matters

A. Effective Date

As of June 3, 1988 these SSPs are adopted for use in the price competitive sale of SPR petroleum.

B. Paperwork Reduction Act

The forms used in the sale of the SPR petroleum have been cleared by the Office of Management and Budget in accordance with the Paperwork Reduction Act under control number 1910-1400.

List of Subjects in 10 CFR Part 625

Administrative Practice and Procedure, Oil and Gas Reserves, Strategic and critical materials, Strategic Petroleum Reserve.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 625—[AMENDED]

1. The authority citation for Part 625 is revised to read as follows:

Authority: 15 U.S.C. 761; 42 U.S.C. 7101; 42 U.S.C. 6201.

2. Appendix A to 10 CFR Part 625 is revised to read as follows:

Appendix A to Part 625—Standard Sales Provisions

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C—Solicitation, Offer and Award—Standard Form 33
D—SPR Crude Oil Stream Characteristics
E—SPR Delivery Point Data
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G—Offer Guarantee—Letter of Credit
H—Payment and Performance Guarantee—Letter of Credit
I—Instruction Guide for Funds Transfer Messages to Treasury
J—Form SPRPMO-F-6110.2-14—SPR Crude Oil Delivery Report
K—Offer Guarantee Calculation Worksheet

Section A - General Pre-Sale Information

A.1 List of acronyms:

(a) *ASO:* Apparently Successful Offeror
(b) *DLI:* Delivery Line Item
(c) *DOE:* U.S. Department of Energy
(d) *MLI:* Master Line Item
(e) *NA:* Notice of Acceptance
(f) *NS:* Notice of Sale
(g) *SSPs:* Standard Sales Provisions
(h) *SPR:* Strategic Petroleum Reserve
(i) *SPRCODR:* SPR Crude Oil Delivery Report (Exhibit J)
(j) *SPR/PMO:* Strategic Petroleum Reserve/ Project Management Office

A.2 Definitions

(a) *Affiliate.* The term "affiliate" means associated business concerns or individuals if, directly or indirectly, (1) either one controls or can control the other, or (2) a third party controls or can control both.

(b) *Business Day.* The term "business day" means any day except Saturday, Sunday or a U.S. Government holiday.

(c) *Contract.* The term "contract" means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

(d) *Contracting Officer.* The term "Contracting Officer" means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) *Government.* The term "Government", unless otherwise indicated in the text, means the United States Government.

(f) *Head of the Contracting Activity.* The term "Head of the Contracting Activity" means the Manager, Oak Ridge Operations Office, DOE.

(g) *Notice of Acceptance (NA).* The term "Notice of Acceptance" means the document which is sent by DOE to accept the purchaser's offer to create a contract.

(h) *Notification of Apparently Successful Offeror (ASO).* The term "notification of apparently successful offeror" means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

(i) *Notice of Sale (NS).* The term "Notice of Sale" means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information. (*See* Exhibit B, Sample Notice of Sale]

(j) *Offeror.* The term "offeror" means any person or entity (including a government agency) which submits an offer in response to a NS.

(k) *Petroleum.* The term "petroleum" means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal).

(l) *Project Management Office (SPR/PMO).* The term "Project Management Office" means the DOE personnel and DOE contractors located in Louisiana and Texas responsible for the operation of the SPR.

(m) *Purchaser.* The term "purchaser" means any person or entity (including a government agency) which enters into a contract with DOE to purchase SPR petroleum.

(n) *Standard Sales Provisions (SSPs).* The term "Standard Sales Provisions" means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the "standard sales agreement" referenced in the Strategic Petroleum Reserve "Drawdown" (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

(o) *Strategic Petroleum Reserve (SPR).* The term "Strategic Petroleum Reserve" means that DOE program established by Title I, Part B of the Energy Policy and Conservation Act, 42 U.S.C. Section 6201, et seq.

(p) *Vessel.* The term "vessel" means a tankship, an integrated tug barge (ITB) system, a self-propelled barge, or other barge.

A.3 Standard Sales Provisions

(a) These SSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR Part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale. (*See* Exhibit B, Sample Notice of Sale)

(b) *All offerors must,* as part of their offers for SPR petroleum in response to a NS, *agree without exception to all provisions of the SSPs which the NS makes applicable to the particular sale.* Offerors shall indicate their agreement by signing the Sales Offer Form (Exhibit A). The Government will not award a contract to an offeror which has failed to so agree.

A.4 Periodic revisions of the Standard Sales Provisions

DOE will review the SSPs periodically and republish them in the Federal Register, with any revisions. When a NS is issued, it will cite the Federal Register and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the Federal Register. Interested persons may obtain a copy of the current SSPs by writing to the address set forth in Provision No. A.5.

A.5 Potential offerors list for sales of petroleum

(a) The SPR/PMO will maintain a list of those potential offerors which wish to receive a NS whenever such a document is issued. In order to assure that prospective offerors will receive the NS or offer forms in timely fashion, all potential offerors are encouraged to submit the information in (d) as soon as possible. *A NS may be issued with a week or less allowed for the receipt of offers.* While DOE will use its best efforts to timely supply copies of the NS to persons not on the list who request the NS at the time an SPR petroleum sale is announced, this may not always be feasible in light of the short amount of time available before offers must be received.

(b) Any firm or individual may send a written request to be on the list to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Procurement and Sales Division, Mail Stop PR-851, 900 Commerce Road East, New Orleans, Louisiana 70123, Telephone Number (504) 734-4228.

The envelope should be marked "SPR Sales Mailing List."

(c) Copies of the SSPs and the NS, when one is issued, may also be obtained from this address.

(d) A request to be placed on the mailing list should be in writing and should include the following information:

Name of firm
Mailing address (Street and P.O. Box) City, State, Zip Code
Name of authorized agent and alternate authorized agent
Telephone numbers for agent and alternate including area code
Agent address, if different from firm represented
TWX number/code
Telecopier brand name and model number
Whether telecopier is automatic or operator controlled
Telephone number for telecopier transmission, including area code
Telephone number for verification of message receipt, including area code
Employer/taxpayer identification number or social security number
Dun's number

As DOE may use express mail which cannot be delivered to a Post Office Box, failure to provide a street address could result in untimely receipt of the NS and will be at the offeror's risk.

A.6 Publicizing the Notice of Sale

(a) The NS will be sent to names on the list of potential offerors referenced in Provision No. A.5. Interested persons may send a representative to the address in Provision No. A.5 to obtain a copy of the NS.

(b) In addition to those on the list of potential offerors, the NS will also be sent to anyone requesting it when a sale is announced. Firms may request the NS by telephone or in writing to the telephone number or address in Provision No. A.5 above.

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

(d) At the option of the Contracting Officer, advertisements may be placed in publications likely to reach interested parties. The advertisements will contain the salient features of the NS and a name and telephone number at the SPR/PMO to call for further information.

A.7 Penalty for false statements in offers to buy SPR petroleum

A penalty for making false statements is imposed in the False Statements Act, 18 U.S.C. Section 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Section B - Sales Solicitation Provisions

B.1 Requirements for a valid offer - caution to offerors

A valid offer to purchase SPR petroleum must meet the following conditions:

(a) The offer guarantee (*see* Provision No. B.10) must be received no later than the time set for the receipt of offers;

(b) The offer must include a completed Sales Offer Form (Exhibit A) and signed Standard Form 33 (Exhibit C) or other forms as specified in the NS;

(c) The offer must be received no later than the time set for receipt of offers;

(d) Any amendments to the NS which explicitly require acknowledgment of receipt must be properly acknowledged as provided for on Exhibit C; and

(e) The offeror must agree without exception to all provisions of the SSPs which the NS makes applicable to a particular sale, as well as to all provisions in the NS.

B.2 Certification of independent price determination

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to: (i) those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the signatory has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; (ii) as their agent does hereby so certify; and (iii) as their agent has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) An offer will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. If the offeror deletes or modifies (a)(2) above, the offeror must furnish with the offer a signed statement setting forth in detail the circumstances of the disclosure.

B.3 Requirements for vessels - caution to offerors

(a) The "Jones Act", 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Treasury. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision No. C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Transportation's interim rule concerning Reception Facility Requirements for Waste Materials Retained on Board (33 CFR Parts 151 and 158) implements the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). This rule prohibits any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oily waste reception facilities. SPR marine terminals (*see* Exhibit E, SPR Delivery Point Data) have Certificates of Adequacy and reception facilities for vessel sludge and oily bilge water wastes, all costs for which will be borne by the vessel. The terminals, however, may not have reception facilities for oily ballast. Accordingly, tankships without segregated ballast systems will be required to make arrangements for and be responsible for all costs associated with appropriate disposal of such ballast, or they will be denied permission to load SPR petroleum at terminals which lack reception facilities for oily ballast.

(c) By submission of this offer, the offeror certifies that it will comply with the "Jones Act" and all applicable ballast disposal requirements.

B.4 "Superfund" tax on SPR petroleum - caution to offerors

(a) Sections 4611 and 4612 of the Internal Revenue Code which imposed a tax on domestic and imported petroleum to support the Hazardous Substance Response Fund (the "Superfund") have been revised by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499, and the Omnibus Budget Reconciliation Act of 1986, Public Law No. 99-509. As amended, these sections impose taxes to finance the Hazardous Substance Superfund and the Oil Spill Liability Trust Fund as of January 1, 1987 and February 1, 1987, respectively.

(b) Section 4611 imposes a tax of 8.2 cents a barrel for domestic crude oil and 11.7 cents a barrel for foreign crude oil to support the "Superfund" on (1) crude oil received at a United States refinery and (2) petroleum products (including crude oil) entered into the United States for consumption, use or warehousing. In addition, Section 4611 provides for a possible additional tax of 1.3 cents a barrel for both foreign and domestic oil to support the Oil Spill Liability Trust Fund. Section 4612 provides that no tax is imposed if it is established that a prior tax imposed by Section 4611 has already been paid with respect to a barrel of oil.

(c) DOE has already paid the "Superfund" taxes on some of the oil imported and stored in the SPR. However, no "Superfund" tax has been paid on imported oil stored prior to the effective dates of these Acts or domestic oil stored in the SPR, nor has tax been paid into the Oil Spill Liability Trust Fund for any oil. Because domestic and imported crude oil for which no tax has been paid and imported crude oils for which "Superfund" taxes have been paid at different rates have been commingled in the SPR, upon drawdown of the SPR, the NS will advise purchasers of the tax liability.

B.5 Export limitations and licensing - caution to offerors

(a) Offerors for SPR petroleum are put on notice that SPR crude oils subject to different export control laws have been commingled in storage. Export of SPR crude oil is subject to U.S. export control laws, the provisions of which differ depending on the source and destination of the crude oil proposed to be exported. For example, imported crude oil stored in the SPR may be exported pursuant to applicable Department of Commerce "Short Supply Controls," 15 C.F.R. Part 377, if: the export is part of a transaction resulting in the importation of refined products of a quantity and quality not less than would be derived from domestic refining; the products are to be sold at prices no higher than the lowest prices at which they could have been sold by the nearest capable U.S. refinery; and for compelling economic or technological reasons beyond the exporter's control, the crude oil cannot reasonably be processed in the U.S. (15 CFR 377.5(d)(1)(vii)). However, there are somewhat more stringent, independent statutory tests to be met as preconditions to the export of certain other crude oils stored in the SPR, including Alaskan North Slope (ANS) and Naval Petroleum Reserves (NPR) oil. *See* 7(d) of the Export Administration Act of 1979, 50 U.S.C App. 2406(d) (ANS oil) and 10 U.S.C. 7430(e) (NPR oil); *see also* 30 U.S.C. 185(u) (oil shipped across a Mineral Lands Leasing Act Section 28(u) right-of-way) and 43 U.S.C. 1354(a) (OCS oil).

(b) By submission of this offer, the offeror certifies that it will comply with any applicable U.S. export control laws.

B.6 Issuance of the Notice of Sale

In the event petroleum is sold from the SPR, DOE will issue a NS containing all of the pertinent information necessary for the offeror to prepare a priced offer. *A NS may be issued with a week or less allowed for the receipt of offers.* Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.7 Submission of offers and modification of previously submitted offers

(a) Unless otherwise provided in the NS, offers must be submitted to the SPR/PMO in New Orleans, Louisiana, by mail or hand-delivery. Direct cash deposits as offer guarantees will be sent by wire in accordance with Provision No. C.24.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn by hand delivery, mail, telegram, or telex, provided that the hand delivery, mail, telegram, or telex is received at the designated office prior to the time specified for receipt of offers.

(c) Envelopes containing offers and any material related to offers shall be plainly marked on the outside: "RE: NS _____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFERS ARE DUE (insert time of opening), LOCAL NEW ORLEANS, LA TIME ON (insert date of opening). MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE." Envelopes containing modified offers or any material related to supplements or modifications of offers, shall be plainly marked on the outside: "RE: NS _____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFER MODIFICATION. MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE."

(d) The envelope shall be marked with the full name and return address of the offeror.

(e) Offers being sent by mail and modifications being sent by hand delivery, mail, telegram, or telex must be received at the address specified in the NS.

(f) Handcarried offers brought during normal business hours on the day set for receipt of offers, or any day prior to that day, shall be taken by the offeror to the place specified in the NS. This includes mail being delivered by a delivery service. At all other times, handcarried offers shall be placed in the bid box, located as specified in the NS.

(g) Public opening of offers is not anticipated unless otherwise indicated in the NS. An abstract of offers will be prepared and posted in a prominent place at the SPR/PMO in New Orleans, Louisiana, for public viewing no later than 48 hours after the specified time and date for the receipt of offers. Persons wishing to see copies of the offers may contact the Contracting Officer to arrange to view the copies at the SPR/PMO.

B.8 Acknowledgment of amendments to a Notice of Sale

When an amendment to a NS requires acknowledgment of receipt, receipt by an offeror must be acknowledged (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on Standard Form 33 (Exhibit C); or (c) by letter, telegram, or telex sent to the address specified in the NS. Such acknowledgment must be received prior to the time specified for receipt of offers.

B.9 Late offers, modifications of offers, and withdrawal of offers

(a) Any offer received at the office designated in the NS after the time specified for receipt will be considered only if it is received before award is made and only under the following conditions:

(1) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a NS requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier); or,

(2) it was sent by mail, telegram or telex if authorized, and it is determined by the Contracting Officer that the late receipt was due solely to mishandling by the SPR/PMO after receipt at the address specified in the NS.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) above, except that it shall be mailed not less than the third calendar day prior to the date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or its authorized representative, provided the representative's identity is made known and the representative signs a receipt for the offer, but only if the withdrawal is made prior to the time set for receipt of offers.

(c) The only acceptable evidence to establish:

(1) the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on either (i) the envelope or wrapper, or (ii) the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification or withdrawal shall be deemed to have been mailed late. Post mark means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

(2) the time of receipt at the address specified in the NS is the time/date stamp at such address on the offer's wrapper or other documentary evidence of receipt maintained at the place of receipt.

(d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Government will be considered at any time it is received, and may be accepted.

B.10 Offer guarantee

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified for receipt of offers no later than the time and date set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer.

(c) The amount of each offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. To assist in this calculation, instructions and a worksheet are available at Exhibit K. Submission of the worksheet is not desired.

(d) Each offeror must submit one of the following types of offer guarantees with each offer:

(1) A certified or cashier's check payable to the U.S. Department of Energy, drawn on a U.S. Bank;

(2) A wire cash deposit to the account of the U.S. Treasury in accordance with Provision No. C.24, all wire deposit costs to be borne by the offeror; or

(3) A letter of credit from a U.S. depository institution conforming without exception to the contents required by Exhibit G, Offer Guarantee - Letter of Credit, all letter of credit costs to be borne by the offeror.

(e) If the offeror or bank forwards the offer guarantee separately from the offer, the envelope shall clearly say "OFFER GUARANTEE OF (Name of Company)" and shall be clearly marked in accordance with Provision No. B.7(c).

(f) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) withdraws its offer within 10 days following the time set for receipt of offers;

(2) withdraws its offer after having agreed to extend its acceptance period; or

(3) having received a notification of ASO, fails to furnish an acceptable payment and performance guarantee within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference or additional resale costs. Use of the offer guarantee for such recovery shall not preclude recovery by DOE of damages in excess of the amount of the offer guarantee caused by such failure of the offeror.

(g) Letters of credit furnished as offer guarantees must be valid for at least 21 calendar days after the date set for the receipt of offers.

(h) Offer guarantees (except letters of credit) will be returned to an unsuccessful offeror 5 business days after expiration of the offeror's acceptance period or 3 business days after award of contracts for delivery line items on which the offeror submitted a price, whichever is first, except as provided in (i) below, and to a successful offeror upon

receipt of a satisfactory performance and payment guarantee. Letters of credit will be returned only upon request. Where the offer guarantee was a wire cash deposit, a cashier's check or a certified check, the offeror may apply it toward advance payment.

(i) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.11 Explanation requests from offerors

Offerors may request explanations regarding meaning or interpretation of the NS from the individual and telephone number indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.12 Currency for offers

Prices shall be stated and invoices shall be paid in U.S. dollars.

B.13 Language of offers and contracts

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.14 Proprietary data

If any information submitted in connection with a sale is considered proprietary, that information should be so marked, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so marked is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.15 SPR crude oil streams and delivery points

(a) The geographical locations of the terminals and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for these streams are as follows, (*see* also Exhibit D, SPR Crude Oil Stream Characteristics, and Exhibit E, SPR Delivery Point Data):

Geographical location	Delivery points	Crude oil Streams
Freeport, Texas	Phillips Terminal, or Phillips Terminal No. 2 Docks.	SPR Bryan Mound Sweet. SPR Bryan Mound Sour. SPR Bryan Mound Mayo.
Texas City, Texas	ARCO Terminal, or ARCO Docks.	SPR Bryan Mound Sweet. SPR Bryan Mound Sour.
Nederland, Texas	Sun Terminal, or Sun Docks.	SPR West Hackberry Sweet. SPR West Hackberry Sour.
St. James, Louisiana	LOCAP Terminal, or DOE St. James Terminal Docks.	SPR Weeks Island Sour. SPR Bayou Choctaw Sweet. SPR Bayou Choctaw Sour.

(b) The NS may change delivery points and it may also include additional terminals, temporary storage facilities or systems utilized in connection with petroleum in transit to the SPR. Alternatively, DOE or its contractor may provide the transportation to the purchaser's facility, for example, when the petroleum is in transit to the SPR at time of sale.

(c) The NS may contain additional information supplementing Exhibit E, SPR Delivery Point Data.

B.16 Notice of Sale line item schedule - petroleum quantity, quality, and delivery method

(a) Unless the NS provides otherwise, the possible master line items (MLI) and delivery line items (DLI) which may be offered are as provided in Exhibit A, SPR Sales Offer Form. Currently, there are eight MLIs in Exhibit A, one for each of the eight crude oil streams that the SPR has in storage. The NS may offer fewer than the eight possible MLIs.

(b) Each MLI contains several DLIs, each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI. This is most likely to occur in the first sales period of a drawdown if the period of sale does not correspond to a calendar month.

(1) DLI-A covers petroleum to be transported by pipeline, either common carrier or local. The nominal delivery period is one month.

(2) DLI-B, DLI-C and DLI-D cover petroleum to be transported by tankships: DLI-B, covering tankships to be loaded from the 1st through the 10th of the month; DLI-C, tankships to be loaded from the 11th through the 20th; and DLI-D, tankships to be loaded from the 21st through the last day of the month.

(3) DLI-E, DLI-F and DLI-G cover petroleum to be transported by barges (Caution: These DLIs are currently only applicable to deliveries of West Hackberry Sweet and Sour crude oil streams from Sun Docks): DLI-E, covering barges to be loaded from the 1st through the 10th of the month; DLI-F, barges to be loaded from the 11th through the 20th; and DLI-G, barges to be loaded from the 21st through the last day of the month.

(4) Where the storage site is connected to more than one terminal or pipeline (presently this only occurs at Bryan Mound) additional DLIs will be offered. The additional DLIs will include DLI-H, covering petroleum to be transported by pipeline over the period of a month; DLI-I, covering tankships to be loaded from the 1st through the 10th; DLI-J, tankships to be loaded from the 11th through the 20th; and DLI-K, tankships to be loaded from the 21st through the last day of the month. The Notice of Sale will specify which DLIs are offered on each MLI.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may vary the estimated MLI quantities by $+/-10$ percent in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity which could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that, in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the maximum amount of the particular SPR crude oil stream that can be moved by that transportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represent estimated transportation capacity, not the amount of petroleum offered for sale. Where necessary to avoid an unfair competitive advantage for local pipeline owners, e.g., where there are only one or two likely offerors, the NS may omit a pipeline DLI. Where this occurs, these offerors may bid against vessel DLIs and, if successful, request a contract modification under Provision No. C.6, to permit delivery of the awarded oil to a pipeline.

(f) The NS will not specify what portion of the petroleum which DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision No. B.15, which shall be made in accordance with Provision No. C.5. A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision No. C.6.

(h) Exhibit D, SPR Crude Oil Stream Characteristics, contains nominal

characteristics for each SPR crude oil stream. Prospective offerors are cautioned that these data will likely change as more crude oil is stored in the SPR. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B.17 Line item information to be provided in the offer

(a) Each offeror, if determined to be an ASO on a DLI, agrees to enter into a contract for the purchase of the quantity of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision No. C.18) in accordance with the terms of that contract.

(b) An offer may be for more than one MLI. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of sweet or 1,000,000 barrels of sour.

(c) An offeror may submit more than one offer. However, separate forms must be prepared and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the form in Exhibit A or other forms as required by the NS:

(1) MLI quantity. ("MAXQ" on the Exhibit A offer form) The offeror shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) DLI quantity. ("DESQ") The offer shall state the number of barrels which the offeror will accept on each DLI, i.e., by the delivery mode and during the delivery period specified. The quantity stated on a single DLI shall not exceed the MAXQ for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its designated DLI quantities would exceed its maximum MLI quantity; otherwise, the total of its designated DLI quantities should equal its maximum MLI quantity.

(3) DLI unit price ("UP89") and total price. The offer shall state the price per barrel for each DLI for which the offeror has designated a desired quantity, as well as the total price (quantity times unit price). Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, or indicates the same preference for more than one DLI, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent ($0.0001). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Minimum DLI quantity acceptable. ("MINQ") The offeror must choose whether to accept only the stated DLI quantity (DESQ) or, in the alternative, to accept any quantity awarded between the offer's stated DLI quantity and the minimum contract quantity for the DLI (indicated by the "N" and "Y" blocks respectively under "MINQ" on the offer form). However, DOE will award less than the DESQ only if the quantity available to be awarded is less than the DESQ. If the offer fails to indicate the offeror's choice, the offer will be evaluated as though the offeror has indicated willingness to accept the minimum contract quantity.

(5) Any other data required by the NS.

B.18 Mistake in offer

(a) After opening and recording offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any price discrepancies or quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) Price discrepancy: An offer for a DLI should contain the unit price per barrel being offered, the desired quantity of barrels to which the unit price applies, and an extension price which is the total of the quantity desired multiplied by the unit price offered. If there is a discrepancy between the unit price and the extension price, the unit price will govern and be recorded as the offer, unless it is clearly apparent on the face of the offer that there has been a clerical error, in which case the Contracting Officer may correct the offer.

(2) Quantity discrepancy: In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, where a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer. In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity was the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in (a) may have been made, he shall request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by telex. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within as little as 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in (1) and (2) below if an offeror alleges a mistake after opening of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, where the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B.19 Evaluation of offers

(a) The Contracting Officer will be the determining official as to whether an offer is responsive to the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B.20 Procedures for evaluation of offers

(a) Award on each DLI will be made to the highest responsible offerors which submit offers responsive to the SSPs and the NS and which have provided the required payment and performance guarantee as required by Provision No. C.19.

(b) DOE will array all price offers on an MLI from highest to lowest for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offer involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) The highest offers will be reviewed for responsiveness to the NS.

(4) In the event the highest offer does not take all the crude oil available on the MLI, sequentially, the next highest offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather

the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest offer.

(5) In the event of tied offers and an insufficient quantity available on the MLI or insufficient capacity on the DLI to fully award all tied offers, the available MLI quantity or DLI capacity remaining will be allotted pro rata among the tied offers using the following formula:

$$\frac{\text{The quantity the offeror is willing to purchase at the tied price}}{\text{The sum of all the quantities the tied offerors are willing to purchase at the tied price}} \times \text{the quantity or capacity remaining to be allotted}$$

If after application of this formula, the pro rata share of any offeror is less than 90 percent of the quantity which the offeror is willing to accept (as indicated in the offer), the Contracting Officer in his sole discretion may do one or more of the following: (i) make additional quantity or capacity available and increase the offeror's share to its minimum acceptable quantity; (ii) contact the offeror to determine whether alternative delivery arrangements can be made, permitting the offeror to accept his pro rata share; (iii) eliminate the offeror and recalculate the shares of all remaining offerors; or (iv) not award that offeror's pro rata share. If any quantities remain after this process, the Contracting Officer may elect not to award those quantities, or to award those quantities in accordance with Provision No. B.22.

(6) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable.

(7) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified by telephone and advised to provide to the Contracting Officer, within five business days or such other longer time as the Contracting Officer shall determine, a letter of credit (see Exhibit H, Payment and Performance Guarantee - Letter of Credit) or advance payment as specified in Provision No. C.19. Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where: (i) an offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or (ii) evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity which represents a violation of law or regulation (including an Executive Order having the force and effect of law); or (iii) evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror which shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B.21 Financial statements and other information

(a) As indicated in Provision No. B.20(b)(7) above, compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in the unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, plans for complying with the Jones Act, etc. The Contracting Officer shall set a deadline for receipt of this information.

B.22 Resolicitation procedures on unsold petroleum

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer, at his option, may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum which has been awarded or allotted for award becomes available to DOE for resale, the Contracting Officer may use the following procedures:

(1) If priced offers remain valid in accordance with Provision No. B.23, the petroleum will go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision No. B.23, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror, etc.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.23 Offeror's certification of acceptance period

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that the successful line items of its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.24 Notification of Apparently Successful Offeror

The following information will be provided to the offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;

(b) Total quantity to be awarded on each MLI and on each DLI;

(c) Price in U.S. dollars per barrel for each DLI;

(d) Extended total price offer for each DLI;

(e) Provisional contract number;

(f) Any other data necessary.

B.25 Contract documents

If an offeror is successful, DOE will make award using a NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. Attached to the NA will be the NS and the successful offer. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. The Contracting Officer also shall provide the purchaser with an information copy of the then-current SSPs as published in the Federal Register. If time constraints require it, DOE may accept the offeror's offer by an electronic notice, such as telegram or telex, and the contract award shall be effective upon issuance of such notice. The electronic notice will be followed by a mailing of full documentation as described above.

B.26 Purchaser's representative

As part of its offer, each offeror shall designate an agent as a point of contact for any telephone calls or correspondence from the Contracting Officer. Any such agent shall have a U.S. address and telephone number and must be conversant in English.

B.27 Procedures for selling to other U.S. Government agencies

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision No. B.20. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must complete all transportation arrangements for moving the petroleum. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C - Sales Contract Provisions

C.1 Delivery of SPR petroleum

(a) The purchaser, at its expense, shall make all necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings, a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services other than those provided by DOE or its agent, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent, subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C.2 Compliance with the "Jones Act" and the U.S. export control laws

Failure to comply with the "Jones Act," 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, and with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination for default in accordance with Provision No. C.27. Purchasers who have failed to comply with the "Jones Act" or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers under Provision No. B.20 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with 10 CFR Part 625.

C.3 Storage of SPR petroleum

Continued storage of purchasers' oil in the SPR facilities after the end of the contract delivery periods is not permitted, unless specifically authorized by the Secretary of Energy and provided for in the NS. Allowing petroleum to remain in storage as the result of failure to complete delivery arrangements may result in assessment of liquidated damages under Provision Nos. C.27 through C.29 unless such failure is excused by those provisions.

C.4 Environmental compliance

(a) Vessels to be used for the transportation of petroleum purchased from the SPR will comply with all applicable rules and regulations, including The Ports and Waterways Safety Act, The Federal Water Pollution Control Act of 1972, The Oil Pollution Control Act of 1961, and other applicable statutes, rules and regulations, including the following: Parts 151, 153, 157, 158 and 159 of Title 33, and Parts 30-36 and 542 of Title 46 of the Code of Federal Regulations.

(b) In the event tankships are used in the performance of this contract, the purchaser will employ only tankships whose owners are parties to the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) or who carry equivalent, as determined by the Contracting Officer, liability coverage.

(c) All crude oil transfer operations in performance of the contract will be in accordance with the guidelines detailed in the International Oil Tanker Safety Guide, U.S. Coast Guard Regulations, and the "Ship to Ship Transfer Guide" of the International Chamber of Shipping Oil Companies International Marine Forum.

(d) Failure of the purchaser or the purchaser's subcontractors to comply with all applicable rules and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision No. C.27, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and transportation scheduling

(a) Unless otherwise instructed in the notification of ASO, each purchaser shall submit a proposed vessel lifting program and/or pipeline delivery schedule to the SPR/PMO by hand-delivery, mail, telex, or facsimile, no later than the fifteenth day prior to the earliest delivery date offered by the NS. The vessel lifting program shall specify the requested three-day loading window for each tanker and the quantity to be lifted. The pipeline schedule will specify the dates on which deliveries are to be tendered to the pipeline and the quantity to be tendered on each date. In the event conflicting requests are received, preference will be given to such requests in descending order, highest priced offer first. The SPR/PMO will respond to each purchaser no later than the tenth day prior to the start of deliveries, either confirming the schedule as originally submitted or proposing alterations. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex or express mail notice on the day after dispatch. The purchaser shall be deemed to have agreed to those alterations unless the purchaser requests the SPR/PMO to reconsider within two days after receipt of such alterations. The SPR/PMO will use its best efforts to accommodate such requests, but its decision following any such reconsideration shall be final and binding.

(b) Telex and facsimile telephone numbers, as well as the address to which mailed and hand-carried proposed schedules should be delivered, will be provided in the notification of ASO.

(c) Notwithstanding paragraph (a) above, ASOs and purchasers may request delivery commencing prior to the contractual delivery period. DOE will honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on the same day, the highest-priced offer will be given preference. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision No. C.6. DOE may not be able to confirm requests for early deliveries until 24 hours prior to the load date.

C.6 Contract modification - alternate delivery line items

A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification will be permitted by DOE if in the sole judgment of DOE the change would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification. The NS shall establish per barrel rates for such increased costs.

C.7 Application procedures for "Jones Act" waivers

(a) Unless otherwise specified, an ASO or purchaser seeking a waiver of the "Jones Act" should submit a request by letter, telegram or telex to: U.S. Customs Service, Chief, Carrier Rulings Branch, 1301 Constitution Avenue, NW., Washington, DC 20229, Telephone No. (202) 566-5706, Telex (710) 822-9525.

Copies of the request should also be sent to:

(1) Assistant Secretary of Defense (Acquisition and Logistics), Department of Defense, Washington, DC 20301-8000;

(2) Associate Administrator for Marketing and Domestic Enterprise, Maritime Administration, Department of Transportation, Mail Stop MAR-800, Washington, DC 20590, Telex (710) 822-9428;

(3) Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves/ Deputy Assistant Secretary for Energy Emergencies, Mail Stop FE-40, Washington, DC 20585, Telex, (710) 822-0176.

(b) A purchaser seeking a waiver to use a vessel built with a Construction Differential Subsidy (and, if applicable, operated with Operating Differential Subsidy) should have the owner of that vessel submit a request by letter, telegram, or telex for such waiver(s) to: Maritime Administrator, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Telex (710) 822-9428. Copies of the request shall be sent to:

(1) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves/Deputy Assistant Secretary for Energy Emergencies, Mail Stop FE-40, Washington, DC 20585, Telex (710) 822-0176.

(2) Chief, Carriers Rulings Branch, U.S. Customs Service, Department of the Treasury, Washington, DC 20229, Telex (710) 822-9525.

For speed and brevity, the request may incorporate by reference appropriate contents of any earlier "Jones Act" waiver request by the purchaser. Under Section 805(a), a hearing is also required for any intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service.

(c) Any request for waiver should include the following information:

(1) Name, address and telephone number of requestor;

(2) Purpose for which waiver is sought, e.g., to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;

(3) Name and flag of registery of vessel for which waiver is sought, if known at the time of waiver request, and either the scheduled 3-day delivery window(s), if available, or 10-day delivery period applicable to the contract;

(4) The intended number of voyages, including the ports for loading and discharging;

(5) Estimated period of time for which vessel will be employed; and

(6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence, telexes, telegrams, and telephone conversation summaries. Use of commercial brokers and the Transportation News Ticker (TNT) is suggested for maximum market coverage. Requests for waivers by telegram or telex may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after transmittal of the telegram or telex requesting the waiver.

(7) For waivers to use Construction Differential Subsidy vessels, the request must also contain a specific agreement for Construction Differential Subsidies payback pursuant to Section 506 of the Merchant Marine Act of 1936 and must be signed by an official of the vessel owner authorized to make a payback commitment.

(d) If there are shown to be "Jones Act" vessels available and in a position to meet the loading dates required, no waivers may be approved.

(e) The names of any vessel(s) to be employed under a "Jones Act" waiver must be provided to the U.S. Customs Service no later than 3 days prior to the beginning of the 3-day loading window scheduled in accordance with Provision No. C.5.

C.8 Vessel loading procedures

(a) After notification of ASO, each ASO shall arrange with the SPR/PMO a schedule of vessel loading windows in accordance with Provision No. C.5.

(b) The length of the scheduled loading window shall be 3 days. The average quantity to be lifted during a loading window will be no less than DOE's minimum contract quantity.

(c) Tankships, ITBs, and self-propelled barges shall be capable of sustaining a minimum average load rate of 15,000 barrels per hour (BPH) during loading operations. Barges with a load rate of not less than 5,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/PMO, lower loading rates and the use of barges at the Sun and Phillips Terminals' suitably equipped tankship docks may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying: (i) name and size of vessel or advice that the vessel is To Be Nominated at a later date (such date to be no later than 3 days before commencement of the loading window); (ii) estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) below); (iii) quantity to be loaded and contract number; and (iv) other relevant information requested by the SPR/PMO. DOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be firm. Once established, changes in such nomination details may be made by only mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with the above provisions.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the quantity scheduled to be delivered during a loading window, the information in (d) above and (f) below shall be provided for each vessel.

(f) The vessel shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the purposes of vessel demurrage (see Provision No. C.9). In addition, the vessel shall notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO: (i) quantity of oily bilge wastes or sludge requiring discharge ashore; (ii) cargo loading rate requested; (iii) number, size, and material of vessel's manifold connections; and (iv) defects in vessel or equipment affecting performance or maneuverability.

(g) Notice of Readiness shall be tendered upon arrival at berth or at customary anchorage which is deemed to be any anchorage within 6 hours vessel time to the SPR dock. The preferred anchorages are identified in Exhibit E. The Notice of Readiness shall be confirmed promptly in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(i) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE. Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent, and bear all costs associated with such services.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours, and barges shall be allowed berth time of 24 hours, as defined below. Vessels loading cargo quantities in excess of 500,000 barrels shall be allowed berth time of 36 hours plus 1 hour for each 20,000 barrels to be loaded in excess of 500,000 barrels. Conditions below excepted, however, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue

until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immmigration clearance.The time required by the vessel to discharge oily wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time in excess of allowable berth time provided for above, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision No. C.10.

C.9 Vessel laytime and demurrage

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in excess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon arrival date, established in accordance with Provision No. C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside, or at 0800 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside.

(c) For all hours or any part thereof of vessel laytime which elapse in excess of the allowed vessel laytime for loading provided for above, demurrage shall be paid by DOE, for U.S.-flag vessels, at the lesser of the demurrage rate in the tanker voyage or charter party agreement, or the most recently available United States Freight Rate Average (USFRA) for a hypothetical tanker with a deadweight in long tons equal to the weight in long tons of the crude oil loaded, multiplied by the most recent edition of the American Tanker Rate Schedule rate for such hypothetical tanker. For foreign flag vessels, demurrage shall be as determined above, except that the London Tanker Brokers' Panel Average Freight Rate Assessment (AFRA) and most recent edition of the Worldwide Tanker Nominal Freight Scale shall be used as appropriate, if less than the charter party rate. For all foreign flag vessel loadings that commence during a particular calendar month, the applicable AFRA shall be the one that is determined on the basis of freight assessments for the period ended on the 15th day of the preceding month. The demurrage rate for barges will be the hourly rate contained in the charter of a chartered barge, or if it is not a chartered barge, at a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual demurrage expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the quantity scheduled to be delivered during a single loading window, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with (a) above.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (*see* Provision No. C.17).

C.10 Purchaser liability for excessive berth time

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision No. C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.11 Pipeline delivery procedures

(a) No later than the last day of the month preceding the month of delivery, the purchaser shall furnish the SPR/PMO with the following information: (i) confirmation of the pipeline's acceptance of the amount of the petroleum proposed to be delivered in the delivery month; (ii) an estimated schedule (consistent with the terms of the contract) for delivery of the petroleum to the pipeline; and (iii) the name and telephone number of the pipeline point of contact with whom the SPR/PMO should coordinate the petroleum delivery.

(b) Once established, the pipeline delivery schedule can only be changed with DOE's prior written consent.

C.12 Title and risk of loss

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment - when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment - when the petroleum passes the permanent flange connecting the SPR's distribution terminal to the commercially-owned pipeline, except for shipments via the LOCAP and ARCO Terminals where title and risk of loss pass when the petroleum enters the LOCAP or ARCO Terminal meter bank.

(c) For in-transit shipments - when the petroleum passes the permanent flange of the discharging vessel manifold upon discharge into the purchaser's designated marine terminal facility or vessel.

C.13 Acceptance of crude oil

(a) When practical, the NS shall update the SPR crude oil stream characteristics shown in Exhibit D, SPR Crude Oil Stream Characteristics. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided below, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil stream delivered both has a total sulfur content (by weight) in excess of 3.5 percent if Bryan Mound Maya, 2.0 percent if any other sour crude oil stream, or 0.50 percent if a sweet crude oil stream, and, in addition, has an API gravity less than 20°API if Bryan Mound Maya, 20°API if any other sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision No. C.14, or request negotiation of the contract price. Unless the purchaser submits a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of delivery, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision No. C.14. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision No. C.34.

C.14 Price adjustments for quality differentials for crude oil

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, price adjustments will be made solely for variations between the API gravity of the crude oil delivered and the API gravity of the crude oil stream contracted for as published in the NS. Price adjustments for SPR crude oil streams are expected to be similar to one or more commercial crude oil differential postings for equivalent quality crude oil.

(b) Price adjustments will be applied only to the amount of variation by which the API of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/− 0.5°API) from the API gravity of the crude oil stream contracted for as published in the NS. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5°API and decreased by that amount if the crude oil delivered falls below the published API gravity by more than 0.5°API.

C.15 Determination of quality of petroleum

(a) The quality of the crude oil delivered to the purchaser will be determined from samples taken from the delivery tanks in accordance with API *Manual of Petroleum Measurement Standards*, Chapter 8.1, *Manual Sampling of Petroleum and Petroleum Products* (ASTM D4057), latest edition, or from the composite sample collected by an automatic inline sampler whose performance has been verified in accordance with the sampling system proving system outlined in the API *Manual of Petroleum Measurement Standards*, Chapter 8.2, *Automatic Sampling of Petroleum and Petroleum Products* (ASTM D4177), latest edition. Preference will be given to samples collected by means of an automatic inline sampler when such a system is available and operational. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: *API Manual of Petroleum Measurement Standards*, Chapter 10.1, *Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method* (ASTM D473) (IP53), latest edition; and API *Manual of Petroleum Measurement Standards*, Chapter 10.2, *Determination of Water in Crude Oil by Distillation* (ASTM D4006) (IP358), latest edition.

Alternate methods: *API Manual of Petroleum Measurement Standards*, Chapter 10.3, *Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure)* (ASTM D4007) (IP 359), latest edition; or *API Manual of Petroleum Measurement Standards*, Chapter 10.4, *Standard Methods of Test for Water—and Sediment in Crude Oils*, (API Pub. 2542) (ASTM D96), latest edition.

(2) Sulfur

Primary method: ASTM D1552, *Sulfur in Petroleum Products (High) Temperature Method)*, latest edition.

Alternate methods: ASTM D2622, *Sulfur in Petroleum Products (X-ray Spectographic Method)*, latest edition; or ASTM D4294, *Sulfur in Petroleum Products by Non-Dispersive X-ray Fluorescence Spectrometry*, latest edition.

(3) API Gravity

API *Manual of Petroleum Measurement Standards*, Chapter 9.1, *Hydrometer Test Method for Density, Relative Density (Specific Gravity)*, or *API Gravity of Crude Petroleum and Liquid Petroleum Products* (ASTM D1298), latest edition; or *API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)* (ASTM D287), latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The primary methods are binding in any dispute over quality characteristics of SPR crude oil.

(b) The purchaser may arrange for additional services to witness and verify testing simultaneously with the Government Quality Assurance Representatives. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision No. C.34. Should the purchaser opt not to provide such additional services, then the Government findings will be binding on the purchaser

C.16 Determination of quantity of petroleum

(a) The quantity of crude oil delivered to the purchaser will be determined from opening and closing tank gauges with adjustment for opening and closing free water and sediment and water as determined from shore tank samples where an inline sampler is not available, or delivery meter reports. All volumetric measurements made when the crude oil is at a temperature other than 60°F will be converted to Net Standard Volume in barrels at 60°F, using the *API Manual of Petroleum Measurement Standards*, Chapter 11.1, Volume 1, *Volume Correction Factors* (ASTM D1280) (IP 200); Table 5A-*Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60°F*; Table 6A-Generalized Crude Oils, Correction of Volume to 60°*F* Against API Gravity at 60°F, latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a composite sample collected by a certified in-line sampler.

(b) The quantity determination shall be made and certified by the DOE contractor responsible for loading operations, and witnessed by the Government Quality Assurance Representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision No. C.34. Should the purchaser not arrange for additional services, then DOE's findings shall be binding on the purchaser.

C.17 Delivery documentation

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO-F-6110.2-14 (*see* Exhibit] for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchaser's authorized representative after completion of delivery They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.18 Contract amounts for crude oil

The contract quantities and dollar value stated in the NA are estimates. The per barrel unit price is subject to adjustment due to variation in the API gravity from the published characteristics. In addition, due to conditions of loading and shipping, the quantity actually delivered may vary by +/−10 percent for each DLI. However, a purchaser is not required to engage additional vessels if sufficient vessels to take delivery of at least 90 percent of the contract quantity have been engaged.

C.19 Payment

(a) Payment for oil delivered shall be due no later than 10 days after the date of delivery

(b) Payment shall be made by the payment and performance guarantee which must be either:

(1) A letter of credit conforming without exception to requirements of Provision No. C.20, and Exhibit H, Payment and Performance Guarantee - Letter of Credit and equal to 100 percent of the contract amount; or

(2) An advance payment by cash wire deposit, made in accordance with the wire transfer instructions in Provision No. C.24 and equal to 110 percent of the contract amount.

(c) The purchaser must furnish an acceptable payment and performance guarantee before DOE will execute the NA. The Contracting Officer will inform the ASO by telephone that the guarantee is due within a period which may be as short as 5 business days. The Contracting Officer may, at his discretion, send a confirming telegram of the notification, but the timeliness of receipt for the guarantee is determined by the date of the telephone call.

(d) All wire deposit and letter of credit costs will be borne by the purchaser.

(e) The Contracting Officer (who may act through the SPR/PMO Planning and Financial Management Division) may draw against this payment and performance guarantee at any time after the first delivery for any monies due under the contract for petroleum delivered and at any time for any other monies owing to DOE under the contract, no matter how the debt arose.

C.20 Payment and performance letters of credit - general requirements

(a) Each letter of credit must conform without exception to the standard letter of credit provided as Exhibit H.

(b) DOE does not require information concerning the issuing bank's agreement with its customer. Any language in the letter of

credit in addition to that specified in Exhibit H shall make the letter of credit unacceptable and shall be cause for rejection of the offer.

(c) As set forth in Exhibit H, the letter of credit provides for payment to DOE by wire transfer of funds over FEDWIRE. If a letter of credit is from a single depository institution, including a branch or an agency of a foreign bank, (hereinafter referred to as "bank") that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant in the Fed's FEDWIRE funds transfer system. If the letter of credit is issued by a syndicate of banks, only the institution acting as agent for the syndicate and responsible for honoring the drafts drawn under the letter of credit must maintain a Fed account and be a participant in FEDWIRE.

(d) DOE reserves the right to request evidence that the bank official signing the letter of credit is authorized to do so, such as a confirming telex, telephone call, or letter from another bank official, or other appropriate evidence as determined by the Contracting Officer.

C.21 Billing and payment - with purchaser's letter of credit

(a) After delivery of the SPR petroleum and completion of the delivery documentation, the Contracting Officer shall prepare an invoice in accordance with the contract and the delivery documentation.

(b) Upon completion of the invoice, the SPR/PMO Planning and Financial Management Division shall prepare a draft requesting a wire transfer of funds in accordance with the letter of credit and transmit that message to the bank issuing the letter of credit by express mail or telex, or via the FEDWIRE system. On the date specified in the draft, nominally 10 days after completion of the delivery of petroleum, the bank shall use the wire transfer procedures specified in the letter of credit to transfer the invoiced funds to the account of the U.S. Treasury. If the draft is not transmitted within 10 days of completion of delivery of the petroleum, the due date shall be the next business day after receipt of the draft.

(c) The SPR/PMO shall provide copies of the invoices to the purchaser and the bank by mail.

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying any interest due (*see* Provision No. C.25) from the due date specified in the draft.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the purchaser.

C.22 Billing and payment - with purchaser's advance payment

(a) If the offeror elects to pay in advance, delivery documentation will be provided to the purchaser after each delivery. After the last delivery under the contract, a reconciliation billing will be made. If money is due from the purchaser to DOE, an invoice will be issued to the purchaser (*see* paragraph (b) below). If money is due the purchaser, a Treasury check will be issued in accordance with the Treasury Fiscal Requirements Manual.

(b) In accordance with the delivery documentation and the contract, the Contracting Officer shall determine the amount of any reconciliation invoice and transmit it to the purchaser by express mail, mail or telex. A purchaser is deemed to have received mailed invoices on the second day after their dispatch and telex and express mail invoices on the day after dispatch. Reconciliation invoices must be paid in accordance with Provision No. C.24 10 business days after the purchaser is deemed to have received them.

C.23 Replacement of funds in the payment and performance guarantee

(a) Payment and performance guarantees must be maintained in full force and effect to the Contracting Officer's satisfaction at the following minimum levels until final payment under the contract:

(1) Letter of credit at 100 percent of the contract price of the petroleum remaining to be paid for; and

(2) Advance payment at 110 percent of the contract price of the petroleum remaining to be delivered.

(b) If the Contracting Officer draws against the letter of credit, or makes charges against the advance payment, for monies owed DOE for oil delivered, for liquidated damages or for other funds due DOE, the purchaser shall be notified within 24 hours by express mail, mail or telex of the fact of such withdrawal or charge and the amount thereof. Purchaser is deemed to have received a mailed notice on the second business day after its dispatch and a telex or express mail notice the next business day after its dispatch.

(c) In the event that a draw against the payment and performance guarantee causes its amount to fall below the levels specified in (a) above, the purchaser shall, within 5 business days after it is deemed to have received notification in (b) above, replenish the payment and performance guarantee to those levels. Such replenishment shall be made either by the wire transfer of funds in accordance with Provision No. C.24, or by the provision of a new letter of credit or amendment of the old letter of credit. If such replenishment is not made within 5 business days, the Contracting Officer may, on the 6th business day, without prior notice to the purchaser withhold deliveries under the contract and/or terminate the contract in whole or in part for default under Provision No. C.27.

C.24 Method of payments - general

(a) Notwithstanding any other contract provision, DOE may invoice the purchaser at any time for payment of monies due under the contract. These would include but not be limited to, interest, liquidated damages, amounts owing for any services provided for under the contract, and the difference between the contract price and price received on the resale of undelivered petroleum as defined in Provision No. C.27. If the invoice is for delinquent payments, interest shall accrue from the date of the delinquency and not from the invoice's deemed date of receipt by purchaser.

(b) All amounts payable by the purchaser in excess of $1,000.00 shall be paid by wire transfer as a deposit to the account of the U.S. Treasury through FEDWIRE. Information which must be included on each wire transfer is specified in Exhibit I, Instruction Guide for Funds Transfer.

(c) Payments in amounts less than $1,000.00 shall be by check made out to "U.S. Department of Energy." Such payments will be sent with documentation to identify the payer and purpose of the payment to: U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, Crude Oil Sales, Planning and Financial Management Division, Mail Stop PR-652, 900 Commerce Road East, New Orleans, Louisiana 70123.

(d) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(e) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

(f) If a purchaser disagrees with the amounts invoiced by DOE, the purchaser immediately shall pay the amount invoiced, and notify the Contracting Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute, and purchaser shall file a claim promptly in accordance with Provision No. C.34.

C.25 Interest

Amounts due and payable by the purchaser or its bank which are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Act of 1982 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the Federal Register.

C.26 Government options if payment is not received

(a) If any amount owed to DOE is not paid within the time deadlines specified by the applicable provisions, the Contracting Officer may, at his discretion, take the following actions either simultaneously or in any sequence he deems appropriate, with or without prior notice to the purchaser:

(1) Invoice the purchaser for the amount on which payment is delinquent or provide written notice that payment is delinquent;

(2) Draw against the letter of credit for all amounts due and delinquent;

(3) Apply any advance payment received against the amount due and delinquent;

(4) Withhold all or any part of future deliveries under the contract; and/or

(5) Terminate the contract, in whole or in part, for purchaser default, in accordance with Provision No. C.27.

(b) Any disputes will be settled by the Contracting Officer in accordance with Provision No. C.34.

C.27 Termination

(a) Immediate termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision No. C.33 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under subparagraph (b)(1)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under subparagraphs (b)(2) and (b)(3) whether such failure was excuseable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with subparagraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for Default.

(1) Subject to the provisions of subparagraphs (b)(2) and (b)(3), the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability of DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision No. C.33 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

[iv] Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision No. C.29 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or a NS issued after the date of default which specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with subparagraphs (2) and (3), the rights and obligations of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Such termination shall be without liability of the Government if such termination arises out of causes specified in (a)(1) or (b)(1) above, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex or express mail notice on the day after dispatch.

(3) Termination for the convenience of the Government shall not excuse the purchaser from liquidated damages accruing prior to the effective date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy which it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) above, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.34.

(h) The term "subcontractor" or "subcontractors" includes subcontractors at any tier.

C.28 Other Government remedies

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision No. C.27, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision No. C.29 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.29 Liquidated damages

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with paragraph (b) of Provision No. C.27 and paragraph (c) of Provision No. C.28.

(b) As provided in (a) above, liquidated damages will be assessed for each day or fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision No. C.27. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision No. C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.34.

C.30 Failure to perform under SPR contracts

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future contracts.

C.31 Government options in case of impossibility of performance

(a) In the event that DOE is unable to deliver petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(1) Terminate for the convenience of the Government under Provision No. C.27; or

(2) Offer different SPR crude oil streams or delivery times to the purchaser in substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price, if established for the same or similar crude oil streams in the most recent NS or determined after the opening of offers.

(c) DOE's obligation in such circumstances is to use its best efforts, and DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision No. 27.

C.32 Limitation of Government liability

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.33 Notices

(a) Any notices required to be given by one party to the contract to the other *in writing* shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested mail, express mail, telegram, or telex. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Procurement and Sales Division, Mail Stop PR-651, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.34 Disputes

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. Section 601 et seq.). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR 1-33.211.

(b) "Claim" means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding $50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's name _____

Signature _____

Title _____

(d) The Government shall pay to the purchaser, interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The Contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semi-annually in the **Federal Register.**

(e) The purchaser shall pay to DOE, interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision No. C.25 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.35 Assignment

The purchaser shall not make or attempt to make any assignment of a contract which incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.36 Order of precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

(a) The NA and written modifications thereto;

(b) The NS;

(c) Those provisions of the SSPs (as published in the **Federal Register**), made applicable to the contract by the NS;

(d) The instructions to the SPR Sales Offer Form; and

(e) The successful offer.

C.37 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government, with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

C.38 Officials not to benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

EXHIBITS:

A - SPR Sales Offer Form
B - Sample Notice of Sale
C - Solicitation, Offer and Award - Standard Form 33
D - SPR Crude Oil Stream Characteristics
E - SPR Delivery Point Data
F - Reserved
G - Offer Guarantee - Letter of Credit
H - Payment and Performance Guarantee - Letter of Credit
I - Instruction Guide for Funds Transfer Messages to Treasury
J - Form SPRPMO-F-6110.2-14 - SPR Crude Oil Delivery Report
K - Offer Guarantee Calculation Worksheet

EXHIBIT A

Social Security Number or
Employer/Taxpayer ID

STRATEGIC PETROLEUM RESERVE
SALES OFFER FORM

NOTICE OF
SALE NUMBER

OFFEROR INFORMATION

NAME

ADDRESS

CITY

STATE

ZIP CODE -

COUNTRY

TELEPHONE - -

BOND (Instruction 10)
$

AGENT INFORMATION

NAME

ADDRESS

CITY

STATE

ZIP CODE -

COUNTRY
USA

TELEPHONE - -

INSTRUCTIONS

1. Identification Number

Individuals enter social security number Businesses enter employer/taxpayer ID. Include dashes.

2. Master Line Item (MLI)

Offerors may bid on one or more MLIs, but may not make alternate bids on separate master line items (i.e., the offer may not state 1,000,000 barrels from either MLI 001, or MLI 002).

3. Maximum MLI Quantity (MAXQ)

For each MLI offered against, offers shall state here, in thousands of barrels, the number of barrels which the offeror seeks to purchase on the MLI, regardless of delivery method. The maximum MLI quantity shall be not less than the DOE's minimum quantity as stated in the Notice of Sale (NS).

4. Delivery Line Items (DLI)

Applicable DLI delivery methods are as follows.

DLI A	Pipeline delivery from first terminal
DLI B,C,D	Tanker delivery from first terminal
DLI E,F,G	Barge delivery from first terminal
DLI H	Pipeline delivery from second terminal
DLI I,J,K	Tanker delivery from second terminal

DLI A and H nominally have a 30-day delivery period. Vessel DLIs B,E and I have ten day delivery periods nominally from the 1st to the 10th; C, F and J cover the 11th to the 20th; and D, G and K cover the 21st to the last day of the period of sale. Not all DLIs may be available on a particular MLI. For example, barges are allowed only at the Sun Terminal barge docks (with certain limited exceptions, see SSP No. C.8). Therefore, only MLI 004 and MLI 005 have DLIs E, F and G. Buyers are cautioned to read the NS carefully as it may alter the period of time covered by each DLI if the period of sale does not correspond to a calendar month. This is most likely to occur in the first sales cycle of a drawdown. For example, the NS may alter DLIs B, C, D, E, F, G, I, J and K to cover approximately 15 days instead of 10, or if the period of sale runs from the middle of one month to the middle of the next, DLIs B, E and I may be designated as covering the 15th to 25th of the first month, etc.

5. Unit Price (UP$$)

The offer shall state the offered price per barrel on each DLI for which the offer indicates a desired DLI quantity. The offer may state either the same unit price for different DLIs or different unit prices. DOE will award the highest price first. Prices may be stated to one-hundredths of a cent ($0.0001), but in no smaller fraction thereof.

6. Delivery Preference (P)

Where the offer has the same unit price for two or more DLIs, the offer may indicate the offeror's order of preference for delivery method and period (1st, 2nd, 3rd, etc.). If the offer does not indicate a preference, DOE will select the DLI(s) to be awarded at its discretion.

7. Desired DLI Quantity (DESQ)

Offers must indicate at least one desired DLI, stating(in thousands of barrels) the number of barrels which the offeror will accept by the delivery method and during the delivery period established for that DLI. An offeror may indicate a willingness to accept alternate delivery methods or delivery periods. An offeror may request all, part or none of the offer's maximum MLI quantity on any particular DLI. A total of all the offeror's desired DLI quantities should total at least the maximum MLI quantity, but could exceed the maximum MLI quantity if the offeror is willing to accept alternate delivery methods or periods. For example, the offer could state:

MLI: 001
Maximum MLI Quantity: 1,000
Desired DLI Quantities:
DLI 001B: 1,000
DLI 001C: 1,000
DLI 001D: 1,000

This would indicate the offeror would be willing to accept one million barrels of Bryan Mound sweet to be delivered to its vessels either from the 1st through the 10th, the 11th through the 20th, or 21st through the end of the month.

8. Minimum Contract Quantity (MINQ)

For each DLI on which an offer is made, the offeror should indicate his willingness to accept as little as DOE's specified minimum contract quantity for that DLI by marking the 'Y' block, or unwillingness to accept less than the DESQ for that DLI by marking the 'N' block. If neither 'Y' or 'N' is indicated, the offer will be evaluated as though the offeror had indicated a 'Y' DOE only will award less than the offeror's desired DLI quantity if an offer is otherwise successful, but the quantity which DOE has available for award is less than said desired DLI quantity or award of the desired quantity would cause the offeror's MAXQ on the MLI to be exceeded.

9. Total Price

The offer shall calculate the total price (desired DLI quantity times unit price) for each DLI on which an offer is made. The offeror is reminded that DESQ is stated in thousands of barrels.

10. Offer Guarantee

The amount of the offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each MLI times the highest offer prices that the offeror would have to pay for that MLI if the offer is successful. To assist in this calculation, instructions and a worksheet are available at Exhibit K. Submission of the worksheet is not mandatory.

Social Security Number or Employer/Taxpayer ID

OFFER

NOTICE OF SALE NUMBER

MLI = MASTER LINE ITEM NUMBER (INSTRUCTION 2)
DLI = DELIVERY LINE ITEM (INSTRUCTIONS 4 AND 7)
UP$$ = UNIT PRICE (U.S. $)/BBL (INSTRUCTION 5)
P = PREFERENCE (INSTRUCTION 6)

MAXQ = MAXIMUM MLI QUANTITY (1000 BBL) (INSTRUCTION 3)
DESQ = DESIRED DLI QUANTITY (1000 BBL) (INSTRUCTION 7)
MINQ = MINIMUM CONTRACT QUANTITY (INSTRUCTION 8)

MLI 001 BRYAN MOUND SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
H						$
I						$
J						$
K						$

MLI 002 BRYAN MOUND SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
H						$
I						$
J						$
K						$

MLI 003 BRYAN MOUND MAYA

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$

MLI 004 WEST HACKBERRY SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
E						$
F						$
G						$

Social Security Number or Employer/Taxpayer ID

OFFER

NOTICE OF SALE NUMBER

MLI = MASTER LINE ITEM NUMBER (INSTRUCTION 2)
DLI = DELIVERY LINE ITEM (INSTRUCTIONS 4 AND 7)
UP$$ = UNIT PRICE (U.S. $)/BBL (INSTRUCTION 5)
P = PREFERENCE (INSTRUCTION 6)

MAXQ = MAXIMUM MLI QUANTITY (1000 BBL) (INSTRUCTION 3)
DESQ = DESIRED DLI QUANTITY (1000 BBL) (INSTRUCTION 7)
MINQ = MINIMUM CONTRACT QUANTITY (INSTRUCTION 8)

MLI 005 WEST HACKBERRY SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$
E					$
F					$
G					$

MLI 006 WEEKS ISLAND SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$

MLI 007 BAYOU CHOCTAW SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$

MLI 008 BAYOU CHOCTAW SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$

By signing below the offeror certifies agreement without exception to all terms and conditions applicable to this sale and that the maximum potential contract amount (Instruction 10) is $

SIGNATURE OFFEROR or AGENT

COMPANY NAME

BEST COPY AVAILABLE

Exhibit B—Sample Notice of Sale (NS)

1. NS No. DE–NS–88–84P010001 is issued (date) for sale of Strategic Petroleum Reserve (SPR) crude oil. All references to "Provision No." refer to the Standard Sales Provisions (SSPs) published in the Federal Register (date). All provisions are applicable to this sale except that provision No(s). (give number or numbers) are changed to read: (give changes). Additional provisions are hereby added (give new numbers which do not duplicate others in SSPs) which read: (give text).

Note.—Should the SSPs be extensively changed, the Notice of Sale (NS) may include, for information purposes only, a complete text of the SSPs as modified for the sale. Offerors are cautioned, however, that these complete text SSPs have *no* contractual status and that in the event of any inconsistencies, the published SSPs and the NS shall establish the terms and conditions for the sale.

2. Offers and offer guarantees must be received by 1:00 p.m. local time on (date) at addresses for mailed and handcarried offers given in SSPs.

3. Offerors must give names, addresses and telephone numbers, including area codes, for authorized representative of the offeror with whom the Government may conduct any necessary discussions.

4. Direct questions regarding NS to (name of individual), telephone (504) 734–4228. Collect calls will not be accepted.

5. Master Line Item (MLI) numbers given herein refer to those schedules attached as Exhibit A of the SSPs. The quantities for each MLI offered for sale are as follows: MLI 001: _____ bbls; MLI 002 not offered this sale; MLI 003: _____ bbls; MLI 004 : _____ bbls; MLI 005 not offered this sale; MLI 006: not offesed this sale; MLI 007: _____ bbls; MLI 008: _____ bbls.

6. Offered delivery line items (DLI) and their maximums, i.e., offered DLIs and the Department of Energy's best estimates of the maximum amount of petroleum that can be moved by each delivery line item transportation system over the delivery period, are as follows (*see* provision No. B.18 of the SSPs):

7. Minimum quantities which will be awarded for each delivery line item (DLI) are as follows:

8. Delivery line item A, for pipeline delivery, is not offered under MLI 001. Offerors wishing to take delivery of MLI 001 by pipeline should offer to purchase quantities under delivery line items B, C, and D. If successful, purchasers may modify delivery method under Provision No. C.6.

9. Consideration to be paid for alteration of contract delivery modes in accordance with provision No. C.6 is as follows:

10. Applicable quality differentials are plus or minus _____ ¢ per degree API gravity, or part thereof, for sweet crude oil streams, and plus or minus _____ ¢ per one-tenth degree API gravity for sour crude oil streams.

11. Refinery recipients' "Superfund" tax liability is as follows:

EXHIBIT C

OMB Approved No. 9000-0008

SOLICITATION, OFFER AND AWARD | 1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) | RATING | PAGE OF PAGES

2. CONTRACT NO	3. SOLICITATION NO	4. TYPE OF SOLICITATION: ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO

7. ISSUED BY CODE

8. ADDRESS OFFER TO (*If other than Item 7*)

NOTE In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried in the depository located in _____ until _____ (Hour) local time _____ (Date)

CAUTION – LATE Submissions, Modifications and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL	A. NAME	B. TELEPHONE NO (*Include area code*) (*NO COLLECT CALLS*)

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH	
	C	DESCRIPTION/SPECS /WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS. AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

OFFER (*Must be fully completed by offeror*)

NOTE Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (*60 calendar days unless a different period is inserted by the offeror*) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (*See Section I, Clause No. 52.232-8*)	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGMENT OF AMENDMENTS (*The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated*)	AMENDMENT NO	DATE	AMENDMENT NO	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (*Type or print*)

15B. TELEPHONE NO (*Include area code*)	15C. ☐ CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE – ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE	18. OFFER DATE

AWARD (*To be completed by Government*)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN _____ ITEM (*4 copies unless otherwise specified*)

24. ADMINISTERED BY (*If other than Item 7*) CODE	25. PAYMENT WILL BE MADE BY CODE

26. NAME OF CONTRACTING OFFICER (*Type or print*)	27. UNITED STATES OF AMERICA (*Signature of Contracting Officer*)	28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

33-134

STANDARD FORM 33 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

☆ GPO : 1985 O - 491-248 (20232)

Exhibit D—SPR Crude Oil Stream Characteristics

Exhibit D

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Sweet Terminals Phillips Terminal, Freeport, TX

ARCO Terminal, Texas City, TX

Crude

Specific Gravity	0.8449	Ni, ppm	5.1(5.3)*	ERVP, psia @ 100° F	5.60
API Gravity	36.0	V, ppm	2.4(3.2)*	Neutralization No.	0.06
Sulfur, Wt. %	0.32	Fe, ppm	4.3(4.1)*	H_2S, ppm (c)*	8.4
Nitrogen, Wt. %	0.122	Org. Cl, ppm (c)*	0.7	Mercaptans, ppm (c)*	0.4
Con. Car. Res., Wt. % (c)*	2.20	O.D. Color	11,450	Viscosity: 77° F	7.93 cSt 51.7 SUS
Pour Point, °F	40	UOP "K"	12.00	100° F	4.89 cSt 42.0 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_4-C_5	C_5-175° F	175°-350° F	350°-375° F	375°-530° F	530°-650° F	650°-1035 °F	Residuum
Vol. - mls	106.2	159.2	291.0	452.7	586.6	455.5	1020.1	416.2
Vol. %	3.0	4.6	8.3	13.0	16.8	13.0	29.2	11.9
Vol. Sum %	3.0	7.6	15.9	28.9	45.7	58.7	87.9	99.8
Wt. - grams	63.7	108.8	214.2	350.9	484.0	389.0	927.4	412.0
Wt. %	2.2	3.7	7.3	11.9	16.4	13.2	31.4	14.0
Specific Gravity	0.6	0.6835	0.7362	0.7752	0.8251	0.8540	0.9091	0.990
API Gravity		75.5	60.7	51.0	40.0	34.2	24.1	11.4
Sulfur, Wt. %		0.003	0.002	0.016	0.08	0.26	0.54	1.02
Mercaptans, ppm		9.9	<1	<1	<1			
H_2S, ppm		<1	10.6	27.1	26.9			
Organic Cl, ppm		2.2	3.8	3.2				
Aniline Point, °F				127.4	145.4	166.4	192.9	
Neutralization No.					0.04	0.09		
Cetane Index					47.09	52.72		
Naphthalenes, vol. %					4.51	8.74		
Smoke point					16.8	14.7		
Nitrogen, Wt. %					0.0004	0.007	0.142	0.668
Viscosity:								
cSt (SUS) 77° F					7.40(50.0)			
100° F					1.85(32.1)	4.93(42.2)		
130° F						3.37(37.3)	25.07(119.9)	
180° F							10.03(59.3)	
210° F								884.6(4126)
250° F								247.3(1156)
Freezing Point, °F					-31.0			
Cloud Point, °F						26	118	
Pour Point, °F						25	100	
Ni, ppm							Not Detectable	37.6
V, ppm							Not Detectable	23.0
Fe, ppm							Not Detectable	28.9
Con. Car. Res., Wt. %							—	15.7

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	70.9	52.6
Motor Octane Number:	67.2	48.6

Whole crude lead content: 0.006 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		43.1	23.8	28.9	30.8
Total Iso-paraffins		36.0	25.5	22.6	0.6
Total Aromatics		2.4	5.8	21.7	33.8
Total Naphthenes		18.5	45.1	25.9	2.1
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.7	32.6
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.4	0.1	0.0	0.0
	C5	18.5	0.4	0.0	0.0
	C6	22.4	4.2	0.0	0.0
	C7	0.8	14.4	0.5	0.0
	C8	0.0	4.8	8.6	0.0
	C9	0.0	0.0	8.9	0.1
	C10	0.0	0.0	7.6	1.8
	C11	0.0	0.0	2.4	12.5
	C12	0.0	0.0	0.1	16.7
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	8.9	0.2	0.0	0.0
	C6	24.2	2.1	0.0	0.0
	C7	2.9	12.7	0.2	0.0
	C8	0.0	10.5	3.2	0.0
	C9	0.0	0.0	10.8	0.0
	C10	0.0	0.0	8.4	0.4
	C11	0.0	0.0	0.2	0.2
Aromatics:	C6	2.0	0.7	0.0	0.0
	C7	0.4	4.3	9.8	0.1
	C8	0.0	0.7	7.4	0.0
	C9	0.0	0.0	0.4	0.7
	C10	0.0	0.0	4.7	12.7
	C11	0.0	0.0	0.5	16.7
	C12	0.0	0.0	0.0	3.7
Naphthenes:	C5	2.1	0.1	0.0	0.0
	C6	14.3	8.2	0.1	0.0
	C7	2.1	24.7	1.8	0.0
	C8	0.0	12.0	11.5	0.0
	C9	0.0	0.0	7.1	0.1
	C10	0.0	0.0	5.5	1.8
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	13.6
i-Butane	11.9
n-Butane	39.4
i-Pentane	18.0
n-Pentane	15.1
C_6+	1.8

Whole Crude B-T-X

Component	Vol. %
Benzene	0.150
Toluene	0.375
Ethylbenzene	0.020
Xylenes	0.034

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Sour Terminals Phillips Terminal, Freeport, TX

ARCO Terminal, Texas City, TX

Crude

Specific Gravity	0.8683	Ni, ppm	11.3(15.4)*	ERVP, psia @ 100° F	3.40
API Gravity	31.5	V, ppm	50.9(60.6)*	Neutralization No.	0.08
Sulfur, Wt. %	1.60	Fe, ppm	Not Detectable	H_2S, ppm (c)*	0.8
Nitrogen, Wt. %	0.149	Org. Cl, ppm (c)*	1.1	Mercaptans, ppm (c)*	12.1
Con. Car. Res., Wt. % (c)*	4.81	O.D. Color	25,540	Viscosity: 77° F	11.4 cSt 63.7 SUS
Pour Point, °F	0	UOP "K"	11.85	100° F	7.44 cSt 50.2 SUS

Fraction Cut Temp.	C_4-C_5	1 C5-175° F	2 175°-250° F	3 250°-375° F	4 375°-530° F	5 530°-650° F	6 650°-1061+° F	7 Residuum
Vol. - mls	23.8	133.6	271.6	522.8	634.3	459.2	1160.7	597.4
Vol. %	0.6	3.5	7.0	13.6	16.5	11.9	30.1	15.5
Vol. Sum %	0.6	4.1	11.1	24.7	41.2	53.1	83.2	98.7
Wt. - grams	14.3	90.1	197.0	403.6	516.8	395.1	1074.0	618.9
Wt. %	0.4	2.7	5.9	12.1	15.5	11.8	32.1	18.5
Specific Gravity	0.6	0.6743	0.7254	0.7720	0.8179	0.8605	0.9253	1.036
API Gravity		78.4	63.6	51.8	41.5	32.9	21.4	5.1
Sulfur, Wt. %		0.002	0.005	0.046	0.42	1.14	2.08	3.88
Mercaptans, ppm		24.4	41.3	74.2	<1			
H_2S, ppm		2.1	2.3	5.4	10.9			
Organic Cl, ppm		1.6	4.7	6.2				
Aniline Point, °F				126.7	144.9	160.4	178.9	
Neutralization No.					0.02	0.01		
Cetane Index					49.81	50.63		
Naphthalenes, vol. %					3.95	11.02		
Smoke point					16.6	14.2		
Nitrogen, Wt. %					0.0009	0.017	0.166	0.696
Viscosity:								
cSt (SUS) 77° F					2.26(33.4)			
100° F					1.79 (<32.0)	4.80(41.8)		
130° F						3.20(37.0)	29.30(138.7)	
180° F							11.05(62.9)	
210° F								9002(41,985)
250° F								1737(8120)
Freezing Point, °F					-31.0			
Cloud Point, °F						24	112	
Pour Point, °F						20	95	
Ni, ppm							Not Detectable	83.3
V, ppm							Not Detectable	328
Fe, ppm							Not Detectable	Not Detectable
Con. Car. Res., Wt. %							—	26.0

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	64.6	41.8
Motor Octane Number:	60.7	40.5

Whole crude lead content: 0.002 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
Total Paraffins		45.9	34.3	30.3	33.6
Total Iso-paraffins		38.4	31.6	25.2	0.5
Total Aromatics		2.7	7.9	24.3	36.4
Total Naphthenes		12.0	26.2	18.6	1.8
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.5	27.9
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.3	0.0	0.0	0.0
	C5	17.2	0.4	0.0	0.0
	C6	26.9	5.8	0.1	0.0
	C7	1.4	19.5	0.9	0.0
	C8	0.0	6.6	7.2	0.0
	C9	0.0	0.0	10.5	0.1
	C10	0.0	0.0	6.6	2.1
	C11	0.0	0.0	2.8	13.7
	C12	0.0	0.0	0.1	17.8
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	6.7	0.2	0.0	0.0
	C6	27.6	2.8	0.0	0.0
	C7	5.1	15.3	0.4	0.0
	C8	0.0	13.3	3.5	0.0
	C9	0.0	0.4	12.2	0.0
	C10	0.0	0.0	9.0	0.4
	C11	0.0	0.0	0.1	0.1
Aromatics:	C6	1.9	0.8	0.0	0.0
	C7	0.8	5.6	0.9	0.1
	C8	0.0	1.5	7.1	0.0
	C9	0.0	0.0	10.5	1.3
	C10	0.0	0.0	5.0	13.0
	C11	0.0	0.0	0.9	17.5
	C12	0.0	0.0	0.0	4.4
Naphthenes:	C5	3.0	0.1	0.0	0.0
	C6	8.5	4.6	0.0	0.0
	C7	1.5	13.2	1.1	0.0
	C8	0.0	6.1	8.0	0.0
	C9	0.0	0.0	4.8	0.1
	C10	0.0	0.0	4.7	1.5
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	6.6
i-Butane	7.8
n-Butane	32.7
i-Pentane	22.6
n-Pentane	24.0
C_6+	6.0

Whole Crude B-T-X

Component	Vol. %
Benzene	0.123
Toluene	0.420
Ethylbenzene	0.035
Xylenes	0.071

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Maya — Terminals Phillips Terminal, Freeport, TX

Crude

Specific Gravity	0.9166	Ni, ppm	58.4(62.4)*	ERVP, psia @ 100° F	5.15
API Gravity	22.9	V, ppm	263 (263)*	Neutralization No.	0.22
Sulfur, Wt. %	3.13	Fe, ppm	2.9 (0.9)*	H_2S, ppm (c)*	1.1
Nitrogen, Wt. %	0.356	Org. Cl, ppm (c)*	0.3	Mercaptans, ppm (c)*	17.7
Con. Car. Res., Wt. % (c)*	11.19	O.D. Color	69.450	Viscosity: 77° F	128.11 cSt 593 SUS
Pour Point, °F	0	UOP "K"	11.75	100° F	61.78 cSt 287 SUS

Fraction / Cut Temp.	C_5-C_5	1 C5-175° F	2 175°-250° F	3 250°-375° F	4 375°-530° F	5 530°-650° F	6 650°-1014° F	7 Residuum
Vol. - mls	71.0	130.3	220.2	421.6	473.8	404.2	1104.7	1317.2
Vol. %	1.7	3.4	5.3	10.2	11.4	9.7	26.6	31.7
Vol. Sum %	1.7	5.1	10.4	20.6	32.0	41.7	68.3	100.0
Wt. - grams	42.6	94.8	159.9	325.4	390.9	351.4	1034.7	1405.5
Wt. %	1.1	2.5	4.2	8.5	10.3	9.2	27.2	36.9
Specific Gravity	0.6	0.6755	0.7263	0.7719	0.8251	0.8693	0.9366	1.067
API Gravity		78.0	63.3	51.8	40.0	31.3	19.6	1.1
Sulfur, Wt. %		0.010	0.018	0.291	0.95	2.00	2.97	5.52
Mercaptans, ppm		82.0	113.6	127.6	<1			
H_2S, ppm		2.9	2.4	5.3	5.0			
Organic Cl, ppm		1.8	1.9	1.8				
Aniline Point, °F				128.7	141.7	151.9	163.4	
Neutralization No.					0.03	0.06		
Cetane Index					47.09	48.14		
Naphthalenes, vol. %					4.16	10.98		
Smoke point					16.0	13.3		
Nitrogen, Wt. %					0.0016	0.030	0.232	0.786
Viscosity:								
cSt (SUS) 77° F					2.33(33.7)			
100° F					1.86(32.1)	4.92(42.1)		
130° F						3.32(37.1)	33.89(159.3)	
180° F							12.23(67.1)	
210° F								495874(2.31x10^6)
250° F								42772 (199962)
Freezing Point, °F					-31.9			
Cloud Point, °F						24	106	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	169
V, ppm							Not Detectable	711
Fe, ppm							Not Detectable	2.4
Con. Car. Res., Wt. %							0.45	30.0

* (c), calculated from fraction results.

Whole crude lead content: 0.008 ppm.

Data current as of September 19, 1986, but subject to change.

	C_5-175°F	C_5-375°F
Research Octane Number:	64.4	41.5
Motor Octane Number:	60.7	41.3

Gas Chromatographic Analysis

SPR BRYAN MOUND MAYA

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
Total Paraffins		48.0	33.5	30.8	34.2
Total Iso-paraffins		37.2	31.9	22.1	0.5
Total Aromatics		3.1	7.6	25.0	38.4
Total Naphthenes		11.7	27.0	17.0	1.3
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	5.1	27.6
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.1	0.0	0.0	0.0
	C4	1.1	0.0	0.0	0.0
	C5	20.2	0.7	0.0	0.0
	C6	25.4	4.5	0.1	0.0
	C7	1.3	19.0	0.9	0.0
	C8	0.0	8.1	6.2	0.0
	C9	0.0	0.1	10.2	0.1
	C10	0.0	0.0	8.7	1.5
	C11	0.0	0.0	4.5	11.1
	C12	0.0	0.0	0.2	21.4
Iso-paraffins:	C4	0.2	0.0	0.0	0.0
	C5	8.5	0.3	0.0	0.0
	C6	24.0	2.5	0.0	0.0
	C7	4.5	14.2	0.4	0.0
	C8	0.0	13.5	3.0	0.0
	C9	0.0	1.4	9.8	0.0
	C10	0.0	0.0	8.8	0.5
	C11	0.0	0.0	0.0	0.0
Aromatics:	C6	2.0	0.6	0.0	0.0
	C7	1.1	6.2	0.9	0.1
	C8	0.0	1.6	7.8	0.1
	C9	0.0	0.0	8.3	1.3
	C10	0.0	0.0	8.7	10.9
	C11	0.0	0.0	1.3	18.9
	C12	0.0	0.0	0.0	5.2
Naphthenes:	C5	2.0	0.2	0.0	0.0
	C6	8.4	4.3	0.1	0.0
	C7	1.4	13.1	1.1	0.0
	C8	0.0	8.4	8.7	0.0
	C9	0.0	0.0	4.3	0.1
	C10	0.0	0.0	4.8	1.1
	C11	0.0	0.0	0.1	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.1
Propane	13.0
i-Butane	8.9
n-Butane	40.8
i-Pentane	15.0
n-Pentane	16.6
C_6+	5.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.110
Toluene	0.313
Ethylbenzene	0.029
Xylenes	0.057

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR West Hackberry Sweet Terminal Sun Marine Terminal, Nederland, TX

Crude					
Specific Gravity	0.8343	Ni, ppm	1.6(1.8)*	ERVP, psia @ 100° F	4.15
API Gravity	38.1	V, ppm	2.7(3.4)*	Neutralization No.	0.14
Sulfur, Wt. %	0.28	Fe, ppm	2.6(3.4)*	H_2S, ppm (c)*	0.5
Nitrogen, Wt. %	0.090	Org. Cl, ppm (c)*	0.9	Mercaptans, ppm (c)*	0.7
Con. Car. Res., Wt. % (c)*	1.81	O.D. Color	8,240	Viscosity: 77° F 4.88 cSt	41.9 SUS
Pour Point, °F	25	UOP "K"	12.00	100° F 3.60 cSt	37.9 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_5-C_6	C_6-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1050° F	Residuum
Vol. - mls	191.8	253.7	379.5	546.8	664.2	499.5	1131.5	382.1
Vol. %	4.7	6.3	9.4	13.5	16.4	12.3	27.9	9.4
Vol. Sum %	4.7	11.0	20.4	33.9	50.3	62.6	90.5	99.9
Wt. - grams	115.1	173.0	290.8	424.9	548.4	427.4	1028.5	378.7
Wt. %	3.4	5.1	8.3	12.6	16.2	12.6	30.4	11.2
Specific Gravity	0.6	0.6819	0.7400	0.7770	0.8256	0.8556	0.9090	0.991
API Gravity		76.0	59.7	50.6	39.9	33.9	24.2	11.3
Sulfur, Wt. %		0.020	0.001	0.004	0.04	0.23	0.53	1.09
Mercaptans, ppm		<1	<1	<1	4.5			
H_2S, ppm		<1	2.4	2.4	<1			
Organic Cl, ppm		1.5	4.0	4.1				
Aniline Point, °F				122.9	142.9	164.5	192.4	
Neutralization No.					0.05	0.10		
Cetane Index					46.91	52.23		
Naphthalenes, vol. %					4.96	9.52		
Smoke point					16.8	15.8		
Nitrogen, Wt. %					0.0005	0.007	0.130	0.604
Viscosity:								
cSt (SUS) 77° F					2.33(33.6)			
100° F					1.85(32.1)	4.95(42.2)		
130° F						3.37(37.3)	25.96(123.7)	
180° F							10.38(60.5)	
210° F								701.9(3274)
250° F								204.96(958)
Freezing Point, °F					-32.8			
Cloud Point, °F						22	120	
Pour Point, °F						20	100	
Ni, ppm							Not Detectable	16.2
V, ppm							Not Detectable	30.3
Fe, ppm							Not Detectable	30.4
Con. Car. Res., Wt. %							--	16.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	68.5	53.3
Motor Octane Number:	63.9	30.8

Whole crude lead content: 0.004 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEST HACKBERRY SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
Total Paraffins		43.9	24.9	26.1	30.1
Total Iso-paraffins		35.1	24.4	20.7	0.7
Total Aromatics		3.6	5.9	24.2	35.1
Total Naphthenes		17.5	41.8	24.4	2.3
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	4.6	31.7
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.7	0.0	0.0	0.0
	C5	20.3	0.2	0.0	0.0
	C6	21.3	4.1	0.0	0.0
	C7	0.6	14.9	0.5	0.0
	C8	0.0	5.6	6.7	0.0
	C9	0.0	0.0	8.9	0.1
	C10	0.0	0.0	7.3	2.2
	C11	0.0	0.0	2.5	11.7
	C12	0.0	0.0	0.1	16.1
Iso-paraffins:	C4	8.2	0.0	0.0	0.0
	C5	9.5	0.1	0.0	0.0
	C6	22.5	1.7	0.0	0.0
	C7	2.9	12.3	0.1	0.0
	C8	0.0	9.4	2.8	0.0
	C9	0.0	0.8	8.1	0.0
	C10	0.0	0.0	8.5	0.5
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	2.1	1.2	0.0	0.0
	C7	0.5	0.6	1.9	0.1
	C8	0.0	1.9	9.9	0.0
	C9	0.0	0.0	8.5	1.3
	C10	0.0	0.0	4.6	13.5
	C11	0.0	0.0	0.7	16.4
	C12	0.0	0.0	0.0	3.4
Naphthenes:	C5	2.9	0.1	0.0	0.0
	C6	13.1	8.8	0.1	0.0
	C7	1.5	22.8	1.6	0.0
	C8	0.0	10.8	10.4	0.0
	C9	0.0	0.0	7.4	0.2
	C10	0.0	0.0	4.9	2.1
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutenization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	9.7
i-Butane	7.8
n-Butane	35.4
i-Pentane	17.4
n-Pentane	21.5
C_6+	8.2

Whole Crude B-T-X

Component	Vol. %
Benzene	0.308
Toluene	0.652
Ethylbenzene	0.025
Xylenes	0.051

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR West Hackberry Sour Terminal Sun Marine Terminal, Nederland, TX

Crude

Specific Gravity	0.8599	Ni, ppm	6.5(6.6)*	ERVP, psia @ 100° F	4.10
API Gravity	33.1	V, ppm	25.9(24.7)*	Neutralization No.	0.12
Sulfur, Wt. %	1.40	Fe, ppm	5.8(6.1)*	H_2S, ppm (c)*	1.2
Nitrogen, Wt. %	0.140	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	23.7
Con. Car. Res., Wt. % (c)*	3.75	O.D. Color	18,300	Viscosity: 77° F	8.88 cSt 54.9 SUS
Pour Point, °F	<-5	UOP "K"	11.90	100° F	6.27 cSt 46.4 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1050° F	Residuum
Vol. - mls	128.5	192.7	324.5	591.7	709.0	523.3	1265.3	635.9
Vol. %	2.9	4.4	7.4	13.6	16.3	12.0	29.0	14.6
Vol. Sum %	2.9	7.3	14.7	28.3	44.6	56.6	85.6	100.2
Wt. - grams	77.1	130.4	235.2	455.4	579.0	449.6	1166.5	646.7
Wt. %	2.1	3.5	6.3	12.1	15.4	12.0	31.1	17.2
Specific Gravity	0.6	0.6766	0.7249	0.7696	0.8167	0.8591	0.9219	1.017
API Gravity		77.6	63.7	52.4	41.8	33.2	22.0	7.6
Sulfur, Wt. %		0.020	0.010	0.040	0.32	1.02	1.96	3.48
Mercaptans, ppm		<1	43.1	120.4	41.4			
H_2S, ppm		16.8	3.7	3.2	<1			
Organic Cl, ppm		1.9	1.6	1.7				
Aniline Point, °F				128.0	145.8	162.5	180.5	
Neutralization No.					0.04	0.07		
Cetane Index					50.36	51.11		
Naphthalenes, vol. %					3.97	11.49		
Smoke point					20.1	15.3		
Nitrogen, Wt. %					0.0005	0.013	0.146	0.558
Viscosity:								
cSt (SUS) 77° F					2.24(33.4)			
100° F					1.78 (<32.0)	4.87(42.0)		
130° F						3.32(37.1)	27.65(131.3)	
180° F							10.82(62.0)	
210° F								2210(10309)
250° F								529.6(2476)
Freezing Point, °F					-31.9			
Cloud Point, °F						22	104	
Pour Point, °F						20	50	
Ni, ppm							Not Detectable	38.2
V, ppm							Not Detectable	143
Fe, ppm							Not Detectable	35.2
Con. Car. Res., Wt. %							—	21.8

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	62.9	43.6
Motor Octane Number:	59.6	40.9

Whole crude lead content: 0.025 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEST HACKBERRY SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		46.7	34.0	30.2	37.2
Total Iso-paraffins		30.1	32.5	23.2	0.5
Total Aromatics		2.9	7.5	25.3	36.2
Total Naphthenes		11.3	25.8	16.8	1.7
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.4	24.3
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.5	0.0	0.0	0.0
	C5	17.2	0.3	0.0	0.0
	C6	28.8	5.4	0.0	0.0
	C7	0.0	20.5	0.7	0.0
	C8	0.0	7.8	7.4	0.0
	C9	0.0	0.0	10.4	0.1
	C10	0.0	0.0	8.4	2.8
	C11	0.0	0.0	3.2	14.1
	C12	0.0	0.0	0.1	20.3
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	6.4	0.1	0.0	0.0
	C6	23.3	2.4	0.0	0.0
	C7	4.3	16.1	0.2	0.0
	C8	0.0	12.2	3.5	0.0
	C9	0.0	0.8	10.7	0.0
	C10	0.0	0.0	8.9	0.5
	C11	0.0	0.0	0.1	0.0
Aromatics:	C6	2.0	0.5	0.0	0.0
	C7	0.9	5.6	0.8	0.1
	C8	0.0	1.1	8.3	0.0
	C9	0.0	0.0	10.0	1.6
	C10	0.0	0.0	5.3	12.5
	C11	0.0	0.0	0.9	17.8
	C12	0.0	0.0	0.0	4.2
Naphthenes:	C5	2.0	0.1	0.0	0.0
	C6	8.3	4.7	0.1	0.0
	C7	1.1	13.2	0.5	0.0
	C8	0.0	7.9	8.4	0.0
	C9	0.0	0.0	4.7	0.1
	C10	0.0	0.0	4.8	1.6
	C11	0.0	0.0	0.0	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Debutanization Fraction

Component	Vol. %
Methane	0.0
Ethane	0.2
Propane	8.0
I-Butane	7.6
n-Butane	34.6
I-Pentane	20.6
n-Pentane	24.6
C_6+	3.4

Whole Crude B-T-X

Component	Vol. %
Benzene	0.147
Toluene	0.454
Ethylbenzene	0.034
Xylenes	0.051

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Weeks Island Sour

Terminals DOE St. James Terminal, St. James, LA

LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8821	Ni, ppm	14.0(15.8)*	ERVP, psia @ 100° F	4.85
API Gravity	28.9	V, ppm	39.2(42.5)*	Neutralization No.	0.19
Sulfur, Wt. %	1.32	Fe, ppm	0.7 (1.5)*	H_2S, ppm (c)*	0.3
Nitrogen, Wt. %	0.216	Org. Cl, ppm (c)*	0.3	Mercaptans, ppm (c)*	6.3
Con. Car. Res., Wt. % (c)*	4.97	O.D. Color	25,150	Viscosity: 77° F	18.02 cSt 89.5 SUS
Pour Point, °F	15	UOP "K"	11.85	100° F	11.43 cSt 63.9 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_5-C_4	C_5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1029° F	Residuum
Vol. - mls	117.7	132.0	252.0	455.6	642.3	526.7	1330.0	835.3
Vol. %	2.7	3.1	5.9	10.6	15.0	12.3	31.0	19.5
Vol. Sum %	2.7	5.8	11.7	22.3	37.3	49.6	80.6	100.1
Wt. - grams	70.6	91.3	185.7	354.3	533.0	458.2	1233.7	855.3
Wt. %	1.9	2.4	4.9	9.3	14.1	12.1	32.6	22.6
Specific Gravity	0.6	0.6918	0.7370	0.7777	0.8298	0.8699	0.9276	1.024
API Gravity		73.0	60.5	50.4	39.0	31.2	21.0	6.7
Sulfur, Wt. %		0.054	0.004	0.043	0.29	0.85	1.58	3.00
Mercaptans, ppm		10.2	17.4	41.8	9.0			
H_2S, ppm		<1	2.5	2.3	<1			
Organic Cl, ppm		2.8	2.1	1.7				
Aniline Point, °F				119.6	137.4	152.9	173.3	
Neutralization No.					0.06	0.07		
Cetane Index					45.31	47.98		
Naphthalenes, vol. %					4.75	11.77		
Smoke point					15.5	12.7		
Nitrogen, Wt. %					0.0006	0.013	0.173	0.692
Viscosity:								
cSt (SUS) 77° F					2.31(33.7)			
100° F					1.85(32.1)	5.17(42.9)		
130° F						3.48(37.6)	30.96(146.1)	
150° F							11.58(64.8)	
210° F								4201(19592)
250° F								935.8(4375)
Freezing Point, °F					-33.7			
Cloud Point, °F						20	104	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	69.8
V, ppm							Not Detectable	188
Fe, ppm							Not Detectable	6.5
Con. Car. Res., Wt. %							0.34	21.5

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	65.8	50.0
Motor Octane Number:	62.4	47.8

Whole crude lead content: 0.014 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEEKS ISLAND SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		41.0	27.7	26.5	29.7
Total Iso-paraffins		36.6	27.5	21.7	9.6
Total Aromatics		4.4	10.0	27.3	36.5
Total Naphthenes		18.0	34.7	20.9	1.7
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.5	31.5
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.2	0.0	0.0	0.0
	C5	16.4	0.3	0.0	0.0
	C6	25.4	4.7	0.0	0.0
	C7	1.1	16.3	0.7	0.0
	C8	0.0	6.4	8.5	0.0
	C9	0.0	0.0	9.0	0.1
	C10	0.0	0.0	7.8	1.7
	C11	0.0	0.0	2.4	12.2
	C12	0.0	0.0	0.1	15.7
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	5.0	0.1	0.0	0.0
	C6	26.9	2.6	0.0	0.0
	C7	4.6	13.3	0.2	0.0
	C8	0.0	11.2	3.1	0.0
	C9	0.0	0.9	10.0	0.0
	C10	0.0	0.0	8.3	0.4
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	3.7	1.4	0.0	0.0
	C7	0.7	7.4	1.2	0.1
	C8	0.0	1.2	9.8	0.1
	C9	0.0	0.0	10.1	1.5
	C10	0.0	0.0	5.5	13.0
	C11	0.0	0.0	0.6	17.7
	C12	0.0	0.0	0.0	4.3
Naphthenes:	C5	2.9	0.1	0.0	0.0
	C6	13.1	7.3	0.1	0.0
	C7	2.0	18.8	1.5	0.0
	C8	0.0	8.5	9.2	0.0
	C9	0.0	0.0	5.7	0.2
	C10	0.0	0.0	4.2	1.5
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.2
Propane	13.2
i-Butane	8.0
n-Butane	32.4
i-Pentane	17.9
n-Pentane	21.6
C_6+	6.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.197
Toluene	0.458
Ethylbenzene	0.025
Xylenes	0.048

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bayou Choctaw Sweet

Terminals DOE St. James Terminal, St. James, LA

LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8424	Ni, ppm	4.4(4.4)*	ERVP, psia @ 100° F	8.10
API Gravity	36.5	V, ppm	7.0(7.4)*	Neutralization No.	0.12
Sulfur, Wt. %	0.40	Fe, ppm	2.1(3.3)*	H_2S, ppm (c)*	2.2
Nitrogen, Wt. %	0.127	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	3.8
Con. Car. Res., Wt. % (c)*	2.53	O.D. Color	14,000	Viscosity: 77° F	6.86 cSt 48.2 SUS
Pour Point, °F	30	UOP "K"	12.05	100° F	4.90 cSt 42.1 SUS

Fraction / Cut Temp.	C_5-C_4	1 C5-175° F	2 176°-250° F	3 250°-375° F	4 375°-530° F	5 530°-650° F	6 650°-1051 °F	7 Residuum
Vol. - mls	259.0	236.7	403.7	600.9	755.8	565.4	1456.9	570.0
Vol. %	5.3	4.9	8.3	12.4	15.6	11.7	30.1	11.8
Vol. Sum %	5.3	10.2	18.5	30.9	46.5	58.2	88.3	100.1
Wt. - grams	155.4	161.6	298.0	466.2	622.4	482.2	1322.0	568.9
Wt. %	3.8	4.0	7.3	11.4	15.3	11.8	32.4	13.9
Specific Gravity	0.6	0.6826	0.7382	0.7759	0.8235	0.8528	0.9074	0.998
API Gravity		75.8	60.2	50.9	40.3	34.4	24.4	10.3
Sulfur, Wt. %		0.004	0.002	0.011	0.06	0.26	0.54	1.26
Mercaptans, ppm		8.0	<1	<1	23.0			
H_2S, ppm		<1	6.3	15.4	<1			
Organic Cl, ppm		2.9	1.8	1.3				
Aniline Point, °F				126.0	144.8	167.3	195.4	
Neutralization No.					0.04	0.08		
Cetane Index					47.62	53.05		
Naphthalenes, vol. %					4.40	9.12		
Smoke point					18.6	16.6		
Nitrogen, Wt. %					0.0003	0.006	0.136	0.630
Viscosity:								
cSt (SUS) 77° F					2.33(33.7)			
100° F					1.85(32.1)	4.89(42.0)		
130° F						3.33(37.1)	25.93(123.6)	
180° F							10.42(60.6)	
210° F								1227.9(5727)
250° F								326.4 (1526)
Freezing Point, °F					-31.9			
Cloud Point, °F						28	114	
Pour Point, °F						25	180	
Ni, ppm							Not Detectable	31.9
V, ppm							Not Detectable	53.3
Fe, ppm							Not Detectable	23.6
Con. Car. Res., Wt. %							--	18.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	68.4	51.7
Motor Octane Number:	64.1	48.2

Whole crude lead content: 0.006 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BAYOU CHOCTAW SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		41.6	25.4	27.0	30.9
Total Iso-paraffins		36.4	24.7	21.6	0.9
Total Aromatics		3.1	7.7	23.2	34.3
Total Naphthenes		18.9	42.0	24.2	2.6
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.1	31.4
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.2	0.0	0.0	0.0
	C5	17.3	0.3	0.0	0.0
	C6	22.4	4.1	0.0	0.0
	C7	0.7	14.6	0.5	0.0
	C8	0.0	6.4	8.2	0.0
	C9	0.0	0.0	9.1	0.1
	C10	0.0	0.0	7.8	2.4
	C11	0.0	0.0	3.2	11.5
	C12	0.0	0.0	0.1	16.8
Iso-paraffins:	C4	0.1	0.0	0.0	0.0
	C5	8.1	0.1	0.0	0.0
	C6	24.5	2.0	0.0	0.0
	C7	3.6	12.2	0.2	0.0
	C8	0.0	9.4	2.7	0.0
	C9	0.0	0.9	10.1	0.1
	C10	0.0	0.0	8.5	0.6
	C11	0.0	0.0	0.1	0.2
Aromatics:	C5	2.6	0.9	0.0	0.0
	C7	0.6	5.6	6.8	0.1
	C8	0.0	1.2	7.8	0.0
	C9	0.0	0.0	8.7	1.4
	C10	0.0	0.0	4.9	13.2
	C11	0.0	0.0	0.9	16.2
	C12	0.0	0.0	0.0	3.4
Naphthenes:	C5	2.7	0.2	0.0	0.0
	C6	14.2	8.3	0.1	0.0
	C7	2.0	23.0	1.6	0.0
	C8	0.0	10.5	10.3	0.0
	C9	0.0	0.1	6.7	0.2
	C10	0.0	0.0	5.3	2.3
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	11.6
i-Butane	8.8
n-Butane	36.5
i-Pentane	18.1
n-Pentane	20.3
C_6+	4.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.202
Toluene	0.494
Ethylbenzene	0.033
Xylenes	0.064

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bayou Choctaw Sour

Terminals DOE St. James Terminal, St. James, LA

LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8573	Ni, ppm	8.0(7.5)*	ERVP, psia @ 100° F	5.80
API Gravity	33.6	V, ppm	27.7(27.6)*	Neutralization No.	0.15
Sulfur, Wt. %	1.41	Fe, ppm	Not Detectable (1.5)*	H_2S, ppm (c)*	5.1
Nitrogen, Wt. %	0.144	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	4.2
Con. Car. Res., Wt. % (c)*	3.64	O.D. Color	15,900	Viscosity: 77° F	8.38 cSt 53.2 SUS
Pour Point, °F	5	UOP "K"	11.90	100° F	5.88 cSt 45.2 SUS

Fraction / Cut Temp.	C_4-C_4	1 C5-175° F	2 175°-250° F	3 250°-375° F	4 375°-530° F	5 530°-650° F	6 650°-1055° F	7 Residuum
Vol. - mls	180.5	184.6	329.3	585.5	731.4	535.9	1311.8	611.0
Vol. %	4.0	4.1	7.4	13.1	16.4	12.0	29.4	13.7
Vol. Sum %	4.0	8.1	15.5	28.6	45.0	57.0	86.4	100.1
Wt. - grams	108.3	124.8	238.9	451.5	598.6	461.0	1213.4	626.9
Wt. %	2.8	3.3	6.2	11.8	15.6	12.0	31.7	16.4
Specific Gravity 0.6		0.6761	0.7255	0.7712	0.8184	0.8603	0.9250	1.026
API Gravity		77.8	63.5	52.0	41.4	33.0	21.5	8.2
Sulfur, Wt. %		0.010	0.010	0.039	0.32	1.01	2.10	3.57
Mercaptans, ppm		<1	50.3	<1	7.1			
H_2S, ppm		31.3	3.8	32.4	<1			
Organic Cl, ppm		1.7	1.7	2.1				
Aniline Point, °F				125.8	144.3	160.5	179.4	
Neutralization No.					0.04	0.07		
Cetane Index					49.62	50.79		
Naphthalenes, vol. %					4.06	11.37		
Smoke point					19.1	14.0		
Nitrogen, Wt. %					0.0006	0.013	0.154	0.582
Viscosity:								
cSt (SUS) 77° F					2.25(33.5)			
100° F					1.79 (<32.0)	4.85(41.9)		
130° F						3.32(37.1)	29.45(139.4)	
180° F							11.30(63.7)	
210° F								2864(13359)
250° F								665.9(3113)
Freezing Point, °F					-31.9			
Cloud Point, °F						22	106	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	45.6
V, ppm							Not Detectable	168
Fe, ppm							Not Detectable	8.9
Con. Car. Res., Wt. %							—	22.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	63.5	44.6
Motor Octane Number:	59.4	42.5

Whole crude lead content: 0.022 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BAYOU CHOCTAW SOUR

		Distillate fractions, ASTM D 2892: C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		46.9	33.4	23.5	36.1
Total Iso-paraffins		40.3	33.5	23.1	8.6
Total Aromatics		2.5	7.8	28.6	32.6
Total Naphthenes		13.2	25.5	14.3	1.9
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	4.5	24.8
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.4	0.0	0.0	0.0
	C5	15.0	0.4	0.0	0.0
	C6	22.6	5.8	0.0	0.0
	C7	1.0	19.4	0.7	0.0
	C8	0.0	7.9	8.9	0.0
	C9	0.0	0.0	10.2	8.2
	C10	0.0	0.0	8.5	2.6
	C11	0.0	0.0	3.1	14.1
	C12	0.0	0.0	0.1	19.2
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	5.7	0.1	0.0	0.0
	C6	29.8	2.7	0.0	0.0
	C7	4.8	16.8	8.3	0.0
	C8	0.0	13.7	3.4	0.0
	C9	0.0	1.1	10.9	0.0
	C10	0.0	0.0	2.4	0.6
	C11	0.0	0.0	0.1	0.0
Aromatics:	C6	2.0	0.7	0.0	0.0
	C7	0.5	5.5	0.9	0.1
	C8	0.0	1.4	8.6	0.1
	C9	0.0	0.0	10.5	1.8
	C10	0.0	0.0	8.6	12.8
	C11	0.0	0.0	1.0	17.8
	C12	0.0	0.0	0.0	4.1
Naphthenes	C5	2.8	0.1	0.0	0.0
	C6	9.9	4.8	0.1	0.0
	C7	1.2	13.6	1.0	0.0
	C8	0.0	7.1	8.8	0.0
	C9	0.0	0.0	4.3	0.1
	C10	0.0	0.0	4.9	1.7
	C11	0.0	0.0	0.0	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.1
Propane	10.8
i-Butane	7.7
n-Butane	31.5
i-Pentane	19.8
n-Pentane	24.2
C_6+	5.9

Whole Crude B-T-X

Component	Vol. %
Benzene	0.134
Toluene	0.428
Ethylbenzene	0.037
Xylenes	0.064

Exhibit E—SPR Delivery Point Data

Phillips Terminal (Formerly Seaway Terminal)

(Data as of December 31, 1988)

Location: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)
Crude Oil Streams: Bryan Mound Sweet, Bryan Mound Sour, and Bryan Mound Maya
Delivery Points: Phillips Terminal marine dock facility number 2
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 3 Docks: Nos. 1, 2 and 3
Maximum Length Overall (LOA): 750 feet during daylight and 615 feet during hours of darkness
Maximum Beam: 107 feet
Maximum Draft: 37.5 feet; subject to change due to the weather and silting conditions
Maximum Air Draft: None
Maximum Deadweight Tons (DWT): Maximum DWT at Dock No. 1 is 50,000 DWT. Dock Nos. 2 an 3 can accommodate up to 80,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: Dock No. 1 has the capability to load barges of a minimum 30,000-barrel capacity. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.
Customary Anchorage: Freeport Harbor sea bouy approximately 4.5 miles from the terminal.

ARCO Pipeline Company, Texas City Terminal

(Data as of December 31, 1988)

Location: Docks 11 and 12, Texas City Harbor, Galveston County, Texas
Crude Oil Streams: Bryan Mound Sweet and Bryan Mound Sour
Delivery Points: ARCO Pipe Line Company Marine Docks (11 and 12) and connections to local commercial pipelines
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 2 Docks; Nos. 11 and 12
Maximum Length Overall (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 488 feet.
Maximum Beam: Dock 11–108 feet; Dock 12–[illegible]0 feet
Maximum Draft: 39.6 feet; subject to change due to weather and silting conditions
Maximum Air Draft: None
Maximum Deadweight Tons (DWT): 150, 000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: None
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.
Customary Anchorage: Bolivar Roads (breakwater) or Galveston sea buoy.

Sun Terminal

(Data as of December 31, 1988)

Location: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar)
Crude Oil Streams: West Hackberry Sweet, West Hackberry Sour
Delivery Points: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 5 Docks: Nos. 1, 2, 3, 4 and 5
Maximum Length Overall (LOA): 1000 feet
Maximum Beam: 145 feet
Maximum Draft: 40 feet fresh water
Maximum Air Draft: 136 feet
Maximum Deadweight Tons (DWT): Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 130,000 DWT. Vessels larger than 85,000 DWT are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: None
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements.
Customary Anchorage: Bolivar Roads (breakwater) or Galveston sea buoy.

Sun Terminal

(Data as of December 31, 1988)

Location: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar)
Crude Oil Streams: West Hackberry Sweet, West Hackberry Sour
Delivery Points: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 5 Docks: Nos. 1, 2, 3, 4 and 5
Maximum Length Overall (LOA): 1000 feet
Maximum Beam: 145 feet
Maximum Draft: 40 feet fresh water
Maximum Air Draft: 136 feet
Maximum Deadweight Tons (DWT): Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 130,000 DWT. Vessels larger than 85,000 DWT are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: None
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements. Terminal can provide suitable contacts.
Customary Anchorage: Grandview Reach approximately 11 miles from the terminal.

Exhibit F—[Reserved]

Exhibit G—Offer Guarantee—Letter of Credit

Procurement and Sales Division, Mail Stop PR–851, Project Management Office, Strategic Petroleum Reserve, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer

_____

(name and address of offeror)

we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for an amount not to exceed U.S. $_____, effective immediately as an offer guarantee for the offer of our customer dated _____ in response to the U.S. Department of Energy's Notice of Sale dated _____ for the sale of Strategic Petroleum Reserve petroleum. Liability under this Letter of Credit shall commence upon the date set by the Notice of Sale, including any amendments thereto, for receipt of offers and expires on the twenty-first day thereafter. We agree that our obligation shall not be impaired by any extensions of the date set for receipt of offers, notice of such extension being hereby waived; provided, that such waiver of notice shall not apply to extensions extending more than thirty (30) calendar days beyond the period originally established for receipt of offers.

Funds under this Letter of Credit are available to the U.S. Department of Energy by its draft or drafts drawn on ourselves and accompanied by a manually signed statement of a duly authorized official of the U.S. Department of Energy stating the following:

This drawing of U.S. $_____ — (U.S. dollar amount expressed in word form)

_____

against your Letter of Credit Numbered _____, dated _____ is due the U.S. Government because of the failure of

_____

(name of offeror)

to honor its offer to enter into a contract for the purchase of petroleum from the Strategic Petroleum Reserve, in accordance with the U.S. Government's Notice of Sale dated _____ and the applicable Standard Sales Provisions (10 CFR Part 625, Appendix A).

Upon receipt of the U.S. Department of Energy's draft and accompanying statement, either by hand or mail, at our office located at _____, we will honor the draft and make payment by 3 p.m. Eastern Standard Time of the next business day following receipt of the draft by wire transfer to the account of the U.S. Treasury through the Federal Reserve Communications System. Each wire transfer shall be formatted in accordance with prescribed Treasury requirements as shown in Exhibit I of the Standard Sales Provisions, 10 CFR Part 625, Appendix A.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit
to_____

(address and any applicable reference)

_____

_____

Yours Truly,

_____

Authorized Signature.

Exhibit H

Payment and Performance Guarantee—Letter of Credit

Procurement and Sales Division, Mail Stop PR–851, Project Management Office, Strategic Petroleum Reserve, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer

_____

(name and address)

we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for about U.S. $_____ — _____ (the U.S. dollar amount expressed in word form) effective immediately and expiring at our office located at _____

_____

(address)

one hundred and twenty (120) days from the date of issuance of this Letter of Credit, relative to an offer by our customer dated _____, to purchase Strategic Petroleum Reserve petroleum.

Funds under this Letter of Credit are available to the U.S. Department of Energy by its draft or drafts drawn on ourselves. Such draft or drafts may be transmitted by telex or U.S. Mail and shall contain either a statement that:

This drawing is due to the U.S. Department of Energy under your letter of Credit number _____ for

_____

(customer's name). Payment of U.S. $_____ to be made by wire transfer to U.S. Department of Energy on

_____

(date)

under contract number DE–SC96–_____, SPRCODR No. _____ for delivery of _____ barrels of oil at U.S. $_____ per barrel, plus/minus $_____ per barrel gravity adjustment. The wire draft should include our FEDWIRE number and other pertinent wire information as follows: Transfer to TREAS Code 021030004 TREAS NYC/(89000201) Dept of Energy (SPRO) U.S. $_____ payment for the sale of crude oil under contract No. DE–SC96–_____, SPRCODR No. _____. Deposit Account 89X0233.91.

or a statement that:

This drawing is due the U.S. Department of Energy under your letter of Credit number _____ for

_____

(customer's name).

Payment of U.S. $_____ to be made by wire transfer to U.S. Department of Energy because of failure of company to accept delivery of petroleum under contract number DE–SC96–_____ at the time specified in the contract resulting in damages due under the contract in that amount. The wire draft should include our FEDWIRE number and other pertinent wire information as follows: Transfer to TREAS Code 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) U.S. $_____ payment for damages incurred by failure to accept delivery under contract number DE–SC96–_____. Deposit Account 89X0233.91.

or both.

We also will honor drafts presented over the Federal Reserve Bank's FEDWIRE system, provided that each such draft contains either a statement that:

Third Party sender, re your LOC#

_____

(Letter of Credit No.)

for

_____

(customer name)

Third Party receiver, Transfer to TREAS Code 021030004 TREAS NYC (89000201) Dept of Energy (SPRO) $_____ payment due on

_____

(date)

for sale of oil under contract No. _____, SPRCODR No. _____ for _____ bls @ $_____/bl ± _____ degrees at $0._____ gravity adjustment and $_____ for delivery damages. Deposit Account 89X0233.91.

or a statement that:

Third Party sender, re your LOC#

(Letter of Credit No.)

for _____

(customer name)

Third Party receiver, Transfer to TREAS Code 021030004 TREAS NYC (89000201) DEPT OF ENERGY (SPRO) $_____ payment due for damages from failure to perform in accordance with contract No. _____. Deposit Account 89X0233.91

or other wire message containing the relevant information. The wire draft should include our FEDWIRE number and other information pertinent to a request for a wire transfer of funds over FEDWIRE, as follows:

_____

For drafts presented by telex or FEDWIRE, the U.S. Government's invoice (including supporting documents) shall be forwarded to us by regular mail.

The U.S. Department of Energy may make multiple drawings totalling up to the amount of funds indicated in the first paragraph as available under this Letter of Credit.

Upon receipt of the U.S. Department of Energy's draft and accompanying statement, we will honor the draft and make payment by 3 p.m. Eastern Standard Time on the date stated in the draft (or the next business day if the stated date does not fall on a regular business day), by wire transfer of funds over FEDWIRE to account number 021030004 of the U.S. Treasury through the Federal Reserve Communications System. Each wire transfer of funds shall be formatted in accordance with prescribed U.S. Treasury requirements as shown in Exhibit I of the Standard Sales Provisions, 10 CFR Part 625, Appendix A.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit
to_____

(address and any applicable reference)

_____

Yours truly,

_____

Authorized signature.

Exhibit I—Instruction Guide for Funds Transfer Messages to Treasury

The following instructions provide specific information which is required so that a funds (wire) transfer message can be transmitted to the Department of Treasury. The funds transfer message format is shown in Attachment 1. A narrative description of each item on the funds transfer message follows:

Line 1

Item 1—*Priority Code*—The priority code will be provided by the sending bank. (Note: Some Federal Reserve District banks may not require this item.).

BEST COPY AVAILABLE

Line 2

Item 2—*Treasury Department Code*—The 9-digit identifier "021030004" is the routing symbol of the Treasury. This item is a constant and is required for all funds transfer messages sent to Treasury.

Item 3—*Type Code*—The type code will be provided by the sending bank (will be a 10 or 12).

Line 3

Item 4—*Sending Bank Code*—This 9-digit identifier will be provided by the sending bank.

Item 5—*Class*—The class field may be used at the option of the sending bank. (Note: Some Federal Reserve Districts prohibit use of this field.)

Item 6—*Reference Number*—The reference number will be inserted by the sending bank to identify the transaction.

Item 7—*Amount*—The amount must include the dollar sign and the appropriate punctuation including cents digits. This item will be inserted by the sending bank.

Line 4

Item 8—*Sending Bank Name*—The telegraphic abbreviation which corresponds to Item 4 will be provided by the sending bank.

Line 5

Items 9, 10, and 11—*Treasury Department, Name, Agency Location Code, Agency Number*—This item is of critical importance. It must appear on the funds transfer message in the precise manner as stated to allow for the automated processing and classification of funds transfer message to Treasury for credit to the Department of Energy. This item is comprised of a rigidly formatted, left justified, nonvariable sequence of characters as follows:

TRES NYC/(89000201) Dept. of Energy (SPRO).

Item 12—*Payment Identification*—The payment identification should be furnished by the remitter in the following manner:

Lines 6 and 7

For contracts payments, either the constant "Payment for the Sale of Crude Oil Under Contract #_____, SPRCODR #_____" or "Payment for Damages Incurred by Failure to Accept Delivery Under Contract #_____" will be inserted. For offer guarantees, the constant "Offer Guarantee for the Sale of Crude Oil Under NS #_____" for *(Name), (Taxpayer ID or Social Security Number)* will be inserted.

Line 8

The constant "Deposit Account 89X0233" will be inserted.

Important Note: Line Nos. 2 and 5 are edited by the Federal Reserve Bank. If the wire transfer message is not formatted as prescribed above, the message will be rejected by the FED Bank and returned to the sending bank.

SAMPLE OF FUNDS TRANSFER MESSAGE FORMAT FOR SPR OIL SALE

02			
To	Type		
021030004	10		
From	Class	Ref	Amount
011000390		0650	$500,000.00

Ordering Bank and Related Data

FIRST BOS

TREAS NYC/(89000201) DEPT OF ENERGY (SPRO)

PAYMENT FOR THE SALE OF CRUDE OIL UNDER

CONTRACT # SPRCODR #

DEPOSIT ACCOUNT 89X0233

Attachment 1 to Exhibit I

EXHIBIT J

STRATEGIC PETROLEUM RESERVE CRUDE OIL DELIVERY REPORT	1. SALES CONTRACT NUMBER	2. TERMINAL REPORT NUMBER
3. CARGO NUMBER	4. DATE DELIVERED	5. TRANSPORTATION MODE ☐ TANKER ☐ BARGE ☐ PIPELINE
		6. ACCEPTANCE POINT ☐ ORIGIN ☐ DESTINATION
7. SHIPPING SPR SITE/TERMINAL	8. PURCHASER-NAME AND ADDRESS	9. CARRIER

10. CONTRACT LINE ITEM MLI	DLI	11 DESCRIPTION OF CRUDE OIL AND GROSS BBLS	11A. API GRAVITY	11B. TOTAL SULPHUR %	12. DEL'D NET BBLS @ 60°F	13. UNIT PRICE	14. AMOUNT DUE

15. QUALITY ADJUSTMENT — INCREASE/(DECREASE)

15A. NET GRAVITY ADJUSTMENT FROM 15B(5) _____.

15B. CALCULATION OF GRAVITY ADJUSTMENT

(1) ADVERTISED API GRAVITY-----
(2) DELIVERED API GRAVITY-----
(3) VARIANCE - (2)minus(1) PLUS/(MINUS)
(4) ALLOWABLE VARIANCE-----
(5) NET VARIANCE-(3)minus(4) +/(−)-----

16. NET AMOUNT DUE

17. THE DELIVERED NET BARRELS, UNIT PRICE, QUALITY ADJUSTMENT, AND NET AMOUNT DUE HAVE BEEN VERIFIED.

SIGNATURE: _____
INVENTORY MANAGER

18. REMARKS

19. VESSEL DATA

19A. VESSEL NAME

19B. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD		
VESSEL ARRIVED IN ROADS		
FIRE LINE ASHORE		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD		
CARGO HOSES CONNECTED		
COMMENCED LOADING		
STOPPED LOADING		
RESUMED LOADING		
FINISHED LOADING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (ACTUAL OR ESTIMATED)		

21. GOVERNMENT INSPECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE (VESSEL CARGO) (PIPELINE SHIPMENT) WAS INSPECTED, DELIVERED AND ACCEPTED AS SHOWN HEREON.

DATE_____ SIGNATURE _____

NAME TYPED/PRINTED

20. RECEIPT IS ACKNOWLEDGED OF THE QUANTITY AND QUALITY SHOWN HEREON:

DATE RECEIVED:_____

AGENT: _____

BY: _____
NAME TYPED/PRINTED

22. I CERTIFY THAT THE TIME STATEMENT SHOWN HEREON IS CORRECT.

SIGNATURE_____
/MASTER OF VESSEL

SPRPMO-F-6110.2-14 1/87

Exhibit K.—Offer Guarantee Calculation Worksheet

MLI: _____

Column	MAXQ (thousands/ bbls) (A)	Unit price (dollars) (B)	DLI (C)	DESQ (thousands/ bbls) (D)	MINQ (thousands/ bbls) (E)	Total DLI price (thousands/ dollars) (F)	Bond factor (G)	Product (dollars) (H)
Row:								
1							x50	
2							x50	
3							x50	
4							x50	
5							x50	
6							x50	
7							x50	
Total								

1. Using separate worksheet for each MLI offered against, from the SPR Sales Offer Form, enter the MLI maximum quantity offered on (expressed in thousands of barrels) in Column (A), Row 1.

2. Starting with the highest DLI unit price offered on the MLI from the SPR Sales Offer Form (and the highest preference if the unit prices of two or more DLIs are the same) enter the unit price in Row 1, Column (B); the DLI letter in Row 1, Column (C); the DLI desired quantity is Row 1, Column (D) (in thousands of barrels) and the minimum quantity in Row 1, Column (E). (The minimum quantity is either the Government's minimum contract quantity, if the offer indicates the offeror will accept as little as that amount, or the desired quantity, if the offeror indicates he will accept no less than that amount. *see* instructions for the SPR Sales Offer Form.)

3. If either the desired quantity in Column (D), or the minimum quantity in Column (E) exceeds the maximum quantity in Column (A), you have made an error either on this form or the offer form and should recheck your figures.

4. Multiply the price in Row 1, Column (B) times the desired quantity in Column (D) (as expressed in thousands) and enter the total DLI price in Column (F).

5. Multiply the total DLI price in Column (F) times the factor in Column (G) and enter the product in Column (H). The factor is 5% of 1000.

6. Subtract the DLI desired quantity in Row 1, Column (D) from the maximum quantity in Row 1, Column (A). Enter the result in Row 2, Column (A). If the result is zero, go to step 11.

7. Enter the next highest unit price for the MLI from the offer form in Row 2, Column (B). Enter the DLI letter, desired quantity, and minimum quantity in their respective columns. If there is a maximum quantity remaining in Row 2, Column (A), but no more DLI offers, or the minimum quantity in Row 2, Column (E) exceeds the maximum quantity, you may have made an error and should recheck your figures.

8. Multiply the lesser of the remaining maximum quantity in Column (A), or the desired quantity in Column (D) times the unit price (even if this quantity is less than MINQ) and enter the resulting total DLI price in Column (F).

9. Multiply Column (F) times the factor in Column (G) and enter the product in Column (H).

10. Repeat steps 6–9 for the next higher unit price until maximum quantity remaining is zero, then go to step 11.

11. Sum the amounts in Column (H) and enter the total in Row 8, Column (H). Sum this amount for all the worksheets. If the sum of all the worksheets is less than $10,000,000, enter the sum in the spaces marked offer bond on the SPR Sales Offer Form. If the sum exceeds $10,000,000, then enter $10,000,000 on the offer form. Obtain an offer guarantee in the amount indicated on the offer form and submit with the offer. These worksheets need not be submitted with the offer and should be retained for your files.

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Part V

Department of Housing and Urban Development

Office of the Secretary and Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 596

Enterprise Zone Development; Proposed Rule and Notice of Concurrent Delegation of Authority

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 596

[Docket No. R-88-1392; FR-1913]

Enterprise Zone Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Title VII (Enterprise Zone Development) of the Housing and Community Development Act of 1987 (Pub. L. 100-242). This Title authorizes the Secretary of The Department of Housing and Urban Development (HUD) to designate not more than 100 zones based entirely on rank order of distress. The Secretary is authorized to waive HUD regulations, promote coordination and expedite consideration of all HUD programs within the designated zones.

The purpose of the program is to encourage business to invest in distressed areas, thereby creating jobs and assisting in the economic revitalization of these areas.

DATE: Comments must be received by July 5, 1988.

ADDRESSES: *Comments on Rule:* Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

Comments on information collection: Comments on the information collection requirements contained in this proposed rule should be submitted to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20504, attention Desk Officer for HUD. They should contain the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6588. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION

I. Background

Legislation to authorize Enterprise Zones has been a goal of the Administration since its inception. Since 1982, several Enterprise Zone Bills have been introduced on behalf of the Administration, providing significant tax incentives as well as the potential for waiver of Federal regulations.

In his 1988 Legislative Message, President Reagan stated: "More than half of the states have set up their own enterprise zones, even without Federal incentives. These zones have created new jobs and spurred billions of dollars in capital investment. Their success is testimony to the power of this concept and is just a small indication of how much could be accomplished if Federal incentives were added to those of States and localities. Adding Federal incentives would make existing zones far more economically attractive and successful and would also encourage more State and local zones. Accordingly, I am renewing my call to the Congress to take up effective Federal Enterprise Zone legislation which will complement the State Programs."

The Housing and Community Development Act of 1987 included Title VII, Enterprise Zone Development as a new program.

II. Program Description

General

The Secretary of HUD may designate up to 100 Enterprise Zones. One third of the Enterprise Zones must be in rural areas.

Designation of the Enterprise Zones will be based solely on the rank order of distress of the zones. The only exception will be if the Secretary determines that the Course of Action proposed for the area is inadequate.

Eligibility

To be eligible for zone designation, the area must:

(1) Have a continuous boundary and a minimum population of 4,000 if located in a metropolitan statistical area or in a jurisdiction with a population of 50,000 or greater, or 1,000 if located in a rural area, or any population if located entirely in an Indian Reservation;

(2) Be located in a UDAG eligible jurisdiction; and

(3) Be of pervasive poverty, unemployment and general distress.

In addition, an urban area must have:

(1) An unemployment rate of at least 1.5 times the national unemployment rate;

(2) A poverty rate of at least 20 percent; and either

(3) Low income or population decline:

(a) Have at least 70 percent of the households with incomes below 80 percent of the median income of households of the local jurisdiction; or

(b) Have a population decline of 20 percent or more between 1970 and 1980.

A rural area must meet at least one of the four criteria enumerated in 1, 2, 3(a), and 3(b).

Designation Process

A local and State Government must jointly request designation of an area which they certify meets the eligibility requirements.

The nomination request must include a "Course of Action" which has been developed to reduce the various burdens borne by employers or employees in the area. The Course of Action must include at least four of the following:

A reduction of tax rates or fees applying within the enterprise zone;

An increase in the level of public services, or in the efficiency of the delivery of public services within the enterprise zone;

Actions to reduce, remove, simplify or streamline paperwork requirements within the enterprise zone;

Involvement in the program by public authorities or private entities, organizations, neighborhood associations and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees and residents of the nominated area;

The giving of special contract preference to businesses owned and operated by members of any minority; and

The gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

Enterprise Zone Benefits

The Secretary of HUD is authorized to waive HUD regulations in designated zones and shall:

1. Promote the coordination of all HUD Programs in Enterprise Zones; and

2. Expedite the consideration of HUD programs in Enterprise Zones.

Special Issue

No guidance is provided in the Act with regard to the Enterprise Zone benefits discussed as "Coordination of Housing and Urban Development Programs in Enterprise Zones." The Department intends to be expansive in its application of this provision and is interested in specific comments in all three areas: e.g. which regulations impede the achievement of Enterprise Zone objectives and should be considered for possible waiver? Which programs have the most potential for facilitating Enterprise Zone objectives and should receive expedited consideration and coordination? In what manner should this expedited consideration and coordination be carried out?

III. Public Comment

The proposed rule will provide the opportunity for the public to comment on the specifics of the Department's intentions to administer the provisions of this title.

Under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o) no rule promulgated by the Department may become effective until after passage of the first period of 30 calendar days of continuous session of Congress after the day on which the rule is published as final. This section 7(o) constraint of the Congressional calendar applies for the rest of the year.

Section 701(a)(4)(A) of the Act requires that HUD issue regulations addressing the enterprise zone requirements not later than four months following the date of enactment of the Act. Given this Congressional mandate to implement the program expeditiously, and the section 7(o) restraints described above, the comment period provided for this rule is limited to 30 days to permit time for review of the public comments and development of a final rule at least 30 days before Congress adjourns for the year.

IV. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW. Washington, DC 20410

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President of February 17, 1981. Analysis of the rule indicated that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets. If Congress passes tax legislation to augment the authority under which this rule is promulgated, the implementing rule for such legislation would constitute a major economic impact and the Department would prepare a Regulatory Impact Analysis at that time.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the Enterprise Zone Program will permit small entities to apply for designation and to benefit from their participation in the program, the impact on these entities is a function of the operation of Title VII of the Housing and Community Development Act of 1987, and is not caused by the rulemaking, which merely provides the machinery for designations of zones under the statutory criteria.

This rule is not listed in the Department's semiannual agenda of regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15960.

List of Subjects in 24 CFR Part 596

Enterprise zones, Economic development, Housing and urban development, Community development.

Accordingly, for the reasons set out in the preamble, Title 24 of the Code of Federal Regulations is proposed to be amended by adding a new part 596, as set forth below.

PART 596—ENTERPRISE ZONE DEVELOPMENT

Subpart A—General Provisions

Sec.
596.1 Applicability and scope.
596.2 Objective and purpose.
596.3 Definitions.
596.4 Secretarial review and enterprise zone designation.
596.5 Waivers.
596.6 Consultation with other Federal agencies.

Subpart B—Area Requirements

596.100 General.
596.101 Eligibility requirements.

Subpart C—State and Local Government Actions

596.200 Nominations by State and local governments.
596.201 Nomination of Indian reservations.
596.202 Course of action.

Subpart D—Zone Designation Process

596.300 Nomination for designation of an enterprise zone.
596.301 HUD action and review of nominations for zone designation.
596.302 Selection factors for designation of nominated zones.
596.303 Zone designation of rural areas.
596.304 Number of zones designated.

Subpart E—Post Zone Designation

596.400 Monitoring [Reserved].
596.401 Revocation of enterprise zone designation.
596.402 Evaluation and reporting.

Subpart F—Waiver or Modification of Rules

596.500 Requests for waivers or modifications.
596.501 Waiver or modification of HUD rules in enterprise zones.

Subpart G—Coordination of Housing and Urban Development Programs

596.600 Coordination of HUD programs.

Authority: Title VII, Housing and Community Development Act of 1987 (42 U.S.C. 11501-11505); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 596.1 Applicability and scope.

(a) This part covers policies and procedures applicable to enterprise zones authorized under Title VII of the Housing and Urban Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988).

(b) This part includes provisions relating to area requirements, the process of nomination of enterprise zones and the designation of enterprise zones by HUD

§ 596.2 Objective and purpose.

The purpose of this part is to provide for the establishment of enterprise zones in order to stimulate the creation of new jobs, particularly for disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas primarily by providing or encouraging:

(a) Tax incentives at the State and local levels;

(b) Specific actions to reduce, remove, simplify, or streamline governmental requirements at the Federal, State, and local levels; and

(c) Improved local services and an increase in the economic stake of enterprise zone residents in their own community and in its development, particularly through the increased involvement of private, local, and neighborhood organizations.

§ 596.3 Definitions.

The following definitions apply to this part:

Act means Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988).

Course of Action means a strategy developed and agreed to by the appropriate State and local governments to reduce the various burdens borne by employers and employees in an area determined to meet the eligibility requirements of the statute. The course of action must include four out of six provisions identified in § 596.202(b), and must include written commitments from the local government and State in which the nominated area is located that they will follow the course of action.

Designated enterprise zone means an area which has been designated by the Secretary as an enterprise zone and within which the provisions of sections 703, 704, and 705 of the Act will apply.

HUD means the United States Department of Housing and Urban Development.

Indian reservation means an area determined to be a reservation by the Secretary of the Interior. As with the UDAG program, for the purposes of the Enterprise Zones program, the term "Indian reservation" will include former Indian reservations in Oklahoma, as determined by the Secretary of the Interior.

Indian tribal government means the governing body of any tribe, band, community, village, or group of Indians, or Alaska Natives which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise substantial governmental functions.

Local government means any county, city, town, township, parish, village, the District of Columbia, or other general purpose political subdivision of a State, or combination thereof, which is an eligible applicant for assistance under the Urban Development Action Grant program under 24 CFR 570.451(e).

Metropolitan Statistical Area is an area designated by the Office of Management and Budget as a freestanding Metropolitan Statistical Area or a Primary Metropolitan Statistical Area, where both primary and consolidated Metropolitan Statistical Areas exist.

Nominated enterprise zone means an area which has been nominated by a State and by a unit or units of local government for designation as an enterprise zone.

Rural area means either:

(a) An area located within the jurisdiction of a unit or units of local government with a population of less than 50,000 and which is wholly located outside of a Metropolitan Statistical Area; or

(b) An area located within the jurisdiction of a unit or units of local government not meeting the criteria of paragraph (a) of this section which is determined by the Secretary, after consultation with the Secretary of Commerce, to be a rural area.

Secretary means the Secretary of Housing and Urban Development.

State means any State of the United States and the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other of the possessions of the United States.

§ 596.4 Secretarial view and enterprise zone designation.

(a) *Review and Designation.* The Secretary of Housing and Urban Development will review nominations submitted by State and local governments to determine the adequacy of courses of action submitted in accordance with the requirements of the Act. The Secretary will designate a maximum of 100 enterprise zones. The designations shall be based entirely upon the rank order of distress, except that the Secretary will not designate a zone if it is determined to have an inadequate course of action.

(b) *Rural Set Aside.* Of the areas designated by the Secretary pursuant to paragraph (a) of this section, at least one-third shall be located in rural areas.

(c) *Period of Designation.* The designation of an area as an enterprise zone shall remain in full effect during the period beginning in the effective date of designation by the Secretary and ending on the earliest of:

(1) December 31 of the 24th year after such date;

(2) The date designated by the State and local governments as set forth in their nomination; or

(3) The date of Secretary revokes the designation of the zone pursuant to § 596.401.

§ 596.5 Waivers.

The Secretary may waive any requirement of this part not required by statute when it is determined that the application of the requirement would adversely affect the purposes of the Act.

§ 596.6 Consultation with other Federal agencies.

The Secretary will consult with other Federal agencies regarding enterprise zones as follows:

(a) *Data.* The Secretary will consult with the Director of the Bureau of the Census or the Commissioner of the Bureau of Labor Statistics, as appropriate, with regard to the data required for determinations of eligibility of areas nominated as enterprise zones under this part.

(b) *Designation Process.* Before the designation of nominated enterprise zones by the Secretary, the Secretary will consult with the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration.

(c) *Indian Reservations.* The Secretary will consult with the Secretary of the Interior regarding the designation of nominated enterprise zones located within Indian reservations.

(d) *Regulatory Waivers.* The Secretary may consult with other Federal agencies, as appropriate, regarding requests for waivers and modifications submitted to HUD or to such other agenices under § 596.500.

Subpart B—Area Requirements

§ 596.100 General.

(a) *Eligibility.* An area is eligible for nomination by a State and one or more local governments, and for designation under the requirements of this part if the area:

(1) Meets the population and boundary tests set forth in § 596.101(a);

(2) Is located wholly within the jurisdiction of one or more units of local government which meet the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974;

(3) Meets the tests of pervasive poverty, unemployment, and general distress set forth in § 596.101(c);

(4) Meets the additional tests of unemployment, poverty, and low income or population loss in § 596.101(d); and

(5) Contains no portion of an area which is included either in an area previously designated as a federal enterprise zone under this part or as part of another area nominated for designation as a federal enterprise zone.

(b) *Data usage for eligibility determinations.* The tests of population and distress set forth in § 596.101 are to be computed based on data from the Bureau of Census and from the Bureau of Labor Statistics. The data shall be comparable as to point or period of time and as to methodology. Appropriate data will be identified by a Notice published in the **Federal Register.**

(c) *Usage of statistical area boundaries.* While the boundary of an enterprise zone does not have to coincide with the boundaries of census statistical areas, the eligibility requirements set forth in § 596.101 will be computed using the lowest level of census statistical areas for which appropriate census data are available and which can reliably be used to perform the tests. The various tests describe the appropriate level of census statistical areas for making the determination regarding each test (i.e., tract, block group, block, minor civil divisions, or enumeration district). The census statistical areas must be the smallest group to entirely contain the nominated zone.

§ 596.101 Eligibility requirements.

To be eligible for nomination and designation as an enterprise zone, an area must meet each of the following criteria:

(a) *Population and physical location.* The area must:

(1) Be located in its entirety within the jurisdiction of the unit or units of local government nominating the area;

(2) Have a continuous boundary;

(3) Have a population of at least 4,000, unless:

(i) It is located in a rural area, in which case it must have a population of at least 1,000; or

(ii) It is located on an Indian reservation, in which case there is no minimum population requirement.

No maximum population size or geographic size is stipulated for an enterprise zone because HUD does not want to limit the flexibility of local governments and states in defining the zones to meet local goals for stimulating economic development.

(b) *Meeting the requirement for federal assistance under the Urban Development Action Grant program.* Eligibility for designation of an enterprise zone under this part is limited to areas located within the jurisdiction of one or more units of local government eligible for assistance under the Urban Development Action Grant (UDAG) program. The jurisdiction must be identified to meet the minimum distress tests or meet the requirements for pocket of poverty based on designations considered current for the purpose of enterprise zone eligibility. Local governments must have been determined eligible by HUD to participate in the UDAG program under 24 CFR 570.453 or 570.466(a), and eligibility has not been subsequently withdrawn by HUD. Nominations from local governments that do not meet this requirement will not be accepted for processing by HUD.

(c) *Pervasive poverty, unemployment, and general distress.* An area must evidence conditions of pervasive poverty, unemployment, and general distress.

(1) *Pervasive poverty and unemployment.* The conditions of poverty must be reasonably distributed throughout the entire area. The poverty rate shall be described by citing nationally and locally available statistics on poverty. The unemployment situation shall be demonstrated through provision of information on job loss, plant closings, or other unemployment indicators which have affected the area.

(2) *General distress.* The area must be an area of general distress. General distress shall be evidenced by describing conditions of distress existing within the area, other than those of poverty and unemployment, such as abandoned housing, infrastructure deficiencies, or other appropriate indicators of conditions of general distress.

(d) *Tests for unemployment, poverty, low income, or population loss.* A nominated enterprise zone in an urban area must meet the requirements of unemployment and poverty, and either low income or population loss. The data used to make tests will be expressed to the nearest tenth of a percent. The criteria are as follows:

(1) *Unemployment.* The unemployment rate for the smallest number of block groups or enumeration districts which entirely contain the nominated enterprise zone must be at least one and one half times the national rate for the same period. Unemployment will be based upon decennial census data adjusted by the most recently available annual average unemployment estimates from the Bureau of Labor Statistics for the smallest jurisdiction which includes the nominated zone.

(2) *Poverty.* The poverty rate for each census tract that contains any part of the nominated enterprise zone must be at least 20 percent under the most recent available census data. If census tracts are not defined, evidence of the 20 percent rate of poverty is required at the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas. The poverty rate will be determined using the estimated number of persons in families or as unrelated individuals who had incomes below the poverty thresholds for the decennial census. Census tracts (or other comparable areas) containing fewer than 100 persons as of the decennial census will not be tested under § 596.101(c)(1) and (d)(2);

(3) *Low income.* For the smallest number of block groups or enumeration districts which entirely contain the nominated enterprise zone, at least 70 percent of the households must be below 80 percent of the median household income for the local government(s). The percent of households below 80 percent of median income is interpolated using decennial census tables which show the number of households in various income intervals. In the case of a joint application, each part of the zone must meet the 80 percent of median income criterion for its jurisdiction; or,

(4) *Population loss.* There must be at least a 20 percent population loss from 1970 to 1980. The 1970 population will be based on the smallest group of census areas for which data are available and which entirely contain the zone. The 1980 data will be based on the smallest group of census areas which entirely contain the 1970 areas.

(e) *Eligibility requirements for rural areas.* A nominated area that is a rural area as defined by these regulations must meet the requirements of paragraphs (a), (b) and (c) of this section and at least one of the criteria set forth in paragraph (d) of this section.

Subpart C—State and Local Government Actions

§ 596.200 Nominations by State and local governments.

A State and local government may nominate an area which is located wholly within the jurisdiction of the local government and which meets the nomination criteria set forth in paragraph (b) of this section for designation as an enterprise zone.

(a) *Nominations involving more than one unit of local government.* Two or more units of local government jointly may nominate, in conjunction with the State, areas that meet the nomination criteria set forth in paragraph (b) of this section for designation as an enterprise zone.

(b) *Nomination criteria.* A nomination must comply with each of the following requirements:

(1) The area must meet the eligibility requirements set forth in § 596.100(a).

(2) The State and local government, or governments in which the area is located must have the legal authority to nominate the area for zone designation and to carry out the course of action in accordance with § 596.202.

(3) All requirements of State and local law for the nomination must have been fulfilled.

(4) The State and local government or, in the case of joint nominations, each local government, must agree in writing to the specific provisions of the course of action to be carried out by each governmental entity, and must provide assurances that the commitments set forth in the course of action will be carried out during the period specified in the course of action.

§ 596.201 Nomination of Indian reservations.

(a) In the case of an Indian reservation, the governing body of the reservation may nominate areas located within the jurisdiction of the Indian reservation.

(b) The governing body of the reservation shall be deemed, for purposes of this part, to be both the State and local government for the reservation, and shall be responsible for meeting the requirements of § 596.200(b).

§ 596.202 Course of action.

The State and local government shall develop a course of action designed to reduce the various burdens borne by employers or employees in the nominated area and to promote community revitalization, as follows:

(a) *Implementation.* A course of action may be implemented by the local government or by the State nominating an area for designation (or both), and by nongovernmental entities. A course of action may be funded from the proceeds of any Federal assistance program as well as from State, local, or private resources.

(b) *Elements of course of action.* A course of action must include, but is not limited to, four of the following six elements:

(1) A reduction of tax rates, fees, or user charges applying within the enterprise zone;

(2) An increase in the level or efficiency of public services within the enterprise zone;

(3) Actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(4) Involvement of public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide to employers, employees and residents of the nominated area:

(i) Jobs and job training;

(ii) Technical assistance;

(iii) Financial assistance; and

(iv) Other assistance.

(5) The giving of special contract preference to businesses owned and operated by members of any minority; and

(6) The gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

(c) *Recognition of past efforts.* In evaluating courses of action agreed to by any State or local government, the Secretary will take into account the past efforts of a State or local government in reducing the various burdens borne by employees and employers in the area involved.

(d) *Prohibition of assistance for business relocations.* (1) The course of action may not include any action to assist:

(i) Any establishment relocating from one area to another area; or

(ii) Any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of a contract customarily performed by such other contractor or subcontractor.

(2) This limitation does not apply to the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary where:

(i) The establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operation; and

(ii) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other areas where the existing business entity conducts business operations.

Subpart D—Zone Designation Process

§ 596.300 Nomination for designation of an enterprise zone.

A separate Nomination for Designation of an Enterprise Zone must be submitted for each area for which enterprise zone designation is requested. The Nomination for Designation of an Enterprise Zone must be submitted in a form prescribed by HUD, and must consist of complete and accurate information. The Nomination for Designation of an Enterprise Zone shall contain:

(a) *Eligibility information.* Information necessary to determine whether the area meets the eligibility requirements of § 596.101(a);

(b) *State and local government certifications.* The nomination Certifications by the State and by each unit of local government in which the designated zone is located that:

(1) Each unit of local government meets each of the eligibility criteria set forth in § 596.101 (a) and (b);

(2) The area meets the population and boundary tests of § 596.101(a);

(3) The area is one of poverty, unemployment, and general distress and that the conditions are pervasive throughout the area as required by § 596.101(c);

(4) The area meets the tests of unemployment, poverty, low income or loss of population, set out in § 596.101(d); and

(5) The area contains no portion of an area that is either already designated as an enterprise zone under this part or is otherwise included in any other area nominated for designation as an enterprise zone under this part;

(6) Each governmental entity has the authority, with respect to the nominated area, to:

(i) Nominate the area for designation as an enterprise zone;

(ii) Make the State and local commitments required under § 596.200(b)(4); and

(iii) Provide assurances that these commitments will be fulfilled.

(7) The written agreement between the State and local government or governments required by § 596.200(b)(4) has been executed.

(c) *Maps and zone description.* Maps and a general description of the area shall accompany the nomination request.

§ 596.301 HUD action and review of nominations for zone designation.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of Nominations for Designation of an Enterprise Zone. The submission deadline and addresses for submission of nominations will be published by Notice in the Federal Register. The data and specific criteria which will be used to establish eligibility will also be identified in the Notice.

(b) *Acceptance for processing.* HUD will accept for processing those Nominations for Designation of an Enterprise Zone which HUD determines have met the criteria required by this part. HUD will notify the State and local government or tribal governing body within 10 working days from receipt of the nomination whether or not the nomination has been accepted for processing. The criteria for acceptance for processing are as follows:

(1) The Nomination for Designation of an Enterprise Zone must be received by HUD on or before the close of business on the date established by Notice in the Federal Register.

(2) Each unit of local government must be determined by HUD to have met the requirements of § 596.101(b).

(3) The Nomination for Designation of an Enterprise Zone must be complete and contain a proposed course of action as required by § 596.202, and the certifications required by § 596.300 (b) and (c).

(c) *Evaluation of nominations.* Each nomination accepted for processing will be reviewed by HUD to determine that, in the judgment of the reviewing official, the problems to be addressed have been adequately assessed and the actions proposed in the course of action appear to address these problems.

(d) *Publication of designations.* Announcements of those zones receiving designation will be made by publication of a Notice in the Federal Register.

§ 596.302 Selection factors for designation of nominated zones.

Zone designation will be based solely on rank order of distress. Each area will be ranked within each of the criteria set forth in § 596.101(d) on the basis of the amount by which the area exceeds the criteria. For the poverty criterion the ranking will be based on the overall poverty rate for the smallest number of block groups, enumeration districts which contain the zone. The rank order will then be determined by the highest average ranking with respect to the four criteria. In any instance where the data are missing and the applicant can not establish that the area would pass the test a rank of zero would be used.

§ 596.303 Zone designation of rural areas.

For rural areas as defined in § 596.3, rank order of distress will be determined separately as set forth in § 596.101(e).

§ 596.304 Number of zones designated.

HUD may choose in advance to designate less than the maximum number of eligible zones in any one submission period. When HUD announces a submission period, HUD will announce the number of enterprise zones which will be designated as a result of that period. Qualified areas which are not selected in one submission period may reapply in a subsequent submission period.

Subpart E—Post Zone Designation

§ 596.400 Monitoring [Reserved].

§ 596.401 Revocation of enterprise zone designation.

The Secretary, after the consultations required by § 596.5 (b) or (c), as appropriate, may revoke the designation of an area as an enterprise zone if the Secretary finds that a local government or the State in which the zone is located is not complying substantially with the State and local commitments made in accordance with § 596.200(b)(4) or, (for an Indian reservation) the assurance required by § 596.201(b).

(a) *Warning letter.* Before revoking the designation of an area as an enterprise zone, the Secretary will issue a letter of warning to the nominating State and local governments:

(1) Advising that the Secretary has determined that one or more parties to the written agreement required by § 596.200(b)(4) or, (for an Indian reservation) the assurance required by § 596.201(b), are not complying substantially with the agreement or assurance; and

(2) Requesting a reply from all involved parties, within a specified period of time.

(b) *Issuance of a notice of revocation.* After providing a minimum of 90 days for parties to respond and upon a finding by the Secretary under this section, the Secretary may issue a final notice of revocation of the designation of the area as an enterprise zone.

§ 596.402 Evaluation and reporting.

For the zones designated in accordance with § 596.302, the Department will require periodic reports. These reports will identify the local and state actions which have been taken in accordance with the course of action and describe the economic and physical revitalizations which has occurred in the zone. The following types of data will be needed for evaluation of Enterprise Zone progress:

(a) *Base line data.* Base line data for the zone and the city as a whole to permit comparison of the city and zone before and after designation;

(b) *Job strategy.* A description of the strategy employed to create and maintain jobs in the zone;

(c) *Business data.* Collection of annual data on new firms created and terminated in the zone and for the city as a whole, the origin of firms moving into the zone (within or outside the SMSA), whether or not the firms are branches of existing firms, the number of firm expansions, jobs created, jobs retained for firms which provide solid evidence that they would have moved out of the zone in the absence of incentives, and a listing of benefits received by new and expanding firms.

Subpart F—Waiver or Modification of Rules

§ 596.500 Requests for waivers or modifications.

(a) *Parties to a request.* A Request for Waiver or Modification of a HUD rule shall be executed by the local government or Indian tribal government of the jurisdiction that nominated an area designated an enterprise zone under this part.

(b) *Submission requirements.* A Request for Waiver or Modification must be submitted in writing in a form prescribed by HUD. The Request shall contain:

(1) A citation of the specific rule or rules for which a waiver or modifications requested;

(2) A brief description of the change requested; and

(3) A brief description of why the change would promote the achievement of job creation, community development, or economic revitalization.

§ 596.501 Waiver or modification of HUD rules in enterprise zones.

(a) *Authority to grant waivers or modifications.* Upon the written request of the governments that nominated an area as enterprise zone under this part, the Secretary may waive or modify all or part of any rule which the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the designated enterprise zone, in order to further the objectives of the program.

(b) *Standards for consideration of requests for waivers and modifications.* In considering a request for a waiver or modification, the Secretary will:

(1) Determine that the waiver or modification furthers job creation, community development, or economic revitalization within the designated enterprise zone.

(2) Weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization against the effect the change is likely to have on the underlying purposes of applicable statutes and rules affected by the change.

(c) *Secretarial determination.* A request for a waiver or modification

may be approved whenever the Secretary finds that the public interest served by the modification would outweigh the public interest served by continuing the rule unchanged.

(d) *Waivers or modifications not authorized.* The Secretary will not approve any request to waive or modify any rule which:

(1) Was adopted to carry out a statute or Executive Order which prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap;

(2) Would directly violate a statutory requirement; or

(3) Would be likely to present a significant risk to the public health, including environmental health or safety.

(e) *View of interested parties.* To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties.

(f) *90 day review period for requests.* Not later than 90 days after receipt of a request under § 596.501, the Secretary will make a determination whether to grant a request for waiver or modification.

(g) *Notification.* Upon a determination by the Secretary to approve a waiver or modification, HUD shall inform the State and local governments requesting the waiver or modification.

(h) *Effect of subsequent amendments to rules waived or modified.* If, subsequent to the granting of a waiver or modification, HUD amends the rule for which the waiver or modification has been granted, the waiver or modification shall continue, in full force and effect unless the governments requesting the waiver or modification are consulted with respect to the effect of the amendment on the requested waiver or modification and the Secretary determines, that the justification for the waiver or modification is no longer valid.

Subpart G—Coordination of Housing and Urban Development Programs

§ 596.600 Coordination of HUD programs.

(a) To the maximum extent possible, the Secretary of HUD will provide special assistance to Enterprise Zones designated in accordance with § 596.302. This will include, but not be limited to:

(1) Expedited processing;

(2) Priority funding;

(3) Program setasides; and

(4) Provision of technical assistance in furtherance of the objectives of Title VII

(b) Although the designation of a Federal enterprise zone under this part does not in itself constitute a Federal action that would trigger application of Executive Orders 11625 and 12432 concerning minority business enterprise, the provision of funds federal funds to carry out elements of a course of action will require that the appropriate provisions of the program providing the funds regarding Executive Orders 11625 and 12432 be met.

Date: May 9, 1988.

Jack E. Stelvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 88-12435 Filed 6-2-88; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-675; FR-1913]

Delegation of Authority With Respect to Enterprise Zone Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes the Secretary to designate up to 100 Enterprise Zones. Within the designated zones, the Secretary may provide for waiver of HUD regulations, promote the coordination of HUD programs, and expedite the processing of applications for HUD assistance. This notice delegates to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, the Secretary's power and authority with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: This notice is effective on May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6588. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This notice states the scope of authority given to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development for Enterprise Zone development. All of the Secretary's authority with respect to this program is delegated, except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue or waive rules, regulations and guidelines under the program.

Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes the Secretary to designate up to 100 Enterprise Zones. Within the designated zones, the Secretary may provide for waiver of HUD regulations, promote the coordination of HUD programs, and expedite the processing of applications for HUD assistance. Proposed rules for the operation of the program are published elsewhere in today's issue of the Federal Register. Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated.

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to Enterprise Zone development as authorized in Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), except as indicated in Section B. below. This includes the authority to issue or waive rules, regulations or guidelines under the program.

Section B. Authority Excepted.

There is excepted from the authority delegated under Section A the power to sue and be sued.

Section C. Authority to Redelegate.

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations or guidelines under the Program.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: May 9, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-12436 Filed 6-2-88; 8:45 am]

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June 3, 1988

Part VI

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: On April 8, 1988, the President issued Executive Order No. 12635, declaring a national emergency with respect to Panama, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), ordering specified measures against Panama, and authorizing the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the Order. In implementation of that Order, the Treasury Department is issuing the Panamanian Transactions Regulations (the "Regulations"). The Regulations block all property and interests in property of the Government of Panama, its agencies, instrumentalities and controlled entities, including the Banco Nacional de Panama and the Caja de Ahorros, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of persons located within the United States. The Regulations also generally prohibit any payments or transfers of currency and other financial or investment assets to the Noriega/Solis regime from the United States, or by U.S. persons and subsidiaries located in Panama.

Certain payments or transfers are authorized by general license; these include: (1) Payments by individuals other than income tax payments; (2) travel-related payments by individuals or by U.S. firms in connection with the provision of travel services to individuals; (3) payments for postal and telecommunications services; (4) payments for utilities and similar municipal services; (5) payments of indirect taxes, including sales and excise taxes; (6) certain administrative fees paid in connection with basic business activity; and (7) payments related to publications.

Payments to the Noriega/Solis regime that are not authorized include: (1) Corporate and individual income taxes; (2) social security taxes (when paid by corporations or U.S. Government agencies, but not by individuals who ordinarily pay such taxes directly; (3) direct taxes and fees, including port fees, export fees, and import duties; (4) direct payments of excise taxes collected as agent for the Government of Panama; and (5) rental fees. Additionally, individuals may not make payments, directly or indirectly, for or on behalf of U.S. firms.

EFFECTIVE DATE: 4:00 p.m., Eastern Daylight Time, April 8, 1988, except § 565.205 which is effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Tel.: (202) 376-0408, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376-0236, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking opportunity for public participation, and delay in effective date, are inapplicable. Because no notice or proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations. The information collection requests contained in §§ 565.601 and 565.602 of this document are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the **Federal Register.**

List of Subjects in 31 CFR Part 565

Panama, Blocking of assets, Transfers of assets, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 565 is added to 31 CFR Chapter V to read as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

Subpart A—Relation of this Part to Other Laws and Regulations

Sec.

565.101 *Relation of This part to other laws and regulations.*

Subpart B—Prohibitions

565.201 *Prohibited transactions involving property in which the Government of Panama has an interest; transactions with respect to securities.*
565.202 *Prohibited payments or transfers from the United States to the Noriega/Solis regime.*
565.203 *Prohibited payments or transfers to the Noriega/Solis regime by U.S. persons located in Panama and by certain juridical entities.*
565.204 *Effect of transfers violating the provisions of this part.*
565.205 *Holding of certain types of blocked property in interest-bearing accounts.*
565.206 *Evasions.*

Subpart C—General Definitions

565.301 *Effective date.*
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565.308 *Transfer.*
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565.312 *Interest.*
565.313 *Blocked account; blocked property.*
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565.316 *General license.*
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Subpart D—Interpretations

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565.402 *Effect of amendment of sections of this part or of other orders, etc.*
565.403 *Termination and acquisition of an interest of the Government of Panama.*
565.404 *Payments to the Noriega/Solis regime prohibited; procedures for making payments to the Federal Reserve Bank of New York.*
565.405 *Blocking not applicable to U.S. persons outside the United States.*
565.406 *Indirect payments to the Noriega/Solis regime; payments in subsidiaries in third countries.*
565.407 *Clarification of interbank clearing payments.*
565.408 *Setoffs prohibited.*
565.409 *Payments in kind.*

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

565.501 *Effect of license or authorization.*
565.502 *Exclusion from licenses and authorizations.*
565.503 *Certain payments authorized.*
565.504 *Certain payments by individuals authorized.*
565.505 *Travel-related payments authorized.*
565.506 *Telecommunications and mail transactions authorized.*
565.507 *Payments and transfers related to purchase and sale of publications authorized.*
565.508 *Payment by the Noriega/Solis regime of obligations to persons within the United States.*

Subpart F—Reports

565.601 *Required records.*
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Subpart G—Penalties

565.701 *Penalties.*
565.702 *Prepenalty notice.*

565.703 *Presentation responding to prepenalty notice.*
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565.705 *Referral to United States Department of Justice.*

Subpart H—Procedures

565.801 *Licensing.*
565.802 *Decisions.*
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Subpart I—Paperwork Reduction Act [Reserved]

Appendix A to Part 565—Panamanian Governmental Entities.

Authority: 50 U.S.C. 1701 *et seq.*, E.O. 12635, 53 FR 12134 (April 12, 1988).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 565.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulations authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 565.201 Prohibited transactions involving property in which the Government of Panama has an interest; transactions with respect to securities.

(a) Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Panama that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of persons located in the United States, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation or withdrawl of, or the endorsement or guaranty of signatures on, or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Panama is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to 4:00 p.m. E.D.T., April 8, 1988) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred, or otherwise disposed of any such security.

§ 565.202 Prohibited payments or transfers from the United States to the Noriega/Solis regime.

Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no direct or indirect payments or transfers may be made from the United States to the Noriega/Solis regime of funds, including currency, cash or coins of any nation, or other financial or investment assets or credits, except for interbank clearing payments. All transfers or payments to the Government of Panama shall be made into an account at the Federal Reserve Bank of New York, as provided in § 565.404.

§ 565.203 Prohibited payments or transfers to the Noriega/Solis regime by U.S. persons located in Panama and by certain juridical entities.

Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no direct or indirect payments or transfers may be made to the Noriega/Solis regime of funds, including currency, cash or coins of any nation, or of other financial or investment assets or credits, by any United States person located in the territory of Panama, or by any person organized under the laws of Panama and owned or controlled by a United States person, except for interbank clearing payments. All transfers or payments to the Government of Panama by such persons shall be made into an account at the Federal Reserve Bank of New York, as provided in § 565.404.

§ 565.204 Effect of transfers violating the provisions of this part.

(a) Any transfer after 4:00 p.m. E.D.T., April 8, 1988, which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization hereunder and involves any property in which the Government of Panama has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before 4:00 p.m. E.D.T., April 8, 1988, shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which the Government of Panama has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such date.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act and this part, and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable, by virtue of the provisions of this section, shall not be deemed to be null and void or unenforceable pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satsifaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; the person with whom such

property was held or maintained must file with the Treasury Department, Washington, DC, a report setting forth in full the circumstances relating to such transfer.

The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance with paragraphs (d)(1) and (2) of this section.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment or other judicial process is null and void with respect to any property in which on or since 4:00 p.m. E.D.T., April 8, 1988, there existed an interest of the Government of Panama.

§ 565.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Any person currently holding property subject to § 565.201 which, as of the effective date of this section, June 3, 1988, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account in a domestic financial institution as of the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control. This requirement shall apply to currency, bank deposits and accounts, and any proceeds resulting from the sale of tangible property.

(b) For purposes of this section, the term "interest-bearing account" means a blocked account in a domestic financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. The funds may not be invested or held in instruments the maturity of which exceeds 30 days. The term "domestic financial institution" is defined in § 565.311.

(c) This section does not apply to blocked tangible, non-financial property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

§ 565.206 Evasions.

Any transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth in this subpart is hereby prohibited.

Subpart C—General Definitions

§ 565.301 Effective date.

The term "effective date" means 4:00 p.m., Eastern Daylight Time, April 8, 1988, except with respect to section 565.205, which is effective June 3, 1988.

§ 565.302 Panama.

The term "Panama" means Panama and all areas under the jurisdiction or authority thereof.

§ 565.303 Government of Panama.

The term "Government of Panama" includes the state and the Government of Panama, as well as any political subdivision, agency, or instrumentality thereof, including the Banco Nacional de Panama and the Caja de Ahorros. See Appendix A to this part for a list of additional Government of Panama entities.

§ 565.304 Noriega/Solis regime.

(a) The term "Noriega/Solis regime" includes:

(1) Manuel Antonio Noriega, Manuel Solis Palma, and any agencies, instrumentalities or entities purporting to act on behalf or under the asserted authority of either or both;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date acting or purporting to act directly or indirectly on behalf of any of the foregoing; or

(4) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within paragraph (a)(3) of this section. Such determinations shall be published from time to time in the Federal Register, but shall be binding prior to such publication upon any person receiving actual notice thereof.

(b) A partnership, association, corporation, or other organization shall not be deemed to fall within the definition of the "Noriega/Solis regime" solely by reason of being located in, organized under the laws of, or having its principal place of business in, Panama.

§ 565.305 Entity.

The term "entity" includes a corporation, partnership, association, or other organization.

§ 565.306 United States.

The term "United States" means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 565.307 United States person.

The term "United States person" means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States, excluding overseas branches except those operating in Panama; or any person in the United States.

§ 565.308 Transfer.

The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power.

§ 565.309 Property; property interests.

The term "property" and "property interest" or "property interests" shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, and other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, owners or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods or ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 565.310 Credits.

The term "credits" means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit. The term "credits" includes, but is not limited to: Overdrafts; purchases of debt securities issued by the Government of Panama after April 8, 1988; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred to or extended to the Governor of Panama; and draw-downs on existing lines of credit.

§ 565.311 Domestic financial institution.

The term "domestic financial institution" means any of the following:

(a) An insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(b) An insured institution as defined in section 408(a) of the National Housing Act;

(c) An insured credit union as defined in section 101 of the Federal Credit Union Act; or

(d) Any other institution that is carrying on banking activities and that is chartered by a federal or state banking authority.

§ 565.312 Interest.

Except as otherwise provided in this part, the term "interest" when used with respect to property (*e.g.*, "an interest in property") shall mean an interest of any nature whatsoever, direct or indirect.

§ 565.313 Blocked account; blocked property.

The terms "blocked account" and "blocked property" shall mean any account or property in which the Government of Panama has an interest, with respect to which payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license authorizing such action.

§ 565.314 Interbank clearing payments.

The term "interbank clearing payments" means payments of funds by a bank to another bank, where such payments are effected by the bank or banks over a funds transfer system such as FedWire, CHIPS, SWIFT, or the like, or across an individual bank's books, where none of the banks involved has any actual knowledge that the original remitter of any funds to the Noriega/Solis regime is located in the United States and is other than a bank acting on its own behalf. See § 565.407 for further clarification.

§ 565.315 License.

Except as otherwise specified, the term "license" means any license or authorization contained in or issued pursuant to this part.

§ 565.316 General license.

The term "general license" means any license or authorization the terms of which are set forth in this part.

§ 565.317 Specific license.

The term "specific license" means any license or authorization not set forth in this part but issued pursuant to this part in response to a written application.

Subpart D—Interpretations

§ 565.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 565.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 565.403 Termination and acquisition of an interest of the Government of Panama.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of Panama, such property shall no longer be deemed to be property in which the Government of Panama has or has had an interest unless there exists in the property another such interest, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred to the Government of Panama, such property shall be deemed to be property in which there exists an interest of the Government of Panama.

§ 565.404 Payments to the Noriega/Solis Regime prohibited; procedures for making payments to the Federal Reserve Bank of New York.

The prohibitions on payments and transfers to the Noriega/Solis regime in §§ 565.202 and 565.203 apply to payments and transfers of any kind whatsoever, including payment of debt obligations, fees, taxes, and royalties owed to the Government of Panama, and also including payment or transfer of dividends, interest payments, and other periodic payments. Payments or transfers owed to the Government of Panama shall be made to "Government of Panama Account No. 2," established on the books of the Federal Reserve Bank of New York pursuant to §§ 565.202 and 565.203.

(a) Payments or transfers of funds into Government of Panama Account No. 2 over FedWire should be made using Typecode 15. The transfer instructions should name "Government of Panama Account No. 2" and refer to routing number 021001208.

(b) Payments or transfers of funds to Government of Panama Account No. 2 at the Federal Reserve Bank of New York other than by FedWire (*e.g.*, where FedWire is not available, as in Panama) shall be made payable to Government of Panama Account No. 2 and sent, along with all required or appropriate documents, to the following lockbox address: Republic of Panama, Box No. 0225, Washington, DC 20055.

§ 565.405 Blocking not applicable to U.S. persons outside the United States.

For purposes of the prohibitions set forth in § 565.201 of this part, the term "persons located in the United States" is intended to express a geographical limitation, and does not include U.S. persons located outside the United States, their branches located outside the United States, or juridical entities located outside the United States, even though owned or controlled by U.S. persons.

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§ 565.406 Indirect payments to the Noriega/Solis regime; payments by subsidiaries in third countries.

The prohibitions in §§ 565.202 and 565.203 on payments or transfers to the Noriega/Solis regime apply to indirect payments (including reimbursement of a non-U.S. person for payment) made after 4:00 p.m. E.D.T., April 8, 1988. Unlicensed payments or transfers made to the Noriega/Solis regime from U.S. subsidiaries or branches in third countries shall, where such payments or transfers are normally made from the United States or Panama, be considered an evasion of the prohibitions set forth in §§ 565.202 and 565.203. Payments or transfers routinely made from these entities, however, are not prohibited.

§ 565.407 Clarification of interbank clearing payments.

(a) The authorization for interbank clearing payments contained in §§ 565.202 and 565.203 includes payments by one bank to another to settle on a net basis other payments transactions cleared by those banks, including check exchanges.

(b) Notwithstanding instructions received from their correspondents, banks located in the United States are not authorized to remit the proceeds of documentary collections or letters of credit to accounts maintained at Banco Nacional de Panama in Panama; such remittances are not included within the meaning of "interbank clearing payments." Banks located in the United States should seek alternate payment instructions from their correspondents.

§ 565.408 Setoffs prohibited.

(a) A setoff against a blocked account, whether by a bank or other U.S. person, is a prohibited transfer under §§ 565.202 and 565.203 if effected after 4:00 p.m., E.D.T., April 8, 1988.

(b) Except as licensed or otherwise authorized, a setoff as a method of settling payments to the Noriega/Solis regime, as by netting or cancelling a debt or other obligation, is prohibited

§ 565.409 Payments in kind.

Payments in kind made to the Noriega/Solis regime in lieu of a payment or transfer of funds, which term includes currency, cash or coins of any nation, as well as other financial or investment assets or credits, shall be considered an evasion of the prohibitions in subpart B.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 565.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or other authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in Subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 565.502 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice thereof.

§ 565.503 Certain payments authorized.

(a) All payments and transfers necessary to pay costs of utilities in Panama are authorized. Utilities shall include electricity, water, and similar municipal services such as trash collection and police and fire protection. The authorization set forth in this paragraph shall not be construed to extend to payments to the Noriega/Solis regime by the United States Government or any agency or instrumentality thereof, where such payments would be inconsistent with U.S. treaty obligations to Panama.

(b) All payments of indirect taxes (*i.e* those normally collected in the purchase of goods and services, such as sales and excise taxes) are authorized. This does not authorize the remittance of such payments, either directly or indirectly by U.S. persons or juridical entities owned or controlled by U.S. persons which collect such taxes for or on behalf of the Government of Panama.

(c) All payments of administrative fees and taxes paid in connection with basic business activity, including but not limited to: Commercial license fees, corporate registration fees and taxes, court pleading fees, creation of rights fees, copyright fees and taxes, custodial fees and services, document processing fees, fiscal stamps, health certificates, immigration fees, inspection services, international banking licenses, landing fees, legal fees, licensing fees, litigation costs, mineral extraction fees, municipal taxes, new product fees, notaries' fees, occupational risk insurance fees, parking meters, passport fees, patent fees and taxes, plant inspection fees, quarantine fees, radio and television registration fees, recordation fees, stamp taxes, towage fees, transportation tolls, trademark fees and taxes, vehicle registration fees, visa fees, warehouse storage fees, and work permits.

(d) This section does not authorize payment of income taxes; of social security taxes that are normally withheld for individuals and paid by other persons; of rental fees; or of direct taxes and fees (*e.g.*, port fees, export taxes and fees, or import duties and related expenses).

§ 565.504 Certain payments by individuals authorized.

All payments and transfers by individuals are authorized, except income taxes. This includes social security taxes that are paid by an individual directly to the Noriega/Solis regime, or by an individual on behalf of household employees. This paragraph does not authorize the payment of social security taxes paid by an individual which are normally paid by his or her employer, or of other payments by an individual made directly or indirectly on behalf of a juridical entity.

§ 565.505 Travel-related payments authorized.

All travel-related payments and transfers are authorized by individuals, including airport departure fees and taxes on tickets, and by United States persons, or by persons organized under the laws of Panama and owned or controlled by a United States person, in connection with the provision of travel services to individuals (*e.g.*, landing fees and fuel). This section does not authorize the payment of income taxes or of social security taxes that are normally withheld for individuals and paid by other persons.

§ 565.506 Telecommunications and mail transactions authorized.

All payments and transfers for the purpose of securing postal or telecommunications services are authorized, including payments and transfers among common carriers for the purpose of securing such services, and payments and transfers for telephone, telex, telegraphic, satellite, and facsimile transmission services.

§ 565.507 Payments and transfers related to purchase and sale of publications authorized.

All payments and transfers related to the purchase in Panama or the purchase or sale of publications involving Panama and the United States are authorized. For purposes of this part, publications include books, newspapers, magazines, films, phonograph records, tape recordings, photographs, microfilm, microfiche, and posters, including items described in the following:

(a) 15 CFR 399.1, Control List, Group 5, CL No. 75991: microfilm that reproduces the content of certain publications, and similar materials.

(b) 15 CFR 399.1, Control List, Group 9, CL No. 79991: certain publications and related materials.

§ 565.508 Payment by the Noriega/Solis regime of obligations to persons within the United States.

(a) The transfer of funds by the Noriega/Solis regime after 4:00 p.m. E.D.T., April 8, 1988, by, through, or to any domestic financial institution or other person within the United States solely for payment of obligations to persons within the United States is authorized, provided that there is no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

(b) A person receiving payment under this section may distribute all or part of that payment to anyone, provided that any such payment to the Noriega/Solis regime must be in accordance with the provisions set forth in section 565.404.

Subpart F—Reports

§ 565.601 Required records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction in which he engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least two years after the date of such transaction.

§ 565.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 565.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, which provides in part:

> A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.
>
> Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

This section of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction of authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is directed to 18 U.S.C. 1001, which provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

§ 565.702 Prepenalty notice.

(a) *When required:* If the Director of the Office of Foreign Assets Control (hereinafter "Director) has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents.*

(1) Facts of violation.

The prepenalty notice shall:

(i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 565.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 565.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

§ 565.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within thirty days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 565.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses are set forth in Subpart E of this Part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisons of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instruction specified in those licenses.

(b) *Specific licenses.*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in Subpart B of this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this part may be filed in duplicate by letter or on an application form with the Office of Foreign Assets Control. Any person having an interest in a transaction in proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make the fullest disclosure of all parties in interest to the transaction so that a decision on the application may be made with the fullest knowledge of all relevant facts and so that the identity and location of the persons who know the most about the transactions may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed for an account other than that of the applicant, the agent, as applicant, must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The application or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

§ 565.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 565.803 Amendment, modification, or revocation.

The provisions of this part and any rulings; licenses, whether general or specific; authorizations; instructions; orders; or forms issued hereunder may be amended, modified, or revoked at any time.

§ 565.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comments, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 565.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order No. 12635 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 565.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the

definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations.

(b) Any form issued for use in connection with the Panamanian Transactions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

Subpart I—Paperwork Reduction Act [Reserved]

Appendix A to Part 565—Panamanian Governmental Entities

Abbattoir Nacional
Aeronautica Civil de Panama and/or Direccion General de Aeronautica Civil
Air Panama
Autoridad Portuaria Nacional (National Port Authority)
Banco de Desarrollo Agropecuario
Banco Hipotecario Nacional (National Mortgage Bank)
Banco Nacional de Panama (Panama National Bank)
Caja de Ahorros (Savings Bank)
Caja de Seguro Social (Social Security)
Citricos de Chiriqui (Chiriqui Citric Plant)
Colon Free Zone
Comite Nacional de Semillas (CANASEM)
Consejo Nacional del Banano
Consejo Nacional de Inversiones (CNI)
Consulado de Panama (Consulate of Panama) [1]
Consulado General de Panama (Consulate General of Panama) [1]
Consular y Naves and/or Direccion General Consular y Naves (SECNAVES)
Contadora Panama S.A.
Cooperativa Agroindustrial de Icacal (CAICA)
Corporacion Agropecuaria de Rio Hato (COAPRHA)
Corporacion Azucarera la Victoria (Sugar Mill)
Corporacion Bananera del Atlantico (COBANA)
Corporacion Bayano (Bayano Cement)
Corporacion Financiera Nacional
Corp. para el Desarrollo Integral del Bayano
Corp. para el Desarrollo Integral de Bocas del Toro
Direccion de Aeronautica Civil (Civil Aeronautics) (DAC)
Direccion de Patrimonio Historico (Historic Heritage)
Direccion General para el Desarrollo de la Comunidad (Community Development Admin.) (DIGEDECOM)
Direccion General de Aduanas (Customs Services)
Direccion Nacional de Acuicultura (DINAAC)
Direccion Nacional de Asuntos Administrativos
Direccion Nacional de Agroindustrias
Direccion Nacional de Asuntos Indigenas (DINAI)
Direccion Nacional de Desarrollo Social
Direccion Nacional de Informacion y Divulgacion
Direccion Nacional de Ingenieria
Direccion Nacional de Planificacion Sectorial
Direccion Nacional de Produccion Agricola
Direccion Nacional de Produccion Pecuaria
Direccion Nacional de Reforma Agraria
Direccion Metropolitana de Aseo
Directorio de Sanidad Vegetal
Electric Power Institute (IRHE)
Empresa Nacional de Maguinaria Agricola (ENDEMA)
Empresa Nacional de Semillas (ENASEM)
Explosivos Nacional, S.A. (Property of Panamanian Military Officers)
Floresta Panamena
Fomento Lechero
Fuerza Aerea Panamena (Panamanian Air Force)
Hipodromo Presidente Remon (Race Tracks)
Instituto para la Formacion y Aprovechamiento de Recursos Humanos (IFARHU)
Instituto de Acueductos y Alcantarillados Nacionales
Instituto de Investigacion Agropecuaria de Panama
Instituto de Mercadeo Agropecuario (IMA)
Instituto de Recursos Hidraulicos y Electrificacion
Instituto de Seguro Agropecuario (ISA)
Instituto Nacional de Agricultura, Divisa (INA)
Instituto Nacional de Cultura (Culture) (INAC)
Instituto Nacional de Deporte (Sports) (INDE)
Instituto Nacional de Formacion Professional (INAFORP)
Instituto Nacional de Recursos Naturales Renovables (INRENARE)
Instituto Panameno Autonomo Cooperativo (IPACOOP)
Instituto Panameno de Comercio Exterior (IPCE)
Instituto Panameno de Habilitacion Especial (IPHE)
Instituto Nacional de Telecommunicaciones (National Telecommunications Institute) (INTEL)
Instituto Panameno de Turismo (Tourism) (IPAT)
Laboratorio de Sanidad Animal
Marinexam, S.A.
Mision de Panama Ante las Naciones Unidas (Mission of Panama to the United Nations)
National Lottery
National Treasury of the Republic of Panama and/or Ministerio de Hacienda de la Republica de Panama
Organizacion Internacional Regional de Sanidad Agropecuarie (OIRSA)
Palma Africana
Segumar
Transit, S.A. (Property of Panamanian Military Officers)
Universidad de Panama (University of Panama)
Universidad Technologica
Water and Sewage Institute (IDAN)
Zona Libre de Colon.

[1] Different restrictions may apply to various consulates and consulates general. Questions should be directed to the Office of Foreign Assets Control.

Dated: May 10, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved:

Francis A. Keating, II,

Assistant Secretary (Enforcement).

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June 3, 1988

Part VII

Department of Defense

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Proposed Rules

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS DRG-Based Payment System and Fiscal Year 1989 Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS regulation, DoD 6010-8-R (32 CFR 199), pertaining to payment for inpatient hospital services. This proposed amendment changes the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. Some of these changes are necessary as a result of our experience with the system or to conform to a number of recent statutory changes affecting the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled. Other changes expand the scope of the DRG-based payment system.

DATES: Written public comments must be received on or before July 5, 1988.

ADDRESS: Send comments to the Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "Address" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

In 1983, Congress called on DoD to establish a new method to pay hospitals for inpatient care under CHAMPUS, to be modeled after the recently established prospective payment system for the Medicare program. Rather than just paying billed charges, the new method was to pay fixed rates for particular categories of medical care, grouped into diagnosis-related groups, or DRGs. This Congressional action was followed by a 1986 law giving CHAMPUS the practical ability to adopt a new payment method by linking hospital participation in Medicare with that in CHAMPUS.

Paying hospitals on the basis of prospectively determined amounts per discharge limits the financial liability of CHAMPUS, yet at the same time provides fair treatment and positive incentives for hospitals. Instead of paying hospitals whatever they charge for whatever services they provide, CHAMPUS now pays hospitals fixed rates in general regardless of how long the patient stays or how many procedures the hospital provides. By paying hospitals according to DRG, this system recognizes the different amount of resources required to care for patients with different diagnoses, demographic characteristics, and specific procedures performed. Hospitals may keep the difference between the amount paid for care and the amount it cost to provide the care. Thus, efficient hospitals have the opportunity to enhance their financial position.

On September 1, 1987, we published a final rule (52 FR 32992) to implement the CHAMPUS DRG-based payment system. On September 15, 1987, we published an amendment to the final rule (52 FR 34775) which contained the final adjusted standardized amounts. This was followed by a notice on March 1, 1988 (53 FR 6182) which implemented a new Grouper Program and the resultant revised weights and rates as well as certain provisions of the 1988 Department of Defense Appropriations Act which exempted certain services from the CHAMPUS DRG-based payment system. The regulations governing the CHAMPUS DRG-based payment system are located in 32 CFR Part 199.

This October, Medicare will be entering its sixth year under the DRG payment system and CHAMPUS will be entering its second. It has been found to be a fair, effective method for paying for quality hospital care.

B. Major Contents of This Proposed Rule

This proposed rule would be effective for the second year of operation of the CHAMPUS DRG-based payment system beginning on October 1, 1988. Following is a summary of the major changes that we are proposing to make to the system.

1. Exemption of Certain Pediatric Services from the CHAMPUS DRG-Based Payment System

We are now proposing that discharges involving pediatric bone marrow transplants, children determined to be HIV seropositive, and pediatric cystic fibrosis be exempt from the CHAMPUS DRG-based payment system.

2. Reclassification of Areas for the Adjusted Standardized Amounts

We are proposing to implement three adjusted standardized amounts—for large urban areas, other urban areas, and rural areas. These changes will conform to those implemented under the Medicare PPS and published on April 5, 1988 (53 FR 11134).

3. Redesignation of Certain Rural Areas as Urban Areas

We are proposing to adopt the changes made for the Medicare PPS under which certain rural areas, because of their proximity to urban areas, are redesignated as urban areas.

4. Medicare Cost-to-Charge Ratio

We are proposing to use a cost-to-charge ratio of .6368 as calculated by the Health Care Financing Administration (HCFA) and published in the May 1988 Medicare PPS proposed rule.

5. Alcohol/Drug Abuse Services

We are proposing to begin coverage initially deferred for alcohol/drug abuse services and include them under the CHAMPUS DRG-based payment system. Generally, payment for these services will be made using the DRGs in use under the Medicare PPS and using the weights and rates developed for the CHAMPUS final rule to be published on or about September 1, 1988. The one exception to the Medicare approach is that DRG 435, which represents the majority of CHAMPUS alcohol/drug abuse cases, will be split into two age groups.

6. Children's Hospitals

We are proposing to begin coverage initially deferred for these hospitals. Payment to these hospitals will be made under the CHAMPUS DRG-based payment system, but, in recognition of the higher costs of care in these hospitals, a "children's hospital differential" will be developed which will be used to increase each DRG-based payment to children's hospitals.

7. Neonate Services

We are proposing to begin coverage initially deferred for these services. When incorporated into the CHAMPUS DRG-based payment system, payment for these services will take into consideration infants' birthweights as recommended in the Children's DRGs (CDRGs) developed by the National Association of Children's Hospitals and Related Institutions (NACHRI). We are currently developing the database necessary to calculate the relative weights for the CDRGs. We will also consider modifying the outlier policy for these services.

8. Outliers

We are proposing to revise our outlier procedures in accordance with most of the changes proposed for the Medicare PPS in the May 1988, proposed rule.

9. Burn Outliers

We are proposing to use the Medicare PPS burn outlier procedures published on April 5, 1988 (53 FR 11137).

10. Other Minor Changes and Clarifications to the Existing Procedures

There are a number of minor changes or clarifications to the provisions currently in the CHAMPUS regulation which we are proposing. These are:

—We are proposing to use the new Grouper Program used under the Medicare PPS beginning October 1, 1988.
—We are proposing to use the same update factors used by Medicare.
—We are proposing to use a revised formula for calculating the indirect medical education adjustment factor to reflect the revisions made in the Medicare formula.
—We are proposing that the per diem cost-sharing amount for beneficiaries other than dependents of active-duty members include an amount to recognize hospitals' costs for capital and direct medical education.
—We are proposing to eliminate the requirement that a hospital's request for payment of capital and direct medical education costs be submitted to the CHAMPUS contractor within three months of the end of the hospital's Medicare cost-reporting period.
—We are proposing clarifications to the definitions of "total inpatient days" and "total CHAMPUS inpatient days" which are required on hospitals' requests for capital and direct medical education payments.
—We are clarifying how the percentage reductions for capital payments which are required under the Medicare PPS will be applied under the CHAMPUS DRG-based payment system.
—We are proposing to use the wage index amounts published for the Medicare PPS in their proposed rule for FY 1989.
—We are clarifying a cross-reference regarding our intention that hospital-based professionals are to be reimbursed using the allowable charge methodology.

II. Exemption of Certain Pediatric Services from the CHAMPUS DRG-Based Payment System

Section 8064 of Pub. L. 100-202, the 1988 Department of Defense Appropriations Act, required certain pediatric services to be excluded from the CHAMPUS DRG-based payment system because of possible inadequacies in the DRG classification system for these conditions. CHAMPUS has not yet studied ways of improving the classification of these conditions. Therefore, we are proposing that the following services continue to be exempt from the CHAMPUS DRG-based payment system until appropriate classification changes can be made. The exemption applies whether the stated condition is the principal or a secondary diagnosis.

A. All services related to discharges involving pediatric (beneficiary less than 18 years old upon admission) bone marrow transplants. This will be ICD-9-CM diagnosis code V42.8 and ICD-9 procedure codes 41.0 and 41.91.

B. All services related to discharges involving children (beneficiary less than 18 years old upon admission) who have been determined to be HIV seropositive. This will be IDC-9-CM diagnosis codes 042 through 044 and 795.8.

C. All services related to discharges involving pediatric (beneficiary less than 18 years old upon admission) cystic fibrosis. This will be ICD-9-CM diagnosis code 277.

III. Reclassification of Areas for the Adjusted Standardized Amounts

Under the CHAMPUS DRG-based payment system, separate adjusted standardized amounts are calculated for urban and rural areas. In our original proposed rule which was published on June 3, 1987 (52 FR 20731), we proposed using a single national adjusted standardized amount. However, based on the comments we received and an analysis of CHAMPUS claims, we decided that the gap between urban and rural payments was sufficient to warrant an urban/rural differentiation in the payment system. We therefore adopted the same area differentiations used under the Medicare PPS.

Under section 4002(c)(1) of Pub. L. 100-203, the Medicare PPS is now required to compute three adjusted standardized amounts: one for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. A large urban area is defined as an urban area with a population of more than 1,000,000 or a New England County Metropolitan Area with a population of more than 970,000.

Just as for the previous distinction of urban and rural areas, we believe this further distinction of large urban areas and other urban areas is appropriate for CHAMPUS. We are, therefore, proposing to use the three adjusted standardized amounts in determining payment under the CHAMPUS DRG-based payment system. The large urban areas to be used are those used for the Medicare PPS as published by the HCFA in the **Federal Register** on April 5, 1988 (53 FR 11138).

IV. Redesignation of Certain Rural Areas as Urban Areas

Section 4005(a) of Pub. L. 100-203 requires the Medicare PPS to treat hospitals located in certain rural counties which are adjacent to one or more urban areas as being located in an urban area. Under the Medicare PPS this provision is effective for discharges occurring on or after October 1, 1988. Therefore, those areas affected will be identified by the HCFA as they implement this and other changes for FY 1989.

Since the impact on these areas under the CHAMPUS DRG-based payment system would be comparable to that under the Medicare PPS, we are proposing to use the same designations. Any county which is currently designated as a rural area but is redesignated as an urban area under the Medicare PPS shall also be considered to be an urban area for purposes of CHAMPUS.

Hospitals located in the specified rural areas will be paid at the higher urban adjusted standardized amount (ASA) and also will benefit from the predominantly higher metropolitan statistical area (MSA) wage indexes. This will better compensate these hospitals for the higher costs they experience as a result of their proximity to urban areas.

In adopting this provision, we are simply duplicating a change which will be made under the Medicare PPS on which the CHAMPUS DRG-based payment system is modeled. We believe it would be unreasonable to consider any other alternative.

Just as for the Medicare PPS, CHAMPUS implementation of this provision will ensure that it does not result in aggregate payments to either

urban or rural hospitals which are greater or less than would otherwise be made.

V. Medicare Cost-To-Charge Ratio

In calculating the adjusted standardized amounts (ASAs) used in the CHAMPUS DRG-based payment system, we have reduced the charges in the database to a cost basis by using the Medicare cost-to-charge ratio. This ratio was .66 as published in the Federal Register on September 3, 1986 (51 FR 31523) and was based on FY 1984 cost and charge data. However, HCFA has now updated this cost-to-charge ratio to .6368. Since the period for this updated ratio coincides more closely with the period we have used for the database in calculating the CHAMPUS ASAs (July 1, 1986, through June 30, 1987), we are proposing to use it.

We continue to believe that the Medicare cost-to-charge ratio is the best measure of the relation of hospital costs to charges that is currently available. Because hospital's posted charges to third-party payers are generally consistent, this ratio provides a reasonable estimate of CHAMPUS costs relative to charges. Moreover, it represents those costs which have been identified, through statute and regulation, as reimbursable under Medicare, the major government program. We also believe that since our beneficiaries are considerably younger and generally healthier on average, the resource consumption (and therefore, costs) for a CHAMPUS beneficiary would be less than for a Medicare beneficiary in the same DRG.

When we implemented the CHAMPUS DRG-based payment system last year, we used the most recently available Medicare cost-to-charge ratio of .66. This ratio was derived from FY 1984 data, but we used a database period of July 1, 1986, through June 30, 1987. Nevertheless, this was the only ratio available, and we were aware that the ratio had been steadily declining from year to year. The cost-to-charge ratio recently calculated by HCFA based on FY 1985 data is now .6368. Thus, the period for which it is calculated much more closely corresponds to our database period.

HCFA also has published the new cost-to-charge ratio on a state basis. The majority of CHAMPUS admissions are located in states with cost-to-charge ratios *below* the national average. For example, over 70 percent of CHAMPUS DRG admissions occur in states with urban cost-to-charge ratios below .62.

Use of the .6368 simply refines our base year calculation. We did consider rebasing in order to reflect in our payment rates the new shorter length-of-stay and other hospital efficiencies. Because CHAMPUS paid billed charges for so long, it is our assumption that our charges reflected an ingrained inefficient provision of care. Simply applying the Medicare cost-to-charge ratio to our charges most likely overstates appropriate costs. Nevertheless, we are proposing not to rebase at this time. We specifically invite comments on the issue of rebasing.

VI. Alcohol/Drug Abuse Services

When CHAMPUS implemented its DRG-based payment system on October 1, 1987, Medicare simultaneously extended its PPS to cover alcohol/drug abuse DRGs. Even so, we elected to defer coverage of alcohol/drug abuse DRGs, because we were not certain that the nature of alcohol/drug abuse treatment, and its classification, is comparable for both the CHAMPUS and Medicare beneficiary groups.

As proposed, since publication of our September 1, 1987, final rule, we have examined the impact of Medicare's alcohol/drug abuse procedures on CHAMPUS beneficiaries. This evaluation was performed through a contract with the RAND Corporation. This evaluation found that:

1. With one exception discussed below, the Medicare DRGs can be used to reimburse for CHAMPUS patients;
2. A large majority (more than two-thirds) of CHAMPUS discharges for alcohol/drug abuse treatment were from general acute-care hospitals;
3. On average, general hospitals are reimbursed slightly more than specialty hospitals;
4. Implementation of DRG-based reimbursement will result in no reduction in total payments for alcohol/drug abuse services.

As a result of the RAND study, we are proposing to end the exemption for alcohol/drug abuse services and reimburse them under the CHAMPUS DRG-based payment system. This will apply to all alcohol/drug abuse services regardless of whether they are provided in hospitals and hospital units subject to DRG-based reimbursement or in hospitals, such as psychiatric institutions, that are currently exempt from DRGs. Alcohol/drug hospitals and alcohol/drug units (in hospitals otherwise subject to DRG-based payments) will no longer be exempt.

We will use the same DRGs as currently used in the Medicare PPS, with one exception. Our analysis has shown that a majority of CHAMPUS alcohol/drug abuse claims group into DRG 435 (alcohol/drug abuse or dependence, detoxification or other symptomatic treatment, without complications or comorbidity), and that for this DRG age appears to significantly influence resource use. We found that the average charges for patients under 21 years of age were approximately $1,900 higher than the average charges for patients over 21. Therefore, we will divide DRG 435 into two age-based DRGs (we will designate these as DRGs 900 and 901), which should improve the ability of the DRG classification system to reflect differences in resource use across patients. Since we will continue to use the Medicare Grouper, this split will be done by the CHAMPUS contractor (FI) after claims have been grouped.

This provision will enable CHAMPUS to incorporate a significant number of CHAMPUS admissions into our DRG-based payment system. This will provide us with the same benefits we achieved for other types of services—namely, a way to control our costs for these services and an incentive for hospitals to provide these services efficiently.

The operational impact of this provision on acute-care hospitals will be negligible, since Medicare implemented alcohol/drug abuse DRGs for these hospitals last year. Although a number of specialty hospitals have not previously been subject to DRG-based reimbursement, we believe there is no justification for continuing to differentiate them in the payment for these services.

The relative weights we use for these services will reflect the treatment patterns and resource use among CHAMPUS patients. It is for just this reason, that we have decided to split DRG 435 into two age-based DRGs.

We are aware that many of the specialty hospitals (alcohol/drug abuse, psychiatric, rehabilitation, and long-term) which treat CHAMPUS beneficiaries are not Medicare-participating providers. Since the participation linkage discussed in our September 1, 1987, final rule would not apply to those hospitals which are not Medicare-participating, they will be required to complete the Health Program Benefit Agreement contained in that final rule. By completing this agreement, hospitals agree to accept the CHAMPUS-determined allowable amount as payment in full for their services. The CHAMPUS-determined allowable amount will be based on the CHAMPUS DRG-based payment system for services subject to this system and on the hospital's billed charges (as described in the CHAMPUS regulation) for services exempt from the CHAMPUS DRG-based payment system. Completed agreements are to be sent to the hospital's CHAMPUS FI, and a representative of the FI will sign and return a copy of the agreement. Just as for all other hospitals, any specialty hospital which is not Medicare-participating and which fails to complete the Health Program Benefit Agreement will no longer be an authorized CHAMPUS provider as of October 1, 1988. These agreements will be completed only upon request of the hospital to the CHAMPUS contractor.

We recognize that some hospitals which are not Medicare-participating hospitals may elect not to sign a participation agreement with CHAMPUS as a result of our implementation of the alcohol/drug abuse DRGs. In light of the relatively small number of hospitals which provide these services to more than a very few CHAMPUS beneficiaries, we expect the number of hospitals deciding not to sign agreements will be extremely small. Moreover, we believe that alternate sources of care will be available for beneficiaries in areas of any hospitals which choose not to sign a participation agreement. Should no alternative source be available in a 50-mile radius, we will consider an alcohol/drug abuse treatment hospital as if it were a sole community provider and exempt it from the DRG system.

Because of the number in which DRG-based payments are determined, it is impractical to place a limit on the number of covered days for a service subject to DRG-based reimbursement. Moreover, since implementation of DRG-based reimbursement for alcohol/drug abuse services provided by hospitals will eliminate length-of-stay as a determinant of payment, we are eliminating the current limits on individual stays for alcoholism. Currently, treatment of alcoholism is limited to seven days detoxification per stay and twenty-one days of rehabilitation. The lifetime limit for rehabilitation is unchanged, and the benefit period limitation is revised to one stay per benefit period, as opposed to twenty-one days per benefit period. We want to emphasize that these changes apply only to inpatient hospital services subject to the DRG-based payment system, and that we don't intend this to be a change to the benefit but rather a change to the procedures for applying the benefit.

In implementing these changes we are not making any distinction between alcohol abuse and drug abuse services. They are treated identically under the Medicare PPS, and we have found no justification in our studies to do any differently.

VII. Children's Hospitals

Last year we deferred coverage of children's hospitals by the CHAMPUS DRG-based payment system. We received a number of comments on our June 3, 1987, proposed rule which contended that the DRG classification system and the payment levels do not adequately distinguish the more complex and resource intensive children's conditions which are treated by children's hospitals. At the time, we examined CHAMPUS data relating to charges of children's hospitals and found some plausible support for this contention. Accordingly, we deferred coverage of children's hospitals, noting that we intended to review this area "so that children's hospitals can be incorporated into our DRG system in the future."

We have subsequently had several meetings with interested organizations including NACHRI, and, under a contract with the Department of Defense, the RAND Corporation has analyzed the implementation of DRG-based payments for children's hospitals. RAND's findings include:

—The proportion of day outliers in children's hospitals is not significantly different from that for pediatric services in other hospitals.
—Use of the CDRGs (exclusive of the neonate CDRGs) provides little improvement over the current DRGs as a predictor of resource use.
—Notwithstanding the above findings, the charges of children's hospitals are consistently higher than the charges for other hospitals for similar services.

In light of the above findings and our discussions with NACHRI, the difference in charges may be a result of two factors: (1) Children's hospitals, although they treat patients generally grouped into the same DRGs as other hospitals, may treat sicker patients on average, and (2) children's hospitals cannot shift some of their costs to less costly adult care as may occur in other hospitals.

We considered recognizing these higher costs by calculating a separate ASA for childrens' hospitals derived by applying the cost-to-charge ratio (currently .66) to the higher childrens' hospitals' charges. This method would recognize the possibility that childrens' hospitals treat sicker patients. It would not, however, recognize the possibility that general hospitals cross-subsidize pediatric care with adult patients while childrens' hospitals cannot. There is no empirical evidence to support or refute this premise. However, we are proposing, for now, to assume it is true for purposes of developing payment rates for childrens' hospitals. To assure full consideration, we invite comments on the possible alternative approach of applying the cost-to-charge ratio to a separately-calculated childrens' hospital ASA.

We are proposing that children's hospitals be subject to the CHAMPUS DRG-based payment system using the CHAMPUS DRGs, but in order to fully recognize their higher costs, we will develop a "children's hospital differential". The differential will be a predetermined amount which will be multiplied by the appropriate DRG relative weight and added to each DRG-based payment made to children's hospitals.

The differential will be equal to the difference between a specially calculated ASA for children's hospitals (using standard procedures but based on a database of only children's hospitals) and the ASA which would otherwise be applicable. It will be calculated so that it is "revenue neutral" for children's hospitals; that is, for the base year overall CHAMPUS payments to children's hospitals under the DRG-based payment system will be equal to those under the old payment system. To accomplish this we will calculate a separate ASA for childrens' hospitals using the same database as for other calculations (July 1, 1986, through June 30, 1987). Normally in calculating ASAs, we reduce the adjusted charges according to the Medicare cost-to-charge ratio (currently .66). However, in recognition of the higher costs of children's hospitals, we will not use this step in calculating the children's hospital differential. We will subtract the appropriate ASA from this children's hospital ASA, and this amount will be the children's hospital differential.

There will actually be two differentials used—one for children's hospitals in large urban areas and one for children's hospitals in other urban areas (there are no children's hospitals in rural areas). The differentials will not be subject to annual inflation updates. Of course, the normal ASAs will be updated annually according to the Medicare increase, so children's hospitals will benefit from these increases just as all other hospitals benefit from them.

NACHRI has also commented that each childrens' hospital is so unique that they require hospital-specific rates. Analysis of the variation among childrens' hospitals indicates that, in general, the variation is no greater for

childrens' hospitals than among large teaching hospitals. There is no justification for special treatment in this regard.

In addition, the vast majority of CHAMPUS claims from childrens' hospitals is concentrated in only a very few hospitals. Thus, the children's hospital differential will essentially be derived from charge data from those few hospitals which receive a significant amount of CHAMPUS reimbursement, and it will, in effect, be specific to them.

Just as for alcohol/drug abuse hospitals, we recognize that some children's hospitals may not be Medicare-participating providers. Those which are not must complete the Health Program Benefit Agreement in order to be authorized CHAMPUS providers. If they do not, they will no longer be authorized CHAMPUS providers as of October 1, 1988.

VIII. Neonate Services

When the CHAMPUS DRG-based payment system was implemented on October 1, 1987, neonatal services were included in it. It was our position, based on an examination of CHAMPUS data, that the impact of DRGs on neonate services would occur primarily at children's hospitals which were exempt. We found that the impact on other hospitals would be similar to the impact of other DRGs.

However Pub. L. 100-202, the 1988 Department of Defense Appropriations Act, required that discharges involving newborns and infants who are less than 29 days old upon admission (other than discharges classified to diagnosis related group 391) be exempt from our DRG-based payment system. This provision has been implemented and was included in a **Federal Register** notice published on March 1, 1988.

Based on our abbreviated experience with payment based on the existing neonate DRGs and on our discussions with NACHRI, we believe neonate services can be equitably included in the CHAMPUS DRG-based payment system. We are proposing that neonate services be reimbursed using the Pediatric Modified DRGs (PMDRG) that differentiate the DRG by birthweight. These PMDRGs were developed by NACHRI. A number of studies have shown that birthweight is a strong predictor of both hospital charges and length-of-stay. The PMDRGs, which are considerably more extensive than the current six neonate DRGs and include divisions based on birthweight, will much more accurately classify neonate admissions.

Because the CHAMPUS data do not now contain birthweight information, we will be using the relative weights for each birthweight category within a neonatal DRG from another large, comparable database. The overall weight for the neonatal DRGs will still be derived from CHAMPUS claims data.

We believe that this classification change, together with the new "childrens' hospital differential" and the increased payment for high-cost outliers proposed below, should substantially reduce or eliminate any adverse fiscal impacts on hospitals resulting from covering neonates in the DRG-based payment system. We invite comment on whether or not additional changes to the outlier policy specific to neonates, are appropriate to assure adequate payment.

IX. Outliers

The CHAMPUS DRG-based payment system includes provisions for making outlier payments. That is, an adjustment is made to the DRG-based payment amount for those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified into the same DRG. Such outlier payments are particularly important for CHAMPUS, since the number of CHAMPUS cases in many hospitals is relatively small, and there may not be an opportunity to "average out" DRG-based payments over a number of claims.

For the most part, our outlier policy follows the outlier procedures used in the Medicare PPS. In their proposed rule published in May 1988, HCFA proposes to change the procedures for reimbursing outliers, and CHAMPUS will make similar changes.

The Medicare analysis indicates that while our payment policy for outliers effectively reduces the risk faced by hospitals in treating cases that are outside the normal range of cases in terms of duration or costliness, additional compensation would be justified for the most expensive cases, particularly those long-stay cases with extremely high costs. On the other hand, some cases that currently qualify for additional payment as day outliers are not extraordinarily costly.

The Medicare research has shown that a higher marginal cost factor would result in more appropriate payments for the most expensive cases, by more effectively reducing the financial risk to hospitals that is associated with these cases. In particular, they note that the estimated loss per case is higher for cost outliers than for day outliers. When day outliers are separated into two categories—those exceeding the length-of-stay threshold but not the cost threshold, and those exceeding both thresholds—the estimated loss per case for the more expensive day outliers (those also exceeding the cost threshold) substantially exceeds that for the less expensive day outliers (those that do not exceed the cost threshold).

This finding that the financial risk associated with outlier cases varies substantially depending on whether the case is long stay only or the case also exceeds the cost threshold suggests that the marginal cost factor being used for the most expensive outliers (those that exceed the cost outlier threshold) is too low.

Accordingly, for discharges occurring on or after October 1, 1988, Medicare is proposing to set the marginal cost factor for the most expensive outlier cases (that is, all outlier cases exceeding the cost outlier threshold) at 80 percent of adjusted charges beyond the cost outlier threshold. Based on the Medicare research to date, they believe that this revised marginal cost factor would result in more accurate payment for the marginal cost of cost outliers and more adequate compensation to hospitals treating the most costly outlier cases.

In addition, we currently pay even the most expensive day outliers at a per diem amount that is based on the average payment for all discharges assigned to that DRG. For some of the cases that currently qualify as day outliers, the per diem rate paid does not adequately compensate the hospital for its marginal costs. This is especially true for day outlier cases with extremely high costs, for which the daily costs may vastly exceed the day outlier per diem and for which that daily difference is multiplied by a long length-of-stay.

We are proposing that the percentage payment for cost outliers be increased from 60 percent to 80 percent, and that cases which qualify as both a day outlier and a cost outlier will be paid at whichever outlier results in the greatest payment. Our methodology for calculating the long-stay and cost outlier cutoffs will continue to duplicate that used in the Medicare PPS.

We are not proposing to adopt the hospital-specific cost-to-charge ratio proposed by Medicare for purposes of computing cost outlier payments. Unlike Medicare, we believe use of a national cost-to-charge ratio is more appropriate for our beneficiaries. We have examined the state cost-to-charge ratios calculated by HCFA, and we find that for the states in which most of our beneficiaries are concentrated the national cost-to-charge ratio is consistently higher. Thus, on average, we believe use of anything other than the national cost-to-charge ratio would actually reduce cost-outlier payments.

X. Burn Outliers

As a result of a statutory change (Section 4006(d)(1)(A) of Pub. L. 100-203), the outlier policy for those DRGs related to burn cases has been changed for Medicare. Therefore, we are proposing that for the DRGs relating to burn cases, the marginal cost factor for both long-stay and cost outlier be increased to 90 percent. There are six DRGs related to burn cases which are affected by this change. They are:

456—Burns, transferred to another acute care facility.
457—Extensive burn w/o O.R. procedure
458—Non-extensive burns with skin graft
459—Non-extensive burns with wound debridement or other O.R. procedure
460—Non-extensive burns w/o O.R. procedure
472—Extensive burns with O.R. procedure

XI. Other Minor Changes and Clarifications to the Existing Procedures

A. Grouper Program

The final rule which we published on September 1, 1987, requires that the CHAMPUS DRG-based payment system use the most recently available Grouper for the Medicare PPS. When our DRG-based payment system was developed and implemented, the FY 1987 Medicare Grouper was the only program available to use. When the HCFA introduced an updated Grouper—a FY 1988 version—we began to receive complaints, because our Grouper was different from Medicare's. As a result, we recalculated the weights and rates necessary for the FY 1988 Medicare Grouper, and we implemented it for discharges occurring on or after March 1, 1988. We are proposing to use the FY 1988 Medicare Grouper beginning October 1, 1988. Of course, this will depend upon its availability in time for use to complete the necessary calculations, such as the updated weights, the weights for alcohol/drug abuse DRGs, and the revised ASAs which recognize large urban areas.

Use of the updated Grouper will mean that we are also adopting the DRG reclassification changes which HCFA has proposed in their recently-published proposed rule. This includes the changes to the major diagnostic categories, the surgical heirarchies, the list of complications and comorbidities, and the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM). We will also use the two new DRGs (476 and 477) proposed by HCFA. All of these changes are discussed in detail in HCFA's proposed rule.

B. ASA Update Factor

In order to update the ASAs for FY 1989, we are proposing to use the same factors used for the Medicare PPS. These factors are the market basket percentage increase minus 1.5 percent for hospitals located in rural areas, the market basket percentage increase minus 2.0 percent for hospitals located in large urban areas, and the market basket percentage increase minus 2.5 percent for hospitals located in other urban areas.

C. Indirect Medical Education Adjustment Factor

The CHAMPUS DRG-based payment system provides for an adjustment factor to be calculated for teaching hospitals in order to compensate them for indirect medical education costs. These hospital-specific factors are calculated in accordance with Medicare procedures, although the factors themselves are not the same as under Medicare, since we use different base data. Also, since CHAMPUS has no disproportionate share provision, we have calculated the adjustment factor using the formula for Medicare which is to be effective as of October 1, 1989. This formula results in a higher factor than would otherwise be calculated.

We intend to continue using the higher Medicare formula, but section 4003(a)(1) of Pub. L. 100-203 revised the formulas used under the Medicare PPS. As we stated in last year's final rule (52 FR 32999), CHAMPUS will revise its formula in accordance with any statutory change in the Medicare formula. Therefore, we are proposing to use the following formula for calculating the indirect medical education adjustment factor.

$$1.43\times\left[\left(1.0+\frac{\text{number of interns+residents}}{\text{number of beds}}\right)^{.676}-1.0\right]$$

The new formula will be used beginning with all submissions of hospitals' requests for payment for capital and direct medical education costs received by CHAMPUS contractors after October 1, 1988.

D. Per Diem Cost-Sharing Amount for Beneficiaries Other than Dependents of Active-Duty Members

When we implemented the CHAMPUS DRG-based payment system we simultaneously modified the cost-sharing procedures for beneficiaries other than dependents of active-duty members. Prior to that time, these beneficiaries' cost-share was simply twenty-five percent of the CHAMPUS determined allowable amount, in accordance with the CHAMPUS statute. With implementation of the DRG-based payment system, we revised the procedures for calculating the cost-share to be the lesser of a per diem amount ($175) or twenty-five percent of the billed charge. The per diem amount was calculated so that total cost-sharing amounts for these beneficiaries would be equivalent to twenty-five percent of the DRG-based payments for hospital services. By doing this we not only complied with the statutory requirement that cost-shares be twenty-five percent, but, more importantly, we ensured that no beneficiary would be required to pay a cost-share under our DRG-based payment system that is greater than the cost-share which would have been required if the DRG-based payment system had not been implemented.

In calculating the cost-sharing per diem for FY 1989, we intend to follow the same procedures with one additional element. Our calculations last year did not include any consideration for the year-end payments for capital and direct medical education costs which CHAMPUS will pay. Since these costs previously would have been included in the hospitals' charges, beneficiary cost-shares would also have included a portion of them. Accordingly, to conform more closely to the requirements of the statute, we propose to include these costs in our calculation of the cost-sharing per diem for FY 1989.

E. Submission of Request for Payment for Capital and Direct Medical Education Costs

The CHAMPUS regulation currently requires that hospitals submit their request for payment of capital and direct medical education costs within three months of the end of the hospital's Medicare cost-reporting period. This requirement has often proven to be impossible for hospitals, because they are granted an extension to the cost-report filing deadline by HCFA. Since part of the data reported to CHAMPUS is derived directly from the Medicare cost-report, hospitals have been unable to meet CHAMPUS' deadline. We have recognized this problem and have not enforced the deadline.

We are proposing that this requirement be eliminated, because it serves no useful purpose for CHAMPUS. It is in the best interests of the hospital to submit the report at the earliest possible time, since no payment for capital and direct medical education costs can be made until the report is received by the CHAMPUS FI. Moreover, for teaching hospitals, the indirect medical education factor cannot be updated until the report is received. However, if the report is submitted late or even not at all, there is no adverse impact on CHAMPUS.

F. Clarification of Total Inpatient Days and CHAMPUS Inpatient Days

The CHAMPUS regulations requires that a hospital's request for payment of capital and direct medical education costs include "total inpatient days provided" and "total CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS DRG-based payment system provided." Customarily, regulation requirements, which are often brief, are expanded and clarified in various manual instructions. Accordingly, these two items have been further defined in CHAMPUS manual instructions as "total inpatient days provided to all patients in units subject to DRG-based payment" and "total CHAMPUS inpatient days provided in units subject to DRG-based payment. (This is to be only days which were allowed for payment. Therefore, days which were paid entirely by other health insurance or which were determined to be not medically necessary are not to be included.)" This is to ensure that only days provided in units subject to DRG-based payment are reported.

These instructions, just as other manual instructions, have been disseminated to hospitals through the normal operations of our contractors. Nevertheless, we are proposing that, to ensure clarity of these requirements, the regulatory requirements be expanded to be more comparable to our existing manual instructions.

G. Percentage Reductions in Capital Payments

Under the CHAMPUS DRG-based payment system, CHAMPUS will make annual payments to hospitals to reimburse them for CHAMPUS' share of each hospital's capital costs. These payments are made only upon request and are based on data submitted in the hospital's Medicare cost-report. The final rule which implemented our DRG-based payment system stated that, "Reductions in payments for capital costs which are required under Medicare shall also be applied to payments for capital costs under CHAMPUS."

Section 4006(a) of Pub. L. 100–203 set forth percentage reductions to be made in capital payments under the Medicare PPS. In accordance with those reductions, the basic capital payments under the CHAMPUS DRG-based payment system shall be reduced by seven percent for any payments made for days between October 1 and December 31, 1987; by 12 percent for any payments made for days between January 1 and September 30, 1988; and by 15 percent for payments made for days during FY 1989. CHAMPUS capital payments will be prorated for the different percentage reductions based on the number of days in the reporting period which fall into each category.

Since last year's final rule provided for using these reductions, they have already been implemented for CHAMPUS. This information is provided only to clarify how we are applying the reductions.

H. Wage Index

The area wage indexes to be used for FY 1989 for the CHAMPUS DRG-based payment system are those used under the Medicare PPS as published in the **Federal Register** in May 1988.

I. Payment for Hospital-Based Professional and Nurse Anesthestist Services

The services of hospital-based professionals and nurse anesthetists are exempt from the CHAMPUS DRG-based payment system. As we stated in last year's proposed rule, they are to be reimbursed using the allowable charge methodology. Although we made the necessary changes to the regulation to implement this policy, we believe the cross-reference in § 199.14, paragraph (a)(1)(ii)(C) is misleading and we are correcting it.

XII. Mental Health Services

Under the CHAMPUS DRG-based payment system, we have exempted all services which would otherwise be paid under one of the psychiatric DRGs which are numbers 424–432. In addition, we have exempted psychiatric hospsitals and psychiatric units. With the exception of alcohol/drug abuse cases in them, these hospitals and units, as well as all mental health services will continue to be exempt from our DRG-based payment system. However, we have developed an alternative payment system for these services, and we are publishing a Notice of Proposed Rulemaking on it as well.

XIII. Other Required Information

A. Effective Date

The procedures contained in this proposed rule are to be applicable to all discharges occurring on or after October 1, 1988.

B. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

C. Coordination of Proposed Rule

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

XIV. Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of $100 million or more;

Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act (FRA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include many nonprofit and for-profit hospitals.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

We do not consider this proposed rule to be a major rule under Executive Order 12291. Moreover, this rule will not significantly affect a substantial number of small entities. The proposed changes set forth in this proposed rule, taken as a whole, would have a annual impact on the hospital industry of substantially less than $100 million. Additionally, the economic impact, which is solely a function of revised federal payments, on almost all individual hospitals is very little in view of the small percentage of hospital revenue provided by CHAMPUS and the small change in CHAMPUS payments represented by this proposed rule.

Therefore, no regulatory impact analysis is required. Nonetheless, throughout the preamble, we have provided information to permit a thorough assessment of all effects of the rule. We welcome comments and factual information that would facilitate additional analysis.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraphs (e)(4)(i) and (e)(4)(ii)(A) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(4) * * *

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of alcohol withdrawal (detoxification), for stabilization, and for treatment of medical complications of alcoholism. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. Stays provided for alcohol rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services also are subject to the provisions regarding the limit on inpatient mental health services.

(ii) * * *

(A) *Rehabilitative care.* Rehabilitative care in an authorized alcohol rehabilitation facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage during a single benefit period is limited to no more than one inpatient stay in hospitals subject to the CHAMPUS DRG-based payment system or 21 days in a DRG-exempt facility for rehabilitative care. If the patient is medically in need of alcohol detoxification, but does not require the personnel or facilities of a general hospital setting, detoxification services are covered in addition to the rehabilitative care, but in a DRG-exempt facility detoxification services are limited to 7 days. The medical necessity for the detoxification must be documented. Any detoxification services provided by the alcohol rehabilitation facility must be under general medical supervision.

* * * * *

3. Section 199.14 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i)(A), (a)(1)(i)(B)(*1*), and (a)(1)(ii)(C) introductory text; by removing paragraph (a)(1)(ii)(C)(*3*) and redesignating paragraphs (a)(1)(ii)(C) (*4*) through (*8*) as paragraphs (a)(1)(ii)(C) (*3*) through (*7*); by adding new paragraphs (a)(1)(ii)(C)(*8*), (a)(1)(ii)(C)(*9*) and (a)(1)(ii)(C)(*10*); by revising paragraphs (a)(1)(ii)(D), (a)(1)(iii) introductory text, (a)(1)(iii)(A)(*3*), (a)(1)(iii)(D)(*1*), (a)(1)(iii)(D)(*2*), (a)(1)(iii)(D)(*4*), (a)(1)(iii)(D)(*5*), (a)(1)(iii)(E)(*1*) introductory text, (a)(1)(iii)(E)(*1*)(*i*)(*bb*), and (a)(1)(iii)(E)(*1*)(*ii*); by adding a new paragraph (a)(1)(iii)(E)(*4*); and by revising paragraphs (a)(1)(iii)(G)(*3*) introductory text, (a)(1)(iii)(G)(*3*)(*vi*), and (a)(1)(iii)(G)(*3*)(*vii*) to read as follows:

§ 199.14 Basic program benefits.

* * * * *

(a) * * *

(1) *CHAMPUS DRG-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applied on a per discharge basis using Diagnosis Related Groups (DRGs). Payments under this system will include a differentiation for urban (using large urban and other urban areas) and rural hospitals and an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs, and outlier cases.

(i) * * *

(A) *DRGs used.* The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare Prospective Payment System, except as necessary to recognize distinct characteristics of CHAMPUS beneficiaries and as described in instructions issued by the Director, OCHAMPUS.

(B) * * *

(*1*) The classification of a particular discharge shall be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed, discharge status, and birthweight (for neonate admissions only).

* * * * *

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system. The services in paragraphs (a)(1)(ii)(C) (*1*) through (*5*) and (*8*) through (*10*) shall be reimbursed under the procedures in paragraph (a)(2) of this section, and the services in paragraphs (a)(1)(ii)(C) (*6*) and (*7*) shall be reimbursed under the procedures in paragraph (f) of this section.

* * * * *

(*8*) All services related to discharges involving pediatric bone marrow transplants (patient under 18 at admission).

(*9*) All services related to discharges involving children who have been determined to be HIV seropositive (patient under 18 at admission).

(*10*) All services related to discharges involving pediatric cystic fibrosis (patient under 18 at admission).

(D) *Hospitals subject to the CHAMPUS DRG-based payment system.* All hospitals within the fifty states, the District of Columbia, and Puerto Rico which are certified to provide services to CHAMPUS beneficiaries are subject to the DRG-

based payment system except for the following.

(*1*) The following hospitals are exempt for all services they provide.

(*i*) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt from the CHAMPUS DRG-based payment system. [See Subpart G of 42 CFR Part 412.]

(*ii*) *Christian Science sanitoriums.* All Christian Science sanitoriums (as defined in paragraph (b)(4)(vii) of § 199.6) are exempt from the CHAMPUS DRG-based payment system.

(*iii*) *Cancer hospitals.* Any hospital which qualifies as a cancer hospital under the Medicare standards and has elected to be exempt from the Medicare prospective payment system is exempt from the CHAMPUS DRG-based payment system. (See 42 CFR 412.94.)

(*iv*) *Hospitals outside the 50 states, the District of Columbia, and Puerto Rico.* A hospital is excluded from the CHAMPUS DRG-based payment system if it is not located in one of the fifty States, the District of Columbia, or Puerto Rico.

(*2*) The following hospitals or hospital units are subject to the DRG-based payment system for alcohol/drug abuse services which they provide. These hospitals and hospital units are exempt for all other services.

(*i*) *Psychiatric hospitals.* A psychiatric hospital which is exempt from the Medicare Prospective Payment System shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a psychiatric hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*ii*) *Rehabilitation hospitals.* A rehabilitation hospital which is exempt from the Medicare Prospective Payment System shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a rehabilitation hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*iii*) *Psychiatric and rehabilitation units (distinct parts).* A psychiatric or rehabilitation unit which is exempt from Medicare Prospective Payment System shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*iv*) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must have an average length of inpatient stay greater than 25 days:

(*aa*) As computed by dividing the number of total inpatient days (less leave or pass days) by the total number of discharges for the hospital's most recent fiscal year; or

(*bb*) As computed by the same method for the immediately preceding six-month period, if a change in the hospital's average length of stay is indicated.

* * * * *

(*iii*) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the appropriate adjusted standardized amount (adjusted to account for area wage differences using the wage indexes used in the Medicare program) by a weighting factor specific to each DRG.

(A) * * *

(*3*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.40 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}}\right)^{.405} - 1.0\right]$$

* * * * *

(*2*) *Differentiate large urban, other urban, and rural charges.* All charges in the database shall be sorted into large urban, other urban, and rural groups (using the same groupings used in the Medicare program). The following procedures will be applied to each group.

(*2*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}}\right)^{.405} - 1.0\right]$$

* * * * *

(*4*) *Apply the cost to charge ratio.* Each charge is to be reduced to a representative cost by using the Medicare cost to charge ratio. This amount shall be increased by 1 percentage point in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

(*5*) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban, other urban, or rural group and dividing by the total number of discharges in the respective group.

* * * * *

(E) * * *

(*1*) *Outliers.* The DRG-based payment to a hospital shall be adjusted for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG. Cases which qualify as both a length-of-stay outlier and a cost outlier shall be paid at the rate which results in the greatest payment.

(*i*) * * *

(*bb*) *Long-stay outliers.* Any discharge which has a length-of-stay (LOS) exceeding the lesser of 3.00 standard deviations or 24 days from the DRG's geometric mean LOS shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus 60 percent (90 percent for DRGs related to burn cases) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean LOS for the DRG.

(*ii*) *Cost outliers.* Any discharge which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $27,000 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in paragraph (a)(1)(iii)(D)(*4*) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 60 percent (90 percent for DRGs related to burn cases) of all costs exceeding the threshold. Additional payment for cost outliers shall be made only upon request by the hospital.

* * * * *

(*4*) *Children's Hospital Differential.* The appropriate adjusted standardized amount for any hospital which qualifies as a children's hospital under the Medicare Prospective Payment System as contained in 42 CFR 412.23 shall be increased by a children's hospital differential. The differential shall recognize the higher costs experienced by children's hospitals and shall be equal to the difference between a specially calculated adjusted standardized amount for children's hospitals and the adjusted standardized amount which would otherwise be applicable during the base period.

* * * * *

(G) * * *

(*3*) *Information necessary for payment of capital and direct medical education costs.* Any hospital subject to the CHAMPUS DRG-based payment system which wishes to be reimbursed for allowed capital and direct medical education costs must submit a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

* * * * *

(*vi*) Total inpatient days provided to all patients in units subject to DRG-based payment.

(*vii*) Total allowed CHAMPUS inpatient days provided in units subject to DRG-based payment.

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1988.

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32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Per Diem Based Payment Method for Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule, if adopted, would revise the comprehensive CHAMPUS regulation, 32 CFR Part 199 [DoD 6010.8-R], to establish a new method of paying for mental health hospital care. Rather than continuing to pay billed charges, the new method would pay hospitals based on prospectively set fixed rates for each day of hospital services provided. These per diem rates would be calculated to be revenue neutral in the base period of calculation, with full adjustments for price inflation. The result will be nearly revenue neutral in fiscal year 1989 with respect to CHAMPUS payments for inpatient mental health services.

DATES: Written comments must be received not later than July 5, 1988. The Department expects to consider comments and proceed with issuance of a final rule by September 1, 1988, which would take effect with respect to hospital admissions that occur on or after October 1, 1988.

ADDRESS: Send comments to: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, Colorado 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

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FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Program Development, OCHAMPUS, telephone (303) 361-3572 and Stephen Knight, Office of Demonstrations and Special Projects, OCHAMPUS, telephone (202) 697-6875.

SUPPLEMENTARY INFORMATION:

I. Synopsis

This proposed rule proposes the establishment of a new method under CHAMPUS to pay for the hospital portion of mental health care provided to CHAMPUS beneficiaries. This new method is to pay predetermined per-diem amounts for each day of hosptial care.

The proposal to establish a per-diem payment method is based on three primary principles. The first is that CHAMPUS can no longer afford to purchase services on the basis of reimbursing providers for whatever amount is billed. Rather, payment methods must be established that, while

assuring fair payments, also create incentives for efficiency. This principle gave rise to establishment last October of a diagnosis related group (DRG)-based payment method for most hospital care under CHAMPUS. It has further motivated another proposed CHAMPUS rule to expand the scope of the DRG payment regulation to certain categories of care initially exempt, most notably, children's hospital, neonatal, and substance abuse treatment services.

The need for an improved payment method for mental health services is no less acute in view of the striking recent increases in CHAMPUS costs for these services. For example, in the last fiscal year, CHAMPUS costs for mental health care increased 30% (to nearly $410 million), with more than four-fifths of the increase attributable to inpatient institutional costs. Thus, CHAMPUS needs to do something to establish a more reasonable payment method for hospital mental health services.

The second major premise underlying this proposed regulation is that a per-diem based payment method is both fair to providers and appropriate for creating reasonable incentives for efficiency. In this regard, it is noteworthy that a DRG-based system does not appear appropriate because hospital costs in connection with mental health care, unlike those for medical and surgical care, are not significantly associated with the diagnosis being treated. For this reason, DRG-based payment systems for mental health care are not generally used.

In contrast, per diem approaches have been widely used in government and the private sector as a means of paying for care prospectively. Like a DRG approach, a per diem method creates incentives for efficiency because if the provider can provide the services at a lower unit cost, profits increase. Conversely, inefficient providers do not get rewarded by having their full costs reimbursed; they must settle for the per diem amount.

DoD arranged for the RAND Corporation to perform a feasibility analysis of a per diem payment system for inpatient mental health care for the CHAMPUS population. RAND found that the main determining factor in charges for CHAMPUS mental health care is the patient's length of stay in the hospital, and that other factors, such as DRGs, are much less important. In fact, RAND found that if the proposed per diem system would have been used, few hospitals would have experienced substantial changes from the billed charges. Thus, RAND found that a system that holds constant the per day payments and responds to the length of stay performs well in minimizing the impact on individual hospitals.

To be more precise, as is detailed further below, the RAND analysis suggests that details of a per diem system be designed to reflect several significant variables, most notably higher charges in the first day of care and some differences in charges in psychiatric specialty hospitals versus general hospitals. Thus, this proposed rule takes into account such factors. Additionally, the proposed rule reflects area wage differences and both direct and indirect costs of medical education costs.

The third key thesis embodied in this proposed rule is that it is designed to be roughly revenue neutral for hospitals in fiscal year 1989. This reflects DoD's policy preference for establishing a fair payment structure that includes incentives for efficiency, rather than seeking more controversial and disruptive changes that could produce greater government savings. Thus, the per diem amounts that would be set under this rule are based on full average charges experienced in the base period, adjusted to take into account several special factors, and updated to fiscal year 1989 by the full value of expected increases in the prices they pay.

Therefore, in a nutshell, this proposed rule would establish a per diem based payment system for mental health care based on key principles that a system that rewards efficiency is needed to start to contain spiraling costs, that a per diem system is fair and reasonable, and that adopting a payment structure that will not substantially depart from revenue neutrality in its first year of operation is worthy of broad support.

II. Background

Last year, CHAMPUS implemented a prospective payment system that pays for most hospital care on a per discharge basis according to diagnosis-related groups (DRGs). This year, in a separate proposed rule, CHAMPUS is proposing to expand the system to cover children's hospitals, neonatal care, and alcohol and substance abuse cases. The remaining major type of hospital care not included in the DRG system is mental health care.

During the past two fiscal years approximately 20 percent of total CHAMPUS medical benefit expenditures has been for mental health related care. In FY 1987, the cost of mental health care rose an estimated 30 percent to reach $410.5 million. Most of this increase was for inpatient care. Costs per day alone rose 12 percent in this one year.

Clearly there has been a need to incorporate mental health care into a system that pays for care on a prospective basis so that hospitals begin to have incentives to provide care more efficiently. The CHAMPUS DRG regulation published last year indicated that DRGs do not appear to be an appropriate method of paying for mental health care. It stated that further study was needed to find an appropriate alternative prospective payment system. DoD contracted with the RAND Corporation to develop such an alternative. This notice presents the RAND findings and the DoD proposed approach to paying for inpatient mental health care on a prospective basis.

III. The Results of the Rand Corporation Analysis

The RAND analysis was based upon the CHAMPUS claims and provider files used to develop the overall DRG-based prospective payment system. The analytic claims file contained 17,945 mental health claims (excluding DRG 424), from 2395 providers, processed between January 1, 1986 and June 30, 1987.

In its analysis of CHAMPUS patterns of use and financing of inpatient hospital mental health care, RAND determined that a prospective payment system for CHAMPUS mental health hospital care is feasible. This section summarizes the significant findings of the RAND Corporation analysis.

A. DRGs Do Not Work for Mental Health Care

Based on a review of the studies on classification systems for mental health care, RAND reported that the unanimous verdict was that DRGs do not work for mental health services. DRGs do a poor job of classifying patients according to costs and systematic differences were found in the cost of treatment by different types of providers unaccounted for by the DRG system. RAND further stated that no other satisfactory classification method has been found.

The U.S. Department of Health and Human Services (HHS) reached a similar conclusion. In a Report to Congress, *Developing Perspective Payment System for Excluded Hospitals*, HHS stated that no matter what system is examined, neither DRGs nor variations thereof explain much of the currently-observed variation in length of stay and cost for mental health hospitalizations. The current mental health DRGs have been examined using data from many sources and generally account for less than 10 percent of the variation currently observed in either length of stay or cost per admission. Efforts to improve the performance of mental health DRGs by using refined diagnostic categories have been disappointing.

B. CHAMPUS Workload is Highly Concentrated

RAND discovered some interesting facts about the nature of CHAMPUS mental health services. For example, RAND found that only 6 percent of the providers (151 hospitals) account for nearly half of the CHAMPUS mental health discharges. The degree of concentration is further reflected in the fact that only this many hospitals had more than 25 CHAMPUS admissions in the 18-month period. Conversely, more than 65 percent of hospitals had four or fewer CHAMPUS mental health discharges during the 18-month period. In addition, about two-thirds of the mental health discharges are concentrated in general hospitals. DoD anticipates that many of these general hospital discharges are likely to be in Medicare exempt specialty units, discussed below.

The distribution of discharges and providers by discharge volume follows:

DISTRIBUTION OF PROVIDERS AND DISCHARGES BY DISCHARGE VOLUME

Discharges per provider	Number of providers (%)	Number of discharges (%)
1	829 (35)	829 (5)
2 to 4	756 (32)	2,006 (11)
5 to 10	425 (18)	2,949 (17)
11 to 25	234 (10)	3,872 (22)
>25	151 (6)	8,257 (46)
Total	2,395 (100)	17,946 (100)

C. Average Charge Per Day Does Not Vary Much by DRG

The average charge per day is remarkably constant across DRGs, suggesting that the intensity of treatment does not depend significantly on specific diagnosis. As an example, the amount of resources typically used for the treatment of a diagnosis of depressive neuroses is not much different from the amount used for the treatment of some other diagnosis, such as personality disorders. RAND indicated that this suggests that observed differences in total charges are primarily due to differences in length of stay. With the exception of DRG 424 (operating procedures), the per diem charges before standardization range from $331 to $384 as shown below:

DRG	Average LOS (days)	Average per diem
425 Adjustment Reactions	8	$384
426 Depressive Neuroses	13	357
427 Other Depression	13	356
428 Personality Disorders	17	331
429 Organic Disturbances	14	348
430 Psychoses	15	353
431 Childhood Mental Disorders	22	334
432 Other Mental Disorders	20	354

D. Average Charges Are Higher for the First Day and Similar for all Subsequent Days

RAND found that one-day stays have the highest average charge. Data are not available to determine the actual charges associated with each day of care. To pursue possible difference in charges between the first few days of a stay and subsequent ones, RAND calculated the difference between the average charge per discharge for stays with consecutive lengths of stay. For example, RAND took the difference in average total charges between all two-days stays and one-days stays. The finding was that the daily charge did not vary substantially on the average after the first day. This suggests that only the first day is more costly.

RAND also found that when the higher first day charges are taken into account, the daily charge essentially does not vary by length of stay. As shown below, no matter how long the patient stays, once the first day payment is removed, the per diem amount is fairly constant for the reamining days.

AVERAGE CHARGE PER DAY AFTER FIRST DAY BY LENGTH OF STAY

Length of stay (days)	Charge per day after first day
2	$366
3	361
4	355
5	351
6	343
7	344
8	364
9	353
10	349
11	351
12	342
13	335
14	359
15	340
16	340
17	339
18	341
19	343
20	339
21	342
22	343
23	341
24	333
25	340

AVERAGE CHARGE PER DAY AFTER FIRST DAY BY LENGTH OF STAY—Continued

Length of stay (days)	Charge per day after first day
26	353
27	342
28	340
29	334
30 plus	301

E. A Two-Part Per Diem System Performs Very Well

RAND found that the CHAMPUS data suggest a per diem reimbursement system based on a higher payment for the first day and a lower one for subsequent days with a higher payment rate for psychiatric specialty hospitals. RAND found no significant difference in the per diem by age, by DRG, or by length of stay.

Use of a per diem system of payment is consistent with industry practice. In a report titled, *State Medicaid Inpatient Hospital Reimbursement, Summary of State Programs*, Abt Associates reported that nineteen State Medicaid programs pay for the acute portion of mental health care on a prospective per diem basis.

Similarly, the American Society of Internal Medicine reported that forty percent of PPOs use a per diem basis of payment for inpatient hospital care, usually using multiple rates by type of service, including mental health care.

IV. Summary of Proposed Rule

This section summarizes the major provisions of the proposed per diem based payment method for inpatient hospital mental health services.

A. Calculation of Per Diem Amounts

1. Revenue Neutral Impact

Per diem amounts are to be calculated from data from actual CHAMPUS claims during the base period of January 1986 through June 1987. The calculations are designed to produce results that would be revenue neutral with respect to total payouts for the mental health services covered. In other words, had this per diem payment method been in place in the base period, total payments to hospitals as a whole would have been the same.

2. Differential for Psychiatric Specialty Hospitals and Medicare Exempt Psychiatric Units of Other Hospitals

In analyzing CHAMPUS psychiatric claims, there appears to be a noteworthy difference in charges based

on the type of hospital involved. Psychiatric specialty hospitals tend to have higher charges than general hospitals. Thus, CHAMPUS data suggest, as have other studies, the appropriateness of different per diem amounts.

Additionally, a December 1985 study by the National Institute of Mental Health, *A Study of Patient Classifications Systems for Prospective Rate-Setting for Medicare Patients in General Hospital Psychiatric Units and Psychiatric Hospitals*, concluded that special psychiatric units in general hospitals resemble specialty psychiatric hospitals with respect to the severity of illnesses treated and other factors pertinent to costs. The main difference is between general hospitals without psychiatric units and all other classes of facilities. Research of this kind supports the current practice of Medicare in exempting from its DRG system specialty hospitals and speciality units of general hospitals. (Of course, in being exempt from the Medicare prospective payment system, these facilities are still subject to detailed cost reimbursement system restraints.)

Based on indications in the CHAMPUS data base, research findings in the literature and the Medicare policy, the proposed rule would produce two different per diem amounts: One for psychiatric specialty hospitals and Medicare-exempt psychiatric units of general hospitals; and the other for care in general hospitals exclusive of Medicare-exempt psychiatric units and all other hospitals. For purposes of simplified terminology, the former group will be referred to as specialty providers and the latter group as nonspecialty providers. Consistent with this split, the per diems are to be calculated to be revenue neutral with respect to each category, specialty providers and nonspecialty providers.

It should be noted in this regard that there may be psychiatric specialty units of general or other hospitals that have not been so designated for exemption from the Medicare prospective payment system because the hospital does not participate in Medicare or because the hospital has a more general prospective payment exemption. For these units, the proposed rule provides that they may obtain a psychiatric specialty unit designation for purposes of per diem payments upon demonstrating to CHAMPUS that they meet the same eligibility criteria as used by Medicare.

3. Different Per Diem For First Day Than For Remaining Days

Based on the RAND analysis described in the previous section, the proposed rule would differentiate between the first day of care and all other days. Costs for care in the first day are higher because of diagnostic work-ups and other factors. After the first day, the RAND analysis suggested there was remarkably little difference in charges among all subsequent days. Thus, the proposed rule would establish for both specialty providers and nonspecialty providers a first day per diem amount and a subsequent days per diem amount.

4 Standardize Charges

We standardize all charges for the hospital wage index and indirect medical education costs.

5. Per Diem Amounts For The First Day of Hospital Care

Applying the notions discussed above, the proposed rule lays out the steps involved in calculating the standard per diem amounts. To calculate the first day per diem amount, the first step is to subtract from the aggregate amount for all care covered by this proposed rule the amount estimated to be involved in the cost of direct medical education. Then for each category of provider, specialty and nonspecialty, the total amount involved in all one day stay discharges is divided by the number of such discharges, producing the average charge for all one day stay discharges. These will be the basic per diem amounts (one for specialty providers and one for nonspecialty providers) for the first day of care for all hospitalizations.

The exact amounts produced by this formula are not available at this moment. We estimate that the average charge in the base period ending in 1987 for the first day of care for all specialty providers (psychiatric specialty hospitals and Medicare-exempt psychiatric units of general hospitals) was in the general range of $575 and for nonspecialty psychiatric providers (all other providers, primarily general hospitals outside Medicare-exempt psychiatric units) was $525. As discussed below, the exact amounts will then be updated to levels appropriate for use in fiscal year 1989.

6. Per Diem Amounts For Subsequent Days of Care

As discussed in the previous section regarding RAND's analysis and findings, there was surprisingly little difference between the inferred per day charges among all days after the first day. Based on this finding, the proposed rule would calculate a single per diem amount (one each for specialty and nonspecialty providers) for all days of care after the first day.

Applying this approach, the proposed rule would take the aggregate amount for all covered care, subtract the pass-through amount (as was done to calculate the first day per diems) and further subtract the aggregate amount involved in all one-day stays for both specialty and nonspecialty providers. For each type of provider, the remainder is then divided by the total number of days of care after the first day. These will be the basic per diem amounts (one of specialty providers and one for nonspecialty providers) for all days after the first day of hospital care.

We estimate that in the base period the average charge for each day of care subsequent to the first day was in the general range of $350 for all specialty providers and $300 for nonspecialty providers. Again, the exact amounts, when finally calculated, will be updated to fiscal year 1989.

7. Update Factors

The discussion above describes the method of calculating the per diem derived from the CHAMPUS data base, which covered the period January 1, 1986 to June 30, 1987. In order to update the CHAMPUS data base to fiscal year 1989 levels, the appropriate Medicare hospital market basket factors will be used to move the charge levels forward to reflect estimated fiscal year 1989 levels. Future updates will be based on the annual update factor promulgated by Medicare for Prospective Payment System Exempt facilities. Psychiatric specialty hospitals and psychiatric specialty units of general hospitals are included in these PPS-exempt facilities. Congress has established the hospital market basket to be used as the update for PPS-exempt facilities for Fiscal Year 1989.

B. Adjustments to Per Diem Amounts

As with the CHAMPUS DRG regulation, this proposed rule provides for several adjustments to the per diem amounts to account for certain factors. These adjustments are discussed below.

1. Area Wage Adjustment

The applicable per diem amount will be adjusted by a wage index to recognize differences in prevailing wages in different areas of the country that have an impact on costs in hospitals. The wage index adjustment will be made in the same way it is for the CHAMPUS DRG based payment system.

2. Indirect Medical Education

An adjustment will also be made to the per diem amounts to reflect different costs involved in teaching hospitals. Like with the CHAMPUS DRG regulation, medical education costs will be recognized in two ways: with an indirect medical education adjustment and with a direct medical education pass-through. The indirect medical education adjustment will be applied to the applicable per diem in the same way as it is to the DRG standardized amount under the DRG-based payment system.

3. No Adjustment For Urban vs. Rural Hospitals

The proposed rule does not include an adjustment to pay different amounts to urban versus rural hospitals, as is done under the CHAMPUS DRG regulation. This was not included because CHAMPUS data reveal that there is no appreciable difference in the charges from hospitals based on whether they are in urban or rural areas. CHAMPUS had very few discharges from rural specialty psychiatric hospitals and the average per day charge difference for urban versus rural general hospitals was only about three dollars.

C. Pass Through Payments for Certain Costs

1. Direct Medical Education Costs

As with the CHAMPUS DRG regulation, this proposed rule would recognize special costs associated with graduate medical education in teaching hospitals. It is appropriate to recognize the medical education costs associated with care of CHAMPUS patients. This will be handled as a once per year special payment to teaching hospitals based on the method they now follow in connection with the DRG regulation.

2. No Pass-Through For Capital Costs

The CHAMPUS DRG regulation provides for an additional pass-through for capital costs. This is in recognition of the widely varied capital costs among hospitals. Only a hospital-specific approach to capital costs reasonably recognized those costs in the context of the DRG regulation. However, the RAND analysis indicated that the CHAMPUS claims data show that within specialty and nonspecialty provider groups there is not significant variation among hospitals' capital costs, they are relatively small with regard to mental health care, and that leaving capital costs in the base for calculating the per diems produces about the same result as establishing a pass-through, but avoids the administrative complexity and paperwork involved. Additionally, this method provides capital payments on a per claim basis rather than on an annual basis. On this basis, the proposed rule does not provide for special payments for capital costs. Rather, capital costs are recognized as part of the per diem amounts.

3. No Pass-Through or Add-on For Bad Debt

In developing the DRG regulation last year, we made special provision for bad debt by applying an across-the-board increase in the standardized amounts. We did this rather than follow the Medicare approach of making a pass-through payment because the substantial paperwork involved in a special CHAMPUS cost report appeared inappropriate. This proposed rule makes no special provision for bad debt. Rather, it is left to remain part of the base reflected in the general per diem amounts.

D. Covered Services

1. Most Inpatient Mental Health Services Covered

This proposed rule would cover hospital charges for most inpatient mental health services. Specifically, it covers services that fall within DRGs 425 through 432.

2. Operating Room Procedures Excluded

This proposed rule excludes DRG 424, operating room procedures with principal diagnosis of mental illness. Services related to this diagnosis-related group will continue to be reimbursed billed charges.

3. Alcohol and Drug Abuse Treatment Services Exempt

This proposed rule does not apply to services for drug and alcohol abuse treatment. These are services that fall within DRGs 433 through 437. DoD has elsewhere issued a Notice of Proposed Rulemaking proposing a DRG-based payment method for alcohol and drug abuse.

4. Other Providers

Individual health care professionals and other noninstitutional health care providers, are not covered by this proposed rule. Residential Treatment Centers are also not covered. Sole community hospitals, as designated by Medicare, are also exempt.

E. Beneficiary Cost Share Requirements

The proposed rule provides that beneficiary cost sharing requirements will be handled in a manner very much like they are under the DRG regulation. Under the proposed rule, the non-active duty beneficiary would be responsible for paying the lesser of a special beneficiary per diem amount or 25% of the hospital's allowable billed charges. The special beneficiary per diem amount will be based primarily on a calculation of 25% of the respective hospital payment per diem amounts (of which, as described above, there are four: Specialty provider first day, nonspecialty provider first day, specialty provider subsequent day, and nonspecialty provider subsequent day). In order to preserve the total 75–25% split required by law, this would be adjusted slightly to make up the difference for those cases in which the beneficiary cost share was less than 25% of the per diem amounts. As with the DRG cost share calculation method, this assures that beneficiaries will never be required to pay more under the new system than they would have been required to pay under the procedures now in place.

F. Additional Clarifications

1. No Special Treatment For Outliers

Because the proposed rule provides for a per diem based payment, patient length of stay, the major factor underlying hospital charges, is already the primary basis for determining the payment amount. Thus, unlike an admission-based payment method (such as the DRG regulation), for which there is a need for additional payments for cases which substantially depart from the average, there appears to be no such need under the proposed per diem based payment system for special treatment for outlier cases.

2. No Special Treatment For Transfer Patients

The DRG regulation makes special provisions for transferred patients. This proposed rule does not because it appears appropriate to pay both transferring and receiving hospitals on the basis of the normal operation of the per diem system. Although this will result in the government making two higher first day payments, that appears appropriate because it is assumed that both hospitals would perform diagnostic work-ups and the like.

3. Participating Provider Status Required

The proposed rule provides that hospital providers of services covered by this rule (like those covered by the DRG regulation) that do not participate in Medicare, must, if they wish to be CHAMPUS-authorized providers, agree to be participating providers under CHAMPUS. Participating providers accept CHAMPUS payment levels as payment in full. It should also be noted

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that pursuant to section 1866(a)(1)(J) of the Social Security Act, 42 U.S.C. 1395cc(a)(1)(J), hospitals that participate in Medicare must also participate in CHAMPUS. It may also be noteworthy that under section 1079(j)(2)(A) of Title 10 of the United States Code, CHAMPUS generally pays hospitals "to the extent practicable" in accordance with the methods used for Medicare. Medicare pays for most hospital mental health care on a cost-reimbursement basis, which requires detailed annual Medicare cost reports. Because CHAMPUS has never used a cost-reimbursement methodology, this method would not be practicable for either hospitals or CHAMPUS.

G. Nonselected Options

For purposes of soliciting the most informed public comments possible, it may be noteworthy that DoD considered but did not adopt for purposes of this proposed rule several other possible features. Comments are invited on these possibilities, as they may be reconsidered in connection with development of the final rule.

1. Cost-to-charge Ratio

A major provision of the CHAMPUS DRG regulation was its use of the published Medicare cost-to-charge ratio for purposes of deriving from CHAMPUS charge-based data a cost-based data set from which the DRG rates and weights could be calculated. The cost-to-charge ratio adopted when the DRG regulation was promulgated was .66. (More recent data indicate that the cost-to-charge ratio more applicable in the DRG system base year was actually .6368.) In developing this proposed rule, we have decided not to apply a cost-to-charge ratio. We believe substantial arguments exist for applying such a ratio in order to, in a manner analogous to the DRG regulation, construct a data set more reflective of costs, rather than charges. On the other hand, some arguments could be advanced that in the case of most mental health services, even though Medicare now uses a cost-based payment method, the lack of a Medicare prospective payment precedent justifies higher CHAMPUS payments. For purposes of this proposed rule, we have resolved the matter in a way that seeks to avoid the controversy and disruption that would likely attend a proposal that included a cost-to-charge ratio similar to that adopted in the DRG regulation. We invite comments on this.

2. Reduced Payments For later Days of Care

We also considered establishing a third per diem level that would apply to later days of care. The reason for this would be to recognize that a per diem system, unlike a DRG per admission system, does nothing to reduce costs associated with unnecessary additional days of care up to the normally applicable 60-day limit. To address this apparent shortcoming, we considered having a lower per diem amount apply to later days of care, perhaps for those days that significantly exceed the average length of stay. Although we see some credible arguments for such an approach, we did not include it in the proposed rule.

3. Limited Update Factor

Rather than give the full value of the Medicare inpatient hospital market basket for purposes of updating the base year to fiscal year 1989, we consider using a more limited update factor. Especially in light of the nonuse of a cost-to-charge ratio in constructing the base period data set, it would appear defensible to start with some more vigorous restraint of the updates. Moreover, this approach would be consistent with Medicare's practice of applying a lower update factor to all facilities covered by prospective payment to reflect their opportunities for efficiencies and retention of profits. However, we decided to give the full benefit of the market basket to reinforce the policy direction of presenting a system that would not substantially deviate from revenue neutrality in its first year of operation. We invite comment on this point.

4. DRGs For General Hospitals.

Medicare exempts from its DRG system mental health cases in psychiatric hospitals and in psychiatric specialty units of general hospitals. It includes in its DRG system, mental health cases in general hospitals exclusive of specialty units. We considered including nonspecialty hospital cases in our DRG system as well. It is consistent with our general preference for mirroring the Medicare DRG system wherever possible.

Including nonspecialty mental health hospital cases in DRGs would probably not have a noticeable impact on hospitals since these patients are likely to be few in number. Further, these hospitals would only be under one CAMPUS prospective payment method instead of two. It would result, however, in paying for these cases on a basis more reflective of costs. Nevertheless, we have proposed to exclude all mental health cases from the DRG system. We invite comment on this.

V. Regulatory Procedures

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in annual effect on the national economy of $100 million or more or have other significant effects on segments or aspects of the economy. In addition, the Regulatory Flexibility Act (RFA) establishes certain requirements regarding regulations that would have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider small entities to include many nonprofit and for-profit hospitals.

This proposed rule is not a major rule under Executive Order 12291. Moreover, this rule will not significantly affect a substantial number of small entities. The proposed changes set forth in this proposed rule, taken as a whole, would have an annual impact on the hospital industry of substantially less than $100 million. Additionally, the economic impact, which is solely a function of revised federal payments, on hospitals is typically very little in view of the small percentage of hospital revenue provided by CHAMPUS and the small change in CHAMPUS payments represented by this proposed rule. The impact is especially slight because of the design feature of this proposed rule to not substantially depart from revenue neutrality in its initial year of operation.

Therefore, no regulatory impact analysis is required. Nonetheless, throughout the preamble, we have provided information to permit a thorough assessment of all effects of the rule. We welcome comments and factual information that would facilitate additional analysis.

B. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not mean to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

C. Coordination of Proposed Rule

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4(f)(3)(ii) is amended by redesignating paragraph (B) as paragraph (C), by adding a new paragraph (B), and by revising the redesignated paragraph (C), as follows:

§ 199.4 Basic Program Benefits.

* * * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) *Services subject to the CHAMPUS mental health per diem payment system.* The cost-share shall be the lesser of a fixed daily amount or 25 percent of the hospital's billed charges. A fixed daily amount shall be established to correspond to each of the four per diems calculated pursuant to § 199.14(a)(2)(i). These fixed daily amounts shall be 25 percent of the respective per diems, adjusted so that total beneficiary cost shares will equal 25 percent of total payments under the mental health per diem payment system. These fixed daily amounts shall be updated annually and published in the **Federal Register** along with the per diems published pursuant to § 199.14(a)(2)(i)(E).

(C) *Other services.* For services exempt from the CHAMPUS DRG-based payment system and the CHAMPUS mental health per diem payment system and services provided by institutions other than hospitals, the cost-share shall be 25% of the CHAMPUS-determined allowable charges.

* * * * * *

3. Section 199.6(a)(8) is amended by revising the third sentence thereof to read as follows:

§ 199.6 Authorized providers.

(a) * * *

(8) *Participation provider* * * * Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in § 199.14(a)(1) or the CHAMPUS mental health per diem payment system in § 199.14(a)(2) must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. * * *

* * * * * *

4. FR Doc. 87–19684, published in the **Federal Register** of September 1, 1987, is corrected on page 33012, column 2, in § 199.14 by correctly designating (a)(1)(iv)(D)(*3*) (*i*), (*ii*), and (*iii*) as (a)(2)(i), (ii) and (iii).

5. Section 199.14 is amended by redesignating paragraph (a)(2) as (a)(3), by adding a new paragraph (a)(2) and by revising the introductory text of newly redesignated paragraph (a)(3) as follows:

§ 199.14 Provider reimbursement methods.

* * * * * *

(a) * * *

(2) *CHAMPUS mental health per diem payment system.* The CHAMPUS mental health per diem payment system shall be used to reimburse for inpatient mental health hospital care. Payment is made on the basis of prospectively determined rates and paid on a per diem basis. The system uses a series of per diems, which are designed to recognize differences in services provided in specialty hospitals and units, compared to general hospitals, and services provided in the first day of hospital care, compared with subsequent days. Payments under this system also include an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for direct medical education costs as an annual cost pass-through.

(i) *Calculation of per diem amounts.* The per diem amounts are calculated as set forth in this paragraph.

(A) *Revenue neutral impact.* The per diem amounts are calculated to produce the result of being revenue neutral in the base period of calculations to the class of hospitals affected.

(*1*) *Base period.* The base period used for the calculation of the per diems is the period of January 1, 1986 to June 30, 1987. The data compiled for the purpose of the calculations consist of all CHAMPUS hospital claims records for the services covered by the per diem system.

(*2*) *Standardize charges.* Prior to making the per diem calculations, the base period charges shall be standardized for indirect medical education costs and the hospital wage index.

(B) *Calculation of different per diems for specialty and nonspecialty providers.* Claims records in the base period will be separated into two groups, claims from specialty providers and claims from nonspecialty providers (as identified in paragraphs (a)(2)(i)(B) (*1*) and (*2*) of this section. From these groups will be calculated two respective per diems. These calculations will be designed to preserve revenue neutrality for each of these two classes of providers.

(*1*) *Specialty per diems.* Specialty per diems will be calculated from the claims records in the base period from all Medicare prospective payment system exempt psychiatric specialty hospitals and all Medicare prospective payment system exempt psychiatric specialty units of other hospitals. These providers will be paid on the basis of the specialty per diems. In addition, any hospital that has a psychiatric specialty unit that has not been so designated for exemption from the Medicare prospective payment system because the hospital does not participate in Medicare or because the hospital has a more general prospective payment system exemption may have its psychiatric specialty unit so designated for purposes of payment of the specialty per diems upon demonstrating that it meets the same criteria (as determined by the Director, OCHAMPUS) as required for the Medicare exemption.

(*2*) *Nonspecialty per diems.* Nonspecialty per diems will be calculated from the claims records in the base period from all other hospitals. These providers will be paid on the basis of the nonspecialty per diems.

(C) *Calculation of the first day per diems.* A first day specialty per diem and a first day nonspecialty per diem will be calculated from the standardized charges in the base period in each of the specialty and nonspecialty groups. For each of these groups, the first day per diem will be calculated by averaging charges for all one-day hospital stays during the base period, after having first subtracted total direct medical education costs.

(D) *Calculation of subsequent day per diems.* A subsequent day specialty per diem and a subsequent day nonspecialty per diem will be calculated from the standardized charges in the base period in each of the specialty and nonspecialty groups. For each of these groups, the calculation shall be made in accordance with the following steps:

(*1*) *Step 1: deduct direct medical education costs.* Total direct medical education costs are subtracted from total standardized charges.

(*2*) *Step 2: deduct first day charges.* The first day per diem amount shall be multiplied by the number of discharges and this product shall be subtracted from the amount from step 1.

(*3*) *Step 3: determine total subsequent days.* The total subsequent days shall be determined by subtracting the number of discharges from the total inpatient days.

(*4*) *Step 4: calculate subsequent day per diem.* The subsequent day per diem

shall equal the amount from step 2 divided by the total subsequent days.

(E) *Update factors.* Each of the four per diems established for the base period pursuant to paragraphs (a)(2)(i)(C) and (D) shall be updated to fiscal year 1989 on the basis of the Medicare inpatient hospital market basket rate. For subsequent fiscal years, each of these per diems shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system. The actual amount for each of the four per diems that will apply in any fiscal year shall be published in the Federal Register prior to the start of that fiscal year.

(ii) *Adjustments to per diems.* Payments made to hospitals under the mental health per diem payment system shall be based on the per diems established pursuant to paragraph (a)(2)(i) of this section, adjusted by the adjustments listed in this paragraph.

(A) *Wage index.* The same hospital wage indexes used for the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(2) of this section) shall be applied to the applicable per diem rate for each day of the admission.

(B) *Indirect medical education.* The indirect medical education adjustment factors shall be calculated for teaching hospitals in the same manner as is used in the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(2) of this section) and applied to the applicable per diem rate for each day of the admission.

(iii) *Annual cost pass-through for direct medical education.* In addition to claims payments with the per diem amounts calculated pursuant to paragraph (a)(2)(i) of this section, with adjustments pursuant to paragraph (a)(2)(ii) of this section, CHAMPUS shall annually reimburse hospitals for actual direct medical education costs associated with CHAMPUS beneficiaries. This reimbursement shall be done pursuant to the same procedures as are applicable to the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(G) of this section).

(iv) *Applicability of and exemptions from the CHAMPUS mental health per diem payment system.*

(A) *Services covered.* Unless specifically exempted, all hospital inpatient claims which group into a mental health DRG (DRG categories 425–432) shall be subject to the mental health per diem payment system.

(B) *Exempt providers and procedures.* The following providers and procedures are exempt from the CHAMPUS mental health per diem payment system.

(1) Professional Services. Professional services provided to hospital inpatients by individual professional providers not employed or contracted with the hospital are exempt from the per diem payment system. All mental health related services provided by hospital based professionals are included within the per diem payment system. Professional components of nonmental health services provided by hospital based professionals; for example, interpretation of radiology or pathology procedures, emergency room care and ambulance services, are payable separately under the allowable charge methodology when billed by the hospital.

(2) DRG 424. Admissions for operating room procedures involving a principal diagnosis of mental illness (services which group into DRG 424) are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of (a)(3) of this section.

(3) Sole community hospitals. Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt.

(4) Hospitals outside the U.S. A hospital is exempt if it is not located in one of the 50 states, the District of Columbia or Puerto Rico.

(3) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS DRG-based payment system or the CHAMPUS mental health per diem payment system shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 25, 1988.

[FR Doc. 88-12308 Filed 6-2-88; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 199

[DOD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Updating CHAMPUS Prevailing Charges

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS Regulation, DOD 6010.8–R (32 CFR Part 199), to allow the Secretary of Defense increased flexibility regarding the timing of updates to the prevailing charge levels which limit the amounts which are payable under CHAMPUS for professional services. This revision is in accordance with 55 U.S.C. 1079(b)(2), which permits the Secretary to adjust the base period for calculation of prevailing charges as frequently as he considers appropriate.

DATES: Written public comments must be received on or before July 5, 1988.

ADDRESS: Send comments to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

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FOR FURTHER INFORMATION CONTACT: Charles Gallegos, Chief, Office of Program Development, OCHAMPUS, telephone (303) 361-3805.

To obtain copies of this document, see the "Address" section above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

CHAMPUS reimburses professional services based on the allowable charge method, in which reimbursement is based on the lower of: (1) The billed charge for a service, or (2) the prevailing charge level that does not exceed the 80th percentile of billed charges for similar services in the same locality during a base period.

Section 1079(b)(2), Chapter 55, Title 10, United States Code, permits the Secretary to adjust the base period for calculation of prevailing charges "as frequently as he considers appropriate." The CHAMPUS Regulation currently is less permissive than the Statute, requiring that the base period shall be adjusted annually, which means that prevailing charges are updated on an annual basis.

The Congressional intent behind the current statutory provision is that DOD have the flexibility to determine how often to update the prevailing charge levels based on all relevant circumstances. The major relevant circumstances that should be taken into account relate to the need to, on the one hand, responsibly constrain program

cost growth, and on the other hand, maintain payment levels adequate to assure the availability of services to CHAMPUS beneficiaries.

Full consideration of both types of circumstances in determining the frequency of prevailing charge updates should take into account such factors as the rate of medical cost inflation. At times of high physician cost inflation, it is more important to have frequent updates so as to keep payment rates high enough to maintain very broad provider availability. At times of low physician cost inflation, however, frequent updates may have the effect of unnecessarily raising program costs by increasing payments even if not needed to maintain very widespread provider availability.

The current practice of automatic annual updates of the prevailing charge levels is not necessarily reflective of the most reasonable and appropriate balance between the two objectives of assuring broad provider availability and responsibly monitoring cost growth. Thus, it would appear reasonable and appropriate for DOD to have the flexibility to make the decision based on the actual circumstances presented.

None of this should be mistaken as hinting a weakened DOD commitment to assuring for CHAMPUS beneficiaries the availability of a very broad range of physicians and other providers who will be perfectly willing to accept CHAMPUS allowable payment rates and will not "balance bill" beneficiaries for any unallowed balances. CHAMPUS now has a remarkable record in this regard, achieving an extraordinarily high level of provider claims paid as billed. In fact, it is estimated that only about four percent of all dollars billed for professional services provided to CHAMPUS beneficiaries are subject to balance billing of beneficiaries. DOD intends to maintain an excellent record in this regard.

Thus, to summarize, the proposal to build into the regulation the same flexibility as Congress established in the statute is intended to permit consideration of all relevant factors before any changes are made to the prevailing charge levels.

The proposed amendment affects § 199.14(f)(1)(i)(B)(*2*) of the CHAMPUS regulation as it appears in the Code of Federal Regulations, Title 32. The corresponding citation in the DOD directives system is DOD 6010.8–R, Chapter 14, Section F.4(1)(b)2.

II. Other Required Information

A. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the executive authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

III. Regulatory Procedures

This proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

§ 199.14 [Amended]

2. Section 199.14(f)(1)(i)(B)(*2*) is revised to read as follows:

(*2*) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year, unless the Director, OCHAMPUS, determines that a different period for adjustment is appropriate and publishes a notice to that effect in the Federal Register.

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1988.

[FR Doc. 88-12309 Filed 6-2-88; 8:45 am]

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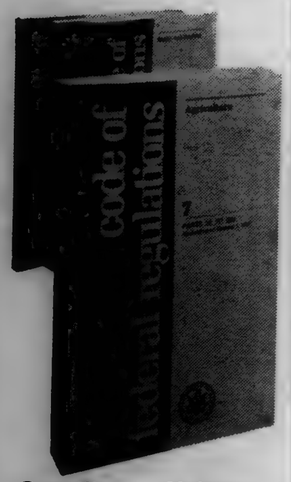

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–15 of May 20, 1988

Determination To Authorize the Furnishing of Transport Services for UNGOMAP Operations in Support of the Geneva Settlement

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 552(c) of the Foreign Assistance Act of 1961, as amended ("the Act"), I hereby determine that:

(1) an unforeseen emergency exists which requires the provision of assistance in amounts in excess of funds otherwise available for such assistance; and

(2) providing such assistance by immediate drawdown of resources of the Department of Defense is important to the national interest.

Therefore, I hereby authorize using Department of Defense services to provide air transport for observers and equipment of the United Nations Good Offices Mission to Afghanistan and Pakistan (UNGOMAP) under Chapter 6 of Part II of the Act.

You are authorized and directed to report to the Congress immediately and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, May 20, 1988.

[FR Doc. 88-12795
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction; Distribution Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program Regulations to permit processors to credit a distributor's account for the value of donated foods contained in an end product and to allow the use of value-pass-through systems not specifically authorized by regulations. Permitting processors to credit a distributor's account and use other types of value-pass-through systems will enhance program operations.

EFFECTIVE DATE: This final rule is effective June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 756-3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Permitting processors to credit a distributor's account and use other types of value-pass-through systems will enhance program operations. In order for these procedures to be effective for the 1988–89 school year, this rule must be made effective upon publication since the majority of processing contracts are negotiated prior to the beginning of the school year. This rule relieves restrictions concerning the use of value-pass-through systems. For this reason, the Administrator has found in accordance with 5 U.S.C. 553(d), that good cause exists for making this rule effective less than 30 days after publication.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule related notice published June 24, 1983 (48 FR 29112).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in § 250.15 of this rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under control number 0584–0007.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which State distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with food processors to incorporate government-donated commodities into processed end products.

On February 2, 1988, the Department published a proposed rule in the Federal Register [53 FR 2848–2849) to amend the Food Distribution Program Regulations to strengthen provisions concerning the processing of donated foods and to increase uniformity between provisions governing State processing activities and those governing the National Commodity Processing Program (Part 252). The proposed rule provided a forty-five day comment period.

This final rule addresses only those provisions that relate to alternative value-pass-through systems and the crediting of a distributor's account for the value of the donated foods contained in an end product. In an effort to enhance processing activities for the 1988–89 school year, these provisions are being finalized separately. Provisions regarding sales verification, contract duration, end product data, contract termination, refund applications, performance reports, annual reconciliation and audits will be finalized at a later date.

Since publication of the proposed rule, Part 250 has been restructured through an amendment which was published in the Federal Register on June 3, 1988. As a result of the restructuring, § 250.15, as referenced under the proposed rule, has become § 250.30. This rule amends the recently issued Part 250.

Analysis of Comments

A total of 158 comment letters were received from various entities such as the American School Food Service Association, National Association of State Agencies for Food Distribution, National Frozen Pizza Institute, and Diary Institute of California. Other commenters included processors, distributors, local school food authorities, State distributing agencies, private consultants and the U.S. Congress.

Definition of Refund Payments

Under the proposed rule, a definition of "Refund" was incorporated in § 250.3 which would permit a processor to credit a distributor's account rather than issue individual checks for refund applications.

Ten of the commenters supported this provision while six were opposed. The majority of the commenters who

opposed the provision did so because they are opposed to the use of a value-pass-through system under which distributors are provided refunds because of the additional paperwork and monitoring burden this system places on processors. The majority of the commenters who supported the provision support the use of the refund system and are of the opinion that the proposed change would decrease the paperwork burden for processors.

The Department continues to support the use of a value-pass-through system which provides refunds to distributors. Thus, since commenters confirmed that permitting a processor to credit a distributor's account rather than issue checks for the value of the donated food contained in an end product sold by the distributor will reduce the paperwork burden for processors while maintaining accountability, the definition of "Refund" as proposed is being incorporated in § 250.3 of this final rule.

Value-Pass-Through (VPT) Systems

Under the proposed rule, processors would be permitted to use VPT systems that are not explicitly authorized by the regulations, but which have been approved by FNS.

Eighty-eight of the commenters supported this provision while twenty-six were opposed. The majority of the commenters who opposed the provision did so because, in their view, the only VPT system that should be allowed is one that requires refund payments to recipient agencies. The majority of the commenters that supported the provision did so because of a belief that the current VPT systems are not flexible enough to meet local agency needs.

The Department is also very concerned about accountability and agrees that the refund system is the most accountable system that has been developed to date. However, the Department has received numerous requests from State and local agencies to permit the use of alternative VPT systems. State and local agencies have expressed concern about the amount of time it takes to receive a refund, increased costs due to the distributor's markup and the paperwork burden associated with the refund system.

As discussed in the proposed regulations, the only permissible alternative VPT systems would be those approved by FNS. As part of the approval process, the accountability of an alternative VPT system would be measured to ensure that such system demonstrates a degree of accountability that is at least equal to that of the refund system. In addition, to further ensure accountability, distributing agencies that permit the use of alternative VPT systems would be required to comply with the sales verification requirements or an alternative verification system approved by FNS.

Since the Department is concerned about meeting the needs of recipient agencies and since the approval of an alternative VPT system will be contingent on whether it is determined to be as accountable as a refund system, the Department feels that implementation of the provision is a viable means of encouraging the development and use of innovative VPT systems. Thus, § 250.30 (d) and (e) are revised in this final rule as proposed.

A few commenters suggested that the authority to approve alternative VPT systems be delegated to the State distributing agency.

Delegating this authority to distributing agencies could result in many State variations of alternative VPT systems. This could become quite cumbersome for processors that have contracts in several States and could add to the costs of processed end-products. Thus, to ensure consistency on a national basis, alternative VPT systems must be approved by FNS headquarters as proposed.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch program, Surplus agricultural commodities.

Accordingly, Part 250 is amended as follows:

PART 250—DONATION OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); Sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); Sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); Sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); Sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); Sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); Sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); Sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1782a); Sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); Sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); Sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); Sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 1114(a), Pub. L. 97–98, 95 Stat. 1299 (7 U.S.C. 1431e) Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301), Pub. L. 100–237.

2. In § 250.3 the definition of "Refund" is added in alphabetical order to read as follows:

§ 250.3 Definitions.

* * * * *

"Refund" means (a) a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and (b) a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

* * * * *

§ 250.30 [Amended]

3. In § 250.30, paragraphs (d) and (e) are revised to read as follows:

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(d) *End products sold by processors.* (1) When recipient agencies pay the processor for end products, the processing contract shall include (i) the processor's established wholesale price schedule for quantity purchases of specified units of end products, and (ii) an assurance that: (A) The price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or (B) a refund equal to the value of the donated foods contained therein shall be made upon presentation of proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section or (C) the value of the donated food contained therein shall be passed to the recipient agency through a system which has been approved by FNS at the request of the distributing agency.

(2) Any value pass through system approved under this section must comply with the sales verification requirements specified in 250.19(b)(2), or an alternative verification system approved by FNS. The Department retains the authority to inspect and review all pertinent records pertaining to value-pass-through systems, including records pertaining to the verification of a statistically valid sample of sales.

(e) *End products sold by distributors.* When a processor transfers end products to a distributor for sale and delivery to recipient agencies, such sales shall be under:

(1) A refund system as defined in § 250.3;

(2) A system which provides refunds to distributors and discounts to recipient agencies; or

(3) If approved by FNS at the request of the distributing agency, another system which passes to the recipient agency the value of donated food contained in end products.

The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

* * * * *

Date: May 27, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–12481 Filed 6–3–88; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 616]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 616 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 385,000 cartons during the period June 5 through June 11, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 616 (§ 910.916) is effective for the period June 5 through June 11, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on June 1, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13–0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.916 is added to read as follows: [*This section will not appear in the Code of Federal Regulations.*]

§ 910.916 Lemon Regulation 616.

The quantity of lemons grown in California and Arizona which may be handled during the period June 5, 1988, through June 11, 1988, is established at 385,000 cartons.

Dated: June 2, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–12804 Filed 6–3–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 915 and 944

[Docket No. AMS–FV–88–067]

Avocados Grown in South Florida and Imported Avocados; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and opportunity to file comments.

SUMMARY: This interim final rule changes the minimum maturity requirements currently in effect on a continuous basis for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States. The rule changes the maturity shipping schedules for the Pinkerton and Reed varieties of avocados, adds the Buccaneer variety to the schedule, and deletes the Day variety from the schedule. This action also makes changes in the maturity schedule in Table I of the regulation to synchronize it with the 1988–89 calendar years. Providing fresh markets with mature fruit is important in creating and maintaining consumer satisfaction and sales. The rule is designed to promote orderly marketing conditions for avocados in the interest of producers and consumers.

DATES: Section 915.332 becomes effective June 6, 1988, and provisions applicable to avocados imported into the United States under § 944.31 shall become effective June 9, 1988. Comments which are received by July 6, 1988 will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20250, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915, as amended [7 CFR Part 915], regulating the handling of avocados grown in South Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, there are approximately 300 avocado producers in South Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, importers, and producers may be classified as small entities.

The maturity regulation for Florida avocados covered under this marketing order is specified in § 915.332 Florida avocado maturity regulation. The maturity regulation for avocados imported into the United States is specified in § 944.31. These regulations were issued on a continuing basis subject to modification, suspension, or termination by the Secretary. The Florida avocado regulation provides that no handler shall handle any variety of avocados grown in the production area unless such varieties meet the prescribed minimum maturity requirements. Such requirements established color maturity specifications for certain varieties, and minimum weights and diameters for about 60 varieties during specified shipping periods each season. The avocado maturity import requirements are comparable to the requirements for Florida avocados.

This interim final rule amends the Florida avocado maturity regulation currently in effect in a continuous basis under § 915.322 [7 CFR Part 915]. This rule changes the maturity shipping schedule and minimum size requirements for weight and diameter for the Pinkerton and Reed varieties of avocados based on maturity test data developed last season. This rule also adds the Buccaneer variety to the maturity shipping schedule, and deletes the Day variety from the schedule, based on shipping data developed last season for all varieties. Such data indicates that a new variety, the Buccaneer, was shipped for the first time last season, while the Day variety was not shipped. In addition, this rule makes necessary changes in the effective periods specified in Table I of the maturity regulation to synchronize these periods with the 1988–89 calendar years.

The changes in the maturity requirements applicable to Florida avocado shipments were unanimously recommended by the Avocado Administrative Committee. The committee works with the Department in administering the marketing agreement and order program.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Fresh Florida avocado shipments are projected at 1,200,000 bushels (55 pounds net weight) for the 1988–89 season, compared with fresh shipments of 1,129,587 bushels shipped in 1987–88, 956,217 bushels in 1986–87, and 1,110,130 bushels in 1985–86. Florida avocados are shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments following in late June or early July. Florida avocados compete primarily with avocados produced in California, with estimated shipments of about 9,000,000 bushels during the 1987–88 season. Avocados imported into the United States amounted to about 287,000 bushels in 1987.

The current minimum maturity requirements applicable to fresh shipments of avocados grown in South Florida and imported avocados have been in effect on a continuous basis since the 1987–88 season. The maturity requirements for Florida avocados are intended to prevent the shipment of immature avocados, to improve buyer confidence in the marketplace, and to foster increased consumption. Similar maturity requirements have been issued each year over the past several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of their avocado crops.

Some Florida avocado shipments are exempt from the maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing will not be covered by the maturity requirements.

It is the Department's view that changing the maturity regulations would not adversely impact growers, handlers, and importers. The application of the maturity requirements of both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The committee continues to believe that the maturity requirements for Florida avocados ar needed to improve grower returns. Although compliance with these maturity requirements would affect costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of mature avocados.

The Florida avocado maturity regulation establishes maturity requirements for fresh shipments of Florida avocados in terms of minimum weights or diameters for specified time periods during the shipping season for 60 varieties and 2 seedling types of avocados grown in Florida. These time periods are for 7-day increments, beginning on Monday of each week and ending on Sunday.

The minimum weight and diameter maturity requirements are used primarily during the first part of the harvest season for each variety to make sure that the avocados are sufficiently mature to complete the ripening process prior to shipment. Another maturity requirement based on the skin color of the fruit is also used to determine maturity for certain varieties of avocados which turn red or purple when mature. The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuous basis for Florida avocados under § 915.306 [7 CFR Part 915].

An avocado import maturity regulation is currently in effect on a continuous basis under section 8e [7 U.S.C. 608e–1] of the Act. Section 8e of the Act requires that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Comparable requirements may be issued upon not less than 3 days notice whenever the Secretary determines that the application of restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the imported and domestic commodity. The avocado import maturity regulation is prescribed in § 944.31 [7 CFR Part 944]. That section establishes comparable minimum weight and diameter maturity requirements for avocados imported into the United States, based on the maturity requirements specified in paragraph (a)(2) of § 915.332 for avocados grown in Florida. Moreover, avocado import grade requirements are currently in effect on a continuous basis under § 944.23 [7 CFR Part 944]. Such grade requirements specify that all avocados imported from all foreign countries must grade at least U.S. No. 2, which requires that the avocados be mature. An exemption provision in both avocado import regulations permits persons to import up to 55 pounds of avocados exempt from such import requirements.

The maturity requirements, specified herein, reflect the committee's and the Department's appraisal of the need to change the maturity requirements applicable to domestic and import shipments of avocados.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) Avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting, and they will not need additional time to comply with the changed requirements; (2) the changes to synchronize effective periods in the maturity table with 1988–89 calendar years must be made by late May when 1988–89 season Florida avocado shipments are expected to begin; (3) the avocado import requirements are mandatory under section 8e of the Act; and (4) the rule provides a 30-day comment period, and any comments received will be consistent prior to issuance of the final rule.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

For the reasons set forth in the preamble, 7 CFR Part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 915.332 [Amended]

2. Section 915.332 is amended by revising Table I in paragraph (a)(2) to read as follows (this section will appear in the Code of Federal Regulations):

* * * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Kasol	3rd Mon May	5th Sun May	16	
	5th Mon May	2nd Sun June	13	
Arue	3rd Mon May	5th Sun May	16	
	5th Mon May	1st Sun July	14	3–3/16
Donnie	4th Mon May	1st Sun June	16	3–5/16
	1st Mon June	1st Sun July	14	3–4/16
Dr. Dupuis #2	5th Mon May	2nd Sun June	16	3–9/16
	2nd Mon June	1st Sun July	14	3–7/16
	1st Mon July	3rd Sun July	12	3–2/16
Fuchs	1st Mon June	3rd Sun June	14	3–3/16
	3rd Mon June	1st Sun July	12	3
K–5	2nd Mon June	4th Sun June	16	3–5/16
	4th Mon June	2nd Sun July	14	3–3/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Hardee	2nd Mon June	3rd Sun June	16	3-6/16
	3rd Mon June	4th Sun June	16	3-2/16
	4th Mon June	3rd Sun July	14	2-14/16
West Indian seedling [1]	3rd Mon June	3rd Sun July	16	
	3rd Mon July	3rd Sun Aug	16	
	4th Mon Aug	3rd Sun Sept	14	
Pollock	3rd Mon June	1st Sun July	16	3-11/16
	1st Mon July	3rd Sun July	16	3-7/16
	3rd Mon July	5th Sun July	14	3-4/16
Simmonds	3rd Mon June	1st Sun July	16	3-9/16
	1st Mon July	3rd Sun July	14	3-7/16
	3rd Mon July	5th Sun July	12	3-1/16
Nadir	3rd Mon June	4th Sun June	14	3-3/16
	4th Mon June	1st Sun July	12	3-1/16
	1st Mon July	3rd Sun July	10	2-14/16
Gorham	1st Mon July	3rd Sun July	29	4-5/16
	3rd Mon July	2nd Sun Aug	27	4-3/16
Reuhle	1st Mon July	2nd Sun July	16	3-11/16
	2nd Mon July	3rd Sun July	16	3-9/16
	3rd Mon July	5th Sun July	14	3-7/16
	1st Mon Aug	1st Sun Aug	12	3-5/16
	2nd Mon Aug	2nd Sun Aug	10	3-3/16
Peterson	2nd Mon July	3rd Sun July	14	3-9/16
	3rd Mon July	4th Sun July	12	3-5/16
	4th Mon July	1st Sun Aug	10	3-2/16
Biondo	2nd Mon July	2nd Sun Aug	13	
Bernecker	3rd Mon July	5th Sun July	16	3-5/16
	1st Mon Aug	2nd Sun Aug	16	3-5/16
	3rd Mon Aug	4th Sun Aug	14	3-4/16
232	2nd Mon July	5th Sun July	14	
	1st Mon Aug	2nd Sun Aug	12	
Pinelli	3rd Mon July	5th Sun July	16	3-12/16
	1st Mon Aug	2nd Sun Aug	16	3-10/16
Trapp	3rd Mon July	5th Sun July	14	3-10/16
	1st Mon Aug	2nd Sun Aug	12	3-7/16
Miguel (P)	3rd Mon July	5th Sun July	22	3-13/16
	1st Mon Aug	2nd Sun Aug	20	3-12/16
	3rd Mon Aug	4th Sun Aug	18	3-10/16
Nesbitt	5th Mon July	5th Sun July	22	3-12/16
	1st Mon Aug	1st Sun Aug	16	3-5/16
	2nd Mon Aug	3rd Sun Aug	14	3-3/16
Bess	1st Mon Aug	1st Sun Aug	18	3-3/16
	2nd Mon Aug	4th Sun Aug	16	3-5/16
K-8	1st Mon Aug	3rd Sun Aug	16	
Tower 2	1st Mon Aug	2nd Sun Aug	14	3-5/16
	3rd Mon Aug	1st Sun Sept	12	3-4/16
Cristina	1st Mon Aug	3rd Sun Aug	11	2-14/16
Tomago	1st Mon Aug	2nd Sun Aug	18	3-5/16
	3rd Mon Aug	3rd Sun Aug	14	3-4/16
	4th Mon Aug	4th Sun Aug	12	3
Waldin	1st Mon Aug	2nd Sun Aug	16	3-9/16
	3rd Mon Aug	4th Sun Aug	14	3-7/16
	5th Mon Aug	2nd Sun Sept	12	3-4/16
Lila (P)	2nd Mon Aug	2nd Sun Aug	12	3-2/16
	3rd Mon Aug	3rd Sun Aug	11	3
Catalina	3rd Mon Aug	4th Sun Aug	24	
	5th Mon Aug	3rd Sun Sept	22	
Pinkerton (P)	1st Mon Oct	3rd Sun Oct	13	3-3/16
	3rd Mon Oct	1st Sun Nov	11	3
Fairchild	1st Mon Nov	3rd Sun Nov	9	
	3rd Mon Aug	4th Sun Aug	16	3-10/16
	5th Mon Aug	2nd Sun Sept	14	3-7/16
	2nd Mon Sept	3rd Sun Sept	12	3-4/16
Black Prince	3rd Mon Aug	4th Sun Aug	28	4-1/16
	5th Mon Aug	2nd Sun Sept	23	3-14/16
Lorena	2nd Mon Sept	1st Sun Oct	16	3-9/16
	5th Mon Aug	2nd Sun Sept	30	4-3/16
Blair	2nd Mon Sept	1st Sun Oct	26	3-15/16
	5th Mon Aug	2nd Sun Sept	16	3-9/16
Booth 8	2nd Mon Sept	1st Sun Oct	14	3-5/16
	5th Mon Aug	3rd Sun Sept	16	3-9/16
Booth 7	3rd Mon Sept	1st Sun Oct	14	3-5/16
	1st Mon Oct	3rd Sun Oct	10	3-1/16
Snom 5	5th Mon Aug	2nd Sun Sept	18	3-13/16
	2nd Mon Sept	4th Sun Sept	16	3-10/16
	4th Mon Sept	3rd Sun Oct	14	3-8/16
	1st Mon Sept	3rd Sun Sept	14	3-9/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Guatemalan Seedling [2]	3rd Mon Sept	1st Sun Oct	12	3-6/16
	1st Mon Sept	1st Sun Oct	15	
Marcus	1st Mon Oct	1st Sun Dec	13	
	1st Mon Sept	3rd Sun Sept	32	4-12/16
Brooks 1976	3rd Mon Sept	5th Sun Oct	24	4-5/16
	1st Mon Sept	2nd Sun Sept	12	3-4/16
Collinson	2nd Mon Sept	3rd Sun Sept	10	3-1/16
	3rd Mon Sept	2nd Sun Oct	8	2-14/16
Rue	2nd Mon Sept	2nd Sun Oct	16	3-10/16
	2nd Mon Sept	3rd Sun Sept	30	4-3/16
	3rd Mon Sept	1st Sun Oct	24	3-15/16
Hickson	1st Mon Oct	3rd Sun Oct	18	3-9/16
	2nd Mon Sept	4th Sun Sept	12	3-1/16
Simpson	4th Mon Sept	2nd Sun Oct	10	3
Choquette	3rd Mon Sept	2nd Sun Oct	16	3-9/16
	4th Mon Sept	3rd Sun Oct	28	4-4/16
	3rd Mon Oct	5th Sun Oct	24	4-1/16
Winslowson	5th Mon Oct	2nd Sun Nov	20	3-14/16
Leona	4th Mon Sept	3rd Sun Oct	18	3-14/16
Hall	4th Mon Sept	2nd Sun Oct	18	3-10/16
	4th Mon Sept	2nd Sun Oct	26	3-14/15
	3rd Mon Oct	4th Sun Oct	20	3-9/16
Herman	4th Mon Oct	1st Sun Nov	18	3-8/16
	1st Mon Oct	3rd Sun Oct	16	3-9/16
Lula	3rd Mon Oct	5th Sun Oct	14	3-6/16
	1st Mon Oct	3rd Sun Oct	18	3-11/16
Ajax (B-7)	3rd Mon Oct	5th Sun Oct	14	3-15/16
Taylor	5th Mon Oct	2nd Sun Nov	12	3-3/16
	2nd Mon Oct	5th Sun Oct	18	3-14/16
Booth 3	2nd Mon Oct	4th Sun Oct	14	3-5/16
	4th Mon Oct	1st Sun Nov	12	3-2/16
Linda	2nd Mon Oct	3rd Sun Oct	16	3-8/16
Monroe	3rd Mon Oct	5th Sun Oct	14	3-6/15
	5th Mon Oct	3rd Sun Nov	18	3-12/16
	1st Mon Nov	3rd Sun Nov	26	4-3/16
	3rd Mon Nov	1st Sun Dec	24	4-1/16
	1st Mon Dec	3rd Sun Dec	20	3-14/16
Booth 1	3rd Mon Dec	1st Sun Jan	18	3-9/16
	2nd Mon Nov	4th Sun Nov	16	3-12/16
Zio (P)	4th Mon Nov	2nd Sun Dec	12	3-8/16
	2nd Mon Nov	4th Sun Nov	12	3-1/36
Wagner	4th Mon Nov	2nd Sun Dec	10	2-14/16
	3rd Mon Nov	1st Sun Dec	12	3-5/15
Brookslate	1st Mon Dec	3rd Sun Dec	10	3-2/16
	2nd Mon Dec	3rd Sun Dec	16	3-13/15
	3rd Mon Dec	4th Sun Dec	16	3-10/16
	4th Mon Dec	2nd Sun Jan	14	3-8/16
	2nd Mon Jan	4th Sun Jan	12	3-5/16
Moya (P)	4th Mon Jan	1st Sun Feb	10	
	2nd Mon Dec	4th Sun Dec	13	3-2/16
Reed (CP)	4th Mon Dec	2nd Sun Jan	11	3
	2nd Mon Dec	4th Sun Dec	12	3-4/16
	4th Mon Dec	2nd Sun Jan	10	3-3/16
Buccaneer	2nd Mon Jan	4th Sun Jan	9	3
	5th Mon Oct	4th Sun Nov	13	3-8/16

[1] Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

* * * * *

Dated: May 31, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-12551 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Revision of Backfitting Process for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is promulgating an amended rule which governs the backfitting of nuclear power plants. This action is necessary in order to have a backfit rule which unambiguously conforms with the August 4, 1987 decision of the U.S. Court of Appeals for the District of Columbia in Union of Concerned Scientists, et al., v. U.S. Nuclear Regulatory Commission. This action is intended to clarify when economic costs may be considered in backfitting nuclear power plants.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT:
Steven F. Crockett, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone: (202) 492–1600.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1985, after an extensive rulemaking proceeding which included sequential opportunities for public comment on an advanced notice of proposed rulemaking (48 FR 44217; September 28 1983) and a notice of proposed rulemaking (49 FR 47034; November 30, 1984), the Commission adopted final amendments to its rule which governs the backfitting of nuclear power plants, 10 CFR 50.109 (50 FR 38097; September 20, 1985). Backfitting is defined in some detail in the rule, but for purposes of discussion here it means measures which are directed by the Commission or by NRC staff in order to improve the safety of nuclear power reactors, and which reflect a change in a prior Commission or staff position on the safety matter in question.

Judicial review of the amended backfit rule and a related internal NRC Manual chapter which partially implemented it was sought and, on August 4, 1987, the U.S. Court of Appeals for the DC Circuit rendered its decision vacating both the rule and the NRC Manual chapter which implemented the rule in part. UCS v. NRC, 824 F.2d 103. The Court concluded that the rule, when considered along with certain statements in the rule preamble published in the **Federal Register**, did not speak unambiguously in terms that constrained the Commission from considering economic costs in establishing standards to ensure adequate protection of the public health and safety as dictated by section 182 of the Atomic Energy Act. At the same time, the Court agreed with the Commission that once an adequate level of safety protection had been achieved under section 182, the Commission was fully authorized under section 161i of the Atomic Energy Act to consider and take economic costs into account in ordering further safety improvements. The Court therefore rejected the position of petitioners in the case, Union of Concerned Scientists, that economic costs may never be a factor in safety decisions under the Atomic Energy Act.

Because the Court's opinion regarding the circumstances in which costs may be considered in making safety decisions on nuclear power plants was completely in accord with the Commission's own policy views on this important subject, the Commission decided not to appeal the decision. Instead, the Commission decided to amend both the rule and the related NRC Manual chapter (Chapter 0514) so that they conform unambiguously to the Court's opinion. On September 10, 1987, the Commission published proposed amendments to the rule (52 FR 34223) and provided for a comment period ending on October 19, 1987.[1] The final rule as set out in this document is substantially the same as the proposed rule (52 FR 34223; September 10, 1987).

In this rulemaking the Commission has adhered to the following safety principle for all of its backfitting decisions. The Atomic Energy Act commands the Commission to ensure that nuclear power plant operation provides adequate protection to the health and safety of the public. In defining, redefining or enforcing this statutory standard of adequate protection, the Commission will not consider economic costs. However, adequate protection is not absolute protection or zero risk. Hence safety improvements beyond the minimum needed for adequate protection are possible. The Commission is empowered under section 161 of the Act to impose additional safety requirements not needed for adequate protection and to consider economic costs in doing so.

The 1985 revision of the backfit rule, which was the subject of the Court's decision, required, with certain exceptions, that backfits be imposed only upon a finding that they provided a substantial increase in the overall protection of the public health and safety or the common defense and security and that the direct and indirect costs of implementation were justified in view of this increased protection. The amended rule, set out in this document, restates the exceptions to this requirement for a finding, so that the rule will clearly be in accord with the safety principle stated above.

Particularly in response to the Court's decision, the rule now provides that if the contemplated backfit involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate, neither the rule's "substantial increase" standard, nor its "costs justified" standard, see § 50.109(a)(3), is to be applied. (See § 50.109(a)(4)(iii).) Also in response to the Court's decision, see 824 F.2d at 119, the rule now also explicitly says that the Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

On instruction from the Commission, the NRC staff has amended its Manual chapter on plant-specific backfitting to ensure consistency with the Court's opinion. Copies of the revised chapter are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.[2]

Response to Comments

Comments were received from 12 utilities, one Federal agency (DOE), one vendor, seven individuals, seven citizens' groups, and two industry groups. Lengthy and detailed comments were submitted by the Union of Concerned Scientists (UCS) and the Nuclear Utility Backfitting and Reform Group (NUBARG). Both organizations were active in the rulemaking which led to the 1985 revision of the rule. The comments submitted by these two groups encompassed most of the comments made by others. Below, the Commission paraphrases the chief comments and responds to them. The Commission has given careful consideration to every comment. The original comments may be viewed in the NRC's Public Document Room in Washington, DC.

[1] In its comments on the proposed amendments, the Union of Concerned Scientists asserts that the **Federal Register** notice of the proposed amendments was technically defective. UCS argues that since the Court had vacated the entire rule, the **Federal Register** notice should have proposed enactment of an entire, amended, rule, rather than simply amendments to the vacated rule. In weighing the technical merit of UCS' argument, it should be noted that as of the date of the **Federal Register** notice, the mandate of the Court had not yet issued and the rule was thus still legally in effect. However, the more important consideration is that the notice clearly revealed the Commission's intent to reissue the backfit rule once it had been conformed to the Court's decision. UCS understood this intent and took the opportunity to resubmit the comments it had submitted during the rulemaking leading up to the 1985 revision of the rule. In any event, the Commission is publishing the entire rule in this document.

[2] Several commenters argue that the revised Manual chapter should undergo what amounts to notice and comment rulemaking. However, the Manual chapter, if it is a rule at all, is a rule of agency organization, procedure, or practice, and therefore is not subject to the notice and comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(A); see also § 553(a)(2). The Commission did publish for comment an earlier version of Manual Chapter (49 FR 19560; April 20, 1984), but that version was already in effect when it was published for comment, and it was published for comment only because the Commission was still in the process of making fundamental changes to the backfitting process and wanted comment on the procedures then in effect. See id.

"Adequate Protection"

The great majority of the commenters raised issues about the rule's use of the phrase "adequate protection". This phrase is used in the rule's exception provisions. See § 50.109(a)(4). Generally, the rule requires, among other things, that it be shown for a given proposed backfit that implementation of the backfit would bring about a "substantial increase" in overall protection to public health and safety, and that the direct and indirect costs of the backfit are justified by that substantial increase. See § 50.109(a)(3). However, § 50.109(a)(4) also requires that these two standards not be applied in three situations:

First, where the backfit is required to bring a facility into compliance with NRC requirements or the licensee's own written commitments;

Second, where the backfit is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; and

Third, as noted above, where the backfit involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

The comments on the rule's use of the phrase "adequate protection" generally took two forms, each discussed more fully later on in this notice. The first form, most fully represented by UCS' comments, was that the rule itself should actually include a definition of "adequate protection" (the final rule set out in this document does not), a phrase nowhere explicitly defined in general terms, either in the Atomic Energy Act, from which the phrase comes, or in the Commission's regulations.

The second, more modest, form of the comments on "adequate protection", most fully represented by NUBARG's comments, was that one or another of the three exception provisions in the rule was redundant (none is). While not amounting to a call for a definition of "adequate protection", NUBARG's comments displayed some of UCS' uncertainty about what the Commission meant by the phrase.

Each group had difficulty applying the phrase to characterize past Commission action in backfitting. UCS claimed that the Commission had never backfitted in order to achieve something beyond "adequate protection." NUBARG, however, claimed that the Commission had never required a backfit on the grounds that compliance with the regulations was not enough to provide adequate protection. These views, differing in emphasis, reflect the two groups' opposite concerns about the possibility that the Commission would use the phrase "adequate protection" arbitrarily. UCS is concerned that the Commission might interpret the phrase "adequate protection" to refer to a level of safety such that every proposed improvement would be subjected to cost-benefit analysis. Conversely, the industry appears concerned that the Commission might interpret the phrase "adequate protection" to refer to a level of safety such that no proposed improvement would be subjected to cost-benefit analysis.

The Commission certainly did not intend that this rulemaking should focus on the meaning of the phrase "adequate protection". The main point of this rulemaking was simply to negate the misimpression left by two statements in the preamble to the 1985 version of the backfit rule. UCS puts forward two grounds for its emphasis on the phrase "adequate protection". First, UCS asserts that "(t)he crucial decision as to whether cost benefit analysis will be used in assessing the need for backfitting is dependent on whether the particular backfitting under consideration is needed to ensure adequate safety * * * ." Second, UCS claims that the Court "ordered" the Commission to "stop trying to obscure its intentions through ambiguous and vague language * * * ."

However, as will be explained more fully below, the Court's decision turned not on the rule's lack of a definition of "adequate protection" but rather on two statements which seemed to the Court to imply that the Commission intended to take costs into consideration in determining what "adequate protection" required; the meaning of "adequate protection" was simply not an issue in the litigation. Moreover, UCS overestimates the role the phrase "adequate protection" plays in the backfit rule. The threshold decision in considering a proposed backfit, and very often the only decision that need be made,[3] is not whether adequate protection is at stake but rather whether the facility is in compliance with the Commission's requirements and the licensee's written commitments.

Even if UCS is right about the importance of the phrase "adequate protection", there is nothing unusual or imprudent, and certainly nothing illegal, about decisions which ultimately turn on the application—by duly constituted authority and after full consideration of all relevant information—of phrases which are not fully defined. Consider, for instance, the "reasonable assurance" determination the Commission must make before issuing an operating license.[4] Indeed, most of the Commission's rules and regulations are ultimately based on unquantified and, as we note below, presently unquantifiable ideas of what constitutes "adequate protection".

Were there something peculiarly critical about the role of "adequate protection" in the backfit rule, the issue of the phrase's meaning could have been raised in the rulemaking for the 1985 rule. Two of the three exception provisions set out above were in the 1985 revision of the rule, where they used the equivalent phrase "undue risk" instead of "adequate protection". Also, as the Court in UCS v. NRC noted, 824 F.2d at 119, the statement of considerations which accompanied the 1985 version of the rule quite explicitly at least twice limited the consideration of costs in backfitting decisions to situations where "adequate protection" was already secured.[5]

Nonetheless, an issue which is a concern of almost every commenter in this rulemaking should not be ignored. Therefore, the Commission will answer as best it can the questions the commenters have raised concerning the rule's use of the phrase "adequate protection". We begin with UCS' call for an objective and generally applicable definition of "adequate protection". We argue that such a definition is not possible in the near future, but that the public and licensees are nonetheless protected against misuse of the phrase. In the course of responding to UCS' comments, we shall, of necessity, be making at least preliminary responses to most of NUBARG's comments also.

UCS argues that the rule permits the agency to escape its legal responsibility

[3] For instance, a majority of the plant-specific backfits carried out during the first year after the 1985 revision of the backfit rule became effective were for the sake of compliance. See SECY-88-40, Evaluation of Managing Plant-Specific Backfit Requirements (November 21, 1988), Enclosure 1.

[4] "* * * [A]n operating license may be issued by the Commission * * * upon finding that: * * * (t)here is reasonable assurance * * * that the activities authorized by the operating license can be conducted without endangering the health and safety of the public * * * ." 10 CFR 50.57(a)(3).

[5] "The consideration and weighing of costs contemplated by the rule applies to backfits that are intended to result in incremental safety improvements for a plant that already provides an acceptable degree of protection[.]" 50 FR 38103, col. 1; also, "(t)he costs associated with proposed new safety requirements may be considered by the Commission provided that the Atomic Energy Act finding 'no undue risk' can be made." Id. at 38101, col. 3.

to articulate the factors on which it bases its backfitting decisions. UCS asserts that the rule should "enunciate criteria and guidelines about what constitutes redefining and defining adequate protection levels, what constitutes an adequate as opposed to a beyond adequate protection level, and what factors place a particular circumstance within the rule or within the exceptions." Another comment asserts that any definition of "adequate protection" should include the resolution of all outstanding safety issues. Yet another calls for "objective criteria", "some real numbers" on releases, accident consequences, and the like.

There does not exist, and cannot exist, at least not yet, a generally applicable definition of "adequate protection" which would guard against every possible misuse of the phrase. Congress established "adequate protection" as the standard the Commission is to apply in licensing a plant, see 42 U.S.C. 2232(a), and gave the Commission authority to issue rules and regulations necessary for protection of public health and safety, see 42 U.S.C. 2201, but Congress did not define "adequate protection", nor did it command the Commission to define it.

Such a definition would have to take one of two forms, one of them incapable of preventing the abuses the commenters are concerned about, and the other simply not possible yet. The first of these would be a verbal definition of the kind encountered in, for instance, the various "reasonable man" standards in the common law. After the pattern of these, the Commission could say, correctly, that "adequate protection" is not zero risk, that it is the same as "no undue risk", that it has long-term and short-term aspects, and that it is that level of safety which the Atomic Energy Act requires for initial and continued operation of a nuclear power plant. However, such a definition clearly will not, of itself, prevent the abuses UCS and NUBARG are concerned about, nor is such a standard sufficiently helpful to the NRC staff in actual practice.

Thus, if there is to be a useful and generally applicable definition of "adequate protection", it must take another, more precise form, namely, quantitative. Several of the commenters seem to have such a definition in mind when they call for "objective criteria", some "real numbers", and the like. In fact, the Commission is actively pursuing reliable quantitative measures of safety, and some quantitative and generally applicable definition of "adequate protection" may eventually emerge as a byproduct of the Commission's efforts, still in their early stages, to implement its general safety goals, which take a partly quantitative form. (See 51 FR 30028; August 21, 1986, Policy Statement on Safety Goals.) However, given the state of the art in quantitative safety assessment, it is not reasonable to expect that the Commission could make licensing decisions—let alone decisions on whether to consider cost in backfitting—wholly on a quantitative definition of "adequate protection". Surprisingly, some of the commenters who call for "objective criteria", "some real numbers", and the like, have in the past criticized quantitative risk assessments.

Nonetheless, even in the absence of a useful and generally applicable definition of "adequate protection", the Commission can still make sound judgments about what "adequate protection" requires, by relying upon expert engineering and scientific judgment, acting in the light of all relevant and material information. As UCS itself said in its comments on the proposed 1985 revision of the rule, "(u)ltimately, the determination of what standards must be met in order to provide a reasonable assurance that the public health and safety will be protected comes down to the reasoned professional judgment of the responsible official."

The Commission's exercise of this judgment will take two familiar forms, of which the most important is rule and regulation. An essential point of the Commission's having regulations is to flesh out the "adequate protection" standard entrusted to the Commission by Congress. See UCS v. NRC, 824 F.2d at 117–18. Exercising engineering and scientific judgment in the light of all relevant and material information, the NRC identifies potential hazards and then requires that designs be able to cope with such hazards with sufficient safety margins and reliable backup systems. Regulations and guidance arrived at in this way do not, strictly speaking, "define" adequate protection, since there will be times when the NRC issues rules which require something beyond adequate protection. Nonetheless, compliance with such regulations and guidance may be presumed to assure adequate protection at a minimum. As the Commission has said on many occasions, compliance with the Commission's regulations and guidance "should provide a level of safety sufficient for adequate protection of the public health and safety and common defense and security under the Atomic Energy Act." (49 FR 47034, 47036, col. 2, November 30, 1984, proposed 1985 rule; see also 50 FR 38097, 38101, col. 3, September 20, 1985, final 1985 rule; 51 FR 30028, col. 1, August 21, 1986, Policy Statement on Safety Goals.)

Because "adequate protection" is presumptively assured by compliance with the regulations and other license requirements, all the versions of the backfit rule—the 1970 rule, the 1985 rule, and the one set out in this document, see § 50.109(a)(4)(i)—have a "compliance" exception: plants out of compliance may be backfitted without findings of "substantial increase" in protection or a "justification" of costs.

However—and here is where the lack of a general definition for "adequate protection" poses a challenge—"adequate protection" is only presumptively assured by compliance. As the Commission said in promulgating the 1985 revision, the presumption may be overcome by, for instance, new information which indicates that improvements are needed to ensure adequate protection. (50 FR 38101, col. 3.) Such new information may reveal an unforeseen significant hazard or a substantially greater potential for a known one, or insufficient margins and backup capability. Engineering judgment may, in the light of such information, conclude that restoration of the level of protection presumed by the regulations requires more than compliance. Thus both the 1985 revision and the revision below contain exemptions for backfits necessary to assure "adequate protection", or, as the 1985 rule equivalently said, "no undue risk". See § 50.109(a)(4)(ii) of the rule set out in this document.

If compliance does not assure adequate protection, the Commission must be able to determine how much more protection is required, and a precise and generally applicable definition of "adequate protection" would facilitate that determination. But such a definition would have only a limited role to play. The first and most crucial question is whether the proposed backfit is required to bring a plant into compliance. Only if the proposed backfit requires more than compliance with NRC regulations and license conditions need there be a determination as to what "adequate protection" requires. Given this relation between compliance and "adequate protection", the industry might be more concerned than UCS is about the lack of a general definition of "adequate protection", for UCS will at least have the comfort of knowing that compliance will be secured before cost is considered, but the industry cannot be sure how much more than compliance may be asked of it despite the cost.

Where, as in the cases contemplated by the second exception provision of the rule, more than compliance is required and quantitative criteria do not define "adequate protection", the agency must fall back on the second familiar form in which engineering judgment is exercised by the Commission, namely, case-by-case. Administrative agencies are not required to proceed by rule alone, for the method of case-by-case judgment is quite capable of meeting the requirement that the factors on which administrative decisions are based be articulated. Rather than proceeding by an almost ministerial application of "objective criteria", the Commission must fashion a series of case-by-case judgments into a well-reasoned and factually well-supported body of decisions which, acting as reasoned precedent, can control and guide the Commission's exercise of the discretion granted it by Congress in precisely the way in which common-law precedents control and guide the common law judge's exercise of his or her judgment. See Nader v. Ray, 363 F.Supp. 946, 954–55 (D.D.C. 1973) (determining what constitutes adequate protection calls for exercise of discretion in a judgmental process very different from acting in accord with a clear, non-discretionary legal duty).

The Commission foresaw the need to proceed case-by-case on occasion and therefore made it a principal aim of the backfit rule to centralize the responsibility and document the bases for case-by-case decisions for such decisions. The Commission thereby hoped to better assure that such decisions as might of necessity be case-by-case would form a reasoned and coherent body.[6]

[6] UCS alleges that in three instances the Commission has abused its discretion by applying cost considerations in specific cases where licensees are in compliance but adequate protection is at stake. However, UCS is misinformed about the first of the three cases, and its allegations about the other two reduce simple to disagreement over what constitutes adequate protection. We briefly discuss the three cases below.

Citing trade journal articles which quote unnamed NRC sources, UCS claims that the backfit rule caused the NRC staff to change its mind about requiring two licensees to conduct certain inspections and analyses in order to justify continued operations. The two plants in question had reactor pump coolant shafts similar to ones which elsewhere had shown a high probability of shearing off under certain conditions. UCS asserts that "[w]e * * * learn from this example the inherent lack of logic and circularity embedded in the rule: NRC is prevented, by operation of the rule, from asking questions needed to learn the degree of risk of a known equipment problem because they do not know the answers in advance."

Nothing in the Court's ruling in UCS v. NRC forbids the Commission's approach

However, the facts of the situations were not what UCS alleges them to have been; indeed the backfit rule was not involved. Letters were sent on April 23, 1986 requiring the licensees to submit within 20 days information which would "enable the Commission to determine whether or not (their) license(s) should be modified." Such information included information on design, operational history, schedules for inspection, plans for operator training, and "any analysis performed subsequent to those done for the FSAR (Final Safety Analysis Report) which would address the consequences of a locked rotor or broken shaft event during plant operation." These letters were sent under the first part of 10 CFR 50.54(f). This part authorizes such information requests without consideration of cost. As an earlier draft of the April 23 letter available in the NRC's Public Document Room shows, the NRC had planned to ask for new analyses under a later part of § 50.54(f) which authorizes requests not required to assure adequate protection if "the burden to be imposed * * * is justified in view of the potential safety significance of the issue to be addressed in the requested information." 10 CFR 50.54(f). (This "safety significance" standard, by its emphasis on "potential", requires less than is required by the "(actural) substantial increase" standard in the backfit rule and also avoids the circularity UCS alleges.) However, the staff sensibly opted for first asking whether such analyses had already been done. In fact they had, or were underway when the letters were sent. The backfit rule played no part here.

UCS' second instance of alleged abuse involves the Mark I containment, about whose performance in beyond-design-basis accidents (ones which involve damage to the reactor core) there is substantial uncertainty. UCS asserts that cost considerations have blocked staff action which would have brought about a significant reduction in some of the figures which estimate the probability that the Mark I would fail in certain kinds of beyond-design-basis accidents. UCS adds in passing that those figures represent undue risk. The NRC staff has already made a formal reply to similar charges of undue risk. See, e.g., Boston Edison Co. (Pilgrim Nuclear Generating Station), Interim Director's Decision under 10 CFR 2.206, DD–87–14, 26 NRC 87, 95–106 (1987). Suffice it here to say that the NRC staff has by no means completed its considerations of the Mark I containment, but that, given present information, the staff has concluded that overall severe-accident risks at plants with Mark I containments are not undue. Id. at 104–106. UCS is content to put forward only unsupported assertions to the contrary. Thus the staff may legitimately consider cost when deciding whether to backfit the Mark I containments.

UCS' third allegation of abuse rehearses part of its February 10, 1987 § 2.206 Petition to the Commission for immediate action to relieve allegedly undue risks posed by nuclear power plants designed by the Babcock & Wilcox Company. The NRC's Director of Nuclear Reactor Regulation responded fully to the Petition, denying it, on October 19, 1987 (UCS' comments on the proposed backfit rule were submitted on October 13). See Director's Decision Under 10 CFR 2.206, DD–87–18, 26 NRC—(October 19, 1987). The Director concluded that "there are no substantial health and safety issues that would warrant the suspension or revocation of any license or permit for such facilities." Slip Opinion at 63. Simply because UCS disagrees with such conclusions does not mean that the Commission is misusing the "adequate protection" standard.

to "adequate protection", UCS boldly asserts that the proposed rule "completely fail[ed] to comport with the orders and directions of the Court of Appeals in UCS v. NRC", that the Court "could not have been more clear about the defects of the backfit rule", that the proposed revised rule "suffers from the exact same defects" as the one vacated, that, indeed, "the new proposal is even more devoid of objective guidance or criteria * * * than was its predecessor."

UCS' criticisms are based on part of a single paragraph in the Court's decision. In pertinent part, that paragraph says, "* * * In our view, the backfitting rule is an exemplar of ambiguity and vagueness; indeed, we suspect that the Commission designed the rule to achieve this very result. The rule does not explicate the scope or meaning of the three listed 'exceptions'. The rule does not explain the action the Commission will (in italics) take when a backfit falls within one of these exceptions. In short, the rule does not speak in terms that constrain the Commission from operating outside the bounds of the statutory scheme." 824 F.2d at 119.

UCS says that this portion of a paragraph was an "order" by the Court to get the Commission to "stop trying to obscure its intentions through ambiguous and vague language * * *." Whether the Court's language amounts to an "order" or only strong advice, we have followed it. For one thing, the rule explicitly says that backfits falling within the exceptions will be imposed (inexplicably, UCS asserts that the proposed rule did not have this provision). See § 50.109(a)(4). For another, both in what we have already said, and in what we shall be saying in response to NUBARG's comments on the exceptions provisions, we shall have explicated the scope and meaning of the three listed exceptions.

However, we have not taken the quoted language of the Court to mean that, after years of making rules and adjudicating cases which ultimately depend on the Commission's judgment about what "adequate protection" requires, the Commission should be obliged to give a mechanically applicable definition of "adequate protection" in order to avoid using the time-honored method of case-by-case, precedent-guided, judgment to implement only a part of the backfit rule. Certainly, the Court never even noted a lack of a general definition of "adequate protection" in the rule, let alone "ordered" the Commission to provide such a definition.

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UCS' position lacks all sense of proportion. We must emphasize the core of the Court's decision, rather than get bogged down by transforming a suspicion and a few criticisms of the rule into an order to undertake an unprecedented task of definition.

Reviewing the exceptions in the rule, and various statements in the Federal Register notice accompanying the rule, the Court said, "We conceivably could read the terms of this rule to comply with the statutory scheme we have described above (that is, a scheme in which economic costs can play no part in establishing what adequate protection requires)." Id. Moreover, the Court says this despite the lack of any summary, general, "objective" definition of "adequate protection" in the rule.

But the Court then went on to say, "Statements that the Commission has made in promulgating the rule and in defending it before this court, however, disincline us from interpreting the rule in this fashion." Id. Again, it is not the lack of a definition of adequate protection that disinclined the Court from saving the rule, but rather certain statements the Commission had made which seemed to suggest that the Commission might consider economic cost when deciding what adequate protection required.

The Three Exceptions

Echoing the Court's remark that the rule "does not explicate the scope or meaning of the three listed 'exceptions' ", id., NUBARG "believes that there is a substantial amount of overlap in these exceptions and that they have not been adequately defined or explained in the proposed rule." NUBARG and others representing the industry are concerned that the two exception provisions which use the phrase "adequate protection", §§ 50.109(a)(4) (ii) and (iii), may "swallow" the rule. One industry commenter objects to the notion, implied by § 50.109(a)(4)(ii), that adequate protection might require more than compliance. Another is concerned that § 50.109(a)(4)(iii), the exception which has been added in response to the Court's ruling, might lead to redefinitions of "adequate protection" that would threaten loss of licenses.

To avoid these results, NUBARG and others recommend deleting one of the two exception provisions which use the phrase "adequate protection". NUBARG's choice is § 50.109(a)(4)(ii), retained from the 1985 version of the rule, where it used the equivalent phrase, "no undue risk". This section provides that the "substantial increase" and "costs justified" standards will not apply to backfits necessary to provide adequate protection to public health and safety. NUBARG calls this provision redundant to the exception for backfits required for the sake of compliance, § 50.109(a)(4)(i). As was noted above, NUBARG reports that its research has uncovered no case in which the Commission "has recognized that some additional measures not contained in existing requirements are necessary to ensure that a facility continues to meet the current level of adequacy." Two other commenters believe that the exception provision added because of the litigation, § 50.109(a)(4)(iii), should be deleted, as being redundant to the provision NUBARG would like to see deleted.

No matter which of the two provisions the commenter would like to see deleted, the commenter would like some restrictions placed on the use of the remaining one. The restriction by far the most frequently proposed is that no action may be taken under the remaining exception provision in the absence of "significant new information or the occurrence of an event which clearly shows" that the action is necessary.

In sum, these commenters either reopen an issue settled in 1985 or they recommend deleting that part of the rule which directly responds to the Court's ruling. We take neither course, for, even putting the 1985 rule and the Court's ruling aside, if either of the two provisions were to be deleted, an essential power of the Commission would be remain unimplemented.

First, the exception for backfits necessary to secure adequate protection, § 50.109(a)(4)(ii), must be retained, because it must be made clear that Commission action is not to be obstructed by cost considerations in a situation where compliance has indeed proved to be insufficient to secure the level of protection presumed in the rule, order, or commitment in question. Despite the results of NUBARG's research, such situations have arisen. See, e.g., SECY-86-340, "Evaluation of Managing Plant-Specific Backfit Requirements", November 21, 1986. Accordingly, this exception provision is not redundant to the exception for backfits necessary to restore compliance. Neither is it redundant to the exception for backfits involving the defining or redefining of "adequate protection", for the latter exception assumes some change in the NRC's judgment of what level of protection should be regarded as "adequate".

Retaining § 50.109(a)(4)(ii) will not give the Commission the power to proclaim at will that compliance is not enough. As we said in the statement of considerations accompanying the 1985 rule, and have in part reiterated in the response to UCS' comments, the regulations, though they do not define "adequate protection", are presumed to ensure it, and, in the absence of a redefinition of "adequate protection", that presumption can be overcome only by significant new information or some showing that the regulations do not address some significant safety issue. "(I)t may be presumed that the current body of NRC safety regulations provides adequate protection. Where new information indicates that improvements are needed to ensure there is 'no undue risk' on * * * a * * * basis which the Commission believes to be the minimum necessary, such requirements must be imposed." (50 FR at 38101-102.)

Second, the exception provision for backfits which are necessary under a defining or redefining of "adequate protection", § 50.109(a)(4)(iii), must be retained because it must be made clear that, as the Court held, cost may not be a factor in setting the level of protection judged as "adequate".[7] As NUBARG acknowledges, citing Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, AFL-CIO, 367 U.S. 396, 408 (1961), the Commission has both the power to define "adequate protection", and the power to re-define it.[8] Without this last exception provision, it might appear from the rule either that the Commission had no such power or that it was restricted by cost considerations, contrary to the Court's ruling. Nor should this exception provision be limited to situations involving "significant new information," as proposed in several comments.

This last exception may be thought by some to threaten to swallow the backfit rule. We believe, however, that instances of backfits based on a "redefinition" of "adequate protection" will be rare. Moreover, the case-by-case approach which is required in the absence of a general definition of "adequate protection" provides licensees—and the public—a large measure of protection from arbitrary action by the Commission. Citing case law, NUBARG says that, in applying this last exception provision, the Commission "must act rationally and consistently in light of available evidence", and "must apply a reasoned analysis indicating the prior policies and standards are being changed, not casually ignored * * *." We wholly agree, and believe that the approach envisioned by the backfit rule will facilitate the Commission's acting accordingly.

[7] As the rule notes in § 50.109(a)(7), cost may nonetheless be a consideration in choosing the means of achieving "adequate protection".

[8] The words "defining or redefining" in this third exception should not be construed necessarily to mean "providing a useful and generally applicable definition", at least not until such a definition becomes possible. Under present conditions, the Commission will have "defined or redefined what level of protection is to be regarded as adequate" if it makes a judgment that, although compliance assures the level of protection that had been thought of as adequate, that level of protection should no longer be considered adequate.

Other Matters

Two other comments bearing on the phrase "adequate protection" require an explicit response. First, several commenters from the industry would prefer that the rule state that the "documented evaluation" which the NRC must prepare in connection with any action under one of the exception provisions, see § 50.109(a)(4), should include consideration of as many of the factors which § 50.109(c) requires of a "backfit analysis" as are appropriate.

The suggested modification of the rule would have only limited utility. Few of the factors listed in § 50.109(c) of the rule are appropriate for consideration in a documented evaluation justifying action under the compliance exception in the rule. It is true that several of the factors in § 50.109(c), indeed, all of them but those in paragraphs (c) (5) and (7) and some of those in paragraph (c)(8) are appropriate for consideration under the "adequate protection" exception, to the extent that they require a showing of exactly what the licensees must do and a showing that the backfit in question actually contributes to safety. However, the Commission believes that the rule's requirement that the documented evaluation "include a statement of the objectives of and reasons for the modification and the basis for invoking the exception" adequately assures that the factors in § 50.109(c) will be considered to the extent relevant, without their being listed and labeled as if they were a part of a § 50.109(c) analysis. Thus, little, if anything, is to be gained by an explicit requirement that § 50.109(c) factors be considered in a documented evaluation.

Second, one citizens' group asserts that the backfit rule should not apply to rulemaking. This issue was thoroughly discussed in 1985. However, this group's comment puts the issue in a slightly altered light, and provides another opportunity to clarify the meaning of "adequate protection". The group argues that since rules "define" "adequate protection", the Commission cannot apply the rule's "substantial increase" and "cost justified" standards in rulemaking without applying cost considerations in setting the standard of adequate protection, contrary to the Court's holding.

The answer to this comment is, of course, that the rules do not, strictly speaking, "define" "adequate protection", and they only presumptively assure it. Not only may there, as stated above, be individual cases that require actions that go beyond what is necessary under the regulations to assure adequate protection, there will also be times when the NRC issues a rule which requires something beyond adequate protection. This follows directly from the Commission's power under section 161 of the Atomic Energy Act, affirmed by the Court, to issue rules or orders to "minimize danger to life or property." See 42 U.S.C. 2201; see also USC v. NRC, 824 F.2d at 118. If a proposed rule requires something more than adequate protection, applying a cost standard to the proposed rule will not be introducing cost considerations into the setting of the adequate protection standard and is therefore permitted. Of course if the rule is directed at either establishing what level of protection is "adequate" or assuring that such a level of protection is met, then cost will play no role.

The backfit rule as set out below is substantially the same as the rule proposed in the Federal Register. (See 52 FR 34223; September 10, 1987.) Provisions which appeared at the end of § 50.109(a)(4) of the proposed rule, or in the footnote to that paragraph, appear below in new paragraphs (a) (5) through (7).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3140-0011.

Regulatory Analysis

The revision to 10 CFR 50.109 will bring it into conformance with the holding in Union of Concerned Scientists, et al., v. U.S. Nuclear Regulatory Commission, D.C. Cir. Nos. 85-1757 and 86-1219 (August 4, 1987). The revision clarifies the backfit rule to reflect NRC practice that, in determining whether to adopt a backfit requirement, economic costs will be considered only when addressing those backfits involving safety requirements beyond those needed to ensure the adequate protection of public health and safety. Such costs are not considered when establishing the adequate protection of public health and safety. This revised rule does not have a significant impact on State and local governments and geographical regions, public health and safety, or the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this rule.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The affected facilities are licensed under the provisions of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in regulations issued by the Small Business Administration in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this rule because it does not impose requirements on 10 CFR Part 50 licensees.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92, Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.8, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.109 is revised to read as follows:

§ 50.109 Backfitting.

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985; or

(ii) Six months before the date of docketing of the operating license application for the facility for facilities having construction permits issued before October 21, 1985; or

(iii) The date of issuance of the operating license for the facility for facilities having operating licenses; or

(iv) The date of issuance of the design approval under Appendix M, N, or O of this part.

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (c) of this section for backfits which it seeks to impose.

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (c) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriated documented evaluation for its finding, either:

(i) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee; or

(ii) That regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety or the public and is in accord with the common defense and security.

(6) The documented evaluation required by paragraph (a)(4) of this section shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action.

(7) If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written licensee commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the applicant or licensee is free to choose the way which best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) Paragraph (a)(3) of this section shall not apply to backfits imposed prior to October 21, 1985.

(c) In reaching the determination required by paragraph (a)(3) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the licensee or applicant in order to complete the backfit;

(3) Potential change in the risk to the public from the accidental off-site release of radioactive material;

(4) Potential impact on radiological exposure of facility employees;

(5) Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit;

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(d) No licensing action will be withheld during the pendency of backfit analyses required by the Commission's rules.

(e) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his designee.

Dated at Rockville, Maryland, this 31st day of May, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-12824 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket No. 88-9]

Description of Office, Procedures, Public Information; Deputy Chief Counsel (Operations) et al.

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The structure of the Law Department of the Office of the Comptroller of the Currency ("OCC") has recently been changed. This final rule sets forth the new descriptions for the positions of Deputy Chief Counsel (Operations) and Deputy Chief Counsel (Policy).

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ferne Fisherman Rubin, Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: On April 6, 1988, the OCC's Chief Counsel announced certain changes to the positions of Deputy Chief Counsel (Operations) and Deputy Chief Counsel (Policy); this amendment reflects these changes.

Notice and Comment

The OCC has determined that notice and comment are unnecessary under 5 U.S.C. 553(b)(3)(A) since this final rule pertains to rules of agency organization and procedure.

Reason for Immediate Effective Date

This final rule informs the public about a change in the Law Department's organization that has already occurred. Confusion could result if the proper position descriptions are not employed immediately.

Regulatory Flexibility Act

A Regulatory Flexibility Analysis is required only for rules issued for notice and comment. Because this final rule pertains to office organization and is therefore exempt from notice and comment procedures, no Regulatory Flexibility Analysis will be prepared.

Executive Order 12291

Section 1(a)(3) of Executive Order 12291 exempts from the requirements that a Regulatory Impact Analysis be prepared those regulations related to agency organization, management or personnel. Since this final rule is so classified, no Regulatory Impact Analysis is required.

List of Subjects in 12 CFR Part 4

National banks, Organization and functions (government agencies), Public information, Official forms, District offices, Field offices, Procedures, Delegation.

For the reasons given in the preamble, Part 4 of Chapter I, Title 12 of the Code of Federal Regulations is amended as follows:

PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

1. The authority citation for Part 4 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. In Part 4, § 4.1a is amended by revising paragraph (a) (20) and (21) to read as follows:

§ 4.1a Central and field organization; delegations.

(a) * * *

(20) *Deputy Chief Counsel (Operations).* The Deputy Chief Counsel (Operations) is responsible for Law Department administration, the District Counsels, and the Legislative and Regulatory Analysis Division of the Law Department.

(21) *Deputy Chief Counsel (Policy).* The Deputy Chief Counsel (Policy) is responsible for the Enforcement and Compliance, Legal Advisory Services, Litigation, and Securities and Corporate Practices Divisions of the Law Department.

* * * * *

Date: May 27, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-12805 Filed 6-3-88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-427]

Miscellaneous Conforming and Technical Amendments

Date: May 31, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; miscellaneous conforming and technical amendments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Saving and Loan Insurance Corporation ("FSLIC"), is amending its regulations in order to correct typographical and other technical errors, and to correct a reference to the Board's recordkeeping requirements with respect to accounts held in institutions the deposits of which are insured by the FSLIC ("insured institutions").

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome L. Edelstein, (202) 377-7057, Deputy Director; or Carol J. Rose, (202) 377-7037, Paralegal Specialist, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 15, 1986, the Board adopted final amendments expanding and clarifying its regulation concerning basic loan records that institutions chartered by the Board or insured institutions and their service corporations are required to maintain. 51 FR 30948 (August 29, 1986). One of the amendments revised 12 CFR 563.17-1(c) by providing that records related to accounts held in insured institutions reflect the Board's recent deletion of the requirement that for insurance of accounts purposes the insured institution's records disclose the names of the settlor (grantor) and trustee of a trust and contain a signature card for the trust executed by the trustee. The Board's deletion of this recordkeeping requirement was adopted on April 4, 1986. 51 FR 12122 (April 9, 1986). The April 1986 revision of 12 CFR 564.2 to delete paragraph (b)(3) was intended to decrease the recordkeeping requirements associated with obtaining trust account insurance coverage and to expedite settlement of insurance claims on such accounts. This amendment was not intended to apply to loan recordkeeping requirements of an insured institution or its service corporations but only to insurance

account coverage and settlement of insurance claims on trust accounts. The Board wishes to state that insured institutions should continue to require the signature card as a recordkeeping provision for purposes of its loan records. By its action today, the Board removes the reference to the deletion of the signature card requirement for trust accounts in 12 CFR 563.17–1(c) and corrects other typographical errors contained in 12 CFR Part 563.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of these corrective amendments, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.17–1 by revising paragraph (c)(8) to read as follows:

§ 563.17–1 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * * *

(c) *Establishment and maintenance of records.* * * *

(8) *Records with respect to insured accounts.* The records of an insured institution with respect to each withdrawable or repurchasable share, investment certificate, deposit, or savings account it issues shall include the signature of the owner of such account of the duly authorized representative of such owner, together with a record reflecting the balance in such account.

* * * * * *

3. Amend § 563.22 by revising the first two sentences of paragraph (e)(1)(xii) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * * *

(e)(1) * * *

(xii) The resulting association's (other than an association that is neither insured by the Corporation nor chartered by the Board) regulatory capital would not at least equal the amount required under the Board's regulatory capital requirements. (Where the resulting association's accounts are insured by the Federal Deposit Insurance Corporation, its regulatory capital would not at least equal the required amount under the capital requirements of the Federal Deposit Insurance Corporation.) * * *

* * * * * *

4. Amend § 563.31 by revising paragraph (b)(1) to read as follows:

§ 563.31 Other insurance or guaranty.

* * * * *

(b) *Exceptions.* * * *

(1) A Federal association may give bond or security pursuant to §§ 545.16 and 545.103 of this chapter; and

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12604 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8206]

Income Tax; Taxable Years Beginning After December 31, 1953; Definition of a Qualified Business Unit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the definition of a qualified business unit. This regulation is intended to provide immediate guidance for taxpayers who must make income tax determinations for their QBUs for taxable years beginning after December 31, 1988. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Chip Collins of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–634–5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 989 of the Internal Revenue Code of 1986 defining the term "qualified business unit" (QBU). This section was added to the Code by section 1261 of the Tax Reform Act of 1986. In general, Subpart J of the Code (which includes section 989) provides rules for the tax treatment of foreign currency transactions for United States tax purposes. Certain foreign operations of a U.S. person or of a foreign corporation may have a functional currency other than the U.S. dollar if such operations satisfy the requirements for a qualified business unit within the meaning of section 989. There is a need for immediate guidance with respect to the provisions contained in this Treasury decision because the provisions of the Internal Revenue Code relating to foreign currency transactions (sections 985–989) are generally effective for tax years beginning after 1986. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Statutory Provision

Section 989(a) of the Code provides that a QBU is any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

Explanation of Temporary Regulations

Section 1.989(a)–1T(a) states the applicability of the definition of a QBU and provides that the effective date is for taxable years beginning after December 31, 1988.

Section 1.989(a)–1T(b) defines a "QBU." This section provides that every corporation is a QBU, but an individual is not. In addition, the activities of an individual or corporation will qualify as a QBU (separate from the individual or corporation itself) if such activities constitute a trade or business for which separate books and records are maintained. This section reserves the issue of the application of the QBU definition to partnerships, trusts, and estates.

Section 1.989(a)–1T(c) defines the term "trade or business." With respect to corporate activities, a trade or business is generally any specific unified group of activities that constitutes (or could constitute) an independent economic enterprise carried on for profit. This test also applies in determining whether an individual's activities constitute a trade or business, except that such activities must not generate expenses that are deductible only under section 212.

Section 1.989(a)–1T(d) defines the term "separate books and records." In general, separate books and records shall include books of original entry and ledger accounts, both general and subsidiary, or similar records.

Non-Applicability of Executive Order 12291

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is P. Ann Fisher of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C 7805. * * * Sections 1.989(1)–0T and 1.989(a)–1T also issued under 26 U.S.C. 989(c).

Par. 2. New §§ 1.989(a)–0T and 1.989(a)–1T are added immediately after § 1.861–3 to read as follows:

§ 1.989(a)–0T Outline of regulation (Temporary).

§ 1.989(a)–1T Definition of a Qualified Business Unit.

(a) Applicability.
(b) Definition of a qualified business unit.
(c) Trade or business.
(d) Separate books and records.
(e) Examples.

§ 1.989(a)–1T Definition of a Qualified Business Unit (Temporary).

(a) *Applicability*—(1) *In general.* This section provides rules relating to the definition of the term "qualified business unit" (QBU) within the meaning of section 989.

(2) *Effective date.* These rules shall apply to taxable years beginning after December 31, 1988.

(b) *Definition of a qualified business unit*—(1) *In general.* A QBU is any separate and clearly identified unit of a trade or business of a taxpayer provided that separate books and records are maintained.

(2) *Applicability of the QBU definition to corporations*—(i) *A corporation.* A corporation itself is a QBU.

(ii) *Activities of a corporation.* Activities of a corporation qualify as a QBU of a corporation (separate from the QBU described in subparagraph (2)(i)) if—

(A) The activities constitute a trade or business as defined in paragraph (c)(1) of this section; and

(B) A complete and separate set of books and records described in paragraph (d) of this section is maintained with respect to the activities.

(3) *Application of the QBU definition to individuals*—(i) *An individual.* An individual is not a QBU.

(ii) *Activities of an individual.* Activities of an individual qualify as a QBU of the individual if—

(A) The activities constitute a trade or business as defined in paragraph (c)(2) of this section; and

(B) A complete and separate set of books and records described in paragraph (d) of this section is maintained with respect to the activities.

(4) *Application of the QBU definition to partnerships, trusts, and estates.* [RESERVED]

(c) *Trade or business*—(1) *In general.* The determination as to whether the activities of a taxpayer constitute a trade or business is ultimately dependent upon an examination of all the facts and circumstances. Generally, a trade or business is a specific unified group of activities that constitutes (or could constitute) an independent economic enterprise carried on for profit. To constitute a trade or business, a group of activities must ordinarily include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. Such group of activities must ordinarily include the collection of income and the payment of expenses. It is not necessary that the activities carried out by a QBU constitute a different trade or business than those carried out by other QBUs of the taxpayer. A vertical, functional, or geographic division of the same trade or business may be a trade or business for this purpose provided that the activities otherwise qualify as a trade or business under the paragraph (c)(1). However, activities that are merely ancillary to a trade or business will not constitute a trade or business under this paragraph (c)(1).

(2) *Special rules for individuals.* In determining whether the activities of an individual constitute a trade or business, the provisions of paragraph (c)(1) of this section apply, except that any activities that give rise to expenses that are deductible only under section 212 do not constitute by themselves a trade or business for purposes of this section. Activities of an individual as an employee are not considered to constitute a trade or business of the individual.

(d) *Separate books and records.* In order to be considered a QBU, a complete and separate set of books and records must be maintained. Such set of books and records shall include books of original entry and ledger accounts, both general and subsidiary, or similar records. For example, in the case of a taxpayer using the cash receipts and disbursements method of accounting, the books of original entry include a cash receipts and disbursements journal where each receipt and each disbursement is recorded. Similarly, in the case of a taxpayer using an accrual method of accounting, the books of original entry include a journal to record

sales (accounts receivable) and a journal to record expenses incurred (accounts payable). In general, a journal represents a chronological account of all transactions entered into by an entity for an accounting period. A ledger account, on the other hand, chronicles the impact during an accounting period of the specific transactions recorded in the journal for that period upon the various items shown on the entity's balance sheet (*i.e.*, assets, liabilities, capital accounts) and income statement (*i.e.*, revenues and expenses).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation X is a domestic corporation. Corporation X manufactures widgets in the U.S. for export. Corporation X sells widgets in the United Kingdom through a branch office in London. The London office has its own employees and solicits and processes orders. Corporation X maintains in the U.S. a separate set of books and records for all transactions conducted by the London office. Corporation X is a QBU under paragraph (b)(2)(i) of this section because of its corporate status. The London branch office is a QBU under paragraph (b)(2)(ii) of this section because (1) the sale of widgets is a trade or business as defined in paragraph (c)(1) of this section; and (2) a complete and separate set of books and records (as described in paragraph (d) of this section) is maintained with respect to its sales operations.

Example (2). A domestic corporation incorporates a wholly-owned subsidiary in Switzerland. The domestic corporation is a manufacturer that markets its product abroad primarily through the Swiss subsidiary. To facilitate sales of the parent's product in Europe, the Swiss subsidiary has branch offices in France and West Germany that are responsible for all marketing operations in those countries. Each branch has its own employees, solicits and processes orders, and maintains a separate set of books and records. The domestic corporation and the Swiss subsidiary are both QBUs under paragraph (b)(2)(i) of this section because of their corporate status. The French and West German branches are QBUs of the Swiss subsidiary. They satisfy paragraph (b)(2)(ii) because each constitutes a trade or business (as defined in paragraph (c)(1) of this section) and because a complete and separate sets of books and records (as described in paragraph (d) of this section) of their respective operations is maintained. Each branch is considered to have a trade or business although each is a geographical division of the same trade or business.

Example (3). W is a domestic corporation that manufactures product X in the United States for sale worldwide. All of W's sales functions are conducted exclusively in the United States. W employs individual Q to work in France. Q's sole function is to act as a courier to deliver sales documents to customers in France. With respect to Q's activities in France, a separate set of books and records as described in paragraph (d) is maintained. Under paragraph (c)(1) of this section, Q's activities in France do not constitute a QBU since they are merely ancillary to W's manufacturing and selling business. Q is not considered to have a QBU because an individual's activities as an employee are not considered to constitute a trade or business of the individual under paragraph (c)(2).

Example (4). The facts are the same as in example (3) except that the courier function is the sole activity of a wholly-owned French subsidiary of W. Under paragraph (b)(2)(i) of this section, the French subsidiary is considered to be a QBU.

Example (5). A corporation incorporated in the Netherlands is a subsidiary of a domestic corporation and a holding company for the stock of one or more subsidiaries incorporated in other countries. The Dutch corporation's activities are limited to paying its directors and its administrative expenses, receiving capital contributions from its United States parent corporation, contributing capital to its subsidiaries, receiving dividend distributions from its subsidiaries, and distributing dividends to its domestic parent corporation. Under paragraph (b)(2)(i) of this section, the Netherlands corporation is considered to be a QBU.

Example (6). Taxpayer A, an individual resident of the United States, is engaged in a trade or business wholly unrelated to any type of investment activity. A maintains a portfolio of foreign-currency-denominated investments through a foreign broker. The broker is responsible for all activities necessary to the management of A's investments and maintains books and records as described in paragraph (d) of this section, with respect to all investment activities of A. A's investment activities do not qualify as a QBU under paragraph (b)(3)(ii) of this section because the activities engaged in by A generate expenses that are deductible only under section 212 and, therefore, do not constitute a trade or business of A under paragraph (c)(2) of this section.

Example (7). Taxpayer A, an individual resident of the United States, is the sole shareholder of foreign corporation (FC) whose activities are limited to trading in stocks and securities. FC is a QBU under paragraph (b)(2)(i) of this section.

Example (8). Taxpayer A, an individual resident of the United States, markets and sells in Spain and in the United States various products produced by other United States manufacturers. A has an office and employs a salesman to manage A's activities in Spain. A keeps a complete and separate set of books and records (as described in paragraph (d) of this section) of A's activities in Spain and is engaged in a trade or business as defined in paragraph (c)(2) of this section. Therefore, under paragraph (b)(3) of this section, the activities of A in Spain are considered to be a QBU.

Example (9). Foreign corporation FX is incorporated in Mexico and is wholly owned by a domestic corporation. The domestic corporation elects to treat FX as a domestic corporation under section 1504(d). FX operates entirely in Mexico and maintains a complete set of books and records with respect to its activities in Mexico. FX is a QBU under paragraph (b)(2)(i) of this section. The activities of FX in Mexico also constitute a QBU under paragraph (b)(2)(ii) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: O. Donaldson Chapoton, Assistant Secretary of the Treasury, April 22, 1988.

[FR Doc. 88-12558 Filed 6-3-88; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8207]

Income Tax; Taxable Years Beginning After December 31, 1953; Transition Rules for Certain Qualified Business Units Using a Net Worth Method of Accounting for Tax Years Beginning Before January 1, 1987

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), which used a net worth method of accounting prior to the enactment of the Tax Reform Act of 1986. This regulation is intended to provide immediate guidance for taxpayers who must change from a net worth method of accounting to the profit and loss method of accounting for taxable years beginning after December 31, 1986. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL-984-86) (202-634-5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to procedures to be followed by branches of United States persons, *i.e.* qualified business units (QBUs), using a net worth method of accounting prior to the enactment of Subpart J of the Internal Revenue Code of 1986. The Secretary is empowered to prescribe such regulations under Section 989(c)(1) of the Internal Revenue Code (26 U.S.C. 989) as enacted by section 1261(a) of the Tax Reform Act of 1986 (Pub. L. 99-514). New §§ 1.989 (c)-0T and 1.989(c)-1T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations in order to provide immediate guidance as to the transition rules for branches that used a net worth method of accounting under old law and will remain in effect until superseded by final regulations on this subject. Immediate guidance is needed by taxpayers who will report under the profit and loss method under section 987 for a taxable year beginning in 1987. For this reason it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Explanation of Provisions

Section 987 of the Internal Revenue Code of 1986 provides that QBUs that have a functional currency other than the U.S. dollar must account for their operations under the profit and loss method set forth in section 987 and regulations thereunder. Prior to the Tax Reform Act of 1986, foreign branches of U.S. corporations could account for their operations under either a similar nonstatutory profit and loss method of accounting or a net worth method of accounting. Section 989(c)(1) of the Internal Revenue Code provides that the Secretary shall set forth procedures to be followed by taxpayers with QBUs using the net worth method for tax years beginning on or before December 31, 1986.

Under the net worth method presented in Rev. Rul. 75-106, 1975-1 C.B. 31, a taxpayer calculated the taxable income of a foreign branch by comparing the change in the dollar value of its net assets (assets less liabilities) over the course of a year. In general, the foreign currency value of current assets and current liabilities was translated into U.S. dollars using the year-end exchange rate, while the foreign currency value of noncurrent assets and liabilities was translated into dollars using the appropriate historical exchange rates. Thus, under the net worth method, branches adjusted their income currently for unrealized foreign currency gain or loss on their current assets and liabilities and realized exchange gains and losses on their long term assets and liabilities.

Under section 987, however, unrecognized currency gains or losses of QBUs that have a functional currency other than the U.S. dollar will now be deferred until a remittance of property. Thus, it is important to ensure that branches on a net worth method, which were permitted to accrue realized and certain unrealized currency gains or losses under old law prior to remittance, do not recognize the same exchange gain or loss again when property is remitted from the branch. In addition, it is important to ensure that any unrecognized currency gains or losses may be taken into income on remittances of property from the branch.

These rules achieve these objectives by establishing a dollar basis for remittances in excess of post-86 earnings (*i.e.* pre-87 earnings and all capital contributions (EQ)). The dollar basis reflects the dollar net worth of the QBU at the end of the last tax year beginning on or before December 31, 1986 (final dollar net worth) plus any other capital contributions. Upon a remittance of EQ, a portion of this dollar basis is deemed remitted and currency gain or loss on the remittance is determined. Since the dollar basis of the EQ has been adjusted for currency gains or losses previously recognized at the QBU, double counting of previously recognized currency gains or losses upon remittance is avoided. Further, the inclusion of historic dollar basis of noncurrent assets and liabilities in the calculation of the QBU's final dollar net worth ensures that currency gains or losses on noncurrent assets and liabilities, unrealized prior to the transition and therefore still included in the historical basis, may be taken into income on remittances of property from the branch.

The Service is especially interested in receiving comments concerning methods for calculating remittances from foreign branches under section 987 that would permit the calculation of currency gain or loss with respect to remittances on an aggregate basis. The Service is also interested in receiving comments as to whether branch equity should be deemed remitted on a transfer of branch assets and liabilities in a transaction in which gain or loss would not otherwise be recognized.

These rules also clarify how a net worth branch should calculate the functional currency adjusted basis of branch assets and the amount of branch liabilities for purposes of determining gain or loss on disposition or adjustment in basis. The post-transition functional currency adjusted basis of such assets is their historical functional currency basis. Similarly, the post-transition amount of such liabilities is their historical functional currency amount.

Thus, for purposes of determining income under section 987, the correct adjusted basis for depreciable assets held by a branch on a net worth method under old law will ordinarily be the original functional currency basis of the asset as adjusted for depreciation since its acquisition, regardless of when the assets were acquired. While the net effect of this rule is to increase or decrease the dollar value of depreciation on these assets in post-transition years, this rule places branches that formerly used the net worth method on the same footing as branches who have always used a version of the profit and loss method in computing income.

Section 1.989(c)-0T sets forth the outline of this section. Section 1.989(c)-1T sets forth the transition rules. Paragraph (a) sets forth the applicability of this section. Paragraph (b) provides rules for: (1) determining the functional currency pool of EQ; (2) determining the correct dollar basis of EQ; (3) determining the pool from which a remittance is drawn; (4) calculating the dollar basis of a remittance of EQ; and (5) calculating the exchange gain or loss on a remittance of EQ. Paragraph (c) provides the adjusted basis rule for assets of a foreign branch that formerly used the net worth method. Paragraph (d) provides the rule for the functional currency amount of liabilities of a foreign branch that formerly used a net worth method. Paragraph (e) provides rules about the character and source of exchange gain or loss determined upon remittance. Finally, paragraph (f) provides an example of the foregoing rules.

Non-Applicability of Executive Order 12291

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is David Rosenberg of the Office of Associate Chief Counsel (International) of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of Income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.989(c)–0T and 1.989(c)–1T are also issued under 26 U.S.C. 989(c).

Par. 2. New §§ 1.989(c)–0T and 1.989(c)–1T are added immediately after § 1.861–3 to read as follows:

§ 1.989 (c)-0T Outline of regulation (temporary).

(a) Applicability.
(b) Transition rule.
(c) Functional currency basis of branch assets acquired in tax years beginning before January 1, 1987.
(d) Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.
(e) Character and source of exchange gain or loss determined upon remittance.
(f) Example.

§ 1.989 (c)-1T Transition rules for certain branches of United States persons using a net worth method of accounting for taxable years beginning before January 1, 1987 (temporary).

(a) *Applicability*—(1) *In general.* This regulation provides transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), whose functional currency (as defined in section 985 of the Code and regulations issued thereunder) is other than the dollar and that used a net worth method of accounting (as described in paragraph (b) of this section) for their last taxable year beginning before January 1, 1987. Under section 987 of the Code and regulations issued thereunder, such QBUs must account for their taxable income under the profit and loss method of accounting for all taxable years beginning after December 31, 1986, except to the extent otherwise provided in regulations issued.

(2) *Insolvent QBUs.* This section shall not apply to a QBU that used a net worth method of accounting for its last taxable year beginning before January 1, 1987 whose final net worth (as defined in paragraph (b)(2) of this section) is negative.

(3) *Taxpayers electing to use the dollar as their functional currency under section 985 (b)(3).* This section shall not apply to a taxpayer that makes the election to use the dollar as its functional currency under section 985(b)(3) and regulations issued thereunder. Transition rules for such situations will be provided in regulations under section 985.

(b) *Transition rule.* This transition rule sets forth rules for calculating exchange gain or loss on a remittance (as defined in section 987 and regulations issued thereunder) that occurs in a taxable year beginning after December 31, 1986, from a QBU that was on a net worth method of accounting for the taxpayer's last taxable year beginning before January 1, 1987. A net worth method of accounting is any method of accounting under which the taxpayer calculates the taxable income of a QBU based on the net change in the dollar value of the QBU's equity over the course of a taxable year, taking into account any remittances made during the year. QBU equity is the excess of QBU assets over QBU liabilities. Under section 987, exchange gain or loss is determined on a remittance of post-86 QBU earnings (which are the previously unremitted earnings of the QBU, as adjusted according to United States generally accepted accounting and tax accounting principles) for taxable years beginning on or after January 1, 1987. Exchange gain or loss is also determined on a remittance in excess of post-86 QBU earnings. In order to calculate the exchange gain or loss occurring on such remittances the taxpayer assigns its unremitted QBU earnings and capital to two pools, one pool consisting of post-86 QBU earnings and the other pool consisting of the sum of pre-87 equity (earnings and capital) and post-86 capital (hereinafter referred to as the EQ pool). A remittance first represents an amount of post-86 QBU earnings and secondly an amount of EQ. This transition rule provides a 5-step method for calculating exchange gain or loss upon a remittance from these pools. The exchange gain or loss is determined by comparing the current dollar value of the remittance to the historical dollar basis of the remittance as determined under this transition rule and section 987 and regulations issued thereunder. Such exchange gain or loss shall be considered realized in the taxable year of the remittance and shall be recognized except to the extent otherwise provided in regulations.

(1) *Step 1 Calculating the functional currency pool of EQ*—(i) *Beginning amount.* The beginning pool of EQ is equal to the functional currency adjusted basis of the branch's assets less the functional currency amount of the branch's liabilities as these amounts are determined under paragraphs (c) and (d) of this section.

(ii) *Adjusting the EQ pool.* The EQ pool is increased by the functional currency amount of any capital contributions (as determined under section 987 and regulations issued thereunder). If the capital contribution is made in a nonfunctional currency, this amount is translated into functional currency at the spot rate at the date of the contribution. Upon a remittance representing EQ (as determined by the ordering rules in paragraph (b)(3) of this section), the pool is decreased by the functional currency amount considered remitted from the pool under section 987 and regulations issued thereunder.

(2) *Step 2 Calculating the dollar pool of equity*—(i) *Beginning value.* The dollar equity pool (hereinafter referred to as the $E pool) equals the final net worth of the QBU. Final net worth of the QBU equals the QBU's equity value (assets less liabilities) measured in dollars at the end of the taxpayer's last taxable year beginning before January 1, 1987, determined on the basis of the QBU's books and records as adjusted according to United States generally accepted accounting and tax accounting principles.

(ii) *Adjusting the $E pool.* The $E pool is increased by the dollar amount of any capital contributions (as determined under section 987 and regulations issued thereunder). If the capital contribution is made in a currency other than the dollar, this amount is translated into dollars at the spot rate at the date of the contribution. Upon a remittance representing $E (as determined by the ordering rules in paragraph (b)(3) of this section), the $E pool is decreased by the dollar amount considered remitted from the pool (as determined under paragraph (b)(4) of this section).

(3) *Step 3 Determination of the pools from which remittances are drawn.* To the extent the functional currency amount of the remittance (as determined under section 987 and regulations issued thereunder) exceeds unremitted post-86

functional currency earnings, it is considered to come out of the EQ pool (as determined under paragraph (b)(1) of this section).

(4) *Step 4 Calculation of the dollar basis of a remittance of EQ.* The dollar basis of the EQ remitted equals:

$$\frac{\text{functional currency amount remitted from EQ}}{\text{EQ}} \times \$E$$

Where:
EQ = the QBU's functional currency pool of branch equity (determined under paragraph (b)(1)(ii) but not reduced by any remittance in the current taxable year)
$E = the QBU's dollar pool of branch equity (determined under paragraph (b)(2)(ii) but not reduced by any remittance in the current taxable year)

(5) *Step 5 Calculation of the exchange gain or loss on the remittance of EQ.* The exchange gain or loss determined on the remittance of EQ equals—

(i) The dollar value of the EQ remitted (as determined under section 987 and regulations issued thereunder), less

(ii) The dollar basis of the EQ remitted as calculated under paragraph (b)(4) of this section.

(c) *Functional currency adjusted basis of branch assets acquired in taxable years beginning before January 1, 1987.* (1) For taxable years beginning after December 31, 1986, the functional currency adjusted basis of a QBU asset acquired in a taxable year beginning before January 1, 1987 is the functional currency basis of the asset at the date of acquisition as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency adjusted basis of an asset for which a functional currency basis was not determined at the date of acquisition is the nonfunctional currency adjusted basis of the asset at the date of acquisition multiplied by the spot exchange rate at the date of acquisition, as adjusted according to United States generally accepted accounting and tax accounting principles.

(2) Any future adjustments to the functional currency adjusted basis of such assets is determined with respect to the appropriate functional currency adjusted basis of the asset as determined under this paragraph (c).

(d) *Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.* For the first taxable year beginning after December 31, 1986, the amount of QBU liabilities incurred in taxable years beginning before January 1, 1987 is the functional currency amount of the liability at the date incurred as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency amount of a liability for which a functional currency amount was not determined at the date incurred is the nonfunctional currency amount of the liability at the date incurred multiplied by the spot exchange rate at the date incurred, as adjusted according to United States Generally accepted accounting and tax accounting principles.

(e) *Character and source of exchange gain or loss determined on a remittance.* Any exchange gain or loss determined on a remittance is sourced and characterized as provided by section 987 and regulations issued thereunder.

(f) *Example.* The provisions of this section are illustrated by the following example.

Example. (i) *Facts.* U.S. is a domestic corporation. B, a branch of U.S., operates in country X. B is a QBU and its functional currency is the FC. U.S. is on a calendar taxable year and, prior to January 1, 1987, accounted for the operations of B by the net worth method of accounting as set forth in Rev. Rul. 75–106, 1975–1 C.B. 31. B's books and records were kept according to United States tax accounting principles. B's functional currency net worth as of December 31, 1986 (beginning pool of EQ) is 15,000 FC. B's dollar final net worth as of December 31, 1986 (beginning pool of $E) is $9,000. Under section 987, B has earnings of 8,000 FC in 1987 worth $1,000. B has no earnings and incurs no loss in 1988. There are no contributions to branch capital in 1987 and 1988. B remits 18,000 FC in 1988. Under section 987, the appropriate exchange rate for the 1988 remittance is 10 FC/$1.

(ii) *Calculation of exchange gain or loss on remittance.*

A. *Post-86 earnings.*

Under paragraph (b)(3) of this section, the 18,000 FC remittance comes first out of post-86 earnings (8,000 FC) and second out of EQ (10,000 FC). The loss of the 1988 remittance of post-86 earnings equals:

(Dollar value of post-86 earnings)—(Dollar basis of post-86 earnings)
=(8,000 FC x 10 FC/$1)—$1,000
=$800—$1,000
=<$200> loss

B. *EQ.*

Under paragraph (b) of this section, U.S. will calculate exchange gain or loss on the 10,000 FC remittance of EQ from B.

Step 1. Total EQ equals 15,000 FC (the historic functional currency value of B's assets over the historic functional currency value of its liabilities). There are no adjustments necessary under paragraph (b)(1)(ii) of this section.

Step 2. $E (final net worth) is $9,000. There are no adjustments necessary under paragraph (b)(2)(ii) of this section.

Step 3. The entire 10,000 FC remittance is deemed to come out of EQ.

Step 4. The dollar basis of the EQ equals:

Dollar basis of EQ remitted
=N x $9,000

$$= \frac{10{,}000\ \text{FC}}{15{,}000\ \text{FC}} \times \$9{,}000$$

=$6,000

Where:
N=*Portion of remittance out of EQ* Total EQ (determined under paragraph (b)(1)(ii) but not reduced by current year remittances)

Step 5. Exchange loss of U.S. on remittance equals:

(Dollar value of the EQ remitted)—(Dollar basis of the EQ remitted)
=(10,000 FC X 10 FC/$1)—$6,000
=$1,000—$6,000
=<$5,000> loss

C. *Total loss of remittance.* The total combined loss of the remittance is <$5,200>.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved:

April 22, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88–12560 Filed 6–3–88; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–88–01]

Anchorage Ground; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending Anchorage 7 in San Francisco Bay by moving the southeastern corner of the anchorage 230 yards to the north. The shifting of the boundary will prevent damage from anchoring vessels to an existing submarine power cable and a newly installed fiber optic telecommunications cable. This will reduce the southern reaches of the anchorage in the shallow waters off Treasure Island.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone number: (213) 499–5410.

SUPPLEMENTARY INFORMATION: On March 17, 1988 the Coast Guard

published a notice of proposed rule making in the Federal Register for these regulations (52 FR 8773). Interested persons were requested to submit comments and no comments were received.

Discussion of Comments: No comments were received. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Drafting Information: The drafters of these regulations are Lieutenant Junior Grade Michael Lodge, project officer, and Lieutenant G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These regulations will have minor impact because the small area being deleted is seldom used due to limited depth of water.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 741, 2030, 2035, and 2071; 49 CFR 1.46(c) and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.224(e)(4) is revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e) * * *

(4) *Anchorage No. 7, Treasure Island.* In San Francisco Bay at Treasure Island bounded a line connecting the following coordinates:

Latitude	Longitude
37°49'36" N.,	122°22'46" W; to
37°50'09" N.,	122°22'57" W; to
37°50'09" N.,	122°23'44" W; to
37°49'22.5" N.,	122°23'44" W; to
37°49'40.5" N.,	122°22'36" W; to
37°49'36.6" N.,	122°22'16" W; thence along the shore to
37°49'36" N.,	122°22'46" W.

* * * * *

Dated: May 16, 1988.

A.B. Beran,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88-12687 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 13

Fiduciary Activities; Investments by Legal Custodians; Estates $1,500; Determination of Value of Estate

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) is amending its regulations to allow a Federally appointed fiduciary to purchase a pre-need burial arrangement for an incompetent VA beneficiary, thus providing the beneficiary with a decent burial; and, exempt the value of the veteran's burial arrangement and the value of the veteran's home from the provisions of 38 U.S.C. 3202(b) while the veteran is hospitalized. Certain technical amendments are also incorporated.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: William Seliski, Program Analyst, Investigation and Compliance Staff, Veterans Assistance Service (273), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-2691.

SUPPLEMENTARY INFORMATION: On pages 33245-33250 of the Federal Register of September 2, 1987, the VA published proposed amendments to 38 CFR 13.103, 13.108 and 13.109. Interested persons were given until October 16, 1987, to submit comments, suggestions or objections to the proposed amendments. No comments, suggestions or objections were received. Accordingly, the proposed amendments are adopted.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), these regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulatory amendments impose no regulatory burdens on small entities, and only claimants for VA benefits and their dependents will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are nonmajor for the following reasons: (1) They will not have an effect on the economy of $100 million or more; (2) they will not cause a major increase in costs or prices; (3) they will not have significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

There is no Catalog of Federal Domestic Assistance Program number.

These regulatory amendments contain no information collection requirements.

List of Subjects in 38 CFR Part 13

Administration practices and procedures, Estates, Fraud, Handicapped, Infants and children, Investigations, Investments, Surety bonds, Trusts and trustees, Veterans.

Approved: May 11, 1988.

Thomas K. Turnage,

Administrator.

PART 13—[AMENDED]

38 CFR Part 13, FIDUCIARY ACTIVITIES, is amended as follows:

§§ 13.77, 13.101, 13.105, and 13.106 [Amended]

1. Add the citation "(Authority: 38 U.S.C. 210)" at the end of each section.

§ 13.100 [Amended]

2. Add the citation "(Authority: 38 U.S.C. 3202)" at the end of paragraphs (a) and (c); add the citation "(Authority: 38 U.S.C. 210)" at the end of paragraph (b); and add the citation "(Authority: 38 U.S.C. 3501)" at the end of paragraph (d).

3. In § 13.102, paragraph (a) is revised and a citation is added at the end of the section to read as follows:

§ 13.102 Accountability of legal custodians.

(a) *Institutionalized veterans without spouse or child.* The legal custodian of VA benefits of an incompetent veteran who has neither spouse nor child and who is being furnished hospital treatment or institutional or domiciliary care by the United States or a political subdivision thereof, will account upon

request to the VA for funds received from the VA for the beneficiary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

* * * * *

(Authority: 38 U.S.C. 210)

4. Section 13.103 is revised to read as follows:

§ 13.103 Investments by Federal fiduciaries.

(a) *Type authorized.* VA benefits paid to a Federally appointed fiduciary other than a spouse payee or an institutional award payee may be invested only in United States savings bonds, or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Veterans Administration benefits that are paid on behalf of an incompetent veteran to an institution via an institutional award payment arrangement may not be invested.

(b) *Registration.* (1) When funds are invested in bonds, the bonds will be registered in this form: (Beneficiary's Name), (Social Security No.), under custodianship by designation of the Veterans Administration.

(2) When funds are invested in interest or dividend-paying accounts in State or Federally insured institutions, the account will be registered in this form: (Beneficiary's name), by (Fiduciary's Name), Federal fiduciary.

(c) *Pre-need burial arrangements.* Federally appointed fiduciaries, other than institutional award payees, may use a beneficiary's funds derived from VA benefits to make deposits into, or purchase, a pre-need burial plan or burial insurance on behalf of the beneficiary, if to do so is in the beneficiary's interest.

(Authority: 38 U.S.C. 210)

§ 13.107 [Amended]

5. Add the citation "(Authority: 38 U.S.C. 3203(b)(3))" at the end of the section.

6. Section 13.108 is revised to read as follows:

§ 13.108 Estate $1,500; 38 U.S.C. 3203(b)(1).

(a) *Discontinuance of payments.* When a veteran, rated incompetent by the VA, without spouse or child, is receiving hospital treatment or domiciliary or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds $1,500, the Veterans Services Officer shall, with regard to those estates monitored by the Veterans Services Officer, immediately notify the Adjudication Division so that VA payments, other than insurance, may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the Veterans Services Officer shall, when the estate has been reduced to $500, immediately notify the Adjudication Division of that fact.

(b) *Waiver of discontinuance.* The Veterans Services Officer shall assist in those cases under the Veterans Services Officer's supervision in determining when discontinuance should be waived for one or more periods not to exceed 60 days of the veteran's care during any calendar year by making an appropriate recommendation.

(1) The Veterans Services Officer should not recommend waiver as an administrative expediency but should recommend waiver when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority: 38 U.S.C. 3203(b)(1)(A))

(c) *Apportionment to dependent parent; care and maintenance award.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate exceeds $1,500, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based on actual need as determined by the Veterans Services Officer. So much of any monthly remainder of the discontinued payments as equals the amount charged to the veterans for his or her current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Veterans Services Officer to be the proper charge as fixed by statute or administrative regulation, may be paid to the institution. The Veterans Services Officer shall recommend to the Adjudication Division the amount of either award.

(Authority: 38 U.S.C. 3203(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

(Authority: 38 U.S.C. 210)

7. In § 13.109, the section heading is revised and paragraphs (d)(5), (6) and (7) are added to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 3203(b)(1)(A).

* * * * *

(d) * * *

(5) The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran's burial plot will be likewise excluded.

(7) Amounts withheld under § 3.551(b) of this title.

(Authority: 38 U.S.C. 210)

[FR Doc. 88-12612 Filed 6-3-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 87-015a]

Delegation of Authority to Measure Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing the criteria necessary for an organization to qualify as a delegate to formally measure U.S. commercial, recreational, and public non-combatant vessels. This rulemaking implements the statutory provision authorizing the Coast Guard to delegate measurement functions, yet ensures high quality service to the maritime industry.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph T. Lewis, Tonnage Survey Branch, (202) 267-2992.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Transportation (Coast Guard) is authorized by statute (46 U.S.C. 14103) to delegate to a "qualified person" the authority to measure, and to issue certificates of measurement for, vessels that are required or eligible to be documented as a vessel of the United States. The Coast Guard published a

Final Rule (52 FR 15947; May 1, 1987) which delegated to the American Bureau of Shipping (ABS) the authority to perform U.S. formal tonnage measurement services for commercial, recreational, and public non-combatant vessels. In the preamble to that rule, the Coast Guard indicated its intention to extend this delegation to other qualified organizations once it had established criteria for eligibility.

On December 4, 1987, the Coast Guard published a Notice of Proposed Rulemaking (52 FR 46103) to develop criteria for eligibility. Comments were received from three international ship classification societies, three marine trade associations, four shipbuilders, five shipping companies, five naval architects, five tonnage surveyors, two maritime unions, and one U.S. Senator. A public hearing was not requested and one was not held.

Because this final rule is administrative in nature and concerns only matters of agency organization and procedure, it is being made effective in less than 30 days after publication in the Federal Register. This rule merely establishes criteria for delegating an existing function to other organizations without substantively changing the function. Because this rule has no substantive effect, good cause exists for making it effective in less than 30 days after publication, under 5 U.S.C. 553(d).

Drafting Information

The principal persons involved in drafting this rule are Mr. Joseph T. Lewis, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background

Vessels that measure five net tons or greater are either required or eligible to be documented as a vessel of the United States. Before a vessel may be documented, it first must be measured to establish its tonnage. Traditionally, vessel measurement has been exclusively a governmental service and was provided free of charge. However, with the passage of Pub. L. 99–509, the Coast Guard is authorized to charge a fee for measurement services or, if it chooses, to delegate measurement authority to the private sector. On May 1, 1987 (52 FR 15947), the Coast Guard delegated this authority to the American Bureau of Shipping with the proviso that the Coast Guard would develop criteria for delegation to other similar organizations. This rulemaking establishes those criteria.

This delegation is in keeping with the Coast Guard's policy to discontinue its formal tonnage measurement services for U.S. commercial, recreational, and public non-combatant vessels and to transfer these services entirely to qualified private measurement organizations. Delegation of authority to additional organizations should assure optimum responsiveness to the public and enhance competition in the marketplace, while continued oversight by the Coast Guard should ensure correct and consistent application of measurement laws and regulations.

Discussion of Comments

The major areas of concern raised by the comments are as follows:

(1) *Varying interpretation of laws and regulations by the organizations.* Several comments suggest that further delegation would increase the likelihood of varying interpretations of the measurement laws and regulations by the delegates and that the Coast Guard would be unable to ensure consistency. By limiting delegation to those within a small pool of large organizations recognized internationally for competency in the field, by retaining oversight authority, by requiring contractually that delegates comply with and apply tonnage measurement laws and regulations (§ 69.01–20(d)(4)(vi)), by having the right to terminate a delegation at any time by simply giving written notice (46 U.S.C. 14103(d)), and by requiring all appeals be routed directly to the Commandant (46 CFR 69.01–17(b)), this program should provide an adequate framework for assuring compliance by, and controlling consistency among, delegates.

Finally, one comment questioned why delegates could not limit their services to Tonnage Convention measurement. The Coast Guard's intention in establishing delegation criteria is to assure that each delegate will provide the full range of tonnage measurement services perviously provided by the Coast Guard. Though Convention measurement business is attractive to organizations engaged in vessel classification, delegates also must be ready and willing to respond to the needs of smaller vessels that are not intended to be classed.

(2) *Competition resulting from further delegation.* One comment suggests that competition would encourage measurement organizations to focus on cost, rather than quality of services. However, quality does not arise from the absence of competition but from Coast Guard oversight and control. It is the responsibility of the Coast Guard to ensure that the measurement laws and regulations are being observed and applied correctly and consistently by its delegates. If competition produces lower fees, as suggested by the comment, this result should be considered a benefit of the delegation program.

One comment suggests that competition would result in an increase, rather than decrease, in costs to clients but offers no justification for this position. There is no indication that costs will increase with further delegation. In fact, the greater availability of service provided by further delegation should reduce costs.

Two comments stated that more delegates would mean more appeals to the Commandant by vessel owners displeased with the decisions of measurement organizations. Actually, the number of appeals under the Coast Guard's current delegation program is lower than it was before delegation. Through close cooperation with, and equal dissemination of its interpretations and policies to, all delegates, the Coast Guard intends to maintain consistency and avert the need for appeal.

One comment states, without further elaboration, that competition will cause delays in vessel construction. The infrequent delays caused by measurement during construction typically result from changes needed to arrive at a desired tonnage and are not the product of delegation. Delays, if any, in finding an available admeasurer should be reduced by increasing the number of eligible admeasurers through further delegation.

Two comments suggest that the vessel population will be too small to realize noticeable benefits from competition. However, it is not the number of vessels but the number of organizations competing for their business that produces the benefits of competition. Even if the population is small, the intensity of competition for those few vessels should increase as the number of delegates increases. In any event, measurement and remeasurement requirements will increase significantly over the next few years. This is because all vessels 79 feet and longer engaged in international voyages that are not measured under the Tonnage Convention system will have to be measured under that system by 1994. Also, Coast Guard regulations presently under development (CGD–87–015(b)) will require that a vessel be measured under the Convention system but permits the vessel to be measured also under a regulatory system at the owner's discretion. Additional delegates will be able to handle these increasing demands.

One comment contends that competition would result in destructive bidding by vessel owners and encourage measurement organizations to sacrifice quality. Quality, however, is controlled by the Coast Guard, not the marketplace. The fact that owners may request bids from more than one organization is a beneficial element of the competitive process.

One comment states that, if the goal of this rulemaking is to "assure optimum responsiveness to the public and enhance competition in the marketplace," such a goal is not within the purview of government and is, therefore, outside the scope of this rulemaking. The goal of this rulemaking is to determine whether authority should be further delegated and, if so, to devise criteria for eligibility of delegates. Any impact further delegation may have, including its effect on responsiveness and competition, must be evaluated by the Coast Guard. These impacts are potential by-products of further delegation, not goals of this rulemaking.

Finally, some comments suggest that Congress intended for ABS, because of its special relationship with the Coast Guard, to have the exclusive authority to measure U.S. vessels. Public Law 99–509, which codified the loadline, as well as the tonnage measurement, legislation, provides delegation of loadline activities expressly "to the American Bureau of Shipping or other similarly qualified organizations" (46 U.S.C. 5107). However, the same legislation, with respect to tonnage measurement, avoids specific reference to ABS and simply authorizes delegation "to a qualified person" (46 U.S.C. 14103). "Qualified person," as defined in the legislative history (House Report No. 99–338), refers to ABS only as an example of an organization competent enough to qualify for a delegation. Though the Coast Guard has already delegated measurement authority to ABS, neither the act nor the legislative history indicates that ABS is the only qualified organization. ABS is referenced in the legislative history only as a guide to the Coast Guard in exercising its authority to delegate.

(3) *Increased Coast Guard costs.* Two comments contend that more delegates would require more oversight by the Coast Guard and result either in an increase in Coast Guard operating costs or a decrease in the quality of its oversight. As a result of its decision to delegate measurement functions, the Coast Guard significantly reduced operating costs by closing field offices, eliminating positions, and consolidating functions within its headquarters office. Unlike a general delegation to the private sector involving extensive and complex safety-related activities which requires intensive oversight and increases governmental costs, this delegation is limited solely to ministerial functions, the rules of which are well-defined in regulation, and which results in less intensive oversight on the behalf of the Coast Guard. Under this delegation program, no additional resources are required. This should ensure that long-term oversight costs will remain virtually the same regardless of the number of delegates, because oversight costs are keyed to the number of measurement transactions, not the number of delegates.

(4) *Threat to national security by delegation to foreign organizations.* Several comments express concern that delegation to a foreign-based organization could lead to a transfer of advanced maritime and military technology and information on our vessels, especially during time of war or political unrest. Considering that U.S. vessels are designed, built, and outfitted in many parts of the world, that some are classed by ABS-employed foreign nationals, that equipment and propulsion systems are advertised and marketed worldwide, and that vessel characteristics and construction techniques are discussed in global publications, there is already a wide dissemination of maritime technology and information. Dissemination of information on U.S. combatant vessels would have national security implications, but measurement of those vessels is not subject to delegation. Nevertheless, should a national security problem arise in relation to a delegate, the Coast Guard could terminate the delegation immediately.

(5) *Conflict of interest.* Several comments concern paragraph (d)(3), which, as proposed, would prohibit an organization from measuring and certifying a vessel if one of its employees or contractors acted as tonnage consultant on that vessel. They note that such a provision would force vessel owners unnecessarily to use more than one organization. One comment points out that the proposal is too broad and contends that the real conflict of interest concern arises when the same person, rather than organization, acts as both consultant and tonnage measurer. As this is the approach that was orginally intended, and as it conforms to that observed under the Memorandum of Agreement with ABS, paragraph (d)(3) is amended accordingly. The new provision prohibits an organization "from using an employee or contractor to measure and certify the tonnage of a vessel if that individual is acting or has acted as tonnage consultant for the same vessel". Under this amendment, the organization may use any of its other employees or contractors who had not acted as consultant on that vessel.

Several comments object to any prohibition whatsoever on the individual consultant/tonnage measurer. They state that prohibitions would reduce the number of much needed consultants and restrict the use of naval architects and former Coast Guard admeasurers, many of whom have years of much-needed experience in interpreting the tonnage measurement regulations. Though there is no intent on the part of the Coast Guard to limit the work of a tonnage consultant, the Coast Guard recognizes that, if it is going to delegate at all, it must take measures to avoid conflicts of interest. Otherwise, any delegation would be reasonably suspect. Therefore, the prohibition provision is retained.

(6) *Reciprocity.* ABS, in its comments, states that the regulations should require that the parent nation of a qualified organization provide for a similar delegation to ABS of that nation's authority to measure and certify its own vessels. If the nation fails to act, U.S. subsidiaries of that nation's organizations should not be eligible for delegation. Two other commenters, who support this rulemaking, also support the principal of reciprocity. The Coast Guard did not propose reciprocity in this rulemaking because it believes that it is not directly related to the criteria to establish qualifications of organizations that measure vessels. Because reciprocity was not identified as an issue in the Notice of Proposed Rulemaking, and received limited comment, the Coast Guard is not including a requirement for reciprocity in this final rule. The Coast Guard, nevertheless, will monitor this issue to determine whether future rulemaking may be warranted.

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary.

This rule is administrative in nature and establishes the criteria for the transfer of services from the Coast Guard to qualified private organizations without substantive change. Traditionally, the formal measurement functions being delegated were provided free of charge by the Coast Guard.

Public Law 99–509 now authorizes the Coast Guard to charge a fee for these services based upon actual costs to the Government or, if it chooses, to delegate to the private sector the authority to provide these services. Instead of handling these services itself and charging a fee, the Coast Guard has determined that it is in the best interests of the Government and the public to delegate this function to the private sector.

Based on fees charged by the current delegate, a typical cost for formal measurement and certification is approximately $700 for a vessel measuring less than 1,000 gross tons and $7,500 for a vessel measuring 50,000 gross tons. Tonnage measurement is usually a one-time expenditure and its costs represent a small proportion of the value of a vessel. These fees may be affected by further delegation.

The cost of preparing an application for delegation will vary from applicant to applicant but, in general, the information needed to complete an application is readily available within the applicant organization. The costs, therefore, for application preparation and information gathering are estimated to be less than $2,800 per application.

Regulatory Flexibility Act

This rule provides for the delegation of tonnage measurement by publishing qualifications that organizations must meet in order to be delegated this authority. No new application costs, burdens, or procedures will be imposed upon vessel owners. Organizations requesting measurement authority will be required to submit basic information to the Coast Guard relating to their capability to perform measurement services for the marine industry. Because eligible organizations have to provide worldwide services, they tend to be large corporations.

Because the impact of this rule is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection requirements. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section number and the corresponding OMB approval number is § 69.01–20—OMB Control No. 2115–0567.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and concludes that, under the categorical exclusion provision in section 2.B.2.1. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, an Environment Impact Statement, or a Finding of No Significant Impact for this rule is not required. This rule is an administrative and procedural regulation which clearly has no environmental impacts.

List of Subjects in 46 CFR Part 69

Measurement standards, Vessels.

For the reasons set forth in the preamble, the Coast Guard is amending 46 CFR Part 69 as follows:

PART 69—MEASUREMENT OF VESSELS

1. The authority citation to Part 69 continues to read as follows:

Authority: 46 U.S.C. 14102, 14103; 49 CFR 1.46; § 69.01–21 issued under 44 U.S.C. 3507, 49 CFR 1.45.

2. Section 69.01–20 is added to read as follows:

§ 69.01–20 Delegation of authority.

(a) Under 46 U.S.C. 14103 and 49 CFR 1.46, the Coast Guard is authorized to delegate to a "qualified person" the authority to measure vessels and to issue appropriate certificates of measurement for U.S. vessels that are required or eligible to be documented as vessels of the United States.

(b) Authority to perform formal tonnage measurement and certification of U.S. commercial, recreational, and public non-combatant vessels may be delegated to an organization that—

(1) Is a full member of the International Association of Classification Societies (IACS);

(2) Is incorporated under the laws of the United States, a State of the United States, or the District of Columbia;

(3) Is capable of providing all formal U.S. tonnage measurement services for vessels domestically and internationally;

(4) Maintains a tonnage measurement staff that has practical experience in measuring U.S. vessels under Coast Guard regulations and under the International Convention on Tonnage Measurement of Ships, 1969; and

(5) Enters into a Memorandum of Agreement, as described in paragraph (d) of this section.

(c) Applications for delegation of authority under this section must be forwarded to the Commandant, U.S. Coast Guard (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001 and include the following information on the organization:

(1) Its name and address.

(2) Its organizational rules and structure.

(3) The location of its offices that are available to provide formal measurement services under Coast Guard regulations or under the International Convention on Tonnage Measurement of Ships, 1969.

(4) The name, qualifications, experience, and job title of each full-time or part-time employee or independent contractor specifically designated by the organization to provide formal measurement services under Coast Guard regulations or under the International Convention on Tonnage Measurement of Ships, 1969.

(5) Its tonnage measurement training procedures.

(d) If, after reviewing the application, the Coast Guard determines that the organization is qualified to measure and certify U.S. vessels on behalf of the Coast Guard, the organization must enter into a Memorandum of Agreement with the Coast Guard which—

(1) Defines the procedures for administering and implementing the tonnage measurement and certification processes, including the roles and responsibilities of each party;

(2) Outlines the Coast Guard's oversight role;

(3) Prohibits the organization from using an employee or contractor of the organization to measure and certify the tonnage of a vessel if that employee or contractor is acting or has acted as a tonnage consultant for that same vessel; and

(4) Requires the organization to—

(i) Accept all requests to perform delegated services without discrimination and without regard to the vessel's location, unless prohibited from doing so under the laws of the jurisdiction in which the vessel is located or of the United States;

(ii) Physically inspect each vessel before issuing a tonnage certificate;

(iii) Provide the Coast Guard with current schedules of fees and related charges;

(iv) Maintain a tonnage measurement file for each U.S. vessel that the organization measures and permit access to the file by any person authorized by the Commandant;

(v) Permit observer status representation by the Coast Guard at all formal discussions that may take place between the organization and other vessel tonnage measurement organizations pertaining to tonnage measurement of U.S. vessels or to the systems under which U.S. vessels are measured;

(vi) Comply with and apply all laws and regulations relating to tonnage measurement of U.S. vessels within the scope of authority delegated; and

(vii) Comply with all other provisions, if any, of the Memorandum of Agreement.

(e) Upon delegation of authority, the organization is listed in § 69.01–11(a), Measurement sources.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

April 29, 1988.

[FR Doc. 88–12666 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Parts 77, 96 and 195

[CGD 87–013]

Anchor Requirements for Certain Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Coast Guard regulations in Subchapters H—Passenger Vessels, I—Cargo and Miscellaneous Vessels, and U—Oceanographic Research Vessels require vessels to be fitted with anchors and chains in general agreement with the current standards established by the American Bureau of Shipping (ABS). The 1973 ABS Rules for Building and Classing Steel Vessels Less Than 200 Feet in Length included standards for anchors and chains that allowed a reduction in equipment required for ferries, supply vessels, and tugs. The Coast Guard accepted these reduced standards. In 1983, ABS revised its standards for anchors and chains and the optional reduced standards for ferries, supply vessels, and tugs were removed. The purpose of this rulemaking is to include the reduced anchor standards in 46 CFR Subchapters H, I, and U for vessels of less than 200 feet in length with equipment numbers less than 150 as defined in ABS rules.

DATES: These regulations are effective July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Allen W. Penn, Ship Design Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–2997.

SUPPLEMENTARY INFORMATION: On February 16, 1988, the Coast Guard published a proposed rule (53 FR 4435) concerning this amendment. Interested persons were given until April 1, 1988 to submit comments. No comments were received and the final rules are being published in the same form as proposed.

Regulatory Background

The 1973 ABS Rules for Steel Vessels Under 61 Meters (200 Feet) in length contained standards (in Section 22, Equipment) for the number and sizing of anchors and chain. Subsection 22.7 relaxed these standards for certain vessels under 61 meters (200 feet) in length, including ferries, tugs, and supply vessels having an equipment number, based on the vessel's dimensions, of less than 150. The Coast Guard adopted these standards, including the reduced standards. In 1975 and 1976, ABS adopted the reduced standards in Rules for Aluminum and Reinforced Plastic Hulled Vessels and they were also accepted by the Coast Guard.

In 1983, a revised edition of ABS Rules for Building and Classing Steel Vessels Less Than 61 Meters (200 Feet) in Length was published. The revised rules did not contain the reduced standards. However, full compliance with the revised standards was made optional for vessels which do not require equipment classification. The current ABS rules for aluminum and reinforced plastic hulled vessels continue to allow the reduced standards.

In practice, both ABS and the Coast Guard continue to require anchors and accept those meeting the reduced standards in the 1973 rules. The purpose of this rulemaking is to include the reduced standards for anchors and chains in Title 46, CFR. The rules also incorporate the reduced standards in the 1975 and 1976 ABS rules that apply to aluminum and reinforces plastic hulled vessels.

Appropriate changes to regulations for anchors in Subchapters D—Tank Vessels, I–A, Mobile Offshore Drilling Units, and proposed Subchapter L—Offshore Supply Vessels, have already been made in separate regulatory projects. No changes are necessary in Subchapters T—Small Passenger Vessels, and R—Nautical School Ships, because they were not affected by the 1983 changes in the ABS Rules.

Drafting Information

The principal persons involved in drafting this Final rule are Mr. Allen W. Penn, Project Manager, and Mr. William R. Register, Project Counsel, Office of Chief Counsel.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the regulations has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulations simply continue in effect relaxed anchor equipment standards which have been applied since 1973. There is no economic impact on existing vessels because the regulations provide for acceptance of current arrangements and equipment on these vessels. There is no significant impact on new vessels since the practice is to equip vessels to meet the relaxed standards and thus minimize costs where compliance with more comprehensive standards is unnecessary.

Regulatory Flexibility Act

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations do not contain any information collection or record keeping requirements.

Environmental assessment

The Coast Guard has considered the environmental impact of the regulations and determined that the impact will be minimal.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 195

Marine safety, Navigation (water), Oceanographic vessels.

In accordance with the foregoing, Title 46 of the Code of Federal Regulations is amended as follows:

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

1. The authority citation for Part 77 is revised to read as follows:

Authority: 46 U.S.C. 3306; 46 CFR 1.46.

2. By adding new paragraphs (b) and (c) to § 77.07-05 to read as follows:

* * * * *

§ 77.07-5 Ocean, coastwise, or Great Lakes service.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, the following requirements and alternatives also apply:

(1) The American Bureau of Shipping rules relating to anchor equipment are mandatory, not a guide.

(2) Vessels under 200 feet (61 meters) in length and with an American Bureau of Shipping equipment number of less than 150 may be equipped with either—

(i) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard, or

(ii) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard provided both anchors are in a position that allows for ready use at all times and the windlass is capable of heaving in either anchor.

(c) Standards of other recognized classification societies may be used, in lieu of those established by the American Bureau of Shipping, upon approval by the Commandant.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

3. The authority citation for Part 96 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 CFR 1.46.

4. By adding new paragraphs (b), (c) and (d) to § 96.07-05 to read as follows:

* * * * *

§ 96.07-5 Ocean, coastwise, or Great Lakes service.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, the following requirements and alternatives also apply:

(1) The American Bureau of Shipping rules relating to anchor equipment are mandatory, not a guide.

(2) Vessels under 200 feet (61 meters) in length and with an American Bureau of Shipping equipment number of less than 150 may be equipped with either—

(i) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard, or

(ii) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard provided both anchors are in a position that allows for ready use at all times and the windlass is capable of heaving in either anchor.

(c) Standards of other recognized classification societies may be used, in lieu of those established by the American Bureau of Shipping, upon approval by the Commandant.

Dated: May 10, 1988.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-12865 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-14-M

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

5. The authority citation for Part 195 is revised to read as follows:

Authority: 46 U.S.C. 3306; 46 CFR 1.46.

6. By adding new paragraphs (b) and (c) to § 195.07-05 to read as follows:

* * * * *

§ 195.07-5 Ocean, coastwise, or Great Lakes service.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, the following requirements and alternatives also apply:

(1) The American Bureau of Shipping rules relating to anchor equipment are mandatory, not a guide.

(2) Vessels under 200 feet (61 meters) in length and with an American Bureau of Shipping equipment number of less than 150 may be equipped with either—

(i) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard, or

(ii) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard provided both anchors are in a position that allows for ready use at all times and the windlass is capable of heaving in either anchor.

(c) Standards of other recognized classification societies may be used, in lieu of those established by the American Bureau of Shipping, upon approval by the Commandant.

Dated: May 10, 1988.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-12865 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-231; RM-5705]

Radio Broadcasting Services; La Salle, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257B1 for Channel 257A at La Salle, Illinois, and modifies the license for Station WAJK-FM at the request of the licensee, La Salle County Broadcasting, Inc., to provide for a first wide coverage area station. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-231, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Illinois by adding Channel 257B1 at La Salle and removing Channel 257A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12874 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-355; RM-5880]

Radio Broadcasting Services; Macomb, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274B1 for Channel 276A at Macomb, Illinois and modifies the license for Station WJEQ(FM) at the request of the licensee, McDonough Broadcasting, Inc., to provide for a first wide coverage area station. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-355, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended for Illinois by adding Channel 274B1 and removing Channel 276A at Macomb.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12877 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-296; RM-5754]

Radio Broadcasting Services; Garden City, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275A to Garden City, Indiana, as that community's first local FM service, in response to a petition filed by Martin L. Hensley. With this action, the proceeding is terminated.

DATES: Effective July 11, 1988; The window period for filing applications on Channel 275A at Garden City, Indiana, will open on July 12, 1988, and close on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-296, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Garden City, Channel 275A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12873 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-379; RM-5870]

Radio Broadcasting Services; Crystal Falls, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 264C1 for Channel 264C at Crystal Falls, Michigan, in response to a petition filed by Munising Radio, Inc. Petitioner filed comments in response to the *Notice*. No other comments were received. There is a site restriction approximately 1 kilometer southwest of the community. The coordinates used for this allotment are 46-04-58 and 88-20-41. Concurrence of the Canadian government has been obtained for the allotment of Channel 264C1 at Crystal Falls. With this action, this proceeding is terminated.

DATES: Effective July 11, 1988; The window period for filing applications will open on July 12, 1988, and close on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-379, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by removing Channel 264C and adding Channel 264C1 at Crystal Falls.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12872 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-335; RM-5634 and 5697]

Radio Broadcasting Services; Steelville and Hermann, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 227C2 for Channel 244A at Steelville, Missouri, in response to a petition filed by Twenty-One Sound Communications, Inc. In accordance with § 1.420(g) of the Commission's Rules, we have also authorized the modification of the license for Station KNSX-FM, Steelville, to specify operation on Channel 227C2 in lieu of Channel 244A, since there were no other expressions of interest for the channel. Channel 227C2 is being allocated to Steelville at the current site of Station KNSX-FM. The *Notice* also requested comments on petition filed by Kenneth W. Kuenzie requesting the allotment of FM Channel 227A to Hermann. In response to the *Notice*, Kenneth W. Kuenzie filed comments withdrawing his interest in the proposal for Hermann. No supporting comments were received for the allotment of a channel at Hermann. With this action, this proceeding is terminated.

DATE: Effective July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-335, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 244A and adding Channel 227C2 at Steelville.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12871 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-587; RM-5111]

Radio Broadcasting Services; Byng, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Don Carmichael, allots Channel 281C2 to Byng, Oklahoma, as the community's first local FM service. Channel 281C2 can be allotted to Byng in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west to avoid a short-spacing to Station KTCS-FM, Fort Smith, Arkansas. The coordinates for this allotment are North Latitude 34-52-13 and West Longitude 96-43-28. With this action, this proceeding is terminated.

DATES: Effective July 11, 1988. The window period for filing applications will open on July 12, 1988, and close on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-587, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by adding the following entry, Byng, Channel 281C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12876 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 205, 206, 219, 226, 235, and 252

Federal Acquisition Regulation Supplement; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

AGENCY: Department of Defense (DoD).

ACTION: Adoption of interim rule as final rule, and, interim rule with request for comment.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved final revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180. These statutes (a) establish a goal for DoD of awarding 5 percent of contract dollars to Small Disadvantaged Business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs) during fiscal years 1987-1989, provided the contract price does not exceed fair market cost by more than 10 percent, and (b) require DoD to issue regulations addressing such areas as ensuring that current levels of awards under Sections 8(a) and 15(a) of the Small Business Act are maintained; increasing subcontract awards to SDBs, HBCUs and MIs; and requiring SDBs, HBCUs and MIs to maintain their status, as such, at time of contract award.

As a result of comments received following publication of an interim rule in the **Federal Register** on February 19, 1988 (53 FR 5114), changes have been made to the interim coverage as indicated below. The primary areas of

change concern application of the evaluation preference procedure; subcontracting plans and goals; eligibility of SDBs for award; presumption of SDB status; protest procedures; and HBCU/MI definition and certification procedures.

DATES: *Effective Dates:* The final rule is effective July 15, 1988. The final rule is effective for all solicitations issued on or after July 15, 1988. The interim rule (as identified in amendatory item numbers 26, 27, and 41 below; amending DFARS 219.7000, 219.7002, and 252.219-7008) is effective June 6, 1988. The interim rule is effective for all solicitations issued on or after June 6, 1988; pending solicitations shall be amended if the date for bid opening or date set for receipt of proposals is after June 6, 1988, unless the Chief of the Contracting Office determines that it is in the best interests of the Government not to amend the solicitation.

Comment Date: Comments are solicited only with respect to the changes made by the interim rule. Comments must be received on or before July 6, 1988 to ensure their consideration in formulating a final rule. Please cite DAR Case 87-33 in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062; telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1207 of Pub. L. 99-661 established an objective that five percent of total combined DoD obligations (i.e., procurement; research, development, test and evaluation; construction; and operation and maintenance) for contracts and subcontracts awarded during FY 1987 through FY 1989 be entered into with SDB concerns, HBCUs, and MIs. To facilitate attainment of that goal, the statute permits DoD to use less than full and open competitive procedures, provided contract prices do not exceed fair market price by more than 10 percent.

As a partial implementation of Section 1207, DoD issued an interim rule and request for comment on May 4, 1987 (52 FR 16293) under DAR Case 87-33. The scope of that rule addressed procedures to achieve the goal as it pertains to SDBs; other aspects of Section 1207 concerning HBCUs and MIs were to be addressed in subsequent issuances.

Over 600 public comments were received in response to that rulemaking. While those comments were being reviewed and rule changes drafted, Section 806 of Pub. L. 100-180 was enacted. Section 806 established procedures and guidelines which required significant revisions to the rule as published on May 4, 1987. Accordingly, on February 19, 1988, the DAR Council published a second comprehensive interim rule and request for comment (53 FR 5114) implementing Section 806 of Pub. L. 100-180, incorporating revisions to the DFARS made as a result of comments received, and establishing new procedures for contracting with HBCUs and MIs. Because of the substantive nature of the revisions, a second opportunity for public comment was afforded pursuant to 41 U.S.C. 418b. Additionally, at the time of publication, an Initial Regulatory Flexibility Analysis was prepared and forwarded to the Chief Counsel for Advocacy of the U.S. Small Business Administration and made available for public comment pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604. That analysis incorporated public comments received as a result of the May 4, 1987 rulemaking.

Over 80 written comments were received in response to the interim rule published on February 19, 1988. These comments were reviewed in detail and given full consideration in preparation of a final rule and a Final Regulatory Flexibility Analysis.

As a result of comments received on the interim rule, and in keeping with the language in section 806 that current levels in the number and dollar value of contracts awarded under section 15(a) of the Small Business Act be maintained, the Under Secretary of Defense (Acquisition) has decided that the 10% evaluation preference should not be applied to total small business set-asides. Accordingly, Subpart 219.70 has been revised, and the clause at 252.219-7008 has been removed, on an interim basis, to eliminate the application of the evaluation preference to total small business set-asides. Comments are invited.

Other major revisions to the interim rule issued February 19, 1988 are as indicated below (with a parenthetical reference to revised coverage); the coverage in the final rule has been revised to:

- Reflect the country of origin of persons within designated disadvantaged groups, consistent with applicable U.S. Small Business Administration (SBA) Regulations (219.301-70(b)(2); 252.219-7005(b)).
- Establish a presumption of both social and economic disadvantage for persons within certain designated groups, consistent with Section 8(d) of the Small Business Act (219.301-70(b)(2)).
- Require the contracting officer to challenge the eligibility, for further determination by SBA, of a concern whose ownership is not within certain disadvantaged groups (designated by SBA pursuant to Section 8(d) of the Small Business Act) if the concern is also neither (1) currently enrolled in the 8(a) program, nor (2) determined to be both socially and economically disadvantaged by SBA within the six-month period immediately preceding submission of the concern's offer (219.301-70(b)(3), 252.219-7005 (b) and (c)).
- Modify procedures governing protests to the SBA of the disadvantaged status of offerors, to be consistent with procedures adopted by the SBA for this purpose (219.302(S-70)).
- Amend the definition of eligible MIs, to reflect the amendment made by Section 806(d)(2) of Pub. L. 100-180, and to ensure consistency with regulations promulgated by the U.S. Department of Education (226.7002, 252.226-7001).
- Require a self-certification of eligibility from HBCUs and MIs (226.7006, 226.7009, 235.016, 252.226-7001).
- Exempt subcontracting plans for commercial products submitted pursuant to FAR 52.219-9(g) from requirements to establish a composit goal of SDBs/HBCUs/MIs and from incentive provisions contained in the coverage (219.704, 219.705-4, 252.219-7000, 252.219-7009).
- Clarify the establishment of a composite goal for SDBs, HBCUs and MIs (219.704(a)(S-70)).
- Apply the subcontracting limitations of Section 15(o)(1) of the Small Business Act to HBCUs and MIs, in accordance with Section 806(b)(12) of Pub. L. 100-180 (226.7004(a), 252.226-7000).
- Clarify that the composite goal for SDBs, HBCUs and MIs relates to subcontracting dollars (not total contract price) and amend the formula for calculation of incentive fee accordingly (219.705-4, 252.219-7009).

B. Regulatory Flexibility Act

As noted above, an Initial Regulatory Flexibility Analysis in connection with this rulemaking was previously

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furnished to the Chief Counsel for Advocacy of the U.S. Small Business Administration on February 17, 1988, in accordance with 5 U.S.C. 603. Additionally, a Final Regulatory Flexibility Analysis has been prepared with respect to regulatory coverage made final by this issuance. That Analysis will be supplemented to incorporate public comments received with respect to the interim rule and request for comment contained in this Notice, and will be furnished upon completion to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties desiring to obtain a copy of the Final Regulatory Flexibility Analysis upon its completion should contact Mr. Charles W. Lloyd, Executive Secretary, DAR Council, at the address listed above.

C. Paperwork Reduction Act

Neither the final nor interim rules impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and OMB approval of the final rule is not required pursuant to 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, without change.

PART 205—PUBLICIZING CONTRACT ACTIONS

3. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, with the following change:

205.207 [Amended]

4. Section 205.207(d)(S–73) is amended by removing in the parenthetical phrase in the third sentence of the statement the words ", e.g., 100% small business set-aside with evaluation preference for SDBs, etc.".

PART 206—COMPETITION REQUIREMENTS

5. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final with the following changes:

206.270 [Amended]

6. Section 206.270 is amended by substituting at the end of the first sentence after the acronym "MIs," the words "pursuant to the procedures in 226.7004 and 235.016(a)(S–70), to compete." in lieu of the words "as defined under the procedures in 226.7004 and 236.016–70, to compete.".

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final (except as specifically noted below), with the following changes:

219.102–70 [Amended]

8. Section 219.102–70 is amended by substituting between the word "exceeded" and the word "during" the words "the applicable limitation in FAR 19.102" in lieu of the words "$7 million".

219.202–5 [Amended]

9. Section 219.202–5 is amended by adding at the end of paragraph (b)(1), between the reference "(219.502–72)" and the comma the words "or an HBCU/MI set-aside (226.7004)"; by adding in the second sentence of paragraph (b) between the reference "(219.502–72)" and the comma the words "or an HBCU/MI set-aside under 226.7004"; by changing the title of the report in paragraph (b) to read "Premium Paid on Small Disadvantaged Business (SDB) and Historically Black Colleges and Universities and Minority Institutions (HBCUs/MIs) Awards $25,000, and Over." in lieu of the title "Premium Paid on Small Disadvantaged Business (SDB) Awards Over $25,000."; by substituting in item 2 of the report in paragraph (b) the words "Identify the type of SDB or HBCU/MI preference" in lieu of the words "Type of SDB preference"; by removing in item 3.b. of the report in paragraph (b) the phrase "—unrestricted"; by removing item 3.c. of the report in paragraph (b) and redesignating the existing item 3.d. to 3.c.; by adding to item 3 of the report in paragraph (b) an item reading "d. Total or partial HBCU/MI set-aside" and a line opposite the added item 3.d. in the column under "(check one)"; and by adding in the first sentence of paragraph (c) between the word "report" and the word "shall" the words in parentheses "(RCS No. ACQ(AR)1778)".

10. Section 219.301–70 is amended by revising paragraph (b) to read as follows:

219.301–70 Eligibility for award.

* * * * * * *

(b)(1) Except as provided in paragraph (b)(3) below, the contracting officer shall accept an offeror's representation and certification under the provision at 252.219–7005 that it is an SDB unless another offeror or the SBA challenges the concern's SDB status, or the contracting officer has reason to question that status.

(2) The contracting officer may presume that socially and economically disadvantaged individuals include Black Americans, (U.S. Citizens), Hispanic Americans (U.S. Citizens whose ancestry and culture are rooted in South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal), Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (U.S. Citizens with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan)), Subcontinent Asian (Asian Indian) Americans (U.S. Citizens with origins from India, Pakistan, Bangladesh, or Sri Lanka), and any other individual/concern currently certified for participation in the Section 8(a) program.

(3) The contracting officer may not presume and shall question the SDB status of any apparent successful offeror whose ownership is based on any category other than those in paragraph (b)(2) above, unless the offeror has represented and certified under the provision at 252.219–7006 that, within the six months preceding submission of its offer, it has been determined by the Small Business Administration to be socially and economically disadvantaged and that no circumstances have changed to vary that determination.

(4) Challenges of and questions concerning the social or economic status of an offeror shall be processed in accordance with 219.302(S–70). Challenges of and questions concerning the size of an SDB shall be processed in accordance with FAR 19.302.

11. Section 219.302 is amended by substituting in the title of paragraph (S–70) the words "the Disadvantaged Status of an Offeror" in lieu of the words "an SDB Representation"; by adding in the first sentence of paragraph (S–70)(1) a period and the words "An offeror may protest an SDB representation" between the acronym "SDB" and the word "by"; by adding a sentence at the end of paragraph (S–70)(1) to read "The SBA may protest an SDB representation by filing a protest with its Director of the Office of Program Eligibility and notifying the contracting officer of the filing."; by changing the period to a comma at the end of the first sentence of paragraph (S–70)(2) and adding the words "or after the receipt from the contracting officer of notification of the identity of the apparently successful SDB offeror in negotiated acquisitions."; by placing a period in the last sentence of paragraph (S–70)(2) after the reference "FAR 15.1001" and removing the remainder of the sentence; by adding a sentence at the end of paragraph (S–70)(2) to read "An SBA protest is always considered timely."; by revising paragraph (S–70)(4); by substituting in the first sentence of paragraph (S–70)(5) between the acronym "SBA" and the word "will" the words "Director, Office of Program Eligibility," in lieu of the words "Regional Administrator"; by removing at the end of paragraph (S–70)(7)(i) the words "by an SBA Regional Administrator"; by revising paragraph (S–70)(7)(ii) to read "the concern whose disadvantaged status was protested"; by substituting in paragraph (S–70)(7)(iii) the words "contracting officer" in lieu of the words "SBA Associate Administrator for Minority Small Business and Capital Ownership Development"; by adding in the second sentence of paragraph (S–70)(7) between the word "Minority" and the word "Business" the word "Small"; by substituting at the end of the second sentence of paragraph (S–70)(7) the words "Director of the Office of Program Eligibility" in lieu of the words "Regional Administrator"; by substituting in the third sentence of paragraph (S–70)(7) between the word "its" and the word "on" the word "decision" in lieu of the word "ruling"; and by substituting in the last sentence of paragraph (S–70)(7) between the acronym "SBA" and the word "received" the word "decisions" in lieu of the word "rulings", to read as follows:

219.302 Protesting a small business representation.

(S–70) * * *

(4) Upon receipt of a protest concerning social or economic disadvantaged status of an SDB, the contracting officer shall withhold award and forward the protest to the Small Business Administration (SBA) Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, 1441 L Street, N.W., Washington, D.C. 20416. Award shall not be withheld (i) when the contracting officer determines in writing that an award must be made to protect the public interest, or (ii) if the SDB certifies in accordance with 252.219–7005 that within the six months preceding submission of its offer it has been determined by SBA to be socially and economically disadvantaged and no circumstances have changed to vary that determination. In the event of a protest which is not timely, the contracting officer shall notify the protestor that its protest cannot be considered. However, the contracting officer or the SBA may question the SDB status of an apparently successful offeror at any time either before or after award.

* * * * *

12. Section 219.501 is amended by adding in the first sentence of paragraph (c) between the word "for" and the word "small" the words "small or"; by revising the second sentence of paragraph (c); by adding in paragraph (c) a sentence preceding the last sentence to read "Disagreements on a small disadvantaged business set-aside shall be resolved under 219.502–72(d)."; by substituting in paragraph (d) between the word "the" and the word "and" the acronym "SADBUS" in lieu of the words "small business specialists"; by adding at the end of paragraph (g)(S–71) a sentence in parentheses to read "(But see 219.502–72(b)(2).)"; by adding after the first sentence of paragraph (g)(S–73) a sentence in parentheses to read "(But see 219.503–72(b)(3).)", to read as follows:

219.501 General.

* * * * *

(c) * * * Prior to the issuance of solicitations or contract modifications (except those that exercise an option), the SADBUS shall review any determination by a contracting officer not to set aside for SDBs acquisitions in excess of $5,000 for additional supplies and services which meet the criteria of 219.502–72(c). In addition, the SADBUS shall review acquisitions in excess of $5,000 for additional supplies and services—

(1) Which have not been set aside under FAR 19.502, or

(2) For which a small business-small purchase set-aside has been dissolved.

* * * * *

219.502–3 [Amended]

13. Section 219.502–3 is amended by adding in paragraph (S–70)(1)(ii) between the word "price" and the word "by" the words in parentheses "(determined in accordance with FAR 19.808–2)"; and by substituting at the end of the second sentence of paragraph (S–70)(2) the reference "252.219–7010" in lieu of the reference "252.219–7009".

219.502–72 [Amended]

14. Section 219.502–72 is amended by substituting in the parenthetical sentence at the end of paragraph (a)(3) the reference "19.502–2" in lieu of the reference "35.007"; by substituting in the reference at the end of paragraph (b)(2) "(S–71)" in lieu of "(71)"; by adding in paragraph (c)(1) between the word "procurement" and the word "and" the words "of similar supplies or services"; and by adding in paragraph (c)(1)(i) between the word "list" and the semicolon the words "for similar supplies or services".

15. Section 219.505–70 is added to read as follows:

219.505–70 Rejecting SDB set-asides.

The procedures in FAR 19.505 and 219.505 do not apply to SDB set-asides (see 219.502–72(d)).

219.506 [Amended]

16. Section 219.506 is amended by adding in paragraph (b) between the acronym "SADBUS" and the word "will" the words "on small business set-asides"; and by adding a sentence at the end of the section to read "Disagreements between the contracting officer and the SADBUS on SDB set-asides will be resolved in accordance with the procedures in 219.502–72(d).

219.508 [Amended]

17. Section 219.508 is amended by changing in paragraph (S–71)(1) the designation of the clause to read "252.219–7006" in lieu of "52.219–7006".

219.602–3 [Amended]

18. Section 219.602–3 is amended by changing the reference at the end of the first sentence of paragraph (b)(2) to read "219.201(S–71)(1)" in lieu of "219.201(71)(1)".

219.702–70 [Amended]

19. Section 219.702–70 is amended by substituting in the last sentence between the word "at" and the word "Incentive" the reference "252.219–7008" in lieu of the reference "252.2129–7009".

219.703 [Amended]

20. Section 219.703 is amended by substituting in the first sentence of paragraph (a) between the acronym "SBA" and the word "has" the words "Office of Hearings and Appeals" in lieu of the words "Size Appeals Board"; and

by substituting at the beginning of the second sentence of paragraph (b) (S–70) the words "A list of HBCUs is" in lieu of the words "Lists of HBCUs and MIs are".

21. Section 219.704 is amended by adding paragraph (a); and by adding in paragraph (a)(S–70) before the period at the end of the second sentence the words "in addition to anticipated use of SDB concerns", to read as follows:

219.704 Subcontracting plan requirements.

(a) Subcontracting plans for commercial items, as defined in FAR 52.219–9 and submitted pursuant to paragraph (g) of that clause, are exempt from the requirements of (a)(3) and (a)(S–70) below.

* * * * *

219.705–4 [Amended]

22. Section 219.705–4 is amended by adding in the first sentence of the introductory text between the word "percent" and the word "must" the words "of the total planned subcontracting dollars"; by adding at the end of the introductory text a sentence reading "This requirement does not apply to subcontracting plans for commercial products submitted in accordance with FAR 52.219–9(g) where an annual plan has already been approved."; and by adding a sentence at the end of paragraph (S–70) to read "But see 219.704(a)."

219.708 [Amended]

23. Section 219.708 is amended by changing in the last sentence of paragraph (c)(1) the FAR reference to read "52.219–10" in lieu of "252.219–10".

219.7000 [Amended]

24. Section 219.7000 is amended by changing in the first sentence of paragraph (a) the reference in parentheses to read "219.201" in lieu of "19.201".

219.7001 [Amended]

25. Section 219.7001 is amended by adding a sentence between the third and fourth sentences to read "However, SDB offerors may request that the evaluation preference not be applied (see 252.219–7007(b))."

219.7000 [Amended]

26. Section 219.7000(a) is amended, on an interim basis, by removing the word "and" at the end of paragraph (a)(5); by changing the period to a semi-colon and inserting the word "and" at the end of paragraph (a)(6); by adding a new paragraph (a)(7) to read "(7) Total small business set-asides."; and by removing in the first sentence of paragraph (b) the phrase "(1) through (6)".

219.7002 [Amended]

27. Section 219.7002 is amended, on the interim basis, by removing paragraphs (a) and (b) and inserting in lieu thereof the following text: "When the evaluation preference as described in 219.7000 is used, the contracting officer shall insert the clause at 252.219–7007, Notice of Evaluation Preference for Small Disadvantaged Business Concerns.".

PART 226—OTHER SOCIOECONOMIC PROGRAMS

28. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, with the following changes:

226.7002 [Amended]

29. Section 226.7002 is amended by substituting in the first sentence of the definition "Minority Institutions (MIs)" following the word "institutions" the words "meeting the requirements prescribed by the Secretary of Education at 34 CFR 607.2." in lieu of the words "determined by the Secretary of Education to meet the requirements of 34 CFR Part 637."

226.7003 [Amended]

30. Section 226.7003 is amended by adding a sentence in parentheses before the last sentence to read "(For reporting requirements see 219.202–5.)".

226.7004 [Amended]

31. Section 226.7004 is amended by adding at the end of paragraph (a)(1) between the acronyms HBCUs/MIs and the comma the words "who can comply with the limitations on subcontracting in the clause at 252.226–7000(d); and by adding at the end of paragraph (a)(3) between the word "sources" and the period the words "for R&D acquisitions".

32. Section 226.7006 is amended by designating the existing paragraph as paragraph (a); by substituting at the beginning of the second sentence of the designated paragraph (a) the words "A list of HBCUs is" in lieu of the words "Lists of HBCUs and MIs are"; and by adding paragraph (b) to read as follows:

226.7006 Eligibility of offeror.

* * * * *

(b) The contracting officer shall accept an offeror's certification under the provision at 252.226–7001 that it is an HBCU/MI unless another offeror challenges the offeror's status or the contracting officer has reason to question that status.

33. Section 226.7009 is revised to read as follows:

226.7009 Contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for total HBCU/MI set asides (see 226.7004):

(a) 252.226–7000, Notice of Total Set-Aside for Historically Black Colleges and Universities/Minority Institutions.

(b) 252.226–7001, Historically Black Colleges and Universities/Minority Institutions Certification.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

34. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, with the following change:

235.016 [Amended]

35. Section 235.016 is amended by adding at the end of paragraph (a)(S–70) a sentence to read "Prior to award, the contracting officer shall obtain a certification from the successful offeror as to its status as an HBCU/MI (see 252.226–7001)."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219–7000 [Amended]

36. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final (except as specifically noted below), with the following changes:

37. Section 251.219–7000 is amended by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; by substituting in the first sentence of paragraph (a) of the clause the words "Except for plans submitted under paragraph (g) of" in lieu of the words "Wherever in"; by adding in the first sentence of paragraph (a) of the clause between the reference "FAR 52.219–9," and the word "the" the word "whenever"; by adding in the first sentence of paragraph (a) of the clause between the word "used" and the comma the words "in that FAR clause"; by substituting at the beginning of the last sentence of paragraph (a) of the clause the words "A list" in lieu of the words "Lists"; by substituting in the last sentence of paragraph (a) of the clause between the acronym "HBCUs" and the word "published" the word "is" in lieu of the words "and MIs are"; and by substituting in the last sentence of paragraph (a) of the clause between the word "and" and the word "available" the word "is" in lieu of the word "are".

38. Section 252.219–7005 is amended by changing the date of the provision to read "JUN 1988" in lieu of "FEB 1988"; and by revising paragraphs (b) and (c) of the provision to read as follows:

252.219–7005 Small disadvantaged business concern representation (DoD FAR Supplement deviation).

* * * * *

(b) *Representation.* The Offeror represents that its qualifying ownership falls within at least one of the following categories (check the applicable categories:

___ Subcontinent Asian (Asian-Indian) American (US Citizen with origins from India, Pakistan, Bangladesh, or Sri Lanka)
___ Asian-Pacific American (US Citizen with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan)
___ Black American (US Citizen)
___ Hispanic American (US Citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal)
___ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians)
___ Individual/concern currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act (15 U.S.C 637(a))
___ Other (In addition to (c)(1), offeror must complete (c)(2) below:

(c) *Certification.*

(1) The Offeror represents and certifies, as part of its offer, that it is
___, is not
___ a small disadvantaged business concern.

(2) (Complete only if item (b) above is checked "Other") The Offeror represents and certifies, as part of its offer, that the Small Business Administration (SBA) has
___, has not
___ made a determination concerning the Offeror's status as a small disadvantaged business concern. If the SBA has made such a determination, the date of the determination was
_____ and the Offeror certifies that it was
___, was not
___ found by the SBA to be socially and economically disadvantaged as a result of that determination and that no circumstances have changed to vary that determination.

* * * * *

252.219–7006 [Amended]

39. Section 252.219–7006 is amended by adding the date "(FEB 1988)" to ALTERNATE I following the text of the clause.

252.219–7007 [Amended]

40. Section 252.219–7007 is amended by removing in the section title the parenthetical "(unrestricted)"; by removing in the title of the clause the parenthetical "(UNRESTRICTED)"; by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; and by removing at the end of paragraph (a) of the clause the parenthetical "(Date)".

252.219–7008 [Amended]

41. Section 252.219–7008 is amended, on an interim basis, by removing the text and marking the section "Reserved."

42. Section 252.219–70009 is amended by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; by revising paragraphs (b)(1) and (b)(2); and by adding paragraph (e) to read as follows:

252.219–7009 Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions.

* * * * *

(b) * * *

(1) Where the SDB/HBCU/MI goal in this contract is less than five percent (5%) of the total planned subcontracting dollars and the Contractor both exceeds its SDB/HBCU/MI goal and awards more than five percent (5%) of the total actual subcontracting dollars to SDBs/HBCUs/MIs in performing this contract, the Contractor will receive ten percent (10%) of the difference between the total actual dollar amount of subcontracts awarded to SDBs/HBCUs/MIs and five percent (5%) of total actual subcontracting dollars.

(2) Where the SDB/HBCU/MI goal in this contract is equal to or greater than five percent (5%) of total planned subcontracting dollars and the Contractor both exceeds its SDB/HBCU/MI goal and awards more than five percent (5%) of total actual subcontracting dollars to SDBs/HBCUs/MIs in performing this contract, the Contractor will receive ten percent (10%) of the difference between the total actual dollar amount of subcontracts awarded to SDBs/HBCUs/MIs and the SDB/HBCU/MI goal amount.

* * * * *

(e) This clause is not effective if this contract is awarded based on a subcontracting plan submitted and approved under FAR 52.219–9, paragraph (g).

* * * * *

252.219–7010 [Amended]

43. Section 252.219–7010 is amended by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; and by substituting in paragraph (c)(2) the words "twenty-five thousand dollars ($25,000)" in lieu of the words "ten thousand dollars ($10,000)".

44. Section 252.226–7000 is amended by changing the date of the clause to read "JUN 1988" in lieu to "FEB 1988"; and by revising paragraph (d) of the clause to read as follows:

252.226–7000 Notice of total set-aside for Historically Black Colleges and Universities and Minority Institutions.

* * * * *

(d) *Agreement.* An HBCU/MI submitting an offer in its own name agrees that at least fifty percent (50%) of the cost of contract performance incurred for personnel shall be expended for employees of the HBCU/MI.

(End of clause)

45. Section 252.226–7001 is added to read as follows:

252.226–7001 Historically Black Colleges and Universities/Minority Institutions Certification.

As prescribed in 226.7009, insert the following clause:

Historically Black Colleges and Universities/Minority Institutions Certification (JUN 1988)

(a) *Definitions.*

(1) "Historically Black Colleges and Universities (HBCUs)" means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2.

(2) "Minority Institutions (MIs)" means institutions meeting the requirements prescribed by the Secretary of Education at 34 CFR Section 607.2. The term also includes any nonprofit research institution that was an integral part of an Historically Black College or University before November 14, 1986.

(b) *Certification.* The Offeror represents and certifies, as part of its offer, that it is ☐ a Historically Black College or University ☐ a Minority Institution as defined in paragraph (a) above (check applicable box).

Notification. The Offeror agrees to notify the Contracting Officer before award of any changes in its status as a Historically Black College or University or a Minority Institution.

(End of clause)

[FR Doc. 88–12622 Filed 6–3–88; 8:45 am]
BILLING CODE 3810–01–M

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48 CFR Parts 209 and 252

Federal Acquisition Regulation Supplement; Intermediate-Range Nuclear Forces (INF) Treaty

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved an amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to prohibit the denial of contract or subcontract awards in excess of $25,000 to Defense contractors

subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty solely or in part because of the presence of Soviet inspectors at the defense contractor's facility unless that decision is reviewed by the Senior Procurement Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisition.

DATE: June 3, 1988. The interim rule is effective for contracts resulting from solicitations issued on or after June 3, 1988. Comments received by July 2, 1988 in response to this Notice will be considered in formulating the final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense has directed that contractors or subcontractors who are subject to on-site inspection by the Soviets in accordance with the terms of the Intermediate-Range Nuclear Forces (INF) Treaty, must be treated fairly and equitably in the award of contracts or subcontracts.

B. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because only a very small number of companies will be affected. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act

The interim rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and OMB approval is not required pursuant to 5 CFR Part 1320.

D. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary to ensure that contractors impacted by the INF Treaty are treated fairly and equitably in the award of contracts and subcontracts.

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 209 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 209 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.103 is amended by adding paragraph (S–71), to read as follows:

209.103 Policy.

* * * * *

(S–71) *Acquisitions from defense contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) treaty.* Contractors and subcontractors subject to on-site inspection under the INF Treaty shall not be denied contract or subcontract awards solely or in part because of the presence of Soviet inspectors at the contractors' facilities unless this decision is reviewed by the Senior Procurement Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisition. Contracting officers shall insert the contract clause at 252.209–7001 in all solicitations and contracts in excess of the dollar threshold identified in FAR 13.000.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.209–7001 is added to read as follows:

252.209–7001 Acquisitions from defense contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103(S–71), insert the following clause:

Acquisitions from Defense Contractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (June 1988)

(a) The Contractor shall not deny subcontract awards under this contract to defense contractors subject to on-site inspection under the INF Treaty solely or in part because of the presence of Soviet inspectors of the Defense Contractor's facility unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, with appropriate changes to identify properly the contracting parties, including this paragraph (b), in all solicitations and contracts in excess of the dollar threshold identified at Federal Acquisition Regulation (FAR) 13.000.

(End of clause.)

[FR Doc. 88–12620 Filed 6–3–88; 8:45 am]

BILLING CODE 3810–01–M

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48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Patents, Data and Copyrights

AGENCY: Department of Defense (DoD).

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule issuing changes to the DoD Federal Acquisition Regulation Supplement (DFARS) with respect to Patents, Data, and Copyrights, published in the **Federal Register** on April 1, 1988 (53 FR 10780). This action is necessary to make corrections to the coverage in the rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department is correcting 48 CFR Parts 227 and 252 as follows:

PART 227—PATENTS, DATA, AND COPYRIGHTS

1. Subpart 227.4, consisting of sections 227.481 through 227.481–2, is correctly revised to read as follows:

227.481 Acquisition of rights in computer software.

227.481–1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government; (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software: *Provided, however,* That the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.471.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section 227.471, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (c)(1)(ii) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

227.481–2 Procedures.

(a) *Deviations.* All requests for deviations from this section 227.481 shall be submitted to the DAR Council in accordance with the procedures in FAR Section 1.404.

(b) *General.* (1) Except as provided at 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimun rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restriction on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account when determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph 227.481–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software

clause at 252.227-7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.473-4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings (notice, legends, identifications, etc.), concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or Improperly Marked Computer Software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates the the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.227-7013 [Corrected]

2. Section 252.227-7013 is corrected by substituting in the introductory text between the word "at" and the word "insert" the references "227.473-1(e), 227.479(d), and 227.461-2(b)(2)," in lieu of the references "227.472-3(e) and 227.479(d),".

[FR Doc. 88-12621 Filed 6-3-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces the approval of Amendment 3 to the Fishery Management Plan for Pacific Coast Groundfish (FMP). The amendment addresses issues of habitat and vessel access and is intended to conform with changes in the Magnuson Fishery Conservation and Management Act, which were implemented in 1986.

EFFECTIVE DATE: June 3, 1988.

ADDRESSES: Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director (Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-528-6140, or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Pacific Fishery Management Council (Council), and approved by the Secretary of Commerce (Secretary) on January 4, 1982. Since then, the FMP has been amended twice with implementing regulations at 50 CFR Part 663.

A 1986 amendment (Pub. L. 99-659) to the Magnuson Act requires that any FMP amendment occurring after January 1, 1987, must (1) include readily available information regarding the significance of habitat to the fishery and assessment of the effects that changes to that habitat may have upon the fishery; and (2) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of vessels.

Under that Magnuson Act amendment, Amendment 3 to the FMP includes (1) an expanded description of habitat to be appended to the FMP; and (2) a description of current procedures for considering temporary access by vessels denied harvest opportunity by

unsafe weather or ocean conditions for incorporation in the FMP. No regulatory changes are needed to meet the Magnuson Act requirement.

The Council-submitted Amendment 3 for review by the Secretary on February 1, 1988. The Secretary filed a Notice of Availability (53 FR 3225, February 4, 1988), announcing a public comment period until March 31, 1988. One comment was received from the U.S. Coast Guard. *Comment:* The U.S. Coast Guard stated its preference for an option which would have codified the Council's current practice of considering vessel safety/access issues and consulting with the U.S. Coast Guard. *Response:* Although the Council did not choose this option, NOAA believes that the concerns of the U.S. Coast Guard are adequately addressed under current practices, codifying such procedures is not necessary and the Council will continue to seek advice of the U.S. Coast Guard on vessel safety/access considerations.

Because Amendment 3 has no implementing regulations, determinations under the Regulatory Flexibility Act and Executive Order 12291 are not required. The Paperwork Reduction Act does not apply since neither an information collection nor a recordkeeping requirement is included in the amendment.

NOAA determined that the amendment is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. None of the States commented that this amendment was inconsistent with its coastal zone management program.

An environmental assessment prepared by the Council concluded that the environmental impacts are positive and slight, and that none would significantly affect the quality of the human environment. The Assistnt Administrator for Fisheries, NOAA, has made a finding of no significant impact under the National Environmental Policy Act.

The Secretary approved Amendment 3 on May 5, 1988, and determined that it is consistent with the Magnuson Act and other applicable law. Therefore, NOAA issues this notice announcing approval of Amendment 3 to the FMP.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: May 31, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-12564 Filed 6-3-88; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Lentils

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is proposing to revise the United States Standards for Lentils to include a U.S. No. 3 Lentil grade designation. The new grade level is being established to bring the U.S. lentil standards in line with standards used by major lentil exporters in the world market.

DATE: Comments must be submitted on or before June 21, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail. Telex users may respond as follows: To: Lewis Lebakken Jr., TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue SW., Washington, DC, 20250 during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Proposed Action

The American Dry Pea and Lentil Association (ADPLA), which represents the majority of those persons using the United States lentil standards, has proposed that an additional grade be added to the current lentil standards. Currently, U.S. competitors in the lentil market are effectively selling on the world market, a quality lentil slightly below the current U.S. No. 2 grade. The Canadians, for example, label this quality as a Number 3 Canada Lentil. Under the U.S. standards, the same quality is labeled U.S. Sample grade. In order to effectively compete in the world market, ADPLA has requested that FGIS establish a U.S. No. 3 Lentil grade. ADPLA has recommended that the maximum amount of defective lentils total, heat damaged lentils and skinned lentils be set at 5.0 percent, 1.0 percent and 10.0 percent respectively. Skinned lentils result from handling and heat-damaged lentils may occur through drying at too high of a temperature or during storage. All other limits would remain the same as the limits for U.S. No. 2 lentils.

The ADPLA requested that the change be effective by August 1, 1988, so that the grade designation can be used to market the 1988 lentil crop. Accordingly, a 15 day comment period is deemed adequate in order to have new standards, if adopted, in effect at the beginning of the crop year to facilitate the marketing of lentils.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Lentils.

For reasons set forth in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CETIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

Subpart H—United States Standards for Lentils

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 68.607 Grades and grade requirements for dockage-free lentils, is revised and an undesignated center heading is added preceding the section, to read as follows:

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Federal Register
Vol. 53, No. 108
Monday, June 6, 1988

Grades, Grade Requirements, and Grade Designations

§ 68.607 Grades and grade requirements for dockage-free lentils. (See also § 68.609.)

Grade	Maximum limits of—						
	Defective lentils			Foreign material		Skinned lentils (percent)	Minimum requirements—color
	Total (percent)	Weevil damaged lentils (percent)	Heat damaged lentils (percent)	Total (percent)	Stones (percent)		
U.S. No. 1	2.0	0.3	0.2	0.2	0.1	4.0	Good.
U.S. No. 2	3.5	0.8	0.5	0.5	0.2	7.0	Fair.
U.S. No. 3	5.0	0.8	1.0	0.5	0.2	10.0	Fair.

U.S. Sample Grade: U.S. Sample grade shall be lentils which—

(a) Do not meet the requirements for the grades U.S. 1, 2, or 3; or
(b) Contain more than 14.0 percent moisture, live weevils or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or
(c) Are materially weathered, heating or distinctly low quality.

Date: May 3, 1988.
W. Kirk Miller,
Administrator.
[FR Doc. 88–12486 Filed 6–3–88; 8:45 am]
BILLING CODE 3410–EN–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 618 and 620

Organization; Personnel Administration; General Provisions; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed Rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), publishes for comment proposed amendments to Parts 611, 612, 618, and 620 to implement changes made necessary as a result of enactment of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100–233. The proposed amendments to Part 611 and 618 are conforming changes which implement the statutory amendments that eliminated the Farm Credit District boards. Other proposed amendments to Part 611 would add regulations regarding eligibility of candidates for bank and association director positions; standards for the election process; mergers of banks; stockholder reconsideration of previously approved mergers; contents of disclosure statements in connection with transfers of Federal land bank lending authorities to Federal land bank associations; other procedures and provisions for disclosure requirements relating to mergers and reorganizations. Finally, regulations are proposed for addition to Part 620 regarding disclosure requirements for candidates for Bank directors.

DATE: Written comments are due on or before July 6, 1988.

ADDRESSES: Submit comments (in triplicate) in writing to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
James F. Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4475,
or
Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The 1987 Act established new authorities and requirements relating to the organization of Farm Credit System (System) institutions. The 1987 Act: (1) Requires the merger or consolidation of the Federal land banks and Federal intermediate credit banks in each district; (2) requires a stockholder vote on the merger or consolidation of Federal land bank associations and production credit associations that share substantially the same geographical territory; (3) mandates stockholder votes on a proposal to consolidate the banks for cooperatives, and on a proposal to consolidate the twelve Farm Credit districts into no less than six banks; (4) provides for the petitioning by association stockholders to reconsider association mergers completed between December 23, 1985 and January 6, 1988, or to seek a transfer of territory to an adjoining district; (5) permits the merger or consolidation of banks in a district into one bank.

The 1987 Act requires the FCA to issue regulations to implement the new or amended reorganization authorities contained in the Act. To prepare for the issuance of proposed regulations, the FCA published an Advance Notice of Proposed Rulemaking (ANPRM) on February 16, 1988, (53 FR 4416) requesting comment on the implementation of the new reorganization authorities of System institutions and on the election of individuals to the boards of directors of the newly established or authorized System institutions. The comment period closed March 1, 1988.

Comments were received from the Farm Credit Corporation of America (FCCA) on behalf of the 37 Farm Credit banks, several individual Farm Credit banks, a number of production credit associations and Federal land bank associations, a west coast growers' cooperative, and the counsel for the Special Committee on Bank for Cooperatives Structure (established in accordance with section 413 of the 1987 Act). All of the comments were analyzed and taken into consideration in the development of the proposed regulations.

I. Election of Directors and Candidate Disclosure Statements

The FCA received comments from the FCCA and three Farm Credit banks and associations regarding the need for regulations addressing the elections of the board of directors of a consolidated bank for cooperatives and the board of directors of an Agricultural Credit Bank, created by merger of a Farm Credit Bank and a bank for cooperatives. A majority of the respondents indicated that regulations governing the nomination and elections of boards of directors were not needed.

The 1987 Act deleted Farm Credit Act of 1971, as amended (1971 Act) sections 5.1 through 5.6 which governed the nomination and election of Farm Credit District Boards in connection with the creation of a separate board for each bank. The deletion of these sections also eliminated the FCA's responsibility and authority to conduct polls for the nomination and election of individuals to district and association boards of directors. The 1987 Act provided that

policies governing the nomination and election of directors should be detailed in the bylaws of the institutions, which would be subject to the FCA's regulation. In addition, new sections 7.1 and 3.21 require the FCA to regulate the conduct of elections for the boards of Agricultural Credit Banks, formed by the merger of a Farm Credit Bank and bank for cooperatives, and elections for the board of a consolidated bank for cooperatives.

In accordance with these general and specific authorities, the FCA has proposed regulations that would establish fundamental eligibility requirements for membership on all bank and association boards based on safety and soundness considerations, and require each bank and association to adopt policies and procedures to ensure impartiality, confidentiality, and security in the election of directors.

The proposed regulation at 12 CFR 611.310 is based in part on provisions previously contained in sections 5.1 to 5.6 of the 1971 Act and would provide for a one-year period between service by any person as director and employee of any bank or association in order to maintain clear and separate accountability of the policy and management functions and require the termination of service of a bank or association director when continued service is clearly incompatible with the integrity and reputation of the institution.

The proposed regulation at 12 CFR 611.320 would incorporate the provisions of 12 CFR 612.2200 which prohibit participation in director elections by bank and association employees and would provide for equal access to bank or association property, facilities, and resources to all declared candidates, if such access is provided to one candidate. Also, the regulation would provide for distribution or mailing of candidate biographical information in a standard format.

New section 4.20 of the 1971 Act prohibits the use of signed ballots in elections for directors of System institutions. The proposed regulation at 12 CFR 611.330 would address this new prohibition by requiring bank and association policies and procedures to protect the confidentiality of stockholders' identity and votes. The proposed regulation contains an exception to this general requirement to enable institutions to identify the voting strength of a ballot or proxy when that type of voting is provided for in the bylaws or required in the Act. These records would be available for review by the FCA through its examination authorities.

Proposed regulations at 12 CFR 620.30, 620.31, 620.32 establish disclosure requirements for bank director candidates consistent with the disclosure requirements for association director candidates. To accommodate the differences between bank and association election scheduling, the proposed regulations for banks do not require these disclosures to be provided in connection with an annual meeting, as is the case for associations. The proposed regulations would require banks to adopt policies and procedures to assure that a disclosure statement is prepared by each candidate for bank director and require such statements to be mailed with the balloting materials.

II. Transfers of Lending Authorities

New section 7.8 of the 1971 Act provides for the transfer of lending authorities from a Federal land bank (or a merged bank having a Federal land bank as one of its constituents) to the Federal land bank associations in its district. This section also contains a provision which provides for the automatic transfer of direct lending authority from a Federal land bank to any association in the district created by the merger of a Federal land bank association and a production credit association.

The FCA received comments from the FCCA and seven Farm Credit banks and associations regarding the transfer of lending authorities. Six of the respondents indicated that a transfer should not be approved if the need for financial assistance was thereby increased. Several commentators expressed a concern that the flexibility for staggered or phased-in transfers should be maintained and that technical assistance agreements between the bank and associations should be allowed. A majority of respondents indicated that regulations are needed to ensure the safe and sound delivery of credit to the member-borrowers of the banks and associations involved in assignments or transfers of lending authorities.

The proposed regulations at 12 CFR 611.500 through 611.525 would establish the manner in which the statutorily required approvals of stockholders, affiliated banks, and the FCA are obtained in connection with a transfer of lending authority. The regulations specify the procedures and disclosures requirements for transfers of lending authorities that are similar to the regulations for other association disclosures requiring stockholder vote. To preserve the totality of circumstances involved in any proposed transfer, the regulations do not contain specific eligibility criteria for approval, such as minimum capital ratios. The regulations provide for an administrative review by the FCA, which would evaluate the proposed assignment or transfer from a safety and soundness standpoint. Under the regulations FCA could deny a request for cause provided that the reasons for denial are fully explained.

III. Special Reconsideration of Mergers

The FCA received comments from the FCCA and six banks and associations regarding new section 7.9 of the 1971 Act which provides for the reconsideration and possible dissolution of mergers that occurred after December 23, 1985, but before January 5, 1988. Half of the respondents stated that there was a need for regulations that protected the rights and interests of the stockholders of each association involved in any reorganization.

A majority of the respondents believed that the FCA should not approve a reorganization which resulted in associations that would be clearly nonviable or would require additional financial assistance from the System. Other commentators supported the need for regulations to ensure the safety and soundness of any institution that may result from a reorganization and that would require the institution to meet minimum capital adequacy standards. Several respondents stated that full disclosure similar to that required for association mergers, should be required in the petition process so that stockholders would have a balanced presentation of the relevant information. One respondent suggested that the regulations should require institutions to prepare financial statements that demonstrate how the association would have performed if the merger had not taken place. Another respondent believed that the association board should have the right to include its opinion on the reorganization in the disclosure materials. Several parties commented that the FCA should establish procedures that would minimize the potentially disruptive impact that multiple votes on different petitions could have on the association and its member-borrowers during this process. One respondent stated that the territorial rights of an association choosing to withdraw should be limited to those it held before the merger, whereas a second respondent believed that the regulations should be flexible on this point so that the desired restructuring could occur with only one, rather than multiple, stockholder votes. Two respondents expressed the need for

regulatory guidance on the distribution of assets and liabilities on a fair and equitable basis should an association be restructured.

The proposed regulations at 12 CFR 611.1190 through 611.1198 set forth the procedures for petitions, disclosures, and stockholder votes during the one-year reconsideration period. The regulations are not applicable to any mergers or consolidations implemented prior to December 23, 1985, or after January 5, 1988.

To minimize the disruptive effect that repeated or multiple petitions could have on the association and stockholders and ensure that a reorganization achieves the results intended by the stockholders, the regulations provide for a petition process which expands the options available to stockholders and directors. Stockholders may petition to either withdraw from the existing association or to reorganize the entire association into two or more separate associations which may or may not have territory similar to that held by predecessor associations. The regulations also authorize an association board of directors to initiate, by board resolution, a complete reorganization of an association and submit it to stockholders for approval.

The proposed regulations specify the types of disclosures that must be provided in an information statement prior to a vote on a petition or board resolution. If the reorganization involves the entire association, an affirmative vote of the majority of the association's stockholders is needed before the reorganization can occur. The disclosure requirements are similar to those for association mergers and include a plan of reorganization for any association created by withdrawal or reorganization as well as pro forma financial statements for the same. The information statement must also include a discussion of the likelihood that the associations involved would need financial assistance during their first three years of operations.

The proposed regulations provide for the verification of signatures on the petition by the association and require that the petitions or board resolutions and the accompanying disclosure materials be submitted to the FCA for approval. The FCA could deny approval of a petition or board resolution provided that the reasons for denial are fully explained.

IV. Merger and Reorganization Proposals Required by the 1987 Act

The FCA received comments from the FCCA and one Farm Credit district regarding section 412 of the 1987 Act which provides for the establishment of the Special Committee for the consolidation of Farm Credit districts. The FCA Board has addressed these regulations in a separate **Federal Register** document which contains interim rules relating to the Special Committee.

The proposed regulations at 12 CFR 611.1145 set forth requirements governing the development of proposals for the merger of certain Federal land bank associations and production credit associations and timetables for the submission of merger proposals to the affiliated banks and to the FCA. The proposed regulations clarify the meaning of "substantially the same" as used in section 411 of the 1987 Act by requiring merger proposals for the creation of agricultural credit associations to be developed in instances in which 90 percent or more of the chartered territory of a production credit association overlaps with 90 percent or more of the chartered territory of a Federal land bank association. The proposed regulations provide that the merger proposals shall be submitted to the affiliated banks no later than 60 days following the creation of the Farm Credit Bank and to the FCA no more than 30 days later. In addition, the proposed regulations specify that merger proposals must comply with the provisions of Subpart G of Part 611 relating to contents of the proposal, required information statements, Farm Credit Administration approval, and stockholder votes.

V. Other Changes to Current Merger Regulations.

The FCA Board adopted other proposed regulations and amendments to current regulations that implement the provisions of sections 7.0 and 7.12 of the 1971 Act which provide for the merger of banks operating under the same or different titles of the 1971 Act. The proposed amendments at 12 CFR 611.1000 and 611.1010 establish the general authority for changes to bank charters and the procedures for amending bank charters. Proposed regulations at § 611.1020 set forth the requirements for mergers and consolidations of banks and incorporate the requirements of §§ 611.1122 and 611.1123 relating to mergers of associations, that are applicable to bank mergers. Proposed regulations at § 611.1030 would provide for association representation on the board of directors of an Agricultural Credit Bank created by the consolidation of a Farm Credit Bank and a bank for cooperatives.

The proposed amendments to §§ 611.1122(g) and 611.1123(a) implement the provisions of section 7.9 of the 1971 Act, by requiring a delay in the implementation of any voluntary bank or association merger which provides the stockholders with the opportunity to reconsider their approval. Upon the filing of a reconsideration petition by 15 percent or more of the stockholders of any one bank or association that is a party to a merger, there would be a new stockholder vote on the merger.

Section 433 of the 1987 Act permits the stockholders of a Federal land bank association or production credit association whose chartered territory adjoins the territory of another district to petition the FCA to incorporate the petitioning association into the adjoining district. The FCA has decided not to promulgate regulations governing this process because the statutory provisions are clear and the FCA's existing regulations at 12 CFR 611.1124 adequately address the requirements for transfers of territory.

List of Subjects in 12 CFR Parts 611, 612, 618, and 620

Accounting, Agriculture, Archives and records, Banks, banking, Conflict of interests, Insurance, Organizations and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, Parts 611, 612, 618, and Part 620 of Chapter VI, Title 12, of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2031, 2071, 2091, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart A—[Removed and Reserved]

2. Part 611, Subpart A is removed and reserved.

3. Part 611, Subpart C, is added to read as follows:

Subpart C—Election of Directors

Sec.
611.310 Eligibility for membership on bank association boards and subsequent employment.
611.320 Impartiality in the election of bank and associated directors.

Sec.
611.330 Confidentiality in the election of bank and association directors.
611.340 Security in the election of bank and associated directors.

Subpart C—Election of Directors

§ 611.310 Eligibility for membership on bank and associated boards and subsequent employment.

(a) No person shall be eligible for membership on a bank or association board who is or has been, within one year next preceding the date the term of office begins, a salaried officer or employee of any bank or association in the System.

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is finally convicted of a felony or held liable in damages for fraud.

(c) No bank or association director shall, within one year after the date when he or she ceases to be a member of the board, serve as a salaried officer or employee of any bank or association for which he or she served as a director.

§ 611.320 Impartiality in the election of bank and association directors.

(a) Each bank and association shall adopt policies and procedures that assure the elections of board members are conducted in an impartial manner.

(b) No employee or agent of a System institution shall take any part, directly or indirectly, in the nomination or election of members of a bank, association, or service organization board, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such nominations, or elections. This paragraph shall not prohibit employees or agents from providing biographical and other similar information or engaging in other activities pursuant to policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution in which the employee or agent is a voting member.

(c) No property, facilities, or resources of any System institution shall be used by any candidate for nomination or election or any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates.

(d) No director, employee, or agent shall, for the purpose of furthering the interests of any candidates for nomination or election, furnish or make use of System records that are not made available for use by all declared candidates.

(e) No bank or association shall distribute or mail directly or at the expense of the bank or association, any campaign materials for director candidates. Banks and associations shall request biographical information from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

§ 611.330 Confidentiality in the election of bank and association directors.

(a) Each bank and association shall adopt policies and procedures that assure confidentiality in the election of board members.

(b) Except as provided in this paragraph, System institutions shall not use ballots or proxy ballots that must be signed by the stockholder or that contain an identifying character or mark that can be used ro identify how an individual stockholder's vote is cast. Institutions may adopt procedures which require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. Institutions may also use signed proxy statements or eligibility certificates which will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope. Where the identity of the voting stockholders is necessary to determine the voting strengths of ballots, the institution shall use a form of identity code on the ballot and shall require that the votes are tabulated by an independent party.

(c) When a bank or association receives a ballot by mail or at a meeting, the vote of such stockholder shall be final. When proxy voting is permitted, a stockholder voting by proxy may revoke the proxy prior to balloting at the stockholders meeting.

(d) Ballots, proxy ballots, election records, and information about how or whether individual stockholders have voted shall be held in confidence and not be disclosed to any person except as required by the Farm Credit Administration.

§ 611.340 Security in the election of bank and association directors.

(a) Each bank and association shall adopt policies and procedures that assure the security of ballots, proxy ballots, and records in the election of board members.

(b) Bank and association procedures shall assure that ballots and proxy ballots are provided only to stockholders who are eligible to vote.

(c) Ballots and proxy ballots shall be physically safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the banks and associations until disposal. Ballots, proxy ballots, and election records shall be retained until the end of the term of office for the election and promptly destroyed thereafter.

(d) The validity of ballots, including proxy ballots, and vote totals for each nominee or candidate shall be verified by the banks and associations before public announcement of election results. No information about vote totals shall be released before public announcement of election results.

4. Part 611, Subpart D is amended by revising the heading and redesignating existing § 611.1020 in Subpart F as new § 611.400 in this Subpart D to read as follows:

Subpart D—Rules for Compensation of Board Members

§ 611.400 Compensation of bank board members.

* * * * *

5. Part 611, Subpart E is revised to read as follows:

Subpart E—Transfer of Authorities

Sec.
611.500 General.
611.501 Procedures.
611.505 Farm Credit Administration review.
611.510 Stockholder vote.
611.515 Information statement.
611.520 Plan of transfer.
611.525 Stockholder reconsideration.

Subpart E—Transfer of Authorities

§ 611.500 General.

(a) Each Farm Credit Bank or Agricultural Credit Bank created by the merger of a Farm Credit Bank and bank for cooperatives is authorized, in accordance with section 7.6 of the Act, to transfer certain authorities to Federal land bank associations. The regulations in this subpart set forth the procedures and voting and approval requirements applicable to such transfers.

§ 611.501 Procedures.

(a) The boards of directors of a bank and an association which seek to transfer authorities may adopt appropriate resolutions proposing such transfer and providing for the submission of such a proposal to their respective stockholders for a vote.

(b) The resolutions accompanied by the following information shall be submitted to the Farm Credit Administration for review and approval:

(1) Any proposed amendments to the charters of the institutions;

(2) A copy of the transfer plan as required under § 611.520 of this part;

(3) An information statement that complies with the requirements of § 611.515;

(4) The proposed bylaws of the bank and the association, as applicable; and

(5) Any additional information the boards of directors wish to submit in support of the request or that the Farm Credit Administration requests.

§ 611.505 Farm Credit Administration review.

(a) Upon receipt of the board of directors resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the bank and the association who shall notify their respective boards of directors.

(c) Upon approval of the proposed transfer of authorities by the stockholders as provided in § 611.510, the secretary of the bank and the secretary of the association shall forward to the Farm Credit Administration a certified copy of their respective stockholders' vote.

(d) Each institution shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. The transfer shall not take effect until 30 days after such notification is mailed to stockholders provided that no petition is filed with the Farm Credit Administration to reconsider the approval. The transfer shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the institutions involved.

§ 611.510 Stockholder vote.

(a) Upon approval of a resolution by the Farm Credit Administration, the bank and the association shall call a meeting of its voting stockholders. The meeting shall be called on written notice sent after receipt of the Farm Credit Administration approval and shall notify each stockholder that the resolution has been filed and the meeting shall be held in accordance with the institutions' bylaws. The stockholders meeting shall be held within 60 days of receipt of the approval from the Farm Credit Administration.

(b) The notice of meeting to consider and act upon the directors' resolution shall be accompanied by an information statement that complies with the requirements of § 611.515.

§ 611.515 Information statement.

(a) An information statement shall be prepared for each bank and association involved which discloses certain information regarding the proposed transfer of authorities and the effect of the proposal on the bank and the association.

(b) The information statement for each institution involved shall contain the following materials as applicable to the institution:

(1) A statement either on the first page of the materials or on the notice of the stockholders meeting, in capital letters and boldface type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the plan under § 611.520 and the effect of the transaction on the institution, its stockholders, and the territority to be served.

(3) A statement enumerating the advantages and disadvantages of the proposed transfer including changes in operating efficiencies, one-stop service, branch offices, local control, financial condition, etc.

(4) A summary of the provisions of the charter and bylaws following the transfer that differ materially from the charter or bylaws currently existing.

(5) A brief statement by the board of directors of the institution setting forth the board's opinion on the advisibility of the transfer.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the bank or the association, as applicable, for the preceding two fiscal years.

(ii) A balance sheet and income statement of the bank or the association, as applicable, showing its financial condition before the transfer and a pro forma balance sheet and income statement for the bank or association, as applicable, showing its financial condition after the transfer which meet the following conditions:

(A) Such financial statements shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the institution, and operating results since the end of the last fiscal year through the end of the most recent quarter of the institution.

(B) If the request is made within 90 days afer the end of the fiscal year, the institution's financial statements shall be as of the most recent fiscal yearend.

(C) If the request is made within 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the institution's financial statement shall be as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, describing the assets being transferred and including data relating to nonperforming loans and related assets, allowance for loan losses, and current year-to-date chargeoffs.

(7) A description of the type and dollar amount of any financial assistance that has been provided to the bank or the association, as applicable, during the past year; the conditions on which the financial assistance was extended, the terms of repayment or retirement, if any; and, the liability for repayment of this assistance by the bank or the association if the transfer were approved.

(8) A statement as to whether the bank or the association, as applicable, would require financial assistance during the first 3 years of operation, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation of the association's interest rate and fee program, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of the bank or the association.

(12) A statement of any other material fact or circumstances that a stockholder would need in order to make an informed and responsive decision, or

that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of transfer provided for in § 611.520 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a transfer under this subpart.

§ 611.520 Plan of transfer.

The transfer of authorities and assets under this subpart shall occur pursuant to a written plan. There shall be a written plan for the bank and the association which shall include the following:

(a) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the bank and the association and the impact of the transfer on the value of that equity.

(b) A provision for the distribution of assets, liabilities, and authorities to the association and a description of the basis upon which the distribution is to be made.

(c) A description of how the association would obtain loan funds after the transfer.

(d) A statement on how the expenses connected with the transfer are to be borne by the affected parties.

(e) A statement of any conditions which must be satisfied prior to the effective date of the transfer, including but not limited to approval by stockholders and approval by the Farm Credit Administration.

(f) A statement that prior to the effective date of the transfer the board of directors of the bank or the association may rescind its resolution, with the concurrence of the Farm Credit Administration, on the basis that:

(1) The information disclosed to stockholders contained material errors or omissions;

(2) Material misrepresentations were made to stockholders regarding the impact of the transfer;

(3) Fraudulent activities were used to obtain the stockholders' approval; or,

(4) An event occurred between the time of the vote and the transfer that would have a significant adverse impact on the future viability of the association.

(g) A designation of those persons who have authority to carry out the plan of transfer, including the authority to execute any documents necessary to perfect title, on behalf of the bank and the association.

§ 611.525 Stockholder reconsideration.

(a) Stockholders have the right to reconsider the approval of the transfer provided that a petition signed by 15 percent of the stockholders of either institution involved in the transfer is filed with the Farm Credit Administration within 30 days of the date of notification of the final results of the stockholder vote required under § 611.506(d) and such petition is approved by the Farm Credit Administration.

(b) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the transfer. If a majority of stockholders of the institution involved in the transfer votes against the transfer, the transfer is not approved.

6. Part 611, Subpart F is revised to read as follows:

Subpart F—Bank Mergers, Consolidations and Charter Amendments

Sec.
611.1000 General authority.
611.1010 Bank charter amendment procedures.
611.1020 Requirements for mergers or consolidations of banks.
611.1030 Board of directors of an Agricultural Credit Bank.
611.1040 Creation of new associations.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

§ 611.1000 General authority.

(a) An amendment to a bank charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the bank, the location of its offices, or the territory served.

(b) The Farm Credit Administration may make changes in the charter of a bank as may be requested by that bank and approved by the Farm Credit Administration pursuant to § 611.1010 of this part.

(c) The Farm Credit Administration may make changes in the charter of a bank as may be necessary or expedient to implement the provisions of the Act.

§ 611.1010 Bank charter amendment procedures.

(a) A bank may recommend a charter amendment to accomplish any of the following actions:

(1) A merger or consolidation with any other bank or banks operating under Titles I and III of the Act;

(2) A transfer of territory with any other bank operating under the same title of the Act;

(3) A change to its name or location.

(b) Upon approval of an appropriate resolution by the bank board, the certified resolution, together with supporting documentation, shall be submitted to the Farm Credit Administration for preliminary approval.

(c) The Farm Credit Administration shall review the material submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate. If the request is for merger, consolidation, or transfer of territory, the approval of Farm Credit Administration will be preliminary only, will final approval subject to an affirmative vote of a majority of the bank's stockholders.

(d) Following receipt of the Farm Credit Administration's written preliminary approval, the proposal shall be submitted for approval by a majority vote of the associations or cooperatives that are stockholders of the requesting bank.

(e) Upon approval by the stockholders of the bank in paragraph (d) of this section, the request for final approval and issuance of the appropriate charter or amendments to charter for the banks involved shall be submitted to the Farm Credit Administration.

§ 611.1020 Requirements for mergers or consolidations of banks.

(a) As authorized under sections 7.0 and 7.12 of the Act, a bank may merge or consolidate with one or more banks operating under the same or different titles of the Act.

(b) Where two or more banks plan to merge or consolidate, the banks shall jointly submit to the Farm Credit Administration the documents itemized in §§ 611.1122(a)–(e) and 611.1123 for the merger of associations.

(c) No bank director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to any stockholder of the bank in connection with a bank merger or consolidation.

(d) Upon approval of a proposed bank merger or consolidation by the stockholders of each constituent bank, the following documents shall be

submitted from the constituent banks to the Farm Credit Administration for final approval and issuance of the appropriate charters or amendments to charter:

(1) A certified copy of the stockholders' resolution, on which the stockholders cast their votes, from each constituent bank;

(2) A certification of the stockholder vote from the corporate secretary of each bank or from an independent third party;

(3) An Agreement of Merger or Consolidation duly executed by those authorized to sign on behalf of each constituent bank.

(4) Two signed copies of the Articles of Association for the new bank entity.

§ 611.1030 Board of directors of an Agricultural Credit Bank.

Each Agricultural Credit Bank formed by the consolidation of a Farm Credit Bank and a bank for cooperatives shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution. In electing such directors each association shall be entitled to cast a number of votes equal to the number of its voting stockholders.

§ 611.1040 Creation of new associations.

Any application for the issuance of a charter to a new production credit association or Federal land bank association shall meet the requirements of sections 2.0 or 2.10, respectively, of the Act. Any application for the issuance of a charter to an agricultural credit association which has the authorities of a production credit association and a Federal land bank association, shall meet the requirements of section 2.0 of the Act.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

7. Section 611.1122 is amended by redesignating paragraphs (e)(11) through (e)(16) as paragraphs (e)(17) through (e)(22); and adding new paragraphs (e)(11) through (e)(16); and by revising paragraph (g) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(e) * * *

(11) A management discussion and analysis of the financial condition and results of operation for the past two fiscal years for each constituent institution. Substitution of the management discussion and analysis of each institution's most recent annual report shall satisfy this requirement.

(12) A discussion of any material changes in financial condition of each constituent institution from the end of the last fiscal year to the date of the interim balance sheet provided.

(13) A discussion of any material changes in the results of operations of each constituent institution with respect to the most recent fiscal-year-to-date period for which an income statement is provided.

(14) Three-year financial projections of each constituent institution individually and combined for the continuing or new institution.

(15) A discussion of any change in the tax status of the new institution from those of the constituent institutions as a result of merger or consolidation. A statement on any adverse tax consequences to the stockholders of the institution as a result of the change in tax status.

(16) A statement on the proposed institution's relationship with a independent public accountant, including any change that may occur as a result of the merger or consolidation.

* * * * *

(g) Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the Farm Credit Administration. Each constituent association shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. The merger shall not take effect until 30 days after such notification is mailed to stockholders provided that no petition is filed with the Farm Credit Administration to reconsider the approval. The merger or consolidation shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the affiliated bank.

* * * * *

Section 611.1123 is amended by redesignating paragraph (a)(9) as paragraph (a)(11) and adding new paragraphs (a)(9) through (a)(10); and by adding paragraph (c) to read as follows:

§ 611.1123 Merger or consolidation agreements.

(a) * * *

(9) The capitalization plan and capital structure for the new institution and a statement that the capitalization plan shall comply with applicable FCA regulations and shall be approved by the institution's stockholders before incorporation into the institution's bylaws.

(10) Provision for the employee benefits plan, its subsequent continuation or adaption by the board of directors of the proposed institution following the merger or consolidation.

* * * * *

(c) Stockholders have the right to reconsider the approval of the merger provided that a petition signed by 15 percent of the stockholders of one or more of the constituent institutions is filed with the Farm Credit Administration within 30 days of the date of notification of the final results of the stockholder vote required under § 611.1122(g); and such petition is approved by the Farm Credit Administration.

(1) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the merger.

(2) If a majority of stockholders of any one of the constituent institutions that is a party to the merger vote against the merger, the merger is not approved.

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

9. Section 611.1145 is added to read as follows:

§ 611.1145 Required consideration of proposals to merge production credit associations and Federal land bank associations.

(a) In accordance with section 411 of the Agricultural Credit Act of 1987 certain Federal land bank associations and production credit associations are required to develop proposals for the merger of such associations into agricultural credit associations.

(b) The merger proposals for the creation of agricultural credit associations shall be developed in those instances in which 90 percent or more of the chartered territory of a production credit association overlaps with 90 percent or more of the chartered territory of a Federal land bank association.

(c) Merger proposals shall be developed by the associations involved and submitted to the affiliated Farm Credit Bank for approval not later than 60 days following the creation of the Farm Credit Bank. Following review and approval by the affiliated Farm Credit

Bank, the associations shall submit the merger proposal to the Farm Credit Administration for approval not later than 90 days after the creation of the Farm Credit Bank.

(d) Each merger proposal shall comply with and be subject to all of the provisions of Subpart G of Part 611 relating to contents of the proposal, required information statements, Farm Credit Administration approval, and stockholder votes.

(e) Each merger proposal submitted to the stockholders for a vote shall have an effective date not later than 6 months after the creation of the affiliated Farm Credit Bank.

10. Subpart O is added to read as follows:

Subpart O—Special Reconsideration of Mergers

Sec.

611.1190 General.
611.1191 Petitions and resolutions.
611.1192 Requirements for petitions.
611.1193 Filing date—additional materials.
611.1194 Farm Credit Administration review.
611.1195 Stockholder vote.
611.1196 Notice of meeting.
611.1197 Information statement.
611.1198 Plan of reorganization.

Subpart O—Special Reconsideration of Mergers

§ 611.1190 General.

The regulations in this Supbart O implement the provisions of Agricultural Credit Act of 1987 relating to special reconsideration of voluntary mergers and consolidations that occurred after December 23, 1985 and prior to January 6, 1988. The regulations establish the procedures for petitions, disclosures, and stockholder votes for reconsideration of such mergers and consolidations and, if approved by stockholders, for the establishment of separate associations. The regulations shall apply to any request to reorganize an association that was created by merger or consolidation and become effective during the period, December 24, 1985 to January 5, 1988. For the purposes of this part, the term "Merger" includes a merger or consolidation. The regulations in this subpart are applicable only to those associations that were created by the merger of two or more associations after December 23, 1985 and before January 6, 1988.

§ 611.1191 Petitions and resolutions.

(a) The voting stockholders of an association who were stockholders of a predecessor association may seek to have the stockholders reconsider their association's participation in such merger by filing a petition for reconsideration with the Farm Credit Administration. The purpose of the petition shall be either:

The withdrawal of one or more predecessor associations from the existing association or

(2) The general reorganization into two or more separate associations of the existing association that was formed by the merger of three or more predecessor associations.

(b) The board of directors of an association may adopt a resolution proposing the general reorganization of the association into two or more separate associations and the submission of such proposal to the stockholders for a vote.

§ 611.1192 Requirements for petitions.

(a) In order for a petition to be acted upon, the petition must be signed by 15 percent or more of the voting stockholders of the existing association who were stockholders of each of the predecessor associations that seeks to withdraw from the existing association, or 5 percent of the total number of voting stockholders of the existing association if the petition seeks to reorganize the existing association that was formed by the merger of three or more associations.

(b) Each petition shall include the signature, printed name and the full address of each voting stockholder on the petition. If the petition proposes the withdrawal of one or more predecessor associations, the association shall certify that the signatures on the petition are the signatures of persons who were voting stockholders of such predecessor associations and that such persons continue to have their farming operations in the territory that was served by the predecessor association. If the petition proposes the reorganization of the entire association, the association shall certify that the signatures are from voting stockholders of the association.

(c) The petition shall describe the manner in which the existing association will be reorganized and the territory in which each proposed separate association would operate.

(d) The certification process shall be completed and the petition forwarded to the Farm Credit Administration within 5 working days of the date of its receipt by the association.

(e) No petition will be considered by the Farm Credit Administration if filed later than (*one year after the effective date of this section*).

§ 611.1193 Filing date—Additional materials.

(a) A certified copy of a petition or resolution, together with the additional materials provided for in this section, shall be forwarded by the association to the Farm Credit Administration. The filing date of a petition or resolution shall be the date the petition or resolution and additional materials are received by the FCA.

(b) Each petition or resolution shall be accompanied by the following materials:

(1) The proposed charter for each of the separate associations and the proposed effective date of the withdrawal or reorganization;

(2) A statement of the reasons for the proposed reorganization of the existing association or the proposed withdrawal of one or more associations from the existing association.

(3) A copy of the reorganization plan as required under § 611.1198 of this part;

(4) An information statement that complies with the requirements of § 611.1197 and that is prepared in accordance with § 611.1196.

(5) Any additional information that the petitioning stockholders or the board of directors wishes to submit in support of its request or that the Farm Credit Administration requests.

§ 611.1194 Farm Credit Administration review.

(a) Upon receipt of the petition or resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the association who shall notify the board of directors and the stockholders of such denial.

(c) Upon approval of the proposed withdrawal or reorganization by the stockholders as provided for in § 611.1195, the secretary of the association shall forward to the Farm Credit Administration a certification of the stockholder vote and a signed copy of the Articles of Association.

(d) On receipt of the certification and Articles of Association as required in paragraph (c) of this section, the Farm Credit Administration shall issue charters or amended charters as are necessary to reflect the territory to be served by the resulting associations.

§ 611.1195 Stockholder vote.

(a) Upon approval of a petition or resolution by the Farm Credit Administration, the association shall call a meeting of its voting stockholders. The meeting shall be called on written notice sent after receipt of the Farm Credit Administration's approval which shall notify each stockholder that a petition or resolution has been filed and that a meeting will be held in accordance with the association's bylaws. The stockholders' meeting shall be scheduled for a date which is no later than 60 days after the filing date.

(b) In the case of a petition to withdraw from the existing association, ballots shall be sent to each stockholder of the existing association who would be a stockholder of one of the separate associations. The petition, as it applies to each such separate association, shall be approved if agreed to by a majority of the stockholders who would be served by the separate association.

(c) Approval of the resolution or petition to reorganize the entire association into two or more associations shall require the affirmative vote of a majority of the voting stockholders of the existing association.

§ 611.1196 Notice of meeting.

(a) The notice of meeting to consider and act upon the petition shall be accompanied by an information statement that complies with the requirements of § 611.1197 which shall be prepared by the existing association with the cooperation and assistance of the petitioning stockholders or, at their discretion, by the petitioning stockholders.

(b) The notice of meeting to consider and act upon a resolution to reorganize the association shall be accompanied by an information statement that complies with the requirements of § 611.1197 prepared by the existing association.

§ 611.1197 Information statement.

(a) An information statement shall be prepared which discloses certain information regarding the existing association and (1) each association that is proposed to be withdrawn from the existing association, or (2) each association that would result from the total reorganization of the existing association.

(b) The information statement shall contain the following materials:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIEF UPON.

(2) A description of the material provisions of the reorganization plan and the effect of the reorganization on each proposed association, their stockholders, and the territory to be served.

(3) A statement enumerating the advantages and disadvantages of the proposed reorganization including changes in operating efficiencies, one-stop service, branch offices, local control, financial condition, etc.

(4) A summary of the provisions of the charter and bylaws of the proposed association that differ materially from the charter or bylaws of the existing association.

(5) A brief statement by the board of directors of the existing association setting forth the board's opinion on the advisability of the separation or reorganization.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the existing association for the preceding two fiscal years.

(ii) A balance sheet and income statement of the existing association showing its financial condition before the separation or reorganization and the pro forma balance sheet and income statement of each proposed association showing its financial condition which meet the following conditions:

(A) The financial statements of the existing and each proposed association (collectively, "constituent financial statements") shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the existing association, and operating results since the end of the last fiscal year through the end of the most recent quarter of the existing association.

(B) If the request is made within 90 days after the end of the fiscal year, the constituent financial statements shall be based on the most recent fiscal yearend financial statements of the existing association.

(C) If the request is made within 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, including data relating to nonperforming loans and related assets, allowance for loan losses, and current year-to-date chargeoffs.

(7) A description of the types and dollar amount of any financial assistance that has been provided to the existing association during the past year; the conditions on which the financial assistance was extended, the terms of repayment or retirement, if any; and, the liability for repayment of this assistance by the existing and proposed associations if the withdrawal or reorganization were approved.

(8) A statement as to whether the proposed association would require financial assistance during the first 3 years of its operation as a new association, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and to the proposed associations, and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation on each proposed association's interest rate and fee programs, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of each proposed association as of its effective date.

(12) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed and responsible decision, or that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy, together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of reorganization provided for in § 611.1198 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a reorganization under this subpart.

§ 611.1198 Plan of reorganization.

(a) The withdrawal of an association or other reorganization under this subpart shall occur pursuant to a written plan. There shall be a written plan of reorganization for each association to be withdrawn from an existing association or each association to be created by the complete reorganization of an existing association.

(b) A written plan shall include, but not be limited to, all of the following provisions:

(1) The proposed Articles of Association which shall contain the following:

(i) The proposed name and headquarters of the association.

(ii) The territory to be served by the association.

(iii) The purposes for which the association is being formed.

(iv) The powers and authorities to be exercised by the association in carrying out its functions under Title II of the Act.

(v) A statement which shall provide that the corporate existence of the association shall commence upon issuance of its charter by the Farm Credit Administration and shall continue until dissolved in accordance with the law.

(vi) The signatures of those persons who choose to establish the association and a statement signed by each such person establishing eligibility to borrow from the association in which such person will become a stockholder.

(2) As an attachment to the Articles of Association, the proposed bylaws of the new association.

(3) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the existing association who would be served by the proposed association.

(4) A statement on the formula for the retirement and transfer of stock, participation certificates and equities held by stockholders of the existing association who would become stockholders of the proposed association, and the issuance of an equivalent amount of stock, participation certificates and equities by the proposed association to its stockholders.

(5) A provision for the distribution of assets and liabilities of the existing association and a description of the basis upon which the distribution is to be made to the proposed association.

(6) A statement on how the expenses connected with the reorganization are to be borne by the affected parties.

(7) The names of the persons who will serve as the initial board of directors until the first annual meeting of stockholders following the reorganization. Any director of an existing association who is eligible to serve as a director of the proposed association may be designated as a member of the initial board of directors for a period not to exceed his or her current term, after which he or she must stand for reelection.

(8) A statement of any conditions which must be satisfied prior to the effective date of the proposed reorganization, including but not limited to approval by stockholders and issuance of a charter by the Farm Credit Administration.

(9) A statement that prior to the effective date of the reorganization, the petitioning stockholders may withdraw their petition or the board of directors of the existing association may rescind its resolution, with the concurrence of the Farm Credit Administration, on the basis that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the reorganization;

(iii) Fraudulent activities were used to obtain the stockholders' approval; or

(iv) An event occurred between the time of the vote and the reorganization that would have a significant adverse impact on the future viability of the proposed association.

(10) A designation of those persons who have authority to carry out the plan of reorganization, including the authority to execute any documents necessary to perfect title, on behalf of the proposed association.

PART 612—PERSONNEL ADMINISTRATION

11. The authority citation for Part 612 is revised to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

Subpart B—Standards of Conduct for Directors, Officers and Employees

§ 612.2200 [Removed and Reserved]

12. In Subpart B section 612.2200 is removed and reserved.

PART 618—GENERAL PROVISIONS

13. The authority citation for Part 618 is revised to read as follows:

Authority: Secs. 1.12, 2.5, 3.7, 4.13A, 4.29, 5.9, 5.17; 12 U.S.C. 2020, 2076, 2128, 2200, 2218, 2243, 2252.

Subparts D and E [Removed and Reserved]

14. Subparts D and E are removed and reserved.

PART 620—DISCLOSURE TO SHAREHOLDERS

15. The authority citation for Part 620 continues to read as follows:

Authority: Secs. 5.17; 12 U.S.C. 2252; sec. 424 of Pub. L. 100-233.

16. Subpart D is added to read as follows:

Subpart D—Bank Director Disclosure Requirements

Sec.

620.30 Disclosure statement for bank director candidates.

620.31 Contents of disclosure statements.

620.32 Prohibition against incomplete, inaccurate, or misleading disclosure.

Subpart D—Bank Director Disclosure Requirements

§ 620.30 Disclosure statement for bank director candidates.

Each bank shall adopt policies and procedures that assure that a disclosure statement is prepared by each candidate for election to the bank board. The banks shall provide a form providing for the information required and distribute or mail copies of completed and signed disclosure statements to stockholders with the election ballots. No person may be a candidate for bank director who does not make the disclosure required by this subpart.

§ 620.31 Contents of disclosure statements.

Disclosure statements shall include the following information:

(a) A statement of the institution's policies, if any, on loans to and transactions with directions of the bank.

(b) Candidate's name, residential address, business address if any, citizenship, business experience during the last 5 years including principal occupation and employment during the last 5 years, a list of any business entities on whose board of directors the candidate serves and state the principal business in which the entities are engaged, and any information pertinent to the creation of a nepotistic relationship upon election to the bank board.

(c) Transactions other than loans. The disclosure statement should describe briefly any transaction or series of transactions other than loans that occurred since the last annual meeting between the bank and the candidate, any member of the immediate family of such person, or any organization with which such person is affiliated, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(d) Loans to director candidates.

(1) To the extent applicable, state that the bank has had loans outstanding during the last full fiscal year to date to the candidate, his or her immediate family members, and any organizations with which such persons are affiliated that:

(i) Were made in the ordinary course of business;

(ii) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(2) To the extent applicable, state that no loan to a candidate, or to any organization affiliated with the candidate, or to any immediate family member who resides in the same household as the candidate or in whose loan or business operation the candidate has a material financial or legal interest, involved more than the normal risk of collectibility; provided that no such statement need be made with respect to any director who has resigned before the time for filing the applicable report with the Farm Credit Administration (but in no case than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(3) If the conditions stated in paragraphs (d) (1) and (2) of this section do not apply to the loan(s) of the candidates or organizations specified therein with respect to such loans, state:

(i) The name of the candidate to whom the loan was made or to whose relative or affiliated organization the loan was made;

(ii) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year;

(iii) The nature of the loan(s);

(iv) The amount outstanding as of the latest practicable date;

(v) The reasons the loan does not comply with the criteria contained in this section;

(vi) If the loan does not comply with this section, the rate of interest payable on the loan and the repayment terms;

(vii) If the loan does not comply with this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectibility.

(e) Involvement in certain legal proceedings. The disclosure statement should describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of the candidate:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of the candidate, or any partnership in which the candidate was a general partner at or within 2 years before the time of such filing;

(2) The candidate was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) The candidate was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limited the candidate from engaging in any type of business practice.

§ 620.32 Prohibition against incomplete, inaccurate, or misleading disclosure.

No employee or director or candidate for director of the bank shall make any disclosure to stockholders with respect to an election that is incomplete, inaccurate, or misleading. When any such person makes disclosure, that, in the judgement of the Farm Credit Administration is incomplete, inaccurate, or misleading, whether or not such disclosure is made pursuant to this subpart, the Farm Credit Administration may direct such institution or person to make such additional or corrective disclosure as is necessary to provide stockholders with full and fair disclosure.

Dated: May 31, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-12898 Filed 6-3-88; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 618

General Provisions; Member Insurance

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, publishes for comment proposed amendments to Part 618, Subpart B, relating to the authority of Farm Credit System (System) institutions to sell credit-related forms of insurance to their members-borrowers. The proposed amendments implement section 422 of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) which amends section 4.29 of the Farm Credit Act of 1971 (Act), 12 U.S.C. 2218. The proposed regulation requires all System banks to approve the programs of more than two insurers for each type of insurance offered in the district, and requires the board of directors of the bank or association to select and offer at least two approved insurers for each type of insurance made available. Insurance programs offered by System banks or associations as of January 6, 1988, that do not meet the requirements of section 4.29 may only be offered until July 1, 1988. The FCA invites comment on the proposed amendments.

DATES: Comments should be received on or before July 6, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: The FCA Board proposes to amend 12 CFR 618.8030 to conform this regulation to changes made by the 1987 Act. Section 618.8030 was promulgated pursuant to section 4.29 of the Act, which authorizes the FCA to issue regulations governing the sale of specified types of insurance by System banks and associations. Section 4.29 sets forth specific criteria to be included in these regulations.

Section 422 of the 1987 Act amends section 4.29 by expanding the specific responsibilities of System institutions in providing insurance services. Specifically, it requires System institutions to provide members or

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borrowers the option, without coercion, to accept or reject the insurance offered by these institutions. It also requires banks to approve the programs of more than two insurers for each type of insurance offered in the district and requires the board of directors of the bank or association to select and offer at least two of the approved programs. Section 422 requires that insurers selected to provide insurance programs must meet reasonable financial and quality of service standards and must be licensed under State law. Finally, section 422 requires that any insurance program offered by any System bank or association as of January 6, 1988, that does not meet the requirements of the amended section 4.29, is to be discontinued after July 1, 1988.

Accordingly, the FCA Board proposes to amend § 618.8030 to incorporate these requirements. Section 618.8030(a) is proposed to be amended by adding a sentence that states that members or borrowers shall have the option to accept or reject insurance without coercion. Section 618.8030(b)(2) is proposed to be amended by adding a new paragraph (i) to include the requirement that insurers selected to offer programs must meet financial and quality of service standards and must be licensed under State law for the State(s) in which the insurance is offered.

The FCA Board proposes to delete the present § 618.8030(b)(7), which requires at least two insurers to be approved for each type of insurance offered in the district and applies this requirement only to Federal intermediate credit banks. In its place, the FCA Board proposes to amend § 618.8030(b)(6) to add the requirement that each bank shall approve the programs of more than two insurers for each type of insurance offered in a district. If a program is not offered in all of the states in the district, the bank shall approve the programs of such additional insurers as are necessary to insure that the bank or each association has more than two approved programs from which to select and offer to its members and borrowers. The FCA Board also proposes to amend § 618.8030(b)(2) to state that the banks and associations are to select and offer at least two of the approved programs. Insurance programs offered by System banks and associations as of January 6, 1988, that do not meet these requirements are grandfathered only until July 1, 1988.

Finally, the existing § 618.8030(b) requires FCA to approve district policies for the sale of insurance services. The FCA Board proposes to delete this prior approval requirement to conform this regulation to amendments to the Act that establish FCA as an arms-length regulator.

List of Subjects in 12 CFR Part 618

Agriculture, Archives, and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, Part 618 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 618—GENERAL PROVISIONS

1. The authority citation for Part 618 is revised to read as follows:

Authority: Secs. 4.12, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2183, 2218, 2243, 2244, and 2252.

Subpart B—Member Insurance

2. Section 618.8030 is amended by removing paragraph (b)(7); by redesignating paragraphs (b)(8) through (b)(13) as paragraphs (b)(7) through (b)(12); and revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), and (b)(6) to read as follows:

§ 618.8030 Authorization.

(a) Banks and associations may sell to any Farm Credit System member or borrower, on an optional basis, credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtors. The sale of other insurance necessary to protect a member's farm or aquatic unit is permitted, but limited to hail and multiple-peril crop insurance, title insurance, and insurance necessary to protect the facilities and equipment of aquatic borrowers. A member or borrower shall have the option, without coercion from the bank or association of such member or borrower, to accept or reject such insurance.

(b) District board policies governing the provision of member insurance programs shall be established within the following general guidelines:

(1) There must be a debtor-creditor relationship with a Farm Credit System institution for a member to be eligible for authorized member insurance services. Coverage may continue after the loan has been repaid provided the member can reasonably be expected to borrow again with 2 years, and provided such continuation of insurance is not contrary to State law. For hail and multiple-peril crop insurance only, eligibility extends to landlords of tenants and tenants of landlords having a debtor-creditor relationship. The member/borrower shall have the option, without coercion from the bank or association, to accept or reject such insurance.

(2) Member insurance services may be offered only if:

(i) The insurance program has been approved by the bank or association from among eligible programs made available to it by insurers—

(A) Meeting reasonable financial and quality of service standards; and

(B) Licensed under State law to do business in the State(s) in which the insurance is offered;

(ii) The bank or association has the capacity to render authorized insurance services;

(iii) There exists the probability that the services will generate sufficient revenue to cover all costs;

(iv) Rendering the insurance service will not have an adverse effect on the credit or other operations of the bank or association; and

(v) In making insurance available through approved insurers, the board directors of the bank or association selects and offers at least two approved insurers for each type of insurance made available to the members and borrowers.

* * * * *

(6) In making insurance available through private insurers, each bank shall approve the programs of more than two insurers for each type of insurance offered in the district. If a program is not offered in all of the states in the district, the bank shall approve the programs of such additional insurers as are necessary to insure that the bank or each association is provided more than two approved programs from which to select and offer to its members and borrowers. The banks may provide comparative information relating to costs and quality of approved programs and financial conditions of approved companies.

* * * * *

Date: May 31, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-12989 Filed 6-3-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 208

[Docket No. R-88-1379; FR-2421]

Computer Automation of Required Data for Certification and Recertification and Subsidy Billing Procedures for Certain Multifamily Subsidized Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would require owners of certain HUD-administered multifamily subsidized projects to automate the submission of certain data to HUD. This rule would apply to multifamily projects under the following programs: Section 236 Interest Reduction and Rental Assistance Payments, Section 8 Housing Assistance Payments Program (including, but not limited to, Loans for Housing for the Elderly or Handicapped (Sections 202/8)), Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements. This rule does not apply to the Section 8 Existing Housing Program or the Moderate Rehabilitation Program, nor does it apply where State housing finance and development agencies and other Public Housing Agencies are contract administrators.

DATES: Comments must be submitted on or before July 21, 1988.

ADDRESSES: Interested parties are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, 451 Seventh Street SW., Room 6182, Washington, DC 20410, (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In 1983 and 1985, legislative changes were made which significantly changed and complicated tenant rent calculations. Therefore, HUD has encouraged automation of the following forms: (1) Form HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures; (2) Form HUD-50059 a through e and k, Computation of Tenant Payment/Rent; (3) Form HUD-52670, Housing Owner's Certification and Application for Housing Assistance Payments; and (4) Form HUD-52670A, Schedule of Tenant Assistance Payments Due. These forms are used in the following subsidy programs: Section 8 Housing Assistance Payments Programs (including, but not limited to, Loans for Housing for the Elderly or Handicapped (Sections 202/8)), Section 236 Interest Reduction and Rental Assistance Payments, Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements. Automation is desirable because these forms have become a burden both to project owners and managers and to HUD. Owners and managers have the time consuming task of completing the calculations and computations which are prone to error, and when errors are found, retroactive changes and subsidy adjustments are required. The burden to HUD results from insufficient HUD staff to perform the time consuming task of reviewing 100 percent of the forms to verify the accuracy and completeness of the information.

The primary goal of this regulation is to allow HUD, as contract administrator, to accumulate and check, through automation, the Form HUD-50059, and subsidy billing submissions. However, under the requirements of this proposed rule, HUD would require owners to automate the transmission of data only when doing so would be cost effective. Therefore, exceptions to this rule would be permitted where, as determined by HUD, and based on information submitted by the owner, it can be shown that it would not be cost effective to automate. As a result of the foregoing, the Department is soliciting comments from the public, regarding the appropriate criteria for waiving the data automation requirements. In the final rule, the Department will publish the criteria under which it will consider granting waivers to the data automation requirements on a case-by-base basis. Project owners would have to have the required data for compliance with this rule within 180 days of the effective date of his rule. The costs of automating the transmission of data—including the purchasing and maintaining of computer hardware or software, or both, or the cost of contracting for such services, associated with front line activities regarding certification, recertification and subsidy billing—would be considered project operating costs to be paid out of project income and would be considered project operating costs when processing rent increases.

On January 11, 1988, at 53 FR 645, the Department published a Notice advising software vendors, project owners, and other interested individuals of the availability of specifications and formats for use in automating the forms. These specifications contain the minimum standards that must be met. Individuals interested in receiving a copy of these standards may request them by writing to James J. Tahash, Director, Planning and Procedures Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6182, Washington, DC 20410.

Other Matters

A 45-day comment period is being afforded this rule so that the Department may have the benefit of public comments. However, a longer comment period would seriously delay implementation of this system. The Department and the industry are committed to a timetable that requires the Department to begin training pre-selected Field Offices and pilot testing the vendor's software and the new system no later than June 1988. The system is scheduled to be fully operational by January 1989. The industry is aware of the intent of the proposed rule and has been working with the Department to develop the minimum standards for the software package. A Notice of the availability of the Department's standards was published in the **Federal Register** on January 11, 1988 (53 FR 645). The Department's timetable for implementation of this system is also an initiative under OMB's Productivity Improvement Program. Substantively, this rule would make no changes in the data requirements of the projects or project owners, nor would it affect the current or prospective tenants. It would merely change the way in which the data is transmitted. The forms used currently are a burden to HUD and the project owners and managers, and HUD's Inspector General would like to see the system fully operational by January 1989 in order to reduce the number of errors associated with the current system.

National Environmental Policy Act. A Finding of No significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321-4347). The Finding is available for public inspection during regular business hours in the Office of

the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410-0500.

Executive Order 12291. This rule would not constitute a major rule as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis on the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because this rule would make no changes in the data requirements of projects or project owners but merely would change the way in which the data is transmitted to HUD. Costs associated with implementation of the automated system would be considered project operating costs. At any rate, exceptions to the rule would be permitted where automation would not be cost effective to the owner and to HUD.

Semiannual Agenda. This rule is listed as item number 913 in the Department's April 25, 1988, Semiannual Regulatory Agenda (53 FR 13854), published in accordance with Executive order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 208

Computer technology: automatic data processing, data processing, electronic data processing, Subsidies: grant programs, rent subsidies.

Accordingly, the Department proposes to add to Title 24, Chapter II, Subchapter B of the Code of Federal Regulations a new Part 208 to read as follows:

PART 208—COMPUTER AUTOMATION OF REQUIRED DATA FOR CERTIFICATION AND RECERTIFICATION, SUBSIDY BILLING PROCEDURES FOR CERTAIN MULTIFAMILY SUBSIDIZED PROJECTS

Sec.
208.101 Purpose.
208.104 Applicability
208.108 Requirements.
208.112 Cost.

Authority: Sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 208.101 Purpose.

The purpose of this part is to require owners of HUD-administered multifamily subsidized projects under the programs listed in § 208.104 to automate the transmission of data required by HUD Forms and Worksheets for Certification and Recertification of Compliance with HUD's Tenant Eligibility and Rent Procedures, and the Computation of Tenant Payment/Rent (Form HUD-50059, 50059a through e and k) and the Monthly Subsidy Billing Forms (HUD 52670 and 52670A, Part 1), as applicable.

§ 208.104 Applicability.

(a) This part applies to those multifamily projects having subsidy contracts, either insured or non-insured, where HUD is the subsidy contract administrator, under Section 236 Interest Reduction and Rental Assistance Payments, Section 8 Housing Assistance Payments Programs (including, but not limited to, Loans for Housing for the Elderly or Handicapped (Sections 202/8)), Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements. This rule does not apply to the Section 8 Existing Housing Program or the Moderate Rehabilitation Program, nor does it apply when State housing finance and development agencies and other Public Housing Agencies are contract administrators.

(b) Exceptions to this part will be permitted where, as determined by HUD, based on information submitted by the owner, it can be shown that it would not be cost effective to automate.

§ 208.108 Requirements.

(a) Project owners of applicable projects, as listed in § 208.104, shall have made arrangements to transmit data for certification, recertification and subsidy bill procedures in an automated mode by (insert 180 days from effective date of final rule.).

(b) Automation shall consist of the submission of the automated data in accordance with the minimum standards prescribed by HUD and in lieu of the hard copy forms.

§ 208.112 Cost.

(a) The costs of automating the transmission of data—including the purchasing and maintaining of computer hardware or software, or both, or the cost of contracting for such services, associated with the front line activities regarding certification, and recertification and subsidy billing—will be considered project operating costs to be paid out of project income and will be considered as project operating costs for purposes of processing and approving requests for HUD approval of rent increases.

(b) The purchase of software by a project owner or manager shall include a contractual agreement by the software contract vendor to provide maintenance and training contracts as a part of the software package. The maintenance contract must include the vendor's commitment to make any changes in its software package resulting from changes or revisions in the legislation, regulations, or handbooks.

Date: May 20, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-12711 Filed 6-3-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-963-86]

Definition of a Qualified Business Unit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the definition of a qualified business unit (QBU). In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to the definition of a QBU. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and request for a public hearing must be delivered or mailed by August 5, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-963-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Chip Collins of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 Attention: CC:LR:T (INTL-963-86), not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new §§ 1.989 (a)-OT and 1.989 (a)-1T to Part 1 of Title 26 of the Code of Federal Regulations. Section 989 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2090). Final regulations are by this document proposed on the basis of these temporary regulations. For the text of the temporary regulations, see FR Doc. 88-12558 [T.D. 8206]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations. The regulations reserve the application of the QBU definition to partnerships, trusts, and estates. The Service is especially interested in receiving comments on the application of the QBU definition to these entities.

Non-applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these proposed regulations is P. Ann Fisher of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

List of Subjects in 26 CFR 1.861-1—1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary regulations, FR Doc. 88-12558 [T.D. 8206] published in the Rules and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under section 989 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-12559 Filed 6-3-88; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[INTL-964-86]

Transition Rules for Certain Qualified Business Units Using a Net Worth Method of Accounting for Tax Years Beginning Before January 1, 1987; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.*, qualified business units (QBUs), whose functional currency is other than the dollar and who used a net worth method of accounting prior to the enactment of the Tax Reform Act of 1986. In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to these transition rules. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by August 5, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-964-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. 20224 Attention: CC:LR:T (INTL-964-86) (202-634-5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new §§ 1.989 (c)-OT and 1.989 (c)-1T to Part 1 of Title 26 of the Code of Federal Regulations. Final regulations are by this document proposed on the basis of the temporary regulations. Section 989 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2090). For the text of the temporary regulations, see FR DOC. 8-12560 [T.D. 8207]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Non-Applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is David Rosenberg of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing

the regulations on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary regulations, FR DOC. 88–12560 [T.D. 8207] published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under section 989 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–12561 Filed 6–3–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–88–04]

Anchorage Ground; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to amend the southwestern boundary of Anchorage 5 in San Francisco Bay by extending it 450 yards to the west. This would increase the anchorage area in the deeper waters needed by larger vessels, while still providing an ample northbound shipping channel.

DATES: Comments must be received on or before July 21, 1988.

ADDRESSES: Comments should be mailed to Commander(oan), Eleventh Coast Guard District, Union Bank Building, Rm 702, 400 Oceangate, Long Beach, CA 90822–5399. The comments and other materials referenced in this notice will be available for inspection and copying at Commander, Eleventh Coast Guard District, Office of Aids to Navigation, Room 701, 400 Oceangate, Long Beach, CA 90822–5399. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael J. Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822–5399. Phone number: (213) 499–5410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD11–88–04), the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Michael J. Lodge, project officer; Lieutenant Commander James Spitzer, project officer; and Lieutenant G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

Anchorage No. 5 is frequently used by vessels returning from upriver ports to refuel before continuing to sea, and by laden tank ships awaiting berth availability. The vessel's deep drafts generally require that they be anchored at the southern portion of the anchorage. The shape and limited area of the anchorage currently make it difficult to anchor without extending beyond the limits of the anchorage into either Southampton Shoal Channel or the Northbound San Francisco Bay Traffic Lane. The proposed change would increase Anchorage No. 5 by 450 yards in width at the southern tip, and decrease the eastern side of the northbound traffic lane by 250 yards. This change would leave a 550 yards wide northbound traffic lane.

Economic Assessment and Certification

These proposed regulations are considerd to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The increase of area in Anchorage 5 will not impede transiting vessels.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR 110

Anchorage grounds

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(c) and 33 CFR 1–05–1(g).

2. Section 110.224 is amended by revising paragraph (e)(2) to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e) * * *

(2) Anchorage No. 5, Southampton Shoal. In San Francisco Bay at Southampton Shoal bounded by a line connecting the following coordinates:

Latitude	*Longitude*
37°55'48" N	122°25'52" W; to
37°55'50" N	122°26'32" W; to
37°54'48" N	122°26'39" W; to
37°54'03" N	122°26'06" W; to
37°53'23" N	122°25'30" W; to
37°53'23" N	122°25'09" W; to
37°55'19" N	122°25'33" W; to
37°55'42" N	122°25'45" W; thence back to
37°55'48" N	122°25'52" W.

* * * * *

Dated: May 16, 1988.

A.B. Beran,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 88–12860 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD11–88–02]

Regulated Navigation Area; Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard has determined that the Regulated Navigation Area at Isthmus Cove, Catalina Island, California is no longer justified. For this reason, the Coast Guard is proposing to delete the Regulated Navigation Area at Isthmus Cove.

DATES: Comments must be received on or before July 21, 1988.

ADDRESSES: Comments should be mailed to Commander(oan), Eleventh Coast Guard District, Union Bank Building, Rm. 701, 400 Oceangate, Long Beach, CA 90822–5399. The comments and other materials referenced in this notice will be available for inspection and copying at Commander, Eleventh Coast Guard District, Office of Aids to Navigation, Room 702, 400 Oceangate, Long Beach, CA 90822–5399. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822–5399. Phone number: (213) 499–5410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CCGD11–88–02] and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is detemined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are Lieutenant Junior Grade Michael J. Lodge, project officer, and Lieutenant Commander A.E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation: In 1984, the Coast Guard was asked by the Catalina Marine Science Center to establish a no anchorage area at Isthmus Cove, Catalina Island. This area was to be used by the Science Center to cultivate marine wildlife on the seabed. The Regulated Navigation Area became effective on August 5, 1985.

In reviewing the regulation, it was found that it was not directly related to navigation or vessel operations. As a result of this review, the Coast Guard has determined that the Regulated Navigation Area at Isthmus Cove, Catalina Island is no longer justified and should be deleted.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal will have minor impact because the deletion of the Regulated Navigation Area will increase the area available for vessels to anchor.

Since the impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33 Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

§ 165.1110 [Removed]

2. Section 165.1110 is removed.

Dated: May 16, 1988.

A.B. Beran,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88–12868 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 19

Appeals Regulations and Rules of Practice; Status of Legal Interns, Law Students and Paralegals

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) proposes to revise and clarify existing procedures and requirements regarding representation. The existing regulation now only refers to attorney "designation" and "revocation or change of representation by an attorney." The proposed change will include "attorneys employed by recognized organization," legal interns, law students and paralegals. It has also been determined that there should be guidelines controlling requests for a change in hearing date. The revisions are designed to improve the VA's ability to assure high quality representation of appellants.

DATES: Comments must be received by July 7, 1988. Comments will be available for public inspection until July 20, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for inspection only in the Veterans Services Unit, room 132, of the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Donsbach, Special (Legal) Assistant to the Chairman, Board of Veterans Appeals, (202) 233–2978.

SUPPLEMENTARY INFORMATION: Proposed amendments to existing regulations include the establishment of new criteria for representation. A new information provision would also be added. The provision would include permitting recognized organizations to use legal interns, law students, or paralegals provided they are under the supervision of an attorney or an attorney/accredited representative who is employed by the service organization.

Provisions pertaining to a change in hearing dates would be supplemented by a requirement that more than one change of hearing date by an appellant or representative is justified.

The Administrator hereby certifies that these proposed rules will not, if promulgated, have a significant

economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. They will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions).

The VA has also determined that these rules are nonmajor in accordance with Executive Order 12291, Federal Regulation. They will not have an adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance program number involved.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: May 11, 1988.

Thomas K. Turnage,

Administrator.

PART 19—[AMENDED]

38 CFR Part 19, APPEALS, is proposed to be amended as follows:

1. In § 19.152, paragraph (b) and the cross-reference are revised, and paragraph (c) is added so that the added and revised material read as follows:

§ 19.152 Rule 52; Attorneys.

* * * * *

(b) *Attorneys employed by recognized organization.* A recognized organization (Rule 51, § 19.151 of this part) may employ an attorney to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellent must be obtained and the attorney will be the recognized representative (Rule 55, § 19.155(a) of this part) of the appellant. An attorney employed by a recognized organization may, with the written consent of the appellant, use legal interns, law students, and paralegals to assist in the appeal.

(Authority: 38 U.S.C. 3401)

(c) *Revocation or change of representatives by an attorney.* An appellant may revoke a declaration of representative by an attorney at any time, irrespective of whether another representative is concurrently designated. The revocation is effective when notice of such is received by the Veterans Administration.

(Authority: 38 U.S.C. 3404)

Cross-References: Requirements for accreditation of representatives, agents, and attorneys. See § 14.629(c). Powers of attorney. See § 14.631. Legal interns, law students and paralegals. See Rule 56, § 19.156.

2. In § 19.156 paragraphs (b) and (c) are revised to read as follows:

§ 19.156 Rule 59; Scheduling and notice of hearing.

* * * * *

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing. The appellant or the representative has a period of 60 days from the date of the letter of notification in which to request a different date for the hearing. Only one request for a change of the date of the hearing will be granted during the 60-day period, and this will be stated in the letter to the appellant and/or the representative at the time a response is given in regards to scheduling a hearing. Consideration will also be given to the interests of other parties if a contested claim is involved. Thereafter, the date of the hearing will become fixed and cannot be changed, except as provided in paragraph (c) of this section. Failure by the appellant or the representative to appear at the hearing as scheduled will result in the case being fowarded to a Section of the Board for continuation of the appellate process.

(Authority: 38 U.S.C. 4002)

(c) *Extension of time.* After a hearing date has become fixed, an extension of time for appearance at a hearing may be granted for good cause shown, with due consideration of the interests of other parties if a contested claim is involved. The request for extension should be in writing and must be filed with the Chief of the Hearing Section. Ordinarily, hearings will not be postponed more than 30 days. Examples of good cause include the following: illness of the appellant and/or representative, difficulty in obtaining records, and unavailability of a witness.

(Authority: 38 U.S.C. 4002, 4005A)

[FR Doc. 88-12613 Filed 6-3-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 84-060]

Licensing of Pilots; Manning of Vessels-Pilots

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is changing its original proposal (50 FR 26117) of June 24, 1985, to amend the regulations concerning the Licensing of Pilots and the Manning of Vessels-Pilots. This proposal would: (1) Delineate when certain inspected vessels are required to be under the direction and control of a pilot, (2) describe first class pilotage areas where local pilotage expertise is warranted, (3) allow licensed individuals to serve as pilot in areas not identified as first class pilotage areas on vessels that they are otherwise qualified to control, and (4) permit individuals with 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, to obtain without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule). The applicant is required to have the same number of round trips that the respective OCMIs require of other applicants for an endorsement as first class pilot, and ⅔ of the required number of round trips must have been on towing vessel combinations greater than 1,600 gross tons.

These changes are necessary to eliminate confusion over where and on what vessels pilotage expertise over and about that held by licensed masters, mates, and operators is warranted. They will also provide relief to tank barge operators who have demonstrated experience in performing this function.

DATES: Comments must be received on or before September 6, 1988.

ADDRESSES: Comments must be mailed to Commandant (G-CMC/21) (CGD 84-060), U.S. Coast Guard, Wasington, DC 20593-0001. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, Comments may be delivered to and will be available for inspection or coping at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. John Hartke, Merchant Vessel Personnel Division (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-0214.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments. Written comments should include the docket number (CDG 84-606), the name and address of the person submitting the comments, and the specific section of th e proposal to which each comment is addressed. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is taken on this proposal. No public hearings are planning, but they may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. As background, an original notice of proposed rulemaking was published in 1980. That proposal was modified and republished as a supplemental notice in 1983. The comment period was subsequently extended twice, and the final rule was published June 24, 1985. Since some of the issues, those identified in the summary of this proposal, were not within the scope of the previous rulemaking, a separate notice of proposed rulemaking addressing those issues was published simultaneously with the final rule. The comment period was originally scheduled to end on September 23, 1985. However, a Notice of Extension of Comment Period (50 FR 38557), published in the **Federal Register** on September 23, 1985, extended the comment period to December 22, 1985.

The Coast Guard received 172 written comments, and two public meetings were held, one meeting in New York, hosted by the Maritime Association Port of New York, on Novermber 12, 1985, and the second was a Towing Safety Advisory Committee Subcommittee on Personnel Manning and Licensing meeting held at Coast Guard Headquarters in Washington, DC., on December 12, 1985.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. John J. Hartke, Project Manger, Merchant Vessel Personnel Division, and, Commander Ronald C. Zabel and Commander Gerald A. Gallion, Project Attorneys, Office of Chief Counsel.

Discussion of the Proposed Regulations

Some of the matters contained in the proposals for the rulemaking have been disposed of. Two of these; (1) increasing the tonnage authorization of licensed officers to serve as pilot on self-propelled coastwise seagoing vessels subject to inspection from 1,000 gross tons to 1,600 gross tons, and (2) requiring pilots on Great Lakes Vessels received no negative comments and were included in the Interim Final Rule published on October 16, 1987 (52 FR 38614).

The proposal regarding the requirement that first class pilots must have experience on vessels of more than 40,000 gross tons in order to be authorized to pilot vessels of more than 50,000 gross tons is withdrawn. The comments received were almost universally negative, indicating that the proposal is unworkable because, in most ports, there are not enough larger vessels to provide the proposed number of round trips for a sufficient number of pilots to quality to handle the larger vessels. Additionally, commenters questioned the need for this particular proposal. The Coast Guard agrees with those comments and that specific proposal is withdrawn. The Coast Guard Guard presently has sufficient authority regarding the limitations on licenses as contained in 46 CFR 10.701.

Pilotage Requirements

In response to the written and oral comments received on the remaining items in the proposal, the Coast Guard is now proposing significant changes to that Notice of Proposed Rulemaking.

In this action the following changes to the prior notice are proposed: (1) Instead of specifically defining "pilotage waters" and "coastwise seagoing vessel", this proposal would accomplish the same purpose by delineating when certain inspected vessels are required to be under the direction and control of a pilot. These provisions will address inspected mechanically propelled vessels and seagoing tank barges inspected under 46 U.S.C. Chapter 37, (2) In conjunction with this, the proposal describes first class pilotage areas where additional local piloting expertise is warranted, and (3) Individuals with 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, may receive, without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule). The applicant is required to have the same number of round trips that the respective OCMIs require of other applicants for an endorsement as first class pilot.

In the June 24, 1985 notice of proposed rulemaking we proposed to define pilotage waters as the navigable waters shoreward of the 10 fathom line, with exceptions for when that line is inside the headlands or beyond the territorial sea. There was very little support for, and considerable opposition to, use of the 10 fathom line. A number of commenters characterized it as a squiggly line and stated that you cannot determine whether or not you are actually in pilotage waters.

46 U.S.C. 8502 requires that certain inspected vessels be under the direction and control of a pilot when "not on the high seas." The clear implication of this language is that pilots are required for those vessels on all the navigable waters of the United States, which includes the territorial seas and internal waters. Limiting the scope of the applicability of the statute by defining pilotage waters as some lesser area is, on the surface, inappropriate. However, there are many large portions of our coastline where there are no navigational risks to vessels proceeding along the coast within the territorial seas. In view of this, the Coast Guard has a long history of only licensing individuals as pilots for a portion of the navigable waters of the United States, primarily harbor areas, high traffic areas, rivers, and the Great Lakes. Conversely, there are some areas outside the territorial seas of the United States, such as Block Island Sound, where pilots have been traditionally required.

46 U.S.C. 8502 is not the Coast Guard's only authority to require an individual with pilotage expertise to be in control of the vessel. Under the Coast Guard's authority to set manning levels on inspected vessels in 46 U.S.C. 8101, and authority to increase the number of licensed individuals required on a vessel in 46 U.S.C. 8301, the Coast Guard may require pilots on inspected vessels when deemed appropriate. In this action the Coast Guard is proposing a rule that would eliminate any conflict or confusion over where an individual holding a license or endorsement as pilot is required, when a licensed

individual with specific local experience is required, and where just the expertise of a licensed master, mate or operator is sufficient.

In the June 24, 1985 notice of proposed rulemaking we proposed to define "coastwise seagoing vessel" as a vessel that at any time is authorized by its Certificate of Inspection to proceed beyond the headlands. A number of commenters stated that they were opposed to the proposed definition because a vessel with Lakes, Bays and Sounds routes on its Certificate of Inspection can proceed beyond the headlands which would then make Lakes, Bays and Sounds vessels coastwise seagoing vessels for pilotage purposes. Some commenters suggested that the definition of coastwise seagoing vessel be tied to the particular voyage that the vessel happens to be on at that time rather than tie it to the route authorized by its Certificate of Inspection. It seems clear that the language of the statute (46 U.S.C. 8502 (a)) is meant to identify a type or class of vessel rather than a vessel's voyage.

Instead of defining "coastwise seagoing vessel" and using the phrase "vessels operating exclusively on pilotage waters of the United States" as originally proposed, this proposal simply applies pilotage requirements to vessels based on the waters on which the vessels are certificated to operate. The Coast Guard believes that this approach will avoid confusion and ease administration of the rule. There are only two categories in this proposal, as the requirement for pilots on vessels operating on the Great Lakes is contained in the Interim Final Rule on the Licensing of Maritime Personnel (CGD 81-059) published in the **Federal Register** October 16, 1987 (52 FR 38655). These categories are: (1) Inspected, mechanically propelled vessels and tank barges subject to inspection under 46 U.S.C. Chapter 37, that are authorized by their certificate of inspection to proceed beyond the Boundary Line specified in 46 CFR Part 7, and (2) inspected, mechanically propelled vessels that are not authorized by their certificate of inspection to proceed beyond the Boundary Line specified in 46 CFR Part 7.

The pilotage requirements proposed for these vessels vary depending on the gross tonnage of the vessel and the specific waters the vessel is being operated on. This proposal is not intended to make a significant change in the areas where pilots have been traditionally required. Rather, it is intended that our regulations recognize the broad statutory requirement for pilots for certain vessels on the navigable waters and provide an appropriate means of satisfying the statutory requirements. In this proposal, the existing manning regulations in 46 CFR 15.812 would continue to apply to areas that have been traditionally covered by first class pilot route endorsements. For areas of the navigable waters of the United States that are not covered by first class pilot endorsements, this proposal would allow the master, mate or operator of a vessel to serve as pilot for that vessel. However, the statutory requirements of being 21 years of age and, for those individuals serving as pilot on vessels greater than 1,600 gross tons, having an annual physical exam would apply. The statutory requirement to maintain adequate knowledge of the waters to be navigated would be met by requiring the individual to have served on that route within the previous 60 months.

Officers in Charge, Marine Inspection, would locally delineate those waters within their zone where additional pilotage expertise is warranted and the qualifications that are necessary for serving as pilot on those waters. This delineation of recognized pilotage routes and the qualifications for them would also facilitate the understanding by individuals authorized to serve as pilots under 46 CFR 15.812 of where they are required and qualified. At the outset, these waters are intended to encompass the areas where pilots have traditionally been required.

While this proposal may appear to impose additional pilot requirements for certian vessels operating in the navigable waters, it is actually a reduction because it makes it easier for a member of the crew to act as the pilot required by law. 46 U.S.C. 8502 requires coastwise, seagoing, inspected, mechanically propelled vessels and inspected, seagoing, tank barges to be under the direction and control of a pilot when not on the high seas. For mechanically propelled vessels of over 1,600 gross tons, and tank barges over 10,000 gross tons, there is currently one class of pilot that is licensed to perform this function. This proposal would add another class of pilot that could perform this function on waters not traditionally covered by first class pilotage endorsements.

The statutory requirements for performing this function differ from those for master, mate and operator licenses primarily in that they require the individual to be 21 years of age, to obtain an annual physical exam, and to maintain adequate knowledge of the waters to be navigated. The Coast Guard is not required to publish regulations to implement the pilotage requirements of 46 U.S.C. 8502. However, without these regulations the statutory requirements are difficult to comply with fully.

Examination Requirements

In the previous notice the Coast Guard proposed the following alternative to the chart sketch for a first class pilot's license: An applicant for an original license, extension of route or endorsement may, upon request, take a written test concerning the route and waters applied for in lieu of the required chart sketching. Licenses, extensions or endorsements obtained by taking the substitute written test would be restricted to "tug and barge only" and have a tonnage limitation based on the largest combined gross tonnage of the vessels on which the applicant has the required round trip experience, up to a maximum of 30,000 gross tons. The intention of the proposal was to allow those who have demonstrated their abilities to pilot tug and barge combinations in various ports, through having done it many times, to obtain an endorsement as first class pilot without completing the chart sketch. This is in keeping with the Coast Guard's traditional practice of providing a "grandfather" clause applicable to those who have been performing an activity that became the subject of a regulatory action.

The comments received regarding that proposal were non-supportive, and additionally, the Coast Guard would have to develop an alternative written test to the chart sketch, as such a test does not presently exist. Many of the comments questioned whether a written test fully discerning of the candidates ability and comparable to the chart sketch could, in fact, even be developed.

The Coast Guard is therefore withdrawing that proposal and is replacing it with the proposal that individuals with 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, may obtain, without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule). The applicant is required to have the same number of round trips that the respective OCMIs require of other applicants for an endorsement as first class pilot, and ⅔ of the required number of round trips must have been on towing vessel combinations greater than 1,600 gross tons.

This proposal requires applicants from the towing industry to have experience and round trips equal to other applicants for an endorsement as first class pilot. The elimination of the written examination, including the chart sketch, is the only lessening of the general requirements. Applicants obtaining an endorsement under these provisions will be restricted to tug and barge combinations. This provision would allow those persons who have been performing the task of operating relatively large tug and barge combinations in the past to obtain the necessary endorsements to continue to serve in the same capacity. It is, in effect, a grandfather provision that allows those already engaged in the trade to continue without having to obtain another license. This method of obtaining an endorsement would be available only for service and round trips obtained prior to (the effective date of the final rule).

Prince William Sound Pilotage

46 U.S.C. 8502(g) states that the Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel is not required to be under the direction and control of a pilot licensed under 46 U.S.C. 7101. The Coast Guard is proposing the following exceptions to the pilotage requirements: (1) Vessels are excluded from pilotage requirements when entering or departing Prince William Sound, Alaska, via Hinchinbrook Entrance, and;

(a) Proceeding directly to or from the established Valdez/Whittier pilot station at Rocky Point (Latitude 60°57.1' N., Longitude 146°46.0' W), or

(b) Proceeding directly to or from the established Cordova pilot station at Sheep Point (Latitude 60°37.0' N., Longitude 146°00.0' W), or

(c) Proceeding directly to or from a designated anchorage described in 33 CFR Part 110.

This proposal regarding pilotage requirements for Prince William Sound has been changed from the prior notice based on the written comments we received, and no longer includes matters not appropriate to the requirement of 46 U.S.C. 8502(g).

Information Collection

This proposed rule contains no new information collection requirements. The information collection requirements for the issuance of marine licenses have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*) and have been approved by OMB. The OMB approval numbers are listed in 46 CFR 10.107.

Evaluation

Based on the comments received, the proposals contained in the notice of proposed rulemaking of June 24, 1985 (50 FR 26117) have been changed and are republished in this supplemental notice.

These proposed regulations are considered to be non-major under Executive Order 12291, and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this supplemental proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. The principle cost is associated with the basic annual physical examination required to qualify as a pilot, and the magnitude of this cost would be proportionate to the number of individuals qualified. The proposals concerning when and on which vessels a pilot is required do not significantly change the present practice, therefore, there will be little or no impact associated with these proposals.

The proposal to permit individuals with 5 years experience on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, to obtain, without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule), would accommodate the more experienced operators and would not compromise safety. It would be available to allow those individuals currently qualified by their experience to obtain a limited license. The applicant would be required to have the same number of round trips that the respective OCMIs require of other applicants for an endorsement as first class pilot.

Federalism

This rulemaking proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 10

Seamen, Marine Safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

In consideration of the foregoing it is proposed that Part 10 and Part 15 of Title 46 of the Code of Federal Regulations be amended as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for Part 10 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101; 49 U.S.C. 1333(d); 49 CFR 1.46(b) and (z).

2. Section 10.707 is amended by revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 10.707 Examination requirements.

* * * * *

(b) An applicant for an extension of route or an endorsement as first class pilot, except as provided for in paragraph (c) of this section, is required to pass those portions of the examination described in Subpart I of this part that concern the specific route for which endorsement is sought.

(c) An applicant for an endorsement as first class pilot for a particular route, restricted to tug and barge combinations only, is not required to pass an examination, provided the applicant has 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, for those routes over which the applicant has made the required number of round trips prior to (the effective date of the final rule). For an applicant exempt from examination under this paragraph, the minimum number of round trips to be required is contained in § 10.705 (c).

PART 15—MANNING REQUIREMENTS

3. The authority citation for Part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105, 8901, 8902, 8903, 8904, 9102; 50 U.S.C. 198; 49 CFR 1.46(b).

Section 15.812 is amended by revising paragraphs (a) introductory text, (a)(1), (c) introductory text, (c)(2), (d), and (e) introductory text, by redesignating paragraph (g) as paragraph (f), and by adding paragraphs (a)(3), (b), (c)(3), and (g) to read as follows:

§ 15.812 Pilots.

(a) The following vessels, not sailing on register, when underway on the navigable waters of the United States, except as provided in paragraph (g) of this section, and such other waters identified as first class pilotage waters, must be under the direction and control of an individual qualified to serve as pilot under paragraph (c) of this section as appropriate:

(1) Vessels propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and tank barges subject to inspection under 46 U.S.C. Chapter 37, that are authorized by their Certificates of Inspection to proceed beyond the Boundary Line established in Part 7 of this chapter.

* * * * *

(3) Vessels in exces of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, that are not authorized by their Certificates of Inspection to proceed beyond the Boundary Line established in Part 7 of this chapter, and that are not underway on the Great Lakes.

(b) First class pilotage waters are designated by the Officer in Charge, Marine Inspection (OCMI) for those waters within the OCMI's zone, where, in the OCMI's direction, local expertise is necessary. The waters determined to be first class pilotage waters within a particular Marine Inspection Zone and the specific requirements for qualifying to serve as pilot on those waters may be obtained from the OCMI concerned.

(c) The following individuals are qualified to serve as a pilot:

* * * * *

(2) For a vessel underway on those navigable waters of the United States not designated as first class pilotage waters, an individual holding a valid license issued by the Coast Guard as master, mate, or operator, employed aboard a vessel within the restrictions of his or her license provided he or she:

(i) Has reached the age of 21 years;

(ii) Complies with the currency of knowledge provisions of 46 CFR 10.713 of this chapter; and,

(iii) Has a current physical examination in accordance with the provisions of 46 CFR 10.709; or,

(3) For a vessel underway on the navigable waters of the United States designated as first class pilotage waters or other waters designated as first class pilotage waters, an individual qualifying under paragraph (c)(2) of this section, subject to the limitations of paragraphs (d) and (e) of this section.

(d) A licensed individual qualifying under paragraph (c)(3) of this section may serve as pilot of a vessel of not more than 1,600 gross tons propelled by machinery, described in paragraphs (a)(1) or (a)(2) of this section, provided the individual has four round trips over the route to be traversed while in the wheelhouse as watchstander or observer. One of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(e) A licensed individual qualifying under paragraph (c)(3) of this section may serve as pilot of tank barges totaling not more than 10,000 gross tons, described in paragraphs (a)(1) or (a)(2) of this section, provided the individual:

* * * * *

(g) Vessels are excluded from pilotage requirements when entering or departing Prince William Sound, Alaska, via Hinchinbrook Entrance, and;

(1) Proceeding directly to or from the established Valdez/Whittier pilot station at Rocky Point (Latitude 60°57.1' N., Longitude 146°46.0' W.), or

(2) Proceeding directly to or from the established Cordova pilot station at Sheep Point (Latitude 60°37.0' N., Longitude 146°00.0' W.), or

(3) Proceeding directly to or from a designated anchorage described in 33 CFR Part 110.

Dated: March 29, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-12664 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-218, RM-6232]

Radio Broadcasting Services; Statesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to substitute Channel 261C2 for Channel 261A at Statesboro, Georgia, and to modify the Class A license for Station WMCD(FM) accordingly, in response to a petition filed by the license, Radio Statesboro, Inc. Coordinates for the proposal are 32-27-21 and 81-46-29.

DATES: Comments must be filed on or before July 18, 1988, and reply comments on or before May 28, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Edward W. Hummers, Jr., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-218, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve chanel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12679 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-215, RM-6176]

Radio Broadcasting Services; Campbellsville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Michael Harding, which proposes to allot Channel 260A to Campbellsville, Kentucky, as a second FM service. City reference coordinates for Channel 260A at Campbellsville are 37-20-36 and 85-20-24.

DATES: Comments must be filed on or before July 18, 1988, and reply comments on or before August 2, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven C. Schaffer, Schwartz, Woods and Miller, 1325 Eighteenth Street NW., Suite 206, The Palladium, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-215, adopted April 18, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12680 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Glazing Materials; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Custom Window Tinting Services. The petitioner requests two amendments to Federal Motor Vehicle Safety Standard 205, *Glazing materials*. First, petitioner asks NHTSA to change the abrasion resistance requirements for glass-plastic glazing materials and second, to allow the use of glass-plastic glazing materials in passenger cars to the same extent as is currently allowed in multipurpose passenger vehicles. NHTSA dismisses the first part of the petition as moot. In addition, to the extent the second part of the petition requests that glass-plastic glazing, as a type of glazing, be allowed in cars also is moot. To the extent the second part of the petition requests that the light transmittance requirements for windows in cars be the same as those in multipurpose passenger vehicles, the second part is denied for lack of supporting data, as detailed in the supplementary information portion of this notice.

FOR FURTHER INFORMATION: Dr. Richard Strombotne, Chief, Crashworthiness Division, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2264.

SUPPLEMENTARY INFORMATION:

The Petition

On September 30, 1986, Mr. Gerald S. Lakas, President of Custom Window Tinting Services (Custom Window or petitioner) petitioned NHTSA to make changes to its Federal Motor Vehicle Safety Standard 205, *Glazing materials*. The petition contains two requests, both dealing with what petitioner terms "plastic laminated glazing". The term "glazing laminates" usually is reserved for after market glazing material and refers to glazing that has a plastic film affixed to it by after market installers. Since installation of the plastic film on the inside of a piece of glass converts the glazing into glass-plastic glazing material, the agency will use the term glass-plastic glazing in this notice to describe the glazing referred to by the petitioner. (Glass-plastic glazing is defined in Standard 205 as a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.)

Abrasion resistance requirements. Petitioner's first request is that the agency revise its abrasion resistance requirements for glass-plastic glazing in motor vehicles. In support of this change, Custom Window asserts that glass-plastic glazing materials cannot be certified as complying with the abrasion resistance requirements in Standard 205, either installed as original or after market equipment. Custom Window bases its statements on abrasion resistance testing it has conducted. Petitioner further requests that the agency's current abrasion testing requirements be revised to simulate the real life activity of a piece of automotive glazing.

Same requirements for glass-plastic glazing in passenger cars and MPV's. Petitioner's second request is that the agency authorize the use of glass-plastic glazing in passenger cars "within the same boundaries and guidelines that currently apply" to multipurpose passenger vehicles (MPV's). The agency believes that the phrase "within the same boundaries and guidelines" implies two requests: first, that glass-plastic glazing be allowed to be used in passenger cars everywhere it is allowed in MPV's, and second, that the light transmittance requirements for windows in passenger cars be the same as the light transmittance requirements for windows in MPV's.

In support of its second request, petitioner states its belief that glass-plastic glazing would decrease significantly the number of lacerative injuries when automobiles are involved in accidents. It further states that glazing requirements for passenger cars and MPV's should be the same, since vehicle usages and driver types are the same for both. Petitioner asserts that there is no safety justification for different glazing requirements for the different vehicle types.

Agency Response to Petition

The agency dismisses in part and denies in part the Custom Window Tinting petition. The standard has already been amended to modify the abrasion resistance requirements for glass-plastic glazing and to authorize the use of glass-plastic glazing in all windows of a motor vehicle and, accordingly, the agency dismisses the portions of the petition relating to these issues as moot. Petitioner's request that windows in passenger cars be subject to the same light transmittance requirements as those for windows in MPV's is denied. The agency's reasons for taking these actions follow.

Moot portions of the petition. On November 16, 1983 (48 FR 52061) the agency authorized the use of a new type of glazing, glass-plastic, in motor vehicles. In this rulemaking, the agency designated glass-plastic glazing AS–14, adopted performance requirements for the glazing, and authorized its use anywhere in a motor vehicle. In authorizing this use, the agency amended the previous abrasion resistance requirement test (found in Test 17 of the American National Standards Institute's Z26.1, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways, January 26, 1977, as supplemented by Z26.1a, July 3, 1980) to provide for a haze of 4 percent after 100 cycles of the Taber abraser. Petitioner stated his abrasion resistance tests referenced in the petition were not the same test procedure as the agency's Taber abraser tests (Docket PRM–205–17A). Additionally, petitioner stated he was unaware of the 1983 amendment (48 FR 52061) permitting glass-plastic glazing. The agency believes that, as amended, types of glazing are available to the petitioner that will meet the new abrasion resistance requirements adopted by the agency in 1983.

Petitioner also requested that glass-plastic be allowed to be used anywhere in a car that it is authorized in an MPV. The 1983 rulemaking authorizing the use of AS–14 also makes this portion of petitioner's request moot, since glass-plastic glazing which meets the testing requirements for AS–14 may be used anywhere in a motor vehicle.

Denied Portion of the Petition. The only portion of the petition not resolved by the agency's 1983 authorization of glass-plastic glazing is its implied request that the light transmittance requirements for cars and MPV's be the same. Standard 205 contains different light transmittance requirements for different window locations in different vehicles types. For example, all windows in a car are considered requisite for driving visibility and must meet the 70 percent light transmittance requirement of Standard 205. On the other hand, Standard 205 provides that only the windshield and front windows to the left and right of the driver of MPV's and trucks meet the 70 percent light transmittance requirement. Petitioner did not submit any data, studies, or other information which supported his claim that cars and MPV's should have comparable requirements.

The fact that some vehicles used by similar groups fall into two different vehicle type categories is not an obstacle to regulating those vehicles in the same fashion, if the agency determined that there was a safety need and that the standard was practicable. In this case, petitioner has not provided any basis for the agency to reconsider its basic requirements concerning light transmittance requirements for vehicle windows. Accordingly, the agency cannot find any basis for a determination that there is a reasonable possibility that the order requested by the petitioner will be issued at the conclusion of a rulemaking proceeding. For these reasons, this portion of the petition is denied. The agency notes, however, that it recently published an Advance Notice of Proposed Rulemaking announcing that it was considering reviewing its definitions of basic vehicle types. (See the October 28, 1987 issue of the **Federal Register**, 52 FR 41475).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles. (Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued: May 31, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–12860 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

49 CFR Part 604

[Docket 88–E]

Charter Service; Information on Public Hearings

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of public hearings.

SUMMARY: On May 25, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking in the **Federal Register** entitled "Charter Service; Amendment" (53 FR 18984). In that notice, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times and locations, were not yet available. This notice provides that information.

DATES: Public hearings are scheduled as follows (local time):

1. June 20, 1988, 9:30 a.m., Washington, DC.
2. June 29, 1988, 9:30 a.m., Kansas City, Missouri.
3. July 15, 1988, 9:30 a.m., Cincinnati, Ohio.
4. July 20, 1988, 9:30 a.m., San Francisco, California.

ADDRESSES: Written comments should be addressed to U.S. Department of Transportation, Urban Mass Transportation Administraton, Office of the Chief Counsel, Docket No. 88–E, 400 7th Street SW., Room 9316, Washington, DC 20590. The locations for the public hearings are as follows:

1. Washington, DC: U.S. Department of Transportation, Room 2230 400 7th St., SW.
2. Kansas City, Missouri: Federal Building, Room 147, 601 E. 12th St.
3. Cincinnati, Ohio: U.S. Post Office & Courthouse Bldg. Room 917, 100 E. 5th St.
4. San Francisco, California: GAS Building, Room 2007, 450 Golden Gate Ave.

FOR FURTHER INFORMATION CONTACT: Holly Vandervort, Office of the Chief Counsel, (202) 366–1936 to request to make a statement or inquire about the logistics.

SUPPLEMENTARY INFORMATION: On May 25, 1988, the Urban Mass Transportation Administraton (UMTA) published a notice of proposed rulemaking (NPRM) entitled "Charter Service; Amendment" (53 FR 18984). The NPRM proposes to amend the Charter Service rule at 49 CFR Part 604 by adding an exception to the general prohibition on using UMTA-funded equipment and facilities for charter service. The proposed exception would allow the incidental use of those UMTA-funded capital assets in direct charter contracting with non-profit social service agencies that serve elderly and handicapped persons or receive funding under certain U.S. Department of Health and Human Services programs. Such contracts would be permitted only if the social service agency that the UMTA recipient enters into a contract with is: (1) Either a governmental entity; or (2) an organization exempt from taxation under sections 501(c) (1), (3), (4), or (19) of the Internal Revenue Code.

At the time the NPRM was published, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times and locations, were not yet available. This notice provides that information. Statements made at the public hearings will be included in UMTA Docket No. 88–E and will be reviewed and evaluated by UMTA in conjunction with the rulemaking proceeding.

It is not necessary to make a statement at a public hearing in order to participate in this rulemaking proceeding. Any individual or organization may submit written comments regarding the NPRM to UMTA Docket No. 88–E instead of, or in addition to making a statement at a public hearing. Additionally, individuals or organizations do not need to make a statement at more than one public hearing.

Written comments must be received by July 25, 1988. Written comments should be sent to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Room 9316, Docket No. 88–E, 400 7th Street SW., Washington, DC 20590. All comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

The NPRM included a number of questions regarding the proposed rule. The questions contained in the NPRM will not be repeated in this notice. UMTA is interested in receiving comments on any aspect of the proposed rule. But, UMTA is particularly interested in receiving factual information on cost and availability of charter service for the targeted populations.

The following procedures are established by UMTA to facilitate the hearings:

Individuals interested in making a statement at the hearing should contact Holly Vandervort at (202) 366–1936, at least 3 days before the hearing is to be held. Individuals will be called to testify in the order their registration is received. UMTA encourages pre-registration, however, witnesses may register to testify on the date of the hearing at each location between 8:30 and 9:15 am.

An individual, whether speaking in a personal or private capacity or speaking in a representative capacity on behalf of an organization, is limited to a 10-minute statement at a hearing. The amount of time for testimony may be further limited, in order to accommodate all witnesses wishing to testify.

Hearings will begin at 9:30 am. Hearings may be extended in order to accommodate the number of witnesses.

UMTA requests that individuals testifying at a hearing provide 3 copies of their prepared written statement, to UMTA officials at the hearing. Individuals testifying are welcome to submit additional material as well. All statements and material received at a hearing will become part of the official rulemaking Docket No. 88–E.

The hearings officer may make statements to clarify issues or facilitate discussion during the hearing. Any statements the hearing officer makes during a hearing are not intended to be, and should not be construed as, a position of UMTA with respect to the rulemaking proceeding.

The hearings will be recorded by a court reporter. A transcript of the hearings will be included in the official rulemaking Docket 88–E. Any person interested in purchasing a copy of a transcript of a hearing should contact the court reporter directly.

The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual making a statement at a hearing will not be subject to cross-examination by any other participant. However, the hearing officer may ask questions in order to clarify statements made at the hearing.

Issued on: June 1, 1988.

Edward J. Babbitt,

Chief Counsel.

[FR Doc. 88–12895 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Ch. VI

Mandatory Carriage of Observers on Domestic Fishing Vessels

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Advance notice of proposed policy and request for comments.

SUMMARY: The Marine Fisheries Advisory Committee (MAFAC) to the Administrator of NOAA has drafted a Policy for Requiring Observers to be Carried on Domestic Fishing Vessels. This policy is proposed in response to requests to NMFS from Regional Fishery Management Councils (Councils) and the fishing industry for a domestic fishing monitoring and data gathering system which will allow timely and effective fishery management. This observer system will provide the same fishery management data as the mandatory foreign fishing observer program, and will replace that data as foreign fishing in the Exclusive Economic Zone (EEZ) is replaced by domestic fisheries. The effect will be to provide guidelines to the Councils and NMFS for the mandatory placement of observers on a random sample of domestic fishing vessels, in accordance with research designs developed under the aegis of the Magnuson Fishery Conservation and Management Act (MFCMA) and approved by the Secretary of Commerce. Comments are invited from the public on the proposed policy.

DATE: Comments will be accepted until July 18, 1988.

ADDRESS: Send comments to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235. Copies of the policy document are available upon request from the Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Peter H. Fricke, 202/673–5263.

SUPPLEMENTARY INFORMATION: The rapid change from a mixed foreign and domestic fishery in the EEZ to a wholly domestic fishery managed under the MFCMA is resulting in the loss of information on fisheries performance and of scientific data formerly collected from the mandatory foreign fishing observer program. Further, the development of sophisticated fishery management plans (FMPS) for the domestic fisheries has accelerated the need for more accurate and timely fisheries monitoring and research data. Consequently, the Councils and NMFS are proposing the use of observers on domestic fishing vessels to collect these essential data needed to effectively manage the fisheries of the EEZ.

The Policy for Requiring Observers to be Carried on Domestic Fishing Vessels was prepared under the aegis of the MFCMA. The policy proposes guidelines and measures related to the mandatory placement of NMFS employees or Federally authorized observers on certain United States fishing vessels. The policy focuses on the use of mandatory domestic fishery observer programs to collect fishing catch and effort data and monitor fishing practices

in accordance with data-collection plans developed in conjunction with an FMP or other MFCMA fishery management action. The policy does not govern the conduct of any voluntary scientific sampling programs that are carried out jointly by NMFS and United States fishermen for scientific and other research purposes.

MAFAC has proposed that any observer program should be Federally funded on the principle that the management of national natural resources, such as the marine fisheries, should be paid for by the U.S. taxpayer. However, NMFS believes that mandatory domestic fishery observer programs should be paid for by the fishermen and fishing entities deriving direct economic and social benefits from the use of a national natural resource, and not be a burden upon the U.S. taxpayer.

MAFAC also proposes that NMFS actively seek legislation to transfer liability for the carriage of observers from the owners and operators of fishing vessels to the Federal Government. In the period prior to the enactment of legislation, MAFAC has proposed that the Federal government pay any insurance coverage differentials incurred by vessel owners and operators selected to carry observers. NMFS disagrees with these proposals and believes that the risks of carrying an observer properly lie with the vessel's owner and operator, and can be insured against with a standard protection and indemnity policy. The costs of such a policy can, NMFS believes, be treated as a legitimate business expense payable by those who obtain direct benefit from the conservation and management of marine fishery resources.

NMFS particularly invites comments and discussion on the proposals for funding the proposed domestic fishery observer program and for the liability for carriage of observers.

(16 U.S.C. 1801 *et seq.*)

Dated: May 31, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-12565 Filed 6-3-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 108
Monday, June 6, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-078]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Herbicide Tolerant Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Sandoz Crop Protection Corporation to allow the field testing in the State of North Carolina of genetically engineered tobacco plants, designed to be tolerant to sulfonylurea herbicides. The assessment provides a basis for the conclusion that the field testing of those genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 88-054-01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the Federal Register (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22908).

The Sandoz Crop Protection Corporation of Des Plaines, Illinois, has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be tolerant to sulfonylurea herbicides. In the course of reviewing the permit application, APHIS assessed the impact of the environment of releasing the tobacco plants under the conditions described in the Sandoz application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environment assessment and finding of no significant impact which is based on data submitted by the Sandoz Crop Protection Corporation, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene which has the effect of making tobacco plants tolerant to the effect of sulfonylurea herbicides has been inserted into a tobacco chromosome. In nature, the genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination. In this field test, the introduced gene cannot spread to any other sexually compatible plant by cross-pollination for the following reasons: (1) No pollen will be produced because upon initiation of flowering the panicle (sexual parts) of each plant, will be removed; and (2) the field test plot is located at a sufficient distance from any sexually compatible plant with which these experimental tobacco plants could successful cross-pollinate.

2. Neither the acetolactate synthase (ALS) gene itself, nor its derived gene product confers on toacco any plant pest characteristic. Traits such as weediness are polygenic and cannot be conferred by adding a single herbicide tolerance gene. The experimental tobacco plants remain sensitive to a wide range of other herbicides which could be used to kill these plants.

3. The tobacco variety from which the ALS gene was obtained is not a plant pest.

4. The ALS gene does not provide the genetically engineered tobacco plants with any measurable selective advantage over nongenetically engineered tobacco plants in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the ALS gene into a tobacco chromosome has been evaluated for its use in this experiment. The vector, although derived from an original wild-type Ti

plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, the phytopathogenic bacterium which was used to deliver the vector encoding the ALS gene into a tobacco plant cell, has been demonstrated by *in vitro* and *in vivo* assays to be eliminated and no longer associated with any genetically engineered tobacco plant or seed.

7. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences is not known to be possible. The vector acts by delivering the gene to the tobacco genome where it is stably inserted into the tobacco chromosomal DNA. The vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to any other organism.

8. Sulfonylurea herbicides are a new class of herbicides noted for their high herbicidal activity at very low use rates, excellent crop selectivity, and low mammalian toxicity.

9. The size of the enclosed field test plot is small (no more than 35,665 square feet). The plot is located on a private research farm and will have good security. The experimental plot is located away from any major village or road.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 31st day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-12869 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88-062]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in the State of California of genetically engineered tomato plants, designed to be tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7769. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7750, or write her at this same address. The environmental assessment should be requested under accession number 88–011–01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to the herbicide glyphosate. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into a tomato chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field test, the introduced genes cannot spread to other plants by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible plants with which the engineered plants might cross-pollinate.

2. Neither the herbicide tolerance gene itself, nor its gene product confers on tomato any plant pest characteristics.

3. The plant from which the herbicide tolerance gene was isolated is not a plant pest.

4. The herbicide tolerance gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the herbicide tolerance gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease has been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the herbicide tolerance gene into the plant cells, has been shown to be eliminated and no longer associated with the transformed tomato plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the plant genome (i.e., chromosomal DNA). The vector does not survive in the transformed plants. No horizontal movement mechanism is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the field test plot is very small (70 feet wide by 320 feet long) and is physically isolated from many species of wild plants and animals by a surrounding area of cultivated land. The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 31st day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-12867 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88-075]

Availability of Environmental Assessment and Finding of No Signficant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in the State of Illinois of genetically engineered tomato plants, modified to be tolerant to tobacco mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7472, or write her at this same address. The environmental assessment should be requested under accession number 88–041–01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rules set forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation of interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to tobacco mosaic virus. In the course of reviewing the permit applications, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the tobacco mosaic virus coat (capsid) protein has

been inserted into a tomato chromosome. In nature, the genetic material contained in a plant chromosome can only be transferred to another sexually compatible plant via cross-pollination. In this field test trial, the inserted gene is unlikely to spread to any other plant by cross-pollination, because the field test plot is located at a sufficient distance from any sexually compatible plant with which the genetically engineered tomato plants could cross-pollinate.

2. Tobacco mosaic virus is a plant pathogen; however, neither the tobacco mosaic virus coat (capsid) protein gene itself, nor the derived gene product confers on tomato any plant pathogenic characteristic.

3. The plasmid vector used to transfer the tobacco mosaic virus coat (capsid) protein gene into a tomato chromosome has been evaluated for its use in this experiment. The plasmid vector, although derived from an original wild-type Ti plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the plasmid vector. The plasmid vector has been tested and shown to be not pathogenic to any susceptible plant.

4. The vector agent, the phytopathogenic bacterium that was used to deliver the plasmid vector encoding the tobacco mosaic virus coat (capsid) protein gene into a tomato plant cell, has been demonstrated by *in vitro* and *in vivo* assays to be eliminated and no longer associated with any transformed tomato plant or seed.

5. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences to another organism is not known to be possible. The plasmid vector acts by delivering the gene to the tomato genome where it is stably inserted into the tomato chromosomal DNA. The plasmid vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

6. The size of the field test plot is approximately 0.85 acre and will be located on a private farm. Monsanto has taken precautions to provide for the identity and physical security of the field plot. The experimental field is located away from any major road or town.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 31st day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12690 Filed 6–3–88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88–083]

Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document advises the public that three permit applications for release into the environment of various genetically engineered organisms are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with the regulations in 7 CFR Part 340 which regulate the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 634, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7472.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe are Plant Pests," require a person to obtain a permit prior to introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products which are deemed "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining limited permits for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following permit applications for release into the environment, which are being reviewed by the Agency:

Accession No.	Date received	Organism and field test location
88-027-03	1-27-88 [1]	Genetically engineered tobacco containing marker genes, Iowa.
88-091-01	3-31-88	Genetically engineered tobacco containing chitinase genes, Delaware.
88-092-01	4-1-88	Genetically engineered tomatoes for sulfonylurea herbicide resistance, Delaware.

[1] This application was not deemed to be complete until March 30, 1988.

Done at Washington, DC, this 31st day of May 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12688 Filed 6–3–88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88–068]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the Sonesta Hotel Portland, 157 High Street, Portland, Maine 04101, on June 20, 1988, from 9 a.m. to noon; June 21 and 22, 1988, from 9 a.m. to 5 p.m.; and June 23, 1988, from 9 a.m. to 2 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5140.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (Committee) makes recommendations to the Department concerning the poultry industry and the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

The Committee's sessions on June 21, 22, and 23, 1988, will include delegates to the upcoming Biennial Conference of the National Poultry Improvement Plan. These delegates represent state officials and members of the poultry industry from the 47 states cooperating in the National Poultry Improvement Plan. In preparation for the Biennial Conference, the Committee will develop recommendations to be considered by the voting delegates during the Biennial Conference.

Tentative topics to be discussed by the Committee include:

1. Inspecting flocks according to need, instead of inspecting a specified percentage of flocks.
2. Lowering the minimum testing age of poultry to allow flocks to be marketed sooner.
3. Strengthening the "U.S. Sanitation Monitored" program to reduce foodborne diseases.
4. Clarifying the time period during which a state must detect on pollorum infections in order to qualify for a certain state classification.
5. Developing a new program for turkeys to reduce salmonella contamination.
6. Improving procedures to determine the Mycoplasma status of breeding flocks.

The meeting will be open to the public. Those interested in expressing their views concerning the above topics or other aspects of the National Poultry Improvement Plan should send their written comments to Dr. Irvin L. Peterson at the address listed in this document, or present them at the time of the meeting. Please refer to Docket Number 88–068 when submitting your comments.

Written comments received by Dr. Peterson may be inspected in Room 848 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 1st day of June, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12685 Filed 6–3–88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88–021]

Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee).

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in Room 107–A of the Administration Building, 12th Street and Jefferson Drive SW., Washington, DC 20090–6464, from 8:15 a.m. until 4:45 p.m. on June 15, 1988, and from 8:15 a.m. until noon on June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. M.A. Mixson, Chief Staff Veterinarian, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8073.

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) is to advise the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry disease, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

The meeting will be open to the public. Anyone who wants to file a written statement with the Committee about meeting topics may do so either at the time of the meeting, or before the meeting, by sending the statement to Dr. M.A. Mixson at the above address.

Dated: May 31, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12686 Filed 6–3–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Land and Resource Management Planning

AGENCY: Forest Service, USDA and Bureau of Land Management, Interior.

ACTION: Joint Notification of Land and Resource Management Planning Schedules.

SUMMARY: Land and resource management plans of the Forest Service and the Bureau of Land Management frequently cover adjoining areas which share common resource issues and management concerns requiring continuous and close interagency coordination. Therefore, the USDA Forest Service and the USDI Bureau of Land Management have again elected to jointly announce land management planning schedules for lands which each agency administers. The purpose of publishing joint planning schedules is to provide agencies and the public with the opportunity to study the relationships between the agencies' current and projected planning activities.

The Forest Service and the Bureau of Land Management's planning systems are authorized and administered under different laws and regulations. Consequently, this notice is organized into two parts (Part A—Forest Service and Part B—Bureau of Land Management).

Comments on the schedules should be directed to the appropriate agency (see **ADDRESS**, Part A and Part B.

Part A—Forest Service

The National Forest Management Act of 1976 directed the Secretary of Agriculture to attempt to complete land and resource management plans for each "administrative unit" (e.g., National Forest) of the National Forest System by September 30, 1985. Regulations to guide this effort were initially developed in 1979 and revised in 1982 at the direction of the Presidential Task Force on Regulatory Relief (Vol. 47, No. 190 of the Federal Register, September 30, 1982). Additional revision to the rules was necessary to respond to a court decision that the 1979 Roadless Area Review and Evaluation (RARE II) environmental statement and associated procedures were inadequate under the National Environmental Policy Act (NEPA).

The NFMA regulations require integrated planning for all resources of the National Forest System—recreation, fish and wildlife, water, timber, range, and wilderness. The rules set forth a process for developing and revising the land and resource management plans as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA). These rules require development of Regional Guides and Forest plans. Each plan will include all management planning for resources and be supported by an environmental impact statement.

All drafts and final Regional Guides and Forest plans and associated

BEST COPY AVAILABLE

environmental impact statement have been or will be filed with the Environmental Protection Agency and made available to the public for comment.

A planning schedule is included below showing the fiscal year in which draft and final documents have been or will be filed. Also given are the addresses of the Forest Service's nine Regional Offices and National Forest headquarters in each Region for which plans are to be prepared.

Readers interested in the progress and status of a particular Regional Guide or Forest plan should contact the appropriate Regional Forester or Forest Supervisor.

DATE: Comments on the schedule will be accepted until July 6, 1988.

ADDRESS: Comments should be sent to: Chief, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Joyce P. Parker, Land Management Planning, P.O. Box 96090, Washington, DC 20090-6090, (202) 447-6697.

Dated: May 26, 1988.

George M. Leonard,

Associate Chief.

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
R-1 Northern Region			
Federal Building, Missoula, Montana 59807			
Regional Guide		1961	1963
Idaho:			
Clearwater	Orofino 83544	[3] 1955	1987
Idaho Panhandle (National Forests,[4] Coeur D'Alene, Kaniksu, St. Joe)	Coeur D'Alene 83814	[3] 1985	1987
Nezperce	Grangeville 83530	1985	1987
Montana:			
Beaverhead	Dillon 59725	1985	1986
Bitterroot	Hamilton 59840	[3] 1985	1987
Custer	Billings 59103	1985	1987
Deerlodge	Butte 59701	1985	1987
Flathead	Kalispell 59901	[3] 1984	1986
Gallatin	Bozeman 59715	1985	1987
Helena	Helena 59601	[3] 1985	1986
Kootenai	Libby 59923	1985	1987
Lewis and Clark	Great Falls 59403	[3] 1984	1986
Lolo	Missoula 59801	[3] 1985	1986
R-2 Rocky Mountain Region			
11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225			
Regional Guide		1981	1983
Colorado:			
Arapaho-Roosevelt [4]	Ft. Collins 80521	1982	1984
Supplement			1985
Grand Mesa, Uncompahgre, and Gunnison [4]	Delta 81416	1983	1983
Supplement		1986	1989
Pike and San Isabel	Pueblo 81006	1982	1985
Rio Grande	Monte Vista 81144	1983	1985
Routt	Steamboat Springs 80477	1983	1984
San Juan	Durango 81301	1982	1983
Supplement		1986	1989
White River	Glenwood Springs 81601	1983	1984
Nebraska: McKelvie [4]	Chadron 69337	1982	1985
South Dakota: Black Hills	Custer 57730	1982	1983
Wyoming:			
Bighorn	Sheridan 82801	1984	1985
Supplement		1985	1985
Medicine Bow	Laramie 82070	1984	1986
Shoshone	Cody 82414	1984	1986
R-3 Southwestern Region			
517 Gold Ave., SW., Albuquerque, New Mexico 87102			
Regional Guide		1981	1983
Arizona:			
Apache-Sitgreaves	Springerville 85938	1986	1987
Coconino	Flagstaff 86001	1986	1987
Coronado	Tucson 85702	1985	1986
Kaibab	Williams 86046	1987	1988
Prescott	Prescott 86301	1985	1987
Tonto	Phoenix 85034	1985	1985
New Mexico:			
Carson	Taos 87571	1985	1986
Cibola	Albuquerque 87112	1984	1985
Gila	Silver City 88061	1985	1986
Lincoln	Alamogordo 88310	1985	1986
Santa Fe	Santa Fe 87501	1986	1987
R-4 Intermountain Region			
324 25th Street, Ogden, Utah 84401			
Regional Guide		1981	1984

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Idaho:			
Boise	Boise 83706	1986	1989
Caribou	Pocatello 83201	1984	1986
Challis	Challis 83226	1985	1987
Payette	McCall 83638	1985	1988
Salmon	Salmon 83467	1985	[3] 1988
Sawtooth	Twin Falls 83301	1985	1987
Targhee	St. Anthony 83445	1981	1985
Supplement			1985
Nevada:			
Humboldt	Elko 89801	1985	1986
Toiyabe	Reno 89501	1985	1986
Utah:			
Ashley	Vernal 84078	1985	1987
Dixie	Cedar City 84720	1986	1986
Fishlake	Richfield 84701	1985	1986
Manti-LaSal	Price 84501	1985	1987
Uinta	Provo 84601	1982	1985
Supplement			1984
Wasatch-Cache [4]	Salt Lake City 84138	1985	1985
Wyoming: Bridger-Teton [4]	Jackson 83001	1987	1989
R-5 Pacific Southwest			
630 Sansome Street, San Francisco, California 94111			
Regional Guide		1981	1984
California:			
Angeles	Pasadena 91101	1985	1987
Cleveland	San Diego 92188	1985	1986
Eldorado	Placerville 95667	1986	1989
Inyo	Bishop 93514	1987	1988
Klamath	Yreka 96097	1990	1991
Lassen	Susanville 96130	1988	1989
Los Padres	Goleta 93107	1986	1988
Mendocino	Willows 95988	1987	1989
Modoc	Alturas 96101	1987	1989
Plumas	Quincy 95971	1988	1988
San Bernardino	San Bernardino 92408	1986	1988
Sequoia	Porterville 93257	1986	1988
Shasta-Trinity	Redding 96001	1989	1990
Sierra	Fresno 93721	1986	1989
Six Rivers	Eureka 95501	1987	1989
Stanislaus-Calaveras, Big Tree [4]	Sonora 95370	[3] 1989	1990
Tahoe	Nevada City 95959	1986	1989
Lake Tahoe Basin Management Unit	So. Lake Tahoe 95731	1986	1988
R-6 Pacific Northwest Region			
319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208			
Regional Guide		1982	1984
Supplemental EIS		1985	1988
Oregon:			
Deschutes	Bend 97701	1986	1989
Supplement		1988	
Fremont	Lakeview 97630	1988	1989
Malheur	John Day 97845	1987	1988
Mt. Hood	Portland 97233	[3] 1988	1989
Supplement		1988	
Ochoco	Prineville 97754	1986	1989
Rogue River	Medford 97501	[3] 1988	1989
Siskiyou	Grants Pass 97526	1987	1989
Siuslaw	Corvallis 97330	1987	1989
Supplement		1988	
Umatilla	Pendleton 97801	[3] 1988	1989
Umpqua	Roseburg 97470	[3] 1988	1989
Wallowa-Whitman	Baker 97814	1986	1989
Supplement		1988	
Willamette	Eugene 97440	[3] 1988	1989
Winema	Klamath Falls 97601	[3] 1988	1989
Washington:			
Colville	Colville 99114	1987	1988
Gifford Pinchot	Vancouver 98660	1987	1989
Mt. Baker-Snoqualmie [4]	Seattle 98101	[3] 1988	1989
Okanogan	Okanogan 98840	1986	1989
Supplement		1988	
Olympic	Olympia 98501	1987	1989
Supplement		1988	
Wenatchee	Wenatchee 98801	1987	1989

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Supplement		1988	
R-8 Southern Region			
1720 Peachtree Road, NW, Atlanta, Georgia 30309			
Regional Guide		1982	1984
Alabama: National Forests in Alabama [4] (William B. Bankhead, Conecuh, Talladega, Tuskegee).	Montgomery 36101	1985	1986
Arkansas:			
Ouachita	Hot Springs 79101	1985	1986
Supplement		1988	1989
Ozark-St. Francis [4]	Russellville 72801	1985	1986
Florida: National Forests in Florida [4] (Apalachicola, Ocala, Osceola)	Tallahassee 32301	1985	1986
Georgia: Chattahoochee-Oconee [4]	Gainesville 30501	1984	1985
Kentucky: Daniel Boone	Winchester 40391	1985	1985
Louisiana: Kisatchie	Pineville 71360	1984	1985
Mississippi: National Forests in Mississippi [4] (Bienville, Delta, DeSoto, Holly Springs, Homochitto, Tombigbee).	Jackson 39205	1985	1985
North Carolina:			
National Forests in North Carolina [4]	Asheville 28802		
Nantahala and Pisgah		1985	1987
Uwharrie and Croatan		1985	1986
Puerto Rico:			
Carribbean	Rio Piedras 00928	1985	1986
Supplement		1988	1988
South Carolina:			
Francis Marion & Sumter [4]	Columbia 29202		
Francis Marion		1984	1985
Sumter		1985	1985
Tennessee: Cherokee	Cleveland 37311	1985	1986
Texas: National Forests in Texas [4] (Angelina, Davy Crockett, Sabine, Sam Houston)	Lufkin 75901	1985	1987
Virginia:			
George Washington	Harrisonburg 22801	1985	1986
Supplement		1989	1990
Jefferson	Roanoke 24011	1985	1986
R-9 Eastern Region			
633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203			
Regional Guide		1981	1983
Illinois: Shawnee	Harrisburg 62946	1985	1987
Indiana and Ohio:			
Wayne-Hoosier [4]	Beford 47421		
Wayne		1987	[3] 1988
Hoosier		1984	1985
Michigan:			
Hiawatha	Escanaba 49829	1985	1987
Huron-Manistee [4]	Cadillac 49601	1985	1986
Ottawa	Ironwood 49938	1986	1987
Minnesota:			
Chippewa	Cass Lake 56633	1985	1986
Superior	Duluth 55801	1985	1986
Missouri: Mark Twain	Rolla 65401	1985	1986
New Hampshire and Maine: White Mountain	Laconia, NH 03246	1985	1986
Pennsylvania: Allegheny	Warren 16365	1985	1986
Vermont: Green Mountain	Rutland 05701	1986	1987
West Virginia: Monongahela	Elkins 26241	1985	1986
Wisconsin:			
Chequamegon	Park Falls 54552	1985	1986
Nicolet	Rhinelander 54501	1985	1986
R-10 Alaska Region			
Federal Office Building, P.O. Box 1628, Juneau, Alaska 99802			
Regional Guide		1981	1984
Alaska:			
Chugach	Anchorage 99502	1982	1984
Tongass-Chatham	Sitka 99835	[3] 1989	[3] 1989
Tongass-Ketchikan	Ketchikan 99901	[3] 1989	[3] 1989
Tongass-Silkine	Petersburg 99833	[3] 1989	[3] 1989

[1] Mailing address for each National Forest
[2] DES and FEIS mean Draft and Final Environmental Impact Statement
[3] Supplemental EIS
[4] Two or more seperately proclaimed National Forests
[5] Filed with EPA in FY 1988
[6] One EIS will be filed for the Tongass National Forest.

Part B—Bureau of Land Management

Resource management planning for the Bureau of Land Management administered lands in governed by regulations 43 CFR Parts 1601 and 1610. Those regulations (43 CFR 1610.2(b)) require that the Bureau publish a planning schedule advising the public of the status of plans in preparation and projected new starts for the three succeeding fiscal years and calling for public comment on the projected new starts. The schedule below fulfills that requirement. Some plan amendments will be prepared in FY 89, 90, and 91 to address oil and gas issues. Because the number, scope and location of these amendments are not sufficiently settled at this time to request public comment, they are not show below.

The planning process begins with the publication of a Notice of Intent to initiate a plan. The projected planning starts are shown on the schedule through 1991. Public notice and opportunity for participation in each resource management plan (RMP) shall be provided as required by the regulations (43 CFR 1610.2(f)). Publication of the draft RMP and associated draft environmental impact statement as indicated on the schedule is a key opportunity for public comment.

A key to the abbreviations used is provided after the schedule.

DATES: Comments on the schedule will be accepted until June 6, 1988.

ADDRESS: Comments should be sent to Director (760), Bureau of Land Management, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Forest W. Littrell or Rene' McCray, (202) 653–8824.

Robert F. Burford,
Director.
May 3, 1988.

BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE

State, District, and resources area	Plan name and type (Major resource/ issues	Fiscal year 1988	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991
ALASKA:					
Anchorage	Kuskokwim/Lower Yukon RMP (Minerals)			PPA	NOI
	Southern RMP (Recreation, Wildlife)			START	
Arctic	Utility Corridor RMP (Wildlife, Recreation, State Land Selection, Energy-Minerals Transportation)	FEIS			
Glennallen	South Central RMP	START	DEIS	FEIS	
Steese/White Mtn.	Fort Greely RMP (Military Withdrawal, Recreation)	DEIS	FEIS		
	Fort Wainwright RMP (Forestry, Recreation, Military Defense, Minerals)	DEIS	FEIS		
	Fortymile/black River RMP (Placer Gold, Recreation, Wildlife)			START	DEIS
ARIZONA:					
Arizona Strip Districtwide.	Arizona Strip RMP (Realty, Off-Road Vehicles, Recreation, Cultural Resources Mgmt.)		DEIS, FEIS		
Phoenix Kingman	Kingman RMP (Realty, ACEC, Range/ Grazing, Wildlife)	START		DEIS	
Phoenix	Phoenix RMP (Realty, ACEC, Recreation, Range)	DEIS, FEIS			
Lower Gila	Lower Gila South RMP (Military withdrawal)	DEIS	FEIS		
Safford Districtwide	Safford RMP (Recreation, Off-Road Vehicles, ACEC, Range)		DEIS	FEIS	
CALIFORNIA:					
Bakersfield Bishop	Bishop RMP (Range, Realty, Geothermal)	START	DEIS		
California Desert Indio	Southern Metropolitan Area RMP (Realty, Forestry, Recreaton)	START	DEIS	FEIS	
Ukiah Eureka	Arcata RMP (Realty, Forestry)	DEIS	FEIS		
Redding	Redding RMP (Realty, Forestry, Recreation)	START	DEIS	FEIS	
COLORADO:					
Canon City Districtwide	Canon City MFPA (Wilderness)	FEIS			
Royal Gorge	Royal Gorge RMP (Range, Realty, O&G, Recreation)			START	
San Luis	San Luis RMP (Realty, Range, Wildlife)	DEIS	FEIS		
Craig Districtwide	Craig MFPA (Wilderness)	DEIS	PFEIS		
Grand Junction Glenwood Springs.	Glenwood Springs RMPA (Wilderness)	PFEIS			
Grand Junction	Grand Junction RMPA (Wilderness)	PFEIS			
Little Snake	Little Snake RMP (O&G, Range, Coal, Recreation)	FEIS			
Montrose Gunnison	Gunnison Basin RMP (Range, Wildlife, Riparian, Recreation)	START	DEIS	FEIS	
San Juan/San Miguel	San Juan/San Miguel RMPA (Wilderness).	PFEIS			
Uncompahgre	Uncompahgre RMP (Coal, Recreation, Wilderness)	FEIS			
IDAHO:					
Statewide	Plan Amendments (Wilderness—Areas less than 5000 acres	PFEIS			
Idaho Falls Pocatello	Medicine Lodge RMPA (Wilderness)	FEIS			
	Pocatello RMP (Realty, Mineral Leasing)	FEIS			
Boise Bruneau	Jacks Creek MFPA (Wilderness)	PFEIS, FEIS			

BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State, District, and resources area	Plan name and type (Major resource/issues	Fiscal year 1988	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991
Owyhee	Owyhee/Canyonlands MFPA (Wilderness)	PFEIS			
Coeur Dalene Cottonwood	Chief Joseph RMP (Realty, Forestry/Timber)				START
Emerald Empire	Emerald Empire RMP (Realty, Forestry/Timber)				START
Shoshone Bennett Hills	Bennett Hills RMP (Range, Recreation)		START	DEIS	FEIS
MONTANA:					
Butte Dillon	Centennial MFPA (Wilderness)	PFEIS	FEIS		
Garnet	Garnet RMPA (Wilderness)	FEIS			
Headwaters	Headwaters RMPA (Sleeping Giant Wilderness)	START	DEIS	FEIS	
Lewistown Great Falls	West Hi-Line RMP (O&C, Realty, Off-Road Vehicles, ACEC,)	FEIS			
	Blackleaf EIS (O&G, Wildlife)	DEIS	FEIS		
Judith	Judith/Phillips/Valley RMP (O&G, Realty, Off-Road Vehicle)	START		DEIS	FEIS
Valley	Bitter Creek MFPA (Wilderness)	FEIS			
Miles City big Dry	Missouri Breaks MFPA (Wilderness)	FEIS			
Billings	Billings RMPA (Wilderness)	FEIS			
Powder River	Powder River RMPA (Wilderness)	FEIS			
	Powder River Round I Suppl. (Coal)	DEIS	FEIS		
NEVADA:					
Carson City Walker	Walker RMPA (Wilderness)	FEIS			
Las Vegas Caliente	Caliente MFPA (Wilderness)	FEIS			
	Nellis RMP (Nat'l Defense, Wild Horses, Wildlife)	DEIS	FEIS		
Stateline	Plan Amendments (Wilderness, Areas less than 5,000 acres)	DEIS, PFEIS	FEIS		
Esmeralda	Esmeralda Southern Nye RMP (Wilderness)	FEIS			
Winnemucca Sonoma-Gerlach.	Sonoma-Gerlach MFPA (Non-Energy Rmlty)				START
NEW MEXICO:					
Statewide	Statewide Wilderness MFPA (Wilderness)	PFEIS			
Las Cruces Las Cruces/Lordsburg.	Las Cruces/Lordsburg RMP (Off-road Vehicles, Lands, Mineral Materials)		START		DEIS, FEIS
Socorro	Socorro RMP (Range, Realty, Off-Road Vehicles, Coal)	DEIS, FEIS			
White Sands	White Sands RMP (MacGregor Amend.; Access, Off-Road Vehicles)	DEIS	FEIS		
Roswell Roswell	Roswell RMP (Mineral Leasing, Off-Road Vehicles)			START	
OREGON:					
Statewide	Oregon Statewide MFPA (Wilderness)	PFEIS			
Burns Andrews	Andrews RMP (Range/Grazing, Wildlife, Water, Wild Horses & Burros)		START		DEIS, FEIS
Three Rivers	Three-Rivers RMP (Range/Grazing, Wildlife, Water, Realty)		DEIS, FEIS		
Coos Bay Districtwide	Coos Bay RMP (Forestry, Water, Wildlife, Realty, ACEC)			DEIS, FEIS	
Eugene Districtwide	Eugene RMP (Forestry, Water, ACEC, Realty)			DEIS, FEIS	
Lakeview Districtwide	Lakeview RMP (Range/Grazing, Wildlife, Water, Wild Horses & Burros)			START	DEIS
Medford Districtwide	Medford RMP (Forestry, Wildlife, Water, Realty, ACEC)		START	DEIS, FEIS	
OREGON:					
Prineville Central Oregon.	John Day RMPA (Recreation, Realty, Water, Wild and Scenic Rivers)	START		DEIS, FEIS	
Central Oregon/Deschutes.	Brothers—LaPine RMP (Forestry, Realty, Water, Off-Road Vehicles)	FEIS			
Roseburg Districtwide	Roseburg RMP (Forestry, Wildlife, Water, Realty, ACEC)			DEIS, FEIS	
Salem Districtwide	Salem RMP (Forestry, Wildlife, Water, Realty)			DEIS, FEIS	
Vale N. Malheur	N. Malheur RMP (Range, Wildlife, water, Realty)		START		DEIS, FEIS
S. Malheur	S. Malheur RMP (Range, Wildlife, Water, Wild Horses and Burros)				START
UTAH:					
Cedar City Dixie	Dixie RMP (O&G, Realty, Recreation, ACEC)	DEIS			
Kanab	Kanab RMP (Recreation, Watershed)			START	
Moab Price River	Price River RMP (O&G, Recreation, Minerals, Wildlife, Watershed)				START
San Juan	San Juan RMP (Livestock, O&G, Recreation, Lands)	FEIS			

BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State, District, and resources area	Plan name and type (Major resource/issues	Fiscal year 1988	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991
San Rafael	San Rafael RMP (Livestock, O&G, Coal, Recreation)	DEIS, FEIS			
Richfield Henry Mountain.	Henry Mountain RMP (ACEC, Wildlife)		START		
Salt Lake Pony Express	Pony Express RMP (O&G, Range, lands, Minerals)	DEIS, FEIS			
Vernal Diamond Mountain.	Diamond Mountain RMP (Wildlife, O&G)	START			DEIS, FEIS
WYOMING:					
Rawlins Lander	Whiskey Mountain, DuBois, Badlands EIS (Wilderness: Area less than 5000 acres)	PFEIS			
Medicine Bow/Divide	Medicine Bow/Divide RMP (Range, Wildlife, Recreation, O&G)	FEIS			
Rock Springs Pinedale	Green River RMP (O&G, Range, Wild Horses, Archeological)	START		DEIS	FEIS
	Pinedale RMP (Range, O&G, Lands, Forestry)	FEIS			
Worland Cody	Cody RMP (O&G, Range)	DEIS, FEIS			
	Cody RMPA (Wilderness)	PFEIS			
Washakie	Washakie RMP (Range, O&G)	FEIS			
	Washakie RMPA (Wilderness)	PFEIS	FEIS		

Key to Abbreviations:
EIS—Environmental impact statement.
DEIS—Draft environmental impact statement.
FEIS—Final environmental impact statement.
MFPA—Management framework plan amendment.
PFEIS—Preliminary final environmental impact statement (wilderness only).
RMP—Resource management plan.
RMPA—Resource management plan amendment.
O&G—Oil and Gas.

[FR Doc. 88-12652 Filed 6-3-88; 8:45 am]
BILLING CODE 3410-11-M 4310-84-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of applications.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received two applications for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificates should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office fo Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the certificates should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should reference the application number provided in the application summary. Summaries of the applications follow.

Summary of Applications

Applicant: Hammerl-Davis International, Inc. ("HDI"), 100 Park Avenue, 17th Floor, New York, NY 10017, Contact: Andrew J. Hammerl, President, Telephone: 212/692-4720.

Application: 88-00007.

Date Deemed Submitted: May 27, 1988.

Members (in addition to applicant): None.

Export Trade Products

All industrial and consumer products.

Related Services

Export management, including, for example, evaluating product market potential, selecting country markets, consulting, developing and implementing export business plans, and assisting clients in introducing products into new export markets or developing new approaches for existing markets; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

HDI seeks certification for the:

1. Export of individual clients' products worldwide with HDI acting as an agent or representative.

2. Export of individual clients' products worldwide with HDI taking possession of the products.

3. Export of the products of several clients in the same industry on a one-on-one basis.

Applicant: Global Marketing Associates, Inc. (GMA), 109 Barksdale Professional Center, Newark, Delaware 19711, Contact: Ferdinand Wieland, President, Telephone: 302/737-4580.

Application #: 88-00006.

Date Deemed Submitted: May 27, 1988.

Members (in addition to applicant): None.

Export Trade Products

X-ray and electro-medical equipment, surgical and medical instruments, surgical appliances and medical supplies, dental equipment and supplies ("surgical and medical products").

Related Services

Marketing, selling, brokering, consulting, international market research, advertising and sales promotion, product research and design, cooperative bidding, consolidation of shipments, export financing and insurance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Global Marketing Associates, Inc. (GMA) seeks certification to:

1. Enter into agreements with suppliers of surgical and medical products, whereby GMA agrees to act as each supplier's exclusive Export Intermediary for the export of surgical and medical products.

2. Exchange among suppliers of GMA information concerning foreign competitors' prices, production, sales, and other information on the supply and demand for surgical and medical products in the export markets.

3. With its suppliers, set prices and other terms for sales and service contracts for the export of surgical and medical products.

Date: May 31, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-12654 Filed 6-3-88; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

[Transmittal No. 06-10-88019-01; Project I.D. No. 06-10-88019-01]

New Orleans Minority Business Development Center (MBDA); Application Announcement

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $282,824 for the project's performance period of October 1, 1988 to September 30, 1989. The MBDC will operate in the New Orleans Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name: New Orleans SMSA	
Federal	$240,400
Non-Federal	[1] 42,424
Total	282,824

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistnce (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to detemine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for receipt of application is July 6, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on June 10, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Bobby T. Jefferson,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development.

Project Name: New Orleans MBDC.

Project Identification Number: 06-10-88019-01.

Project Start and End Dates: 10/01/88 to 09/30/89.

Project Duration: 12 months.

Total Federal Funding (85%): $240,400.

Minimum Non-Federal Share (15%): $42,424.

Total Project Cost (100%): $282,824.

Closing Date for Submission of this Application: July 5, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: New Orleans, Louisiana SMSA.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indain Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:
Financial packages: $4,005,000.
Billable M&TA: $123,000.
Number of Professional Staff: 5.
Procurements: $8,010,000.
M&TA Hours: 2,460.
Number of Clients: 110.

[FR Doc. 88-12760 Filed 6-3-88; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

[Docket No. 80586-8086]

Continuation of Fire Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing Continuation of Fire Research Grants Program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Fire Research, National Bureau of Standards, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the **Federal Register** on February 20, 1981 (46 FR 13250), November 19, 1984 (49 FR 45836) May 6, 1986 (51 FR 16730) and June 5, 1987 (52 FR 21342). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

Closing Date for Applications: Proposals must be received no later than close of business September 30, 1988.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 as referenced under the provisions of OMB Circular A-110 to:

Center for Fire Research
Attn: Sonya Cherry
National Bureau of Standards
Gaithersburg, Maryland 20899

FOR FURTHER INFORMATION CONTACT: Sonya Cherry, (301) 975-6854.

Eligibility: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NBS Center for Fire Research conducts directly and through grants and cooperative agreements, a basic and applied fire research program. This program has been in existence for several years at approximately the same funding level. No increase in funds has taken place. The Fire Research Grants Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent on satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant. All grant proposals submitted must be in accordance with the programs and objectives listed below. For clarity of the program objectives, you may contact Dr. Andrew J. Fowell (301) 975-6850.

Program Objectives

(a) Polymer Combustion Research—Chemical and physical processes associated with ignition, flame spread and smoldering of polymeric materials.

(b) Smoke Dynamics Research—Develop scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and modeling general fire phenomena.

(c) Flammability and Toxicity Measurement—Measurement of the acute toxicity of fire gases, development of test methods and safety criteria, research into additive or synergistic acute effects of multiple gaseous toxicants, and development of behavior models for incapacitation. Development of laboratory size tests and measurements that are of use in predicting the performance of combustible items (including heat release rate, toxic gas production, and smoke production in full scale fire).

(d) Fire Performance and Validation—Obtaining and analyzing experimental data from full scale tests for input to model development. Evaluation of mathematical models and methodology for quantitatively assessing the correlation between the models and full-scale test data.

(e) Hazard Analysis—Development and evaluation of mathematical smoke and toxic species transport models for large, complex structures. Methods to calculate hazard development vs. time. Methods to simulate the operation and impact of ventilation systems and components under conditions created by unwanted fires. Some research is carried out into the behavior of persons at risk in fire to calculate how rapidly persons can evacuate the structure or otherwise find refuge.

(f) Fire Growth and Extinction—Research into the physics and chemistry of fire processes such as burning rate, flame spread, fire gas flows, fire suppression, and the development of an understanding of the relationship between these processes as they contribute to compartment fire growth and spread, fire suppression system performance and smoke transport in buildings.

(g) Compartment Fire Modeling Research—The development, improvement and validation of: (1) "benchmark" compartment fire model computer codes, and (2) their submodel algorithm components which describe individual fire compartment processes.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the seven programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the center Director. Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NBS, the Center for Fire Research, or technical experts from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

Rationality—0-20 points.
Qualification of Technical Personnel—0-20 points.
Resources Availability—0-20 points.
Technical Merit of Contribution—0-40 points.

The results of these evaluations are transmitted to the head of the appropriate research unit in the Center for Fire Research who prepares an analysis of comments and makes a recommendation. The Center for Fire Research unit head will also consider compatibility with programmatic goals and financial feasibility.

Paperwork Reduction Act

The SF-424 mentioned in this notice is subject to the requirements of the

Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Administrative questions pertaining to the grant process may be directed to the Grants Specialist, Sharon Green, National Bureau of Standards, Bldg. 301, Room B–158, Gaithersburg, Maryland 20899, telephone number (301) 975–6328.

Date: May 31, 1988.

Ernest Ambler,

Director.

[FR Doc. 88–12614 Filed 6–3–88; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Policy; Industry Supply Advisory Group; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held on June 13 through 16, 1988, beginning at 1:00 p.m. on June 14 and at 9:30 a.m. on June 15 and 16. The meeting will take place at the office of the IEA, 2, rue Andre Pascal, Paris, France. The purpose of the meeting is to permit attendance by representatives of U.S. company members of ISAG at an ISAG Training Session on June 13 and 14, at a Briefing Session for European National Emergency Sharing Organizations ("NESOs") on June 15, and at a Briefing Session for European Reporting Companies and Reporting Company Affiliates on June 16. The agenda for the sessions on June 13 and June 14 is as follows:

June 13

1. Introduction and Administrative Matters.
2. Emergency Sharing System.
3. Data Base/Allocation Calculation.
4. AST–6.
   (a) Objectives/Scope.
   (b) New Features.
   (c) Timetable.
5. Voluntary Offers.
6. Questions and Answers.

June 14

1. IEA Security Issues—Documents/Physical.
2. Group Meetings.
   (a) Country Supply Group ("CSG") and Supply Analysis Group ("SAG") Voluntary Offer Computer System/Reports.
   (b) Supply Coordination Group ("SCG") Organizational Meeting and Procedures.
3. Group Meetings.
   (a) SCG Voluntary Offer Computer System/Reports.
   (b) SCG—Organizational Meeting and Procedures.
   (c) SAG—Discuss Role and Potential Projects.
4. Information on Paris—Accommodations, etc.
5. Appraisal Report.
6. Legal Issues.
7. Wrap-Up.

It is anticipated that for agenda items 2 and 3 on June 14, ISAG will break up into two or three subgroups.

The agenda for the sessions on June 15 and June 16 is under the control of the IEA. It is expected that the following draft agenda will be followed for the sessions on both June 15 and June 16:

June 15 and 16

1. Overview: Emergency Sharing System.
2. Legal Aspects.
3. Test Background.
4. Test Guide.
   (a) Objectives and Scope.
   (b) New Features.
   (c) Timetable.
   (d) Organization and Responsibilities.
   (e) Data Base and Allocation Calculation.
5. Instructions for Questionnarie A/Questionnaire B Preparation and Submission.
6. ISAG and its Functions.
7. Voluntary Offer Process and Random Non-Implementation Procedure.
8. Appraisal Reports.
9. Question and Answer Session.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the ISAG, their counsel, representatives of the IEA Group of Reporting Companies, their counsel, employees of the IEA, employees of the Department of Energy, Justice, State, and the Federal Trade Commission and the General Accounting Office, representatives of committees of Congress, representatives of the Commission of the European Communities, and invitees of the ISAG or the IEA.

Issued in Washington, DC, May 31, 1988.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 88–12625 Filed 6–3–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order with Stanco Petroleum, Inc.

AGENCY: Economic Regulatory Administration; Department of Energy.

ACTION: Final action on Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Stanco Petroleum, Inc. (Stanco) executed on March 24, 1988, and published for comment in 53 FR 11548 on April 7, 1988.

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 6H–034, RG–33, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–5417.

Copies of the Consent Order may be obtained free of charge by written request to "Stanco Consent Order Request" at the above address or by calling Edward P. Levy at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On April 7, 1988, DOE Published notice in the **Federal Register**, Vol. 53 at page 11548 announcing the execution of a Proposed Consent Order between Stanco and DOE. In compliance with the DOE regulations, that Notice, and a Press Release issued on April 14, 1988, summarized the Proposed Consent Order and the relevant facts.

As a result of an audit of Stanco's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) concluded that Stanco had overcharged in certain crude oil transactions during the period September 1973 through August 1976. Stanco disputed ERA's audit findings and denied any overcharge liability, but DOE's Office of Hearings and Appeals essentially upheld ERA's conclusions in a Remedial Order issued to Stanco.

The Consent Order resolves these matters and all other civil and administrative claims or causes of action regarding Stanco's compliance with and obligations under the Federal petroleum price and allocation regulations.

As consideration, Stanco has agreed to pay $50,000 plus interest, over three and one-half years. An additional payment will be made to DOE for every calendar quarter (during the term of the Consent Order) in which the posted price for crude oil sold by the firm averages $21 or more per barrel. These payments will increase as the posted price increases. ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute all amounts paid by Stanco pursuant to the Consent Order.

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on May 26, 1988.

Milton C. Lorens,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88–12663 Filed 6–3–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC)

Date and time: June 29, 1988—8:30 a.m. -3:00 p.m.

Place: Conference Center, One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact: George D. Duda, Office of Health and Environmental Research (ER–72), Office of Energy Research, Department of Energy, Washington, DC 20545, Telephone: 301/353–3057.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

June 29, 1988

- Report from HERAC Subcommittee on Biotechnology
- Report from HERAC Subcommittee on Radiation Biology
- Report from HERAC Subcommittee on Nuclear Medicine
- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George D. Duda at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 31, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–12630 Filed 6–3–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–29–NG]

Premier Enterprises, Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy; Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 6, 1988, of an application filed by Premier Enterprises, Inc. (Premier), for blanket authorization to import up to 73 Bcf of natural gas from Canada for domestic spot sales over a two-year period beginning on the date of first delivery

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 6, 1988.

FOR FURTHER INFORMATION:

William L. Durbin, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9516.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Premier is a corporation organized and existing under the laws of the State of Colorado with its principal place of business in Engelwood, Colorado. The applicant is a marketer of natural gas and contemplates importing the gas from a variety of Canadian suppliers, either for its own account for resale to a range of United States purchasers, including local distribution companies, pipelines and commercial and industrial end-users, or as an agent on behalf of Canadian suppliers or U.S. purchasers. Premier may also secure arrangements for transportation of Canadian gas in the United States. The terms of each agreement would be negotiated between Premier or participating U.S. buyers for which Premier acts as agent or marketer and Canadian producers. Premier intends to use existing transmission systems and will not require the construction of new or separate facilities to import the natural gas. Premier proposes to comply with ERA's reporting requirements.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement, in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 684, February 22, 1984). Parties that may oppose this applicatoin should comment in their response on the issue of competitiveness as set forth in

the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may permit the import of the gas at any existing point of entry and through any existing transmission system.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., July 6, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in the dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Premier's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 26, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-12094 Filed 6-3-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-396-000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Pipeline Company

May 31, 1988.

[Docket No. CP88-396-000]

Take notice that on May 16, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP88-396-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Tenngasco Corporation (Tenngasco) as agent and on behalf of Tenneco Oil Company. Tennessee explains that service commenced April 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3297-000. Tennessee further explains that the peak day quantity would be 103,400 dekatherms, the average daily quantity would be 8,000 dekatherms, and that the annual quantity would be 2,920,000 dekatherms. Tennessee explains that it would receive natural gas for Tennagasco's account in the states of Louisiana, Texas, and Offshore Louisiana. Tennessee further explains that, it would redeliver natural gas for the account of Tenngasco in the states of Texas and Louisiana.

Comment date: July 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Equitable Resources Exploration, Inc. and Eastern Kentucky Production Company

May 31, 1988.

[Docket No. CI88-245-002, *et al.*]

Take notice that on February 22, 1988, Equitable Resources Exploration, Inc. (EREX) and Eastern Kentucky Production Company (EKPC), c/o Henry E. Reich, Jr., Suite 2900, 330 Grant Street, Pittsburgh, Pennsylvania 15219, filed an application requesting redesignation and amendment of the certificate and rate schedule formerly held by PECO Resources, Inc. and of the terminated small producer certificates formerly held by Union Drilling, Inc. (UDI) and Gas Well Supply Company (GWSC) listed on the attached appendix, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective January 1, 1988, PECO merged into UDI, with the latter continuing as the surviving company under the new name Equitable Resources Exploration, Inc. and GWSC merged into EKPC with the latter continuing as the surviving company under the name of Eastern Kentucky Production Company.

Comment date: June 14, 1988, in accordance with Standard Paragraph J at the end of the notice.

Appendix

CERTIFICATE AND RATE SCHEDULE OF PECO RESOURCES, INC. TO BE REDESIGNATED IN THE NAME OF EQUITABLE RESOURCES EXPLORATION, INC.

PECO rate schedule No.	Proposed EREX rate schedule No.	Purchaser	Docket No.
1	1	East Tennessee Natural Gas Company	CI88-245-001.

SMALL PRODUCER CERTIFICATES TO BE REDESIGNATED IN THE NAME OF EQUITABLE RESOURCES EXPLORATION, INC. OR EASTERN KENTUCKY PRODUCTION COMPANY

Original small producer/seller	Successor producer/seller	Docket No.
Union Drilling, Inc.	EREX	R-371 (Order No. 411).
Gas Well Supply Co.	EKPC	R-371 (Order No. 411).

3. Fina Oil and Chemical Company

May 31, 1988.

[Docket No. CI76-361, *et al.*]

Take notice that on March 11, 1988, Fina Oil and Chemical Company (Fina) of P.O. Box 2159, Dallas, Texas 75221, filed an application to amend the certificates in the dockets listed in the Appendix hereto by substituting Fina for Northwest Exploration Corporation (Northwest) as the certificate holder and to redesignate Northwest's related Rate Schedules listed on the Appendix hereto as Fina's Rate Schedules, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By assignments dated December 29, 1986, and effective October 1, 1986, Williams Exploration Company assigned to Fina all right, title and interest in the properties covered under Northwest's certificates and rate schedules listed on the attached Appendix.

Comment date: June 14, 1988, in accordance with Standard Paragraph J at the end of this notice.

Appendix

Northwest rate schedule	FINA rate schedule	Buyer, contract date and property covered	Docket No.
3	131	Northwest Pipeline, January 7, 1976, Philadelphia Creek, Rio Blanco Co., Colo	C176-361.
4	132	Northwest Pipeline, August 31, 1977, East Douglas Creek, Rio Blanco Co., Colo	C178-49.
10	133	Northwest Pipeline, July 29, 1978, Twin Arrows Creek, Rio Blanco Co., Colo	C178-1235.
12	134	Northwest Pipeline, December 4, 1979, San Juan Basin, San Juan, Co, NM	C179-206.

4. Nothern Natural Gas Company, Division of Enron Corp.

June 1, 1988.

[Docket No. CP88-410-000]

Take notice that on May 25, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-410-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Citizens Gas Supply Corporation (Citizens Gas), a marketer of natural gas, under the certificate issued in Docket No. CP86-435-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated April 6, 1988, it proposes to receive up to 20 billion Btu of natural gas per day plus additional volumes if sufficient capacity exists, at existing interconnections in Eugene Island Blocks 384 and 372, Offshore Louisiana and redeliver thermally equivalent volumes at Eugene Island Block 342, Offshore Louisiana.

Northern further states that the average day, maximum day and annual volumes would be 20.0 billion Btu, 15.0 billion Btu, and 7.300 billion Btu, respectively. Northern states that no facilities need be constructed to implement the service. In addition Northern indicates that there is no agency relationship under which a local distribution company or affiliate of Citizens Gas would receive gas on behalf of Citizens Gas. Northern also states that on March 8, 1988, it commenced a transportation service for Citizens Gas under the 120-day authorization of § 284.223 of the Commission's Regulations.

Northern states that the contract provides for a two-year primary term and would continue month to month thereafter unless terminated by thirty-day written notice.

Northern proposes to charge the rates and abide by the terms and conditions provided by its Rate Schedule IT-1.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

June 1, 1988.

[Docket No. CP88-406-000]

Take notice that on May 24, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-406-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Consolidated Fuel Supply, Inc. (Consolidated), a marketer, under applicant's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant proposes to transport up to 50,000 Dt. per day on behalf of Consolidated pursuant to a transportation agreement dated April 8, 1988, between Applicant and Consolidated (Agreement). Applicant

would receive gas from various existing points of receipt on its system in Illinois, Louisiana, offshore Louisiana, Tennessee and Texas and transport and redeliver the subject gas, less fuel used and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois for various end-users.

Applicant further states that the estimated daily and estimated annual quantities would be 27,000 Dt. and 10,000,000 Dt., respectively. Service under §284.223(a) commenced on April 11, 1988, as reported in Docket No. ST88-3567.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Company

June 1, 1988.

[Docket No. CP88-392-000]

Take notice that on May 13, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88-392-000 pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a sales tap and valve assembly, to be located in McKinley County, New Mexico in order to permit the delivery of natural gas to the Gas Company of New Mexico (GCNM) for resale to the Gallup McKinley County Elementary School located in McKinley County, New Mexico, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that it is advised by GCNM that the requested quantities of natural gas will be utilized to serve the natural gas requirements of the new Gallup McKinley County Elementary School. It is stated that initial deliveries of natural gas are requested to begin in the first quarter of 1989. The estimated cost of the sales tap in $3,970, it is further stated.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph:

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12707 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18748-005, et al]

ARCO Oil and Gas Co. Division of Atlantic Richfield Company, et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

May 31, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 14, 1988, file with the Federal Energy Regulatory Commisson, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Description
G-18748-005, D, May 17, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company Mocane, *et al.*, Fields, Beaver and Ellis Counties, Oklahoma, and Lipscomb and Ochiltree Counties, Texas.	(1)
CI81-1429-020, D, May 16, 1988	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Jalmat, *et al.*, Fields, Lea County, New Mexico	(2)
CI81-1429-021, D, May 19, 1988	do	do	(2)
		Langlie-Mattix Field, Lea County, New Mexico	(2)
CI65-543-000, D, May 13, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Company of America, Indian Basin Field, Eddy County, New Mexico.	(1)
CI65-1227-001, D, Dec. 1, 1987	Mobil Oil Exploration and Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046-0957.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Second Bayou Field, Cameron Parish, Louisiana.	(4)

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and Location	Description
CI88-456-000, (CI64-522), B, May 13, 1988.	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	K N Energy, Inc., Camrick Field, Beaver County, Oklahoma.	(5)
CI88-457-000, (CI61-1429), B, May 16, 1988.	Sun Exploration and Production Company	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(6)
CI88-458-000, F, May 16, 1988	Helmerich & Payne, Inc., 1579 E. 21st, Tulsa, OK 74114.	Williams Natural Gas Company, Hobert Ranch Area, Hemphill County, Texas.	(7)
CI88-459-000, (CI62-3), B, May 16, 1988.	Sun Exploration and Production Company	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	(8)
CI88-460-000, (CI62-530), B, May 16, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	National Gas Pipeline Company of America, Northeast Alden Field, Caddo County, Oklahoma.	(1)
CI88-461-000, (G-4361), B, May 19, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., LaReforma Field, Starr and Hidalgo Counties, Texas.	(9)
CI88-462-000 (CI61-1425), B, May 19, 1988.	Sun Exploration and Production Company	El Paso Natural Gas Company, Jalmat Yates Field, Lea County, New Mexico.	(10)

[1] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.
[2] Effective 1-2-86, Sun assigned its interest in Property No. 527338 to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[3] Effective 6-1-84, Sun assigned its interest in Property No. 481203, Gregory 'A' 2-7 (partial assignment), limited from the surface down to 3,500 ft., to Doyle Hartman.
[4] Effective 5-15-87, Mobil assigned certain acreage to Fina Oil and Chemical Company, American Cometra Inc. and Corexcal, Inc.
[5] Effective 4-1-72, Union assigned a certain lease to R. W. Rine Drilling Company.
[6] Effective 1-2-86, Sun assigned its interest in Property No. 527258, S. E. King, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[7] Effective 1-1-88, Shell Western E&P Inc. assigned certain acreage to Helmerich & Payne, Inc.
[8] Effective 1-2-86, Sun assigned its interest in Property No. 749363, Wells 12 & 13, to Doyle Hartman, James A. Davidson, Michael L. Kline, and John H. Hendrix Corporation.
[9] Effective 10-1-87, Sohio assigned certain acreage to Union Pacific Resources Company and Mobil Exploration & Producing U.S. Inc.
[10] Effective 1-2-86, Sun assigned its interest in Property No. 639862, So-Langlie Jal Unit (formerly Gutman 18), to Doyle Hartman, James A Davidson, Michael L. Klein, and John H. Hendrix Corporation.
Filing code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 88-12623 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-35-011]

Great Lakes Gas Transmission Co.; Compliance Filing

June 1, 1988.

Take notice that on May 20, 1988, Great Lakes Gas Transmission Company (Great Lakes) filed revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2.

Great Lakes states that these tariff sheets incorporate changes in revised base tariff rates, interim overrun rates, and interim minimum bill in compliance with Articles III, VI, VII and IX of the stipulation and agreement approved by the Commission in its letter order issued April 6, 1988.

Great Lakes states that the filing fee is being tendered under protest to the extent, if any, a protest is required to preserve the right of Great Lakes to the refund of any amount thereof which may subsequently be determined to have been unlawfully collected as a result of final disposition of administrative or judicial proceedings.

Great Lakes states that copies of this filing are being served on all its customers and the Public Service Commissions of Minnesota, Michigan and Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12705 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ88-1-51-001 and RP88-158-000]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff

June 1, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on May 20, 1988, tendered for filing Substitute Fourteenth Revised Sheet Nos. 57(i), Substitute Fourteenth Revised Sheet Nos. 57(ii), and Substitute First Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1 to be effective June 1, 1988.

Great Lakes states that on May 2, 1988, it filed with the Federal Energy Commission (Commission), pursuant to Order No. 483—Revisions to Purchased Gas Adjustment Regulations, a series of tariff sheets which included Fourteenth Revised Sheet Nos. 57(i), Fourteenth Revised Sheet No. 57(ii) and First Revised Sheet No. 57(v) with a proposed effective date of June 1, 1988.

Great Lakes states that since this filing was made, it has been notified by its largest resale customer, Natural Gas Pipeline Company of America ("Natural"), of a revision in the level of volumes projected by Natural to be purchased during the months of June and July, 1988. This change in volumes causes a corresponding change in Great Lakes' company use gas which results in a decrease in the Purchased Gas Cost Adjustment rates from those of the May 2, 1988, filing for most of Great Lakes' customers.

Great Lakes is requesting the Commission to accept this revised filing in order to implement the aforementioned revised Purchased Gas Cost Adjustments effective June 1, 1988.

Great Lakes requests waiver of the notice requiremnt of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit Substitute Fourteenth Revised Sheet Nos. 57(i), Substitute Fourteenth Revised Sheet No. 57(ii) and Substitute First Revised Sheet No. 57(v) to become effective on June 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commisison and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-12703 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-22-007]

High Island Offshore System; Tariff Filing

June 1, 1988.

Take notice that on May 24, 1988, High Island Offshore System ("HIOS") tendered for filing Third Substitute Eighteenth and Second Substitute Nineteenth Revised Sheet Nos. 4 to be included in its F.E.R.C. Gas Tariff, Original Volume No. 1 to be effective January 1, 1988, and April 1, 1988, respectively.

HIOS states that Third Substitute Eighteenth and Second Substitute Nineteenth Revised Sheet Nos. 4 reflect a decrease of $.03 in its Demand Rate as a result of decreased costs paid to U-T Offshore System under its Rate Schedule X-1 for measurement, dehydration, and separation at the Cameron Meadows facilities. HIOS further states that such rate reduction is being made as an amendment to its previous filing submitted on May 6, 1988 in compliance with Article III of RP87-22-000 Stipulation and Agreement approved by the Federal Energy Regulatory Commission ("Commission") on February 25, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12708 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-22-004, et al.]

High Island Offshore System, et al.; Filing of Pipeline Refund Reports and Refund Plans

May 31, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before June 17, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.
Apr. 8, 1988	High Island Offshore System.	RP87-22-004
Apr. 18, 1988	MGC, Inc.	RP87-43-004
Apr. 25, 1988	High Island Offshore System.	RP87-22-005
Do	Arkla Energy Resources.	RP86-106-011
May 2, 1988	Southern Natural Gas Company.	RP85-153-006
May 16, 1988	Midwestern Gas Transmission Company.	RP86-33-010
May 17, 1988	East Tennessee Natural Gas Company.	RP87-70-010
May 23, 1988	Southern Natural Gas Company.	CP86-401-010

[FR Doc. 88-12700 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-15-002]

Mid Louisiana Gas Co.; Correction to Filing

June 1, 1988.

Take Notice that on May 24, 1988, Mid Louisiana Gas Company (Mid Louisiana) filed Sixty-Third Revised Sheet No. 3a to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1988.

Mid Louisiana states that the previously filed sheet entitled Sixty-Third Revised Sheet No. 3a, Superseding Substitute Sixty-Second Revised Sheet No. 3a should have been titled Sixty-Third Revised Sheet No. 3a, Superseding Sixty-Second Revised Sheet No. 3a.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12702 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-002]

Natural Gas Pipeline Co. of America; Tariff Filing

June 1, 1988.

Take notice that on May 25, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, submitted in Docket No. RP88-94-002 revised tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on May 1, 1988:

Substitute Alternate Eight Revised Sheet No. 8,
Substitute Alternate Fourth Revised Sheet No. 13,
Substitute Alternate Original Sheet Nos. 165 through 170.

Natural states that in compliance with Ordering Paragraph D of the Commission order issued in Docket Nos. RP88-94-000 and 001 on April 29, 1988 (Order), Natural revised its sheets to (1) reflect removal of all Relief Gas from its Base Period and Comparison Period purchase calculations for the purpose of allocating Take-or-Pay Settlement Costs to jurisdictional and non-jurisdictional customers; and (2) reflect removal of all interest included in the Take-or-Pay Settlement Costs for the period prior to May 1, 1988.

Natural states that its revised tariff sheets reflect elimination of (1) the provision for recovering take-or-pay or other contractual claims not asserted by a supplier on or before December 31, 1986; and (2) the provision which required terminating customers to pay their full allocation of Take-or-Pay Settlement Costs in one lump sum within 60 days of termination. Terminating customers shall remain liable for their full cost allocation but will be permitted to pay for these costs as if they had remained a customer.

Natural states that a copy of its filing has been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP88-94-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12710 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-168-000]

Raton Gas Transmission Co.; Compliance Filing

June 1, 1988.

Take notice that on May 20, 1988 (fee filed), Raton Gas Transmission Company (Raton) filed First Revised Sheet Nos. 22, 23, 24, and Original Sheet Nos. 24-A and 24-B to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective June 1, 1988, in compliance with Order No. 483.

Raton states that these revised tariff sheets reflect modifications of its existing PGA Clause where necessary to implement Order No. 483 and 483-A. Raton also states that it is electing to continue use of its currently existing unit-of-sales method as contained in the revised tariff sheets.

Raton states it is not filing Revised Tariff Sheet—Statement of Rates since the rate change of its supplier, Colorado Interstate Gas Company (CIG), is below the Minimum amount of one mill per Mcf and Raton's Surcharge Deferral and Amortization Period does not currently expire until September 30, 1988 and could not be changed under Commission's regulations.

Raton requests that the Commission grant waiver of filing requirements for magnetic tape in any PGA filing requirement since Raton does not have the necessary equipment or trained personnel for this purpose and considering its limited operation could not economically provide such a facility. Raton further requests that such waivers be granted as is necessary to permit Raton to follow CIG in its delayed filings as ordered April 12, 1988, since Raton's rates directly follow and coincide with CIG's rates and dates of filing.

Copies of this filing have been served on Raton's customers and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12706 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-177-000]

Texas Gas Transmission Corp.; Tariff Filing

June 1, 1988.

Take notice that on May 24, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventh Revised Sheet No. 14
Original Sheet No. 14A
Original Sheet No. 14B
Original Sheet No. 14C
Original Sheet No. 122
Original Sheet No. 123

Texas Gas states that this filing is made to reflect the allocation of United Gas Pipe Line Company's fixed take-or-pay charges to Texas Gas's downstream customers. Texas Gas states that this filing is consistant with the Commission's proposed Interim Rule and Statement of Policy pursuant to Order No. 500 issued August 7, 1987, which allows "downstream pipelines . . . to allocate the fixed take-or-pay charges of upstream pipelines on the same basis as that upon which they are incurred, namely, cumulative purchase deficiencies." Texas Gas reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is June 1, 1988.

Copies of this filing have been served upon Texas Gas's affected jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12709 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-124-001]

Trunkline Gas Co.; Filing

June 1, 1988.

Take notice that on May 24, 1988, Trunkline Gas Company (Trunkline) filed the following tariff sheets to its

FERC Gas Tariff, Original Volume No. 1, proposed to be effective June 1, 1988:

Seventh Revised Sheet No. 21–D
Seventh Revised Sheet No. 21–E
Twelfth Revised Sheet No. 21–F
Fourth Revised Sheet No. 21–F.1
Eighth Revised Sheet No. 21–G
Sixth Revised Sheet No. 21–H
Sixth Revised Sheet No. 21–I
Sixth Revised Sheet No. 21–J
First Revised Sheet No. 21–J.1
First Revised Sheet No. 21–J.2
Original Sheet No. 21–J.3
Original Sheet No. 21–J.4
Original Sheet No. 21–J.5

Trunkline states that this filing corrects the headings on the revised tariff sheets that were filed with the Commission on May 3, 1988.

Trunkline requests that the Commission accept these corrected sheets in place of those submitted on May 3, 1988, to be effective June 1, 1988. Therefore, Trunkline requests waiver of § 154.22 of the Commission's Regulations.

Trunkline states that a copy of this filing is being sent to each of its jurisdictional customers and to the respective State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12701 Filed 6–3–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP87–15–023, RP86–115–014]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

June 1, 1988.

Take notice that Trunkline Gas Company (Trunkline) on May 24, 1988, filed the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 in compliance with the Commission's Opinion No. 297 issued February 26, 1988 and its April 22, 1988 Notice of Denial of Rehearing by operation of law:

Ninth Revised Sheet No. 5
Thirteenth Revised Sheet No. 5–A
Fourth Revised Sheet No. 9–E
Fourteenth Revised Sheet No. 9–F

The effective date of these revised tariff sheets pursuant to the Commission orders referenced above is May 1, 1987.

Trunkline states that these tariff sheets are being filed under compulsion of such orders of the Commission and without prejudice to Trunkline's position that the subject of the Commission's orders can not lawfully be made applicable retroactively, and in fact no refunds should be ordered at this juncture in the proceedings. Accordingly, these tariff sheets are submitted without prejudice to judicial review of the Commission's orders and Trunkline's position in the above-docketed proceedings.

Copies of the filing were served upon Trunkline's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12704 Filed 6–3–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3391–5]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Corn Products' Stockton Cogeneration Facility (SCF) (EPA Project Number SJ 85–04)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 14, 1988, the Environmental Protection Agency issued a modified PSD permit (which was originally issued on December 16, 1985 under EPA's Federal regulations 40 CFR 52.21) to the applicant named above. The original PSD permit grants approval to construct a 49.9 MW coal-fired circulating fluidized bed combustor (CFBC) cogeneration facility located in Stockton, California. The permit modification allows Corn Products simultaneous operation of an existing gas turbine with the CFBC, and flexibility to operate an existing incinerator/waste heat boiler during the initial startup period of the CFBC. (Both turbine and boiler were originally proposed to be shutdown following the initial operation of the CFBC).

FOR FURTHER INFORMATION: Copies of the permit modification are available for public inspection upon request; address request to: Linda Barajas (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8221, FTS 454–8221.

DATE: The PSD permit modification is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within sixty (60) days of the date of this notice.

Date: May 20, 1988.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 88–12634 Filed 6–3–88; 8:45 am]

BILLING CODE 6560–50–M

[CFRL–3391–6]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Cyprus Casa Grande Corporation (Cyprus) (EPA Project Number NSR 4–1–3; AZP 87–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 18, 1988, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct/modify the Cyprus Casa Grande existing copper mining and processing facility located on the Tohono O'odham Indian Reservation in Pinal County, Arizona. Due to a decline in copper prices and the unavailability of copper concentrates, the plant ceased operating in August 1977. Cyprus now wishes to resume operation of the plant. The facility presently includes an underground copper leaching operation; concentrate preparation system; two fluidized bed concentrate roasters with an associated leach and acid plant; a solvent extraction plant; and an electrowinning plant. The permit is subject to certain conditions, including an allowable emission rate (and averaging time) as follows: sulfur dioxide (SO_2) not to exceed 165 lbs/hr or 650 ppm (one-hour), 600 ppm (24-hour) and 500 ppm (annual); particulate matter (as TSP or PM–10), each not to exceed 5.56 lbs/hr (3-hour).

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the existing cyclones, venturi scrubber, electrostatic precipitator, acid plant, mist eliminator and the proposed new double alkali scrubber for the control of SO_2, TSP and PM–10 emissions from the plant.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within sixty (60) days of the date of this notice.

Dated: May 20, 1988.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 88–12635 Filed 6–3–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3391–8]

Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations; Availability of Draft Report

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of Risk Assessment Forum draft report.

SUMMARY: This notice announces the availability of an EPA Risk Assessment Forum draft report entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations." EPA has asked for combined Science Advisory Board (SAB) and Science Advisory Panel (SAP) review of this report. The date, time, and place of the SAB/SAP review meeting will be announced in a separate Federal Register notice.

DATES: The Agency will make the document available for public review and comment on or about June 6, 1988. Comments must be postmarked by August 6, 1988.

ADDRESSES: To obtain a single copy of this document, interested parties should contact: the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency (EPA), 26 Martin Luther King Drive, Cincinnati, OH 45268. Telephone: (513) 569–7562 or FTS: 684–7562. Please provide your name, mailing address, and the EPA document number (EPA–625/3–88/014A). The document will be distributed from the Cincinnati office only.

It will be available for public inspection and copying at the EPA Public Information Reference Unit (PIRU), EPA Headquarters Library, 401 M Street SW., Washington, DC 20460, between the hours of 8:00 a.m. and 4:30 p.m. Comments on the document may be sent to Linda C. Tuxen, Technical Liaison, Risk Assessment Forum (RD–689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Tuxen, (202) or FTS) 475–0743.

SUPPLEMENTARY INFORMATION: EPA's Guidelines for Carcinogen Risk Assessment call for use of mechanistic and other relevant information in making choices about the models to be used in extrapolating hazard estimates from high to low exposures (51 FR 33998: September 24, 1986). The Forum report on thyroid neoplasia proposes that, under clearly specified conditions, chemical carcinogenesis in thyroid follicular cells can be analyzed as a threshold phenomenon, rather than assuming low-dose linearity as EPA customarily does for carcinogenic compounds. Specifically, for chemicals that induce tumors only in the thyroid gland and alter pituitary-thyroid status, EPA scientists would use metabolic, toxicological, and ancillary data on preneoplastic endpoints to identify a NOAEL or LOAEL as the basis for a cancer potency estimate.

The Forum report reviews the physiology and biochemistry of normal thyroid-pituitary function, discusses factors influencing thyroid carcinogenesis, and analyzes human data on thyroid hyperplasia and neoplasia. These findings were in part described in a 1986 Office of Pesticide Programs (OPP) report which was favorably reviewed by the FIFRA SAP. The Forum report enlarges on some of the issues in the OPP paper and provides analysis of additional topics.

Date: May 26, 1988.

Carl R. Gerber,

for Assistant Administrator for Research and Development.

[FR Doc. 88–12833 Filed 6–3–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44508; FRL–3392–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tetrafluoroethylene (CAS No. 116–14–3) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submission

Test data for tetrafluoroethylene (TFE) was submitted by E. I. du Pont de Nemours and Company, Inc. pursuant to a test rule for the fluoroalkenes group, which includes TFE, at 40 CFR 799.1700. The data was received by EPA on May 20, 1988. The submission describes an evaluation of TFE in the mouse micronucleus test. Mutagenic effects testing is required by the test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to its completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44508). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA

Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 29, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88–12703 Filed 6–2–88; 12:56 pm]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of 3067–0122

Title: Debt Collection Financial Statement

Abstract: FEMA Form 22–13, Debt Collection Financial Statement, is used by the Federal Emergency Management Agency to obtain information on a debtor's financial condition to determine the debtor's ability to pay a debt due the Federal Government. The FEMA Claims Collection Officer uses the information to decide whether to allow installment payments or to suspend or terminate the debt.

Type of Respondents: Individuals or households

Number of Respondents: 280

Burden Hours: 280

Frequency of Recordkeeping or Reporting: On Occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20502 within two weeks of this notice.

Date: May 27, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 12619 Filed 6–3–88; 8:45 am]

BILLING CODE 671–621–M

FEDERAL HOME LOAN BANK BOARD

Alliance Savings and Loan Association, Houston, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Alliance Savings and Loan Association, Houston, Texas on May 13, 1988

Dated: May 19, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12600 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Universal Savings and Loan Association, Scottsdale AZ; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Universal Savings and Loan Association, Scottsdale, Arizona, on May 25, 1988.

Dated: May 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12602 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Briercroft Savings and Loan Association, Austin TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Briercroft Savings and Loan Association, Austin, Texas on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12594 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Cameron County Savings Association, San Benito, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Cameron County Savings Association, San Benito, Texas, on May 13, 1988.

Dated: May 19, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12599 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Cardinal Savings Bank Inc., Newport, NC; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Cardinal Savings Bank, Inc., Newport, North Carolina, on May 13, 1988.

Dated: May 19, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12592 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

City Savings and Loan Association, San Angelo, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for City Savings and Loan Association, San Angelo, Texas, on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12598 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Colorado County Federal Savings and Loan Association, Columbus, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Colorado County Federal Savings and Loan Association, Columbus, Texas on May 13, 1988.

Dated: May 19, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12593 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–719; FHLBB No. 2219]

Danielson Federal Savings and Loan Association, Danielson, CT; Final Action; Approval of Conversion Application

Date: May 20, 1988.

Notice is hereby given that on May 13, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Danielson Federal Savings and Loan Association, Danielson, Connecticut for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 88–12601 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Lamar Savings Association, Austin, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Lamar Savings Association, Austin, Texas on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12595 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Security Savings and Loan Association, Dickinson, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Security Savings and Loan Association, Dickinson, Texas on May 13, 1988.

Dated: May 19, 1988.

John L. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12597 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Stockton Savings Association, Dallas, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Stockton Savings Association, Dallas, Texas on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12596 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Bluebonnet Savings Association, of Texas, Hempstead, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Bluebonnet Savings Association of Texas, Hempstead, Texas, on May 26, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12603 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have failed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Alomar Transport, Inc., 167–43 148th Avenue, Jamaica, New York 11434, Officer: Henry M. Kelly, President

Atlantic Customs Brokers, Inc., 2261 Broadbridge Avenue, Stratford, Conn. 06497, Officers: Peter K. Schlesinger, President, Valerie B. Schlesinger, Secretary/Treas.

Teresa Fisher Pittillo, 2470 Windy Hill Road, Suit 161, Marietta, Georgia 30067, Officer: Teresa F. Pittillo, Sole Proprietor

Dateline Forwarding Services, Inc., 377 Oyster Point Blvd., Unit 15, South San Francisco, CA 94080, Officers: Freddie Dias, President, Violet Dias, Secretary/Treasurer, Robert Villanueva, Senior Vice President

Ice-USA Inc., 341 Edwin Drive, Virginia Beach, VA 23462, Officers: Gunnar Gudjonsson, President, Henry Swann Poteet III, Dir./Sec./Treas.

By the Federal Maritime Commission.

Dated: June 1, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–12670 Filed 6–3–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

BEST COPY AVAILABLE

SUMMARY: The Food and Drug Administration announces the renewal of the Blood Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on May 13, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-433-2765.

Dated: May 27, 1988.

George R. White,

Acting Associate Commissioner.

[FR Doc. 88-12810 Filed 6-3-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81F-0158]

American Cyanamid Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to a future filing of a petition proposing that the food additive regulations be amended to provide for the safe use of sodium acrylate-acrylamide resins to control organic and mineral scale in beet sugar juice and liquor or cane sugar juice and liquor by the polymerization and hydrolysis of acrylamide.

FOR FURTHER INFORMATION CONTACT: Catherine J. Bailey, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 5, 1981 (46 FR 30198), FDA published a notice that it had filed a petition (FAP 9A3475) from the American Cyanamid Co., Wayne, NJ 07470, that proposed to amend the food additive regulations to provide for the safe use of sodium acrylate-acrylamide resins to control organic and mineral scale in beet sugar juice and liquor or cane sugar juice and liquor by the polymerization and hydrolysis of acrylamide. American Cyanamid Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: May 24, 1988.

Fred R. Sinsk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12809 Filed 6-3-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Open Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the National Cancer Advisory Board Subcommittee on Cancer Centers to be held at the times and places listed below. Attendance by the public will be limited to space available.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meetings and rosters of the Committee members, upon request.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, Md. 20892 (301/496-5515).

Date of Meeting: June 25.

Place of Meeting: O'Hare Hilton Hotel, O'Hare Airport, Chicago, Illinois 60666.

Open: 10 a.m.-2 p.m.

Agenda: To plan a Workshop for July 21-22 pertaining to the Cancer Centers Program.

Name of Committee: Subcommittee on Cancer Centers Workshop.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, Md. 20892 (301/496-5515).

Dates of Meeting: July 21-22.

Place of Meeting: Capital Hilton Hotel, 1001 16th Street, NW., Washington, D.C. 20036.

Open:

July 21, 8:30 a.m.-5 p.m.

July 22, 8:30 a.m.-5 p.m.

Agenda: To discuss a new direction for the Cancer Centers Program.

Dated: May 26, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-12653 Filed 6-3-88; 8:45 am]

BILLING CODE 4140-01-M

Office of Refugee Resettlement

Refugee Resettlement Program; Allocations to States of FY 1988 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Final notice.

SUMMARY: This notice establishes the allocations to States of FY 1988 funds for social services under the Refugee Resettlement Program (RRP).

EFFECTIVE DATE: June 6, 1988.

ADDRESS: Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, (202) 245-1924.

SUPPLEMENTARY INFORMATION: Notice of the proposed allocations to States of FY 1988 social services funds was published in the **Federal Register** on February 25, 1988 (53 FR 5846). As a result of the comments received, over $1.5 million which ORR previously had planned to use for discretionary initiatives has been added to the amount allocated by formula. Adjustments have been made in the estimated refugee populations of four States as a result of evidence submitted by those States.

I. Amounts Available for Allocation

The Office of Refugee Resettlement (ORR) expects to have available $65,694,000 in FY 1988 refugee/entrant social service funds. This amount is based upon the Continuing Resolution for FY 1988 (Pub. L. 100-202) and the accompanying Conference Report (H. Rept. 100-498).

Of the total of $65,694,000, the Director of ORR will make available to States during FY 1988 $57,073,451 (86.9%) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees and entrants. The final allocation amounts have been adjusted as a result of ORR's addition of $1,573,451 to the formula allocation and after taking into consideration population adjustments based on evidence submitted by four States.

All allocation figures include both refugees and Cuban/Haitian entrants since both populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

Of the $57,073,451 covered by this notice, the Director will allocate funds directly to States in the following manner:

- $54,573,451 will be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. 3 years or less as of October 1, 1987 (including a floor of $75,000 for States which have small refugee/entrant populations).
- $2,500,000 will be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a floor amount of $5,000 to States with small refugee-entrant populations) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) of the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605) which amended section 412(c) of the Immigration and Nationality Act to require that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

The approximately $8,600,000 in remaining social service funds is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program.

The discretionary funds will support specific program activities designed to improve the delivery of services to refugees. Announcements of the availability of funding and grant application procedures for some projects have been issued (Availability of Grants to States to Implement Community/Family Stability Projects, ORR Regional Letter issued to April 29, 1988; Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984; and Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985). ORR is also continuing the Key States Initiative, which began last year, for projects to increase employment and self-support in States that have a high rate of dependence of refugees on cash assistance.

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's or entrant's length of residence.

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that under current regulations services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice for the basic and MAA incentive allocations are subject (as were FY 1985-1987 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B).) As in previous years, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must meet either of the following two conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that two of the following three circumstances exist: The cash assistance rate for time-eligible refugees/entrants in the State is below the national average for all time-eligible refugees/entrants in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

2. In accordance with section 412(c)(1)(C) of the Immigration and Nationality Act, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98-473) amended section 412(e)(7)(A) of the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain certain provisions for the allocation of additional social service funds beyond the amounts made available by this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

2. That the MAA incentive allocation is subject to and included under ORR's requirement that 85 percent of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

3. That the State agency will observe the following definition of a mutal assistance association:

a. The organization must be legally incorporated as a nonprofit organization; *and*

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW, Washington, DC 20201, with a duplicate copy to the appropriate Family Support Administration (FSA) Regional Administrator. States must respond by 30 days from the date of publication of this notice in order to avail themselves of this special allocation.

II. Discussion of Comments Received

We received three letters of comment in response to the notice of the proposed allocation to States of FY 1988 funds for social services for refugees and Cuban/Haitian entrants. The comments are summarized below and are followed in each case by the Department's response.

Comment: One commenter objected to the use of a formula based on refugees who have been in the U.S. 3 years or less, stating that 60% of the refugees who are receiving assistance in the commenter's area have been in the U.S. more than 3 years.

Response: The 3-year formula is required by statute.

Comment: Two commenters recommended that the approximately $10 million which ORR proposed to use for discretionary purposes be allocated instead according to the formula. The comments stated that this would aid States in addressing the reductions in funding for social services and State administration under the FY 1988 Continuing Resolution on Appropriations.

Response: After careful consideration, we have concluded that it would not be appropriate to distribute all of the discretionary funds under the allocation formula because of the importance of continuing a number of special efforts including the Key States Initiative to reduce welfare dependence and the Community/Family Stability Projects to provide services in on-impacted communities which are favorable locations for refugees. Other initiatives to provide services to newly arriving Hmong refugees from Laos and to Amerasians from Vietnam are also important. These and other discretionary projects, which are intended to improve the effectiveness and efficiency of the refugee resettlement program, fully merit the use of funds for these purposes and are able to address particular needs in a more flexible and productive manner than could be achieved by simply adding funds to the formula allocation. Most of the discretionary funds for special initiatives are awarded to States.

In response to the commenters' recommendation, we have, however, re-examined the amount of funds required this year for ORR's high-priority discretionary activities and have concluded that $1,573,451 can appropriately be added to the allocation formula. This addition brings the total amount allocated by this notice to $57,073,451. This is 98% of the $58,224,410 allocated in FY 1987. The FY 1988 formula allocations comprise 88.9% of the appropriation available for social services as compared with 84.9% in FY 1987.

III. Allocation Formula

Of the funds available for FY 1988 for social services, $54,573,451 will be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1987, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1988 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1987, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1984. Figures on the numbers of entrants resettled are maintained by the ORR Florida office.

For fiscal year 1988, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1985, 1986, and 1987. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1984, and September 30, 1987, who are thought to be living in each State as of October 1, 1987. The population estimates for the FY 1988 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

All participating States submitted data on their secondary in-migration on Form ORR–11 for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the State's total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in April-May 1987. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 12 States were adjusted in this manner. Finally, each State's population was deflated by approximately 0.68% to constrain the sum of the State figures to the known national total. Due to the adjustments made for population appeals, the population estimates for most States are changed slightly from the notice of proposed allocations. Four States submitted convincing evidence of larger time-eligible populations than had been estimated previously, and their population estimates were revised accordingly.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State.

Table 1, below, shows the estimated 3-year population of refugees and entrants, as of October 1, 1987 (col. 1); the formula amounts which the population estimates yield (col. 2); the total allocation amounts after allowing for the minimum amounts (col. 3); and the amounts available as an incentive to States to use MAAs as service providers (col. 4).

V. Allocation Amounts

The following amounts are *allocated* for refugee social services in FY 1988:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1988

State	Total population (1)	Formula amount (2)	Allocation (3)	MAA incentive allocation (4)
Alabama	724	$200,757	$200,757	$9,134
Arizona	2,587	717,345	717,345	32,637
Arkansas	522	144,744	144,744	6,585
California	71,858	19,953,106	19,953,106	907,803
Colorado	2,342	649,409	649,409	29,546
Connecticut	2,273	630,276	630,276	28,676
Delaware	74	20,519	75,000	5,000
Dist. of Columbia	556	154,172	154,172	7,014
Florida	4,304	1,193,448	1,193,448	54,298
Georgia	2,923	810,513	810,513	36,876
Guam	34	9,428	75,000	5,000
Hawaii	935	259,264	259,264	11,796
Idaho	599	166,098	166,098	7,557
Illinois	7,886	2,186,895	2,186,895	99,496
Indiana	555	153,885	153,885	7,002
Iowa	1,584	439,225	439,225	19,983
Kansas	2,192	607,816	607,816	27,654
Kentucky	695	192,715	192,715	8,768
Louisiana	2,104	583,414	583,414	26,544
Maine	593	164,432	164,432	7,481
Maryland	3,038	842,402	842,402	38,327
Massachusetts	8,315	2,305,652	2,305,652	104,900
Michigan	3,323	921,429	921,429	41,922
Minnesota	6,255	1,728,892	1,728,892	78,659
Mississippi	299	82,909	82,909	5,000
Missouri	1,915	531,007	531,007	24,159
Montana	117	32,443	75,000	5,000
Nebraska	379	105,092	105,092	5,000
Nevada	785	217,671	217,671	9,903
New Hampshire	263	72,927	75,000	5,000
New Jersey	2,867	794,985	794,985	36,169
New Mexico	377	104,538	104,538	5,000
New York	14,336	3,975,204	3,975,204	180,859
North Carolina	1,516	420,369	420,369	19,125
North Dakota	239	66,272	75,000	5,000
Ohio	2,433	674,642	674,642	30,694
Oklahoma	1,326	367,684	367,684	16,726
Oregon	2,326	644,972	644,972	29,344
Pennsylvania	5,424	1,504,011	1,504,011	68,428
Rhode Island	1,545	428,410	428,410	19,491
South Carolina	208	57,676	75,000	5,000
South Dakota	309	85,682	85,682	5,000
Tennessee	2,165	600,329	600,329	27,313
Texas	12,173	3,375,430	3,375,430	153,571
Utah	1,536	425,915	425,915	19,376
Vermont	230	63,776	75,000	5,000
Virginia	5,501	1,525,362	1,525,362	69,389
Washington	7,974	2,211,096	2,211,096	100,596
West Virginia	26	7,209	75,000	5,000
Wisconsin	2,946	817,446	817,446	37,191
Wyoming	7	1,941	75,000	5,000
Total	195,575	54,230,642	54,573,451	2,500,000

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: May 19, 1988.

Bill F. Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 88–12808 Filed 6–3–88; 8:45 am]

BILLING CODE 4150–04–M

Social Security Administration

Agreement on Social Security Between the United States and France; Entry Into Force

The Commissioner of Social Security gives notice that an agreement coordinating the United States and French social security programs is effective beginning July 1, 1988. The agreement with France, which was signed on March 2, 1987, is similar to U.S. social security agreements already in force with nine other countries—Belgium, Canada, the Federal Republic of Germany, Italy, Norway, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-French agreement eliminates duel social security coverage—the situation that exists when a person from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker and his or her employer may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-French agreement, an employee who is sent by an employer in the United States to work in France for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and French coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights merely because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or French benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235 or may call (301) 965-3540.

Dated: May 27, 1988.

Doreas R. Hardy,

Commissioner of Social Security.

[FR Doc 88-12618 Filed 6-3-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-88-1910]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 31, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Nondiscrimination Based on Handicap in Federally Assisted Programs.
Office: Fair Housing and Equal Opportunity.
Description of the Need for the Information and Its Proposed Use: This rule implements Section 504 of the Rehabilitation Act of 1973, as amended. HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from HUD.
Form Number: None.
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 1,413,470.
Status: New.
Contact:
David H. Enzel, HUD, (202) 755-5404
John Allison, OMB, (202) 395-6880.

Dated: May 18, 1988.

Proposal: Record of Employee Interview.
Office: Secretary.
Description of the Need for the Information and Its Proposed Use: This information is needed to assure compliance with the Davis-Bacon Act and 24 CFR Part 5.6. HUD uses the form, Record of Employee Interview, to assist in recording interviews with construction workers and in conducting labor standards investigations.
Form Number: HUD-11.
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, and Small Businesses or Organizations.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 10,000.
Status: Reinstatement.

Contact:
Elizabeth G. Cronin, HUD, (202) 755-5370
John Allison, OMB, (202) 395-6880.

Dated: May 26, 1988.

[FR Doc. 88-12712 Filed 6-3-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Issued

May 6, 1988.

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to this permit application duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on this permit action may be requested by contacting the Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329, telephone (202/343-4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

Toledo Zoo Gardens	726229	05/06/88

Dated: May 27, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88-12691 Filed 6-3-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for amendment of a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

PRT-691972

Applicant
Name: Carle Foundation Hospital.
Address: 611 West Park, Urbana, IL 61801.
Type of Permit: Scientific Research.
Name and Number of Animals: Polar bear (Ursus maritimus); 40 per year.
Summary of Activity to be Authorized: The applicant proposes to import approximately 300 serum samples, 300 urine samples and 300 adipose tissue samples per year to examine the seasonal ability of the polar bear to use specialized protein sparing metabolic adaptations to facilitate long-term fasting during their over-winter hibernation.
Source of Marine Mammals for Display: Canada.
Period of Activity: Annually.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 27329, Washington, DC, 20038-7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400 1375 K Street, NW., Washington, DC 20005.

Dated: June 1, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 122692 Filed 6-3-88; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC 20253, telephone (202) 395-7313.

Title: Coal Production and Reclamation Fee Report, Form OSM-1
Abstract: In order to ensure compliance with 30 CFR 870 a quarterly record is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.
Bureau Form Number: OSM-1
Frequency: Quarterly
Description of Respondents: Coal Operators
Annual Responses: 22,000
Annual Burden Hours: 5,867
Bureau Clearance Officer: Nancy Ann Baka (202) 343-5961

Dated: May 20, 1988

Andrew F. DeVito,

Acting Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88-12607 Filed 6-3-88; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from The Woodside Consulting Group for permission to use certain waybill data from the Commission's 1986 waybill sample. The data sought are to be used to estimate the going concern value of certain lines of railroads operated by The Kansas City Southern Railway Company and the Louisiana and Arkansas Railway Company. The requester states that such an analysis should be based not only on existing KCS traffic but also on other relevant traffic in which the KCS System does not now participate but for which it can compete. The data fields requested are those used by Woodside in Finance Docket No. 32000 (list of items available on request to OTA). The requested traffic is limited to:

- All traffic in which KCSR participates; and
- Non-KCSR traffic between Illinois or states west of the Mississippi River and the following states: VA, WV, KY, TN, NC, SC, GA, AL, MS, FL, AR, LA, AND TX.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of propietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not

release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864

Noreta R. McGee,

Secretary

[FR Doc. 88-12521 Filed 6-3-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 1, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

Revision of a Currently Approved Collection

(1) Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students—
(2) I-20, A, B, and 20 ID, Immigration and Naturalization Service
(3) On occcasion.
(4) Businesses or other for-profit, non-profit institutions. In accordance with Section 1001(A)(15)(F)(i) of the Immigration and Nationality Act, counsular and immigration officials use this form to determine if an alien student is eligible for an F-1 student visa.
(5) 200,000 respondents at .5 hours each.
(6) 100,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Application by Nonimmigrant Student for Extension of Stay, School Transfer, and Permission to Accept or Continue Employment or Practical Training—
(2) I-538, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households, businesses or other for-profit, non-profit institutions. This form is provided for by the Immigration and Nationality Act, section 101(a)(15) and 8 CFR Part 214 and is submitted by a nonimmigrant student seeking an extension of stay, transfer, or permission to accept or continue employment or practical training.
(5) 150,000 respondents at .166 hours each.
(6) 24,900 estimated annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Nonresident Alien's Canadian Border Crossing Card—
(2) I-175, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to obtain data from an applicant for a Canadian Border Crossing Card to determine eligibility
(5) 700 respondents at .083 hours each.
(6) 58 estimated annual burden hours
(7) Not applicable under 3504(h).

(1) Request for Certification of Military or Naval Service—
(2) N-426, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to verify the military or naval service claimed by an applicant for naturalization.
(5) 7,000 respondents at .166 hours each
(6) 1,162 estimated annual burden hours
(7) Not applicable under 3504(h).

(1) Registration for Classification as Refugee—
(2) I-590, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is use to determine eligibility of applicant for refugee status under Section 207 of the Immigration and Nationality Act.
(5) 75,000 respondents at .332 hours each.
(6) 24,900 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Supplement to Application to File Petition for Naturalization (Seaman)—
(2) N-400B, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to determine eligibility for naturalization benefits.
(5) 25 respondents at .25 hours each.
(6) 6.25 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Revalidation Letter (Immigrant Visa Petition)—
(2) I-71, Immigration and Naturalization Service
(3) On occasion.
(4) Businesses or other for-profit. Form is used to determine if petition should be revalidated on behalf of an alien to be employed by the petitioner
(5) 13,000 respondents at .033 hours each.
(6) 429 estimated annual burden hours
(7) Not applicable under 3504(h).

(1) Application for Nonresident Alien's Mexican Border Crossing Card—
(2) I-190, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to obtain data from an applicant for a Mexican border crossing card to determine eligibility.
(5) 250,000 respondents at .083 hours each.
(6) 20,750 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application to Payoff or Discharge Alien Crewmen—
(2) I-408, Immigration and Naturalization Service
(3) On occasion.
(4) Businesses or other for-profit. Form is for use in obtaining permission from the Attorney General by a master or an agent of a vessel or aircraft to discharge or payoff alien crewmen in the United States.
(5) 90,000 respondents at .25 hours each.
(6) 22,500 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88-12846 Filed 6-3-88; 8:45 am]

BILLING CODE 4410-19-M

Consent Decree in Clean Water Act Enforcement Action

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Judgment in *People of the State of Illinois, United States of America, et al. v. The East Chicago Sanitary District, et al.*, Civil Action No. H-81-613, was lodged with the United States District court for the Northern District of Indiana on May 12, 1988. The United States' Complaint in the action alleged that the East Chicago Sanitary District violated the Clean Water Act by (1) discharging waste into a navigable water without a permit; (2) discharging waste at a permitted location in excess of effluent limitations set by its National Pollutant Discharge Elimination System (NPDES) permit; and by violating permit provisions relating to equipment, operations, and maintenance.

The Consent Judgment requires East Chicago to take a number of specified measures to ensure compliance with the Clean Water Act, including completing construction of new facilities at the District's plant and achieving compliance with final permit effluent limits by July 1, 1988. East Chicago is also required to pay a civil penalty of $160,000 to the United States, and to reimburse the State of Illinois $40,000 for its litigation expenses.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *People of the State of Illinois, United States of America, et al. v. The East Chicago Sanitary District*, DOJ No. 90-5-1-1-1763.

The proposed Consent Judgment may be examined without charge at the office of the United States Attorney, Federal Building, 507 State Street, Hammond, Indiana 46320; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the Consent Judgment may be requested in person or by mail from the Department of Justice, at the above address. A copying charge of $2.50 (10 cents per page reproduction cost) must be paid, by check or money order payable to the Treasurer of the United States, at the time of the request.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12857 Filed 6-3-88; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Corrections

Advisory Board; Meeting

Time and date: 8:00 a.m., Monday, June 27, 1988.

Place: Ramada Hurstbourne, 9700 Bluegrass Parkway, Louisville, KY.

Status: Open.

Matters to be considered: Issues related to the possible relocation of the National Institute of Corrections Boulder, Colorado offices to the University of Louisville Shelby Campus.

Contact person for more information: Larry Solomon, Assistant Director, (202) 724-3106.

Raymond C. Brown,

Director.

[FR Doc. 88-12836 Filed 6-3-88; 8:45 am]

BILLING CODE 4410-36-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-55]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by July 6, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: Space Transportation System; Duty Free Entry of Space Articles.
OMB Number: 2700-0044.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 6.
Annual Burden Hours: 12
Abstract-Need/Uses: Public Law 97-446 authorized duty-free entry of space materials into the U.S. if NASA certifies that the statutory requirements are met. Information from applicants requesting duty-free entry is necessary to determine whether NASA should certify and if the statutory requirements are met.

John F. Duggan,

Director, General Management Division.

May 27, 1988.

[FR Doc. 88-12815 Filed 6-3-88; 8:45 am]

BILLING CODE 7516-01-M

[Notice 88-56]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by July 6, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: New Technology Transmittal.
OMB Number: 2700-0009.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 2000.
Annual Burden Hours: 500.
Abstract-Need/Uses: Report is needed to transmit information from NASA contractors and NASA laboratory personnel who have developed new technological advances (inventions, discoveries, improvements or innovations) in the course of NASA-sponsored research and development programs. Such reporting is required under contract provisions.

May 27, 1988.

John F. Duggan,
Director, General Management Division.

[FR Doc. 88-12816 Filed 6-3-88; 8:45 am]
BILLING CODE 7510-01-M

[Notice 88-57]

NASA Wage Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Wage Committee.

DATE AND TIME: June 29, 1988, 2:30 p.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 5092, Federal Building 6, 400 Maryland Avenue SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah C. Green, Code NPM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2622).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Assistant Associate Administrator for Personnel and General Management on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Pub. L. 92-392. The Committee, chaired by Ms. Deborah Green, consists of six members. During this meeting the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since the session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters believed to be deserving of the Committee's attention.

Type of Meeting: Closed.
Purpose of Meeting: The NASA Wage Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.

May 31, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-12817 Filed 6-3-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Meetings; Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of § 552 of Title 5, United States Code.

1. *Date:* June 20, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 30, 1988.
2. *Date:* June 22, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 30, 1988.
3. *Date:* June 24, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: M-14.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 30, 1988.
4. *Date:* June 23-24, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Undergraduate Education, submitted to the Office of Challenge Grants Programs, for projects beginning after December 1, 1988.
5. *Date:* June 28-29, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Small Museums and Historical Organizations, submitted to the Office of Challenge Grants Programs, for projects beginning after December 1, 1988.

Stephen J. McCleary,
Advisory Committee, Management Officer.

[FR Doc. 88-12855 Filed 6-3-88; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

The Federal Demonstration Project (Formerly the Florida Demonstration Project); Phase II Solicitation

AGENCIES: National Science Foundation, National Institutes of Health, Office of Naval Research, Department of Energy, and Department of Agriculture.

ACTION: Notice.

SUMMARY: This Notice announces a solicitation to select organizations to participate in a Federal Demonstration Project (FDP) to eliminate unnecessary administrative burdens on sponsored research, thereby enhancing research productivity. The FDP constitutes Phase II of the current Florida Demonstration Project.

DATES: Evaluation and selection of organizations will be completed about August 15, 1988. Project organization and execution of Phase II agreements will be completed about October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Geoffrey Grant, National Institutes of Health, 301-496-5967; William Kirby, National Science Foundation, 202-357-7880; Charles Paoletti, Office of Naval Research, 202-696-4601; Edward Sharp, Department of Energy, 202-586-8192; or Lyn Zimmerman, Department of Agriculture, 202-382-1304.

SUPPLEMENTARY INFORMATION:

Background

In April 1986 NIH, NSF, DOE, ONR, and USDA joined with the Florida State University System and the University of Miami in a demonstration of a standard and simplified research support instrument.

The demonstration was developed by Federal officials with the encouragement of the Government-University-Industry Research Roundtable of the National Academy of Sciences.

The demonstration is testing the efficacy of standardizing and simplifying most Federal grant financial and administrative requirements as a means of enhancing research productivity and reducing administrative burden for Federal agencies and grantees.

The standard research grant being tested differs from the grants issued by most Federal agencies by eliminating most of the current requirements for Federal prior approval of certain expenditure items (foreign travel, permanent equipment, etc.) as long as pertinent grantee administrative systems are adequate. The terms of the Florida Demonstration Project also allow grantees the authority to incur pre-award costs up to 90 days before the effective date of the grant and to extend the period of the grant, if necessary, without Federal approval. Grantees may also determine that all Federally supported research of individual PI's is scientifically related and, if so, may charge available Federal funds to accomplish the work supported by each agency in the most effective way without detailed justifications of such allocations now required by Federal regulations. The Federal agencies continue to approve changes in the scope of the research or of the Principal Investigator.

Based on extensive review of the results of the project to date, an Interagency Assessment Committee recommended to the Office of Management and Budget that all research agencies be authorized to make routine use of most of the above features and that the Demonstration be continued with an enlarged scope and broader participation. On May 18, OMB issued a memorandum to all agencies making these authorities available for all agencies to apply to many research awardees, including contractors. The following solication is intended to implement the recommendation that the Demonstration be continued in an expanded form.

Purpose and Scope

The purpose of this solicitation is to provide a mechanism to expand the scope of the Florida Demonstration Project and to broaden participation in demonstration activities.

Phase II will have the following basic purposes:

1. To refine and test further certain features of the Florida Demonstration Project.

2. To identify and test or review new features.

3. To serve as the basis for the continued development of a model policy for the administration of all fundamental research and related awards.

4. To serve as a catalyst for awardee organizations and state government participation in reducing unnecessary or redundant internal and state systems administrative burden.

5. To examine the potential effects of administrative requirements on research productivity and/or costs.

Eligibility and Composition of Phase II

This solicitation is open to all organizations which perform or administer Federally sponsored research, or recognized representatives of such organizations. Up to 20 organizations may be selected. Those organizations that participated in Phase I that submit proposals and wish to participate under the same conditions outlined in this solicitation for Phase II will be included.

The selection or organizations is intended to be broadly representative of the research community, including primarily large and small public and private colleges and universities, and also possibly predominantly undergraduate institutions, non-profit research institutions, hospitals, and profit-making organizations. However, no commitment is made to select either a minimum number of organizations or to ensure representation by every

organization type or other characteristics.

Participation Conditions

As a condition for participation in Phase II, the selected organizations will be required to agree to the following conditions:

1. To participate fully in the development and demonstration of Phase II activities; and in subsequent review and communication of Phase II results to appropriate officials and audiences.

2. To accept the General Terms and Conditions governing the current Florida Demonstration project, as revised for Phase II.

3. To conduct an assessment of its own internal systems and to report on and undertake appropriate organizational changes (including review and approval at organization system or state/local levels) to improve administrative systems by reducing unnecessary and redundant requirements.

4. To assess or measure actual or potential impact of changes on research productivity.

5. To defray the costs of participation without special awards or funding from the participating Federal agencies.

Selection Criteria

1. Proposed approach(es) to addressing required Phase II activities, including methodologies for assessing the impact of administrative changes on research productivity.

2. Evidence of organizational and top management commitment to full participation in Phase II.

3. Organization's proposed approach to its own internal systems assessment, including evidence of appropriate state system or agency agreement to engage in these or corresponding assessments.

4. Evidence of experience and leadership in improving research administration.

In addition to the above, equally weighted criteria, consideration will be given to achieving an appropriate representation of organizations, including organization type, size, extent of research support, geographic location, etc.

Evaluation of Proposals and Selection Process

Evaluation of proposals will be carried out by a panel comprised of Federal agency officials and representatives of the research community convened by the Government-University-Industry Research Roundtable (GUIRR). The panel will make its recommendations to an Interagency Assessment Committee, comprised of representatives of participating Federal agencies for final selection.

Organization of Phase II

Phase II will be organized around several major core activities and issues which will be addressed by the participating organizations and agencies. The emphasis of these activities will be on examining administrative requirements and processes which directly impact research productivity. The Federal agencies, in cooperation with the selected organizations, will assess policies and operational issues in the core areas; select appropriate issues for demonstration or testing purposes; develop demonstration protocol; and be the focal point for carrying out the activity and evaluating its results. Selected organizations must be involved in all the core areas. While the focus of the Phase II activities will be on Federal requirements and processes, selected organizations will be expected to make corresponding changes in internal systems, where appropriate and consistent with prudent stewardship of Federal or institutional resources.

Phase II Activities

The following core areas will be included in Phase II:

1. Terms, Conditions, and Award Instruments

The standard terms and conditions governing the original Florida Demonstration Project will be refined and modified, with particular emphasis on the issues of project relatedness, data rights and copyrightable materials, and issues related to different types of award instruments (grants, contracts, cooperative agreements). It is intended that, prior to the commencement of Phase II, the parties will ratify standard terms and conditions which will govern both the Phase II participation and awards made during Phase II. The period of the Phase II agreements will extend for 24 months.

2. Application Process

Issues pertaining to the administrative burden associated with the application process will be explored, with particular emphasis on the time, effort and paperwork required to comply with Federal application requirements. The goals of this core area will be to simplify the process for non-competing applications and funding and to develop uniform protocol and formats for application materials and electronic submission.

3. Reporting Requirements

Issues pertaining to the administrative burden associated with technical and financial reporting requirements will be explored. The focus of this core area will include contents of reports, standardization, and frequency, and electronic submission.

4. Audit Requirements

Alternatives to existing audit and systems review processes as a means of assuring appropriate accountability and proper stewardship of Federal funds will be explored.

Other Areas

In addition to the above core areas, selected organizations and participating agencies may agree to pursue additional administrative issues, including more limited studies and demonstrations which may not involve all participants. Examples of such activities could include developing standard certifications and assurances, addressing indirect cost negotiation and reimbursement issues, reviewing payment processes, etc.

What to Submit

Proposing organizations must submit fifteen (15) copies of a brief proposal (not to exceed 5 pages) which covers the following:

1. Phase II Narrative

A narrative describing: (i) the primary areas of organizational and staff expertise which the proposer would contribute to Phase II, with particular emphasis on the core activities; (ii) suggested approaches for addressing those areas; (iii) other suggested subject areas and features; (iv) expected benefits to organization and research community of organization's participation, including suggested methods or approaches for assessing the impact of changes on research productivity.

2. Commitment/Responsibility

A section indicating the organization's top management and working level willingness and commitment to fully participate in the Phase II activities. This discussion should also identify the person who will be responsible for coordinating the organization's participation and their qualifications. In the case of organizations representing university systems, a single contact is required.

3. Internal Systems Review

A brief description of what and how the organization would reveiw its internal systems and make or recommend changes. In the case of state institutions, how they will also seek review and appropriate changes at the system or state levels and evidence of appropriate state agency agreement to engage in such reviews.

4. Experience

A description of the organization's and its staff's experience and contributions in the area of sponsored research management.

5. Organization Profile

A brief summary of the organization's characteristics: type of institution/organization, size, Federal R&D funding for FY 85–87, by year and funding agency, etc.

Proposal Submission and Deadlines

Fifteen (15) copies of the organization's proposal must be received by C.O.B. July 15, 1988 at: Government—University—Industry, Reasearch Roundtable, National Academy of Sciences, National Academy of Engineering, Institute of Medicine, 2101 Constitution Avenue NW., Washington, DC 20418. Attention: FDP.

Selection and Schedule

Evaluation and selection of organizations will be completed about August 15, 1988.

Project organization and execution of Phase II agreements will be completed about October 1, 1988.

(OMB No. 3145–0060)

William S. Kirby,

Head, Policy Office, Division of Grants and Contracts, National Science Foundation.

[FR Doc. 88–12820 Filed 6–3–88; 10:11 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting Agenda

The Advisory Committee on Nuclear Waste will hold a meeting on June 27–29, 1988. The sessions on June 27–28, 1988 will be held in Room 1046, 1717 H Street, NW., Washington, DC. The sessions on June 29, 1988 will be held in the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. The meeting room location will be determined at a later date.

Monday, June 27, 1988—Room 1046, 1717 H Street, NW., Washington, DC

10:00 a.m. – 10:15 a.m.: Comments by ACNW Chairman (Open) — The ACNW Chairman will report briefly regarding items of current interest.

10:15 a.m. – 12:00 noon: LLW Form and Polyethylene High-Integrity Containers (HICs) (Open) — The Division of Low-Level Waste and Decommissioning will report on recent staff and contractor actions concerning LLW solidified by cement, and studies regarding the serviceability of polyethylene HICs.

1:00 p.m. – 5:00 p.m.: Licensing of LLW Treatment Processes and the Dry Storage and Consolidation of Spent Fuel (Open)—The NRR Staff will report on the licensing of waste management activities at reactor sites with emphasis on the consolidation of spent fuel, LLW treatment processes, and dry storage.

Tuesday, June 28, 1988 — Room 1046, 1717 H Street, NW., Washington, DC

8:30 a.m.–9:30 a.m.: Future Activities and Preparation of ACNW Reports (Open) — The ACNW will meet to discuss anticipated ACNW activities, future meeting agendas, program plans and organization matters and preparation of ACNW reports as appropriate.

9:30 a.m. – 12:00 noon: Alternative Site Models of the Yucca Mountain Site (Open) — The DOE Staff and contractors will report on alternative site models for the Yucca Mountain Site with the emphasis on alternative models of the hydrologic regions at the Yucca Mountain Site.

1:00 p.m. – 3:00 p.m.: Design Basis Accident Limits for the HLW Repository (Open) — The DOE Staff will discuss their proposed request for a rulemaking defining the design basis accident limit for the HLW repository.

3:15 p.m. – 4:00 p.m.: NRC's Review of DOE's Consultation Draft Site Characterization Plan (Open) — The NRC Staff will discuss their response to the May 11, 1988 memo from R. Fraley to V. Stello on the NRC Staff's review of DOE's Consultation Draft Site Characterization Plan (CDSCP).

4:00 p.m. – 5:45 p.m.: Consultation Draft Site Characterization Plan (Open) — The DOE Staff will review the content of the CDSCP and describe their plans to address the NRC Staff's comments on it.

Wednesday, June 29, 1988 — Room 2F–17, 11555 Rockville Pike, Rockville, MD

8:30 a.m. – 10:00 a.m.: ACNW Future Activities and Preparation of ACNW Reports (Open) — The ACNW will meet and continue to discuss anticipated ACNW activities, future meeting agendas, program plans, and organizational matters.

10:00 a.m.–11:30 a.m.: Meeting with the NRC Commissioners (Open) — The ACNW will meet with the NRC Commissioners to discuss ACNW future activities.

1:00 p.m. – 2:30 p.m.: ACNW Future Activities and Preparation of ACNW Reports (Open) — The ACNW will meet and continue to discuss anticipated ACNW activities, future meeting agendas, program plans, and organizational matters and preparation of ACNW reports, as appropriate.

2:30 p.m. – 3:00 p.m.: New Members (Closed) — The ACNW will discuss appointments of proposed members and the qualifications of consultants considered for nomination.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)] or involve internal personnel rules and practices of the agency [5 U.S.C. 552b(c)(2)].

Procedures for the conduct of and participation in ACNW meetings are similar to those used by ACRS and published in the Federal Register on October 2, 1987 (51 FR 32241). The procedures which will be used are as follows:

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste (ACNW) are published in this notice. These procedures are set forth and may be incorporated by reference in future individual meeting notices. The Advisory Committee on Nuclear Waste has been established pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, 86 Stat. 770–776). The Commission has determined that the establishment of this Committee is necessary and in the public interest in order to obtain input, advice and recommendations on all aspects of the management of radioactive wastes within the purview of NRC regulatory responsibilities. The purpose of the Committee is to provide advice and recommendations on topics, issues, and activities related to the regulation of nuclear wastes. Such activities encompass:

- Regulation of high-level waste, including the licensing of high-level waste repositories;
- Licensing and regulation of low-level waste disposal repositories; and

• Handling, processing, transporting, storing and safeguarding wastes, including but not limited to spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings.

The Committee's reports will become part of the public record.

Although ACNW meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process.

General Rules Regarding ACNW Meetings

An agenda is published in the Federal Register for each full Committee meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACNW meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meeting are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's review.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Office of the Executive Director, in care of the ACNW, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director (telephone: 202–634–3265) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACNW Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additonal information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: May 31, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–12626 Filed 6–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364]

Alabama Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NFP–2 and NPF–8, issued to Alabama Power Company, (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The licensee proposes to amend the Technical Specifications (TS) in response to Generic Letter 88–06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements." The proposed amendment deletes Figure 6.2.1, "Offsite Organization for Facility Management and Technical Support," and Figure 6.2.2, "Facility Organization." TS 6.2.1 and 6.2.2 will be revised to have more general organization requirements. These general requirements capture the essential organization aspects that are defined by the organization charts to be relocated to the Final Safety Analysis Report. This action is in response to licensee's letter dated April 28, 1988.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not increase the probability or consequences of an accident previously evaluated. The Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i) requires that the organizational structure be included in the Final Safety Analysis Report (FSAR). Chapter 13 of the FSAR provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), Alabama Power Company will maintain the organization description in the FSAR current. Therefore, the NRC will continue to be informed of organizational changes. With the existing technical specification requirements and the proposed additional requirements, the deletion of the organization charts will not result in a decrease in safety requirements. Therefore, the probability or consequences of an accident previously evaluated will not change.

2. The proposed change will not create the possibility of a new or different kind of accident previously evaluated. The proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change will not involve a reduction in a margin of safety. The existing organizational requirements in the Technical Specifications combined with the proposed additional requirements will ensure that there is no reduction in current safety requirements. Therefore, the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's determination and concurs with the licensee's findings. In addition, the proposed changes are in conformance with Commission guidance of Generic Letter 88–6.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 6, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Esquire, 2300 N Street, NW., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Senior Project Manager, Project Directorate II-3, Division of Reactor Projects I/II.

[FR Doc. 88-12842 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co. (Pilgrim Nuclear Power Station); Issuance of Interim Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued an interim decision concerning a request filed pursuant to 10 CFR 2.206 by Governor Michael S. Dukakis and Attorney General James M. Shannon on behalf of the Commonwealth of Massachusetts and its citizens (Petitioners). On October 15, 1987 the Petitioners requested the Director of the Office of Nuclear Reactor Regulation to institute a proceeding to modify; suspend, or revoke the operating license held by Boston Edison Company (BECo) for its Pilgrim Nuclear Power Station (Pilgrim). In particular, the Petitioners requested the NRC to: (1) Modify the Pilgrim license to bar restart of the facility until a plant-specific probabilistic risk assessment (PRA) is performed and all indicated safety modifications are implemented; (2) modify the license to extend the current shutdown pending the outcome of a full hearing on the significant outstanding safety issues and the development and certification by the Governor of Massachusetts of adequate emergency plans; and (3) issue an Order, effective immediately, to modify the Pilgrim license to preclude the licensee from taking steps in its power ascension program until a formal adjudicatory hearing is held and findings of fact are made concerning safety questions raised.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition, with the exception of the management and emergency preparedness issues is denied. The portion of the Petition concerning licensee management and emergency preparedness will be addressed in a subsequent response.

The reasons for this decision are explained in the "Interim Director's Decision Under 10 CFR 2.206, "DD–88–7", which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five days (25) after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 27th day of May 1988.

For the Nuclear Regulatory Commission.

Morton B. Fairtile,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–12841 Filed 6–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

GPU Nuclear Corp. (Three Mile Island Nuclear Station Unit 2); Notice of Exemption

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey, Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR–73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI–2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

By letter dated April 23, 1987, and revised October 26, November 9, and December 4, 1987 the licensee requested in part an exemption from the requirements of 10 CFR 70.24, Criticality accident requirements. Specifically, 10 CFR 70.24 requires licensees authorized to possess special nuclear material above a minimum quantity to maintain redundant monitoring systems that are capable of detecting a criticality in each area in which such licensed special nuclear material is handled, used or stored. The monitoring system, using gamma- or neutron-sensitive radiation detectors, is required to energize clearly audible alarm signals if an accidental criticality occurs. The regulations applicable to TMI–2 (10 CFR 70.24(a)(1)) state that the monitoring system shall be capable of detecting a criticality that produces an absorbed dose of 20 rads of combined neutron and gamma radiation at an unshielded distance of 2 meters from the special nuclear material within 1 minute. Also, 10 CFR 70.24 requires that the licensee have emergency procedures for each area in which special nuclear material is handled, used or stored. These procedures include evacuation plans, including periodic drills to familiarize personnel, plans for determining the cause of the alarm, and the placement of radiation survey instruments in accessible locations for use in an emergency. Section 70.24(d) states that any licensee may apply to the Commission for an exemption from the regulation if good cause exists.

III

The licensee has requested exemption from the above described regulation in conjunction with the license amendment request submitted by letter dated April 23, 1987 and revised by letters dated October 26, November 9, and December 4, 1987. The staff has reviewed the safety evaluation submitted in support of the proposed license amendments, which also provides the bases for the licensee's exemption request.

The licensee proposes to extensively revise the TMI–2 Technical Specifications to align license requirements appropriate to current, as well as future, plant conditions through the remainder of the current cleanup operations. At the end of the current cleanup operations the licensee plans to place the facility into a post-defueling monitored storage condition (PDMS). The proposed amendment to the Technical Specifications allows for the transition from the current defueling phase through the completion of defueling and offsite fuel shipment by the incorporation of Technical Specifications that are applicable during specific phases or modes of the cleanup. Certain Technical Specifications are retained during the entire transition period while others are phased out or modified as the cleanup progresses. Phase-out of specific requirements would be dependent on the status of the cleanup as defined by the facility mode. Three cleanup modes are proposed:

Mode 1—The current condition, during which defueling and other major tasks are in progress.

Mode 2—The period subsequent to defueling of the reactor vessel and the reactor coolant system but prior to completion of the core debris shipping program. The possibility of criticality in the Reactor Building (RB) is precluded and no canisters containing core material are in the RB.

Mode 3—The period subsequent to shipment of the remaining core material offsite.

Prior to an anticipated change in Mode, the licensee proposes to submit to the NRC a report which provides the basis for the transition.

The requested exemption from 10 CFR 70.24, Criticality accident requirements, would be Modes 2 and 3, after defueling has been completed and there no longer exists the possibility of criticality.

The licensees' Mode 1 defueling program is expected to result in removal of greater than 99% of the reactor fuel. Because of the March 28, 1979 accident, fuel has escaped from the fuel pins and reactor fuel and fission products were dispersed throughout the reactor coolant piping system as finely divided particles and/or as plating on surfaces. During the accident, a small quantity of finely fragmented fuel was also released into the basement by reactor coolant escaping through the pressurizer relief valve to the reactor coolant drain tank into the basement through a rupture disk. Directional surveys of the reactor coolant system components have permitted estimates of fuel present outside the reactor vessel. The majority of this residual fuel is contained within the reactor coolant system with less than 11 lbs (5 kg) in piping drains, floors and sumps of the Auxiliary and Fuel Handling Building and less than 7 lbs (3 kg) dispersed in the rector building basement. Prior to the transition to Mode 2 the licensee will provide a criticality analysis that will address each separate quantity of residual fuel in each defined location. The criticality analysis will estimate the quantity of fuel remaining, its location, its dispersion within the location, its physical form (i.e. film, finely fragmented, intact fuel pellets), its mobility, the presence of any mechanism that would contribute to the mobility of the material, the presence of any moderating or reflecting material, and its potential for a critical event. In this submittal the licensee must demonstrate that the cleanup has progressed far enough such that an inadvertent criticality is precluded and therefore, may enter Mode 2 without the need for criticality monitoring.

The licensee's request for an exemption to the requirements of 10 CFR 70.24 subsequent to Mode 1 operation is based on the conclusion that an inadvertent criticality will not occur. All fuel will have been removed to the extent practicable, and the remaining fuel will be in a geometric configuration that precludes criticality. Reactor systems will be drained. There will be no mechanism that could result in significant movement or concentration of dispersed fuel such that a critical geometry could be attained. At the conclusion of defueling there will be a lack of material that could act as a moderator or reflector. Once defueling has been completed, access to the reactor building will be primarily limited to readying the facility for long-term monitored storage. Once the facility enters monitored storage, access will be on a frequency of one a month or less. Residual fuel will be limited to areas normally inaccessible to personnel.

Based on the quantities of fuel that will remain, the configuration of the fuel, the lack of a mechanism to move and concentrate the remaining fuel, the lack of a moderator or a reflector, and the infrequent personnel access t the building, the staff finds that a significant radiation exposure due to a hypothetical criticality event is highly improbable.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 70.24(d) good cause exists for the grant of this exemption after the transition to Mode 2. Further, in accordance with 10 CFR 50.12 granting of this exemption from the requirements of 10 CFR 70.24 after staff review of the Mode 1 criticality analysis and transition to Mode 2 is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that in accordance with 50.12(a)(2)(ii) special circumstances are present justifying this exemption. The application of the criticality monitoring requirements of 10 CFR 70.24 will not be necessary at TMI–2 following Mode 1 to achieve the underlying purpose of the rule, which is to provide for warning of, and adequate response in the event of, an inadvertent criticality.

Accordingly, the Commission hereby grants exemption from the requirements of 10 CFR 70.24, criticality accident

requirements, contingent upon staff review of the Mode 1 criticality analysis described above, and will be effective upon transition to Mode 2.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (53 FR 15006).

Dated at Rockville, Maryland, this May 27, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12843 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-345]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 112 to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the TS's to: (1) Delete reference from Table, 3.3-5, TS Section 3/4.3.2, to the Makeup System as containing valves receiving a Safety Features Actuation Signal; (2) delete containment isolation valve MU-33 (penetration 19) from Section A of Table 3.6-2, TS Section 3/4.6.3 and add valves MU-6422 (penetration 19) and MU-6421 (penetration 50) to section C; and (3) correct two typographical errors on Page 6-20 at Penetrations 10 and 28.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on December 8, 1987 (52 FR 46545). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated October 27, 1987, (2) Amendment No. 112 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated May 25, 1988 and (4) the Environmental Assessment dated May 13, 1988 (53 FR 16827). All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 25th day of May, 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-12844 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

Application for License To Export Nuclear Facilities or Materials; Transnuclear, Inc.

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC EXPORT APPLICATION

Name of applicant, Date of Appl., Date Received, Application Number	Material type	Material in total element	Kilograms total isotope	End use	Country of destination
Transnuclear, Inc., 5-23-88, 5-27-88, XSNMO2142	93.3% Enriched	Decrease to 10.772	Decrease to 10.050	Production of isotopes for medical purposes.	EURATOM Research Reactors.

Dated this 31st day of May 1988 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

[FR Doc 88-12840 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Notice of Exemption

I

Yankee Atomic Electric Company (YAEC or the licensee) holds Facility Operating License No. DPR-3 which authorizes the operation of the Yankee Nuclear Power Station (Yankee or the facility) at steady-state power levels not in excess of 600 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site near Rowe, Massachusetts.

II

The Code of Federal Regulations, in 10 CFR 50-62, "Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants" requires, "Each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS."

III

By letters dated October 15, 1985, January 21, 1987, January 22, 1988 and April 25, 1988, the licensee requested an exemption from the requirements of 10 CFR 50.62. The January 21, 1987 letter also provided information to identify the special circumstances for granting this exemption to Yankee pursuant to 10 CFR 50.12, "Specific exemptions." Because Yankee is an older and smaller plant (licensed in 1960 with a rating of 185 MWe), the staff can consider Yankee for exemption from the ATWS rule based upon the requirements of 10 CFR 50.12(a). Guidance provided in SECY 83-293 dated July 19, 1983 states: "Some of the older nuclear power plants (e.g., those licensed to operate prior to August 22, 1969) may be granted an exemption from these amendments if they can demonstrate that their risk from ATWS is sufficiently low. Factors important to this demonstration could be power level, unique design features that could prevent or mitigate the consequences of an ATWS, remaining plant lifetime, or remote siting."

In the October 15, 1985 request for exemption, the licensee cites a Probabilistic Safety Study which indicates that the risk imposed by YNPS is small and ATWS is not a major risk contributor. Total annual core melt frequency was conservatively calculated to be less than 2×10^{-5}. The ATWS induced core melt contribution was about 1×10^{-6} per year.

Two previous studies of the YNPS emergency feedwater system [for Item II.E.1.2 of NUREG-0737 and SEP Topic VII-3] each concluded that automatic initiation of emergency feedwater was unnecessary. The main feedwater system is unique in that it consists of ten pumping trains and eight flow paths to supply feedwater to the steam generators. A steam driven emergency feedwater pump and a new safe shutdown system assure feedwater even for a station blackout event.

The licensee states that there has never been a failure of a reactor trip breaker to open either in testing or actual demand in more than 25 years of operation. It is operating policy (by procedure) to manually actuate the reactor and turbine trip buttons on every unanticipated transient and to immediately reaffirm that these trips have occurred.

The plant is located in a river valley on a 2,000 acre site in the rural northwestern corner of Massachusetts. The area is sparsely populated with 60 people within a 1-mile radius of the plant and 1,600 within a 5-mile radius. The low population zone extends 2 miles upstream and 6 miles downstream and has an estimated population of 280 persons. The population numbers have remained stable since the plant was built and are expected to remain stable in the future. Considering the cumulative population data for 91 plants as presented in NUREG/CR-2239, the staff finds that 51 percent of the plants have a higher average population density over a 20-miles radius than YNPS. Given a range of population densities of 1 to 711 persons per square mile among the 91 plants, YNPS with 81 persons per square mile is in the lower or sparser population density range for up to a 20-mile radius.

We find that the Yankee Rowe Nuclear Power Station satisfies the guidance for an exemption to the ATWS rule as provided in SECY 83-293. Licensed for operation in 1960 at a power level roughly 20% of current PWRs, YNPS has demonstrated over twenty-five years of safe operation with a capacity factor exceeding 70 percent. Unique design features in the main feedwater systems and unique operating procedures are believed to have contributed (along with the small size and remote location) to facility characteristics assessed through a Probabilistic Safety Study to indicate that YNPS has a low predicted total core melt frequency and that the contribution of ATWS to the total frequency is small.

The approval of this exemption from physical changes to satisfy the rule was: (1) Contingent upon receipt of a commitment from the licensee describing how they intend to maintain and operate the plant for its remaining lifetime within the conditions assumed for the safety study and (2) contingent on obtaining a commitment from the licensee to maintain the moderate temperature coefficient at hot, full power, with equilibrium xenon, no less negative than -5.5×10^{-4} delta k/k° F for every fuel cycle. This value of the moderator temperature coefficient corresponds to the value which would result in a system pressure corresponding to Service Limit C for the Westinghouse reference plant.

By letter dated April 25, 1988 the licensee committed to maintain and operate the plant within the conditions assumed in the safety study and described plant upgrades and analyses supporting this commitment. In addition, the licensee committed to maintain the moderator temperature coefficient at hot, full power, with equilibrium xenon, no less negative than -5.5×10^{-4} delta k/k° F for every fuel cycle.

IV

Based on the above evaluation, and on the condition that the licensee maintain and operate the plant consistent with the commitments made in the April 25, 1988 letter, the staff concludes that an exemption to 10 CFR 50.62 should be granted. The purpose of the rule, which is to reduce the risk of ATWS events and to mitigate the consequences of an ATWS event, is satisfied by the special circumstances associated with this facility. Application of 10 CFR 50.62 would require the plant to install an independent trip system to initiate the emergency feedwater system and initiate a turbine trip under ATWS conditions. However, as discussed above, the risk from ATWS, at Yankee, is sufficiently low, without addition of this equipment, to meet the intent of 10 CFR 50.62. We conclude, per 10 CFR 50.12(a)(2)(ii), that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of 10 CFR 50.62.

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.62.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (52 FR 3368, February 3, 1987).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of May, 1988.

For the Nuclear Regulatory Commission.
Steven A. Varga,
Director, Division of Reactor Projects, I/II.
[FR Doc. 88-12845 Filed 6-3-88; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF TRADE REPRESENTATIVE OF THE UNITED STATES

[Docket No. 301-66]

Initiation of Section 301 Investigation; Japan's Restrictions on Imports of Fresh Oranges and Orange Juice

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Initiation of an Investigation under Section 302.

SUMMARY: Pursuant to 19 U.S.C. 2412, the U.S. Trade Representative has initiated an investigation of the Government of Japan's policies and practices with respect to the importation of fresh oranges and orange juice.

EFFECTIVE DATE: May 25, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs, (202) 395-5006; Amelia Porges, Associate General Counsel, (202) 395-7305; or Glen Fukushima, Director for Japan, (202) 395-5070, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 6, 1988, Florida Citrus Mutual, Florida Citrus Packers, the Florida Citrus Processors Association, the Florida Department of Citrus and the Indian River Citrus League filed a petition under section 302(a) of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2412(a). The petition alleges that the Government of Japan engages in acts, policies and practices that violate obligations of Japan under the General Agreement on Tariffs and Trade ("GATT") and are unjustifiable, unreasonable and burden or restrict U.S. commerce.

Specifically, the petition states that Japan maintains import quotas on fresh oranges and orange juice, and that these trade restrictions contravene Article XI of the GATT. It also states that Japan requires that importers of orange juice blend such imported juice with domestic orange juice, in contravention of Article III, paragraph 5 of the GATT. The petitioners estimate that elimination of the import quota restrictions and the juice blending requirement could increase United States exports to Japan by $50 to $100 million annually

Effective May 25, 1988, the U.S. Trade Representative initiated an investigation of the Japanese government's policies and practices restricting imports of oranges and orange juice into Japan. The United States Government has already begun proceedings under the dispute settlement procedures of Article XXIII of the General Agreement on Tariffs and Trade concerning Japan's import restrictions on fresh oranges, orange juice and beef, and the orange juice blending requirement. On May 4, the GATT Council authorized formation of a dispute settlement panel concerning this matter under Article XXIII:2 of the GATT. We have held many rounds of consultations with Japan on this issue. These consultations are deemed to have fulfilled the requirement in section 303(a) of the Act (19 U.S.C. 2413(a)) that the USTR, on behalf of the United States, request consultations with the government concerned regarding issues raised in the petition.

USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Act (19 U.S.C. 2155) in preparing United States presentations for consultations and dispute settlement proceedings. Any interested person is invited to submit comments on the issues raised in the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.6 and are due no later than June 25, 1988. Comments must be in English and provided in 20 copies to: Chairman, Section 301 Committee, Room 222, USTR, 600 17th Street, NW., Washington, DC 20506.

Judith Hippler Bello,
General Counsel, Chairman, Section 301 Committee
[FR Doc. 88-12606 Filed 6-3-88; 8:45 am]
BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25701; File Nos. SR-Amex-88-12; SR-CBOE-88-6; SR-CBOE-88-8; SR-NYSE-88-12; SR-PSE-88-4; and SR-Phlx-88-19]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al. Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange ("CBOE"), and the American ("Amex"), New York ("NYSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges ("Exchanges") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes to amend their rules to increase the customer margin requirements for equity and index options.

The proposals were noticed in the Federal Register.[3] No comments were received on the proposed rule changes.

On September 26, 1985,[4] the Commission approved proposed rule changes filed by the Amex, CBOE, PSE, Phlx, NYSE, and the National Association of Securities Dealers, Inc. ("NASD") (collectively, the self-regulatory organizations ["SROs"]), to establish a uniform, premium-based customer margin system for short options positions.[5] Under this uniform margin system, the SROs' rules[6] calculate margin requirements by use of a formula applicable to bill options products. The formula calls for the deposit and maintenance of margin equal to 100% of the current option premium value plus a fixed percentage of the underlying product value with an adjustment for out-of-the-money options, with a minimum of 100% of the current option premium value plus a fixed lesser percentage of the current value of the underlying product. The percentage requirement varies with the options product. The percentages were developed by relating option margin to the annualized price volatility of the underlying product to provide for initial margin that would cover the underlying product's historical volatility over a seven day period with a 95% confidence level.

The SRO's current margin requirements for each short put or call on a narrow-based market index is 100% of the current premium plus 15% of the current index value times the index multiplier, less any out-of-the-money amount, with a minimum of 100% of the current premium plus 5% of the current index value times the index multiplier. Current margin requirements for short equity option positions is 100% of the current premium plus 15% of the current value of the underlying security, less any out-of-the-money amount, with a minimum of 100% of the current premium plus 5% of the current value of the underlying security.

The SROs' margin requirements for short puts or short calls on broad-based market index were raised after the October 1987 market break.[7] The SRO's current margin requirements for short positions in option on a broad-based index is 100% of the current premium plus 10% of the current index value times the index multiplier, less any out-of-the-money amount, with a minimum of 100% of the current premium plus 5% of the current index value times the index multiplier.

In view of the increased volatility experienced in the stock markets during the fourth quarter of 1987, and because current margin requirements are based upon historical levels of volatility that are no longer valid under current market conditions, the Exchanges have proposed to raise the margin requirements applicable to index and equity options. The increased margin requirements cover 95% of all historical seven business day percentage price moves during a six-month review period, and reflect the substantial rise in market volatility stemming from the October 1987 market break. Previously, a twelve-month review period was used. A six-month review period would provide a methodology for determining margin requirements that is more responsive to change in market volatility.

Based upon a review of six-month data, the Exchanges propose to increase by 5% the basic and minimum formula percentage for both index and equity options. Accordingly, the new margin requirements for broad-based index options will be premium plus 15% of the current index value times the index multiplier, less any out-of-the-money amount, with a minimum of premium plus 10%. The new margin requirements for equity options and narrow-based index options will be premium plus 20% of the underlying product value, less any out-of-the money amount, with a minimum of premium plus 10% of the underlying product value.

The Amex CBOE, PSE, and Phlx proposals provide that the new margin requirements will be in effect for a period of six months commencing on the date the margin increases become effective for positions established on or after the effective date. At the end of the six month period, the new percentages will revert to their previous levels unless other proposed percentages are deemed to be appropriate in light of experienced market volatility. The NYSE did not provide for such a "sunset" provision, but stated that it will continue to monitor market volatility data to determine if the margin requirements should be adjusted.

The Exchanges stated that they will work together to develop procedures to monitor routinely the adequacy of option margin requirements and a system for adjusting margin requirements more expeditiously in order to provide adequate protection for both investors and firms based upon current market volatility.

The Exchanges also proposed to amend the margin requirements for straddle/combination positions. Currently, the margin for short straddles or combinations is the required margin on the short put or short call position, whichever is greater, plus any unrealized loss on the other position. The margin requirements for short straddles/combinations would be revised to include the required margin on the short put or short call position, whichever is greater, plus the current market value of the other contract. This proposed change would more accurately reflect the potential risk of such positions by requiring deposit of the current market value of the option rather than any unrealized loss.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[8] which provides, in pertinent part, that the rules of the Exchanges must be designed to protect investors and the public interest. The increased margin requirements for index and equity options will provide more financial protection to the securities industry at a time of increased market volatility. The current margin levels are based on historical volatility levels that are no longer valid in light of the events of the week of October 19, 1987. Hence, at a minimum, higher margin levels are needed to ensure the financial stability of member firms.

At this time, the Exchanges have determined to raise the initial margin level for broad-based index options to premium plus 15 percent and to raise the initial margin levels for equity options and narrow-based index options to premium plus 20 percent. The Commission believes this action is necessary in assuring the adequacy of margin levels in light of the increased market volatility during the last quarter of 1987. Because of concerns raised in the Commission staff's Report on the October 1987 Market Break about the effect on market volatility of margin levels on derivative products, however, the Commission reserves judgment both on the sufficiency of the levels of margin set by the proposed rule change as well as the method of determining adequate margin.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the Federal Register in light of the increased stock market volatility since the October 1987 market break and its effect on margin adequacy. In addition, the Commission notes that the Amex, NYSE, and PSE proposals are substantially identical to the CBOE proposed rule change that was noticed for the full thirty-day period. In addition, the proposals are consistent with the recommendation contained in the Commission staff's Report on the October 1987 Market Break that options exchanges should review the impact on the stock market of options margin levels.[9]

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at

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[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b-4 (1987).
[3] CBOE's proposals were noticed in Securities Exchange Act Release Nos. 25552 (April 7, 1988), 53 FR 12466 and 25839 (April 21, 1988), 53 FR 15400; Amex's proposal was noticed in Securities Exchange Act Release No. 25666 (May 3, 1988), 53 FR 16002; NYSE's proposal was noticed in Securities Exchange Act Release No. 25664 (May 3, 1988), 53 FR 16006; PSE's proposal was noticed in Securities Exchange Act Release No. 25668 (May 3, 1988), 53 FR 16634; and Phlx's proposal was noticed in Securities Exchange Act Release No. 25670 (May 9, 1988), 53 FR 17122.
[4] Securities Exchange Act Release No. 22489 (September 26, 1985), 50 FR 40533.
[5] A short position is the number of outstanding option contracts of a given series of options with respect to which a person is obligated as a writer (seller).
[6] Amex: Rule 462; CBOE Rule 24.11; NASD Rules, Article III Sec. 30, Appendix A, Sec. 4; NYSE Rule 431; PSE Rule XXI, Sec. 19; Phlx Rule 722.
[7] *See* Securities Exchange Act Release Nos. 25081 (November 2, 1987), 52 FR 42751; 25178 (December 8, 1987), 52 FR 47854; and 24581 (March 15, 1988), 53 FR 8990.
[8] 15 U.S.C. 78f(b)(5) (1982).
[9] *The October 1987 Market Break* at 3-22.

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the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by June 27, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: May 17, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-12847 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25760; File No. SR-NASD-87-35]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On October 14, 1987, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to amend Article V, Sections 1 and 2 of the NASD's Rules of Fair Practice ("Rules") to conform the language of Article V, section 1 to section 15A(b)(7) of the Act and to amend Article XIV of the NASD By-Laws to bring all monetary sanctions imposed by the NASD, including disgorgement,[1] within the purview of Article V, section 2. Two amendments to the proposed rule change were filed, one on March 31, 1988 and a second on April 20, 1988. Notice of the proposed rule change, together, with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 25608, April 21, 1988) and by publication in the **Federal Register** (52 FR 15161, April 27, 1988). No comment letters were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15a and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 27, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12849 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16414; 812-6993]

American Home Acceptance Corporation; Application

May 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Home Acceptance Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance of collateralized mortgage obligations ("Bonds") by the Applicant.

Filing Dates: The application was filed February 23, 1988, and amended on April 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One California Street, Suite 2630, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272-2811, or Karen L. Skidmore, Branch Chief (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Texas corporation, was incorporated on July 21, 1987, and is a wholly-owned subsidiary of RPR Mortgage Finance Corp., which, in turn, is wholly-owned by Rauscher Pierce Refsnes, Inc., a registered broker/dealer which transacts a full range of investment banking and related financial services. Applicant's primary activity shall consist of issuing Bonds collateralized by interests in mortgage-backed securities.

2. Each Series of Bonds will be either registered under the Securities Act of 1933, as amended (the "1933 Act"), or sold in transactions exempt from registration pursuant to section 4(2) of the 1933 Act. Each Series of Bonds will be issued pursuant to the Applicant's Standard Indenture Provisions which will be incorporated by reference in a terms indenture for such Series (the "Terms Indenture") between an independent trustee (the "Bond Trustee") and the Applicant (the Standard Indenture Provisions and Terms Indenture collectively, the "Indenture"). The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

3. Each Series of Bonds will consist of one or more classes ("Classes"), which may include fixed interest rate Bonds, floating interest rate Bonds and compound interest rate Bonds. A floating interest rate Bond is one on which the interest rate adjusts periodically according to a fixed index set forth in the Prospectus Supplement and the Indenture relating to the Series of such Bonds.[1]

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30-3(a)(12) (1987).

[1] The NASD's policy with respect to the disgorgement sanction provides for the imposition of orders to disgorge monetary profits where such profits were earned through conduct constituting a violation of the federal securities laws, the regulations thereunder, or the NASD Rules. When a public customer has suffered a loss due to the violative conduct and such customer is, or reasonably can become, known to the NASD, the respondent will generally be ordered to disgorge "ill-gotten gains" to such customer. In other instances, disgorgement may be ordered to the NASD to deprive the wrongdoer of his ill-gotten gains.

[1] A Prospectus Supplement for a Series may provide for book entry Bonds issued in the name of a clearing agency or its nominee ("Clearing Agency"). Any such Clearing Agency will be registered with the SEC under section 17A of the Securities Exchange Act of 1934. Transfers and pledges of book entry Bonds may be made only through entries on the books of the Clearing Agency.

4. The Collateral securing the Bonds will primarily consist of one or more of the following (collectively, "Mortgage Collateral"): Fully-modified pass-through certificates guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA Certificates"); mortgage participation certificates guaranteed as to timely payment of interest and timely or ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"); other mortgage pass-through certificates evidencing an undivided interest in a pool of mortgages that are secured by first liens on single (one- to four-unit) family residential properties ("Non-Agency Certificates") (collectively, "Mortgage Certificates"); and Funding Agreements (as hereinafter defined) together with the related promissory notes (the "Funding Notes") which will be secured by Mortgage Certificates. Each Series of Bonds also may be secured by certain funds and accounts (including a collection account, debt service fund, a reserve fund and other funds) and by insurance policies and other credit enhancement devices described in the Prospectus Supplement for such Series of Bonds.

5. The Mortgage Collateral securing each Series of Bonds will not be used to secure any other obligation of the Applicant, and will have scheduled cash flows (plus cash available to be withdrawn from any debt service fund, reserve fund, or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each nationally recognized statistical rating organization rating the Bonds of such Series (individually and collectively, a "Rating Agency") sufficient to make all timely payments of principal and interest on the Bonds in accordance with their terms and to pay all of the fees and expenses of the issuance of the Bonds. The collateral value of the Mortgage Certificates securing the Bonds will be described in the Indenture for such Series and, together with other assets pledged to secure the Bonds, will be at least equal to the initial principal amount of such Bonds on their date of issuance and following each payment date for such Bonds.

6. The Mortgage Collateral securing each Series of Bonds will be owned either by the Applicant or by certain homebuilders, thrifts, commercial bankers, mortgage bankers or other entities engaged in mortgage finance companies affiliated with any of the foregoing (the "Participants") and pledged to secure such Series of Bonds pursuant to funding agreements with respect to such Series of Bonds (the "Funding Agreements"). Such collateral will consist of or include Mortgage Certificates which are backed by mortgage loans: (1) That were initially originated by or on behalf of a Participant or an affiliate thereof participating in such Series of Bonds; or (2) that are purchased by the Applicant or a Participant or an affiliate thereof participating in such Series of Bonds in the mortgage market. The Bond Trustee will be granted a first priority perfected security or lien interest in and to all Mortgage Collateral and other items of collateral securing the Bonds.

7. Each participant in a Series of Bonds will enter into a Funding Agreement with respect to such Series of Bonds pursuant to which the Participant will: (i) Borrow a portion of the proceeds of the sale of such Series of Bonds; (ii) repay such loan by causing payments to be made to the Bond Trustee for such Series of Bonds in such amounts as are necessary to pay the accrued interest on such loan and to repay the principal amount of such loan; and (iii) pledge Mortgage Certificates to the Applicant as security for the loan. Applicant will assign to the Bond Trustee as security for such Series of Bonds its entire right, title and interest in the Mortgage Collateral and all proceeds thereof pledged under the Funding Agreements (except for the Applicant's right to indemnification thereunder).

8. The Bonds may be subject to redemption by Applicant under the circumstances set forth in the Prospectus Supplement for such Series of Bonds. The Bonds will not be redeemable at the option of Bondholders except that certain Series of Bonds may provide for the establishment of a redemption fund and, subject to the limitations and priorities set forth in the Prospectus Supplement for each such Series of Bonds, requests for redemption by Bondholders will be honored to the extent funds are available in such redemption fund. Such redemption, if provided, will not render the Bonds of such Series "redeemable securities" within the meaning of section 2(a)(32) of the Act. Unless an event of default with respect to a Series of Bonds has occurred and is continuing, the Bondholders will not be entitled to accelerate payment of the Bonds or otherwise to compel the liquidation of the remaining Collateral.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

A. Conditions Relating to the Collateral

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds of each Series will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Certificates underlying each Series of Bonds will be limited to GNMA Certificates, FNMA Certificates, FHMA Certificates and Non-Agency Certificates.

3. If new Mortgage Certificates are substituted, the substituted Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in Conditions A(2) and (4). In addition, new Mortgage Certificates will not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged to the Bond Trustee as security for a Series of Bonds. In no event will any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this condition.

4. The collateral securing a Series of Bonds will be assigned to and held by the Bond Trustee for such Series of Bonds pursuant to the Indenture under which such Bonds were issued. The Bond Trustee for a Series of Bonds will act as custodian for all of the Collateral of such Series. The Bond Trustee for such Series of Bonds will be granted a first priority perfected security or lien interest in and to all collateral securing such Series of Bonds. The Bond Trustee for a Series of Bonds will not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant of the servicer or master servicer of the mortgage loans underlying the Non-Agency Certificates securing such Series of Bonds. In addition, any master servicer and any servicer of mortgage loans underlying Non-Agency

Certificates will be approved by FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of mortgage loans underlying Non-Agency Certificates shall obligate the servicer to provide substantially the same services with respect to such mortgage loans as it is then currently required to provide in connection with mortgage loans insured by the Federal Housing Administration, guaranteed by the Veteran's Administration or eligible for purchase by FNMA or FHLMC.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds of each Series will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Applicant. In addition, such accountant will report at least annually on whether the anticipated payments of principal and interest on the collateral securing each Series of Bonds together with reinvestment income thereon at the assumed reinvestment rate, will continue to be adequate to pay the principal of and interest on the Bonds of each such Series in accordance with their terms. Upon completion of such audits, copies of each of the accountants' reports will be provided to the Bond Trustee for each Series of Bonds.

B. Conditions Relating To Floating Interest Rate Bonds

(1) Each Class of Bonds of a Series bearing a floating interest rate will have a set maximum interest rate which may vary from period to period as specified in the applicable Indenture or Prospectus Supplement.

(2) At the time of the deposit of the collateral of a Series of Bonds, as well as during the life of the Bonds, the Mortgage Collateral securing such Series of Bonds will have scheduled cash flows sufficient (plus cash available to be withdrawn from any Debt Service Fund, Reserve Fund or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each Rating Agency rating the Bonds of such Series, to make all timely payments or principal and interest on the Bonds of such Series in accordance with their terms and to pay all of the fees and expenses of the Applicant with respect to such Series of Bonds, assuming the maximum interest rate for each specified period on each Class of Bonds bearing a floating interest rate. In the case of a Series of Bonds that contains a Class or Classes of adjustable or floating interest rate Bonds, a number of mechanisms exist to ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the adjustable or floating interest rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the adjustable or floating interest rate Bonds; (ii) "inverse" floating interest rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" floating interest rate Bonds); (iii) floating rate collateral (such as ajustable rate GNMA Certificates) to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to the counter-party at a fixed rate of interest based on a stated principal amount such as the principal amount of Bonds in the floating interest rate Class, in exchange for receiving corresponding periodic payments from the counter-party at a floating rate of interest based on the same principal amount, and (v) hedge agreements (including interest rate futures and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the floating interest rate Class of Bonds). It is expected that other mechanisms may be identified in the future. Applicants will give the staff of the Division of Investment Management (the "Staff") notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories and no Bonds will be issued for which this is not the case.

3. The Mortgage Collateral will be paid down as the mortgages underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds (except pursuant to the limited right of substitution described in condition A(3)).

C. Conditions Relating to REMICs

1. The election by the Applicant to treat the arrangement by which any Series of Bonds is issued as a real estate mortgage investment conduit (a "REMIC") will have no effect on the level of the expenses that would be incurred by the Applicant. If such an election is made, the Applicant will provide that all administration of the REMIC will be paid or provided for in a manner satisfactory to the Rating Agency rating such Series of Bonds.

2. The Applicant will provide for the payment of the administrative fees and expenses incurred in connection with the issurance of a Series of Bonds and the administration of the REMIC by one or more of the methods set forth in the application.

3. The Applicant will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the above methods (which methods may be used in combination) are selected by the Applicant to provide for the payment of such fees and expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12650 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16415; 812-7022]

GW Utilities Limited; Application

May 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under the Investment Company Act of 1940 ("1940 Act").

Applicant: GW Utilities Limited.

Relevant 1940 Act Sections: Order requested under section 3(b)(2) or, alternatively, under section 6(c).

Summary of Application: Applicant seeks an order amending a prior order declaring Applicant to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities (Investment Company Act Rel. No. 16068, October 28, 1987) ("Prior Order"), or, alternatively, granting Applicant an exemption from all provisions of the 1940 Act.

Filing Date: The application was filed on April 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or my mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2 First Canadian Place, Suite 2700, P.O. Box 29, Toronto, Ontario, Canada M5X 1B5; Attention: Secretary; with a copy to: Gregory K. Palm, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Curtis R. Hilliard, Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. As a result of the reorganization of Gulf Canada Corporation ("Gulf"), a Canadian corporation, pursuant to a court-approved statutory arrangement (the "Arrangement"), Applicant acquired and is conducting certain businesses formerly conducted by Gulf, Gulf Canada Limited, and Hiram Walker Resources Ltd. ("Hiram Walker"). The Arrangement was authorized by Gulf's board of directors and approved by Gulf's shareholders.

2. Prior to the effective date of the Arrangement, July 1, 1987 (the "Effective Date"), Applicant had no material assets or operations. Pursuant to the Arrangment, Applicant was engaged primarily in four lines of business: 1) In the distilled spirits business through its 49% ownership of Hiram Walker-Gooderham & Worts Limited ("HW-GW"); 2) in the natural gas distribution business through its 82.7% in The Consumers' Gas Company Ltd. ("Consumers"); 3) in the pipeline business through its 40.8% interest in Interprovincial Pipe Line Limited ("IPL"); and 4) in the oil and gas business through IPL's wholly-owned subsidiary, Home Oil Company Limited ("Home").

3. In Investment Company Act Release No. 16027 (October 2, 1987), the SEC granted a temporary order, subject to conditions, under section 3(b)(2) of the 1940 Act exempting Applicant from all provisions of the 1940 Act during the period from July 25, 1987, until the SEC made a final determination upon the request for the permanent order set forth in Applicant's application (File No. 812-6734). In the Prior Order, the SEC granted a permanent order, subject to conditions, under section 3(b)(2) of the 1940 Act, declaring Applicant to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

4. On November 26, 1987, Applicant entered into an agreement with Allied-Lyons PLC ("Allied-Lyons") to transfer its entire interest in HW-GW to Allied-Lyons ("Transfer"). In a two-step transaction, Applicant transferred its 49% of the preference shares of HW-GW to Allied-Lyons on December 23, 1987, for approximately $299 million in cash.[1] The receipt of this cash enabled Applicant to forego, at this time, a previously publicly announced rights offering to raise cash to retire certain debt incurred by Applicant in connection with the Arrangement. On March 3, 1988, Applicant then transferred its 49% of the common shares of HW-GW to Allied-Lyons in return for approximately $141.6 million in cash and 60,937,638 Allied-Lyons preference shares convertible after 1990 into approximately 10% of the capital shares of Allied-Lyons after giving effect to such conversion.

5. Allied-Lyons, a corporation organized under the laws of the United Kingdom, is engaged principally in the production and sale of food and drinks and the provision of leisure services to consumers. Allied-Lyons' businesses are organized into three divisions: beer and retailing, wines and spirits, and food.

6. Prior to the Transfer, Applicant and Allied-Lyons had exercised joint control over HW-GW in accordance with the provisions of a shareholder agreement. As a result of the Transfer, HW-GW has become a wholly-owned subsidiary of Allied-Lyons and Applicant has continued its investment in the distilled spirits business and has acquired an interest in the other businesses of Allied-Lyons through direct ownership in the larger corporate entity, Allied-Lyons.

Applicant's Legal Analysis:

1. Applicant comes within the definition of an investment company as contained in section 3(a)(3) of the 1940 Act since more than 40% of its assets on an unconsolidated basis are "investment securities." Therefore, Applicant requests an order under section 3(b)(2) of the 1940 Act declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses. Applicant's historical development, its public representation of policy, the activities of its directors and officers, the nature of its present assets and the source of its present income support the issuance of such an order.

2. Applicant's predecessors (Gulf, Gulf Canada Limited, and Hiram Walker) historically have actively conducted the businesses which Applicant is engaging in as intergral parts of its current business. Consumers amalgamated with HW-GW in 1960 and both became wholly-owned subsidiaries of Hiram Walker in 1961. Consumers subsequently issued shares to the public and was 83% owned when Hiram Walker was acquired by Gulf in 1986. HW-GW remained a wholly-owned subsidiary of Hiram Walker until December 1986. Certain of the Applicant's executive officers have had long associations working with their counterparts in HW-GW. Applicant and its predecessors also have had an established relationship with IPL. Furthermore, on the Effective Date, Gulf's shareholders became Applicant's shareholders and as such are aware of the historical involvement in these lines of business.

3. Applicant's representations of policies since the Effective Date indicate that Applicant will be engaged in the gas distribution, pipelines and natural resources businesses through its interests in Consumers and IPL and not in the business of trading in securities. The Applicant does not hold itself out as being an investment company.

4. Applicant's directors and executive officers have had extensive involvement in the management of businesses with extensive natural resource operations. A majority of Applicant's directors are engaged, either as directors or officers or both, in the management of businesses with substantial operations in areas of activity similar to that conducted by Applicant through its operating subsidiaries. With the exception of one, all of Applicant's directors and executive officers had been or are directors or executive officers of Gulf Canada Resources

[1] All dollar amounts are stated in Canadian Dollars.

Limited [2] and thus are familiar with Applicant's businesses. None of Applicant's directors or executive officers is a portfolio management or brokerage professional.

5. Moreover, Consumers, the majority owned company, and IPL accounted for 31% and 35%, respectively, of Applicant's a fair market value, pro forma basis, and Allied-Lyons accounted for 32% of Applicant's assets at December 31, 1987, calculated on a pro forma basis based upon a written opinion of Applicant's independent investment advisor. Since 66% of the fair market value of Applicant's total assets on an unconsolidated basis is derived from its ownership interest in regulated utilities (through Consumers and IPL), it should continue to be deemed primarily engaged in non-investment company operating businesses.

6. Applicant's pro forma revenues for the twelve month period ended June 30, 1987, from Consumers, IPL and Allied-Lyons are $55 million (35%), $44 million (28%), and $59 million (37%), respectively. Applicant's earnings from other sources (primarily interest income) represent less than 1% of such earnings. Alternatively, in terms of dividend income, Applicant received, on a pro forma basis, $44 million, $32 million and $59 million from Consumers, IPL and Allied-Lyons, representing 32%, 24% and 44%, respectively, of Applicant's pro forma cash receipts for the fiscal year ended June 30, 1987. Thus, for the periods stated, Applicant's ownership interest in regulated utilities through Consumers and IPL resulted in 63% of its revenues or 56% of its dividend income.

7. With respect to section 3(a)(1) of the 1940 Act, Applicant did not in the past, does not now and does not propose to hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Rather, it is a holding company engaged in a number of business enterprises through its majority-owned subsidiary, Consumers, and through IPL, which Applicant jointly "controls" with another major shareholder within the meaning of section 2(a)(9) of the 1940 Act. Applicant has not acquired the Allied-Lyons preference shares for speculative purposes. Pursuant to their terms, the preference shares are convertible into Allied-Lyons ordinary shares between 1991 and 1994 inclusive. Additionally, any proposed sale of Applicant's holdings of equity securities of Allied-Lyons is subject to a right of first refusal. Applicant believes that the transfer of its interest in HW-GW will allow the full integration of the distilled spirits businesses of Hiram Walker and Allied-Lyons by permitting the development of joint production, distribution and marketing operations. The benefits derived from the Transfer will flow to the shareholders of Allied-Lyons, as well as those of the Applicant, by virtue of their opportunity to participate in the ownership of Allied-Lyons. The conversion by Applicant of its Allied-Lyons preference shares would make Applicant the single largest shareholder in Allied-Lyons, assuming present ownership patterns. However, acquisition of such shares has not changed the nature of Applicant's primary activities nor will the shares be used for trading purposes. Ownership of the Allied-Lyons preference shares is consistent with the undertaking which Applicant made as a condition to the receipt of the Prior Order that it "will not engage in the trading of investment securities for speculative purposes so as to bring its activities within those intended to be regulated by the 1940 Act."

8. In the alternative, Applicant requests an order under section 6(c) of the 1940 Act exempting it from all provisions of the 1940 Act. Applicant submits that exempting it from all provisions of the 1940 Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the aforementioned reasons.

Applicant's Conditions:

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will not engage in the trading of investment securities for speculative purposes so as to bring Applicant's activities within those intended to be regulated by the 1940 Act.

2. Applicant intends to continue to be primarily engaged in non-investment company businesses.

3. Applicant will notify the staff of the Division of Investment Management immediately of any proposed material changes to be made in its investments.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12851 Filed 6-3-88 8:45 am]

BILLING CODE 8010-01-M

[2] Under the Arrangement, Gulf changed its name to "Gulf Canada Resources Limited."

[Rel. No. IC-16405; 812-7001]

Victorian Public Authorities Finance Agency; Notice of Application

May 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Victorian Public Authorities Finance Agency.

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act.

Summary of Application: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the offering and sale of debt securities by the Applicant in the United States.

Filing Date: The application was filed on March 4, 1988, and an amendment to the application was filed on May 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on June 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Jeffrey F. Browne, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant, a public authority of the State of Victoria ("Victoria"), Commonwealth of Australia, was established by the Victorian Public Authorities Finance Act 1984 (the "Act") principally to borrow in both the Australian and international capital markets on behalf of certain public authorities and instrumentalities of Victoria ("Participating Authorities"). The Applicant, which is constituted by four members who are appointed by the Governor in Council of Victoria, has authority to lend to, or arrange financial accommodation for, the Participating Authorities. As of June 30, 1987, the Applicant states, the total borrowings of the Applicant from public sources were A$4.5 billion.

2. The Applicant is required under the Act to maintain proper accounts and records of its transactions and affairs. It is required within three months of the end of each financial year, to prepare and submit to the Treasurer of Victoria a statement of accounts in respect of the financial year in the manner and form approved by the Treasurer and signed by not less than two members of the Applicant. The statement of accounts is to be audited by the Auditor-General of Victoria.

3. The Applicant proposes, from time to time, in the future, to offer and sell debt securities in the United States ("Debt Securities"). No equity in the Applicant has been sold, and there is no provision in the Act permitting the sale of equity in the Applicant.

4. Applicant undertakes that the payment of principal of, and interest and premium, if any, on Debt Securities issued by the Applicant will be unconditionally guaranteed by Victoria pursuant to section 13(2) of the Borrowing and Investment Powers Act 1987 (the "Borrowing Act"). The guarantee of Victoria will be backed by the full faith and credit of Victoria.

5. Applicant undertakes that there is no requirement that legal proceedings be commenced against the Applicant prior to making a demand against or, if necessary, taking proceedings against Victoria in respect of section 13(2) of the Borrowing Act. Section 16(1) of the Borrowing Act provides in effect that any sums required by the Treasurer of Victoria in fulfulling any liabilities arising under the guarantee by or on behalf of Victoria shall be paid out of the Consolidated Fund of Victoria (which is thereby to the necessary extent appropriated accordingly). Proceedings may be brought against Victoria for enforcement of section 13(2) of the Borrowing Act.

Applicant's Cooditions

If the requested order is granted, Applicant agrees to the following conditions:

1. The Applicant undertakes that no Debt Securities will be offered or sold unless (a) they are registered under the Securities Act of 1933 (the "1933 Act") or (b) in the opinion of United States counsel for the Applicant an exemption from registration under the 1933 Act is available with respect to such offer and sale or (c) the staff of the Commission states that they would not recommend that the Commission take any action under the 1933 Act if such securities are not registered.

(2) The payment of principal of, and interest and premium, if any, on Debt Securities issued by the Applicant will be unconditionally guaranteed by Victoria pursuant to section 13(2) of the Borrowing Act.

3. The Debt Securities will have received, as certified by the Applicant's United States counsel, one of the two highest investment grade ratings from one nationally recognized statistical rating organization.

4. The Applicant undertakes to provide to any person to whom it offers its Debt Securities in the United States (and undertakes to take reasonable steps to ensure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made prior to any sale of Debt Securities to such offeree) disclosure documents which are at least as comprehensive in their description of the Applicant and Victoria as those which would be used by United States issuers in United States offerings of such securities and which contain the latest available audited financial statements of the Applicant.

5. In connection with any offering by the Applicant of its Debt Securities in the United States, the Applicant and Victoria will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought with respect to the Debt Securities which may be instituted in any state or federal court in the City or State of New York, by the holder of any Debt Securities. The Applicant and Victoria will expressly submit to the jurisdiction of any such court with respect to any such suit, action or proceeding. Such appointment of an agency to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of such Debt Securities have been paid.

6. Applicant consents to any order of the SEC being expressly conditioned on its compliance with the undertakings and representations contained in the application.

Applicant's Legal Analysis

The Applicant believes that granting the exemption would be necessary or appropriate in the public interest and that its activities would not lend theselves to the abuses against which the 1940 Act is directed. The applicant further believes that the issuance of an order pursuant to section 6(c) would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Debt Securites issued by the Applicant would be unconditionally guaranteed by Victoria and will be backed by the sovereign credit of Victoria and not merely the credit and assets of the Applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-12848 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on International Law; Partially Closed Meeting

A meeting of the Advisory Committee on International Law will take place at 11:00 a.m. on Thursday, June 16, 1988, in Room 1205 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session will not be open to the public; the afternoon session (2:00 p.m. to 3:00 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the immunity of foreign States and their instrumentalities in United States courts, and the International Court of Justice. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to June 15, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647-6771) of their name, affiliation,

address and telephone number in order to arrange admittance.

Bruce C. Rashkow,
Executive Director.
May 27, 1988.

[FR Doc. 88-12859 Filed 6-3-88; 8:45 am]
BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending May 27, 1988

The following applications for certificates of public convenience and necessity and foreign air carriers permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45631

Date Filed: May 24, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 21, 1988.
Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 129 to permit Northwest to provide nonstop air transportation services between Honolulu and Nagoya.

Docket No. 45637

Date Filed: May 27, 1988.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 21, 1988.
Descriptions; Application of Continental Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations authorizing Continental to provide foreign scheduled air transportation of persons, property and mail between Los Angeles, California, on the one hand, and San Jose Del Caba (Los Cabos), Mexico, on the other hand.

Docket No. 45639

Date Filed: May 27, 1988.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 24, 1988.

Description: Application of Jet Express, pursuant to section 401 of the Act and Subpart Q of the Regulations applies to transfer its certificate of public convenience and necessity to Jet Ex Inc.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 88-12862 Filed 6-3-88; 8:45 am]
BILLING CODE 4910-62-M

Order Adjusting the Standard Foreign Fare Level Index

[Docket No. 37554]

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 88-4-38 set the currently effective two-month SFFL applicable through May 31, 1988.

In establishing the SFFL for the two-month period beginning June 1, 1988, we have projected nonfuel costs based on the year ended December 31, 1987 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 88-5-64 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.1629
Latin American	1.1442
Pacific	1.5020
Canada	1.1382

For further information contact: Julien R. Schrenk (202) 366-2441.

By the Department of Transportation: May 1, 1988.

Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-12863 Filed 6-3-88; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP 88-02; Notice 2]

Goodyear Tire and Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Goodyear Tire and Rubber Company (Goodyear), of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 25, 1988, and an opportunity afforded for comment (53 FR 9844).

Paragraph S4.3(e) of Standard No. 109 requires in pertinent part that the actual number of plies in the tread area be permanently molded into or onto both sidewalls. Goodyear produced and labeled 17,694 P195/60HR15 Eagle GT + tires with the incorrect number of plies.

The tires in question were marked as follows:

Tread 6 Plies: 2 Polyester Cord + 2 Steel Cord + 2 Nylon Cord Sidewall 2 Plies Polyester Cord.

The correct marking should be:

Tread 5 Plies: 2 Polyester Cord + 2 Steel Cord + 1 Nylon Cord Sidewall 2 Plies Polyester Cord.

Goodyear believes that the incorrect stamping has no effect on the tire performance or safety. The company supports the petition for inconsequential noncompliance "because the tires meet all test requirements of FMVSS No. 109, including tire strength, tire endurance, high speed performance, tubeless tire resistance to bead unseating, and physical dimensions." In addition, "the tires meet the temperature resistance requirement of § 575.14 of Title 49, Code of Federal Regulation, Uniform Tire Quality Grading Standard."

No comments were received on the petition.

Ply labeling is an indicator to the consumer of the strength and endurance of the tire. Standard No. 109, however, does not specify the number of types of plies required to meet the minimum requirements of the standard, and petitioner has certified that its tires meet those requirements.

The noncompliance is similar to one for which the agency has previously granted an inconsequentiality petition (Sumitomo Rubber Industries, Ltd., IP85-12, 50 FR 48151). There the agency concluded "(t)he error in no way affects the load carrying or endurance properties of the tires, and retreading operations will not compromise safety." NHTSA believes that the same conclusions are appropriate with respect to Goodyear's petition.

Accordingly, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

[15 U.S.C. 1419; delegations of authority at 49 CFR 1.50 and 501.8]

Issued on May 31, 1988.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 88-12866 Filed 6-3-88; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0383.
Form Number: IRS Form 6560.
Type of Review: Extension.
Title: Employer Summary of Form W-2 Magnetic Media Wage Report.
Description: This form must be filed by all transmitters of wage information who file on magnetic media. Form 6560 is used to provide balancing totals to insure that all records are processed.
Respondents: State or local government, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Burden: 25,000 hours.

OMB Number: 1545-0746.
Form Number: None.
Type of Review: Extension.
Title: LR-27-83 TEMP REG—Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and LR-54-85 TEMP REG—Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.
Description: LR-27-83 amends the definition of first retail sale. Under the revised rules, a sale is treated as a first retail sale unless the purchaser (a) is not in the business of leasing and intends to resell, or (b) registers under section 4222 and certifies that it intends to resell the vehicle. LR-54-85 amends the definition of first retail sale to correspond to sections 505 and 506 of Highway Revenue Act of 1987.
Respondents: Businesses or other for-profit.
Estimated Burden: 3,059,480 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88-12828 Filed 6-3-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington DC 20220.

U.S. Customs Service

OMB Number: 1515-0041.
Form Number: CF 6059B.
Type of Review: Extension.
Title: U.S. Customs Declaration.
Description: The Customs Form 6059B facilitates the clearance of persons and their goods upon arrival in the territory of the U.S. by requiring basic information necessary to determine Customs exception status and if any duties or taxes are due. The form is used for the enforcement of other Federal agencies laws and regulations.
Respondents: Individuals or households, Small businesses or organizations.
Estimated Burden: 1,000,000 hours.

OMB Number: 1515-0007.
Form Number: CF 7506.
Type of Review: Reinstatement.
Title: Warehouse Withdrawal Conditionally Free of Duty and Permit.
Description: This form is an application and permit to withdraw goods from a warehouse without paying duties and taxes. The form also covers several types of withdrawals from a Customs Bonded Warehouse, subject to Customs controls.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 15,819 hours.

Clearance Officer: John L. Poore (202) 566-2491, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88-12829 Filed 6-3-88; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Dept. Cir.; Public Debt Series—No. 14-88]

Treasury Notes, Series AB-1990

Washington, May 26, 1988.

The Secretary announced on May 25, 1988, that the interest rate on the notes designated Series AB-1990, described in Department Circular—Public Debt Series—No. 14-88 dated May 19, 1988, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 88-12861 Filed 6-3-88; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series—No 15-88]

Treasury Notes, Series L-1993

Washington, May 27, 1988.

The Secretary announced on May 26, 1988, that the interest rate on the notes designated Series L-1993, described in Department Circular—Public Debt Series—No. 15-88 dated May 19, 1988, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 88-12862 Filed 6-3-88; 8:45 am]
BILLING CODE 4810-40-M

Internal Revenue Service

Income Taxes; 1989 Electronic Filing Program; Forms 1040, 1040A and 1040EZ Returns; Briefing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of electronic filing software/communications industry briefing.

SUMMARY: An Electronic Filing Software/Communications Industry Briefing will be conducted by the Electronic Filing Systems Project Office, Internal Revenue Service.

DATES: The briefing is scheduled for July 1, 1988, beginning at 8:30 a.m. and continuing until 3:30 p.m. Notification of attendance is required no later than June 17, 1988.

ADDRESS: The briefing will be held in the IRS Main Auditorium, 7409 Corridor, 1111 Constitution Ave., NW., Washington, DC 20224.

Registration: To register for the briefing and for additional information telephone (202) 566-3328 (not a toll free number).

SUPPLEMENTARY INFORMATION: Electronic Filing software and communications will be discussed. This session is an information session for potential participants and is not intended to generate RFPs.

Seating capacity is limited: Attendees will be accommodated on a first-come, first-served basis; no more than two representatives from the same company.

Richard Morse,

Project Officer, Electronic Filing Systems.

[FR Doc. 88-12883 Filed 6-3-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 108
Monday, June 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for June 7, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 7, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4006.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Final Rule on Simultaneous Service, 12 CFR 612.2150
2. Proposed Changes to Farm Credit System Retirement Plans
   - Springfield District
   - Texas District
   - Farm Credit Corporation of America
3. Proposed Farm Credit System District Special Early Retirement Programs
   - Baltimore District
   - Texas District
   - Springfield District
4. Proposed Changes on Farm Credit System District Severance Plans
   - St. Paul District
   - Louisville District
   - Central Bank for Cooperatives
5. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management
6. Mergers of the Farm Credit System Federal Land Banks and Federal Intermediate Credit Banks

[1] **Closed Session**

7. Examination and Enforcement Matters.

Dated: June 1, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-12807 Filed 6-2-88; 9:24 am]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:38 p.m. on Tuesday, May 31, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Personnel matters.

Matters relating to the possible closing of certain insured banks.

Discussion of certain procedures for handling bank failures.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552 (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: June 1, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-12715 Filed 6-1-88; 9:01 am]

BILLING CODE 6714-01-M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8), and (9).

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.–5:00 p.m., Thursday, and Friday, June 16, and 17, 1988.

PLACE: American Chemical Society, 1155 Sixteenth Street, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the twenty-third meeting. Consideration of grant application matters.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 457-1700.

Dated: June 1, 1988.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 88-12717 Filed 6-2-88; 10:28 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 53, No. 108
Monday, June 6, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL 3378-4]

Stratospheric Ozone Protection; Apportionment of Baseline Consumption and Production Rights

Correction

In proposed rule document 88-11710 beginning on page 18800 in the issue of Tuesday, May 24, 1988, make the following correction:

On page 18800, in the second column, in the first complete paragraph, in the last line, "June 23, 1988" should read "July 7, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0104]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ucephan™

Correction

In notice document 88-10481 beginning on page 16786 in the issue of Wednesday, May 11, 1988, make the following corrections:

1. On page 16786, in the second column, under SUPPLEMENTARY INFORMATION, in the seventh line, "project" should read "product".

2. On page 16787, in the first column, in the third complete paragraph, in the eighth line, "Is" should read "Its".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0106]

Medtronic, Inc.; Premarket Approval of the Medtronic® Prime™ Coronary Balloon Dilatation Catheter

Correction

In notice document 88-10485 beginning on page 16789 in the issue of Wednesday, May 11, 1988, make the following correction:

On page 16789, in the third column, in the fourth line from the bottom, after "petition" insert "supporting".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0114]

Medtronic, Inc.; Premarket Approval of the Medtronic® SynchroMed™ Infusion System

Correction

In notice document 88-10548 appearing on page 16788 in the issue of Wednesday, May 11, 1988, make the following corrections:

1. On page 16788, the heading is corrected to read as set forth above.

2. In the first column, under SUMMARY, the seventh line should read "Medtronic® SynchroMed™ Infusion System".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0091]

Zeus Scientific, Inc.; Premarket Approval of Fluoro-Cep® Estrogen

Correction

In notice document 88-10484 beginning on page 16788 in the issue of Wednesday, May 11, 1988, make the following corrections:

1. On page 16788, in the third column, under SUMMARY, in the sixth line, after "the" insert "Fluoro-Cep® Estrogen. After reviewing the recommendation of the".

2. On page 16789, in the first column, in the third complete paragraph, in the third line, "CDRF" should read "CDRH".

3. On the same page, in the second column, in the first complete paragraph, in the third line, "909" should read "90".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-08-4230-11; WYW 38577, WYW 058320, WYW 094183]

Proposed Continuation of Forest Service Withdrawals; Wyoming

Correction

In notice document 88-10571 appearing on page 17117 in the issue of Friday, May 13, 1988, make the following correction:

In the second column, under SUMMARY, in the sixth line, "in" should read "to".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8204]

Income Taxes; Safe-haven Interest Rates and Rental Charges for Commonly Controlled Taxpayers

Correction

In rule document 88-11393 beginning on page 18276 in the issue of Monday, May 23, 1988, make the following correction:

§ 1.482-2 [Corrected]

On page 18279, in the third column, in § 1.482-2(a)(1)(iii)(E)(*3*), *Example* (i), in the eighth line, "[X's" should read "X's".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-102-86]

Cooperative Housing Corporations; Proposed Rulemaking

Correction

In proposed rule document 88-11970 beginning on page 19312 in the issue of Friday, May 27, 1988, make the following correction:

§ 1.216-1 [Corrected]

On page 19313, in the third column, in § 1.216-1(d)(3), *Example (3)*, in the 16th line, before "fair" insert "total".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-52-86]

Income Taxes; Information Reporting and Backup Withholding

Correction

In proposed rule document 88-4140 beginning on page 5991 in the issue of Monday, February 29, 1988, make the following correction:

§ 1.6049-5 [Corrected]

On page 6007, in the third column, in § 1.6049-5(j)(1)(ii), in the fifth line, "payer" should read "payee" and "in" should read "is".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 11]

Delegation of Authority; Division Chiefs

Correction

In notice document 88-10520 appearing on page 16835 in the issue of Wednesday, May 11, 1988, make the following correction:

In the third column, in the 15th line, "frivol" should read "frivolous".

BILLING CODE 1505-01-D

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Part II

Environmental Protection Agency

40 CFR Part 81

State Implementation Plans; Attainment Status Designations; Proposed Rulemaking and Alternative Policy Proposals

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-3378-6]

State Implementation Plans; Attainment Status Designations; Proposed Rulemaking and Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; alternative policy proposals.

SUMMARY: The EPA, as directed by the Mitchell-Conte Amendment of December 22, 1987 (contained in the Budget Reconciliation Act of 1987, Pub. L. 100-202), is proposing to designate as nonattainment under the Clean Air Act (CAA) those areas throughout the nation that have not attained the National Ambient Air Quality Standard (NAAQS) for either ozone or carbon monoxide (CO). EPA proposes to designate as nonattainment those areas currently codified as attainment or unclassified, and to renew the designations for areas currently codified as nonattainment. This notice thus proposes rulemaking to create a list of nonattainment designations pursuant to the Mitchell-Conte Amendment. This list will be set forth either as a supplement or as a modification to 40 CFR Part 81, Subpart C (1987), which contains designations pursuant to the Clean Air Act Amendments of 1977.

EPA employed the most recently available air quality data as the basis for today's proposed action. For ozone, EPA used air quality data for calendar years 1985, 1986 and 1987; for CO, data for calendar years 1986 and 1987. In both instances, EPA has followed the methodologies prescribed in 40 CFR Part 50 (1987) in making these determinations as to air quality violations.

In this notice, EPA also discusses three alternative intepretations of the Mitchell-Conte Amendment. The first interpretation would leave undisturbed EPA's current practice under which the states, pursuant to section 107 of the Clean Air Act, have the authority to designate areas as nonattainment for purposes of the planning and implementation requirements imposed by Part D of the Clean Air Act. Under this interpretation, EPA would issue a list of which areas throughout the country have not attained the National Ambient Air Quality Standards for either ozone or CO.

Under a second interpretation of the amendment, EPA not only would determine which areas have failed to attain the ozone and CO NAAQS, but also would designate those areas as nonattainment under section 107 of the Act, thereby triggering the Part D planning and implementation requirements. These regulatory consequences would apply both to areas currently designated as nonattainment and to those areas that EPA would newly designate as nonattainment. Adopting this interpretation would involve a new initiative as explained below.

The third interpretation of the amendment is identical to the second one, except that an EPA nonattainment designation would attach Part D regulatory consequences only to those areas newly designated as nonattainment. As is the case with the second interpretation, this would also involve a new initiative.

EPA solicits comments on both portions of this notice: the proposed rulemaking establishing nonattainment designations pursuant to the Mitchell-Conte Amendment; and the discussion of possible regulatory consequences for such nonattainment designations. EPA intends to promulgate the nonattainment designations, and to issue its final policy on these matters, only after responding to public comment. That final policy will be an advance notice of how EPA intends, in subsequent rulemakings on State Implementation Plan (SIP) submittals, to judge the adequacy of states' efforts to plan for attainment of the ozone and CO NAAQS.

The EPA believes that each of the three interpretations has federalism implications as described in Executive Order 12612. To understand the significance of the federalism implications on the various roles of local, state and federal governments in air quality management, and in particular to the Mitchell-Conte Amendment, EPA specifically solicits comments on today's notice.

DATES: The EPA will consider comments received by August 5, 1988.

ADDRESSES: Docket A-88-17 containing material relevant to this action is located at: Central Docket Section, South Conference Center, Room 4, U.S. EPA, 401 M Street SW., Washington, DC 20460.

Interested persons may inspect the docket between 8:00 am and 4:00 pm on weekdays. The EPA may charge a reasonable fee for copying.

All written comments should be submitted (in duplicate if possible) to: Central Docket Section, Docket A-88-17, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Brock Nicholson, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711, (919) 541-5517 or (FTS) 629-5517.

Questions or comments regarding state-specific designations should be addressed to the appropriate EPA Regional Office as listed below:

John Hanish, Chief, Air Branch, EPA, Region I, JFK Federal Bldg. Boston MA, 02203 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) (617) 565-3245.

William Baker, Chief, Air Branch, EPA, Region II, 26 Federal Plaza, New York, NY, 1007 (New York, New Jersey, Puerto Rico, Virgin Islands) (212) 264-2517.

Jessie Baskerville, Chief, Air Branch, EPA, Region III, Curtis Bldg, Sixth and Walnut Streets, Philadelphia, PA 19106 (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia) (215) 597-9075

Bruce Miller, Chief, Air Branch, EPA Region IV, 345 Courtland St. NE, Atlanta, GA. 30308 (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina) (404) 347-2864.

Steve Rothblath, Chief, Air Branch, EPA Regional V, 230 South Dearborn St, Chicago, IL, 60604 (Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin) (312) 353-2211.

Gerald Fontinot, Chief, Air Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75270 (Arkansas, Louisiana, Oklahoma, New Mexico, Texas) (214) 655-7204.

Carl Walter, Chief, Air Branch, EPA Region VII, 1735 Baltimore St, Kansas City, MO, 64108 (Nebraska, Iowa, Kansas, Missouri) (913) 236-2893.

Doug Skie, Chief, Air Branch, EPA Region VIII, 1860 Lincoln St, Denver, CO 80295 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) (303) 293-1751.

Dave Calkins, Chief, Air Branch, EPA Region IX, 215 Fremont St., San Francisco, CA. 94105 (Arizona, California, Hawaii, Nevada, American Samoa, Northern Mariana Islands) (415) 974-8058.

George Abel, Chief, Air Branch, EPA Region X, 1200 Sixth Ave, Seattle, WA 98101 (Alaska, Idaho, Oregon, Washington) (206) 442-1275.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1978 Air Quality Designations

The 1970 Amendments to the Clean Air Act directed EPA to establish primary and secondary National Ambient Air Quality Standards (NAAQS) to protect the public health and the public welfare, respectively. Under these amendments, the states were directed to develop and adopt State Implementation Plans (SIPs) to attain and maintain the NAAQS.

In 1971, EPA promulgated NAAQS for sulfur oxides, particulate matter, carbon monoxide, ozone (originally called photochemical oxidants) and nitrogen dioxide. States were required, pursuant to CAA § 110(a), to develop and adopt SIPs that would attain the NAAQS in most areas in 1975, with some extensions, pursuant to CAA section 110(e), until 1977. Many of these SIPs were inadequate to attain the NAAQS; by 1976 EPA had begun issuing numerous "calls," under CAA section 110(a)(2)(H), for states to revise their SIPs to provide for attainment.

Section 107(d) of the Clean Air Act (CAA) Amendments of 1977 required that each State identify all areas within their boundaries that had not attained the national ambient air quality standards (NAAQS) by August 7, 1977. The States were directed to submit a list of these areas to EPA by December 7, 1977. The EPA was required to promulgate these lists within 60 days with such modifications as EPA deemed necessary and after giving the States notice and opportunity to comment.

The EPA promulgated most of these designations in 43 FR 8962 (March 3, 1978). Part D of the Clean Air Act required that those areas designated as nonattainment in 1978 submit SIP revisions by January 1, 1979 that demonstrated attainment of the NAAQS by December 31, 1982.[1] EPA could approve a state's application for an extension of the attainment deadline until December 31, 1987, upon a proper demonstration that attainment of the NAAQS was not possible by the December 1982 deadline, despite the use of all reasonably available measures.

B. Part D's Planning and Sanctions Provisions

Each SIP revision due in 1979 was to provide for the implementation of reasonably available control measures (RACM) and for "reasonable further progress" (RFP) is defined as annual incremental reductions in emissions sufficient to provide for attainment by the applicable deadline, including such reductions as may be obtained through the adoption of "reasonably available control technology (RACT)."

[1] The requirements for this SIP revision are contained in the Administrator's memo of February 24, 1978, entitled "Criteria for the Approval of 1979 SIP Revisions," published at 43 FR 21673 (May 19, 1978).

Each such SIP revision was also to include a permit program for the preconstruction review of major new sources of the relevant pollutants. As outlined by CAA section 173, this program would allow construction, even before attainment occurs, upon determinations that (1) the source would have state-of-the-art emissions controls; (2) its emissions would be offset by greater than one-for-one reductions elsewhere or would be accounted for in an approved attainment demonstration for the area where the source proposed to locate; (3) the applicant's other sources in the state are in compliance with the SIP; and (4) the State is carrying out the SIP. In the case of the areas with an attainment deadline of December 31, 1987 ("extension" areas), each revision due in 1979 had to identify any measures beyonnd RACM that would be necessary to assure timely attainment and had to contain commitments to adopt a vehicle inspection and maintenance (I/M) program. In addition, each state with an extension area was to submit a supplemental revision before July 1, 1982, containing those additional measures necessary to assure attainment by December 31, 1987.

As part of the 1977 Amendments, section 110(a)(2)(I) required each SIP to contain a construction ban that would operate against major new sources and major modifications of existing sources of the relevant pollutants in each nonattainment area after June 30, 1979, "unless, as of the time of application for a permit for such construction * * *, such plan meets the requirements of Part D * * *." As further incentive for timely submission of Part D. SIP revisions, Congress added CAA sections 176(a) and 316(b). Section 176(a) bars the U.S. Department of Transportation from funding many highway projects, and bars EPA from making air quality planning grants, in any ozone or CO nonattainment area where EPA determines that the state has failed to make reasonable efforts to submit approvable SIP revisions for the area in accordance with Part D. Section 316(b) authorizes EPA to withhold certain grants for sewage treatment construction where an area has failed, among other things, to submit an adequate Part D SIP for the area.

In the Clean Air Act Amendments of 1977, Congress also established three sanctions for failures to implement a SIP. First, Congress authorized EPA's discretionary withholding of air quality planning grants and sewage treatment grants for any area where the state is not implementing the applicable SIP. *See* CAA sections 176(b) and 316(b). Beyond these sanctions, CAA section 173(4) operates, in effect, as a ban on the construction of major new sources and major modifications of existing sources in the event that a state is not "carrying out" its approved Part D SIP.

C. EPA's 1983 Policy for Newly Designated Nonattainment Areas

The Clean Air Act does not establish any express deadlines for submittal of SIP revisions in those areas that are designated nonattainment after 1978, and thus does not fully prescribe EPA's treatment of those areas' planning and implementation failures.

In 48 FR 50686 and 50895-6 (Nov. 2, 1983) (The "1983 Sanctions Policy"), EPA determined that newly designated nonattainment areas should meet the CAA's Part D planning and implementation requirements. Under that policy, newly designated nonattainment areas must adopt and submit SIP revisions whose provisions satisfy the criteria of CAA sections 110(a) and 172. Moreover, these areas would be subject to a construction ban and funding restrictions under the same circumstances that would trigger those sanctions for areas designated nonattainment in 1978: e.g., EPA's determination of failure to submit an approvable plan, or to implement a plan upon approval.

In this 1983 Sanctions Policy, EPA acknowledged that it would be impossible for those areas which are designated as nonattainment long after 1978 to meet the statutory deadlines for submittal and implementation of Part D SIP revisions. EPA concluded that Congress intended for such areas to have a reasonable time to submit SIP revisions and implement them. Accordingly, having calculated the time periods between the statutory deadlines for areas designated in 1978, EPA required newly designated nonattainment areas to follow approximately the same time periods, commencing whenever redesignation occurred, in submittal and implementation of Part D SIPs. *Id.*

Under EPA's longstanding interpretation of the Clean Air Act, an unconditional approval of a Part D SIP revision for an area designated nonattainment either in 1978, or subsequently, satisfies the Part D planning requirements for that area. Such approval also exempts that area from associated sanctions for planning failures, specifically the bans on construction of major new and modified sources pursuant to CAA section 110(a)(2)(I), and on federal funding of

highway construction pursuant to CAA section 179(a). For an explanation of this policy, *See* 48 FR 50899–50901 (Nov. 3, 1983); 52 FR 45044, 45049–45052 (Nov. 24, 1987).) [2]

D. EPA's Designation Practice Pursuant to Bethlehem Steel

The designation process embodied in CAA section 107(d) required each state to submit a list of areas *classified* according to attainment status for each NAAQS. That section in turn obliged EPA to promulgate those designations within sixty days of receipt of the state's list of recommendations. It authorized EPA to modify the state's submittal, after giving the state notice and an opportunity to comment. It further authorized a state to review, and as appropriate revise and resubmit, its list of recommended attainment designations. EPA initially took the position that it could modify an area's promulgated designation at any time when warranted by evidence of nonattainment, not only upon review of the state's original recommendations. The Agency relied upon its authority to modify designations under CAA section 107(d)(2) and CAA section 171(2). The latter section, in the "Definitions" of Part D, provides broadly that a "nonattainment area" "include[s]" an area designated nonattainment under CAA section 107(d); the verb "include" suggests that EPA's redesignation authority covers not only areas for which the state has requested a nonattainment designation pursuant to CAA section 107(d), but also areas for which the state has not requested such a designation. Part D's definition of "nonattainment area," in conjunction with CAA section 107(d), governs EPA's choice of the areas that are subject to the Part D provisions which apply to "nonattainment areas."

In *Bethlehem Steel v. EPA*, 723 F.2d 1303 (1983), the U.S. Court of Appeals for the Seventh Circuit held that EPA may not modify designations, under either CAA section 107(d) or 171(2), following EPA's promulgation of the initial list of designations for a state unless the state has requested such a modification. While not conceding the decision's validity, EPA has, as a matter of practice, acquiesced in the reasoning of *Bethlehem Steel* in all states, not just those in the Seventh Circuit (Illinois, Indiana, and Wisconsin). *See*, e.g., post-1987 policy proposal, 52 FR 45044, 45049 (Nov. 24, 1987). Accordingly, absent a request from the affected state, an area which was originally designated as attainment or unclassifiable would not be redesignated as nonattainment, regardless of the evidence of violation of the NAAQS. In turn, absent designation as nonattainment, an area would not be subject to Part D's planning and implementation requirements. *Id.* As explained below, however, the EPA believes that the Mitchell-Conte Amendment could be interpreted to give EPA authority to designate areas as nonattainment, with regulatory consequences under Part D, absent a request from the affected state.

E. Proposed Post-1987 Attainment Policy and SIP Calls

In 52 FR 45044 (Nov. 24, 1987), EPA proposed a post-1987 policy for areas that would not attain the NAAQS for ozone and carbon monoxide by December 31, 1987. Supplemental Information Section IV of today's notice supplements that earlier proposal in certain respects.

In the November 24, 1987 notice, EPA proposed similar planning requirements for three categories of areas previously designated nonattainment: those areas whose Part D SIPs had not received EPA's approval and thus which were (prior to Mitchell-Conte) subject to Part D's provisions; those urbanized areas whose Part D SIPs had been approved; and those rural areas whose emissions produce local violations or contribute to violations in adjacent urbanized areas. Invoking the authority of Part D as to any area whose SIP has not received EPA's approval, and otherwise relying on CAA section 110, EPA proposed that such areas would be obliged to prepare SIP revisions which met specified planning requirements. These include: the submittal of a new plan that provides for attainment within three to five years of its approval, and interim progress towards attainment; adoption of reasonably available control technologies (RACT) for certain categories of sources; and for certain areas, an I/M program. *See* 52 FR 45082–45082. EPA also proposed that, regardless of the unconstitutionality of EPA's approval of a Part D SIP, any inconsistency between that SIP and EPA's prior Part D Guidance would have to be corrected. *See id.* at 45105–45106.

While the previous designations for many nonattainment areas have applied to only the "urbanized" portion of the metropolitan area, the proposed post-1987 policy would apply planning requirements to the suburban or rural areas surrounding the central cities, including those outlying areas designated as attainment. Except for isolated rural areas, the Metropolitan Statistical Area (MSA), as defined by the U.S. Bureau of Census (or, where applicable, the Consolidated Metropolitan Statistical Area [CMSA]), will be the minimum planning area for the post-1987 SIPs. *See id.* at 45055–45056. The proposed post-1987 policy does not require RACT for such outlying attainment areas (*id.* at 45063–45083) but does oblige the states to account for such areas in their attainment demonstrations for the MSA/CMSA, and to control emissions "to the extent necessary" for timely progress and attainment throughout the MSA/CMSA (*id.* at 45055).

In the November 24, 1987 notice, EPA also proposed a policy for imposition of sanctions for planning or implementation failures. Under that proposal, only a nonattainment area whose Part D SIP has not received EPA's unconditional approval could ever potentially become subject to the ban on construction under CAA section 110(a)(2)(I), or to the highway funding restriction under CAA section 179(a). A nonattainment area with an approved Part D SIP could become subject to the construction ban under CAA section 173(4), if it failed to do the necessary planning. *Id.* at 45050. Any area, whether or not attainment, which failed to plan as required could become subject to restrictions on federal funding for such planning, pursuant to CAA section 176(b) and for sewage treatment, pursuant to CAA section 316(b).

The post-1987 policy proposal discussed EPA's intitial intent to publish the final policy in early 1988 and shortly thereafter to issue "calls" for SIP revisions pursuant to CAA section 110(a)(2)(H) [SIP calls]. The EPA is currently developing responses to comments received during the extended public comment period on the proposed policy and now anticipates issuance of the final policy later this year, although this schedule depends in part on whether and how Congress amends the Act in this session. As to SIP calls, however, EPA believes that, even before the issuance of EPA's final post-1987 policy, the states should initiate certain

[2] EPA has never viewed this policy as the only permissible reading of the Clean Air Act as amended through 1987.

In 46 FR 4072 (Feb. 3, 1981), EPA proposed to disapprove various SIPs that it had previously approved, that had not produced attainment by December 31, 1982, but that did not contain requests, pursuant to CAA section 172(a)(2), for an extension of the attainment deadline to December 31, 1987. EPA thereby proposed to re-impose Part D's obligations on those areas. In its subsequent finalization of policy for those areas, EPA noted that "[n]early all commenters" objected to that proposal. 46 FR 50899, 50900 (Nov. 3, 1983). EPA stated that it "now agrees that the better interpretation of the Act," *id.* at 50900, is that Part D obligations are discharged by EPA's unconditional approval of a Part D SIP.

fundamental activities necessary to continue to make progress in attaining the ozone or CO NAAQS. Then, upon publication of the final post-1987 policy, EPA will direct all areas affected by SIP calls to begin the process of fully implementing all other elements of the final post-1987 policy.

Parallel to today's notice, through a letter to the affected state's Governor, EPA is issuing a SIP call for each area which measures a violation, or which contributes to a violation, of the ozone or CO NAAQS. Such a SIP call will apply to the expanded planning area described in the Post-1987 Policy proposal. EPA will call on each affected state: first, to correct discrepancies between EPA's existing Part D guidance and the approved Part D SIP or pending SIP submittal; second, to satisfy any unimplemented commitments in the Part D SIP to adopt control measures; and third, to begin updating the base-year emissions inventory for the defined planning area. In addition, EPA will call on some MSAs to commit to a schedule of monitoring for nonmethane organic compounds (NMOCs). Within 60 days of receipt of a SIP call, each affected state must submit a schedule to the appropriate EPA Regional Office setting forth the time periods and interim steps required to complete all actions defined in the SIP call. The EPA believes that the maximum period for satisfaction of the SIP call requirements should be one year.

F. Budget Reconciliation Act of 1987 (Mitchell-Conte Amendment)

In the Budget Reconciliation Act of 1987, P.L. 100–202 (December 22, 1987), Congress enacted the Mitchell-Conte Amendment, which prohibited any of the Clean Air Act's planning and implementation sanctions from taking effect until August 31, 1988.

The Mitchell-Conte Amendment also states that, by August 31, 1988, EPA shall "make determinations with respect to which areas throughout the nation have attained, or failed to attain" these NAAQS. It further provides that EPA "shall take appropriate steps to *designate those areas failing to attain either or both of the standards as nonattainment within the meaning of part D of title I of the Clean Air Act*" (emphasis added).

II. Interpretations of the Designations Provision of the Mitchell-Conte Amendment

It is clear that the Mitchell-Conte Amendment obliges EPA to determine which areas violate the ozone or CO NAAQS and to take appropriate steps to designate these areas as nonattainment within the meaning of Part D. The Mitchell-Conte Amendment applies whether or not these areas are currently designated as nonattainment under CAA § 107.

As explained below, EPA's rulemaking proposal to designate as nonattainment both attainment and nonattainment areas is consistent with a reasonable interpretation of the Mitchell-Conte Amendment. Beyond that, EPA has identified three plausible, alternative interpretations of the Amendment as to the regulatory consequences of such designations. Where Congress has not directly or unambiguously spoken to the precise question at issue, EPA has the responsibility and discretion to establish and implement its own interpretation of the statute, so long as that interpretation is consistent with the language, structure, purpose, and legislative history of the statute. *See Chevron v. NRDC*, 467 U.S. 837, 842–3 (1984). EPA believes that there are three plausible views as to the regulatory consequences of nonattainment designations pursuant to the Mitchell-Conte Amendment. Therefore, EPA solicits comments from all interested parties regarding its discussion of the regulatory consequences of such designations.

A. Designations without regulatory consequences

A plausible interpretation of the Mitchell-Conte Amendment is that EPA should make determinations on nonattainment by using the definition in CAA § 171(2), but without attaching any regulatory consequences—e.g., without obliging any nonattainment area to satisfy Part D planning requirements, and without subjecting it to sanctions for planning or implementation failures. Under that interpretation, designations pursuant to the Mitchell-Conte Amendment would be informational at present, and would have regulatory consequences only insofar as Congress amended the Clean Air Act to establish post-1987 obligations for nonattainment areas so identified.

This interpretation appears consistent with legislative history indicating that Congress intended to preserve the regulatory status quo, pending direct amendment of the Clean Air Act to establish a comprehensive framework for correcting post-1987 nonattainment of the ozone and CO NAAQS.[3] The legislative history [4] contains no express statement that Congress intended to allow EPA to designate areas for the purpose of imposing Part D consequences. Indeed, with the exception of one comment discussed below, Congressional debate did not address the designation provision at all, but instead focussed on the Amendment's other provision, which prohibits EPA's imposition of CAA sanctions for ozone or CO nonattainment until August 31, 1988.

This interpretation assumes that Congress limited the designation provision. A normal designation as nonattainment (as that term is used in Part D) includes Part D consequences; thus, designation "within the meaning of Part D" strongly suggests such consequences. It is possible, of course, that Congress intended Mitchell-Conte designations to be "within the *meaning* of Part D" (i.e., to apply to those areas which are nonattainment as that term is defined in CAA section 171(2)), but not for the *purpose* of Part D (e.g., imposition of planning and implementation requirements).

B. Designations for new and existing nonattainment areas, all of which would be subject to Part D planning and implementation requirements

Another plausible interpretation of the Mitchell-Conte Amendment is that EPA must take steps to designate as nonattainment every area which it determines not to have attained the ozone or CO NAAQS, regardless of current designation. Further, such designations would have the same regulatory consequences as would attach to a nonattainment designation newly requested by a state and promulgated by EPA pursuant to CAA section 107(d).

Under this reading, the Mitchell-Conte Amendment would change existing law and EPA practice in two respects. First, it would override *Bethlehem Steel* (as to the states comprising the Seventh Circuit), and EPA's nationwide acquiescence in *Bethlehem Steel's*

[3] *See, e.g.*, statement by Senator Mitchell, 133 Cong. rec. S 17,612 col. 2 (Dec. 15, 1987), regarding the Mitchell-Conte Amendment's prohibition of CAA sanctions until August 31, 1988:

". . . a short-term extension appears necessary in order to provide time for Congress to make the needed decisions on the best way to assure national attainment of the air quality standards. These decisions require legislative changes; regulatory proposals will not suffice.

I do not believe that the current Clean Air Act authorizes the agency to develop its own post-1987 attainment strategy. . . . While this extension [e.g., sanctions prohibition] does not specifically preclude the agency from implementing its policy [proposed in 52 FR 45044 (Nov. 24, 1987)], I encourage EPA to reconsider the proposal.

[4] Congressional debate of the Mitchell-Conte Amendment is set forth in 133 Cong. Rec. H 10,923–H 10,948 (Dec. 3, 1987) and 133 Cong. Rec. S 17,612–S 17,614 (Dec. 21, 1987).

reasoning. Thus, EPA would now designate as nonattainment, areas which are currently designated as attainment or unclassifiable, even in the absence of requests from the affected states.

Second, the Mitchell-Conte Amendment would authorize EPA to supersede its existing policy that unconditional approval of a nonattainment area's SIP revision discharges for all time Part D's planning requirements and exempts that area from associated sanctions for planning failures, specifically the bans on construction of major new sources, pursuant to CAA section 110(a)(2)(I), and on federal funding of highway construction, pursuant to CAA section 176(a). Thus, EPA would designate as nonattainment every area which is nonattainment in fact, including those areas which are currently designated nonattainment and which have unconditionally approved Part D SIPs. Such confirmation or renewal of the existing nonattainment designation would subject such areas to Part D planning requirements (to the extent that EPA determined that the existing SIPs did not meet all such requirements) and, potentially, to sanctions for failures to meet such requirements and to implement approved plans.

This interpretation stems from the wording of the amendment, in particular the use of the term "designation" and the phrase "within the meaning of Part D." It could be argued that this language suggests that Congress intended that the Clean Air Act's redesignation process should be restarted, and that the designations should have all the regulatory consequences that they would have had in the initial round of designations following the enactment of the Clean Air Act Amendments of 1977. This interpretation would rely on the fact that the statutory language directing EPA to designate as nonattainment "those areas" which have not attained the ozone or CO NAAQS by December 31, 1987, is not limited to areas currently designated as attainment, and that there is no indication that such designations would have consequences different from those that attach when EPA redesignates as nonattainment at a state's request.

On the other hand, it can be argued that if Congress meant to restart the planning and sanctions provisions of Part D for all nonattainment areas, even those that had fulfilled their Part D planning obligations, such a decision would have led to extended debate. In fact, the proponents of the amendment uniformly described it as a simple extension of the Clean Air Act "freezing the status quo," and only Representative Dingell, an opponent of the House version of what was subsequently enacted, made any reference at all to the redesignation provision. However, that reference could provide some support for this interpretation. Mr. Dingell stated that the House bill "could subject" such areas as New York and New Jersey (that were already designated nonattainment and that had fulfilled their Part D planning obligations) "and others to new planning and sanctions." 133 Cong. Rec. H 10,942 col. 1 (Dec. 3, 1987). He also characterized the redesignation provision as a "significant change in the Clean Air Act." *Id.* No other participant in the debate confirmed or refuted Congressman Dingell's interpretation.

Part D itself does not expressly establish the regulatory requirements applicable to a nonattainment area designated as such after 1978, or to a nonattainment area which failed to improve its air quality adequately by December 31, 1987, the final attainment target set forth in CAA section 172. Part D establishes planning requirements in the context of a planning and implementation schedule starting in 1978. As previously discussed, in 1983 EPA reasoned that Congress intended that the Agency establish analogous substantive requirements, and schedules for satisfaction of those requirements, for newly designated nonattainment areas. Similarly, EPA's November 24, 1987 notice proposes Part D requirements for all nonattainment areas whose SIPs have not received EPA's approval, and CAA section 110 requirements for attainment areas and nonattainment areas whose Part D SIPs have received EPA's approval.

EPA's post-1987 policy proposal already contains the same planning requirements for three categories of areas already designated nonattainment: those areas whose Part D SIPs had not received EPA's approval and thus which were (prior to Mitchell-Conte) subject to Part D's provisions; those urbanized areas whose SIPs had been approved and thus whose post-SIP call planning efforts would (absent Mitchell-Conte) have been subject to CAA section 110, not Part D; and those rural or suburban areas whose emissions produce local violations or contribute significantly to violations in adjacent urbanized areas. Under this interpretation of the Mitchell-Conte Amendment, such nonattainment areas whose nonattainment status is confirmed would still be subject to the same planning requirements identified in the November 24, 1987 proposal. However, the authority for those planning requirements would then be Part D for all such areas. For the reasons discussed at 54 FR 45050, areas with either new or confirmed nonattainment designations would be subject to the 3–5 year attainment period discussed in the November 1987 proposal, which is analogous to the second Part D planning period (1982–87).

Applying Part D to all nonattainment areas in the post-1987 planning for attainment of the ozone or CO NAAQS would have several other consequences. Part D requires the adoption of RACT in every nonattainment area. Accordingly, EPA would require the adoption of RACT measures in areas which form part of a MSA/CMSA, which had previously been designated attainment, but which (through Mitchell-Conte designations) are redesignated nonattainment. The RACT requirements that would apply in these newly designated nonattainment areas would be those that would have applied under the November 1987 proposal if those areas had already been designated nonattainment prior to the Mitchell-Conte Amendment. Such newly designated nonattainment areas would otherwise not be subject to RACT under CAA section 110 and EPA's earlier proposal, discussed in Section I.E of today's notice.

Additionally, all areas which are designated nonattainment pursuant to Mitchell-Conte would be potentially subject to Part D sanctions, if they failed in the future to submit adequate plans or implement their plans. Therefore, under this interpretation, all nonattainment areas could potentially become subject to the construction ban, pursuant to CAA Section 110(a)(2)(I); and the restrictions on federal funding of highways and air quality planning, pursuant to CAA Section 176(a). Under the November 1987 policy proposal, these areas could potentially have become subject only to the other sanctions in the Act; the funding restrictions under CAA Sections 176(b) and 316, and the construction ban under CCC Section 173(4).

C. Designations with Regulatory Consequences Only for New Nonattainment Areas

A third interpretation is that the Mitchell-Conte Amendment authorizes EPA to attach regulatory consequences to nonattainment designations for areas currently designated attainment. This interpretation differs from the second insofar as EPA would not attach such consequences to confirmation of the nonattainment status of areas already designated as nonattainment.

Under this interpretation, the Mitchell-Conte Amendment directs EPA to designate as nonattainment without mention of any request from the affected state, and does not limit EPA's pre-existing authority to attach regulatory consequences to any initial nonattainment redesignation. The relevant legislative history is discussed above in Supplemental Information Section II.B. This interpretation differs from the second interpretation discussed above on the basis of the assumption that the Congress would not have subjected nonattainment areas with approved Part D SIPs to further obligations without express debate on that subject, and that nonattainment areas without approved Part D SIPs are still subject to Part D obligations under the Clean Air Act prior to Mitchell-Conte.

D. Relative Effects of Nonattainment Designations Under the Various Options

Nonattainment designations for all areas measuring or contributing to violations of the ozone or CO NAAQS, and the application (or reapplication) of Part D's provisions to all such areas (discussed in Section II.B), would restart the planning and sanctions process. All areas measuring or contributing to NAAQS violations would be subject to the same control requirements and forcing functions (i.e., the potential application of the same array of sanctions).

By contrast, nonattainment designations without regulatory consequences, discussed in Section II.A, would not restart the planning and sanctions process.

III. Proposed Designations as Nonattainment Pursuant to the Mitchell-Conte Amendment

The EPA today proposes to designate those areas listed in the following Tables A and B as nonattainment for ozone and carbon monoxide, respectively. These designations, upon promulgation, either will be set forth in a supplement to existing 40 CFR Part 81, or will modify that existing nonattainment list. After receiving comment as to Mitchell-Conte's relation to Clean Air Act. Section 107, EPA will determine how to codify these designations pursuant to the Mitchell-Conte Amendment.

A. Air Quality Data

1. Ozone

The ambient air quality standard for ozone is 0.12 parts per million (ppm). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1. 40 CFR 50.9. 40 CFR Part 50, Appendix H (1987) contains the method for calculating the expected exceedances. To evaluate an area's attainment status, EPA uses the most recent 3-year period of air quality data. This period is consistent with the statistical form of the ozone standard.

The air quality data used for purposes of this notice are from calendar years 1985 through 1987 and thus are the most current available. EPA's Post-87 Policy proposal contains a somewhat different list of areas violating the ozone NAAQS, because it reflects the calendar years 1984 through 1986. See 52 FR 45100–45101.[5]

2. Carbon Monoxide

The ambient air quality standards for carbon monoxide are 9 ppm for an 8-hour average concentration not to be exceeded more than once per year, and 35 ppm for a 1-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 (1987). A violation is more than one exceedance of the standard in a year. However, to determine if an area has met the CO NAAQS, EPA uses the most recent 2-year period of air quality data. The EPA looks at data from the most recent 2-year period to ensure that attainment shown in 1 year is supported by air quality data for the second year and not merely a 1-year aberration.

The EPA reviewed CO data for calendar years 1986 through 1987 for purposes of this notice. EPA's Post-87 Policy proposal contains a somewhat different list of areas violating the CO NAAQS, because it reflects the calendar years 1985 through 1986. See 52 FR 45101–45103.[5]

B. Geographic Areas

The March 1978 nonattainment designations typically were limited to the "urbanized" counties in the metropolitan areas. In some instances, only portions of counties were included. As stated in its post-1987 policy proposal, EPA believes that the entire metropolitan area contributes to nonattainment measured anywhere within the area, and that attainment can be realized only through accounting for and controlling the emissions throughout the area. See 52 FR 45055. Consistent with its November 1987 policy proposal, today's rulemaking notice includes the entire metropolitan area as the area designated to nonattainment for both ozone and CO. The EPA will use the defined metropolitan statistical area (MSA) [7] or, where applicable, consolidated metropolitan statistical area (CMSA) for purposes of defining the planning area.

By definition MSA/CMSA's contain one or more large urban centers together with adjacent communities that have a high degree of social and economic interaction. The inclusion of outlying areas within a MSA/CMSA is based upon combinations of population density and percentage of commuters to the urban centers. These criteria coincide with the typical inventory and spacial distribution of emissions of CO, and the generation of volatile organic compounds (VOC), oxides of nitrogen (NO_x) and the subsequent formation of ozone.

Specific to proposed CO nonattainment areas, and consistent with its November 1987 proposed policy, EPA acknowledges that in certain areas, the ambient concentrations of CO may be attributable to localized traffic problems, or other "hotspots." In such cases, EPA will consider adjustments to the MSA/CMSA for purposes of designating the nonattainment area, but only upon an adequate and specific showing by the state that an adjusted area reflects the nature of the nonattainment problem and is consistent with its likely solution.[8]

For both ozone and area-wide CO, EPA recognizes that there may be logical exceptions to the MSA/CMSA planning area. For example, a MSA/CMSA may contain a large mountain range that physically divides the area into two or more planning areas, or a very large county with very sparse population in the portions of the county furthest from the urban core. Where such conditions exist, it may be more realistic to either adjust the size of the area or, in the case of multiple areas, require each of the areas involved to

[5] Seven areas in the November 1987 notice's list of violators of the ozone NAAQS now meet that NAAQS: 15 areas which were in attainment as of December 31, 1986 are now in violation of the NAAQS. Overall, the number of areas not attaining the ozone NAAQS is 98 in Table A of today's proposal, and 62 in the November 1987 notice.

[6] Two areas in the November 1987 notice's list of violators of the CO NAAQS now meet that NAAQS; 4 areas which were in attainment as of December 31, 1986 are now in violation of the NAAQS. Overall, the number of areas not attaining the CO NAAQS is 39 in Table B to today's proposal, and 35 in the November 1987 notice.

[7] MSA/CMSA's are defined by the Office of Management and Budget (OMB). The MSA/CMSA's used in this Notice are those defined by OMB as of June 30, 1986.

[8] See 52 FR 45058 for a discussion of CO modeling requirements and hotspot determinations.

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commence its own distinct planning and control activities as needed to bring about attainment in the respective areas. Therefore, EPA will consider alternatives to MSA/CMSA's as the designated nonattainment areas or the planning areas where significant topography or other physical impediments exist. Furthermore, consistent with its post-1987 policy proposal, today's rulemaking notice proposes that, where the boundaries of the previous planning area (under Part D) extend beyond the MSA/CMSA boundaries, this extended area will be designated nonattainment.

EPA specifically requests comments on the criteria which EPA should use in defining both ozone and CO nonattainment areas, particularly with regard to such special circumstances as discussed immediately above.

C. Identification of Areas Proposed for Designation as Nonattainment Pursuant to the Mitchell-Conte Amendment

This notice proposes nonattainment designations for all areas nationwide that are not attaining the ozone or CO NAAQS. EPA is today proposing nonattainment designations only for those areas specifically listed in Tables A and B of this notice. Unless otherwise noted, whole counties are listed.

The designation status of all other areas remains unchanged. Any area which is currently designated nonattainment, but which is not on the Mitchell-Conte list, retains its nonattainment status until the state requests redesignation as attainment and follows the appropriate policy requirements.

IV. Solicitation of Comments Regarding Proposed Nonattainment Designations and Alternative Regulatory Consequences of Such Designations

EPA solicits comments on: (1) its proposed rulemaking, which identifies as nonattainment those areas which have failed to attain the ozone or CO NAAQS; and (2) its discussion of alternative regulatory consequences of such designations under the Mitchell-Conte Amendment. EPA will consider timely comments before it takes final action on this proposal.

V. Miscellaneous

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action is not major. The proposed designations only classify areas as to the status of attainment of the ozone or CO NAAQS; this rulemaking portion does not specify the planning or sanction provisions which apply following promulgation of those designations. The discussion of alternative interpretations of the Mitchell-Conte Amendment, in turn, is only a preliminary step in formulating a post-1987 policy, which itself will constitute an advance notice of how EPA intends, in subsequent rulemakings on State Implementation Plan (SIP) submittals, to judge the adequacy of states' efforts to plan for attainment of the ozone and CO NAAQS. Through its proposed designations and its discussion of alternatives, EPA is not prescribing the specific plans that states ultimately will have to adopt to comply with the applicable statutory requirements.

Under Executive Order 12612, EPA must determine whether a rule has federalism implications, namely, substantial impacts on the states, on the relationship between the U.S. and the states, or on the distribution of power between the various levels of government. The Executive Order also provides that a federal agency should refrain from national regulation which lacks clear statutory or constitutional authority. An agency must prepare a Federalism Assessment for a rule with sufficient federalism implications. EPA has determined that the proposed rulemaking to designate areas as nonattainment, and the discussion of possible regulatory consequences of Mitchell-Conte designations, have federalism implications.

The federalism Executive Order defines policies (including regulations) that have federalism implications as those "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." By this definition, the policies embodied in this proposed regulation have federalism implications. All three alternatives involve the federal government taking appropriate steps to designate nonattainment areas in the absence of state requests as clearly required by the Mitchell-Conte Amendment. Reinstituting Part D planning requirements in the absence of a state's request to do so, as required by the interpretations presented in Supplemental Information Sections II.B and C, would have greater federalism implications. To understand the significance of the federalism implications on the various roles of local, state and federal governments in air quality management, and in particular to the Mitchell-Conte Amendment, EPA specifically solicits comments on today's notice.

EPA believes that the Mitchell-Conte Amendment obligates it to "take appropriate steps to designate those areas failing to attain [the CO or ozone NAAQS] as nonattainment areas." The rulemaking proposal is based on air quality data collected by the states. All interested parties, including state and local agencies, may submit comments as to why any area should not be classified as nonattainment, or as to whether adjustments should be made in the geographic area designated as nonattainment. In turn EPA's discussion of the regulatory consequences of Mitchell-Conte designations does not require any action by the states.

EPA has submitted today's notice to the Office of Management and Budget (OMB) for review. Any written comments from OMB to EPA are available for public inspection in the docket.

Pursuant to 5 U.S.C. 605(b), I hereby propose to certify that this action will not have a significant economic impact on a substantial number of small entities because this action proposes to classify areas regarding their air quality attainment status for the purpose of deciding which existing statutory requirements apply, as opposed to creating new requirements applicable directly to small entities.

List of Subjects in 40 CFR Part 81

Air pollution control, ozone, carbon monoxide.

Authority: Pub. L. 100-202; 42 U.S.C. 7501-7508.

Date: May 28, 1988.

Lee M. Thomas,

Administrator.

TABLE A.—AREAS PROPOSED TO BE DESIGNATED NONATTAINMENT FOR OZONE

State Area County

Alabama

Birmingham, AL
- Blount Co
- Jefferson Co
- St Clair Co
- Shelby Co
- Walker Co

Montgomery, AL
- Autauga Co
- Elmore Co
- Montgomery Co

Arizona

Phoenix, AZ
- Maricopa Co

Arakansas

Memphis, TN-AR-MS
- Crittenden Co

California

Bakersfield, CA
- Kern Co

Fresno, CA
- Fresno Co
- Kings Co [1]

Los Angeles-Anaheim-Riverside, CA
- Los Angeles Co
- Orange Co
- Riverside Co
- San Bernardino Co
- Ventura Co

Modesto, CA
- Stanislaus Co

Sacramento, CA
- El Dorado Co [2]
- Placer Co [2]
- Sacramento Co
- Yolo Co

San Diego, CA
- San Deigo Co

San Francisco-Oakland-San Jose, CA [3]
- Alameda Co
- Contra Costa Co
- Marin Co
- Napa Co
- San Francisco Co
- San Mateo Co
- Santa Clara Co
- Solano Co
- Sonoma Co

Santa Barbara-Santa Maria-Lompoc, CA
- Santa Barbara Co

Stockton, CA
- San Joaquin Co

Visalia-Tulare-Porterville, CA
- Tulare Co

Connecticut (Entire State)

Hartford-New Britain-Middletown, CT

New York-Northern New Jersey-Long Island, NY-NJ-CT (CT Portion)

New Haven-Meriden, CT

New London-Norwich, CT-RI (CT portion)

Waterbury, CT

Non MSA Areas [1] (In Previous Planning Areas)

Delaware

Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
- New Castle Co
- Kent Co [1]

District Of Columbia (Entire District)

Washington, DC-MD-VA

Florida

Jacksonville, FL
- Clay Co
- Duval Co
- Nassau Co
- St Johns Co

Miami-Fort Lauderdale, FL
- West Palm Beach-Boca Raton-Delray Beach, FL
- Broward Co
- Dade Co
- Palm Beach Co [2]

Tampa-St. Petersburg-Clearwater, FL
- Hernando Co
- Hillsborough Co
- Pasco Co
- Pinellas Co

Georgia

Atlanta, GA
- Barrow Co
- Butts Co
- Cherokee Co
- Clayton Co
- Cobb Co
- Coweta Co
- De Kalb Co
- Douglas Co
- Fayette Co
- Forsyth Co
- Fulton Co
- Gwinnett Co
- Henry Co
- Newton Co
- Paulding Co
- Rockdale Co
- Spalding Co
- Walton Co

Illinois

Chicago-Gary-Lake County, IL-IN-WI
- Cook Co
- Du Page Co
- Grundy Co
- Kane Co
- Kendall Co
- Lake Co
- Mc Henry Co
- Will Co

St Louis, MO-IL
- Clinton Co
- Jersey Co
- Madison Co
- Monroe Co
- St Clair Co

Indiana

Chicago-Gary-Lake County, IL-IN-WI
- Lake Co
- Porter Co

Cincinnati-Hamilton, OH-KY-IN
- Dearborn Co

Indianapolis, IN
- Boone Co
- Hamilton Co
- Hancock Co
- Hendricks Co
- Johnson Co
- Marion Co
- Morgan Co
- Shelby Co

Louisville, KY-IN
- Clark Co
- Floyd Co
- Harrison Co

Kentucky

Cincinnati-Hamilton, OH-KY-IN
- Boone Co
- Campbell Co
- Kenton Co

Huntington-Ashland, WV-KY-OH
- Boyd Co
- Carter Co
- Greenup Co

Lexington-Fayette, KY
- Bourbon Co
- Clark Co
- Fayette Co
- Jessamine Co
- Scott Co
- Woodford Co

Louisville, KY-IN
- Bullitt Co
- Jefferson Co
- Oldham Co
- Shelby Co

Louisiana

Baton Rouge, LA
- Ascension Par
- East Baton Rouge Par
- Livingston Par
- West Baton Rouge Par
- Iberville Par [1]
- St James Par [1]
- Pointe Coupee Par [1]

Maine

Portland, ME
- Cumberland Co
- York Co (All Except)
  - Berwick town
  - Eliot town
  - Kittery town
  - North Berwick town
  - Ogunquit town
  - South Berwick town
  - Wells town
  - York town

Portsmouth-Dover-Rochester, NH-ME
- York Co (Part)
  - Berwick town
  - Eliot town
  - Kittery town
  - North Berwick town
  - Ogunquit town
  - South Berwick town
  - Wells town
  - York town

Hancock Co, ME

Kennebec Co, ME

Knox Co, ME

Lincoln Co, ME

Sagadahoc Co, ME [1]

Maryland

Baltimore, MD
- Anne Arundel Co
- Baltimore Co
- Carroll Co
- Harford Co
- Howard Co
- Baltimore

Queen Annes Co
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
Cecil Co
Washington, DC-MD-VA
Calvert Co
Charles Co
Frederick Co
Montgomery Co
Prince Georges Co

Massachusetts (Entire State)

Boston-Lawrence-Salem, MA-NH (MA Portion)
Fitchburg-Leominster, MA
New Bedford, MA
Pittsfield, MA
Springfield, MA
Worcester, MA
Providence-Pawtucket-Fall River, RI-MA (MA Portion)
Non MSA Areas [1] (In Previous Planning Areas)

Michigan

Detroit-Ann Arbor, MI
Lapeer Co
Livingston Co
Macomb Co
Monroe Co
Oakland Co
St Clair Co
Washtenaw Co
Wayne Co
Grand Rapids, MI
Kent Co
Ottawa Co
Muskegon, MI
Muskegon Co

Mississippi

Memphis, TN-AR-MS
De Soto Co

Missouri

St Louis, MO-IL
Franklin Co
Jefferson Co
St Charles Co
St Louis Co
St Louis

New Hampshire

Portsmouth-Dover-Rochester, NH-ME
Rockingham Co (Part)
Exeter Town
Greenland town
Hampton town
New Castle town
Newfields town
Newington town
Newmarket town
North Hampton town
Portsmouth city
Rye town
Stratham town
Kinsington town [1]
South Hampton town [1]
Hampton Falls town [1]
Strafford Co (Part)
Barrington town
Dover city
Durham town
Farmington town
Lee town
Madbury town
Milton town
Rochester city
Rollinsford town
Somersworth city
Boston-Lawrence-Salem, MA-NH
Rockingham Co (Part)
Atkinson town
Brentwood town
Danville town
Derry town
East Kingston town
Hampstead town
Kingston town
Newton town
Plaistow town
Salem town
Sandown town
Seabrook town
Windham town
Londonderry town
Hillsborough Co (Part)
Pelham town
Amherst town
Brookline town
Hollis town
Hudson town
Litchfield town
Merrimack town
Milford town
Mont Vernon town
Nashua city
Wilton town

New Jersey

Allentown-Bethlehem, PA-NJ
Warren Co
Atlantic City, NJ
Atlantic Co
Cape May Co
New York-Northern New Jersey-Long Island, NY-NJ-CT
Bergen Co
Essex Co
Hudson Co
Hunterdon Co
Middlesex Co
Monmouth Co
Morris Co
Ocean Co
Passaic Co
Somerset Co
Sussex Co
Union Co
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
Burlington Co
Camden Co
Cumberland Co
Gloucester Co
Mercer Co
Salem Co

New York

New York-Northern New Jersey-Long Island, NY-NJ-CT
Bronx Co
Kings Co
Nassau Co
New York Co (Manhattan)
Orange Co
Putnam Co
Queens Co
Richmond Co
Rockland Co
Suffolk Co
Westchester Co
Jefferson Co, NY

North Carolina

Charlotte-Gastonia-Rock Hill, NC-SC
Cabarrus Co
Gaston Co
Lincoln Co
Mecklenburg Co
Rowan Co
Union Co
Raleigh-Durham, NC
Durham Co
Franklin Co
Orange Co
Wake Co
Granville Co [1]

Ohio

Cincinnati-Hamilton, OH-KY-IN
Butler Co
Clermont Co
Hamilton Co
Warren Co
Cleveland-Akron-Lorain, OH
Cuyahoga Co
Geauga Co
Lake Co
Lorain Co
Medina Co
Portage Co
Summit Co
Huntington-Ashland, WV-KY-OH
Lawrence Co
Parkersburg-Marietta, WV-OH
Washington Co

Oklahoma

Tulsa, OK
Creek Co
Osage Co
Rogers Co
Tulsa Co
Wagoner Co

Oregon

Portland-Vancouver, OR-WA
Clackamas Co
Multnomah Co
Washington Co
Yamhill Co

Pennsylvania

Allentown-Bethlehem, PA-NJ
Carbon Co

Lehigh Co
Northampton Co
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
Bucks Co
Chester Co
Delaware Co
Montgomery Co
Philadelphia Co
Pittsburgh-Beaver Valley, PA
Allegheny Co
Beaver Co
Fayette Co
Washington Co
Westmoreland Co
Butler Co [1]
Armstrong Co [1]

Rhode Island (Entire State)

Providence-Pawtucket-Fall River, RI-MA (RI Portion)
New London-Norwich, CT-RI (RI Portion)
Non MSA Areas [1] (In Previous Planning Areas)

South Carolina

Charlotte-Gastonia-Rock Hill, NC-SC
York Co

Tennessee

Nashville, TN
Cheatham Co
Davidson Co
Dickson Co
Robertson Co
Rutherford Co
Sumner Co
Williamson Co
Wilson Co
Memphis, TN-AR-MS
Shelby Co
Tipton Co

Texas

Beaumont/Port Arthur, TX
Hardin Co
Jefferson Co
Orange Co
Dallas-Fort Worth, TX
Collin Co
Dallas Co
Denton Co
Ellis Co
Johnson Co
Kaufman Co
Parker Co
Rockwall Co
Tarrant Co
El Paso, TX
El Paso Co
Houston-Galveston-Brazoria, TX
Brazoria Co
Fort Bend Co
Galveston Co
Harris Co
Liberty Co
Montgomery Co
Waller Co
Chambers Co [1]

Utah

Salt Lake City-Ogden, UT
Davis Co
Salt Lake Co
Weber Co

Virginia

Norfolk/Virginia Beach-Newport News, VA
Gloucester Co
James City Co
York Co
Chesapeake
Hampton
Newport News
Norfolk
Poquoson
Portsmouth
Suffolk
Virginia Beach
Williamsburg
Richmond-Petersburg, VA
Charles City Co
Chesterfield Co
Dinwiddie Co
Goochland Co
Hanover Co
Henrico Co
New Kent Co
Powhatan Co
Prince George Co
Colonial Heights
Hopewell
Petersburg
Richmond
Washington, DC-MD-VA
Arlington Co
Fairfax Co
Loudoun Co
Prince William Co
Stafford Co
Alexandria
Fairfax
Falls Church
Manassas
Manassas Park

Washington

Portland-Vancouver, OR-WA
Clark Co

West Virginia

Huntington-Ashland, WV-KY-OH
Cabell Co
Wayne Co
Parkersburg-Marietta, WV-OH
Wood Co

Wisconsin

Chicago-Gary-Lake County, IL-IN-WI
Kenosha Co
Milwaukee-Racine, WI
Milwaukee Co
Ozaukee Co
Racine Co
Washington Co
Waukesha Co
Sheboygan, WI
Sheboygan Co
Manitowoc Co [1]
Kewaunee Co, WI

[1] The counties (or cities or townships) are either (a) part of the previous planning area but not part of the CMSA (or MSA) or (b) counties adjacent to the CMSA (or MSA) and measuring violations.
[2] The Lake Tahoe area is proposed to be excluded from the designation because it is physically separated from the Sacramento area by a mountain range. The exact description of the Lake Tahoe area is described in 40 CFR 81.275.
[3] Santa Cruz Co. in California was not included because it is physically separated from the Bay Area by a mountain range.

TABLE B.—AREAS PROPOSED TO BE DESIGNATED NONATTAINMENT FOR CARBON MONOXIDE

State Area County

Alaska

Anchorage, AK
Anchorage Borough
North Star Borough, AK (Fairbanks)

Arizona

Phoenix, AZ
Maricopa Co

Arkansas

Memphis, TN-AR-MS
Crittendon Co

California

Chico, CA
Butte Co
Fresno, CA
Fresno, Co
Los Angeles-Anaheim-Riverside, CA [1]
Los Angeles Co
Orange Co
Riverside Co
San Bernardino Co
Modesto, CA
Stanislaus Co
Sacramento, CA
El Dorado Co
Placer Co
Sacramento Co
Yolo Co
San Francisco-Oakland-San Jose CA [2]
Alameda Co
Contra Costa Co
Marin Co
Napa Co
San Francisco Co
San Mateo Co
Santa Clara Co
Solano Co
Sonoma Co

Colorado

Colorado Springs, Co
El Paso Co
Denver-Boulder, CO
Adams Co
Arapahoe Co
Boulder Co

Denver Co
Douglas Co
Jefferson Co
Fort Collins-Loveland, CO
Larimer Co
Greelly, CO
Weld Co

Connecticut

New York-Northern New Jersey-Long Island, NY-NJ-CT
Fairfield County
New Haven County (Part)
Ansonia city
Beacon Falls town
Derby city
Milford city
Oxford town
Seymour town
Litchfield County (Part)
Bridgewater town
New Milford town
Hartford-New Britain-Middletown, CT
Hartford County (Part)
Bristol city
Burlington town
Avon town
Bloomfield town
Canton town
East Granby town
East Hartford town
East Windsor town
Enfield town
Farmington town
Glastonbury town
Granby town
Hartford city
Manchester town
Marlborough town
Newington town
Rocky Hill town
Simsbury town
South Windsor town
Suffield town
West Hartford town
Wethersfield town
Windsor town
Windsor Locks town
Berlin town
New Britain city
Plainville town
Southington town
Litchfield County (Part)
Plymouth town
Barkhamsted town
New Hartford town
New London County (Part)
Colchester town
Tolland County (Part)
Andover (Part)
Bolton town
Columbia town
Coventry town
Ellington town
Hebron town
Somers town
Stafford town
Tollard town
Vernon town
Willington town
Middlesex County (Part)
Cromwell town
Durham town
East Hampton town
Haddam town
Middlefield town
Middleton city
Portland town
East Haddam town
Non CMSA Portion of Hartford [4] (Part of Previous Planning Area AQCR 42)
Litchfield Country (Part)
Bethlehem town
Thomaston town
Watertown town
Woodbury town
New Haven County (Part)
Bethany town
Branford town
Cheshire town
East Haven town
Guilford town
Hamden town
Madison town
Meriden city
Middlebury town
Naugatuck town
New Haven city
North Bradford town
North Haven town
Orange town
Prospect town
Southbury town
Wallingford town
Waterbury city
West Haven city
Wolcott town
Woodbridge town

District of Columbia (Entire District)

Washington, DC-MD-VA

Idaho

Boise City, ID
Ada Co

Illinois

St Louis, MO-IL
Clinton Co
Jersey Co
Madison Co
Monroe Co
St Clair Co

Kansas

Wichita, KS
Butler Co
Harvey Co
Sedgwick Co

Maryland

Baltimore, MD
Anne Arundel Co
Baltimore Co
Carroll Co
Harford Co
Howard Co
Baltimore
Queen Annes Co
Washington, DC-MD-VA
Calvert Co
Charles Co
Frederick Co
Montgomery Co
Prince Georges Co

Massachusetts

Boston-Lawrence-Salem, MA-NH (MA portion)
New Bedford, MA
Non CMSA/MSA [5] (Previous Planning Areas)
Above Areas Include:
Essex County
Middlesex County
Plymouth County
Suffolk County
Barnstable County
Dukes County
Nantucket County
Norfolk County
Bristol County
Worcester County (Part)
Berlin town
Bolton town
Harvard town
Hopedale town
Lancaster town
Mendon town
Milford town
Southborough town
Upton town
Springfield, MA
Pittsfield, MA
Non MSA [5] (Previous Planning Areas)
Above Areas Include:
Hampden County
Hampshire County
Franklin County
Berkshire County

Michigan

Detroit-Ann Arbor, MI
Lapeer Co
Livingston Co
Macomb Co
Monroe Co
Oakland Co
St Clair Co
Washtenaw Co
Wayne Co

Minnesota

Duluth, MN-WI
St Louis Co
Minneapolis-St. Paul, MN-WI
Anoka Co
Carver Co
Chisago Co
Dakota Co
Hennepin Co
Isanti Co
Ramsey Co
Scott Co

Washington Co
Wright Co
St Cloud, MN
Benton Co
Shelburne Co
Stearns Co

Mississippi

Memphis, TN-AR-MS
De Soto Co

Missouri

Springfield, MO
Christian Co
Greene Co
St Louis, MO-IL
Franklin Co
Jefferson Co
St Charles Co
St Louis Co
St Louis

Montana

Great Falls, MT
Cascade Co
Missoula Co, MT

Nebraska

Lincoln, NE
Lancaster Co

Nevada

Las Vegas, NV
Clark Co
Reno, NV
Washoe Co

New Hampshire

Boston-Lawrence-Salem, MA-NH
Rockingham County (Part)
Atkinson town
Brentwood town
Danville town
East Kingston town
Hampstead town
Kingston town
Newton town
Plaistow town
Sandown town
Seabrook town
Derry town
Salem town
Windham town
Londonderry town
Hillsborough County (Part)
Pelham town
Amherst town
Hollis town
Hudson town
Litchfield town
Merrimack town
Milford town
Nashua city
Brookline town
Mount Vernon town
Wilton town
Manchester, NH
Hillsborough County (Part)
Bedford town
Goffston town
Manchester city
Merrimack County (Part)
Allenstown town
Hooksett town
Rockingham County (Part)
Auburn town
Candia town

New Jersey

New York-Northern New Jersey-Long Island, NY-NJ-CT
Bergen Co
Essex Co
Hudson Co
Hunterdon Co
Middlesex Co
Monmouth Co
Morris Co
Ocean Co
Passaic Co
Somerset Co
Sussex Co
Union Co

New Mexico

Albuquerque, NM
Bernalillo Co

New York

New York-Northern New Jersey-Long Island, NY-NJ-CT
Bronx Co
Kings Co
Nassau Co
New York Co (Manhattan)
Orange Co
Putnam Co
Queens Co
Richmond Co
Rockland Co
Suffolk Co
Westchester Co
Syracuse, NY
Madison Co
Onondaga Co
Oswego Co

North Carolina

Raleigh-Durham, NC
Durham Co
Franklin Co
Orange Co
Wake Co

Ohio

Cleveland-Akron-Lorain, OH
Cuyahoga Co
Geauga Co
Lake Co
Lorain Co
Medina Co
Portage Co
Summit Co
Steubenville-Weirton, OH-WV
Jefferson Co

Oklahoma

Oklahoma City, OK
Canadian Co
Cleveland Co
Logan Co
McClain Co
Oklahoma Co
Pottawatomie Co

Oregon

Josephine Co, OR
Medford, OR
Jackson Co
Portland-Vancouver, OR-WA
Clackamas Co
Multnomah Co
Washington Co
Yamhill Co

Pennsylvania

Pittsburgh-Beaver Valley, PA
Allegheny Co
Beaver Co
Fayette Co
Washington Co
Westmoreland Co

Tennessee

Memphis, TN-AR-MS
Shelby Co
Tipton Co
Nashville, TN
Cheatham Co
Davidson Co
Dickson Co
Robertson Co
Rutherford Co
Sumner Co
Williamson Co
Wilson Co

Texas

El Paso, TX
El Paso Co
Houston-Galveston-Brazoria, TX
Brazoria Co
Fort Bend Co
Galveston Co
Harris Co
Liberty Co
Montgomery Co
Waller Co

Utah

Provo-Orem, UT
Utah Co
Salt Lake City-Ogden, UT
Davis Co
Salt Lake Co
Weber Co

Virginia

Washington, DC-MD-VA
Arlington Co
Fairfax Co
Loudoun Co
Prince William Co
Stafford Co
Alexandria
Fairfax

Falls Church
Manassas
Manassas Park

Washington

Portland-Vancouver, OR-WA
Clark Co
Seattle-Tacoma, WA
King Co
Pierce Co
Snohomish Co
Spokane, WA
Spokane Co
Yakima, WA
Yakima Co

West Virginia

Steubenville-Weirton, OH-WV
Brooke Co
Hancock Co

Wisconsin

Duluth, MN-WI
Douglas Co
Minneapolis-St. Paul, MN-WI
St Croix Co

[FR Doc. 88-12304 Filed 6-3-88; 8:45 am]

BILLING CODE 6560-50-M

[1] Ventura Co. in California was not included it is physically seperated from the South Coast Air Basin by a mountain range.

[2] Santa Cruz Co. in California was not included because it is physically seperated from the Bay Area by a mountain range.

[3] The counties (or cities or townships) are part of the previous planning area but not part of the CMSA and MSA.

federal register

Monday
June 6, 1988

Part III

Department of Transportation

Research and Special Programs Administration

City of Maryland Heights (Missouri) Application for Inconsistency Ruling; Public Notice and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-43]

City of Maryland Heights (Missouri) Application for Inconsistency Ruling; Public Notice and Invitation to Comment

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The City of Maryland Heights, Missouri, has applied for an administrative ruling determining whether its requirement for a $1,000 bond for each vehicle carrying hazardous and other wastes is inconsistent with the Hazardous Materials Transportation Act (HMTA), and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before July 20, 1988, and rebuttal comments received on or before September 16, 1988, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-43. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. Michael K. Moran, Building Commissioner, City of Maryland Heights, 212 Millwell Drive, Maryland Heights, MO 63043, and that fact certified to at the time comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Moran at the address specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202-366-4392.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On May 13, 1988, Michael K. Moran, Building Commissioner of the City of Maryland Heights, Missouri, filed an inconsistency ruling application. That application requested a ruling concerning the consistency with the HMTA of the following prohibition in section I of the City's Ordinance 88-378:

> No person shall haul sewage, sludge, human excrement, special, hazardous or infectious wastes without providing a bond in the amount of One Thousand Dollars ($1,000) per vehicle for each vehicle, hauling or to haul sewage, sludge, human excrement, special, hazardous or infectious waste.

The City has requested that this section be reviewed for consistency with the insurance and indemnification requirements of the HMTA. OHMT will consider its consistency with all relevant provisions of both the HMTA and the HMR.

On the issue of consistency, the City states:

> We believe this bonding requirement is not in conflict with the Hazardous Materials Transportation Act inasmuch as it imposes an additional requirement upon haulers; it does not exempt, or attempt to exempt them from the requirements of the Hazardous Materials Transportation Act.

3. Public Comment

Comments should be restricted to the issue of whether the requirement in Section 1 of Ordinance 88-378 of the City of Maryland Heights, Missouri, for a $1,000 bond for each vehicle carrying hazardous and other wastes is inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Among the issues to be addressed are: Is there any conflict with HMTA or HMR requirements? How great a burden or obstacle is the $1,000 per vehicle bond? Is any such "obstacle" an obstacle to the HMTA or HMR or merely to transportation?

Commenters should note that the 49 CFR 387.15 insurance requirements for highway transportation of hazardous wastes and other hazardous materials were not issued under the HMTA and thus are irrelevant to this proceeding.

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, including the text of Ordinance 88-378, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Issued in Washington, DC, on May 31, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-12627 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-60-M

federal register

Monday
June 6, 1988

Part IV

Environmental Protection Agency

40 CFR Parts 264, 265, and 270

Delay of the Closure Period for Hazardous Waste Management Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, and 270

[FRL-3334-2]

Delay of the Closure Period for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend portions of the closure requirements under Subtitle C of the Resource Conservation and Recovery Act (RCRA) applicable to owners and operators of certain types of hazardous waste land disposal facilities. The proposed amendments would allow, under limited circumstances, a landfill or surface impoundment to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This proposed rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units.

DATE: Comments must be submitted on or before July 21, 1988.

ADDRESS: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-301) (WH-562), 401 M Street SW., Washington, DC 20460.

Place the docket #F-88-DCPP-FFFFF on your comments. For additional details about the OSW docket see the "OSW Docket" section in "Supplementary Information".

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC, or Sharon Frey, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-6725.

SUPPLEMENTARY INFORMATION: The OSW docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460.

The docket is open from 9:00 to 4:00 Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call 475-9327 for appointments. The public may copy materials at the cost of $.15/page. Charges under $15.00 are waived.

Preamble Outline

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II. Background
III. Synopsis of Proposed Rule
A. Rationale for Proposed Rule
B. Summary of Proposed Rule
IV. Section-by-Section Analysis of Proposed Rule
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B. Part 264 Standards
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a. Demonstrations for Extensions to Closure Deadlines
b. Changes to Facility Plans
c. Exposure Assessment Information
d. Permit Revisions
2. Surface Impoundments that Do Not Meet Liner and Leachate Collection System Requirements
a. Contingent Corrective Measures Plan
b. Alternatives
(1) Alternative 1—Removal of Hazardous Wastes
(2) Alternative 2—Flushing Hazardous Wastes
(a) Sludge Removal and Flushing of Liquids
(b) Relationship to Mixture Rule
(3) Alternative 3—Leaving Hazardous Wastes in Place
c. Corrective Action Requirements
(1) Disposal Impoundments
(2) Surface Impoundments at Which Wastes Are Removed
(a) Releases at the Time of the Final Receipt of Hazardous Wastes
(b) Releases after the Final Receipt of Hazardous Wastes
d. Evaluating Progress of Corrective Action
3. Notification of Closure
C. Part 270 Permit Modification Requirements
D. Conforming Changes
1. Conforming Changes to Part 265 Interim Status Requirements
a. Initial Demonstrations
b. Corrective Action
c. Applicability to New Interim Status Units
2. Other Conforming Changes to Parts 264 and 265
V. State Authorization
A. Applicability of Rules in Authorized States
B. Effect of Proposed Rule on State Authorizations
VI. Executive Order 12291
VII. Paperwork Reduction Act
VIII. Regulatory Flexibility Act
List of Subjects

I. Authority

These requirements are proposed under the authority of sections 1006, 2002(a), 3004, 3005, and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6926).

II. Background

Section 3004 of RCRA Subtitle C requires the Administrator of EPA to promulgate regulations establishing such performance standards applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TSDF to have a permit, and to establish requirements for permit applications. Recognizing that a period of time would be required to issue permits to all facilities, Congress created "interim status" in section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of carrying on operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued several sets of regulations to implement RCRA section 3004. These regulations include Part 264 (which provides standards for owners and operators of TSDFs that have been issued RCRA permits) and Part 265 (which provides standards for owners and operators of interim status TSDFs) of Title 40 of the *Code of Federal Regulations* (CFR). Subpart G within these two Parts addresses requirements for closing TSDFs and maintaining them after closure if necessary. The Subpart G requirements in both of these Parts, particularly the closure deadlines found in §§ 264.112, 265.112, 264.113, and 265.113, would be affected by the promulgation of today's proposal.

The requirements at §§ 264.113 and 265.113 were last amended on May 2, 1986 (51 FR 16422). Prior to that final rule, §§ 264.113(a) and 265.113(a) required the owner or operator to treat, remove from the site, or dispose of all hazardous wastes in accordance with the approved closure plan within 90 days after receiving the final volume of *hazardous* wastes (or for interim status facilities, within 90 days after approval of the closure plan, if that is later). Prior to the May 2, 1986, rules, §§ 264.113(b) and 265.113(b) also required the owner or operator to complete closure activities within 180 days after receiving the final volume of *wastes* (or approval of the closure plan). Preambles and supporting documents to the earlier rulemakings on May 19, 1980 and January 12, 1981 did not address the rationale for distinguishing between the deadlines for the final receipt of *hazardous* waste in §§ 264.113(a) and 265.113(a) and the final receipt of both hazardous and non-hazardous waste in the deadlines in §§ 264.113(b) and 265.113(b).

To make §§ 264.113(b) and 265.113(b) consistent with the deadlines in §§ 264.113(a) and 265.113(a), the Agency proposed, on March 19, 1985, that closure be completed within 180 days after the final receipt of *hazardous* wastes rather than after the final receipt of wastes (50 FR 11068). The changes to §§ 264.113(b) and 265.113(b) were promulgated as proposed on May 2, 1986 (51 FR 16422), following public comment. After promulgation of the May 2, 1986, amendments, lawsuits were filed challenging the requirement that closure be completed within 180 days after the final receipt of *hazardous* waste. The litigants, Union Carbide Corporation (Union Carbide) and the Chemical Manufacturers Association (CMA), contended that this change was inconsistent with the Congressional intent evidenced in the Hazardous and Solid Waste Amendments (HSWA) legislative history regarding closure of surface impoundments, and further that the change was unnecessary to protect human health and the environment, and that it would discourage waste minimization and other goals Congress expressed in HSWA.

Union Carbide and CMA were particularly concerned about the effect of the amended closure regulations on surface impoundments that ceased the receipt of hazardous wastes in compliance with section 3005(j) of RCRA. This section of the statute requires that all surface impoundments that had interim status on November 8, 1984, either satisfy certain minimum technological requirements (MTRs) (i.e., double liner, leachate collection system, and ground-water monitoring requirements) applicable to new surface impoundments, receive a variance from these requirements, or cease the receipt, storage or treatment of hazardous waste by November 8, 1988. The May 2, 1986, closure rule would require interim status surface impoundments that failed to meet MTRs by the November 8, 1988, deadline to close within 180 days, because November 8, by statute, would be the date of final receipt of hazardous waste for these units. Union Carbide and CMA, however, argue that the legislative history of HSWA explicitly indicates Congressional intent to allow disposal surface impoundments that stop receiving hazardous wastes to remain open and receive non-hazardous wastes after this deadline, even if they do not retrofit to satisfy the MTRs.

The legislative history of section 3005(j) of RCRA (130 *Cong. Rec.* S9182 (daily ed. July 25, 1984)) contains a brief discussion that indicates that the retrofitting requirements do not in themselves require the closure of an impoundment that ceases to receive hazardous wastes and that requiring such closure would not be proper if the management of the impoundment were protective of human health and the environment. In the preamble to the May 2, 1986, final rule, the Agency argued that, while the legislative history evidences that fact that section 3005(j) of RCRA itself does not mandate closure of an interim status surface impoundment that ceases to receive hazardous wastes, it leaves unimpaired EPA's pre-existing authority to establish by regulation additional closure requirements as necessary to protect human health and the environment. In other words, EPA concluded that the statute did not directly address the issue and did not constrain its discretion to promulgate closure regulations for surface impoundments subject to the retrofitting requirements. EPA concluded on a factual and policy-making basis that expeditiously closing hazardous waste surface impoundments after they stop receiving hazardous wastes was necessary to ensure protection of human health and the environment. The Agency primarily was concerned that, in certain circumstances, proper management of the facility might be continued which could lead to an increased possibility of releases and therefore risks to human health and the environment.

III. Synopsis of Proposed Rule

A. Rationale for Proposed Rule

Since the challenge to the May 2, 1986, final rule, EPA has been engaged in negotiations to settle the suit brought by Union Carbide and CMA. While no written settlement of this action has yet been signed, as a result of the discussions EPA now believes that it may not be necessary to require closure and termination of the receipt of nonhazardous wastes at all non-retrofitted surface impoundments. Under certain carefully controlled circumstances it may be possible for a nonretrofitted surface impoundment to continue to receive nonhazardous waste in manner that is protective of human health and the environment. EPA also believes that other types of land disposal units may be able to continue to accept nonhazardous wastes if they are similarly controlled. The types of controls that EPA deems necessary are discussed in detail in Part IV of this preamble.

There also are a number of sound policy reasons why it is desirable to allow units to delay closure to continue to receive nonhazardous waste, provided that it does not jeopardize protection of human health and the environment. First, the Agency is concerned that the existing closure deadlines could limit incentives for hazardous waste minimization. This would be inconsistent with the Agency's overall policies and goals as well as Congressional intent expressed in HSWA. For example, a generator with on-site hazardous waste storage, treatment, or disposal capacity might refrain from recycling wastes or modifying production processes to eliminate the generation of hazardous wastes, if such actions resulted in specific units no longer receiving hazardous wastes. In this case, the current closure rules would require the closure of that unit, even if it had remaining capacity useful for the management of nonhazardous waste.

Second, the land disposal prohibitions may require that owners and operators of land disposal units stop using the units for the management of certain hazardous wastes, e.g., wastes containing banned solvents. As a consequence, these requirements might trigger closure of the units, even if capacity remains for managing other hazardous wastes or nonhazardous wastes in an environmentally protective manner. Finally, the closure regulations could act as a disincentive to the delisting of a waste stream, if such delisting resulted in a triggering of the closure requirements.

In all of these cases, the Agency recognizes that closure of the unit while the unit has remaining capacity to receive nonhazardous wastes could disrupt facility operations or impose substantial economic burdens on the facility owner or operator. This is particularly likely in the case of treatment impoundments (such as wastewater treatment units) that serve as an integral part of an industrial waste management system, providing management for both hazardous and nonhazardous waste streams. The Agency continues to believe that, in general, units that cease the receipt of hazardous wastes should initiate closure in accordance with Parts 264 and 265 standards. However the Agency believes that, under certain conditions, closure activities can be deferred without increasing the risks to human health and the environment. For example, landfills which meet the permitting requirements to manage hazardous wastes should pose few additional risks to human health and the environment provided added nonhazardous wastes are compatible with previously disposed hazardous

wastes. Today's proposal attempts to promote these policy goals while continuing to protect human health and the environment by establishing specific applicability requirements, environmental controls and, the continued application of Subtitle C requirements to units wishing to remain open after the final receipt of hazardous wastes to receive nonhazardous wastes.

The Agency therefore is proposing to allow units that cease the receipt of hazardous wastes to delay closure, so that they may remain open to receive nonhazardous wastes provided that they meet the requirements of today's proposal in addition to current Subtitle C regulations. EPA considers these requirements discussed below to be consistent with the full set of regulatory and legislative requirements currently in place for units or facilities that accept hazardous waste.

B. Summary of Proposed Rule

Today's proposal would allow an owner or operator of a permitted or interim status surface impoundment or landfill in compliance with applicable requirements to remain open following the final receipt of hazardous waste to receive only non-hazardous wastes, if he additionally satisfies the specific conditions being proposed today, and continues to conduct operations in accordance with all applicable Subtitle C interim status and permit requirements. The requirements included in today's proposal vary with the type of unit, with additional conditions imposed on surface impoundments that do not meet the Part 264 liner and leachate collection system requirements. In general, however, the facility owner or operator would be required to operate under full permit requirements of 40 CFR Part 264, including corrective action requirements. Facilities currently in interim status which meet the requirements of today's proposal may defer closure while the permit application is being reviewed. In addition, surface impoundments that did not meet the liner and leachate collection system requirements would be required to remove all hazardous waste, or, if hazardous waste were not released, to discontinue the first indication of ground-water contamination.

Exhibit 1 shows requirements applicable to all owners or operators wishing to delay closure, regardless of the type of unit involved. The requirements for permitted and interim status facilities are basically the same; the differences are primarily procedural in nature. As Exhibit 1 illustrates, owners or operators wishing to keep units open would be required to seek a permit modification at least 120 days prior to the final receipt of hazardous wastes, or, for interim status facilities, to submit an amended Part B permit application (or a Part B application if not previously required) at least 180 days prior to the final receipt of hazardous wastes. (Owners or operators of units that received their final volume of hazardous wastes before the promulgation of this rule would be eligible to keep their units open if they submitted the appropriate demonstrations within 90 days after the notice of the final rule has been published in the *Federal Register*.)

BILLING CODE 6560-50-M

Exhibit 1

Requirements Applicable to All Facilities Wishing to Defer Closure

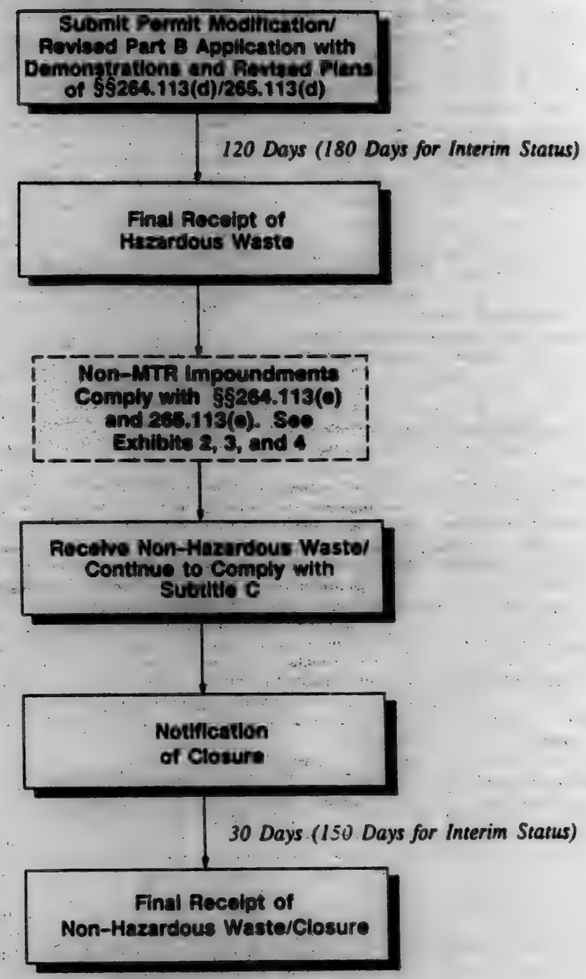

* Note: If a permit or permit modification is denied at any time, or interim status terminated for the affected unit, closure pursuant to §§ 264.113(a) and (b) or 265.113(a) and (b) must be initiated.

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The request for a permit modification or the amended Part B permit application must include a number of demonstrations, including ones showing that: (1) The unit has the existing design capacity to manage non-hazardous wastes; and (2) the non-hazardous wastes are not incompatible with any remaining wastes in the unit. As part of the permit modification or the amended Part B application, the owner or operator also must submit revised facility plans, including the waste analysis, ground-water monitoring, and closure and post-closure plans, and, if necessary, the closure and post-closure cost estimates and financial assurance to reflect changes associated with operating the unit to receive only non-hazardous wastes.

Owners or operators wishing to remain open following the final receipt of hazardous waste also must continue to comply with all Part 264 permit requirements (or Part 265 requirements until a permit has been issued), including ground-water monitoring and corrective action requirements and closure and post-closure care requirements. In addition, if the Regional Administrator determines that continued operation of the unit or facility will pose a substantial risk to human health and the environment, the unit would not be eligible to delay closure. Data collected pursuant to RCRA section 3019 and any other relevant information may be used by the Regional Administrator to make a determination of whether a substantial risk exists. Finally, units must be closed in accordance with the approved closure plan and the Subpart G regulations applicable to hazardous waste management units. Owners or operators must notify the Agency at least 30 days prior to the final receipt of non-hazardous wastes at that unit (or at least 120 days for interim status units without approved closure plans) and initiate closure activities in accordance with Subpart G regulations.

If a request to modify the permit to manage only non-hazardous wastes is denied, the permit is revoked at any time, a RCRA permit is denied for interim status facilities or interim status is otherwise terminated, the owner or operator must initiate closure following the final receipt of hazardous waste. Closure must be conducted in accordance with the approved closure plan and the deadlines currently in § 264.113 (a) and (b) or § 265.113 (a) and (b).

Today's proposal includes an additional set of requirements applicable to surface impoundments that do not satisfy the liner and leachate collection system requirements specified under HSWA or have not received a waiver from these requirements, but wish to remain open for non-hazardous waste management. For these impoundments, the Agency is proposing a combination of source control, accelerated corrective measures, and strict limitations on continued operations following the detection of a release to ground water. The Agency believes that compliance with these additional requirements and limitations when coupled with cessation of the receipt of hazardous wastes at these impoundments, will ensure the protection of human health and the environment. Exhibits 2, 3, and 4 show the additional requirements applicable to surface impoundments that do not meet the liner and leachate collection system requirements. These requirements, which are in addition to the requirements shown in Exhibit 1 and discussed above, are briefly summarized below.

In addition to these general requirements, all owners and operators of surface impoundments subject to section 3005(j) that do not satisfy the liner and leachate collection system requirement (Exhibits 2, 3, and 4) must provide a contingent corrective measures plan with their request to modify the permit (or, for interim status facilities, in their amended Part B permit application). This plan will ensure that corrective measures can be implemented promptly in the event of a release. (The contents of a contingent corrective measures plan are discussed in IV.E.2.a of today's preamble.)

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Exhibit 2

Surface Impoundment/Waste Removal Alternative with Release Detected Before/At Time of Final Receipt of Hazardous Waste

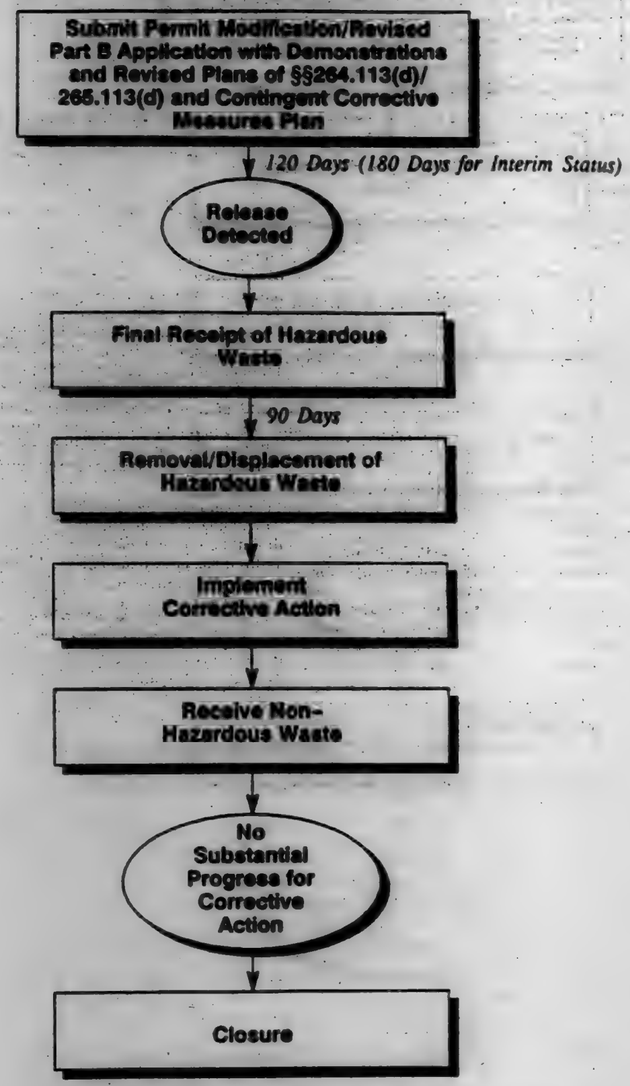

Exhibit 3

Surface Impoundment/Waste Removal Alternative with Release Detected After Final Receipt of Hazardous Waste

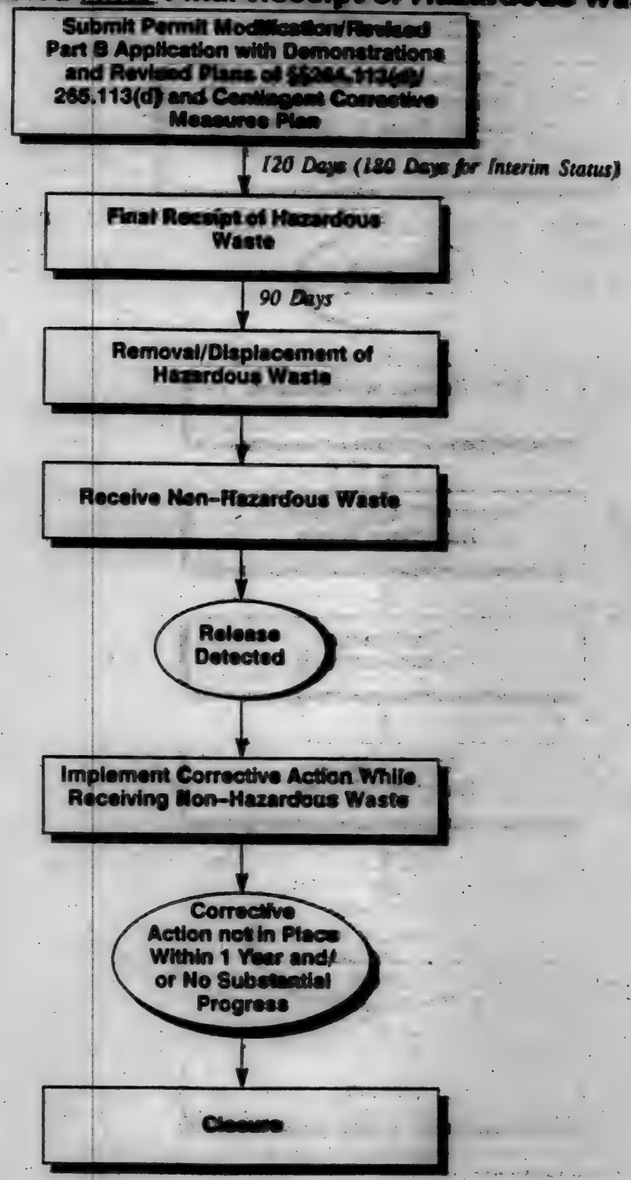

Exhibit 4

Surface Impoundment/Hazardous Wastes Remain Alternative

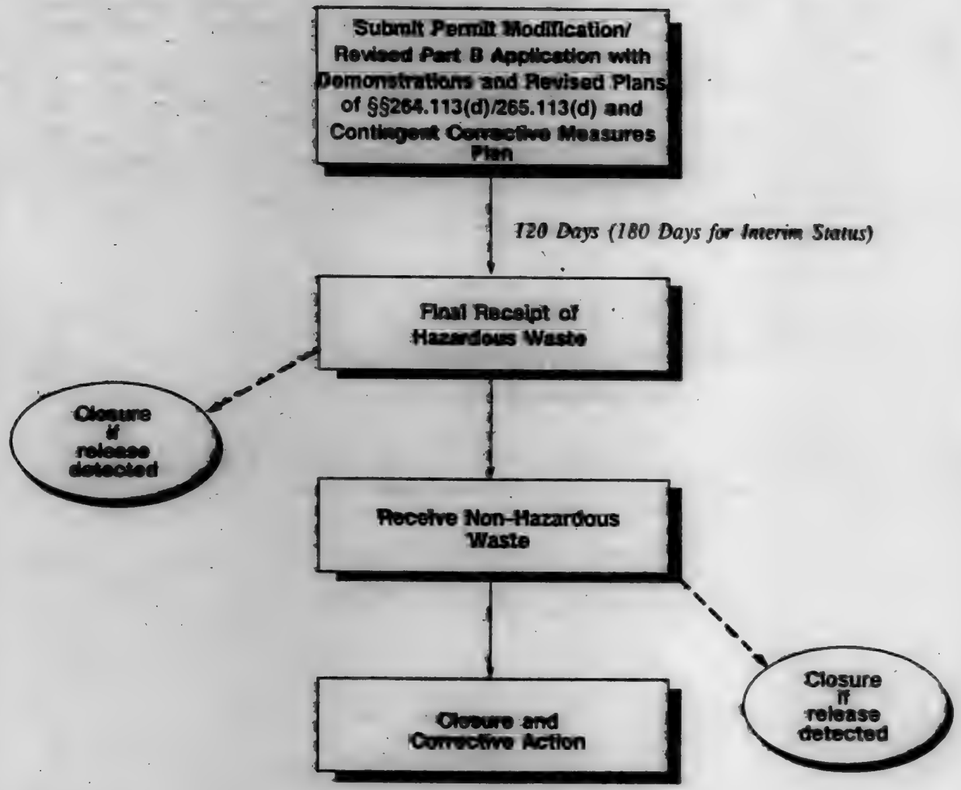

With the submission of these initial demonstrations and contingent corrective measures plan, the owner or operator must indicate whether he intends to remove wastes from the impoundment or not. As summarized below and in Exhibits 2, 3, and 4, this decision will determine both eligibility of the impoundment to delay closure and the specific additional requirements applicable to the impoundment. Selection of an alternative will depend in part on whether a release has been detected from the impoundment.

If a release has been detected at an impoundment at or before the time of the final receipt of hazardous waste, the unit will be eligible to delay closure *only* if (1) the hazardous wastes are removed as discussed below *and* (2) corrective measures are implemented *prior* to the receipt of non-hazardous wastes (see Exhibit 2). Waste removal may be accomplished by either removing all hazardous liquids and sludges or, if removal of all hazardous wastes is infeasible or impracticable, by removing the sludges and displacing the hazardous liquids and suspended solids with non-hazardous wastes. Owners or operators who do not intend to remove the hazardous wastes from the impoundment (i.e., disposal impoundments) are not eligible to delay closure if a release has been detected at or before the final receipt of hazardous wastes.

If releases are detected *after* the final receipt of hazardous wastes, owners or operators of units that have removed sludges and removed or displaced the hazardous liquids may continue to operate the unit to receive non-hazardous wastes provided that corrective measures are implemented within one year from the date of the release (see Exhibit 3). Owners or operators who do not remove all hazardous wastes prior to receiving only non-hazardous wastes (i.e., disposal impoundments in Exhibit 4) must promptly initiate closure within 30 days of detection of the release in accordance with the deadlines in § 264.113(a) and (b) or § 265.113(a) and (b) if a release is subsequently detected.

Regardless of when the release is detected, the owner or operator must begin closure if he fails to make substantial progress in implementing the corrective measures and achieving the ground-water protection standard (or background levels for facilities that have no established ground-water protection standard). Substantial progress will be determined on a case-by-case basis. In general, however, the achievement of substantial progress will be measured by whether the owner or operator has met significant deadlines in the compliance schedule, permit, or enforcement order that establishes timeframes for achieving the facility's ground-water protection standard or background levels, if applicable. The Agency also is proposing procedural requirements for triggering closure of the unit if the Agency determines that the owner or operator fails to demonstrate substantial progress. This is discussed further in Section IV.B.2.d of today's proposal.

Today's proposal applies only when an owner or operator of a unit wishes to remain open following the final receipt of hazardous wastes to receive only non-hazardous wastes and meets all of the conditions in today's rule. Today's rule does not affect requirements applicable to owners or operators allowed to receive *hazardous* waste who wish to suspend operations temporarily and receive additional *hazardous* wastes in the future. The existing requirements in § 264.113(a) and (b) and § 265.113 (a) and (b) already include provisions for extending the deadlines for initiating and completing closure under these circumstances. The current Subpart G regulations also do not preclude an owner or operator from receiving non-hazardous wastes during the closure period as part of the closure activities provided that it does not interfere with closure activities. Today's proposal also does not affect these requirements.

IV. Section-by-Section Analysis of Proposed Rule

The following sections of this preamble address the major issues and present the Agency's rationale for the specific regulations proposed today. The preamble is arranged in a section-by-section sequence for ease of reference. Section A addresses the applicability of today's proposal. Section B discusses the Part 264 technical requirements applicable to permitted facilities, while the Part 270 procedural requirements applicable to permitting are addressed in Section C. Section D discusses the conforming changes to Parts 264 and 265 interim status standards. The requirements proposed in Parts 264 and 265 are substantively identical, but have slightly different procedural requirements.

A. Applicability

Today's proposal is restricted to permitted and interim status landfill and surface impoundment units that: (1) Are in compliance with applicable permit or interim status requirements; (2) cease to receive hazardous wastes; *and* (3) will subsequently receive only non-hazardous waste. For a unit to qualify as no longer receiving hazardous wastes, no additional hazardous wastes or wastes that generate a hazardous waste, shall be placed in the unit.[1] Today's proposal does not extend the option to delay closure to units that lost interim status pursuant to section 3005(e) (2) or (3) of RCRA.

Today's proposal also does not extend the option to delay closure to manage only non-hazardous wastes to storage units (i.e., storage or treatment tanks, container storage areas, or waste piles), incinerators, or land treatment units. If owners or operators of such units wish to receive non-hazardous wastes after the final receipt of hazardous wastes, they must comply with the current closure requirements, including decontamination procedures. The Agency believes that the activities necessary to close storage units (i.e., tanks, container storage areas, waste piles) and incinerators are compatible with the future use of the unit because by definition these units were always intended to only handle wastes on a temporary basis. Further, the Agency believes that requiring these units to conduct closure prior to receiving only non-hazardous wastes will not impose an undue burden on owners or operators.

The Agency is also not proposing in today's rule to allow land treatment units the option of delaying closure following the final receipt of hazardous waste. The Agency is not currently aware of any likely situations when the delay of closure to receive only non-hazardous wastes would be desirable or practical. However, EPA requests public comment on whether the option to delay closure should be applicable to land treatment units. If there are reasons to allow owners or operators of these units the option to remain open following the final receipt of hazardous wastes to receive only non-hazardous wastes, they would become subject to the requirements proposed in §§ 264.113(d) or 265.113(d), including demonstrations that the management of non-hazardous wastes in the land treatment unit will not be incompatible with any prior hazardous waste management

[1] For example, when a non-listed rinsewater from an electroplating operation is discharged into a surface impoundment, a listed wastewater treatment sludge from electroplating operations is formed in the impoundment. While the waste that enters the impoundment is non-hazardous, a listed hazardous waste is generated and thus received in the impoundment. Therefore, this unit would not qualify as a unit no longer receiving hazardous wastes.

operations. Owners or operators also would continue to be subject to all applicable Parts 264 or 265 requirements under Subpart *M*, including the treatment demonstration requirements in § 264.272.

EPA also requests comments on whether the closure delay option offered to landfills and surface impoundments should be extended to other hazardous waste units. We also request comment on the types of requirements that would be appropriate for other types of units seeking to delay closure in order to change to non-hazardous waste operations after the final volume of hazardous waste has been received.

B. Part 264 Standards

The Agency is proposing to amend § 264.112(d) and § 264.113 (a), (b), and (c), and to add new paragraphs (d) and (e) to § 264.113.

As previously discussed, the current Part 264 standards require a facility owner or operator to treat, dispose of or remove all hazardous wastes within 90 days (264.113(a)) and to complete closure activities within 180 days (264.113(b)) of the last receipt of hazardous wastes. Further, 264.112(d) establishes that the date that the owner or operator expects to begin closure, and therefore must notify EPA, is no later than 30 days after the receipt of the last known volume of hazardous wastes. Today's amendments will provide an additional justification for an extension of the closure period to allow for management of only non-hazardous wastes. Additionally, a conforming change is being made to § 264.112(d) to address final closure of units that qualify for this new closure extension.

The changes to § 264.113 supplement the existing general facility and technology-specific Part 264 standards by adding a separate set of requirements for owners or operators of hazardous waste management units that will delay closure in order to remain open to manage solely non-hazardous waste stream(s). These requirements are proposed to provide assurance that public health and the environment will be adequately protected at these units during the period prior to closure. All owners or operators wishing to delay closure are required to apply for a modification of their facility operating permits. This permit modification request must be accompanied by certain demonstrations and amended facility plans. Procedures for requesting a permit modification to delay closure, including timing requirements, are discussed in Section III.C of this preamble. Additional requirements are proposed in § 264.113(e) for surface impoundments that do not meet the liner and leachate collection system requirements in Part 264. Surface impoundment units will be subject to proposed §§ 264.113 (d) and (e) whereas landfill units will be subject to proposed § 264.113(d) only. The owner or operator must also continue to comply with existing Part 264 permit requirements.

1. General Conditions for Delay of Closure

Today's proposed rule imposes additional requirements on units wishing to remain open after the final receipt of hazardous wastes. These requirements supplement existing Subtitle C requirements. Under today's proposal an owner or operator must comply with all other applicable Part 264 requirements, including ground-water monitoring and corrective action requirements. Additional requirements are discussed below and in Section IV.B.2. A discussion of deadlines for complying with these requirements is in Section IV.C.

a. *Demonstrations for Extensions to Closure Deadlines.* Proposed §§ 264.113 (d) and (e) specify the conditions which must be met to delay closure to manage only non-hazardous wastes. First, the owner or operator must request a permit modification and, under § 264.113(d)(1) make a series of demonstrations. Sections 264.113(d)(1) (i) and (ii) propose that the owner or operator demonstrate that the unit has existing design capacity to receive non-hazardous wastes, and that there is a reasonable likelihood that the unit will receive non-hazardous wastes within one year after the final receipt of hazardous wastes. These demonstrations are consistent with the demonstrations currently required in §§ 264.113 (a) and (b) to extend the closure deadlines if an owner or operator wishes to suspend hazardous waste management operations temporarily and recommence receiving hazardous wastes at a later time.

Design capacity as specified in these sections refers to the operational design capacity included within the facility's Part A application. Since a primary purpose of the proposed rule is to allow facility owners and operators with existing waste disposal capacity to use this capacity effectively, the Agency does not believe that facilities should be allowed to expand their design capacity to accommodate even greater amounts of wastes.

In addition, to ensure that use of the unit to manage non-hazardous waste is protective of human health and the environment, the Agency is proposing to require in § 264.113(d)(1)(iii) that owners or operators must demonstrate that treatment, storage, or disposal of non-hazardous waste (including the interaction between non-hazardous wastes that may be co-managed) will not pose any potential threats to human health and the environment as a result of past and existing hazardous waste management operations. In this demonstration, owners or operators would be required to consider fully any potentially detrimental effects concerning the design, operation, closure, and post-closure of the unit due to the addition of non-hazardous wastes. Potentially detrimental effects include those due to the incompatibility of non-hazardous wastes and constituents with the hazardous wastes that previously had been disposed of in the unit. For example, detrimental effects might occur if a neutral pH metallic sludge (listed as F006) remained at the bottom of a unit that received non-hazardous waste containing relatively high acid levels. The elevated levels of acid in the non-hazardous waste would tend to solubilize the metals in the F006 sludge, resulting in a leachate with potentially significant levels of toxic metals. Potential problems that may affect a unit's ability to comply with Subtitle C requirements also must be addressed. For example, at a landfill the impacts of adding non-hazardous wastes may include subsidence, settlement of the cap, or leachate or methane gas generation.

In many cases, especially for wastewater treatment impoundments, both hazardous and non-hazardous waste streams will have been previously managed simultaneously in the unit and compatibility of operations should be relatively easy to demonstrate to the Agency. On the other hand, EPA does not believe, for example, that receipt of municipal solid waste at a landfill previously used to manage hazardous waste would ever be considered compatible given the potential for the generation and migration of methane gas, subsidence, and settling of the cap.

As discussed below, the proposal requires that the unit continue to comply with all RCRA Subtitle C permit conditions. Because a unit or facility that delays closure is handling non-hazardous wastes, such facilities may be subject to State laws regulating the management of municipal or industrial solid wastes. Therefore, the Agency expects owners and operators to conduct management of the non-hazardous wastes in a manner consistent with any applicable State and local requirements for facilities that handle non-hazardous wastes.

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Finally, §§ 264.113(d)(1) (iv) and (v) require owners and operators to demonstrate that closure of the unit is incompatible with its continued operation and that the unit is (and will continue to be) in compliance with all applicable permit requirements. These requirements are consistent with current requirements for approval to extend the closure period under §§ 264.113 (a) and (b). In reviewing compliance with applicable regulations, the Agency is concerned that ground-water systems pursuant to § 264.97 be in place. The Agency in particular would expect facilities delaying closure under today's proposal to have monitoring wells in place as required by Subpart F.

b. *Changes to Facility Plans.* The Agency is proposing in § 264.113(d)(2) to require as a condition of delaying closure that owners or operators submit, with their permit modification, a request to make the appropriate changes to the waste analysis, ground-water monitoring and response, and closure and post-closure plans, and associated changes to the closure and post-closure cost estimates and financial assurance required elsewhere in Part 264. Just as facility plans must be revised to reflect substantial changes in the types of *hazardous* wastes handled or the hazardous waste management practices employed, the Agency believes that selected plans for the facility, and, in particular, the waste analysis plan, ground-water monitoring plan, and closure and post-closure plans and cost estimates, may have to be modified to reflect the changes associated with operation of the unit to receive only non-hazardous wastes.

The ground-water monitoring plan may also need to be revised to account for the presence of any hazardous constituents, such as those published in Appendix VIII of Part 261 or Appendix IX in Part 264, in the non-hazardous waste. In addition, at some facilities it may be necessary to revise the ground-water monitoring plan to address the installation of additional wells for those units that will be remaining open to receive only non-hazardous wastes in order to detect releases from those units. Revisions to the closure and post-closure plans may be necessary if the activities to be conducted differ from those previously planned (e.g., procedures for handling wastes at closure or the date of final closure, if required under § 264.112(b)(7)). To the extent that revisions to the closure or post-closure care plans increase the cost estimates, the cost estimates and the amount of financial assurance required in §§ 264.143 and 264.145 also must be increased.

c. *Exposure Assessment Information.* Under proposed § 264.113(d)(4), owners or operators of landfills and surface impoundments must include the human exposure assessment required under RCRA section 3019(a). Facilities will not be eligible to delay closure to receive non-hazardous waste if the Regional Administrator determines that the unit poses a substantial risk to human health. Such a determination will be based on data from the human exposure assessement, as well as on any other relevant information. Upon determination that a unit poses a substantial risk to human health, the unit will be required to close following the final receipt of hazardous wastes pursuant to the current deadlines in Subpart G.

d. *Permit Revisions.* Finally, the Agency is proposing in § 264.113(d)(5) to require that the request to modify the permit include revisions as appropriate to affected conditions of the permit to account for the management of only non-hazardous waste in a unit previously managing hazardous waste. Because some hazardous constituents may remain in a unit even in cases where hazardous wastes have been flushed or removed, the Agency believes that it is important for the protection of human health and the environment that information concerning the management of non-hazardous waste be included in the permits of facilities seeking to delay closure under today's proposal. In addition, this requirement is consistent with the Agency's intent that units delaying closure continue to be subject to the permitting requirements of Subtitle C. Receipt of non-hazardous waste under today's proposal, therefore, would be considered analogous to adding a hazardous waste stream to a facility during its normal operating life. Permit revisions that the Agency would consider necessary include revisions to the exposure information required under § 270.10(j) to account for the potential danger to the public due to the continued presence of hazardous constituents in the unit following the final receipt of hazardous waste. A list of the non-hazardous wastes to be managed as required for hazardous waste under §§ 270.17(a) and 270.21(a), and revised descriptions of the processes to be used in the unit for treating, storing, and disposing of wastes as required under § 270.13(h)(1) would also be required. Other required revisions might include an updated demonstration of financial assurance as required under § 270.14(b)(15) and a revised ground-water monitoring plan as required under § 270.14(c)(5) and discussed in Section IV.B.1.b above.

2. Surface Impoundments that Do Not Meet Liner and Leachate Collection System Requirements

Congress has recognized that surface impoundments may pose certain waste management problems as evidenced by the provisions of RCRA section 3005(j), which state that interim status surface impoundments in existence on November 8, 1984, must either satisfy the MTRs applicable to new units (i.e., be designed with double liners, leachate collection systems, and ground-water monitoring), receive a waiver from these requirements, or stop the receipt, storage, or treatment of hazardous wastes by November 8, 1988. These requirements are discussed in the March 28, 1986 **Federal Register** (See 51 FR 10707).

Because of this additional concern for surface impoundments that do not meet the MTRs, and Agency believes that controls beyond those already discussed above must be imposed on these units as a condition of delaying closure to receive only non-hazardous wastes where some hazardous wastes are to remain in the unit. For surface impoundments that otherwise satisfy the permit requirements (including compliance with Subpart F ground-water monitoring) but do not meet liner and leachate collection system requirements, EPA believes that additional controls are necessary to ensure that such units delaying closure under today's proposed rule afford a level of protection consistent with that of units that are retrofitted to meet these requirements. Although these units are no longer receiving additional hazardous wastes, hazardous wastes (e.g., sludges) from previous operations may be present in the unit. Because of the potential presence of hazardous wastes in these impoundments, continued operation of the units for any waste management is concern due to the likelihood of leakage, especially from unlined units. Therefore, today's rule proposes that all surface impoundments that do not comply with double liner and leachate collection system requirements in Part 264 applicable to new units and RCRA section 3005(j) must submit not only the required demonstrations and the modified facility plans discussed above, but also comply with additional requirements in § 264.113(e) to ensure protection of human health and the environment. These requirements are discussed below.

a. *Contingent Corrective Measures Plan.* In addition to the demonstrations and requirements described in IV.B.1 above, proposed § 264.113(e)(1) requires owners or operators of surface impoundments that do not satisfy liner and leachate collection system requirements to submit a contingent corrective measures plan with the request to modify the permit as a condition of delaying closure unless a corrective action plan has already been submitted under § 264.99. (The requirements for initiating corrective action are discussed further in today's preamble at IV.B.2.c below.) Requiring this plan in advance of a release will ensure that if a leak does occur, corrective measures can be implemented quickly to prevent further contamination of ground water, contain existing contamination, and lead to steady progress in achieving the ground-water protection standard at the unit.

The Agency expects such a plan to include as many elements of a full corrective action program as possible and to be sufficiently detailed with respect to actual remedial activities to ensure rapid implementation in the event of a release. Because the exact extent and type of release will not be known, the contingent corrective measures plan should describe a range of possible remedies that may be appropriate under several likely release scenarios. While the Agency recognizes that it would be impossible to plan for all contingencies, EPA believes that, using data on the types of constituents at the facility, hydrogeologic conditions, location of ground-water monitoring wells, and available remedial technologies, it is possible to develop a fairly detailed set of alternative measures.

The plan should include an extrapolation of future contaminant movement, a discussion of the likely contaminants of concern, and a description of those corrective measures that can be installed quickly to address *inter alia* releases of different types of constituents or releases at variable rates and plumes of different size and depth. The plan should also identify potential interim measures such as alternate water supplies, stabilization and repair of side walls, dikes, and liners, or reduction of head, if appropriate. The range of corrective measures should be described in detail, including the equipment and the physical components required. For example, the plan should describe the type and placement of the containment measures to be used (e.g., slurry walls, low permeability barriers, etc.), the number and types of wells and how they will be used (e.g., diversion wells or wells for collecting the flow), and the proposed treatment technologies (e.g., carbon adsorption, ion exchange, chemical precipitation, etc.). The plan should also identify any site-specific problems which could affect a corrective measures program, such as underground utilities and migration of the plume under structures.

The Agency believes that much of the data for the contingent corrective measures plan should be readily available to owners or operators. Information on constituents, plume direction, location of wells, and potential human and environmental exposures is included with the Part B permit application. Additional information may also be available as a result of actions taken or ongoing to comply with corrective action requirements under either Subpart F or a RCRA section 3008(h) corrective action order or permit conditions pursuant to RCRA section 3004(u).

The preparation of the contingent corrective measures plan does not relieve the owner or operator of any existing or future requirements of a corrective action program or schedules of compliance in a RCRA section 3008(h) corrective action order. The measures identified in the contingent corrective measures plan are anticipated to be complementary to any long-term corrective measures that may be determined to be required following more in-depth analysis of the release and remedy evaluation. Changes to the contingent plan may be made under applicable permit modification requirements.

b. *Alternatives.* Today's proposal in section 264.113(e) offers owners or operators of surface impoundments that do not satisfy the double liner and leachate collection requirements three alternatives for delaying closure to receive non-hazardous wastes. These options offer flexibility to owners or operators to account for different types of management practices. However, regardless of the option chosen, the combined requirements are designed to assure that impoundments that do not meet double liner and leachate collection system requirements ensure protection of human health and the environment. As part of the demonstrations required in the request to modify the permit to delay closure, an owner or operator of a surface impoundment eligible to delay closure must include a plan for complying with one of the three alternatives described below.

(1) *Alternative 1—Removal of Hazardous Wastes.* Under the first alternative, proposed in section 264.113(e)(2)(i), an owner or operator of a surface impoundment must remove all hazardous liquids and hazardous sludges from the impoundment prior to the receipt of nonhazardous waste. In addition, in the event of a release to ground water, the facility would have to comply with the corrective action requirements discussed in Section IV.B.2.c below.

The Agency recognizes that for lined units, it may be necessary to leave some wastes immediately above the liner to avoid impairing the integrity of the liner. Therefore, the Agency is proposing to allow sludges to remain immediately above the liner *only* to the extent necessary to maintain the integrity of the liner. In cases where the unit is unlined, the hazardous waste must be removed down to the underlying and adjacent soil. This degree of removal will maintain the structural uniformity of the bottom of the unit. The amount of hazardous sludge that must be removed will be determined on a case-by-case basis, taking into consideration the physical and chemical characteristics of the sludge, technology available to remove the sludge, and liner material.[5] The Agency will not consider the economic practicability of sludge removal in determining the amount of sludge that must be removed. At the time of final closure, the impoundment will still be subject to Subpart G closure requirements. If the unit chooses to "clean close", additional sludge removal may be required to meet clean closure standards. This final determination will be made at the time of final closure.

As specified in proposed § 264.113(e)(4)(i), the hazardous wastes (liquids and sludges) must be removed no later than 90 days after the final receipt of *hazardous* wastes. The Regional Administrator may approve a request for a longer period of time based on need (e.g., additional time is required because of adverse weather conditions or specific operating practices), and a demonstration that an extension will not pose a threat to human health and the environment. (The requirement to remove wastes as a condition of delaying closure applies only to the

[5] The draft RCRA Guidance Document, "Minimum Technology Guidance on Single Liner Systems for Landfills, Surface Impoundments, and Waste Piles—Design, Construction, and Operation," issued may 24, 1985, for example, suggests that a minimum of 18 inches of protective soil or equivalent is appropriate to protect liners from damage when mechanical equipment is used to remove sludge or contents of the impoundment.

hazardous wastes in the impoundment.) The deadline and the criteria for requesting an extension to the 90-day deadline are consistent with the current provisions in § 264.113(a) for removing all *hazardous* wastes at closure and for requesting an extension to that deadline. The Agency wishes to ensure that owners or operators of surface impoundments that do not satisfy the double liner and leachate collection system requirements and who choose to remove hazardous wastes do so within the same time frames were they to close their units following the final receipt of *hazardous* wastes.

(2) *Alternative 2—Flushing Hazardous Wastes— (a) Sludge Removal and Flushing of Liquids.* The second alternative, proposed in § 264.113(e)(2)(ii), would allow an owner or operator to delay closure if he removed the hazardous sludges as required in Alternative 1 (e.g., dredging or pumping) and removed the liquid hazardous wastes and suspended solids from the unit by flushing the unit with the non-hazardous influent. This alternative is available only where the owner or operator can demonstrate that it is infeasible or impracticable to remove all of the hazardous waste from the impoundment as discussed in Alternative 1. The owner or operator also would be required to demonstrate that the liquid wastes and suspended solids remaining in the unit did not exhibit a characteristic of hazardous wastes identified in Subpart C of Part 261. As in Alternative 1, the owner or operator also must comply with corrective action requirements discussed below.

The Agency believes that units employing biological treatment methods may be able to demonstrate that it is infeasible or impracticable to remove all of the hazardous wastes as discussed in Alternative 1. In a biological treatment impoundment, the hazardous wastes of concern include the sludge that has settled to the bottom of the unit and the liquid phase. If the hazardous liquids are removed by draining the impoundment, the following problems could arise: First, in many cases the facility's wastewater treatment system would be shut down, which could force the facility to stop some of its operations for a significant period of time while the removal activities were completed. Second, the microorganisms which had been acclimated to the facility's wastes would be destroyed and the facility would have to reacclimate a new biomass.

Under Alternative 2, at least 95 percent of the liquid and suspended hazardous wastes must be displaced by flushing with non-hazardous influent. The owner or operator must demonstrate that 95 percent of the liquid, as measured by volume, has been displaced. The Agency would consider a tracer study to be an appropriate means of making this demonstration. For example, in some impoundments, depending on the waste types and the environment, a radioisotope (e.g., deuterated marker compounds) or an easily detected and identifiable chemical compound could be introduced into the impoundment, allowing the wastes remaining in the impoundment to be measured. Use of chemical dyes to trace the flow of wastes also may be appropriate methods in some circumstances.

As specified in § 264.113(e)(4)(ii), the owner or operator must begin flushing the impoundment and removing hazardous sludges no later than 15 days after the final receipt of hazardous wastes and complete the 95 percent displacement and removal of hazardous wastes no later than 90 days after the final receipt of hazardous wastes. This deadline is consistent with the deadline in § 264.113(a) for removing hazardous wastes at closure. For multi-unit treatment impoundments, 95 percent of the hazardous wastes in the last unit in the train must be displaced no later than 90 days after the final volume of hazardous wastes has been received at the first unit. The Regional Administrator may grant an extension to the 90-day deadline if the owner or operator can demonstrate that the retention time necessary to flush the unit or remove all of the sludge necessitates a longer time period and that an extension will not pose a threat to human health and the environment.

The Agency recognizes that the retention time necessary to complete the 95-percent displacement will vary significantly among units, depending on site-specific factors such as size, depth, average flow rate, and the type of treatment that is being conducted (e.g., aerobic, anaerobic, aeration, settling, facultative). The Agency believes that a 90-day deadline should be sufficient for all but the largest impoundments or for multi-unit treatment impoundments. Data on the average retention time for a number of different sizes and types of impoundments suggest that only very large impoundments (e.g., 200-acre impoundments) or treatment train impoundments comprised of several units are likely to have retention times of over 90 days. Most of the impoundments examined had average retention times of less than 50 days, suggesting that displacement and sludge removal could be completed within the proposed deadline. For units that cannot complete the displacement within the 90-day deadline, the Agency would have the authority to extend the deadline. To support an extension, EPA would expect an owner or operator to submit data on the size of the unit, the type of treatment being conducted, the average flow rate (e.g., millions of gallons per day), and documentation supporting the claim that the unit's retention time and the time required to remove the sludge would exceed 90 days.

The Agency recognizes that the 90-day deadline also may be insufficient for treatment facilities composed of multiple impoundments. For example, a treatment system comprised of an equalization pond, two anaerobic ponds, and an aerobic pond could have a combined retention time exceeding 90 days. In this case, the Agency would entertain a request for an extension of the 90-day deadline.

The Agency considered proposing that the flushing process be completed within 180 days to allow owners or operators of very large impoundments sufficient time to remove the sludges and complete the flushing process. The Agency was concerned that owners or operators not delay the flushing process and, as a result, is proposing that the flushing begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt. The Agency is requesting comments on whether 90 days is an adequate amount of time to complete the sludge removal and flushing process for most facilities and data on retention times of impoundments to support an alternative deadline, if appropriate.

(b) *Relationship to Mixture Rule.* EPA's "mixture rule" for the definition of hazardous wastes raises an interesting issue for facilities that treat hazardous wastes in a series of connected surface impoundments. Under the requirements of 40 CFR 261.3(a)(2)(iv), where a listed hazardous waste mixes with a non-hazardous waste, the entire mixture is considered to be the listed waste and must be handled as hazardous. Such mixing might occur in a surface impoundment that is delaying closure to receive non-hazardous wastes under any of the three alternatives described above. If the impoundment in which the mixing occurred was the first impoundment in a treatment train, the material it discharged to "downstream" impoundments would be considered a hazardous waste. The "downstream" impoundments would have to retrofit to continue to receive this mixed hazardous waste stream after November 8, 1988.

Retrofitting, however, might not be required in all circumstances. The key question would be whether in fact any mixing of non-hazardous and hazardous wastes occurs in the first impoundment in the series. The Agency has stated, in somewhat analogous circumstances, that no mixing occurs in a wastewater treatment unit that manages a non-hazardous liquid waste even if that liquid generates a hazardous sludge that settles to the bottom of the same unit, unless the sludge is in some way physically dredged up and mixed with the liquid. EPA believes it would be appropriate to apply the same principle here. There should be even less opportunity for mixing here because in many cases much of the original hazardous sludge will be removed, and in all cases no additonal quantities of hazardous sludge will be generated. Consequently, if there is no further disturbance of remaining hazardous waste in an impoundment delaying closure, EPA will presume that no mixing occurs and that the non-hazardous waste does not become a hazardous waste. Subsequent surface impoundments would be able to accept this non-hazardous waste if they met the requirements proposed today.

Final closure activities, of course, may disturb and mix the wastes and as previously discussed, the hazardous waste rules apply at final closure. Sludges within all impoundments continue to be considered hazardous wastes unless delisted.

(3) *Alternative 3—Leaving Hazardous Wastes in Place.* The third alternative proposed in § 264.113(e)(3) allows owners or operators of disposal impoundments who do not intend to remove all hazardous wastes, including liners and contaminated soils, at closure, but instead will leave some hazardous wastes in place, to delay closure under only limited circumstances. Because hazardous wastes are not removed prior to the receipt of non-hazardous wastes, the Agency is proposing more stringent requirements for disposal impoundments than for impoundments at which hazardous wastes are removed. For disposal impoundments, the Agency is limiting the availability of the option to delay closure to those impoundments that do not have a statistically significant increase over background values of detection monitoring parameters or constituents or have not exceeded the facility's ground-water protection standard at the point of compliance on the date of the final receipt of hazardous wastes. This determination will be based on the most recent monitoring data as required in Part 264 Subpart F. In addition, if a release is detected after the final receipt of hazardous wastes, the owner or operator must promptly initiate closure of the disposal impoundment in accordance with the approved closure plan no later than 30 days after the detection of the release and comply with the corrective action requirements including those discussed below.

c. *Corrective Action Requirements.* All units that delay closure will remain subject to all applicable corrective action requirements. In addition, owners or operators of surface impoundments that do not meet the double liner and leachate collection system requirements must submit a contingent corrective measures plan as a condition of delaying closure. The Agency is proposing in § 264.113(e) additional conditions that apply if there is a statistically significant increase over background values of detection monitoring parameters or constituents for interim status units or if a release that exceeds the facility's ground-water protection standards at the point of compliance is detected at these impoundments. This determination will be made based on the unit's most recent monitoring data as required under Part 264 Subpart F. The purpose of the contingent corrective measures plan and the corrective action requirements in § 264.113(e) is to ensure that if a release is detected, interim corrective measures, at a minimum, are instituted quickly.

As mentioned earlier, the corrective action requirements proposed in § 264.113(e) have no effect on an owner's or operator's obligations to comply with all of the requirements in Part 264, Subpart F. Rather, the requirements in today's proposal are in addition to the corrective action requirements specified in Subpart F to ensure that the delay of closure to receive only non-hazardous wastes at surface impoundments that do not meet the double liner and leachate collection system requirements does not compromise the protection of human health and the environment. Moreover, the Regional Administrator retains the authority to require additional corrective measures as deemed necessary in the final corrective action plan. Finally, today's proposal will not affect future changes to Subpart F that are currently under consideration. For example, if the Agency revises the methods for setting the ground-water protection standards, disposal impoundments that exceed their ground-water protection standard as a result of such regulatory amendments would still be required to close. If necessary, conforming amendments will be made to today's rule to be consistent with any future changes to Subpart F.

The Agency is concerned that basing the evidence of a release from a unit on contamination of ground water alone may overlook releases that have occurred but have not yet been detected by the ground-water monitoring system. The Agency is also concerned about contamination to media besides ground water, e.g., soil contamination or leaching of hazardous constituents to surface water. While the unit remains subject to all corrective action requirements for all media, the initial determinations of whether expedited corrective action is required under today's proposal for delayed closure are based on ground-water monitoring data. The Agency is requesting comments on the approach of basing the evidence of a release on ground-water monitoring results only and whether other options may be appropriate.

The Agency is proposing more stringent corrective action requirements for disposal impoundments because of the greater risks associated at units where hazardous wastes have not been removed. The Agency is also imposing more stringent requirements on impoundments that are leaking on the date of the final receipt of hazardous waste to ensure that these units do not exacerbate any threats to human health and the environment. These requirements are discussed in detail below.

(1) *Disposal Impoundments.* As discussed above, § 264.113(e)(8) proposes that disposal impoundments must not have detected a release to ground water as a condition of delaying closure to receive only nonhazardous waste. Any disposal impoundment having a statistically significant increase over background values of monitoring parameters or constituents or exceeding the ground-water protection standard on the date of the final receipt of hazardous waste, based on the most recent ground-water monitoring data as required under Part 264, Subpart F, is not eligible for delayed closure. If a statistically significant increase in background values is detected, or if the ground-water protection standard is exceeded, corrective action must be conducted as required under Subpart F and the unit must be closed in accordance with the approved closure

plan and other requirements in Subparts G and K.

(2) *Surface Impoundments At Which Wastes Are Removed.* The Agency is proposing in § 264.113(a) (5), (6), and (7) the corrective action requirements imposed on owners or operators who intend to remove hazardous wastes from their impoundments as a condition of delaying closure. These sections vary depending on whether or not a release has been detected by the date of the final receipt of hazardous wastes. These regulations are discussed below.

(a) *Releases at the Time of the Final Receipt of Hazardous Wastes* (Exhibit 2 in Section III.B of this preamble). The Agency is proposing in § 264.113(e) (5) and (6) to require owners or operators of surface impoundments intending to remove hazardous wastes to cease the receipt of all wastes if they have detected contamination statistically greater than background levels of detection monitoring parameters or constituents, or in excess of their ground-water protection standard at the point of compliance. The most recent monitoring data required under Subpart F will be used to make this determination by the date of the final receipt of hazardous wastes. An exception would be granted to owners or operators who remove hazardous wastes from the impoundment by flushing with non-hazardous wastes. In this case, the impoundment may continue to receive non-hazardous waste only to complete the flushing process in accordance with the timeframes established in § 264.113(e)(4)(iii).

Non-hazardous wastes may not be received at a unit with a release statistically greater than background levels or exceeding the ground-water protection standard on the date of the final receipt of hazardous waste until corrective measures have been implemented. These measures must be consistent with an approved contingent corrective measures plan or with provisions of an approved corrective action plan otherwise required in Subpart F. The specific corrective measures that must be implemented to allow a facility to receive nonhazardous wastes will be specified on a case-by-case basis in the plan. However, if an owner or operator can demonstrate that the release is not statistically greater than background levels or does not exceed the facility's ground-water protection standard, he may continue to receive non-hazardous wastes.

The Agency intends that the corrective measures to be implemented be more than studies of the extent of contamination or development of remedial alternatives. Rather, the Agency would expect containment and/or remediation activity, consistent with the activities described in the contingent corrective measures plan, to be undertaken. For example, installing removal wells and a slurry wall and starting the pumping and treating of contaminated ground water might satisfy the requirement that corrective measures be implemented.

The Agency recognizes that stopping the receipt of all wastes until corrective measures have been implemented could adversely affect the operations of some types of facilities. The Agency believes that in most cases, however, the delay should not be extensive. First, many of the units that may have to stop the receipt of wastes because a release has been detected at the time of the final receipt of hazardous wastes will have already triggered compliance monitoring and/or be engaged in a corrective action program under Subpart F prior to today's proposal. In fact, remedies may already be under review for such units. Therefore, there should not be an extensive delay before the unit is placed on a compliance schedule for corrective action and the unit can receive non-hazardous wastes. Second, because these units have detected releases, the Agency expects that in most cases these facilities will have a high priority for approval of corrective action plans. At the same time, prohibiting the continued receipt of non-hazardous waste until corrective measures have begun should provide an incentive for owners or operators to implement corrective measures as soon as possible after the approval of a corrective action plan.

The Agency considered allowing units that are leaking on the date of the final receipt of hazardous wastes to receive non-hazardous wastes if the owner or operator makes a demonstration that the receipt of non-hazardous wastes will not exacerbate threats to human health and the environment or impede the effectiveness of the corrective measures, and that these corrective measures will be implemented within one year from the final receipt of hazardous waste. It has been argued that, particularly for owners or operators who will remove the hazardous wastes by flushing with non-hazardous influent, allowing the further receipt of non-hazardous wastes at these units after flushing has been completed may not increase the environmental risks. According to the argument, allowing the continued receipt of non-hazardous wastes will further dilute certain types of constituents in the impoundment and thus may decrease the potential for threats to human health and the environment.

The Agency is not proposing this approach for a number of reasons. First, because hazardous wastes remain in the unit, it would be necessary to evaluate the impacts of allowing the receipt of non-hazardous wastes on the effectiveness of the corrective action program. Because the units in question do not satisfy liner and leachate collection system requirements, the Agency must be assured that the requirements applicable to these units provide adequate protection of human health and the environment. (This is a particular concern for facilities awaiting permit approval where characterization of ground-water flows, hydrogeologic conditions, the extent of the plume, etc., may not yet have been subject to the rigorous review that occurs during permitting.) The Agency is not convinced that it will be possible to effectively evaluate such impacts. The Agency also is uncertain about what criteria should be used to evaluate the impacts of the continued receipt of non-hazardous wastes on the effectiveness of corrective action. Finally, the Agency is concerned that the effort required to evaluate these demonstrations will be time-consuming and not an effective use of Agency resources.

The Agency is requesting comments on whether impoundments not meeting liner and leachate collection system requirements that are leaking on the date of the final receipt of hazardous wastes should be allowed to receive non-hazardous wastes prior to the institution of a corrective action program. Particularly, the Agency is soliciting information on the impacts of hydraulic head on the effectiveness of corrective action, the types of data necessary to make these determinations, deadlines for making these demonstrations, and whether this option should be available to all impoundments or only impoundments that have already received permits.

(b) *Releases After the Final Receipt of Hazardous Wastes* (Exhibit 3 in Section III.B of this preamble). Today's rule proposes in § 264.113(e)(7) to allow an owner or operator of an impoundment that does not meet liner and leachate collection system requirements and whose hazardous wastes have been removed to continue operating the unit if a release is detected after the date of the final receipt of hazardous wastes under limited circumstances. After the detection of a release, the unit only be allowed to continue to receive non-hazardous waste only if corrective measures consistent with the approved contingent corrective measures plan are implemented within one year of the detection of the release, or approval of the contingent corrective measures plan, whichever is later, and if the continued receipt of non-hazardous waste will not pose a threat to human health and the environment. Again, the conditions for demonstrating that corrective measures have been established will be specified on a case-by-case basis in the corrective action plan. (As discussed earlier, the Regional Administrator retains the authority to require additional corrective measures in the final corrective action plan.)

Again, while a demonstration that corrective measures have been put in place must be more than the completion of studies, the implementation of interim measures (e.g., installing slurry walls and initiating a pump and treat program) may be sufficient. If the Regional Administrator determines that the continued receipt of non-hazardous waste during this one-year period is posing a threat to human health or the environment, he has the authority to either require that corrective measures be implemented in less than one year or to require that the receipt of non-hazardous wastes cease until corrective measures are implemented.

While it is the Agency's policy that corrective action be undertaken promptly, it recognizes that at large units or facilities a longer time could be needed to completely assess the nature and extent of the contamination and specify remedies or that delays in cleanup activities could be caused by timing issues beyond the control of the owner or operator (e.g., availability of cleanup contractors, weather conditions). The Agency considered giving the Regional Administrator the authority to grant extensions to the one-year deadline for implementing corrective measures. However, the Agency wished to avoid additional administrative burdens and delays in getting corrective measures implemented and still believes that one year should provide adequate time. The Agency is requesting comments on this one-year deadline and suggestions on other alternatives.

d. *Evaluating Progress of Corrective Action.* In § 264.113(e)(10), the Agency is proposing that impoundments that have removed all hazardous wastes and have been allowed to delay closure to receive non-hazardous waste in accordance with the requirements in § 264.113 (d) and (e)(2) must initiate closure if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

The Agency is not proposing to define "substantial progress" in today's rule. Rather, the Agency believes that this determination should be made on a case-by-case basis based on an evaluation of the progress of the corrective action program towards achieving the ground-water protection standard (or background levels if applicable). In addition, the Regional Administrator will evaluate the effect of the continued receipt of non-hazardous waste on the effectiveness of the corrective measures being taken in determining whether substantial progress towards the ground-water protection standards has been achieved. In general, the Agency would consider the failure to comply with significant deadlines in the schedule of compliance, the permit, or other enforcement orders that establish timeframes for achieving the facility's ground-water protection standard as cause for closure. The Agency does not intend failure to comply with procedural or reporting requirements that do not affect the progress of corrective action to be cause for closure; on the other hand, compliance with deadlines for procedural or reporting requirements alone will not be considered a demonstration of substantial progress.

A determination of whether the unit has demonstrated substantial progress in its corrective action program would be based, in part, on the results of the semi-annual reports required under § 264.113(e)(9). Proposed § 264.113(e)(9) requires the owner or operator to submit reports to the Regional Administrator that describe the progress of the corrective measures, including results of ground-water monitoring and the effect of the receipt of non-hazardous wastes on the effectiveness of the corrective action. The amount of time allowed for demonstrating that substantial progress toward achieving the ground-water protection standard has been achieved, will be a site-specific decision that is dependent upon the nature, extent, and magnitude of the contamination, as well as the nature of the remedial measures.

Today's rule also establishes an accelerated set of procedures for initiating closure if the owner or operator fails to demonstrate substantial progress in achieving the ground-water protection standard. The objective of these accelerated procedures is to reduce delays in initiating closure, while still providing adequate due process to the owner or operator and adequate notice to the public.

Under proposed § 264.113(a)(11), the Regional Administrator must notify the owner or operator in writing that he has failed to make substantial progress and that he will be required to close the unit in accordance with the deadline in § 264.113 (a) and (b). The Regional Administrator must provide the owner or operator a detailed statement of reasons for his determination and also publish a newspaper notice of this decision and provide a 20-day comment period. If the Regional Administrator does not receive written comments on the decision to require closure of the unit, the decision will be final five days after the close of the comment period. The Regional Administrator will then notify the owner or operator that he must submit a revised closure plan, if necessary, within 15 days of the final notice and commence closure in accordance with the deadlines in § 264.113 (a) and (b). If written comments are received, the Regional Administrator will make a final determination no later than 30 days after the end of the comment period and notify the owner or operator and the public of the decision by newspaper notice.

Because the Agency is concerned that closure be commenced as quickly as possible once it is determined that the unit is not demonstrating substantial progress towards achieving the ground-water protection standard to ensure protection of human health and the environment, today's proposal does not provide for administrative appeals of the Regional Administrator's decision to require closure. The proposed rule, however, does include a formal comment period (in addition to informal negotiations prior to the final Agency decision). In addition, the decision to require closure would constitute a final Agency decision and is therefore subject to judicial appeal. The Agency does not believe that disallowing administrative appeals will violate the due process rights of the owner or operator.

3. Notification of Closure

Section 264.112(d)(1) currently requires an owner or operator to notify the Regional Administrator at least 60 days prior to the expected date of closure, defined in § 264.112(d)(2) as no later than 30 days after the final receipt of *hazardous* waste. EPA proposes to add subsection (ii) to §264.112(d)(2) to specify that for units that have delayed closure after the final receipt of hazardous waste, the "expected date of closure" is no later than 30 days after

the final receipt of non-hazardous wastes. Therefore, an owner or operator who has delayed closure after the final receipt of hazardous waste to receive only non-hazardous waste must notify the Regional Administrator at least 60 days prior to the final receipt of non-hazardous waste.

C. Part 270 Permit Modification Requirements

For facilities with RCRA permits, the request to modify the permit to extend the closure period would be considered under the current regulations to be a major modification subject to public notice and comment and procedures in Part 124. The demonstrations discussed earlier must be submitted to the Agency for approval with a request to modify the permit at least 120 days prior to the final receipt of hazardous waste, or within 90 days after the final rule is published in the Federal Register as required in § 270.42, whichever is later.

If, subsequent to approval of the permit modifications, an owner or operator changes the types of non-hazardous wastes that are handled in the unit, he must again request a modification to the permit and demonstrate that the addition of these new non-hazardous wastes is also compatible with the hazardous and non-hazardous wastes in the unit and past, current and future operations.

On September 23, 1987, the Agency proposed amendments to the Part 270 procedures for modifying permits. Today's rule proposes a conforming change to the September 23, 1987, proposal to make the procedures for modifying a permit for delayed closure consistent with that scheme. The Agency is proposing to classify an extension to the closure period to receive non-hazardous waste following final receipt of hazardous waste as a Class 2 modification and to add it to Appendix I of § 270.42, "Classification of Permit Modifications." In order to request this Class 2 modification, the owner or operator must submit the demonstrations and changes to facility plans required in § 264.113(d) and (e) and described in IV.B.1 in this preamble. If these proposed amendments to Part 270 do not become final, an extension of the closure period to receive non-hazardous waste will continue to be classified as a major permit modification.

While it has not proposed changes to Part B application requirements, the Agency wishes to make clear that Part B applications submitted in order to delay closure under today's rule will be required to contain, for the non-hazardous wastes to be received, all of the elements required in a Part B application for a facility continuing to receive hazardous waste. Such information would include closure and post-closure plans revised to account for non-hazardous wastes, revised documentation of financial assurance under §§ 264.143 and 264.145, and a revised ground-water monitoring program. The Agency considers it appropriate to have such information submitted in the Part B application because facilities delaying closure will continue to be considered hazardous waste facilities. This is consistent with the Agency's position that facilities delaying closure must continue to comply with the permitting requirements of Subtitle C.

D. Conforming Changes

The Agency is proposing conforming changes to the interim status standards, in Part 265 that parallel the technical requirements in Part 264 for deferring closure to receive only non-hazardous wastes. The interim status requirements are substantially the same as those for permitted units. Today's rule also proposes conforming changes to §§ 265.19 (a) and (b) and 265.13 (a) and (b) and to §§ 264.142(a)(3) and 264.143(a)(4) and 265.142(a)(3) and 265.142(a)(4). These differences are highlighted below.

1. Conforming Changes to Part 265 Interim Status Requirements

a. *Initial Demonstrations.* Proposed § 265.113 (d)(1) requires owners or operators of interim status units, to submit amended Part B applications, or Part B applications if one was not previously required, with the revised facility plans and required demonstrations. Part B applications are required because the Agency does not believe that a facility should be allowed to remain open to receive non-hazardous waste while remaining in interim status. The Agency is particularly concerned that units that do not satisfy the double liner and leachate collection system requirements and remain open under today's proposal be subject to the stricter provisions of Part 264, especially the stricter ground-water protection requirements of Subpart F to sufficiently protect human health and the environment. Plans and demonstrations must be submitted at least 180 days prior to the final receipt of hazardous wastes. This 180-day deadline is consistent with the deadline in § 265.112(d) for notifying the Regional Administrator of closure and submitting the closure plan for review and approval. Owners or operators who already have received their final volume of hazardous wastes or will receive it in the near future will be eligible to delay closure if they submit their Part B application and the required demonstrations no later than 90 days after notice of today's final rule is published in the Federal Register.

As discussed above, under today's proposal, facility owners and operators would be required to operate under the full permit requirements of 40 CFR Part 264. However, because the Agency cannot guarantee that a Part B permit will be issued prior to the final receipt of hazardous wastes, the Agency is proposing to allow the owner or operator to remain open after the final receipt of hazardous wastes to receive only non-hazardous wastes prior to issuance of the permit. During this period the owner or operator must comply with all of the applicable requirements in § 265.113 (d) and (e) and continue to conduct operations in accordance with all other applicable Part 265 requirements. If the Agency subsequently denies the permit, the Part 265 closure requirements, including the closure deadlines of § 265.113 (a) and (b), become effective immediately.

We recognize that there may be concern about allowing interim status facilities to delay closure while a decision on a permit application and delay of closure is pending. However, the Agency is convinced that the applicability criteria in § 265.113(d) together with the technical requirements in § 265.113(e) for delaying closure and other Part 265 requirements are sufficient to preclude any increases in threats to human health and the environment during the permit review period. In the case of surface impoundments that choose to or must remove wastes to delay closure, the required activities are consistent with current Subpart G closure requirements. Therefore, even if the request to delay closure and/or an operating permit is denied, the owner or operator will have begun the closure process by removing the hazardous wastes from the impoundment. In addition, a facility awaiting a determination of a request to delay closure remains subject to all Part 265 requirements and applicable enforcement authorities, including RCRA section 3008(h) corrective action orders.

b. *Corrective Action.* The Agency is proposing slightly different triggers for corrective action requirements for interim status units than for permitted units. For interim status facilities that have not yet established a ground-water protection standard, the Agency is proposing that the corrective action requirements in § 265.113(e) be triggered by a statistically significant increase in hazardous constituents over background levels or decrease in pH over background levels. The Agency has chosen background as the baseline to measure the presence of a release to ensure that interim status impoundments that do not satisfy liner and leachate collection system requirements and wish to delay closure to receive only non-hazarous wastes remain protective of human health and the environment. This approach is consistent with the current triggers in Part 265, Subpart F for implementing the ground-water quality assessment plan.

Interim status impoundments that do not meet the liner and leachate collection system requirements and do not remove hazardous wastes will be allowed to remain open to receive only non-hazardous waste if no statistically significant increase in contamination above background levels (or decrease in pH levels) as specified in accordance with Subpart F has been detected. If background levels are exceeded at any time after the request to defer closure has been granted, the owner or operator of a disposal impoundment that does not satisfy the liner and leachate collection system requirements must initiate closure of the unit in accordance with the approved closure plan. Similarly, impoundments not in compliance with liner and leachate collection system requirements that remove hazardous wastes prior to receiving only non-hazardous wastes are subject to accelerated corrective action requirements consistent with the Part 264 requirements described above. Again, as discussed earlier, these corrective measures requirements are in addition to requirements in Subpart F or those included in a RCRA section 3008(h) corrective action order.

c. *Applicability to New Interim Status Units.* The requirements in today's proposal also apply to owners or operators of units that receive interim status as a result of new regulations (e.g., additional listings of hazardous wastes). For example, HSWA section 3005(j) requires that surface impoundments that receive interim status after November 8, 1984, because of new regulations, such as the promulgation of additional listings or characteristics for the identification of hazardous wastes, must satisfy the MTRs within four years of the promulgation that subjected the unit to RCRA Subtitle C. These owners or operators will be given sufficient notice that they will become subject to Subtitle C requirements; therefore requiring that the Part B application be submitted no later than 180 days prior to the final receipt of hazardous wastes as a condition of delaying closure to receive only non-hazardous waste should not impose an undue burden.

2. Other Conforming Changes to Parts 264 and 265

The Agency is proposing a conforming change to §§ 264.13 (a) and (b) and 265.13 (a) and (b) to require that the waste analysis plan be revised to account for the presence of any non-hazardous wastes managed pursuant to §§ 264.113 (d) and (e) and 265.113 (d) and (e). Today's rule also revises §§ 264.142(a) (3) and (4) and 265.142(a) (3) and (4) to specify that an owner or operator may not account for salvage value or incorporate a zero cost in the closure cost estimate for handling non-hazardous waste at closure, consistent with the current limitations in §§ 264.142 and 265.142 for hazardous wastes.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Proposed Rule on State Authorizations

Today's rule proposes standards that would not be effective in authorized States since the requirements would not be imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). The standards proposed today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above. If the State does modify its program, EPA must approve the modification for the State requirements to become Subtitle C RCRA requirements. States should follow the deadlines of 40 CFR 271.21(e)(2) if they desire to adopt this less stringent requirement.

VI. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being proposed today are designed to reduce the burden of the RCRA regulations and are not likely to result in a significant increase in costs. Thus, this proposal is not a major rule; no Regulatory Impact Analysis has been prepared.

VII. Paperwork Reduction Act

The information collection requirements contained in this rule have

been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20608, marked: Attention—Desk Officer for EPA. Should EPA promulgate a final rule, the Agency will respond to comments by OMB or the public regarding the information collection provisions of this rule.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 801 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The amendments proposed today are more flexible than the existing regulations and thus result in no additional costs. The viability of small entities, thereby, should not be adversely affected.

Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 27, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed that 40 CFR Chapter I be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.13 paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (b)(1) are revised to read as follows:

§ 264.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes if applicable under § 264.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste or non-hazardous waste if applicable under § 264.113(d) will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

3. In § 264.112, paragraph (d)(2) is revised to read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 264.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

4. Section 264.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding (d) and (e) to read as follows:

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the owner or operator complies with

paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows: (1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and (2) the demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in Parts 270 and 124 of this title and in the permit modification request demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this Part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(2) The request to modify the permit includes an amended waste analysis plan, ground-water monitoring and response program, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 264.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit and the demonstrations referred to in paragraph (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after Federal Register notice of this regulation, whichever is later; and

(4) The request to modify the permit is accompanied by the human exposure assessment required under RCRA section 3019, and the Regional Administrator does not determine, based on this information or information from other sources, that the unit poses a substantial risk to human health and the environment; and

(5) The request to modify the permit includes revisions, as appropriate, to affected conditions of the permit to account for the management of only non-hazardous wastes in a unit which previously managed hazardous wastes.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the request to modify the permit:

(i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under § 264.99; and

(ii) A plan for demonstrating compliance with one of the options described in paragraphs (e)(2) and (e)(3) of this section; and

(2) Remove all hazardous wastes from the unit by either:

(i) Removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s); or

(ii) Where removal in accordance with paragraph (e)(2)(i) of this section is infeasible or impracticable, displacing at least 95 percent of the liquid and suspended solid hazardous wastes (as measured volumetrically) by flushing with non-hazardous wastes, removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable, and demonstrating that the liquids and suspended solids remaining in the unit do not exhibit a characteristic of hazardous waste identified in Subpart C of Part 261; or

(3) Leave the hazardous wastes in place following the final receipt of hazardous wastes and comply with the requirements in paragraph (e)(6) of this section if a release is detected that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit, or exceeds the facility's ground-water protection standard at the point of compliance, if applicable, as specified under Subpart F of this part.

(4) The activities referred to in paragraph (e)(2) of this section must be completed as follows:

(i) For units meeting the requirements of paragraph (e)(2)(i) of this section, no later than 90 days after the final receipt of hazardous wastes; or

(ii) For units meeting the requirement of paragraph (e)(2)(ii) of this section, the process of displacing and removing the hazardous wastes must begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt of hazardous wastes.

(iii) The Regional Administrator may approve an extension to the deadlines in paragraph (e)(4)(i) or (ii) of this section if the owner or operator demonstrates that the removal or displacement of hazardous wastes will, of necessity, take longer than the allotted periods to complete and that an extension will not pose a threat to human health and the environment.

(5) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, has

been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(i) of this section, the owner or operator must cease the receipt of all wastes at the unit until corrective action measures in accordance with an approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(6) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, has been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(ii) of this section, the owner or operator must cease the receipt of all wastes following the displacement of hazardous wastes as specified in paragraphs (e)(2)(ii) and (e)(4)(ii) of this section until corrective action measures in accordance with the approved contingent corrective measures plan required in paragraph (e)(1) of this section have been implemented.

(7) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in Subpart F of this part after the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2) of this section, the owner or operator of the unit must implement corrective action measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later. The Regional Administrator may require the owner or operator to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(8) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements of Subpart F of this part at a surface impoundment subject to the requirements in paragraph (e)(3) of this section, the owner or operator must conduct corrective action in accordance with the requirements in Subpart F of this part and begin closure of the unit no later than 30 days after the detection of the release in accordance with the approved closure plan and the deadlines in paragraphs (a) and (b) of this section.

(9) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(10) The Regional Administrator may require the owner or operator of a surface impoundment subject to the requirements in paragraph (e)(2) of this section to commence closure of the unit if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

(11) If the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(10) of this section he shall:

(i) Notify the owner or operator in writing that substantial progress has not been made and he must begin closure in accordance with the deadlines in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (d)(11) (iii) and (iv) of this section are not subject to administrative appeal.

5. In § 264.142, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 264.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), that might have economic value.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for Part 265 continues to read as follows:

Authority: Section 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

7. In § 265.13, paragraphs (a)(1), (a)(3) introductory text, (a)(8)(i), and (b)(1) are revised to read as follows:

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes if applicable under § 265.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste or non-hazardous waste if applicable under § 265.113(d) will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

8. In § 265.112, paragraph (d)(2) is revised to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the onwer or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

9. Section 265.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding (d) and (e) to read as follows:

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complied with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows: (1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and (2) the demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator submits an amended Part B application, or a Part B application, if not previously required, and demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous waste will not be incompatible with any remaining wastes in the unit or with the facility design and operating requirements of the unit or facility under this Part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(2) The Part B application includes an amended waste analysis plan, ground-water monitoring and response program, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 265.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The Part B application and the demonstrations referred to in paragraph (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 180 days prior to the date on which the facility owner or operator receives the known final volume of hazardous wastes, or no later than 90 days after **Federal Register** notice of this regulation, whichever is later; and

(4) The Part B application is accompanied by the human exposure assessment required under RCRA section 3019, and the Regional Administrator does not determine, based on this information or information from other sources, that the unit poses a substantial risk to human health and the environment; and

(5) The Part B application is amended, as appropriate, to account for the management of only non-hazardous wastes in a unit which previously managed hazardous wastes.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection systems requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004 (o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the Part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for demonstrating compliance with one of the options described in paragraphs (e)(2) and (e)(3) of this section; and

(2) Remove all hazardous wastes from the unit by either:

(i) Removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable; or

(ii) Where removal in accordance with paragraph (e)(2)(i) of this section is infeasible or impracticable, displacing at least 95 percent of the liquid and suspended solid hazardous wastes (as measured volumetrically) by flushing with non-hazardous wastes, removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable, and demonstrating that the liquids and suspended solids remaining in the unit do not exhibit a characteristic of hazardous waste identified in Subpart C of Part 261; or

(3) Leave the hazardous wastes in place following the final receipt of hazardous wastes and comply with the requirements in paragraph (e)(8) of this section if a release from the unit is detected that is a statistically significant increase (or decrease in the case of pH) over background levels.

(4) The activities referred to in paragraph (e)(2) of this section must be completed as follows:

(i) For units meeting the requirements of paragraph (e)(2)(i) of this section, no later than 90 days after the final receipt of hazardous wastes; or

(ii) For units meeting the requirement of paragraph (e)(2)(ii) of this section, the process of displacing and removing the hazardous wastes must begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt of hazardous wastes.

(iii) The Regional Administrator may approve an extension to the deadlines in paragraph (e)(4) (i) or (ii) of this section if the owner or operator demonstrates that the removal or displacement of hazardous wastes will, of necessity, take longer than the allotted periods to complete and that extension will not pose a threat to human health and the environment.

(5) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels has been detected in accordance with the requirements in Subpart F of this Part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(i) of this section, the owner or operator must cease the receipt of all wastes at the unit until corrective measures in accordance with an approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(6) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels has been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(ii) of this section, the owner or operator must cease the receipt of all wastes following the displacement of hazardous wastes as specified in paragraph (e)(2)(ii) of this section until corrective action measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(7) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in Subpart F on this part after the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2) of this section, the owner or operator of the unit must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later. The Regional Administrator may require the owner or operator to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(8) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in Subpart F of this part at a surface impoundment subject to the requirements in paragraph (e)(3) of this section, the owner or operator must conduct corrective action in accordance with the requirements in Subpart F of this part and begin closure of the unit no later than 30 days after the detection of the release in accordance with the approved closure plan and the deadlines in paragraphs (a) and (b) of this section.

(9) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(10) The Regional Administrator may require the owner or operator of a surface impoundment subject to the requirements in paragraph (e)(2) of this section to commence closure of the unit if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(11) If the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(10) of this section he shall

(i) Notify the owner or operator in writing that substantial progress has not been made and he must begin closure in accordance with the deadline in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (d)(11) (iii) and (iv) of this section are not subject to administrative appeal.

10. In § 265.142, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 265.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), that might have economic value.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3005, 3007, 3019 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, as amended (42 U.S.C. 6905, 6912, 6925, 6939, and 6794).

§ 270.42 [Amended]

12. In § 270.42, the list of permit modifications in Appendix I.D.1 is amended by adding the following:

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Modifications	Class
D. Closure:	
1. Changes to the closure plan: * * *	
(g) Extension of the closure period to allow a landfill or surface impoundment unit to receive non-hazardous wastes after final receipt of hazardous wastes under §§ 264.113(d) and (e)	2
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Part V

Environmental Protection Agency

40 CFR Parts 232 and 233
Clean Water Section 404 Program Definition and Permit Exemptions; Section 404 State Program Regulations; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 232 and 233

[FRL-3214-1]

Clean Water Act Section 404 Program Definitions and Permit Exemptions; Section 404 State Program Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are hereby issuing final rules containing 404 program definitions and 404(f)(1) exemptions and the procedures and criteria used in approving, reviewing and withdrawing approval of State 404 programs. Part 232 contains definitions and exemptions related to both the Federal and State-run 404 program and Part 233 deals with State programs only. The revisions in these rules will provide the States more flexibility in program design and administration while still meeting the requirements and objectives of the Clean Water Act (the Act).

EFFECTIVE DATES: This final rule is effective on July 6, 1988. In accordance with 40 CFR 23.2, this regulation shall be considered issued for purposes of judicial review at 1:00 p.m., Eastern time on June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lori Williams, Office of Wetlands Protection (A–104F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–5043.

SUPPLEMENTARY INFORMATION: This final rule contains the 404 program definitions and 404(f)(1) permit exemptions in addition to the procedures and criteria used in approving, reviewing and withdrawing approval of 404 State programs. Part 232 basically recodifies the existing 404 program definitions and 404(f)(1) permit exemptions in a new, separate part of eliminate any confusion about their applicability. Part 232 applies to both the Federal and State programs. Part 233 revises the procedures and criteria used in approving, reviewing and withdrawing approval of 404 State programs. These final rules provide the States more flexibility in program design and administration while still meeting the requirements and objectives of the Act.

This rule was proposed on October 2, 1984 at 49 FR 39012. The notice invited public comments for a 60-day period ending December 3, 1984. On December 10, 1984 (49 FR 48064), the comment period was extended to January 2, 1985. Thirty-eight comments were received—15 State agencies, 10 environmental groups, 6 industry groups, 4 Federal agencies, and 3 others.

The comments covered the full range of views, ranging from those which indicated that more streamlining is required to those which indicated that the proposed regulations increased flexibility at the expense of environmental protection.

In addition to the more significant revisions described in the preamble, we have made minor editorial and content changes from the proposal. We have also renumbered the sections in Part 233 to close the large gaps in numbering in the proposal.

It is the agency's intent that 40 CFR Part 124 no longer applies to 404 State programs. We will be publishing technical, conforming regulations in the near future.

The following summarizes the major comments and EPA's response to them.

Response to Comments and Explanation of Changes

Part 232—404 Program Definitions, Exempt Activities Not Requiring 404 Permits

Section 232.2(b): In response to comment, we have revised the proposed definition of "application" for clarity.

Section 232.2 (e) and (f): The definition of "discharge of dredged material" and "discharge of fill material" were modified for consistency with the Corps regulations (33 CFR 323.2 (d) and (f)).

Section 232.2(j): We received comment that our definition of "general permit" is different from the Corps' definition (33 CFR 323.2(n)). The proposed definition was taken from the Act (404(e)(1)) and, therefore, has been retained in the final regulation.

Section 232.2(i): Under Section 404 of the Act, the Corps (and States approved by EPA) issue permits for discharges of dredged and fill material into waters of the U.S. Under Section 402, EPA (and States approved by EPA) issue permits for discharges of all other pollutants into waters of the U.S. In January 1986 the Corps and EPA entered into a Memorandum of Agreement (MOA) to resolve a longstanding difference over the appropriate Clean Water Act program to regulate certain discharges of solid wastes into waters of the U.S. The Corps issued its definition of "fill material" in 1977, which provided that only those solid wastes discharged with the primary purpose of replacing an aquatic area or of changing the bottom elevation of a waterbody are regulated under the Corps' 404 program. These discharges include discharges of pollutants intended to fill a regulated wetland to create fast land for development. The Corps' definition excludes pollutants discharged with the primary purpose to dispose of wastes which, under the Corps' definition, would be regulated under Section 402. Under EPA's definition of "fill material," all such solid waste discharges would be regulated under Section 404, regardless of the primary purpose of the discharger. The difference complicated the regulatory program for some solid wastes discharged into waters of the U.S.

The MOA provides an interim arrangement between the agencies for controlling these discharges. In the longer term EPA and Army agree that consideration given to the control of discharges of solid waste both in waters of the U.S. and upland should take into account the results of studies being implemented under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). The main focus of the interim arrangement is to ensure an effective enforcement program under Section 309 of the Act of controlling discharges of solid and semi-solid wastes into waters of the U.S. for the purpose of disposal of waste. When warranted, EPA will normally initiate section 309 action to control such unauthorized discharges. If it becomes necessary to determine whether Section 402 or 404 applies to an ongoing or proposed discharge, the determination will be based upon criteria in the agreement, which provide, *inter alia*, for certain homogeneous wastes to be regulated under the Section 402 Program and certain heterogeneous wastes to be regulated under the Section 404 Program, subject to certain criteria. This agreement does not affect the regulatory requirements for materials discharged into waters of the U.S. for the primary purpose of replacing an aquatic area or of changing the bottom elevation of a water body. Discharges listed in the Corps definition of "discharge of fill material" (33 CFR 323.2(1)) remain subject to Section 404 even if they occur in association with discharges of waste meeting the criteria in the agreement for Section 402 discharges.

Unless extended by mutual agreement, the MOA will expire at such time as EPA has accomplished specified steps in its implementation of RCRA. In the meantime, these regulations simply repromulgate EPA's existing definition of fill material.

Section 232.2 (q) and (r): Several comments were directed toward the definitions of "waters of the United States" and wetlands." The commentors suggested that these definitions exceed the original intent of Congress.

The legislative history of the Act, from both 1972 and 1977, emphasizes Congress' intent that the jurisdiction of the Act over waters of the United States reflect the maximum extent permissible under the Commerce Clause of the Constitution. The specific definition of wetlands used in these regulations was originally promulgated in 1977 (prior to the 1977 Amendments to the Act) and has been approved in numerous courts, most recently by the Supreme Court in *U.S.* v. *Riverside Bayview Homes Inc.* (106 S.Ct. 455 (Dec. 4, 1985)). The overall definition of waters of the United States has also been approved by the courts, both in its current articulation and in earlier versions. Therefore, we see no need to change these definitions to narrow their coverage.

Several questions have arisen about this application of this definition to isolated waters which are or could be used by migratory birds and endangered species. As the Agency explained in an opinion by the General Counsel dated September 12, 1985, if evidence reasonably indicates that isolated waters are or would be used by migratory birds or endangered species, they are covered by EPA's regulation. Of course, the clearest evidence would be evidence showing actual use in at least a portion of the waterbody. In adition, if a particular waterbody shares the characteristics of other waterbodies whose use by and value to migratory birds as well established, and those characteristics make it likely that the waterbody in question would also be used by migratory birds, it would also seem to fall clearly within the definition (unless, of course, there is other information that indicates the particular waterbody would not in fact be so used). Endangered species are, almost by definition, rare. Therefore, in the case of endangered species, if there is no evidence of actual use of the waterbody (or similar waters in the area) by the species in question, one could actually assume that the waterbody was not susceptible to use by such species, notwithstanding the particular characteristics of the waterbody. However, in each case a specific determination of jurisdiction would have to be made, and would turn on the particular facts.

For clarity and consistency, we are adding the following language from the preamble to the Corps' regulations published on November 13, 1986 (51 FR 41217). This language clarifies some cases that typically are or are not considered "waters of the United States."

"Waters of the United States" typically include the following waters:

- Which are or would be used as habitat by birds protected by Migratory Bird Treaties; or
- Which are or would be used as habitat by other migratory birds which cross State lines; or
- Which are or would be used as habitat for endangered species; or
- Used to irrigate crops sold in interstate commerce.

For clarification it should be noted that we generally do not consider the following waters to be "waters of the United States." However, EPA reserves the right on a case-by-case basis to determine that a particular waterbody within these categories of waters is a water of the United States. Pursuant to agreements with EPA, the permitting authority also has the right to determine on a case-by-case basis if any of these waters are "waters of the United States."

Non-tidal drainage and irrigation ditches excavated on dry land.

- Artificially irrigated areas which would revert to upland if the irrigation ceased.
- Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.

Section 232.3: The 1977 Clean Water Act provided for specific exemptions (404(f)(1)) from permitting requirements. EPA's 1980 Consolidated Permit Regulations promulgated regulations spelling out the scope of the exempted activities. The October 2, 1984, publication proposed several substantive revisions to the 404(f)(1) exemptions, as well as organizational changes. This rulemaking finalizes the organizational changes, but finalizes only one of the proposed substantive revisions. That revision substitutes "one year from discovery" for the previous "one year from formation" in § 232.2(d)(3)(i)(D), which exempts as minor drainage certain discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages. This rule also includes the revised irrigation ditch provision which was the subject of a separate rulemaking (40 CFR 233.35(a)(3), December 20, 1984). Additionally, we have made the note following § 232.3(b) more explicit to clarify that a conversion of wetlands to non-wetlands is (and has been) considered a "change in use." Apart from these changes, it appears, based on the comments received, that the regulated sector is familiar with the existing language and that no additional clarification or improvement is now needed.

One commenter suggested that the Best Management Practices (BMPs) for the exemption from permitting for construction or maintenance of farm roads, forest roads or temporary roads for moving mining equipment are complex and difficult to administer and should be left to negotiation between the State and EPA for inclusion in the Memorandum of Agreement (§ 233.13). These BMPs are the same BMPs that are required for exemption from Federal permitting requirements. These BMPs were promulgated in 1980 and have not been the subject of significant comment or complaint since then. A discharger under an approved State program should meet the same requirements as under the Federal program.

Part 233—State Section 404 Program Assumption Regulations

We received several comments expressing concern that the proposed regulations would weaken Federal responsibilities, such as those in the Fish and Wildlife Coordination Act, Endangered Species Act, and National Environmental Policy Act. When a State assumes the 404 permitting responsibility, these statutes usually no longer apply, since these statutes only apply to Federal actions. When a State assumes the program, the permit decision is a State action, not a Federal action. However, a Federal oversight role is clearly established by section 404(j) of the Act. Therefore, the altered Federal role after program approval is a function of the statutory scheme, not these regulations.

Section 233.1: Several comments were received on partial State programs, ranging from the view that partial programs should not be allowed to the

view that it is desirable to approve partial programs. The commentors identified partial programs in terms of geographic extent or scope of activities regulated. EPA interprets the Act as requiring State programs to have full geographic and activities jurisdiction (subject to the limitation in section 404(g)). While specific authorization for partial programs under section 402 was enacted in the Water Quality Act of 1987, no similar provision was added for section 404. Accordingly, partial 404 programs are not approvable. Because of the special status of Indians, a lack of State authority to regulate activities on Indian lands will not cause the State's program to be considered a partial program.

We encourage States to begin working with the Federal land-owning agencies (i.e., Forest Service, Bureau of Land Management, and National Park Service to name a few) early in the program development stage. This should eliminate or reduce any confusion that may develop, since subsequent to program approval, the State will assume 404 permitting responsibility in these lands.

In response to comments, we have clarified that States may have a program that is more stringent or extensive than what is required for an approvable program. Under State law, and not as part of its approved program, States may also regulate discharges into those waters over which the Corps retains jurisdiction. Those parts of the State's program that go beyond the scope of Federal requirements for an approvable program are not subject to Federal oversight or federally enforceable. Of course, while States may impose more stringent requirements they may not compensate for making one requirement more lenient than required under these regulations by making another requirement more stringent than required.

Section 233.3: One commentor requested that we limit confidentiality only to that information that does not relate to adverse effects on the aquatic environment. As these regulations conform to EPA's general regulations on confidentiality of information (40 CFR Part 2), we did not make the requested change.

Section 233.4: In the preamble to the proposed rulemaking, we specifically sought comment on the conflict of interest section. Several comments were received on this topic, the vast majority of which supported the need for a conflict of interest provision. However, several commentors did suggest that some flexibility should be added into this section.

The current language is derived from the requirements for an approvable NPDES program. However, State 404 programs should not be held to the same conflict of interest standards as State NPDES programs because of factual differences between the two programs. NPDES discharges are usually long term discharges, often from certain specific types of industrial or municipal dischargers. Discharges authorized by section 404 typically tend to be one time, of shorter duration, and by a wider range of dischargers than NPDES, ranging from private citizens to large corporations, from small fills for boat docks or erosion prevention to major development projects. Therefore, an absolute ban on anyone with a financial interest in a permit from serving on a board that approves permits is likely to be more difficult to comply with under the 404 program than under the NPDES program because under the NPDES criteria, so many people would be considered to be financially interested in 404 permits that the pool of potential 404 board members would be unreasonably small. In addition, because of the nature and size of the discharge, 404 dischargers will often have less at stake financially than 402 dischargers.

Therefore, we have simplified the conflict of interest section from what was proposed. The final rule does not prohibit a person with an interest in a 404 permit decision from generally participating on a board which makes decisions on permit issuance or denial. However, anyone with a direct personal or pecuniary interest in a particular permit decision *must* make such interest known and must *not* participate in that permit decision. This new language allows more latitude in who may serve on a board, but still provides that there not be a conflict of interest or appearance of conflict of interest in any particular permit decision. This language effectuates the basic intent of the NPDES criteria, by ensuring that board members are disinterested decisionmakers.

Section 233.10: In response to comment, we have clarified our original intent that copies of State statutes and regulations submitted as part of a State's submission include statutes and regulations concerning the State's applicable administrative procedures.

Section 233.11: Several comments addressed the need for additional information in the program description. These commentors were concerned that there may be insufficient information available to determine a program's adequacy. These regulations reflect EPA's view that a complete program description is essential for determining the adequacy of a State's program. A State's program must be at least as stringent and extensive as the Federal program. In response to these comments, we have specified certain information that must be included in the scope and structure of the State's program. The description of the scope and structure of the State's program must include a detailed description of the extent of the State's jurisdiction, scope of the activities regulated as well as the scope of permit exemptions (if any), anticipated coordination, and the environmental permit review criteria.

Section 233.11(h) clarifies the requirements for a description of the State's jurisdiction. As part of the program description, the State must describe separately the waters it will assume after program approval and the waters retained by the Corps. This should make it easier for the public to understand the split jurisdiction between the State and the Corps.

We do not concur with the comment that, in addition to a description of funding and manpower available for program administration, the program description should include formal assurance from the Governor that the level of funding is sufficient to provide for an effective program. However, we have reinstated the existing requirement that the State provide an estimate of the anticipated workload. This should provide the information needed to determine if the State has sufficient manpower to adequately administer a good program. If there is insufficient funding or manpower for an adequate program, this will become evident either in review of the program submission or in the annual review of an approved program.

Section 233.13: In response to comment, we have specified that, if more than one State agency has responsibility for program administration, all the involved State agencies must be parties to the Memorandum of Agreement (MOA) between the State and EPA's Regional Administrator. This requirement is in the existing regulations, but had been eliminated in the proposal. Restoring this requirement ensures that all State agencies responsible for program implementation are fully aware of their responsibilities.

One commenter suggested we use the MOA to establish procedures to withdraw a permit from State processing prior to any State action on the application. We do not agree with this suggestion. Except for one situation provided for in Section 404(j), only the

State may issue a permit for discharges in State regulated waters.

We do not agree with the comment that the proposal fails to ensure adequate coordination of EPA and State enforcement activities, as it requires the MOA to address State and EPA roles and coordination on compliance monitoring and enforcement activities. The purpose of formalizing this aspect of the State's program in an MOA is to assure adequate coordination on compliance monitoring and enforcement activities. As part of the State's program submission, this MOA is subject to public comment. If there is any question on the adequacy of a particular program, it should become apparent during Federal agency and public review.

Many commentors expressed concern about the provision for waiver of Federal review. Many were concerned that the waiver provision would be abused and that environmental protection of the resources would suffer. Several commentors were concerned that inappropriate categories would be waived. We feel that use of this waiver provision will reduce workload and paperwork and focus Federal resources where they are most needed and appropriate. Specific waivers will be available for public review and comment prior to program approval.

This final regulation eliminates a separate section on sharing of information (former 40 CFR 233.29), since the MOA with the Regional Administrator is already required to address State submittal of information to EPA and EPA access to State records, reports and files relevant to the program. We feel this adequately serves the purpose of 40 CFR 233.29.

Section 233.14: In response to comments, we have, as in the previous section, now specified that all State agencies responsible for program administration must be parties to the Memorandum of Agreement between the State and the Secretary.

EPA has also added a note encouraging States to use this MOA to establish procedures for joint processing of Federal and State permits. Several comments requested that joint processing be made mandatory. While we agree that joint permit processing may be very beneficial to the regulated public, we cannot make this a condition to an approvable program. However, we will continue to strongly encourage States to look into the possibility of joint processing.

In response to comment, we have retained the existing requirement that, if States plan to assume existing Corps general permits, this MOA must include procedures for transferring the support files for these general permits from the Corps to the State. This will facilitate State oversight of such general permits.

One commentor was concerned that the regulations eliminated a provision for procedures to ensure the State did not approve permits on the basis of incomplete applications transferred by the Corps. This provision was deleted as unnecessary. Once a State assumes the program, it is responsible for fulfilling all permitting requirements, including public notice. The regulation requires that sufficient information be available to meet the information requirements for public notice and for assessing the impacts of the discharge. Therefore, the State must either deny incomplete applications or take steps to get the complete information.

Section 233.15: The Act establishes a 120-day time clock for EPA decision on a State's request for program approval. The final regulation clarifies that this statutorily mandated time period starts on EPA's receipt of a complete program submission. If the State significantly changes its submission during the review period, the time clocks starts over upon EPA's receipt of the revised submission. The review period may be extended upon agreement of the State and EPA.

We cannot agree to the suggestion that the regulation lengthen the public comment period and notice of public hearing for decision on a State program. The Act is very specific on the timeframe for this decision. If a decision is not made within the 120 days timeframe, the State's program is automatically approved. EPA cannot make a decision within the mandated 120 days of receipt if these time frames are extended. Of course, as noted earlier, a State may agree to extend the time period for program approval; in that event, additional time could be provided for public participation within that State.

EPA will make its decision to approve or disapprove the State's program within the statutorily mandated timeframe. However, if approved, the State's program will not be effective until the notice of approval is published in the **Federal Register**.

Many comments were received on the delegation of authority to the Regional Administrator to approve/disapprove State programs. Most commentors were concerned about national consistency among the States' programs. The Delegation Manual, which formalizes this delegation of authority, requires that the Regional Administrator approving a State program must obtain the concurrence of two EPA headquarters offices—Office of Water and Office of General Counsel. This should ensure the desired national consistency.

EPA has added language to make it explicit that programs shall be approved or disapproved based on whether the State's program fulfills the requirements of this regulation and the Act.

This rule also clarifies that EPA will use existing State, Corps, FWS and NMFS mailing lists as the basis for mailing notices about the State's request for program approval.

A summary of significant comments received and response to these comments will be prepared by the Regional Administrator prior to decision on a State's program. Since there are already specific requirements for public notice and public hearing, there is no need for (and we have deleted the requirement for) the responsiveness summary itself to describe the public participation activities or matters presented to the public.

Section 233.16: This rule clarifies that it is the State's obligation to keep the Regional Administrator informed of any proposed or actual changes to the State's approved program.

We rejected the suggestion that if a State must amend or enact new legislation to comply with any modification in Federal regulation, the change must be promulgated within one year of the modification. A two year time period was chosen because many State legislatures do not meet every year. A one-year deadline for these States would be impossible to meet.

We also do not agree with the suggestion that minor revisions to an approved State program should undergo as much review and/or coordination as substantial program revisions. As the name (minor revision) implies, these program changes will not have a significant impact on the program or the environment. Of course, if there is question in EPA's mind about whether a proposed revision is minor or substantial, the revision shall be considered substantial and undergo full review specified for an original application.

Section 233.21: Several commentors questioned the legality of State issued general permits. Sections 404 (g), (h) and (j) of the Act authorize this type of State permit.

Many commenters were received on general permits. States have the option of assuming administration of Corps' existing general permits. If they choose to exercise this option, the State is responsible for ensuring discharges comply with any existing permit conditions and any reporting, monitoring

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or predischarge requirements. The Corps shall provide the State copies of the support files for any general permits assumed by the State.

One commentor questioned the advisability of EPA approving transfer of some existing Corps general permits to a State. EPA cannot ignore Sections 404 (g)(1) and (h)(5) which provide for a State to assume existing general permits. If a State with an approved State program proposes renewal of any permits that have not worked well, EPA will comment/object to these proposed permits, as appropriate.

Several commentors expressed satisfaction with the Corps' existing general permits. These commentors expressed concern about the States not assuming such existing general permits and about their opportunity for participation in such a decision. It is the State's prerogative not to assume any of the existing general permits. However, if, at the time of initial program assumption, the State does not intend to assume existing Corps general permits, this will be noted within the program submission and will be subject to public comment and public hearing as part of the approval process. Failure to assume existing Corps general permits does not constitute a partial program, since the State will process individual permit applications for those discharges previously authorized by general permit. Any Corps general permit not assumed by the State will remain in effect, for purposes of the Clean Water Act, until its normal expiration date, unless revoked or modified sooner by the Corps under its procedures. If subsequent to program approval the State decides to revoke or modify a general permit it has assumed, the normal revocation procedures will apply.

Many comments were received on predischarge notification requirements for general permits. Some commenters agreed that notification should be determined on a permit-by-permit basis; others felt that such notification should be required on all general permits. This rule adopts the proposal that notification requirements be established on a permit-by-permit basis. For instance, prenotification or reporting may be required in areas where there is a likelihood for individual or cumulative adverse effect on the environment because of discharges conducted under a general permit. All draft general permits will be reviewed by EPA and the other Federal review agencies as well as the general public. If during the review of a particular draft general permit, EPA determines that notification provisions are appropriate to ensure compliance with the 404(b)(1) Guidelines, we will so state in the Federal comments to the State. This ensures that notification requirements will be included where in fact appropriate.

The Department of the Interior requested that we require a 30-day prenotification requirement on any discharge pursuant to a general permit that may impact units of the National Park System, National Wildlife Refuge System, National Fish Hatchery, Reclamation project lands, Indian Reservation and Trust lands, and public lands under the jurisdiction of the Bureau of Land Management. We do not feel at this time that there is a basis for automatically requiring such prenotification. If there is a need for prenotification for a particular permit, it may be specified through the Federal comment on the draft permits and will therefore be included in the issued general permit, in accordance with § 233.50.

Several commentors requested that we retain limits on any single operation conducted under a general permit. We agree that this is appropriate. Subsection 233.21(c) (1) and (2) require each general permit to have limits on the size and location and type of fill for any single operation, sufficient to ensure minimal adverse environmental effects when performed separately and minimal cumulative adverse effects, as required by Section 404(e).

One commentor was concerned that we had deleted all the standard permit conditions (§ 233.23) for general permits. Section 233.21(c) (1) and (2) recapture the main items of § 233.23(c)(1) such as specific description of activities authorized including limitations for any single operation and precise description of geographic area to which the general permit applies including any limitations where operations may be conducted. The only part of § 233.23 (Permit conditions) that does not apply for general permits is § 233.23(c)(1), which is not applicable because it refers to items that are pertinent only to individual permits (e.g. name and address of permittee).

Several commentors suggested that the Director should show cause for invoking discretionary authority to require an individual permit. This regulation specifies that discretionary authority may be based on concerns for the aquatic environment including compliance with these regulations and the 404(b)(1) Guidelines. Section 510 of the Act preserves the Director's right to impose more stringent requirements, i.e., to invoke discretionary authority for other reasons under State law. Once the Director notifies a discharger that he will exercise discretionary authority to require an individual permit, the activity is no longer authorized under the general permit. If the activity continues after notification, the discharger is subject to enforcement action.

Section 233.22: In response to comments requesting more specific permit conditions, we have clarified that emergency permits, to the extent possible, should incorporate all applicable permit conditions (§ 233.23), including restoration of the site. We have also retained the provision that emergency permits shall be limited to duration of time needed to complete the authorized emergency action.

We do not agree with the comment that the Regional Administrator must show cause to terminate an emergency permit. The Regional Administrator never terminates permits. The Director may terminate an emergency permit if he determines such an action is necessary to protect human health or the environment.

Section 233.23: Each permit shall have conditions which assure compliance with all applicable statutory and regulatory requirements. If any of these requirements change, the permit conditions must be modified as needed to assure compliance with the revised requirements.

In response to comments, we have added a requirement that the permit contain conditions which assure that the discharge will be conducted in a manner which minimizes adverse impacts on the physical, chemical and biological integrity of the waters of the United States. This is a reiteration of the requirements in the 404(b)(1) Guidelines (§ 230.10(a)). Restoration and mitigation may be considered as mechanisms for reducing adverse impacts in appropriate circumstances.

One commentor expressed concern about the proposed deletion of the permit condition referring to BMP's approved by a Statewide 208(b)(4) agency. If a State has an approved 208 program, these requirements would be covered by § 233.23(a), which requires the Director to establish conditions which assure compliance with all applicable statutory and regulatory requirements, so there is no need for a separate reference to the BMP's.

In response to comment, we have retained the requirement for a permit condition explaining that a permit violation is a violation of the Act as well as of State statutes or regulations, as this reminder may enhance compliance.

We also have expanded § 233.23(c)(6) to require the permittee to provide the Director information to determine whether cause exists for permit revocation or termination as well as modification.

We concur with the comment that the Director or his authorized representative should have proper identification before they can enter the premises or inspect any records. We believe this is reasonable and have added this to the final regulation.

One commentor requested that the regulation require more specific identification of the disposal site. We feel that between the existing requirements for permit application, public notice and permit conditions, the disposal site will be adequately identified. However, as a safeguard, we have added that the description of the project on the issued permit must include a description of the purpose of the discharge.

Section 233.24 (Effect of a permit). This section has been deleted as unnecessary. The statements in this section were simply facts which do not need to be included in regulations to be in effect.

Section 233.30: Many comments were received on the State application form. A number expressed concern that there would not be enough information available to evaluate the potential impacts of the discharge activity. We have accordingly revised this section to generally reflect the same application information requirements contained in the Corps' current regulations (33 CFR Part 325). Under this approach, State assumption of the program should not result in any change in either the kind of information available for review or the burden upon the applicant to supply the information. In addition, a requirement for certification that all information contained in the application is true and accurate has been added to § 233.30(b)(4).

Several commentors requested that we include the publicity and pre-application consultation requirements in the regulations. As noted in the preamble to the proposed rule, we agree that publicity and preapplication consultation are beneficial; however, they are not required for an approvable program. We will continue to encourage States to include them in their programs.

Section 233.31: In response to comment, this section has been simplified from proposed § 233.61; it now simply requires coordination with other States whose waters may be impacted by the discharge and coordination with Federal and Federal-State water related planning and review processes, without attempting to list such processes. These planning and review processes may include, but are not limited to, coastal zone management plans, 208 areawide plans, Continuing Planning Process (§ 303(e)), and advanced identification (40 CFR 230.80). The coordination procedures will likely vary from State to State. The State's anticipated coordination shall be included in the program description. EPA will carefully scrutinize the anticipated coordination to assure it is adequate.

Comments were received suggesting that we require States to incorporate into their programs information developed by FWS' National Wetlands Inventory (NWI). While we agree that this information would be very useful in administering a State's program and encourage States to take advantage of it, it should not be mandatory for States to incorporate this information in their programs. The NWI was not developed for regulatory purposes. Additionally, the FWS did not use EPA's definition of wetlands in the NWI; therefore, the "NWI wetlands" and the "404 wetlands" may not always coincide.

Several commentors were concerned that the lack of specificity of coordination requirements would weaken State programs. While these regulations do not list specific entities (agencies) that must be coordinated with, we will carefully evaluate the coordination aspects of each State's program prior to decision on approval/disapproval. While we anticipate that the State's permitting agency will coordinate with State fish and game agencies, this is not required by the Fish and Wildlife Coordination Act (FWCA). Once a State assumes the 404 permitting responsibility, that Act no longer applies in the permitting process since permitting becomes a State (not Federal) action. The FWCA will still require coordination with FWS whenever a State-issued permit is issued to a Federal agency or facility. However, it must also be remembered that States must assure compliance with the 404(b)(1) Guidelines which provide for protection of fish and wildlife resources. EPA is responsible for soliciting comments from the Corps, FWS, and NMFS, and commenting to the States.

Section 233.32: Many comments were received on proposed § 233.62 (public notice), some in support of and others opposed to shortening the public comment period. The final rule provides for a public comment period at least comparable to that under the Federal program. The existing Corps' regulations (33 CFR Part 325.3) specify a public notice period of "A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing." Today's rules specify "* * * a reasonable period of time, normally 30 days," and allows approving a program that allows less than a 30 day public comment period if the Regional Administrator determines that "sufficient public notice is provided for." The Regional Administrator must carefully consider all aspects of a State's program in regard to public involvement, including how extensive the State's mailing list is, whether notice is published in area newspapers, what the actual length of the comment period is, whether the shorter time period is for all projects or just certain categories of discharge. We anticipate that comment periods would not be shorter than 20 days, and we will carefully scrutinize any that are less than 30 days.

Several comments on the content of the public notices were also received. These comments objected to the lack of specificity of the information required to be included in the public notice. In response to these comments, the information requirements for public notice have been changed. These regulations incorporate much of the language in the Corps' existing regulations (33 CFR 325.3.) Therefore, there should be no net change in the information available to evaluate a proposed discharge from the existing Federal program to an approved State program.

We have modified the requirement on who must automatically be mailed notice of a permit application. While the notification may vary depending on the type and location of the project, certain notifications, such as the local governmental agency, should be routine. Other notifications that may be useful include historic preservation and coastal zone management offices.

In response to comments, we have also clarified that anyone may request to be put on a mailing list to receive copies of public notices.

One commentor suggested that we make it clear that information obtained in response to the public notice will be taken into consideration as part of the environmental assessment to determine if an environmental impact statement (EIS) should be prepared. We have not included this language since, once a State assumes the permitting responsibility, the National Environmental Policy Act (NEPA) no longer applies. NEPA applies to Federal actions. When a State assumes the program, the permit decision is a State action, not a Federal action. While many States have a State law equivalent to

NEPA, it is not the function of these regulations to address EIS requirements under such State laws.

Section 233.33: This provision has been rewritten to clarify how the transcript of public hearings will be made available to the public.

Section 233.34: Several commentors expressed concern that requiring the State to prepare a written determination for each permit is excessive paperwork. We do not concur with this view; we feel that a written determination is needed for each permit decision to ensure proper evaluation and to facilitate subsequent review. Therefore, these regulations contain the requirement that the Director must prepare a written determination for each permit application outlining the decision and the rationale for the decision. Of course, in accordance with § 230.6 of the Guidelines, the level of detail may be tailored to the circumstances.

Any State environmental review criteria must be at least equivalent to the 404(b)(1) Guidelines for an approvable program. The 404(b)(1) Guidelines were the subject of an Advanced Notice of Proposed Rulemaking (ANPRM) (47 FR 36798) published August 23, 1982, to solicit comments and examples of alleged problems with these Guidelines. At this time, EPA has not found sufficient basis for revising the Guidelines. Therefore, States must assure compliance with the current Guidelines, as required in section 404(h)(1)(A)(i).

We do not concur with the suggestion that we establish specific deadlines for State decision on an application. The only deadlines in this regulation are those which relate to the statutorily mandated timeframes for Federal review of an application.

Section 233.35: The final regulation simply requires signature by both the applicant and the Director, and does not specify the sequence in which they sign. However, EPA anticipates that, if the project is controversial or if the permit conditions are restrictive, the Director may wish to require the applicant to sign the permit to indicate acceptance of its terms prior to the Director's signature.

Section 233.36: These regulations simplify the procedures for modification, suspension and revocation of permits. State procedures to handle these situations shall be approved if there is opportunity for public comment, coordination with the Federal review agencies, and opportunity for public hearing. Language has been added (§ 233.36(b)) specifying that permit modification must be in compliance with § 233.20 (Prohibitions).

The 402 State program regulations handle modifications differently than these 404 State Program Regulations. 40 CFR 122.62 provides an exclusive list of grounds which justify the modification of a 402 State permit. Section 233.36 does not. This difference between the two programs is appropriate for the following reasons. First, the 402 program has a long history of litigation concerning reopener and the five year maximum permit term; the 404 program does not. Second, the 402 program generally regulates continuous discharges; consequently, there is great concern with balancing the permittee's need for certainty and continuity against the program's need to impose more stringent standards. The 404 program, however, tends to regulate short-term discharges, and thus the permittee's need for continuity is much less than it is in the 402 program. Consequently, the 404 programs may facilitate permit modification by States where the 402 program can not.

One commenter expressed concern about use of abbreviated review procedures for modification of permits for minor modification of project plans that do not "significantly" change the character, scope and/or purpose of the project or result in significant change in environmental impact. The commenter was concerned that the use of the word "significant" was too vague and allowed a procedural loophole to avoid public and agency review. The key word in this sentence is "*minor*" modification. Things that will be evaluated in making the decision on whether the project modification is minor are whether there is any change in project purpose, or any change that increases the amount of dredged or fill material, or any change that enlarges the scope of the project. We anticipate that, if there is any question about the need for public and agency review of a project modification, the State will initiate full review procedures.

Section 233.37: In the preamble to the proposed regulation (49 FR 39015) we noted that the requirements concerning who must sign may not necessarily be appropriate for the 404 program. The language in the proposal was the result of a settlement agreement (*NRDC* v. *EPA*, and consolidated cases [No. 80–1607 (D.C. Circuit)]). All the comments received on this subject agreed that the proposed signature requirements are appropriate for NPDES discharges, but are too inflexible and are not really appropriate for 404 discharges, since most 404 discharges are a one time discharge and on a relatively small scale. We concur with these comments. Therefore, this final regulation incorporates the signatory requirements contained in the Corps' current regulations (33 CFR 325.1). Thus, there will be no change from the existing Section 404 requirements when a State assumes the program.

The certification that all statements contained in the application or other documents are true and accurate and that there are penalties for submitting false information has been removed from this section to § 233.30 (Application for a permit). Section 233.41(a)(3)(iii) also addresses this certification in that it provides for authority to seek criminal fines against any person who knowingly makes false statements in any application, record, report, plan or other document filed or required to be maintained under the Act, these regulations or the approved State program.

Section 233.38: One commentor requested that if a State permit application has been submitted in a timely manner, an existing Federal permit should be continued beyond its expiration date until a State permit is issued. The provision in the Administrative Procedures Act for continuing Federal permits does not apply in this setting. Therefore, such continuation may be accomplished only through State law. These regulations allow but do not require the State to have such authority. We cannot mandate that this be a requirement for an approvable program.

Section 233.40: The compliance evaluation provision has been rewritten from the existing regulation to simplify it and to provide additional flexibility. We continue to believe that compliance evaluation is an important component of an effective Section 404 program. Therefore, the previous provisions (40 CFR 233.27 (1984)) should be considered as guidance in interpreting the new streamlined language.

We do not agree with the comment that State agency authority to "* * * enter any site or premises subject to regulation" is excessive or may violate civil rights. This provision does not override applicable warrant requirements or other safeguards. Of course, if State requirements so constrain the State's right of entry that the State lacks meaningful authority to inspect, the program would not be approvable. (We are not presently aware of any States where there would be this problem, however.)

Section 233.41: Many comments were received on the proposed alternative requirements for authority to assess civil and criminal fines of a specific amount. The comments ranged from approval of the alternative concept to concern about weakening State enforcement capability. This regulation promulgates the proposed subsection allowing approval of a State program without the specific monetary penalty authority if it has a demonstrably effective alternative enforcement mechanism.

We are interested in ensuring that State programs have strong enforcement capability, since it is not desirable for EPA to constantly overfile in State enforcement actions. Because the Act does not specify that a State must have penalties equal to the Federal penalties or at any other particular level for an approvable program, EPA has substantial discretion in deciding what is sufficient State enforcement authority. These regulations establish monetary penalties for which the State must have the authority to assess; they need not be assessed by the State for every violation. These amounts are approximately half those EPA is authorized to assess.

If a State cannot fulfill these monetary penalty requirements, it can still have an approved program if EPA is satisfied that it has "an alternate, demonstrably effective method of ensuring compliance." However, even under the alternative enforcement program provision, States must still have the authority to assess both civil and criminal penalties, although the amounts may not equal those required by § 233.41(a)(i)–(iii).

Before approving any alternate enforcement mechanism, the Regional Administrator (RA) will carefully evaluate the State's proposed alternative enforcement mechanism to ascertain the effectiveness of the proposed alternative. The State's program must have a clear history of demonstrated effective deterrence, while also having direct punitive value. Programs will have to be in effect for at least one year prior to formal application for program approval in order to have a sufficient track record for evaluating effectiveness.

An effective, strong restoration program is the type of enforcement program that would be given serious consideration as an alternative under this provision. Being of a solid nature, 404 discharges tend to stay where originally placed, making restoration of illegally filled areas more feasible for 404 discharges as compared to 402 discharges. Most 404 discharges are a one time discharge, of relatively short duration, and on a relatively small scale. This lends more credence to restoration working as an alternative enforcement mechanism which can serve to protect the environment, deter future violations, and penalize the violator.

A key aspect that the RA must consider in determining effectiveness is whether the alternative program has an equivalent deterrence effect as would assessment of monetary penalties. The alternative approach must be strong enough to cause a violator to cease any and all illegal activities. It must also deter others from violating the State's permit program. How effective the alternative mechanism will be in preventing and restoring any environmental damage will also be considered by the RA in making a decision on approval/denial of a State's alternative enforcement program.

The enforcement authority which a State must have in order for a Section 404 program to be approved is essentially the same enforcement authority it must have to administer an NPDES program under the Act. If a State lacks authority to recover penalties of the levels required under § 233.41(a)(3)(i)–(iii), EPA will review a State's authority to assess penalties in light of the State's ability to provide other incentives to compliance and deterrence to noncompliance. EPA intends that penalties for violations of Section 404 programs will provide general and specific deterrence. Penalties assessed in State administered programs should persuade the violator to take precautions against falling into noncompliance again, deter violations by others, and restore economic equity to regulated parties who have complied with Section 404 requirements. Penalties assessed in a State program should, at a minimum, recapture the economic benefit that a violator has wrongfully obtained. In support of its application for program approval, a State may provide information regarding its authority to obtain money judgments from Section 404 violators under equitable theories such as restitution and unjust enrichment.

Any proposed alternative enforcement mechanism will be available for public comment as part of the State's program submission. We are concerned about national consistency in administration and effectiveness of State programs. Therefore, we must stress that approval of an alternate enforcement mechanism will not be undertaken lightly. States should continue to try to meet the existing monetary penalty requirements.

In these regulations we have added a reporting requirement for States using the alternative enforcement authority. Under final § 233.41(d) the State must keep the Regional Administrator informed of all enforcement actions carried out under the alternative provision. The manner of reporting will be established as part of the State's submission in the Memorandum of Agreement with the Regional Administrator. This reporting requirement will enable EPA to closely monitor the effectiveness of the State's enforcement program and to determine any need for EPA overfiling in State enforcement cases and/or action under Section 309.

In response to comment, we have retained the requirement that the burden of proof for State enforcement cases shall be no greater than the burden of proof required of EPA.

One commentor suggested that any intervention in a State enforcement action must include some showing of justification. This regulation adopts the proposal which allows intervention "* * * by any citizen having an interest which is or may be adversely affected." We feel this adequately answers the suggestion.

One commentor requested that EPA prescribe procedures for any affected person to initiate legal action in State or Federal court against the Director, the permittee, or anyone operating in noncompliance with a State program. This would be comparable to the citizen suit provision in Section 505 of the Act. While such a provision might strengthen a State program, there is no such statutory requirement for an approvable program. However, we do anticipate that many States will have some form of citizen suit provisions.

Subpart F—Oversight Policy

Many Federal environmental programs were designed by Congress to be administered at the State level wherever possible. EPA's policy has been to transfer the administration of national programs to State governments to the fullest extent possible, consistent with statutory intent and good management practice. The clear intent of this design is to use the strengths of Federal and State governments in a partnership to protect public health and the nation's air, water, and land. State governments are expected to assume primary responsibility, while EPA is to provide consistent environmental leadership at the national level, develop general program frameworks, establish standards as required by the legislation, assist States in preparing to assume responsibility for program operation, provide technical support to States in maintaining high quality programs, and ensure national compliance with environmental quality standards.

The relationship between EPA and the States under assumption of the Section 404 Program is intended to be a partnership. Both EPA and the States have continuing roles and responsibilities under assumed State 404 programs. EPA remains responsible to the President, the Congress and the public for progress toward meeting national environmental goals and for ensuring that the Clean Water Act is adequately enforced. Thus, EPA's policy to transfer management responsibilities for environmental programs to State governments carriers with it a corresponding EPA responsibility to assure the objectives of the Federal law are achieved.

Evaluation of approved State 404 programs will generally focus on overall program performance and identifying patterns of problems. However, there will be some cases where EPA (and other Federal agency) participation in an individual State permit decision will be appropriate. Section 404(j) specifically provides for Federal comment on individual permit applications.

However, based on our general policy and our specific experience with Michigan's Section 404 program, the provision for waiver of Federal review (§ 404(k)) will be exercised to focus permit-specific oversight primarily on proposed discharges with potentially serious adverse environmental impacts. Review of Michigan's assumed program clearly illustrates that Federal review was waived in the vast majority of cases. In 1985, approximately 1% of the permit applications received Federal review; in 1986, approximately 1.5%.

We expect to issue guidance on Federal oversight of approved State programs under these regulations. This will include guidance on identifying and describing categories of activities eligible and appropriate for waiver of Federal review, emphasizing reasonable waiver initially, followed by increasing waiver over time based on experience with the State 404 Program. Thus, as experience demonstrates that a State is effectively administering its approved program, so as to comply with all national requirements, it is expected that additional waivers will be developed, replacing more individual permit review with periodic programmatic review. This periodic review will usually be conducted on an annual basis, but may be more frequent, as necessary or appropriate. EPA intends that other Federal agencies with responsibility under Section 404 will have an opportunity to participate in State program review activities and in the determination of what changes to such review would be appropriate.

Section 233.50: Several commentors expressed concern that too much time is allowed for Federal review of State permit applications. The final regulations retain the proposed time frames because they are based on Section 404(j) of the Act. However, the regulations do allow for the times to be shortened by mutual agreement of the Federal agencies and the State.

Several commentors questioned why EPA receives the public notice from the State and distributes the notice to the Federal agencies. The Act establishes EPA as the Federal focus of contact with the State. However, if the State, with the goal of streamlining, wants to provide copies of the public notice directly to all the Federal agencies, this can be accommodated within the Memorandum of Agreement with the Regional Administrator (§ 233.13). In either case, the comments from the Federal review agencies will be forwarded to EPA to consolidate the Federal comment to the State.

In addition to the public notice and draft general permit, the Regional Administrator shall forward to the Corps, FWS, and NMFS any other information pertinent to making an informed comment that the States makes available to him.

This regulation eliminates the requirement that States prepare draft individual permits. Draft general permits must be prepared (§ 404(j) refers to a copy of each proposed general permit) but there is no comparable statutory requirement for draft individual permits. Moreover, draft permits are not prepared as part of the current Federal program. Public review of individual permit applications is currently based on the public notice; public review subsequent to State assumption will also be based on public notice. Therefore, there will be no substantial change from existing procedures.

One commentor questioned why the public notice was circulated to EPA for Federal review instead of the permit application (§ 404(j)). The public notice usually contains all the pertinent information in the permit application (§ 233.32(d)). Under the Corps administered program, public and Federal review is normally based on the public notice; therefore, there will be no significant change from current practice. In addition, under either the Federal and State programs, EPA can request a copy of a particular application if it has a need for it.

In response to comment, we have reinstated the provision that if the Regional Administrator notified the Director within 30 days of receipt of the public notice that there is no comment, he may reserve the right to object within 90 days of receipt of the notice based on new information brought out by the public during the comment period or at a hearing.

Contrary to several comments received, the regulation already provides that the State shall provide a copy of every issued permit to the Regional Administrator (§ 233.50(a)(4)). These issued permits will be reviewed for compliance with the requirements for an approvable program, as part of EPA's overall oversight.

One commentor suggested that our provision for the Regional Administrator to consolidate comments for the Federal agencies conflicted with Section 404(h)(1)(H). However, Section 404(j) specifically assigns this coordination/consolidation role to EPA's Regional Administrator. This section clearly establishes EPA's Regional Administrator as the Federal focus for approved State programs. After "full consideration" of the comments of the Federal review agencies, EPA will prepare and transmit the Federal comment on a permit application to the State. If appropriate and/or useful, EPA may transmit copies of the other Federal agencies' comment to the State as part of the official Federal comment. Those agencies are, of course, also free to furnish information copies of their comments to the State at the same time they submit them to EPA.

Section 233.51: This section received many comments, which range from the view that Federal review has been waived far too much to one that Federal review has not been waived for enough categories of discharge. Other than the few categories never eligible for waiver, waivers will be developed on a State-by-State basis. Each State has unique resources that must be considered in developing categories or discharge eligible for waiver. These categories will be developed in consultation with the Federal review agencies and will be open to public comment. We anticipate that use of this waiver mechanism will reduce unnecessary paperwork and direct the Federal presence to where it is most needed and appropriate.

The proposed rule specified that general permits are not eligible for waiver of Federal review. The proposal intended that *draft* general permits are not eligible for waiver of review. This has been clarified in the final rule.

In response to comment, we have reinstated the provision that discharges into National and historical monuments

are not eligible for waiver of Federal review, in light of the special Federal interest in them.

We anticipate that existing Corps nationwide permits will be used as a basis for developing categories to discharge eligible for waiver of Federal review. Previous Federal agencies' comments (or no comment) can also be used in determining activities eligible for waiver of Federal review. Where EPA has used the advanced identification procedure with the Corps or the State under 40 CFR 230.80, or on its own initiative under Section 404(c) (40 CFR Part 231), the results of that process will be used to determine those areas and categories of discharge that should be, and/or those that should not be, considered for waiver of Federal review.

Categories of activities eligible for waiver of Federal review in a particular State will be developed after consultation with the Corps, FWS, and NMFS. These categories will be described in the State's submission for program approval and therefore will be subject to public comment. Activities for which Federal review is waived are also subject to annual review. If, at any time, any of these categories of activities are deemed inappropriate for continued waiver, they can (and will) be withdrawn from the waiver provision and become subject to individual review.

Section 233.52: In response to comments, we have added a requirement that the State's draft annual report to be made available for public inspection.

The annual report is a mandatory, not a discretionary, requirement for an approved program. In response to comment, we have added to the information that shall be included in the annual report the number of suspected unauthorized activities reported to the State and the nature of the State's action on these reported activities; added that the State shall report the number of violations identified as well as the number and nature of enforcement actions taken; and the number of permit applications received but not yet processed.

Contrary to comment on the annual reporting requirements, the regulation does require the Director to respond, in the final report, to the Regional Administrator's comments and questions about the draft report.

Section 233.53: One commentor suggested that program withdrawal should be initiated only where a State's program, on the whole, has repeatedly failed to comply with the requirements for an approvable program. This commentor suggested that continued problems with any one of the criteria specified in § 233.53(b) (2) and (3) is not sufficient grounds for program withdrawal. We cannot concur with this suggestion. While we do agree that program withdrawal will not be taken lightly and that program approval will not be withdrawn for minor reasons, continued non-performance of any of the criteria specified can be grounds for initiating program withdrawal. Each of the criteria listed is a vital part of an approved program and continued non-performance of any of these would result in a program that no longer fulfills the requirements for an approved program.

These regulations provide that the Administrator shall respond in writing to any petition to commence withdrawal proceedings. One commentor suggested that this exceeded the public involvement requirements. We believe that such written response is nonetheless good policy and publish the rule as proposed.

Executive Order 12291

Since these rules are revisions which provide regulatory relief by, for the most part, increasing flexibility in State program design and administration, we have determined that they are not a major rule requiring a Regulatory Impact Analysis under Executive Order 12291. This rule has been reviewed by the Office of Management and Budget in accordance with the requirements of Executive Order 12291.

Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. Since this revision to 40 CFR Part 233 will reduce paperwork, reporting requirements and application information requirements, this final rule will be beneficial to small entities. Thus, no Regulatory Flexibility Analysis is needed.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers:

2090-011.
2090-012.
2090-013.
2090-015.

List of Subjects in 40 CFR Parts 232 and 233

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water pollution control, Indian lands, Intergovernmental relations, Water supply, Waterways, Navigation, Penalties, Wetlands.

Dated: May 27, 1988.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

For the reasons set out in the preamble, 40 CFR Part 232 is amended as set forth below.

1. Part 232 is added to read as follows:

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

Sec.
232.1 Purpose and scope of this part.
232.2 Definitions.
232.3 Activities not requiring permits.

Authority: 33 U.S.C. 1344.

§ 232.1 Purpose and scope of this part.

Part 232 contains definitions applicable to the Section 404 program for discharges of dredged or fill material. These definitions apply to both the Federally operated program and State administered programs after program approval. This part also describes those activities which are exempted from regulation. Regulations prescribing the substantive environmental criteria for issuance of Section 404 permits appear at 40 CFR Part 230. Regulations establishing procedures to be followed by the EPA in denying or restricting a disposal site appear at 40 CFR Part 231. Regulations containing the procedures and policies used by the Corps in administering the 404 program appear at 33 CFR Parts 320-330. Regulations specifying the procedures EPA will follow, and the criteria EPA will apply in approving, monitoring, and withdrawing approval of Section 404 State programs appear at 40 CFR Part 233.

§ 232.2 Definitions.

(a) *Administrator* means the Administrator of the Environmental Protection Agency or an authorized representative.

(b) *Application* means a form for applying for a permit to discharge dredged or fill material into waters of the United States.

(c) *Approved program* means a State program which has been approved by the Regional Administrator under Part 233 of this chapter or which is deemed

approved under Section 404(h)(3), 33 U.S.C. 1344(h)(3).

(d) *Best management practices* (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States from discharges of dredged or fill material. BMPs include methods, measures, practices, or design and performance standards which facilitate compliance with the Section 404(b)(1) Guidelines (40 CFR Part 230), effluent limitations or prohibitions under Section 307(a), and applicable water quality standards.

(e) *Discharge of dredged material* means any addition of dredged material into waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal site. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to Section 402 of the Act even though the extraction and deposit of such material may require a permit from the Corps or the State Section 404 program. The term does not include *de minimus*, incidental soil movement occurring during normal dredging operations.

(f) *Discharge of fill material* means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary to the construction of any structure; the building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses, causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs.

(g) *Dredged material* means material that is excavated or dredged from waters of the United States.

(h) *Effluent* means dredged material or fill material, including return flow from confined sites.

(i) *Fill material* means any "pollutant" which replaces portions of the "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.

(j) *General permit* means a permit authorizing a category of discharges of dredged or fill material under the Act. General permits are permits for categories of discharge which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

(k) *Owner or operator* means the owner or operator of any activity subject to regulation under the 404 program.

(l) *Permit* means a written authorization issued by an approved State to implement the requirements of Part 233, or by the Corps under 33 CFR Parts 320–330. When used in these regulations, "permit" includes "general permit" as well as individual permit.

(m) *Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

(n) *Regional Administrator* means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

(o) *Secretary* means the Secretary of the Army acting through the Chief of Engineers.

(p) *State regulated waters* means those waters of the United States in which the Corps suspends the issuance of Section 404 permits upon approval of a State's Section 404 permit program by the Administrator under Section 404(h). The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to the high tide line, including wetlands adjacent thereto. All other waters of the United States in a State with an approved program shall be under jurisdiction of the State program, and shall be identified in the program description as required by Part 233.

(q) *Waters of the United States* means:

(1) All waters which are currently used, were used in the past, or may be susceptible to us in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) All interstate waters including interstate wetlands.

(3) All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce.

(4) All impoundments of waters otherwise defined as waters of the United States under this definition;

(5) Tributaries of waters identified in paragraphs (g)(1)-(4) of this section;

(6) The territorial sea; and

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (q)(1)–(6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

(r) *Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§ 232.3 Activities not requiring permits.

Except as specified in paragraphs (a) and (b) of this section, any discharge of dredged or fill material that may result from any of the activities described in paragraph (c) of this section is not prohibited by or otherwise subject to regulation under this Part.

(a) If any discharge of dredged or fill material resulting from the activities listed in paragraph (c) of this section contains any toxic polutant listed under Section 307 of the Act, such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a Section 404 permit.

(b) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraph (c) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernable alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

[Note.—For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with constuction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of Section 404 wetland to a non-wetland is a change in use of an area of waters of the U.S. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.]

(c) The following activities are exempt from Section 404 permit requirements, except as specified in paragraphs (a) and (b) of this section:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (d) of this section.

(ii)(A) To fall under this exemption, the activities specified in paragraph (c)(1) of this section must be part of an established (i.e., ongong) farming, silviculture, or ranching operation, and must be in accordance with definitions in paragraph (d) of this section. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

(B) Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a Section 404 permit whether or not it was part of an established farming, silviculture or ranching operation.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, wiers, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the United States. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under Section 208(b)(4) of the Act which meets the requirements of Section 208(b)(4)(B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the United States shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the United States;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within the waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the United States shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(d) For purpose of paragraph (c)(1) of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or

forest crops to aid and improve their growth, quality, or yield.

(2) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(3)(i) Minor drainage means:

(A) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a Section 404 permit;

(B) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(C) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production or rice, cranberries, or other wetland crop species.

[Note.—The provisions of paragraphs (d)(3)(i) (B) and (C) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.]

(D) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exemption.

(ii) Minor drainage in waters of the United States is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adequate to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming).

In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(4) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing, as described above, will never involve a discharge of dredged or fill material.

(5) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(e) Federal projects which qualify under the criteria contained in Section 404(r) of the Act are exempt from Section 404 permit requirements, but may be subject to other State or Federal requirements.

2. Authority citation for Part 233 continues to read as follows:

Authority: 33 U.S.C. 1344.

3. Part 233 is amended by revising Subparts A, B, C, E, and F and by redesignating Subpart D as G and the section number is changed from "233.42" to "233.60" and by adding a new Subpart D to read as follows:

PART 233—404 STATE PROGRAM REGULATIONS

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Subpart A—General

§ 233.1 Purpose and scope.

(a) This Part specifies the procedures EPA will follow, and the criteria EPA will apply, in approving, reviewing, and withdrawing approval of State programs under Section 404 of the Act.

(b) Except as provided in § 232.3, the State program must regulate all discharges of dredged or fill material into State regulated waters. Partial State programs are not approvable under Section 404. A State's decision not to assume existing Corps general permits does not constitute a partial program. The discharges previously authorized by general permit will be regulated by State individual permits. However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. The Secretary will administer the program on Indian lands if the State does not have authority to regulate activities on Indian lands.

(c) Nothing in this Part precludes a State from adopting or enforcing requirements which are more stringent or from operating a program with greater scope, than required under this Part. Where an approved State program has a greater scope than required by Federal law, the additional coverage is not part of the Federally approved program and is not subject to Federal oversight or enforcement.

Note.—State assumption of the Section 404 program is limited to certain waters, as provided in section 404(g)(1). The Federal program operated by the Corps of Engineers continues to apply to the remaining waters in the State even after program approval. However, this does not restrict States from regulating discharges of dredged or fill material into those waters over which the Secretary retains Section 404 jurisdiction.

(d) Any approved State Program shall, at all times, be conducted in accordance with the requirements of the Act and of this Part. While States may impose more stringent requirements, they may not impose any less stringent requirements for any purpose.

§ 233.2 Definitions.

The definitions in Parts 230 and 232 as well as the following definitions apply to this Part.

(a) *Act* means the Clean Water Act (33 U.S.C. 1251 et seq.).

(b) *Corps* means the U.S. Army Corps of Engineers.

(c) *FWS* means the U.S. Fish and Wildlife Service.

(d) *Interstate agency* means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution.

(e) *NMFS* means the National Marine Fisheries Service.

(f) *State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. For purposes of this regulation, the word State also includes any interstate agency requesting program approval or administering an approved program.

(g) *State Director* (*Director*) means the chief administrative officer of any State or interstate agency operating an approved program, or the delegated representative of the Director. If responsibility is divided among two or more State or interstate agencies, Director means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

(h) *State 404 program* or *State program* means a State program which has been approved by EPA under Section 404 of the Act to regulate the discharge of dredged or fill material into certain waters as defined in § 232.2(p).

§ 233.3 Confidentiality of information.

(a) Any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter at the time of submittal and a final determination as to that claim will be made in accordance with the procedures of 40 CFR Part 2 and paragraph (c) of this section.

(b) Any information submitted to the Director may be claimed as confidential in accordance with State law, subject to paragraphs (a) and (c) of this section.

(c) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee,

(2) Effluent data,

(3) Permit application, and

(4) Issued permit.

§ 233.4 Conflict of interest.

Any public officer or employee who has a direct personal or pecuniary interest in any matter that is subject to decision by the agency shall make known such interest in the official records of the agency and shall refrain from participating in any manner in such decision.

Subpart B—Program Approval

§ 233.10 Elements of a program submission.

Any State that seeks to administer a 404 program under this Part shall submit to the Regional Administrator at least three copies of the following:

(a) A letter from the Governor of the State requesting program approval.

(b) A complete program description, as set forth in § 233.11.

(c) An Attorney General's statement, as set forth in § 233.12.

(d) A Memorandum of Agreement with the Regional Administrator, as set forth in § 233.13.

(e) A Memorandum of Agreement with the Secretary, as set forth in § 233.14.

(f) Copies of all applicable State statutes and regulations, including those governing applicable State administrative procedures.

§ 233.11 Program description.

The program description as required under § 233.10 shall include:

(a) A description of the scope and structure of the State's program. The description should include extent of State's jurisdiction, scope of activities regulated, anticipated coordination, scope of permit exemptions if any, and permit review criteria;

(b) A description of the State's permitting, administrative, judicial review, and other applicable procedures;

(c) A description of the basic organization and structure of the State agency (agencies) which will have responsibility for administering the program. If more than one State agency is responsible for the administration of the program, the description shall address the responsibilities of each agency and how the agencies intend to coordinate administration and evaluation of the program;

(d) A description of the funding and manpower which will be available for program administration;

(e) An estimate of the anticipated workload, e.g., number of discharges.

(f) Copies of permit application forms, permit forms, and reporting forms;

(g) A description of the State's compliance evaluation and enforcement programs, including a description of how the State will coordinate its enforcement strategy with that of the Corps and EPA;

(h) A description of the waters of the United States within a State over which the State assumes jurisdiction under the approved program; a description of the waters of the United States within a State over which the Secretary retains

jurisdiction subsequent to program approval; and a comparison of the State and Federal definitions of wetlands.

Note.—States should obtain from the Secretary an identification of those waters of the U.S. within the State over which the Corps retains authority under Section 404(g) of the Act.

(i) A description of the specific best management practices proposed to be used to satisfy the exemption provisions of Section 404(f)(1)(E) of the Act for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.

§ 233.12 Attorney General's statement.

(a) Any State that seeks to administer a program under this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independence legal counsel), that the laws and regulations of the State, or an interstate compact, provide adequate authority to carry out the program and meet the applicable requirements of this Part. This statement shall cite specific statutes and administrative regulations which are lawfully adopted at the time the statement is signed and which shall be fully effective by the time the program is approved, and, where appropriate, judicial decisions which demonstrate adequate authority. The attorney signing the statement required by this section must have authority to represent the State agency in court on all matters pertaining to the State program.

(b) If a State seeks approval of a program covering activities on Indian lands, the statement shall contain an analysis of the State's authority over such activities.

(c) The State Attorney General's statement shall contain a legal analysis of the effect of State law regarding the prohibition on taking private property without just compensation on the successful implementation of the State's program.

(d) In those States where more than one agency has responsibility for administering the State program, the statement must include certification that each agency has full authority to administer the program within its category of jurisdiction and that the State, as a whole, has full authority to administer a complete State Section 404 program.

§ 233.13 Memorandum of Agreement with Regional Administrator.

(a) Any State that seeks to administer a program under this Part shall submit a Memorandum of Agreement executed by the Director and the Regional Administrator. The Memorandum of Agreement shall become effective upon approval of the State program. When more than one agency within a State has responsibility for administering the State program, Directors of each of the responsible State agencies shall be parties to the Memorandum of Agreement.

(b) The Memorandum of Agreement shall set out the State and Federal responsibilities for program administration and enforcement. These shall include, but not be limited to:

(1) Provisions specifying classes and categories of permit applications for which EPA will waive Federal review (as specified in § 233.51).

(2) Provisions specifying the frequency and content of reports, documents and other information which the State may be required to submit to EPA in addition to the annual report, as well as a provision establishing the submission date for the annual report. The State shall also allow EPA routinely to review State records, reports and files relevant to the administration and enforcement of the approved program.

(3) Provisions addressing EPA and State roles and coordination with respect to compliance monitoring and enforcement activities.

(4) Provisions addressing modification of the Memorandum of Agreement.

§ 233.14 Memorandum of Agreement with the Secretary.

(a) Before a State program is approved under this Part, the Director shall enter into a Memorandum of Agreement with the Secretary. When more than one agency within a State has responsibility for administering the State program, Directors of each of the responsible agencies shall be parties of the Memorandum of Agreement.

(b) The Memorandum of Agreement shall include:

(1) A description of waters of the United States within the State over which the Secretary retains jurisdiction, as identified by the Secretary.

(2) Procedures whereby the Secretary will, upon program approval, transfer to the State pending 404 permit applications for discharges in State regulated waters and other relevant information not already in the possession of the Director.

Note.—Where a State permit program includes coverage of those traditionally navigable waters in which only the Secretary may issue Section 404 permits, the State is encouraged to establish in this MOA procedures for joint processing of Federal and State permits, including joint public notices and public hearings.

(3) An identification of all general permits issued by the Secretary the terms and conditions of which the State intends to administer and enforce upon receiving approval of its program, and a plan for transferring responsibility for these general permits to the State, including procedures for the prompt transmission from the Secretary to the Director of relevant information not already in the possession of the Director, including support files for permit issuance, compliance reports and records of enforcement actions.

§ 233.15 Procedures for approving State programs.

(a) The 120 day statutory review period shall commence on the date of receipt of a complete State program submission as set out in § 233.10 of this Part. EPA shall determine whether the submission is complete within 30 days of receipt of the submission and shall notify the State of its determination. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(b) If EPA determines the State significantly changes its submission during the review period, the statutory review period shall begin again upon the receipt of a revised submission.

(c) The State and EPA may extend the statutory review period by agreement.

(d) Within 10 days of receipt of a complete State Section 404 program submission, the Regional Administrator shall provide copies of the State's submission to the Corps, FWS, and NMFS (both Headquarters and appropriate Regional organizations.)

(e) After determining that a State program submission is complete, the Regional Administrator shall publish notice of the State's application in the Federal Register and in enough of the largest newspapers in the State to attract statewide attention. The Regional Administrator shall also mail notice to persons known to be interested in such matters. Existing State, EPA, Corps, FWS, and NMFS mailing lists shall be used as a basis for this mailing. However, failure to mail all such notices shall not be grounds for invalidating approval (or disapproval) of an otherwise acceptable (or unacceptable) program. This notice shall:

(1) Provide for a comment period of not less than 45 days during which interested members of the public may express their views on the State program.

(2) Provide for a public hearing within the State to be held not less than 30 days after notice of hearing is published in the Federal Register;

(3) Indicate where and when the State's submission may be reviewed by the public;

(4) Indicate whom an interested member of the public with questions should contact; and

(5) Briefly outline the fundamental aspects of the State's proposed program and the process for EPA review and decision.

(f) Within 90 days of EPA's receipt of a complete program submission, the Corps, FWS, and NMFS shall submit to EPA any comments on the State's program.

(g) Within 120 days of receipt of a complete program submission (unless an extension is agreed to by the State), the Regional Administrator shall approve or disapprove the program based on whether the State's program fulfills the requirements of this Part and the Act, taking into consideration all comments received. The Regional Administrator shall prepare a responsiveness summary of significant comments received and his response to these comments. The Regional Administrator shall respond individually to comments received from the Corps, FWS, and NMFS.

(h) If the Regional Administrator approves the State's Section 404 program, he shall notify the State and the Secretary of the decision and publish notice in the Federal Register. Transfer of the program to the State shall not be considered effective until such notice appears in the Federal Register. The Secretary shall suspend the issuance by the Corps of Section 404 permits in State regulated waters on such effective date.

(i) If the Regional Administrator disapproves the State's program based on the State not meeting the requirements of the Act and this Part, the Regional Administrator shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State's program which are necessary to obtain approval. If the State resubmits a program submission remedying the identified problem areas, the approval procedure and statutory review period shall begin upon receipt of the revised submission.

§ 233.16 Procedures for revision of State programs.

(a) The State shall keep the Regional Administrator fully informed of any proposed or actual changes to the State's statutory or regulatory authority or any other modifications which are significant to administration of the program.

(b) Any approved program which requires revision because of a modification to this Part or to any other applicable Federal statute or regulation shall be revised within one year of the date of promulgation of such regulation, except that if a State must amend or enact a statute in order to make the required revision, the revision shall take place within two years.

(c) States with approved programs shall notify the Regional Administrator whenever they propose to transfer all or part of any program from the approved State agency to any other State agency. The new agency is not authorized to administer the program until approved by the Regional Administrator under paragraph (d) of this section.

(d) Approval of revision of a State program shall be accomplished as follows:

(1) The Director shall submit a modified program description or other documents which the Regional Administrator determines to be necessary to evaluate whether the program complies with the requirements of the Act and this Part.

(2) Notice of approval of program changes which are not substantial revisions may be given by letter from the Regional Administrator to the Governor or his designee.

(3) Whenever the Regional Administrator determines that the proposed revision is substantial, he shall publish and circulate notice to those persons known to be interested in such matters, provide opportunity for a public hearing, and consult with the Corps, FWS, and NMFS. The Regional Administrator shall approve or disapprove program revisions based on whether the program fulfills the requirements of the Act and this Part, and shall publish notice of his decision in the Federal Register. For purposes of this paragraph, substantial revisions include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.

(4) Substantial program changes shall become effective upon approval by the Regional Administrator and publication of notice in the Federal Register.

(e) Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to a State's program, he may request and the State shall provide a supplemental Attorney General's statement, program description, or such other documents or information as are necessary to evaluate the program's compliance with the requirements of the Act and this Part.

Subpart C—Permit Requirements

§ 233.20 Prohibitions.

No permit shall be issued by the Director in the following circumstances:

(a) When permit does not comply with the requirements of the Act or regulations thereunder, including the Section 404(b)(1) Guidelines (Part 230 of this Chapter).

(b) When the Regional Administrator has objected to issuance of the permit under § 233.50 and the objection has not been resolved.

(c) When the proposed discharges would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the Administrator under Section 404(c) of the Act, or when the discharge would fail to comply with a restriction imposed thereunder.

(d) If the Secretary determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

§ 233.21 General permits.

(a) Under Section 404(h)(5) of the Act, States may, after program approval, administer and enforce general permits previously issued by the Secretary in State regulated waters.

Note: If States intend to assume existing general permits, they must be able to ensure compliance with existing permit conditions an any reporting monitoring, or prenotification requirements.

(b) The Director may issue a general permit for categories of similar activities if he determines that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Any general permit issued shall be in compliance with the Section 404(b)(1) Guidelines.

(c) In addition to the conditions specified in § 233.23, each general permit shall contain:

(1) A specific description of the type(s) of activities which are authorized, including limitations for any single operation. The description shall be detailed enough to ensure that the requirements of paragraph (b) of this section are met. [This paragraph supercedes § 233.23(c)(1) for general permits.]

(2) A precise description of the geographic area to which the general permit applies, including limitations on the type(s) of water where operations may be conducted sufficient to ensure that the requirements of paragraph (b) of this section are met.

(d) Predischarge notification or other reporting requirements may be required by the Director on a permit-by-permit basis as appropriate to ensure that the general permit will comply with the requirement (section 404(e) of the Act) that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment.

(e) The Director may, without revoking the general permit, require any person authorized under a general permit to apply for an individual permit. This discretionary authority will be based on concerns for the aquatic environment including compliance with paragraph (b) of this section and the 404(b)(1) Guidelines (40 CFR Part 230.)

(1) This provision in no way affects the legality of activities undertaken pursuant to the general permit prior to notification by the Director of such requirement.

(2) Once the Director notifies the discharger of his decision to exercise discretionary authority to require an individual permit, the discharger's activity is no longer authorized by the general permit.

§ 233.22 Emergency permits.

(a) Notwithstanding any other provision of this Part, the Director may issue a temporary emergency permit for a discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

(b) Emergency permits shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of § 233.23.

(1) Any emergency permit shall be limited to the duration of time (typically no more than 90 days) required to complete the authorized emergency action.

(2) The emergency permit shall have a condition requiring appropriate restoration of the site.

(c) The emergency permit may be terminated at any time without process (§ 233.36) if the Director determines that termination is necessary to protect human health or the environment.

(d) The Director shall consult in an expeditious manner, such as by telephone, with the Regional Administrator, the Corps, FWS, and NMFS about issuance of an emergency permit.

(e) The emergency permit may be oral or written. If oral, it must be followed within 5 days by a written emergency permit. A copy of the written permit shall be sent to the Regional Administrator.

(f) Notice of the emergency permit shall be published and public comments solicited in accordance with § 233.32 as soon as possible but no later than 10 days after the issuance date.

§ 233.23 Permit conditions.

(a) For each permit the Director shall establish conditions which assure compliance with all applicable statutory and regulatory requirements, including the 404(b)(1) Guidelines, applicable Section 303 water quality standards, and applicable Section 307 effluent standards and prohibitions.

(b) Section 404 permits shall be effective for a fixed term not to exceed 5 years.

(c) Each 404 permit shall include conditions meeting or implementing the following requirements:

(1) A specific identification and complete description of the authorized activity including name and address of permittee, location and purpose of discharge, type and quantity of material to be discharged. (This subsection is not applicable to general permits).

(2) Only the activities specifically described in the permit are authorized.

(3) The permittee shall comply with all conditions of the permit even if that requires halting or reducing the permitted activity to maintain compliance. Any permit violation constitutes a violation of the Act as well as of State statute and/or regulation.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit.

(5) The permittee shall inform the Director of any expected or known actual noncompliance.

(6) The permittee shall provide such information to the Director, as the Director requests, to determine compliance status, or whether cause exists for permit modification, revocation or termination.

(7) Monitoring, reporting and recordkeeping requirements as needed to safeguard the aquatic environment. (Such requirements will be determined on a case-by-case basis, but at a minimum shall include monitoring and reporting of any expected leachates, reporting of noncompliance, planned changes or transfer of the permit.)

(8) Inspection and entry. The permittee shall allow the Director, or his authorized representative, upon presentation of proper identification, at reasonable times to:

(i) Enter upon the permittee's premises where a regulated activity is located or where records must be kept under the conditions of the permit,

(ii) Have access to and copy any records that must be kept under the conditions of the permit,

(iii) Inspect operations regulated or required under the permit, and

(iv) Sample or monitor, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(9) Conditions assuring that the discharge will be conducted in a manner which minimizes adverse impacts upon the physical, chemical and biological integrity of the waters of the United States, such as requirements for restoration or mitigation.

Subpart D—Program Operation

§ 233.30 Application for a permit.

(a) Except when an activity is authorized by a general permit issued pursuant to § 233.21 or is exempt from the requirements to obtain a permit under § 232.3, any person who proposes to discharge dredged or fill material into State regulated waters shall complete, sign and submit a permit application to the Director. Persons proposing to discharge dredged or fill material under the authorization of a general permit must comply with any reporting requirements of the general permit.

(b) A complete application shall include:

(1) Name, address, telephone number of the applicant and name(s) and address(es) of adjoining property owners.

(2) A complete description of the proposed activity including necessary drawings, sketches or plans sufficient for public notice (the applicant is not generally expected to submit detailed engineering plans and specifications); the location, purpose and intended use of the proposed activity; scheduling of the activity; the location and dimensions of adjacent structures; and a list of authorizations required by other Federal, interstate, State or local agencies for the work, including all approvals received or denials already made.

(3) The application must include a description of the type, composition, source and quantity of the material to be discharged, the method of discharge, and the site and plans for disposal of the dredged or fill material.

(4) A certification that all information contained in the application is true and accurate and acknowledging awareness of penalties for submitting false information.

(5) All activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application.

(c) In addition to the information indicated in § 233.30(b), the applicant will be required to furnish such additional information as the Director deems appropriate to assist in the evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(d) The level of detail shall be reasonably commensurate with the type and size of discharge, proximity to critical areas, likelihood of long-lived toxic chemical substances, and potential level of environmental degradation.

Note: EPA encourages States to provide permit applicants guidance regarding the level of detail of information and documentation required under this subsection. This guidance can be provided either through the application form or on an individual basis. EPA also encourages the State to maintain a program to inform potential applicants for permits of the requirements of the State program and of the steps required to obtain permits for activities in State regulated waters.

§ 233.31 Coordination requirements.

(a) If a proposed discharge may affect the biological, chemical, or physical integrity of the waters of any State(s) other than the State in which the discharge occurs, the Director shall provide an opportunity for such State(s) to submit written comments within the public comment period and to suggest permit conditions. If these recommendations are not accepted by the Director, he shall notify the affected State and the Regional Administrator prior to permit issuance in writing of his failure to accept these recommendations, together with his reasons for so doing. The Regional Administrator shall then have the time provided for in § 233.50(d) to comment upon, object to, or make recommendations.

(b) State Section 404 permits shall be coordinated with Federal and Federal-State water related planning and review processes.

§ 233.32 Public notice.

(a) Applicability.

(1) The Director shall give public notice of the following actions:

(i) Receipt of a permit application.

(ii) Preparation of a draft general permit.

(iii) Consideration of a major modification to an issued permit.

(iv) Scheduling of a public hearing.

(v) Issuance of an emergency permit.

(2) Public notices may describe more than one permit or action.

(b) Timing.

(1) The public notice shall provide a reasonable period of time, normally at least 30 days, within which interested parties may express their views concerning the permit application.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing.

(3) The Regional Administrator may approve a program with shorter public notice timing if the Regional Administrator determines that sufficient public notice is provided for.

(c) The Director shall give public notice by each of the following methods:

(1) By mailing a copy of the notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his rights to receive notice for any classes or categories of permits):

(i) The applicant.

(ii) Any agency with jurisdiction over the activity or the disposal site, whether or not the agency issues a permit.

(iii) Owners of property adjoining the property where the regulated activity will occur.

(iv) All persons who have specifically requested copies of public notices. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

(v) Any State whose waters may be affected by the proposed discharge.

(2) In addition, by providing notice in at least one other way (such as advertisement in a newspaper of sufficient circulation) reasonably calculated to cover the area affected by the activity.

(d) All public notices shall contain at least the following information:

(1) The name and address of the applicant and, if different, the address or location of the activity(ies) regulated by the permit.

(2) The name, address, and telephone number of a person to contact for further information.

(3) A brief description of the comment procedures and procedures to request a public hearing, including deadlines.

(4) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, and a description of the type, composition and quantity of materials to be discharged.

(5) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area.

(6) A paragraph describing the various evaluation factors, including the 404(b)(1) Guidelines or State-equivalent criteria, on which decisions are based.

(7) Any other information which would significantly assist interested parties in evaluating the likely impact of the proposed activity.

(e) Notice of public hearing shall also contain the following information:

(1) Time, date, and place of hearing.

(2) Reference to the date of any previous public notices relating to the permit.

(3) Brief description of the nature and purpose of the hearing.

§ 233.33 Public hearing.

(a) Any interested person may request a public hearing during the public comment period as specified in § 233.32. Requests shall be in writing and shall state the nature of the issues proposed to be raised at the hearing.

(b) The Director shall hold a public hearing whenever he determines there is a significant degree of public interest in a permit application or a draft general permit. He may also hold a hearing, at his discretion, whenever he determines a hearing may be useful to a decision on the permit application.

(c) At a hearing, any person may submit oral or written statements or data concerning the permit application or draft general permit. The public comment period shall automatically be extended to the close of any public hearing under this section. The presiding officer may also extend the comment period at the hearing.

(d) All public hearings shall be reported verbatim. Copies of the record of proceedings may be purchased by any person from the Director or the reporter of such hearing. A copy of the transcript (or if none is prepared, a tape of the proceedings) shall be made available for public inspection at an appropriate State office.

§ 233.34 Making a decision on the permit application.

(a) The Director will review all applications for compliance with the 404(b)(1) Guidelines and/or equivalent State environmental criteria as well as any other applicable State laws or regulations.

(b) The Director shall consider all comments received in response to the public notice, and public hearing if a hearing is held. All comments, as well as the record of any public hearing, shall be made part of the official record on the application.

(c) After the Director has completed his review of the application and consideration of comments, the Director will determine, in accordance with the record and all applicable regulations, whether or not the permit should be issued. No permit shall be issued by the Director under the circumstances described in § 233.20. The Director shall prepare a written determination on each application outlining his decision and rationale for his decision. The determination shall be dated, signed and included in the official record prior to final action on the application. The official record shall be open to the public.

§ 233.35 Issuance and effective date of permit.

(a) If the Regional Administrator comments on a permit application or draft general permit under § 233.50, the Director shall follow the procedures specified in that section in issuing the permit.

(b) If the Regional Administrator does not comment on a permit application or draft general permit, the Director shall make a final permit decision after the close of the public comment period and shall notify the applicant.

(1) If the decision is to issue a permit, the permit becomes effective when it is signed by the Director and the applicant.

(2) If the decision is to deny the permit, the Director will notify the applicant in writing of the reason(s) for denial.

§ 233.36 Modification, suspension or revocation of permits.

(a) *General.* The Director may reevaluate the circumstances and conditions of a permit either on his own motion or at the request of the permittee or of a third party and initiate action to modify, suspend, or revoke a permit if he determines that sufficient cause exists. Among the factors to be considered are:

(1) Permittee's noncompliance with any of the terms or conditions of the permit;

(2) Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at the time;

(3) Information that activities authorized by a general permit are having more than minimal individual or cumulative adverse effect on the environment, or that the permitted activities are more appropriately regulated by individual permits;

(4) Circumstances relating to the authorized activity have changed since the permit was issued and justify changed permit conditions or temporary or permanent cessation of any discharge controlled by the permit;

(5) Any significant information relating to the activity authorized by the permit if such information was not available at the time the permit was issued and would have justified the imposition of different permit conditions or denial at the time of issuance;

(6) Revisions to applicable statutory or regulatory authority, including toxic effluent standards or prohibitions or water quality standards.

(b) *Limitations.* Permit modifications shall be in compliance with § 233.20.

(c) *Procedures.* (1) The Director shall develop procedures to modify, suspend or revoke permits if he determines cause exists for such action (§ 233.36(a)). Such procedures shall provide opportunity for public comment (§ 233.32), coordination with the Federal review agencies (§ 233.50), and opportunity for public hearing (§ 233.33) following notification of the permittee. When permit modification is proposed, only the conditions subject to modification need be reopened.

(2) Minor modification of permits. The Director may, upon the consent of the permittee, use abbreviated procedures to modify a permit to make the following corrections or allowance for changes in the permitted activity:

(i) Correct typographical errors;

(ii) Require more frequent monitoring or reporting by permittee;

(iii) Allow for a change in ownership or operational control of a project or activity where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;

(iv) Provide for minor modification of project plans that do not significantly change the character, scope, and/or purpose of the project or result in significant change in environmental impact;

(v) Extend the term of a permit, so long as the modification does not extend the term of the permit beyond 5 years from its original effective date and does not result in any increase in the amount of dredged or fill material allowed to be discharged.

§ 233.37 Signatures on permit applications and reports.

The application and any required reports must be signed by the person who desires to undertake the proposed activity or by that person's duly authorized agent if accompanied by a statement by that person designating the agent. In either case, the signature of the applicant or the agent will be understood to be an affirmation that he possesses or represents the person who possesses the requisite property interest to undertake the activity proposed in the application.

§ 233.38 Continuation of expiring permits.

A Corps 404 permit does not continue in force beyond its expiration date under Federal law if, at that time, a State is the permitting authority. States authorized to administer the 404 Program may continue Corps or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the discharge is being conducted without a permit from the time of expiration of the old permit to the effective date of a new State-issued permit, if any.

Subpart E—Compliance Evaluation and Enforcement

§ 233.40 Requirements for compliance evaluation programs.

(a) In order to abate violations of the permit program, the State shall maintain a program designed to identify persons subject to regulation who have failed to obtain a permit or to comply with permit conditions.

(b) The Director and State officers engaged in compliance evaluation, upon presentation of proper identification, shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program.

(c) The State program shall provide for inspections to be conducted, samples to be taken and other information to be gathered in a manner that will produce evidence admissible in an enforcement proceeding.

(d) The State shall maintain a program for receiving and ensuring proper consideration of information submitted by the public about violations.

§ 233.41 Requirements for enforcement authority.

(a) Any State agency administering a program shall have authority:

(1) To restrain immediately and effectively any person from engaging in any unauthorized activity;

(2) To sue to enjoin any threatened or continuing violation of any program requirement;

(3) To assess or sue to recover civil penalties and to seek criminal remedies, as follows:

(i) The agency shall have the authority to assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any Section 404 permit condition in an amount of at least $5,000 per day of such violation.

(ii) The agency shall have the authority to seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under Section 404 in the amount of at least $10,000 per day of such violation.

(iii) The agency shall have the authority to seek criminal fines against any person who knowingly makes false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act, these regulations or the approved State program, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit, in an amount of at least $5,000 for each instance of violation.

(b)(1) The approved maximum civil penalty or criminal fine shall be assessable for each violation and, if the violation is continuous, shall be assessable in that maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action under the Act.

(c) The civil penalty assessed, sought, or agreed upon by the Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA may, when authorized by Section 309 of the Act, commence separate action for penalties.

(d)(1) The Regional Administrator may approve a State program where the State lacks authority to recover penalties of the levels required under paragraphs (a)(3)(i)–(iii) of this section only if the Regional Administrator determines, after evaluating a record of at least one year for an alternative enforcement program, that the State has an alternate, demonstrably effective method of ensuring compliance which has both punitive and deterrence effects.

(2) States whose programs were approved via waiver of monetary penalties shall keep the Regional Administrator informed of all enforcement actions taken under any alternative method approved pursuant to paragraph (d)(1) of this section. The manner of reporting will be established in the Memorandum of Agreement with the Regional Administrator (§ 233.13).

(e) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention of right in any civil or administrative action to obtain remedies specified in paragraph (a)(3) of this section by any citizen having an interest which is or may be adversely affected, or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to State procedures;

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

Subpart F—Federal Oversight

§ 233.50 Review of and objection to State permits.

(a) The Director shall promptly transmit to the Regional Administrator:

(1) A copy of the public notice for any complete permit applications received by the Director, except those for which permit review has been waived under § 233.51. The State shall supply the Regional Administrator with copies of public notices for permit applications for which permit review has been waived whenever requested by EPA.

(2) A copy of a draft general permit whenever the State intends to issue a general permit.

(3) Notice of every significant action taken by the State agency related to the consideration of any permit application except those for which Federal review has been waived or draft general permit.

(4) A copy of every issued permit.

(5) A copy of the Director's response to another State's comments/recommendations, if the Director does not accept these recommendations (§ 233.32(a)).

(b) Unless review has been waived under § 233.51, the Regional Administrator shall provide a copy of each public notice, each draft general permit, and other information needed for review of the application to the Corps, FWS, and NMFS, within 10 days of receipt. These agencies shall notify the Regional Administrator within 45 days of their receipt if they wish to comment on the public notice or draft general permit. Such agencies should submit their evaluation and comments to the Regional Administrator within 50 days of such receipt. The final decision to comment, object or to require permit conditions shall be made by the Regional Administrator. (These times may be shortened by mutual agreement of the affected Federal agencies and the State.)

(c) If the information provided is inadequate to determine whether the permit application or draft general permit meets the requirements of the Act, these regulations, and the 404(b)(1) Guidelines, the Regional Administrator may, within 30 days of receipt, request the Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record, or other information, including a supplemental application, that the Regional Administrator determines necessary for review.

(d) If the Regional Administrator intends to comment upon, object to, or make recommendations with respect to a permit application, draft general permit, or the Director's failure to accept the recommendations of an affected State submitted pursuant to § 233.31(a), he shall notify the Director of his intent within 30 days of receipt. If the Director has been so notified, the permit shall not be issued until after the receipt of such comments or 90 days of the Regional Administrator's receipt of the public notice, draft general permit or Director's response (§ 233.31(a)), whichever comes first. The Regional Administrator may notify the Director within 30 days of receipt that there is no comment but that he reserves the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing.

(e) If the Regional Administrator has given notice to the Director under paragraph (d) of this section, he shall submit to the Director, within 90 days of receipt of the public notice, draft general permit, or Director's response (§ 233.31(a)), a written statement of his

comments, objections, or recommendations; the reasons for the comments, objections, or recommendations; and the actions that must be taken by the Director in order to eliminate any objections. Any such objection shall be based on the Regional Administrator's determination that the proposed permit is (1) the subject of an interstate dispute under § 233.31(a) and/or (2) outside requirements of the Act, these regulations, or the 404(b)(1) Guidelines. The Regional Administrator shall make available upon request a copy of any comment, objection, or recommendation on a permit application or draft general permit to the permit applicant or to the public.

(f) When the Director has received an EPA objection or requirement for a permit condition to a permit application or draft general permit under this section, he shall not issue the permit unless he has taken the steps required by the Regional Administrator to eliminate the objection.

(g) Within 90 days of receipt by the Director of an objection or requirement for a permit condition by the Regional Administrator, the State or any interested person may request that the Regional Administrator hold a public hearing on the objection or requirement.

The Regional Administrator shall conduct a public hearing whenever requested by the State proposing to issue the permit, or if warranted by significant public interest based on requests received.

(h) If a public hearing is held under paragraph (g) of this section, the Regional Administrator shall, following that hearing, reaffirm, modify or withdraw the objection or requirement for a permit condition, and notify the Director of this decision.

(1) If the Regional Administrator withdraws his objection or requirement for a permit condition, the Director may issue the permit.

(2) If the Regional Administrator does not withdraw the objection or requirement for a permit condition, the Director must issue a permit revised to satisfy the Regional Administrator's objection or requirement for a permit condition or notify EPA of its intent to deny the permit within 30 days of receipt of the Regional Administrator's notification.

(i) If no public hearing is held under paragraph (g) of this section, the Director within 90 days of receipt of the objection or requirement for a permit condition shall either issue the permit revised to satisfy EPA's objections or notify EPA of its intent to deny the permit.

(j) In the event that the Director neither satisfies EPA's objections or requirement for a permit condition nor denies the permit, the Secretary shall process the permit application.

§ 233.51 Waiver of review.

(a) The MOA with the Regional Administrator shall specify the categories of discharge for which EPA will waive Federal review of State permit applications. After program approval, the MOA may be modified to reflect any additions or deletions of categories of discharge for which EPA will waive review. The Regional Administrator shall consult with the Corps, FWS, and NMFS prior to specifying or modifying such categories.

(b) With the following exceptions, any category of discharge is eligible for consideration for waiver:

(1) Draft general permits;

(2) Discharges with reasonable potential for affecting endangered or threatened species as determined by FWS;

(3) Discharges with reasonable potential for adverse impacts on waters of another State;

(4) Discharges known or suspected to contain toxic pollutants in toxic amounts (Section 101(a)(3) of the Act) or hazardous substances in reportable quantities (Section 311 of the Act);

(5) Discharges located in proximity of a public water supply intake;

(6) Discharges within critical areas established under State or Federal law, including but not limited to National and State parks, fish and wildlife sanctuaries and refuges, National and historical monuments, wilderness areas and preserves, sites identified or proposed under the National Historic Preservation Act, and components of the National Wild and Scenic Rivers System.

(c) The Regional Administrator retains the right to terminate a waiver as to future permit actions at any time by sending the Director written notice of termination.

§ 233.52 Program reporting

(a) The starting date for the annual period to be covered by reports shall be established in the Memorandum of Agreement with the Regional Administrator (§ 233.13.)

(b) The Director shall submit to the Regional Administrator within 90 days after completion of the annual period, a draft annual report evaluating the State's administration of its program identifying problems the State has encountered in the administration of its program and recommendations for resolving these problems. Items that shall be addressed in the annual report include an assessment of the cumulative impacts of the State's permit program on the integrity of the State regulated waters; identification of areas of particular concern and/or interest within the State; the number and nature of individual and general permits issued, modified, and denied; number of violations identified and number and nature of enforcement actions taken; number of suspected unauthorized activities reported and nature of action taken; an estimate of extent of activities regulated by general permits; and the number of permit applications received but not yet processed.

(c) The State shall make the draft annual report available for public inspection.

(d) Within 60 days of receipt of the draft annual report, the Regional Administrator will complete review of the draft report and transmit comments, questions, and/or requests for additional evaluation and/or information to the Director.

(e) Within 30 days of receipt of the Regional Administrator's comments, the Director will finalize the annual report, incorporating and/or responding to the Regional Administrator's comments, and transmit the final report to the Regional Administrator.

(f) Upon acceptance of the annual report, the Regional Administrator shall publish notice of availability of the final annual report.

§ 233.53 Withdrawal of program approval.

(a) A State with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to the Secretary by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator and the Secretary 180 days notice of the proposed transfer. The State shall also submit a plan for the orderly transfer of all relevant program information not in the possession of the Secretary (such as permits, permit files, reports, permit applications) which are necessary for the Secretary to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator and the Secretary shall evaluate the State's transfer plan and shall identify for the State any additional information needed by the Federal government for program administration.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of transfer in the Federal Register and in a sufficient number of the largest newspapers in the State to provide statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA, Corps and State mailing lists.

(b) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this Part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets the requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this Part, including:

(i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;

(ii) Issuance of permits which do not conform to the requirements of this Part; or

(iii) Failure to comply with the public participation requirements of this Part.

(3) When the State's enforcement program fails to comply with the requirements of this Part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed, or to implement alternative enforcement methods approved by the Administrator; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 233.13.

(c) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program:

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on the Administrator's initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this Part as set forth in subsection (b) of this section. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal review of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing, shall specify the allegations against the State which are to be considered at the hearing, and shall be published in the **Federal Register**. Within 30 days after publication of the Administrator's order in the **Federal Register**, the State shall admit or deny these allegations in a written answer.

The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definition of "Administrative Law Judge," "Hearing Clerk," and "Presiding Officer" in 40 CFR 22.03 apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency, and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter of the proceedings.

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.*

(i) The following provisions of 40 CFR Part 22 [Consolidated Rules of Practice] are applicable to proceedings under this paragraph:

(A) Section 22.02—(use of number/gender);

(B) Section 22.04—(authorities of Presiding Officer);

(C) Section 22.06—(filing/service of rulings and orders);

(D) Section 22.09—(examination of filed documents);

(E) Section 22.19 (a), (b) and (c)—(prehearing conference);

(F) Section 22.22—(evidence);

(G) Section 22.23—(objections/offers of proof);

(H) Section 22.25—(filing the transcript; and

(I) Section 22.26—(findings/conclusions).

(ii) The following provisions are also applicable:

(A) Computation and extension of time.

(*1*) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal legal holiday, the stated time period shall be extended to include the next business day.

(*2*) *Extensions of time.* The Administrator, Regional Administrator, or Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (*i*) upon timely motion of a party to the proceeding, for good cause shown and after consideration of prejudice to other parties, or (*ii*) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(*3*) The time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator.

(B) Ex parte discussion of proceeding. At no time after the issuance of the order commencing proceedings shall the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any other person who is likely to advise these officials in the decisions on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

(C) Intervention.

(*1*) *Motion.* A motion for leave to intervene in any proceeding conducted under these rules of practice must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the

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foregoing sentence and paragraph (b)(3)(ii)(C)(*3*) of this section, within ten (10) days after service of the motion for leave to intervene.

(*2*) However, motions to intervene must be filed within 15 days from the date the notice of the Administrator's order is published in the Federal Register.

(*3*) *Disposition.* Leave to intervene may be granted only if the movant demonstrates that (*i*) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (*ii*) the movant will be adversely affected by a final order; and (*iii*) the interests of the movant are not being adequately represented by the original parties. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(*4*) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(D) Motions. (1) *General.* All motions, except those made orally on the record during a hearing, shall (*i*) be in writing; (*ii*) state the grounds therefore with particularity; (*iii*) set forth the relief or order sought; and (*iv*) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by paragraph (b)(4) of this section.

(*2*) *Response to motions.* A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer, Regional Administrator, or Administrator, as appropriate, may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(*3*) *Decision.* The Administrator shall rule on all motions filed or made after service of the recommended decision upon the parties. The Presiding Officer shall rule on all other motions. Oral argument on motions will be permitted where the Presiding Officer, Regional Administrator, or the Administrator considers it necessary or desirable.

(*4*) *Record of proceedings.* (*i*) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed by an official reporter designated by the Presiding Officer;

(*ii*) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs, and other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying in the Office of the Hearing Clerk, upon payment of costs. Inquiries may be made at the Office of the Administrative Law Judges, Hearing Clerk, 401 M Street SW., Washington, DC 20460;

(*iii*) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involve matters of substance;

(*iv*) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(*v*) A copy of each such submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(*vi*) Every submission shall be accompanied by acknowledgement of service by the person served or proof of service in the form of a statement of the date, time, and manner of service and the names of the persons served, certified by the person who made service; and

(*vii*) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives.

(*5*) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making an oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he/she may not otherwise participate in the proceeding.

(*6*) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and prehearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(*7*) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions and reply briefs, the Presiding Officer shall evaluate the record before him/her, the proposed findings and conclusions and any briefs filed by the parties, and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a supporting brief.

(*8*) *Decision by Administrator.* (i) Within 60 days after certification of the record and filing of the Presiding Officer's recommended decision, the Administrator shall review the record before him and issue his own decision.

(ii) If the Administrator concludes that the State has administered the program in conformity with the Act and this Part, his decision shall constitute "final agency action" within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the Act and regulations, he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the state fails to take appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S.C. 704.

(d) Withdrawal of authorization under this section and the Act does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions taken by the State prior to withdrawal.

* * * * *

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Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 35 et al.

Lead-Based Paint Hazard Elimination; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 35, 200, 510, 511, 570, 882, 886, 941, 965, and 968

[Docket No. R-88-1282, FR-2447]

Lead-Based Paint Hazard Elimination

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: In response to amendments to the Lead-Based Paint Poisoning Prevention Act ("LPPPA") by section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100-242 approved February 5, 1988) (1987 Act), HUD is amending its regulations regarding the elimination of hazards due to lead-based paint in Public and Indian Housing. This final rule amends 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, 24 CFR Part 941, Public Housing Development, Subpart H in 24 CFR Part 965, PHA-owned or Leased Projects-Maintenance and Operation and 24 CFR Part 968, Comprehensive Improvement Assistance Program ("CIAP")

HUD has also changed the definition of "applicable surfaces" to include all interior and exterior painted surfaces and changed the construction cut-off dates to 1978 for other HUD programs, including certain FHA Single Family and Multifamily Housing Programs, Section 8 Housing Assistance Payments Program for Substantial Rehabilitation, Section 8 Existing Housing Certificate, Section 8 Moderate Rehabilitation Program, Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, Section 312 Rehabilitation Loan and Rental Rehabilitation Programs. Additional changes to these programs will be initiated after HUD conducts the demonstration program discussed below.

This final rule also revises regulations for rehabilitation under section 203(k) of the National Housing Act. This rule permits an escrow procedure in the case of rehabilitation work in dwellings financed under section 203(k). In response to public comments, this rule also permits an escrow procedure in those circumstances where exterior defective paint surfaces cannot be abated due to adverse weather conditions.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director of Policy, Office of Public and Indian Housing, (202) 755-6713, Room 4118, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD is amending its current regulations implementing section 302 of the LPPPA (42 U.S.C. 4822) in response to recent amendments contained in section 566 of the Housing and Community Development Act of 1987. Consistent with the legislative history of section 566 (S. 825, 100th Cong., 1st Sess., *Cong. Rec.* S 18615, 18618 (December 21, 1987)), this rule relates primarily to Public and Indian Housing, although the definition of applicable surface in all program regulations is amended to include all interior and exterior painted surfaces, and construction cut-off dates in all programs are amended to include housing constructed prior to 1978. Certain program regulations are individually amended to include the construction cut-off date of 1978 in this rule (see Section VI below) while other programs incorporate by reference Part 35 (*e.g.*, Urban Homesteading, Emergency Shelter Grants) which is also amended to include housing construction prior to 1978. Additional regulations to these programs may be proposed after HUD conducts the demonstration program mandated by section 566.

Section 566 required publication of a proposed rule by April 5, 1988 (see 53 FR 1164, April 5, 1988) and publication of a final rule to be effective by June 6, 1988. Given this rulemaking schedule and the 1988 Congressional recess schedules, the Department has interpreted the statutory rulemaking schedule as an expression of Congressional intent to exempt this rulemaking from the prepublication review and delayed effective date requirements contained in section 7(o) (2) and (3) of the Department of Housing and Urban Development Act.

This preamble is divided into six sections: (1) Background (discussion of statutory and regulatory requirements and the HUD demonstration program; (2) Recent Studies of the Lead-Based Paint Problem (the Centers for Disease Control's January 1985 Statement on Preventing Lead Poisoning in Young Children and the Environmental Protection Agency's Air Quality Criteria for Lead), (3) Proposed Public and Indian Housing Rulemaking and Comments; (4) Summary Final Requirements for Public and Indian Housing's Program; (5) Proposed Regulations for Rehabilitation Under Section 203(k) of the National Housing Act, Comments and Final Regulations; and (6) Section-by-Section Review of Regulations.

A. Statutory and Regulatory Requirements

HUD's authority to issue this rule is based on section 302 of the LPPPA. Added in 1973, and amended in 1987 by section 566 of the Housing and Community Development Act of 1987, this section requires the Secretary of HUD to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." The statute further prescribes that such procedures shall "as a minimum provide for * * * appropriate measures to eliminate as far as practicable immediate hazards due to the presence of accessible intact, intact, and nonintact interior and exterior painted surfaces that may contain lead in any such housing in which any child who is less than seven years of age resides or is expected to reside"; and, further, that the procedures must apply to housing constructed prior to 1978.

Under new section 302(b), the procedures established by the Secretary for the detection and abatement of lead-based paint poisoning hazards in any housing, including housing assisted under section 8 of the United States Housing Act of 1937 "shall be based upon criteria that measure the condition of the housing; and shall not be based upon criteria that measure the health of the residents of the housing."

For public housing assisted under section 9 of the United States Housing Act of 1937, new section 302(d) requires (1) testing of each vacant dwelling prior to rerenting, (2) a random sample of all occupied dwellings, and (3) testing of each dwelling in any housing in which there is a dwelling determined (through testing of vacant dwellings prior to rerenting or from the random sample of all occupied dwellings) to have lead-based paint hazards. The Secretary is required to complete the testing of the public housing described dwellings before the expiration of five years from the date of the publication of final regulations required by section 566. The inspections are to be prioritized on the basis of vacancy, age of housing, or projected modernization or rehabilitation. The Secretary is to require abatement to eliminate the lead-based paint poisoning hazards in housing in which the test results equal or exceed 1 mg/cm². If the test results equal or exceed a level of 1 mg/cm², the results shall be provided to any potential purchaser or tenant of the housing. The Secretary is also to periodically review and reduce the level below 1 mg/cm² to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level.

B. HUD Demonstration Program

New section 302(d)(2) requires HUD to carry out an abatement demonstration program with respect to single family and multifamily properties owned by HUD. HUD is to utilize a sufficient variety of abatement methods in a sufficient number of areas and circumstances to demonstrate their relative cost-effectiveness and their applicability to various types of housing. Not later than 18 months after the effective date of regulations required by section 566, HUD is to transmit to Congress its findings and recommendations for legislation. HUD is to examine the most reliable technology available for detecting lead-based paint; the most efficient and cost-effective methods for abatement; safety considerations in testing; over accuracy and reliability of laboratory testing of physical samples, X-ray fluorescence machines ("XRFs") and other available testing procedures; availability of qualified samplers and testers; and an estimate of the amount, characteristics and regional distribution of housing in the United States that contains lead-based paint hazards at differing levels of contamination.

Not later than nine months after the completion of the demonstration program, HUD, based on the demonstration, is to prepare and transmit to Congress a comprehensive and workable plan, including any recommendations for changes in legislation, for the prompt and cost-effective inspection and abatement of privately owned single family and multifamily housing, including housing assisted under section 8 of the United States Housing Act of 1937.

The demonstration authorized by section 566 is expected to contribute significantly to the store of knowledge on safe and effective abatement. For the Public and Indian housing program, HUD does not intend to wait for the results of the demonstration before testing and abatement guidelines are published because: (1) It is necessary to test now to assure completion of the above described testing within a five-year time frame; (2) work to be performed under the modernization program would create lead-based paint hazards with the breaking of painted surfaces; (3) it is cost-effective to do testing in conjunction with modernization so that required abatement may be merged into the modernization work efficiently, rather than be performed independently later; and (4) defective paint creates ongoing hazards which must be addressed during normal maintenance inspections. HUD will publish testing and abatement guidelines as soon as possible. These guidelines will be based on the very extensive experience of those who have been involved in lead-based paint programs and the public comments. Benefits resulting from the demonstration progam can be incorporated into such guidelines as they are made available.

II. Recent Studies of Lead Poisoning Problem

A. Centers for Disease Control's January 1985 Statement

In January 1985, the Centers for Disease Control (CDC) issued a second revision to its statement entitled "Preventing Lead Poisoning in Young Children". Based on new research findings on lead toxicity, CDC redefined elevated blood lead level ("EBL") at a lower blood lead level (from 30 to 25 ug/dl, micrograms of lead per deciliter of whole blood) and updated its recommendations on lead-based paint hazard abatement. CDC is currently considering even lower blood lead levels.

B. EPA Air Quality Criteria for Lead

EPA's Air Quality Criteria for Lead evaluates and assesses scientific information on the health and welfare effects associated with exposure to various concentrations of lead in ambient air. The documentation considers all sources of lead including lead-based paint. EPA has finalized this document and has prepared an addendum which discusses recent papers and scientific literature concerning the relationship between blood lead levels and blood pressure.

III. Proposed Public and Indian Housing Rulemaking and Comments

A proposed rule regarding elimination of hazards due to lead-based paint in Public and Indian Housing was published on April 5, 1988 (53 FR 11164). In response to section 566 of the 1987 Act, this rule proposed amendment of 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures; 24 CFR Part 941, Public Housing Development; Subpart H of 24 CFR Part 965, PHA-owned or Leased Projects—Maintenance and Operation; and 24 CFR Part 968, Comprehensive Improvement Assistance Program ("CIAP"). The proposed rule discussed the six main components for addressing the hazards of lead-based paint in Public and Indian Housing: (1) Maintenance Obligations; (2) Unit Turnover Procedures; (3) Emergency Procedures Involving Children With EBLs; (4) Comprehensive and Homeownership Modernization Procedures; (5) Other Family Project Procedures; and (6) Development/Acquisition Requirements. HUD solicited comments on all aspects of Public and Indian Housing's lead-based paint poisoning prevention requirements and specifically requested information for the development of HUD testing, abatement, inspection certification, and relocation guidelines.

Comments were received on all aspects of Public and Indian Housing's lead-based paint poisoning prevention requirements as well as general concerns regarding regulating lead-based paint hazard elimination. HUD also received significant technical information which will be helpful in the publication of the above-referenced guidelines. Fifty-eight comments were received from commenters including thirty-five public housing authorities ("PHAs") (predominantly southern PHAs), environmental groups, trade associations, state and local health departments, independent laboratories, a private law firm, a legal services organization, Federal agencies, a Congressman, manufacturers of XRFs and contractors.

This section will first discuss the general concerns of proposed rule commenters and then specific Public and Indian Housing issues. Comments regarding the proposed regulations for rehabilitation under section 203(k) of the National Housing Act are discussed in Section V of this preamble.

A. General Concerns

1. Feasibility Considerations

There were a number of general concerns regarding regulating lead-based paint hazard elimination. At least thirteen commenters concluded that the proposed regulations were impossible to execute. Many regarded section 566 of the 1987 Act as impractical and impossible to administer. A significant majority of the PHA commenters emphasized the hardship the regulations

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and statutory amendments caused for PHAs. Other commenters indicated that similar problems will arise in other HUD programs if similar principles are applied. Four commenters suggested that the proposed regulations wasted resources of PHAs. Ten commenters believed that the proposed regulation would increase the hazards of lead-based paint. The specific comments justifying these conclusions are largely contained in the discussion below of Public and Indian Housing's Lead-Based Paint Program issues. Ultimately, the majority of commenters, especially PHAs, called for the postponement of the public housing regulation. Many commenters suggested a delay in the effective date of the regulations until testing and abatement guidelines are available. Several commenters advised further development of the approach to eliminating the hazards of lead-based paint was warranted. Other commenters did not believe a viable program could be designed without a significant infusion of funding and improved testing and abatement technology. In addition to delaying the implementation of the requirements in section 566 of the 1987 Act, commenters suggested expanding the testing period for Public and Indian Housing beyond the five year statutory period.

Alternate approaches were suggested by the commenters. Several commenters suggested that HUD should review the current regulation for effectiveness, gain more expertise by consulting with the scientific and medical communities, the National Institute of Building Sciences, National Bureau of Standards, the Environmental Protection Agency, and other interested groups including PHAs and trade associations, and seriously use the demonstration program as a tool for developing a better lead-based paint program. One commenter stated that HUD failed to make the lead-based paint situation clear to Congress, and three commenters suggested that HUD should seek Congressional modification of the LPPPA.

Six commenters questioned whether there was a severe lead-based paint problem in Public and Indian Housing and pointed to other sources of lead poisoning. Many commenters expressed concerns about other emergency conditions in PHA housing and anticipated a decline in the general condition of PHA housing.

Although many valid comments have been presented and described, HUD believes it must follow the Congressional mandate expressed in section 566 of the 1987 Act and must publish effective final regulations. After the demonstration program (detailed in Section I.B. above), HUD will transmit to Congress its findings and recommendations for legislation. These comments and this rulemaking experience will be instrumental in developing the Congressionally required report and in preparing future regulations.

2. Discretion and liability

Many PHAs were concerned as to the extent of their discretion and liability under the proposed regulation. In describing the requirements for the Public and Indian Housing program in Section IV of this preamble, HUD has attempted to clarify those limited areas of PHA discretion. Commenters also requested guidance on PHA liability and insurance needs regarding the discretionary areas. HUD believes it is for PHA counsel and advisors to assess the PHA liability and need for insurance.

HUD has learned that the majority of insurance companies writing general liability coverage for PHAs/IHAs have adopted, as a standard policy form, the 1986 Commercial General Liability policy wording and are issuing this form on new and renewal policies with 1988 effective dates. The new policy form does not provide bodily injury or property damage coverages arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants. Pollutants include any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, soot, (from a nonhostile fire) vapor, fumes, acids, chemicals and waste. The lead in lead-based paint is a "pollutant." Insurance companies are very much aware of this hazard in PHA/IHA projects and many insurers are excluding all claims that are caused by the lead-based paint. Insurance companies are taking the same position when insuring a Section 8 landlord.

All PHAs/IHAs are urged to contact their insurance agent/broker for a clear interpretation of the coverage afforded by their liability insurance policy.

Commenters were concerned who will determine what constitutes "practicability" or "practicality" under the LPPPA and in the individual housing programs. It is HUD's opinion that Section 566 essentially eliminated most of the discretion under the LPPPA for the Secretary and program participants and substituted Congressional mandates obviating the need for practicability analyses.

3. Housing v. Health Approach

Section 566 of the 1987 Act requires HUD to establish procedures based upon criteria that measures the condition of the housing (housing approach) rather than measuring the health of the residents of the housing (health approach). Only one commenter suggested a return to the health approach; however, HUD can not statutorily use a health approach.

Four commenters noted that HUD must amend other program regulations (such as Section 8 and insured single family programs) to reflect the housing approach. The proposed regulation stated that HUD plans to amend the other program regulations (in addition to the definitional changes and construction cut-off dates) after the demonstration program (see Section I of preamble). This plan is supported by the legislative history for section 566 of the 1987 Act (S. 825, 100th Cong., 1st Sess., *Cong. Rec.* S 18615, 18618 (December 21, 1987)). Many commenters expressed concerns regarding the potential treatment and impact on these other programs. HUD will especially review these comments in preparing the Congressional reports and drafting future proposed lead-based paint regulations for the other HUD programs.

4. Elderly Housing

Eight commenters expressed confusion and disagreement over the coverage of elderly housing. HUD does not intend to apply the revised Public and Indian Housing program requirements to elderly projects or 0-bedroom units (see definition of family project, 24 CFR 965.702). Guided by the exception in the 1987 Act for elderly housing and 0-bedroom units, HUD does not expect children who are less than seven years of age to reside in elderly projects or 0-bedroom units.

5. Notice and Comment Procedures

Five commenters stated that the proposed regulation provided only minimal notice and did not allow sufficient time for the development of public comments (normally sixty days). Section 566 of the 1987 Act permitted only sixty days for final rulemaking. As a result HUD had to shorten the comment period to meet this statutory deadline.

A few commenters noted that a few of section 566's requirements already appeared in CIAP Notice 88-7. Public and Indian Housing issued that notice in order to provide PHAs with early notice of the effect of section 566 and to coordinate the upcoming regulations with the FY 1988 CIAP processing schedule.

6. Environmental Impact

One PHA questioned whether HUD's Finding of No Significant Impact ("FONSI") on the environment was justified. The FONSI detailed the proposed regulation and concluded that the proposed regulation would benefit the environment and would reduce the hazards of lead-based paint. The FONSI is available for inspection during regular business hours in the Office of the Rules Docket clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

7. Definitions

The proposed rule defined applicable surfaces to include all interior and exterior painted surfaces of residential structures. A majority of commenters agreed with HUD's inclusion of all interior and exterior painted surfaces. Four commenters, however, suggested that HUD limit the coverage of exterior surfaces to a four or five feet level and the Environmental Protection Agency and National Institute of Environmental Health Sciences suggested including maintenance areas normally inaccessible to tenants because lead-based paint dust from these rooms may contaminate tenant areas. One commenter suggested that the "as far as practicable" language in the LPPPA allows HUD to exclude areas inaccessible to children.

Section 566 of the 1987 Act provides that HUD's procedures are to eliminate as far as practicable immediate hazards due to the presence of *"accessible intact, intact, and nonintact interior and exterior painted surfaces* that may contain lead in any such housing in which any child who is less than seven years of age resides or is expected to reside" (emphasis added). Congress has made it clear that it intends to include all intact and nonintact interior and exterior painted surfaces that may contain lead, and HUD has drafted the rule in that fashion.

Five commenters requested a clarification concerning the terms "project" and "building". HUD intends to use these terms in the same way as it does for the CIAP program. Project refers to the units or buildings undergoing comprehensive or homeownership modernization or projects (except elderly projects) assisted under section 9 of the U.S. Housing Act of 1937. A building is used in the typical sense to describe structural parts of a project.

One commenter suggested that immediate hazard should be defined. HUD believes the program-specific regulations (*e.g.*, 24 CFR Part 965, Subpart H) collectively serve as a definition of immediate hazard.

One commenter was confused by the use of both the terms abatement and treatment. HUD used these terms interchangeably. The final rule predominantly uses the term treatment to avoid any confusion.

8. Notification

One commenter suggested that the regulation should be modified to provide for a hazard notice in the language of the tenant. HUD intends to prepare a revised uniform notification for use in all of its programs. HUD intends to also provide a Spanish version with this notification. Other translations will be prepared as needed by the organization authorized to administer the HUD-associated housing program (*e.g.*, PHAs).

Another comment was to modify the rule to provide that notice be given to the "official" tenant since many families may reside in the same apartment for extended periods without notice to the PHA. HUD does not believe this modification is necessary because the terms tenant, tenant family and family are used consistently throughout the Public and Indian Housing regulations and includes only the tenants covered by the lease.

9. Lead Level

Two commenters suggested that HUD should reduce the lead level to .7 mg/cm². Other commenters suggested a review of the lead level or use of local levels. Section 566 of the 1987 Act sets a 1 mg/cm² level which is to be periodically reviewed by the Secretary and reduced to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level. As part of the demonstration program, HUD will be reviewing the XRF, new technology and the lead level. Additionally, redesignated § 965.710 (formerly 24 CFR 965.706) requires compliance with local law governing lead-based paint testing.

10. Construction Cut-off Date

Many commenters noted that the regulation followed section 566 of the 1987 Act and imposed a 1978 construction cut off date. However, one commenters noted that this change along with the new definition of applicable surfaces would result in at least a 100% increase in the number of surfaces covered and corresponding costs. HUD believes that the 1978 construction cut-off date is not discretionary.

B. Public and Indian Housing Issues

1. Routine Maintenance Requirements (section 965.704)

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA is to visually inspect units for defective paint surfaces as part of routine periodic unit inspections and treat the defective area within a reasonable period of time. Four commenters suggested that the routine maintenance procedures should be combined with CIAP procedures. HUD disagrees because of the nature of the work (maintenance vs. modernization), funding mechanisms and scope of the abatement and surfaces to be treated.

2. Unit Turnover/Vacant Unit Procedures (section 965.705)

Applicable surfaces in family projects are to be tested at unit turnover. Nineteen commenters were concerned with these procedures. Many commenters suggested there would be additional cost, fewer available testers, increased opportunities for vandalism, an increase in the number of vacancies, the need for additional rehabilitation, difficult tenant choices for available units and cost inefficiencies. Some commenters suggested the regulation was unworkable, unnecessary and would have a negative impact on the performance funding system.

HUD has clarified the proposed regulation; however, vacant unit testing at unit turnover is mandated by section 566 of the 1987 Act.

3. Emergency Procedures (Section 965.706)

In addition to the maintenance obligations, unit turnover and random testing requirements discussed in section IV of this preamble, emergency procedures apply to situations involving EBL children. Most commenters agreed with HUD's emergency procedures; however four commenters asked what a PHA should do if a lead-free apartment does not exist in the PHA's stock and who will pay for such housing outside PHA stock. HUD suggests that temporary lead-free housing should be secured by the PHA (at its cost) for the family with the EBL child. HUD will address the relocation issue in the abatement guidelines.

4. CIAP Procedures (Sections 968.5, 968.9(e))

Many commenters suggested that many other emergencies would be left uncorrected because of the lead-based paint requirements and ultimately only lead-based paint testing and abatement

would be funded because of budgetary reductions. Many commenters urged HUD to secure more CIAP funding and assist PHAs with their funding and planning problems. One commenter suggested that all lead-based paint activities be included in the Group 1 funding level. PHAs indicated that the new testing requirements will have a negative impact on the 1988 CIAP funding cycle and urged HUD to withdraw CIAP Notice 88–7.

In order to complete the statutory required testing within five years, HUD believes that it must impose the requirements immediately and allow 1988 funds to be used to begin the process. For this reason, HUD does not intend to withdraw CIAP Notice 88–7 or change its funding procedures. HUD has attempted to describe in more detail the CIAP funding procedures for lead-based paint testing and abatement.

5. Testing

Thirty-two commenters raised issues regarding the reliability and availability of the XRF testing equipment and the testers. In its previous lead-based paint rulemaking in 1985–1987, HUD reviewed these issues. HUD is also required to examine these issues as part of the demonstration program. HUD will utilize these comments as part of its examination of the problem for the Congressional report.

Twenty-four commenters requested testing guidelines as soon as possible. Many commenters submitted sample testing procedures which will be useful in preparing HUD guidelines. As part of the guidelines, commenters suggested that HUD consider the issues of independent third party testing (conflicts of interest created by having the same group test and abate), regular retesting, testing after abatement, testing priorities (*e.g.*, by units), contracting guidelines for testing and cost estimates for the XRF and staff. HUD will consider these issues in drafting the guidelines.

Two commenters suggested that paint manufacturers should share in the testing and abatement costs. Section 566 of the 1987 Act only provides for existing Federal funding sources. HUD does not foresee any sharing of costs with paint manufacturers.

One commenter considered the testing and abatement to be discriminatory because similar testing and abatement is not required in other HUD programs. After the demonstration, other HUD programs will need to redesign their testing and abatement requirements.

Five commenters stated that HUD should conduct testing with its own personnel and equipment or contract with a testing service. HUD does not believe this is a practicable alternative at this time.

The random sampling requirements including scattered site and 100%-testing (*e.g.*, PHAs are required to test all surfaces in all units in the CIAP project if one unit in the random sample includes lead-based paint) requirements generated six comments. Comments were split between increasing or reducing the percentage of units (including scattered site units) to be tested and the need for 100% testing if lead-based paint was found in the sample. The random testing in the proposed regulation is being retained because decreased sample sizes would lower the statistical confidence and stringency levels of the tests. Sample size increases, on the other hand, would impose extra costs on the PHAs while providing less than proportionate increases in statistical precision levels. HUD believes the 100% testing requirement should be maintained because it is more cost-effective to test than to automatically require abatement of all units.

6. Abatement

Twenty five commenters requested abatement guidelines. Many commenters submitted information on abatement methods, hazards (disposal problems, hazards to workmen, lead dust hazards and lead-contaminated soil), costs and relocation procedures. This information will be helpful in preparing the HUD guidelines.

7. Five Year Period for Testing

Two commenters considered the five year testing requirement (and corresponding abatement requirements) to be unrealistic and impracticable. Section 566 of the 1987 Act requires Public and Indian Housing to be tested within five years from the date of publication of final regulations.

8. Inspection Certification

Twenty-four commenters urged HUD to prepare inspection certification guidelines because PHAs do not feel competent in making the judgment without professional standards, training and a certification program to qualify inspectors. HUD plans to issue guidelines regarding qualified inspectors, final inspection and certification after abatement as part of HUD's testing and abatement guidelines.

9. Funding

Seventeen commenters stated that the testing and abatement is too costly and that a massive infusion of funding is needed or the CIAP program would fail. Commenters asked for more details on Group 2 funding availability and application procedures. Five commenters suggested a set-aside for testing and abatement. Other commenters were concerned about the competition for funding and whether PHAs are expected to fund this activity from regular operating budgets. Two commenters noted that parallel procedures in the Section 8 program would result in high costs for landlords. HUD has described in more detail its plan for funding these activities below in Section IV.

Two commenters were concerned with the funding of development program costs. It should be noted that the total development cost cap is an administratively imposed limit that can be relaxed by HUD if necessary to pay for elimination of lead-based paint. HUD Regional Administrators are authorized to raise the total development cost cap by 5 per cent which should be adequate to pay for development work related to lead-based paint.

10. Training

Along with the need for guidelines, five commenters suggested that HUD should conduct training regarding the guidelines. HUD will assess this need after the guidelines are developed.

11. Monitoring and Enforcement

Six commenters suggested that there should be monitoring and enforcement requirements including penalties for failure to complete testing within the five year period and binding or mandatory guidelines especially for abatement and clean-up.

HUD plans to modify its PIH Field Monitoring Handbook (7460.7 REV.) and CIAP Handbook 7485.1 REV–3) to reflect the revised lead-based paint testing/abatement monitoring and performance review objectives. On-site HUD inspections of PHAs will incorporate review of lead-based paint testing/abatement performance.

12. Waivers

Two commenters suggested that HUD should provide for an appeals process for extensions of time to complete lead-base paint testing and abatement. HUD only has the discretion to grant waivers of non-statutory lead-based paint requirements. This is reflected in 24 CFR 35.70.

IV. Summary of Final Requirements for Public and Indian Housing's Program

This rule amends the Public and Indian Housing Lead-Based Paint Poisoning Prevention program in response to the amendments made by section 566 of the 1987 Act. In addition to responding to the amendments concerning detection and abatement procedures and measurement criteria, this rule is designed to assure that all public housing assisted under section 9 of the United States Housing Act of 1937 (*i.e.*, public housing receiving operating subsidies (including those PHAs which received special funds for the cost of insurance and audit expenses)) is tested as described in section 566 prior to the expiration of five years from the date of the publication of these final regulations. Section 566 and these final regulations require the inspection of each vacant dwelling prior to reresting and a random sample of all remaining occupied dwellings. If lead-based paint hazards are detected during these inspections, all units in a building will be inspected if one unit is found to have lead-based paint. HUD will maintain the current regulatory 1978 construction cut-off date. HUD is revising the definition of applicable surfaces in § 968.702 to parallel the LPPPA amendments and include all intact and nonintact exterior and interior painted surfaces of a residential structure. The definition of family project is also amended to reflect the statutory coverage of all housing assisted under section 9 of the United States Housing Act of 1937 and in which children under seven years of age reside or are likely to reside.

Public and Indian Housing's lead-based paint poisoning prevention requirements have the following six main components for addressing the hazards of lead-based paint:

(1) Maintenance obligations (24 CFR 965.704);

(2) Unit turnover procedures (24 CFR 965.705);

(3) Emergency procedures involving children with EBLs (24 CFR 965.706);

(4) Comprehensive and homeownership modernization procedures (24 CFR 968.9(e));

(5) All other family projects (24 CFR 968.9(e)(1)(iii)); and

(6) Development/acquisition requirements (24 CFR 941.206(g)).

Each of these components are discussed below.

Maintenance Obligations

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall continue to visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of defective paint spots by scraping and repainting the defective area is the required treatment. Treatment shall be completed within a reasonable period of time.

Unit Turnover Procedures

Applicable surfaces in family projects are to be tested at unit turnover (24 CFR 965.705). If the building has been randomly tested and all applicable surfaces in the random sample contain no hazardous levels of lead, no further testing is required. A qualified inspector shall certify in writing the precise results of the test. HUD will prepare guidelines regarding qualified inspectors. Testing services available from state, local or tribal health or housing agencies or an organization recognized by HUD are to be utilized to the extent available. Testing is to be performed by using an XRF; however, laboratory chemical analysis may be used in limited circumstances if approved by HUD in cases where it is not practical to obtain XRF readings. All units shall be tested in any building in which a unit is determined, at unit turnover, to have lead-based paint test results equal or exceeding a level of 1 mg/cm^2.

If the test results equal or exceed a level of 1 mg/cm^2, the results shall be provided to the tenant family and any potential purchaser. If testing finds lead-based paint and the incoming tenant family has a child under seven years of age, the tenant family shall be offered a post-1978 unit, or a unit which either has been abated to the requirements of this section or found to contain no lead-based paint.

If lead-based paint is found on applicable surfaces, such surfaces are to be treated in accordance with § 35.24(b)(2)(ii). Treatment is to consist of covering or removal of the applicable surfaces containing lead-based paint. Covering methods include but are not limited to adding a layer of wallboard or permanent wallcovering. Paint removal may be accomplished by such methods as scraping, heat treatment or chemicals. Removal (of the paint), covering (or encapsulation) or replacement of the substrate (or trim) surface are the preferred methods. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment.

If defective but not leaded paint surfaces are found, covering or removal of defective paint spots by scraping and repainting the defective area is the required treatment. Treatment is to be completed before occupancy.

Final inspection and certification are required after treatment by a qualified inspector. The final inspection shall certify that abatement of lead-based paint hazards was completed in accordance with the abatement specifications and need not be presented as an indication that the lead-based paint has been removed from the premises. This will allow for the fact that encapsulation (or covering) techniques do not result in the removal of lead-based paint and will ensure that any future work done in the unit will take this into account. This will also permit the unit to be deemed to have been abated if the abatement was done according to these requirements, even though an unremovable residue may remain in or on the surface. The certification should be precise as to the nature of the abatement.

Testing and abatement guidance will be published in the Federal Register as notices. As part of this guidance, HUD will also describe acceptable qualifications for inspectors who perform XRF testing or comparable approved testing or sampling techniques and certify as to the precise results of such testing. HUD will defer to appropriate requirements for such inspectors where they are established by states or localities.

Emergency Procedures Involving Children with EBLs

In addition to the maintenance obligations, unit turnover and random testing requirements discussed in this Part, emergency procedures (24 CFR 965.706) must also apply to situations involving EBL children. In the case of a current resident EBL child, or a resident Ebl child or non-resident EBL child using a PHA-owned or operated child care facility, these procedures require the PHA to test all surfaces in the unit and/or PHA-owned and operated child care facilities used by the EBL child for lead-based paint and to abate (where positive) the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including non-dwelling PHA facilities which are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by PHA and HUD. Surfaces not tested during an EBL emergency will be tested as part of the random testing. In the case of a current resident family with an EBL child, the PHA may assign the family to a post-1978 or previously tested unit which was found to be free of lead-based paint hazards or in which such hazards have been abated.

Existing regulations (which have not been amended) require testing to be completed within five days after

notification to the PHA of the identification of the EBL child. Other testing procedures are identical to § 965.705 discussed above. Abatement actions are amended to include all applicable surfaces. The order of priority has not been amended (*i.e.*, units, PHA owned or operate child care facilites, interior common areas and exteriors). The abatement methods are the same as those in § 965.705 discussed above.

Certain miscellaneous program regulations are also amended. The PHA recordkeeping requirements in § 965.709 are amended to reflect the effective date of this regulation. The recordkeeping provision is designed to prevent duplicative testing or treatment. The tenant protection requirements in § 965.707 require PHAs to follow such tenant protection/relocation actions as shall be prescribed by HUD. Where debris, dust or fumes are going to be created during the abatement process, children under seven years of age and pregnant women should be relocated during the abatement process. Specific Guidance for relocation will be published as part of the abatement guidelines in a notice in the Federal Register.

Comprehensive and Homeownership Modernization Procedures

These procedures include family projects constructed prior to 1978 or substantially rehabilitated prior to 1978. Homeownership units constructed prior to 1978 or substantially rehabilitated prior to 1978 are also included. These procedures apply to the above-described family projects and homeownership units (1) undergoing comprehensive or homeownership modernization, (2) involving applications for comprehensive or homeownership modernization and (3) all other family projects not covered by (1) or (2). As of the effective date of this regulation, such family projects or homeownership units (assisted under section 9 of the United States Housing Act of 1937) must be randomly tested for lead-based paint and abated where lead-based paint hazards are found.

Lead-based paint testing and abatement must be accomplished simultaneously with comprehensive or homeownership modernization projects. In order to meet the statutory five-year inspection deadline, HUD requires comprehensive plans for CIAP (as described in § 968.5) to be amended to include the five-year schedule for lead-based paint testing and abatement. Random testing as described in § 968.9(e)(2) should be scheduled and prioritized by age of project and projects known to have lead-based paint from unit turnover testing or presence of previous EBLs. Any previous testing or abatement work which does not meet the requirements of this rule is to be tested and abated in accordance with these requirements.

The procedures for random testing are amended to include all interior and exterior surfaces and clarify random sampling of scattered site projects. Testing methods, tenant protection, lead-based paint debris disposal, recordkeeping and state and local law as described in §§ 965.705, 965.707, 965.708, 965.709 and 965.710 shall be followed. Abatement as described in § 965.705 is also to be followed.

Development/Acquisition Requirements

HUD has amended its development/acquisition regulations for Public and Indian Housing to avoid acquiring properties with lead-based paint hazards and to enhance the decisionmaking process with respect to cost and new construction considerations. All existing properties constructed prior to 1978 (or substantially rehabilitated prior to 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on applicable surfaces (including defective paint surfaces) as described in 24 CFR 968.9(e)(2). If lead-based paint is found, the cost of testing and abatement shall be considered when (1) making the cost comparison to justify new construction as well as (2) meeting maximum total development cost limitations. If units containing lead-based paint are acquired, compliance with 24 CFR Part 35 and 24 CFR Part 965, Subpart H, is required. Abatement as described in 24 CFR 965.705 shall be completed prior to occupancy.

Funding

If state and local funds are unavailable, PHAs may continue to use CIAP funds (section 14 of the United States Housing Act of 1937, 42 U.S.C. 1437) for testing and abatement of EBL units, PHA owned or operated child care facilitate used by EBL children and interior common areas and exteriors where necessary and appropriate. The Group 1 (CIAP emergency condition) funding preference continues to be limited to provide for activities involving EBLs. Additionally, under section 14 of the United States Housing Act of 1937, a new funding eligibility in Group 2 is added to address other family projects or vacant units which are not undergoing comprehensive or homeownership modernization and which must be tested and abated. These activities are now defined as lead-based paint modernization. Corresponding changes have been made in Part 968 to reflect this new category of modernization. Lead-based paint testing and abatement of units undergoing comprehensive or homeownership modernization will continue to be funded as part of the Comprehensive or homeownership modernization.

V. Proposed Regulations for Rehabilitation Under Section 203(k) of the National Housing Act, Comments and Final Regulations

The adoption in early 1987 of revised regulations under the LPPPA (see 52 FR 1891, January 15, 1987) raised a problem that occurs when the surface treatment requirement of 24 CFR 200.810(b) is invoked in certain cases of rehabilitation under section 203(k) of the National Housing Act. Section 200.810(b) of the 1987 regulations provided:

> The fee panel appraiser or direct endorsement appraiser of a dwelling constructed prior to 1973 shall inspect the dwelling for defective paint surfaces. If a defective paint surface is found, the commitment or other approval document will contain the requirement that the surface is to be treated as described in paragraph (c) of this section. Under no circumstances, when such a defective paint surface has been listed to be treated, is any escrow procedure regarding that condition permitted. Treatment of the surface shall be accomplished before the mortgage is endorsed for insurance.

Section 203(k) of the National Housing Act provides for a program of mortgage insurance to facilitate the rehabilitation of one-to-four-family properties. Under the program, HUD insures rehabilitation loans to: (1) Finance rehabilitation of an existing property; (2) finance rehabilitation and refinancing of the outstanding indebtedness of a property; and (3) finance purchase and rehabilitation of a property. An eligible rehabilitation loan must involve a principal obligation not exceeding the amount allowed under the section 203(b) basic home mortgage insurance program. Legislation establishing this rehabilitation program was enacted in 1961.

In many instances, making abatement a precondition of endorsement (as is required under § 200.810(b)) compels either the buyer or the seller, where section 203(k) is being used, to perform work that must be undone during the rehabilitation for which the loan was sought. The seller is often unwilling, and prior to closing and disbursement may be unable, to undertake the expense of abatement; the buyer is usually even less able to afford it until the loan is closed. Similarly, when there is no accompanying sale of the property, the homeowner is typically unable to meet the expenses until the loan is closed. Even if one of the parties can afford the cost, the work, which usually requires an additional inspection by the appraiser, is often duplicative and wasteful. Occupant homeowners may defer or forego property improvements that could abate a lead-based paint hazard or else obtain rehabilitation financing through other sources that impose no abatement requirements. The proposed rule indicated that procedures intended to enhance the protection of occupants, may in fact exacerbate the lead-based paint problem.

When the rehabilitation involves a sale of the property, work is usually completed before the buyer takes occupancy. The properties are typically uninhabitable prior to rehabilitation. To avoid the risk of poisoning and also duplicative rehabilitation/abatement with respect to unoccupied properties, HUD proposed to expand the exception under section 203(k) and make the abatement procedure a condition of occupancy. HUD proposed to revise § 200.810(b) to provide that, except in the case of rehabilitation work in unoccupied dwellings financed under section 203(k) of the National Housing Act, no escrow procedure will be permitted with respect to abatement of a defective paint surface, and treatment must be accomplished before the mortgage is endorsed for insurance. Where section 203(k) financing is involved and the dwelling is unoccupied, the defective paint condition will be abated in conjunction with the rehabilitation work, and will be completed as expeditiously as possible.

HUD requested comments regarding the situation where the property is occupied at the time of section 203(k) loan application. Because of the obvious risk of exposing occupants to abatement work in progress, the proposed rule did not provide for escrow of abatement (or other rehabilitation) funds if the property is occupied.

HUD received one comment on the proposed amendment of § 200.810(b). The commenter, the National Association of Realtors, noted that home sales in Northeastern and Midwestern states have been delayed during winter months because of the requirement to abate defective exterior paint. The commenter urged HUD to allow the use of escrow accounts in those circumstances where exterior defective paint surfaces cannot be abated due to adverse whether conditions. HUD agrees with the commenter that relief is needed but does not wish to expose occupants to unnecessary risks; therefore, HUD has added an exception which parallels the current section 8 program requirement. When weather conditions prevent completion of repainting of exterior surfaces, repainting may be delayed and an escrow procedure is permitted; however, covering or removal of the defective paint must be completed within a reasonable period of time.

The commenter also suggested allowing treatment to take place after closing to allow a seller additional time for treatment or to permit the buyer to provide treatment before the dwelling becomes re-occupied. HUD agrees with this comment and has amended the regulation to permit escrow procedures for post-closing treatment. HUD will provide the abatement guidelines to the party responsible for the rehabilitation.

VI. Section-by-Section Review of Final Regulation

These regulations amend Parts 35, 200, 510, 511, 570, 882, 886, 941, 965 and 968. With the exception of the Public and Indian Housing regulations (Parts 941, 965 and 968) described in Section IV above, each of these amendments is described below.

Part 35 is amended by revising Subpart A's notification requirements. Section 35.5(b) reflects the 1987 Act's amendments. Each Assistant Secretary will use the same notification. Such notification will be prepared after consultation with the National Institute of Building Sciences. Section 35.5(c) was inadvertently omitted when the final regulation for rehabilitation programs was published on February 17, 1987 (52 FR 4870). In response to the 1987 Act, § 35.22 is amended by revising the definition of applicable surfaces to include all interior and exterior painted surfaces, and §§ 35.24(b)(1) and 35.56 are amended by extending the construction cut off date to HUD-associated housing constructed prior to 1978. Sections 35.24(b) and 35.56 are amended to generically describe covering methods and prohibit all open flame removal methods.

In response to the 1987 Act, the definitions of applicable surface in affected HUD program regulations are revised to include all interior and exterior painted surfaces (*i.e.*, § 200.805; § 510.410(c)(1); § 511.11(f)(3)(i); § 570.608(c)(2); § 882.106(i)(2); § 882.404(c); and § 886.113(i)(2)). The rationale for revisions to § 200.810(b) regarding rehabilitation work in unoccupied dwelling financed under section 203(k) of the National Housing Act is detailed in Section V above.

In response to the 1987 Act, construction cut-off dates in affected HUD program regulations are revised to include housing constructed prior to 1978 (*i.e.*, § 200.815(b), (c) and (d); § 200.830(b) and (c); § 200.825(b) and (c); § 510.410(c)(2); § 511.11(f)(3)(ii); § 570.608(c)(3); § 882.106(i)(3) and (4); § 882.404(c)(3) and (4); and § 882.113(i)(3) and (4)). The testing requirements are revised to also permit testing by an organization recognized by HUD. The existing testing and abatement requirements continue to apply.

Other Matters

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities. HUD finds that there are not anticompetitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

OMB Control Number

Information collection requirements contained in §§ 965.705, 965.709(c) and (d)(2), and 968.9(e)(2) and (3) of this final rule have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number will be announced by separate notice in the Federal Register.

Regulatory Impact Analysis

This rule qualifies as a major rule as defined in Executive Order 12291. The Department has conducted a draft cost analysis of the regulations, using in part the public and Indian housing modernization needs study. This cost analysis will serve as a Regulatory

Impact Analysis. The cost study will be available from the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Semiannual Agenda of Regulations

This final rule was listed as sequence number 880 under the Office of the Secretary in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13863) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 35

Lead poisoning, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 510

Loan programs—Housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal.

24 CFR Part 511

Rental rehabilitation grants, Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing, Pockets of poverty, Small cities.

24 CFR Part 882

Grant programs—Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 886

Grant programs—Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 941

Loan programs—Housing and community development, Public Housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 965

Energy conservation, Loan programs—Housing and community development, Public housing, Utilities.

24 CFR Part 968

Loan programs—Housing and community development, Public housing, Reporting and recordkeeping requirements, Grant programs—Housing and community development, Indians.

Accordingly, 24 CFR Parts 35, 200, 510, 511, 570, 882, 886, 941, 965 and 968 would be amended to read as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation of Part 35 continues to read as follows:

Authority: Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 35.5 is amended by revising paragraph (b) and adding a new paragraph (c) to § 35.5 to read as follows:

§ 35.5 Requirements.

* * * * *

(b) Each Assistant Secretary shall take necessary actions to implement the requirements of paragaph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Such actions shall include providing the required notification (prepared by the Secretary after consultation with the National Institute of Building Sciences) and establishing procedures to:

(1) Provide evidence that the required notification has been received by purchasers and tenants of HUD-associated housing constructed prior to 1978, and

(2) Require the inclusion of appropriate provisions in contracts of sale, rental or management of HUD-associated housing to assure that purchasers and tenants receive the required notification.

(c) Any requirement of this section, except use of the required notification, shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated pursuant to the authorization granted in this section and supersedes, with respect to programs within its defined scope, the notification requirements prescribed by this section. *See, e.g.*, 24 CFR 570.880(b) (Community Development Block Grants).

3. Section 35.22 is amended by revising the definition of applicable surface to read as follows:

§ 35.22 Definitions.

As used in this subpart:

Applicable surface means all intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

4. Section 35.24 is amended by revising paragraphs (b)(1), (b)(2)(ii) and (b)(4) to read as follows:

§ 35.24 Requirements.

* * * * *

(b) * * *

(1) All applicable surfaces of HUD-associated housing constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist.

(2) * * *

(ii) Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adquate treatment.

* * * * *

(4) Any requirements of this section shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated under the authorization granted in this section and supersedes, with respect to programs within its defined scope, the requirements prescribed by this section. *See, e.g.*, 24 CFR Part 200, Subpart O (Mortgage Insurance and Property Disposition); § 570.608 (Community Development Block Grant); § 882.109(i) (Section 8 Existing Housing); Part 965, Subpart H (Public and Indian Housing).

5. Sections 35.56(a)(1) and (2) are revised to read as follows:

§ 35.56 Requirements.

(a) * * *

(1) All applicable surfaces of residential structures constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist. For this purpose all defective paint surfaces shall be assumed to be immediate hazards; and

(2) Treatment necessary to eliminate hazards of lead-based paint shall consist of covering or removal of defective paint surfaces. Covering may be accomplished by such means as adding a layer of wallbard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment.

* * * * *

PART 200—INTRODUCTION

6. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. The definition of applicable surface in § 200.805 is revised to read as follows:

§ 200.805 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

8. Paragraph (b) of § 200.810 is revised to read as follows:

§ 200.810 Single family insurance and coinsurance.

* * * * *

(b) *Appraisal.* The fee panel appraiser or direct endorsement appraiser of a dwelling constructed prior to 1978 shall inspect the dwelling for defective paint surfaces. If a defective paint surface is found, the commitment or other approval document will contain the requirement that the surface is to be treated as described in paragraph (c) of this section. Treatment of the surface shall be accomplished before the mortgage is endorsed for insurance. Except in the case of rehabilitation work financed under section 203(k) of the National Housing Act and under certain weather conditions described below, when such a defective paint surface has been listed to be treated, no escrow procedure regarding that condition will be permitted. With respect to rehabilitation work financed under section 203(k), an escrow procedure is permitted provided that the defective paint condition will be abated in conjunction with the rehabilitation work and will be completed as expeditiously as possible. When weather conditions prevent completion of repainting of exterior surfaces, repainting may be delayed and an escrow procedure is permitted; however, covering or removal of the defective paint must be completed within a reasonable period of time.

* * * * *

9. Paragraphs (b), (c) and (d) of § 200.815 are revised to read as follows:

§ 200.815 HUD-owned single family property disposition.

* * * * *

(b) *Defective paint surfaces.* For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before the closing of the sale of the property. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before the closing of the sale of the property. In the case of a sale to a non-owner occupant purchaser, treatment may be made a condition of sale, with sufficient sale funds escrowed to assure treatment.

(c) *Chewable surfaces.* This subsection applies to dwellings constructed prior to 1978. If the purchaser is an owner-occupant and the occupant family contains one or more children under the age of seven years, closing of the sale shall be deferred until completion of the following procedures. Where a blood lead level screening program is determined by HUD to be reasonably available, screening of each occupant child under the age of seven years will be required. If an EBL condition is identified, HUD will cause the dwelling to be tested for lead-based paint on chewable surfaces or follow treatment procedures. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, a qualified HUD inspector or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii).

(d) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section in the case of a residential structure constructed prior to 1978, HUD, at its option, may forgo testing and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

10. Paragraphs (b), (c)(1), and (c)(4) of § 200.820 are revised to read as follows:

§ 200.820 Multifamily insurance and coinsurance.

* * * * *

(b) *Defective paint surfaces.* In the case of a residential structure constructed prior to 1978, the HUD or coinsurer's architect and the sponsor's architect shall inspect the property for defective paint surfaces before the issuance of a commitment. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before final endorsement as a condition of the firm commitment.

(c) *Chewable surfaces*—(1)(i) *Random sample.* In the case of a residential structure constructed prior to 1978 a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with twenty or more units, and six units shall be tested in projects with fewer than twenty units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as child care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any unit in the sample, all units in the project are required to be tested. If lead-based paint is found in any common area, all common areas in the project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the project are required to be tested.

(ii) *EBL Child.* In the case of a residential structure constructed prior to 1978, if the developer is presented with test results that indicate a child seven years of age or younger living in a unit

has an EBL the developer must test the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test, and abate all the unit surfaces.

(4) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (c)(1)(i), (2) and (3) of this section, in the case of a residential structure constructed prior to 1978, the developer may forego testing and abatement, and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) before final endorsement. HUD or the coinsuring lender will reinspect all units after repair and before final endorsement.

* * * * *

11. Paragraphs (b), (c) introductory text, and (c)(2) of § 200.825 are revised to read as follows:

§ 200.825 HUD-owned multifamily property disposition.

* * * * *

(b) *Defective paint surfaces.* For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before offering the property for sale. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before delivery of the property to the purchaser or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required reports. Residential structures assisted under section 223(f) of the National Housing Act are to be inspected and treated as set forth in this paragraph.

(c) *Chewable surfaces.* If the residential structure was constructed or substantially rehabilitated prior to 1978, HUD shall cause a random sampling of dwelling units to be tested for lead-based paint on chewable surfaces as part of the sales contracting procedure. Random testing shall be performed as described in § 200.820(c)(1). Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by the State or local health or housing agency, a qualified HUD inspector, or an organization recognized by HUD. The testing entity shall certify to the results of the test. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). Treatment shall be completed before delivery of the property to the purchaser, or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required repairs.

* * * * *

(2) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section, in the case of a residential structure constructed prior to 1978, HUD, at its option, may forego testing, and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

12. The authority citation for Part 510 continues to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. In paragraph (c)(1) the definition for "Applicable surface" and (c)(2) of § 510.410 are revised to read as follows:

§ 510.410 Lead-based paint.

* * * * *

(c) * * *

(1) *Definitions—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(2) *Inspection and testing—* (i) *Defective paint surfaces.* The local agency shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The local agency shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an indentified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(2)(ii) of this section, in the case of a residential structure constructed prior to 1978, the owner may forego testing and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 511—RENTAL REHABILITATION GRANT PROGRAM

14. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17, United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. In paragraphs (f)(3)(i), the definition for "Applicable surface" and (f)(3)(ii) of § 511.11 are revised to read as follows:

§ 511.11 Other Federal requirements.

* * * * *

(f) * * *

(3) * * *

(i) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(ii) *Inspection and Testing—*(A) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(B) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint.

(C) *Abatement without testing.* In lieu of the procedures set forth in paragraph (f)(3)(ii)(B) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G—Urban Development Action Grants

16. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

17. In paragraph (c)(2), the definition for "Applicable surface" and (c)(3) of § 570.608 are revised to read as follows:

§ 570.608 Lead-based paint.

* * * * *

(c) * * *

(2) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Inspection and Testing—*(i) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PROGRAM—EXISTING HOUSING

18. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f, sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

19. In paragraph (i)(2), the definition for "Applicable surface," and (i) (3) and (4) of § 882.109 are revised to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(i) * * *

(2) *Definitions—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Defective paint.* In the case of a unit, for a Family which includes a child under the age of seven years, which was constructed prior to 1978, the initial inspection under § 882.209(h)(1), and each periodic inspection under § 882.211(b), shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211(b)–(c), as appropriate. Correction of defective paint conditions discovered at periodic inspection shall be completed within 30 days of PHA notification to the Owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30 day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* In the case of a unit constructed prior to 1978, for a Family which includes a child under the age of seven years with an identified EBL condition, the initial inspection under § 882.209(h)(1), or a periodic inspection under § 882.211(b), shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate, and correction shall be completed within the time limits set forth in paragraph (i)(3) of this section.

* * * * *

20. In paragraph (c)(2) the definition for "Applicable surface," and (c)(3) and (4) of § 882.404 are revised to read as follows:

§ 882.404 Housing quality standards.

* * * * *

(c) * * *

(2) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Defective paint.* In the case of a unit, for a Family which includes a child under the age of seven years, which was constructed prior to 1978, the initial inspection under § 882.504(a), and each periodic inspection under § 882.516(b), shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a) or required as corrective action pursuant to § 882.516(c), as appropriate. Correction of defective paint surfaces discovered at periodic inspection must be completed within 30 days of PHA notification to the Owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30 day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* If a proposal is submitted with respect to a unit constructed prior to 1978, occupied by a Family which includes a child under the age of seven years with an identified EBL condition, the PHA shall cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is indentified at initial inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a). Where lead-based paint on

chewable surfaces is discovered at periodic inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be completed within the time limits set forth in paragraph (c)(3) of this section.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

21. The authority citation for Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Subpart A—Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages

22. In paragraph (i)(2) the definition for "Applicable surface"and (i) (3) and (4) of § 886.113 are revised to read as follows:

§ 886.113 Housing quality standards.

* * * * *

(i) * * *

(2) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Defective paint.* Residential units which were constructed prior to 1978 shall be inspected for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(4)(i) *Chewable surfaces.* In the case of a residential structure constructed prior to 1978, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with twenty or more units, and six units shall be tested in projects with fewer than twenty units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as day care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all assisted units in the project are required to be tested. If lead-based paint is found in any common areas, all common areas in the project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the projects are required to be tested. Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a State or local health or housing agency, an inspector certified or regulated by the State or local health or housing agency, or an organization recognized by HUD. The testing entity shall certify to the results of the test. The Owner shall be responsible for obtaining these testing services. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Covering or removal of the paint surface in accordance with 24 CFR 35.24 (b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(iii) *EBL Child.* In the case of a residential structure constructed prior to 1978, if the owner is presented with test results that indicate a child seven years of age or younger living in a unit has an elevated blood lead level or EBL, the owner must test the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test and abate all the unit surfaces.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (i)(3) and (4) of this section, in the case of a residential structure constructed prior to 1978, the owner may forego testing and abatement, and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(iii).

* * * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

23. The authority citation for Part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d)).

24. Section 941.208 is revised by adding a new section (h) to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(h) *Lead-based paint.* All existing properties constructed prior to 1978 (or substantially rehabilitated prior to 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) under this part shall be tested for lead-based paint on applicable surfaces (including defective paint surfaces) as described in 24 CFR 968.9(e)(2). If lead-based paint is found, the cost of testing and abatement shall be considered when: (1) Making the cost comparison to justify new construction as well as (2) meeting maximum total development cost limitations. If units containing lead-based paint are acquired, compliance with 24 CFR Part 35 and 24 CFR Part 965 Subpart H is required, and abatement as described in 24 CFR 965.705 shall be completed prior to occupancy.

* * * * *

PART 965—PHA-OWNED PROJECTS—MAINTENANCE AND OPERATIONS

25. The authority citation for Part 965 continues to read as follows:

Authority: Secs. 2, 3, 6, and 9, United States Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart H is also issued under Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

26. Section 965.702 is amended by deleting the definition of chewable surface and revising the definitions of applicable surface and family project to read as follows:

§ 965.702 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

Family project. Any project assisted under section 9 of the U.S. Housing Act of 1937 which is not an elderly project. For this purpose, an elderly project is one which was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project which meets these qualifications shall, for purposes of this subpart, be excluded from any family project. Zero bedroom units, for purposes of this subpart, are excluded from any family project.

* * * * *

27. Section 965.704 is revised to read as follows:

§ 965.704 Maintenance obligation.

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2)(ii) of this title shall be required. Treatment shall be completed within a reasonable period of time.

§§ 965.706 and 965.707 [Redesignated as §§ 965.710 and 965.711]

28. Sections 965.706 and 965.707 are redesignated as §§ 965.710 and 965.711; § 965.705 is revised; and new §§ 965.706, 965.707, 965.708 and 965.709 are added to read as follows:

§ 965.705 Unit turnover procedures.

(a) *Vacant unit testing.* In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall test units for lead-based paint on applicable surfaces at unit turnover. If the family project has been randomly tested in accordance with § 968.9(e)(2) and no lead-based paint was found, no further testing is required. If testing finds lead-based paint and the incoming tenant family has a child under seven years of age, the tenant family shall be offered a post 1978 unit, or a unit which either has been abated to the requirements of this section or found to contain no lead-based paint. A qualified inspector shall certify in writing the precise results of the test. Testing services available from state, local or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. Testing shall be performed by using an X-ray fluorescence analyzer (XRF). Laboratory chemical analysis may be used in limited circumstances if approved by HUD in cases where it is not practical to obtain XRF readings. If the test results equal or exceed a level of 1 mg/cm², the results shall be provided to the incoming tenant family and any potential purchaser.

(b) *Building testing.* All units shall be tested in any building in which a unit is determined, at unit turnover, to have lead-based paint test results equal or exceeding a level of 1 mg/cm². Vacant unit and building testing are eligible costs under § 968.4. Procedures for obtaining approval of a modernization program are described in § 968.5(h)(2).

(c) *Abatement.* If lead-based paint is found on applicable surfaces, such surfaces shall be treated in accordance with § 35.24(b)(2)(ii) of this title. Wherever possible removal (of the paint), encapsulation (or covering) or replacement of the substrate (or trim) surface is strongly upgraded to avoid lead-dust hazards to both residents and workers. If defective but not leaded paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2)(ii) of this title shall be required. Treatment shall be completed before occupancy. Final inspection and certification after treatment shall be made by a qualified inspector. Testing and treatment of lead-based paint will be considered an eligible modernization cost under Part 968 only upon PHA certification that such services are otherwise unavailable.

§ 965.706 Procedures involving EBLs.

(a) *Procedures where a current resident child has an EBL.* When a child residing in a PHA-owned low income family project has been identified as having an EBL, the PHA shall: (1) Test all surfaces in the unit and applicable surfaces of the PHA-owned or operated child care facility if used by the EBL child for lead-based paint and abate the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including non-dwelling PHA facilities which are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by the PHA and HUD; or (2) assign the family to a post-1978 or previously tested unit which was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures where a non-resident child using a PHA-owned or operated child care facility has an EBL.* When a non-resident child using a PHA-owned or operated child facility has been identified as having an EBL, the PHA shall test all applicable surfaces of the PHA-owned or operated child care facilities and abate the surfaces found to contain lead-based paint.

(c) *Testing requirements.* Testing for lead-based paint on all surfaces in the unit housing the EBL child and the PHA owned or operated child care facilities used by the EBL child shall be completed within five days after notification to the PHA of the identification of the child. A qualified inspector shall certify in writing the precise results of the test. Testing services available from state, local or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm², the results shall be provided to the tenant or the family of the EBL child using PHA owned or operated child care facilities. Testing will be considered an eligible modernization cost under Part 968 only upon PHA certification that testing services are otherwise unavailable. Testing shall be performed by using an X-ray fluorescence analyzer (XRF). Laboratory chemical analysis may be used in limited circumstances if approved by HUD in cases where it is not practical to obtain XRF readings. XRF readings of 1 mg/cm² or higher are considered positive for presence of lead-based paint.

(d) *Hazard abatement requirements—*(1) *Abatement actions.* Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) Unit housing a child with an EBL. Any surface in the unit found to contain lead-based paint shall be treated. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, the PHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds.

(ii) PHA owned or operated child care facilities used by a child with an EBL. Any applicable surface found to contain lead-based paint shall be treated.

(iii) Interior common areas (including non-dwelling PHA facilities which are commonly used by EBL children under seven years of age) and exterior surfaces of projects in which children with EBLs reside. Abatement shall be provided to all surfaces containing lead-based paint.

(2) *Abatement methods.* Surfaces found to contain lead-based paint shall be treated in accordance with § 35.24(b)(2)(ii) of this title. The PHA shall select a safe and cost-effective treatment for the surface under the circumstances. Wherever possible, coverings, encapsulation and replacement of painted surfaces is strongly urged to avoid lead-dust hazards to both residents and workers. Final inspection and certification after treatment shall be made by a qualified inspector.

§ 965.707 Tenant protection.

The PHA shall take appropriate action in order to protect tenants including children with EBLs, other children, and pregnant women from hazards associated with abatement procedures. Where debris, fumes or dust are going to

be created during the abatement process, such action shall include the relocation of tenants with children under seven years of age and pregnant women in order to mitigate possible health hazards arising from the abatement process. Tenant relocation may be accomplished with CIAP assistance.

§ 965.708 Disposal of lead-based paint debris.

The PHA shall dispose of lead-based paint debris in accordance with applicable local state or Federal requirements. (See *e.g.*, 40 CFR Parts 260 through 271.)

§ 965.709 Records.

The PHA shall maintain records on which units, common areas, exteriors and PHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, interior common area, exterior surface or PHA child care facility. The PHA shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD. The PHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR Part 35, Subpart A and § 965.703 of this Part, in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, PHA owned or operated child care facility, exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart before or after June 6, 1988, such units, child care facilities, exteriors or interior common areas are not required to be re-tested or re-treated.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577–0090.)

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

29. The authority citation for Part 968 continues to read as follows:

Authority: Secs. 6 and 14 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

30. Section 968.3 is amended by revising the definition of comprehensive modernization and by adding in alphabetical order the definition of lead-based paint modernization to read as follows:

§ 968.3 Definitions.

"Comprehensive modernization" means a modernization program for a project which provides for all needed physical and management improvements. Under the CIAP, all modernization programs are Comprehensive Modernization, except those defined as emergency, homeownership, lead-based paint or special purpose.

* * * * *

"Lead-based paint modernization" means a modernization program for a family project that is limited to lead-based paint testing and lead-based paint hazard abatement as prescribed in §§ 965.705 and 968.9(e)(1)(iii). For such projects, management improvements are not eligible modernization costs.

* * * * *

31. Sections 968.4 (h) and (i) are revised to read as follows:

§ 968.4 Eligible costs.

* * * * *

(h) *Lead-based paint testing.* Lead-based paint testing costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.9(e) of this Part, are eligible modernization costs.

(i) *Lead-based paint hazard abatement.* Lead-based paint hazard abatement costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.9(e) of this Part are eligible modernization costs.

* * * * *

32. Paragraphs (c) introductory text, (c)(1), (e)(2), (h)(1) and (2), and (i)(7)(ii) of § 968.5 are revised to read as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

* * * * *

(c) *Preliminary application.* Based on an initial comprehensive assessment of its improvement needs, including a determination of the financial feasibility of the proposed modernization and the long-term viability of the project(s) after Comprehensive homeownership, lead-based paint or special purpose modernization, the PHA shall submit to the HUD office a Preliminary Application, in a form prescribed by HUD, which shall contain:

(1) A five-year plan, which is the PHA's initial comprehensive assessment of the modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects, including any special purpose, lead-based paint and homeownership needs, as well as any emergency needs in the current year. The plan provides for gross estimates of the total needs of the project(s) for which Comprehensive Modernization is requested and for gross estimates of the specialized needs of the project(s) for which special purpose, emergency, lead-based paint or homeownership modernization is requested.

* * * * *

(e) *PHA preparation for Joint Review.*

* * * * *

(1) * * *

(2) Completing a detailed comprehensive assessment, in a form prescribed by HUD, of the total physical and management improvement needs of the project(s) for which the PHA is requesting Comprehensive Modernization and of the specialized needs of the project(s) for which the PHA is requesting special purpose, emergency, lead-based paint or homeownership modernization in the current FFY. For each project proposed for Comprehensive Modernization, the comprehensive assessment shall include: the current physical condition and the physical improvements necessary to meet the standards (see § 968.4(a)); the improvements needed to upgrade the management and operation so that decent, safe and sanitary living conditions will be provided; and an identification of management needs related to items set forth in § 968.4(b)(2).

(h) *HUD preliminary funding decisions.*

* * * * *

(1) Group 1, projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant health and safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. Emergency conditions include all testing and abatement as required by § 965.706 of this chapter.

(2) Group 2, projects:

(i) Having conditions which threaten tenant health or safety or having a significant number (10 percent or more) of vacant or substandard units; or

(ii) Other family projects not receiving comprehensive modernization funds as defined in § 968.3, and are required to conduct testing and abatement under §§ 965.705 and 968.9(e)(1)(iii) of this part; and

(iii) Located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, lead-based paint and homeownership modernization).

Within this group, the Secretary may also give priority to additional factors,

such as the correction of physical disparities under the nondiscrimination preference, second or subsequent stage of comprehensive modernization, cost benefit, and the need for lead-based paint testing and hazard abatement.

* * * * *

(i) *Final application.*

* * * * *

(7) * * *

(ii) *Emergency or lead-based paint modernization.* For a project under emergency or lead-based paint modernization, the PHA shall omit from the Final Application the items required in paragraphs (i)(1), (i)(2)(iii) and (iv), and (i)(3) and (4) of this section and limit the items required in paragraph (i)(2)(i) of this section to only those emergency or lead-based paint work items.

* * * * *

33. Paragraph (e) and the OMB approval number of § 968.9 are revised to read as follows:

§ 968.9 Other program requirements.

* * * * *

(e) *Lead-based paint poisoning prevention*—(1) *General.* The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR Parts 35 and 965, Subpart H). Comprehensive plans for CIAP (as described in § 968.5 of this Part) shall be amended to include the schedule for lead-based paint testing and abatement. Testing shall be completed within five years from June 6, 1988. Testing and abatement shall be completed with respect to family projects approved for comprehensive and homeownership modernization (paragraph (e)(i) of this section), applications for family projects for comprehensive and homeownership modernization (paragraph (e)(1)(ii) of this section) and other family projects not undergoing comprehensive and homeownership modernization (paragraph (e)(1)(iii) of this section). Any previous testing or abatement work which does not meet the requirements of this rule must be tested and abated in accordance with these requirements.

(i) Comprehensive and Homeownership Modernization in Progress. With respect to family projects approved for comprehensive and homeownership modernization (assisted under section 9 of the United States Housing Act of 1937) which may contain lead-based paint for which funds have been reserved by HUD before June 6, 1988, no construction contracts, excluding those contracts solely for emergency or energy conservation work items, shall be executed until random testing as described in this paragraph has taken place and any necessary abatement as described in this paragraph is included in the modernization budget.

(ii) Applications for Comprehensive and Homeownership Modernization Projects. With respect to applications for family projects for comprehensive and homeownership modernization (assisted under section 9 of the United States Housing Act of 1937) which may contain lead-based paint for which funds are reserved on or after June 6, 1988, no construction contracts, excluding those contracts solely for emergency or energy conservation work items, shall be executed until random testing as described in this paragraph has taken place and any necessary abatement as described in this paragraph is included in the modernization budget.

(iii) Other Family Projects Not Undergoing Comprehensive and Homeownership Modernization. Any family projects (assisted under section 9 of the United States Housing Act of 1937) not undergoing comprehensive and homeownership modernization (as covered in paragraph (e)(1) (i) and (ii) in this section) including family projects which previously have been comprehensively or homeownership modernized under previous regulations shall be randomly tested as described in this paragraph and abated if lead-based paint is found as described in this paragraph.

(2) *Random testing.* If the family project (including homeownership units) was constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall cause a random sample of all family project units to be tested for lead-based paint on applicable surfaces (including defective painted surfaces). Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint from unit turnover testing or presence of previous EBLs. Ten units shall be tested in family projects that are comprised of contiguous units which were built at the same time and contain twenty or more units. Six units shall be tested in similar projects with fewer than twenty units. A sample of interior common areas and exterior surfaces which are part of the family project shall also be tested. For scattered site family projects involving multi-unit structures, ten units shall be tested in structures containing twenty or more units and six units shall be tested in projects with fewer than twenty units, together with a sample of interior common areas and exterior surfaces and defective paint surfaces which are part of the family project. For other scattered site family projects involving single unit structures which are not contiguous or were built at different times, the PHA shall cause each unit to be tested for lead-based paint on applicable surfaces. The interior common areas required to be sampled by this paragraph may include PHA-owned or operated child care facilities or non-dwelling PHA facilities commonly used by children under seven years of age. If none of the tested units, interior common areas or exterior surfaces contain lead-based paint, the family projects may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all units in the family project are required to be tested. If lead-based paint is found in any interior common areas, all interior common areas in the family project are required to be tested. If lead-based paint is found on any exterior surface, all exterior surfaces in the family project are required to be tested. In the family projects that are known to contain some lead-based paint, no random sampling is necessary, but all applicable surfaces shall be tested. Testing, tenant protection, lead-based paint debris disposal, record-keeping and state and local law requirements as described in §§ 965.705, 965.707, 965.708, 965.709 and 965.710 of this chapter shall be followed. Random testing as described in this paragraph (e)(2) is an eligible planning cost as described in § 968.4(d). Where abatement will result from rehabilitation activities planned (*i.e.*, where all applicable surfaces will be replaced, covered, or otherwise abated as described in this part), those surfaces need not be tested.

(3) *Abatement.* If lead-based paint is found on applicable surfaces, such surfaces shall be treated in accordance with § 965.705 of this chapter. Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards found to children under seven years of age.

* * * * *

(Information collection requirements contained in paragraph (e)(1) were approved by the Office of Management and Budget under control number 2577–0090).

34. Section 968.10(a) is revised to read as follows:

§ 968.10 Special requirements for homeownership project.

(a) Promptly after HUD approval of the Final Application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an

increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation measures, or lead-based paint testing and abatement.

* * * * *

Dated: May 31, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-12713 Filed 6-3-88; 8:45 am]

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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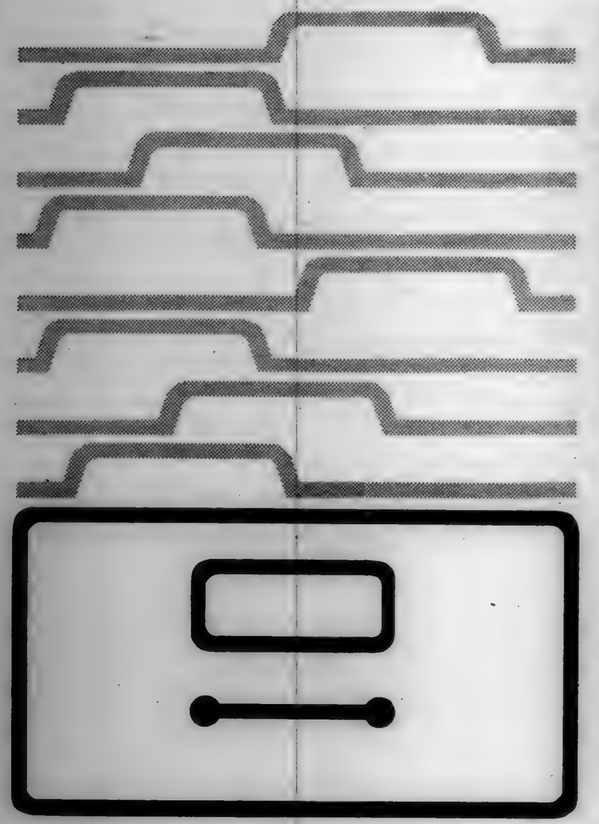

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 307 and 316

Veterans Readjustment Appointments; Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations on the Veterans Readjustment Appointment (VRA) Program to incorporate statutory changes. The statutory authority for the VRA program as cited in the "Veterans' Benefits Improvement Act of 1984" expired on September 30, 1986. On October 28, 1986, the President signed into law the "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986," extending the law through December 31, 1989. These regulations would allow agencies to use the VRA authority through December 31, 1989.

DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Don Smith, (202) 632–0643.

SUPPLEMENTARY INFORMATION: On April 30, 1987, the Office of Personnel Management (OPM) published (at 52 FR 15730) proposed regulations to amend 5 CFR Parts 307 and 316 to incorporate statutory changes (Pub. L. 99–576) to the Veterans Readjustment Appointment (VRA) program and to delete unnecessary paragraphs. We received comments from three Federal agency representatives, three Federal employees unions, and two individuals. Key aspects of the proposal are summarized below along with a discussion of the more significant comments received on the regulations and OPM's decision.

Key Provisions

—Extends the current statutory authority for the VRA authority through December 31, 1989.
—Revises Part 307 to include only the basic requirements of law and eliminates language which properly belongs in the Federal Personnel Manual (FPM).
—Amends 5 CFR 316.302(c) and 316.402(b)(4) to delete unnecessary language.

Comments Received

—Two agencies suggested deleting the training agreement required by OPM regulations and guidance. They felt the training agreement is cumbersome to administer and in many instances training is not needed for the position to be filled. Training is an essential component of the basic law that established the VRA authority; therefore, we are unable to comply with this suggestion.
—One agency suggested that OPM waive the educational limit for temporary VRA eligibles who obtain education in excess of 14 years during a temporary appointment for VRA eligibles. OPM does not have the authority to waive this educational limitation because it is established by law.
—One agency and a Federal employees union disagreed with OPM's decision to delete information that is also published in its Federal Personnel Manual. We believe the deleted information more properly belongs in the Federal Personnel Manual and access to this information is readily available to the public.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees.

List of Subjects in 5 CFR Parts 307 and 316

Government employees, Veterans.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM amends Parts 307 and 316 of Title 5, Code of Federal Regulations, as follows:

PART 307—VETERANS READJUSTMENT APPOINTMENTS

1. The authority citation for Part 307 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR 1970 Comp. p. 912, 38 U.S.C. 2014.

2. Sections 307.102 and 307.103 are revised to read as follows:

§ 307.102 Coverage and general responsibilities.

(a) Federal agencies have the responsibility to provide the maximum of employment and job advancement opportunities to qualified disabled veterans and Vietnam era veterans.

(b) The Office of Personnel Management (OPM) will prescribe instructions and guidance for implementing the Veterans Readjustment Appointment Program through the Federal Personnel Manual (FPM) system.

(c) The current statutory authority for the program extends through December 31, 1989.

§ 307.103 Appointing authority.

An agency may appoint any veteran who meets the basic veterans readjustment eligibility requirements provided by law.

§§ 307.104 through 307.107 [Removed]

3. Sections 307.104 through 307.107 are removed.

PART 316—TEMPORARY AND TERM EMPLOYMENT

4. The authority citation for Part 316 is revised to read as set forth below:

Authority: 5 U.S.C. 3301 and 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p.218); Section 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; Section 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

5. Section 316.302 is amended by revising paragraph (c)(2) to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(c) * * *

(2) Any veteran who meets the qualifications for a veterans readjustment appointment is eligible for employment under this paragraph. The Office will prescribe instructions and guidance in FPM Chapter 316 on implementing term employment for veterans readjustment appointment eligibles.

* * * * *

6. Section 316.402 is amended by revising paragraph (b)(4) to read as follows:

§ 316.402 Authorities for temporary appointments.

* * * * *

(b) * * *

(4) Any veteran who meets the qualifications for a veterans readjustment appointment is eligible for employment under this paragraph. The Office will prescribe instructions and guidance in FPM Chapter 316 on temporary limited employment for veterans readjustment appointment eligibles.

* * * * *

[FR Doc. 88-12761 Filed 6-6-88; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R-0615]

Agricultural Loan Loss Amortization

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This regulation implements Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA") which permits state member agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to state member banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. Title VIII of CEBA required regulations implementing Title VIII to be issued not more than 90 days after enactment, that is, by November 9, 1987. Therefore, the Board initially published the rule as a final rule effective November 9, 1987, and provided for reporting on the Call Report beginning December 31, 1987, but allowed interested parties to comment through December 3, 1987 (52 FR 42087; November 3, 1987). The comment period was extended and closed on January 8, 1988 (52 FR 46984; December 11, 1987).

After consideration of comments received, the Board is making one substantive change and several technical changes to the rule. The substantive change would allow eligible state member banks to amortize over a period of up to seven years losses on reappraisal or sale of real or personal property that was acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or subsequently acquires prior to January 1, 1992. Under the initial rule, such property had to be currently owned. The technical changes clarify the regulatory definition of "qualified agricultural loan" and add a definition for "agriculturally-related other property."

EFFECTIVE DATE: The rule is retroactively effective to November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Manager (202) 728-5883, Stanley B. Rediger, Senior Financial Analyst (202) 452-2629, Division of Banking Supervision and Regulation; Helen Lewis (202) 452-3490, Economist, Financial Reports Section, Division of Research and Statistics; or John Harry Jorgenson, Senior Attorney (202) 452-3778, Legal Division; Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired ONLY, Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA") permits an agricultural bank to amortize: (1) Losses on qualified agricultural loans shown on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) losses suffered as the result of an appraisal of agriculturally related other property between January 1, 1983, and January 1, 1992.

Title VIII of the CEBA also required that the federal banking agencies issue implementing regulations no later than 90 days after the effective date of the Act (that is, no later than November 9, 1987). In order to comply with this requirement, the Board initially published this rule as a final rule effective November 9, 1987, and provided for reporting on the Call Report beginning December 31, 1987, but allowed interested parties to comment through December 3, 1987 (52 FR 42087; November 3, 1987). The comment period was extended and closed on January 8, 1988 (52 FR 46984; December 11, 1987). The Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") proposed substantially identical regulations containing only technical variations necessary to accommodate their own regulatory and organizational systems and requested comments on their rules as well. The standards to be applied by the Board, the OCC, and the FDIC are the same, however.

After consideration of the comments it received, the Board is making one substantive change and several technical changes to the rule. The substantive change would allow eligible state member banks to amortize over a period of up to seven years losses on reappraisal or sale of real or personal property that was acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or subsequently acquires prior to January 1, 1992. Under the initial rule, such property had to be owned on November 9, 1987, to qualify. This amendment is retroactively effective to November 9, 1987. The technical changes amend the definition of "qualified agricultural loan" to clarify that the Board intends to construe the phrase broadly and add a definition of "agriculturally-related other property" to clarify the treatment of losses due to reappraisals and sales of such property.

The statute allows amortization for agricultural loan losses that would be reflected on annual financial statements for 1984-1991. It also allows amortization for losses resulting from reappraisals on real or personal property acquired in connection with making an agricultural loan that the bank would otherwise be required to show on its annual financial statements. To ensure that losses due to reappraisals are treated comparably to loan losses, the regulation requires that losses from reappraisals that the bank would be required to reflect on financial statements for 1983-1991 will be allowed a seven year amortization period in the same manner as agricultural loan losses generally, i.e., they must be fully amortized by 1998. For the same reason, the regulation provides that losses resulting from reappraisals after 1991 are not eligible for amortization.

Discussion of Comments Received

Sixteen commenters submitted twenty-one comments on the Board's rule. Seventeen comments addressed the substance of the rule, and the remaining four comments concerned the extension of the original comment period. Comments were received from six banks, four banking trade associations (two national and two state-level), four

Reserve Banks, one law firm, and the Financial Accounting Standards Board ("FASB"). Additionally, Board staff and FDIC staff met with representatives of the two national trade associations commenting (the American Bankers Association ("ABA") and the Independent Bankers Association of America ("IBAA")) on December 11, 1987, after the associations asked for clarification of the rule as published. Subsequent to the meeting, the IBAA and the ABA each submitted a substantive written comment on the rule.

General Comments

Four banks submitted comments supporting the rule, and three of these suggested that the Board liberalize certain of its provisions. A fifth bank opposed the rule because it does not believe it is prudent to give special treatment to classes of loans when such treatment results in false statements of available capital. Four trade associations (two state and two federal) submitted written comments generally supporting the rule and suggesting changes to it. Four Federal Reserve banks commented favorably on the rule although several expressed reservations about the advisability of the statutory program itself and asked about administrative procedures. The comment from the law firm favoring the proposal was extensively paraphrased in one of the bank comments favoring the proposal and suggesting substantive changes to the portion of the rule concerning amortization of losses related to real estate sales or reappraisals.

Specific Comments

The FASB Comment. The FASB comment criticized the practice established by Title VIII of the CEBA of allowing banks to amortize loan losses rather than recognizing the losses when they are taken. It voiced a concern over yet another difference between regulatory reporting standards and generally accepted accounting principals and believes such differences only serve to confuse and mislead shareholders and financial analysts. The FASB comment suggested that agricultural loan problems could be treated more effectively by modifying the regulatory prescriptions of acceptable capital rather than adding lines to regulator financial statements. Regardless of whether the Board agrees with the FASB approach, Title VIII of the CEBA explicitly requires the approach embodied in the rule.

Definition of "agricultural bank." Section 208.15(a)(1) defines an agricultural bank as any bank: (A) With FDIC insured deposits; (B) located in an area of the country with an economy dependent on agriculture; (C) with total assets of $100 million or less; and (D) with at least 25 percent of its total loans in qualified agricultural loans or with less than 25 percent of its total loans in qualified agricultural loans but which the Board, appropriate Reserve Bank, or state regulator still recommends to the FDIC as eligible.

The definition of an agricultural bank includes the statutory requirement that the bank have total assets of $100 million or less. Comments were received suggesting that the regulators clarify what happens if a bank is approved for loss deferral and subsequently exceeds the size limitation. While Congress did not intend for banks larger than $100 million in assets to defer loan losses under the program, it is of little value to a member bank to defer a loss one year if it must reverse that deferral the next year because it grows to over $100 million in assets. Therefore, the Board expects a member bank to meet the definition of an agricultural bank, including the size limitation, upon initial application and as of every quarter end that new agricultural loan losses are to be deferred. Once admitted to the program, any loss which was properly deferred will be allowed to amortized according to the regulation regardless of the bank's size, but new losses can be amortized only if the bank has assets of less than $100 million.

On the other hand, the Board does not intend to allow member banks to bypass the application/review process through a merger with another bank which has already received program approval. Conversely, the merger of two banks which are both in the program could result in a participating bank with over $100 million in assets. Because mergers are not expected to be frequent, the status of loss deferral subsequent to a merger will be determined on a case-by-case basis. State member banks should discuss their loss deferral status with their Reserve Bank.

One bank and the IBAA urged that the Federal Reserve be liberal when it determines whether a bank meets the 25 percent test because prudent banks may have charged off substantial amounts of such loans but, due to the depressed agricultural economy, may not have been able to replace such loans with new agricultural loans. The bank commenting suggested using a pre-charge-off measure of agricultural loan values to prevent failure to qualify because of the depressed value of collateral or the smaller size of loans made to the depressed agricultural sector. The IBAA suggested that a bank should satisfy the test if at any time since December 31, 1983, it met the test.

The Board does not believe such a change is necessary as the rule does not establish the 25 percent test as an absolute requirement. Thus, factors such as depressed collateral value or lack of prudent agricultural lending opportunities will be considered when applications for loan loss amortization are reviewed to ensure that this arbitrary limit alone is not the reason a bank cannot participate. Further, Title VIII of CEBA was directed toward banks with a continuing commitment to agriculture, and given the broad definition of "agricultural loan" in the regulation, a bank otherwise qualifying under the program should have no difficulty satisfying this test.

Some commenters also urged that the Board list specific criteria to identify agricultural areas. As it did when considering the initial rule, the Board concluded that the normal means of identifying agricultural areas—income levels, revenue flows, acreage in production—are abnormally depressed due to the current state of the agricultural economy. Furthermore, adopting a list of acceptable counties or geographic regions might leave the erroneous impression that a bank located outside such an arbitrary area could not qualify even though it might otherwise qualify as an "agricultural bank," just as the relatively low level of farm income compared to other income might artificially mask local areas that traditional are dependent upon agriculture but currently have a depressed level of income from agriculture. Consequently, each application should include a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in an agricultural area.

Definition of "qualified agricultural loan." Under section 601 of Title VIII of the CEBA,

> The term "qualified agricultural loan" means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

Section 208.15(a)(2) of the Board's rule defines a qualified agricultural loan to include any loan qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC-C of the FFIEC

Consolidated Report of Condition. The definition also includes other loans and leases that the applying bank proves to be sufficiently related to agriculture to qualify in the opinion of the bank's Reserve Bank.

These Call Report definitions are virtually identical to those contained in Title VIII of the CEBA but are more comprehensive and permit the agencies to use the Call Reports as the predominant monitoring device for the amortization program. Therefore, the Board initially saw no reason to repeat the definition in the statute when the regulatory definition was of a more descriptive nature and referred to Call Report terms with which member banks are familiar. Additionally, as suggested by Title VIII of the CEBA, the Board retained discretion to deem other types of loans and leases to be "qualified" and to recommend them to the FDIC as eligible if the requesting bank demonstrates those assets to be sufficiently related to agriculture.

Three banks and three trade associations commented on this provision. One bank suggested that the regulation treat any loan made by an agricultural bank as an agricultural loan because such banks as a practical matter only make agricultural and agriculturally-related loans. Another bank suggested that loans to farm equipment suppliers be specifically mentioned in the rule. The Independent Bankers Association of Minnesota and the third bank noted that the statute mentions farm machinery loans specifically while the rule does not and suggested that the rule include this category of loans. The third bank and the three trade associations suggest that the Board provide examples of others types of loans that would be considered as agriculturally-related loans.

In order to clarify that the regulatory definition of "qualified agricultural loan" is as broad as the statutory definition and is not intended to limit the types of loans which a member bank may include in an application, the statutory phrases referring to farm machinery loans will be added to the regulatory definition. Member banks should refer to the "Line Item Instructions for the Consolidated Report of Condition ("Call Report")" for Schedule RC–C for an indication of the other types of loans that will be considered as qualifying for amortization. For example, qualified agricultural loans would include loans reported under line item 1(b)—loans secured by farmland (land known to be used or usable for agricultural purposes, such as crop and stock production, grazing or pasture land, whether tillable or not and whether wooded or not). Similarly, loans reported under line item 3 would qualify. Such loans would include loans to finance agricultural production (such as for growing or sorting crops, or breeding, raising, fattening, or marketing livestock), or for purchases of farm machinery, equipment, or implements. Consistent with the congressional intent, the definitions on the Call Report are not necessarily exclusive descriptions of eligible loans. If a member bank believes that a loan was made for an agricultural purpose, it may apply to amortize it even though the loan was not reported on the Call Report as an agricultural loan. A determination will be made on a case-by-case basis on whether each loan qualifies.

Amortization. Section 208.15(b)(2) provides that amortization of each qualified agricultural loan shall be computed over a period not to exceed seven years on a quarterly, straight-line basis commencing with the first quarter after the loan was or is charged off so that each loan is fully amortized not later than December 31, 1988. Thus, loans written off in accounting periods ending prior to the adoption of the rule can be amortized *pro rata* beginning with the Call Report for December 31, 1987.

Two state trade associations, the IBAA, and one bank believe that the bank, rather than the Federal Reserve, should decide whether the full seven year amortization period will be used. The IBAA also believes that adopting the *pro rata* treatment of loans written down prior to adoption of the rule unfairly penalizes banks that were diligent in adjusting their assets.

Under the initial rule, a bank that wishes to use an amortization schedule shorter than the maximum seven years is free to apply to do so. The rule anticipates that a seven year schedule will be the normal schedule but does not require its use. The decision to permit the use of a shorter amortization period will depend upon the applicant bank's financial position and is not likely to require consideration of any extraordinary issues.

With regard to adopting a *pro rata* treatment of loans written down prior to adoption of the rule, the Board does not believe it unfairly penalizes banks that were diligent in adjusting their assets. Accepted banking practice and Call Report instructions require member banks to record a loss in the period it becomes apparent.

Losses due to real estate sales or reappraisals. Section 208.15(b)(1)(ii) allows a bank to amortize any loss reflected in its financial statements resulting from a reappraisal or sale of real or personal property it acquired in connection with a qualified agricultural loan and that it owned on January 1, 1983, and still held on November 9, 1987, and of any additional property acquired on or before December 31, 1988.

A law firm and a bank submitting substantially similar letters, the Independent Bankers of Minnesota, and the IBAA objected to the requirement that such property had to be held on November 9, 1987, in order for any such losses to be eligible for amortizing. Comments pointed out that neither the statute nor its legislative history explicitly calls for ownership of such property on the effective date of the regulation and suggested that better reference dates might be the date the loss was actually recognized or the date the legislation was introduced, passed both houses of Congress, or was signed. The Independent Bankers of Minnesota suggested that any loss on such property be treated in the same manner as the loss on the loan it secured, that is, amortization should be allowed at least beginning with the date the loss was recognized so long as the loss is otherwise an eligible loss.

One of the reasons Congress authorized in Title VIII of CEBA the deferral of reappraisal losses was to remove the accounting pressure to sell such property into already weak markets. This is not a factor if the property has already been sold. In addition, unlike unsold property, charged-off loans still evidence a legal obligation to pay which might still have some value. With regard to losses resulting from sales, Congress did not mention deferral at all. Losses on sales were authorized in the regulation merely to make unnecessary the expense of a reappraisal immediately before a sale solely to allow the economic loss to qualify for deferral as a loss on reappraisal rather than be recognized as a loss on a sale. For these reasons, the initial rule did not provide for amortization of losses from reappraised or sold property not owned on or after November 9, 1987.

After consultation among the federal banking regulatory agency staffs, reconsideration of the initial rule, and consideration of pending applications and the comments received, the Board concluded that requiring real property to be owned on or after November 9, 1987, does not necessarily accomplish the goal Congress sought to achieve (that is, avoiding the forced sale of real property into depressed markets simply to qualify

the losses on such a sale for amortization under the program). Thus, the rule is being amended retroactively to November 9, 1987, to remove this requirement. This change represents the only substantive change to the rule.

In need of capital. Title VIII of the CEBA provides that a bank must be in need of capital restoration. The legislative history of the provision indicates that Congress intended that only banks with capital in need of restoration be permitted to amortize losses. Further, it intended that only banks with reasonable prospects for survival be permitted to amortize losses. Section 208.15(d)(2) of the rule provides that the current capital of a bank wishing to amortize qualifying loans must be in need of restoration although the bank remains an economically viable, fundamentally sound institution.

Two state-level trade associations believed that this section is too restrictive. Both commenters believed that any bank qualifying as an agricultural bank which has qualifying agricultural loan losses should be able to amortize those losses to restore capital to some higher level even if it is not "in need of" capital restoration for regulatory purposes. The Independent Bankers of Minnesota also stated that the requirement that a bank must be economically viable and fundamentally sound to be eligible is unnecessary. The ABA explicitly asked that the capital level after adjustment be used when measuring compliance with lending limits based on a percentage of capital.

The Board has concluded, as it did when it issued its initial rule, that no purpose would be served by allowing an otherwise insolvent institution to avoid insolvency through the use of this accounting adjustment. Whether a particular member bank is "in need of" capital restoration may depend on its particular circumstances, however. Because the Federal Reserve will make the determination of need in each case, a member bank applying to amortize agricultural loans should include a statement as to why it is "in need of" capital restoration.

There remains the question of removing a bank from the program once it has recovered financially. As a matter of administrative practice, the Board does not intend to remove such a bank from the program so long as the bank continues to meet the conditions on acceptance prescribed in the regulation. Therefore, once a loan loss has been deferred, a bank will have the option to continue to amortize it over the period provided for in the regulation. However, once the bank has recovered sufficiently so that it no longer meets eligibility requirements because it no longer is "in need of" capital restoration, no new deferral of loan losses will be permitted.

Other Issues. Several commenters suggested that the regulation clarify what would constitute evidence of fraud which would disqualify a loan from amortization. The Board decided not to attempt to list what would constitute fraud in the regulation. An indicium of fraud might include a criminal referral report, for example, but lack of such a report will not preclude excluding a loan if evidence of fraud is uncovered during the application process. Normal sources of information used to determine whether fraud is present should include information collected in the examination process as well. Using this case-by-case approach will allow an applying bank an opportunity to explain ambiguous circumstances.

The rule requires a certification by the bank's chief executive officer that there is no evidence that the loss resulted from fraud or criminal abuse. One commenter expressed concern over this requirement because no one could be absolutely certain in every case that fraud did not exist. The Board appreciates that proving without doubt that fraud does not exist in each case may be impossible. The Board believes, however, that certifying "on knowledge and belief" that fraud does not exist is acceptable.

Several commenters also suggested removing references to enforcement proceedings and to compensation levels from the regulation. The presence of such references only affirms that the program will be monitored and managed through an agreement between a participating bank and its Reserve Bank and does not create information requirements or performance obligations not already attaching through the agreement itself.

Information Collection

These amendments to the procedures and standards applicable to participation in the agricultural loan loss deferral program accordingly amend the information requirements of the proposal submitted by banks desiring to participate in the program provided for in the Report by Banks Proposing to Amortize Losses on Qualified Agricultural Loans (FR 4020; OMB No. 7100–0228). This information collection was approved by the Board under delegated authority from the Office of Management and Budget on October 28, 1987. It specifies the information required to establish and document the bank's eligibility to participate in the program including provision of details of the loans on which the bank proposes to amortize losses, of a capital restoration plan, and other necessary information. The information requirements of the FR 4020 proposal to participate are those specified to meet the requirements of the regulation and are thus now amended to reflect the changes in the regulation. No change will be required in the items collecting information on agricultural loan loss deferral on the Report of Condition and Income (FFIEC 034; OMB No. 7100–0036).

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments would not have any effect on many depository institutions, and any adverse impact on small depositories affected (which only occurs if an institution chooses to take advantage of this regulation) would likely be outweighed by the benefits bestowed by the regulation on these small depository institutions.

List of Subjects in 12 CFR Part 208

Banks, banking, State member banks, Applications, Recordkeeping, Flood insurance, Capital, Securities.

Pursuant to the Board's authority under Title VIII of the Competitive Equality Banking Act of 1987 (Pub. L. No. 100–86) and section 9 of the Federal Reserve Act, 12 U.S.C. 321 *et seq.*, the Board is amending 12 CFR Part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR Part 208 is revised to read as set forth below, and the authority citations following each section are removed.

Authority: Sections 9, 11, and 21 of the Federal Reserve Act (12 U.S.C. 321–338, 248, and 485, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78f(b), 78f(g), 78f(i), 78o–4(c)(5), 78q, 78q–1, and 78w, respectively); and section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927.

2. Section 208.15 is amended by revising paragraphs (a)(1)(iv), (a)(2), (b)(1), (d)(3), (e)(4), (f)(1), and (f)(2)(vi)

and adding paragraph (a)(4) to read as follows:

§ 208.15 Agricultural loan loss amortization.

(a) * * *

(1) * * *

(iv) Which has:

(A) At least 25 percent of its total loans in qualified agricultural loans and agriculturally-related other property; or

(B) Less than 25 percent of its total loans in qualified agricultural loans and agriculturally-related other property but which bank the Board or the Reserve Bank in whose District the bank is located or its primary state regulator has recommended to the Federal Deposit Insurance Corporation for eligibility under this part.

(2) "Qualified agricultural loan" means:

(i) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC–C of the FFIEC Consolidated Report of Condition or such other comparable schedule;

(ii) Loans secured by farm machinery,

(iii) Other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Federal Reserve; and

(iv) The remaining unpaid balance of any loans, described in paragraphs (a)(2) (i), (ii) and (iii) of this section, that have been charged off since January 1, 1984, and that qualify for deferral under this section.

* * * * *

(4) "Agriculturally-related other property" means any property, real or personal, that the bank owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of §§ 208.15(a)(1)(iv) and 205.15(e), the value of such property shall include the amount previously charged off as loss.

(b) * * *

(1) * * *

(i) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991.

(ii) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally-related other property.

* * * * *

(b) * * *

(3) There is no evidence that fraud or criminal abuse by the bank or its officers, directors, or principal shareholders led to significant losses on qualified agricultural loans or from a reappraisal or sale of agriculturally-related other property; and

* * * * *

(e) * * *

(4) The bank agrees to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally-related other property, not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

* * * * *

(f) * * *

(1) A bank wishing to amortize losses on qualified agricultural loans or from reappraisal or sale of agriculturally-related other property shall submit a proposal to the appropriate Accepting Official.

(2) * * *

(vi) A list of the loans and agriculturally-related other property upon which the bank proposes to defer loss including for each such loan or property, the following information:

* * * * *

By order of the Board of Governors of the Federal Reserve System, effective June 1, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–12718 Filed 6–6–88; 8:45 am]

BILLING CODE 6210–01–M

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12 CFR Part 261

[Docket No. R–0601]

Rules Regarding Availability of Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System has revised its Rules Regarding Availability of Information to update procedures, which have not had a comprehensive review since 1987. This revision was published for comment on April 23, 1987. (52 FR 13458). The revised regulation includes: (1) A description of the Board's procedures in processing requests under the Freedom of Information Act ("FOIA"); (2) further delegation of authority to the Board's General Counsel to act on requests for information by law enforcement agencies and others; (3) additional provisions regarding the availability of information to federal and state financial institutions' supervisory authorities; (4) disclosure by financial institutions of examination or inspection reports to certified public accountants and attorneys employed by such institutions; and (5) notice of FOIA requests to submitters of confidential commercial or financial information, and procedures for requesting confidential treatment of such information and requests for disclosure of such information.

On April 22, 1987, the Board adopted as a final rule changes to its fee schedules pertaining to requests for Board documents pursuant to the Freedom of Information Reform Act of 1986, Pub. L. 99–570. 52 FR 15299 (April 28, 1987). Accordingly, those changes to that section (§ 261.10) were not addressed in this rulemaking.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452–3920); Elaine M. Boutilier, Senior Attorney, Legal Division (202/452–2418); Kenneth M. Kinoshita, Attorney, Legal Division (202/452–3721); or for the hearing impaired *only*; Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The purpose of this revision of the Board's Rules Regarding Availability of Information is to set forth more clearly the procedures for requesting access to documents that are records of the Board, either under the FOIA or the Federal Reserve Act. The revision also changes certain procedures for obtaining access to documents. These provisions and changes were described in detail when comments were requested on the proposal. See 52 FR 15299 (April 23, 1987). The Board received twelve comment letters—five from Reserve Banks, two from commercial banks, four from trade associations and one from a Congressman. Of these twelve comments, seven generally supported the proposed revisions. There were no comments opposed to the proposed revisions, but one of the seven generally supportive comments and four of the remaining five comments recommended substantive changes, which have been considered by the Board. The remaining comment and part of another comment recommending substantive changes addressed issues not applicable to the proposal. Changes to the rule in response to the comments are discussed below.

A. Subpart A—General Provisions

Minor wording changes were made, but no substantive changes were made to this subpart of the proposed regulation.

B. Subpart B—Published Information and Records Available to Public; Procedures for Requests

Minor changes were made to this subpart as a result of comments made, and certain clarifications are noted.

Section 261.6(b)(5) was amended to clarify that notices received pursuant to the Change in Bank Control Act, as well as applications received pursuant to the Bank Holding Company Act, are reviewed upon receipt for separation into a public portion and a confidential portion. The public portions of these applications and notices may be released either by the Board or the appropriate Federal Reserve Bank without further review, and any request for an application or notice will be deemed to be a request for the public portions only, unless otherwise specifically noted.

The Board wishes to clarify a statement in § 261.8(a)(3), which is the exemption from disclosure for trade secrets, and confidential commercial or financial information. Section 261.8(a)(3)(ii) states that the Board may, without prior notice and to the extent it deems necessary, comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains. This provision is included in the regulation to ensure that the Board has the ability to fully discuss the basis for its actions on regulatory applications.[1] However, the Board's staff normally will apprise an applicant in the course of the application's process that such information may need to be disclosed in connection with the Board's action on the application. This would afford the applicant the opportunity either to revise the application or to withdraw the application prior to Board action or to address the matter further with Board staff.

Section 261.10 was adopted as a final rule in a separate action due to a statutory deadline for adoption of revised fee schedules. 52 FR 15299 (April 28, 1987). When the entire Part 261 was published for comment, § 261.10 was included in its proposed format for the convenience of the public, with the statement that the comment procedure for that section was a separate action and the comment period had already closed. Nevertheless, one comment was received regarding the fees, but it did not raise any new issues not already addressed by the Board when the fee schedule was adopted in final form. Section 261.10 was adopted in its final form by the Board on April 22, 1987, (52 FR 15299, April 28, 1987) and is included in this rulemaking for the sake of clarity and convenience.

C. Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institutions Supervisory Agencies, Law Enforcement Agencies, and Other in Certain Circumstances

Both major and minor changes were made to this subpart as a result of public comments received by the Board. In addition, certain clarifications are noted.

Section 261.11(a) was amended by deleting the last sentence of this paragraph as unnecessary in light of new § 261.11(b). The rest of § 261.11 has been clarified through reorganization and modification. Section 261.11(b) was renumbered as § 261.11(e) and simplified, and § 261.13(d) has been renumbered as § 261.11(b).

This new § 261.11(b), which concerns disclosure of confidential supervisory information by a supervised financial institution, logically should follow § 261.11(a), which concerns disclosure of confidential supervisory information to the supervised financial institution.

The Board received several comments on § 261.13(d) as proposed. These comments stated that proposed § 261.13(d) could be read to prohibit disclosure of confidential supervisory information to parent holding companies, officers, directors, and employees; that the requirement that the supervised financial institution agree to keep any confidential information provided to it confidential was unnecessary; that the requirement that the supervised financial institution consult with the appropriate Reserve Bank prior to disclosing confidential institutions to "agents" was awkward, unnecessary, and may prevent the necessary flow of information to "agents"; and that the Board should require financial institutions to make Board reports of examination available to their outside auditors.

In response to the comments, the Board amended § 261.13(d) (the new § 261.11(b)) to clarify that a supervised financial institution and its parent bank holding company may disclose confidential supervisory information to their officers, directors, and employees. The Board also eliminated the requirement that supervised financial institutions consult with a Reserve Bank prior to disclosing confidential information to "agents." The new § 261.11(b)(2) authorizes a supervised financial institution to disclose confidential supervisory information to outside legal counsel and outside auditors without consultation, subject to the following conditions, which apply to all persons and are set forth in § 261.11(g): That the confidential supervisory information be reviewed only on the premises of the supervised financial institution; that no copies of the confidential supervisory information be made; and that such persons not disclose the confidential supervisory information without the prior written approval of the Board's General Counsel.

The Board believes that it is unnecessary to make it mandatory that confidential supervisory information be provided to outside auditors. The American Institute of Certified Public Accountants ("AICPA") guidelines do not call for outside auditor access to reports of examination in all situations in which auditors may be retained to perform services for a bank, and bank management will have no practical alternative to permitting such access where it is needed and authorized.

The Board believes that outside auditors should receive access to its reports whenever they are called upon to conduct a general audit or otherwise to render a formal opinion regarding a bank's condition. The Board notes that outside auditors are sometimes retained to assist in preparation of so-called directors examinations. The Board believes that a bank's directors may permit outside auditors to review reports of examination where appropriate in such situations, but that such review by the auditors does not absolve the directors of their independent responsibility to read, understand, and respond appropriately to the Board's reports of examination, or of any responsibility they may have under applicable law regarding the directors' examination.

Section 261.11(e) was renumbered as § 261.11(g), and § 261.11(g) was simplified and renumbered as § 261.11(f).

Section 261.11(f) was renumbered as §§ 261.11(h)(1), and 261.8(d) was renumbered as § 261.11(h)(2). Section 261.11(h)(2), which concerns disclosure of confidential Report of Operations of a foreign banking organization (Form F.R. 2068) by Federal Reserve employees,

[1] As a related matter, the procedure established in § 261.17, regarding notice of a request for information to submitters of confidential information, does not apply to any determination by the Board to comment upon such information in any opinion or statement concerning a regulatory application. (See § 261.17(g)).

should logically follow new § 261.11(h)(1), which concerns disclosure of Form F.R. 2068 reports to other bank supervisory authorities.

Section 261.12(e) was eliminated as unnecessary in light of new § 261.11(e), and § 261.12 (f) through (h) were renumbered as §§ 261.12 (e) through (f).

For purposes of clarity, § 261.13(a) was amended. It originally provided that confidential supervisory information should not be disclosed "except in the most compelling circumstances." The term "compelling circumstances", which is a term of art, may be confusing to the layman. Accordingly, § 261.13(a) was revised to provide that the Board will not authorize disclosure of confidential supervisory information unless the person requesting disclosure "is able to show a substantial need for such information that outweighs the need to maintain confidentiality." The last sentence of the original § 261.13(a) was eliminated as unnecessary.

Section 261.13(b) was amended for clarity and for structural reasons. It no longer applies only to requests for disclosure of confidential supervisory information from private litigants, but has been expanded to include all requests for access to confidential supervisory information not otherwise covered by Subpart C or other portions of the regulation.

Section 261.13(b)(1) was amended to combine the original § 261.13(b)(1), which required litigants seeking documents to file a request, and original § 261.13(c), which required litigants seeking testimony to file a request. This amendment was made to simplify the regulation since both sections required litigants to follow the same procedures. Section 261.13(b)(1) was further amended by setting forth the information that a litigant must provide to the Board to justify disclosure of confidential information. This amendment was made to explain how litigants and others can make a showing of substantial need for the information that outweighs the need to maintain confidentiality required by § 261.13(c)(1)(i).

A new § 261.13(b)(2) was added. This section was drafted in response to comments received concerning proposed § 261.13(d)(3), which required financial institutions in possession of confidential supervisory information to consult with the appropriate Reserve Bank prior to disclosing such information to agents in their employ. While the Board has amended that provision to automatically allow financial institutions to disclose confidential supervisory information to outside legal counsel and outside auditors, the Board believes that there are a number of other types of agents to which the financial institutions may wish to disclose confidential supervisory information from time to time. The new § 261.13(b)(2) permits financial institutions and others to make such requests for disclosure of confidential supervisory information to the Board. The Board will consider such requests on a case by case basis.

Original § 261.13(b)(2) was renumbered as § 261.13(c) (1) and (2) and amended. The proposed § 261.13(b)(2) authorized the General Counsel to approve requests for disclosure of confidential supervisory information if the requester made a showing of "compelling circumstances that require disclosure * * *" and if the General Counsel determines that such disclosure is consistent with the regulatory responsibilities and the policies of the Board. The term "compelling circumstances" is a term of art that may be confusing to the layman. Accordingly, that provision was amended to read "has shown a substantial need for confidential supervisory information that outweighs the need to maintain confidentiality * * *."

A new § 261.13(d) was added. Section 261.13(b)(1) was originally titled "Exhaustion of administrative remedies." It did not state with sufficient clarity that it was necessary to file a request under §§ 261.13(b)(1) and 261.13(c) to exhaust administrative remedies for discovery purpose in any litigation, although this requirement was intended. Accordingly, § 261.13(d) makes clear that action under § 261.13(c) exhausts administrative remedies for discovery purposes in any litigation. Section 261.13(d) also explains that a request under § 261.9 (which implements FOIA) does not exhaust administrative remedies for discovery purposes in litigation and that it is not necessary to file a request under § 261.9 for that purpose. This provision was added because the standards for determining whether to release confidential supervisory information differ under FOIA from the factors to be considered for discovery in litigation.

Original § 261.13(c) has been incorporated into new § 261.13(b)(1), and original § 261.13(d) has been incorporated into new § 261.11(b) and § 261.13(b)(2). These amendments are described above. Section § 261.13(e) has been amended to reflect the changes made to § 261.13.

Minor wording changes have been made to § 261.14 for the sake of clarity.

D. Requests for Confidential Treatment

After the proposed regulation was published for comment, the President issued Executive Order No. 12600 (June 23, 1987), which requires executive agencies to establish procedures to notify submitters of confidential financial and commercial information of any requests for access to such information. The Executive Order is similar in substance to the proposed § 261.17, which has now been modified to reflect the provisions of the Executive Order. These modifications will ensure uniformity in treatment of submitters of confidential commercial or financial information.

One such modification provides in § 261.17(a)(1) that a designation of confidentiality by a submitter will expire after ten years. Another modification, in § 261.17(a)(2), gives the Secretary the discretion to notify a submitter who has not requested confidential treatment of his information of a request for access, if the Secretary has a reasonable expectation of substantial competitive harm upon disclosure. This standard of "reasonable expectation of competitive harm" replaces the proposed regulation's standard of "deemed confidential under 5 U.S.C. 552(b)(4)." A further modification provides, in § 261.17(d), that when the Secretary notifies a submitter of a determination to release the information despite written objections by the submitter to such disclosure, the Secretary will provide a written explanation of why the submitter's objections were not sustained. The final change in § 261.17(e) concerns the exceptions under which the Secretary need not notify the submitter of a request for confidential information. This change replaces the exception for a claim of confidentiality that "is deemed to be insubstantial" with the exception used in the Executive Order—that the submitter's designation as confidential is "obviously frivolous." This change will not adversely affect the rights of submitters since, to the extent "deemed to be insubstantial" differ from "obviously frivolous," the latter formulation is seen as defining the Secretary's discretion more narrowly then the originally proposed formulation.

These changes will ensure consistency of the Board's regulation with those used by other agencies and will avoid confusion on the part of requesters and submitters of information.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

List of Subjects in 12 CFR Part 261

Freedom of Information Act, Federal Reserve System.

For the reasons set out in this notice, and pursuant to the Freedom of Information Act (5 U.S.C. 552), and the Board's authority under section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and under section 5 of the Bank Holding Company (12 U.S.C. 1844) to exercise general supervision of and to examine state member banks and bank holding companies, and section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate functions to members and employees of the Board and to the Reserve Banks, the Board revises its Rules Regarding Availability of Information, 12 CFR Part 261 as follows:

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

Subpart A—General Provisions

261.1 Authority, purpose, and scope.
261.2 Definitions.
261.3 Custodian of records; certification; service; alternative authority.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

261.5 Published information.
261.6 Records available to public upon request.
261.7 Deferred availability of certain information.
261.8 Exemptions from disclosure.
261.9 Procedures for making requests for indentifiable records; processing of requests; appellate review of denial of request; time extensions.
261.10 Fee schedules; waiver of fees.

Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institutions Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances

261.11 Confidential supervisory information made available to supervised financial institutions and financial institution supervisory agencies.
261.12 Confidential information made available to law enforcement agencies and other nonfinancial institution supervisory agencies.
261.13 Other disclosure of confidential supervisory information.
261.14 Subpoenas, orders compelling production and other process.

Subpart D—Requests for Confidential Treatment

261.15 Scope of subpart.
261.16 Submission and form of request for confidential treatment; action on request.
261.17 Confidential commercial or financial information.

Authority: 5 U.S.C. 552, 12 U.S.C. 248(k), 321, and 1844.

Subpart A—General Provisions

§ 261.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to 12 U.S.C. 248(i) and (k) and 5 U.S.C. 552.

(b) *Purpose.* This regulation sets forth the kinds of information made available to the public, the rules of procedure for obtaining documents and records, and the rules of procedure with respect to confidential information.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B implements the Freedom of Information Act (5 U.S.C. 552) and explains:

(i) The kinds of information the Board regularly publishes;

(ii) The types of records made available to the public upon request;

(iii) The kinds of information exempt from disclosure or subject to deferred availability; and

(iv) The procedures for obtaining information and for processing information requests.

(3) Subpart C sets forth:

(i) The kinds of confidential information made available to supervised institutions, supervisory agencies, law enforcement agencies, and others in certain circumstances;

(ii) The procedures for disclosure;

(iii) The procedures for processing law enforcement requests; and

(iv) The procedures with respect to subpoenas, orders compelling production, and other process.

(4) Subpart D contains the procedures relating to requests for confidential treatment of documents and information.

§ 261.2 Definitions.

For purposes of this regulation:

(a) "Board's official files" means the Board's central records.

(b) "Confidential supervisory information" means cease and desist orders, suspension or removal orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, as amended, the Bank Holding Company Act of 1956, as amended, or the Federal Reserve Act of 1913, as amended; reports of examination and inspection, confidential operating and condition reports, and any information derived from, related to, or contained in them. "Confidential supervisory information" may consist of documents prepared by, on behalf of, or for the use of the Board, a Reserve Bank, a Federal or state financial institutions supervisory agency, or a bank or bank holding company.

(c) "Information of the Board" means all information coming into the possession of the Board, any Board member, any Federal Reserve Bank, or any officer, employee, or agent of the Board or of any Federal Reserve Bank, in the performance of functions for or on behalf of the Board, including functions delegated by the Board pursuant to Part 265 of this chapter.

(d) (1) "Records of the Board" includes applications, rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other written material, as well as magnetic tapes, computer printouts of information obtained through use of existing computer programs, maps, photographs, and other materials in nonwritten or machine readable form that are under the control of the Board, that contain information of the Board, and that:

(i) Constitute part of the Board's official files; or

(ii) Are maintained for administrative reasons in the regular course of business in official files in any division or office of the Board or any Federal Reserve Bank in connection with the transaction of any official business.

(2) "Records of the Board" does not include:

(i) Handwritten notes; personal files of Board members and employees; tangible exhibits, formulas, designs, or other items of valuable intellectual property; extra copies of documents and library and museum materials kept solely for reference or exhibition purposes; unaltered publications otherwise available to the public in Board publications, libraries, or established distribution systems;

(ii) Documents, including lists, and other material not in existence or not in the Board's possession or control on the date a request for records is received;

(iii) Documents no longer in the possession of the Board which have been disposed of in accordance with law;

(iv) Copies of transcripts provided to the Board under any reporting service contract and that may be obtained directly from the contractor;

(v) Documents of other agencies made available to the Board on a confidential basis by such agencies;

(vi) Documents that are not the property of the Board and which have been made available to the Board on a temporary or otherwise limited basis with its consent.

(e) (1) "Report of examination" means the report prepared by the Board concerning its examination of a state member bank of the Federal Reserve System, and includes reports of inspection of bank holding companies, U.S. branches or agencies of foreign banks, and other institutions examined by the Federal Reserve System. Such reports may be prepared either solely by the Board or jointly by the Board and an appropriate state bank supervisory agency.

(2) "Reports of examination" may include reports of examination of other financial institutions prepared and provided to the Federal Reserve System by other Federal and state financial institution supervisory agencies.

(f) "Report of inspection" means the report prepared by the Board concerning its inspection of a bank holding company and its bank and nonbank subsidiaries.

(g) (1) "Search" means a reasonable search of the Board's official files and any other files containing Board records as seem reasonably likely in the particular circumstances to contain documents of the kind requested. Searches may be done manually or by computer using existing programming. For purposes of computing fees under § 261.10 of this regulation, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from "review" of material to determine whether the material is exempt from disclosure.

(2) "Search" does not mean or include:

(i) Research;

(ii) Creation of any information or data retrieval program or system;

(iii) Extensive modification of an existing program or system;

(iv) Creation of any document, or any other activity that involves creative processes rather than simply retrieval of existing documents.

§ 261.3 Custodian of records; certification; service; alternative authority.

(a) *Custodian of records.* The Secretary of the Board is the official custodian of all records of the Board, including all records that are in the possession or control of the Board, any Federal Reserve Bank, or any Board or Reserve Bank employee.

(b) *Certification of record.* The Secretary may certify the authenticity of any record of the Board, or of any copy of such record, for any purpose, and for or before any duly constituted Federal or state court, tribunal, or agency.

(c) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process demanding access to records of the Board shall be addressed to and served upon the Secretary of the Board at the Board's offices in Washington, DC 20551.

(d) *Alternative authority—(1) Secretary of the Board.* Any action or determination required or permitted by this regulation to be done by the Secretary of the Board may be done by an Associate Secretary or other responsible employee of the Board who has been duly designated for this purpose by the Secretary.

(2) *General Counsel.* Any action or determination required or permitted by this regulation to be done by the General Counsel may, in the General Counsel's absence, be done by a deputy or associate general counsel or other attorney of the Board's Legal Division who has been duly designated for this purpose by the General Counsel.

(3) *Director of Banking Supervision and Regulation.* Any action or determination required or permitted by this regulation to be done by the Director of the Division of Banking Supervision and Regulation may, in the Director's absence, be done by the Deputy Director or other official of the Division who has been duly designated for this purpose by the Director.

Subpart B—Published Information and Records Available to Public: Procedures for Requests

§ 261.5 Published information.

(a) *Federal Register.* The Board publishes in the **Federal Register** for the guidance of the public:

(1) Descriptions of the Board's central and field organization;

(2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;

(3) Rules of procedure, descriptions of forms available and the place where they may be obtained, and instructions on the scope and contents of all papers, reports, and examinations;

(4) Substantive rules and interpretations of general applicability, and statements of general policy;

(5) Every amendment, revision, or repeal of the foregoing;

(6) General notices of proposed rulemaking;

(7) Notices of applications received under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) and the Change in Bank Control Act (12 U.S.C. 1817);

(8) Notices of formal public hearings ordered by the Board;

(9) Notices of all Board meetings, pursuant to 5 U.S.C. 552b;

(10) Notices identifying the Board's systems of records, pursuant to 5 U.S.C. 552a; and

(11) Notices of agency data collection forms being reviewed under the Paperwork Reduction Act (5 U.S.C. 3501 et seq.).

(b) *Board's reports to Congress—(1) Annual report under Federal Reserve Act.* The Board's annual report to Congress pursuant to the Federal Reserve Act (12 U.S.C. 247), which is made public upon its submission to Congress, contains a full account of the Board's operations during the year, an economic review of the year, and legislative recommendations to Congress. The report includes:

(i) A full account of the policy actions taken by the Board and the Federal Open Market Committee, showing the votes taken and the underlying reasons (12 U.S.C. 247a);

(ii) Material pertaining to administering Board functions under the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and 1844(d));

(iii) Material pertaining to bank mergers approved by the Board under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(9)); and

(iv) Reports required by section 114 of the Truth in Lending Act (15 U.S.C. 1613); section 602 of the Change in Bank Control Act (12 U.S.C. 1817(j)(14)); section 121 of the Securities and Exchange Act (15 U.S.C. 78w(b)); the Securities Act Amendments of 1975 (15 U.S.C. 78w); section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f); section 18 of the Federal Trade Commission Improvement Act (12 U.S.C. 57a(f)(5)); section 918 of the Electronic Funds Transfer Act (15 U.S.C. 1693p); section 805 of the Community Reinvestment Act (12 U.S.C. 2904); and section 3(h) of the International Banking Act of 1978, Pub. L. 95-369.

(2) *Reports under other Acts.* The Board also reports to Congress annually, or at more frequent intervals, under certain Acts of Congress, including but not limited to the Freedom of Information Act (5 U.S.C. 552(e)); the Government in the Sunshine Act (5 U.S.C. 552b(i)); and the Full Employment and Balanced Growth Act of 1978 (12 U.S.C. 225a), concerning the administration of its functions under each of these acts.

(c) *Federal Reserve Bulletin—(1) Contents.* In the *Federal Reserve Bulletin*, which is issued monthly, the Board publishes:

(i) Economic and statistical information;

(ii) Articles on subjects of economic interest or relating to Board activities;

(iii) Regulations;

(iv) Statements of general policy;

(v) Interpretations of laws and regulations of general interest to the public;

(vi) Notices of Board action on certain types of applications; and

(vii) Board orders and accompanying statements on certain types of adjudications.

(2) *Advanced release of information.* Some material published in the *Bulletin* is released in advance of publication, including certain regulations, interpretations, orders and opinions, and the Board's index of industrial production and other statistical series.

(d) *Other published information—(1) Statements of financial condition.* As required by section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), the Board issues weekly a statement showing the condition of each Federal Reserve Bank and a consolidated statement of the condition of all Federal Reserve Banks.

(2) *Index of applications.* The Board also issues weekly an index of the applications received and the actions taken on such applications, as well as other matters issued, adopted, or promulgated by the Board.

(3) *Statement of changes in bank structure.* In addition, the Board issues weekly a statement showing changes in the structure of the banking industry resulting from mergers and the establishment of branches.

(4) *Press releases.* The Board frequently issues statements to the press and public regarding monetary and credit actions, regulatory actions, actions taken on certain types of applications, and other matters. Current press releases may be obtained from the Board's Publications Services Section.

(5) *Computer tapes.* The Board periodically prepares data of various kinds on computer tapes, which are available to the public upon request pursuant to a current schedule of charges.

(6) *Regulatory Service.* The Board publishes *The Federal Reserve Regulatory Service*, which is a multivolume looseleaf service containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Parts of the Service are also published as separate looseleaf handbooks relating to Consumer and Community Affairs, Monetary Policy and Reserve Requirements, and Securities Credit Transactions. The Service and each handbook contain subject and citation indexes, are updated monthly, and may be subscribed to on a yearly basis.

(7) *Lists of Board publications.* The Board's Publications Services Section maintains a list of Board publications that are available to the public. In addition, a partial list of important publications is published in the *Federal Reserve Bulletin.*

(e) *Indexes to Board actions.* (1) The Board's Freedom of Information Office maintains an index to Board actions which provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. The index is updated weekly and is available to the public on microform. Copies of the index may be obtained upon request to the Secretary of the Board subject to the current schedule of charges, as described in § 261.10 of this regulation.

(2) In addition, the Board publishes a weekly index, as described in paragraph (d)(2) of this section, which provides identifying information on a current basis about matters issued, adopted, and promulgated by the Board. The weekly index is available from the Publications Services Section on a subscription or a single issue basis pursuant to a current schedule of charges. Back issues of this index are available from the Secretary of the Board subject to the schedule of charges, described in § 261.10 of this regulation.

(f) *Obtaining Board publications.* All publications issued by the Board may be obtained from the Publications Services Section of the Federal Reserve Board, 20th Street and Constitution Ave., NW., Washington, DC 20551 (pedestrian entrance is on C Street, NW.), including: (1) Current and available back issues of the Board's Annual Report to Congress (copies of the board's Annual Report to Congress are also normally available for examination at each Federal Reserve Bank); and (2) single current and available back issues of the *Federal Reserve Bulletin*, which may be obtained at the prescribed rates (any individual or group may subscribe annually to the *Bulletin*, at the prescribed rate).

§ 261.6 Records available to public upon request.

(a) *Types of records made available.* Subject to the provisions of this regulation, the following records shall be made available for inspection and copying upon request, unless they were published promptly and made available for sale or without charge:

(1) Orders made in the adjudication of cases, and final opinions, including concurring and dissenting opinions, and orders and opinions issued pursuant to authority delegated by the Board;

(2) Interpretations and statements of policy adopted by the Board that are not published in the **Federal Register**;

(3) Records of the final votes of Board members;

(4) Administrative staff manuals and instructions to staff that affect the public; and

(5) Other records subject to disclosure pursuant to 5 U.S.C. 552.

(b) *Exceptions and limitations—(1) Confidentiality.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy. The Board shall state in writing the reason for the deletion.

(2) *Deferred availability.* Availability of information in any record may be postponed, as provided in § 261.7 of this regulation.

(3) *Exempt records; discretionary release.* Some records are exempt from disclosure under 5 U.S.C. 552(b), as described in § 261.8 of this regulation. However, except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary of the Board, the General Counsel of the Board, the Director of the Division of Banking Supervision and Regulation, or the appropriate Federal Reserve Bank, acting pursuant to this regulation or Part 265 of this title, determines that such disclosure would be in the public interest. In no event shall the release of information that has been requested for commercial solicitation purposes be considered to be in the public interest unless such release is specifically authorized by the persons named in the records to be released.

(4) *Nonexempt information.* Although the Board may deny access to portions of a record, it shall release reasonably segregable nonexempt portions.

(5) *Requests for applications, notices, and reports.* The Board preliminarily identifies public portions of most applications filed under the Bank Holding Company Act, notices filed under the Change in Bank Control Act, and other reports filed in connection with its supervision of financial

institutions. The public portions contain information that may be released by the Board or appropriate Federal Reserve Bank without further review. Each request for these applications, notices, and reports shall be considered to be a request for the public portions only, unless the requester specifically seeks access to the entire document.

(6) *Disposal of records.* Nothing in this regulation precludes the Board from disposing of records eligible for disposal in the normal course of business and in accordance with applicable law.

(c) *How to obtain access to records.* (1) Records of the Board subject to this section are available for inspection and copying, in response to requests for identifiable records pursuant to § 261.9 of this regulation, from 9:00 a.m. to 5:00 p.m. weekdays, at the Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551 (the pedestrian entrance is on C Street, NW.). Indexes of Board actions and copies of selected Board records are available in the Freedom of Information Office for immediate inspection without a request or other prior arrangements.

(2) The Board may determine that certain classes of publicly available filings shall be made available for inspection and copying only at the Federal Reserve Bank where those records are filed.

(3) The publicly available portions of Reports of Condition and Income of individual banks, as well as certain other data files produced by the Board, are distributed by the National Technical Information Service. Requests for these public reports should be addressed to:

Sales Office,
National Technical Information Service,
U.S. Department of Commerce,
285 Port Royal Road,
Springfield, Virginia 22161,
(703) 487–4650.

§ 261.7 Deferred availability of certain information.

(a) *Information subject to deferred availability.* Certain types of information may not be published in the **Federal Register** or made available for inspection and copying until after a period of time the Board determines to be reasonably necessary to avoid the effects described in paragraph (b) of this section.

(b) *Reasons for deferred availability.* Information may be subject to deferred availability or deferred publication because earlier disclosure would likely:

(1) Interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interests of the United States, the Board, any Federal Reserve Bank, or any department or agency of the United States.

§ 261.8 Exemptions from disclosure.

(a) *Types of information or records that are exempt from disclosure.* The following records and information of the Board are exempt from disclosure under this regulation:

(1) *National defense.* Any information or record that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive order.

(2) *Examination, inspection, operating, or condition reports, and confidential supervisory information.*

(i) Any matter that is contained in or related to confidential supervisory information prepared by, on behalf of, or for the use of the Board, any Federal Reserve Bank, or any Federal or state financial institution supervisory agency that deems such documents or information confidential.

(ii) The Board may, however, determine that certain kinds of operating or condition reports may, for reasons of policy, be routinely disclosed to the public upon request. In such case, no special authorization shall be required for disclosure of the reports by members of the Board's staff or by staff of the Reserve Banks; and there shall be no limitation on the use of the reports by members of the public receiving them.

(3) *Trade secrets; commercial or financial information.*

(i) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(ii) The Board may, however, make any information furnished in confidence in connection with an application for Board approval of a transaction available to the public in accordance with § 261.6 of this regulation, and without prior notice and to the extent it deems necessary, may comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(4) *Records or information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7), including information relating to proceedings for:

(i) Issuing cease-and-desist orders, suspension or removal orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, as amended, the Bank Holding Company Act of 1956, as amended, or the Federal Reserve Act of 1913, as amended;

(ii) Terminating membership of an institution in the Federal Reserve System under section 9 of the Federal Reserve Act (12 U.S.C. 327);

(iii) Suspending a depository institution from use of the credit facilities of the Federal Reserve System under section 4 of the Federal Reserve Act (12 U.S.C. 301); or

(iv) Granting or revoking any approval, permission, or authority, except to the extent provided in this regulation and Part 262 of this chapter concerning bank holding company and bank merger applications.

(5) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board, within the meaning of 5 U.S.C. 552(b)(2).

(6) *Personnel and medical files.* Any information contained in personnel and medical files and similar files the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

(7) *Inter- or intra-agency memorandums or letters.* Any matter contained in inter- or intra-agency memorandums or letters that would not be routinely available by law to a party (other than an agency) in litigation with an agency, including but not limited to:

(i) Memorandums;

(ii) Reports;

(iii) Other documents prepared by the staffs of the Board or Federal Reserve Banks; and

(iv) Records of deliberations of the Board and of discussions at meetings of the Board, any Board committee, or Board staff, that are not subject to 5 U.S.C. 552b.

(8) *Court order prohibitions.* Any document or information that is covered by an order of a court of competent jurisdiction that prohibits its disclosure.

(9) *Statutory exemption.* Any information specifically exempted from

disclosure by statute (other than 5 U.S.C. 552b), if the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(b) *Segregation of nonexempt information*—(1) *Partial release.* The Board shall provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt under this section. In determining whether exempt information is reasonably segregable, the Board shall consider all relevant factors, including but not limited to:

(i) The amount and placement of nonexempt information in relation to the structure and size of the document; and

(ii) The intelligibility and usefulness of the nonexempt information that is segregated balanced against the administrative burden and cost of segregation.

(2) *Reasonably segregable portions.* Subject to these considerations, reasonably segregable nonexempt portions of a document are those nonexempt portions:

(i) Whose meaning is not distorted by deletion;

(ii) That are sufficiently detailed to be intelligible and useful to the requester; and

(iii) From which a skillful and knowledgeable person could not reconstruct any exempt information.

(3) *Computer tapes.* Information stored on computer tape that can be segregated only by creating a new retrieval program is not considered reasonably segregable.

(c) *Prohibition against disclosure.* Except as provided in this regulation, no officer, employee, or agent of the Board or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board or Reserve Bank officers, employees, or agents properly entitled to such information for the performance of official duties), whether by giving out or furnishing the information or a copy of it or by allowing any person to inspect or copy it, or otherwise.

§ 261.9 Procedures for making requests for identifiable records; processing of requests; review of denial of request; time extensions.

(a) *Procedures for making request for records*—(1) *Contents of request.* A request for identifiable records shall reasonably describe the records to which access is sought in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or disrupting any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board, and the envelope clearly marked "Freedom of Information Act Request." The request shall contain the following information:

(i) The name and address of the person filing the request, and the telephone number at which the requester can be reached during normal business hours;

(ii) The name of any pending litigation to which the request relates, the court, and its location;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative; and

(iv) A statement agreeing to pay the applicable fees; or a statement identifying any fee limitation desired; or a request for a waiver or reduction of fees that satisfies § 261.10(h) of this regulation.

(2) *Defective requests.* (i) The Board need not accept or process a request that is not a request for identifiable records or that:

(A) Can be complied with only by designing an information retrieval system; or

(B) Does not otherwise comply with the requirements of paragraph (a)(1) of this section.

(ii) The Board may return a defective request, specifying the deficiency. The requester may submit a corrected request which shall be treated as a new request.

(3) *Oral requests.* The Board may honor an oral request for records, but if the requester is dissatisfied with the Board's response and wishes to seek review, the requester must submit a written request, which shall be treated as an initial request.

(4) *Advance payment of fees.* Whenever the Board requires advance payment of any fee pursuant to § 261.10(g) of this regulation, the requester shall promptly remit the required advance payment to the Board as a condition to further processing of the request.

(b) *Procedures for responding to requests*—(1) *Time limits.* In response to any request that satisfies paragraph (a) of this section, the Board shall, if necessary, cause an appropriate search to be conducted of records of the Board in existence on the date of receipt of the request, and shall determine within ten working days of receipt of the request whether to comply with the request, unless the running of such time is suspended for payment of fees pursuant to § 261.10(g)(3) of this regulation, or such period is extended, pursuant to paragraph (e) of this section or § 261.7 of this regulation. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank, is the date the Office of the Secretary actually receives it.

(2) *Response to request.* The Board shall, within the time period specified in paragraph (b)(1) of this section, notify the requester of:

(i) The Board's determination of the request;

(ii) The reasons for the determination;

(iii) The right of the requester to appeal to the Board any denial or partial denial, as specified in paragraph (d) of this section; and

(iv) In the case of a denial of a request, the name and title or position of the person responsible for the denial.

(3) *Refusal to acknowledge records.* If a request covers records or types of records whose existence is confidential, such as records of reforcement actions against identifiable financial institutions, the Board may advise the requester that it can neither confirm nor deny the existence of the requested records and notify the requester of the legal basis for that determination.

(4) *Priority of responses.* The Secretary will assign responsible staff to particular requests and will normally process requests in the order they are received. However, in the Secretary's discretion, or upon a court order in a matter to which the Board is a party, a particular request may be processed out of turn.

(5) *Referrals.* To the extent a request covers documents that were created by, obtained from, or classified by another agency, the Board may refer the request to that agency for a response and inform the requester promptly of the referral.

(c) *Procedures for copying and review of records; number of copies; method of duplication*—(1) *Request for copies.* When a requester asks that documents be copied, copies shall be made at the fee established, as provided in § 261.10 of this regulation. Copies shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office in Washington, DC, or makes other arrangements acceptable to the Board.

(2) *Number of copies; method of duplication.* The Board need not provide

more than one copy of any record to any requester, and the Board may select the form of the copy provided, such as paper, microform, or other medium.

(3) *Request to review documents.* Requesters may review documents at the Board's Freedom of Information Office under staff supervision. Requesters may not disassemble or alter any record or file being inspected.

(d) *Appeal of denial of request for records*—(1) *Request for review; time limits.* Any person denied access to Board records requested in accordance with this section may file with the Board a written request for review of the denial by the Board or Board member(s) designated to hear such appeal. The request shall be filed within ten working days of the date on which the denial was issued, or, where a request for documents has been partially approved but access to the documents has not been given, within ten working days from the date such documents are transmitted to the requester. The request shall prominently display the word "Appeal" on the first page. An initial request for records may not be combined in the same letter with an appeal.

(2) *Untimely appeals.* The Board may consider an untimely appeal if:

(i) It is accompanied by a written request for leave to file an untimely appeal; and

(ii) The Board or designated Board member(s) determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(3) *Decision on appeal; time limits.* The Board or designated Board member(s) shall make a determination with respect to any appeal within 20 working days of actual receipt of the appeal by the Secretary and shall immediately notify the appealing party of the determination and the right to seek judicial review if the determination upholds, in whole or in part, the denial of the request for records. Such determination is not subject to review under § 265.3 of this chapter which provides for review of actions taken under delegated authority.

(4) *Mootness of appeal.* (i) The Board, a Board member, or a staff person designated by the Chairman may declare an appeal wholly or partially moot and instruct the Secretary of the Board to reconsider the previous denial or to release the requested documents, where a determination is made that intervening circumstances or additional facts not known at the time of denial have or may have eliminated any need or justification for withholding the requested documents.

(ii) The Secretary may reconsider a denial being appealed if such intervening circumstances or additional facts come to the attention of the Secretary while an appeal is pending.

(e) *Time extensions in unusual circumstances; failure to comply with time limits*—(1) *Time extensions.* In unusual circumstances, as defined in 5 U.S.C. 552(a)(6), the time limits specified in paragraph (b)(1) and paragraph (d)(3) of this section may be extended for a period of time not to exceed 10 working days by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. The extension of time may be divided between the initial and appellate reviews but the total extensions relating to any request and resulting appeal may not exceed 10 working days.

(2) *Failure to comply with time limits.* If the Board fails to comply with the time limits and extensions specified in this section, the Board or other responsible Board employee shall, where practicable, give notice to the requester, stating the reasons for the delay and the date by which the Board expects to dispatch its determination. Without prejudice to the legal remedies provided the requester in 5 U.S.C. 552, the Board shall continue processing the request as quickly as possible and shall dispatch its determination when reached in the same manner as if it had been reached within the applicable time limits.

§ 261.10 Fee schedules; waiver of fees.

(a) *Fee schedules.* Records of the Board available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See Appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the full allowable direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the full allowable direct costs of search, duplication, or review.

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 261.9 of this regulation. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Duplication" refers to the process of making a copy of a document necessary to respond to a request for disclosure of records, or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(3) "Review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may seek additional clarification from the requester before categorizing the request as one for commercial use.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education which operates a program of scholarly research.

(3) "Noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis (as that term is used in paragraph (c) of this section) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) "Representative of the news media" refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests, each seeking portions of a document or documents solely for the purpose of avoiding the assessment of fees, the Secretary may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Payment procedures.*—(1) *Fee payment.* The Secretary may assume that a person requesting records pursuant to § 261.9 of this regulation will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance notification.* If the Secretary estimates that charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. Upon receipt of such notice the requester may confer with the Secretary as to the possibility of reformulating the request in order to lower the costs.

(3) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under § 261.9(b) of this regulation, the running of the time period will begin only after the Secretary receives the required payment.

(4) *Late charges.* The Secretary may assess interest charges when a fee is not paid within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. and will accrue from the date of the billing. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

(h) *Waiver or reduction of fees*—(1) *Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors shall be considered:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding;

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) *Contents of request for waiver.* The Secretary shall normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a)) are $50 or less; but the Secretary may waive fees in excess of that amount.

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Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances

§ 261.11 Confidential supervisory information made available to supervised financial institutions and financial institution supervisory agencies.

(a) *Disclosure of confidential supervisory information to supervised financial institutions.* Confidential supervisory information concerning a supervised bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other institution examined by the Federal Reserve System ("supervised financial institution") may be made available by the Board or the appropriate Federal Reserve Bank to the supervised financial institution.

(b) *Disclosure of confidential supervisory information by supervised financial institution.*—(1) *Parent bank holding company, directors, officers, and employees.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to its directors, officers, and employees, and to its parent bank holding company and its directors, officers, and employees.

(2) *Certified public accountants and legal counsel.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to any certified public accountant or legal counsel employed by the supervised financial institution, subject to the following conditions:

(i) Certified public accountants or legal counsel shall review the confidential supervisory information only on the premises of the supervised financial institution, and shall not make or retain any copies of such information;

(ii) The certified public accountants or legal counsel shall not disclose the confidential supervisory information for any purpose without the prior written approval of the Board's General Counsel except as necessary to provide advice to the supervised financial institution, its parent bank holding company, or the officers, directors, and employees of such supervised financial institution and parent bank holding company.

(c) *Disclosure upon request to Federal financial institution supervisory agencies.* Upon requests, the Director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank, may make available to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board and their regional offices and representatives, confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution.

(d) *Disclosure upon request to state financial institution supervisory agencies.* Upon requests, the Director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank may make available confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution to:

(1) A state financial institution supervisory agency having direct supervisory authority over such supervised financial institution; or

(2) A state financial institution supervisory agency not having direct supervisory authority over such supervised financial institution if the requesting agency has entered into an information sharing agreement with the appropriate Federal Reserve Bank and the information to be provided concerns a supervised financial institution that has acquired or has applied to acquire a financial institution subject to that agency's direct supervisory authority.

(e) *Discretionary disclosures.* The Board may determine, from time to time, to authorize other disclosures of confidential information as necessary.

(f) *Conditions and limitations.* The Board may impose any conditions or limitations on disclosure under this section that it determines are necessary to effect the purposes of this regulation.

(g) *Other disclosure prohibited.* All confidential supervisory information or other information made available under this section shall remain the property of the Board. No supervised financial institution, financial institution supervisory agency, person, or any other party to whom the information is made available, or any other officer, director, employee or agent thereof, may disclose such information without the prior written permission of the Board's General Counsel except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual, corporation, or other entity.

No person obtaining access to confidential supervisory information pursuant to this section may make a personal copy of any such information, and no person may remove confidential supervisory information from the premises of the institution or agency in possession of such information except as permitted by specific language in this regulation or by the Board.

(h) *Disclosure of Foreign Bank Confidential Report of Operations.*—(1) *Availability of Foreign Bank Confidential Report of Operations to Bank Supervisory Agencies.* Notwithstanding any other provision of this regulation, any Confidential Report of Operations (Form F.R. 2068) of a foreign banking organization may, upon written request to and approval by the Director of the Division of Banking Supervision and Regulation (or his delegee), and with the concurrence of the General Counsel (or his delegee), be made available for inspection to another bank supervisory authority having general supervision of any United States branch, agency, subsidiary bank or commercial lending company of the foreign banking organization, only for use where necessary in the performance of official duties. These reports shall be made available for inspection by authorized persons only on Federal Reserve premises under the same procedures as apply to personnel of the Federal Reserve System. All reports made available under this paragraph shall remain the property of the Board; and no person, agency or authority who obtains access to any such report, or any officer, director, or employee thereof, shall publish, publicize, or otherwise disclose any information contained in the report to any person.

(2) *Restrictions on disclosure by Federal Reserve System employees.* It is the Board's policy that the confidentiality of a foreign banking organization's Confidential Report of Operations (Form F.R. 2068) should be maintained at all times. Except as provided by paragraph (h)(1) of this section, information submitted to the Board as part of any Confidential Report of Operations is not available for public inspection by any person other than an officer, employee, or agent of the Board or of a Federal Reserve Bank properly entitled to such information in the performance of such person's official duties. Any employee that violates this section by releasing such a report to any unauthorized person may be subject to disciplinary action under 12 CFR 264.735–5 (Rules of Employee Responsibilities and Conduct).

§ 261.12 Confidential information made available to law enforcement agencies and other nonfinancial institution supervisory agencies.

(a) *Disclosure upon request.* Upon written request, the Board may make available to appropriate law enforcement agencies and to other nonfinancial institution supervisory agencies for use where necessary in the performance of official duties, reports of examination and inspection, confidential supervisory information, and other confidential documents and information of the Board concerning banks, bank holding companies and their subsidiaries, U.S. branches and agencies of foreign banks, and other examined institutions.

(b) *Eligibility.* Federal, state, and local law enforcement agencies and other nonfinancial institution supervisory agencies may file written requests with the Board for access to confidential documents and information under this section of the regulation. Properly accredited foreign law enforcement agencies and other foreign government agencies may also file written requests with the Board.

(c) *Contents of request.* To obtain access to confidential documents or information under this section of the regulation, the head of the law enforcement agency or nonfinancial institution supervisory agency (or their designees) shall address a letter request to the Board's General Counsel, specifying:

(1) The particular information, kinds of information, and where possible, the particular documents to which access is sought;

(2) The reasons why such information cannot be obtained from the examined institution in question rather than from the Board;

(3) A statement of the law enforcement purpose or other purpose for which the information shall be used;

(4) Whether the requested disclosure is permitted or restricted in any way by applicable law or regulation;

(5) A commitment that the information requested shall not be disclosed to any person outside the agency without the written permission of the Board or its General Counsel; and

(6) If the document or information requested includes customer account information subject to the Right to Financial Privacy Act, as amended (12 U.S.C. 3401 et seq.), a statement that such customer account information need not be provided, or a statement as to why the Act does not apply to the request, or a certification that the requesting agency has complied with the requirements of the Act.

(d) *Action on request.* (1) The General Counsel shall review each request and may approve the request upon determining that:

(i) The request complies with this section;

(ii) The information is needed in connection with a formal investigation or other official duties of the requesting agency;

(iii) Satisfactory assurances of confidentiality have been given; and

(iv) No law prohibits the requested disclosure.

(2) The General Counsel may impose any conditions or limitations on disclosure that the General Counsel determines to be necessary to effect the purposes of this regulation or to insure compliance with applicable laws or regulations.

(e) *Federal and state grand jury, criminal trial, and government administrative subpoenas.* The Board's General Counsel shall review and may approve the disclosure of confidential information pursuant to Federal and state grand jury, criminal trial, and government administrative subpoenas. The General Counsel may impose such conditions or limitations on disclosure under this section that the General Counsel determines are necessary to effect the purposes of this regulation, to insure compliance with applicable laws or regulations, or to protect the confidentiality of the Board's information.

(f) *Requests for testimony or interviews.* Government agencies seeking to obtain testimony or interviews from current and former Federal Reserve System staff concerning any confidential information of the Board shall use the procedures set out in paragraph (c) of this section.

(g) *Other disclosure prohibited.* All reports and information made available under this section remain the property of the Board, and except as otherwise provided in this regulation, no person, agency, or authority to whom the information is made available, or any officer, director, or employee thereof, may disclose any such information except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual or corporation.

§ 261.13 Other disclosure of confidential supervisory information.

(a) *Board policy.* It is the Board's policy regarding confidential supervisory information that such information is confidential and privileged. Accordingly, the Board will not normally disclose this information to the public. The Board, when considering a request for disclosure of confidential supervisory information under this section, will not authorize disclosure unless the person requesting disclosure is able to show a substantial need for such information that outweighs the need to maintain confidentiality.

(b) *Requests for disclosure.*—(1) *Requests from litigants for information or testimony.* Any person (except agencies identified in §§ 261.11 and 261.12 of this regulation) seeking access to confidential supervisory information or seeking to obtain the testimony of present or former Board or Reserve Bank employees on matters involving confidential supervisory information of the Board, whether by deposition or otherwise, for use in litigation before a court, board, commission, or agency, shall file a written request with the General Counsel of the Board. The request shall describe:

(i) The particular information, kinds of information, and where possible, the particular documents to which access is sought;

(ii) The judicial or administrative action for which the confidential supervisory information is sought;

(iii) The relationship of the confidential supervisory information to the issues or matters raised by the judicial or administrative action;

(iv) The requesting person's need for the information;

(v) The reason why the requesting person cannot obtain the information sought from any other source; and

(vi) A commitment to obtain a protective order acceptable to the Board from the judicial or administrative tribunal hearing the action preserving the confidentiality of any information that is provided.

(2) *All other requests.* Any other person (except agencies identified in §§ 261.11 and 261.12 of this regulation) seeking access to confidential supervisory information for any other purpose shall file a written request with the General Counsel of the Board. A request under this paragraph (b)(2) shall describe the purpose for which such disclosure is sought.

(c) *Action on request.*—(1) *Determination of approval.* The General Counsel of the Board may approve a request made under this section provided that he or she determines that:

(i) The person making the request has shown a substantial need for confidential supervisory information that outweighs the need to maintain confidentiality; and

(ii) Disclosure is consistent with the supervisory and regulatory

responsibilities and policies of the Board.

(2) *Conditions or limitations.* The General Counsel of the Board may, in approving a request, impose such conditions or limitations on use of any information disclosed as is deemed necessary to protect the confidentiality of the Board's information.

(d) *Exhaustion of administrative remedies for discovery purposes in civil, criminal, or administrative action.* Action on a request under this section by the General Counsel of the Board shall exhaust administrative remedies for discovery purposes in any civil, criminal, or administrative proceeding. A request made pursuant to § 261.9 of this regulation does not exhaust administrative remedies for discovery purposes. Therefore, it is not necessary to file a request pursuant to § 261.9 to exhaust administrative remedies under this section.

(e) *Other disclosure prohibited.* All confidential supervisory information made available under this section shall remain the property of the Board. Any person in possession of such information shall not use or disclose such information for any purpose other than that authorized by the General Counsel of the Board without his or her prior written approval.

§ 261.14 Subpoenas, orders compelling production, and other process.

(a) *Advice by person served.* Any person (including any officers, employee, or agent of the Board or any Federal Reserve Bank) who has documents or information of the Board that may not be disclosed and who is served with a subpoena, order, or other judicial or administrative process requiring his or her personal attendance as a witness or requiring the production of documents or information in any proceeding, shall:

(1) Promptly inform the Board's General Counsel of the service and all relevant facts, including the documents and information requested, and any facts of assistance to the Board in determining whether the material requested should be made available; and

(2) At the appropriate time inform the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued of the substance of these rules.

(b) *Appearance by person served.* Unless the Board has authorized disclosure of the information requested, any person who has Board information that may not be disclosed, and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this regulation. If the court or other body orders the disclosure of the information or the giving of testimony, the person having the information shall continue to decline to disclose the information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

Subpart D—Requests for Confidential Treatment

§ 261.15 Scope of subpart.

(a) *Data collection forms.* This subpart does not apply to data collected by the Board on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*) and are deemed confidential by the Board. Any such form deemed confidential by the Board shall contain language so indicating on the face of the form or in its instructions. Such information may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(d) *Duty to submit information.* This subpart does not modify in any manner the obligation of any person or company to submit, pursuant to any law or regulation, any document, information, form, or other filing to the Board or any Federal Reserve Bank.

(c) *Public comments.* (1) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board are public unless the Board or the Secretary determines that confidential treatment is warranted.

(2) A request for confidential treatment of such comments shall be submitted in a separate letter or memorandum accompanying the comments and on which the words, "Request for Confidential Treatment" are prominently displayed. Notwithstanding any other provision of this regulation, the Board need not inform any person submitting such comments of a decision not to afford confidential treatment to the comments.

§ 261.16 Submission and form of request for confidential treatment; action on request.

(a) *Submission of request.* Any submitter of documents or information to the Board who desires that they be afforded confidential treatment pursuant to 5 U.S.C 552(b)(4) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Reserve Bank), at the time they are submitted or a reasonable time after submission.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts and arguments supporting the request and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(c) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated "Confidential" in the submission and clearly separated from information for which confidential treatment is not requested.

(d) *Action on request.* (1) Requests for confidential treatment of any documents shall be considered in connection with any request for access to the documents. At their discretion, appropriate Board or staff members (including Reserve Bank staff) may act on the request for confidentiality prior to any request for access to the documents.

(2) Any request for confidentiality pursuant to 5 U.S.C. 552(b)(4) shall be handled in accordance with § 261.17 of this subpart.

(3) Nothing in this section limits the Secretary's authority to make determinations regarding requests for access to records under § 261.9.

(e) *Special procedures.* The Board may establish special procedures for particular documents, filings, or types of information by express provisions in this regulation or by instructions on particular forms that are approved by the Board. These special procedures shall take precedence over the procedures set out in this subpart.

§ 261.17 Confidential commercial or financial information.

(a) *Request for confidential information.* (1) The Secretary shall notify a submitter of any request for access to all or a portion of information provided to the Board by the submitter if:

(i) The submitter requested confidential treatment of that information pursuant to 5 U.S.C. 552(b)(4) ("trade secrets and commercial or financial information obtained from a person and privileged or confidential"); and

(ii) The request by the submitter for confidential treatment was made within 10 years preceding the date of the request for access.

(2) Absent a request by a submitter for confidential treatment, the Secretary may notify a submitter of a request for access to all or a portion of information provided by the submitter if it appears to the Secretary that disclosure of the information may reasonably be expected to cause substantial competitive harm to the submitter.

(b) *Notice to submitter.* The notice given to the submitter pursuant to paragraph (a) of this section shall:

(1) Where possible, be given within five working days of the receipt of the request for access;

(2) Describe the request;

(3) Give the submitter a reasonable opportunity, not to exceed ten working days, to submit written objections to disclosure of the information; and

(4) If given orally, be promptly confirmed in writing by the Secretary.

(c) *Notice to requester.* At the same time the Secretary notifies the submitter, the Secretary shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being notified of the request.

(d) *Determination by Secretary.* The Secretary's determination whether or not to disclose any document for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary determines to disclose the document or information and the submitter has objected to such disclosure pursuant to paragraph (b) of this section, the Secretary shall provide the submitter with the reasons for disclosure, and shall delay release of the document or information for ten working days following the date of the determination.

(e) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(1) The Secretary determines, prior to giving such notice, that the request for access should be denied;

(2) The requested information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary, except that in this last instance the Secretary shall give the submitter written notice of the determination to disclose the information at least five working days prior to release.

(f) *Notice of lawsuit.* (1) The Secretary shall promptly notify any submitter of information or documents covered by this section of the filing of any suit against the Board pursuant to 5 U.S.C. 552 to compel disclosure of such documents or information.

(2) The Secretary shall promptly notify the requester of any suit filed against the Board to enjoin the disclosure of any documents requested by the requester.

(g) *Exception for Board rulings.* Nothing in this section shall apply in connection with any determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.8 of this regulation.

By order of the Board of Governors of the Federal Reserve System, June 1, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-12719 Filed 6-6-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-175-AD; Amdt. 39-5949]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMB-BA) Model Fan Jet Falcon Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain AMB-BA Model Fan Jet Falcon series airplanes, which requires modification of the main landing gear (MLG) release mechanism. This amendment is prompted by reports of jamming of the rear lock when the emergency manual control is operated. This condition, if not corrected, could result in failure of the MLG to extend.

DATE: Effective July 11, 1988.

ADDRESSES: The applicable service information may be obtained from Falcon Jet Corporation, 77737 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, applicable to certain AMB-BA Model Fan Jet Falcon series airplanes, which require modification of the main landing gear (MLG) release mechanism, was published in the Federal Register on March 8, 1988 (53 FR 7371).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 117 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,040.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD-BA): Applies to Model Fan Jet Falcon series airplanes as listed in AMD-BA Service Bulletin FJF-32-45(502), Revision 1, dated May 27, 1987, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the inability to extend the main landing gear (MLG) due to the lateral door rear lock jamming, accomplish the following:

A. Install a stop on each MLG lateral door rear lock in accordance with AMD-BA Fan Jet Falcon Service Bulletin FJF-32-45(502), Revision 1, dated May 27, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, 77737 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 11, 1988.

Issued in Seattle, Washington, on May 26, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12735 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-68-AD; Amdt. 39-5946]

Airworthiness Directives; Cessna Model S550 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Cessna Model S550 series airplanes, which currently requires repetitive inspections of the cotter pins securing the main landing gear (MLG) torque link connections, and repair, if necessary. This action expands the applicability to include all Cessna Model S550 series airplanes, and revises the corrective action procedures. This amendment is prompted by reports that the cotter pins securing the MLG torque link connections were found broken on other airplanes, and reports that corrective repairs accomplished in accordance with the existing AD are inadequate. This condition, if not corrected, could result in failure of the cotter pins, which could lead to loss of control of the airplane during takeoff or landing.

EFFECTIVE DATE: June 20, 1988.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: On February 6, 1986, the FAA issued AD 86-01-02, Amendment 39-5237 (51 FR 5513; February 14, 1986), applicable to Cessna Model S550 series airplanes, Serial Numbers S550-0001 through S550-0079, which requires inspection to ensure that the cotter pins securing the left and right MLG torque link connections are not missing or do not indicate evidence of being cut or sheared by the attaching nut. If the pins are not in place, or are broken, they must be replaced or repaired. That action was prompted by reports of broken cotter pins. This condition, if not corrected, could result in loosening of the attaching nut and bolt, and could lead to loss of control of the airplane during takeoff or landing.

Recently, the FAA has received reports of broken cotter pins found on other Cessna Model S550 series airplanes with serial numbers outside of those affected by the existing AD. Accordingly, the FAA has determined that the unsafe condition addressed in AD 86-01-02 may exist on any airplane of this model.

Additionally, there have been two reports of broken cotter pins found on airplanes on which corrective repair action had been taken in accordance with AD 86-01-02. This indicates that the corrective action was apparently inadequate.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a revision to the Airplane Flight Manual (AFM) requiring inspection of the cotter pins prior to the first flight of the day, and replacement of the cotter pin and retorquing of the attaching nut, if necessary.

The manufacturer has indicated that it is designing a modification which, if installed, would eliminate the need for the inspections required by this AD. Once this modification is available, the FAA may consider further rulemaking to require its installation.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 86-01-02, Amendment 39-5237 (51 FR 5513; February 14, 1986), with the following new airworthiness directive:

Cessna: Applies to all Model S550 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of control of the airplane during landing or takeoff due to failure of the cotter pins securing the main landing gear torque link connections, accomplish the following:

A. Within 48 hours after the effective date of this AD, incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM:

"Prior to the first flight of each day, verify that the cotter pins securing the left and right main landing gear torque link connections are installed. If either cotter pin is broken, missing, or exhibits any evidence of being cut or sheared by the nut, prior to further flight, accomplish paragraph B. of this AD."

B. If either cotter pin is broken, missing, or exhibits any evidence of being cut or sheared by the nut, the nut must be retorqued to 630 inch-pounds, then tightened to align the cotter pin(s) hole up to a maximum torque of 810 inch-pounds, and a new cotter pin(s), P/N MS24665-287, installed. This must be accomplished in accordance with Cessna S550 Maintenance Manual Section 32-11-01, pages 403, 404, and 405.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This supersedes Ad 86-01-02, Amendment 39-5237.

This amendment becomes effective June 20, 1988.

Issued in Seattle, Washington, on May 25, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12727 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-47-AD; Amdt. 39-5947]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes telegraphic Airworthiness Directive T88-06-51, issued on March 11, 1988, applicable to all Boeing Model 767 series airplanes, which currently requires a functional flow check of the cargo compartment Halon fire extinguishant distribution system. This amendment requires additional inspection or testing of the cargo compartment Halon fire extinguishant distribution system. This amendment is prompted by reports that the cargo fire extinguishant system plumbing was connected in reverse on some airplanes and, in one case, the extinguishant discharge nozzle in the aft compartment was covered by a ceiling panel. These conditions, if not corrected, could result in severe damage to an airplane in the event of a cargo compartment fire.

DATE: Effective June 20, 1988.

ADDRESS: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On March 11, 1988, the FAA issued telegraphic AD 88-06-51, applicable to all Boeing Model 767 airplanes, which requires flow testing of the cargo compartment fire extinguishant system, and repair, if necessary. That action was prompted by two recent reports in which cargo fire extinguishant system plumbing was connected in reverse, the aft discharge port to the forward compartment distribution line and vice versa.

Since the issuance of AD T88-06-51, one recent report also disclosed that an extinguishant discharge nozzle in the aft cargo compartment on one plane was covered by a ceiling panel. This condition could prevent discharge of the fire extinguishant into the cargo compartment through that nozzle.

These conditions, if not corrected, could result in severe damage to the airplane in the event of a cargo compartment fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-28A0036, dated March 11, 1988, and Boeing Service Letter 767-SL-26-11 dated March 10, 1988, which describe inspections for both the cargo fire extinguishant distribution system reversal and covered extinguishant discharge nozzles.

Since this condition is likely to exist on other airplanes of the same type design, this AD supersedes telegraphic AD T88-06-51 and requires inspection to assure freedom from coverage of the discharge nozzles, and either a part number inspection in accordance with the previously mentioned service bulletin or, alternatively, a functional flow test of the distribution system to ensure proper operation.

Since a situation exits that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et*

seq.), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

§ 39.13 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding telegraphic AD 88-06-51, issued March 11, 1988, with the following new airworthiness directive:

Boeing: Applies to Boeing Model 767 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent severe damage to the airplane in the event of a cargo compartment fire, due to fire extinguishant distribution system reversals or covered extinguishant discharge nozzles, accomplish the following:

A. Within the next 24 hours (1 day) after the effective date of this AD, accomplish either of the following:

1. Conduct the cargo compartment fire extinguishant distribution system part number inspection, in accordance with Boeing Alert Service Bulletin 767-26A0036, dated March 11, 1988; or

2. Conduct the functional flow check of the cargo compartment Halon fire extinguishant distribution system using guidelines in the applicable section of Maintenance Manual 26-23-00. Verify that the flow is distributed to the proper cargo compartment.

B. Within the next 30 days after the effective date of this AD, inspect the cargo fire extinguishant nozzles in accordance with either Boeing Alert Service Bulletin 767-26A0036, dated March 11, 1988, or Boeing Service Letter 767-SL-26-11, dated March 10, 1988.

C. Any detected cargo fire extinguishant distribution system reversals and/or covered extinguishant nozzles must be ordered, in accordance with the Boeing Model 767 Maintenance Manual, prior to further flight with baggage or cargo in either the forward or aft cargo compartments.

D. Within 7 days, report a complete description of the findings from the accomplishment of the requirements paragraph A., above, from which it is determined that the flow is not distributed to the proper cargo compartment; and from the requirements of paragraph B., above, from which it is determined that a nozzle is covered; to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington 98168.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the tests required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This supersedes telegraphic AD T88-06-51 issued March 11, 1988

This amendment becomes effective June 20, 1988.

Issued in Seattle, Washington, on May 25, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12728 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-130-AD; Amdt. 39-5950]

Airworthiness Directives; Short Brothers, PLC, Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Shorts Model SD3-30 series airplanes, which requires replacement of certain pitot tubes. This amendment is prompted by reports of inoperative pitot tubes due to icing. This condition, if not corrected, could result in erroneous airspeed and altitude indications.

DATE: Effective July 11, 1988.

ADDRESSES: The applicable service information may be obtained from the Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD), applicable to Shorts Brothers Model SD3-30 series airplanes, which requires replacement of certain pitot tubes, was published in the **Federal Register** on March 22, 1988 (52 FR 9322).

Interested person have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD

to U.S. operators is estimated to be $7,920.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers, PLC: Applies to Model SD3-30 series airplanes; serial numbers SH3002 through SH3098, inclusive; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent pitot tubes from becoming inoperative due to icing, which could result in erroneous airspeed and altitude indication, accomplish the following:

A. Within the next 180 days after the effective date of this AD, replace pitot tubes having the code letter "Z" adjacent to the serial number with one containing a code letter other than "Z", in accordance with accomplishment instructions in Service Bulletin SD3-34-20, Revision 1, dated September 1, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 11, 1988.

Issued in Seattle, Washington, on May 26, 1988.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 88-12736 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-74-AD; Amdt. 39-5948]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes equipped with an integrated autopilot/flight director and a Landing Rollout Control Unit (LRCU) computer, which requires certain revisions to the Airplane Flight Manual (AFM) concerning landing operations and the installation of a placard on the instrument panel, or, as an alternate, rework of the computer. This amendment is prompted by an incident of excessive bank angle during touchdown. This condition, if not corrected, could result in contact of the engine nacelle with the runway upon landing.

DATE: Effective July 11, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires certain revisions to the Airplane Flight Manual (AFM) concerning landing operations and the installation of a placard on the instrument panel on certain Boeing Model 747 airplanes was published in the **Federal Register** on July 15, 1987 (52 FR 26484).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The first commenter, the Air Transport Association (ATA) of America, expressed no objections to the proposed rule.

The other commenter, the Boeing Commercial Airplane Company, submitted a letter from a foreign operator of a Model 747 airplane indicating that the operational costs resulting from the proposed rule could be far in excess of that indicated in the Notice. The FAA agrees that additional, *indirect* costs might be incurred if, for example, it were necessary that an airplane divert to a different airport as a result of the limitations imposed by this AD. However, the economic analysis of this rulemaking identifies only those costs associated directly with the requirements of the AD, in this case, a change to pages in the AFM and cockpit placards, or an optional modification.

Further, Boeing submitted data obtained from simulated landings which indicate that a pilot would recognize the cross-wind condition and take over from the autoland system to prevent the airplane from striking an engine nacelle on the runway. Therefore, the commenter suggested that the

requirements of the proposed AD are unnecessarily restrictive. The FAA does not concur. These airplanes must be able to land under low visibility minimums without developing high bank angles in an effort to correct for cross-wind drift.

Since the issuance of the Notice, Boeing has developed a modification to correct the excessive roll condition that could occur during a cross-wind landing. The FAA has reviewed and approved Boeing Service Bulletin 747–22–2168 dated March 17, 1988, which describes a modification to the Landing Rollout Control Unit (LRCU) computer, P/N 60B00013–759. The FAA has determined that modification of the LRCU in accordance with the aforementioned service bulletin is an acceptable alternate means of compliance with the intent of this rule, and has revised the final rule to include this modification as an optional requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the change previously described.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD. The costs to operators who elect to revise pages of the FAA-approved AFM and install placard (which can be manufactured locally) is estimated to be approximately one manhour per airplane at an average labor cost of $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160. The cost to operators who elect to rework the LRCU computer to a part number 60B00013–759 is estimated to be approximately 6 manhours per airplane at an average labor cost of $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,280.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because the minimal cost of compliance per airplane ($40 or $320). A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, equipped with the autopilot/flight director which has the Landing Rollout Control Unit (LRCU), part number 60B00013–759, with the rollout function not installed or previously removed, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent engine contact with the runway as a result of excessive airplane roll after touchdown, accomplish the following:

A. Within the next 15 days after the effective date of this AD, accomplish the following:

1. Incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM: "Disconnect autopilot prior to 50 feet AGL during approach to land;" and

2. Install a placard in plain view of both the Captain and First Officer, which reads as follows: "Disconnect autopilot prior to 50 feet AGL."

B. Rework of the LRCU, P/N 60B00013–759, in accordance with the instructions contained in Boeing Service Bulletin 747–22–2168, dated March 17, 1988, constitutes terminating action for the requirements of paragraph A., above.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who may add any comments and then send it to the Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 11, 1988.

Issued in Seattle, Washington, on May 26, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12734 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-CE-36-AD; Amdt. 39-5953]

Airworthiness Directives; Partenavia Costruzioni Aeronautiche, S.p.A., Models P 68, P 68B, P 68C, P68C–TC, P 68 "Observer", and P 68–TC "Observer" Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Partenavia Costruzione Aeronautiche, S.p.A., Models P 68, P 68B, P 68C, P 68C–TC, P 68 "Observer", and P 68–TC "Observer" airplanes, which requires initial and recurring visual or non-destructive inspection of the engine mounting brackets, repair or replacement if corrosion or cracking is found, and modification of the airplane to provide inspection access. Several reports of cracks and corrosion have been received by the airplane manufacturer. Undetected corrosion or cracks can result in structural failure of the engine mounts, whirl mode flutter, and subsequent loss of the airplane. The actions required by this AD will prevent structural failure of the engine mounts.

DATES: *Effective Date:* July 18, 1988.

Compliance: As prescribed within the body of the AD.

ADDRESSES: Partenavia Costruzione Aeronautiche, S.p.A. Service Bulletin (S/B) No. 70, Revision 1, dated May 13, 1987, applicable to this AD may be obtained from Partenavia Costruzione Aeronautiche, S.p.A., Via Cava, Casoria-Naples, Italy; Telephone: 81 759–0946. This information may also be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone 513.38.30, ext. 2710/2711; or Mr. John P. Dow, Sr., FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring initial and recurring visual or non-destructive inspection of the engine mounting brackets, repair or replacement if corrosion or cracking is found, and modification of the airplane to provide inspection access on Partenavia Costruzione Aeronautiche, S.p.A., Models P 68, P 68B, P 68C, P68C–TC, P 68 "Observer", and P 68–TC "Observer" airplanes was published in the Federal Register on December 10, 1987 (52 FR 46776). The airplane manufacturer issued S/B 70, dated November 21, 1986, applicable to Model P 68, P 68B, P 68C, P 68C–TC, P 68 "Observer", and P 68–TC "Observer" airplanes based on one report of corroded or cracked engine mount brackets. The FAA determined at that time that the unsafe condition addressed by Partenavia S/B 70 was not likely to exist or develop in other products of the same type design.

An additional thirteen reports of corrosion and cracks were subsequently received, including areas not previously reported. Consequently, Partenavia Costruzione Aeronautiche, S.p.A. issued Partenavia S/B No. 70, Rev. 1, dated May 13, 1987, which describes initial and recurrent visual or non-destructive inspection and modification to install inspection holes and repair or replacement of engine mount brackets if corrosion or a crack is found.

As a result of these additional reports, the FAA has determined that if the cracks and corrosion addressed in these reports remain undetected, catastrophic failure of the engine mount may occur resulting in possible whirl mode flutter and loss of the airplane.

The Registro Aeronautico Italiano (RAI), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, classified Partenavia S/B No. 70, Rev. 1, dated May 13, 1987, and RAI AD No. 87–141/P.68–36, Rev. 2, dated August 31, 1987, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Partenavia S/B No. 70, Rev. 1, dated May 13, 1987, and the mandatory classification of this S/B by the RAI, as well as the information available concerning the additional reports of corrosion and cracks in the engine mount brackets, and concluded that the condition addressed by Partenavia S/B No. 70, Rev. 1, dated May 13, 1987, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public.

Subsequent to the issuance of the NPRM, the FAA discovered that instructions for recurrent inspections and serial number effectivity had been omitted. Accordingly, since no additional cost to the public is incurred, and no change of the intent or substance of the NPRM is involved, the AD is adopted with the subject matter of those omissions incorporated therein.

The FAA has determined that this regulation involves 70 U.S. registered airplanes at an appropriate initial cost of $2,216 per airplane and $80 thereafter per inspection for each airplane resulting in a total initial fleet cost of $155,120 and recurring fleet inspection cost of $5,600 thereafter. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating this airplane.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Partenavia Costruzione Aeronautiche S.p.A.: Applies to Models P 68, P 68B, P68C, P68C–TC, P 68 "Observer", and P 68–TC "Observer" (all serial numbers (S/N)) airplanes certificated in any category.

Compliance: Required initially within 6 calendar months after the effective date of this AD unless already accomplished within the last 24 calendar months preceding the effective date of this AD, and thereafter at intervals not to exceed 24 calendar months or 500 hours time-in-service, (TIS) whichever occurs first, unless already accomplished.

To prevent engine mount failure, whirl mode flutter, and structural failure of the wing, accomplish the following:

(a) For S/N 1 thru 368, at the time of the initial inspection specified in this AD, modify the engine skin panels for inspection access in accordance with the instructions in Section 1 of Partenavia Service Bulletin (S/B) No. 70, Rev. 1, dated May 13, 1987.

(b) For S/N 1 thru 368, visually inspect the upper and lower engine mounts and attachments for surface corrosion and cracks

in accordance with the instructions in Section 1 of the above S/B. If cracks or surface corrosion are found, prior to further flight repair the affected structure in accordance with the instructions in paragraph (d) of this AD.

(c) For S/N 389 and subsequent, visually inspect the upper and lower engine mounts and attachments for surface corrosion and cracks in accordance with the instructions in Section 3 of the above S/B. If cracks or surface corrosion are found, prior to further flight repair the affected structure in accordance with the instructions in paragraph (d) of this AD.

(d) If cracks or surface corrosion are found as a result of the inspections specified in paragraph (b) or (c) of this AD, prior to further flight, repair the affected structure as follows:

(1) If the surface corrosion or crack extends no deeper than 75/1000 (7.5%) of the original local thickness, so that no less than 92.5% of the original local thickness remains, repair using the procedures described in Section 1 of Partenavia S/B No. 70, Rev. 1, dated May 13, 1987.

(2) If any crack or surface corrosion extends deeper than 75/1000 (7.5%) of the original local thickness, so that less than 92.5% of the original local thickness remains including blistering, pitting, or flaking, prior to further flight, remove and replace the affected part with a serviceable part as described in Section 2 of Partenavia S/B No. 70, Rev. 1, dated May 13, 1987.

(e) Within one week following each inspection specified in paragraph (b) or (c) of this AD, submit a written report of the result of that inspection to include whether or not damage was found, part number(s) involved, extent, location, and description of any damage found, and a brief description of remedial measures. Submit the reports to the FAA, ACE-106, 601 East 12th Street, Kansas City, Missouri 64106. If an inspection was made previous to this AD, forward the requested data within one week of receipt of this AD. (Report approved by the Office of Management and Budget under OMB No. 2120-0056.)

(f) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(g) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium; Telephone (322) 513.3830 ext. 3710/2711.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Partenavia Costruzione Aeronautiche, S.p.A., Via Cava, Casoria-Naples, Italy; Telephone 81 758-0946 (Product Support); or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 13, 1988.

Issued in Kansas City, Missouri, on May 27, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-12733 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-4]

Amendment of Transition Area, Holyoke, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Holyoke, Colorado, Transition Area. The amendment is necessary to provide controlled airspace for a new instrument approach procedure. The area will be depicted on aeronautical charts for pilot reference, and is intended to segregate aircraft operating in Instrument Flight Rules conditions and other aircraft which are operating in Visual Flight Rules conditions.

EFFECTIVE DATE: 0901 UTC, July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ted Mellund, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-4, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

History

On March 1, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Holyoke, Colorado Transition Area (53 FR 6160.).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations adds controlled airspace to the Holyoke, Colorado, Transition Area. The additional area is needed to encompass a new approach procedure to the Holyoke Airport, Colorado. The area will be depicted on aeronautical charts for pilot reference enabling pilots to remain clear of controlled airspace or otherwise comply with Instrument Flight Rules.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Ex.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Holyoke, Colorado [Amended]

On the sixth line after "Heginbotham NDB", change the period to a semicolon and add the following: "* * * and that airspace extending upward from 1,200 feet above the surface bounded by V80 on the north, V8 on the south, and by the Colorado-Nebraska State boundary on the east."

Issued in Seattle, Washington, on May 30, 1988.

F.E. Davis,

Assistant Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 88-12730 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-11]

Alteration of Transition Area, Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects Federal Register Document 88-7885 (as published in the Federal Register on April 11, 1988, 53 FR 11841) which corrected the final rule revising the transition area description for Missoula, Montana [FR Document 88-835 as published in the Federal Register on January 19, 1988, 53 FR 1336]. The aforementioned correction document incorrectly referenced the Missoula VORTAC 208° radial rather than the Missoula 290° radial in the 700-foot transition area description.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

Issued in Seattle, Washington, on May 30, 1988.

F.E. Davis,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-12731 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-14]

Transition Area Alteration; Mobridge, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to reflect the name change of a navigational facility currently contained in the Mobridge, SD, transition area description. The published description inadvertently refers to the NDB (Nondirectional Radio Beacon) as "Mobridge NDB" when in actuality the facility name is "Riverbend NDB." This action only involves the facility name change and no other changes.

EFFECTIVE DATE: 0901 UTC, August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will alter the Mobridge, SD, transition area by changing the NDB facility name from "Mobridge NDB" to "Riverbend NDB" where it appears in the transition area description.

The alterations will affect only the published description and will cause no change to aeronautical operations as currently conducted or to the general configuration of the airspace.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Mobridge, SD [Amended]

Wherever the words "Mobridge NDB" appears substitute the words "Riverbend NDB."

Issued in Des Plaines, Illinois, on May 26, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-12729 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 390

[Docket No. 80227-8081]

Discontinuance of Daily License List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: In accordance with § 390.4 of the Export Administration Regulations, the Department of Commerce has published a daily list of Export Licenses Approved and Reexports Authorized. A notice was published in the Federal Register on April 1, 1988 (53 FR 10553) stating that, effective May 2, 1988, the Department of Commerce would discontinue publication of this list. Supplementary information in the notice provided the financial justification for this action and informed subscribers that current subscription balances would be refunded by the Department within approximately six months.

This rule revises § 390.4 of the Export Administration Regulations by removing the provisions on the availability of the daily licensing list.

EFFECTIVE DATE: This rule is effective May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 19870 (44 U.S.C. 3501 *et seq.).*

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment by given for this rule.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 390

Administrative practice and procedure, Advisory committees, Exports.

Accordingly, Part 390 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 390—[AMENDED]

1. The authority citation for 15 CFR Part 390 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12543 of January 7, 1986 (51 FR 875, January 9, 1986).

2. Section 390.4 is revised to read as follows:

§ 390.4 Disclosure of license issuance and other information.

As provided by section 12(c) of the Export Administration Act of 1979, as amended, information obtained for the purpose of considering license applications and other information obtained by the U.S. Department of Commerce concerning license applications will not be made available to the public without the approval of the Secretary of Commerce. Shippers' Export Declarations also are exempt from public disclosure, except with the approval of the Secretary of Commerce, in accordance with section 12(c) of the Export Administration Act of 1979 and section 301(g) of Title 13, United States Code.

Dated: June 2, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–12794 Filed 6–6–88; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3230]

Sun Industries, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Jonesboro, AR., manufacturer and seller of tanning devices and related products from misrepresenting that the use of a tanning device does not pose a risk of any harmful side effects to users. The consent order also requires the respondent to include a warning statement in any advertisements or promotional materials used for its tanning devices.

DATE: Complaint and Order issued May 13, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Brinley H. Williams, Cleveland Regional Office, Federal Trade Commission, Suite 500-Mall Bldg., 118 St. Clair Ave., Cleveland, OH. 44114. (216) 522–4210. Toby M. Levin, FTC/S–4002, Washington, DC 20580. (202) 326–3156.

SUPPLEMENTARY INFORMATION: On Wednesday, December 23, 1987, there was published in the **Federal Register**, 52 FR 48543, a proposed consent agreement with analysis In the Matter of Sun Industries, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.195 Safety; § 13.195–60 Product; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–10 Corrective advertising; § 13.533–20 Disclosures; § 13.533–40 Furnishing information to media; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation; § 13.533–50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods—Goods: § 13.1590–20 Federal Trade Commission Act; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Suntanning devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,

Secretary.

[FR Doc. 88–12749 Filed 6–6–88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 500

Rules and Regulations Under the Fair Packaging and Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission, in accordance with the requirements of the Regulatory Flexibility Act,[1] has conducted a review of the Commission's Rules and Regulations Under the Fair Packaging and Labeling Act [2] to determine if the Rules have had a significant economic impact on small entities and, if so, whether the Rules should be amended to minimize any such impact. In the course of its review, the Commission has found that there is an insufficient basis to conclude that the Rules have had a significant economic impact upon a substantial number of small entities. The Commission, therefore, is terminating this review proceeding and is leaving the Rules in effect without change.

DATE: This action is effective as of June 7, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Mills, (202) 326–3035, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires that the FTC conduct a periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities.

The Fair Packaging and Labeling Act, 15 U.S.C. 1453–1455 (the "FPLA"), was enacted in order to eliminate consumer confusion in the marketplace; to standardize the means used by sellers to disclose package content information to buyers; and to eliminate consumer deception and confusion concerning product size representations. Section 2 of the Act states Congress' policy on informing consumer: "Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons." 15 U.S.C. 1451.

The Federal Trade Commission has enforcement responsibility over package disclosures placed upon "consumer commodities" as defined in the FPLA. The Food and Drug Administration and the U.S. Department of Agriculture have analogous responsibilities and regulations covering foods, drugs, devices and cosmetics, and meat and poultry products, respectively.

In 1966, The Commission issued rules implementing the Fair Packaging and Labeling Act. These rules are codified at 16 CFR Part 500. The FPLA regulations, which closely parallel the Act's requirements, establish requirements for the manner and form of the labeling of consumer commodities (as defined in the FPLA) with: (1) The identity of the commodity; (2) the name and place of business of the manufacturer, packer or distributor; (3) the net quantity of contents; and (4) the net quantity of servings, uses or applications represented to be present. 16 CFR 500.3–500.26. The rules also require sellers that make "cents off," "introductory offer," or "economy size" claims to keep records for one year showing compliance with the Act's substantiation requirements for such claims. 16 CFR 500.100–500.103.

On December 24, 1987, the Commission, in accordance with the requirements of the RFA and the Commission's plan for the Periodic Review of the Rules,[3] published a notice in the **Federal Register** [4] soliciting comments on whether the Commission's Rules and Regulations Under the Fair Packaging and Labeling Act have had a significant economic impact on small entities and, if so, whether the Rules should be amended to minimize any such impact. The notice requested that all comments and data be submitted to the Commission no later than January 25, 1988.

The purpose of this review was limited to determining whether the Rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of the applicable statute, to minimize any significant economic impact of the Rules upon a substantial number of small entities.

No comments were received in response to the Notice requesting comments. In view of this fact, the Commission concludes that there is an insufficient basis for finding that the Rules have had a significant economic impact on a substantial number of small entities. Therefore, the Commission hereby terminates the review proceeding and leaves the Rules in effect without modification.

List of Subjects in 16 CFR Part 500

Packaging, Labeling, Trade practices.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88–12748 Filed 6–6–88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM88–14–001]

Interpretation of Section 5 of the Outer Continental Shelf Lands Act (OCSLA)

Issued: June 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: On April 1, 1988, the Federal Energy Regulatory Commission (Commission) issued an interpretative rule in Order No. 491 interpreting section 5 of the Outer Continental Shelf Lands Act (OCSLA). The Commission grants rehearing of its interpretative rule solely for the purpose of further consideration.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Order Granting Rehearing Solely for the Purpose of Further Consideration

On April 1, 1988, the Federal Energy Regulatory Commission (Commission) issued an interpretative rule (Order No. 491) and a notice of proposed rulemaking (NOPR) with respect to section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1]

Pursuant to 18 CFR 385.713 (1987), the Commission has received 13 requests for rehearing on the interpretative rule.[2] The issues raised in the requests for rehearing are inextricably intertwined with the issues in the NOPR. The Commission will address the issues discussed in the requests for rehearing when it reviews the comments received in response to the NOPR. Therefore, the Commission is granting rehearing of the other solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[1] Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1982) ("the RFA").

[2] 16 CFR Part 500 ("the Rules").

[3] 46 FR 35119 at 35119 (July 7, 1981).

[4] 52 FR 48716 (Dec. 24, 1987).

[1] Interpretative Rule on Section 5 of the Outer Continental Shelf Lands Act (Docket No. RM88–14–000), 53 FR 14922 (April 26, 1988); and Regulations Under section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf (Docket No. RM88–15–000), 53 FR 14923 (April 26, 1988).

[2] Northern Illinois Gas Co.; Producer Associations; Black Marlin Pipeline Co.; Enron Interstate Pipelines; ANR Pipeline Co.; United Gas Pipe Line Co. and Sea Robin Pipeline Co.; Texas Eastern Transmission Corp.; High Island Offshore System and Interstate Natural Gas Association of America; Tennessee Gas Pipeline Co.; Tarpon Transmission Co.; Transcontinental Gas Pipe Line Corp.; Stingray Pipeline Co. and Trunkline Gas Co.; Natural Gas Pipeline Company of America.

Procedure (18 CFR 385.713(d) (1987), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12779 Filed 6-6-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 88-31]

Country of Origin Marking Requirement on Fruit Juice Containers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of effective date of interpretive rule.

SUMMARY: This document informs the public that Customs has made its determination regarding an implementation date for the requirement that labels on frozen concentrated and reconstituted fruit juice products which contain imported concentrate be marked to show the foreign country of origin of the products. Customs had previously announced that this requirement, heretofore limited to orange juice, would be extended to cover other fruit juices, and sought public comment on an effective date for the requirement.

Effective on June 7, 1988, fruit juice processors may use the "major supplier marking" that was approved for containers of orange juice on other fruit containers. Thus, if a processor obtains 75 percent or more of its imported concentrate from a single source country, it is sufficient to disclose only that source. Otherwise, disclosure of all foreign sources is required.

Interested parties are advised to consult another Customs document published in today's **Federal Register** for a proposed interpretive rule that would discontinue major supplier marking for all fruit juices made with imported concentrate. That proposal, if adopted, would supersede the rule described in this document.

DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after June 7, 1988.

FOR FURTHER INFORMATION CONTACT: John Doyle, Office of Regulations & Rulings (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

In a ruling dated September 4, 1985 (C.S.D. 85-47, 19 Cust. Bull. No. 39 at 21), the Customs Service held that containers of orange juice in frozen concentrated or reconstituted forms which contain foreign concentrate must be labeled to comply with the country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). The ruling was based on the determination that the foreign concentrate which is imported into the U.S. and used in the production of frozen concentrated or reconstituted orange juice is not substantially transformed after undergoing further processing in the U.S., including blending with other batches of orange concentrate; addition of water, oils, and essences; pasteurization or freezing; and repacking. In *National Juice Products Association* v. *United States*, CIT Slip Op. 86-13 (Jan. 30, 1986), the Court of International Trade held that C.S.D. 85-47 was substantively valid.

On March 19, 1986, Customs held in Ruling No. 729410 (C.S.D. 86-19, Cust. Bull. No. 33 at 17), that orange juice containers would meet the marking requirements if only the major foreign sources of the imported product were listed ("major supplier marking"). Current major supplier marking practice permits a processor that obtains 75 percent or more of its imported concentrate from one country to disclose only that source. If there is not one source country supplying 75 percent or more of the imported concentrate, all foreign countries from which the concentrate is derived must be disclosed.

On June 25, 1986, Customs published T.D. 86-120 in the **Federal Register** (51 FR 23045), informing the public that frozen concentrated and reconstituted orange juice products containing imported concentrate were required to bear labels marked for country of origin by February 1, 1987. The notice of the decision announced that Customs had considered the comments submitted in response to an earlier notice published in the **Federal Register** (51 FR 7285), on March 3, 1986, and that requiring the country of origin marking for these products was consistent with the court decision in *National Juice Products*.

Applicability of C.S.D. 85-47 to Other Juices

On July 30, 1986, Customs announced in a **Federal Register** notice (51 FR 27195), that the principles set forth in C.S.D. 85-47 and supported by the court in *National Juice Products* were applicable to containers of other fruit juices containing imported concentrate as well as to those of orange juice. In other words, all imported fruit juice concentrate which is imported into the U.S. and used in the production of reconstituted fruit juice is not substantially transformed after undergoing further processing in the U.S. involving blending with other batches of concentrate; addition of water, oils, and essences; pasteurization or freezing; and repacking. Accordingly, pursuant to the notice, all frozen concentrated or reconstituted fruit juices made from frozen concentrate and so processed must be required to be marked to indicate the country of origin of the frozen concentrate. The notice sought public comment on the issue of establishing a date upon which the marking requirements would go into effect.

Discussion of Comments

Thirty-six comments were received in response to the notice. Approximately half of the comments were submitted on behalf of the fruit juice processors that use imported concentrate in their products. The other half were submitted on behalf of domestic apple growers and other farming groups. Although the July 30, 1986 notice stated that the principles set forth in C.S.D. 85-47 are to be applicable to all fruit juices containing foreign concentrate, and asked for comments solely regarding a practicable implementation date, many of the commenters addressed problems specifically associated with the marking of apple juice and raised additional issues, including the method of compliance.

The analysis of comments presented in this document pertains only to the extension of the orange juice ruling to other fruit juices. In another document published in today's **Federal Register**, Customs discusses comments regarding the manner of marking.

The commenters representing the domestic industry advocate an implementation date of 6 months from the date of the final ruling. They contend that processors should have already taken steps to begin complying with the marking requirement.

The commenters representing juice processors using imported concentrate generally advocate a period of 18 months from the date of the July 30, 1986 notice, or one year from the date of the publication of this notice. They point out that Customs allowed orange juice processors approximately one year from the date of the ruling to comply with the marking requirements, so that those processors would have sufficient lead time to obtain new labels and to deplete inventories. The commenters believe that a similar time frame should be accorded other juice processors. Many of the commenters stress that the multiple sourcing practices with respect to apple juice and other juices complicate the labeling task facing these juice processors. Many commenters also point to the label supplier bottleneck and capacity limitations as another factor requiring a sufficient amount of time to comply with the new requirements. It is claimed that there is a limited number of label suppliers and packaging manufacturers and that many of these also supply the orange juice processors.

Determination

After reviewing all the comments concerning an effective date, we are satisfied that the same circumstances that warranted a delay of approximately one year in the implementation of the orange juice ruling are relevant here. (For a detailed discussion of these factors, see T.D. 86-120, published in the **Federal Register** dated June 25, 1986 (51 FR 23045)). Although Customs announced that the orange juice ruling would be extended to other juices in the notice of July 30, 1986, the method of compliance that would be required was not determined at that time. Until now, processors could not take the necessary steps to comply with the new labeling requirements. Accordingly, the implementation date for marking of other juices will be June 7, 1988. All importations of juice concentrate entered for consumption or withdrawn from warehouse for consumption on or after the effective date will be subject to the marking requirements.

This extended period of time will enable processors to develop the necessary procedures to comply with the specific marking requirements set forth in this document.

Major Supplier Marking

In another document published in today's **Federal Register**, Customs proposes to disallow major supplier marking for fruit juices containing imported concentrate. Customs questions whether major supplier marking for these fruit juices provides the level of information to consumers in the U.S. that was contemplated by the country of origin marking laws, as codified in section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304).

Despite the on-going reconsideration of the correct method of marking fruit juices, Customs believes that fruit juice processors may reasonably have expected that major supplier marking would apply to them as it currently applies to orange juice processors. For reasons of fairness, when the new marking requirements become effective on June 7, 1988, fruit juice processors may utilize major supplier marking.

Major supplier marking stipulates that if a processor obtains 75 percent or more of its imported concentrate from one source country, only that source country need be disclosed. Otherwise, disclosure of all foreign sources is required.

If there is a change in the Customs Service's interpretation of the country of origin marking rules as they are applied to containers of fruit juice made with imported juice concentrate as a result of the review announced in another Customs document published in today's **Federal Register**, major supplier marking may be disallowed in the future.

Method of Compliance

Customs recommends that fruit juice containers be marked by printing the name of the country of origin of the concentrate by the same method that is used to print other information subject to change, such as the product codes or the use-by dates. For example, a blank space could be left on the juice labels immediately prior to their attachment to the containers. A second alternative would be to print the information directly on the containers, such as on the edge of the bottle cap or the end of the can. Yet another alternative is to print the country of origin on adhesive stickers. It would be required that such stickers remain on the containers until the containers reach the ultimate purchaser.

Scope of Ruling

Several commenters asked whether the marking requirements are applicable to blended juices containing foreign concentrate (*e.g.*, cranberry-apple; orange-grapefruit) and fruit drink products which are made from foreign concentrate but contain additional ingredients. The marking requirement set forth in the July 30, 1986 notice applies only to concentrated and reconstituted fruit juices processed in the manner described in C.S.D. 85-47. Blended juices and fruit drink products are outside the scope of the ruling. This does not preclude Customs from ruling specifically on the marking requirements of these products in the future.

Drafting Information

The principal author of this document was John Doyle, Office of Regulations & Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Edward F. Kwas,

Acting Commissioner of Customs.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 88-12782 Filed 6-6-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 84F-0137]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in ready-to-serve gelatin desserts. This action responds to a petition filed by Bernard Food Industries, Inc.

DATES: Effective June 7, 1988; objections by July 7, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 18, 1984 (49 FR 21118), FDA announced that a food additive petition (FAP 4A3775) had been filed by Bernard Food Industries, Inc., 1125 Hartrey Avenue, Evanston, IL 60204, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl-*N*-L-α-aspartyl-L-phenylalanine) as a sweetener in ready-to-serve gelatin desserts to the extent standards of identity do not preclude such use.

One comment was received in response to the filing of the petition. The comment requested that the regulation be worded broadly to cover all ready-to-serve desserts, not just gelatin desserts. The comment was not supported by any data or information. Similarly, in a letter

dated September 30, 1986, the petitioner requested that his petition be amended to include ready-to-eat gelatins, puddings, and fillings. Accordingly, in a notice published in the Federal Register of December 19, 1986 (51 FR 45555), FDA announced that it was amending the filing notice for a food additive petition filed by Bernard Food Industries, Inc., to include ready-to-serve gelatins, puddings, and fillings regardless of the "setting system." The agency reviewed its aspartame files to determine if they contained sufficient technical information to support the amended petition (which now includes aseptically packaged puddings and fillings). The agency determined that the petition contained insufficient data on aspartame degradation in aseptically packaged puddings and fillings. The agency communicated its finding of this deficiency in the petition to the petitioner and requested additional data to address the issue. The petitioner responded to the agency's request for additional data by dropping its request for the expanded uses and by asking the agency to revert to the petitioner's original request which was for the use of aspartame as a sweetener in ready-to-serve gelatin desserts. In response to the petitioner's request, FDA reevaluated the original data in the petition and other relevant materials related to the use of aspartame in ready-to-serve gelatin desserts, and has concluded that the proposed food additive use is safe. The agency has no basis upon which to make a similar conclusion for the requested expanded uses. Therefore, the agency concludes that the regulation in 21 CFR 172.804(c)(13) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding a new paragraph (c)(13) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(13) Refrigerated ready-to-serve gelatin desserts.

* * * * *

Dated: May 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12742 Filed 6-6-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 85F-0092]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener for ready-to-serve nonrefrigerated, pasteurized, aseptically packaged dilute fruit juice beverages. This action responds to a petition filed by Squirt & Co.

DATES: Effective June 7, 1988; objections by July 7, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 2, 1985 (50 FR 13084), FDA announced that a food additive petition (FAP 5A3829) had been filed by Squirt & Co., 777 Brooks Ave., Holland, MI 49423, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N*-L-α-aspartyl-L-phenylalanine) as a sweetener in ready-to-serve nonrefrigerated, pasteurized, aseptically packaged dilute fruit juice beverages.

The agency received comments on the petition from the General Foods Corp. and the Coca-Cola Co. The comments addressed the use of pasteurization after the addition of aspartame to the finished product. The comments provided data to support the firms' contentions that minimal loss of aspartame occurs during pasteurization, provided that the PH is 4.5 or less, and that, under these conditions, the aspartame levels before and after pasteurization, are the same within the experimental error for the analytical method. The agency agrees

with the comments because the data submitted in them presented convincing evidence that conditions commonly used in the beverage industry do not result in significant losses of aspartame. Therefore, the final rule will provide for the addition of aspartame either before or after pasteurization, except that when the pH of the beverage is greater than 4.5, aspartame may be added only subsequent to pasteurization.

FDA has evaluated these comments, the data in the petition, and other relevant materials, and has concluded that the proposed food additive use is safe, and that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.7(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 172.804, paragraph (c)(12) is added to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(12) Ready-to-serve nonrefrigerated, pasteurized, aseptically packaged diluted fruit juice beverages. For beverages whose pH is above 4.5, aspartame may be added only subsequent to pasteurization.

* * * * *

Dated: May 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12741 Filed 6-6-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 85F-0280]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in fruit (including grape) wine beverages with ethanol content below 7 percent volume per volume. This action responds to a petition filed by Canandaigua Wine Co., Inc.

DATES: Effective June 7, 1988 objections by July 7, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 22, 1986 (51 FR 26308), FDA announced that a food additive petition (FAP 6A3942) had been filed by Canandaigua Wine Co., Inc., 116 Bufalo St., Canandaigua, NY 14424, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame in alcoholic beverages containing wine with ethanol content below 7 percent volume per volume.

Two comments were received in response to the filing of the Canandaigua petition. Salzman Beverage Importers, Ltd. requested that the scope of the final regulation be broad enough to include any carbonated or noncarbonated fruit vine (i.e., not only vine made from grapes, but also wine which is made from any kind of fruit). The agency has considered this comment in evaluating the Canandaigua petition and agrees that the data in the petition support the use of aspartame in these products. Therefore, the final rule reflects Salzman's request.

The second comment was submitted by the Stroh Brewery Co. The comment, which was unaccompanied by any supporting data or information, requested that a regulation be issued permitting the use of aspartame in alcoholic beverages with ethanol contents of less than 7 percent by volume. The agency has considered but finds that because the request specifically addressed malt-based coolers, it is outside the scope of the Canandaigua petition. Thus, this use is not included in the regulation. Moreover, as a minimum, stability data and information regarding aspartame in malt coolers would be needed before any action could be taken on a petition supporting the request.

Based on its review of the petition and other relevant data, the agency has concluded that the proposed use of aspartame as a sweetener in alcoholic beverages containing any fruit

(including grape) wine with ethanol content below 7 percent per volume is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environment effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding new paragraph (c)(14) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c)* * *

(14) Fruit (including grape) wine beverages with ethanol contents below 7 percent volume per volume.

* * * * *

Dated: May 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12746 Filed 6-6-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 86F-0420]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in yogurt-type products. This action responds to a petition filed by the Milk Industry Foundation, the NutraSweet Co., and Beatrice Dairy Products, Inc.

DATES: Effective June 7, 1988; objections by July 7, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 21, 1986 (51 FR 42139), FDA announced that a food additive petition (FAP 6A3964) had been filed by the Milk Industry Foundation, 888 16th St. NW., Washington, DC 20006, Beatrice Dairy Products, Inc., 1526 South State St., Chicago IL 60605, and the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in yogurt-type products.

One comment was received in response to the filing of this petition for the use of aspartame in yogurt-type products. The Pro-Mark Companies (Weight Watchers Dairy Products) expressed its objection to the proposed use. The firm's main concern was that such approval would dilute the standards of identity for yogurt, lowfat yogurt, and nonfat yogurt. The agency notes that the petition is for products that are not covered by the standards of identity for yogurt, lowfat yogurt, and nonfat yogurt. Therefore, the agency concludes that approval of the petition would have no effect on these standards.

FDA has evaluated data in the petition and other relevant material on yogurt-type products. The agency concludes that the proposed use is safe, and that the regulation in 21 CFR 172.804 should be amended by adding a new paragraph (c)(15).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding a new paragraph (c)(15) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(15) Yogurt-type products where aspartame is added after pasteurization and culturing.

* * * * *

Dated: May 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12744 Filed 6-6-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 86F-0279]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in refrigerated flavored milk beverages. This action responds to a petition filed by the Milk Industry Foundation, the NutraSweet Co., and Beatrice Dairy Products, Inc.

DATES: Effective June 7, 1988; objections by July 7, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 31, 1986 (51 FR 27461), FDA announced that a food additive petition (FAP 6A3945) had been filed by the Milk Industry Foundation, 888 16th St. NW., Washington, DC 20006, the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, and Beatrice Dairy Products, Inc., 1526 South State St., Chicago, IL 60605, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in refrigerated flavored milk beverages to the extent standards of identity do not preclude such use.

The agency has evaluated data in the petition and other relevant material. Based on this evaluation the agency concludes that the proposed use is safe, and that the regulations in 21 CFR 172.804 should be amended by adding a new paragraph (c)(16).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considerd the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

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of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding a new paragraph (c)(16) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(16) Refrigerated flavored milk beverages.

* * * * *

Dated: May 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12743 Filed 6-6-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 85F-0345]

Food Additives Permitted for Direct Addition To Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in frozen desserts where standards of identity do not preclude this use. This action responds to a petition filed by Pfizer Central Research, Pfizer, Inc.

DATES: Effective June 7, 1988; objections by July 7, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 23, 1985 (50 FR 34198), FDA announced that a food additive petition (FAP 5A3861) had been filed by Pfizer Central Research, Pfizer, Inc., 235 East 42nd St., New York, NY 10017, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame to sweeten frozen desserts where standards of identity do not preclude this use.

The agency has evaluated data in the petition and other relevant material and concludes that the proposed use is safe. Therefore, the regulation in 21 CFR 172.804 is amended by adding a new paragraph (c)(17).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding a new paragraph (c)(17) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(17) Frozen desserts.

* * * * *

Dated: May 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12745 Filed 6-6-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510, 522, 548 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several NADA's from International Minerals & Chemical Corp. (IMC), to Pitman-Moore, Inc. Pitman-Moore, Inc., requested the change to indicate that it is the parent company currently sponsoring the NADA's.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., of Washington Crossing, NJ 08560, has informed FDA that it is now sponsor of several NADA's formerly held by International Minerals & Chemical Corp., Veterinary Division, P.O. Box 207, Terre Haute, IN 47808.

The NADA's affected are:

NADA	Product
38-233	RALGRO® (Zeranol) Implants for Cattle and Lambs.
46-320	Baciferm® 10, 25, 30, 40, 50, and 60 (Bacitracin Zinc Type A Article).
65-313	Baciferm® Soluble-50 (Bacitracin Zinc for Drinking Water).
105-758	Bacitracin Zinc/Amprolium plus Ethopabate/Roxarsone.
114-794	Bacitracin Zinc/Amprolium plus Ethopabate.
123-154	Bacitracin Zinc/Monensin/Roxarsone.
136-484	Bacitracin Zinc/Carbarsone.
139-190	Bacitracin Zinc/Salinomycin/Roxarsone.
139-235	Bacitracin Zinc/Salinomycin.

The agency is amending 21 CFR Parts 510, 522, 548 and 558 to reflect the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

21 CFR Part 548

Animal drugs, Antibiotics.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Parts 510, 522, 548, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "International Minerals & Chemical Corp." and in paragraph (c)(2) by removing the entry for the number "012769."

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMALS DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.2660 [Amended]

4. Section 522.2660 *Zeranol* is amended in paragraph (c) by removing "No. 012769" and by adding in its place "No. 011716."

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

5. The authority citation for 21 CFR Part 548 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10, 5.83.

§ 548.114 [Amended]

6. Section 548.114 *Bacitracin zinc soluble powder* is amended in paragraph (c)(2) by removing "No. 012769" and by adding in its place "No. 011716."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

7. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.15 [Amended]

8. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in paragraphs (g)(1) and (g)(2) in the tables under the "Drug sponsor" column by removing "International Minerals & Chemicals Corp." and by adding in its place "Pitman-Moore, Inc."

§ 558.58 [Amended]

9. Section 558.58 *Amprolium and ethopabate* is amended in paragraph (d)(1) in the table in entry (iii) under the "Limitations" and "sponsor" columns by removing the number "012769" each time it appears, and by adding in its place the number "011716."

§ 558.76 [Amended]

10. Section 558.76 *Bacitracin zinc* is amended in paragraph (a)(2), paragraph (d)(1) in the table under the "Sponsor" column, and in paragraph (d)(2)(ii) by removing the number "012769" wherever it appears, and by adding in its place the number "011716."

§ 558.105 [Amended]

11. Section 558.105 *Buquinolate* is amended in paragraph (d)(1)(xi)(*b*) by removing "No. 012769" and by adding in its place "No. 011716."

§ 558.120 [Amended]

12. Section 558.120 *Carbarsone (not U.S.P.)* is amended in paragraph (c)(1)(iii)(*b*) by removing "No. 012769" and by adding in its place "No. 011716."

§ 558.175 [Amended]

13. Section 558.175 *Clopidol* is amended in paragraphs (c)(1)(iii)(*b*) and (c)(1)(iv)(*b*) by removing "No. 012769" and by adding in its place "No. 011716."

§ 558.195 [Amended]

14. Section 558.195 *Decoquinate* is amended in paragraph (d) in the table under the "Limitations" column by removing "No. 012769" each time it appears and by adding in its place "No. 011716".

§ 558.311 [Amended]

15. Section 558.311 *Lasalocid* is amended in paragraph (e)(1) in the table in entry (ii) under the "Limitations" column by removing "No. 012769" and by adding in its place "No. 011716".

§ 558.355 [Amended]

16. Section 558.355 *Monensin* is amended in paragraphs (b)(9), (f)(1)(iv)(*b*), (f)(1)(v)(*b*), (f)(1)(xv)(*b*), and (f)(1)(xvi)(*b*) by removing the number "012769" and by adding in its place the number "011716."

§ 558.515 [Amended]

17. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (d)(1)(vi)(*b*) by removing "No. 012769" and by adding in its place "No. 011716."

§ 558.550 [Amended]

18. Section 558.550 *Salinomycin* is amended in paragraphs (b)(1)(vii)(*c*) and (b)(1)(ix)(*c*) by removing "No. 012769" and by adding in its place "No. 011716."

Dated: May 27, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-12749 Filed 6-6-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 114

[DoD Instruction 7730.54]

Reserve Components Common Personnel Data System (RCCPDS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part provides DoD policy and guidance for reporting

Reserve Component categories, personnel transactions accounting, personnel data items, definitions, and accuracy standards to the Reserve Components Common Personnel Data System (RCCPDS). The RCCPDS is the computerized data base that has been established to meet the policy requirements and to provide statistical tabulations of Reserve Components strengths and related data for use throughout the Department of Defense, other Government Agencies, and the Congress. This revision corrects administrative changes required by standardization of data elements for the automated system.

EFFECTIVE DATE: May 13, 1988.

ADDRESS: Office of the Assistant Secretary of Defense (Reserve Affairs), the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: K. Robinson, telephone (202) 696-5848.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 114

Archives and records, Armed forces reserves.

Accordingly, 32 CFR Part 114 is revised as follows:

PART 114—RESERVE COMPONENTS COMMON PERSONNEL DATA SYSTEM (RCCPDS)

Sec.

114.1 Reissuance and purpose.
114.2 Applicability and scope.
114.3 Policy.
114.4 Responsibilities.
114.5 Procedures.
114.6 Information requirements.
114.7 Effective date and implementation.

Authority: 10 U.S.C. 261, 267, 275, 511, 651, 652, 671, 1331, 3914, 8330, and 8914.

§ 114.1 Reissuance and purpose.

This part revises 32 CFR Part 114 to correct administrative changes required by standardization of Data Elements for the Reserve Components Common Personnel Data System (RCCPDS).

§ 114.2 Applicability and scope.

(a) This Part applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the U.S. Coast Guard (by agreement with the Department of Transportation).

(b) The provisions of this Part govern all officers, warrant officers, and enlisted personnel assigned to the Ready Reserve, the Standby Reserve, and the Retired Reserve. Reservists on active duty for training who continue their assignment with a Reserve component are included. Reserve Officer Training Corps (ROTC) members, who are not members of the Simultaneous Membership Program (SMP), are excluded. Also excluded are individuals who have elected discharge after 20 creditable years instead of transfer to the Retired Reserve. The Defense Manpower Data Center (DMDC) shall maintain a historical file on these individuals.

(c) Enlisted members of an active component who also have a Reserve commission shall not be reported in RCCPDS.

(d) Members on extended active duty who are part of the active component or assigned to the Selective Service System shall not be reported. (This does not include members identified in §114.5(a)(1)).

§ 114.3 Policy.

(a) RCCPDS is the computerized common data base that has been established to meet the policy requirements and to provide statistical tabulations of Reserve components' strengths and related data for use throughout the Department of Defense, other Government Agencies, the Congress, and for appropriate public release by the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) (DoD Directive 1205.17 [1])

(b) The requirements and procedures prescribed by 32 CFR Part 286a must be followed to safeguard the personnel data maintained in this reporting system. Individuals having access to identifiable personnel information may be held personally responsible and punishable under the law for making unauthorized disclosures.

§ 114.4 Responsibilities.

(a) *The Assistant Secretary of Defense (Reserve Affairs)* (ASD(RA)) shall:

(1) Establish policy and provide guidance for Reserve Component Categories, personnel transaction accounting, personnel data items, definitions, and accuracy standards.

(2) Provide policy guidance to the DMDC on the content and use of the RCCPDS including data fields, definitions, frequency, format, and the content of periodic and special RCCPDS reports in accordance with responsibilities detailed in DoD Directive 1205.17 and 32 CFR Part 379.

(3) Revise and maintain this Part as necessary to update data requirements and provide accurate and effective guidance on personnel data management to the Military Departments and their Reserve components.

(b) The *Assistant Secretary of Defense (Force Management and Personnel* (ASD(FM&P)) shall:

(1) Ensure that Reserve component military personnel information requirements for actuarial valuations and for effective Total Force military personnel management are identified to the ASD(RA).

(2) Exercise such policy guidance and management supervision for the DMDC consistent with ASD(FM&P) responsibilities in DoD Directive 5124.2 [2] as required to ensure adequate resources are available and used by the DMDC to fulfill its responsibilities.

(c) The *Director, Defense Manpower Data Center* shall:

(1) Operate and maintain the RCCPDS, to include computer support, software development, quality control, inquiry capability, and administrative support.

(2) Develop, produce, and distribute all periodic and special RCCPDS reports.

(3) Provide programing and analytical support to ASD(RA) for special studies requiring use of the RCCPDS.

(4) Modify the RCCPDS to reflect the changing nature of the Reserve components.

(5) Inform the ASD(RA) of data produced from the RCCPDS for other users and of the state and quality of the information submitted by the Reserve components.

(d) The *Secretaries of the Military Departments and the Commandant of the U.S. Coast Guard* shall:

(1) Provide their respective Reserve components with the support necessary to maintain a personnel data system.

(2) Prepare, at the end of each month, a Master Officer File and Master Enlisted File reflecting the status of each member of the Reserve component as of the last day of each month as stated in enclosure 2 of DoD Instruction 7730.54.[3]

(3) Prepare, at the end of each month, an Officer Transaction File and an Enlisted Transaction File reflecting the gains, losses, reenlistments, extensions, and transfers of Reserve component personnel that occurred during the reporting month as stated in enclosure 4 of DoD Instruction 7730.54.

(4) Edit monthly submissions according to the editing concept defined in enclosure 3 of DoD Instruction 7730.54.

(5) Perform a quality control validation of the data before submission to the OSD.

§ 114.5 Procedures.

(a) The following categories of full-time support personnel shall be reported in RCCPDS:

(1) *Active Guard/Reserve.* Guardsmen and Reservists on active duty to provide full-time support to the Ready Reserve and who are paid from the Reserve personnel appropriations of the Military Department concerned.

(2) *Military Technicians.* Federal civilian personnel of a Military Department who occupy Military Technician positions and are members of the Reserve component they support.

(b) As the official DoD vehicle for reporting Reserve component manpower strengths, records reported in this system (as prescribed in this Part) may not be duplicated in other DoD-wide strength reporting systems. Additionally, to support the accuracy of strength data in the system, DoD Components shall ensure that:

(1) All strength-affecting changes are processed and reported without delay.

(2) All master and transaction files are edited before submission following the procedures stated in enclosure 3 of DoD Instruction 7730.54.

(c) Requests to provide specifically tailored reports and inquiries to system users shall be directed to the address shown at § 114.5(g). A Reserve component may not be provided data relative to another Reserve component without prior approval of that component.

(d) Any information available to RCCPDS required by the Selective Service System and the Veterans' Administration shall be provided by magnetic tape extracts of data submitted in compliance with this part.

(e) Information from RCCPDS shall be provided annually to Federal Agencies screening employees who are also Reserve component members, as prescribed by 32 CFR Part 44.

(f) RCCPDS data validity shall be ensured as follows:

(1) The following shall be critical data for all Reserve component members, and the goal shall be 100 percent validity to ensure acceptability in the system.

Record field	Data field	Record position
1	Reserve Component	1–2
2a	Reserve Component Category Indicator.	3
2b	Reserve Component Training-Retirement Category Indicator.	4
3	Social Security Number	5–13
92	Transaction Codes	399–400

(2) Each of the following (as applicable within each Reserve Component Category) shall have as a goal at least 98 percent validity.

Record field	Data field	Record position
6	Name, Individual	24–50
7	Date of Birth	51–56
8	Sex	57
11	Marital Status	60
13	Educational Designator	63
17	Date of Rank	155–160
18	Pay Grade, Uniformed Services.	161–163
19	Pay Entry Base Date (PEBD).	164–169
35(a), (b), (c), (d)	Date of Appointment/Date of Expiration of Current Service Agreement.	229–234
40	Armed Forces Qualification Test (AFQT) Percentile Score (Enlisted Only).	243–244
46	Military Unit Designator (Unit Identification Code).	251–258
47	States of the United States, and Countries (Unit).	259–260
48	National Zoning Improvement Plan (Unit Zip Code).	261–269
66(a), (b)	Year and Month, Reserve Component Incentive Program Eligibility Effective Date.	311–314
67	Reserve Component Incentive Program Type.	315
68	Reserve Component Incentive Program Educational Type.	315
70	Active Component Montgomery GI Bill (MGIB) Eligibility Status (Title 38, U.S.C. Chapter 30).	323
76	Reserve Component Montgomery GI Bill (MGIB) Eligibility Status (Title 10, U.S.C. Chapter 106).	339
88	Notification of Eligibility for Retired Pay Indicator (20-Year Letter Indicator).	385
89	Date of Transfer to the Retired Reserve.	386–391
90	Date of Transfer to the Standby Reserve.	392–397

(3) The goal for all remaining data fields shall be:

(i) Ninety-five percent validity for the Ready Reserve and Standby Reserve.

(ii) Ninety-five percent validity for the Retired Reserve receiving pay or eligible for pay at age 60.

(4) The data validity rates (§ 114.5(f) (1) through (3)) shall be used as standards for judging the validity of this data base and shall be provided to any audit or inspection agency reviewing their accuracy.

(g) Magnetic tape files and the quality control edit reports shall be delivered by the 20th of the month following the previous report period. The mailing address is Defense Manpower Data Center, ATTN: Reserve File Manager, 550 Camino el Estero, Suite 200, Monterey, CA 93940-3231.

§ 114.6 Information requirements.

The reporting requirements for this part are assigned the following Report Control Symbols:

Master File..... DD-RA(M)1147
Transaction File..... DD-RA(M)1148

Standard data elements from DoD 5000.12-M [4] are being used in these reporting requirements where applicable.

§ 114.7 Effective date and implementation.

This part is effective May 13, 1988. Implementation shall be completed by 1 July 1988. Forward two copies of implementing documents and phased time plan to the Assistant Secretary of Defense (Reserve Affairs) within 120 days.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1988.

[FR Doc. 88-12810 Filed 6-6-88; 8:45 am]

BILLING CODE 3810-01-M

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[1] Copies may be obtained, if needed, from the U.S. Naval Publication and Forms Center, Attn: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to §114.3(a).

[3] See footnote 1 to § 114.3(a).

[4] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3392-2]

North Carolina; Order to Commence Proceedings To Determine Whether To Withdraw Hazardous Waste Program Approval; Correction of Date and Location of Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of correction of hearing and date and location.

SUMMARY: This notice corrects the date and location previously published in the **Federal Register** (53 FR 3894) on February 10, 1988, establishing the dates and location for the North Carolina withdrawal proceeding hearing. The hearing will be held on September 19–21, 1988, at the Jane S. McKimmon Center, North Carolina State University, Raleigh, NC.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., at (404) 347–3016.

Dated: May 23, 1988.

Jon R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88–12770 Filed 6–6–88; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6679

[AK–932–08–4220–10; F–012718]

Modification of Public Land Order (PLO) No. 1571, as Amended, for Selection of the Oil and Gas Estates by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will open and classify the oil and gas estates of 678.20 acres of public land for selection and conveyance of the oil and gas estates to the State of Alaska. The land is and will continue to be withdrawn for the Department of the Air Force for military purposes by PLO No. 1571, and for study and classification by PLO No. 5187.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1571, as amended, is hereby modified to permit selection of the oil and gas estates of the following described land by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *et seq.*; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438; 43 U.S.C. 1635:

Oliktok Point (PLO No. 1571)

U.S. Survey No. 4275, Alaska.
The area described contains 678.20 acres.

2. Subject to valid existing rights, the oil and gas estates of the land described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *et seq.*; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the oil and gas estates of the above described land, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. If not selected by the State of Alaska, the oil and gas estates of the land will remain under the jurisdiction of the Secretary of Interior and shall remain closed until a further opening order is published.

4. The remaining estates of the land described above continue to be subject to the terms and conditions of PLO No. 1571, as amended, and PLO No. 5187, and no surface occupancy of the land shall be permitted.

J. Steven Griles,

Assistant Secretary of the Interior.

May 31, 1988.

[FR Doc. 88–12760 Filed 6–6–88; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6792]

Suspension of Community Eligibility; New York

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: June 15, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole.

This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
New York	Holland Patent, village of	Oneida	360530	June 15, 1988.
Do	Huron, town of	Wayne	360892	Do.
Do	Jay, town of	Essex	360265	Do.
Do	Lebanon, town of	Madison	360403	Do.
Do	Leicester, village of	Livingston	361456	Do.
Do	Lexington, town of	Greene	360294	Do.
Do	Lima, town of	Livingston	360457	Do.
Do	Lincoln, town of	Madison	360405	Do.
Do	Lyons, town of	Wayne	361226	Do.
Do	Marathon, town of	Cortland	361327	Do.
Do	Marathon, village of	Cortland	360183	Do.
Do	Mechanicville, city of	Saratoga	360721	Do.
Do	Middlesex, town of	Yates	360960	Do.
Do	Newark, village of	Wayne	360884	Do.
Do	Newcomb, town of	Essex	361390	Do.
Do	Pelham, village of	Westchester	360925	Do.
Do	Pharsalia, town of	Chenango	361091	Do.
Do	Plandome, village of	Nassau	360484	Do.
Do	Pulaski, village of	Oswego	360659	Do.
Do	Rensselaer, Falls, village of	St. Lawrence	361466	Do.
Do	Richford, town of	Tioga	361216	Do.
Do	Round Lake, village of	Saratoga	360726	Do.
Do	Rushford, town of	Allegany	360033	Do.
Do	Savona, village of	Steuben	361049	Do.
Do	Scriba, town of	Oswego	360663	Do.
Do	Sherbourne, town of	Chenango	360164	Do.
Do	Sherman, town of	Chautauqua	361502	Do.
Do	Shoreham, village of	Suffolk	361506	Do.
Do	Smithfield, town of	Madison	361294	Do.
Do	Smithville, town of	Chenango	361040	Do.
Do	Smyrna, town of	Chenango	361306	Do.
Do	Sodus Point, village of	Wayne	360899	Do.
Do	Solon, town of	Cortland	361329	Do.
Do	Speculator, village of	Hamilton	361527	Do.
Do	Stockport, town of	Columbia	361322	Do.
Do	Syracuse, city of	Onandaga	360595	Do.
Do	Taghkanic, town of	Columbia	361324	Do.
Do	Taylor, town of	Cortland	361330	Do.
Do	Tivoli, village of	Dutchess	361507	Do.
Do	Valatie, village of	Columbia	361508	Do.
Do	Valley Falls, village of	Rensselaer	361469	Do.
Do	Van Etten, village of	Chemung	361045	Do.
Do	Wallkill, town of	Orange	360634	Do.
Do	Wappingers Falls, village of	Dutchess	360223	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 1, 1988.

[FR Doc. 88–12758 Filed 6–6–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87–6]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Proceeding held in abeyance.

SUMMARY: The Federal Maritime Commission, in response to comments filed by interested parties on reconsideration of the Final Rule issued in this proceeding, has determined to hold the proceeding in abeyance for a period of time, and requests further comments by August 31, 1988.

DATE: Comments due on or before August 31, 1988.

ADDRESS: Comments (Original and 15 copies) to Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L

Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: On March 3, 1988, the Federal Maritime Commission ("Commission" or "FMC") gave notice that it would reconsider the Final Rule earlier promulgated in this proceeding, and invited comments and information on present conditions in the U.S./Peru trade from interested parties. Comments have been received from eleven parties in response to that Notice. Comments have been received from the United States Executive Agencies ("Executive Agencies");[1] Shippers for Competitive Ocean Transportation ("SCOT"); Campania Sud Americana de Vapores ("CSAV"), Great Lakes Transcaribbean Line ("GLTL"); Naviera Amazonica Peruana, S.A. ("NAPSA"); Nedlloyd Lines ("Nedlloyd"), Compania Peruana de Vapores ("CPV"), Naviera Neptuno, S.A. ("Neptuno") and Empresa Naviera Santa, S.A. ("Santa"), jointly ("the Peruvian carriers"); the American Chamber of Commerce of Peru ("Chamber"), Georgetown Steel Corporation ("GSC"); Occidental International Exploration and Production Company ("Occidental"); and Southern Peru Copper Corporation ("SPCC").

Those comments and related recent events have been considered by the Commission, as set forth below. Based on those comments, the Commission herein announces that this proceeding will be held in abeyance and invites further comments and information from interested parties by August 31, 1988.

Background

On December 2, 1987, the Commission issued a Final Rule in this proceeding (52 FR 46356, December 7, 1987) stating that it finds "conditions unfavorable to shipping" within the meaning of section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19"), exist in the foreign oceanborne trade between the United States and Peru ("Trade"). The Commission advised in its Final Rule that the GOP, through its laws and regulations, imposed burdens on non-Peruvian-flag carriers which are not experienced by Peruvian-flag carriers. The Commission therefore suspended the tariffs of certain Peruvian-flag carriers in the U.S. trade.

The GOP laws and regulations to which the Commission referred in its Final Rule include Supreme Decree No. 009-86-TC [2] ("Decree 009-86"), which reserves 100 percent of all imported and exported ocean freight generated by Peru's foreign trade for Peruvian-flag carriers. The amount of cargo reserved by Decree 009-86 for Peruvian-flag carriers could be reduced: (1) On the basis of strict reciprocity;[3] (2) pursuant to government or commercial agreements [4] among non-Peruvian and Peruvian-flag carriers, preferably include CPV, the Peruvian state-owned shipping line; or (3) when the Peruvian Director General of Maritime Transportation or Peruvian Consuls grant non-Peruvian-flag or non-associate carriers permission to carry Peruvian export or import cargoes. Authorization for the use of non-Peruvian-flag or non-associate carriers would be granted in the form of a waiver or cargo manifest certification when Peruvian-flag or associate carriers were not available and in position within 12 days [5] following the proposed date of shipment of non-perishable products, or within 4 days in the case of perishable products, or when no Peruvian-flag carrier serves the relevant port.

Subsequent to issuance of the Proposed Rule which initiated this proceeding,[6] regulations ("Regulations")[7] were issued by the GOP pursuant to a Memorandum of Understanding ("MOU") signed by the USG and the GOP on May 1, 1987. These Regulations set forth new requirements and procedures that shipping lines operating third-flag vessels must observe in order to obtain authorizations from the GOP Ministry of Transportation and Communications ("Ministry") to participate in the Trade. The GOP advised through the Department of State that the "authorization" system under the Regulations totally replaced the existing "waiver" system for granting third-flag carriers access to the Trade.

In issuing its Final Rule the Commission explained that while it recognized the good faith efforts made by the USG and GOP to address the situation in the Trade through diplomatic means, the resultant Regulations which implement the MOU did not satisfactorily resolve that situation. The Commission stated that, in fact, the Regulations, in effect, continue in place the very types of restrictions and impediments which prompted this proceeding in the first instance. Although third-flag carriers were no longer required to obtain "waivers" for individual shipments, they were to obtain "authorizations" to participate in the Trade. The Commission found this authorization process as inconsistent with free access to trade, as was the waiver system it replaced. In this regard, the Commission also added that it was unknown whether Chilean-flag carriers would be granted authorizations and allowed to operate in the Trade, particularly in light of the existence of Peruvian Resolution No. 044-86-TC/AC ("Resolution 044-86"), which excludes Chilean-flag carriers from certain Peru/third-country trades.

Finally, the Commission advised that it could not accept as a satisfactory resolution of this matter an accommodation which would permit the GOP to deny authorization to a third-flag operator in the Trade if the country of nationality of that operator bars participation to Peruvian-flag carriers in any of its third-country trades. The Commission explained that to accept the proposition that the GOP can settle disputes with foreign nations by imposing burdens on U.S.-Peru trade hostage to obtaining concessions elsewhere.

Thus, the Final Rule suspended the tariffs of the Peruvian-flag carriers operating in the Trade, with the exception of Naviera Amazonica Peruana, S.A. ("NAPSA"),[8] unless such carriers obtain authorized status from the Commission.[9] The suspension of these tariffs was to become effective March 7, 1988.

On February 4, 1988, the Peruvian carriers filed a Petition for Reconsideration ("Petition") requesting that the FMC reconsider its Final Rule, or, in the alternative, stay the effective date of the Final Rule on grounds that the Rule is basically directed at Decree 009-86 of February 28, 1986, which has been rescinded by GOP Supreme Decree No. 004-88-TC ("Decree 004-88") of January 22, 1988.[10] Further, the Peruvian carriers submitted that the Regulations which implement the MOI also have been rescinded.[11]

The Peruvian carriers alleged that with such action by the GOP, Peruvian cargo preference law has reverted to its status prior to enactment of Decree 009-86, and prior to the initiation of this proceeding which resulted from complaints to the Commission about Decree 009-86. They advised that while Decree 009-86 reserved 100 percent of all Peruvian import and export cargoes, Decree 004-88 reestablishes legislation in existence between 1970 and 1986 which reserves 50 percent of Peruvian cargoes to Peruvian-flag or associate carriers.[12] The Peruvian carriers took the position that since, as the Commission states in its Final Rule, this proceeding arose from complaints about the enactment, implementation and enforcement by the GOP of Decree 009-86, the Commission should reconsider its Final Rule and terminate the proceeding due to the rescission of Decree 009-86.

As an alternative to reconsideration and termination of the proceeding, the Peruvian carriers suggested that the Commission stay its Final Rule pending investigation of present conditions in the Trade or judicial review,[13] whichever is later, particularly if the Commission determines that it has insufficient knowledge of present conditions in the Trade to order termination of the proceeding. The Peruvian carriers contended that a stay would allow time for the Commission to gather any facts required for reconsideration and, if necessary, for the Court to clarify "serious legal issues in this proceeding."

After analyzing the Petition and replies thereto, the Commission issued its Notice of Reconsideration of Final Rule ("March Notice".) In its March Notice the Commission discussed the GOP initiatives, noting that some action was necessary to recognize the change status of the issues brought about by the GOP's actions and, as a technical legal matter, because the rescission of Decree 009-86 and Resolution 044-86 appeared to have undermined the basis cited in the Final Rule for the Commission's findings of conditions unfavorable to shipping in the Trade. The Commission withdrew the Final Rule for reconsideration and again invited interested parties to comment. However, the Commission also pointed out that rescission alone may not resolve the unfavorable conditions which the Final Rule addressed, and the Commission stated that, if the system remains discriminatory in the absence of Decree 009-86, it would be prepared to act swiftly to reinstate the Final Rule on the basis of new findings that conditions unfavorable to shipping continue to exist.

Subsequent to the issuance of the Commission's March Notice, three agreements were filed with the Commission between Peruvian and Chilean-flag carriers.[14] Pursuant to these agreements, the Chilean-flag carriers would be granted associate status by the GOP and thereby given access to the Trade.

Summary of Comments

A. Executive Agencies

1. March 3, 1988 Letter

On March 3, 1988, Gregory Dole, Deputy Assistant Secretary for Policy and International Affairs ("DAS"), DOT, reported to the Commission on consultations between the USG and GOP, held February 25-26, 1988, regarding the GOP's implementation of Decree 036-82. DAS Dole reports that the GOP provided assurances that U.S. carriers will, through their equal access agreement, continue to have access to all cargo in the Trade on the same basis as Peruvian-flag carriers. Further, the DAS reports that the GOP had approved, by Ministerial Resolution of February 22, 1988, three agreements between Peruvian and Chilean-flag carriers which will accord Chilean-flag carriers access to all cargo on the same basis as Peruvian-flag carriers. The DAS states that, if the terms of these commercial agreements are acceptable, the Executive Agencies believe that the agreements will resolve the problems that the Chilean-flag carriers have had gaining access to the Trade. In addition, the DAS notes that during the consultations, the USG expressed hope to the GOP that similar commercial solutions would be found for other third-flag carriers to allow them to operate without restrictions.

Further, DAS Dole submits that the GOP indicated that the administration of the Peruvian waiver system was being evaluated so as to create a system with maximum flexibility. In addition, the FMC was advised that the GOP has set up a commission to review GOP merchant marine policy.

The DAS reports that the Executive Agencies are generally encouraged by the developments in the Trade, but states that it is premature for them to make a recommendation as to the disposition of the Final Rule.

2. March 31, 1988 Comments

The Executive Agencies state that as of the final day of the comment period two service agreements between Peruvian and Chilean-flag carriers had been filed with the FMC. They submit that these agreements appear to provide these Chilean-flag carriers access to the Trade. The Executive Agencies point out, however, that the access of other third-flag carriers to the Trade is uncertain.

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[1] The Department of Transportation ("DOT") submitted these comments on behalf of the Executive Agencies. In addition, earlier on March 3, 1988, the DOT, on its own behalf, submitted a letter to the Commission reporting on consultations between the United States Government ("USG") and the Government of Peru ("GOP") held in Lima on February 25-26, 1988.

[2] Decree 009-86 amended Supreme Decree No. 036-82-TC ("Decree 036-82"), effective September 1982. Decree 036-82 reserves Peruvian import and export cargoes for Peruvian-flag vessels and sets out waiver and cargo manifest certification requirements for non-Peruvian-flag carriers. The exact percentage of cargo reserved for Peruvian-flag carriers is not specified in Decree 036-82. An earlier decree states that 50 percent of Peruvian import and export cargo is reserved for Peruvian-flag carriers.

[3] *E.g.*, U.S. carriers' access to Peruvian cargoes would be proportional to Peruvian carriers' access to U.S. cargoes.

[4] Non-Peruvian-flag carriers which become parties to such commercial agreements may be granted associate status upon approval by the GOP. Associate carriers are excepted from cargo manifest certification and waiver requirements under Decree Nos. 009-86 and 036-82.

[5] Supreme Decree No. 033-86-TC modified Decree 009-86 by reducing the number of days a shipment must wait for a Peruvian or associate carrier from 15 days to 12 days.

[6] *See* Notice of Proposed Rulemaking, 52 FR 11832, April 13, 1987.

[7] These Regulations were contained in Ministerial Resolution No. 027-87-TC/AC ("Resolution").

[8] Under the Final Rule, NAPSA's tariff, FMC No. 3, covering the U.S./Iquitos, Peru trade, would not be suspended because the Commission found this subtrade distinguishable from the Trade generally, and, therefore, entitled to different treatment. The Final Rule noted that the Commission did not receive any complaints regarding this subtrade. Further, it stated that there is no alternative to NAPSA's service in this subtrade. (*See* Docket No. 87-6, 52 FR 46382, December 7, 1987).

[9] The Final Rule states that authorized status shall be conferred upon a Peruvian-flag carrier upon that carrier's submitting to the Commission a certificate from the GOP stating unequivocally that no law, regulation or policy of the GOP will:

(i) Preclude any non-Peruvian-flag carrier from competing in the Trade on the same basis as any other carrier;

(ii) Result in less than meaningful and competitive access by any non-Peruvian-flag carrier, to cargo designated as reserved under Supreme Decree No. 009-86-TC; and

(iii) Impose any administrative burden, including but not limited to, the necessity to secure an authorization based on the national status of the carrier, or otherwise discriminate against any non-Peruvian-flag carrier in the Trade.

[10] Decree 004-88 was published in the Peruvian Official Gazette, "El Peruano," on January 25, 1988.

[11] In addition, Resolution No. 044-86 which excluded Chilean-flag carriers from certain Peru/third-country trades has been rescinded.

[12] The pre-1986 legal regime is based primarily on Decree 036-82.

[13] A petition for review of the Final Rule was filed by the Peruvian-flag carriers in the U.S. Court of Appeals for the District of Columbia Circuit ("Court") on January 29, 1988. *Compania Peruana de Vapores, et al. v. USA and FMC*, D.C. Cir. No 88-1073. That proceeding has been held in abeyance until May 31, 1988.

[14] These agreements are: Agreement No. 212-011180 between Neptuno and CSAV, filed March 10, 1988, effective April 30, 1988; Agreement No. 212-011186, as amended by Agreement No. 212-011186.001, between Santa and Empresa Maritima de Estrado ("Empremar"), filed March 29, 1988, effective May 13, 1988; and Agreement No. 212-011189 between CPV and Compania Chilena de Navegacion Interoceanica S.A. ("CCNI"), filed April 12, 1988, effective May 27, 1988.

Further, the Executive Agencies report that they received assurances that third-flag carrier access to the Trade, as well as other issues, will be addressed over the next few months by the Commission established to develop a new Peruvian merchant marine policy.

Based on the aforementioned developments, the Executive Agencies state that they do not believe sanctions are warranted at this time.

B. SCOT

SCOT contends that while the GOP's rescission of Decree 009–86 and the Resolution are positive steps, such action will not remove the conditions unfavorable to shipping in the Trade. SCOT adds, however, that as of March 31, 1988, none of the changes implemented by the GOP will have been in place for sufficient time to allow U.S. shippers to comment on their effect on the Trade.

SCOT states that three agreements between Peruvian and Chilean-flag carriers have been approved by the GOP. It comments on the agreement between CSAV and Neptuno, the only agreement which had been filed with the FMC at the time SCOT drafted its comments. SCOT argues that the provisions of the CSAV-Neptuno service agreement do not appear to provide effective competition by the Chilean-flag carrier in the Trade. Further, SCOT believes that the agreement raises the question of whether any third-flag carrier would be given associate status without granting serious commercial concessions. The fact that CSAV can no longer participate in the profits of the U.S./Peru trade pursuant to the agreement, is said to indicate that CSAV's price of admission to the Trade was significant. SCOT contends that the conditions under which CSAV was readmitted will not remove unfavorable conditions as far as Chilean carriers are concerned.

Given the legislative regime now in place and the agreement between CSAV and Neptuno, SCOT maintains that conditions unfavorable to shipping in the Trade continue to exist and that no evidence submitted to date indicates otherwise. SCOT states that it would be premature for the Commission to take any action to stay or discontinue the investigation. It submits, however, that shippers would like an opportunity to comment further on conditions in the Trade after sufficient time has passed to allow them to assess GOP actions. A minimum of 90 days is said to be required to obtain any meaningful experience.

C. CSAV

CSAV directs the Commission's attention to its commercial agreement with Neptuno which has been approved by the GOP and filed with the FMC. CSAV reports that this agreement renders CSAV an associate carrier for purposes of Decree 036–82.

CSAV takes the position, therefore, that should the Commission determine that commercial settlements have made it desirable to suspend the proceeding and the Final Rule, it would have no formal objection to such action at this time. CSAV suggests, however, that it would be beneficial to shippers for the Commission to make a statement that its Final Rule could be reimposed in the event that new obstacles are placed on operations in the Trade or if the commercial settlements prove unworkable.

D. GLTL

GLTL states that it is meeting with CPV on April 20, 1988, to discuss potential cooperation and the terms of a free access agreement for cargoes moving between U.S. Great Lakes ports and Peru. GLTL advises that such a commercial agreement would confer associate status upon it and would resolve the concerns it previously raised in this proceeding. Absent such an agreement, GLTL asserts that its cargoes in the Trade would be subject to vessel manifest certificaton and waiver requirements pursuant to Decree 036–82.

It, therefore, requests that the Commission hold any further action in abeyance for a reasonable period of time to permit negotiations betwen CPV and GLTL and a determination as to the approvability of any agreement. GLTL states that it will promptly notify the Commission of the results of the April 20, 1988 negotiations.

GLTL subsequently informed the Commission by letter dated May 11, 1988 that representatives of GLTL and CPV had discussed the "framework for a proposed commercial agreement which, if approved by the Government of Peru and by the Commission, would confer associate status upon GLTL * * * and would resolve the concerns previously raised by GLTL in this proceeding." GLTL stated its expectation that a formal agreement would be concluded following action by CPV's Board of Directors on the proposal. GLTL also informed the Commission in that letter that the Peruvian Government has recently reaffirmed fines imposed on GLTL in connection with cargo carried in the Trade in 1984, and that imposition of these fines is being appealed through litigation in Peru.[15]

E. NAPSA

NAPSA reaffirms that no adverse conditions exist in the United States/Iquitos, Peru subtrade. It, therefore, requests that the Commission maintain its current policy permitting NAPSA free access to this subtrade. Further, NAPSA states that the rescission of Decree 009–86 should moot the controversy concerning the Trade generally.

F. Nedlloyd

Nedlloyd explains that it has an interest in this proceeding because it plans to institute a service between Chile and the United States on or about July 1, 1988. Nedlloyd states that it will attempt to offer services between Peru and the United States depending on the outcome of this proceeding and the actions taken by the GOP. It contends that the long term commercial viability of this proposed service depends on Nedlloyd's ability to serve Peru as part of its West Coast South America/United States service.

Nedlloyd expresses concern over the effects of the recent rescission of Decree 009–86 and the reestablishment of the cargo waiver system under Decree 036–82. It takes the position that the cargo waiver system under Decree 036–82 is a barrier to third-flag carrier entry into the Trade. Nedlloyd points out that if it wishes to operate in the Trade, it either must obtain a waive or seek associate status by entering into agreements with Peruvian-flag carriers. Nedlloyd finds neither of these options commercially attractive because they impose economic costs on the Trade in general and on Nedlloyd in particular. With regard to obtaining waivers, Nedlloyd asserts that Peruvian-flag carriers and their associates can schedule sailings so that it is virtually impossible for a third-flag carrier to qualify for a waiver.

Further, Nedlloyd maintains that there are potential costs, official and unofficial, of obtaining waivers. It states that it has experienced severe commercial difficulties dealing with the Peruvian cargo preference regime in the Peru/Far East trades and is not eager to

[15] GLTL's May 11, 1988 letter to the Commission was filed subsequent to the closing date of March 31, 1988 for the filing of comments in this proceeding. GLTL's comments filed on March 31, 1988, however, stated that a meeting of GLTL and CPV representatives was expected to occur on April 20, 1988 and that GLTL would promptly inform the Commission of the outcome of that meeting. The Commission therefore has accepted the May 11, 1988 letter which supplements GLTL's otherwise timely comments.

be exposed to future harm in its efforts to provide service in the Trade.

Nedlloyd also notes that, based on its experience, the option of obtaining associate status entails costs which distort the economics of a trade and extracts a "price of admission" from the third-flag carrier. Nedlloyd maintains that third-flag carriers should not be required to enter such agreements when there is no economic or commercial basis for doing so. It contends that these agreements have the effect of diminishing efficiency and price competitiveness of transportation providers.

Nedlloyd alleges that conditions unfavorable to shipping in the Trade continue to exist. It contends that Decree 036–82 inherently discriminates against non-Peruvian-flag carriers and favors Peruvian-flag and associate carriers. Nedlloyd submits that there is no reason to believe that this waiver regime will not have an injurious effect on carriers, shippers and the Trade, similar to the "authorization" system under Decree 009–86. Nedlloyd maintains that because it does not wish to become an associate carrier, Decree 036–82 will preclude it from operating in the Trade. It asserts that there should be no doubt that Decree 036–82 is inconsistent with free access to the Trade.

Nedlloyd recommends, therefore, that the Commission act swiftly to reinstate the Final Rule, with appropriate modifications, on the basis that conditions unfavorable to shipping continue to exist.

C. CPV, Neptuno and Santa

The Peruvian carriers allege that conditions have significantly changed in the Trade given the rescission of Decree 009–86. They contend that the decrees in existence prior to Decree 009–86 [16] and now reestablished, have restored the Trade to its prior state which the Commission has allegedly never found objectionable. Under these decrees, the Peruvian carriers state that only 50 percent of Peruvian import and export cargo is reserved to Peruvian-flag and associate carriers.

Further, noting that those parties supporting the Final Rule had argued that Decree 009–86 denied U.S. shippers the right to choose third-flag carriers, the Peruvian carriers assert that as a result of the three commercial agreements between Peruvian and Chilean-flag carriers, shippers will be able to choose Chilean-flag carriers. They also advise that the GOP has created a commission to further improve conditions in the Trade through its review of Peruvian maritime policy.

The Peruvian carriers contend, therefore, that given the changes in GOP law and the commercial agreements between Chilean and Peruvian-flag carriers, whatever basis may have existed for the Final Rule is no longer present. Further, they submit that the Final Rule casts uncertainty over the Trade, threatens diplomatic relations and courts retaliation. The Peruvian carriers submit that, substantially, all concerns expressed by interested parties have been resolved. They believe that whatever residual concerns or uncertainty exist do not justify continuation of the proceeding and it, therefore, should be terminated.

H. The Chamber

The Chamber notes the good faith efforts made by the GOP and USG to address the situation in the Trade through diplomatic means. It mentions that the repeal of Decree 009–86 and the joint service or space charter agreements between Peruvian and Chilean-flag carriers should result in improvements in the Trade and provide U.S. shippers with greater freedom of choice in U.S. trades. Further, the Chamber contends that the recent increase in U.S. exports to Peru could not have been achieved if conditions unfavorable to U.S. shippers existed.

The Chamber, therefore, supports reconsideration of the Final Rule. It believes that the Commission should now find that there is adequate service in the Trade. Further, it believes that the Commission should find that the GOP's rules and regulations permit U.S. shippers freedom to select the carriers of their choice and create conditions which are no more restrictive than those allegedly accepted by the FMC in most other U.S. trades.

The Chamber takes the position that because the conditions which caused the complaints to the FMC have been corrected, given the improvement in third-flag carrier access to the Trade and the good faith efforts by the GOP to accommodate shippers, the Commission should take no further action, but rather carefully monitor conditions in the Trade. Suspension of Peruvian-flag carriers' tariffs by the FMC allegedly would lead to retaliation by the GOP and suspension of the maritime trade. The Chamber submits that this would be extremely damaging to the relations between the two countries and contrary to U.S. economic and political objectives.

I. GSC

GSC submitted a copy of a letter sent to the Honorable Robin Tallon, which requests that the Congressman review the FMC's actions against Peruvian-flag carriers. This letter expresses hopes that the Congressman would support it in stopping any retaliation against Peruvian-flag carriers because such action could affect GSC's ability to operate in the future. GSC explains that it receives a substantial amount of raw materials from Peru because the U.S. does not have the quality of ore required for its process.

GSC advises that the GOP's cargo reservation system has never been a problem for it. GOP allegedly has granted it waivers whenever necessary. In this regard, GSC advises that it recently used an Ecuadorian-flag carrier for shipment of cargo. GSC contends that to restrict the Peruvian-flag vessels which it may employ in the Trade would inflate the cost of its operation.

J. Occidental

Occidental states that it was pleased with the FMC's decision to exclude the U.S./Iquitos, Peru trade from the proposed sanctions in the Final Rule. It maintains that this decision has enabled it to support its operations in that area. Further, Occidental states because it also has operations on the West Coast of Peru, it joins the Chamber in requesting that the Commission reconsider its proposed sanctions against Peru. Finally, Occidental believes that the GOP's repeal of Decree 009–86 and improved access to the Trade for third-flag carriers should allow the FMC to rescind its Final Rule.

K. SPCC

SPCC advises that if the proposed rule [17] was enacted, it would be forced to seek supplies from Europe and the Far East rather than the United States, and that copper bound for the U.S. would have to move through ports in Mexico or Canada prior to delivery in the U.S. SPCC contends that this would cause increased costs and delays.

SPCC opposes the suspension of Peruvian-flag carriers' tariffs. It asserts that the commercial agreements between Peruvian and Chilean-flag carriers address the concerns of the FMC because Chilean-flag carriers will be accorded associate status. SPCC takes the position, therefore, that the problems which brought about Commission action in the Trade no longer exist and that action by the

[16] Decree 012–70–TC of June 1970, 034–70–TC of December 1970, and 036–82–TC of September 1982.

[17] It is assumed that SPCC means the Final Rule.

Commission would be counterproductive.

Discussion

Uncertainty continues to exist as to the precise nature and operating characteristics of the shipping regime which will regulate traffic between the U.S. and Peru following the reacission of Decree No. 009–86 and the reestablishment of Decree 036–82 and other pre-1986 decrees and resolutions. We continue to be concerned about the terms upon which Chilean-flag carriers and other third-flag carriers will be gaining competitive access to the Trade pursuant to "commercial agreements" filed with the Commission. The impact of these agreements will not be known for some time. The comments on the Commission's March Notice reflect a wide range of views regarding third-flag access to the Trade given the reestablishment of the pre-1986 legal regime in Peru, and the commercial agreements filed. At the least, some of the comments call into question whether the agreements are commercially viable or were entered into solely as an accommodation to the GOP's cargo reservation and other decrees.

Nedlloyd is the only commenter that believes that the Commission should swiftly reinstate the Final Rule with necessary modifications, on the basis that conditions unfavorable to shipping continue to exist because third-flag carrier access to the Trade requires associate status or a waiver. While SCOT believes that unfavorable conditions continue to exist, and that the agreement between CSAV and Neptuno does not provide effective competitive access for CSAV, it states that its members will require at least 90 days to evaluate the effects of recent Peruvian actions on the Trade.

We note that the Chilean party to one of these agreements, CSAV, does not affirmatively propose or support any specific course of action, but states that it would not oppose suspension of the Final Rule. However, it suggests that accompanying such action should be a statement from the Commission that the Final Rule could be reimposed if necessary. Thus, it would appear, that CSAV is not particularly sanguine about the agreement it has entered into and which ostensibly will allow it access to the Trade.

While the Executive Agencies appear optimistic with respect to the problem of Chilean-flag carrier access to the Trade, they are not as certain as to the access of other third-flag carriers. They maintain, however, that given the developments in the Trade, sanctions are not warranted at this time.

GLTL suggests that the Commission hold any further action in abeyance until it has completed agreement negotiations with CPV. The prospective agreement between the two carriers would confer associate status on GLTL.

The Chamber, GSC, NAPSA, Occidental and SPCC believe that the problems which gave rise to the Final Rule have been resolved and, thus, oppose any further action by the Commission. The Peruvian carriers specifically request termination of the proceeding.

The pre-1986 legal regime now in place appears to reserve 50 percent, rather than 100 percent, of Peruvian traffic for Peruvian-flag and *associate* carriers. The remaining 50 percent is open to all carriers, including nonassociate carriers. However, under Decree 036–82, a non-associate carrier must obtain a waiver or cargo manifest certification to carry any portion of the unreserved cargo. The manner in which the "50 percent" reservation is to be administered is unclear in light of the requirements for waivers or manifest certifications on *all* non-Peruvian or non-associate shipments. Given the various requirements, it is possible that significant barriers to non-Peruvian-flag and non-associate carrier access to the Trade continue to exist.

The GOP has stated that it is reviewing its maritime policy in general and its waiver system in particular. It is reported that the GOP plans to apply its waiver system in as flexible a manner as possible.

Reinstatement of the Final Rule appears disfavored by all but one of the parties to this proceeding. The only party requesting immediate reinstatement of the Final Rule with appropriate modifications is a third-flag carrier which has not yet attempted to enter the Trade. With this one exception, the parties believe that the Commission should either terminate the proceeding or hold any further action in abeyance until the situation can be assessed. Reinstatement of the Final Rule would not, moreover, allow shippers the opportunity requested to evaluate the impact of the recent GOP actions and the Chilean and Peruvian-flag carrier agreements on the Trade. The parties which throughout this proceeding have urged Commission action to meet unfavorable conditions in the Trade are now requesting more time to evaluate the situation, and in the case of CSAV, stating that it would not formally object to a suspension of the proceeding.

The course of action suggested by SCOT and others, to hold the proceeding in abeyance for a reasonable period, will allow the Commission time to assess the impact of the recent developments in the Trade including the effect of the pre-1986 legal regime on third-flag carrier access to the Trade, the commercial agreements between Peruvian and Chilean-flag carriers, the anticipated agreement between CPV and GLTL and the GOP maritime policy review. This course of action, in one form or another, appears to be favored, or acceptable, to all but one of the commenters.

Conclusion

Although the Commission is anxious to achieve a resolution of the problems affecting the Trade, it does not appear that further Commission action *at this time* would favorably affect events or actions by the GOP which are moving forward, albeit slowly. The comments from shippers and the carriers presently active in the trade reflect a consensus that, as conditions presently exist, Commission action would be premature.

The Commission has already expressed herein its continued concern that impediments to the entry and operation of third-flag carriers on commercially viable terms may continue to exist, at the least as a part of the re-instated waiver and manifest certification system under Decree 036–82. Nevertheless, the practical workings and effects of that Decree are at present unclear to us, particularly in light of the new agreements among major parties in the Trade.

In order to assess the impact of these new factors, the Commission will hold this proceeding in abeyance for a further period of time. We anticipate that the GOP will have taken further action to clarify the status of laws and decrees affecting shipping in the Trade, including completion of the work of the Commision reviewing maritime policy, before the FMC resumes consideration of these matters.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), Reorganization Plan No. 7 of 1961, 75 Stat. 870, and 46 CFR Part 585, this proceeding is held in abeyance pending further order of the Commission. Interested parties are invited to submit comments, views and information on or before August 31, 1988, concerning whether the conditions unfavorable to shipping in the U.S.-Peru Trade previously found in this proceeding continue to exist, whether other conditions unfavorable to shipping now exist as a result of actions, laws, decrees or regulations of the Government of Peru or carriers in the Trade, and what actions the Commission should take to adjust or meet any such conditions unfavorable to shipping.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–12796 Filed 6–6–88; 8:45 am]

BILLING CODE 6730–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 406]

Electronic Transmission of Freight Bills

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; modification of existing rules.

SUMMARY: The Commission is clarifying its regulations governing rail carrier bills of lading by modifying 49 CFR Part 1035 to *expressly* authorize the use of electronic bills of lading (EBOL). This should eliminate any confusion concerning rail carriers' right to use EBOL.

DATE: This action will be effective June 7, 1988.

ADDRESS: Because the ICC is merely clarifying its existing regulations, prior notice and comment procedures are unnecessary under 5 U.S.C. 553(b)(A). However, the public is welcome to comment on the modified rules by writing to the Office of Proceedings, Deputy Director of Rail Section, Room 2144, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1712.]

SUPPLEMENTARY INFORMATION: To eliminate any possible confusion or doubt that rail carriers may use electronic bills of lading (EBOL), the Commission is modifying its regulations at 49 CFR Part 1035 to authorize expressly the use of EBOL. In *Electronic Transmission of Loss and Damage Claims and Freight Bills*, 365 I.C.C. 581 (1982), *modified at* 367 I.C.C. 699 (1983), the Commission revised 49 CFR Parts 1051, 1008, and 1005 to expressly authorize motor carriers to use EBOL, but did not similarly modify the parallel rail regulation at 49 CFR Part 1035. The Commission explained that it was unnecessary to alter the rail regulation because, absent a clear prohibition against the use of EBOL's, rail carriers were already free to use them. It stated, *Electronic Transmission, supra*, 365 I.C.C. at 585:

> Various parties suggested that railroads * * * should also be included. Particularly, the AAR points out that there are no regulations in effect which either authorize or prohibit using electronic billing by computer and, as a result, many are already doing so.
>
> We agree that there does not appear to be any regulatory impediment to railroads * * * participating in electronic billing. For this reason, we see no need to adopt this suggestion.

Since then, because of the silence in the rail regulations on the use of EBOL, the Commission has received a number of inquiries from persons unsure of the propriety of rail carrier use of EBOL. To eliminate further confusion on this matter, the Commission is now revising its rail regulations at 49 CFR Part 1035, in the manner described in the Appendix hereto, expressly to authorize rail carriers to use EBOL.

The Commission adopts the revision to its rules set forth below, effective immediately.

Prior notice and public comment are unnecessary because this is merely a clarifying procedural change which preserves the *status quo* and has no substantial impact on the industry or the public. No person's legal obligations are affected by this action.

This action does not affect significantly the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1035

Maritime carriers, Railroads.

This action is taken under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: May 27, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49, Part 1035 of the Code of Federal Regulations is amended as follows:

PART 1035—BILLS OF LADING

1. The authority citation for Part 1035 is revised to read:

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

2. Section 1035.1 is amended by designating the existing two paragraphs as (b) and (c) and adding a new paragraph (a) to read as follows:

§ 1035.1 Requirement for certain forms of bills of lading.

(a) All bills of lading referred to in this Part may be either paper documents or electronically generated and/or transmitted bills of lading.

* * * * *

[FR Doc. 88–12754 Filed 6–6–88; 8:45 am]

BILLING CODE 7035–01–M

49 CFR Parts 1104 and 1115

[Ex Parte No. 475]

Designation of Office To Receive Petitions for Review of Agency Orders

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This rule designates the official who must be served with petitions for judicial review under 28 U.S.C. 2112(a), as amended by Pub. L. 100–236, 10 Stat. 1731 (1988). The Commission designates its General Counsel.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert S. Burk, General Counsel, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7312.

SUPPLEMENTARY INFORMATION: On January 8, 1988, Congress enacted Pub. L. 100–236, 101 Stat. 1731 (1988), which amends 28 U.S.C. 2112(a) governing the selection of the appropriate court when petitions for judicial review of agency orders are filed in more than one court of appeals. The amendments to 28 U.S.C. 2112(a) are intended to replace, in part, the "first-to-file" rule, and the resulting "race to the courthouse" when agency orders are issued. S. Rep. No. 263, 100th Cong., 1st Sess. 1, *reprinted in* 1988 U.S. Code Cong. & Admin. News 3198. The amendments take effect on July 6, 1988, 180 days after the date of enactment. Pub. L. 100–236, sec. 3, 101 Stat. 1731, 1732 (1988).

As amended, 28 U.S.C. 2112(a)(2) requires each agency to designate by rule the office and the officer who must receive petitions for review. The Commission designates the Office of General Counsel and the General Counsel and amends its Rules of Practice at 49 CFR 1104.1(a) and 49 CFR 1115.7 to reflect those designations.

Because this amendment to the Commission's Rules of Practice has no effect on the substantive rights of parties and is a procedure specifically required by statute, an opportunity for comment in advance is not necessary under 5 U.S.C. 553(b)(A) and the new rule may take effect on less than 30 days' notice under 5 U.S.C. 553(d)(3).

Environmental and Energy Considerations

The Commission certifies that this rule will not affect significantly the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1104

Administrative practice and procedure.

49 CFR Part 1115

Administrative practice and procedure.

Decided: May 27, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49 of Parts 1104 and 1115 of the Code of Federal Regulations is amended as follows:

PART 1104—PLEADINGS, GENERALLY

1. The authority citation for 49 CFR Part 1104 continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

2. Part 1104 is amended by revising § 1104.1(a) to read as follows:

§ 1104.1 Address and identification.

(a) Except as provided in § 1115.7, pleadings should be addressed to the "Secretary, Interstate Commerce Commission, Washington, DC 20423," and should designate the docket number and title of the proceeding, if known.

* * * * *

PART 1115—APPELLATE PROCEDURES

1. The authority citation for 49 CFR Part 1115 continues to read:

Authority: 49 U.S.C. 10321, 10322, and 10377; 5 U.S.C. 559.

2. Part 1115 is amended by adding § 1115.7, which shall read as follows:

§ 1115.7 Petitions for judicial review; mailing address.

Petitions for judicial review of final agency orders may be served on the Commission pursuant to 28 U.S.C. 2112(a) and be addressed to "General Counsel, Office of the General Counsel, Interstate Commerce Commission, Washington, DC 20423."

[FR Doc. 88-12755 Filed 6-6-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 70617-7239]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of area opening.

SUMMARY: NOAA issues this final notice to open the currently closed surf clam areas located offshore of Atlantic City, New Jersey, and Ocean City, Maryland, for harvesting. This action is taken because the majority of the surf clams located in these areas have attained the current legal minimum size of 5 inches. The intended effect is to allow the harvest of surf clams which have been protected and allowed to grow to produce greater yields.

EFFECTIVE DATE: July 3, 1988.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, Surf Clam/Ocean Quahog Plan Coordinator, 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) is implemented by regulations appearing at 50 CFR Part 652. At meetings held in November 1986 and January 1987, the Mid-Atlantic Fishery Management Council (Council), requested that the Secretary of Commerce reopen the three closed areas designated as Atlantic City, Chincoteague, and Ocean City, with the exception that the Chincoteague, Virginia, closed area would be reopened to allow thinning of the surf clam beds, except for a 9-square-mile research area which would remain closed.

As required by § 652.23, the Secretary published notice of this proposed action (52 FR 4020, February 9, 1987) and requested comments on opening the three currently closed areas. Public hearings were held on February 13 and 14, 1987, at locations in New Jersey and Maryland. Comments favored opening each of the three areas, with consensus that all three areas should be opened at the same time and that the opening should not occur until after November 1987.

Before this action could be taken, a regulatory amendment was needed to make the surf clam size criteria for reopening areas consistent with the prevailing legal minimum surf clam size. Amendment 3 to the FMP specified that areas could be reopened once the average length of the dominant size class in the area to be reopened reached 5⅛ inches or greater. Amendment 5 to the FMP provided a mechanism for adjusting the legal minimum size within a range of 4¾ to 5⅛ inches. Under the provisions of Amendment 5, a notice was published (50 FR 46671, November 12, 1985) reducing the legal minimum surf clam size to 5 inches, with opportunity for public comment until December 31, 1985. After considering comments, and with the aim of reducing wasteful discards, the 5-inch minimum legal size limit was confirmed (51 FR 8326, March 11, 1986) and currently prevails.

A regulatory amendment (53 FR 4630, February 17, 1988) modified the closed area criteria by specifying that instead of 5⅛ inches, an area could be reopened if the average length of the dominant size class in that area was equal to or greater than the prevailing legal minimum size. A 1986 stock survey the (most recent survey) performed under contract by Rutgers University determined that the mean length for surf clams in the Ocean City area was 4.9 inches with a 0.32-inch standard deviation and the mean length in the Atlantic City area was 5.3 inches with a 0.48-inch standard deviation.

At the April 1988 Council meeting, the Council reconsidered the motion recommending that the Chincoteague area be reopened. The sentiment was that while there is justification for opening the area, there is a potential for a high discard of small clams with a resultant high mortality. An opinion was expressed that under the current method of effort control, vessel operators could not be selective on which beds to work and harvesting would be done with the intent to achieve the maximum yield in the least amount of time. The Council voted to wait to open the Chincoteague area until implementation of Amendment 8 to the FMP, at which time harvesters would be allowed to be more selective.

Areas

The areas reopened by this notice are defined as follows:

Atlantic City Closed Area—located between 3 and 9⅛ nautical miles offshore of Atlantic City, New Jersey. Part of the area was reopened in 1982.

Area currently closed:

Latitude	*Longitude*
39°15.5' N.	74°30.0' W.
39°28.5' N.	74°14.15' W.
39°37.2' N.	74°09.7' W.
39°17.62' N.	74°14.3' W.
39°11.6' N.	74°23.5' W.

Area reopened in 1982:

Latitude	*Longitude*
39°12.4' N.	74°22.3' W.
39°28.33' N.	74°22.37' W.
39°18.35' N.	74°13.6' W.
39°17.6' N.	74°14.3' W.

Ocean City Closed Area—located between 6 and 10 nautical miles offshore of Ocean City, Maryland.

Area currently closed:

Latitude	*Longitude*
38°17.0' N.	74°57.0' W.
38°20.5' N.	74°51.0' W.
38°19.0' N.	74°48.5' W.
38°12.5' N.	74°51.0' W.

Opening Date

In order to allow for sufficient notification and equitable access to the areas to be reopened, the opening date will be July 3, 1988, which is the first day of the third quarter.

Effort Control/Monitoring

Under § 652.23(b)(3), "the Secretary will control the harvest of surf clams from reopened areas separate from the management of the general fishery until the catch per unit of effort in the reopened area is comparable to the average catch per unit of effort in the general fishery." To achieve this goal, vessels operating in the two reopened areas will be limited to one trip of six hours' duration per quarter for each of the areas. These trips will be included among the regularly scheduled trips allotted for the third quarter.

Trips to be taken in the reopened areas must be indicated on the Letter of Authorization by writing either "Atlantic City" or "Ocean City" immediately following the scheduled trip day.

Written notification to NMFS must include this designation when scheduling trips for the third and subsequent quarters. Additionally, vessels working the reopened areas will be required to indicate in the "Area Fished" column of the vessel Fishing Trip Record (Shellfish) (NOAA Form 88-140) the name of the reopened area as well as the loran bearings of latitude/longitude coordinates.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries.

Dated: June 2, 1988.

Richard H. Schaefer,

Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-12802 Filed 6-6-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 109
Tuesday, June 7, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Public Workshop for NRC Rulemaking on Maintenance of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: On March 23, 1988, the Commission published a final Policy Statement on Maintenance of Nuclear Power Plants. In the Policy Statement, the Commission stated it expected to publish a Notice of Proposed Rulemaking in the near future, and has directed the staff to develop such a Notice of Proposed Rulemaking. In order to solicit information and comment from the public and regulated industry early in the formulation of the proposed rule, NRC plans to conduct a workshop.

DATES: July 11–13, 1988.

ADDRESS: The Mayflower Hotel, 1127 Connecticut Avenue NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3730.

SUPPLEMENTARY INFORMATION: The following is the agenda for the workshop.

Day 1: General Session (9 am–5 pm).

1. Introduction and opening remarks by the Workshop Chairman.
2. Remarks by NRC Commissioner.
3. NRC Approach, Schedule and Options for Maintenance Rulemaking.
4. Presentations by the Public and Industry.

Statements and comments by the public and industry on items pertaining to the rulemaking are requested. These may be of a general or specific nature.

The following are specific questions and topics which are of interest and which the NRC desires to have input on:

—What approach should NRC take in developing a rulemaking on maintenance:

- Prescriptive?
- General Goals?
- Standardize Maintenance Practices?
- Performance Indicators?

—How should the rule address the various maintenance activities listed in the Policy Statement?

—What defines a good maintenance program?

- What industry standards are available for defining an effective maintenance program.
- How should the effectiveness of a maintenance program be measured/monitored?

Presentors are also welcome to address other areas related to the maintenance rulemaking.

5. Question/Answer Period.

Day 2: Working Group Sessions (9 am–5 pm).

The activities listed in the Commission Policy Statement on Maintenance of Nuclear Power Plants have been grouped into four major areas. There will be parallel sessions of four Working Groups in each of these areas to discuss how they could be addressed in a rule, regulatory guide and/or industry standard.

Working Group A: *Maintenance Technology*
(1) Corrective maintenance
(2) Preventive maintenance
(3) Predictive maintenance
(4) Surveillance
(5) Post-maintenance testing
(6) Others

Working Group B: *Maintenance Management, Planning, and Organization*
(1) Procedures
(2) Planning
(3) Scheduling
(4) Staffing
(5) Shift coverage
(6) Allocation of resources
(7) Personnel qualification and training
(8) Record keeping
(9) Management of contract maintenance services
(10) Management of spare parts, tools, facilities, and equipment qualifications
(11) QA/QC
(12) ALARA considerations (occupational exposures)
(13) Reporting requirements
(14) Others

Working Group C: Maintenance Monitoring, Assessment, and Effectiveness
(1) Equipment history and trending
(2) Surveillance
(3) Predictive maintenance
(4) Information feed-back loop
(5) Measures of overall maintenance program effectiveness
(6) Effective communications structure
(7) Industry/NRC data base
(8) Others

Working Group D: Effective Organizational Communications
(1) Communications between maintenance and: (a) Operations; (b) Corporate; (c) Corporate engineering and design.
(2) Incorporation of vendor maintenance recommendations
(3) Engineering support and modifications (e.g., cooperation, coordination, and support between maintenance group and the engineering/design group)
(4) Interface and communications with contract maintenance services

Note:

All four working groups would be asked to focus on the following objectives:

(1) Discuss the important issues for an effective maintenance program and the approach for addressing these issues in rulemaking.

(2) Provide information regarding acceptable ways to adequately address these issues and acceptance criteria that could be included in a rule, regulatory guide or industry standard.

(3) Provide information regarding industry's initiatives as they relate to each one of these issues and areas.

(4) Prepare a brief report summarizing highlights of their discussion (to be prepared by the working group chairman).

Each working group will be asked to address a specific set of questions related to its topic area.

Day 3: Final Session (9 am–12 noon).

1. Highlights of Working Group A: Working Group A Chairman.
2. Highlights of Working Group B: Working Group B Chairman.
3. Highlights of Working Group C: Working Group C Chairman.
4. Highlights of Working Group D: Working Group D Chairman.
5. General Comment Period.
6. Concluding remarks by Workshop Chairman.

Those members of the public who wish to attend the workshop should notify the contact listed above. In addition, those members of the public who wish to make a presentation on Day 1, or who wish to be a member of any of the Working Groups on Day 2 of the Workshop should indicate their preference to the contact listed above so that they can be added to the agenda. Early notification is recommended since requests will be processed as they are received.

Dated in Rockville, Maryland, this 1st day of June, 1988.

For the Nuclear Regulatory Commission.

Moni Dey,

Task Manager, Advanced Reactors & Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 88–12784 Filed 6–6–88; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Size Standard for Export Trading Companies and Export Management Companies

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA is proposing to establish a size standard of $10 million for "Export Trading Companies and Export Management Companies (ETCs/EMCs/)." Currently, SBA has no small business definition for such firms. Because of the increased interest in exporting and the uniqueness of these types of firms, SBA wishes to establish a size standard to clarify the size status of ETCs/EMCs. The intent of this rule is to determine which firms would be eligible for SBA's financial assistance and other programs.

DATE: Comments must be submitted on or before August 8, 1988.

ADDRESS: SEND ALL COMMENTS TO: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 L Street, NW., Room 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:
Robert N. Ray, Economist, Size Standards Staff, (202) 653–6373;
Sheryl J. Swed, Director, Office of International Trade, (202) 653–7794.

SUPPLEMENTARY INFORMATION: Since the enactment of the "Export Trading Company Act" in 1982, Pub. L. 97–270, there has been interest in the formation of such companies. SBA has attempted to encourage exporting by small businesses, including but not limited to, ETCs/EMCs, through a variety of programs, such as:

- Export Revolving Lines of Credit to guarantee loans made by private lenders of up to $500,000, and in conjunction with the Export-Import Bank, of loans up to $1,000,000.
- Other regular business loans of up to $500,000 through the SBA's 7(a) Loan Guarantee Program.
- Business Development assistance tailored to meet the needs of exporters through counseling by volunteers (SCORE/ACE), Small Business Institutes, or Small Business Development Centers.
- Legal consultation including free initial consultations provided through an agreement between the Federal Bar Association's International Law Council and SBA.
- Export training, international trade missions, publications, and other services provided by SBA.

This assistance is not limited to firms formally organized or certified as ETCs under the "Export Trading Company Act" of 1982. It applies to any small firm which exports or intends to export. For purposes of this rule, the terms "EMC and ETC" are used interchangeably.

ETCs usually purchase goods from a manufacturer, take title, and sell abroad. Some, however, do not take title, but work on a commission and/or fee basis. ETCs act as the export arm for small and medium sized manufacturers. Such manufacturers are generally too small to set up their own export activities and look to ETCs to market their products abroad. Thus, ETCs can also act as intermediaries to facilitate the exports of small business. It is for this reason that SBA is interested in fostering ETCs and in developing a size standard for these types of businesses.

While export trading incorporates elements of both wholesaling and certain business services, like market research, product design, insurance, freight forwarding, etc. SBA believes it is sufficiently unique, and other possible size standards so inappropriate, that the ETC/EMC activity warrants its own size standard. Compared to conventional domestic wholesalers, ETCs perform many functions beyond wholesaling, yet typically do not handle the volumes of most wholesalers. They also provide more than export-related business services in that they often take title to goods and provide storage facilities. Thus the uniqueness of this activity and the special attention accorded it under the "Export Trading Company Act" lead SBA to propose a size standard for this activity.

When researching an industry for size standards purposes, SBA relies on generally accepted published statistical sources such the Census Bureau, Internal Revenue Service, SBA's Small Business Data Base, and similar sources for a description of the economic structure of the industry. Because ETCs do not comprise an industry in the sense of being recognized in the "Standard Industrial Classification Manual," the typical statistical sources do not collect data on the structure of this activity. Normally, data on the number of firms, average firm size by sales and employees, distribution and range of firm sizes, and primary line of business are essential in formulating a size standard (see 13 CFR 121.1).

As a substitute for these data, SBA has obtained information from secondary sources. These include: A 1980 survey by the National Association of Export Companies (NEXCO), a trade group; a survey conducted in 1983 by Coopers and Lybrand, an accounting firm; and "The Export Company Guidebook" on ETCs prepared in 1984 by Price Waterhouse and the Council for Export Trading Companies for the Commerce Department's International Trade Administration.

First, the NEXCO survey obtained results from 92 firms out of 134 NEXCO members. NEXCO found that the average volume of export sales ranged from $8 million to $17 million per firm with the $5–10 million size category, containing 19 firms, as the mode.

TABLE 1.—1980 EXPORT SALES VOLUME [1]

[By percentage of 90 NEXCO respondents; dollars in millions]

[1] Firm size	$1 or less	$1–3	$3–5	$5–10	$10–20	$20–50	Over $50
Percent	8.7	19.5	13.0	20.7	18.5	14.1	5.5

[1] "A Profile of the Export Trading Company Industry," NEXCO, New York, July 1981 Table 6, p. 11

Second, Coopers and Lybrand (C&L) composed a similar table based on 201 respondents out of 1178 which received surveys.

C&L's survey was broader in that it attempted to query all identifiable ETCs. Because NEXCO's "members represent many of the largest ETCs operating in the United States," [1] its data are biased upward. Due to larger sample size and more recent results, the C&L survey is probably more reliable. It shows that firms are smaller than NEXCO found (even with 13 percent inflation in the intervening years [2], and that the mode is lower than the $1 million size category. C&L's average firm size range is $4 million to $11 million.

[1] NEXCO, op. cit., p. 11.

[2] "Economic Report of the President, 1985," Implicit price deflators for GNP for exports, Table B–3, p. 237

TABLE 2.—PERCENT OF ETC'S BY FIRM SIZE CATEGORIES [1]

[By percent of firms; dollars in millions, annual revenues]

Firm sizes	$0–1	$1–2	$2–5	$5–10	$10–50	Over $50
Percent of firms	27	19	23	13	15	2
percent of revenues	2	3	9	11	46	28

[1] "Export Management Companies," R. Spiewak and K. Maritz, Coopers & Lybrand, Washington, D.C., June 1984, Table 2, p.7, Percent of Revenues, SBA estimate.

C&L also obtained results on firm size by employees. Average employment was between 8 and 15 employees. One-third of the firms had four or fewer employees, the model size category. Average sales per employee is estimated at $800,000, (1983 dollars).[3]

According to the C&L study, 25 percent of ETCs revenues are accounted for by firms in the under $10 million sales size category. Typically, an ETC of $10 million in sales would have one foreign office, staffed by no more than four employees, in addition to one domestic office; and above $10 million in annual sales, the firm would add a second foreign office.

[3] Separately, the U.S. Dept. of Commerce estimated per employee sales volume of $400,000 to $850,000 per year. "The Export Company Guidebook", March 1984, p. 34.

TABLE 3.—PERCENT OF EMPLOYEES EMPLOYED BY ETC'S OF VARIOUS FIRM SIZES [1]

Firm size	1–4	5–9	10–24	25–49	/Over 50
Percent of employees	37	29	22	6	/6

[1] Coopers & Lybrand, op. cit., Table 3, p. 8.

Third, the Price Waterhouse/Council for "Export Trading Companies Guidebook" was published by the U.S. Department of Commerce (DoC) in 1984. The Guidebook identifies three categories of ETC's by size of trading volume; these are:

- Major trading entities, typically *Fortune* 1,000 companies such as Sears World Trade, Inc., General Electric Trading Company, and others.
- Moderately sized "free standing" trading entities. There are a small number of these which each export about $50 million to $80 million per year.
- Small export trading companies of which there are an estimated 2,000 such firms. At $6.5 million in volume, an ETC becomes "viable * * * in terms of manpower and potential trading flexibility," the Guidebook states. Employees would number 10 to 15 persons at this level of trading volume. These small ETCs average $3 million in annual volume; this is too low to achieve the minimum threshold for viability, the Guidebook explains.

This last category is of most interest for size standards purposes. Using the range of sales per employee for ETCs from the guidebook—$400,000 to $850,000 per year—and the minimum viable size of 10 to 15 employees described above, yields a range of ETC sizes of $4 million to $8.5 million for a 10-employee ETC and $6 million to $12.8 million for a 15-employee ETC. These size firms may be considered minimum viable sizes with the range of sales, $4 million to $12.8 million, reflecting the different types of goods and services which would be exported.[4]

Because of the lack of regular economic statistics, SBA in advance of this proposed rule contacted ETC trade groups and others to obtain a better picture of the industry.[5] SBA was interested especially in three factors—the number of ETCs, the unit of measurement of firm size, and an opinion of what the size standard should be. First, there seems to be general agreement that there are about 1300 ETCs with estimates ranging from 1200 to 1500 firms.

Second, SBA attempted, through contracting various sources and attending conferences on export trading companies, to solicit opinions as to the measurement and appropriate level of firm size. Most sources favored using sales dollars, although employees and profits were also mentioned. Occasionally, sources recommended specific size standards. Two recommended $10 million, one $25 million, and one $100 million.

Based on the above information, SBA is proposing to establish a size standard of $10 million. This level is being proposed because it is within the range of viable firm size for an ETC as discussed in the DoC's Guidebook, and because it reflects those sizes of firms discovered in the NEXCO and Coopers & Lybrand surveys.

Because not all ETCs take title to the goods exported, in computing annual receipts of the firm, SBA will also include revenues from other sources including commissions and fees. For Example, if an ETC sold $4 million of goods for which it has title, received $800,000 in brokerage commissions and $200,000 in consulting fees, then its receipts would be $5 million.

SBA's definition of export trading or export management company is proposed to draw on the "Export Trading Company Act" of 1982 (15 USCS & 4002[a] [3] & [4]). The definition proposed here differs from the Act in that non-profit firms are not included, and the term "primarily engaged" is added to conform to similar SBA regulations for financial assistance. While not made explicit in the ETCs definition, when applying for financial assistance, ETC must conform to the normal SBA finance regulations (13 CFR Part 120). This means, for example, that a firm primarily engaged in export financing or currency dealing would not be eligible for financial assistance. If these activities, however, were merely incidental to general exporting, then the applicant would be eligible under the financial assistance regulations.

For lack of a specific size standard for ETCs, SBA had been using the size standard for wholesale trade, 500 employees, since changed to 100 employees as of August 11, 1986. The impact of this rule would be to change the effective size standard from 100 employees to $10 million in receipts. This would reduce the number of ETCs regarded as small business. However, since SBA estimates there are 225 ETCs between the presently used size standard of 100 employees and the proposed one of $10 million,[6] and typically only a small percent of firms out of any population are likely to use SBA assistance, the impact is not expected to be great. For example, the number of export revolving line of credit loans has averaged 20 per year for the past 4 years.

Other Federal agencies which have small business export assistance include the Overseas Private Investment Corporation. Since this corporation, however, has elected not to use the SBA's size standards, the proposed change if finalized, would not be the cause of any impact.

Another agency is the Export-Import Bank which does use the SBA's size standards for its export credit program. This program is primarily used to facilitate the export of U.S. manufactured products. As such even if an ETC is involved in the transaction, the size standard applied by the bank is the one for the manufacturer, not the ETC. Since ExIm's small business credit (64 loans and $23 million in credit for FY 1985) goes almost entirely to manufacturers, a change in the ETC size standard would have little impact.

Therefore, SBA certifies that this regulation, if made final, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et sequitur.*

SBA also certifies that this regulation is a nonmajor rule as defined by Executive Order No. 12291, in that it is not expected to have an impact of over $100 million per year. The amount of SBA assistance available for ETCs is far less than $100 million. In addition, this

[4] For example, an ETC dealing in medical equipment may have fewer sales per employee than one dealing in sporting goods, which are a mass-market product.

[5] Some of the sources questioned were the Council on Export Trading Companies, Washington, DC; Overseas Sales and Marketing Assn., Chicago; American Export/Import Assn., New York; National Assn. of Export Companies, New York; Coopers & Lybrand, Washington, DC; U.S. Dept. of Commerce, Office of Export Trading Companies, Washington, DC

[6] Estimated by assuming 1500 total ETCs' From Table 2, using 15% of firms between $10 million and $50 million sales, the approximate equivalent of 100 employees, yields 225 firms.

regulation is not likely to result in a major increase in costs or prices, or have a significant adverse impact on the U.S. economy.

SBA also certifies that this regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35. This rule defines the maximum size firm in the industry which may be eligible for SBA assistance. The legal basis for the proposal is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a) and 634(b). There are no Federal rules which duplicate, overlap, or conflict with the proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant Programs business, Loan programs-business, Reporting and recordkeeping requirements, Small Business.

Accordingly, SBA proposes to amend Part 121 of 13 CFR as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR would continue to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 632(a) and 634(b)(6).

2. Paragraph (i) would be added to § 121.4 to read as follows:

§ 121.4 Small business for financial programs.

* * * * *

(i) For purposes of financial assistance or other assistance, an "export trading company" is a small business if it has average annual receipts not exceeding $10 million for its preceding 3 fiscal years.

(1) For purposes of these regulations, the term "export trading company" means a person, partnership, corporation, association, or similar organization, operated for profit, which does business under the laws of the United States or any State, and which is organized for and primarily engaged in:

(i) Exporting goods or services produced in the United States, or

(ii) Facilitating the exportation of goods or services produced in the United States by providing one or more export trade services.

(2) An export trading company includes for all purposes under these regulations an export management company. To be an export trading company under these regulations, a firm need not qualify as an trading company under the "Export Trading Company Act" of 1982, Pub. L. 97–270.

(3) The term "Export Trade Services" as used in this part, includes but is not limited to, consulting, international market research, advertising, marketing, insurance, product research design, legal assistance, and transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing and taking title to goods when provided in order to facilitate the export of goods or services produced in the United States.

(4) A small export trading company as defined herein is not eligible for SBA's financial assistance if it is otherwise ineligible under § 120.101–2 of these regulations governing types of business eligible for financial assistance.

James Abdnor,

Administrator, U.S. Small Business Administration.

Date: May 25, 1988.

[FR Doc. 88–12501 Filed 6–6–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 057CE, Notice No. 23–ACE–42]

Special Conditions; Gyroflug Model SC–01 Speed Canard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Gyroflug Ingenieurgesellschaft mbH Model SC–01 Speed Canard airplane. The Gyroflug Model SC–01 will have novel or unusual design features when compared to the state of technology envisaged in the airworthiness standards of Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the aerodynamic configuration of the airplane, the location of the engine and propeller, and the use of composite materials for primary flight structure, for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 23.

DATE: Comments must be received on or before October 5, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 057CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 057CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 057CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Gyroflug Model SC–01 airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; Part 23 of the FAR, effective January 9, 1965, including amendments 23–1 through 23–25; Part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions that may result from this proposal.

Background

On January 27, 1984, Gyroflug Ingenieurgesellschaft mbH, Flughafen, 7570 Baden-Baden Oos, West Germany, filed an application to the FAA Brussel's Office for U.S. type certification for its Model SC–01 Speed Canard airplane. The Gyroflug Model SC–01 is a small, two-place, composite structure, canard configuration airplane with a pusher propulsion system. It is powered by a 116-horsepower Avco Lycoming 0–235–P2A reciprocating engine and the airplane has a maximum takeoff weight of 1,500 pounds. The airplane received German type certification on September 30, 1983.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Model SC–01 airplane contains a number of novel or unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model SC–01 airplane.

The Model SC–01 airframe is made of composite material and is assembled by the extensive use of bonding. This material and its assembly is completely different from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the Model SC–01 airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the wing fatigue requirements of § 23.572 are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of composite materials and extensive bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of Part 23. Because the requirements of Part 23 do not require the level of subsidiaries necessary for composite material structure, a special condition is proposed to include the necessary airworthiness standards as a part of the type certification basis for the Model SC–01 airplane. This special condition is proposed to assure that a level of safety exists for airplanes made from bonded composite materials equivalent to those existing for aluminum airplanes.

The proposed special condition will require the wings and other composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage consideration includes principal structural elements, such as the wing, wing carry-through, wing attaching structure, fuselage, and the vertical and horizontal stabilizers and their carry-through structures, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the proposed special condition is worded to permit approval, based on safe-life testing. Metal details may continue to be evaluated to the fatigue requirements of § 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of Part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the Model SC–01 airplane equivalent to that required by the airworthiness standards of Part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as moveable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of Part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate proposing special conditions to assure an appropriate level of safety for the Model SC–01 airframe structure. These proposed special conditions are intended to require: (1) Accounting for environmental effects; i.e., temperature and humidity on material mechanical properties in all structural substantiation analyses and tests, (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability, and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof-testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of "design features," provided each bonded is subjected to its critical design limit load during the proof testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof-testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventive maintenance and inspection procedures different from those commonly utilized for aluminum airframes, the proposed special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

The forward-mounted lifting surface, i.e., canard, of the Model SC–01 incorporates aerodynamic control surfaces with function as elevators for longitudinal (pitch) control of the airplane. With this configuration, the forward lifting surface has a significant effect on the lift distribution of the main wing and Part 23 does not currently provide strength requirements which adequately or appropriately address the forward/main wing configuration. In addition, Part 23 does not adequately or appropriately address requirements for longitudinal control surfaces attached to the trailing edge of the forward wing. The forward lifting surface on the airplane is subject to different structural loads from those airplanes with aft-mounted empennages. Existing Part 23 requirements specifically address only horizontal tail surfaces. The forward-mounted horizontal lifting surface, like the one chosen for the Model SC–01 design was not envisioned when Part 23 was promulgated. A special condition is proposed to clarify and broaden the existing Part 23 requirements to account

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for the airplane loads associated with the novel or unusual forward lifting surface design.

Additionally, Model SC-01 has vertical extensions at the end of the main wing which act as vertical stabilizers and include rudders. The unusual aerodynamic configuration resulting from the use of these vertical stabilizers and the forward wing lifting surface; i.e., forward wing, combined with the aft-facing pusher propeller are novel and unusual when compared to the aerodynamic configuration envisioned by the airworthiness standards of Part 23. Depending upon the preferred terms of "winglets," "tip fins," or "tip sails" of a particular manufacturer, the vertical surfaces at the ends of the main wing perform substantially the same functions of directional stability, and, in some cases, directional control. Part 23 does not adequately or appropriately address requirements for vertical surfaces providing directional stability and control when these surfaces are located at the ends of the main wing. Therefore, the FAA is proposing a special condition to ensure adequate strength requirements for this novel or unusual design feature.

The aft-mounted propeller of the selected configuration may be susceptible to contact with the runway surface at the maximum pitch attitude attainable during takeoff and landing. This is an unusual design feature different from the tractor configuration envisioned by the airworthiness standards of Part 23. Therefore, a special condition is proposed to provide adequate ground clearance for the propeller. If a tail wheel or energy absorbing device is provided to show compliance with the special condition, as proposed, the FAA proposes to require that appropriate design loads be established for the energy absorbing device and that the energy absorbing device and its supporting structure be designed to support those loads.

Since the aft location of the propeller on the Model SC-01 is an unconventional design feature, passenger and ground personnel may be less aware of the proximity of the propeller blades. A special condition is proposed to require the necessary visibility of the propeller disc corresponding to similar requirements of Parts 27 and 29 concerning the conspicuity of the tail rotor.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

PARTS 21 AND 23—[AMENDED]

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Gyroflug Model SC-01 series Airplanes:

1. Evaluation of Composite Structure

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, in each wing, wing carry-through, wing attaching structure, fuselage, wing mounted vertical stabilizer, wing flap, and moveable control surfaces must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (i) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) Each wing, fuselage, wing carry-through, wing attaching structure, wing flap, moveable control surface, and wing-mounted vertical stabilizer structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(h) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) The airplane must be shown by analysis to be free from the flutter to V_D with the extent of damage for which residual strength is demonstrated.

(j) For those structures where the damage tolesance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads

of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Loads

(a) In addition to the requirements of § 23.301, paragraph (b), the following shall be required: Methods used to determine load intensities and distribution over the various aerodynamic lifting and control surfaces must be validated by flight test measurements unless the methods used for determining those loads are shown to be reliable or conservative for the configuration under consideration.

(b) In lieu of § 23.301, paragraph (d), the following applies: The forward lifting surface of a canard or tandem wing configuration must meet all of the requirements of Part 23, Subpart C—Structure, applicable to a wing.

(c) In lieu of § 23.331, the following apply:

(1) The appropriate balancing loads must be accounted for in a rational or conservative manner when determining forward and main wing loads and linear inertia loads corresponding to any of the symmetrical flight conditions specified in §§ 23.333 through 23.341.

(2) The incremental forward wing loads due to maneuvering and gusts must be reacted by the angular inertia of the airplane in a rationale or conservative manner.

(3) Mutual influence of the aerodynamic surfaces must be taken into account when determining flight loads.

(d) In addition to the gust load requirements of § 23.341, the following applies: The gust loads for a canard or tandem wing configuration must be computed using a rational analysis considering the gust criteria of § 23.333(c), or may be computed in accordance with § 23.341 provided the resulting load factors are shown to be conservative with respect to the gust criteria of § 23.333(c).

(e) In lieu of the balancing loads requirements of § 23.421, the following apply:

(1) A horizontal surface balancing load is a load necessary to maintain equilibrium in any specified flight condition with no pitching acceleration.

(2) Horizontal balancing surfaces must be designed for balancing loads occurring at any point on the limit maneuvering envelope and in the flap conditions specified in § 23.345. The distribution in figure B6 of Appendix B of Part 23 may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(f) In lieu of the maneuvering load requirements of § 23.423, the following apply:

(1) Each horizontal surface with pitch control must be designed for maneuvering loads imposed by the following conditions:

(i) A sudden movement of the pitching control at V_A, to (1) the maximum aft movement, and (2) to the maximum forward movement, as limited by the control stops, or pilot effort, whichever is critical.

The average loading of B23.11 of Appendix B and the distribution in figure B7 of Appendix B may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(ii) A sudden aft-movement of the pitching control at speeds above V_A, followed by a forward movement of the pitching control resulting in the following combinations of normal and angular acceleration:

Condition	Normal acceleration (n)	Angular acceleration (radian/sec.^{2})
Nose up pitching.	1.0	$+39\ n_m\ (n_m - 1.5) \frac{}{V}$
Nose down pitching.	n_m	$+39\ n_m\ (n_m - 1.5) \frac{}{V}$

where—

(a) n_m = positive limit maneuvering load factor used in the design of the airplane; and

(b) V = initial speed in knots

(2) The condition in this section involve loads corresponding to the loads that may occur in a "checked maneuver", i.e., a maneuver in which the pitching control is suddenly displaced in one direction and then suddenly moved in the opposite direction. The deflection and timing of the "checked maneuver" must avoid exceeding the limit maneuvering load factor. The total horizontal surface load for both down-load and up-load conditions is the sum of the balancing loads at V and the specified value of the normal load factor, n_m plus the maneuvering load increment due to the specified value of the angular acceleration. The maneuvering load increment in figure B2 of Appendix B and the distribution in figure B7 for nose-up pitching and in figure B8 for nose-down pitching of Appendix B may be used only on airplane configurations with aft-mounted surfaces unless their use elsewhere is shown to be conservative.

(g) In lieu of the gust loads requirements of § 23.425, the following apply:

(1) Each horizontal surface, other than the main wing, must be designed for loads resulting from—

(i) Gust velocities specified in § 23.333(c) with the flaps retracted; and

(ii) Positive and negative gusts of 25 feet per second (f.p.s.) nominal intensity at V_F corresponding to the flight conditions specified in § 23.345(a)(2).

(2) When determining the total load on the horizontal surfaces for the conditions specified in subparagraph (g)(1) of this special condition, the initial balancing loads for steady unaccelerated flight at the pertinent design speeds, V_F, V_C, and V_D must first be determined. The incremental load resulting from the gusts must be added to the initial balancing load to obtain total load.

(h) In lieu of unsymmetrical load requirements of § 23.427, the following apply:

(1) Horizontal surfaces, other than the main wing, and their supporting structure must be designed for unsymmetrical loads arising from yawing and slipstream effects, in combination with the loads prescribed for the flight conditions set forth in paragraphs (e) through (g) of this special condition.

(2) In the absence of more rational data:

(i) 100 percent of the maximum loading from the symmetrical flight conditions may be assumed on the surface on one side of the plane of symmetry; and

(ii) The following percentage of that loading must be applied to the opposite side:

Percent = 100—10 (n-1), where n is the specified positive maneuvering load factor, but this value may not be more than 80 percent.

(3) The vertical and horizontal surfaces and their supporting structures must be designed for combined vertical and horizontal surface loads resulting from each prescribed flight condition taken separately.

(i) In the absence of specific requirements for wing mounted vertical stabilizers, the following apply: Vertical stabilizers mounted on the wing must meet the applicable requirements of §§ 23.441, 23.443, and, in lieu of a more rationale method, § 23.445 for vertical tail surfaces. The effect of these surfaces

on the spanwise loading of the wing must also be accounted for.

3. Propeller Ground Clearance

In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propeller will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(b) If a tail wheel, bumper, or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable design loads must be established for the tail wheel, bumper, or energy absorption device; and

(2) The supporting structure of the tail wheel, bumper, or energy absorption device must be designed to withstand the loads established in subparagraph (b)(1) of this special condition and inspection/replacement criteria must be established for the tail wheel, bumper, or energy absorbing device and provided as part of the information required by § 23.1529.

4. Propeller Marking

In the absence of specific regulations, the propeller must be marked so that the disc is conspicuous under normal daylight ground conditions.

Issued in Kansas City, Missouri on May 18, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-12732 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-13]

Proposed Control Zone Establishment; Waukegan, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Waukegan, IL, airport control zone to serve Waukegan Regional Airport, Waukegan, IL. This results from the establishment of an Air Traffic Control Tower (ATCT) at Waukegan, IL, which is expected to be commissioned in October 1988. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before July 12, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone near Waukegan, IL.

The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a five statute mile radius of the geographic center of Waukegan Regional Airport, Waukegan, IL. The control zone would be effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory.

In addition, aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Waukegan, IL [New]

Within a five (5) mile radius of the Waukegan Regional Airport, Waukegan, IL, (Lat. 42°25'20" N., Long. 0 87°52'04" W.). The control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Des Plaines, Illinois, on May 25, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-12726 Filed 6-6-88; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1501

Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, Or Ingestion Hazards Because of Small Parts; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On basis of available information, the Commission has reason to believe that unreasonable risks of death and injury may be associated with some toys and articles intended for children under three years of age because of small parts. The toys and children's articles under consideration comply with all requirements enforced by the Commission but nevertheless have parts which may be small enough to present choking, aspiration, or ingestion hazards to children under three.

This advance notice of proposed rulemaking begins a rulemaking proceeding under the authority of the Federal Hazardous Substances Act. One outcome of the proceeding could be the amendment of existing requirements for toys and articles intended for children under three years of age to address risks of injury associated with small parts that present choking, aspiration, or ingestion hazards. Additionally, the Commission is considering the possibility that an existing voluntary standard might be modified or a new one developed to address the risks of injury described in this notice.

The Commission solicits written comments from all interested persons on the risks of injury and regulatory alternatives discussed in this notice, and other possible means to address those risks of injury. The Commission particularly desires to receive technical and medical data and other information relevant to (1) the possible need for amendment of the small parts regulations; (2) an appropriate modification of the present test for determining if toys or articles intended for children less than three years of age are banned because of small parts; and (3) the economic impact of amending the small parts regulations. Additionally, the Commission invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address the risks of injury described in this notice.

DATE: Written comments and submissions in response to this notice must be received by the Commission by August 8, 1988.

ADDRESS: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Elaine A. Tyrrell, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

At the age of about four months, most infants acquire the ability to bring objects to their mouths and to suck on them. At about the same age, infants begin to explore their surroundings by putting objects in their mouths, and gum objects in an attempt to relieve teething pains. Many infants and young children continue to put objects in their mouths indiscriminately until they are about three years old. Infants gradually develop skills which enable them to prevent objects from entering and remaining in their throats, but until children are about three years old many are not able to remove or expel an object from their own throat or mouth. For this reason, children under the age of three are particularly susceptible to injuries which result when objects are swallowed or become lodged in the mouth or throat.

In 1979, the Commission issued regulations under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) to ban certain toys and other articles intended for children under three years of age which present unreasonable risks of injury because of small parts. Those regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501, and are intended to address the following risks of death and injury:

(1) Asphyxiation from lodgment of an object in the throat resulting in blockage of air to the lungs;

(2) Asphyxiation from obstruction of the airway by a foreign object or vomit;

(3) Aspiration of an object into a bronchus or a lung; and

(4) Cuts or penetration wounds to internal organs from sharp or pointed objects which have been swallowed.

The regulation codified at 16 CFR 1500.18(a)(9) bans any toy or other article intended for children under three years of age which persents a choking, aspiration, or ingestion hazard because of small parts, and which is introduced into interstate commerce after January 1, 1980. The regulation codified at 16 CFR Part 1501 describes certain types of products which are subject to the banning rule codified at § 1500.18(a)(9); lists certain other types of products which are specifically exempted; and provides a test method for determining whether an article presents a choking, aspiration, or ingestion hazard because the article itself, or any part which could be detached or broken off during normal or reasonably foreseeable use, is too small.

Section 1501.2(a) of the regulation contains a list of products which the Commission considers to be intended for children under three years of age. This list is illustrative, but not all-inclusive. Among the products listed in § 1501.2 are squeeze toys, teethers, crib exercisers, crib mobiles, pull and push toys, pounding toys, blocks and stacking sets, stuffed animals and other figures, dolls intended for children under three

such as baby dolls, rag dolls, and bean bag dolls, and infant and juvenile furniture intended for children under three such as cribs, playpens, strollers, and carriages.

In addition to the product types listed in § 1502.2(a), the banning rule codified at § 1500.18(a)(9) is also applicable to any other toys or articles which are intended to be entrusted to or used by children under three years of age. Section 1501.2(b) lists the factors which are relevant when deciding whether a particular product not listed in § 1501.2(a) is subject to the banning rule. Those factors include the manufacturer's stated intent on labeling and elsewhere, if reasonable; advertising, promotion, and marketing of the product; and whether the product is commonly recognized as one intended for children under three years of age.

Section 1501.3 of the regulation exempts ten categories of products from the banning rule. Two of the exempted products are rattles and pacifiers which are subject to other FHSA regulations containing requirements to address risks of injury presented by small parts. Rattles are subject to regulations codified at 16 CFR 1500.18(a)(15) and Part 1510; pacifiers are subject to regulations codified at 16 CFR 1500.18(a)(8) and Part 1511.

Other categories of exempt products include books and articles made from paper; writing materials such as crayons, chalk, pencils, and pens; children's clothing and accessories, such as shoe lace holders and buttons; grooming, feeding, and hygiene products such as diaper pins, barrettes, toothbrushes, drinking glasses, dishes and eating utensils; and phonograph records. These products were exempted because the Commission determined that their functional, educational, or other value outweighed any possible hazard from small parts.

Modeling clay and similar products, and finger paints, water colors, and other paint sets were exempted because they cannot be manufactured so that small bits will never separate from these items. Finally, balloons were exempted from the products subject to the banning rule because the Commission concluded that balloons cannot be subject to this regulation without being banned entirely.

Section 1501.4 sets forth the test used to determine if a toy or article intended for children under three is banned because of small parts. The apparatus used in this test is a hollow truncated cylinder having an interior diameter of 1.25 inches, a minimum interior depth of 1.0 inches, and maximum interior depth of 2.25 inches. See Figure 1.

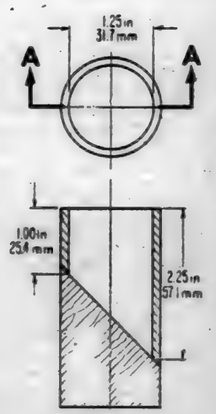

FIG 1—SMALL PARTS CYLINDER

The product to be tested is placed in the test cylinder and must be large enough not to fit entirely within the cylinder. Any detachable component is tested in the same manner. If neither the product nor any detachable component fits entirely within the test cylinder, the product is subjected to the applicable "use and abuse" procedure codified at 16 CFR 1500.51 and 1500.52, with the exception of the bite tests specified at §§ 1500.51(c) and 1500.52(c). Any component or piece that becomes separated from the product during use and abuse testing is tested individually by placing it in the cylinder. (Paper and pieces of fabric, yarn, fuzz, elastic, or string that separate during use and abuse testing are not tested in the cylinder; this aspect of the test is clarified in a Commission statement of interpretation published in the Federal Register of May 27, 1988, 53 FR 19281.) If the entire product, any detachable component, or any component or any piece which separates during use and abuse testing fits entirely within the cylinder, the product is banned if it is intended for use by children under three years of age.

The Commission issued the small parts regulation to reduce unreasonable risks of injury to children under three years of age from choking on, aspirating, or ingesting toys or articles intended for their use. The Commission recognized, however, that by restricting the scope of the regulation to items intended for children under three, it would not eliminate all choking, aspiration, or ingestion hazards to children associated with small objects. See the Federal Register notice of June 15, 1979; 44 FR 34892.

In 1983, the Commission's Directorate for Epidemiology published a human factors analysis of 195 incidents in which children ranging in age from one month to four years old choked to toys or children's products. Thirty-seven of these incidents resulted in deaths of children. All of the incidents considered in this study were selected because they involved items which were too large to fit entirely within the test cylinder specified by Part 1501.

The incidents occurred from 1973 through 1983. More than half of these incidents involved products in two categories exempted from the small parts regulations: Rattles and pacifiers. Rattles were involved in 97 of the choking incidents, including 14 which resulted in death. Pacifiers were involved in nine incidents, including three fatalities.

One purpose of the 1983 analysis was to identify common characteristics, such as size and shape, of the items involved in the selected choking incidents. Another purpose of the analysis was to determine the interaction of the anatomy and behavior of the children with the characteristics of the products involved in an attempt to determine why choking incidents resulted. This analysis also examined the requirements of the Commission's regulations applicable to rattles, pacifiers, and toys and articles intended for children under three years of age in an attempt to determine if a single test apparatus and procedure could be developed to identify a choking hazard presented by any type of toy or product intended for children younger than three.

The 1983 report outlined proposals for such a test. One approach proposed by the 1983 report was to prohibit all toys or articles intended for children less than three years of age which could enter a child's mouth and extend far enough to block passage of air to the lungs. This approach proposed a test fixture having an opening 1.66 inches in diameter, and a depth of 1.18 inches. See Figure 2. The report stated that mandatory requriements based on this approach would have prohibited the sale of all but five of the items involved in the 195 choking incidents selected for analysis. The report observed, however, that mandatory requirements based on such an approach would require substantial modifications of many toys then on the market.

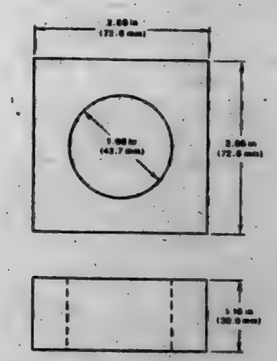

FIG. 2 – TEST FIXTURE

Since 1983, the Commission's Directorate for Epidemiology has collected additional information about injuries to children which have resulted from choking on, aspirating, or ingesting toys and other children's products with small parts. This information has been obtained through the National Electronic Injury Information Surveillance System (NEISS), in-depth investigations, death certificates, consumer complaints, newspaper and magazine articles, and reports from coroners and medical examiners.

During fiscal year 1988 (October 1, 1987 through September 30, 1988), the Commission staff is conducting a special study of choking incidents involving toys and children's products which are treated at emergency rooms of NEISS participating hospitals. Follow-up investigations of selected incidents treated at NEISS particpating hospitals will obtain detailed information about the children and products involved, and the accident scenarios. The special study will yield data which can be used to make statistically valid estimates of the total number of children in the United States who sustain injuries from choking incidents which require emergency room treatment during a specific time period. The staff will also obtain anecdotal information about choking incidents associated with toys and children's products from death certificates, consumer complaints, periodicals, reports from coroners and medical examiners, and investigations of some accidents reported by these sources. During fiscal year 1989, the staff will prepare an anaysis of the information obtained from the special study and other sources in an effort to define more precisely the nature and scope of choking, aspiration, and ingestion hazards associated with toys and children's products.

B. Petition

By letter dated April 20, 1987, the Consumer Federation of America and the New York State Attorney General's Office petitioned the Commission to amend the small parts regulation by modifying the test apparatus specified by 16 CFR Part 1501. The petition (HP 87–1) requested the Commission to amend Part 1501 to prescribe a test which would ban any toy or article intended for children under three years of age having a diameter less than 1.66 inches. The petition asserted that the requested amendment of Part 1501 was needed to prevent choking incidents involving toys and articles intended for children under three years of age which had resulted in deaths and injuries. The petition cited the 195 incidents discussed in the 1983 human factors analysis issued by the Commission's Directorate for Epidemiology, and other information obtained from the Commission about deaths and injuries to children from choking incidents involving toys and children's products.

The Commission staff prepared briefing materials for consideration by the Commission when deciding whether to grant or deny the petition. The breifing materials included information about current activities to address choking hazards presented by toys and children's products and comments on the injury information cited in the petition. The staff observed that the 195 choking incidents considered in the 1983 analysis, 49 involved products with diameters smaller than the 1.25 inch interior diameter currently specified for the test cylinder but which passed the small parts test, and 71 were associated with products which are not currently prohibited by either mandatory requirements or provisions of a voluntary standard for toy safety to address choking hazards. The latter 71 choking incidents included 14 fatalities, three of which occurred outside the United States. The briefing materials also contained information about the various types of toys and children's products intended for children under three years of age, the annual volume of sales of such products, and possible costs to manufacturers and importers of such products if the Commission amended the small parts regulations.

After consideration of the petition and supporting information provided by the petitioners, the briefing materials and an oral briefing by the Commission staff, and other information, the Commission voted on February 3, 1988, to deny the petition. The Commission took this action after deciding that available information does not support the specific modification of the test in Part 1501 requested by the petitioners.

Nevertheless, the Commission concluded that some change to the small parts regulations may be needed to reduce choking hazards associated with toys and articles intended for children under three years of age. The Commission voted to publish an advance notice of proposed rulemaking to begin a proceeding which may result in the amendment of the small parts regulations, and to solicit information relevant to such a proceeding. The Commission particularly desires to obtain technical and medical data and other information relevant to:

(1) The possible need for amendment of the small parts regulations;

(2) An appropriate modification of the provisions of Part 1501, including the test procedures as well as test apparatus and the products excluded from the small parts rule, to eliminate or reduce unreasonable risks of death and injury associated with toys and articles intended for children under three years of age which present choking, aspiration, or ingestion hazards;

(3) The economic impact of amending the small parts regulations, including information about the various types of toys and children's products which may be affected by an amendment of those regulations, the annual volume of sales of those products and the number of units affected, and the costs of such an amendment to manufacturers and importers.

C. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or childrens' article presents a mechanical hazard by issuance of a regulation in accordance

with provisions of sections 3 (e) through (i) of the FHSA (15 U.S.C. 1262 (e) through (i)). A toy or children's article which has been determined by regulation to present a mechanical hazard is a "banned hazardous substance" as that term is defined by section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)) and may not be imported into or sold in the United States. See Section 4(a) of the FHSA (15 U.S.C. 1263(a)).

The first step in a proceeding under provisions of section 3 (e) through (i) of the FHSA to issue a rule declaring that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with section 3(f). If after considering comments received in response to the ANPR the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

D. The Products and Risks of Injury

This proceeding is concerned with all toys and other articles intended for children under three years of age which present choking, aspiration, or ingestion hazards because of small parts. All such toys and children's products, including those specifically exempted from the small parts regulations by 16 CFR 1501.3, and those complying with all requirements of 16 CFR 1500.18(a) (8), (9), and (15), and Parts 1501, 1510, and 1511 to address hazards from small parts are within the scope of this proceeding.

This proceeding is concerned with unreasonable risks of death and injury which may occur when a child under three years of age asphyxiates or is otherwise injured from the aspiration or ingestion of a toy or children's article, or any part thereof, intended to be entrusted to or used by children in that age group. These risks of injury are discussed in detail under the heading "Background" in this notice.

E. Voluntary Standard

The Commission is aware of only one voluntary standard applicable to the products and risks of injury with which this proceeding is concerned. That standard was revised in 1986 (following the 1983 CPSC study). It is published by the American Society for Testing and Materials and is designated F 963–86, Standard Consumer Safety Specification on Toy Safety.

This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys and children's products, some of which are intended for children as old as 14 years of age. However, this standard does include provisions intended to address choking, aspiration, and ingestion hazards from small parts of toys and articles intended for children under three years of age.

The voluntary standard includes the same small parts requirements for toys and products intended for children under three years of age as those codified at 16 CFR Part 1501. The voluntary standard also includes the same requirements for rattles as those codified at Part 1510, and the same requirements for pacifiers as those at Part 1511. Moreover, the voluntary standard imposes the following additional requirements:

(1) All teethers and squeeze toys are tested in accordance with the test for rattles set forth in Part 1510; and

(2) All rattles, teethers, and squeeze toys with nearly spherical, hemispherical, or circular flared ends are subjected to a supplementary test to identify those articles which could penetrate far enough into an infant's mouth to block passage of air to the lungs. This supplementary test uses a test fixture similar to the apparatus illustrated in Figure 2 of this notice.

F. Regulatory Alternatives Under Consideration

The Commission decided to begin this proceeding after it denied a petition requesting amendment of Part 1501 to prescribe a test which would ban any toy or product intended for children under three years of age having a diameter less than 1.66 inches. The Commission concluded that available information did not support the specific change requested by the petition.

In this proceeding, the Commission is considering any modification of the provisions of 16 CFR 1500.18(a)(9) and Part 1501 which can be supported by information currently available or developed during the course of this proceeding. The Commission may reconsider the specific change requested by the petition if information becomes available to support that particular modification of the test in Part 1501.

The Commission is also considering the possibility that the voluntary standard for toy safety, ASTM F 963–86 could be revised to reduce even further the hazards to children under three years of age from choking on, aspirating, or ingesting toys or products intended for children of that age group, or that a new voluntary standard to address those hazards might be developed.

G. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in amendment of existing regulations prescribing requirements for toys and articles intended for children under three years of age to address risks of injury from choking on, aspirating, or ingesting small parts. All interested person are invited to submit to the Commission:

(1) Written comments concerning the risk of injury discussed in this notice; the regulatory alternatives being considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Any existing standard or portion of an existing standard which could be published as a proposed amendment of the small parts regulations.

(3) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addresed in the development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about their backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than August 8, 1988.

Dated: June 1, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland:

1. **Federal Register** notice of June 15, 1979 (44 FR 34882) entitled Method for Identifying Toys or Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards.

2. Briefing materials on Petition HP 87–2 for amendment of the small parts regulation, dated December 7, 1978. The TABS are listed separately below.

3. TAB A—(1) Memorandum from James V. Lacy, General Counsel, and Stephen Lemberg, Assistant General Counsel, dated May 6, 1987, entitled Petition to Amend Small Parts Regulations; (2) Petition from the New York Attorney General and Consumer Federation of America to amend the small parts test, and attachments: Letter from Bernard P. Dreyer, M.D., Associate Professor of Clinical Pediatrics, New York School of Medicine, to Phyllis Spaeth, New York State Department of Law, dated January 15, 1987; Human Factors Analysis—Choking Incidents in Children, by Shelley Waters Deppa, Directorate for Epidemiology, Consumer Product Safety Commission.

4. TAB B—Memorandum from Deborah Tinsworth, EPHA, to Elaine A. Tyrrell, EXPM, dated November 13, 1987, entitled FY 88 Choking Hazards Project.

5. TAB C—Memorandum from Deborah Tinsworth, EPHA, to Elaine A. Tyrrell, EXPM, dated November 12l, 1987, entitled Small Parts Petition HP 87–2.

6. TAB D—Memorandum from Shelley Waters Deppa, EPHF, to Elaine A. Tyrrell, EX–PB, dated November 1, 1987, entitled Human Factors Input to Small Parts Petition Breifing Package.

7. TAB E—Memorandum from Terrance R. Karels, ECSS to Elaine A. Tyrrell, EX–P, dated November 10, 1987, entitled Small Parts Petition—HP 87–2.

8. TAB–F—(1) Memorandum from Alfred L. Roma, AEDPO, to Elaine A. Tyrrell, OPMB, dated November 30, 1987, entitled Briefing Package on Petition HP 87–1—Amend the Small Parts Regulations. (2) Memorandum from Robert D. Verhalen, AEDEP, to Elaine A. Tyrrell, OPMB, dated November 30, 1987, entitled Epidemiology Position on Petition HP 87–2 Amend the Small Parts Regulation. (3) Memorandum from Warren J. Prunella, AEDEC, to Douglas L. Noble, OPMB, dated November 30, 1987, entitled Petition HP 87–2 to Amend the Small Parts Regulation. (4) Memorandum from Andrew G. Ulsamer, AEDHS, to Elaine A. Tyrrell, dated December 1, 1987, entitled Small Parts Petition. (5) Memorandum from David Shiflett, OIPA, to Elaine A. Tyrrell, OPMB, dated November 30, 1987, entitled Petition HP 87–2 to Amend the Small Parts Regulation. (6) Memorandum from Walter Hobby, OPE, to Elaine A., Tyrrell, OPMB, dated November 30, 1987, entitled Petition HP 87–2 to Amend the Small Parts Regulation. (7) Memorandum from William W. Walton, AEDES, to Elaine A. Tyrrell, EX–PB, dated November 30, 1987, entitled Petition HP 87–2 to Amend the Small Parts Regulation. (8) Memorandum from David Schmeltzer, AEDCA, to Elaine A. Tyrrell, OPMB, dated December 4, 1987, entitled Small Parts Petition—AEDCA Recommendation. (9) Memorandum to the File for Douglas Noble, OPMB, dated December 4, 1987, entitled Petition HP 87–2 to Amend 16 CFR 1501.4.

9. Standard Consumer Safety Specification on Toy Safety, ASTM F 963–86, published by the American Society for Testing and Materials.

[FR Doc. 88–12716 Filed 6–6–88; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Country of Origin Marking of Fruit Juice Containers

AGENCY: Customs Service, Treasury.

ACTION: Proposed interpretive rule.

SUMMARY: This document proposes a change to the Customs Service's interpretation of country of origin marking rules as they are applied to containers of fruit juice made with imported juice concentrate. Customs has been allowing a method of marking known as "major supplier marking" for containers of orange juice since February 1, 1987. Marking requirements, and the applicability of major supplier marking, are being extended to other fruit juices as of June 7, 1988, by another Customs document published in today's **Federal Register**. Major supplier marking stipulates that if a processor obtains 75 percent or more of its imported concentrate from one source country, only that source country need be disclosed. Otherwise, if no single source accounts for 75 percent or more of the concentrate, than all source countries must be disclosed.

Customs has been asked to consider whether major supplier marking provides the level of information to consumers that was contemplated by the country of origin marking laws, as codified in the Tariff Act of 1930, as amended. Because of comments submitted in response to a prior **Federal Register** notice addressing the marking of apple juice and other fruit juices made from concentrate, and because of concerns that have been raised regarding public health, Customs has declined to consider further the merits of major supplier marking. The comments submitted indicated that major supplier marking may not provide adequate information to consumers of imported apple juice because of the wide variety of sources and the frequency of the changes in those sources. The public health concern also raises potential issues regarding major supplier marking of fruit juices. Customs has been told that certain pesticides, banned in the U.S. because they can cause illness, may be reaching the U.S. because the pesticides were used on foreign fruit which is the source of imported concentrates. If major supplier marking for fruit juice concentrate were not allowed, and all countries of origin of fruit juice concentrate are listed on juice containers, it is alleged that the Food and Drug Administration would be better able to trace imported concentrate that may contain pesticides, and that consmers could better protect themselves from potential health threats.

Accordingly, Customs is now proposing that all fruits made from foreign concentrate be required to be labeled to indicate all actual sources of concentrate contained in the particular package of juice. If the proposed rule is adopted, all fruit juice concentrate processors, including processors of orange juice, will no longer be allowed to use major supplier marking. Written comments are invited on this proposal.

DATE: Comments must be received on or before August 8, 1988.

ADDRESS: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Doyle, Office of Regulations & Rulings, (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

In a ruling dated September 4, 1985 (C.S.D. 85–47, 19 Cust. Bull. No. 39 at 21), the Customs Service held that containers of orange juice in frozen concentrated or reconstituted forms which contain foreign concentrate must be labeled to comply with the country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19

U.S.C. 1304). The ruling was based on the determination that the foreign concentrate which is imported into the U.S. and used in the production of frozen concentrated or reconstituted orange juice is not substantially transformed after undergoing further processing in the U.S. involving blending with other batches of orange concentrate; addition of water, oils, and essences; pasteurization or freezing; and repacking. In *National Juice Products Association* v. *United States*, CIT Slip Op. 86–13 (Jan. 30, 1986), the Court of International Trade held that C.S.D. 85–47 was substantially valid.

On March 19, 1986, Customs held in Ruling No. 729410 (C.S.D. 86–19, 20 Cust. Bull. No. 33 at 17) that orange juice containers would meet the marking requirements if only the major foreign sources of the imported product were listed ("major supplier marking"). Under current practice, major supplier marking permits an orange juice processor that obtains 75 percent or more of its imported concentrate from one country to disclose only that source. If there is no one source country supplying 75 percent or more of the imported concentrate, all foreign countries from which the concentrate is derived must be disclosed.

Noting that orange juice imports are principally from a single country and that sources of supply remain constant, Customs permitted major supplier marking of orange juice based on the conclusion that in most cases such marking would be both accurate and informative. Customs believed that in these circumstances major supplier marking would serve the statutory requirement that the ultimate purchaser be informed of the country of origin, notwithstanding that the origin of a minority portion of the concentrate might not be disclosed. Customs also believed that this approach would facilitate compliance with the marking statute by eliminating the need to identify and disclose the names of those countries that supply a very small quantity of orange juice concentrate.

On June 25, 1986, Customs published T.D. 86–120 in the **Federal Register** (51 FR 23045), informing the public that frozen concentrated and reconstituted orange juice products containing imported concentrate were required to bear lables marked for country of origin by February 1, 1987. The notice of the decision announced that Customs had considered the comments submitted in response to an earlier notice, published in the **Federal Register** on March 3, 1986 (51 FR 7285), and that requiring country of origin marking for these products was consistent with the court decision in *National Juice Products*.

Other Fruit Juices

On July 30, 1986, Customs announced in a **Federal Register** notice (51 FR 27195) that the principles set forth in C.S.D. 85–47 and supported by the court in *National Juice Products* were to be applicable to containers of other fruit juices containing imported concentrate as well as to those of orange juice. In other words, imported fruit juice concentrate which is imported into the U.S. and used in the production of reconstituted fruit juice is not substantially transformed after undergoing further processing in the U.S. involving blending with other batches of concentrate, addition of water, oils and essences, pasteurization or freezing, and repacking. Accordingly, pursuant to the notice, all frozen concentrated or reconstituted fruit juices made from imported concentrate and so processed will be required to be marked to indicate the country of origin. In addition, the notice announced that the certification requirements set forth in §134.25, Customs Regulations (19 CFR 134.25), would be applicable. The notice sought public comments for the purpose of establishing an effective date.

Another document, published in today's **Federal Register**, discusses the comments that were received concerning the establishment of an effective date and sets forth the effective date. Because major supplier marking has been allowed for imported orange juice products, and because processors of other juices reasonably may have expected that major supplier marking would apply to them as well, Customs, for reasons of fairness, states in that document that the juice processors may meet the marking requirements by using major supplier marking. However, while major supplier marking has been approved for the time being, Customs has been urged by comments received in response to the July 30, 1986, notice to question whether major supplier marking adequately meets the requirements of the marking statute.

Major Supplier Marking

Many of the comments received in response to the July 30, 1986 notice discussed the feasibility of major supplier marking for fruit juices, other than orange juice, made from imported concentrate. Most of the comments concerned the apple juice. These comments stated that apple juice concentrate is imported in large quantities from many countries, that the relative quantities imported from these countries vary greatly from year to year and season to season, and that processing in the U.S. often requires that apple juice from a variety of sources be blended to achieve desired characteristics. Because of these factors, many commenters on behalf of the domestic apple industry stated that marking that lists the name of a single country that accounts for the origin of 75 percent of a product and does not list all countries from which the product in a particular container is derived is meaningless. On the other hand, because of the same factors, many commenters on behalf of the processors of apple juice concentrate claimed that major supplier marking is as informative for apple juice concentrate as it is for orange juice concentrate, and that it would be economically prohibitive to require containers of apple juice concentrate to be marked to indicate all sources of concentrate or juice within a container.

The U.S House of Representatives Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce has urged Customs to adopt specific country of origin marking of fruit juice containers for public health reasons. The subcommittee has told Customs that a number of pesticides banned in the U.S. are routinely applied to crops overseas, particularly in developing countries. The subcommittee pointed out that listing of all countries of origin of juice concentrate on juice containers would facilitate better monitoring and tracing of imported juice and juice concentrate and would allow consumers to protect themselves from potential health threats.

Uniformity of Marking for all Fruit Juices

Although many of the comments received by Customs address the adequacy of major supplier marking with respect to apple juice products, the same question clearly applies to other juice products as well; that is, whether the origin disclosure made by major supplier marking satisfies the requirements of the law. Moreover, the public health concerns raised with respect to apply juice are equally applicable to other fruit juices.

Accordingly, Customs proposes to require that all fruit juices made from foreign concentrate, including orange juice, be labeled to indicate all actual sources of concentrate contained in a particular package of juice. For example, if a can of juice contains a blend of concentrate from three foreign countries, all three countries must be indicated on the label. This proposal encompasses all fruit juice concentrate which undergoes processing in the U.S. similar to the processing described in C.S.D. 85–47; *i.e.*, blending with other batches of concentrate; addition of water, oils, and essences; pasteurization or freezing; and repacking. If the proposed rule is adopted, processors of apple juice and other fruit juices, including those of orange juice, that use imported concentrate would no longer be allowed to use major supplier marking.

Comments

All public comments submitted on this issue will be considered before a final determination is reached regarding the method of marking that will be required for fruit juices. Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), §1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9 a.m. and 4:30 p.m. on normal buisness days, at the Regulations and Disclosures Law Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Harold M. Singer, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Edward F. Kwas,

Acting Commissioner of Customs.

May 11, 1988.

Approved:

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 88–12783 Filed 6–6–88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 80340–8040]

Practice Before the Patent and Trademark Office; Government Employees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth changes that the Patent and Trademark Office (PTO) is proposing to the rules governing admission of Government employees to practice before the PTO in patent cases. Those rules presently permit officers and employees of the Government to be registered only if their official duties include preparation and prosecution of patent applications. A recent decision of the U.S. District Court for the District of Columbia has held that these rules are partially invalid. By this notice of proposed rulemaking, the PTO intends to conform the rules to the court's decision and to eliminate an "inactive" status designation of registered attorneys and agents who became employed by the Government, but do not engage in the preparation and prosecution of patent applications.

DATES: Comments must be submitted on or before August 9, 1988.

ADDRESS: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231 marked to the attention of Nancy C. Slutter.

FOR FURTHER INFORMATION CONTACT: Nancy C. Slutter by telephone at (703) 557–4035 or by mail marked to her attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC

SUPPLEMENTARY INFORMATION: Attorneys and agents must be admitted to practice before the Patent and Trademark Office (PTO) in patent cases. 35 U.S.C. 31; 37 CFR 10.10. The purpose of the proposed rule change is to allow federal employees who fulfill the requirements for registration set forth at 37 CFR 10.7 to have their names placed on the PTO register of attorneys and agents.

The rules, as presently written, provide that an officer or employee of the Government whose official duties include preparation and prosecution of patent applications may be registered. 37 CFR 10.6(d). Under the rule, all other Government employees will not be registered. If a registered practitioner becomes an employee, the rule requires that the practitioner's name be endorsed as "inactive."

In a recent decision by the U.S. District Court for the District of Columbia, portions of 37 CFR 10.6(d) were held to be invalid. In that case, an attorney presently employed by a federal agency petitioned the Commissioner, requesting that his name be placed (with an inactive designation) on the register of attorneys and agents entitled to practice before the PTO in patent cases. His petition was denied in view of 37 CFR 10.6(d). *In re Athridge*, 230 USPQ 470 (Comm'r Pat. 1986). Following the Commissioner's decision, the attorney sought judicial review in the U.S. District Court for the Dsitrict of Columbia. The court determined that 37 CFR 10.6(d) was invalid to the extent that it precluded registration of an otherwise qualified individual solely on the basis of his status as a Government employee. Based on its determination, the court held that the employee could be registered and designated as "inactive." *Athridge v. Quigg*, 655 F.Supp. 779, 3 USPQ 2d 1391 (D.D.C. 1987).

The rule changes proposed herein would eliminate 37 CFR 10.6(d). The effect of removing § 10.6(d) will permit otherwise qualified Government employees to be registered to practice before the PTO in patent cases. Registration, however, will not relieve any Government employee from otherwise complying with conflict of interest requirements, e.g., 18 U.S.C. 203, 205, 207, applicable agency regulations and personnel practices, and applicable codes of professional responsibility.

Other Considerations

The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The proposed rule change allowing Government employees who meet the requirements set forth at 37 CFR 10.7 to have their names placed on the Patent and Trademark Office register of attorneys and agents would not be expected to result in an increase of fees charged by attorneys and agents to entities, including small entities.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Office of Management and Budget approval of the registration information reporting requirements contained in the proposed rules was extended until July 31, 1990, OMB Control No. 0651–0012.

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, lawyers.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 31, the Patent and Trademark Office proposes to amend Title 37 of the Code of the Federal Regulations as set forth below:

It is proposed to amend 37 CFR Part 10, as follows wherein removals are indicated by brackets and additions by arrows:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 would continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

§ 10.6 [Amended]

2. Section 10.6 is proposed to be amended by removing paragraph (d) and redesignating paragraph (e) as § 10.16(b).

3. Section 10.10 is proposed to be amended by revising the title, redesignating the text as paragraph (a), revising newly redesignated paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 10.10 ►Restrictions on◄ [Individuals not registerd recognized to] practice in patent cases.

►(a)◄ * * *

(b) [No individual who has served in the Office will be registered after termination of his or her services, nor if registered before such service, be reinstated, unless he or she signs a written statement indicating that he or she has read 18 U.S.C. 207.] No individual who has served in the patent examining corps of the Office ►may practice before the Office◄ [will be registered] after termination of his or her service, [nor if registered before such service, be reinstated,] unless he or she signs a written undertaking (1) not to prosecute or aid in any manner in the prosecution of any patent application pending in any patent examining group during his or her period of service therein and (2) not to prepare or prosecute or to assist in any manner in the preparation or prosecution of any patent application of another (i) assigned to such group for examination and (ii) filed within two years after the date he or she left such group, without written authorization of the Director. Associated and related classes in other patent examining groups may be required to be included in the undertaking or designated classes may be excluded from the undertaking. When an application for registration [or reinstatement] is made after resignation from the Office, the applicant will not be registered [or reinstated] if he or she has prepared or prosecuted or assisted in the preparation or prosecution of any patent application as indicated in the paragraph.

►Preparation or prosecution or providing assistance in the preparation or prosecution of any patent application contrary to the provisions of this paragraph shall constitute misconduct under § 10.23(c)(13) of this part.◄

(Approved by the Office of Management and Budget under control number 0651–0012)

►(c) A practitioner who is an employee of the Office cannot prosecute or aid in any manner in the prosecution of any patent application before the Office.

(d) Practice before the Office by Government employees is subject to any applicable conflict of interest laws, regulations or codes of professional responsibility.◄

4. Section 10.23 is proposed to be amended by revising paragraph (c)(13) and by adding new paragraphs (c)(19) and (c)(20) to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(13) Knowingly preparing or prosecuting a patent application in violation of an undertaking signed under ►§ 10.10(b)◄ [§ 10.6].

* * * * *

►(19) Action by an employee of the Office contrary to the provisions set forth in § 10.10(c).

(20 Knowing practice by a Government employee contrary to applicable federal conflict of interest laws, or regulations of the Department, agency or commission employing said individual.◄

* * * * *

Date: May 3, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–12788 Filed 6–6–88; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP OF2389/P452; FRL–3392–7]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the insecticide permethrin and its metabolites in or on the raw agricultural commodities alfalfa (fresh) and alfalfa hay; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; milk; poultry; and eggs. This proposal to establish maximum permissible levels for the combined residues of permethrin was requested pursuant to petitions by FMC Corp.

DATE: Comments, identified by the document control number [PP OF2389/P452], must be received on or before June 22, 1988.

ADDRESS: By mail, submit written comments to: Information Service Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Information submitted as comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 204,CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 8, 1980 (45 FR 66863), which announced that FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, had submitted pesticide petition OF2389 to the Agency proposing to establish new tolerances and amend existing tolerances for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites *cis* and *trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, 3-phenoxybenzyl alcohol, and 3-phenoxybenzoic acid in or on the following raw agricultural commodites: alfalfa, fresh at 20.0 parts per million; alfalfa, hay at 65 ppm; meat and meat byproducts of cattle, goats, hogs, horses, and sheep to 2.0 ppm; milk to 0.5 ppm; poultry to 0.1 ppm; eggs to 1.0 ppm; and potatoes at 0.05 ppm. The tolerance expression was later revised to include the metabolite 3-phenoxybenzoic acid for animal commodities.

On March 30, 1988 (53 FR 10286), EPA announced the filing of an amended petition by FMC Corp. increasing the tolerances on alfalfa, fresh from 20 ppm to 25ppm; fat of cattle, hogs, and horses to 2.5 ppm; fat of goats and sheep at 3.0 ppm; meat of cattle, hogs, horses, sheep, and goats at 0.25 ppm; meat byproducts of cattle, goats, hogs, horses, and sheep at 2.0 ppm; and milk fat at 6.25 ppm, reflecting 0.25 ppm in whole milk. The proposed tolerance in or on potatoes at 0.25 was withdrawn in October 1982. The proposed tolerance for residues of permethrin in or on alfalfa, hay was also decreased from 65 ppm to 55 ppm.

There no comments or requests for referral to an advisory committee received in response to the notice of filing. The petitioner has subsequently amended the petition by increasing the tolerance levels for cattle, fat; hogs, fat; and horses, fat to 3.0 ppm; poultry, fat to 0.15 ppm; and poultry mbyp to 0.25 ppm.

The toxicity data submitted and other relevant material have been previsouly evaluated and discussed in detail in a final rule document on permethrin published in the Federal Register of October 13, 1982 (47 FR 45008).

The acceptable daily intake (ADI) based on a NOEL of 5 mg/kg/day from a 2-year rat feeding study and a safety factor of 100 is 0.05 mg/kg body weight/day. The theoretical maximum residue contribution from all food uses (including the proposed use on alfalfa and other pending tolerances) is 0.017131 mg/kg body weight/day; this is equivalent to about 36 percent of the ADI.

The metabolism of permethrin is adequately understood, and an adequate analytical method, gas-liquid chromatography with an electron capture detector or a mass spectrometer detector, is available for enforcement purposes. No actions are pending against continued registration of permethrin, nor are any other considerations involved in establishing the tolerances.

The tolerance established by amending 40 CFR 180.378 will be adequate to cover residues in alfalfa (fresh); alfalfa, hay; meat fat and meat byproducts of cattle, goats, hogs, horses, and sheep; milk; poultry; and eggs.

The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances will protect the public health, and they are established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. As provided for in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the time for comments is being limited to 15 days in order that the permanent tolerance may be established in the second week of June 1988. Comments must bear a notation indicating the document control number, [PP OF2389/P452]. Written comments filed in response to this proposed rule will be available in the Information Service Section at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agriculture commodities, Pesticides and pests.

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378 is amended in paragraph (b) by adding and alphabetically inserting the commodities alfalfa, fresh and alfalfa, hay and in paragraph (c) by revising the entries for eggs; fat, meat, and meat byproducts (mbyp) of cattle, goats, hogs, horses, poultry and sheep; milk; and eggs, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Alfalfa, fresh	25.0
Alfalfa, hay	55.0

* * * * *

(c) * * *

Commodities	Parts per million
Cattle, fat	2.5
Cattle, meat	0.25
Cattle, mbyp	2.0
Eggs	1.0
Goats, fat	3.0
Goats, meat	0.25
Goats, mbyp	2.0
Hogs, fat	2.5
Hogs, meat	0.25
Hogs, mbyp	2.0
Horses, fat	2.5
Horses, meat	0.25
Horses, mbyp	2.0
Milk fat (reflecting 0.25ppm in whole milk)	6.25
Poultry, fat	1.0
Sheep, fat	3.0
Sheep, meat	0.25
Sheep, mbyp	2.0

[FR Doc. 88–12767 Filed 6–6–88; 8:45 am]

BILLING CODE 4560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: In the March 9, 1988, **Federal Register**2 (53 FR 7702) the public was notified that the U.S. Fish and Wildlife Services (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1988–89, and provided information on certain proposed regulations. This proposed rulemaking provides supplemental proposals for the early- and late-season migratory bird hunting regulations frameworks.

The early hunting seasons open prior to October 1 and include seasons on mourning, white-winged and white-tipped doves, band-tailed pigeons, woodcock, common snipe, rails, moorhens and gallinules, teal and sea ducks; experimental September duck seasons in Florida, Iowa, Kentucky, and Tennessee; experimental September Canada goose seasons in portions of Michigan, Minnesota and Illinois; a special sandhill crane-Canada goose season in southwestern Wyoming; sandhill cranes in the Central and Pacific Flyways; migratory bird hunting seasons in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and extended falconry seasons. Late seasons open about October 1 or later and include those for most waterfowl, and seasons not previously selected for other species. The Service annually prescribes hunting regulations frameworks within which the States select specific seasons. The effect of this rulemaking is to facilitate establishment of early- and late-season migratory bird hunting regulations for the 1988–89 season.

DATES: The comment period for proposed migratory bird hunting season frameworks for Alaska, Hawaii, Puerto Rico and the Virgin Islands will end on June 22, 1988; that for other early-season frameworks proposals will end on July 18, 1988; and that for late-season frameworks proposals on August 29, 1988. Public hearings on proposed early- and late-seasons frameworks will be held on June 22 and August 3, 1988, respectively (53 FR 7702).

ADDRESSES: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building-Room 536, Washington, DC 20240. The public hearings will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Street NW., Washington DC. Notice of intention to participate in either hearing should be sent in writing to the Director at the address above.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which open before October 1, while late seasons open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover mourning, white-winged and white-tipped doves, band-tailed pigeons, rails, moorhens and gallinules, woodcock, and common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississippi Flyways; experimental September duck seasons in Florida, Iowa, Kentucky, and Tennessee; experimental September Canada goose seasons in portions of Michigan, Minnesota and Illinois; sandhill cranes in the Central and Pacific Flyways; a special sandhill crane-Canada goose season in southwestern Wyoming; doves in Hawaii; migratory game birds in Alaska, Puero Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal during regular duck seasons; coots, moorhens and gallinules, and snipe in the Pacific Flyway; and other extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented, as necessary, with additional **Federal Register** documents. Following review of comments received and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register**. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits, and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows: On March 9, 1988, the Service published in the **Federal Register** (53 FR 7702) a proposal to amend 50 CFR Part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. All comments on the March 9 proposal received through May 9, 1988, have been considered in developing this document. Comment periods on this second document are specified above under **DATES**. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are targeted for **Federal Register** publication on or about July 27, 1988, and those for early seasons in other areas of the United States on August 10, 1988; and those for late seasons on September 16, 1988.

On June 22, 1988, a public hearing will be held in Washington, DC, as announced in the **Federal Register** of March 9, 1988, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, moorhens and gallinules, common snipe, and sandhill cranes. Recommended hunting regulations will be discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental September waterfowl seasons in designated States; sea duck seasons in the Altantic Flyway; and extended falconry seasons. Statements or comments are invited.

On August 3, 1988, a public hearing will be held in Washington, DC, as announced in the **Federal Register** of

March 9, 1988, to review the status and recommended hunting regulations for waterfowl not previously discussed at the June 22 public hearing.

This supplemental proposed rulemaking describes a number of changes which have been proposed by commenters on the original framework proposals published on March 9, 1988, in the **Federal Register**.

Review of Public Comments and the Service's Response

Written Comments Received

As of May 9, 1988, the Service had received comments on proposals published in the March 9, 1988, **Federal Register** (53 FR 7702) from 48 correspondents, including 7 State agencies, all four waterfowl flyway councils and 37 individuals. In some instances, the communications did not specifically mention the open comment period or the regulatory proposals; however, because they were received during the comment period and generally relate to migratory game bird hunting regulations, they are treated as comments. The comments are discussed below with particular attention to new proposals and modifications or clarifications to previously described proposals. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 9, 1988, **Federal Register**. Comments received subsequent to May 9, 1987, as well as those received at the June 22, 1988, public hearing will be addressed in the next supplemental proposal targeted for publication in the **Federal Register** in early July.

In the March 9, 1988, **Federal Register** (at 53 FR 7705), the data used in regulatory decisions were outlined. At this time the Service does not have complete data from the spring breeding ground surveys but a preliminary assessment of breeding habitat was released in mid-May. The habitat conditions are not good and duck production may suffer. Restrictive duck regulations were enacted in 1985 in response to reduced duck breeding populations and fall flights, and were continued in 1986 and 1987 in response to low duck breeding populations and poor production. The Service notes that if populations need additional protection, further framework restrictions, to include outside dates, season lengths and bag limits, will be considered in the development of regulations for the 1988–89 hunting season. In addition, all aspects of past regulations which may have a bearing on possible harvest, including various special seasons and options, will be reviewed. Depending on full information from the May surveys, some actions will have to be decided for early season regulations. The public hearing for early seasons is scheduled for June 22, 1988.

General Comments

The Central Flyway Council has recommended adoption of the proposed basic regulations frameworks for 1988–89 hunting seasons on webless and waterfowl species pertinent to the Central Flyway except for specific recommendations given in the numbered headings that follow.

1. *Shooting hours.* a. An Illinois sportsman has recommended that shooting hours for 1988–89 waterfowl hunting, including hunting programs on State and Federal management areas, be standardized at 7:00 a.m. to 3:30 p.m. The individual feels the recommended shooting hours would eliminate waterfowl identification problems that may occur during poor light conditions early and late in the day, and would decrease the amount of time each day that ducks are disturbed by hunters.

Response. The Service has previously addressed the issue of shooting hours in an Environmental Assessment (EA), *Proposed Shooting Hours Regulations*, dated August 1, 1977. Based on information in this EA and findings from a subsequent study, *Shooting Activities of Waterfowl Hunters in Relation to Time of Day, and Abundance and Availability of Protected and Non-Protected Species of Birds*, it was concluded that early morning and late afternoon shooting of protected species was inconsequential. There has been no new information developed that indicates present shooting hours are harmful to the resource. Shooting hours of one-half hour before sunrise have been in effect during most years since 1918, when Federal establishment of migratory bird regulations began. The Service intends to continue the present shooting hours framework.

2. *Framework for ducks in the conterminous United States—outside dates, season length and bag limits.* a. An Illinois sportsman has recommended that the 1988–89 regulatory frameworks for duck hunting permit a 50-day split season and that the point values in the point-system be revised to give more protection to the hens of most species and eliminate the accidental taking of protected species.

Response. The Service will consider these recommendations when the late-season frameworks are developed in early August.

b. A Minnesota and a Louisiana sportsman have each recommended that the point-system bag-limit option be eliminated, and an individual from Vermont urges the Service to shorten the duck hunting season and reduce the daily bag limit.

Response. These recommendations will be considered by the Service in early August when the late-season frameworks are developed.

3. *American black ducks.* a. The Massachusetts Division of Fisheries and Wildlife submitted comments on the four regulatory options for harvest management of black ducks that were noted in the March 9, 1988, **Federal Register** (at 53 FR 7708). Massachusetts indicated that although they believed further harvest restrictions will be necessary to increase black duck population levels, the 1987–88 regulatory frameworks should be continued in 1988–89 while Canada completes its 5-year harvest reduction program, and then both countries can develop a joint harvest reduction plan.

b. New Jersey, in commenting on the four regulatory options for black duck harvest management, expressed support for continuation of current restrictive frameworks.

Response. These recommendations will be considered in early August when the late-season frameworks are developed.

4. *Wood ducks.* a. In the March 9, 1988, **Federal Register** (53 FR 7708), the Service outlined the regulations of recent years that permit southeastern States the option of selecting an early October duck season with no special wood duck bag limit restrictions. In that document the Service noted such seasons and bag limits were under review because the effect of such seasons on wood ducks is not well known. At a February 1988 symposium addressing wood duck status and management the Service indicated that preseason banding programs are not presently meeting required sample sizes to evaluate proposed or existing special seasons on a State by State basis. In the absence of an adequate data base, the Service feels wood duck harvest management should exist on a broader basis. The Service reaffirms its interest in wood duck management and will propose a program to gather information needed to address questions of harvest, recruitment and survival of wood ducks. The Service asks the Atlantic and Mississippi Flyway Councils to review existing harvest strategies and give consideration to their proper evaluation.

8. *Experimental September duck season.* a. At its March meeting the Lower Region Regulations Committee of the Mississippi Flyway Council endorsed a recommendation for the

continuation of the experimental September duck seasons in Kentucky and Tennessee for 1988. The Committee indicated that continuation of these seasons would permit further evaluation of the reduction in the wood duck bag limits prescribed in 1986 and 1987, and added that Kentucky recently initiated a research project that should provide additional insight on the effects of the early season on local wood ducks.

Response. As noted earlier in this document, preliminary results of the waterfowl breeding ground surveys and the depressed status of waterfowl populations may require review of harvest management strategies such as September duck seasons. The Service will consider this recommendation when the early-season frameworks are developed in late June.

12. *Canvasback and redhead ducks.* a. At its March meeting the Atlantic Flyway Council endorsed a recommendation requesting the Service to complete its review of the final report on the Flyway's experimental canvasback seasons (1983–1985) in order that the harvest strategy can be considered when the canvasback population increases and is able to support a hunting season.

Response. The Service will complete its review of the final report on the Atlantic Flyway's experimental canvasback seasons (1983–85).

Recommendations to develop a North American canvasback management plan have recently been made. The Service believes this may be the proper approach to developing an international harvest strategy for canvasbacks. Ways to accomplish this task are being explored.

13. *Duck zones.* The question of the proper flyway alignment of the State of Louisiana with respect to waterfowl management has been pending for several years. The Service believes this issue should be resolved prior to the opening of the 1988 waterfowl hunting season. Louisiana has been considered a Mississippi Flyway State since the flyway-management system was established in 1948. However, results of cooperative studies conducted by the Service and the Louisiana Department of Wildlife and Fisheries during 1975–81 indicated that a substantial proportion of ducks wintering in western Louisiana migrates through the Central Flyway, but there are marked differences among species in the proportions received from each flyway. Further, a wide variety of species are important in the Louisiana duck harvest, most of which are lightly harvested in comparison with the mallard. Two basic issues exit—the question of proper flyway affinity of ducks that winter or migrate through Louisiana, and whether the varied bag of formerly lightly gunned and abundant species warranted special regulations in western Louisiana. One confounding problem, however, is that the source of the mallards throughout Louisiana is the heavily gunned Mississippi Flyway birds.

These studies led to the establishment of two experimental zones in Louisiana—a western zone and an eastern zone. Since 1975 the season length in the experimental western zone has been 5 days longer than that provided for the rest of the Mississippi Flyway, while the entire State has been governed by Mississippi Flyway bag limits. In 1984 (49 FR 22420) the Service proposed to establish, beginning in 1985, a permanent west zone in Louisiana with Central Flyway season length while retaining Mississippi Flyway bag limits statewide. Most responses opposed such a change on the grounds that it would increase an already large duck harvest in Louisiana.

Subsequent to the initiation of the study, populations of many duck species, particularly mallards, pintails and blue-winged teal, have declined to very low levels and do not appear likely to recover quickly. The duck harvest in Louisiana has grown markedly since the cooperative studies began, to a point where sustained additional harvest may be detrimental to the long-term welfare of breeding stocks. Some of this additional harvest has resulted from regulatory changes made by the Service to provide additional recreational opportunity directed at lightly-harvested species such as pintails and blue-winged teal. These and other species have declined, and the Service believes that continuation of such management strategies is no longer appropriate, and will review a number of such strategies over time. Since 1985, the Service's efforts have focused on reducing harest and it appears that such an objective may be a necessary part of waterfowl management until populations recover.

The depressed population of many duck species and a full review of migratory bird harvest-management practices have changed the Service's position on the west zone of Louisiana. The issue has been evaluated in the Draft Supplemental Environmental Impact Statement on the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS) which should be available in final form by July 1988. The SEIS reaffirms that the administrative flyways, while not biologically precise, are appropriate and disirable units for effective management of waterfowl, and that not all the complexities of differences in affinities of migratory birds can be accommodated by regulations.

In summary, because of the depressed status of several duck species, reduced reproductive capacity of their breeding habitats, and an increase in the overall impact of Louisiana's duck harvest on Mississippi and Central Flyway duck populations, the Service will henceforth consider Louisiana as part of the Mississippi Flyway for the purpose of waterfowl management.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* a. The Atlantic Flyway Council endorsed the following recommendations at its March meeting:

i. That 1988–89 regulatory frameworks for Atlantic brant be established to provide for a 50-day season and a 2-bird daily bag limit pending an evaluation of the 1988 brant production. The Council noted that the 1987–88 season frameworks allowed a 30-day season and 2 brant daily, but indicated that the 1988 winter count of brant increased and the birds should arrive on the breeding grounds in excellent shape because sea lettuce, the species' major food, was very abundant this past winter. Unless there is extremely poor brant production in 1988 the Council believes the recommended frameworks are justified.

Response. The Service defers action on the recommendation until the late-season frameworks are developed in early August, at which time more information about the status of Atlantic brant will be available.

ii. That the regulatory frameworks for snow geese in the Atlantic Flyway be stabilized at the current level of 90 days and 4 snow geese daily until such time that the status of the population or biological investigation warrants a review.

Response. The Service notes the regulatory frameworks for Atlantic Flyway snow geese have been unchanged for many years, but believes action on the request to stabilize the frameworks should be deferred until a harvest management plan for Atlantic Flyway snow geese is developed and approved.

b. The Upper Region Regulations Committee of the Mississippi Flyway Council endorsed a recommendation at its March meeting that Indiana be permitted to eliminate two mandatory check-stations in its Posey County harvest zone for Mississippi Valley Population Canada geese. The State has indicated that of the total Posey County harvest during the past 3 seasons, Hovey Lake has averaged 94 percent and therefore the total kill for the harvest zone can be extrapolated solely from the known harvest at the Hovey Lake check-station.

Response. The Service supports the request to use only the Hovey Lake check-station to estimate the Posey County harvest of Canada geese but will consider all comments received.

c. The Lower Region Regulations Committee of the Mississippi Flyway Council endorsed the following recommendations at its March meeting:

1. That the 1987–88 snow goose season regulatory frameworks for Arkansas, including a January 31 framework closing date, be continued in 1988–89, and the 1988–89 regulatory frameworks for white-fronted geese in Arkansas permit the State's season to run concurrent with its snow goose season pending evaluation of the status and production information for mid-continent white-fronted geese.

Response. The Service defers action on the recommendations until the late-season frameworks are developed in early August, at which time more information about the status of snow geese and white-fronted geese will be available. With respect to the recommendation regarding whitefronts, the Service notes that the mid-continent white-fronted goose population is shared by the Mississippi and Central Flyways and that mid-winter and spring surveys indicate this population may be declining in part of its range; therefore, this recommendation should be discussed by both Flyway Councils.

ii. That the 1987–88 regulatory frameworks that included Arkansas in the harvest allocation procedures for Mississippi Valley Population of Canada geese and prescribed a January 31 framework closing date be continued in 1988–89.

Response. Service action on this recommendation is deferred until the late-season frameworks are developed in early August, at which time more information about the status of Canada geese will be available.

d. An Illinois sportsman has recommended that the 1988–89 regulatory frameworks for hunting Canada geese permit a split season concurrent with the duck season and extending through early January.

Response. This recommendation will be considered by the Service when late-season frameworks are developed in early August.

e. A group of landowners and sportsmen from the mid-Willamette Valley of Oregon has requested a change in the regulatory frameworks for hunting geese in western Oregon that would allow hunting from December 1 through February 15. This late season is requested to help reduce late-winter goose depredations.

Response. The Service defers action on this request pending receipt of additional comments. Regulatory frameworks for hunting geese in Oregon will be developed in early August.

f. In a Federal Register document dated July 2, 1987 (at 52 FR 25174) the Service mentioned criteria were being developed for special resident Canada goose seasons but focused only on those criteria for early Canada goose seasons. In the intervening period additional discussions of criteria for the special seasons have occurred at flyway council and technical section meetings. Special experimental early Canada goose seasons have been established in Minnesota, Michigan and Illinois. A Memorandum of Agreement between the Service and each State was established for each of these seasons. These Memoranda of Agreement contain criteria that the Service intends to use to evaluate future special early seasons. These criteria are:

1. A State may hold a Canada goose season of up to 10 consecutive days between September 1 and September 10—this is in addition to its regular season.

2. During the September season the daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

3. The area(s) open to hunting will be described in State regulations.

4. Provisions for discontinuing, extending or modifying the season will be included in the Memorandum of Agreement.

5. The evaluation required of the State will be incorporated in the Memorandum of Agreement and will include at the least the following:

i. Neck-collar observations and population surveys beginning a year prior to the requested season and continuing during the experiment.

ii. Determine derivation of neck-collar codes from observations and harvested geese.

iii. Collect morphological information from harvested geese to ascertain probable source population(s) of harvest.

iv. Analyze band recovery data.

v. Analyze hunter activity and estimate harvest.

vi. Prepare annual and final reports of the study.

Efforts are still underway to develop criteria for special late Canada goose seasons.

g. The Pacific Flyway Council recommended a change in the regulatory frameworks for brant seasons in Alaska. This recommendation is responded to in item 25.

15. *Tundra swans.* a. The Atlantic Flyway Council has endorsed the hunt plan for Eastern Population tundra swans and in accordance with that plan has recommended that North Carolina, Virginia and New Jersey be allowed to participate in special-permit swan hunts. Permit quotas would be 6,000, 600 and 200, respectively, for North Carolina, Virginia and New Jersey. In addition, New Jersey and Virginia have submitted copies of their proposals for an experimental swan season. New Jersey indicated the season would be limited to Salem, Cumberland and Burlington Counties, and only 200 permits would be issued with an anticipated harvest of less than 60 swans. Virginia proposes a 90-day season concurrent with its snow goose season; 600 permits would be issued with an expected harvest of 300 swans.

Response. The Service also is reviewing recommendations from the Pacific, Central and Mississippi Flyway Councils regarding the hunt plan for Eastern Population tundra swans. Action on the Atlantic Flyway Council's recommendation regarding swan hunting seasons in North Carolina, Virginia and New Jersey, and on the proposals from New Jersey and Virginia is deferred until early August at which time regulatory frameworks for tundra swan hunting seasons will be developed.

b. At its March meeting, the Pacific Flyway Council endorsed Montana's proposal to add four counties to the two counties in the Pacific Flyway area of the State in which tundra swans are hunted. Hill, Liberty, Toole and Pondera Counties are recommended to be added to Teton and Cascade Counties, but the number of permits authorized (500) would not increase.

Response. The Service will consider this recommendation when the regulatory frameworks for tundra swan seasons are developed in early August.

c. Twenty-five individuals have submitted comments urging the Service not to permit sport hunting of swans.

Response. The Service will consider these comments when the frameworks for tundra swan hunting are developed in early August.

d. The Pacific Flyway Council endorsed a proposed experimental tundra swan hunting season on Alaska's Seward Peninsula. This recommendation is responded to in item 25.

16. *Sandhill cranes.* a. The Pacific and Central Flyway Councils recommended

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that the experimental sandhill crane hunting season in New Mexico's Middle Rio Grande Valley be continued in 1988–89.

Response. The Service notes both Councils' recommendations. Regulatory frameworks for 1988–89 sandhill crane hunting seasons will be developed in late June.

b. The Central Flyway Council has recommended that the sandhill crane hunting season in the Hatch-Deming area of New Mexico (portions of Sierra, Luna and Dona Ana Counties) be granted operational status (up to 350 permits; 3 cranes daily and 9 per season; not to exceed 30 days between September 1 and January 31).

In a separate but related action the Central Flyway Council has recommended that an exception to the outside framework dates of September 1 and November 30, as called for in the Pacific and Central Flyway Management Plan for Rocky Mountain Population Sandhill Cranes, be made for Sierra, Luna and Dona Ana Counties of New Mexico. The outside frameworks for these three counties would be September 1 and January 31. The exception is requested in order to accommodate the Hatch-Deming area sandhill crane hunt in southwest New Mexico noted above.

The Pacific Flyway Council has recommended that New Mexico be permitted to conduct a sandhill crane hunting season in the Hatch-Deming area with the following stipulations:

i. Both New Mexico hunts combined (Middle Rio Grande Valley and Hatch-Deming) be designed to harvest no more than 749 Rocky Mountain Population sandhill cranes.

ii. The harvest rate of greater sandhill cranes should be assumed to be 35 percent until data prove otherwise.

iii. Data relative to racial composition of the harvest will be collected.

iv. If needed, the season length will be adjusted by New Mexico to comply with the 30-day season framework in the joint management plan for Rocky Mountain Population sandhill cranes.

Response. Service action on this requested season is deferred until the proposed frameworks for hunting sandhill cranes are developed in early June.

c. The Pacific Flyway Council recommends Wyoming's proposal to eliminate hunting Canada geese in the Bear River area and to reduce the number of permits in its Salt River sandhill crane-Canada goose hunt area from 60 to 40.

Response. The Service notes the Pacific Flyway Council's recommendation.

d. In 1987 the Service approved frameworks recommendations from the Central and Pacific Flyway Councils for operational seasons for hunting sandhill cranes within the range of the Rocky Mountain Population in Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming (See August 6, 1987, 52 FR 29194). The Pacific Flyway Council has give notice that Utah, in accordance with those frameworks, will initiate experimental sandhill crane seasons in Rich and Cache Counties, September 3–5, and September 10–12, 1988. Fifty permits, allowing the take of 1 sandhill crane per season, will be issued for each county. The Central Flyway Council endorses the Utah season.

Response. The Service notes Utah's intent to initiate an experimental sandhill crane season in 1988–89.

e. Montana has alerted the Service that it is considering requesting a change in its sandhill crane hunting season that would allow crane hunting in the area south of Interstate Highway 90 and west of the Bighorn River.

Response. The Service notes Montana's request is tentative pending approval by the Central and Pacific Flyway Councils and the State's Fish and Game Commission.

17. *Coots.* a. At its March meeting the Mississippi Flyway Council's Upper Region Regulations Committee adopted a recommendation that the regulatory frameworks for coot hunting be concurrent with the regulatory frameworks for the regular duck season only. The Committee indicated that permitting hunters to take coots during special duck hunting seasons would only provide hunters increased opportunity to accidentally or willfully harvest other species illegally.

Response. The Service notes the Committee's recommendation.

b. The Central Flyway Council has recommended the regulatory frameworks for coot hunting coincide with all duck hunting seasons, including September teal seasons and other special duck seasons.

Response. A similar recommendation from the Central Flyway Council was addressed by the Service in the March 9, 1988, **Federal Register** (at 53 FR 7710). The Service reiterates its intent to continue to limit the taking of coots in the regular duck seasons only.

21. *Woodcock.* a. Pennsylvania has submitted comments recommending that the Service continue the 1987–88 frameworks for hunting woodcock in the Eastern Region (Atlantic Flyway States) in 1988–89. The State also recommends that the framework closing date for hunting woodcock throughout the U.S. be no later than January 31.

Response. The Service will consider these recommendations when the proposed frameworks for woodcock hunting are developed in late June.

22. *Band-tailed pigeons.* a. The Pacific Flyway Council has recommended the following:

i. The framework opening date for hunting Pacific Coast Population band-tailed pigeons be delayed from September 7 to September 14 during the remaining 2 years of the scheduled 3-year harvest reduction program.

Response. The Service will consider this recommendation when the early-season frameworks are developed in late June.

ii. The regulatory frameworks for 1988–89 hunting seasons for Four-Corners Population band-tailed pigeons be the same as those of 1987–88.

Response. The Service notes the Council's recommendation.

23. *Mourning doves.* Western Management Unit (WNU).

a. The Pacific Flyway Council recommends that all WMU States, except Arizona and California be offered only 30-consecutive day hunting seasons, between September 1 and 30, 1988, and that Arizona and California be offered only 60-day seasons to be split between two periods, September 1–15, 1988, and November 1, 1988–January 15, 1989.

Response. The Service recognizes these recommended changes would effect a change in the experimental 3-year season established last year. The proposed regulations would in effect create submanagement units in the WMU. The recommendation will be further examined when the early-season frameworks are considered in late June.

24. *White-winged and white-tipped doves.* a. The Pacific Flyway Council recommends that the framework for white-winged doves in Arizona provide a season not to exceed 30 days, to be concurrent with the mourning dove season; and that frameworks for whitewings in Nevada and California provide for a season concurrent in length and timing with the mourning dove season.

Response. The Council's recommendation will be considered by the Service in late June when the early-season frameworks are developed.

b. In the March 9, 1988, **Federal Register** (53 FR 7712) the Service gave notice of Texas' request that the 1988–89 regulatory frameworks permit an aggregate daily bag limit of 12 white-winged, mourning and white-tipped doves to include no more than 2 white-tipped doves during the Sepcial 4-day white-winged dove season in Texas. At its March meeting, the Central Flyway Council adopted a recommendation supporting Texas' requests.

Response. The Service notes that the early September season in south Texas was developed as a white-winged dove season. It is also noted that white-winged doves in south Texas experienced a serious population decline following a freeze of citrus nesting habitat during the winter of 1983–84. Populations have not yet fully recovered and regulations relaxation is not thought to be warranted at present. The regular mourning dove season in south Texas begins on September 20 and continues for 66 days. Although concurrent hunting of mourning doves has been permitted during the special whitewing season in the past, a large harvest of mourning doves has resulted during a period (early September) when many individuals of this species are still nesting in south Texas. The current limitation of 2 mourning doves in an aggregate bag of 10 doves has significantly reduced the mourning dove harvest during early September in 1984–87. Previous experience predicts that a large mourning dove harvest will result during the special whitewing hunt under the Texas proposal. The Service believes that a large mourning dove harvest in early September is not in the best interest of the species.

25. *Migratory bird hunting seasons in Alaska.* a. The Pacific Flyway Council has forwarded its endorsement of the following to the Service:

i. Alaska's request for reinstatement of a 107-day season length framework for brant hunting seasons. The framework was reduced to 50 days in 1987 and the State has indicated the action did little to reduce harvest while adding complexity to the regulations. The Service has also received a formal request from Alaska for the framework change.

Response. The Service notes that brant populations have declined in the Pacific Flyway over the long-term and special efforts have been made to limit subsistence harvest of these birds in western Alaska. Despite the fact the shortened season may have done little to reduce the harvest, the Service questions whether a 57 day increase in season length in Alaska would be understood by Alaskan subsistence hunters, U.S. sport hunters or wildlife management officials in Mexico. The Service proposes to continue the current season length of 50 days for brant in Alaska.

ii. Alaska's proposal for a tundra swan season in its Game Management Unit 22 (Seward Peninsula). The State would issue 300 permits allowing each permittee 1 swan per season. The Service has also received a formal request from the State for the experimental season.

Response. This proposal will be further examined by the Service in late June when the frameworks for migratory bird hunting in Alaska are developed.

27. *Migratory game birds seasons for falconers* a. In the March 9, 1988, **Federal Register** (53 FR 7713) the Service gave notice of and solicited comments on a request that the outside framework dates for special falconry seasons be expanded. At its March meeting, the Pacific Flyway Council adopted a recommendation endorsing the request. In addition, eight individuals (MD–1, NC–1, IL–1, NM–1, ME–1, OR–1, NV–2) and one State (WA) submitted comments expressing support for the frameworks change. One of the individuals also supported zoning for falconry seasons and the use of falcons during September teal seasons.

Response. The Service continues to seek additional information or comments on this request. All comments will be considered in late June when the early-season frameworks are developed.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations that differ from these proposals. The addresses where comments should be sent and where received comments are available for public inspection were given earlier in this document under the caption **ADDRESSES**.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Flyway Council Meetings

Department of the Interior representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—Toronto, Ontario, Canada (Sutton Place Hotel) July 28–29

Mississippi Flyway—Baton Rouge, Louisiana (Hilton) July 29–30

Central Flyway—Calgary, Alberta, Canada (Marlboro Inn) July 28–29

Pacific Flyway—Reno, Nevada (Sundowner Hotel) July 28

Although agendas are not yet available, these meetings usually commence at 8:30 or 9 a.m. on the days indicated.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service at the address indicated under the caption **ADDRESS**. As noted in the March 9, 1988, **Federal Register** (at 53 FR 7707), the Service released a draft supplemental environmental impact statement (SEIS) on the FES in September 1987. The Service has reviewed the comments received on the draft SEIS and anticipates the final SEIS will be available by July 1988.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," [and shall] "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued

existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat . . ."

Section 7 consultations are presently underway regarding both the early- and late-season regulatory proposals. It is possible that the findings from the consultation, which will be included in a biological opinion, may cause modification of some of the regulatory measures proposed in this document. Any modifications that may be desirable will be reflected in the final frameworks for Alaska, Puerto Rico, and the Virgin Islands; those for other early seasons; and those for late seasons.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migatory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and Habitat Conservation, and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 9, 1988, (53 FR 7707), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above **Federal Register** publication, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collecting requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: May 27, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-12714 Filed 6-6-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 109
Tuesday, June 7, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Civil Rights of Native Americans; Hearing

Notice is hereby given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Pub. L. 98-183, 97 Stat. 1304, that a public hearing before a Subcommittee of the U.S. Commission on Civil Rights will be held on July 7, 1988, beginning at 9:00 a.m. and continuing on such succeedings days as may be deemed appropriate at the discretion of the Chairman, at the Days Inn, 2320 East Lucky Lane, Flagstaff, Arizona.

The purpose of the hearing is to receive evidence about enforcement of the Indian Civil Rights Act and about the civil rights of Native Americans.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, handicap, or national origin, or in the administration of justice.

Dated at Washington, DC, June 2, 1988.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 88-12730 Filed 6-6-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Packages Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance five clearance requests for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Federal Fisheries Permits.

Form Numbers: NOAA—N/A; OMB—five new numbers to be assigned.

Type of Request: Revision of a currently approved collection (formerly cleared under (0648-0097).

Burden: 12,952 respondents; 6,353 reporting hours (total estimate for all packages).

Needs and Uses: Under the authority of the Magnuson Fishery Conservation and Management Act, the Regional Fishery Management Councils have developed plans to conserve and manage marine resources. One of the steps taken to manage regulated fisheries is to issue permits to users of the resources. A separate clearance package has been submitted to OMB for each Region—Northeast, Southeast, Northwest, Southwest, and Alaska. While there are variations between Regions, the regular permit applications require essentially the same information on owners and operators of vessels, gear type used, tonnage, and fish hold capacity of vessels. Permits serve three main purposes: (1) To determine fishing effort, (2) to allow revocation of a permit as an enforcement tool, and (3) to acquire data on the economic structure of the fishing fleet. Some Regions also have special permit requirements which are used for fishery management purposes.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations; non-profit institutions.

Frequency: On occasion; annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7343.

Copies of the information collection packages for each Region can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection requirements should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-12809 Filed 6-6-88; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Establishment of the Bureau of Export Administration; Department Organization Order 10-16

AGENCY: Bureau of Export Administration; Commerce.

ACTION: Notice of Department Organization Order.

SUMMARY: On October 1, 1987, the Bureau of Export Administration was established within the Department of Commerce. Attached to this notice is a copy of Department Organization Order 10-16 of March 10, 1988, which sets forth the scope of authority and the functions of the Under Secretary for Export Administration.

Dated: May 19, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

[Department Organization Order 10-16]

Department Organization Order Series

Date of Issuance: March 10, 1988.
Effective Date: March 10, 1988.
Subject: Under Secretary for Export Administration.

Section 1. Purpose

This Order prescribes the scope of authority and the functions of the Under Secretary for Export Administration. The organizational structure and the assignment of functions are prescribed in Department Organization Order 50-1, the "Bureau of Export Administration."

Section 2. Administrative Designation

.01 The Under Secretary for Export Administration, established by Section 15 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985)), shall be head of the Bureau of Export Administration. The Under Secretary is appointed by the President by and with the advice and consent of the Senate.

.02 The positions of Assistant Secretary, established by Section 15 of the Export Administration Act of 1979,

BEST COPY AVAILABLE

as amended (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985)) are designated the Assistant Secretary for Export Administration and the Assistant Secretary for Export Enforcement.

Section 3. Structure and Scope of Authority

.01 The Under Secretary for Export Administration shall be assisted in carrying out his/her responsibilities by:

a. The Deputy Under Secretary for Export Administration;

b. The Assistant Secretary for Export Administration; and

c. The Assistant Secretary for Export Enforcement.

.02 The Assistant Secretary for Export Administration shall be assisted in carrying out his/her responsibilities by:

a. The Deputy Assistant Secretary for Export Administration;

b. The Director of the Office of Export Licensing;

c. The Director of the Office of Technology and Policy Analysis; and

d. The Director of the Office of Foreign Availability.

0.3 The Assistant Secretary for Export Enforcement shall be assisted in carrying out his/her responsibilities by:

a. The Deputy Assistant Secretary for Export Enforcement;

b. The Director of the Office of Export Enforcement;

c. The Director of the Office of Export Intelligence; and

d. The Director of the Office of Antiboycott Compliance.

Section 4. Delegation of Authority

.01 Pursuant to the authority vested in the Secretary of Commerce, the Under Secretary for Export Administration is hereby delegated the following authorities of the Secretary of Commerce; provided, however, that the Secretary reserves authority to provide policy guidance and direction to the Under Secretary (and delegates) and, at the Secretary's initiative or at the request of the Under Secretary, to consult with the Under Secretary (and delegates) to the extent permitted by law regarding the exercise of the authorities delegated by this section:

a. The Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420), and the authority under the Act conferred on the Secretary under Executive Order 12525 of July 12, 1985, Executive Order 12214 of May 12, 1980, and Executive Order 12002 of July 17, 1977, except that:

1. the submission of reports to the Congress required by Section 14 of the Act shall be reserved to the Secretary; and

2. the power, authority, and discretion to make the determination required by Section 12(c):

(a) may not be delegated below the Assistant Secretary level;

(b) determinations regarding the publication or disclosure of confidential information obtained under the Act pursuant to a request under the Freedom of Information Act (5 U.S.C. 552) shall be reserved to the Under Secretary for Export Administration; and

(c) any determination under Section 12(c) shall require the prior concurrence of the Office of the General Counsel.

b. Executive Order 11958 of January 18, 1977, as it pertains to carrying out, on behalf of the Department of State, functions under Section 38(e) of the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) as agreed to by the Departments of Commerce and State;

c. Executive Order 11322 of January 5, 1967, and Executive Order 11419 of July 29, 1968, regarding the Rhodesian sanctions with respect to transactions occurring prior to December 16, 1979 (Executive Order 12183 of December 6, 1979 revoked provisions of Executive Orders 11322 and 11419 regarding transactions occurring after December 6, 1979);

d. the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3201 *et seq.*) and the authority under that Act conferred on the Secretary under Executive Order 12058 of May 11, 1978, pertaining to nuclear exports and other matters;

e. Sections 103 and 251 of the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) conferred on the Secretary under Executive Order 11912 of April 13, 1976, regarding:

1. export restrictions of coal, petroleum products, natural gas, or petrochemical feedstocks, and supplies of material or equipment necessary to maintain for further exploration, production, refining, or transportation of energy supplies or for the construction or maintenance of energy facilities within the United States; and

2. rules to authorize the export of petroleum and petroleum products as may be necessary for implementation of the obligations of the United States under the International Energy Program.

f. The delegation of authority, dated June 25, 1982, for the United States Information Agency under Section 5(e) of Executive Order 11034 of June 25, 1962, as amended by Executive Order 11380 of November 8, 1967, regarding the promotion of international trade and collection of contributions under the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 *et seq.*).

.02 The Under Secretary may exercise other authorities of the Secretary as applicable to perform the functions assigned in this Order.

.03 Except as otherwise provided in this Order, the Under Secretary may redelegate his/her authority, subject to such conditions in the exercise of such authority as he/she may prescribe.

Section 5. Functions

The Under Secretary for Export Administration, acting as such and as head of the Bureau of Export Administration, shall be the principal officer of the Department for carrying out the policies and programs necessary to administer the Export Administration Act and other laws regarding the control of U.S. exports.

S. William Verity,

Secretary of Commerce.

[FR Doc. 88–12760 Filed 6–6–88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A–588–703]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning certain internal-combustion, industrial forklift trucks (forklifts) from Japan, the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (the ITC) determined that forklifts are being sold at less than fair value and that imports of forklifts from Japan are materially injuring a U.S. industry. On April 7, 1988, the Department determined that critical circumstances exist with respect to imports of forklifts from Nissan Motor Co., Ltd. (Nissan) and Toyo Umpanki Co. (TCM). However, on May 31, 1988, the ITC notified the Department that critical circumstances do not exist with respect to imports of forklifts from Nissan and TCM. Therefore, based on these findings, all unliquidated entries of forklifts from Japan entered or withdrawn from warehouse, for consumption, on or after November 24, 1987, the date on which the Department published its preliminary determination notice in the Federal Register, will be liable for the possible assessment of antidumping duties. As a result of the ITC's negative critical circumstances determination, U.S. Customs will refund all cash deposits and release all bonds collected on forklifts entered or withdrawn from warehouse, for consumption, on or after August 26, 1988 and before November 24, 1987. Further, a cash deposit of estimated antidumping duties must be made on all entries of forklifts from Japan entered or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 377–0161.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs., currently provided for under *Tariff Schedules of the United States Annotated* (TSUSA) items 692.4025, 692.4030, and 692.4070, and currently classifiable under Harmonized System (HS) item numbers 8427.20.00–0, 8427.90.00–0, and 8431.20.00–0. The products covered by this investigation are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.

Products not covered by this investigation are genuinely used forklifts. For the purposes of this antidumping duty order and amendment to the final determination, we consider any forklift to be used if, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured in a calendar year at least three years prior to the year of entry into the United States. The importer must show documentation from industrial publications that reconcile the serial number and year of manufacture of the forklift. If the calendar year of manufacture is at least three years prior to its year of entry into the United States, it will not be subject to the suspension of liquidation or any assessment of antidumping duties.

For example, if a forklift is entered or withdrawn from warehouse, for consumption in June 1988 and if the importer demonstrates through industrial publications that the forklift was manufactured in or before calendar year 1985, that forklift will not be covered by this order.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on April 7, 1988, the Department made its final determination that forklifts from Japan are being sold at less than fair value (53 FR 12552, April 15, 1988) and that critical circumstances exist with respect to Nissan and TCM. On May 31, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports are materially injuring a U.S. industry and that critical circumstances do not exist with respect to Nissan and TCM.

Subsequent to the publication of the Department's final determination, Komatsu Forklift Co., Ltd. (Komatsu) made allegations that certain clerical errors had been made in the concordance. The Department conducted a review based on these comments and amended its final determination to correct these errors. These corrections changed Komatsu's weighted-average dumping margin from 47.73% to 47.50% and the "all others" rate from 39.50% to 39.45%.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of forklifts from Japan, with the exception of genuinely used forklifts as described above. These antidumping duties will be assessed on all unliquidated entries of forklifts from Japan entered or withdrawn from warehouse, for consumption, on or after November 24, 1987, the date on which the Department published its preliminary determination notice in the Federal Register (52 FR 45003).

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on forklifts from Japan, a cash deposit equal to the estimated weighted-average dumping duty margins noted below:

Manufacturers/Producers/Exporters	Weighted-average margin (percent)
Toyota Motor Corp	37.29
Nissan Motor Co., Ltd	51.23
Komatsu Forklift Co., Ltd	47.50
Sumitomo-Yale Co., Ltd	51.33
Toyo Umpanki Co., Ltd	51.33
Sanki Industrial Co., Ltd	13.65
Kasagi Forklift, Inc	56.51
All Others	39.45

This determination constitutes an amendment to the final determination and an antidumping duty order with respect to forklifts from Japan, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e) and 19 CFR 353.48.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

June 3, 1988.

[FR Doc. 88–12918 Filed 6–6–88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: June 9, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of a Special Access Program.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: During recent consultations between the Governments of the United States and Jamaica, agreement was reached to increase the guaranteed access levels for certain properly certified cotton and man-made fiber textile products which are assembled in Jamaica from fabric formed and cut in the United States and exported during 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 51 FR 21208, published on June 11, 1986; 52 FR 28057, published on July 10, 1987; and 52 FR 49185, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 2, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 24, 1987, concerning, among other things, guaranteed access levels for certain cotton and man-made fiber textile products, assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 9, 1988, the directive of December 24, 1987 is amended to increase the guaranteed access levels for cotton and man-made fiber textile products in the following categories, under the terms of the current bilateral agreement between the Governments of the United States and Jamaica:

Category	Guaranteed access level (dozen)
338/339/638/639	1,500,000
340/640	300,000
341/641	375,000
347/348/647/648	2,000,000
352/652	1,550,000
632	3,000,000

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–12801 Filed 6–6–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures scheduled for May 10–11, 1988 as published in the **Federal Register** (Vol. 53, No. 86, Page 16315, Friday, May 6, 1988, FR Doc. 88–10105) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1988.

[FR Doc. 88–12815 Filed 6–6–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment, Revisit; Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Use of Commercial Components in Military Equipment—Revisit scheduled for June 17, 1988 as published in the **Federal Register** (Vol. 53, No. 14, Page 1615, Friday, January 22, 1988, FR Doc. 88–1315) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1988.

[FR Doc. 88–12816 Filed 6–6–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations will meet in closed session on June 23–24, 1988 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the potential for achieving U.S. security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1988.

[FR Doc. 88–12817 Filed 6–6–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 7, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Officer of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 2, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Extension
Title: Lender's Request for Interest and Special Allowance for Loans Made from Tax-Exempt Funds
Frequency: Quarterly
Affected Public: Businesses or other for-profit
Reporting Burden:
Responses: 300
Burden Hours: 352
Recordkeeping:
Recordkeepers: 75
Burden Hours: 113
Abstract: This form will be used by lenders participating in the Guaranteed Student Loan (GSL) and PLUS programs. The Department will use the information to pay interest and special allowance payments to tax-exempt lenders.

Office of Postsecondary Education

Type of Review: Extension
Title: Lender's Request for Interest and Special Allowance
Frequency: Quarterly
Affected Public: Business or other for-profit
Reporting Burden:
Responses: 48,000
Burden Hours: 79,200
Recordkeeping:
Recordkeepers: 12,000
Burden Hours: 18,000
Abstract: This form will be used by lenders participating in the Guaranteed Student Loan (GSL) and PLUS programs. The Department will use the information to pay interest and special allowance payments to lenders.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Tape Dump Procedures for the Guaranteed Student Loan (GSL) and PLUS/SLS Programs
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 108
Burden Hours: 4,752
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: State and private, nonprofit guarantee agencies provide specific data on the GSL and PLUS/SLS Programs, via magnetic tape, to the Department. The Department uses the data to describe the characteristics of borrowers; to assess the impact of various legislative, regulatory and budgetary proposals; and to monitor borrower fraud and abuse.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: New and Continuation Application for Grants under the Upward Bound Program
Frequency: Annually
Affected Public: State or local governments; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 700
Burden Hours: 23,800
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by institutions of higher education, public and private agencies or organizations, and in exceptional cases, secondary schools, to apply for funding under the Upward Bound Program. The Department will use the information to make grant awards.

[FR Doc. 88–12814 Filed 6–6–88; 8:45 am]

BILLING CODE 4000-01-M

Notice Inviting Applications for New State Grant Awards for Fiscal Year 1988

Title of Program: Training Personnel for the Education of the Handicapped.

CFDA No: 84.029H4.

Purpose: To increase the quantity and improve the quality of personnel to educate children and youth with handicaps. Applications for State grants may be submitted by State educational agencies (SEAs).

Subsequent to the initial publication of application announcements for fiscal year (FY) 1988, the Conference report accompanying the FY 1988 appropriations bill expressed an expectation that 10 percent of the funds available for awards under Part D of the Education of the Handicapped Act (EHA–D) would be awarded under section 632. The Secretary has decided to supplement the FY 1988 awards under section 632 of the EHA–D by inviting SEAs to submit applications—including SEAs that have received new or continuation grants under the State Grant Program (84.029H) for FY 1988—for additional funds. Each SEA that submits an application will receive a grant.

Deadline for Transmittal of Applications: July 20, 1988.

Applications Available: June 10, 1988.

Estimated Range of Awards: $10,000 to $40,000.

Estimated Average Size of Awards: $25,000.

Estimated Number of Awards: 24.

Project Period: 12 months.

Applicable Regulations: (a) The Training Personnel for the Education of the Handicapped Program, 34 CFR Part 319, 52 FR 25830 *et seq.*; and (b) the Education Department General Administration Regulations, 34 CFR Parts 75, 77, 78, and 80.

For Applications or Information Contact: Norman D. Howe, U.S. Department of Education, Office of Special Education Programs, Division of Personnel Preparation, 400 Maryland Avenue, S.W. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1070.

Program Authority: 20 U.S.C. 1432.

Dated: June 2, 1988.

(Catalog of Federal Domestic Assistance No. 84.029: Training Personnel for the Education of the Handicapped)

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88–12813 Filed 6–6–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA NO.: 84.073E]

National Diffusion Network Program; Application for New Dissemination Process Awards for Fiscal Year 1988

ACTION: Extension of deadline date for transmittal of applications.

The Secretary extends the deadline date for transmittal of applications from June 1, 1988 to August 1, 1988.

On January 28, 1988 the Secretary published in the **Federal Register** (53 FR 2532) a notice inviting applications for new Dissemination Process awards. Detailed information is included in that notice. On March 31, 1988 the Secretary published in the **Federal Register** (53 FR 10418) a notice extending the closing date for transmittal of applications to June 1, 1988.

The purpose of this notice is to further extend the closing date for transmittal of applications so that potential applicants may have additional time to complete their applications.

For Applications or Information Contact: Mrs. Linda Jones, U.S. Department of Education, 555 New Jersey Avenue NW, Room 510, Washington, DC 20208. Telephone: (202) 357-6153.

Program Authority: 20 U.S.C. 3851.

Dated: June 2, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88-12812 Filed 6-6-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-AU-132, for the sale of 5 milligrams of plutonium-239 to the Australian Radiation Laboratory, Yallambie, Victoria, Australia, for use in emission rate studies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 2, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-12799 Filed 6-6-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-42, for the transfer of fuel elements containing 4.992 kilograms of uranium, enriched to 93.17 percent in the isotope uranium-235, from France to Japan for use as fuel in the KYOTO University reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 2, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-12800 Filed 6-6-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E 88-12; Certification Notice—17]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants; Panda Energy Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Panda Energy Corp., Dallas, TX	5-17-88	Cogeneration Combined Cycle	11.4	Dallas, TX

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on May 25, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-12757 Filed 6-6-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES88-30-000, et al.]

PacifiCorp doing business as Pacific Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Pacific Power & Light Co.

[Docket No. ES88-30-000]

May 31, 1988.

Take notice that on May 19, 1988, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing it to (1) guaranty up to $15,000,000 principal amount of debt, together with interest thereon, on behalf of its PacifiCorp K Plus Employee Savings and Stock Ownership Plan and Trust and (2) enter into such agreements or arrangements with financial institutions necessary to effect the guaranty.

Comment date: June 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Vermont Electric Power Company, Inc.

[Docket No. ER88-411-000]

June 1, 1988.

Take notice that on May 24, 1988, Vermont Electric Power Company, Inc. (VELCO) tendered for filing substantially identical Agreements for Transmission Services by which VELCO agrees to provide transmission services (a) for the transmission of 50 megawatts of power and associated energy to be taken by VELCO at the New York/Vermont border near Whitehall, New York, and to be delivered to Public Service Company of New Hampshire at the Vermont/ New Hampshire border near Ascutney, Vermont, and (b) for the transmission of 75 megawatts of power and associated energy to be taken by VELCO at the New York/Vermont border near Hoosick, New York, and to be delivered for Boston Edison Company to New England Electric System at the Vermont/Massachusetts border near North Adams, Massachusetts, each for a period of six months commencing on May 1, 1988, and each at a rate of $1.50 per kilowatt month.

VELCO proposes that the Agreements for Transmission Services become effective on May 1, 1988. VELCO requests waiver of the Commission's regulations to allow the Agreements to become effective as of that date. If waiver is granted, VELCO states that there will be no adverse effect upon customers under VELCO's other rate schedules.

VELCO states that it has served the filing upon the Vermont Public Service Board, the Vermont Department of Public Service, Boston Edison Company, Public Service Company of New Hampshire, Niagara Mohawk Power Corporation, Northeast Utilities Service Corporation, and New England Electric System.

Comment date: June 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Power Co. and Kentucky Power Co.

[Docket No. ER88-408-000]

June 1, 1988.

Take notice that on May 23, 1988, American Electric Power Service Corporation (AEP) on behalf of its affiliates, Ohio Power Company and Kentucky Power Company, tendered for filing the following:

1. The Facilities Agreement among Kentucky Power Company, Ohio Power Company, and City of Vanceburg, dated September 1, 1980.

2. The Agreement among City of Hamilton, Ohio, American Municipal Power-Ohio, Inc. and Ohio Power Company, dated September 1, 1980.

3. The Agreement between City of Vancebury and Kentucky Power Company, dated September 1, 1980.

4. Agreement among City of Hamilton, American Municipal Power-Ohio, Kentucky Power Company, and Ohio Power Company, dated May 1, 1988.

5. Agreement between Kentucky Power and City of Vanceburg, Kentucky, dated May 1, 1988.

Items 1, 2, and 3 above are being terminated and Items 4 and 5 are effectively replacing them. These changes in contractual arrangements are necessitated by the City of Hamilton's acquisition from the City of Vanceburg of the Greenup hydroelectric facility.

Copies of the filing were served upon American Municipal Power-Ohio, City of Hamilton, City of Vanceburg, Public Utilities Commission of Ohio, and Kentucky Public Service Commission.

Comment date: June 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co.

[Docket No. ER88-410-000]

June 1, 1988.

Take notice that on May 23, 1988, Northern States Power Company (Minnesota) tendered for filing the Municipal Transmission Service Agreement Between Northern States Power Company (NSP) and the City of Truman.

The Municipal Transmission Service Agreement is an initial rate schedule filing. The Municipal Transmission Service Agreement essentially provides that NSP will wheel power and energy delivered to it by the Western Area Power Administration to the Interstate Power Company for ultimate delivery to Truman. The power in question has been sold by the Missouri Basin Municipal Power Agency to Truman. The rate and charges provided for this service are on file with the Commission for similar agreements with other cities.

NSP requests the Municipal Transmission Service Agreement become effective on May 1, 1988 and therefore, requests waiver of the Commission's notice requirements.

Comment date: June 15, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Indiana Michigan Power Co.

[Docket No. ER88-409-000]

June 1, 1988.

Take notice that on May 23, 1988, American Electic Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Indiana Michigan Power Company (I&M), which is an AEP affiliated operating subsidiary, Modification No. 14 dated May 1, 1988 to the Agreement dated January 1, 1977 between I&M and the Indiana Municipal Power Agency (IMPA), assignee of the City of Richmond, Indiana. The Commission has previously designated the 1977 Agreement as I&M's Rate Schedule FERC No. 70.

This Modification updates the Emergency Service and Interchange Power Service Schedules to make them similar to those I&M currently has on file with the Commission.

Copies of this filing were served upon IMPA, RP&L, the Public Service Commission of Indiana and the Michigan Public Service Commission.

Comment date: June 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Union Electric Co.

[Docket No. ER84-560-004]

June 1, 1988.

Take notice that on May 20, 1988, Union Electric Company tendered for filing an amendment to its filing of January 14, 1988. That original filing included tariff sheets in compliance with the Commission's Opinion No. 279-A in Docket Nos. ER84-560-002 and 003 issued December 21, 1987, and the Opinion and Order Establishing Just and Reasonable Rates (Opinion 279) issued July 20, 1987, in docket No. ER84-560-000, as well as various schedules and workpapers as directed by the Commission's Orders. This Amendment is filing pursuant to the instructions of the Division of Electric Power Application Review by letter dated April 25, 1988.

Copies of the filing were served upon the public's utility's jurisdictional customers, intervenors and the Missouri Public Service Commission.

Comment Date: June 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Upper Peninsula Power Co.

[Docket No. ER88-402-00]

June 1, 1988.

Take notice that on May 19, 1988, Upper Peninsula Power Company tendered for filing, pursuant to Part 35 of the regulation under the Federal Power Act, an Interconnection Agreement between Upper Peninsula Power Company and the City of Escanaba dated December 12, 1986.

Comment date: June 15, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Public Service Electric and Gas Co.

[Docket No. ER88-412-000]

June 1, 1988.

Take notice that on May 24, 1988, Public Service Electric and Gas Company (PSE&G) tendered for filing to Part 131.53 of the Commission's Regulations a Notice of Cancellation of Sale of Power Agreement for a sale of system power from PSE&G to Connecticut Light and Power Company for the period January 1, 1988 through January 31, 1988.

PSE&G requests that the cancellation be made effective as of February 1, 1988. Consequently, PSE&G requests waiver of the notice requirements to the extent necessary to accomplish the foregoing.

Comment date: June 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Central Power & Light Co.

[Docket No. EL79-8-002]

June 1, 1988.

Take notice that on May 20, 1988, Texas Utilities Electric Company tendered for filing in the above-referenced proceeding a compliance Tariff for Transmission Service To, From and Over Certain HVDC Interconnections, pursuant to the Commission's Order Approving Settlement issued July 23, 1987 in the above-referenced docket. The compliance tariff replaces references to the South HVDC Interconnection with references to an East HVDC Interconnection, as ordered by the Commission in its Order Approving Settlement. The compliance filing also includes a provision concerning reservation of capacity by qualified utilities. The compliance filing reflects no change in the rates presently on file.

Comment date: June 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Freeport Geothermal Resources Company, a Delaware Corporation

[Docket No. QF87-586-002]

June 2, 1988.

On May 13, 1988, Freeport Geothermal Resources Company, a Delaware Corporation (Applicant), of 1160 N. Dutton, Suite 200, Santa Rosa, California 95401-4606, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The application for recertification requests that approximately 1.3 miles of 230 kV transmission line, to be constructed by Applicant, be determined to be part of the qualifying small power production facility. The proposed transmission line will interconnect the facility with the transmission system of Pacific Gas and Electric Company (PG&E). The transmission line will be utilized to transmit the qualifying facility's electric power output to PG&E, and to transmit standby, maintenance and back up power from PG&E to the facility. The facility was previously certified as a qualifying small power production facility on February 23, 1988, Freeport Geothermal Resources Company, a Delaware Corporation, Docket No. QF87-586-001, 42 FERC ¶62,145. All other facility's characteristics remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

11. Freeport-McMoRan Resource Partners Limited Partnership, a Delaware limited partnership

[Docket No. QF87-587-002]

June 2, 1988.

On May 13, 1988, Freeport-McMoRan Resource Partners Limited Partnership, a Delaware limited partnership (Applicant), of 1160 N. Dutton, Suite 200, Santa Rosa, California 95401-4606, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The application for recertification requests that approximately 1.8 miles of 230 kV transmission line, to be constructed by Applicant, be determined to be part of the qualifying small power production facility. The proposed transmission line will interconnect the facility with the transmission system of Pacific Gas and Electric Company (PG&E). The transmission line will be utilized to transmit the qualifying facility's electric power output to PG&E, and to transmit standby, maintenance and back up power from PG&E to the facility. The facility was previously certified as a qualifying small power production facility on February 24, 1988, Freeport-McMoRan Resource Partners Limited Partnership, a Delaware limited partnership, Docket No. QF87-587-001, 42 FERC ¶62,147. All other facility's characteristics remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12807 Filed 6-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-388-000, et al.]

PennEast Gas Services Co., et al.; Natural gas certificate filings

June 1, 1988.

Take notice that the following filings have been made with the Commission:

1. PennEast Gas Services Company

[Docket No. CP88-388-000]

Take notice that on May 11, 1988, PennEast Gas Services Company (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP88-388-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to provide long-term firm storage and firm transportation service for Valley Gas Company (Valley), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that on April 30, 1987, Applicant filed an application in Docket No. CP87-312-000 to render a firm storage and transportation service commencing April 1, 1988 under Rate Schedule PSS and T-1. It is further indicated that Applicant, in an amended application in Docket No. CP87-92-002 filed on January 15, 1988, requested approval to implement such service commencing November of 1989. Applicant states that the PSS storage service, as requested in Docket No. CP87-312-00, is based upon 10 Bcf of storage capacity to be developed by Applicant at the North Summit Pool located in Fayette County, Pennsylvania, in combination with the purchase by Applicant of 19 Bcf of storage service from CNG Transmission Corporation, also pending authorization in Docket No. CP87-312-000. Applicant further states that the storage service specifies a maximum daily withdrawal quantity of up to 199,104 dt equivalent per day under Applicant's Rate Schedule PSS.

Applicant submits that Valley has requested storage service from Applicant under Applicant's proposed Rate Schedule PSS and has entered into a precedent agreement dated September 23, 1987 with Applicant for a maximum daily withdrawal quantity of 1,000 dt equivalent. Applicant further submits that a position of the storage capacity proposed in Docket No. CP87-312-000 was undesignated and would be utilized to render the proposed service for Valley.

Applicant proposes on behalf of Valley, pursuant to Rate Schedule PSS, to receive gas from Valley at the receipt point specified in the service agreement and to inject such gas into Applicant's storage capacity, and to withdraw gas from Applicant's storage capacity and deliver such gas for the account of Valley at the delivery point specified in the service agreement. Also, Applicant proposes, when capacity is available on Applicant's system for receipt of gas from or for the account of Valley, to receive from or for the account of Valley quantities of gas and inject into storage for Valley's account such quantities of gas. Applicant proposes to withdraw from storage for Valley, at Valley's request, quantities of gas from the Valley's storage inventory up to the Valley's maximum daily withdrawal quantity (and such additional quantity as Applicant in its judgement is able to withdraw) and deliver to or for the account of Valley such quantities less company use gas, all subject to the provisions of Rate Schedule PSS.

In addition to the firm storage service contracted for by Valley, Applicant proposes to render to Valley a long-term firm transportation service pursuant to Applicant's firm transportation Rate Schedule T-1. Applicants proposes to transport for Valley on a daily basis natural gas up to contract demand quantity of 989 dt equivalent commencing November 15, 1988.

Applicant states that a copy of the precedent agreement and proforma storage service and transportation agreements between Applicant and Valley are attached in Exhibit I to the application.

It is indicated that Applicant would charge Valley, pursuant to Rate Schedules PSS and T-1, such rates to be derived and charged as proposed in Docket No. CP87-312-000.

Comment date: June 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP88-397-000]

Take notice that on April 29, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP88-397-000 an application, as amended May 19, 1988, pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its interest in certain pipeline and regulating facilities, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to abandon by assignment to Huffco Petroleum Corporation (Huffco) its interest in approximately 6.5 miles of 10-inch pipeline and related measurement and appurtenant facilities extending from a production platform in Eugne Island Area, Block 260, offshore Louisiana, to an interconnection with Sea Robin Pipeline Company's 24-inch pipeline in Eugene Island Area, Block 273, offshore Louisiana. Southern states that it has agreed to assign the Facilities to Huffco pursuant to an agreement between Southern and Huffco dated April 1, 1988.

Southern states further that the abandonment of the facilities would not result in termination of any service to its customers, and that the purpose of such abandonment is to provide partial consideration for the reformation of a Gas Purchase Contract between Huffco and Southern, the terms of which are subject to an understanding of confidentiality between the parties.

Comment date: June 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88-400-000]

Take notice that on May 19, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-400-000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon certain facilities in offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee requests authority to abandon natural gas pipeline, compression and metering facilities located in West Delta Blocks 68, 69, 70, 71, 94, 95, and 96 and Grand Isle Block 43, which facilities are designated by Tennessee as the Grand Isle Gathering System. It is stated that these facilities consist of 25 segments of pipeline ranging in length from 0.07 mile to 8.84 miles and ranging in size from 4 inches to 16 inches, a total of 6,000 horsepower of compression located on four offshore platforms, seven measuring facilities installed on various offshore platforms and other appurtenant facilities.

Tennessee states that the facilities of the Grand Isle Gathering System have been and presently are utilized for the production, transportation and delivery of natural gas produced from various wells located in the West Delta and Grand Isle offshore areas to metering facilities located on the platform

designated the Grand Isle 43AA platform on OCS Block 0175, offshore Louisiana. It is further stated that all of the gas delivered to Tennessee through these metering facilities is purchased for Tennessee's system supply under various gas purchase agreements between Tennessee and Conoco, Inc., Atlantic Richfield Company, Texaco Producing Inc., and Cities Service Oil and Gas Corporation (referred to collectively as CATC). Upon receipt of the CATC gas on the Grand Isle 43AA platform, Tennessee transports the gas through its existing facilities to its onshore pipeline system.

Tennessee proposes to effect the abandonment by transferring all title and interest in the Grand Isle Gathering System to CATC. Tennessee notes, however, that this arrangement is contingent on an FERC finding that, following approval of the subject abandonment, the Grand Isle Gathering System will not be subject to FERC jurisdiction under the Natural Gas Act. It is stated that such a finding by the FERC is to be requested in a companion filing with the FERC to be made by CATC.

Tennessee explains that in the past it has entered into various operating agreements with CATC for various segments of the Grand Isle Gathering System. Despite these operating agreements, Tennessee asserts that total costs of operation and maintenance of the Grand Isle System have been comparatively high, exceeding $1,500,000 per year. In addition, it is noted that considerable employee effort has been expended to evaluate and recoup from CATC appropriate reimbursement for CATC's production related usage of the Grand Isle System.

Tennessee asserts that by conveying the Grand Isle System to CATC, it will maintain the same gas supply dedication while eliminating all the expenses of maintaining and operating the system. Tennessee states that such a reduction in operating expenses would generate savings to Tennessee's customers.

Comment date: June 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Company

[Docket No. CP88-391-000]

Take notice that on May 12, 1988, as supplemented May 20, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP88-391-000, proposing to restructure the sales, transportation and storage services offered to its customers, for abandonment authorization and for approval of tariff changes pursuant to a stipulation and agreement and in accordance with the provisions of sections 4 and 7 of the Natural Gas Act and the applicable provisions of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization among other things, (1) to comprehensively restructure the basic services offered by the pipeline to include flexible sales and transportation options; (2) to provide an opportunity for customers to submit new or revised entitlement nominations for such service; and (3) to implement a gas inventory charge (Option Service Charge) in conformance with the fundamental principles and policies underlying Order No. 500. Transco states that the service restructuring proposal involves the updating of Volume 1 of Applicant's FERC Gas Tariff to eliminate or suspend outdated rate schedules or provisions, and to offer a basket of new and existing services.

Applicant states that the instant filing represents an offer of settlement because it is the result of negotiations involving Transco, its customers and other interested participants. Applicant accordingly requests that this filing be processed under the provision of the Rules of Practice and Procedure dealing with offers of settlement, Rule 602 *et seq.*

Transco summarizes the major elements of the settlement agreement as follows:

(1) Transco states that it is offering a new MDQ Rate Schedule as a voluntary alternative to its CD Rate Schedule. It is indicated that the MDQ Rate Schedule offers greater flexibility for firm transportation and sales service while ensuring that Transco remains revenue neutral. Transco states that customers would be able to freely nominate for MDQ service as well as for firm transportation service, provided that any increase in firm capacity entitlements should only be available within the constraints of Transco's existing pipeline capacity. It is also indicated that in order to manage the gas supply and price risks inherent in the MDQ service, a threshold aggregate level of MDQ nominations must be achieved on a daily and annual basis. Transco states that it reserves the right to withdraw the MDQ Rate Schedule from the available service options if the aggregate initial customer nominations under the MDQ Rate Schedule do not equal or exceed 1,900,000 dt equivalent of gas per day and 438,000,000 dt equivalent of gas per year.

(2) Transco states that its customers would be given the opportunity at the outset to choose from among a wide variety of service options: (a) *Switch* to the new MDQ merchant service; (b) *remain* on the existing sales rate schedules; (c) *convert* all or a portion of their firm sales entitlement to FT service; (d) *reduce* or relinquish firm sales entitlements; or (e) *structure* a combination of sales service and transportation service.

(3) It is indicated that the gas commodity pricing of Transco's sales services—both under the MDQ Rate Schedule and under existing rate schedules—would be based on a markets—oriented structure employing an initial price formula keyed to spot prices and that the pricing regime would provide mutual rights to periodic price redeterminations which would encompass the right to invoke binding arbitration designed to yield market-sensitive gas commodity prices over the term of the agreements.

(4) Transco states that its gas inventory charge, the Option Service Charge, is modeled on one of the Order No. 500 prototypes. In addition to the spot-based gas commodity rate outlined above, it is indicated that customers would pay a Daily Option Service Charge based on daily entitlements plus a Monthly Option Service Charge based on the customer's nominated annual entitlement to sales service and the customer's nominated load factor. If such OSC provision or its function equivalent is limited or discontinued as a result of future regulatory action, Transco indicates it shall have the right to make a concomitant limitation or termination with respect to the quantity and/or term provisions of the service agreements under the Rate Schedule MDQ.

(5) Transco states that it would provide its firm transportation customers (under "converted" FT service, regular FT service, and transportation under the MDQ Rate Schedule) with specific capacity rights in the production area as well as to mainline facilities. It is indicated that the intent and effect of the tariff provisions is to put customer-arranged supplies on a par with system supply insofar as concerns access to Transco's production area pipeline capacity.

(6) Transco also states it would (1) remove the existing restrictions in its major storage rate schedules which preclude the injection of third-party supplies into such storage, (2) offer a new open access firm storage rate schedule if and to the extent that storage capacity is available in excess of that which is dedicated to specific storage services and to system operations, and (3) offer a new IS rate schedule for interruptible service to on and off-system customers. Transco requests blanket authority to use that rate schedule. Transco indicates that the rates for this service would be negotiated within a range of prices set forth in the rate schedule.

(7) Transco also states that it would update Volume 1 of Applicant's FERC Gas Tariff to eliminate outdated Rate Schedules OG, E, T-1, T-11 and TSS, to suspend both the existing purchased gas adjustment (PGA) mechanism and the gas supply deficiency curtailment provisions and to conditionally eliminate the minimum commodity bills from sales rate schedules.

With respect to (2) above, Transco states that any customer electing to remain on the existing CD, G, ACQ and PS Rate Schedules shall be entitled to do so for the remaining term of such customer's service agreement and thereafter until abandonment of service is approved. Transco indicates that the gas costs for those rate schedules would be based on the market-based formulae used for the MDQ service. Transco indicates that customers electing to remain on the existing firm sales rate schedules for annual service should only have the contract conversion rights as specified in Order No. 436/500 but no reduction rights. Transco states that customers shall have the option to convert all or any portion of existing CD, G and OG Rate Schedule entitlements to firm transportation under the FT Rate Schedule. Transco also states that its sole direct sale customer, Owens-Corning Fiberglas Corporation shall have the option to convert its contract sales service to FT service and/or an MDQ-type service. Transco indicates it would file under section 7(c) for such converted FT service for any customer which has elected to so convert and whose conversion has already taken place. Transco also states that with respect to future conversions to FT service under the MDQ Rate Schedule in the future, approval of the stipulation and agreement would constitute certificate authority to perform any such service under section 7 of the Natural Gas Act.

With respect to reductions in firm daily capacity, Transco indicates that during the first three years of the availability of MDQ Rate Schedule service, customers under such rate schedules shall have a one-time conditional right to reduce their firm entitlement capacity by up to 10 percent of the customer's then-effective firm daily entitlement.

Transco also proposes to permit its MDQ customers upon one year's notice to convert to firm transportation under the FT Rate Schedule up to fifteen percent per year of its original nominated MDQ daily quantity. Transco indicates the reduction rights would be non-cumulative.

Transco requests waiver of any sections of the Commission's regulations which may be necessary to permit the filing to be approved and made effective on a prospective basis. Transco also advises that approval of an application filed in Docket No. CI88-455-000 by Transco on behalf of its producer suppliers for blanket abandonment and sales authority to implement the marketing of all released gas supplies subject to the Commission's Natural Gas Act jurisdiction is a necessary and integral part of the stipulation and agreement and is a condition to the effectiveness hereof. Transco further alleges that Commission approval of the stipulation and agreement constitutes all approvals under sections 4 and 7 of the Natural Gas Act to effectuate the implementation, restructuring and abandonments of the various services proposed in the application, and to establish the gas pricing provisions including price changes pursuant to price formulae discussed in the application.

Comment date: June 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-12808 Filed 6-6-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-2748-001, et al.]

Total Minatome Corp.; Application

June 2, 1988.

Take notice that on May 20, 1988, Total Minatome Corporation (TMC) of P.O. Box 4326, Houston, Texas 77210-4326, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Commission's regulations thereunder requesting that the Commission reflect TMC's status as successor-in-interest to CSX Oil & Gas Corporation (CSX) by amending the orders issuing certificates of public convenience and necessity to CSX in the dockets listed on the attached Appendix, redesignating CSX's related FERC Gas Rate Schedules listed on the attached Appendix and related blanket affidavits filed under §§ 154.94(h) and (k) of the Commission's regulations, and substituting TMC for CSX in pending proceedings before the Commission in which CSX was a party.

Effective April 27, 1988, CSX was merged into TMC after TMC purchased all shares of CSX capital stock. TMC thereby assumed all of the assets, liabilities, rights and powers formerly held by CSX.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX.—TOTAL MINATOME CORPORATION

[Successor-in-Interest to CSX Oil & Gas Corporation]

Docket No.	Rate Schedule No.	Purchaser name
G-2748 [1]	1	Texas Gas Transmission Corp.
CI61-1427 [1]	7	Texas Gas Transmission Corp.
CI63-204 [1]	8	Texas Gas Transmission Corp.
CI66-1438	22	Natural Gas Pipeline Company of America.
CI66-782 [1]	27	Texas Gas Transmission Corp.
CI70-322	28	Consolidated Gas Supply Corp.
CI72-419 [1]	29	Texas Gas Transmission Corp.
CI73-574	30	United Gas Pipe Line Company.
CI72-664 [1]	31	Texas Gas Transmission Corp.
CI72-680	32	Columbia Gas Transmission Corp.
CI73-259 [1]	33	Texas Gas Transmission Corp.
CI73-260 [1]	34	Texas Gas Transmission Corp.
CI75-35	35	Consolidated Gas Supply Corp.
CI76-178 [1]	41	Texas Gas Transmission Corp.
CI76-130 [1]	42	Texas Gas Transmission Corp.
CI77-161 [1]	43	Texas Gas Transmission Corp.
CI77-159 [1]	44	Texas Gas Transmission Corp.
CI77-287 [1]	45	Texas Gas Transmission Corp.
CI78-385 [1]	46	Texas Gas Transmission Corp.
CI78-386 [1]	47	Texas Gas Transmission Corp.
CI78-489 [1]	48	Texas Gas Transmission Corp.
CI77-101 [1]	49	Texas Gas Transmission Corp.
CI78-576	50	Consolidated Gas Supply Corp.
CI78-582	51	Consolidated Gas Supply Corp.
CI78-1221	52	Northwest Pipeline Corporation.
CI79-88 [1]	53	Texas Gas Transmission Corp.

APPENDIX.—TOTAL MINATOME CORPORATION—Continued

[Successor-in-Interest to CSX Oil & Gas Corporation]

Docket No.	Rate Schedule No.	Purchaser name
CI79-91 [1]	54	Texas Gas Transmission Corp.
CI79-336 [1]	55	Texas Gas Transmission Corp.
CI79-354 [1]	56	Texas Gas Transmission Corp.
CI79-624	57	Consolidated Gas Supply Corp.
CI79-640 [1]	58	Texas Gas Transmission Corp.
CI80-148	59	Columbia Gas Transmission Corp.
CI81-45	60	Columbia Gas Transmission Corp.
CI81-69 [1]	61	Texas Gas Transmission Corp.
CI81-91 [1]	62	Texas Gas Transmission Corp.
CI81-92 [1]	63	Texas Gas Transmission Corp.
CI81-176	64	Consolidated Gas Supply Corp.
CI82-2-001	65	Columbia Gas Transmission Corp.
CI82-306 [1]	66	Texas Gas Transmission Corp.
CI82-402 [1]	67	Texas Gas Transmission Corp.
CI85-233	68	Columbia Gas Transmission Corp.
CI85-2334	69	Columbia Gas Transmission Corp.

[1] The certificates issued in these dockets are presently inactive because gas sales service was abandoned pursuant to the good faith negotiation procedures of § 270.201 of the Commission's regulations and Orders Nos. 451 and 451-A, effective September 30, 1987.

[2] The certificates issued in these dockets are presently inactive because service was abandoned by order issued pursuant to section 7(b) of the Natural Gas Act, effective September 30, 1987. *CSX Oil & Gas Corporation*, 40 FERC (CCH) ¶ 61,373 (1987).

[FR Doc. 88-12809 Filed 6-6-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3387-2]

Intent To Prepare an Environmental Impact Statement Supplement; North Jefferson County, KY, Metropolitan Sewer District (MSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare a supplement to "The North County Area Environmental Impact Statement, Jefferson County, Kentucky" (July 1983) to evaluate a new proposed wastewater management alternative and its impacts.

Purpose: Pursuant to 40 CFR 1507.7 and in accordance with section 511(c) of the Clean Water Act (CWA) and section 102(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS supplement and therefore issues this notice of intent.

For Further Information and to be Placed on the Project Mailing List Contact: Robert B. Howard, Chief, NEPA Compliance Section, Environmental Assessment Branch, EAB-4, US EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. Telephone: (404) 347-3776 or (FTS) 257-3776.

Need for Action: MSD has developed a wastewater management plan (North County Action Plan) for the North County Area of Jefferson County which proposes a different alternative than the preferred alternative of the original EIS. The North County Action Plan proposes eliminating all small "package plant" treatment facilities, constructing force mains, and using the existing Ohio River Interceptor and Morris Forman Wastewater Treatment Plant to handle all sewage of North Jefferson County. The original preferred alternative proposed the elimination of all small "package plant" treatment facilities and the construction of a regional treatment facility with gravity flow sewers. The EPA and MSD have determined the need to reevaluate the alternatives presented in the original EIS in light of changes that have occurred in North Jefferson County and determine a new preferred alternative. Issues to be addressed include land use impacts, impacts on the overflows of the Ohio River Interceptor, and primary impacts of operational changes on residential communities.

Alternatives: The EIS supplement will examine the long term alternatives for wastewater management in the study area.

Scoping: Participation in the EIS process is invited from individuals, organizations, and government agencies. Preliminary project scoping is underway. The EPA will hold a public scoping meeting on or about June 28, 1988 in North Jefferson County, Kentucky. A brief history of the project and a general description of the project goals will be presented. Comments and questions are encouraged and will be addressed and recorded. A Public Notice will be issued stating the exact time and location of the scoping meeting.

Estimated Date of DEIS Release: November 30, 1988.

Responsible Official: Greer C. Tidwell, Regional Administrator.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-12783 Filed 6-6-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-50259A; FRL-3383-1]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-88-10. The test marketing conditions are described below:

EFFECTIVE DATE: May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Seidenstein, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3395).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk or injury.

EPA hereby approves TME-88-10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-88-10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantities of the TME substance produced and the dates of manufacture.

2. The applicant must maintain records of the quantities shipped to customers and the date of each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-88-10.

Date of Receipt: April 12, 1988.

Notice of Receipt: April 28, 1988; 53 FR 15284.

Close of Review Period: May 26, 1988.

Applicant: Confidential.

Chemical: (G) Modified polyacrylamide.

Use: Cement additive.

Production Volume: Confidential.

Number of Customers: Nine.

Worker Exposure: At each of the 9 processing or use sites, approximately 4 to 20 workers will be exposed dermally to up to 3,900 mg/day and by inhalation to up to 150 mg/day, 250 days/year. For activities involving significant exposure, the Material Safety Data Sheet recommends the following protective equipment: respirators, gloves, goggles and protective clothing.

Test Marketing Period: 18 months.

Commencing on: Date of first manufacture.

Risk assessment: EPA identified no significant environmental concerns. EPA identified a potential concern for irritation to skin and mucous membranes. However, EPA believes that any potential health hazard will be mitigated by the protective equipment specified in the Material Safety Data Sheet. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 26, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-12773 Filed 6-6-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3392-4]

Chicot Aquifer System of Southwest Louisiana; Sole Source Aquifer; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator, Region VI of the U.S. Environmental Protection Agency (EPA), has determined that the Chicot aquifer system is the sole or principal source of drinking water for an area comprising all or parts of 16 parishes in southwest Louisiana, and that this aquifer, if contaminated would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed in the designated area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time, two weeks after the date of Federal Register publication.

ADDRESS: The data on which these findings are based are available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Office of Groundwater, Environmental Protection Agency, Region VI at (214) 655-6446.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., U.S.C., 300f, 300h-3(e), Pub. L. 93-523) states:

(e) If the Regional Administrator determines on his own initiative or upon petition that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Regional Administrator determines may contaminate such aquifer through a

recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On December 5, 1986, "Save Acadia's Water" of Egan, Louisiana; petitioned the Environmental Protection Agency, Region VI, to designate the aquifer system in southwest Louisiana as a sole or principal source of drinking water. On May 8, 1987, EPA published a public notice announcing the receipt of the petition and requesting public comment. A public hearing was held in Lafayette, Louisiana, on June 9, 1987. The public was invited to submit comments and information on the petition until June 22, 1987. After review of all available information EPA determined that the aquifer system and its recharge zone occupies an eighteen parish area in Louisiana (consisting of all of Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Jefferson Davis, Lafayette, St. Landry, and Vermilion parishes and portions of Avoyelles, Iberia, Natchitoches, Rapides, Sabine, St. Martin, St. Mary and Vernon parishes).

II. Basis for Determination

Among the factors to be considered by the Region VI Administrator in connection with the designation of an area under section 1424(e) are: (1) Whether the Chicot aquifer system is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Region VI Administrator has made the following findings, which are the bases for the determination noted above:

1. The Chicot aquifer system supplies approximately 87% of the public and domestic water consumed in the aquifer area.

2. There is no existing alternative drinking water source or combination of sources which provides 50% or more of the drinking water to the designated area, nor is there any available cost effective future source capable of supplying the drinking water demands for the designated area.

3. The Chicot aquifer system consists predominantly of a series of sands interbedded with discontinous clay layers. Where these sands are exposed at the surface in the recharge area, they are vulnerable to contamination from a number of sources including, but not limited to, chemical spills, highway and urban runoff, septic systems, leaking storage tanks and landfill leachate. Public and domestic wells which withdraw water from shallow aquifers under water table conditions in the recharge area are most susceptible to contamination. Since groundwater contamination can be difficult or sometimes impossible to reverse and since most of the drinking water in the designated area is provided by the Chicot aquifer system, contamination of the aquifer system would pose a significant public health hazard.

III. Description of the Chicot Aquifer System and its Recharge Zone

The designated area of the Chicot aquifer system occupies a portion of southwest Louisiana consisting of all or parts of eighteen parishes. The area is bounded on the west by the Sabine River, on the south by the Gulf of Mexico, on the east by the Atchafalaya River and on the north by the Red River and northernmost contiguous outcrop of the Carnahan Bayou member of the Fleming formation. The recharge zone covers all of this area. From its northern boundary, the aquifer system thickens progressively toward the south where near the edge of the designated area, a natural increase in the salinity of the groundwater renders it non-potable for local use.

The aquifer system may contain a dozen or more fresh water bearing sands at a single locality, but many of these sands are not contiguous and may not be reliably traced in the subsurface over long distances. The sands are recharged by downward percolating rainwater where they crop out in the recharge zone, by the Atchafalaya Basin to the east and by the vertical movement of fresh water from aquifers below the sands and overlying alluvial aquifers.

The area in which Federal financially assisted projects will be subject to review is the designated area described above. The streamflow source zone is not included in the project review area; only a small part of the northern portion of the recharge zone is traversed by a stream (Kisatchie Bayou) which originates outside the designated area, and under the existing climatic conditions flow of groundwater into streams strongly predominates over flow from streams into the groundwater.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202.

V. Project Review

EPA Region VI will work with Federal agencies that in the future may provide financial assistance to the projects in the area of concern. Interagency procedures will be developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the aquifer. EPA will evaluate such projects and where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer. Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible, on any existing or future state and local control mechanisms in protecting the groundwater quality of the aquifer.

Included in the review of any Federal financially assisted project, will be coordination, as needed, with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local groundwater protection mechanisms.

VI. Summary of Public Comments

All comments at the public hearing were unanimously in favor of designation. Written comments received also strongly supported designation. EPA has prepared a Responsiveness Summary which addresses the comments received at the public hearing and during the comment periods.

Robert E. Layton jr.,

Regional Administrator, Region VI.

Date: May 27, 1988.

[FR Doc. 88-12709 Filed 6-6-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3382-1]

Sole Source Aquifer Determination for Missoula Valley Aquifer, Missoula, Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator in Region VIII of the U.S. Environmental Protection Agency (EPA) has determined that the Missoula Valley Aquifer and surrounding and immediately adjacent recharge area is the sole or principal source of drinking water for a valley in western Montana extending from the city of Missoula on the eastern end to the town of Huson approximately 20 miles to the northwest. No viable drinking water alternative sources of sufficient supply exist. If this aquifer is contaminated, a signficant hazard to public health could occur.

The boundaries of the designated area and project review area have been reviewed and approved by EPA. As a result of this action, Federal financially-assisted projects constructed in the approximately 100 square mile area mentioned above will be subject to EPA review to ensure that these projects are designed and constructed in a manner which does not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on June 7, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2405.

FOR FURTHER INFORMATION CONTACT: James F. Dunn, Ground-Water Branch, EPA Region VIII, Denver Place, 999 18th Street, Suite 500, Denver, CO 80202-2405, telephone (303) 293-1703.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300f, 300h-3(e), Pub. L. 93-523 as amended, the Regional Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Missoula Valley Aquifer is the sole or principal source of drinking water for the Missoula-Huson area of western Montana described above. Pursuant to section 1424(e), Missoula-Huson area described above will be subject to EPA review.

I. Background

Section 1423(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On November 23, 1987, a petition was received from the Missoula City-County Health Department (MCCHD), 301 West Adler, Missoula, Montana 59802, requesting EPA to designate ground-water resources of the Missoula-Huson area as a principal source of drinking water. In response to this petition, EPA published a notice in newspapers of Statewide distribution on January 31, 1988. EPA also sent copies of the notice to potentially-interested parties in the Missoula Valley area. This notice announced receipt of the petition and requested public comment. EPA prepared a draft document verifying technical information and proposing a sole or principal source aquifer designation. Due to a totally positive public response to the designation and lack of presentation of any new information during the public comment period, the public hearing scheduled for March 17, 1988 was cancelled. The public was allowed to submit comments until March 31, 1988. In all eight (8) comments were received by EPA. The comments unilaterally supported the designation of the Missoula Valley Aquifer as proposed.

II. Basis for Determination

Among the factors to be considered by the Regional Administrator in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to this Agency, the Regional Administrator has made the following findings, which are the basis for the determination noted above:

1. The Missoula Valley Aquifer serves as the "principal source" of drinking water for approximately 60,000 permanent residents within the Missoula Valley area.

2. There is no existing alternative drinking water source or combination of sources which provides fifty percent or more of the drinking water to the designated area, nor is there any demonstrated available alternative future source capable of supplying the area's drinking water needs at an economical cost.

3. Although the water quality over most of the study area is satisfactory for domestic use, widespread potential exists for degradation. Potential sources of direct contamination include: septic systems, industrial waste ponds, several historical and one active municipal waste landfill(s), underground fuel and chemical storage tanks, and high pressure petroleum pipelines. Two major transportation routes, the Burlington Northern Railroad and Interstate 90, run parallel to each other bisecting the northern boundary of the aquifer. Hazardous materials and waste are routinely transported through Missoula over these routes. Accidental spills and releases of these materials could result in catastrophic damage to the aquifer. A number of incidents that have occurred and threatened or contaminated the Missoula Valley Aquifer are described below.

Yellowstone Pipeline

On June 26, 1982, a rupture occurred in a high pressure gasoline pipeline which spewed an undetermined amount of gasoline into La Valle Creek located in the north central portion of the aquifer. This spill caused contamination of wells in the aquifer adjacent to the creek. This was the second such rupture of this pipeline that the MCCHD is aware of. There was a leak in the mid 1970s that caused contamination of wells in the Grant Creek area just east of the La Valle Creek drainage.

Milltown Contamination

Just east and upstream of the proposed designation area is the Milltown Superfund site. The aquifer in this area is contaminated with arsenic and other heavy metals. The source of this contamination is the sediments trapped behind the Milltown Dam located on the Clark Fork River. This river flows through the Missoula Valley and is a major source of recharge to the Missoula Valley Aquifer.

Missoula County Weed Control Contamination

In December of 1984 low levels of pesticides were noted in a community water supply serving a KOA campground and mobile home court. Chemical analysis showed that a number of wells had elevated levels of the herbicide Picloram. Further investigation revealed that the source of the Picloram was the County Weed Control Department which was disposing of unused spray into a sump at their shop located upgradient of the wells. This practice was immediately ceased.

Browning Ferris Landfill Leachate

The Browning-Ferris Landfill, Missoula's only municipal waste landfill, is located near the northeastern boundary of the Missoula Aquifer between the Grant Creek and Rattlesnake Creek drainages.

In the spring of 1986 routine groundwater samples began showing elevated levels for almost every parameter sampled. Follow-up samples in the summer of 1986 taken from the base of the landfill showed continuing contamination of the ground-water system just down-gradient from the landfill.

Monitoring wells were drilled in the Missoula Valley Aquifer down-gradient from the landfill monitoring wells in late 1986. Sampling during 1987 has shown the continued presence of leachate at the landfill, but wells finished in the Missoula Aquifer have not yet shown any contamination. It is hypothesized that the Missoula Aquifer provides a tremendous dilution factor for the landfill leachate and therefore water quality has not changed noticeably in the aquifer. Monitoring and assessment are ongoing.

Burlington Northern Diesel Contamination

In the fall of 1986 the Montana Water Quality Bureau (WQB) informed MCCHD that diesel fuel had been detected at the Burlington Northern (BN) Railroad refueling site, located in the northern part of the city of Missoula and entirely within the aquifer boundaries.

The amount of fuel that had leaked into the aquifer was unknown at that time and remains unknown today, but several monitoring wells showed free product on the water table. At least one well had a lens of diesel fuel seven feet thick floating on top of the water table.

Since fall of 1986, BN has attempted to identify the source of the product and has begun recovery operations. As of October, 1987 the source of the problem has not been identified and full scale recovery has not been implemented. BN is continuing to work on the problem under the guidance of the WQB.

High Nitrate Levels in the Lindo Vista Area

In a subdivision located on the southeast boundary of the proposed designation area at the mouth of Miller Creek, MCCHD discovered that a number of individual wells had elevated nitrate levels. Nine wells in this subdivision had nitrate levels above 19 mg/liter. These levels have been associated with the high use of dry wells (seepage pits) for sewage disposal in this area. These systems are being upgraded upon replacement.

Bacterial Contamination in the Frenchtown Area

In September of 1986, MCCHD became aware that 25 of 36 individual wells, located in a two square mile area near the west end of the designated area, were contaminated with coliform bacteria. Although a definite cause has not been determined, it appears that the bacterial contamination is related to high ground water during the summer and fall created by recharge from a large irrigation canal. Contamination of the supplies also seems to be correlated with improper well construction.

California Street Gasoline Contamination

Ground water beneath the California Street area of Missoula was contaminated by gasoline that leaked from a tank buried at the Champion Missoula Sawmill (CMS). Gasoline was detected in domestic wells near the CMS in May of 1985. CMS excavated a 1,000 gallon gasoline tank and discovered many holes in the tank. A loss of 600 gallons of fuel was recorded over a three day period after the tank was pressure tested. The total amount of fuel lost is unknown but it is assumed the tank had been leaking for several years. Champion initiated a ground-water monitoring program in May of 1985 to comply with a request from the Montana Department of Health and Environmental Sciences to determine the extent of pollution. Drinking water and in-line carbon filters for 24 individual wells were provided to the affected neighbors. In January, 1986, when gasoline constituents were verified in samples of the area wells, Champion began a well replacement program for the users. In the process of review for other possible contributors to contamination in the area, an abandoned oil refinery was discovered. This site was tested by an EPA FIT Team and is currently listed as a potential Superfund site.

Storm Water

Urban storm runoff is a matter of interest as a source of ground-water and surface water recharge, but most importantly as a potential source of contamination. According to a recent study by the University of Montana (Woessner/Wegsland, 1987), there are 2000 dry wells in the municipal area that meet the EPA Class 5 description of an injection well. It is estimated that annually, 119 million gallons of contaminant-laden storm water are injected eight to twenty feet deep into highly permeable soils via these sumps. Although the contribution to ground-water recharge is relatively small compared to other sources, the potential for contamination is disproportionately higher. Runoff quality is variable, with annual total dissolved solids levels estimated at more than 4400 tons.

Although it appears most of the chemicals are attenuated within the vadose zone, higher levels of calcium, magnesium, sodium, chloride, and iron have been found in ground water associated with runoff recharge.

The above examples of real and potential contamination clearly illustrate the vulnerability of the Missoula Aquifer.

III. Description of the Petitioned Aquifer

Located in western Montana, the Missoula Valley Aquifer consists of alluvial sediments of Early Miocene to Recent age deposited within a wide alluvial mountain basin (Missoula Valley). The valley extends from the city of Missoula on the eastern end to the town of Huson approximately twenty (20) miles to the northwest. From an aerial view, the valley is eight (8) miles wide at its widest extent and tapers to about one (1) mile in width near its western end at Huson. The boundary of the aquifer closely follows the limit of the valley floor and is defined by the topographic break of the surrounding terraces and mountain slopes.

The bedrock under the Valley consists of the Precambrian Belt Supergroup Metasediments (marine sedimentary rocks). These rocks are relatively impermeable and yield water from fracture systems only. The Renova Formation is a Tertiary deposit of clays, silts, sand, gravel and volcanic ash which unconformably overlies the marine sediments in the area beneath the Missoula Valley Aquifer. These strata range in thickness from 2,000 to 2,500 feet in the Missoula Valley.

The Missoula Valley Aquifer overlies the Renova Formation and forms the valley floor. This aquifer consists of a complex arrangement of fluvial, lacustrine and colluvial sediments, but it can generally be subdivided into three hydrostratigraphic units. The upper unit is a fluvially-deposited strata which consists of boulders, coarse cobbles, sand and silt. This unit ranges in thickness from 10 to 30 feet. The water content in this unit ranges from fully saturated to unsaturated, with the percentage of saturation dependent on location in the valley and time of year. The middle unit is a silty sandy clay with lenses of sand and gravel. Finer materials found in this unit are believed to have been deposited in a Pleistocene glacial lake which formed in the valley. This unit is approximately 40 feet thick and is less transmissive than the upper unit. The lower unit is composed primarily of coarse-grained sediments interlayered with thin layers of fine-grained sediments, with a total unit thickness ranging from 50 to 150 feet. This unit is hydraulically connected to the upper two units and behaves as an unconfined aquifer. This unit is quite transmissive (transmissivities range from approximately 100,000 to 1,700,000 gpd/ft) and is the unit of choice when most water supply wells are drilled in the valley.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition from the Missoula City-County Health Department, research of available literature, the results of investigative efforts conducted to date on the ground-water resources of the area, and written and verbal comments submitted by the public. This data is available to the public and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2405, Attn: James F. Dunn (8WM-GW), telephone (303) 293-1793.

V. Project Review

EPA Region VIII will work with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures will be developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal assistance may be entered into. However, a commitment for Federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated to state or local agencies, the EPA will rely upon any existing or future state and local control mechanisms to the maximum extent possible in protecting the ground-water quality of the aquifer. Included in the review of any Federal financially-assisted project will be coordination with the state and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support state and local ground-water quality protection mechanisms.

VI. Summary and Discussion of Public Comments

In response to the Public Notice dated January 31, 1988, eight (8) written comments were received. These comments unanimously supported the designation of the area as a sole or principal source of drinking water. In addition, resolutions were adopted by the Missoula City Council and the Missoula County Commission supporting the petition and urging designation. No new information was presented during the public comment period regarding aquifer characteristics or reasons not to delegate.

Dated: May 9, 1988.

James J. Scheer,

Regional Administrator.

[FR Doc. 88-12771 Filed 6-6-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3392-5]

A Portion of the Austin-Area Edwards Aquifer in Parts of Hays and Travis Counties, Texas; Sole Source Aquifer; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator, Region VI of the U.S. Environmental Protection Agency (EPA), has determined that a portion of the Austin-area Edwards aquifer is the sole or principal source of drinking water for an area of approximately 115 square miles in central Texas which includes parts of northern Hays and southern Travis counties, and that this aquifer, if contaminated would create a significant hazard to public health. As a result of this action, Federally financially assisted projects constructed in the designated area or in the stream flow source areas which contribute recharge to the aquifer will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATE: This determination shall be promulgated for purposes of judical review at 1:00 p.m. eastern time, two weeks after the date of Federal Register publication.

ADDRESS: The data on which these findings are based are available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region VI, 1445 Ross Ave., Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Richard A. Wooster, Officer of Groundwater, Environmental Protection Agency, Region VI at 214/655-6446.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

If the Administrator determines on his own initiative or upon petition that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On August 29, 1986, the Hays County Soil and Water Conservation District #351 petitioned EPA for sole source designation of a portion of the Austin-area Edwards aquifer in parts of Hays and Travis Counties. The petition was substantially complete according to the proposed regulations for sole source designation which were applicable at the time. A public hearing was held on March 3, 1987, in Austin, Texas, to solicit public comments. The public comment period closed on March 11, 1987. At the public hearing a representative of the newly created

Barton Springs Edwards Aquifer Conservation (BSEACD) District declared the intention of the District to join in petitioning EPA for designation. On March 5, 1987, notice was published in the **Federal Register** of the availability of new guidance for evaluating SSA petitions. The notice also indicated that the guidance would apply to all petitions received after June 19, 1986. Thus, the new guidance is applicable to the Austin-area Edwards aquifer petition. Subsequently, the Region notified the petitioners that the petition was incomplete according to the new guidance and outlined the specific areas where additional information was needed. On December 11, 1987, EPA Regional representatives met with representatives of the BSEACD, the City of Austin and the Texas Water Commission to discuss additional information needed in the petition. Information to complete the petition was received by EPA in March of 1988.

II. Basis for Determination

Among the factors to be considered by the Region VI Administrator in connection with the designation of an area under section 1424(e) are: (1) Whether the particular aquifer is the sole or principal source of drinking water within the area in which it serves as a drinking water supply; and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Region VI Administrator has made the following findings, which constitute the basis for the determination noted above:

1. A portion of the Austin-area Edwards aquifer system supplies approximately 74% of the public and domestic water consumed in the aquifer service area, as identified by the petitioner.

2. There is no existing alternative drinking water source or combination of sources which currently provides fifty percent or more of the drinking water to the aquifer service area, nor are there any reasonably available alternative sources which are capable of supplying the drinking water demands of the aquifer service area, should the aquifer become contaminated.

3. The Austin-area Edwards aquifer consists of the Georgetown limestone and the underlying Edwards limestone, both of which are of Cretaceous age. The Georgetown limestone ranges in thickness from 40 to 100 feet in the subsurface, and consists of interbeds of fossiliferous limestone and marly limestone. The Edwards limestone ranges in thickness from about 300 to 350 feet in the subsurface, and is composed of thick to thin-bedded limestone and dolomitic limestone containing solution collapse zones that create cavernous and vugular porosity. Since infiltration of precipitation and streamflow to the aquifer occurs readily in the recharge area, due to the extensive fractures, faults, and other secondary porosity features (e.g., caves, sinkholes, etc.) which characterize both the Edwards and Georgetown formations, the aquifer is vulnerable to contamination. Public and domestic wells which withdraw water from the Austin-area Edwards aquifer under water table conditions in the recharge area are most susceptible to contamination. Since groundwater contamination can be difficult or sometimes impossible to remediate and since most of the drinking water in the aquifer service area is provided by the aquifer, contamination of the Austin-area Edwards aquifer would pose a significant public health hazard.

III. Description of the Austin-area Edwards Aquifer

The Austin-area Edwards aquifer extends northeastwardly in a narrow band from a "groundwater divide," which separates it from the San Antonio-area Edwards aquifer near Kyle, Texas, in Hays County, to the Colorado River in southern Travis County. Laterally, the location of the Austin-area Edwards aquifer is defined to the west by a line delineating the geologic contact between the Edwards Limestone, which forms the base of the aquifer, and underlying Walnut or Glen Rose formations. To the east, the lateral boundary of the Austin-area Edwards aquifer is a line which delineates a marked decrease in groundwater quality, known locally as the "bad water line."

The designated area covers approximately the southern two-thirds of the area in which the Austin-area Edwards aquifer occurs, includes about 115 square miles and has boundaries at its west, south, and east which coincide with those which define the extent of the aquifer. The northern boundary of the designated area, as proposed by the petitioners, is the surface watershed divide (i.e., a topographic high) between Slaughter Creek and Williamson Creek and between Slaughter Creek and Boggy Creek.

The Austin-area Edwards aquifer recharge area makes up about the western one-half of the designated area described above, and occurs where the Edwards or Georgetown limestones (which together comprise the Edwards aquifer) crop out at the surface. The major creeks that cross the recharge area within the designated area and which contribute most of the recharge to the Austin-area Edwards aquifer are: Slaughter, Bear, Little Bear and Onion. Since recharge from these creeks provides the major portion of drinking water for approximately 22,800 people, the project review area includes the entire designated area and the streamflow source areas which contribute recharge to the aquifer through its recharge area.

IV. Information Utilized in Determination

The information utilized in making this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202.

V. Project Review

EPA Region VI will work with Federal agencies that in the future may provide financial assistance to projects in the project review area of concern. Interagency coordination will be established to ensure EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the aquifer. EPA will then evaluate such projects and, where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment may be entered into for Federal financial assistance. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer. Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible, on any existing or future State and local control mechanisms in protecting the groundwater quality of the aquifer.

The EPA's review of any Federally financially assisted project will include coordination, as needed, with all appropriate State and local agencies. The EPA will give those agencies' comments given full consideration, and the Federal review process will attempt to complement and support State and local groundwater protection mechanisms.

VI. Summary of Public Comments

Of the comments received at the public hearing and during the comment period, ten were in favor of designation, seven were opposed and three were undecided. Major issues raised by these comments are discussed below:

Federal, State and Local Responsibilities

Several commenters expressed concern that the sole source aquifer program is a major duplication of existing Federal, state and local regulations and restrictions regarding groundwater protection and also represents another layer of bureaucratic red tape. EPA does not believe that this is the case. The sole source aquifer program only affects Federally financially assisted projects and, therefore, does not duplicate efforts to control the siting and operation of non-Federally funded projects. EPA recognizes the right of the states and municipalities to initiate their own groundwater protection programs, but the Sole Source Aquifer program, as implemented under the SDWA, deals directly with Federally assisted proejects.

Impact on Growth and Development of the Area Proposed for Designation

Many commenters were concerned that designation would restrict the growth of south Austin and would cause lengthy, expensive and unnecessary delays for projects involving Federal funds. EPA believes this will not be the case for several reasons. The great majority of the proposed area lies outside the city limits of Austin; few projects located within the current city limits would be reviewed. Also, in the eastern portion of the designated area, including San Leanna, Manchaca, Buda and other heavily developed areas, the aquifer is covered by the Del Rio clay and is said to be under artesian conditions. Because the aquifer is much less vulnerable to contamination in the artesian area, EPA anticipates that only certain types of projects (e.g. those involving excavations or wells) will require detailed review for the artesian area. Also, small isolated projects such as home loans are presumed to pose an insignificant threat to the aquifer and will not be reviewed individually although their cumulative affect may be reviewed for larger projects or housing developments. The SSA program has not been responsible for any unnecessary delays in any project completion, nor for the rejection of any project's application for Federal funding.

Location of Boundaries of the Designated Area

Some commenters questioned the placement of the northern boundary of the designated area. It was pointed out that the Edwards aquifer in this area is a hydrologic unit which is bounded on the south by the Southern boudary of the designated area but extends northward to the Colorado River. The designated area covers only the southern two-thirds of this hydrologic unit, and it was argued that excluding the northern one-third of the aquifer would not allow complete protection of the groundwater.

While EPA recognizes that the aquifer extends beyond the boundaries of the designated area it also recognizes that the local population north of Slaughter Creek is served predominantly by surface water supplied by the City of Austin. The Hays County Soil and Water Conservation District #351, is its sole source aquifer petition to EPA, identified the Edwards aquifer as the "sole or principal water source" for the people living in the southern two-thirds of the aquifer segment. The course of Slaughter Creek roughly defines the northern boundary of the area identified in the petition to be protected because of its overwhelming dependence on the Edwards as a drinking water source. In order to include the entire area which drains into Slaughter Creek that might impact the area to be protected, the northern border of the designated area is set at the northern surface watershed divide for Slaughter Creek (the topographic high separating the watershed of Slaughter Creek from the watersheds of Williamson and Boggy Creeks).

Hydrologic studies by the U.S. Geological Survey indicate that the flow of groundwater in the Edwards aquifer south of Austin is toward the northeast. Consequently, contamination of the aquifer north of Slaughter Creek would not affect the designated area. However, due to the direction of groundwater flow, the designation does provide a degree of protection to the undesignated portion of the hydrologic unit.

Availability of Alternate Water Supplies

Some commenters felt that the Edwards aquifer should not be considered the sole or principal source of water supply for the designated area because of the future or present availability of Austin city water. Commenters suggested that the present Austin water system could be easily expanded to supply surface water to the designated area and that such extension is bound to follow development of the area in the future. Under EPA guidelines for the sole source aquifer program, the feasibility of replacing the aquifer as a water supply source is considered when deciding whether to grant designation. When cost of replacement exceeds 0.8% of the mean household income, replacement by the alternate source is considered to be an economic burden.

It is estimated that the city of Austin has the ability to replace the water supply of the designated area. However, reasonable estimates of the total cost of replacement by surface water from Austin result in a cost of approximately $531 per year for each family in the designated area, or 2.2% of the mean household income. Under the circumstances, Austin city water is not considered to be a feasible replacement for the water supplied by the Edwards aquifer.

Regarding the question of expansion of Austin city services into the designated area, the designation decision can not be based on future events which are subject to unpredictable economic and political influences. The area under consideration currently meets the requirements for designation under the sole aquifer program and there is no provision in the Act or in EPA guidance for denial of a petition based on anticipated development of an area.

Date: May 27, 1988.

John S. Floex,

Acting Regional Administrator, Region VI.

[FR Doc. 88-12768 Filed 6-6-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35)

Type: Revision of 3067-0106.

Title: Flooded Property Purchase Program.

Abstract: Section 1362 of the National Flood Insurance Act of 1968 (Pub. L. 90-488) as amended. (42 U.S.C. 4103) authorizes FEMA to purchase severely or repetitively damaged insured properties to reduce future Federal disaster costs. The forms

will be used to collect data which determines eligibility, funding priorities and cost effectiveness.
Type of Respondents:
Individuals or households
State or local governments
Farms
Businesses or other for-profit
Non-profit institutions
Small businesses or organizations
Number of Respondents: 150.
Burden Hours: 75.
Frequency of Recordkeeping or Reporting: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: May 31, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–12759 Filed 6–6–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Alabama State Docks Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200124.
Title: Alabama State Docks Terminal Agreement.
Parties:
Alabama State Docks Department (Department)
Bama Stevedore & Terminal Operators, Inc. (Bama)

Synopsis: The agreement authorizes Bama to perform or have performed freight handling services at the Department's facilities at the Port of Mobile.

By order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: June 2, 1988.

[FR Doc. 88–12788 Filed 6–6–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; South Europe/U.S.A. Freight Conference

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–029.
Title: South Europe/U.S.A. Freight Conference.
Parties:
Achille Lauro
Compania Trasatlantica Espanola, S.A.
Costa Container Lines, S.p.A.
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
Italia di Navigazione, S.p.A.
Jugolinija
Jugooceanija
Lykes Lines
A.P. Moller-Maersk Line
Nedloyd Lines
Sea-Land Services, Inc.
Trans Freight Lines
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would specifically state the authority of the parties to negotiate and agree upon prices or rates to be paid by the parties to European inland carriers.

Agreement No.: 202–010790–005.
Title: Israel Eastbound Conference.
Parties:
Zim Israel Navigation Co., Ltd.
Farrell Lines, Inc.
Lykes Bros. Steamship Company, Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions and make other technical revisions necessitated by such action.

Agreement No.: 203–011075–006.
Title: Central America Discussion Agreement.
Parties:
United States/Central America Liner Association
Nordana Line, Inc.
Concorde Shipping, Inc.
Marine Bulk Carriers, Inc.
Nexos Line
Thompson Shipping Co., Ltd.
Maritima Juno, S.A.

Synopsis: The proposed amendment would delete Transportes Navieros Equatorianos as a party and would add Gran Golfo Express as a party to the agreement. The parties have requested a shortened review period

Agreement No.: 271–011196.
Title: Nedlloyd Lines/Hoegh Lines Reciprocal Space Charter Agreement.
Parties:
Nedlloyd Lines,
Hoegh Lines.

Synopsis: The proposed agreement would permit the parties to charter space aboard one another's vessels in the trade between Pacific Coast ports of North America and ports in Australia. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: June 2, 1988.

[FR Doc. 88–12787 Filed 6–6–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of nominations for membership on the Board's Consumer Advisory Council.

SUMMARY: The Board is asking the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Twelve new members will be selected for three-year terms that will begin in January 1989. It is contemplated that the Board will announce its selection of new members by year-end.

DATE: Nominations should be received by August 31, 1988.

ADDRESS: Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. This information about nominees is available for inspection upon request, except as provided in the Board's Rules Regarding Availability of Information (12 CFR 262.6(a)).

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202) 452–2412; or for Telecommunications Device for the Deaf (TDD) users *only*, Earnestine Hill or Dorothea Thompson (202) 452–3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity.

Twelve new members will be selected this year for terms beginning January 1, 1989, to replace members whose terms expire this year. Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services. Persons may nominate themselves as well as other candidates.

The Board is interested in candidates who are willing to express their viewpoints and who have some familiarity with consumer financial services. Candidates do not have to be experts on all levels of consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two to three days long) three times a year and to take part in committee work.

In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

The Council meets in Washington, DC. Council members receive $100 per day for participating in meetings and for travel time. The Board also pays travel expenses.

The names and affiliations of current Council members (and the expiration date of each term of office) are listed below:

Chairman

Steven W. Hamm, Administrator, South Carolina Department of Consumer Affairs, Columbia, South Carolina, December 31, 1988
Stephen Brobeck, Executive Director, Consumer Federation of America, Washington, DC, December 31, 1990

Vice Chairman

Edward J. Williams, Senior Vice President, Consumer Banking Group, Harris Trust and Savings Bank, Chicago, Illinois, December 31, 1988
Edwin B. Brooks, Jr., President, Security Federal Savings and Loan Association, Richmond, Virginia, December 31, 1988

Members

Naomi G. Albanese, Former Professor of Home Economics, University of North Carolina, Greensboro, North Carolina, December 31, 1990
Judith N. Brown, Treasurer, American Association of Retired Persons, Edina, Minnesota, December 31, 1989
Michael S. Cassidy, Vice President, Chase Manhattan Bank, N.A., New York, New York, December 31, 1988
Betty Tom Chu, Chairman, Trust Savings Bank, Arcadia, California, December 31, 1990
Jerry D. Craft, Executive Vice President, First National Bank of Atlanta, Atlanta, Georgia, December 31, 1990
Donald C. Day, President, New England Securities Corp., Boston, Massachusetts, December 31, 1990
Richard B. Doby, Financial Services Consultant, Denver, Colorado, December 31, 1989
Richard H. Fink, President, Citizens for a Sound Economy, Washington, DC, December 31, 1989
Neil J. Fogarty, Attorney, Hudson County Legal Services, Jersey City, New Jersey, December 31, 1988
Stephen Gardner, Assistant Attorney General, Consumer Protection Division, State of Texas, Dallas, Texas, December 31, 1989
Kenneth A. Hall, President, South Division, First United Bank, Picayune, Mississippi, December 31, 1988
Elena Hanggi, Director, Institute for Social Justice, Little Rock, Arkansas, December 31, 1989
Robert A. Hess, President and General Manager, Wright Patman Congressional Federal Credit Union, Washington, DC, December 31, 1990
Robert J. Hobbs, Deputy Director, National Consumer Law Center, Boston, Massachusetts, December 31, 1988
Ramon W. Johnson, Professor of Finance, College of Business and Graduate School of Business, University of Utah, Salt Lake City, Utah, December 31, 1989
Robert W. Johnson, Professor of Management and Director, Credit Research Center, Purdue University, West Lafayette, Indiana, December 31, 1988
A.J. King, Chairman, Valley Bank of Kalispell, Kalispell, Montana, December 31, 1990
John M. Kolesar, President, Ameritrust Development Bank, Cleveland, Ohio, December 31, 1988
Alan B. Lerner, Senior Executive Vice President, Associates Corporation of North America, Dallas, Texas, December 31, 1988
Richard L.D. Morse, Professor of Family Economics, Kansas State University, Manhattan, Kansas, December 31, 1989
William E. Odom, Chairman of the Board, Ford Motor Credit Company, Dearborn, Michigan, December 31, 1990
Sandra R. Parker, Chairman, Banking Committee, Richmond United Neighborhoods, Richmond, Virginia, December 31, 1988
Sandra Phillips, Executive Director, Oakland Planning and Development Corporation, Pittsburgh, Pennsylvania, December 31, 1990
Jane Shull, Director, Institute for the Study of Civic Values, Philadelphia, Pennsylvania, December 31, 1988
Ralph E. Spurgin, President and Chief Executive Officer, Limited Credit Services, Inc., Columbus, Ohio, December 31, 1990
Lawrence Winthrop, President, Consumer Credit Counseling Service of Oregon, Inc., Portland, Oregon, December 31, 1990

Board of Governors of the Federal Reserve System, June 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–12720 Filed 6–6–88; 8:45 am]

BILLING CODE 6210–01–M

BEST COPY AVAILABLE

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquititions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05/16/88 AND 05/25/88

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Cox Enterprises, Inc., Metropolitan Broadcasting Holding Company, Metropolitan Broadcasting Corporation of Tampa	88-1560	05/16/88
USX Corporation, K N Energy, Inc., Western Gas, Western Gas Transmission, Texas Gasmark	88-1409	05/17/88
Stewart A. Resnick, Theron Shamgochian, Monte Cristo Packing Company, Monte Cristo Intl. Sales	88-1454	05/17/88
H.B. Fuller Company, Widger Chemical Corporation, certain assets of WCC	88-1455	05/17/88
NIKE, Inc., The Bear Stearns Companies, Inc., Cole Haan Holdings Incorporated	88-1472	05/17/88
Sara Lee Corporation, Morrison Incorporated, Morrison Incorporated	88-1478	05/17/88
Grand Metropolitan Public Limited Company, Vision Express, Vision Express	88-1485	05/17/88
Alliant Computer Systems Corporation, Raster Technologies, Inc., Raster Technologies, Inc.	88-1367	05/18/88
The Prospect Group, Inc., BSN Corp., Cheerleader Supply, Inc., Team Mates, Inc., Green River	88-1512	05/18/88
Koninklijke Wessanen N.V., Sheikh Abdulaziz A. Al-Sulaiman, Sheikh Abdulaziz A. Al-Sulaiman	88-1524	05/18/88
Norton Opax plc, Barlow Rand Limited, ICI Capital Corporation	88-1538	05/18/88
Inland Steel Industries, Inc., AFCO Metals, Inc., AFCO Metals, Inc.	88-1520	05/19/88
GTE Corporation, Intermountain Health Care, Inc., IHC Affiliated Services, Inc.	88-1544	05/19/88
Triax Midwest Associates, L.P., Mr. John A. Stephens, Vantage Cable, Inc.	88-1447	05/20/88
Triax Midwest Associates, L.P., Iowa Farm Bureau Federation, Vantage Cable, Inc.	88-1448	05/20/88
American General Corporation, Manufacturers Hanover Corporation, Manufacturers Hanover Consumer Services Group, Inc.	88-1466	05/20/88
Waste Management, Inc., The Henley Group, Inc., Wheelabrator Holdings Inc.	88-1468	05/20/88
The Henley Group, Inc., Waste Management, Inc., Two subs and UPE	88-1470	05/20/88
NRM Energy Company, L.P., Newmont Mining Corporation, Newmont Mining Corporation	88-1540	05/20/88
Norfolk Southern Corporation, Advanced Telecommunications Corporation, Advanced Telecommunications Corporation	88-1545	05/20/88
Occidental Petroleum Corporation, Mobil Corporation, Mobil Exploration & Producing North America, Inc.	88-1559	05/20/88
Skandia Insurance Company, Lincoln National Corporation, The Western Fire Insurance Company	88-1566	05/20/88
Businessland, Inc., ComputerCraft, Inc., ComputerCraft, Inc.	88-1580	05/20/88
TCW Special Placements Fund II, Michael W. Wilsey, Wilsey Foods, Inc.	88-1582	05/20/88
Victoria Co., Ltd., Illinois Mountain Partners, Aspen Skiing Company	88-1585	05/20/88
Victoria Co., Ltd., MKDG III Aspen Inc., Aspen Skiing Co.	88-1586	05/20/88
Victoria Co., Ltd., MKDG IV Aspen Inc., Aspen Skiing Company	88-1587	05/20/88
Heraeus Holding GmbH, Hendrik Jan Cornelis Kleijn, Electro-Nite Co.	88-1589	05/20/88
Gulf+Western Inc., Barclays PLC, Barclays PLC	88-1590	05/20/88
USF&G Corporation, Citicorp (1) Citicorp Invest. Mgmt. Inc. & (2) certain rel. assets	88-1595	05/20/88
Anchor Savings Bank FSB, Salomon Inc., Two subsidiaries of Sl	88-1603	05/20/88
LMG II, Inc., Roxboro (1976) Ltd., Brillion Iron Works, Inc.	88-1606	05/20/88
Sharad Tak, WGRZ Acquisition Corp., WGRZ Acquisition Corp.	88-1507	05/20/88
P. J. Carroll and Company plc, Alan M. Glazer, Bedford Fair Industries, Ltd., Bedford Fair Warehouse	88-1612	05/20/88
Shoji Kanazawa, Holiday Corporation, Holiday Corporation	88-1626	05/20/88
LIT Holdings PLC, Goldberg Securities, Inc., Goldberg Securities, Inc.	88-1611	05/23/88
Heritage Health Systems, John Hancock Mutual Life Insurance Company, John Hancock Healthplans, Inc.	88-1465	05/24/88
Banc One Corporation, General Electric Company, Geico Corporation	88-1552	05/24/88
John Buzzetta, Jean L. Scudder, The Times Herald Printing Company	88-1570	05/24/88
John Buzzetta, William Dean Singleton, The Times Herald Printing Company	88-1571	05/24/88
British Aerospace plc, Dennis D. Davis, Arkansas Modification Center, Inc.	88-1605	05/24/88
China International Trust & Investment Corporation, Phoenix Steel Corporation, Phoenix Steel Corporation	88-1630	05/24/88
Craig O. McCaw, Voting Trustee for MFC, Inc., Graphic Scanning Corp., Graphic Scanning Corp.	88-1486	05/25/88
Societe Internationale Pirelli S.A., Armtek Corporation, The Armstrong Rubber Company	88-1528	05/25/88
Pirelli S.p.A., Armtek Corporation, The Armstrong Rubber Company	88-1529	05/25/88
Prudential Corporation plc, Avalon/Applause, Inc., Avalon/Applause, Inc.	88-1553	05/25/88
Prudential Corporation plc, Harris Tolbb, Applause Inc.	88-1554	05/25/88
Corning Glass Works, Revere Copper and Brass Incorporated, Revere Ware, Inc. and Revere Ware Courtesy Stores, Inc.	88-1562	05/25/88
Prudential Corporation plc, Larry Eline, Applause Inc.	88-1569	05/25/88
ALLTEL Corporation, Advanced Telecommunications Corporation, Advanced Telecommunications Corporation	88-1575	05/25/88
Golder, Thoma, Cressey Fund III Limited Partnership, Postal Instant Press, Inc., Postal Instant Press, Inc.	88-1583	05/25/88
Kamiche Company, Edward L. Scarff, Edward L. Scarff	88-1591	05/26/88
Sheldon G. Adelson, Kirk Kerkorian, MGM Sands, Inc.	88-1593	05/25/88
American National Insurance Company, Primerica Corporation, Pennsylvania Life Ins. Co. et. al.	88-1620	05/25/88
First Chicago Corporation, Bentley Carpets, Inc., Bentley Carpets, Inc.	88-1635	05/25/88
First Chicago Corporation, BC Holding Corp., BC Holding, Corp.	88-1650	05/25/88
Sulzer Brothers Limited, Guy F. Atkinson Company of California, Bingham International, Inc.	88-1497	05/26/88
Thomas Robinson Group PLC, John Crowther Group plc, John Crowther Group plc	88-1558	05/26/88
Mannesmann A.G., Phillips Petroleum Company, Applied Automation, Inc.	88-1484	05/27/88
Norton Company, Roger C. Stull, Penhall Company	88-1509	05/27/88
Northern California Health Center, Homoeopathic Foundation of California, Marshal Hale Memorial Hospital	88-1530	05/27/88
Tele-Communications, Inc., United Cable Television Corporation, United Cable, Television Corporation	88-1531	05/27/88
USA Mobile Communications, Inc. II, Henry Crown and Company, CQ Communications Corporation	88-1596	05/27/88
USA Mobile Communications, Inc. II, ALLTEL Corporation, ALLTEL Mobile Communications of Ohio	88-1597	05/27/88
USA Mobile Communications, Inc. II, Graphic Scanning Corp., Graphic Scanning Corp.	88-1598	05/27/88
David L. Paul, Dr. Ghaith R. Pharaon, American Southern Insurance Company	88-1600	05/27/88
Curtis L. Carlson, General Electric Company, Geico Travel Management Services, Inc.	88-1604	05/27/88
William J. Stoecker, City Auto Stamping Co., Inc., City Auto Stamping Co., Inc.	88-1608	05/27/88
Eugene C. Cashman, Donald K. Gearheart, Quick Weight Loss Centers, Inc.	88-1617	05/27/88
Printon, Kane Government Securities, L. P., First Interstate Bancorp., First Interstate Capital Markets, Inc.	88-1618	05/27/88
Peninsular & Oriental Steam Navigation Company, LMB, Inc., LMB, Inc.	88-1622	05/27/88
Pacific Enterprises, Apache Petroleum Company, L.P., APC Operating Partnership, L.P.	88-1629	05/27/88
"Winterthur" Swiss Insurance Company, Fireman's Fund Corporation, Southern Guaranty Insurance Company	88-1640	05/27/88
Richard G. Fahslow, Cargill, Incorporated, Summit National Life Insurance Company	88-1644	05/27/88
Eugene C. Cashman, Philip R. and Joyce A. Schuman, Quick Weight Loss Centers, Inc.	88-1646	05/27/88
MLH Income Realty Partnership VI, Donald E. and Mary Katheryn Russell, Russell/Sutro, a California limited partnership	88-1655	05/27/88
ML Media Partners, L.P., Anthony S. Ocepek, Wincom Corporation	88-1662	05/27/88
International Broadcasting Corporation, Auto Club Insurance Association, Island of Bob-Lo Company	88-1666	05/27/88
ML Media Partners, L.P., Walter A. Tiburski, Wincom Broadcasting Corporation	88-1669	05/27/88
The Prospect Group, Inc., Kemper Corporation, National Automobile and Casualty Insurance Co.	88-1677	05/27/88
John W. Kluge, Orion Pictures Corporation, Orion Pictures Corporation	88-1680	05/27/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-12750 Filed 6-6-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Research and Demonstration Grants Relating to Occupational Safety and Health; Availability of Funds for Fiscal Year 1988

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds in Fiscal Year 1988 for research and demonstration project grants relating to occupational safety and health. The objective of this program is to award funds to eligible institutions or agencies to establish, discover, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. The Catalog of Federal Domestic Assistance number is 13.262.

Authority

This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951). Program regulations applicable to these grants are in Part 87, "National Institute for Occupational Safety and Health Research and Demonstration Grants," of Title 42, Code of Federal Regulations.

Eligibility Requirements

Eligible applicants include non-profit and for-profit organizations. Thus universities, colleges, research institutions and other public and private organizations including State and local governments and small, minority and/or woman-owned businesses are eligible for these research and demonstration grants.

Availability of Funds

There is $6,299,000 available in Fiscal Year 1988 to fund research project grants, demonstration grants, Special Emphasis Research Career Award (SERCA) grants, small grants, and Small Business Innovation Research (SBIR) grants.

For research project grants, it is expected that 22 continuation grants will be awarded totaling approximately $3.099 million and that about 17 new and competing renewal grants will be awarded totaling approximately $2.153 million and ranging from approximately $50,000 to $250,000 with the average award being approximately $140,000.

For SERCA grants, it is expected that approximately $222,000 will be awarded for seven continuation grants and $259,000 for eight new grants.

For small grants, it is expected that approximately $143,000 will be awarded for seven continuation grants and $248,000 for eleven new grants.

For SBIR grants, the total available funds for phase I and II awards is approximately $175,000.

Grants are usually funded for 12 months in project periods of up to 5 years for research project and demonstration grants, 3 years for SERCA grants, and 2 years for small grants. Continuation awards within the project period are made on the basis of

satisfactory progress and on the availability of funds.

Program Requirements

A. Research Project Grants

A research project grant application should be intended and designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of underlying causes and mechanisms.

B. Demonstration Grants

A demonstration grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility or application of: (1) A new or improved occupational safety or health procedure, method, technique, or system, or (2) an innovative method, technique, or approach for preventing occupational safety or health problems.

C. Special Emphasis Research Career Award (SERCA) Grants

The SERCA is designed to enhance the research capability of individuals in the formative stages of their careers who have demonstrated outstanding potential for contributing as independent investigators to health-related research. Candidates must have had 2 or more years of relevant post-doctoral experience prior to the submission date. The application must document accomplishments in this period that demonstrate research potential; it must also present a plan for additional experience in a productive scientific environment at domestic institutions that will foster development of a career of independent research in the area of occupational safety and health. The SERCA is not intended for untried investigators, or for productive, independent investigators with significant numbers of publications of high quality, or for persons of senior academic rank (above associate professor or tenured). Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research, nor is it intended to be a mechanism for providing institutional support. The application must demonstrate that the award will make a difference in and enhance the candidate's development as an independent investigator.

Candidates must indicate a commitment of at least 60 percent time (not necessarily 60 percent salary) devoted to research under the SERCA grant, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. While working closely with one or more advisers, the awardee is expected to develop capabilities in fundamental, applied, and/or clinical research in one of the areas listed under "Programmatic Interests." At the end of the award period, evidence of independent investigative capability should be present such that the individual is better able to compete in traditional NIOSH research grant activities.

The total grant award may comprise direct costs of up to $30,000 per year and up to 8 percent additional indirect costs. Direct costs may include salary plus fringe benefits, technical assistance, equipment, supplies, consultant costs, domestic travel, publication, and other costs. If the awardee already holds a small grant on the same research topic, the amount of the SERCA may be reduced up to the amount of the small grant. Awards may be up to 3 years and will not be renewable.

D. Small Grants

A small grant application is intended to provide financial support to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. This small grant program is intended for predoctoral graduate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training) and junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, the application should specify that the funds are for the use of a particular student or junior-level person and should include appropriate justification for this arrangement. Though biographical sketches are required only for the person actually doing the work, the application should indicate who would be supervising the research. Small grant applications should be identified as such on the application form.

The total small grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for up to 2 years and are thereafter continuable by competitive renewal as a regular research grant. Salary of the principal investigator as well as that of the junior investigator, if university policy requires a senior person to be listed as the principal investigator, will not be allowed on a small grant, though salaries can be requested for necessary support staff such as laboratory technicians, interviewers, etc.

E. Program Project Grants

NIOSH will also accept applications for program project grants, but only after discussion with the individuals listed in this announcement.

Programmatic Interests

NIOSH program priorities, listed below, are applicable to all of the above types of grants. The conditions or examples listed under each category are selected examples, not comprehensive defintions of the category. Investigators may also apply in other areas related to occupational safety and health. Applications responding to this announcement will be reviewed by staff for their responsiveness and relevance to occupational safety and health. Assignment to NIOSH for funding consideration will be according to established referral guidelines. Potential applicants with questions concerning the acceptability of their proposed work should contact the individuals listed in this announcement under **"FOR FURTHER INFORMATION CONTACT."**

1. Occupational lung disease: asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, occupational asthma
2. Musculoskeletal injuries: disorders of the back, trunk, upper extremity, neck, lower extremity: traumatically induced Raynaud's phenomenon
3. Occupational cancers (other than lung): leukemia; Mesothelioma; cancers of the bladder, nose and liver
4. Severe occupational traumatic injuries: amputations, fractures, eye loss, and lacerations
5. Cardiovascular diseases: hepertension, coronary artery disease, acute myocardial infarction
6. Disorders of reproduction: inferitlity, spontaneous abortion, teratogenesis
7. Neurotoxic disorders: peripheral neuropathy, toxic encephalitis, psychoses, extreme personality changes (exposure-related)
8. Noise-induced loss of hearing
9. Dermatologic conditions: dermatoses, burns (scalding), chemical burns, contusions (abrasions)
10. Psychological disorders: neuroses, personality disorders, alcoholism, drug dependency
11. Engineering control systems: new technology performance evaluation, preconstruction review, equipment redesign, containment of hazards at the source, fundamental dust generation mechanisms, machine guarding/avoidance methods, explosion control, removal of emissions after generation, dispersion models, monitoring and warning techniques, technology transfer
12. Respirator research: new and innovative respiratory protective devices, techniques to predict performance, effectiveness of respirator programs, physiologic and ergonomic factors, medical surveillance strategies, psychological and motivational aspects, effectiveness of sorbents and filters, including chemical and physical properties.

Criteria for Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Applications will be evaluated by a dual review process. The primary (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningul results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured.
- Availability, adequancy, and competence of personnel, facilities, and other resources needed to carry out the project.
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.
- Extent of cooperation expected from industry, union, or other participants in the project, where applicable.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements, evidence of demonstrated commitment to a research career in occupational safety and health, and supportive nature of the research environment (including letter(s) of reference from adviser(s) which should accompany the application).

Small grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will take into consideration the fact that the applicants do not have extensive experience with the grant process.

A secondary review will also be conducted. Factors considered in the secondary review will include:

- The results of the initial review.
- The significance of the proposed study to the research programs of NIOSH.
- National needs and program balance.
- Policy and budegtary considerations.

Application and Award

Applications should be submitted on Form PHS–398 (revised September 1986) or PHS–5161–1 for State and local government applications. Forms should be available from the institutional business offices or from: Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building—Room 449, 5333 Westbard Avenue, Bethesda, Maryland 20892.

The original and six copies of the application must be submitted to the address below on or before the specified receipt dates in accordance with the instructions in the PHS–398 packet: Division of Research Grants, National Institutes of Health, Westwood Building—Room 240, Bethesda, Maryland 20892.

In developing the application please note that the conventional presentation for grant applications should be used and the points identified under "Criteria for Review" must be fulfilled.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. If the applicant's orginization elects to exercise this option, use asterisks on the original and six copies of the application to indicate those individuals for whom salaries and fringe benefits are being requested; the subtotals must still be shown. In addition, submit an additional copy of page 4 of Form PHS–398, completed in full with the asterisks replaced by the amount of the salary and fringe benefits requested for each individual listed. This budget page will be reserved for internal PHS staff use only.

The instructions in the Form PHS–398 packet should be followed concerning deadlines for either delivering or mailing the applications. The application should be sent or delivered using the mailing label in the Form PHS–398 packet.

The proposed timetable for receiving applications and awarding grants is as follows:

Application deadline	Primary review group meeting	Secondary review meeting	Earliest possible beginning date
New and competing renewal applications:			
February 1 [1]	June	September	December 1.
June 1 [1]	October/November	January	April 1.
October 1 [1]	February/March	May	July 1.
Exceptions: Career Development and Small Grants:			
March 1	June	September	December 1.
July 1	October/November	January	April 1.
November 1	February/March	May	July 1.

[1] Competing renewal deadlines are 1 month later.

Awards will be made based on results of the initial and secondary reviews, balance among areas of programmatic interest, emphasis area, and availability of funds.

FOR FURTHER INFORMATION CONTACT:

For Technical Information Contact: Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, NE., Bldg. 1, Room 3053, Atlanta, Georgia 30333, Telephone: (404) 639–3343.

For Business Information Contact:
Henry Cassell, Grants Management Officer, Centers for Disease Control, 255 E. Paces Ferry Rd., NE., Room 321, Atlanta, Georgia 30305, Telephone: (404) 842–6575.

Dated: May 27, 1988.

Signed by:

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR. Doc. 88–12781 Filed 6–6–88; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 88M–0165]

Medstone International, Inc.; Premarket Approval of the Medstone 1050 ST Lithotripter

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medstone International, Inc., Costa Mesa, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Medstone 1050 ST Lithotripter. After reviewing the recommendation of the Gastroenterology/Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of April 15, 1988, of the approval of the application.

DATE: Petitions for administrative review by July 7, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank S. Casciani, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

SUPPLEMENTARY INFORMATION: On September 3, 1987, Medstone International, Inc., Costa Mesa, CA 92627, submitted to CDRH an application for premarket approval of the Medstone 1050 ST Lithotripter. FDA filed the application on September 10, 1987. The device is an extracorporeal shock wave lithotripter for use in the fragmentation of upper urinary tract stones, i.e., renal calyceal stones, renal pelvic stones, and upper ureteral stones.

On November 18, 1987, the Gastroenterology-Urology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 15, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Frank S. Casciani (HFZ–420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e)(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures, regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 27, 1988

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–12780 Filed 6–6–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0161]

N&N Contact Lens International, Inc.; Premarket Approval of Tresoft and Tresoft Thin (Ocufilcon A) Soft (Hydrophilic) Contact Lenses

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by N & N Contact Lens International, Inc., Lynnwood, WA, for premarket approval, under the Medical Device Amendments of 1976, of the Tresoft and Tresoft Thin (ocufilcon A) Soft (Hydrophilic) Contact Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of March 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by July 7, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (FHA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On December 15, 1987, N & N Contact Lens International, Inc., Lynnwood, WA 98046, submitted to CDRH an application for premarket approval of the Tresoft and Tresoft Thin (ocufilcon A) Soft (Hydrophilic) Contact Lenses. The lenses are indicated for daily wear for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lenses may be worn by persons who exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. The Tresoft (ocufilcon A) Lens ranges in powers from −20.00 D to +20.00 D. The Tresoft Thin (ocufilcon A) Lens ranges in powers from −15.00 D to +20.00 D. The lenses are to be disinfected using a chemical (not heat) disinfection system. The application includes authorization from Ciba Vision Corp., Atlanta, GA 30340, to incorporate the information contained in its approved premarket approval applications for the Tresoft and Tresoft Thin (ocufilcon A) Soft (Hydrophilic) Contact Lenses.

On February 18, 1977, Ciba's PMA N17–855 was approved by FDA. On March 31, 1988, CDRH approved the subject application (P870079) by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the aproved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with aproved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petiiton, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 27, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–12791 Filed 6–6–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meeting

Notice is hereby given that a public meeting will be held so that the recently formed National Research Council/National Academy of Sciences Committee on Dietary Guidelines Implementation may receive information relevant to its study. Established at the request of the National Cancer Institute and the Kaiser Family Foundation, the Committee will conduct an indepth study and propose detailed strategies and options for the implementation of dietary guidelines by government agencies at all levels; by professionals in the nutrition, medical, and allied health fields; by educational institutions; and by certain segments of the private sector, including institutions concerned with mass feeding.

The Committee is chaired by Dr. Edward N. Brandt, Chancellor of the University of Maryland at Baltimore and former Assistant Secretary for Health.

The meeting will be held on Wednesday, July 6 from 9:15 a.m. to 3:30 p.m. in the auditorium of the National Academy of Sciences, 2100 C Street, NW., Washington, DC 20418. The entire meeting will be open to the public, but attendance will be open to the public, but attendance will be limited to space available.

Written material for presentation to the Committee can be of any length and should be sent to one of the individuals listed below by Friday, June 17. Multiple copies should be provided if public distribution at the meeting is desired. Persons wishing to make oral presentations should also submit their written comments by June 17. When the final program has been determined, all oral presenters will be given a specified amount of time to summarize their views. Time will be also provided for discussion.

For further information contact Lenora Morsgne, Ph.D., or Paul Thomas, Ed.D., Dietary Guidelines Implementation Committee, National Academy of Sciences, 2101 Constitution Avenue, NW., Room 340, Washington, DC 20418, (202) 334–2582.

Dated: May 31, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–12797 Filed 6–6–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the Interagency Technical Committee (IATC), sponsored by the National Heart, Lung, and Blood Institute on July 20, 1988, from 1 p.m. to 5 p.m., at the National Institutes of Health, Building 31, C-Wing, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–5031.

The entire meeting is open to the public. The IATC is meeting to give member agencies the opportunity to exchange information on the status of their respective programs that relate to

heart, blood vessel, lung, and blood diseases and blood resources. Attendance by the public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Ms. Janyce N. Hedetniemi, Chief, Planning and Coordination Branch, Office of Program Planning and Evaluation, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 5A03, Bethesda, Maryland 20892, (301) 496–5031.

Dated: May 31, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88–12798 Filed 6–6–88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 053, Block 128, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 25, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 25, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–12751 Filed 6–6–88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, July 7, 1988, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The first agenda item will be a presentation by the United States Army on the proposal to expand the Post Exchange at the Presidio of San Francisco, Building T–135, by 26,000 square feet to provide increased retail space and a consolidation of services and activities presently found elsewhere on post. The addition will be to the west and south of the existing building. It will contain the Garden Shop from the Four Seasons Store, Building 609, which has been demolished. The Post Exchange building is at the 35 percent design stage and construction is planned to begin in the summer of 1988 and be completed in 14 months. The former Post Exchange and the Four Seasons Store which have been demolished for the site clearance total the equivalent square footage of the proposed one-story addition (26,000 square feet).

The second agenda item will be a presentation by the U.S. Army on a proposal to upgrade the motor pool area and facilities located at Fort Scott in the northwest section of the Presidio of San Francisco. Approximately one-half acre of the existing two-acre dirt parking area would be paved and existing asphalt areas would be resurfaced as necessary. Improved drainage structures and concrete curbs would be constructed around the perimeter of the parking area. Other work at the site include rehabilitating the perimeter fence and replacement of the west and east gates at the site. The fence adjacent to Lincoln Boulevard is to be moved 30 feet east to allow for screening tree plantings.

The third agenda item will be a presentation by the staff of Golden Gate National Recreation Area on the Environmental Assessment on options for development of the Presidio Bayfront/Crissy Field area in San Francisco. Four alternatives are considered for this San Francisco shoreline site. Each alternative would implement the approved General Management Plan for the Golden Gate National Recreation Area, which recommended restored dunes, natural landscaping, lawn, parking, and visitor amenities, such as restrooms and picnic facilities. The amount and location of parking and the balance between the urban and natural landscapes varies under each alternative. Twenty acres of open space will be created by removal of paving and nonhistoric structures. New and restored landscapes would include dunes, grassland, lawn and a seasonal wetland reminiscent of Crissy Field's past as a saltwater marsh. One alternative considers a saltwater lagoon.

The formal presentation of the Crissy Field Bayfront options were presented at the Golden Gate National Recreation Area Advisory Commission meeting on March 10, 1988. A presentation of broad development plans was made before the GGNRA Advisory Commission on November 10, 1987. Options for the Golden Gate National Recreation Area portions of Presidio Bayfront/Crissy Field were developed with the assistance of John Northmore Roberts, Landscape Architects and Land Planners, of Berkeley, California, under the auspices of the Golden Gate National Park Association. Plans for those Presidio Bayfront/Crissy Field lands under U.S. Army management were developed by the Directorate of Engineering and Housing at the Presidio of San Francisco. The San Francisco City Planning Commission staff has also participated in the formulation of these options.

The meeting is open to the public. Persons wishing to receive the Environmental Assessment for the Crissy Field plans should contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or telephone (415) 556–4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after July 28, 1988. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88–12747 Filed 6–6–88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations; California et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 28, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 22, 1988.

Carol D. Shull,

Chief of Registration National Register.

CALIFORNIA

Butte County

Chico vicinity, *Honey Run Covered Bridge*, Honey Run Humbug Rd.

Contra Costa County

Richmond, *Ford Motor Company Assembly Plant*, 1414–1422 Harbour Way, S.

Los Angele County

Los Angeles, *Machell–Seaman House*, 2341 Scarff St.

San Bernardino County

Colton, *Carnegie Public Library Building*, 380 N. La Cadena Dr.

San Luis Obispo County

San Luis Obispo, *Pacific Coast Railway Company Grain Warehouse*, 65 Higuera St.

Santa Clara County

Gilroy, *Gilroy Free Library*, 195 Fifth St.

Sonoma County

Healdsburg, *Healdsbury Carnegie Library*, 221 Matheson St.
Petaluma, *Free Public Library of Petaluma*, 20 Fourth St.

IOWA

Johnson County

Iowa City, *Ashton, Ned, House*, 820 Park Rd.

Wright County

Clarion, *Burlington, Cedar Rapids and Northern Railrood Passenger Station*, 302 S. Main

KENTUCKY

Bourbon County

Paris, *Duncan Avenue Historic District*, Duncan, Stoner, Vine, and Massie Sts.

McCracken County

Paducah, *Lincoln School*, S. Eighth St., between Ohio and Tennessee Sts.

LOUISIANA

Madison County

Tallulah, *Kell House*, 502 N. Mulberry St.

Union County

Farmerville, *Stein, Daniel, House*, 208 W. Bayou

MAINE

Cumberland County

East Harpswell, *East Harpswell Free Will Baptist Church*, Cundys Harbor Rd.
New Gloucester vicinity, *Universalist Meeting House*, ME 231, Intervale
North Harpswell, *Union Church*, ME 123
Yarmouth, *Central Parish Church*, 146 Main St.

Hancock County

Von Mach Site (ME 151/02)

Lincoln County

Boothbay Harbor, *Auld–McCobb House*, Oak St.

Penobscot County

Eddington Bend (Site 74–8)
Bangor, *Veazie, Jones P., House*, 88 Fountain St.

Somerset County

Norridgewock, *Eaton School*, Jct. of Main St. and Mercer Rd.
North Anson vicinity, *Bailey Farm Windmill*, ME 16

Waldo County

North Islesboro vicinity, *Free Will Baptist Church and Cemetery*, Church Rd.

Washington County

Addison vicinity, *Indian River Baptist Church*, ME 187, Indian River

York County

Waterboro vicinity, *First Baptist Church*, West side, Jct. of West Rd. and Federal St.

MASSACHUSETTS

Berkshire County

Sheffield, *Sheffield Plain Historic District*, Roughly one-half mile of US 7, S from Cook Rd.

Essex County

Peabody, *Peabody, George, House*, 205 Washington St.

Hampshire County

Northampton, *Fort Hill Historic District*, 124, 130, 134, 144, 148, and 135 South St.

Middlesex County

Melrose, *Melrose Public Library*, 63 W. Emerson St.

Suffolk County

Boston, *Goodwin, Ozias, House*, 7 Jackson Ave.

MINNESOTA

St. Louis County

Ely vicinity, *Burntside Lodge Historic District*, Off CR 88

NEBRASKA

Adams County

Pauline vicinity, *Antioch School*, Near Crooked Creek

Buffalo County

Meisner, George, House,

Butler County

David City, *Thorpe's Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, 457–½ D St.
Surprise, *Surprise Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, SE. corner, intersection of Miller and River Sts.

Chase County

Champion, *Champion Mill*, Mill St. and Second St.

Cherry County

Valentine vicinity, *Bryan Bridge*, US 20

Cheyenne County

Lodgepole, *Lodgepole Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, W. side of Oberfelder at Front

Colfax County

Clarkson, *Z.C.B.J. Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Fourth and Pine

Dawes County

Crawford, *Army Theatre (Opera House Buildings in Nebraska 1867–1917 MPS)*, Fort Robinson State Park

Dawson County

Cozad, *Allen's Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, 100th E. Eighth

Dodge County

Snyder, *Schneider's Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, 104 Ash

Fillmore County

Geneva, *Auditorium, The (Opera House Buildings in Nebraska 1867–1917 MPS)*, 160 N. Ninth

Hamilton County

Hampton, *IOOF Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, N. Third and B Sts.

Jefferson County

Diller, *Diller, Anna C., Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Commercial and Hilton

Johnson County

Tecumseh, *Tecumseh Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, 123 S. Third

Knox County

Bloomfield, *Pospeshil Theatre (Opera House Buildings in Nebraska 1867–1917 MPS)*, 123 Broadway

Verdigre, *Z.C.B.J. Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Fourth Ave. and Main

Merrick County

Central City, *Ellen, Martha, Auditorium (Opera House Buildings in Nebraska 1867–1917 MPS)*, 706 C Ave.

Nemaha County

Auburn, *New Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, 921 Central Ave.

Nuckolls County

Lawrence, *Lawrence Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Second and Calvert Sts.

Pawnee County

Steinauer, *Steinauer Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, 215 Main

Table Rock, *Table Rock Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Houston St.

Polk County

Stromsburg, *Wilson, Victor E., House*, 518 Main St.

Richardson County

Falls City, *Gehling's Theatre (Opera House Buildings in Nebraska 1867–1917 MPS)*, 1592 Stone St.

Saline County

Friend, *Warren's Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, 511 Second St.

Sheridan County

Rushville, *Gourley's Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Second St.

Webster County

Bladen, *IOOF Hall and Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Main St.

York County

Gresham, *Clem's Opera House (Opera House Buildings in Nebraska 1867–1917 MPS)*, Main and Post Sts.

NEW JERSEY

Bergen County

Norwood, *Church of the Holy Communion*, Summit Ave.

NEW MEXICO

Santa Fe County

Santa Fe, *Archbishop Lamy's Chapel*, Bishop Lodge Rd.

NEW YORK

Columbia County

Livingston, *Richmond Hill*, CR 31

Dutchess County

New Hackensack, *Horton, Joseph, House*, NY 376, New Hackensack Rd.

Westchester County

Mount Kisco, *St. Mark's Cemetery*, E. Main St., corner of St. Mark's Pl.

NORTHERN MARIANA ISLANDS

Tinian Island

Magpo Valley Latte Sites District

OREGON

Benton County

Corvallis vicinity, *Irwin, Richard S., Barn*, 26208 Finley Refuge Rd.

Correction:

The following property was erroneously listed in Georgia under Atkinson County in our annual list dated Tuesday, May 24, 1988, under Properties Determined Eligible for the National Register in Fiscal Year 1988, and should read as follows:

HAWAII

Honolulu County

Honolulu, *Ala Wai Canal*, Oahu Island (10/28/85)

[FR Doc. 88-12723-Filed 6-6-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 473]

Railroad Cost of Capital—1987

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On June 6, 1988, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1987. The composite cost of capital rate for 1987 is found to be 11.6 percent, based on a current cost of debt of 9.3 percent, a cost of preferred equity capital of 7.9 percent, a cost of common equity capital of 12.8 percent, and a 30.6 percent debt/0.5 percent preferred equity/68.9 percent common equity capital structure mix. The cost of capital finding made in this proceeding will enable the Commission to make its annual determination of railroad revenue adequacy for 1987.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision should be utilized to evaluate the adequacy of railroad revenues for 1987 under the standards and procedures promulgated in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*, 3 I.C.C. 2d 261 (1986). This finding may also be utilized in proceedings involving the prescription of maximum reasonable rate levels.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: May 31, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-12758 Filed 6-6-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 246X)]

Exemption; CSX Transportation, Inc.; Abandonment Exemption; Portsmouth, VA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.32-mile line of railroad between Valuation Stations 6018+32, and 6035+30 in Portsmouth, VA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate state agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective July 7, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by June 17, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 27, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, Esq., CSX Transportation, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by June 12, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316).

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 26, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-12522 Filed 6-6-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informal decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 5, 1988.

[2] *See Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164, (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-88-85-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1003-2(f) (requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; pre-movement requirement; certified and qualified persons) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a minimum vertical clearance of 12 inches be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley feeder wires at all times during the movement or transportation of such equipment.

2. Petitioner states that the mine is requesting relief only for movement of longwall shields. The longwall shields, when collapsed and loaded onto equipment dollies for moving, are lower than the normal rolling stock i.e. the mine cars. Twelve inches of radical clearance is provided from all trolley wire for shields loaded on dollies. All fire resistant fluid that can be removed from the shields without disassembly is removed prior to transporting them.

3. As an alternate method, petitioner proposes that prior to moving a shield, which has been loaded on a dolly, passed energized trolley wire the following procedures would be followed:

(a) When the shields are fully collapsed and loaded for movement on the equipment, dolly measurements would be taken to verify that they are lower than rolling stock;

(b) Nonconductive standards such as plastic pipe would be mounted on each end of the dolly extending to 48 inches above the rail to allow the motorman to ascertain any low top or wire conditions;

(c) The top and wire side of each shield would be covered with fire resistant material;

(d) The shields and dollies would be examined by a certified person to ensure that coal dust, float dust, loose coal, oil, grease, and other combustible materials have been cleared up and not permitted to accumulate on either unit;

(e) The shield would be effectively grounded to the dolly;

(f) A qualified person, would examine the trolley wires, trolley feeder wires, and associated automatic circuit interrupting devices for the entire route to ensure proper short circuit protection exists;

(g) A mine car would be transported over the entire route to physically assure all crossings and clearance;

(h) All shields would to securely anchored to the equipment dolly to prevent shifting and or separation from the dolly. The shields would be blocked on each end by steel which is an integral part of the dolly. Two chain binders and a chain would hold down the shields securely to the dolly and would also prevent the shields from slipping off the sides;

(i) The trip of shields would be moved at a reduced speed to lessen the likelihood of the shields shifting or the dollies coming off the track;

(j) Any shield which does not meet the requirements of 3(a) would be moved in full compliance with the standard; and

(k) All personnel involved with the move would be reinstructed as to the new procedures.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 7, 1988. Copies of the petition are available for inspection at that address.

Date: June 1, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-12818 Filed 6-6-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[V-88-1]

Variance Applications; Doe Run Co.

AGENCY: Occupational Safety and Health Administration Labor.

ACTION: Notice of application for permanent variance.

SUMMARY: This notice announces the application of the Doe Run Company for a permanent variance from the provision in the lead standard (29 CFR 1910.1025(f)(2), Table II) limiting the use of half-mask, air-purifying respirators equipped with high efficiency filters, to areas where the lead concentration in air is not in excess of 500 micrograms per cubic meter of air. The applicant has requested that it be authorized, under specified conditions, to permit employees to wear such respirators where they are exposed to lead at concentrations in excess of that limitation.

DATES: The last date for interested persons to submit comments is July 7, 1988. The last date for affected employers and employees to request a hearing is July 7, 1988.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination at the above address, Telephone: (202) 523-7193.

or the following Regional and Area Offices:

US Department of Labor—OSHA, 911 Walnut Street Room 406, Kansas City, Missouri 64106

US Department of Labor—OSHA, 4300 Goodfellow Boulevard—Building 105E, St. Louis, Missouri 63120.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that the Doe Run Company, 7733 Forsyth Boulevard, Clayton, Missouri 63105, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the standard prescribed in 29 CFR 1910.1025(f)(2), respirator selection.

The address of the place of employment that will be affected by the application is as follows: Herculaneum Smelting Division, Herculaneum, Missouri 63048.

The purpose of 29 CFR 1910.1025(f)(2) is to protect employees from excessive lead exposure by requiring employers to provide employees with respirators appropriate for the concentration of lead in air.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representatives and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that the practices and conditions it proposes to use will provide a place of employment which is as safe and healthful as that provided under the occupational health standard for lead.

The Doe Run Company operates a lead smelter in southwest Missouri with a smelter design capacity of 225,000 tons annually, which represents approximately 36 percent of the total United States refined lead capacity. In fiscal 1986 (11/85-10/86) the smelter produced 151,000 tons of refined lead.

Under the provisions of the lead standard, specifically 29 CFR 1910.1025(e)(1), Doe Run is required to implement engineering, work practice and administrative controls, to the extent feasible, to reduce and maintain employee exposure to airborne lead to or below 100 micrograms per cubic meter ($\mu g/m^3$) of air, averaged over an 8-hour period. By June 29, 1991, the applicant must comply with a permissible exposure limit (PEL) of 50 $\mu g/m^3$ through the use of engineering and work practice controls, except to the extent it can demonstrate that such controls are not feasible.

During the time period necessary to install the above-referenced controls, or in work situations where such controls are not sufficient to reduce exposures to or below the PEL, Doe Run may utilize respiratory protection. When respirators are used, Table II (29 CFR 1910.1025(f)(2), Table II) of the standard specifies the type of respiratory protection depending on the airborne concentration of lead or condition of use. This table assigns a protection factor of 10 for negative-pressure, half-mask respirators, thereby establishing a maximum airborne lead concentration of 500 $\mu g/m^3$ for which such a respirator may be used. The applicant is seeking a permanent variance from this restrictive protection factor.

The applicant asserts that airborne levels within the smelter may exceed the level of 500 $\mu g/m^3$ for some operations and, moreover, during upset conditions or maintenance operations, airborne lead levels may often exceed 500 $\mu g/m^3$.

Compliance with Table II in these situations, Doe Run states, is infeasible due to the variability in duration of exposure and the inability to determine the need for greater protective measures until industrial hygiene sampling has been conducted and laboratory results returned. In light of those factors, the applicant seeks to utilize a protection factor of 25 for negative pressure respirators.

The applicant further states that it has developed an extensive respirator protection program at the smelter which provides, in part, quantitative fit testing and employee training in respirator usage. Based upon this program and available evidence, Doe Run stipulates that it has determined that a protection factor greater than 10 can be assigned to a negative pressure respirator. Quantitative fit test results performed on its employees, states the applicant, yielded a fit factor with a geometric mean of 1470 during the second half of 1985. During this time period, no employee had a fit factor less than 286.

Distribution of fit test results for this time period is as follows:

FREQUENCY DISTRIBUTION OF PROTECTION FACTORS

[June 1, 1985-Dec. 31, 1985]

Range	Frequency	Cumulative frequency	Percent	Cumulative percent
200	0	0	0.0	0.0
200 to 999	97	97	20.0	20.0
1000 to 4999	387	484	79.7	99.7
5000+	2	486	0.3	100.0

Further, according to Doe Run, the American National Standards Institute (ANSI) has also concluded that a protection factor higher than 10 can be assigned to a negative pressure respirator if the employee has been quantitatively fit tested (ANSI Z88.2-1980). Moreover, Doe Run asserts, data from the National Institute for Occupational Safety and Health's work at the Doe Run Herculaneum smelter indicates that a half-mask negative-pressure respirator with a high efficiency filter will provide a geometric mean protection factor of 180 when used in a smelter environment. Therefore, Doe Run states that it is confident that by the strict enforcement of it's respirator protection program, a protection factor of at least 25 could be assigned to a negative pressure respirator.

Doe Run states that in lieu of complying with 29 CFR 1910.1025(f)(2) it will provide respirators, at no cost to its employees, and shall require the use of said respirators during the time period necessary to install engineering or work practice controls, in work situations in which feasible engineering and work practice controls are not sufficient to reduce airborne lead exposures to or below the PEL, and/or whenever any employee requests a respirator.

In addition, when respirators are required, the applicant states that half-mask negative pressure respirators, with high-efficiency filters, will be provided to employees who work in operations having airborne concentrations of lead not exceeding 25 times the exposure limit, only if said employees demonstrate a quantitative fit test fit factor of 250 or greater. Quantitative fit tests will be performed at the time of initial fitting and at least semiannually for all exposed employees.

Doe Run further alleges that, with respect to any employee who is wearing a half-mask negative pressure respirator in accordance with this permanent variance and who has a rise in his/her blood lead level from the previous sampling test of 10 $\mu g/100g$ of whole blood or greater, it will perform a quantitative fit test to ensure that the fit factor is 250 or greater. In addition, the applicant states that it will evaluate such employee's respirator usage, hygiene habits and lead-related work practices. Based on the quantitative fit test and the evaluation, the Company agrees to take all reasonable and appropriate corrective steps to protect the health of the employee including, if necessary, requiring the employee to wear a powered air-purifying respirator in lieu of a half-mask negative pressure respirator.

Doe Run alleges that it will also continue to enforce and, if warranted, revise its written respirator program. This program provides, in part, that Doe Run clean an employee's respirator at the end of each shift, and after it has been dried in an oven, wrap it in plastic and return it to the individual employee's storage bin.

The applicant contends that it will also provide powered air-purifying respirators in lieu of half-mask negative pressure respirators whenever an employee requests the use of said respirator or when the use of said respirator is necessary to protect the health of an employee, and that it shall select respirators from those approved for protection against lead dust, fume and mist by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

In summary, the applicant contends that it has demonstrated by a preponderance of the evidence that the practices and conditions it proposes to use will provide a place of employment which is as safe and healthful as that provided under the occupational health standard for lead.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of this application for variance, are invited to submit written data, views, and arguments relating to the issues raised in the application no later than July 7, 1988.

In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than July 7, 1988, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quaduplicate, and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, DC, this 1st day of June 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-12818 Filed 6-6-88; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-7155] et al.

Proposed Exemptions; Telephone Real Estate Equity Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Telephone Real Estate Equity Trust (the Trust) Located in New York, New York

[Exemption Application No. D–7155]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) certain leases (the Leases) by the Trust of space in two commercial real properties (the Properties) located in Hampton, Virginia (Executive Towers) and Portland, Oregon (Parkside) to the Equitable Life Assurance Society of the United States (Equitable), Manufacturers Hanover Consumer Services (MHCS), Security Pacific Corporation (SPC), Read Commercial Properties, Inc. (Read), Prudential-Bache Securities, Inc. (Prudential-Bache) and General Electric Company (GE), each of which is a party in interest or an affiliate of a party in interest with respect to the Trust; (2) the proposed potential amendments, renewals or extensions of the Leases; and (3) the proposed leasing by the Trust of space in the Properties to any other persons or entities that may be parties in interest with respect to the Trust (except for fiduciaries with respect to the Properties),[1] including the amendments, renewals and extensions thereof; provided that the terms and conditions of any leases subject to this exemption, including any amendments, renewals or extensions thereof, are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such leases, including any amendments, renewals or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc.

Effective Date: The effective date of the proposed exemption, if granted, will be May 1, 1984 as to the Executive Towers lease to Equitable; December 5, 1986 as to the Parkside lease to Equitable; May 1, 1984 as to the lease to MHCS; February 29, 1984 as to the lease to SPC; April 1, 1987 as to the lease to Read; June 22, 1983 as to the lease to Prudential-Bache, and December 20, 1982 as to the leases to GE.

Summary of Facts and Representations

1. The Trust

The Trust is a group trust which is utilized for the investment on an undivided basis of certain real estate assets of its participating plans (the Plans). The Plans are employee benefit plans established by the companies resulting from the reorganization of American Telephone and Telegraph Company (AT&T) and its subsidiaries, pursuant to the Plan of Reorganization approved by the U.S. District Court for the District of Columbia in the matter of *U.S.* v. *Western Electric Co., Inc., et. al.* (Civil Action No. 82–0192). The assets of the Plans' predecessor plans were held in the Bell System Pension Plan Trust (the BSPP) and the Bell System Management Pension Plan Trust (the BSMPP). On January 1, 1984 the trusts for the BSPP and the BSMPP were merged into the Bell System Trust (the BST). Substantially all of the non-real estate assets in the BST were transferred to a new AT&T trust. The BST, retaining the real estate assets, was amended and restated as the Trust. As of January 1, 1988, the Trust covered approximately 1,226,000 participants and had net assets of approximately $4.218 billion. To promote diversification, AT&T has utilized the professional services of more than a hundred independent trustees and investment managers to manage the Trust assets.

2. Eastdil

A subsidiary of Eastdil Realty, Inc., Eastdil Advisers, Inc. (Eastdil) is a registered investment advisor under the Investment Advisors Act of 1940, as amended. Eastdil's stated purpose is the investment and management of real estate assets for large pension plans and has more than $1 billion in pension plan assets currently under management. As of December 31, 1986, Eastdil was managing approximately $650 million in real estate assets of the Trust.

3. The Properties

Executive Towers is a commercial office building located at 2101 Executive Drive in Hampton, Virginia. Eastdil organized a Delaware corporation, Executive Towers, Inc. (ETI), to hold title to Executive Towers on behalf of the Trust, to collect income therefrom and distribute such income to the Trust. All of the officers and directors of ETI are employees of Eastdil. ETI is wholly owned by the Trust and is exempt from Federal income taxation under section 501(c)(2) of the Code.

Parkside is a commercial office building located at 2020 SW Fourth Avenue in Portland, Oregon. It is the sole asset of the Parkside Center Company (the Joint Venture), a joint venture formed to take title to, operate, lease, dispose of and otherwise deal with Parkside. The joint venturers are the Oregon Pacific Investment and Development Company and Parktel I, Inc. (Parktel), a Delaware corporation wholly owned by the Trust and organized by Eastdil to hold the Trust's interest in the Joint Venture, to collect income therefrom and to distribute such income to the Trust. All of the officers and directors of Parktel are employees of Eastdil. Eastdil represents that Parktel is exempt from Federal income taxation under section 501(c)(2) of the Code. Under the terms of the agreement establishing the Joint Venture, all of the leases of space in Parkside must be satisfactory in form and substance to Parktel and Parktel's counsel and all tenants in Parkside must be satisfactory in all respects to Parktel. All proposed leases must be submitted to Parktel at least twenty days prior to the anticipated execution thereof, and Parktel has the right to approve or disapprove such leases in its sole discretion.

[1] Fiduciaries as used here include the American Telephone and Telegraph Company and its affiliates and Eastdil Advisers, Inc. and its affiliates.

4. The Tenants

(a) Equitable is a life insurance company organized and incorporated in New York with its headquarters in New York City. Equitable is engaged as an investment manager of certain assets of the Trust other than the Properties. Equitable was engaged in this fiduciary capacity on behalf of the Trust prior to the executions of its Leases of space in the Properties.

(b) MHCS is engaged in the provision of consumer finance services, the making of first and second mortgage loans and small consumer loans. On May 1, 1984, the parent corporation of MHCS, Manufacturers Hanover Corporation (MHC), purchased 100 percent of the stock of C.I.T., Inc. (CIT), which was engaged in substantially the same business as MHCS and which was not affiliated with MHC or MHCS prior to such stock purchase. Until December 31, 1985, a subsidiary of MHC, Manufacturers Hanover Trust Company (MHTC), was a trustee with respect to certain assets of the Trust other than the Properties.

(c) SPC is a public corporation which is the parent corporation of Security Pacific National Bank (SPNB), which served as ancillary trustee with respect to certain assets of the Trust other than the Properties in 1984 and 1985. Two other subsidiaries of SPC were or are tenants in the Properties: the Security Pacific Finance Corporation (SPFC), engaged in the provision of consumer credit services, and the Security Pacific Finance Management Corporation (SPFMC), engaged in the provision of payroll and leasing services to certain of its affiliates.

(d) Read is a Virginia corporation engaged in the management and leasing of real property. Read is wholly owned by Read Consolidated Companies (RCC), a Virginia partnership with ownership interests in various entities engaged in real property development and management, including Read Commercial Properties Atlanta, Inc. (Read Atlanta), a Georgia corporation wholly owned by Read Interstate Companies, a partnership in which RCC has an 85 percent ownership interest. On April 1, 1987, Read Atlanta entered into an agreement with Eastdil to manage certain commercial real property in Atlanta, Georgia which is owned by Artel I, Inc., a title-holding corporation wholly owned by the Trust.

(e) Prudential-Bache is a registered broker-dealer and investment banking firm engaged in the sale of securities, insurance products and other financial services. It is a wholly-owned subsidiary of the Prudential Insurance Company of America (Prudential). Effective January 1, 1984, Prudential entered into a group annuity contract with the Trust and a separate investment management agreement to manage certain assets of the Trust, not including the Properties, on a discretionary basis.

(f) GE is a public corporation which is the parent corporation of General Electric Financial Services, Inc. (GEFS): In June of 1986 GEFS purchased 80 percent of all outstanding stock of Kidder Peabody & Company, Inc. (Kidder Peabody). GEFS subsequently formed a wholly-owned subsidiary, KPG, to hold the Kidder Peabody stock purchased by GEFS: Kidder Peabody is a service provider with respect to certain of the Plans participating in the Trust by virtue of Kidder Peabody's rendering of securities brokerage services to such Plans.

5. The Leases

(a) On Feburary 2, 1984, ETI entered into a lease (the ET Lease) with Equitable under which Equitable leased approximately 3,653.05 square feet of space in Executive Towers out of a total of approximately 130,000 square feet of rentable space. The ET Lease provided for occupancy commencing May 1, 1984 with an initial term of three years. The ET Lease was renewed on April 30, 1987 for an additional term of five years. The ET Lease provides for an initial base rent subject to automatic annual increases proportionate to increases in the taxes and operating expenses of Executive Towers. Upon the May 1, 1987 renewal of the ET Lease, the base rent was increased.

On December 5, 1986, the Joint Venture entered into a lease (the Parkside Lease) with Equitable under which Equitable leased 9,800 square feet in Parkside out of a total of 218,810 rentable square feet. The Parkside Lease provided for occupancy commencing March 1, 1987 for an initial term ending February 29, 1992. The Parkside Lease provides for a monthly base rent which increases incrementally according to a schedule in the Parkside Lease. The rent is also subject to annual increases proportionate to increases in taxes and operating expenses in accordance with a rider to the Parkside Lease. Under the Parkside Lease, Equitable has a right of first refusal to lease adjacent vacant space prior to any lease of such space to a third party. In the Parkside Lease the Joint Venture agreed to reimburse Equitable in an amount not to exceed $34,000 for the monthly rental payments which Equitable was obliged to make under an existing lease for space in a competing commercial office building which was to expire April 30, 1987. Eastdil, as a fiduciary of the Trust, represents that this reimbursement agreement was an inducement for Equitable to enter into the lease, that such tenant inducements are common in the real estate industry and that the terms of such reimbursement agreement were reasonable under the surrounding facts and circumstances.

(b) On February 24, 1983, ETI entered into a lease (the CIT Lease) with CIT under which CIT leases 885.50 square feet in Executive Towers, approximately .68 percent of the rentable space in Executive Towers. The CIT Lease provided for occupancy commencing July 1, 1983 and terminating on June 30, 1988 unless sooner amended, terminated or extended as provided in the CIT Lease. As a result of MHC's purchase of the stock of CIT, the CIT Lease was assinged to MHCS as of January 1, 1987. Under the CIT Lease, MHCS pays a base rent subject to an annual increase equal to MHC's proportionate share of the annual increase in operating expenses and real estate taxes, based on the proportion of the entire rentable square footage in Executive Towers demised under the CIT Lease. On March 4, 1987 MHCS notified ETI of the intention of MHCS to vacate the premises demised by the CIT Lease. MHCS has vacated the premises but will continue to pay rent under the CIT Lease until the earlier of the CIT Lease's termination or the lease of the premises by ETI to another party.

(c) On February 29, 1984, ETI entered into a lease with SPFC (the SP Lease) under which SPFC leased 1009.57 square feet, or approximately .77 percent, of the rentable square footage in Executive Towers. The SP Lease provided for a base rent subject to an annual increase equal to SPFC's proportionate share of the annual increase in operating expenses and real estate taxes, based on the proportion of the entire rentable square footage in Executive Towers demised under the SP Lease.

The SP Lease was renewed by SPFMC on March 20, 1987 for a term commencing July 1, 1987 and terminating

on June 30, 1990. Under the renewed SP Lease, SPFDMC leases 1168.24 square feet, or approximately .89 percent, of the rentable square footage in Executive Towers. The base rent under the renewed SP Lease is subject to an annual increase equal to SPFC's proportionate share of the annual increase in operating expenses and real estate taxes.

(d) On September 23, 1985, ETI entered into a lease (the Read Lease) with Read under which Read leased 6,189.14 square feet, or approximately 4.7% of the rentable square footage, in Executive Towers. The Read Lease provided for occupancy commencing on September 23, 1985 and terminating on August 31, 1990, unless sooner amended, terminated or extended as provided in the Read Lease. The Read Lease provides for an annual base rent which will increase incrementally each year of its five-year term in accordance with a schedule incorporated into the Read Lease. The base rent is also subject to an annual increase equal to Read's proportionate share of the annual increase in operating expenses and real estate taxes of Executive Towers, based on the proportion of the entire square footage in Executive Towers demised under the Read Lease.

(e) On June 22, 1983, the Joint Venture entered into a lease (the PB Lease) with Prudential-Bache under which Prudential-Bache leased 11,619 square feet, on approximately 5.31 percent of the rentable square footage, in Parkside. The PB Lease provided for occupancy commencing September 1, 1983 and terminating on September 1, 1988, unless sooner terminated, amended or extended as provided in the PB Lease. The PB Lease provides for a monthly base rent which increase in increments according to a schedule incorporated into the PB Lease. The base rent is also subject to annual increases equal to Prudential-Bache's proportional share of the annual increases in operating expenses and real estate taxes of Parkside, based on the proportion of the entire square footage in Parkside demised under the PB Lease. The PB Lease gives Prudential-Bache a right of first refusal to lease adjacent vacant space prior to any lease to a third party. The rental rate for any such additional space will be the rental rate in effect for Prudential-Bache with respect to the other space which is the subject of the PB Lease.

(f) On December 20, 1982, ETI entered into a lease (the GE Lease #1) with GE under which GE leased 1333.97 square feet, or approximately 1.02 percent of the rentable square footage, in Executive Towers. The GE Lease #1 provided for occupancy commencing on February 1, 1983 and terminating on January 31, 1988 unless sooner extended, modified or terminated in accordance with the lease's terms. In a June 13, 1983 addendum to the GE Lease #1, ETI and GE added 666.99 square feet to the space leased under the GE Lease #1. In a second addendum, ETI and GE agreed to renew the GE Lease #1 for an additional term commencing February 1, 1988 and terminating January 31, 1991. The GE Lease #1 provides for an annual base rent which is subject to a yearly increase equal to GE's proportionate share of the annual increase in Executive Towers' real estate taxes and operating expenses, based on the proportion of the entire rentable square footage in Executive Towers which is demised under the GE Lease #1.

(g) On May 12, 1986, ETI entered into an additional, separate lease (the GE Lease #2) with GE under which GE leased 7907.79 square feet, or approximately 6.03 percent, of the rentable square footage in Executive Towers. The GE Lease #2 provided for occupancy commencing on July 1, 1986 and terminating on June 30, 1991, unless sooner extended, modified or terminated in accordance with the lease's terms. The GE Lease #2 provides for an initial annual base rent which increases annually in the amount of five percent of the preceding year's annual rental.

(h) Each of the Leases may be terminated by the lessor, either ETI or the Joint Venture, upon the occurrence of an event of default as set forth in each Lease, including the lessee's failure to pay rent when due and any default in the performance or observance of any other covenant or condition of such Lease which continues afer notice to the lessee for a certain period specified in each Lease.

6. Eastdil represents that it is independent of the various lessees under the Leases and not related to such lessees in any way affecting its judgment as a fiduciary on behalf of the Trust. Eastdil represents that the Leases pertaining to Executive Towers were negotiated by ETI under Eastdil's control and direction and have been at all times subject to the review and approval of Eastdil, acting in its capacity as an investment manager of the Trust. With respect to the Leases pertaining to Parkside, Eastdil represents that such Leases were negotiated and executed in accordance with the provisions of the Joint Venture agreement establishing Parktel's right to review and approve Parkside leases in advance of their execution.

Eastdil represents that the Leases were negotiated in arm's-length transactions and that the Leases are standard commercial office leases, in both form and substance, which are utilized generally for all tenants of Executive Towers and Parkside. Eastdil maintains that the negotiations resulting in the Leases reflect common industry practices and the practices established for similar leases in Executive Towers and Parkside. Eastdil represents that the terms and conditions of the Leases are as good or better than those which ETI and Parktel could obtain in arm's-length transactions with unrelated parties. Eastdil represents that the terms of the Leases are comparable to those of similar leases in the Properties and in similar commercial office buildings in the same geographical areas of the Properties at the time of the Leases' executions and that the rentals provided under the Leases are not less than the fair market rental values of the demised premises at the times of the Leases' executions.

Eastdil represents that it has determined that the Leases constitute transactions which are prudent and in the best interests of the Trust and the participants and beneficiaries of the Plans. Eastdil notes that the Leases are for fixed terms which will not be amended, renewed or extended unless a determination is made on behalf of the Trust by Eastdil that such amendment, renewal or extension would be in the best interests of the Trust and the Plans.

7. Eastdil is requesting that the exemption posed herein be applicable on a prospective basis for any future leases in the Properties which may be executed with parties in interests (except for fiduciaries with respect to the Properties) with respect to the Trust. Eastdil represents that this request for prospective relief is necessitated by practical business considerations stemming from the large size of the Trust and the Plans and the large number of parties in interest who deal with them. Eastdil maintains that ETI and Parktel require the ability to negotiate and enter into leases of the Properties in the ordinary course of business. Eastdil also represents that the requested prospective relief for amendments, renewals or extensions of the Leases or of future leases will provide ETI and Parktel with additional flexibility which will expand the potential value of lease transactions involving the Properties, thereby increasing the investment return to the Trust.

8. In summary, Eastdil represents that the past and proposed transactions satisfy the requirements of section

408(a) of the Act for the following reasons: (1) Each Lease was negotiated and entered into in arm's-length transactions on behalf of the Trust by ETI and Parktel, under the control and direction of Eastdil, an independent fiduciary of the Trust which is unrelated to the various lessees; (2) Any amendments, renewals or extensions of the Leases and any executions of future leases in the Properties with parties in interest with respect to the Trust, or their affiliates, including any amendments, renewals or extensions thereof, will require the approval of Eastdil; (3) The Leases are, and any future leases subject to this proposed exemption will be, standard commercial office leases which are utilized generally for all tenants of the Properties and which reflect common industry practices; and (4) The rentals provided under the Leases are and will be no less than the fair market rental values of the demised premises at the times of the Leases' executions.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Harris Trust and Savings Bank (Harris) Located in Chicago, Illinois

[Application Nos. D-7277, D-7278 and D-7279]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the lending by Harris to Merrill Lynch Canada, Inc. (Merrill Lynch Canada) of securities that are assets of employee benefit plans and trusts for which Harris acts as trustee, co-trustee, investment manager, custodian or agent, provided the following conditions are met.

1. Neither Merrill Lynch Canada nor an affiliate of Merrill Lynch Canada has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

2. The plan receives from Merrill Lynch Canada (either by physical delivery or by book entry in a securities depository) by the close of Harris' business on the day in which the securities lent are delivered to Merrill Lynch Canada, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than Merrill Lynch Canada or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 100 percent of the then market value of the securities lent. All such collateral will be held within the United States;

3. Prior to the making of any such loan, Merrill Lynch Canada shall have furnished Harris with (1) the most recent available audited statement of Merrill Lynch Canada's financial condition, (2) the most recent available unaudited statement of its financial condition (if more recent than such audited statement), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to Harris. Such representation may be made by Merrill Lynch Canada's agreeing that each such loan shall constitute a representation by Merrill Lynch Canada that there has been no such material adverse change;

4. The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as an arm's-length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;

5. (a) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to Merrill Lynch Canada, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(b) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

6. If the market value of the collateral at the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, Merrill Lynch Canada shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph 2 above) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day.

Notwithstanding the foregoing, part of the collateral may be returned to Merrill Lynch Canada if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

7. The loan may be terminated by the plan at any time, whereupon Merrill Lynch Canada shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery by the plan and Merrill Lynch Canada, whichever is lesser; and

8. In the event the loan is terminated, and Merrill Lynch Canada fails to return the borrowed securities or the equivalent thereof within the time described in paragraph 7, above, (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of Merrill Lynch Canada under the agreement, and any expenses associated with the sale and/or purchase, and (ii) Merrill Lynch Canada is obligated, under the terms of the loan agreement, to pay, and does pay to the plan the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate.

Notwithstanding the foregoing, Merrill Lynch Canada may, in the event that it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by Harris.

If Merrill Lynch Canada fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a

transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of Merrill Lynch Canada's failure to comply with the conditions of the exemption.

For purposes of this class exemption the term "affiliate" of another person shall include: (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) Any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Summary of Facts and Representations

1. Harris, an Illinois chartered banking corporation, is the third largest bank in Illinois and is among the largest U.S. pension trustees. Harris also is an indirect wholly-owned subsidiary of Bank of Montreal, which is one of the five major Canadian banking companies. The proposed exemption is requested on behalf of the Employees Savings and Profit Sharing Plan of Bank of Montreal/Harris; the Employees Retirement Plan of Bank of Montreal/Harris; the Harris Trust for Collective Investment of Employee Benefit Accounts (the Collective Investment Trust), a declaration of trust for the collective investment of assets of employee benefit trusts of which Harris or an affiliated bank is acting as trustee or co-trustee or as agent for the trustee or trustees thereof; and about 160 other pension and profit sharing plans for which Harris acts as trustee, investment manager, custodian or agent. As of January 1, 1987, approximately 1,500 plans had assets held in the Collective Investment Trust. The various plans mentioned above are collectively referred to as the Plans.

2. Harris, in its fiduciary capacity as agent, investment manager, custodian or trustee of the Plans, regularly engages in securities lending transactions on behalf of the Plans in order to enhance the investment returns of the Plans. In cases where the borrower of the securities is a party in interest with respect to the Plans, Harris generally relies on Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987). PTE 81–6 is a class exemption that permits, under certain conditions, the lending of securities that are assets of employee benefit plans to banks and certain broker-dealers which are parties in interest with respect to such plans.[2]

3. Harris proposes to engage in securities lending transactions on behalf of the Plans with Merrill Lynch Canada, an indirect wholly-owned subsidiary of Merrill Lynch, Pierce, Fenner & Smith (Merrill Lynch). The securities involved in the lending transactions will be securities of United States corporations which are regularly traded on U.S. and/or Canadian stock exchanges. The proposed securities lending transactions would comply in all respects with the provisions of PTE 81–6 except that the borrower is not a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act). PTE 81–6 covers broker-dealers which are registered under the 1934 Act as well as those which are exempted from registration under section 15(a)(1) of the 1934 Act as dealers in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act). Merrill Lynch Canada does not provide broker-dealer services in the United States and thus is not required to register under the 1934 Act. The applicant believes that Merrill Lynch Canada is at times a party in interest with respect to some or all of the Plans because of the widespread use of its parent, Merill Lynch, to provide brokerage services to the Plans.[3] Such use of Merrill Lynch often occurs without the knowledge or control of either Harris or Merrill Lynch Canada.

4. The applicant maintains that, if Merrill Lynch Canada were not a subsidiary of Merrill Lynch, the proposed securities lending transactions would not be prohibited transactions even though Merrill Lynch Canada is not registered under the 1934 Act. The only reason the proposed transactions would be prohibited with respect to Merrill Lynch Canada, according to the applicant, is because the prospective borrower is a subsidiary of a United States broker-dealer which is itself registered under the 1934 Act. Merrill Lynch Canada is a Nova Scotia corporation. The applicant represents that its activities are subject to Canadian laws which provide regulation comparable to registration under the 1934 Act for a U.S. broker-dealer.

5. The applicant represents that Canadian securities laws were derived mainly from the perceived need for more comprehensive protection for investors as a result of the financial crisis that began in 1929. As with Canadian law in general, however, comprehensive regulation of the securities industry is centered at the Provincial rather than the Federal level. Each Canadian Province has written provisions for the registration of securities and for the regulation of persons engaging in the sale of securities. Regulatory and enforcement authority is vested in a Provincial Securities Commission or similarly denominated entity. According to the applicant, Provincial securities regulations generally parallel U.S. requirements in that they mandate that primary securities offerings may be made only after the filing of a prospectus containing complete disclosure. Such regulations also require registration of securities dealers, enforce capitalization requirements for dealers, license securities exchanges, and vest regulatory, investigative and criminal enforcement authority in the Securities Commissions. Additionally, a privately funded national assurance fund exists for the protection of securities investors.

6. The applicant points out that the proposed exemption is virtually identical to PTE 81–6. Accordingly, the same protections afforded to plans relying on PTE 81–6 will be present for the participants and beneficiaries of any Plans engaging in the described transactions. In regard to the collateral requirements described in conditions 2 and 6 of the proposed exemption, the applicant also points out that all the collateral for the loans of securities will be held within the United States. The letters of credit or other forms of collateral specified in the exemption would be held at Harris as trustee or agent for the Plans. Such collateral would provide an immediate, independent source of funds available to the appropriate Plans in the event that a securities loan is terminated and Merrill Lynch Canada fails to return the borrowed securities or equivalent to the Plans within a certain period of time.

7. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 406(a) of the Act because, among other things: (1) All the conditions specified in PTE 81–6 for the protection of plans engaging in transactions in reliance on that class exemption will be met in regard to the transactions proposed in the application; (2) the securities involved in the proposed lending transactions will be securities of U.S. corporations which are regularly traded on U.S. and/or Canadian stock exchanges; (3) the applicant maintains that the proposed transactions would not be prohibited except for the described relationship between Merrill Lynch Canada and Merrill Lynch; (4) the activities of Merrill Lynch Canada are subject to Canadian laws which provide regulation comparable to registration under the 1934 Act for a U.S. broker-dealer; and (5) all the collateral for any securities loans entered into under the proposed exemption will be held within the United States.

[2] PTE 81–6 requires, among other conditions, that the borrower of the securities has no discretionary authority regarding the plan assets involved in the transaction, that the lending plan receives collateral equal to 100 percent of the market value of the loaned securities, and that the loan is made under a written agreement the terms of which are at least as favorable as the plan could obtain in an arm's-length transaction with an unrelated party.

[3] Section 3(14) of the Act defines the term "party in interest" with respect to a plan to include a corporation which is 50 percent or more owned by an entity that provides services to the plan.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Popham, Haik, Schnobrich & Kaufman, Ltd. 401(k) Profit Sharing Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D–7327]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the past purchase by the individually directed accounts (the Accounts) in the Plan held by certain shareholders (the Shareholders), who are also employees and/or officers and directors of Popham, Haik, Schnobrich & Kaufman, Ltd. (the Employer), the Plan sponsor and a party in interest with the respect to the Plan, of 89,000 shares of stock owned by the Employer/Plan sponsor; provided the terms and conditions of the transactions were as favorable to the Plan as those which could have been obtained in an arm's-length transaction between unrelated parties.

EFFECTIVE DATE: If granted, this exemption will be effective March 25, 1987.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with individually directed accounts and 182 participants. Total plan assets were $4,479,082 as of June 30, 1986. The Employer is a law firm with offices in Minneapolis, Minnesota, Denver, Colorado, and Washington, DC. The independent trustee of the Plan is the Marquette Bank, Minneapolis, N.A. (the Trustee).

2. On March 25, 1987, the nine Shareholders [4] directed the Trustee to purchase 89,000 shares of Radersburg Mining Company (Radersburg) common stock (the Stock) for their Accounts in the Plan from the Employer at a price of $1.00 per share. The applicant represents that the price was determined by reference to an arm's-length sales transaction of 37,000 shares of the Stock between Neil Croonquist and Thomas Kelm, parties unrelated to the Plan or Employer, on March 24, 1987 for $1.00 per share. The Employer had acquired the Stock in September, 1986 from its client, Radersburg, for $1.00 per share in full settlement of outstanding legal fees. Also in September, 1986, seventeen creditors converted Radersburg debts into the Stock at $1.00 per share.

3. The applicant further represents that the Shareholders and the Trustee were in full compliance with all Securities and Exchange Commission rules and regulations regarding the transaction. The Plan paid no fees or commissions in connection with the purchase. Subsequent to the purchase, the Accounts of the nine Shareholders held between .68%–10.58% of their Accounts' assets in the Stock. Each of the nine Shareholders has represented that he desired that the purchase be consummated on behalf of his individually directed account in the Plan.

4. An independent appraisal of the Stock was performed on August 12, 1987 by Peter L. Hauser, Vice President of Equity Securities Trading Co., Inc. of Minneapolis, Minnesota. Mr. Hauser represents that he has more than twenty years' experience in the securities industry and is qualified to evaluate the Stock. He further represents that approximately .1% of his income in 1987 was derived from the partners of the Employer. He determined that, as of March 25, 1987, the fair market value of the Stock was $1.00 per share.

5. In summary, the applicant represents that the transaction met the statutory criteria contained in section 408(a) of the Act because: (1) The transaction involved no more than 10.58% of the assets of any of the Accounts; (2) the purchase price paid by the Plan was determined by reference to arm's-length transactions between unrelated parties; and (3) the nine Shareholders were the only Plan participants affected by the transaction and each has represented that he desired the transaction to be consummated.

Notice to Interested Persons: Because the nine Shareholders are the sole Plan participants to be affected by the transaction, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Morison Securities, Inc. (Morison) Located in Minneapolis, Minnesota

[Application No. D–7336]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by various individuals who are clients of Morison of certain public limited partnership units (the Units) from their individual retirement accounts (the IRAs), their Keogh plans (the Keoghs) or their profit sharing plans (the PS Plans) for cash, provided the IRAs, Keoghs and PS Plans receive no less than the fair market value of the Units on the dates of the sales.[5]

Summary of Facts and Representations

1. Morison is a retail securities Broker/Dealer, registered with the NASD, and located in Minnesota, Minnesota. Various clients of Morison have set up self-directed qualified plans. These include 175 IRAs, 6 Keoghs, and 3 PS Plans. These 184 plans each have only one participant.

[4] The nine Shareholders are: Ray Haik, D. William Kaufman, Denver Kaufman, James Lockhart, Robert Minish, Roger Schnobrich, James Steilen, G. Marc Whitehead and Rolfe Worden.

[5] Because the IRAs meet the conditions described in 29 CFR 2510.3–2(d), there is no jurisdiction under Title I of the Act with respect to the IRAs. Because there are no employees covered under the Keoghs and PS Plans, there is no jurisdiction under Title I of the Act with respect to the Keoghs and PS Plans pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction with respect to the IRAs. PS Plans and the Keoghs under Title II of the Act pursuant to section 4975 of the Code.

2. Each of the subject plans was established for the sole purpose of purchasing the Units, which are certain public limited partnership units, mainly in the oil and gas industry. The two largest investments are in Damson Oil & Gas (Damson) whose A and B Units are traded publicly on the AMEX and whose IPX and IPY Units are publicly traded on the OTC Market, and in the Western Real Estate Fund, whose Units are publicly traded on the OTC Market. Damson's 85O1 and 851E Units are not publicly traded.

3. As the plans are self-directed, the Units must be held by an independent custodian. Morison does not, due to the type of Broker-Dealer it is, maintain any client securities or funds. The plan participants each want to purchase the Units from their respective IRAs, Keoghs and PS Plans. Morison has requested the prohibited transaction exemption on behalf of its clients to permit each to purchase the Units from his plan for cash. No commissions will be paid on the sales.

4. For those Units which are publicly traded, the sales price for the subject transactions will be the closing price on the day preceding the sale. If there is no public market value for the Units, the price will be determined by the Unit sponsor's estimate of fair market value. Morison represents that the Unit sponsor is independent of the IRAs, Keoghs and PS Plans, and is also best able to arrive at a value as it has all of the facts regarding the investment. Morison represents that in some limited cases where a public market does not exist and the Unit sponsors are unwilling to offer a fair market value, the sales price would be determined by independent third party valuations.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 4975(c)(2) of the Code because: (a) The sales will be one-time transactions for cash, and no commissions will be charged on the sales; (b) the sales price for the Units will be determined by the market price, or if not publicly traded, the fair market value as established by the Unit sponsor or independent expert; and (c) the one participant in each IRA, Keogh or PS Plan will be the only participant to be affected by the particular transaction, and the transaction will not occur unless the participant desires that it be consummated.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Sammons Trucking Amended and Restated Profit Sharing Plan (the Plan), Located in Missoula, Montana

[Application No. D-7340]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, effective June 3, 1975, to: (1) The sales by the Plan of five parcels of unimproved real property (the Properties) to Robert R. and Mary Lynn Van Derhoff (the Van Derhoffs), parties in interest with respect to the Plan; and (2) extensions of credit by the Plan to the Van Derhoffs in conjunction with the sales of the Properties; provided that the terms and conditions of such transactions are at least as favorable to the Plan as those which the Plan could obtain in arm's length transactions with unrelated parties.

Effective date: The effective date of the proposed exemption, if granted, will be June 3, 1975.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan which is sponsored by the Sammons Trucking Company (the Employer), a Montana closely-held corporation engaged in the business of interstate commercial transport. As of September 14, 1987, there where 59 active participants in the Plan, which had total net assets of $1,932,531 as of March 31, 1987. Investment decisions on behalf of the Plan are the responsibility of the Plan's trustees, James D. Basolo and Hal W. Fullerton (the Trustees), each of whom is an officer of the Employer. The Van Derhoffs, who are related as father and daughter, represent that since 1974, their business, Van Derhoff Realty, located in Plains, Montana, has been a provider of property management and brokerage services to the Plan.

2. The Trustees represent that commencing in 1975, on behalf of the Plan they embarked on an investment program which consisted of the purchase of undeveloped real property, the subdivision of such property and the sales of the subdivided parcels by contracts for deed involving extensions of credit by the Plan to the purchasers of the parcels. As of March 31, 1985 the Plan had executed sixty-five such contracts resulting from sales of subdivided parcels of real property between 1975 and 1985. Five of these sales and extensions of credit (the Contracts) were made to one or both of the Van Derhoffs. The Trustees are requesting an exemption for the Plan's sales of real property and extensions of credit to the Van Derhoffs under the Contracts, the terms of which are described herein.

3. Under each Contract, the buyer made payments as per the Contract terms to a designated Bank escrow agent which was required to convey the subject property to the buyer by a warranty deed upon payment of the entire purchase price plus interest. The buyer acknowledged under each Contract that no representations of any kind concerning the subject property were being made by the seller and each Contract specifically provided that it superseded any and all prior agreements between the parties pertaining to the sale of the subject property. Each Contract granted the buyer the right, within 60 days written notice to the seller, to accelerate payment under the Contract at any time during the Contract's term and to pay any portion or all of the unpaid principal balance of the purchase price, together with interest accrued to the date of such payment. According to default provisions in each Contract, the seller had the right to declare the Contract forefeited and all Contract rights of the buyer to be nullified if the buyer should remain in default on any terms of the Contract for thirty days after written notice of such default. Specific terms of each Contract are summarized as follows:

(A) Under a Contract executed on June 3, 1975 and closed on July 11, 1975, the Plan sold to Robert R. Van Derhoff a 10.193 acre parcel of unimproved real property designated as Tract Eleven in Survey No. 50A in Sanders County, Montana for a purchase price of $7,000 payable as follows: $500 in cash paid on or before the Contract's execution and the balance of $6,500 to be paid over ten years commencing July 15, 1975 in amortized monthly installments of $77.16 including interest of 7.5 percent per annum effective June 15, 1975.

(B) Under a Contract executed on September 29, 1977 and closed on October 7, 1977, the Plan sold to Robert R. Van Derhoff a 10.365 acre parcel of unimproved real property and a 20.030 acre parcel of unimproved real property designated as Tracts Twenty-five and Forty-six, respectively, in Survey No. 50A in Sanders County, Montana for a purchase price of $14,174 payable as follows: $2,274 in cash paid on or before the Contract's execution and the balance of $11,900 to be paid over ten years commencing November 10, 1977 in monthly installments of $141.27 including interest of 7.5 percent per annum effective October 10, 1977.

(C) Under a Contract executed on March 21, 1980 and closed on August 15, 1980, the Plan sold to Robert R. Van Derhoff a 22.94 acre parcel of unimproved real property designated as Tract 1-A in Survey No. 486 in Sanders County, Montana for a purchase price of $18,000 payable as follows: $1,500 in cash on or before the Contract's execution and the balance of $16,500 to be paid over 15 years commencing September 15, 1980 in amortized monthly installments of $177.38 including interest at ten percent per annum effective August 15, 1980.

(D) Under a Contract executed on June 14, 1983 and closed on June 15, 1983, the Plan sold to Robert R. Van Derhoff a 3.86 parcel of unimproved real property designated as Tract 1-J in Survey No. 662 in Sanders County, Montana for a purchase price of $10,800 payable as follows: $2,100 in cash on or before the Contract's execution and the balance of $8,700 to be paid over ten years commencing July 15, 1983 in amortized monthly installments of $115.01 including interest of ten percent per annum effective June 14, 1983.

(E) Under a Contract executed and closed on May 4, 1984, the Plan sold to Mary Lynn Van Derhoff a 2.99 acre parcel of unimproved real property designated as Parcel E in Survey No. 726 in Sanders County, Montana for a purchase price of $9,000 payable as follows: $1,800 in cash upon the Contract's execution and the balance of $7,200 to be paid over ten years commencing June 1, 1984 in amortized monthly installments of $95.18 including interest of ten percent per annum effective May 4, 1984.

5. The Trustees represent that all decisions and determinations on behalf of the Plan with respect to the Contracts were made by the Plan's Administrative Committee (the Committee), consisting of the Trustees and a third member, James O. Bendickson, an officer of the Employer. The Trustees represent further that no member of the Committee is related in any way to the Van Derhoffs and that the Committee determined that the Van Derhoffs were not related in any way to any employee of the Employer or any Plan participant. The Trustees represent that the Van Derhoffs did not influence the decision of the Committee with respect to any sale of property to them. Maintaining that the subject transactions were entered into without knowledge by the Committee or the Van Derhoffs that the Contracts constituted prohibited transactions under the Act or the Code, the Trustees acknowledge that all of the Contracts were paid in full by the Van Derhoffs by April 10, 1987 after the Internal Revenue Service informed the Trustees that the Contracts appeared to be prohibited by the Act and the Code. The Trustees state that the Contracts were entered into in the ordinary course of business on behalf of the Plan and that the purchase price and other terms for the sale of the property under each Contract were determined by the Committee independently of the Van Derhoffs to be arms-length, at or above the fair market value of each subject property. The Trustees state further that the interest rate and other terms of the Plan's commensurate extension of credit under each Contract were established by the Committee pursuant to the same procedures utilized on behalf of the Plan in all real estate sales under contracts for deed on the basis of the prevailing rates offered by local commercial lenders and the prevailing rates charged in seller-financed arrangements at the time of each Contract in the same geographic locale of the subject property.

6. In summary, the Trustees represent that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (1) All terms and conditions of the Contracts were established on behalf of the Plan by the Committee, which is unrelated to the Van Derhoffs; (2) Under the Contracts the Plan received purchase prices of no less than the fair market value of each of the Properties; (3) The terms of the extensions of credit under the Contracts were equivalent to those between unrelated parties in similar transactions at the same times and in the same geographic locales as those involved in the Contracts; and (4) The Plan's interests under the Contracts were represented at all times by the Trustees, who are independent of the Van Derhoffs.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Andes/Buchanan Medical Corporation Defined Benefit Pension Plan (the Pension Plan) and the Andes-Buchanan Medical Corporation Money Purchase Pension Plan (the M/P Plan; Together, the Plans), Located in Fullerton, California

[Application No. D-7402]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase by the Plans of a certain promissory note (the Note) which is secured by a deed of trust against certain real property owned by F.V. Ltd., an unrelated party, from the Jerry P. Andes and Barbara J. Andes Revocable Estate Trust (the Andes Trust), a party in interest with respect to the Plans, provided that the price paid for the Note is the lesser of either the outstanding principal balance on the Note or the fair market value of the Note on the date of purchase.

Summary of Acts and Representations

1. The Pension Plan is a defined benefit pension plan which, as of September 30, 1987, had seven participants and total assets of $708,944.71. The M/P Plan is a money purchase pension plan which, as of September 30, 1987, had six participants and total assets of $758,459.45. Jerry P. Andes, M.D., (Dr. Andes) and Dennis Buchanan, M.D., (Dr. Buchanan) are the trustees of the Plans (the Trustees), and the decision-makers with respect to the Plans' investments.

2. The Plans are sponsored by the Andes/Buchanan Medical Corporation (the Employer). The Employer is a California medical corporation located at 220 Laguna Road, Fullerton, California. The shareholders of the Employer are Dr. Andes and Dr. Buchanan. Dr. Andes is the President of the Employer.

3. Dr. Andes and his wife, Barbara J. Andes, are the trustees of the Andes Trust. The Andes Trust is an estate trust, owned by Dr. Andes and Barbara Andes, which is a party in interest with respect to the Plans. Prior to January 1980, the Andes Trust owned a limited partnership interest in F.V. Ltd. (the

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Partnership), a California limited partnership. The applicant states that the Partnership is an unrelated party with respect to the Plans and the Employer, and that the Plans have never held either an equity or debt interest in the Partnership. The general partner of the Partnership is DVM, Inc. (DVM), a California corporation whose president and principal shareholder is William J. Carden (Mr. Carden). DVM is a general partner in several real estate limited partnerships in southern California. The applicant states that both DVM and Mr. Carden are unrealated parties with respect to the Plans and the Employer.

4. On January 14, 1980, the Andes Trust liquidated its interest in the Partnership. The Andes Trust received the Note in partial consideration for its interest in the Partnership. The original face amount of the Note was $170,000. The obligors on the Note are DVM, as the general partner of the Partnership, and Mr. Carden. The Note bears simple interest at the rate of 10 percent per annum. Since April 2, 1980, principal and interest on the Note have been payable in quarterly installments of $4,800. On January 2, 1990, the Note provides for the payment in five equal annual installments of unpaid principal and interest. The applicant states that all payments on the Note have been made in a timely manner. The outstanding principal balance on the Note was $143,600, as of January 1, 1988.

The collateral for the Note is a first deed of trust on a certain parcel of commercial real property located at 10221 thru 10231 Slater Avenue, Fountain Valley, California (the Property). There is a second deed of trust in favor of the Mitsubishi Bank of California in the amount of $3,909,500. The Property is approximately 2.65 acres of real estate with a two building office complex of approximately 115,434 square feet. The Property was appraised on August 24, 1983 by William L. Reinhart, SRPA, and William V. Shrewsbury, MAI, independent, qualified real estate appraisers in Newport Beach, California, as having a fair market value of $5,585,000.

5. The Note was appraised on March 21, 1988 by Mark Zane Freilich a/k/a Mark Zane (Mr. Zane), President of Interbranch, Inc., a California corporation engaged in mortgage brokerage and various other financial services. Mr. Zane represents that he is an independent, qualified appraiser for the Note.

Mr. Zane states that in his opinion, the fair market value of the Note, as of March 21, 1988, was the current outstanding principal balance of the Note as of that date. Mr. Zane represents that his valuation of the Note was based on the current value of the Note's terms and conditions, the Note's lien position with respect to other encumbrances, and the security for the Note based on the value of the Property as appraised by independent, qualified appraisers. Mr. Zane also represents that he will update his appraisal of the Note at the time of the proposed transaction and that the appraisal will reflect any accrued but unpaid interest as of the date of purchase.

6. The Trustees propose to have the Plans purchase the Note for cash at the lesser of either the outstanding principal balance on the Note or the fair market value of the Note on the date of purchase. Each of the Plans would acquire a 50 percent interest in the Note. The Plans will not pay any commissions or other expenses with respect to the proposed transaction.

7. Mr. Zane has provided a declaration dated March 9, 1988 (the Declaration), in which he has agreed to serve as an independent fiduciary of the Plans for purposes of the proposed transaction. Mr. Zane acknowledges in the Declaration that he understands his duties, responsibilities and liabilities under the Act in acting as a fiduciary for the Plans. Mr. Zane states that he is qualified to act as a fiduciary of the Plans because he has been involved in numerous transactions involving pension plans investing in various types of mortgage interests and has been often called upon to advise plan trustees with respect to the safety and diversity of their portfolios. Mr. Zane states further that he is not related in any way to any officer, director or employee of the Employer.

8. Mr. Zane has analyzed the investment portfolios of the Plans to determine whether the Note would be both an appropriate and desirable investment for the Plans, based on the Note's rate of return, the character and diversification of the other assets of the Plans, and the probable liquidity needs of the Plans. Mr. Zane states that his review of the Plans' portfolios indicates that the Plans are substantially lacking in investments of a medium term which is precisely the type of investment which the Note represents for the Plans. Mr. Zane states further that the 10% annual return on the Note would be in excess of anything earned by the Plans' portfolios at the present time. Mr. Zane also believes that the security for the Note is excellent, based on the Note's senior lien position and the priority of its recording date. In addition, Mr. Zane states that the principal and interest payments on the Note have been timely made and that the Note is a well seasoned investment. Finally, Mr. Zane notes that immediately following the proposed acquisition of the Note by the Plans, each Plan's interest in the Note will represent less than 10% of each Plan's total assets. Thus, Mr. Zane states that the proposed transaction will not adversely affect the liquidity needs of the Plans.

Mr. Zane concludes that the proposed transaction would be in the best interests of the Plans. Mr. Zane states that his conclusion is based on his total analysis of the Note as an investment for the Plans, taking into account the terms of the Note and the investment policies and objectives of the Plans, as established by the Employer. In addition, Mr. Zane states that he will monitor the proposed transaction on behalf of the Plans and will take whatever actions are necessary to safeguard the Plans' interests.

9. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Note will be a one-time transaction for cash; (b) the Plans will purchase the Note at a price which is the lesser of either the outstanding principal balance of the Note or the fair market value of the Note, as established by a qualified, independent appraiser, as of the date of the transaction; (c) the Plans will not pay any commissions or other expenses with respect to the transaction; (d) Mr. Zane, a qualified independent fiduciary, has determined that the proposed transaction is in the best interests of the Plans; and (e) Mr. Zane will monitor the proposed transaction on behalf of the Plans to ensure that the Plans' interests are safeguarded.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2d day of June 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-12821 Filed 6-6-88; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Application for License To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b), "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requester or or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC EXPORT APPLICATION

Name of Applicant, Date of Appl., Date Received, Application Number	Material Type	Material in Total Element	Kilograms Total Isotope	End Use	Country of Destination
Edlow Int'l. Co., 5-23-88, 5-26-88; XSNM02384.	93.3% Enriched	16.478	15.247	Fuel for TRIGA III at Petesti	Romania.

For the Nuclear Regulatory Commission.

Dated this 31st day of May 1988 at Rockville, Maryland.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

[FR Doc. 88-12785 Filed 6-6-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25761; File No. SR-NASD-88-17]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Proposed Rule Change Adding Section 3 to Article VII and Amending Article XI, Section 4 of the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds section 3 to Article VII and amends Article XI, section 4 of the NASD By-Laws, giving the NASD Board of Governors ("Board") and a proposed Committee ("Committee"), comprised of the NASD Chairman of the Board, the NASD President, and a member of the Executive Committee, the authority to respond promptly to emergency conditions that may arise as a result of extraordinary market conditions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under current NASD procedure, the Executive Committee of the Board is delegated the authority, pursuant to Article XI, section 4 of the NASD By-Laws, to exercise the powers of the Board between Board meetings. Generally, the Executive Committee acts via telephone conference calls or by mail. During highly volatile market conditions, however, it is necessary at times to be able to respond immediately to these conditions. As a result of the precipitous market decline in October

1987, the Board has determined to approve the proposed rule change as a means of ensuring the continued efficient operation of the NASD trading systems, over-the-counter ("OTC") markets, and member firms, in times of highly volatile market conditions.[1] The proposed rule change is summarized below.

Proposed Rule Change

Proposed section 3 to Article VII of the NASD By-Laws, grants the Board—or between Board meetings, a proposed Committee, consisting of the NASD Chairman of the Board (or the Vice Chairman in his absence), the NASD President, and a member of the Executive Committee—the authority to take any action regarding the following:

(1) Operation of NASD quotation, execution, and other systems, and the participation therein of any person or the trading therein of any security;

(2) Operation of, trading in, OTC markets; and

(3) Operation of firms' offices or systems.

The proposed rule change also provides that the exercise of this authority shall occur only if the NASD President, in his discretion, concludes that convening a meeting of the Board or the Executive Committee is not practical or appropriate. The proposed rule change further provides that the NASD President shall report immediately any emergency action taken by the proposed Committee to the Executive Committee and to the Board.

The proposed amendment to Article XI, Section 4 of the NASD By-Laws is a technical amendment. The purpose of the amendment is to clarify the procedure by which the Board delegates authority to the Executive Committee to act between meetings of the Board.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. In pertinent part, section 15A(b)(6) mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market. The NASD believes that by providing the NASD with a method of responding promptly to emergency conditions, the proposed rule change will assist in enhancing the fair and orderly functioning of the OTC market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on The Proposed Rule Change Received from Members, Participants, or Others.

The proposed rule change was published for comment in NASD Notice to Members 88–8 on January 20, 1988. As a result of the notice, the NASD received seven comment letters.[2] Five of the comment letters generally favored the proposed rule change; the two remaining comment letters either requested clarification of the terms used in the proposed rule change or expressed concern that the proposed rule change was overly broad. Among the five comment letters in favor of the proposed rule change, one commentator indicated that is was in "wholehearted agreement" with the proposed rule change. Another commentator indicated that it strongly endorsed the proposal's adoption but recommended that the Board be given notice of any actions taken pursuant to the emergency authority granted by the proposed rule change concurrently with the actions being taken. Two of the commentators in support of the proposed rule change recommended that certain language changes be made to the proposed provisions. One of these commentators believed that because meetings of the Executive Committee and Board may be "many weeks away," the term "promptly" should be deleted from the provisions of paragraph (c) to the proposed rule change. Similarly, the other commentator who recommended language changes suggested that paragraph (c) be changed to provide that the proposed Committee notify the Board or Executive Committee of any actions taken by "mail, telephone or telegraph," as opposed to "at its next meeting." The fifth commentator in favor of the proposed rule change stated, in pertinent part, that while it had "no problem" with emergency powers being delegated to a committee, the delegated power should be limited to operation of the OTC market, NASDAQ, or any related trading system, and not extend to the operation of firms' offices or systems. This commentator also suggested that there should be a "time frame" within which the emergency directives issued by the Committee pursuant to proposed section 3 be in effect. This commentator suggested that beyond that time, the directives should be reviewed by the Board.

The remaining two comment letters did not generally endorse the proposed rule change. One of these commentatoss indicated, instead, that it would be helpful to understand what constitutes "highly volatile markets." The other commentator expressed concern, in part, that the grant of authority in proposed section 3 is too broad, and recommended that a third member of the Executive Committee be included as a member of the proposed Committee empowered to act in emergencies.

After considering the comment letters received in response to Notice to Members 88–8, the Board detemined to approve the proposed rule change with two changes. First, the Board determined to increase the number comprising the proposed Committee authorized to take emergency action pursuant to proposed section 3, from two members to three, as suggested by one of the commentators. The third Committee member would be selected from the Executive Committee. The second change approved by the Board is the requirement that the NASD President report immediately to the Executive Committee and to the Board any action taken pursuant to proposed section 3, as also suggested by a commentator.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-17 and should be submitted by June 28, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: May 27, 1988.

[FR Doc. 88–12774 Filed 6–6–88; 8:45 am]
BILLING CODE 8010–01–M

[1] Pursuant to the provisions of section 19(b)(3)(A) of the Act, a similar rule proposal granting emergency powers jointly to the NASD Chairman of the Board (or the Vice Chairman in his absence) and the NASD President was filed with the Commission on October 27, 1987. Under the terms of the rule filing, the grant of emergency authority remained in effect until November 13, 1987. *See* File No. SR–NASD–87–48; Securities Exchange Act Release No. 34–25157, 52 FR 46013 (Dec. 3, 1987).

[2] The Notice to Members, a list of the commentators, and the comment letters are attached as Exhibit 2 to the rule filing.

[Release No. 34–25763; File No. SR–NYSE–87–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Regulatory Review Requirements

I. Introduction and Background

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted, on March 27, 1987, copies of a proposed rule change, and on August 28, 1987, copies of an amendment to that proposal, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to amend NYSE Rules 342, 351 and 476 to supplement the existing internal compliance procedures of members and member organizations by imposing additional trade review, inquiry, and reporting requirements.[3]

In its initial filing, the NYSE stated that the purpose of the initiative is to strengthen the supervisory and compliance processes of members and member organizations by requiring them to demonstrate to the Exchange that they are meeting their obligations and responsibilities in these areas. In particular, the proposed amendments would require the affected entities to review member, employee, and proprietary trades for violations of securities laws and Exchange rules prohibiting insider trading and the use of manipulative or deceptive devices, require the production of an annual compliance report, mandate the collection and reporting of customer complaint statistics, and require key compliance officials to pass a compliance official examination.

Notice of the proposed rule change and its amendment ("NYSE Amendment No. 1"), together with the terms of substance of the proposals, was given by the issuance of Commission releases (Securities Exchange Act Release Nos. 24363, April 17, 1987; 24941, September 25, 1987) and by publication in the **Federal Register** (52 FR 13781, April 24, 1987; and 52 FR 36655, September 30, 1987).[4] Twenty-one comments were received from 18 commentators regarding the proposal.[5]

II. Description of the Proposal

A. Proprietary and Employee Trading Review

Proposed NYSE Rule 342.21(a) requires members and member organizations to subject to review procedures trades for their own accounts, for the accounts of associated members, allied members, employees, and their families,[6] in NYSE-listed securities and related financial instruments.[7] According to the Rule, the trade review procedures reasonably must be designed to identify trades that are or may be violative of the provisions of the Act, the rules thereunder, and the rules of the Exchange, pertaining to insider trading and manipulative and deceptive practices. Paragraph (b) of proposed Rule 342.21 requires the member or member organization to conduct an internal investigation into any reviewed trade that appears to have violated those laws or rules. Finally, the Exchange, at its discretion, can exclude certain classes of persons, trades, or securities from the reviewing and investigation requirements. In this context the NYSE has indicated that it intends to exclude from the review process proprietary trades of fewer than 1,000 shares, provided other safeguards are established.

B. Annual Compliance Report

Proposed Rule 342.30 requires members and member organizations to prepare a report on supervisory and compliance efforts undertaken during the previous year and to submit the report to its chief executive officer or managing partner by April 1 of each year. The report must include a tabulation of customer complaints and internal investigations, identification and analysis of significant compliance problems, and plans for future systems or procedures to prevent and detect future compliance problems. Further, the report must include a discussion of the preceding year's compliance efforts in the areas of antifraud, investment banking, sales practices, books and records, finance and operations and supervision.[8]

C. Reporting Requirements

Proposed Rules 351 (d) and (e) enhance the reporting requirements of members and member organizations to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (1987).

[3] The terms "member" and "member organization" have specific meanings under the NYSE Constitution. According to Article I, section 3(h), a member is defined as "a natural person who is a member of the Exchange" (*i.e.*, a sole proprietor). Member organizations, according to Article I, section 3(k), include member firms (partnerships) and member corporations.

[4] The NYSE filed another amendment to its proposal, which the Commission did not publish for comment because the amendments are of a non-substantive nature. *See* letter from James E. Buck, Senior Vice President, NYSE to Sharon Lawson, Branch Chief, Division of Market Regulation, SEC dated April 22, 1988 ("NYSE Amendment No. 2").

[5] *See* notes 13 to 28 and accompanying text, *infra*, summarizing comments received.

[6] *See* NYSE Amendment No. 1, at 3. The NYSE, in its amendment to the filing, noted that it would define what is meant by "family members" in an information memorandum circulated to members and member organizations.

[7] *See* proposed NYSE Rule 342.22. This section defines "related financial instrument" as (a) any stock underlying an NYSE listed stock option or included in an index stock group underlying an NYSE listed stock index option; (b) any stock option on an NYSE listed stock; (c) any stock index option that includes an NYSE listed stock or bond as one of the index's component securities; (d) any stock index futures contract that includes an NYSE listed stock or bond as one of the index's component securities; and (e) any option on any such futures contract.

[8] The NYSE recently filed a rule proposal to supplement the requirements of Rule 342.30. Proposed Rule 354 would require that a copy of the annual report be furnished to the control person (as defined in NYSE Rule 2) of the member organization. If the control person is itself an organization, the report must be delivered to the general counsel and the audit committee of the control person. Finally, if the member organization has no control person, the rule would require that the report be furnished to the audit committee of the board of directors of the member organization. The proposal has been published for comment by the Commission. *See* Securities Exchange Act Release No. 25402 (February 26, 1988), 53 FR 7272. The NYSE also has noted that the first annual report would be due in April 1989. That report would cover all relevant trading information from the date of the approval of the rule until the end of the trading year, and should include full year information on subjects upon which the member or member organization already maintains records (*i.e.* customer complaints). *See* NYSE Amendment No. 2.

the NYSE. Rule 351(d) requires these entities to report to the Exchange, on a periodic basis, statistical information regarding customer complaints. Rule 351(e) institutes a reporting requirement to the Exchange for trades that are subject to the review procedures of Rule 342.21. Pursuant to paragraph (e), each member, or the senior officer or partner of each member organization, must certify, on a quarterly basis, that adequate review procedures have been established and carried out for proprietary trades and those employee trades subject to review,[9] and there is no reasonable cause to believe that the reviewed trades violate the Act, the rules thereunder, or the rules of the Exchange pertaining to insider trading or manipulative and deceptive devices, or that the trade presently is subject to an internal investigation.[10] If a trade is subject to an internal investigation, the member must report the quarterly progress of such investigation to the Exchange.

D. Compliance Official Examination

Proposed Rule 342.13(b) requires members, and the person or persons responsible for direct day to day compliance activity within a member organization, as well as any person with direct supervision over ten or more persons engaged in compliance activity, to pass a Compliance Official Qualification Examination. Further, if the member or member organization does business with the public, the compliance official or officials must also pass the General Securities Sales Supervisor Qualification (Series 8) Exam. The rule includes a waiver provision, for all or part of the examination requirements, if good cause is demonstrated.[11]

E. Compliance with Information Requests

The NYSE proposal contains three procedural provisions designed to ensure timely compliance by members and member organizations with information requests. Proposed Rule 342.20 states that a member or member organization must comply with any request by the Exchange for "detailed information regarding trades" effected in NYSE listed stocks or related financial instruments by the date required by the Exchange. Amendments to Rule 476(a)(11) make the failure to respond in a timely manner actionable pursuant to NYSE disciplinary procedures. Finally, proposed amendments to NYSE Rule 476A add violations of Rule 342.20 and 476(a)(11) to the list of Exchange rule violations eligible to be processed pursuant to the NYSE's minor rule violation plan.[12]

III. Summary of Comments

As noted above, 21 comments were received regarding the NYSE proposal.[13] With the exception of two separate comments from the Subcommittee on Broker-Dealer Matters of the Comittee on Federal Regulation of Securities, Section on Business Law of the American Bar Association ("ABA"),[14] the remaining comments were from broker-dealers, or law firms or groups representing broker-dealers. Each commentator was critical of at least certain aspects of the NYSE proposal, and one commentator specifically requested the Commission to disapprove substantial portions of the proposal as being inconsistent with the Act.[15] The NYSE also filed two comments, supporting its position and responding to some of the criticisms of the commentators.[16]

Twelve commentators objected to the trade review requirements of Rule 342.21 and the corresponding reporting requirement of Rule 351(e), as being excessively burdensome while adding little or no corresponding benefit to the surveillance and compliance efforts of the members and the NYSE.[17] A number of commentators claimed that the proposed rules actually would be detrimental to the supervisory and compliance processes of members and member organizations. Three commentators claimed that the requirements of the rule would hinder compliance procedures by not permitting firms to "break" a suspicious trade without finding a violation.[18]

[9] The Exchange has noted that all employee trades need not be reviewed each quarter, so long as each employee account is reviewed at least once per year.

[10] *See* proposed Rule 351(e). This section provides a specific format for the required certification.

[11] *See* proposed Rule 342.13(b). The rule states that any waiver request will be evaluated in light of the scope of the member or member organization's activity, previous related employment, and the examination requirements of other self-regulatory organizations ("SROs").

[12] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23030. Under the amendment, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for the purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. The Commission previously approved a minor rule violation plan filed by the NYSE. The NYSE plan permits the imposition of a sanction pursuant to an abbreviated disciplinary procedure. A respondent in such an action may avail himself of the protections of a full disciplinary proceeding by contesting the charge, or may terminate the proceeding by paying the appropriate fine. *See* Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38030.

[13] Six of the 21 comments were received by the Commission; the remaining 15 were directed to the NYSE and then forwarded to the Commission. Four of these fifteen comments were submitted to the NYSE in response to an early draft of the proposed rule, and were forwarded to the Commission by the NYSE with the initial proposal.

[14] *See* letters from Lewis S. Black, Chairman, Federal Regulation of Securities Committee, Section on Business Law, ABA, to Jonathan G. Katz, Secretary, SEC, dated May 14, 1987 ("May 14 ABA letter") and November 23, 1987 ("November 23 ABA letter").

[15] *See* November 23 ABA letter at 8.

[16] *See* letter and attached memorandum from Richard P. Bernard, Milbank, Tweed, Hadley & McCloy (NYSE counsel) to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated August 27, 1987 ("August 27 NYSE Letter"); letter from Raymond J. Hennessey, Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated February 17, 1987 ("February 17 NYSE letter").

[17] *See* May 14 ABA letter; letter from Robert F. Price, Alex Brown and Sons, to Jonathan G. Katz, Secretary, SEC, dated July 30, 1987 ("Alex Brown"); letter from G. Fredrick Kastin, President, Robert W. Baird Inc., to Robert Birnbaum, President, NYSE, dated June 22, 1987 ("Baird"); letter from Theodore W. Pash, Executive Vice President, Bateman, Eichler, Hill Richards, to Robert Birnbaum, dated June 23, 1987 ("Bateman Eichler"); letter from Alvin H. Einbender, Executive Vice President, Bear Stearns, to Robert Birnbaum, dated March 3, 1987 ("Bear Stearns"); letter from R. Patrick Shepherd, General Counsel, J.C. Bradford & Co. to Jonathan G. Katz, dated July 23, 1987 ("Bradford"); letter from Philip J. Purcell, Chairman, Dean Witter Financial Services, to John J. Phelan, Chairman, NYSE, dated July 13, 1987 ("Dean Witter"); letter from Stephen Robert, Chairman, Oppenheimer & Co., Inc. to Robert Birnbaum, dated June 15, 1987 ("Oppenheimer"); letter from George A. Jensen, Peper, Martin, Jensen, Maichel and Hetlage, (Counsel to A.G. Edwards and Sons); to Jonathan G. Katz, dated July 1, 1987 ("Peper, Martin"); letter from Addison L. Piper, Chief Executive Officer, Piper, Jaffray and Hopwood, to David Marcus, Executive Vice President, NYSE, dated June 9, 1987 ("Piper Jaffray"); letter from Saul S. Cohen, Rosenman and Colin, to Robert Birnbaum, dated March 20, 1987 ("Rosenman"); letter from Edward O'Brien, President, Securities Industry Association, to John Phelan, dated July 10, 1987 ("SIA"). *See also* May 14 ABA letter, which argued that because the proposed procedures would be more burdensome than beneficial, they are violative of section 6(b)(8) of the Act.

[18] *See* May 14 ABA letter; Bradford; SIA. These commentators noted that compliance departments will often break, or cancel, a suspicious proprietary or employee trade, and by doing so, resolve the investigation without making an official finding that a violation has occurred. According to these commentators, this intermediate step is not available under the requirements of Rules 342.21 and 351(e).

Bradford and the SIA both stated that the requirement that each trade be reviewed would undermine advancements that have been made and resources that have been dedicated to the development of sophisticated computer mechanisms for the detection of anomalous trading. Baird and Piper, Jaffray claimed that the rules would lead to an adversarial relationship between the compliance and trading staffs of a firm, thereby limiting the free flow of information between those two groups.

Other commentators believed that the entire review process was inappropriate. Several criticized the specific requirement that firms investigate any trade that "appears that it may have violated" insider trading or antifraud rules. The ABA and the SIA claimed that member organizations should not be placed in the position of making a determination on the legality of a trade, but instead only should be responsible for referring suspicious or anomalous trades to the Exchange. The ABA stated that the NYSE was "impermissibly seeking to shift its responsibilities under law to private organziations, which have not been authorized by Congress to assume such responsibilities." [19] Some commentators claimed that such an obligation would present serious due process problems,[20] while others suggested that the filing of these investigative reports could result in litigation against broker-dealers. The SIA noted that even a good faith failure in the review process could result in a claim against the member or member organization for filing a false report with the Exchange. Further, a number of commentators expressed concern that the trade review and subsequent reports would lead to liability for libel and slander, and that the reports will provide a very damaging paper trail to plaintiffs in those litigations.[21] Finally, the ABA and Oppenheimer claimed that the reporting requirements would violate the attorney-client privilege that exists between compliance and trading staffs.

Commentators also were critical of the proposed compliance report requirement of Rule 342.30. As with the trade review proposals, these criticisms centered on the perceived lack of effectiveness of the proposal, and the potential for leaving members and member organizations open to civil liability.[22] Four commentators expressed the opinion that the compliance report would not only be ineffective, but would actually hinder compliance efforts. The ABA and the SIA claimed that a variety of informal compliance tools would become standardized and publicized by the production of the annual report, thereby destroying the effectiveness of such tools by creating a "road map" for their evasion. Alex. Brown viewed the rule as a formalization of the internal review process. Such a formalization, according to the firm, would be inefficient, because the decision as to the form an internal review should take is better left to the diverse member organizations. The SIA opined that pinpointing the chief executive officer or managing partner as the recipient of the report was unrealistic in light of the size and diversification of many member organizations.[23] The SIA and Peper Martin both recommended that instead of the report, periodic meetings between supervisory and compliance officials and senior management should be held. These commentators believed that such meetings are more likely to produce candid assessments of compliance efforts and problems than the production of a written annual report.

The majority of commentators favored the concept of a compliance official examination, with only four commentators expressing minor criticisms about the specifics of the NYSE proposal. Alex. Brown noted that, for officials with supervisory responsibility over a narrow area of a diversified firm, the existing Series 8 and Series 24 examinations are sufficient to demonstrate overall knowledge of the securities laws and Exchange rules, therefore making redundant the requirement that those officials take the newly created NYSE exam. Similarly, the ABA stated that such individuals should not be responsible for passing the entire exam, but only that portion that pertains directly to the individual's area of responsibility. The SIA and the ABA each argued that the good cause waiver provision did not go far enough, and that significant related employment experience should be grounds for an automatic exemption from the requirement. Finally, Bateman Eichler stated that all present supervisory and compliance officials should be exempted pursuant to a broad grandfathering provision.

Four commentators objected to the additional procedures designed to ensure prompt compliance with Exchange information requests. Alex. Brown commented that the proposed rule could be interpreted to require a firm to gather information on customer trades, which would be inappropriate because such an activity is "outside the province of the broker-dealer." [24] Other comments were less specific. All four commentators focused on the "date specified" timetable built into the Rule.[25] These commentators believed that such a timetable was unfair, because it permitted the Exchange to fine a member or member organization for failure to respond in a timely fashion, even if the time limit imposed by the Exchange was unreasonable. The SIA elaborated on the perceived unfairness of the rule by noting that noncompliance could be caused by something outside the control of the member organization, such as a computer failure.[26] Finally, the ABA noted that the "date specified" language was so unfair as to violate the "fair procedure for disciplining members" language of sections 6(b)(7) and 6(d) of the Act.[27] The ABA continues to maintain that the provision is violative of the Act, despite the fact that the NYSE has amended the language of the rule from "date specified" to "date required." [28]

IV. Discussion

The Commission reviewed carefully the filing submitted by the NYSE, as well as the comments and criticisms submitted by the ABA, SIA, and the NYSE member community, to determine whether the proposed rules are consistent with the Act, including the

[19] November 23 ABA letter at 4.

[20] *See* Bateman Eichler; May 14 ABA letter. Bateman Eichler claimed that by reporting "apparent" violations, those under scrutiny were placed "in the position of appearing guilty until proven innocent." The ABA found the requirement especially burdensome because, in its opinion, the determination would force member organizations to institute a variety of due process protections into its internal investigation procedures, thereby hindering those procedures.

[21] *See* November 23 ABA letter; Baird; Bateman Eichler; Bradford; SIA.

[22] Four commentators felt that the publication of such a document would be damaging to the defense efforts of a member organization in a civil litigation. *See* Baird; Bateman Eichler; Bradford; Peper Martin.

[23] The SIA also noted that the restriction on delegation of this responsibility inherent in the proposed rule would be inconsistent with NYSE Rule 342(b)(1), which allows the delegation of compliance and supervisory duties to qualified principals and employees.

[24] *See* comments of Alex. Brown.

[25] *See* May 14 ABA letter; comments of Alex. Brown; Bateman Eichler; SIA. In response to such criticisms, the NYSE changed the language of the proposed rule from "date specified" to "date required." The Exchange believes that the change clarifies that it can adjust deadlines for members and member organizations which show reasonable grounds for not meeting an information deadline.

[26] The SIA argued, in the alternative, that a "date specified" clause was less objectionable if the information requested was limited to information gathered in the ordinary course of business.

[27] *See* 15 U.S.C. 78f(b)(7), 78f(d).

[28] *See* November 23 ABA letter at 8.

requirements set forth in section 6(b) of the Act.[28]

We believe that both the increased surveillance mandated by proposed Rule 342.21, which requires members and member organizations to review proprietary and employee trades, and proposed Rule 351(e), which sets forth the reporting requirements for trades subject to the review procedures of Rule 342.21, are consistent with the requirements of the Act. First, we note that the increased surveillance mandated by these rules should have a positive impact upon the compliance efforts of Exchange members and member organizations, consistent with the oversight responsibilities imposed upon the NYSE as a self-regulatory organization under the Act. Further, section 19(g)(1) of the Act provides that every self-regulatory organization shall comply with the provisions of the Act, the rules and regulations thereunder, and its own rules, and enforce compliance, in the case of a national securities exchange, with such provisins by its members and persons associated with its members. Indeed, section 6(b)(1) of the Act specifically provides that, to be registered, a national securities exchange must have the ability to enforce compliance by its members with the Act, the rules thereunder, and the rules of the exchange.[29]

By requiring members and member organizations to establish review procedures that reasonably are designed to identify trades that may violate prohibitions against insider trading and manipulative and deceptive devices under the Act, we believe that NYSE Rule 342.21 will enhance compliance with section 15(b)(4)(E) of the Act.[31] Section 15(b)(4)(E), in effect, requires broker-dealers to establish procedures, and a system for applying such procedures, to prevent and detect violations of the Act by persons under its supervision. Moreover, mandating such a thorough review will not only increase the possibility of detecting illegal trades, but also will have a deterrent effect on insider trading and manipulative and deceptive practices.

The NYSE has stated that it disagrees with the argument raised by commentators that Rule 342.21 would place members and member organizations in the improper position of making an adjudicatory "finding" on the legality of a trade. The Exchange argued that the language of Rule 342.21 does not require a legal finding, but only triggers a responsibility to investigate any trade that raises a suspicion of a possible violation.[32] The Commission agrees with the reasoning of the NYSE. We note that 351(e) does not require a member or member organization to report whether it actually found a violation of securities laws with respect to a trade subject to an internal investigation under Rule 342.21. Instead 351(e) requires the member or member organization to report the status of the investigation including, upon its completion, whether any internal disciplinary action was taken or referral to an SRO was made. Accordingly, if an investigation of a suspicious trade raises questions concerning violations of securities laws, it would, under the proposed rule, be fully permissible for the member or member organization to refer it to the NYSE for further review. We believe this is consistent with the current obligations of NYSE members and member organizations under the Act and existing Exchange rules.[33] We also note that the obligations of Rule 342.21 are not so inflexible as to prohibit members and member organizations from taking the intermediate step of "breaking" an individual trade. Breaking a trade, however, may not relieve the member or member organizations of its responsibility to investigate further, or report or refer the investigation to the Exchange. An investigation that uncovers the possibility of serious or egregious conduct in an employee or proprietary account should not terminate with the firm merely breaking the trade. The Commission emphasizes, however, that the firm's obligation to go beyond breaking a trade does not derive solely from Rule 351(e) but instead may be required in order for the firm to comply with section 15(b)(4)(E) of the Act.[34]

Further, the Commission does not find convincing the argument that the volume of the trade review requirements will place to severe a burden on members and member organizations. First, acknowledging the increased administrative responsibilities that will be placed on members and member organizations, the NYSE has provided that those entities may use sampling techniques to review trades,[35] and that not all employee trades must be reviewed quarterly, so long as each employee account is reviewed once per year.[36] Moreover, Rule 342.21 provides the Exchange with discretion to exclude classes of persons and trades from review. In this context, the Exchange has stated that it anticipates excluding proprietary trades of less than 1,000 shares from the review process, provided that members and member organizations can develop reliable methods for detecting attempts to split large trades to avoid review.[37]

[28] *See* 15 U.S.C. 78s(b)(7) and (8). The majority of comments, directly or indirectly, raise issues stemming from these two sections. The comments addressing proposed Rule 342.20, concerning compliance with information requests implicate the "fair procedure for disciplining members" provision of section 6(b)(7). Further, the comments concerning the perceived burdens of increased trade review and reporting and the collection of customer complaint statistics involve section 6(b)(8), in that the commentators suggest that the proposed rules would impose a burden not necessary or appropriate in furtherance of the purposes of the Act by increasing responsibilities without gaining any tangible increase in supervisory or compliance efforts.

[29] *See* 15 U.S.C. 78f(b). Section 6(b) generally sets forth the requirements to be registered as a national securities exchange while section 19 sets forth the oversight responsibilities of self-regulatory organizations.

[31] *See* 15 U.S.C. 78o(b)(4)(E)(i).

[32] *See* February 17 NYSE letter at 5.

[33] We note that if no internal disciplinary action is taken or referral made, the member or member organizations would be required to sign a statement that there is no reasonable cause to believe the examined trade violated prohibitions against insider trading and manipulative and deceptive devices.

[34] *See* text accompanying note 16, *supra*.

[35] *See* November 23 ABA letter at 2. The ABA expressed concern about the lack of any generally accepted standards of sampling techniques. The Commission is aware that most firms have developed sampling techniques for the review of proprietary and employee trading in order to comply with section 15(b)(4)(E). These techniques vary substantially based on the size and nature of a firm's business. Accordingly, the Commission believes it would be impractical for the NYSE to specify appropriate sampling techniques for its entire membership in the Rule. We note, however, that the NYSE has stated its willingness to assist firms in developing acceptable review procedures. *See* August 27 NYSE letter at 9.

[36] In response to the ABA comment concerning the use of sampling techniques for the review of proprietary trades, the NYSE has indicated that sampling techniques would be permissible to review such trades under the proposed rules. The NYSE notes, however, that because the Rule 351(e) statement covers all proprietary trades occurring during the period reviewed, not just those actually reviewed as with employee trades, it may be necessary to review all proprietary trades if one or more of the sampled trades raise questions. If, however, sampled trades reveal questionable activity to only a limited area (e.g., the block trading desk), the member or member organization may only need to review all trades within that discrete area. The Commission believes it is important for members and member organizations to review both employee and proprietary trades. Further, we believe that the NYSE decision to provide alternative reporting requirements for employee trades to reduce the burden of reviewing every employee every quarter, while maintaining a higher level of review in those cases where the proprietary trades actually reviewed indicate questionable trades, is consistent with the Act.

[37] *See* NYSE Amendment No. 1 at 2. The Commission notes, however, that any exemptive interpretations of Rule 342.21 would require prior Commission approval pursuant to Commission Rule 195-4.

The NYSE, in its comments, also responded to criticisms raised by the commentors that the trade review procedures of proposed Rule 342.21 and 351(e) might expose the firm to defamation actions. In particular, the NYSE noted that the reporting requirements of Rule 351(e) do not differ dramatically from those of existing Rule 351(a).[38] Further, the Exchange noted that, to its knowledge, no member or member organization has ever been found to have defamed any person as a result of those reporting requirements. Finally, the NYSE argued that any person made in this context would likely enjoy the absolute privilege of statement or opinion.[39] Irrespective of the validity of this argument, the Commission emphasizes that the reporting requirements of Rule 351(e) do not alter substantially the existing reporting requirements for members and member organizations under the Act and Exchange rules, but simply implement a mandatory procedure for such reporting. Accordingly, the procedures should not provide additional exposure to defamation claims.

The Commission also believes that the annual report requirement under proposed Rule 342.30 will improve significantly the compliance efforts of member organizations, by ensuring that the chief executive officer or managing partner is focusing sufficient attention on supervisory and compliance obligations. It is important for the top executive of a member organization to understand the firm's compliance efforts and problems. Moreover, as the report also would have to be made available to the NYSE at the request of the Exchange, it can be an effective aid to the NYSE in understanding changes in member and member organizations compliance procedures. The Commission also finds that some of the negative comments concerning the annual report are based on the mistaken assumption that the report will be available for public dissemination, therefore compromising the effectiveness of some compliance tools. The proposed Rule does not indicate that the annual report would be made available to the public. In response to comments concerning the availability of information contained in the report, the NYSE stressed that the report is an internal summary prepared for the chief executive officer or managing partner, and need not be generally circulated, either inside or outside the firm.[40]

The Commission also has reviewed the proposed compliance official exam and customer compliant reporting requirements and believe they are consistent with the Act. The compliance official exam will ensure that those persons responsible for day to day compliance activity will have the requisite specialized knowledge of broker-dealer compliance responsibilities under the federal securities laws and NYSE rules. The good cause exemption of the rule, among other things, will permit the NYSE to exempt employees with narrow supervisory responsibility from all or parts of the examination, if appropriate. Further, the customer complaint statistics will provide the Exchange with information valuable to the execution of its oversight responsibilities. The statistics can highlight to the NYSE any problem areas or other trends in a firm's compliance program.

The Commission also finds that the proposed rules concerning member compliance with information requests are consistent with the requirements of the Act. In order to effect its supervisory and compliance role over members and member organizations, it is necessary for the Exchange to have the ability to set timetables for the receipt of information, and the disciplinary authority to compel members to comply with such requests. Because the timetable set by the NYSE will vary depending upon the circumstances of particular investigation, it would be inappropriate to establish a minimum notice period for members and member organizations to respond to information requests. In addition, setting a minimum notice period could be detrimental during an emergency situation.

Some commentators expressed concern about the NYSE's ability to impose summary fines for the failure to produce information, in that an unreasonable deadline set by the Exchange can result in a summary fine being imposed against a member or member organization who in good faith attempted to produce the requested information on a timely basis. To address this concern, the NYSE noted that the language of the Rule is intended to make clear that the Exchange can adjust deadlines for members and member organizations that show reasonable grounds for not meeting an initial deadline. Further, the due process protections built into the NYSE disciplinary actions, as well as Commission review of NYSE disciplinary proceedings, offer protection to members and member organizations. Included within the due process protections of the NYSE disciplinary system are the procedural safeguards of the NYSE summary sanction process.[41] As noted above, any member or member organization that is the respondent in a summary action pursuant to NYSE Rule 476A automatically may receive a full disciplinary hearing simply by contesting the charge. Further, the maximum amount that the Exchange may fine a member or member organization pursuant to this procedure is $5,000. Finally, the NYSE has stated, and the Commission concurs, that reasonableness would be an issue in any proceeding brought as the result of a violation of Rule 342.20.[42] In light of the above, the Commission believes that the provisions concerning compliance with information requests are consistent with section 6(b)(7) of the Act.

V. Conclusion

The Commission believes that the proposed rules adequately balance the need to ensure that firms have reasonable and effective procedures in place to detect securities law violations with the need to avoid imposing unnecessary compliance costs or impeding firms' flexibility in determining what specific surveillance and compliance procedures are necessary to effectively meet its supervisory obligation. Therefore, the Commission finds that the NYSE's proposal is consistent with the requirements of the Act, specifically sections 6(b)(1) and 19(g) of the Act, which require that national securities exchanges must ensure member and member organization compliance with the Act, its rules and the rules of the exchange. Although the rules impose more specific requirements than currently exist on members and member organizations to show they are meeting their compliance and surveillance obligations, the Commission believes these additional requirements will aid firms and the NYSE in fulfilling their obligations under the Act.

[38] For example, Rule 351(a)(1) requires a member organization to report to the Exchange whenever a member, allied member, or employee has violated any provision of any securities law or regulation, or engaged in conduct which is inconsistent with just and equitable principles of trade.

[39] *See* February 17 NYSE letter at 4.

[40] *See* February 17 NYSE letter at 5. Proposed NYSE Rule 354 would, however, require a member organization to circulate the report to the CEO, managing partner or audit committee of the control person of the member organization. *See* note 8 *supra*.

[41] The Commission notes that it has determined that the procedural protections included within the summary sanction process meet the due process requirements of the Act.

[42] *See* February 17 NYSE letter at 6.

In particular, consistent with sections 6(b)(1) and 19(g), the rules will enhance compliance by members and member organizations with rules and regulations pertaining to insider trading, manipulative and deceptive devices, and supervisory responsibilities of member firms. For these same reasons, the proposed rules are consistent with section 6(b)(5) of the Act, which requires that rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just equitable principles of trade and to protect investors and the public interest. Finally, while the rules impose an increased burden on NYSE members and member organizations, we believe that consistent with section 6(b)(8), the burden is justified by the positive effects it will have on member compliance with the Act.

Based on the above, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of sections 6 and 19 and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

By the Commission.
Jonathan G. Katz,
Secretary.

Dated: May 27, 1988.

[FR Doc. 88-12775 Filed 6-6-88; 8:45 a.m.]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Apple Bank for Savings,
Common Stock, $1.00 Par Value (File No. 7-3494).
Dime Savings Bank, NY,
Common Stock, $1.00 Par Value (File No. 7-3495).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 21, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-12776 Filed 6-6-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Ausimont N.V.,
Capital Stock, L2, 990 Par Value (File No. 7-3498).
New Plan Realty Trust,
Shares of Beneficial Interest, No Par Value (File No. 7-3497).
The New Hall Land and Farming Company,
Limited Partnership Units (File No. 7-3496).
National Convenience Stores, Inc.,
Common Stock, $0.41 ⅔ Par Value (File No. 7-3499).
Nevada Power Company,
Common Stock, $1.00 Par Value (File No. 7-3500).
The Monarch Machine Tool Company,
Common Stock, No Par Value (File No. 7-3501).
Morrison Knudsen Corporation,
Common Stock, $3.33 ⅓ Par Value (File No. 7-3502).
Motel 6, L.P.,
Depositary Units (File No. 7-3503).
Murray Ohio Manufacturing Company,
Common Stock, $2.50 Par Value (File No. 7-3504).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 21, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-12777 Filed 6-6-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Century Telephone Enterprises, Inc.,
Common Stock, $1.00 Par Value (File No. 7-3505).
Corroon & Black Corporation,
Common Stock, $0.12 Par Value (File No. 7-3506).
Interpublic Group of Companies, Inc.,
Common Stock, $0.10 Par Value (File No. 7-3507).
Iow Resources, Inc.,
Common Stock, No Par Value (File No. 7-3508).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 21, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-12778 Filed 6-6-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16420; 812-6923]

The Enterprise Group of Funds, Inc. et al.; Application

June 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Enterprise Group of Funds, Inc. ("Fund") together with Liquid Green Trust ("Trust") and Liquid Green Tax-Free Trust ("Tax-Free Trust") ("Affiliated Money Market Funds"), (the Fund Trust and Tax-Free Trust collectively referred to as "Applicants").

Relevant 1940 Act Sections: Exemptions requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c-1 thereunder, and pursuant to section 11(a) to approve certain exchange offers.

Summary of Application: Applicants seek an order (1) to permit the Fund's Growth Portfolio, Growth and Income Portfolio, Aggressive Growth Portfolio, International Growth Portfolio, GNMA Portfolio, Government Securities Portfolio, Corporate Bond Portfolio, High-Yield Bond Portfolio, Tax-Exempt Bond Portfolio, and Precious Metals Portfolio (the "Portfolios") (and all subsequently created series of the Fund) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of their shares; (2) to permit the deferral of any applicable CDSC in connection with offers of exchange between and among the Fund's Portfolios (and all subsequently created series of the Fund) and the Affiliated Money Market Funds (and subsequently created Affiliated Money Market Funds); (3) to permit the Affiliated Money Market Funds to assess such CDSCs on behalf of the Portfolios on redemptions of shares of the Affiliated Money Market Funds which are issued in exchange for shares of the Portfolios; (4) to permit the Portfolios and the Affiliated Money Market Funds to waive the charge with respect to certain redemptions described herein; and (5) to permit offers of exchange among any of the Portfolios and any of the Affiliated Money Market Funds as described herein.

Filing Date: The application was filed on November 20, 1987 and amended and restated on May 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 21, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary: SEC, 450 5th Street NW., Washington, DC 20549; Applicants: The Enterprise Group of Funds, Inc., Suite 102, 250 Piedmont Avenue NE., Atlanta, Georgia 30365; Liquid Green Trust and Liquid Green Tax-Free Trust, 429 North Pennsylvania Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney (202) 272-2856, or Karen L. Skidmore, Branch Chief (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier: (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Fund was incorporated in 1968 as Alpha Fund, Inc. Among other changes, under an Agreement and Plan of Merger, effected on September 15, 1987, the Fund's name was changed and the Fund was reincorporated as a Maryland, series corporation. The Fund is registered under the 1940 Act as an open-end, management, series investment company. Its shares are offered for sale to the public through broker-dealers pursuant to a distribution agreement with Enterprise Fund Distributors, Inc. ("Enterprise Distributors"), a wholly-owned subsidiary of The Mutual Life Insurance Company of New York ("MONY"), and the Fund's principal underwriter. The Fund's investment adviser is Enterprise Capital Management, Inc. ("Enterprise Capital"), also a MONY subsidiary. The Affiliated Money Market Funds are registered under the 1940 Act as open-end, diversified, management investment companies. Another MONY subsidiary, Unified Management Corporation ("UMC"), is their investment adviser. UMC is under common control with Enterprise Capital and Enterprise Distributors, and the Fund and the Affiliated Money Market Funds hold themselves out to investors as related companies for purposes of investment and investor services.

2. Applicants have requested that any order issued by the Commission on this application also extend (1) to all series of the Fund which may be organized in the future which issue and sell shares subject to the CDSC and exchange privilege on substantially the same basis as described in the application; and (2) to the Liquid Green Government Trust, a third money market Fund to be created in 1988 as an Affiliated Money Market fund, and any other subsequently created Affiliated Money Market Funds. The order sought applies only to Applicants and these future entities, and not to their predecessors, and is prospective in nature. Applicants will not rely on any such exemptive order as authority for any exchanges which occurred prior to the issuance of the order. The CDSC will apply only as to purchases made after the issuance of the order requested.

3. The Fund proposes to offer shares of ten series, the Fund's Portfolios, without the imposition of a front-end sales charge, and proposes to impose a CDSC upon redemption by investors of shares of these Portfolios and any shares of the Affiliated Money Market Funds for which they may have been exchanged, with certain exceptions noted below.

4. the CDSC will be imposed if a shareholder redeems an amount which does not represent Reinvestment Value,

as defined below, and which causes the current value of the shareholder's account to fall below the total dollar amount of that shareholder's purchases of shares of the Portfolios ("Purchase Payments") within the preceding five years.

5. The CDSC imposed upon redemption will not, in the aggregate, exceed 5% of the aggregate Purchase Payments made by the investor. No CDSC will be imposed upon redemption on amounts derived from: (i) appreciation in the net asset value of a shareholder's holdings ("Net Appreciation Value"), (ii) increases in the value of a shareholder's holdings representing reinvestment of dividend and capital gain distributions ("Reinvestment Value"), or (iii) net Purchase Payments applied to Fund shares more than five years prior to the redemption date ("Old Capital").

6. Applicants state that the amount of the CDSC, if any, will depend upon the year during which the shares being redeemed were purchased. The appropriate percentage will then be applied to the amount of the redemption subject to the sales load. In determining the rate of any CDSC, it will be assumed that a redemption is made of shares held by an investor for the longest period of time within the applicable five-year period. This will result in any such charge being imposed at the lowest possible rate. When the CDSC is imposed, the amount of the CDSC will be 5.0% if the redemption occurs during the same twelve-month period during which the shares being redeemed were purchased; 4.0% if the redemption occurs during the next prior twelve-month period; 3.0% if the redemption occurs during the third twelve-month period; 2.0% if the redemption occurs during the fourth twelve-month period; 1.0% if the redemption occurs during the fifth twelve-month period; and 0% if the redemption occurs during the sixth or subsequent years following the date of purchase.

7. Applicants also propose to waive the CDSC with respect to the following redemptions: (a) Redemptions effected pursuant to the Fund's Systematic Withdrawal Plan; (b) redemptions following the death or disability, as defined in Section 72(m)(7) of the Internal Revenue Code, of a shareholder; (c) redemptions of shares as to which the Distributor paid no commission to a selling broker (which can only be shares purchased by: (i) MONY and its subsidiaries; (ii) directors and employees of MONY and its subsidiaries; (iii) selling brokers, their employees, and their registered representatives; (iv) employees of the Portfolio Managers; (v) directors of the Fund; and (vi) spouses, minor children, and employee benefit plans of the foregoing for which the orders were placed by the employee or director); (d) involuntary redemptions of small accounts effected by directors of the Fund; (e) redemptions effected by an investment company registered under the Investment Company Act of 1940 in connection with the combination of the investment company with the Fund or any of its Portfolios by merger, acquisition of assets, or any other transaction. In addition, the Applicants propose that shareholders who reinvest in a Portfolio within 30 days of a redemption pursuant to a reinstatement privilege will receive a credit, upon notice to the Transfer Agent, against the amount of the CDSC, if any, paid upon the redemption. Applicants will meet all of the conditions set forth in Rule 22d–1 under the 1940 Act when allowing and administering any such waivers of, or credit against, the CDSC.

8. Each Portfolio finances its own distribution expenses pursuant to a plan adopted under Rule 12b–1 under the Act (the "Plan"). The Plan provides that each of the Portfolios will accrue daily and pay monthly to Enterprise Distributors a distribution fee equal on an annual basis to 1.25% of that Portfolio's average daily net assets. Enterprise Distributors will also receive the proceeds of all unwaived CDSCs imposed on redemptions. The Fund's Board of Directors has approved the Plan in accordance with Rule 12b–1 and determined that the Plan and use of fees collected pursuant to the Plan comply with Rule 12B–1. In its periodic review of the Plan pursuant to Rule 12b–1, the Board will consider, among other things, the use by Enterprise Distributors of revenues raised by the CDSC.

9. Both Affiliated Money Market Funds have distribution plans adopted under Rule 12b–1 and have distribution agreements with UMC. Under the distribution agreement between the Trust and UMC, the Trust pays no fee to UMC other than its investment advisory fee. Under the distribution agreement between the Tax-Free Trust and UMC, the Tax-Free Trust pays UMC an annual distribution fee, payable monthly, of .25% of the average daily net asset value of the Tax-Free Trust to $500 million, .20% of the next $1 billion, and 0.15% in excess of $1.5 billion. The board of directors of each Affiliated Money Market Fund has approved its distribution plan in accordance with Rule 12b–1, and such plans and the use of fees collected pursuant to those plans comply with Rule 12b–1.

10. The Applicants currently offer exchange privileges and will defer the CDSC in those circumstances where Portfolio shares are exchanged for those of any other Portfolio, Portfolio shares are exchanged for shares of an Affiliated Money Market Fund, and Affiliated Money Market Fund shares acquired by an exchange from a Portfolio are exchanged for other Affiliated Money Market Fund shares or Portfolio shares, all exchanges being at the respective net asset values of the shares.

11. When a Fund shareholder exchanges his investment from one Portfolio into another, the shareholder will be subject to a CDSC upon the ultimate redemption for cash of the Fund shares unless he qualifies for a waiver of the CDSC based upon the sum of the time periods in which he was invested in each Portfolio. The Affiliated Money Market Funds will assess, collect and transfer to Enterprise Distributors the appropriate CDSC on redemptions of Affiliated Money Market Fund investments acquired in an exchange from the Fund. In the case when a Fund shareholder exchanges shares of a Portfolio into one of the Affiliated Money Market Funds (and subsequently into another Affiliated Money Market Fund), the period of time during which the shareholder holds such Affiliated Money Market Fund shares will not be included for purposes of calculating the Fund's CDSC (*i.e.*, the CDSC period will be tolled). If the directors of either Affiliated Money Market Fund intend to increase the 12b–1 fee above .25%, Applicants will notify the staff of the Division of Investment Management of the SEC, and, if the staff believes that such increase raises any question as to whether the CDSC should be "tolled" during the period an investment is made in the Affiliated Money Market Fund, Applicants will seek and secure an exemptive order prior to instituting any such increase to continue to permit such tolling. In the event that an investor makes a direct investment in an Affiliated Money Market Fund, regardless of whether or not that investor holds Affiliated Money Market Fund shares obtained in an exchange from a Portfolio, the conversion into Portfolio shares of the Affiliated Money Market Fund shares obtained through such a direct investment may not be accomplished through an exchange but rather must be accomplished through a redemption from the Affiliated Money Market Fund as a new direct investment in a Portfolio.

12. If a shareholder transfers his shares to another individual or entity, no CDSC will be assessed upon the transfer. However, if the receiving shareholder subsequently redeems the transferred shares, he will be subject to the CDSC, which will be calculated as if the receiving shareholder had acquired the transferred shares in the same manner and at the same time as the transferring shareholder. The Applicants undertake that they will not encourage or promote any transfer of Fund or Affiliated Money Market Fund shares, and recordation of such a transfer on the books of the Fund or Affiliated Money Market Fund will not be deemed to constitute the encouragement or promotion of any such transfer.

13. While dealers will be notified of the availability of the exchange privilege, dealers or other persons involved in the distribution of shares of the Fund and the Affiliated Money Market Funds will not receive advice from Enterprise Distributors or UMC as to the suitability of an investment in a Portfolio or an Affiliated Money Market Fund; will not actively solicit exchanges; and will not contact investors by telephone to notify them of the exchange privilege. In addition, Enterprise Distributors has established adequate internal monitoring and review procedures to ensure that such exchanges are made at the request of investors rather than for the dealers' personal gain. Moreover, Enterprise Distributors requires by the terms of its dealer agreement that a participating dealer make its books and records available to Enterprise Distributors and further agrees to comply with all applicable federal and state laws and rules, as well as the rules and regulations of all agencies having jurisdiction.

14. A nominal service fee of $5.00 per exchange will be levied on all such exchanges. Applicants reserve the right not to allow the exercise of the exchange privilege in less than two-week intervals. Applicants further reserve the right to discontinue or modify the exchange privilege on a prospective basis at any time, including a modification of the amount or terms of the service fee, upon 60 days' written notice mailed to shareholders at their address of record. With respect to any such modification other than a termination of the exchange privilege or a reduction of the service fee, the Applicants will apply for an exemptive order to amend any order issued pursuant to their current request. All reserved rights to discontinue or modify the exchange privilege will be disclosed in the Fund's prospectus and any other sales literature or advertising referring to the exchange privileges.

15. Applicants have undertaken to file an amendment during the notice period to clarify that various representations regarding the exemptive relief requested have been agreed to by Applicants as conditions to securing such relief, and to elucidate other matters.

Applicants' Legal Conclusions

1. The Applicants submit that the requested exemption under Section 6(c) and the approval under Section 11(a) are appropriate and in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The contingent deferred sales charge is fair, equitable and in the best interests of Fund shareholders because they will have the advantage of greater investment dollars working for them from the time of their purchase of the Fund's shares than with the traditional front-end sales charge. With respect to the proposed waivers of the contingent deferred sales charge for certain classes of Fund shares, any such waivers will comply witht the requirements of Rule 22d–1 of the 1940 Act which permits scheduled variations in, or elimination of, front-end sales loads.

3. The proposed exchange privileges enable shareholders of the Fund and the Affiliated Money Market Funds to exchange their shares at relative net asset value and provide a high degree of flexibility in the shareholder's financial planning. In the absence of such relief permitting deferral of the contingent deferred sales charge, a Fund shareholder who sought to shift his investment into an Affiliated Money Market Fund would generally be required to pay the contingent deferred sales charge at the time of such exchange. This would mean that the amount invested upon the exchange would be less than the net asset value of the investor's shares immediately prior to the exchange.

4. The tolling of the contingent deferred sales charge period while an investment is made in an Affiliated Money Market Fund is necessary and appropriate in the public interest and consistent with the protection of investors because (a) redemptions of Affiliated Money Market Fund shares (other than those acquired by exchange from the Fund) are not subject to a contingent deferred sales charge, (b) the Affiliated Money Market Funds are subject to a minimal distribution related fee (*i.e.*, a maximum of .25%) which is far less than those paid by the Portfolios (*i.e.*, 1.25%) and is not passed along to the Enterprise Distributor, and (c) the amounts exchanged from the Fund to the Affiliated Money Market Funds are not included in the assets of any Portfolio of the Fund for the purposes of determining the amount payable by the Portfolio under the Fund's 12b–1 Plan.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. Applicants will comply Rule 12b–1 under the 1940 Act now in effect and as it may be revised in the future.

2. The Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

3. Applicants will comply with the provisions of Rule 11a–3 under the 1940 Act as it is proposed, as it may be adopted, and as it may be revised in the future, except that the Fund and the Affiliated Money Market Funds will not be served by exactly the same investment adviser and/or principal underwriter.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12805 Filed 6–6–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16417; 811–4998]

Federated Short-Intermediate Corporate Trust; Application

June 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Federated Short-Intermediate Corporate Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 therefore.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application on Form N–8F was filed on March 10, 1988, and a letter to correct a typographical error was filed on May 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this

application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Federated Investors Tower, Pittsburgh, PA. 15222.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3047 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application on Form N–8F is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On January 21, 1987, Applicant filed Form N–8A to register under the 1940 Act as an open-end, diversified management investment company. On January 28, 1987, Applicant filed Form N–1A pursuant to the Securities Act of 1933 to register an indefinite number of shares of beneficial interest at no par value. This registration statement became effective on April 10, 1987. Applicant never made a public offering of its securities and is not a party to any litigation or administrative proceeding. Applicant does not have any assets or liabilities. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

2. On March 4, 1988, Applicant was dissolved, pursuant to its Declaration of Trust and applicable law of the State of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12806 Filed 6–6–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2315]

Kentucky; Declaration of Disaster Loan Area

Bell County in the State of Kentucky constitutes a disaster area because of damages from a devastating tornado, severe storms and high winds which occurred on May 9, 1988. Applications for loans for physical damage may be filed until the close of business on August 1, 1988, and for economic injury until the close of business on March 1, 1989, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308,

or other locally announced locations. The interest rates are:

Homeowners With Credit Available Elsewhere—8.000%
Homeowners Without Credit Available Elsewhere—4.000%
Businesses With Credit Available Elsewhere—8.000%
Businesses Without Credit Available Elsewhere—4.000%
Businesses (EIDL) Without Credit Available Elsewhere—4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)—9.000%

The number assigned to this disaster is 231512 for physical damage and for economic injury the number is 662400.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: June 1, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–12792 Filed 6–6–88; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council; Public Meeting; Missouri

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting from 9:00 a.m. to 12:00 noon, on Thursday, June 30, 1988, at the Federal Reserve Bank, 925 Grand Avenue, Visitor's Center Assembly Room, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John Scott, Deputy District Director, U.S. Small Business Administration, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106, (816) 374–5557.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 1, 1988.

[FR Doc. 88–12793 Filed 6–6–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–88–19]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 27, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 26, 1988.

Denise D. Hall,

Manager, Program Management staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25254	Omniflight Helicopters, Inc	14 CFR 43.3(h)	To allow petitioner's pilots to replace medical oxygen cylinders on petitioner's helicopters after such cylinders have been depleted.
25554	Stoddard-Hamilton Aircraft, Inc	14 CFR 21.191	To allow petitioner to operate under the limitations for amateur-built aircraft with the following exclusion: Only FAA-certificated mechanics holding an airframe and powerplant rating, or appropriately rated repair stations, may perform condition inspections in accordance with Appendix D of Part 43.
25581	Bannock Regional Medical Center	14 CFR 135.271(g)	To allow certain crewmembers to be assigned to conduct training, public relations, and routine transportation missions while on a Hospital Emergency Medical Evacuation Service (HEMES) mission.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought; disposition
24441	Northern Pacific Transport, Inc	14 CFR 91.31(a)	To extend and amend Exemption No. 4666, as amended, that allows petitioner to operate certain DC–6 airplanes at 5 percent increased zero fuel and landing weights subject to certain conditions and limitations. Grant, May 16, 1988, Exemption No. 4666B.
25526	Ketchum Air Service Inc	14 CFR 43.3(g)	To allow pilots employed by petitioner to perform the preventive maintenance functions of removing and/or replacing the passenger seats of aircraft used under Part 135. Grant, May 19, 1988, Exemption No. 4932.

[FR Doc. 88–12725 Filed 6–6–88; 8:45 am]

BILLING CODE 4910–13–M

Organization, Functions, and Authority Delegations: Manhattan, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight service station closure—Manhattan, Kansas.

SUMMARY: Notice is hereby given that on July 2, 1988, the Flight Service Station at Manhattan, Kansas, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Wichita, Kansas. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on May 24, 1988.

Paul E. Marchbanks,

Acting Manager, Air Traffic Division.

[FR Doc. 88–12721 Filed 6–6–88; 8:45 am]

BILLING CODE 4910–13–M

Organization, Functions, and Authority Delegations: Russell, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight service station closure—Russell, Kansas.

SUMMARY: Notice is hereby given that on July 2, 1988, the Flight Service Station at Russell, Kansas, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Wichita, Kansas. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on May 24, 1988.

Paul E. Marchbanks,

Acting Manager, Air Traffic Division.

[FR Doc. 88–12722 Filed 6–6–88; 8:45 am]

BILLING CODE 4910–13–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATE: Comments on the information collection should be directed to the OMB Desk Officer on or before July 7, 1988.

Dated: June 1, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Interest Rate Reduction Refinancing Loan Worksheet.
3. VA Form 26–8923.
4. This form is used by lenders for completing the funding fee and maximum permissible loan amounts for interest rate reduction refinancing loans to veterans.
5. On occasion.
6. Businesses or other for-profit.
7. 35,000 responses.
8. 5,833 hours.
9. Not applicable.

[FR Doc. 88–12737 Filed 6–6–88; 8:45 am]
BILLING CODE 8320–01–M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 7, 1988.

Dated: May 31, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Change of Permanent Plan (Nonmedical).
3. VA Form 29–1550.
4. This form is used by insured's to apply for the change of one permanent plan policy to one having a higher reserve value.
5. On occasion.
6. Individuals or households.
7. 468 responses.
8. 156 hours.
9. Not applicable.

[FR Doc. 88–12738 Filed 6–6–88; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 109
Tuesday, June 7, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 20213, Thursday, June 2, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Tuesday, June 7, 1988.

CHANGE IN THE MEETING: An item has been added to the agenda under the Open Session: Request for Approval of a Non-Competitive Requirement for Herman Miller's Vaughan Wall Demountable Wall Systems.

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriquez, Executive Officer (Acting), Executive Secretariat, (202) 634–6748.

Date: June 1, 1988.

Susan Daniel,

Acting Executive Officer Executive Secretariat.

[FR Doc. 88–12898 Filed 6–3–88; 4:03 pm]
BILLING CODE 6750–06–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, June 13, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)

Closed Session

Litigation Authorization: General Counsel Recommendation

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634–6748.

Date: June 2, 1988.

Susan Daniel,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 88–12899 Filed 6–3–88; 4:03 pm]
BILLING CODE 6750–06–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 6, 13, 20, and 27, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 6

Thursday, June 9

10:00 a.m.
Briefing on Status of Pilgrim (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)

Week of June 13—Tentative

Thursday, June 16

2:00 p.m.
Briefing on Advanced Light Water Reactors by EPRI (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 20—Tentative

Monday, June 20

1:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 4)
2:30 p.m.
Briefing on Technical Specification Revisions (Public Meeting)

Tuesday, June 21

2:00 p.m.
Briefing on Proposed Rule on Fitness for Duty (Public Meeting)

Friday, June 24

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 27—Tentative

Monday, June 27

10:00 a.m.
Briefing on Proposed Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

Wednesday, June 29

10:00 a.m.
Initial Briefing by the Advisory Committee on Nuclear Waste (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote [Public Meeting) (if needed)

ADDITIONAL INFORMATION: Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting) was held on June 2.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

June 2, 1988.

[FR Doc. 88–12900 Filed 6–3–88; 4:02 pm]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 19367 May 27, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, May 24, 1988.

CHANGES IN THE MEETING: Cancellation.

The closed meeting to be held on Wednesday, June 1, 1988, after the 10:00 a.m. open meeting has been cancelled.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Jonathan G. Katz,

Secretary.

June 1, 1988.

[FR Doc. 88-12906 Filed 6-3-88; 4:03 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1403)

TIME AND DATE: 10 a.m. (E.D.T.), June 8, 1988.

PLACE: A.C. Reynolds High School Auditorium, Reynolds School Road, Asheville, North Carolina.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 18, 1988.

Action Items

A—Budget and Financing

A1. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Rehabilitation of Precast Concrete Floor Slabs at all Fossil Plants.

B—Purchase Awards

B1. Invitation SA-17354A—Indefinite Quantity Term Agreement for Paper to be used by Office Support Services Branch in Chattanooga, Knoxville, and Muscle Shoals.

B2. Invitation HE-38057B—Instrument and Control Systms for Allen and John Sevier Fossil Plants.

B3. Negotiation GL-08298A—Dry Fly Ash Collection Facility for Colbert Fossil Plant.

C—Power Items

C1. Renewal Power Contract with Knoxville, Tennessee.

D—Personnel Items

*D1. Proposed Increase in Expenditures Under Personal Services Contract with Bishop, Cook, Purcell & Reynolds.

E—Real Property Transactions

E1. Grant of Permanent Easement for a Road Right of Way Affecting Approximately 3.3 Acres of Tims Ford Reservoir Land Located in Franklin County, Tennessee; and Modification of a Deed to a 33-Acre Track of Tims Ford Reservoir Land to Permit Subdivision and Use for Residential Development.

F—Unclassified

F1. Modification of Interagency Agreement Between TVA and the Department of Energy Providing for the Continuation of TVA's Assistance in the Disposal of Residual Materials from Vicinity Properties in Edgemont, South Dakota.

F2. Supplement to Contract No. TV-72077A with U.S. Department of Agriculture, Forest Service, Northeastern Forest Experiment Station, Providing for Conduct of Exposure Experiments at Whitetop Mountain to Determine Cause of Red Spruce Decline in High Elevation of Southern Appalachians.

F3. Memorandum of Agreement No. TV-74203A with U.S. Geological Survey (USGS), Department of the Interior, Covering Arrangements for the Coordination of Mapping Activities Within the Tennessee Valley Region and Cooperative Mapping Projects with the USGS.

F4. Supplements to Memorandum of Understanding (TV-71249A) Between TVA and Directorate of Engineering and Housing for TVA Support to the U.S. Army Forces Command, in Connection with Energy Resources Management.

F5. Supplement to Interagency Agreement No. TV-61855A with the U.S. Department of Energy Covering Arrangements for a Southeastern Regional Biomass Energy Program.

*F6. Proposed Changes to the Rules and Regulations of the Retirement System.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: June 1, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-12873 Filed 6-3-88; 1:17 pm]

BILLING CODE 8120-01-M

Corrections

Federal Register

Vol. 53, No. 109

Tuesday, June 7, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 184 and 186

[Docket No. 79N-0259]

Iron and Iron Salts; Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

Correction

In rule document 88-10582 beginning on page 16862 in the issue of Thursday, May 12, 1988, make the following corrections:

§ 184.1304 [Corrected]

1. On page 16865, in the second column, in § 184.1304(a), in the second line, "H_{2o}" should read "H_2O".

2. In the same column, in § 184.1304(d), in the last line, "waived" was misspelled.

§ 184.1306 [Corrected]

3. On page 16866, in the second column, in § 184.1306(b), in the ninth line, "1200" should read "1100".

§ 186.1300 [Corrected]

4. On page 16867, in the second column, in § 186.1300(b)(2), in the first line, "as" should read "at".

§ 186.1374 [Corrected]

5. On the same page, in the second column, in § 186.1374(b)(2), in the first line, "as" should read "at".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-249]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

Correction

In notice document 88-11463 beginning on page 18361 in the issue of Monday, May 23, 1988, make the following corrections:

1. On page 18362, in the second column, in the first complete paragraph, in the 13th line, after "will" insert "not".

2. On the same page, in the same column, in the fourth complete paragraph, in the second line, "Mary" should read "March".

BILLING CODE 1505-01-D

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federal register

Tuesday
June 7, 1988

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Air Contaminants; Proposed Rule

BEST COPY AVAILABLE

VOL 53 ISS 109 JE 7 1988 UMI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-020]

Air Contaminants

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to amend its existing air contaminant standards § 1910.1000, Tables Z–1, Z–2, Z–3, and add a new Table Z–4. The amendments reduce permissible exposure limits for approximately 100 substances now listed in the "Z-tables," raise the permissible exposure limit for 1 substance, set permissible exposure limits for 205 substances currently not regulated by OSHA, add or change STEL's for 70 substances, and, as appropriate, set skin, short-term or ceiling limits.

OSHA has reviewed health evidence for all these substances and has determined that the new limits substantially reduce a risk of deleterious health effects among American workers, including cancers, central and peripheral neuropathies, lung disease, liver and kidney damage and other systemic effects. The health evidence forms a reasonable basis for proposing revisions to these levels. In the final rule, after review of all the evidence in the record OSHA will establish new levels which it determines will substantially reduce significant risks.

It has also preliminary concluded, based on a review of many data bases and an extensive survey, that the new limits are feasible. To assist in its analysis, OSHA has utilized the National Institute for Occupational Safety and Health-Recommended Exposure Limits (NIOSH–REL's) and the American Conference of Governmental Industrial Hygienists-Threshold Limit Values (ACGIH–TLV) published in 1987–88, as the starting points in its review.

OSHA will continue its practice of rulemaking for individual substances when regulations of that type are necessary and appropriate.

DATES: Written comments on the proposed standard must be postmarked on or before July 8, 1988. Notices of Intention to appear at the informal rulemaking hearings on the proposed standard must be postmarked on or before July 1, 1988. Individuals who wish to comment or appear during the public hearings must see Section VIII of this document for specific requirements.

Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence, postmakred on or before July 8, 1988. The informal rulemaking hearing is scheduled to begin on July 20, 1988.

ADDRESSES: Written comments should be submitted to the Docket Officer, Docket No. H–020, Room N–3670, U.S. Department of Labor 200 Constitution Avenue NW., Washington, DC, 20210, telephone (202) 523–7894.

Notice of intention to appear, testimony and documentary evidence to be submitted at the hearing are to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–020, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 523–8615.

The hearing will be held in Washington, DC, in the Auditorium, Frances Perkins Department of Labor Building, Third and Constitution Avenue NW. The informal public hearing will begin at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3649, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

Organization of this Document

This **Federal Register** notice discusses policy and legal issues, and includes the proposed amendments to 29 CFR 1910.1000 Tables Z–1, Z–2, and Z–3, and the proposed new Table Z–4. It includes a discussion of the generic health effects for 15 individual groupings (e.g., neuropathic, ocular, cardiovascular, etc.) as well as a review of the health effects for all of the individual substances. It also includes a summary of the preliminary regulatory analysis with feasibility determinations organized by industry sector.

The Docket (H–020) includes considerable additional data, including many health studies, the complete preliminary regulatory and feasibility analysis with appendices and additional feasibility information. This includes the final results of a large scale industry survey. Also included are several computerized data tapes and a master tape summarizing the available information. A four-volume printed version of this information, organized by substance, is also in the Docket. All this information is available for inspection and copying at the Docket Office. Copies will be available at the cost of reproduction.

OSHA is continuing to gather additional individual substance information. This includes health effects and feasibility information. A number of site visits reports will be placed in the docket.

The discussion is organized in the following manner:

I. Background
- A. Questions Solicited for NPRM
- B. History and Need for Revision of the PEL's
- C. Approach
- D. Basis for Identifying Replacement PEL's
- E. Substances Included in the Update of 1910.1000 Z-Tables
- F. Identification of Substances Requiring Special Attention
- G. Alternate Procedures for Dealing with Substances Requiring Special Attention
- H. Construction, Maritime and Agriculture Segments

II. Pertinent Legal Authority
III. Glossary
IV. Substances to be Regulated
- A. General Principles of Toxicology and Dose-Response
- B. Historical Development of Occupational Exposure Limits
- C. Description of the Substances for Which Limits Are Being Proposed
  1. Substances for Which Proposed Limits are Based on Avoidance of Neuropathic Effects
  2. Substances for Which Proposed Limits are Based on Avoidance of Narcosis
  3. Substances for Which Proposed Limits are Based on Avoidance of Sensory Irritation
  4. Substances for Which Proposed Limits are Based on Avoidance of Liver or Kidney Effects
  5. Substances for Which Proposed Limits are Based on Avoidance of Ocular Effects
  6. Substances for Which Proposed Limits are Based on Avoidance of Respiratory Effects
  7. Substances for Which Proposed Limits are Based on Avoidance of Cardiovascular Effects
  8. Substances for Which Proposed Limits are Based on Avoidance of Systemic Toxicity
  9. Substances for Which Proposed Limits are Based on Observed No-Effects Levels
  10. Substances for Which Proposed Limits are Based on Avoidance of Adverse Nuisance Effects
  11. Substances for Which Proposed Limits are Based on Avoidance of Odor and Taste Effects
  12. Substances for Which Proposed Limits are Based on Avoidance of Adverse Health Effects caused by Exposure to Analogous Substances
  13. Substances for Which Proposed Limits are Based on Avoidance of Biochemical/Metabolic Effects
  14. Substances for Which Proposed Limits are Based on Avoidance of Sensitization Effects
  15. Substances for Which Proposed Limits are Based on Avoidance of Cancer
  16. Substances for Which Current ACGIH–TLVs are Less Stringent than Existing OSHA PELs
  17. Substances for Which OSHA is Proposing Short Term Exposure Limits
  18. Substances for Which OSHA is Proposing to Add Skin Notations
- D. References For Section IV

V. Summary of Preliminary Feasibility, Regulatory Impact, Regulatory Flexibility and Environmental Impact Analyses
VI. Clearance of Information Collection Requirements
VII. Summary and Explanation of the Proposed Standard
VIII. Public Participation Public Hearings
IX. Authority
X. Standard
XI. Appendices
- Appendix A—Sampling and Analytical Methods
- Appendix B—Preliminary Regulatory Impact, Regulatory Flexibility Analysis, and Feasibility Analysis

I. Background

A. Questions Solicited for NPRM

OSHA requests comments on all issues raised by this proposal including health effects, feasibility, risk and policy issues. The following are some specific questions which may assist commenters in their review.

1. Are substances included which should be excluded from this rulemaking?

2. Is additional health and feasibility documentation available relative to the proposed PEL's, beyond that described in the preamble?

3. Are substances included in this rulemaking used in industries other than those described in the preamble?

4. Are substances included in this rulemaking used for purposes other than those described in the preamble?

5. Do alternative unpublished exposure guidelines exist, such as those used in private workplaces, which may be suitable for general usage?

6. Is there information regarding laboratory analytical procedures which may be used in lieu of those suggested by OSHA (See Appendix A) to determine exposure to air contaminants?

7. Are the proposed exposure limits for each substance appropriate?

8. Is additional information available for those substances for which ACGIH proposed a higher TLV which might affect OSHA's decision that such a change was not justified?

9. Should the implementation dates for some substances be delayed because of sampling/analytical limitations or short term feasibility impact considerations?

10. Is there additional information relative to the OSHA plans to adopt some recommended 10 hour TWA REL's as an 8-hour TWA PEL?

11. Does the most current scientific information generally support acceptance of the hypothesis that all C-5-8-Alkanes are *not* equally toxic because a metabolite of n-Hexane exhibits unique neurotoxic properties?

12. OSHA has proposed to use exposure limits from two well-established sets of guidelines as a source of values to update the PEL's. Is information available about alternative sources which OSHA might consider for this purpose?

13. OSHA has outlined its criteria for identifying special situations. Are alternative criteria available which might be used in lieu of these, or in addition to them?

14. OSHA has outlined three alternative procedures for dealing with substances requiring special attention. Are additional approaches available which might be used in lieu of these, or in addition to them?

15. OSHA has performed feasibility analysis for the following substances, based on limited available information:
Acetonitrile
Carbon disulfide
Carbon monoxide
Carbon tetrachloride
Chloroform
Ethylene dichloride
Ethylene glycol dinitrate
Fibrous glass dust
Hydrogen cyanide
Isophorone diisocyanate
Nitrogen dioxide
Nitroglycerin
Trichloroethylene

Is further information available which might be used to supplement the present findings regarding the feasibility of achieving these levels in the workplaces?

16. OSHA has made a preliminary assessment of the proposed rulemakings' impact on large and small establishments. The Act requires OSHA to determine whether a regulation will have a significant impact on a substantial number of small entities, pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* Is there additional information regarding implementation of this rule for small businesses and entities which OSHA should consider?

17. OSHA has proposed PEL's for some substances, where the basis for this proposal also includes a carcinogenicity designation (e.g., TLV with a A1 or A2 designation; REL with a Ca designation). Should OSHA include a similar carcinogen designation in the Z–4 Table in this rulemaking?

18. OSHA has preliminarily decided that for substances where the ACGIH, TLV is a TWA and the NIOSH, REL is a Ceiling Value which is the same or one half of the TWA, OSHA will propose that the TWA be adopted as the PEL. Should this approach be modified in the final rulemaking? What approach should be used when the converse of this situation (TLV, Ceiling-REL, TWA) exists?

19. OSHA preliminarily plans to adopt a phased start-up schedule. This would include an initial start-up requirement permitting the use of alternate control methods for revised PEL's, followed at a later date by the required use of control methods fully consistent with the methods of compliance priorities in effect at that time. OSHA will shortly be requesting comments on the hierarchy of controls. An alternate approach is to set compliance date for engineering controls based on final determinations of that rulemaking. OSHA solicits comments on those approaches and suggestions regarding appropriate times for the two proposed start-up dates.

20. OSHA requests comment on whether the establishment of margins of safety below lowest observed or no effect levels is consistent with the concept of "significant risk," and on whether the specific margins of safety proposed for specific chemicals are appropriate.

21. OSHA has identified sensory irritation, which causes rhinitis, cough, sputum production, chest pain, wheezing and dyspnea as material impairment of health. OSHA invites comments on this understanding.

22. The question also arises of whether odorants present material impairment of health. That issue also might arise in the context of other substances. Based on the evidence in the final record concerning this issue, OSHA will determine if the criteria detailed in section IV–C–16 have been met, and take appropriate action. OSHA requests comment on this issue.

23. Is there exposure information available which can be supplied which will refine OSHA's estimates of employee exposures and overexposures to the substances being regulated?

24. Is there information available which can be supplied to improve or supplement the engineering controls identified as necessary in order to reduce exposure levels? Is there additional cost data which can be

supplied to refine the annual costs associated with these controls?

25. Under what conditions, involving which industrial processes, will respirators be needed during the start up period, for maintenance operations, or where other controls are infeasible in order to protect employees at the proposed exposure levels? Are respirators currently being used under the conditions identified, or would they need to be purchased? Please describe the type of respirator currently in use or needed.

26. As a result of simultaneously regulating many substances, what cost savings will be realized in purchasing new engineering controls? Are alternate engineering controls available to achieve the lower permissible exposure limits being proposed?

27. What is the current state of technology control and financing in firms which would need to comply with reduced exposure limits to wood dust?

B. History and Need for Revision of the PEL's

One of the principal reasons, if not the single most important basis, for Congress passing the Occupational Safety and Health Act of 1970, was Congress' recognition of the need to protect workers from occupational health hazards. In the preamble to the Act, Congress stated one of the purposes was to protect employees by "exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conduct other research relating to health problems, in recognition of the fact the that *occupations health standards present problems often different from those involved in occupational safety.*" (emphasis added).

The legislative history indicates Congressional concern for reduction in health risk from both the recognized hazards and from the many newly utilized chemicals. Congress stated in 1970,

> In the field of occupational health the view is particularly bleak, and due to the lack of information and records, may well be considerably worse than we currently know. Occupational diseases which first commanded attention at the beginning of the Industrial Revolution are still undermining the health of workers. Substantial numbers, even today, fall victim to to ancient industrial poisons such as lead and mercury. Workers in the dusty trades still contract various respiratory diseases. Other materials in industrial use are only now being discovered to have toxic effects. In addition, technological advances and new processes in American industry have brought numerous new hazards to the workplace. Carcinogenic chemicals, lasers, ultrasonic energy, beryllium metal, epoxy resins, pesticides, among others, all present incipient threats to the health of workers. Indeed, new materials and processes are being introduced into industry at a much faster rate than the present meager resources of occupational health can keep up with. It is estimated that every 20 minutes a new and potentially toxic chemical is introduced into industry. New processes and new resources of energy present occupational health problems of unprecedented complexity. (Senate Report 91–1282, p. 2)

To accomplish the goal of protecting workers from occupationally related disease Congress created a three-pronged approach in the OSH Act.

First, Congress desired that OSHA, as soon as possible after it was established, have in existence a set of basic, minimum health and safety standards. To accomplish this it provided in section 6(a) of the OSH Act that OSHA should adopt within its first two years, without hearing or public comment, established federal standards and national consensus standards.

At that time, under the Walsh-Healey Act, The Department of Labor had adopted for government contractors approximately 400 health standards based on the Threshold Limit Value (TLV) recommendations of the American Conference of Governmental Industrial Hygienists (ACGIH). Those were adopted as established federal standards. In addition about 25 additional exposure limits had been recommended by the American Standards Association (presently called the American National Standards Institute). Those were adopted as national consensus standards. OSHA adopted these initial exposure limits in May 1971. They are for the most part the maximum air contaminant levels set forth in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000.

Congress recognized the need to update these standards. It created two mechanisms for updating health standards: Regular or "6(b)" standards and emergency or "6(c)" standards.

Congress specified the procedures for regular standards in sections 6(b) (1)–(4) and 6(f). They provide that: The public may petition for new standards; OSHA may set up an advisory committee; and, before issuing a standard, OSHA must publish a proposal with an explanatory preamble, request public comments and publish an explanatory preamble with the final standard. In addition to these general requirements of informal rulemaking, Congress specified that OSHA must hold an oral hearing if requested and support its determination with substantial evidence in the rulemaking record.

Congress set forth the criteria for health standards in section 6(b)(5) of its Act. This stated:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposures to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Congress also provided in section 6(c) for the issuance of Emergency Temporary Standards (ETS) to take immediate effect without rulemaking. However, OSHA is to issue a proposal and complete a section 6(b) rulemaking within 6 months. The criteria for issuing an ETS is that "employers are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that such emergency standard is necessary to protect employees from that danger." OSHA has found that section 6(c) procedures have not generally accelerated the regulatory process. Most ETS's have been litigated, and judicial stays have been issued either on procedural or substantive grounds.

Since the passage of the Act in 1970, OSHA has made substantial progress improving the occupational health of workers for some priority health hazards. Asbestos and arsenic exposures have been dramatically reduced, substantially reducing cancer risk to employees. Lead exposures have been reduced and we are now seeing a major reduction in employee blood lead levels, and lead related diseases. Cotton dust exposures have been reduced and byssinosis has been nearly eliminated from the textile work force. OSHA has also substantially reduced significant health risk from some of the newer chemicals such as ethylene oxide and vinyl chloride.

Through the hazard communication and access to employee exposure and medical records standards, OSHA has greatly expanded the ability of employees to learn about and protect themselves from health hazards.

OSHA's standards have proven to be feasible, often costing less than estimated. The vinyl chloride standard cost one-tenth OSHA's contractor's estimate. The cotton dust standard has been credited with improving the industry's competitiveness and productivity while costing one-half OSHA's estimate.

The preambles to OSHA standards have been lengthy, detailed and sophisticated. They have thoroughly analyzed health studies and controversial scientific issues about carcinogencity and risk assessment. Extensive analyses of feasibility have been made.

OSHA has issued only 24 substance-specific health regulations since its creation. It has not been able to review the many thousands of currently unregulated chemicals in the workplace nor to keep up with reviewing the several thousand new chemicals introduced since its creation. It has not been able to fully review the literature to determine if lower limits are needed for many of the approximately 400 substances it now regulates.

Using past approaches and practices, OSHA could continue to regulate a small number of the high priority substances and those of greatest public interest. However, it would take decades to review currently used chemicals and OSHA would never be able to keep up with the many chemicals which will be newly introduced in the future.

OSHA believes it is a major priority to update its existing PEL's and to make a substantial effort to control exposure to chemicals newly used in the workplace for which no exposure limits exist. The existing health literature and expert judgment indicate that such new or lower limits are needed to protect against many types of deleterious health effects. These include kidney and liver diseases, respiratory diseases, reductions in lung function, nerve disorders and reduction in nerve function, carcinogenicity, irritation to the eyes, throat, skin and other organs which prevent working safely and many other disorders and dysfunctions.

As the preliminary regulatory analysis indicates, millions of employees in total are exposed to levels of these chemicals which, the literature or expert opinion indicates, do or may create deleterious health effects. Clearly, it is a most important occupational health priority to reduce or eliminate such disease and material impairments of health.

Congress clearly indicated that it was a major Congressional priority to consider and control, when needed, the many thousands of unregulated chemicals, and update the existing Z-Table chemicals. For example, the previous quotation indicated Congress' concern with the thousands of newly introduced chemicals. Congress also stated.

> Accordingly, it is essential that such standards (Table Z chemicals) be constantly improved and replaced as new knowledge and techniques are developed. In addition there are occupational hazards, particularly those affecting health—which are not covered by any standards at all. (Senate Report 91–1282, p. 6).

Government agencies and professional organizations have also recommended that OSHA lower exposures for many Table-Z substances and add limits for currently unregulated substances. The National Institute for Occupational Safety and Health has recommended new or lower exposure limits for approximately 160 chemicals (REL's) in its Recommendations for Occupational Safety and Health Standards, September 1986.

The American Conference of Governmental Industrial Hygienists (ACGIH) 1987–88 Threshold Limit Values (TLV's) adopted new exposure limits for approximately 200 substances not regulated by OSHA, and lower limits, short-term exposure limits, ceiling or skin limits for approximately 200 substances now regulated by OSHA.

In light of its priority to address the many unregulated health hazards and improve the existing Table Z limits, OSHA commenced a review process to determine the best way to achieve this goal. It has reviewed its past history and set up an internal task force to consider the matter. OSHA requested the Administrative Conference of the United States to study the issue and make recommendations.

In other rulemakings, important factors as discussed below led OSHA to perform detailed analyses, consider all possible issues, write lengthy preambles and have extensive administrative procedures. However, in OSHA's view, to review and regulate many substances in a reasonable period requires some narrowing of the issues, focus of analysis, and reducing the length of the discussions in the preamble.

The factors that led to OSHA's detailed approach to analysis are clear from OSHA's history: when OSHA issued a health standard it would be sued both by industry arguing its health standards were too strict and by unions arguing tis standards were not strict enough. For example, in 1974, OSHA issued standards for 14 carcinogens (39 FR 3756; Jan. 29, 1974). Industry sued, claiming that OSHA's procedures were inadequate and various studies were poorly done. The unions sued arguing that OSHA had not set a no detectable exposure level, had not set up a permit system and had not set detailed enough requirements for medical examinations. See *Synthetic Organic Chemical Mfgs. v. Brennan; Oil Chemical & Atomic Workers* v. *Brennan*, 503 F.2d 1155, 506 F2d 385 (3rd Cir. 1974).

More recently industry challenged the ethylene oxide standard as being too low and the unions challenged the same standard for not including a short term exposure limit (STEL). See *Public Citizen Health Research Group et al v. Tyson; Assoc. of Ethylene Oxide Users v. Tyson*, 796 F. 2d 1479 (D.C. Cir. 1986).

OSHA also found that lengthy discussions of what it perceived were major issues and less detailed discussion of what it perceived to be minor issues or issues which could wait until another day sometimes resulted in a court remand. For example, the preambles to the final lead standard were over 100 Federal Register pages (43 FR 52952, Nov. 14, 1978; 43 FR 54354, Nov. 21, 1978) and included extensive health and feasibility discussions. However, the feasibility discussions were brief for those segments of industry which OSHA believed had fewer problems. The court generally upheld the standard but remanded for reconsideration some of those segments. (See OSHA's similar experience for *Asbestos, Building and Construction Trades vs. Brock*, 86–1359 (D.C. Circ., Feb. 2, 1988)) *United States Workers* v. *Marshall* 647 F. 2d 1189 (D.C. Cir. 1980). Energetic industry challenges, difficulties in gathering detailed data and some lengthy agency reviews have resulted in a major commitment of OSHA resources, numerous hearings and several Federal Register notices, in attempting to complete this remand. In another example, a court did not accept the agency's decision to intially limit the hazard communication regulation to the manufacturing sector though the standard as issued created major employee protection benefits. *United Steelworkers* v. *Auchter*, 763 F. 2d 728 (3rd Cir. 1985.).

The success of a project to regulate a large backlog of chemicals for which there is a generally recognized need for new or improved employee protection requires some recognition of the need for agency flexibility in several areas. One is in narrowing the scope of the issues to be covered. A second is in less detailed discussion for each substance. Third is in the flexibility not to cover some issues at the present time when

administrative resources are not available to consider them. In the future when resources are available, the Agency will decide whether the issues have priority.

OSHA, in its first 17 years has also had to address difficult scientific, feasibility and policy issues. These include extrapolation from animal data to humans, (ETO supra), epidemiology risk assessment and significant risk analysis (Arsenic, 46 FR 1864, Jan. 14, 1983; Asbestos, 51 FR 22612, June 20, 1986), feasibility for industries with aging facilities (lead, arsenic, supra), lowest feasible level (Benzene, 52 FR 34460, Sept. 11, 1987, for example) and others.

In response to both the court challenges and the need to face difficult issues, OSHA has engaged in detailed and extensive analyses. These have resulted in lengthier preamble discussions and in-depth analyses for all issues. For example, the 1986 asbestos final standard as published in the Federal Register had a 100 page explanatory preamble for general industry. The original asbestos Sec. 6(b) standard had a 2 page preamble (37 FR 11318, June 7, 1972).

Now that OSHA has reviewed these issues in depth several times, has experience "gained under this * * * law" (sec. 6(b)(5)) on these issues, and has had its analysis upheld in the Courts, somewhat less detailed chemical-by-chemical analyses should be appropriate. The accumulated judicial guidance and agency experience reduces the need for as extensive a discussion of some of the issues.

Overall, this preamble is lengthy and both the scientific and feasibility analyses are longer than in previous OSHA rulemaking. OSHA is fully meeting the requirements to analyze significant risk and feasibility. However, the analyses for each chemical are briefer than that provided as part of individual rulemaking.

OSHA has also followed the more extensive administrative procedure of what is called hybrid rulemaking rather than the minimum requirements of informal rulemaking. (See the OSHA procedural rules in 29 CFR Part 1911.) This includes oral hearings, questioning by the public in hearings, extensive right to comment, decision based on an identified record and an Administrative Law Judge presiding at hearings.

As discussed above, in part this is a requirement of the OSHA Act. However, it also reflects relevant legal doctrine. See *International Harvester v. Ruckleshouse*. 478F 2d 615 (D.C. Cir. 1973). This approach has served OSHA well by increasing the Agency's knowledge, and gaining commendation from the courts. See *Industrial Union Dept. v. Hodgson*, 499 F. 2d 467 (D.C. Circ. 1974). It has also been commended in the academic community.

OSHA is not short-cutting its administrative procedures in this matter. However, it is, of course, covering more territory in a single proposal for exposure limits than it has previously. (OSHA's hazard communication regulation, which also has very wide scope, was covered in a single proceeding and was upheld.) This method seems reasonable to OSHA in light of the nature of its proposal and its past experience. Also the Supreme Court in *Vermont Yankee* v. *N.R.D.C.*, 435, U.S. 519, 543.44 (1798) has indicated that agencies have broad flexibility in devising appropriate administrative procedures. It stated that:

"administrative agencies should be free to fashion their own rules of procedure, and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.

Additional factors which have affected the number of health standards issued by OSHA include various policies of Congress and the President. OSHA develops Environmental Impact Statements as required by the National Environmental Policy Act, conducts Regulatory Flexibility Analyses as required by the Regulatory Flexibility Act and conducts detailed analysis required by the Paperwork Reduction Act. All of the Presidents during OSHA's existence have stressed the need to reduce inflation and improve the cost effectiveness of regulations. Under various Executive Orders (E.O. 12044, 12291) OSHA has been required to perform extensive economic analyses. OSHA, of course, must continue to carry out these important goals of Congress and the President.

As mentioned, OSHA consulted with the Administrative Conference of the United States on appropriate procedures to face the issue of the large number of chemicals which needed new exposure limits. The Conference issued two lengthy reports of a study by two professors of administrative law. After extensive consideration, it made two sets of recommendations to OSHA, Recommendation 87–1, 52 FR 23629 (1987) and 87–10, 92 FR 40147 (Dec. 30, 1987).

The Administrative Conference specifically recommended:

1. Updating the 1971 Consensus Standards. The Occupational Safety and Health Administration, as an interim step should continue to update the Table Z national consensus standards adopted in 1971 if updating can be accomplished by expedited rulemaking procedure (e.g., including more concise preambles) appropriate to the nature of the revised Table. OSHA should update the 1971 standards on a generic basis (i.e., include multiple standards in one proceeding) when consensus recommendations are available, which are generally accepted by employers and workers in the affected industries, and when the new standards can be evaluated on the basis of risk and feasibility information reasonably available to the Agency. This interim step should not interfere with OSHA's continuing responsibility to promulgate and modify safety and health standards.

As this discussion indicates there is clear and generally recognized need to improve occupational health protection of workers from a substantial number of chemicals which are present in the workplace. Clearly an improved approach to regulation is needed to solve this problem in a reasonable time period. OSHA has reviewed the law, Congressional intent, its history, and the recommendations of experts. Based on this review, OSHA has adopted the approach reflected in this proposal and described in greater detail in the approach section below.

OSHA believes that the proposal will lead to a major improvement in occupational health, probably the greatest improvement it can achieve in a short period of time. Consequently, it believes it is justified to make, as one of its first priorities, reducing exposure to approximately 400 substances. It believes it is appropriate to leave for later standards and a second stage, of somewhat lower priority, more detailed analyses of some substances, where lower limits may be appropriate, and review of the need for medical, monitoring and industrial hygiene provisions is required.

C. Approach

This proposed rulemaking represents a different OSHA approach to the problem of setting permissible exposure limits for the wide variety of potentially hazardous substances present in the work place. Under typical section 6(b) rulemaking, OSHA has developed detailed standards for individual substances based on an extensive review of all available information. This is an extremely time and resource-intensive process. In the proposed rulemaking, OSHA will rely to a large extent on the evaluation of other existing exposure limits which have been developed and widely accepted as health protection guidelines, recommendations, or regulations together with an evaluation of the more important studies for each substance. These sources have been developed by various organizations within and outside the United States.

Analysis of all these guidelines clearly documented the inadequacies of the existing Permissible Exposure Limits (PEL), defined in the § 1910.1000 Z-Tables, which were all developed prior to 1968. Further analysis identified two sources, the American Conference of Governmental Industrial Hygienists, Threshold Limit Values (ACGIH/TLV) and the National Institute for Occupational Safety and Health, Recommended Exposure Limits (NIOSH/REL's), which could be used in this rulemaking. The TLV's were used to identify those substances to be considered in this rulemaking. Both the REL's and TLV's were used to permit OSHA to determine which limits provide a more appropriate permissible exposure limit in light of the evidence and the statutory requirements OSHA must follow. A detailed explanation of this analysis is provided in a separate section of this preamble. The justifications for limiting this proposed rulemaking to the question of allowable air concentrations, without considering ancillary requirements, such as control methods, personal protective equipment, training, etc., are described in a separate section of this preamble.

While OSHA has relied extensively on the guidance provided by the documentation for the ACGIH TLV's and NIOSH REL's, OSHA has also reviewed other health effects data to determine, as the OSHA Act requires, if significant risks exist; if the new exposure limits would substantially reduce that risk; and if technological and economic feasibility exists for the proposed PEL's. OSHA has concentrated its efforts on reviewing summaries of the major studies, with emphasis on the literature used to support the exposure limits proposed by NIOSH and ACGIH for the several hundred substances being considered in this proposed rulemaking. With this approach, it is not necessary to analyze in depth all available studies for each substance. When the studies support the recommended level within the context of OSHA's legal requirements, OSHA is proposing to adopt either the TLV or REL, rather than attempt a detailed analysis. The details of the approach used to resolve differences between individual permissible exposure limits are provided in another section of the preamble. This preamble will discuss the health effects and risk for each substance being considered.

OSHA is also engaging in an extensive analysis of technological and economic feasibility. OSHA is utilizing:

A review of the literature; expert professional judgement by a selected group of certified industrial hygienists and professional engineers; a large scale survey of past experiences in the work place; and input from several computer-processable data bases to determine whether the proposed levels are technologically and economically feasible. The survey will be focused by using existing exposure sampling data which indicate usage and the level of compliance already achieved. OSHA is not attempting to analyze the feasibility of alternative proposed exposure levels except where the TLV and REL differ significantly. In those instances only the REL and TLV are considered. However, the absence of adequate feasibility information for a given TLV or REL will eliminate that exposure level from consideration as a possible OSHA PEL.

To attain the objectives of the proposed rulemaking, it has been necessary to limit the discussion of health effects for each individual substance. To use this approach, and satisfy the technical and legal requirements for section 6(b) rulemaking, OSHA has identified 15 health effect categories to include all the substances considered in the rulemaking. While some substances have health effects which fall into more than one category, for purposes of organization, OSHA has grouped the substances according to the ACGIH rationale for identifying the primary health effect. For each of these groups there is a generic discussion of the general health effects considerations which lead to the development of permissible air concentrations for those substances falling within that category. This is then supplemented by a limited discussion of: health effects, significance of risk, and risk reduction for each substance, primarily based on the TLV and REL documentation. In each instance, OSHA reaches its own conclusion regarding which (if either) of these limits are appropriate. OSHA is also considering other relevant guidelines for allowable air concentrations to identify any specific substances which require special attention.

This preamble will include the generic discussions for all 15 health effects groups, and an evaluation of the specific substances.

OSHA anticipates that there are three possible outcomes for the proposed PEL's in this proposal. These are:

(1) The final rule adopts the proposed limits.

(2) The final rule adopts limits different from the existing or proposed limits.

(3) The final rule adopts no changes to the existing limits.

To make a decision between these three alternatives, OSHA will consider three types of information.

(a) Facts, objectively defined on the basis of information now available.

(b) Policy judgment consistent with the statutory requirements the Agency must follow.

(c) Assessment of the record presented during or as a result of the public hearing scheduled for this rulemaking. This assessment of the record will consider both factual and policy information.

Specific evidence which OSHA will consider includes the following:

Number of exposed employees at various exposure levels, number of manufacturing processes involved, quantity of material involved, cost of compliance, type of effect (e.g., acute, chronic), severity of health effects, absence of an existing PEL, magnitude of proposed change to PEL, general acceptance of proposed PEL, and quality of the evidence.

OSHA will use all these criteria in reaching its final decisions based on statutory requirements for each of the substances currently included in the proposal.

In most previous health rulemakings subsequent to the benzene decision OSHA has regulated health hazards which have posed risks above 1 in a thousand over a working lifetime. These are clearly in the range of risks which the agency generally considers "significant." These risks have been quantified through risk assessments using accepted statistical techniques. In most of these rulemakings, the limits of the agency's action have been determined by the constraint of feasibility, meaning that significant risks were likely to remain at the new levels, according to the quantitative risk assessments, but that further reductions in exposures were feasible. In the formaldehyde final rulemaking OSHA stated that regarding the question of significant risk, it "believes that figures of 0.6 per 100,000 (i.e., 6 in one million) predicted by the lower end of the range may be approaching a level that can be viewed as safe in the context of the workplace environment.

Most of OSHA's prior standards have involved chronic health hazards where studies have identified risks at relatively high levels of exposure. OSHA utilized standard risk assessment models to estimate risks at lower levels of

exposure. It used these estimates as the basis for significant risk determinations at existing and proposed levels.

Many of the substances OSHA is regulating in this proposed rulemaking are acute hazards. Studies indicate that workers may suffer health effect at a level close to the current exposure limit, or if not exposure limit exists, at a specific level. With data close to the level of interest, extensive extrapolation is not necessary and the primary question is what level will substantially reduce or eliminate the significant risk identified.

OSHA is relying on guidelines already available in the literature, which use a variety of adjustments to account for the uncertainties inherent in translating animal or human health studies to the actual work situation. Adjustments are required due to inter-species and intra-species variations, sex and age differences, and the limited statistical power of typical studies. Statistical power is frequently limited because of the small number of test subjects, and the time constraints regarding single or repeated exposures. For the same reason the available studies may not support precise quantitative estimates of the probability of adverse health effects. In these situations, even where the presence of risk is well-established at the current level, it may not be possible to reach a conclusion concerning the precise point at which that risk ceases to be significant, in other words, how far exposure limits should be reduced. However, the evidence may be sufficient to justify a specific level as substantially reducing or eliminating significant risk.

The Supreme Court has indicated that the decision about whether a particular level of risk is significant will be based on largely on policy considerations. OSHA will include in the final rule only those limits which the record supports as being consistent with the statutory requirement that OSHA must follow. In carrying out this responsibility OSHA will consider the quality of the evidence, the type of risk, the reasonableness of the risk assessment or evidence of risk, the substantial reduction or elimination of significant risk, and the appropriateness of the final limit, taking into account statutory requirements, the cost and compliance factors, and policy considerations. Where more information is required to support a new final rule, the agency will collect it before revising existing limits or establishing new limits. Policy discretion is particularly appropriate where risk appears to be in the range where the question of its insignificance is presented.

OSHA is proposing to regulate 428 chemicals in this proceeding. In developing new PELs for some of these chemicals, questions may arise about the point at which the risks associated with them become insignificant. (See the discussion about formaldehyde quoted above.) EPA and FDA have recently considered analogous issues under other statutory authorities, specifically, what levels of risk are sufficiently low so that no further regulatory action is necessary or where there is more discretion whether to take action or not.

The FDA has indicated that in its view, risks of less than one in one-million from a lifetime of exposure are *de minimus*. See 51 FR 28344 at 362 August 7, 1986 and *Public Citizen* v. *Young*, 831 F. 2d 1108 (D.C. Cir., 1987). "FDA's proposed one-in-one million dividing point has been used by EPA to distinguish acceptable and unacceptable risks. 119 FR 46294 (1984) (general guideline); 51 FR 1602, 1635 (1986) (hazardous wastes). FDA has used the same break point to determine whether the general safety clause of the Act applies. 47 FR 14 138 (1982) "*Public Citizen*, Note 4 ibid. Public comment is invited on how OSHA should, as a matter of policy, address these issues.

Policy discretion concerning the appropriate extent of regulation if any may be particularly appropriate where risk appears to be in the range between clearly significant and *de minimus*, when the question of its insignificance is presented. One area of such discretion may be whether ancillary provisions are appropriate when risk is in this middle range. For example, medical screening tests may not be as effective, or the side effects may outweigh their value when the predicted risk is relatively low, and it is of value to focus medical resources where these have greater value. See, for example, discussion of medical surveillance for OSHA's arsenic standard, 43 FR 19620–1 (May 5, 1978) and benzene standard, 52 FR 34547–54 (September 11, 1987).

On the other hand, the Supreme Court stated in the benzene decision about medical surveillance that, "It should also be noted that, in setting a permissible exposure level in reliance on less-than-perfect methods, OSHA would have the benefit of a backstop in the form of monitoring the medical testing.

Thus, if OSHA properly determined that the permissible exposure limit should be set at 5 ppm, it could still require monitoring and medical testing for employees exposed to lower levels. By doing so, it could keep a constant check on the validity of the assumptions made in developing the permissible exposure limit, giving it a sound evidentiary basis for decreasing the limit if it was initially set too high. Moreover, in this way it could ensure that workers who were unusually susceptible to benzene could be removed from exposure before they had suffered any permanent damage.

" " " This is precisely the type of information-gathering function that Congress had in mind when in enacted section (6)(b)(7), which empowers the Secretary to require medical examinations to be furnished to employees exposed to certain hazards and potential hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. See Legis. Hist., p. 147 (Emphasis added)" (448 U.S. 658). *Accord, National Cottonseed Prods. Assoc.* v. *Brock*, 829 F. 2d 482 (D.C. Cir. 1987), Cert. denied 56 U.S.L.W. 3733 (4/26/88).

OSHA is not raising the issue of the appropriateness of ancillary provisions in this rulemaking for reasons discussed above. However, this question may be of relevance to any comments on the issue of insignificant risk and regulatory discretion.

D. Basis for Identifying Replacement PEL's

OSHA's PEL's were based originally on established Federal standards and consensus standards, as provided by the Occupational Safety and Health Act. Those standards, in turn, were based largely upon air contaminant standards (Threshold Limit Values or TLV's) promulgated by the American Conference of Governmental Industrial Hygienists (ACGIH). Originally, ACGIH–TLV's were adopted for employees of government contractors, pursuant to the Walsh-Healey Act. At the time, they represented the most comprehensive set of workplace exposure guidelines available. They were then adopted under the OSHAct as established federal standards.

ACGIH updates its TLV's annually, adjusting exposure limits and adding new substances to its list as evidence of health effects is accumulated. During the past 20 years, a gap has developed between the OSHA PEL's and the more current ACGIH–TLV's because OSHA has approached standards-setting on an item-by-item basis and has not re-evaluated the PEL's listed in the 1910.1000 Z Tables as a group.

In the present rulemaking, OSHA had many more sources of standards from which to consider exposure limits, and a comparison of several of these sources was made early in the review process. In the review it became clear that two sorts of decisions, based on alternative sources of standards, would be made. First, it was necessary to determine which substances would be included in the updating, since the health effects of many more substances are now known. Second, it was necessary to propose new limits for each substance which will provide protection to exposed workers.

OSHA examined lists of recommended exposure limits compiled by a variety of professional organizations, international bodies, governments and government agencies, using these criteria:

1. Comprehensiveness: What is the breadth (number of substances covered) and depth (inclusion of STEL's and ceilings as well as 8-hour TWA's) of the guidelines as a whole?
2. Currentness: How recent are the limits and how often are they updated?
3. Review Process: What procedures does he limit-setting body use to update its list?
4. Feasibility: To what extent is feasibility considered when limits are decided upon?
5. Documentation: What reasons are provided when limits are set and how well-documented are those decisions?
6. Applicability: Are the limits suitable for application in U.S. workplaces?

OSHA considered exposure limits set by professional organizations. (The American National Standards Institute, ANSI; The American Industrial Hygiene Association, AIHA; The American Conference of Governmental Industrial Hygienists, ACGIH), by NIOSH, by several countries (United Kingdom, Sweden, Federal Republic of Germany, and Japan), and three international bodies (European Economic Community, EEC; International Labor Organization, ILO; and the World Health Organization, WHO).

Not all of these limits could be evaluated against all of the criteria, since information was unavailable in some cases. Some organizations do not explain their reasons for setting guidelines, and others do not publish descriptions of their limit-setting and review procedures. OSHA nonetheless identified a group of exposure limit lists that warranted additional study, including the NIOSH Recommended Exposure Limits (REL's), WHO limits, British and West German limits and the TLV's established by ACGIH.

For the purpose of determining which substance would be included in the rulemaking, OSHA determined that the 1987–88 ACGIH–TLV list was most suitable. This TLV list included all of the substances in the present Z-tables, plus some two hundred more recently enrolled common substances. None of the other lists had equal depth and breadth. The number of hazardous substances included in other lists ranged from three (the EEC) to about 400 (United Kingdom), compared to over 600 substances in the ACGIH list. The NIOSH REL's covered a total of approximately 160 substances with numerical values.

OSHA then began its analysis of the particular exposure limits on the ACGIH list, comparing them with values suggested by other sources. All of the sources cited above indicated the need for updating, but inconsistencies in documentation of the recommended limits reduced the utility of most sources. For example, while the United Kingdom has many recommended limits, documentation by means of specific studies and description of methodology is often missing or inadequate for OSHA's purposes. In many instances, West German limits were based on the same 1968 documentation used by OSHA. Although West Germany has amended more than one hundred of the standards, documentation of feasibility and of risk has not been available to support the limits. OSHA believes that such documentation of feasibility would be especially necessary if German standards were to be adopted for application in U.S. workplaces, given the differing social, economic and political environments in the two countries.

NIOSH's recommended exposure limits (REL's) are well-documented and they are set with U.S. workplaces in mind. NIOSH explains the basis for its limits in criteria documents or in Current Intelligence Bulletins. OSHA has considered each of the available REL's in preparing this proposal, and has used the NIOSH-recommended exposure limit wherever it is shown to be both feasible and more appropriate than the corresponding ACGIH TLV. In each instance where there is a "significant difference" between a TLV and REL for an individual substance, OSHA has independently evaluated which value should be adopted as the PEL. In those few instances where REL's indicated limits for substances which were not on the ACGIH list, no new limit was proposed, because it was necessary to set a boundary on the number of substances to be evaluated. It was considered a higher priority to devote time to completing the regulation of 428 substances, rather than attempting to determine if additional substances, in other listings, should be considered. Where the REL and TLV differed in matters such as minor variations in TWA, lack of a STEL or ceiling, or use of a ceiling in lieu of a STEL, simplified procedures (described elsewhere) were adopted. These procedures considered the availability of feasibility data, practical sampling considerations, and the time available to complete this rulemaking. The criteria for defining significant differences between REL's and TLV's is discussed in section I–F.

Thus, the proposed modifications of OSHA's permissible exposure limits are based on the best information available to the agency at this time, regarding both health effects and feasibility, making use of the guidelines and recommendations developed by other organizations, primarily those of NIOSH and ACGIH. OSHA requests that the public provide any further relevant information regarding both health effects and feasibility which will supplement the information upon which this proposal is based.

E. Substances Included in the Update of § 1910.1000 Z Tables

Table I–E lists those 420 substances which are addressed by this proposal. This includes substances listed by the ACGIH in its publication "Threshold Limit Values and Biological Exposure Indices for 1987–88", excluding: (a) 24 substances for which comprehensive OSHA standards exist; (b) 9 substances for which OSHA standard development is in active progress; (c) and 160 substances from the existing Z-Tables where there is no difference between the OSHA PEL and the adopted 1987–88 ACGIH-TLV. This rulemaking therefore includes all substances which have been changed or added to the ACGIH TLV list since 1988. Changes or additions are considered to exist when: (1) A TWA or STEL has been modified; (2) a STEL or ceiling has been added (where none existed before); (3) where skin notation has been added; or (4) where some type of exposure limit (TWA, STEL or ceiling) exists where no OSHA limit existed in the § 1910.1000 Z-Tables.

Use of the TLV list as a reference point to define the bounds of this rulemaking is necessary to limit the number of substances under consideration to manageable size. Since the TLV list is the most extensive available source, and is the basis for the existing OSHA PEL's in the § 1910.1000 Z-Tables, it represents the best choice to serve this limited purpose.

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TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard

H.S. Number	Chemical Name	CAS Number
1001	ACETALDEHYDE	75-07-0
1002	ACETIC ACID	64-19-7
1003	ACETIC ANHYDRIDE	108-24-7
1004	ACETONE	67-64-1
1005	ACETONITRILE	75-05-8
1006	ACETYLSALICYLIC ACID (ASPIRIN)	50-78-2
1007	ACROLEIN	107-02-8
1008	ACRYLAMIDE	79-06-1
1009	ACRYLIC ACID	79-10-7
1010	ALLYL ALCOHOL	107-18-6
1011	ALLYL CHLORIDE	107-05-1
1012	ALLYL GLYCIDYL ETHER (AGE)	106-92-3
1013	ALLYL PROPYL DISULFIDE	2179-59-1
1014	ALPHA-ALUMINA	1344-28-1
1015	ALUMINUM (ALKYLS)	7429-90-5
1016	ALUMINUM (METAL)	7429-90-5
1017	ALUMINUM (PYRO POWDERS)	7429-90-5
1018	ALUMINUM (SOLUBLE SALTS)	7429-90-5
1019	ALUMINUM (WELDING FUMES)	7429-90-5
1020	AMITROLE (3-AMINO-1,2,4-TRIAZOLE)	61-82-5
1021	AMMONIA	7664-41-7
1022	AMMONIUM CHLORIDE (FUME)	12125-02-9
1024	AMMONIUM SULFAMATE (AMMATE)	7773-06-0
1025	ANILINE	62-53-3
1028	ASPHALT FUMES	8052-42-4
1029	ATRAZINE	1912-24-9

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number	Chemical Name	CAS Number
1031	BARIUM SULFATE	7727-43-7
1032	BENOMYL	17804-35-2
1033	BERYLLIUM & COMPOUNDS	7440-41-7
1034	BISMUTH TELLURIDE (SE-DOPED)	1304-82-1
1035	BISMUTH TELLURIDE (UNDOPED)	1304-82-1
1036	BORATES, TETRA, SODIUM (ANHYDROUS)	1303-96-4
1037	BORATES, TETRA, SODIUM (DECAHYDRATE)	1303-96-4
1038	BORATES, TETRA, SODIUM (PENTAHYDRATE)	1303-96-4
1039	BORON OXIDE	1303-86-2
1040	BORON TRIBROMIDE	10294-33-4
1041	BROMACIL	314-40-9
1042	BROMINE	7726-95-6
1043	BROMINE PENTAFLUORIDE	7789-30-2
1044	BUTANE	106-97-8
1045	2-BUTANONE (MEK)	78-93-3
1046	2-BUTOXY ETHANOL	111-76-2
1047	N-BUTYL ACETATE	123-86-4
1048	BUTYL ACRYLATE	141-32-2
1049	SEC-BUTYL ALCOHOL	78-92-2
1050	TERT-BUTYL ALCOHOL	75-65-0
1051	N-BUTYL ALCOHOL	71-36-3
1052	N-BUTYL GLYCIDYL ETHER	2426-08-6
1053	N-BUTYL LACTATE	138-22-7
1054	BUTYL MERCAPTAN	109-79-5
1055	O SEC-BUTYL PHENOL	89-72-5
1056	P-TERT-BUTYLTOLUENE	98-51-1

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name		CAS Number
1057	CALCIUM CARBONATE	1317-65-3
1058	CALCIUM CYANAMIDE	156-62-7
1059	CALCIUM HYDROXIDE	1305-62-0
1060	CALCIUM OXIDE	1305-78-8
1061	CALCIUM SILICATE, TOTAL DUST	NONE
1062	CALCIUM SULFATE	7778-18-9
1063	CAMPHOR (SYNTHETIC)	76-22-2
1064	CAPROLACTAM (DUST)	105-60-2
1065	CAPROLACTAM (VAPOR)	105-60-2
1066	CAPTAFOL (DIFOLATAN)	2425-06-1
1067	CAPTAN	133-06-2
1068	CARBOFURAN (FURADAN)	1563-66-2
1069	CARBON DIOXIDE	124-38-9
1070	CARBON DISULFIDE	75-15-0
1071	CARBON MONOXIDE	630-08-0
1072	CARBON TETRABROMIDE	558-13-4
1073	CARBON TETRACHLORIDE	56-23-5
1074	CARBONYL FLUORIDE	353-50-4
1075	CATECHOL (PYROCATECHOL)	120-80-9
1076	CELLULOSE	9004-34-6
1077	CESIUM HYDROXIDE	21351-79-1
1078	CHLORINATED CAMPHENE	8001-35-2
1079	CHLORINE	7782-50-5
1080	CHLORINE DIOXIDE	10049-04-4
1081	1 CHLORO-1 -NITROPROPANE	600-25-9
1082	2 -CHLORO-6-TRICHLOROMETHYL PYRIDINE (NITRAPYRIN)	1929-82-4

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name		CAS Number
1083	CHLOROACETYL CHLORIDE	79-04-9
1084	O-CHLOROBENZYLIDENE MALONONITRILE	2698-41-1
1085	CHLORODIFLUOROMETHANE	75-45-6
1086	CHLOROFORM	67-66-3
1087	CHLOROPENTAFLUOROETHANE	76-15-3
1088	CHLOROPRENE	126-99-8
1089	O-CHLOROSTYRENE	1331-28-8
1090	O-CHLOROTOLUENE	95-49-8
1091	CHLORPYRIFOS	2921-88-2
1092	CHROMIC ACID & CHROMATES	7440-47-3
1093	CHROMIUM, METAL	7440-47-3
1094	CHROMYL CHLORIDE	14977-61-8
1095	CLOPIDOL(COYDEN)	2971-90-6
1096	COAL DUST, < 5% QUARTZ	NONE
1097	COAL DUST, > 5% QUARTZ	NONE
1098	COBALT CARBONYL	10210-68-1
1099	COBALT HYDROCARBONYL	16842-03-8
1100	COBALT, METAL, FUME, DUST	7440-48-4
1101	COPPER (FUME)	7440-50-8
1102	CRAG HERBICIDE (SESONE)	136-78-7
1103	CRUFOMATE	299-86-5
1104	CYANAMIDE	420-04-2
1105	CYANOGEN	460-19-5
1106	CYANOGEN CHLORIDE	506-77-4
1107	CYCLOHEXANOL	108-93-0
1108	CYCLOHEXANONE	108-94-1

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number	Chemical Name	CAS Number
1109	CYCLOHEXYLAMINE	108-91-8
1110	CYCLONITE	121-82-4
1111	CYCLOPENTANE	287-92-3
1112	CYHEXATIN	13121-70-5
1113	DDT	50-29-3
1114	DECABORANE	17702-41-9
1116	DI-SEC-OCTYL-PHTHALATE	117-81-7
1117	2,6-DI-TERT-BUTYL-P-CRESOL	128-37-0
1118	DIAZINON	333-41-5
1119	DIBUTYL PHOSPHATE	107-66-4
1120	2-N-DIBUTYLAMINOETHANOL	102-81-8
1121	1,1-DICHLORO-1-NITROETHANE	594-72-9
1122	1,3-DICHLORO-5,5-DIMETHYLHYDANTOIN	118-52-5
1123	DICHLOROACETYLENE	7572-29-4
1125	P-DICHLOROBENZENE	106-46-7
1126	1,1-DICHLOROETHANE	75-34-3
1127	DICHLOROETHYL ETHER	111-44-4
1128	DICHLOROMONOFLUOROMETHANE	75-43-4
1129	1,3-DICHLOROPROPENE	542-75-6
1130	2,2-DICHLOROPROPIONIC ACID	75-99-0
1131	DICROTOPHOS (BIDRIN)	141-66-2
1132	DICYCLOPENTADIENE	77-73-6
1133	DICYCLOPENTADIENYL IRON	102-54-5
1134	DIETHANOLAMINE	111-42-2
1135	DIETHYL KETONE	96-22-0
1136	DIETHYL PHTHALATE	84-66-2
1137	DIETHYLAMINE	109-89-7
1138	DIETHYLENE TRIAMINE	111-40-0
1139	DIGLYCIDYL ETHER (DGE)	2238-07-5
1140	DIISOBUTYL KETONE	108-83-8
1141	DIMETHYL 1,2-DIBROMO-2,2-DICHLOROETHYL PHOSPHATE	300-76-5
1142	DIMETHYL SULFATE	77-78-1
1143	DIMETHYLANILINE	121-69-7
1144	DINITOLMIDE (3,5-DINITRO-O-TOLUAMIDE)	148-01-6
1145	DIOXANE (DIETHYLENE DIOXIDE)	123-91-1
1146	DIOXATHION (DELNAV)	78-34-2
1147	DIPHENYLAMINE	122-39-4
1148	DIPROPYL KETONE	123-19-3
1149	DIPROPYLENE GLYCOL METHYL ETHER	34590-94-8
1150	DIQUAT	85-00-7
1151	DISULFIRAM	97-77-8
1152	DISULFOTON	298-04-4
1153	DIURON	330-54-1
1154	DIVINYL BENZENE	108-57-6
1155	EMERY	112-62-9
1156	ENDOSULFAN	115-29-7
1158	EPICHLOROHYDRIN	106-89-8
1159	ETHANOLAMINE	141-43-5
1160	ETHION (NIALATE)	563-12-2
1161	ETHYL ACRYLATE	140-88-5
1162	ETHYL BENZENE	00-41-4
1163	ETHYL BROMIDE	74-96-4

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name	CAS Number
1164 ETHYL ETHER	60-29-7
1165 ETHYL MERCAPTAN	75-08-1
1166 ETHYL SILICATE	78-10-4
1167 ETHYLENE CHLOROHYDRIN	107-07-3
1168 ETHYLENE DICHLORIDE (1,2-DICHLOROETHANE)	107-06-2
1169 ETHYLENE GLYCOL	107-21-1
1170 ETHYLENE GLYCOL DINITRATE	628-96-6
1171 ETHYLIDENE NORBORNENE	16219-75-3
1172 N-ETHYLMORPHOLINE	100-74-3
1173 FENAMIPHOS	22224-92-6
1174 FENSULFOTHION (DASANIT)	115-90-2
1175 FENTHION	55-38-9
1176 FERBAM	14484-64-1
1177 FERROVANADIUM DUST	12604-58-9
1178 FIBROUS GLASS DUST	NONE
1179 FLUORINE	7782-41-4
1180 FLUOROTRICHLOROMETHANE	75-69-4
1181 FONOFOS	944-22-9
1182 FORMAMIDE	75-12-7
1183 FURFURAL	98-01-1
1184 FURFURYL ALCOHOL	98-00-0
1185 GASOLINE	8006-61-9
1186 GERMANIUM TETRAHYDRIDE	7782-65-2
1187 GLUTARALDEHYDE	111-30-8
1188 GLYCERIN (MIST)	56-81-5
1189 GLYCIDOL (2,3-EPOXY-1-PROPANOL)	556-52-5

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name	CAS Number
1190 GRAIN DUST	NONE
1191 GRAPHITE, NATURAL, RESPIRABLE	7782-42-5
1191A GRAPHITE, SYNTHETIC	NONE
1192 GYPSUM, TOTAL DUST	NONE
1194 N-HEPTANE	142-82-5
1195 HEXACHLOROBUTADIENE	87-68-3
1196 HEXACHLOROCYCLOPENTADIENE	77-47-4
1197 HEXACHLOROETHANE	67-72-1
1198 HEXAFLUOROACETONE	684-16-2
1200 N-HEXANE	110-54-3
1201 HEXANE ISOMERS	NONE
1202 2-HEXANONE	591-78-6
1203 HEXONE (METHYL ISOBUTYL KETONE)	108-10-1
1204 HEXYLENE GLYCOL	107-41-5
1205 HYDRAZINE	302-01-1
1206 HYDROGEN BROMIDE	10035-10-6
1207 HYDROGEN CYANIDE	74-90-8
1208 HYDROGEN FLUORIDE	7664-39-3
1209 HYDROGEN SULFIDE	7783-06-4
1210 HYDROGENATED TERPHENYLS	61788-32-7
1211 2-HYDROXYPROPYL ACRYLATE	999-61-1
1212 INDENE	95-13-6
1213 INDIUM & COMPOUNDS	7440-74-6
1214 IODOFORM	75-47-8
1215 IRON OXIDE (DUST AND FUME)	1309-37-1
1216 IRON PENTACARBONYL	13463-40-6

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name	CAS Number
1217 IRON SALTS (SOLUBLE)	NONE
1218 ISOAMYL ALCOHOL	123-51-3
1219 ISOBUTYL ALCOHOL	78-83-1
1220 ISOOCTYL ALCOHOL	26952-21-6
1221 ISOPHORONE	78-59-1
1222 ISOPHORONE DIISOCYANATE	4098-71-9
1223 2-ISOPROPOXYETHANOL	109-59-1
1224 ISOPROPYL ACETATE	108-21-4
1225 ISOPROPYL ALCOHOL	67-63-0
1226 ISOPROPYL ETHER	108-20-3
1227 ISOPROPYL GLYCIDYL ETHER	4016-14-2
1228 ISOPROPYLAMINE	75-31-0
1229 N-ISOPROPYLANILINE	643-28-7
1230 KAOLIN, TOTAL DUST	NONE
1231 KETENE	463-51-4
1232 LIMESTONE, TOTAL DUST	NONE
1233 MAGNESITE, TOTAL DUST	NONE
1234 MAGNESIUM OXIDE FUME	1309-48-4
1235 MALATHION	121-75-5
1236A MANGANESE, FUME	7439-96-5
1237 MANGANESE CYCLOPENTADIENYL TRICARBONYL	12079-65-1
1238 MANGANESE TETROXIDE	1317-35-7
1239 MARBLE, TOTAL DUST	1317-65-3
1240 MERCURY (ARYL AND INORGANIC COMPOUNDS)	7439-97-6
1241 MERCURY (VAPOR)	7439 97 6
1242 MERCURY, (ORGANO) ALKYL COMPOUNDS	7439-97-6

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name	CAS Number
1243 MESITYL OXIDE	141-79-7
1244 METHACRYLIC ACID	79-41-4
1245 METHOMYL (LANNATE)	16752-77-5
1246 METHOXYCHLOR	72-43-5
1247 4-METHOXYPHENOL	150-76-5
1248 METHYL 2-CYANOACRYLATE	137-05-3
1249 METHYL ACETATE	79-20-9
1250 METHYL ACETYLENE/PROPADIENE MIXTURE	74-99-7
1251 METHYL ACRYLONITRILE	126-98-7
1252 METHYL ALCOHOL	67-56-1
1253 METHYL BROMIDE	74-83-9
1254 METHYL CHLORIDE	74-87-3
1255 METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)	71-55-6
1256 METHYL DEMETON	8022-00-2
1257 METHYL ETHYL KETONE PEROXIDE	1338-23-4
1258 METHYL FORMATE	107-31-3
1259 METHYL IODIDE	74-88-4
1260 METHYL ISOAMYL KETONE	110-12-3
1261 METHYL ISOBUTYL CARBINOL	105-30-6
1262 METHYL ISOPROPYL KETONE	563-80-4
1263 METHYL MERCAPTAN	74-93-1
1264 METHYL N-AMYL KETONE	110-43-0
1265 METHYL PARATHION	298-00-0
1266 METHYL SILICATE	681-84-5
1267 ALPHA METHYL STYRENE	98-83 9
1268 METHYLCYCLOHEXANE	108-87-2

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number	Chemical Name	CAS Number
1269	METHYLCYCLOHEXANOL	25639-42-3
1270	O-METHYLCYCLOHEXANONE	583-60-8
1271	METHYLCYCLOPENTADIENYL MN TRICARBONYL	12108-13-3
1272	METHYLENE BIS (4-CYCLOHEXYLISOCYANATE)	5124-30-1
1273	4,4'-METHYLENE BIS(2-CHLOROANILINE)	101-14-4
1275	METRIBUZIN	21087-64-9
1276	MICA	12003-38-2
1277	MINERAL WOOL FIBER	NONE
1278	MOLYBDENUM (INSOLUBLE COMPOUNDS)	7439-98-7
1279	MONOCROTOPHOS (AZODRIN)	6923-22-4
1280	MONOMETHYL ANILINE	100-61-8
1281	MORPHOLINE	110-91-8
1282	NAPHTHALENE	91-20-3
1283	NICKEL (SOLUBLE COMPOUNDS)	7440-02-0
1284	NICKEL CARBONYL	13463-39-3
1286	NITRIC ACID	7697-37-2
1287	P-NITROANILINE	100-01-6
1288	P-NITROCHLOROBENZENE	100-00-5
1289	NITROGEN DIOXIDE	10102-44-0
1290	NITROGLYCERIN	55-63-0
1291	2-NITROPROPANE	79-46-9
1292	NITROTOLUENE	1321-12-6
1293	NONANE	111-84-2
1294	NUISANCE PARTICULATES, TOTAL DUST	NONE
1295	OCTACHLORONAPHTHALENE	2234-13 1
1296	OCTANE	111-65-9

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number	Chemical Name	CAS Number
1297	OIL MIST (MINERAL)	8012-95-1
1298	OSMIUM TETROXIDE	20816-12-0
1299	OXALIC ACID	144-62-7
1300	OXYGEN DIFLUORIDE	7783-41-7
1301	OZONE	10028-15-6
1302	PARAFFIN WAX FUME	8002-74-2
1303	PARAQUAT, RESPIRABLE DUST	4685-14-7
1304	PENTABORANE	19624-22-7
1305	PENTAERYTHRITOL, TOTAL DUST	115-77-5
1306	PENTANE	109-66-0
1307	2-PENTANONE (METHYL PROPYL KETONE)	107-87-9
1308	PERCHLOROETHYLENE	127-18-4
1309	PERCHLORYL FLUORIDE	7616-94-6
1310	PERLITE	NONE
1312	PETROLEUM DISTILLATES (NAPHTHA)	8002-05-9
1313	PHENOTHIAZINE	92-84-2
1314	PHENYL ETHER (VAPOR)	101-84-8
1315	PHENYL GLYCIDYL ETHER	122-60-1
1316	PHENYL MERCAPTAN	108-98-5
1317	PHENYLHYDRAZINE	100-63-0
1318	PHENYLPHOSPHINE	638-21-1
1319	PHORATE (THIMET)	298-02-2
1320	PHOSDRIN (MEVINPHOS)	7786-34-7
1321	PHOSPHINE	7803-51-2
1322	PHOSPHORIC ACID	7664-38 2
1323	PHOSPHORUS OXYCHLORIDE	10025-87-3

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name	CAS Number
1324 PHOSPHORUS PENTASULFIDE	1314-80-3
1325 PHOSPHORUS TRICHLORIDE	7719-12-1
1326 PHTHALIC ANHYDRIDE	85-44-9
1327 M-PHTHALODINITRILE	626-17 5
1328 PICLORAM (TORDOM)	1918-02-1
1329 PICRIC ACID	88-89 1
1330 PIPERAZINE DIHYDROCHLORIDE	142-64-3
1331 PLASTER OF PARIS, TOTAL DUST	NONE
1332 PLATINUM, METAL	7440-06-4
1333 PORTLAND CEMENT	65997-15-1
1334 POTASSIUM HYDROXIDE	1310-58-3
1335 PROPARGYL ALCOHOL	107-19-7
1336 PROPIONIC ACID	79-09-4
1337 PROPOXUR (BAYGON)	114-26-1
1338 N-PROPYL ACETATE	109-60-4
1339 PROPYL ALCOHOL	71-23-8
1340 N-PROPYL NITRATE	627-13-4
1341 PROPYLENE DICHLORIDE	78-87-5
1342 1,2-PROPYLENE GLYCOL DINITRATE	6423-43-4
1343 PROPYLENE GLYCOL MONOMETHYL ETHER	107-98-2
1344 PROPYLENE OXIDE	75-56-9
1346 RESORCINOL	108-43-3
1347 RHODIUM (METAL FUME & INSOLUBLE COMPOUNDS)	7440-16 6
1348 RHODIUM (SOLUBLE SALTS)	7440-16-6
1349 RONNEI	299 84 3
1350 ROSIN CORE SOLDER PYROLYSIS PRODUCI (AS HCHO)	NONE

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S Number/Chemical Name	CAS Number
1351 ROUGE, TOTAL DUST	NONE
1352 SILICA, AMORPHOUS, DIATOMACEOUS EARTH	68855-54-9
1353 SILICA, AMORPHOUS, PRECIPITATED OR GEL	NONE
1354 SILICA, CRYSTALLINE-CRISTOBALITE	14464-46-1
1355 SILICA, CRYSTALLINE QUARTZ, RESPIRABLE	14808-60-7
1356 SILICA, CRYSTALLINE TRIDYMITE	15468-32-3
1357 SILICA, CRYSTALLINE TRIPOLI (AS QUARTZ DUST)	1317-95-9
1358 SILICA, FUSED	60676-86-0
1359 SILICON	7440-21-3
1360 SILICON CARBIDE	409-21-2
1361 SILICON TETRAHYDRIDE	7803-62-5
1362 SILVER, METAL, DUST, AND FUME	7440-22-4
1363 SOAPSTONE, TOTAL DUST	NONE
1363A SOAPSTONE, RESPIRABLE DUST	NONE
1364 SODIUM AZIDE	26628-22-8
1365 SODIUM BISULFITE	7631-90-5
1366 SODIUM FLUOROACETATE	62-74-8
1367 SODIUM HYDROXIDE	1310-73-2
1368 SODIUM METABISULFITE	7681-57-4
1369 STARCH, TOTAL DUST	NONE
1371 STODDARD SOLVENT	8052-41-3
1372 STYRENE (PHENYLETHYLENE)	100-42-5
1373 SUBTILISINS (PROTEOLYTIC ENZYMES)	9014-01-1
1374 SUCROSE, TOTAL DUST	57-50-1
1375 SULFUR DIOXIDE	7446 09 5
1376 SULFUR MONOCHLORIDE	10025-67 9

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S Number/Chemical Name		CAS Number
1377	SULFUR PENTAFLUORIDE	5714-22-7
1378	SULFUR TETRAFLUORIDE	7783-60-0
1379	SULFURYL FLUORIDE	2699-79-8
1380	SULPROFOS	35400-43-2
1381	TALC (NON-ASBESTIFORM)	14807-96-6
1382	TANTALUM	7440-25-7
1383	TEMEPHOS	3383-96-8
1384	TERPHENYLS	26140-60-3
1385	1,1,2,2-TETRACHLOROETHANE	79-34-5
1386	TETRAETHYL LEAD	78-00-2
1387	TETRAHYDROFURAN	109-99-9
1388	TETRAMETHYL LEAD	75-74-1
1389	TETRASODIUM PYROPHOSPHATE	7722-88-5
1391	4,4'-THIOBIS (6-TERT-BUTYL-M-CRESOL)	96-69-5
1392	THIOGLYCOLIC ACID	68-11-1
1393	THIONYL CHLORIDE	7719-09-7
1394	TIN (ORGANIC COMPOUNDS)	7440-31-5
1395	TIN OXIDE	18282-10-5
1396	TITANIUM DIOXIDE	13463-67-7
1397	TOLUENE	108-88-3
1398	TOLUENE-2,4-DIISOCYANATE	584-84-9
1399	O-TOLUIDINE	95-53-4
1400	P-TOLUIDINE	106-49-0
1401	M-TOLUIDINE	108-44-1
1402	TRIBUTYL PHOSPHATE	126-73-8
1403	1,1,2 TRICHLORO-1,2,2 TRIFLUOROETHANE	76-13-1

TABLE I-E. List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name		CAS Number
1404	TRICHLOROACETIC ACID	76-03-9
1405	1,2,4-TRICHLOROBENZENE	120-82-1
1406	TRICHLOROETHYLENE	79-01-6
1407	1,2,3-TRICHLOROPROPANE	96-18-4
1408	TRIETHYLAMINE	121-44-8
1409	TRIMELLITIC ANHYDRIDE	552-30-7
1410	TRIMETHYL PHOSPHITE	121-45-9
1411	TRIMETHYLAMINE	75-50-3
1412	TRIMETHYLBENZENE	25551-13-7
1413	2,4,6-TRINITROTOLUENE (TNT)	118-96-7
1414	TRIORTHOCRESYL PHOSPHATE	78-30-8
1415	TRIPHENYL AMINE	603-34-9
1416	TUNGSTEN & COMPOUNDS (INSOLUBLE)	7440-33-7
1417	TUNGSTEN & COMPOUNDS (SOLUBLE)	7440-33-7
1418	URANIUM (INSOLUBLE COMPOUNDS)	7440-61-1
1419	URANIUM (SOLUBLE COMPOUNDS)	7440-61-1
1420	N-VALERALDEHYDE	110-62-3
1421	VANADIUM (V_2O_5, DUST)	7440-62-2
1422	VANADIUM (V_2O_5, FUME)	7440-62-2
1423	VEGETABLE OIL MIST	NONE
1424	VINYL ACETATE	108-05-4
1425	VINYL BROMIDE	593-60-2
1426	VINYL CYCLOHEXENE DIOXIDE	106-87-6
1427	VINYL TOLUENE	25013-15-4
1428	VINYLIDENE CHLORIDE	75-35-4
1429	VM & P NAPHTHA	8032-32-4

TABLE I-E: List of Substances for Which ACGIH Recommendation Differs From OSHA's Current Standard (continued)

H.S. Number/Chemical Name	CAS Number
1430 WELDING FUMES (TOTAL PARTICULATE)	NONE
1430a WOOD DUST, HARD WOOD	NONE
1430b WOOD DUST, SOFT WOOD	NONE
1431 XYLENE (O,M,P-ISOMERS)	1330-20-7
1432 M-XYLENE-ALPHA,ALPHA'-DIAMINE	1477-55-0
1433 XYLIDINE	1300-73 8
1434 ZINC STEARATE	557-05-1
1435 ZINC CHLORIDE FUME	7646-85-7
1436 ZINC CHROMATES (CrVI)	13530-65-9
1437 ZINC OXIDE (FUME)	1314-13-2
1438 ZINC OXIDE, TOTAL DUST	1314-13-2
1439 ZIRCONIUM COMPOUNDS	7440-67-7

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F. Identification of Substances Requiring Special Attention

As previously noted, the substances to be considered in this proposed rulemaking are defined by the aodpted 1987–88 ACGIH TLV's. The use of some boundary for this rulemaking is necessary to avoid the impossible task of considering over 100,000 chemicals which exist in U.S. workplaces. Use of a single source to identify such a boundary is necessary to provide a clearly defined reference point for additional analyses. Since the 1968 ACGIH TLV's were used (through the Walsh-Healey Act) as the primary basis for the existing Z-Tables adopted in 1971, and since the 1987–88 TLV's represent the most extensive data base available (as described in a previous section of the preamble), selection of the TLV's to satisfy the objective of setting a boundary, is appropriate.

While the adopted 1987–88 ACGIH TLV's define the boundaries for this proposed rulemaking, the OSHA analysis (previously described) will consider both the 1987–88 ACGIH TLV's and NIOSH REL's as the potential alternatives for selecting replacements for the existing OSHA PEL's noted in the § 1910.1000 Z-Tables, or expansion of these Z-Tables.

Twenty or more years have elapsed since the TLV's forming the basis for OSHA's PEL values were set. During the interim, a great deal of knowledge has been gained regarding the hazards of these and other substances generally found in the workplace. Control technologies have evolved during this same time, altering previous standards of feasibility for workplace exposures.

OSHA realizes that while this proposal represents a major improvement in health protection, it is also necessary that OSHA evaluate the appropriateness of the individual TLV's or REL's OSHA should also identify any individual substances which will require: (1) Special attention as part of this rulemaking, or (2) follow-up rulemaking activities.

Of the 428 substances considered in this proposed rulemaking, approximately 75 involved changes to the existing OSHA TWA; approximately 70 involve the addition of, or changes to, a STEL in conjunction with an existing PEL; approximately 25 involve changes to both the TWA and STEL; and 205 involve establishment of some allowable exposure limit where none existed before. These four categories cover most of the 428 substances to be covered by this proposal.

In most instances, proposed new PELs establish lower permissible exposure limits or establish expesure limits where none existed before. In a very limited number of instances, however, the permissible exposure limits could be increased in keeping with the best current judgment regarding toxicity, hazard, and risk for the specific substance in question. In those instances, OSHA will ascertain that the legal requirements for increasing an established PEL are satisfied. The details of this requirement are noted in that part of section IV of this preamble dealing with substances falling within this category.

Since two independent sources will be used to develop new PEL's it is necessary to indicate what criteria will be used to identify substances where the TLV and REL "differ significantly." These substances will undergo additional analyses to resolve the different recommendations. For this rulemaking a "significant difference" is presumed *NOT* to exist when:

(a) The TLV and REL values are the same.

(b) TLV and REL values differ by less than 10%.

(c) The TLV and REL Time Weighted Averages (TWA) are the same, but there are differences in the Short Term Exposure Limit (STEL) or Ceiling (C).

(d) The TWA in one data base is the same, or one-half, the STEL/C in the other data base.

OSHA realizes that (c) and (d) represent simplification of the standard setting analysis. For both (b) and (c) situations, the TLV values will be used since they represent a logical extension of the existing Z-Tables, which are based on the 1968 TLV's. This approach is intended to facilitate the proposed changes for a large number of substances. Evidence may be introduced into the record which will permit further analysis of these situations. OSHA will consider comments on this procedure prior to final rulemaking. Based on comments, priorities and administrative resources, OSHA will consider if proposing further refinements in the future is appropriate.

For situation (d), the data base providing a TWA value will be used, since this type of limit represents a more typical exposure monitoring situation. This will result in the adoption of PEL's based either on a TLV or REL.

On the basis of these criteria, Table I–F–A lists 35 substances where there is a "significant difference" between the TLV and the REL, and the REL is lower than the TLV. Table I–F–B lists 9 substances for which there is a "significant difference", and the REL is higher than the TLV. Individual evaluations will be performed by OSHA for each of the substances listed in these Tables.

The approach of using primarily exposure limits from two well-established sets of guidelines carries with it the responsibility for OSHA to determine also which of these limits is appropriate in light of the statutory and legal requirements that OSHA must satisfy. OSHA describes in the following text these circumstances where consideration of other factors may be appropriate. OSHA requests comments on these proposed circumstances and/or the alternate procedures for handling these situations (described in section I–G).

To satisfy these requirements, and complete the objectives of revision and expansion for a large number of exposure limits in a reasonable time period, OSHA will identify two special situations by comparing the ACGIH TLV's with exposure limit guidelines developed by: (1) United Kingdom 1987 Occupational Exposure Limits (OEL); (2) West German—1985 Maximum Allowable Concentrations (MAK); (3) Japanese Permissible Exposure Limits—1983; (4) Swedish-Allowable Workplace Air Concentrations—1984. OSHA will consider the significance of differences among these sources, and take appropriate action in each case. Use of the TLV's as a reference point for this comparison is dictated by the fact that the TLV's define the boundary for the substances to be considered in this proposed rulemaking, and any significant differences between the TLV's and REL's are considered in the evaluation previously noted for substances listed in Tables I–F–A and I–F–B.

OSHA proposes to identify these two special situations as follows:

(a) At least three of the four alternate data bases recommend allowable exposure limits that are less than the 1987–88 ACGIH-TVL's. Five substances fall into this category, and are identified in Table I–F–C. This criterion avoids undue consideration of any single low proposed exposure limit, and identifies those instances where there is reasonable uncertainty regarding the proper levels which will improve worker protection. One of these substances noted in Table I–F–C is also identified in Table I–F–B.

(b) At least three of the four alternate data bases recommend allowable exposure limits which are *greater* than the 1987–88 ACGIH-TVL's. Ten substances fall into this category, and these are identified in Table I–F–D. Two of the substances noted in Table I–F–D are also noted in Table I–F–B and four

of these substances are listed in Table I–F–A.

Special situations are also indicated for the following three circumstances:

(c) The 1987–88 TLV exceeds the existing PEL. When considering these substances, OSHA will ascertain that the legal requirements detailed in the cotton dust preamble (50 FR 511 32–3, Dec. 13, 1985) for increasing or eliminating an existing PEL are satisfied. Analyses of these situations are detailed in that part of section IV which discusses substances for which current ACGIH TLV's are less stringent than current OSHA limits.

(d) The available analytical and sampling methods are not adequate to measure the air concentrations of a specific chemical. OSHA has reviewed this concern and has identified 7 substances for which adequate sampling and analytical methods are not available. These are listed in Table I-F-E and details regarding analytical procedures are provided in Appendix A. OSHA will consider if rulemaking can proceed for such substances, with final implementation being deferred until OSHA or others develop the necessary sampling and analytical procedures.

(e) Substances for which recent information suggests that the 1987–88 TLVs or REL's may not be appropriate. OSHA will consider this aspect prior to final rulemaking if the hearing record provides relevant additional information. This category may include substances such as carcinogens, which have implicit or explicit recommendations to maintain exposures to levels which are: As low as feasible; as low as detectable; minimal; as low as practical; etc. Clearly, the use of detection limits as a PEL does not fully consider the feasibility issue. OSHA preliminarily believes that such substances cannot be considered in this rulemaking without greatly extending the decision process, and inordinately delaying changing the PEL's for 428 substances. Therefore, it would be more appropriate to proceed only on the basis of available, quantitative information provided by the TLV's or REL's. OSHA intends future consideration, using individual rulemaking, for such substances.

OSHA invites public comments on the five special situations identified. OSHA also is interested in learning of any chemicals which should be added to, or deleted from the listing in Tables I-F-A through I-F-E. Such suggestions should clearly indicate the basis and supporting data for any requested changes.

Table I-F-A

Significant Difference between REL and TLV REL lower than TLV

1. Acetone
2. Acetonitrile
3. Beryllium and its compounds
4. n-Butyl glycidyl ether
5. Carbon disulfide
6. Carbon monoxide
7. Carbon tetrachloride
8. Chlorine
9. Chloroform
10. Chloroprene
11. Chromic acid and chromates, non-carcinogenic
12. Dioxane
13. Ethylene dichloride
14. Ethylene glycol dinitrate
15. Fibrous glass dust
16. n-Heptane
17. Hexane isomers
18. 2-Hexanone (methyl n-butyl ketone)
19. Hydrazine
20. Hydrogen cyanide
21. Mercury (aryl and inorganic compounds)
22. Mesityl oxide
23. Methyl propyl ketone
24. Nickel (soluble compounds)
25. Nitroglycerin
26. Nitrogen dioxide
27. Octane
28. Pentane
29. Petroleum distillates (naphtha)
30. Phenylhydrazine
31. Silica, crystalline quartz, respirable
32. Sulfur dioxide
33. Trichloroethylene
34. Vinyl acetate
35. Zinc chromate

Table I-F-B

Significant Difference Between REL and TLV REL Higher than TLV

1. Acrylamide
2. Ammonia
3. Carbon dioxide
4. Furfuryl alcohol
5. n-Hexane
6. Isophorone diisocyanate
7. Malathion
8. Methyl n-amyl ketone
9. Stoddard solvent

Table I-F-C

Substances Requiring Special Attention

At least three data base exposure limits are less than the ACGIH TLV's.

1. Furfuryl alcohol
2. Methyl chloroform
3. Selenium
4. Tetraethyl lead
5. Tetramethyl lead

Table I-F-D

Substances Requiring Special Attention

At least three data base exposure limits are greater than the ACGIH TLV's.

1. Acrylamide
2. Carbon tetrachloride
3. Cobalt
4. Ethylene glycol dinitrate
5. Furfural
6. n-Hexane
7. Methylene chloride
8. Nitroglycerin
9. Toluene di-isocyanate
10. Zinc chromate

Table I-F-E

Substances Requiring Special Attention

Inadequate Analytical or Sampling Methods

1. Aluminum alkyls
2. Cyanamide
3. Ethylidene norbornene
4. Hexafluoroacetone
5. Mercury (alkyl compounds)
6. Subtilisins
7. Sulfur pentafluoride

G. Alternate Procedures for Dealing with Substances Requiring Special Attention

In previous sections of this preamble, OSHA has indicated an approach where different recommendations exist for an individual TLV or REL. For these substances an extended analysis of the health and feasibility data was performed to determine which level will be proposed. Evaluation of feasibility and significance of risk are statutory requirements which OSHA must follow. The absence of any evidence indicating these requirements are satisfied would preclude OSHA from adopting a PEL. Therefore, permissible exposure levels cannot be adopted if they are primarily based on limits of detection, or similar concepts, unless OSHA's legal requirements are satisfied.

OSHA is also considering three possible alternative procedures for the substances categorized according to the criteria previously described, as requiring special attention (Tables I–F–C, and I–F–D). Any additional substances which may be identified during the rulemaking process as requiring special attention may receive similar treatment.

The first alternative would be to review in depth all the available health effects data for each of these substances, the data and reasoning which lead to the different allowable exposure limits, the criteria of the organization providing each recommendation, relative dates of adoption, and the applicability of supporting data to typical workplaces in the United States. Based on this analysis, OSHA could adopt either the REL, TLV or some other recommended or other allowable exposure limit. This would require preparation of numerous mini-standards, a major time commitment by OSHA, and would probably result in a significant delay in the adoption of 428 new or revised permissible exposure limits proposed in this rulemaking.

A second approach would be to identify the substances noted in Section I–F–, Tables C, and D, (plus any additional substances identified during the rulemaking process) as requiring possible individual follow-up evaluation and possible separate rulemaking but adopt the proposed PEL or another level if clear evidence is presented to the record. This approach would: permit prompt updating and expansion of all the PEL's noted in the Z–Tables on the basis of either the TLV or REL; use the current rulemaking analyses to identify chemicals requiring priority consideration regarding their PEL; and reduce conflicts among the several allowable exposure guidelines which currently face many industrial health protection organizations. Future rulemaking based on OSHA priorities could consider the necessary and appropriate refinements based on all the available evidence.

A third approach would be to maintain the current OSHA PEL's for the substances noted in Section I–F, Tables C, and D (plus any additional substances identified during the rulemaking process), while revising the remaining substances on the basis of TLV or REL guidance. These unchanged substances would then be identified for future follow-up evaluations and possible separate rulemaking under 6(b) provisions. This is similar to the second approach but without benefit of the updating process.

OSHA invites comments on these three options and others, so they can be considered in the final rulemaking. OSHA initially believes that the second approach is the best option since it promptly provides health protection for over 400 substances of concern, when the evidence indicates it is needed.

The substances identified in Table I–F–E, where OSHA is not aware of an adequate analytical method, present a different situation. OSHA is considering issuing the proposed new PEL's if supported by the record on health and feasibility grounds. OSHA would also consider staying these PEL's until an analytical procedure becomes available. OSHA requests comments on this, or alternate approaches.

H. Construction, Maritime and Agriculture Segments

Currently the exposure limits which apply to construction are the ACGIH Threshold Limit Values of Air Contaminants for 1970 and certain substance specific section 6(b) standards. See 29 CFR 1926.55, 58 and 29 CFR 1910.19. OSHA is to consult with the Advisory Committee on Construction Safety and Health prior to proposing new standards that have a major impact on construction. See 29 CFR 1911.10(a). OSHA is in the process of consulting with the Construction Advisory Committee. After receiving their recommendations, OSHA intends to propose amendments covering exposures to toxic substances in construction reflecting the facts in this proposal and the views of the Construction Advisory Committee.

Parts 1916, 1917 and 1918 of 29 CFR cover, respectively, employment in shipyards, marine terminals and longshoring. Part 1916 for shipyards references the 1970 TLV's of the ACGIH. See 29 CFR 1915.5 and 1915.12 (b)(3). Part 1917 for marine terminals references the current Z–Tables. See 29 CFR 1917.2(p), and 1917.23. Part 1918 for longshoring refers to "dangerous gaseous contaminants not immediately dangerous to life" and "heavy concentrations of dusts." See 29 CFR 1918.93 (e) and (f). Certain substance specific section 6(b) standards also cover these industries. See 29 CFR 1910.18.

OSHA, as part of the rulemaking covering construction, intends to consider applying this proposal to the maritime sectors.

Subpart Z of 29 CFR Part 1910, and the included Z–Tables specifically do not apply to Agriculture. See 29 CFR 1928.21(b). In addition, many of the chemicals which affect agriculture are pesticides regulated by the EPA over which OSHA may not have jurisdiction, pursuant to section 4(b)(1) of the OSHA Act. In the future OSHA will consider based on relevance, priorities and administrative resources if it is appropriate to consider coverage for agriculture.

II. Pertinent Legal Authority

The publication of a final standard is authorized by sections 6 and 8 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655 and 657. Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents.

It states:

> The Secretary in promulgating standards dealing with toxic materials or harmful physical agents under this subsection shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Section 3 (8) defines an occupational safety and health standard as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

The Supreme Court has held under the Act that the Secretary, before issuing any new standard, must determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980). The Court stated that "' * * before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices" (448 U.S. at 642). The Court also stated "that the Act does limit the Secretary's power to require the elimination of significant risk" (448 U.S. 644, n. 19).

The Court indicated, however, that the significant risk determination is "not a mathematical straitjacket," and that "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge (and that) * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection rather than under protection" (448 U.S. at 655, 655).

The Court also stated that "while the Agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." (488 U.S. at 655, n. 62).

After OSHA determines that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set a standard which is technologically and economically feasible. In *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981) the Supreme Court held that "cost-benefit analysis is not required by statute because feasibility analysis is" (452 U.S. 531, n. 32). For non-threshold toxic substances, the aim is to set the lowest feasible level necessary to eliminate significant risk.

As stated above in the history and approach sections of the preamble, OSHA has concluded that updating the Z-tables to reflect recent information is the highest priority for the Agency. This will reduce exposure limits for approximately 200 substances regulated currently by the Z-tables and add exposure limits for approximately 200 substances. The health literature indicates this must be accomplished to improve worker health: it is one of Congress's concurrent goals and will greatly increase occupational health protection for a very large number of workers.

In order to accomplish this high priority task in a reasonable time in the light of limited administrative resources, it is necessary to narrow somewhat the issues to be faced by the agency in this proceeding. Consequently, it is necessary to delay other worthwhile goals and concurrent Congressional purposes to a later stage.

This approach is consistent with general principles of administrative law. An agency may set priorities within the framework of its statutory authority. Secondly, an Agency may take substantial steps towards its statutory goals without having to achieve them completely at the first stage, when agency resources are not sufficient to complete all aspects initially.

Section 6(g) of the OSHA Act clearly indicates that OSHA has authority to set priorities among competing occupational health and safety goals. It states:

> In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

Several Court decisions recognize that OSHA has some discretion in setting priorities. For example, the District of Columbia Circuit Court stated,

> The Act has built in flexibilities that the Secretary may use, such as his right to initially determine whether or not there will be a standard; what the standard will be; the priorities between the various occupations that may require standards; the altering and changing of those priorities even though once set; the forgiving of inaction where the Secretary makes a contemporaneous statement of reasons; the right to delay hearings; to process higher priority standards more quickly than initiated ones . . . Since the Congress left such open-ended discretion in the Secretary at many key points in the Act, including Section 6(g) we find implicit acknowledgement that traditional agency discretion to alter priorities and defer action due to legitimate statutory considerations was preserved. *National Congress of Hispanic Cit.* v. *Usery* 554 F. 2d 1196, 1199–1200. (1977). See also *National Cong.* v., *Marshall*, 626 F. 2d 882, 889 (1979).

Similarly, the Court stated, in regard to delaying a relevant decision to a later stage, in *Natural Resources Defense Council* v. *S.E.C.*, 606 F. 2d 1031 (1979) that,

> Deference to the SEC's decision to consider environmental disclosure in another proceeding is in our view, appropriate. Our discussion of the scope of review of agency rulemaking shows that the quasi-legislative nature of rulemaking requires even greater agency freedom to manage and structure decisionmaking than is required in licensing or adjudication. (1056)

It also stated,

> the Agency alone is cognizant of the many demands on its, its limited resources, and the most effective structuring and timing of proceedings to resolve those competing demands. An agency is allowed to be master of its own house, lest effective agency decistonmaking not occur in any proceeding: and judicial review awaits the agency's conclusion of its proceedings. See Myers v. Bethlehem Shipbuilding Corp., 303 U.I.S. 41, 58 S.CT 459, 82L.ED. 638 (1938), (p. 1056)

Within this context the ACGIH's Threshold Limit Values and NIOSH Recommended Exposures Limits have been used in determining the substances to give priority to in this proceeding. They have also been used as a starting point for OSHA's significant risk and feasibility analysis. See also the other criteria used which are discussed in the "History" and "Additional Factors" sections.

Secondly, OHSA has concluded that setting exposure limits for these chemicals has priority at this stage over exploring the need for accompanying medical surveillance, monitoring and industrial hygiene provisions. Section 6(b)(7) of the Act, of course, indicates that "where appropriate" such provisions are to be included. That was a concurrent goal of Congress as was Congress' goal to lower exposure for the many unregulated or inadequately regulated substances when scientific data indicates lower exposures are needed.

OSHA has inadequate time to accomplish both goals at this time. Lowering exposures is a higher priority because it is more effective in reducing diseases and material impairments of health.

OSHA has already addressed some of section 6(b)(7)'s goals, labels and warnings, in the Hazard Communication Regulation, 29 CFR 1910.1200 for all substances. It is working on a standard to improve respirator use for all chemicals (47 FR 20603). It is considering generic regulation for monitoring and medical surveillance. OSHA does not have the resources to conclude this rulemaking in any reasonable time, and also consider these issues.

OSHA will meet its statutory requirements to determine whether the proposed new levels substantially reduce significant risk and are feasible. OSHA's risk assessments are briefer than has been the case for rulemakings limited to single sustances. Elaborate and detailed risk assessments for these 428 substances which are generally recognized as needing new limits, would make it impossible for OSHA to address these hazards in any reasonable time period.

Many of the exposure limits are based on moderate safety factors below levels which human or animal studies report "no observed effect" (sometimes called a "threshold"). Incorporation of a moderate safety factor does not result in setting a limit below which significant risk is eliminated. Many of the studies are of small scale and do not have the scientific quality (statistical power) to demonstrate that a "no observed effect level" has been shown. In many instances interpretation of health effects studies must account for inter-species and intra-species variability, and the lack of statistical power.

Finally, when the reported no-effect level is based on animal date, consideration must be given to the fact that humans may be more or less sensitive than the animals. All experts in this situation recommend setting an exposure limit which includes a safety factor from the reported no observed effect level in animals. Therefore, a moderate safety factor below the level which is hypothesized, or reported as demonstrating no observed effect, does not put OSHA in the position of proposing a limit below the level where there is insignificant risk.

In this rulemaking, OSHA is also proposing new exposure limits for some possible carcinogens and some other chemicals for which there may be a remaining significant risk. It is possible that much more detailed analysis or new data might find that a lower limit than OSHA proposed would both reduce remaining significant risk and be feasible.

However, OSHA preliminarily believes that to address those questions in this rulemaking would significantly delay completion of this rulemaking which substantially improves health protection for many millions of workers.

OSHA's experience in ethylene oxide, benzene, formaldehyde, asbestos and other such substances, indicates that these issues take a large amount of administrative and scientific resources for each substance. Consequently, OSHA preliminarily concludes that it is appropriate to complete this action as first priority. In the future, based on priorities, OSHA will explore the issue that for some substances lower limits might be determined to be appropriate after more extensive analysis.

III. Glossary

The following terms and acronyms appear in the proposed standard and the preamble supporting it. This glossary is provided as a convenience to the reader.

ACGIH—American Conference of Governmental Industrial Hygienists.

CHRIS—Chemical Hazard Response Information System, a data base developed for use by the U.S. Coast Guard.

HSDB—Hazardous Substances Data Bank, a data base developed by the National Library of Medicine.

IARC—International Agency for Research on Cancer.

ILO—The International Labor Organization, and agency of the United Nations.

IMIS—The Integrated Management Information System, a source of enforcement data developed by and for OSHA.

MSDS—Material Safety Data Sheet, a means of disseminating risk information and safe handling information to workers; it is required by OSHA's Hazard Communication Standard (29 CFR 1910.1200).

NIOSH—The National Institute for Occupational Safety and Health, a research agency located within the Department of Health and Human Services.

NOES—National Occupational Exposure Survey, a compilation of data about the prevalence of certain chemicals in workplaces based on a survey of some 4000 workplaces.

OCIS—OSHA Computerized Information System, a data base containing records of laboratory analyses of air contaminant samples, gathered during OSHA inspections.

OSHA HS Number—OSHA has identified each substance considered in their rulemaking with a unique 4-digit number, referred to as the "Health Standard (HS) number." This step was taken for ease of reference and convenience of readers.

PEL—Permissible Exposure Limit, the exposure limits contained in OSHA's air contaminant standard. (See "Z-Tables")

REL—Recommended Exposure Limit, produced by NIOSH and publicized through Criteria Documents and Current Intelligence Bulletins.

RTECS—Registry of Toxic Effects of Chemical Substances, a NIOSH publication.

TLV—Threshold Limit Value, a recommended exposure limit produced by the ACGIH.

TSCA—Toxic Substances Control Act, administered by the Environmental Protection Agency, EPA.

WHO—World Health Organization, an agency of the United Nations.

IV. Substances to be Regulated

A. General Principles of Toxicology and Dose-Response

As long ago as the 16th century, people recognized that there is no such thing as an absolutely safe chemical. The Swiss physician Paracelsus, who live from 1493 to 1541, said:

> All substances are poisons; there is none which is not a poison. The right dose differentiates a poison and a remedy.

On the other hand, methods have been devised to permit any chemical, no matter how poisonous, to be handled safely; this is done either by limiting the dose or controlling the exposure. However, before the necessary degree of control can be determined for a particular exposure or situation, the toxicity of the substance in question must be known. The paragraphs that follow describe the methods used by scientists to measure the relative toxicity of substances and to select exposure limits that will prevent exposed individuals from suffering adverse effects from such exposures. As this discussion demonstrates, methods of choosing exposure limits must, because of the lack or inadequacy of dose-response information for most chemicals, rely heavily on experience in the use of these substances and on scientific and professional judgment.[1]

Chemicals range in inherent toxicity from those that are relatively harmless even after large doses have been administered to others that cause death if encountered even in small quantities. Toxicologists rank chemicals by categories that range from practically non-toxic (an adult human would have to consume a quart) to supertoxic (fewer than 7 drops would be lethal for most people).

In the occupational setting, it is the risk associated with a particular use of a chemical rather than its inherent toxicity that is important. *Risk* can be defined as the probability that a substance will produce harm under certain conditions of use. The converse of risk is *safety*, which is the probability that no harm will occur under specific circumstances.

The degree of hazard associated with exposure to a specific substance depends on the manner in which it is handled in a particular situation: A supertoxic chemical that is processed in a closed, isolated system may be less hazardous in actual use than a relatively low-toxicity compound handled in an open batch process. Another factor affecting the ability of a chemical to elicit a toxic response is the susceptibility of the biological system or individual. For the relative degree of hazard to be known in a particular instance, this requires knowledge about the chemical agent, the exposure situation, and the exposed subject. In addition, the route of administration and the duration and frequency of exposure must be known.

Route of Exposure

There are four principal routes of exposure by which toxic substances can invade humans or animals. These are inhalation, ingestion, dermal absorption, and parenteral administration (i.e., administration through routes other than the intestinal canal). The route of administration of a toxin also affects the relative toxicity of the agent. For example, a chemical that can be detoxified in the liver will be less toxic if it is administered orally than if it is given systemically (i.e., inhaled). Studies that provide information about the relative toxicity of an agent via different routes of exposure can provide a considerable amount of information

[1] The material in this section derives principally from the following sources: Klaassen, Amdur, and Doull, 1986; National Research Council, 1980; and Cohen, 1986a, b.

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about the absorbability of the agent. For example, if exposure to a certain dose of a chemical via all routes of administration causes death within the same time period, it can be assumed that the substance in question is easily and rapidly absorbed. On the other hand, if the dermal dose of a chemical that is required to kill a subject is much higher than the dose required to produce the same effect when the chemical is ingested, one can deduce that the skin provides, to some degree, a barrier against that agent's toxicity. Other, less important elements affecting the response to a toxic substance include the relative concentration of the substance, the volume of the vehicle used to administer the chemical, the chemical and physical properties of the vehicle, and the dose rate, i.e., the period of time over which the dose is administered.

Duration and Frequency of Exposure

Scientists conduct animal experiments that involve four different types of exposure: acute, subacute, chronic, and subchronic. Acute exposures are limited to periods of less than 24 hours and can involve either single or repeated exposures within that period. Subacute exposures are repeated exposures that last for one month or less, while subchronic exposures have a duration of one to three months. When a research project having a chronic regimen is conducted, the test animals are dosed repeatedly for a period lasting more than three months. Animals exposed acutely can have both immediate and delayed-onset responses. Similarly, chronic exposures can cause immediate reactions as well as long-term effects.

The frequency of dosing also has an important influence on the magnitude of the toxic effect: A large single dose of an acute toxin will usually have more than three times the effect of one-third the dose given at three different times, and the same dose administered in 10 or 15 applications might have no effect whatsoever. The pattern of dosing is important because it is possible for some of the substance to be excreted between successive administrations or because the lesion caused by the toxin has a chance to be partially or completely repaired between applications. Thus a chronic effect is said to occur: (1) If a toxic substance accumulates in the system of an exposed person or animal because the dose absorbed is greater than the body's ability to transform or eliminate the substance; (2) if it produces adverse effects that are not reversible; or (3) if it is administered in a manner that permits inadequate time for repair or recovery.

Variation in Response

Responses to toxic insults vary in a number of ways. For example, some toxicants have immediate effects, while other are associated with delayed symptom onset. The latency period for carcinogenic agents may be as long as 40 years for some types of cancer, and even some acute agents, such as some chemicals that have adverse ocular effects, may not cause overt symptoms until hours after exposure.

Another difference in type of response concerns the reversibility or irreversibility of the effect. Reversibility depends on the site of action as well as the magnitude of the insult. That is, some tissues of the body, such as the liver, have considerable ability to regenerate; others, like the kidney or central nervous system, do not.

The site of action associated with toxic substances also varies widely. Local effects are those lesions caused at the site of first contact between the agent and the organisms. Examples of localized effects are skin burns caused by contact with a caustic substance and site-of-contact tumors that develop at the locus of the injection of the carcinogen.

In contrast to localized effects, systemic effects involve the absorption and distribution of the toxic agent from the point of entry to a distant site; the toxic response is manifested at this distant point. An example of a systemic poison is mercury, which produces its toxic effect on the central nervous system. Often, the site of deposition for a chemical is not the organ system most affected by the toxin. For example, although lead is deposited and concentrated in the bone, it affects the central nervous system. Any sites that are adversely affected by the toxic effects of exposure to a substance, whether they are sites of contact or distal sites, are called the target organs of toxicity.

In cases of systemic poisoning, the system most often affected is the central nervous system (CNS); it is common for the CNS to be involved even when another target, such as the liver, is the primary target organ of toxicity. In descending order of frequency, the systems or organs most often involved in cases of systemic poisoning are the central nervous system, the circulatory system, the blood and hematopoietic system, the visceral organs (liver, kidney, lung), and the skin.

Dose-Response

The relationship that associates the dose of a chemical with the effects it causes is called the dose-response relationship. A single data point relating a dose to a response is sufficient to establish a dose-response relationship. As additional data become available, it is possible to expand our understanding of the dose-response relationship to cover a range of doses or exposures. Dose-response is the most important single principle in toxicology, and an understanding of dose-response is important in establishing occupational or other exposure limits. Knowing how toxic substances act makes it easier to predict the potential effects of exposure. (It is, of course, generally true that lowering dose reduces response, and data are often available to demonstrate that lower doses reduce responses, at least on the grossly observable level. However, data showing that more subtle responses, e.g., those at the subcellular level, have been reduced are rarely available.)

To apply dose-response relationships, it is helpful if several types of data are available. First, it must be possible to relate a response to a particular chemical. Although basic data pointing toward causality may be available, it is often difficult to refine the dose-response relationship further. For example, epidemiological studies often identify an association between a disease and one or more causative agents. However, since information on the precise identity of the etiologic agent, the actual dose received, and the true site of the response is usually not available, it is often impossible to use data from epidemiological studies to establish a precise dose-response relation between a specific dose of a toxin and an effect.

The second condition to be met before dose-response can be established is that is must be possible to relate the response to the dose. It is relatively easy to determine that a large dose causes an obvious response. Refining the relationship, however, involves three other requirements: (1) That there be a receptor site; (2) that the response and the intensity of the response be related to the concentration of the toxin at the receptor site; and (3) that the concentration of the toxin at the site be related to the dose given.

The third principle underlying the concept of dose-response is that there be a quantifiable means of measuring the toxicity of a substance and a precise method of expressing this measured toxicity. Although lethality in test animals is often used to measure toxicity, the best form of measurement would involve quantification of the sequence of molecular events occurring during the toxic response. In the absence of such endpoints, other good methods are available. For example, it is common to measure an effect believed to be related to the substance in question. The level of activity of an enzyme in the blood is often used as a measure of effect, e.g., serum glutamic-oxaloacetic transaminase (SGOT) levels are used to measure liver damage. Many different endpoints can be used to measure toxic effects, such as changes in muscle tone, heart rate, blood pressure, electrical activity of the brain, motor functioning, and behavior.

The most widely used endpoint, especially when a new substance is involved, is lethality in an animal test system. Lethality studies allow scientists to make comparative assessments of a chemical's toxicity as it relates to that of many other substances. Research of this type also permits the gathering of essential information on dose, duration, route of administration, site of action, and the target organ of toxicity.

Form of the Response

The classic form of dose-response is sigmoidal (Figure 1). This form characterizes the relationship between the amount of a toxin administered and the degree of response to that dose. The response is measured on the ordinate, and the dose is represented on the abscissa.

Dose-response can be thought of in two ways:

- As exposure increases, the proportion of the population that manifests the response increases;
- As exposure increases, the intensity of the response increases.

A relatively flat dose-response curve means that a large change in dose is required before there is a significant change in response. A step curve, on the other hand, means that a small change in dose will elicit a large increase in response. Although it is sometimes possible to generate a curve of the type shown in Figure 1, it is not necessary to do so to demonstrate that exposure at a given level is associated with a particular response. That is, it is not necessary to have sufficient data to define, in mathematical terms, the dose-response relationship to know that exposure at a given level is associated with adverse consequences.

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Figure 1

Diagram of dose-response relationship

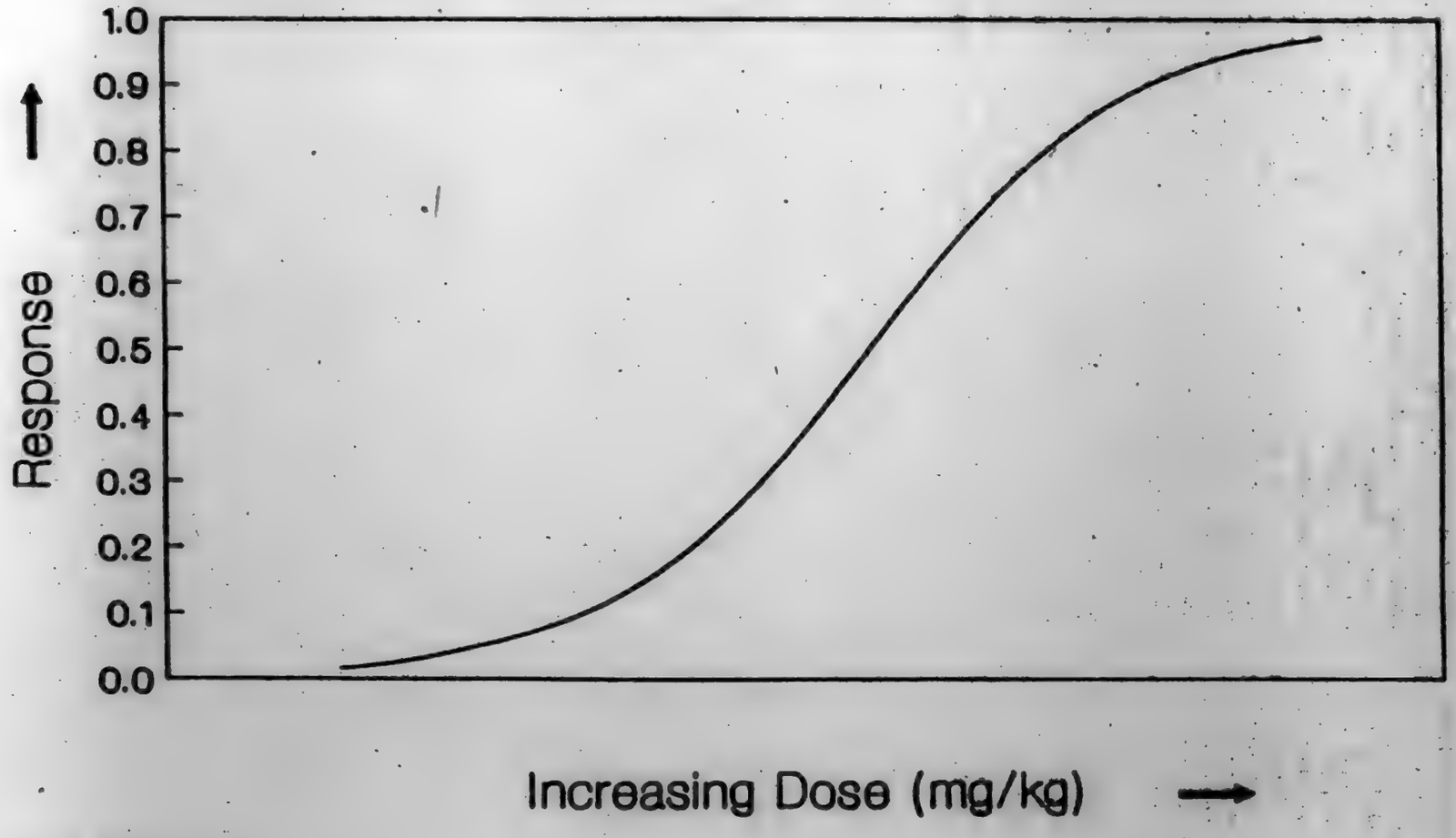

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In the regulatory context, it is most common to express dose-response relations in terms of the percentage of the population responding. However, this information alone is meaningless unless the endpoint being considered is known. For every substance, there are several dose-response relationships, depending on endpoint: A substance that produces irritation at low doses may cause more severe symptoms or even death at high doses and in other conditions. For example, many substances that are mucosal irritants at low doses will produce pulmonary edema and nervous system effects at high doses.

Plotting the cumulative percentage of individuals responding against dose produces the typical sigmoid curve. Such a curve reflects the fact that at the lowest dose, zero percent of the population responds, while 100 percent of the population will respond at the highest dose. However, if the percentage responding is plotted against incremental rather than total dose, the curve produced is abnormal distribution (Figure 2). This curve says that a relatively small percentage of the population will manifest the response at the lowest dose and that a similarly small percentage of the population will exhibit the effect at the highest dose.

What this normal distribution of response reflects is individual and species variation in exposed populations. A wide degree of variation occurs even in inbred, homogeneous laboratory animals, and such variability increases dramatically when a heterogeneous population, such as workers, is involved. Individuals responding at the left end of the curve shown in Figure 2 are hypersusceptible, while those at the right end could be termed resistant.

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Figure 2
Diagram of quantal dose-response relationship

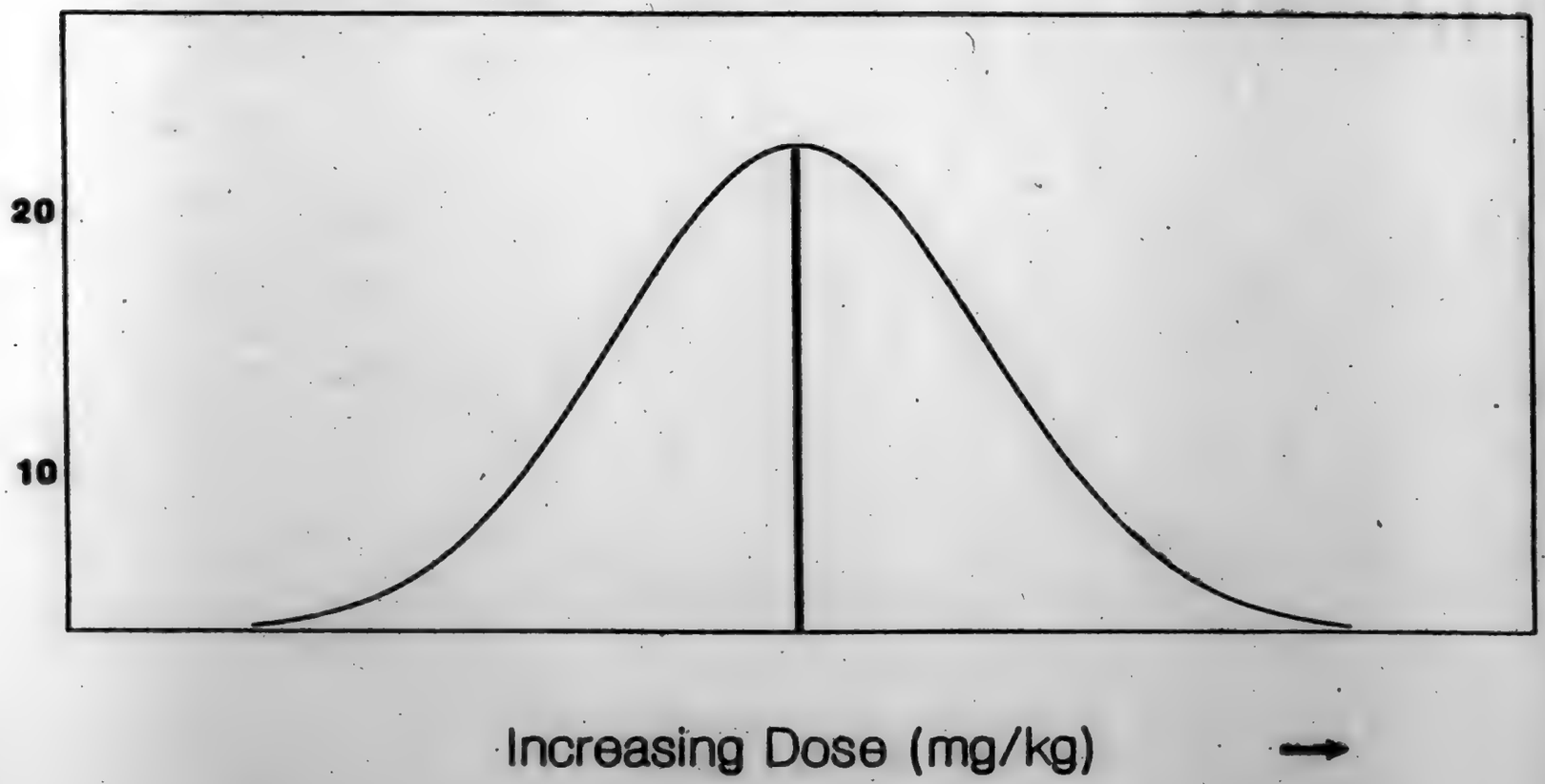

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Because the relationship between dose and response is sigmoidal, response approaches zero as dose approaches zero. However, because of the mathematical form used to express this relationship, a true zero response can never be achieved. In the strictest sense, therefore, a true threshold dose level (i.e., the dose with which a zero response is associated) can never be established on the basis of experimental research. Instead, scientists attempt to define the minimum dose associated with a specific endpoint, which is customarily termed the "threshold" dose for that particular endpoint. However, unless a specific endpoint, such as respiratory irritation, cholinesterase inhibition, the development of a tumor, or death, is specified, the concept of a threshold is essentially meaningless. In fact, a separate threshold could be said to exist for each of these endpoints.

The extent to which an experimentally derived "threshold" actually reflects the true threshold for a substance [i.e., the level above which a response will occur and below which no response will occur) depends on several factors, such as the number of animals used to determine the experimental threshold, the number of dose levels tested, and the degree of variation represented in the test subjects. For example, to determine an LD_{50} (the lethal dose that will kill 50 percent of the animals tested) with a high degree of precision requires the use of a minimum of 50 test animals and 5 dose groups (10 animals in each group). Other factors that can influence the magnitude of the median lethal dose include the sources involved, the sex and age of the animals, the environmental conditions prevailing during the test conditions, diet, the health status of the subjects being tested, and their past exposure to other toxic substances.

In toxicological research, the experimentally observed "threshold" dose is called the low observed effect level (LOEL) or the low observed adverse effect level (LOAEL). Alternatively, the threshold may be expressed as the highest no observed effect level (NOEL), i.e., the highest dose administered and found not to produce a given response. Determination of an accurate NOEL requires both a careful interpretation of the toxicological data and the use of an adequate number of test animals. The National Academy of Sciences (1985) has concluded that the chance of finding a no adverse effect level (that is, of missing an adverse effect) at a given dose is statistically greater in experiments having a small number of animals than in studies involving a large number of animals. Thus, the degree of confidence one has that NOEL actually represents a "safe" dose, rather than a research design artifact, increases with the number of animals tested. The greatest degree of confidence is associated with studies involving a large number of animals that were tested at several doses that were administered at close intervals.

Safety Factors

Because of the uncertainties surrounding the use of NOELs and LOELs, the difficulties of extrapolating from animals to humans, and the problems involved in trying to account for biological variability (both across species and within the same species), regulators and others have used safety factors to aid them in setting permissible exposure limits. Safety factors are margins applied to the NOEL or LOEL to determine a level believed to be "safe." Safety margins are necessary because studies designed to establish NOELs and LOELs do not generally pick up other-than-gross-organ responses or include hypersusceptible individuals. Regulatory agencies and limit-setting organizations have traditionally used safety factors ranging from 2 to 1,000.

These factors are designed to account for:

- Sensitive members of a population;
- Extrapolation from animals to human; and
- Administration of a substance via a different route.

Additional safety factors may be applied if the toxicological endpoint assessed by the NOEL or LOEL is an insensitive one, e.g., lethality. This is necessary because the dose that is "safe" for an insensitive endpoint will not really be safe in terms of any adverse effects occurring before that endpoint is reached. That is, the LOEL associated with convulsions caused by a neuropathic agent will not be safe or protective against the decrement in mental capacity observed in animals or people long before convulsions occur; to give another example, a dose that is "safe" in terms of lethality is often sufficient to cause serious damage to various organ systems.

Types of Toxicological Evidence

The evidence available to scientists wishing to evaluate the toxicity of a substance can be derived from studies in laboratory animals, in-vitro studies in cell or tissue systems, reports of clinical observations, studies of exposed human populations, or from intervention studies conducted with human volunteers. The preceding paragraphs have described animal studies (or "bioassays"). The following section discusses the two most common types of human evidence: Data derived from clinical observations and information from epidemiological studies.

Clinical observations. Much of the data on the toxic effects associated with human exposures have come from industrial accidents, fatal poisonings, or other such tragedies. This information is generally more useful in delineating broad categories of pathological effects than in refining a specific dose-response relationship, because the exposure levels causing the accident are known to be high but cannot be quantified with precision.

Epidemiological studies. Studies conducted by epidemiologists are designed to reveal the patterns of disease or mortality prevailing in certain groups of people (usually workers) exposed to a single toxin or to a group of substances. One of the advantages of epidemiological studies is that they involve humans and their responses to actual situations. The interpretation of the results of epidemiological studies is complicated by the inevitable presence of confounding variables that occur whenever human populations are involved. Ideally, the populations being studies (i.e., the study population and the control population) should be fully comparable with regard to every variable except the single characteristic under study. Because it is rarely possible to achieve this degree of comparability, statistical techniques are often used to attempt to adjust for this lack of comparability. In addition, if the measured effect is relatively large, it is unlikely that confounding factors will obscure the true picture.

Broadly speaking, epidemiological studies can have two possible outcomes: They can report an effect or they can report no effect; in the former case, the study is termed a positive study, and in the latter, a negative one. Within each of these categories, it is possible for the study to be correct (that is, to give a true-positive or true-negative result) or to be incorrect (that is, to give a false-positive or a false-negative result). A false-positive result reports that there is an increased risk when in fact there is not, and a false-negative study reports that there is no increased risk when in fact there is.

The probability that a study will detect a statistically significant effect if that effect is actually present is called the power of the study. As the power of a study increases, the likelihood of producing a false-negative error decreases. Power is dependent on two factors: The level of relative risk being

evaluated and the number of cases of the effect (i.e., disease) that are expected in the population being studied. The number of expected cases depends both on the sample size and the expected disease frequency in the comparison population. For example, a study involving a small population and a common disease can have the same power as a study of a rare disease in a large population. Consequently, studies of larger samples have sufficient power to detect smaller increases in risk, and studies of smaller samples will be able only to detect large increases in relative risk.

Because epidemiological studies have limitations, it is essential that the power of such studies, particularly of negative studies, be examined to ensure that their sample sizes are adequate to detect the absence of increased risk with validity. When the power of a study is not adequate, negative studies cannot be said either to contradict or to support the conclusion that increased risk exists. However, a study with a positive result may indicate a relationship if the excess risk is high, even if the study's sample size is small and the effects of some factors are not controlled for.

Quality of Evidence

Dose-response models have often been used in the quantitative assessment of the risks associated with exposures to carcinogenic substances. However, less scientific effort has been devoted to models to be used with non-carcinogenic substances. Mathematically precise methods to establish the true no-effect level or to define the dose-response curves have not been developed for most of the more than 400 substances involved in this rulemaking.

Most of the scientific work that has been done was designed to identify lowest observed effect or no-effect levels for a variety of acute effects. As described above, experts in industrial hygiene and occupational health have developed factors to be used to offset, at least to some extent, the insensitivity of NOELs and LOELs to such factors as subcellular effects, sensitive individuals, and chronic effects. It is possible to use these data, combined with professional judgment and OSHA's expertise and experience, to determine that significant risk exists at current levels of exposure and that a reduction in these levels will substantially reduce that risk. OSHA is also confident that it is not attempting in this rulemaking to reduce exposures to insignificant levels. However, additional analysis may well reveal that the levels being proposed at this interim stage can be refined further in the future.

B. Historical Development of Occupational Exposure Limits

Early Limits

Until the development of occupational health standards, the occurrence of adverse health effects resulting from exposures to hazardous substances or conditions in the workplace could only be determined *ex post facto*—after impairment had already occurred to the health and welfare of exposed employees. In her 1910 studies of lead poisoning, Dr. Alice Hamilton was forced to rely on "personal observations of working conditions and the illness and deaths of workers to demonstrate the existence of harmful exposures" (Paull 1984). The concept of occupational exposure limits thus represents a dramatic breakthrough in the battle against occupational disease and remains "one of the most useful and indispensable tools yet devised for safeguarding the health and well-being of industrial workers" (Thomas 1979).

Occupational exposure limits are air quality values that apply in workplaces, and they are derived by studying the correlation between the amount of a toxic substance absorbed by the body and its effects on health. Within the context of occupational exposure, knowledge of this relationship permits quantification of the etiology "of a large number of occupational health impairments, [evaluation of] the risk of such impairments and, if necessary, [consideration of] the effectiveness of preventive meaures" (Parmeggiani 1983). More specifically, an understanding of the levels at which disease or other health effects occur can be used to establish limits of occupational exposure below which health hazards are unlikely to occur in most workers.

The historical development of occupational exposure limits began with the published reports of a German scientist whose investigations in 1883 into the effects of experimental animals (and on himself) of carbon monoxide in known air concentrations caused him to conclude that "the boundary of injurious action of carbon monoxide lies at a concentration in all probability of 500 parts per million, but certainly [not less than] 200 parts per million" (Cook 1987). Shortly after the appearance of this first documented dose-response value, another German researcher, K. N. Lehmann, published a series of reports on a number of chemical substances under the title "Experimental Studies on the Effect of Technically and Hygienically Important Gases and Vapors on the Organism." This series culminated in 1936 with a comprehensive paper on chlorinated hydrocarbons, published as Volume 116 of *Archiv fuer Hygiene*.

In 1912, Rudolf Kobert published a table of exposure limits, based on animal studies, for 20 compounds. One of the first tables of hazardous air concentrations to originate in the United States was a technical paper published in 1921 by the U.S. Bureau of Mines. The 33 substances included in this table were those frequently encountered in the workplace. In addition to limits based on acute toxic effects, this table provided some information on the least detectable odor concentration and the lowest airborne concentration required to cause irritation (Paull 1984; Cook 1987).

Throughout the 1920s and 1930s, data became available that correlated concentrations of harmful substances with observed effects on worker health for such materials as lead and mercury compounds, benzene, and granite dusts. These early occupational health studies, which were based on animal experiments and on findings in exposed workers, provided the kind of data needed to link human exposures "to concentrations that were capable of producing not only acute, but chronic health effects" (Paull 1984).

After 1935, the emphasis of researchers had shifted, for the most part, from the reporting of a series of values for a range of acute effects to results that yielded a single limit based on studies of repeated exposures. Over the years, a sizable amount of data about the levels of exposure that would not produce injurious effects had been amassed for a considerable number of substances. "By the early 1940s, control of the occupational environment to prevent the harmful absorption of toxic materials was becoming an accepted principle, and the practical problem of defining what was 'harmful' was beginning to be met by employing maximum allowable concentrations" (Paull 1984). In 1943, Sterner explained the meaning of the term maximum allowable concentrations as "the upper limit of concentration of an atmospheric contaminant which will not cause injury to an individual exposed continuously during his working day and for indefinite periods of time" (Paull 1984).

The first lists of maximum allowable concentrations of airborne toxic substances were issued between 1933 and 1938. The Union of Soviet Socialist Republics (U.S.S.R.) was the first country to make occupational exposure limits a statutory obligation; in 1933 it published a list that included 14 substances (although health standards for some air pollutants apparently were used in the Soviet Union during the 1920s). The first American list was published four years later by the State of Massachusetts, and in 1938 Germany issued occupational health standards for a number of organic solvents (Holmberg and Winell 1977). Additionally, the United States "imposed limited occupational safety and health requirements on certain contractors with the Federal government" when the Walsh-Healey Act was passed in 1936 (Mintz 1984).

Standards Developed by Professional Organizations

During the 1940s, American organizations led in the development of occupational health standards, beginning with the American Standards Association (now the American National Standards Institute, or ANSI) list of "maximum acceptable concentrations" (MACs), which appeared in 1941. This list represented a consensus of opinion by the ASA and a number of industrial hygienists who had formed the American Conference of Governmental Industrial Hygienists (ACGIH) in 1938 (Baetjer 1980). Originally conceived of as a time-weighted concentration to be maintained as an average over the working shift, the MAC was redefined in 1957 to mean an upper level (ceiling level) that should never be exceeded (Turner 1978).

An important contribution to occupational health standard-setting was made in 1945 by Warren Cook, who published a list of maximum allowable concentrations for 132 industrial atmospheric contaminants. These limits had been developed by six states, the U.S. Public Health Service, and the American Standards Association, and included Cook's own list of "accepted or tentative values" based on industrial experience, animal experimentation, human sensory response, or a combination of these factors. This table was followed by:

documentation supported by 187 specific references, indicating the basis and reliability of each value. Cook was the first investigator to codify all of the available data on MAC's and present it in one publication. His list of recommended values was incorporated, practically without changes, by the ACGIH in establishing the TLVs. In support of Cook's inferences, it should be noted that 50 of the * * * values that he recommended in 1945 were subsequently adopted as federal standards, and are still in use today (Paull 1984).

The American Conference of Governmental Industrial Hygienists Subcommittee on Threshold Limits presented its second report at the Eighth Annual Meeting of the ACGIH in 1948. The report included values for 131 gases, vapors, dusts, fumes, mists, and 13 mineral dusts "compiled from the list reported by this subcommittee * * * in 1942, from the list published by Warren Cook in * * * 1946, and from published values of the Z-37 Committee of the American Standards Association" (Cook 1987). The Committee's report noted that:

Considerable difficulty attends the fixing of satisfactory values for maximal allowable concentrations of chemicals in respirable atmospheres because of the lack of a uniform definition of the maximum allowable concentration concept. One concept is that the M.A.C. value should represent as accurately as possible that concentration at which a worker exposed for a sufficient period of time will just escape physiological or organic injury and occupational disease. A second concept is that the M.A.C. should represent some fraction of that concentration which will injure the worker in order to allow a margin of safety in the design of protective equipment and guard against possible synergistic effects in the case of multiple exposures. A third concept is that the M.A.C. should perform the functions of the former concepts and in addition provide a work environment free of objectionable but non-injurious concentrations of smokes, dusts, irritants and odors. Obviously all of these concepts cannot be fulfilled with the establishment of a single value. M.A.C. values in use at the present time represent examples of all of these concepts.

The committee feels that the establishment of dual lists or a single definition is not possible at the present time.

The report concluded by stressing that the 1946 list of M.A.C. values was presented "with the definite understanding that it be subject to annual revision" (Report of the Sub-committee on Threshold Limits 1946).

Papers presented at both the Ninth International Congress on Industrial Medicine in London (1948) and at the Fifteenth International Congress of Occupational Health in Vienna (1966) also dealt with maximum acceptable concentrations. The first of these proposed that zones of toxicity be set up to facilitate an understanding of the relative hazards of substances, "since the boundaries of MAC values were not sharp lines of demarcation" (Cook 1987). At the 1968 meeting, discussion took place on the advantages of the concept of a "peak level" of exposure—an extension of the "ceiling level" notion inherent in the definition of a MAC since 1957. A "peak level" was defined as one "that can be applied to certain substances for brief designated periods and for a strictly limited number of times during the work shift, with a designated time interval between peaks. The 'peak' concept places a limit on the intermittent higher exposures that occur in many industrial operations. The time-weighted average exposure limit is of course to be observed [even when a peak has also been assigned to a substance]" (Cook, 1987).

Terminology and definitions throughout this early period were ambiguous and imprecise, reflecting uncertainty as to exactly what needed to be and could be done in the realm of occupational health standard setting. Initially, the ACGIH designated its recommended limits as "maximum allowable concentrations," although this term was often used interchangeably with "threshold limit values." Confusion about the meaning, interpretation, and relative significance of the terms being employed during this embryonic period was common. After 1953, the ACGIH defined the concept of threshold limit values in the preface to its annual published list of occupational health standards as "maximum average atmospheric concentrations * * * for an eight-hour day." This definition of the TLVs as average concentrations differed from the general understanding of the original term "maximum allowable concentrations," which were essentially ceiling values (Stokinger 1982).

By 1955, the ACGIH's philosophy of establishing threshold limits had begun to shift from concern solely with the prevention of acute stress and illness to consideration also of "more subtle, effects on health, such as the effects of annoying or irritating agents * * *. Thus, whereas a threshold limit value of 3 or 4 ppm for chlorine would insure no impairment to workers' health, this value is reduced to 1 ppm in the interest of greater freedom from irritant effects" (Stokinger 1956). It should be noted that such analyses often did not take into account chronic effects or responses among sensitive workers.

Documentation for the 238 substances included in the TLV list for 1956 was provided by Smyth in a separate paper in which the author

recommended that the TLV's include references to the underlying data, and that the concepts represented by the values be restated in more realistic toxicological terms. In his analysis of the TLVs, he [Smyth] concluded that nine categories of objectionable action were guarded against: chronic toxicity, acute toxicity, narcosis, irritation, asphyxiation, fume fever, eye pigmentation, allergic response, and cancer. (Paull 1984)

At about the same time, Stokinger stated that in his opinion, the Threshold Limits Committee had avoided grappling with the issue of developing a method for establishing limits for industrial

carcinogens and noted that, with the exception of nickel carbonyl, limits had not been assigned for potential carcinogens (Paull 1984). In 1962, however, the TLV Committee included three carcinogens as additions to the TLV list, although these were listed separately in an appendix and did not have assigned TLVs.

Despite the fact that the ACGIH had stressed early on that TLVs were intended as guides and not as rigidly enforceable limits, the American Standards Association's MAC values (or, where none was available, the TLV) were included as mandatory limits in the Safety and Health Standards for Federal Supply Contracts, which were published in 1960 under the Walsh-Healey Act. Following this action, the ACGIH issued a statement on the definitions and interpretations of TLVs and MACs (Stokinger 1962). At the same time, the ACGIH announced the production of the first edition of the *Documentation for Threshold Limit Values* (ACGIH 1962); this was followed by another paper in which the work and intentions of the Threshold Limits Committee were reviewed. Turner states that:

> [a]t this time the concept of ceiling values and excursion factors around the time-weighted average values was introduced in order to reduce conflict or confusion with the 'maximal' values in the American [ANSI] Standards. A 'C' (ceiling value) listing was to be given to those fast-acting substances thought likely to be injurious if the concentration exceeded the limit value by more than a designated factor for a relatively short period (about 15 min.). The factor varied between 3 and 1.25, depending inversely upon the magnitude of the TLV. A corollary was that the factor would also indicate the limit of permissive excursion of the concentration above the TLV for a substance not given a 'C' listing, always provided that the time-weighted average concentration did not exceed the TLV. This rule of thumb approach to limiting exposure is no doubt appropriate to certain substances when they are used routinely throughout the working day. It seems to have little relevance in other instances where exposure is irregular or where the basis for fixing the TLV is on grounds other than toxicity. (Turner 1976)

Limits in the Era of OSHA

The enactment of the Occupational Safety and Health Act of 1970 marked the first "comprehensive and serious attempt * * * to protect the health and safety of American workers" (Mintz 1984); it also greatly extended the use of MACs and TLVs by authorizing the newly established Occupational Safety and Health Administration (OSHA) to adopt as its own standards "national consensus standards" and established federal standards (29 U.S.C. 655(a)). Mintz notes that "in addition to the safety standards adopted under section 6(a), OSHA also adopted permissible exposure limits for approximately 400 toxic substances. These [start-up] health standards, now appearing in 29 CFR 1910.1000, * * * were derived from both national consensus and established federal standards. The national consensus standards had been issued by ANSI, while the established federal standards had been adopted under the Walsh-Healey Act from the TLVs * * * recommended by the * * * ACGIH" (Mintz 1984).

Since OSHA's large-scale adoption of the ANSI consensus standards and the 1968 ACGIH TLVs, the Agency has promulgated standards under section 6(b) of the OSH Act to regulate the industrial use of 24 substances, most of which have been identified as occupational carcinogens, but the ANSI and ACGIH start-up standards continue to comprise the major part of the Agency's occupational health and safety program.

In the interval since the establishment of OSHA and the adoption of the ACGIH and ANSI limits by the Agency, the ACGIH has continued to revise, update, and document the recommended limits that appear in its annual list of TLVs. Since 1968, annual revisions have been made to these limits by the ACGIH. During this time, the TLVs have been "accepted on an international basis as the best available guides for providing healthful occupational environments, and at least 18 countries, including the United States, have either adopted them as legal standards or as guides to legal action, thus verifying their efficacy in accomplishing this purpose" (Paull 1984).

The action OSHA takes today initiates the process of updating the Agency's Z table permissible exposure limits. That these limits are seriously out of date is attested to by the fact that the ACGIH has found it necessary to revise or add nearly 200 limits to its list in the 20 years since the limits that were later adopted by OSHA were initially published. Recognition that OSHA's Z table limits need updating to reflect recent developments in toxicology and new data on the health effects associated with exposure to these substances is widespread throughout industry. For example, OSHA requires and it is standard practice for organizations that develop Material Safety Data Sheets (MSDSs) to include on these MSDSs the ACGIH's current TLV values, as well as the OSHA limit.

The following section describes the methodology used by OSHA in selecting the limits it is proposing today. The Agency believes that promulgation of these limits will address a broad range of significant risks now prevalent in industry. As many industrial hygienists and occupational safety and health professionals have noted, the use of permissible exposure limits continues to be the single most efficacious way of protecting the health, functional capacity, and well-being of the American worker.

C. Description of the Substances For Which Limits Are Being Proposed

In this rulemaking, OSHA considered revising 428 substances and is proposing to revise existing or add new limits for several hundred (a total of 406) toxic substances currently being manufactured, used, or handled in workplaces throughout general industry. This section of the preamble identifies the proposed PELs, describes the available toxicological data for many of these substances, and explains the Agency's rationale for selecting the proposed limits for several of these substances.

The universe of substances included in this rulemaking is bounded by the substances for which the American Conference of Governmental Industrial Hygienists (ACGIH) has established a Threshold Limit Value (TLV) for exposures in the work environment. That is, OSHA is not proposing at this time to establish exposure limits for any hazardous substance that is not included in the ACGIH's 1987–88 List of TLVs. In addition, where the limit included in the current ACGIH list is identical to OSHA's existing Z-table limit for the same substance, OSHA is not proposing a change. OSHA has determined that the ACGIH's TLV is clearly the most comprehensive list for this purpose.

Although limits are not being proposed for chemicals excluded from the ACGIH's 1987–88 list, OSHA has not limited its consideration of appropriate limits to those levels established by the ACGIH. The Agency has also carefully evaluated the exposure limits recommended by the National Institute for Occupational Safety and Health, OSHA's sister agency. In instances where both NIOSH and the ACGIH have recommended substantially different limits for the same substance, OSHA has thoroughly analyzed the evidence presented by each organization before determining which of the two limits to propose. The proposed limits thus represent, in the Agency's professional judgment, those levels found to be most consistent with OSHA's mandate and the case law that has subsequently developed to interpret that mandate. (For a discussion of the relevent legislative and judicial principles, see the section elsewhere in this preamble entitled History and Need for Revision of the PELs.

For ease of analysis and presentation, the substances included in the scope of this rulemaking have been grouped into 18 separate sub-sections. In general, these groupings reflect the principal mechanisms of action or target organ systems involved in the toxic responses that occur when workers are exposed to these substances.

In addition to target organs or effect groupings, separate sections dealing with limits set on the basis of no-effect levels or by analogy are included. Three additional sections cover substances for which the ACGIH has increased its limits, substances for which OSHA is proposing to add short-term limits, and those for which the Agency proposes to add skin notations.

The following sections are included:

1. Substances for Which Proposed Limits Are Based on Avoidance of Neuropathic Effects.
2. Substances for Which Proposed Limits Are Based on Avoidance of Narcotic Effects.
3. Substances for Which Proposed Limits Are Based on Avoidance of Sensory Irritation.
4. Substances for Which Proposed Limits Are Based on Avoidance of Liver or Kidney Effects.
5. Substances for Which Proposed Limits Are Based on Avoidance of Ocular Effects.
6. Substances for Which Proposed Limits Are Based on Avoidance of Respiratory Effects.
7. Substances for Which Proposed Limits Are Based on Avoidance of Cardiovascular Effects.
8. Substances for Which Proposed Limits Are Based on Avoidance of Systemic Effects.
9. Substances for Which Proposed Limits Are Based on Observed No-Effect Levels.
10. Substances for Which Proposed Limits Are Based on Avoidance of Adverse Nuisance Effects.
11. Substances for Which Proposed Limits Are Based on Avoidance of Taste and Odor Effects.
12. Substances for Which Proposed Limits Are Based on Avoidance of Adverse Health Effects Caused by Exposure to Analogous Substances.
13. Substances for Which Proposed Limits Are Based on Avoidance of Biochemical/Metabolic Effects.
14. Substances for Which Proposed Limits Are Based on Avoidance of Sensitization Effects.
15. Substances for Which Proposed Limits Are Based on Avoidance of Cancer.
16. Substances for Which Current ACGIH TLVs Are Less Stringent than Existing OSHA PELs.
17. Substances for Which OSHA Is Proposing Short-Term Exposure Limits.
18. Substances for Which OSHA Is Proposing To Add Skin Notations.

A list of the references that OSHA relied on in evaluating the toxicological evidence pertaining to these chemicals appears at the end of Section IV.

1. Substances for Which Proposed Limits Are Based on Avoidance of Neuropathic Effects

Introduction

Many industrial chemicals have been shown to cause severe neurological effects in exposed workers, and in many cases these effects are irreversible. There are 20 chemicals for which limits have been set on the basis of avoidance of neuropathic effects. Table C1–1 lists the current PEL, ACGIH TLV, NIOSH REL, CAS number, and OSHA identification number for each of these chemicals. The table shows time-weighted averages (TWAs), ceiling limits, and short-term exposure limits (STELs). For this group of 20 compounds, OSHA is proposing to lower its current TWA-PEL for two substances; add a STEL to an existing TWA for five substances; change an existing ceiling to a TWA and STEL for one substance; change an existing TWA-PEL to a ceiling value for one substance; amend existing short-term or ceiling limits for four substances; and establish new exposure limits for seven substances not currently regulated by OSHA. As Table C1–1 shows, most of the proposed limits are revisions of existing OSHA limits, rather than new additions to Table Z. In only five instances is there a difference between the quantitative limits set by the ACGIH and NIOSH for the same substance.

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TABLE C1-T. Substances for Which Limits Are Based on Avoidance of Neuropathic Effects

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1051 n-Butyl alcohol	71-36-3	100 ppm TWA	50 ppm Ceiling, Skin	—
1078 Chlorinated camphene	8001-35-2	0.5 mg/m^3 TWA	0.5 mg/m^3 TWA, Skin 1 mg/m^3 STEL	—
1114 Decaborane	17702-41-9	0.05 ppm TWA, Skin	0.05 ppm TWA, Skin 0.15 ppm STEL	— —
1116 di-sec-octyl-Phthalate	117-81-7	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	— —
1123 Dichloroacetylene	7572-29-4	—	0.1 ppm Ceiling	—
1149 Dipropylene glycol methyl ether	34590-94-8	100 ppm TWA, Skin	100 ppm TWA, Skin 150 ppm STEL	—
1200 n-Hexane	110-54-3	500 ppm TWA	50 ppm TWA	100 ppm TWA 510 ppm Ceiling (15 min)
1202 2-Hexanone	591-78-6	100 ppm TWA	5 ppm TWA	1 ppm TWA

TABLE C1-1. Substances for Which Limits Are Based on Avoidance of Neuropathic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1216 Iron pentacarbonyl	13463-40-6	—	0.1 ppm TWA 0.2 ppm STEL	—
1236A Manganese, fume	7439-96-5	5 mg/m^3 Ceiling	1 mg/m^3 TWA 3 mg/m^3 STEL	—
1237 Manganese cyclopentadienyl tricarbonyl	12079-65-1	—	0.1 mg/m^3 TWA, Skin	—
1238 Manganese tetroxide	1317-35-7	—	1 mg/m^3 TWA	—
1240 Mercury (aryl and inorganic compounds)+	7439-97-6	0.1 mg/m^3 Ceiling	0.1 mg/m^3 TWA, Skin	0.05 mg/m^3 TWA (8-hr)
1241 Mercury, vapor	7439-97-6	0.1 mg/m^3 Ceiling	0.05 mg/m^3 TWA, Skin	—
1242 Mercury, (organo) alkyl compounds	7439-97-6	0.01 mg/m^3 TWA 0.04 mg/m^3 Ceiling	0.01 mg/m^3 TWA, Skin 0.03 mg/m^3 STEL	— —
1251 Methylacrylonitrile	126-98-7	—	1 ppm TWA, Skin	—
1253 Methyl bromide	74-83-9	20 ppm Ceiling, Skin	5 ppm TWA, Skin	Lowest feasible level

TABLE C1-1. Substances for Which Limits Are Based on Avoidance of Neuropathic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1304 Pentaborane	19624-22-7	0.005 ppm TWA	0.005 ppm TWA	—
			0.015 ppm STEL	—
1316 Phenyl mercaptan	108-98-5	—	0.5 ppm TWA	0.1 ppm Ceiling (15 min)
1342 1,2-Propylene glycol dinitrate	6423-43-4	—	0.05 ppm TWA, Skin	—

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ OSHA's current limit is retained.

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Description of the Health Effects

The human nervous system comprises the central nervous system (CNS) and peripheral nervous system (PNS). The CNS is made up of the brain and spinal cord, while the PNS consists of a network throughout the body of nerves that communicate with the CNS via connections to the spinal cord. The brain and spinal cord are bathed in cerebrospinal fluid, which supplies nutrients to the CNS and also acts as a barrier against some foreign substances. This barrier protects the central nervous system. In general, fat-soluble substances readily diffuse across this barrier and water-soluble substances do not.

Chemicals that affect the central nervous system may manifest their toxic effects peripherally. An example of this is the tremor associated with elemental and organic mercury poisoning. Exposure to some chemicals, such as n-hexane, is associated with axonal degeneration of the nerves in both the central and peripheral nervous systems. Baker (1983) refers to this dual-system effect as central-peripheral distal axonopathy.

Nervous system toxicants can affect motor function, sensory function, or integrative processes, and they can also cause changes in the behavior of exposed persons. Substances that cause demyelination or neuronal damage can produce motor dysfunction that is expressed as muscular weakness or unsteadiness of gait, while exposures to chemicals that are associated with loss of sensory function may result in alterations in touch, pain, or temperature sensation or damage to sight or hearing. Other neuropathic chemicals affect the way in which information is processed in the brain and can interfere with learning and memory.

Although mature neurons cannot divide and be replaced, the nervous system has considerable ability to restore function lost as a result of exposure to toxic chemicals. This capability to restore function even after neurons have been killed is achieved by two mechanisms: Plasticity of organization and redundancy of function. That is, when some neurons die, other cells that perform the same function may be able to maintain an adequate level of functioning, or other neurons may be able to "learn" how to perform the lost function. However, even when one of these mechanisms comes into play to compensate for neuronal damage, the overall reserve capacity of the nervous system will have been diminished. The loss of this reserve could be critical in a situation in which additional demands are placed on the nervous system. Thus, even so-called reversible neuropathic effects should be seen as toxic effects causing alterations in an impairment of the normal functioning of the nervous system.

The neurological effects potentially associated with chemical exposures are numerous, and it is not always easy to identify the precise target site. However, recent medical advances have made tests available that can detect neurological damage that was not detectable several years ago. For example, electrophysiological methods have been developed to measure damage to the visual pathway caused by such exposures. Because of the variation in individual responses to chemical exposures, exposure limits should be set with a view toward this range of susceptibility and the avoidance of any neuropathic effects.

Peripheral Nervous System Effects

The pathological mechanisms associated with peripheral neuropathies result from segmental demyelination or axonal degeneration. Segmental demyelination destroys the myelin sheath but leaves the axon intact; this causes a slowing in nerve conduction velocity. Muscle weakness is often the first sign of such segmental demyelination, and this effect can progress to a decline in motor function or paralysis. Although remyelination may occur within weeks after injury, even a temporary loss in motor or sensory function places the affected worker or others at risk of injury.

Axonal degeneration is a more serious effect in that recovery is often slow or incomplete. It causes demyelination secondary to the degeneration of the distal portion of the nerve. This effect occurs when a chemical interferes with the physiologic dynamics of the nerve, e.g., when it decreases the transport of nutrients to the nerve. The axon will degenerate (die-back) sufficiently to accommodate the cell's capacity to supply it with nutrients. Axonal degeneration can also occur as a result of biochemical or metabolic derangement of the central nervous system. Alkyl mercury and elemental mercury are examples of chemicals causing this type of effect (Cavanaugh 1985).

Central Nervous System Effects

The mechanism of action of central nervous system toxins is not well understood but is believed to be associated with neurochemical alteration in the brain. Seizures, Parkinsonism, intellectual impairment, narcosis, dementia, cranial neuropathy, and visual disturbances are all examples of effects that can occur after overexposures to neuropathic chemicals. The more serious CNS effects, such as Parkinsonism, dementia, intellectual impairment, and cranial neuropathy, are generally irreversible (Baker 1983). Before these effects are manifested, subtle changes in behavior may occur; if these subtle signs are interpreted correctly, exposure can be stopped before irreversible damage occurs.

Dose-Response Relationships and Neuropathic Effects

The development of chemically induced neurological effects is believed to follow a dose-response pattern. At an exposure intensity or duration below the no-effect level, detectable effects are unlikely to be evident. As exposure intensity/duration increases to and beyond this level, the toxin begins to interfere with the normal cellular processes of the neurological system. At this early stage, transient signs and symptoms may appear. Overt effects become more severe as exposure continues and finally progress to serious loss of neurological function and possible permanent damage to neural tissue. Increases in our ability to detect neurological changes at lower levels of exposure have shown that neurobehavioral changes or impairment may occur at levels previously thought to be innocuous. These early effects can be important indicators of potential functional impairment at exposure levels below those that produce either transient or permanent damage. Heavy metals, solvents, and pesticides are examples of chemicals that can cause symptoms that include nausea, sensory and motor function impairments, depression, sleep disturbances, cognitive impairment, and sexual dysfunction. Limits for substances in this group are generally designed to maintain worker exposures below the level associated with such symptoms. This approach ensures that employees will not be likely to suffer these adverse symptoms and provides a margin of safety against the risk of more severe or permanent neurological impairment.

The following discussions describe OSHA's preliminary findings for all of the substances in this group and illustrate the serious nature of the risk faced by workers exposed to these toxicants.

n-BUTYL ALCOHOL

CAS: 71-36-3; Chemical Formula: $CH_3CH_2CH_2CH_2OH$

H.S. No. 1051

OSHA's current PEL for n-butyl-alcohol is a 100 ppm 8-hour TWA; the ACGIH-recommended limit is a 50 ppm ceiling, with a skin notation.

n-Butyl alcohol is a colorless, highly refractive liquid with a mild vinous odor that has long been known to cause irritation of the eyes and headaches in occupational settings. Systemic exposure effects in the form of vestibular and auditory nerve injury have only been reported in workers in France and Mexico (Seitz 1972; Velasquez 1964; Velasquez et al. 1969).

The current OSHA limit of 100 ppm (TWA) is based on the studies of Tabershaw, Fahy, and Skinner (1944) and of Smyth (1956). These studies indicated that workers experienced no narcotic or systemic effects at levels lower than 100 ppm. Mild irritation was reported in humans exposed to 24 ppm; this irritation became uncomfortable and was followed by headaches at 50 ppm (Nelson, Ege, Roes et al. 1943).

More recent data reported by Seitz (1972), Velasquez (1964), and Velasquez et al. (1969) indicate serious long-term systemic effects on the auditory nerve and hearing loss (hypoacusia), the magnitude of hearing loss was related to length of exposure. Nine of 11 workers exposed without hearing protection to 80 ppm for periods of from 3 to 11 years displayed impaired hearing. This phenomenon was particularly evident in younger workers (Velasquez 1964; Velasquez et al. 1969).

OSHA believes that the current PEL of 100 ppm is not protective against the risk of hearing loss and vestibular injury associated with exposure to n-butyl alcohol, because these types of systemic injuries have been observed at levels below 100 ppm. A skin notation is also being proposed because of n-butyl alcohol's potential to cause skin irritation. The Agency preliminarily concludes that the proposed 50 ppm ceiling will reduce this risk substantially. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-butyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

CHLORINATED CAMPHENE (60 Percent)
CAS: 8001-35-2; Chemical Formula: $C_{10}H_{16}Cl_2$
H.S. No. 1078

OSHA currently has a limit of 0.5 mg/m³, with a skin notation, for chlorinated camphene. The ACGIH recommends a limit of TLV-TWA 0.5 mg/m³ and a TLV-STEL of 1 mg/m³ for chlorinated camphene (60 percent), with a skin notation. This substance is an amber waxy solid with a pleasant, pine-like odor.

Chlorinated camphene has demonstrated a moderately high acute toxicity in animal studies (ACGIH 1986, p. 114). Toxic doses cause varied central nervous system effects, including nausea, muscle spasms, confusion, and convulsions (Hayes 1963). Data indicate that rats and guinea pigs show no significant effects at dietary levels of 800 ppm daily for a 6-month period (Alderson Reporting Co. 1972). Monkeys tolerate 10 ppm daily but show toxic symptoms after 2 weeks' feeding at the 60-ppm level (Sosinerz 1972). Although chlorinated camphene may accumulate in fatty tissues, it clears quickly when ingestion is terminated (Sosinerz 1972).

In humans, the acute lethal dose of chlorinated camphene is between 2 and 7 grams, and a dose of 10 mg/kg causes nonfatal convulsions in some exposed individuals. The ACGIH (1986, p. 115) concludes that the acute toxicity of chlorinated camphene is equivalent to that of chlordane, for which the fatal human dose is estimated to be around 6 grams; the ACGIH TLV-TWA for chlordane is 0.5 mg/m³. One study of 25 human volunteers failed to reveal toxic responses to a daily 30-minute exposure to 500 mg/m³ for 10 consecutive days, followed by similar exposures for 3 consecutive days 3 weeks later (Shelansky 1947, as cited in ACGIH 1986, p. 115). There are no reports of occupational poisonings, and a review of the medical records of employees engaged in the manufacture and handling of chlorinated camphene showed no ill effects in workers exposed for an average of 3.7 years (Hercules 1972).

OSHA is proposing a PEL of 0.5 mg/m³ TWA and a 15-minute STEL of 1.0 mg/m³ for this insecticide, with a skin notation. The Agency preliminarily concludes that both a TWA and a STEL are required to protect exposed workers against the risk of neuropathic and systemic effects. The health evidence forms a reasonable basis for proposing a new limit for chlorinated camphene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DECABORANE
CAS: 17702-41-9; Chemical Formula: $B_{10}H_{14}$
H.S. No. 1114

OSHA currently has an 8-hour TWA limit of 0.05 ppm TWA and a skin notation for decaborane. The ACGIH recommends a TLV-TWA of 0.05 ppm and a TLV-STEL of 0.15 ppm, also with a skin notation. Decaborane forms colorless crystals, which are stable at ordinary temperatures and have a pungent odor.

The acute toxicity of decaborane is extremely high for small laboratory animals. The 40-hour LC_{50}s for rats and mice are 46 and 12 ppm, respectively (Schecter 1958). Dermal LD_{50}s for rabbits and rats are 71 and 740 ppm, respectively (Svirbely 1955). Acute exposures to decaborane cause loss of coordination, convulsions, weakness, tremors, and hyperexcitability. Its primary effects are on the kidneys and liver. Studies of repeated exposures to this substance suggest that the toxicity of decaborane is intermediate between that of pentaborane and diborane. The ability of decaborane to penetrate the skin is particularly notable, as is its toxicity to the central nervous system in some species, e.g., rats and rabbits (Svirbely 1954 and 1955). Monkeys showed decreased ability for certain operant behaviors when injected with doses of 3 to 6 mg/kg decaborane (Reynolds et al. 1964). Central nervous system toxicity has been observed in humans exposed occupationally (Krackow 1953).

OSHA is proposing an 8-hour TWA PEL of 0.05 ppm TWA, a 15-minute STEL of 0.15 ppm, and a skin notation for decaborane. The Agency preliminarily concludes that this level will provide protection against the risk of neuropathies, kidney and liver damage, and percutaneous absorption possible in the absence of a short-term limit for decaborane. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for decaborane if the Agency determines that this limit will substantially reduce significant risk.

di-sec-OCTYL PHTHALATE
CAS: 117-81-7; Chemical formula: $C_{24}H_{38}O_4$
H.S. No. 1116

OSHA currently has a limit of 5 mg/m³ TWA for di-sec-octyl phthalate. The ACGIH recommends a TLV-TWA of 5 mg/m³ and a TLV-STEL of 10 mg/m³ for this light-colored, viscous, odorless, and combustible liquid.

Di-sec-octyl phthalate (DEHP) has an extremely low acute oral toxicity in small laboratory animals. The oral LD_{50} reported for the mouse is 28.3 g/kg; for the rat, it is 33.8 g/kg (Krauskopf et al. 1973). No skin irritation or sensitization potential has been demonstrated in either animals or humans, and the lethal dermal dose in rabbits is about 25 ml/kg (Singh, Lawrence, and Autian 1972). Shaffer, Carpenter and Smyth (1945) and Lawrence (unpublished data) have reported deaths in exposed rats as well as chronic diffuse inflammation of the lung, resembling burn responses, after DEHP exposures in mice at unspecified levels.

Long-term dietary toxicity studies in rats, guinea pigs, and dogs have established a no-effect dose level of about 60 mg/kg/day, and no carcinogenic or histologic abnormalities were observed at this level (Gesler 1973). Higher doses were associated with growth retardation and increased liver and kidney weights but not histologic abnormalities. Metabolic studies have demonstrated that laboratory animals do not appreciably metabolize DEHP (Dillingham and Autian 1983). Teratogenicity studies in pregnant rats indicated that fertility is unaffected at doses of 0.1, 0.2, or 0.33 percent of the acute intraperitoneal LD_{50} dose for rats, although slight effects on embryonic and fetal development were observed in these animals; skeletal deformities were the most common teratogenic effects observed (Dillingham and Autian 1973). Mutagenic effects were observed at intravenous doses of one-third, one-half, and two-thirds of the acute LD_{50}; these effects were consistent with DEHP's ability to produce dominant lethal mutations (Dillingham and Autian 1973).

A study of exposures to a mixture of the vapors of diethyl phthalate, dibutyl phthalate, and di-2-ethylhexyl phthalate reported that exposures to 1 to 6 ppm caused no phthalates in the blood and no peripheral polyneuritis (Raleigh, as cited in ACGIH, p. 223). However, Russian investigators examined male and female workers exposed to between 1.7 and 66 mg/m³ of various combinations of airborne phthalates and noted complaints of pain, numbness, and spasms in the upper and lower extremities after 6 to 7 years' exposure. Polyneuritis was observed in 32 percent of the workers studied, and 78 percent of these workers showed depression of vestibular receptors (Milkov et al. 1973).

OSHA proposes an 8-hour PEL of 5 mg/m³ and a 15-minute STEL of 10 mg/m³ for di-sec-octyl phthalate. The Agency preliminarily concludes that these limits together will protect workers from the risk of pain, numbness, spasms of the extremities, and polyneuritis possible at excursions above the existing 8-hour TWA PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for di-sec-octyl phthalate if the Agency determines that this limit will substantially reduce significant risk.

DICHLOROACETYLENE
CAS: 7572-29-4; Chemical Formula: ClC≡CCl
H.S. No. 1123

OSHA currently has no limit for dichloroacetylene. The ACGIH recommends a TLV-ceiling of 0.1 ppm for this liquid, which explodes on boiling.

In preliminary inhalation exposure studies, guinea pigs demonstrated a 4-hour LC_{50} of 20 ppm; death occurred 2 or 3 days after exposure and was caused by pulmonary edema. In rats, similar exposures to dichloroacetylene in the presence of 330 ppm of trichloroethylene indicated an LC_{50} of 55 ppm (Siegel, as cited in ACGIH 1986, p. 177). When dichloroacetylene was mixed with 9 parts of ether, the 4-hour LC_{50} in rats was 219 ppm; in combination with 7 parts of trichloroethylene, the 4-hour LC_{50} in rats was 55 ppm; and exposure to dichloroacetylene with 10 parts trichloroethylene caused a 4-hour LC_{50} in guinea pigs of 15 ppm (Siegel et al. 1971).

In humans, dichloroacetylene exposure causes headache, loss of appetite, extreme nausea, and vomiting; it affects the trigeminal nerve and facial muscles and exacerbates facial herpes. Disabling nausea was experienced by approximately 85 percent of individuals exposed for prolonged periods of time (not further specified) at concentrations from 0.5 to 1 ppm (Saunders 1967). A number of occupational fatalities have been attributed to exposure to dichloroacetylene (Humphrey ad McClelland 1944; Firth and Stuckey 1945). Humphrey and McClelland (1944) reported on 13 instances of cranial nerve palsy, nine of which had labial herpes, following exposure to dichloroacetylene. These patients also had symptoms of nausea, headache, jaw pain, and vomiting. Autopsies of two of these fatalities revealed edema at the base of the brain (Humphrey and McClelland 1944).

OSHA is proposing a ceiling limit of 0.1 ppm for dichloroacetylene. The Agency preliminarily concludes that exposure to dichloroacetylene poses a risk of disabling nausea and serious systemic effects to workers exposed to the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for dichloroacetylene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIPROPYLENE GLYCOL METHYL ETHER
CAS: 34590-94-8; Chemical Formula: $CH_3OC_3H_6OC_3H_6OH$
H.S. No. 1149

OSHA currently has an 8-hour TWA limit of 100 ppm for dipropylene glycol methyl ether (DPGME), with a skin notation. The ACGIH recommends a TLV-TWA of 100 ppm and a TLV-STEL of 150 ppm for this colorless liquid with a mild, pleasant, ethereal odor and a bitter taste.

DPGME is a central nervous system and cardiac depressant. Dogs receiving intravenous injections of DPGME exhibited auricular fibrillation caused by auricular anoxia, depressed conduction, and heart block. Ventricular asystole accompanied increased intra-auricular pressure. Irritation and local pain preceded death from respiratory depression (Shideman and Procita 1951). Rowe and associates (1954) reported a single acute oral LD_{50} for rats of 5.4 ml/kg. Even at the highest levels tested (not further specified), no single application of DPGME to the skin of rabbits was lethal, although some narcosis and transient weight loss did occur. However, a significant number of deaths occurred in a group of rabbits treated with 65 repeated dermal applications of 3 ml/kg and higher during a 90-day period. Four animal species, including the monkey, were exposed repeatedly to 7-hour daily inhalation exposures of between 300 and 400 ppm DPGME; the animals exhibited narcosis and changes in the lung and liver (Rowe, McCollister, Spencer et al. 1954).

Humans inhaling levels of 300 to 400 ppm found them very disagreeable, but 100 ppm was tolerable and, in the opinion of the authors, was not likely to produce organic injury (Rowe, McCollister, Spencer et al. 1954). Patch tests on the skin of 250 human subjects produced neither irritation nor sensitization (ACGIH 1986, p. 221). Humans exposed to DPGME vapor concentrations at levels between 50 to 2000 ppm experienced eye, nose, and throat irritation before the onset of CNS impairment, which occurred at 1000 ppm in one of two subjects (Stewart, Baretta, Dodd, and Torkelson 1970).

OSHA is proposing a PEL of 100 ppm TWA and a STEL of 150 ppm for dipropylene glycol methyl ether. The Agency believes this combined limit will reduce the risk of central nervous system effects and irritation that may exist when workers are exposed for short periods above the 100 ppm PEL. In addition, OSHA is proposing a skin notation because of evidence in experimental animals that DPGME can be percutaneously absorbed. The health evidence forms a reasonable basis for proposing a revision of this level. At the time of the final rule, OSHA will establish a new limit for dipropylene

glycol methyl ether if the Agency determines that this limit will substantially reduce significant risk.

n-HEXANE
CAS: 110-54-3; Chemical Formula: $CH_3(CH_2)_4CH_3$
H.S. No. 1200

n-Hexane has been shown to produce distal axonopathy in both experimental animals and humans; it is metabolized to 2,5-hexanedione (2,5-HD), which is thought to be the causative agent of most of the adverse neurological effects observed after exposure to hexane (Schaumburg et al. 1983). OSHA's current PEL for n-hexane is 500 ppm. The ACGIH arrived at a TLV at 50 ppm for this substance, based primarily on studies (Miyagaki 1967; Inoue et al. 1970) showing peripheral neuropathies at exposure levels as low as 210 ppm. The REL for n-hexane recommended by NIOSH is 100 ppm (10-hour TWA). NIOSH based its recommendation on the same studies as those cited by the ACGIH (Miyagaki 1967; Inoue et al. 1970). NIOSH reasoned as follows:

> The absence of definitive epidemiologic or toxicologic evidence makes it difficult to determine how much lower the environmental limit should be. Professional judgment suggests a TWA concentration of 350 mg/m³ (100 ppm) offers a sufficient margin of safety to protect against the development of chronic nerve disorders in workers [NIOSH 1977a, p. 74].

The adverse neurological effects of hexane exposure are manifested as both sensory and motor dysfunction. Initially, there is a symmetric sensory numbness of the hands and feet, with loss of pain, touch, and heat sensation. Motor weakness of the toes and fingers is often present; as the neuropathy becomes more severe, weakness of the muscles of the arms and legs may also be observed (Schaumburg et al. 1983). There are no known conditions that predispose an individual to hexane neurotoxicity (Schaumburg et al. 1983). The onset of neurological symptoms may not be evident for several months to a year after the beginning of exposure. Recovery may be complete, but severely exposed individuals often retain some degree of sensorimotor deficit.

The dose-response relationship for n-hexane exposure in humans is not well defined, although it is clear that the severity of the resulting neuropathy increases as the exposure level of n-hexane increases. A number of studies have shown a consistent relationship between exposure levels of 500 ppm (OSHA's current exposure limit) to 2000 ppm and the development of characteristic peripheral neuropathies (Yamamura 1969; Yamada 1967). Neuropathic effects have also been shown to occur at levels between 210 and 500 ppm (Takeuchi et al. 1975).

Reports of effects occurring at levels of 210 to 500 ppm indicate that the current OSHA PEL of 500 ppm is not adequate to protect exposed workers from adverse sensorimotor neuropathic effects, and exposure at this level thus represents a risk to workers. The decreased sensitivity to pain, touch, and temperature associated with n-hexane exposure can also make a worker more susceptible to injuries and accidents. Further, the delayed onset of a clinical response, which is typical of hexane exposure, increases the probability that exposure will continue until irreversible effects occur.

The NIOSH REL is 100 ppm. However, both the presence of peripheral neurophathies at 210 ppm and the delay in onset of neurological symptoms indicate the need to adopt the 50 ppm TLV to prevent development of these symptoms. Sampling data from the IMIS data base show that 75 percent of the samples are below the 50 ppm level, and additional information confirms that attaining this level is feasible. OSHA therefore proposes a PEL of 50 ppm TWA. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-hexane if the Agency determines that this limit will substantially reduce significant risk.

2-HEXANONE (METHYL n-BUTYL KETONE)
CAS: 591-78-6; Chemical Formula: $CH_3CO-CH_2CH_2CH_2CH_3$
H.S. No. 1202

OSHA's current PEL for 2-hexanone is 100 ppm TWA; the NIOSH REL is 1 ppm (10-hour) TWA; and the ACGIH recommends a TLV-TWA of 5 ppm. Industrial exposure to 2-hexanone causes distal neuropathy manifesting as interference with motor and sensory function; even in cases characterized by minimal intensity, electrodiagnostic abnormalities were seen (ACGIH 1987). In animals, exposure to 2-hexanone causes axonal swelling and thinning of the myelin sheath. A metabolite of 2-hexanone, 2,5-hexanedione, appears to be responsible for the neural damage; this same metabolite is formed when n-hexane (discussed above) is metabolized.

The limit of 5 ppm TWA for 2-hexanone recommended by the ACGIH is based on the results of several different studies. These include a study showing decreases in sciatic-tibial nerve conduction in animals exposed to levels of 75 ppm for 9 months (Johnson et at. 1979); another study reporting neuropathy in animals after 6 months of exposure to 50 ppm (Streletz, Duckett, and Chambers 1976); and a study identifying 2,5-hexanedione in the serum of humans after a 1-day exposure to 50 ppm (diVincenzo, Kaplan, and Dedinas 1976).

The NIOSH REL for 2-hexanone of 1 ppm (10-hour TWA) is based on an epidemiologic study describing an outbreak of neurologic disease among workers in a plant that manufactures printed fabrics (Allen et al. 1975, as cited in NIOSH 1978). This study reported that a screening of 1,157 exposed workers revealed 86 verified cases of distal neurepathy. 2-Hexanone was suspected of being the neurotoxicant because it had only recently been introduced into the process (Allen et al. 1975). When recommending its limit, NIOSH relied on an industrial hygiene survey of the plant conducted by Billmaier et al. in 1974, which showed that 2-hexanone concentrations near the textile printing machines ranged from 1 to 156 ppm (10-minute area samples). After reviewing this evidence, NIOSH concluded that the 1 ppm level could not a considered a no-effect level for 2-hexanone-induced neuropathy.

The ACGIH (1987) stated that interpretation of the results of the Billmaier study was complicated because the exposure measurements reported in the study had been taken after the outbreak of neuropathic effects had occurred. In addition, the ACGIH pointed out that Billmaier et al. found poor work practices at the plant (gloves were rarely used, employees washed their hands with solvent, etc.), and thus dermal exposure may have contributed substantially to the outbreak.

Both human and animal studies show the development of disease at exposure levels below the existing 100 ppm PEL, clearly indicating the need to reduce this risk. There is disagreement regarding the interpretation of the reported epidemiology study to substantiate the 1 ppm REL. At this time OSHA has inadequate data to support feasibility at the 1 ppm level, while feasibility at 5 ppm has been demonstrated. OSHA therefore proposes adoption of a 5-ppm (TWA) PEL. The health evidence forms a reasonable basis for proposing a revision in this level. At the time of the final rule, OSHA will establish a new limit for 2-hexanone if the Agency determines that this limit will substantially reduce significant risk.

IRON PENTACARBONYL
CAS: 13463-40-6; Chemical Formula: $Fe(CO)_5$
H.S. No. 1216

OSHA currently has no limit for iron pentacarbonyl. The ACGIH recommends a TLV-TWA of 0.1 ppm with a TLV-STEL of 0.2 ppm, as iron, for this highly flammable, oily, colorless-to-yellow liquid.

In studies of rats, iron pentacarbonyl has been reported to have approximately one-third the acute toxicity of nickel carbonyl (for which ACGIH has recommended a TLV of 0.05 ppm TWA) (Sunderman, West, and Kincaid 1959). In 1970, Gage found that a 5.5-hour exposure at 33 ppm caused fatalities in three of eight rats; four of eight animals died after two 5.5-hour exposures at 18 ppm. At 7 ppm, no ill effects were observed in rats exposed 18 times for 5.5 hours (Gage 1970). There are no reports of long-term dose-response exposure studies in laboratory animals, and no evidence exists that iron pentacarbonyl is carcinogenic in either man or animals (ACGIH 1986, p. 327).

Immediate symptoms of acute exposure to high concentrations of iron pentacarbonyl include headache and dizziness, followed in 12 to 36 hours by fever, cyanosis, cough, and shortness of breath. The primary clinical effect is lung injury, although degenerative changes in the central nervous system have also been reported (ACGIH 1986, p. 327).

OSHA proposes a permissible exposure limit of 0.1 ppm TWA and a STEL of 0.2 ppm for iron pentacarbonyl. OSHA preliminarily concludes that these limits will protect exposed workers from the risk of headache, dizziness, fever, dyspnea, cyanosis, pulmonary injury, and central nervous system effects potentially associated with exposures at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for iron pentacarbonyl. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MERCURY (ARYL AND INORGANIC COMPOUNDS)
CAS: 7439-97-6; Chemical Formula: Hg
H.S. No. 1240

The current OSHA limit for all inorganic forms of mercury is 0.1 mg/m³ Hg as a ceiling limit; this limit was adopted from ANSI standard Z37.8 (1943). ACGIH currently recommends a 0.1 mg/m³ TLV–TWA for aryl and inorganic mercury compounds. NIOSH (1973b) has recommended a 0.05 mg/m³ limit as an 8-hour TWA.

In 1971, the ACGIH recommended a 0.05 mg/m³ TLV–TWA for all forms of mercury, including inorganic compounds. ANSI also reduced its standard to 0.05 mg/m³ in 1972, and NIOSH recommended the same limit in 1973. The 0.05 mg/m³ limit was based largely on the study of Smith et al. (1970) on workers exposed to mercury levels ranging from less than 0.1 to 0.27 mg/m³ in chlor-alkali plants. The authors reported a significant dose-related increase in the incidence of weight loss, tremors, abnormal reflexes, nervousness, and insomnia among workers exposed to 0.1 mg/m³ or more. There were slight increases in the incidence of insomnia and loss of appetite among workers exposed to 0.1 mg/m³ or less. Smith et al. (1970) concluded that a limit of 0.1 mg/m³ contained little or no margin of safety. Other studies (Bidstrup et al. 1951; Turrian et al. 1956) have also reported symptoms of mercury poisoning among workers exposed below 0.1 mg/m³. The 0.05 mg/m³ limit established by ACGIH, ANSI, and NIOSH also follows the 1968 recommendation of an international committee (Permanent Commission & International Association on Occupational Health 1968).

In 1980, the ACGIH revised its recommended TLV for aryl and inorganic mercury compounds to 0.1 mg/m³ Hg. In revising this limit, the ACGIH cited discrepancies in the literature regarding the ratio of blood and urinary mercury levels to airborne concentrations of mercury (Bell et al. 1973; Stopford et al. 1978). These studies reported lower ratios of mercury body burden to airborne concentration when personal sampling is used rather than area sampling. According to Bell et al. (1973), the lower ratio results because mercury exposure measurements are generally found to be higher when personal sampling is conducted, presumably as a consequence of contamination of clothing. The ACGIH argued that the 0.05 mg/m³ limit may be too stringent to apply when personal sampling is conducted. The ACGIH also stated that, unlike elemental or alkyl mercury, little mercury is deposited in the brain following exposure to aryl or inorganic mercury compounds. Based on this reasoning, the ACGIH adopted the higher 0.1 mg/m³ TLV–TWA for aryl and inorganic compounds of mercury. However, the ACGIH (1986) also noted that, although central nervous system effects are less likely to occur from exposure to mercury salts than from other forms of mercury, the risk of renal and oral effects would "presumably be just as great." Therefore, they cautioned that the higher limit for mercury salts "may be subject to debate" (ACGIH 1986). The 0.05 mg/m³ REL for the aryl and inorganic forms of mercury was established in 1973 and has been superseded by the 1980 ACGIH TLV of 0.1 mg/m³ TWA, which is based on more recent studies. However, adopting the TLV would constitute a deregulation of OSHA's current standard for mercury. Because the health effects data available do not satisfy the requirements for deregulation, OSHA proposes to maintain its current 0.1 mg/m³ ceiling PEL.

METHYLACRYLONITRILE
CAS: 126-98-7; Chemical Formula: $CH_2=C(CH_3)C=N$
H.S. No. 1251

There is no current OSHA standard for methylacrylonitrile, and NIOSH has no REL for this substance. The ACGIH recommends a 1-ppm TLV–TWA with a skin notation to protect workers who are occupationally exposed to methylacrylonitrile.

Methylacrylonitrile has been shown to be extremely toxic in animals, both by inhalation and dermal absorption. Beagles exposed for 90 days to 13.5 ppm convulsed and lost motor control in their hind limbs. Microscopic brain lesions were detected in one of the dogs. The level at which no effects were detected was determined to be between 3.2 ppm and 8.8 ppm (ACGIH 1986).

Neuropathic effects in dogs at levels of exposure below 8.8 ppm indicate that, in the absence of an exposure limit, occupational exposure to methyl acrylonitrile may be associated with a risk of neurological impairment. OSHA believes that establishing a 1-ppm PEL (which provides for a margin of safety below the observed no-effect level in dogs) and a skin notation will reduce the risk of neurological impairment that currently exists in the absence of an OSHA limit for this substance. The health evidence forms a reasonable basis for proposing a new limit for methylacrylonitrile. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce a significant risk.

METHYL BROMIDE
CAS: 74-83-9; Chemical Formula: CH_3Br
H.S. No. 1253

OSHA's current PEL for methyl bromide is a 20 ppm ceiling, while the ACGIH limit is 5 ppm as an 8-hour TWA, with a skin notation. NIOSH recommends that the REL for this substance be set at the lowest feasible level. Acute poisoning from methyl bromide is characterized by lung irritation, pulmonary edema, convulsions, and coma. Chronic exposure to low concentrations of methyl bromide generally produces

central nervous system effects, including muscle weakness and pain, incoordination, inability to focus one's eyes, and behavioral changes (ACGIH 1986; Craft 1983). The onset of neurological signs and symptoms is delayed for several hours to a few days after exposure.

Methyl bromide is a gas and an inhalation hazard, although it can also be absorbed through the skin. A report by Hine (1969) notes that methyl bromide has been responsible for more deaths among occupationally exposed workers in California than the organophosphates. It is hypothesized that methyl bromide has a greater potential for toxicity than other organic bromides, because its greater lipophilicity provides increased access to the brain.

Various studies demonstrate methyl bromide's toxicity in humans. Ingram (1951) reports ill effects (symptoms not specified) after exposure to methyl bromide at concentrations of 100 ppm. Similar exposure concentrations were also reported by Hine (1969) in a case study of two date packers in California. Johnson (1977) indicates that 34 packers became sick when exposed to an average methyl bromide concentration of 50 ppm, although concentrations in the packing room may have been as high as 100–150 ppm during the purging of a fumigation chamber.

Watrous (1942) described nausea, vomiting, and headache in 90 workers who were exposed for 2 weeks to concentrations "generally below" 35 ppm. These symptoms emphasized the need to create a TLV to protect workers from the nausea, vomiting, and headaches associated with lower levels of exposure. This need is strengthened by the fact that since these symptoms are usually delayed in onset, workers may not have sufficient warning of this substance's potential neurotoxicity.

The presence of neurologic symptoms at levels below 35 ppm indicates that a ceiling limit of 20 ppm is not adequate to protect workers from the effects of methyl bromide poisoning. OSHA proposes a PEL of 5 ppm TWA, with a skin notation, to more adequately protect workers against these incapacitating symptoms and to reduce this existing risk substantially. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl bromide if the Agency determines that this limit will substantially reduce significant risk.

MANGANESE FUME
CAS: 7439–96–5; Chemical Formula: MnO
H.S. No. 1236a

OSHA currently has a ceiling limit of 5 mg/m³ for manganese fume. Because of its potential for damage to the lungs and central nervous system, the ACGIH recommends an 8-hour TWA of 1 mg/m³ and a 3-mg/m³ STEL for manganese fume.

Symptoms of manganese poisoning range from sleepiness and weakness in the legs (Fairhall 1957) to difficulty in walking and uncontrolled laughter (Fairhall and Neal 1943). Health surveys of employees exposed to manganese fume have demonstrated a high incidence of pneumonia in these workers (Davies 1948). Tanaka and Lieben (1969) found seven cases of pneumonia and 15 borderline cases of pneumonia among 144 workers exposed to manganese dust or fume concentrations greater than 5 mg/m³; three of these cases were associated with fume rather than dust exposure. Those workers exposed to fume levels below 5 mg/m³ exhibited no signs of pneumonia. In a separate study by Smyth, Ruhf, Whitman, and Dugan (1973), 3 cases of manganese poisoning were detected among 71 employees exposed to levels of 13.3 mg/m³ fume.

OSHA is proposing a 1-mg/m³ TWA and a 3-mg/m³ STEL for manganese fume. The Agency preliminarily concludes that both a TWA limit and STEL are required to protect exposed employees from the risk of manganese poisoning, lung damage, and pneumonia associated with exposure to these fumes. The health evidence forms a reasonable basis for proposing a new limit for manganese fume. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MANGANESE CYCLOPENTADIENYL TRICARBONYL
CAS: 12079–65–1; Chemical Formula: C_5H_5-$Mn(CO)_3$
H.S. No. 1237

OSHA currently has no limit for exposure to manganese cyclopentadienyl tricarbonyl (MCT). The ACGIH recommends a TLV–TWA of 0.1 mg/m³ (as manganese), with a skin notation.

A Russian study reported that a single 2-hour exposure to MCT at 120 mg/m³ was fatal to 80 percent of albino rats, although rabbits, guinea pigs, and rats survived a single 2-hour exposure at 20 to 40 mg/m³. Chronic exposure of rats for 11 months at levels averaging 1 mg/g³ for 4 hours daily showed delayed effects (7 months from onset of exposure) on neuromuscular excitability, evidence of kidney damage, and decreased resistance to infection (Arkipova, Tolgskaya, and Kocketkova 1965). The tails of 10 white mice were dipped in a gasoline mixture containing 1 gram MCT per 100 ml; a second group of mice had their tails immersed in gasoline without MCT. An equal number of fatalities were observed in the gasoline plus MCT and gasoline only groups after four or five 2-hour applications, and all tails exhibited necrosis. The authors concluded that these effects were caused by the gasoline and not by the MCT (Arkipova, Tolgskaya, and Kocketkova 1965). Further studies in rabbits showed that MCT applied dermally as an oil emulsion caused irritation of the skin. These authors also investigated the dermal toxicity of tetrahydrofuran in MCT solutions versus tetrahydrofuran in oil. All animals whose tails had been dipped in the hydrofuran solution of MCT died within an hour, while animals whose tails had been dipped in pure tetrahydrofuran did not (Arkipova, Tolgskaya, and Kocketkova 1965). The same authors concluded that MCT is toxic at low concentrations, has cumulative properties, affects the nervous system, is irritating to the skin, and causes early histological changes in the respiratory tract.

More recent reports describe MCT-induced pulmonary edema and convulsions in the rat (Penney et al. 1985). The ED_{50}s for convulsions were 32 mg/kg orally and 20 mg/kg intraperitoneally; LD_{50}s were 24 mg/kg orally and 14 mg/kg intraperitoneally. Necrosis of the bronchiolar tissue and pulmonary parenchymal damage were seen in mice and rats given intraperitoneal doses (Haschek et al. 1982).

OSHA has preliminary concluded that occupational exposure to MCT poses a risk of neuropathic effects, kidney damage, skin irritation, pulmonary edema, and tissue damage. The Agency is therefore proposing an 8-hour TWA PEL of 0.1 mg/m³ for manganese cyclopentadienyl tricarbonyl, with a skin notation, to protect workers against the risk of these effects, which have been shown to occur at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for manganese cyclopentadienyl tricarbonyl. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MANGANESE TETROXIDE
CAS: 1317–35–7; Chemical Formula: Mn_3O_4
H.S. No. 1238

OSHA currently has no limit for manganese tetroxide (compounds and fume). The ACGIH recommends a TLV–TWA of 1 mg/m³, as manganese, for this brownish-black powder and its fume. Ferromanganese fume has been determined by x-ray diffraction analysis to consist primarily of manganese tetroxide.

Findings from a Russian study indicated that intratracheal suspensions of manganese oxide, manganese dioxide, and manganese tetroxide particles (particle size less than 3um) produced pneumonitis and other similar pulmonary effects in rats (Lovina and Robachevsky 1955). These investigators also determined that manganese tetroxide has a greater toxicity than the lower oxides of manganese and that freshly prepared oxides were more potent than those stored for 6 months to a year.

Two cases of manganese fume poisoning were reported in a plant where concentrations were between 2.7 and 4.7 mg/m³ (Whitlock, Kimuso, and Bittenbender 1986), but other investigators have questioned these air analysis data and believe that exposures to manganese tetroxide concentrations of 5 mg/m³ or less cause no harmful effects (Whitman and Brandt 1966). In a 7-year study, Smyth and co-workers investigated chronic manganese poisoning in workers exposed to both ferromanganese fumes and dust. Five of 71 employees suffered from chronic manganism; of these five cases, three resulted from fume exposure and two from dust exposure. Two of the three fume-exposure victims were exposed over a 5-year period to an estimated average ferromanganese concentration of 13.3 mg/m³; however, the third victim worked in an operation where air concentrations of manganese were less than 1 mg/m³, which suggests that certain individuals may be hypersusceptible to manganese poisoning. The dust-exposed victims worked in areas where air concentrations were in the range of 30 to 50 mg/m³ throughout the study period (Smyth, Ruhf, Whitman, and Dugan 1973).

Martonik (cited in ACGIH 1986, p. 357) reports that the fume has greater toxicity than the dust. During a 2-year period, at least one case of acute manganese poisoning was documented at a fume concentration level of 7.5 mg/m³ and another case at the same welding operation may have been manganism.

OSHA is proposing a 1 mg/m³ 8-hour TWA for manganese tetroxide (compounds and fume). The Agency preliminarily concludes that this limit will provide protection against the risk of chronic manganese poisoning, pneumonitis, and other respiratory effects associated with exposure to manganese tetroxide at the levels presently permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for manganese tetroxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MERCURY (VAPOR)
CAS: 7439–97–6
H.S. No. 1241

OSHA currently has a ceiling limit of 0.1 mg/m³ for mercury (including vapor). The ACGIH recommends a TLV–TWA of 0.05 mg/m³ for mercury vapor, measured as mercury, and a skin notation. Elemental mercury is a silvery, odorless, heavy liquid.

Inhalation of high concentrations of mercury vapor for relatively brief periods can cause pneumonitis, bronchitis, chest pain, dyspnea, coughing, stomatitis, gingivitis, salivation, and diarrhea (NIOSH 1973; Ashe, Largent, Dutra et al. 1953). Chronic mercurialism is manifested by central nervous system effects, including tremor, a variety of neuropsychiatric disturbances, and loss of appetite (Kazantzis 1968; Smith, Vorwald, Patil, and Mooney 1970).

Severe organ damage occurred in rabbits exposed for 4 hours to an average vapor concentration of 28.8 mg/m³. Damage was observed in the kidneys, liver, brain, heart, lungs, and colon (Ashe, Largent, Dutra et al. 1953). The oral LD_{50} in rats for mercuric vapor is 18 mg/kg (NTIS PB 214–270, as cited in ACGIH 1986, p. 358). A study by Smith, Vorwald, Patil, and Mooney (1970) indicated that workers in the chlorine-producing industry who were exposed to mercury showed that chronic exposures to a 1-mg/m³ vapor concentration produced no effects in these workers. Six of 75 workers regularly exposed to 0.05 to 0.1 mg/m³ of mercury vapor in a glassware manufacturing plant reported insomnia, and one was found to have tremors (Danziger and Possick 1973). One of 11 workers employed in a mercury mine or refining plant and exposed at vapor concentrations below 0.1 mg/m³ had sore gums, loose teeth, or excess salivation (Rentos and Seligman 1968).

NIOSH (1973) has recommended a 10-hour TWA limit of 0.05 mg/m³ for inorganic mercury and concluded that hyperactivity, rather than tremor, may be the most typical symptom of chronic mercurialism. Two studies report no evidence of mercury vapor poisoning in industrial settings where characteristic exposures ranged between 0.05 and 0.1 mg/m³ (Danziger and Possick 1973; McGill et al. 1984).

In workers exposed at levels about 0.1 mg/m³, toxic symptoms were seen (Rentos and Seligman 1968). Turrian, Grandjean, and Turrian (1956) found that 33 percent of workers exposed to the vapor at levels above 0.05 mg/m³ had erethism, while only 8 percent of those exposed below this level manifested this symptom. About 20 percent of workers in both groups exhibited tremor. The ACGIH notes that, after exposure to the vapor, "a relatively high percentage of the absorbed mercury remains in the brain" compared with the amount deposited in the brain after exposure to the aryl and inorganic compounds (ACGIH 1986, p. 359). The ACGIH accordingly recommends a higher TLV–TWA for these compounds.

OSHA proposes a PEL of 0.05 mg/m³ TWA for mercury vapor, with a skin notation. The Agency preliminarily concludes that this limit will protect workers against the risk of acute and chronic mercury poisoning that exists from workplace exposures to this vapor at levels above 0.05 mg/m³. The skin notation is proposed because the vapors of elemental mercury can be readily absorbed through the skin. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for mercury (vapor) if the Agency determines that this limit will substantially reduce significant risk.

MERCURY, (ORGANO) ALKYL COMPOUNDS
CAS: 7439–97–6
H.S. No. 1242

OSHA has a current PEL of 0.01 mg/m³ TWA and a ceiling limit of 0.04 mg/m³ for the alkyl compounds of mercury. The ACGIH recommends a TLV–TWA of 0.01 mg/m³ and a TLV–STEL of 0.03 mg/m³ for these compounds, as mercury. A skin notation is also recommended by the ACGIH. Alkyl mercury compounds include volatile liquids, such as dimethyl and diethyl mercury, as well as many complex salts, which are usually solids.

Alkyl mercury compounds pose greater health hazards than do the inorganic compounds or mercury because they can penetrate the blood-brain barrier and the placenta very quickly. The primary toxic effects associated with exposure to the organic compounds of mercury are injuries to the central and peripheral nervous

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systems and to the kidneys (Casarett and Doull 1975). In addition, data concerning mouse and rat exposures to alkyl mercury compounds have demonstrated toxicity to the gastrointestinal system, pancreas, liver, gonads, and cardiovascular system. Suppression of the immune system and impairment of the endocrine system have also been demonstrated (Shakbazyan et al. 1977). Fatalities in mice have been reported at exposures of 10 to 30 mg/m³ for 3 to 5 hours (Trakhtenberg 1950).

Methyl mercury is among the most damaging of the alkyl compounds to humans because it accumulates in the body and causes developmental effects (Wilson 1977). A 3-month exposure to approximately 1 mg/m³ diethyl mercury caused death in two individuals (Hill 1943). Another fatal case of alkyl mercury poisoning has also been described (Hook, Lundgren, and Swensson 1954). On the basis of his work with laboratory animals, Trakhtenberg (1950) stated that even a concentration as low as 0.00001 mg/m³ could not be tolerated by humans on a continuing basis. However, a later study reported no consistent, acute effects of mercury poisoning at air concentrations between 0.01 and 0.1 mg/m³, despite the fact that brief excursions considerably above this range occurred (Dinman, Evans, and Linch 1956).

OSHA is proposing a PEL of 0.01 mg/m³ TWA and a 15-minute STEL of 0.03 mg/m³ for the alkyl compounds of mercury, with a skin notation. The Agency preliminarily concludes that exposure to the alkyl mercury compounds poses a risk of severe neuropathic and other systemic injury. The Agency believes that both the short-term and 8-hour limits are necessary to reduce these risks and that the skin notation will protect against the dermal absorption possible in the absence of any OSHA limit or skin notation. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for mercury, (organo) alkyl compounds if the Agency determines that this limit will substantially reduce significant risk.

PENTABORANE
CAS: 19624-22-7; Chemical Formula: B_5H_9
H.S. No. 1304

OSHA's current limit for pentaborane is 0.005 ppm as an 8-hour TWA. The ACGIH has the same 8-hour TWA but additionally recommends a 15-minute STEL of 0.015 ppm. Pentaborane is a colorless liquid with a strong and penetrating odor.

In both humans and animals, inhalation of pentaborane vapor causes central nervous system effects (Svirbely 1954; Rozendaal 1951; Lowe and Freeman 1957; Cordasco, Cooper, Murphy, and Anderson 1962).

The 5-minute LC_{50} for rats and mice is 67 and 40 ppm, respectively; for 60 minutes, these values are 10 and 6 ppm for rats and mice, respectively (Weir, Bath, and Weeks 1961, as cited in ACGIH 1986, p. 459). Rats exposed repeatedly to 3-ppm pentaborane by inhalation exhibited tremors, hyperexcitability, belligerency, and weight loss (Svirbely 1954). Rats, rabbits, monkeys, and dogs exposed repeatedly to pentaborane vapor at concentrations of 1 ppm for 4 weeks or 0.2 ppm for 6 months lost weight (Levinkas, Paslian, and Bleckman 1956). In the same experiments, rats and rabbits exposed at 1 ppm showed reduced activity and impaired locomotor ability, respectively, and monkeys and dogs exhibited apathy, loss of appetite, insensitivity to pain, loss of mobility, tremor, and impaired coordination. The ACGIH (1986, p. 459) notes that the 0.2 ppm concentration reported in the Levinkas et al. study (1956) was a calculated rather than measured value and that the actual exposure level was probably closer to 0.01 ppm.

Humans accidentally overexposed to pentaborane experience tremors, convulsions, behavioral changes, loss of memory, impaired judgment, and other symptoms of central nervous system intoxication (Svirbely 1954; Rozendaal 1951; Lowe and Freeman 1957; Cordasco, Cooper, Murphy, and Anderson 1962).

OSHA is proposing an 8-hour TWA of 0.005 ppm for pentaborane and a STEL of 0.015 ppm. The Agency preliminarily concludes that these limits will protect workers against the risk of central nervous system effects, such as tremors and convulsions, behavioral changes, and loss of judgment, potentially associated with exposure to pentaborane at levels only slightly above those that would be permitted by the 8-hour TWA alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for pentaborane if the Agency determines that this limit will substantially reduce significant risk.

PHENYL MERCAPTAN
CAS: 108-98-5; Chemical Formula C_6H_5SH
H.S. No. 1316

OSHA has no current limit for phenyl mercaptan. The ACGIH recommends a TLV–TWA of 0.5 ppm. NIOSH recommends a 15-minute ceiling limit of 0.1 ppm for phenyl mercaptan (benzenethiol). Phenyl mercaptan is a colorless liquid with an offensive, garlic-like odor.

The primary acute hazards of exposure to phenyl mercaptan are central nervous system stimulation followed by post-convulsive CNS depression, severe eye and skin irritation, systemic toxicity to spleen, kidney, lung, and liver tissues, and narcotic effects (ACGIH 1986, p. 478).

Phenyl mercaptan has been reported to have 4-hour inhalation LC_{50} values of 33 and 28 ppm for rats and mice, respectively (Doull and Plzak 1962; Fairchild and Stokinger 1958). The oral LD_{50} for the rat is reported to be 46 mg/kg (McCord and Witheridge 1949; Robles 1975, as cited in ACGIH 1986, p. 478). For the rabbit and rat, the dermal LD_{50} values are 134 mg/kg and 300 mg/kg, respectively (Doull and Plzak 1962; Fairchild and Stokinger 1958; Schafer 1972). The responses of animals to exposure to phenyl mercaptan were uniform regardless of species and progressed from CNS stimulation to incoordination, skeletal and muscular paralysis, respiratory depression, followed at high concentrations by coma and death. High doses (not further specified) administered via inhalation produced lung, liver, and kidney changes in mice (Doull and Plzak 1962; Fairchild and Stokinger 1958; Schafer 1972). In rabbits, phenyl mercaptan is a severe eye and skin irritant (McCord and Witheridge 1949; Robles 1975; Schafer 1972).

In humans, phenyl mercaptan is a moderately toxic skin irritant and causes severe dermatitis, headaches, and dizziness at unspecified levels (Fairchild and Stokinger, 1958; McCord and Witheridge 1949).

OSHA is proposing an 8-hour TWA limit of 0.5 ppm for phenyl mercaptan. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of CNS effects, skin irritation, and systemic injury potentially associated with occupational exposure to phenyl mercaptan at the uncontrolled levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for phenyl mercaptan. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PROPYLENE GLYCOL DINITRATE
CAS: 6423-43-4; Chemical Formula: $C_3H_6N_2O_6$
H.S. No. 1342

OSHA currently has no limit for propylene glycol dinitrate. The ACGIH recommends a TLV–TWA of 0.05 ppm, with a skin notation. When freshly prepared, propylene glycol dinitrate is a colorless liquid with a disagreeable odor.

Exposure to this substance affects blood pressure, causes methemoglobinuria and respiratory toxicity, injures liver and kidney tissues, and distorts vision. It can also cause headache and incoordination.

The oral LD_{50} value for the rat is between 480 and 250 mg/kg (Clark and Litchfield 1969; Andersen and Mehl 1973), and the subcutaneous LD_{50} is 530 mg/kg (Andersen and Mehl 1973). Mice are reported to be somewhat more resistant, with a subcutaneous LD_{50} of slightly more than 1200 mg/kg; however, cats appear to be even more susceptible to propylene glycol dinitrate with a subcutaneous LD_{50} of between 200 and 300 mg/kg (Clark and Litchfield 1969). In all species studied, death occurs by anoxia, which is caused by almost complete conversion of hemoglobin to methemoglobin (Clark and Litchfield 1969). Skin tests in albino rabbits did not produce irritation, but ocular instillation caused transient conjunctival redness (Jones, Strickland, and Siegel 1972). Twenty-day skin exposures in rabbits at 1 g/kg showed minor irritation, and at 2 g/kg, rabbits became weak and cyanotic; one of five rabbits died, and this animal's hemoglobin and hematocrit values had decreased. When the dose was increased to 4 g/kg, the rabbits methemoglobin values rose to 34.5 percent at death, an indication, along with elevated serum and urinary nitrate levels, that propylene glycol dinitrate is readily absorbed through the skin (Jones, Strickland, and Siegel 1972). Continuous 90-day inhalation exposures in dogs at 10 ppm showed kidney and liver changes; exposures at 35 ppm caused heavy iron deposits in the liver, spleen, and kidneys. Female (but not male) rats showed a drop in blood pressure within 30 minutes after injection of doses above 5 mg/kg. Rhesus monkeys displayed mydriasis in 90-day exposures at 35 ppm but no change in avoidance behavior during a visual discrimination and acuity threshold test (Jones, Strickland, and Siegel 1972).

In humans, 8-hour exposures to 0.2 ppm or higher propylene glycol dinitrate resulted in visual distortion and headache (Stewart et al. 1974). Subjects developed a tolerance for the headache response, but the visual effects were cumulative. Impaired balance occurred after 6.5 hours of exposure at 0.5 ppm, and a 40-minute exposure at 1.5 ppm caused eye irritation. Subjects exposed at 0.5 ppm for 8 hours experienced a consistent elevation in diastolic pressure but no pulmonary irritation. At concentrations of 0.03 to 1.5 ppm, no hematologic effects were observed (Stewart et al. 1974). Studies of human exposures to levels below 0.1 ppm do not report evidence of chronic neurotoxicity (Horvath et al. 1981).

OSHA proposes a TWA limit of 0.05 ppm, with a skin notation, for propylene glycol dinitrate. The Agency believes that this limit will protect workers against the risk of hepatotoxic, hematologic, and central nervous system effects that exists from workplace exposure in the absence of any OSHA PEL. The skin notation is proposed to protect against the risk of skin absorption. The health evidence forms a reasonable basis for proposing a new limit for propylene glycol dinitrate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

OSHA preliminary concludes that risks are associated with occupational exposure to the group of neuropathic toxicants shown in Table C1–1. The effects caused by such exposures include brain lesions, nausea, vomiting, general depression of the central nervous system, interference with sensory and motor functions, and alterations in the ability of the brain to process information. Affected workers may experience drowsiness, dizziness, loss of ability to concentrate, mood changes, reduced awareness, learning difficulty, unsteadiness, and auditory and visual disturbances. In addition, employees experiencing these effects are at risk and are likely to hurt themselves or others in accidents caused by their reduced functional capacity. OSHA believes that the health evidence for these neurotoxins forms a reasonable basis for proposing new or revised limits. At the time of the final rule, the Agency will establish these limits if it determines that significant risk will be substantially reduced thereby.

2. Substances for Which Proposed Limits are Based on Avoidance of Narcosis Effects

Introduction

Proposed limits for 19 substances are based primarily on evidence showing that occupational exposure to these substances causes narcosis. The narcotic effects of exposure to substances such as alcohols, aliphatic hydrocarbons, and chlorinated hydrocarbons have been recognized in industry as serious adverse effects for many years. Table C2–1 lists these chemicals, their CAS and HS numbers, and their OSHA, ACGIH, and NIOSH limits. For seven of these substances, the Agency proposes to lower the 8-hour limit and to revise or add a STEL. In five cases, the 8-hour limit will remain the same and a proposed STEL will be added. Eight-hour TWAs and/or STELs are being proposed for four previously unregulated substances; in two cases, OSHA is proposing the NIOSH REL, and, in the remaining case, an existing limit would be replaced by a new value.

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TABLE C2-1. Substances for Which Limits Are Based on Avoidance of Narcosis

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1044 Butane	106-97-8	—	800 ppm TWA	—
1049 sec-Butyl alcohol	78-92-2	150 ppm TWA	100 ppm TWA 150 ppm STEL	—
1050 tert-Butyl alcohol	75-65-0	100 ppm TWA	100 ppm TWA 150 ppm STEL	—
1111 Cyclopentane	287-92-3	—	600 ppm TWA	—
1163 Ethyl bromide	74-96-4	200 ppm TWA	200 ppm TWA 250 ppm STEL	—
1185 Gasoline	8006-61-9	—	300 ppm TWA 500 ppm STEL	—
1194 Heptane	142-82-5	500 ppm TWA	400 ppm TWA 500 ppm STEL	85 ppm TWA 440 ppm Ceiling (15 min)
1201 Hexane isomers	—	—	500 ppm TWA 1000 ppm STEL	100 ppm TWA 510 ppm Ceiling (15 min)

TABLE C2-1. Substances for Which Limits Are Based on Avoidance of Narcosis (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1218 Isoamyl alcohol	123-51-3	100 ppm TWA	100 ppm TWA 125 ppm STEL	—
1221 Isophorone+	78-59-1	25 ppm TWA	5 ppm Ceiling	4 ppm TWA
1254 Methyl chloride	74-87-3	100 ppm TWA 200 ppm STEL 300 ppm Ceiling	50 ppm TWA 100 ppm STEL	Lowest feasible level
1255 Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350 ppm TWA	350 ppm TWA 450 ppm STEL	350 ppm Ceiling (15 min)
1296 Octane	111-65-9	500 ppm TWA	300 ppm TWA 375 ppm STEL	75 ppm TWA 385 ppm Ceiling (15 min)
1306 Pentane	109-66-0	1000 ppm TWA	600 ppm TWA 750 ppm STEL	120 ppm TWA 610 ppm Ceiling (15 min)
1307 2-Pentanone (Methyl propyl ketone)	107-87-9	200 ppm TWA	200 ppm TWA 250 ppm STEL	150 ppm TWA
1308 Perchloroethylene (Tetrachloroethylene)	127-18-4	100 ppm TWA 200 ppm STEL 300 ppm Ceiling	50 ppm TWA 200 ppm STEL	Lowest feasible limit

TABLE C2-1. Substances for Which Limits Are Based on Avoidance of Narcosis (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1371 Stoddard solvent	8052-41-3	500 ppm TWA	100 ppm TWA (525 mg/m^3)	350 mg/m^3 TWA 1800 mg/m^3 Ceiling (15 min)
1397 Toluene	108-88-3	200 ppm TWA 300 ppm STEL 500 ppm Ceiling	100 ppm TWA 150 ppm STEL	100 ppm TWA (8-hr) 200 ppm Ceiling (10 min)
1406 Trichloroethylene+	79-01-6	100 ppm TWA 200 ppm STEL 300 ppm Ceiling	50 ppm TWA 200 ppm STEL	25 ppm TWA

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ Proposed PEL is based on NIOSH REL.

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Description of the Health Effects

Narcosis is the result of general depression of central nervous system (CNS) function. When the CNS becomes sufficiently depressed, the awareness or consciousness of exposed workers is affected. Initial symptoms of narcosis include drowsiness, difficulty in concentration, and mood changes; these may progress to slurred speech, dizziness, and loss of coordination, and, in more severe cases, loss of consciousness, coma and death. Except in more serious cases, CNS depression is reversible on removal from exposure and causes no permanent damage to the CNS. However, because narcosis adversely affects workers' concentration and coordination, there is an increased risk of injuries and accidents caused by mistakes and errors in judgment.

The mechanism by which substances induce narcosis is poorly understood. CNS depressants may have the same mechanism of action as general anesthetics, which appear to produce a reversible effect on electrically excitable neuronal membranes.

Dose-Response Relationship and Narcotic Effects

The induction of narcosis following exposure to narcotic agents is expected to follow the classical S-shaped (sigmoidal) dose-response relationship. As exposure level increases, both the percent of exposed persons affected and the severity of the effect will increase. Although it is not known whether a true threshold exists for the occurrence of the molecular events leading to narcosis (i.e., disruption of electrical impulses in neurons), there is usually a level at which most exposed individuals will manifest the onset of symptoms associated with narcosis. The no-effect level for a particular substance will be determined largely by individual susceptibility, the extent to which the material is absorbed, and the rate at which it is metabolized and eliminated.

The following discussion describes OSHA's preliminary findings for the substances in this group and illustrates the potentially serious consequences of workplace exposure to these substances.

BUTANE
CAS: 106-97-8; Chemical Formula: C_4H_{10}
H.S. No. 1044

OSHA has no current limit for butane. the ACGIH recommends a threshold limit value of 800 ppm TWA for this colorless, flammable gas.

The primary risk of exposure to butane is its ability to cause narcosis at high exposure levels. Exposure to 10,000 ppm for 10 minutes causes drowsiness, but there are no reports of systemic toxicity or irritation (Gerarde 1963).

In rats, the 4-hour LC_{50} for butane is 658 gm/m^3, or about 280,000 ppm (NIOSH 1977). Humans exposed to 1000 ppm for a single 8-hour day, or to 500 ppm for 2-week periods of 8-hour workdays, showed no harmful subjective or abnormal physiological responses but did show a reduced visual evoked response (VER) wave amplitude during the second week (Stewart et al. 1977).

OSHA is proposing a permissible exposure limit of 800 ppm TWA for butane. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of narcosis and drowsiness potentially associated with exposures at previously uncontrolled levels. The health evidence forms a reasonable basis for proposing a new limit for butane. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

sec-BUTYL ALCOHOL
CAS: 78-92-2; Chemical Formula: $CH_3CH_2CHOHCH_3$
H.S. No. 1049

OSHA's current limit for sec-butyl alcohol is 150 ppm as an 8-hour TWA. The ACGIH recommends a TLV-TWA of 100 ppm, with a 15-minute STEL of 150 ppm. sec-Butyl alcohol is a colorless liquid with a strong, wine-like odor.

The acute toxicity of sec-butyl alcohol is reported to be lower than that of n-butanol, for which OSHA is proposing a ceiling of 50 ppm. The oral LD_{50}s in rats for these two substances are 6.5 g/kg for sec-butyl alcohol and 4.4 g/kg for n-butanol, respectively (Smyth, Carpenter, and Weil 1951). Liquid sec-butyl alcohol is less injurious to the eyes than liquid n-butanol (ACGIH 1988, p. 77). Occupational exposures to sec-butyl alcohol at levels of about 100 ppm were reported not to be associated with difficulties (Bank, unpublished communication, as cited in ACGIH 1986, p. 77).

OSHA proposes to reduce the permissible exposure limit for sec-butyl alcohol to 100 ppm TWA, and to include a 150-ppm STEL, to afford adequate protection against the risk of narcosis and irritation caused by short-term elevated exposures. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for sec-butyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

tert-BUTYL ALCOHOL
CAS: 75-65-0; Chemical Formula: $(CH_3)_3COH$
H.S. No. 1050

OSHA currently has a limit of 100 ppm for tert-butyl alcohol. The ACGIH recommends a TLV-TWA of 100 ppm, with a TLV-STEL of 150 ppm. At ordinary temperatures and pressures, tert-butyl alcohol exists in the form of colorless hygroscopic crystals (ACGIH 1986).

Although similar to the other butyl alcohols in many respects, tert-butyl alcohol is more volatile and has a greater potential for narcotic effects (Weese 1928). Mice exposed to t-butyl alcohol exhibit a stronger narcotic response than they show when exposed to normal or iso-butyl alcohol (Weese 1928). Repeated daily doses of t-butyl alcohol that produced narcosis were not fatal in animals (Schaffarzick and Brown 1952). In humans, contact with t-butyl alcohol produces erythema and hyperemia (Oetel 1936).

OSHA proposes an 8-hour TWA PEL of 100 ppm for tert-butyl alcohol, with a 15-minute STEL of 150 ppm. The Agency preliminarily concludes that this combination of limits will protect against the risk of narcosis permitted at elevated short-term levels. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for tert-butyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

CYCLOPENTANE
CAS: 287-92-3; Chemical Formula: $CH_2CH_2CH_2CH_2CH_2$
H.S. No. 1111

OSHA currently has no limit for cyclopentane. The ACGIH recommends a TLV-TWA of 600 ppm for this flammable, mobile liquid.

The few existing animal data indicate the cyclopentane is a central nervous system depressant. As with other alicyclic hydrocarbons, high concentrations cause excitement, loss of equilibrium, stupor, coma, and, rarely, respiratory failure (Gerard 1963). No major toxicological animal studies on the effects of cyclopentane exposure have been reported, and evaluations of the toxic properties of this substance have therefore relied on the animal data for n-pentane. n-Pentane has been shown to cause narcosis in animals at exposures of 90,000 to 120,000 ppm for 5 to 60 minutes (Abritti et al. 1976). Swann (1974) reported that a concentration of 130,000 ppm is fatal. Almost no data are available concerning the chronic effects of cyclopentane exposure.

Abritti et al. (1976) report that petroleum solvents used in the Italian shoe industry contain up to 16 percent cyclopentane. Workers exposed to these solvents have been observed to suffer from polyneuropathy, and Oettel reported in 1936 that skin exposure to such solvents caused burning and skin blistering after 15 minutes of confined contact. It has not been determined whether the irritation was caused by cyclopentane or by other substances, such as n-hexane, in the solvent.

OSHA is proposing a PEL of 600 ppm TWA for this substance. OSHA has preliminarily concluded that occupational exposure to cyclopentane poses a risk of irritation and narcosis at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for cyclopentane. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ETHYL BROMIDE
CAS: 74-96-4; Chemical Formula: C_2H_5Br
H.S. No. 1163

OSHA currently has an 8-hour TWA limit of 200 ppm for ethyl bromide. The ACGIH also recommends a limit of 200 ppm as an 8-hour TWA, and in addition recommends a 15-minute STEL of 250 ppm. Ethyl bromide is a colorless, highly volatile, and flammable liquid with an ether-like odor; it becomes yellow when exposed to light and air.

The concentrations of ethyl bromide reported as lethal to guinea pigs are 3200 ppm for 9 hours and 1700 ppm for 12.5 hours (Sayers, Yant, Thomas, and Berger 1929). Von Oettingen (1955) reported the minimal lethal concentration of this substance for mice as 3500 ppm.

Ethyl bromide acts as a central nervous system depressant (narcotic); additionally, exposure irritates the lungs and causes congestion and fatty degeneration of the liver, intestinal hemorrhage, and kidney swelling. Several deaths have been reported from the use of ethyl bromide as general anesthetic (von Oettingen 1955).

OSHA is proposing a PEL of 200 ppm as an 8-hour TWA and a 15-minute STEL of 250 ppm for ethyl bromide. The Agency preliminarily concludes that these limits will work to reduce the risk of narcosis, kidney and liver damage, and respiratory irritation associated with occupational exposure to elevated levels of ethyl bromide. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethyl bromide if the Agency determines that this limit will substantially reduce significant risk.

GASOLINE
CAS: 8006-61-9; Chemical Formula: None
H.S. No. 1185

There is no current OSHA PEL for gasoline. The ACGIH has established a 300-ppm 8-hour TWA and a 500-ppm 15-minute STEL.

Studies have shown that exposure to 3000 ppm of gasoline for 30 minutes produces mild anesthesia, while exposure to concentrations between 500 and 900 ppm for 1 hour produces dizziness (Gerarde 1963; Rumion 1975). However, these authors also found that people exposed to gasoline at concentrations 100 to 270 ppm for several hours do not experience any symptoms of narcosis.

OSHA is proposing an 8-hour TWA of 300 ppm, supplemented by a STEL of 500 ppm to ensure that levels do not exceed 300 ppm for any length of time; these limits are intended to protect against the early symptoms of narcosis. OSHA preliminarily concludes that uncontrolled exposure to gasoline place exposed employees at risk of experiencing drowsiness, headaches, dizziness, and loss of coordination. The health evidence forms a reasonable basis for proposing a new limit for gasoline. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

HEPTANE
CAS: 142-82-5; Chemical Formula: $CH_3(CH_2)CH_2CH_3$
H.S. No. 1194

The current OSHA limit for heptane is 500 ppm as an 8-hour TWA. The ACGIH TLVs for heptane are 400 ppm as a TWA and 500 ppm as a STEL. NIOSH (1977a) has recommended that workplace exposures not exceed 85 ppm as a 10-hour TWA or 440 ppm as a 15-minute ceiling limit.

Patty and Yant (1939) reported that exposure to 1,000 ppm for 6 minutes caused slight dizziness in humans; exposures to higher levels caused vertigo, incoordination, and hilarity. They also reported that a 4-minute exposure to 5,000 ppm produced complaints of nausea and loss of appetite. Based on this information, as well as animal data showing 10,000 to 15,000 ppm as being an effect level for narcosis (Fuhner 1921), the ACGIH concluded that heptane was more acutely toxic than hexane. They therefore recommended limits that are somewhat lower than for hexane isomers.

As discussed above in the discussions on pentane and hexane isomers, NIOSH has recommended the same occupational limits for all C_5–C_8 alkanes (i.e., 350 mg/m³ TWA and 1800 mg/m³ as a 15-minute ceiling). This recommendation considers that all C_5–C_8 alkanes possess potential neurotoxic capability similar to that of n-hexane. The ACGIH disagrees with this concept, believing that the neurotoxicity caused by exposure to n-hexane is the result of a unique metabolite, 2,5-hexanedione.

Because heptane is considered to be more acutely toxic than hexane, OSHA preliminarily concludes that it is appropriate to revise its limit for heptane to a level below that of hexane isomers and, thus, reduce the risk of narcosis. Therefore, OSHA proposes to revise its limit for heptane to 400 ppm TWA and 500 ppm STEL. As in the case of hexane isomers and pentane, OSHA solicits comment on the evidence that heptane is potentially neuropathic.

HEXANE ISOMERS
CAS: None; Chemical Formula: $(CH_3)_2C_2H_6$; $n(CH_2)_4C_2H_6$
H.S. No. 1201

OSHA has no current limit for the hexane isomers. The ACGIH TLVs for hexane isomers are 500 ppm TWA and 1000 ppm STEL. NIOSH has a recommended TWA limit for these isomers of 100 ppm, supplemented by a 510-ppm (15 min) ceiling.

A study by Drinker et al. (1943) shows that humans exposed to 1400 to 1880 ppm of hexane experienced nausea and headache. Patty and Yant (1929) found that a 10-minute exposure to 5000 ppm caused giddiness and dizziness in exposed subjects. A study by Nelson et al. (1943) showed no effects in unacclimated subjects exposed to hexane isomers in concentrations of 500 ppm, but narcotic effects have often been seen in people exposed at levels above 100 ppm (Elkins 1959). The ACGIH based its recommendation primarily on the Nelson et al. (1943) study.

NIOSH recommends limits for the hexane isomers of 100 ppm as a 10-hour TWA and 510 ppm as a 15-minute short-term limit. This recommendation is based on human and animal evidence that exposure to n-hexane below concentrations of 500 ppm is associated with the development of polyneuropathy (Inoue et al. 1970; Miyagaki 1967); NIOSH (1977a) did not distinguish between n-hexane and other hexane isomers when making its recommendation for an exposure limit. It should be noted that NIOSH concluded that all C_5–C_8 alkanes are potential neuropathic agents and cited a human study (Gaultier 1973) that reported neuropathy among workers exposed to an alkane mixture containing less than 5 percent n-hexane.

The ACGIH (1986, p. 307) disagrees with NIOSH that all C_5–C_8 alkanes are potential neuropathic agents, citing evidence that a metabolite of n-hexane (2,5-hexanedione) is responsible for the unique neurotoxic properties of n-hexane (see discussion of n-hexane in Section IV–C1 of this Preamble). The ACGIH concluded that "it seems unlikely that all the hexanes would follow the same metabolic route in the body [as n-hexane], in view of the marked variations in structure of the molecule" (ACGIH 1986, p. 307).

After reviewing the evidence cited by ACGIH (1986) and NIOSH (1977a), OSHA preliminarily finds that workers exposed to hexane isomers are at significant risk of experiencing narcosis and of developing neuropathy in the absence of an OSHA limit. The NIOSH RELs for the hexane isomers (100 ppm TWA and 510 ppm STEL) are based on the hypothesis that all of the C_5–C_8 alkanes are potential neuropathic agents. OSHA tentatively accepts the analysis that a unique metabolite of n-hexane is responsible for such effects and therefore proposes at this time a 500-ppm TWA and a 1000-ppm STEL for the hexane isomers. Because of the scientific disagreement on this subject, OSHA specifically requests comments on the toxicity or absence of toxicity of the other C_5–C_8 alkanes. The health evidence forms a reasonable basis for proposing a new limit for hexane isomers. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ISOAMYL ALCOHOL (PRIMARY AND SECONDARY)
CAS: 123-51-3; Chemical Formula: $(CH_3)_2CHCH_2CH_2OH$—Primary; $(CH_3CH_2)_2CHOH$—Secondary
H.S. No. 1218

OSHA's current limit for the isoamyl alcohols is 100 ppm as an 8-hour TWA. The ACGIH has established an 8-hour TLV–TWA of 100 ppm and a 15-minute STEL of 125 ppm for these substances, which are colorless liquids that have pungent tastes and an alcoholic odor that causes coughing.

In rats, the oral LD_{50} for the primary isoamyl alcohol in 7.07 mg/kg (Smyth et al. 1969). Haggard, Miller, and Greenburg (1945) determined that isoamyl alcohol's anesthetic toxicity was approximately 12 times higher than that of ethyl alcohol; these authors believed that exposure to isoamyl alcohol would not cause chronic effects.

Smyth (1956) reported that the principal effect of inhalation exposure to this substance is narcosis, and this author believed that, by analogy with the narcotic effects of butyl alcohol, a 100-ppm level would protect exposed workers against narcosis but not against irritation. Nelson, Ege, Ross and co-workers (1943) stated that unacclimatized human volunteers reported throat irritation at a concentration of 100 ppm, and eye and mucous membrane irritation at higher levels.

OSHA is proposing an 8-hour TWA of 100 ppm and a 15-minute STEL of 125 ppm for the isoamyl alcohols (primary and secondary). The Agency preliminarily concludes that these limits will work together to ensure that workers are protected against the eye and mucous membrane irritation known to be associated with exposures above 100 ppm. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for isoamyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

ISOPHORONE
CAS: 78-59-1; Chemical Formula: $C_9H_{14}O$
H.S. No. 1221

The current OSHA limit for isophorone is 25 pm as an 8-hour TWA. The ACGIH has established a 5 ppm TLV as a ceiling limit, and NIOSH recommends a workplace standard of 4 ppm as a 10-hour TWA for isophorone. Isophorone is a colorless liquid at room temperature, and it has a comphor-like order.

Studies in animals and with human volunteers indicate that exposures to high concentrations of isophorone cause nephrotoxic and other adverse effects. A paper by Smyth, Seaton, and Fischer (1942) reported that guinea pigs and rats exposed to 550 ppm isophorone for 6 weeks demonstrated degenerative changes in the kidneys and liver. At an exposure level of 25 ppm, no adverse effects were noted, but at 50 ppm, the liver of one animal and the kidneys of four others were damaged. The entire group of 20 animals exposed at 50 ppm survived, but 2 of 16 animals died after this level was raised to 100 ppm (Smyth, Seaton, and Fischer 1942). Volunteers exposed for a few minutes to isophorone vapor at concentrations between 40 and 400 ppm experienced eye, nose, and throat irritation; several subjects exposed at the 200-ppm level developed headache, nausea, faintness, dizziness, and a feeling of suffocation (Smyth and Seaton 1940). Silverman, Schulte, and First (1946) reported that volunteers exposed to 25 ppm isophorone, the current OSHA PEL, complained of irritation of the eyes, nose, and throat. Another study conducted by the Western Electric Company (Ware, personal communication, 1973) reported that workers exposed for a one-month period to levels of 5 to 8 ppm isophorone demonstrated fatigue and malaise. When the workplace level was reduced to between 1 and 4 ppm, there were no complaints of adverse effects. The NIOSH Criteria Document for the ketones (1978) notes that all of the ketones are central nervous system depressants, and that workplace exposures to more than one ketone may produce additive effects.

OSHA is proposing to reduce the current 8-hour TWA PEL of 25 ppm to an 8-hour TWA of 4 ppm, to protect workers against the risk of fatigue, nausea, and headaches demonstrated to occur in exposed workers at levels between 5 and 8 ppm. The Agency preliminarily concludes that this limit will substantially reduce this occupational risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for isophorone if the Agency determines that this limit will substantially reduce significant risk.

METHYL CHLORIDE
CAS: 74-87-3; CHEMICAL FORMULA: CH_3Cl
H.S. No. 1254

OSHA's current limits for methyl chloride are 100 ppm as an 8-hour TWA, 200 ppm as a 15-minute ceiling, and 300 ppm as a 5-minute peak in any 3-hour period. The ACGIH has established a 50-ppm 8-hour TLV–TWA limit and a 100-ppm 15-minute STEL for this substance. NIOSH recommends the lowest feasible limit for methyl chloride and considers it a carcinogen. Methyl chloride is a colorless, sweet-smelling gas.

There is considerable evidence in humans and some in animals demonstrating that exposure to methyl chloride by inhalation or dermal absorption produces narcosis and other central nervous system effects, including respiratory failure and death (ACGIH 1986, p. 380). In animals, repeated exposures to 500 ppm or to higher concentrations can be life-threatening, but exposures to 300 ppm for 64 weeks caused no apparent effects (Smith and von Oettingen 1947).

Reports in the earlier literature described by Fairhall (1969) indicate that moderate (not further specified) exposure causes ocular symptoms that

may persist for weeks, white serious (not farther specified) exposure has severe effects in the central nervous system. Patty (1963) states that serious exposure causes central nervous system, liver and kidney, and bone marrow effects, with symptoms of ataxia, staggering gait, weakness, tremors, vertigo, speaking difficulty, and blurred vision. Symptoms may be of several weeks' duration or may even be permanent (Patty 1963).

The Dow Chemical Company (as cited in ACGIH 1986, p. 380) studied the methyl chloride exposures of employees in 54 job classifications over a 4-month period. Exposures ranged from 5 to 78 ppm methyl chloride (8-hour TWA), averaged 30 ppm over the work shift, and occasionally included peaks as high as 440 ppm. Medical examination of these workers revealed no detectable effects of methyl chloride exposure. However, average 8-hour exposures in the range of 195 to 475 ppm caused symptoms of weakness, drowsiness, staggering gait, thickness of the tongue, and memory lapses in some of the employees (Dow Chemical Company, as cited in ACGIH 1986, p. 380).

In a study of six cases of industrial methyl chloride poisoning, workers chronically exposed to levels between 200 and 400 ppm developed neurotoxic symptoms after 2 or more weeks of exposure (Scharen-Weber, Spears, Cowles 1974). Symptoms included drowsiness, dizziness, mental confusion, misty vision, staggering gait, and slurred speech, and symptoms sometimes recurred after apparent recovery and in the absence of renewed exposure.

Repko and co-workers (1976) found that workers exposed to concentrations of methyl chloride ranging from 7.4 to 70 ppm but averaging 33.6 ppm displayed a significant performance decrement, and that exposures below 100 ppm produced significant but transitory changes in functional capacity.

OSHA is proposing an 8-hour TWA of 50 ppm and a 15-minute STEL of 100 ppm for methyl chloride. The Agency preliminarily concludes that these two limits together will protect workers from the risk of neurotoxic effects, including functional impairment, performance decrements, headaches, dizziness, slurred speech, and staggering gait associated with exposure to this substance at the levels permitted by OSHA's current PEL. The Agency believes that the proposed PEL and STEL will work together to reduce this risk substantially. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl chloride if the Agency determines that this limit will substantially reduce significant risk.

METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)
CAS: 71-55-6; Chemical Formula: CH_3CCl_3
H.S. No. 1255

OSHA currently has an 8-hour TWA limit of 350 ppm for methyl chloroform. The ACGIH has established the same TWA limit as well as a TLV–STEL of 450 ppm. NIOSH recommends a 15-minute ceiling limit of 350 ppm. Methyl chloroform is a clear, nonflammable liquid.

The primary health concerns associated with exposure to methyl chloroform are anesthesia and cardiac sensitization. The oral toxicity of methyl chloroform is low, with LD_{50} values ranging from 5.7 to 12.3 g/kg for rats, mice, rabbits, and guinea pigs. This substance does, however, defat the skin on contact causing redness and scaling (Torkelson et al. 1958). Skin absorption is relatively insignificant; the acute percutaneous LD_{50} in rabbits is greater than 16 g/kg; slight, reversible irritation was observed from applications of 0.5 g/kg to rabbit skin for 90 days (Torkelson et al. 1958). Repeated exposure of animals to concentrations between 1000 and 10,000 ppm for 3 months produced anesthesia and lung and liver damage in some species, but exposure to 500 ppm of methyl chloroform vapor for 7 hours daily, 5 days/week for 6 months caused no toxic changes in guinea pigs, rabbits, or monkeys (Torkelson et al. 1958). Other animal studies (Gehring 1966; Pizz, Evans, and Hine 1956; Rowe et al. 1963) have reported that methyl chloroform has low hepatotoxicity, but cardiac sensitization has occurred at high doses (5000–10,000 ppm) (Reinick et al. 1949; Trochimowicz et al. 1976). Tests in rats and mice for teratogenicity and carcinogenicity have demonstrated negative results (Schwetz et al. 1975; NIOSH 1976; Weisberger 1977).

In humans, it has been reported that anesthetic effects may begin to occur at methyl chloroform concentrations approaching 900 ppm (Stewart et al. 1969). Deaths from anesthesia and/or cardiac sensitization have been noted in employees working in confined areas (Patty 1963). Kramer and co-workers (1978) conducted an epidemiological study of men and women exposed for periods ranging from several months to 6 years to methyl chloroform at levels that occasionally exceeded 280 ppm; when compared to matched-pair controls, no adverse exposure-related effects were found (Kramer, Ott, Fulerson et al. 1978).

OSHA is proposing a PEL of 350 ppm TWA and a STEL of 450 ppm for methyl chloroform. The Agency preliminarily concludes that this combined PEL–STEL limit will protect workers against the risk of anesthetic and cardiac-sensitizing effects potentially associated with exposure at the elevated short-term levels permitted by an 8-hour limit alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl chloroform if the Agency determines that this limit will substantially reduce significant risk.

OCTANE
CAS: 111-65-9; Chemical Formula: $CH_3(CH_2)_6CH_3$
H.S. No. 1296

OSHA's current limit for octane is 500 ppm as an 8-hour TWA. The ACGIH has established a 300-ppm TWA and a 375-ppm STEL. NIOSH (1977a) recommends a 75-ppm 10 hour TWA and a 385-ppm 15-minute ceiling limit.

Mice exposed to octane concentrations of 6680 to 13,700 ppm developed narcosis in 30 to 90 minutes (Fuhner 1921). Flury and Zernik (1931) believed the narcotic concentration in humans to be 5000 ppm; Patty and Yant (1929) placed the narcotic concentration at 8000 ppm. Based on this information, the ACGIH concluded that octane was 1.2 to 2 times more toxic than heptane, and recommended TLVs of 300 ppm TWA and 375 ppm STEL.

As discussed in more detail above for the other C_6–C_8 alkanes, the NIOSH (1977a) recommended limits are based on their finding that all C_6–C_8 alkanes present a neurotoxic hazard similar to n-hexane. The ACGIH disagrees with this conclusion, believing the neurotoxic properties of n-hexane to be unique among the alkane series.

Because octane is known to be more toxic than heptane, OSHA believes a lower limit is warranted to protect against the risk of narcosis. At this time, OSHA is proposing to revise its limits for octane to 300 ppm TWA and 375 ppm STEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for octane if the Agency determines that this limit will substantially reduce significant risk. OSHA also requests comment on the strength of the evidence that exposure to octane may present a more serious neuropathic hazard.

PENTANE
CAS: 109-66-0; Chemical Formula: C_5H_{12}
H.S. No. 1298

OSHA's current limit for pentane is 1000 ppm TWA. In 1978, the ACGIH adopted a 600-ppm TLV–TWA and a 750-ppm TLV–STEL. NIOSH (1977a) has recommended that workplace exposures to pentane not exceed 120 ppm as a 10-hour TWA and 610 ppm as a 15-minute short-term limit. Pentane is usually encountered in volatile petroleum fractions, some of which are used as solvents. Pure pentane is used as a blowing agent for plastics, in solvent extraction, and in ice manufacture.

Fairhall (1957) stated that narcosis and mucous membrane irritation were the only reported toxic effects resulting from exposure to pentane. The reported lethal concentration in humans is 130,000 ppm. (Flury and Zernik 1931; Swann et al. 1974). According to Patty and Yant (1929), humans exposed for 10 minutes to 5000 ppm did not complain of any adverse symptoms.

In a report by Gaultier et al. (1973), five cases of polyneuropathy occurred among employees exposed to a solvent containing 80 percent pentane, 14 percent heptane, and 5 percent hexane. Based largely on this report, NIOSH (1977a) recommended the same occupational limit for all C_5–C_8 alkanes as for the neuropathic agent n-hexane (350-mg/m³ TWA and 1800-mg/m³ 15-minute short-term limits; these limits are equal to about 120-ppm TWA and 610-ppm 15-minute short-term limits for pentane).

The ACGIH (1986) points out that the rationale used by NIOSH in setting a limit for pentane ignores the theory that n-hexane is uniquely neuropathic via metabolism to 2,5-hexanedione, which is the same metabolite that is formed during exposure to another neuropathic agent, methyl butyl ketone. The ACGIH (1986) established its limits of 600 ppm TWA and 750 ppm as a STEL to "provide a substantial margin of safety against narcotic and irritative effects," but did not rule out the possibility that "chronic exposure to high concentrations may lead to neuropathy" (ACGIH 1986). The ACGIH believed that the manifestation of such effects would require heavy exposures to pentane and concluded that its recommended limits would be adequately protective. At this time, OSHA accepts the evaluation that all C_5–C_8 alkanes are not equally toxic because a metabolite of n-hexane exhibits unique neurotoxic properties. The Gaultier study does not provide specific isomer exposure data supporting the RELs of 120 ppm (TWA) and 610 ppm (STEL). The Agency therefore proposes a TWA of 600 ppm and a STEL of 750 ppm as the permissible exposure limits for pentane. Because of the disagreement regarding the subject of equal C_5–C_8 alkane toxicity, OSHA is specifically requesting comments on this scientific question.

2-PENTANONE (METHYL PROPYL KETONE)
CAS: 107-87-9; Chemical Formula: $CH_3COC_3H_7$
H.S. No. 1307

The current OSHA limit for 2-pentanone is 200 ppm as an 8-hour TWA. ACGIH recommends a 200-ppm TLV–TWA and a 250-ppm TLV–STEL. NIOSH (1978g) has recommended a 150-ppm limit as a 10-hour TWA.

Both the ACGIH- and NIOSH-recommended limits are based on a study by Specht et al. (1940), who found that guinea pigs exhibited irritation and weakness on exposure to 2500 ppm, and that exposure to 5000 ppm produced narcosis and coma. The authors concluded that 2-pentanone was considerably less toxic than methyl butyl ketone but is more toxic than methyl ethyl ketone, and is likely to be more irritating than methyl ethyl ketone or acetone. The ACGIH-recommended limits are apparently based on a judgment that the 200-ppm TLV–TWA and 250-ppm TLV–STEL are low enough to prevent narcosis and irritation.

NIOSH (1978) applied the findings of Specht et al. (1940) to the findings of Nelson et al. (1943), who reported that volunteers complained of slight irritation on exposure to 100 ppm methyl ethyl ketone. Because 2-pentanone was believed by Specht et al. (1940) to be at least as irritating as methyl ethyl ketone, NIOSH (1978) believed that a "slight reduction" in the OSHA standard was warranted. Therefore, NIOSH recommended a 150-ppm limit for 2-pentanone.

Both the ACGIH and NIOSH limits are designed to reduce the acute health effects observed at 100 ppm. While the 150-ppm REL appears to be more protective, OSHA has preliminarily concluded that the combination of a 200-ppm TWA and a 250-ppm STEL is more protective and is necessary to prevent the adverse health effects associated with exposure to this chemical. OSHA therefore proposes these limits for adoption as the PEL to reduce the risks associated with exposures at elevated short-term levels. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 2-pentanone if the Agency determines that this limit will substantially reduce significant risk.

PERCHLOROETHYLENE (TETRACHLOROETHYLENE)
CAS: 127-18-4; Chemical Formula: $CCl_2=CCl_2$
H.S. No. 1306

OSHA's current limits for perchloroethylene are 100 ppm as an 8-hour TWA, 200 ppm as a 15-minute ceiling, and 300 ppm as a 5-minute peak not to be exceeded in any 3-hour period. The ACGIH has established an 8-hour TWA of 50 ppm and a 15-minute STEL of 200 ppm for perchloroethylene. NIOSH recommends maintaining exposures at the lowest feasible limit and classifies this chemical as a carcinogen. Perchloroethylene is a clear, colorless liquid with an ether-like odor.

The oral LD_{50} for mice is 8.85 mg/kg, and the lethal air concentration for this species is 6000 ppm for 4 hours (Handbook of Toxicology 1956). Rats were exposed 8 hours/day, 5 days/week for as long as 17 months to 70, 230, or 470 ppm (Carpenter 1937). At 70 ppm, all animals survived and no pathology was noted. Animals also survived the higher exposures, but changes were seen at postmortem in the kidneys and livers of these rats. Rats, guinea pigs, cats, rabbits, and monkeys were exposed to varying concentrations of perchloroethylene for 7 hours/day, 5 days/week for various durations (Rowe et al. 1952). Rats exposed at 1600 ppm developed drowsiness and depression after 1 week and liver and kidney changes after 4 weeks. Guinea pigs exposed to 400 ppm for 130 exposures developed heavier kidneys and livers and fatty degeneration of the liver. Rats, rabbits, and monkeys exposed for 130 7-hour exposures to 400 ppm showed no effects.

Mice exposed in another study to 200 ppm 4 hours/day for 1, 2, 4, or 8 weeks developed fatty degeneration of the liver (Kylin, Sumegi, and Yllner 1965). Exposure of pregnant rats to 300 ppm perchloroethylene on days 6 through 15 of gestation did not cause teratological effects but did produce developmental toxicity (Schuetz, Leong, and Gerhing 1975). This substance does not appear to be mutagenic (ACGIH 1986, p. 464).

In an NCI gavage study for carcinogenicity, perchloroethylene proved carcinogenic to the livers of mice but not to those of rats (NCI 1977). Application of perchloroethylene to the skin of rats and mice, with and without a promoter, did not induce cancer (Thiess et al. 1977).

In humans being treated for worms, perchloroethylene doses of 2.8 or 4 ml caused narcosis, exhilaration, and signs of inebriation; at doses of 1 to 8 ml, no changes were seen in liver function tests (Lambert 1933; Fernando et al. 1939). A worker exposed to an estimated concentration of 1470 ppm perchloroethylene and Stoddard solvent for 3.5 hours lost consciousness (Stewart

et al. 1961). Studies have shown that exposure to perchloroethylene at 2000 ppm for 1.5 minutes caused unconsciousness; exposure at 500 ppm for 50 minutes caused increased salivation, metallic taste, eye irritation, and other effects; exposure at 216 ppm for 2 hours caused eye burning, light-headedness, motor incoordination, and other effects (Carpenter 1973). A 4-hour exposure to 100 ppm caused eye irritation (Stewart et al. 1974).

Chronic exposure to 200 ppm perchloroethylene caused early signs of central nervous system depression, but exposure to 100 ppm on a regular basis apparently had no adverse effect (Stewart et al., 1974, 1977). Direct contact with the liquid causes erythema, skin burns, and dermal absorption (Morgan 1969; Gold 1969; Stewart and Dodd 1964).

Two epidemiological studies of occupationally exposed perchloroethylene workers have failed to show increases in the incidence of liver tumors among these workers (Blair, Decoufle, and Grauman 1979; Kaplan 1980, as cited in ACGIH 1986, p. 464).

OSHA is proposing an 8-hour TWA of 50 ppm and a 15-minute STEL of 200 ppm for perchloroethylene. The Agency preliminarily concludes that these limits, taken together, will protect workers against the risk of eye irritation, headaches, and other effects associated with exposure to perchloroethylene. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for perchloroethylene if the Agency determines that this limit will substantially reduce significant risk.

STODDARD SOLVENT
CAS: 8052-41-3; Chemical Formula: C_nH_{2n}
H.S. No. 1371

OSHA's current limit for stoddard solvent is 500 ppm as an 8-hour TWA. The ACGIH has established a TLV-TWA of 100 ppm. NIOSH (1977h) recommends limits of 350 mg/m³ as a 10-hour TWA and 1800 mg/m³ as a 15-minute ceiling for all refined petroleum solvents; these limits correspond approximately to a 60 ppm TWA and 310 ppm STEL, respectively. Stoddard solvent is a refined petroleum solvent having a flash point in the range of 102 to 100 °F and containing 85 percent or more C_{10} and higher molecular weight hydrocarbons.

The current OSHA limit of 500 ppm (equivalent to the 1968 ACGIH TLV) was based on the toxicities of the major components of stoddard solvent (i.e., 60 to 85 percent nonane and isodecane and 15 to 20 percent trimethyl benezene); specifically, the recommended limit was calculated from the TLVs established for pentane and trimethyl benzene. The revised ACGIH limit of 100 ppm thus reflects a reduction in the TLVs for pentane and trimethyl benzene. The ACGIH (1986) noted that a report by Carpenter et al. (1978), who found slight kidney damage among rats exposed to 330 ppm for 65 days, provided additional evidence that the earlier limit was too high.

The NIOSH limit of 350 mg/m³ TWA and 1800 mg/m³ is derived from its recommended limits for C_9–C_{11} alkanes, which are designed to protect against neuropathic effects. NIOSH recommended the same limit for stoddard solvent because of the lack of data on chronic effects and because of a report of polyneuropathy occurring among workers exposed to jet fuels containing mixtures of kerosene and gasoline. NIOSH reasoned that although C_9–C_{11} alkanes present in jet fuel may have been responsible, it was possible that the heavier hydrocarbon components may also have been responsible. Thus, the recommended limits for stoddard solvent reflect a concern that higher molecular weight hydrocarbons may be neuropathic.

The NIOSH RELs for stoddard solvent are based on the hypothesis of equivalent neuropathic toxicity for all of the C_9–C_{11} alkanes. OSHA has tentatively rejected this approach. OSHA therefore proposes that the 100 ppm TWA be adopted as the new PEL to reduce the risk; this limit is based on information developed for analogous solvents. The Agency requests comments on this issue, as discussed above.

TOLUENE
CAS: 108-88-3; Chemical Formula: $C_6H_5CH_3$
H.S. No. 1397

The current OSHA standard for toluene is 200 ppm as an 8-hour TWA limit, with a 300 ppm ceiling and a 500 ppm peak for a maximum of 10 minutes in 8 hours. The ACGIH has established an exposure limit for toluene at 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL. NIOSH recommends a 100 ppm 8-hour TWA and a 10-minute ceiling of 200 ppm. Toluene is a flammable, colorless liquid with an aromatic hydrocarbon odor.

The acute toxicity of toluene in animals is greater than that of benzene. Patty (1963) reports that the lethal doses of toluene and benzene in mice are 10,000 and 14,000 ppm, respectively. The oral LD_{50} in rats is 7.53 ml/kg (Smyth et al. 1969). Exposure of rats to 2500 or 5000 ppm of toluene caused a temporary decrease in white cell count but no evidence of damage to the blood-forming organs or the liver. Fairhall (1957) stated that severe toluene exposure can cause a marked drop in the red blood cell count and partial destruction of the blood-forming elements of the bone marrow, but other researchers report that numerous animal studies indicate that toluene is not a bone marrow toxin (Gerarde 1960). A study by Greenberg, Mayers, Heinmann, and Moskowitz (1942) reported that painters exposed to toluene levels of 100 to 1100 ppm exhibited enlarged livers, a moderate decrease in red blood cell counts, enlarged red blood cells, and absolute lymphocytosis, but no leukopenia. Wilson (1943) observed workers exposed to toluene at varying levels up to 1500 ppm. At levels less than 200 ppm, signs of headache, fatigue, and nausea were present. Those workers exposed to 200 to 500 ppm toluene experienced temporary amnesia, lack of coordination, and anorexia. Levels of exposure from 500 to 1500 ppm resulted in a marked loss of coordination, diminished reaction time, pronounced weakness, and heart palpitations. Red cell counts were also decreased, and two cases of aplastic anemia required lengthy hospital treatment; however, the author noted that he could not rule out the possibility that benzene contamination of the toluene was the cause of these effects. Incidences of aplastic anemia (one fatal) have been noted in six glue sniffers; toluene was the base solvent in the glue (Powers 1965). A man who had inhaled toluene regularly at unspecified levels for 14 years developed permanent encephalopathy (Knox and Nelson 1966). Von Oettingen, Neal, Donahue, et al. (1942) found that exposures of 200 ppm for an unspecified duration caused slight changes in muscle coordination in human volunteers. Later studies by Ogata, Tomokuni and Takatsuka (1970) showed an increase in reaction time, and a decrease in pulse rate, and a decrease in systolic blood pressure at exposures to 200 ppm for 7 hours.

OSHA is proposing an 8-hour TWA PEL of 100 ppm and a STEL of 150 ppm for toluene. The Agency preliminarily concludes that studies clearly indicate that a risk of hepatotoxicity, hematopoietic, and nervous system effects exists at levels substantially below the current 200-ppm 8-hour TWA PEL. OSHA believes that the new limits will protect exposed workers from the risk of these serious health effects, which have been demonstrated to occur even as a result of less than full-shift exposures.

TRICHLOROETHYLENE)
CAS: 79-01-6; Chemical Formula: $CCl_2=CHCl$
H.S. No. 1406

OSHA's current limit for trichloroethylene, adopted from ANSI, is 100 ppm TWA, 200 ppm as a ceiling not to be exceeded for more than 5 minutes every 2 hours, and 300 ppm as a peak limit. The ACGIH has recommended a 50-ppm TLV-TWA and a 200-ppm TLV-STEL. NIOSH (1978h) considers trichloroethylene to be a potential human carcinogen and has recommended a 25-pm 10-hour TWA.

The ACGIH (1986) cited several studies establishing that trichloroethylene primarily affects the central nervous system and liver; some of these studies have indicated that chronic exposure to less than 100 ppm trichloroethylene is associated with a variety of nervous disturbances. Haas (1960) and Grandjean (1955) reported nervous symptoms among workers exposed for 5 years or more to concentrations ranging from 1 to 335 ppm; the frequency of complaints increased when average exposures exceeded 40 ppm. Bardodej and Vyskocil (1956) also reported symptoms of trichloroethylene poisoning, including tremors, giddiness, anxiety, and alcohol intolerance, among workers exposed above 40 ppm. In contrast, controlled laboratory experiments with human subjects exposed for up to several days to 100 or 200 ppm have generally reported no behavioral or subjective responses. The ACGIH concluded that although the symptoms reported by workers are subjective and commonly found among individuals with no chemical exposure, the consistency of the reports "suggests the possibility of some subjective complaints as concentrations exceed about 50 ppm" (ACGIH 1986). Therefore, the ACGIH recommended a TLV-TWA of 50 ppm and a TLV-STEL of 200 ppm to minimize complaints of headache, fatigue, and irritability.

The ACGIH (1986) also reviewed some of the carcinogenicity data on trichloroethylene. In an NCI bioassay (1976b), mice given trichloroethylene by gavage developed hepatocellular carcinomas, but rats did not. The species difference in response was attributed to a difference in the way trichloroethylene is metabolized between the mouse and rat (Stott et al. 1982). An inhalation study on mice, rats, and Syrian hamsters (Henschler et al. 1980) found only an increase in the occurrence of malignant lymphomas in mice, which the authors believed were peculiar to the strain of mouse used (NMRI). The ACGIH also cited a number of epidemiologic investigations of cohorts as large as 7,688 workers, in which no correlation between cancer mortality and exposure to trichloroethylene was found (Novotna et al. 1971; Axelson et al. 1978; Tola et al. 1980).

After reviewing some of the same data, NIOSH (1978h) concluded that the results of the NCI gavage study indicate trichloroethylene (TCE) to be a potential human carcinogen, although it was "not considered to be a potent carcinogen." In addition, NIOSH concluded that the current 100 ppm limit would not sufficiently protect against neuropathic symptoms caused by exposure to trichloroethylene. NIOSH's recommended limit of 25 ppm was based on an evaluation of several industrial hygiene reports showing that many degreasing operations, including those using open-top tanks, are maintaining exposures at less than 50 ppm TWA. NIOSH believed that a 25-ppm TWA level could be uniformly achieved by the use of engineering control technology.

Since publication of the 1978 NIOSH report, several recent bioassays on trichloroethylene have been published and are currently being reviewed by EPA. Fukuda et al. (1983) exposed female rats and mice to 50, 150, or 450 ppm trichloroethylene for 103 weeks and reported an increase incidence of lung tumors among mice only. Maltoni et al. (1986) exposed rats and mice to 100, 300, or 600 ppm trichloroethylene and reported a significant increase of renal adenocarcinomas and Leydig cell tumors in rats, and a signfiant increase in hepatomas and lung tumors in mice. In 1986, the NIP reported an increase in the incidence of kidney tumors in rats given trichloroethylene by gavage; however, the NTP considered the response to be weak (3 of 49 animals) and reported that the results were only statistically significant after corrections for high mortality were made.

The 50-ppm TWA and 200-ppm STEL established by the ACGIH were established to minimize subjective complaints of headache, fatigue, and irritability. However, NIOSH has concluded that TCE is a potential human carcinogen, although not a "potent" one. NIOSH recommended a REL of 25 ppm TWA because the current PEL does not sufficiently protect against nervous system effects. NIOSH believes this REL is feasible and can be achieved by engineering control technology. In light of the uncertainty of the carcinogenicity issue, OSHA proposes adoption of a 25-ppm TWA REL to substantially reduce occupational risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for trichloroethylene if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

OSHA preliminarily concludes that workers exposed to these narcosis-causing substances are at risk of loss of consciousness, uncoordinated movements, inability to concentrate, and drowsiness; these highly undesirable and serious health effects may additionally have the potential to cause serious workplace accidents and injuries. The new or reduced exposure limits being proposed by OSHA are intended to protect employees from experiencing these risks in their places of work and will create a substantial reduction in such risks. The health evidence for these substances forms a reasonable basis for proposing the revision or addition of limits at the proposed levels. At the time of the final rule, OSHA will establish limits for these narcotic substances if the Agency determines that these limits will reduce significant risk.

3. Substances for Which Proposed Limits Are Based on Avoidance of Sensory Irritation

Introduction

Exposure to many chemical agents is associated with the development of sensory irritation, which is initiated when these substances come into contact with mucous membranes or skin. Limits have been set for a large group of chemicals on the basis of their sensory irritant effects. These substances, which number 79, are shown in Table C3–1, along with their current OSHA limits, CAS numbers, NIOSH RELs, ACGIH TLVs, and OSHA HS numbers. For six of these chemicals, OSHA is proposing to reduce the 8-hour TWA, and for an additional nine, the Agency proposes both to reduce the 8-hour limit and to add a STEL. In 22 cases, the 8-hour limit would remain unchanged but a STEL would be added. In six instances, a ceiling is proposed for deletion, and this limit would be replaced by an 8-hour TWA and/or STEL limits. Thirty of these chemicals were previously unregulated by OSHA, and for these, OSHA is proposing 8-hour

limits, 8-hour limits supplemented by a STEL, or ceiling limits. For five substances, OSHA is proposing to replace an existing TWA limit with a ceiling limit. For 15 of these substances, the NIOSH and ACGIH limits are different (see Table C3-1). OSHA is proposing the NIOSH REL for three substances.

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TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1001 Acetaldehyde	75-07-0	200 ppm TWA	100 ppm TWA 150 ppm STEL	—
1002 Acetic acid	64-19-7	10 ppm TWA	10 ppm TWA 15 ppm STEL	—
1004 Acetone+	67-64-1	1000 ppm TWA	750 ppm TWA 1000 ppm STEL	250 ppm TWA
1007 Acrolein	107-02-8	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	—
1010 Allyl alcohol	107-18-6	2 ppm TWA, Skin	2 ppm TWA, Skin 4 ppm STEL	—
1012 Allyl glycidyl ether	106-92-3	10 ppm Ceiling	5 ppm TWA, Skin 10 ppm STEL	9.6 ppm Ceiling (15 min)
1013 Allyl propyl disulfide	2179-59-1	2 ppm TWA	2 ppm TWA 3 ppm STEL	—
1021 Ammonia	7664-41-7	50 ppm TWA	25 ppm TWA 35 ppm STEL	50 ppm Ceiling (5 min)
1022 Ammonium chloride fume	12125-02-9	—	10 mg/m^3 TWA 20 mg/m^3 STEL	—

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1036 Borates, tetra, Na (anhydrous)	1303-96-4	—	1 mg/m^3 TWA	—
1037 Borates, tetra, Na (decahydrate)	1303-96-4	—	5 mg/m^3 TWA	—
1038 Borates, tetra, Na (pentahydrate)	1303-96-4	—	1 mg/m^3 TWA	—
1042 Bromine	7726-95-6	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	—
1045 2-Butanone (MEK)	78-93-3	200 ppm TWA	200 ppm TWA 300 ppm STEL	200 ppm TWA
1047 n-Butyl acetate	123-86-4	150 ppm TWA	150 ppm TWA 200 ppm STEL	—
1053 n-Butyl lactate	138-22-7	—	5 ppm TWA	—
1054 n-Butyl mercaptan	109-79-5	10 ppm TWA	0.5 ppm TWA	0.5 ppm Ceiling (15 min)
1063 Camphor	76-22-2	2 ppm TWA	2 ppm TWA 3 ppm STEL	—

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1064 Caprolactam (dust)	105-60-2	—	1 mg/m^3 TWA 3 mg/m^3 STEL	—
1065 Caprolactam (vapor)	105-60-2	—	20 mg/m^3 TWA 40 mg/m^3 STEL	—
1077 Cesium hydroxide	21351-79-1	—	2 mg/m^3 TWA	—
1079 Chlorine+	7782-50-5	1 ppm Ceiling	1 ppm TWA 3 ppm STEL	0.5 ppm Ceiling (15 min)
1083 Chloroacetyl chloride	79-04-9	—	0.05 ppm TWA	—
1084 o-Chlorobenzylidene malononitrile	2698-41-1	0.05 ppm TWA	0.05 ppm Ceiling, Skin	—
1105 Cyanogen	460-19-5	—	10 ppm TWA	—
1106 Cyanogen chloride	506-77-4	—	0.3 ppm Ceiling	—
1119 Dibutyl phosphate	107-66-4	1 ppm TWA	1 ppm TWA 2 ppm STEL	—
1122 1,3-Dichloro-5,5-dimethylhydantoin	118-52-5	0.2 mg/m^3 TWA	0.2 mg/m^3 TWA 0.4 mg/m^3 STEL	—

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1127 Dichloroethyl ether	111-44-4	15 ppm Ceiling, Skin	5 ppm TWA 10 ppm STEL, Skin	—
1130 2,2-Dichloropropionic acid	75-99-0	—	1 ppm TWA	—
1137 Diethylamine	109-89-7	25 ppm TWA	10 ppm TWA 25 ppm STEL	—
1140 Diisobutyl ketone	108-83-8	50 ppm TWA	25 ppm TWA	25 ppm TWA
1158 Epichlorohydrin	106-89-8	5 ppm TWA, Skin	2 ppm TWA, Skin	—
1162 Ethyl benzene	100-41-4	100 ppm TWA	100 ppm TWA 125 ppm STEL	—
1164 Ethyl ether	60-29-7	400 ppm TWA	400 ppm TWA 500 ppm STEL	—
1165 Ethyl mercaptan	75-08-1	10 ppm Ceiling	0.5 ppm TWA	0.5 ppm Ceiling (15 min)
1169 Ethylene glycol	107-21-1	—	50 ppm Ceiling	—
1171 Ethylidene norbornene	16219-75-3	—	5 ppm Ceiling	—

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1183 Furfural	98-01-1	5 ppm TWA, Skin	2 ppm TWA, Skin	—
1184 Furfuryl alcohol	98-00-0	50 ppm TWA	10 ppm TWA 15 ppm STEL, Skin	50 ppm TWA
1187 Glutaraldehyde	111-30-8	—	0.2 ppm Ceiling	—
1196 Hexachlorocyclopentadiene	77-47-4	—	0.01 ppm TWA	—
1204 Hexylene glycol	107-41-5	—	25 ppm Ceiling	—
1206 Hydrogen bromide	10035-10-6	3 ppm TWA	3 ppm Ceiling	—
1208 Hydrogen fluoride+	7664-39-3	3 ppm TWA	3 ppm Ceiling	3 ppm TWA 6 ppm Ceiling (15 min)
1211 2-Hydroxypropyl acrylate	999-61-1	—	0.5 ppm TWA, Skin	
1217 Iron salts (soluble)	Varies with compound	—	1 mg/m^3 TWA	—
1224 Isopropyl acetate	108-21-4	250 ppm TWA	250 ppm TWA 310 ppm STEL	—

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1225 Isopropyl alcohol	67-63-0	400 ppm TWA	400 ppm TWA 500 ppm STEL	400 ppm TWA 800 ppm Ceiling (15 min)
1228 n-Isopropylamine	75-31-0	5 ppm TWA	5 ppm TWA 10 ppm STEL	—
1243 Mesityl oxide	141-79-7	25 ppm TWA	15 ppm TWA 25 ppm STEL	10 ppm TWA
1248 Methyl 2-cyano-acrylate	137-05-3	—	2 ppm TWA 4 ppm STEL	—
1261 Methyl isobutyl carbinol	105-30-6	25 ppm TWA, Skin	25 ppm TWA 40 ppm STEL, Skin	—
1263 Methyl mercaptan	74-93-1	10 ppm Ceiling	0.5 ppm TWA	0.5 ppm Ceiling (15 min)
1264 Methyl n-amyl ketone++	110-43-0	100 ppm TWA	50 ppm TWA	100 ppm TWA
1267 alpha-Methyl styrene	98-83-9	100 ppm Ceiling	50 ppm TWA 100 ppm STEL	—
1270 o-Methylcyclo-hexanone	583-60-80	100 ppm TWA, Skin	50 ppm TWA 75 ppm STEL, Skin	—

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1298 Osmium tetroxide	20816-12-0	0.002 mg/m^3 TWA	0.002 mg/m^3 TWA 0.006 mg/m^3 STEL	—
1302 Paraffin wax fume	8002-74-2	—	2 mg/m^3 TWA	—
1322 Phosphoric acid	7664-38-2	1 mg/m^3 TWA	1 mg/m^3 TWA 3 mg/m^3 STEL	—
1325 Phosphorous trichloride	7719-12-1	0.5 ppm TWA	0.2 ppm TWA 0.5 ppm STEL	—
1334 Potassium hydroxide	1310-58-3	—	2 mg/m^3 Ceiling	—
1350 Rosin core solder	—	—	0.1 mg/m^3 TWA	—
1365 Sodium bisulfite	7631-90-5	—	5 mg/m^3 TWA	—
1367 Sodium hydroxide	1310-73-2	2 mg/m^3 TWA	2 mg/m^3 Ceiling	2 mg/m^3 Ceiling (15 min)
1368 Sodium metabisulfite	7681-57-4	—	5 mg/m^3 TWA	—
1376 Sulfur monochloride	10025-67-9	1 ppm TWA	1 ppm Ceiling	—
1377 Sulfur pentafluoride	5714-22-7	0.025 ppm TWA	0.01 ppm Ceiling	—

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TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1387 Tetrahydrofuran	109-99-9	200 ppm TWA	200 ppm TWA 250 ppm STEL	—
1389 Tetrasodium pyrophosphate	7722-88-5	—	5 mg/m^3 TWA	—
1392 Thioglycolic acid	68-11-1	—	1 ppm TWA, Skin	—
1405 1,2,4-Trichloro-benzene	120-82-1	—	5 ppm Ceiling	—
1408 Triethylamine	121-44-8	25 ppm TWA	10 ppm TWA 15 ppm STEL	—
1421 Vanadium (V_2O_5, dust)	7440-62-2	0.5 mg/m^3 Ceiling	0.05 mg/m^3 TWA	0.05 mg/m^3 Ceiling (15 min)
1422 Vanadium (V_2O_5, Fume)	7440-62-2	0.1 mg/m^3 Ceiling	0.05 mg/m^3 TWA	0.05 mg/m^3 Ceiling (15 min)
1424 Vinyl acetate	108-05-4	—	10 ppm TWA 20 ppm STEL	4 ppm Ceiling (15 min)
1429 VM & P Naphtha	8032-32-4	—	300 ppm TWA	75 ppm TWA 400 ppm Ceiling (15 min)

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1431 Xylene	1330-20-7	100 ppm TWA	100 ppm TWA 150 ppm STEL	100 ppm TWA 200 ppm Ceiling (10 min)
1435 Zinc chloride fume	7646-85-7	1 mg/m^3 TWA	1 mg/m^3 TWA 2 mg/m^3 STEL	—

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ Proposed limit is the NIOSH REL.

++ OSHA's current limit is retained.

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Description of the Health Effects

Irritant effects are readily perceived by affected individuals. The symptoms of sensory irritation include stinging, itching, and burning of the eyes, tearing (or lacrimation), a burning sensation in the nasal passages, rhinitis (nasal inflammation), cough, sputum production, chest pain, wheezing, and dyspnea (breathing difficulty). In the majority of cases, the onset of symptoms occurs rapidly upon exposure to the irritant; it is therefore easy to associate the causative agent with the irritant effect.

These effects cause severe discomfort and may be seriously disabling, as is the case with dyspnea or wheezing. The tearing and eye irritation associated with exposure to sensory irritants is often severe and can be as disabling as the weeping caused by exposure to tear gas. In addition to these primary effects, workers distracted by irritant effects are considerably more likely than non-exposed workers to have accidents and thus to endanger both themselves and others. (These adverse health effects also clearly have substantial productivity impacts.)

The eye irritation caused by exposure to irritants is believed to result from stimulation of the sensory nerve endings in the cornea. There is little information available on the relationship between the severity of the effect and the physical or chemical properties of the irritating substance. In addition, the mechanism of action underlying this irritant effect is not well understood. Mechanisms that have been suggested include physical action of the irritant on nerve endings, binding of the irritant to sulfhydryl groups of protein, inhibition of cellular respiration, and cholinesterase inhibition (Grant 1986). The symptoms of eye irritation are usually transient and do not generally persist after cessation of exposure; however, exposure to concentrations of lacrimators that exceed the levels associated with transient eye irritation may produce corneal or conjunctival injury that requires medical treatment (Grant 1986).

Sensory irritation of the pulmonary system primarily affects the upper respiratory tract and causes an increase in sputum production; inflammation of the nasal passages, trachea, and upper bronchial tree; and decreased cilial clearance. These effects produce a burning sensation in the nasal passages and throat; coughing; sneezing; and acute bronchitis. The development of bronchitis indicates that the cilial clearance mechanism has been compromised and the resulting mucus retention increases the risk of secondary bacterial infection. Wheezing may also be apparent, particularly if the affected individual has a history of hyper-reactive airways disease. If exposure is sufficiently intense, the irritant may reach the lower portion of the bronchial tree, causing a chemical burn of the parenchyma and the sudden collection of fluid in interstitial spaces and alveoli (pulmonary edema). Irritation-induced edema may have a delayed onset (12 hours or more) and can cause hypoxia and difficulty in breathing.

For the great majority of substances in this group, current limits are derived from human evidence that exposure to the chemical agent at a particular airborne concentration will be associated with sensory irritation. For a few substances in this group, animal evidence provided the basis for limit setting. Several general types of evidence may be used to lower existing limits:

- Consideration of new human evidence;
- Reinterpretation of human data that formed the basis for setting the 1968 TLV;
- Consideration of evidence from industrial experience showing that employees are not experiencing irritation; and
- Evaluation of new animal evidence.

The studies that provide the basis for the sensory irritant levels being proposed by OSHA are generally controlled-exposure experiments using human volunteers or reports of employee complaints arising in industrial settings. Almost all of these studies report either a NOE level for irritation (described either as the "complaint level" or the level that can be "tolerated" for 8 hours) or an exposure level below which there have been no reported complaints.

Dose-Response Relationships and Sensory Irritation

The onset of sensory irritation is considered a "threshold" or NOE level; that is, for any sensory irritant, there is an exposure level below which very few if any individuals will experience sensory irritation. As exposure increases above this level, a larger proportion of exposed individuals will notice the effect and the effect will become increasingly severe. At some level above this NOEL, all exposed persons will experience sensory irritation, although the intensity of the response may vary.

The risk of experiencing irritation that is associated with exposures below the NOEL will be minimal (except in the hypersensitive individual), while the risk of experiencing the irritant effect will increase directly as exposure increases. At some point above the NOE level, i.e., at some dose of the substance, the response will be 100 percent, and all exposed persons will experience irritation. According to general toxicologic principles, the shape of the curve that describes responses above the NOEL is sigmoidal, and the steepness of the curve is a function of the variability in individual responses to the particular irritant. For example, if nearly all persons exposed to the substance will experience a response at approximately the same concentration (dose), the curve will be steep; if, on the other hand, the percentage of people responding increases only slowly as concentration rises, the curve will be considerably flatter.

Analyses of the toxicologic data for the the substances in this group of chemicals follow. The following paragraphs describe OSHA's preliminary findings for the substances in this group of sensory irritants.

ACETALDEHYDE
CAS: 75-07-0; Chemical Formula: CH_3CHO
H.S. No. 1001

OSHA's current PEL for acetaldehyde is 200 ppm as an 8-hour TWA. The 200-ppm 1968 TLV established by the ACGIH for acetaldehyde was based on a sensory irritation study conducted by Silverman et al. (1946) that showed that unacclimatized individuals experienced eye irritation at 50 ppm, but that a level of 200 ppm was tolerable for an 8-hour day. The ACGIH has subsequently lowered its limit for acetaldehyde to 100 ppm as an 8-hour TWA and supplemented this with a STEL of 150 ppm. NIOSH has no REL for this substance.

Reexamination of the data reported by Silverman et al. (1946) reveals that, at 200 ppm of acetaldehyde, all exposed persons experienced inflammation of the conjunctivae of the eyes, which manifested as redness. OSHA therefore preliminarily concludes that the current PEL of 200 ppm places exposed employees at risk of conjunctivitis and other irritation and that a reduction to 100 ppm is necessary to reduce this risk. OSHA also finds that a STEL is necessary to supplement the 8-hour limit, because without a STEL, workers could be exposed at levels many times those that have been shown to cause corneal injury, sensitization, and respiratory tract irritation. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for acetaldehyde if the Agency determines that this limit will substantially reduce significant risk.

ACETIC ACID
CAS: 64-19-17; Chemical Formula: CH_3COOH
H.S. No. 1002

The current OSHA PEL for acetic acid is a 10-ppm 8-hour TWA. The ACGIH recommends a TLV-TWA of 10 ppm and a TLV-STEL of 15 ppm. Acetic acid is a clear, colorless, flammable liquid with a pungent odor.

The 10-ppm TWA was established on the basis of work indicating that industrial exposure to acetic acid at 10 ppm was non-irritating (Sterner 1943). Patty (1949) reported that exposures to 800 to 1200 ppm cannot be tolerated by humans for longer than three minutes. One of six rats exposed to 16,000 ppm died (Smyth 1956), and guinea pigs exhibited minor changes in respiration after exposure at 5 ppm, with more pronounced effects at 100 ppm (Amdur 1961).

In humans, conjunctival irritation has been reported for exposures below 10 ppm (duration not specified) (Baldi 1963), and workers exposed to concentrations of 60 ppm during the workshift, plus one hour daily at 100 to 200 ppm, for 7 to 12 years developed respiratory irritation, conjunctivitis, bronchitis, pharyngitis, and erosion of exposed teeth (Parmeggiani and Sassi 1954). Vigliana and Zurlo (1956) observed respiratory, gastrointestinal, and skin irritation in the same group of workers.

To protect against these irritant effects, which were associated with short-term exposures, OSHA is proposing to supplement the existing 10-ppm 8-hour TWA with a STEL of 15 ppm.

The Agency preliminarily concludes that the combined TWA-STEL is necessary to protect exposed workers against the risk of respiratory, gastrointestinal, and skin irritation associated with industrial exposures to acetic acid. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for acetic acid if the Agency determines that this limit will substantially reduce significant risk.

ACETONE
CAS: 67-64-1; Chemical Formula: CH_3COCH_3
H.S. No. 1004

OSHA's current Z table limit for acetone is 1000 ppm as an 8-hour TWA. The ACGIH recommends a 750-ppm TLV and a 1000-ppm STEL for this substance, while the NIOSH REL is 250 ppm TWA.

The 1000-ppm limit for acetone was established primarily on the basis of information that indicated that workers experienced irritation at exposure levels ranging from 2500 to 3000 ppm (Oglesby et al. 1949). The 1000-ppm TLV represented the hygienic standard observed in the 1960s and earlier for that group of vapors considered by industrial hygienists to be relatively harmless. In the interval since the adoption of the 1968 TLVs by OSHA, additional information has been developed that shows that exposure to 1000 ppm of acetone causes sensory irritation in some workers. The ACGIH (1986) reports that a study by Vigliani and Zurlo (1955) found that acetone production workers exposed at the 700-ppm level for 3 hours daily for 7 to 15 years experienced inflammation of the respiratory tract, stomach, and duodenum, giddiness, and loss of strength; some of these effects go beyond irritation effects. In another study reported on by the ACGIH, 10 men exposed to various acetone concentrations for 3 to 5 minutes found a level of 200 ppm satisfactory and experienced "slight" irritation at 300 ppm, but could still "tolerate" exposure at 500 ppm (Nelson et al. 1943). The ACGIH concluded that a TLV of 750 ppm was appropriate because Nelson's results were based on "extremely short, 3 to 5 minute, exposures," while DiVincenzo's findings demonstrated "no effects from acetone at 500 ppm except an awareness of odor" (ACGIH 1986).

In recommending a 250-ppm 10-hour TWA limit, NIOSH relied on the Nelson et al. (1943) study, as well as a controlled human exposure study (Matsushita 1969) showing that subjects exposed to 500 ppm for 6 hours experienced mucosal irritation as well as general weakness the following day. Another study cited by NIOSH (Parmeggiani and Sassi 1954) indicated that employees exposed to acetone in the range of 307 to 918 ppm experienced mucosal irritation and CNS disturbances. NIOSH (1978j) concluded that adverse effects will occur upon exposure to acetone concentrations below 500 ppm, and therefore recommended a 250-ppm TWA limit.

OSHA preliminarily concludes that the 750-ppm TLV does not protect against deleterious health effects observed at 700 ppm, 500 ppm, and 300 ppm and that a 250-ppm 8-hour TWA limit is necessary to provide adequate protection against the risk of acetone-induced irritation at these levels. Feasibility is indicated by the fact that more than 95 percent of a very large number of air samples reported in the IMIS data base reveal exposures below 250 ppm. OSHA therefore proposes that the 250-ppm REL be adopted as the OSHA PEL to reduce the risk of irritation for exposed individuals. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for acetone if the Agency determines that this limit will substantially reduce significant risk.

ACROLEIN
CAS: 107-02-8; Chemical Formula: $CH_2=CHCHO$
H.S. No. 1007

OSHA currently has an 8-hour TWA PEL of 0.1 ppm (0.25 mg/m^3) for acrolein. The ACGIH recommends a 0.1-ppm TLV-TWA for this substances, as well as a STEL of 0.3 ppm for a 15-minute period. Acrolein is a colorless or yellowish flammable liquid with a disagreeable, choking odor.

In early inhalation studies of cats (Iwanoff 1911), exposure to 10 ppm acrolein for 3.5 hours was found to have only transient effects, including salivation, lacrimation, respiratory irritation, and mild narcosis. However, later studies reported that an exposure to 1 ppm of acrolein produced marked nose and eye irritation in 5 minutes or less (Cook 1945). Over longer periods, studies have demonstrated fatalities in 1 of 6 rats exposed for 4 hours to airborne concentrations of acrolein at 8 ppm; at 16 ppm, the mortality was 100 percent (Smyth 1956). Irritation of the upper respiratory tract is the primary symptom of acrolein inhalation, but lung edema can occur after exposure to high concentrations (Henderson and Haggard 1943). In addition, skin contact with acrolein causes skin burns and severe injury to the cornea.

OSHA is proposing 0.1 ppm as an 8-hour time-weighted average and a 15-minute short-term limit of 0.3 ppm to provide the necessary protection against the acutely irritating effects of short-term exposure to acrolein. The Agency preliminarily concludes that the combined TWA-STEL being proposed will reduce the risk of severe irritation, skin burns, and corneal damage to which workers could be exposed with an 8-hour TWA alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for acrolein if the Agency determines that this limit will substantially reduce significant risk.

ALLYL ALCOHOL
CAS: 107-18-6; Chemical Formula: $CH_2=CHCH_2OH$
H.S. No. 1010

OSHA has a current PEL of 2 ppm TWA for allyl alcohol with a skin notation. The ACGIH also has a TLV-TWA of 2 ppm, supplemented by a STEL of 4 ppm and a skin notation. Allyl alcohol is a colorless liquid with a pungent, mustard-like odor.

The most important adverse effects of occupational exposures to allyl alcohol are upper-respiratory-tract irritation and burns of the eyes. Severe eye irritation has been reported in humans at exposure levels of 25 ppm, and milder irritation has been reported at 5 ppm (Dunlap, Kodarma, Wellington et al. 1958; McCord 1932). Necrosis of the cornea and temporary blindness occurred in one individual exposed to allyl alcohol at a level irritating to the eyes and nose (Smyth 1956). Skin absorption may lead to serious systemic injury (visceral congestion, periportal congestion of the liver, hematuria, and nephritis); when evaporation is prevented or reduced, skin contact causes burns (ACGIH 1986, p. 18).

Exposure to airborne concentrations of allyl alcohol causes a series of characteristic effects, including lacrimation, photophobia, blurred vision, and retrobulbar pain (Dunlap, Kodarma, Wellington et al. 1958). Exposed individuals do not develop a tolerance for this substance, and they also do not become sensitized (Kodama and Hine 1958).

OSHA proposes a short-term limit of 4 ppm (15 minutes) and an 8-hour TWA PEL of 2 ppm to provide protection against the risk associated with severe eye irritation resulting from exposure to allyl alcohol. This short-term limit ensures that workers will be protected against the health effects associated with exposures at levels only somewhat above the current 8-hour TWA limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for allyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

ALLYL GLYCIDYL ETHER
CAS: 106-92-3; Chemical Formula: $C_6H_{10}O_2$
H.S. No. 1012

OSHA's current PEL for allyl glycidyl ether (AGE) is 10 ppm (45 mg/m³) as a ceiling. The ACGIH recommends a TLV-TWA of 5 ppm and a 15-minute STEL of 10 ppm and additionally has a skin notation. NIOSH has recommended a 15-minute ceiling of 9.6 ppm for this colorless liquid, which has a characteristic, but not unpleasant, odor.

In limited human exposure studies, AGE has been demonstrated to cause dermatitis and eye irritation; the substance produces moderate primary skin irritation and severe eye irritation in animals (Hine, Kodama, Wellington et al. 1958). At 200 ppm, animals experienced irritation of the eyes and respiratory distress; at high levels (e.g., 400, 800, and 900 ppm), corneal opacities and severe respiratory difficulties occurred (Hine, Kodama, Wellington et al. 1956). The percutaneous LD_{50} for rabbits is 2.55 g/kg. Intragastric administration of AGE in mice, rats, and rabbits has also been demonstrated to cause depression of the central nervous system (Hine, Kodama, Wellington et al. 1956).

In humans, skin sensitization occurs readily (Hine and Rowe 1962), and, based on animal studies, percutaneous absorption would appear likely. In addition to primary irritation and sensitization, the potential exists for cross-sensitization with other epoxy agents (ACGIH 1986, p. 20).

OSHA is proposing to establish a PEL of 5 ppm as an 8-hour TWA and to supplement this with a 15-minute STEL of 10 ppm, and with a skin notation, to ensure protection against primary irritation and to minimize sensitization effects. The Agency preliminarily concludes that this combination of full-shift and short-term limits, in addition to a skin notation, will reduce the risk of sensitization, primary irritation, and percutaneous absorption to which workers could otherwise be exposed at the current ceiling of 10 ppm. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for allyl glycidyl ether if the Agency determines that this limit will substantially reduce significant risk.

ALLYL PROPYL DISULFIDE
CAS: 2179-59-1; Chemical Formula: $CH_2=CHCH_2S_2C_3H_7$
H.S. No. 1013

The current OSHA PEL for allyl propyl disulfide is 2 ppm (12 mg/m³) as an 8-hour TWA. The ACGIH recommends a TLV-TWA of 2 ppm and a TLV-STEL of 3 ppm (18 mg/m³). Allyl propyl disulfide is a liquid with a pungent, irritating odor.

Nearly all occupational exposures to allyl propyl disulfide, the primary volatile constituent of onion oil, occur in the processing of onions and onion products. Allyl propyl disulfide's irritative effects on the human eye, nose, and upper respiratory tract are well recognized. The most severe irritation effects have occurred when workers were exposed to allyl propyl disulfide in the vicinity of onion slicing machines, where average concentrations of 3.4 ppm have been measured (Feiner, Burke, and Baliff 1940).

OSHA proposes a 2-ppm 8-hour TWA limit and a STEL of 3 ppm to protect against irritation and lacrimation, which can occur as a result of higher short-term exposures. OSHA preliminarily concludes that adding a STEL of 3 ppm will reduce the risk of lacrimation and upper respiratory tract irritation to which employees could otherwise be exposed. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for allyl propyl disulfide if the Agency determines that this limit will substantially reduce significant risk.

AMMONIA
CAS: 7664-41-7; Chemical Formula: NH_3
H.S. No. 1021

OSHA's current limit for ammonia is 50 ppm TWA. The ACGIH revised its TLV-TWA to 25 ppm in 1973, and added a 35-ppm STEL in 1976. NIOSH (1974a) has recommended a 5-minute short-term limit of 50 ppm for ammonia. Ammonia is principally used as a feedstock in the manufacture of fertilizers and other chemical substances, and is also used as a refrigerant.

The chief effect resulting from exposure to ammonia is eye and upper respiratory tract irritation. Vigliani and Zurlo (1956) reported respiratory tract irritation and irritation of the conjunctivae in workers exposed to 100 ppm; exposure to a concentration of 20 ppm caused complaints of discomfort among uninjured workers. An analysis of plant surveys (Bureau of Industrial Hygiene, Detroit Department of Health, 1965–1970) conducted by ACGIH (1986) showed that the "complaint level" was between 20 and 25 ppm. ACGIH (1986) also stated in their documentation for the ammonia TLVs that general field experience with a "large number of workers" exposed to ammonia from printing and copying machines indicated that concentrations of 20 to 25 ppm were the maximum concentrations not associated with complaints of irritation. The ACGIH selected a 25-ppm TLV-TWA and a 35-ppm TLV-STEL "to protect against irritation to eyes and respiratory tract and minimize discomfort among uninjured workers" (ACGIH 1986).

In recommending a 5-minute 50-ppm short-term limit, NIOSH relied on several reports that ammonia concentrations as low as 50 ppm are moderately irritating (Vigliani and Zurlo 1956; Industrial Biotest Laboratories 1973; MacEwen et al. 1970; Mazgold 1971; Pagnotto 1973). NIOSH concluded

that the "irritating or annoying effects * * * [are] more dependent upon concentration than length of exposure," and that "a standard expressed as a time-weighted average is inappropriate since it would permit fluctuations to concentrations considerably higher than 50 ppm" (NIOSH 1974a, p. 69). Therefore, NIOSH recommended a 50-ppm ceiling limit to restrict 5-minute fluctuations in exposure levels and to "ensure that such possibly irritating exposures are brief" (NIOSH 1974a, p. 70).

The ACGIH (1986) disagreed that a short-term limit alone was more appropriate than a TWA limit, citing animal evidence (Stombaugh 1980) indicating that continuous, 24-hour exposure over several days produced effects not observed from high, short-term exposures. NIOSH also reviewed this and other evidence (Doig and Willoughby 1971; Coon et al. 1970), showing that laboratory animals exhibited chronic lung inflammation and marked thickening of the tracheal epithelium following continuous exposure to average concentrations exceeding 100 ppm. Continuous exposure to concentrations below 100 ppm did not generally result in microscopic lung abnormalities (Coon et al. 1970; Stombaugh et al. 1969).

OSHA believes that the human evidence discussed by the ACGIH (1986) and NIOSH (1974a) clearly indicates that the current limit of 50 ppm as an 8-hour TWA would permit short-term exposures to levels well above those reported to caused conjunctival and respiratory tract irritation, even among workers who are acclimated to the effects of ammonia. OSHA preliminarily concludes that there is a risk of mucosal irritation at the current PEL and that it is necessary to lower the PEL to reduce that risk. The 50-ppm 5-minute ceiling recommended by NIOSH is above exposure levels that are reported to be moderately irritating to the eyes and respiratory tract. Therefore, OSHA is proposing to revise its existing PEL for ammonia to 25 ppm as a TWA and 35 ppm as a STEL. Extensive air sampling data reported in the IMIS data base show that more than 90 percent of exposures are below 25 ppm TWA and thus demonstrate the feasibility of the proposed limits. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ammonia if the Agency determines that this limit will substantially reduce significant risk.

AMMONIUM CHLORIDE (FUME)
CAS: 12125-02-9 Chemical Formula: NH_4Cl
H.S. No. 1022

No current OSHA PEL for ammonium chloride fume has been established. The ACGIH recommends a TLV-TWA of 10 mg/m³ and a 20-mg/m³ TLV-STEL. Ammonium chloride is a white crystalline solid, somewhat hygroscopic, with a cool, saline taste.

Ammonium chloride is an irritant to the skin and respiratory passages when inhaled and produces mild systemic toxicity when ingested (Sax 1968). Large amounts of fume can be generated during galvanizing operations, and these fumes should be controlled to prevent irritation of the respiratory tract (ACGIH 1986, p. 28).

OSHA proposes a permissible exposure limit of 10 mg/m³ TWA, with a 15-minute short-term limit of 20 mg/m³, to protect workers exposed to ammonium chloride fume in the numerous applications in general industry involving this substance. The Agency preliminarily concludes that this combination of TWA and STEL limits will protect workers against the risk of respiratory irritation and systemic effects, and will eliminate or reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for ammonium chloride fume. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BORATES, TETRA, SODIUM SALTS (ANHYDROUS AND PENTAHYDRATE)
CAS: 1303-96-4 Chemical Formula: $Na_2B_4O_7$ (anhydrous), $Na_2B_4O_7 \cdot 5H_2O$ (pentahydrate)
H.S. Nos. 1038 and 1038

OSHA currently has no limit for exposure to anhydrous or pentahydrate sodium tetraborate. The ACGIH recommends a TLV-TWA of 1.0 mg/m³. The anhydrous form is a light gray, odorless solid; the pentahydrate form is white, odorless, and crystalline.

In the workplace, the salient toxic effects of the tetraborates are acute irritation of the skin, eyes, nose, and upper respiratory tract. Dermatitis, cough, nasal irritation, shortness of breath, and nosebleeds resulting from visible (but unstated) concentrations of borate dust in mining and milling facilities have been reported (Birmingham and Key 1963). There is evidence that respiratory ill health may be associated with inhalation exposures to dehydrated sodium borate dust (Hogan 1965; Ury 1966).

To prevent these acute irritant effects and to protect against chronic respiratory effects, OSHA is proposing an 8-hour TWA PEL of 1.0 mg/m³ for the anhydrous and pentahydrate forms of sodium tetraborate. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of acute irritation and chronic respiratory ill health potentially associated with these substances, which have not previously been regulated by OSHA. The health evidence forms a reasonable basis for proposing a new limit for borates. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BORATES, TETRA, SODIUM (DECAHYDRATE)
CAS: 1303-96-4; Chemical Formula: $Na_2B_4O_7 \cdot 10H_2O$
H.S. No. 1037

OSHA currently has no limit for decahydrate sodium tetraborate. The ACGIH recommends a TLV-TWA of 5.0 mg/m³ for this white, odorless, and crystalline substance.

In humans, exposure to more than 1 gram of borax ($Na_2B_4O_7 \cdot 10H_2O$) through gastroenteric or percutaneous absorption can cause acute toxicity in the form of severe gastrointestinal irritation, kidney injury, and even death from central nervous system depression or vascular collapse. It is also known that chronic exposure to small amounts can cause mild gastroenteritis and dermatitis (Browning 1969; Deichmann and Gerarde 1969; Thienes and Haley 1972). However, neither of these types of systemic poisoning have been reported in the workplace (Browning 1969).

In the workplace, the salient toxic effects of the tetraborates are acute irritation of the skin, eyes, nose, and upper respiratory tract. Dermatitis, cough, nasal irritation, shortness of breath, and nosebleeds resulting from visible (but unstated) concentrations of borate dust in mining and milling facilities have been reported (Birmingham and Key 1963). There is evidence that respiratory ill health may be associated with inhalation exposures to dehydrated sodium borate dust (Hogan 1965; Ury 1966).

To prevent exposed workers against these acute irritant effects and the potential for chronic respiratory ill health, OSHA is proposing an 8-hour PEL of 5.0 mg/m³ for decahydrate sodium tetraborate. The Agency preliminarily concludes that this limit will protect workers exposed to this form of sodium tetraborate from the risk posed by these acute and chronic irritant and respiratory effects. The health evidence forms a reasonable basis for proposing a new limit for borax. At the time of the final rule, OSHA will promulgate a new limit if the

Agency determines that this limit will substantially reduce significant risk.

BROMINE
CAS: 7726-95-6; Chemical Formula: Br_2
H.S. No. 1042

OSHA's current limit for bromine is 0.1 ppm TWA. The ACGIH recommends a TLV-TWA of 0.1 ppm with a TLV-STEL of 0.3 ppm. Bromine is a dark, reddish-brown, non-combustible, diatomic liquid that has irritating vapors.

Early studies of bromine exposure indicated that workers exposed to 0.75 ppm for 6 hours exhibited no symptoms (Flury and Zernik 1931). Later studies reported physiological responses to different concentrations of bromine and used these findings to make the following recommendations: The maximal allowable concentration for prolonged exposure should be 0.1 to 0.15 ppm, and the maximal allowable concentration for short exposure (i.e., 30 minutes to 1 hour) should be 4 ppm (Henderson and Haggard 1943). These investigators found levels of 40 to 60 ppm dangerous for short-term exposures, and a level of 1000 ppm proved rapidly fatal even during short exposures. These authors reported that the effects of exposure to bromine include respiratory irritation and lung edema. Elkins (1951) reported that exposure at 1 ppm in a plant handling liquid bromine was excessively irritating.

OSHA proposes a PEL of 0.1 ppm (8-hour TWA) and a STEL of 0.3 ppm for a 15-minute period. The Agency believes that both the TWA and short-term limits are necessary to reduce the risk of respiratory irritation and lung damage that could occur in the absence of a short-term limit. The Agency believes that the combined TWA-STEL will substantially reduce this risk among occupationally exposed workers. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for bromine if the Agency determines that this limit will substantially reduce significant risk.

2-BUTANONE (METHYL ETHYL KETONE)
CAS: 78-93-3; Chemical Formula: $CH_3COCH_2CH_3$
H.S. No. 1045

OSHA's current limit for 2-butanone is 200 ppm TWA. The ACGIH's recommended limit is 200 ppm TWA, with a STEL of 300 ppm. NIOSH recommends a 200-ppm 10-hour TWA limit for 2-butanone. 2-Butanone is a colorless, flammable liquid and has an objectionable odor.

2-Butanone is an ocular and upper respiratory tract irritant. Some authors (Nelson, Nelson, Ross et al. 1943) report that exposures to 200 ppm caused mild eye irritation in some subjects and that others experienced these effects even at concentrations of 100 ppm. Studies conducted in the 1940s noted low-grade intoxication at 300 to 600 ppm (Smith and Mayers 1944), slight nose and throat irritation at 100 ppm, and mild eye irritation at 200 ppm (Nelson, Nelson, Ross et al. 1943). Later studies have shown that approximately 50 percent of exposed individuals experience eye and nose irritation at 200 ppm (as reported in ACGIH 1986, p. 395).

OSHA is proposing a 15-minute STEL of 300 ppm and an 8-hour TWA limit of 200 ppm to protect exposed individuals against the short-term exposures known to cause irritation. However, since a significant number of all exposed workers experience adverse irritant effects even at 200 ppm, the Agency realizes that the 300-ppm STEL may not be fully protective. Therefore OSHA specifically requests comments on the adequacy of the proposed limits to reduce the risk of such irritation in exposed employees. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 2-butanone if the Agency determines that this limit will substantially reduce significant risk.

n-BUTYL ACETATE
CAS: 123-86-4; Chemical Formula: $CH_3COO(CH_2)_3CH_3$
H.S. No. 1047

The current OSHA limit for n-butyl acetate is 150 ppm, measured as an 8-hour TWA. The ACGIH (1986) also recommends an 8-hour TWA of 150 ppm with the addition of a 200-ppm 15-minute STEL. n-Butyl acetate is a colorless liquid with a fruity odor.

n-Butyl acetate is an irritant to the eyes, skin, and respiratory system. In a study involving cats exposed for 6 hours to 6100 ppm, slight narcotic effects were noted (Flury and Wirth 1933). When exposed to 4200 ppm n-butyl acetate for 6 days at 6 hours per day, cats experienced slight irritation of the respiratory passage; at 3100 ppm, changes in blood cell morphology were recorded. At exposures of 1600 ppm, these cats exhibited slight irritation of the eyes and salivation (Flury and Wirth 1933). Air concentrations of 10,000 ppm (n-butyl acetate proved fatal to rats after 6 hours; 4 hours of exposure at the same level produced no deaths (Smyth, et al. 1956). A paper by Sayers, Schrenk, and Patty (1936) reported that guinea pigs demonstrated eye irritation effects at 3300 ppm, became unconscious after 9 hours exposure to 7000 ppm, and died after 4 hours of exposure to 14,000 ppm.

Human volunteers complained that throat irritation, which began at an exposure level of 2000 ppm n-butyl acetate, worsened and became quite severe at 300 ppm (Nelson, Ege, Morwich et al. 1943).

OSHA is proposing an 8-hour TWA of 150 ppm and a 200-ppm STEL for n-butyl acetate. The Agency preliminarily concludes that these limits are necessary to protect workers from the risks of eye, skin and respiratory irritation, in addition to narcotic effects, potentially associated with exposures to this substance at the levels permitted by the 8-hour limit alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-butyl acetate if the Agency determines that this limit will substantially reduce significant risk.

n-BUTYL LACTATE
CAS: 138-22-7; Chemical Formula: $C_7H_{14}O_3$
H.S. No. 1053

OSHA currently has no limit for n-butyl lactate. The ACGIH-recommended limit is a TLV-TWA of 5 ppm. Butyl lactate is a colorless liquid ester of lactic acid.

In humans, prolonged exposures to n-butyl lactate at approximately 7 ppm, with brief peak excursions to 11 ppm, caused headache, irritation of the pharyngeal and laryngeal mucosa, and coughing in all workers, and occasional nausea, vomiting, and sleepiness in some (Zuidema and Pel 1969, as cited in ACGIH 1986, p. 82). Headache, coughing, and irritation of the pharynx were sometimes related to n-butyl lactate concentrations of 4 ppm; however, no adverse effects were observed at a concentration of 1.4 ppm. Studies employing improved sampling and analytic methods have subsequently concluded that, although the odor of n-butyl lactate is discernible at the 7-ppm level, this concentration does not produce objectionable or injurious effects (Turner 1972).

OSHA proposes a limit of 5 ppm TWA for n-butyl lactate to protect against the risk of irritation, headache, nausea, and coughing associated with occupational exposures to this substance. However, the Agency notes that studies show adverse effects at levels below the proposed 5-ppm limit. OSHA specifically requests data on the health effects associated with exposures to this substance and the airborne concentrations at which such effects occur. The health evidence forms a reasonable basis for proposing a new limit for n-butyl lactate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

n-BUTYL MERCAPTAN
CAS: 109-79-5; Chemical Formula: $CH_3CH_2CH_2CH_2SH$
H.S. No. 1054

This chemical is used as a solvent and chemical intermediate, and as an odorant for natural gas. OSHA's current limit for n-butyl mercaptan is 10 ppm as an 8-hour TWA. The ACGIH has recommended a TLV-TWA of 0.5 ppm. The NIOSH REL for n-butyl mercaptan is 0.5 as a 15-minute short-term exposure.

Humans exposed to concentrations of butyl mercaptan report that the "readily noticeable" odor level for this substance is between 0.1 and 1 ppm, although the odor threshold is significantly below this level (ranging from 0.001 to 0.0001 ppm). Gobbato and Terribile (1968) have reported that symptoms of CNS toxicity occurred in humans exposed for 1 hour to concentrations of n-butyl mercaptan believed to lie in the range of 50 to 500 ppm. These same authors reported that mucosal irritation occurred in human volunteers exposed to 4 ppm of ethyl mercaptan, a closely related substance. Irritation did not occur at exposures to 0.4 ppm. The ACGIH established the TLV at 0.5 ppm, which is approximately halfway between 0.1- to 1.0-ppm levels reported as being readily noticeable (ACGIH 1986). Thus, the ACGIH TLV was not set at a level designed to protect against detecting the odor of butyl mercaptan, but to avoid the intolerable odor effects of higher concentrations of this substance. NIOSH (1978) recommended a 15-minute short-term limit of 0.5 ppm because the toxic action of n-butyl mercaptan, like that of other thiol compounds, is expressed as an acute effect. NIOSH concluded that a short-term limit was more appropriate than a TWA limit, and that "use of a ceiling [i.e., short-term] concentration instead of a TWA has the effect of increasing the protection provided to the worker about twofold" (NIOSH 1978, p. 85).

OSHA preliminarily concludes that the current PEL for n-butyl mercaptan is insufficient to protect workers from experiencing the adverse acute effects caused by exposure to this substance. The current PEL of 10 ppm is between 10 and 100 times higher than the concentration of n-butyl mercaptan that is readily detected by smell and is more than twice the concentration reported as causing mucosal irritation for a closely related substance. OSHA finds that workers are at risk of these acute effects in the absence of a more stringent limit and is proposing to reduce its exposure limit for n-butyl mercaptan to 0.5 ppm TWA. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-butyl mercaptan if the Agency determines that this limit will substantially reduce significant risk.

CAMPHOR (SYNTHETIC)
CAS: 76-22-2; Chemical Formula: $C_{10}H_{16}O$
H.S. No. 1063.

OSHA currently has a limit of 2 ppm for camphor. The ACGIH recommends a TLV-TWA of 2 ppm and a TLV-STEL of 3 ppm. Synthetic camphor is a colorless or white crystalline substance with an aromatic odor.

Synthetic camphor is known to cause severe injuries in animals exposed for prolonged periods by inhalation to 6 mg/m³. Exposure may cause convulsions, congestion and changes in the gastrointestinal tract, and damage to the kidneys and brain (Flury and Zernik 1931). Animal bioassays showed that camphor was not carcinogenic in rats injected subcutaneously; however, when the cancer promoter, croton oil, was concurrently applied to the skin of mice, two of 110 treated mice developed carcinomas (Graffi et al. 1953).

In humans, there are reports of industrial exposure to camphor that resulted in coma, dyspnea, and headache; one fatality from inhalation of the vapor has been noted (Flury and Zernik 1931). Exposures for up to 10 months in a synthetic camphor-packing plant are reported not to have involved eye and nose irritation if concentrations were maintained at or below 2 ppm (Gronka, Bobkoski, Tomchick, and Rakow 1969). However, the same authors report that these packing plant workers did experience nose and throat inflammation.

OSHA proposes a TWA of 2 ppm and a STEL of 3 ppm for synthetic camphor to prevent the risk of irritation to the eyes, nose, and central nervous system potentially associated with elevated exposures to this substance. The Agency preliminarily concludes that the combined TWA-STEL is necessary to reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for synthetic camphor if the Agency determines that this limit will substantially reduce significant risk.

CAPROLACTAM (DUST)
CAS: 105-60-2; Chemical Formula: $C_6H_{11}NO$
H.S. No. 1064

OSHA has no current permissible exposure limit for caprolactam dust. The ACGIH recommends a 1-mg/m³ TLV-TWA for this substance, with a short-term exposure limit of 3 mg/m³. Caprolactam is a white crystalline solid with an unpleasant odor.

In humans, caprolactam has been shown to be a convulsant, a dermal and respiratory irritant, and a dermal sensitizer, but dosage levels in humans are ill-defined (Ferguson and Wheller 1973; Tuma, Fossela, and Waidhofer 1981). In animals, exposure to caprolactam by several routes can cause convulsions, tremors, mydriasis, opisthotonus (Ellson, Lein, Zinger, et al. 1971; Lein, Lein, and Tong 1971) and salivation (Goldblatt et al. 1954). Cardiovascular and respiratory effects have been reported in rabbits and cats, with an initial increase in blood pressure followed by a decrease in blood pressure and an increased respiratory rate (Goldblatt, Farquharson, Bennett, and Askew 1954). Weight loss and initial growth depression occur in rates and mice (Morrison, Ross, and Ruth 1980).

One animal study observed that caprolactam's convulsant effects on rats, rabbits, and cats occur at injection doses above 100 mg/kg (Goldblatt et al. 1954). Results of studies in guinea pigs were consistent with these findings (Hohensee 1951). In a 90-day feeding study of dogs, Burdock, Kolwick, Alsakor, and Marshal (1984) reported that dogs given dietary dose levels of 0.1, 0.5, and 1.0 percent caprolactam showed weight losses at 1.0 percent and lesser losses at 0.5 percent. Hematologic and ophthalmologic changes did not occur. In a 2-year bioassay of rats and mice, caprolactam was not observed to be carcinogenic (NCI/NTP 1982). A Polish study in animals observed hematologic and systemic changes, increased mortality, kidney and liver damage, and growth inhibition in animals given daily doses of 50 or 100 mg/kg (Zwierzchowski et al. 1967).

The results of early studies of caprolactam's teratogenicity in rats and rabbits indicate that it is not teratogenic even at doses as high as 1000 mg/kg/day (Gas, Powers, Robinson et al. 1984).

Studies of industrial exposures to caprolactam dust in Germany report severe irritation on inhalation of 10 percent caprolactam in dust (Hohensee 1951). Workers experienced a bitter taste, nervousness, epistaxis, upper respiratory tract irritation, and dry and splitting skin on the lips and nose (Hohensee 1951). Ferguson and Wheller (1973) found that some workers exposed to caprolactam vapors experienced nose

and throat irritation at concentrations above 10 ppm, and others reported irritation at levels below 10 ppm. Direct contact with the solid form of caprolactam produces primary skin irritation (Ferguson, unpublished communication, as cited in ACGIH 1986, p. 98–2). Brief (unpublished communication, as cited in ACGIH 1986, p. 98–2) also reports that the dust produces skin irritation.

OSHA is proposing a permissible exposure limit of 1 mg/m³ TWA and a 3-mg/m³ STEL for caprolactam dust to prevent the risk of respiratory and skin irritation and of sensitization, to which workers can be subjected in the absence of any OSHA limit. The Agency preliminarily concludes that this combination of limits will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for caprolactam (dust). At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CAPROLACTAM (VAPOR)
CAS: 105–60–2; Chemical Formula: $C_6H_{11}NO$
H.S. No. 1065

OSHA has no current permissible exposure limit for caprolactam as vapor. The ACGIH recommends a TVL–TWA of 20 mg/m³ for the vapor, supplemented by a STEL of 40 mg/m³. Caprolactam is a white, crystalline solid at room temperature, and thus high vapor levels occur only at elevated temperatures.

The health effects of exposure to caprolactam vapor are identical to those described for caprolactam dust, except that contact with the vapor is reported to be even more irritating (Hohensee 1951). Workers exposed to the vapor at approximately 12 ppm complained of a bitter taste in the mouth, nervousness, epistaxis, upper respiratory tract congestion, and dry and splitting skin; other workers reported experiencing heartburn, flatulence, and a heavy feeling in the stomach (Hohensee 1951).

In another report of industrial exposure to the vapor, Ferguson and Wheeler (1973) reported that workers routinely exposed to unspecified levels and occasionally to concentrations as high as 100 ppm for 18 years reported severe discomfort from burning nose, throat, and eyes. This irritation response was dose-related, with no workers reporting effects at 7 ppm or below, some experiencing transient upper respiratory tract irritation at levels above that, and others reporting eye irritation at concentrations of 25 ppm and above (Ferguson and Wheeler 1973). Ferguson (private communication, 1972, as cited in ACGIH 1986, p. 98.1) noted that a group of 143 workers, some of whom were exposed for as long as 17 years to vapor concentrations of 5 to 10 ppm showed no evidence of adverse effects. At higher vapor exposures (53 to 521 mg/m³), all subjects experienced eye irritation (Ferguson, private communication, 1972). Human volunteers exposed at low relative humidities to concentrations of the vapor in the range of 10 to 100 ppm showed a dose-related response, but at higher relative humidities, no irritation was observed below a concentration of 14 ppm (Ferguson and Wheeler 1973).

OSHA is proposing to establish an 8-hour TWA exposure limit of 20 mg/m³ for caprolactam vapor and to supplement this with a STEL of 40 mg/m³. The Agency preliminarily concludes that this combination of limits will protect workers from the risk of eye, upper respiratory, and skin irritation to which they could otherwise be exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for caprolactam vapor. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CESIUM HYDROXIDE
CAS: 21351–79–1; Chemical Formula: CsOH
H.S. No. 1077

OHSA currently has no limit for cesium hydroxide. The ACGIH recommends a threshold limit vlaue of 2 mg/m³ as an 8-hour TWA. Cesium hydroxide is a colorless or yellowish fused crystalline mass; it is the strongest base known and is highly soluble in water and alcohol.

Animal studies indicate that cesium hydroxide has an acute oral toxicity of about one-third that of potassium hydroxide, which causes lesions of the nasal septum and irritation of the eyes and respiratory tract (Kanpov 1971, as cited in ACGIH 1986, p. 495). The oral LD_{50} for cesium hydroxide in rats is 1016 mg/kg. A concentration of 5 percent cesium hydroxide did not produce skin irritation; however, severe irritation of the eyes resulted from contact with a 5-percent concentration of cesium hydroxide. Cesium hydroxide does not cause skin sensitization (Johnson, Lewis, and Perone 1972).

OSHA proposes a TWA of 2 mg/m³ as an 8-hour permissible exposure limit for cesium hydroxide. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of severe eye irritation associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for cesium hydroxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CHLORINE
CAS: 7782–50–5; Chemical Formula: Cl_2
H.S. No. 1079

The current OSHA limit for chlorine is a 1-ppm ceiling limit. The ACGIH has recommended a TLV–TWA of 1 ppm with a TLV–STEL of 3 ppm. NIOSH (1976e) has recommended a limit of 0.5 ppm over a 15-minute sampling duration.

Exposure to chlorine at concentrations around 5 ppm has been associated with respiratory symptoms, erosion of teeth, and inflammation of mucous membranes (Flury and Zernik 1931; Patty 1963). Ferris et al. (1964) reported slight effects on the respiratory system in workers exposed to chlorine ranging from negligible to 7 ppm. Rupp and Henschler (1967) reported burning of the eyes among human subjects exposed to 0.4 ppm; some of these subjects reported painful eyes after 15 minutes' exposure to this level. In a separate test, subjects reported respiratory irritation upon exposure to 0.5 ppm, and a concentration of 1 ppm was described as being uncomfortable.

After reviewing these reports, the ACGIH recommended the 1-ppm TLV–TWA and 3-ppm TLV–STEL to "minimize chronic changes in the lungs, accelerated aging, and erosion of the teeth" (ACGIH 1986, p. 117). NIOSH (1976e) reviewed these studies, as well as others (Matt 1889; Beck 1959) that reported ocular and respiratory irritation associated with exposure to chlorine levels of around 1 ppm for 30 minutes or less. NIOSH (1976e) recommended a 15-minute 0.5-ppm limit to prevent possible eye and respiratory tract irritation.

The current OSHA limit for chlorine (1 ppm ceiling) and the ACGIH TLVs (1 ppm TWA and 3 ppm STEL) are inadequate to protect against the risk to workers' health. Studies show that humans exposed to 0.4 ppm experienced burning of the eyes, and when exposed to 0.5 ppm they experienced respiratory irritation. The subjects were "uncomfortable" when exposed to 1 ppm of chlorine. OSHA therefore proposes adoption of the NIOSH REL (0.5 ppm ceiling) to prevent possible eye and respiratory irritation and thus substantially to reduce this risk. The Agency's preliminary feasibility analysis is based on limited data at this level; additional feasibility information is requested from the public. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for chlorine if the Agency determines that this limit will substantially reduce significant risk.

CHLOROACETYL CHLORIDE
CAS: 79–04–9; Chemical Formula: $ClCH_2COCl$
H.S. No. 1083

OSHA has no current limit for chloroacetyl chloride. The ACGIH recommends a TLV–TWA of 0.05 ppm. Chloroacetyl chloride is a colorless liquid with a pungent odor.

The oral LD_{50} in rats fed this substance is between 0.12 and 0.25 g/kg. Chloroacetyl chloride is corrosive to the skin and eyes, and skin absorption of this substance can be lethal. Inhalation of 4 ppm for 5 to 10 minutes caused respiratory problems in rats; however, no effect was observed in these animals when they inhaled 2.5 ppm for a period of 7 hours (Dow Chemical Company 1977, as cited in ACGIH 1986, p. 122). Thirty-day inhalation studies with rats, mice, and hamsters showed eye and respiratory irritation at 2.5 ppm and no effect at 0.5 ppm (Dow Chemical Company 1977, as cited in ACGIH 1986, p. 122).

Reports of the acute effects associated with exposure to chloracetyl chloride in humans include mild to moderate skin burns and erythema, eye burns and tearing, cough, dyspnea, and cyanosis, as well as mild gastrointestinal effects. Eye and respiratory irritation occurred in an industrial setting characterized by an exposure level of 0.009 to 0.017 ppm, with excursions as high as 0.140 ppm (Dow Chemical Company 1977, as cited in ACGIH 1986, p. 122). An accidental drenching with a mixture containing chloroacetyl chloride resulted in extensive first- and second-degree burns, pulmonary edema, and three episodes of cardiac arrest, followed by coma and anoxia-induced brain damage (Pagnotto 1978, as cited in ACGIH, p. 122). Other ingredients of the mixture involved in the accident included xylidine, benzene, and sodium carbonate. Rescuers of this victim experienced hand blisters, chest tightness, and nausea for 2 days.

OSHA proposes a PEL of 0.05 ppm TWA for chloroacetyl chloride. The Agency preliminary concludes that this limit is necessary to protect exposed employees from the risk of eye, skin, and respiratory irritation; gastrointestinal effects; and severe systemic effects, including life-threatening coma, cardiac arrest, and pulmonary edema, to which workers could presently be exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for chloroacetyl chloride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

o-CHLOROBENZYLIDENE MALONONITRILE
CAS: 2698–41–1; Chemical Formula: $ClC_6H_4CH{=}C(CN)_2$
H.S. No. 1084

OSHA's existing PEL for o-chlorobenzylidene malononitrile (OCBM) is 0.05 ppm as an 8-hour TWA. The ACGIH recommends a ceiling limit of 0.05 ppm, with a skin notation. o-chlorobenzylidene malononitrile is a white crystalline solid with a pepper-like odor.

This substance has extremely irritating properties. It causes intense eye and skin irritation, coughing, difficulty in breathing, chest tightness, running nose, dizziness, nausea, and vomiting. These effects are evident on exposure to concentrations between 12 and 20 mg/m³, and they become incapacitating within 20 seconds of exposure; the effects persist for approximately 5 to 10 minutes after the victim has been removed to fresh air (*Military Chemistry and Chemical Agents* 1963).

OCBM is only slightly toxic to laboratory animals when they are exposed intravenously, subcutaneously, or through inhalation (Punte, Weimer, Ballard, and Wilding 1962). In animals, it has been demonstrated that OCBM is metabolized by the body to cyanide (Frankenberg and Sorbo 1973). Short-term exposures to high levels of OCBM did not cause carcinogenic, teratogenic, or embryolethal effects in animals (McNamara et al. 1973).

Three of four human volunteers exposed to a 1.5-mg/m³ concentration of OCBM aerosol dispersed from a 10-percent solution in methylene chloride for 90 minutes developed headaches, and one showed mild eye and nose irritation. Headaches persisted for 24 hours in two subjects. At 4 to 5 mg/m³, subjects' problem-solving abilities were affected and they showed eye irritation, conjunctivitis, lacrimation, and skin burning (Punte, Owens, and Gutentag 1963). Other researchers observed no persistent clinical abnormalities in seven subjects exposed to OCBM at concentrations ranging from 1 to 13 mg/m³ over a 15-day period; however, none of these subjects developed a tolerance for the compound. Severe skin sensitization has also been reported in workers handling OCBM (Schumes and Taylor 1973).

OSHA is proposing a ceiling limit of 0.05 ppm and a skin notation for o-chlorobenzylidene malononitrile. The Agency preliminarily concludes that these limits are necessary to protect workers from the risk of severe eye and upper respiratory tract irritation, skin sensitization, dyspnea, nausea, lacrimation, vomiting, and performance decrement associated with brief exposures to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for o-chlorobenzylidene malononitrile if the Agency determines that this limit will substantially reduce significant risk.

CYANOGEN
CAS: 460–19–5; Chemical Formula: $(CN)_2$
H.S. No. 1105

OSHA currently has no limit for cyanogen. The ACGIH recommends a TLV–TWA of 10 ppm for this colorless gas, which has a pungent, almond-like odor.

The acute toxicity for cyanogen in various animal species is high (Flury and Zernik 1931). One-hundred ppm was fatal to cats in 2 to 3 hours, and 400 ppm was fatal to rabbits in less than 2 hours. However, rabbits exposed to 100 ppm for 4 hours showed practically no effects. Cats exposed to 50 ppm were severely affected but recovered (Flury and Zernik 1931). Investigations in the rat suggest that cyanogen is approximately 10 times less acutely toxic than is hydrogen cyanide (McNerney and Schrenk 1960).

Human tests showed that subjects experienced almost immediate eye and nasal irritation at exposures of 18 ppm (McNerney and Schrenk 1960).

OSHA proposes a PEL of 10 ppm TWA for cyanogen. Because of the high acute toxicity of this substance in experimental animals, the Agency preliminarily concludes that this limit is necessary to protect against the risk of irritation and systematic effects associated with exposure at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for cyanogen. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CYANOGEN CHLORIDE
CAS: 506–77–4; Chemical Formula: ClCN
H.S. No. 1106

OSHA currently has no limit for cyanogen chloride. The ACGIH recommends a ceiling limit of 0.3 ppm

for this colorless liquid or gas, which has a pungent odor.

The chronic effects of cyanogen chloride, which include hoarseness, conjunctivitis, and edema of the eyelid, have long been recognized (Reed 1920).

Flury and Zernik (1931) observed the effects of exposure to cyanogen chloride in five animal species. In mice, a concentration of approximately 500 ppm was fatal within 3 minutes; in cats, 120 ppm was fatal in 3.5 minutes; 48 ppm was fatal to dogs in 6 hours; in goats, a 1000-ppm exposure for 3 minutes caused death after 70 hours; and 1200 ppm was fatal to the rabbit. Several other studies have demonstrated that animals exposed to cyanogen chloride exhibit pulmonary edema and interference with cellular metabolism (Jandorf and Bodansky 1946; Aldrich and Evans 1946).

Human data indicate that 1 ppm is the lowest irritant concentration for a 10-minute exposure; 2 ppm was intolerable for this time period, and 48 ppm was fatal in 30 minutes (Prentiss 1937). The Michigan Department of Public Health (1977) reported that a concentration of about 0.7 ppm caused severe eye and nasal irritation, forcing workers to quit the area.

OSHA is proposing a ceiling limit of 0.3 ppm for cyanogen chloride. The Agency preliminarily concludes that this ceiling is necessary to protect exposed workers from the risks of severe irritation, metabolic effects, and pulmonary edema associated with exposure to this substance at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for cyanogen chloride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIBUTYL PHOSPHATE
CAS: 107–66–4; Chemical Formula: $(n\text{-}C_4H_9O)_2(OH)PO$
H.S. No. 1119

OSHA currently has an 8-hour TWA PEL of 1 ppm for dibutyl phosphate. The ACGIH recommends a TLV–TWA of 1 ppm and a TLV–STEL of 2 ppm for this pale amber liquid.

There are no published reports of toxic reactions caused by exposure to dibutyl phosphate. However, in a personal communication to the ACGIH, Mastromatteo reposted that workers exposed to relatively low levels of dibutyl phosphate developed respiratory tract irritation and headache (Mastromatteo, as cited in ACGIH 1986, p. 175).

OSHA is proposing an 8-hour TWA PEL of 1 ppm and a 15-minute STEL of 2 ppm for dibutyl phosphate. The Agency preliminarily concludes that both a TWA and a STEL are necessary to protect exposed workers from the risk of respiratory tract irritation and headaches reported at low levels of exposure and to substantially reduce this risk. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for dibutyl phosphate if the Agency determines that this limit will substantially reduce significant risk.

1,3-DICHLORO-5,5-DIMETHYLHYDANTOIN
CAS: 118–52–5; Chemical Formula: $C_5H_6Cl_2N_2O_2$
H.S. No. 1122

OSHA currently has a limit of 0.2 mg/m³ TWA for 1,3-dichloro-5,5-dimethylhydantoin (DCDMH). The ACGIH recommends a TLV–TWA of 0.2 mg/m³ TWA and a TLV–STEL OF 0.4 mg/m³ for this white powder, which has a mild odor similar to that of chlorine.

1,3-Dichloro-5,5-dimethylhydantoin produces systemic toxicity in laboratory animals. The acute oral LD_{50} in rats of both sexes is 542±84 mg/kg when administered as a 10-percent aqueous suspension. Rats dying within 48 hours of administration showed gastrointestinal hemorrhage at necropsy. The animals tolerated aqueous solutions of DCDMH maintained at 20-ppm available chlorine (Industrial Bio-Test Laboratories, as cited ACGIH 1986, p. 183).

Limited human exposure data have been provided by Baier, who reported that individuals experienced extreme respiratory irritation at an average level of 1.97 mg/m³, but that some experienced this degree of irritation even at 0.7 mg/m³ (Baier, as cited in ACGIH 1986, p. 183).

OSHA is proposing a PEL of 0.2 mg/m³ TWA and a STEL of 0.4 mg/m³ for DCDMH. These limits are based on evidence of systemic toxicity in laboratory animals and respiratory irritation at low exposure levels in human subjects. The Agency preliminarily concludes that both a TWA and STEL are required to protect exposed workers from the risk of respiratory irritation that has been shown to occur at levels only slightly above the level specified by the 8-hour TWA limit. OSHA believes that the two limits will reduce this risk substantially. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 1,3-dichloro-5,5-dimethylhydantoin if the Agency determines that this limit will substantially reduce significant risk.

DICHLOROETHYL ETHER
CAS: 111–44–4; Chemical Formula: $(ClCH_2CH_2)_2O$
H.S. No. 1127

OSHA currently has a 15-ppm ceiling limit, with a skin notation, for dichloroethyl ether. The ACGIH recommends a TLV–TWA of 5 ppm with a TLV–STEL of 10 ppm, also with a skin notation. Dichloroethyl ether is a colorless, flammable liquid with a nauseating odor.

The primary health hazards associated with exposure to this substance are irritation of the eyes and respiratory system and pulmonary damage. Schrenk, Patty, and Yant (1933) report that guinea pigs exposed to the vapor of dichloroethyl ether at 500 ppm experienced immediate and severe eye and nose irritation, respiratory disturbances after 1.5 to 3 hours, and death after 5 to 8 hours. Lung, kidney, liver, and brain damage were also observed in these animals; exposure to a reduced level of 105 ppm caused eventual death after 10 hours of continuous exposure. A one-hour exposure to 105 ppm caused irritation only (Carpenter, Smyth, and Pozzani 1949). At 35 ppm, for an unspecified duration, irritation but no other adverse effects were observed (Schrenk, Patty, and Yant 1933). Rats responded similarly, with 4-hour exposures to 250 ppm proving lethal (Carpenter, Smyth, and Pozzani 1949).

Repeated exposures to 69 ppm (7 hours/day, 5 days/week for 120 days) caused no serious injury in rats or guinea pigs; only mild stress-related effects were noted (Kosyan 1966). However, other studies of guinea pigs have shown mild primary irritative effects on the skin, and fatalities occurred when 300 mg/kg was applied dermally as a pure liquid for 24 hours (Smyth, jr. and Carpenter 1948). Direct contact of dichloroethyl ether with the eye causes moderate pain, conjunctival irritation, and transient corneal injury (Carpenter and Smyth 1946). A sufficient amount of dichloroethyl ether can be absorbed through the skin to be lethal (Carpenter and Smyth 1946). Mice have been reported to develop hepatomas after prolonged oral administration (80 weeks) at 300 mg/kg (Innes et al. 1969).

Humans exposed briefly to dichloroethyl ether at concentrations above 550 ppm experienced intolerable eye and nasal irritation, with coughing, nausea, and retching. Concentrations between 100 and 380 ppm were irritating but tolerable; however, the odor of dichloroethyl ether was still nauseating at 35 ppm (Schrenk, Patty, and Yant 1933). Eye irritation has been reported from industrial exposure to a concentration of dichloroethyl ether of 2.5 ppm (Bell and Jones 1958). A single fatality, presumably from inhalation of the vapor, has been reported but not documented (Elkins 1959).

OSHA proposes an 8-hour TWA limit of 5 pm and a STEL of 10 ppm, with a skin notation, for dichloroethyl ether. The Agency preliminarily concludes that this combination of limits will protect workers against the risk of irritation, lung injury, and nausea associated with occupational exposure to elevated levels of dichloroethyl ether. The skin notation is proposed because dichloroethyl ether can cause systemic toxicity if percutaneously absorbed. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for dichloroethyl ether if the Agency determines that this limit will substantially reduce significant risk.

2,2-DICHLOROPROPIONIC ACID
CAS: 75–99–0; Chemical Formula: CH_3CCl_2COOH
H.S. No. 1130

OSHA currently has no limit for 2,2-dichlororopionic acid. The ACGIH recommends a TLV of 1 ppm TWA for this liquid.

In a communication to the ACGIH (1986, p. 190), the Dow Chemical Company (1977) reported that 2,2-dichloropropionic acid is corrosive to the skin and can cause permanent injury to the eye. The oral LD_{50} in rats is between 0.7 and 1 g/kg. Seven-hour exposures to a saturated atmosphere of the acid vapor caused no ill effects in rats, and a 120-day study of dietary exposure in rats showed a no-effect level of 15 mg/kg/day (Dow Chemical Company, as cited in ACGIH 1986, p. 190).

Acute human exposures have been reported to cause mild to moderate skin, eye, respiratory, and gastrointestinal irritation. Minimal respiratory irritation was observed in workers exposed at concentrations of between 2 and 7 ppm (ACGIH 1986, p. 190).

OSHA is proposing a PEL of 1 ppm TWA for 2,2-dichloropropionic acid. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of eye, respiratory, and gastrointestinal irritation at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for 2,2-dichloropropionic acid. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIETHYLAMINE
CAS: 109–89–7; CHEMICAL FORMULA: $(C_2H_5)_2NH$
H.S. No. 1137

OSHA's current limit for diethylamine is 25 ppm as an 8-hour TWA. The ACGIH has established an 8-hour TLV–TWA of 10 ppm and a 15-minute STEL of 25 ppm for this substance, which is a colorless liquid with an ammonia-like odor.

Diethylamine is a strong irritant of the eyes, skin, and mucous membranes, and chronic sublethal exposures cause tracheitis, bronchitis, pneumonitis, and pulmonary edema (ACGIH 1986, p. 197). In rabbits, the dermal LD_{50} is 0.82 ml/kg, and instillation of solutions of 1 percent or greater into the eyes of rabbits caused corneal opacity (Sutton 1963). Direct contact of the skin with diethylamine causes necrosis (ACGIH 1986, p. 197). Rabbits exposed 7 hours/day, 5 days/week for 6 weeks to 50 or 100 ppm diethylamine survived; those exposed to 50 ppm showed marked lung and corneal irritation, and, occasionally, degeneration of the heart muscle (Brieger and Hodes 1951). In the animals exposed to 100 ppm, these changes were more severe, and the parenchymatous degeneration of the heart muscle was marked (Brieger and Hodes 1951).

OSHA is proposing an 8-hour TWA of 10 ppm and a STEL of 25 ppm for diethylamine. The Agency preliminarily concludes that this combined limit will protect workers from the risk of skin burns, corneal injury, pulmonary irritation, and skin, eye, and upper respiratory tract irritation potentially associated with exposures to this substance at the levels permitted by an 8-hour limit alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for diethylamine if the Agency determines that this limit will substantially reduce significant risk.

DIISOBUTYL KETONE
CAS: 108–83–8; Chemical Formula: $[(CH_3)_2CHCH_2]_2CO$
H.S. No. 1140

OSHA currently has an 8-hour limit of 50 ppm TWA for diisobutyl ketone. NIOSH recommends a 10-hour TWA of 25 ppm, and the ACGIH has established a TWA limit of 25 ppm for this clear liquid with a mild ether-like odor.

The primary health effects associated with exposure to diisobutyl ketone are eye, nose, and throat irritation, although experimental animals have shown some systemic effects. Diisobutyl ketone has a uniformly low acute toxicity by all routes of exposure. Rats and guinea pigs survived single exposures of from 7.5 to 16 hours to essentially saturated vapor (McOmie and Anderson 1949). Smyth and co-workers (1949) reported that five of six rats died after exposure to 2000 ppm for 8 hours; they also reported a percutaneous LD_{50} for rabbits of greater than 20 ml/kg. Direct application of diisobutyl ketone to rabbit skin was only mildly irritating, and no eye irritation was reported after instillation into the rabbit eye. The oral toxicity for the rat was reported as 5.8 g/kg (Smyth et al. 1949). Carpenter and Smyth (1946) reported a no-effect level for diisobutyl ketone of 125 ppm in rats and guinea pigs given thirty 7-hour exposures. At 250 ppm, the liver and kidney weights of female rats increased, and the liver weights of male guinea pigs decreased; at levels of 530 and 920 ppm, rats showed increased liver and kidney weights; and at 1650 ppm, increased mortality was noted (Carpenter and Smyth 1946).

Silverman, Schulte, and First (1946) reported eye irritation and complaints of objectionable odor in volunteer human exposures to concentrations above 25 ppm. No worker illnesses have been linked to diisobutyl ketone exposure (ACGIH 1986, p. 203)

OSHA proposes a TWA limit of 25 ppm for diisobutyl ketone. The Agency preliminarily concludes that this limit will protect workers against the risk of irritation that is asociated with workplace exposures to diisobutyl ketone levels greater than 25 ppm. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for diisobutyl ketone if the Agency determines that this limit will substantially reduce significant risk.

EPICHLOROHYDRIN
CAS: 106–89–8; Chemical Formula: C_3H_5ClO
H.S. No. 1158

OSHA currently has a limit on 5 ppm TWA, with a skin notation, for epichlorohydrin. the ACGIH has established a limit of 2 ppm TWA, also with a skin notation. NIOSH recommends reducing employee exposure to the lowest feasible limit, and considers epichlorohydrin a carcinogen.

In animals, epichlorohydrin is irritating and systemically toxic by all routes of exposure (Shell Chemical Corporation 1958, as cited in ACGIH 1986, p. 233). Fatalities are caused and central nervous system and respiratory

tract effects resulting from exposure to high concentrations.

In mice, single 30-minute exposures to 8300 ppm of epichlorohydrin vapor caused muscular paralysis and death from respiratory failure; similar results have been reported for dermal application of the liquid at 0.5 ml/kg in rats, and repeated oral administration at 0.1 mg/kg in mice (Shell Chemical Corporation 1980, as cited in ACGIH 1986, p. 233). At 32 ppm (7 hours/day, 5 days/week) for 91 days, rats failed to show normal weight gain, and at 16 ppm they showed increased kidney size (ACGIH 1986, p. 233). Gage (1959) confirmed these findings and demonstrated lung, liver, and kidney injury in rats from repeated 6-hour exposures at concentrations ranging from 17 to 120 ppm. No effects were observed by this author at 9 ppm. The oral LD_{50} in rats is reported as 260 mg/kg, and the dermal LD_{50} in rabbits is reported as 755 mg/kg (Lawrence 1972). A 4-hour exposure at a level of 250 ppm was fatal to rats (Carpenter 1949).

There have also been reports of carcinogenicity in mice from dermal application and subcutaneous injection (Van Duuren et al. 1974), as well as reproductive effects from injection; mutagenic effects were observed in microbial systems and in the fruit fly (NIOSH 1976).

In humans exposed to concentrations above 100 ppm for brief periods, lung edema and kidney lesions have been reported (NIOSH 1976). Exposure at 20 ppm caused burning of eyes and nasal mucosa (Wexler 1971). Another exposure to an unknown concentration caused eye and throat irritation, nausea, dyspnea, bronchitis, and an enlarged liver (Schultz 1964). Painful irritation of subcutaneous tissues follows skin contact in humans (ACGIH 1986, p. 233).

OSHA proposes an 8-hour TWA limit of 2 ppm, with a skin notation, for epichlorohydrin. The Agency preliminarily concludes that this limit will protect workers from the risk of dermal, respiratory, liver, and kidney effects that are potentially associated with exposure to epichlorohydrin at elevated concentrations. The skin notation is retained because of this substance's capacity to penetrate the skin and cause toxicity. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for epichlorohydrin if the Agency determines that this limit will substantially reduce significant risk.

ETHYL BENZENE
CAS: 100-41-4, Chemical Formula C_8H_{10}
H.S. No. 1162

OSHA currently has an 8-hour TWA limit of 100 ppm for ethyl benzene. The ACGIH recommends a limit of 100 ppm TWA and a 15-minute STEL of 125 ppm for this colorless, flammable liquid with an aromatic odor.

Ethyl benzene is a skin and mucous membrane irritant. It is reported to be the most severe irritant of the benzene series (Gettel 1936). In rabbits, repeated dermal application of the liquid causes reddening, exfoliation, and blistering of the skin (Wolf et al. 1956). The acute toxicity of ethyl benzene is low, with death reported to occur at 10,000 ppm in guinea pigs exposed for a few minutes; at 5000 ppm, ethyl benzene was described as dangerous to life for those exposed for 30 to 60 minutes. Dying animals suffered intense congestion and edema of the lungs, as well as generalized visceral hyperemia (Yant, Schrenk, Waite, and Patty 1930). The narcotic dose in laboratory animals is reported to be 10,000 ppm (reached within 18 minutes) and narcosis is preceded by vertigo, unsteadiness, and ataxia (Yant, Schrenk, Waite, and Patty 1930).

Chronic inhalation exposures of guinea pigs, monkeys, rabbits, and rats at concentrations of from 400 ppm to 2200 ppm, 7 to 8 hours/day, 5 days/week for as long as 6 months produced no effects in these species, except that liver damage occurred, on the average, in animals exposed to 400 ppm for 186 days (Wolf et al. 1956).

Observations in humans suggest that intolerable eye and nose irritation occurs at 5000 ppm; immediate and severe eye irritation and tearing and moderate nose irritation is exhibited at 2000 ppm; and irritation that reportedly can be tolerated occurs at 1000 ppm. At 200 ppm, the vapor produces transient eye irritation (Gerarde 1963).

OSHA is proposing a PEL of 100 ppm TWA and a 15-minute STEL of 125 ppm for ethyl benzene. The Agency preliminarily concludes that both of these limits are required to protect those exposed from the risk of irritation associated with occupational exposure to ethyl benzene above the 100-ppm level even for a brief period. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethyl benzene if the Agency determines that this limit will substantially reduce significant risk.

ETHYL ETHER
CAS: 60-29-7; Chemical Formula: $C_2H_5OC_2H_5$
H.S. No. 1164

OSHA currently has a limit of 400 ppm TWA for ethyl ether. The ACGIH recommends the same time-weighted average limit, with a STEL of 500 ppm for a 15-minute period. Ethyl ether is a colorless, volatile, mobile liquid with a distinct odor and a burning, sweet taste. It is extremely flammable and is a severe fire and explosion hazard when exposed to heat or flame.

Ethyl ether causes narcosis and general anesthesia. Concentrations of 3.6 to 6.5 volumes percent in air are anesthetic to humans; 7- to 10-percent concentrations cause respiratory arrest, and concentrations greater than 10 percent are fatal (ACGIH 1986, p. 259). Repeated workplace exposures deliberately induced to produce the so-called "ether jag" have caused narcosis, exhaustion, headache, dizziness, sleepiness, excitation, and other psychic disturbances (Hake and Rowe 1963). In women, albuminuria and polycythemia may result (Browning 1965). Repeated exposure may cause skin desiccation; irritation of the mucous membranes and eyes occurs on contact with the liquid or after exposure to high concentrations of the vapor (Hake and Rowe 1973). Nelson and co-workers (1943) reported that workers began to experience nasal irritation at 200 ppm (Nelson, Ege, Ross et al. 1943). Henderson and Haggard calculated that the amount of ether absorbed by a man of average height at a concentration of 400 ppm would not cause intoxication. Armor (1960) observed that exposure effects occur only at levels of 500 ppm and above.

OSHA is proposing a PEL of 400 ppm TWA and a 15-minute STEL of 500 ppm for ethyl ether. The Agency preliminarily concludes that both of these limits are necessary to protect against the risk of narcosis and irritation potentially associated with excursions above the 8-hour TWA level. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethyl ether if the Agency determines that this limit will substantially reduce significant risk.

ETHYL MERCAPTAN
CAS: 75-08-1; Chemical Formula: C_2H_5SH
H.S. No. 1165

OSHA currently has a ceiling limit of 10 ppm for ethyl mercaptan. The ACGIH recommends a TLV of 0.5 ppm TWA. The NIOSH recommended exposure limit for this substance is 0.5 ppm as a 15-minute ceiling. Ethyl mercaptan is a colorless liquid with a persistent and penetrating leek-like odor.

Acute animal toxicity data concerning ethyl mercaptan are taken from a single study that reports the following findings. The 4-hour inhalation LC_{50} values in rats and mice are 2770 ppm and 4420 ppm, respectively. In the rat, the intraperitoneal LD_{50} is reported to be approximately 450 mg/kg. One drop applied to rabbit eyes caused only slight irritation; but high concentrations of vapor caused considerable irritation within 15 minutes. Maximal sublethal intraperitoneal doses have been reported to induce deep sedation, with higher exposures causing restlessness, muscular incoordination, skeletal muscular paralysis, cyanosis, respiratory depression, coma, and death. Although inhalation tests showed no noteworthy pathology in rats, intraperitoneal injection caused lymphotic infiltration of the liver with occasional necrosis (Fairchild and Stokinger 1958).

In chronic inhalation studies of rabbits, rats, and mice, a 5-month exposure to 40 ppm caused minimal cardiovascular and other systemic effects (Bilyons 1935).

Studies of human volunteers, exposed at 4 ppm for 3 hours daily for 5 to 10 days, have reported minimal effects. At this level, all subjects experienced altered taste and olfactory reactions, periodic nausea, mucous membrane irritation, and fatigue. Exposure to 8.4 ppm produced no unpleasant symptoms (ACGIH 1986, p. 262).

OSHA is proposing to reduce its current ceiling limit of 10 ppm for ethyl mercaptan to 0.5 ppm as a time-weighted average, to protect workers against the risk of nausea, fatigue, and irritation associated with exposure to concentrations well below the current PEL. The Agency preliminary concludes that the revised limit will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethyl mercaptan if the Agency determines that this limit will substantially reduce significant risk.

ETHYLENE GLYCOL
CAS: 107-21-1; Chemical Formula: CH_2OHCH_2OH
H.S. No. 1169

OSHA currently has no limit for ethylene glycol. The ACGIH recommends a ceiling limit of 50 ppm (approximately 125 mg/m³) for this clear, colorless, odorless, and hygroscopic liquid.

Ethylene glycol poses virtually no exposure risk at room temperature because of its low vapor pressure; at elevated temperatures, however, exposures are possible and adverse effects have been reported as a result of exposure to mists.

In studies of rats, guinea pigs, rabbits, dogs, and monkeys, Coon and colleagues (1970) reported that animals exposed over a 30-day period to concentrations at 10 or 57 mg/m³ for 8 hours daily, 5 days per week, showed no adverse effects. Moderate to severe eye irritation did occur in rats and rabbits exposed at 12 mg/m³ for 24 hours per day for 90 days. (Coon et al. 1970). Wiley and co-workers reported no ill effects in animals exposed to approximately 350 to 400 mg/m³, 8 hours per day, for 16 weeks (Wiley, Hueper, and von Oettingen 1938).

Rowe concluded that daily exposure to 100 ppm of the vapor did not cause systemic or eye injuries (1962), although Troisi described nystagmus in overexposed workers (concentrations not reported) (1950). In a human inhalation study, Wills and collegues (1974) reported that volunteers exposed to the aerosol from 20 to 22 hours per day for 4 weeks, at an average concentration of 12 ppm, complained of throat irritation, mild headache, and lower back pain. Complaints were more pronounced when the concentration was raised to 140 mg/m³ (80 ppm) for part of a day. Average concentrations of 80 ppm were found intolerable by the subjects, who reported a burning sensation in the throat and respiratory passages; irritation was also common at 50 ppm (1974).

Based on evidence of an occupational risk of severe throat and respiratory irritation associated with exposure to the vapor and mist, OSHA proposes a ceiling limit of 50 ppm for ethylene glycol; this level is just below the level at which clinical symptons were noted. The Agency preliminarily concludes that this limit will substantially reduce the risk associated with the uncontrolled exposures at the currently uncontrolled level. The health evidence forms a reasonable basis for proposing a new limit for ethylene glycol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ETHYLIDENE NORBORNENE
CAS: 16219-25-3; Chemical Formula: C_9H_{12}
H.S. No. 1171

OSHA currently has no limit for ethylidene norbornene. The ACGIH recommends a ceiling limit of 5 ppm. This colorless liquid reacts with oxygen.

In a range-finding study, five of six rats died following a 4-hour exposure to 4000 ppm 5-ethylidene-2-norbornene (Smyth, Carpenter, Weil et al. 1967). Other studies of longer duration have reported that exposures to 237 ppm for 7 hours per day, 5 days per week for 88 days, resulted in death for 21 of 24 rats. No deaths resulted from repeated exposures at 90 ppm, but renal lesions and enlarged livers were observed, liver lesions, testicular atrophy, and hydrothorax occurred at the 237-ppm level (Kinkead, Pozzani, Geary, and Carpenter 1971). Beagle dogs similarly exposed to 93 ppm for 88 days survived, but exhibited such effects as testicular atrophy, hepatic lesions, and slight blood changes. Less pronounced effects were seen after exposure to 61 ppm, but no effects were seen at 22 ppm (Kinkead, Pozzani, Geary, and Carpenter 1971).

Human volunteers exposed for 30 minutes to ethylidene norbornene concentrations of 11 ppm experienced eye and nose irritation; at 6 ppm, transient eye irritation occurred (ACGIH 1986, p. 261).

OSHA proposes a ceiling limit of 5 ppm to minimize the risk of irritation that has been documented to occur in occupational exposures to concentrations as low as 6 ppm for 30-minute periods. The Agency preliminarily concludes that this limit will reduce this risk substantially. The health evidence forms a reasonable basis for proposing a new limit for ethylidene norbornene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FURFURAL
CAS: 98-01-1; Chemical Formula: $C_5H_4O_2$
H.S. No. 1185

OSHA currently has an 8-hour TWA limit of 5 ppm, with a skin notation, for furfural. The ACGIH recommends a TLV-TWA of 2 ppm, also with a skin notation. Furfural is a colorless, oily liquid that turns rust-colored when exposed to air and light.

An inhalation exposure to 260 ppm of furfural was fatal to rats but not to mice or rabbits. A 4-week exposure of dogs to 130 ppm for 6 hours a day caused liver damage, but no adverse effects were observed at 83 ppm (AIHA 1965).

Bugyi and Lepold (1952) describe numbness of the tongue and oral mucosa, absence of a sense of taste, and labored breathing in workers exposed to furfural (at unspecified levels) in a poorly ventilated facility. Koreman and Resnik (1930) state that inhalations of from 1.9 to 14 ppm furfural caused headaches, itching throat, and eye irritation; Kuhn (1944) reported that exposure to furfural damages the eyesight in some individuals. NIOSH (1975) describes widespread eye and respiratory tract irritation in workers at a griding wheel plant exposed to furfural vapor at levels ranging from 5 to 16 ppm.

However, Dunlop and Peters (1953) report that a 15-year study of furfural use in the synthetic resin industry revealed that this substance is not hazardous to health in facilities that are adequately ventilated, and that only occasional individual sensitivity was found.

OSHA proposes a PEL of 2 ppm TWA, with a skin notation, for furfural. The Agency preliminarily concludes that these limits will protect workers against the risk of headaches and eye and respiratory irritation associated with exposure to furfural at the levels permitted by OSHA's existing PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for furfuryl alcohol if the Agency determines that this limit will substantially reduce significant risk.

FURFURYL ALCOHOL
CAS: 98-00-0; Chemical Formula: $C_5H_6O_2$
H.S. No. 1184

OSHA's current limit for furfuryl alcohol is 50 ppm TWA. NIOSH (1979) has also recommended a 50-ppm limit as a 10-hour TWA. The ACGIH recommends a 10-ppm TLV–TWA, a 15-ppm TLV–STEL and a skin notation.

The basis for the ACGIH-recommended limits are two foundry studies in which furfuryl alcohol was released during core preparation. Apol (1973) reported no discomfort among workers exposed to 10.8 ppm furfuryl alcohol, but severe lacrimation occurred at 15.8 ppm. Formaldehyde was also present at a concentration of 0.33 ppm. Burton and Rivers (1972) found no irritation, headache, or dizziness among workers exposed to 8-hour TWA concentrations of 5 and 6 ppm, with excursions up to 16 ppm. The ACGIH concluded that a TLV–TWA of 10 ppm with a 15-ppm TLV–STEL would protect workers against irritation effects.

NIOSH (1979) also reviewed these studies, but concluded that it was unknown whether the lacrimation reported by Apol (1973) was caused by furfuryl alcohol, formaldehyde, or both combined. They also noted that the current OSHA limit (50 ppm) is five times lower than the concentration reported to cause no adverse effects in monkeys (Woods and Seevers 1954–56). NIOSH (1979) concluded that the 50-ppm limit should remain, since no information exists showing that this limit offers inadequate protection.

The 50-ppm REL is based on the hypothesis that severe lacrimation noted in a foundry study was due to the presence of formaldehyde. More serious effects than severe lacrimation would occur at this formaldehyde level, and therefore OSHA believes that the health effects observed at 15.8 ppm are caused by exposure to furfuryl alcohol. OSHA thus finds that the REL does not provide adequate protection and proposes a 10-ppm (TWA), 15-ppm (STEL), and a skin notation for this substance to reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for furfuryl alcohol if the Agency determines that this limit will substantially reduce significant risk.

GLUTARALDEHYDE
CAS: 111-30-8; Chemical Formula: OCH$(CH_2)_3$CHO
H.S. No. 1187

OSHA currently has no limit for glutaraldehyde. The ACGIH recommends a ceiling limit of 0.2 ppm. Glutaraldehyde is an aliphatic dialdehyde which forms colorless crystals.

Glutaraldehyde is strongly irritating to the nose, eyes, and skin (*Human Sensory Irritation Threshold of Glutaraldehyde Vapor* 1976, as cited in ACGIH 1986, p. 285) and can cause allergic contact dermatitis from occasional or incidental occupational exposure (Jordan et al. 1972). The rat oral LD_{50} has been variously reported as 250, 620, and 2380 mg/kg (Stonehill et al. 1965; Smyth 1963, as cited in Fassett 1961; NIOSH 1975). The dermal LD_{50} in the rabbit is 2560 mg/kg, and the 4-hour inhalation LD_{50} in the rat is 5000 ppm (NIOSH 1975).

Mice exposed to alkalinized glutaraldehyde at 8 and 33 ppm for 24 hours have showed marked nervous behavior and panting and washing of the face and limbs; those exposed to 33 ppm exhibited signs of toxic hepatitis at autopsy (Varpela et al. 1971).

In a study of cold-sterilizing operation in which the operator was exposed for 12 minutes to an activated 2-percent aqueous solution, a measurement of 0.38 ppm glutaraldehyde was taken in the operator's breathing zone; the operator and the investigators experienced severe eye, nose, and throat irritation as well as sudden headache at the end of this procedure (Schneider and Blejer 1973). Another study employing very precise methods of airborne concentration measurement reported the irritation response level for glutaraldehyde to be 0.3 ppm and the odor recognition threshold to be 0.04 ppm (Colwell 1976, as cited in ACGIH 1986, p. 285).

OSHA proposes a ceiling level of 0.2 ppm for glutaraldehyde. The Agency preliminarily concludes that this ceiling limit will prevent the risk of irritation to the eyes, nose, and throat potentially associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for glutaraldehyde. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

HEXACHLOROCYCLOPENTADIENE
CAS: 77-47-4; Chemical Formula: C_5Cl_6
H.S. No. 1190

OSHA has no current limit for hexachlorocyclopentadiene. The ACGIH recommends a TLV–TWA of 0.01 ppm. Hexachlorocyclopentadiene is a yellow to amber-colored, nonflammable liquid with a pungent odor.

Hexachlorocyclopentadiene has a high order of acute toxicity in laboratory animals. Rabbits, mice, rats, and guinea pigs died from inhaling 89.5 percent of the vapor in air (Treon, Cleveland, and Cappel 1955). In 150 daily exposures of 7 hours each, rabbits, rats, and guinea pigs survived concentrations of 0.15 ppm, but a similar exposure was fatal to four of five mice. At approximately twice this concentration, mice, rats, and most rabbits died by or before the 25th exposure, but guinea pigs survived 30 exposures. The vapors caused tearing, labored respiration, and, at high concentrations, tremors. Treon and associates observed degenerative changes in the brain, heart, liver, adrenal glands, and kidneys; pulmonary irritation occurred in all species, even at the lowest concentration of 0.15 ppm. At higher concentrations, pulmonary edema, hyperemia, necrotizing bronchitis, and bronchiolitis were observed.

In humans, there are few data concerning hexachlorocyclopentadiene's toxicity. Irritation is known to occur, but the intolerable odor and eye irritation associated with exposure to hexachlorocyclopentadiene have discouraged prolonged exposures (McGilvray 1971, as cited in ACGIH 1986, p. 300).

OSHA is proposing an 8-hour TWA of 0.01 ppm for this severely toxic substance. The Agency preliminarily concludes that this limit will protect exposed workers against the risks of exposure to this acute toxin at the levels permitted in the absence of any OSHA limit. These risks include intense eye and pulmonary irritation and multiple organ damage. The health evidence forms a reasonable basis for proposing a new limit for hexachlorocyclopentadiene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines

that this limit will substantially reduce significant risk.

HEXYLENE GLYCOL
CAS: 107-41-5; Chemical Formula: $(CH_3)_2$-$COHCH_2$-$CHOH$-CH_3
H.S. No. 1204

OSHA currently has no limit for hexylene glycol. The ACGIH recommends a ceiling limit of 25 ppm for this liquid, which has a mild, sweetish odor.

In mice, the LD_{50} is reported to be 3.8 ml/kg, and it is reported to be 4.79 g/kg in rats. A single dose of 2.0 ml/kg induced hypnosis in mice. Undiluted hexylene glycol instilled into the rabbit eye caused irritation and corneal injury (Smyth and Carpenter 1948).

The Shell Chemical Corporation has reported that oral administration of hexylene glycol can cause nervous system depression that is manifested by an initial state of excitation, followed by deep depression (Shell Chemical Corporation, as cited in ACGIH 1986, p. 309). When the liquid is applied to the skin, mild to moderate irritation occurs, although skin absorption does not. At high concentrations, hexylene glycol vapors evoke a strong sensory response: a 5-minute exposure at 1000 ppm produced eye irritation and throat and respiratory discomfort. At concentrations of 50 ppm for 15 minutes, slight eye irritation is reported (ACGIH 1986, p. 309).

OSHA is proposing a ceiling limit of 25 ppm for hexylene glycol to minimize the risk of neuropathy and irritation that may occur as a result of even brief excursions at the high concentrations permitted in the absence of any OSHA limit. The Agency preliminarily concludes that this limit will substantially reduce this significant risk. The health evidence forms a reasonable basis for proposing a new limit for hexylene glycol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

HYDROGEN BROMIDE
CAS: 10035-10-6; Chemical Formula: HBr
H.S. No. 1206

The current OSHA PEL for hydrogen bromide is 3 ppm as an 8-hour TWA. The ACGIH recommends the same 3 ppm value as a ceiling limit not to be exceeded at any time during the working day. Hydrogen bromide (HBr) is a colorless, corrosive, non-flammable gas with an acrid odor.

Animal studies have demonstrated that hydsogen bromide has a considerably higher acute toxicity than hydrogen chloride (HCl) in mice and a somewhat higher acute toxicity than this chemical in rats (NIOSH 1977). In mice, the LC_{50} is 800 ppm HBr in air for 60 minutes (and 2500 HCl in air for 30 minutes); in rats, the LC_{50} is 2800 ppm HBr in air for 60 minutes (and 5000 ppm HCl in air for 30 minutes).

The chief toxic effect of hydrogen bromide in humans is primary irritation of the nose and throat. Irritation begins within several minutes at levels between 3 and 6 ppm. At 2 ppm, the odor of HBr is detectable, but no irritation is experienced (Connecticut State Department of Health, as cited in ACGIH 1986, p. 312). No chronic effects have been associated with exposure to hydrogen bromide.

Based on evidence that hydrogen bromide is a primary irritant without known chronic toxicity, OSHA is proposing a 3-ppm ceiling for this substance. The Agency preliminarily concludes that this limit will protect against the risk of primary irritation to which workers can be exposed at the current PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for hydrogen bromide if the Agency determines that this limit will substantially reduce significant risk.

HYDROGEN FLUORIDE
CAS: 7664-39-3; Chemical Formula: HF
H.S. No. 1208

The current OSHA standard for hydrogen fluoride is 3 ppm as an 8-hour TWA. The ACGIH has established a ceiling limit of 3 ppm for this substance, and NIOSH recommends 3 ppm as a 10-hour TWA and a 15-minute ceiling of 6 ppm for hydrogen fluoride. Hydrogen fluoride is a fuming, colorless liquid; at temperatues above 19°C (66°F), it becomes a colorless gas.

Guinea pigs and rabbits survived 40 ppm for 41 hours, but exposure to 300 ppm for 2 hours or more was fatal (Machle, Thamann, Kitzmiller, and Cholak 1934). Animals exposed to 3 ppm hydrogen fluoride for 30 days showed no adverse effects (Ronzani 1909). Stokinger and co-workers (1949) reported that animals repeatedly exposed to 7 ppm on a daily basis exhibited mild respiratory tract irritation. One study by Largent (1961) demonstrated kidney, liver, and lung damage in laboratory animals repeatedly exposed to 17 ppm hydrogen fluoride. At 8.6 ppm, the pathologic changes seen in exposed animals were minor, except for lung damage in one dog (Largent 1961).

In studies with humans, Largent (1960, 1961) reported that volunteers exposed repeatedly to concentrations of hydrogen fluoride as high as 4.7 ppm for 6 hours/day for 10 to 50 days experienced irritation and burning of the eyes and nose, in addition to reddening of the skin, at concentrations above 3 ppm. Industrial experience has shown that direct contact of the skin with hydrogen fluoride results in severe burns that may have delayed onset but later develop into ulcers that eventually scar (Patty 1981). A report by Eagers (1969) described several industrial accidents in which workers died in a matter of hours after accidential splashing from ruptured containers of hydrogen fluoride (the cause of death was respiratory failure and cardiac arrest). Kleinfeld (1985) reported a fatal case of hydrogen fluoride poisoning that caused death from pulmonary edema.

NIOSH (1976) cites numerous studies that consistently show that long-term occupational exposures to hydrogen fluoride lead to fluorosis in workers. The NIOSH limit is based in part on a study by Derryberry, Bartholomew, and Fleming (1963) showing that the threshold limit for minimal increases in bone density caused by fluoride (fluorosis) is below 4.3 ppm of hydrogen fluoride.

The Agency is proposing an 8-hour TWA limit of 3 ppm and a 6-ppm 15-minute ceiling for hydrogen fluoride. These are the current NIOSH-recommended limits for this substance. OSHA preliminarily concludes that both a TWA and a STEL are required to protect exposed workers from the risk of fluorosis, eye burning, and skin and upper respiratory tract irritation potentially associated with exposure at the levels permitted by the TWA alone. The Agency believes that these limits will substantially reduce these risks. The health evidence forms a reasonable basis for proposing a new limit for hydrogen fluoride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

2-HYDROXYPROPYL ACRYLATE
CAS: 999-61-1; Chemical Formula: $CH_2CHCOOCH_2CHOHCH_3$
H.S. No. 1211

OSHA currently has no limit for 2-hydroxypropyl acrylate. The ACGIH recommends a TLV–TWA limit of 0.5 ppm and a skin notation. 2-hydroxypropyl acrylate (HPA) is a liquid at room temperature.

In experimental animals, 2-hydroxypropyl acrylate has a high acute toxicity. The Dow Chemical Company (1977), as cited in ACGIH 1986, p. 320) has reported an oral LD_{50} for the rat of 0.25 g/kg, and a dermal LD_{50} in the

rabbit of approximately 0.25 mg/kg. In guinea pigs, direct contact with HPA caused severe eye burns and skin corrosion and sensitized some of the experimental animals. Rats exposed to a concentration 650 ppm HPA in air for 7 hours did not die. Longer-term inhalation studies (30 days for 2 hours/day/6 days/week) in rats, dogs, rabbits, and mice resulted in some irritation at 5 ppm (Dow Chemical Company, as cited in ACGIH 1986, p. 320).

OSHA is proposing an 8-hour TWA Limit of 0.5 ppm and skin notation. The Agency preliminarily concludes that these limits will protect exposed workers from the risk of irritant effects and skin and eye burns associated with exposure to 2-hydroxypropyl acrylate at the previously uncontrolled level. OSHA believes these limits will substantially reduce these risks. The health evidence forms a reasonable basis for proposing a new limit for 2-hydroxy-propyl acrylate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

IRON SALTS (SOLUBLE)
CAS: 7705–08–0 (ferric chloride); 10421–48–4 (ferric nitrate); 10028–22–5 (ferric sulfate); 7758–94–3 (ferrous chloride); 7720–78–7 (ferrous sulfate); Chemical Formula: Varies with compound
U.S. No. 1217

OSHA currently has no limit for soluble iron salts. The ACGIH recommends a limit of 1 mg/m³, as iron, for these substances.

When injected into the bloodstream of experimental animals, iron salts (especially the ferric salts) are highly toxic (ACGIH 1986, p. 328). The acute intravenous dose of ferric chloride that is lethal to rabbits is about 7.2 mg/kg (Drinker, Warren, and Page 1935). The salts are also considered irritants to the respiratory tract when inhaled as dusts and mists (Drinker and Nelson 1944). Stewart and Faulds (1934) described the ferric salts as skin irritants. The oral toxicities of iron salts are considered to be moderate to low, and marked gastrointestinal irritation results from ingestion (U.S. Dept. of Labor 1941); 30 grams is the estimated fatal dose for humans (Smyth 1956).

OSHA is proposing an 8-hour TWA PEL of 1 mg/m³, as iron, for the soluble salts of iron. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of skin and mucous membrane irritation associated with exposure to these salts at the existing uncontrolled levels. The health evidence forms a reasonable basis for proposing a new limit for iron salts. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ISOPROPYL ACETATE
CAS: 108–21–4; Chemical Formula: $CH_3COOCH(CH_3)_2$
H.S. No. 1224

OSHA currently has a 250 ppm TWA limit for isopropyl acetate. The ACGIH recommends a TLV-TWA of 250 ppm and a 15-minute STEL of 310 ppm for this colorless liquid, which has a fruity odor.

The oral LD_{50} for rats is reported to be 6.75 g/kg; five of six rats died after a 4-hour exposure to 32,000 ppm, and one of six rats died after a 4-hour exposure to 16,000 ppn (Smyth, Carpenter, West, and Pozzani 1954).

The primary problems in occupational exposures to isoproply acetate are eye and mucous membrane irritation. In humans, exposure to 200 ppm isoproply acetate caused eye irritation, with nose and throat irritation occurring at higher concentrations (Silverman, Schulte, and First 1946). Data show that isopropyl acetate is more similar to ethyl acetate than to n-propyl acetate in its toxic-effects (von Oettingen 1960).

OSHA proposes an 8-hour TWA PEL of 250 ppm and a STEL of 310 ppm for isopropyl acetate. The Agency preliminarily concludes that both a TWA and a STEL are necessary to protect exposed workers from the risk of eye and respiratory irritation associated with elevated exposure to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for isopropyl acetate if the Agency determines that this limit will substantially reduce significant risk.

ISOPROPYL ALCOHOL
CAS: 67–63–0; Chemical Formula: $CH_3CHOHCH_3$
H.S. No. 1225

OSHA currently has a limit of 400 ppm TWA for isopropyl alcohol. The ACGIH recommends a TLV-TWA limit of 400 ppm, with a 500-ppm TLV-STEL. NIOSH has recommended a limit of 400 ppm TWA, with a 15-minute ceiling of 800 ppm. Isopropyl alcohol is a colorless, flammable liquid with a slight odor resembling that of rubbing alcohol.

Rats exposed at concentrations of 12,000 ppm for 4 hours survived, but extending the duration of exposure to 8 hours killed the animals (Smyth, unpublished results, 1937–1955, as cited in ACGIH 1986, p. 337).

Isopropyl alcohol has been demonstrated to be mildly irritating to the eyes, nose, and throat in humans exposed to 400 ppm (Nelson et al. 1943); at 800 ppm, these symptoms were more intense. In addition, it has narcotic, irritative, and acute toxic effects at higher concentrations. Weil has reported that an excess of paranasal sinus cancers has been observed among workers manufacturing isopropyl alcohol (1952). It has been established that the cancers associated with isopropyl alcohol manufacture were caused by isopropyl oil and not by isopropyl alcohol itself (NIOSH 1976).

OSHA is proposing a PEL of 400 ppm TWA and a STEL of 500 ppm for isopropyl alcohol. The short-term limit is being added to reduce the risk of irritation and narcotic effects at the higher short-term concentrations permitted by the TWA alone. The Agency preliminarily concludes that the addition of the STEL will reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for isopropyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

n-ISOPROPYLAMINE
CAS: 75–31–0; Chemical Formula: $(CH_3)_2CHNH_2$
H.S. No. 1226

OSHA currently has a limit of 5 ppm TWA for n-isopropylamine. The ACGIH recommends a TLV-TWA of 5 ppm and a TLV-STEL of 10 ppm for this flammable, volatile, colorless liquid, which has an odor similar to that of ammonia.

The most serious effect of n-isopropylamine in laboratory animals is respiratory tract irritation, which can be severe enough to cause lung edema. Rats survived a 4-hour inhalation at 4000 ppm, but an 8000-ppm exposure resulted in fatalities (Smyth, Carpenter, and Weil 1956).

Proctor and Hughes (1978) have reported that the odor of n-isopropylamine becomes strong and unpleasant at the 10-to 20-ppm level; nose and throat irritation is experienced even as a result of brief exposures.

OSHA is proposing a PEL of 5 ppm TWA and a 15-minute STEL of 10 ppm for this substance. The Agency preliminarily concludes that both a TWA and STEL are required to protect exposed workers from the risk of upper respiratory tract irritation known to occur even at brief excursions above the 8-hour PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-isopropylamine if the Agency determines that this limit will substantially reduce significant risk.

MESITYL OXIDE
CAS: 141–79–7; Chemical Formula: $(CH_3)_2C{=}CHCOCH_3$
H.S. No. 1245

OSHA's current limit for mesityl oxide is 25 ppm TWA. The ACGIH has recommended a 15-ppm TLV-TWA and a 25-ppm TLV-STEL. NIOSH (1978j) recommended a 10-ppm limit as a 10-hour TWA.

Silverman et al. (1946) found that a majority of test subjects experienced eye irritation upon exposure to 25 ppm mesityl oxide and nasal irritation at 50 ppm. A toxicity data sheet published by Shell Chemical Corporation (cited in ACGIH 1986, p. 361) confirmed 25 ppm as being the maximum comfort level. Smyth et al. (1942) reported liver and kidney damage among rats and guinea pigs exposed to 100 ppm mesityl oxide for 6 weeks; no adverse effects were reported for animals exposed to 50 ppm. After reviewing these data, the ACGIH (1986, p. 361) concluded that the former TLV of 25 ppm should be reduced to 15 ppm because of the greater systemic toxicity of mesityl oxide compared to other saturated ketones. NIOSH (1978j), relying on the same data, recommended a limit of 10 ppm as a 10-hour TWA and noted that the eye irritation caused by mesityl oxide may be more serious than that caused by lower ketones. This belief was based on the observation that eye irritation generally becomes more severe as the molecular weight of the ketone increases.

Studies indicate that eye irritation occurs following exposure to 25 ppm of mesityl oxide, and nasal irritation is experienced at the 50-ppm level. Animal studies show liver and kidney damage in experimental animals exposed to 100 ppm. OSHA proposes that a PEL of a 15-ppm TWA and a 25-ppm STEL be adopted as a necessary and more protective limit than the REL of 10 ppm TWA to provide protection against these occupational risks.

METHYL 2-CYANOACRYLATE
CAS: 137–05–3; Chemical Formula: $CH_2{=}C(C{=}N)COOCH_3$
H.S. No. 1248

OSHA has no current limit for methyl 2-cyanoacrylate. The ACGIH recommends a limit of 2 ppm TLV-TWA with a TLV-STEL of 4ppm. Methyl 2-cyanoacrylate is a colorless, viscous liquid.

In a personal communication to the ACGIH TLV Committee in 1985, Eastman Kodak reported on the toxicity of methyl 2-cyanoacrylate in experimental animals. The oral LD_{50} in rats is reported to be 1.6 to 3.2 g/kg, and the dermal LD_{50} in guinea pigs is 10 ml/kg. The adverse effects reported in laboratory animals are slight irritation of the skin and corneal damage. An inhalation LC_{50} or 101 ppm has been reported in rats exposed for 6 hours to methyl 2-cyanoacrylate. Repeated exposures (6 hours/day for 5 days/week) at 31.3 ppm for a total of 12 exposures caused only a slight decrease in the rate of weight gain in rats and no nasal or tracheal lesions or systemic toxicity. No changes were observed in rats similarly exposed at 3.1 ppm (Eastman Kodak, as cited in a CGIH 1986, p. 383).

In a simulated workbench exposure, McGee and co-workers reported nasal irritation in humans at 3 ppm and eye irritation at 5 ppm (McGee, Oglesby, Raleigh, and Fassett 1968). There are no reports of occupational poisonings.

OSHA proposes of PEL of 2 ppm TWA and a 4-ppm STEL for this previously unregulated substance. The Agency preliminarily concludes that both of these limits are necessary to protect against the risk of eye, skin, and upper respiratory tract irritation in workers exposed at the uncontrolled levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methyl 2-cyanoacrylate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit substantially reduce significant risk.

METHYL ISOBUTYL CARBINOL
CAS: 108–11–2; Chemical Formula: $CH_3CHOHCH_2CH(CH_3)_2$
H.S. No. 1261

OSHA currently has an 8-hour TWA limit of 25 ppm, with a skin notation, for methyl isobutyl carbinol. The ACGIH recommends a TLV–TWA of 25 ppm and a TLV–STEL of 40 ppm, also with a skin notation. Methyl isobutyl carbinol is a colorless, stable liquid.

In rabbits, a 24-hour skin application of 3.56 ml/kg was lethal to half the animals, indicating toxic absorption through the skin (Smyth, Carpenter, and Weil 1951). Rats exposed by inhalation to 2000 ppm of methyl isobutyl carbinol vapor died, and the same authors report that the oral LD_{50} for rats is 2.6 g/kg (Smyth, Carpenter, and Weil 1951).

Humans volunteers exposed to methyl isobutyl carbinol reported eye irritation at 50 ppm (Silverman, Schulte, and First 1946).

OSHA proposes an 8-hour TWA of 25 ppm and a 15-minute STEL of 40 ppm for methyl isobutyl carbinol. The Agency preliminarily concludes that these limits will together protect workers from the risk of eye irritation potentially associated with exposure to this substance in the absence of a STEL. OSHA is retaining the skin notation for methl isobutyl carbinol because of its demonstrated dermal toxicity. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl isobutyl carbinol if the Agency determines that this limit will substantially reduce significant risk.

METHYL MERCAPTAN
CAS: 74–93–1; Chemical Formula: CH_3SH
H.S. No 1263

OSHA currently has a ceiling limit of 10 ppm for methyl mercaptan. The ACGIH recommends an 8-hour TLV–TWA of 0.5 ppm, and NIOSH recommends a 15-minute ceiling of 0.5 ppm. Methyl mercaptan is a flammable, water-soluble gas with a disagreeable odor like that of rotten cabbage.

Methyl mercaptan acts on the respiratory center, producing death by respiratory paralysis. DeRekowski (1893) and Frankel (1921) have reported that the acute toxicity of methyl mercaptan is similar to but somewhat lower than that of hydrogen sulfide; however, Ljunggren and Norberg (1943) have concluded that the two substances exhibit toxicities of the same magnitude. Pulmonary edema results from exposures to lower, less actue concentrations of methyl mercaptan (Fairchild, as cited in ACGIH 1986, p. 405).

Inhalation of (an unspecified concentration of) methyl mercaptan produced coma and death in one worker; acute hemolytic anemia and methemoglobinemia developed after this exposurer (Schultz, Fountain, and Lynch 1970).

OSHA is proposing a PEL of 0.5 ppm as an 8-hour TWA for methyl mercaptan. The Agency believes that this limit is necessary to reduce the risk of respiratory and pulmonary injury that exists for workers expdsed to higher concentrations. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl mercaptan if the agency determines that this limit will substantially reduce significant risk.

METHYL n-AMYL KETONE
CAS: 110–43–0; Chemical Formula: $CH_3COC_6H_{11}$
H.S. No. 1264

The current OSHA limit for methyl n-amyl ketone is 100 TWA. NIOSH (1978j) also recommends a limit of 100 ppm as a 10-hour TWA, and the ACGIH recommends a TLV–TWA of 50 ppm.

Johnson et al. (1978) found no neurologic impairment in rats and monkeys exposed to 131 ppm or 1025 ppm methyl n-amyl ketone for 9 months. No gross or histopathologic changes were found. Because of the absence of any human data indicating the concentration of methyl n-amyl ketone that produces sensory irritation, ACGIH (1986) believed in prudent to reduce the TLV-TWA from 100 ppm to 50 ppm. NIOSH (1978j) concluded that there was no basis for revising the 100-ppm OSHA limit; they cited evidence that methyl n-amyl ketone was likely to be as irritating as 2-pentanone (which has a recommended limit of 100 ppm), and therefore the 100-ppm limit was probably sufficient for methyl n-amyl ketone.

No neurological or histopathological effects were observed at 131 ppm. The ACGIH's 50-ppm TLV applies an additional factor of safety to this no-observed-effect level, while the NIOSH REL is based on a judgment that such a reduction is unnecessary. The health evidence for methyl n-amyl ketone may not be sufficient to support a revision to the existing limit, and OSHA accordingly is retaining the Z table limit. However, there may be other information on the health effects of occupational exposure to methyl n-amyl ketone, and OSHA is specifically requesting such information from the public. At the time of the final rule, OSHA will make a final determination, based on the best available evidence, of whether to retain or revise the limit for this substance.

a-METHYL STYRENE
CAS: 98-83-9; Chemical Formula: $C_6H_5C(CH_3)=CH_2$
H.S. No. 1267

OSHA currently has a ceiling limit of 100 ppm for a-methyl styrene. The ACGIH recommends a limit of TLV-TWA 50 ppm with a TLV-STEL of 100 ppm a-Methyl styrene is a polymerizable, colorless liquid.

OSHA's existing ceiling limit of 100 ppm is based on data developed in 1935 by the Dow Chemical Company (as cited in ACGIH 1986, p. 410) and by Wolf, Rowe, McCallister et al (1956). These data demonstrated that 7 hours/day, 5 days/week exposures to a-methyl styrene for 6 months produced no ill effects in rats, guinea pigs, rabbits, or monkeys.

In humans, however, these authors reported that a 2-minute exposure to 200 ppm caused eye irritation and complaints about this substance's unpleasant odor.

OSHA is proposing an 8-hour TWA of 50 ppm and a 15-minute STEL of 100 ppm for a-methyl styrene. The Agency preliminarily concludes that these limits will protect workers from the risk of eye irritation potentially associated with exposure to this substance at the current OSHA PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for a-methyl styrene if the Agency determines that this limit will substantially reduce significant risk.

o-METHYLCYCLOHEXANONE
CAS: 583-60-8; Chemical Formula: $CH_3C_6H_9CO$
H.S. No. 1270

OSHA currently has a limit of 100 ppm TWA for o-methylcyclohexanone with a skin notation. The ACGIH recommends lowering this limit to TLV-TWA 50 ppm and adding a TLV-STEL of 75 ppm; ACGIH also recommends a skin notation. ortho-Methylcyclohexanone is a somewhat viscous liquid with an acetone-like odor.

o-Methylcyclohexanone has both irritative and narcotic effects at relatively low concentrations. The commercial product contains a mixture of isomers; however, toxicity data describe effects of the ortho isomer only. Gross reported that 450 ppm had irritative effects on the eyes and respiratory systems of rabbits, and 2500 ppm produced narcotic effects (1943). Treon et al. reported the oral LD_{50} to be between 1 and 1.25 g/kg for rabbits. Eye problems were observed at about 500 ppm, but 182 ppm showed no adverse effects (1943).

Patty (1963) has reported that concentrations of 100 ppm have no narcotic effects in humans, but may cause irritation.

OSHA concludes that the current TWA of 100 ppm is insufficient to prevent eye and respiratory system irritation. A TWA limit of 50 ppm is proposed with a STEL of 75 ppm for o-methylcyclohexanone and a skin notation. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for o-methylcyclohexanone if the Agency determines that this limit will substantially reduce significant risk.

OSMIUM TETROXIDE
CASE: 20816-12-0; Chemical Formula: OsO_4
H.S. No. 1291

OSHA currently has a limit of 0.002 mg/m³ for osmium tetroxide. The ACGIH recommends a TLV-TWA of 0.0002 ppm (0.002 mg/m³) and a TLV-STEL of 0.0006 ppm (0.006 mg/m³). Osmium tetroxide is a noncombustible, colorless to pale yellow solid with a disagreeable, chlorine-like odor.

Exposure to osmium tetroxide is known to produce ocular effects and respiratory irritation. In 1933, Brunot reported that rabbits died from pulmonary edema four days after a 30-minute exposure to osmium tetroxide at 130 mg/m³ or higher. Visual problems (e.g. delayed lacrimation and "halo" effects) were reported by this investigator after a brief exposure to osmium tetroxide at a significantly lower concentration (Brunot 1933). A 4-hour LC_{50} value of 40 ppm has been reported in rats and mice (NIOSH 1977). Toxic effects to bone marrow have been reported in guinea pigs (Hardy 1974).

Industrial experience indicates that concentrations in a precious metal refining plant ranged from 0.1 to 0.6 mg/m³; intermittent exposures produced symptoms (sometimes delayed) of lacrimation, vision disturbances, headache, conjunctivitis, and cough (McLaughlin, Milton, and Parry 1948). Complaints of persistent and severe nose and throat irritation have been reported (Hardy and Hamilton 1974). Fairhall (1949) reported a human fatality resulting from inhalation exposure to OsO_4. Flury and Zernik (1931) reported that 0.001 mg/m³ is the highest concentration of osmium tetroxide that can be tolerated for 8 hours without harmful effects.

OSHA is proposing a TWA limit of 0.0002 ppm and a STEL of 0.0006 ppm for osmium tetroxide. The Agency preliminarily concludes that this combined limit will protect workers against the risk of ocular disturbances and respiratory irritation associated with exposure to this substance at the levels permitted in the absence of a short-term limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for osmium tetroxide if the Agency determines that this limit will substantially reduce significant risk.

PARAFFIN WAX FUME
CAS: 8002-74-2; Chemical Formula: C_nH_{2n+2}
H.S. No. 1302

OSHA currently has an 8-hour TWA limit for paraffin wax fume. The ACGIH recommends a TLV-TWA of 2 mg/m³. Paraffin is a white or slightly yellow odorless solid that is derived from petroleum.

Paraffin is considered noxious in its solid state, but fume generated when it is in the molten state may cause discomfort and nausea (Journal of American Medical Association, cited in ACGIH 1986, p. 455). In the most recent report of industrial exposure effects, paraffin fume is reported to cause no discomfort in most cases when the concentration is maintained at or below 2 mg/m³, although one instance of mild discomfort was reported at concentrations between 0.6 and 1 mg/m³ (Massachusetts Division of Occupational Hygiene 1970, cited in ACGIH 1986, p. 455).

OSHA is proposing a PEL of 2 mg/m³ TWA for paraffin wax fume. The Agency preliminarily concludes that this limit will protect workers against the risk of nausea and irritation that exists in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for paraffin wax fume. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PHOSPHORIC ACID
CAS: 7664-38-2; Chemical Formula: H_3PO_4
H.S. No. 1322

OSHA currently has a limit of 1 mg/m³ as an 8-hour TWA for phosphoric acid. The ACGIH recommends a TLV-TWA of 1 mg/m³ and a TLV-STEL of 3 mg/m³. Phosphoric acid is a colorless, odorless solid at temperatures below 21°C, but it becomes a viscous, clear liquid at higher temperatures.

In humans, there have been reports of respiratory irritation from exposure to phosphorus pentoxide fume at concentrations of between 3.6 and 11.3 mg/m³; concentrations of 100 mg/m³ were unendurable except to workers who had developed a tolerance to the fume over time (Rushing 1957, as cited in the ACGIH 1986, p. 483). The AIHA Hygiene Guide reports that phosphoric acid is less hazardous than nitric or sulfuric acid (1957).

To protect unacclimatized workers from the risk of throat irritation, OSHA proposes a TWA limit of 1 mg/m³, with a STEL of 3 mg/m³, for phosphoric acid. The Agency preliminarily concludes that the combined 8-hour TWA and STEL limit is necessary to reduce this risk of irritation, which has been shown to occur at levels only slightly above those permitted by the TWA alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phosphoric acid if the Agency determines that this limit will substantially reduce sigificant risk.

PHOSPHORUS TRICHLORIDE
CAS: 7719-12-2; Chemical Formula: PCl_3.
H.S. No. 1325

OSHA currently has an 8-hour TWA limit of 0.5 ppm for phosphorus trichloride. The ACGIH recommends a TLV-TWA of 0.2 ppm and a TLV-STEL of 0.5 ppm for this fuming, colorless, noncombustible liquid.

The primary occupational hazards associated with exposure to phosphorus trichloride are respiratory irritation and intoxication involving cough, bronchitis, pneumonia, and conjunctivitis (Henderson and Haggard 1943; International Labour Office 1934; Sassi 1954).

Early studies indicate that severe symptoms did not occur in cats and guinea pigs until concentration levels reached 50 to 90 ppm for exposures lasting 1 hour, although slight illness was observed at 0.7 ppm after an exposure of 6 hours (Butjagin 1904). However, by 1934, the effects of phosphorus trichloride were considered to be 5 to 10 times as intense as those of hydrolyzed hydrochloric acid (International Labour Office 1934). More recently, Weeks and associates (1964) reported studies in which 4-hour LC_{50} values of 104 ppm for rats and 50 ppm for guinea pigs were obtained.

OSHA is proposing a PEL of 0.2 ppm TWA and a STEL of 0.5 ppm for phosphorus trichloride. The Agency preliminarily concludes that both a TWA and a STEL are required to reduce the risk of respiratory and eye irritation that exists for workers exposed to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phosphorus trichloride if the Agency determines that this limit will substantially reduce significant risk.

POTASSIUM HYDROXIDE
CAS: 1310-58-3; Chemical Formula: KOH
H.S. No. 1334

OSHA has no current limit for potassium hydroxide. The ACGIH recommends a ceiling limit of 2 mg/m³. Potassium hydroxide is a white, deliquescent material that occurs in the form of pellets, sticks, lumps, or flakes.

Potassium hydroxide is corrosive to tissues. The health hazards of potassium hydroxide are similar to those of the other strong alkalies, such as sodium hydroxide. These substances gelatinize tissue on contact, causing deep, painful lesions. Dust or mist exposures may cause eye or respiratory system irritation and nasal septum lesions (Kanpov 1971).

OSHA is proposing an 8-hour TWA limit of 2 mg/m³ for this previously unregulated substance. The Agency preliminarily concludes that this limit will protect workers against the risk of respiratory irritation and severe dermal lesions that exists in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for potassium hydroxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ROSIN CORE SOLDER PYROLYSIS PRODUCTS
CAS: None; Chemical Formula: None
H.S. No. 1350

OSHA currently has no limit for rosin core solder pyrolysis products. The ACGIH has established an 8-hour TLV-TWA of 0.1 mg/m³ for these compounds, measured as formaldehyde. This limit applies to the thermal decomposition products of gum rosin soldering flux (3 to 6 percent rosin and 30 to 700 percent tin-lead solder)(Lozano and Melvin, as cited in ACGIH 1986, p. 514).

A 2-week exposure of guinea pigs and rats to these products at average concentrations of 0.96 mg/m³ caused reduction in rate of weight gain in male guinea pigs, abnormal liver-to-body-weight ratios in guinea pigs of both sexes, and abnormal heart-to-body-weight ratios in male rats (Industrial Bio-test Lab, Inc., as cited in ACGIH 1986, p. 514). Lungs of the animals exposed in this same study were hyperemic.

In humans, slight bronchial irritation has been reported at 1 mg/m³ (Industrial Bio-test Lab, Inc., as cited in ACGIH 1986, p. 514). Several workers chronically exposed to levels as high as 0.15 mg/m³ had to be removed from exposure because of intractable upper respiratory tract irritation; when concentrations were kept below 0.1 mg/m³, such irritation was not reported (Christy 1965, as cited in ACGIH 1986, p. 514). In a study designed to quantify dose-response levels for irritation in human volunteers, subjects were exposed for 15 minutes to these products at aldehyde concentrations (as formaldehyde, which is the best indirect measure of rosin pyrolysis products) of 0.04 to 0.2 mg/m³ (U.S. Public Health Service 1965, as cited in ACGIH 1986, p. 514). Subjects detected the odor at 0.07 mg/m³, and 80 percent of subjects reported moderate to severe irritation of the eyes, nose, and throat at a concentration of 0.12 mg/m³ or above. At levels below 0.05 mg/m³, fewer than 10 percent of subjects experienced irritation. Mucous membrane irritation occurred in 30 percent of subjects exposed at 0.07 mg/m³. Some subjects reported severe irritation at 0.1 mg/m³ (U.S. Public Health Service 1965, as cited in ACGIH 1986, p. 514).

OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³, measured as formaldehyde, for rosin core solder

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pyrolysis products. The Agency preliminarily concludes that this limit will protect workers from the risk of eye, skin, and upper respiratory tract irritation demonstrated to occur at the higher levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for rosin core solder pyrolysis products. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

SODIUM BISULFITE
CAS: 7631-90-5; Chemical Formula: $NaHSO_3$
H.S. No. 1365

OSHA's current Z tables have no limits for exposure to sodium bisulfite. The ACGHIH limit is 5 mg/m³ as an 8-hour TWA. Sodium bisulfite is a white crystalline powder, which has an odor like that of sulfur dioxide.

The oral LD_{50} in rats fed this substance is 2 g/kg (Dow Chemical Company 1977, as cited in ACGIH 1986, p. 534), and the intraperitoneal LD_{50} for rats is 115 mg/kg (Hoppe and Goble 1954). The ACGIH reports that sodium bisulfite is an eye, skin, and mucous membrane irritant; acute exposures have resulted in mild eye and respiratory effects (ACGIH 1986, p. 534).

OSHA is proposing an 8-hour TWA limit for sodium bisulfite, a level half that for the inert dusts, because the Agency has preliminarily concluded that this limit will protect exposed workers against the risk of eye, skin, and upper respiratory tract irritation potentially associated with exposure to this dust at the uncontrolled levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for sodium bisulfite. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

SODIUM HYDROXIDE
CAS: 1310-73-2; Chemical Formula: NaOH
H.S. No. 1367

The current OSHA standard for sodium hydroxide is 2 mg/m³ as an 8-hour TWA. NIOSH recommends a 2 mg/m³ 15-minute ceiling for sodium hydroxide and the ACGIH has established a 2-mg/m³ ceiling limit (maximum duration of 5 minutes in any 3 hours). Sodium hydroxide is a white, deliquescent solid.

Exposure to sodium hydroxide in the form of a caustic dust irritates the upper respiratory tract any may cause ulceration of the nasal passages (ACGIH 1986, p. 535). NIOSH states that rats exposed to unmeasured concentrations of sodium hydroxide for 30 minutes per day developed pulmonary damage after 2 to 3 months (Dlubos et al. 1969, as cited in NIOSH 1976).

Patty (1977) reported that a concentration of 2 mg/m³ sodium hydroxide represents a level that is noticeably irritating to exposed workers. Hervin et al. (1973) noted marked redness and burning sensations in the eyes, throats, and noses of workers exposed to concentrations of sodium hydroxide in the range of 0.005 to 0.7 mg/m³. A study by Lewis (1974, as cited in ACGIH 1986, p. 535) noted throat irritation or eye watering in those employees exposed briefly to concentrations of 0.24, 0.8, or 1.86 mg/m³ of sodium hydroxide; only those workers exposed to 0.24 mg/m³ showed no irritation.

The Agency preliminarily concludes that a 2-ppm ceiling is required to protect exposed workers against the risk of eye and upper respiratory irritation that has been shown to exist at the current 2-mg/m³ TWA. OSHA is proposing a ceiling limit of 2 mg/m³ for sodium hydroxide. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for sodium hydroxide if the Agency determines that this limit will substantially reduce significant risk.

SODIUM METABISULFITE
CAS: 7681-57-4; Chemical Formula: $Na_2S_2O_5$
H.S. No. 1365

OSHA's current Z tables have no exposure limits for sodium metabisulfite. The ACGIH limit is 5 mg/m³ as an 8-hour TWA. Sodium metabisulfite can occur either in the form of a solid or as white crystals; this substance smells like sulfur dioxide.

A 2-year study at the Dow Chemical Company (1977, as cited in ACGIH 1986, p. 535), in which rats ingested 0.215 percent sodium metabisulfite, demonstrated no adverse effects in the rats. If the results of this study are extrapolated to humans, using a safety factor of 10, the equivalent air concentration would be 70 mg/m³ (Dow Chemical Company 1977, as cited in ACGIH 1986, p. 535). Other animal studies show a median lethal dose of 192 mg/kg for rabbits and 115 mg/kg for rats when sodium metabisulfite is injected intravenously (NIOSH 1973). Inhalation of sodium metabisulfite dust is irritating to the lungs, nose, and throat (ACGIH 1986, p. 535).

OSHA is proposing an 8-hour TWA of 5 mg/m³ for sodium metabisulfite. The Agency preliminarily concludes that establishing this limit is necessary and will reduce the risk of irritation of the skin and eyes to which workers are exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for sodium metabisulfite. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

SULFUR MONOCHLORIDE
CAS: 10025-67-9; Chemical Formula: S_2Cl_2
H.S. No. 1376

OSHA's existing PEL for sulfur monochloride is 1 ppm as an 8-hour TWA. The level established by the ACGIH is 1 ppm as a ceiling limit. Sulfur monochloride is an amber, oily, nonflammable, fuming liquid, which has a penetrating odor.

Sulfur monochloride is a primary irritant that affects the upper respiratory tract by releasing hydrochloric acid (HCl) on contact with moisture (Henderson and Haggard 1943). This same study noted that "undecomposed vapor [of sulfur monochloride] might reach the lungs, in which case it would be more toxic than an equivalent quantity of HCl." The ACGIH (1986, p. 545) considers these data indicative of a far greater acute toxicity for sulfur monochloride than for hydrochloric acid. Animal toxicity studies revealed that a dose of 150 ppm sulfur monochloride resulted in death to mice exposed for 1 minute (Flury and Zernik 1931). Cats exposed to 60 ppm sulfur monochloride for 15 minutes all died within a few days, but concentrations of 12 ppm for 15 minutes were tolerated (Henderson and Haggard 1943).

A study by Elkins (1959) of workers in the rubber industry found that concentrations of 2 to 9 ppm sodium monochloride were mildly irritating; however, the concentrations to which these workers were exposed may have included a high proportion of hydrochloric acid.

OSHA is proposing a ceiling of 1 ppm for sulfur monochloride because this substance is a primary irritant. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of primary irritation that could occur at the current 8-hour TWA limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for sulfur monochloride if the Agency determines that this limit will substantially reduce significant risk.

SULFUR PENTAFLUORIDE
CAS: 5714-22-7?; Chemical Formula S_2F_{10}
H.S. No. 1377

The current OSHA limit for sulfur pentafluoride is 0.025 ppm as an 8-hour TWA. The ACGIH (1986) has

recommended a ceiling limit of 0.01 ppm for this substance. Sulfur pentafluoride is a colorless gas or liquid with a sulfur-dioxide-like odor.

Sulfur pentafluoride's toxic effects include lung congestion and lesions, and pulmonary edema. In a study in which rats were exposed to sulfur pentafluoride for 16 to 18 hours, levels of 0.1 ppm caused lung irritation, 0.5 ppm resulted in severe pulmonary lesions, and 1 ppm proved fatal (Greenberg and Lester 1950). One-hour exposures to 10 ppm sulfur pentaifluoride resulted in diffuse hemorrhagic lesions in the lungs of rats, while rats exposed to 1 ppm for 1 hour had severe congestion of the lungs. Rats exposed for 1 hour at 0.1 ppm showed no effects. Subsequent examination of rats surviving the 10- and 1-ppm exposures revealed that the lungs had returned to normal after 24 hours (Greenberg and Lester 1950). Saunders, Shoshkes, De Carlo, and Brown (1953) established that the LD_{50} for sulfur pentafluoride in rabbits is 5.8 mg/kg, and that death was due to fulminant pulmonary edema. According to this study, sulfur pentafluoride does not injure the columnar epithelium of the respiratory tract, and exposure is not followed by bronchopneumonia.

OSHA is proposing a ceiling limit for this substance. The 0.01-ppm ceiling has been selected on the basis of evidence showing that even brief exposures to 1 ppm caused pulmonary effects in animals; 0.01 ppm provides a margin of safety against such effects. OSHA preliminarily concludes that this limit for sulfur pentafluoride will reduce the risks of irritation and pulmonary effects to which workers could be exposed in the absence of a ceiling limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for sulfur pentafluoride if the Agency determines that this limit will substantially reduce significant risk.

TETRAHYDROFURAN
CAS: 109-99-9; Chemical Formula: $(C_4H_8)_2O$
H.S. No. 1367

OSHA's existing PEL for tetrahydrofuran is 200 ppm as an 8-hour TWA. This is the 8-hour TWA limit recommended by the ACGIH, which also has established a 15-minute STEL of 250 ppm for tetrahydrofuran. Tetrahydrofuran is a colorless liquid with an odor like that of ether.

This proposed limit was selected on the basis of extensive data from experimental animal studies. Lehmann and Flury (1943) reported irritation of the upper respiratory tract as well as kidney and liver injury in a number of animals exposed by inhalation to more than 3000 ppm tetrahydrofuran for 20 days, 8 hours daily. Aqueous solutions exceeding a concentration of 20 percent tetrahydrofuran proved irritating to the skin of rabbits. One study (Stoughton and Robbins 1936) found that amounts in excess of 25,000 ppm were needed to anesthetize dogs. The anesthesia process in these animals showed a delayed induction period and poor recovery. In other studies with dogs (Zapp, cited in ACGIH 1986, p. 564), 200 ppm tetrahydrofuran in daily, 6-hour inhalation exposures produced an observable effect on the pulse pressure of these animals within 3 to 4 weeks; despite an exposure of nine weeks at this dosage level followed by 3 weeks at nearly twice this concentation, no histopathologic changes were observed in the critical organs. Studies (Jochmann 1962) in which tetrahydrofuran was given orally and peritoneally to a variety of laboratory animals resulted in both liver and kidney damage; however, some of the effects observed by this author may have been caused by peroride contamination of the tetrahydrofuran. Oettel (as cited in ACGIH 1986, p. 564) observed no kidney or liver damage in cats, rabbits, rats, or mice exposed repeatedly by inhalation to tetrahydrofuran at concentrations of 3400 to 17,000 ppm for as long as 6 hours.

Technicians involved in the experiment of Stoughton and Robbins (described above) experienced severe headaches when conducting these experiments.

OSHA is proposing an 8-hour TWA of 200 ppm and a STEL of 250 ppm for tetrahydrofuran. The Agency preliminarily concludes that both of these limits are required to protect workers from the risk of headache and irritation potentially associated with exposure to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for tetrahydrofuran if the Agency determines that this limit will substantially reduce significant risk.

TETRASODIUM PYROPHOSPHATE
CAS: 7722-88-5; Chemical Formula: $Na_4P_2O_7$
H.S. No. 1389

The current OSHA Z tables do not include a limit for tetrasodium pyrophosphate. The ACGIH has established a limit of 5 mg/m³ as an 8-hour TWA. Tetrasodium pyrophosphate may occur either as a white powder or a crystalline substance.

Tetrasodium pyrophosphate is an alkaline dust and therefore causes irritation to the eyes and the respiratory tract (ACGIH 1986, p. 567). For this reason, the ACGIH recommends a time-weighted average TLV of 5 mg/m³, which is half the value recommended for the inert dusts.

OSHA is proposing a 5-mg/m³ 8-hour TWA for this substance. The Agency preliminarily concludes that establishing this limit for this previously unregulated chemical is necessary to reduce the risk of eye and respiratory tract irritation to workers exposed to this substance. The health evidence forms a reasonable basis for proposing a new limit for tetrasodium pyrophosphate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

THIOGLYCOLIC ACID
CAS: 68-11-1; Chemical Formula: $C_2H_4O_2S$
H.S. No. 1392

OSHA has no current PEL for thioglycolic acid. The ACGIH recommends a 1-ppm 8-hour TWA, with a skin notation, for this colorless liquid, which has an unpleasant odor.

A study by the Dow Chemical Company in which thioglycolic acid was instilled into the eyes of rabbits resulted in severe conjunctival inflammation and pain, dense opacity of the cornea, and severe inflammation of the iris. These effects had not improved 14 days after exposure and washing immediately after exposure did not modify the severity of this ocular response. A single dermal application of the thioglycolic acid to rabbit skin caused necrosis in 5 minutes and was accompanied by hyperemia and edema. The LD_{50} for a 10-percent solution applied percutaneously was 848 mg/kg for rabbits; further studies by Dow (1973) in which female rats were fed a single oral dose of a 10-percent solution of thioglycolic acid showed that this dose resulted in death at the level of 125 mg/kg. Autopsy revealed damage to the liver and gastrointestinal tract. Fassett (1963) reported that the oral LD_{50} for undiluted thioglycolic acid in rats in 50 mg/kg, and that a 10-percent solution applied to the skin of guinea pigs caused fatalities at doses of less than 5 ml/kg. Symptoms prior to death included gasping, convulsions, and weakness.

OSHA is proposing a 1-ppm 8-hour TWA limit for thioglycolic acid. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of eye and skin irritation as well as systemic effects, potentially associated with exposures at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for thioglycolic acid. At the time of

the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

1,2,4-TRICHLOROBENZENE
CAS: 120-82-1; Chemical Formula: $C_6H_3Cl_3$
H.S. No. 1405

OSHA currently has no limit for 1,2,4-trichlorobenzene. The ACGIH has established an exposure limit of 5 ppm as a ceiling for this substance. 1,2,4 trichlorobenzene is a colorless liquid.

The inhalation toxicity of trichlorobenzene was studied by Treon (1950), who determined that the target organs of exposure in cats, dogs, rats, rabbits, and guinea pigs included liver, kidneys, ganglion cells at all brain levels, and mucous membranes. Irritation of the lungs and changes in respiration were seen in animals that later died as a result of exposure. Brown et al. (1969) reported that 1,2,4-trichlorobenzene's single-dose oral LD_{50} for rats is 756 mg/kg and for mice is 766 mg/kg. The acute percutaneous LD_{50} for rats was 6139 mg/kg. Sublethal doses administered repeatedly to guinea pigs caused liver damage; acute and short-term (15 6-hour exposures to 70–200 ppm) inhalation studies failed to kill these animals (Gage 1970). In a separate study reported on by Rowe (1975, as cited in ACGIH 1986, p. 593), 20 male rats, 4 rabbits, and 2 dogs were exposed at levels of 30 or 100 ppm 1,2,4-trichlorobenzene 7 hours/day, 5 days/week for 30 exposures in 44 days. No adverse effects were detectable in exposed animals belonging to 30 species as a result of exposure to 30 ppm, with the exception of an elevation of urinary porphyrins in the rats at 15 and 30 exposure days. A second inhalation study was performed with 1,2,4-trichlorobenzene 7 hours/day, 5 days/week for 26 consecutive weeks (Coate, Schoenfisch, Busey, and Lewis n.d.). Thirty rats, 16 rabbits, and 9 monkeys, all males, were exposed at zero, 25, 50, and 100 ppm. Microscopic changes were seen in the parenchymal cells of livers and kidneys of all rats after 4 and 13 weeks of exposure to 1,2,4-trichlorobenzene, but no adverse effects were seen in any of the other species.

In workers, exposure to 1,2,4-trichlorobenzene caused dermal irritation, which may have been attributable to the defatting action of this chemical (Powers, Coate, and Lewis 1975), and in some cases, exposure levels of 3 to 5 ppm caused eye and throat irritation (Rowe 1975, as cited in ACGIH 1986, p. 593).

OSHA is proposing a 5-ppm ceiling limit for 1,2,4-trichlorobenzene. The Agency preliminarily concludes that this limit will protect workers from the risk of eye, throat, and dermal irritation to which they can potentially be exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for 1,2,4-trichlorobenzene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TRIETHYLAMINE
CAS: 121-44-8; Chemical Formula: $(C_2H_5)_3N$
H.S. No. 1408

OSHA currently has a limit of 25 ppm TWA for triethylamine. The ACGIH recommends a TLV–TWA of 10 ppm and a TLV–STEL of 15 ppm for this colorless liquid with a strong ammonia-like odor.

Exposure to triethylamine is associated with pulmonary, skin, and eye irritation and central nervous system effects. Guinea pigs exposed for 30 minutes to a concentration of 2,000 ppm triethylamine survived, but four of six animals died when exposed to this level for 2 hours; two of six guinea pigs died during a 4-hour exposure to a concentration of 1,000 ppm, but all survived similar exposures at the 250- and 500-ppm levels (Carpenter, Smyth, and Shaffer 1948). The single-dose oral LD_{50} value in rats is 0.46 g/kg (range: 0.25 to 0.65) (Smyth, Carpenter, and Weil 1951). These investigators also report that triethylamine readily penetrated rabbit skin on contact, with an LD_{50} value of 0.57 ml/kg (range: 0.36 to 0.90); skin irritation and eye injury were also noted from contact with the liquid. One of the six rats died from an acute 4-hour inhalation exposure to 1,000 ppm triethylamine (Smyth, Carpenter, and Weil 1951). Rabbits exposed repeatedly to a level of 50 ppm exhibited marked irritation of the cornea and of pulmonary tissue (Brieger and Hodes 1951; Carpenter and Smyth 1946). The effects of repeated triethylamine exposure correspond to those of ethylamine and diethylamine (Brieger and Hodes 1951). Triethylamine was found to inhibit monoamine oxidase activity, resulting in central nervous system stimulation (DeBruin 1976).

OSHA is proposing an 8-hour TWA limit of 10 ppm and a 15-minute STEL of 15 ppm for triethylamine. The Agency preliminarily concludes that both of these limits are required to protect workers against the risk of CNS effects and acute irritation to the eyes and lungs potentially associated with occupational exposure to triethylamine at elevated levels. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for triethylamine if the Agency determines that this limit will substantially reduce significant risk.

VANADIUM (V_2O_5) DUST
CAS: 1314-62-1; Chemical Formula: V_2O_5
H.S. No. 1421

The current OSHA PEL for vanadium pentoxide dust is a ceiling of 0.5 mg/m³. The ACGIH has established 0.05 mg/m³ as an 8-hour TWA for the respirable dust as vanadium pentoxide. NIOSH recommends a 15-minute short-term limit of 0.05 mg/m³. Vanadium pentoxide is a yellow to rust-brown crystalline compound.

Several studies indicate that OSHA's current exposure limit is insufficient to protect exposed workers against vanadium dust's respiratory effects, which include bronchitis, emphysema, tracheitis, pulmonary edema, and bronchial pneumonia. According to Hudson (1964), vanadium is poisonous to all animals by all routes of administration. The LD_{50} in rabbits injected intravenously is 1.5 mg/kg, and rats fed 25 ppm demonstrated toxic responses within a short time (Hudson 1964).

Seven cases of upper respiratory tract irritation were reported in boiler cleaners exposed to concentrations of from 2 to 85 mg/m³ vanadium pentoxide dust (Sjoberg 1951). Williams (1952) reported eight cases of vanadium poisoning in workers cleaning boilers in an atmosphere ranging from 30 to 104 mg/m³. Gulko (1956) observed eye and bronchial irritation in workers exposed to 0.5 to 2.2 mg/m³. A study by Lewis (1959) indicated that workers exposed to levels of 0.2 to 0.5 mg/m³ experienced a higher incidence of respiratory symptoms than did controls. Tebrock and Machle (1968) reported that workers exposed to average concentrations of 1.5 mg/m³ vanadium pentoxide in a mixed dust developed conjunctivitis, tracheobronchitis, and dermatitis. A single average 8-hour exposure to 0.2 mg/m³ respirable vanadium dust caused severe upper respiratory tract irritation in five human volunteers, and two other subjects exposed to a 0.1-mg/m³ concentration also developed a delayed cough and an increase in mucous production (Zenz and Berg 1967).

OSHA is proposing a limit of 0.05 mg/m³ as an 8-hour TWA for vanadium dust as vanadium pentoxide. The Agency preliminarily concludes that this limit will prevent or substantially reduce the risks of eye and bronchial irritation, respiratory symptoms, conjunctivitis, and coughing seen in exposed workers at levels ranging from 0.1 mg/m³ to 2.2 mg/m³. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for vanadium dust if the Agency determines that this limit will substantially reduce significant risk.

VANADIUM (V_2O_5) FUME
CAS: 1314-62-1; Chemical Formula: V_2O_5
H.S. No. 1422

OSHA's present PEL for vanadium pentoxide fume is 0.1 mg/m³. The ACGIH has set a 0.05-mg/m³ 8-hour TWA limit for vanadium pentoxide fume, and NIOSH recommends 0.05 mg/m³ as a 15-minute short-term limit. Vanadium pentoxide is a yellow to rust-brown crystalline compound.

Vanadium pentoxide fume's chief toxic effects are manifested in the respiratory passages: Bronchitis, emphysema, tracheitis, pulmonary edema, and bronchial pneumonia result from exposure to vanadium pentoxide fume. According to Hudson (1964), vanadium is poisonous to all animals by all routes of administration. The LD_{50} in rabbits injected intravenously is 1.5 mg/kg, and rats fed 25 ppm demonstrated toxic responses within a short time (Hudson 1964).

Seven cases of upper respiratory tract irritation were reported in boiler cleaners exposed to concentrations of from 2 to 85 mg/m³ vanadium pentoxide fume (Sjoberg 1951). Williams (1952) reported eight cases of vanadium poisoning in workers cleaning boilers in an atomosphere ranging from 30 to 104 mg/m³. Gulko (1956) observed eye and bronchial irritation in workers exposed to 0.5 to 2.2 mg/m³. A study by Lewis (1959) indicated that workers exposed to levels of 0.2 to 0.5 mg/m³ experienced a higher incidence of respiratory symptoms than did controls. Tebrock and Machle (1968) reported that workers exposed to average concentrations of 1.5 mg/m³ vanadium pentoxide in a mixed dust developed conjunctivitis, tracheobronchitis, and dermatitis. A single average 8-hour exposure to 0.2 mg/m³ respirable vanadium dust caused severe upper respiratory tract irritation in five human volunteers, and two other subjects exposed to a 0.1-mg/m³ concentration also developed a delayed cough and an increase in mucous production (Zenz and Berg 1967).

OSHA is proposing an 8-hour TWA limit of 0.05 mg/m³ for vanadium fume as vanadium pentoxide. The Agency preliminarily concludes that this limit will protect exposed workers from the risks of eye, skin, and upper respiratory tract irritation, conjunctivitis, pulmonary damage, and systemic poisoning potentially associated with vanadium pentoxide fume exposures. OSHA believes that this limit will substantially reduce these risks. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for vanadium fume if the Agency determines that this limit will substantially reduce significant risk.

VINYL ACETATE
CAS: 108-05-4; Chemical Formula: $CH_3COOCH=CH_2$
H.S. No. 1424

There is no current OSHA limit for vinyl acetate. The ACGIH has recommended a 10-ppm TLV–TWA and a 20-ppm TLV–STEL. NIOSH (1978m) recommends a 4-ppm ceiling limit, measured over a 15-minute period.

The basis for the ACGIH-recommended limits is an epidemiologic report by Deese and Joyner (1969) describing 15 years of industrial experience with vinyl acetate production. They reported that vinyl acetate is not a significant irritant at exposure levels of 5 to 10 ppm but causes cough and hoarseness at around 22 ppm. They also found no evidence of adverse chronic effects resulting from exposure to 5 to 10 ppm, as determined from medical records and examinations. While conducting air sampling for the study, the primary author (Deese) experienced hoarseness at concentrations of 4.2 and 5.7 ppm, and eye irritation at 5.7 and 6.8 ppm. Three chemical operators and one technician did not report any subjective responses at these levels. The ACGIH also cited a personal communication from the Mellon Institute (1968) that vinyl acetate concentrations of less than 5 ppm are detectable by odor, although some individuals may detect the odor at concentrations of 0.5 ppm.

NIOSH (1978m) reviewed these data and concluded that the recommended exposure limit be designed to protect even the most sensitive individuals from sensory irritant effects. Since the lowest level reported to cause upper respiratory tract irritation was 4.2 ppm (Deese and Joyner 1969), NIOSH recommended that workplace exposures not exceed 4 ppm measured over a 15-minute period.

The NIOSH REL of 4 ppm (ceiling) relies on a report concerning a single individual and provides insufficient information as a basis for standardsetting. The ACGIH recommended TLVs are based on a 15-year epidemiology study that suggests that a 10-ppm TWA and 20-ppm STEL will provide protection against the risk of irritation associated with exposure to vinyl acetate at higher levels. Therefore, the Agency proposes this 8-hour TWA and STEL combination as the revised limits for vinyl acetate. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for vinyl acetate if the Agency determines that this limit will substantially reduce significant risk.

VM & NAPHTHA
CAS No. 8032-32-4; Chemical Formula: none
H.S. No. 1429

OSHA currently has no PEL for VM & P (Varnish Makers' and Printers') naphtha. The ACGIH has established an 8-hour TWA of 300 ppm and a STEL of 400 ppm, which is not to be exceeded in any 15-minute period, for this substance. NIOSH recommends a 10-hour TWA of 75 ppm and a 400-ppm 15-minute STEL. VM & P naphtha, also known as ligroin, is a colorless, flammable liquid.

A study in which rats and beagles received doses by inhalation of 500 ppm for 30 hours per week for 13 weeks resulted in no chronic or latent effects (Carpenter et al. 1975). These authors also noted that the acute toxicity of VM & P naphtha for rats and other species was 4 times greater than that of rubber solvent naphtha, which has a limit of 400 ppm. Carpenter and associates (1975) also reported on an experiment in which rats lost coordination and went into convulsions in 15 minutes during exposures to saturation concentrations at ambient room temperature. The 4-hour inhalation LC_{50} was 3400 ppm, and the acclimated rats survived 5900 ppm for 6 hours.

Seven human volunteers exposed to 880 ppm VM & P naphtha for 15 minutes reported upper respirator tract, eye, nose irritation, and olfactory fatigue (ACGIH 1986, p. 631). Elkins (1959) noted one case of a worker, exposed to levels of VM & P naphtha averaging 800 ppm, who developed unspecified chronic effects. Elkins also reported that the VM & P naphtha level producing significant irritation in human volunteers was about half as great for this form of naphtha as for rubber solvent naphtha.

OSHA is proposing limits of 300 ppm as an 8-hour TWA and 400 ppm as a 15-minute STEL for VM & P naphtha. The Agency preliminarily concludes that both of these limits are required to protect exposed workers against the risk of upper-respiratory effects, eye irritation, and possible chronic effects associated with naphtha exposure. The health evidence forms a reasonable basis for proposing a new limit for VM & P naphtha. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

XYLENE, o, m, and p ISOMERS

CAS: 1330-20-7; 95-47-6; 108-38-3; 106-42-3; Chemical Formula: $C_6H_4(CH_3)_2$
H.S. No. 1431

The current OSHA limit for xylene is 100 ppm as an 8-hour TWA. The ACGIH also recommends a TLV–TWA of 100 ppm, but adds a 15-minute STEL of 150 ppm. NIOSH recommends an exposure limit of 100 ppm TWA, with a 200-ppm 10-minute ceiling. Xylene and its isomers are clear, flammable liquids with an aromatic hydrocarbon odor.

Rats and rabbits exposed to a mixture of xylene isomers at a concentration of 680 ppm for 8 hours daily, six days per week showed no blood abnormalities, but rabbits exposed on the same regimen at 1150 ppm for 55 days showed a decrease in red and white blood cell counts and an increase in platelet count (Fabre and Truhaut 1954).

Studies of workers exposed to xylene revealed headache, fatigue, lassitude, irritability, and gastrointestinal disturbances as the most common symptoms (Gerarde 1960). At unspecified exposure levels, Browning (1965) also noted gastrointestinal disturbances, in addition to kidney, heart, liver, and neurological damage; blood dyscrasias, some of which result in death, were also reported in these workers. A study by Nelson, Ege, Ross et al. (1943), in which human volunteers were exposed to 200 ppm xylene, found eye, nose, and throat irritation in the subjects at this level of exposure.

NIOSH developed a Criteria Document for xylene in 1975, in which the work of Morley and his colleagues (1970) was discussed. These authors observed liver dysfunction and renal impairment in three workers overexposed to xylene (estimated concentration of 10,000 ppm). One of these workers died, but the others recovered slowly. Furniture polishers were reported by Matthaus (1964) to have suffered corneal damage as a result of exposure to xylene at unknown concentrations.

OSHA preliminarily concludes that both a TWA and STEL are necessary to prevent risk of narcosis, blood effects, and irritant effects at the elevated levels possible at the current exposure limit. To reduce this risk, OSHA is proposing a 150-ppm STEL and a 100-ppm TWA. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for xylene if the Agency determines that this limit will substantially reduce significant risk.

ZINC CHLORIDE (FUME)
CAS: 7646-85-7; Chemical Formula: $ZnCl_2$
H.S. No. 1435

OSHA's current PEL for zinc chloride is 1 mg/m³ as an 8-hour TWA. The ACGIH has established a TLV–TWA of 1 mg/m³, with a STEL of 2 mg/m³. Zinc chloride fume is white and has an acrid odor.

Zinc chloride fume is highly caustic and damages the mucous membranes of the nasopharynx and respiratory tract. Exposure to the fumes of zinc chloride may result in a severe pneumonitis that is caused by irritation of the respiratory tract (Gafafer 1964). One instance in which a worker inhaled zinc chloride fumes resulted in advanced pulmonary fibrosis that ended in death (Milliken, Waugh, and Kadish 1963), and 16 deaths and 25 non-fatal cases of pneumonitis occurred in workers caught in a tunnel when 79 smoke generators caught fire and generated zinc chloride fumes (Humter 1955). Other studies have shown that zinc chloride exposures cause skin ulceration (Sax 1957). It has also been suggested that zinc chloride exposure may have chronic effects (Hamilton and Hardy 1974). In an investigation of the adverse effects of zinc chloride fume exposures, Ferry (personal communication 1966, as cited in the ACGIH 1966, p. 643) reported that no sensory effects occurred when 30 minute exposures were limited to 0.07 and 0.4 mg/m³; however, this researcher noted that these levels did corrode metal.

OSHA preliminarily concludes that the risk of damage to the eyes, skin, and respiratory tract associated with exposure to zinc chloride fume should be substantially reduced by establishing a STEL and TWA to protect against elevated short-term and long-term exposures to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for zinc chloride if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

OSHA's preliminary finding is that sensory irritation poses an occupational health risk to workers exposed to these substances at the existing hazardous levels. Among the adverse health consequences of exposure to sensory irritants are acute breathing difficulty, eye tearing, conjunctivitis, sensitization, persistent coughing, and upper respiratory tract irritation. In addition to the pain and suffering associated with these signs and symptoms, workers experiencing irritant effects find it difficult if not impossible to concentrate on the job at hand; thus they work less safely and less productively than non-exposed employees. Reducing exposures from levels that have been associated with these effects to levels where such consequences are substantially less likely to occur will reduce the risk posed to workers at current levels.

The health evidence for these substances forms a reasonable basis for proposing revised or new limits. At the time of the final rule, OSHA will establish new or revised limits for these sensory irritants if the Agency determines that these limits will substantially reduce significant risks.

4. Substances for Which Proposed Limits Are Based on Avoidance of Liver or Kidney Effects

Introduction

The liver or kidneys are the primary target organs affected by toxic exposures to a number of industrial chemicals. In recognition of this target organ toxicity, OSHA is proposing new or revised limits for 17 hepato- or nephrotoxic compounds (12 hepatotoxins and five nephrotoxins). For these substances, the liver or kidney is probably the organ most sensitive to the effects of exposure. Thus, establishing permissible exposure limits that are low enough to prevent toxicity to these target organs generally also protects other organ systems.

Seventeen compounds for which revised limits are being proposed produce kidney or liver effects in overexposed individuals. For seven of these substances, OSHA is proposing to lower the PEL, and for one other substance, OSHA is also proposing the adoption of a short-term exposure limit. For five liver or kidney toxins, OSHA is proposing a PEL where none formerly existed, and in three cases, OSHA proposes to retain the current PEL but to add a STEL where none formerly existed. For four chemicals in this category, NIOSH recommends limits lower than those established by the ACGIH, and for one of these substances, OSHA proposes adoption of the NIOSH RELs; in three cases, the NIOSH and ACGIH limits are essentially the same. The sections below discuss liver and kidney toxins separately. Table C4–1 shows these hepatotoxic substances, their OSHA, ACGIH, and NIOSH limits, and their CAS and HS numbers; Table C4–2 provides the same information for the nephrotoxins in this group.

Liver Toxicity

Description of the Health Effects

Although the precise mechanisms by which these compounds cause liver damage are only partly understood, the development and manifestation of liver

toxicity are similar for all of them. In general, liver toxicity is a graded response, i.e., the severity of the lesion is directly proportional to the intensity/duration of exposure. Although many of the effects caused by exposure to these substances are reversible, some are not.

Liver damage is not a single entity; the manner in which it is manifested depends on the dose, duration, and particular chemical agent involved. For example, acute exposures may cause lipid to accumulate in the hepatocytes, cellular death, and/or hepatobiliary dysfunction. In contrast, chronic exposures may lead to cirrhotic changes and the development of neoplasms. Fatty accumulation and necrosis can be either localized or widespread, and chemical-induced lesions resulting from chronic exposures can cause marked changes of the entire liver (Plaa 1986).

Typically, the earliest and most sensitive indicators of liver toxicity are alterations in biochemical liver functions, such as changes in specific enzyme activities. These may be accompanied by changes in the morphology of specific organelles in hepatocytes. For example, relatively low doses of halogenated aliphatic hydrocarbons, such as allyl chloride, carbon tetrabromide, and 1,1-dichloroethane, cause an increase in the activity of microsomal mixed function oxidase enzymes. This increase is ordinarily accompanied by proliferation of the endoplasmic reticulum.

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Table C4-1. List of Substances For Which Limits Are Based Primarily on Avoidance of Liver Toxicity

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1011 Allyl chloride	107-05-1	1 ppm TWA	1 ppm TWA 2 ppm STEL	1 ppm TWA 3 ppm Ceiling (15 min)
1072 Carbon tetrabromide	558-13-4	–	0.1 ppm TWA 0.3 ppm STEL	–
1089 o-Chlorostyrene	2039-87-4	–	50 ppm TWA 75 ppm STEL	–
1108 Cyclohexanone	108-94-1	50 ppm TWA	25 ppm TWA, Skin	25 ppm TWA
1145 Dioxane	123-91-1	100 ppm TWA, Skin	25 ppm TWA, Skin	1 ppm Ceiling (30 min)
1168 Ethylene dichloride+	107-06-2	50 ppm TWA 100 ppm STEL 200 ppm Ceiling	10 ppm TWA	1 ppm TWA 2 ppm Ceiling (15 min)
1205 Hydrazine	302-01-1	1 ppm TWA, Skin	0.1 ppm TWA, Skin	0.03 ppm Ceiling (120 min)
1269 Methylcyclohexanol	25639-42-3	100 ppm TWA	50 ppm TWA	–
1295 Octachloro- naphthalene	2234-13-1	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL Skin	–

Table C4-1. List of Substances For Which Limits Are Based Primarily on Avoidance of Liver Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1341 Propylene dichloride	78-87-5	75 ppm TWA	75 ppm TWA 110 ppm STEL	–
1385 1,1,2,2-Tetrachloro- ethane	79-34-5	5 ppm TWA, Skin	1 ppm TWA, Skin	Lowest feasible level
1407 1,2,3-Trichloro- propane	96-18-4	50 ppm TWA	10 ppm TWA, Skin	–

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

\+ Proposed limit is the NIOSH REL.

Table C4-2. List of Substances For Which Limits are Based Primarily on Avoidance of Kidney Toxicity

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1129 1,3-Dichloropropene	542-75-6	-	1 ppm TWA, Skin	—
1132 Dicyclopentadiene	77-73-6	-	5 ppm TWA	—
1166 Ethyl silicate	78-10-4	100 ppm TWA	10 ppm TWA	—
1195 Hexachlorobutadiene	87-68-3	—	0.02 ppm TWA, Skin	—
1203 Hexone (Methyl isobutyl ketone)	108-10-1	100 ppm TWA	50 ppm TWA 75 ppm STEL	50 ppm TWA

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

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Many compounds that damage the liver, such as 1,1,2,2-tetrachloroethane, also cause an abnormal accumulation of fat, especially triglycerides, in liver cells. In experimental animals this effect is manifested as an accumulation of microscopic vacuoles in liver cells. In humans, however, the only grossly detectable manifestation of this effect is increased liver size, which is an indication of severe fat accumulation in the liver.

At sufficiently high doses, most substances that damage the liver cause cell death that leads to tissue necrosis or gangrene. This necrosis may initially be localized, but at higher or more sustained exposure levels the entire liver may be involved. Moderate to severe liver necrosis is usually accompanied by increased concentrations of marker enzymes such as glutamate-pyruvate transaminase or glutamate-oxalacetate transaminase in the serum; the detection of these substances in the serum of exposed individuals can thus be a useful diagnostic tool.

Dose-Response Characteristics

The development of liver and other organ damage in humans and animals is progressive; it begins with subcellular changes, progresses to the cellular level, and is finally manifested as whole-organ damage. This progression is related to the intensity/duration of dose; i.e., as dose increases, cellular death becomes widespread and eventually causes liver dysfunction. The extent to which liver damage is reversible follows a similar continuum; since the liver can regenerate, minor cellular damage or transient disease states are usually reversible if exposure ceases. However, if exposure continues, the capacity of the liver to regenerate is exceeded and permanent damage results.

As is the case for some chemically induced toxic effects, there appears to be a NOE level below which hepatotoxic effects do not occur.

The following paragraphs describe OSHA's preliminary results for all of the substances in this group of hepatotoxins and discuss the nature of the risk experienced by exposed workers.

ALLYL CHLORIDE
CAS: 107-05-1; Chemical Formula: $CH_2=CHCH_2Cl$
H.S. No. 1011

The current OSHA PEL for allyl chloride is a 1 ppm (3 mg/m³) 8-hour TWA; the ACGIH-recommended TLV-TWA is also 1 ppm, with a 15-minute STEL of 2 ppm. NIOSH has recommended a 1 ppm 10-hour TWA and a 3 ppm 15-minute STEL for this substance. Allyl chloride is a colorless liquid with an unpleasant, pungent odor.

Studies of animal exposures to allyl chloride indicate that the chemical is among the most toxic of the halogenated aliphatic hydrocarbons, producing mucous membrane irritation, mild narcosis, and, at higher concentrations, histologic lesions of the lungs and kidneys (Adams, Spencer, and Irish 1940). Even single exposures lasting only a few minutes at concentrations between 1 and 100 mg/liter (332 to 32,000) caused mucous membrane irritation in various laboratory animals (Adams, Spencer, and Irish 1940). Further animal studies have confirmed liver and kidney pathology in many species (Torkelson, Wolf, Oyen, et al. 1959) and female rats exhibited kidney pathology after exposure to 3 ppm for 6 months.

Human exposures to concentrations of 1 to 113 ppm caused abnormal liver test results (Hausler and Lenich 1988). OSHA therefore proposes that both a STEL of 2 ppm and a 1 ppm TWA are required. The Agency preliminarily concludes that a combined limit is necessary to protect employees from the risk of mucous membrane irritation potentially associated with the elevated short-term exposures to allyl chloride currently permitted by the 8-hour TWA alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for allyl chloride if the Agency determines that this limit will substantially reduce significant risk.

CARBON TETRABROMIDE
CAS: 558-13-4; Chemical Formula: CBr_4
H.S. No. 1072

OSHA's current Z tables have no limits for exposure to carbon tetrabromide. The ACGIH limit is a 0.1 ppm TWA and a 0.3 ppm STEL. Carbon tetrabromide's hepatotoxic effects include both fatty infiltration and necrosis. The 0.1 ppm and 0.3 ppm levels were selected based on an observed no-effect level at 0.1 ppm; this finding derives from a study in which rats were exposed to carbon tetrabromide by inhalation for 7 hours per day, 5 days per week for 6 months (Torkelson and Rowe 1981). OSHA believes that controlling workplace exposures to these levels will prevent adverse effects in exposed workers. OSHA preliminarily concludes that establishing a limit for this previously unregulated chemical will protect workers against the risk of experiencing its hepatotoxic effects and will achieve a substantial reduction in this risk. The health evidence forms a reasonable basis for proposing a new limit for carbon tetrabromide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

o-CHLOROSTYRENE
CAS: 2039-87-4; Chemical Formula: C_8H_7Cl
H.S. No. 1069

OSHA has no current limit for o-chlorostyrene. The ACGIH recommends a TLV-TWA of 50 ppm with a TLV-STEL of 75 ppm. o-Chlorostyrene is a liquid.

In an unpublished report, the Dow Chemical Company (1973) describes the results of an o-chlorostyrene inhalation study in rats, rabbits, guinea pigs, and dogs. Dow exposed the animals to an average concentration of 101 ppm for 7 hours daily, 5 days a week, for a total of 130 exposures in 180 days. No adverse effects were observed in any species in terms of appearance, growth, behavior, mortality, hematology, BUN, alkaline phosphatase, SGPT, BSP, organ weights, or gross pathology (Dow Chemical Company, unpublished report, 1973). Microscopic examination of animal tissue revealed a somewhat higher incidence of pathological liver and kidney changes. There is evidence indicating that the warning properties of o-chlorostyrene do not permit workers to recognize concentrations of o-chlorostyrene of 100 ppm. Based on o-chlorostyrene's structural analogy to styrene, for which short-term exposures of 100 ppm have been demonstrated to produce neuropathic and narcotic effects (Stewart, Dodd, Baretta, and Schaffer 1968), a short-term limit is necessary (ACGIH 1986, p. 136).

OSHA is proposing a PEL of 50 ppm as an 8-hour TWA and a 15-minute STEL of 75 ppm for o-chlorostyrene. The Agency preliminarily concludes that both of these limits will protect against the risk of narcosis and neuropathy to which workers could potentially be exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for o-chlorostyrene if the Agency determines that this limit will substantially reduce significant risk.

CYCLOHEXANONE
CAS: 108-94-1; Chemical Formula: $C_6H_{10}O$
H.S. No. 1106

OSHA has a current limit of 50 ppm TWA for cyclohexanone. Both the ACGIH and NIOSH recommend a time-weighted average of 25 ppm, and the ACGIH also recommends a skin notation. Cyclohexanone is a white to pale yellow oily liquid with an odor

similar to that of acetone and peppermint.

Cyclohexanone has a low order of acute toxicity in animals. A concentration of 2000 ppm inhaled for 4 hours was lethal to 1 of 6 rats; at 4000 ppm, all of the exposed animals died. In rabbits, the dermal LD_{50} was 1000 mg/kg (Smyth et al. 1969). Rabbits showed marked irritation and some corneal injury when undiluted cyclohexanone was instilled in the eye (Carpenter and Smyth 1946). Guinea pigs exposed to 4000 ppm for 6 hours showed narcotic symptoms, lacrimation, salivation, depression of body temperature and heart rate, and corneal opacity (Specht et al. 1940). Rabbits exhibited degenerative changes of the liver and kidneys after 50 daily 6-hour inhalation exposures to 190 ppm (Treon, Crutchfield, and Kitzmiller 1943). Exposures to 309 ppm cyclohexanone on the same regimen caused conjunctival congestion, while exposures to 3000 ppm were lethal to some of the exposed animals (Treon, Crutchfield, and Kitzmiller 1943). In humans, Nelson and co-workers (1943) report that irritation caused by exposure to cyclohexanone was intolerable at 50 ppm, however, 25 ppm was not objectionable to most subjects in 3- to 5-minute exposures.

OSHA is proposing a 25-ppm 8-hour TWA and a skin notation for cyclohexanone. The Agency preliminarily concludes that these two limits will prevent the risk of respiratory and skin irritation associated with cyclohexanone exposures at levels below the existing PEL of 50 ppm. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for cyclohexanone if the Agency determines that this limit will substantially reduce significant risk.

DIOXANE
CAS: 123–91–1; Chemical Formula: $O(CH_2CH_2)_2O$
H.S. No. 1145

OSHA's current PEL for dioxane is 100 ppm as an 8-hour TWA, with a skin notation. NIOSH recommends a 1-ppm 30-minute ceiling for dioxane, and the ACGIH has established a 25-ppm TLV–TWA, with a skin notation. The proposed 25-ppm PEL reflects new toxicological data for this substance. A 2-year drinking water study conducted by the Dow Chemical Company, in which male and female rats were given water containing 1.0, 0.1, or 0.01 percent dioxane, showed that animals given the highest dose developed liver and nasal tumors, as well as pathological changes in the liver and kidney. Rats in the 0.1-percent group showed renal tubular sloughing and hepatocellular degeneration but no significant increase in neoplasms. Because this study demonstrated hepato- and nephrotoxic effects at doses 10 times lower than the dose causing cancer in animals, the ACGIH established the TLV based on dioxane's liver and kidney effects rather than its carcinogenicity. A study by Torkelson et al. (1974) in four species of animals exposed to multiple daily airborne exposures of dioxane at 50 ppm showed no gross or histopathologic organ changes, leading the ACGIH to recommend 25 ppm as an appropriate level to protect against liver and kidney effects in exposed workers (ACGIH 1988). In this case, the ACGIH is using a safety factor to establish the 8-hour limit, i.e., is applying a safety factor of 2 to the results of an animal study in four species that showed no gross or histopathological changes at 50 ppm.

The 25-ppm TLV is based on hepato- and nephrotoxic effects, since the ACGIH evaluation determined that these effects were more severe than the potential for carcinogenicity. OSHA does not generally accept such a rationale; however, OSHA is unable to perform the necessary risk assessment to evaluate the question of carcinogenicity in time for this rulemaking. The 1-ppm (ceiling) REL is based on cancer potential and appears to represent the "lowest concentration reliably measured," a criterion that would not satisfy OSHA feasibility requirements. OSHA therefore proposes that a PEL of 25 ppm TWA, with a skin notation, be adopted at the present time to reduce the risk that currently exists. As future priorities permit, OSHA will consider the need for a more stringent PEL.

ETHYLENE DICHLORIDE
CAS: 107–06–2; Chemical Formula: $ClCH_2CH_2Cl$
H.S. No. 1168

The current OSHA standard for ethylene dichloride is 50 ppm as an 8-hour TWA, a 100-ppm ceiling (maximum duration of 5 minutes in any 3 hours), and a 200-ppm peak; these limits were derived from limits recommended by the American National Standards Institute in 1969. In 1980, the ACGIH reduced its TLV to 10 ppm as an 8-hour TWA. NIOSH (1978) has concluded that ethylene dichloride should be considered a potential human carcinogen and has recommended 1-ppm 10-hour TWA and 2-ppm 15-minute short-term limits. Several studies indicate that the current OSHA PELs are insufficient to protect workers against hepatotoxic and other adverse effects. A paper by Kozik (1957) reported that workers generally exposed below 16 ppm but occasionally exposed to levels between 30 and 50 ppm experienced adverse liver and nervous system effects. In addition, Brzozowski (1954) reported abnormal changes in the blood of 50 percent of workers (8 of 16) exposed to between 10 and 37 ppm of ethylene dichloride. The ACGIH also cited numerous animal studies that consistently show hepatotoxic effects caused by exposure to ethylene dichloride; the ACGIH concluded that ethylene dichloride "clearly belongs in the group of hepatotoxic halogenated hydrocarbons" (ACGIH 1988). Based on these findings, the ACGIH (1988) recommended a reduction in the 8-hour TLV–TWA to 10 ppm.

In August 1978, NIOSH recommended that exposure to ethylene dichloride be minimized in response to an NCI bioassay (1978) showing that ethylene dichloride induced liver cancer in both sexes of mice and rats. NIOSH (1978) subsequently recommended a 1-ppm 10-hour TWA and a 2-ppm 15-minute short-term limit.

OSHA preliminarily concludes that the studies of Kozik (1957) and Brzozowski (1954) clearly indicate that a risk of hepatotoxicity, nervous system effects, and hematopoietic effects exists at the current 50-ppm 8-hour TWA PEL. The 10-ppm TLV recommended by the ACGIH does not afford protection at the levels (10 to 37 ppm) where abnormal blood changes were measured in 50 percent of the workers studied. Therefore, OSHA believes it necessary to reduce its current limits for ethylene dichloride to reduce this risk (as well as to protect against potential carcinogenic effects) and is proposing to revise these limits to 1 ppm as a TWA and 2 ppm as a STEL. The Agency's preliminary feasibility analysis is based on limited data at these levels; OSHA requests additional feasibility information from the public. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethylene dichloride if the Agency determines that this limit will substantially reduce significant risk.

HYDRAZINE
CAS: 302–01–2; Chemical Formula: $H_2N–NH_2$
H.S. No. 1205

The current OSHA limit for hydrazine is 1 ppm as an 8-hour TWA, with a skin notation. The ACGIH (1988) has recommended a TLV–TWA of 0.1 ppm, also with a skin notation. Because of its potential carcinogenic hazard, NIOSH (1978a) has recommended that workplace exposure to hydrazine not exceed 0.03 ppm as determined by a 2-hour air sample; this level represents the lowest detectable level over this sampling period.

A hepatotoxic response in mice and anemia and weight loss in dogs were reported to occur following a 6-month exposure to 1 ppm for 6 hours per day, 5 days per week or to 0.2 ppm continuously (Haun and Kinkead 1973). It was this finding that led the ACGIH to conclude that the former TLV of 1 ppm was too high. The ACGIH has also assigned an A2 designation (suspect human carcinogen), based on a study by MacEwen et al. (1979) showing significant increases in nasal tumors in rats exposed to 1 or 5 ppm hydrazine, in thyroid adenocarcinoma in rats exposed to 5 ppm, and in lung adenoma among mice exposed to 1 ppm. Other studies are cited by NIOSH (1978a) that demonstrate the carcinogenicity of hydrazine in rodents by a variety of dose routes. Because of this evidence, NIOSH has recommended a workplace exposure limit equal to the limit of detection for a 2-hour sample (0.03 ppm).

The animal studies conducted by Haun and Kinkead (1973) and by MacEwen et al. (1979) clearly demonstrate that exposure to the current 1 ppm PEL presents a risk of respiratory cancer, liver disease, and adverse blood effects; animals exposed to airborne concentrations at the current PEL have exhibited all of these effects. Therefore, OSHA preliminarily concludes that a reduction in the PEL for hydrazine is warranted to reduce this risk and is proposing to revise its PEL to 0.1 ppm as an 8-hour TWA, with a skin notation. The Agency has selected this limit rather than the 0.03-ppm REL recommended by NIOSH because it does not have sufficient feasibility data or risk assessment information regarding use of the 0.03-ppm level. Furthermore, the NIOSH REL appears to be based on the sampling and analytical limits of detection, and OSHA cannot base its limits on such criteria. The Agency believes that the 0.1-ppm limit will control hepatotoxic effects and reduce potential carcinogenic risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for hydrazine if the Agency determines that this limit will substantially reduce significant risk.

METHYLCYCLOHEXANOL
CAS: 25639–42–3; Chemical Formula: $CH_3C_6H_{10}OH$
H.S. No. 1269

OSHA currently has an 8-hour TWA limit of 100 ppm for methylcyclohexanol. The ACGIH recommends a limit of 50 ppm TWA. Methylcyclohexanol is a colorless, viscous liquid with an aromatic odor.

Exposure to methylcyclohexanol produces narcotic effects, liver and kidney impairment, and eye and respiratory irritation. Treon, Crutchfield, and Kitzmiller (1943) have reported the oral LD_{50} in rabbits to be between 1.25 and 2 g/kg; liver damage was observed in surviving animals. Repeated inhalation exposures to the vapor caused salivation, eye irritation and lethargy in rabbits exposed at 500 ppm, but exposures to 230 ppm caused no observable effects. Fifty 6-hour exposures at a level of 120 ppm caused "barely discernible" microscopic changes in the liver and kidney tissue of rabbits (Treon, Crutchfield, and Kitzmiller 1943).

In humans, headaches and eye and respiratory irritation have been reported to occur from prolonged exposure to high concentrations of methycyclohexanol (Fillipi 1914). Smyth (1956) considered an exposure limit of 100 ppm to be sufficiently low to prevent narcotic effects and, perhaps, significant liver and kidney damage.

OSHA is proposing an 8-hour TWA of 50 ppm for methylcyclohexanol. The Agency preliminarily concludes that this limit will protect workers against the risk of narcosis and hepatic and renal effects that potentially exists at the levels permitted by the current 100-ppm limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methylcyclohexanol if the Agency determines that this limit will substantially reduce significant risk.

OCTACHLORONAPHTHALENE
CAS: 2234–13–1; Chemical Formula: $C_{10}Cl_8$
H.S. No. 1295

OSHA currently has a limit of 0.1 mg/m³ TWA, with a skin notation, for octachloronaphthalene. The ACGIH recommends a TLV–TWA of 0.1 mg/m³ and a TLV–STEL of 0.3 mg/m³, also with a skin notation. Octachloronaphthalene is a nonflammable, pale yellow, and waxy solid containing 70 percent chlorine.

Inhalation toxicity data for octachloronaphthalene fumes or dust are lacking, but exposure to the chloronaphthalenes causes acne-like lesions that itch severely. Repeated exposure to the fumes of molten chlorinated naphthalenes can cause severe and sometimes fatal systemic poisoning and is especially damaging to the liver (Patty 1963). Ingestion studies of cattle have shown different toxicities for different naphthalenes, with the toxicity increasing with the degree of chlorination (Sikes, Wise, and Bridges 1952). However, these data are controverted by another report in which octachloronaphthalene was found to be less toxic than the hexachloro derivative (Bell 1953). This divergence in the data may be due to differing methods of administration (suspension versus solution) or may reflect the soluble form's greater capacity for absorption (ACGIH 1986, p. 447).

OSHA proposes a PEL of 0.1 mg/m³ TWA and a STEL of 0.3 mg/m³, with a skin notation, for octachloronaphthalene. The Agency preliminarily concludes that this combined limit will protect workers against the risk of dermal effects and serious liver damage potentially associated with exposure to this substance at the levels permitted by the 8-hour limit alone. The skin notation is retained because of octachloronaphthalene's severe dermal effects. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for octachloronaphthalene if the Agency determines that this limit will substantially reduce significant risk.

PROPYLENE DICHLORIDE
CAS: 78–87–5; Chemical Formula: $CH_3CHClCH_2Cl$
H.S. No. 1341

OSHA currently has a limit of 75 ppm TWA for propylene dichloride. The ACGIH recommends a 75-ppm TLV–TWA and a TLV–STEL of 110 ppm. Propylene dichloride is a colorless, flammable, mobile liquid with an odor like that of chloroform.

The primary hazards associated with exposure to propylene dichloride are inhalation toxicity to liver tissue and mild skin and eye irritation. Repeated inhalation exposures to 1000 ppm have been reported to kill dogs (after 24 exposures), guinea pigs (after 22 exposures), and rats (in some cases after 7 exposures); some animals survived more than 100 7-hour exposures. Necropsy showed severe liver damage; the hepatotoxicity of propylene dichloride appears to be greater than that of carbon tetrachloride and less than that of ethylene dichloride (Heppel, Neal, Highman, and Porterfield 1946). Animals of these same species (rats, dogs, and guinea pigs) survived 128 to 140 7-hour exposures to 400 ppm for 5 days/week without histologic effects, while mice died from similar exposures; surviving mice displayed hepatomas (Heppel, Highman, and Peake 1946). The

oral LD_{50} for rats has been reported as 1.19 ml/kg (Smyth et al. 1969); the acute 8-hour inhalation LC_{50} for rats is 3000 ppm (Pozzani et al. 1959).

OSHA proposes an 8-hour TWA PEL for propylene dichloride of 75 ppm and a 15 minute STEL of 110 ppm. The Agency preliminarily concludes that this combined limit will protect workers against the risk of hepatotoxic effects potentially associated with exposures at the levels permitted by the absence of a short-term limit above the 8-hour TWA PEL for even brief periods. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for propylene dichloride if the Agency determines that this limit will substantially reduce significant risk.

1,1,2,2-TETRACHLOROETHANE
CAS: 79-34-5; Chemical Formula: $CHCl_2CHCl_2$
H.S. No. 1385

OSHA's existing PEL for 1,1,2,2-tetrachloroethane is 5 ppm with a skin notation; a 1-ppm 8-hour TWA, also with a skin notation, is the level established by the ACGIH. The NIOSH recommendation is that exposure be reduced to the lowest feasible level. One study by Jevey et al. (1957) revealed identifiably adverse effects on the liver, including hepatitis, in humans exposed to concentrations of tetrachloroethane ranging from 1.5 to 247 ppm; liver damage was still evident after exposures were reduced to 15 ppm. An animal study by Schmidt et al. (1972) found "barely detectable" fatty infiltration of the liver in rats exposed to 2 ppm tetrachloroethane for 11 months.

Based on this evidence, OSHA preliminarily concludes that the current level does not protect against fatty infiltration of the liver and probably does not protect against more serious liver damage; these health consequences clearly pose an occupational risk. OSHA believes that reducing the 8-hour TWA for tetrachloroethane to 1 ppm will substantially reduce the risk posed to workers exposed at the current PEL and thus proposes adoption of a 1-ppm 8-hour TWA, with a skin notation. The proposed limit was selected on the basis of relatively extensive data from health surveys conducted among occupationally exposed workers, supplemented by results from experimental animal studies. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 1,1,2,2-tetrachloroethane if the Agency determines that this limit will substantially reduce significant risk.

1,2,3-TRICHLOROPROPANE
CAS: 96-18-4; Chemical Formula: $C_3H_5Cl_3$
H.S. No. 1407

OSHA's existing PEL for 1,2,3-trichloropropane is 50 ppm as an 8-hour TWA, and the ACGIH has a TLV-TWA of 10 ppm and a skin notation. 1,2,3-Trichloropropane is a colorless to straw-colored, combustible liquid with an odor similar to chloroform.

1,2,3-Trichloropropane is not irritating to intact skin, but it is absorbed through the skin. It is highly irritating to the eyes (Smyth, Carpenter, Weil et al. 1962). Five of six rats exposed to 1000 ppm died after 4-hour exposures. Rats and guinea pigs exposed at 600, 2100, or 5000 ppm for 30 minutes showed central nervous system depression, which progressed at the higher levels to narcosis and convulsions (Lewis, as cited in ACGIH 1986, p. 602). Several mice exposed for 20 minutes to 5000 ppm died, some as long as several days later from liver damage. Daily 10-minute exposures at 2500 ppm for 10 days killed 7 of 10 mice (McOmie and Barnes 1949). Animals exposed once for 4 hours to 1,2,3-trichloropropane at concentrations of 125, 340, 700, or 2150 ppm showed dose-related signs of irritation, which included, at 700 or 2150 ppm, labored respiration, inactivity, and eye and nose irritation; at autopsy, however, no organ or other damage was apparent (McOmie and Barnes 1949).

Human volunteers found exposure to 1,2,3-trichloropropane objectionable because of eye and upper respiratory tract irritation, and many found 50 ppm an unacceptable level for a full-shift exposure (Silverman, Schulte, and First 1946). Drew and colleagues (1978) noted changes in liver enzymes after a single 4-hour exposure to 500 ppm, and Russian studies indicate that morphologic changes and metabolic lesions of the liver, kidney, and lungs occurred in mice exposed continuously to concentrations of 0.007 to 0.3 ppm (Siderenko, Tsulaya, Bonashevskaya, and Shaipak 1979; Siderenko, Tsulaya, Koreneveskaya, and Banashevskaya 1976; Tsulaya, Bonashevskaya, Zykova et al. 1977).

A National Toxicology Program prechronic study in which rats were gavaged daily with 1,2,3-trichloropropane at 8, 16, 32, 63, 125, and 250 mg/kg body weight for 120 days showed good survival in all but the highest dose group (National Toxicology Program 1983). Statistically significant changes in the liver and kidney, and necrosis and irritation of the nasal passages, occurred in the 63 and 125 mg/kg dose groups. Decreases in the red blood cell count and hematocrit were seen even in the 16-mg/kg dose group. 1,2,3-Trichloropropane did not affect sperm count or morphology or testicular weight. The NTP found this substance to be genetically active in three bioassays. However, Hardin, Bond, Stikov et al. (1981) did not find 1,2,3-trichloropropane to be fetotoxic or teratogenic.

The ACGIH (1986, p. 602) concluded that the most sensitive sex and species, female rats, had a no-adverse-effect level for kidney or liver effects of 8 mg/kg/day, and extrapolated from this level to humans to establish a TLV-TWA of 10 ppm.

OSHA is proposing an 8-hour PEL of 10 ppm and a skin notation for 1,2,3-trichloropropane. The Agency preliminarily concludes that these limits are necessary to protect exposed workers against the risks of liver and kidney damage, eye and throat irritation, and systemic toxicity via inhalation or skin absorption that are potentially associated with exposures to this substance at levels considerably below the Agency's current PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 1,2,3-trichloropropane if the Agency determines that this limit will substantially reduce significant risk.

Kidney Toxicity

Introduction

Kidney damage is the basis for revising the PELs for five of the compounds in this group. These compounds, their CAS and HS numbers, and their current OSHA, ACGIH, and NIOSH limits are shown in Table C4-2. Three of these substances will be regulated by OSHA for the first time, and in the other two cases, the 8-hour TWA will be reduced. In one of the latter cases, a STEL will also be added.

Description of the Health Effects

The precise mechanism by which these chemicals damage the kidneys is unknown. Typically, these compounds are selectively toxic to cells in the renal tubule, perhaps because impaired transport causes the chemical to collect in these cells. In addition to the excretion of wastes, the kidney plays an important role in the regulation of total body homeostasis. This organ regulates extracellular volume, controls electrolyte and acid-base balance, and forms several hormones that control systemic metabolism. Depending on their particular site of action,

nephrotoxicants thus can interfere with the proper excretion of the body's wastes, hydration, electrolytic balance, metabolism, and the maintenance of the correct acid-base balance.

Like the hepatotoxic effects previously described, the least severe lesions caused by nephrotoxic compounds are graded and reversible. The earliest changes are usually alterations in the activities of specific enzymes in the tubular cells. These changes may be accompanied by minor morphological alterations of the cells that are visible only with an electron microscope. Higher doses or more sustained exposures are required to cause cellular necrosis that might be visible with light microscopy. Because of the reserve capacity of the kidneys, a significant degree of tubular cellular necrosis must occur before it is reflected by measurable alterations in kidney function. Thus, indicators of impaired renal function that can be measured in humans, such as proteinuria, glucosuria, and increased BUN, are relatively insensitive indicators of kidney damage. Other indicators of significant kidney damage include increased kidney weight, swelling of the tubular epithelium, fatty degeneration of tubular epithelium, and the presence of tubular casts in the urine.

OSHA is proposing to establish or revise occupational exposure limits for five nephrotoxic agents. NIOSH has a REL for one of these substances (hexone), and OSHA is currently regulating two chemicals in this group. These limits were selected based primarily on the results of studies in experimental animals. For example, the limit for hexone is based on results from a study in which rats were continuously exposed by inhalation to 100 or 200 ppm of hexone for 90 days. The lowest effects observed in this study were degeneration and necrosis of the renal tubules, which were associated with the 100 ppm exposures (MacEwen 1971). In a study of effects caused by exposure to ethyl silicate at 88, 50 or 23 ppm, no decrease in kidney weight was seen in rats exposed to this substance 7 hours per day, 5 days per week for 90 days (Pozzani and Carpenter 1951). OSHA preliminarily concludes that the 10-ppm level will provide protection against any nephrotoxic effects, and will reduce the significant risk associated with exposure to these hazardous substances.

Dose-Response Characteristics

Kidney damage, like liver damage, is progressive; only at earlier stages are nephrotoxic effects reversible. The toxicity of the kidney-damaging chemicals included in the group for which OSHA is proposing limits also increases as dose increases. For most nephrotoxins there appears to be a NOEL. Workplace exposures to concentrations of these substances at levels at or below the proposed limits are unlikely to cause kidney effects in most workers. OSHA believes that the nephrotoxic risks being protected against are significant at the current PELs for these substances, because the PELs are often at levels well above the concentration demonstrated to produce the toxic effect. In addition, for three of the chemicals, there have previously been no OSHA limits, and workers could therefore be exposed to levels well above the NOEL.

1,3-DICHLOROPROPENE
CAS: 542-75-6; CHEMICAL FORMULA: $CHCl=CH-CH_2Cl$
H.S. No. 1129

OSHA currently has no limit for 1,3-dichloropropene. The ACGIH has established an 8-hour TLV-TWA of 1 ppm, with a skin notation, for this straw-colored clear liquid with a chloroform-like odor. This compound occurs in the form of two isomers, cis and trans.

In male and female rats, the acute oral LD_{50}'s for a 92-percent mixture of the cis and trans isomers of 1,3-dichloropropene were 713 and 470 mg/kg, respectively; post mortem examination showed liver and kidney damage and, perhaps, evidence of lung injury (Torkelson and Oyen 1977). The dermal LD_{50} in rabbits for a 92-percent undiluted mixture was 504 mg/kg, but a 10-percent solution administered by gavage at a dose of 125 or 250 mg/kg was lethal to some of the animals (Torkelson and Oyen 1977). Contact with the liquid was irritating to the eyes and skin of rabbits (Torkelson and Oyen 1977).

Inhalation exposures to 1,3-dichloropropene vapor concentrations above 2700 ppm produced eye and nasal irritation and severe lung, nasal, kidney, and liver damage in rats (Torkelson and Oyen 1977). Exposure to 1000 ppm caused eye and nasal irritation, lacrimation, and, if prolonged, unconsciousness; rats exposed to 1000 ppm for 2 hours died, but those exposed for 1 hour survived (Torkelson and Oyen 1977). Guinea pigs exposed to 400 ppm for a single 7-hour period died, while rats exposed similarly survived but had obvious lung congestion (Torkelson and Oyen 1977). Rats, rabbits, guinea pigs, and dogs were exposed 7 hours/day 5 days/week for 6 months to 1-ppm or 3-ppm concentrations of 1,3-dichloropropene (Torkelson and Oyen 1977). No adverse effects were observed in any of the animals exposed at 1 ppm. Of the animals exposed at 3 ppm, only male rats showed adverse effects; these animals had reversible cloudy swelling of the renal tubular epithelium (Torkelson and Oyen 1977).

In humans, acute exposures to 1,3-dichloropropene cause skin, eye, and respiratory irritation (Torkelson and Oyen 1977). There are no data on the effects in humans of chronic exposure to this substance.

OSHA is proposing an 8-hour TWA limit of 1 ppm, with a skin notation, for 1,3-dichloropropene. The Agency preliminarily concludes that this limit will protect workers against the risk of eye and mucous membrane irritation and lung, kidney, and liver damage potentially associated with exposure to this substance at the levels permitted by the absence of any OSHA limit. A skin notation is proposed to protect against 1,3-dichloropropene's ability to be absorbed through the skin. The health evidence forms a reasonable basis for proposing a new limit for 1,3-dichloropropene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DICYCLOPENTADIENE
CAS: 77-73-6; Chemical Formula: $C_{10}H_{12}$
H.S. No. 1132

OSHA currently has no limit for dicyclopentadiene (DCPD). The ACGIH recommends a TLV-TWA of 5 mg/m³. DCPD is a solid at room temperature and has a disagreeable odor.

The health effects associated with exposure to DCPD include mild eye, skin, and respiratory irritation, as well as possible pulmonary and renal damage. By the oral and intraperitoneal routes, DCPD is extremely toxic, with an oral LD_{50} value of 0.35 ml/kg and an intraperitoneal LD_{50} value of 0.31 ml/kg in rats: rat fatalities occurred within 60 minutes of exposure to an unspecified concentration of the saturated vapor (Kinkead, Pozzani, Geary, and Carpenter 1971). However, Gage (1970) regards approximately 660 ppm as the 4-hour LC_{50} in rats and reports that ten 6-hour daily exposures to DCPD at a concentration of 250 ppm were survived only by three of four rats; when the animals were subjected to a concentration of 100 ppm for 15 similar exposures, all survived (Gage 1970). Other species were less susceptible than mice to the effects of DCPD exposure, but they exhibited eye irritation, incoordination, and convulsions preceding death (Kinkead, Pozzani, Geary, and Carpenter 1971).

Kinkead and associates (1971) report that rats exposed repeatedly for 10 days

survived concentrations of 72 or 146 ppm but succumbed at the 332 ppm level, with convulsions, lung hemorrhage and blood in the intestines; female rats also suffered hemorrhage of the thymus. Mice similarly exposed succumbed at all three concentration levels (Kinkead, Pozzani, Geary, and Carpenter 1971). Chronic exposures of 7 hours/day for 89 days produced kidney damage and some pulmonary effects in rats exposed at levels of 35 and 74 ppm; a no-effect level for rats was determined to be below 19.7 ppm. Dogs exposed at concentrations of 9, 23, or 32 ppm on the same regimen exhibited only minimal effects (Kinkead, Pozzani, Geary, and Carpenter 1971).

Human sensory response tests resulted in findings of mild eye and throat irritation in 7 minutes on exposure to 1 ppm DCPD vapor and olfactory fatigue in 24 minutes; a 30-minute exposure to 5.5 ppm produced no olfactory fatigue (ACGIH 1986, p. 194). Subjective complaints of headache during the first 2 months of occupational exposure disappeared during the following 3 months of exposure, suggesting a developed tolerance for this substance (ACGIH 1986, p. 194).

OSHA is proposing a PEL of 5 ppm TWA for dicyclopentadiene. The Agency preliminarily concludes that this limit will protect workers against the potential risk of kidney injury, pulmonary effects, and irritation potentially associated with workplace exposure to DCPD at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for dicyclopentadiene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ETHYL SILICATE
CAS: 78–10–4; Chemical Formula: $Si(OC_2H_5)_4$
H.S. No. 1196

OSHA's current permissible exposure limit for ethyl silicate is 100 ppm as an 8-hour TWA. The ACGIH recommends a limit of 10 ppm TWA for this colorless, flammable liquid with a faint odor.

Ethyl silicate has been reported to cause both irritation and systemic toxicity. In guinea pigs and rats, a 60-minute exposure of 2000 ppm was reported as the maximal time-concentration that did not cause serious disturbances; 500 ppm was the maximal no-effect exposure level for an exposure of several hours' duration (Smyth and Seaton 1940). Thirty-day exposures to 400 ppm ethyl silicate for 7 hours/day caused significant mortality in rats and damage to the lungs, liver, and kidney in the surviving animals. Exposures of rats, guinea pigs, and mice to 88, 50, or 23 ppm for 90 days (7 hours/day, 5 days/week) resulted only in decreased kidney weights in mice exposed at the 88-ppm level (Pozzani and Carpenter 1951). In another study, Kasper, McCord, and Frederick (1937) showed that animals exposed to 164 ppm ethyl silicate for 17 8-hour days showed less weight gain than did controls. Rowe and associates (1948) reported that three 7-hour exposures at 1000 ppm were fatal to 4 of 10 rats; similar exposures to 500 ppm caused pronounced kidney changes and slight lung irritation. Four to 10 similar exposures at 250 ppm caused slow weight loss and some lung and renal changes; at 125 ppm, slight to moderate kidney damage was observed (Rowe, Spencer, and Bass 1948).

Smyth and Seaton (1940) reported that exposure to a concentration of 1200 ppm causes lacrimation in humans and that 250 ppm causes eye and nose irritation.

OSHA is proposing a PEL of 10 ppm TWA for ethyl silicate. The Agency preliminarily concludes that this limit is required to protect exposed workers from the risk of renal damage potentially associated with exposures to higher concentrations. OSHA believes that this reduced limit will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for ethyl silicate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

HEXACHLOROBUTADIENE
CAS: 87–68–3; Chemical Formula: $CCl_2=CCl-CCl=CCl_2$
H.S. No. 1195

OSHA has no current limit for hexachlorobutadiene (HCBD). The ACGIH recommends a TLV–TWA of 0.02 ppm with a skin notation, and classifies this substance as a suspected human carcinogen (A2). Hexachlorobutadiene is a heavy, clear liquid.

Hexachlorobutadiene has a moderate-to-high acute oral toxicity. The LD_{50}s reported for mice, rats, and guinea pigs are 87, 350, and 90 mg/kg, respectively (Murzakev 1964). Gulko and co-workers reported LD_{50} values of 116 mg/kg for mice and 270 mg/kg for rats (Gulko, Zimina, and Shroit 1966). Skin absorption has been demonstrated in rabbits (Kociba et al. 1977). The dose range reported to be lethal via skin absorption is comparable to that which is lethal via the oral administration route. A single exposure of 133 to 150 ppm via inhalation has been fatal in rats when the exposure lasts for 4 to 7 hours. All rats survived exposures at 161 ppm for 0.58 hour or 34 ppm for 3.3 hours; similar exposure of guinea pigs and cats to the same concentrations resulted in the death of most animals (Kociba et al. 1977). Another inhalation study in rats showed eye and nose irritation, respiratory difficulty, and damage to kidney tissue and adrenal cortex after two 4-hour exposures at 250 ppm; twelve 6-hour exposures to 100 ppm caused eye and nose irritation, respiratory difficulty, weight loss, anemia in the female animals, and kidney and adrenal damage; fifteen 6-hour exposures at 25 ppm caused retarded weight gain in females, respiratory difficulty, and kidney damage; fifteen 6-hour exposures at 10 ppm caused retarded weight gain in females but no systemic injury; and fifteen 6-hour exposures at 5 ppm resulted in no adverse effects (Gage 1970).

Reproductive studies in male and female rats demonstrated multiple toxicological effects, including kidney damage in both sexes and increased liver weight in males, at the high dose level of 20 mg/kg/day. Dietary administration of 20, 2, or 0.2 mg/kg daily had no effect on conception percentages, gestational survival, neonatal survival, neonatal sex ratio, neonatal morphology, or neonatal body weights (except for the high-dose neonates) (Schwetz et al. 1977). Results of lifetime dietary studies suggest that the no effect level for hexachlorobutadiene in rats is 0.2 mg/kg/day, that a clear dose-response relationship exists for HCBD-induced toxicity affecting primarily the kidney, and that carcinogenic effects (i.e., renal neoplasms) result from ingestion of 20 mg/kg/day (Kociba et al. 1977). These authors also reported that HCBD-induced neoplasms occur only at HCBD doses higher than those causing discernible renal injury. The ACGIH states that "HCBD would seem to qualify as a carcinogen of intermediate potency" (ACGIH 1986, p. 299).

OSHA is proposing an 8-hour TWA limit of 0.02 ppm, with a skin notation, for this hazardous substance. Assuming a 10-m^3 per day breathing volume per 8-hour workshift and a 70-kg body weight for humans, this limit corresponds to a daily intake of approximately 0.03 mg/kg. This is about 10 times below the observed no-effect level in rats fed hexachlorobutadiene. The Agency preliminarily concludes that the proposed limit of 0.02 ppm will protect workers exposed to HCBD from the risks of eye, skin, and pulmonary irritation, kidney damage, and renal neoplasms potentially associated with exposure to HCBD at the levels

permitted in the absence of any OSHA limit. In addition, the proposed skin notation will prevent the systemic toxicities that can occur as a result of dermal absorption of HCBD. The health evidence forms a reasonable basis for proposing a new limit for hexachlorobutadiene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYL ISOBUTYL KETONE
CAS: 108–10–1; CHEMICAL FORMULA: $CH_3COCH_2CH(CH_3)_2$
H.S. No. 1203

OSHA's current 8-hour TWA standard for methyl isobutyl ketone (MIBK) is 100 ppm. The ACGIH has established a TLV–TWA of 50 ppm and a 15-minute STEL of 75 ppm for this substance. NIOSH recommends a TWA of 50 ppm for MIBK, which is a clear liquid with a characteristic odor.

A 4-hour exposure to 4000 ppm killed all exposed rats, but a similar exposure to 2000 ppm was not fatal to these animals (Smyth et al. 1951). Guinea pigs exposed to a MIBK concentration of 10,000 ppm immediately showed signs of irritation (Specht et al. 1940, as cited in ACGIH 1986, p. 402).

MacEwen, Vernst, and Haun (1971) exposed rats, mice, dogs, and monkeys to 100 or 200 ppm MIBK for two weeks and noted no signs of intoxication; however, rats exposed to 100 ppm had heavier kidneys and higher kidney-to-body-weight ratios, and, at 200 ppm, livers were heavier as well. Postmortem examination revealed nephrosis of the proximal tubules.

The same authors (MacEwen, Vernst, and Haun 1971), exposed rhesus monkeys, dogs, and rats continuously for 90 days to MIBK concentrations of 100 ppm. These authors observed no significant changes in clinical chemistry or blood test results, although the rats had heavier kidneys and livers, reversible hyaline dioplet degeneration of the proximal tubules of the kidneys, and some necrosis of the tubules.

Silverman and co-workers (1946) determined that the maximum dose of MIBK tolerable to human volunteers for 8 hours was 160 ppm; at 200 ppm, these subjects found the odor of MIBK objectionable and the vapor irritating. Linair and co-workers (1984) reported that more than half of all workers exposed to 500 ppm of MIBK for 20 to 30 minutes daily, and perhaps to 80 ppm for the remainder of the shift, experienced weakness, loss of appetite, headache, burning eyes, nausea, vomiting, and sore throat; several of these workers also reported insomnia, somnolence, heartburn, and intestinal pain. Some workers had enlarged livers and others had colitis. Clinical test results on these workers were normal.

In a follow-up study on this same group of centrifuge operation workers, Armeli and co-workers (1968) determined that reduction of MIBK levels during the 15 to 30 minutes of centrifuge operation to 100 to 105 ppm, and, for the remainder of the shift, to 50 ppm, had also significantly reduced the symptomatology reported earlier by these workers. However, liver enlargement persisted in two workers, and a few workers continued to report gastrointestinal and nervous system effects.

Elkins (1959) noted that exposure to 100 ppm during boot waterproofing operations caused workers to develop headache and nausea; another similarly exposed group experienced only irritation at 100 ppm.

OSHA is proposing an 8-hour TWA of 50 ppm and a 15-minute STEL of 75 ppm for methyl isobutyl ketone. The Agency preliminarily concludes that these limits will work together to protect workers from the risk of headache, nausea, and irritation, as well as potential kidney and liver effects, determined to be associated with exposures to the levels permitted at a 100-ppm TWA limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl isobutyl ketone if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusion for Both Liver and Kidney Toxins

The health effects associated with occupational exposure to the hepato- and nephrotoxins shown in Tables C4–1 and C4–2 can be acute or chronic, reversible or irreversible, temporarily disabling or threatening to life. Workers experiencing chemically induced hepatotoxic or nephrotoxic effects may have enlarged livers, high blood pressure, hormonal imbalances, and/or organ necrosis. The health evidence forms a reasonable basis for proposing new or revised limits for the substances in this section. At the time of the final rule, OSHA will establish new or revised limits if the Agency determines that significant risk will be thereby reduced.

5. Substances for Which Proposed Limits Are Based on Avoidance of Ocular Effects

Introduction

Five of the chemicals for which OSHA is proposing limits have the potential to cause serious ocular effects. Certain chemicals in this group are also sensory irritants and are distinguished from other such irritants by their ability to cause permanent damage to the corneas, lenses, or optic nerves of exposed individuals.

Table C5–1 lists these five chemicals, along with OSHA's current PEL, the NIOSH REL, the ACGIH TLV, and the chemical's CAS number and HS number. In two cases, the proposed 8-hour PELs correspond to the current ACGIH TLV–TWAs for these substances. For one substance, methyl alcohol, OSHA is proposing to retain the existing 8-hour TWA and to add a STEL. In the case of methyl silicate, the Agency proposes to add an 8-hour PEL where none formerly existed. For N-ethylmorpholine, the PEL is being reduced from 20 to 5 ppm.

In two instances, the ACGIH and NIOSH limits differ in some respects. For methyl alcohol, the ACGIH recommends a 200-ppm TWA and a 250-ppm STEL, while NIOSH recommends a 200-ppm TWA and an 800-ppm STEL (15-minute ceiling). For hydrogen sulfide, the ACGIH has established both a STEL and a TWA, while NIOSH recommends only a 10-minute STEL. These differences, and the Agency's decision with regard to them, are discussed further below.

Description of the Health Effects

Damage to the eye caused by exposure to the five chemicals in this group can occur in the form of corneal, lens, retinal, ganglion cell layer, or optic nerve effects. Depending on the severity of the exposure, individual susceptibility, and the particular chemical involved, this damage may be transient, temporarily disabling, or permanently blinding.

Corneal effects. The cornea and conjunctiva are the outer surfaces of the eye and are thus directly exposed to external insults. Since the cornea must maintain transparency to remain functional, scar formation after injury to the cornea can destroy visual function completely. Recent evidence suggests that the transparency of the cornea is maintained by thin inner and outer

boundary layers and that the death of these layers leads to loss of transparency (Potts 1986). The corneal epithelium (outer layer) sometimes regenerates, depending on the depth of the burn or insult and the nature of the toxicant.

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Table C5-1. Substances for Which Limits Are Based on Avoidance of Ocular Effects

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1172 N-Ethylmorpholine	100-74-3	20 ppm TWA, Skin	5 ppm TWA, Skin	--
1209 Hydrogen sulfide	7783-06-4	20 ppm STEL 50 ppm Ceiling	10 ppm TWA 15 ppm STEL	10 ppm Ceiling (10 min)
1252 Methyl alcohol	67-56-1	200 ppm TWA	200 ppm TWA 250 ppm STEL, Skin	200 ppm TWA 800 ppm Ceiling (15 min)
1266 Methyl silicate	681-84-5		1 ppm TWA	-
1282 Naphthalene	91-20-3	10 ppm TWA	10 ppm TWA 15 ppm STEL	--

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

BILLING CODE 4510-26-C

Some chemicals, including methyl silicate, produce painful corneal epithelial injuries that have a delayed symptom onset. These substances can continue to cause pain and loss of corneal epithelial cells for several hours after exposure. Typically, there is no discomfort during the actual exposure, but several hours later, the eyes begin to burn, vision blurs, and conjunctival hyperemia, tearing, photophobia, and squinting occur (Grant 1986). Possible mechanisms are enzyme inhibition, denaturing of other proteins, alteration of the DNA, and interference with the mitotic process, so that after a period of exposure, the affected cells die. Although the damaged epithelium may regenerate after this type of injury, the damage can also involve the corneal stroma and endothelium, leading to scarring, vascularization, opacity, and loss of vision. These substances' poor warning properties, i.e., absence of immediate effect, make the establishment of protective exposure limits especially critical for these chemicals.

Exposure to some chemical vapors produces painless edema of the corneal epithelium, which is accompanied by the delayed onset of visual haloes. A chemical that produces these effects is N-ethylmorpholine, a catalyst used to manufacture urethane foam. Painless edema generally occurs in workers who have been exposed for several hours to levels that do not produce discomfort during the exposure itself. The visual effect produced by such exposures consists of the appearance of colored haloes around lights, an effect that is caused by the diffraction of light through the swollen epithelial cells of the eye. Visual haloes are severely distracting and restrict activity substantially, and the mechanism underlying this effect is not well understood (Grant 1986).

Lens effects. The lens is a transparent, avascular tissue surrounded by a thin, collagenous capsule. The major portion of the lens is composed of long, thin fibers that form closely packed, onion-like layers. Transparency is dependent on several factors: A highly ordered cellular arrangement; fiber size, shape, and uniformity; molecular structure; and regularity of fiber packing (Potts 1966). Interference with lens metabolism, transport across cell boundaries, or the integrity of the lens capsule itself can cause a loss of lens transparency and lead to decreased visual acuity (Potts 1966). All such changes in lens transparency are referred to as cataracts.

Retinal effects. The retina is a compact neural structure that is responsible for converting the ocular light image to neural impulses. Because the retina is an internal structure, it is not generally affected by exposure to dust, splashes of liquids, or vapors. However, exposure to certain internally absorbed substances, such as methyl alcohol, may cause changes or lesions in the retina, including retinal edema or hemorrhage. Exposure to a few of these substances can cause acute narrowing of the retinal arteries themselves, which can lead, in turn, to damage to the optic nerve and loss of vision.

Effects on ganglion cell layer and optic nerve. Below the retinal surface layer lies the ganglion cell layer, which is composed of the cell bodies of neurons that extend to the midbrain via the optic nerve. Ganglion cells may be damaged directly when the chemical acts on the cell bodies themselves or secondarily when the toxin destroys the optic nerve. Depending on the severity of the exposure, loss of visual acuity or vision may ensue.

Dose-Response Relationships and Ocular Effects. For most of the chemicals on this list, limits have been established on the basis of health surveys and case reports of occupationally exposed populations. These studies indicate that exposures to concentrations of these substances at levels above the NOE level cause damage or pain to the eyes of exposed workers. In some cases only limited human data are available, and evidence from animal studies or knowledge of a chemical's structural analogy to another chemical known to have ocular effects provides the basis for proposing the limit. Animal models are generally good predictors of ocular effects in humans because the eyes of rodents, especially those of guinea pigs and rabbits, closely resemble human eyes. Thus, animal studies of the effects of acid burns on the eye can be relied on to predict accurately how the chemicals that produce these effects in animals will behave in workers exposed in industrial situations. OSHA's preliminary findings and the available toxicologic data for the chemicals in this group are described below.

N-ETHYLMORPHOLINE
CAS: 100-74-3; Chemical Formula: $C_6H_{13}NO$
H.S. No. 1172

The current OSHA 8-hour TWA PEL is 20 ppm, and the ACGIH TLV is an 8-hour TWA of 5 ppm: both limits have skin notations. NIOSH has no REL for ethylmorpholine. N-Ethylmorpholine is a severe eye irritant. Prolonged exposure to fairly low concentrations of ethylmorpholine causes corneal edema, blue-gray vision, and colored haloes. Typically, vision becomes misty and haloes appear a few hours after workers have been exposed to vapors for a period of hours. Distortion of vision can occur even at levels considerably lower than those that cause irritation (Mastromatteo 1965).

Reversible corneal edema has been observed in workers exposed to 40 ppm or more of ethylmorpholine for several hours (Dernehl 1966). Workers routinely exposed to 3 to 4 ppm and never exposed to concentrations above 11 ppm complained of haloes and foggy vision as well as drowsiness (ACGIH 1987). The irritant effects of N-ethylmorpholine were also seen in a controlled- exposure experiment on volunteer subjects. Ten subjects exposed for 2.5 minutes to 100 ppm experienced irritation of the eyes, nose, and throat; those exposed for 2.5 minutes to 50 ppm experienced slight irritation; and no irritation was reported after exposure for 2.5 minutes to 25 ppm (ACGIH 1986).

OSHA's current 20-ppm PEL for N-ethylmorpholine does not protect exposed workers against the occurrence of corneal edema, workers are especially likely not to be aware of the danger of exposure to N-ethylmorpholine because corneal edema is painless as it is developing and has a delayed onset, and thus no warning occurs during the actual exposure itself. In addition, the effects on visual function of repeatedly exposing the eyes to episodes of corneal edema are not known. OSHA therefore preliminarily concludes that reducing the PEL to 5 ppm as an 8-hour TWA (with a skin notation) is necessary to improve the protection of occupationally exposed individuals from ethylmorpholine's injurious effects on the eyes. This reduction in the PEL will reduce the risk of corneal edema, visual distraction, and impaired vision associated with exposure to this substance. The health evidence forms a reasonable basis for proposing a new limit for N-ethylmorpholine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

HYDROGEN SULFIDE
CAS: 7783-06-4; Chemical Formula: H_2S
H.S. No. 1209

OSHA's current limits (based on an earlier ANSI standard) for hydrogen sulfide are a 20-ppm STEL (10-minute maximum duration) and a 50-ppm peak limit. The ACGIH has established a TLV of 10 ppm TWA and a 5-ppm STEL for hydrogen sulfide. NIOSH has recommended a 10-minute limit of 10 ppm. Hydrogen sulfide is widely used as an analytical reagent and in the manufacture of heavy water. However, occupational exposure to hydrogen sulfide occurs most frequently when it is encountered in natural oil or gas deposits or as a byproduct in chemical reactions.

The ACGIH cites several reports (Brieger 1964; Kranenburg and Kessner 1941; Elkins 1950; Masure 1963) of the occurrence of adverse ocular effects, including conjunctivitis, associated with exposure to 20 ppm or less of hydrogen sulfide. The ACGIH also cites a publication by Poda (1966), who reported that the voluntary adoption of 10 ppm as a limit in two heavy-water plants proved to be a satisfactory limit. Based on this information, the ACGIH recommended 10 ppm as a TLV-TWA and 15 ppm as a TLV-STEL.

In recommending a 10-minute limit of 10 ppm for hydrogen sulfide, NIOSH also cited the Poda (1966) report. In addition, NIOSH relied on many of the same studies cited by the ACGIH (1986) to demonstrate the occurrence of ocular damage and eye irritation at exposure levels below 20 ppm. In discussing the ocular effects of hydrogen sulfide exposure, NIOSH (1977) points out that the effects are predominately acute and, although there are no reports of permanent eye damage, recovery may require several days' absence from work. NIOSH also cites a study done by Flury and Zernik (1931) that reported a case of enduring conjunctivitis in a person exposed to 10 to 15 ppm hydrogen sulfide for 8 hours.

OSHA preliminarily concludes that the current 20-ppm (10-minute) short-term limit and 50-ppm peak limit are inadequate to ensure worker protection against the adverse ocular effects associated with exposure to concentrations of less than 20 ppm hydrogen sulfide, as reported in several studies. OSHA believes that the eye irritation and conjunctivitis associated with such exposures represent a risk to workers, who will be forced to seek medical treatment after exposure and who may also be absent from work. OSHA is proposing to reduce its current limits for hydrogen sulfide to 10 ppm as a TWA and 15 ppm as a STEL. The limit being proposed by OSHA for hydrogen sulfide is a level that has been found to be effective in preventing such effects in the workplace (Poda 1966). Promulgating the proposed limit for hydrogen sulfide will substantially reduce the risk of adverse ocular effects that can occur as a consequence of exposure at the Agency's existing Z table limits. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for hydrogen sulfide if the Agency determines that this limit will substantially reduce significant risk.

METHYL ALCOHOL
CAS: 67-56-1; Chemical Formula: CH_4H
H.S. No. 1253

The OSHA 8-hour TWA limit for methyl alcohol is 200 ppm. The ACGIH has established a 200-ppm TWA and a 250-ppm STEL for methyl alcohol, with a skin notation. NIOSH recommends the same 8-hour limit as the ACGIH, but would supplement the TWA with an 800-ppm rather than a 250-ppm STEL (15-minute ceiling). Methyl alcohol is a widely used industrial solvent whose principal toxic effects are headaches, loss of vision, conjunctivitis, and other adverse effects.

Workers exposed to concentrations of methyl alcohol between 200 and 375 ppm experience severe recurrent headaches, and at levels between 1200 and 8300 ppm, studies by Kingsley and Hirsch (1954; 1955) report that their visual capacity is diminished. The ACGIH recommends the addition of a 250-ppm STEL because it believes that an 8-hour PEL of 200 ppm does not ensure that workers may not be exposed to short-term peaks above the 200 to 375 ppm levels that have been shown to cause severe recurrent headaches in exposed workers.

OSHA believes that observance of the current 200-ppm TWA, supplemented by the proposed STEL of 250 ppm and a skin notation, will eliminate or substantially reduce the risk of severe and recurring headaches and other symptoms potentially associated with industrial exposures to methyl alcohol at such peaks. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

METHYL SILICATE
CAS: 681-84-5; Chemical Formula: $(CH_3O)_4Si$
H.S. No. 1206

Methyl silicate damages the cornea and produces a delayed response. The current Z tables have no limit for methyl silicate. The ACGIH recommends a 1 ppm 8-hour TWA TLV, and NIOSH has no REL for this substance.

In many cases of methyl silicate exposure, the eyes recover completely, but there are reports of damage to the deep layers of the cornea that caused permanent opacification and, in one worker, loss of the vision in one eye (Grant 1986). It is estimated that exposing humans to methyl silicate at concentrations of 200 to 300 ppm for 15 minutes will produce minimal lesions, and that exposure to 1000 ppm for this period will produce injury requiring hospitalization (ACGIH 1986).

Rabbits exposed to 1000 ppm of methyl silicate in dry air experienced delayed eye burns (ACGIH 1986). Exposure of these animals to approximately 15,000 ppm for 5 minutes caused eye burns, but exposure to this level for 4 minutes caused no appreciable effect. Guinea pigs, which are the test animals with the most sensitive eyes, showed maximum no-effect levels of 135 ppm for 15 minutes, 90 ppm for 1 hour, and 20 ppm for eight 1-hour periods. The latency period for ocular changes was 16 hours for serious effects and up to 3 days for mild involvement (ACGIH 1986). The ACGIH applied a safety factor to the NOEL observed in guinea pigs and established a 1-ppm TWA.

OSHA is proposing a 1-ppm 8-hour limit to reduce the risk of potentially severe ocular effects associated with the uncontrolled occupational exposures currently permitted in the workplace. The health evidence forms a reasonable basis for proposing a new limit for methyl silicate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

NAPHTHALENE
CAS: 91-20-3; Chemical Formula: $C_{10}H_8$
H.S. No. 1282

OSHA's current exposure limit for naphthalene is 10 ppm as an 8-hour TWA. The ACGIH has established a 10-ppm 8-hour TWA and a 15-ppm 15-minute STEL for this substance, which occurs as a colorless-to-brown solid and has the odor of mothballs.

The oral LD_{50} in rats is 1760 mg/kg (Flury and Zernik 1931).

In humans, the inhalation of naphthalene vapor causes headache, loss of appetite, and nausea (Flury and Zernik 1931; Patty 1949). These authors also report that exposure causes optical neuritis, corneal damage, and kidney injury. Eight of 21 workers exposed for 5 years to unspecified levels of naphthalene developed opacities of the lens of the eye (Ghetti and Mariani 1956). Ingestion of large amounts of naphthalene causes severe hemolytic anemia and hemoglobinuria (Stokinger and Mountain 1963).

The lethal dose in humans has been reported as 50 mg/kg (NIOSH 1977). Concentrations somewhat above 15 ppm are reported to cause marked eye irritation (Robbins 1951).

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OSHA is proposing an 8-hour TWA of 10 ppm and a 15-minute STEL of 15 ppm for naphthalene. The Agency preliminarily concludes that these limits will protect workers from the risks of eye irritation and serious ocular effects potentially associated with exposure to the levels permitted by an 8-hour limit alone. The health evidence forms a reasonable basis for proposing a new limit for naphthalene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

OSHA believes that adoption of the limits being proposed for this group of chemicals, which have the potential to cause adverse ocular effects ranging from transient discomfort to permanent blindness, will substantially reduce the risk of visual impairment associated with exposure to these substances. The toxicological bases for the proposed limits include evidence derived from occupationally exposed workers, results obtained in animal models that have been shown to be excellent predictors of human responses, and, in a few instances, evidence that a chemical having a similar chemical structure produces serious adverse ocular effects. The risks being protected against have serious consequences, both in terms of the health and functional capacity of the exposed workers themselves and the safety and well-being of these workers and their co-workers.

The available health evidence for the substances described in this section forms a reasonable basis for proposing the revision or addition of these limits. At the time of the final rule, OSHA will promulgate revised or new limits for these substances if the Agency determines that these limits will reduce significant risk.

6. Substances for Which Proposed Limits Are Based on Avoidance of Respiratory Effects

Introduction

Limits are being proposed for a total of 32 substances or materials for which exposure has been shown to cause adverse respiratory effects. The chemicals in this group cause acute pulmonary edema, alveolar damage, or chronic respiratory damage through the general mechanisms of cellular damage or fibrosis. At sufficient doses, these effects can be permanent, disabling, and life-threatening.

Some of the materials in this group are composites of naturally occurring minerals, and for these, the Agency is proposing limits based on the most hazardous component. For several materials (coal dust, crystalline tripoli, silica, and graphite), OSHA proposes that the TWA be measured as the respirable quartz fraction of the dust, because it is exposure to this fraction that presents the greatest risk to exposed workers. In cases where only a portion of the dust is in the form of a respirable dust, OSHA is proposing limits that are to be measured as the respirable fraction rather than as total dust.

Table C6-1 lists the 32 substances in this group, along with the current OSHA PELs, ACGIH TLVs, NIOSH RELs, CAS numbers, and OSHA HS numbers. There is no current OSHA PEL for ten of these substances. For 15 substances, OSHA is proposing to replace its existing TWA-PELs with different TWA-PELs. For one substance, OSHA is proposing to establish a ceiling limit to replace an existing 8-hour TWA, and for three substances, a lower TWA and a new STEL are proposed. In three instances, OSHA is proposing to establish a STEL to augment its current TWA-PELs. NIOSH has recommended limits for 7 substances in this group.

Description of the Health Effects

The respiratory system is a major route of occupational exposure for toxic substances. Because of the vital nature of pulmonary function, respiratory toxicants present a serious health hazard both from acute and chronic exposures. Acute respiratory disease can be life threatening; however, in most cases, such severe effects are associated only with high exposure levels. (One exception to this general rule is exposure to chemicals that can cause allergic sensitization reactions that lead, in turn, to anaphylactic shock; these substances are discussed in a different section of this preamble describing sensitization reactions.)

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C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1017 Aluminum (pyro powders)	7429-90-5	--	5 mg/m^3 TWA	--
1034 Bismuth telluride (Se-doped)	1304-82-1	-	5 mg/m^3 TWA	-
1080 Chlorine dioxide	10049-04-4	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	-
1093 Chromium metal	7440-47-3	1 mg/m^3 TWA	0.5 mg/m^3 TWA	--
1096 Coal dust, < 5% quartz	None	2.4 mg/m^3 TWA[a]	2 mg/m^3 TWA[a]	--
1097 Coal dust, > 5% quartz	None	10 mg/m^3 / % SiO_2+2	0.1 mg/m^3 TWA[b]	--
1161 Ethyl acrylate	140-88-5	25 ppm TWA, Skin	5 ppm TWA 25 ppm STEL, Skin	-
1177 Ferrovanadium dust	12604-58-9	1 mg/m^3 TWA	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA
1190 Grain dust (oat, wheat, barley)	None	-	4 mg/m^3 TWA	--

C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1191 Graphite, natural, respirable < 1% quartz	7782-42-5	15 mppcf TWA	2.5 mg/m^3 TWA	—
1213 Indium & compounds	7440-74-6	—	0.1 mg/m^3 TWA	—
1215 Iron oxide (dust and fume)	1309-37-1	10 mg/m^3 TWA	5 mg/m^3 TWA	—
1272 Methylene bis (4-Cyclohexyliso-cyanate)	5124-30-1	-	0.01 ppm Ceiling	--
1276 Mica	12003-38-2	20 mppcf TWA	3 mg/m^3 TWA	—
1289 Nitrogen dioxide+	10102-44-0	5 ppm Ceiling	3 ppm TWA 5 ppm STEL	1 ppm Ceiling (15 min)
1300 Oxygen difluoride	7783-41-7	0.05 ppm TWA	0.05 ppm Ceiling	--
1301 Ozone	10028-15-6	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	--
1303 Paraquat, respirable dust	4685-14-7	0.5 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA	--

C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1354 Silica, crystalline cristobalite	14464-46-1	1/2 value calculated for quartz	0.05 mg/m^3 TWA	50 ug/m^3 TWA
1355 Silica, crystalline quartz, respirable	14808-60-7	10 mg/m^3 % SiO_2+2	0.1 mg/m^3 TWA	50 ug/m^3 TWA
1356 Silica, crystalline tridymite	15468-32-3	1/2 value calculated for quartz	0.05 mg/m^3 TWA	50 ug/m^3 TWA
1357 Silica, crystalline tripoli (as quartz dust)	1317-95-9	10 mg/m^3 % SiO_2+2	0.1 mg/m^3 TWA	50 ug/m^3 TWA
1358 Silica, fused	60676-86-0	10 mg/m^3 % SiO_2+2	0.1 mg/m^3 TWA	--
1363 Soapstone, total dust	None	20 mppcf TWA	6 mg/m^3 TWA	--
1363A Soapstone, respirable dust	None	20 mppcf TWA	3 mg/m^3 TWA	--
1375 Sulfur dioxide	7446-09-5	5 ppm TWA	2 ppm TWA 5 ppm STEL	0.5 ppm TWA
1378 Sulfur tetrafluoride	7783-60-0	--	0.1 ppm Ceiling	--
1381 Talc (non-asbestiform)	14807-96-6	20 mppcf TWA	2 mg/m^3 TWA	--

C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1395 Tin oxide	18282-10-5	-	2 mg/m^3 TWA	--
1409 Trimellitic anhydride	552-30-7	-	0.005 ppm TWA	--
1430A Wood dust, hard wood	--	-	1 mg/m^3 TWA	--
1430B Wood dust, soft wood	--	-	5 mg/m^3 TWA	--
			10 mg/m^3 STEL	--

[a] For coal dust, respirable fraction less than 5 percent SiO_2.

[b] For coal dust, respirable fraction more than 5 percent SiO_2.

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ Proposed limit is the NIOSH REL.

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Chronic pulmonary disease can result from long-term exposure to respiratory toxicants and is potentially crippling because it greatly reduces the quality of life and the productivity of its victims. In addition, the onset of respiratory disease can be insidious, because it may be indicated only by the gradual development of a few nonspecific signs (Petersdorf et al. 1983).

The difficulties of detecting irreversible respiratory effects complicate the prevention of pulmonary disease. Pulmonary function can be evaluated with a variety of tests, including measurements of the vital capacity and of the resting and forced expiratory volumes. However, certain conditions, including emphysema and fibrosis, are difficult to diagnose even with such tests. In addition, these same diseases often continue to progress even after the affected individual has recognized the problem and obtained medical assistance. Furthermore, these diseases may continue to progress even after exposure has ceased, which makes prevention even more vital.

In addition to the threat posed to the general occupational population by respiratory toxins, certain subpopulations, such as persons with impaired lung function caused by asthma, bronchitis, emphysema, and pulmonary fibrosis, are at special risk from the adverse effects of respiratory toxins. Tobacco smoking can cause or aggravate all of the respiratory conditions discussed above and can interact additively or synergistically with respiratory toxins to increase their adverse effects on the pulmonary system. For example, tobacco smoking acts additively with coal dust to diminish pulmonary function. Because tobacco smoke contains nitrogen oxides, cadmium, and ammonia, occupationally exposed workers who smoke have an additional source of exposure to these respiratory toxins (U.S. HEW 1979).

Two general categories of lung injuries are relevant to the group of substances under consideration:

- Damage to cells lining the airways, which results in necrosis (localized areas of dead cells), increased permeability, and edema.
- Production of fibrosis, which may become massive and greatly reduce lung capacity.

Cellular damage resulting in edema and emphysema. A number of substances cause damage to cells lining the airways. This can result in increased permeability of cell membranes and subsequent edema, hemorrhage, and localized necrosis (areas of dead cells). Chronic inhalation of certain chemicals causes destruction of the alveolar septa and results in emphysema. Cellular damage may be either localized or diffuse, depending on the distribution of the toxicant in the lung.

Edema is the release of fluid into the lumen (open spaces of the airways) or alveoli. Serious edema can take several hours to develop so that, in some cases, life-threatening or even fatal exposures can take place without the individual's being aware at the time of exposure of the extent of the damage. Ozone, nitrogen dioxide, and paraquat all cause localized cellular damage leading to edema (Klaassen et al. 1986). Fatalities from pulmonary edema have resulted from exposures to concentrations of nitrogen dioxide of about 200 ppm (Sax 1984). Paraquat is unusual in that it can cause delayed pulmonary damage following exposure, even when exposure occurs via routes other than inhalation (Klaassen et al. 1986).

Necrotic changes can reduce the functional surface area of the lung. One type of lesion often noted in persons exposed to respiratory toxins is benign granulomas, which are localized masses formed when the immune system attempts to sequester a foreign object. Depending on the extent of the damage, these masses may reduce the functional capacity of the lung. Exposure to selenium-doped bismuth telluride has been associated with the production of benign granulomas without fibrosis (Wagner et al. 1974).

Emphysema is caused by a gradual destruction of the cells of the alveolar septa, which causes a loss of elasticity in the lung. A slight degree of emphysema is present in much of the adult population and does not cause any functional impairment. As the disease progresses, however, serious and life-threatening reductions in functional capacity can occur. Once the disease has advanced to the point of serious functional impairment, it is, for the most part, irreversible (Petersdorf et al. 1983). There is evidence that a number of the substances in this group cause emphysema, including sulfur tetrafluoride (ACGIH 1986), ozone, and nitrogen dioxide (Klaassen et al. 1986).

Fibrotic changes. Pulmonary fibrosis was one of the earliest recognized forms of occupational disease. Fibrosis should be distinguished from pneumoconiosis, although these terms are often used interchangeably. Pneumoconiosis is a more general term indicating the presence of a foreign substance in the lung, as determined by radiographic (X-ray) analysis. This definition encompasses a variety of conditions and does not by itself necessarily indicate functional damage (Petersdorf et al. 1983). In contrast, fibrosis is a seriously debilitating disease. One type of fibrosis is interstitial fibrosis, which is a kind of pneumoconiosis characterized by deposition of fibrous tissue in the interstitial spaces between the alveolar membrane and the pulmonary capillary membrane. Interstitial fibrosis greatly reduces the diffusing capacity of the lung and thus causes oxygen deprivation in the body (Guyton 1981). Like emphysema, fibrosis is largely irreversible; it sometimes progresses even in the absence of further exposure (Petersdorf et al. 1983).

Silicosis is a form of interstitial fibrosis that is caused by exposure to respirable silica particles (Klaassen et al. 1986). Exposure to coal dust causes a pneumoconiosis with fibrosis that can be severely debilitating (Petersdorf et al. 1983). In addition, exposure to graphite, mica, and grain dust have all been associated with fibrosis in workers (ACGIH 1986).

Dose-Response Relationships and Respiratory Effects

For most of the substances in this group, permissible exposure limits have been based on health surveys and case reports of occupationally exposed populations. In some cases, animal studies provide the evidence of a substance's toxicity. As is the case for most of the substances for which OSHA is proposing new, reduced, or revised limits, the dose-response curve for respiratory irritants tends to be S-shaped.

Table C6-2 presents dose-response data on the adverse pulmonary effects of representative chemicals in this group, the populations exposed, and the endpoints observed. The following discussions of respiratory toxins present OSHA's preliminary findings for all the substances on Table C6-1 and describe the nature of the risks faced by workers exposed to them.

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TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***	Dose-Response Data		
					Dose/Duration Associated With Observed Effects	Species	Comments
1034 Bismuth telluride (Se-Doped)	1304-82-1		5 mg/m^3 TWA	-	15 mg/m^3 1 year	Dogs Rats Rabbits	Granulomatous lesions in lungs seen after 6 months of exposure.
1096 Coal Dust, < 5% quartz	None	2.4 mg/m^3 TWA	2 mg/m^3 TWA	-	4 mg/m^3 35 years	Humans	Calculated estimate of 10 percent probability of developing pneumoconiosis with fibrosis after 35 years of exposure to coal dust. (Quartz content not identified.)
1097 Coal Dust, > 5% quartz	None	10 mg/m^3 % SiO_2+2	0.1 mg/m^3 TWA	-			
1190 Grain Dust (oat, wheat, barley)	None		4 mg/m^3 TWA	-	20 mg/m^3	Humans	Chronic bronchitis, shortness of breath, reduced pulmonary function.
					13.9 mg/m^3	Humans	Increased incidence of respiratory symptoms.
					4 mg/m^3	Humans	No increased incidence of respiratory symptoms.
						Humans	Fibrosis and mottling, pneumoconiosis.
1191 Graphite, natural, respirable	7782-42-5	15 mppcf TWA	2.5 mg/m^3 TWA	-	N/A	Humans	Anthracosilicosis, similar to that seen in coal miners.

N/A = Not available.

TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***	Dose-Response Data: Dose/Duration Associated With Observed Effects	Species	Comments
1213 Indium & compounds	7440-74-6	-	0.1 mg/m^3 TWA	-	24-97 mg/m^3	Rats	Widespread alveolar edema following exposure to In_2O_2.
1276 Mica[1]	12003-38-2	20 mppcf TWA	3 mg/m^3 TWA	-	N/A	Humans	Signs and symptoms resembling silicosis and pneumoconiosis in 8 of 57 workers.
1289 Nitrogen dioxide*	10102-44-0	5 ppm Ceiling	3 ppm TWA 5 ppm STEL	1 ppm ceiling (15 min)	N/A	Humans	Fatal pulmonary edema.
					0.4-2.7 ppm Chronic	Humans	Change in pulmonary vital capacity.
1300 Oxygen difluoride	7783-41-7	0.05 ppm TWA	0.05 ppm Ceiling	-	0.5 ppm two 7-hr exposures	Lab. Animals	Lethal to a wide variety of laboratory species, causing pulmonary edema and hemorrhage after several hours of exposure.
1301 Ozone	10028-15-6	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL		1.5 ppm 3 hrs/day	Humans	Significant reduction in pulmonary vital capacity.
					1 ppm 1 day	Mice	Damage to alveolar tissue.
1303 Paraquat, respirable dust	4685-14-7	0.5 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA	-	N/A	Humans	69 accidental deaths from pulmonary injury reported through 1972.

[1]Measured as total dust.

TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***	Dose-Response Data: Dose/Duration Associated With Observed Effects	Species	Comments
1354 Silica, crystalline Cristobalite	14464-46-1	1/2 value for quartz	0.05 mg/m^3 TWA	50 ug/m^3 TWA	0.5 mg/m^3 (as total dust) 2.5 years	Dogs	Cellular infiltration of lung and fibrotic nodules in pulmonary lymph nodes.
1355 Silica, crystalline quartz, respirable	14808-60-7	$\frac{10 \text{ mg/m}^3}{\% \text{ SiO}_2+2}$	0.1 mg/m^3 TWA	50 ug/m^3 TWA	0.1 mg/m^3 chronic	Humans	Accelerated loss of pulmonary function over effects of aging alone.
1356 Silica, crystalline Tridymite	15468-32-3	1/2 value for quartz	0.05 mg/m^3 TWA	50 ug/m^3 TWA	N/A	Rats	Most active form of free silica when administered by intratracheal injections.
1357 Silica, crystalline Tripoli (as quartz dust)	1317-95-9	$\frac{10 \text{ mg/m}^3}{\% \text{ SiO}_2+2}$	0.1 mg/m^3 TWA	50 ug/m^3 TWA	N/A	Lab. Animals	Progressive nodular fibrosis.
1375 Sulfur dioxide	7446-09-5	5 ppm TWA	2 ppm TWA 5 ppm STEL	0.5 ppm TWA	1 ppm	Humans	Accelerated loss of pulmonary function predicted based on data in smelter workers.

TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***	Dose-Response Data: Dose/Duration Associated With Observed Effects	Species	Comments
1378 Sulfur tetrafluoride	7783-60-0	—	0.1 ppm Ceiling	-	4 ppm 4 hrs/day/ 10 days	Rats	Emphysema, marked clinical signs of respiratory impairment.
1409 Trimellitic anhydride	552-30-7	-	0.005 ppm TWA	—		Rats	Intra-alveolar hemorrhage. (No exposure duration indicated.)

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

* Proposed limit is the NIOSH REL.

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ALUMINUM (PYRO POWDERS)
CAS: 7429-90-5; Chemical Formula: Al
H.S. No. 1017

OSHA currently has no permissible exposure limits for aluminum pyro powders. The ACGIH recommends an 8-hour TLV–TWA of 5 mg/m³.

Aluminum pyro powders have a higher reported toxicity than aluminum metal dusts (Stokinger 1981). Several British studies have examined the effects of this finely flaked aluminum on workers in paints and pyrotechnics plants. Their findings revealed that pulmonary fibrosis may result from exposure to pyro powders, although epidemiologic evidence indicated that additives used to prevent oxidation and agglomeration may have contributed to the incidence and nature of the disease (Edling 1961; Jordan 1961; Mitchell 1961). The ACGIH observes that exposures that have previously caused lung changes in workers are presumed to have been extremely high (ACGIH 1986, p. 22).

OSHA preliminarily concludes that the proposed permissible exposure limit of 5 mg/m³ TWA for aluminum pyro powders will prevent the occurrence of lung changes in exposed workers. The health evidence forms a reasonable basis for proposing a new limit for aluminum pyro powders. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BISMUTH TELLURIDE (DOPED)
CAS: 1304-82-1; Chemical Formula: Bi_2Te_3
H.S. No. 1034

OSHA has no current limit for doped bismuth telluride. The ACGIH recommends a TLV–TWA of 5 mg/m³ for Bi_2Te_3 that has been doped with selenium sulfide. Bismuth telluride appears as gray, hexagonal platelets; it is also available as ingots or single crystals.

Wagner and co-workers conducted a 1-year study in which rabbits, dogs, and rats were exposed 6 hours/day, 5 days/week to doped bismuth telluride dust (containing 80.04 mol % Bi_2Te_3 and 0.20 mol % SnTe, plus a small stoichiometric excess of Te) of 1.04 um particle diameter at a mean concentration of 15 mg/m³. Small, granulomatous lesions without fibrosis appeared in the lungs of dogs at 6 months. In dogs that were sacrificed 4 months after an 8-month exposure, the lesions had regressed, and the affected lymph nodes were without cellular reaction. Rabbits exhibited similar histologic effects, but with decreased numbers of pulmonary macrophages, no fibrous tissue proliferation, and no cellular or fibrous tissues reaction around the dust deposits in the lymph nodes. The rats showed fewer granulomas but some areas of epithelialization of the alveolar walls. As was true for the other species, the rats showed neither fibrosis nor cellular reaction in the lymph nodes, despite accumulation of the intermetallic dust (Wagner, Madden, Zimber et al. 1974).

A PEL of 5 mg/m³ TWA is proposed for Se-doped bismuth telluride to prevent the occurrence of pulmonary lesions seen in experimental animals. OSHA believes this limit will reduce the risk of these pulmonary effects. The health evidence forms a reasonable basis for proposing a new limit for doped bismuth telluride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CHLORINE DIOXIDE
CAS: 10049-04-4; Chemical Formula: ClO_2
H.S. No. 1060

OSHA currently has an 8-hour TWA limit of 0.1 ppm for chlorine dioxide. The ACGIH recommends the same time-weighted average and a 15-minute STEL of 0.3 ppm. Chlorine dioxide is a red-yellow gas at ordinary temperatures.

Rats exposed to 0.1-ppm concentrations of chlorine dioxide for 10 weeks at 5 hours daily showed no adverse effects from exposures. Other data in animals are not available (Dalhamn 1957).

Data on human exposures indicate that marked irritation occurs on inhalation of 5 ppm (no time specified) and that one death occurred at 19 ppm (Elkins 1959). Repeated exposures in an exposed individual have been linked to bronchitis and pronounced emphysema (Petry 1954). Clinical studies conducted by Gloemme and Lundgren (1957) revealed that the majority of workers who had been exposed for 5 years to average concentrations of chlorine dioxide below 0.1 ppm, in combination with about 1.0 ppm chlorine, experienced eye and respiratory irritation and slight bronchitis. Some gastrointestinal irritation was also observed in these workers. Gloemme and Lundgren (1957) attributed all of these effects to elevated short-term exposures involving excursions above the 0.1 ppm level. Ferris et al. (1964) have shown that concentrations occasionally ranging as high as 0.25 ppm were associated with respiratory effects in workers concomitantly exposed to chlorine.

OSHA proposes a 0.1-ppm 8-hour TWA and a 15-minute STEL of 0.3 ppm for chlorine dioxide. The Agency preliminarily concludes that both of these limits are necessary to protect exposed workers against the risk of respiratory, skin, and eye irritation known to occur as a result of short-term exposures above the TWA of 0.1 ppm. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for chlorine dioxide if the Agency determines that this limit will substantially reduce significant risk.

CHROMIUM, METAL
CAS: 7440-47-3
H.S. No. 1093

OSHA currently has an 8-hour TWA of 1 mg/m³ for chromium metal. The ACGIH has established an 8-hour TWA of 0.5 mg/m³ for this element. NIOSH has no REL for the elemental form of chromium. Chromium is a steel-grey metal.

The ACGIH (1986, p. 139) reports that exposure to chromium metal does not cause pulmonary fibrosis or pneumoconiosis. The ACGIH has established the 0.5-mg/m³ TLV–TWA for this metal on the basis of its low order of toxicity (ACGIH 1986, p. 139), and states that this limit "should be adequate to prevent pulmonary disease or other toxic effects."

OSHA is proposing an 8-hour TWA limit of 0.5 mg/m³ for chromium metal. The Agency preliminarily concludes that this limit will protect against the risk of pulmonary or other toxic effects potentially associated with exposure to chromium. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for chromium metal if the Agency determines that this limit will substantially reduce significant risk.

COAL DUST, <5% QUARTZ
COAL DUST, >5% QUARTZ
CAS: None; Chemical Formula: None
H.S. Nos. 1096 and 1097

OSHA has a current formula limit of 10 mg/m³/% SiO_2+2 for coal dust containing a respirable quartz fraction greater than 5 percent, and a 2.4-mg/m³ limit for coal dust containing a respirable quartz fraction of less than 5 percent. The ACGIH recommends a TLV–TWA of 0.1 mg/m³ for the respirable quartz fraction of coal dust containing more than 5 percent quartz, and 2 mg/m³ for the respirable dust fraction of coal dust containing less than 5 percent quartz. Coal is a natural dark brown to black-colored solid formed from fossilized plants.

The National Coal Board of the United Kingdom has calculated the probabilities of developing pneumoconiosis from various concentrations of coal dust, based on statistical data from the first 10 years of an epidemiologic study (1969). The study involved 4,122 men from 20 coal pits, for whom radiologists compared pairs of chest X-rays taken at 10-year intervals. The radiologists classified the degree of pneumoconiosis observed in the X-rays in accordance with the International Labour Office's (ILO) pneumoconiosis classification scheme. For each of the 20 collieries, data concerning mean respirable dust concentrations at the coal face were analyzed. Mean coal, carbon, and quartz content of the dust from each of the collieries were also analyzed. Results indicated that the progression of pneumoconiosis correlates significantly with mean respirable dust concentrations and with the respirable quartz fraction of that dust. The carbon content of the dust did not correlate with the development of pneumoconiosis. Estimates of the risk of developing ILO category 2 or greater pneumoconiosis after a 35-year exposure to coal dust containing a respirable quartz fraction of greater than 5 percent quartz were projected to be a 10-percent probability of disease at a concentration of 6.5 mg/m³, and a zero probability at a concentration of 2.2 mg/m³. For exposures to coal dust containing a respirable quartz fraction of less than 5 percent quartz, a 10-percent probability of developing ILO category 1 or greater disease was projected at a concentration of 4 mg/m³, and a zero probability of disease was projected at 1.6 mg/m³. In 1979, Gormley confirmed these calculations, but reduced the concentration of dust containing more than 5 percent respirable quartz associated with a zero probability of developing pneumoconiosis to 1 mg/m³ (ACGIH 1986, p. 142).

OSHA proposes an 8-hour TWA PEL of 0.1 mg/m³, measured as respirable silica, for coal dust with a respirable quartz fraction containing more than 5 percent quartz, and an 8-hour TWA PEL of 2 mg/m³ TWA for coal dust with a respirable quartz fraction containing less than 5 percent quartz. The Agency's current formula limit is similar to the 0.1 mg/m³ limit and, thus, does not represent a change in the limit (see discussion for crystalline silica-quartz below). OSHA is proposing to revise its formula limit for coal dust containing more than 5 percent quartz to 0.1 mg/m³ to simplify employee exposure monitoring. OSHA also concludes that the reduction in the 8-hour TWA PEL for coal dust containing less than 5 percent quartz will protect exposed workers from the risk of pneumoconiosis at the existing limit for coal dust with this quartz content. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for coal dust if the Agency determines that this limit will substantially reduce significant risk.

ETHYL ACRYLATE
CAS: 140-88-5; Chemical Formula: $CH_2=CHCOOC_2H_5$
H.S. No. 1101

OSHA has a current 8-hour TWA of 25 ppm for ethyl acrylate, with a skin notation. The ACGIH recommends a TLV–TWA of 5 ppm and a TLV–STEL of 15 ppm for ethyl acrylate, which is a colorless liquid. The ACGIH also recommends a skin notation for this substance.

Ethyl acrylate produces irritation of the skin, eyes, mucous membranes, gastrointestinal tract, and respiratory system (Dreisbach 1974). The oral LD_{50} in rats fed this substance is 1020 mg/kg and the 4-hour inhalation LC_{50} for these animals ranges between 1000 ppm and 2000 ppm. In rabbits, the dermal LD_{50} is 1790 mg/kg (Pozzani et al. 1949), and the minimum oral LD_{50} is 280 to 420 mg/kg (Treon et al. 1949). Animal studies also indicate that severe chronic effects may result from exposure to this substance. Rats exposed to levels of 70, 300, or 540 ppm of ethyl acrylate for up to 30 days showed accelerated mortality and pathologic changes in the lungs, liver, and kidneys. In those animals that developed pneumonia, renal and hepatic lesions were also seen. In a parallel study, rats, rabbits and guinea pigs who were subjected to ethyl acrylate concentrations in excess of 75 ppm for fifty, 7-hour inhalation periods exhibited pulmonary edema, degenerative changes in the heart, liver, and kidneys, and death (Treon et al. 1949). Miller et al. (1980) reported that rats and mice exposed to 75 or 225 ppm, 6 hours per day for 30 days, developed nasal lesions and other degenerative inflammatory changes in the nasal structure. In other studies, rats and mice administered 100 or 200 mg/kg ethyl acrylate by gavage 5 times per week for 103 weeks developed inflammation and hyperplasia of the forestomach, in addition to squamous cell carcinomas and papillomas in the same area (NTP 1983, as cited in ACGIH 1986, p. 240). Based on a study by Miller et al. (1985) in which rats and mice exposed to 25 or 75 ppm ethyl acrylate for 6 hours per day, 5 days per week for 27 months developed lesions in the nasal cavity even at the lowest dose, the ACGIH (1986, p. 240) concurs with the American Industrial Hygiene Association (1986) that a 25-ppm limit for ethyl acrylate is too high to prevent irritating effects in exposed humans.

In a study by Nemec and Bauer (1976), human volunteers experienced drowsiness, headache, and nausea after prolonged inhalation exposures at 50 to 75 ppm. Opdyke (1975) reported that the application of a 4-percent concentration of ethyl acrylate produced skin sensitization reactions in 10 out of 24 volunteers.

OSHA is proposing an 8-hour TWA of 5 ppm, a 15-minute STEL, and a skin notation, for ethyl acrylate. The Agency preliminarily concludes that these limits will protect workers from the risk of severe nasal irritation and eye and skin irritation associated with exposure to this substance at the level permitted by OSHA's current limit. The skin notation is necessary to protect against skin sensitization and skin absorption. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethyl acrylate if the Agency determines that this limit will substantially reduce significant risk.

FERROVANADIUM DUST
CAS: 12604-58-9; Chemical Formula: FeV
H.S. No. 1177

OSHA currently has a limit of 1 mg/m³ for ferrovanadium dust. The ACGIH recommends a TLV–TWA limit of 1 mg/m³ with a TLV–STEL of 3 mg/m³. The NIOSH-recommended exposure limit for metallic vanadium is 1 mg/m³ as a 10-hour TWA. Ferrovanadium dust exists as dark, odorless, solid particles.

Soviet studies in animals showed ferrovanadium dust to be less toxic than vanadium pentoxide. Roshchin (1952) reported that no acute intoxication occurred in animals exposed to ferrovanadium dust at concentrations as high as 10,000 mg/m³, serious chronic pulmonary changes were observed after short-term exposures (one hour) on alternate days for two months to concentrations in the 1000- to 2000-mg/m³ range. These pulmonary changes consisted of chronic bronchitis and chronic lung inflammation.

OSHA proposes a PEL of 1 mg/m³ TWA and a STEL of 3 mg/m³ for ferrovanadium dust, in order to reduce the risk of chronic pulmonary damage potentially associated with exposures to this substance at the elevated short-term levels permitted by the TWA limit alone. The Agency preliminarily concludes that the proposed TWA and STEL will substantially reduce this risk. The health evidence forms a reasonable

basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ferrovanadium dust if the Agency determines that this limit will substantially reduce significant risk.

GRAIN DUST (OAT, WHEAT, AND BARLEY)
CAS: None; Chemical Formula: None
H.S. No. 1199

A judicial decision has held that there is no OSHA exposure limit for grain dust, and NIOSH also has no REL for this substance. The ACGIH has recommended that worker exposure to grain dust (oat, wheat, and barley) not exceed 4 mg/m³ as total dust.

Exposure to grain dust was reported to result in radiographic changes consistent with pneumoconiosis and fibrosis in 11 of 57 workers handling grain. No exposure information was available (Dunner et al. 1946). Chronic bronchitis was reported in an epidemiologic investigation of workers exposed to concentrations of oat dust ranging from 214 mg/m³ to 308 mg/m³ and of wheat dust ranging from 20.2 to 4.08 mg/m³ (Williams et al. 1964). In a third study by Rankin and do Pico (1980), respirable grain dust concentrations of 20 mg/m³ caused pre- to post-workshift changes of more than 20 percent in the forced expiratory volumes of exposed individuals, indicating reduced lung function. In contrast, lung function changes were infrequent among workers exposed to total grain dust concentrations below 15 mg/m³ (Rankin and do Pico 1980). These same authors reported that grain fever occurred among volunteers exposed to 15 mg/m³ of grain dust for 1 to 3 hours. They also reported a higher incidence of respiratory symptoms among workers exposed to 13.9 mg/m³ TWA. However, acute bronchial symptoms did not appear among workers exposed at or below 4 mg/m³. Although dose response data for grain dusts other than wheat are not available' two recent studies (Darke et al. 1976; Cockcroft et al. 1983) have demonstrated the appropriateness of applying the same PEL to all three of these grain dusts. The work of these authors showed that exposure to any of these dusts produced the same type and degree of respiratory distress.

Based on the observed no-effect level reported by Rankin and do Pico (1980), OSHA is proposing an 8-hour TWA of 4 mg/m³ for grain dust. OSHA preliminarily finds that this PEL for grain dust will greatly reduce the risk of chronic bronchitis, reduced pulmonary function, grain fever, and respiratory symptoms currently faced by workers exposed at uncontrolled levels. The health evidence forms a reasonable basis for proposing a new limit for grain dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

GRAPHITE, NATURAL
CAS: 7782-42-5; Chemical Formula: None
H.S. No. 1197

The current OSHA limit for natural graphite (total dust) is 15 million particles per cubic foot (mppcf), which is equivalent to 2.5 mg/m³ as respirable dust (assuming that respirable mass is one-half total particle mass). The ACGIH has recommended a graphite TLV of 2.5 mg/m³ for respirable dust containing less than 1 percent quartz. Graphite is a mineral substance that is best known for its use as the "lead" in pencils.

Early reports established that graphite deposited in the lungs of occupationally exposed workers caused pneumoconiosis (Koopman 1924). Subsequent research described the condition produced by exposure to graphite as anthracosilicosis, a pulmonary condition similar to that seen in coal miners, based on radiographic and histologic examinations in exposed individuals (Harding and Oliver 1949). The fibrotic changes seen in graphite workers appear to be related to the silica content of the graphite; experimental animals that were administered graphite that did not contain silica did not develop fibrotic changes (Ray et al. 1951), while another study found that graphite containing only a small amount of silica produced fibrotic changes in exposed animals (Ottowicz and Paradowski 1981). Radiologic changes were also observed among graphite mine and production workers exposed to graphite containing from 3.6 to 10 percent silica (Pendergass et al. 1967).

Although the role of silica in the development of pneumoconiosis among graphite workers remains unclear, OSHA preliminarily concludes that the current limit of 15 mppcf (2.5 mg/m³ for the respirable fraction of graphite containing less than 1 percent quartz) will protect employees from pneumoconiosis that may develop from exposure to graphite, whether silica-containing or not. However, OSHA is proposing to revise its limit to 2.5 mg/m³ as respirable dust to simplify the monitoring of employee exposures, because the use of impingers and microscopic analyses are not required to measure exposures that are expressed in mg/m³ rather than mppcf.

INDIUM AND COMPOUNDS
CAS: 7440-74-6; Chemical Formula: In
H.S. No. 1213

There is no current OSHA limit for indium and compounds, and NIOSH does not have a REL for these substances. The ACGIH has recommended that exposures to indium not exceed 0.1 mg/m³ as an 8-hour TWA.

Although there is no direct human evidence of the effects of indium compounds, severe effects have been produced by indium exposures in experimental animals. Rats that inhaled the sesquioxide form of indium at airborne concentrations ranging from 24 to 97 mg/m³ daily for a total of 224 hours developed widespread alveolar edema; these histologic lesions did not change after a 12-week post-exposure period. Exposure of animals to indium reduces alveolar clearance and may be associated with chronic respiratory insufficiency, recurrent acute pneumonitis, and death.

Because of the severity of indium-induced injury and the persistence of such injuries, OSHA preliminarily concludes that, in the absence of an exposure limit, exposed employees are placed at risk of developing chronic lung function impairment. The health evidence forms a reasonable basis for proposing a new limit for indium and compounds. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

IRON OXIDE (DUST AND FUME)
CAS: 1309-37-1; CHEMICAL FORMULA: Fe_2O_3
H.S. No. 1215

OSHA currently has an 8-hour TWA limit of 10 mg/m³ for iron oxide fume. The ACGIH has established a limit of 5 mg/m³, measured as iron, total particulate. The appearance of iron oxide depends on the shape and size of the particles and the amount of combined water (Merck Index 1983, p. 579). The fume of iron oxide is red-brown in color.

Animals exposed to iron oxide or to iron oxide mixed with less than 5 percent silica by inhalation or by intratracheal injection did not develop pulmonary fibrosis (Naeslund 1940; Harding, Grout, Durkan et al. 1950). Inhalation of iron oxide dust did not produce lung cancer in mice (Muller and Erhardt 1956).

The evidence in humans is conflicting. Drinker, Warren, and Page (1935) concluded that exposures to iron oxide fume should be maintained below 10 mg/m³, and a U.S. Department of Labor study (1941) found that exposures below 30 mg/m³ were without adverse effect.

There are several studies, on the other hand, that report chest X-ray abnormalities in miners, welders, silver polishers, electrolytic iron oxide workers, foundry workers, and boiler scalers (Doig and McLaughlin 1936; Stewart and Faulds 1934; Doig and McLaughlin 1948; McLaughlin, Grout, Barries, and Harding 1945; Davidson, as cited in ACGIH 1986, p. 325; Prendergass and Leopold 1945; Dunner and Herman 1944) exposed to iron oxide dust or fume. However, the exposures of many of these workers were mixed and included exposure to varying amounts of silica; some of these workers developed disabling penumoconiosis.

McLaughlin (1951), whose opinion on the subject is widely accepted, found that the presence of iron oxide dust or fume in the lung caused a pigmentation (termed siderosis) that was responsible for the changes seen in exposed individuals' chest X-rays. Siderosis is believed not to progress to fibrosis (Fawcitt 1943; Fleischer, Nelson, and Drinker 1945; Hamlin and Weber 1950).

It is believed that 6 to 10 years of exposure to about 15 mg/m³ of iron oxide is needed before siderosis develops (Fawcitt 1943; Fleischer, Nelson, and Drinker 1945; Hamlin and Weber 1950), although no studies are available to correlate exposure levels with X-ray changes.

Some studies have shown that workers with exposures to iron oxide and such other substances as silica, radon gas, diesel exhaust, core oils, and the thermal decomposition products of synthetic resins (Faulds 1957; Dreyfus 1936; Bidstrup 1959; Boyd, Doll, Faulds, and Leiper 1970; Braun, Guillorm, Pierson, and Sadoul 1980; Monlibert and Roubille 1980; Jorgensen 1973; Muller and Erhardt 1956; Kosela, Heraberg, Karava et al. 1976; Gibson, Martin, and Lockington 1978) have a greater risk of developing lung cancer.

The ACGIH states that, "at this time, it is not generally accepted that exposure to iron oxide dust or fume causes cancer in man" (1986, p. 325). A review of the world literature by Stokinger (1984) concluded that exposure to iron oxide *per se* was not carcinogenic.

OSHA is proposing an 8-hour TWA of 5 mg/m³ for iron oxide dust and fume, measured as total particulate (Fe). The Agency preliminarily concludes that this limit will protect workers from the risk of siderosis and its accompanying generalized pulmonary densities associated with exposure at the existing PEL. The Agency believes that this limit will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for iron oxide if the Agency determines that this limit will substantially reduce significant risk.

METHYLENE BIS-(4-CYCLOHEXYLISOCYANATE)
CAS: 5124-30-1; Chemical Formula: $C_{15}H_{22}N_2O_2$
H.S. No. 1272

OSHA has no current limit for methylene bis-(4-cyclohexylisocyanate). The ACGIH recommends a TLV ceiling of 0.01 ppm for this alicyclic diisocyanate compound.

Methylene bis-(4-cyclohexylisocyanate) is a pulmonary, skin, and eye irritant. The oral LD_{50} in rats is 9.9 g/kg. A 5-percent solution applied to the skin of guinea pigs produced strong erythema and edema, and rabbits treated with 0.1 mg showed severe skin reactions (Younger Laboratories 1965, as cited in ACGIH 1986, p. 392).

Rats inhaling a lethal concentration of 20 ppm for 5 hours exhibited marked respiratory irritation, tremors, and convulsions during exposure, and their lungs revealed severe congestion and edema after death (E.I. du Pont de Nemours and Company 1976, as cited in ACGIH 1986, p. 392). Repeated inhalation exposure at 0.4 ppm produced initial weight loss in rats; exposure at 1.2 ppm caused respiratory irritation and decreased growth (E.I. du Pont de Nemours and Company 1976). Guinea pigs exposed to 0.12 ppm and mice exposed to 0.65 ppm did not exhibit dermal sensitivity (Stadler and Karol 1984). Unlike toluene diisocyanate, which is a sensory irritant, methylene bis-(4-cyclohexylisocyanate) depresses respiration by producing pulmonary irritation, e.g., an exposed mouse showed a 50-percent decrease in respiration rate, along with lung irritation, when exposed to 3.7 ppm of this substance (weyel and Schaffer 1985).

Human exposures to this compound have resulted in skin sensitization but only infrequently in pulmonary sensitization (Emmett 1976; Israeli et al. 1981).

OSHA is proposing a ceiling limit of 0.01 ppm for methylene bis-(4-cyclohexylisocyanate). The Agency preliminarily concludes that this limit will protect workers against the risk of eye, skin, and pulmonary irritation potentially associated with occupational exposures to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methylene bis-(4-cyclohexylisocyanate). At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MICA
CAS: 12001-26-2; Chemical Formula: $K_2Al_4(Al_2Si_6O_{20})(OH)_4$
H.S. No. 1276

OSHA currently has a PEL of 20 mppcf TWA for mica containing less than 1 percent crystalline silica; this limit is equivalent to a 3-mg/m³ limit. The ACGIH recommends a limit of 3 mg/m³ TWA for the respirable dust of mica containing less than 1 percent quartz. Mica is a colorless, odorless, nonflammable, nonfibrous, water-insoluble silicate occurring in plate form and containing less than 1 percent quartz; it includes nine different species.

OSHA proposes an 8-hour TWA limit of 3 mg/m³ for respirable mica dust containing less than 1 percent quartz; this limit corresponds to the existing 20 mppcf PEL and is in keeping with the Agency's decision to delete mppcf values in favor of respirable dust values expressed in mg/m³. The Agency is proposing to express this and other similar limits as mg/m³ to facilitate employee exposure monitoring.

NITROGEN DIOXIDE
CAS: 10102-44-0; Chemical Formula: NO_2
H.S. No. 1289

Both the ACGIH and NIOSH have recommended occupational limits for nitrogen dioxide. The current ACGIH recommendation is for a 3-ppm TWA and a 5-ppm STEL. The NIOSH REL is 1 ppm as a 15-minute short-term limit. OSHA's current PEL is 5 ppm as a ceiling value.

The previous ACGIH TLV of 5 ppm as a ceiling concentration (the basis for the current OSHA limit) was based primarily on the animal studies of Gray et al. (1952 1954) and Wagner et al. (1965). Gray et al. (1952 1954) demonstrated lung injury among rats exposed for 8 or more weeks to an 8 ppm concentration of a mixture of NO_2 and nitric acid, but these authors did not see such lesions in rats exposed for 6 months to 4 ppm concentrations of this mixture. Wagner et al. (1965) reported transient, mild acute effects and no adverse chronic effects in rats exposed to 1 ppm, 5 ppm, or 25 ppm pure NO_2 for 18 months. The ACGIH's recommendation that the 5 ppm TLV be defined as a ceiling rather than an 8-hour TWA was based on reports that NO_2 accelerated lung tumor development among lung-tumor susceptible mice; in the late 1960s, the ACGIH believed that a TLV-ceiling

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value would minimize the risk of accelerating lung tumor development.

The current ACGIH TLVs for NO_2 of a 3-ppm 8-hour TWA and a 5-ppm STEL are based on human studies that indicate that normal respiratory function may be compromised at exposures below the current OSHA ceiling limit of 5 ppm NO_2. In particular, Kosmider et al. (1972) reported a slight reduction in vital capacity and maximum respiratory volume in 70 men exposed to 0.4- to 2.7-ppm concentrations of the oxides of nitrogen 6 to 8 hours daily for 4 to 6 years. These authors also reported an unspecified number of cases of chronic bronchitis among men in this group. Another study by Vigdortschik et al. (1937) reported possible cases of chronic bronchitis and emphysema among 127 workers generally exposed below 2.8 ppm NO_2; these workers were also believed to be exposed to sulfuric acid mist at levels sufficient to cause dental erosion.

The NIOSH REL for NO_2 of 1 ppm as a 15-minute STEL is based on the two human studies discussed above, as well as some human studies involving short-term exposure. Abe (1967) found a 40-percent decrease in effective lung compliance among healthy adult males 30 minutes after a 10-minute exposure to 4- to 5-ppm NO_2. Expiratory and inspiratory maximum viscous resistance also increased after exposure. NIOSH (1976c) concluded that Abe's results "document a definite and undesirable effect" at exposures approaching the current OSHA limit. A significant decrease in carbon monoxide diffusing capacity was observed by Von Nieding et al. (1973) in healthy adults exposed to 5 ppm for 15 minutes. NIOSH also cites the work of Von Nieding et al. and Krekeler (1971), who reported significant increases in airway resistance among 88 chronic bronchitis patients after a 15-minute exposure to a concentration of NO_2 as low as 1.5 ppm. NIOSH (1976c) concluded that the specific concentration of NO_2 required to produce pulmonary changes in normal, healthy adults is unknown, but is "likely to be about the same or perhaps a slightly higher concentration than the one inducing pulmonary changes in humans with existing chronic bronchitis" (1.5 ppm). Therefore, NIOSH recommended a 1-ppm 15-minute short-term limit for nitrogen dioxide. To provide additional support for a short term rather than a TWA limit, NIOSH cites several animal studies that indicate that the toxic effects associated with exposure to NO_2 are primarily determined by peak, and not average, concentrations of exposure.

After reviewing the evidence cited by ACGIH (1986) and NIOSH (1976c), OSHA preliminarily concludes that the current 5-ppm ceiling limit for nitrogen dioxide is not sufficient to protect workers against impairment of pulmonary function. The studies by Abe (1967) and by Von Nieding et al. (1973) clearly show that even brief exposures to levels at or just below the current OSHA limit are associated with measurable declines in pulmonary function. The work of Von Nieding et al. and Krekeler (1971) suggests that workers whose respiratory systems are already compromised will be adversely affected during exposures even to lower concentrations of NO_2. Therefore, OSHA believes it necessary to reduce the current occupational exposure limit of NO_2 to reduce this risk, and is proposing to change the limit for nitrogen dioxide to 1 ppm as a 15-minute short-term limit. Human health studies indicate respiratory effects at levels ranging from 0.4 to 2.8 ppm. Health effects have also been observed following short-term exposures ranging from 1.5 to 5.0 ppm. OSHA therefore concludes that the 3-ppm TWA), 5-ppm (STEL) TLV is not sufficiently protective and proposes that a 1-ppm (STEL) be adopted as the PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for nitrogen dioxide if the Agency determines that this limit will substantially reduce significant risk. OSHA's preliminary feasibility analysis is based on limited data at this exposure level; additional feasibility information is requested from the public.

OXYGEN DIFLOURIDE
CAS: 7783–41–7; Chemical Formula: OF_2
H.S. No. 1300

The current PEL for oxygen difluoride is 0.05 ppm as an 8-hour TWA. NIOSH has no REL for this substance. The ACGIH has established a limit of 0.05 ppm as a ceiling value. The revision of the TLV for oxygen difluoride from an 8-hour TWA to a ceiling value reflects the general position of the ACGIH that ceiling TLVs are more appropriate for chemicals that cause acute but not chronic health effects.

Oxygen difluoride is a substance having extremely high acute toxicity; it is an acute irritant and causes fatal pulmonary edema and hemorrhage in animals exposed to 0.5 ppm for a few hours (ACGIH 1986). A single exposure to 0.1 ppm also had an effect on the lung as evidenced by development in animals of a tolerance to the acute effects of this substance after an isolated exposure. Animals acutely exposed to oxygen difluoride have also exhibited gross changes in the kidney and internal genitalia (LaBelle et al. 1945; Lester and Adams 1965).

Because of the extreme acute toxicity of this compound, OSHA believes that the current TWA–PEL of 0.05 ppm is not sufficiently protective of workers, in that this limit would permit brief periods of high exposure (i.e., at 0.5 ppm or more) that have been associated with severe lung damage. Therefore, to reduce the risk of acute lung damage associated with brief excursion exposures to oxygen difluoride, OSHA proposes to revise its 0.05 TWA–PEL to a ceiling value. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for oxygen difluoride if the Agency determines that this limit will substantially reduce significant risk.

OZONE
CAS: 10028–15–6; Chemical Formula: O_3
H.S. No. 1301

The current OSHA PEL for ozone is 0.1 ppm TWA. In the interval since this limit was adopted in 1971, the ACGIH has recommended that 15-minute short-term exposures to ozone not exceed 0.3 ppm. NIOSH has no REL for ozone.

Ozone is highly injurious and lethal in experimental animals at concentrations as low as a few parts per million (Stokinger 1957). A study in which young mice were exposed to 1 ppm ozone for 1 or 2 days reported damage to alveolar tissue (Bils 1970). Human populations chronically exposed to lower concentrations of ozone have been observed to have changes in lung function. In one study, human volunteers exposed to 0.5 ppm ozone for 3 hours a day, 6 days a week, for 12 weeks showed significant changes in lung function (Jaffe 1967). Other authors reported a 20 percent reduction in timed vital capacity in persons exposed to average concentrations of ozone of 1.5 ppm (range not indicated) for 2 hours (Griswold et al. 1957). Welders exposed to maximal ozone concentrations of 9 ppm were observed to have pulmonary congestion (Kleinfeld and Giel 1956).

OSHA is proposing a STEL based on observations that significant declines in pulmonary function can result from repeated intermittent exposures or even from a single short term exposure (Bils 1970; Jaffe 1967; Griswold et al. 1957). OSHA believes that, in the absence of a STEL, employees will continue to be at risk of the impairment in pulmonary functional capacity associated with short-term exposures that could occur if exposures are controlled only by an 8-hour TWA. Thus the Agency preliminarily concludes that it is necessary to supplement the existing PEL with the proposed STEL of 0.3 ppm. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ozone if the Agency determines that this limit will substantially reduce significant risk.

PARAQUAT
CAS: 4685–14–7; Chemical Formula:
H.S. No. 1303

OSHA's current limit for paraquat is 0.5 mg/m³ as an 8-hour TWA, with a skin notation. The ACGIH has established a limit of 0.1 mg/m³ as an 8-hour TWA. Paraquat refers to a group of compounds that are odorless, yellow solids. The principal compounds are: 1,1'-dimethyl–4,4'-bipyridinium; 1,1'-dimethyl–4,4'-bipyridinium bis (methyl sulfate); and 1,1'-dimethyl 4,4'-bipyridinium dichloride.

The toxicity of these compounds depends on the compound's cationic moiety. Acute oral toxicity is reported as 30 mg/kg ion as cation for guinea pigs and 127 mg/kg ion for female rats, while the dermal LD_{50} in rabbits is 240 mg/kg ion (Clark 1964; Clark, McElligott, and Hurst 1966; Elligott 1965). Paraquat can penetrate broken skin after it has broken down the skin's usual barriers (Swan 1969; Clark 1966). By inhalation or intratracheal injection, paraquat is very toxic because of its irritant properties (Gage 1966). Rats exposed once for 6 hours to a concentration of 1 mg/m³ died if the aerosol contained particles with diameters of 3 to 5 microns (Gage 1966). Rats exposed 6 hours/day for 3 weeks to the same aerosol at 0.4 mg/m³ exhibited signs of pulmonary irritation; no effects were observed for the same exposure regimen at 0.1 mg/m³ (Gage 1966).

When the diameter of the particles in the aerosol are not of respirable size, toxicity is greatly reduced. The 4-hour LC_{50} for rats is 6400 mg/kg, and dogs, rats, and guinea pigs tolerated 3 weeks of daily exposures to 100 mg/m³ without apparent pulmonary effect (although nosebleeds were observed) (Palazzolo 1965, as cited in ACGIH 1986, p. 456).

Dietary administration, for 90 days, of doses ranging from 300 to 700 ppm showed dose-related effects ranging from pulmonary edema to intrealveolar hemorrhage and death (Kimbrough and Gaines 1970).

Paraquat's teratogenic potency in mice is low (Bus et al. 1975), although 100 ppm administered in the drinking water of pregnant rats increased postnatal mortality significantly (Bus and Gibson 1975).

In humans, 69 accidental deaths and 81 suicides were attributed to the effects of paraquat exposure up to 1972 (Chipman Chemicals 1972, as cited in ACGIH 1986, p. 456). Bouletreau, Ducluzeau, Bui-Xuan et al. (1977) reported 31 cases of renal insufficiency, and a spray applicator was killed when he absorbed a lethal dose of inadequately diluted paraquat through the skin (Jeroe 1978). Workers using a 0.05- to 1-percent solution of paraquat developed skin and mucous membrane irritation but experienced no symptoms of systemic poisoning (Howard 1978). Fugita, Suzuki, and Ochiai (1976) reported 5 cases of reversible kerato-conjunctivitis, with corneal injury, after a month of exposure to paraquat.

OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³ for paraquat, with a skin notation. The Agency preliminarily concludes that this limit will protect workers from the risk of skin, eye, and pulmonary irritation observed in animals exposed to aerosols of respirable size at levels below OSHA's existing PEL for paraquat. The Agency believes that this reduction in permissible exposure level will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for paraquat if the Agency determines that this limit will substantially reduce significant risk. OSHA is retaining the skin notation for this substance because of its capacity to penetrate the skin.

SILICA, CRYSTALLINE-CRISTOBALITE
CAS: 14464–46–1; Chemical Formula: SiO_2
H.S. No. 1354

The current OSHA PEL for respirable cristobalite is expressed by the formula 5 mg/m³/% SiO_2 measured as total respirable dust (i.e., one-half the value calculated for respirable quartz dust). This formula corresponds to a range of 0.04 to 0.05 mg/m³, measured as silica, for dusts containing 10 to 100 percent tridymite. The ACGIH recommends an 8-hour TWA limit of 0.05 mg/m³, measured as silica dust. The ACGIH limit is based on a study by Gardner (1938) that was confirmed by King, Mahanty, Harrison, and Nagelschmidt (1953). Experimental animals injected with cristobalite showed a more severe response than that produced by quartz, and the fibrosis that followed was diffuse rather than nodular.

Although expressed in different units, the current AGGIH and OSHA limits for cristobalite are comparable. The ACGIH's mg/m³ limit, adopted in 1985, does not reflect a re-evaluation of cristobalite's toxicity but was adopted merely to simplify the monitoring of cristobalite dust concentrations.

OSHA is proposing to replace its limit for cristobalite, which is expressed as the formula presented above, with a numerically equivalent limit of 0.05 mg/m³; the Agency is making this change to simplify employee exposure monitoring.

SILICA, CRYSTALLINE—QUARTZ
CAS: 14808–60–7; Chemical Formula: None
H.S. No. 1355

The current OSHA limit for silica-containing dusts is a respirable dust limit expressed as the following formula:

(10 mg/m³)/(% respirable quartz + 2).

The ACGIH formerly also expressed its silica limit in terms of this formula. However, the current ACGIH TLV is 0.1 mg/m³, measured as respirable quartz dust. The ACGIH does not see this change in the value of its limit for occupational exposure to silica as significant; instead, the ACGIH made this change to conform its limit for this dust to its TLVs for other dusts. If the OSHA formula is used to calculate a limit for a dust containing 100 percent quartz, the limit would be 0.098 mg/m³, not appreciably different from the ACGIH's revised limit of 0.1 mg/m³ for respirable quartz dust. For quartz dusts containing less than 100 percent free silica, the current OSHA formula would yield a limit of, for example, 0.83 mg/m³ for respirable dust containing 10 percent quartz. This result is only slightly more stringent than the ACGIH's TLV of 0.1 mg/m³. For cristobalite and tridymite, the OSHA formula and the ACGIH limits yield approximately the same results: both are approximately one-half the limit established by these two entities for quartz dust (see discussions below).

Occupational exposure to free silica has been known for many years to produce silicosis, a chronic, disabling lung disease characterized by the formation of silica-containing nodules of scar tissue in the lungs. Simple silicosis, in which the nodules are less than 1 cm in diameter (as measured on chest x-ray films) is generally asymptomatic but can be slowly progressive, even in the absence of continued exposure. Complicated silicosis (i.e., nodules greater than 1 cm in diameter) is more often associated with disability and can also progress in the absence of continuing exposure.

The health basis underlying the ACGIH's limit for crystalline silica is the work of Russell (1929), which suggested that a limit of 10 mppcf would protect workers from the effects of exposure to granite dust; a study by Ayer (1969) demonstrated that 10 mppcf of granite

dust is approximately equal to 0.1 mg/m³ of respirable quartz dust (ACGIH 1986).

NIOSH has recommended an exposure limit of 0.05 mg/m³ as respirable free silica for all crystalline forms of silica. As applied to cristobalite and tridymite, the NIOSH REL is 0.05 mg/m³, the same as the ACGIH TLV, but NIOSH's 0.05 mg/m³ REL for quartz dust is one-half the value of the ACGIH TLV for quartz dust. To support its more stringent REL for quartz dust, NIOSH cites the work of Hosey et al. (1957), which reported that no new cases of silicosis occurred in workers in Vermont granite sheds who were generally exposed to 0.05 mg/m³ or less of granite dust. The recommendation was also partly based on studies by Theriault, Burgess et al. (1974); Theriault, Peters and Fine (1974); and Theriault, Peters and Johnson (1974) that found that annual declines in pulmonary function and abnormal chest x-rays occurred among 192 granite shed workers exposed to an average quartz concentration of 0.05 mg/m³. NIOSH noted that the exposure estimates reported in the Theriault studies probably failed to account for the higher exposures that probably occurred in the years before exposure sampling was initiated and thus that Theriault's exposure data may have understated average exposures to quartz. Thus, NIOSH believes that the exposures responsible for the declines in pulmonary function were actually above 0.05 mg/m³. The ACGIH (1986) found NIOSH's reasoning unpersuasive, citing a report by Graham et al. (1981), who measured the pulmonary function of the same group of workers studied by Theriault et al., and found, in contrast to Theriault, that these workers experienced "an overall increase in FVC and FEV" (ACGIH 1986).

The 0.1-mg/m³ TLV represents no real change from the existing PEL. However, the use of an mg/m³ unit will simplify sampling procedures by using recently developed technologies which in turn will reduce the cost of air sampling to evaluate potential silica exposures. NIOSH admits to significant error in the exposure estimates used to establish its 0.05-mg/m³ REL, and OSHA believes that use of this limit will introduce feasibility problems. Before this REL can be considered, for adoption as an OSHA limit, a more detailed analysis would be required. OSHA therefore proposes that 0.1 mg/m³ be adopted as the PEL.

SILICA, CRYSTALLINE-TRIDYMITE
CAS: 15468-32-3; Chemical Formula: SiO_2
H.S. No. 1356

The current OSHA PEL for respirable tridymite is expressed by the formula 5 mg/m³/% SiO_2 measured as total respirable dust (i.e., one-half the value calculated for respirable quartz dust). This formula corresponds to a range of 0.04 to 0.05 mg/m³, measured as silica, for dusts containing 10 to 100 percent tridymite. The ACGIH recommends an 8-hour TWA limit of 0.05 mg/m³, measured as silica dust. The ACGIH limit is based on a study conducted by King, Mahanty, Harrison, and Nagelschmidt (1963) that found tridymite to be the most active of the free silica forms when injected intratracheally into rats.

Although expressed in different units, the current ACGIH and OSHA limits for tridymite are comparable. The ACGIH's mg/m³ limit, adopted in 1985, does not reflect a re-evaluation of tridymite's toxicity but was adopted merely to simplify the monitoring of tridymite dust concentrations. OSHA is proposing to replace its limit for tridymite, which is expressed as the formula presented above, with a numerically equivalent limit of 0.05 mg/m³; the Agency is making this change to simplify employee exposure monitoring.

SILICA, CRYSTALLINE-TRIPOLI
CAS: 1317-95-9; Chemical Formula: SiO_2
H.S. No. 1357

Tripoli is a colorless microcrystalline form of quartz. Although OSHA's Table Z-2 does not specifically indicate a limit for tripoli, OSHA currently 10 mg/m³/% SiO_2 +2 specifies a limit for crystalline quartz based on the formula measured as total respirable dust. Expressed as mg/m³, this limit corresponds to a limit in the range of 0.08 to 0.1 mg/m³ for respirable dust containing from 10 to 100 percent silica. The 8-hour TWA ACGIH limit for tripoli is 0.1 mg/m³, measured as respirable silica dust. This limit was adopted by the ACGIH in 1985 to simplify the monitoring of quartz dust concentrations. Thus, this revision does not represent a re-evaluation of toxicity data for tripoli.

OSHA is proposing to replace its limit for quartz, which is expressed as the formula presented above, with a numerically equivalent limit of 0.1 mg/m³ as total respirable dust, and to add the same limit for tripoli.

SILICA, FUSED
CAS: 60676-86-0; Chemical Formula: SiO_2
H.S. No. 1358

Fused silica is a colorless, odorless solid that is a form of quartz. As such, it is currently covered by OSHA's limit for quartz (Table Z-3). Exposure to fused silica has long been known to cause the fibrogenic lung disease, silicosis. OSHA's current limit for quartz dust is the formula 10 mg/m³/% SiO_2 +2 measured as total respirable dust. This limit corresponds to a respirable quartz concentration ranging from 0.08 to 0.1 mg/m³, measured as free silica. The ACGIH recommends an 8-hour TWA limit of 0.1 mg/m³, measured as free silica; the ACGIH adopted this limit in 1985 to simplify the monitoring of quartz dust concentrations. Thus, this revision does not represent a re-evaluation of the toxicity data for fused silica.

OSHA is proposing to replace its limit for fused silica, which is expressed as the formula presented above, with a numerically equivalent limit of 0.1 mg/m³ as total respirable dust; the Agency is making this change to simplify employee exposure monitoring.

SOAPSTONE, TOTAL DUST
SOAPSTONE, RESPIRABLE DUST
CAS: None; Chemical Formula: 3 Mg-4 SiO_2-H_2O
H.S. No. 1363 (total dust)
H.S. No. 1363A (respirable dust)

OSHA's current exposure limit for soapstone total dust is 20 mppcf (6 mg/m³), and the Agency has no separate limit for the respirable fraction. The ACGIH has established two TLV-TWAs for these two forms of soapstone: 6 mg/m³ for total dust, and 3 mg/m³ for the respirable fraction, both measured as total dust or respirable dust containing less than 1 percent quartz. Because the ratio of total dust mass to the mass of the respirable fraction is 2:1 (ACGIH 1984, p. 480), the 6-mg/m³ total dust limit automatically implies a 3-mg/m³ limit for the respirable fraction.

A study by Dreessen and DallaValle (1935) of mill workers exposed to soapstone showed lung changes in these workers, but it is believed that the dusts involved in these exposures were actually steatite talc, which had a tremolite content of 10 percent. Experiments by Miller and Sayers (1941) showed no measurable toxic effects in guinea pigs injected intraperitoneally with various samples of soapstone.

OSHA is proposing to express the limit for soapstone total dust in mg/m³, rather than mppcf, to simplify employee sampling and analysis. The total dust limit of 6 mg/m³ is equivalent to the previous limit of 20 mppcf, and the new limit of 3 mg/m³ for respirable dust is actually implicit in the total dust limit.

SULFUR DIOXIDE
CAS: 7446-09-5; Chemical Formula: SO_2
H.S. No. 1375

OSHA's current limit for sulfur dioxide is 5-ppm TWA. ACGIH has recommended a 2-ppm TLV-TWA and a 5-ppm STEL. In its written testimony at

OSHA's 1977 hearing on sulfur dioxide, NIOSH recommended a 10-hour TWA of 0.5 ppm (NIOSH 1977).

ACGIH cites one epidemiologic study (Scalpe 1964) showing an increased incidence of respiratory symptoms among pulpmill workers exposed to 10 to 20 ppm sulfur dioxide. Another study by Ferris et al. (1967) found a high incidence (30 percent) of respiratory disease among pulpmill workers exposed to 2 to 13 ppm; however, this was not statistically different from the incidence of disease in a group of workers at a nearby papermill. Kehoe et al. (1932) also found an increased incidence of respiratory irritation among refrigeration workers exposed to 20 to 30 ppm. Weir et al. (1972) exposed 12 healthy subjects to sulfur dioxide continuously for 120 hours. No subjective complaints or decline in respiratory function was found in subjects exposed to 0.3 or 1 ppm. Slight increases in airway resistance resulted from exposure to 3 ppm. Based on these data, the ACGIH recommended a TLV-TWA of 2 ppm and a STEL of 5 ppm.

In recommending a 0.5-ppm TWA limit, NIOSH (1977j) cited four epidemiological studies that became available after publication of their criteria document (NIOSH 1974b). Archer and Gillam (1977) found increases in the incidence of respiratory disease and reductions in pulmonary function among workers exposed to 0.4 to 4 ppm (mean=2 ppm) for many years. Smith et al. (1977) reported pulmonary function decrements among workers exposed to between 1 and 4 ppm sulfur dioxide; the decrements were statistically significant compared to workers whose mean exposures were less than 1 ppm. A third study (Ministry of Health 1976) also reported increases in respiratory disease incidence among smelter workers exposed to an average of 2.5 ppm for 10 years or more. A fourth study reported finding no definite effects among 10,000 workers exposed to mean sulfur dioxide levels of 0.35 ppm. Based on these studies, NIOSH (1977j) revised its original recommendation from 2 ppm TWA to a 0.5-ppm TWA.

The 2-ppm TLV-TWA is based on limited data showing no effects from exposures at levels less than 1 ppm. The 0.5-ppm REL is based on additional information indicating respiratory disease associated with exposures ranging from 0.4 to 4 ppm, with no observed effects at 0.35 ppm. Although these findings suggest that the ACGIH TLV may not be sufficiently protective, OSHA is concerned that the NIOSH limit may present feasibility problems. The Agency's preliminary feasibility analysis has considered only a PEL of 2 ppm. At this time, OSHA tentatively proposes that a 2-ppm 8-hour TWA, supplemented by a 5-ppm STEL, be adopted as the PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for sulfur dioxide if the Agency determines that this limit will substantially reduce significant risk. The Agency specifically solicits comments on feasibility and on any evidence related to adverse health effects at exposures at or below these levels. The proposed 2-ppm limit will be reconsidered in light of the feasibility and health effects data obtained prior to the final rulemaking.

SULFUR TETRAFLUORIDE
CAS: 7783-60-0; Chemical Formula: SF_4
H.S. No. 1378

OSHA's current Z tables have no exposure limits for sulfur tetrafluoride. The ACGIH recommends 0.1 ppm as a ceiling limit. Sulfur tetrafluoride is a colorless, non-combustible gas.

On contact with moisture, sulfur tetrafluoride produces sulfur dioxide and hydrogen fluoride (HF) (Lester 1971, as cited in ACGIH 1986, p. 546), and it is the release of HF that is primarily responsible for sulfur tetrafluoride's toxic effects (Zapp 1971, as cited in ACGIH 1986, p. 546). A du Pont (1961) study of rats exposed for 4 hours to 4 ppm sulfur tetrafluoride over a period of 10 days reported that the animals demonstrated nasal discharge, difficulties in breathing, and weakness. Autopsies of these animals revealed evidence of emphysema, but those rats surviving exposure and given a 2-week rest period after exposure showed no significant pathological changes. In the same study by du Pont, a 4-hour exposure to 20 ppm sulfur tetrafluoride proved lethal to one of two rats. In a study by Clayton (1962), irregular breathing and signs of irritation were observed at exposures of 20 ppm and lower; animals receiving lethal amounts of sulfur tetrafluoride showed pulmonary edema on autopsy, and those with sub-lethal exposures demonstrated no pathologic changes 14 days later.

OSHA is proposing a 0.1-ppm ceiling limit for this highly toxic gas. The Agency preliminarily concludes that establishing this limit for this previously unregulated chemical will reduce the risk of chronic respiratory effects potentially associated with exposure to the chemical at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for sulfur tetrafluoride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TALC (non-asbestiform)
CAS: 14807-96-6; Chemical Formula: $H_2O_5Si_3/4Mg$
H.S. No. 1361

The current OSHA PEL for non-asbestiform talc is 20 million particles per cubic foot of air (mppcf) as an 8-hour TWA; this is roughly equivalent to 3 mg/m³. The ACGIH recommends a TLV-TWA of 2 mg/m³ (15 mppcf) for talc, measured as respirable dust. Talc is a white to gray-white, fine powder.

The health effects evidence for talc is complicated by the fact that talcs contain amphiboles and other minerals, in addition to platiform talc crystals; adverse health effects appear to be related to the non-platiform content (that is, to the fiber content) of the talc in question (ACGIH 1986, p. 550). There are conflicting views over the extent to which the non-platiform constituents are asbestos; however, no health effects information is available that is specifically related to non-asbestiform talc (ACGIH 1986, p. 550).

Numerous epidemiological studies have documented the effects on workers of long-term exposures to talc. In 1942, Porro et al. (cited in Patty 1981) published a report in which 15 cases of talc pneumoconiosis, including 5 postmortem examinations, showed that asbestotic bodies were almost always present in fibrotic areas of the lungs of those workers with talcosis. Siegal and his colleagues (1943, as cited in Patty 1981) noted that an advanced fibrosis incidence rate of 14.5 percent existed among a group of 221 talc miners and millers. These workers were primarily exposed to fibrous talc, which was held to be responsible for the pathology of the asbestos-like lung lesions. A study by McLaughlin et al. (1949, as cited in Patty 1981) revealed that talc-induced pneumoconiosis was caused by the fibrous varieties of talc; in animal studies by Schepers and Durkin (1955, as cited in Patty 1981), the degree of fibrosis in the lung tissue was found to be a function of the length of the talc fibers, rather than of the composition of the talc itself. A paper by Kleinfeld et al. in 1963 (as cited in Patty 1981) reported that postmortem examinations on 6 talc industry workers showed that bodies found in the lung bronchioles or embedded in fibrous tissue were indistinguishable from the asbestos bodies seen in cases of asbestosis.

Kleinfeld et al. (1967) later conducted a cohort study of 220 workers employed in a mine that produced talc with a

tremolite and anthophyllite content. Of the 91 deaths in this group, 10 resulted from respiratory cancer and 28 were attributed to pneumoconiosis. The proportional mortality from respiratory cancer was four times the expected rate. In 1974, when Kleinfeld performed a follow-up study of this group, which at that time consisted of 280 workers (108 deaths), he found significant differences between expected and observed mortality in the period 1950 to 1954, but not during 1960 to 1969. This investigator attributed this finding to the reduction in talc dust counts (from averages of 25 to 73 mppcf in the years 1948 to 1965 to averages of 9 to 43 mppcf in the period 1966 to 1969). This study also showed a decrease of greater than 50 percent in deaths due to pneumoconiosis in the 1965-to-1969 time period.

Studies by NIOSH (Dement and Zumwald 1978) of 398 white male workers employed between 1947 and 1959 in the talc industries found that 74 of these men had died. Bronchogenic cancer was the cause of death in 9 men, whereas only 3.3 deaths from this cause would have been expected. Non-malignant respiratory disease (NMRD) exclusive of influenza, pneumonia, and tuberculosis accounted for 3 deaths; 1.5 would have been expected. From these data, NIOSH concluded that a significant increase in mortality due to bronchogenic cancer and NMRD had occurred from occupational exposure to talc dust. NIOSH's report also included a morbidity study of 12 talc industry workers, currently employed, in which chest X-rays, lung function tests, and questionnaires were used. This study concluded that a higher prevalence of cough, phlegm, dyspnea, and irregular opacities in chest X-rays existed in these workers than in potash miners; instances of pleural thickening and calcification were greater than in coal and potash miners; and the pulmonary function of talc workers overall was reduced in comparison with that of coal and potash miners employed for the same length of time. The reductions in pulmonary function were dose- and duration-related.

The ACGIH (1986, p. 552) concludes that serious health effects have been associated in the past (i.e., prior to 1945) with exposures to amphibole-containing talc. However, the ACGIH believes that the introduction of mining improvements has all but eliminated "the excess of death rates from pneumoconiosis and lung cancer" (ACGIH 1986, p. 552).

Two recent studies of talc exposures (Rubino, Scansetti et al. 1976; Selevan, Dement et al. 1979) are available. The Rubino et al. study found that miners and millers exposed to an average of 849 to 8470 mppcf-years (miners) and 76 to 651 mppcf-years (millers) showed no increase in the number of observed (compared to expected) deaths from causes other than silicosis. These authors concluded that the disease-causing factor in these workers was silica rather than talc (Rubino, Scansetti et al. 1976).

Selevan and Dement's studies (1979) of 392 workers exposed to talc in five mines found non-malignant respiratory deaths for millers to be almost eight times the expected rate, while miners experienced more than three times the expected mortality rate for these same diseases. The ACGIH (1986, p. 552) concludes that the Selevan and Dement study is incomplete because confounders were not adequately identified and controlled for.

OSHA is proposing an 8-hour TWA limit of 2 mg/m³ for the respirable dust of talc containing no asbestos fibers and less than 1 percent silica. The Agency preliminarily concludes that this limit will protect workers from the risk of non-malignant respiratory effects associated with exposure to the dust of non-fibrous talc.

With regard to the finding by NIOSH (Dement and Zumwald 1978) of excess cancer deaths among talc workers, OSHA is currently reviewing data describing the effects of exposure to non-asbestiform varieties of mineral fibers that are found in talc deposits. OSHA is considering a separate rulemaking to address this issue.

In addition, OSHA is proposing to express the limit for talc in mg/m³ rather than mppcf, to facilitate employee exposure monitoring. The Agency is proposing this change for all of its Z table limits that are currently expressed as mppcf.

TIN OXIDE
CAS: 7440-31-5; Chemical Formula: SnO
H.S. No. 1265

OSHA currently has no exposure limit for tin oxide. The ACGIH recommends an exposure limit of 2 mg/m³ as an 8-hour TWA. Tin oxide may be a white or yellow-brown powder.

Injection of tin dust intraperitoneally into guinea pigs resulted in a non-specific, well-vascularized chronic granulomatous reaction (Oyanguren, Haddad, and Maass 1958). Chronic exposure to tin oxide fume and dust results in stannosis, a form of pneumoconiosis. The fume is considered a more important source of stannosis than the dust (Dundon and Hughes 1950), but other authorities consider the quality of the dust and the duration of exposure equally important (Robertson and Whittaker 1954). The onset of the symptoms of stannosis may be delayed for years; the appearance of the condition is signalled by the onset of difficulty in breathing. One worker who had been exposed to unspecified tin oxide levels for 22 years was tested for stannosis and registered a vital breathing capacity 70 percent of normal and a maximal breathing capacity 61 percent of the predicted value (Spencer and Wycoff 1954).

More than 150 cases of stannosis have been reported in the world literature (Robertson and Whittaker 1954), and five cases were reported in the United States before 1954. No cases of massive fibrosis caused by exposure to tin oxide dust or fume have been reported (ACGIH 1986, p. 574).

OSHA is proposing an 8-hour TWA of 2 mg/m³ for tin oxide dust and fume. The Agency preliminarily concludes that this limit will protect workers from the risk of reduced pulmonary capacity and stannosis associated with exposure to this substance in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for tin oxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TRIMELLITIC ANHYDRIDE (TMAN)
CAS: 552-30-7; Chemical Formula: $C_9H_4O_5$
H.S. No. 1409

OSHA has no exposure limit for trimellitic anhydride. In 1981, the ACGIH set 0.005 ppm (0.04 mg/m³ as the 8-hour TWA limit for this substance. Trimellitic anhydride is a colorless solid.

Exposure to trimellitic anhydride (TMAN) causes irritation of the eyes, nose, skin, and pulmonary tract. NIOSH (1978) reported in a Current Intelligence Bulletin that trimellitic anhydride should be considered an extremely toxic workplace hazard, because exposure to it can cause noncardiac pulmonary edema and immunological sensitization, as well as upper respiratory tract irritation.

Pulmonary edema has occurred in workers exposed to TMAN at unreported air concentrations; the development of pulmonary edema in these workers without upper respiratory tract irritation suggests that TMAN is a sensitizer (Rice et al. 1977). Zeiss and colleagues (1977) described TMAN-related illnesses among a group of workers synthesizing TMAN. These authors believe there are three separate syndromes associated with TMAN exposure: Rhinitis/asthma; a flu-like condition; and irritation of the upper respiratory tract. Another case of TMAN-related occupational sensitization occurred in a worker exposed during the application of an epoxy resin coating (Fawcett et al. 1977).

At levels averaging 1.5 and 2.8 mg/m³ in two processes, NIOSH reported that employees reported eye and nose irritation, shortness of breath, coughing, nausea, headache, skin irritation, and throat irritation (NIOSH 1974). Pulmonary hemorrhage and hemolytic anemia have been reported in workers exposed to TMAN at unspecified levels (Ahmed et al. 1979).

Rats have shown intralveolar hemorrhage after TMAN exposures to concentrations of 0.01 ppm.

OSHA is proposing to regulate trimellitic anhydride to an 8-hour TWA level of 0.005 ppm. The Agency preliminarily concludes that this limit will protect workers from the severe pulmonary effects, sensitization and skin and upper respiratory tract irritation observed in workers exposed to this extremely toxic substance. OSHA believes that this limit will substantially reduce this risk, which is presently not controlled due to the absence of any OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for trimellitic anhydride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

WOOD DUST
CAS: None; Chemical Formula: None
H.S. No. 1430A (Hard Wood)
H.S. No. 1430B (Soft Wood)

Before 1980, OSHA regulated wood dust under its nuisance dust standard of 15 mg/m³ (29 CFR 1910.1000, Table Z-3). However, in an enforcement proceeding, wood dust was held not to be an inert mineral dust, and the Agency has subsequently not regulated this substance. Consequently, OSHA has no current PEL for hard wood or soft wood dust. The ACGIH recommends a TLV-TWA of 1 mg/m³ for hard wood dust, and a TLV-TWA of 5 mg/m³ and STEL of 10 mg/m³ for soft wood dust. Wood dust is defined as any wood particles arising from the processing or handing of woods. Hard woods derive from the deciduous broad-leaved flowering species of trees, and soft woods include the coniferous species that do not shed their leaves in the winter.

Exposure to wood dust has long been associated with a variety of adverse health effects, including dermatitis, allergic respiratory effects, mucosal and non-allergic respiratory effects, and cancer. The toxicity data in animals are limited, particularly with regard to exposure to wood dust alone.

Animal Studies

Groups of male guinea pigs were injected intratracheally with suspensions containing 75 mg of sheesham or mango wood dust or of hemp or bagasse fibers, or 20 mg of jute fiber (Bhattacharjee et al. 1979; Bhattacharjee and Zaidi 1982). Animals were sacrificed serially at intervals up to 90 days after injection. Lung examination revealed that, at 90 days, Grade I fibrosis of the lungs had occurred in the guinea pigs injected with mango or jute, while those treated with sheesham or hemp had developed Grade II pulmonary fibrosis.

In another experiment involving guinea pigs, animals were exposed by inhalation to average respirable dust concentrations of 1143 mg/m³ for 30 minutes/day, 5 days/week for 24 weeks (McMichael et al. 1983). Histopathological examination showed lung changes, described by the authors as moderate to severe, in all exposed guinea pigs. The changes seen included an increase in septal connective tissue components and aggregation of lymphocytes; however, no pulmonary fibrosis or extensive destruction of the parenchymal tissue occurred. The authors of this study concluded that exposure to fir bark dust may cause inflammatory changes in the lung.

Two studies examined the effect of exposing Syrian golden hamsters to beech wood dust by inhalation, with or without concurrent administration of the known carcinogen diethylnitrosamine (DEN) (Wilhelmsson et al. 1985a, b; Drettner et al. 1985). In each study, the animals were divided into four separate groups. In Study 1, there were 12 animals per group. Two groups were exposed to fresh beech wood dust (a hard wood dust) at a mean total dust concentration of 15 mg/m³ for 6 hours/day, 5 days/week for 36 weeks, and one of these groups was also given 1.5 mg of DEN once a week for the first 12 weeks. The third group in Study 1 was given the DEN doses only (positive control) and the fourth group was given no exposure at all (negative control).

In Study II, there were 24 animals in each of four groups. Two groups of animals were exposed to fresh beech wood dust at a mean total dust concentration of 30 mg/m³ for 6 hours/day, 5 days/week for 40 weeks. The positive and negative control groups were treated as in Study I.

In Study I, none of the hamsters had lung or nasal tumors or metaplasia. Four hamsters exposed to wood dust and DEN exhibited squamous cell papillomas of the trachea, as did three animals in the positive control group and one in the negative control group. No differences in organs other than the respiratory organs were seen between the treated and control groups in Study I.

In Study II, all DEN-exposed hamsters had nasal lesions ranging from hyperplasia and dysplasia to papillomas. In addition, half of all DEN-exposed hamsters developed nasal adenocarcinomas, whether or not they had also been exposed to wood dust. Half of the DEN-exposed animals also had papillomas of the larynx and trachea. In the wood-dust-exposure-only group, two of the animals had nasal lesions, one of which was an unclassifiable malignant nasal tumor and the other of which consisted of fo metaplasia with mild dysplasia. The authors concluded that exposure to wood dust did not increase the tumor incidence in DEN-exposed animals but did affect the respiratory tract of all exposed animals.

Human Studies

Dermatitis. There are a large number of case reports, epidemiological studies, and other data on the health effects of wood dust exposure in humans. Dermatitis caused by exposure to wood dusts is common, and can be caused either by chemical irritation, sensitization (allergic reaction), or either of these together. As many as 300 species of trees have been implicated in wood-caused dermatitis.

The chemicals associated with allergic reactions are generally found in the inner parts of a tree, e.g., the heartwood, and the workers most prone to these reactions are those involved in secondary wood processing (carpenters, joiners, finishers).

The symptoms of sensitization are redness, scaling, and itching, which may progress to vesicular dermatitis and, after repeated exposures, to chronic dermatitis. The parts of the body most often affected are the hands, forearms, eyelids, face, neck, and genitals. This form of dermatitis generally appears after a few days or weeks of contact.

Allergic Respiratory Effects. Allergic respiratory responses are mediated by the immune system, as is also the case with allergic dermatitis. Many authors have reported cases of allergic reactions in workers exposed to wood dust (Soeman et al. 1969; Greenberg 1972; Pickering et al. 1972; Eaton 1973; Booth et al. 1976; Chan-Yeung et al. 1976; Edwards et al. 1976; Innocenti and Angotzi 1980; Bush and Clayton 1983; Cartier et al. 1986). Asthma is the most

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common response to wood dust exposure, and the allergic nature of such reactions has been demonstrated by the presence of IgE antibodies and positive skin reactions on patch testing. The best-studied of the allergic reactions to wood dust is Western red cedar (WRC) asthma; it is estimated that 5 percent of the exposed population is allergic to this wood. However, only one study is available that relates exposure level to ventilatory function. In that study, exposure to concentrations of 2 mg/m³ of WRC dust caused significant decreases in forced vital capacity and forced expiratory volume (Vedel et al. 1986). These authors also found that exposures to concentrations above 3 mg/m³ produced eye irritation.

Mucosal and Nonallergic Respiratory Effects. This section discusses changes in the structure and function of the nasal mucosa and respiratory tract that are caused by exposure to wood dust. These changes include nasal dryness, irritation, bleeding, and obstruction; coughing, wheezing, and sneezing; sinusitis; and prolonged colds. These symptoms have been observed even at wood dust concentrations below 4 mg/m³.

Bellin et al. (1964) found that 97 of 225 workers (carpenters, sawmill workers, woodworkers) exposed from 3 to 24 years to the dust of several different hard woods showed radiologic evidence of pulmonary abnormalities. Black et al. (1974) studied nine woodworkers from a woodworking factory in England. In all of these workers, mucociliary movement was markedly depressed, leading these authors to conclude that exposure to wood dust in the furniture industry for 10 years or more can impair mucociliary clearance. These findings were confirmed in a Danish study involving furniture makers (Solgaard and Andersen 1975; Andersen et al. 1976, 1977); compared with controls, the mucociliary transport rate was also significantly impaired in these woodworkers and dose-response effects were noted.

A respiratory survey conducted by Chan Yeung et al. (1980) in pulp and paper mill workers in British Columbia showed that workers exposed to wood dust at a mean total dust concentration of 0.5 mg/m³ had a slight but statistically significant decrease in pulmonary function values compared with controls. The authors concluded that the chemical preservatives used to treat the wood could also have been responsible for these adverse effects.

In a cross-sectional survey of 1,157 American woodworkers (both hard and soft wood), Whitehead et al. (1986) found that exposure to higher (10+ mg/years/m³) compared with lower (0–2 mg-years/m³) dust concentrations was associated with a statistically significant and higher incidence of decreased pulmonary function. However, dose-response effects were observed only for soft wood (i.e., pine) dusts. A later study by Beckman et al. (1981) examined subgroups of the workers studied by Whitehead and found no correlation between years of exposure to pine wood dust and pulmonary function.

In a pilot study of 55 workers in a North Carolina hardwood furniture plant, Goldsmith (1983) found that, at mean area wood dust concentrations of 2 mg/m³ or below, peak ventilatory flow correlated significantly with cumulative person-years of exposure. Goldsmith interpreted this finding to mean that inhalation of wood dust may impair large airway function.

A study of Italian woodworkers showed that the number of wood-dust-exposed workers who had developed anosmia (loss of smell) was significantly higher than in a control group of non-exposed workers (Innocenti et al. 1985). Amoore (1986) confirmed this finding in other workers exposed to hardwood dusts.

Summary of mucosal and nonallergic respiratory effects. A large number of studies have demonstrated that occupational exposure to wood dust causes both statistically significant and non-significant increases in respiratory symptoms. These symptoms range from irritation to bleeding, wheezing, sinusitis, and prolonged colds. In addition, chronic wood dust exposure reduces the rate of mucociliary transport in the nose and, in some workers, also causes changes in the nasal mucosa. Several studies have demonstrated decreased pulmonary function among wood-dust-exposed workers, although other studies have not confirmed these findings.

Carcinogenicity

The association between occupational exposure to wood dust and various forms of cancer has been explored in many studies and in many countries. In 1987, the International Agency for Research on Cancer (IARC) classified furniture manufacturing in Category I (confirmed human carcinogen) and carpentry in category 2B (suspected human carcinogen).

The discussion below focuses on selected U.S. studies.

Nasal and Sinus Cavity Cancer. The earliest U.S. study of wood dust exposure and nasal cancer was conducted by Brinton et al. in 1976. These authors analyzed cancer death rates between 1950 and 1969 in 152 U.S. counties having at least 1 percent of their population employed in furniture and wood fixture manufacturing. This study revealed that the age-adjusted mortality rate for cancer of the nasal cavity and sinuses among white males in the "furniture" counties was significantly higher than in non-furniture counties.

In a later case-control study, these authors (Brinton et al. 1984) analyzed cases of nasal and sinus cancers occurring in North Carolina and Virginia between 1970 and 1980. This study identified a significantly elevated risk of adenocarcinomas in males working in the furniture manufacturing industry, but no increased risk among lumber, carpentry, or construction workers. There was no significant increase in the risk of squamous cell carcinoma in workers from any other wood-related industry.

In a study sponsored by the Inter-Industry Wood Dust Task Force, Viren and colleagues (1982) described a death certificate case-control study of nasal cancer deaths for 1963 to 1977 in North Carolina, Mississippi, Washington, and Oregon. Findings of this study included a relative nasal cancer risk of 1.95 for industries involving lumber and wood products; however, no significant relative risk of nasal cancer was seen for workers in the furniture manufacturing industry.

Imbus and Dyson conducted a study of nasal cancer and North Carolina furniture workers (1986). This study found: (1) That there was a statistically significant increase of nasal cancer among furniture workers; (2) that the nasal cancer rates among North Carolina furniture workers were much lower than those reported for English furniture workers; (3) that the number of nasal cancer deaths among North Carolina furniture workers decreased between 1956 and 1977; and (4) that a slight excess in nasal cancer may have existed among North Carolina furniture workers but is currently either declining or non-existent.

At present, the National Cancer Institute is conducting a cohort mortality study of 36,622 workers employed in the wood, metal, and plastic furniture manufacturing industries (Miller 1987). Results are too preliminary to be described at this time.

Summary of evidence for nasal and sinus cavity cancers. NIOSH (1987) concluded that the literature clearly demonstrates an association between occupational wood dust exposure and nasal cancer. English studies first identified this link by showing a 10- to 20-times greater incidence of nasal adenocarcinoma among woodworkers in the furniture industry than among other woodworkers and 100 times greater than in the general population. In the United States, three studies have reported a fourfold risk of nasal cancer or adenocarcinoma in furniture workers, and another study noted a similar relationship between nasal cancer and wood dust exposure. One other study failed to find such an association for furniture workers, but did find an increase among logging and timber industry workers. Although hard wood dust has most often been implicated, soft-wood-dust exposure has also been a risk factor in some studies. In addition, there is some evidence that the development of adenocarcinomas is associated with quantitatively higher levels of wood dust exposure and that the risk of this form of cancer increases with latency from first exposure.

Pulmonary Cancer. A number of studies investigating the association between wood dust exposure and the development of lung cancer have been conducted. Milham (1974) found a significant excess of malignant tumors of the bronchus and lung in workers who had belonged to the AFL–CIO United Brotherhood of Carpenters and Joiners of America. Only construction workers showed a statistically significant increase in lung cancer rate.

In a study of lung cancer in Florida residents, Blot et al. (1982) found that an elevated risk of lung cancer that was statistically significant existed among workers in the lumber and wood industry and in construction; however, smoking may have been a confounding factor in these results.

Summary of evidence for pulmonary cancer. The association between lung cancer and occupational wood dust exposure is inconclusive, although several epidemiological studies have reported increases in lung cancer among wood-dust-exposed workers.

Hodgkin's Disease. The data on the relationship between exposure to wood dust and the development of Hodgkin's disease are conflicting. Milham (1967) and Milham and Hesser (1967) concluded, on the basis of a case-cohort study of 1,549 white males dying of this disease between 1940–1953 and 1957–1964, that there was an association between Hodgkin's disease and exposure to wood dust.

Another study (Spiers 1989) concluded that men working in the wood industries in the eastern United States were at special risk for Hodgkin's disease, and suggested that pine pollen exposure might be responsible for the increase.

A Washington State epidemiological study (Petersen and Milham 1974) also found that woodworkers had an increase risk of Hodgkin's disease, and the work of these authors was supported by the results of another study (Gufferman et al. 1976), which showed a non-significant increase in the relative risk for Hodgkin's disease among woodworkers.

Summary of evidence for Hodgkin's disease. Although the data are conflicting, several epidemiological studies of U.S. workers do report increases in the incidence of Hodgkin's disease among woodworkers. This excess is particularly apparent among carpenters.

Other Cancers. NIOSH (1987) concluded that the data on the relationship between occupational exposure to wood dust and the development of cancers other than nasal, Hodgkin's disease, or lung cancers are insufficient and inconclusive.

Basis for the Proposed Limits

OSHA is proposing an 8-hour TwA limit of 1 mg/m³ for hard wood dust and a 5 mg/m³ 8-hour TWA and 10 mg/m³ 15-minute STEL for soft wood dust. These limits reflect evidence in the literature that exposures to these substances cause allergic respiratory effects and eye irritation (Vedal et al. 1986), mucosal and nonallergic respiratory effects (Bellin et al. 1964; Black et al. 1974; Goldsmith 1983), nasal and sinus cavity cancers (Brinton et al. 1976, 1984; Viren et al. 1982; Imbus and Dyson 1985), and, perhaps, Hodgkin's disease (Milham 1967; Milham and Hesser 1967; Spiers 1969; Petersen and Milham 1974; Gufferman et al. 1976). OSHA preliminarily concludes that these limits will protect exposed workers from the risks of the many conditions and diseases associated with wood dust exposure. However, the Agency notes that many of the studies described above implicate both hard wood and soft wood dusts or do not distinguish between these two substances for cancer, asthma, and dermatitis. OSHA requests information on the health effects, the exposure levels, and the protectiveness of the proposed limits. The health evidence forms a reasonable basis for proposing a new limit for wood dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions for All Respiratory Toxicants

As Table C6–2 and the discussions above show, limits for substances in this group have been established to control employee exposures to or below concentrations of substances that have been associated with acute or chronic respiratory effects. For most of these substances, the evidence is sufficient to identify the NOE or low-effect levels that are related to these effects in humans or animals. Accordingly, OSHA preliminarily concludes that maintaining employee exposures at or below these limits will greatly decrease the likelihood that employees will be at significant risk of respiratory effects when they are exposed to these substances in the workplace. Because chronic pulmonary disease caused by exposure to toxic dusts can be incapacitating, such exposures can effectively end the working life of severely affected individuals. Less serious pulmonary disease can result in lost work days, both as a result of the associated symptoms themselves and as a consequence of increased susceptibility to respiratory infections. The effects of exposure to acute pulmonary toxins, such as ozone or trimellitic anhydride, range from reduced lung function to life-threatening pulmonary edema. Lowering the Agency's current limits or establishing limits where none previously existed will substantially reduce these risks. The health evidence for the substances in this group provides a reasonable basis for revising or adding limits for these substances. At the time of the final rule, OSHA will establish new or revised limits for these respiratory toxins if the Agency determines that these limits will substantially reduce significant risks.

7. Substances for Which Proposed Limits Are Based on Avoidance of Cardiovascular Effects

Introduction

For seven chemicals, OSHA is proposing limits based on their adverse effects on the cardiovascular system. Table C7–1 lists the current Z table limits for these substances, along with the ACGIH TLVs, NIOSH RELs, CAS numbers and HS numbers for these substances. For two of these substances, chloropentafluoroethane and sodium azide, neither OSHA nor NIOSH has current limits. OSHA is proposing to replace its current ceiling limits for two substances (ethylene glycol dinitrate and nitroglycerin) with lower short-term limits. OSHA is proposing to reduce its

current TWA-PEL for carbon disulfide to 1 ppm. For one other substance (fluorotrichloromethane), OSHA is proposing to replace its current TWA-PEL with a ceiling value. For the remaining substance (1,1,2-trichloro-1,2,2-trifluoroethane), OSHA proposes to add a STEL to its existing 8-hour TWA. For three substances in this group, NIOSH recommends limits substantially lower than those established by the ACGIH.

Description of the Health Effects

Although the cardiovascular system can be adversely affected in many different ways by exposure to toxic substances, the adverse effects caused by exposure to the seven chemicals in Table C7-1 are limited to three categories: (1) Cardiac sensitization, (2) vasodilation, and (3) atherosclerosis.

Cardiac sensitization is not related to the type of sensitization that is mediated by the immune system and that causes an allergic reaction. Instead, it results when a chemical "sensitizes" the heart to the effects of a class of biological compounds called sympathomimetic amines. The physiological action of sympathomimetic amines is to stimulate the heart to beat faster. The hormone adrenaline, also called epinephrine, is an example of a sympathomimetic amine. It is normally secreted into the bloodstream when the body anticipates an increase in physical exertion, such as occurs when someone is frightened. A concentration of epinephrine equal to or higher than the noe-ffect level for this substance is necessary to increase the heartbeat rate in exposed individuals. The effect of a cardiac sensitizer is to lower the no-effect level so that the heartbeat rate is stimulated by a lower concentration of adrenaline.

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TABLE C7-1. List of Substances for Which Limits Are Based on Avoidance of Cardiovascular Effects

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1070 Carbon disulfide[+]	75-15-0	20 ppm TWA 30 ppm STEL 100 ppm Ceiling	10 ppm TWA, Skin	1 ppm TWA 10 ppm Ceiling (15 min)
1087 Chloropenta-fluoroethane	76-15-3	--	1000 ppm TWA	--
1170 Ethylene glycol[+] dinitrate	628-96-6	0.2 ppm Ceiling, Skin	0.3 mg/m^3 TWA, Skin	0.1 mg/m^3 Ceiling (20 min)
1180 Fluorotrichloro-methane	75-69-4	1000 ppm TWA	1000 ppm Ceiling	--
1290 Nitroglycerin[+]	55-63-0	0.2 ppm Ceiling, Skin	0.5 mg/m^3 TWA, Skin	0.1 mg/m^3 Ceiling (20 min)
1364 Sodium azide	26628-22-8	--	0.1 ppm Ceiling	--

TABLE C7-1. List of Substances for Which Limits Are Based on Avoidance of Cardiovascular Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1403 1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000 ppm TWA	1000 ppm TWA 1250 ppm STEL	--

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

† Proposed limit is the NIOSH REL.

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The region of the heart that becomes sensitized is the pacemaking and conduction system, which determines the rhythm and rate of the heartbeat. Unregulated or unnecessary interference with this region of the heart can result in arrhythmia, an abnormality in the rhythm or rate of the heartbeat (Wyngaarden and Smith 1985). The clinical consequences of an arrhythmia vary among individuals. A young person with a healthy heart may not be adversely or seriously affected. However, fatal arrhythmias have occurred in healthy young people, and in older people or individuals whose cardiovascular systems have already been compromised, arrhythmias can cause symptoms of cerebral or myocardial ischemia, shock, or congestive heart failure.

Vasodilators are compounds that cause blood vessels to expand, resulting in a decrease in blood pressure (hypotension) and a decrease in the amount of blood reaching the organs. Acute hypotension is a common cause of shock (Petersdorf et al. 1983). Chronic hypotension may result in a number of symptoms, including lethargy, weakness, easy fatigability, and dizziness or faintness.

Atherosclerosis is a serious disease produced by a degenerative process in the arteries. Plaques containing lipids, complex carbohydrates, blood products, and calcium form on the inside walls of arteries, usually on major blood vessels. These plaques are also called atheromas; their presence makes arteries narrower. Depending on which arteries in the body contain atheromas, different clinical consequences may result, including renal hypertension, stroke, and myocardial ischemia (inadequate circulation of blood to the myocardium) (Balazs et al. 1986). Some chemicals can enhance or accelerate the formation of atheromas and thereby encourage the development of atherosclerosis, a major cause of coronary heart disease.

Dose-Response Relationships and Cardiac Effects

For four of the chemicals in Table C7-1 (carbon disulfide, ethylene glycol dinitrate, nitroglycerin, and sodium azide), the ACGIH-recommended limits are based primarily on health surveys and case reports indicating that occupationally exposed workers subjected to concentrations above a no-effect level experience these cardiovascular effects. Human data for the other three chemicals (chloropentafluoroethane, fluorotrichloromethane, and 1,1,2-trichloro-1,1,2-trifluoroethane), however, are scarce. For these chemicals, limits are based on the results of studies in laboratory animals.

Chemically induced cardiovascular disease occurs in a pattern that appears to correspond to a typical effect level dose-response relationship. That is, an exposure level and exposure duration exist below which the substance appears unlikely to exert an adverse effect. Thus, the limits for substances in this group are designed to maintain exposures below this apparent no-effect level.

The following discussions describe OSHA's preliminary findings for some substances in this group and point to the seriousness of the cardiovascular effects potentially associated with exposure to these substances.

CARBON DISULFIDE
CAS: 75-15-0: Chemical Formula: CS_2
H.S. No. 1070

The current OSHA PELs for carbon disulfide include a TWA of 20 ppm, a STEL of 30 ppm, and a ceiling of 100 ppm. The ACGIH has recommended a TLV-TWA for this substance of 10 ppm without a ceiling or STEL, but with a skin notation, and NIOSH recommends a 1-ppm TWA and a 10-ppm 15-minute ceiling.

The serious adverse effects of exposure to carbon disulfide on the cardiovascular and neurological systems have been documented for decades (ACGIH 1986). Evidence has accumulated indicating that even exposure to low levels of carbon disulfide exerts harmful effects on the cardiovascular and neurological systems of occupationally exposed populations. The current PEL of 20 ppm (i.e., the 1988 ACGIH TLV) was established primarily to prevent neurological disturbances. Since that time, carbon disulfide has been implicated as a risk factor in the development of coronary heart disease at the 20-ppm PEL.

The cardiovascular effects of exposure to carbon disulfide have been well documented in three studies. Tiller et al. (1968), Tolonen et al. (1975), and Tolonen et al. (1979) all identified exposure to carbon disulfide as a contributing factor in coronary heart disease. The latter two studies were epidemiological investigations in Finland in which viscose rayon workers were exposed to low levels of carbon disulfide for at least 5 years; at times, they were exposed to high carbon disulfide concentrations.

Mihail et al. (1968) observed "significant vascular, nervous and biochemical changes" in workers exposed to an average carbon disulfide concentration of 9 ppm for 2 years. According to the ACGIH (1986) and NIOSH (1977b), other studies have reported cardiovascular disorders among the effects of carbon disulfide exposure at levels between 10 and 40 ppm.

Several other studies demonstrate that exposure to carbon disulfide is associated with the development of neurological symptoms, including nervousness, irritability, indigestion, bizarre dreams, insomnia, excessive fatigue, loss of appetite, and headache. More severe symptoms such as psychosis, polyneuritis, and tremors have also been reported (Vigliani 1954; Gordi and Trumper 1938).

Seppalainen and Tolonen (1974) conducted a neurological study on a subgroup of the same workers whose exposure to carbon disulfide at levels between 10 and 30 ppm was considered a contributing factor to coronary heart disease (Tolonen et al. 1975; 1979). They reported an increased incidence of pathologically reduced nerve conduction velocities and abnormal electroencephalograms in exposed workers relative to unexposed workers. The observed decreases in nerve conduction velocity were believed by these researchers to be irreversible.

Several scientists have urged that the exposure limits for carbon disulfide be reduced; Gordi and Trumper (1938) and Kleinfeld and Tabershaw (1955) all advocated a TWA of 10 ppm for carbon disulfide on the basis of its adverse neurological effects. In light of these recommendations and the reports of adverse cardiovascular effects in workers exposed to "relatively low concentrations," the ACGIH (1986) recommended a TLV of 10 ppm TWA. However, NIOSH (1977) considered 10 ppm to be the "lowest concentration causing demonstrated adverse health effects" (p. 137), and believed it necessary to apply a safety factor because "coronary heart disease frequently results in sudden death" (p. 137). Therefore, NIOSH recommended a 10-hour TWA of 1 ppm with a 15-minute short-term limit of 10 ppm with a 15-minute short-term limit of 10 ppm to protect against acute neurological effects associated with exposure to high concentrations of carbon disulfide.

OSHA preliminarily concludes that the epidemiological studies showing neurological and cardiovascular disease among workers exposed to 9 ppm and to between 10 and 40 ppm demonstrate that a risk exists at the current OSHA TWA PEL of 20 ppm for carbon disulfide. OSHA believes that the reduction of the current PEL from 20 ppm to a 1-ppm TWA and a 10-ppm 15-

minute STEL is essential to reduce the risk of adverse effects on the cardiovascular and neurological systems caused by exposure to carbon disulfide at the existing PEL. Because there are reports of cardiovascular and biochemical changes at levels below the ACGIH's limit, the 10-ppm TLV does not provide adequate protection. OSHA is proposing the NIOSH recommendations of a 1-ppm TWA and a 10-ppm STEL as the permissible exposure limits. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for carbon disulfide if the Agency determines that this limit will substantially reduce significant risk.

CHLOROPENTAFLUOROETHANE
CAS: 76-15-3; Chemical Formula: $ClCF_2CF_3$
H.S. NO. 1067

OSHA has no current limit for chloropentafluoroethane (FC–115); the ACGIH recommends a TLV–TWA of 1000 ppm for this colorless, odorless gas.

Chloropentafluoroethane vapors have rather low acute toxicity. In dogs and rats, gastrointestinal absorption following intragastric intubation has been shown to be minimal (Terrill 1974; Clayton, Hood, Nick, and Waritz 1966). The inhalation toxicity for this compound is very low; rats exposed to 800,000 ppm for 4 hours showed no clinical or histopathologic effects (Clayton, Hood, Nick, and Waritz 1966). Rats and guinea pigs showed no adverse clinical effects at inhalation levels of 600,000 ppm for 2 hours (Weigand 1971), and guinea pigs exposed to 200,000 ppm for varying intervals also exhibited no adverse signs (Breen and Wallis 1963). Rats, mice, rabbits and dogs have also demonstrated that FC–115 has a very low subchronic inhalation toxicity. These species have tolerated 6-hour daily exposures of 100,000 ppm for 90 days without adverse effects (Clayton, Hood, Nick, and Waritz 1971), and laboratory animals have tolerated doses of 200,000 ppm for 3.5 hours daily, 5 days per week, for 4 weeks (Weigand 1971). The potential for cardiac sensitization appears to be very low for FC–115; only one of 13 unanesthetized dogs showed cardiac sensitization after exposure to 150,000 ppm intravenously (Trochimoicz, Azar, Terrill, and Mullin 1974). However, several other studies indicate that unanesthetized dogs, rats, and monkeys receiving dosages between 100,000 ppm and 200,000 ppm may show increased blood pressure, accelerated heart rate, myocardial depression, or altered pulmonary effects under certain conditions (Belej and Aviado 1975; Friedman, Cammarato, and Aviado 1973; Aviado and Belej 1975). There are no reports of mutagenic, teratogenic, or carcinogenic toxicities in these studies.

OSHA is proposing an 8-hour TWA permissible exposure limit of 1000 ppm for chloropentafluoroethane. The Agency preliminarily concludes that this limit will protect workers from the risk of cardiac effects at the extremely high levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for chloropentafluoroethane. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ETHYLENE GLYCOL DINITRATE
CAS: 628–96–6; Chemical Formula: $CH_2H_4(NO_3)_2$
H.S. No. 1170

NITROGLYCERIN
CAS: 55–63–0: Chemical Formula: $CH_2NO_3CHNO_3NO_3$
H.S. No. 1290

The current OSHA PELs for ethylene glycol dinitrate (EGDN) and nitroglycerin (NG) are ceilings of 0.2 ppm (1 mg/m³ and 2 mg/m³, respectively, with skin notations). The ACGIH (1986) has established a TWA of 0.05 ppm (0.3 mg/m³) for EGDN and a TWA of 0.05 ppm (0.05 mg/m³) for NG, both with skin notations, to protect against the hypotension and headaches caused in occupationally exposed populations by the vasodilatory effects of these substances. NIOSH recommends a 20-minute ceiling of 0.1 mg/m³ for both of these substances.

Most occupational exposures to EGDN actually involve mixtures of EGDN and nitroglycerin (NG). Because EGDN is 100 times more volatile than nitroglycerin, and most of the mixtures of these two substances used in industry consist of 60 to 80 percent EGDN, the adverse effects associated with inhalation of such mixtures can be attributed primarily to EGDN.

Trainor and Jones (1966) reported that exposure to EGDN:NG at a level of 0.7 mg/m³ for 25 minutes was sufficient to produce decreased blood pressure and a slight headache in humans. The authors also reported that workers at a munitions plant developed headaches when exposed to EGDN:NG concentrations between 0.1 and 0.53 mg/m³ (0.38 mg/m³ average). Morikawa et al. (1967) found that workers in an explosives plant exposed to low concentrations of EGDN:NG (0.066 ppm was the highest average level) had a much higher incidence of abnormal pulse waves than controls (143 out of 1,271 versus 0 out of 175). (Abnormal pulse waves often indicate a clinically significant defect in the functioning of the heart and/or circulatory system (Braunwald 1978).)

In its Criteria Document for NG and EGDN, NIOSH (1976b) refers to a raport of a dynamite worker who died when exposed to EGDN:NG concentrations between 0.3 and 1.4 mg/m³, and to another report of two workers who died suddenly following exposure to EGDN:NG at concentrations ranging from 1.7 to 2.7 mg/m³. NIOSH (1976) observed that skin absorption may have contributed significantly to these deaths.

Based on the evidence described above, the ACGIH recommended a 0.05-ppm TLV–TWA and a 0.1-ppm TLV–STEL in 1981. Because the studies relied on were primarily reports of adverse effects resulting from chronic exposure, ACGIH adopted the TLV–TWA without the STEL in 1983. After reviewing the same evidence, NIOSH (1978) concluded that exposure to EGDN:NG should be controlled to a level below that associated with vasodilation, which is the most sensitive indicator of toxicity. Relying primarily on the Trainor and Jones (1966) study, NIOSH concluded that workers exposed to or below 0.1 mg/m³ will not develop vasodilation, as indicated by the development of headache. Because vasodilation and associated headache were found to occur even on short-term exposure to EGDN:NG, NIOSH recommended a 20-minute short-term limit of 0.1 mg/m³ approximately 0.01 ppm).

Hypotension and headache have been observed in populations exposed below 0.5 mg/m³, and fatalities have occurred at EGDN:NG exposures of between 0.3 and 1.4 mg/m³ in one instance, and between 1.7 and 2.7 mg/m³ in another. OSHA's existing standard is 0.3 mg/m³, as is the ACGIH TLV. Since worker deaths have occurred at or near the current PEL, OSHA proposes adoption of the more stringent 0.1-mg/m³ (0.01-ppm) NIOSH short-term limit as the PEL to prevent fatalities and protect against adverse health effects. It should be noted that toxicity can be produced readily through the skin, and therefore the recommended environmental limit is protective only if skin contact is prevented. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethylene glycol dinitrate and nitroglycerin if the Agency determines that this limit will substantially reduce significant risk.

FLUOROTRICHLOROMETHANE
CAS: 75–69–4; Chemical Formula: CCl_3F
H.S. No. 1180

Fluorotrichloromethane, also known as FC–11, is a member of a large family of chemicals, the chlorofluorocarbons. The current OSHA PEL is an 8-hour TWA of 1000 ppm. NIOSH has no REL for fluorotrichloromethane. OSHA proposes that the standard be revised to a ceiling limit of 1000 ppm, which corresponds to the current ACGIH TLV for this substance.

Inhalation of large doses of FC–11 has caused cardiac sensitization and death in humans. Experimental mice that inhaled aerosol containing 10 percent FC–11 exhibited cardiac arrhythmias. In the same study, dogs that inhaled aerosol containing 2.5 percent FC–11 had decreased myocardial function; monkeys that inhaled an aerosol containing 5 percent FC–11 developed tachycardia and hypotension (NRC 1977).

Exposure to 5000 ppm FC–11 has induced cardiac sensitization and arrhythmia in dogs that were intravenously injected with epinephrine (Reinhardt, Azar, Maxfield et al. 1971). Jenkins, Jones, Coon, and Siegel (1970) found that four species of animals (monkeys, dogs, rats, and guinea pigs) suffered no ill effects after 90 days of continuous exposure to 1000 ppm FC–11.

Because 1000 ppm appears to represent a no-effect level for FC–11, OSHA recommends a ceiling of 1000 ppm, which will provide workers with a greater margin of safety against cardiac sensitization than the Agency's current 1000-ppm 8-hour TWA. The cardiac sensitization exhibited by FC–11-exposed animals is an acute effect. OSHA's current 1000-ppm TWA PEL would permit workers to be exposed to short-term concentrations of FC–11 that are sufficiently high to sensitize the heart to sympathomimetic amines. Accordingly, OSHA finds that, at the current limit, workers are at risk of experiencing arrhythmia. Reducing this to a 1000-ppm ceiling limit (the observed no-effect level in animals) should ensure that no worker is placed at risk of cardiac sensitization as a result of exposure to FC–11. Therefore OSHA is proposing to revise its 1000-ppm TWA–PEL for this substance to a 1000-ppm ceiling value. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for fluorotrichloromethane if the Agency determines that this limit will substantially reduce significant risk.

SODIUM AZIDE
CAS: 26628–22–8; Chemical Formula: NaN_3
H.S. No. 1364

There is no current OSHA PEL for sodium azide and NIOSH also has no REL for this substance. The ACGIH (1986) recommends ceiling limits of 0.1 ppm for sodium azide (as hydrazoic acid vapor), or 0.3 mg/m³ as NaN_3).

Sodium azide is known to produce hypotension in laboratory animals and humans. An intravenous dose of 1 mg/kg has been reported to lower blood pressure in cats (Graham 1949). In the 1950s, the medicinal usefulness of sodium azide as a hypotensive agent was tested in 30 hypertensive patients. Their hypertension was reduced, but observed side effects included headaches; in addition, 20 of 30 patients developed increased sensitivity to sodium azide, necessitating a reduction in the dose (Black et al. 1954).

Acute inhalation by humans of hydrazoic acid vapor (which forms when sodium azide contacts water) results in lowered blood pressure, eye irritation, bronchitis, headache, weakness, and collapse (Fairhall et al. 1943; Graham 1949). The exposure levels that produce these effects were not reported by these authors. Haas and Marsh (1970) report that exposure to concentrations of hydrazoic acid vapor as low as 0.5 ppm "cause some discomfort to laboratory personnel."

Because of its hypotensive effect in humans, OSHA believes that a limit should be established for sodium azide that will reduce the risk posed to workers at the previously uncontrolled levels of this substance permitted in the workplace. To reduce this risk substantially, OSHA is proposing to establish a ceiling limit of 0.1 ppm HN_3 (0.3 mg/m³ NAN_3) for sodium azide. The health evidence forms a reasonable basis for proposing a new limit for sodium azide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE
CAS: 76–13–1; Chemical Formula: CCl_2FCClF_2
H.S. No. 1403

1,1,2-Trichloro-1,2,2-trifluoroethane (FC–113) is a member of the chlorofluorocarbon family. The current OSHA PEL is an 8-hour TWA of 1000 ppm. The ACGIH has an 8-hour TLV–TWA of 1000 ppm and a 15-minute STEL of 1250 ppm. NIOSH has no REL for 1,1,2-trichloro-1,2,2-trifluoroethane.

Cardiac sensitization following the administration of epinephrine is the most significant effect observed after exposure to FC–113. Reinhardt, Mullin, and Maxfield (1973) observed that 10 out of 29 dogs exposed to 5000 ppm FC–113 for 5 minutes and simultaneously injected with epinephrine developed serious arrhythmias. Similar experiments in which the dogs were exposed to 2000 to 2500 ppm of this substance for longer periods of time (from one-half to 6 hours) and administered epinephrine resulted occasionally in arrhythmia (Aviado 1975). However, when the experiment was repeated using four 6-hour exposures to 1000 ppm in conjunction with an injection of epinephrine, no arrhythmias were observed.

A study by Stopps and McLaughlin (1967) of human volunteers revealed that exposure to 2500 ppm FC–113 resulted in impairment of psychomotor performance (described as loss of ability to concentrate and lethargy). This effect was not observed at concentrations below 2500 ppm.

The evidence described above demonstrates that FC–113 can exert toxic effects at levels of exposure comparable to the levels that are permitted by excursions above the current OSHA TWA of 1000 ppm; thus, current levels pose a risk of cardiac sensitization to exposed workers. OSHA finds that a STEL of 1250 ppm will provide a wider margin of safety against cardiac sensitization and impaired psychomotor performance by limiting the potentially high, short-term exposures currently permitted by the 8-hour TWA. OSHA believes that establishing a STEL of 1250 ppm will reduce this risk of FC–113-induced cardiovascular toxicity. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 1,1,2-trichloro-1,2,2-trifluoroethane if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

Of all the physiological systems, the cardiovascular system is especially vulnerable to occupational hazards because cardiovascular diseases are already so prevalent in our society. According to Levy (1985), "an estimated 40 million Americans have some form of cardiovascular disease." The major risk factors, as revealed by epidemiology, are age, male sex, hypertension, cigarette smoking, the existence of low-density and high-density plasma lipoproteins, cholesterol, and diabetes (Levy 1985). Many American workers exposed to the chemicals grouped here on the basis of their cardiovascular

effects have one or more of these risk factors and are therefore particularly susceptible to exposure to cardiovascular toxicants. Although the precise interactions among these risk factors and exposures to cardiovascular toxins are difficult to demonstrate with accuracy, few would argue that they do not occur.

OSHA preliminarily concludes that the potential for cardiovascular system damage associated with exposure to these cardiac sensitizers, vasodilators, and atherosclerosis-causing substances poses a risk to employees in a broad range of workplaces. The effects experienced by exposed workers range from arrhythmia, low blood pressure, stroke, and blockage of the flow of blood to the myocardium. Reducing the exposure limits for these cardiovascular toxins from levels where such effects could occur to concentrations where their occurrence is unlikely will substantially reduce these risks. OSHA believes that the health evidence for these cardiovascular toxins forms a reasonable basis for proposing new or revised limits. At the time of the final rule, OSHA will establish new or revised limits for these substances if the Agency determines that such limits will substantially reduce significant risk.

8. Substances for Which Proposed Limits Are Based on Avoidance of Systemic Toxicity

Introduction

For a number of substances, OSHA's proposed limits are based primarily on evidence that exposure to these substances is associated with general systemic toxicity. This group of substances is unique among the groupings discussed so far in that no single low-dose target organ system can be identified for these chemicals. Instead, these substances have been shown either to affect several organ systems simultaneously or to cause a variety of nonspecific adverse signs and symptoms that are indicative of general toxicity.

The 33 substances belonging to this group and their CAS numbers, HS numbers, current PELs, ACGIH TLVs, and RELs are shown in Table C8-1. OSHA is proposing to establish exposure limits for 17 substances in this group for which there are currently no Z table limits. OSHA is also proposing to retain the Agency's PELs for eight substances and to add STELs to them. For five substances, OSHA is proposing to lower its existing TWA PELs. For two additional substances that have existing TWA PELs, OSHA is proposing to delete the TWA PELs and to adopt ceiling values instead. For one remaining substance, OSHA is proposing to delete its existing ceiling limit and to adopt a new TWA PEL. NIOSH recommends limits for 11 of the substances that differ in some respects from the ACGIH TLVs.

Description of the Health Effects

For each substance included in this grouping, limits have been established to protect against a variety of adverse exposure-related effects that are manifested at multiple target organ sites. In some instances, the nature of the toxic effects associated with exposure is well-defined and clearly understood (for example, CNS depression, histological organ changes, embryotoxicity, methemoglobinemia, conjunctivitis). The effects of exposure to other substances in this group, however, have been demonstrated only by such nonspecific indicators as weight loss or decreased weight gain, lethargy, loss of appetite, nervousness, or gastrointestinal disturbances. Although the specificity of the systemic effect caused by exposure to the substances in this group may vary, all of these substances have been shown to be biologically active in mammalian species, to interfere significantly with biological processes, and to impair normal organ function.

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TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1005 Acetonitrile+	75-05-8	40 ppm TWA	40 ppm TWA 60 ppm STEL, Skin	20 ppm TWA
1006 Acetylsalicylic acid (Aspirin)	50-78-2	--	5 mg/m^3 TWA	--
1019 Aluminum (Welding fumes)	7429-90-5	--	5 mg/m^3 TWA	--
1046 2-Butoxy ethanol	111-76-2	50 ppm TWA, Skin	25 ppm TWA, Skin	--
1052 n-Butyl glycidyl ether	2426-08-6	50 ppm TWA	25 ppm TWA	5.6 ppm Ceiling (15 min)
1067 Captan	133-06-2	--	5 mg/m^3 TWA	--
1088 Chloroprene	126-99-8	25 ppm TWA, Skin	10 ppm TWA, Skin	1 ppm Ceiling (15 min)
1109 Cyclohexylamine	108-91-8	--	10 ppm TWA	--
1112 Cyhexatin	13121-70-5	-	5 mg/m^3 TWA	--
1120 2-N-Dibutylamino-ethanol	102-81-8	-	2 ppm TWA, Skin	--

TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1139 Diglycidyl ether	2238-07-5	0.5 ppm Ceiling	0.1 ppm TWA	0.2 ppm Ceiling (15 min)
1159 Ethanolamine	141-43-5	3 ppm TWA	3 ppm TWA 6 ppm STEL	—
1167 Ethylene chlorohydrin	107-07-3	5 ppm TWA, Skin	1 ppm Ceiling, Skin	—
1189 Glycidol	556-52-5	50 ppm TWA	25 ppm TWA	—
1198 Hexafluoroacetone	684-16-2	—	0.1 ppm TWA, Skin	—
1207 Hydrogen cyanide+	74-90-8	10 ppm TWA, Skin	10 ppm Ceiling, Skin	4.7 ppm Ceiling (10 min)
1210 Hydrogenated terphenyls	61788-32-7	—	0.5 ppm TWA	—
1223 2-Isopropoxyethanol	109-59-1	—	25 ppm TWA	—
1227 Isopropyl glycidyl ether	4016-14-2	50 ppm TWA	50 ppm TWA 75 ppm STEL	50 ppm Ceiling (15 min)
1273 4,4'-Methylene bis (2-chloroaniline)	101-14-4	—	0.02 ppm TWA (0.22 mg/m^3), Skin	3 ug/m^3 TWA (Lowest detectable limit)

TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1317 Phenylhydrazine	100-63-0	5 ppm TWA, Skin	5 ppm TWA 10 ppm STEL, Skin	0.14 ppm Ceiling (120 min)
1318 Phenylphosphine	638-21-1	--	0.05 ppm Ceiling	--
1321 Phosphine	7803-51-2	0.3 ppm TWA	0.3 ppm TWA 1 ppm STEL	—
1330 Piperazine dihydrochloride	142-64-3	--	5 mg/m^3 TWA	--
1340 n-Propyl nitrate	627-13-4	25 ppm TWA	25 ppm TWA 40 ppm STEL	--
1366 Sodium Fluoroacetate	62-74-8	0.05 mg/m^3 TWA, Skin	0.05 mg/m^3 TWA 0.15 mg/m^3 STEL, Skin	—
1412 Trimethylbenzene	25551-13-7	--	25 ppm TWA	—
1416 Tungsten Compounds (insoluble)	7440-33-7	—	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA
1417 Tungsten Compounds (soluble)	7440-33-7	--	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA

TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1428 Vinylidene chloride	75-35-4	—	5 ppm TWA 20 ppm STEL	Lowest feasible level
1430 Welding fumes (Total particulate)	—	-	5 mg/m^3 TWA	--
1437 Zinc oxide (Fume)	1314-13-2	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA 15 mg/m^3 Ceiling (15 min)
1439 Zirconium compounds	7440-67-7	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	--

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceiling are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ Proposed limit is the NIOSH REL.

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Table C8-2 summarizes the toxic effects reported in humans and experimental animals to support the establishment of limits for these substances. This table shows the variety of adverse health effects that adoption of the proposed limits will minimize or prevent. The table also shows that, for the vast majority of substances in this group, the risks of exposure have been defined in studies of humans or animals and are known to include respiratory effects, neurological effects, adverse effects on the reproductive system, organ damage, hematopoietic effects, sensitization, and mucosal irritation. All of these effects are indicative of generalized systemic effects rather than localized effects occurring at the site of chemical contact.

Dose-Response Relationships and Systemic Effects

As Table C8-2 shows, adverse toxic reactions have been reported to occur in humans for 18 of the 33 substances in this group; thus, for more than half of these substances, it has been established conclusively that exposure is associated with adverse health effects in humans. Experimental animal data comprise the principal evidence for the toxicologic action of the remaining substances. As is the case for many substances for which limits are being proposed, apparent no-observed effect levels, supplemented by the use of an additional safety factor to take more sensitive individuals into account, provide the basis for setting limits. The systemic toxic effects caused by exposure to substances in this group appear to follow an NOE dose-response pattern. That is, as intensity and/or duration of exposure decreases, the severity of the effect on organ systems also decreases until a point is reached where there is no detectable effect, at least at observable levels, on organ systems at or below the NOE level. No-effect exposure levels have been identified in humans and animals for several of the substances in this group; where no-effect levels have been identified (i.e., for diglycidyl ether and phenylphosphine), they have provided the primary basis for the proposed limits.

TABLE C8-2.—SUMMARY OF ADVERSE HEALTH EFFECTS REPORTED FOR SUBSTANCES PRODUCING GENERAL SYSTEMIC TOXICITY

H.S. No./Chemical name	Effects reported in humans	Effects reported in animals
1005 Acetonitrile	Tightness in chest Flushing of face	Embryotoxicity. Teratogenicity at maternally toxic doses. Liver, blood count changes.
1006 Acetylsalicylic acid	Mucosal irritation Respiratory allergic response Internal bleeding	Teratogenicity at "very large" doses.
1019 Aluminum welding fumes	No data	Respiratory effects.
1046 2-Butoxy ethanol	Mild sensory irritation	Severe hemoglobinuria; lung, kidney, liver changes. Hemolytic anemia, increased osmotic fragility in erythrocytes
1052 n-Butyl glycidyl ether	Dermatitis, skin sensitization	Delirium, depression.
1067 Captan	Recurrent urticaria	Decreased fertility index in males. Polyploid carcinoma of duodenum.
1088 Chloroprene	CNS depression Lung, liver, kidney injury Conjunctivitis, necrosis of cornea Lowering of blood pressure	"Mineral systemic effect."
1109 Cyclohexylamine	Acute toxicity Sensitization	Mutagenic and reproductive effects.
1112 Cyhexatin	No data	Microscopic changes in liver, kidney, adrenal glands.
1120 2-N-Dibutylaminoethanol	No data	Weight loss. Elevated liver- and kidney-to-body-weight ratios.
1139 Diglycidyl ether	Mucosal irritation	CNS depression. Clouding of cornea. Respiratory irritation. Hematopoietic effects.
1159 Ethanolamine	No data	Pulmonary, hepatic, and renal lesions. Decreased alertness. Temporary weight loss.
1167 Ethylene chlorohydrin	Damage to liver and brain at lethal concentrations. Mucosal irritation Gastrointestinal disturbances	Respiratory depression. Liver and kidney damage.
1189 Glycidol	No data	Pneumonitis, emphysema.
1196 Hexafluoroacetone	No data	Renal dysfunction. Increased lung weight. Testicular damage. Hematopoietic effects. Feletoxicity.
1210 Hydrogenated terphenyls	No data	Decreased weight gain. Liver, kidney damage. Lung changes, bronchopneumonia.
1207 Hydrogen cyanide	Cyanide poisoning Weakness Mucosal irritation Colic Nervousness Enlargement of thyroid	None reported.
1223 2-Isopropoxyethanol	No data	Anemia. Hemoglobinuria. Lung congestion.
1227 Isopropyl glycidyl ether	Mucosal irritation	Reduced weight gain. Hemoglobin increase. Emphysematous changes in lungs. CNS depression.

TABLE C8-2.—SUMMARY OF ADVERSE HEALTH EFFECTS REPORTED FOR SUBSTANCES PRODUCING GENERAL SYSTEMIC TOXICITY—Continued

H.S. No./Chemical name	Effects reported in humans	Effects reported in animals
1273 4,4'-methylene-bis (2-chloroaniline)	Hematuria	Cyanosis. Methemoglobinemia.
1317 Phenylhydrazine	Skin sensitization	Liver, lung tumors. Anemia. Irregular growth. General weakness. Blood vessel tumors.
1318 Phenylphosphine	No data	Mild hemolytic anemia. Testicular degeneration. Hind leg tremor. Nausea, loss of appetite. Hypersensitivity to sound and touch.
1321 Phosphine	Pulmonary edema Gastrointestinal disturbances Dizziness	Respiratory irritation.
1330 Piperazine dihydrochloride	Skin burns, sensitization, asthma	No data.
1340 n-Propyl nitrate	No data	Dyspnea. Methemoglobinemia. Hypotension. Respiratory depression.
1366 Sodium fluoroacetate	No data	Fluctuation in growth rate. Tissue changes.
1412 Trimethylbenzene	Nervousness, tension, anxiety Asthmatic bronchitis Hypochromic anemia	Lymphopenia, neutrophilia.
1416 Tungsten compounds (insoluble)	No data	Gross changes in liver and spleen. Lung tissue changes.
1417 Tungsten compounds (soluble)	No data	Generalized cellular asphyxiation. Colic. Incoordination.
1428 Vinylidene chloride	No data	Dyspnea. Nasal irritation. Liver cell degeneration. Retarded weight gain. Embryotoxicity. Kidney adenocarcinoma.
1430 Welding fumes (total particulate)	Pulmonary irritation	Pulmonary irritation.
1437 Zinc oxide (fume)	Metal fume fever, gastritis	No data.
1439 Zirconium compounds	No data	Toxic effects from zirconium tetrachloride due to liberation of hydrochloric acid.

In instances where no-effect levels have not been reported (e.g., for n-butyl glycidyl ether, trimethylbenzene, and acetylsalicylic acid), OSHA has used safety factors and expert judgment to derive an NOE value.

The following discussions describe OSHA preliminary findings for these systemic toxicants.

ACETONITRILE
CAS: 75-05-8; Chemical Formula: CH_3CN
H.S. No. 1005

Acetonitrile is most widely used in industry as a specialty solvent and chemical intermediate. The current occupational exposure limit for acetonitrile is a 40-ppm TWA. The ACGIH has recommended a 40-ppm TLV–TWA with a 60-ppm TLV–STEL in addition to a skin notation. NIOSH (1978) has also evaluated the toxicity of acetonitrile and has recommended a TWA limit of 20 ppm.

The only human evidence describing the toxic effects associated with exposure to acetonitrile is a report by Pozzani et al. (1959), who exposed human subjects to acetonitrile vapor. None of three subjects exposed to 40 ppm for 4 hours reported any adverse responses during the exposure period, but one subject experienced slight tightness of the chest a few hours after termination of exposure as well as a cooling sensation in the lungs the following day. None of the subjects had elevated blood cyanide levels; one subject showed a slightly elevated urinary thiocyanate level. Pozzani et al. (1959) also exposed two subjects to 80 ppm and 160 ppm of acetonitrile for 4 hours. Subjects exposed to 80 ppm reported no adverse response. One subject exposed to 160 ppm experienced slight flushing of the face and chest tightness a few hours after exposure (Pozzani et al. 1959).

In animal studies, acetonitrile has been found to be embryotoxic and teratogenic in rodents only at exposure levels sufficiently high to cause maternal toxicity (Berteau et al. 1982; Willhite 1983). A 13-week inhalation study conducted by the National Toxicology Program (Hazelton Laboratories 1983) found pathological changes in the liver and some blood changes in mice and rats exposed to concentrations of 400 ppm acetonitrile.

The human study by Pozzani et al. (1959) provides the primary basis for both the ACGIH's 40-ppm TWA and 60-ppm STEL and NIOSH's REL of 20 ppm (TWA). In addition to this study, NIOSH (1978) cites a report by Amdur (1959), who investigated an incident in which 16 painters became ill (with one death) after using an acetonitrile-containing material in a confined space. Amdur (1959) reported no further incidents after adequate ventilation was installed and acetonitrile levels were maintained at about 17 ppm. NIOSH concluded that exposure to 40 ppm "produced minimal effects, whereas no observable effects were produced in humans at 17 ppm" (NIOSH 1978, p. 97). Therefore, NIOSH recommended that exposure not exceed 20 ppm as a 10-hour TWA.

OSHA proposes a 20-ppm PEL for acetonitrile. Minor health effects have been reported at the 40-ppm TLV–TWA (with a 60-ppm STEL) level; the identification of 17 ppm as a no-effect level is a major consideration in selection of the 20-ppm REL value that the Agency proposes to adopt. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for acetonitrile if the Agency determines that this limit will substantially reduce significant risk. OSHA's preliminary feasibility analysis is based on limited data at this level, and additional feasibility information is requested from the public.

ACETYLSALICYLIC ACID (ASPIRIN)
CAS: 50-78-2; Chemical Formula: $CH_3COOC_6H_4COOH$
H.S. No. 1006

There is no current OSHA limit or NIOSH REL for acetylsalicylic acid. The ACGIH has established a TLV of 5 mg/m³ as an 8-hour TWA.

The work of O'Brien (1968) reports that a normal therapeutic dose of 600 mg aspirin will interfere with platelet aggregation in exposed subjects for a period of five days or more. Hart (1947) also reported that 150 mg is the smallest oral dose of acetylsalicylic acid that will produce this effect. Unpublished data from the Dow Chemical Company (cited in ACGIH 1986, p. 16) indicate that aspirin concentrations exceeding 100 mg/m³ are tolerated except for occasional skin irritation. However, no data are available on the long-term effects on organ systems of inhalation exposure to aspirin. Secondary sources report that aspirin is an acute irritant to the gastric mucosa and respiratory tract.

OSHA is proposing an 8-hour TWA of 5 mg/m³ for acetylsalicylic acid. The Agency preliminarily concludes that this limit will prevent blood effects and gastric and respiratory irritation, and proposes to protect workers from these adverse effects by reducing this uncontrolled risk. This health evidence forms a reasonable basis for proposing a new limit for acetylsalicylic acid. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ALUMINUM (WELDING FUMES)
CAS: 7429-90-5; Chemical Formula: Al
H.S. No. 1019

OSHA currently has no permissible exposure limits for aluminum welding fume. The ACGIH recommends an 8-hour TLV–TWA of 5 mg/m³.

Aluminum welding fumes are produced by arc-welding in a protective, inert atmosphere such as argon. Some aluminum fume is created by these arcs, as is an intense radiation that can produce ozone. Because workers exposed to arc welding fumes have previously not been protected by a permissible exposure limit, OSHA proposes a PEL of 5 mg/m³ TWA for these welding fumes. The Agency preliminarily concludes that this limit will protect welders and other workers in the vicinity of the welding from exposure to the significant irritation potentially associated with inhalation of these fumes. This health evidence forms a reasonable basis for proposing a new limit for aluminum (welding fumes). At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

2-BUTOXYETHANOL
CAS: 111-76-2; Chemical Formula: $C_4H_9OCH_2CH_2OH$
H.S. No. 1046

OSHA's current permissible exposure limit for 2-butoxyethanol, one of the family of substances known as the glycol ethers, is 50 ppm as an 8-hour TWA, with a skin notation. The ACGIH recommends a limit of 25 ppm TWA, also with a skin notation, for this colorless liquid with a mild ether odor.

2-Butoxyethanol has long been known to be toxic, with early studies indicating that a single 7-hour exposure to 700 ppm was lethal to laboratory animals (Werner, Mitchel, Miller et al. 1943). Exposures near the lethal level caused systemic toxicity in the form of hemoglobinuria and lung, kidney, and liver changes. Carpenter and associates (1956) reported hemolytic anemia and increased fragility of the red blood cells in rats repeatedly exposed to 2-butoxyethanol at 320 ppm for 5 weeks. However, repeated exposure for 12 weeks at 400 ppm was only slightly injurious to dogs (Werner, Mitchell, Miller et al. 1943).

Humans appear to be less susceptible to butoxyethanol poisoning than experimental animals. In humans, several single 8-hour exposures at levels of 200 ppm and 160 ppm caused urinary excretion of butoxyacetic acid. However, these subjects experienced irritation and discomfort after these exposures (Carpenter, Pozzani, Weil et al. 1956). However, a recent study has confirmed that the increased erythrocyte osmotic fragility observed in rats exposed to many of the glycol ethers is a very sensitive indicator of toxicity and correlates with the development of hemoglobinuria at higher exposure levels (Moffett, Linnett, and Blair 1976). These findings indicate that the no-effect level in animals is approximately 25 ppm. The ACGIH suggests that 2-butoxyethanol's toxicity may be more likely to occur as a result of skin absorption than as a consequence of inhalations (ACGIH 1986, p. 71).

OSHA preliminarily concludes that the current PEL of 50 ppm is insufficiently protective against the risk of 2-butoxyethanol's hematological effects. The proposed limit of 25 ppm will reduce this risk to a level below that at which these toxic effects have been observed. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 2-butoxyethanol if the Agency determines that this limit will substantially reduce significant risk.

n-BUTYL GLYCIDYL ETHER
CAS: 2426-08-6; Chemical Formula: $C_4H_9OH_2CHOCH_2$
H.S. No. 1052

The current OSHA limit for n-butyl glycidyl ether is 50 ppm TWA. The ACGIH-recommended TLV is 25 ppm; NIOSH has recommended that occupational exposure to n-butyl glycidyl ether not exceed 5.6 ppm as a 15-minute short-term level.

OSHA's current PEL of 50 ppm, which was adopted from the ACGIH's 1968 TLV list, was based on a Dow Chemical Company report (cited in ACGIH 1986, p. 81) that showed that repeated applications of n-butyl glycidyl ether to the skin of humans caused irritation and sensitization; at the time, the ACGIH concluded that a limit of 50 ppm would prevent these irritation responses. The ACGIH proposed to reduce the TLV to 25 ppm in 1978, noting that the 50-ppm limit was only 13 times lower than the 8-hour LC_{50} (670 ppm) reported for this chemical in rats and that a wider margin of safety was desirable.

The NIOSH limit of 5.6 ppm was recommended in the Institute's June 1978 Criteria Document on Glycidyl Ethers. This limit was based, in large part, on mutagenic studies conducted in microbial and mammalian test systems, as well as some evidence for other glycidyl ethers that exposure is associated with testicular atrophy and hematopoietic abnormalities in laboratory animals. After publication of its Criteria Document, NIOSH received a confidential report prepared for the Shell Development Company by Anderson et al. (1957), who had conducted a rat inhalation study. In the research, rats were exposed to 38 ppm, 75 ppm, 150 ppm, or 300 ppm for seven hours daily, 5 days per week for 10 weeks. Atrophic testes were found in 5 of 10 rats exposed to 300 ppm, very small testes were found in 1 of 10 rats exposed to 150 ppm, and patchy atrophy was found in 1 of 10 rats exposed to 75 ppm. No effects were observed in rats exposed at 38 ppm. Based on this

additional evidence, NIOSH reaffirmed its REL for n-butyl glycidyl ether in a Current Intelligence Bulletin published in October, 1978.

The NIOSH REL of 5.6 ppm (15-minute STEL) is based on in-vitro testing of microbial and mammalian systems, and extensive extrapolation of these data is required to predict effects in humans. The 25-ppm TLV is based on an increased factor of safety applied to the LC_{50} rate determined in animal studies and is below the observed no-effect level of 38 ppm. OSHA therefore proposes that a PEL of 25 ppm TWA be adopted to protect exposed workers from the serious adverse effects of butyl glycidyl ether exposure. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-butyl glycidly ether if the Agency determines that this limit will substantially reduce significant risk.

CAPTAN
CAS: 133-06-2; Chemical Formula: $C_9H_8Cl_3NO_2S$
H.S. No. 1067

OSHA does not currently regulate captan. The ACGIH recommends a TLV–TWA of 5 mg/m³ for this substance, which is a white, crystalline, odorless solid.

Skin applications of 900 mg/kg captan produce skin irritation in experimental animals. Long-term feeding studies did not reveal adverse effects in dogs fed captan in the diet at levels of 100 mg/kg/day for 66 weeks or in rats fed 1000 mg/kg/day for 2 years (Martin 1971; Spencer 1968). Male mice showed decreased fertility at levels of 50 or 100 mg/kg/day for 5 days (Collins 1972).

Studies on the mutagenicity of captan indicate that the substance acts as an alkylating agent and induces chromosome rearrangements in rats and point mutations in *Neurospora crassa* (Epstein and Legator, as cited in ACGIH 1986, p. 98). Legator and colleagues (1969) reported that concentrations of 10 ug/ml inhibited DNA in human embryo cells, and concentrations of 1.5 ug/ml produced chromosomal aberrations in somatic and germ cells of kangaroo rats. Animal evidence concerning carcinogenicity is contradictory, although high doses caused significant incidences of polypoid carcinoma of the duodenum in mice, as well as adenomatous polyps (NCI 1977).

Some exposed individuals experience skin irritation (Spencer 1968). A case of recurrent urticaria caused by captan exposure has been reported and confirmed (Croy 1973), and captan exhibited high reactivity when administered in a battery of patch tests (Rudner 1977).

OSHA is proposing a PEL of 5 mg/m³ TWA to protect workers exposed to captan from the risk of skin irritation and reproductive effects associated with exposure to this previously unregulated substance. This health evidence forms a reasonable basis for proposing a new limit for captan. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CHLOROPRENE
CAS: 126-99-8; Chemical Formula: $CH_2{:}CClCH{:}CH_2$
H.S. No. 1068

The current OSHA limit for chloroprene is 25 ppm TWA with a skin notation. The ACGIH has recommended a 10-ppm TLV–TWA, with a skin notation, and NIOSH (1977c) recommended a limit of 1 ppm, measured over a 15-minute period.

The ACGIH recommended a reduction in the TLV from 25 ppm to 10 ppm in 1981 based on a review of the world literature by Trochimowicz, who prepared the 1980 ACGIH proposed documentation, and by Reinhardt (personal communication 1980, as cited in ACGIH 1986, p. 135). Reinhardt concluded that there was no evidence indicating a lack of safety associated with the 25-ppm TLV, but "minimal systemic effects" (i.e., growth retardation) seen in rats and hamsters exposed to 39 ppm for 4 weeks or 50 ppm for a lifetime suggest that an additional margin of safety was in order. Therefore, the ACGIH reduced the TLV–TWA to 10 ppm.

In recommending a 1-ppm 15-minute exposure limit, NIOSH (1977c) cited three reports on plants in the Soviet Union. Katoeova (1973) reported finding a significant excess of chromosomal abnormalities in the blood of workers exposed to approximately 5 ppm chloroprene. Volkova et al. (1976) reported similar findings in a plant where chloroprene levels ranged from 0.8 to 1.95 ppm. In the third study, Sanotskii (1976) reported abnormal sperm morphology among workers exposed from 0.28 to 1.94 ppm; a threefold increase in the rate of spontaneous abortion among wives of the workers was also found. In addition, NIOSH (1977c) cited a study by Davtian et al. (1973), who reported a significant excess of embryonic mortality in female rats that were mated to male rats exposed to 1 ppm chloroprene. The investigators also found chromosomal aberrations in bone marrow cells of exposed male rats. NIOSH (1977c) also cited a number of reports showing chloroprene to be mutagenic in a variety of test systems. NIOSH concluded that it was prudent to limit exposure to 1 ppm over a 15-minute period, to limit the risk of genetic abnormalities being transmitted to subsequent generations. This limit represents the lowest concentration that can be measured reliably over a 15-minute period.

The 1-ppm (15-minute STEL) value recommended by NIOSH is based on studies reported in the USSR literature, and it represents an analytical and sampling limit of detection. The 10-ppm TLV–TWA is based on a 1981 critical review of the world literature and the observation that minimal systemic effects are observed at 38 ppm. OSHA proposes to adopt the 10-ppm TWA as a PEL to substantially reduce the systemic effects associated with chloroprene exposure. However, the Agency solicits comments on the significance of the Russian studies as their findings relate to risks to employees. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for chloroprene if the Agency determines that this limit will substantially reduce significant risk.

CYCLOHEXYLAMINE
CAS: 108-91-8; Chemical Formula: $C_6H_{13}N$
H.S. No. 1109

OSHA has no current limit for cyclohexylamine. The ACGIH recommends a TLV–TWA of 10 ppm. Cyclohexylamine is a liquid with a strong, fishy, amine odor.

Data concerning the acute toxicity of cyclohexylamine were reported by Eastman Kodak in 1968. In rats, the oral LD_{50} of a 5-percent solution in water was between 400 and 800 mg/kg; mice fed a diet of the 1-percent aqueous solution or the undiluted amine had LD_{50}s of between 200 and 400 mg/kg. Injection of the 5-percent aqueous solution in rats produced LD_{50}s of between 5 and 25 mg/kg, while mice injected intraperitoneally with the 1-percent solution had LD_{50}s of between 5 and 10 mg/kg. In guinea pigs, the dermal LD_{50} of undiluted cyclohexylamine is reported to be between 1 and 5 mL/kg. Edema, necrosis, and eschars were reported as a consequence of these dermal exposures. In rabbits, one drop of a 50-percent solution caused complete destruction of the eye. Six-hour inhalation exposures at a vapor concentration of 12,000 ppm caused deaths in rats, but exposure to 1000 ppm caused neither toxic effects nor deaths.

Legator, Palmer, Green, and Petersen (1969) considered cyclohexylamine to be a potential carcinogen, mutagen, or teratogen on the basis of dose-dependent chromosomal abnormalities observed in rats injected intraperitoneally with cyclohexylamine. Khera and Stolz (1971) noted adverse effects on rat fertility, and Becker and Gibson (1970) reported embryotoxic effects in mice intraperitoneally injected with cyclohexylamine. In contrast, Kennedy, Sanders, Weinberg, et al. (1969) reported no effects of exposure to cyclohexylamine on rabbit and rat fertility, reproduction, embryogenesis, or perinatal and postnatal development.

In general, there is agreement concerning the moderate-to-severe toxicity of cyclohexylamine and its potential for intense skin irritation and moderate skin sensitization (Sax 1968). The chemical is well known to be pharmacologically active, having sympathomimetic activity (Barger and Dale 1910). However, Lichfield and Swan (1971) report that human dietary levels of 5 g/day for 7 to 8 days produced no pharmacologically active levels in the tissues; furthermore, no changes were detected in blood pressure or heart rate, or in the electrocardiograms of exposed subjects. Chronic experimental toxicity data are lacking, but Watrous and Shulz (1950) have reported that exposure to 4 to 10 ppm of cyclohexylamine caused no symptoms of any kind in acutely exposed workmen.

OSHA is proposing an 8-hour TWA PEL of 10 ppm for cyclohexylamine. The Agency preliminarily concludes that limiting workplace exposures to this previously unregulated substance to the 10-ppm level will protect workers against the risk of severe skin and eye irritation, and sensitization that are potentially associated with exposure to cyclohexylamine. This health evidence forms a reasonable basis for proposing a new limit for cyclohexylamine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CYHEXATIN
CAS: 13121-70-5; Chemical Formula: $[C_6H_{11}]_3SnOH$
H.S. No. 1112

OSHA currently has no limit for cyhexatin. The ACGIH recommends a TLV–TWA of 5 mg/m³. At room temperature, cyhexatin exists in the form of white crystals.

Cyhexatin has oral LD_{50}s of 500, 700, and 654 mg/kg for rabbits, guinea pigs, and chickens, respectively. The intraperitoneal LD_{50} for the rat is 13 mg/kg (NIOSH 1977), and the oral LD_{50} for the rat has been reported to be 190 mg/kg (ACGIH 1974). Skin exposure to a 1-to 2-percent solution in goats and cattle caused mild effects; sheep showed mild effects after application of a 0.5-percent solution. One of 5 sheep died from multiple skin applications of a 1-percent suspension (Johnson et al. 1975).

The toxicity of cyhexatin is considered to be moderate, although it is greater than the toxicity of most other organic tin compounds. Long-term feeding studies in the rat produced no behavioral changes, mortality, tissue changes, or hematologic or biochemical changes in response to a 2-year oral dosage at 12 mg/kg per day for 2 years; however, dosed animals were smaller than controls. After daily doses by gavage of 24 mg/kg per day for 2 weeks, rats showed microscopic changes in the liver, kidneys, and adrenal glands at autopsy. Six mg/kg is considered to be the no-effect level in rats, and in dogs, the no-effect feeding level is reported to be 3 mg/kg. Rats fed 4 to 6 mg/kg, and rabbits fed 3 mg/kg, showed no ill effects on indices for fertility, gestation, viability, or lactation (Dow Chemical Company 1973). No inhalation data on animals are available and there are no human data.

OSHA proposes an 8-hour TWA limit of 5 mg/m³ for cyhexatin. OSHA preliminarily concludes that a PEL of 5 mg/m³ will protect workers against the risk of skin and other irritation associated with exposure to this tin compound in the absence of a current limit. This health evidence forms a reasonable basis for proposing a new limit for cyhexatin. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

2-N-DIBUTYLAMINOETHANOL
CAS: 102-81-8; Chemical Formula: $(C_4H_9)_2NCH_2CH_2OH$
H.S. No. 1120

OSHA currently has no limit for 2-N-dibutylaminoethanol (DBAE). The ACGIH recommends a TLV–TWA of 2 ppm, with a skin notation, for this colorless, combustible liquid, which has a faint, amine-like odor.

In rats, 2-N-dibutylaminoethanol has a single-dose oral LD_{50} of 1.7 g/kg and a corresponding intraperitoneal LD_{50} of 0.14 g/kg; these values are approximately analogous to the oral and intraperitoneal LD_{50}s for diethanolamine (Hartung and Cornish 1968). The LD_{50} for skin absorption in rabbits is 1.88 g/kg (Smyth et al. 1954). In male rats, the lowest 5-week drinking water dose tolerated without weight loss was 0.13 g/kg/day. Rats that ingested a dose of 0.43 g/kg/day showed elevated kidney-to-body-weight ratios but no histologic changes at autopsy (Cornish, Dambrauskas, and Beatty 1969). In inhalation studies of rats, 6-hour exposures at 70 ppm for 5 days killed one rat, and the surviving rats showed a 57 percent average body weight loss, as well as a doubling of kidney-to-body-weight ratio, a 10-fold increase in serumbilirubin, a slight increase in clotting time, and an elevated hematocrit. Inhalation of 33 ppm for one week caused a 3-percent body weight loss and a slight increase in clotting time, but no significant changes in the other variables observed. Twenty-seven weeks of exposure to 22 ppm caused no differences in the variables measured between exposed rats and controls (Cornish, Dambrauskas, and Beatty 1969). 2-N-dibutylaminoethanol is a more potent inhibitor of acetylcholinesterase in vitro than is diethylamine (DEA) (Hartung and Cornish 1968).

OSHA is proposing an 8-hour TWA PEL of 2 ppm, with a skin notation, for 2-N-dibutylaminoethanol. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of metabolic effects associated with inhalation exposure at the levels permitted in the absence of any OSHA limit. In addition, OSHA concludes that this substance presents a risk of systemic toxicity via percutaneous absorption and that a skin notation is required to substantially reduce this risk. This health evidence forms a reasonable basis for proposing a new limit for 2-n-dibutylaminoethanol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIGLYCIDYL ETHER
CAS: 2238-07-5; Chemical Formula: $C_6H_{10}O_3$
H.S. No. 1139

The current OSHA limit for diglycidyl ether (DGE) is 0.5 ppm as a ceiling concentration, and the ACGIH recommended TLV is 0.1 ppm as an 8-hour TWA. NIOSH recommends a limit of 0.2 ppm as a 15-minute ceiling.

Both the previous ACGIH 0.5 ppm TLV and that organization's current TLV are based on the results of an animal study reported by Hine and Rowe (1963) in which rats were administered repeated 4-hour exposures of 20 ppm, 3 ppm, or 0.3 ppm DGE. Rats exposed to 20 ppm of DGE showed respiratory irritation, loss of body weight, decreased leukocyte count, involution of the spleen and thymus, and hemorrhagic bone marrow. Residual hematopoietic effects were observed among rats exposed to 3 ppm, and no observed effects were

noted among rats exposed to 0.3 ppm after as many as 60 exposures. The previous TLV of 0.5 ppm as a ceiling value was based on the no-observed effect level of 0.3 ppm reported in this study and on industrial experience. In 1979, the ACGIH reconsidered its limit for DGE, noting that "in view of the seriousness of some of the effects produced [in the rat study], a TLV below the no-ill-effect level [of 0.3 ppm] would normally be adopted" (ACGIH 1986). The ACGIH consequently revised the TLV to 0.1 ppm as a TWA.

OSHA preliminarily finds that the revised TWA limit of 0.1 ppm will protect exposed workers against the hematopoietic and irritant effects to which they are potentially exposed at OSHA's current PEL. The risks of DGE exposure range from respiratory irritation to bone marrow effects. The proposed limit for DGE is intended to reduce this risk substantially. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for diglycidyl ether if the Agency determines that this limit will substantially reduce significant risk.

ETHANOLAMINE
CAS: 141-43-5; Chemical Formula: $NH_2CH_2CH_2OH$
H.S. No. 1159

OSHA currently has an 8-hour TWA limit of 3 ppm for ethanolamine. The ACGIH recommends the same TWA limit and a 15-minute STEL of 6 ppm. Ethanolamine is a colorless liquid with a mild smell like that of ammonia.

The health hazards associated with exposures to ethanolamine include skin irritation and necrosis and central nervous system depression. The oral LD_{50} in rats is reported as 3.32 g/kg and the intraperitoneal LD_{50} in rats as 981 mg/kg (Hartung and Cornish 1968). The dermal toxicity is considerably higher, with the LD_{50} being reported as 1 mg/kg in the rabbit. Dermal application of the undiluted liquid also caused redness, swelling, and burns comparable to mild first-degree burns (Union Carbide Corporation, as cited in ACGIH 1986, p. 235). The eye injury potential of ethanolamine is just slightly less than that of undiluted ammonia (Carpenter and Smyth 1946). Rats fed 0.5 percent in their food for 90 days (Smyth, Carpenter, and Weil 1951) showed no adverse effects, but at 1.28 g/kg/day, fatalities occurred. Treon and associates (1975) reported lung, liver, and kidney damage in various species exposed to high concentrations of the vapor and mist. In tests of various species, Weeks and coworkers (1980) reported marked dermal effects from continuous exposures (24 hours/day, 7 days/week for from 24 to 90 days) at various concentrations of the vapor; at 12 to 20 ppm, dermal effects were less severe, but at 5 ppm, skin irritation was still evident. Dogs also experienced a slight and temporary weight loss after 90-day exposure to 5 ppm, as well as decreased activity and alertness (Weeks, Dowing, Musselman et al. 1980). Luck and Wilcox (1953) demonstrated that a portion of low-dose ethanolamine is not excreted and is presumably retained in the body of cats, rats, and rabbits.

In studies of anesthetized dogs, Priddle (1954) reported that low doses cause central nervous system stimulation, while lethal doses cause CNS depression. Ethanolamine's irritant and necrotic effect on the skin is not related to its alkalinity (Hinglais 1948).

OSHA is proposing a PEL of 3 ppm TWA and a 15-minute STEL of 6 ppm for ethanolamine. The Agency preliminarily concludes that both of these limits are required to protect workers against the risk of irritation and neuropathic effects potentially associated with exposure to the levels permitted in the absence of a short-term limit. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethanolamine if the Agency determines that this limit will substantially reduce significant risk.

ETHYLENE CHLOROHYDRIN
CAS: 107-07-3; Chemical Formula: $ClCH_2CH_2OH$
H.S. No. 1167

OSHA currently has an 8-hour TWA limit of 5 ppm, with a skin notation, for ethylene chlorohydrin. The ACGIH recommends a ceiling limit of 1 ppm, with a skin notation. Ethylene chlorohydrin is a colorless liquid with a faint ethereal odor.

The primary health hazards associated with exposure to this substance are central nervous system effects, cardiovascular effects, liver damage, kidney damage, gastrointestinal effects, skin irritation, eye irritation, and mutagenic effects. The oral LD_{50} for rats is 72 mg/kg, and the intra peritoneal LD_{50} is 56 mg/kg (Goldblatt and Chiesman 1944). In guinea pigs, the intraperitoneal LD_{50} is 98 mg/kg, and the percutaneous LD_{50} is 205 mg/kg (Wahlberg and Bowman 1978).

The skin absorption rate for ethylene chlorohydrin is high; Semenova and associates (1978) determined that the LD_{50} must be reduced to one-fifth if ethylene chlorohydrin is administered daily for 20 days (Semenova, Kazanina, Fedyanina et al. 1978).

Inhalation toxicity is also high. Ambrose (1950) has reported that a single 1-hour exposure at 7.5 ppm and repeated 1-hour exposures at 2 ppm can be fatal to rats. Exposures of 15 minutes daily at concentrations of from 900 to 1000 ppm were fatal to rats within a few days (Goldblatt and Chiesman 1944).

In subacute and chronic studies, rats have shown fatalities from a daily dietary dose of 67.5 mg/kg (Oser, Morgareidge, Cox, and Carson 1975). Semenova and associates (1978) reported a 4-month no-effect inhalation level of 0.0033 ppm; at 0.017 ppm, slight CNS inhibition changes in the cavity of acid phosphatases and urinary secretion of nitrogen were observed after 4 months. These investigators also observed increased chromosomal aberrations in rat bone marrow at the 0.22-ppm level for 4 months (Semenova, Kazanina, Fedyanina et al. 1978).

Voost and Vet (1969) tested ethylene chlorohydrin in Klebsiella pneumoniae and found it strongly mutagenic. This finding was confirmed by the Ames test in Salmonella typhimurium; ethylene chlorohydrin reacts with DNA, since it inhibits the growth of DNA-deficient bacteria (Rosenkranz and Whodkowski 1974). A dose related increase of liver protein and glutathion depletion was observed in rats after a single dose of ethylene chlorohydrin of from 10 to 50 mg/kg (Friedman, Scalera, Balazs et al. 1977).

One fatal and several non-fatal cases of poisoning in industrial workers have been reported from exposure (for unspecified periods) to levels between 300 and 500 ppm. Autopsy of the worker who died revealed severe damage to the liver and brain, as well as effects in other organs. The survivors experienced nausea, vomiting, and irritation of the eyes, nose, and lungs (Bush, Abrams, and Brown 1949). Dierker and Brown (1944) reported that a 2-hour inhalation exposure to 300 ppm was fatal in one accidental exposure.

OSHA is proposing a ceiling limit of 1 ppm for ethylene chlorohydrin, with a skin notation. The Agency preliminarily concludes that this limit will protect workers against the risk of central nervous system and other systemic effects associated with workplace exposures at the levels permitted with a TWA limit alone. The skin notation is retained because ethylene chlorohydrin is readily absorbed through the skin. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ethylene chlorohydrin if the Agency determines that this limit will substantially reduce significant risk.

GLYCIDOL (2,3-EPOXY-1-PROPANOL)
CAS: 556-52-5; Chemical Formula: $C_3H_6O_2$
H.S. No. 1169

OSHA currently has an 8-hour TWA limit of 50 ppm TWA for glycidol. The ACGIH recommends a limit of 25 ppm TWA for this colorless liquid.

Glycidol causes eye, respiratory, and pulmonary irritation. Hine and associates (1956) conducted a study of animal toxicity caused by glycidol exposure and reported that glycidol is irritating to the lungs, with mice and rats exhibiting pneumonitis and emphysema resulting from vapor inhalation. The LC_{50} reported for mice is 450 ppm for a 4-hour exposure; the 8-hour LC_{50} for rats is 580 ppm (Hine, Kodama, Wellington et al. 1956). A single dermal application was only mildly irritating (Draize score, 4.5); repeated daily skin applications were severely irritating after 4 days. One drop of pure glycidol in the rabbit eye caused severe but reversible corneal injury (Hine, Kodama, Wellington et al. 1956). In rats, chronic exposures to 400 ppm (7 hours/day for 50 days) did not cause systemic toxicity, but eye irritation and respiratory distress were observed after the first few exposures (Hine, Kodama, Wellington et al. 1956). A study to determine glycidol's tumorigenic potential on the skin of mice showed negative results (Van Duuren et al. 1967).

OSHA proposes an 8-hour TWA limit of 25 ppm TWA for glycidol. The Agency preliminarily concludes that this limit will protect workers against the risk of eye, respiratory, and pulmonary irritation potentially associated with exposures to this substance. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for glycidol (2,3-epoxy-1-propanol) if the Agency determines that this limit will substantially reduce significant risk.

HEXAFLUOROACETONE
CAS: 684-16-2; Chemical Formula: C_3F_6O
H.S. No. 1196

OSHA currently has no limit for hexafluoroacetone. The ACGIH recommends a TLV-TWA of 0.1 ppm, with a skin notation, for this colorless, non-flammable, and highly reactive gas.

Inhalation studies of hexafluoroacetone in animals have shown varied systemic toxicities, including injury to the liver, kidney, testes, thymus, and bone marrow. In rats and dogs exposed 6 hours/day, 5 days/week for 13 weeks at concentrations of about 0.1, 1.0, or 12 ppm, no effects (other than increased lung weights in dogs) were observed in either species at 0.1 ppm. However, the 12-ppm exposures produced severe effects in both species, including marked but reversible testicular damage and slight hypoplasia of the spleen, thymus, and lymph nodes (E.I. du Pont de Nemours & Company, Inc. 1971 as cited in ACGIH 1986, p. 303). Reversible kidney damage in rats and increased lung weights in dogs occurred during the 1.0-ppm exposures. An earlier 4-hour acute exposure of rats demonstrated that 300 ppm was a lethal concentration (E.I. du Pont de Nemours and Company, Inc., as cited in ACGIH 1986, p. 303).

In rats, 2-week dermal exposures of 65, 130, or 250 mg/kg resulted in numerous adverse effects, including testicular damage and corresponding changes in lipid metabolism (Kennedy et al. 1982). A dermal dose of 13 mg/kg produced no adverse effects (Lee and Gillies 1984). An injected dose of radiolabeled hexafluoroacetone was, for the most part, rapidly excreted in unmetabolized form in the urine; this material also did not accumulate in rat testes (Gillies and Rickard 1984). Britelli and co-workers reported that hexafluoroacetone was fetotoxic in rats (1979). Dermal application of 90 mg/kg/day to pregnant rats resulted in maternal toxicity. Fetal toxicity occurred at maternal doses of 25 mg/kg, and fetal size was reduced at maternal doses of 5 and 25 mg/kg; however, 1 mg/kg produced no fetal effect. Although soft-tissue damage and external abnormalities were observed, teratogenicity could not be demonstrated definitively (Britelli et al. 1979).

OSHA proposes an 8-hour TWA PEL of 0.1 ppm TWA and a skin notation for hexafluoroacetone. The Agency preliminarily concludes that these limits, taken together, will protect hexafluoroacetone-exposed workers from the systemic injuries that can be manifested at multiple organ sites, reproductive effects, kidney damage, and fetotoxic effects associated with exposure to this substance at previously uncontrolled levels. This health evidence forms a reasonable basis for proposing a new limit for hexafluoroacetone. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

HYDROGEN CYANIDE
CAS: 74-90-8; Chemical Formula: HCN
H.S. No. 1207

The current OSHA limit for hydrogen cyanide is a 10-ppm TWA, with a skin notation. The ACGIH recommends a 10-ppm ceiling limit, also with a skin notation. NIOSH (1976) has recommended that workplace exposures not exceed 4.7 ppm as a 10-minute ceiling.

The ACGIH summarized the extensive body of human evidence on the adverse effects resulting from exposure to hydrogen cyanide. They note that exposure to levels of 45 to 54 ppm can be tolerated for 1 hour with no immediate or delayed effects, and that 18 to 36 ppm produces "slight" symptoms after several hours of exposure. They also cite Grabois (1954), who reported that workers in apricot kernel processing plants experienced no ill effects when exposed to hydrogen cyanide on the order of 10 ppm.

The NIOSH recommendation of 4.7 ppm as a 10-minute ceiling limit is based largely on an epidemiologic study by El Ghawabi (1976), showing an increase in symptoms of headache, weakness, throat irritation, vomiting, dyspnea, lacrimation, colic, and nervousness among workers exposed for an average of 7.5 years to cyanide concentrations ranging from 4.2 to 12.4 ppm. NIOSH also cited other papers reporting similar symptoms among cyanide-exposed workers. NIOSH acknowledged that such symptoms can be caused by a wide variety of other chemical or physical factors, but believed that these symptoms were sufficiently well characterized as being associated with cyanide exposure to warrant their consideration as indicators of health impairment. Therefore, NIOSH recommended a 4.7 ppm limit, determined from a 10-minute sample. Because of this recommendation, ACGIH considered recommending a 3-ppm TLV-ceiling for hydrogen cyanide; however, a majority of committee members favored retention of the 10-ppm ceiling limit at ACGIH's 1979 meeting.

The 10-ppm (ceiling) TLV is based on the observation of some health effects at 18 to 36 ppm and no observed effects at 10 ppm. More recent epidemiological data indicate that a variety of symptoms may be associated with exposure to hydrogen cyanide at levels less than 10 ppm. This indicates that neither the existing PEL nor the ACGIH TLV may be sufficiently protective. OSHA therefore proposes a 4.7 ppm (ceiling) as the PEL. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for hydrogen cynanide if the Agency determines that this limit will substantially reduce significant risk.

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OSHA's preliminary feasibility analysis is based on limited data at this exposure level, and the Agency therefore requests additional feasibility information from the public.

HYDROGENATED TERPHENYLS
CAS No.: 61788-32-7; Chemical Formula: None
H.S. No. 1210

OSHA does not currently regulate the hydrogenated terphenyls. The ACGIH recommends a TLV–TWA of 0.5 ppm (approximately 5 mg/m³) TWA for these complex mixtures of ortho-, meta-, and para-terphenyls in various stages of hydrogenation.

Acute exposure to the hydrogenated terphenyls poses a risk of potential lung, eye, and skin damage. Chronic exposure presents a risk of systemic toxicity involving injury to the liver, kidneys, and blood-forming organs, as well as possible metabolic disturbances and cancer (ACGIH 1986, p. 311).

Early studies of unhydrogenated terphenyl isomers determined that the LD_{50} in rats is low, i.e., 1900 mg/kg for the ortho isomer, 2400 mg/kg for the meta isomer, and 10,000 mg/kg for the para isomer (Cornish 1962). Thirty-day oral administration of 500 mg/kg/day in the diet of rats indicated possible liver and kidney damage, which was suggested by increases in the liver and kidney to body-weight ratios and decreases in the rate of weight gain (Cornish 1962). Other studies have demonstrated nephrotoxicity and liver damage in rats fed 33 mg/kg or more of unirradiated terphenyl isomers (Petkau and Hoogstraater 1965; Young et al. 1969). Inhalation studies showed that bronchopneumonia is associated with exposure to the ortho and meta isomers, but not to the para isomer (Haley et al. 1959). Cornish's work (1962) showed that none of the isomers caused skin irritation in rabbits following a 24-hour dermal application. For terphenyls that are approximately 40 percent hydrogenated, the acute oral LD_{50} in rats is reported as 17,500 mg/kg; in mice, it is 12,500 mg/kg (Adamson and Weeks 1973). This study also demonstrated that an irradiated hydrogenated terphenyl mixture is three times more acutely toxic by ingestion than is a non-irradiated mixture. This finding was confirmed in 16-week chronic ingestion studies (Adamson and Weeks 1969); these authors found that 1200 mg/kg of an irradiated mixture was lethal to mice, while the same dose in non-irradiated form produced only an irreversible interstitial nephritis. In the same study, no effects were observed for either mixture at a dose level of 250 mg/kg.

Eight-day inhalation studies in mice showed some pathologic changes in lung tissue after 500 mg/m³ exposures to non-irradiated hydrogenated terphenyls; 8-week exposures at 2000 mg/m³ resulted in the same lung damage, as well as some proliferation of the smooth endoplastic reticulum in the liver (Adamson and Weeks 1969, 1973). Carcinogenesis in mice has been reported from 8-week skin exposures to the irradiated mixture (Handerson and Weeks 1973). The significance of the changes observed by Adamson and Furlong (1974) in the mouse lung after 8 weeks of inhalation exposure to the irradiated mixture is difficult to interpret in terms of the potential of the hydrogenated terphenyls to cause pulmonary cancer; particles were found to clear the lungs rapidly but to accumulate and clear more slowly in the intestine, kidney, and liver.

OSHA is proposing a 0.5-ppm 8-hour TWA for the complex mixtures of ortho-, meta-, and para-terphenyls (either irradiated or non-irradiated) in various stages of hydrogenation. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of eye, skin, and lung damage, and of systemic toxicity to the liver, kidney, and blood-forming organs, potentially associated with exposure at the levels possible in the absence of any OSHA limit for this substance. This health evidence forms a reasonable basis for proposing a new limit for hydrogenated terphenyls. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

2-ISOPROPOXYETHANOL
CAS: 109-59-1; Chemical Formula: $(CH_3)_2CHOCH_2CH_2OH$
H.S. No. 1223

OSHA has no current limit for 2-isopropoxyethanol. The ACGIH recommends a TLV–TWA of 25 ppm for this mobile liquid.

2-Isopropoxyethanol has been demonstrated to produce systemic toxicity in laboratory animals. In studies of rats, fifteen 6-hour exposures at 1000 ppm caused hemoglobinuria, anemia, and lung congestion, but no fatalities (Gage 1970). At 300 ppm, Gage reported transient hemoglobin and MCHC decreases and lung congestion after 15 exposures. Exposure at the 100-ppm level produced no effect (Gage 1970). Another study reported a significant increase in the osmotic fragility of erythrocytes in female rats after a 4-hour inhalation exposure to 62 ppm, but no effect was observed at 32 ppm (Carpenter et al. 1956). Studies of four species exposed at concentrations of 200, 50, or 25 ppm 8 hours/day for 26 weeks resulted in hematologic changes only in rats; increased osmotic fragility of erythrocytes was marked at 200 ppm, slight at 50 ppm, and minimal at 25 ppm (Moffet, Linnett, and Blair 1976).

OSHA is proposing an 8-hour TWA PEL of 25 ppm for 2-isopropoxyethanol. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of hemolytic effects associated with exposure to this substance, which is not presently regulated. This health evidence forms a reasonable basis for proposing a new limit for 2-isopropoxyethanol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ISOPROPYL GLYCIDYL ETHER
CAS: 4016-14-2; Chemical Formula: $C_6H_{12}O_2$
H.S. No. 1227

OSHA's current limit for isopropyl glycidyl ether (IGE) is 50 ppm as an 8-hour TWA. The ACGIH has established an 8-hour TWA of 50 ppm and a 15-minute STEL of 75 ppm for IGE. NIOSH recommends a limit of 50 ppm for IGE as a 15-minute ceiling. IGE is a colorless and volatile liquid.

The 4-hour LC_{50} for mice was 1500 ppm and the 8-hour LC_{50} in rats was 1100 ppm (Hine, Kodama, Wellington et al. 1956). The intragastric LD_{50}s in mice and rats were 1.30 and 4.2 g/kg, respectively; in rabbits, the dermal LD_{50} was 9.65 g/kg (Hine, Kodama, Wellington et al. 1956). Fifty daily 7-hour exposures of rats to 400 ppm caused a reduced rate of weight gain, an increase in hemoglobin, a decrease in peritoneal fat, and, in some animals, emphysematous lungs and mottling of the liver (Hine, Kodama, Wellington et al. 1956). Animals in this study also exhibited signs of ocular irritation and respiratory distress.

In humans, eye, nose, and upper respiratory irritation occurred in the technicians handling the animals in the Hine and co-workers' study; exposure levels were not specified. Dermatitis has also been reported in workers exposed to other glycidyl ethers during manufacture, and one such case involved IGE exposure (ACGIH 1986, p. 340).

OSHA is proposing an 8-hour TWA of 50 ppm and a 15-minute STEL of 75 ppm for IGE. The Agency preliminarily concludes that these limits will work together to protect workers from the risk of eye, skin, and upper respiratory tract irritation associated with exposures at the levels permitted in the absence of a short-term limit. This health evidence

forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for isopropyl glycidyl ether if the Agency determines that this limit will substantially reduce significant risk.

4,4'-METHYLENE BIS(2-CHLOROANILINE)
CAS: 101-14-4; Chemical Formula: $CH_2(C_6H_2ClNH_2)_2$
H.S. No. 1273

OSHA currently has no limit for 4,4-methylene bis (2-chloroaniline), or MBOCA, a tan-colored solid. The ACGIH recommends a limit of 0.02 ppm TWA, with a skin notation; MBOCA is classified as a suspected human carcinogen (A2) by the ACGIH. NIOSH recommends a TWA limit of 3 mg/m³, which is the lowest detectable limit.

MBOCA is highly toxic, causing cyanosis, kidney irritation, and methemoglobinemia. It is similar in effect to the other aromatic amines (Hosein and van Roosmalen 1978; Mastromatteo 1965.)

Steinhoff and Grundman (1969) demonstrated that feeding MBOCA at unspecified levels to rats on a protein-deficient diet caused a high incidence of liver cancer. Russfield and associates (1975) reported liver and lung tumors in rats fed MBOCA while on a standard diet. Dogs fed MBOCA at a dose of 100 mg/day, 5 days/week showed no hepatic cancer, but malignant nodules in the bladder occurred in a dog fed MBOCA for 9 years (Stula et al. 1977).

In industry, reversible hematuria has been reported among MBOCA-exposed workers, but precise concentration data are lacking (Mastrometteo 1965). However, a study of workers exposed for as long as 18 years to MBOCA showed no adverse effects, although the substance and its metabolites were detected in the urine of these subjects (Linch et al. 1971). Hosein and van Roosmalen (1978) reported an industrial incident where molten MBOCA was splashed in a worker's face; urinary levels of 3.6 mg/L MBOCA, as well as protein, were detected in the urine, and the subject experienced nausea. However, this worker recovered quickly.

A recent NIOSH retrospective study involving 370 workers employed in a MBOCA-manufacturing plant evaluated the carcinogenicity of this substance, which is structurally similar to benzidene. The study has found 2 bladder cancers in very young workers (less than 30 years of age), both of whom are non-smokers.

OSHA is proposing an 8-hour TWA limit of 0.02 ppm for MBOCA, with a skin notation. The Agency preliminarily concludes that this limit will protect workers against the risk of cyanosis, methemoglobinemia, kidney irritation, and cancer potentially associated with exposures to this substance at the levels permitted in the absence of any OSHA limit. A skin notation is proposed to protect against the percutaneous absorption and systemic toxicity demonstrated for this substance in industrial accidents. This health evidence forms a reasonable basis for proposing a new limit for 4,4'-methylene bis (2-chloroaniline). At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PHENYLHYDRAZINE
CAS: 100-63-0; Chemical Formula: $C_6H_5NHNH_2$
H.S. No. 1317

OSHA's current limit for phenylhydrazine is 5 ppm TWA, with a skin notation. The ACGIH recommends a TLV–TWA of 5 ppm with a STEL of 10 ppm, and a skin notation. NIOSH (1978a) recommends that workplace exposures not exceed 0.14 ppm as measured over a 2-hour period.

No data are available on the effects of phenylhydrazine resulting from inhalation. The ACGIH limits are based on the high acute toxicity of the compound when administered orally or subcutaneously to animals; single doses on the order of 20 mg/kg have resulted in the death of dogs within 22 days (Hease et al. 1935) and produced a marked decrease in erythrocyte count in rodents (von Oettingen and Deichmann 1938). Anemia and hemolysis are the characteristic responses seen in animals fed or injected with phenylhydrazine.

In its criteria document on hydrazines, NIOSH (1978a) reviewed four studies on the carcinogenicity of phenylhydrazine in mice. One study (Toth and Shimizu 1976) found significant increases in blood vessel tumors. Another study (Clayson et al. 1966) reported increased incidences of lung adenomas and adenocarcinomas. Two other studies (Roe et al. 1967; Kelly et al. 1969) were negative. NIOSH concluded that phenylhdyrazine should be considered a potential human carcinogen and recommended that exposures not exceed 0.14 ppm over a 2-hour sampling period, which represents the lowest level that can be detected reliably. The ACGIH (1986) has placed phenylhydrazine on its A2 list.

As discussed previously, the NIOSH REL is based on the limitations of the available sampling and analytical methods for this substance; this approach does not necessarily satisfy OSHA's requirements regarding significant risk and feasibility. In addition, OSHA is not able to conduct the risk assessment necessary to consider the potential carcinogenic risks associated with occupational exposure to phenylhydrazine in time for this rulemaking. The Agency therefore proposes that a 5-ppm (8-hour) TWA and 10-ppm STEL be adopted as an interim PEL to reduce the risk of acute blood-related toxicity that has been associated with phenylhydrazine. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phenylhydrazine if the Agency determines that this limit will substantially reduce significant risk. As future priorities dictate, OSHA may consider the need for a lower limit for this substance.

PHENYLPHOSPHINE
CAS: 638-21-1; Chemical Formula: $C_6H_5PH_2$
H.S. No. 1316

OSHA has no current requirement for limiting worker exposure to phenylphosphine; NIOSH also has no REL for this substance. The ACGIH has recommended a ceiling limit of 0.05 ppm.

A 90-day inhalation study conducted by the duPont Company in which rats and beagle dogs were exposed to average concentrations of 0.6 ppm or 2.2 ppm for 6 hours per day, 5 days per week, showed that rats exposed to 2.2 ppm had significant hematologic changes and testicular degeneration (as cited in ACGIH 1986, p. 479). These effects were not noted among rats exposed to 0.6 ppm, but rats exposed at the lower level did show hypersensitivity to sound and touch and mild hyperemia. The dogs tolerated the higher exposure level better than the rats in that some regeneration of testicular damage occurred during a 1-month recovery period. Dogs exposed to 0.6 ppm exhibited intermittent nausea, diarrhea, lacrimation, and hind leg tremor (ACGIH 1986). The ACGIH considered 0.6 ppm to be an NOE level for severe effects in animals and recommended a 0.05-ppm ceiling TLV to provide a 10-fold safety margin to protect workers against the changes exhibited by the test animals at the 0.6 ppm level.

OSHA preliminarily concludes that workers currently exposed to uncontrolled levels of phenylphosphine are at risk of experiencing the nausea, irritation, and CNS effects found to be associated with such exposures in animals. The Agency believes the proposed ceiling of 0.05 ppm will reduce this risk substantially. This health evidence forms a reasonable basis for

proposing a new limit for phenylphosphine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PHOSPHINE
CAS: 7803-51-2; Chemical Formula: PH_3
H.S. No. 1321

OSHA currently has a PEL of 0.3 ppm TWA for phosphine. The ACGIH recommends a TLV-TWA of 0.3 ppm and a TLV-STEL of 1.0 ppm. Phosphine is a colorless gas with a disagreeable, garlic-like odor.

Early studies reported that laboratory animals could tolerate phosphine in 4-hour daily exposures of 5 ppm for 2 months, but fatalities were observed from seven similar exposures at 10 ppm (Muller 1940). In 1975, Waritz and Brown reported a 4-hour LC_{50} of 11 ppm in rats; these lethal exposures caused effects typical of respiratory irritation.

Prior to 1968, numerous cases of phosphine-related occupational poisonings and deaths were reported including a fatality caused by pulmonary edema that was attributed to an exposure to 8 ppm for 2 hours daily (Harger and Spolyar 1958). Sublethal symptoms (without chronic effects) occurred at phosphine exposures averaging 10 ppm or less, with excursions of up to 35 ppm: recorded symptoms included diarrhea, nausea, vomiting, respiratory distress, and dizziness (Jones, Jones, and Longely 1964). The literature contains no documented reports of chronic poisoning caused by prolonged exposure to phosphine, although several authorities have asserted that this is a possibility (Henderson and Haggard, 1963; Fairhall 1957; Johnstone and Miller, 1940; Patty 1963; American Industrial Hygiene Association, 1964).

OSHA proposes an 8-hour TWA PEL for phosphine of 0.3 ppm and a 15-minute STEL of 1 ppm. The Agency preliminarily concludes that both of these limits are required to protect exposed workers from the risk of lung damage, diarrhea, nausea, and other effects potentially associated with elevated short-term and long-term exposure to this gas. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phosphine if the Agency determines that this limit will substantially reduce significant risk.

PIPERAZINE DIHYDROCHLORIDE
CAS: 142-64-3; Chemical Formula: $C_4H_{10}N_2 \cdot 2HCl$
H.S. No. 1330

OSHA currently has no limit for piperazine dihydrochloride. The ACGIH recommends a TLV-TWA limit of 5 mgm^3. Piperazine dihydrochloride is a solid. Piperazine dihydrochloride is a water-soluble solid with low systemic toxicity and mild irritant properties; the compound is biologically active. The oral LD_{50} for rats has been reported as 4.9 g/kg (NIOSH 1984).

Eye and skin irritation have been reported as a result of human exposures to high (not further specified) levels of piperazine dihydrochloride; subjects experienced mild to moderate skin burns and sensitization. Inhalation of the dust has been associated with asthmatic reactions (Dow Chemical Company, as cited in ACGIH 1986, p. 491).

OSHA proposes a limit of 5 mg/m^3 as an 8-hour TWA for piperazine dihydrochloride. The Agency preliminarily concludes that this limit will reduce the risk of sensitization and eye and skin irritation potentially associated with exposures to this substance at the previously uncontrolled level. This health evidence forms a reasonable basis for proposing a new limit for piperazine dihydrochloride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

n-PROPYL NITRATE
CAS: 627-13-4; Chemical Formula: $CH_3CH_2CH_2ONO_2$
H.S. No. 1340

OSHA currently has an 8-hour TWA limit of 25 ppm for n-propyl nitrate. The ACGIH recommends a 25-ppm TWA and adds a 15-minute STEL of 40 ppm. n-Propyl nitrate is a pale yellow liquid with a sickly sweet odor.

Rats inhaling propyl nitrate vapor for 4 hours at a concentration of 10,000 ppm demonstrated cyanosis and methemoglobinemia before they died (Hood 1963, as cited in ACGIH 1986, p. 505). Subsequent cardiac muscle effects and respiratory depression. The intravenous LD_{50} in unanesthetized rabbits has been reported to be between 200 and 250 mg/kg; in anesthetized dogs and cats, intravenous doses of between 100 and 200 mg/kg were usually fatal (Murtha, Stabile, and Wills 1956). Murtha and associates, who conducted these studies, concluded that n-propyl nitrate exerts a direct action on the vascular smooth muscle and that the ensuing cardiac effects and respiratory depression contribute to the compound's hypotensive action (Murtha, Stabile, and Wills 1956). Inhalation trials in mice, rats, hamsters, guinea pigs, and dogs have established 4-hour LC_{50} values ranging from 9000 to 10,000 ppm for rats, 6000 to 7000 for mice, and 2000 to 2500 for dogs. Dogs survived repeated exposures (6 hours/day, 5 days/week) at 260 ppm for 6 months, although slight clinical signs were observed during the first 2 weeks of exposure (Rinehart, Garbers, Greene, and Stoufer 1958). The percutaneous toxicity of n-propyl nitrate is low but may cause inflammation and thickening of the skin after repeated exposures; these effects are sometimes transient, however (ACGIH 1986, p. 505). The odor of n-propyl nitrate is detectable at 50 ppm. To protect against cardiovascular and respiratory depressant effects requires both TWA and STEL limits.

OSHA proposes a limit of 25 ppm TWA with a STEL of 40 ppm for n-propyl nitrate. The Agency preliminarily concludes that this combined PEL-STEL limit will protect workers against the risk of cyanosis, methemoglobinemia, and hypotension that have been observed in laboratory animals. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-propyl nitrate if the Agency determines that this limit will substantially reduce significant risk.

SODIUM FLUOROACETATE
CAS: 62-74-8; Chemical Formula: $CH_2FCOONa$
H.S. No. 1306

The current OSHA standard for sodium fluoroacetate is 0.05 mg/m^3 as an 8-hour TWA with a skin notation. The ACGIH has established exposure limits of 0.05 mg/m^3 TLV-TWA and 0.15-mg/m^3 TLV-STEL, with a skin notation. Sodium fluoroacetate is a fine white powder, which is sometimes dyed black for commercial use.

Sodium fluoroacetate causes vomiting, convulsions, and ventricular fibrillation. It is highly toxic by inhalation, ingestion, or via absorption through the skin (NIOSH/OSHA, 1981). The ACGIH calculated and set the threshold limit of 0.05 mg/m^3 based on studies of rats indicating an oral LD_{50} of 1.7 mg/kg (Lehman 1952). Tissue changes in rats were noted in a later study by the same author in which the animals were fed 0.25 mg sodium fluoroacetate/kg/day (Lehman 1952); the equivalent level in humans would be 17 mg/person/day. A further study by Miller and Phillips (1955) examined growth rates in rats fed various dosages of sodium fluoroacetate. Rats who received 10 ppm in their diet experienced a transient fluctuation in growth rate. At 20 ppm (approximately 2 mg/kg in young rats), the growth rate declined markedly the first week; the rats survived and resumed growth at the normal rate in 3 to 4 weeks. Tolerance for the chemical lasted less than 2 weeks, and those rats who had adjusted to sodium fluoroacetate showed a second retardation of growth when returned to a dietary level of 20 ppm, after a 2-week interval of eating a normal diet. Miller and Phillips (1955) noted that rats conditioned to a dietary level of 20 ppm were then able to adjust to a level of 40 ppm (a dose that is greater than the single LD_{50} dose per day).

OSHA is proposing an 8-hour TWA of 0.05 mg/m^3 a STEL of 0.15 mg/m^3, and a skin notation. The Agency preliminarily concludes that the 8-hour and short-term exposure limits will reduce the risk of systemic effects possible as a result of exposures above the 8-hour TWA of 0.05 mg/m^3. A skin notation is proposed because this substance causes systemic toxicity when absorbed dermally. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for sodium fluoroacetate if the Agency determines that this limit will substantially reduce significant risk.

TRIMETHYLBENZENE
CAS: 25551-13-7; Chemical Formula: $(CH_3)_3C_6H_3$
H.S. No. 1412

There is no current OSHA exposure limit for trimethylbenzene. The current ACGIH TLV for all isomers of trimethylbenzene is 25 ppm as an 8-hour TWA. NIOSH has no REL for this substance or its isomers.

A study by Battig et al. (1957) provides the basis for the proposed limit; this work reports symptoms among 27 workers exposed to a solvent containing 30 percent 1,3,5-trimethylbenzene and 50 percent 1,2,3-trimethylbenzene. A "significant number" of these workers were reported to have experienced symptoms of nervousness, tension and anxiety, and asthmatic bronchitis. The peripheral blood of these workers "showed a tendency to hypochromic anemia" and somewhat abnormal clotting ability. This group of workers had been occupationally exposed to total hydrocarbon concentrations ranging from 10 to 60 ppm for several years. The authors of the study recommended maintaining employee exposures below 35 ppm (Battig et al. 1957).

OSHA agrees that workers exposed to trimethylbenzene should be protected by an OSHA limit. OSHA believes that a 25-ppm 8-hour PEL will provide protection for trimethylbenzene-exposed workers, and a PEL set at this level is therefore proposed. This level will reduce the risk of bronchitis and anxiety previously reported in exposed workers. This health evidence forms a reasonable basis for proposing a new limit for trimethylbenzene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TUNGSTEN AND COMPOUNDS (insoluble)
CAS: 7440-33-7; Chemical Formula: W
H.S. No. 1416

OSHA presently has no exposure limits for insoluble tungsten and its compounds. The ACGIH has established 5 mg/m^3 as an 8-hour TWA and 10 mg/m^3 as a short-term exposure limit for these substances. NIOSH recommends a limit of 5 mg/m^3 as a 10-hour TWA. Tungsten is a gray, hard metal.

Rats fed a diet containing 0.5 percent insoluble tungsten compounds died, and another group of rats fed 0.1 percent of these compounds suffered noticeable weight loss (Kinard and van de Erve 1941). Studies in rats fed tungsten at 2, 5, or 10 percent of their diet showed that females in all dose groups has a 15-percent reduction in weight gain (Kinard and van der Erve 1943). The intraperitoneal LD_{50} tungsten metal powder of 5 g/kg body weight; survivors showed minor liver and spleen changes at necropsy (Frederick and Bradley 1946). Studies of the tissues of guinea pigs intratracheally injected with tungsten metal and tungsten carbide revealed moderate interstitial cellular proliferation and no changes, respectively. However, Soviet studies involving similar intratracheal injections showed proliferation of the intra-alveolar septa (Kaplun and Mezentseva 1980). The NIOSH criteria document for tungsten (1977) reports that Russian investigators found a 9- to 11-percent incidence of pulmonary fibrosis in workers exposed to tungsten (Kaplun and Mezentseva 1959; Mezentseva 1967). NIOSH recommended that the standard for the tungsten and its insoluble compounds be set at 5 mg/m^3 to protect against pulmonary effects. To date, studies of industrial conditions have yielded evidence that pneumoconiosis does not develop from exposure to tungsten metal or its insoluble compounds (Dernehl 1986, as cited in ACGIH 1986, p. 614).

OSHA is proposing an 8-hour TWA of 5 mg/m^3 and a STEL of 10 mg/m^3 for tungsten and its insoluble compounds. The Agency preliminarily concludes that these limits will protect exposed workers against the risk of pulmonary fibrosis and other lung effects associated with exposure to this metal and its compounds at the levels permitted by the absence of any OSHA limit. This health evidence forms a reasonable basis for proposing a new limit for tungsten and compounds (insoluble). At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TUNGSTEN AND COMPOUNDS (soluble)
CAS: 7440-33-7; Chemical Formula: W
H.S. No. 1417

OSHA has no current limit for exposure to tungsten and its soluble compounds. The ACGIH limit is 1 mg/m^3 TWA with a 3 mg/m^3 STEL. NIOSH recommends a 1-mg/m^3 10-hour TWA for tungsten and its soluble compounds. Tungsten is a grey, hard metal.

Animal studies have shown that the LD_{50} for soluble sodium tungstate when injected subcutaneously in rats ranges from 140 to 160 mg/kg (Kinard and van de Erve 1940). Soluble tungsten's lethal effects are the result of systemic poisoning that occurs as the compound is absorbed by multiple organs; this is followed by cellular asphyxiation (International Labour Office [ILO] 1934). Karantassis (1924) also observed a systemic response in guinea pigs given soluble sodium tungstate or pure soluble tungsten either orally or intravenously, developed anorexia, colic, trembling, and difficulty in breathing prior to death. Rats fed a diet containing 0.5 percent tungsten as soluble sodium tungstate or tungsten oxide died from this dose. Dietary doses of 0.1 percent tungsten oxide and the sodium salt caused weight loss in rats, but no deaths (Kinard and van der Erve 1941). Tungsten is believed to act by antagonizing the action of molybdenum (Higgins, Richert, and Westerfield 1956). NIOSH states in its criteria document for tungsten (1977) that information on the effects of exposure to soluble tungsten compounds in the working population is unknown. The ACGIH (1986, p. 614) recommends a lower TLV for the soluble compared with the insoluble compounds of tungsten because of the former's greater systemic toxicity.

OSHA proposes an 8-hour TWA of 1 mg/m^3 and a STEL of 3 mg/m^3 for tungsten and its soluble compounds. The Agency preliminarily concludes that these limits will protect exposed workers against the risk of systemic toxicity, anorexia, colic, incoordination, trembling, and dyspnea associated with exposure to these compounds, which are presently not regulated by OSHA. This health evidence forms a reasonable

basis for proposing a new limit for tungsten and compounds (soluble). At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

VINYLIDENE CHLORIDE (1,1-DICHLOROETHYLENE)
CAS: 75-35-4; Chemical Formula: $CH_2=CCl_2$
H.S. No. 1428

Currently, OSHA's Z tables do not have a limit for vinylidene chloride (VCD). The ACGIH has established 5 ppm as an 8-hour TWA and 20 ppm as a 15-minute STEL. NIOSH recommends that employee exposure to VCD be reduced to the lowest feasible level, and considers VCD a carcinogen. Vinylidene chloride is a colorless liquid that polymerizes readily.

The acute oral LD_{50} for male rats is 2500 mg/kg (Jenkins, Trabulus, and Murphy 1972). The LC_{50} for rats exposed to a single 4-hour exposure of VCD vapor was reported as 6350 ppm in one study (Siegel, Jones, Coon, and Lyon 1971) and 32,000 ppm in an earlier study (Carpenter, Smyth, and Pozzani 1949). Liquid VCD causes transient irritation to the eyes of rats but has little effect on exposed skin if the VCD is allowed to evaporate (Torkelson and Rowe 1981).

Prendergast and co-workers exposed rats, rabbits, guinea pigs, and monkeys 8 hours/day, 5 days/week for 6 weeks to 395 mg/m³ (100 ppm); these authors saw no visible signs of toxicity while the exposure was in process, but rabbits and monkeys lost weight. These same species were exposed continuously to VCD concentrations of 5, 15, 25, or 47 ppm for 90 days; only the animals exposed to 5 ppm showed no increases in mortality (Prendergast, Jones, Jenkins, and Siegel 1967).

Nasal irritation, liver cell degeneration, and retarded weight gain were reported in rats following twenty 6-hour exposures to 500 ppm VCD (Gage 1970); at 200 ppm, only nasal irritation occurred. Studies by Torkelson and Rowe (1981) in which rats, rabbits, guinea pigs, and dogs were exposed to 25, 50, or 100 ppm VCD for 6 hours per day, 5 days per week for 6 months revealed injury of the kidneys and liver in all animals at all levels of exposure. Maltoni (1977) and Maltoni, Cotti, Morisi, and Chieco (1977) conducted an evaluation of VCD's carcinogenicity in which mice, rats and hamsters were exposed to levels from 10 ppm to 150 ppm for 4 hours per day, 5 days per week for 52 weeks, with results reported through week 96 of the study. In those mice exposed to 25 ppm VCD, 21 percent of the males and 1.5 percent of the females developed kidney adenocarcinomas; these tumors were not seen in rats exposed to amounts of VCD up to 150 ppm. Exposures of 100 or 150 ppm in rats did produce a significant increase in mammary adenocarcinomas, and this response was dose-related (Maltoni 1977; Maltoni, Cotti, Morisi, and Chieco 1977). Overt toxicity and mortality occurred early in the studies after 4-hour exposures at levels of 50 ppm in mice and 200 ppm in rats; hamsters exposed to 20 ppm VCD showed no increase in tumor incidence (Maltoni 1977; Maltoni, Cotti, Morisi, and Chieco 1977).

A study by Murray, Nitschke, Rampy, and Schwetz (1979) investigated the embryotoxic, fetotoxic, and teratogenic effects of inhaled and ingested VCD (in rats) and inhaled VCD (in rabbits). In the inhalation studies, rats were exposed to 20, 80, or 160 ppm VCD for 7 hours per day. VCD was toxic to both the adults and their embryos at levels of 80 and 160 ppm among the rats, and 160 ppm in rabbits. At exposure levels of 20 ppm in rats and 80 ppm in rabbits, neither maternal toxicity nor effects on embryonic or fetal development were noted. In the ingestion study with rats, drinking water containing 200 ppm VCD caused no toxic effects in either the rats or their offspring.

Two strains of rats exposed to 75 or 100 ppm VCD for 5 days/week, 6 hours/day for 12 months did not show a significant increase in tumors (Viola and Caputo 1977). Other investigators exposed rats to 25 or 75 ppm by inhalation for 6 hours/day, 5 days/week for 18 months or to 60, 100, or 200 ppm VCD in their drinking water for 2 years and found no increase in tumor incidence in these animals (Rampy, Quast, Humiston et al. 1977). In mice, VCD was not active either as a whole mouse skin carcinogen or by subcutaneous injection.

In other studies, VCD proved mutagenic in both E. coli and S. typhimurium strains (Greim, Bonse, Radwan et al. 1975; Bartsch, Malaveille, Montesano, and Tomatis 1975). VCD has been implicated as a tumor initiator in a carcinogenesis bioassay by Van Duuren (1979). Studies by Reitz, Watanabe, McKenna et al. (1980) suggest that VCD's tumorigenicity is a result of its ability to initiate cell injury and not of its ability to alter the genetic material of an injured cell. The actual cell injury is caused by VCD metabolites which are highly reactive and cytotoxic (Maltoni 1977; Hathaway 1977; Henschler and Bonse 1977).

A cohort study of 138 VCD-exposed workers did not identify any VDC-related health effects in these workers (Ott, Fishbeck, Townsend, and Schneider 1976).

OSHA is proposing an 8-hour TWA of 5 ppm and a 15-minute STEL of 20 ppm for vinylidene chloride. The Agency preliminarily concludes that these limits will protect workers from the risk of kidney and liver damage and carcinogenicity potentially associated with exposure to VCD at the levels permitted by the absence of any OSHA limit. This limit may be an interim limit; as future priorities permit, the Agency may perform a quantitative risk assessment for VCD and consider further rulemaking. This health evidence forms a reasonable basis for proposing a new limit for vinylidene chloride (1,1-dichloroethylene). At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

WELDING FUMES
CAS: None; Chemical Formula: Not available
H.S. No. 1430

OSHA currently has no limits for exposure to welding fumes, which it defines as fumes that are generated by the manual metal arc or oxy-acetylene welding of iron, mild steel, or aluminum. The ACGIH has set an 8-hour TWA of 5 mg/m³ for welding fumes, measured as total particulate inside the welding helmet.

Although welding of these types generally produces fumes made up of aluminum, iron, or zinc oxides, other toxic gases may be produced in large amounts (Ferry and Ginther 1952; Ferry 1954; Silverman 1956; Homer et al. 1957). Iron metals may give off fumes of manganese, silicate, and various organic binders. Aluminum welding may result in fumes consisting of fluorine, arsenic, copper, silicon, and beryllium (NIOSH n.d.; American Welding Society 1973). Eighteen different substances, including fluoride, manganese, silicon, titanium, and sodium and potassium silicates, have been measured in the fumes resulting from the welding of mild steel (ACGIH 1986, p. 634). The process of shielded arc welding is known to produce ozone, and when carbon dioxide is used as a shield gas, carbon monoxide is given off (NIOSH n.d.; American Welding Society 1973).

The adverse health effects associated with over exposure to welding fumes are those of metal fume fever—chills and fever, profuse sweating, and weakness—and respiratory irritation.

OSHA preliminarily concludes that a PEL for welding fumes is needed to protect workers involved in the welding of aluminum, iron, or mild steel from the risk of metal fume fever and respiratory irritation associated with welding fumes, and is proposing to adopt a TWA of 5 mg/m³ for welding fumes as total particulate. This health evidence forms a reasonable basis for proposing a new limit for welding fumes. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ZINC OXIDE (FUME)
CAS: 1314-13-2; Chemical Formula: ZnO
H.S. No. 1437

OSHA's existing exposure limit for zinc oxide fume is 5 mg/m³ as an 8-hour TWA. The ACGIH also recommends a 5-mg/m³ TWA and also has a STEL of 10 mg/m³. NIOSH recommends a 5-mg/m3 10-hour TWA limit with a 15-minute ceiling of 15 mg/m³. When heated. zinc oxide produces a white fume.

The most prevalent toxic effect of zinc oxide fume is a condition known as "metal fume fever," whose symptoms include chills, fever, muscular pain, nausea, and vomiting (Turner and Thompson 1926). Studies in the workplace have shown that welders exposed to zinc oxide fumes at concentrations of 320 to 580 mg/m³ reported nausea, with the development of chills, shortness of breath, and severe chest pains 2 to 12 hours later. Most workers took approximately 4 days to recover, and some eventually developed pneumonia (Hammond 1984). Other studies have reported the frequent occurrence of chills in workers exposed to zinc oxide at levels as low as 5 mg/m³ (Hickish 1963; Wall 1970). Hammond (1984) reported that workers exposed to 8 to 12 mg/m³ of zinc oxide fume did not suffer from metal fume fever.

Exposure of guinea pigs lasting only an hour caused a drop in body temperature, followed 6 to 16 hours later by an increase above normal levels (Turner and Thompson 1926). The animals in the high exposure group (2500 mg/m³ for 3 to 4 hours) died after exposure.

Early studies (Drinker and Fairhall 1957) suggested that metal fume fever was unlikely to occur at concentrations below 15 mg/m³, but subsequent experience shows that exposures even at 5 mg/m³ can cause this syndrome (Hickish, private communication, 1983; Wall, private communication, 1970, as cited in ACGIH 1986, p. 646).

NIOSH's Criteria Document (1975) reported that the development of metal fume fever was unlikely at levels as low as 3 mg/m³, but the institute stated that exposures to the fume could cause chronic respiratory effects.

OSHA is proposing a 5-mg/m³ TWA and a STEL of 10 mg/m³. The Agency preliminarily concludes that both of those limits will protect exposed workers from the risk of metal fume fever associated with exposure to zinc oxide fumes at the elevated short term levels permitted in the absence of a STEL. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for zinc oxide (fume) if the Agency determines that this limit will substantially reduce significant risk.

ZIRCONIUM COMPOUNDS
CAS: 7440-67-7; Chemical Formula: Zr
H.S. No. 1439

The current OSHA limit for zirconium compounds is an 8-hour TWA of 5 mg/m³. The ACGIH has established a TLV-TWA of 5 mg/m³, supplemented by a 10 mg/m³ STEL. Zirconium compounds may be either bluish-black powders or grayish-white lustrous metals.

The toxic effects of inhalation exposures to zirconium compounds include the formation of granulomas, both in the lungs and on the skin. Sax (1984) reports cases of pulmonary granulomas in workers exposed to zirconium aerosols. In laboratory animals, oral toxicity is low (NIOSH 1972), and inhalation studies conducted for one year at levels of 3.5 mg zirconium/m³ dust and mist resulted in limited toxicity (Stokinger 1981).

OSHA preliminarily concludes that the 5-mg/m³ TWA and 10-mg/m³ STEL limits for zirconium compounds will protect exposed workers from the risk of pulmonary effects potentially associated with the short-term exposures permitted by the 8-hour TWA alone. This health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for zirconium compounds if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

For the group of systemic toxicants shown on Table C8-1, OSHA preliminarily concludes that the risks associated with occupational exposures to these substances are substantial. As Table C8-2 shows, the systemic effects caused by such exposures include liver and kidney damage, testicular damage, fetal poisoning, central nervous system depression, and asthma. Affected employees may experience dizziness, nausea, generalized weakness, respiratory irritation, blood in the urine, chest tightness, hives, and necrosis of the cornea. These effects represent risks to health and functional capacity, and reducing the limits for these systemic toxins will substantially reduce these risks. The health evidence for these substances is a reasonable basis for proposing revised or new limits for substances in this group. At the time of the final rule, OSHA will establish revised or new limits for these systemic toxins if the Agency determines that these limits will substantially reduce significant risks.

9. Substances for Which Proposed Limits Are Based on Observed No-Effects Levels

Introduction

For a group of 23 toxic substances, OSHA is proposing limits based on evidence that the levels chosen have been shown not to produce adverse effects in exposed populations. These substances are shown in Table C9-1, along with their CAS numbers and H.S. numbers and current OSHA, ACGIH, and NIOSH limits. OSHA is proposing limits for 17 chemicals in this group that have not formerly been regulated by the Agency. The Agency is proposing to retain or decrease the 8-hour limit and to add a STEL in a total of five cases and to reduce the TWA in one instance. NIOSH has RELs only for one substance in this class.

Description of the Health Effects

The substances included in this group cause a wide range of adverse health effects in both animals and humans. Unlike most of the other groupings described in this preamble, these toxicants do not affect the same target organ or system: Some are central nervous system depressants, several are upper respiratory tract irritants, and still others have their primary effect on the liver and/or kidney.

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Table C9-1. Substances for Which Limits Are Based On A No-Effect Level

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1029 Atrazine	1912-24-9	—	5 mg/m^3 TWA	—
1041 Bromacil	314-40-9	—	1 ppm TWA	—
1056 p-tert-Butyltoluene	98-51-1	10 ppm TWA	10 ppm TWA 20 ppm STEL	—
1085 Chlorodifluoromethane	75-45-6	—	1000 ppm TWA 1250 ppm STEL	—
1090 o-Chlorotoluene	95-49-8	—	50 ppm TWA 75 ppm STEL	—
1110 Cyclonite	121-82-4	—	1.5 mg/m^3 TWA, 3 mg/m^3 STEL, Skin	—
1117 2,6-di-tert-Butyl-p-cresol	128-37-0	—	10 mg/m^3 TWA	—
1134 Diethanolamine	111-42-2	—	3 ppm TWA	—
1136 Diethyl phthalate	84-66-2	—	5 mg/m^3 TWA	—

Table C9-1. Substances for Which Limits Are Based On A No-Effect Level (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL**
1144 Dinitolmide	148-01-6	—	5 mg/m^3 TWA	—
1147 Diphenylamine	122-39-4	—	10 mg/m^3 TWA	—
1153 Diuron	330-54-1	-	10 mg/m^3 TWA	—
1249 Methyl acetate	79-20-9	200 ppm TWA	200 ppm TWA 250 ppm STEL	—
1275 Metribuzin	21087-64-9	—	5 mg/m^3 TWA	—
1297 Oil mist (mineral)	8012-95-1	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	-
1312 Petroleum distillates (naphtha)	8002-05-9	500 ppm TWA	400 ppm TWA	87 ppm TWA 450 ppm Ceiling (15 min)
1327 m-Phthalodinitrile	626-17-5	—	5 mg/m^3 TWA	—
1332 Platinum, metal	7440-06-4	—	1 mg/m^3 TWA	—
1346 Resorcinol	108-43-3	—	10 ppm TWA 20 ppm STEL	—

Table C9-1. Substances for Which Limits Are Based On A No-Effect Level (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL**
1382 Tantalum	7440-25-7	5 mg/m^3	5 mg/m^3 TWA 10 mg/m^3 STEL	--
1410 Trimethyl phosphite	121-45-9	--	2 ppm TWA	--
1415 Triphenyl amine	603-34-9	--	5 mg/m^3 TWA	--
1418 Uranium (insoluble compounds)	7440-61-1	0.25 mg/m^3 TWA	0.2 mg/m^3 TWA 0.6 mg/m^3 STEL	--

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

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For some compounds in this category, no adverse health effects have been observed in animals or humans. This is the case because the research conducted did not reveal effects at the doses and durations tested. Compounds falling into this latter sub-group include 2,6-di-tert-butyl-p-cresol, diethanolamine, dinitolmide, diuron, oil mist, m-phthalodinitrile, resorcinol, triphenyl amine, and the insoluble uranium compounds.

The commonality among these otherwise diverse substances is that apparent no-effect levels have been defined for all of them. Permissible exposure limits have been developed for these chemicals by applying safety factors to these no-effect levels. Table C9-2 shows the health effects observed in humans and animals after exposure to these substances.

Dose-Response Relationships and No-Effect Levels

The concept of setting limits based on a NOE level assumes that there is a concentration at which repeated and prolonged exposure to a toxic substance causes no adverse effect in the majority of workers. A similar concept is widely used by a variety of federal agencies, for example the Food and Drug Administration, to set contaminant tolerances, acceptable daily intake values, and other limits.

All of the limits for these substances have been set, with varying degrees of confidence, at a no-effect or minimal effect level, regardless of the specific effect being protected against. At least in part, the limits proposed for the 23 items listed in Table C9-1 are based on published or unpublished data or information indicating that these limits are already being maintained in work environments and that industrial experience shows these levels to be both feasible and free of associated health effects or employee complaints. OSHA believes that these limits will also protect against any effects these substances have been shown to cause at higher concentrations (e.g., minimal effects are noted in animals at 50 times the TLV-TWAs for trimethylphosphite and chlorodifluoromethane). The substances in this group have effects that range in toxicity from low to high at relatively low exposure concentrations.

TABLE C9-2.—HEALTH EFFECTS ASSOCIATED WITH SUBSTANCES FOR WHICH LIMITS ARE BASED ON NO-EFFECT LEVELS

H.S. number chemical name	CAS No.	Health effects observed in animals	Health effects observed in humans
1029 Atrazine	1912-24-9	Ataxia, dyspnea, convulsions.	
1041 Bromacil	314-40-9	Mild irritation.	
1056 p-tert-Butyl-toluene	98-51-1	CNS depression, respiratory tract irritation, liver and kidney changes	Nasal irritation, nausea, headache, weakness.
1085 Chlorodifluoromethane	75-45-6	Cardiac sensitization.	
1080 o-Chlorotoluene	95-49-8	Weakness, vasodilation, incoordination, convulsions.	
1110 Cyclonite	121-82-4		Nausea, vomiting, convulsions.
1117 2,6-di-tert-Butyl-p-cresol	128-37-0		
1134 Diethanolamine	111-42-2	Impaired vision skin irritation.	
1136 Diethyl phthalate	84-66-2		Pain, numbness, transient irritation, polyneuritis.
1144 Dinitolmide	148-01-6	Liver changes.	
1147 Diphenylamine	122-39-4	Liver, kidney, spleen changes	Tachycardia, bladder symptoms, hypertension, eczema.
1153 Diuron	330-54-1		
1249 Methyl acetate	79-20-9		Eye, mucous membrane irritation, chest tightness.
1275 Metribuzin	21087-64-9	CNS depression, thyroid and liver changes.	
1297 Oil mist (mineral)	8012-95-1	Lung irritation.	
1312 Petroleum distillates (naphtha).	8002-05-9	Motor incoordination, convulsions	Eye,throat irritation.
1327 m-Phthalodinitrile	626-17-5	Skin irritation.	
1332 Platinum, metal	7440-06-4		
1346 Resorcinol	108-43-3		
1382 Tantalum	7440-25-7	Bronchitis, pneumonitis, hyperamia.	
1410 Trimethyl phosphite	121-45-9	Teratogenicity, ocular irritation.	
1415 Triphenyl amine	603-34-9	Skin irritation.	
1418 Uranium (insoluble compounds).	7440-61-6	Kidney damage, blood disorders.	

The following discussions describe OSHA's preliminary findings for some of the substances in this group and illustrate the nature of the risk faced by workers exposed to these toxicants.

ATRAZINE
CAS: 1912-24-9; Chemical Formula: $C_8H_{14}ClN_5$
H.S. No. 1029

OSHA has no current limit for atrazine. The ACGIH recommends a TLV-TWA of 5 mg/m.^{3} Atrazine is a stable, white, crystalline compound.

Animal studies indicate that the toxicity of the s-triazine herbicides, of which atrazine is the best known, is low. No observable effects have been shown in rats, dogs, horses, and cattle fed dietary levels of over 25 ppm for extended periods. In addition, the s-triazine herbicides are excreted in urine and feces in relatively short periods of time (Bakke et al. 1972). Atrazine has not shown teratogenic effects in studies of rats, mice, and sheep (the Merck Index 1983; Peters and Cook 1973; Binns and Johnson 1970). *In vitro* studies have shown no mutagenic effects, and a 2-year feeding study in rats and mice showed no carcinogenic effects (Innes et al. 1969). The only reports of toxicity indicate that high-dose ingestion of atrazine can cause ataxia, dyspnea, and convulsions in animals (as cited in ACGIH 1986, p. 44). The s-triazines appear to interfere with carbohydrate metabolism by blocking the production of sugars (Gysin 1962; Gast 1958).

In humans there are no reports of atrazine poisoning (ACGIH 1986, p. 44). Because there are no reports of human reactions to atrazine that can be related to air concentrations, the ACGIH's limit was set on the basis of animal studies. Long-term feeding studies in dogs have established 3.75 mg/kg as the highest no-observed-effect level (U.S. EPA 1979). Applying appropriate safety factors to this value, and assuming that lung absorption is less than 50 percent, yields an 8-hour TWA limit of 5 mg/m^3 (Zielhuis and Van der Kreek 1979).

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OSHA proposes a PEL of 5 mg/m³ TWA for atrazine and preliminarily concludes that this limit will protect employees from the risk of metabolic effects to which they could potentially be exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for atrazine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BROMACIL
CAS: 314-40-9; Chemical Formula: $C_9H_{13}BrN_2O_2$
H.S. No. 1061

OSHA has no current limit for bromacil. The ACGIH recommends a TLV–TWA of 1 ppm. Bromacil is a white, crystalline solid.

Bromacil has a low order of acute and chronic toxicity (Sherman 1975). In 2-year feeding studies of rats, no-effect dietary concentrations were determined to be greater than 250 ppm but less than 1250 ppm for rats and 1250 ppm for dogs. Rats and rabbits exhibited no teratogenic or carcinogenic effects as a result of dietary intake (Sherman 1975). Inhalation studies in rats have shown that all rats tolerate a 4-hour exposure equivalent to 4880 mg/m³. Studies of guinea pigs showed no skin sensitization and only mild irritation after exposures at unspecified levels. Rabbits have shown no clinical signs of toxicity as a result of the skin application of 5000 mg/kg (ACGIH 1986, p. 64).

OSHA proposes a permissible exposure limit of 1 ppm for bromacil, and preliminarily concludes that this limit will protect exposed employees against the risk of irritation potentially associated with exposure to bromacil at uncontrolled levels. The health evidence forms a reasonable basis for proposing a new limit for bromacil. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

p-tert-BUTYLTOLUENE
CAS: 98-51-1; Chemical Formula: $(CH_3)_3C-C_6H_4CH_3$
H.S. No. 1066

OSHA currently has a limit of 10 ppm TWA for p-tert-Butyltoluene. The ACGIH recommends a TLV–TWA of 10 ppm and a TLV–STEL of 20 ppm. p-tert-Butyltoluene is a colorless liquid with an aromatic, gasoline-like odor.

p-tert Butyltoluene has been shown to be slightly toxic on ingestion, moderately toxic when inhaled, and negligibly toxic through skin exposure (Hine, Ungur, Anderson et al. 1954). Repeated exposures in animals have shown liver and kidney changes and microscopic degenerative hemorrhages in the spinal cord and brain, even at relatively low concentrations. The chief acute effects in animals are central nervous system depression and respiratory irritation; in rats exposed for 1 to 7 hours daily over a 28-week period, 25 ppm daily appeared to be the no-effect level (Gerarde 1960).

In humans, Hine, Unger, Anderson, et al. (1954) observed nasal irritation, nausea, malaise, headache, and weakness associated with exposure to p-tert-butyltoluene at unspecified levels. These authors also observed cardiovascular effects, as well as effects on the central nervous system, the skin, and the respiratory tract. Half of the subjects exposed to p-tert-butyltoluene developed tremor and anxiety, and 25 percent of exposed individuals showed evidence of chemical contact irritation of the respiratory tract.

OSHA is proposing a TWA of 10 ppm and a STEL of 20 ppm for p-tert-butyltoluene. The Agency preliminarily concludes that a STEL as well as a TWA will protect exposed workers against the risk of central nervous and cardiovascular system effects and of irritation and nausea potentially associated with short-term exposures to p-tert-butyltoluene. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for p-tert-butyltoluene if the Agency determines that this limit will substantially reduce significant risk.

CHLORODIFLUOROMETHANE
CAS: 75-45-6; Chemical Formula: $CHClF_2$
H.S. No. 1065

OSHA has no current limit for chlorodifluoromethane (Freon 22). The ACGIH recommends a TLV–TWA of 1000 ppm, with a short-term limit of 1250 ppm for 15 minutes. Chlorodifluoromethane is a colorless, nearly odorless, non-flammable gas.

Exposure to very high atmospheric levels of Freon 22 cause stimulation and then depression of the central nervous system, followed by asphyxiation. Rats and guinea pigs exposed to concentrations of 75,000 to 100,000 ppm over a 2-hour period exhibited excitation and disequilibrium; narcosis was observed at 200,000 ppm and mortality at 300,000 and 400,000 ppm (Weigand 1971). In mice, similar exposures at 320,000 ppm were the maximum tolerated, and the minimum lethal dose was 370,000 ppm (Karpov 1965). In rabbits, the minimum concentration altering reflex responses was 11,000 to 20,000 ppm (Karpov 1965). Studies of guinea pigs reported no fatalities as a result of exposure for 2 hours at 209,000 ppm, but mild clinical changes were observed at 80,000 ppm and minimal effects at 25,000 ppm (Underwriters' Laboratories, Inc. 1940). Thirty-minute exposures at 500,000 ppm were lethal to guinea pigs (Booth and Bixby 1932). Karpov has also reported the results of a 10-month study of inhalation effects in rats, guinea pigs, dogs, and cats. Six-hour inhalation exposures to 14,000 ppm and 2000 ppm for 5 days/week were studied, and alterations in weight, endurance, blood chemistry, and pathology of the lungs, central nervous system, heart, liver, kidney, and spleen were seen at the 14,000-ppm level in rats, mice, and rabbits. At the 2000-ppm daily inhalation level, rats and mice showed no effects. In dogs, cardiac sensitization was not observed at the 25,000-ppm level, but it did occur at the 50,000-ppm level (Reinhardt, Azar, and Maxfield 1971). No data have been published concerning the carcinogenicity, mutagenicity, or teratogenicity of this substance.

The Agency is proposing an 8-hour TWA limit of 1000 ppm for chlorodifluoromethane and a 1250-ppm 15-minute STEL. OSHA preliminarily concludes that these limits will provide protection against the life-threatening asphyxiant effects that could occur in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for chlorodifluoromethane. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

o-CHLOROTOLUENE
CAS: 95-49-8; Chemical Formula: C_7H_7Cl
H.S. No. 1090

OSHA has no current limit for o-chlorotoluene. The ACGIH recommends a TLV–TWA of 50 ppm and a 15-minute STEL of 75 ppm for this colorless liquid.

The oral LD_{50} in rats for o-chlorotoluene is greater than 1600 mg/kg. When the undiluted material was administered orally in doses ranging from 50 to 100 mg/kg, the animals experienced weakness and vasodilation at the higher dose levels, but all survived and were gaining weight 2 weeks later (ACGIH 1986 p. 137). When the undiluted liquid was applied to the skin of guinea pigs in doses of 1 cc or 10 cc/kg for 24 hours, moderately severe skin irritation occurred at both dose levels. The guinea pigs lost weight over the 2-week period following application, indicating percutaneous absorption of this substance. One drop of undiluted material in the eyes of rabbits produced a delayed erythema of the conjunctiva, although this effect cleared after 14 days (Ely, as cited in ACGIH 1986, p. 137). Rats exposed to an atmosphere of 21 mg/L, or about 4000 ppm, for 6 hours exhibited loss of coordination within 1.5 hours, prostration at 1.75 hours, and tremors at 2 hours. At 14,000 ppm, rats showed loss of coordination, vasodilation, labored respiration, narcosis, and tearing. Rats exposed at 4000 and 14,000 ppm survived. At 175,000 ppm, one of three rats died (Ely, as cited in ACGIH 1986 p. 137). In another study, mice, rats, and guinea pigs were exposed to o-chlorotoluene at a concentration of about 4400 ppm. Mice showed gasping and convulsions within 30 minutes, and guinea pigs and rats exhibited gasping, hyperpnea, ataxia, and convulsions in 45 minutes. All animals were comatose within 60 minutes, and, except for two guinea pigs that still survived at 14 days, all of the animals died (Hazleton Laboratories, Inc. 1966).

In rabbits, the 24-hour patch test resulted in moderate skin irritation; albino rabbits displayed conjunctival irritation from a single instillation of 0.1 ml of undiluted o-chlorotoluene, but no corneal damage was observed 7 days later (Hazleton Laboratories, Inc. 1966).

Data concerning human exposures are lacking, but no cases of dermatitis or poisoning have been reported as a result of occupational exposure. Personal communications from several occupational health experts recommend limits ranging from 25 ppm to 200 ppm TWA for human exposures (Hopton; Mastromatteo; Elkins; Torkelson, as cited in ACGIH 1986, p. 137). These limits were recommended on the basis of analogy with similar compounds, such as the chlorinated benzenes.

OSHA is proposing 50 ppm as an 8-hour TWA PEL. The Agency preliminarily concludes that this limit will protect against the risk of eye and skin irritation and systemic poisoning possible in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for o-chlorotoluene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CYCLONITE
CAS: 121-82-4; Chemical Formula: $C_3H_6N_6O_6$
H.S. No. 1110

OSHA currently has no permissible exposure limit for cyclonite. The ACGIH recommends a TLV–TWA of 1.5 mg/m³ and a STEL of 3 mg/m³, with a skin notation. Cyclonite exists in the form of orthorhombic crystals.

Cyclonite, a high explosive and a rat poison, has not been shown in animal studies to be acutely toxic. In industry, reports of poisonings as a result of occupational exposures to cyclonite were widespread as late as 1962 (Kaplan, Berghout, and Peczenik 1962). Exposure causes central nervous system effects, including nausea, vomiting, convulsions, and unconsciousness. These clinical signs result from repeated gastrointestinal and respiratory exposures and from skin absorption (Sunderman et al. 1944; von Oettingen, Donahue, Yagoda et al. 1949). In an epidemiological study, Hathaway (1977) reported that 8-hour TWA exposures ranging up to 1.57 and averaging 0.28 mg/m³ caused no identifiable abnormalities attributable to cyclonite exposure.

OSHA is proposing a limit of 1.5 mg/m³ TWA, a 3-mg/m³ 15-minute STEL, and a skin notation for cyclonite. The Agency preliminarily concludes that establishing these limits for this previously unregulated chemical will protect workers from the risk of neuropathic effects associated with cyclonite exposure, either as a result of inhalation or percutaneous exposures, in the absence of an OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for cyclonite. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

2,6-DI-tert-BUTYL-p-CRESOL
CAS: 128-37-0; Chemical Formula: $C_{15}H_{24}O$
H.S. No. 1117

OSHA currently has no limit for 2,6-di-tert-butyl-p-cresol (DBPD). The ACGIH recommends a TLV–TWA of 10 mg/m³ for this white crystalline compound, which is prepared from p-cresol and isobutylene. DBPD is widely used as a food preservative.

DBPD is considered to have a low order of toxicity; in extensive animal studies, ingestion has not been associated with toxic effects (ACGIH 1986, p. 227). Deichmann and associates (1955) reported oral LD_{50} values of 10.7 g/kg for guinea pigs, 1.7 and 1.97 g/kg for male and female rats, respectively, and ranges of between 0.94 and 2.1 g/kg for cats and between 2.1 and 3.2 g/kg for rabbits. One year of daily oral administration of 0.17 to 0.9 g/kg in dogs produced no effects, nor did a 24-month oral administration of 0.2, 0.5, or 0.8 percent DBPD in rats (Deichmann et al. 1955). Other studies have confirmed these overall results, although some growth rate decreases and liver weight increases were demonstrated in rats fed 0.01 to 0.5 percent DBPD, total daily diet (Brown, Johnson, and O'Halloran 1969; Creaven, Davies, and Williams 1966).

The estimated human intake of DBPD in the United States does not exceed a few milligrams daily (Gilbert and Goldberg 1965), perhaps 0.2 mg/kg body weight. These authors further observe that the no-effect dietary level in rats is 25 mg/kg.

OSHA proposes a TWA limit of 10 mg/m³ for 2,6-di-tert-butyl-p-cresol. The Agency preliminarily concludes that this limit will protect workers against the risk of any acute or chronic effects potentially associated with occupational exposure to this substance in the absence of any OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for 2,6-di-tert-butyl-p-cresol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIETHANOLAMINE
CAS: 111-42-2; Chemical Formula: $HO(CH_2)_2NH(CH_2)_2OH$
H.S. No. 1134

OSHA currently has no limit for diethanolamine. The ACGIH has established an 8-hour TWA limit of 3 ppm. Diethanolamine exists as either a solid or a liquid at room temperature.

Diethanolamine has a low order of toxicity. The oral LD_{50} for both rats and guinea pigs has been reported to be about 2 g/kg (Dow Chemical Company, as cited in ACGIH 1986, p. 197). Acute toxicity studies have shown that direct contact may impair vision and denature the skin if exposure is repeated. Dietary studies in rats showed no ill effects after 90 days of feeding at 20 mg/kg/day (Smyth et al. 1951).

OSHA is proposing a PEL of 3 ppm TWA for diethanolamine. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of eye damage and skin irritation potentially associated with exposure to diethanolamine at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for diethanolamine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIETHYL PHTHALATE
CAS: 84-66-2; Chemical Formula: $C_6H_4-(COOC_2H_5)_2$
H.S. No. 1136

OSHA currently has no limit for diethyl phthalate. The ACGIH recommends a TLV–TWA of 5 mg/m³ for this stable, colorless, odorless, and oily liquid with a bitter taste.

Diethyl phthalate exposure may cause polyneuritis and disturbance of the vestibular function. By most routes of administration, this substance has low acute toxicity in laboratory animals and borders on the "relatively harmless" classification according to the systematic grouping developed by Hine and Jacobson (1954). Oral LD_{50} values in the rat range between 9.5 and 31 g/kg (Shibko and Blumenthal 1973); the intraperitoneal LD_{50} for the rat is 5.08 ml/kg (Singh, Lawrence, and Autrian 1972) and, for the mouse, 2.8 g/kg (Calley, Autrian, and Guess 1966). Chronic feeding studies lasting 6 or more weeks resulted in no-effect levels of 2.5 g/kg/day for the rat and 1.25 g/kg/day for the dog, with no specific lesion attributable to diethyl phthalate and no unusual incidence of tumors (Shibko and Blumenthal 1973).

A study of workers exposed to a mixture of diethyl phthalate, dibutyl phthalate, and di-2-ethyl hexyl phthalate vapors in air at concentrations of 8 to 53 mg/m^3 resulted in findings of no phthalates in the blood (before or after the exposure) and no peripheral polyneuritis (Raleigh, as cited in ACGIH 1986, p. 200). Fassett (1963) reported transient nasal and throat irritation produced by exposure to the heated vapors of diethyl phthalate, but no cumulative effects have been noted. A Russian study of workers (employed for between 0.5 and 19 years) who were exposed to several phthalate plasticizers (e.g., butyl phthalate, the higher aryl phthalates, dioctyl phthalate, and benzyl butyl phthalate), as well as to sebacates, adipates, and tri-o-cresyl phosphate, at concentrations ranging from 1.7 to 66 mg/m^3 resulted in subjective complaints of pain, numbness, and spasms in the upper and lower extremities. These complaints were related to the duration of exposure and usually began after the 6th or 7th year of employment (Milkov et al. 1969). These investigators reported polyneuritis in 32 percent of the 47 persons examined for this health effect; of 81 persons evaluated for disturbance of the vestibular function, 78 percent showed depression of vestibular receptors (Milkov et al. 1969).

OSHA proposes a PEL of 5 mg/m^3 for diethyl phthalate. The Agency preliminarily concludes that this limit will protect workers against the risk of polyneuritis and vestibular function disturbance potentially associated with occupational exposure to this substance in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for diethyl phthalate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DINITOLMIDE (3,5-DINITRO-O-TOLUAMIDE)
CAS: 148-01-6; Chemical Formula: $C_8H_7N_3O_5$
H.S. No. 1144

OSHA currently has no limit for dinitolmide. The ACGIH recommends a limit of 5 mg/m^3 TWA for this yellowish solid.

In rats, the oral LD_{50} for males is 500 mg/kg, and for females, 650 mg/kg; the ACGIH concludes that it has a moderate oral toxicity in rats (1986, p. 213). Two-year dietary studies of rats fed 62.5 ppm (or 3 mg/kg/day) dinitolmide showed no ill effects. Rats of both sexes fed 6 mg/kg/day showed slight fatty changes in the liver; female rats also exhibited slight liver weight increases. Dogs fed 10 mg/kg/day showed no effects after 1 year. A 3-generational study of rats fed 6 or 3 mg/kg/day revealed no effects on fertility, gestation, viability, or lactation (Dow Chemical Company, as cited in ACGIH 1986, p. 213). There are no inhalation data.

OSHA is proposing an 8-hour TWA PEL for dinitolmide of 5 mg/m^3. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of hepatic changes possible as a result of exposure at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for dinitolmide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIPHENYLAMINE
CAS: 122-39-4; Chemical Formula: $(C_6H_5)_2NH$
H.S. No. 1147

OSHA currently has no limit for diphenylamine. The ACGIH recommends a TLV of 10 mg/m^3 TWA. Diphenylamine exists as monoclinic crystalline leaflets that discolor when exposed to light.

Acute oral toxicity data for diphenylamine are limited. A single report describes a study in which a dietary dose of 1,500 mg/kg killed two of twenty rats within 30 days of ingestion (Griswold et al. 1968). This suggests that diphenylamine is significantly less toxic than aniline (Hamblin 1963). Dietary studies of rats fed 0.025, 0.1, 0.5, 1.0, or 1.5 percent diphenylamine for 226 days demonstrated non-malignant renal cysts at the three highest doses (Thomas et al. 1957). However, rats given diphenylamine crystals encapsulated in collodion developed bladder papillomas within 125 days (Yoshida et al. 1941). Exposure to diphenylamine dust has been linked to liver, spleen, and kidney changes in experimental animals (Robert et al. 1937).

A report of industrial diphenylamine poisoning in France described bladder symptoms, tachycardia, hypertension, and eczema (Fairhall 1957).

OSHA is proposing a PEL of 10 mg/m^3 TWA for diphenylamine. The Agency preliminarily concludes that this limit will protect workers against the risk of liver, kidney, cardiovascular, and other systemic effects potentially associated with exposures to this substance in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for diphenylamine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIURON
CAS: 330-54-1; Chemical Formula: $C_9H_{10}Cl_2N_2O$
H.S. No. 1153

OSHA currently has no limit for diuron. The ACGIH recommends a TLV of 10 mg/m^3 TWA for this white crystalline solid.

Hodge and associates (1967, 1968) have reported a low order of acute and chronic toxicity for diuron. For male rats, the oral LD_{50} is 3,400 mg/kg. In 2-year feeding studies of rats and dogs, the no-effect levels were reported to be 250 and 125 ppm, respectively. A concentration of 125 ppm in the diet did not cause reproductive or carcinogenic effects in a 3-generational study of rats (Hodge, Downs, and Panner 1967; Hodge, Downs, Smith et al. 1968); 1,400 ppm did not have carcinogenic effects in mice (Innes et al. 1969). Skin irritation and sensitization test findings in guinea pigs have been negative (ACGIH 1986, p. 228).

OSHA is proposing an 8-hour limit of 10 mg/m^3 TWA for diuron. This is the limit being proposed by the Agency for all inert dust and particulates; OSHA preliminarily concludes that this limit will protect exposed workers from the risks potentially associated with workplace exposure in the absence of any OSHA PEL. These risks include accidents, skin and upper respiratory tract irritation, and interference with vision. The health evidence forms a reasonable basis for proposing a new limit for diuron. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYL ACETATE
CAS: 79-20-9; Chemical Formula: CH_3COOCH_3
H.S. No. 1249

OSHA currently has a limit of 200 ppm TWA for methyl acetate. The ACGIH also recommends an 8-hour TWA limit of 200 ppm, with the addition of a TLV–STEL of 250 ppm. Methyl acetate is a highly volatile, colorless liquid with a pleasant odor.

Methyl acetate is mildly narcotic and is a known irritant to the mucous membranes of the eyes and respiratory passages. Occupational exposure to this substance by vapor inhalation at unreported levels resulted in inflammation of the eyes, nervous irritation, and tightness in the chest (Duquenois and Revel 1934; Fairhall 1957). Duquenois and Revel (1934) suggested that, like methyl alcohol, methyl acetate may produce atrophy of the optic nerve.

Other researchers have suggested that the methanol formed by hydrolysis in the body may be responsible for the toxicity of methyl acetate and, on this basis, have recommended a limit of 250 ppm in the occupational setting (Henderson and Haggard 1943). However, Lehmann and Flury (1943) have attributed toxic effects (e.g., blood changes, weight loss, lung irritation), as well as some deaths, to chronic exposures at 6800 ppm. These health effects require a PEL which will protect workers against both chronic and acute exposures.

No cases of irritation or systemic injury have been reported from industrial exposures to methyl acetate below 200 ppm.

OSHA is proposing an 8-hour PEL of 200 ppm TWA and a 15-minute STEL of 250 ppm for methyl acetate. The Agency preliminarily concludes that both of these limits will protect exposed workers from the risk of narcosis, eye and skin irritation, and pulmonary irritation possible at elevated exposure levels. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl acetate if the Agency determines that this limit will substantially reduce significant risk.

METRIBUZIN
CAS: 21087-64-9; Chemical Formula: $C_8H_{14}N_4OS$
H.S. No. 1275

OSHA currently has no limit for metribuzin. The ACGIH recommends a TLV–TWA of 5 mg/m.^{3} Metribuzin is a crystalline solid.

The herbicide metribuzin has a low order of acute toxicity; single exposures to high concentrations produce central nervous system depression, and repeated high doses affect the thyroid and liver function (Deutsche Forschungsgemeinshaft 1981, as cited in ACGIH 1986, p. 411). The oral LD_{50} in rats has been reported to be 2000 mg/kg; in cats and rabbits, the LD_{50} is up to 500 mg/kg. A 4-hour aerosol exposure at concentrations of between 860 and 892 mg/m^3 was tolerated by rats and mice; no skin or eye irritation was observed in rabbits. No sensitizing effects were seen in guinea pigs, and a skin application of the 70-percent wettable powder of 1000 mg/kg per day for 3 weeks produced no effects in rats (Deutsche Forschungsgemeinschaft 1981 as cited in ACGIH 1986, p. 411).

Inhalation studies have shown no adverse effects in rats exposed to 31 mg/m^3 of the aerosol for 6 hours/day, 5 days/week during a 3-week period (Bayer 1981, as cited in ACGIH 1986, p. 411). No carcinogenic effects were observed in rats and mice fed 20, 600, or 3200 ppm for 2 years (Kimmerle 1982, as cited in ACGIH 1986, p. 411). A no-effect level of 100 ppm was observed in a 2-year dietary study of rats and dogs (Deutsche Forschungsgemeinschaft 1981, as cited in ACGIH 1986, p. 411); these same investigators observed no teratogenic, embryotoxic, or reproductive effects in rats or rabbits. In Chinese hamsters and mice, no mutagenic activity was observed (Siebert and Lemperle 1974).

No human poisonings with metribuzin have been reported. In oral long-term studies, the highest no-observed effect levels (NOELs) were 2.5 to 5 mg/kg per day (ACGIH 1986, p. 411). Single and repeated patch tests in humans resulted in neither irritation nor sensitization (Deutsche Forschungsgemeinschaft 1981, as cited in ACGIH 1986, p. 411).

OSHA is proposing a PEL of 5 mg/m^3 TWA for metribuzin. The Agency preliminarily concludes that this limit will protect workers against the risks of metabolic and CNS effects that potentially exist from workplace exposure to metribuzin at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for metribuzin. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

OIL MIST (MINERAL)
CAS: 8012-95-1; Chemical Formula: None
H.S. No. 1297

OSHA currently has a limit of 5 mg/m^3 TWA for oil mist. The ACGIH has the same limit and recommends the addition of a 10 mg/m^3 TLV–STEL. Oil mist (mineral) refers to the airborne mist of petroleum-based cutting oils or of white petroleum oil; its odor is described as that of burned lubrication oil.

Studies in animals have shown no ill effects as a result of repeated 6-hour daily exposures to 5 mg/m^3 level (Wagner, Wright, and Stokinger 1964). At 100 mg/m^3, slight changes (not further specified) were observed in exposed animals (Lushbauch, Green, and Redemann 1950). Oil fumes and the role of additives have not yet been evaluated, but it has been suggested that heat-decomposed oil fumes are irritating to the lungs (Wagner, Dobrogorski, and Stokinger 1961). Some lung effects have been reported as a result of exposures in animals at 100 mg/m^3 Lushbauch, Green, and Redemann 1950).

OSHA proposes a PEL of 5 mg/m^3 TWA and a STEL of 10 mg/m^3 for mineral oil mist. The Agency preliminarily concludes that both a TWA limit and a STEL are necessary to protect against the risk of lung irritation potentially associated with elevated short-term exposures to oil mist. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for mineral oil mist if the Agency determines that this limit will substantially reduce significant risk.

PETROLEUM DISTILLATES (NAPHTHA)
CAS: None; Chemical Formula: None
H.S. No. 1312

For petroleum distillates (naphtha), also identified as rubber solvents, OSHA is proposing to reduce its current 8-hour limit of 500 ppm to 400 ppm. The ACGIH has a TLV–TWA of 400 ppm, and NIOSH recommends a TWA of 87 ppm and a ceiling (15 min) of 450 ppm for these substances.

A 1975 study performed by Carpenter et al. exposed rats to between 2800 and 24,200 ppm of naphtha. Motor incoordination occurred at 5300 ppm, and convulsions and death occurred in all animals at 24,200 ppm. Animals exposed to 480 ppm for 63 days showed no signs of toxicity (Carpenter et al. 1975).

NIOSH (1977) noted that rubber solvent (naphtha) is composed primarily of C_6–C_8 alkanes and, as such, the limit of 350 mg/m^3 (85 ppm) recommended for C_6–C_8 alkanes should apply to naphtha. This recommendation presumes that all C_6–C_8 alkanes possess neuropathic capability; as discussed above in the section on narcotic agents, OSHA has preliminarily concluded that not all C_6–C_8 alkanes are neuropathic agents.

In establishing its recommended 400-ppm TLV–TWA for petroleum distillates, the ACGIH relied on the

observations that slight irritation occurs in humans at exposure to 430 ppm and that no signs of toxicity occur in animals exposed to 480 ppm. The NIOSH-recommended 85-ppm limit is based on the assumption that all C_9–C_{12} alkanes possess equivalent neuropathic properties. OSHA has tentatively rejected this hypothesis and proposes therefore to reduce the PEL to 400 ppm TWA in order to avoid the risk of extensive irritation. The Agency requests comments on the issue of equivalent toxicity for all C_9–C_{12} alkanes. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for petroleum distillates if the Agency determines that this limit will substantially reduce significant risk.

m-PHTHALODINITRILE
CAS: 626-17-5; Chemical Formula: $C_8H_4N_2$
H.S. No. 1327

OSHA currently has no limit for m-phthalodinitrile. The ACGIH has recommended a TLV–TWA of 5 mg/m³. meta-Phthalodinitrile exists in the form of needles obtained from solutions containing either water or ligroin as the solvent.

In rabbits, slight skin reactions have been reported from dermal applications of m phthalodinitrile to intact or abraded skin for 6 hours/day, 5 days/week during a 3-week period. The doses applied were 0.5, 1.0, and 2.0 g/kg; at the two higher dose levels, some changes in organ size, without histopathologic changes, were observed. Female rabbits exposed at the highest dose lost body weight (Owen 1972, as cited in ACGIH 1986, p. 488).

A 15-year review of industrial experience revealed no reports of adverse effects from exposure to m-phthalodinitrile (Zeller, Hofmann, Thiess, and Hey 1983). Williams (1959) attributes this absence of exposure effects to the fact that the aromatic nitriles, of which m-pthalodinitrile is one, do not liberate cyanide in the body, as is the case with the aliphatic nitriles.

OSHA is proposing an 8-hour TWA limit for m-phthalodinitrile of 5 mg/m³. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of skin irritation that exists in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for m-phthalodinitrile. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PLATINUM (METAL)
CAS: 7440-06-4; Chemical Formula: Pt
H.S. No. 1332

OSHA currently has no limit for platinum metal. The ACGIH recommends a limit of 1.0 mg/m³ TWA for platinum metal dust. Platinum is a silver grey, lustrous, malleable, and ductile precious metal.

Extrapolating from its TLV for platinum soluble salts and recognizing no major health effects associated with exposure to the metal dust, the ACGIH recommended a TLV of 1.0 mg/m³ for platinum metal dust. This level apparently was based on good industrial hygiene practices and the expectation that a heavy metal dust will be more toxic than nuisance dusts (which are controlled to 10 mg/m³).

OSHA therefore proposes a limit of 1.0 mg/m³ TWA for platinum metal dust. The Agency preliminarily concludes that this limit will protect workers against the risk of adverse health effects potentially associated with workplace exposure in the absence of any OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for platinum metal dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

RESORCINOL
CAS: 108-46-3; Chemical Formula: $C_6H_4(OH)_2$
H.S. No. 1340

OSHA currently has no limit for resorcinol. The ACGIH recommends an 8-hour TWA limit of 10 ppm with a TLV–STEL of 20 ppm. Resorcinol occurs in the form of sweet-tasting white crystals that may turn pink on exposure to air and light or on contact with iron.

Resorcinol has been reported to be less toxic than either catechol or phenol by ingestion or skin penetration (von Oettingen 1949; Koppers Company 1974, as cited in ACGIH 1986, p. 511). The oral LD_{50} in rats is 301 mg/kg (NIOSH 1977). Daily 6-hour exposures at 8 ppm for 2 weeks produced no ill effects in rats, guinea pigs, and rabbits. Acute inhalation exposures to a resorcinol-water aerosol at concentrations as high as 7800 mg/m³ for 1 hour and 2800 mg/m³ for 8 hours caused no toxic effects in laboratory animals (Koppers Company 1974, as cited in ACGIH 1986, p. 511).

In humans, regular exposure to 10 ppm also caused no irritation and no complaints of discomfort (Koppers Company 1974, as cited in ACGIH 1986, p. 511).

OSHA proposes a PEL of 10 ppm TWA and a STEL of 20 ppm for resorcinol. The Agency preliminarily concludes that this combined limit will protect workers against the risk of irritation that exists in the absence of any OSHA limit for occupational exposure to this substance. The health evidence forms a reasonable basis for proposing a new limit for resorcinol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TANTALUM (METAL DUST AND OXIDE)
CAS: 7440-25-7; Chemical Formulas: [Tantalum metal]Ta; [Tantalum oxide]Ta_2O_5
H.S. No. 1382

OSHA's existing PEL for tantalum is 5 mg/m³; the ACGIH recommends a 5-mg/m³ and TWA and a 15-minute STEL of 10 mg/m³. Tantalum dust is a black powder and tantalum oxide is a white, microcrystalline powder.

Animal studies by Miller, Davis, Goldman, and Wyatt (1953) have not implicated tantalum as a cause of pnuemoconiosis, although an exposure to 100 mg tantalum oxide produced "soft white circumscribed pigmented dust lesions" (ACGIH 1986, p. 554) in the lungs of these animals. Additionally, this particular study demonstrated transient bronchitis, interstitial pneumonitis, and hyperemia at the 100-mg exposure level. Tantalum oxide has been used as a dressing for burns (Olsen 1944), and the use of tantalum gauze in surgical repair showed no long-term adverse effects (Dales and Kyle 1958). No adverse health effects have been associated with industrial exposures to tantalum or its compounds (Cochran, Doull, Mazur, and DuBois 1950). A single oral dose of 6500 mg/kg oxide was virtually nontoxic to rats (ACGIH 1986, p. 554).

The ACGIH (1986, p. 554) believes that tantalum dust and oxide should be classified as an inert or nuisance dust and, accordingly, placed tantalum on its 1987–88 Notice of Intended Changes list with a recommendation for increasing the TLV–TWA to 10 mg/m³, the ACGIH's limit for all nuisance dusts, and deleting the current STEL of 10 mg/m³. However, OSHA notes that inhalation exposures to tantalum have produced pulmonary lesions, bronchitis, interstitial pneumonitis, and hyperemia. The Agency preliminarily concludes that the existing 5-mg/m³ TWA for these compounds should be supplemented with a short-term limit of 10 mg/m³ to protect exposed workers from these respiratory effects of exposure. OSHA therefore proposes a PEL of 5 mg/m³ TWA and a STEL of 10 mg/m³ for tantalum (metal dust and oxide). The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for tantalum dust and oxide if the Agency determines that this limit will substantially reduce significant risk.

TRIMETHYL PHOSPHITE
CAS: 121-45-9; Chemical Formula: $(CH_3O)_3P$
H.S. No. 1410

OSHA currently has no limit for trimethyl phosphite. The ACGIH limit is a 2-ppm 8-hour TWA. Trimethyl phosphite is a colorless liquid with a pungent odor.

Trimethyl phosphite's toxic effects include lung, skin, and eye irritation. In a chronic inhalation study of rats, Levin and Gabriel (1973) found that exposure to trimethyl phosphite at concentrations of 500±75 ppm for 7.5 hours daily, 5 days/week for 8 weeks caused an adverse effect on body weight and, at necropsy, revealed evidence of severe pulmonary and cutaneous pathology. At exposures of 600 ppm 6 hours/day, 5 days/week for 4 weeks, 70 percent of the rats died, and 10 percent of those exposed even at 300 ppm on the same regimen died (Mobil Oil Corporation 1979).

Rats exposed at 100 ppm showed signs of eye irritation, and at 300 to 600 ppm, mild to severe cataracts developed. At doses of 164 mg/kg, trimethyl phosphite caused gross abnormalities in the offspring of treated rats (Mobil Oil Corporation 1979).

Skin contact with trimethyl phosphite produced severe skin irritation in rabbits, and instillation in the eyes of rabbits caused temporary swelling and irritation but no permanent effects (Fassett 1963).

In a group of 179 workers exposed to average concentrations of trimethyl phosphite of between 0.3 and 4 ppm, no ocular changes were observed (Mobil Chemical Corporation 1980, as cited in ACGIH 1986, p. 609).

OSHA is proposing an 8-hour TWA for trimethyl phosphite of 2 ppm. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of eye damage, skin irritation, and upper respiratory tract irritation potentially associated with exposures to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for trimethyl phosphite. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TRIPHENYL AMINE
CAS: 603-34-9; Chemical Formula: $(C_6H_5)_3N$
H.S. No. 1415

OSHA currently has no exposure limit for triphenyl amine. The ACGIH recommends a 5-mg/m³ 8-hour TWA limit for this substance. Triphenyl amine exists as colorless monoclinic prisms.

Animal studies conducted by the Eastman Kodak Company (as cited in ACGIH 1986, p. 612) showed an oral LD_{50} in rats of 3200 to 6400 mg/kg and an oral LD_{50} in mice of 1600 to 3200 mg/kg. The LD_{50} by intraperitoneal administration for both rodent species exceeded 6400 mg/kg. Skin and eye sensitivity tests in both rabbits and guinea pigs were essentially negative except that application of 5 to 20 ml/kg occlusively for 4 hours produced slight erythema (Eastman Kodak Company, as cited in ACGIH 1986, p. 612).

OSHA is proposing a 5-mg/m³ TWA limit for triphenyl amine. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of skin irritation potentially associated with exposure to this substance in the absence of any OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for triphenyl amine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

URANIUM (INSOLUBLE COMPOUNDS)
CAS: 7440-61-1; Chemical Formula: U
H.S. No. 1416

OSHA's existing PEL for insoluble uranium compounds is 0.25 mg/m3; the ACGIH has a TLV–TWA of 0.2 mg/m³ and a 0.6-mg/m³ STEL. Uranium is a silver-white radioactive metal.

OSHA's existing limit for the insoluble compounds of uranium was based on several early studies of uranium's toxic effects in animals; these effects included kidney damage and blood changes (Voegtlin and Hodge 1953). In the intervening years, a considerable body of evidence has accumulated based on the actual occupational exposures of uranium plant workers over a period as long as 25 years. This evidence shows that, before 1950, workers were often exposed to uranium levels between 0.2 and 1.5 mg/m³, but that after 1950, only about 6 percent were exposed at 0.05 mg/m³ or above; despite these relatively high early exposures, the incidence of all diseases, whether or not linked to radiation exposure, has been no higher than is the case for workers in the general population (ACGIH 1986, p. 617). However, there is also evidence that several workers were exposed to brief excursions during which exposure levels reached a concentration as much as five times the TLV (Wing, Heatherton, and Quigley 1963, as cited in ACGIH 1986, p. 617).

OSHA is proposing an 8-hour TWA of 0.2 mg/m³ and a STEL of 0.6 mg/m³ for the insoluble forms of uranium. The Agency preliminarily concludes that these limits are required to protect uranium plant workers from the risk of kidney or blood disorders potentially associated with both full-shift and excursion exposures to these compounds. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for uranium if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

For the group of substances shown in Table C9–1, OSHA preliminarily concludes that workplace exposures to these substances cause a broad range of adverse health consequences in exposed individuals; effects include CNS depression, respiratory irritation, liver and kidney damage, cardiac sensitization, and hepatocellular cancer. OSHA believes that the health evidence forms a reasonable basis for proposing new or revised limits for these substances. At the time of the final rule, the Agency will establish new or revised limits if it determines that significant risk will be substantially reduced thereby.

10. Substances for Which Proposed Limits Are Based on Avoidance of Adverse Nuisance Effects

Introduction

OSHA is proposing limits for a group of substances that cause a variety of adverse effects. These substances are recognized universally as posing a substantial threat to the health, safety, and well-being of workers exposed to them. The term "nuisance" for these particulates can be misleading because the hazards they pose in the workplace are real and often serious. The ACGIH classifies many of these substances as nuisance particulates and applies a single workplace limit to them. OSHA has no substance-specific limits for these dusts; the Agency's limit for the category of nuisance dusts as a whole is 15 mg/m³ as total dust and 5 mg/m³ as respirable dust (see Table Z–3 of 29 CFR 1910.1000). Table C10–1 shows the 47 substances included in this group. NIOSH does not recommend a limit for the category of nuisance dusts but does have a REL for malathion and fibrous glass dust, two substances included in this group by the ACGIH. For all of these substances except fibrous glass dust, OSHA is proposing to establish an

8-hour TWA limit of 10 mg/m³ as total dust. For fibrous glass dust, the Agency is proposing a limit of 5 mg/m³ as a TWA.

Description of the Health Effects

The adverse effects caused by exposure to these substances include: Interference with vision; deposition of these substances in the eyes, ears, nasal passages, and upper respiratory tract; and skin irritation. Thus, workers exposed to excessive concentrations of these substances may have difficulty seeing or be subjected to attacks of uncontrolled coughing and sneezing. Moreover, workers may injure their skin and mucous membranes when they attempt to remove these substances, which settle everywhere. These undesirable exposure effects also have serious safety implications, because they lead to workplace accidents and injuries.

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TABLE C10-1. - Substances Causing Adverse Nuisance Effects

H.S. Number/ Chemical Name	CAS No.	OSHA Nuisance Dust Limit	ACGIH TLV	NIOSH REL
1014 Alpha-alumina	1344-28-1	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1016 Aluminum metal dust	7429-90-5	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1024 Ammonium sulfamate	7773-06-0	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1031 Barium sulfate	7727-43-7	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1032 Benomyl	17804-35-2	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1035 Bismuth telluride (undoped)	1304-82-1	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1039 Boron oxide	1303-86-2	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1057 Calcium carbonate	1317-65-3	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1061 Calcium silicate, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1062 Calcium sulfate	7778-18-9	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1076 Cellulose	9004-34-6	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1082 2-Chloro-6-trichloro-methyl pyridine	1929-82-4	15 mg/m^3 TWA	10 mg/m^3 TWA	--

TABLE C10-1. - Substances Causing Adverse Nuisance Effects (continued)

H.S. Number/ Chemical Name	CAS No.	OSHA Nuisance Dust Limit	ACGIH TLV	NIOSH REL
1095 Clopidol	2971-90-6	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1102 Crag herbicide (sesone)	136-78-7	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1133 Dicyclopentadienyl iron	102-54-5	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1155 Emery	112-62-9	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1176 Ferbam	14484-64-1	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1178 Fibrous glass dust*	--	--	10 mg/m^3 TWA	5 mg/m^3 TWA*
1180 Glycerin (mist)	56-81-5	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1191A Graphite, synthetic, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1192 Gypsum, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1230 Kaolin, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--

* NIOSH has an additional limit for fibrous glass of 3 million fibers/m^3; fibers less than or equal to 3.5 microns in diameter and equal to or greater than 10 microns in length are counted.

TABLE C10 1. Substances Causing Adverse Nuisance Effects (continued)

H.S. Nomber/ Chemical Name	CAS No.	OSHA Nuisance Dust Limit	ACGIH TLV	NIOSH REL
1232 Limestone, total dust	1317-65-3	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1233 Magnesite, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1234 Magnesium oxide fume	1309-48-4	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1235 Malathion	121-75-5	15 mg/m^3 TWA, Skin	10 mg/m^3 TWA, Skin	15 mg/m^3 TWA
1239 Marble, total dust	1713-65-3	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1246 Methoxychlor	72-43-5	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1277 Mineral wool fiber	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1278 Molybdenum (insoluble compounds)	7439-98-7	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1294 Nuisance particulates, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1305 Pentaerythritol, total dust	115-77-5	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1310 Perlite	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--

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TABLE C10-1. - Substances Causing Adverse Nuisance Effects (continued)

H.S. Number/ Chemical Name	CAS No.	OSHA Nuisance Dust Limit	ACGIH TLV	NIOSH REL
1328 Picloram	1918-02-1	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1331 Plaster of Paris, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1333 Portland cement	65997-15-1	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1351 Rouge, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1359 Silicon	7440-21-3	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1360 Silicon carbide	409-21-2	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1369 Starch, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1374 Sucrose, total dust	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1383 Temephos	3383-96-8	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1391 4,4'-Thiobis (6-tert-butyl-m-cresol)	96-69-5	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1396 Titanium dioxide	13463-67-7	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1423 Vegetable oil mist	--	15 mg/m^3 TWA	10 mg/m^3 TWA	--
1434 Zinc stearate	557-05-1	15 mg/m^3 TWA	10 mg/m^3 TWA	--

TABLE C10-1. - Substances Causing Adverse Nuisance Effects (continued)

H.S. Number/ Chemical Name	CAS No.	OSHA Nuisance Dust Limit	ACGIH TLV	NIOSH REL
1438 Zinc oxide, total dust	1315-13-2	15 mg/m^3 TWA	10 mg/m^3 TWA	--

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ Proposed PEL is the NIOSH REL.

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When exposures to the substances shown in Table C10–1 are kept under proper control in the workplace, exposures are not likely to result in significant organic disease or irreversible toxic effects. However, it is inappropriate to consider these nuisance particulates biologically inert, because, if inhaled in sufficient amount, these dusts do cause pulmonary responses.

The lung-tissue reactions associated with exposure to these nuisance particulates leave the structure of the air spaces intact and do not cause scar tissue formation to any significant extent (ACGIH 1986). In addition, the reactions caused by inhalation are reversible if exposure is stopped. Controlling occupational exposures to these nuisance particulates and the other substances included in this category to levels below 10 mg/m³ as an 8-hour TWA will prevent these adverse effects. Workers protected by the proposed 10 mg/m³ limit will therefore not be at risk of the seriously distracting and often painful effects associated with exposures above this NOE level.

The following discussions describe OSHA's preliminary findings for the particulates included in this group. In addition, the health effects potentially associated with exposures to these substances are reviewed.

ALPHA-ALUMINA
CAS: 1344–28–1; Chemical Formula: Al_2O_3
H.S. No. 1014

OSHA presently has no specific limit for alpha-alumina, although OSHA's general nuisance dust limit of 15 mg/m³ applies. The ACGIH recommends an 8-hour TWA of 10 mg/m³, measured as total dust. Alpha-alumina, also called aluminum oxide, is a white powder that is widely used as an abrasive grinding material.

A study by Miller and Sayers (1941) determined that alumina particles with diameters less than 40 microns produced no reaction in laboratory animals. The results of a study by Stacy, King, Harrison et al. (1959) confirmed the findings of Miller and Sayers; these authors found a-aluminn to be nearly inert when injected in the lungs of rats (Stacy, King, Harrison et al. 1959). Inhalation of fine aluminum powders at unspecified levels did not cause fibrosis in rats, guinea pigs, or hamsters (Gross et al. 1973).

In 1923, shortly after a-alumina replaced sandstone as the industrial abrasive of choice. Macklin and Middleton (1923) reported that workers exposed to aluminum oxide dust using the new, synthetic abrasive had much less pulmonary disease than workers using sandstone abrasives. Other studies (Sutherland, Meiklejohn, and Price 1937; Meiklejohn and Posner 1947; Meiklejohn and Posner 1948) reported that workers exposed to aluminum oxide dust in the chinaware industry and in aluminum production showed no evidence of pneumoconiosis. However, some early studies (Clark and Simmons 1925; Clark 1929) reported that workers engaged in aluminum oxide production and exposed to dust levels generally between 50 and 100 mppcf showed X-ray evidence of pulmonary fibrosis; these workers are likely also to have been exposed to silica. Workers exposed during World War II to bauxite fumes containing both alumina and silica developed pulmonary fibrosis and emphysema; the authors believe that silica fume was involved in the development of these diseases (Shaver and Riddell 1947). The ACGIH (1986, p. 21) states that alpha-alumina acts as an inert material.

OSHA is proposing an 8-hour limit of 10 mg/m³ for alpha-alumina, the limit being proposed for all inert particulates. The Agency preliminarily concludes that this limit will protect workers from the safety and health risks potentially associated with exposures to inert particulates in the workplace. These risks include safety accidents, skin and eye irritation, interference with vision, and distraction from the task at hand. This health evidence forms a reasonable basis for proposing a new limit for alpha-alumina. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ALUMINUM METAL DUST
CAS: 7429–90–5; Chemical Formula: Al
H.S. No. 1016

OSHA currently has no specific permissible exposure limit for aluminum metal dust; however, OSHA's current nuisance dust limit of 15 mg/m³ TWA applies. The ACGIH recommends an 8-hour TWA limit of 10 mg/m³ as total dust.

Aluminum metal dust has been shown to present a minimal health hazard, according to results from the McIntyre Foundation's 27-year study of aluminum oxide dust. No deleterious lung or systemic effects were observed as a result of exposure to aluminum metal dust having a particle size of 1.2 um at calculated concentrations equivalent to 2 mg/m³ over an 8-hour workshift. Even much higher concentrations (not further specified) over 10- or 20-minute periods produced no adverse effects (ACGIH 1986, p. 22).

Therefore, OSHA has preliminarily concluded that aluminum metal dusts are essentially inert and is proposing a PEL of 10 mg/m³ TWA, the standard being proposed for all nuisance dusts. This level will provide protection against the physical irritation possible at the previously uncontrolled level and prevent the safety hazards potentially associated with overexposure to dusts. This health evidence forms a reasonable basis for proposing a new limit for aluminum metal dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

AMMONIUM SULFAMATE
CAS: 7773–06–0; Chemical Formula: $NH_4SO_3NH_2$
H.S. No. 1024

OSHA currently regulates ammonium sulfamate under its general nuisance dust limit of 15 mg/m³. The ACGIH recommends a limit of 10 mg/m³ as an 8-hour TWA. Ammonium sulfamate is a colorless, non-combustible, white crystalline substance.

Ammonium sulfamate has a low order of toxicity and should be considered a nuisance dust. Lehman (1951) found oral LD_{50}s of 3900 mg/kg, 5700 mg/kg, and 3000 mg/kg in rats, mice, and quail, respectively. He also reported that no effects were noted in rats administered 10,000 ppm in the diet for 105 days. The hazards associated with exposure to ammonium sulfamate include eye and nose irritation, interference with vision, and the danger of accidents caused by the distraction and avoidance reactions typical of workers overexposed to dusts in the workplace.

OSHA proposes a PEL of 10 mg/m³ TWA for ammonium sulfamate, which is the limit being proposed for all workplace dusts with a low order of toxicity. The Agency preliminarily concludes that this revised limit will protect workers against physical and other irritation and against workplace accidents associated with exposure to this substance. The health evidence forms a reasonable basis for proposing a new limit for ammonium sulfamate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BARIUM SULFATE
CAS: 7727–43–7; Chemical Formula: $BaSO_4$
H.S. No. 1031

OSHA has no specific limit for barium sulfate, although OSHA's nuisance dust limit applies; the ACGIH recommends a TLV–TWA of 10 mg/m³, total dust, for this substance. Barium sulfate is a white or yellowish, odorless, tasteless powder.

Because barium sulfate is insoluble, it is considered an inert dust. Einbrodt et al. (1972) exposed rats to a concentration of 40 mg/m³ for 2 months and concluded that barium sulfate is an inert dust. As an inert dust of the non-collagenous type; however, barium sulfate has the potential to cause pneumoconiosis through tissue reaction to accumulated dust in the lung (Anon., *Brit. Med. J.* 1972). Barium sulfate has been observed to cause no adverse effects in industrial workers exposed over periods of several years (Doig 1976).

OSHA proposes that a PEL for barium sulfate be established at the 10 mg/m³ TWA level; this limit is the limit proposed by OSHA for all inert dusts. The Agency preliminarily concludes that this limit will protect workers against the hazards associated with exposures to these dusts, which include safety hazards, eye irritation, and upper respiratory tract irritation. The health evidence forms a reasonable basis for proposing a new limit for barium sulfate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BENOMYL
CAS: 17804–35–2; Chemical Formula: $C_{14}H_{18}N_4O_3$
H.S. No. 1032

OSHA currently regulates benomyl under its general nuisance dust limit of 15 mg/m³. The ACGIH has established a TLV TWA of 10 mg/m³ for this substance. Benomyl is a white crystalline solid, and exposures to it occur in its particulate form.

Studies of rats and rabbits indicate that the oral and skin absorption LD_{50}s are greater than 10,000 mg/kg, and studies of guinea pigs show a very low risk of skin irritation. Application to the shaved intact skin of ten male guinea pigs (as aqueous suspensions containing 5, 12.5, and 25 percent benomyl) resulted in negligible irritation; one of ten guinea pigs had mild erythema 2 days after application at the high rate (E. I. du Pont de Nemours and Co., Inc. 1974). In another study, instillation of 10 mg of dry 50-percent powder or 0.1 ml of 10-percent suspension in mineral oil caused only temporary mild conjunctival irritation (E. I. du Pont de Nemours and Co., Inc. unpublished). No teratogenic or mutagenic effects have been observed in rats, and dogs have been shown to eliminate more than 99 percent of ingested benomyl within 72 hours (Gardiner, Kirkland, and Klopping 1974).

OSHA proposes a PEL of 10 mg/m³ for this substance as an 8-hour TWA. The Agency believes that this limit will protect workers from the risks of benomyl's effects, which include irritation and erythema. The health evidence forms a reasonable basis for proposing a new limit for benomyl. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BISMUTH TELLURIDE (UNDOPED)
CAS: 1304–82–1; Chemical Formula: Bi_2Te_3
H.S. No. 1035

OSHA has no current limit for undoped bismuth telluride; however, OSHA's general nuisance dust limit of 15 mg/m³ applies. The ACGIH recommends a TLV–TWA of 10 mg/m³ for the undoped substance. Bismuth telluride appears as gray, hexagonal platelets; it is also available as ingots or single crystals.

An 11-month inhalation study of dogs, rabbits, and rats exposed to pure bismuth telluride dust at 15 mg/m³ showed the pulmonary responses typical of exposure to inert dust (Wagner, Madden, Zimber et al. 1974). Thus, OSHA proposes a permissible exposure limit of 10 mg/m³ TWA for pure undoped bismuth telluride. This limit is the same as the limit proposed for all nuisance dusts. The Agency believes that a 10-mg/m³ PEL will protect workers from the hazards associated with workplace dust exposures, which include skin and eye irritation and safety accidents. The health evidence forms a reasonable basis for proposing a new limit for undoped bismuth telluride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BORON OXIDE
CAS: 1303–86–2; Chemical Formula: B_2O_3
H.S. No. 1039

OSHA currently regulates boron oxide under its general nuisance dust limit of 15 mg/m³, and the ACGIH recommends a TLV–TWA of 10 mg/m³. Boron oxide occurs as a white powder or granular solid, and it has a bitter taste.

Animal studies indicate that skin and eye irritation were caused by the topical application of boron oxide to the skin of rabbits and by ocular instillation. Studies of aerosol administration at various exposure levels for varying time periods caused mild nasal irritation and an increase in urine acidity and creatinine coefficient in dogs and rats (Wilding, Smith, Yevich et al. 1959). Young rats that were force-fed a 10-percent slurry of boron oxide in water for 3 weeks showed no growth retardation or other effects (Wilding, Smith, Yevich et al. 1959).

Gabrant and co-workers (1984) determined the prevalence of eye and respiratory irritation among boron-oxide-exposed workers; those exposed to boron oxide concentrations ranging from 1.2 to 8.5 mg/m³ were then compared with controls. Workers exposed at an average concentration of 4.1 mg/m³ reported significant increases in coughing; eye, nose, and throat irritation; dryness of the mouth; and sore throats.

The ACGIH believes that a TLV–TWA of 10 mg/m³ will provide protection against boron oxide's irritant effects (ACGIH 1986). However, OSHA notes that irritation of the upper respiratory tract and eyes occurs among occupationally exposed workers at an average airborne concentration of 4.1 mg/m³. OSHA therefore proposes a PEL of 10 mg/m³ TWA and solicits additional information on the boron oxide exposure levels associated with adverse health effects in workers. The health evidence forms a reasonable basis for proposing a new limit for boron oxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CALCIUM CARBONATE
CAS: 1317–65–3; Chemical Formula: $CaCO_3$
H.S. No. 1067

OSHA currently regulates calcium carbonate under the 15-mg/m³ nuisance dust limit. The ACGIH recommends a TLV–TWA of 10 mg/m³, total dust. Calcium carbonate is an odorless, tasteless powder or crystal.

The ACGIH considers calcium carbonate a nuisance dust and has accordingly established a 10-mg/m³ TWA limit for it. Beal, Griffith, and Nagelschmidt (as cited in the ACGIH 1986, p. 90) believe that exposure to this substance in its pure form does not cause pneumoconiosis, and Hunter (1975) confirms this finding.

OSHA is proposing to reduce its current PEL of 15 mg/m³ for calcium carbonate to 10 mg/m³ to protect workers against the risks associated with dust exposures in the workplace. These risks include eye and skin irritation, as well as the danger of accidents caused by interference with vision and the distractive effects of these substances. The health evidence forms a reasonable basis for proposing a new limit for calcium carbonate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CALCIUM SILICATE
CAS: 1344–95–2; Chemical Formula: None
H.S. No. 1061

OSHA has no limit specifically for calcium silicate; the Agency classifies this substance as a nuisance dust and assigns it an 8-hour TWA limit of 15 mg/m³, as total dust. The ACGIH also classifies calcium silicate as a nuisance dust and has established an 8-hour limit of 10 mg/m³ for this white powder.

There are no reported health effects in humans or animals as a result of exposure to calcium silicate. Calcium silicate is thus a nuisance dust, without long-term adverse health effects if exposures are kept under reasonable control.

OSHA is proposing an 8-hour limit of 10 mg/m³ TWA for calcium silicate; this limit is being proposed for all nuisance dusts and inert particulates. The Agency preliminarily concludes that this limit will protect workers from the risk of reduced visibility and distraction that can cause accidents in the workplace and will also prevent them from experiencing the eye and skin irritation associated with exposures to higher levels of this or other nuisance dusts. The health evidence forms a reasonable basis for proposing a new limit for calcium silicate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CALCIUM SULFATE
CAS: 7778-18-9; Chemical Formula: $CaSO_4$
H.S. No. 1052

OSHA currently regulates calcium sulfate under its general nuisance dust limit of 15 mg/m³. The ACGIH recommends a TLV–TWA of 10 mg/m³ total dust for this crystalline or powdery substance.

Calcium sulfate dust is known to have a low order of toxicity, and it is not reported to have specific irritant properties (ACGIH 1986, p. 93). One report has indicated that no lung diseases are associated with exposure to calcium sulfate in miners (Hunter 1975). Because calcium sulfate appears to be biologically inert, it is appropriately classified as a nuisance dust.

OSHA is proposing to reduce the permissible exposure limit to an 8-hour TWA of 10 mg/m³ (total dust) for calcium sulfate, the limit being proposed for all dusts in this category. The Agency preliminarily concludes that this limit will prevent eye and skin irritation, interference with vision, and lack of concentration associated with high dust exposures in the workplace. As is the case for all of the substances classified as nuisance dusts, calcium sulfate presents a safety as well as a health hazard to exposed workers. The health evidence forms a reasonable basis for proposing a new limit for calcium sulfate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CELLULOSE
CAS: 9004-34-6; Chemical Formula: $(C_6H_{10}O_5)n$
H.S. No. 1078

OSHA currently regulates cellulose under the 8-hour TWA limit of 15 mg/m³ for nuisance dusts. The ACGIH recommends a TLV–TWA of 10 mg/m³ (total dust). Technical cellulose refers to that portion of the plant cell wall derived exclusively from glucose and resembles cotton cellulose in its physical and chemical properties (ACGIH 1986, p. 113).

Technical cellulose is inert, and inhalation of cellulose dust is not irritating or toxic in exposed humans (Schreiber 1974). In industry, cellulose dust occurs in combination with other substances, such as quartz dust, wood, cotton, flax, jute, and hemp fibers, and these substances have demonstrated toxicities that are unrelated to their cellulose content (ACGIH 1986, p. 113).

OSHA is proposing to reduce the PEL for this dust to 10 mg/m³ TWA total dust for cellulose dust containing less than 1 percent quartz. This limit is the limit OSHA is proposing for all of the "nuisance" dusts. The Agency preliminarily concludes that this reduced limit will protect exposed workers from safety and health risks associated with exposure to cellulose dust in the workplace. These adverse effects include eye and skin irritation, coughing, interference with vision, loss of the ability to concentrate, and accidents. The health evidence forms a reasonable basis for proposing a new limit for cellulose. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

2-CHLORO-6-(TRICHLOROMETHYL) PYRIDINE (NITRAPYRIN)
CAS: 1929-82-4; Chemical Formula: $C_6H_3Cl_4N$
H.S. No. 1082

OSHA currently has no specific limit for nitrapyrin; however, OSHA's general nuisance dust limit of 15 mg/m³ TWA applies. The ACGIH recommends a TLV–TWA of 10 mg/m³ and a TLV–STEL of 20 mg/m³. Nitrapyrin is a crystalline substance.

Nitrapyrin's very low vapor pressure limit makes hazardous inhalation exposures unlikely. Torkelson (as cited in ACGIH 1986, p. 428) has reported feeding dogs and rats a dosage of 15 mg/kg daily for 93 days. He observed no adverse effects in appearance, behavior, growth, food consumption, body and organ weight, mortality, or blood chemistry, and no tissue or organ changes.

OSHA proposes a PEL of 10 mg/m³ TWA for this dust, which is the limit that OSHA is proposing for all nuisance dusts to protect workers from the health and safety risks associated with exposure to these dusts. With regard to the 20-mg/m³ STEL, the ACGIH (1986) provided no basis for this limit. OSHA therefore requests additional information that will assist the Agency in determining the need for the 20-mg/m³ STEL. The health evidence forms a reasonable basis for proposing a new limit for nitrapyrin. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CLOPIDOL (COYDEN)
CAS: 2971-90-6; Chemical Formula: $C_7H_7Cl_2NO$
H.S. No. 1095

OSHA has no current limit specifically for clopidol; however, OSHA's general nuisance dust limit of 15 mg/m³ TWA applies. The ACGIH recommends a TLV–TWA of 10 mg/m³ and a TLV–STEL of 20 mg/m³. Clopidol is a solid.

Clopidol has a low reported acute oral toxicity. The oral LD_{50} in rats, rabbits, and guinea pigs is greater than 8 g/kg (Dow Chemical Company 1973). Long-term (two-year) studies of rats and dogs fed at levels of 15 mg/kg and 5 mg/kg per day, respectively, showed no adverse effects. Similarly, there were no adverse effects on fertility, gestation, viability, or lactation in rats and rabbits, and no increase in teratogenicity (Dow Chemical Company 1973). The chronic toxicity of clopidol is also reported to be low (ACGIH 1986, p. 141).

OSHA is proposing a PEL of 10 mg/m³ TWA for clopidol, the same limit as for all nuisance dusts. OSHA preliminarily concludes that this limit will protect workers from the health and safety risks associated with exposure to these dusts. OSHA notes that the ACGIH (1986) provided no basis for the 20-mg/m³ STEL recommendation. OSHA requests additional information that will assist the Agency in determining the need for a STEL for clopidol. The health evidence forms a reasonable basis for proposing a new limit for clopidol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CRAG HERBICIDE (SESONE)

CAS: 136-78-7; Chemical Formula: $C_9H_{17}Cl_2NO_3S$
H.S. No. 1102

OSHA currently applies a TWA limit of 15 mg/m³ for crag herbicide; this is the Agency's limit for all inert dusts. The ACGIH recommends a TLV–TWA of 10 mg/m³ for this colorless, odorless, non-combustible solid.

An early study reported an oral LD_{50} in rats of 1500 mg/kg for this herbicide (Smyth 1956). At high concentrations, crag herbicide is a gastrointestinal irritant (NIOSH 1984). Rats fed a diet containing 60 mg sesone/100 gm experienced minor liver damage; when fed 20 mg sesone/100 gm of diet for 2 years, rats showed no adverse effects (ACGIH 1986, p. 519). In 1984, NIOSH reported the oral LD_{50} in rats to be 730 mg/kg. There are no reported incidents of human poisonings associated with the use of sesone.

OSHA is proposing a reduction in the PEL to 10 mg/m³ TWA, the limit being proposed for all nuisance dusts. OSHA preliminarily concludes that this level will protect exposed workers from the safety and health hazards potentially associated with exposures to these dusts. These risks include accidents, interference with vision, and eye and skin irritation. This health evidence forms a reasonable basis for proposing a new limit for crag herbicide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DICYCLOPENTADIENYL IRON
CAS: 102-54-5; Chemical Formula: $C_{10}H_{10}Fe$
H.S. No. 1133

OSHA currently regulates dicyclopentadienyl iron under its nuisance dust limit of 15 mg/m³. The ACGIH recommends a TLV–TWA of 10 mg/m³ for this bright-orange, crystalline solid that smells like camphor.

Available evidence in animals suggests that dicyclopentadienyl iron has a relatively low order of oral toxicity. In mice, the oral LD_{50} has been reported as 900 mg/kg (Madinaveitia 1956). In rats, 1000 mg/kg has been reported as the lethal dose, and subacute oral toxicity tests have shown no fatalities when 10 feedings of 200 mg/kg were given over a 2-week period (E.I. du Pont de Nemours and Company 1955, as cited in ACGIH 1986, p. 195). Madinaveitia (1956) has determined that this substance is a hematinic agent in animals.

OSHA proposes an 8-hour TWA limit of 10 mg/m³ for dicyclopentadienyl iron. The Agency preliminarily concludes that this limit will protect workers against the risk of hematinic effects potentially associated with occupational exposure to this substance at the levels permitted in the absence of any OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for dicyclopentadienyl iron. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

EMERY
CAS: 112-62-9; Chemical Formula: Al_2O_3
H.S. No. 1155

OSHA currently regulates emery at an 8-hour TWA of 15 mg/m³ TWA, the Agency's limit for all nuisance dusts. The ACGIH recommends a limit of 10 mg/m³ TWA, total dust, for emery containing less than 1 percent quartz. Emery is impure corundum (aluminum oxide) and is found in certain mineralogical deposits.

The only report of ill effects from emery dust inhalation is a report of a case of pneumoconiosis occurring in France, and it is questionable whether this incident was caused by emery dust or silica impurities in the dust (*Archives des Maladies Professionelles de Medcin du Travail et de Securite* 1970). Exposure to emery dust containing less than 1 percent silica produces little if any effect on the health of exposed workers; it does not affect the lungs or produce organic disease at commonly encountered levels (ACGIH 1986, pp. 21, 229).

OSHA is therefore proposing a PEL of 10 mg/m³ TWA, total dust, for emery, in keeping with the Agency's decision to lower the TWA for all nuisance dusts. OSHA preliminarily concludes that this limit will prevent the safety and health risks associated with exposures to dusts in the workplace; these risks include the danger of accidents, interference with vision, distraction, and skin and eye irritation. The health evidence forms a reasonable basis for proposing a new limit for emery. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FERBAM
CAS: 14484-64-1; Chemical Formula: $[(CH_3)_2NCS_2]_3Fe$
H.S. No. 1176

OSHA currently applies its general nuisance dust limit of 15 mg/m³ TWA to ferbam. The ACGIH recommends a TLV–TWA of 10 m/gm³ for this odorless black solid.

Ferbam, which is a fungicide, has been reported to have an oral LD_{50} of more than 17 mg/kg in rats, but rabbits and guinea pigs demonstrated less sensitivity to this substance (Hodge, Maynard, Downs, and Blanchet 1952). Thirty-day dietary studies of rats showed no effect at ferbam doses of 0.01 percent, with fatalities occurring at 0.5 percent. Dogs showed no adverse effects when fed 25 mg/kg of ferbam daily for 6 months.

Inhalation of ferbam affects the upper respiratory tract in humans, in a manner typical of airborne exposures to inert dusts.

OSHA is proposing to reduce the PEL to a 10-mg/m³ 8-hour TWA because the Agency has decided that a decrease in the limit from 15 to 10 mg/m³ is warranted for all the nuisance dusts. The Agency preliminarily concludes that this reduction is necessary to prevent the health and safety risks associated with workplace exposures to these dusts. These risks include skin and eye irritation, on-the-job accidents, and interference with vision. The health evidence forms a reasonable basis for proposing a new limit for ferbam. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FIBROUS GLASS DUST
CAS: None; Chemical Formula: None
H.S. No. 1170

Fibrous glass dust is used primarily for thermal and acoustical insulation of residential and commercial buildings. There is currently no OSHA limit governing occupational exposure to fibrous glass dust. The ACGIH (1986) has established a 10-mg/m³ TLV–TWA, reflecting its belief that a nuisance-dust limit is appropriate. NIOSH (1977) recommended a 5-mg/m³ 10-hour TWA limit for total dust and a 3-fibers/cc limit for airborne fibers less than 3.5 um in diameter and longer than 10 um in length.

Epidemiologic studies of workers exposed to fibrous glass dust have generally failed to detect any significant increase in respiratory effects. One study of 2,028 workers (Nasr et al. 1976) did not identify any increased prevalence of abnormal radiographic findings among production workers compared to office workers; results of spirometric tests and administration of a chronic bronchitis questionnaire did not discern any difference in health between workers with the heaviest exposure and those with minimal exposure. Another study of 416 retired workers reported no difference in overall mortality or morbidity rates compared to general population rates (Enterline and Henderson 1975). Bayliss et al. (1976) failed to find any excess in overall mortality or lung cancer among 1,446 workers, but did report an excess of

mortality from nonmalignant respiratory disease; the authors could not attribute this excess to fibrous glass because smoking histories were not generally available. A review of 691 physicians' reports of adverse effects caused by exposure to vitreous fibers identified 66 reports of nondisabling upper respiratory tract symptoms (Milby and Wolf 1969).

In animal studies, intratracheal injection of thin glass fibers longer than 10 um into guinea pigs produced peribronchiolar fibrosis (Kuschner and Wright 1976). When such fibers were injected into the abdomen of rats, a dose-related increase in sarcomas and mesotheliomas resulted (Stanton and Wrench 1972; Wagner et al. 1973; Pott and Friedrichs 1972). The response mimics that found with asbestos, but the magnitude of the response is generally less than is found with asbestos. NIOSH (1977) did not consider fibrous glass to present a carcinogenic hazard after reviewing these data.

Based on the lack of reported adverse health effects in epidemiologic studies, the ACGIH (1986) considered fibrous glass dust to be essentially a nuisance dust and applied a 10-mg/m³ TLV-TWA. In contrast, NIOSH (1977) concluded that "available data are sufficient to demonstrate that fibrous glass does not act like an inert or nuisance dust because it can produce fibrosis in animals and respiratory tract irritation in humans" (NIOSH 1977, p. 94). Relying on several investigations that showed a lack of adverse effects among workers exposed to mean respirable fiber concentrations generally less than 5 to 6 f/cc, NIOSH recommended that exposures be limited to 3 f/cc for fibers 3.5 um or less in diameter and greater than 10 um in length. In addition, NIOSH recommended that exposures to total fibrous glass dust be limited to 5 mg/m³ as a 10-hour TWA.

The 10-mg/m³ TLV-TWA considers only the health effects associated with fibrous glass particles. However, the PEL will also be applied by OSHA to situations where the fibrous form of this material is present. Recent concerns have emerged regarding the potential carcinogenicity of the long fibers (TIMA 1988). While a 3-fibers/cc limit for long, thin fibers has also been proposed by NIOSH, it is impossible in this rulemaking to adequately evaluate that limit for the fibrous form of this substance. Therefore, as an interim measure, OSHA proposes that a 5-mg/m³ TWA be adopted as the PEL for fibrous glass dust. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for fibrous glass dust if the Agency determines that this limit will substantially reduce significant risk. Because of the concern with the fibrous forms of this substance, feasibility is not expected to be a problem at this level. If future information and priorities indicate the need for a more restrictive standard for the fibrous form of this material, OSHA will initiate individual-substance rulemaking.

GLYCERIN (MIST)
CAS: 56-81-5; Chemical Formula: $CH_2OHCHOHCH_2OH$
H.S. No. 1100

OHSA currently has no specific limit for glycerin mist, although this substance is currently regulated at 15 mg/m³ as a general nuisance dust. The ACGIH recommends a TLV-TWA of 10 mg/m³. Glycerin is an oily hygroscopic liquid with a warm, sweet taste.

Glycerin was long considered to be nontoxic; however, more recent information has indicated that the mist may be injurious to the kidneys at very high exposure levels (Campanacci 1965). Ackerman, Bassler, and Wagner (1975) have reported that glycerin mist is easily metabolized and excreted. In the adult human of average weight, 2 grams of glycerol can be metabolized and excreted in an 8-hour workday. At this metabolic and elimination rate, the ACGIH believes that no ill effects are likely to occur as a result of exposure at or below 10 mg/m³ as an 8-hour TWA, the level set for nuisance dusts (ACGIH 1986, p. 286).

OSHA proposes a limit of 10 mg/m³ TWA for glycerin mist, which is the level the Agency is proposing for all inert dusts. The health evidence forms a reasonable basis for proposing a new limit for glycerin mist. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk. However, OSHA notes that glycerin may not be truly inert, as evidenced by the study of Campanacci (1943). The Agency specifically requests comments on the toxicity (if any) of exposures to various levels of glycerin.

GRAPHITE, SYNTHETIC
CAS: None; Chemical Formula: None
H.S. No. 1101A

OSHA currently has no specific standard for synthetic graphite but regulates it as a nuisance dust. OSHA's 8-hour TWA for all nuisance dusts is 15 mg/m³. The ACGIH recommends a TLV-TWA limit of 10 mg/m³ for graphite as total dust.

Synthetic graphite is a crystalline form of carbon made from high-temperature treatment of coal or petroleum products; it has the same properties as natural graphite. Meiklejohn reported that synthetic graphite injected intraperitoneally in mice produced effects characteristic of inert dusts (1958).

In humans, exposure to natural graphite has long been associated with the development of pneumoconiosis (Koopman 1924; Ruttner et al. 1952; Pendergass et al. 1967). Lister (1961, 1972) reported fibrotic changes in the lungs of a worker who had been engaged for 17 years in the production and milling of synthetic graphite. Other reports of lung injury caused by exposure to graphite have not distinguished between the form of the graphite (i.e., natural or synthetic) causing the injury; in addition, exposures to impurities, such as quartz silica, were involved in many of the reported cases (ACGIH 1986, p. 291).

OSHA is proposing to reduce the 8-hour TWA limit for all the nuisance dusts from 15 mg/m³ to 10 mg/m³, to protect against the health and safety risks potentially associated with dust exposures in the workplace. The health evidence forms a reasonable basis for proposing a new limit for synthetic graphite. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk. However, the Agency notes that occupational exposure to synthetic graphite has been associated with pneumoconiosis, and preliminarily concludes that a lower limit may be appropriate. Specific comment is solicited on the exposure levels and health effects associated with synthetic graphite related occupational disease.

GYPSUM, TOTAL DUST
CAS: 7778-18-9; Chemical Formula: $CaSO_4 \cdot H_2O$
H.S. No. 1102

The current OSHA limit for gypsum is an 8-hour TWA of 15 mg/m³, the Agency's current limit for all inert dusts. The ACGIH recommends a TWA of 10 mg/m³, measured as total dust, for gypsum and other inert particulates. Gypsum exists as either colorless or white crystals.

The ACGIH (1986) states that gypsum does not "produce significant organic disease or toxic effect when exposures are kept under reasonable control." Exposures in excess of the recommended limit may result in reduced visibility, deposits of gypsum dust in the eyes, ears, and nasal passages, and skin irritation.

OSHA is proposing to reduce the current limit for gypsum total dust to 10 mg/m³ as an 8-hour TWA, which is the limit being proposed for all of the inert particulates. The Agency preliminarily concludes that this limit will protect exposed workers from the safety and health risks associated with exposures to gypsum or other dusts at higher levels. These risks include eye and skin irritation, interference with vision, and safety accidents. The health evidence forms a reasonable basis for proposing a new limit for gypsum total dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

KAOLIN, TOTAL DUST
CAS: None; Chemical Formula: $H_4Al_2Si_2O_9 \cdot H_2O$
H.S. No. 1230

OSHA's current limit for kaolin is 15 mg/m³, measured as total dust; this is the Agency's current limit for all inert particulates. The ACGIH recommends a TLV-TWA of 10 mg/m³, also measured as total dust. Kaolin may be a white powder or a white or yellow-white earthy mass.

Exposure to excess amounts of kaolin dust or other inert particulates may cause reduced visibility in the workplace, injury to the skin or mucous membranes, and a buildup of dust deposits in the eyes, ears, and nasal passages (ACGIH 1986).

OSHA is proposing a PEL of 10 mg/m³ TWA for kaolin, measured as total dust, which is the limit being proposed for all of the inert particulates. The Agency preliminarily concludes that this limit will protect exposed workers from the safety and health risks potentially associated with exposure to the dusts at higher levels. These risks include skin and mucous membrane injury, accumulations of kaolin deposits in the eyes, ears and nose, and reduced visibility in the workplace, which may endanger worker safety. The health evidence forms a reasonable basis for proposing a new limit for kaolin, measured as total dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

LIMESTONE, Total Dust
CAS: 1317-65-3; Chemical Formula: $CaCO_3$
H.S No. 1232

The current OSHA PEL for limestone is an 8-hour TWA of 15 mg/m³, as total dust. The ACGIH recommends 10 mg/m³ TWA for limestone, measured as total dust. Limestone is a hard white solid.

Exposure to limestone dust has not been associated with the development of pneumoconiosis, and ACGIH considers it to be a nuisance dust (see discussion on calcium carbonate above).

Exposure to excess levels of limestone dust may result in deposits in the eyes, ears, and nasal passages, or may injure the skin or mucous membranes (ACGIH 1986). OSHA proposes an 8-hour TWA of 10 mg/m³ for limestone dust, the limit being proposed for all of the nuisance dusts and particulates. The Agency preliminarily concludes that this limit will reduce the safety and health hazards posed to exposed employees by nuisance dusts in the workplace. The health evidence forms a reasonable basis for proposing a new limit for limestone dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MAGNESITE, TOTAL DUST
CAS: None; Chemical Formula: $(MgCO_3)_4 \cdot Mg(OH)_2 \cdot 5H_2O$(approx)
H.S. No. 1233

OSHA's existing PEL for magnesite is 15 mg/m³, measured as total dust; this is the Agency's limit for all inert particulates. The ACGIH recommends a TLV-TWA of 10 mg/m³, also measured as total dust. Magnesite occurs as a white powder.

Magnesite is considered by both OSHA and the ACGIH to be one of the "nuisance dusts," which "do not produce significant organic disease or toxic effect when exposures are kept under reasonable control" (ACGIH 1986). Exposure to excess levels of magnesite or the other nuisance particulates in the workplace causes skin or mucous membrane irritation resulting from contact with the magnesite itself or from rigorous cleansing procedures necessary for removing the dust; buildup of dust deposits in the eyes, ears, and nasal passages; and reduced visibility in the workplace.

OSHA is proposing a PEL of 10 mg/m³ TWA for magnesite, measured as total dust. This is the limit being proposed for all of the inert particulates. The Agency preliminarily concludes that this limit is necessary to protect exposed workers from the health and safety risks potentially associated with exposure to magnesite or other inert dusts. These risks include skin and mucous membrane injury, the deposition of magnesite deposits in the eyes, ears, and nose, and reduced workplace visibility, which may endanger employee safety. The health evidence forms a reasonable basis for proposing a new limit for magnesite. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MAGNESIUM OXIDE (FUME)
CAS: 1309-48-4 Chemical Formula: MgO
H.S. No. 1234

OSHA's current limit for magnesium oxide (as fume) is 15 mg/m³ as an 8-hour TWA, the Agency's limit for inert dusts. The ACGIH recommends a TLV-TWA limit of 10 mg/m³ for the fume of this white, odorless, very fine powder.

Slight reactions (not further specified) have been reported in human subjects after exposures of less than 10 minutes to freshly generated MgO fume at concentrations of from 400 to 600 mg/m³ Drinker, Thomson, and Finn 1927). Animal and human studies of magnesium oxide fume exposure have shown toxicities less marked than but similar to those attributable to zinc oxide fume (Drinker and Drinker 1928). The symptoms of exposure include those of metal fume fever (fever, chills, muscular pain, nausea, and vomiting) and leukocytosis, symptoms analogous to those caused by exposure to zinc oxide fume.

OSHA is proposing a PEL of 10 mg/m³ TWA for magnesium oxide fume, the limit OSHA is proposing for all of the toxicologically inert nuisance particulates included in this rulemaking. OSHA preliminarily concludes that this limit will protect exposed workers from the safety and health risks potentially associated with exposures to these dusts in the workplace. These risks include accidents, skin and eye irritation, and interference with vision. The health evidence forms a reasonable basis for proposing a new limit for magnesium oxide fume. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MALATHION
CAS: 121-75-5; Chemical Formula: $C_{10}H_{19}O_6PS_2$
H.S. No. 1235

Both OSHA and NIOSH have 15-mg/m³ limits for malathion (and OSHA has a skin notation); the ACGIH TLV for this substance is 10 mg/m³ as a TWA, also with a skin notation.

Malathion is a widely used organophosphorus insecticide having a relatively low level of toxicity; some authors have determined that malathion is approximately ½ooth as toxic as parathion (Johnson et al. 1952). Rats fed malathion at a concentration of 100 ppm for 2 years exhibited no toxic effects (Hazleton and Holland 1953). Several occupational and research exposures

involving scientists or human volunteers produced no change in blood cholinesterase or other effects (Rider et al. 1959; Hayes et al. 1960; Culver et al. 1956).

Fatalities have been reported in the Japanese and Indian literature, but these deaths have always involved extremely high doses of malathion (Chatra 1976; Horiguchi 1973). Thus, malathion's principal workplace effect is that it acts like a nuisance dust. NIOSH concurs in this view (NIOSH 1976i) and recommends a higher TWA (15 mg/m³) for this substance than would be permitted by the ACGIH.

The 10-mg/m³ TLV–TWA is part of a generally accepted, broad guideline to limit exposure to nuisance dusts; the 15-mg/m³ REL represents an earlier approach to the control of these substances. As discussed in this section, nuisance dusts must be controlled to prevent skin, respiratory tract, and eye irritation, as well as a variety of other effects. This level is readily attainable in the workplace, using generally available industrial hygiene practices. OSHA is therefore proposing a PEL of 10 mg/m³ TWA for malathion with a skin notation. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for malathion if the Agency determines that this limit will substantially reduce significant risk.

MARBLE, TOTAL DUST
CAS: 1317–65–3; Chemical Formula: None
H.S. No. 1239

OSHA currently has no specific limit for marble dust, but regulates this substance as a nuisance dust, for which the 8-hour TWA limit as total dust is 15 mg/m³. The ACGIH has established an 8-hour TLV–TWA of 10 mg/m³ for marble dust as total dust containing less than 1 percent quartz. Marble dust, a metamorphic form of calcium carbonate dust, is an odorless and tasteless powder or crystal.

OSHA is proposing an 8-hour TWA limit of 10 mg/m³ for marble dust as total dust containing less than 1 percent quartz. This is the limit being proposed by the Agency for all nuisance dusts and inert particulates. OSHA preliminarily concludes that this limit will protect exposed workers from the safety and health risks associated with exposure to the inert dusts at higher levels. These risks include the danger of accidents caused by interference with vision and distraction, and eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for marble dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHOXYCHLOR
CAS: 72–43–5; Chemical Formula: $C_{16}H_{15}Cl_3O_2$
H.S. No. 1240

OSHA currently applies its 15-mg/m³ TWA limit for nuisance dusts to methoxychlor. The ACGIH recommends a limit of 10 mg/m³ TWA for this white crystalline solid, which is assigned the limit for all inert dusts.

Methoxychlor has a low level of toxicity. The reported oral LD_{50} for rats is 6000 mg/kg (Lehman 1954). Lehman also determined that 100 ppm for 2 years is the lowest dietary level producing no effect in rats: this corresponds to a level of 350 mg/man/day. Results of another dietary study indicated that rats fed 200 ppm methoxychlor for 2 years were not affected in terms of growth or survival (Hodge, Maynard, and Blanchet 1952). Tegeris and co-workers reported that dogs fed 1 g/kg daily for 6 months showed weight loss; most animals died within 9 weeks when the dietary level was increased to 2 g/kg daily (Tegeris, Earl, Smalley, and Curtis 1956). Morgan and Hickenbottom (1978) reported that male Holtzman rats fed 10, 40, 160, or 640 mg/kg for 24 hours showed no liver abnormalities. Extrapolating from animal data, Lehman estimated the dose levels that would produce toxic effects in humans as follows: The fatal oral dose would be 430 grams; adverse health effects would occur at 6430 mg/kg orally; and 2414 mg/kg is the level at which dermal effects would be predicted to occur (Lehman 1954).

OSHA is proposing to reduce the existing 8-hour TWA limit from 15 mg/m³ to 10 mg/m³ to reduce the health and safety risks of exposure to the inert dusts in the workplace. These risks include interference with vision, skin and eye irritation, and accidents. The health evidence forms a reasonable basis for proposing a new limit for methoxychlor. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MINERAL WOOL FIBER
CAS: None; Chemical Formula: None
H.S. No. 1277

OSHA currently has no limit specifically for mineral wool fiber, but this substance is covered by the Agency's 15-mg/m³ 8-hour TWA limit for all inert dusts and particulates. The ACGIH recommends an 8-hour TWA limit of 10 mg/m³ for mineral wool fiber as total dust containing less than 1 percent quartz. Rock or mineral wool is composed of mineral fibers produced by blowing steam or air through molten furnace slag; the fibers contain less than 1 percent quartz, and the substance is therefore vitreous.

In a study of cats, the only ill effects of inhalation that were observed were pulmonary changes attributed to silicate deposition (Fairhall, Webster, and Bennett 1938). A Russian study showed that mineral wool dust containing little free silica and moderate amounts of combined silica produced moderate diffuse and nodular sclerosis in the lungs of rats after 2 to 3 months (Grimailovskaya et al. 1957). The ACGIH (1986, p. 414) states that these conclusions are suspect, however, because rat lungs show only cellular foci even after 2 to 3 months of exposure to heavy quartz dust; the ACGIH believes that the Soviet investigators were not familiar with the chronic bronchitis that is endemic in rats.

Chronic exposure of 84 workers to mineral wool (with a free silica content of no more than 6.5 percent) for from 7 to 29 years resulted in no X-ray evidence of silicosis (Carpenter and Spolyor 1946).

OSHA is proposing a PEL of 10 mg/m³ TWA for mineral wool fiber as total dust containing less than 1 percent quartz. This is the limit being proposed for all inert or "nuisance" particulates. The Agency preliminarily concludes that this limit will protect workers against the safety risks associated with on-the-job exposures to inert particulates; these risks include interference with vision, accidents caused by the distracting effects of these substances, eye irritation, and irritations of the skin and mucous membranes. The health evidence forms a reasonable basis for proposing a new limit for mineral wool fiber. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MOLYBDENUM [INSOLUBLE COMPOUNDS]
CAS: 7439–98–7; Chemical Formula: None
H.S. No. 1276

OSHA has a current limit of 15 mg/m³ TWA for the insoluble compounds of molybdenum, which include molybdenum metal and the dioxide. This is the Agency's limit for all inert dust and particulates. The ACGIH recommends a TLV–TWA of 10 mg/m³ as molybdenum. Molybdenum is a silver-white metal or a dark-gray or black powder.

In general, the compounds of molybdenum have a low order of toxicity. The insoluble compounds of molybdenum have not been reported to have any definite toxicities, although no specific exposure data are available.

Mogilvskaya (1959) concluded that the dust of molybdenum metal and molybdenum dioxide caused only transitory irritation of mucosal surfaces in white mice of or an intensive dusting for 1 hour; in a similar 30-day exposure, the metal and the dioxide proved only minimally poisonous.

OSHA is proposing a PEL for the insoluble compounds of molybdenum of 10 mg/m³ TWA, measured as molybdenum. This is the limit being proposed for all inert dusts and particulates. The Agency preliminarily concludes that this limit will protect workers from the safety and health risks of overexposure to inert particulates. These risks include distraction and interference with vision, which can lead to safety accidents, and eye, nose, and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for molybdenum. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

NUISANCE PARTICULATES
CAS: None; Chemical Formula: None
H.S. No. 1294

OSHA, currently regulates nuisance dusts at an 8-hour TWA limit of 15 g/m³ as total dust. The ACGIH recommends a TLV-TWA of 10 mg/m³ (as total dust) for nuisance particulates having a quartz content of less than 1 percent. Nuisance particulates are air-suspended particles having diameters of greater than respirable size.

According to the ACGIH:

> Nuisance particulates differ from fibrogenic dusts in that the former produce little adverse effect on the lungs and do not cause organic disease or toxic effects when exposures are reasonably controlled; fibrogenic dusts, on the other hand, cause the formation of pulmonary scar tissue when they are inhaled in excessive amounts. Nuisance dusts are sometimes referred to as "biologically inert," and, in the sense that they do not affect the architecture of pulmonary air spaces, do not form collagen or scar tissue, and do not cause irreversible tissue damage. this term is appropriate. Excessive concentrations of nuisance dusts may reduce visibility, cause deposits in the eyes, ears, and nasal passages, or injure the skin or mucous membranes by mechanical action or by the rigorous skin-cleansing procedures necessary for their removal (ACGIH 1986, p. 445).

OSHA proposes an 8-hour TWA limit of 10 mg/m³ as total dust, for nuisance particulates containing less than 1 percent quartz. The Agency preliminarily concludes that this limit will protect workers against the safety and health risks associated with exposure to excessive concentrations of these dusts, including reduced visibility, deposits in the eyes, ears, and nasal passages, and skin injury. The health evidence forms a reasonable basis for proposing a new limit for nuisance particulates. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PENTAERYTHRITOL, TOTAL DUST
CAS: 115–77–5; Chemical Formula: $C(CH_2OH)_4$
H.S. No. 1305

OSHA currently has no separate limit for pentaerythritol, but this substance is classified as a nuisance dust and is regulated at 15 mg/m³ TWA, the Agency's limit for all such dusts. The ACGIH recommends a TLV–TWA of 10 mg/m³ for total dust containing less than 1 percent quartz. Pentaerythritol is an odorless, white, crystalline solid.

Pentaerythritol has a low acute toxicity and only mild irritative effects. Rats exposed at 11,000 mg/m³ for 6 hours were reported to show no ill effects from a single exposure, and rats, dogs, and guinea pigs exposed 6 hours daily for 90 days also showed no effects (Keplinger and Kay 1964). The oral LD_{50}s in guinea pigs and mice are 11.3 g/kg and 22.5 g/kg, respectively; rats survived oral doses as high as 16 g/kg. At higher doses, animals displayed diarrhea, tremors, ataxia, and loss of righting reflex (Keplinger and Kay 1964). Daily applications of a saturated aqueous solution of technical pentaerythritol to rabbit skin produced no significant irritation; a single application of 10 g/kg aqueous paste on intact or abraded rabbit skin produced no evidence of percutaneous absorption (Keplinger and Kay 1964; Hercules, Inc., as cited in ACGIH 1986, p. 462). Instillation of a 50-percent aqueous suspension into the conjunctival sac of rabbits' eyes resulted in slight transient irritation (Hercules, Inc., as cited in ACGIH 1986, p. 462).

Human volunteers are reported to have eliminated 85 percent of dietary pentaerythritol unchanged in the urine within 30 hours. A slight and transient increase in apparent blood sugar that was proportional to the ingested dose appeared in these subjects soon after administration (Berlow, Barth, and Snow 1958).

OSHA is proposing an 8-hour PEL of 10 mg/m³ TWA for pentaerythritol, which is the level the Agency is proposing for all nuisance dusts. The Agency preliminarily concludes that this limit will protect exposed employees from the safety and health risks potentially associated with exposure to this substance at higher levels. These risks include the risk of accidents and of eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for pentaerythritol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PERLITE
CAS: None; Chemical Formula: None
H.S. No. 1310

OSHA currently regulates perlite as a nuisance dust at an 8-hour PEL of 15 mg/m³. The ACGIH recommends a TLV–TWA of 10 mg/m³ for perlite as total dust containing less than 1 percent quartz. Perlite is a natural volcanic glass. It is essentially an amorphous mineral consisting of fused sodium potassium aluminum silicate.

Perlite is reported to have a free silica content varying from zero to 3 percent (Anderson, Selvig, Baur et al. 1956; Perlite Institute, as cited in ACGIH 1986, p. 467). In its processed crude and expanded forms, perlite is reported to have a measurable quartz content of 0.4 percent quartz and 0.2 percent cristobalite (Sheckler, as cited in ACGIH 1986, p. 467). There are no published reports of adverse physiologic effects from exposure to perlite dust.

OSHA has preliminarily concluded that perlite is non-toxic when airborne concentrations are maintained at levels of 10 mg/m³ or below and when its quartz content is limited to a level below 1 percent crystalline silica. For these reasons, the Agency proposes a PEL of 10 mg/m³ TWA for total perlite dust containing less than 1 percent quartz, which is the limit being proposed for all nuisance particulates. OSHA believes that this limit will protect exposed workers from the risk of safety and health hazards associated with workplace exposures to inert particulates; these risks include the danger of accidents, interference with vision, and eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for perlite. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PICLORAM
CAS: 1918–02–1; Chemical Formula: $C_6H_3Cl_3N_2O_2$
H.S. No. 1328

OSHA currently has no limit for picloram. The ACGIH recommends a TLV–TWA of 10 mg/m³ and a TLV–STEL of 20 mg/m³ for this white powder, which has an odor like that of chlorine.

Picloram has low acute oral toxicity, with LD_{50} values of 3.75 g/kg for rats, 1.5

g/kg for mice, and 2.0 g/kg for rabbits (NIOSH 1979). Two-year feeding studies showed no ill effects in albino rats and beagle dogs from ingestion of doses up to and including 150 mg/kg/day (McCallister and Leng 1989). At 225 mg/kg/day, rats displayed moderate liver and kidney changes and, in females, slight body weight loss after 90 days (McCallister and Leng 1989). McCallister and Leng (1989) reported no fertility, reproduction, or lactation effects in albino rats fed at levels of up to 3000 ppm (0.3 percent) in a 3-generational study. However, maternal toxicity in rats was reported at dietary levels of 750 and 1000 mg/kg administered during days 6 through 15 of gestation, but neither teratogenic nor neonatal effects were observed when sub-toxic or maternally toxic doses of picloram were administered during organogenesis (Thomson et al. 1972). The National Cancer Institute (NCI) has concluded that picloram is not carcinogenic in mice or rats (NCI 1977).

OSHA proposes a TWA limit of 10 mg/m³ and a 15-minute STEL of 20 mg/m³ for picloram. The Agency preliminarily concludes that this combined limit will minimize the risk of systemic effects, such as liver and kidney damage, potentially associated with exposure to this substance in the absence of any OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for picloram. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PLASTER OF PARIS, Total Dust
CAS: None; Chemical Formula: CaO_4S
H.S. No. 1331

Plaster of Paris is a fine white powder. OSHA's Z–3 table lists an 8-hour TWA exposure limit of 15 mg/m³ for Plaster of Paris. This is the Agency's limit for all of the inert particulates and dusts. The ACGIH has established a 10-mg/m³ TWA for Plaster of Paris, measured as total dust.

Where occupational exposures to Plaster of Paris have been limited, no toxic effects or organic diseases of the lungs have occurred (see discussion on calcium sulfate above). Exposure to excessive levels of dust in the work area may result in reduced visibility or injury to the skin or mucous membranes from the dust itself, or damage to the skin from the rigorous skin-cleansing procedures required to remove the dust (ACGIH 1988).

OSHA is proposing an 8-hour TWA of 10 mg/m³ for Plaster of Paris dust. The Agency preliminarily concludes that this limit will reduce the risk of the safety and health hazards described above, which include accidents, interference with vision and concentration, and skin and eye irritation. The health evidence forms a reasonable basis for proposing a new limit for plaster of paris dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PORTLAND CEMENT
CAS: 65997–15–1; Chemical Formula: None
H.S. No. 1333

OSHA currently has a limit of 50 mppcf (approximately 15 mg/m³) for Portland cement containing less than 1 percent crystalline silica. The ACGIH recommends a TLV–TWA of 10 mg/m³ for Portland cement as total dust containing less than 1 percent quartz. Portland cement refers to a class of hydraulic cements that are odorless gray powders containing less than 1 percent crystalline silica. Portland cement is insoluble in water and contains tri- and di-calcium silicate, with varying amounts of alumina, tricalcium aluminate, and iron oxide.

Intraperitoneal injection of Portland cement in guinea pigs produced an absorptive reaction, which is typical of inert particulates. Portland cement is eventually eliminated from tissue and is generally considered harmless when ingested (Miller and Sayers 1941).

In a study of industrial exposures, Gardner and associates (1939) found no evidence of Portland-cement-related pneumoconiosis in 2,278 workers who had been heavily exposed to this substance for prolonged periods of time (Gardner, Durkan, Brumfiel, and Sampson 1939). Conflicting reports of pneumoconiosis (Parmeggiani 1951; Prosperi and Barsi 1957) are attributed to the presence of silica in the inhaled dust rather than to exposure to Portland cement itself (ACGIH 1988, p. 494). Cement dermatitis does occur among exposed workers, however, as a consequence of the alkaline, abrasive, and hygroscopic properties of the wet cement, which cause general irritation of the skin (Schwartz, Tulipan, and Birmingham 1957).

OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ for Portland cement as total dust containing less than 1 percent quartz. The Agency preliminarily concludes that this limit will protect workers against the safety risks associated with on-the-job exposures to inert particulates. These risks include interference with vision, accidents caused by the distracting effects of these substances, eye irritation, and irritation of the skin and mucous membranes. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for Portland cement if the Agency determines that this limit will substantially reduce significant risk. In addition, revising the limit to 10 mg/m³ TWA will simplify employee exposure monitoring for Portland cement, since gravimetric rather than impinger methods can be used.

ROUGE, TOTAL DUST
CAS: None; Chemical Formula: None
H.S. No. 1351

OSHA currently has no specific limit for rouge, but regulates this substance as a nuisance dust under the Agency's nuisance dust standard of 15 mg/m³ as an 8-hour TWA. The ACGIH has established an 8-hour limit of 10 mg/m³ TWA for rouge as total dust containing less than 1 percent quartz. Rouge is a high-grade red pigment, composed mainly of ferric oxide, that is used as a polishing agent for glass, jewelry, etc.

Rouge is a biologically inert substance. There are no studies demonstrating any effects of exposure to rouge in either animals or humans.

OSHA is proposing an 8-hour TWA of 10 mg/m³ for total dust, the limit being proposed by the Agency for all inert particulates and nuisance dusts. OSHA preliminarily concludes that this limit will protect workers from the health and safety risks associated with workplace exposure to higher levels of rouge and other nuisance dusts. These effects include reduced visibility and distraction, which may lead to accidents and injuries, and deposits in the ears, eyes, and nasal passages. In addition, rouge and other nuisance particulates can cause skin and mucous membrane irritation. The health evidence forms a reasonable basis for proposing a new limit for rouge. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

SILICON
CAS: 7440–21–3; Chemical Formula: Si
H.S. No. 1350

OSHA's current Z Tables have no specific limit for silicon; however, silicon is currently regulated under OSHA's nuisance dust limit of 15 mg/m³ TWA. The ACGIH recommends a 10-mg/m³ 8-hour TWA for silicon, measured as total dust. Silicon is a black to gray, lustrous, needle-like crystal, which is used in the manufacture of semiconductors.

An early study by McCord, Fredrick, and Stolz (1937) reported no response in guinea pigs and rats injected intraperitoneally with silicon. A more recent study (Schepers 1971) demonstrated pulmonary lesions in rabbits administered an intratracheal dose of 25 mg silicon dust.

OSHA is proposing an 8-hour TWA limit of 10 mg/m³ for silicon, the limit being proposed for all inert particulates. The Agency preliminarily concludes that this limit will reduce the safety and health risks potentially associated with exposure to this substance at the currently unregulated level. These risks include interference with vision, accidents, and eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for silicon. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

SILICON CARBIDE
CAS: 409–21–2; Chemical Formula: SiC
H.S. No. 1360

OSHA currently regulates silicon carbide under its 15-mg/m³ nuisance dust limit. The ACGIH recommends 10 mg/m³ as an 8-hour TWA, measured as total dust. Silicon carbide is a green to blue-black iridescent crystal.

An animal study (Gardner 1923) showed that exposure to silicon carbide alone produced no changes in the lungs, while exposure of guinea pigs infected with tuberculosis to silicon carbide (6 hours/day, 5 days/week for one year) aggravated pulmonary tuberculosis to the extent that extensive fibrosis occurred. Guinea pigs exposed to silicon carbide dust and infected with the tubercle bacteria developed tuberculopneumoconiotic lesions (Gross, Westrick, and McNerney 1956). Miller and Sayers (1941) observed that intraperitoneal injection of guinea pigs produced no reaction.

Brunsgaard (1945) found that X-rays of 10 out of 32 workers exposed to average levels of 34 mppcf of silicon carbide for 15 years or more demonstrated pulmonary changes: these 10 workers also were tuberculin-positive. Miller, Davis, Goldman, and Wyatt (1953) described three cases of pulmonary reactions and hyperglobinemia in tungsten carbide industry workers; these authors concluded that exposure to silicon carbide was not a hazard unless the exposed workers already had pulmonary tuberculosis.

OSHA is proposing a 10-mg/m³ TWA limit for silicon carbide, as total dust. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of safety and health effects potentially associated with exposure to this inert particulate. The health evidence forms a reasonable basis for proposing a new limit for silicon carbide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

STARCH, TOTAL DUST
CAS: 9005–25–8; Chemical Formula: $(C_6H_{10}O_5)_n$
H.S. No. 1362

The current OSHA limit for starch is 15 mg/m³ as an 8-hour TWA, the Agency's limit for all inert particulates. The ACGIH recommends a TLV–TWA of 10 mg/m³ for starch as total dust that contains no asbestos and less than 1 percent crystalline silica. Starch is a white odorless powder.

Exposure to high concentrations of dust may result in impaired vision, or may cause injury to mucous membranes or skin. Injury may also result from vigorous skin-cleansing procedures necessary for the complete removal of starch (ACGIH 1988).

OSHA is proposing an 8-hour TWA of 10 mg/m³ for starch. The Agency preliminarily concludes that this limit will reduce the risk of safety accidents, eye and skin irritation, and interference with concentration and vision that may result from exposure to high levels of inert dusts in the workplace. The health evidence forms a reasonable basis for proposing a new limit for starch. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

SUCROSE, TOTAL DUST
CAS: 57–50–1; Chemical Formula: $C_{12}H_{22}O_{11}$
H.S. No. 1374

The current OSHA 8-hour TWA limit for sucrose is 15 mg/m³ as total dust, the Agency's limit for all nuisance dusts. The ACGIH includes sucrose in its grouping of nuisance particulates that "do not produce significant organic disease or toxic effect when exposures are kept under reasonable control" (1988), and has therefore established a TLV–TWA limit of 10 mg/m³ for sucrose as total dust containing no asbestos and less than 1 percent quartz. Sucrose is found in the form of white crystals.

Exposure to excess levels of sucrose dust can cause skin and eye irritation, interference with vision, and distraction from the task at hand.

OSHA is proposing an 8-hour TWA of 10 mg/m³ for sucrose dust, the limit being proposed for all of the inert particulates. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of the health and safety hazards described above. The health evidence forms a reasonable basis for proposing a new limit for sucrose dust. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TEMEPHOS
CAS: 3383–96–8; Chemical Formula: $C_{16}H_{20}O_8P_2S_3$
H.S. No. 1363

The current OSHA Z tables have no specific limit for exposure to temephos, a cholinesterase-inhibiting insecticide. Temephos is currently regulated under OSHA's nuisance dust limit of 15 mg/m³. The ACGIH limit is 10 mg/m³ as an 8-hour TWA. Temephos may be a white crystalline solid or a viscous brown liquid.

In rats and mice, temephos has an acute oral LD_{50} of 400 mg/kg or greater. Various animal species tolerated doses of 10 mg/kg without clinical effect and 1 mg/kg without effect on cholinesterase activity (Gaines, Kimbrough, and Laws 1967). Laws et al. (1967) revealed that human volunteers consuming oral doses of temephos at levels of 256 mg/man/day for 5 days, or 64 mg/man/day for 4 weeks, evidenced no detectable effects on erythrocyte or plasma cholinesterase levels. Murphy and Cheever (1972) reported that 1 mg of temephos per liter of drinking water produces no effect. These authors found that rat liver carboxylesterases were at least 30 times more sensitive to inhibition from temephos than cholinesterases. Assuming that human liver carboxylesterases are proportionately more sensitive than cholinesterases, it is estimated that significant inhibition of these carboxylesterases could occur as a result of consuming 2 liters of drinking water containing 1 mg/L of temephos. Although nonspecific liver carboxylesterase is not critical for normal physiologic function, adverse effects on this enzyme could increase the susceptibility of exposed individuals to chemicals and drugs that contain carboxylesterase linkages (ACGIH 1988, p. 557).

The ACGIH derived the limit of 10 mg/m³ TWA for temephos from studies of malathion, which has an acute LD_{50} of 2100 mg/kg in rats, or roughly one-half that of temephos. Because humans tolerate 16 mg/day oral doses of malathion without effects on blood cholinesterase levels, the ACGIH believes the 10 mg/m³ limit is appropriate for temephos (ACGIH 1988, p. 557).

OSHA is proposing a limit of 10 mg/m³ for temephos. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of cholinesterase inhibition and reduction in carboxylesterase activity

potentially associated with exposure to this substance. This health evidence forms a reasonable basis for proposing a new limit for temephos. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

4,4'-THIOBIS (6-TERT-BUTYL-m-CRESOL)
CAS: 96-69-5; Chemical Formula: $C_{22}H_{30}O_2S$
H.S. No. 1381

OSHA currently regulates 4,4'-thiobis under its general nuisance dust limit of 15 mg/m³ TWA. The ACGIH limit is 10 mg/m³ as an 8-hour TWA, the limit established by the ACGIH for all of the inert dusts. 4,4'-Thiobis is a light gray to tan powder with a slightly aromatic odor.

In a 30-day study, rats fed diets of 500 ppm 4,4'-thiobis exhibited normal weight gain; those rats fed five times this amount exhibited enlarged livers and a reduced rate of weight gain (Lefaux 1968, as cited in ACGIH 1986, p. 570). In a 90-day study reported by the same author, rats fed 50 ppm showed no toxic effects, but male rats fed 500 ppm ate and grew at a slightly lower rate. No pathologic changes were observed in the 500 ppm-dosed rats. A dose of 5 g/kg of 4,4'-thiobis proved lethal to rats, with the predominant symptom being gastroenteritis.

OSHA is proposing an exposure limit of 10 mg/m³ as an 8-hour TWA for 4,4'-thiobis. The Agency preliminarily concludes that this limit will protect exposed workers from the risks to safety and health potentially posed by workplace exposures to this and other nuisance dusts. These risks include distraction and interference with vision, which may cause safety accidents, and eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for 4,4'-thiobis. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TITANIUM DIOXIDE
CAS: 13463-67-7; Chemical Formula: TiO_2
H.S. No. 1395

OSHA's existing PEL for titanium dioxide is 15 mg/m³ as an 8-hour TWA; this is the Agency's current limit for inert particulates. A 10-mg/m³ 8-hour TWA, measured as total dust, has been established by the ACGIH. Titanium dioxide is a white crystalline solid.

Miller and Sayers (1941) reported that intraperitoneal injections of titanium dioxide in guinea pigs showed a tendency to remain in the injected tissues but not to produce a proliferative response; these authors consider it an inert dust. A study by Grandjean (1956) in which rats were administered 50 mg of titanium dioxide intratracheally showed pigmented dust deposits in the lungs. In addition, evidence of infection appeared in the alveoli of one rat and diffuse fibrosis was found in the lungs of a separate test animal. No nodule formation was observed (Grandjean et al. 1956). Another study by Dale (1973) revealed thickening of the walls of the alveoli in the lungs of rabbits injected with titanium dioxide dust; however, lungs had returned to normal 3 months post-treatment. Feeding studies of rats and mice at doses of 2.5 percent or 5 percent titanium dioxide for 103 weeks revealed no signs of carcinogenicity in either species (National Cancer Institute 1978). From these data, the ACGIH determined that there exists "no evidence of danger to health from the inhalation of titanium dioxide dust in concentrations of air that do not exceed 10 mg/m³ total dust containing less than 1 percent quartz" (1986).

OSHA proposes an 8-hour TWA of 10 mg/m³, the limit being proposed for all inert particulates. The Agency preliminarily concludes that this limit will protect workers from the health and safety risks potentially associated with exposure to airborne particulates at higher levels. These risks include accidents, interference with vision, and eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for titanium dioxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

VEGETABLE OIL MIST (EXCEPT CASTOR OIL, CASHEW NUT, OR SIMILAR IRRITANT OILS)
CAS: 8008-89-7; Formula: None
H.S. No. 1423

Vegetable oil is a pale-yellow oily liquid. The current OSHA standard for vegetable oil mist is 15 mg/m³, the limit applying to all inert dusts at present. The ACGIH has established a 10-mg/m³ 8-hour TWA for all nuisance dusts.

Occupational exposure to this group of dusts is associated with a variety of health and safety hazards. For example, these substances interfere with vision; cause coughing, eye tearing, and irritation; and, by distracting affected employees from the task at hand, can lead to on-the-job accidents and injuries. In addition, the vigorous cleansing necessary to remove the oil mist from the skin may cause skin irritation.

OSHA is proposing to reduce the existing limit for dusts in this category to 10 mg/m³ TWA. The Agency preliminarily concludes that this limit will avoid the risks described above, which include both safety and health risks to exposed employees. The health evidence forms a reasonable basis for proposing a new limit for vegetable oil. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ZINC STEARATE
CAS: 557-01-1; Chemical Formula: $Zn(C_{18}H_{35}O_2)_2$
H.S. No. 1434

OSHA currently regulates zinc stearate as a nuisance dust with a limit of 15 mg/m³ 3 TWA, total dust. The ACGIH has established an 8-hour TWA of 10 mg/m³ for zinc stearate, measured as total dust. Zinc stearate is a white powder.

A report in *Folia Medica* (1957) documented the case of a worker exposed to zinc stearate dust for 30 years who died from extensive fibrosis of the lungs. More recent studies have revealed incidences of pulmonary fibrosis associated with encephalopathy that stemmed directly from exposure to aluminum dust, which is frequently coated with stearic acid (*British Journal of Industrial Medicine* 1982); the ACGIH (1986, p. 646) is uncertain of the relevance of this report to zinc stearate exposures.

Observations of long-term workers exposed to this dust in the rubber industry revealed no adverse effects of exposure (B.F. Goodrich Rubber Company, private communication, as cited in the ACGIH 1986, p. 646). The ACGIH considers zinc stearate dust to be biologically inert and has assigned a nuisance dust limit to this substance.

OSHA is proposing a 10-mg/m³ limit for this dust (measured as total dust) because the Agency believes that all of its nuisance dust limits should be decreased to 10 mg/m³ as 8-hour TWAs. The Agency believes that this limit will prevent the safety and health risks associated with high workplace exposures to these dusts. These risks include accidents, interference with vision, and eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for zinc stearate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ZINC OXIDE, TOTAL DUST
CAS: 1314-13-2; Chemical Formula: ZnO
H.S. No. 1428

Zinc oxide dust is a white or pale-yellow powder. OSHA currently has no exposure limit specifically for zinc oxide as total dust. The ACGIH established a limit of 10 mg/m³ as an 8-hour TWA for zinc oxide, measured as total dust.

According to Turken and Thompson (1928), exposure to finely divided zinc oxide dust can produce effects similar to those for metal fume fever. Beeckmans and Brown (1963) reported that catalytically active zinc oxide dust is more toxic when treated with ultraviolet light. Aside from these considerations, the ACGIH considered zinc oxide dust to be a nuisance dust.

OSHA is proposing a limit of 10 mg/m³ for zinc oxide as total dust, the same as for all nuisance dusts. The Agency preliminarily concludes that this limit will protect exposed individuals from the risk of exposure to this dust in the workplace, which can result in safety and health hazards such as accidents, skin and respiratory irritation, and interference with vision. The health evidence forms a reasonable basis for proposing a new limit for zinc oxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

OSHA's current 8-hour inert or nuisance dust standard (29 CFR 1910.1000, Table Z-3) was adopted from the 1968 ACGIH TLV-TWA of 15 mg/m³ for total dust and 5 mg/m³ for respirable dust. At the time, the ACGIH considered the 15 mg/m³ value to be "an acceptable limit of good hygienic practice" based on the then prevailing "lack of knowledge" of any adverse effects at exposure levels below this value (ACGIH Documentation 1966). Shortly after OSHA adopted the ACGIH's 1968 limit, the ACGIH revised its limit downward to 10 mg/m³ for total dust and 5 mg/m³ for respirable dust. In justifying this reduction, the ACGIH noted that the lower levels would "result in appreciable improvement of working conditions in plants where the old limit of 15 mg/m³ formerly prevailed" (ACGIH 1971, p. 190).

OSHA preliminarily concludes that the proposed TWA limit of 10 mg/m³ for this group of substances that cause a variety of adverse effects will substantially reduce the risk of upper respiratory tract, eye, and skin irritation and of danger to the safety of workers distracted by the presence of these substances in the workplace. The health evidence forms a reasonable basis for proposing revised or new limits for nuisance dusts. OSHA will establish new limits for the nuisance dusts if the Agency determines that these limits will substantially reduce significant risks.

11. Substances for Which Limits Are Based on Avoidance of Odor and Taste Effects

Introduction

This category includes four substances that have obnoxious odors. The Agency recognizes that working in atmospheres containing detectable concentrations of these substances will endanger workers by distracting them from the task at hand and creating safety hazards. For three of these substances, OSHA is retaining its current 8-hour TWAs. For one substance, propylene glycol monomethyl ether, a new limit is being proposed. OSHA is proposing the retention or adoption of these limits based on the data described below, which show a NOE level for these intolerable taste and odor effects. Table C11-1 shows the substances included in this group and their OSHA and ACGIH limits, as well as their CAS and HS numbers.

Description of the Health Effects

The substances in this group have obnoxious odors and cannot willingly be tolerated by most workers for any extended period of time. Because odor detection occurs at very low concentrations for many of these chemicals, the proposed limit has been set at a level below the concentration at which the odor is intolerable to employees.

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TABLE C11-1. Substances for Which Limits Are Based on Avoidance of Odor and Taste Effects

Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1226 Isopropyl ether+	108-20-3	500 ppm TWA	250 ppm TWA 310 ppm STEL	—
1314 Phenyl ether (vapor)+	101-84-8	1 ppm TWA	1 ppm TWA 2 ppm STEL	—
1343 Propylene glycol monomethyl ether	107-98-2	-	100 ppm TWA 150 ppm STEL	—
1427 Vinyl toluene+	25013-15-4	100 ppm TWA	50 ppm TWA 100 ppm STEL	—

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

\+ The existing OSHA limit for this substance is being retained.

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The evidence for each of the substances in this group describes their adverse effects both in animals and humans. These effects, which range from nausea to narcosis, generally occur at levels higher than the limits for these substances, which are based not only on toxicological effects but also on the basis of the intolerable odors associated with their presence in workroom air. Because odor effects range in severity from distracting to intolerable, these limits have been set at the concentration at which the odor becomes so seriously objectionable as to create a risk of safety hazards.

Dose-Response Relationships and Odor Effects

Odor effects are threshold effects, although there is wide variation in individual odor response, i.e., in the ability to detect odor. Because of this wide variation and the phenomenon of olfactory fatigue, odor is not a reliable indicator of airborne concentrations and should not be relied on to provide a warning of overexposure. The following paragraphs describe OSHA's preliminary findings with respect to the substances in this group.

ISOPROPYL ETHER
CAS: 108-20-3; Chemical Formula: $(CH_3)_2CHOCH(CH_3)_2$
H.S. No. 1226

OSHA currently has a limit of 500 ppm TWA for isopropyl ether. The ACGIH recommends a TLV-TWA of 250 ppm and a TLV-STEL of 310 ppm for this liquid, which has a sharp, sweet odor similar to that of ether.

Animal studies have shown that exposures to high concentrations cause narcosis and death (Machle, Scott, and Treon 1939). Twenty exposures at a 1-percent vapor concentration produced intoxication and depression but no significant blood or weight changes. In rabbits, the minimum lethal dose has been reported to be 5 to 6.5 g/kg. The liquid is an irritant to the skin and mucous membranes and causes dermatitis in rabbits on repeated exposure (Machle, Scott, and Treon 1939).

Humans exposed for 15 minutes at 300 ppm experienced no irritation but complained about the objectionable odor of isopropyl ether; eye and nose irritation was experienced as a result of 5-minute exposures to 800 ppm. A 15-minute exposure to 500 ppm was not reported by subjects to be irritating (Silverman, Schulte, and First 1946).

The available health evidence for this substance may not be sufficient to support a revision of the current limit, and OSHA is accordingly retaining its current limit. However, there may be other health effects information on isopropyl ether, and OSHA is specifically requesting any available information from the public to support lower limits for this substance. The public may also wish to address the topic of material impairment of health, as discussed in section 6(b) of the Act.

PHENYL ETHER
CAS: 101-84-8; Chemical Formula: $(C_6H_5)_2O$
H.S. No. 1314

OSHA currently has an 8-hour TWA limit of 1 ppm for phenyl ether. The ACGIH recommends the same TWA and the addition of a 2-ppm 15-minute STEL for phenyl ether vapor. Phenyl ether is a colorless liquid or solid with a low volatility; its vapor has a disagreeable odor.

The acute oral lethal dose is approximately 4 g/kg for rats and guinea pigs, and single doses of between 1 and 2 g/kg administered to various species have shown no liver, spleen, kidney, thyroidal or gastrointestinal toxicities in surviving animals (Vogel, Snyder, and Schulman 1964). Repeated inhalation studies in rats, rabbits, and dogs have shown that 20 exposures to 4.9 ppm for 5 days per week, 7 hours per day produced no adverse effects. Eye and nasal irritation were observed in rats and rabbits exposed at 10 ppm (Hefner, Leong, Kociba, and Gehring 1975). Skin and eye irritation have been reported only as a result of prolonged undiluted exposures. There is no evidence that skin absorption presents a health hazard (ACGIH 1986, p. 475).

The primary complaints associated with human exposures to phenyl ether vapor are of disagreeable odor and occasional nausea (Hake and Rowe, as cited in Patty 1963, p. 1698).

The available health evidence for this substance may not be sufficient to support a revision of this current limit, and OSHA is therefore retaining its limit for phenyl ether. However, there may be other health effects information on phenyl ether, and OSHA is specifically requesting any available information from the public to support lower limits for this substance. The public may also wish to comment on the topic of material impairment of health, as discussed in section 6(b) of the Act.

PROPYLENE GLYCOL MONOMETHYL ETHER
CAS: 107-98-2; Chemical Formula: $CH_3OCH_2CHOHCH_3$
H.S. No. 1343

OSHA has no current standard for propylene glycol monomethyl ether (PGME). The ACGIH recommends a TWA of 100-ppm and a STEL of 150 ppm; NIOSH has no REL.

Exposure to propylene glycol monomethyl ether causes anesthesia at a level of approximately 1000 ppm, eye tearing at levels above 100 ppm, and an objectionable odor at 100 ppm (Stewart, Baretta, Dodd, and Torkelson 1970). Ingestion of 3 g/kg in a 35-day period caused minor changes in the livers and kidneys of rats, and repeated dermal applications of 7 to 10 ml/kg/day caused death in rats treated over a 90-day period (Rowe, McCollister, Spencer et al. 1954).

The proposed PELs for PGME of 100 ppm TWA and 150 ppm STEL are designed to protect workers from experiencing this objectionable effect, which is seriously distracting. In addition, the proposed levels will ensure that workers will not experience the eye irritation reported to be associated with exposures to propylene glycol monomethyl ether at levels above 100 ppm. OSHA preliminarily finds that the proposed limits will reduce the risks potentially associated with previously uncontrolled exposures to this substance. The health evidence forms a reasonable basis for proposing a new limit for propylene glycol monomethyl ether.

VINYL TOLUENE
CAS: 25013-15-4; Chemical Formula: $CH_3C_6H_4CH=CH_2$
H.S. No. 1427

The current OSHA standard for vinyl toluene is 100 ppm as an 8-hour TWA. The ACGIH recommends a TWA of 50 ppm with a 100-ppm short-term exposure limit. Vinyl toluene is a colorless liquid with a strong, disagreeable odor.

Wolf, Rowe, McCollister et al. (1956) noted fatty degeneration of the liver and an increase in kidney and liver weights in rats, guinea pigs, rabbits, and monkeys exposed to approximately 100 7- to 8-hour exposures of vinyl toluene at 1250 ppm. Some deaths occurred among the rats in this group. Animals exposed to vinyl toluene at 600 ppm appeared normal and showed no blood or urine abnormalities, no gross or microscopic tissue changes, and no changes in growth rate or organ weight (Wolf, Rowe, McCollister et al. 1956).

Human volunteers reported eye and nose irritation at 400 ppm, and objectionable odor at 300 ppm. At 50 ppm, the odor of vinyl toluene was detectable, but no irritation was experienced (ACGIH 1986, p. 630).

The available health evidence for this substance may not be sufficient to support a revision of the current limit, and OSHA is accordingly retaining its limit. However, there may be other

health effects information on vinyl toluene, and OSHA is specifically requesting any available information on vinyl toluene from the public to support lowering the limit for this substance. The public may also wish to comment on the topic of material impairment of health, as discussed in section 6(b) of the Act.

Preliminary Conclusions

For the one chemical in this group for which OSHA is proposing a new limit, the Agency preliminarily finds that exposure at the uncontrolled levels currently permitted places workers at risk of experiencing the adverse effects associated with this noxious substance. These effects include irritation, distraction, discomfort, and, if exposure is sufficiently severe, danger to affected employees and their co-workers. This risk is created by the safety risks generated by propylene glycol monomethyl ether's intolerable odor.

For the three substances—isopropyl ether, phenyl ether, and vinyl toluene—for which OSHA is at present retaining its current limits, the available health evidence may not be sufficient to support a revision of these limits. However, OSHA is soliciting additional information from the public on the health effects associated with occupational exposure to these substances to support revision or retention of these limits. At the time of the final rule, OSHA will make a final determination, based on the best available evidence, of whether to retain or revise the limits for these substances.

12. Substances for Which Proposed Limits are Based on Avoidance of Adverse Health Effects Caused by Exposure to Analogous Substances

Introduction

OSHA is proposing limits for 73 substances on the basis of their toxicologic and structural similarities to other chemical substances that create significant risks of systemic toxicity, ocular effects, kidney or liver damage, and other similarly adverse health effects. For 46 of these substances, OSHA has not previously had Z table limits. For an additional 12 substances, OSHA is proposing to reduce the 8-hour TWA, and in 13 cases, the Agency is proposing to retain its 8-hour limit and to add a STEL to supplement the TWA. OSHA proposes to delete the 8-hour limit and add a ceiling in the case of acetic anhydride and to delete a ceiling limit and add an 8-hour TWA for another substance. Table C12-1 shows these substances, their CAS and HS numbers, and their current OSHA and ACGIH limits. NIOSH has RELs for four substances in this category.

Description of the Health Effects

The health effects associated with occupational exposures to the diverse group of substances shown in Table C12-1 vary widely, ranging from sensory irritation, systemic toxicity, ocular effects, and neuropathy to renal and liver damage. This variation in target organs reflects the fact that the substances in this group have not been grouped on the basis of their toxic effects or mechanism of action; instead, they are considered together because the specific limits proposed for them have been determined on the basis of toxic effects caused by exposure to analogous chemicals. Table C12-2 shows these substances, along with their adverse health effects and analogous compounds.

The use of analogy is a reasonable basis for making estimates because of the similarities in structure and activity of these substances. Industrial hygienists frequently use this approach. The limits for these chemicals have thus been set based on dose-response information for other compounds that are of similar chemical structure or that have a similar mechanism of action. For example, limits are being proposed for a number of compounds that are known cholinesterase inhibitors (including diazinon, disulfoton, and monocrotophos); since direct dose-response data are not available, OSHA has proposed limits that are similar to the proposed limit for parathion, another cholinesterase inhibitor for which adequate dose-response data are available.

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TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Compounds

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL
1003 Acetic anhydride	108-24-7	5 ppm TWA	5 ppm Ceiling	—
1009 Acrylic acid	79-10-7	—	10 ppm TWA	—
1015 Aluminum (alkyls)	7429-90-5	—	2 mg/m^3 TWA	—
1018 Aluminum (soluble salts)	7429-90-5	—	2 mg/m^3 TWA	—
1040 Boron tribromide	10294-33-4	—	1 ppm Ceiling	—
1043 Bromine pentafluoride	7789-30-2	—	0.1 ppm TWA	—
1048 n-Butyl acrylate	141-32-2	—	10 ppm TWA	—
1055 o-sec-Butylphenol	89-72-5	-	5 ppm TWA, Skin	—
1059 Calcium hydroxide	1305-62-0	-	5 mg/m^3 TWA	—
1060 Calcium oxide	1305-78-8	5 mg/m^3 TWA	2 mg/m^3 TWA	—
1074 Carbonyl fluoride	353-50-4	-	2 ppm TWA 5 ppm STEL	—
1075 Catechol	120-80-9	—	5 ppm TWA	—
1081 1-Chloro-1-nitro-propane	600-25-9	20 ppm TWA	2 ppm TWA	—

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL
1098 Cobalt carbonyl	10210-68-1	-	0.1 mg/m^3 TWA	--
1099 Cobalt hydrocarbonyl	16842-03-8	-	0.1 mg/m^3 TWA	--
1118 Diazinon	333-41-5	-	0.1 mg/m^3 TWA, Skin	--
1121 1,1-Dichloro-1-nitroethane	594-72-9	10 ppm Ceiling	2 ppm TWA	--
1125 p-Dichlorobenzene	106-46-7	75 ppm TWA	75 ppm TWA 110 ppm STEL	--
1128 Dichloromonofluoromethane	75-43-4	1000 ppm TWA	10 ppm TWA	--
1135 Diethyl ketone	96-22-0	-	200 ppm TWA	--
1138 Diethylenetriamine	111-40-0	-	1 ppm TWA, Skin	--
1148 Dipropyl ketone	123-19-3	-	50 ppm TWA	--
1150 Diquat	85-00-7	-	0.5 mg/m^3 TWA	--
1152 Disulfoton	298-04-4	-	0.1 mg/m^3 TWA	--

TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Compounds (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL
1154 Divinyl benzene	108-57-6	-	10 ppm TWA	--
1156 Endosulfan	115-29-7	--	0.1 mg/m^3 TWA, Skin	--
1181 Fonofos	944-22-9	-	0.1 mg/m^3 TWA, Skin	--
1182 Formamide	75-12-7	-	20 ppm TWA 30 ppm STEL	--
1186 Germanium tetrahydride	7782-65-2	--	0.2 ppm TWA	--
1212 Indene	95-13-6	-	10 ppm TWA	--
1214 Iodoform	75-47-8	--	0.6 ppm TWA	--
1219 Isobutyl alcohol	78-83-1	100 ppm TWA	50 ppm TWA	--
1220 Isooctyl alcohol	26952-21-6	-	50 ppm TWA, Skin	--
1229 n-Isopropylaniline	643-28-7	-	2 ppm TWA, Skin	--
1231 Ketene	463-51-4	0.5 ppm TWA	0.5 ppm TWA 1.5 ppm STEL	--
1244 Methacrylic acid	79-41-4	-	20 ppm TWA	--

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H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL
1247 4-Methoxyphenol	150-76-5	--	5 mg/m^3 TWA	--
1250 Methyl acetylene-propadiene mixture	74-99-7	1000 ppm TWA	1000 ppm TWA 1250 ppm STEL	--
1256 Methyl demeton	8022-00-2	-	0.5 mg/m^3 TWA, Skin	--
1257 Methyl ethyl ketone peroxide	1338-23-4	--	0.2 ppm Ceiling	--
1258 Methyl formate	107-31-3	100 ppm TWA	100 ppm TWA 150 ppm STEL	--
1259 Methyl iodide	74-88-4	5 ppm TWA, Skin	2 ppm TWA, Skin	Lowest feasible limit
1260 Methyl isoamyl ketone	110-12-3	--	50 ppm TWA	50 ppm TWA
1262 Methyl isopropyl ketone	563-80-4	-	200 ppm TWA	--
1265 Methyl parathion	298-00-0	-	0.2 mg/m^3 TWA, Skin	0.2 mg/m^3 TWA

TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Compounds (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL
1268 Methylcyclohexane	108-87-2	500 ppm TWA	400 ppm TWA	--
1271 Methylcyclopenta-dienyl Mn tricarbonyl	12108-13-3	--	0.2 mg/m^3 TWA, Skin	--
1279 Monocrotophos	6923-22-4	--	0.25 mg/m^3 TWA	--
1281 Morpholine	110-91-8	20 ppm TWA, Skin	20 ppm TWA 30 ppm STEL, Skin	--
1286 Nitric acid	7697-37-2	2 ppm TWA	2 ppm TWA 4 ppm STEL	2 ppm TWA
1287 p-Nitroaniline	100-01-6	6 mg/m^3 TWA, Skin	3 mg/m^3 TWA, Skin	--
1292 Nitrotoluene	1321-12-6	5 ppm TWA, Skin	2 ppm TWA, Skin	--
1293 Nonane	111-84-2	--	200 ppm TWA	--
1299 Oxalic acid	144-62-7	1 mg/m^3 TWA	1 mg/m^3 TWA 2 mg/m^3 STEL	--
1309 Perchloryl fluoride	7616-94-6	3 ppm TWA	3 ppm TWA 6 ppm STEL	--

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL
1320 Mevinphos (Phosdrin)	7786-34-7	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL, Skin	--
1323 Phosphorus oxychloride	10025-87-3	--	0.1 ppm TWA 0.5 ppm STEL	--
1324 Phosphorus pentasulfide	1314-80-3	1 mg/m^3 TWA	1 mg/m^3 TWA 3 mg/m^3 STEL	--
1326 Phthalic anhydride	85-44-9	2 ppm TWA	1 ppm TWA	--
1335 Propargyl alcohol	107-19-7	-	1 ppm TWA, Skin	--
1336 Propionic acid	79-09-4	--	10 ppm TWA 15 ppm STEL	--
1338 n-Propyl acetate	109-60-4	200 ppm TWA	200 ppm TWA 250 ppm STEL	--
1339 n-Propyl alcohol	71-23-8	200 ppm TWA	200 ppm TWA 250 ppm STEL, Skin	--
1344 Propylene oxide	75-56-9	100 ppm TWA	20 ppm TWA	-

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL
1361 Silicon tetrahydride	7803-62-5	-	5 ppm TWA	--
1379 Sulfuryl fluoride	2699-79-8	5 ppm TWA	5 ppm TWA 10 ppm STEL	--
1393 Thionyl chloride	7719-09-7	--	1 ppm Ceiling	--
1402 Tributyl phosphate	126-73-8	5 mg/m^3 TWA	2.5 mg/m^3 TWA	--
1404 Trichloroacetic acid	76-03-9	-	1 ppm TWA	-
1411 Trimethylamine	75-50-3	-	10 ppm TWA 15 ppm STEL	-
1420 n-Valeraldehyde	110-62-3	-	50 ppm TWA	-
1432 m-Xylene-alpha, alpha', diamine	1477-55-0	-	0.1 mg/m^3 Ceiling, Skin	--
1433 Xylidine	1300-73-8	5 ppm TWA, Skin	2 ppm TWA, Skin	--

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

BILLING CODE 4510-26-C

It is important to note that the establishment of a limit on the basis of analogy to other substances does not reflect a lack of information showing that the substance is toxic; acute animal data are available demonstrating the toxicity of all of the substances for which limits are being proposed in this category, and cases of human poisoning caused by exposure to many of them are reported. Thus the proposed limits reflect more than theoretical considerations of chemical structure and physiologic reaction: The hazardous nature of exposure has been demonstrated beyond doubt, although the precise level at which it will occur cannot be foretold with certainty.

The following sections describe OSHA's preliminary findings for the substances in this grouping.

TABLE C12-2.—SUMMARY OF RATIONALE FOR LIMITS BASED ON ANALOGY TO RELATED COMPOUNDS

H.S. No./Chemical name	Compound on which limit is based	Associated health effects
1003 Acetic anhydride	Acetic acid	Sensory irritation.
1009 Acrylic acid	Acetic acid	Sensory irritation.
1015 Aluminum (alkyls)	Welding fumes	Respiratory irritation.
1018 Aluminum (soluble salts)	Hydrolysis to hydrogen chloride.	Sensory irritation.
1040 Boron tribromide	Hydrogen bromide	Sensory irritation.
1043 Bromine pentafluoride	Chlorine trifluoride	Systemic injury.
1048 n-Butyl acrylate	Methyl acrylate	Acute toxicity.
1055 o-sec-Butylphenol	Phenol and cresol	Respiratory, liver, and kidney effects.
1059 Calcium hydroxide	Sodium hydroxide	Sensory irritation.
1060 Calcium oxide	Sodium hydroxide	Sensory irritation.
1074 Carbonyl fluoride	Hydrolysis to hydrogen fluoride.	Sensory irritation.
1075 Catechol	Phenol	Peripheral vasoconstriction, renal tubule degeneration.
1081 1-Chloro-1-nitropropane	Nitropropane	Acute toxicity, damage to heart muscle, liver, and kidneys.
1098 Cobalt carbonyl	Nickel carbonyl	Systemic toxicity.
1099 Cobalt hydrocarbonyl	Nickel carbonyl	Systemic toxicity.
1116 Diazinon	Parathion	Cholinesterase inhibition.
1121 1,1-Dichloro-1-nitroethane	Related compounds	Systemic toxicity.
1125 p-Dichlorobenzene	o-Dichlorobenzene	Neurological effects, cataract formation.
1128 Dichlorofluoromethane	Chloroform	Hepatotoxicity, cardiac sensitization.
1135 Diethyl ketone	Methyl propyl ketone	Acute toxicity.
1138 Diethylenetriamine	Ethylamine	Irritation, sensitization.
1148 Dipropyl ketone	Methyl isobutyl ketone	Acute toxicity.
1150 Diquat	Paraquat	Ocular effects.
1152 Disulfoton	Parathion	Cholinesterase inhibition.
1154 Divinyl benzene	Styrene	Sensory irritation.
1156 Endosulfan	Aldrin, Dieldrin	Neurological effects.
1181 Fonofos	Ethyl parathion	Cholinesterase inhibition.
1182 Formamide	Dimethyl formamide	Acute toxicity.
1186 Germanium tetrahydride	Stibine	Acute toxicity.
1212 Indene	Naphthalene	Sensory irritation.
1214 Iodoform	Methyl iodide	Acute toxicity.
1219 Isobutyl alcohol	n-Butanol	Acute toxicity.
1220 Isooctyl alcohol	Isoamyl alcohol	Sensory irritation.
1229 o-Isopropylaniline Aniline	N,N-dimethylaniline	Acute toxicity.
1231 Ketene	Phosgene	Sensory irritation.
1244 Methacrylic acid	Acrylic acid	Sensory irritation.
1247 4-Methoxyphenol	Hydroquinone	Ocular effects.
1250 Methyl acetylene-propadiene mixture	Methyl acetylene	Hygienic standard (absence of demonstrated health effects).
1256 Methyl demeton	Demeton	Ocular effects, respiratory effects, inner ear irritation.
1257 Methyl ethyl ketone peroxide	Benzoyl peroxide, hydrogen peroxide.	Sensory irritation.
1258 Methyl formate	Methyl acetate	Sensory irritation.
1259 Methyl iodide	Methyl bromide	CNS effects.
1260 Methyl isoamyl ketone	Methyl isobutyl ketone	Neuropathy.
1262 Methyl isopropyl ketone	Diethyl ketone, methyl propyl ketone.	Narcosis sensory irritation.
1265 Methyl parathion	Parathion	Cholinesterase inhibition.
1268 Methylcyclohexane	Heptane	Acute toxicity.
1271 Methylcyclopentadienyl manganese tricarbonyl	Tetraethyl lead	Central nervous system effects, chronic lung effects.
1279 Monocrotophos	Cholinesterase inhibitors	Cholinesterase inhibition.
1281 Morpholine	Ammonia	Kidney and liver degeneration, sensory irritation.
1286 Nitric acid	Hydrogen chloride, sulfuric acid.	Sensory irritation.
1287 p-Nitroaniline	Aniline	Methemoglobin formation.
1292 Nitrotoluene	Aniline	Methemoglobin formation.
1293 Nonane	Octane	Acute toxicity.
1299 Oxalic acid	Sulfuric acid, phosphoric acid.	Irritation, burns.
1309 Perchloryl fluoride	Fluoride	Fluorosis.
1320 Phosdrin (Mevinphos)	Parathion	Cholinesterase inhibition.
1323 Phosphorus oxychloride	Phosphorous trichloride	Sensory irritation, respiratory effects.
1334 Phosphorus pentasulfide	Hydrolysis to phosphoric acid.	Sensory irritation.
1326 Phthalic anhydride	Tetrachlorophthalic anhydride, maleic anhydride.	Sensory irritation.

TABLE C12-2.—SUMMARY OF RATIONALE FOR LIMITS BASED ON ANALOGY TO RELATED COMPOUNDS—Continued

H.S. No./Chemical name	Compound on which limit is based	Associated health effects
1335 Propargyl alcohol	Allyl alcohol	Acute toxicity.
1336 Propionic acid	Acetic acid	Sensory irritation.
1338 n-Propyl acetate	Isopropyl acetate, n-butyl acetate.	Sensory irritation.
1339 n-Propyl alcohol	Isopropyl alcohol	Sensory irritation.
1344 Propylene oxide	Ethylene oxide	Central nervous system depression, sensory irritation.
1361 Silicon tetrahydride	Germane, stannane	Acute toxicity.
1379 Sulfuryl fluoride	Hydrogen fluoride	Fluorosis.
1398 Thionyl chloride	Hydrolysis to hydrogen chloride.	Sensory irritation.
1402 Tributyl phosphate	Triphenyl phosphate	Narcosis, cholinesterase inhibition.
1404 Trichloroacetic acid	2,2-Dichloropropionic acid	Sensory irritation.
1411 Triethylamine	Dimethylamine	Sensory irritation.
1420 n-Valeraldehyde	Saturated aliphatic	Sensory irritationaldehydes.
1432 m-Xylene-alpha, alpha', diamine	Phenylenediamine	Allergic respiratory sensitization.
1433 Xylidine	Aniline	Methemoglobin formation.

ACETIC ANHYDRIDE
CAS: 108-24-7; Chemical Formula: $[CH_3CO]_2O$
H.S. No. 1003

The current OSHA PEL for acetic anhydride is 5 ppm as an 8-hour TWA. The ACGIH has recommended a TLV of 5 ppm as a ceiling, based on analogy with acetic acid and the substance's irritant potential. Acetic anhydride is a colorless, mobile, strongly refractive liquid with a strong odor.

In one study, rats inhaling 1000 ppm of acetic anhydride for 4 hours survived, but 2000 ppm was fatal (Smyth 1956). In human studies, eye, nose, and throat irritation has been observed, and it has been suggested that bronchial and lung injury may occur as a consequence of exposure. (Henderson and Haggard 1943). Skin burns and serious corneal injury have been reported in industrial settings when workers came into contact with the liquid (McLaughlin 1946), and acetic anhydride is a marked lacrimator (Fairhall 1946).

In light of acetic anhydride's potential for acute toxicity, OSHA is proposing to replace the current 5-ppm 8-hour TWA with a 5-ppm ceiling. The Agency preliminarily concludes that this limit will protect workers from the risk of ocular and respiratory effects associated with high, short-term exposures to acetic anhydride at the current level. The proposed limit will substantially reduce this risk among industrially exposed workers. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for acetic anhydride if the Agency determines that this limit will substantially reduce significant risk.

ACRYLIC ACID
CAS: 79-10-7; Chemical Formula: $CH_2=CHCO_2H$
H.S. No. 1009

OSHA has no current permissible exposure limit for acrylic acid. The ACGIH has a recommended 8-hour TWA of 10 ppm. Acrylic acid is a colorless, corrosive liquid with a distinctive acrid odor.

Acrylic acid is known to polymerize explosively with amines, ammonia, oleum, and chlorosulfonic acid, and it is incompatible with strong alkalis and pure nitrogen. Occupational exposure to acrylic acid usually occurs when the chemical is used in the form of methyl, ethyl, or butyl esters in the manufacture of acrylic resins.

Data indicate that the oral LD_{50} in rats is between 0.25 and 0.5 mg/kg (Dow Chemical Company, 1977), and the skin absorption LD_{50} in rabbits is 0.95 ml/kg (Smyth et al. 1962). Another study indicates that rabbits given acrylic acid orally had no ill effects at a level of 0.025 mg/kg (Kimkina et al. 1968), and Gage reports that rats exposed to 80 ppm for 6 hours daily for 20 days showed no adverse effects (1970).

Case reports indicate that acute exposures to acrylic acid in workers have caused skin burns, eye burns, and upper respiratory effects (ACGIH, 1980, p. 14).

OSHA preliminarily concludes that an 8-hour TWA PEL of 10 ppm is necessary to protect exposed workers from the risk of nasal and eye irritation potentially associated with exposure to acrylic acid at the previously uncontrolled level. This limit will substantially reduce this risk and prevent recurrences of the burns and irritation previously associated with industrial exposures. The health evidence forms a reasonable basis for proposing a new limit for acrylic acid. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ALUMINUM (ALKYLS)
CAS: 7429-90-5; Chemical Formula: Al
H.S. No. 1015

ALUMINUM (SOLUBLE SALTS)
CAS: 7429-90-5; Chemical Formula: Al
H.S. No. 1018

OSHA currently has no permissible exposure limits for the soluble salts of aluminum or for the aluminum alkyls. The ACGIH recommends an 8-hour TLV-TWA limit of 2 mg/m^3 for aluminum (soluble salts) and 2 mg/m^3 for the aluminum alkyls.

The ACGIH's limits for aluminum soluble salts have been set on the basis of the amount of hydrolized acid, such as hydrochloric acid or sulphuric acid, in their acid compounds. For example, three mols of hydrochloric acid (HCl) hydrolize from one mol of aluminum chloride; since HCl has a PEL of 5 ppm, a PEL of 2 mg/m^3 for aluminum chloride, a soluble salt of aluminum, would provide the same degree of protection from irritation as that provided by this current limit for HCl. The acute toxicity of aluminum chloride is generally representative of the toxicity of all of the soluble salts of aluminum. For the aluminum alkyls, toxicity data are sparse. However, all of the nonhalogenated alkyls decompose into aluminum oxide fume, and the halogenated alkyls are even more irritating because of acid hydrolysis.

OSHA proposes an 8-hour TWA limit of 2 mg/m^3 for the soluble salts and the alkyls of aluminum. The Agency preliminarily concludes that these limits will protect against the risk of irritation and skin burns presented by the acidic nature of these substances, to which workers can presently be exposed at uncontrolled levels. The health evidence

forms a reasonable basis for proposing new limits for the alkyls and aluminum salts. At the time of the final rule, OSHA will promulgate new limits if the Agency determines that these limits will substantially reduce significant risk.

BORON TRIBROMIDE
CAS: 10294-33-4; Chemical Formula: BBr_3
H.S. No. 1040

OSHA currently has no limit for exposure to boron tribromide. The ACGIH recommends a 1-ppm ceiling limit for boron tribromide, which is a colorless, fuming liquid that is decomposed by water and alcohol.

Boron tribromide has a high potential for acute local irritation, and its potential for systemic toxicity is analogous to that of hydrogen bromide (HBr). On decomposition, one molecule of boron tribromide would be expected to produce three molecules of HBr (ACGIH 1986, p. 62).

Animals repeatedly exposed to boron tribromide develop pneumonia, and exposure at 100 ppm caused a uniformly high mortality rate in six laboratory species (Stokinger, Spiegel et al. 1953). Rats, rabbits, and mice exposed at 1.5, 3.4, or 12.8 ppm boron trifluoride developed pneumonitis and dental fluorosis, although at the lowest level tested, the evidence of pneumonitis was described as "marginal" (Torkelson, Sadek, and Rowe 1961).

Based on this evidence of boron tribromide's severe pulmonary toxicity at exposure levels below 4 ppm, OSHA preliminarily proposes a ceiling limit of 1 ppm. The Agency believes that this limit will protect workers from the risk of serious pulmonary damage associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for boron tribromide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

BROMINE PENTAFLUORIDE
CAS: 7789-30-2; Chemical Formula: BrF_5
H.S. No. 1041

OSHA has no current limit for bromine pentafluoride exposure. The ACGIH recommends a TLV–TWA of 0.1 ppm. This substance is a pale-yellow liquid at temperatures below 40.3°C; above this temperature, it is a colorless, pungent, and corrosive gas.

Bromine pentafluoride has been shown to be acutely toxic in animals. Animals exposed to bromine pentafluoride vapor at 500 ppm exhibited immediate symptoms of gasping, swollen eyelids, clouded corneas, tearing, salivation, and acute distress; these symptoms appeared after exposure for a period as short as 3 minutes. Exposures to 50 ppm were fatal after 30 minutes, and chronic exposures above 3 ppm resulted in severe nephrosis in some animals, as well as marked hepatosis and severe respiratory involvement (The Matheson Co., Inc., as cited in ACGIH, p. 66). Bromine pentafluoride is toxicologically more active than free, elemental fluorine, and its toxicity appears to be closely related to that of chlorine trifluoride (Horn and Wier 1955, 1956). Chlorine trifluoride has caused severe toxicity and some fatalities in dogs and rats exposed to an average concentration of 1.17 ppm 6 hours daily for 6 months (Horn and Wier 1955).

OSHA is proposing the adoption of a PEL of 0.1 ppm as an 8-hour TWA to prevent the risk of serious systemic injury potentially associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The Agency preliminarily concludes that this limit will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for bromine pentafluoride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

n-BUTYL ACRYLATE
CAS: 141-32-2; Chemical Formula: $C_7H_{12}O_2$
H.S. No. 1048

OSHA has no current limit for n-butyl acrylate. The ACGIH's Threshold Limit Value is a 10 ppm TWA. n-Butyl acrylate is a colorless, flammable liquid.

n-Butyl acrylate is a skin and eye irritant and is toxic to animals (rats) at inhalation doses of 1000 ppm for 4 hours (Treon, Sigmon, Wright, and Kitzmiller 1949).

In rabbits, the dermal LD_{50} for n-butyl acrylate was approximately 1600 mg/kg, compared to 1235 mg/kg for methyl acrylate (Smyth, Carpenter, and Weil 1951). n-Butyl acrylate has also been found to be mildly irritating to the skin and to produce corneal necrosis in the unwashed eyes of rabbits (Holland 1974, unpublished memo, as cited in ACGIH 1986, p. 75).

OSHA is proposing an 8-hour TWA PEL of 10 ppm for n-butyl acrylate, based on the similarity of the toxicological response of n-butyl acrylate to methyl acrylate, for which OSHA has a 10 ppm TWA limit. The Agency preliminarily concludes that this limit is necessary to reduce the risk of skin irritation and corneal necrosis to which workers could be exposed in the absence of an OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for n-butyl acrylate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

o-sec-BUTYLPHENOL
CAS No. 89-72-5; Chemical Formula: $C_2H_5(CH_3)CHC_6H_4OH$
H.S. No. 1055

OSHA has no current limit for o-sec-butylphenol. The ACGIH recommends a 5-ppm 8-hour TLV–TWA with a skin notation. o-sec-Butylphenol is a colorless liquid.

Animal studies indicate that contact with o-sec-butylphenol causes irritation of the skin, eyes, and respiratory tract, and may result in skin burns. A Dow Chemical Company study (1977, as cited in ACGIH 1986, p. 84) showed that the oral and skin absorption LD_{50}'s for guinea pigs ranged between 0.6 and 2.4 g/kg. Prolonged contact of o-sec-butylphenol with the skin of these animals resulted in burns, whereas direct application to the eyes did not cause corneal injury. The oral LD_{50} for rats is 2700 mg/kg (Sax 1984), and rats exposed to saturated air levels of this chemical survived for 7 hours (Dow Chemical Company 1977, as cited in ACGIH 1986, p. 84). The intravenous LD_{50} for mice is 6 mg/kg (Sax 1984).

Acute workplace exposures to o-sec-butylphenol have resulted in mild respiratory irritation and skin burns (ACGIH 1986, p. 84).

OSHA is proposing an 8-hour TWA limit of 5 ppm for o-sec-butylphenol, with a skin notation. The Agency preliminarily concludes that this limit is necessary to protect workers from the risk of eye and respiratory tract irritation and skin burns associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for o-sec-butylphenol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CALCIUM HYDROXIDE
CAS: 1305-62-0; Chemical Formula: $Ca(OH)_2$
H.S. No. 1059

OSHA currently has no limit for calcium hydroxide; the ACGIH recommends a TLV–TWA of 5 mg/m³. Calcium hydroxide is a soft, white, odorless crystalline powder with an alkaline, bitter taste.

Calcium hydroxide is a moderately caustic irritant when it comes in contact with the skin, eyes, or mucous membranes of the upper respiratory tract. The oral LD_{50} in rats is reported to be 7.34 g/kg (Smyth et al. 1969). Industrial experience with this substance has not shown a high incidence of adverse health effects. Calcium hydroxide has less alkalinity than the hydroxides of the alkali series, and the ACGIH has suggested that limits for exposures to calcium hydroxide should be based on its total alkalinity. According to the ACGIH, since calcium hydroxide has 2.5 times the alkalinity of sodium hydroxide, it should have a limit 2.5 times that of sodium hydroxide; this would set the limit for calcium hydroxide at 5 mg/m³.

OSHA is proposing an 8-hour TWA limit for calcium hydroxide of 5 mg/m³ to protect against the risk of skin, eye, and mucous membrane irritation caused by exposure to this substance at the uncontrolled levels permitted by the absence of any OSHA limit. The Agency preliminarily concludes that this limit will reduce the risk substantially. The health evidence forms a reasonable basis for proposing a new limit for calcium hydroxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CALCIUM OXIDE
CAS: 1305-78-8; Chemical Formula: CaO
H.S. No. 1060

OSHA currently has a limit of 5 mg/m³ for calcium oxide, and the ACGIH recommends a TLV–TWA of 2 mg/m³. Calcium oxide is a white or off-white powder.

Calcium oxide is known to be a caustic and irritating material (Sax 1984); it produces severe irritation on contact with the mucous membranes and moist skin. Significant irritation occurs from the local liberation of heat and the dehydration of tissues resulting from the alkalinity of the slaked particles (ACGIH 1986, p. 92). Sax (1984) considers calcium oxide "a powerful caustic to living tissue."

Exposure to calcium oxide can cause inflammation of the respiratory passages and ulceration of the nasal septum (National Safety Council 1936; Schwartz, Tulipan, and Birmingham 1957). The inhalation of calcium oxide dust has also been linked to reports of pneumonia (International Labour Office 1934). However, the most frequent adverse response associated with exposure to calcium oxide is irritation to the skin and eyes. The effects of exposure to calcium oxide are analogous to those of sodium hydroxide.

OSHA proposes a PEL of 2 mg/m³ TWA for calcium hydroxide to afford protection against the risk of skin and eye irritation. The Agency preliminarily concludes that a 2-mg/m³ 8-hour TWA will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for calcium oxide if the Agency determines that this limit will substantially reduce significant risk.

CARBONYL FLUORIDE
CAS: 353-50-4; Chemical Formula: COF₂
H.S. No. 1074

OSHA has no current limit for carbonyl fluoride. The ACGIH has established an 8-hour TWA limit of 2 ppm and a 15-minute STEL of 5 ppm for this colorless and essentially odorless gas.

The 1-hour LC_{50} for rats is 360 ppm, and the 4-hour LC_{50} for the same species is 90 ppm (ACGIH 1986, p. 111). Carbonyl fluoride hydrolyses instantly on contact with moisture.

Repeated exposure of animals to carbonyl fluoride is known to have metabolic effects; it inhibits the fluoride-sensitive enzyme succinic dehydrogenase via hydrolysis of carbonyl fluoride to hydrogen fluoride (Scheel, McMillan, and Phipps 1954). Carbonyl fluoride is also a strong irritant to the eyes, skin, mucous membranes, and respiratory tract (Sax 1984).

OSHA is proposing an 8-hour TWA limit of 2 ppm and a 15-minute 5 ppm STEL for carbonyl fluoride; these limits are based on analogy to the 3-ppm TWA limit being proposed for hydrogen fluoride. The Agency preliminarily concludes that both a TWA and a STEL are necessary to provide protection against the risk of marked irritation and metabolic effects associated with exposure to carbonyl fluoride at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for carbonyl fluoride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CATECHOL (PYROCATECHOL)
CAS: 120-80-9; Chemical Formula: $C_6H_4(OH)_2$
H.S. No. 1075

OSHA currently has no established limit for catechol. The ACGIH recommends a TWA–TLV of 5 ppm. Catechol is a colorless crystalline solid that sublimes readily and thus occurs in the vapor state at room temperature.

Catechol is approximately 1.1 to 2.2 times more toxic than phenol, depending on the route of exposure (Acute Toxicity Studies With Catechol 1974, as cited in ACGIH 1986, p. 112). The oral LD_{50} in rats is 300 mg/kg, or approximately half that of phenol. Percutaneous toxicity for catechol in rabbits is 800 mg/kg, only slightly greater than the value for phenol. Eye and nose irritation, as well as muscular spasms and tremor, have been observed in rats at a concentration of 2600 mg/m³ catechol indicating that the acute respiratory toxicity of catechol is approximately one-third that of phenol (Acute Toxicity Studies with Catechol 1974, as cited in ACGIH 1986, p. 112). Metabolic data indicate that the urinary elimination rate of catechol in rabbits is only 19 percent of that of phenol (Williams 1959). In mice, catechol is easily absorbed through the skin and gastrointestinal tract (Forsyth and Quinel 1957). Additional data document a variety of dermal, respiratory, and systemic toxicities that are closely analogous to those of phenol in their metabolic actions (Harald, Nierenstein, and Read 1916; Dietering 1938; Cushny et al. 1940).

Exposure to catechol causes an increase in blood pressure, and, at high doses, kidney damage, eczematous dermatitis, and systemic illness (Harald, Nierenstein, and Read 1916; Dietering 1938; Cushny et al. 1940).

OSHA is proposing a permissible exposure limit of 5 ppm TWA for this substance. The Agency preliminarily concludes that this level will protect workers against the risk of dermal-respiratory, and systemic effects potentially associated with exposure to catechol in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for catechol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

1-CHLORO-1-NITROPROPANE
CAS: 600-25-9; Chemical Formula: $CH_3CH_2CHClNO_2$
H.S. No. 1081

OSHA's current time-weighted average limit for 1-chloro-1-nitropropane is 20 ppm. The ACGIH recommends a TLV–TWA of 2 ppm for this flammable liquid (ACGIH 1986). The ACGIH (1986, p. 732) notes that a 20-ppm 8-hour TWA "provides little margin of safety, even assuming no chronic effects."

1-Chloro-1-nitropropane is the most acutely toxic of the fungicides known as the chloronitropropanes. In an inhalation experiment, two rabbits were exposed for 6 hours to a concentration of 398 ppm, after which one rabbit died; at an average concentration of 2574 ppm, both rabbits died. Guinea pigs tested under the same conditions survived these exposures. The oral LD_{50} for rabbits determined in the same study

was between 50 and 100 mg/kg (Machle, Scott, Treon et al. 1945). Other members of this family of fungicides show lesser skin and lung irritation but do have higher ingestion toxicities (Patty 1963). Exposure to high concentrations of 1-chloro-1-nitropropane can cause heart muscle, liver, and kidney damage (Patty 1963).

OSHA is proposing an 8-hour TWA PEL of 2 ppm. The Agency preliminarily concludes that this limit will protect exposed employees from the risk of skin and upper respiratory irritation and of systemic toxicity potentially associated with 1-chloro-1-nitropropane exposure at the existing PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 1-chloro-1-nitropropane if the Agency determines that this limit will substantially reduce significant risk.

COBALT CARBONYL
CAS: 10210-68-1; Chemical Formula: $Co_2(CO)_8$
H.S. No. 1026

OSHA has no current limit for cobalt carbonyl. The ACGIH recommends a TLV–TWA of 0.1 mg/m³ (as cobalt) for this substance, which is a solid that decomposes at 50°C.

Sax (1984) reports that cobalt carbonyl has a moderate-to-high order of toxicity by the oral route. The oral LD_{50} in mice is 377.7 mg/kg; in rats, it is 763.8 mg/kg (Spiridonova and Shabalina 1973). The hazards of exposure to the metal carbonyls range from relatively low (for iron pentacarbonyl) to extremely serious (for nickel carbonyl) (Clayton and Clayton 1982, Vol. 2A, pp. 1787–1806); the greater the toxicity of the metal and the more stable and volatile the carbonyl, the more hazardous the compound. Exposure to any of the metal carbonyls causes the same symptoms of nausea, dizziness, headache, substernal pain, coughing and dyspnea (Clayton and Clayton 1982). Evidence concerning any chronic effects of long-term exposure is lacking (ACGIH 1988, p. 145).

OSHA proposes a PEL of 0.1 mg/m³ TWA for cobalt carbonyl to protect against the risk of headache, nausea, and pulmonary effects associated with occupational exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for cobalt carbonyl. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

COBALT HYDROCARBONYL
CAS: 16842-03-8; Chemical Formula: $HCo(CO)_4$
H.S. No. 1099

OSHA has no current limit for cobalt hydrocarbonyl. The ACGIH recommends a TLV–TWA of 0.1 mg/m³ (as cobalt) for this flammable and toxic gas.

Cobalt hydrocarbonyl is approximately half as toxic as nickel carbonyl in terms of acute effects; in animals, it produces clinical signs and symptoms very similar to those produced by nickel carbonyl (ACGIH TLV–TWA of 0.007 mg/m³) and iron pentacarbonyl (ACGIH TLV–TWA of 0.8 mg/m³ (ACGIH 1986, p. 145). These include headache, dizziness, and, after a delay in onset, liver, brain, and lung damage. The 30-minute LC_{50} in rats is 165 mg/kg (Palmes, Nelson, Laskin, and Kuschner 1959). There is no evidence of chronic toxicity or of carcinogenicity.

OSHA proposes a TWA limit of 0.1 mg/m³ to protect exposed employees from the risk of pulmonary, brain, and liver damage, as well as that of acute effects such as headaches and dizziness, which are possible in the absence of an OSHA limit for this substance. The Agency preliminarily concludes that this limit will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for cobalt hydrocarbonyl. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIAZINON
CAS: 333–41–5; Chemical Formula: $C_{12}H_{21}N_2O_3PS$
H.S. No. 1110

OSHA currently has no limit for diazinon. The ACGIH recommends a TLV–TWA of 0.1 mg/m³, with a skin notation. Pure diazinon is a colorless liquid, but the technical grade is pale yellow to dark brown in color and has a faint odor.

Gaines reports the acute oral LD_{50} for male and female rats to be 108 and 76 mg/kg, respectively (1960). Other reports set the acute oral LD_{50}'s in rats, guinea pigs, and rabbits at 76 to 150, 240 to 320, and 130 mg/kg, respectively (Pesticide Chemicals Official Compendium 1969). Hazleton Laboratories (1966) and Radeleff (1958) have shown much greater susceptibility to diazinon in birds and calves, with the oral LD_{50} being less than 10 mg/kg in some instances. However, susceptibility to repeated doses is relatively consistent among species, with dogs showing signs of poisoning at 9.3 mg/kg per day and rats showing complete inhibition of red blood cell cholinesterase and marked inhibition of brain cholinesterase at 50 mg/kg/day (Bruce, Howard, and Elsea 1955). Monkeys were poisoned at 5 mg/kg/day (Woodard and Cronin 1968). Chronic feeding studies in rats have shown no chronic toxicity at 10, 100, and 1000 ppm. For many mammals, diazinon is less toxic than parathion (ACGIH TLV–TWA of 0.1 mg/m³), although this is not true under some circumstances (ACGIH 1986, p. 172).

In humans, Hayes reports that two patients were poisoned by a dermal diazinon dosage of about 1.1 mg/kg (1963); however, Gassman (1957) reports no ill effects from an accidental ingestion of 30 mg/kg. One man received a dose of 250 mg/kg and recovered after treatment, which included gastric lavage (Bockel 1967). In tests, Geigy (1966) found that a series of doses of 0.05 mg/kg/day for 28 days produced plasma cholinesterase inhibition, and it has been suggested that the no-effect level for cholinesterase inhibition in humans is 0.02 mg/kg/day. Skin absorption of diazinon occurs readily, and overexposures are associated with weakness, headache, blurred vision, salivation, sweating, nausea, vomiting, diarrhea, abdominal cramps, slurred speech, and moist rales in the lungs (ACGIH 1986, p. 172).

The Agency is proposing an 8-hour TWA PEL of 0.1 mg/m³, with a skin notation, for diazinon. The Agency preliminarily concludes that these limits will protect exposed workers from the risk of cholinesterase inhibition, weakness, headache, nausea, vomiting, and the other symptoms and signs of diazinon poisoning resulting either from ingestion or dermal absorption at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for diazinon. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

1,1-DICHLORO-1-NITROETHANE
CAS: 594-72-9; Chemical Formula: $CH_3CCl_2NO_2$
H.S. No. 1121

OSHA currently has a ceiling limit of 10 ppm for 1,1-dichloro-1-nitroethane. The ACGIH recommends a TLV–TWA of 2 ppm for this colorless liquid.

Toxicity data on 1,1-dichloro-1-nitroethane are largely derived from the 1945 studies conducted by Machle and co-workers. These scientists reported that both rabbits and guinea pigs died from inhaling vapors at 100 ppm for 6 hours; at a concentration of 69 ppm, the animals survived a 2-hour exposure.

Four-hour inhalation exposures at 34 ppm and 6-hour daily exposures at 25 ppm for a total of 204 hours also did not kill rabbits or guinea pigs. Skin and mucous membrane irritation was not produced at the 25 ppm exposure level. At survival concentrations, the primary targets of toxicity were the lungs, which showed edema, congestion, hemorrhage, and acute bronchitis. At lethal exposures, these investigators observed acute myocardial degeneration with interstitial edema, cloudy swelling of the liver with cellular degeneration, and tubular degeneration and interstitial edema of the kidney, as well as edema of the tufts of the glomeruli and kidney necrosis. The compound was also found to be a severe skin irritant when two applications were applied on 2 successive days (Machle, Scott, Treon et al. 1945).

OSHA is proposing a PEL of 2 ppm TWA for 1,1-dichloro-1-nitroethane. The Agency preliminarily concludes that this limit will protect workers against the risk of irritation, lung injury, and liver and kidney damage that exists at the current permissible exposure limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 1,1-dichloro-1-nitroethane if the Agency determines that this limit will substantially reduce significant risk.

p-DICHLOROBENZENE
CAS: 106–46–7; Chemical Formula: $C_6H_4Cl_2$
H.S. No. 1125

OSHA currently has an 8-hour 75 ppm TWA limit for p-dichlorobenzene. The ACGIH recommends a limit of 75 ppm TWA and a STEL of 110 ppm for this white crystalline material, which has a camphor-like odor. The ACGIH's limit recognizes that the para isomer is somewhat less toxic than the ortho isomer, for which the ACGIH has established a ceiling limit of 50 ppm.

In animal studies, an injection of 0.005 gram in rats caused slight liver necrosis (Cameron and Thomas 1937). The intraperitoneal injection LD_{50} for rats has been reported as 2562 mg/kg (Zupko and Edwards 1949). The oral LD_{50} in mice is 2950 mg/kg (Domenjoz 1946); for rats, the oral LD_{50} is 2512 mg/kg (Varshavskaya 1970). Rabbits fed a daily dietary exposure of 5 grams developed opacity of the lens in 3 weeks (Berliner 1939); this finding was not confirmed, however, in repeated studies (Pike 1944).

Reports of a human inhalation exposure to unspecified levels of p-dichlorobenzene describe swelling of the feet, ankles, and hands after day-long use of a moth proofing agent consisting of this substance (Claytor 1935). Other reports describe cataracts caused by exposure to unspecified concentrations of the vapor of p-dichlorobenzene (Berliner 1939). Petit and Champaix (1948) report the case of a woman who experienced tingling of the hands, vertigo, and loss of weight from working for 18 months with a mixture of 90 parts p-dichlorobenzene and 10 parts hexachloroethane (airborne concentration not specified).

OSHA is proposing a PEL of 75 ppm TWA and a STEL of 110 ppm for p-dichlorobenzene. The Agency preliminarily concludes that both a TWA and a STEL are necessary to protect exposed workers from the risk of eye damage, vertigo, and neuropathic effects potentially associated with occupational exposure to p-dichlorobenzene. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for p-dichlorobenzene if the Agency determines that this limit will substantially reduce significant risk.

DICHLOROFLUOROMETHANE
CAS: 75–43–4; Chemical Formula: $CHCl_2F$
H.S. No. 1128

OSHA currently has a limit of 1000 ppm TWA for dichlorofluoromethane (FC–21). The ACGIH recommends a TLV–TWA of 10 ppm for this colorless gas. FC–21 is considered more toxic than the related difluorinated methanes. The major health hazards associated with exposure to this substance are liver damage, cardiac sensitization, and narcosis.

Freon-21 has a 4-hour LC_{50} of 49,900 ppm in rats (Tappan and Waritz 1964, as cited in ACGIH 1986, p. 187). Within an hour, exposure to 100,000 ppm killed rats and guinea pigs (Weigand 1971); other tests with guinea pigs and mice demonstrated that concentrations of 50,000 ppm and higher cause unconsciousness or death (Nuckolls 1935, as cited in ACGIH 1986, p. 187; Booth and Bixby 1932). The clinical signs of overexposure include loss of coordination, tremors, narcosis, and prostration, as well as possible lung and liver changes (Tappan and Waritz 1964).

Two-week exposures of rats to 10,000 ppm for 6 hours daily caused hepatic failure or marked liver damage (Trochimowicz, Moore, and Chiu 1977). A series of 90-day exposures of rats and dogs to concentrations of 1000 and 5000 ppm dichlorofluoromethane resulted in bilateral hair loss, cirrhosis, and excessive mortality in rats at both exposure levels; dogs exhibited weight loss at both levels, but mild liver changes were observed only at the 5000-ppm level (Trochimowicz, Lyon, Kelly, and Chiu 1977). Another uncompleted study reported liver pathology in rats repeatedly exposed for 90 days at 500 ppm, and probable liver pathology from similar exposures to 200 ppm; no hepatic effects were observed after exposure to 50 ppm (Allied Chemical Company 1978, as cited in ACGIH 1986, p. 187).

Two of 12 dogs exposed to 10,000 ppm FC–21 plus intravenous epinephrine developed serious arrhythmia (Mullin, as cited in ACGIH 1986, p. 187). Dogs and monkeys (anesthetized) demonstrated tachycardia and hypotension after exposure to FC–21 levels between 50,000 and 100,000 ppm; bronchoconstriction was observed at 25,000 ppm (Aviado and Smith 1975; Belej and Aviado 1975). Anesthetized mice exposed to a concentration of 100,000 ppm FC–21 showed arrhythmia and cardiac sensitization to epinephrine (Aviado and Belej 1974). Pre-implantation loss has been reported in pregnant rats exposed to FC–21 at 10,000 ppm on days 6 to 15 of gestation (Belej and Aviado 1975).

OSHA proposes a TWA limit of 10 ppm for dichlorofluoromethane. The Agency preliminarily concludes that this limit will protect workers against the risks of hepatotoxic effects, cardiac sensitization, and narcosis that have been shown to exist as a consequence of exposure to this substance at levels substantially below the current OSHA limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for dichlorofluoromethane if the Agency determines that this limit will substantially reduce significant risk.

DIETHYL KETONE
CAS: 96–22–0; Chemical Formula: $C_2H_5COC_2H_5$
H.S. No. 1135

OSHA currently has no limit for diethyl ketone. The ACGIH recommends a limit of 200 ppm TWA for this colorless liquid, which has an acetone-like odor.

The oral LD_{50} for diethyl ketone in rats is reported to be 2.14 g/kg. Four of six rats died when exposed to diethyl ketone for 4 hours at 8000 ppm (Smyth et al. 1954). In general, the toxicities of the methyl ketones increase with increasing molecular weight; diethyl ketone is somewhat less toxic than is methyl propyl ketone (NIOSH 1978). All of the ketones cause mucous membrane and eye and skin irritation.

OSHA is proposing an 8-hour TWA PEL of 200 ppm for diethyl ketone, the same limit being proposed for methyl

propyl ketone. The Agency preliminarily concludes that this limit will reduce the risk of eye and skin irritation associated with exposure to diethyl ketone in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for diethyl ketone. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIETHYLENE TRIAMINE
CAS: 111-40-0; Chemical Formula: $(NH_2CH_2CH_2)_2NH$
H.S. No. 1138

OSHA currently has no limit for diethylene triamine (DETA). The ACGIH recommends a TLV-TWA of 1 ppm, with a skin notation, for this strongly alkaline, hygroscopic, and somewhat viscous yellow liquid that smells like ammonia.

The acute intraperitoneal LD_{50} values for DETA are reported to be 71 and 74 mg/kg for the mouse and rat, respectively (Hine 1956). In the rat, the reported oral and percutaneous LD_{50} values are the same (1080 mg/kg); the dermal LD_{50} for the rabbit is 1090 mg/kg (Smyth et al. 1949). Exposure to 300 ppm of diethylene triamine vapor for 8 hours failed to kill any of a group of exposed rats (Savitt 1955).

Sutton (1983) has reported that DETA causes severe corneal injury; solutions of 15 to 100 percent caused lasting corneal damage. If improperly controlled, the vapor and liquid cause sensitization of the respiratory tract and skin (American Industrial Hygiene Association 1950). Dernehl demonstrated such sensitization in a study reported in 1951.

OSHA proposes an 8-hour TWA limit of 1 ppm, with a skin notation, for diethylene triamine. The Agency preliminarily concludes that these limits will protect workers against the risk of skin and respiratory tract irritation and sensitization potentially associated with exposure to diethylene triamine in the absence of any OSHA PEL. The skin notation is necessary to reduce the risk of skin sensitization resulting from contact with this substance. The health evidence forms a reasonable basis for proposing a new limit for diethylene triamine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIPROPYL KETONE
CAS: 123-19-3; Chemical Formula: $(CH_3CH_2CH_2)_2CO$
H.S. No. 1145

OSHA currently has no limit for dipropyl ketone. The ACGIH recommends a TLV of 50 ppm TWA for this colorless liquid with a penetrating odor.

Dipropyl ketone has a moderate oral and inhalation toxicity (Sax 1984). In rats, the oral LD_{50} is 3.73 g/kg. Tests have indicated that rats inhaling 2000 ppm for 4 hours survived, but at 4000 ppm all animals died (Carpenter, Weil, and Smyth 1974). Methyl isobutyl ketone (MIBK) has a similar acute toxicity (OSHA is proposing a 50-ppm 8-hour TWA and a 75-ppm STEL for MIBK) (ACGIH 1986, p. 221).

OSHA is proposing a PEL of 50 ppm TWA for dipropyl ketone. The Agency preliminarily concludes that this limit is necessary to protect workers from the adverse health effects that could occur from the uncontrolled exposures permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for dipropyl ketone. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIQUAT
CAS: 85-00-7; Chemical Formula: $C_{12}H_{12}Br_2N_2$
H.S. 1150

OSHA currently has no limit for diquat. The ACGIH recommends a limit of 0.5 mg/m³ TWA for these yellow crystals.

In most species, the acute oral toxicity of diquat is similar to that of paraquat and ranges from 100 to 400 mg/kg in rats, mice, rabbits, and dogs. Cows experience more severe toxic effects, with an acute oral LD_{50} of 30 mg/kg. The 24-hour percutaneous LD_{50} in rabbits is greater than 400 mg cation/kg; no skin irritation or other ill effects were demonstrated at this level (Clark and Hurst 1978; Rowe and Wright 1985). Rats fed 1000 ppm daily (about 50 mg/kg/day) for 2 years survived; reduced food intake and growth were the only consequences observed. At 500 ppm (about 25 mg/kg/day), the only ill effect observed was a pathologic change in the eye. A dietary level of 10 ppm (about 0.5 mg/kg/day) for 2 years did not induce cataract formation, but cataracts do occur at higher levels, with pathology observed at the 300-ppm level; one in four animals demonstrated complete corneal opacity in one or both lenses after 6 months at the 1000-ppm level. Cataract formation requires prolonged exposure and is not induced by single high-level exposures (ACGIH 1986, p. 222).

Unlike paraquat, diquat does not produce lung damage in human or animal exposures. Acute poisoning may produce nonspecific respiratory distress as well as other nonspecific signs of poisoning. In humans, accidental ingestion has shown less toxic reactions than those associated with paraquat (Oropeuou and McEvoy 1980).

OSHA is proposing a PEL of 0.5 mg/m³ TWA for diquat. The Agency preliminarily concludes that this limit will protect against the risk of ocular problems associated with chronic exposure at the exposure levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for diquat. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DISULFOTON
CAS: 298-04-4; Chemical Formula: $C_8H_{19}O_2PS_3$
H.S. No. 1152

OSHA currently has no exposure limit for disulfoton. The ACGIH recommends a limit of 0.1 mg/m³ TWA for this substance. Pure disulfoton is an oily, colorless liquid; the technical grade is a brown liquid.

The acute toxicity of disulfoton is very high by all laboratory-tested routes of administration. For weanling rats, the intraperitoneal LD_{50} is reported to be 5.4 mg/kg; for adult rats, it is 9.4 mg/kg (Brodeur and Dubois 1983). The acute dermal LD_{50} is 6 mg/kg for adult female rats and 25 mg/kg for adult male rats (Gaines 1969). The acute oral LD_{50}s for male and female rats are reported as 6.8 mg/kg and 2.3 mg/kg, respectively (Brodeur and Dubois 1984). Rats have demonstrated an acquired tolerance for disulfoton (Brodeur and Dubois 1984).

Metabolically, disulfoton is highly fat-soluble, and the compound apparently interferes with mixed-function oxidase activity in the same manner shown to be the case for parathion; with respect to median lethal doses, parathion and disulfoton are similar (Stevens et al. 1973).

OSHA proposes an 8-hour TWA PEL for disulfoton of 0.1 mg/m³. The Agency preliminarily concludes that this limit will prevent the risk of acute toxicity and metabolic injury possible in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for disulfoton. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIVINYL BENZENE
CAS: 108-57-6; Chemical Formula: $C_6H_4(CHCH_2)_2$
H.S. No. 1154

OSHA currently has no limit for divinyl benzene. The ACGIH recommends a TLV-TWA of 10 ppm. The commercial grade of divinyl benzene is a straw-colored liquid; it contains all three isomers, but the meta isomer predominates.

Divinyl benzene has low acute toxicity. The oral LD_{50} for rats is reported to be 4.1 g/kg, and an acute inhalation study showed no ill effects from a single 7-hour exposure at 351 ppm. However, repeated or prolonged contact with the liquid may cause skin burns (Dow Chemical Company, as cited in ACGIH 1986, p. 228).

Industrial experience indicates that mild irritation of the respiratory system, skin, and eyes can result from inhalation exposures, but there are no data concerning chronic exposures in humans.

OSHA is proposing a PEL of 10 ppm TWA for divinyl benzene. The Agency preliminarily concludes that this limit will prevent the risk of irritation to the respiratory tract, eyes, and skin potentially associated with exposure to divinyl benzene in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for divinyl benzene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ENDOSULFAN
CAS: 115-29-7; Chemical Formula: $C_9H_6Cl_6O_3S$
H.S. No. 1156

OSHA currently has no permissible exposure limit for endosulfan. The ACGIH recommends a TLV-TWA of 0.1 mg/m³, with a skin notation. Technical endosulfan is a tan, semi-waxy solid mixture; it may have a slight odor similar to that of sulfur dioxide.

The insecticide, endosulfan, is similar in its acute oral toxicity to the related insecticides aldrin and dieldrin, with the exception that it is slightly more toxic than these substances in female laboratory animals. In rats, the oral LD_{50} of endosulfan is 43 mg/kg for males and 18 mg/kg for females (Farm Chemicals Handbook 1974). The dermal LD_{50}s in male and female rats are 130 mg/kg and 74 mg/kg, respectively (Farm Chemicals Handbook 1974). The respiratory LC_{50} for male rats is 50 mg/kg for 4 hours of exposure (Pesticide Chemicals Official Copendium, as cited in ACGIH 1986, p. 230).

In laboratory tests of chronic exposure, rats tolerated oral doses of up to 3.2 mg/kg/day for 3 months without injury (Gaines, as cited in ACGIH 1986, p. 230), and dogs tolerated doses up to 0.75 mg/kg for 1 year (Ely, MacFarlane, Galen, and Hines 1967). A 2-year dietary level of 10 ppm (approximately 0.5 mg/kg/day) in rats was associated with a statistically insignificant decline in female survival rates and caused a reduction in testis weights in males. At 5.0 mg/kg/day, histopathologic findings showed renal tubular damage and some hydropic changes in rat livers (Czech 1958).

Inhalation of endosulfan dust has been associated with slight nausea, confusion, excitement, flushing, and dry mouth (State of California: Department of Industrial Relations, as cited in ACGIH 1986, p. 230). Nine employees who had been working with 50-percent water-wettable endosulfan powder for only a few days had convulsions (Pesticide Chemicals Official Compendium, as cited in ACGIH 1986, p. 230).

OSHA preliminarily concludes that exposure to endosulfan poses a risk of systemic poisoning and renal and testicular damage, and the Agency therefore proposes a PEL of 0.1 mg/m³ TWA for endosulfan. OSHA believes that this limit will substantially reduce the risk currently associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for endosulfan. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FONOFOS
CAS: 944-22-9; Chemical Formula: $C_{10}H_{15}OPS_2$
H.S. No. 1161

OSHA currently has no limit for fonofos. The ACGIH recommends a limit of 0.1 mg/m³ TWA, with a skin notation, for this light-yellow liquid.

In male rats, the average acute oral LD_{50} of technical fonofos has been reported to be 13.2 mg/kg (Stauffer Chemical Co., as cited in ACGIH 1986, p. 275). For female rats, an average oral LD_{50} of 3 mg/kg has been reported (NIOSH 1974). The acute dermal LD_{50}s reported for rats and guinea pigs are 147 and 276 mg/kg, respectively (Weir and Hazleton 1981). Weir and Hazleton reported that no localized eye irritation occurred when 0.1 ml of technical fonofos was instilled into rabbit eyes; however, death resulted in these animals within 24 hours after the instillation (1981). Dietary studies of rats lasting 105 weeks have shown 10 ppm (about 0.2 mg/kg) to be a no-effect level. Dogs fed fonofos for 14 weeks showed no-effect dietary levels of 8 ppm; no carcinogenic effects were observed. Rats showed reproductive effects at dietary levels of 10 ppm and 31.6 ppm (about 0.7 mg/kg) (Stauffer Chemical Co., as cited in ACGIH 1986, p. 275).

There are no reports of human poisonings caused by fonofos, although it is known to be a cholinesterase inhibitor (ACGIH 1986, p. 275).

OSHA is proposing a PEL of 0.1 mg/m³ TWA for fonofos to protect exposed workers from the risk of cholinesterase inhibition that is characteristic of this substance and of other organic phosphate pesticides. A skin notation is also proposed, based on evidence in animals that fonofos can penetrate the skin and cause death. The Agency preliminarily concludes that these limits will reduce the risk to which workers could be exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for fonofos. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FORMAMIDE
CAS: 75-12-7; Chemical Formula: CH_3NO
H.S. No. 1162

OSHA currently has no limit for formamide. The ACGIH recommends a TLV-TWA of 20 ppm and a TLV-STEL of 30 ppm for this clear, viscous, odorless liquid.

Formamide has a low oral toxicity, with an LD_{50} of approximately 6 g/kg for rats (Thierah 1962; Zaeva et al. 1969). Dietary administration at 1.5 g/kg for 2 weeks resulted in fatalities in rats; pathologic examination revealed cumulative changes characteristic of gastritis and malnutrition (E.I. du Pont de Nemours and Company, as cited in ACGIH 1986, p. 278). Czajkowska (1981) reports the dermal LD_{50} for skin absorption in rabbits as 6 g/kg; Sturla and Krauss (1977) report the approximate lethal dose in rabbits to be greater than 17 g/kg. Mild and transient irritation, but no allergic skin sensitization, occurred when formamide was applied to the skin of guinea pigs (Sax 1984; E.I. du Pont de Nemours and Company, as cited in ACGIH 1986, p. 278). However, the potential for systemic toxicity through skin absorption has been demonstrated in tests with rats, although effective doses were relatively high (BASF Corporation 1985, as cited in ACGIH 1986, p. 278). Eye irritation tests in rabbits showed only slight, temporary irritation (Carpenter and Smyth 1956). No signs of toxicity in rats were detected in single 6-hour exposures at 3900 ppm formamide dispensed as a mist, or in 6-hour daily exposures for 10 days at approximately 1500 ppm formamide vapor (equivalent

to air saturated with formamide at room temperature; no indications of organ damage were seen in these animals on pathologic examination (E.I. du Pont de Nemours and Company, as cited in ACGIH 1986, p. 278).

Gross fetal malformations were not noted following dermal applications of formamide to skin of pregnant rats; the effects that were observed were weak and were produced at overwhelming concentrations (Stula and Krauss 1977). The no-observed-effect level in a rabbit developmental toxicity study was 22 mg/kg orally (Merkle and Zeller 1980).

There are no reports of industrial poisoning by formamide (E.I. du Pont de Nemours and Company, as cited in ACGIH 1986, p. 278).

OSHA is proposing a PEL of 20 ppm TWA and a 15-minute STEL of 30 ppm for formamide. The Agency preliminarily concludes that this combined limit will protect workers against the risk of eye and skin irritation that exists potentially from workplace exposure at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for formamide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

GERMANIUM TETRAHYDRIDE
CAS: 7782-65-3; Chemical Formula: GeH_4
H.S. No. 1185

OSHA currently has no limit for germanium tetrahydride. The ACGIH recommends a TLV of 0.2 ppm TWA for this colorless gas.

An early study indicated that germanium tetrahydride has a toxicity between that of tin hydride and arsine (Flury and Zernik 1931). In this study, a rabbit survived exposure to 100 ppm for 1 hour. One-hour exposures at 150 and 185 ppm caused fatalities in mice, and a similar exposure involving guinea pigs resulted in sickness at the 150 ppm level and death at 185 ppm (Flury and Zernik 1931). On the other hand, Webster (1956) reported that germanium tetrahydride is less toxic than both tin hydride and arsine. The effect of exposure to germanium tetrahydride is hemolysis. Data concerning chronic or sub-acute toxicities are not available. Based on germanium's acute toxicity, which is approximately half that of arsine, the ACGIH recommends an 8-hour TLV of 0.2 ppm TWA.

OSHA proposes a PEL of 0.2 ppm as an 8-hour TWA for germanium tetrahydride to reduce the risk of hemolytic effects associated with exposure to this substance at the previous uncontrolled level. The Agency preliminarily concludes that implementation of this limit will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for germanium tetrahydride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

INDENE
CAS: 95-13-6; Chemical Formula: C_9H_8
H.S. No. 1212

OSHA has no current limit for indene. The ACGIH recommends a TLV–TWA of 10 ppm for this colorless liquid. This limit is recommended by analogy to naphthalene, for which a TLV–TWA of 10 ppm is recommended.

Early inhalation studies of indene reported injury to the spleen, liver, and kidneys of rats exposed to indene vapor concentrations of 800 to 900 ppm for six 7-hour periods (Cameron and Doniger 1939). Some animals were found at necropsy to have severe necrosis of the liver with hemorrhage; kidney necrosis was also observed. No other organ damage was found and no deaths occurred as a result of these exposures (Cameron and Doniger 1939). By analogy with the effects of exposure to other monoaromatic hydrocarbons, exposure to indene is likely to irritate the mucous membranes. In laboratory animals, chemical pneumonitis, pulmonary edema, and hemorrhage have resulted from the aspiration of indene liquid into the lung, and repeated skin contact has caused dermatitis as a result of the defatting properties of indene (Gerarde 1960). In dermal studies of rats, one to eight applications of 0.1 ml to the shaved skin were reported to have no effect; three applications of 0.5 ml to guinea pig skin also produced no effect (Cameron and Doniger 1939). The oral toxicity of indene appears to be moderate, with adult rabbits tolerating a single dose of 1 gram without signs of systemic toxicity (Gerarde 1960). Subcutaneous injection of 1 gram, however, caused liver pathology and fatalities; high oral doses (2.5 ml of a 1:1 v/v mixture in olive oil) were uniformly fatal, with characteristic liver, lung, and gastrointestinal changes. Chronic administration of 3 mg/m^3 indene for 105 days caused catalase inhibition and stimulation of blood cholinesterase in rats, but no effects were observed in rats exposed at 0.6 mg/m^3 (Dyshinevich, as cited in ACGIH 1986, p. 321).

OSHA is proposing a PEL of 10 ppm TWA for indene. The Agency preliminarily concludes that this level will reduce the risk of irritation, pulmonary effects, and systemic toxicity that may occur when workers are exposed to indene at the levels permitted by the absence of any OSHA permissible exposure limit. The health evidence forms a reasonable basis for proposing a new limit for indene. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

IODOFORM
CAS: 75-47-8; Chemical Formula: CHI_3
H.S. No. 1214

OSHA has no current limit for iodoform. The ACGIH has established an 8-hour TWA limit of 0.6 ppm for this yellow-green powder or crystalline solid with a pungent odor.

The subcutaneous LD_{50} for rabbits is 50 mg/kg, and the oral LD_{10} for iodoform in dogs is 1000 mg/kg (Kutob and Plaa 1962). These authors also report that, on a molar basis, iodoform has an acute toxicity in mice similar to that of methyl iodide; this conclusion is based on parameters of lethality, barbiturate sleeping time, and bromsulphalein (BSP) retention time. An NCI bioassay (1978a) of iodoform indicates that the substance is not carcinogenic nor of high systemic toxicity, although histopathological examination of laboratory animals was inadequate.

No human data are available for this compound.

OSHA is proposing an 8-hour TWA limit of 0.6 ppm for iodoform, based on the proposed limit for methyl iodide (2 ppm TWA); these limits are comparable on a molar iodine basis. The health evidence forms a reasonable basis for proposing a new limit for iodoform. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ISOBUTYL ALCOHOL
CAS: 78-83-1; Chemical Formula: $(CH_3)_2CHCH_2OH$
H.S. No. 1219

OSHA currently has a limit of 100 ppm as an 8-hour TWA for isobutyl alcohol. The ACGIH recommends a limit of 50 ppm TWA for this flammable, refractive, colorless liquid.

Limited inhalation studies have reported a somewhat higher acute toxicity for isobutyl alcohol than for n-butyl alcohol (which has an ACGIH ceiling of 50 ppm) (Smyth, Carpenter, and Weil 1951; Smyth, Carpenter, Weil, and Pozzani 1954). A 4-hour LC_{50} of 8000 ppm has been reported in rats for isobutyl alcohol. Ingestion studies in rabbits have reported an acute oral toxicity of 3.75 g/kg for isobutyl alcohol (Smyth, Carpenter, and Weil 1951; Smyth, Carpenter, Weil, and Pozzani 1954). The dermal LC_{50} is 4.2 g/kg (Stokinger 1976). Weese (1928) reported that the narcotic inhalation dose over a total of 136 hours is 6400 ppm in mice. Slight changes in the liver and kidneys were reported, but no fatalities occurred after repeated narcotizing doses (Weese 1928).

The effects of liquid isobutyl alcohol on the human eye appear to be comparable to those of n-butanol; no data are available on ocular exposure to the isobutyl alcohol vapor. Dermal application of isobutyl alcohol has caused slight erythema and hyperemia in humans (Schwartz and Tulipan 1939; Oettel 1936).

OSHA is proposing to reduce the current 8-hour TWA PEL of 100 ppm to 50 ppm for isobutyl alcohol. The Agency preliminarily concludes that a 50-ppm limit will reduce the risk of skin irritation associated with exposures to concentrations below those permitted by the current OSHA PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for isobutyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

ISOOCTYL ALCOHOL
CAS: 26952-21-6; Chemical Formula: $CH_3(CH_2)_3CH(C_2H_5)CH_2OH$
H.S. No. 1220

OSHA currently has no limit for isooctyl alcohol. The ACGIH recommends a TLV–TWA of 50 ppm, with a skin notation, for this colorless liquid mixture.

The single-dose oral LD_{50}s reported for rats and mice are between 3.2 and 6.4 g/kg; intraperitoneal injection LD_{50}s for these species range from less than 0.4 g/kg to 1.6 g/kg (Hodge 1943; Fassett, as cited in ACGIH 1986, p. 332). The dermal LD_{50} for the guinea pig is greater than 10 ml/kg (Fassett, as cited in ACGIH 1986, p. 332). Moderate skin irritation from exposure to isooctyl alcohol has also been reported. Rats and rabbits have shown skin irritation at exposure levels ranging from 1.7 to 3.34 ml/kg (Smyth et al. 1969). Fassett (as cited in ACGIH 1986, p. 332) also reported no fatalities in rats after an 8-hour inhalation test at 235 ppm.

OSHA is proposing an 8-hour TWA PEL of 50 ppm, with a skin notation, for isooctyl alcohol. The Agency preliminarily concludes that these limits will reduce the risk of skin irritation and dermal absorption potentially associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence, forms a reasonable basis for proposing a new limit for isooctyl alcohol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

n-ISOPROPYLANILINE
CAS: 643-28-7; Chemical Formula: $C_6H_5NHCH(CH_3)_2$
H.S. No. 1229

OSHA currently has no limit for n-isopropylaniline. The ACGIH recommends a TLV–TWA of 2 ppm, with a skin notation, for this liquid.

The oral LD_{50} for rats exposed to n-isopropylaniline is between 0.25 and 0.5 g/kg. Slight irritation of the skin and eyes has been reported in animals as a result of direct contact with this chemical (Dow Chemical Company, as cited in ACGIH 1986, p. 338). No other data concerning chronic toxicity or human exposure are available (ACGIH 1986, p. 338).

Chemical analysis shows n-isopropylaniline to have toxicologic properties similar to those of its parent compound, aniline. The oral LD_{50}s for the two chemicals are approximately equal. The ACGIH has established the 2-ppm TLV–TWA for n-isopropylaniline on the basis of structural analogy with aniline (which has a 2-ppm TLV–TWA) and n,n-dimethylaniline (which has a 5-ppm TLV–TWA and a 10-ppm STEL); exposure to these substances has been shown to cause hemolytic and central nervous system effects in animals and humans. These substances are also toxic when absorbed through the skin.

OSHA is proposing an 8-hour PEL of 2 ppm for n-isopropylaniline, with a skin notation. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of irritation and, by analogy with aniline, of systemic and hemolytic effects caused by inhalation, ingestion, or dermal absorption. The health evidence forms a reasonable basis for proposing a new limit for n-isopropylaniline. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

KETENE
CAS: 463-51-4; Chemical Formula: $CH_2=C=O$
H.S. No. 1231

OSHA has a current 8-hour TWA limit of 0.5 ppm for ketene. The ACGIH recommends a TLV–TWA of 0.5 ppm and a TLV–STEL of 1.5 ppm for this colorless gas with a sharp, penetrating odor.

Ketene is highly irritating to the respiratory tract (Mendenhall and Stokinger 1959), and the effects of its action are delayed (Treon, Sigmon, Kitzmiller et al. 1949). Mendenhall and Stokinger (1959) have reported a 10-minute LC_{50} for mice of 17 ppm. Chronic exposure at 1 ppm for 6 months on a schedule of 6 hours daily, 5 days per week, was tolerated by animals of several species (Mendenhall and Stokinger 1960, as cited in ACGIH 1986, p. 341). Similar results have been reported in monkeys exposed repeatedly (55 exposures) for 7 hours (Treon, Sigmon, Kitzmiller et al. 1949). Evidence strongly suggests that the development of emphysema and fibrosis may occur in individuals who have developed a tolerance to the acute effects of ketene exposure (Stokinger, Wagner, and Dobrogarski 1957).

OSHA proposes an 8-hour TWA PEL of 0.5 ppm and a 15-minute STEL of 1.5 ppm for ketene. The Agency preliminarily concludes that workers exposed to this highly irritating and toxic gas are at risk of developing respiratory irritation, pulmonary edema, and other severe pulmonary effects. OSHA believes that these limits will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ketene if the Agency determines that this limit will substantially reduce significant risk.

METHACRYLIC ACID
CAS: 79-41-4; Chemical Formula: $CH_2=C(CH_3)COOH$
H.S. No. 1244

OSHA currently has no limit for methacrylic acid. The ACGIH recommends a TLV–TWA of 20 ppm for this substance. Methacrylic acid is a liquid with an acrid, disagreeable odor.

The primary toxic hazard associated with exposure to methacrylic acid is irritation, although the degree of irritation from exposure to this substance is significantly less than that from acrylic acid (ACGIH 1986, p. 362).

Direct contact of methacrylic acid with the skin or eye can cause corrosion of the skin or blindness. In rabbits, the skin absorption LD_{50} for methacrylic acid is 0.5 to 1 g/kg (Dow Chemical Company, as cited in ACGIH 1986, p. 362). Rats exposed by inhalation to approximately 1000 ppm methacrylic acid exhibited eye irritation (Dow Chemical Company, as cited in ACGIH 1986, p. 362). Rats exposed to 300 ppm for 6 hours daily for 20 days showed slight congestion of the kidneys (Gage 1970).

Medical reports of acute exposures (at concentrations of up to 113 ppm) in an industrial setting revealed no respiratory symptoms; however, skin responses and a severe corneal burn

were reported (Dow Chemical Company, as cited in ACGIH 1986, p. 362).

OSHA is proposing a PEL of 20 ppm as an 8-hour TWA for this substance. The Agency preliminarily concludes that this limit will protect workers from the risk of severe eye and skin irritation potentially associated with exposure to methacrylic acid at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methacrylic acid. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

4-METHOXYPHENOL
CAS: 150-76-5; Chemical Formula: $CH_3OC_6H_4OH$
H.S. No. 1247

OSHA currently has no limit for 4-methoxyphenol. The ACGIH recommends a TLV-TWA of 5 mg/m³ for this solid substance.

In rats, the oral LD_{50} for 4-methoxyphenol is between 1 and 2 g/kg; the skin absorption LD_{50} is reported as greater than 1 g/kg in rabbits. Results of a 2-month dietary study demonstrated no ill effects at 0.1 ppm (approximately 50 mg/kg/day). Direct contact of 4 methoxyphenol with the skin or eyes causes burns or moderate corneal damage (Hodge et al. 1948; Dow Chemical Co., as cited in ACGIH 1986, p. 367).

To reduce the risk of dermal and ocular effects resulting from exposure to 4-methoxyphenol, a compound similar in chemical structure and toxicity to hydroquinone, OSHA is proposing a permissible exposure limit of 5 mg/m³ TWA. The Agency preliminarily concludes that this limit will protect workers against the risk of dermal and skin effects potentially associated with exposures to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for 4-methoxyphenol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYL ACETYLENE-PROPADIENE MIXTURE (MAPP)
CAS: 74-99-7; 463-49-0; Chemical Formula: C_3H_4 isomers
H.S. No. 1250

OSHA currently has a standard of 1000 ppm TWA for MAPP. The ACGIH also recommends an 8-hour TWA limit of 1000 ppm, with a TLV-STEL of 1250 ppm. MAPP contains 58 percent of a mixture of propadiene (a colorless, unstable gas with a strong, unpleasant odor) and methyl acetylene (a colorless gas with a sweet odor); the balance of the mixture consists of paraffinic and olefinic C_3 and C_4 hydrocarbons.

Tests of rabbits, dogs, and guinea pigs exposed to an average concentration of 5000 ppm for 7 hours/day, 5 days/week for 4 months resulted in no adverse health effects except decreased lung weights. No changes at all were observed in animals exposed to 1000 ppm for 4 months (Dow Chemical Co., as cited in ACGIH 1986, p. 368).

On the basis of these data, which show MAPP to be a chemical mixture of low toxicity in experimental animals, the Agency proposes a PEL of 1000 ppm and a STEL of 2250 ppm. The Agency preliminarily concludes that both of these limits are necessary to ensure that workers are protected and that good industrial hygiene practice is maintained. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for MAPP if the Agency determines that this limit will substantially reduce significant risk.

METHYL DEMETON
CAS: 8022-00-2; Chemical Formula: $(CH_3O)_2PSO(CH_2)_2SC_2H_5$
H.S. No. 1256

OSHA currently has no limit for methyl demeton. The ACGIH recommends a TLV-TWA limit of 0.5 mg/m³, with a skin notation. Methyl demeton is an oily, colorless to pale-yellow liquid with an unpleasant odor.

Methyl demeton is reported to have an oral LD_{50} value of 40 to 65 mg/kg for the thiolo isomer and 150 to 250 mg/kg for the thiono isomer. Both isomers form sulfoxide or sulfone, with an oral LD_{50} similar to that of the parent compounds (Dubois and Plazak 1962; Heath and Vandekar 1965; Klimmer and Pfaff 1955). In solution or storage, methyl demeton may form alkyl sulfonium compounds of very high intravenous toxicity and an oral LD_{50} of 10 to 20 mg/kg. Dermal toxicity is reported to be moderate, with an LD_{50} of approximately 400 mg/kg (Heath and Vandekar 1965).

In humans, methyl demeton causes changes in intraocular pressure, and acute poisonings produce nausea, headache, dizziness, vomiting, and hyperemia of the nasal mucosa. Chronic exposure causes hyperemia of the respiratory organs and inner ear irritation (Dugel'nyy 1971; Rasuleva 1970).

OSHA is proposing an 8-hour TWA for methyl demeton of 0.5 mg/m³, with a skin notation. The Agency preliminarily concludes that this limit will protect workers from the risk of ocular and nasal irritation and pulmonary effects potentially associated with exposure to this substance at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methyl demeton. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYL ETHYL KETONE PEROXIDE
CAS: 1338-23-4; Chemical Formula: $C_8H_{18}O_4$ or $C_4H_{10}O_4$
H.S. No. 1257

OSHA currently has no limit for methyl ethyl ketone peroxide (MEKP). The ACGIH recommends a ceiling limit of 0.2 ppm. MEKP is sold commercially as a colorless liquid mixture of approximately 60 percent MEKP and 40 percent diluent to reduce MEKP's sensitivity to shock.

In mice and rats, the 4-hour LC_{50}s for MEKP have been reported to be 170 ppm and 200 ppm, respectively; by intraperitoneal injection, the LD_{50} in rats is 65 mg/kg, and the oral LD_{50} in this species is 484 mg/kg (Floyd and Stokinger 1958). The same authors report that MEKP is irritating to the eyes and skin. In addition, the effects of MEKP exposure are cumulative; rats died or showed marked evidence of cumulative effects both orally and intraperitoneally after 7 weeks of 3-day/week doses of MEKP that were 20 percent of the LD_{50} level (Floyd and Stokinger 1958). Inhalation of vapors produced petechial and gross hemorrhages of the lungs in rats after 4-hour exposures; liver and kidney damage was also observed by these authors. Acute high-level exposures have caused nasal porphyrin exudate in rats. Although MEKP caused methemoglobin formation in rats, low-level chronic exposures did not cause this effect (Floyd and Stokinger 1958).

OSHA is proposing a ceiling limit of 0.2 ppm for methyl ethyl ketone peroxide. The Agency preliminarily concludes that this limit will protect workers against the risk of eye and skin irritation, kidney and liver damage, and the cumulative effects potentially associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methyl ethyl ketone peroxide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYL FORMATE
CAS: 107-31-3; Chemical Formula: $HCOOCH_3$
H.S. No. 1258

OSHA has a current limit of 100 ppm TWA for methyl formate. The ACGIH also recommends an 8-hour time-weighted average of 100 ppm, with a TLV-STEL of 150 ppm. Methyl formate is a flammable, colorless liquid with an agreeable odor.

Methyl formate causes nose and eye irritation, vomiting, incoordination, narcosis, and death in guinea pigs exposed at high concentrations (Schrenk, Yant, Chornyak, and Patty 1936). A 5-percent concentration was fatal in 20 to 30 minutes, a 1.5- to 2.5-percent concentration was dangerous in 30 to 60 minutes, and a 0.5-percent concentration (5000 ppm) was considered the maximum concentration tolerable for a 60-minute period without serious consequences. Lehmann and Flury (1943) observed that inhalation of 1.02 percent methyl formate for 2 to 3 hours caused pulmonary edema and death in cats; a concentration of 1000 ppm resulted in lung inflammation after 1 hour (1943). Guinea pigs died when exposed by inhalation to 2.5 percent methyl formate (Lehmann and Flury 1943).

In studies of methyl formate exposure in humans, von Oettingen reported that exposed workers showed temporary blindness, narcosis, mucous membrane irritation, and dyspnea (1950). Fairhall (1957) has reported that methyl formate was more irritating than either methyl or ethyl acetate (1957).

OSHA is proposing both a 15-minute STEL of 150 ppm and an 8-hour PEL of 100 ppm TWA to prevent the risks of irritation, narcotic effects, and pulmonary damage potentially associated with exposure to concentrations of methyl formate even for short periods (one hour or more). The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl formate if the Agency determines that this limit will substantially reduce significant risk.

METHYL IODIDE
CAS: 74-88-4; Chemical Formula: CH_3I
H.S. No. 1259

OSHA currently has a limit of 5 ppm TWA, with a skin notation, for methyl iodide. The ACGIH recommends a TLV-TWA limit of 2 ppm, with a skin notation, for methyl iodide, and classifies it as a suspected human carcinogen (A2). NIOSH recommends reducing exposure to the lowest feasible limit, and also considers this chemical a carcinogen. Methyl iodide is a colorless, sweet-smelling liquid that turns yellow, red, or brown when exposed to light and moisture.

Methyl iodide has been reported to have an LD_{50} in rats of 150 to 200 mg/kg; liver damage was evident after these lethal exposures (Kutob and Plan 1960). Fifteen-minute exposures to 3800 ppm were fatal in rats (Chambers et al. 1950, as cited in ACGIH 1986, p. 399), and Bachem (1927, as cited in ACGIH 1986, p. 399) has reported that methyl iodide is 6 times as toxic in mice as methyl bromide. Inhalation studies have shown eye irritation and depressed body weight in rats as a result of 14-week exposures to 30 and 60 ppm (Black et al. 1984). The same authors observed fatalities in rats within 4 weeks of exposure to 143 ppm; 10 ppm was reported to be a no-effect level.

In industry, fatalities have occurred from methyl iodide poisoning in chemical workers (Garland and Camps 1945; Appel, Galen, O'Brien, and Schoenfeldt 1975). The exposure levels associated with these fatal overexposures are not known, however (ACGIH 1986, p. 399).

In tests of carcinogenicity, methyl iodide produced local sarcomas in rats injected subcutaneously and lung tumors in mice given intraperitoneal injections (Druckrey, Kruse, Preussman et al. 1970; Poirer, Stoner, and Shimkin 1975). These carcinogenic effects occurred at a dosage approximately equivalent to a daily 8-hour exposure to 20 or 25 ppm for an adult human (ACGIH 1986, p. 399).

OSHA proposes an 8-hour TWA limit of 2 ppm, with a skin notation, for methyl iodide. The Agency preliminarily concludes that these limits will protect workers from the risk of irritation, liver and kidney damage, and potential carcinogenicity associated with exposure to methyl iodide in the workplace. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methyl iodide if the Agency determines that this limit will substantially reduce significant risk.

METHYL ISOAMYL KETONE
CAS: 110-12-3; Chemical Formula: $CH_3COCH(C_2H_5)_2$
H.S. No. 1260

OSHA currently has no limit for methyl isoamyl ketone (MIAK). The ACGIH has established an 8-hour TLV-TWA of 50 ppm. NIOSH recommends a 50-ppm TWA limit for MIAK. Methyl isoamyl ketone is a colorless, clear liquid with a pleasant odor.

The oral LD_{50} value of methyl isoamyl ketone in rats is 1.67 g/kg (Smyth et al. 1962). No data relating exposure levels to specific effects in humans have been reported. However, the ACGIH (1986, p. 400) believes that MIAK is likely to be more irritating and a more potent narcotic than is the case for methyl isobutyl ketone.

The NIOSH criteria document on the ketones states that "because methyl isoamyl ketone contains one more carbon atom than does methyl isobutyl ketone, methyl (isoamyl) ketone might produce irritation and narcosis at concentrations at least as low as those at which methyl isobutyl ketone produces these effects," and NIOSH thus recommends a 50-ppm TWA for MIAK, corresponding to NIOSH's recommendation for methyl isobutyl ketone (NIOSH 1978).

OSHA is proposing an 8-hour TWA limit of 50 ppm for methyl isoamyl ketone. The Agency preliminarily concludes that this limit will protect workers against the risk of narcotic and irritant effects potentially associated with exposure to MIAK at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methyl isoamyl ketone. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYL ISOPROPYL KETONE
CAS: 563-80-4; Chemical Formula: $(CH_3)_2CHCOCH_3$
H.S. No. 1282

OSHA currently has no limit for methyl isopropyl ketone (MIPK). The ACGIH recommends a TLV-TWA of 200 ppm. Methyl isopropyl ketone is a colorless, flammable liquid.

Animal studies have shown MIPK to have an acute toxicity somewhat greater than that of diethyl ketone and somewhat lesser than that of di-n-propyl ketone or methyl-n-propyl ketone (ACGIH 1986, p. 405). Rats exposed for 4 hours at a concentration of 5700 ppm died (NIOSH 1977). Other data concerning the inhalation toxicity of MIPK are lacking.

OSHA proposes a limit of 200 ppm TWA for methyl isopropyl ketone. The Agency preliminarily concludes that this limit will protect workers against the risk of irritation associated with exposure to this (and other) ketone(s) in the workplace at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methyl isopropyl ketone. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYL PARATHION
CAS: 298-00-0; Chemical Formula: $C_8H_{10}NO_5PS$
H.S. No. 1265

OSHA currently has no limit for methyl parathion. The ACGIH recommends a TLV–TWA of 0.2 mg/m³, with a skin notation. NIOSH recommends a TWA of 0.2 mg/m³ and a skin notation for methyl parathion. Methyl parathion is a tan to brown liquid with a pungent odor like that of garlic.

Methyl parathion is an acetylcholinesterase inhibitor, and excessive exposure can cause sweating, salivation, diarrhea, bradycardia, bronchoconstriction, muscle fasciculations, and coma. Methyl parathion's acute oral LD_{50} for male rats is almost identical to that of parathion, i.e., 10 to 25 mg/kg; for female rats, the LD_{50} is 24 mg/kg, or approximately one-sixth that of parathion. By the dermal route, methyl parathion is much less toxic than parathion, with an LD_{50} of 67 mg/kg in rats of both sexes (Hayes, as cited in ACGIH 1986, p. 407). Erythrocyte cholinesterase activity was inhibited in dogs fed methyl parathion for 12 weeks at a rate corresponding to approximately 24 mg/day; inhibition of both plasma and erythrocyte cholinesterase activity occurred at doses of 70 mg/day, without accompanying illness (Williams et al. 1968). Dogs fed 6 mg/day methyl parathion for 12 weeks showed no effects from such exposures (Williams et al.). Lifetime feeding studies of rats and mice fed diets containing methyl parathion concentrations of up to 40 ppm and up to 125 ppm, respectively, produced no evidence of cancer (NCI 1979).

Plasma and erythrocyte cholinesterase levels did not differ by more than 20 percent in subjects exposed at 7, 7.5, 8, or 9 mg/man/day, compared with controls (Moeller and Rider 1968). Tiess and associates (1982) have reported a case of protracted methyl parathion poisoning resulting from both percutaneous and inhalation exposure; Dille and Smith (1984) attribute the long-term neuro-psychiatric illness of two pilots to exposure to methyl parathion and other cholinesterase-inhibiting agents. Chronic exposure to small doses of methyl parathion have not caused chromosomal effects (DeCassia Stocco et al. 1982).

OSHA proposes a limit of 0.2 mg/m³ TWA for methyl parathion, with a skin notation. The Agency preliminarily concludes that this limit will protect workers against the risk of acetylcholinesterase inhibition potentially associated with workplace exposures at the levels permitted in the absence of any OSHA limit. The skin notation will protect workers from the risk of percutaneous absorption of this substance. The health evidence forms a reasonable basis for proposing a new limit for methyl parathion. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHYLCYCLOHEXANE
CAS: 108-87-2; Chemical Formula: C_7H_{14}
H.S. 1208

OSHA has a current 8-hour TWA limit of 500 ppm for methylcyclohexane. The ACGIH recommends a limit of 400 ppm TWA for this colorless liquid.

Lehmann and Flury (1943) indicate that the acute toxicity of methylcyclohexane is greater than that of heptane but less than that of octane. Lazarew (1929) found that a 2-hour exposure to a concentration of 7500 to 10,000 ppm caused prostration in mice, and exposure to 10,000 to 12,500 ppm caused death. Treon, Crutchfield, and Kitzmiller (1943) reported that exposure to 1200 ppm had no effect in rabbits, and prolonged exposures to 370 ppm had no effect in monkeys. Methylcyclohexane's histologic effects in animals resemble those of cyclohexane; the liver and kidney are the sites affected (ACGIH 1986, p. 384).

OSHA proposes an 8-hour TWA limit of 400 ppm for methylcyclohexane. The Agency preliminarily concludes that this limit will protect workers against the risk of irritation associated with exposure to methylcyclohexane and other alicyclic hydrocarbons at the levels permitted by the current OSHA limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for methylcyclohexane if the Agency determines that this limit will substantially reduce significant risk.

2-METHYLCYCLOPENTADIENYL MANGANESE TRICARBONYL
CAS: 12108-13-3; Chemical Formula: $(CH_3)C_5H_4—Mn(CO)_3$
H.S. No. 1271

OSHA currently has no limit for 2-methylcyclopentadienyl manganese tricarbonyl (C1–2). The ACGIH recommends a TLV–TWA of 0.2 mg/m³, as manganese, with a skin notation. C1–2 is a dark orange liquid with a faintly pleasant odor; it is a complex organic compound containing about 25 percent manganese by weight.

2-Methylcyclopentadienyl Mn tricarbonyl is highly toxic in its concentrated form, causing adverse effects primarily on the central nervous system. It is somewhat irritating to the eyes but skin contact does not produce irritation or sensitization. C1–2 is readily absorbed through the skin (ACGIH 1986, p. 387). Animal studies indicate that C1–2 has a toxicity similar to that of tetraethyl lead and is highly toxic by all routes of exposure (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986, p. 387).

The single-dose oral LD_{50} for rats is 23 or 39 mg/kg, depending on sex. The skin LD_{50} for rabbits is 1692±145 mg/kg, and the 1-hour inhalation LC_{50} for rats is about 350 mg/m³ (The Ethyl Corporation, as cited in ACGIH 1986, p. 387). Toxic exposures by all routes produce rapidly appearing symptoms of mild excitement, hyperactivity, tremors, severe clonic spasms, weakness, respiratory distress, and occasional clonic convulsions, followed by terminal coma (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986, p. 387).

Acute exposure causes damage to the liver, kidneys, and cerebral cortex, as well as changes in lung tissue (ACGIH 1986, p. 387). Browning (1966) observed chronic bronchitis, peribronchitis, interstitial pneumonia, and lung abscesses in animals that subsequently died from long-term inhalation exposure to C1–2: exposure to C1–2 concentrations of approximately 12 mg/m³ for 100 days produced no deviation in weight gain patterns and no gross or microscopic changes in two dogs (Browning 1966). The liver and kidneys are the principal target organs associated with acute overexposures; the lungs of overexposed animals were hemorrhagic (Browning 1966).

In humans, skin contact should be entirely avoided. A 5- to 15-ml spill on one worker's hand and wrist was reported to have caused "thick tongue," nausea, giddiness, and headache within 3 to 5 minutes (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986, p. 387).

OSHA proposes a PEL of 0.2 mg/m³ TWA as manganese, with a skin notation, for 2-methylcyclopentadienyl manganese tricarbonyl. The Agency preliminarily concludes that this limit will protect workers against the risk of CNS effects and systemic damage that exists in the absence of any OSHA limit for this substance. A skin notation is proposed because of C1–2's ability to penetrate the skin rapidly. The health evidence forms a reasonable basis for proposing a new limit for manganese. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MONOCROTOPHOS (AZODRIN)
CAS: 6923-22-4; Chemical Formula: $C_7H_{14}NO_5P$
H.S. No. 1279

OSHA currently has no limit for the systemic insecticide monocrotophos. The ACGIH recommends a TLV–TWA of 0.25 mg/m³ for this reddish-brown solid with a mild ester odor.

Monocrotophos is a highly toxic, direct acting cholinesterase inhibitor that penetrates the intact skin (ACGIH 1986, p. 416). The acute oral LD_{50} values in rats and mice range from 5.7 to 17 mg/kg in a water formulation (Brown et al. 1970; Shellenberger and Newell, as cited in ACGIH 1986, p. 416) and from 10 to 23 mg/kg in an oil formulation (Shellenberger and Newell, as cited in ACGIH 1986, p. 416). These authors also report a percutaneous LD_{50} in the rabbit that ranges from 112 to 709 mg/kg, depending on the vehicle used. A 2-year dietary study of rats ingesting 0, 1, 10, or 100 ppm monocrotophos revealed that both sexes in the 100 ppm group failed to gain as much weight as the controls, but autopsy showed no significant findings; plasma, erythrocyte, and brain cholinesterase decreased at the two highest dose levels but were unaffected at 1 ppm (Johnston 1966, as cited in ACGIH 1986, p. 416; Johnston et al. 1967, as cited in ACGIH 1986, p. 416). Another 2-year feeding study in dogs administered doses of up to 16 ppm monocrotophos revealed no adverse effects at levels of 0.16 and 1.6 ppm, but serious cholinesterase reduction was observed at the 16 ppm level (Johnston 1966, as cited in ACGIH 1986, p. 416; Johnston et al. 1967, as cited in ACGIH 1986, p. 416). Metabolism studies in rats and goats indicate that monocrotophos is excreted rapidly in the rat and does not accumulate in the body (Bull and Lindquist, as cited in ACGIH 1986, p. 416); goats given labeled monocrotophos by mouth showed only traces of the material in their milk (Menzer and Casida; Potter, both as cited in ACGIH 1986, p. 416). Inhalation exposure of rats to an unknown concentration of 75 percent monocrotophos in air for 1 hour was not lethal; a 4-hour exposure to an unknown concentration of the aerosol (0.4 and 0.75 percent) was fatal to 2 out of 8 (0.4 percent aerosol) and 5 out of 8 rats (0.75 percent aerosol). Head-only exposure to the 0.4 percent aerosol resulted in the death of one of eight animals (Wilson, as cited in ACGIH 1986, p. 416).

Intravenous injection of radiolabeled monocrotophos in human volunteers showed maximum excretion at 4 to 8 hours, with 67 ± 5 percent of the material in the urine; absorption of 14 ± 7 percent occurred when the radiolabeled material was applied to the forearm; 33 ± 9 percent of the applied dose was absorbed when it was covered with a vapor-proof film for 72 hours (Maibach 1970). Although gauze patches attached to the clothing and skin of field workers attested to the presence of monocrotophos, no cholinesterase inhibition resulted in post-exposure examinations at 3 hours and at 3 and 7 days (Maibach, as cited in ACGIH 1986, p. 416).

OSHA is proposing a PEL of 0.25 mg/m³ TWA for monocrotophos. The Agency preliminarily concludes that this limit will protect workers against the risk of cholinesterase inhibition potentially associated with exposure in the workplace at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for monocrotophos. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MORPHOLINE
CAS: 110-91-8; Chemical Formula: C_4H_9NO
H.S. No. 1281

OSHA has a current limit of 20 ppm, with a skin notation, for morpholine. The ACGIH recommends a 20-ppm TWA limit and a TLV–STEL of 30 ppm, as well as a skin notation. Morpholine is a colorless liquid with an amine-like odor.

Exposure to morpholine produces nasal and bronchial irritation and liver and kidney impairment in animals (Shea 1939); the substance readily penetrates the skin and is highly irritating to the eyes (Jefferson Chemical Company, Inc. 1961, as cited in ACGIH 1986, p. 417). The single oral LD_{50} in rats is 1.05 g/kg (range: 0.95 to 1.16 g/kg), and the single skin LD_{50} for 24-hour contact is 0.5 mg/kg (Smyth, Carpenter, Weil, and Pozzani 1954). A 1-hour exposure to concentrated vapor was not fatal in rats, nor was an 8-hour exposure to 8000 ppm (Smyth, Carpenter, Weil, and Pozzani 1954). Rats were exposed for 8 hours daily to a concentration of 18,000 ppm for a total of 5 days; after the first day, all animals showed severely reddened thoracic walls, and one fatality (from kidney and liver congestion) occurred. A similar fatality occurred on the third day; on day 4, a third rat died, and postmortem examination revealed degeneration of the epithelial lining of the kidney tubules. Three additional deaths occurred after the exposures had ended; autopsy revealed thickened alveoli, emphysema, and liver and kidney effects (Shea 1939).

Reporting on his own reactions to morpholine exposure at a concentration of 12,000 ppm, Shea (1939) complained of nose irritation (after 1 minute) and coughing (after 90 seconds); in addition, when he transferred morpholine by pipette, he experienced sore throat and mucosal irritation. All symptoms disappeared after the experiment stopped (Shea 1939). Skin contact poses a moderately high degree of hazard, which diminishes as the product is diluted with water to less than 25 percent (Jefferson Chemical Company, Inc. 1961, as cited in ACGIH 1986, p. 417). Respiratory irritation but no chronic effects have been reported as a result of industrial exposure (Patty 1963). In comparison with ammonia, morpholine has a greater potential for systemic toxicity (ACGIH 1986, p. 417).

OSHA proposes an 8-hour TWA limit for morpholine of 20 ppm TWA and a 15-minute STEL of 30 ppm, with a skin notation. The Agency preliminarily concludes that this limit will protect workers against the risk of eye and respiratory tract irritation potentially associated with exposures in the absence of a short-term limit. OSHA is retaining the skin notation for morpholine because of its ability to be absorbed through the skin. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for morpholine if the Agency determines that this limit will substantially reduce significant risk.

NITRIC ACID
CAS: 7697-37-2; Chemical Formula: HNO_3
H.S. No. 1286

OSHA currently has an 8-hour limit of 2 ppm TWA for nitric acid. The ACGIH recommends the same TWA limit and a 15-minute STEL of 4 ppm, and NIOSH recommends a TWA limit of 2 ppm. Nitric acid is a fuming colorless or yellowish liquid.

Rats receiving a single exposure to nitric acid mist at a concentration of 63 mg/m³ exhibited no apparent adverse effects (Diggle and Gage 1954).

Chronic exposure to airborne nitric acid vapor or mist at unspecified levels was reported to cause chronic bronchitis, pneumonitis (Fairhall 1957), and tooth erosion (Lynch and Bell 1947).

Nitric acid's irritant potential is considered similar to that of other strong acids; it typically exists in conjuction with nitrogen dioxide, which is regarded as being more hazardous (ACGIH 1986, p. 428).

OSHA is proposing a PEL of 2 ppm TWA and a STEL of 4 ppm for nitric acid. The Agency preliminarily

concludes that this combined limit will protect workers against the risk of irritation, chronic pulmonary disease, and dental corrosion that potentially exists at exposures at the levels permitted by the TWA alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for nitric acid if the Agency determines that this limit will substantially reduce significant risk.

p-NITROANILINE
CAS: 100-01-6; Chemical Formula: $NO_2C_6H_4NH_2$
H.S. No. 1287

OSHA currently has a skin notation and a limit of 1 ppm TWA (6 mg/m³) for p-nitroaniline (PNA). The ACGIH recommends a limit of TLV-TWA 3 mg/m³, with a skin notation. para-Nitroaniline usually exists in the form of yellow needles.

p-Nitroaniline is readily absorbed through the skin and is a strong methemoglobin-forming agent, and prolonged exposure can cause liver damage (ACGIH 1988, p. 430). Anderson (1946) reported several cases of PNA-poisoning among shipboard workers assigned to clean up a p-nitroaniline spill; one man with a history of liver disease became jaundiced and died, and the other exposed workers became cyanotic and complained of headache, sleepiness, weakness, and respiratory distress (Anderson 1946). It has also been reported that children who ingested p-nitroaniline that was contained in wax crayons subsequently became ill (Riedess and Brieger 1953).

Several investigators (Anderson 1946; Gupta 1953; Fairhall 1957; Linch 1974) have concluded that the nitroanilines are more hazardous than aniline, and, on this basis, the ACGIH has recommended a TWA limit for PNA that is lower than the limit for aniline (ACGIH 1988, p. 430).

OSHA is proposing a PEL of 3 mg/m³ TWA for p-nitroaniline, with a skin notation. The Agency preliminarily concludes that this limit will protect workers against the risk of methemoglobinemia and liver damage potentially associated with exposure to PNA at levels above 3 mg/m³. The Agency is retaining the skin notation because this substance is readily absorbed through the skin. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for p-nitroaniline if the Agency determines that this limit will substantially reduce significant risk.

NITROTOLUENE
CAS: 88-72-2; 99-08-1; 99-99-0; Chemical Formula: $CH_3C_6H_4NO_2$
H.S. No. 1282

OSHA currently has an 8-hour limit of 5 ppm, with a skin notation, for nitrotoluene. The ACGIH recommends a TLV-TWA of 2 ppm, also with a skin notation. The ortho- and meta-isomers of nitrotoluene are yellow liquids; the para-isomer is also yellow, but exists in crystalline form.

Nitrotoluene is one of the aromatic nitrogen compounds that may cause methemoglobin formation. Linch (1974) has studied the nitrotoluene isomers and reported that they have relatively low emiagenic potential; he considered nitrotoluene comperable to aniline in its toxic effects (Linch 1974). Cases of poisoning as a result of exposure to nitrotoluene are rare (von Oettingen 1941).

OSHA proposes an 8-hour TWA limit of 2 ppm, with a skin notation, for nitrotoluene. The Agency preliminarily concludes that this limit will protect workers against the risk of methemoglobinemia potentially associated with exposure to this substance; the skin notation is retained because of nitrotoluene's capacity to penetrate the skin. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for nitrotoluene if the Agency determines that this limit will substantially reduce significant risk.

NONANE
CAS: 111-84-2; Chemical Formula: $CH_3(CH_2)_7CH_3$
H.S. No. 1288

OSHA currently has no limit for nonane. The ACGIH recommends a TLV-TWA of 200 ppm for this colorless liquid.

The toxicity of nonane is approximately equal to that of VM&P naphtha. Naphtha has a 4-hour inhalation LC_{50} for rats of 3400 ppm, while nonane has an LC_{50} of 3200 ppm (Carpenter et al. 1975, 1978). These investigators found a no-effect level of 500 ppm nonane for rats exposed 6 hours/day, 5 days/week for a 65-day period; under the same exposure conditions, a no-effect level of 500 ppm was reported for rats exposed to VM&P naphtha (Carpenter et al. 1975, 1978). Earlier studies of octane and heptane have resulted in much higher LC_{50} values for mice, i.e., 13,500 ppm and 16,000 ppm, respectively, for 30- to 60-minute exposures (Flury and Zernik 1931). Swann and associates (1974) have reported similarly high values for octane and hexane in mice; mice died from respiratory arrest after 3 to 5 minutes of exposure to 10,000 ppm of octane or to 48,000 ppm of hexane (Swann et al. 1974).

OSHA proposes an 8-hour TWA limit of 200 ppm for nonane. The Agency preliminarily concludes that this limit will protect workers against the risk of narcotic effects potentially associated with exposure to nonane at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for nonane. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

OXALIC ACID
CAS: 144-62-7; Chemical Formula: $H_2C_2O_4$
H.S. No. 1299

OSHA currently has a limit of 1 mg/m³ for oxalic acid. The ACGIH has a TLV-TWA of 1 mg/m³ and recommends a TLV-STEL of 2 mg/m³. Anhydrous oxalic acid is usually in the form of a white powder; the dihydrate form is a colorless, odorless, crystalline substance.

Oxalic acid is known to produce severe burns of the eyes, mucous membranes, and skin (The Merck Index 1983, p. 981). There have been human fatalities from ingesting as little as 5 grams of oxalic acid. It appears that these deaths were caused by oxalic acid's ability to disturb the calcium-potassium balance in critical tissues (Klandar, Eholzwald, and Gabriel 1955). Solutions of 5- to 10 percent oxalic acid have also been reported to irritate the skin on prolonged exposure.

Because of oxalic acid's severe acute toxicity, OSHA is proposing an 8-hour TWA limit of 1 mg/m³ PEL and a STEL of 2 mg/m³. The Agency preliminarily concludes that both of these limits are required to protect exposed workers from the risk of severe eye and skin burns and respiratory tract irritation that could result from elevated short-term exposures at the present TWA limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for oxalic acid if the Agency determines that this limit will substantially reduce significant risk.

PERCHLORYL FLUORIDE
CAS: 7616-94-6; Chemical Formula: ClO_3F
H.S. No. 1300

OSHA's current 8-hour TWA limit for perchloryl fluoride is 3 ppm. The ACGIH has a TLV-TWA of 3 ppm and a STEL of 6 ppm for this colorless gas with a sweet odor.

The 4-hour LD_{50}s in rats and mice were 385 and 630 ppm, respectively.

Dogs exposed for 4 hours to 220- to 450-ppm concentrations of the vapor, followed by exposure to 620 ppm for 2.5 hours, became hyperpneic and cyanotic and showed increased methemoglobin. Dogs succumbing from these exposures had pigment deposition in the liver, spleen, and bone marrow; alveolar hemorrhage and collapse; and emphysema.

Exposure to 185 ppm for 6 hours/day, 5 days/week for 7 weeks killed 18 of 20 rats, 20 of 30 mice, and all exposed guinea pigs (Greene, Colburn, Donati, and Weeks 1980). These animals had difficulty breathing, became cyanotic, and developed alveolar edema and methemoglobinemia; at autopsy, they showed fluorosis; patchy lungs; enlarged spleens; and hemosiderosis of the kidneys, spleen, and liver. When animals were exposed on a similar regimen but to a concentration of 104 ppm for 6 weeks, all guinea pigs but only 1 of 20 rats died (Greene, Colbourn, Donati, and Weeks 1980). After a 6-month exposure to 24 ppm, bone fluoride levels increased 4-fold in guinea pigs, 3-fold in rats, and about 50 percent in dogs. Animals exposed at 24 ppm showed no signs of irritation (Greene, Colbourn, Donati, and Weeks 1980).

OSHA is proposing an 8-hour TWA of 3 ppm and a STEL of 6 ppm for perchloryl fluoride. The Agency preliminarily concludes that this combined limit will protect workers from the risk of fluorosis and hematologic effects potentially associated with exposures to perchloryl fluoride at the levels permitted in the absence of a short term limit. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for perchloryl fluoride if the Agency determines that this limit will substantially reduce significant risk.

MEVINPHOS (PHOSDRIN)
CAS: 7786-34-7; Chemical Formula:
H.S. No. 1320

OSHA currently has an 8-hour TWA limit of 0.1 mg/m³, with a skin notation, for mevinphos (phosdrin). The ACGIH recommends a TLV-TWA of 0.01 ppm (0.1 mg/m³) and a TLV-STEL of 0.03 ppm (0.3 mg/m³), also with a skin notation. Phosdrin is a colorless liquid. The commercial product is a mixture of cis- and trans-isomers that have a yellow color.

The acute oral LD_{50} of phosdrin is 4 to 8 mg/kg for male mice and 6 to 8 mg/kg for female rats (Shell Chemical Corporation 1956, as cited in ACGIH 1986, p. 412). Phosdrin is a cholinesterase inhibitor and has been reported to cause slight plasma cholinesterase depression but no decrease in brain cholinesterase activity in rats fed 2 to 5 ppm. The compound may be absorbed dermally and by inhalation or ingestion; the action of the compound is direct and immediate (Cleveland and Treon 1961). The dermal LD_{50} in rats has been reported to be 4.5 mg/kg (Gaines 1969). Chronic feeding of rats demonstrated a minimal lethal dose of between 100 and 200 ppm. Cholinesterase activity decreased continually when sublethal doses were administered until a maximum reduction in RBC cholinesterase activity of 25 percent was achieved on the 27th day of the administration of 1.5 to 20 mg doses (Hueise and Federspil 1975).

In industry, the primary hazards associated with exposure to phosdrin are absorption of phosdrin through the skin, lung, and mucous membranes, which causes liver damage (Natoff 1970). Phosdrin intoxication is reported to occur in humans, with accompanying symptoms of headache, visual distortion, weakness, cramps, diarrhea, pain, and respiratory distress. Severe exposure may cause convulsions; in one reported case, some symptoms (anxiety, depression, vertigo, and nystagmus) persisted for as long as 4 months (Zavon, as cited in ACGIH 1986, p. 412).

OSHA is proposing a PEL of 0.01 ppm TWA and a STEL of 0.03 ppm for phosdrin, with a skin notation. The Agency preliminarily concludes that these limits will protect workers against the risk of cholinesterase inhibition and hepatic injury that results from absorption of phosdrin through the skin and mucous membranes and from exposure by the inhalation and oral routes. OSHA believes that these limits will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phosdrin if the Agency determines that this limit will substantially reduce significant risk.

PHOSPHORUS OXYCHLORIDE
CAS: 10025-87-3; Chemical Formula: $POCl_3$
H.S. No. 1323

OSHA has no current limit for phosphorus oxychloride. The ACGIH recommends a TLV-TWA of 0.1 ppm and a TLV-STEL of 0.5 ppm. This clear, colorless, fuming liquid has a pungent odor.

The primary hazards associated with inhalation of phosphorus oxychloride vapor are irritation of the eyes and respiratory tract, as well as narcotic effects, gastric irritation, pulmonary edema, and nephritis (The International Technical Information Institute 1978).

Weeks and associates (1984) reported 4-hour LC_{50} values for phosphorus oxychloride of 48 ppm and 52 ppm for guinea pigs and rats, respectively. They also observed that ammonia vapor mediates the irritant effects of exposure to phosphorus oxychloride without significantly altering this LC_{50} value (Weeks et al. 1984).

Both chronic and acute occupational intoxication have been reported to occur among workers exposed to phosphorus oxychloride (Sassi 1954).

OSHA is proposing a PEL of 0.1 ppm TWA and a 15-minute STEL of 0.5 ppm for phosphorus oxychloride. The Agency preliminarily concludes that these limits will reduce the risk of narcotic effects and systemic poisoning potentially associated with acute and chronic exposure at the uncontrolled levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for phosphorus oxychloride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PHOSPHORUS PENTASULFIDE
CAS: 1314-80-3; Chemical Formula: P_2S_5
H.S. No. 1324

OSHA currently has a limit of 1 mg/m³ as an 8-hour TWA for phosphorus pentasulfide. The ACGIH also recommends a limit of 1 mg/m³ TWA and a 15-minute STEL of 3 mg/m³. These limits are the same as those proposed for phosphoric acid, which the ACGIH believes to be approximately as toxic as phosphorus pentasulfide. Phosphorus pentasulfide is a greenish-yellow crystalline mass with an odor like that of rotten eggs.

The primary hazard associated with exposure to phosphorus pentasulfide is respiratory irritation (Smyth 1956). In the presence of moisture, phosphorus pentasulfide is rapidly hydrolyzed to phosphoric acid and hydrogen sulfide. No toxicity data are available concerning phosphorus pentasulfide per se.

OSHA is proposing a PEL of 1 mg/m³ as an 8-hour TWA, with a 15-minute STEL of 3 mg/m³, for phosphorus pentasulfide. The Agency preliminarily concludes that both of these limits are necessary to reduce the risk of respiratory irritation associated with exposure to this substance at the higher concentrations permitted at the current PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phosphorus pentasulfide if the

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Agency determines that this limit will substantially reduce significant risk.

PHTHALIC ANHYDRIDE
CAS: 85-44-9; Chemical Formula:
$C_6H_4(CO)_2O$
H.S. No. 1336

OSHA currently has an 8-hour TWA limit of 2 ppm for phthalic anhydride. The ACGIH recommends a limit of 1 ppm TWA. Phthalic anhydride exists in the form of white crystalline needles with a mild odor.

The primary exposure hazards associated with phthalic anhydride are severe skin, eye, and respiratory irritation. The substance can also produce skin and, perhaps, pulmonary sensitization (Patty 1963). Baader (1955) has reported irritant effects in animals exposed to 30 mg/m³ (approximately 5 ppm) phthalic anhydride in air.

In studies of workers exposed to phthalic anhydride, symptoms of respiratory tract injury as well as bronchitis, eye irritation, and nasal bleeding have been reported. Precise exposure concentrations were not detectable by the analytic method being used, which had a limit of detection of 25 mg/m³ (i.e., of 4 ppm or lower) (Baader 1955; Menschick 1955). Other industrial acid anhydrides (e.g., tetrachlorphthalic anhydride and maleic anhydride) are considered more irritating than phthalic anhydride (ACGIH 1986, p. 489).

OSHA is proposing an 8-hour TWA limit of 1 ppm for phthalic anhydride, compared with the limit of 0.25 ppm being proposed for maleic anhydride. The Agency preliminarily concludes that a 1 ppm limit will reduce the risk of respiratory irritation and the potential risk of skin and pulmonary sensitization that exists for workers exposed at higher levels permitted by the current PEL. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phthalic anhydride if the Agency determines that this limit will substantially reduce significant risk.

PROPARGYL ALCOHOL
CAS: 107-19-7; Chemical Formula:
$HC{\equiv}CCH_2OH$
H.S. No. 1335

OSHA has no current limit for propargyl alcohol. The ACGIH has established an 8-hour TWA of 1 ppm, with a skin notation, for this light to straw-colored liquid, which smells like geraniums.

In rats, guinea pigs, and mice, the oral LD_{50}s are 70, 60, and 50 mg/kg, respectively; the inhalation LC_{50} in both the rat and mouse is reported to be about 850 ppm (NIOSH 1977).

Propargyl alcohol is a primary skin irritant, but it is not a skin sensitizer (Antara Chemicals 1963, as cited in ACGIH 1986, p. 498). The toxicity of propargyl alcohol is estimated to be equal to that of allyl alcohol (oral LD_{50} in rats of 64 mg/kg) (NIOSH 1977). The ACGIH limit is based on the structural and toxicological similarity of propargyl alcohol to allyl alcohol (ACGIH 1986, p. 498).

OSHA is proposing an 8-hour TWA for propargyl alcohol of 1 ppm, with a skin notation. The Agency preliminarily concludes that these limits will protect workers against the risk of skin and mucous membrane irritation potentially associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for propargyl alcohol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PROPIONIC ACID
CAS: 79-09-4; Chemical Formula:
CH_3CH_2COOH
H.S. No. 1338

OSHA currently has no limit for propionic acid. The ACGIH recommends a TLV–TWA of 10 ppm and a TLV–STEL of 15 ppm. Propionic acid is a colorless, oily liquid with a pungent odor.

The primary health effects associated with exposure to propionic acid are skin burns and irritation of the eyes and respiratory system. Smyth and co-workers (1962) reported that the oral LD_{50} for rats is 4.3 g/kg; NIOSH (1977) stated that the intravenous LD_{50} for mice is 625 mg/kg and the skin absorption LD_{50} for rabbits is 500 mg/kg. Inhalation of the saturated vapor for 8 hours caused no rat fatalities (ACGIH 1986, p. 498).

Acute industrial exposures have been reported to cause mild to moderate skin burns, eye irritation, and, in a single incident, asthmatic cough. No irritation was observed as a consequence of exposures in humans averaging below 0.25 ppm with excursions to 2.1 ppm in an 8 hour-period (Dow Chemical Company, as cited in ACGIH 1986, p. 498).

OSHA proposes limits of 10 ppm TWA and 15 ppm as a 15-minute STEL for propionic acid. The Agency preliminarily concludes that both of these limits are required to protect workers against the risk of eye and respiratory tract irritation that exists at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for propionic acid. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

n-PROPYL ACETATE
CAS: 109-60-4; Chemical Formula:
$CH_3COOCH_2CH_2CH_3$
H.S. No. 1337

OSHA currently has an 8-hour TWA limit of 200 ppm for n-propyl acetate. The ACGIH also recommends a 200 ppm TWA limit and a TLV–STEL of 250 ppm. n-Propyl acetate is a pleasant-smelling liquid.

The primary health effects associated with exposure to n-propyl acetate are narcosis and eye and respiratory irritation. The limiting 8-hour narcotic concentrations for cats and mice have been reported as 6000 ppm and 6900 ppm, respectively (Flury and Wirth 1933). n-Propyl acetate's narcotic action is 1.3 times that of ethyl acetate; salivation and irritation of cats' eyes occurred at 2000 ppm (Flury and Wirth 1933). A 4-hour exposure at 6000 ppm killed four of six rats (Smyth 1954, as cited in ACGIH 1986, p. 590).

OSHA is proposing a PEL of 200 ppm TWA and a STEL of 250 ppm for n-propyl acetate. The Agency preliminarily concludes that both of these limits are required to prevent the risk of narcosis and eye and respiratory tract irritation that exists for workers exposed to levels above the level permitted by the 8-hour TWA limit alone. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for n-propyl acetate if the Agency determines that this limit will substantially reduce significant risk.

PROPYL ALCOHOL
CAS: 71-23-8; Chemical Formula:
$CH_3CH_2CH_2OH$
H.S. No. 1339

OSHA currently has a limit of 200 ppm TWA for n-propyl alcohol. The ACGIH recommends the same TWA limit, a 250-ppm 15-minute STEL, and a skin notation. Propyl alcohol is a colorless liquid with an alcohol-like odor.

The primary health effect associated with exposure to propyl alcohol is mild narcosis. Propyl alcohol's toxicity is somewhat greater than that of isopropyl alcohol (Gleason, Gosselin, and Hodge 1963).

The inhalation LD_{50} for propyl alcohol in rats is reported as 1.9 g/kg (Smyth, Carpenter, Weil, and Pozzani 1954). Starrek reported deep narcosis in mice inhaling the vapor at a concentration of 4100 ppm for 240 minutes and of 34,500 ppm for 60 minutes; ataxia appeared in 90 to 120 minutes at 3250 ppm (Starrek in Patty 1963 pp. 1434–1436). These effects are almost twice as intense as those reported for exposure to the vapor of isopropyl alcohol. The dermal LD_{50} in rabbits is 5040 mg/kg (Sax 1984).

Nelson, Ege, Ross, and associates (1943) reported mild eye, nose, and throat irritation in humans exposed at 400 ppm to the vapor of isopropyl alcohol, but no data exist on human sensory response to propyl alcohol vapor. The ACGIH (1986, p. 508) reports that many industrial hygienists consider the vapor of propyl alcohol to be more irritating to the throat than the vapor of the isomer.

OSHA is proposing an 8-hour TWA PEL of 200 ppm and a STEL of 250 ppm for propyl alcohol, with a skin notation. The Agency preliminarily concludes that these limits will protect workers against the risk of narcosis and irritation that exists at levels above the PEL. OSHA also proposes to add a skin notation because propyl alcohol can be absorbed through the skin. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for propyl alcohol if the Agency determines that this limit will substantially reduce significant risk.

PROPYLENE OXIDE
CAS: 75-56-9; Chemical Formula:
CH_3CHOCH_2
H.S. No. 1344

OSHA currently has an 8-hour TWA limit of 100 ppm for propylene oxide. The ACGIH recommends a limit of 20 ppm TLV–TWA. Propylene oxide is a colorless, highly flammable, volatile, and ethereal liquid.

The health hazards associated with exposure to this substance are primary skin, eye, and respiratory irritation, as well as central nervous system depression. The oral LD_{50} values reported for rats and guinea pigs are 930 mg/kg and 900 mg/kg, respectively. In mice, the inhalation LC_{50} has been reported to be at 1740 ppm for 4 hours. Dogs and guinea pigs exposed for 4 hours at 2000 and 4000 ppm, respectively, died (NIOSH 1977). Although some species tolerate daily exposures to 200 ppm, all species tested tolerated 100 ppm without ill effects (Rowe, Hollingsworth, Oyen et al. 1956). Jacobson and associates (1958) considered the toxic effects of propylene oxide to be one-half to one third as intense as those of ethylene oxide (Jacobson, Hackley, and Feinsilver 1956).

Corneal burns and skin necrosis, as well as respiratory and pulmonary irritation, have been reported in humans as a result of direct contact with the liquid or vapor (Patty 1963); central nervous system effects include ataxia, incoordination, and general depression.

OSHA proposes an 8-hour TWA limit of 20 ppm for propylene oxide to protect workers against the risk of primary irritation and CNS depression potentially associated with exposure to higher levels. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for propylene oxide if the Agency determines that this limit will substantially reduce significant risk.

SILICON TETRAHYDRIDE
CAS: 7803-62-6; Chemical Formula: SiH_4
H.S. No. 1361

OSHA currently has no limit for silicon tetrahydride. The ACGIH limit of 5 ppm as an 8-hour TWA was established in 1983. Silicon tetrahydride, which is a colorless gas, is used in the manufacture of semiconductors.

Studies of rats exposed to silicon tetrahydride at levels of 126 ppm for 1 hour (Matheson Gas Products 1971, as cited in ACGIH 1986, p. 526) and at 1400 ppm for 6 hours (Union Carbide Corporation 1960, as cited in ACGIH 1986, p. 526) have failed to identify any systemic effects associated with exposure to this chemical. Sax (1984) lists the effects of acute exposure to silicon tetrahydride as moderate irritation to the eyes, skin, and mucous membranes.

OSHA is proposing a limit of 5 ppm TWA for silicon tetrahydride. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of eye, skin, and upper respiratory tract irritation potentially associated with exposure to this substance at the unregulated levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for silicon tetrahydride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

SULFURYL FLUORIDE
CAS: 2699-79-8; Chemical Formula: SO_2F_2
H.S. No. 1379

The current OSHA limit for sulfuryl fluoride is 5 ppm as an 8-hour TWA. The ACGIH recommends 5 ppm as a TWA, with the addition of a STEL of 10 ppm. Sulfuryl fluoride is a colorless gas with a sulfide odor. When selecting this limit, the ACGIH took into consideration the fact that, compared with hydrogen fluoride (TLV–TWA ceiling of 3 ppm), only a small portion of the inhaled gas is retained and converted to inorganic fluorides.

In extensive animal studies conducted by the Dow Chemical Company (1962 and 1970, as cited in ACGIH 1986, p. 546), sulfuryl fluoride was determined to exhibit one-half to one-third the acute inhalation toxicity of methyl bromide. Acute exposures of animals resulted in tremors that later developed into severe convulsions. Pulmonary edema was seen in laboratory animals following a single severe exposure. Repeated exposures of rats, guinea pigs, and mice to 20 ppm sulfuryl fluoride for 7 hours per day produced both kidney and lung injuries after 6 months. After 12 months of exposure, slight effects were seen that reversed after exposure was terminated. Some evidence of fluorosis was observed in the incisors of mice, but not in the teeth of the rats or guinea pigs (Dow Chemical Company 1962, 1970, as cited in ACGIH 1986, p. 546).

A report by Texay (1966) that examined an incident of workplace exposure to sulfuryl fluoride noted that abdominal pain, nausea, vomiting, and itching were the major symptoms. On the day following exposure, the serum of the affected worker tested positive for fluoride.

OSHA is proposing an 8-hour TWA limit of 5 ppm and a STEL of 10 ppm for sulfuryl fluoride. The Agency preliminarily concludes that these limits will protect workers against the risks of kidney and lung injury and of fluorosis potentially associated with chronic exposure to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for sulfuryl fluoride if the Agency determines that this limit will substantially reduce significant risk.

THIONYL CHLORIDE
CAS: 7719-09-7; Chemical Formula: Cl_2OS
H.S. No. 1393

OSHA's current Z tables have no limits for thionyl chloride. The ACGIH has established a ceiling limit of 1 ppm for this substance. Thionyl chloride is a colorless to pale yellow liquid with a suffocating odor.

Thionyl chloride vapors are skin, eye, and mucous membrane irritants, probably as a result of the formation of sulfur dioxide and hydrogen chloride (ACGIH 1986, p. 572). An inhalation exposure of 17.5 ppm proved lethal to cats within 20 minutes (Sax 1979).

The ACGIH's exposure limit for thionyl chloride is based on the exposure limits for the decomposition products (hydrogen chloride and sulfur

dioxide) of thionyl chloride when mixed with water. The reaction of one mole of thionyl chloride with water produces two moles of hydrogen chloride and one of sulfur dioxide, so that 1 ppm of thionyl chloride can be shown to produce a total irritant gas concentration of 3 ppm. The exposure limit for hydrogen chloride is 5 ppm as a ceiling limit; for sulfur dioxide, the limit is a TWA of 2 ppm. Thus, "the * * * ceiling limit of 1 ppm for thionyl chloride should prevent the irritant effects of its reaction products" (ACGIH 1986, p. 572).

The Agency is proposing a ceiling limit of 1 ppm for thionyl chloride. OSHA preliminarily concludes that this limit will protect workers from the risk of irritation of the eyes, skin, and mucous membranes potentially associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for thionyl chloride. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TRIBUTYL PHOSPHATE
CAS: 126–73–8; Chemical Formula: $(C_4H_9)_3PO_4$
H.S. No. 1402

The current OSHA standard for tributyl phosphate is 5 mg/m³ as an 8-hour TWA. The ACGIH has established a 2.5-mg/m³ TWA. Tributyl phosphate is a clear, colorless, odorless liquid.

Tributyl phosphate's toxicity affects the skin and mucous membranes, the lungs and the central nervous system, and this substance is also a cholinesterase inhibitor.

A paper by Smyth and Carpenter (1944) reported that contact with liquid tributyl phosphate caused severe eye injury and skin irritation when tested in rabbits. Chambers and Casida (1967) found that mice injected with 1 g/kg tributyl phosphate intraperitoneally became paralyzed. A study by Vandekar (1957) in which mice were given tributyl phosphate by gavage revealed that a dose of 80 mg/kg resulted in a 1-hour period of anesthesia, and a dose of 100 mg/kg resulted in 8 to 10 minutes of anesthesia, followed by respiratory failure and death. Administered intraperitoneally to rats, tributyl phosphate inhibited cholinesterase activity and stimulated plasma beta-glucuronidase activity (Suzuki, Kikuchi, Kato et al. 1977). This substance did not exhibit mutagenic activity in bacterial or fruit fly assays (Hanna and Dyer 1975). Nausea and headache were reported by workers exposed to levels of 15 mg/m³ of tributyl phosphate (Mastromatteo, as cited in ACGIH 1986, p. 591).

OSHA is proposing to reduce the 8-hour PEL from 5 mg/m³ to 2.5 mg/m³. OSHA preliminarily concludes that this limit will protect workers against the risk of paralysis, anesthetic effects, and skin or eye irritation potentially associated with exposure to tributyl phosphate. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for tributyl phosphate if the Agency determines that this limit will substantially reduce significant risk.

TRICHLOROACETIC ACID
CAS: 76–03–9; Chemical Formula: CCl_3COOH
H.S. No. 1404

OSHA currently has no exposure limits for trichloroacetic acid. The ACGIH recommends an 8-hour TWA of 1 ppm to protect against the corrosive effects of trichloroacetic acid. Trichloroacetic acid is a relatively strong acid that forms deliquescent crystals.

The Dow Chemical Company (1977, as cited by the ACGIH 1986, p. 592) reported that the oral LD_{50} of trichloroacetic acid for rats is 3.33 g/kg. Studies on mice conducted by NIOSH (1984) established that the oral LD_{50} for this species is 4.97 g/kg, and that a 500-mg/kg dose was fatal when administered intraperitoneally.

Medical reports show mild to moderate skin and eye burns in workers exposed to unspecified levels of trichloroacetic acid; although corrosive, trichloroacetic acid is not readily absorbed by the skin (ACGIH 1986, p. 592).

OSHA is proposing an 8-hour TWA limit for trichloroacetic acid of 1 ppm. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of skin and eye irritation associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for trichloroacetic acid. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TRIMETHYLAMINE
CAS: 75–50–3; Chemical Formula: $(CH_3)_3N$
H.S. No. 1411

OSHA presently has no exposure limit for trimethylamine. The ACGIH recommends a 10-ppm limit as an 8-hour TWA and 15 ppm as a 15-minute STEL. Trimethylamine has a pungent, fishy odor and is a gas at room temperature.

Little toxicological data are available for trimethylamine. One study reports that the intravenous LD_{50} for this substance is 90 mg/kg in mice (Dechezlepretre and Cheymol 1967). The ACGIH established the TLV for trimethylamine on the basis of its chemical similarity to dimethylamine, for which the current TLV–TWA is 10 ppm. Dimethylamine is a central nervous system depressant and cause methemoglobinemia.

OSHA is proposing an 8-hour TWA limit of 10 ppm and a STEL of 15 ppm (15 minutes) for trimethylamine. Based on analogy to dimethylamine, the Agency preliminarily concludes that these limits will protect workers exposed at previously unregulated levels from the risk of eye, mucous membrane, and upper respiratory tract irritation associated with this substance. The health evidence forms a reasonable basis for proposing a new limit for dimethylamine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

n-VALERALDEHYDE
CAS: 110–62–3; Chemical Formula: $CH_3(CH_2)_3CHO$
H.S. No. 1420

OSHA currently has no limit for n-valeraldehyde. The ACGIH limit is 50 ppm as an 8-hour TWA. n-Valeraldehyde is a colorless liquid.

n-Valeraldehyde's toxic effects include both skin and eye irritation. Animal studies showed n-valeraldehyde to be severely irritating when applied to guinea pig skin and to rabbits' eyes (Fassett, as cited in ACGIH 1986, p. 619). The dermal LD_{50} for guinea pigs exceeds 20 ml/kg (Fassett, as cited in ACGIH 1986, p. 619).

A series of studies of the relative acute inhalation toxicity of 13 aliphatic saturated and unsaturated aldehydes in mice, guinea pigs, and rabbits showed that valeraldehyde was relatively nontoxic systemically (Salem and Cullumbine 1960).

OSHA is proposing a 50-ppm 8-hour TWA limit for this previously unregulated chemical. The Agency preliminarily concludes that this limit will protect workers from the risk of valeraldehyde's potential to cause severe eye and skin irritation. The health evidence forms a reasonable basis for proposing a new limit for n-valeraldehyde. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

m-XYLENE ALPHA, ALPHA'-DIAMINE

CAS: 1477–55–0; Chemical Formula: $C_6H_4(CH_2NH_2)_2$
H.S. No. 1432

OSHA presently has no exposure limit for this substance. The ACGIH has established a limit of 0.1 mg/m³ as a ceiling limit that should not be exceeded during any part of the working day, and has added a skin notation to indicate that substantial percutaneous absorption can occur through the eyes, mucous membranes, and skin. m-Xylene alpha, alpha'-diamine (MXDA) is a colorless liquid.

Animal studies have demonstrated that MXDA is strongly irritating to the skin (Haskell Laboratory 1973, private communication; Sherwin-Williams Company 1978). Research at Du Pont (1973) showed that pure MXDA was corrosive when applied to the skin of guinea pigs, and a 50-percent MXDA solution caused severe irritation in these animals. In a separate study (Sherwin-Williams Company 1978), a 10-percent mixture of MXDA caused severe skin irritation and erythema in guinea pigs. Sherwin-Williams (1978) also reported that rats exposed to levels of MXDA ranging from 1.74 to 6.04 mg/liter even for 1 hour sustained liver, kidney, and lung damage, as determined at necropsy. One study showed mild sensitization when MXDA was applied to guinea pig skin, but this effect was not observed in a second study (Sherwin-Williams Company 1978).

OSHA preliminarily concludes that a ceiling limit of 0.1 mg/m³ is necessary to protect against the risk of skin irritation, percutaneous absorption of MXDA, and potential systemic effects. The health evidence forms a reasonable basis for proposing a new limit for MXDA. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

XYLIDINE
CAS: 1300–73–8; Chemical Formula: $(CH_3)_2C_6H_3NH_2$
H.S. No. 1433

OSHA's current Z tables list an exposure limit of 5 ppm as an 8-hour TWA for xylidine, with a skin notation. In 1982, the ACGIH reduced its TLV to 2 ppm as an 8-hour TWA and retained the skin notation. Xylidine is a pale-yellow to brown liquid. Commercial xylene is a mixture of isomers.

Several studies indicate that the current OSHA PEL for xylidine is insufficient to protect workers against hepatotoxic and other adverse effects. A paper by Von Oettingen et al. (1974) reported liver damage in dogs, rats, cats, and mice repeatedly exposed to 45 ppm xylidine for 7 hours per day for a period of 20 to 40 weeks; these exposures also caused death in dogs, cats, and mice. Treon, Sigmon, Wright, et al. (1950) noted cardiac, liver, and kidney damage in animals fatally exposed at the following doses: Cats, 17 ppm; guinea pigs, 50 ppm; and rabbits, 60 ppm; cyanosis was also observed in these animals.

OSHA is proposing to reduce the existing 8-hour TWA to 2 ppm and to retain the skin notation. The Agency preliminarily concludes that these limits will protect workers from the risk of cardiac, kidney, and liver damage potentially associated with exposure to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for xylidine if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

Exposure to the 72 substances included in this category place workers at risk of material health impairment or functional incapacity. The adverse health consequences of exposure to these chemicals include neuropathies, skin and respiratory tract irritation, kidney and liver damage, and gastrointestinal disorders. The available health evidence for this large group of substances forms a reasonable basis for proposing to reduce existing limits or to add new limits where none formerly existed. At the time of the final rule, OSHA will establish new or revise existing limits, if the Agency determines that these limits will substantially reduce significant risk.

13. Substances for Which Proposed Limits Are Based on Avoidance of Biochemical/Metabolic Effects

Introduction

One basis for establishing exposure limits is the ability of many toxic substances to interfere with the normal metabolism or biochemistry of the body. A total of 26 substances for which OSHA is proposing limits fall into this group. Table C13–1 shows these substances, their current OSHA PELs, ACGIH TLVs, and NIOSH RELs, and their CAS and HS numbers. For four of these substances, OSHA is proposing only to lower the 8-hour TWA; for two other substances, the Agency is proposing to retain the 8-hour limit and to add a STEL. In one instance, OSHA is proposing a reduced TWA and the addition of a ceiling. In one case (terphenyls), OSHA proposes a reduction in the ceiling level, and for 17 substances, new limits are being proposed. In the case of p-nitrochlorobenzene, OSHA proposes to retain OSHA's current limit of 1 mg/m³ as an 8-hour TWA. NIOSH has a REL for only two of these substances, carbon monoxide and carbon dioxide.

Description of the Health Effects

The compounds shown in Table C13–1 are further divided into the following sub-classes, based on their mechanism of action:

- Substances that are cholinesterase inhibitors;
- Substances that interfere with the oxygen carrying capacity of blood;
- Substances with Antabuse-like effects.

The disruption of metabolic processes by toxic substances, if severe enough, results in potentially dangerous effects on the neurological, cardiovascular, and respiratory systems. The adverse health consequences caused by exposure to chemicals having cholinesterase inhibition effects range from wheezing, nausea, vomiting, and confusion to respiratory failure, coma, and death. If exposure has localized rather than systemic effects, the signs and symptoms of cholinesterase inhibition can include sweating, blurred vision, and constriction of the bronchial tubes. Substances that interfere with the ability of the blood to carry oxygen cause a broad range of symptoms, including fainting, loss of consciousness, rapid heartbeat, headache, nausea, coma, and death. Carbon monoxide (CO) is the best known substance in this category of chemicals, and exposure to CO is common throughout industry.

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Table C13-1. Substances for Which Limits Are Based on Avoidance of Metabolic Effects

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***	Biochemical/ Metabolic Effect
1025 Aniline and homologs	62-53-3	5 ppm TWA, Skin	2 ppm TWA, Skin	-	Methemoglobinamia
1058 Calcium cyanamide	156-62-7		0.5 mg/m^3 TWA		Antabuse-like effect
1068 Carbofuran	1563-66-2	-	0.1 mg/m^3 TWA		Cholinesterase inhibition
1069 Carbon dioxide	124-38-9	5000 ppm TWA	5,000 ppm TWA 30,000 ppm STEL	10,000 ppm TWA 30,000 ppm Ceiling (10 min)	Hyperventilation
1071 Carbon monoxide	630-08-0	50 ppm TWA	50 ppm TWA 400 ppm STEL	35 ppm TWA 200 ppm Ceiling	Carboxyhemoglobinemia
1091 Chlorpyrifos	2921-88-2		0.2 mg/m^3 TWA 0.6 mg/m^3 STEL, Skin		Cholinesterase inhibition
1103 Crufomate	299-86-5		5 mg/m^3 TWA 20 mg/m^3 STEL		Cholinesterase inhibition

Table C13-1. Substances for Which Limits Are Based on Avoidance of Metabolic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***	Biochemical/ Metabolic Effect
1104 Cyanamide	420-04-2		2 mg/m^3 TWA	-	Antabuse-like effect
1131 Dicrotophos	141-66-2	-	0.25 mg/m^3 TWA, Skin	-	Cholinesterase inhibition
1143 Dimethylaniline	121-69-7	5 ppm TWA, Skin	5 ppm, TWA, Skin 10 ppm STEL		Methemoglobinemia
1146 Dioxathion	78-34-2		0.2 mg/m^3 TWA, Skin	-	Cholinesterase inhibition
1151 Disulfiram (Antabuse)	97-77-8		2 mg/m^3 TWA		Antabuse effects
1160 Ethion	563-12-2		0.4 mg/m^3 TWA, Skin		Cholinesterase inhibition
1173 Fenamiphos	22224-92-6		0.1 mg/m^3 TWA, Skin	-	Cholinesterase inhibition
1174 Fensulfothion	115-90-2		0.1 mg/m^3 TWA		Cholinesterase inhibition

Table C13-1. Substances for Which Limits Are Based on Avoidance of Metabolic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***	Biochemical/ Metabolic Effect
1175 Fenthion	55-38-9		0.2 mg/m^3 TWA, Skin	-	Cholinesterase inhibition
1245 Methamyl	16752-77-5		2.5 mg/m^3 TWA	-	Cholinesterase inhibition
1280 Monomethylaniline	100-61-8	2 ppm TWA, Skin	0.5 ppm TWA, Skin	-	Methemoglobinemia
1288 p-Nitrochloro-benzene††	100-00-5	1 mg/m^3 TWA, Skin	3 mg/m^3 TWA, Skin		Methemoglobin-emia
1319 Phorate	298-02-2		0.05 mg/m^3 TWA, 0.2 mg/m^3 STEL, Skin	-	Cholinesterase inhibition
1337 Propoxur	114-26-1		0.5 mg/m^3 TWA	-	Cholinesterase inhibition
1349 Ronnel	299-84-3	15 mg/m^3 TWA	10 mg/m^3 TWA		Cholinesterase inhibition
1380 Sulprofos	35400-43-2		1 mg/m^3 TWA		Cholinesterase inhibition

Table C13-1. Substances for Which Limits Are Based on Avoidance of Metabolic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***	Biochemical/ Metabolic Effect
1384 Terphenyls	26140-60-3	1 ppm Ceiling	0.5 ppm Ceiling		Mitochondrial changes
1401 m-Toluidine	108-44-1	-	2 ppm TWA, Skin		Methemoglobinemia
1413 2,4,6-Trinitrotoluene	118-96-7	1.5 mg/m^3 TWA, Skin	0.5 mg/m^3 TWA, Skin	-	Methemoglobinemia

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

† Proposed PEL is the NIOSH REL.

†† OSHA limit is retained.

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The Antabuse-like effects associated with exposure to three chemicals—disulfiram, cyanamide, and calcium cyanamide—include facial flushing, nausea, and a racing heartbeat. However, these effects are manifested only if the exposed individual has ingested alcohol. The three chemicals in this sub-group cause this effect by inhibiting aldehyde dehydrogenase activity, which is involved in the biotransformation of alcohol.

For chemicals that cause systemic toxicity in animals and/or humans, the grossly observable signs and symptoms of intoxication are usually secondary to the interaction of the chemical with a molecular target. In other words, the chemical interacts with (binds with or modifies) an endogenous molecular constituent (protein, nucleic acid, lipid, etc.) in the target tissue(s). The result of the interaction is ordinarily a modification or elimination of the normal function of the specific molecular constituent which, if sufficiently severe, may lead to secondary effects within the affected cells and/or tissues. It is possible for a number of molecules to be affected by the toxic chemical without there being any overt manifestation of toxicity. In other words, there is an apparent no-effect level governing the overt manifestation of toxicity, although there are usually metabolic effects at levels below those that cause overt effects.

For chemicals for which the molecular target is known and for which methods are available to detect the altered molecular target, it is possible to use the measure of altered biochemical function as a sensitive indicator of exposure to the chemicals at levels below those that cause grossly observable signs and symptoms of poisoning. For some other classes of chemicals, studies in animals and/or humans have shed light on the biochemical basis of their toxicity. For some of these classes of chemicals, it is possible to base limits of human exposure on biochemical, metabolic, or pharmacologic indicators of their interaction with molecular targets rather than on grossly visible signs and symptoms of adverse systemic effects.

Cholinesterase inhibition. A number of organophosphate and carbamate insecticides produce acute toxicity in humans through inhibition of acetylcholinesterase at cholinergic synapses in the central and peripheral nervous systems. This inhibition causes an accumulation of acetylcholine at the effector sites and elicits signs and symptoms consistent with excessive cholinergic activity. These include bronchoconstriction; increased bronchial secretions, salivation, and lacrimation; nausea; vomiting; cramps; constriction of the pupils; muscular weakness; and cardiac irregularities. If sufficiently severe, acetyl-cholinesterase inhibition may cause coma, irreversible CNS damage, and death.

The mechanisms by which carbamates and organophosphates inhibit acetylcholinesterase differ. In general, carbamates form a non-covalently bound complex with the enzyme, while most organophosphates bind covalently with the enzyme. The net result, inactivation of the enzyme, is similar for both groups. In either case, the inhibition is usually reversible. The carbamate-cholinesterase complex dissociates to regenerate the active enzyme, while cholinesterase inactivated by organophosphates is replaced by the *de novo* synthesis of active enzyme. Therefore, unless the inhibition is sufficiently severe to cause brain damage or death, the manifestations of acute toxicity are reversible, and poisoned individuals recover without sequelae. A significant proportion of endogenous cholinesterase activity may be inhibited before the overt manifestations of intoxication appear. The fraction of total cholinesterase activity that can be inhibited without there being signs and symptoms of toxicity varies from individual to individual and also appears to depend on the intensity and duration of exposure. The lack of warning signs at low levels of exposure increases the need to set exposure limits at levels that will protect those individuals who do not readily manifest the symptoms and signs of toxicity from experiencing the subclinical effects of exposure.

Compounds that interfere with the oxygen-carrying capacity of the blood. A number of compounds produce their immediate toxicity in humans by altering the ability of hemoglobin in the red blood cells to bind, transport, and release oxygen. Perhaps the best studied of these is carbon monoxide. Carbon monoxide binds to hemoglobin with a greater affinity than does oxygen. It also alters the dissociation characteristics for the oxygen-hemoglobin complex. The overall effect is to reduce the oxygen-carrying capacity of the blood. Also included in this overall category of compounds is a group of aromatic amines and nitro compounds that react with hemoglobin in the blood to reduce it to methemoglobin. Methemoglobin will not bind with oxygen and therefore is not an effective carrier of oxygen.

Because these compounds reduce the ability of the blood to transport oxygen, the overt signs and symptoms of acute toxicity are those of tissue anoxia, i.e., neurobehavioral disturbances, dizziness, cardiac irregularities, cyanosis, unconsciousness, and death. The severity of the symptoms are a function of the degree to which the oxygen-carrying capacity of the blood has been depleted and of the state of the exposed individual's health. In the case of carbon monoxide, individuals may experience only very subtle neurobehavioral effects when 10 percent of the hemoglobin is bound to carbon monoxide, and healthy individuals may tolerate carboxyhemoglobin concentrations of 50 percent for short periods of time without experiencing lasting adverse effects.

In the cases of both carbon monoxide and the methemoglobin-forming compounds, the primary effect (i.e., formation of carboxyhemoglobin or methemoglobin) is reversible. In the absence of additional carbon monoxide exposure, carboxyhemoglobin dissociates to carbon monoxide and fully functional hemoglobin. Methemoglobin can be reoxidized to hemoglobin by endogenous mechanisms, but the major recovery mechanism is via the synthesis of new hemoglobin.

Substances that cause Antabuse-like effects. The ingestion of alcoholic beverages following exposure to disulfiram, cyanamide, or calcium cyanamide results in a characteristic syndrome consisting of flushing of the face, nausea, vomiting, hypotension, and increased heart rate. If exposure is particularly severe, the reaction may trigger convulsions, cardiac arrhythmias, or heart attacks and has in some cases caused death. In the vast majority of less severe cases, the reaction is fully reversible, although the symptoms are temporarily completely disabling. Disulfiram (Antabuse) is used therapeutically in the treatment of chronic alcoholism; as such, employees who are currently being treated with disulfiram for alcoholism are at particularly high risk if they are also occupationally exposed to these substances that cause Antabuse-like effects. These compounds do not cause any signs or symptoms of toxicity in the absence of alcohol ingestion unless exposure levels are far above those that trigger the alcohol response.

Dose-Response Relationships and Biochemical/Metabolic Effects

Cholinesterase inhibition. Typically, the cholinesterase inhibition potential of a compound is assessed by measuring plasma cholinesterase activity in the treated organism. Data from experiments in animals and limited data from human clinical trials indicate that the percentage of basal plasma cholinesterase activity decreases with increasing dose and that the dose-response curve is S-shaped. Because there is inter-individual variation in this relationship, the dose-response curve for a population exposed to a cholinesterase inhibitor would be expected to be much shallower in slope and to have longer tails than the dose-response curve for any single individual.

The relationship between the dose-response curve for plasma cholinesterase inhibition and the dose-response curves for more direct indicators of clinical intoxication, such as acetylcholinesterase activity in the CNS or the actual appearance of signs of intoxication, is not known. Evidence suggests that there is considerable inter-individual variability in these relationships. Some individuals may be free of the symptoms and signs of intoxication when their plasma cholinesterase levels have been inhibited by as much as 90 percent, while others may experience symptoms after only a small decrease in plasma cholinesterase activity. Because of this variability, any exposure limit should be set with this individual variability in mind.

Substances that interfere with oxygen transport. Both carboxyhemoglobin and methemoglobin formation exhibit a classical sigmoidal dose-response relationship in relation to exposure to carbon monoxide or methemoglob-informing compounds. The loss in the oxygen-carrying capacity of the blood is a function of the intensity and duration of exposure. As stated above, the majority of healthy individuals can tolerate some reduction in the oxygen-carrying capacity of their blood without experiencing symptoms of overt toxicity. However, there is great inter-individual variability in the degree of decreased oxygen-carrying capacity that can be tolerated without apparent ill effect. Individuals with pre-existing anemia or with high carboxyhemoglobin levels as a result of other environmental exposures may already be at or above the level at which they will display the signs or experience the symptoms of tissue anoxia. For these individuals, even a small incremental decrease in the oxygen-carrying capacity of the blood can have serious consequences.

Substances causing Antabuse-like effects. The dose-response characteristics of disulfiram, cyanamide, and calcium cyanamide follow the usual S-shaped curve. The effect of exposure to cyanamide is approximately one-half that of exposure to disulfiram (ACGIH 1986). The proposed limits for the substances in this group have been set at levels below those associated with the Antabuse effect in workers ingesting alcohol either during or after work.

The following paragraphs describe the Agency's preliminary findings with respect to the substances that cause metabolic disturbances. The discussions below illustrate the serious nature of the risk associated with exposure to these substances.

PHORATE
CAS: 298-02-2; Chemical Formula: $C_7H_{17}O_2PS_2$
H.S. No. 1319

Phorate is an organophosphorus cholinesterase inhibitor that is used as an insecticide. The ACGIH has recommended exposure limits of 0.05 mg/m³ 8-hour TWA and 0.2 mg/m³ STEL for phorate, with a skin notation.

Phorate has been shown to be a highly toxic compound in animals. Rats exposed to daily doses of phorate showed effects at levels above 0.15 mg/kg/day but no effects at levels below this level. The no-effect level in dogs is between 0.01 and 0.05 mg/kg/day Gaines 1969).

The proposed limit of 0.05 mg/m³ as an 8-hour TWA, supplemented by a STEL of 0.2 mg/m³ and a skin notation, is based on calculations that the no-effect level in humans would lie in the range between 0.21 and 0.7 mg/day, and that use of an appropriate safety factor would suggest an 8-hour limit of 0.05 mg/m³ with a STEL of 0.2 mg/m³ to ensure against excursions greatly in excess of the TWA limit.

OSHA preliminarily finds that these limits will protect workers exposed to phorate against cholinesterase inhibition and its associated effects, which include respiratory symptoms, nausea, confusion, and vomiting. The Agency believes that, in the absence of any OSHA limit, phorate-exposed employees are at risk of experiencing such effects and that establishing a PEL will substantially reduce these risks. The health evidence forms a reasonable basis for proposing a new limit for phorate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CARBON MONOXIDE
CAS: 630-08-0; Chemical Formula: CO
H.S. No. 1071

OSHA's current limit for carbon monoxide is 50 ppm TWA. The ACGIH recommends a TLV–TWA of 50 ppm with a TLV–STEL of 400 ppm. NIOSH (1972) recommends an 8-hour TWA limit of 35 ppm with a 200-ppm ceiling.

Carbon monoxide readily combines with hemoglobin to form carboxyhemoglobin (COHb). Excessive accumulations of COHb cause hypoxic stress in healthy individuals as a result of reduced oxygen-carrying capacity of the blood. In patients with cardiovascular disease, such stress can further impair cardiovascular function. The ACGIH (1986) cites a number of studies showing that exposure to 50 ppm TWA carbon monoxide generally results in COHb levels of 8 to 10 percent, and that such levels are not associated with signs or symptoms of health impairment in healthy individuals. However, ACGIH comments that a TLV of 25 ppm, which results in COHb levels of 4 percent or less, may be necessary for workers with disease that places them at higher risk of serious cardiovascular injury. The NIOSH recommendation of 35 ppm TWA is also based on protecting workers with chronic heart disease; NIOSH believed that such workers should not be allowed to approach a COHb level of 5 percent.

The basis for the recommendation of a 400-ppm TLV–STEL by the ACGIH is not entirely clear, but may be based on a study by Schulte (1964), who stated that exposure to 100 ppm carbon monoxide for 4 hours is excessive. NIOSH recommended a 200-ppm short-term limit to supplement the TWA limit since it appears that transient exposures up to 200 ppm do not significantly alter a worker's equilibrium COHb level.

Exposure to the TLV–TWA of 50 ppm generally results in COHb levels of 8 to 15 percent. These levels are not associated with toxic effects in healthy individuals. NIOSH recommends an 8-hour TWA limit of 35 ppm and a ceiling limit of 200 ppm, based on the need to protect workers with chronic heart disease. OSHA proposes that these NIOSH limits be adopted as the PEL to ensure that COHb levels are less than 5 percent and thus protect workers who may be at greater risk because of cardiovascular or pulmonary impairment. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for carbon monoxide if the Agency determines that this limit will substantially reduce significant risk. OSHA's preliminary feasibility analysis is based on limited data at this level, and the Agency therefore requests additional feasibility information from the public.

CRUFOMATE
CAS: 299-86-5; Chemical Formula: $C_{12}H_{19}ClNO_3P$
H.S. No. 1103

This pesticide actively inhibits both plasma and erythrocyte cholinesterase. Neither OSHA nor NIOSH presently has a limit for crufomate; the ACGIH has set a TWA–TLV of 5 mg/m³ and a STEL of 20 mg/m³ for this substance.

A study in humans showed that ingestion of 200 mg of crufomate daily for 7 days caused no apparent cholinesterase inhibition in the subjects of this controlled study. Rats and dogs receiving higher doses (5 mg/kg/day) for two years did show this effect (McCollister et al. 1968).

Because cholinesterase inhibition is a very sensitive indicator of exposure, OSHA preliminarily concludes that the proposed level of 5 mg/m³ will provide a margin of safety below the ingestion NOEL for humans, which corresponds approximately to an 8-hour inhalation of 20 mg/m³. The substantial risk of experiencing such effects will be significantly reduced from the uncontrolled levels possible in the absence of an OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for crufomate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CARBON DIOXIDE
CAS: 124–38–9; Chemical Formula: CO_2
H.S. No. 1059

OSHA's current limit for carbon dioxide is 5000 ppm TWA. ACGIH also recommends a 5000-ppm TWA with a 30,000-ppm TLV–STEL. NIOSH recommends a 10-hour TWA limit of 10,000 ppm with a 10-minute 30,000 ppm ceiling limit.

Both ACGIH (1988) and NIOSH (1976f) cite studies indicating that continuous exposure to between 1.5 and 3 percent carbon dioxide (15,000 to 30,000 ppm) results in few, if any, adverse effects. However, electrolyte imbalances and other mild metabolic changes have been associated with prolonged exposure to 10,000 to 20,000 ppm (Schulte 1964; Gray et al. 1950). Increases in the rate of respiration have been observed among resting subjects exposed to 30,500 ppm for periods shorter than a day and among exercising subjects exposed to airborne concentrations below 30,000 for the same period (Sinclair et al. 1969).

OSHA is proposing to add a 30,000-ppm STEL to the existing PEL of 5000 ppm TWA to protect employees from experiencing elevated short term exposures; the Agency preliminarily concludes that this limit will substantially reduce the risk associated with such short-term exposures to CO_2. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for carbon dioxide if the Agency determines that this limit will substantially reduce significant risk.

ANILINE (AND HOMOLOGUES)
CAS: 62–53–3; Chemical Formula: $C_6H_5NH_2$
H.S. No. 1025

The current OSHA 8-hour TWA permissible exposure limit for aniline is 5 ppm, with a skin notation. The ACGIH-recommended 8-hour TLV is a 2-ppm TWA, with a skin notation. Aniline, when first distilled, is an oily, colorless liquid that darkens on exposure to air.

Occupational aniline poisoning was a relatively common occurrence in earlier years (ACGIH 1986, p. 30). The early limits for aniline were set to guard against acute toxicity manifested as cyanosis (Henderson and Haggard 1943). Cirrhosis and chronic CNS effects were also reported (Holstein 1955; von Oettingen 1941). Skin absorption occurs when aniline vapor contacts the skin (Dutkiewicz 1962), and skin contact should therefore be avoided.

Early studies suggested that less than full-shift exposures of 7 to 53 ppm of aniline vapor caused mild symptoms, while 1-hour inhalation exposures to concentrations in the range of 100 to 160 ppm caused severe effects (Henderson and Haggard 1943). Later studies in several species of animals found no effects, other than a slight increase in methemoglobin in the blood of rats, after the animals had been exposed to aniline concentrations of 5 ppm for 6 months (Oberst, Hackley, and Comstock 1956). An early NCI aniline hydrochloride cancer bioassay in Fischer-344 rats and B6C3F1 mice demonstrated carcinogenic effects, primarily in the spleen of rats, but multiple organ sites were also involved in rats fed 0.6 percent or 0.3 percent aniline hydrochloride for 103 weeks (NCI 1978).

OSHA has preliminarily concluded that the current limit of 5 ppm is not protective, since systemic effects have been observed in humans exposed to levels as low as 7 ppm and in animals at levels as low as 5 ppm. Accordingly, OSHA proposes an 8-hour TWA of 2 ppm for aniline and retains the skin notation to protect against percutaneous absorption. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for aniline if the Agency determines that this limit will substantially reduce significant risk. The Agency intends to analyze the evidence of aniline carcinogenicity further.

CALCIUM CYANAMIDE
CAS: 156–62–7; Chemical Formula: $CCaN_2$
H.S. No. 1058

OSHA currently has no limit for calcium cyanamide. The ACGIH recommends a TLV–TWA of 0.5 mg/m³ for this crystalline gray material.

The acute toxicity of calcium cyanamide is low, although evidence of its toxic effects is sparse. The oral LD_{50} reported for rabbits is 1400 mg/kg, and that for rats is 1000 mg/kg (Guide to Chemicals Used in Crop Production, London, Ontario, 1973).

Skin and eye irritation have been reported in rats and rabbits, with a significant irritative effect occurring when 100 mg is placed directly into the eyes of rabbits (Martin 1975). Severe skin irritation developed in rabbits when a paste of this substance was applied to the shaved abdominal skin for 24 hours (Martin 1975). Two of five animals died when the dose was 10 g/kg, but all survived a dose of 5 g/kg.

Most industrial toxicities involve primary skin irritation or sensitizing dermatitis. This skin irritation develops in the form of an erythematous rash over the body surfaces exposed to the substance or those areas irritated by clothing or perspiration. Some individuals develop a macular rash on exposure, and this may progress to the weeping stage. In addition, exposed workers may develop temporary vasomotor disturbances of the upper body, with susceptibility increasing with alcohol intake (Fassett 1963). Calcium cyanamide is used medically for its Antabuse-like effect, and the maintenance dose in adults is between 50 and 100 mg/day (Hald, Jacobson, and Varson 1952).

OSHA proposes a TWA of 0.5 mg/m³ for calcium cyanamide. The Agency preliminarily concludes that this level will substantially reduce the risks of eye and skin irritation, sensitizing dermatitis, and the occurrence of Antabuse-like effects possible at previously unregulated levels of exposure. The health evidence forms a reasonable basis for proposing a new limit for calcium cyanamide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CARBOFURAN
CAS: 1563–66–2; Chemical Formula: $C_{12}H_{15}NO_3$
H.S. No. 1068

OSHA does not currently regulate carbofuran. The ACGIH recommends a TLV–TWA of 0.1 mg/m³ for this white crystalline solid.

The inhalation toxicity of carbofuran is low, with Tobin reporting the LC_{50} of 50-percent wettable powder to be 108 mg/m³ for male and 133 mg/m³ for female rats; a respiratory LC_{50} of 53 mg/m³ for guinea pigs exposed to 75-percent wettable powder is also reported (Tobin 1970). Rhesus monkeys did not display cholinesterase depression at levels equivalent to 0.56 mg/m³ of 75-percent wettable powder (Tobin 1970). Chronic feeding studies in the rat have shown no effect at 25 ppm; in the dog, the no-effect level was 20 ppm (Gaines, unpublished data). Inhibition of plasma, erythrocyte, and brain cholinesterase levels were evident at levels of 50 ppm in the diet (Tobin 1970). Six-hour exposures at levels of 0.86 mg/m³ caused significant cholinesterase inhibition in animals (Tobin 1970).

Workers exposed at concentrations approaching 0.1 mg/m³ have not shown any adverse effects (Tobin, personal communication to ACGIH TLV Committee, as cited in ACGIH 1986, p. 100).

OSHA is proposing a permissible exposure limit of 0.1 mg/m³ TWA for this substance to protect exposed employees from the risk of metabolic effects potentially associated with exposure to this previously unregulated substance. The health evidence forms a reasonable basis for proposing a new limit for carbofuran. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CHLORPYRIFOS
CAS: 2921–88–2; Chemical Formula: $C_9H_{11}Cl_3NO_3PS$
H.S. No. 1091

OSHA has no current limit for chlorpyrifos. The ACGIH recommends a TLV–TWA of 0.2 mg/m³ and a 0.6-mg/m³ STEL, with a skin notation, for this white crystalline solid.

Chlorpyrifos has an acute oral LD_{50} of 135 mg/kg for female rats and 163 for male rats (The Merck Index 1983, pp. 309–310). Other sources have reported the acute oral LD_{50} as 82 mg/kg in rats and the acute dermal LD_{50} as about 2000 mg/kg for rabbits (Gray 1965; Gaines 1969).

Chlorpyrifos is absorbed through the skin. It is an active inhibitor of plasma cholinesterase but has only moderate capacity to reduce red blood cell cholinesterase or to cause cholinergic symptoms and systemic injury (ACGIH 1986, p. 138). Particle inhalation has been shown to cause mild depression in plasma cholinesterase in dogs exposed for 4 hours at the upper end of a 140- to 280-mg/m³ range (Spencer 1968).

Dogs and rats fed 3.0 mg/kg of chlorpyrifos daily for 2 years showed no adverse effects (FAO/WHO 1972). Male and female rats showed no teratogenic or reproductive effects when fed 1.0 mg/kg per day (Dow Chemical Company 1972).

Five out of seven human exposures to 0.5 percent chlorpyrifos resulted in a measurable decrease (50 percent) in plasma and red cell cholinesterase (Eliason, Cranmer, von Windeguth et al. 1989). However, another study showed no ill effects on cholinesterase metabolism when human volunteers were exposed to an ultra-low-volume spray (0.8 um/m³ for 3 to 8 minutes) (Ludwig, Kilian, Dishburger, and Edwards 1970). Human cholinesterase levels appear to be less affected by dermal exposure than do those of rabbits (ACGIH 1986, p. 138). In human volunteers, four repeated dermal doses of 10 mg/kg, applied for 12 hours each, caused no depression in cholinesterase levels, but a similar dose of 25 mg/kg did depress plasma cholinesterase. Human subjects ingesting 0.03 mg/kg for 3 weeks showed no cholinesterase effects, but subjects ingesting 0.1 mg/kg demonstrated plasma cholinesterase depression (Dow Chemical Company 1973).

Workers applying chlorpyrifos as a spray were exposed to 0.5 percent chlorpyrifos emulsion and exhibited a marked decrease in plasma and red cell cholinesterase levels (Eliason, Cranmer, von Windeguth et al. 1989). In five of seven exposed sprayers, this reduction was greater than 50 percent.

OSHA proposes a PEL of 0.2 mg/m³ TWA and a 0.6 mg/m³ STEL for chlorpyrifos to protect exposed workers against the risk of organic injury and cholinesterase inhibition caused by this currently unregulated substance. A skin notation is also proposed to protect workers from the significant risk of systemic effects caused by percutaneous absorption. The health evidence forms a reasonable basis for proposing a new limit for chlorpyrifos. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

CYANAMIDE
CAS: 420–04–2; Chemical Formula: $H_2NC{\equiv}N$
H.S. No. 1104

OSHA currently has no limit for cyanamide. The ACGIH recommends a TLV–TWA of 2 mg/m³. Undiluted cyanamide is a deliquescent crystalline solid.

The average oral LD_{50} for cyanamide in rats is 125 (65 to 180) mg/kg, and cyanamide has been observed to be very irritating and caustic to the skin (American Cyanamide Company n.d.). As a 25-percent solution, which is commonly used, 10 mL/kg applied to the skin of rabbits caused no fatalities or signs of systemic toxicity. Irritation occurred in the form of primary skin irritation and, following instillation into the eye, slight irritation of the conjunctival sac (American Cyanamide Company n.d.).

When cyanamide is ingested or inhaled by a person who has also consumed an alcoholic beverage, the person experiences vasodilation of the face and neck, tachycardia, tachypnea, nausea, vomiting, and hypotension. This syndrome is referred to as the Antabuse effect. Studies of cyanamide's Antabuse-like effects indicate that the effect is about one-half that of tetraethylthiuram disulfide (Antabuse) and one-sixth that of tetramethyl thiuram disulfide (Hald, Jacobsen, and Larsen et al. n.d.).

OSHA proposes a limit of 2 mg/m³ TWA for cyanamide. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of irritation and of an adverse reaction in individuals who have ingested alcohol. The health evidence forms a reasonable basis for proposing a new limit for cyanamide. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DICROTOPHOS (BIDRIN)
CAS: 141–66–2; Chemical Formula: $C_8H_{16}NO_5P$
H.S. No. 1131

OSHA currently has no limit for dicrotophos; the ACGIH recommends a TLV of 0.25 mg/m³ TWA, with a skin notation, for this brown liquid with a mild ester odor.

Dicrotophos is a cholinesterase inhibitor (ACGIH 1986, p. 193). The acute oral LD_{50} in rats is reported as 22 mg/kg, and the percutaneous LD_{50} in rabbits is 224 mg/kg (Stanford Research Institute 1982, as cited in ACGIH 1986, p. 193). Another study reports the oral LD_{50} in rats as 16 to 21 mg/kg and the dermal LD_{50} in the same species as 42 mg/kg (Gaines 1969). Two-year feeding studies in rats given 0, 1, 10, or 100 ppm dicrotophos showed no detectable effects at the 1-ppm concentration. At the higher concentrations, decreased body weights (as compared to controls) and cholesterinase inhibition were observed (Woodward Research Corporation 1987, as cited in ACGIH 1986, p. 193). Dietary studies in dogs showed both plasma and erythrocyte cholinesterase inhibition at a 16-ppm concentration, but no significant ill effects at concentrations of 0, 0.16, or 1.6

ppm (Woodward Research Corporation 1967, as cited in ACGIH 1986, p. 193). Studies of vapor inhalation in male rats have shown that transient illness occurred after a 1-hour exposure to 910 mg/m³ technical dicrotophos, and 2820 mg/m³ or 2120 mg/m³ of 38-percent dicrotophos (Kettering Laboratories 1965, as cited in ACGIH 1986). Dicrotophos does not cause demyelinization in chickens (Tunstall Laboratory 1965; Kettering Laboratory 1963, as cited in ACGIH 1986, p. 193), and it is metabolized in a fashion similar to mono-microtophos (Menzer and Casida 1965). The ACGIH (1986, p. 193) reports that dicrotophos penetrates the skin.

The ACGIH recommendation is based on the data described above and, in part, by analogy to other cholinesterase-inhibiting substances. OSHA is proposing an 8-hour TWA permissible exposure limit of 0.25 mg/m³, with a skin notation, for dicrotophos. The Agency preliminarily concludes that this limit will protect exposed workers from the metabolic effects, such as cholinesterase inhibition, potentially associated with inhalation, ingestion, and dermal exposure to this substance. The health evidence forms a reasonable basis for proposing a new limit for dicrotophos. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DIMETHYLANILINE
CAS: 121–69–7; Chemical Formula:
$C_6H_5N(CH_3)_2$
H.S. No. 1143

OSHA's current permissible exposure limit for dimethylaniline is 5 ppm as an 8-hour TWA, with a skin notation. The ACGIH recommends an 8-hour TWA limit of 5 ppm, with a 15-minute STEL of 10 ppm and a skin notation. Dimethylaniline is a yellow-to-brown oily liquid.

One of the major toxic effects of dimethylaniline exposure is methemoglobinemia, although authorities disagree concerning the level at which humans can tolerate exposure to this substance (ACGIH 1986, p. 207).

Hamblin (1962) reported that dimethylaniline is quantitatively less toxic than aniline. Dogs administered a single oral dose of 50 mg/kg exhibited methemoglobinemia, and absorption through the skin can increase the overall exposure (Hamblin 1962). Mayer (1930) reported that dimethylaniline's necrotic potential was markedly lower than that of aniline, which has a TLV–TWA of 2 ppm. However, von Oettingen (1941) stated that dimethylaniline has a greater depressant effect on the nervous system than does aniline.

The literature on industrial experience with dimethylaniline is limited. Hamilton (1919) reported collapse, prolonged unconsciousness, visual disturbance, and intense abdominal pain following severe exposure of two workers.

The Agency is proposing an 8-hour TWA PEL of 5 ppm and a short-term limit of 10 ppm, with a skin notation, for dimethylaniline. OSHA believes that the STEL is necessary to afford protection from CNS depression following acute exposures. OSHA preliminarily concludes that these limits, taken together, will provide exposed workers with protection from the risks of skin absorption, methemoglobinemia, and neuropathic effects associated with exposure to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for dimethylaniline if the Agency determines that this limit will substantially reduce significant risk.

DIOXATHION (DELNAV)
CAS: 78–34–2; Chemical Formula:
$C_{12}H_{26}O_4P_2S_4$
H.S. No. 1146

OSHA currently has no permissible exposure limit for dioxathion. The ACGIH recommends a limit of 0.2 mg/m³ as an 8-hour TWA, with a skin notation. Dioxathion is a nonvolatile, very stable, dark amber liquid.

The pesticide, dioxathion, contains both the cis- and trans-isomers of 2,3-p-dioxanedithiol; the cis-isomer is approximately four times as acutely toxic as the trans-isomer ACGIH 1986, p. 219). The oral LD_{50} values reported for rats range from 23 to 118 mg/kg (with most values in the 23- to 64-mg/kg portion of the range); in dogs, oral LD_{50}s range from 10 to 40 mg/kg. The LC_{50} in rats is 1398 mg/m;³ in mice, it is 340 mg/m³ (Hercules, Inc. 1973, as cited in ACGIH 1986, p. 219). The percutaneous LD_{50}s in rats and rabbits are reported to be 63 and 85 mg/kg, respectively (NIOSH 1983). Instillation of 0.1 ml dioxathion into the rabbit eye produces mild, transient conjunctivitis but no corneal damage (ACGIH 1986, p. 219).

In subacute oral toxicity studies, the no-effect dose level in rats was reported to be 0.22 mg/kg/day; in dogs, a no-effect level of between 0.075 and 0.25 mg/kg/day was indicated (Frawley, Weir, Tusing et al. 1963). Dioxathion was reported not to produce myelin degeneration in chickens (Frawley, Weir, Tusing et al. 1963). The no-effect level in multigenerational studies of reproductive effects in rats was reported to be 10 ppm (Kennedy, Frawley, and Colandra 1973).

Human volunteers who ingested 0.075 mg/kg/day had no symptoms related to plasma or blood cholinesterase activity, while those ingesting 0.15 mg/kg/day exhibited a slight decrease in plasma cholinesterase activity (Frawley, Weir, and Tusing et al. 1963). The World Health Organization has estimated an acceptable daily intake for man of 0.0015 mg dioxathion/kg (WHO, as cited in ACGIH 1986, p. 219). Other organophosphorous compounds have been demonstrated to produce levels of cholinesterase inhibition analogous to those produced by dioxathion (ACGIH 1986, p. 219).

OSHA is proposing an 8-hour TWA PEL of 0.2 mg/m³ for dioxathion; the Agency also proposes a skin notation for dioxathion. OSHA preliminarily concludes that these limits will protect exposed workers against the risk of metabolic effects associated with inhalation and oral exposure and with dermal penetration of this substance, which is currently not regulated by OSHA. The health evidence forms a reasonable basis for proposing a new limit for dioxathion. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

DISULFIRAM
CAS: 97–77–8; Chemical Formula: $C_{10}H_{20}N_2S_4$
H.S. No. 1151

OSHA currently has no limit for disulfiram. The ACGIH recommends a limit of 2 mg/m³ TWA for this crystalline solid.

Disulfiram has a very low order of acute oral toxicity in laboratory animals (ACGIH 1986, p. 225). The LD_{50} for rats is reported as 8.6 g/kg (The Merck Index 1983, pp. 491–492), and the oral LD_{50} for rabbits is reported to be 2.05 g/kg (Brieger 1947). The compound is highly toxic when injected intraperitoneally, with an LD_{50} of 75 mg/kg for mice (National Technical Information Service, as cited in ACGIH 1986, p. 225). The effects of high-dose ingestion include degenerative changes in the liver and kidneys. Very high doses can cause leukopenia and marked hypoplasia or aplasia of the bone marrow; in the most seriously afflicted animals, the blood urea nitrogen sometimes increased and the thymol turbidity test was positive (Brieger 1947).

Adverse health effects occur in humans consuming alcohol and simultaneously exposed to disulfiram. This represents a significant concern since disulfiram, under the trade name Antabuse, is used as a medication in the treatment of chronic alcoholism. For individuals who drink alcohol and are exposed to disulfiram, the symptoms of exposure are facial vasodilation, tachycardia, tachypnea, nausea, vomiting, pallor, and hypotension. High doses of disulfiram can induce convulsions, cardiac arrhythmias, and myocardial infarction, and the compound has also been associated with polyneuropathy, peripheral neuritis, and skin eruption (Compendium of Pharmaceuticals and Specialties 1988). In industry, there have been reports of minimal skin irritation (Mastromatteo, as cited in ACIGH 1986, p. 225) and of optic neuritis (Norton and Walsh 1972).

OSHA is proposing a PEL of 2 mg/m³ TWA for disulfiram. The Agency preliminarily concludes that this limit will protect workers against the risk of Antabuse-like effects associated with exposure to airborne concentrations of disulfuram in combination with alcohol consumption. The health evidence forms a reasonable basis for proposing a new limit for disulfiram. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

ETHION (NIALATE)
CAS: 563–12–2; Chemical Formula:
$C_9H_{22}O_4P_2S_4$
H.S. No. 1160

OSHA currently has no permissible exposure limit for ethion. The ACGIH recommends a limit of 0.4 mg/m³ TWA, with a skin notation. Pure ethion is an odorless and colorless liquid. The technical material has a very disagreeable odor.

Ethion, is an insecticide that is used in a variety of forms, including 25-percent wettable powder, 2-, 3-, and 4-percent dust, 5-percent granules, and in several oil solutions and combinations with other chemicals. As a result, the acute toxicity values reported vary considerably.

NIOSH (1974) reports an oral LD_{50} in rats of 13 mg/kg. Other reported values for oral LD_{50}s in rats include 65 mg/kg, 96 mg/kg, and 208 mg/kg (Clinical Handbook on Economic Poisons; Farm Chemicals Handbook A74; Pesticide Chemicals Official Compendium; all as cited in ACGIH 1986, p. 236). Studies with 95 percent technical ethion report oral LD_{50}s of 87.4±0.16 mg/kg for albino rats and 24.4 mg/kg for female rats (Niagara Chemical Division, FMC Corp., as cited in ACGIH 1986, p. 236). Inhalation studies report LC_{50} values of 710 mg/m³ for female rats exposed to 25-percent wettable powder dust for 1 hour, and 7200 mg/m³ for male rats similarly exposed. Dermal exposure studies employing technical Nialate report a median acute dermal lethal dose of 915 mg/kg, demonstrating ethion's ability to penetrate skin; instillation of 0.05 ml ethion in the rabbit eye is immediately irritating but does not cause corneal scarring (Niagara Chemical Division, FMC Corp., as cited in ACGIH 1986, p. 236). Dietary studies of rats fed 600, 1000, or 1500 ppm showed complete cholinesterase inhibition; 300 ppm in the diet produced marked cholinesterase inhibition (Pesticide Chemicals Official Compendium, as cited in ACGIH 1986, p. 236).

Ethion poisonings have been reported in workers harvesting grapes and peaches (State of California: Department of Industrial Relations, as cited in ACGIH 1986, p. 236).

OSHA is proposing a PEL of 0.4 mg/m³ TWA for ethion. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of organophosphate poisoning and cholinesterase inhibition posed to workers in the absence of any OSHA limit. The Agency notes this substance's potential for dermal absorption in laboratory animals and is proposing a skin notation to protect against the risk of systemic toxicity possible in the absence of a skin notation. The health evidence forms a reasonable basis for proposing a new limit for ethion. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FENAMIPHOS
CAS: 22224–92–6; Chemical Formula:
$C_{13}H_{22}NO_3PS$
H.S. No. 1173

OSHA currently has no limit for fenamiphos. The ACGIH recommends a TLV–TWA of 0.1 mg/m³ for this substance, with a skin notation. Fenamiphos is a tan-colored and waxy solid.

Fenamiphos is a cholinesterase inhibitor that produces both central and peripheral cholinergic reactions (WHO 1975). The acute oral LD_{50} values reported for fenamiphos are 2 to 19 mg/kg in rats, 22 mg/kg in mice, 58 to 100 mg/kg in guinea pigs, 10 to 17 mg/kg in rabbits, and approximately 10 mg/kg in cats and dogs. Acute dermal LD_{50} values are 72 to 154 mg/kg in rats and 178 to 225 mg/kg in rabbits. One- and 4-hour exposures of rats to fenamiphos aerosols resulted in LC_{50} values of 110 to 175 and 91 mg/m³ to 100 mg/m³ of air, respectively. Rabbits exhibited no dermal or eye irritation (WHO 1975; Loeser and Kimmerle 1971).

Rats exposed to fenamiphos aerosol at concentrations of 0.03, 0.25, or 3.5 mg/m³ of air for 3 weeks exhibited no symptoms. At 3.5 mg/m³, rats showed significant depression of plasma cholinesterase; 0.25 mg/m³ was the highest no-effect concentration observed (Kimmerle, as cited in ACGIH 1986, p. 265). Two-year feeding studies of dogs (0.5, 1.0, and 10 ppm) and rats (3, 10, and 30 ppm) revealed no treatment-related toxic or oncogenic effects or tissue changes at a dietary level of 10 ppm; no-observable-effect levels were 3 ppm for the rat and 1 ppm for the dog (WHO 1975). Studies of rabbits and rats showed no embryotoxic or teratogenic effects, and results of a 3-generation study in rats showed that fenamiphos had no effect on reproduction (WHO 1975). Studies of mice have also shown no mutagenic effects, and a study of chickens demonstrated no delayed neurotoxic effects (WHO 1975; Kimmerle, as cited in ACGIH 1986, p. 265). Fenamiphos is metabolized rapidly and excreted primarily in the urine, as demonstrated in absorption tests of the skin and digestive and respiratory tracts of rats and cows (Waggoner and Khasawinah 1974).

There are no reports of human poisonings caused by exposure to fenamiphos, and no quantitative data are available relating adverse health effects to measurable airborne concentrations of fenamiphos.

OSHA proposes a PEL for this substance of 0.1 mg/m³ TWA to protect against the risk of anti-cholinesterase effects. A skin notation is also proposed based on the evidence of percutaneous absorption of fenamiphos in experimental animals. The Agency preliminarily concludes that these limits will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for fenamiphos. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FENSULFOTHION (DASANIT)
CAS: 115–90–2; Chemical Formula:
$C_{11}H_{17}O_4PS_2$
H.S. No. 1174

OSHA currently has no limit for fensulfothion. The ACGIH recommends a TLV–TWA of 0.1 mg/m³ Fensulfothion is a brown liquid at room temperature.

Fensulfothion has an acute oral LD_{50} of 4 mg/kg in male rats, and 1.8 mg/kg in female rats. Aerosol inhalation studies in rats have shown LC_{50}s of 113 mg/m³ for a 1-hour exposure and 29.5 mg/m³

for a 4-hour exposure (Luser and Kimmerle 1971). This insecticide has been shown to have effects similar to those of the other thiophosphates, which cause cholinesterase inhibition. Dermal toxicity is relatively high, with LD_{50} values ranging between 14 and 30 mg/kg for male rats and between 3.5 and 3.0 mg/kg for females (NIOSH 1974). Tests of mice and rabbits have shown no embryotoxic, reproductive or mutagenic effects. The no-effect dietary level in subchronic feeding studies is reported to be 1 ppm in rats and 2 ppm in dogs. The no-effect level for cholinesterase inhibition is reported as 1 ppm in the diet for both dogs and cats (ACGIH 1986, p. 286).

In humans, dermal studies have shown irritation without cholinesterase effects from 2-hour twice-daily applications of a 5-percent granular formulation to the forearms of three subjects. Systemic absorption through the lungs has been demonstrated after inhalation of fensulfothion aerosols (ACGIH 1986, p. 286).

OSHA is proposing a PEL of 0.1 mg/m³ TWA for this previously unregulated substance to reduce the risks of metabolic effects and skin irritation. The Agency preliminarily concludes that this limit will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for fensulfothion. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

FENTHION
CAS: 55-38-9; Chemical Formula: $C_{10}H_{15}O_3PS_2$
H.S. No. 1175

OSHA currently has no limit for fenthion. The ACGIH recommends a TLV–TWA of 0.2 mg/m³, with a skin notation. Fenthion is a yellow-to-tan, oily liquid that smells slightly like garlic.

The primary health effect associated with exposure to fenthion is plasma cholinesterase inhibition. The oral LD_{50} values for the rat and rabbit are 215 mg/kg and 150 mg/kg, respectively, and the dermal LD_{50} in rats is 330 mg/kg (*Farm Chemicals Handbook* 1976; NIOSH 1977). Rats given single intramuscular injections of 5, 25, or 50 mg/kg of fenthion exhibited enduring changes in the electroretinogram (ERG) and cholinesterase activity; pseudocholinesterase activity in the plasma dropped to 50 percent of normal on the fourth day after injection. The retinal effects of fenthion persisted for as long as 50 days (Imai 1975). Groups of Donryn rats fed 300 ppm fenthion daily showed symptoms of organophosphate intoxication, including nervousness, general spasms, diarrhea, salivation, and ophthalmologic effects (Kawai, Tojo, Miyazawa et al. 1976). The no-effect inhalation level for rats has been reported to be 1 ppm for exposures of 6 hours/day, 5 days/week for 3 weeks (Thyssen 1979, as cited in ACGIH 1986, p. 287); the 4-hour inhalation LC_{50} in the rat is between 800 and 1200 mg/m³ Thyssen 1978, as cited in ACGIH 1986, p. 287).

No mutagenic, carcinogenic, or reproductive effects have been reported (WHO 1976; Food and Agriculture Organization 1979; Shirasu, Moriya, Kato et al. 1976; Hanna and Dyer 1975; Oesch 1977; Simmon, Mitchell, and Jergenson 1977; Herbold 1980). Single and repeated applications of the compound have shown no delayed neurotoxic effects in chickens (WHO 1972). Two-year feeding studies of rhesus monkeys have shown plasma cholinesterase inhibition only at the highest oral dose given, i.e., 0.2 mg/kg daily (Rosenblum 1980).

Griffin, Rosenblum, and Coulston (1979) reported cholinesterase depression in humans at oral doses of 0.07 mg/kg daily for 4 weeks, but no effect was observed at 0.02 mg/kg. The lowest lethal dose for humans is 50 mg/kg (*Farm Chemicals Handbook* 1976; NIOSH 1977).

OSHA is proposing an 8-hour TWA limit of 0.2 mg/m³, with a skin notation, for fenthion. The Agency preliminarily concludes that these limits will protect workers against the risk of cholinergic effects associated with exposures to this substance at the levels permitted by the absence of any OSHA limit. A skin notation is proposed because of evidence that fenthion is readily absorbed through the skin. The health evidence forms a reasonable basis for proposing a new limit for fenthion. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

METHOMYL
CAS: 16752-77-5; Chemical Formula: $C_5H_{10}N_2O_2S$
H.S. No. 1245

OSHA currently has no limit for methomyl. The ACGIH recommends a TLV–TWA of 2.5 mg/m³ for this white crystalline solid with a slightly sulfurous odor.

Methomyl is a cholinesterase-inhibiting insecticide. The oral LD_{50} in rats is reported to be between 25 and 40 mg/kg (Dashiell and Kennedy 1984). Studies of dermal effects have reported no appreciable irritation or sensitization effects in guinea pigs. Instillation of a 10-percent solution of methomyl in propylene glycol or of the dry material into rabbit eyes caused mild conjunctivitis without corneal injury. However, marked pupillary constriction, a health effect produced commonly by cholinesterase inhibitors, occurred (E.I. du Pont de Nemours and Co., Inc., as cited in ACGIH 1986, p. 363). The LC_{50} of unformulated methomyl as mist is 0.3 mg/L at 4-hour exposures; the lethal concentration in rats exposed to a 90-percent water-soluble formulation with a particle size of less than 10 microns was approximately 0.45 mg/L.

Inhalation studies have reported no fatalities resulting from 4-hour exposures to the saturated vapor. There is no clinical evidence of cumulative toxicity resulting from 10 doses of 5.1 mg/kg/day over a 14-day period (Harvey, Jelnek, and Sherman 1973). Methomyl is rapidly metabolized and excreted in the urine, and cholinesterase inhibition is thus quickly reversed. In dogs, a dose of 20 mg/kg (one-half the lethal dose) produced symptoms of intoxication and cholinesterase inhibition that disappeared within 2 to 4 hours after cessation of exposure (E.I. du Pont de Nemours and Co., Inc. as cited in ACGIH 1986, p. 363). No depression of cholinesterase activity could be detected in rats fed at levels of 0, 200, 400, or 800 ppm methomyl for 79 days. In dogs, 90-day and 2-year feeding studies have shown no effect at 0, 50, 100, or 400 ppm; however, animals fed at 1000 ppm did demonstrate toxicity. Similar studies of rats have shown kidney, liver, and spleen damage at higher feeding levels, but the no-effect level for both rats and dogs has been reported to be 100 ppm (Kaplan and Sherman 1977).

OSHA is proposing a PEL of 2.5 mg/m³ TWA for methomyl. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of cholinesterase inhibition to which they could otherwise be exposed in the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for methomyl. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

MONOMETHYLANILINE
CAS: 100-61-8; Chemical Formula: $C_6H_5NH(CH_3)$
H.S. No. 1280

OSHA's existing PEL for monomethylaniline (N-methyl aniline) is 2 ppm, measured as an 8-hour TWA, and this limit is accompanied by a skin notation, indicating that this chemical may penetrate the skin to a degree such that the total amount absorbed by the body via all routes of exposure may be

significantly increased. The ACGIH has a limit of 0.5 ppm TWA for monomethylaniline, with a skin notation. Monomethylaniline is a colorless liquid which turns reddish-brown after standing.

Treon, Deichmann, Sigmon, and associates (1949) found that monomethylaniline applied to the skin of laboratory animals resulted in systemic poisoning, and that the oral LD_{50} in rabbits was 280 mg/kg. A later study by Treon and his associates (1950) showed that guinea pigs, rabbits, and rats died from 130 or fewer 7-hour exposures to 7.6 ppm monomethyl aniline. In the same study, a monkey survived the same number and length of exposures at 2.4 ppm, and a dog survived 50 exposures at 86 ppm. Exposed animals later developed blood changes, including methemoglobinemia and Heinz bodies.

OSHA is proposing a 0.5-ppm TWA limit, with a skin notation, for this substance. The Agency preliminarily concludes that these two limits, taken together will protect exposed workers from the risk of metabolic and blood effects, such as methemoglobinemia, potentially associated with exposure to monomethylaniline. The skin notation will protect workers from the risk of systemic poisoning posed by skin absorption of this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for monomethylaniline if the Agency determines that this limit will substantially reduce significant risk.

p-NITROCHLOROBENZENE
CAS: 100-00-5; Chemical Formula: $NO_2C_6H_4H_4Cl$
H.S. No. 1286

OSHA currently has an 8-hour TWA limit of 1 mg/m³, with a skin notation, for p-nitrochlorobenzene (PNCB). The ACGIH recommends a TLV–TWA of 3 mg/m³ with a skin notation. para-Nitrochlorobenzene exists as yellow crystals and has a sweet odor.

The primary hazards associated with exposure to PNCB include systemic toxicity to the liver, spleen, bone marrow, and kidneys, as well as methemoglobinemia and DNA damage. The Monsanto Company (1977) reported an oral LD_{50} in rats of 530 mg/kg and a dermal LD_{50} in rabbits of greater than 3040 mg/kg; PNCB was absorbed through rabbit skin to produce methemoglobinemia (Kubota 1980), although application to the skin or eyes did not produce irritation (Monsanto Company 1977). Rusakov and associates (1973) described sensitization in guinea pigs after dermal application of PNCB.

A 4-hour inhalation exposure of rats (heads only) showed that the lethal concentration was approximately 18.1 mg/L (Du Pont Company 1981, as cited in ACGIH 1986, p. 432). Head-only exposures at 0.05, 0.29, or 0.64 mg/L PNCB for 6 hours/day, 5 days/week for 2 weeks resulted in spleen weight increases and blood effects in all groups. In addition, there were dose-related effects in blood methemoglobin levels, i.e., decreased hemoglobin, hematocrit, and red blood cell count values. Microscopic changes in the spleen, bone marrow, and kidneys were seen in the two higher-dose groups, and pathological degeneration of the seminiferous tubules and abnormal epididymal sperm contents were also observed in these groups (Du Pont Company 1984, as cited in ACGIH 1986, p. 432).

The Monsanto Company (1981, as cited in ACGIH 1986, p. 432) reported that a 90-day gavage administration of PNCB at daily doses of 0.3, 10, or 30 mg/kg to male and female rats produced hemolytic effects and spleen changes at all levels, kidney and liver effects at mid- to high-level doses, and hyperplasia of bone marrow and testicular atrophy at the highest dose (30 mg/kg/day). In 1985, Monsanto reported the results of another gavage study in rats. After 2 years of PNCB feeding at 0.1, 0.7, or 5.0 mg/kg/day, animals in the mid- and high-dose groups exhibited hemolytic effects; in addition, mid- and high-dose groups showed microscopic spleen, kidney, and liver changes and, at the highest dose, bone marrow hyperplasia and testicular atrophy were seen (Monsanto Company 1985, as cited in ACGIH 1986, p. 432).

Rats fed PNCB at doses of 0, 0.1, 0.7, or 5 mg/kg/day for up to 2 years showed methemoglobinemia at the two highest levels, and animals in the 5 mg/kg/day group had indications of anemia and pigment accumulation in spleen cells. No treatment-related increase in tumors was observed (Monsanto Company 1985, as cited in ACIGH 1986, p. 432). In a dietary cancer bioassay, rats and mice were given PNCB at unspecified levels for 2 years (Weisberger, et al. 1978). Only mice were affected, with mice of both sexes showing an increase in vascular tumors at the highest dose and male mice showing an increase in liver tumors at the lowest dose (Weisberger et al. 1978).

Maternal toxicity was seen in rats given PNCB by gavage at doses of 15 and 45 mg/kg/day on days 9 through 16 of gestation; at the 45-mg/kg level, fetotoxicity and teratogenicity were also observed (Nair et al. 1985). At 15 mg/kg, maternal toxicity but no fetotoxicity or teratogenic effects occurred; at the lowest dose, the only effect was a small increase in maternal spleen weight. A two-generation reproductive study resulted in a reduced mating index in rats given 0.7 or 5.0 mg/kg/day (Monsanto Company) 1984, as cited in ACGIH 1986, p. 432). Positive responses were observed in a mutation assay of L5178Y TK mouse lymphoma cells (both in the presence and absence of metabolic activation) and in a microbial assay of *Salmonella* strain TA 1535 (in the absence of metabolic activation); however, no evidence of mutagenicity was noted in assays of three other *Salmonella* strains or in assays of Chinese hamster ovary cells, rat hepatocyte primary culture/DNA repair, or rat bone marrow cell clastogenesis (Monsanto Company 1980–1984, as cited in ACGIH 1986, p. 432). PNCB produced DNA damage in the liver, kidney, and brain cells of rats after a single intraperitoneal dose of 30 to 1000 mg/kg (Cesarone et al. 1983) and in cultured hepatocytes at 1.5 hours after a 3-hour treatment (Cesarone et al. 1984).

p-Nitrochlorobenzene may be absorbed through the lungs and skin in humans to produce methemoglobin. Reports of industrial exposures indicate that overexposure causes cyanosis, weakness, and headache (Saita and Moreo 1956; Renshaw 1926). In a study of workmen exposed to average concentrations of PNCB at 55, 125, and 143 ppm and to a PNCB-nitrophenol mixture at 23 ppm, the authors concluded that the mixed exposure did not produce chronic intoxication, but did cause increased methemoglobin, the appearance of Heinz bodies, headache, vertigo, and occasional eczema; these effects could not be attributed definitely either to skin absorption or to the level of PNCB in the mixture (Pacseri et al. 1958). No data are reported for the p-nitrochlorobenzene exposures only (Pacseri et al. 1958).

OSHA is proposing to retain its current 8-hour TWA limit of 1 mg/m³ for p-nitrochlorobenzene, with a skin notation. The Agency preliminarily concludes that these limits are necessary to protect workers from the risk of methemoglobinemia and changes in the spleen, liver, and kidney possible at higher exposure levels. OSHA is retaining the skin notation because dermal absorption of PNCB has been shown to cause systemic effects in animals.

PROPOXUR
CAS: 114-26-1; Chemical Formula: $C_{11}H_{15}NO_3$
H.S. No. 1337

OSHA has no current limit for propoxur. The ACGIH has established an 8-hour TLV–TWA of 0.5 mg/m³ for this white, odorless, crystalline compound.

The oral LD_{50}s in male and female rats are 83 and 66 mg/kg, respectively; for both sexes, the dermal LD_{50} is greater than 2400 mg/kg (Gaines 1969).

Dietary studies in rats at levels of 7.5 mg/kg/day for 28 days or at 800 ppm for 3 months produced no adverse effects (Association of American Pesticide Control Officials, Inc., 1986, as cited in ACGIH 1986, p. 499).

Rats were exposed to propoxur concentrations of 5, 7, 18.7, or 31.7 mg/m³ 6 hours/day, 5 days/week for 12 weeks; animals in the high-dose group showed depressed red blood cell and brain cholinesterase levels, and plasma cholinesterase was depressed by as much as 20 to 30 percent (Association of America Pesticide Officials, as cited in ACGIH 1986, p. 499).

In humans, a few cases of mild propoxur poisoning have been reported among sprayers of this insecticide and among residents of propoxur-treated homes (Vandekar, Hedayat, Plestina, and Ahmady 1968). In a study of human volunteers, a single oral dose of 1.5 mg/kg propoxur caused gastrointestinal symptoms that disappeared two hours after ingestion and a depression in red blood cell cholinesterase; oral doses of 0.75 to 1.0 mg/kg produced no symptoms but did depress erythrocyte cholinesterase (Vandekar, Plestina, and Wihelm 1971).

OSHA is proposing an 8-hour TWA of 0.5 mg/m³ for propoxur. The Agency preliminarily concludes that this limit will protect workers against the risk of cholinesterase inhibition potentially associated with exposure to this substance at the levels permitted by the absence of any OSHA limit. The health evidence forms a reasonable basis for proposing a new limit for propoxur. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

RONNEL
CAS: 299–84–3; Chemical Formula: $(CH_3O)_2PSOC_6H_2Cl_3$
H.S. No. 1349

OSHA currently has a limit of 15 mg/m³ TWA for ronnel. The ACGIH recommends a TLV–TWA of 10 mg/m³ for this white, noncombustible powder.

Ronnel is an indirect cholinesterase inhibitor that affects the blood plasma rather than the red cell acetyl cholinesterase (Plapp and Casida-1958). The acute oral LD_{50} for rats is reported as 1250 and 2630 mg/kg for males and females, respectively. The oral LD_{50} in dogs is greater than 500 mg/kg (McCollister, Oyen, and Rowe 1959). Two-year dietary studies of rats fed up to 50 mg/kg/day showed no effect on growth rate, food consumption, survival or hematopoesis (McCollister, Oyen, and Rowe 1959). In a study by Gladenko and Stuk (1972), albino rats developed clinical symptoms of motor irritation, tremor, increased auditory and tactile sensitivity, lacrimation, and salivation within 2 weeks at exposure levels between 164 and 328 mg/kg; some animals died during the latter part of the study. At exposures below 16.4 mg/kg, no ill effects were observed (Gladenko and Stuk 1972). A 2-year feeding study in dogs exposed at 10 mg/kg showed no ill effects except cholinesterase depletion (Worden, Noel, and Mawdsley-Thomas 1972).

Patch tests of 50 human subjects showed that ronnel has no skin-sensitizing potential (McCollister, Oyen, and Rowe 1959).

OSHA proposes an 8-hour TWA limit of 10 mg/m³ for ronnel. The Agency preliminarily concludes that this limit will protect workers against the risk of cholinergic effects potentially associated with exposure to this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for ronnel if the Agency determines that this limit will substantially reduce significant risk.

SULPROFOS
CAS: 35400–43–2; Chemical Formula: $C_{12}H_{19}O_2PS_2$
H.S. No. 1380

OSHA's Z tables currently have no limit for sulprofos. The ACGIH recommends an exposure limit of 1 Mg/m³ as an 8-hour TWA. Sulprofos, also known as the insecticide Bolstar®, is a tan liquid.

Kimmerle (1982, as cited in ACGIH 1986, p. 547) conducted an extensive animal study on the effects of sulprofos. He reported that the acute toxicity of sulprofos is species-dependent; rats have an oral LD_{50} of 100 to 300 mg/kg and mice have an oral LD_{50} of 1600 to 1800 mg/kg. The acute dermal toxicity of this substance is low, with an LD_{50} greater than 1000 ml/kg in rats and 800 to 1000 mg/kg in rabbits. In rabbits, sulprofos did not irritate the skin or eyes, and it had no dermal sensitization effects in guinea pigs. Inhalation studies showed no fatalities in rats exposed to aerosol concentrations of up to 4130 mg/m³ of sulprofos over a period of 4 hours. In a 3-week inhalation study in which rats were exposed to aerosol concentrations of 6, 14, or 74 mg/m³, the two highest concentrations produced cholinergic symptoms; no observable effects were seen at the lowest concentration. Two-year feeding studies by Kimmerle (as cited in ACGIH 1986, p. 547) in dogs, rats, and mice showed that sulprofos concentrations of 150 ppm, 250 ppm, or 400 ppm were tolerated by all species, with no sulprofos-related tissue changes, signs of toxicity, or oncogenic effects. The overall NOELs were 10 ppm in dogs, 6 ppm in rats, and 2.5 ppm in mice. Kimmerle's ingestion studies in rats and rabbits at levels of 3, 10, or 30 mg/kg/day of sulprofos showed no embryotoxic or teratogenic effects in these animals, and a three-generation diet study in rats also produced no adverse reproductive effects. Mutagenic studies reported by the same author in mice were negative. Separate subacute inhalation studies also showed no effects on blood cholinesterase levels in rats exposed to 6 mg/m³ Zielhuis and Van der Kreek 1979).

There are no reported cases of poisoning in humans (ACGIH 1986, p. 547).

OSHA is proposing an 8-hour TWA limit of 1 mg/m³ for sulprofos. The Agency preliminarily concludes that this limit will protect workers from the risk of cholinesterase inhibition, the most sensitive indicator of exposure to this currently unregulated substance. The health evidence forms a reasonable basis for proposing a new limit for sulprofos. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

TERPHENYLS
CAS: 26140–60–3; Chemical Formula: $C_{18}H_{14}$
H.S. No. 1384

The current OSHA limit for the terphenyls is 1.0 ppm as a ceiling limit. The ACGIH recommends a 0.5-ppm ceiling limit for these substances. Terphenyls are colorless or light-yellow solids and are used as coolants in nuclear reactors. Commercial preparations contain mixtures of ortho, meta, and para terphenyls.

The terphenyls are primary irritants that cause eye, skin, and respiratory irritation.

Haley, Detrick, Kosmeau et al. (1959) reported that mixtures of terphenyls caused conjunctival irritation when instilled into the eyes of rabbits and damaged guinea pig skin following intracutaneous injection. Cornish, Bahor, and Ryan (1962) determined LD_{50} values of 1900, 2400, and greater than 10,000 mg/kg for the ortho, meta-, and para-terphenyls, respectively. These authors

also conducted 30-day feeding studies of rats involving doses of 250 or 500 mg/kg/day of the individual terphenyl isomers. Rats fed ortho-terphenyl showed elevated liver and kidney weight ratios; rats fed meta-terphenyl displayed elevated kidney weight ratios only; and rats fed para-terphenyl showed no elevation in liver or kidney weight ratios. Two studies by Petkau and Hoogstraaten (1965) and Young, Petkau, and Hoogstraaten (1969) have shown that the terphenyls have nephrotoxic effects and cause hepatic damage in rats fed 33 mg/kg/day. Adamson, Bowden, and Wyatt (1969) published a study in which rats exposed to terphenyl aerosols for 7 hours per day at a concentration of 50 mg/m³ for a period of 8 days developed morphological changes in their pulmonary cell mitochondria: the number of vacuolated mitochondria was directly related to duration of exposure.

Weeks and Lentle (1970, 1971) conducted a clinical survey of 47 workers with ongoing exposure to terphenyl coolant in a nuclear facility. The study represented 122 man-years of occupational exposure, with duration of exposure ranging from 6 months to 7 years. The airborne concentrations of terphenyl varied, measuring 0.094 mg/m³ in general working areas and up to 0.89 mg/m³ in areas with organic piping equipment. The terphenyl coolant was determined to be a primary irritant, even in those workers wearing protective clothing, because skin moistness increased sensitivity to the terphenyls (Weeks and Lentle 1970, 1971). Testa and Masi (1964) reported that at concentrations above 10 mg/m³ (approximately 1 ppm), workers reported both eye and respiratory irritation.

OSHA is proposing a ceiling of 0.5 ppm for the terphenyls. The Agency preliminarily concludes that this limit will protect exposed workers against the risk of primary irritation of the eyes, skin, and upper respiratory tract and of mitochondrial changes potentially associated with exposure to very low levels of the terphenyls. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for terphenyls if the Agency determines that this limit will substantially reduce significant risk.

m-TOLUIDINE
CAS: 108–44–1; Chemical Formula: C_7H_9N
H.S. No. 1401

m-Toluidine currently has no OSHA permissible exposure limit. The ACGIH recommends a 2-ppm 8-hour TWA, with a skin notation. m-Toluidine is a light yellow liquid.

When m-toluidine was tested on the eyes and skin of rabbits, moderate to strong irritation effects resulted (NIOSH 1979). A mean maximal methemoglobinemia of 66.2 percent was reported to occur following the intravenous administration of 27 mg m-toluidine per kilogram body weight in cats (McLean, Starner, and Thomas 1969). Rodent carcinogenicity studies cited by the ACGIH (1986, p. 589) were either inconclusive or negative.

The effects in humans of exposure to m-toluidine, either absorbed through the skin or via inhalation, are hematuria and methemoglobinemia. Exposure to 40 ppm for 60 minutes causes severe poisoning (Goldblatt 1955). There are no epidemiological studies of workers exposed only to m-toluidine (ACGIH 1986, p. 589).

OSHA is proposing a 2-ppm 8-hour TWA and a skin notation for this previously unregulated chemical. The Agency preliminarily concludes that this limit will protect workers from the risk of metabolic effects, such as hematuria and methemoglobinemia, associated with exposure to m-toluidine at levels currently permitted in the absence of any OSHA PEL. The health evidence forms a reasonable basis for proposing a new limit for m-toluidine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

2,4,6-TRINITROTOLUENE
CAS: 118–96–7; Chemical Formula: $C_7H_5N_3O_6$
H.S. No. 1413

OSHA's current PEL for 2,4,6-trinitrotoluene (TNT) is 1.5 mg/m³ as an 8-hour TWA with a skin notation. The ACGIH has set a standard of 0.5 TLV–TWA with a skin notation for this chemical. TNT occurs as yellow needle-like crystals and is used as an explosive.

The ACGIH's limit was selected on the basis of health surveys conducted among occupationally exposed workers. Fairhall (1957) describes dermatitis, cyanosis, gastritis, acute yellow atrophy of the liver, and aplastic anemia as possible effects of exposure to TNT. According to Sollman (1957), blood destruction, leucocytosis or leucopenia, and varying degrees of central nervous system change (probably resulting from anoxia, peripheral neuritis and muscular pains, cardiac muscular and menstrual irregularities, and urinary and renal irritation) can also occur as a consequence of TNT exposure. TNT has irritant properties, and may cause sneezing, sore throat, or skin irritation (von Oettingen 1941).

A study by Goodwin (1972) revealed 36 cases of liver damage in a munitions plant where workers were exposed to a mean air level of 2.38 mg/m³ TNT over a period of 20 years. Another study (Morton et al. 1976) found elevated levels of liver enzymes in 43 TNT shell-packers and loaders who worked where TNT exposures ranged from 0.3 to 0.8 mg/m³ over a period of 5 months. In 1975, Djerassi and Vitany published a paper describing hemolytic episodes in three TNT workers with glucose-6-phosphate dehydrogenase deficiency; although these workers were from Iraq, where G–6–PDase deficiency has a high (25 percent) frequency of occurrence, the study is also of concern for other workers having a high frequency of G–6–PDase deficiency.

OSHA is proposing an 8-hour TWA of 0.5 mg/m³ with a skin notation for 2,4,6-trinitrotoluene. The Agency preliminarily concludes that this limit is necessary to protect workers against the risk of liver damage and hemolytic effects potentially associated with exposure to TNT. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for 2,4,6-trinitrotoluene if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

For the class of toxic substances having biochemical/metabolic effects, OSHA preliminarily concludes that occupational exposure presents significant risks. The effects associated with exposure to these substances (which inhibit cholinesterase activity, interfere with the blood's ability to carry oxygen, and produce Antabuse-like symptoms and signs) range from nausea, bronchoconstriction, cardiac irregularities, neurobehavioral effects, and unconsciousness, to coma and death, depending on the severity of the exposure. Because many of these substances are relatively new on the industrial scene, OSHA has no limits for them. This situation means that occupational exposures can potentially be uncontrolled, which increases the urgency that limits be adopted. The Agency thus preliminarily finds that establishing or revising limits for this group of toxicants will reduce occupational risks. The health evidence discussed in this section provides a reasonable basis for proposing revised or new limits for these substances. At the time of the final rule, OSHA will revise or add new limits for this group of metabolic toxins if the Agency

determines that these limits will substantially reduce significant risk.

14. Substances for Which Proposed Limits Are Based on Avoidance of Sensitization Effects

Introduction

OSHA is proposing limits for eight substances based on their sensitization potential. Table C14–1 lists the current OSHA PELs, ACGIH Limits, and NIOSH RELs for each chemical in this group, along with their CAS and HS numbers. In four cases, current OSHA regulations set no limit on exposure. For two substances, OSHA is proposing to reduce its current TWA–PEL. In one other instance, OSHA is proposing to replace its current ceiling limit with an 8-hour TWA–PEL and a 15-minute STEL. For the remaining substance, the addition of a STEL with no change in the current TWA–PEL is proposed. NIOSH has recommended exposure limits for three substances that cause sensitization; OSHA is proposing the REL value for one of these chemicals, isophorone diisocyanate.

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Table C14-1. Substances for Which Limits Are Based on Avoidance of Sensitization

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1066 Captafol (Difolatan)	2425-06-1		0.1 mg/m^3 TWA, Skin	
1100 Cobalt, metal, fume, dust	7440-48-4	0.1 mg/m^3 TWA	0.05 mg/m^3 TWA	-
1222 Isophorone diisocyanate[†]	4098-71-9		0.01 ppm TWA, Skin	0.005 ppm TWA 0.02 ppm Ceiling (10 minutes)
1313 Phenothiazine	92-84-2		5 mg/m^3 TWA, Skin	-
1315 Phenyl glycidyl ether	122-60 1	10 ppm TWA	1 ppm TWA	1 ppm Ceiling (15 min)
1329 Picric acid	88-89 1	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL, Skin	
1373 Subtilisins (Proteolytic enzymes)	9014-01 1		0.06 ug/m^3 Ceiling**	

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Table C14-1. Substances for Which Limits Are Based on Avoidance of Sensitization (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1398 Toluene-2,4-diisocyanate	584-84-9	0.02 ppm Ceiling	0.005 ppm TWA 0.02 ppm STEL	0.005 ppm TWA 0.02 ppm Ceiling (20 min)

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ Proposed PEL is the NIOSH REL.

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Description of the Health Effects

A sensitization reaction, also known as an allergic reaction, is defined as an adverse response to a chemical following a previous exposure to that chemical or to a structurally similar one (Klaasen 1986). The subject who suffers an allergic reaction is said to have become sensitized to that chemical. Sensitization is the result of an immune reaction to the chemical; although the initial exposure does not generate an immediate response, the immune system "remembers" the chemical and reacts strongly at the next encounter. A related phenomenon is cross-sensitization. Cross-sensitization occurs when exposure to one chemical elicits a sensitization reaction not only on subsequent exposure to the same chemical but also on exposure to a different chemical, usually one with a similar structure.

The toxic manifestations of a sensitization reaction vary both in their location and severity. In humans, common target organs are the skin and the eyes; typical allergic conditions in these organ systems are allergic contact dermatitis and conjunctivitis, respectively. The respiratory system can also be sensitized; the resulting pathologies include bronchitis and asthma (Dean et al. 1986). These allergic reactions are mediated by the two immunoglobulins IqD or IqE. Involvement of IqD results in delayed contact dermatitis. In contrast, IqE-mediated reactions cause very severe effects, such as acute asthmatic attack, urticaria, and anaphylactic shock, which can be fatal. The unpredictability and potential seriousness of sensitization reactions demand that exposures be carefully controlled.

Sensitivity to a chemical frequently persists throughout the lifetime of an individual; occasionally it may gradually disappear over time. Usually symptoms are not observed after exposure to the sensitizing agent is discontinued. Although treatment for some allergies is possible, avoidance is considered the best way, and sometimes the only way, to regain good health.

An additional cause for concern about exposure to sensitizing chemicals is recent evidence that residual respiratory symptoms may continue even after exposure is discontinued. For example, in the case of toluene-2,4-diisocyanate (TDI), Weill et al. (1981) and Innocenti et al. (1981) found that sensitized workers may exhibit decreased pulmonary function or chronic bronchitis for as long as 3½ years after cessation of exposure.

Dose-Response Relationships and Sensitization Effects

Like other toxic effects, allergic reactions are dose-related; that is, in response to increasing doses of the chemical, increasing numbers of subjects may be sensitized, and the subsequent reactions may be more severe. The time course of sensitization for any one individual is unpredictable. Some individuals are sensitized after only one exposure; others remain resistant to sensitization after a lifetime of exposure. Different people are generally sensitive to different chemicals, although some chemicals are more universally reactive than others, such as the active agent in poison ivy. Various parameters influence the likelihood of sensitization by a particular chemical, such as "the nature of the chemical, concentration, type of exposure, genetic susceptibility and nongenetic idiosyncrasies" (Emmett 1986). Sensitization reactions observed in occupational settings are often the result of dermal or inhalation exposure.

For most of the substances in this group, the proposed limits are based on health surveys and reports of occupationally exposed populations. These studies indicate that exposures below a certain no-effect level generally do not result in individuals becoming sensitized. Where human data were absent or sparse, OSHA has relied on animal evidence to set the proposed limit. However, since chemically induced immunological sensitization occurs among laboratory animals by the same mechanism as in humans (that is, immune reactions in animals can be mediated by either IqB or IqE immunoglobulins), sensitization reactions in animals are generally good predictors of immune reactions in humans.

The discussions below describe OSHA's preliminary findings for the substances in this group. These discussions illustrate the nature of the risk confronting exposed employees, and the extent to which the risk of developing immune sensitization will be reduced among workers by the promulgation of the proposed limits.

CAPTAFOL (DIFOLATAN)
CAS: 2425-06-1; Chemical Formula: $C_{10}H_9Cl_4NO_2S$
H.S. No. 1066

OSHA has no current permissible exposure limit for captafol. The ACGIH recommends a TLV-TWA of 0.1 mg/m³, with a skin notation. Captafol is a white, crystalline substance with a slight but characteristic odor.

A 2-year study conducted by the World Health Organization (Reinhardt and Brittelli 1981) reported growth depression in rats at captafol dietary levels of 1500 and 5000 ppm, and histopathologic examination revealed changes in the livers and kidneys of the animals exposed at these levels. No tumors were observed. In male rats, an increase in liver-to-body-weight ratio was observed at levels of 250 ppm and higher after 12 months of captafol feeding (Reinhardt and Brittelli 1981).

In humans, skin irritation has been reported in both American and Japanese studies of farmers applying captafol as a fungicide. Arimatsu (1970) reports that farmers using captafol have experienced acute contact dermatitis manifesting as erythematous dermatitis and phototoxic eruptions. Khan reports that workers cleaning up in an area where captafol was handled experienced skin and respiratory sensitization (written communication, 1975, as cited in ACGIH 1986, p. 97).

OSHA is proposing a permissible exposure limit for captafol of 0.1 mg/m³ TWA, with a skin notation, to protect exposed workers against the risk of contact dermatitis and respiratory and skin sensitization associated with exposure to this substance at the levels permitted in the absence of any OSHA limit. The Agency preliminarily concludes that the 8-hour TWA, combined with a skin notation, will substantially reduce this risk. The health evidence forms a reasonable basis for proposing a new limit for captafol. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

COBALT (METAL, DUST AND FUME)
CAS: 7440-48-4; Chemical Formula: Co
H.S. No. 1100

OSHA has a current 8-hour TWA limit of 0.1 mg/m³ for cobalt metal dust and fume. The ACGIH recommends a TLV-TWA of 0.05 mg/m³ for cobalt, which is a gray, hard, magnetic, and somewhat malleable metal.

Animal studies indicate that high intratracheal doses (10, 25, or 50 mg) of cobalt metal dust can cause obliterative bronchiolitis adenomatosis in guinea pigs (Schepers 1955). Additional studies in animals have shown that exposure to cobalt dust or fumes causes hypersensitivity reactions. Increases in serum A-globulin and neuraminic acid occurred in dogs and rabbits exposed by inhalation to cobalt metal, metal fume, or carbide blend; injections of $CoCl_2$ produced similar reactions (Stokinger and Wagner 1958). Recent studies conducted on miniswine have shown that inhalation of 0.1 mg/m³ cobalt

metal dust (50 percent alpha and 50 percent beta variety, with a size range of from 0.4μ to 3.8μ) has caused early (onset in 3 months) pulmonary disease. Wheezing, which indicates hypersensitivity, occurred during the fourth week of exposure to 0.1 or 1.0 mg/m³ for 8 hours/day, 5 days/week, for 3 months following a 1-week sensitizing dose (Kerfoot, Frederick, and Domeier 1975).

Pulmonary disease has been reported frequently in workers exposed to cobalt in the manufacture of cemented tungsten carbide (Miller, Davis, Goldman, and Wyatt 1953; Lundgren and Ohman 1954; Lundgren and Swensson 1953). The adverse effect of exposure is generally chronic interstitial pneumonitis. Fatalities have been reported occasionally from exposures to cobalt of 1 to 2 mg/m³ or less (Fairhall, Gastberg, Carrozza, and Brinton 1947; Fairhall, Keenan, and Brinton 1959). An increase in serum A-2 globulin fraction was reported in the case of a welder exposed to fumes containing cobalt; the welder had a history of exertional dyspnea and an abnormal chest X-ray (Seigesmund et al. 1974). Schwartz, Tulipan, and Birmingham (1957) reported that allergic dermatitis has been caused by contact with cobalt and its compounds.

In studies undertaken by the Michigan Department of Health, it was demonstrated that, in the period between 1948 and 1964, improved control measures had successfully reduced cobalt metal dust and fume levels from 14.42 mg/m³ to a level below 0.1 mg/m³. No new cases of systemic toxicity or dermatitis have since been associated with cobalt exposure. The Pennsylvania Department of Health demonstrated that concentrations could be controlled easily to 0.07 mg/m³; without control, concentrations were about 0.5 mg/m³ (ACGIH 1986, p. 144).

OSHA is proposing an 8-hour TWA limit of 0.05 mg/m³ for cobalt metal fume and dust. The Agency preliminarily concludes that this limit will provide workers exposed to cobalt metal dust and fume with protection against the risk of serious pulmonary injury demonstrated to occur at levels above 0.1 mg/m³. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for cobalt if the Agency determines that this limit will substantially reduce significant risk.

ISOPHORONE DIISOCYANATE
CAS: 4098-71-9; Chemical Formula: $C_{12}H_{18}N_2O_2$
H.S. No. 1222

There is no current OSHA limit for isophorone diisocyanate (IPDI). The ACGIH has recommended a TLV-TWA of 0.01 ppm, with a skin notation. NIOSH (1978) recommended a 10-hour TWA of 0.005 ppm for all isocyanates, with a 10-minute ceiling limit of 0.02 ppm.

To date, there is little direct information on health effects associated with exposure to this chemical. However, diisocyanates, in general, cause irritation of the respiratory tract, decreases in pulmonary function, and sensitization. The ACGIH (1986) cited two reports in which workers exposed to isophorone diisocyanate suffered asthma or dyspnea (Clark and Aldons 1961; Tyrer 1979). Neither of these reports contained quantitative exposure data. The ACGIH recommended that the TLV-TWA for 2,4-toluene diisocyanate (TDI) apply to isophorone diisocyanate until more information becomes available; however, the ACGIH did not include its 0.02-ppm TLV-STEL for TDI in this recommendation. NIOSH (1978) came to the same conclusion, reasoning that other diisocyanates would react similarly to TDI on a molar basis; therefore, NIOSH recommended that the limits established for TDI (0.005 ppm TWA and 0.02 ppm as a 10-minute ceiling) apply to all diisocyanates. In supporting the need for a ceiling limit for diisocyanates, NIOSH (1978) cites a report in which 12 workers in an automobile plant developed severe respiratory symptoms after exposure to 0.03 to 0.07 ppm TDI for one week. The ceiling limit recommended by NIOSH is designed to prevent the irritation effects of exposure to the diisocyanates in nonsensitized workers.

OSHA is proposing a 0.005-ppm TWA, a 0.02-ppm ceiling (10-minute), and a skin notation for IPDI. The Agency believes that these limits will protect exposed nonsensitized workers against IPDI's sensitizing effects and minimize asthmatic reactions among sensitized workers. OSHA's preliminary feasibility analysis is based on limited data at this level; the Agency requests additional feasibility information from the public. The health evidence forms a reasonable basis for proposing a new limit for isophorone diisocyanate. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PHENOTHIAZINE
CAS: 92-84-2; Chemical Formula: $S(C_6H_4)_2NH$
H.S. No. 1313

Currently, neither OSHA nor NIOSH has an occupational exposure limit for phenothiazine. The ACGIH has established an 8-hour TWA-PEL for this substance of 5 mg/m³, with a skin notation.

The Agency's recommendation is based primarily on a study by Mawhinney and Rakow (1968) that showed that exposure to 15 to 48 mg/m³ of phenothiazine was associated with skin sensitization in workers but not with more acute systemic effects. Symptoms of sensitization included burning and an itching sensation of the skin. The skin effects were identifiable as an allergic reaction because the employees developed a tolerance to phenothiazine exposure after a few weeks (Mawhinney and Rakow 1968). Accompanying the sensitization reaction were pinkish-red-colored hair and brown fingernails.

OSHA is proposing an 8-hour TWA limit of 5 mg/m³, which represents a threefold margin of safety over the low end of the exposure range that causes sensitization reactions in workers. Because uncontrolled occupational exposures to phenothiazine pose a risk of developing sensitization reactions, OSHA preliminarily concludes that adopting an exposure limit of 5 mg/m³ will markedly reduce the risk of sensitization for workers. The health evidence forms a reasonable basis for proposing a new limit for phenothiazine. At the time of the final rule, OSHA will promulgate a new limit if the Agency determines that this limit will substantially reduce significant risk.

PHENYL GLYCIDYL ETHER
CAS: 122-60-1; Chemical Formula: $C_6H_5OCH_2CHOCH_2$
H.S. No. 1315

OSHA currently has an 8-hour TWA limit of 10 ppm for phenyl glycidyl ether. The ACGIH recommends a TLV-TWA of 1 ppm for this substance, and NIOSH recommends a 15-minute ceiling limit of 1 ppm. Phenyl glycidyl ether is a colorless liquid.

Exposure to phenyl glycidyl ether causes systemic effects and irritation. Studies in 1956 by Hine, Kodama, Wellington, and colleagues showed pulmonary inflammation and liver changes in some of the rats exposed for 7 hours daily for 50 days to 100 ppm; respiratory distress and minimal eye irritation were also observed in the exposed animals. Intragastric LD_{50} values of 1.40 g/kg for mice and 3.85 g/kg for rats were reported. Animals displayed central nervous system (CNS) depression, and death was caused by respiratory paralysis; in the survivors, these CNS effects were transient. The percutaneous LD_{50} reported for rabbits was 2.99 g/kg. Other studies have reported a single-dose oral LD_{50} of 4.28 g/kg, although exposure for 8 hours to the near-saturated vapor was not lethal (Smyth, Carpenter, Weil, and Pozzani 1954). Terrill and Lee (1977) reported kidney, liver, spleen, thymus, and testicular changes in rats exposed to phenyl glycidyl ether at 29 ppm for 4 hours daily, 5 days/week for 2 weeks. At concentrations of 12 or 5 ppm, these authors observed no effects other than hair loss after exposures of 6 hours/day, 5 days/week for 9 weeks; however, after 18 weeks, 10 percent of male and 25 percent of female rats exhibited alopecia. These health effects were attributed by the authors to direct irritation of the skin rather than to systemic absorption (Terrill and Lee 1977).

Reports of workers using or handling this substance have described moderate skin irritation on prolonged or repeated contact, as well as several cases of skin sensitization (ACGIH 1986, p. 476).

NIOSH (1978) notes that the glycidyl ethers are biologically reactive compounds because of the presence of the epoxide group; these compounds have also been shown to have cytotoxic effects and to be mutagenic in short-term bioassays. Terrill and Lee (1977) exposed rats repeatedly to 1 ppm PGE and observed no effects, although skin damage was observed at 5 ppm. Inconclusive evidence of testicular degeneration was reported in some of the rats exposed to levels as low as 1.75 ppm (Haskell Laboratory Reports, as cited in NIOSH 1978, p. 114). At 10 ppm, 5 day/week exposures for 10 weeks caused respiratory tract irritation and early signs of liver necrosis in rats (Hine, Kodama, Wellington, Dunlap, and Anderson 1956).

OSHA is proposing to reduce the 8-hour TWA for phenyl glycidyl ether to 1 ppm. The Agency preliminarily concludes that this limit will protect exposed workers from the risk of skin and respiratory tract irritation, skin sensitization, testicular damage, and liver necrosis potentially associated with exposure to the current limit of 10 ppm. OSHA believes that the revised limit will substantially reduce these risks. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for phenyl glycidyl ether if the Agency determines that this limit will substantially reduce significant risk.

PICRIC ACID
CAS: 88-89-1; Chemical Formula: $HOC_6H_2(NO_2)_3$
H.S. No. 1329

OSHA currently has a limit of 0.1 mg/m³ TWA, with a skin notation, for picric acid. The ACGIH also recommends an 8-hour TWA of 0.1 mg/m³, as well as a 15-minute short-term limit of 0.3 mg/m³ and a skin notation. Picric acid occurs as colorless to pale yellow, odorless, and intensely bitter crystals.

Picric acid and its salts are toxic by ingestion, skin contact, or inhalation, and the substances also have skin-sensitization potential (Schwartz 1944). Available reports concerning human exposures describe edema, papules, vesicles, and desquamations of the face, mouth, and nose (Sunderman, Weidman, and Batson 1945). Systemic poisoning following absorption has been reported to produce headache, vertigo, vomiting, nausea, diarrhea, and skin and conjunctival discoloration, as well as discoloration of urine and albuminuria; high-dose exposures caused destruction of erythrocytes and produced gastroenteritis, hemorrhagic nephritis, and acute hepatitis (Sunderman, Weidman, and Batson 1945). Occupational exposure to ammonium picrate dust at concentrations of 0.0088 to 0.1947 mg/m³ caused dermatitis only in those workers who were least exposed; the ACGIH believes that this suggests that desensitization or adaptation occurs with repeated exposure (ACGIH 1986, p. 490).

OSHA proposes an 8-hour TWA of 0.1 mg/m³, a 15-minute STEL of 0.3 mg/m³, and a skin notation for picric acid. The Agency has preliminarily concluded that these limits will protect exposed workers from the risk of systemic poisoning resulting from skin absorption and of sensitization caused by contact with this substance. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for picric acid if the Agency determines that this limit will substantially reduce significant risk.

SUBTILISINS
CAS: 1395-21-7; 9014-01-1; Chemical Formula: None
H.S. No. 1373

Currently, neither OSHA nor NIOSH has an occupational exposure limit for subtilisins. The ACGIH has established a ceiling limit of 0.06 μg/m³. Subtilisins are proteolytic bacterial enzymes used primarily in laundry detergents. They are considered a threat to occupational health because they cause bronchoconstriction and respiratory allergies in addition to irritation of the skin and respiratory tract (ACGIH 1986; Pepys et al. 1969).

A report by the California Department of Public Health (1969) showed that several workers were hospitalized after exposure to subtilisins in a detergent formulation plant where the "safe limit" was set at 0.12 μg/m³. Whether this limit was exceeded or the workers failed to wear the protective gear they were given is unclear.

OSHA is proposing a ceiling limit of 0.06 μg/m³ for the subtilisins; the incident described above suggests that OSHA's proposal to set a ceiling limit of 0.06 μg/m³ for exposure to subtilisins is appropriate and will reduce the risk of skin irritation, respiratory allergies, and sensitization in the exposed worker population. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for subtilisins if the Agency determines that this limit will substantially reduce significant risk.

TOLUENE-2,4-DIISOCYANATE
CAS: 584-84-9; Chemical Formula: $CH_3C_6H_3(NCO)_2$
H.S. No. 1398

The current OSHA limit for toluene-2,4-diisocyanate (TDI) is 0.02 ppm as a ceiling limit. The ACGIH and NIOSH both recommend a TWA of 0.005 ppm and a STEL of 0.02 ppm.

TDI is one of the most frequently encountered sensitizers in the workplace, and is also a known cross-sensitizer. The proposed limit is based on human data showing that workers can develop sensitization reactions at exposure levels below the 0.02-ppm ceiling. Elkins et al. (1965) reviewed the incidence of TDI intoxication in 14 plants in Massachusetts between 1957 and 1962. In eleven instances of TDI intoxication, the average concentration of TDI was 0.015 ppm, and in nine cases the average concentration was below 0.01 ppm. In all plants where the average levels were above 0.01 ppm, TDI had caused respiratory problems. TDI-related respiratory problems were not observed when the average concentration of TDI was maintained below 0.007 ppm.

Williamson conducted two TDI studies (1964, 1965) that revealed a 5-percent sensitization rate in 99 workers exposed for 18 months to levels of TDI averaging below 0.02 ppm. The author believed that accidental spills accounted for the high sensitization rate. Williamson also found that six sensitized workers out of 18 exposed to concentrations of TDI below 0.02 ppm for 14 months showed marked decreases in lung function.

A NOEL (no-observed-effect level) for TDI has been documented. In 1975, Roper and Cromer failed to observe any

symptoms of respiratory illness or changes in pulmonary function in nine employees working in a plant where breathing zone samples showed TDI concentrations of 0.001 to 0.002 ppm.

Wegman et al. (1974, 1977, 1982) observed a dose-response relationship among TDI-exposed employees in the long-term decline of lung function, as documented in test results. Only for those workers exposed to less than 0.002 ppm TDI were the results of lung function tests normal. In keeping with these findings, OSHA is proposing a TWA of 0.005-ppm and a STEL of 0.02-ppm.

OSHA preliminarily concludes that the evidence clearly demonstrates that workers are at risk of pulmonary sensitization reactions at the current PEL, as evidenced by declines in pulmonary function observed among workers exposed below this level. OSHA also believes that establishing a 0.005-ppm TWA with a 0.02-ppm STEL will reduce this risk; TDI-related respiratory effects have not generally been observed among workers exposed below 0.01 ppm. The health evidence forms a reasonable basis for proposing a revision to this level. At the time of the final rule, OSHA will establish a new limit for toluene-2,4-diisocyanate if the Agency determines that this limit will substantially reduce significant risk.

Preliminary Conclusions

For the eight sensitizing agents included in this category of substances, OSHA preliminarily concludes that there are occupational risks associated with exposure. The effects caused by such exposures include skin sensitization, substantial decrements in lung function, bronchoconstriction, and severe skin irritation. Reducing or establishing exposure limits for these toxic substances will substantially reduce these workplace risks.

The health evidence for these sensitizers forms a reasonable basis for proposing revisions to or additions of exposure limits for these substances. At the time of the final rule, OSHA will establish new limits or revise existing limits if the Agency determines that these limits will substantially reduce significant risk.

15. Substances for Which Proposed Limits Are Based on Avoidance of Cancer

The ACGIH has established new TLVs or lowered previous TLVs for 17 substances based on evidence that occupational exposure may be associated with an increased cancer risk. Table C15-1 lists the current OSHA permissible exposure levels (PELs), the ACGIH TLVs, the NIOSH RELs, and the CAS and HS numbers for these substances. OSHA is proposing to revise existing TWA and/or STEL limits for six substances; retain a PEL for three substances currently listed on Table Z-2; adopt NIOSH ceiling limits for two substances; and add limits for six substances not currently listed on OSHA's Z-tables.

The following discussion addresses some general aspects of carcinogenicity, together with the methodology used by OSHA in previous rulemakings to assess carcinogenic hazards. Two representative substances are reviewed in terms of their effects, dose-response considerations, and quantitative risk assessments to evaluate the decrease in risk of developing cancer that is expected after revising or establishing PELs for these substances. In this section, quantitative risk models that are widely accepted by the scientific community are used as a means of estimating cancer risks. The multistage model, which is the model primarily used by OSHA, is preferred over other models because it is based on a more plausible biological mechanism of cancer than the other models.

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TABLE C15-1. Substances for Which Limits Are Based on Avoidance of Cancer

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1008 Acrylamide	79-06-1	0.3 mg/m^3 TWA, Skin	0.03 mg/m^3 TWA, Skin	0.3 mg/m^3 TWA
1020 Amitrole (3-Amino-1,2,4-triazole)	61-82-5	-	0.2 mg/m^3 TWA	-
1028 Asphalt fumes	8052-42-4	--	5 mg/m^3 TWA	5 mg/m^3 Ceiling (15 min)
1033 Beryllium & compounds++	7440-41-7	0.002 mg/m^3 TWA 0.005 mg/m^3 STEL 0.025 mg/m^3 Ceiling (30 min)	0.002 mg/m^3 TWA	0.5 ug/m^3 (No time specified)
1073 Carbon tetrachloride+	56-23-5	10 ppm TWA 25 ppm STEL 200 ppm Ceiling (5 min/4 hr)	5 ppm TWA, Skin	2 ppm Ceiling (60 min)
1086 Chloroform+	67-66-3	50 ppm Ceiling	10 ppm TWA	2 ppm Ceiling (60 min)

TABLE C15-1. Substances for Which Limits Are Based on Avoidance of Cancer (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1092 Chromic acid & chromates++	7440-47-3	0.1 mg/m^3 Ceiling	0.05 mg/m^3 TWA	25 ug/m^3 TWA 50 ug/m^3 Ceiling (15 min)
1094 Chromyl chloride	14977-61-8	-	0.025 ppm TWA	--
1142 Dimethyl sulfate	77-78-1	1 ppm TWA, Skin	0.1 ppm TWA, Skin	--
1283 Nickel (soluble compounds)	7440-02-0	1 mg/m^3 TWA	0.1 mg/m^3 TWA	15 ug/m^3 TWA
1291 2-Nitropropane	79-46-9	25 ppm TWA	10 ppm TWA	Lowest feasible level
1372 Styrene	100-42-5	100 ppm TWA 200 ppm STEL 600 ppm Ceiling (5 min/3 hr)	50 ppm TWA 100 ppm STEL	50 ppm TWA 100 ppm STEL (15 min)
1399 o-Toluidine	95-53-4	5 ppm TWA Skin	2 ppm TWA Skin	--
1400 p-Toluidine	106-49-0	-	2 ppm TWA Skin	-

TABLE C15-1. Substances for Which Limits Are Based on Avoidance of Cancer (continued)

H.S. Number/ Chemical Name	CAS No.	Current PEL*	ACGIH TLV**	NIOSH REL***
1425 Vinyl bromide	593-60-2	--	5 ppm TWA	-
1426 Vinyl cyclohexene dioxide	106-87-6	-	10 ppm TWA, Skin	--
1436 Zinc chromates (CrVI)++	13530-65-9	0.1 mg/m^3 Ceiling	0.05 mg/m^3 TWA	0.001 mg/m^3 TWA

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ Proposed PEL is the NIOSH REL.

++ Existing limit is retained.

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Description of the Health Effects

Cancer is a life-threatening and particularly insidious disease that is brought about by the invasion of organ systems by abnormal tissue growth. The abnormal tissue is comprised of cells that have been altered in such a way as to cause unrestricted cell growth. As this unrestricted growth progresses, the abnormal tissue begins to interfere with the vital functions of normal organ systems. In the absence of medical intervention, most forms of cancer are ultimately lethal. In some instances (e.g., colon cancer, breast cancer), life can be prolonged through chemotherapy, radiation treatment, surgery, or some combination of these; however, the quality of life of the victims of cancer is usually severely affected. In other instances, such as lung cancer, there is little hope of survival, even when aggressive treatment strategies are employed.

An increased risk of developing cancer has been associated with occupational or environmental exposure to a number of chemical substances. The development of chemically induced cancer in humans and animals is a complex and multi-step process that is not completely understood. It is currently believed that the mechanism by which cancer develops requires at least two stages: initiation and promotion. Initiation occurs when chemicals interact either directly or indirectly with DNA to cause a heritable mutation. Alterations in DNA structure may cause an incorrect reading of the DNA sequence during replication and result in more altered cells, which may eventually be expressed as a tumor. There is a correlation between substances that are mutagenic in *in-vitro* test systems and their ability to cause cancer. Although genotoxic assays are not capable of predicting carcinogenic potential with certainty, such assays are useful for the preliminary identification of substances that may have the potential to cause cancer.

The second stage in the carcinogenic process is promotion. Promotion is considered to be the likely mechanism of action when there is no evidence that a substance interacts with genetic material, e.g., when *in-vitro* mutagenicity assays are negative. Peroxisome proliferation, immunosuppression, and hormonal alterations are examples of promotional events; these events facilitate the unrestricted multiplication of initiated cells, leading to the development of cancer. When a substance or its metabolite possesses both initiation and promotion capabilities, it is considered to be a complete carcinogen, i.e., exposure to the substance alone is sufficient to cause cancer. Examples of such substances that OSHA has recently regulated include asbestos, benzene, ethylene oxide, and formaldehyde.

In all of OSHA's past rulemakings for carcinogens, the Agency has used a weight-of-evidence approach to assess the carcinogenic potential of chemical substances. This approach involves examining all available human epidemiologic studies, clinical and case studies, animal studies, mutagenicity studies, and metabolic studies, combined with a quantitative assessment of cancer risk, to make determinations regarding the potential that occupational exposure to a substance increases the risk of cancer. OSHA relies most heavily on epidemiologic studies of worker populations and well-conducted animal bioassays to make these determinations. OSHA's overall approach to promulgating regulations for carcinogens has been upheld in a number of Court decisions.

The following discussion summarizes how epidemiologic and animal studies are used to assess cancer risk.

Epidemiology studies. Epidemiological studies that include detailed exposure data provide the best evidence for describing a causal relationship between exposure to a substance and the onset of cancer in humans. Epidemiologic evidence has been relied on heavily in OSHA's decisions to promulgate standards for the carcinogens benzene, asbestos, and arsenic. At a minimum, positive epidemiologic studies provide qualitative proof of a causal relationship between exposure to a substance and the development of cancer. A general lack of quantitative exposure data and the long latencies between onset of exposure and appearance of disease may make it difficult to derive quantitative dose-response relationships from epidemiological studies. However, the ability of such studies to link exposures to carcinogens to cancer in humans outweighs these limitations.

Because of the long latency periods associated with chemically induced cancer in humans, these studies cannot be used to detect disease until after irreparable harm has been done. To protect workers or other human populations, therefore, it is necessary to assess the risks of such effects before they occur. The data used for this purpose derive from animal bioassays; these data are used to predict potential human responses and to infer a causal relationship between exposure to a substance and the onset of disease.

Animal data. Animal studies frequently provide the best dose-response data for chemically induced cancer. When relying on such studies, assumptions must be made in order to extrapolate from animal bioassay data to humans; the most important of these are that physiologic, pharmacokinetic, and biochemical parameters are similar between mammalian species. To the extent that adequate metabolic data are available, such data may be used to refine the extrapolation from animals to humans. Despite the need to make such assumptions, it is widely accepted that animals are acceptable surrogates for estimating potential cancer risks in humans. This confidence derives from the observation, after many years of conducting bioassay studies, that there appears to be a reasonable concordance between carcinogenic effects in animals and these effects in humans.

Dose-Response and Quantitative Assessment of Risk

Unlike other chemically induced toxic effects discussed in this preamble, a large body of scientific knowledge has accumulated regarding the mechanisms by which carcinogens act and the quantitative relationship between dose and biological response. As a result of these investigations, several mathematical approaches have been developed that permit estimates to be made of the cancer risk that is associated with exposure to low doses of carcinogenic substances.

Since the dominant view of the carcinogenic process holds that most cancer initiators cause irreversible damage to DNA, there is reason to assume that the dose-response of most carcinogens will follow a linear, non-threshold relationship. The Office of Science and Technology Policy (OSTP 1985) recommends the use of models that incorporate low-dose linearity when the data are limited and uncertainty exists regarding the mechanisms of carcinogenic action. In conducting risk assessments for prior rulemakings, OSHA has generally relied on the linearized multistage model.

The multistage model used to assess cancer risks associated with exposure to substances in this group is GLOBAL83, a model developed by K.S. Crump and colleagues. If P(d) represents the lifetime risk of cancer at dose d, and A(d) is the extra risk over the background rate at dose d, then the multistage model has the following form:

$$A(d)=1-\exp[-(q_1d+q_2d^2+\ldots+q_kd^k)]$$

where

$q_i>0$

$i=1,2,3,\ldots,k$

and $A(d)=[P(d)-P(0)]/[1-P(0)]$

For a unique set of q_i, this function will adequately describe (or fit) the experimentally derived data. How well the model describes the data may be mathematically determined by what are termed goodness-of-fit tests. Once the model is fit to the data, the maximum likelihood estimate (MLE) and the 95 percent upper confidence limit (UCL) of A(d) are calculated using the 95 percent upper confidence limit on parameter q_1 (q_1^*). The MLE is the point estimate of A(d), and is therefore considered the best estimate of extra risk at dose d.

The following discusses the carcinogenicity evidence for the chemicals listed in Table C15–1. A brief discussion of the data and a quantitative risk assessment (where appropriate) are included to demonstrate the reduction in cancer risk that could result from lowering the current OSHA PELs for these potential carcinogens.

ACRYLAMIDE

CAS: 79–06–1; Chemical formula: $CH_2=CHCONH_2$

H.S. No. 1008

The current OSHA PEL for acrylamide is an 8-hour TWA PEL of 0.3 mg/m³. The ACGIH has established a TLV–TWA of 0.03 mg/m³ for acrylamide based on the increased incidence of cancer seen in laboratory animals chronically exposed to acrylamide (Johnson et al. 1986; Bull et al. 1984). Acrylamide has been classified by the ACGIH as a suspected human carcinogen (A2).

Acrylamide is commonly used as a reactive monomer or intermediate in organic syntheses. Polyacrylamide is a polymer used in the manufacture of adhesives, fibers, paper sizing, molded parts, water coagulant aids, and textiles (ACGIH 1986, p. 12).

Past industrial experience and several animal studies have demonstrated that chronic exposure to acrylamide has clinically significant neurotoxic effects (ACGIH 1986, p. 12). In fact, the original ACGIH recommendation of 0.3 mg/m³ as a TWA was intended to protect workers against central nervous system toxicity.

Assays of acrylamide mutagenicity in *S. typhimurium* were negative, with or without microsomal activation (Bull et al. 1984; Miller et al. 1984). However, subchronic exposure to 75 mg acrylamide/kg/day in the diet caused chromosome breaks and aberrations in spermatogonia in mice (Shiraishi 1978). Furthermore, Smith et al. (1985) found that females mated with male rats that had been given 30 or 60 mg acrylamide/liter in drinking water suffered a significantly increased incidence of post-implantation loss. Litters sired by males exposed to 60 mg/L had a significant increase in pre-implantation loss. The authors concluded that acrylamide produces dominant lethality in the male rat (Smith et al. 1985).

No data are available at the present time on the carcinogenic effects of acrylamide exposure in humans. The evidence that acrylamide causes cancer in experimental animals is described in two studies, Bull et al. (1984) and Johnson et al. (1986). Bull et al. (1984) tested acrylamide as a skin tumor initiator in female Sencar mice, using 12-o-tetradecanoyl-phorbol-13-acetate (TPA) as a promoter. Acrylamide was administered 6 times during a 2-week period in doses ranging from 0 to 50 mg/kg body weight. Tumor incidence increased in a dose-related manner, regardless of whether the route of exposure was gastric intubation, i.p. injection, or topical application. The systemic routes of exposure were the most effective. A dose-response relationship was also observed in the induction of lung adenomas in both sexes of A/J mice exposed to acrylamide by either gastric intubation or i.p. injection. These mice were exposed to doses of acrylamide ranging from 0 to 25 mg/kg body weight 3 times per week for 8 weeks.

Johnson et al. (1986) exposed male and female Fischer 344 rats to acrylamide in drinking water for 2 years. Doses ranged from 0 to 2.0 mg acrylamide/kg body weight/day. A statistically significant increase in mortality caused by cancer was observed at the highest dose level during the last 4 months of the study. The incidences of several types of tumors in both sexes were also significantly increased at this dosage. In females, the more frequently observed tumor types were tumors of the mammary gland, central nervous system, thyroid gland (follicular epithelium), oral tissues, uterus, and clitoral gland. In males, increased incidences of tumors in the central nervous system, thyroid gland, and scrotum were observed.

Risk estimate for acrylamide. For the EPA, Crump et al. (1987) performed a risk assessment for acrylamide, derived in part from the results of the Johnson et al. study (1986). For the purposes of risk assessment, the incidences of certain tumors in female rats were pooled: tumors of the mammary gland, brain and spinal cord, thyroid gland, uterus, and oral cavity. The Maximum Likelihood Estimates (MLEs) and Upper Confidence Limits (UCLs) for the current and proposed exposure limits are presented in Table C15–2. GLOBAL 83, a multistage model developed by K.S. Crump, was used to predict these risks. The risk estimate shows that, at OSHA's current PEL of 0.3 mg/m³, the excess risk of death from cancer for workers exposed over their working lifetimes is 10 per 1,000 workers. At the proposed PEL of 0.03 mg/m³, this number would be reduced to 1 per 1,000 exposed workers.

OSHA preliminarily concludes, based on the results of the quantitative risk estimate shown in Table C15–2, that the risks of cancer posed to workers at the current PEL are clearly significant. The Agency finds that reducing the exposure limit to the proposed 0.03 mg/m³ level will reduce this significant risk by a factor of 10, to 1 per 1,000 workers, which is consistent with the Supreme Court's guidance in the *Benzene* decision. OSHA therefore proposes to lower the 8-hour TWA PEL to 0.03 mg/m³.

TABLE C15–2.—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH WORKING LIFETIME EXPOSURE TO ACRYLAMIDE

Exposure level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
0.3 mg/m³[a]	10	45
0.03 mg/m³[b]	1	5

[a] Current OSHA PEL.
[b] Proposed PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95 percent upper confidence limit on maximum likelihood estimate of risk.

AMITROLE

CAS: 61–82–5: Chemical Formula: $C_2H_4N_4$

H.S. No. 1020

Amitrole is used as an herbicide and plant growth regulator. There is no current OSHA PEL for amitrole. OSHA proposes a TWA limit of 0.2 mg/m³, the same limit recommended by the ACGIH, based on positive carcinogenicity studies conducted in rats and mice. NIOSH recommends a 10-hour TWA of 0.3 mg/m³ for amitrole.

Amitrole is a potent anti-thyroid agent and has been shown to cause tumors, particularly of the thyroid and pituitary glands, in experimental animals (ACGIH 1986, p. 25). Its tumor-producing activity is thought to be related to its goitrogenic effects, which cause an increase in thyroid stimulating hormone (TSH). Other antithyroid agents that cause TSH stimulation, such as propylthiouracil, have also been shown to produce thyroid tumors (Guyton 1981).

Amitrole has not been shown to be mutagenic in the Ames bacterial mutation assay, a dominant lethal test in male mice, or in assays that measure recessive sex-linked lethal mutations in Drosophila melanogaster (ACGIH 1986, p. 25).

An excess incidence of tumors has been reported to occur among pesticide workers exposed to amitrole alone and in combination with phenoxy herbicides. Although these studies indicate the possible association of increased tumor incidence with exposure to amitrole, confounding factors, such as smoking and concurrent exposure to other pesticides, complicate interpretation of these data.

The Swedish National Board of Occupational Safety and Health ordered an epidemiological evaluation to assess the incidence of cancer among railroad workers exposed to herbicides (Axelson and Sundell 1974). Amitrole was among the pesticides utilized by these workers. Cohorts were separated into groups according to whether they were exposed to amitrole and combinations of other herbicides, phenoxy acids and combinations of other herbicides, or other herbicides alone. A statistically significant increase in the incidence of total tumors and lung tumors was found among workers exposed to amitrole and combinations of other herbicides. Smoking frequency among members of this group was reported to be similar to the frequency of smoking in the general Swedish population.

In a 1980 follow-up to Axelson and Sundell (1974), Axelson and co-workers combined data from the earlier study with data on workers exposed from 1972 to 1976. Cohorts were divided into the following exposure groups: Amitrole alone, phenoxy acids alone, and amitrole and phenoxy acids combined. The reanalyzed data did not show a statistically significant increase in cancer incidence among the workers exposed to amitrole alone; however, the incidence of tumors among workers exposed to amitrole and phenoxy acids together was significantly increased.

Amitrole has been found to be carcinogenic in laboratory animals following dietary exposure to relatively high doses. Attempts to induce tumors by dermal application and subcutaneous injection have been unsuccessful. Studies investigating the carcinogenic potential of amitrole in laboratory animals are reviewed below. The inhibitory effects of amitrole on the production of liver tumors induced by 4-dimethylaminoazobenzene are also discussed.

The effects of lifetime exposure to amitrole were investigated in rats, mice, and hamsters fed diets containing 1, 10, or 100 ppm amitrole (Steinhoff et al. 1983). There was a significant increase in the incidence of thyroid tumors in male and female rats and in the incidence of pituitary tumors in female rats exposed to 100 ppm. An excess incidence of tumors was not found in male or female rats exposed to 1 or 10 ppm. The results of this experiment are presented in Table C15–3. Tumor induction was not observed in male or female mice or hamsters. Another study reported negative results for rats fed diets containing 10, 50, or 100 ppm amitrole (Jukes and Schaffer 1960).

Dermal applications of 0.1 or 10 mg of amitrole produced no increased incidence of tumors in mice (IARC 1974).

In contrast to the negative results obtained in mice following lifetime dietary exposure to 1, 10, or 100 ppm amitrole (Steinhoff et al. 1983), positive results were observed in male and female mice following dietary exposure to higher levels (2192 ppm) of amitrole for 1 year (Innes et al. 1969). Carcinomas of the thyroid were observed in 89 percent (64/72) of the exposed animals (tumor incidence in controls is not reported).

TABLE C15-3. Incidence of Rat Thyroid and Pituitary Tumors Associated With Ingestion of Amitrole

Tumor Site	Concentration in diet (ppm) 0	1	10	100
Thyroid (Male)				
- Benign	5/75	9/75	4/75	45/75*
- Malignant	3/75	0/75	3/75	18/75*
Thyroid (Female)				
- Benign	7/75	12/75	8/75	44/75*
- Malignant	0/75	1/75	4/75	28/75*
Pituitary (Female)				
- Benign	14/75	20/75	15/75	36/75*
- Malignant	1/75	2/75	4/75	5/75

* $p < 0.001$, Fisher Exact Test

Positive results were also observed in mice exposed to 1 percent (10,000 ppm) amitrole in the diet (duration of exposure not indicated; Feinstein et al. 1976). Liver tumors developed in 7 percent of the exposed mice; however, the incidence of tumors in unexposed controls was not reported. A small number of thyroid tumors was also reported. The authors hypothesized that the reason more thyroid tumors were not seen was because the animals died of the high toxic doses before such tumors were expressed.

Chronic dietary administration of amitrole in dogs (10, 50, 100, or 500 ppm) and in rainbow trout (1200 or 4800 ppm) did not result in the development of tumors (IARC 1974).

Risk estimate for amitrole. The study by Steinhoff et al. (1983) provides sufficient information to estimate quantitatively the excess cancer risk associated with exposure to amitrole in the workplace. The linearized multistage model was chosen to estimate risk. The incidence of malignant thyroid tumors in female rats was used because these tumors demonstrate a clear monotonic response. Female rats were assumed to weigh 250 g and to consume 25 g of food per day. Human risks were estimated at exposure levels corresponding to the proposed PEL of 0.2 mg/m³, as well as for exposure levels of 0.4 mg/m³ and 1.0 mg/m³. The excess estimated cancer risk, in terms of excess deaths per 1000 employees, is shown in Table C15–4.

TABLE C15-4. Multistage Model Estimates of Cancer Risk Associated With Working Lifetime Exposure to Amitrole

Exposure Level	Excess Cancer Deaths per 1,000 Workers MLE	UCL
0.2 mg/m³[a]	13	17
0.4 mg/m³	26	35
1.0 mg/m³	65	84

[a] Proposed OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95 percent upper confidence limit on maximum likelihood estimate of risk.

Exposure to 0.2 mg/m³ of amitrole for an occupational lifetime (45 years) is associated with an estimated 13 excess cancer deaths per thousand employees (1.3 percent). This rate is based on the maximum likelihood estimate (MLE). The 95-percent upper-bound estimate of risk corresponding to this dose is 17 excess cancer deaths per 1,000. By comparison, the maximum likelihood estimates of risk for lifetime exposure to 0.4 mg/m³ or 1.0 mg/m³ are 26 or 65 excess deaths per 1,000 employees, respectively.

Exposure to amitrole has been shown to be associated with an increased incidence of thyroid and pituitary tumors in experimental animals. Although human studies have not demonstrated conclusively that amitrole is carcinogenic, the studies by Axelson and Sundell (1974) and Axelson et al. (1980) provide evidence that amitrole may increase cancer risk among exposed workers. OSHA's risk assessment, based on the animal data, shows that this significant excess cancer risk can be substantially reduced for employees who are currently exposed above the proposed 0.2 mg/m³ limit. Therefore, OSHA is proposing to establish a 0.2 mg/m³ TWA exposure limit for amitrole.

ASPHALT FUMES
CAS: 8052–42–4; Chemical formula: None
H.S. No. 1028

There is no current OSHA PEL for asphalt fumes. The ACGIH recommends a TLV–TWA of 5 mg/m³, based on asphalt's ability to induce skin tumors in mice. NIOSH recommends a ceiling (15 minutes) of 5 mg/m³ for asphalt fumes, measured as total particulates.

Asphalt, also called bitumen, is a mixture of hydrocarbons that is produced by the evaporation of the lighter hydrocarbons from petroleum distillation and subsequent partial oxidation of the residue. Occupational exposure to asphalt fumes can occur during its manufacture or as a result of the secondary heating of asphalt in processes such as road building, roofing, and the coating of construction metals (Thayer et al. 1981). Asphalt is considered a potential carcinogen because of its physical and chemical similarity to coal tar pitch, a recognized human carcinogen. (Benz(a)pyrene (BaP), which is found in coal tar pitch, is a known carcinogen that has been regulated by OSHA in a 6(b) rulemaking.)

The process of manufacturing asphalts or bitumens removes many of the lower molecular weight compounds that have low boiling points, including PAHs with 3 to 7 rings. Therefore, the amount of BaP in asphalt is lower than the amount in coal tar pitch.

The mutagenicity data on asphalt are limited. Claxton and Hufsingh (1980) and Lewtas (1981, 1983) reported positive results for extracts of roofing tar fumes in the Ames *Salmonella*

typhimurium assay. Penalva et al. (1983) also reported that an extract of asphalt was mutagenic in *Salmonella typhimurium* in the presence of biological activation by cytochrome P-450. The vapors, particles, and aerosols of this substance were weakly mutagenic in *Salmonella typhimurium*, both in the presence and the absence of biological activation.

Several studies of the carcinogenicity of asphalt have been conducted. Four studies reported negative results (Hueper and Payne 1960; Wallcave et al. 1972; Bingham et al. 1980; and Emmett et al. 1981), and three studies reported positive results (Simmers 1985, 1986; Thayer et al. 1981). These studies are summarized below.

Four studies have reported findings on the carcinogenicity of asphalt by skin painting. Thayer et al. (1981) reported positive tumorigenic activity when two different types of condensates from roofing asphalt volatiles and two types of condensates from coal tar pitch volatiles were tested at two temperatures, 232 and 316 degrees F.

Groups of CD–1 and CH3/HeJ mice were treated with one of the four types of asphalt condensates or one of the four types of coal tar pitch condensates. The mice treated with asphalt received a 25-mg dose of the condensate twice weekly for 18 months. The mice treated with coal tar solids received a dose of 1.5 to 4.2 mg of the condensate (0.15 μg and 0.45 μg BaP, respectively) twice weekly for 18 months. In addition to these treatments, separate groups of mice were treated with the asphalt or coal tar preparations plus ultraviolet light (UVL).

CH3/HeJ mice were more sensitive than the CD–1 mice, with nearly 100 percent of the CH3/HeJ mice and about half of the CD–1 mice developing skin papillomas. UVL decreased the carcinogenic response in all test groups. Also, the asphalt volatiles prepared at the higher temperature produced a greater response. Although Thayer et al. (1981) report a statistically significant increase in the incidence of skin tumors, it is difficult to estimate quantitatively the cancer risk from these data because of the lower reliability of the estimate of q_1 (the slope of the dose-response curve) determined from data providing one dose level and a 100-percent tumorigenic response.

An additional skin painting study (Simmers 1985) supports the results of Thayer et al. (1981). However, in the Simmers study (1985), the asphalt was applied in a solution containing benzene, a human carcinogen.

There is conflicting evidence concerning the carcinogenicity of asphalt following dermal application and inhalation exposure. Hueper and Payne (1960), Wallcave et al. (1972), Bingham et al. (1980), and Emmett et al. (1981) reported negative results by skin painting. Hueper and Payne (1960) also reported negative results when guinea pigs and rats were exposed to asphalt fumes by inhalation.

A positive carcinogenic response was reported by Simmers (1985) and by Hueper and Payne (1960) when rats and mice were exposed to asphalt by injection.

Studies by Hammond et al. (1976), Menck and Henderson (1976), and Milham (1982) reported increased standardized mortality ratios or proportionate mortality ratios for lung cancer among roofers and slaters. It is difficult to show a definite association between asphalt exposure and lung cancer because most people who work with asphalt have concomitant exposure to coal tars (Hammond et al. 1976).

A survey by Baylor and Weaver (1968) reported no significant differences in the health of 482 asphalt workers, compared with the health of controls. These workers had asphalt exposures for a period of at least 5 years and were then given a physical examination, which included a medical and occupational history. Additional information was obtained by questionnaire from paving companies, roofing manufacturers, and truck operators. No adverse health effects were reported in this survey (Baylor and Weaver 1968). However, without mortality data and a longer period of follow-up, no firm conclusions can be drawn from these studies.

Asphalt's ability to induce skin tumors directly in mice and rats demonstrates this substance's potential carcinogenicity. Exposures to asphalt fumes should also be reduced because these fumes contain benzo(a)pyrene. BaP is present in coal tar and is the constituent primarily responsible for the high carcinogenic risk associated with exposure to coal tar pitch. OSHA considered the possibility of performing a quantitative risk assessment for asphalt and concluded that the studies described above did not have sufficient dose-response data to provide an adequate basis for such a risk assessment. OSHA preliminarily concludes that workers exposed at the current unregulated level are at significant risk of cancer. The Agency believes that establishing a limit of 5 mg/m³ for daily exposure to asphalt fumes will substantially reduce this significant risk.

BERYLLIUM AND COMPOUNDS
CAS No.: 7440–41–7
H.S. No. 1035

OSHA's current limits for beryllium are 0.002 mg/m³ as an 8-hour TWA, 0.005 mg/m³ as a ceiling, and 0.025 mg/m³ as a 30-minute peak. The ACGIH has established a TLV–TWA of 0.002 mg/m³; NIOSH [1977] has recommended a ceiling limit of 0.5 μg/m³ [0.0005 mg/m³].

The ACGIH recommendation is based on human evidence describing non-malignant respiratory disease and berylliosis associated with exposure to beryllium. Because of the uncertainty regarding the minimal concentrations of beryllium necessary to produce chronic respiratory disease, and because of the serious nature of the disease, ACGIH recommended a TLV–TWA of 0.002 mg/m³.

At the time of publication of NIOSH's 1972 criteria document on beryllium, NIOSH judged the evidence on beryllium-related cancer to be equivocal. In testimony at OSHA's 1977 hearing on a standard for beryllium, NIOSH presented additional epidemiologic and animal evidence indicating that beryllium is carcinogenic. In particular, NIOSH cited the studies of Bayliss and Wagoner (1977) and Mancuso (personal communication, 1977) showing significant increases in bronchogenic cancer among beryllium-exposed workers. NIOSH therefore recommended that exposure to beryllium not exceed the reliable limit of detection of 0.5 μg/m³.

The ACGIH TLV of 0.002 mg/m³ (TWA) is less stringent than OSHA's existing PELs. The NIOSH REL is based on analytical and sampling limits of detection, which do not necessarily satisfy OSHA's requirements regarding significant risk and feasibility. To consider the carcinogenic effects of beryllium, OSHA would have to perform a quantitative risk assessment, which could not be completed in time for this rulemaking. In light of these facts, OSHA proposes to maintain the Agency's existing PELs of 0.002 mg/m³ TWA, 0.005 mg/m³ as a 30-minute ceiling, and 0.025 mg/m³ as a peak.

CARBON TETRACHLORIDE
CAS: 56–23–5; Chemical Formula: CCl_4
H.S. No. 2903

The current OSHA PELs for carbon tetrachloride are 10 ppm as an 8-hour TWA, 25 ppm as a ceiling limit not to be exceeded for more than 5 minutes every 4 hours, and 200 ppm as a peak limit. The ACGIH has established a 5 ppm 8-hour TWA limit, with a skin notation. A 60-minute limit of 2 ppm has been recommended by NIOSH (1977); this limit reflects the lowest reliably detectable airborne concentration at the time that the recommendation was made. Carbon tetrachloride is classified as a probable human carcinogen by EPA (group B2) and IARC (group 2B) and as a suspected human carcinogen by ACGIH (category A2), based on positive carcinogenicity studies in rats, mice, and hamsters.

In humans, there have been three case reports of liver tumors developing after carbon tetrachloride exposure (Tracey and Sherlock 1968; Johnstone 1948; Simler et al. 1984). In each case, the patient had been acutely overexposed to carbon tetrachloride, leading to nausea, stomach pains, and signs of severe liver damage.

Blair et al. (1979) studied causes of death in 330 laundry and dry cleaning workers potentially exposed to carbon tetrachloride, as well as to trichloroethylene and tetrachloroethylene. Causes of death based on death certificates were compared to the age, sex, race, and cause-specific distribution of U.S. deaths from the same time period. The proportionate mortality ratio (PMR) for all malignant neoplasms was 128, which was statistically significant, indicating that the study group had a 28 percent higher proportion of total deaths due to cancer compared with the U.S. general population. The excess cancer deaths were due to liver, lung, and cervical cancer and leukemia. Although the excess lung and cervical cancer may reflect socioeconomic differences among these workers, the excess liver cancer seen in this study is consistent with findings in animal studies on carbon tetrachloride.

In animals, carbon tetrachloride has produced hepatocellular carcinomas in all species evaluated (rats, mice, and hamsters). Male rats were given 47 or 94 mg/kg carbon tetrachloride and females were given 80 or 159 mg/kg by gavage for 78 weeks (NCI 1976a,b; 1977). The incidence of hepatocellular carcinomas was increased in animals exposed to carbon tetrachloride as compared with pooled colony controls but was statistically significant only for low-dose females. The lower incidence of carcinomas in female rats at the high dose (1/49) compared to the low-dose (4/49) was attributed by the authors to the increased lethality that occurred among these rats before tumors could be expressed.

In this same study, mice of both sexes received 1250 or 2500 mg/kg carbon tetrachloride by gavage. Hepatocellular carcinomas were found in 49/49 low-dose and 47/48 high-dose males (compared with 5/77 in the control males) and in 40/40 low-dose and 43/45 high-dose females (compared with 1/80 in the control females) (NCI 1976a,b; 1977).

Edwards et al. (1942) administered carbon tetrachloride by gavage to a mouse strain known to have a low incidence of spontaneous hepatomas. The incidence of hepatomas was 32 percent (28/54) for males and 32 percent (6/19) for females. Previous hepatoma incidence data for untreated mice of this strain were 2/71 for males and 0/81 for females. Carbon tetrachloride administered by gavage has also been shown to produce neoplastic changes in the livers of four additional strains of mice (Andervont 1958; Edwards 1941; Eschenbrenner and Miller 1943).

Della Porta et al. (1961) gave weekly gavage treatments to hamsters for 30 weeks, and the animals were observed for an additional 25 weeks. All 10 hamsters dying or killed between weeks 43 and 55 had liver cell carcinomas, in comparison with 0/254 in historical controls.

Risk estimate for carbon tetrachloride. Four data sets have sufficient dose response information to allow quantitative risk estimation: The rat and mouse bioassay data (NCI 1976a, 1976b, 1977); the Edwards et al. (1942) mouse data; and the Della Porta et al. (1961) hamster data. In order to increase sample sizes, the data for male and female animals in each of the studies were pooled. The estimated risk presented in Table C15–11 is the geometric mean of the risk calculated from each data set.

Inhalation risk was calculated assuming an air intake of 20 m³ per 24-hour day and a 40 percent absorption rate for humans (U.S. EPA 1984). All four studies suggest that a common biological mechanism, cell death and regeneration, occurs and leads to the development of the same tumor type.

Table C15–11 presents the estimates of lifetime human risk from carbon tetrachloride exposure, calculated by the linearized multistage model (GLOBAL83), at the proposed 2 ppm limit, the ACGIH limit of 5 ppm, and the current 10 ppm OSHA PEL. Both the maximum likelihood estimates (MLE) and the 95 percent upper confidence limits of human risk are given, as well as the corresponding expected number of excess cancer deaths per 1,000 exposed over a working lifetime.

TABLE C15-11. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to Carbon Tetrachloride

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
2 ppm[a]	3.7	5.2
5 ppm[b]	9.2	13.0
10 ppm[c]	17.9	26.0

[a] Proposed OSHA PEL.
[b] ACGIH TLV.
[c] Current OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95 percent upper confidence limit on the maximum likelihood estimate of risk.

Based on this risk estimate, the MLE at the current OSHA limit of 10 ppm is 17.9 excess deaths per 1000 exposed workers, clearly indicating that a significant cancer risk exists at the current PEL.

Risk at the current ACGIH limit of 5 ppm is estimated to be 9.2 excess deaths per 1000 workers exposed over their working lifetimes. At the proposed limit of 2 ppm, residual risk continues to be significant, according to the Supreme Court's guidance in the *Benzene* decision; the risk predicted at 2 ppm is 3.7 excess deaths for 1000 workers exposed over their working lifetimes. However, risk at the 2 ppm limit is substantially reduced compared with risk at the current OSHA PEL of 10 ppm. The estimate shows that approximately 14 cancer deaths would potentially be avoided by reducing the limit to 2 ppm. However, because the 2 ppm limit was set by NIOSH on the basis of the limits for the sampling and analytical method available at the time this 60-minute PEL was recommended. OSHA solicits comments on the technological feasibility of the proposed limit.

CHLOROFORM
CAS: 67-66-3; Chemical Formula: $CHCl_3$
H.S. No. 1000

The current OSHA PEL for chloroform is 50 ppm as a ceiling limit. The ACGIH has established a TLV-TWA of 10 ppm and assigned chloroform an A2 designation. NIOSH (1977) recommends that workplace exposures not exceed 2 ppm as detected by a 60 minute sample; this limit represented the limit of detection at the time NIOSH made the recommendation.

Chloroform is considered to be a probable carcinogen in humans by the ACGIH and the United States Environmental Protection Agency (EPA) and International Agency for Research on Cancer (IARC). Chloroform is given an overall weight-of-evidence classification of B2 by the EPA, and an IARC classification of 2B. These classifications are based on sufficient animal evidence for carcinogenicity and insufficient epidemiological evidence to reach a conclusion based on the human data. The following discussion is based on information from the EPA Health Assessment Document for chloroform (U.S. EPA 1985).

It is currently believed that the carcinogenicity of chloroform results from the formation of reactive metabolites, such as phosgene, that bind to cellular macromolecules. Although there is some evidence to suggest that chloroform is weakly mutagenic, the results of most mutagenicity tests are negative.

In humans, there are no epidemiological studies that evaluate populations exposed only to chloroform, although there are several studies that examine populations exposed to chloroform in chlorinated drinking water. However, because chloroform is not the only potential carcinogen present in chlorinated water, the epidemiological data are considered inadequate to use as the basis for a quantitative risk assessment. Thus, a causal relationship between cancer and chloroform exposure cannot be determined based on epidemiological studies alone, although these studies can be used to provide general support for findings in animal studies.

A case-controlled study indicates a significant association between colon cancer and exposure to chlorinated drinking water contaminated with organic material (Young et al. 1981). Significant positive associations were also found for chloroform levels in drinking water and the incidence of mortality due to cancer of the bladder, rectum, and large intestine (Hogan et al. 1979). Similar results also have been found by others (Cantor et al. 1978 and Gottlieb et al. 1981). However, although these studies suggest an association between exposure to chloroform and an increased risk of cancer, a definite causal relationship between the development of colon and bladder cancer and exposure to chloroform cannot be determined solely from these studies.

In animals, several long-term studies provide strong evidence for the carcinogenic activity of chloroform. Chloroform has been shown to produce statistically significant increases in renal epithelial tumors in male rats and hepatocellular carcinomas in several strains of mice. The carcinogenic activity of chloroform in these studies is specific to the kidney and liver.

The carcinogenic activity of chloroform was investigated in rats exposed to chloroform by gavage for 78 weeks (NCI 1976). Male rats were administered doses of 90 or 180 mg/kg/day, and female rats were administered doses of 100 or 200 mg/kg/day. A statistically significant dose-related increase in renal epithelial tumors was observed in treated male rats compared with untreated, matched controls; these tumors were described as carcinomas and adenomas. No increase in the incidence of tumors was observed in chloroform-treated female rats.

In this same study, the carcinogenicity of chloroform was evaluated in mice exposed chronically to chloroform by gavage (NCI 1976). Male mice were exposed to doses of 138 or 277 mg/kg/day and females to 238 or 477 mg/kg/day for 78 weeks. There were significant dose-related increases in the incidence of hepatocellular carcinomas in chloroform-treated male and female mice. The increase of tumors in male mice for low and high doses was 36 percent and 98 percent, respectively. For female mice, the increases were 80 percent for the low dose and 95 percent for the high dose of chloroform.

The carcinogenic potential of chloroform in mice was further investigated in two additional studies (Roe et al. 1979; Jorgenson et al. 1985). Doses of 17, 60, or 100 mg/kg/day were administered to four different strains of male and female mice (C57BL, CBA, CF/1, and ICI) by gavage for 80 weeks (Roe et al. 1979). The incidence of kidney tumors, described as hypernephromas, was significantly elevated in the ICI strain. Moderate to severe renal changes were observed in the male mice of the other strains, but no significant increase in renal tumors was reported. Tumors were not observed in female mice.

The carcinogenicity of chloroform administered in drinking water was investigated in male rats and female mice (Jorgenson et al. 1985). Animals were treated with drinking water containing chloroform concentrations of 200, 400, 900, or 1800 mg/L for 104 weeks. There was a marked increase in the number of kidney tumors (described as tubular cell adenomas and adenocarcinomas) in rats. However, the incidence of tumors in female mice was not significantly increased.

Risk estimate for chloroform. The NCI (1976) rat study, which demonstrated a statistically significant increase in the incidence of renal tumors in male rats, was the data set used for the quantitative risk estimation. Although there are no data concerning the carcinogenicity of chloroform following inhalation exposure, the risk from inhaled chloroform is considered to be equivalent to the risk from ingested chloroform. The linearized multistage, one hit, and Weibull models were used. The maximum likelihood estimates of

excess cancers over an occupational lifetime for a population of 1000 and the 95 percent upper bound estimates are summarized in Table C15-12. The Weibull model is similar to the logit and probit models. However, by using only one data set, the logit, probit, and multihit models failed to converge.

The results of the data analysis presented here are similar to the results of other models described by the EPA (1985) for chloroform. These three models clearly demonstrate, based on the MLE estimates, that a significant cancer risk exists at the current PEL of 50 ppm. The risks estimated to exist at the current PEL are of the same order of magnitude as the risks determined by OSHA to be associated with other carcinogens that OSHA has regulated (e.g., benzene, ethylene oxide). Therefore, OSHA preliminarily concludes that a significant risk of cancer exists at the current PEL of 50 ppm, with estimated risks ranging from 9 to 32 excess deaths per 1,000 workers. The Supreme Court indicates that a reasonable person "might well consider a risk of 1.0 per 1000 significant, and take steps to decrease or eliminate that risk" (*I.U.D.* v. *A.P.I.*, 448 U.S. 655). OSHA also preliminarily finds that revising the PEL to 2 ppm will substantially reduce this risk by from 92 to 98 percent. Therefore, OSHA is proposing a 2 ppm short-term limit (15 minutes) as the PEL. OSHA's preliminary feasibility analysis is based on limited data at this level, and the Agency accordingly requests additional feasibility information from the public.

Table C15-12. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to Chloroform

Exposure Level	Excess Cancer Deaths Per 1,000 Workers	
	MLE	UCL
Multistage		
2 ppm[a]	0.22	3.6
10 ppm[b]	1.17	8.90
50 ppm[c]	12.20	44.20
One Hit		
2 ppm[a]	2.58	3.81
10 ppm[b]	6.43	9.44
50 ppm[c]	32.00	46.80
Weibull		
2 ppm[a]	0.01	0.65
10 ppm[b]	0.56	3.22
50 ppm[c]	9.08	31.80

[a] Proposed OSHA PEL.
[b] ACGIH TLV.
[c] Current OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95 percent upper confidence limit on the maximum likelihood estimate of risk.

CHROMIC ACID, CHROMATES; ZINC CHROMATES
CAS: 7440-47-3; 13530-65-9
H.S. No. 1092; 1436

The current OSHA limit for chromic acid and chromates is a ceiling limit of 0.1 mg/m³ measured as CrO_3. The ACGIH has established a TLV-TWA of 0.05 mg/m³ as Cr(VI) for both the soluble and insoluble forms of chromate (except zinc chromate), and has designated insoluble chromates as confirmed human carcinogens (A1). NIOSH (1975) has recommended that exposure to the noncarcinogenic forms of chromium (VI) be limited to 0.025 mg Cr(VI)/m³ as a 10-hour TWA and 0.05 mg Cr(VI)/m³ as a 15-minute ceiling. For the carcinogenic (i.e., insoluble) forms of chromium (VI), NIOSH recommends a 10-hour TWA limit of 0.001 mg Cr(VI)/m³.

The ACGIH recommendation for both soluble (noncarcinogenic) and insoluble (carcinogenic) forms of Cr(VI) is based largely on reports by Bloomfield and Blum (1928) and by the U.S. Public Health Service (1953) that demonstrate nasal irritation and some evidence of liver enlargement and kidney dysfunction among chromate workers exposed to 0.06 to 0.07 mg Cr(VI)/m³. The ACGIH also cites a report by Mancuso and Hueper (1951) of excess lung cancer among chromate workers exposed to 0.01 to 0.15 mg/m³ soluble chromate and 0.1 to 0.58 mg/m³ insoluble chromate. Animal data cited by the ACGIH indicate that insoluble chromate salts were likely to have been responsible for the increased incidence of cancer seen in the Mancuso and Hueper study. The ACGIH (1986) concluded that the 0.05 mg/m³ TLV-TWA would protect workers from chromium-induced nasal irritation and possible liver or kidney damage, and, in the case of the insoluble chromates, would provide an adequate margin of safety from respiratory cancer. (It should be noted that the 0.05 mg/m³ limit, expressed as Cr(VI), approximates 0.01 mg/m³ measured as CrO_3.)

NIOSH (1975) cited several studies showing inflammation and ulceration of the nasal cavity at short-term exposure levels greater than 0.1 mg CrO_3/m³. In its 1973 Criteria Document on chromic acid, NIOSH recommended that the current OSHA ceiling limit (0.1 mg CrO_3/m³) be supplemented with an 0.05 mg CrO_3/m³ 10-hour TWA limit. In its 1975 Criteria Document on chromium (VI), NIOSH reaffirmed these limits but extended their application to all forms of noncarcinogenic chromate. Thus, the 0.1 mg CrO_3/m³ ceiling limit corresponds to a 0.05 mg Cr(VI)/m³ ceiling limit, and the 0.05 mg CrO_3 TWA limit corresponds to a 0.025 mg Cr(VI)/m³ TWA. For the carcinogenic (insoluble) forms of Cr(VI), NIOSH recommends the lowest detectable level, which is 0.001 mg Cr(VI)/m³ as a 10-hour TWA.

Zinc chromate is an insoluble, carcinogenic form of chromate. As such, the current OSHA limit for chromic acid and chromates applies, as does the NIOSH limit of 0.001 mg/m³ limit for carcinogenic chromates. The ACGIH (1986) reviewed several small epidemiologic studies of zinc chromate workers, all of which reported excesses of lung cancer. Because of the consistent evidence, the ACGIH (1986) classified zinc chromate as a confirmed human carcinogen (A1) and reduced the TLV to 0.05 mg Cr(VI)m³.

Evaluation of the alternate recommendations is complicated by the different valence states of chromium compounds, the different methods of measurement (CrO_3 or Cr(VI)), and differences in defining those substances that present a cancer hazard (soluble vs. insoluble or valence state). The 0.05 ppm TWA-TLV is less restrictive than the current 0.05 ppm ceiling limit (as Cr(VI)), and would not be considered a revised PEL. OSHA therefore tentatively proposes that the existing PEL of 0.1 mg/m³ (measured as CrO_3) be maintained. Because of the problems noted above, OSHA will consider whether the NIOSH REL should be adopted in place of the 0.1 mg/m³ limit (measured as CrO_3) during the public hearing phase of this rulemaking. OSHA will also consider whether to place these substances on its regulatory agenda for future consideration for section 6(b) rulemaking, rather than making any changes as part of this rulemaking.

CHROMYL CHLORIDE
CAS: 14977-61-8; Chemical Formula: CrO_2Cl_2
H.S. No. 1094

There is no existing OSHA PEL for chromyl chloride. The ACGIH recommends that a TWA of 0.025 ppm be established, based on this substance's carcinogenic potential (ACGIH 1986, p. 141). The evidence in humans is considered sufficient for the carcinogenicity of chromium and chromium compounds, and these have been given a Group 1 classification by the International Agency for Research on Cancer. As discussed below in connection with chromic acid, chromates, and zinc chromates, the chromium compounds present several important issues that require detailed analysis and can most appropriately be handled in an individual section 6(b) rulemaking. OSHA intends to commence work on this rulemaking as priorities and research permit.

DIMETHYL SULFATE
CAS: 77-78-1; Chemical Formula: $(CH_3)_2SO_4$
H.S. No. 1142

OSHA's current limit for dimethyl sulfate is 1 ppm. The ACGIH considers this substance a suspected human carcinogen and has given it a classification of A2 (ACGIH 1986, p. 212). The ACGIH's TLV-TWA for this substance is 0.1 ppm.

Dimethyl sulfate is commonly used in the manufacture of many organic chemicals. It has been shown to be carcinogenic in rats by inhalation exposure, subcutaneous injection, and prenatal exposure. The rat is the only animal species in which the carcinogenesis of dimethyl sulfate has been tested (IARC 1974).

The carcinogenic activity of dimethyl sulfate was investigated in male rats chronically exposed to subcutaneous injections of 8 or 16 mg/kg body weight per week (Druckrey et al. 1968). Local sarcomas with metastases to the lung and regional lymph nodes were observed at both dose levels. A single subcutaneous injection of dimethyl sulfate (50 mg/kg) also produced local sarcomas with metastases to the lung (Druckrey et al. 1970). However, tumors did not develop following chronic weekly intravenous injections of dimethyl sulfate (2 or 4 mg/kg) (Druckrey et al. 1970). Control data were not reported for either of these studies.

The carcinogenic potential of dimethyl sulfate exposure by inhalation was also evaluated in male rats (Druckrey et al. 1970). Animals were exposed to approximately 3 or 10 ppm dimethyl sulfate for 1 hour per day five times weekly for 130 days. Malignant tumors developed in 15 percent (3/20) of the rats exposed at 3 ppm and in 16 percent (5/27) of the rats exposed at 10 ppm.

Pregnant rats were exposed to a single intravenous injection of dimethyl sulfate (20 mg/kg body weight) on day 15 of gestation and the incidence of malignant tumors in the offspring was investigated for 1 year. Tumors were reported in 7/59 of the offspring. However, the incidence of tumors in the control group was not indicated. The results of this study are complicated because several rats died (number of deaths not specified) from the acute toxic effects of dimethyl sulfate, and the incidence of tumors in the control group was not reported.

There is little information available regarding the carcinogenicity of dimethyl sulfate in humans. A case study of workers exposed to dimethyl sulfate reported that three workers developed bronchial cancer (Druckrey et al. 1968). However, an epidemiological study by the E.I. du Pont de Nemours Company (cited in ACGIH 1986, p. 213) demonstrated no increase in the incidence of respiratory cancer among workers exposed to dimethyl sulfate.

OSHA considered the possibility of performing a quantitative risk assessment for dimethyl sulfate and concluded that the studies described above did not have sufficient dose-response data to provide an adequate basis for such a risk assessment. Dimethyl sulfate induces malignant tumors in animals both by inhalation and ingestion, and there is thus sufficient evidence in animals to predict that workers exposed to dimethyl sulfate are at significant risk of developing cancer; exposures at levels only three times the existing PEL resulted in a significant number of tumors. OSHA preliminarily concludes that reducing the current limit to 0.1 ppm as an 8-hour TWA will reduce this risk and will substantially reduce this significant risk of cancer mortality.

NICKEL (SOLUBLE COMPOUNDS)
CAS: 7440-02-0; Chemical Formula: Varies
H.S. No. 1283

The current OSHA PEL for all forms of inorganic nickel (as Ni) is 1 mg/m³ TWA. The ACGIH has recommended that the TLV-TWA for soluble forms of nickel be reduced to 0.1 mg/m³. NIOSH recommends that exposure to any form of inorganic nickel be maintained at or below 0.015 mg/m³.

A variety of toxic effects results from exposure to nickel compounds. Soluble nickel salts cause contact dermatitis in sensitized individuals and eye irritation (ACGIH 1986, p. 422). High rates of asthmatic lung disease have been reported among nickel-plating workers (EPA 1986).

Three soluble nickel compounds have been tested for their carcinogenic potential: Nickel chloride, nickel sulfate, and nickel acetate. In addition, the sparingly soluble compounds, nickel carbonate and nickel hydroxide, have been studied. As a whole, the results of animal studies suggest that some soluble nickel compounds are potentially carcinogenic. Results from occupational studies are inconclusive for soluble nickel compounds because of the presence of several types of nickel compounds in the facilities studied. One cohort of nickel refinery electrolysis workers exposed to nickel sulfate experienced an increased risk of lung cancer compared with the facility's roasting and smelting workers (Doll 1958). OSHA proposes to lower the PEL for soluble nickel compounds to 0.1 mg/m³, due to recent evidence that, in animals, exposure to low levels causes lung damage that is indicative of pre-neoplastic changes.

Nickel chloride has been reported to be mutagenic in *Salmonella typhimurium and Cornebacterium*, but negative in *E. coli* (EPA 1986). The positive studies are not considered conclusive, however, because the *S. typhimurium* report is an abstract lacking detailed data and *Cornebacterium* is not the usual species

used in these tests. Amacher and Paillet (1980) reported that nickel chloride was mutagenic in mouse lymphoma cells and demonstrated a dose-response relationship.

Some *in-vitro* studies using soluble nickel compounds report finding chromosomal aberrations (EPA 1986). These studies do not demonstrate a dose-response relationship or statistical significance, which weakens their findings. Several *in-vivo* studies have failed to detect chromosomal aberrations (EPA 1986). However, several *in-vitro* studies on nickel sulfate and nickel chloride have reported findings of sister chromatid exchanges (EPA 1986).

Some animal studies on soluble nickel compounds suggest that these compounds are carcinogenic in animals. Strain A mice receiving intraperitoneal injections of nickel acetate had an increased rate of lung adenomas and adenocarcinomas that was statistically significant in the high dose group (Stoner et al. 1976). The animals were injected 3 times per week for 8 weeks at 72, 180, or 360 mg/kg.

EPA (1986) reported a study in which rats were given monthly intramuscular injections of 35 mg/kg nickel acetate for 4 to 6 months (Haro et al. 1966, as reviewed by Rigaut 1983). Twenty-two percent of the treated rats developed sarcomas. Payne (1964) observed tumor responses in rats after intramuscular implantation of 7 mg nickel acetate, nickel sulfate, nickel chloride, or nickel carbonate. Implant site sarcomas developed in 1 of 35 rats exposed to nickel acetate, 1 of 35 rats exposed to nickel sulfate, none of 35 rats exposed to nickel chloride, and 4 of 35 rats exposed to nickel carbonate.

Results of other studies on nickel sulfate have been negative. Three studies used intramuscular injection in rats and reported that no tumors developed in the treated group (Gilman 1962; Gilman 1966; and Kasprazak et al. 1983). An ingestion study also reported no tumors among treated rats or dogs (Ambrose et al. 1976).

Gilman (1966) administered 5 mg nickel hydroxide to rats by intramuscular injection in each thigh. Nineteen out of 40 injection sites developed sarcomas. Kasprazak et al. (1983) gave rats intramuscular injections of nickel hydroxide in gel, crystalline, or colloidal form. Five out of 19 animals receiving the gel developed sarcomas (2 with metastasis to the lung), 3 out of 20 receiving the crystalline form developed sarcomas (1 with metastasis to the lung), and none of 13 rats receiving the colloid developed tumors.

Bingham et al. (1972) exposed rats by inhalation to 0.1 mg/m³ nickel chloride for 12 hours a day for 2 weeks. Animals showed evidence of pulmonary damage and hyperplasia. Rats and guinea pigs exposed daily to 1.0 mg/m³ (as Ni) nickel chloride for 6 months showed increased lung weight, which is an indication of pulmonary damage and hyperplasia (Clary 1977). Rabbits inhaling 0.3 mg/m³ (as Ni) nickel chloride aerosol for 30 days showed a doubling in alveolar cell number and volume of alveolar epithelial cells, as well as nodular accumulation of macrophages and laminated structures (Johansson et al. 1983). These studies indicate that exposure above the current OSHA PEL of 1.0 mg/m³ for soluble nickel is associated with increased cell turnover in the lung; the hyperplasia observed in the lungs of treated animals is indicative of pre-neoplastic change.

Electrolysis workers at a refinery in Kristiansand, Norway experienced the highest lung cancer risk in the plant (Mangus et al. 1982). Electrolysis workers were exposed to an aerosol composed predominantly of nickel sulfate, which was estimated (to contain nickel) at a concentration of 0.2 mg/m³ (EPA 1986). However, exposure to nickel subsulfide and oxides may have occurred in the electrolysis building, and the electrolysis workers may have worked in other process departments (Grandjean et al. 1988). Roasting and smelting workers were exposed to an estimated average of 0.5 mg/m³ (as Ni) of roasting dust.

The standardized mortality ratios (SMRs) for lung cancer were 550 for electrolysis workers, 300 for other process workers, and 360 for roasting and smelting workers. The pattern of SMRs for nasal cancer was different: 2600 for electrolysis workers, 2000 for other process workers, and 4000 for roasting and smelting workers. The results seem consistent with studies showing that roasting and smelting workers have the highest concentrations of nickel in the nasal mucosa, presumably because of the relatively larger particles resulting from roasting. Electrolysis workers have higher plasma and urine levels of nickel, suggesting that nickel aerosolized by this process penetrates to the deep lung (EPA 1986).

In contrast to the study of Norwegian nickel refinery workers, an increased risk of lung cancer was not found among electrolysis workers at Port Colborne, Ontario (EPA 1986). The characteristics of exposure, however, may not have been similar to those experienced by the workers in Norway.

Risk estimate for soluble nickel compounds. OSHA considered the possibility of performing a quantitative risk assessment for the nickel compounds. However, the animal studies on the effects of exposure to the soluble compounds of nickel do not contain sufficient dose-response data for such an assessment. Risk estimates can be derived from the study by Mangus et al. (1982), which reported excesses in lung cancer and nasal tumors among electrolysis workers exposed predominantly to soluble nickel aerosols. To perform the risk assessment, OSHA used the multiplicative and average relative risk models (EPA 1986) applied to the excess lung cancer response reported by Mangus et al. (1982). The results of the risk assessment are reported in Table C15-5.

TABLE C15-5. Multistage Model Estimates of Lung Cancer Risk Associated With Working Lifetime Exposure to Soluble Nickel

Exposure Level	Excess Cancer Deaths Per 1,000 Workers: Estimate Using Multiplicative Relative Risk Model	Estimate Using Average Relative Risk Model	Midpoint of Range
0.1 mg/m³ [a]	0.25	2.5	1.4
1.0 mg/m³ [b]	2.5	25.0	14.0

[a] Proposed OSHA PEL.
[b] Current OSHA PEL.

Animal studies have clearly demonstrated that lung changes indicative of pre-neoplastic responses occur as a result of exposure to soluble nickel at levels ranging from 0.1 mg/m³ to 1.0 mg/m³ for periods of time that were far less than the lifetime of the animals. From these studies, it is clear that the current OSHA PEL of 1.0 mg/m³ for soluble nickel is inadequate to offer protection against these pathological changes.

For example, using the midpoint of the range of excess deaths predicted by the two models (Table C15-5), 14 excess deaths would be predicted to occur among 1,000 workers exposed over their working lifetimes at the current limit. This risk is reduced by 90 percent at the proposed level, i.e., is reduced to 1.4 excess deaths per 1,000 exposed workers. The residual risk at 0.1 mg/m³ is still significant, if the guidelines provided by the Supreme Court in the *Benzene* decision are used. Soluble nickel has exhibited carcinogenic activity in animals treated by injection. The finding by Mangus et al. (1982) of excess lung and nasal tumor cancer among workers exposed to soluble nickel, although complicated because of concurrent exposure to insoluble nickel, is consistent with these animal findings. A quantitative assessment of cancer risk based on the Mangus et al. (1982) study shows that the potential cancer risk at the current PEL represents a significant cancer risk, and that reducing the exposure limit for soluble nickel to 0.1 mg/m³ results in a substantial reduction of that risk. Because the 0.015 mg/m³ NIOSH limit is based on analytical and sampling limits of detection, the significant risk and feasibility requirements to which the Agency may not be satisfied. OSHA preliminarily concludes that reducing the current PEL for soluble nickel is necessary and proposes to reduce its limit to a 0.1-mg/m³ 8-hour TWA, measured as elemental nickel, as an interim PEL. As future priorities permit, OSHA may consider the need for a more restrictive standard for these compounds.

2-NITROPROPANE
CAS: 79-46-9; Chemical Formula: $CH_3CH(NO_2)CH_3$
H.S. No. 1291

OSHA's current limit for 2-nitropropane (2-NP) is 25 ppm; the ACGIH has an established limit for this substance of 10 ppm as an 8-hour TWA and classifies 2-nitropropane as a suspected human carcinogen (A2). 2-Nitropropane is used as a chemical intermediate, solvent, and a component in paint, ink, and varnishes (Fiala et al. 1987). Approximately 185,000 workers are exposed to 2-NP during its production and use in printing, highway maintenance (traffic markings), shipbuilding and maintenance (marine coatings), furniture and plastic product finishes, and food packaging (NIOSH 1980).

In rats and chimpanzees, 2-NP is metabolized by microsomal enzymes in the liver to acetone, low levels of isopropanol, and nitrite (Mueller et al. 1983). Methemoglobin formation is associated with the metabolism of nitropropane and has been reported in cats exposed to 280 ppm of 2-NP for 7 hours. Sensitivity to the toxic effects of 2-NP in animals varies by species (Dequidt et al. 1972; ACGIH 1986, p. 441).

The mechanisms of carcinogenicity of 2-NP are thought to involve the release of nitrite and the formation of a reactive azoxy intermediate that can react with cellular macromolecules (Williams and Weisburger 1986).

In mutagenicity tests, 2-NP increased the frequency of mutations in all strains of *Salmonella typhimurium* with and without metabolic activation. Positive mutagenicity results were reported in *Salmonella typhimurium* strains TA100, TA1535, and TA98 by Lofroth et al. (1981) and Speck et al. (1982). 2-NP was not shown to be mutagenic in the mouse micronucleus test (Hite and Skeggs 1979).

Acute exposures to 2-NP from occupational accidents have been reported to cause severe liver toxicity and subsequent death in humans (ACGIH 1986, p. 441). However the

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available epidemiology data on the chronic health effects of occupational exposure to 2-NP do not contain sufficient dose-response data to use as a basis for quantitative risk estimation. An unpublished retrospective mortality study of 1,461 potentially exposed workers from a nitropropane production plant found no increase in liver cancer or liver disease mortality. However, lack of exposure data, the small number of workers with long exposures (greater than 15 years), and a short latency period make interpretation of the results of this study difficult (Miller and Temple 1979; Bolender 1983).

There are two studies that report high incidences of liver tumors in male rats exposed to 2-NP by gavage and inhalation. Fiala et al. (1987) administered, by gavage, 1 mmol/kg body weight (approximately 27 mg/treatment per 300-gram rat) of 2-NP in a 10 percent aqueous Emulphor EL-620 vehicle to male Sprague-Dawley rats three times weekly for 16 weeks. Dosing was discontinued after 16 weeks because of excessive mortality in the treated rats. Seventy-seven weeks from the first treatment, the surviving rats were sacrificed and subjected to necropsy. All (100 percent) of the treated rats examined had developed hepatocarcinomas.

The results of the Fiala et al. study (1987) support the earlier positive results reported by Lewis et al. (1979). In the Lewis et al. study (1979), male Sprague-Dawley rats and male New Zealand White rabbits were exposed via inhalation to 27 ppm or 207 ppm of 2-NP for 7 hours/day, 5 days/week for 6 months. At the end of 6 months, all 10 rats in the high-dose group exhibited hepatocellular carcinomas and neoplastic nodules. No exposure related lesions were seen in the rats exposed to 27 ppm, and no exposure related lesions were observed in any of the rabbits.

One high-dose and two low-dose studies reported negative results for rats exposed to 2-NP vapors. Griffin et al. (1978) reported no hepatic carcinomas on exposing male and female rats to 200 ppm of 2-NP by inhalation using a protocol similar to that described by Lewis et al. (1979). Although no hepatic carcinomas were observed, the following effects (generally occurring more extensively in males) were seen: Increased liver weights (both sexes); hepatic nodules; hepatocellular necrosis; and peripheral compression.

Two low-dose studies by Griffin et al. (1980, 1981) also produced negative results. Male and female Sprague-Dawley rats were exposed by inhalation to 25 ppm of 2-NP for 7 hours/day, 5 days/week for 22 months. No pathological changes associated with exposure to 2-NP were seen.

Although the results of both the Lewis et al. (1979) and the Fiala et al. (1987) studies show statistically significant increases in liver carcinomas, neither study provides sufficient dose-response information to use as a basis to quantify the excess cancer risk to humans exposed to 2-NP. Both studies were terminated before the natural lifetime expectancy of the controls, so it is not possible to determine a background incidence of cancer risk. No historical information is provided on tumor incidence for these animals.

2-Nitropropane produced a high incidence of liver tumors in male rats by two routes of administration: Inhalation and ingestion. Its ability to cause mutations in *Salmonella typhimurium* further supports the premise that 2-NP is a potential human carcinogen. OSHA considered whether to perform a quantitative risk assessment on 2-NP. OSHA preliminarily concludes that the studies described above do not contain sufficient dose-response data to use as the basis for quantitative risk estimation using standardized risk assessment models. However, two studies (Fiala et al. 1987, Lewis et al. 1979) demonstrate that exposure to 2-NP, either by gavage or inhalation, produced hepatocarcinomas in rats. In addition, this substance produced positive results in two mutagenic assays (Lofroth et al. 1981, Speck et al. 1982).

OSHA is proposing an 8-hour PEL for 2-NP of 10 ppm. The Agency preliminarily concludes that a reduction in the PEL is necessary to protect exposed workers from the significant risk of cancer potentially associated with exposure to 2-NP at the current PEL. The proposed limit will substantially reduce this significant occupational risk.

STYRENE
CAS: 100-42-5; Chemical Formula: $C_6H_5CH=CH_2$
H.S. No. 1372

OSHA's current occupational limits for styrene are 100 ppm as an 8-hour TWA, 200 ppm as a ceiling limit not to be exceeded for more than 5 minutes in any 3-hour period, and 600 ppm as a peak limit. The ACGIH has recommended limits of 50 ppm as an 8-hour TWA and 100 ppm as a 15-minute STEL for styrene. NIOSH has a recommended standard for styrene of 50 ppm as a 10-hour TWA, with a 15-minute ceiling of 100 ppm.

An increased incidence of cancer has been reported among workers exposed to styrene. In addition, styrene has been demonstrated to be carcinogenic in animals. The discussion below summarizes the human and animal data and presents OSHA's quantitative assessment of the cancer risk potentially associated with occupational exposure to styrene.

McMichael et al. (1976), in a nested case-control study, identified a sample of male workers who had worked for 5 or more years at a tire manufacturing plant where exposure to styrene (and butadiene) occurred. The authors found the age-standardized relative risk for this cohort (128 workers), compared with that of the total plant population (6,678 workers), to be 6.2 for lymphatic and hematopoietic cancer, 3.9 for lymphatic leukemia, and 2.2 for stomach cancer. In a follow-up unpublished analysis (discussed in EPA 1987), the relative risk for lymphatic and hematopoietic cancer was revised to 2.4.

In a retrospective cohort mortality study, Meinhardt et al. (1982) identified five deaths from leukemia and aleukemia (1.8 expected, SMR = 278) among 600 workers in a synthetic rubber manufacturing facility. Workers at this plant had been exposed to styrene (and butadiene) for at least 6 months; the mean concentration of styrene at the plant was 0.94 ppm. Because of the concurrent exposure to butadiene reported among the study cohort, these studies can be said to support but not conclusively to prove that exposure to styrene is associated with an elevated risk in workers of hematopoietic cancer and leukemia.

In a study sponsored by the Chemical Manufacturers Association (Dow 1978, as cited in EPA 1987), male and female Sprague-Dawley rats were exposed to styrene vapor at concentrations of 600 to 1200 ppm, 6 hours per day, 5 days per week, for 18 or 20 months. The higher exposure level was reduced to 1000 ppm after the first 2 months of exposure because of excessively reduced weight in the male rats. A statistically significant increased incidence of mammary tumors was reported in low-dose female rats (7 of 87) compared with controls (1 of 85); no increase in mammary tumors was reported among high-dose female rats. The authors questioned the significance of this response, since historical control animals from the same laboratory showed a higher background incidence of mammary tumors than the controls used in this study.

An increased incidence of leukemia and lymphosarcoma was also observed in both low-dose and high-dose females; both experimental groups exhibited the same incidence (6 of 85), compared with 1 of 85 in the controls. Although the increased incidence was not statistically significant compared with the incidence in concurrent controls, the increase was highly significant compared with historical control rates. The tumor response in male rats was confounded by excessive non-treatment-related mortality.

In a 1979 NCI study, male and female B6C3F1 mice and Fischer 344 rats were treated by gavage 5 days per week for 78 weeks (low-dose rat groups were treated for 103 weeks). The study was terminated at 91 weeks for mice and 104 to 105 weeks for rats. Dose-related increases in alveolar/bronchiolar adenomas and carcinomas were observed only in the low-dose (150 mg/kg) and high-dose (300 mg/kg) male mice; the incidence of tumors for vehicle controls, low dose, and high-dose male mice was 0/20, 8/44, and 9/43, respectively. Although the historical incidence of tumors among untreated controls was 12 percent (32/271), the historical incidence of vehicle controls was 0/40.

Quantitative Risk Assessment for Styrene. OSHA assessed the excess cancer risk associated with 45 years of occupational exposure to styrene using both the NCI (1979) male mouse lung tumor response and the Dow (1978) female rat leukemia/lymphosarcoma response. Risk estimates derived using the multistage model and the NCI data set yielded estimated excess cancer deaths of 280 or 150 per 1,000 employees exposed to 100 ppm or 50 ppm over their working lifetimes, respectively (95 percent upper-bound estimates were 460 or 220 per 1,000, respectively). However, the daily doses associated with 45 years of occupational exposure to 100 ppm or 50 ppm styrene are well above the daily dose administered to the high-dose group of mice in the NCI gavage study, which places the estimated human doses outside the linear range of the model. As a consequence, the NCI gavage study is not suited to estimating risk in the range of exposure represented by the current and proposed limits for this substance.

Because the daily human doses corresponding to 45 years of exposure to 100 ppm or 50 ppm styrene in the Dow (1978) study are well below the daily doses administered to the female rats, these data can be used as the basis for a quantitative risk assessment. The risk estimates based on this study are presented in Table C15-6.

TABLE C15-6. Multistage Model Estimates of Cancer Risk Associated With Working Lifetime Exposure to Styrene*

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
50 ppm[a]	9.5	17
100 ppm[b]	19.0	33

* Based on 1978 Dow study sponsored by the Chemical Manufacturers Association.
a Proposed OSHA PEL.
b Current OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95 percent upper confidence limit on maximum likelihood estimate of risk.

Styrene has been shown to be carcinogenic in two species of animals and by two routes of administration. Human studies also implicate styrene as a potential human carcinogen, but these studies are confounded by concurrent exposure to butadiene in the cohorts studied. However, it is noteworthy that the excess cancers that have been found in workers exposed to styrenebutadiene (hematopietic cancer and leukemia) involve the same tumor site affected in rats exposed to styrene by inhalation.

OSHA's quantitative risk assessment based on the rat inhalation study indicates that an excess of 19 cancer deaths will occur among 1,000 employees exposed to the current PEL of 100 ppm styrene for 45 years; clearly, this represents a significant risk. Reduction of the PEL to 50 ppm will reduce this significant risk substantially; the reduction from 100 to 50 ppm reduces the risk existing at the current PEL by 50 percent. Therefore, OSHA proposes to revise its existing PEL for styrene to 50 ppm as an 8-hour TWA; OSHA also proposes to supplement the TWA-PEL with a 100-ppm 15-minute STEL to ensure that workplace exposures are maintained under good industrial hygiene control. OSHA is proposing the 50-ppm limit as an interim measure. As future priorities permit, the Agency will consider additional rulemaking for this potent occupational carcinogen, at which time OSHA will investigate whether it is feasible to reduce exposures further.

o-TOLUIDINE
CAS: 95-53-4; Chemical Formula: $CH_3C_6H_4NH_2$
H.S. No. 1399

OSHA's current 8-hour TWA for o-toluidine is 5 ppm. The ACGIH identifies o-toluidine as a suspected human carcinogen and has accordingly placed it in the A2 category (ACGIH 1986, p. 586). The ACGIH has a TLV-TWA of 2 ppm, with a skin notation, for this substance. The International Agency for Research on Cancer (IARC 1982) classifies o-toluidine as a probable carcinogen (category 2A) based on sufficient evidence of its carcinogenicity

in rats and mice following oral administration (IARC 1982). IARC judged the human evidence inadequate to establish o-toluidine's carcinogenicity in human tests.

o-Toluidine is mutagenic in short-term tests, inducing sister chromatid exchanges and unscheduled DNA synthesis in mammalian cells in vitro and chromosomal anomalies in yeast. o-Toluidine was negative in the micronucleus test in mice in vivo, but induced cell transformations in the BHK (baby hamster kidney) assay. IARC considers these data to be sufficient evidence of o-toluidine's activity in short-term tests (IARC 1982).

There are a number of studies that report an excess of bladder tumors in dyestuff workers exposed to o-toluidine and other chemicals; however, there are no studies that examine a population of workers exposed to o-toluidine alone. Workers exposed to toluene, o-nitrotoluene, o-toluidine, and 4,4 methylene bis (2-methylaniline) in manufacturing were observed to have an excess of bladder tumors. However, the concurrent exposures of these workers to these other potential carcinogens make these data inappropriate for use in the quantitative assessment of o-toluidine's carcinogenic risk in human populations. A few reports of bladder tumors in persons exposed primarily to o-toluidine have been reported, but insufficient follow-up time and incomplete data have prevented the establishment of a clear quantitative association between o-toluidine exposure and cancer in humans. For this reason, IARC considers the data from human studies inadequate to establish an association between exposure to o-toluidine and cancer (IARC 1982).

o-Toluidine has been determined to be carcinogenic in rats and mice following oral administration. In rats, statistically significant increases in subcutaneous fibromas, fibrosarcomas, and cancers of the urinary bladder have been reported. Studies in mice have resulted in statistically significant increases in hemangiosarcomas and hepatocellular carcinomas.

The National Cancer Institute (NCI 1979) conducted long-term carcinogenicity studies with o-toluidine in rats and mice. Both of these studies were positive for carcinogenicity. The mouse study used groups of 50 female and 50 male B6C3F1 mice fed o-toluidine hydrochloride in the diet at levels of 1000 ppm or 3000 ppm for 102 to 103 weeks. There was no excess mortality in the tested animals. At the 3000-ppm dose level, there was a statistically significant increase in hemangiosarcomas at all sites in males and a statistically significant increase in hepatocellular carcinomas and adenomas in females.

The National Cancer Institute also conducted a 2-year feeding study with 50 male and 50 female Fischer 344 rats. There was a dose-related trend in mortality (which was not caused by cancer); all the males in the high-dose group died by 100 weeks. However, the females at both dose levels were observed to have significant increases in transitional-cell carcinomas or papillomas of the urinary bladder, and the high-dose females developed fibroadenomas of the mammary gland. The males at both dose levels showed significant increases in fibromas of the subcutaneous tissue and mesotheliomas in multiple organs (NCI 1979). The high mortality in the males complicates the interpretation of these latter findings.

Weisburger et al. (1978) reported positive findings for o-toluidine in long-term feeding studies in rats and mice. The study in rats was conducted with two groups of 25 male CD rats fed o-toluidine in the diet via one of two regimens: 8000 ppm for 3 months and then 4000 ppm for an additional 15 months; or 16,000 ppm for 3 months and then 8000 ppm for an additional 15 months. Statistically significant increases in the incidence of subcutaneous fibromas and fibrosarcomas were observed in both dose groups. In addition, there was a non-statistically significant increase in the incidence of transitional-cell carcinomas of the urinary bladder in these animals.

Weisburger et al. (1978) also reported the results of a long-term study in mice. Groups of 25 male and 25 female CD-1 mice were fed diets containing o-toluidine at two dose levels: 16,000 ppm for 3 months and then 8000 ppm for an additional 15 months; or 32,000 ppm for 3 months and then 8000 ppm for an additional 15 months. There was a statistically significant, dose-related increase in the incidences of vascular tumors (hemangiosarcomas and hemangiomas of the abdominal viscera) in both sexes of treated mice, compared with results in control mice.

Risk estimate for o-toluidine. Four of these carcinogenicity studies of o-toluidine have yielded sufficient and adequate data for quantitative risk estimation: The two NCI studies (NCI 1978) and the two Weisburger et al. (1978) studies. OSHA has used the NCI study in rats as the basis for its quantitative risk assessment because it provides the most appropriate data. Table C15-7 presents the Maximum Likelihood Estimates (MLE) of excess deaths per 1,000 employees predicted to result from exposure to o-toluidine at the current OSHA PEL of 5 ppm and at the proposed PEL of 2 ppm. These data were calculated using a multistage model, GLOBAL83.

Table C15-7 shows an excess MLE estimate of risk of 1.4 per 10,000 workers exposed over their working lifetimes at the current PEL. This risk would be reduced to 0.5 per 10,000 exposed workers after promulgation of the proposed limit of 2 ppm. This level of risk is lower than the levels OSHA has regulated for some carcinogens, such as ethylene oxide, arsenic, and benzene. However, this risk is approximately the same as that associated with exposure to formaldehyde; in the case of formaldehyde, OSHA considered a reduction in exposure of approximately this amount to be appropriate (see the discussion at 52 FR 46211-37, December 4, 1987). Based on that analysis, OSHA preliminarily concludes that the significant risk of carcinogenicity to which workers are currently exposed at the existing PEL would be substantially reduced by promulgation of the proposed PEL.

TABLE C15-7. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to o-Toluidine

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
5 ppm[a]	0.137	1.6
2 ppm[b]	0.055	0.64

[a] Current OSHA PEL.
[b] Proposed OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = Upper bound (95 percent) confidence limit on maximum likelihood estimate of risk.

p-TOLUIDINE
CAS: 106-49-0; Chemical Formula: $CH_3C_6H_4NH_2$
H.S. No. 1400

OSHA has no current PEL for p-toluidine. The ACGIH considers this substance a suspected human carcinogen and has given it a classification of A2 (ACGIH 1988) and a TLV-TWA of 2 ppm. There is sufficient evidence for the carcinogenesis of p-toluidine in experimental animals; there is no human epidemiological evidence.

One study investigates the carcinogenic potential of lifetime exposure to p-toluidine in experimental animals (Weisburger et al. 1978). Male and female mice were exposed to p-toluidine in the diet for a total of 18 months. During the first 6 months of the experiment, mice were exposed to 1000 and 2000 mg p-toluidine/kg diet. As a result of the weight loss that occurred in mice exposed to the 2000 mg/kg diet dose, the concentrations of p-toluidine were reduced to 500 and 1000 mg/kg diet during the last 12 months of exposure. The rate of food consumption by the animals was not reported and was assumed to be 3 g/day. Thus, the average doses of p-toluidine received during the 18-month exposure were calculated to be 80 and 160 mg/kg body weight per day (Weisburger et al. 1978).

For both the low and high dietary doses of p-toluidine, a significant increase in the incidence of hepatomas was observed. The incidence of tumors in the control, 80, and 160 mg/kg/day groups were 3/38, 10/38, and 12/35, respectively. The same study (Weisburger et al. 1978) showed negative results in male rats exposed to two doses of p-toluidine in the diet for 18 months (1000 and 2000 mg/kg diet).

Risk estimate for p-toluidine. To assess the quantitative risk of p-toluidine's carcinogenicity, OSHA used the Weisburger et al. (1978) data which, despite some limitations, e.g., changes in dose levels during the experiment and the absence of data concerning the amount of food animals consumed during the exposure period, were considered adequate for risk assessment purposes.

The maximum likelihood estimates (MLE) of excess cancers per 1,000 workers over an occupational lifetime and the 95 percent upper-bound estimates were obtained by using a linearized multistage model (GLOBAL83). These values are summarized in Table C15-8. This table shows the number of cancer deaths potentially associated with working lifetime exposure to 20, 5, or 2 ppm p-toluidine.

TABLE C15-8. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to p-Toluidine

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
2 ppm[a]	12	19
5 ppm	29	46
20 ppm	112	172

[a] Proposed OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = Upper bound (95 percent) confidence limit on maximum likelihood estimate of risk.

OSHA preliminarily concludes, as Table C15-8 shows, that workers exposed to p-toluidine, which is currently not regulated by OSHA, are at significant risk of developing hepatomas. For example, the MLE at 20 ppm is 112 excess cancer deaths per 1,000 workers exposed over a working lifetime. Promulgating the proposed PEL of 2 ppm will substantially reduce this significant risk. According to this scenario, a 90-percent reduction in excess cancer deaths would be achieved by establishing the 2-ppm limit. The risks existing at the present uncontrolled level are clearly significant and have been determined to be so in several previous OSHA rulemakings. OSHA is proposing a 2-ppm limit as an interim measure. As future priorities permit, the Agency will consider additional rulemaking to investigate whether it is feasible and appropriate to reduce exposures further.

VINYL BROMIDE
CAS: 593-60-2; Chemical Formula: C_2H_3Br
I.I.S. 1425

OSHA has no current PEL for vinyl bromide. The ACGIH has established an 8-hour TWA of 5 ppm for this substance; NIOSH has no REL for vinyl bromide. The ACGIH places vinyl bromide on its A2 list of industrial substances suspected of having carcinogenic potential in humans. Vinyl bromide is used as an intermediate in organic synthesis and in the manufacture of polymers, copolymers, and flame retardants. Its principal use is as a flame retardant.

Henschler and Hoos (1982) believe that vinyl bromide undergoes the same mechanism of biotransformation as its structural analog, vinyl chloride, a recognized human carcinogen that has been regulated by OSHA in a section 6(b) rulemaking. The microsomal oxidation of vinyl bromide leads to epoxide formation, which results, in turn, in the formation of a reactive intermediate. This intermediate has the potential to form covalent bonds with DNA to produce a mutagenic response. Vinyl bromide has been reported to be mutagenic in *Salmonella typhimurium* and *tradescantia* (IARC 1979; NIOSH/OSHA 1978).

No epidemiological studies have been conducted on populations exposed to vinyl bromide. Benya et al. (1982) reported a positive carcinogenic response in an inhalation study of rats exposed to vinyl bromide vapor; this study is important because inhalation is a major mode of occupational exposure. The results of the Van Duuren (1977) study were equivocal (described below), in that female Swiss albino mice were exposed dermally or by subcutaneous injection either to vinyl bromide in acetone or to polymerized vinyl bromide in an aqueous latex solution.

Benya et al. (1982) exposed male and female Sprague-Dawley rats to 0, 9.7, 52, 247, or 1,235 ppm vinyl bromide by inhalation for 6 hours daily, 5 days per week, for 2 years. The incidence of angiosarcomas, primarily of the liver, was found to be statistically significant in all dose groups tested except controls. The combined incidences of hepatic angiosarcomas in the treated male and female rates were 1/288, 17/240, 86/240, 122/240, and 84/240 for their respective dose levels. One control female rat developed an hepatic angiosarcoma. Table C15-9 summarizes the incidence of angiosarcoma in control and treated rats.

TABLE C15 9. Incidence of Angiosarcomas in Control and Vinyl Bromide Exposed Rats

Group	Exposure level (ppm)	Males			Females		
		No. of animals	No. with angiosarcoma	p	No. of animals	No. with angiosarcoma	p
1	Control	144	0	—	144	1	-
2	10	120	7	<0.025	120	10	<0.01
3	50	120	36	<0.001	120	50	<0.001
4	250	120	61	<0.001	120	61	<0.001
5	1250	120	43	<0.001	120	41	<0.001

Source: Benya et al. (1982)

Van Duuren injected a group of female ICR/Ha Swiss mice once weekly for 48 weeks with 0.05 ml of commercial polymerized vinyl bromide aqueous latex suspension; the animals were observed for 420 days. Nineteen of the 30 mice developed sarcomas at the site of injection. Animals in a positive control group that had been injected with b-propriolactone (0.3 mg/.05 ml trioctanoin) developed 18 sarcomas and 3 squamous cell carcinomas (in 30 mice). No tumors developed in untreated controls or in controls injected with trioctanoin, an organic solvent, alone (Van Duuren 1977).

In another injection study by the same author, a group of female IRC/Ha Swiss mice were treated with 25 mg vinyl bromide per animal in 0.05 ml trioctanoin once weekly for 48 weeks. The mice were observed for 420 days. One control group was given a weekly injection of trioctanoin alone and the other control group was untreated. No local tumors were seen in any of the test groups, although pathological examination of the animals appears to have been incomplete (Van Duuren 1977).

Application of vinyl bromide to the skin of female ICR/Ha Swiss mice at a dose of 15 mg per animal administered in 0.1 ml of acetone 3 times weekly for 420 days resulted in no tumors. When this solution was applied once and was followed by an application of phorbol myristyl acetate (PMA) 3 times weekly, 1 of 30 mice developed a skin papilloma at 412 days, one control treated with PMA developed a tumor after 44 days, and no untreated controls developed tumors (Van Duuren 1977).

In another dermal study, a dose of 0.1 ml of polymerized vinyl bromide in an aqueous latex suspension was applied 3 times weekly to the skin of female ICR/Ha Swiss mice for 420 days. No skin tumors developed, when this solution was applied once, followed by an application of PMA 3 times weekly, 1 of 30 mice developed a skin tumor at 175 days. No untreated controls developed skin tumors (Van Duuren 1977).

Risk estimate for vinyl bromide. The Benya et al. (1982) study was a well-designed and conducted study that yielded sufficient information for quantitative risk estimation. The route of administration used in the study, inhalation, is directly applicable to occupational exposure, and the incidence of hepatic angiosarcoma was significant. Angiosarcoma is a rare and malignant neoplasm that has a very low background incidence in animals and humans. Therefore, its appearance in the exposed rats supports the premise that vinyl bromide is potentially carcinogenic in humans. Also, it is the same tumor that is associated with the exposure of workers and animals to vinyl chloride, a recognized human carcinogen and a compound whose structure is similar to that of vinyl bromide.

To estimate excess cancer risk over background incidence for a chemical, experimental data (experimental doses and corresponding responses) are used to define various parameters of an assumed response model. At low doses, the slope of this dose-response curve is referred to as q_1. The 95 percent upper-bound confidence limit for this slope is referred to as q_1^* or the chemical's potency. q_1 and q_1^* are then used to determine the respective maximum likelihood estimate (MLE) of risk and the 95 percent upper-bound confidence limit (UCL) on risk associated with a given lifetime occupational exposure. A non-threshold, linearized multistage model (GLOBAL83) was chosen to estimate the risk potentially associated with exposure to vinyl bromide because the scientific rationale for this model is biologically the most plausible. Additionally, the choice of a non-threshold model is consistent with current methodologies when positive mutagenicity data are available (EPA 1984).

To choose the appropriate data set to use with the model, the most sensitive species and sex are chosen. In the case of vinyl bromide, both male and female

rats responded equally, and data from the two groups were therefore combined by calculating the geometric means of the risk estimates derived from the male and female response data (Anderson 1983). The high-dose data for each test group were dropped, since their inclusion makes the dose-response curve non-monotonic and precludes proper fitting of the linearized multistage risk model (EPA 1984).

Since cancer risk modeling assumes lifetime exposure, adjustments were made to fit the animal data to this criterion. The adjustments made for the data in Benya et al. (1982) were: Multiplying dose by 5/7 to adjust for days of exposure per week and by 6/24 to adjust for hours of exposure per day. These adjusted doses were then changed to human equivalent doses.

Three hypothetical occupational exposure limits, 5 ppm, 20 ppm, and 250 ppm, were used to calculate the maximum likelihood estimates of risk of developing angiosarcoma of the liver. Five ppm has been the ACGIH limit since 1978. Twenty ppm was chosen as an intermediate exposure level, and 250 ppm was the exposure level before the ACGIH reduced it in 1978. These occupational dose levels were also adjusted for lifetime exposure. The adjustments made were: multiplying dose by 5/7 to adjust for days worked per week, by 50/52 to adjust for vacation time, by 8/24 to adjust for hours of exposure per day, and by 45/70 to adjust for work years per lifetime.

Because inhalation is the primary route of exposure to vinyl bromide in occupational settings, the occupational dose was calculated assuming that air intake in humans is 20 m^3 per 24-hour day (Anderson 1983). The fraction of vinyl bromide absorbed was assumed to be 100 percent, because no absorption rate data were available for vinyl bromide. Because the log p (lipid solubility) value for vinyl bromide (1.52) is similar to that of vinyl chloride (1.38), OSHA assumed that the absorption rates of these two compounds would also be similar. The absorption rate for vinyl chloride used in risk estimations is assumed to be 100 percent (IRIS 1988).

The MLE shown in Table C15–10 for an occupational exposure to 250 ppm is 0.87, or 87 percent. According to the linearized multistage risk model, 870 of 1,000 workers exposed over their working lifetimes to vinyl bromide at 250 ppm are at risk of developing angiosarcoma. The MLE for an occupational exposure to 5 ppm of vinyl bromide is 0.04; this indicates that, at the proposed PEL, 40 workers per 1,000 exposed to this substance over their occupational lifetimes are at risk of developing angiosarcoma.

TABLE C15-10. Multistage Model Estimates of Cancer Risk Associated with Lifetime Exposure to Vinyl Bromide

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE[a]	UCL[a]
5 ppm[b]	40	48
20 ppm[c]	155	180
250 ppm[d]	870	930

[a] Geometric mean of male and female rats.
[b] Proposed OSHA PEL.
[c] Intermediate exposure level.
[d] ACGIH limit before 1978.
MLE = Maximum likelihood estimate of risk.
UCL = 95 percent upper confidence limit on maximum likelihood estimate on risk.

Table C15–10 shows that workers exposed to this substance, which is currently not regulated by OSHA, are clearly at significant risk of developing hepatic angiosarcomas, the same rare type of tumor associated with exposure to vinyl chloride, a structurally similar substance. Promulgating the proposed PEL of 5 ppm will not eliminate this significant risk, because, as Table C15–10 shows, the upper-bound estimate of residual risk at 5 ppm is 48 excess deaths per 1,000 exposed workers. Thus, residual risk at 5 ppm is clearly significant. OSHA is proposing the 5 ppm limit as an interim measure; as future priorities permit, the Agency will consider additional rulemaking for this potent occupational carcinogen. At the present time, OSHA preliminarily concludes that establishing a PEL of 5 ppm will substantially reduce the significant risk potentially associated with exposure at the uncontrolled levels possible in the absence of an OSHA limit for this substance.

VINYL CYCLOHEXENE DIOXIDE
CAS: 106–87–6; Chemical Formula: $C_8H_{12}O_2$
H.S. No. 1426

OSHA has no PEL for vinyl cyclohexene dioxide (VCD), and NIOSH has no REL for this substance. The ACGIH classifies VCD as a suspected human carcinogen (A2) and recommends a TLV–TWA of 10 ppm for it. Vinyl cyclohexene dioxide is a colorless liquid used as a chemical intermediate and as a monomer in the manufacture of polyglycols containing unreacted epoxy groups (Hine et al. 1981). It is also used as a reactive diluent for other diepoxides and certain epoxy resins (IARC 1976).

Turchi et al. (1981) assayed the mutagenicity of VCD and several other epoxides using the TA100 strain of *S. typhimurium* and V79 Chinese hamster cells; these authors also investigated the alkylating properties of these chemicals. VCD tested positively in the *S. typhimurium* test (point mutation) and in the V79 Chinese hamster cell test (both point mutation and chromosome aberration) and had an intermediate alkylating capacity relative to other epoxide compounds tested.

There are no data concerning the adverse health effects of VCD in humans. There are no reports as a result of industrial experience that reveal carcinogenic effects in workers caused by VCD exposure (ACGIH 1986).

Four studies have reported the development of skin tumors in mice exposed dermally to VCD (Hendry et al. 1951; Kotkin and Falk 1963; Weil et al. 1963; and Van Duuren et al. 1963). The study of Van Duuren et al. (1963) included controls and is thus particularly well suited for an evaluation of VCD's carcinogenic potential.

These authors painted 30 male Swiss ICR/Ha mice with 0.1 ml of a 10-percent solution of VCD in benzene three times per week (approximately 100 mg of solution per application). Two negative controls were used; one set of 150 mice was treated with benzene alone and another set of 207 mice was not treated with anything. Fourteen of the 30 VCD-treated mice developed skin tumors after an undefined length of time (mean survival time was 326 days). The incidences of skin tumors in the controls were 11/150 and 13/207 for the benzene-treated and untreated mice, respectively. The incidence of skin tumors in the VCD-treated mice was significantly greater than the incidence observed in either of the controls (Van Duuren et al. 1981).

The study of Van Duuren et al. (1963) demonstrates the carcinogenicity of VCD in experimental animals. OSHA considered the possibility of conducting a quantitative risk assessment VCD, and the Agency preliminarily concluded that the dose-response data in this study are unsuitable for quantitative risk assessment purposes because the VCD was administered in a solution of benzene, which is itself regulated as a carcinogen and classified as such by several authorities (IARC, NTP, NIOSH, and ACGIH). Even though the Van Duuren et al. study included a control for the independent carcinogenic effects of benzene, the possibility of a synergistic or additive effect of benzene on VCD cannot be completely ruled out.

Vinyl cyclohexene dioxide has been shown to be carcinogenic by dermal application in mice, and four studies have confirmed these effects. Based on these animal studies showing VCD's carcinogenicity, OSHA preliminarily concludes that exposed employees are at significant risk of cancer potentially associated with exposure to VCD at the uncontrolled levels permitted in the absence of any OSHA limit. The Agency preliminarily concludes that promulgation of a 10-ppm 8-hour-TWA PEL will substantially reduce this significant risk.

Preliminary Conclusions for this Group of Substances

The Supreme Court in *I.U.D.* v. *A.P.I.* (supra, the *Benzene* decision) gave OSHA directions as to its decisional process, and of course that case involved a carcinogen. OSHA is following the Supreme Court's guidance within the context of this present broader rulemaking. In the current rulemaking, OSHA has considered or performed preliminary perform risk assessments for each of the 17 chemicals discussed in this section. The risk assessments follow the approach OSHA has used in prior rulemakings for carcinogens, a process that has repeatedly been upheld by the courts. The risk assessment review process has necessarily been more limited for the hundreds of substances being regulated today than is the case for single-substance rulemakings, and OSHA requests comment on the approach it has taken in the present rulemaking.

OSHA is conducting its significant risk analyses utilizing the principles suggested by the Supreme Court and adopted in its carcinogen rulemakings subsequent to *I.U.D.* v. *A.P.I.* OSHA is proposing to lower its existing exposure limits based on these analyses when significant risk is indicated at the existing PEL. OSHA is preliminarily proposing either the ACGIH or NIOSH numerical level, based on the results of these significant risk analyses.

In some cases (all of the risk assessments have not yet been finalized) it is possible for OSHA to conclude that not enough data are available to quantify risks at the level of detail the Agency has formerly used. In those cases, OSHA will preliminarily decide whether a lower limit is justified; without this latitude, the Agency would indeed be in the "mathematical straitjacket" alluded to by the Court in the *Benzene* decision. In other circumstances, OSHA may decide that not enough evidence is available to propose a lower limit.

OSHA must also demonstrate the feasibility of the level set. In some cases, OSHA believes it has sufficient preliminary data on the feasibility of the proposed limits for these substances. (Of course, all data on feasibility are welcome.) In some cases further analysis might indicate that neither the ACGIH nor the NIOSH-recommended level is the lowest feasible level and that significant risk remains below either level. However, this rulemaking would be inordinately delayed by the amount of effort necessary to make feasibility and significant risk determinations for a greater range of levels than those already established by the ACGIH and NIOSH. In such circumstances, the level proposed here should be considered to be an interim level. As priorities and resources become available, a second-stage rulemaking will be considered to refine these exposure levels, and the interim level should thus be considered a "backstop."

For some substances in this rulemaking other than the 17 discussed in this section, there may be evidence in the literature of carcinogenicity, even though the ACGIH has established limits for these based on other-than-cancer effects. For these few substances, OSHA has not initiated a risk assessment, because this additional effort would have delayed this rulemaking unreasonably.

In sum, where OSHA preliminarily found that there was sufficient evidence of potential carcinogenicity to meet the Agency's legal requirements, the Agency has proposed a level based on the risk of cancer. Where there was not sufficient evidence readily available, OSHA proposed a level based on these substances' non-carcinogenic effects. At a later stage, depending on priorities and resources, OSHA will further review the data to determine whether a second-stage rulemaking based on carcinogenicity is appropriate for these few chemicals.

Overall, OSHA believes its analyses of proposed limits for carcinogenic chemicals meet the Agency's legal requirements. Accordingly, OSHA preliminarily concludes that these limits will lead to substantial reductions in the significant risk currently confronting workers exposed to these substances.

16. Substances for Which Current ACGIH TLVs Are Less Stringent Than Existing OSHA PELS

Introduction

There are 13 substances for which the ACGIH has increased its recommended TLVs since the time that OSHA adopted the 1968 TLVs under the authority of section 6(a) of the Act. These substances are listed in Table C16-1, along with their current OSHA PELs, ACGIH TLVs, NIOSH RELs, CAS numbers, and HS numbers. Evaluating the protectiveness and appropriateness of exposure limits that are less stringent than the corresponding limits on OSHA's Z tables represents a special case in this rulemaking. OSHA has previously stated (see 50 FR 51120, December 13, 1985) the principle to be followed before the Agency raises an exposure limit. This issue is discussed below.

BILLING CODE 4510-26-M

TABLE C16-1. Substances for Which the ACGIH's Limits are Higher Than the Current PELs

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1101 Copper (fume)	7440-50-8	0.1 mg/m^3 TWA	0.2 mg/m^3 TWA	--
1126 1,1-Dichloroethane	75-34-3	100 ppm TWA	200 ppm TWA 250 ppm STEL	--
1179 Fluorine	7782-41-4	0.1 ppm TWA	1 ppm TWA 2 ppm STEL	--
1197 Hexachloroethane	67-72-1	1 ppm TWA Skin	10 ppm TWA	Lowest feasible level
1284 Nickel carbonyl	13463-39-3	0.001 ppm TWA	0.05 ppm TWA	1 ppb TWA
1347 Rhodium (metal fume and insoluble salts)	7440-16-6	0.1 mg/m^3 TWA	1 mg/m^3 TWA	--
1348 Rhodium (soluble salts)	7440-16-6	0.001 mg/m^3 TWA	0.01 mg/m^3 TWA	--
1352 Silica, Amorphous-Diatomaceous Earth	68855-54-9	20 mppcf TWA (6 mg/m^3)	10 mg/m^3 TWA	--
1353 Silica, Amorphous-Precipitated and Gel	None	20 mppcf TWA (6 mg/m^3)	10 mg/m^3 TWA	--

TABLE C16-1. Substances for Which the ACGIH's Limits are Higher Than the Current PELs (continued)

H.S. Number/ Chemical Name	CAS No.	CURRENT PEL*	ACGIH TLV**	NIOSH REL***
1362 Silver (metal dust and fume)	7440-22-4	0.01 mg/m^3 TWA	0.1 mg/m^3 TWA	—
1386 Tetraethyl lead	78-00-2	0.075 mg/m^3 TWA Skin	0.1 mg/m^3 TWA Skin	—
1388 Tetramethyl lead	75-74-1	0.075 mg/m^3 TWA Skin	0.15 mg/m^3 TWA Skin	—
1419 Uranium (soluble compounds)	7440-61-1	0.05 mg/m^3 TWA	0.2 mg.m^3 TWA 0.6 mg/m^3 STEL	—

* OSHA's TWA limits are for 8-hour exposures; its STELs are for the durations specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

BILLING CODE 4510-26-C

In 1978, OSHA issued a cotton dust standard; this standard did not go into effect in any of the nontextile industries. However, although the new standard's PEL for cotton dust did not apply in these segments, the Z-1 limit for cotton dust continued to apply to them. In 1983, OSHA determined that it would better effectuate the purposes of the Act to exclude the knitting and other nontextile industries from coverage by the Z table limit for cotton dust. In revoking the Z table limit, OSHA stated:

> When it [the Agency] proposes to eliminate a class [of operations or industry sectors] from either a 6(a) or 6(b) standard on health grounds, the evidence must affirmatively indicate that significant risk is unlikely to exist for that class at exposures likely to exist after the standard has been eliminated * * *. OSHA must be able to support with substantial evidence any change it is propounding [50 FR 51120 et seq., Dec. 13, 1985].

Accordingly, the Agency must be able to show that exposed workers will not be placed at increased risk for the health effects at issue even after the limit in question has been raised or revoked. In conformance with this interpretation, OSHA has carefully examined the bases underlying the adoption of increased exposure limits by the ACGIH. After reviewing the available data for these substances, OSHA has made a preliminary determination that adequate evidence exists to increase the permissible exposure limits for only one of these substances (fluorine), and the Agency is now proposing to raise the limit for this chemical to 1 ppm as an 8-hour TWA, with a STEL of 2 ppm to provide additional protection against excessive short-term exposures. For the remaining 11 substances in this group, OSHA believes that the available toxicological data are insufficient to meet the increased burden of proof appropriate when the raising of an exposure limit is under consideration. For these substances, OSHA is not proposing to revise the current PELs at this time, but requests comments and data on the issue.

The following discussion summarizes OSHA's preliminary analyses and findings for each of the 11 substances in this group.

COPPER (FUME)
CAS: 7440-50-8; Chemical Formula: Cu
H.S. No. 1101

The current OSHA limit for copper fume is 0.1 mg/m^3 as an 8-hour TWA. Since OSHA adopted this limit in 1971, the ACGIH has increased the recommended TLV to 0.2 mg/m^3 as an 8-hour TWA. The ACGIH's previously recommended TLV of 0.1 mg/m^3 was based on personal communications (Newton Whitman 1957; 1962) that reported that the taste perception of welders was altered when they were exposed to copper fume at levels ranging from 1 to 3 mg/m^3 for short periods but that exposure to 0.02 to 0.4 mg/m^3 did not cause such complaints (ACGIH 1966). At the time, the ACGIH judged the 0.1-mg/m^3 TLV to be "sufficiently low to provide freedom from irritation from the fume by a reasonable margin" (ACGIH 1966).

In 1972, the ACGIH received a personal communication from a member of the U.K. Industrial Hygiene Unit, Her Majesty's Factory Inspectorate (Luxon 1972) reporting that employees exposed to copper fume at levels up to 0.4 mg/m^3 during welding and copper metal refining operations experienced no ill effects from exposure. Based on this additional evidence, the ACGIH increased its TLV for copper fume to 0.2 mg/m^3 in 1975.

OSHA preliminarily judges that the evidence cited by the ACGIH (1986) in support of the increase in its TLV for copper fume is not sufficient to provide a basis for OSHA to propose raising the limit for this substance. The basis for this finding is that the ACGIH's action was based largely on a personal communication, making it impossible for the Agency to evaluate the evidence appropriately.

1,1-DICHLOROETHANE
CAS: 75-34-3; Chemical Formula: CH_3CHCl_2
H.S. No. 1126

The current OSHA limit for 1,1-dichloroethane, which is a hepatotoxin, is 100 ppm TWA. The ACGIH recommended TLV is a 200-ppm TWA with a 250-ppm STEL; NIOSH has no REL for this substance. The previous ACGIH TLV of 100 ppm was based on the observation that 1,1-dichloroethane has an acute toxicity approximately half that of carbon-tetrachloride and a chronic toxicity somewhat less than that of carbon tetrachloride (for which a TLV of 10 ppm had been set). In 1973, the ACGIH adopted the higher 200-ppm TLV based on unpublished data from the Dow Chemical Company showing that rats, rabbits, guinea pigs, and dogs exhibited no gross or microscopic organ pathology after exposure to 500 or 1000 ppm of 1,1-dichloroethane for 6 months. The ACGIH cited no human data in support of raising the TLV.

Because no human toxicity data are available for 1,1-dichloroethane and because the Dow data are unpublished and thus not available for scrutiny, OSHA preliminarily concludes that the evidence for this substance is insufficient to warrant increasing the PEL at this time.

FLUORINE
CAS: 7782-41-4; Chemical Formula: F
H.S. No. 1179

OSHA's current PEL for fluorine is 0.1 ppm; NIOSH has no REL for fluorine. In 1973, the ACGIH revised its TLV to 1 ppm and, subsequent to that change, adopted a TLV-STEL of 2 ppm. The ACGIH's previous 0.1-ppm TLV, which was adopted by OSHA in 1971, was based on a 30-day inhalation study in rats and dogs (Stokinger 1949) in which no consistent pulmonary, renal, or blood effects were observed following exposure to 0.5 ppm. The ACGIH believed that a TLV of 0.1 ppm would "provide a working environment of probable safety from the effects of F_2" (ACGIH 1986). Subsequently, the ACGIH reviewed a 7-year study (Lyon et al. 1962) of 61 workers exposed to fluorine concentrations "far in excess of 0.1 ppm" (ACGIH 1986), which reported a lack of significant medical findings. This evidence, along with more recent animal evidence (Keplinger and Suissa 1968) suggesting that animals were not as sensitive to fluorine as was reported by Stokinger (1949), led the ACGIH to increase its TLV to 1 ppm. The STEL of 2 ppm was supported by a study (Ricca 1970) in which human volunteers repeatedly exposed to 10 ppm reported only slight irritation.

OSHA believes that the human and animal evidence is adequate to support a proposed increase in the 8-hour TWA for this substance from 0.1 ppm to 1 ppm. OSHA is proposing at this time to revise the PEL for fluorine to 1 ppm as an 8-hour TWA and 2 ppm as a 15-minute STEL.

HEXACHLOROETHANE
CAS: 67-72-1; Chemical Formula: CCl_3CCl_3
H.S. No. 1197

OSHA's current PEL for hexachloroethane is a 1-ppm TWA, with a skin notation, which was adopted from the 1968 ACGIH TLV. The NIOSH REL for this substance is the lowest feasible level, based on hexachloroethane's potential carcinogenicity. The basis for the 1-ppm TLV was to prevent the "serious injury potential to several organ systems" shown by animal studies (ACGIH 1986). Subsequently, the ACGIH revised its TLV upward to 10 ppm based, in part, on a study by Weeks et al. (1979) that reported no adverse effects among several animal species exposed daily to 15- or 48-ppm concentrations of hexachloroethane. The ACGIH also cited an NCI study (NCI 1978b) in which

"extremely heavy dosages * * * administered continuously for a long period of time" resulted in the development of hepatocellular tumors in mice but not in rats. The 10-ppm TLV was further supported by a personal communication of a TLV Committee member who reported that no ill effects occurred among workers "who handled the material with few precautions" during World War II (ACGIH 1986). No exposure data were supplied to support this personal communication.

In 1978, NIOSH reviewed the results of an NCI bioassay in which hexachloroethane was administered by gavage to mice and rats. Both male and female mice exhibited an excess incidence of hepatocellular carcinoma, but rats did not. NCI concluded that early mortality may have obscured detection of a carcinogenic effect in rats. Toxic kidney damage was also found in mice and rats treated with hexachloroethane. Based on this evidence, NIOSH (1978n) has recommended that exposure to hexachloroethane be maintained at the lowest detectable level.

OSHA does not believe that the evidence relied on by the ACGIH is adequate to support raising the PEL at this time. The human evidence cited by the ACGIH is anecdotal and lacks the exposure data necessary to permit OSHA to assess whether significant risk is absent (and likely to remain so) at the 10-ppm exposure level. In addition, OSHA is concerned, as is NIOSH, with the development of tumors in hexachloroethane-exposed mice demonstrated in the NCI study. OSHA therefore retains its PEL of 1 ppm TWA, with a skin notation, and preliminarily concludes that increasing the PEL for hexachloroethane would increase the risk of cancer potentially associated with exposure to this substance.

NICKEL CARBONYL
CAS: 13463-39-3; Chemical Formula: $Ni(CO)_4$
H.S. No. 1284

The current OSHA PEL and the NIOSH recommended limit for nickel carbonyl is 0.001 ppm TWA. In 1976, the ACGIH increased its TLV for nickel carbonyl from 0.001 to 0.05 ppm. The ACGIH's former 0.001-ppm TLV was based primarily on the reported association of nasal and lung cancer among workers exposed to nickel carbonyl during work in nickel refinery operations. In addition, the ACGIH cited evidence (Sunderman et al. 1959) that rats exposed to nickel carbonyl developed lung tumors that metastasized to the kidney. At the time, the ACGIH (1986) noted that these tumors were not of a type generally associated with exposure to environmental agents.

In its 1976 documentation for the 0.05-ppm TLV for nickel carbonyl, the ACGIH cited the work of Doll et al. (1970), who evaluated the exposures of nickel refinery workers in whom cancers had been found. Doll found that there had been no exposures to nickel carbonyl in the facility, and this finding led the ACGIH to conclude that nickel carbonyl was not the causative agent of the cancers reported among the refinery workers in the earlier studies it had relied on to set the 0.001-ppm TLV. A report that no excess nasal or lung tumors had occurred among workers exposed over a 50-year period in a nickel refinery in Wales (Renzoni, personal communication, 1975) appeared to the ACGIH to corroborate Doll's results. The ACGIH concluded that the TLV for nickel carbonyl should be raised based on the acute, systemic effects of this substance and that carcinogenicity was not an appropriate basis for limit-setting (ACGIH 1976). In the 1986 documentation for the 0.05-ppm TLV for nickel carbonyl, the ACGIH concluded that "although the evidence that nickel carbonyl is carcinogenic to humans is inconclusive, this recommended TLV (i.e., one set at 0.05 ppm) is also adequate to minimize any potential carcinogenic effects" (ACGIH 1986).

OSHA finds the evidence discussed by the ACGIH insufficient to warrant an increase in the limit since some of the evidence is in the form of a personal communication, particularly since NIOSH has concluded that occupational exposures should be maintained at the lowest detectable level because of nickel carbonyl's potential carcinogenicity. OSHA therefore retains its existing PEL for nickel carbonyl of 0.001 ppm TWA.

RHODIUM COMPOUNDS (METAL FUME: SOLUBLE AND INSOLUBLE SALTS)
CAS: 7440-16-6; Chemical Formula: Rh
H.S. No. 1347; 1348

The current OSHA PEL for rhodium metal fume and insoluble salts is 0.1 mg/m³; the current PEL for soluble rhodium compounds is 0.001 mg/m³. The ACGIH recommends a 1-mg/m³ TLV for rhodium metal and insoluble salts and a 0.01 mg/m³ TLV for soluble rhodium salts. The current OSHA PELs for rhodium compounds (i.e., the 1968 ACGIH TLVs) were based on the then-existing TLVs for platinum because of concern that exposure to rhodium might be associated with respiratory sensitization effects. This concern was prevalent because rhodium belongs to the platinum family of metals and because the toxicologic data on rhodium that were available were "meager" (ACGIH 1986).

The ACGIH's decision to increase the TLVs for rhodium compounds was based primarily on a personal communication to the TLV Committee (Johnson 1981). This communication indicated that, in a major precious metals refinery, "procedures which were abandoned for the refining of platinum because of cases of sensitization have been carried out for a year with analogous rhodium compounds without any problems" (ACGIH 1986). In addition, the ACGIH noted that none of the substances in the platinum group was known to produce respiratory effects similar to those of platinum. The ACGIH reported that rhodium exhibited "slight" carcinogenic activity in mice (ACGIH 1986). After considering all of this evidence, the ACGIH judged the previous TLVs to be inappropriate and increased them tenfold.

OSHA preliminarily concludes that the evidence adduced by the ACGIH is not sufficient to meet the standard of proof the Agency must achieve before it can raise an exposure limit. This conclusion is based on the fact that the ACGIH relied heavily on a personal communication when making its decision, and no exposure or other data are available to support the ACGIH's action. Thus OSHA is unable adequately to evaluate the toxicologic evidence pertaining to the rhodium compounds and retains the existing PEL's for rhodium metal fume and insoluble salts (0.1 mg/m³ TWA) and rhodium soluble salts (0.001 mg/m³ TWA).

SILICA, AMORPHOUS—DIATOMACEOUS EARTH
CAS: 68855-54-9; Chemical Formula: SiO_2
H.S. No. 1352

OSHA's current limit for amorphous silica is 20 mppcf, equivalent to 6 mg/m³ (ACGIH 1984), as total dust. The ACGIH has established a limit for this dust, as total dust, of 10 mg/m³ 8-hour TLV–TWA). Amorphous silica (diatomaceous earth) is composed of the skeletons of prehistoric plants known as diatoms. These skeletons are largely non-crystalline, although diatomaceous earth can contain varying amounts of crystalline quartz, which has led, in the opinion of the ACGIH (1986, p. 520) to conflicting results in studies of the pulmonary effects of exposure to this colorless to gray, odorless powder.

Cooper and Cralley (1958) reported "doubtful" linear-nodular changes in the lungs of workers exposed only to amorphous (noncrystalline) silica for 5 years or more. Other studies (Vigliani and Mottura 1948; 1948; Gardner 1942) also found mild silicosis only or no evidence of serious lung pathology in diatomite workers. Kovalevich (1959) reported silicosis in diatomite workers. However, intratracheal instillation of diatomaceous earth dust in animals showed evidence of fibrosis (Gardner 1942) and silicosis (Kovalevich 1959), although another study (Tebbens and Beard 1957) exposed guinea pigs to this substance at an average concentration of 60 mg/m³ for 37–50 weeks and found both gross and microscopic changes in the lungs but no fibrosis.

In setting its limit for diatomaceous earth, the ACGIH (1986, p. 520) assumed that this substance itself is either "weakly fibrogenic or nonfibrogenic," and thus that those studies discussed above that report adverse pulmonary effects actually involved exposure to diatomaceous earth having an unmeasured but significant crystalline quartz content. Based on this reasoning, the ACGIH considers amorphous silica-diatomaceous earth to be a nuisance dust. However, OSHA does not consider the evidence for diatomaceous earth's lack of fibrogenicity sufficent to demonstrate the absence of significant risk at the ACGIH's revised TLV.

OSHA is proposing to retain an 8-hour TWA of 6 mg/m³ (equivalent to 20 mppcf) for this form of silica. OSHA believes that the health evidence for this substance is not sufficiently persuasive permit an increase in the limit at the present time. The Agency is proposing to change the units in which its permissible exposure limit is expressed; this change is being made to facilitate the accurate monitoring of employee exposures.

SILICA, AMORPHOUS, PRECIPITATED AND GEL
CAS: None; Chemical Formula: SiO_2
H.S. No. 1353

OSHA currently has a limit of 20 mppcf (equivalent to a limit of 6 mg/m³ if expressed in mg/m³ for amorphous silica. The ACGIH recommends a TLV–TWA of 10 mg/m³ measured as total dust containing less than 1 percent quartz. There are numerous methods of producing precipitated silica; those that apply heat to siliceous products produce airborne dusts; these are less toxic than quartz dust, because the particles are generally sheathed in a molecular layer of amorphous silica (ACGIH 1986, p. 521).

Studies of laboratory animals have shown no fibrosis after intratracheal and intraperitoneal injection of precipitated silica or silica gel (Klosterkotter 1954; Klosterkotter 1958). Schepers reported in 1957 that rats exposed for 1 year and guinea pigs and rabbits exposed for 2 years to a concentration of 126 mg/m³ of precipitated amorphous silica displayed no pulmonary fibrosis; the effects of exposure were limited to macrophage accumulations and mild proliferation of reticulin fibers (Schepers 1957).

In a study of human exposures to precipitated amorphous silica, Wilson reported no ill effects in 165 workers exposed for an average of 8.6 years (Wilson, Stevens et al. 1981).

The ACGIH considers the precipitated and gel form of amorphous silica an inert dust, based on the evidence discussed above. However, OSHA notes that effects were seen in animals exposed to this substance for 1 to 2 years and does not find that this evidence demonstrates the absence of significant risk necessary to support an increase in a PEL. Accordingly, OSHA is retaining its current PEL of 6 mg/m³ (equivalent to 20 mppcf) at the present time. The Agency is proposing to change the units in which its permissible exposure limit is expressed to facilitate the accurate monitoring of employee exposures.

SILVER (METAL DUST AND FUME)
CAS: 7440-22-4; Chemical Formula: Ag
H.S. No. 1362

The current OSHA standard for silver metal and soluble compounds (including the metal dust and fume) is 0.01 mg/m³. NIOSH has no REL for this substance, but the ACGIH has established a 0.1-mg/m³ TLV for silver metal dust and fume. The previous TLV of 0.01 mg/m³, which was established for all forms of silver, was designed to protect workers against developing argyria. This condition arises from the accumulation of silver in the body and results in an unsightly, widespread blue-grey discoloration of the skin that can persist for long periods of time. The skin of exposed workers may also become black and have a metallic luster. Argyria may also manifest itself in the conjunctiva of the eye, which may be affected sufficiently to cause lens and visual disturbances.

In arriving at the previous TLV of 0.01 mg/m³ for silver, the ACGIH relied on a publication by Pillsbury and Hill (1939), which stated that an accumulated intake of from 1 to 5 grams of silver would lead to generalized argyria. Assuming a 20-year exposure duration, a 10-m³/day respiratory volume, and a 50-percent body retention, the ACGIH estimated that exposure to 0.05 mg/m³ was sufficient to cause argyria. The former TLV of 0.01 mg/m³ thus appeared to incorporate a safety factor to account for the uncertainties involved in using this approach to develop a TLV. The ACGIH's current TLV of 0.1 mg/m³ for silver metal dust and fume was determined in a similar fashion, except that the ACGIH assumed a lower percent retention and apparently did not incorporate a safety margin (ACGIH 1986). Because the increase in the TLV from 0.01 to 0.1 mg/m³ is based on assumptions regarding the extent to which silver metal is systemically absorbed rather than on human data demonstrating the absence of a significant risk at the revised TLV, OSHA finds the ACGIH's reasoning unpersuasive. Thus DSHA is not at this time proposing to increase the PEL for silver metal dust and fume.

TETRAETHYL LEAD (TEL)
CAS: 78-00-2; Chemical Formula: $(C_2H_5)_4Pb$
H.S. No. 1388

OSHA's current 8-hour limit for tetraethyl lead is 0.075 mg/m³ as lead, with a skin notation; NIOSH has no REL for this substance. The ACGIH is now recommending that worker exposures not exceed 0.1 mg/m³ TWA; ACGIH also recommends a skin notation. The previous TLV of 0.075 mg/m³ was based almost exclusively on a personal communication from the Medical Department of the Ethyl Corporation, which stated that a level of 0.075 mg/m³ "is a good guideline for an allowable air concentration of TEL" (ACGIH 1986). The ACGIH documentation for the 0.075-mg/m³ TLV also pointed out that the ability of tetraethyl lead to penetrate the skin "makes reliance on the airborne concentration impractical in many situations," and that urinary lead levels were a more reliable indicator of exposure than blood lead levels (ACGIH 1986).

In its documentation for the 0.1-mg/m³ TLV, the ACGIH again cited the communication from the Ethyl Corporation. In addition, the organization cited a personal communication from Linch (1968), who reported that an improved analytical procedure for measuring airborne concentrations of tetraethyl lead had been used to determine the relationship between airborne tetraethyl lead levels and urinary lead levels. He reported that urinary lead concentration was not significantly elevated "above a high normal" value (0.15 mg/L) when the airborne TEL level was 121 ug/m³ ACGIH 1986). As a result of this communication, the ACGIH adopted a revised TLV of 0.1 mg/m³ in 1970.

OSHA does not find the evidence presented by the ACGIH to be sufficiently comprehensive or detailed

to permit significant risk to be ruled out at the 0.1-ppm level. The Agency is particularly reluctant to increase the PEL for TEL in light of this substance's ability to be absorbed percutaneously. OSHA is therefore not proposing to raise its PEL for tetraethyl lead.

TETRAMETHYL LEAD (TML)
CAS: 75-74-1; Chemical Formula: $(CH_3)_4Pb$
H.S. No. 1368

The current OSHA limit for tetramethyl lead (TML) is 0.075 mg/m³ with a skin notation, while the ACGIH has recommended a TLV of 0.15 mg/m³, also with a skin notation. There is no NIOSH REL for TML. In establishing the previous TLV of 0.15 mg/m³, the ACGIH cited the work of DeTreville (1962), who reported that tetramethyl lead is about three times more volatile than tetraethyl lead and thus *could* result in employee exposures to airborne TML about three times higher than those for TEL. Despite the heavier TML exposure of employees, urinary lead levels were not significantly different from the urinary lead levels of employees exposed to TEL. The ACGIH concluded that a 0.075-mg/m³ TLV for TML, identical to the TLV recommended at the time for TEL, should furnish an adequate margin of safety. The revised TLV of 0.15 mg/m³ was based on a personal communication by Lisch (1980), who reported that exposure to 0.178 mg/m³ tetramethyl lead was not associated with a significant increase in urinary lead levels.

Based on the same reasoning as that described above in connection with tetraethyl lead, OSHA is not proposing at this time to increase the existing OSHA limit for TML.

URANIUM (SOLUBLE COMPOUNDS)
CAS: 7440-61-1; Chemical Formula: U
H.S. No. 1419

The current OSHA limit for soluble uranium compounds is 0.05 mg/m³. NIOSH has no REL for soluble uranium compounds. Since 1966, the ACGIH has increased its TLV for soluble uranium from 0.05 mg/m³ to 0.2 mg/m³, with a 0.6-mg/m³ STEL. The previous TLV of 0.05 mg/m³ was based on animal studies relating exposure level and duration to the resulting tissue concentration of uranium and on other chronic animal studies showing the kidney to be the most sensitive target organ. In 1986, the ACGIH List of Intended Changes included a TLV of 0.2 mg/m³ for all forms of uranium, and this value was adopted by the ACGIH in 1969. The basis for adopting the 0.2-mg/m³ TLV for soluble uranium compounds was a study by Wing et al. (1963), reporting no adverse effects from radiation exposure over a 25-year period. Although no data were discussed in the ACGIH (1986) documentation regarding typical exposure levels at the plants studied, the documentation does mention that seven accidental, brief exposures to soluble uranium compounds at levels two- to five-fold the former TLV of 0.05 mg/m³ did not result in physiologic changes or significant body burden.

OSHA does not find that the evidence brought forward by the ACGIH is sufficiently detailed or comprehensive to meet the Agency's increased standard of proof for relaxing an existing standard. In addition, OSHA notes that the 25-year period of observation in the Wing et al. (1963) study is not long enough to rule out the occurrence of some forms of radiation-induced cancer and, further, that the power of the study to detect health effects occurring in a small percentage of the population was very limited. OSHA is accordingly not proposing to raise the current PEL for soluble uranium compounds.

17. Substances for Which OSHA is Proposing Short-Term Exposure Limits; Introduction

OSHA is proposing to add a short-term exposure limit (STEL) to a total of 134 substances; 126 of these STELs are values recommended by the ACGIH, while the remaining eight are NIOSH ceiling values for periods of 15 minutes or more. These substances are listed in Table C17-1.

When OSHA adopted the ACGIH TLVs via the Walsh-Healey Act and the OSH Act's section 6(a) mechanism, the ACGIH had not established the short-term TLV category; as a consequence, none of the substances on OSHA's Z-1 table have STELs. (Some of the substances on OSHA's current Z-2 tables, whose limits derive from standards established by the American National Standards Institute rather than the ACGIH, have "acceptable ceiling concentrations" that act in effect as short-term exposure limits.)

The ACGIH defines a STEL as

> a 15-minute time-weighted average exposure which should not be exceeded at any time during a work day even if the eight-hour time-weighted average is within the TLV. Exposures at the STEL should not be longer than 15 minutes and should not be repeated more than four times per day. There should be at least 60 minutes between successive exposures at the STEL. An averaging period other than 15 minutes may be recommended when this is warranted by observed biological effects [ACGIH 1987].

Basis Under Which ACGIH Established STELs

The ACGIH establishes STELs for substances that cause a wide variety of acute effects; these effects include irritation, narcosis, lung damage, systemic effects, and organic poisoning. The ACGIH first considered adding STELs to the TLV-TWAs for some substances in 1971 when it appointed a subcommittee to study the appropriateness of adding such exposure limits to its TLV list.

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Table C17-1. Substances for Which OSHA is Proposing STELs and Values Being Proposed

H.S. Number/ Chemical Name	CAS No.	ACGIH STEL	NIOSH Ceiling/STEL*
1001 Acetaldehyde	75-07-0	150 ppm	--
1002 Acetic acid	64-19-7	15 ppm	--
1007 Acrolein	107-02-8	0.3 ppm	--
1010 Allyl alcohol	107-18-6	4 ppm	--
1011 Allyl chloride	107-05-1	2 ppm	--
1012 Allyl glycidyl ether (AGE)	106-92-3	10 ppm	--
1013 Allyl propyl disulfide	2179-59-1	3 ppm	--
1021 Ammonia	7664-41-7	35 ppm	--
1022 Ammonium chloride (fume)	12125-02-9	20 mg/m³	--
1042 Bromine	7726-95-6	0.3 ppm	--
1045 2-Butanone (MEK)	78-93-3	300 ppm	--
1047 n-Butyl acetate	123-86-4	200 ppm	--
1049 sec-Butyl alcohol	78-92-2	150 ppm	--
1050 tert-Butyl alcohol	75-65-0	150 ppm	--
1056 p-tert-Butyltoluene	98-51-1	20 ppm	--
1063 Camphor (Synthetic)	76-22-2	3 ppm	--
1064 Caprolactam (Dust)	105-60-2	3 mg/m³	--
1065 Caprolactam (Vapor)	105-60-2	40 mg/m³	--
1069 Carbon dioxide	124-38-9	30,000 ppm	--
1070 Carbon disulfide	75-15-0		10 ppm (15 min)
1072 Carbon tetrabromide	558-13-4	0.3 ppm	--
1074 Carbonyl fluoride	353-50-4	5 ppm	--
1078 Chlorinated camphene	9001-35-2	1 mg/m³	--
1079 Chlorine	7782-50-5		0.5 ppm (15 min)
1080 Chlorine dioxide	10049-04-4	0.3 ppm	--
1082 2-Chloro-6-trichloromethyl pyridine (nitrapyrin)	1929-82-4	20 mg/m³	--
1085 Chlorodifluoromethane	75-45-6	1250 ppm	--
1086 Chloroform	67-66-3		2 ppm (60 min)
1089 o-Chlorostyrene	1331-38-8	75 ppm	--
1090 o-Chlorotoluene	95-49-8	75 ppm	--
1091 Chlorpyrifos	2921-88-2	0.6 mg/m³	--
1095 Clopidol (Coyden)	2971-90-6	20 mg/m³	--
1103 Crufomate	299-86-5	20 mg/m³	--
1110 Cyclonite	121-82-4	3 mg/m³	--
1114 Decaborane	17702-41-9	0.15 ppm	--
1116 Di-sec-octyl-phthalate	117-81-7	10 mg/m³	--
1119 Dibutyl phosphate	107-66-4	2 ppm	--
1122 1,3-Dichloro-5,5-dimethylhydantoin	118-52-5	0.4 mg/m³	--

Table C17-1. Substances for which OSHA is Proposing STELs and Values Being Proposed (continued)

H.S. Number/ Chemical Name	CAS No.	ACGIH STEL	NIOSH Ceiling/STEL*
1125 p-Dichlorobenzene	106-46-7	110 ppm	--
1127 Dichloroethyl ether	111-44-4	10 ppm	--
1137 Diethylamine	109-89-4	25 ppm	--
1143 Dimethylaniline	121-69-7	10 ppm	--
1149 Dipropylene glycol methyl ether	34590-94-8	150 ppm	--
1159 Ethanolamine	141-43-5	6 ppm	--
1161 Ethyl acrylate	140-88-5	25 ppm	--
1162 Ethyl benzene	100-41-4	125 ppm	--
1163 Ethyl bromide	74-96-4	250 ppm	--
1164 Ethyl ether	60-29-7	500 ppm	--
1168 Ethylene dichloride	107-06-2		2 ppm (15 min)
1170 Ethylene glycol dinitrate	628-96-6		0.1 mg/m^3 (20 min)
1177 Ferrovanadium dust	12604-58-9	3 mg/m^3	--
1179 Fluorine	7782-41-4	2 ppm	--
1182 Formamide	75-12-7	30 ppm	--
1184 Furfuryl alcohol	98-00-0	15 ppm, Skin	--
1185 Gasoline	8006-61-9	500 ppm	--
1194 n-Heptane	142-82-5	500 ppm	--
1201 Hexane isomers	-0	1000 ppm	--
1203 Hexone (Methyl isobutyl ketone)	108-10-1	75 ppm	--
1208 Hydrogen fluoride	7664-39-3		6 ppm (15 min)
1209 Hydrogen sulfide	7783-06-4	15 ppm	--
1216 Iron pentacarbonyl	13463-40-6	0.2 ppm	--
1218 Isoamyl alcohol	123-51-3	125 ppm	--
1224 Isopropyl acetate	108-21-4	310 ppm	--
1225 Isopropyl alcohol	67-63-6	500 ppm	--
1227 Isopropyl glycidyl ether	4016-14-2	75 ppm	--
1228 Isopropylamine	75-31-0	10 ppm	--
1231 Ketene	463-51-4	1.5 ppm	--
1234 Manganese, fume	7439-96-5	3 mg/m^3	--
1242 Mercury, (organo) alkyl compounds	7439-97-6	0.03 mg/m	--
1243 Mesityl oxide	141-79-7	25 ppm	--
1248 Methyl 2-cyanoacrylate	137-05-3	4 ppm	--
1249 Methyl acetate	79-20-9	250 ppm	--
1250 Methyl acetylene/ propadiene mixture	74-99-7	1250 ppm	--
1252 Methyl alcohol	67-56-1	250 ppm, Skin	--
1254 Methyl chloride	74-87-3	100 ppm, Skin	--

Table C17-1. Substances for which OSHA is Proposing STELs and Values Being Proposed (continued)

H.S. Number/ Chemical Name	CAS No.	ACGIH STEL	NIOSH Ceiling/STEL*
1255 Methyl chloroform (1,1,1-trichloroethane)	71-55-6	450 ppm	--
1258 Methyl formate	107-31-3	150 ppm	--
1261 Methyl isobutyl carbinol	105-30-6	40 ppm, Skin	--
1267 alpha-Methyl styrene	98-83-9	100 ppm	--
1270 o-Methylcyclohexanone	583-60-8	75 ppm, Skin	--
1281 Morpholine	110-91-8	30 ppm, Skin	--
1282 Naphthalene	91-20-3	15 ppm	--
1286 Nitric acid	7697-37-2	4 ppm	--
1289 Nitrogen dioxide	10102-44-0		1 ppm (15 min)
1290 Nitroglycerin	55-63-0		0.1 mg/m^3 (20 min)
1295 Octachloronaphthalene	2234-13-1	0.3 mg/m^3	--
1296 Octane	111-65-9	375 ppm	--
1297 Oil mist (Mineral)	8012-95-1	10 mg/m^3	--
1298 Osmium tetroxide	20816-12-0	0.006 mg/m^3	--
1299 Oxalic acid	144-62-7	2 mg/m^3	--
1301 Ozone	10028-15-6	0.3 ppm	--
1304 Pentaborane	19624-22-7	0.015 ppm	--
1306 Pentane	109-66-0	750 ppm	--
1307 2-Pentanone (Methyl propyl ketone)	107-87-9	250 ppm	--
1308 Perchloroethylene	127-18-4	200 ppm	--
1309 Perchloryl fluoride	7616-94-6	6 ppm	--
1317 Phenylhydrazine	100-63-0	10 ppm	--
1319 Phorate (Thimet)	293-02-2	0.2 mg/m^3	--
1320 Phosdrin (Mevinphos)	7786-34-7	0.3 mg/m^3	--
1321 Phosphine	7803-51-2	1 ppm	--
1322 Phosphoric acid	7664-38-2	3 mg/m^3	--
1323 Phosphorus oxychloride	10025-87-3	0.5 ppm	--
1324 Phosphorus pentasulfide	1314-80-3	3 mg/m^3	--
1324 Phosphorus trichloride	7719-12-1	0.5 ppm	--
1325 Picloram (Tordom)	1918-02-1	20 mg/m^3	--
1328 Picric acid	88-89-1	0.3 mg/m^3	--
1329 Propionic acid	79-09-4	15 ppm	--
1336 n-Propyl acetate	109-60-4	250 ppm	--
1338 Propyl alcohol	71-23-8	250 ppm	--
1340 n-Propyl nitrate	627-13-4	40 ppm	
1341 Propylene dichloride	78-87-5	110 ppm	--
1342 Propylene glycol mono-methyl ether	107-98-2	150 ppm	--

Table C17-1. Substances for Which OSHA Is Proposing STELs and Values Being Proposed (continued)

H.S. Number/ Chemical Name	CAS No.	ACGIH STEL	NIOSH Ceiling/STEL*
1346 Resorcinol	108-43-3	20 ppm	—
1366 Sodium fluoroacetate	62-74-8	0.15 mg/m^3	—
1372 Styrene (Phenylethylene)	100-42-5	100 ppm	—
1375 Sulfur dioxide	7446-09-5	5 ppm	—
1379 Sulfuryl fluoride	2699-79-8	10 ppm	—
1382 Tantalum	7440-25-7	10 mg/m^3	—
1387 Tetrahydrofuran	109-99-9	250 ppm	—
1397 Toluene	108-88-3	150 ppm	—
1398 Toluene-2,4-diisocyanate	584-84-9	0.02 ppm	—
1403 1,1,2-Trichloro-1,2,2-trifluorethane	76-13-1	1250 ppm	—
1408 Triethylamine	121-44-8	15 ppm	—
1411 Trimethylamine	75-50-3	15 ppm	—
1416 Tungsten & compounds (insoluble)	7440-33-7	10 mg/m^3	—
1417 Tungsten & compounds (soluble)	7440-33-7	3 mg/m^3	—
1418 Uranium (insoluble compounds)	7440-61-1	0.6 mg/m^3	—
1424 Vinyl acetate	108-05-4	20 ppm	—
1428 Vinylidene chloride	75-35-4	20 ppm	—
1431 Xylene (o,m,p-isomers)	1330-20-7	150 ppm	—
1435 Zinc chloride fume	7646-85-7	2 mg/m^3	—
1437 Zinc oxide (fume)	1314-13-2	10 mg/m^3	—
1434 Zinc stearate	557-01-1	20 mg/m^3	—
1435 Zirconium compounds	7440-67-7	10 mg/m^3	—

* NIOSH ceiling limits that are recommended for time periods of 15 minutes or more are treated as short-term exposure limits.

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In 1973, this subcommittee recommended that the ACGIH establish STELs as a third category (along with TLV-TWAs and ceilings) of exposure limits. The STEL was defined as the maximum concentration to which workers can be exposed *for a period up to 15 minutes* continuously without suffering from

1. Intolerable irritation,
2. Chronic or irreversible tissue change, or
3. Narcosis of sufficient degree to increase accident proneness, impair self-rescue, or materially reduce work efficiency (ACGIH 1984).

The ACGIH stipulated that no more than four excursions per day were permissible, with at least 60 minutes between exposure periods, and that the daily TLV-TWA could not be exceeded.

In 1974, the ACGIH agreed by consensus that 425 of the 520 compounds in its 1973 list should be assigned STELs, but these were not in fact published until 1976, when "Tentative Values" for STELs were listed in the organization's annual booklet. In 1978, the ACGIH emphasized that, according to its definition, a STEL was not a TWA value but a maximal allowable concentration, or absolute ceiling, not to be exceeded for any time during the 15-minute excursion period. The TWA-STEL should not be used as an engineering design criterion or considered as an emergency exposure level (ACGIH 1978).

ACGIH redefined the application of STELs in 1979, 1982, and 1984. The 1987-1988 ACGIH TLV booklet states that the TLV-STEL is "the concentration to which workers can be exposed continuously for a short period of time without suffering from (1) irritation, (2) chronic or irreversible tissue damage, or (3) narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency * * * provided that the daily TLV-TWA is not exceeded."

In 1982, the ACGIH qualified the conditions under which STELs are recommended to situations "only where toxic effects have been reported from high short-term exposures in either humans or animals." In 1984, the ACGIH proposed the deletion of STELs for 142 substances in its Notice of Intended Changes; most of these STELs were deleted in 1986. Another 53 STELs were proposed for deletion in 1988. These two major revision efforts successfully eliminated many STELs for substances with inadequate toxicological support data. As the introduction to the most recent edition of the *Threshold Limit Values and Biological Exposure Indices* (1988) indicates:

> For the vast majority of substances with a TLV-TWA, there is not enough toxicological data available to warrant a STEL. Nevertheless, excursions above the TLV-TWA should be controlled even where the eight-hour TWA is within recommended limits (ACGIH 1987). At present, a total of 122 STELs remain in the ACGIH's most recent TLV list; the organization has removed its recommended STELs for 217 substances on the ground that insufficient toxicological data existed on which to base a STEL.

The ACGIH has stressed that STELs are set on physiological grounds rather than in response to sampling and analytical limitations (ACGIH 1984).

Separate from the STEL category, the ACGIH in the 1970s established a fourth limit, a general "excursion factor" that should always be observed implicitly but is not specifically assigned to each chemical. The "excursion limit" recommended by the ACGIH is as follows:

> Short-term exposures should exceed three times the TLV-TWA for no more than a total of 30 minutes during a work day and under no circumstances should they exceed five times the TLV-TWA, provided that the TLV-TWA is not exceeded (ACGIH 1987).

The basis for this excursion recommendation is that any process whose emissions display a variability greater than would be permitted by this excursion factor is not under good industrial hygiene control, and the ACGIH believes that in such cases, efforts should be made to restore control (ACGIH 1986). Where specific STELs exist, they take precedence over the general excursion limit (ACGIH 1987). Thus *all* ACGIH TLV-TWAs have implicit excursion limits, but only a few substances (i.e., those for which specific toxicological evidence indicates that a STEL is necessary) have explicit STELs.

Significance of Risk

The STELs being proposed by OSHA in this rulemaking, which parallel those STELs remaining in the ACGIH's most recent list (ACGIH 1987-1988)) are thus limits for substances where there is toxicological evidence of recognized acute effects resulting from short-term exposure. (STELs also are appropriate to reduce significant risk remaining at the 8-hour TWA limit. See *Public Citizen HRG* v. *Tyson*, 796 F.2d 1479, 1505 (D.C. Cir. 1986). That issue does not arise for most of the substances covered in this rulemaking. If evidence is presented or available on this issue, OSHA will consider an appropriate regulatory response.) The health effects associated with short-term exposures for some of these substances are shown in Table C17-2.

Table C17-2. Health Effects Supporting Proposed ACGIH STELs

H.S. Number/ Chemical Name	ACGIH STEL**	Health Effects
1001 Acetaldehyde.	150 ppm	Eye irritation; narcosis; potential injury to respiratory tract.
1002 Acetic acid.	15 ppm	Irritation.
1007 Acrolein	0.3 ppm	Irritation; lung edema.
1010 Allyl alcohol.	4 ppm	Irritation.
1011 Allyl chloride.	2 ppm	Mucous membrane irritation.
1012 Allyl glycidyl ether (AGE).	10 ppm	Irritation.
1013 Allyl propyl disulfide.	3 ppm	Irritation; lacrimation.
1021 Ammonia	35 ppm	Irritation; temporary blindness.
1022 Ammonium chloride (fume).	20 mg/m^3	Irritation.
1042 Bromine	0.3 ppm	Respiratory tract irritation.
1045 2-Butanone (MEK).	300 ppm	Eye and nose irritation.
1047 n-Butyl acetate.	200 ppm	Throat irritation.
1049 sec-Butyl alcohol.	150 ppm	Irritation; narcosis.
1050 tert-Butyl alcohol.	150 ppm	Narcosis.
1063 Camphor (synthetic).	3 ppm	Eye and nose irritation; anosmia.
1064 Caprolactam (dust).	3 mg/m^3	Irritation.
1065 Caprolactam (vapor).	40 mg/m^3	Irritation.
1072 Carbon tetrabromide.	0.3 ppm	Upper respiratory tract irritation; injury to lungs, liver, and kidney.
1080 Chlorine dioxide.	0.3 ppm	Irritation.
1082 2-Chloro-6-trichloromethyl pyridine (nitrapyrin).	20 mg/m^3	Nuisance effects.
1065 Chlorodifluoro-methane.	1250 ppm	CNS effects; asphyxiation; narcosis.
1090 o-Chlorotoluene.	75 ppm	Cardiovascular effects.
1091 Chlorpyrifos.	0.6 mg/^{3}	Cholinesterase inhibition.
1103 Crufomate.	20 mg/m^3	Cholinesterase inhibition.
1110 Cyclonite	3 mg/m^3	CNS effects.
1119 Dibutyl phosphate.	2 ppm	Irritation to respiratory tract; headaches.
1122 1,3-Dichloro-5,-5-dimethyl-hydantoin.	0.4 mg/m^3	Respiratory irritation.

TABLE C17-2. HEALTH EFFECTS SUPPORTING PROPOSED ACGIH STELs—Continued

H.S. Number/ Chemical Name	ACGIH STEL**	Health Effects
1125 p-Dichlorobenzene.	110 ppm	Acute poisoning.
1127 Dichloromethyl ether.	10 ppm	Upper respiratory tract and eye irritation.
1137 Diethylamine.	25 ppm	Acute toxicity characterized by strong local irritation.
1149 Dipropylene glycol methyl ether.	150 ppm	Eye, nose, and throat irritation; central nervous system impairment.
1161 Ethyl acrylate.	25 ppm	Irritation.
1162 Ethyl benzene.	125 ppm	Skin and eye irritation.
1163 Ethyl bromide.	250 ppm	Narcosis.
1164 Ethyl ether.	500 ppm	Narcosis; nasal irritation.
1179 Fluorine	2 ppm	Eye and skin irritation.
1184 Furfuryl alcohol.	15 ppm	Eye irritation.
1194 n-Heptane.	500 ppm	Narcosis; respiratory irritation.
1201 Hexane isomers.	1000 ppm	Narcotic symptoms; eye and throat irritation; slight nausea, headache.
1203 Hexone (MIBK).	75 ppm	Irritant effects.
1209 Hydrogen sulfide.	15 ppm	Eye irritation.
1216 Iron pentacarbonyl.	0.2 ppm	Headaches; dizziness.
1218 Isoamyl alcohol.	125 ppm	Respiratory and eye irritation.
1224 Isopropyl acetate.	310 ppm	Eye and respiratory irritation.
1225 Isopropyl alcohol.	500 ppm	Narcotic effects and irritation.
1227 Isopropyl glycidyl ether.	75 ppm	Respiratory tract and eye irritation.
1228 Isopropylamine.	10 ppm	Respiratory irritation.
1231 Ketene	1.5 ppm	Respiratory irritation.
1236A Manganese, fume.	3 mg/m³	Central nervous system effects.
1243 Mesityl oxide.	25 ppm	Eye and mucous membrane irritation, breathing difficulty, headache and vertigo.
1248 Methyl 2-cyanoacrylate.	4 ppm	Nasal and eye irritation.
1249 Methyl acetate.	250 ppm	Ocular and nervous disturbances; eye, mucous membrane, upper and lower respiratory tract irritation.
1252 Methyl alcohol.	250 ppm	Recurrent headaches; diminution of vision.
1255 Methyl chloroform(1,1,1-trichloroethane).	450 ppm	Anesthesia.
1258 Methyl formate.	150 ppm	Visual disturbances (temporary blindness); narcotic symptoms, mucous membrane irritation; dyspnea.
1261 Methyl isobutyl carbinol.	40 ppm	Eye irritation.
1270 o-Methylcyclohexanone.	75 ppm	Eye and respiratory irritation.
1281 Morpholine.	30 ppm	Irritation and harmful effects to eyes and vision.
1282 Naphthalene.	15 ppm	Ocular effects.
1298 Octane	375 ppm	Acute effects on nervous system.
1299 Oxalic acid.	2 mg/m³	Severe local burns to eyes, mucous membranes, and skin.
1304 Pentaborane.	0.015 ppm	Central nervous system effects.
1308 Pentane	750 ppm	Narcotic and irritative effects.
1307 2-Pentanone (MPK).	250 ppm	Narcotic effects; irritation.
1306 Perchloroethylene.	200 ppm	Anesthetic effects.
1309 Perchloryl fluoride.	6 ppm	Respiratory irritation; fluorosis.
1323 Phosphorous oxychloride.	0.5 ppm	Irritation.
1324 Phosphorus pentasulfide.	3 mg/m³	Respiratory irritation.
1325 Phosphorus trichloride.	0.5 ppm	Respiratory irritation.
1328 Picloram (Tordon).	20 mg/m³	Systemic effects.
1336 Propionic acid.	15 ppm	Eye and respiratory irritation.
1339 Propyl alcohol.	250 ppm	Possible deep narcosis.
1343 Propylene glycol monomethyl ether.	150 ppm	Odor; eye irritation.
1372 Styrene, monomer.	100 ppm	Tremors with subsequent severe convulsions; pulmonary edema may follow severe single exposure.
1375 Sulfur dioxide.	5 ppm	Respiratory effects.
1387 Tetrahydrofuran.	250 ppm	Narcotic and irritative effects.
1397 Toluene	150 ppm	Impairment of coordination, momentary memory loss, anorexia.
1403 1,1,2-Trichloro-1,2,2-trifluoroethane.	1250 ppm	Impairment of psychomotor performance.
1408 Triethylamine.	15 ppm	Acute irritation of eyes, mucous membranes, and lungs.
1424 Vinyl acetate.	20 ppm	Irritation.
1428 Vinylidene chloride.	20 ppm	Overt toxicity.
1431 Xylene (o,m,p-isomers).	150 ppm	Narcosis, irritant effects.
1435 Zinc chloride (fume).	2 mg/m³	Respiratory irritation.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

Preliminary Conclusions

OSHA is proposing STELs where the Agency believes a short-term limit is needed to supplement the 8-hour TWA to protect workers from the adverse health effects associated with exposure to short-term excursions that would be permitted with the 8-hour limit alone. OSHA preliminarily concludes that, without a STEL, workers remain at risk of experiencing the broad range of recognized acute effects associated with elevated short-term exposures to these chemicals. Compliance with a STEL in addition to an 8-hour limit will substantially reduce the risk of health impairment and functional incapacity potentially faced by workers exposed to these substances during excursions to the levels permitted by the 8-hour limit alone. OSHA believes that, for this group of substances, the toxicological evidence forms a reasonable basis for proposing to supplement the 8-hour permissible exposure limit with a short-term limit.

At the time of the final rule, OSHA will establish short-term exposure limits for these substances if it determines that STELs will substantially reduce significant risk.

18. Substances for Which OSHA Is Proposing To Add Skin Notations

There are a number of instances in this rulemaking for which OSHA is proposing to add a skin notation to the limit for a substance. In all, a skin notation is being added in 49 cases. Table C18-1 shows all of the substances for which the Agency is proposing to add skin notations.

The ACGIH began to include skin designations for the chemicals in its list for the first time in 1961 (Stokinger 1961). At that time, the organization stated that:

> This notation is to be interpreted simply as an indicator that skin absorption may contribute to the overall intake from exposure in addition to that from inhalation. It refers mainly to absorption from liquid contamination (Stokinger 1961).

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TABLE C18-1.. List of Substances for Which OSHA Is Proposing to Add a Skin Notation

H.S. Number/ Chemical Name	CAS No.
1012 Allyl glycidyl ether (AGE)	106-92-3
1051 n-Butyl alcohol	71-36-3
1055 o-sec-Butylphenol	89-72-5
1066 Captafol (Difolatan)	2425-06-1
1084 o-Chlorobenzylidene malonitrile	2698-41-1
1091 Chlorpyrifos	2921-88-2
1107 Cyclohexanol	108-93-0
1108 Cyclohexanone	108-94-1
1110 Cyclonite	121-82-4
1118 Diazinon	333-41-5
1120 2-N-Dibutylaminoethanol	102-81-8
1129 1,3-Dichloropropene	542-75-6
1131 Dicrotophos (Bidrin)	141-66-2
1138 Diethylene triamine	111-40-0
1141 Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5
1146 Dioxathion (Delnav)	78-34-2
1156 Endosulfan	115-29-7
1160 Ethion (Nialate)	563-12-2
1173 Fenamiphos	22224-92-6
1175 Fenthion	55-38-9
1181 Fonofos	944-22-9
1184 Furfuryl alcohol	98-00-0
1195 Hexachlorobutadiene	87-68-3
1198 Hexafluoroacetone	684-16-2
1211 2-Hydroxypropyl acrylate	999-61-1
1220 Isooctyl alcohol	26952-21-6
1229 m-Isopropylaniline	643-28-7
1237 Manganese cyclopentadienyl tricarbonyl	12079-65-1
1241 Mercury (vapor)	7439-97-6
1242 Mercury, (organic) alkyl compounds	7439-97-6
1251 Methyl acrylonitrile	126-98-7
1252 Methyl alcohol	67-56-1
1256 Methyl demeton	8022-00-2
1265 Methyl parathion	298-00-0
1271 Methylcyclopentadienyl manganese tricarbonyl	12108-13-3
1273 4,4'-Methylene bis(2-chloroaniline)	5124-30-1
1313 Phenothiazine	92-84-2
1319 Phorate (Thimet)	298-02-2
1335 Propargyl alcohol	107-19-7
1339 Propyl alcohol	71-23-8
1342 1,2-Propylene glycol dinitrate	6423-43-4
1392 Thioglycolic acid	68-11-1
1394 Tin (organic compounds)	7440-31-5
1400 p-Toluidine	106-49-0
1401 m-Toluidine	108-44-1
1407 1,2,3-Trichloropropane	96-18-4
1414 Triorthocresyl phosphate	78-30-8
1426 Vinyl cyclohexene dioxide	106-87-6
1432 m-Xylene-alpha,alpha'-diamine	1477-55-0

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The ACGIH has expanded on its reasoning since the 1960s, and the preface to the most recent *Threshold Limit Values and Biological Exposure Indices* (1987–1988) explains that the skin designation is designed to call attention to the need for "appropriate measures for the prevention of cutaneous absorption so that the threshold limit is not invalidated" (p. 7). Thus a skin notation warns that exposure via the cutaneous route, including absorption through the eyes or mucous membranes, by either inhalation or direct contact, may contribute substantially to an employee's overall exposure and cause systemic toxicity.

In establishing most skin designations, OSHA has relied primarily on animal data, particularly on dermal LD_{50} values in rodents (mice, rats, rabbits, and guinea pigs). This evidence is occasionally supported by findings in humans, and in a few cases, human evidence provides the sole basis. The ACGIH has a policy of using a dermal LD_{50} of 2 g/kg as a general cutoff for determining when to classify a substance as sufficiently absorbable to present a hazard via the percutaneous route; that is, substances having a single-dose dermal LD_{50} of less than 2 g/kg receive a skin notation, while those with dermal LD_{50}s above this cutoff do not (ACGIH 1986, p. 332). The *Documentation* (ACGIH 1986) contains no cutoff value for chronic dermal exposures, i.e., for toxicity resulting from repeated applications of substances to the skin.

The following discussions describe OSHA's reasons for adding or deleting skin notations for some OSHA-regulated chemicals or the regulatory candidates under consideration.

o-sec-Butylphenol. In assigning a skin notation to this substance, the ACGIH relied on an unpublished Dow Chemical Company study showing that the dermal LD_{50} for butylphenol in guinea pigs is between 0.6 and 2.4 g/kg. This range clearly includes the single-dose percutaneous cutoff value of 2 g/kg, and skin absorption of butylphenol thus has the potential to contribute to overall exposure and to cause systemic effects in dermally exposed workers. OSHA preliminarily concludes that the addition of a skin notation is warranted by this avoidance and that the evidence of dermal contact will eliminate the risk of systemic toxicity posed by this chemical.

Phorate. Phorate, an organophosphate insecticide, has been proposed for a skin designation on the basis of its high acute percutaneous toxicity. In male and female rats, the dermal LD_{50} is 6.2 and 2.5 mg/kg, respectively, values substantially below the level used as the criterion for permeability via the percutaneous route (ACGIH 1986, p. 332). OSHA preliminarily concludes that preventing skin contact with this chemical will protect exposed workers from experiencing the neurologic effects associated with overexposure to this cholinesterase inhibitor.

Vinyl cyclohexene dioxide. The skin notation for vinyl cyclohexene dioxide is based on evidence that this substance is highly toxic in rats given a single skin application. The dermal LD_{50} in this species is 0.62 ml/kg. In addition, this chemical has been shown to cause skin tumors and cancers developing late in life in mice receiving dermal applications of a 30-percent solution of vinyl cyclohexene dioxide in acetone. The ACGIH (1986) reports that "extreme caution should be exercised in the use of this diepoxide" because of the "very limited toxicological data and * * * demonstrated carcinogenicity when * * * applied to the skin of the mouse." OSHA preliminarily concludes that the addition of a skin designation to the limit for this chemical is essential to protect workers both from systemic toxicity via the percutaneous route and from the potential risk of developing either systemic or skin cancers.

Substances for Which the ACGIH Has Deleted the Skin Notation

For four substances, the ACGIH has deleted the skin notations that have appeared in the 1968 edition of the *Documentation* and which were subsequently adopted by OSHA under the section 6(a) mechanism in 1971. Table C18–2 shows these chemicals.

OSHA is not proposing to delete the skin notations for these four substances. The Agency believes that deletion of these designations would in effect constitute an increase in the level of exposure permitted and thus a decrease in the extent of worker protection provided by the limits of the current Z tables. In accordance with principles established by OSHA (see the preamble for the final revisions to the cotton dust standard, 50 FR 51120 *et seq.*), the Agency must demonstrate that deleting these skin designations, which were established under the section 6(a) mechanism, will not pose a significant risk to exposed workers. The discussion below describes the ACGIH's reasons for recommending deletion of these notations.

TABLE C18-2. List of Substances for Which the ACGIH Has Deleted the Skin Notation

H.S. Number/ Chemical Name	CAS No.
1113 DDT	50-29-3
1149 Dipropylene glycol methyl ether	34590-94-8
1197 Hexachloroethane	67-72-1
1303 Paraquat, respirable dust	4685-14-7

The evidence on which the ACGIH based its decision to delete skin notations for the four chemicals in question is primarily animal evidence. For DDT and hexachloroethane, the ACGIH deleted the skin designation based on the relatively low dermal toxicity demonstrated by these substances in animal studies. OSHA preliminarily finds, however, that the absence of significant risk via dermal absorption has not been sufficiently shown for DDT and hexachloroethane, and thus OSHA is not proposing deletion at this time.

For the two remaining substances in this group, paraquat and dipropylene glycol methyl ether (DPGME), the skin notation was deleted because the ACGIH believes that the substance does not, in the case of paraquat, "penetrate the unbroken or uninjured skin" or believes, as in the case of DPGME, that the substance is "practically nontoxic * * * by the dermal route for rabbits" (ACGIH 1986). However, OSHA notes that at high doses paraquat does "injure and break down dermal barriers" and gain entry to the body. The *Documentation* records the case of a 44-year-old man who died of respiratory insufficiency after he was poisoned by the percutaneous absorption of an acutely toxic quantity of undiluted paraquat (ACGIH 1986). The ACGIH also reports that there is evidence that, despite DPGME's low single-dose dermal toxicity, repeated applications of the chemical to the skin of rabbits caused death "in a significant number of the exposed rabbits at levels of 3 ml/kg and above" (ACGIH 1986).

In accordance with the principles stated in the cotton dust preamble (50 FR 51120) OSHA does not find the evidence adduced by the ACGIH sufficient to provide a basis for the deletion of the skin notations for this group of substances. The Agency preliminarily concludes that deleting the skin notation from the limits for these four substances will not ensure that workers are protected against the risks potentially posed by percutaneous absorption of these substances.

D. References for Section IV

Abe, M. 1967. Effects of mixed NO_2-SO_2 gas on human pulmonary functions—effects of air pollution on the human body. *Bulletin of Tokyo Medical and Dental University* 14:415–433.

Adams, W.G.F. 1975. Long-term effects on the health of men engaged in the manufacture of tolylene di-isocyanate. *British Journal of Industrial Medicine* 32:72–78.

———. 1970. Lung function of men engaged in the manufacture of tolylene diisocyanate (TDI). *Proceedings of the Royal Society of Medicine* 63:376–379.

Allen, N., J.R. Mendall, D. Billmaier et al. 1975. Toxic polyneuropathy due to methyl n-butyl ketone: an industrial outbreak. *Archives of Neurology* 32:209–218.

Amacher, D.E., and S.C. Paillet. 1980. Induction of trifluorothymidine-resistant mutants by metal ions in L5178/TK+/- cells. *Mutation Research* 78:279–288.

Ambrose, A.M., P.S. Larson, J.F. Borzelleca et al. 1976. Long-term toxicologic assessment of nickel in rats and dogs. *Journal of Food Science and Technology* 13(4):181–187.

Amdur, M.L. 1959. Accidental group exposure to acetonitrile—a clinical study. *Journal of Occupational Medicine* 1:627–633.

American Conference of Governmental Industrial Hygienists (ACGIH). 1986. *Documentation of the Threshold Limit Values and Biological Exposure Indices.* Cincinnati, OH.

———. 1986. *Documentation of the Threshold Limit Values and Biological Exposure Indices.* 5th ed. Cincinnati, OH.

Amoco Chemical Corporation. 1976. Material Safety Data Sheet—Trimellitic Anhydride. Medical and Health Services Department.

Anderson, A., et al. 1967. Confidential report prepared for the Shell Development Company on a rat inhalation study on n-butyl glycidyl ether.

Anderson, E.L. and the Carcinogen Assessment Group of the Environmental Protection Agency. 1988. Quantitative approaches in use to assess cancer risk. *Risk Analysis* 3:277–295.

Andervont, H.B. 1958. Induction of hepatomas in strain C3H mice with 4-o-tolylazo-o-toluidine and carbon tetrachloride. *Journal of the National Cancer Institute* 20:431–438.

Andrews, L.S. and R. Snyder. 1986. Toxic effects of solvents and vapors. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons.* 3rd ed. C.D. Klaassen, M.O. Amdur, and J. Doull, eds. New York: Macmillan Publishing Company.

Aviado, D.M. 1975. Toxicity of aerosol propellants in the respiratory and circulatory systems: a proposed classification. *Toxicology* 3:321–332.

Axelson, O., and L. Sundell. 1974. *Work, Environment, and Health* II:21–28.

Axelson, O., L. Sundell, K. Andersson et al. 1980. Herbicide exposure and tumor mortality. *Scandinavian Journal of Work, Environment, and Health* 6:73–82.

Ayer, H.E. 1968. The proposed ACGIH mass limits for quartz: review and evaluation. *American Industrial Hygiene Association Journal* 30:117–125.

Baetjer, A.M. 1960. The early days of industrial hygiene—their contribution to current problems. In: *Threshold Limit Values—Discussion and Thirty-five Year Index with Recommendations.* Annals of the American Conference of Governmental Industrial Hygienists. Vol. 9. Cincinnati, OH.

Baker, E.L. 1983. Neurological disorders. In: *Environmental and Occupational Medicine.* W.N. Rom, ed. Boston: Little, Brown and Company.

Balazs, T., J.P. Hanig, and R.H. Hermes. 1988. Toxic responses of the cardiovascular system. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons.* See Klaassen et al.

Battig, K., E. Grandjean, and V. Turrian. 1957. Gesundheitsschaden nach langdauernder Trimethylbenzol-Exposition in einer Malerwerkstatte. *Zeitschrift Praventative Medizin* 1:383–403.

Bayliss, D.L., and J.K. Wagoner. 1977. Bronchogenetic cancer and cardiorespiratory disease mortality among white males employed in a beryllium production facility. OSHA Beryllium Hearing. 1977. Docket No. H-005, Exhibit 13-F.

Bayliss, D.L., J. Dement and J.K. Wagoner. 1976. *Occupational Exposure to Fibrous Glass: Proceedings of a Symposium.* HEW Publication No. (NIOSH) 76-151, p. 349.

Baylor, C.H. and N.K. Weaver. 1966. A health survey of petroleum asphalt workers. *Archives of Environmental Health* 17: 210–214.

Bell, Z.G., H.G. Lovejoy, T.B. Vinzan. 1971. *Journal of Occupational Medicine* 15:501.

Benya, T.J., Busey, W.M., Dorato, M.A., and Berteau, P.E. 1982. Inhalation carcinogenicity bioassay of vinyl bromide in rats. *Toxicology and Applied Pharmacology* 64:367–379.

Berteau, P.E., G.J. Levinskas, and D.E. Rodwell. 1962. Teratogenic evaluation of aliphatic nitriles in rats. *Toxicologist* 2(1): 118.

Bidstrup, P.L., J.A. Bonnell, D.G. Harvey et al. 1951. *Lancet* 2:655.

Billmaier, D., H.T. Yee, M. Alfes et al. 1974. Peripheral neuropathy in a coated fabrics plant. *Journal of Occupational Medicine* 16:665–671.

Bils, R.F. 1976. Ultrastructural alterations of alveolar tissue of mice: III. Dose. *Archives of Environmental Health* 30:405–410.

Bingham, E. W. Barkley, M. Zerwas et al. 1972. Responses of alveolar macrophages to metals: II. Inhalation of lead and nickel. *Archives of Environmental Health* 25:409–414.

Bingham, E., R.P. Trosset, and D. Warshowsky. 1980. Carcinogenic potential of petroleum hydrocarbons. *Journal of Environmental Pathology and Toxicology* 3:483–563 (as cited in Thayer et al. 1981).

Blair, A., P. Decouflé, and D. Grauman. 1979. Causes of death among laundry and dry cleaning workers. *American Journal of Public Health* 69:508–511.

Black, M.M., B.W. Zweifach, and F.D. Speer. 1954. Comparison of hypotensive action of sodium azide in normotensive and hypertensive patients. *Proceedings of the Society for Experimental Biology and Medicine* 85:11–16.

Bloomfield, J.J., and W. Blum. 1928. *Public Health Reports* 43:2330–2347.

Bolender, P.L. 1983. Report to the International Minerals and Chemical Corporation, Northbrook, IL (as cited in ACGIH 1986).

Braunwald, E., ed. 1976. *Heart Disease: A Textbook of Cardiovascular Medicine.* 3rd ed. Philadelphia: W.B. Saunders Company.

Brieger, H. 1984. Private communication quoting French authorities in the viscose industry, as cited in the ACGIH 1986, p. 310.

Brzozowski, J., J. Czajka, T. Dutkiewicz et al. 1954. Higiena pracy i stan zdrowia zatrudnionych przy wsalczaniu stonki ziemniaczanej heksachlorocyklohreksanem, dwuchloroetanem. *Medycyna Pracy Dwumiesiecznik* 5:89–96.

Bull, R.J., M. Robinson, R.D. Laurie, A.D. Stoner, E. Greisiger, J.R. Meier, and J. Stober. 1986. Carcinogenic effects of acrylamide in Sencar and A/J mice. *Cancer Research* 44:107–111.

Cantor, K.P., R. Hoover, T. Mason, and L.J. McCabe. 1978. Associations of cancer mortality with halomethanes in drinking water. *Journal of the National Cancer Institute* 61(4):979–985.

Carpenter, C.P., E.R. Kinkead, D.L. Geary et al. 1975. Petroleum hydrocarbon toxicity studies: IV. Animal and human response to vapors of rubber solvent. *Toxicology and Applied Pharmacology* 33:526–542.

Cavanagh, J.B. 1985. Metabolic Mechanisms of neurotoxicity caused by mercury. In: *Neurotoxicology.* L. Roizin et al., ed. New York: Raven Press.

Chapman, E.M. 1932. Acute silicosis. *Journal of the American Medical Association* 98:1438–1441.

Chabra, M.L. 1970. E.C.G. and necropsy changes in organophosphorus compound (malathion) poisoning. *Indian Journal of Medical Sciences* 24:426–429.

Chipman Chemicals, Ltd. 1972. Summary of Toxicologic Properties and User Experience.

Clark, C.D., and E.W. Hurst. 1970. The toxicity of diquat. *British Journal of Industrial Medicine* 27:23–35.

Clary, J.J. 1977. Public Health Service, Centers for Disease Control, and National Institute for Occupational Safety and Health, Cincinnati, Ohio. 7 pp. (as cited in ACGIH 1986, p. 423).

Claxton, L.D., and J.L. Hulsingh. 1980. Comparative mutagenic activity of organics from combustion sources. In *Pulmonary Toxicology of Respirable Particles.* C.L. Sanders, F.T. Cross, G.E. Dagle, and J.A. Mahaffey, eds. Department of Energy. CONF-791002.

Cockcroft, A.E., M. McDermott, J. H. Edwards, and P. McCarthy. 1983. Grain exposure—symptoms and lung function. *European Journal of Respiratory Diseases* 64:180–188.

Cook, W.A. 1987. Historical development of occupational exposure limits (OELs). In: *Occupational Exposure Limits—Worldwide.* American Industrial Hygiene Association.

Coon, R.A., R.A. Jones, L.J. Jenkins, and J. Siegel. 1970. Animal inhalation studies on ammonia, ethylene glycol, formaldehyde, dimethylamine, and ethanol. *Toxicology and Applied Pharmacology* 16:946–955.

Craft, B.F. 1983. Solvents and related compounds. In: *Environmental and Occupational Medicine.* W.N. Rom, ed. Boston: Little, Brown and Company.

Crump, K.S., A. Silvers, P.F. Ricci, and R. Wyzga. 1985. Interspecies comparison for carcinogenic potency to humans. In: *Principles of Health Risk Assessment.* P.F. Ricci, ed. Englewood Cliffs, NJ: Prentice-Hall.

Crump, K.C. & Co. 1987. Quantitative risk assessment for acrylamide. Prepared for the Environmental Protection Agency. Research Triangle Park, North Carolina 27711. Contract 68-02-4403, Work Assignment 5. Report dated February 1987.

Culver, D., P. Caplan, and G.S. Batchelor. 1956. Studies of human exposure during aerosol application of malathion and chlorthion. *Archives of Industrial Health* 13:37–50.

Darke, C.S., J. Knowelden, J. Lacey, and A.M. Ward. 1976. Respiratory disease of workers harvesting grain. *Thorax* 31:294–302.

Dean, J.H., M.J. Murray, and E.C Ward. 1988. Toxic responses of the immune system. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons.* See Klaassen et al.

De Flora, S., R. Coppola, A. Camoirance, M.A. Battaglia, and C. Bennicelli. 1980. Mutagenicity and toxicity of chromyl chloride and its vapors. *Carcinogenesis* 1:583–587.

Deguidt, J., P. Vasseur, and J. Potencier. 1972. Experimental toxicological study of several nitroparaffins. *Bulletin of the Society of Pharmacy Lille* 2:83–89 (as cited in Santodonato et al. 1985).

Della Porta, G.B., B. Terracini, and P. Shubik. 1961. Induction with carbon tetrachloride of liver cell carcinomas in hamsters. *Journal of the National Cancer Institute* 26:855–863.

Dernehl, C.U. 1986. Health hazards associated with polyurethane foams. *Journal of Occupational Medicine* 8:59–62.

Detroit Department of Health, Bureau of Industrial Hygiene. Unpublished reports of investigations, 1965–1970 (as cited in ACGIH 1986, p. 27).

Doig, P.A. and R.A. Willoughby. 1971. Response of swine to atmospheric ammonia and organic dust. *Journal of the American Medical Veterinary Association* 159:1353–1361.

Doll, R. 1958. Cancer of the lung and nose in nickel workers. *British Journal of Industrial Medicine* 14(4):217–223.

Dreessen, W.C. and J.M. Dallavalle. 1940. Pneumoconiosis among mice and pegmatite workers. *Public Health Bulletin* No. 256. U.S. Public Health Service. Washington, D.C.: U.S. Government Printing Office.

Druckrey, H., R. Preussmann, N. Nashed, and S. Ivanovic. 1966. Carcinerogene alkylierende Substanzen: III. Dimethyl-sulfat, Cancerogene Wirkung an Ratten und wahrscheinliche Uhrsache von Berufskrebs. *Zeitscrift fuer Krebsforshung* 68:103.

Druckrey, H., H. Kruse, R. Preussman, S. Ivanovic, and C. Landschutz. 1970. Cancerogene alkylierende Substanzen: III. Akylhalogenide, -sulfate, sulfonate und ringgespante heterocyclen. *Zeitschrift fuer Krebsforshung* 74:241.

Dunner, L., R. Harmon, and D.J.T. Bagnall. 1946. Pneumoconiosis in dockers dealing with grain and seed. *British Journal of Radiology* 19:505–511.

Edwards, J.E. 1941. Hepatomas in mice induced with carbon tetrachloride. *Journal of the National Cancer Institute* 2:197–199.

Edwards, J., W.E. Heston, and A.J. Dalton. 1942. Induction of the carbon tetrachloride hepatoma in strain L mice. *Journal of the National Cancer Institute* 3:287–301.

E.I. du Pont de Nemours & Co. 1961. Sulfur Tetrafluoride Technical. New Product Information Bulletin 2b. (as cited in ACGIH, 1986, p. 546).

Elkins, H.B. 1950. Organic compounds: Part I. Hydrocarbons. In: *Chemistry of Industrial*

Toxicology p. 101. New York: John Wiley & Sons.

———. 1959. Maximum allowable concentrations. In: *Chemistry of Industrial Toxicology*. p. 232. New York: John Wiley & Sons.

Elkins, H.B., G.W. McCarl, H.G. Brugsch, and J.P. Fahy. 1962. Massachusetts experience with toluene di-isocyanate. *American Industrial Hygiene Association Journal* 23:265–272.

Emmett, E.A. 1988. Toxic responses of the skin. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons*. See Klaasen et al.

Emmett, E.A., E.M. Bingham, and W. Berkeley. 1981. A carcinogenic bioassay of certain roofing material. *American Journal of Industrial Medicine* 2(1):59–64.

Enterline, P.E., and V. Henderson. 1975. The health of retired fibrous glass workers. *Archives of Environmental Health* 30:113–116.

Environmental Protection Agency. 1984. *Health Assessment Document for Carbon Tetrachloride*. EPA–600/8–82–001F. Cincinnati, OH: Environmental Criteria and Assessment Office.

———. 1984. *Health Assessment Document for Chromium*. Final Report. EPA/600/8–83/014F. Washington, DC.

———. 1984. *Health effects assessment for hexavalent chromium*. EPA/540/1–86/019. Office of Research and Development and Office of Health and Environmental Assessment. Cincinnati, OH, and Office of Emergency and Remedial Response and Office of Solid Waste and Emergency Response, Washington, D.C.

———. 1984. *Guidelines for Carcinogenic Risk Assessment*. FRL–2994–1. Washington, D.C.: Office of Health and Environmental Assessment.

———. 1985. *Health Assessment Document for Chloroform*. EPA/600/8–84/004F. Washington, DC.: Office of Health and Environmental Assessment.

———. 1985. *Health Advisory on Acrylamide*. (Draft). Washington, D.C.: Office of Drinking Water.

———. 1986. *Health Assessment Document for Nickel and Nickel Compounds Final Report*. EPA/600/8–83/012FF. Washington, DC.

———. 1987. Carcinogen Assessment Group Position Paper on Carcinogenicity of Styrene.

Eschenbrenner, A.B., and E. Miller. 1943. Liver necrosis and the induction of carbon tetrachloride hepatomas in strain A mice. *Journal of the National Cancer Institute* 8:325–341.

Fairhall, L.T. 1957. *Industrial Toxicology*. 2nd ed., p. 288. Baltimore, MD: Williams & Wilkins.

Fairhall, L.T. et al. 1943. The toxicity of lead azide. *Public Health Reports* 58:907–917.

Federal Security Agency. 1953. Health of Workers in Chromate Producing Industry—A Study. U.S. Public Health Service, Division of Occupational Health.

Feinstein, R.N., R.J. Fry, and E.F. Staffeld. 1978. *Journal of the National Cancer Institute* 60:1113–1118.

Feinstein, R.N., R.J. Fry, and E.F. Staffeld. 1978. *Journal of Environmental Pathology and Toxicology* 1:779–790.

Fiala, E.S., R. Czerniak, A. Castonguay, C.C. Conway, and A. Rivenson. 1987. Assay of 1-nitropropane, 2-nitropropane, 1-azoxypropane, and 2-azoxypropane for carcinogenicity by gavage in Sprague-Dawley rats. *Carcinogenesis* 8(12):1947–1949.

Fletcher, J.H., K.G. Nolan, and J.T. Cassaday. 1952. Decreased toxicity and cholinesterase inhibition in a new series of dithiophosphates. *Journal of Economic Entomology* 45:279–283.

Flury, F. and F. Zernik. 1931. *Schaedliche Gase*, 257–284. Berlin: J. Springer Verlag.

Gallagher, J.J. 1985. Cardiac arrhythmias. In: *Cecil Textbook of Medicine*. 17th edition. J.B. Wyngaarden and L.H. Smith, eds., p. 300. W.B. Saunders Company.

Gardner, L.U. 1942. *Annual Report of Saranac Laboratory for the Study of Tuberculosis*, 12. Saranac Lake, NY. As cited in ACGIH 1986, p. 526.

Gardner, L.U. 1938. Tech. Publ. No. 839. American Institute of Mining & Metallurgic Engineers. (as cited in ACGIH 1986, p. 527).

Gaultier, M., Rancurel, G., Piva, C., and M.L. Efthymioc. 1973. Polyneurites et hydrocarbures aliaphatiques. *Journal Europeen de Toxicologie* 6:284–298.

Gilman, J.P.W. 1962. Metal carcinogenesis: II. A study of the carcinogenic activity of cobalt, copper, iron, and nickel compounds. *Cancer Research* 22:158–162.

———. 1966. Muscle tumorigenesis. Pp. 209–223 in *Proceedings of the sixth Canadian cancer research conference, 1964*. Honey Harbour, Ontario. Pergamon Press. Oxford (as cited in EPA 1986).

Gobbato, F. and P.M. Terrible. 1966. Toxicological properties of mercaptans. *Folia Medica* 51:329–341.

Gordy, S.T., and M. Trumper. 1938. Carbon disulfide poisoning with a report of six cases. *Journal of the American Medical Association* 110:1543–1549.

Gottlieb, M.S., J.K. Carr, and D.T. Morris. 1981. Cancer and drinking water in Louisiana: colon and rectum. *International Journal of Epidemiology* 10(2):117–125.

Graham, J.D.P. 1949. Actions of sodium azide. *British Journal of Pharmacology* 4:1–6.

Graham, W.G.B., R.V. O'Grady, and B. Dubuc. 1981. Pulmonary function loss in Vermont granite workers: a long-term follow-up and reappraisal. *American Review of Respiratory Disease* 123:25–28.

Grandjean, P., O. Andersen, and G.D. Nielsen. 1988. Carcinogenicity of occupational nickel exposures: An evaluation of the epidemiological evidence. *American Journal of Industrial Medicine* 13:193–209.

Grant, W.M. 1986. *Toxicology of the Eye*. 3rd ed. Springfield, IL: Charles C. Thomas.

Gray, E. LeB., J.K. MacNamee, and S.B. Goldberg. 1952. Toxicity of NO_2 vapors at very low levels. *American Medical Association Archives of Industrial Hygiene and Occupational Medicine* 6:20–21.

Gray, E. LeB., S.B. Goldberg, and F.M. Patton. 1954. Toxicity of oxides of nitrogen. *American Medical Association Archives of Industrial Hygiene and Occupational Medicine* 10:423–425.

Griffin, T.B., K.F. Benitz, F. Coulston, and I. Rosenblum. 1978. Chronic inhalation toxicity of 2-nitropropane in rats. *Pharmacologist* 20(3):145.

Griffin, T.B., F. Coulston, and A.A. Stein. 1980. Chronic inhalation exposure of rats to vapors of 2-nitropropane at 25 ppm. *Ecotoxicology and Environmental Safety* 4:207–221.

Griffin, T.B., A.A. Stein, and F. Coulston. 1981. Histologic study of tissues and organs from rats exposed to vapors of 2-nitropropane at 25 ppm. *Ecotoxicology and Environmental Safety* 5:194–201.

Griswold, S., L.A. Chambers, and H.L. Motley. 1957. Report of a case of exposure to high ozone concentrations for two hours. *American Medical Association Archives of Industrial Health* 15:108–110.

Guyton, A.C. 1961. *Textbook of Medical Physiology*. 6th ed. Philadelphia: W.P. Saunders Company.

Haas, J.M. and W.W. Marsh. 1970. Sodium azide: a potential hazard when used to eliminate interferences in the iodometric determination of sulfur. *American Industrial Hygiene Association Journal* 31:318–321.

Hallenbeck, W.H. 1984. Human health effects of exposure to cadmium. *Experientia* 40:136–141.

Hammond, E.C., I.J. Selikoff, P.L. Lawther, and H. Seidman. 1976. Inhalation of benzpyrene and cancer in man. *Annals of N.Y. Academy of Sciences* 271:116–124.

Harding, H.E. and G.B. Oliver. 1949. Changes in the lungs produced by natural graphite. *British Journal of Industrial Medicine* 6:91–99.

Haro, R.T., A. Furst, and H.L. Falk. 1968. Studies on the acute toxicity of nickelocene. *Proceedings of the Western Pharmacology Society* 11:39–42.

Hart, E.R. 1947. The toxicity and analgetic potency of salicylamide and certain of its derivatives as compared with established analgetic-antipyretic drugs. *Journal of Pharmacology and Experimental Therapeutics* 89:205–209.

Haun, C.C. and E.R. Kinkead. 1977. Chronic inhalation toxicity of hydrazine. In: *Proceedings of the 4th Annual Conference on Environmental Toxicology*, Wright-Patterson AFB, OH. AMRL–TR–73–125 (NTIS AD 731–031). Springfield, VA: National Technical Information Service.

Hayes, W.J., Jr., A.M. Mattson, J.G. Short, and R.F. Witter. 1960. Safety of malathion dusting powder for louse control. *Bulletin of the World Health Organization* 22:503–514.

Hazelton Laboratory. 1983. Reports prepared for National Toxicology Program June 27, 1983 and July 8, 1983 (Acetonitrile). As cited in ACGIH 1986, p. 8.

Hazleton, L.W. and E.G. Holland. 1953. Toxicity of malathion: summary of mammalian investigations. *American Medical Association Archives of Industrial Hygiene and Occupational Medicine* 8:369.

Hendry, J.A., R.F. Homer, and F.L. Rose. 1951. Cytotoxic agents: II. Bis-epoxides and related compounds. *British Journal of Pharmacology*. 6:236–258.

Henschler, D., and Hoos, R. 1982. Metabolic activation and disactivation mechanisms of di-, tri-, and tetrachloroethylenes. *Biological Reactive Intermediates: II: Chemical Mechanisms and Biological Effects*. Snyder, R., Parke, D.V., Kocsis, J.J., Jollow, D.J.,

Gibson, G.G., and Witmer, C.M., eds. Plenum Press. New York.

Hine, C.H. 1969. Methyl bromide poisoning: A review of ten cases. *Journal of Occupational Medicine* 11:1–10.

Hine, C.H. and V.K. Rowe. 1963. *Industrial Hygiene and Toxicology*. 2nd ed. Vol. II, 1606–1610. New York: Interscience.

Hine, C.H., V.K. Rowe, E.R. White, K.I. Darmer, and G.T. Youngblood. 1961. Epoxy Compounds. Chapter 32 in *Patty's Industrial Hygiene and Toxicology, 3rd Revised Edition, Volume 2A*. G.D. Clayton and F.E. Clayton, eds. New York: John Wiley and Sons.

Hite, M., and H. Skaggs. 1979. Mutagenic evaluation of nitroparaffins in the Salmonella typhimurium/mammalian-microsome test and the micronucleus test. *Environmental Mutagenesis* 1(4):383–389.

Hodge, H.C., J.H. Sterner, E.A. Maynard, and J. Thomas. 1949. Short-term toxicity tests on the mono and di methyl ethers of hydroquinone. *Journal of Industrial Hygiene and Toxicology* 31:79–92.

Hogan, M.D., P. Chi, D.G. Hoel, and T.J. Mitchell. 1979. Association between chloroform levels in finished drinking water supplies and various site-specific cancer mortality rates. *Journal of Environmental Pathology and Toxicology* 2:873–887.

Holmberg, B., and M. Winell. 1977. Occupational health standards: An international comparison. *Scandinavian Journal of Work, Environment, and Health* 3:1–15.

Horiguchi, Y. 1973. *Journal of Japan Association of Rural Medicine* 22(3):294.

Hosey, A.D., H.B. Ashe, and V.M. Trasko. 1957. *Public Health Service Bulletin* No. 557. Washington, DC: USPHS. As cited in ACGIH 1986, p. 524.

Hueper, W.C., and W.W. Payne. 1960. Carcinogenic studies on petroleum asphalt, cooling oil, and coal tar. *Archives of Pathology* 70:372–382.

Industrial Biotest Laboratories. 1973. *Imitation Threshold Evaluation Study with Ammonia*. IBT 663–03161 (March 23, 1973).

Ingram, F.R. 1961. Methyl bromide fumigation and control in the date-packing industry. *American Medical Association Archives of Industrial Hygiene and Occupational Medicine* 4:193–198.

Innes, J.R.M., B.M. Uliand, M.G. Valerio, et al. 1969. Bioassay of pesticides and industrial chemicals for tumorigenicity in mice: A preliminary note. *Journal of the National Cancer Institute* 42(6):1101–1114.

Innocenti, A., A. Franzinelli, and E. Sartorelli. 1981. Studio longitudinale in lavoratori affeti da asma da resine poliuretaniche. *Medicina del Lavoro* 3:231, as cited in ACGIH 1986, p. 584.

Inoue, T., Y. Takeuchi, S. Takeuchi, et al. 1970. A health survey on vinyl sandal manufacturers with high incidence of "n-hexane" intoxication occurred. *Japanese Journal of Industrial Health* 12:73–84.

Integrated Risk Information System (IRIS). 1988. Office of Health and Environmental Assessment. Washington, D.C.: U.S. EPA.

International Agency for Research on Cancer (IARC). 1974. *Some aromatic amines, hydrazine and related substances, n-nitroso compounds and miscellaneous alkylating agents*. Vol. 4 of *IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man*. Lyon, France.

———. 1976. *Cadmium, Nickel, Some Epoxides, Miscellaneous Industrial Chemicals and General Considerations on Volatile Anesthetics*. Vol. 11 of *IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man*. Lyon, France.

———. 1979. *Vinyl Bromide. Some Monomer, Plastics, and Synthetic Elastomers, and Acrolein*. Vol. 19 of *IARC Monographs on the Evaluation of the Carcinogenic Risk in Man*. Lyon, France.

———. 1982. *IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans*. Supplement 4. World Health Organization. Lyon, France.

———. 1985. Bitumens, coal-tars and derived products, shale-oils and soots. Vol. 35 (Polynuclear aromatic compounds, Part 4) of IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans. Lyons, France.

Jacobsen, M. 1978. Dust exposure and pneumoconiosis at ten British coal mines. Paper presented at the ILO 5th International Conference on Pneumoconiosis, Caracas. (as cited in ACGIH, 1986, p. 142).

Jaffe, L.S. 1967. The biological effects of ozone on man and animals. *American Industrial Hygiene Association Journal*. 28:267–277.

Jenkins, L.J., R.A. Jones, R.A. Coon, and J. Siegel. 1970. Repeated and continuous exposures of laboratory animals to trichlorofluoromethane. *Toxicology and Applied Pharmacology* 16:133–142.

Johansson, A., T. Curstedt, B. Robertson, and P. Camner. 1983. Rabbit lung after inhalation of soluble nickel II. Effects on lung tissue and phospholipids. *Environmental Research* 31:399–412 (as cited in EPA 1986).

Johnson, B.L., J.V. Setzer, T.R. Lewis, and W.K. Anger. 1977. Effects of methyl n-butyl ketone on behavior and the nervous system. *American Industrial Hygiene Association Journal* 38:567–579.

Johnson, G.A., J.H. Fletcher, K.G. Nolan, and J.T. Cassaday. 1952. Decreased toxicity and cholinesterase inhibition in a new series of dithiophosphates. *Journal of Economic Entomology* 45:279–283.

Johnson, K.A., S.J. Gorzinsky, K.M. Bodner, R.A. Campbell, C.H. Wolf, M.A. Friedman, and R.W. Mast. 1986. Chronic toxicity and oncogenicity study on acrylamide incorporated in the drinking water of Fischer 344 rats. *Toxicology and Applied Pharmacology* 85:154–168.

Johnstone, R.T. 1948. *Occupational Medicine and Industrial Hygiene*, p. 157. St. Louis: C.V. Mosby Co.

Jorgenson, T.A., E.F. Meierhenry, C.J. Rushbrook et al. 1985. Carcinogenicity of chloroform in drinking water to male Osborne-Mendel rats and female B6C3F1 mice. *Fundamental and Applied Toxicology* 5:760–769.

Jukes, T.H., and C.B. Shaffer. 1960. Antithyroid effects of aminotriazole. *Science* 132:295–297.

Karol, M.H. 1983. Concentration-dependent immunologic response to toluene diisocyanate (TDI) following inhalation exposure. *Toxicology and Applied Pharmacology* 68:229–41.

Karol, M.H., C. Dixon, M. Brady, and Y. Alane. 1980. Immunologic sensitization and pulmonary hypersensitivity by repeated inhalation of aromatic isocyanates. *Toxicology and Applied Pharmacology* 53:280–70.

Kasprzak, K.S., P. Gabryel, and K. Jarczewska. 1983. Carcinogenicity of nickel (II) hydroxides and nickel (II) sulfate in Wistar rats and its relation to the in vitro dissolution rates. *Carcinogenesis* 4(3):275–279.

Kerfoot, E.J., W.G. Fredrick, and E. Domeier. 1975. Cobalt metal inhalation studies on miniature swine. *American Industrial Hygiene Association Journal* 36:17–25.

King, E.G., G.P. Mohanty, C.V. Harrison, and G. Nagelschmidt. 1953. The action of different forms of pure silica on the lungs of rats. *British Journal of Industrial Medicine* 10:9–17.

Kingsley, W.H., and F.C. Hirsch. 1954–55. *Compensation Medicine* 40:7.

Klaasen, C.D. 1986. Principles of toxicology. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons*. See Klaasen et al.

Klaasen, C.D., M.O. Amdur, and J. Doull, eds. 1986. *Casarett and Doull's Toxicology: The Basic Science of Poisons*. 3rd ed. New York: Macmillan Publishing Company.

Kleinfeld, M., and C.P. Giel. 1956. Clinical manifestations of ozone poisoning: Report of a new source of exposure. *American Journal of the Medical Sciences* 231:636–643.

Kleinfeld, M., and I.R. Tabershaw. 1955. Carbon disulfide poisoning: report of two cases. *Journal of the American Medical Association* 159:667–679.

Koopman, H. 1924. Beitrag zur Frage der Pneumokoniosen. *Virchows Archiv fuer Pathologische Anatomie und Physiologie* 253:423–431.

Kosmider, S., et al. 1972. Experimentelle und Klinische Untersuchungen uber amphysembildende Wirkung de Stickstoffoxyde. *Zentralblatt fuer Arbeitsmedizin und Arbeitsschutz* 22:362.

Kotin, P., and H.L. Falk. 1963. Organic peroxides, hydrogen peroxide, epoxides and neoplasia. *Radiation Research Supplement* 3:193–211.

Kozik, L. 1957. Untranslated Russian article. *Gigiena Truda I Professionalnye Zabolevaniia. (MOSKVA)* 1:32.

Kranenburg, W.R.H., and H. Kessener. 1935. *Zentralblatt fuer Gewerbehygiene Unfallverhuetung* 2:348; quoted in Public Health Reports Reprint No. 2258. Washington, DC: National Institutes of Health 1941).

Kuschner, M., and G.W. Wright. 1976. The Effects of Intratracheal Instillation of Glass Fiber of Varying Size in Guinea Pigs. In: *Occupational Exposure to Fibrous Glass—Proceedings of a Symposium*. HEW publication No. (NIOSH) 76–151.

Kutob, S.D., and G.L. Plaa. 1962. A procedure for estimating the hepatotoxic potential of certain industrial solvents. *Toxicology and Applied Pharmacology* 4:354–361.

LaBelle, C.W., R.G. Metcalf, G.M. Suter, and F.A. Smith. 1945. Studies of the toxicity

of oxygen fluoride at levels of exposure from 10 to 0.1 ppm by volume. University of Rochester Report M/1981, January 1945.

Lane, R.E., and A.C.P. Campbell. 1954. Fatal emphysema in two men making a copper cadmium alloy. *British Journal of Industrial Medicine* 11:118–122.

LaNier, M.E., ed. 1984. *Threshold Limit Values—Discussion and Thirty-five Year Index with Recommendations.* Annals of the American Conference of Governmental Industrial Hygienists. Vol. 9. Cincinnati, OH.

Leach, L.J., et al. 1961. Atomic Energy Commission Research and Development Report UR–500. University of Rochester.

Levy, R.I. 1985. Prevalence and epidemiology of cardiovascular disease. In: *Cecil Textbook of Medicine 17th edition,* J.B. Wyngaarden and L.H. Smith, eds., p. 300. W.B. Saunders Company.

Levy, L.S., P.A. Martin and P.L. Bidstrup. 1986. Investigation of the potential carcinogenicity of a range of chromium containing materials in rat lung. *British Journal of Industrial Medicine* 43:243–256.

Lewis, T.R., C.E. Ulrich, and W.M. Busey. 1979. Subchronic inhalation toxicity of nitromethene and 2-nitropropane. *Journal of Environmental Pathology and Toxicology* 2:233–249.

Lewtas, J. 1981. Comparison of the mutagenic and potentially carcinogenic activity of particle-bound organics from wood stoves, residential oil furnaces, and other combustion sources. *Proceedings of 1981 International Conference on Residential Solid Fuels.*

———. 1983. Combustion emissions: characterization and comparison of their mutagenic and carcinogenic activity. In: *Carcinogens and Mutagens in the Environment.* H.F. Stich, ed. Vol. 4. Boca Raton, FL: CRC Press.

Lofroth, G., L. Nilsson, and J.R. Anderson, Jr. 1981. The mutagenicity of nitroalkanes in the Ames/Salmonella/microsome assay. Paper presented at the 12th Annual Meeting of the Environmental Mutagen Society, March 5–8, San Diego, CA.

MacEwen, J.D., J. Theodore, and E.H. Vernot. 1970. Human exposure to EEL concentrations of monomethylhydrazine. In: *Proceedings of the 1st annual Conference on Environmental Toxicology.* Wright-Patterson Air Force Base, OH (September 9–11, 1970). AMRL–TR–70–102. Springfield, VA: National Technical Information Service.

MacEwen, J.D., E.H. Vernot, and C.C. Haun. 1971. *Effect of 90-Day Continuous Exposure to Methylisobutyl Ketone on Dogs, Monkeys, and Rats.* AD Rep. 155–730291. Springfield, VA: National Technical Information Service.

———. 1979. Chronic effects of inhalation exposure to hydrazine. *Proceedings of the 10th Annual Conference on Environmental Toxicology.* Wright-Patterson AFB, OH. 261–282. AFAMRL–TR–79–121. Springfield, VA: National Technical Information Service.

Magnus, K., A. Anderson, and A.C. Hogetvait. 1982. Cancer of the respiratory organs among workers at a nickel refinery in Norway. *International Journal of Cancer* 30:681–685.

Mancuso, T.F. 1970. Relation of duration of employment and prior respiratory illness to respiratory cancer among beryllium workers. *Environmental Research* 3(3):251–275.

Mancuso, T.F., and W.C. Hueper. 1951. Occupational cancer and other health hazards in a chromate plant: A medical appraisal 1. Lung cancers in chromate workers. *Industrial Medicine and Surgery* 20(7):358–363.

Mangold, C.A. 1971. Investigation of Occupational Exposure to Ammonia. Puget Sound Naval Shipyard (November 29, 1971).

Markham, T.N., and C.W. Fishburn. 1987. Ann Arbor case reports: sensitivity to toluene diisocyanate in an adhesive. *Journal of Occupational Medicine* 9:471–473.

Mastromatteo, E. 1985. Recent occupational health experiences in Ontario. *Journal of Occupational Medicine* 7:502–511.

Masure, R. 1950. *Revue Belgique Pathologique* 20:297; quoted in Carson, M.B. *Industrial Medicine and Surgery* 32:69 (1963).

Matsushita, T., A. Yoshimune, T. Inoue et al. 1969. Experimental studies for determining the maximal permissible concentrations of acetone. *Japanese Journal of Industrial Health* 11:477–485.

Mawhinney, W.C., and D.O. Rakow. 1968. Personal Communication from Pennsylvania Department of Health. As cited in ACGIH 1986, p. ——.

McCallister, R.G. 1954. Exposure to methanol from spirit duplicating machines. *American Industrial Hygiene Association Quarterly* 15:26–28.

McCord, C.P., S.F. Meek, and G.C. Harrold. 1943. *Industrial Medicine* 12:373.

McMichael, A.J., R. Spirta, J.F. Gamble, and P.M. Tousey. 1976. Mortality among rubber workers: relationship to specific jobs. *Journal of Occupational Medicine* 18:178–185 [as cited in EPA 1985].

Meinhardt, T.J., R.A. Lemen, M.S. Crandall, and R.J. Young. 1982. Environmental epidemiologic investigation of the styrene-butadiene rubber industry. Mortality patterns with discussion of the hematopoietic and lymphatic malignancies. *Scandinavian Journal of Work, Environment and Health* 8:250–259 (as cited in EPA 1985).

Menck, H.R., and B.E. Henderson. 1976. Occupational differences in rates of lung cancer. *Journal of Occupational Medicine* 18:797–801.

Mendenhall, R.M., and H.E. Stokinger. 1960. Unpublished.

Menzel, D.B., and M.O. Amdur. 1986. Toxic responses of the respiratory system. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons.* See Klaasen et al.

Mihail, J., D. Mihaila, D. Branisteanu et al. 1968. Manifestations cliniques, fonctionnelles et biochimiques des studes precoce dn sulfocarbonisme. *Archives des Malodies Professionnelles, de Medicine du Travail et de Securite Sociale* 29:109–120.

Milby, T.H., and C.R. Wolf. 1969. Respiratory tract irritation from fibrous glass inhalation. *Journal of Occupational Medicine* 11:409–410.

Milham, S., Jr. 1982. Occupational mortality in Washington state 1950–1979. No. 210–80–0068. Cincinnati, OH: NIOSH.

Miller, C.W., M.W. Davis, A. Goldman, and J.P. Wyatts. 1953. Pneumoconiosis in the tungsten-carbide tool industry. *Archives of Industrial Hygiene and Occupational Medicine* 8:453–453.

Miller, M.J., M.S. Miller, and C.A. McQueen. 1984. Lack of genotoxicity of acrylamide using the hepatocyte primary culture (HPC)/DNA repair test. Abstract 136. Presented at the 1984 meeting of the Society of Toxicology. *Toxicologist* 4(1):35.

Miller, M., and G. Temple. 1978. 2-NP mortality epidemiology study of the Sterlington, LA employees, 1–1–46 through 6–30–77. Report to the International Minerals and Chemical Corporation, Mundelein, IL (as cited in ACGIH 1986, p. 442).

Mintz, B.W. 1984. *OSHA: History, Law, and Policy.* Washington, D.C.: The Bureau of National Affairs, Inc.

Miyagaki, H. 1967. Electrophysiological studies on the peripheral neurotoxicity of n-hexane. *Japanese Journal of Industrial Health* 9:660.

Morikawa, Y., K. Muraki, Y. Ikoma et al. 1967. Organic nitrate poisoning at an explosives factory: plethysmographic study. *Archives of Industrial Health* 14:614–621.

Mueller, W.F., F. Coulson, and F. Korte. 1983. Comparative metabolism of 2-nitropropane in rats and chimpanzees. *Chemosphere* 12(2):231–237 (as cited in Santodonato, et al. 1985).

Nasr, A.N.M., T. Ditchek, and P.A. Scholtens. 1976. The prevalence of radiographic abnormalities in the chests of fiber glass workers. In: *Occupational Exposure to Fibrous Glass: Proceedings of a Symposium.* HEW Publication No. (NIOSH) 76–151. U.S. Department of HEW.

National Academy of Sciences, Division of Biology and Agriculture. 1959. *Handbook of Toxicology.* Vol. V. Philadelphia: W.B. Saunders Company.

National Cancer Institute (NCI). 1976a. *Report on Carcinogenesis Bioassay of Chloroform.* PB–264916. Springfield, VA: National Technical Information Service.

———. 1976b. *Carcinogenesis Bioassay of Trichloroethylene.* Carcinogenesis Technical Report Series No. 2. DHEW Publication No. (NIH) 76–802. Washington, DC.

———. 1977. *Bioassay of 1,1,1-Trichloroethane for Possible Carcinogenicity.* Carcinogenesis Technical Report Series No. 3. DHEW Publication No. (NIH) 77–803. Washington, DC.

———. 1978. NIOSH: Special Hazard Review of Ethylene Dichloride.

———. 1978. *Bioassay of Iodoform for Possible Carcinogenicity.* NCI Carcinogenesis Technical Report Series No. 110.

———. 1979. Technical Report Series No. 153. Washington, DC.

National Coal Board. 1969. Pneumoconiosis field research. United Kingdom.

National Institute for Occupational Safety and Health (NIOSH). 1972. *Criteria for a Recommended Standard . . . Occupational Exposure to Carbon Monoxide.* DHEW (HSM) Pub. No. 73–11000. Washington, DC.

———. 1972. *Criteria for a Recommended Standard . . . Occupational Exposure to Chromic Acid.* DHEW (HSM) Pub. No. 73–11021. Washington, DC.

———. 1973a. *Criteria for a Recommended Standard . . . Occupational Exposure to Trichloroethylene.* DHEW (HSM) Pub. No. 73–11025. Washington, DC.

———. 1974a. *Criteria for a Recommended Standard . . . Occupational Exposure to Ammonia.* DHEW (NIOSH) Pub. No. 74–136. Washington, DC.

———. 1974b. *Criteria for a Recommended Standard . . . Occupational Exposure to Sulfur Dioxide. Washington, DC.*

———. 1975. *Criteria for a Recommended Standard . . . Occupational Exposure to Chromium (VI).* DHEW (NIOSH) Pub. No. 76–129. Washington, DC.

———. 1976a. *Criteria for a Recommended Standard . . . Occupational Exposure to Chlorine.* DHEW (NIOSH) Pub. No. 76–170. Washington, DC.

———. 1976b. *Criteria for a Recommended Standard . . . Occupational Exposure to Ethylene Dichloride.* DHEW (NIOSH) Pub. No. 76–139. Washington, DC.

———. 1976c. *Criteria for a Recommended Standard . . . Occupational Exposure to Oxides of Nitrogen.* DHEW (NIOSH) Pub. No. 76–149. Washington, DC.

———. 1976d. *Criteria for a Recommended Standard . . . Occupational Exposure to Hydrogen Cyanide and Cyanide Salts.* DHEW (NIOSH) Pub. No. 77–108. Washington, DC.

———. 1977a. *Criteria for a Recommended Standard . . . Occupational Exposure to Alkanes.* DHEW (NIOSH) Pub. No. 77–151. Washington, DC.

———. 1977b. Criteria for a Recommended Standard . . . Occupational Exposure to Carbon Disulfide. DHEW (NIOSH) Pub. No. 77–156. Washington, DC.

———. 1977c. *Criteria for a Recommended Standard . . . Occupational Exposure to Chloroprene.* DHEW (NIOSH) Pub. No. 77–210. Washington, DC.

———. 1977d. *Criteria for a Recommended Standard . . . Occupational Exposure to Fibrous Glass.* DHEW (NIOSH) Pub. No. 77–152. Washington, DC.

———. 1977e. *Revised Recommended Carbon Tetrachloride Standard.* DHEW (NIOSH). Cincinnati, OH.

———. 1977f. *Revised Recommended Chloroform Standard.* DHEW (NIOSH). Cincinnati, OH.

———. 1977g. *Criteria for a Recommended Standard . . . Occupational Exposure to Inorganic Nickel.* DHEW (NIOSH) Pub. No. 77–164. Washington, DC.

———. 1978c. *Criteria for a Recommended Standard . . . Occupational Exposure to Hydrazines.* DHEW (NIOSH) Pub. No. 78–172. Washington, DC.

———. 1978d. *Criteria for a Recommended Standard . . . Occupational Exposure to Nitroglycerine and Ethylene Glycol Dinitrate.* DHEW (NIOSH) Pub. No. 78–167. Washington, DC.

———. 1978e. *Criteria for a Recommended Standard . . . Occupational Exposure to Glycidyl Ethers.* DHEW (NIOSH) Pub. No. 78–166. Washington, DC.

———. 1978f. *Criteria for a Recommended Standard . . . Occupational Exposure to Nitriles.* DHEW (NIOSH) Pub. No. 78–212. Washington, DC.

———. 1978g. *Criteria for a Recommended Standard . . . Occupational Exposure to Diisocyanates.* DHEW (NIOSH) Pub. No. 78–215. Washington, DC.

———. 1978h. Special Hazard Review of Ethylene Dichloride.

———. 1978i. Vinyl halides—carcinogenicity. Current Intelligence Bulletin. 28. U.S. DHEW. Washington, D.C.

———. 1979. *Criteria for a Recommended Standard . . . Occupational Exposure to Furfuryl Alcohol.* DHEW (NIOSH) Pub. No. 79–133. Washington, DC.

———. 1980. Health Hazard Alert—2-nitropropane. DHHS (NIOSH) Publication No. 80–142. Reprinted in *American Industrial Hygiene Association Journal* 41:A18–A24. (as cited in Santodonato et al. 1985).

National Research Council. 1977. *Drinking Water and Health.* Vol. 1. Washington, DC: National Academy of Sciences.

———. 1986. *Drinking Water and Health.* Vol. 6. Washington, DC. National Academy Press.

Nelson, K.W., J. F. Enge, Jr., M. Ross et al. 1943. Sensory response to certain industrial solvent vapors. *Journal of Industrial Hygiene and Toxicology* 25:282–285.

O'Brien, J.R. 1966. Effects of salicylates on human platelets. *Lancet* 1:779–783.

Occupational Safety and Health Administration (OSHA). 1980. Identification, classification, and regulation of potential occupational carcinogens. *Federal Register* 45(15):5001–5296.

Office of Science and Technology Policy. 1985. Chemical carcinogens; A review of the science and its associated principles. *50* FR 10371, March 14, 1985.

Oglesby, F.L., J.E. Williams, D.W. Fassett et al. 1949. Unpublished paper presented at Industrial Health Conference, Detroit. As cited in *Documentation of the Threshold Limit Values.* ACGIH. 3rd. ed., 1971.

Ottowicz, J., and Z. Paradowski. 1961. Badania aktywnoeki Fibrogenne; przemyslowego pylo grafitowego. *Postepy. Hig. Med. Dosw.* 15:341–351.

Pagnotto, L.D. 1973. Private communication. As cited in ACGIH 1986, p. 585.

Parkes, W.R. 1982. *Occupational Lung Disorders.* 2nd ed., 179. London: Butterworths.

Parmeggiani, L. 1983. Exposure limits. In: *Encyclopedia of Occupational Health and Safety.* Vol. 1. Parmeggiani, L., ed. Geneva: International Labour Organisation.

Parmeggiani, L., and C. Sassi. 1954. Sui danni per la salute provocati dall 'acido acetico nella produzione degli acetati di cellulosa. *Medicina del Lavoro* 45:316–323.

Patty, F.A., and W.P. Yan. 1929. U.S. Bureau of Mines Report, Investigation No. 2979.

Paull, J.M. 1984. The origin and basis of threshold limit values. *American Journal of Industrial Medicine* 5:227–238.

Payne, W.W. 1964. Carcinogenicity of nickel compounds in experimental animals. Proceedings of the American Association for Cancer Research 5(1):50.

Penalva, J.M., J. Chalabreysse, M. Archimboud, and G. Bourgineau. 1963. Determining the mutagenic activity of a tar, its vapors and aerosols. *Mutation Research* 117:93–104 (As cited in IARC 1985).

Pendergrass, E.P., A.J. Vorwald, M. Mishkin, et al. 1967. Observations on workers in the graphite industry. *Medical Radiography and Photography* 43:69–99.

Permanent Commission & International Association on Occupational Health: Subcommittee for MAC Values. Mercury Compounds. 1968. Report of International Committee, Stockholm.

Petersdorf, R.G., et al., eds. 1983. *Harrison's Principles of Internal Medicine.* 10th ed., Vols. 1 and 2. New York: McGraw-Hill Book Company.

Plan, G. 1986. Toxic responses of the liver. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons.* See Klaasen et al.

Poda, G.A. 1966. Hydrogen sulfide can be handled safely. *Archives of Environmental Health* 12:795–800.

Pott, F., and K.H. Friedrichs. 1972. Tumoren der Ratte nach i.p.-Injektion faser formiger Staube. *Naturwissenschaften* 59:318.

Potts, A.M. 1986. Toxic responses of the eye. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons.* See Klaasen et al.

Pozzani, U.C., and C.P. Carpenter. 1951. Response of rodents to repeated inhalation of vapors of tetraethyl orthosilicate. *American Medical Association Archives of Industrial Hygiene and Occupational Medicine* 4:465–468.

Pozzani, U.C., C.P. Carpenter, P.E. Palm et al. 1959. An investigation of the mammalian toxicity of acetonitrile. *Journal of Occupational Medicine* 1:634–642.

Rankin, J., and G.A. do Pico. 1980. Study of the prevalence of chronic, nonspecific lung disease. NIOSH Contract No. 210-78-0175.

Ray, S.C., E.J. King, and C.V. Harrison. 1951. The action of variable amounts of quartz on the lungs of rats. *British Journal of Industrial Medicine* 8:62–67.

Reinhardt, C.F., A. Azar, M.E. Maxfield, P.E. Smith, and L.S. Mullin. 1971. Cardiac arrhythmias and aerosol "sniffing." *Archives of Environmental Health* 22:265–279.

Reinhardt, C.F., L.S. Mullin, and M.E. Maxfield. 1973. Epinephrine-induced cardiac arrhythmia potential of some common industrial solvents. *Journal of Occupational Medicine* 15:953–955.

Rider, J.A., H.C. Mueller, J. Swader, et al. 1959. Pharmacology and Therapeutics: A study of the anticholinesterase properties of EPN and malathion in human volunteers. *Clinical Research* 1:81.

Rigaut, J.P. 1983. Prepatory Report on the health criteria for nickel. Luxembourg: Commission of the European Community Directorate General (as cited in EPA 1986).

Roe, F.J.C., A.K. Palmer, and A.N. Worden. 1979. Safety evaluation of toothpaste containing chloroform: I. Long-term studies in mice. *Journal of Environmental Pathology and Toxicology* 2:799–819.

Roper, C.P., and J.W. Cromer. 1975. *Health Hazard Evaluation Determination Report.* General Tire and Rubber Company, Marion, IN. HEW, PHS, CDC, NIOSH. Pub. No. 74–118–218.

Russell, A.E., et al. 1928. *The Health of Workers in Dusty Trades: II. Exposure to Siliceous Dust in the Granite Industry.* Public Health Bulletin No. 187. Washington, DC: USPHS.

Santodonato, J., S. Bosch, W. Meylan, J. Becker, and M. Neal. 1985. Monograph on human exposure to chemicals in the workplace: asphalt. SRC–TR–85–166. Syracuse Research Corporation. Center for Chemical Hazard Assessment. Syracuse, N.Y.

Sax, N.I. 1984. *Dangerous Properties of Industrial Materials.* 6th ed. New York: Van Nostrand Reinhold Co.

Schaumburg, H.H., P.S. Spencer, and P.K. Thomas. 1983. *Disorders of Peripheral Nerves.* Philadelphia: F.A. Davis Company.

Schmidt, P. 1972. *Internationales Archiv fuer Arbeitsmedizin* 30:283.

Seppalainen, A.M., and M. Tolonen. 1974. Neurotoxicity of long-term exposure to carbon disulfide in the viscose rayon industry: a neurophysiological study. Abstract. *Toxicology* 60:1844.

Shiraishi, Y. 1978. Chromosome aberrations induced by monomeric acrylamide in bone marrow and germ cells of mice. *Mutation Research* 57:313–323.

Silverman, L., H.F. Schulte, and M.W. First. 1948. Further studies on sensory response to certain industrial solvent vapors. *Journal of Industrial Hygiene and Toxicology* 28:262–266.

Simler, M., M. Maurer, and J.C. Mandard. 1964. Cancer du foie sur cirrhose au tetrachlorure de carbone. *Strasbourg Medical* 15:910–916.

Simmers, M.H. 1965. Cancers in mice from asphalt fractions. *Industrial Medicine and Surgery,* pp. 573–577.

———. 1966. Tumors from asphalt fractions injected into mice. *Industrial Medicine and Surgery,* pp. 680–684.

Smith, T.J., J.M. Peters. 1986. Longitudinal evaluation of pulmonary function in copper smelter worker's exposure to sulfur dioxide. Letter to the editor. *American Review of Respiratory Disease* 134(b):1332.

Smith, M.K., H. Zelnick, B.L. Genge, and R.A. Leeg. 1985. Dominant lethal effects of subchronic acrylamide administration in the male Long-Evans rat. EPA Health Effects Research Laboratory, Cincinnati, OH. Submitted for publication. Cited in EPA (1985).

Speck, N.T., L.W. Meyer, E. Zaiger, and H.S. Rosenkranz. 1982. Mutagenicity and DNA-modifying activity of 2-nitropropane. *Mutagenesis Research* 104(1–3):49–54 (As cited in Santodonato et al. 1985).

Stanton, M.F., and C. Wrench. 1972. Mechanisms of mesothelioma induction with asbestos and fibrous glass. *Journal of the National Cancer Institute* 48:797–821.

Steinhoff, D., H. Weber, U. Mohr, and K. Boehme. 1983. Evaluation of amitrole (Aminotriazole) for potential carcinogenicity in orally dosed rats, mice and golden hamsters. *Toxicology and Applied Pharmacology* 69:181–189.

Stokinger, H.E. 1956. Prepared discussion. *American Industrial Hygiene Association Quarterly* 17:294–298.

———. 1957. Evaluation of the hazards of ozone and oxides of nitrogen. *American Medical Association Archives of Industrial Health* 15:181–190.

———. 1962. Threshold limits and maximal acceptable concentrations: their definition and interpretation, 1961. *Industrial Hygiene Journal* 23(1):45–47.

Stokinger, H.E., W.D. Wagner, and O.J. Dobrogonski. 1957. Ozone toxicity studies: III. Chronic injury to lungs of animals following exposure at a low level. *American Medical Association Archives of Industrial Health* 16:514–522.

Stombaugh, D.P., H.S. Teague, and W.L. Rollac. 1969. Effects of atmospheric ammonia on the pig. *Journal of Animal Science* 28:844–847.

Stonec, G.D., M.B. Shimkin, M.C. Troxell et al. 1976. Test for carcinogenicity of metallic compounds by the pulmonary tumor response in strain A mice. *Cancer Research* 36:1744–1747.

Stopford, W. et al. 1978. *American Industrial Hygiene Association Journal* 39:378.

Stoppa, G.J., and M. McLaughlin. 1967. Psychophysiological testing of human subjects exposed to solvent vapors. *American Industrial Hygiene Association Journal* 28:48–50.

Sub-committee on Threshold Limits. 1948. Report. In: *Threshold Limit Values—Discussion and Thirty-five Year Index with Recommendations.* Annals of the American Conference of Governmental Industrial Hygienists. Vol. 9. Cincinnati, OH.

Swann, H.E., B.K. Kwon, G.K. Hogan. 1974. Acute inhalation toxicology of volatile hydrocarbons. *American Industrial Hygiene Association Journal* 35:511–518.

Takeuchi, Y., C. Maluchi, and S. Takagi. 1975. *Internationales Archiv fuer Arbeitsmedizin* 35:185.

Thayer, P.S., K.T. Menzies, and P.C. von Thuna. 1961. Roofing asphalts, pitch, and UVL carcinogenesis. National Institute for Occupational Safety and Health (NIOSH). PB–83–134767. Cincinnati, OH.

Theriault, G.P., and W.A. Burgess. 1974. Dust exposure in the Vermont granite sheds. *Archives of Environmental Health* 28:12–17.

Theriault, G.P., J.M. Peters, and L.J. Fine. 1974. Pulmonary function in granite shed workers of Vermont. *Archives of Environmental Health* 29:16–22.

Theriault, G.P., J.M. Peters, and W.M. Johnson. 1974. Pulmonary function and roentgenographic changes in granite dust exposure. *Archives of Environmental Health* 28:23–27.

Thermal Insulation Manufacturers Association. Summary of Meeting of Fiber Glass and Mineral Wool, January 26–27, London, England, 1988.

Thomas, H.F. 1979. Some observations on occupational hygiene standards. *Annals of Occupational Hygiene* 22:369–387.

Tiller, J.R., R.S.F. Schilling, and J.N. Morris. 1968. Occupational toxic factor in mortality from coronary heart disease. *British Medical Journal* 4:407–411.

Tolonen, M., et al. 1975. A follow-up study of coronary heart disease in viscose rayon workers exposed to carbon disulfide. *British Journal of Industrial Medicine* 32:1–10.

Tolonen, M., M. Nurminen, and S. Hernberg. 1979. Ten-year coronary mortality of workers exposed to carbon disulfide. *Scandinavian Journal of Work, Environment and Health* 5:109–114.

Torkelson, T.R., et al. 1974. 1,4-Dioxane: II. Results of a 2-year inhalation study in rats. *Toxicology and Applied Pharmacology* 30:287–298.

Torkelson, T.R., and V.K. Rowe. 1981. *Patty's Industrial Hygiene and Toxicology.* 3rd. ed. Vol. 2B, 3479–3490. New York: John Wiley and Sons.

Toyama, T., and H.L. Sakurai. 1967. Ten-year changes in exposure level and manifestations in carbon disulfide workers. In: *Toxicology of Carbon Disulfide.* H. Brieger and J. Teisinger, eds., p. 197. Amsterdam: Excerpta Medical Foundation.

Trainor, D.C., and R.C. Jones. 1966. Headaches in explosive magazine workers. *Archives of Environmental Health* 12:231–234.

Tracy, J.P., and G.L. Sherlock. 1968. Hepatoma following carbon tetrachloride poisoning. *New York Journal of Medicine* 68:2202–2204.

Turchi, G., S. Bonatti, L. Citti et al. 1981. Alkylating properties and genetic activity of 4-vinylcyclohexene metabolites and structurally related epoxides. *Mutation Research* 89:429–436.

Turner, D. 1976. The development of hygiene standards. *Annals of Occupational Hygiene* 19:147–152.

Turrian, H., E. Grandjean, V. Turrien. 1956. *Schweizerische Medizinische Wochenschrift* 86:109.

Ubel, F.A., S.D. Sorenson, and D.E. Roach. 1980. Health status of plant workers exposed to fluorochemicals—a preliminary report. *American Industrial Hygiene Association Journal* 41:584–589.

United States Department of Health, Education, and Welfare. 1979. *Smoking and Health: A Report of the Surgeon General.* DHEW Publication No. 79–50066.

Van Duuren, B.L. 1977. Chemical structure, reactivity, and carcinogenicity of haloalkylcarcinogens. *Environmental Health Perspectives* 21:17–29.

Van Duuren, B.L., Nelson, N., Orris, L., Palmes, E.D., and Schmitt, F.L. 1963. Carcinogenicity of epoxides, lactones and peroxy compounds. *Journal National Cancer Institute* 31:41–55.

Vigdortschik, N.A., E.C. Ancheeva, I.Z. Matussovitsch et al. 1937. The symptomatology of chronic poisoning with oxides of nitrogen. *Journal of Industrial Hygiene and Toxicology* 19:469–473.

Vigliani, E.C. 1954. Carbon disulfide poisoning in viscose rayon factories. *British Journal of Industrial Medicine* 11:235–244.

Vigliani, E.C., and N. Zurlo. 1955. Erfahrungen der Clinica del Lavoro mit einigen maximalen Arbeitsplatz Konzentrationen (MAK) von industriegiften. *Archiv fuer Gewerbepthologie und Gewerbehygiene* 13:528–534.

———. 1958. Experiences of the Clinica del Lavoro with maximum allowable concentrations of industrial poisons. (Abstract). *American Medical Association Archives of Industrial Health* 13:403–404.

Wade, H.A., H.B. Elkins, and B.P.W. Ruotolo. 1950. Composition of nitrous fumes from industrial processes. *Archives of Industrial Hygiene and Occupational Medicine* 1:21–28.

Wagner, J.C., G. Berry, and V. Timbrell. 1973. Mesotheliomata in rats after inoculation with asbestos and other materials. *British Journal of Cancer* 28:173–185.

Wagner, W.D., D.A. Fraser, P.G. Wright et al. 1969. Experimental evaluation of the threshold limit of cristobalite—calcined diatomaceous earth. *American Industrial Hygiene Association Journal* 29:211–221.

Wagner, W.D., B.R. Duncan, P.G. Wright, and H.E. Stokinger. 1965. Experimental study of threshold limit of NO_2. *Archives of Environmental Health* 10:455–466.

Wagner, W.D., G.E. Madden, C.W. Zimber, and H.E. Stokinger. 1974. Cincinnati, OH: Toxicology Branch, NIOSH.

Wallcave, L., H. Garcia, R. Feldmen et al. 1971. Skin tumorigenesis in mice by petroleum asphalts and coal-tar pitches of known polynuclear aromatic hydrocarbon content. *Toxicology and Applied Pharmacology* 18:41–52.

Warot, P., P. Colleau, and S. Meignie. 1964. Quinze observations d'intoxication chronique par le sulfure de carbone. *Archives des Maladies Professionnelles de Medecine du Travail et de Securite Sociale* 25:348–350.

Watrous, R.M. 1942. Methyl bromide—Local and mild systemic toxic effects. *Industrial Medicine* 11:575–579.

Wegman, D.H., A.W. Musk, D.M. Main, and L.D. Pagnotto. 1982. Accelerated loss of FEV–1 in polyurethane production workers: A four-year prospective study. *American Journal of Industrial Medicine* 3:209.

Wegman, D.H., L.D. Pagnotto, L.J. Fine, and J.M. Peters. 1974. A dose-response relationship in TDI workers. *Journal of Occupational Medicine* 16:258–260.

Wegman, D.H., J.M. Peters, L. Pagnotto, and L.J. Fine. 1977. Chronic pulmonary function loss from exposure to toluene diisocyanate. *British Journal of Industrial Medicine* 34:196–200.

Weil, C.S., M. Condra, C. Haun, and J.A. Streigel. 1963. Experimental carcinogenicity and acute toxicity of representative epoxides. *American Industrial Hygiene Association Journal* 24:305–325.

Weill, H., B. Butcher, V. Dharmarajan, et al. 1981. Toluene diisocyanate. NIOSH Contract No. 210–75–0006.

Weisberger, E.K., A.B. Russfield, J.H. Weisberger, et al. 1976. Testing of twenty-one environmental aromatic amines or derivatives for long-term toxicity or carcinogenicity. *Journal Environmental Pathology and Toxicology* 2:325–356.

Willhite, C.C. 1983. Developmental toxicology of acetonitrile in the Syrian golden hamster. *Teratology* 27:313–325.

Williams, G.M., and J.H. Weisburger. 1986. Chemical carcinogens. In: *Casarett and Doull's Toxicology: The Basic Science of Poisons.* See Klaasen et al.

Williams, N., A. Skoulas, and J.E. Merriman. 1964. Exposure to grain dust: I. A survey of the effects. *Journal of Occupational Medicine* 6:319–329.

Williamson, K.S. 1964. *Transactions of the Association of Industrial Medical Officers.* 14:81. As cited in ACGIH 1986, p. 584.

Williamson, K.S. 1965. *Transactions of the Association of Industrial Medical Officers.* 15:29. As cited in ACGIH 1986, p. 584.

Yamada, S. 1967. *Japanese Journal of Industrial Health* 9:651.

Yamamura, Y. 1969. n-Hexane polyneuropathy. *Folia Psychiatrica et Neurologica Japonica* 23:45–57.

Young, T.B., M.S. Kanarek, and A.A. Tsiatis. 1981. Epidemiologic study of drinking water chlorination and Wisconsin female cancer mortality. *Journal of the National Cancer Institute* 67(6):1191–1198.

V. Summary of Preliminary Feasibility, Regulatory Impact, Regulatory Flexibility and Environmental Impact Analyses

The OSHA Act requires the Agency to consider the feasibility of proposed standards. Executive Order 12291 (46 FR 13197) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires OSHA to consider the impact of the proposed regulation on small entities. Consistent with these requirements, OSHA has prepared a Feasibility Analysis, and a Preliminary Regulatory Impact and Regulatory Flexibility Analysis for this proposed rule. Details supporting this Summary are included in Appendix B of this proposal. Not all of the Supplements to Appendix B are published in this proposal. They are, however, available from OSHA. Instructions on how to obtain the Supplements are given at the end of Appendix B.

Approach

Because this rulemaking involves about 430 chemicals, OSHA has prepared the regulatory impact analysis in two phases. Phase I involved the use of a number of secondary data bases to collect information on the chemicals to be regulated and the industries in which they are used. These data bases provided information on the toxicity and health effects of exposure to the chemicals, and current information on engineering controls in use and emergency response procedures. Two data bases provided information on employee exposures. The 1982 National Occupational Exposure Survey (NOES) was based on a sample of about 4,500 businesses. The data base developed from this survey contains an estimate of the number of persons occupationally exposed to hazardous substances by Standard Industrial Classification (SIC). The second data base was OSHA's Integrated Management Information System (IMIS). The IMIS contains the results of air samples taken since 1979 by OSHA industrial hygienists in the course of compliance inspections. Both the NOES and IMIS data bases provided valuable information on the nature and extent of employee exposures to the substances to be regulated; however, they did not provide complete information on all substances. Supplementary information was obtained from industrial hygienists and engineers. These experts identified exposure controls in use, and the number and size of plants most likely to be affected by this rulemaking. These sources have provided OSHA with a substantial body of information on chemical use, exposures and controls.

Phase II of the data collection effort involved a sampling survey of over 5,300 firms in industries where chemical exposures were believed to pose potential problems. The survey, conducted during the first part of 1988, gathered data on chemicals, processes, exposures and controls currently in use. These additional data have permitted OSHA to refine the Phase I preliminary estimates of technical and economic feasibility. In addition, site visits to over 100 plants are underway to verify the data collected to date on chemicals, processes, controls and employee exposures. The reports covering these site visits will be submitted to the docket prior to the completion of the public hearing in this rulemaking.

Employee Exposure and Benefits

Revising OSHA's Z-Table limits for hazardous substances is expected to result in reduced risk of chemically related disease among exposed employees. Exposure to substances included in the rulemaking has been associated with a variety of adverse health effects, including impairment of organ system functions, mucous membrane irritation, neuropathy, narcosis, allergic sensitization, respiratory disease, cardiovascular disease, and cancer.

Using data from OSHA's IMIS system and information collected from the survey of over 5,300 establishments, OSHA estimates over 17 million employees are potentially exposed to hazardous substances in the workplace. OSHA also estimates that over 3.6 million employees are currently exposed above the proposed exposure limits for these substances. Table V–1 summarizes OSHA's estimates of the number of workers currently at risk of adverse health effects. OSHA estimates that promulgation of the proposed exposure limits will result in a potential reduction of over 55,000 work-related illness cases per year, over 23,600 lost-workday illness cases per year, and over 533,000 lost workdays due to illness per year. OSHA's preliminary estimate is that industry compliance with the proposed exposure limits will result in a reduction of 519 fatalities caused by exposure to substances that cause cancer, respiratory disease, cardiovascular disease, or liver or kidney disease per year.

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TABLE V-1

ESTIMATED NUMBER OF WORKERS POTENTIALLY AT RISK OF EXPERIENCING ADVERSE EFFECTS, BY TYPE OF ADVERSE EFFECT*

ADVERSE HEALTH EFFECT	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MINIMUM ESTIMATE	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MAXIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE PROPOSED LIMITS FOR SUBSTANCES, MINIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE PROPOSED LIMITS FOR SUBSTANCES, MAXIMUM ESTIMATE
NUISANCE EFFECTS	4,729,417	5,804,846	829,487	892,725
ODOR AND TASTE EFFECTS	718,522	808,537	59,102	59,102
SYSTEMIC TOXICITY	3,233,319	3,818,742	250,282	256,909
MUCOUS MEMBRANE IRRITATION	12,077,315	15,813,663	59,969	1,021,197
METABOLIC INTERFERENCES	2,277,113	2,345,975	746,879	746,879
LIVER/KIDNEY DISEASE	2,321,573	2,488,604	383,581	384,076
OCULAR DISTURBANCES	194	194	0	0
RESPIRATORY DISEASE	3,765,717	4,023,525	639,717	654,319
CARDIOVASCULAR DISEASE	164,576	164,576	44,355	44,355
NEUROPATHY	1,231,744	1,349,421	201,760	210,203
NARCOSIS	4,601,993	6,301,099	526,021	547,731
CANCER	3,663,053	3,784,374	499,716	499,716
ALLERGIC SENSITIZATION	2,710,576	2,903,153	296,444	297,255

*Double counting of employees simultaneously exposed to more than one substance in different adverse health effects categories, prevents the summation of workers exposed to all adverse health effects in this table.

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Nonregulatory Alternatives

OSHA believes that there are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with exposure to the chemicals under consideration. OSHA believes that the tort liability laws and Workers' Compensation do not provide adequate worker protection due to market imperfections. Some employers have not complied with the standards recommended by professional organizations. The deleterious health effects resulting from continued high levels of exposure to hazardous substances require a regulatory solution.

Technological Feasibility

Consistent with OSHA regulations and policy, engineering controls and work practices to control employee exposure are preferred over the use of personal protective equipment.

Engineering controls involve the use of local exhaust ventilation, general ventilation, isolation of the worker and enclosure of the source of emissions, process modifications, equipment modifications, and substitution of non-hazardous chemicals. These methods may be used alone or in combination depending upon the industrial processes involved. These controls are widely used and will effectively control exposures either by themselves, or coupled with changes in work practices.

Perhaps the most widely used technique for controlling chemical exposure is the use of ventilation. General ventilation uses the movement of air within the general work space to displace or dilute the contaminant with fresh outside air. General ventilation may not be the preferred control method, however, due to the large volumes of air movement required. Local exhaust ventilation uses much smaller volumes of air, exhausted from the point or source at which contaminants are generated.

Isolation involves placing a physical barrier between the hazardous operation and the worker. Many modern, automated manufacturing processes are now fully enclosed in ventilated cabinets. The effectiveness of such a control technique depends on the frequency with which the workers have to enter the enclosure during normal operations. In other situations, rather than placing the process or machine in an enclosure, the worker is placed in an enclosure. Many processes which involve potential chemical exposures are operated remotely by operators in air-conditioned booths isolated from the hazardous materials.

Substitution refers to the replacement of a toxic chemical in a particular process or work area with another, less toxic product. Properly applied, substitution can be a very effective control technique. However, care must be taken to ensure that the proposed substitute performs in a similar manner to the product being replaced. In addition, it is essential that the substitute be carefully evaluated to ensure that in controlling one hazard, another different hazard is not inadvertently introduced. The substitute must also be compatible with existing manufacturing equipment and processes.

The success of these techniques will depend on the physical properties of the chemicals and emissions encountered (boiling point, vapor pressure, etc.) and the process operating conditions. In some cases, particularly with cleaning solvents, substitution may provide the quickest and most effective means of reducing exposure. In other situations, a major effort may be required to alter processes or install or expand local or general dilution ventilation.

OSHA believes that existing engineering controls are available to reduce exposure levels to the new proposed levels. Standard controls have been adapted in numerous situations to solve situation-specific problems in all of the industry sectors affected. Detailed industry-specific illustrations of this point are presented in the Technological Feasibility Chapter of the Preliminary Regulatory Impact Analysis.

Costs of Compliance

Costs of compliance with the proposed rulemaking would result from industry actions to lower workers' chemical exposure to the levels proposed. The 1988 sample survey of more than 5,300 firms was drawn from a universe of over one million firms potentially affected by the rule. Table V-5 at the end of this section presents a list of industries included in the analysis.

Survey respondents verified the number of work stations and workers related to each process, the process location and configuration, the controls already in place, and potential chemical exposures above new proposed levels. Process controls in place were compared to a list of control designs needed to limit exposures to new lower levels. Where the required controls were not reported to be in place, a compliance cost per work station was assigned. Process control costs were summed per establishment and certain maintenance workers were assigned a respirator cost. Costs for the surveyed establishments were then weighted (by SIC and size) to represent compliance costs for the universe of affected plants.

The survey found that about 500,000 establishments use the chemicals being regulated. Of this number, about 101,200 would incur some costs to comply with the proposed rule. The total estimated annualized capital plus annual operating costs are $927.83 million. Table V-2 presents the annual cost by industry sector, for large and small (fewer than 20 employees) plants.

Among all industry sectors affected by this proposal, about 101,200 establishments are estimated to incur, on average, an annual cost of $9,200.

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TABLE V-2

ANNUAL OPERATING AND ANNUALIZED CAPITAL COST OF COMPLIANCE BY INDUSTRIAL SECTOR (a)

SIC (b)	SIC DESCRIPTION	LARGE PLANTS	SMALL PLANTS	ANNUAL COST
20	FOOD PROD. (c)	$21,704,100	$11,789,000	$33,493,100
21	TOBACCO (c)	$19,700	$0	$19,700
22	TEXT. MILL (c)	$23,308,400	$6,170,000	$29,478,400
23	APPAREL PROD. (c)	$23,604,300	$8,139,900	$31,744,200
24	LUMBER & WOOD	$20,534,800	$175,551,300	$196,086,100
25	FURNITURE	$7,915,300	$6,805,300	$14,720,600
26	PAPER PROD.	$30,966,900	$290,800	$31,257,700
27	PRINTING & PUB.	$15,263,300	$60,425,000	$75,688,300
28	CHEMICAL PROD.	$31,745,500	$8,412,100	$40,157,600
29	PETRO. REFINING	$6,800,700	$414,600	$7,215,300
30	RUBBER & PLASTICS	$53,256,200	$22,225,900	$75,682,100
31	LEATHER PROD.	$1,464,400	$1,115,100 (c)	$2,579,500
32	STONE & CLAY	$15,079,300	$7,463,300	$22,542,600
33	PRIM. METAL	$34,721,200	$5,612,400	$40,333,600
34	FAB. METALS	$50,927,100	$5,010,500	$55,937,600
35	MACHINERY	$43,986,300	$13,754,100	$57,740,400
36	ELEC. MACH.	$24,210,900	$7,570,500	$31,781,400
37	TRANS. EQUIP.	$20,884,600	$26,214,500 (c)	$47,099,100
38	INSTRUMENTS	$10,257,300	$3,207,400	$13,464,700
39	MISC. MANUF.	$13,861,200	$4,334,300	$18,195,500
40	R.R. TRANS.	$532,200	$0	$532,200
45	AIR TRANS.	$1,828,900	$0	$1,828,900
47	TRANS. SERV.	$1,853,100	$0	$1,853,100
49	ELEC. GAS. SAN.	$19,373,900	$3,314,500	$22,688,400
50	WHOLESALE TRADE	$1,416,300	$2,638,300	$4,054,600
51	WHOLESALE, NON-DUR	$3,094,200	$5,764,000	$8,858,200
55	AUTO DEALERS (c)	$9,862,500	$2,092,200	$11,954,700
72	PERSONAL SRV. (c)	$15,648,500	$15,639,300	$31,287,800
73	BUSINESS SRV. (c)	$3,701,700	$5,252,100	$8,953,800
75	AUTO REPAIR (c)	$466,800	$1,044,100	$1,510,900
76	MISC. REPAIR SRV.	$669,500	$4,179,000	$4,848,500
80	HEALTH SERV. (c)	$2,413,000	$2,026,400	$4,439,400
TOTAL		$511,372,100	$416,455,900	$927,828,000

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

(a) Costs were calculated by annualizing the capital cost over the projected life of the equipment (10 years) using a 10 percent cost of capital and adding an annual operating and maintenance cost estimated at 10 percent of the capital cost.

(b) Industry sectors not identified in this table include industries with no major cost impact expected, the construction industry, which will be the subject of a separate regulatory analysis, and industries such as mining, over which OSHA has no jurisdiction.

(c) Costs in these sectors were based on expert judgement and secondary data collection. Survey data for SICs 55, 72, 73, 75 and 80 was insufficient to estimate compliance costs.

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Economic Impact

OSHA prepared two estimates of the economic effects of the proposal on potentially affected firms. The two estimates were based upon Zero Cost-Passthrough ("worst case") and Total Cost-Passthrough ("best case") scenarios.

In the first scenario it was assumed that all compliance costs would be absorbed by firms in the form of reduced profits. Table V-3 contains a summary of this "worst case" analysis. Under this scenario, the estimated average percent reduction in profits for all affected firms was less than one percent. The estimated reduction in profit of 8 percent for SIC 24, Lumber and Wood Products Manufacturers, was the highest among all industries.

In the second scenario it was assumed that all compliance costs would be passed on to the consumer in the form of higher prices. The potential price increase for an industry sector at the two-digit SIC level was estimated by dividing the sector's compliance cost by its total sales. In this scenario, there would be little impact on market prices; none of the estimated price increases exceeded one half of one percent (Table V-4).

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Table V-3

ECONOMIC EFFECTS: NO-COST PASSTHROUGH SCENARIO[1]

SIC	Industry	Annual Costs[2] ($ millions)	Total Sales[3] ($ millions)	R.O.R. on Sales (%)[4]	Pre-Reg Profits ($ m)	Post-Reg Profits ($ m)	% Change in Profits
20	FOOD PROD.	33.49	353,780.38	1.9	8,008.04	7,986.29	- 0.2715
21	TOBACCO	0.02	74,030.13	5.3	3,923.60	3,923.59	- 0.0003
22	TEXT. MILL	29.48	60,735.22	2.7	1,765.42	1,747.59	- 1.0100
23	APPAREL PROD.	31.74	74,474.65	2.8	1,813.22	1,793.56	- 1.0845
24	LUMBER & WOOD	196.09	57,994.48	3.9	1,974.51	1,814.21	- 8.1188
25	FURNITURE	14.72	37,648.27	3.5	1,411.02	1,400.96	- 0.7129
26	PAPER PROD.	31.26	103,694.14	3.7	3,778.20	3,761.24	- 0.4489
27	PRINTING & PUB.	75.69	134,830.21	4.8	6,471.85	6,412.25	- 0.9210
28	CHEMICAL PROD.	40.16	272,759.67	3.7	11,738.80	11,714.76	- 0.2048
29	PETRO. REFINING	7.22	196,400.57	2.7	4,964.85	4,960.84	- 0.0808
30	RUBBER & PLASTICS	75.48	86,538.58	4.3	3,423.75	3,376.10	- 1.3918
31	LEATHER PROD.	2.58	15,449.56	2.6	401.69	399.95	- 0.4328
32	STONE & CLAY	22.54	46,094.04	4.1	1,954.99	1,940.73	- 0.7300
33	PRIMARY METALS	40.33	112,564.26	3.3	3,714.62	3,691.27	- 0.6286
34	FAB. METALS	55.94	150,146.41	4.0	6,005.86	5,974.10	- 0.5288
35	MACHINERY	57.74	345,144.89	5.1	17,602.39	17,566.95	- 0.2013
36	ELEC. MACH.	31.78	245,982.70	5.0	12,299.14	12,279.63	- 0.1586
37	TRANS. EQUIP.	47.10	365,427.20	3.9	14,520.25	14,486.69	- 0.2311
38	INSTRUMENTS	13.46	83,359.57	4.9	3,373.26	3,365.00	- 0.2450
39	MISC. MANUF.	18.20	41,870.30	4.4	1,788.56	1,777.39	- 0.6245
40	R.R. TRANS.	.53	43,869.14	10.0	3,969.62	3,969.34	- 0.0072
45	AIR TRANS.	1.83	109,538.08	3.6	3,251.40	3,250.41	- 0.0304
47	TRANS. SERVICES	1.85	12,254.96	2.7	502.10	581.18	- 0.1719
49	ELEC.,GAS & SAN.	22.69	300,254.83	7.0	21,017.84	21,004.06	- 0.0655
50	WHOLESALE TRADE[5]	4.05	13,853.52	2.0	277.07	273.67	- 1.2285
51	WHOLESALE, NON-DUR	8.86	113,848.20	1.5	1,726.26	1,721.48	- 0.2771
55	AUTO DEALERS	11.95	341,574.50	1.9	6,489.92	6,482.81	- 0.1095
72	PERSONAL SERV.	31.29	24,270.74	7.3	1,771.76	1,750.02	- 1.2272
73	BUSINESS SERV.	8.95	22,165.94	6.6	1,462.95	1,455.45	- 0.5126
75	AUTO REPAIR	1.51	45,750.92	5.1	2,492.19	2,491.05	- 0.0457
76	MISC. REPAIR SERV.	4.85	2,665.52	5.5	146.60	142.69	- 2.6696
80	HEALTH SERVICES	4.44	170,234.25	4.5	7,807.72	7,804.54	- 0.0406

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Notes:
1. All values in 1985 dollars.
2. Reproduced from Table VI-1.
3. Dun and Bradstreet, Dun's Marketing Identifiers (DMI) Database.
4. Rate of Return on Sales, Dun and Bradstreet, Industry Norms Database.
5. Consists of SIC 5093 (scrap and waste materials) only.

TABLE V-4

ECONOMIC EFFECTS: TOTAL-COST PASSTHROUGH

SIC	Industry	Annual Costs ($ millions)	Total Sales ($ millions)	Costs as a Percent of Sales
20	FOOD PROD.	33.49	353,780.38	0.0095
21	TOBACCO	0.02	74,030.13	0.0000
22	TEXT. MILL	29.48	60,735.22	0.0485
23	APPAREL PROD.	31.74	74,474.65	0.0426
24	LUMBER & WOOD	196.09	57,994.48	0.3381
25	FURNITURE	14.72	37,648.28	0.0391
26	PAPER PROD.	31.26	103,694.14	0.0301
27	PRINTING & PUB	75.69	134,830.21	0.0561
28	CHEMICAL PROD.	40.16	272,759.67	0.0147
29	PETRO. REFINING	7.22	196,400.57	0.0037
30	RUBBER & PLASTICS	75.48	86,538.58	0.0872
31	LEATHER PRODUCTS	2.58	15,449.56	0.0167
32	STONE & CLAY	22.54	46,094.04	0.0489
33	PRIM. METALS	40.33	112,564.26	0.0358
34	FAB. METALS	55.94	150,146.41	0.0373
35	MACHINERY	57.74	345,144.89	0.0167
36	ELEC. MACH.	31.78	245,982.70	0.0129
37	TRANS. EQUIP.	47.10	365,427.20	0.0129
38	INSTRUMENTS	13.46	83,359.57	0.0162
39	MISC. MANUF.	18.20	41,870.30	0.0435
40	R.R. TRANS.	.53	43,869.14	0.0012
45	AIR TRANS.	1.83	109,538.08	0.0017
47	TRANS. SERVICES	1.85	12,254.96	0.0151
49	ELEC,GAS & SAN.	22.69	300,254.83	0.0076
50	WHOLESALE TRADE[1]	4.05	13,853.52	0.0293
51	WHOLESALE, NON-DUR.	8.86	113,848.20	0.0078
55	AUTO DEALERS	11.95	341,574.50	0.0035
72	PERSONAL SERVICES	31.29	24,270.74	0.1289
73	BUSINESS SERVICES	8.95	22,165.94	0.0404
75	AUTO REPAIRS	1.51	45,750.92	0.0033
76	MISC. REPAIR SERV.	4.85	2,665.52	0.1819
80	HEALTH SERVICES	4.44	170,234.25	0.0026

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Notes:
1. Consists of SIC 5093 (scrap and waste materials) only.

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Based on this analysis, OSHA concludes that the proposed standard is economically feasible for each sector. The impact on prices is slight and even in the worst cases, the reductions in profitability are small.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (Pub. L. 96-353, 94 Stat.1664 (5 U.S.C. 601 *et seq.*), OSHA has made a preliminary assessment of how the proposed rulemaking will affect large and small establishments. The results of this preliminary assessment indicate that some small establishments may experience some adverse impact. The smaller profit margins of some small establishments may make it more difficult for them to absorb increases in compliance costs. OSHA requests comments on approaches to reduce the impact on small establishments. An important ameliorating factor for each affected firm will be its ability to pass through additional costs to the consumer. The ability of individual firms to do this will be dependent upon product demand elasticities. It is expected that all impacted firms will be able to pass through some portion of their increased costs.

Environmental Impact

The proposed standard has been reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality NEPA regulations, and the Department of Labor's NEPA compliance procedures and is not anticipated to have a significant impact on the external environment.

TABLE V-5.—SIC GROUPS COVERED IN THE OSHA ANALYSIS

Division D. Manufacturing:
Major Group 20. Food and kindred products
Major Group 21. Tobacco manufactures
Major Group 22. Textile mill products
Major Group 23. Apparel and other finished products, made from fabrics and similar materials
Major Group 24. Lumber and wood products, except furniture
Major Group 25. Furniture
Major Group 26. Paper and allied products
Major Group 27. Printing, publishing, and allied industries
Major Group 28. Chemicals and allied products
Major Group 29. Petroleum refining and related industries
Major Group 30. Rubber and miscellaneous plastics products
Major Group 31. Leather and leather products
Major Group 32. Stone, clay, glass, and concrete products
Major Group 33. Primary metal industries
Major Group 34. Fabricated metal products, except machinery and transportation equipment
Major Group 35. Machinery, except electrical
Major Group 36. Electrical and electronic machinery, equipment, and supplies
Major Group 37. Transportation equipment
Major Group 38. Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
Major Group 39. Miscellaneous manufacturing industries
Division E. Transportation, Communications, Electric, Gas, and Sanitary Services:
Major Group 40. Railroad transportation
Major Group 44. Water transportation
Major Group 45. Transportation by air
Major Group 47. Transportation services
Major Group 49. Electric, gas, and sanitary services
Division F. Wholesale Trade:
Major Group 50. Wholesale trade—durable goods
Major Group 51. Wholesale trade—nondurable goods
Division G. Retail Trade: Major Group 55. Automotive dealers and gasoline service stations
Division I. Services:
Major Group 72. Personal services
Major Group 73. Business services
Major Group 75. Automotive repair, services, and garages
Major Group 80. Health services

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, as derived from Standard Industrial Classification Manual 1972, Executive Office of the President—Office of Management and Budget (1, pp. 5-7).

The listing excludes the construction industry (SICs 15, 16, and 17) which will be the subject of a separate regulatory analysis.

VI. Clearance of Information Collection Requirements

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983, sets forth procedures for agencies to follow in obtaining OMB clearance not later than the date of publication of the proposal in the **Federal Register** for collection of information requirements contained in proposed rules. It also requires agencies to include a statement in the notice of proposed rulemaking indicating that such information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act.

In addition to the above requirements, applicable federal regulations also provide, 5 CFR 1320 4(a), 1320.5(a), and 1320.5(d), respectively, as follows:

An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid control number and, unless OMB determines it to be inappropriate, an expiration date. * * *

Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any information collection request if the request does not display a currently valid OMB control number, or, in the case of an information collection request which is submitted to nine or fewer persons, the request fails to state that for this reason it is not subject to OMB review under the Act.* * *

Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.* * *

The proposed PELs update standard will create no additional recordkeeping requirements.

In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it will submit the information collection requirements contained in its proposed update of the air contaminants rule on to OMB for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested persons to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for OSHA.

VII. Summary and Explanation of the Proposed Standard.

Table Z-4 in the standard includes proposed new exposure limits for 428 substances. These include approximately 220 substances for which OSHA has exposure limits and approximately 205 substances for which OSHA has not specified exposure limits prior to this proposal.

OSHA is republishing Tables Z-1, Z-2, and Z-3 which include most existing OSHA exposure limits. Asterisks have been placed next to the substances which OSHA proposes to remove from those tables. All these substances have been incorporated in Table Z-4 with new exposure limits. Table Z-4 lists the proposed permissible exposure limits for 428 substances. This includes the eleven substances for which increased PELs were considered and two substances for which deleting skin notations were considered, but for which no changes were made. Table VII-C lists 44 substances in which 2 alternate permissible exposure limits, based on the NIOSH-PELs and ACGIH TLVs, were evaluated. Part I-D of the preamble explains the basis for the choice of these two data bases. The OSHA recommended PEL is underlined in this Table. For most substances noted as changes in Table Z-4 the TWA limit is either lower or remains the same but there is a change, or there is an addition or deletion of a STEL or Ceiling limit. For one substance, the TWA has been raised.

The policy reasons for this proposal are explained in Part I of the preamble. The health basis of the new exposure limits are explained in Part IV. The feasibility analysis for the proposal is summarized in part V.

OSHA's preliminary conclusion that the proposed limits noted in Table Z-4 substantially reduce significant risk and are feasible, is based on the analysis in those parts.

Initially, OSHA is proposing these new limits for general industry. Additional consideration and consultation is needed to determine their applicability to other sectors (e.g., construction, maritime, and agriculture). To attempt to consider these sectors in this rulemaking would delay this important proceeding. OSHA is commencing that consultation for the construction sector. See Part I-H of the preamble for further discussion of this subject.

As a matter of form, the final regulation may delete those substances in the Table Z-4 from Tables Z-1, Z-2, and Z-3 rather than republishing them with asterisks. However, Part 1917, Marine Terminals, references the existing Tables Z-1, Z-2 and Z-3 which OSHA is not proposing to change in this proceeding. Therefore, OSHA may publish the final rule in the same format as the proposal so that there will be published current CFR exposure limits for Marine Terminals. In that case the asterisk will refer to limits only applicable to marine terminals. Suitable changes will be made in the language of 29 CFR 1910.1000 to indicate this. An alternative would be to republish the existing Tables Z-1, Z-2 and Z-3 in Part 1917 until such time as a proceeding to update them is completed.

OSHA is adding a new paragraph (d) to § 1910.1000. The old paragraph (d) is redesignated paragraph (f). That paragraph states that employers must not expose employees over the limits specified in Table Z-4. It defines TWA, STEL and Ceiling limits and indicates skin absorption should be prevented for substances so identified in Table Z-4.

OSHA is not considering any changes to paragraphs (a), (b), (c) and (e) in this rulemaking. Certain format changes have been made to redesignated paragraph (f) to clarify that the formulas for multiple exposure applies to substances listed in Table Z-4, substances specified standards listed in Sections 1910.1001-1047 as well as Tables Z-1, Z-2 and Z-3. OSHA interprets the existing language as having the same intent. OSHA is not reopening consideration of the formulas in redesignating paragraph (f).

A slight format change is also made in the introductory text of § 1910.1000 to reflect that Table Z-4 has been added.

The term "material" was used in the standard; it is equivalent to the term "substance" as used in the preamble.

The standard provides an explanation of skin notation and definitions of the following terms used in Table Z-4: Time Weighted Average (TWA). Short Term Exposure Limit (STEL) and Ceiling.

The standard states in paragraph 3.(2):

(2). An employee's skin exposure to materials listed in table Z-4 with an "S" Notation shall be limited through the use of gloves, coveralls, goggles, or other appropriate personal protection equipment or method necessary to prevent possible skin absorption.

The skin notation is used where the substance may be absorbed through the skin. It also may be used where skin contact could damage or irritate the skin. This sub-paragraph indicates for those substances, methods must be used to limit skin exposure. As the language indicates it may be limited through use of appropriate personal protection equipment. Appropriate engineering controls or work practices may also be used. No specific order of priority is stated.

The standard states in paragraph 3.(3):

(3). The following definitions apply to paragraph (d) of this section and Table Z-4:

(i) Time weighted average (TWA) is the average airborne exposure of an employee in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) Short term exposure limit (STEL) is the employee's 15-minute time-weighted average exposure which shall not be exceeded at any time during a work day. This applies even if the eight hour time-weighted average is within the TWA.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed by sampling over a 15-minute period as would be done for a STEL, unless a different time period is specifically indicated.

OSHA intends that the effective date of new exposure limits issued in final form based on this proposal shall be 90 days after the date of publication in the **Federal Register**. This is set forth in section 6(b)(4) of the OSH Act.

In addition, OSHA has set forth start-up dates for most of its health standards. It takes time for employers to evaluate exposures and purchase, install and make operable equipment to control such exposures.

In the case of this proposed standard, start-up dates need to be sufficient to take into account the fact that many employers will have to evaluate and make operable controls for several different chemicals. This may require more time than would be necessary for only one chemical.

OSHA believes that 6 months from the date of publication is a reasonable time to evaluate exposures and come into compliance with any combination of respirators, work practices and engineering controls. OSHA standards generally have had a period of approximately this length or shorter where compliance with an exposure limit was to be achieved with any suitable combination of controls. See, for example, the benzene standard, 29 CFR 1910.1028(m)(2), 52 FR 34460, 345676 (September 11, 1987) and the formaldehyde standard, 29 CFR 1910.1048(p)(2)(iv), 52 FR 46168, 46298 (December 4, 1987). OSHA experience is that the 6 month period is appropriate and sufficient to come into compliance with any combination of controls. Comment is requested.

OSHA has also generally provided a more extended period to come into compliance using the hierarchy of controls contained in 29 CFR 1910.1000(e), with its preference for engineering and work practice controls. It takes more time, in general, to plan, purchase equipment, install and make operational engineering controls than to implement other types of control strategies. Examples of representative phase-in periods include 1 to 10 years (depending on the sector) for the lead standard, 29 CFR 1910.1025(e), 4 years for the cotton dust standard, 29 CFR 1910.1043(m), 2 years for the benzene standard, 29 CFR 1910.1028(m)(2)(ii) and 14 months for the formaldehyde

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standard, 29 CFR 1910.1048(p)(2)(v). These dates have varied depending upon OSHA estimates of the difficulties involved. OSHA's experience has been that generally the times proposed here have been sufficient. See the detailed analysis reported in the cotton dust standard, 50 FR 51164, December 13, 1985.

In the case of this proposal, OSHA estimates that compliance can be reasonably achieved by all employers, including those who would have to control exposures for several different chemicals, within 4 years, using the present hierarchy of controls. OSHA requests comment on this estimate.

OSHA will be shortly publishing a Federal Register notice requesting public comment on the hierarchy of controls currently contained in 29 CFR 1910.1000(e). Based on comment, evidence and data received during the course of that rulemaking, it is possible that changes in the hierarchy may be made. If more flexibility were to be permitted in the use of engineering controls, a shorter period to come into compliance with the new exposure limits might be appropriate. On the other hand, during the period of uncertainty about the outcome of the methods of compliance rulemaking, employers seeking to comply with the new exposure limits may install controls under the existing hierarchy that may turn out later not to be required. Accordingly, it may be appropriate to set a start-up time for installing engineering controls that is contingent on the completion date of the methods of compliance rulemaking.

OSHA requests public comment on the approach it should follow and the period it should set for coming into compliance under the hierarchy of controls. OSHA is not requesting comment in this rulemaking on what the hierarchy of controls should be.

For some substances OSHA is tentatively using the 10-hour TWA given in the NIOSH-RELs as a proposed PEL. It should be noted that NIOSH generally refers in its criteria document for airborne concentration of a substance as a "time-weighted average (TWA) exposure for up to a 10-hour work shift in a 40-hour work week." OSHA preliminarily concludes that this is equivalent to the OSHA definition of an 8-hour work shift for a 40-hour work week. OSHA requests comments on this approach.

NIOSH REL ceiling values are based on time intervals which range from instantaneous to 120 minutes. Most of these REL ceilings have been established for a 15-minute period. OSHA proposes that PELs based on REL ceilings of 10, 15, and 20 minutes all be considered as 15-minute PELs in order to achieve greater uniformity and simplicity in the standards. OSHA is also considering treating the 30-minute, 60-minute and 120-minute ceilings in the same way. OSHA invites comments on these two approaches.

OSHA also recognizes that ceiling limits as defined by the ACGIH-TLV committee may represent a permissible exposure based on instantaneous measurement, or an exposure over a 15-minute period, if instantaneous monitoring is not feasible. The ACGIH-TLV committee defined a STEL as a 15-minute measurement. Therefore, some of the ceiling limits can be equivalent to STELs. OSHA will consider adopting the 15-minute period for many of the proposed PELs based on TLV ceiling values in order to achieve greater uniformity and simplicity in the standard. OSHA invites comments on this modification of the definition of a TLV ceiling, and the possible use of two alternate monitoring procedures (instantaneous and 15-minute) for substances having a PEL ceiling.

It should be noted that OSHA is not proposing to change exposure limits for the 24 substances regulated in §§ 1910.1000 to 1910.1047. These limits have previously been issued in section 6(b) rulemakings where their health effects and feasibility have been fully considered. Table VII–A lists those substances. Some of those substances remain listed unchanged in Tables Z–1, Z–2 and Z–3 as well. Those listings apply in limited particular circumstances specified by footnotes.

OSHA is also not proposing to change exposure limits for 9 other substances on Tables Z–1, Z–2 and Z–3 for which ACGIH or NIOSH have recommended different exposure limits. OSHA plans to regulate those substances (such as cadmium) in the near future in individual section 6(b) rulemakings because of the importance of the substance, or the need to fully evaluate the substance individually in determining the level to be set. Those substances are listed in Section VII, Table VII–B.

OSHA is also *not* proposing to change the limits for 160 substances for which the OSHA PEL's and the 1987–88 ACGIH TLV's are identical. Table VII–D lists these substances.

To summarize other sections of the preamble, OSHA reviewed some fourteen (14) data bases in developing an approach to updating the permissible exposure limits (PELs). These data bases included those developed by professional organizations, private-sector corporations, international bodies, governments and government agencies. In making a preliminary selection, the sources of standards were evaluated for the following criteria: Comprehensiveness, currentness, process setting procedures, feasibility, review process, applicability and documentation for each substance.

OSHA has preliminarily concluded that ACGIH–TLV is the most extensive source when compared to a number of other sources, and that it satisfies all the additional criteria established for this effort. OSHA has also preliminarily concluded that NIOSH's recommended exposure limits, while less extensive, should also be considered in the proposal. Thus, the ACGIH–TLVs and NIOSH–RELs will be discussed in order to present the OSHA basis for setting the new proposed PELs.

The ACGIH–TLV's are the most comprehensive of all the examined lists. Currently, over 600 substances are covered and TWA's, STELs, ceilings and skin notations are included where appropriate. The limits developed by the ACGIH TLV committee are applicable to U.S. industry conditions, and feasibility is generally considered.

The ACGIH–TLV process includes multiple professional review, and documentation is included for every recommendation. This documentation includes a discussion of the toxicological data underlying the limit, a description of the exposure limits set for the chemical by NIOSH and other sources, and a statement of the rationale for selecting a particular limit. In some cases, the ACGIH–TLV documentation lacks optimal depth of detail, but in all cases it is possible to determine what AGCIH judges to be the most directly relevant toxicological data. While some documentation is anecdotal or contained in personal communication, this is generally only one component of the total basis for recommending the TLVs. Recently, Castleman and Ziem (1987–1988) and Samuels (1987) have been critical of the TLV's committee's procedures and documentation because a number of references have been based on personal communication and they believe industry representatives on the TLV Committee have had too much influence. It should be noted that voting members of ACGIH must be employed by governments or educational institutions. Industry employees do not vote.

On the basis of all evidence, OSHA makes a preliminary conclusion that the TLVs established by the ACGIH constitute the best available *starting point* for revisions of existing PEL's. This establishes the *bounds* of the substances

to be considered in this proposal as those substances where the 1987–88 TLVs differ from the existing OSHA PELs.

OSHA will also consider the NIOSH–REL's in setting new PEL's in this rulemaking. The NIOSH–RELs are well documented and their RELs are set with U.S. workplaces in mind. NIOSH explains the basis for its limits in criteria documents or in Current Intgelligence Bulletins.

OSHA has considered more than 160 NIOSH–RELs and classified the RELs according to the following preliminary assumptions:

1. OSHA has excluded RELs for substances for which the OSHA comprehensive standards exist. The comprehensive standards had been previously reviewed and analyzed under 6(b) rulemaking process (Table VII–A.).
2. OSHA has excluded RELs for substances which are in various stages of OSHA rulemaking (Table VII–B).
3. OSHA has identified 9 substances for which the existing OSHA–PELs, NIOSH RELs, and ACGIH TLVs are identical. These substances are exempted from the new proposal and are included in Tables Z–1, Z–2, and Z–3 without the asterisk. The 9 substances are: Antimony and compounds, benzoyl peroxide, carbaryl, carbon black, diacetone alcohol, dinitrocresol, fluoride, nitrioc oxide and sulfuric acid.
4. OSHA has identified 11 substances for which the RELs and the TLVs are different, but the TLV and PEL are the same. OSHA has also identified 19 substances which have RELs, but have no corresponding TLVs or PELs. OSHA has preliminarily decided to exclude these 30 substances from this standard. This is in line with OSHA's discussion in Section I–D which limits this proposal to those substances where 1987–88 ACGIH TLVs exist and differ from the existing PEL.
5. OSHA has identified 8 substances for which the RELs equal the TLVs. They are listed in Table Z–4 as proposed PELs and are identified by footnote C.
6. OSHA has identified 44 substances for which significant differences between the RELs and the TLVs exist. Table VII–C lists 44 substances in which two alternate permissible exposure limits are proposed, based on the NIOSH–RELs and the ACGIH–TLVs. OSHA identified 35 substances for which the RELs are lower than the TLVs (Table I–F–A) and 9 substances in which the RELs are higher than TLVs (Table I–F–B). These were evaluated on an individual substance basis and the proposed PEL is listed in Table Z–4. The OSHA proposed PEL is also underlined in Table VII–C.
7. OSHA has identified 15 substances for which the TWA for the RELs and the TLVs are identical, but differences exist in the STEL or Ceiling limit. OSHA has preliminarily concluded that this is a minor difference and therefore is using the TLV limits which are included in Table Z–4. This preliminary approach is based on the fact that the existing PEL's are based on 1987–88 TLV's, and the approach used in this proposal should follow that baseline unless significant differences exist.
8. OSHA has identified 16 substances for which the TWA TLV or TWA REL equals the STEL/Ceiling; the TWA, TLV or REL equals ½ STEL; or the TWA, TLV or REL are within 10%. OSHA has preliminarily concluded that these are minor differences and has selected the available TWA limit. The 16 substances in this group are included in Table Z–4.

OSHA has also identified a number of substances which require special attention because of differences in the allowable exposure guidelines compared to the other sets of limits reviewed or other special circumstances. OSHA has identified several alternatives for dealing with these situations.

For its discussion of health effects OSHA has preliminarily grouped each substance on the basis of the TLV documentation. The substances are divided into 15 generic groups. These are: Neurophatic effects, narcotic effects, sensory irritants, liver and kidney effects, ocular effects, adverse respiratory effects, cardiovascular effects, systemic effects, no observed effects, nuisance potential, odor and taste effects, analogy, biochemical and metabolic effects, sensitizers, and carcinogenic effects. The OSHA analysis also considered three special categories concerned with: Change only to the STEL; change regarding skin designation in the TLV; and situations where the TLV is greater than the existing PEL.

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TABLE VII A. Substances Regulated by OSHA Under Section 6(b)

CHEMICAL NAME	STANDARD
2-Acetylaminofluorine	1910.1014
Acrylonitrile	1910.1045
4-Aminodiphenyl	1910.1011
Arsenic (Inorganic)	1910.1018
Asbestos	1910.1001
Benzene	1910.1028
Benzidine	1910.1010
Bis-Chloromethyl Ether	1910.1008
Coke Oven Emissions	1910.1029
Cotton Dust	1910.1043
1,2 Dibromo 3 Dichloropropane	1910.1049
3,3' Dichlorobenzidine	1910.1007

TABLE VII A. Substances Regulated by OSHA Under Section 6(b)

CHEMICAL NAME	STANDARD
4-Dimethylaminoazobenzene	1910.1015
Ethylene Oxide	1910.1047
Ethyleneimine	1910.1012
Formaldehyde	1910.1048
Lead	1910.1025
Methyl Chloromethyl Ether	1910.1006
2 Naphthylamine	1910.1004
3 Naphthylamine	1910 1009
4 Nitrobiphenyl	1910.1003
n Nitrosodimethylamine	1910.1016
b Propiolactone	1910.1013
Vinyl Chloride	1910 1017

TABLE VII B. Substances for Which OSHA Has Initiated 6(b) Rulemaking

CHEMICAL NAME	STANDARD
1,3 Butadiene	
Cadmium Dust and Fume	
2 Ethoxyethanol (Cellosolve)	
2 Ethoxyethyl Acetate	
Ethylene Dibromide	
Methyl Cellosolve	
Methyl Cellosolve Acetate	
Methylene Chloride	
4,4' Methylenedianiline	

TABLE VII-C. Substances for Which OSHA Considered Proposing Either the ACGIH or NIOSH Limit*

H.S. No.	Chemical Name	CAS No.	ACGIH TLV[R]** TWA	ACGIH TLV[R]** STEL	ACGIH TLV[R]** Ceiling	NIOSH REL*** TWA	NIOSH REL*** Ceiling
1004	Acetone	67-64-1	750 ppm	1000 ppm	—	250 ppm	—
1005	Acetonitrile	75-05-8	40 ppm	60 ppm	—	20 ppm	—
1008	Acrylamide	79-06-1	0.03 mg/m^3, Skin	—	—	0.3 mg/m^3	—
1021	Ammonia	7664-41-7	25 ppm	35 ppm	—	—	50 ppm (5 min)
1033	Beryllium and Compounds+	7440-41-7	0.002 mg/m^3	—	—	—	0.0005 mg/m^3
1052	n-Butyl Glycidyl Ether	2426-08-6	25 ppm	—	—	—	5.6 ppm (15 min)
1069	Carbon Dioxide	124-38-9	5000 ppm	30,000 ppm	—	10,000 ppm	30,000 ppm (10 min)
1070	Carbon Disulfide	75-15-0	10 ppm	—	—	1 ppm	10 ppm (15 min)

TABLE VII-C. Substances for Which OSHA Considered Proposing Either the ACGIH or NIOSH Limit* (Continued)

H.S. No.	Chemical Name	CAS No.	ACGIH TLV[R]** TWA	ACGIH TLV[R]** STEL	ACGIH TLV[R]** Ceiling	NIOSH REL*** TWA	NIOSH REL*** Ceiling
1071	Carbon Monoxide	630-08-0	50 ppm	400 ppm	—	35 ppm	200 ppm (no defined time)
1073	Carbon Tetrachloride	56-23-5	5 ppm, Skin	—	-	—	2 ppm (60 min)
1079	Chlorine	7782-50-5	1 ppm	3 ppm	—	—	0.5 ppm (15 min)
1086	Chloroform	67-66-3	10 ppm	—	—	—	2 ppm (60 min)
1088	Chloroprene	126-099-8	10 ppm, Skin	—	—	—	1 ppm (15 min)
1192	Chromic Acid and Chromates+ (Non-carcinogenic)	7738-94-5	0.05 mg/m^3	—	—	0.025 mg/m^3	—
1192	Chromic Acid and Chromates+ (Carcinogenic)	7738-94-5	0.05 mg/m^3	—	—	0.001 mg/m^3	—

TABLE VII-C. Substances for Which OSHA Considered Proposing Either the ACGIH or NIOSH Limit* (Continued)

H.S. No.	Chemical Name	CAS No.	ACGIH TLV®** TWA	ACGIH TLV®** STEL	ACGIH TLV®** Ceiling	NIOSH REL*** TWA	NIOSH REL*** Ceiling
1145	Dioxane	123-91-1	25 ppm, Skin	—	—	—	1 ppm (30 min)
1168	Ethylene Dichloride	107-06-2	10 ppm	—	—	1 ppm	2 ppm (15 min)
1170	Ethylene Glycol Dinitrate	628-96-6	0.05 ppm, Skin	—	—	—	0.1 mg/m^3 (20 min)
1178	Fibrous Glass Dust	↓	10 mg/m^3	—	—	5 mg/m^3	—
1184	Furfuryl Alcohol	98-00-0	10 ppm, Skin	15 ppm	—	50 ppm	—
1194	n-Heptane	142-82-5	400 ppm	500 ppm	—	85 ppm	440 ppm (15 min)
1200	n-Hexane	110-54-3	50 ppm	--	—	100 ppm	510 ppm (15 min)
1201	Hexane Isomers	→	500 ppm	1000 ppm	—	100 ppm	510 ppm (15 min)

TABLE VII-C. Substances for Which OSHA Considered Proposing Either the ACGIH or NIOSH Limit* (Continued)

H.S. No.	Chemical Name	CAS No.	ACGIH TLV®**			NIOSH REL***	
			TWA	STEL	Ceiling	TWA	Ceiling
1202	2-Hexanone	591-78-6	5 ppm	—	—	1 ppm	—
1205	Hydrazine	302-01-2	0.1 ppm, Skin	-	—	—	0.03 ppm (120 min)
1207	Hydrogen Cyanide	74-90-8	—	—	10 ppm, Skin	—	4.7 ppm (10 min)
1222	Isophorone Diisocyanate	4098-71-9	0.09 mg/m^3	—	—	0.045 mg/m^3	0.18 mg/m^3 (10 min)
1235	Malathion	121-75-5	10 mg/m^3, Skin	--	—	15 mg/m^3	—
1240	Mercury (Aryl and Inorganic Compounds)+	7439-97-6	0.1 mg/m^3, Skin	—	—	0.05 mg/m^3	—
1243	Mesityl Oxide	141-79-7	15 ppm	25 ppm	—	10 ppm	—

TABLE VII-C. Substances for Which OSHA Considered Proposing Either the ACGIH or NIOSH Limit* (Continued)

H.S. No.	Chemical Name	CAS No.	ACGIH TLV®** TWA	ACGIH TLV®** STEL	ACGIH TLV®** Ceiling	NIOSH REL*** TWA	NIOSH REL*** Ceiling
1264	Methyl n-Amyl Ketone+	110-43-0	50 ppm	—	—	100 ppm	—
1283	Nickel (Soluble Compounds)	7440-02-0	0.1 mg/m^3	—	—	0.015 mg/m^3	—
1289	Nitrogen Dioxide	10102-44-0	3 ppm	5 ppm	--	—	1 ppm (15 min)
1290	Nitroglycerin	55-63-0	0.5 mg/m^3, Skin	—	—	—	0.1 mg/m^3 (20 min)
1296	Octane	111-65-9	300 ppm	375 ppm	—	75 ppm	385 ppm (15 min)
1306	Pentane	109-66-0	600 ppm	750 ppm	—	120 ppm	610 ppm (15 min)
1307	2-Pentanone (Methylpropyl ketone)	107-89-9	200 ppm	250 ppm	—	150 ppm	—

TABLE VII-C. Substances for Which OSHA Considered Proposing Either the ACGIH or NIOSH Limit* (Continued)

H.S. No.	Chemical Name	CAS No.	ACGIH TLV®** TWA	ACGIH TLV®** STEL	ACGIH TLV®** Ceiling	NIOSH REL*** TWA	NIOSH REL*** Ceiling
1312	Petroleum Distillates (Naphtha)	—	1600 mg/m^3	—	—	350 mg/m^3	1800 mg/m^3 (15 min)
1317	Phenylhydrazine	100-63-0	5 ppm, Skin	10 ppm	—	—	0.14 ppm (120 min)
1355	Silica, Crystalline Quartz, Respirable	14808-60-7	0.1 mg/m^3	—	—	0.05 mg/m^3	—
1371	Stoddard Solvent	8052-41-3	100 ppm (525 mg/m^3)	—	—	350 mg/m^3	1800 mg/m^3 (15 min)
1375	Sulfur Dioxide	7446-09-5	2 ppm	5 ppm	—	0.5 ppm	—

TABLE VII-C. Substances for Which OSHA Considered Proposing Either the ACGIH or NIOSH Limit* (Continued)

H.S. No.	Chemical Name	CAS No.	ACGIH TLV** TWA	ACGIH TLV** STEL	ACGIH TLV** Ceiling	NIOSH REL*** TWA	NIOSH REL*** Ceiling
1406	Trichloroethylene	79-01-6	50 ppm	200 ppm	—	25 ppm	—
1424	Vinyl Acetate	108-05-4	10 ppm	20 ppm	—	—	4 ppm (15 min)
1436	Zinc Chromates (CrVI)+	13530-65-9	0.05 mg/m^3	—	—	0.001 mg/m^3	—

* Underlined values indicate the limits being proposed by OSHA.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10-hour exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ OSHA is not proposing to revise its current limit at the present time.

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits

CHEMICAL NAME	8-HOUR TWA		15-MINUTE STEL		CEILING		SKIN
	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	
ACETYLENE TETRABROMIDE	1	-	-	-	-	-	-
ALDRIN	-	0.25	-	-	-	-	S
2-AMINOPYRIDINE	0.5	-	-	-	-	-	-
N-AMYL ACETATE	100	-	-	-	-	-	-
SEC-AMYL ACETATE	125	-	-	-	-	-	-
ANISIDINE (O,P ISOMERS)	-	0.5	-	-	-	-	S
ANTIMONY & COMPOUNDS	-	0.5	-	-	-	-	-
ANTU	-	0.3	-	-	-	-	-
ARSINE	0.05	-	-	-	-	-	-
ARSENIC, ORGANIC COMPOUNDS	0.5	-	-	-	-	-	-
AZINPHOS-METHYL	-	0.2	-	-	-	-	S
BARIUM (SOLUBLE COMPOUNDS)	-	0.5	-	-	-	-	-
BENZOYL PEROXIDE	-	5	-	-	-	-	-
BENZYL CHLORIDE	1	-	-	-	-	-	-
BIPHENYL (DIPHENYL)	0.2	-	-	-	-	-	-
BORON TRIFLUORIDE	-	-	-	-	1	-	-
BROMOFORM	0.5	-	-	-	-	-	S
SEC-BUTYL ACETATE	200	-	-	-	-	-	-
TERT-BUTYL ACETATE	200	-	-	-	-	-	-
TERT-BUTYL CHROMATE	-	-	-	-	-	0.1	S
BUTYLAMINE	-	-	-	-	5	-	S

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits (Continued)

CHEMICAL NAME	8-HOUR TWA		15-MINUTE STEL		CEILING		SKIN
	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	
CARBARYL (SEVIN)	-	5	-	-	-	-	-
CARBON BLACK	-	3.5	-	-	-	-	-
CHLORDANE	-	0.5	-	-	-	-	S
CHLORINATED DIPHENYL OXIDE	-	0.5	-	-	-	-	-
CHLORINE TRIFLUORIDE	-	-	-	-	0.1	-	-
CHLOROACETALDEHYDE	-	-	-	-	1	-	-
ALPHA-CHLOROACETOPHENONE	0.05	-	-	-	-	-	-
CHLOROBENZENE	75	-	-	-	-	-	-
CHLOROBROMOMETHANE	200	-	-	-	-	-	-
CHLORODIPHENYL 42% (AROCLOR 1242)	-	1	-	-	-	-	S
CHLORODIPHENYL 54% (AROCLOR 1254)	-	0.5	-	-	-	-	S
CHLOROPICRIN	0.1	-	-	-	-	-	-
CHROMIUM, SOL.CHROMIC, CHROMOUS	-	0.5	-	-	-	-	-
COAL TAR PITCH VOLATILES	-	0.2	-	-	-	-	-
COPPER (DUSTS & MISTS)	-	1	-	-	-	-	-
CRESOL (ALL ISOMERS)	5	-	-	-	-	-	S
CROTONALDEHYDE	2	-	-	-	-	-	-
CUMENE	50	-	-	-	-	-	S
CYANIDES	-	5	-	-	-	-	S
CYCLOHEXANE	300	-	-	-	-	-	-
CYCLOHEXENE	300	-	-	-	-	-	-

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits (Continued)

CHEMICAL NAME	8-HOUR TWA		15-MINUTE STEL		CEILING		SKIN
	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	
CYCLOPENTADIENE	75	-	-	-	-	-	-
DEMETON	-	0.1	-	-	-	-	S
2,4-D (2,4-DICHLOROPHENOXYACETIC ACID)	-	10	-	-	-	-	-
DDVP (DICHLORVOS)	-	1	-	-	-	-	S
DIACETONE ALCOHOL	50	-	-	-	-	-	-
DIAZOMETHANE	0.2	-	-	-	-	-	-
DIBORANE	0.1	-	-	-	-	-	-
DIBUTYLPHTHALATE	-	5	-	-	-	-	-
O-DICHLOROBENZENE	-	-	-	-	50	300	-
DICHLORODIFLUOROMETHANE	1000	-	-	-	-	-	-
1,2-DICHLOROETHYLENE	200	-	-	-	-	-	-
DICHLOROTETRAFLUOROETHANE	1000	-	-	-	-	-	-
DIELDRIN	-	0.25	-	-	-	-	S
DIETHYLAMINOETHANOL	10	-	-	-	-	-	S
DIFLUORODIBROMOMETHANE	100	-	-	-	-	-	-
DIISOPROPYLAMINE	5	-	-	-	-	-	S
DIMETHYL ACETAMIDE	10	-	-	-	-	-	S
DIMETHYLAMINE	10	-	-	-	-	-	-
DIMETHYLFORMAMIDE	10	-	-	-	-	-	S
1,1-DIMETHYLHYDRAZINE	0.5	-	-	-	-	-	S

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits (Continued)

CHEMICAL NAME	8-HOUR TWA		15-MINUTE STEL		CEILING		SKIN
	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	
DIMETHYLPHTHALATE	-	5	-	-	-	-	-
DINITRO-O-CRESOL	-	0.2	-	-	-	-	S
DINITROBENZENE (ALL ISOMERS)	-	1	-	-	-	-	S
DINITROTOLUENE	-	1.5	-	-	-	-	S
ENDRIN	-	0.1	-	-	-	-	S
EPN	-	0.5	-	-	-	-	S
ETHYL ACETATE	400	-	-	-	-	-	-
ETHYL ALCOHOL	1000	-	-	-	-	-	-
ETHYL BUTYL KETONE	50	-	-	-	-	-	-
ETHYL CHLORIDE	1000	-	-	-	-	-	-
ETHYL FORMATE	100	-	-	-	-	-	-
ETHYL SEC-AMYL KETONE	25	-	-	-	-	-	-
ETHYLAMINE	10	-	-	-	-	-	-
ETHYLENEDIAMINE	10	-	-	-	-	-	-
FLUORIDE (AS F)	-	2.5	-	-	-	-	-
FORMIC ACID	5	-	-	-	-	-	-
HAFNIUM	-	0.5	-	-	-	-	-
HEPTACHLOR	-	0.5	-	-	-	-	S
HEXACHLORONAPHTHALENE	-	0.2	-	-	-	-	S
SEC-HEXYL ACETATE	50	-	-	-	-	-	-
HYDROGEN CHLORIDE	-	-	-	-	5	-	-

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits (Continued)

CHEMICAL NAME	8-HOUR TWA		15-MINUTE STEL		CEILING		
	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	SKIN
HYDROGEN PEROXIDE (90%)	1	-	-	-	-	-	-
HYDROGEN SELENIDE	0.05	-	-	-	-	-	-
HYDROQUINONE	-	2	-	-	-	-	-
IODINE	-	-	-	-	0.1	-	-
ISOAMYL ACETATE	100	-	-	-	-	-	-
ISOBUTYL ACETATE	150	-	-	-	-	-	-
L.P.G.	1000	-	-	-	-	-	-
LINDANE	-	0.5	-	-	-	-	S
LITHIUM HYDRIDE	-	0.025	-	-	-	-	-
MALEIC ANHYDRIDE	0.25	-	-	-	-	-	-
MANGANESE DUST AND COMPOUNDS	-	-	-	-	-	5	-
METHYL ACETYLENE (PROPYNE)	1000	-	-	-	-	-	-
METHYL ACRYLATE	10	-	-	-	-	-	S
METHYL ISOCYANATE	0.02	-	-	-	-	-	S
METHYL METHACRYLATE	100	-	-	-	-	-	-
METHYLAL(DIMETHOXYMETHANE)	1000	-	-	-	-	-	-
METHYLENE BISPHENYL ISOCYANATE (MDI)	-	-	-	-	0.02	0.2	-
METHYLAMINE	10	-	-	-	-	-	-
MOLYBDENUM (SOLUBLE COMPOUNDS)	-	5	-	-	-	-	-
MONOMETHYL HYDRAZINE	-	-	-	-	0.2	-	S

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits (Continued)

	8-HOUR TWA		15-MINUTE STEL		CEILING		
CHEMICAL NAME	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	SKIN
NAPHTHA (COAL TAR)	100	-	-	-	-	-	-
NICKEL (METAL)	-	1	-	-	-	-	-
NICOTINE	-	0.5	-	-	-	-	S
NITRIC OXIDE	25	-	-	-	-	-	-
NITROBENZENE	1	-	-	-	-	-	S
NITROETHANE	100	-	-	-	-	-	-
NITROGEN TRIFLUORIDE	10	-	-	-	-	-	-
NITROMETHANE	100	-	-	-	-	-	-
1-NITROPROPANE	25	-	-	-	-	-	-
NUISANCE DUST, RESPIRABLE	-	5	-	-	-	-	-
PARATHION	-	0.1	-	-	-	-	S
PENTACHLORONAPHTHALENE	-	0.5	-	-	-	-	S
PENTACHLOROPHENOL	-	0.5	-	-	-	-	S
PERCHLOROMETHYL MERCAPTAN	0.1	-	-	-	-	-	-
PHENOL	5	-	-	-	-	-	S
PHENYL ETHER, BIPHENYL MIXTURE	1	-	-	-	-	-	-
P-PHENYLENE DIAMINE	-	0.1	-	-	-	-	S
PHOSGENE	0.1	-	-	-	-	-	-
PHOSPHORUS (YELLOW)	-	0.1	-	-	-	-	-
PHOSPHORUS PENTACHLORIDE	-	1	-	-	-	-	-
PINDONE	-	0.1	-	-	-	-	-

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits (Continued)

CHEMICAL NAME	8-HOUR TWA		15-MINUTE STEL		CEILING		SKIN
	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	
PLATINUM (SOLUBLE SALTS)	-	0.002	-	-	-	-	-
PROPANE	1000	-	-	-	-	-	-
PROPYLENEIMINE	2	-	-	-	-	-	S
PYRETHRUM	-	5	-	-	-	-	-
PYRIDINE	5	15	-	-	-	-	-
QUINONE (P-BENZOQUINONE)	0.1	-	-	-	-	-	-
ROTENONE (COMMERCIAL)	-	5	-	-	-	-	-
SELENIUM AND COMPOUNDS	-	0.2	-	-	-	-	-
SELENIUM HEXAFLUORIDE	0.05	-	-	-	-	-	-
SILICA, CRYSTALLINE QUARTZ, TOTAL DUST	-	4.3	-	-	-	-	
SILVER, SOLUBLE COMPOUNDS	-	0.01	-	-	-	-	-
STIBINE	0.1	-	-	-	-	-	-
STRYCHNINE	-	0.15	-	-	-	-	-
SULFUR HEXAFLUORIDE	1000	-	-	-	-	-	-
SULFURIC ACID	-	1	-	-	-	-	-
2,4,5-T (TRICHLOROPHENOXYACETIC ACID)	-	10	-	-	-	-	-
TEDP (SULFOTEP)	-	0.2	-	-	-	-	S
TELLURIUM	-	0.1	-	-	-	-	-
TELLURIUM HEXAFLUORIDE	0.02	-	-	-	-	-	-

TABLE VII-D. Substances for Which OSHA Did Not Consider Changing Its Current Limits (Continued)

CHEMICAL NAME	8-HOUR TWA		15-MINUTE STEL		CEILING		SKIN
	PPM	MG/M3	PPM	MG/M3	PPM	MG/M3	
TEPP	-	0.05	-	-	-	-	S
1,1,2,2-TETRACHLORO-1, 2-DIFLUOROETHANE	500	-	-	-	-	-	-
1,1,1,2-TETRACHLORO-2, 2-DIFLUOROETHANE	500	-	-	-	-	-	-
TETRACHLORONAPHTHALENE	-	2	-	-	-	-	S
TETRAMETHYL SUCCINONITRILE	0.5	-	-	-	-	-	S
TETRANITROMETHANE	1	-	-	-	-	-	-
TETRYL	-	1.5	-	-	-	-	S
THALLIUM (SOLUBLE COMPOUNDS)	-	0.1	-	-	-	-	S
THIRAM	-	5	-	-	-	-	-
TIN (METAL AND INORGANIC COMPOUND)	-	2	-	-	-	-	-
1,1,2-TRICHLOROETHANE	10	-	-	-	-	-	S
TRICHLORONAPHTHALENE	-	5	-	-	-	-	S
TRIFLUOROMONOBROMOMETHANE	1000	-	-	-	-	-	-
TRIPHENYL PHOSPHATE	-	3	-	-	-	-	-
TURPENTINE	100	-	-	-	-	-	-
WARFARIN	-	0.1	-	-	-	-	-
YTTRIUM	-	1	-	-	-	-	-

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VIII. Public Participation—Public Hearings

Interested persons are invited to submit written data, views, and arguments with respect to OSHA'S proposed rule. These comments must be postmarked on or before July 8, 1988, and submitted in quadruplicate to the Docket Officer, Docket H–020, Room N–3670, U.S. Department of Labor, Washington, DC 20210, Tel. (202) 523–7894.

This rulemaking covers a large number of substances and industries. Therefore, to permit the public and OSHA to efficiently review the comments, it is necessary to specify the format of the comments in greater detail than normally required for OSHA rulemakings.

Comments on the general concept of the proposal shall be first and shall begin on a new page with the heading "General Comments", the name of the commenter, and the commenter's SIC code or codes if a business.

Comments on individual substances shall follow. The comment on each substance shall start on a new page with a heading identifying the substance with the name and code number used in proposed Amended Table Z (Table I–E of the preamble; the HS code number, not the CAS number) and a second line identifying the comment as on "Health Issues" or on "Feasibility Issues." If there are comments on both they shall begin on separate pages with headings that identify the substances, and its code number and area of the comment. For feasibility comments, the heading should contain a third line identifying the SIC codes (preferably 4 digit) that the comment covers.

In addition the first or second page of each comment is to have a table of contents indicating the page number that the general comments begin and the page number that Health and Feasibility comments for each chemical individually discussed begin. Finally, one of the four sets of each comment received should not be stapled or bound, so that it can be easily copied. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary regulatory impact assessment, regulatory flexibility assessment, and the exhibits cited in this document will be available for public inspection and copying at the above address.

In addition, the record currently contains many data bases of economic and health information identified in the bibliography. That information is also available for inspection and copying at the Docket Office. (Much of the information is on computer tape. OSHA will supply duplicate tapes for the copying charge).

Notice of Intention To Appear at the Informal Hearings

Pursuant to section 6(b)(3) of the OSHA Act, informal public hearings will be held on this proposal in Washington, DC commencing July 20, 1988, and continuing through August 5, 1988, or until such earlier date as oral presentations are completed. The hearing will commence at 9:30 a.m. in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, DC 20210.

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by July 1, 1988. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues and substances that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue and substance addressed, and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The Notice of Intention to Appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. H–020, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, tel. (202) 523–8615, and shall be post-marked no later than July 1 1988.

Note.—This is a different address than that previously listed for docket submissions.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for presentation at the informal public hearing, or who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public hearing. The documentary evidence and testimony shall follow the format and include the headings and index required for comments. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be post-marked no later than July 8, 1988.

Each submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearings.

Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Conduct of Hearing

The informal public hearing will commence at 9:30 a.m. at the scheduled location with the resolution of any procedural matters relating to the hearing. The informal public hearing will be presided over by an Administrative Law Judge who will have the power necessary and appropriate to conduct a full and fair informal public hearing as provided in 29 CFR Part 1911, including the power to:

1. Regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the informal public hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a brief additional period to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings. It is intended that August 12, 1988 be the deadline for post hearing evidence and August 26, 1988 be the deadline for post hearing briefs.

Following the close of the informal public hearing, the presiding Administrative Law Judge will certify the record of the informal public hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notice of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and the proposed standard will be modified or a determination will be made not to modify the proposed standard based on the entire record of the proceeding.

State Plan Applicability

The 25 states with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

List of Subjects in 29 CFR Part 1910

Air contaminants, Occupational safety and health, Permissible exposure limits, Health, Risk assessment.

IX. Authority

This document has been prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedures Act (5 U.S.C. 551), 29 CFR Part 1911 and Secretary of Labor's Order 9–83 (48 FR 35736), it is proposed to amend 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 25th day of May 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

X. Standard

OSHA propose to amend 29 CFR Part 1910 as follows:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 would be amended by revising the third paragraph, and the first and second paragraphs are republished to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR 1911.

Section 1910.1000 Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 paragraphs (a) through (c), (e), (f) and Tables Z–1, Z–2, Z–3, not issued under 29 CFR 1911 except for the arsenic, cotton dust, benzene and formaldehyde listings.

* * * * *

2. It is proposed to amend § 1910.1000 by revising the introductory text, redesignating paragraph (d) as paragraph (f) and revising introductory text of paragraph (f) and the last sentence of paragraph (f)(1)(i); adding a new paragraph (d); republishing Tables Z–1, Z–2 and Z–3 with an asterisk indicating the materials proposed to be removed and adding a new Table Z–4.

§ 1910.1000 [Amended]

An employee's exposure to any material listed in Tables Z–1, Z–2, Z–3 or Z–4 of this section shall be limited in accordance with the requirements of the following paragraphs of this section.

* * * * *

(d) Table Z–4 lists the proposed permissible exposure limits for 428 materials.

(1) An employee's exposure to any material listed in Table Z–4 shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) or Ceiling specified in Table Z–4 for that material.

(2) An employee's skin exposure to materials listed in table Z–4 with an "S" Notation shall be limited through the use of gloves, coveralls, goggles, or other appropriate personal protection equipment necessary to prevent possible skin absorption.

(3) The following definitions apply to paragraph (d) of this section and Table Z–4:

(i) Time weighted average (TWA) is the average airborne exposure of an employee in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) Short term exposure limit (STEL) is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed by sampling over a 15-minute period as would be done for a STEL, unless a different time period is specifically indicated.

* * * * *

(f) Computational formula. The computation formula which shall apply to employee exposure to more than 1 material for which 8 hour time weighted averages are listed in Subpart Z of 29 CFR Part 1910 in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) * * * *

The value of E shall not exceed the 8-hour time weighted average specified in Subpart Z of 29 CFR Part 1910 for the material involved.

* * * * *

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TABLE Z-1

Substance	ppm[a]	mg/m³[b]
ACETALDEHYDE*	200	360
ACETIC ACID*	10	25
ACETIC ANHYDRIDE*	5	20
ACETONE*	1000	2400
ACETONITRILE*	40	70
ACETYLENE DICHLORIDE, see 1,2-DICHLOROETHYLENE		
ACETYLENE TETRABROMIDE	1	14
ACROLEIN*	0.1	0.25
ACRYLAMIDE-Skin*		0.3
ALDRIN-Skin		0.25
ALLYL ALCOHOL-Skin*	2	5
ALLYL CHLORIDE*	1	3
C ALLYLGLYCIDYL ETHER (AGE)*	10	45
ALLYL PROPYL DISULFIDE*	2	12
2-AMINOETHANOL, see ETHANOLAMINE		
2-AMINOPYRIDINE	0.5	2
AMMONIA*	50	35
AMMONIUM SULFAMATE (AMMATE)*		15
N-AMYL ACETATE	100	525
SEC-AMYL ACETATE	125	650
ANILINE-Skin*	5	19
ANISIDINE (O,P-ISOMERS)-Skin		0.5
ANTIMONY AND COMPOUNDS(as Sb)		0.5
ANTU (ALPHA NAPTHYL THIOUREA)*		0.3
ARSENIC ORGANIC COMPOUNDS (as As)		0.5
ARSINE	0.05	0.2

TABLE Z-1

Substance	ppm[a]	mg/m³[b]
AZINPHOS-METHYL-Skin*		0.2
BARIUM (SOLUBLE COMPOUNDS)		0.5
p-BENZOQUINONE, see QUINONE		
BENZOYL PEROXIDE		5
BENZYL CHLORIDE	1	5
BIPHENYL, see DIPHENYL		
BORON OXIDE*		15
C BORON TRIFLUORIDE	1	3
BROMINE*	0.1	0.7
BROMOFORM-Skin	0.5	5
BUTADIENE (1,3-BUTADIENE)	1000	2200
BUTANETHIOL, see BUTYL MERCAPTAN		
2-BUTANONE*	200	590
2-BUTOXY ETHANOL(BUTYL CELLOSOLVE)-Skin*	50	240
BUTYL ACETATE (N-BUTYL ACETATE)*	150	710
SEC-BUTYL ACETATE	200	950
TERT-BUTYL ACETATE	200	950
BUTYL ALCOHOL*	100	300
SEC-BUTYL ALCOHOL*	150	450
TERT-BUTYL ALCOHOL*	100	300
C BUTYLAMINE-Skin	5	15
C TERT-BUTYL CHROMATE (as CrO_3)-Skin		0.1
N-BUTYL GLYCIDYL ETHER*	50	270
BUTYL MERCAPTAN*	10	35
P-TERT-BUTYLTOLUENE*	10	60
CALCIUM OXIDE*		5
CAMPHOR*		2

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
CARBARYL (SEVIN)		5
CARBON BLACK		3.5
CARBON DIOXIDE*	5000	9000
CARBON MONOXIDE*	50	55
CHLORDANE-Skin		0.5
CHLORINATED CAMPHENE-Skin*		0.5
CHLORINATED DIPHENYL OXIDE		0.5
C CHLORINE*	.1	3
CHLORINE DIOXIDE*	0.1	0.3
C CHLORINE TRIFLUORIDE	0.1	0.4
C CHLOROACETALDEHYDE	1	3
A-CHLOROACETOPHENONE (PHENACYLCHLORIDE)	0.05	0.3
CHLOROBENZENE (MONOCHLOROBENZENE)	75	350
O-CHLOROBENZYLIDENE MALONONITRILE (OCBM)*	0.05	0.4
CHLOROBROMOMETHANE	200	1050
2-CHLORO-1,3-BUTADIENE, see CHLOROPRENE		
CHLORODIPHENYL (42 PERCENT CHLORINE)-Skin		1
CHLORODIPHENYL (54 PERCENT CHLORINE)-Skin		0.5
1-CHLORO, 2,3-EPOXYPROPANE, see EPICHLORHYDRIN		
2-CHLOROETHANOL, see ETHYLENE CHLOROHYDRIN		
CHLOROETHYLENE, see VINYL CHLORIDE		
C CHLOROFORM (TRICHLOROMETHANE)*	50	240
1-CHLORO-1-NITROPROPANE*	20	100
CHLOROPICRIN	0.1	0.7
CHLOROPRENE(2-CHLORO-1,3-BUTADIENE)-Skin*	25	90
CHROMIUM, SOL.CHROMIC, CHROMOUS SALTS AS Cr		0.5
CHROMIUM, METAL AND INSOLUBLE SALTS		1

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
COAL TAR PITCH VOLATILES (BENZENE SOLUBLE FRACTION) ANTHRACENE, BaP, PHENANTHRENE, ACRIDINE, CHRYSENE, PYRENE)		0.2
COBALT, METAL FUME AND DUST*		0.1
COPPER FUME		0.1
COPPER DUSTS AND MISTS		1
COTTON DUST (RAW)		1[c]
CRAG HERBICIDE*		15
CRESOL (ALL ISOMERS)-Skin	5	22
CROTONALDEHYDE	2	6
CUMENE-Skin	50	245
CYANIDE (as Cn)-Skin		5
CYCLOHEXANE	300	1050
CYCLOHEXANOL*	50	200
CYCLOHEXANONE*	50	200
CYCLOHEXENE	300	1015
CYCLOPENTADIENE	75	200
2,4-D		10
DDT-Skin*		1
DDVP -Skin		1
DECABORANE-Skin*	0.05	0.3
DEMETON -Skin		0.1
DIACETONE ALCOHOL (4-HYDROXY-4-METHYL-2-PENTANONE)	50	240
1,2-DIAMINOETHANE, see ETHYLENEDIAMINE		
DIAZOMETHANE	0.2	0.4
DIBORANE	0.1	0.1
DIBUTYL PHOSPHATE*	1	5

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
DIBUTYLPHTHALATE		5
C O-DICHLOROBENZENE*	50	300
P-DICHLOROBENZENE*	75	450
DICHLORODIFLUOROMETHANE	1000	4950
1,3-DICHLORO-5,5-DIMETHYL HYDANTOIN*		0.2
1,1-DICHLOROETHANE*	100	400
1,2-DICHLOROETHYLENE	200	790
C DICHLOROETHYL ETHER-Skin*	15	90
DICHLOROMETHANE, see METHYLENECHLORIDE		
DICHLOROMONOFLUOROMETHANE*	1000	4200
C 1,1-DICHLORO-1-NITROETHANE*	10	60
1,2-DICHLOROPROPANE, see PROPYLENEDICHLORIDE		
DICHLOROTETRAFLUOROETHANE	1000	7000
DIELDRIN-Skin		0.25
DIETHYLAMINE*	25	75
DIETHYLAMINO ETHANOL-Skin	10	50
DIETHYLETHER, see ETHYL ETHER		
DIFLUORODIBROMOMETHANE	100	850
C DIGLYCIDYL ETHER (DGE)*	0.5	2.8
DIHYDROXYBENZENE, see HYDROQUINONE		
DIISOBUTYL KETONE*	50	290
DIISOPROPYLAMINE-Skin	5	20
DIMETHOXYMETHANE, see METHYLAL		
DIMETHYL ACETAMIDE-Skin	10	35
DIMETHYLAMINE	10	18
DIMETHYLAMINOBENZENE, see XYLIDENE		
DIMETHYLANILINE (N-DIMETHYL-ANILINE)-Skin*	5	25

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
DIMETHYLBENZENE, see XYLENE		
DIMETHYL 1,2-DIBROMO-2,2-DICHLOROETHYL PHOSPHATE (DIBROM)		3
DIMETHYLFORMAMIDE-Skin	10	30
2,6-DIMETHYLHEPTANONE, see DIISOBUTYL KETONE		
1,1-DIMETHYLHYDRAZINE-Skin	0.5	1
DIMETHYLPHTHALATE		5
DIMETHYLSULFATE-Skin*	1	5
DINITROBENZENE (ALL ISOMERS)-Skin		1
DINITRO-O-CRESOL-Skin		0.2
DINITROTOLUENE-Skin		1.5
DIOXANE (DIETHYLENE DIOXIDE)-Skin*	100	360
DIPHENYL	0.2	1
DIPHENYLMETHANE DIISOCYANATE (see METHYLENE BIS-PHENYL ISOCYANATE (MDI))		
DIPROPYLENE GLYCOL METHYL ETHER-Skin*	100	600
DI-SEC. OCTYL-PHTHALATE (DI-2-ETHYLHEXYLPHTHALATE)*		5
ENDRIN-Skin		0.1
EPICHLOROHYDRIN-Skin*	5	19
EPN-Skin		0.5
1,2-EPOXYPROPANE, see PROPYLENEOXIDE		
2,3-EXPOXY-1-PROPANOL, see GLYCIDOL		
ETHANETHIOL, see ETHYLMERCAPTAN		
ETHANOLAMINE*	3	6
2-ETHOXYETHANOL -Skin	200	740
2-ETHOXYETHYLACETATE-(CELLO-SOLVE ACETATE)-Skin	100	540
ETHYL ACETATE	400	1400

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
ETHYL ACRYLATE-Skin*	25	100
ETHYL ALCOHOL (ETHANOL)	1000	1900
ETHYLAMINE	10	18
ETHYL SEC-AMYL KETONE (5-METHYL-3-HEPTANONE)	25	130
ETHYL BENZENE*	100	435
ETHYL BROMIDE*	200	890
ETHYL BUTYL KETONE (3-HEPTANONE)	50	230
ETHYL CHLORIDE	1000	2600
ETHYL ETHER*	400	1200
ETHYL FORMATE	100	300
C ETHYL MERCAPTAN*	10	25
ETHYL SILICATE*	100	850
ETHYLENE CHLOROHYDRIN-Skin*	5	16
ETHYLENEDIAMINE	10	25
C ETHYLENE GLYCOL DINITRATE AND/OR NITROGLYCERIN -Skin*	0.2[d]	1
ETHYLENE GLYCOL MONOMETHYL ETHER ACETATE, see METHYL CELLOSOLVE ACETATE		
ETHYLENE IMINE-Skin	0.5	1
N-ETHYLMORPHOLINE-Skin*	20	94
FERBAM*		15
FERROVANADIUM DUST*		1
FLUORIDE (AS F)		2.5
FLUORINE*	0.1	0.2
FLUOROTRICHLOROMETHANE*	1000	5600
FORMIC ACID	5	9
FURFURAL-Skin*	5	20

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
FURFURYL ALCOHOL*	50	200
GLYCIDOL (2,3-EPOXY-1-PROPANOL)*	50	150
GLYCOL MONOMETHYL ETHER, see 2-ETHOXYETHANOL		
GLUTHION , see AZINPHOSMETHYL		
HAFNIUM		0.5
HEPTACHLOR-Skin		0.5
HEPTANE (N-HEPTANE)*	500	2000
HEXACHLOROETHANE-Skin*	1	10
HEXACHLORONAPHTHALENE-Skin		0.2
HEXANE (N-HEXANE)*	500	1800
2-HEXANONE*	100	410
HEXONE (METHYL ISOBUTYL KETONE)*	100	410
SEC-HEXYL ACETATE	50	300
HYDRAZINE-Skin*	1	1.3
HYDROGEN BROMIDE*	3	10
C HYDROGEN CHLORIDE	5	7
HYDROGEN CYANIDE-Skin*	10	11
HYDROGEN PEROXIDE (90%)	1	1.4
HYDROGEN SELENIDE	0.05	0.2
HYDROQUINONE		2
C IODINE	0.1	1
IRON OXIDE FUME*		10
ISOAMYL ACETATE	100	525
ISOAMYL ALCOHOL*	100	360
ISOBUTYL ACETATE	150	700
ISOBUTYL ALCOHOL*	100	300

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
ISOPHORONE*	25	140
ISOPROPYL ACETATE*	250	950
ISOPROPYL ALCOHOL*	400	980
ISOPROPYLAMINE*	5	12
ISOPROPYLETHER*	500	2100
ISOPROPYL GLYCIDYL ETHER (IGE)*	50	240
KETENE*	0.5	0.9
LINDANE-Skin		0.5
LITHIUM HYDRIDE		0.025
L.P.G. (LIQIFIED PETROLEUM GAS)	1000	1800
MAGNESIUM OXIDE FUME*		15
MALATHION-Skin*		15
MALEIC ANHYDRIDE	0.25	1
C MANGANESE		5
MESITYL OXIDE*	25	100
METHANETHIOL, see METHYL MERCAPTAN		
METHOXYCHLOR*		15
2-METHOXYETHANOL, see METHYL CELLOSOLVE		
METHYL ACETATE*	200	610
METHYL ACETYLENE (PROPYNE)	1000	1650
METHYL ACETYLENE-PROPADIENE MIXTURE (MAPP)*	1000	1800
METHYL ACRYLATE-Skin	10	35
METHYLAL(DIMETHOXYMETHANE)	1000	3100
METHYL ALCOHOL (METHANOL)*	200	260
METHYLAMINE	10	12
METHYL AMYL ALCOHOL, see ISOBUTYL CARBONOL		
METHYL (N-AMYL) KETONE (2-HEPTANONE)*	100	465

TABLE Z-1

Substance	ppm[a]	mg/m[3][b]
C METHYL BROMIDE-Skin*	20	80
METHYL BUTYL KETONE, see 2-HEXANONE		
METHYL CELLOSOLVE-Skin	25	80
METHYL CELLOSOLVE ACETATE-Skin	25	120
METHYL CHLOROFORM*	350	1900
METHYLCYCLOHEXANE*	500	2000
METHYLCYCLOHEXANOL*	100	470
O-METHYLCYCLOHEXANONE-Skin*	100	460
METHYL ETHYL KETONE (MEK), see 2-BUTANONE		
METHYL FORMATE*	100	250
METHYL IODIDE-Skin*	5	28
METHYL ISOBUTYL CARBINOL-Skin*	25	100
METHYL ISOBUTYL KETONE, see HEXONE		
METHYL ISOCYANATE-Skin	0.02	0.05
C METHYL MERCAPTAN*	10	20
METHYL METHACRYLATE	100	410
METHYL PROPYL KETONE, see 2-PENTANONE		
C A-METHYL STYRENE*	100	480
C METHYLENE BISPHENYL ISOCYANATE (MDI)	0.02	0.2
MOLYBDENUM (INSOLUBLE COMPOUNDS)		15
MOLYBDENUM (SOLUBLE COMPOUNDS)		5
MONOMETHYL ANILINE-Skin*	2	9
C MONOMETHYL HYDRAZINE-Skin	0.2	0.35
MORPHOLINE-Skin*	20	70
NAPHTHA (COAL TAR)	100	400
NAPHTHALENE*	10	50
NICKEL CARBONYL*	0.001	0.007

TABLE Z-1

Substance	ppm[a]	mg/m[3b]
NICKEL, (METAL AND SOLUBLE COMPOUNDS AS Ni)		1
NICOTINE-Skin		0.5
NITRIC ACID*	2	5
NITRIC OXIDE	25	30
P-NITROANILINE-Skin*	1	6
NITROBENZENE-Skin	1	5
P-NITROCHLOROBENZENE-Skin*		1
NITROETHANE	100	310
C NITROGEN DIOXIDE*	5	9
NITROGEN TRIFLUORIDE	10	29
C NITROGLYCERIN-Skin*	0.2	2
NITROMETHANE	100	250
1-NITROPROPANE	25	90
2-NITROPROPANE*	25	90
NITRO TOLUENE-Skin*	5	30
NITROTRICHLOROMETHANE, see CHLOROPICRINE		
OCTACHLORONAPHTHALENE-Skin*		0.1
OCTANE*	500	2350
OIL MIST, MINERAL*		5
OSMIUM TETROXIDE*		0.002
OXALIC ACID*		1
OXYGEN DIFLUORIDE*	0.05	0.1
OZONE*	0.1	0.2
PARAQUAT-Skin*		0.5
PARATHION-Skin		0.1
PENTABORANE*	0.005	0.01
PENTACHLORONAPHTHALENE-Skin		0.5

TABLE Z-1

Substance	ppm[a]	mg/m[3b]
PENTACHLOROPHENOL-Skin		0.5
PENTANE*	1000	2950
2-PENTANONE*	200	700
PERCHLOROMETHYL MERCAPTAN	0.1	0.8
PERCHLORYL FLUORIDE*	3	13.5
PETROLEUM DISTILLATES (NAPHTHA)*	500	2000
PHENOL-Skin	5	19
P-PHENYLENE DIAMINE-Skin		0.1
PHENYL ETHER (VAPOR)*	1	7
PHENYL ETHER- BIPHENYL MIXTURE (VAPOR)	1	7
PHENYLETHYLENE, see STYRENE		
PHENYL GLYCIDYL ETHER (PGE)*	10	60
PHENYLHYDRAZINE-Skin*	5	22
PHOSDRIN (MEVINPHOS)-Skin*		0.1
PHOSGENE (CARBONYL CHLORIDE)	0.1	0.4
PHOSPHINE*	0.3	0.4
PHOSPHORIC ACID*		1
PHOSPHORUS (YELLOW)		0.1
PHOSPHORUS PENTACHLORIDE		1
PHOSPHORUS PENTASULFIDE*		1
PHOSPHORUS TRICHLORIDE*	0.5	3
PHTHALIC ANHYDRIDE*	2	12
PICRIC ACID-Skin*		0.1
PIVAL (2-PIVALYL-1,3-INDANDIONE)		0.1
PLATINUM (SOLUBLE SALTS) AS Pt		0.002
PROPANE	1000	1800
N-PROPYL ACETATE*	200	840

TABLE Z-1

Substance	ppm[a]	mg/m[3b]
PROPYL ALCOHOL*	200	500
N-PROPYL NITRATE*	25	110
PROPYLENE DICHLORIDE*	75	350
PROPYLENE IMINE-Skin	2	5
PROPYLENE OXIDE*	100	240
PROPYNE, see METHYLACETYLENE		
PYRETHRUM		5
PYRIDINE	5	15
QUINONE	0.1	0.4
RHODIUM, METAL FUME AND DUST, AS Rh*		0.1
RHODIUM (SOLUBLE SALTS)*		0.001
RONNEL*		15
ROTENONE (COMMERCIAL)		5
SELENIUM COMPOUNDS (AS Se)		0.2
SELENIUM HEXAFLUORIDE	0.05	0.4
SILVER, METAL AND SOLUBLE COMPOUNDS*		0.01
SODIUM FLUOROACETATE (1080) -Skin*		0.05
SODIUM HYDROXIDE*		2
STIBINE	0.1	0.5
STODDARD SOLVENT*	500	2900
STRYCHNINE		0.15
SULFUR DIOXIDE	5	13
SULFUR HEXAFLUORIDE	1000	6000
SULFURIC ACID		1
SULFUR MONOCHLORIDE*	1	6
SULFUR PENTAFLUORIDE*	0.025	0.25
SULFURYL FLUORIDE*	5	20

TABLE Z-1

Substance	ppm[a]	mg/m[3b]
SYSTOX, see DEMETON		
2,4,5T		10
TANTALUM*		5
TEDP-Skin		0.2
TELLURIUM		0.1
TELLURIUM HEXAFLUORIDE	0.02	0.2
TEPP-Skin		0.05
C TERPHENYLS*	1	9
1,1,2,2-TETRACHLORO-1,2-DIFLUOROETHANE	500	4170
1,1,1,2-TETRACHLORO-2,2-DIFLUOROETHANE	500	4170
1,1,2,2-TETRACHLOROETHANE-Skin*	5	35
TETRACHLOROMETHANE, see CARBON TETRACHLORIDE		
TETRACHLORONAPHTHALENE-Skin		2
TETRAETHYL LEAD (AS Pb)-Skin*		0.075
TETRAHYDROFURAN*	200	590
TETRAMETHYL LEAD (AS Pb)-Skin*		0.075
TETRAMETHYL SUCCINONITRILE-Skin	0.5	3
TETRANITROMETHANE	1	8
TETRYL (2,4,6-TRINITROPHENOL-METHYL-NITRAMINE)-Skin		1.5
THALLIUM (SOLUBLE COMPOUNDS)-Skin AS Tl*		0.1
THIRAM		5
TIN (INORGANIC COMPOUNDS EXCEPT OXIDES)		2
TIN (ORGANIC COMPOUNDS) *		0.1
C TOLUENE-2,4-DIISOCYANATE*	0.02	0.14
O-TOLUIDINE-Skin*	5	22
TOXAPHENE, see CHLORINATED CAMPHENE		

TABLE Z-1

Substance	ppm[a]	mg/m³[b]
TRIBUTYL PHOSPHATE*		5
1,1,1-TRICHLOROETHANE, see METHYL CHLOROFORM		
1,1,2-TRICHLOROETHANE-Skin*	10	45
TITANIUM DIOXIDE		15
TRICHLOROMETHANE, see CHLOROFORM		
TRICHLORONAPHTHALENE-Skin		5
1,2,3-TRICHLOROPROPANE*	50	300
1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE*	1000	7600
TRIETHYLAMINE*	25	100
TRIFLUOROMONOBROMOMETHANE	1000	6100
2,4,6 - TRINITROPHENOL, see PICRIC ACID		
2,4,6 - TRINITROPHENOLMETHYL-NITRAMINE, see TETRYL		
TRINITROTOLUENE-Skin*		1.5
TRIORTHOCRESYL PHOSPHATE*		0.1
TRIPHENYL PHOSPHATE		3
TURPENTINE	100	560
URANIUM (SOLUBLE COMPOUNDS)*		0.05
URANIUM (INSOLUBLE COMPOUNDS)*		0.25
C VANADIUM (V2O5, DUST)*		0.5
C VANADIUM (V2O5, FUME)*		0.1
VINYL BENZENE, see STYRENE		
VINYL CYANIDE, see ACRYLONITRILE		
VINYL TOLUENE*	100	480
WARFARIN		0.1
XYLENE (XYLOL)*	100	435
XYLIDINE-Skin	5	25
YTTRIUM		1
ZINC CHLORIDE FUME*		1
ZINC OXIDE (FUME)*		5
ZIRCONIUM COMPOUNDS (AS Zr)*		5

[a]Parts of vapor or gas per million parts of contaminated air by volume at 25° C and 760 mm. Hg pressure.

[b]Approximate milligrams of particulate per cubic meter of air. (No footnote "c" is used to avoid confusion with ceiling value notations.)

[d]An atmospheric concentration of not more than 0.02 p.p.m. or personal protection may be necessary to avoid headache.

[e]This 8-hour time weighted average is for respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. This time weighted average applies to the cotton waste processing operations of waste recycling (sorting, blending, cleaning, and willowing) and garnetting.

*Substances that are in Table Z-4 in this proposal.

TABLE Z-2

Material	8-hour time weighted average	Acceptable ceiling concentration	Acceptable maximum peak above the acceptance ceiling concentration for an 8-hour shift	
			Concentration	Maximum duration
BENZENE (Z37.40-1969)	10 p.p.m.	25 p.p.m.	50 p.p.m.	10 minutes
BERYLLIUM AND BERYLLIUM COMPOUNDS (Z37.29-1970)*	2 ug/M^3	5 ug/M^3	25 ug/M^3	30 minutes
CADMIUM FUME (Z37.5-1970)	0.1 mg/M^3	0.3 mg/M^3		
CADMIUM DUST (Z37.5-1970)	0.2 mg/M^3	0.6 mg/M^3		
CARBON DISULFIDE (Z37.3-1968)*	20 p.p.m.	30 p.p.m.	100 p.p.m.	30 minutes
CARBON TETRACHLORIDE (Z37.17-1967)*	10 p.p.m.	25 p.p.m.	200 p.p.m.	5 minutes in any 4 hours
CHROMIC ACID AND CHROMATES (Z37.7-1971)*		1 mg/10M^3		
ETHYLENE DIBROMIDE (Z37.31-1970)	20 p.p.m.	30 p.p.m.	50 p.p.m.	5 minutes
ETHYLENE DICHLORIDE (Z37.21 1969)*	50 p.p.m.	100 p.p.m.	200 p.p.m.	5 minutes in any 3 hours

TABLE Z-2

Material	8-hour time weighted average	Acceptable ceiling concentration	Acceptable maximum peak above the acceptance ceiling concentration for an 8-hour shift	
			Concentration	Maximum duration
FORMALDEHYDE (Z37.16-1967)	3 p.p.m.	5 p.p.m.	10 p.p.m.	30 minutes
HYDROGEN FLUORIDE (Z37.28-1969)*	3 p.p.m.			
HYDROGEN SULFIDE (Z37.2-1966)*		20 p.p.m.	50 p.p.m.	10 minutes once only if no other measurable exposure occurs
FLUORIDE AS DUST (Z37.28-1969)	2.5 mg/M^3			
MERCURY (Z37.8-1971)*		0.1 mg/10M^3		
METHYL CHLORIDE(Z37.18-1969)*	100 p.p.m.	200 p.p.m.	300 p.p.m.	5 minutes in any 2 hours
METHYLENE CHLORIDE (Z37.23-1969)	500 p.p.m.	1,000 p.p.m.	2,000 p.p.m.	5 minutes in any 2 hours
ORGANO (ALKYL) MERCURY (Z37.30-1969)*	0.01 mg/M^3	0.04 mg/M^3		

TABLE Z-2

Material	8-hour time weighted average	Acceptable ceiling concentration	Acceptable maximum peak above the acceptance ceiling concentration for an 8-hour shift	
			Concentration	Maximum duration
STYRENE (Z37.15-1969)*	100 p.p.m.	200 p.p.m.	600 p.p.m.	5 minutes in any 3 hours
TETRACHLOROETHYLENE (Z37.22-1967)*	100 p.p.m.	200 p.p.m.	300 p.p.m.	5 minutes in any 3 hours
TOLUENE (Z37.12-1967)*	200 p.p.m.	300 p.p.m.	500 p.p.m.	10 minutes
TRICHLOROETHYLENE (Z37.19-1967)*	100 p.p.m.	200 p.p.m.	300 p.p.m.	5 minutes in any 2 hours

*Substances that are on Table Z-4 in this proposal.

TABLE Z-3

Substance	Mppcf[e]	Mg/M^3
SILICA:		
CRYSTALINE		
QUARTZ (RESPIRABLE)*	$\frac{250}{\%SiO_2+5}$[f]	$\frac{10\ mg/M^3}{\%SiO_2+2}$ m
QUARTZ (TOTAL)		$\frac{30\ mg/M^3}{\%SiO_2+2}$
CRISTOBALITE*: Use 1/2 the value calculated from the count or mass formulae for quartz		
TRIDYMITE*: Use 1/2 the value calculated from the formulae for quartz		
AMORPHOUS, including natural diatomaceous earth*	20	$\frac{80\ mg/M^3}{\%SiO_2}$
SILICATES (less than 1% crystalline silica):		
Mica*	20	
Soapstone*	20	
Talc (non-asbestos-form)*	20[g]	

TABLE Z-3

Substance	Mppcf[e]	Mg/M^3
Talc (fibrous). Use asbestos limit		
Tremolite (see talc, fibrous)		
Portland cement*	50	
GRAPHITE (NATURAL)*	15	
COAL DUST (respirable fraction less than 5% SiO_2)*		2.4 mg/M^3 or $\frac{10 \text{ mg/M}^3}{\%SiO_2+2}$
For more than 5% SiO_2*		
INERT OR NUISANCE DUST:		
Respirable fraction*	15	5 mg/M^3
Total dust	50	15 mg/M^3

NOTE: Conversion factors--mppcf X 35.3 = million particles per cubic meter = particles per c.c.

[e]Millions of particles per cubic foot of air, based on impinger samples counted by light field techniques.

[f]The percentage of crystalline silica in the formula is the amount determined from air-borne samples, except in those instances in which other methods have been shown to be applicable.

[m]Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size selector with the following characteristics:

[n]Containing less than 1% quartz; if 1% quartz, use quartz limit.

Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

The measurements under this note refer to the use of an AEC instrument. The respirable fraction of coal dust is determined with a MRE; the figure corresponding to that of 2.4 Mg/M^3 in the table for coal dust is 4.5 Mg/M^3.

* Substances that are in Table Z-4 in this proposal.

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1001 ACETALDEHYDE	180	100	270	150	—	—	
1002 ACETIC ACID	25	10	37	15	—	—	
1003 ACETIC ANHYDRIDE	—	—	—	—	20	5	
1004 ACETONE[d]	590	250	—	—	—	—	
1005 ACETONITRILE[d]	34	20	—	—	—	—	
1006 ACETYLSALICYLIC ACID (ASPIRIN)	5	—	—	—	—	—	
1007 ACROLEIN	0.25	0.1	0.8	0.3	—	—	
1008 ACRYLAMIDE	0.03	—	—	—	—	—	YES
1009 ACRYLIC ACID	30	10	—	—	—	—	
1010 ALLYL ALCOHOL	5	2	10	4	—	—	YES
1011 ALLYL CHLORIDE	3	1	6	2	—	—	
1012 ALLYL GLYCIDYL ETHER (AGE)	22	5	44	10	—	—	YES
1013 ALLYL PROPYL DISULFIDE	12	2	18	3	—	—	
1014 ALPHA-ALUMINA	10	—	—	—	—	—	
1015 ALUMINUM (ALKYLS)	2	—	—	—	—	—	
1016 ALUMINUM (METAL)	10	—	—	—	—	—	
1017 ALUMINUM (PYRO POWDERS)	5	—	—	—	—	—	
1018 ALUMINUM (SOLUBLE SALTS)	2	—	—	—	—	—	
1019 ALUMINUM (WELDING FUMES)	5	—	—	—	—	—	
1020 AMITROLE (3-AMINO-1,2,4-TRIAZOLE)	0.2	—	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1021 AMMONIA	18	25	27	35	—	—	
1022 AMMONIUM CHLORIDE (FUME)	10	—	20	—	—	—	
1024 AMMONIUM SULFAMATE (AMMATE)	10	—	—	—	—	—	
1025 ANILINE	8	2	—	—	—	—	YES
1028 ASPHALT FUMES[b]	5	—	—	—	—	—	
1029 ATRAZINE	5	—	—	—	—	—	
1031 BARIUM SULFATE	10	—	—	—	—	—	
1032 BENOMYL	10	0.8	—	—	—	—	
1033 BERYLLIUM AND BERYLLIUM COMPOUNDS[c]	0.002	—	0.005 (30 min)	—	0.025	—	
1034 BISMUTH TELLURIDE (SE-DOPED)	5	—	—	—	—	—	
1035 BISMUTH TELLURIDE (UNDOPED)	10	—	—	—	—	—	
1036 BORATES, TETRA, SODIUM (ANHYDROUS)	1	—	—	—	—	—	
1037 BORATES, TETRA, SODIUM (DECAHYDRATE)	5	—	—	—	—	—	
1038 BORATES, TETRA, SODIUM (PENTAHYDRATE)	1	—	—	—	—	—	
1039 BORON OXIDE	10	—	—	—	—	—	
1040 BORON TRIBROMIDE	—	—	—	—	10	1	
1041 BROMACIL	10	1	—	—	—	—	
1042 BROMINE	0.7	0.1	2	0.3	—	—	
1043 BROMINE PENTAFLUORIDE	0.7	0.1	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1044 BUTANE	1900	800	—	—	—	—	
1045 2-BUTANONE (MEK)	590	200	885	300	—	—	
1046 2-BUTOXY ETHANOL	120	25	—	—	—	—	YES
1047 N-BUTYL ACETATE	710	150	950	200	—	—	
1048 BUTYL ACRYLATE	55	10	—	—	—	—	
1049 SEC-BUTYL ALCOHOL	305	100	455	150	—	—	
1050 TERT-BUTYL ALCOHOL	300	100	450	150	—	—	
1051 N-BUTYL ALCOHOL	—	—	—	—	150	50	YES
1052 N-BUTYL GLYCIDYL ETHER	135	25	—	—	—	—	
1053 N-BUTYL LACTATE	25	5	—	—	—	—	
1054 BUTYL MERCAPTAN	1.5	0.5	—	—	—	—	
1055 O-SEC-BUTYLPHENOL	30	5	—	—	—	—	YES
1056 P-TERT-BUTYLTOLUENE	60	10	120	20	—	—	
1057 CALCIUM CARBONATE	10	—	—	—	—	—	
1058 CALCIUM CYANAMIDE	0.5	—	—	—	—	—	
1059 CALCIUM HYDROXIDE	5	—	—	—	—	—	
1060 CALCIUM OXIDE	2	—	—	—	—	—	
1061 CALCIUM SILICATE, TOTAL DUST	10	—	—	—	—	—	
1062 CALCIUM SULFATE	10	—	—	—	—	—	
1063 CAMPHOR (SYNTHETIC)	12	2	18	3	—	—	

TABLE 2-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1064 CAPROLACTAM (DUST)	1	—	3	—	—	—	
1065 CAPROLACTAM (VAPOR)	20	5	40	10	—	—	
1066 CAPTAFOL (DIFOLATAN)	0.1	—	—	—	—	—	YES
1067 CAPTAN	5	—	—	—	—	—	
1068 CARBOFURAN (FURADAN)	0.1	—	—	—	—	—	
1069 CARBON DIOXIDE	9000	5000	54,000	30,000	—	—	
1070 CARBON DISULFIDE[d]	3	1	30	10	—	—	
1071 CARBON MONOXIDE[d]	40	35	—	—	229	200(NDT)	
1072 CARBON TETRABROMIDE	1.4	0.1	4.0	0.3	—	—	
1073 CARBON TETRACHLORIDE[d]	—	—	12.6	2 (60 min)	—	—	
1074 CARBONYL FLUORIDE	5	2	15	5	—	—	
1075 CATECHOL (PYROCATECHOL)	20	5	—	—	—	—	
1076 CELLULOSE	10	—	—	—	—	—	
1077 CESIUM HYDROXIDE	2	—	—	—	—	—	
1078 CHLORINATED CAMPHENE	0.5	—	1	—	—	—	YES
1079 CHLORINE[d]	—	—	1.45	0.5	—	—	
1080 CHLORINE DIOXIDE	0.3	0.1	0.9	0.3	—	—	
1081 1-CHLORO-1-NITROPROPANE	10	2	—	—	—	—	
1082 2-CHLORO-6-TRICHLOROMETHYL PYRIDINE (NITRAPYRIN)	10	—	20	—	—	—	

BEST COPY AVAILABLE

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1083 CHLOROACETYL CHLORIDE	0.2	0.05	—	—	—	—	
1084 O-CHLOROBENZYLIDENE MALONONITRILE	—	—	—	—	0.4	0.05	YES
1085 CHLORODIFLUOROMETHANE	3500	1000	4375	1250	—	—	
1086 CHLOROFORM[d]	—	—	9.78 (60 min)	2 (60 min)	—	—	
1087 CHLOROPENTAFLUOROETHANE	6320	1000	—	—	—	—	
1088 CHLOROPRENE	35	10	—	—	—	—	YES
1089 O-CHLOROSTYRENE	285	50	430	75	—	—	
1090 O-CHLOROTOLUENE	250	50	375	75	—	—	
1091 CHLORPYRIFOS	0.2	—	0.6	—	—	—	YES
1092 CHROMIC ACID AND CHROMATES[e]	—	—	—	—	0.1	—	
1093 CHROMIUM, METAL	0.5	—	—	—	—	—	
1094 CHROMYL CHLORIDE	0.15	0.025	—	—	—	—	
1095 CLOPIDOL(COYDEN)	10	—	20	—	—	—	
1096 COAL DUST, < 5% QUARTZ, RESPIRABLE FRACTION	2	—	—	—	—	—	
1097 COAL DUST, > 5% QUARTZ, RESPIRABLE QUARTZ FRACTION	0.1	—	—	—	—	—	
1098 COBALT CARBONYL	0.1	—	—	—	—	—	
1099 COBALT HYDROCARBONYL	0.1	—	—	—	—	—	
1100 COBALT, METAL, FUME, DUST	0.05	—	—	—	—	—	
1101 COPPER (FUME)[e]	0.1	—	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1102 CRAG HERBICIDE (SESONE)	10	—	—	—	—	—	
1103 CRUFORMATE	5	—	20	—	—	—	
1104 CYANAMIDE	2	—	—	—	—	—	
1105 CYANOGEN	20	10	—	—	—	—	
1106 CYANOGEN CHLORIDE	—	—	—	—	0.6	0.3	
1107 CYCLOHEXANOL	200	50	—	—	—	—	YES
1108 CYCLOHEXANONE[c]	100	25	—	—	—	—	YES
1109 CYCLOHEXYLAMINE	40	10	—	—	—	—	
1110 CYCLONITE	1.5	—	3	—	—	—	YES
1111 CYCLOPENTANE	1720	600	—	—	—	—	
1112 CYHEXATIN	5	—	—	—	—	—	
1113 DDT[e]	1	—	—	—	—	—	YES
1114 DECABORANE	0.3	0.05	0.9	0.15	—	—	YES
1116 DI-SEC-OCTYL-PHTHALATE	5	—	10	—	—	—	
1117 2,6-DI-TERT-BUTYL-P-CRESOL	10	—	—	—	—	—	
1118 DIAZINON	0.1	—	—	—	—	—	YES
1119 DIBUTYL PHOSPHATE	5	1	10	2	—	—	
1120 2-N-DIBUTYLAMINOETHANOL	14	2	—	—	—	—	YES
1121 1,1-DICHLORO-1-NITROETHANE	10	2	—	—	—	—	
1122 1,3-DICHLORO-5,5-DIMETHYLHYDANTOIN	0.2	—	0.4	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1123 DICHLOROACETYLENE	—	—	—	—	0.4	0.1	
1125 P-DICHLOROBENZENE	450	75	665	110	—	—	
1126 1,1-DICHLOROETHANE[e]	400	100	—	—	—	—	
1127 DICHLOROETHYL ETHER	30	5	60	10	—	—	YES
1128 DICHLOROMONOFLUOROMETHANE	40	10	—	—	—	—	
1129 1,3-DICHLOROPROPENE	5	1	—	—	—	—	YES
1130 2,2-DICHLOROPROPIONIC ACID	6	1	—	—	—	—	
1131 DICROTOPHOS (BIDRIN)	0.25	—	—	—	—	—	YES
1132 DICYCLOPENTADIENE	30	5	—	—	—	—	
1133 DICYCLOPENTADIENYL IRON	10	—	—	—	—	—	
1134 DIETHANOLAMINE	15	3	—	—	—	—	
1135 DIETHYL KETONE	705	200	—	—	—	—	
1136 DIETHYL PHTHALATE	5	—	—	—	—	—	
1137 DIETHYLAMINE	30	10	75	25	—	—	
1138 DIETHYLENE TRIAMINE	4	1	—	—	—	—	YES
1139 DIGLYCIDYL ETHER (DGE)[b]	0.5	0.1	—	—	—	—	
1140 DIISOBUTYL KETONE[c]	150	25	—	—	—	—	
1141 DIMETHYL 1,2-DIBROMO-2,2-DICHLOROETHYL PHOSPHATE	3	—	—	—	—	—	YES
1142 DIMETHYL SULFATE	0.5	0.1	—	—	—	—	YES
1143 DIMETHYLANILINE	25	5	50	10	—	—	YES

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1144 DINITOLMIDE (3,5-DINITRO-O-TOLUAMIDE)	5	—	—	—	—	—	
1145 DIOXANE (DIETHYLENE DIOXIDE)	90	25	—	—	—	—	YES
1146 DIOXATHION (DELNAV)	0.2	—	—	—	—	—	YES
1147 DIPHENYLAMINE	10	—	—	—	—	—	
1148 DIPROPYL KETONE	235	50	—	—	—	—	
1149 DIPROPYLENE GLYCOL METHYL ETHER	600	100	900	150	—	—	YES
1150 DIQUAT	0.5	—	—	—	—	—	
1151 DISULFIRAM	2	—	—	—	—	—	
1152 DISULFOTON	0.1	—	—	—	—	—	
1153 DIURON	10	—	—	—	—	—	
1154 DIVINYL BENZENE	50	10	—	—	—	—	
1155 EMERY	10	—	—	—	—	—	
1156 ENDOSULFAN	0.1	—	—	—	—	—	YES
1158 EPICHLOROHYDRIN	8	2	—	—	—	—	YES
1159 ETHANOLAMINE	8	3	15	6	—	—	
1160 ETHION (NIALATE)	0.4	—	—	—	—	—	YES
1161 ETHYL ACRYLATE	20	5	100	25	—	—	YES
1162 ETHYL BENZENE	435	100	545	125	—	—	
1163 ETHYL BROMIDE	890	200	1110	250	—	—	
1164 ETHYL ETHER	1200	400	1500	500	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1165 ETHYL MERCAPTAN	1	0.5	—	—	—	—	
1166 ETHYL SILICATE	85	10	—	—	—	—	
1167 ETHYLENE CHLOROHYDRIN	—	—	—	—	3	1	YES
1168 ETHYLENE DICHLORIDE (1,2-DICHLOROETHANE)[d]	4	1	8	2	—	—	
1169 ETHYLENE GLYCOL	—	—	—	—	125	50	
1170 ETHYLENE GLYCOL DINITRATE[d]	—	—	0.1 (20 min)	—	—	—	YES
1171 ETHYLIDENE NORBORNENE	—	—	—	—	25	5	
1172 N-ETHYLMORPHOLINE	23	5	—	—	—	—	YES
1173 FENAMIPHOS	0.1	—	—	—	—	—	YES
1174 FENSULFOTHION (DASANIT)	0.1	—	—	—	—	—	
1175 FENTHION	0.2	—	—	—	—	—	YES
1176 FERBAM	10	—	—	—	—	—	
1177 FERROVANADIUM DUST	1	—	3	—	—	—	
1178 FIBROUS GLASS DUST[d]	5	—	—	—	—	—	
1179 FLUORINE	2	1	4	2	—	—	
1180 FLUOROTRICHLOROMETHANE	—	—	—	—	5600	1000	
1181 FONOFOS	0.1	—	—	—	—	—	YES
1182 FORMAMIDE	30	20	45	30	—	—	
1183 FURFURAL	8	2	—	—	—	—	YES

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA MG/M3	8-HOUR TWA PPM	SHORT-TERM LIMIT* MG/M3	SHORT-TERM LIMIT* PPM	CEILING** MG/M3	CEILING** PPM	SKIN NOTATION
1184 FURFURYL ALCOHOL	40	10	60	15	—	—	YES
1185 GASOLINE	900	300	1500	500	—	—	
1186 GERMANIUM TETRAHYDRIDE	0.6	0.2	—	—	—	—	
1187 GLUTARALDEHYDE	—	—	—	—	0.8	0.2	
1188 GLYCERIN (MIST)	10	—	—	—	—	—	
1189 GLYCIDOL (2,3-EPOXY-1-PROPANOL)	75	25	—	—	—	—	
1190 GRAIN DUST (OAT, WHEAT, BARLEY)	4	—	—	—	—	—	
1191 GRAPHITE, NATURAL, RESPIRABLE	2.5	—	—	—	—	—	
1191A GRAPHITE, SYNTHETIC	10	—	—	—	—	—	
1192 GYPSUM, TOTAL DUST	10	—	—	—	—	—	
1194 N-HEPTANE	1600	400	2000	500	—	—	
1195 HEXACHLOROBUTADIENE	0.24	0.02	—	—	—	—	YES
1196 HEXACHLOROCYCLOPENTADIENE	0.1	0.01	—	—	—	—	
1197 HEXACHLOROETHANE[e]	10	1	—	—	—	—	YES
1198 HEXAFLUOROACETONE	0.7	0.1	—	—	—	—	YES
1200 N-HEXANE	180	50	—	—	—	—	
1201 HEXANE ISOMERS	1800	500	3600	1000	—	—	
1202 2-HEXANONE	20	5	—	—	—	—	
1203 HEXONE (METHYL ISOBUTYL KETONE)	205	50	300	75	—	—	
1204 HEXYLENE GLYCOL	—	—	—	—	125	25	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1205 HYDRAZINE	0.1	0.1	—	—	—	—	YES
1206 HYDROGEN BROMIDE	—	—	—	—	10	3	
1207 HYDROGEN CYANIDE[d]	—	—	—	—	5 (10 min)	4.7 (10 min)	YES
1208 HYDROGEN FLUORIDE[d]	—	3	—	6	—	—	
1209 HYDROGEN SULFIDE[b]	14	10	21	15	—	—	
1210 HYDROGENATED TERPHENYLS	5	0.5	—	—	—	—	
1211 2-HYDROXYPROPYL ACRYLATE	3	0.5	—	—	—	—	YES
1212 INDENE	45	10	—	—	—	—	
1213 INDIUM & COMPOUNDS	0.1	—	—	—	—	—	
1214 IODOFORM	10	0.6	—	—	—	—	
1215 IRON OXIDE (DUST AND FUME)	5	--	—	—	—	—	
1216 IRON PENTACARBONYL	0.8	0.1	1.6	0.2	—	—	
1217 IRON SALTS (SOLUBLE)	1	--	—	—	—	—	
1218 ISOAMYL ALCOHOL	360	100	450	125	—	—	
1219 ISOBUTYL ALCOHOL	150	50	—	—	—	—	
1220 ISOOCTYL ALCOHOL	270	50	—	—	—	—	YES
1221 ISOPHORONE[d]	23	4	—	—	—	—	
1222 ISOPHORONE DIISOCYANATE[d]	—	0.005	—	—	—	0.02 (10 min)	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

N.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1223 2-ISOPROPOXYETHANOL	105	25	—	—	—	—	
1224 ISOPROPYL ACETATE	950	250	1185	310	—	—	
1225 ISOPROPYL ALCOHOL	980	400	1225	500	—	—	
1226 ISOPROPYL ETHER[e]	2100	500	—	—	—	—	
1227 ISOPROPYL GLYCIDYL ETHER[b]	240	50	360	75	—	—	
1228 ISOPROPYLAMINE	12	5	24	10	—	—	
1229 N-ISOPROPYLANILINE	10	2	—	—	—	—	YES
1230 KAOLIN, TOTAL DUST	10	—	—	—	—	—	
1231 KETENE	0.9	0.5	3	1.5	—	—	
1232 LIMESTONE, TOTAL DUST	10	—	—	—	—	—	
1233 MAGNESITE, TOTAL DUST	10	—	—	—	—	—	
1234 MAGNESIUM OXIDE FUME	10	—	—	—	—	—	
1235 MALATHION	10	—	—	—	—	—	YES
1236A MANGANESE, FUME	1	—	3	—	—	—	
1237 MANGANESE CYCLOPENTADIENYL TRICARBONYL	0.1	—	—	—	—	—	YES
1238 MANGANESE TETROXIDE	1	—	—	—	—	—	
1239 MARBLE, TOTAL DUST	10	—	—	—	—	—	
1240 MERCURY (ARYL AND INORGANIC COMPOUNDS)[e]	—	—	—	—	0.1	—	
1241 MERCURY (VAPOR)	0.05	—	—	—	—	—	YES
1242 MERCURY, (ORGANO) ALKYL COMPOUNDS	0.01	—	0.03	—	—	—	YES

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA MG/M3	8-HOUR TWA PPM	SHORT-TERM LIMIT* MG/M3	SHORT-TERM LIMIT* PPM	CEILING** MG/M3	CEILING** PPM	SKIN NOTATION
1243 MESITYL OXIDE	60	15	100	25	—	—	
1244 METHACRYLIC ACID	70	20	—	—	—	—	
1245 METHOMYL (LANNATE)	2.5	—	—	—	—	—	
1246 METHOXYCHLOR	10	—	—	—	—	—	
1247 4-METHOXYPHENOL	5	—	—	—	—	—	
1248 METHYL 2-CYANOACRYLATE	8	2	16	4	—	—	
1249 METHYL ACETATE	610	200	760	250	—	—	
1250 METHYL ACETYLENE/PROPADIENE MIXTURE	1800	1000	2250	1250	—	—	
1251 METHYL ACRYLONITRILE	3	1	—	—	—	—	YES
1252 METHYL ALCOHOL	260	200	310	250	—	—	YES
1253 METHYL BROMIDE	20	5	—	—	—	—	YES
1254 METHYL CHLORIDE	105	50	205	100	—	—	
1255 METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)	1900	350	2450	450	—	—	
1256 METHYL DEMETON	0.5	—	—	—	—	—	YES
1257 METHYL ETHYL KETONE PEROXIDE	—	—	—	—	1.5	0.2	
1258 METHYL FORMATE	250	100	375	150	—	—	
1259 METHYL IODIDE	10	2	—	—	—	—	YES
1260 METHYL ISOAMYL KETONE	240	50	—	—	—	—	
1261 METHYL ISOBUTYL CARBINOL	100	25	165	40	—	—	YES
1262 METHYL ISOPROPYL KETONE	705	200	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA MG/M3	8-HOUR TWA PPM	SHORT-TERM LIMIT* MG/M3	SHORT-TERM LIMIT* PPM	CEILING** MG/M3	CEILING** PPM	SKIN NOTATION
1263 METHYL MERCAPTAN[b]	1	0.5	—	—	—	—	
1264 METHYL N-AMYL KETONE[e]	465	100	—	—	—	—	
1265 METHYL PARATHION[c]	0.2	—	—	—	—	—	YES
1266 METHYL SILICATE	6	1	—	—	—	—	
1267 ALPHA-METHYL STYRENE	240	50	485	100	—	—	
1268 METHYLCYCLOHEXANE	1600	400	—	—	—	—	
1269 METHYLCYCLOHEXANOL	235	50	—	—	—	—	
1270 O-METHYLCYCLOHEXANONE	230	50	345	75	—	—	YES
1271 METHYLCYCLOPENTADIENYL MN TRICARBONYL	0.2	—	—	—	—	—	YES
1272 METHYLENE BIS (4-CYCLOHEXYLISOCYANATE)	—	—	—	—	0.11	0.01	
1273 4,4'-METHYLENE BIS(2-CHLOROANILINE)	0.22	0.02	—	—	—	—	YES
1275 METRIBUZIN	5	—	—	—	—	—	
1276 MICA	3	—	—	—	—	—	
1277 MINERAL WOOL FIBER	10	—	—	—	—	—	
1278 MOLYBDENUM (INSOLUBLE COMPOUNDS)	10	—	—	—	—	—	
1279 MONOCROTOPHOS (AZODRIN)	0.25	—	—	—	—	—	
1280 MONOMETHYL ANILINE	2	0.5	—	—	—	—	YES
1281 MORPHOLINE	70	20	105	30	—	—	YES
1282 NAPHTHALENE	50	10	75	15	—	—	
1283 NICKEL (SOLUBLE COMPOUNDS)	0.1	—	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT[b]		CEILING[c]		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1284 NICKEL CARBONYL[e]	0.007	0.001	—	—	—	—	
1286 NITRIC ACID	5	2	10	4	—	—	
1287 P-NITROANILINE	3	—	—	—	—	—	YES
1288 P-NITROCHLOROBENZENE[e]	1	—	—	—	—	—	YES
1289 NITROGEN DIOXIDE[d]	—	—	1.8	1	—	—	
1290 NITROGLYCERIN[d]	—	—	0.1 (20 min)	—	—	—	YES
1291 2-NITROPROPANE	35	10	—	—	—	—	
1292 NITROTOLUENE	11	2	—	—	—	—	YES
1293 NOMAME	1050	200	—	—	—	—	
1294 NUISANCE PARTICULATES, TOTAL DUST	10	—	—	—	—	—	
1295 OCTACHLORONAPHTHALENE	0.1	—	0.3	—	—	—	YES
1296 OCTANE	1450	300	1800	375	—	—	
1297 OIL MIST (MINERAL)	5	—	10	—	—	—	
1298 OSMIUM TETROXIDE	0.002	0.0002	0.006	0.0006	—	—	
1299 OXALIC ACID	1	—	2	—	—	—	
1300 OXYGEN DIFLUORIDE	—	—	—	—	0.1	0.05	
1301 OZONE	0.2	0.1	0.6	0.3	—	—	
1302 PARAFFIN WAX FUME	2	—	—	—	—	—	
1303 PARAQUAT, RESPIRABLE DUST	0.1	—	—	—	—	—	YES

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA MG/M3	8-HOUR TWA PPM	SHORT-TERM LIMIT* MG/M3	SHORT-TERM LIMIT* PPM	CEILING** MG/M3	CEILING** PPM	SKIN NOTATION
1304 PENTABORANE	0.01	0.005	0.03	0.015	—	—	
1305 PENTAERYTHRITOL, TOTAL DUST	10	—	—	—	—	—	
1306 PENTANE	1800	600	2250	750	—	—	
1307 2-PENTANONE (METHYL PROPYL KETONE)	700	200	875	250	—	—	
1308 PERCHLOROETHYLENE	340	50	1340	200	—	—	
1309 PERCHLORYL FLUORIDE	14	3	28	6	—	—	
1310 PERLITE	10	—	—	—	—	—	
1312 PETROLEUM DISTILLATES (NAPHTHA)	1600	400	—	—	—	—	
1313 PHENOTHIAZINE	5	—	—	—	—	—	YES
1314 PHENYL ETHER (VAPOR)[e]	7	1	—	—	—	—	
1315 PHENYL GLYCIDYL ETHER	6	1	—	—	—	—	
1316 PHENYL MERCAPTAN	2	0.5	—	—	—	—	
1317 PHENYLHYDRAZINE	20	5	45	10	—	—	YES
1318 PHENYLPHOSPHINE	—	—	—	—	0.25	0.05	
1319 PHORATE (THIMET)	0.05	—	0.2	—	—	—	YES
1320 PHOSDRIN (MEVINPHOS)	0.1	0.01	0.3	0.03	—	—	YES
1321 PHOSPHINE	0.4	0.3	1	1	—	—	
1322 PHOSPHORIC ACID	1	—	3	—	—	—	
1323 PHOSPHORUS OXYCHLORIDE	0.6	0.1	3	0.5	—	—	
1324 PHOSPHORUS PENTASULFIDE	1	—	3	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1325 PHOSPHORUS TRICHLORIDE	1.5	0.2	3	0.5	—	—	
1326 PHTHALIC ANHYDRIDE	6	1	—	—	—	—	
1327 M-PHTHALODINITRILE	5	—	—	—	—	—	
1328 PICLORAM	10	—	20	—	—	—	
1329 PICRIC ACID	0.1	—	0.3	—	—	—	YES
1330 PIPERAZINE DIHYDROCHLORIDE	5	—	—	—	—	—	
1331 PLASTER OF PARIS, TOTAL DUST	10	—	—	—	—	—	
1332 PLATINUM, METAL	1	—	—	—	—	—	
1333 PORTLAND CEMENT	10	—	—	—	—	—	
1334 POTASSIUM HYDROXIDE	—	—	—	—	2	—	
1335 PROPARGYL ALCOHOL	2	1	—	—	—	—	YES
1336 PROPIONIC ACID	30	10	45	15	—	—	
1337 PROPOXUR (BAYGON)	0.5	—	—	—	—	—	
1338 N-PROPYL ACETATE	840	200	1050	250	—	—	
1339 PROPYL ALCOHOL	500	200	625	250	—	—	YES
1340 N-PROPYL NITRATE	105	25	170	40	—	—	
1341 PROPYLENE DICHLORIDE	350	75	510	110	—	—	
1342 PROPYLENE GLYCOL DINITRATE	0.3	0.05	—	—	—	—	YES
1343 PROPYLENE GLYCOL MONOMETHYL ETHER	360	100	540	150	—	—	
1344 PROPYLENE OXIDE	50	20	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA MG/M3	8-HOUR TWA PPM	SHORT-TERM LIMIT* MG/M3	SHORT-TERM LIMIT* PPM	CEILING** MG/M3	CEILING** PPM	SKIN NOTATION
1346 RESORCINOL	45	10	90	20	—	—	
1347 RHODIUM (METAL FUME & INSOLUBLE COMPOUNDS)[e]	0.1	—	—	—	—	—	
1348 RHODIUM (SOLUBLE SALTS)[e]	0.001	—	—	—	—	—	
1349 RONNEL	10	—	—	—	—	—	
1350 ROSIN CORE SOLDER PYROLYSIS PRODUCT (AS HCHO)	0.1	—	—	—	—	—	
1351 ROUGE, TOTAL DUST	10	—	—	—	—	—	
1352 SILICA, AMORPHOUS, DIATOMACEOUS EARTH	6	—	—	—	—	—	
1353 SILICA, AMORPHOUS, PRECIPITATED OR GEL	6	—	—	—	—	—	
1354 SILICA, CRYSTALLINE - CRISTOBALITE	0.05	—	—	—	—	—	
1355 SILICA, CRYSTALLINE QUARTZ, RESPIRABLE	0.1	—	—	—	—	—	
1356 SILICA, CRYSTALLINE TRIDYMITE	0.05	—	—	—	—	—	
1357 SILICA, CRYSTALLINE TRIPOLI (AS QUARTZ DUST)	0.1	—	—	—	—	—	
1358 SILICA, FUSED	0.1	—	—	—	—	—	
1359 SILICON	10	—	—	—	—	—	
1360 SILICON CARBIDE	10	—	—	—	—	—	
1361 SILICON TETRAHYDRIDE	7	5	—	—	—	—	
1362 SILVER (METAL DUST AND FUME)[e]	0.01	—	—	—	—	—	
1363 SOAPSTONE, TOTAL DUST	6	—	—	—	—	—	
1363A SOAPSTONE, RESPIRABLE DUST	3	—	—	—	—	—	
1364 SODIUM AZIDE	—	—	—	—	0.3	0.1	
1365 SODIUM BISULFITE	5	—	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA MG/M3	8-HOUR TWA PPM	SHORT-TERM LIMIT* MG/M3	SHORT-TERM LIMIT* PPM	CEILING** MG/M3	CEILING** PPM	SKIN NOTATION
1366 SODIUM FLUOROACETATE	0.05	—	0.15	—	—	—	YES
1367 SODIUM HYDROXIDE	—	—	—	—	2	—	
1368 SODIUM METABISULFITE	5	—	—	—	—	—	
1369 STARCH, TOTAL DUST	10	—	—	—	—	—	
1371 STODDARD SOLVENT	525	100	—	—	—	—	
1372 STYRENE (PHENYLETHYLENE)[c]	215	50	425	100	—	—	
1373 SUBTILISINS (PROTEOLITIC ENZYMES)	—	—	—	—	0.00006	—	
1374 SUCROSE, TOTAL DUST	10	—	—	—	—	—	
1375 SULFUR DIOXIDE	5	2	10	5	—	—	
1376 SULFUR MONOCHLORIDE	—	—	—	—	6	1	
1377 SULFUR PENTAFLUORIDE	—	—	—	—	0.1	0.01	
1378 SULFUR TETRAFLUORIDE	—	—	—	—	0.4	0.1	
1379 SULFURYL FLUORIDE	20	5	40	10	—	—	
1380 SULPROFOS	1	—	—	—	—	—	
1381 TALC (NON-ASBESTIFORM)	2	—	—	—	—	—	
1382 TANTALUM (METAL AND OXIDE DUSTS)	5	—	10	—	—	—	
1383 TEMEPHOS	10	—	—	—	—	—	
1384 TERPHENYLS	—	—	—	—	5	0.5	
1385 1,1,2,2-TETRACHLOROETHANE	7	1	—	—	—	—	YES
1386 TETRAETHYL LEAD[e]	0.075	—	—	—	—	—	YES
1387 TETRAHYDROFURAN	590	200	735	250	—	—	
1388 TETRAMETHYL LEAD[e]	0.075	—	—	—	—	—	YES

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1389 TETRASODIUM PYROPHOSPHATE	5	—	—	—	—	—	
1391 4,4'-THIOBIS (6-TERT-BUTYL-M-CRESOL)	10	—	—	—	—	—	
1392 THIOGLYCOLIC ACID	4	1	—	—	—	—	YES
1393 THIONYL CHLORIDE	—	—	—	—	5	1	
1394 TIN (ORGANIC COMPOUNDS)	0.1	—	—	—	—	—	YES
1395 TIN OXIDE	2	—	—	—	—	—	
1396 TITANIUM DIOXIDE	10	—	—	—	—	—	
1397 TOLUENE	375	100	560	150	—	—	
1398 TOLUENE 2,4-DIISOCYANATE	0.04	0.005	0.15	0.02	—	—	
1399 O-TOLUIDINE	9	2	—	—	—	—	YES
1400 P-TOLUIDINE	9	2	—	—	—	—	YES
1401 M-TOLUIDINE	9	2	—	—	—	—	YES
1402 TRIBUTYL PHOSPHATE	2.5	0.2	—	—	—	—	
1403 1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE	7600	1000	9500	1250	—	—	
1404 TRICHLOROACETIC ACID	7	1	—	—	—	—	
1405 1,2,4-TRICHLOROBENZENE	—	—	—	—	40	5	
1406 TRICHLORDETHYLENE[d]	—	25	—	—	—	—	
1407 1,2,3-TRICHLOROPROPANE	60	10	—	—	—	—	YES
1408 TRIETHYLAMINE	40	10	60	15	—	—	
1409 TRIMELLITIC ANHYDRIDE	0.04	0.005	—	—	—	—	
1410 TRIMETHYL PHOSPHITE	10	2	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA		SHORT-TERM LIMIT*		CEILING**		SKIN NOTATION
	MG/M3	PPM	MG/M3	PPM	MG/M3	PPM	
1411 TRIMETHYLAMINE	24	10	36	15	—	—	
1412 TRIMETHYLBENZENE	125	25	—	—	—	—	
1413 2,4,6-TRINITROTOLUENE (TNT)	0.5	—	—	—	—	—	YES
1414 TRIORTHOCRESYL PHOSPHATE	0.1	—	—	—	—	—	YES
1415 TRIPHENYL AMINE	5	—	—	—	—	—	
1416 TUNGSTEN & COMPOUNDS (INSOLUBLE)	5	—	10	—	—	—	
1417 TUNGSTEN & COMPOUNDS (SOLUBLE)	1	—	3	—	—	—	
1418 URANIUM (INSOLUBLE COMPOUNDS)	0.2	—	0.6	—	—	—	
1419 URANIUM (SOLUBLE COMPOUNDS)[e]	0.05	—	—	—	—	—	
1420 N-VALERALDEHYDE	175	50	—	—	—	—	
1421 VANADIUM (V205, DUST)[b]	0.05	—	—	—	—	—	
1422 VANADIUM (V205, FUME)[b]	0.05	—	—	—	—	—	
1423 VEGETABLE OIL MIST	10	—	—	—	—	—	
1424 VINYL ACETATE	30	10	60	20	—	—	
1425 VINYL BROMIDE	20	5	—	—	—	—	
1426 VINYL CYCLOHEXENE DIOXIDE	60	10	—	—	—	—	YES
1427 VINYL TOLUENE[e]	480	100	—	—	—	—	
1428 VINYLIDENE CHLORIDE	20	5	80	20	—	—	
1429 VM & P NAPHTHA	1350	300	—	—	—	—	
1430 WELDING FUMES (TOTAL PARTICULATE)	5	—	—	—	—	—	
1430a WOOD DUST, HARD WOOD	1	—	—	—	—	—	

TABLE Z-4. All Substances Considered by OSHA for Proposed Revision or Addition of Limits[a]

H.S. NO./ CHEMICAL NAME	8-HOUR TWA MG/M3	8-HOUR TWA PPM	SHORT-TERM LIMIT* MG/M3	SHORT-TERM LIMIT* PPM	CEILING** MG/M3	CEILING** PPM	SKIN NOTATION
1430b WOOD DUST, SOFT WOOD	5	—	10	—	—	—	
1431 XYLENE (O,M,P-ISOMERS)	435	100	655	150	—	—	
1432 M-XYLENE-ALPHA,ALPHA'-DIAMINE	—	—	—	—	0.1	—	YES
1433 XYLIDINE	10	2	—	—	—	—	YES
1434 ZINC STEARATE	10	—	20	—	—	—	
1435 ZINC CHLORIDE FUME	1	—	2	—	—	—	
1436 ZINC CHROMATES (CrVI)[e]	—	—	—	—	0.1	—	
1437 ZINC OXIDE (FUME)	5	—	10	—	—	—	
1438 ZINC OXIDE, TOTAL DUST	10	—	—	—	—	—	
1439 ZIRCONIUM COMPOUNDS	5	—	10	—	—	—	

[a] All proposed limits derive from the 1987-88 ACGIH TLVs, unless otherwise noted.

[b] Proposed limit is based on 1987-88 ACGIH TLV because NIOSH REL for this substance was judged to be essentially equivalent to the TLV.

[c] Proposed limit is based both on 1987-88 ACGIH TLV and the current NIOSH REL, which are identical.

[d] Proposed limit is based on NIOSH REL.

[e] Proposal retains existing PEL.

* Duration is 15 minutes, unless otherwise noted.

** Ceiling is a peak not to be exceeded at any time during the working day.

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XI. Appendices

Note.—These appendices will not appear in the Code of Federal Regulations.

Appendix A—Sampling and Analytical Methods

The sampling and analytical methods for the substances listed in Section I-E of this preamble are categorized into three groups: (1) Fully Validated Methods, (2) Other Methods, and (3) No Methods. These methods are indicated in the Table in this Appendix. The first Table details fully validated methods, other methods, substances for which there are no identified methods, and detection limits. The second Table identifies the most recent NIOSH Analytical methods.

A. Fully Validated Methods

Fully Validated methods were developed by either NIOSH or OSHA. The criteria used in validating these procedures were developed independently by each agency. There are some differences in validation protocol, but in general similar testing procedures were followed. These methods are widely accepted by the scientific community.

B. Other Methods

Methods in this category have not been subjected to all of the testing procedures required of fully validated methods. Some of these procedures have been taken directly from the scientific literature and may not have been used by OSHA. Some are methods that were validated for a specific analyte and assumed to be applicable to a similar one.

While the precision and accuracy of these methods has not been determined and may not meet the OSHA accuracy requirement (±25% at the 95% confidence level), they are the best procedures currently available at this time. Work at evaluating these procedures is progressing.

C. No Methods

These analytes to not have an adequate sampling method available at OSHA, nor has an appropriate method been found in the available scientific literature.

D. Detection Limits

The values listed under Detection Limits are the lowest air concentrations that can be monitored, based on recommended sample air volumes. Detection limits for the OSHA validated methods are determined during the evaluation. Detection limits are not routinely determined for OSHA in-house methods, nor were they determined in the validated methods of the NIOSH Standards Completion Program. Therefore, the detection limits listed for these methods are estimated.

SAMPLING AND ANALYTICAL METHODS

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
1. Acetaldehyde	OSHA 68			0.58	
2. Acetic Acid		In-house[2]		6 ppb	DL based on 240 L air vol.
3. Acetic Anhydride	NIOSH 3506			5 mg/M³	DL based on 100 L air vol.
4. Acetone	NIOSH 1300			0.3 ppm	
5. Acetonitrile	NIOSH 1606			1 ppm	
6. Acetylsalicylic Acid (Aspirin)		In-house		2 µg/M³	DL based on 120 L air vol.
7. Acrolein	OSHA 52			2.7 ppb	
8. Acrylamide	OSHA 21			1.3 ppb	
9. Acrylic Acid	OSHA 28			0.014 ppb	
10. Allyl Alcohol	NIOSH 1402			0.5 ppm	
11. Allyl Chloride	NIOSH 1000			0.2 ppm	
12. Allyl Glycidyl Ether (AGE)	NIOSH S346			0.1 ppm	
13. Allyl Propyl Disulfide		In-house		0.16 ppm	
14. alpha-Alumina	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
15. Aluminum					
Metal & oxide—					
Pyro powders					DL based on 480 L air vol.
Welding fumes	GRAV & In-house			0.1 mg/M³	Method does not differentiate different forms of Al.
Soluble Salts—					
Alkyls			XXXX		
16. Amitrole (3-Amino-1,2,4-triazole).		In-house		0.004 mg/M³	DL based on 60 L air vol.
17. Ammonia		In-house		1 ppm	DL based on 24 L air vol.
18. Ammonium Chloride (fume)	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
19. Ammonium Perfluorooctanoate.			XXXX		
20. Ammonium Sulfamate (Ammate).	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
21. Aniline	NIOSH 2002			0.05 ppm	
22. ANTU (alpha-Naphthyl Thiourea).	NIOSH S276			0.01 mg/M³	DL based on 480 L air vol.,
23. Arsenic	OSHA ID105			0.0005 mg/M³	DL based on 480 L air vol.
24. Asphalt (Petroleum) Fumes		OSHA 58		0.008 mg/M	Benzene soluble portion.
25. Atrazine		In-house		0.05 mg/M³	DL based on 300 L air vol.
26. Azinphos-methyl		In-house		0.014 mg/M³	DL based on 300 L air vol.
27. Barium Sulfate	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
28. Benomyl		In-house		0.03 mg/M³	DL based on 60 L air vol.
29. Beryllium & compounds	OSHA ID125			0.04 µg/M³	DL based on 480 L air vol.
30. Bismuth Telluride (Se-doped).		In-house		0.02 mg/M³	DL based on 480 L air vol.

SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
31. Bismuth Telluride (Undoped).	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
32. Borates, Tetra, Sodium Salts.					
Anhydrous					DL based on 480 L air vol. Method is for total Boron and does not differentiate different forms of Boron.
Decahydrate		In-house		0.01 mg/M³	
Pentahydrate					
33. Boron Oxide	GRAVIMETRIC			0.02 mg/sample	Same as nuisance particulate TLV.
34. Boron Tribromide		In-house		0.013 mg/M³	Based on total Br & 15 L air vol.
35. Bromacil		In-house		0.1 mg/M³	DL based on 50 L air vol.
36. Bromine	OSHA ID108			0.09 ppm	DL based on 30 L air vol.
37. Bromine Pentafluoride		In-house		0.009 mg/M³	Based on total Br & 48 L air vol.
38. Butane		In-house		1 ppm	DL based on 10 L air vol.
39. 2-Butanone (MEK)	OSHA 16			1.5 ppm	
40. 2-Butoxy Ethanol	NIOSH 1403			0.02 ppm	DL based on 10 L air vol.
41. n-Butyl Acetate	NIOSH 1450			0.04 ppm	DL based on 10 L air vol.
42. Butyl Acrylate		In-house		0.3 ppm	DL based on 3 L air vol.
43. sec-Butyl Alcohol	NIOSH 1401			0.5 ppm	DL based on 10 L air vol.
44. tert-Butyl Alcohol	NIOSH 1400			0.5 ppm	DL based on 10 L air vol.
45. n-Butyl Alcohol	NIOSH 1401			0.5 ppm	DL based on 10 L air vol.
46. n-Butyl Glycidyl ether (BGE)	NIOSH S81			0.5 ppm	DL based on 10 L air vol.
47. n-Butyl Lactate		OSHA 7		0.2 ppm	Use method for Organic Solvents.
48. Butyl Mercaptan	NIOSH S350			0.2 ppm	DL based on 10 L air vol.
49. o-sec-Butylphenol		In-house		0.1 ppm	DL based on 10 L air vol.
50. p-tert-Butyltoluene	NIOSH 1501			0.1 ppm	DL based on 10 L air vol.
51. Calcium Carbonate (Limestone, Marble).	GRAVIMETRIC			0.02 mg/Sample	Same as nuisance particulate TLV.
52. Calcium Cyanamide		In-house		0.02 mg/M³	DL based on act. Ca & 480 L air vol.
53. Calcium Hydroxide		OSHA ID121		0.002 mg/M³	DL based on total Ca.
54. Calcium Oxide		OSHA ID121		0.002 mg/M³	DL based on total Ca.
55. Calcium Silicate, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
56. Calcium Sulfate (Plaster of Paris).	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
57. Camphor, Synthetic	NIOSH 1301			0.5 ppm	DL based on 10 L air vol.
58. Caprolactam Vapor & Aerosol.		In-house		0.007 mg/M³	DL based on 100 L air vol.
59. Caprolactam Vapor only		In-house		0.007 mg/M³	DL based on 100 L air vol.
60. Captafol (Difolatan)		In-house		0.025 mg/M³	DL based on 120 L air vol.
61. Captan		In-house		0.02 mg/M³	DL based on 60 L air vol.
62. Carbofuran (Furadan)		In-house		0.02 mg/M³	DL based on 300 L air vol.
63. Carbon Dioxide	OSHA ID172			500 ppm	
64. Carbon Disulfide	OSHA-NIOSH 1600			0.1 ppm	DL based on 5 L air vol.
65. Carbon Monoxide		Field Test		0.5 ppm	Use direct reading instrument.
66. Carbon Tetrabromide		In-house		0.01 ppm	DL based on 10 L air vol.
67. Carbon Tetrachloride (Tetrachloromethane).	NIOSH 1003			0.1 ppm	DL based on 15 L air vol.
68. Carbonyl Fluoride		In-house		0.2 mg/M³	Based on total F & 240 L air vol.
69. Catechol (Pyrocatechol)		OSHA 32		0.5 ppm	Use OSHA method of Cresol.
70. Cellulose (paper fiber)	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
71. Cesium Hydroxide		In-house		0.02 mg/M³	DL based on Total Ca & 480 L air vol.
72. Chlorinated Camphene (Toxaphene).	NIOSH S87			0.05 mg/M³	DL based on 15 L air vol.
73. Chlorine	OSHA ID101			0.13 ppm	
74. Chlorine Dioxide		In-house		0.05 ppm	DL based on 29 L air vol.
75. 1-Chloro-1-nitropropane	NIOSH S211			0.5 ppm	
76. 2-Chloro-6-trichloro-methyl Pyridine (Nitrapyrin).		In-house		0.08 mg/M³	DL based on 60 L air vol.
77. Chloroacetyl Chloride		In-house		0.05 ppm	DL based on 10 L air vol.
78. o-Chlorobenzylidene Malonitrile.		NIOSH 304		0.003 mg/M³	DL based on 90 L air vol.
79. Chlorodifluoromethane		NIOSH 1020		1 ppm	Use NIOSH method for 1,1,2-Trichloro-1,2,2-trifluoroethane.
80. Chloroform	OSHA 5			0.11 ppm	
81. Chloropentafluoroethane		NIOSH 1020		1 ppm	Use NIOSH method for 1,1,2-Trichloro-1,2,2-trifluoroethane.
82. beta-Chloroprene	NIOSH 1002			0.5 ppm	
83. o-Chlorostyrene		NIOSH 1003		0.5 ppm	Use NIOSH method for Chlorobenzene.
84. o-Chlorotoluene		NIOSH 1003		0.5 ppm	Use NIOSH method for Chlorobenzene.

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SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
85. Chlorpyrifos (Dursban)	OSHA 62			0.23 ppb	DL based on 480 L air vol.
86. Chromic Acid & Chromates	OSHA ID103			<0.4 µg/M³ as CrO_3	DL based on 480 L air vol.
87. Chromium, metal	ID121, ID125			2 µg/M³	DL based on 480 L air vol.
88. Chromyl Chloride		In-house		0.009 mg/M³	Based on Cr^{+6} & 240 L air vol.
89. Clopidol (Coyden)		In-house		0.06 mg/M³	DL based on 60 L air vol.
90. Coal Dust (<5% Quartz)	GRAV & ID142			0.02 mg/M³	Quartz analysis using 400 L air vol.
91. Coal Dust (>5% Quartz)	GRAV & ID142			0.02 mg/M³	Quartz analysis using 400 L air vol.
92. Cobalt as Co Metal Dust & Fume.	ID121, ID125			2 µg/M³	DL based on 480 L air vol.
93. Cobalt Carbonyl as Co		In-house		0.002 mg/M³	Based on total Co & 480 L air vol.
94. Cobalt Hydrocarbonyl as Co		In-house		0.002 mg/M³	Based on total Co & 480 L air vol.
95. Copper, Fume-	ID121, ID125			2 µg/M³	DL based on 480 L air vol.
96. Crag Herbicide (Sesone)	NIOSH S356			1.5 mg/M³	DL based on 60 L air vol.
97. Crufomate		In-house		0.05 mg/M³	DL based on 60 L air vol.
98. Cyanamide			XXXX		
99. Cyanogen		In-house		0.06 ppm	DL based on 10 L air vol.
100. Cyanogen Chloride		In-house		0.06 ppm	DL based on 10 L air vol.
101. Cyclohexanol	NIOSH 1402			0.5 ppm	DL based on 10 L air vol.
102. Cyclohexanone	OSHA 1			0.05 ppm	
103. Cyclohexylamine		In-house		0.5 ppm	DL based on 10 L air vol.
104. Cyclonite (RDX)		In-house		0.06 mg/M³	DL based on 60 L air vol.
105. Cyclopentane		NIOSH 1500		0.5 ppm	Use NIOSH method for pentane.
106. Cyhexatin		In-house		0.006 mg/M³	Solvent extract, Sn anal & 480 L air vol.
107. DDT (Dichlorodiphenyltrichloroethane).	NIOSH S274			0.01 mg/M³	DL based on 90 L air vol.
108. Decaborane		In-house		0.002 mg/M³	Hot H_2O extract, B anal & 480 L air vol.
109. Demeton (Systox)	NIOSH 5514			0.006 mg/M³	DL based on 480 L air vol.
110. Di-Sec-Octyl Phthalate		In-house		0.01 mg/M³	DL based on 100 L air vol.
111. 2,6-Di-tert-Butyl-p-cresol		NIOSH 226		0.5 ppm	
112. Diazinon	OSHA 62			0.24 ppb	DL based on 480 L air vol.
113. Dibutyl Phosphate		NIOSH 5017		0.3 mg/M³	DL based on 250 L air vol.
114. 2-N-Dibutylaminoethanol		OSHA-NIOSH 2007.		0.5 ppm	
115. 1,1-Dichloro-1-nitroethane	NIOSH 1601			0.5 ppm	
116. 1,3-Dichloro-5,5-dimethyl-hydantoin.		In-house		0.2 mg/mL	Field anal by Chemiluminescence.
117. Dichloroacetylene		NIOSH 1003		0.05 ppm	Use NIOSH method for 1,1-Dichloroethane.
118. o-Dichlorobenzene	NIOSH 1003			0.5 ppm	
119. p-Dichlorobenzene	NIOSH 1003			0.5 ppm	
120. 1,1-Dichloroethane	NIOSH 1003			0.5 ppm	
121. Dichloroethyl Ether	NIOSH 1004			1 ppm	
122. Dichlorofluoromethane	NIOSH 2516			1 ppm	
123. 1, 3-Dichloropropene		NIOSH 1003		0.5 ppm	Use NIOSH method for 1,1-Dichloroethane.
124. 2,2-Dichloropropionic Acid		In-house		0.5 ppm	DL based on 10 L air vol.
125. Dicrotophos (Bidrin)		In-house		0.006 mg/M³	DL based on 240 L air vol.
126. Dicyclopentadiene		In-house		0.04 ppm	DL based on 10 L air vol.
127. Dicyclopentadienyl Iron		ID121, ID125			
128. Diethanolamine		In-house		0.05 ppm	DL based on 10 L air vol.
129. Diethyl Ketone		In-house		0.5 ppm	DL based on 10 L air vol.
130. Diethyl Phthalate		In-house		0.07 mg/M³	DL based on 180 L air vol.
131. Diethylamine	OSHA 41			0.053 ppm	
132. Diethylenetriamine	OSHA 60			4 ppb	
133. Diglycidyl Ether (DGE)					Not present-Sample for Epichlorohydrin & Bisphenol A.
134. Diisobutyl Ketone	NIOSH 1300			0.5 mg/M³	
135. Dimethyl-1,2-dibromo-2,2-dichloroethyl Phosphate.		In-house		0.01 mg/M³	DL based on 480 L air vol.
136. Dimethyl Sulfate		OSHA-NIOSH 301		0.1 mg/M³	DL based on 20 L air vol.
137. Dimethylaniline (N,N-Dimethylaniline).	NIOSH 2002			0.003 ppm	DL based on 20 L air vol.
138. Dinitolmide (3,5-Dinitro-o-Toluamine).		In-house		0.05 mg/M³	DL based on 240 L air vol.
139. Dioxane (Diethylene Dioxide).	NIOSH 1602			0.5 ppm	
140. Dioxathion (Delnav)		In-house		0.03 mg/M³	DL based on 10 L air vol.

SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
141. Diphenylamine	OSHA 22			1 ug/M³	
142. Dipropyl Ketone		OSHA 7		0.5 ppm	Use OSHA method for Organic Solvents.
143. Dipropylene Glycol Methyl Ether.	NIOSH S69			0.5 ppm	DL based on 10 L air vol.
144. Diquat		In-house		2.8 mg/M³	DL based on 100 L air vol.
145. Disulfiram		In-house		0.02 mg/M³	DL based on 25 L air vol.
146. Disulfoton (Disyston)		In-house		0.002 mg/M³	DL based on 480 L air vol.
147. Diuron		In-house		0.03 mg/M³	DL based on 60 L air vol.
148. Divinyl Benzene		OSHA 9		0.5 ppm	Use OSHA method for Styrene.
149. Emery	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV
150. Enflurane (Ethrane)	OSHA 29			0.04 ppm	DL based on 10 L air vol.
151. Epichlorohydrin	NIOSH 1010			0.1 ppm	DL based on 20 L air vol.
152. Ethanolamine		In-house		0.06 ppm	DL based on 10 L air vol.
153. Ethion (Nialate)		In-house		0.006 mg/M³	DL based on 240 L air vol.
154. Ethrane (Enflurane)	OSHA 29			0.04 ppm	DL based on 10 L air vol.
155. Ethyl Acrylate	NIOSH 1450			0.5 ppm	
156. Ethyl Benzene	NIOSH 1501			0.05 ppm	DL based on 10 L air vol.
157. Ethyl Bromide	NIOSH 1011			0.5 ppm	
158. Ethyl Ether	NIOSH [illegible]			0.5 ppm	
159. Ethyl Mercaptan	[illegible]	In-house		0.1 ppm	DL based on 20 L air vol.
160. Ethyl Silicate	NIOSH S304			0.5 ppm	
161. Ethylene Chlorohydrin	NIOSH 2513			0.1 ppm	
162. Ethylene Dichloride (1,2-Dichloroethane).	OSHA 3			0.05 ppm	
163. Ethylene Glycol		NIOSH 5500		0.8 ppm	
164. Ethylene Glycol Dinitrate	OSHA 43			0.043 ppm	DL based on 15 L air vol.
165. Ethylidene Norbornene			XXXX		
166. N-Ethylmorpholine	NIOSH S146			0.1 ppm	
167. Fenamiphos		In-house		0.004 mg/M³	DL based on 480 L air vol.
168. Fensulfothion (Dasanit)		In-house		0.025 mg/M³	DL based on 200 L air vol.
169. Fenthion (Tiguvon)		In-house		0.004 mg/M³	DL based on 480 L air vol.
170. Ferbam		In-house		0.08 mg/M³	DL based on 60 L air vol.
171. Ferrovanadium Dust	ID121, ID125			2 µg/M³	DL based on Fe or V & 480 L air vol.
172. Fibrous Glass Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV
173. Fluorine		In-house		0.1 mg/M³	As F^-, DL based on 240 L air vol.
174. Fluorotrichloromethane	NIOSH 1006			1 ppm	DL based on 3 L air vol.
175. Fonofos		In-house		0.004 mg/M³	DL based on 480 L air vol.
176. Formamide		In-house		0.5 ppm	DL based on 10 L air vol.
177. Furfural		In-house		0.1 ppm	DL based on 10 L air vol.
178. Furfuryl Alcohol	NIOSH 5365			0.5 ppm	
179. Gasoline		In-house		0.9 mg/M³	DL based on 10 L air vol.
180. Germanium Tetrahydride		In-house		0.0008 mg/M³	As Ge by (HGA AAS) & 240 L air vol.
181. Glutaraldehyde	OSHA 64			4.4 ppb	
182. Glycerin (Mist)	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
183. Glycidol (2,3-Epoxy-1-propanol).	NIOSH 1608			1 ppm	DL based on 10 L air vol.
184. Grain Dust (oat, wheat, barley).	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
185. Graphite (natural, respirable).	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
186. Gypsum, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
187. Halothane	OSHA 29			0.023 ppm	
188. n-Heptane	NIOSH 1500			0.2 ppm	
189. Hexachlorobutadiene	NIOSH 307			0.2 ppm	DL based on 100 L air vol.
190. Hexachlorocyclopentadiene.		NIOSH 2518		1 ppb	
191. Hexachloroethane	NIOSH 1003			0.5 ppm	DL based on 10 L air vol.
192. Hexafluoroacetone			XXXX		
193. Hexamethylene Diisocyanate.	OSHA 42			0.43 ppb	DL based on 15 L air vol.
194. n-Hexane	NIOSH 1500			0.05 ppm	
195. Hexane Isomers		NIOSH 1500		0.5 ppm	Use NIOSH method for Hexane.
196. 2-Hexanone	NIOSH 1300			0.5 ppm	
197. Hexone (Methyl Isobutyl Ketone).	NIOSH 1300			0.05 ppm	DL based on 10 L air vol.
198. Hexylene Glycol		In-house		0.5 ppm	DL based on 10 L air vol.
199. Hydrazine	OSHA 20			1.2 ppb	
200. Hydrogen Bromide		In-house		0.6 ppb	DL based on 96 L air vol.

SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
201. Hydrogen Cyanide	OSHA ID120			0.03 ppm	DL based on 60 L air vol.
202. Hydrogen Fluoride		In-house		0.1 ppm	DL based on 240 L air vol.
203. Hydrogen Sulfide	OSHA ID141			0.9 ppm	DL based on 2 L air vol.
204. Hydrogenated Terphenyls		NIOSH 5021		0.1 mg/M³	Use NIOSH method of Terphenyls.
205. 2-Hydroxypropyl Acrylate		NIOSH S43		1 ppm	Use NIOSH method for Methyl Methacrylate.
206. Indene		In-house		0.01 ppm	DL based on 10 L air vol.
207. Indium & Compounds		In-house		0.025 mg/M³	As In. DL based on 480 L air vol.
208. Iodoform		In-house		0.005 ppm	DL based on 10 L air vol.
209. Iron Oxide, (Dust & Fume)	ID121, ID125			3 µg/M³	As Fe_2O_3. DL based on 480 L air vol.
210. Iron Pentacarbonyl (as Fe)		COLORIMETRIC		0.04 mg/M³	DL based on 240 L air vol.
211. Iron Salts, Soluble, as Fe	OSHA ID121			2 µg/M³	As Fe water soluble. DL based on 480 L
212. Isoamyl Alcohol	NIOSH 1402			0.5 ppm	
213. Isobutyl Alcohol	NIOSH 1401			0.03 ppm	
214. Isooctyl Alcohol		NIOSH 1400		0.5 ppm	Use NIOSH method for Isopropanol.
215. Isophorone	NIOSH 2508			0.07 ppm	DL based on 12 L air vol.
216. Isophorone Diisocyanate		OSHA 42		0.02 mg/M³	DL based on 15 L air vol.
217. 2-Isopropoxyethanol		OSHA 53		0.5 ppm	Use OSHA method for Cellosolve.
218. Isopropyl Acetate	NIOSH 550			0.5 ppm	
219. Isopropyl Alcohol	NIOSH 1400			0.2 ppm	
220. Isopropyl Ether	NIOSH S368			0.5 ppm	
221. Isopropyl Glycidyl Ether (IGE).	NIOSH S77			0.5 ppm	
222. Isopropylamine	NIOSH S147			0.5 ppm	
223. N-Isopropylaniline		NIOSH 2002		0.5 ppm	Use NIOSH method for Dimethylaniline.
224. Kaolin, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
225. Ketene	NIOSH S62			0.2 mg/M³	DL based on 50 L air vol.
226. Limestone, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
227. Magnesite, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
228. Magnesium Oxide fume	OSHA ID121			4 ug/M³	As total Mg. DL based on 480 L air vol.
229. Malathion	OSHA 62			2.2 ppb	DL based on 60 L air vol.
230. Manganese as Mn Dust & Compounds Fume.	ID121, ID125			0.07 mg/M³	As Mn, Method does not distinguish fume from dust.
	ID121, ID125			0.004 mg/M³	
231. Manganese Cyclopentadienyl Tricarbonyl as Mn.		In-house		0.004 mg/M³	Total Mn by AAS, 240 L air vol.
232. Manganese Tetroxide	ID121, ID125			0.004 mg/M³	DL based on total Mn & 30 L air vol.
233. Marble, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
234. Mercury as Hg Alkyl Compounds.			XXXX		
All forms except alkyl vapor	In-house			0.001mg/M³	DL based on 15 L air vol.
Aryl & Inorganic compounds.	In-house			0.001 mg/M³	DL based on 15 L air vol.
235. Mesityl Oxide	NIOSH 1301			0.5 ppm	
236. Methacrylic Acid		In-house		0.03 ppm	DL based on 20 L air vol.
237. Methomyl (Lannate)		In-house		0.03 mg/M³	DL based on 60 L air vol & OVS-2 Sampler.
238. Methoxychlor		OSHA-NIOSH S371.		0.5 mg/M³	DL based on 100 L air vol.
239. 4-Methoxyphenol		OSHA 32		0.5 ppm	Use OSHA method for Cresol.
240. Methyl-2-cyanoacrylate	OSHA 55			0.01 ppm	
241. Methyl Acetate	NIOSH S42			0.5 ppm	
242. Methyl Acetylene/Propadiene Mixture (MAPP).		In-house		2.5 ppm	DL based on 5 L air vol.
243. Methyl Acrylonitrile		OSHA 37		0.1 ppm	Use OSHA method for Acrylonitrile.
244. Methyl Alcohol	OSHA-NIOSH 2000			1.5 ppm	
245. Methyl Bromide	NIOSH 2520			0.5 ppm	
246. Methyl Chloride	NIOSH 1001			0.5 ppm	DL based on 10 L air vol.
247. Methyl Chloroform (1,1,1-Trichloroethane).	OSHA 14			0.07 ppm	
248. Methyl Demeton		In-house		0.03 mg/M³	DL based on 60 L air vol.
249. Methyl Ethyl Ketone Peroxide.		In-house		0.05 mg/M³	DL based on 15 L air vol.
250. Methyl Formate	NIOSH 5291			1 ppm	DL based on 10 L air vol.
251. Methyl Iodide	NIOSH 1014			0.5 ppm	
252. Methyl Isoamyl Ketone		In-house		0.5 ppm	DL based on 10 L air vol.
253. Methyl Isobutyl Carbinol (Methyl Amyl Alcohol).	NIOSH 1402			0.5 ppm	
254. Methyl Isopropyl Ketone		OSHA 7		0.5 ppm	Use OSHA method for Organic Solvents.

SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
255. Methyl Mercaptan (Methanethiol).	OSHA 26			0.027 ppm	
256. Methyl (N-amyl) Ketone	NIOSH 1301			0.5 ppm	
257. Methyl Parathion		In-house		0.002 mg/M³	DL based on 480 L air vol.
258. Methyl Silicate		NIOSH S264		0.5 ppm	Use NIOSH method for Ethyl Silicate.
259. alpha-Methyl Styrene	NIOSH 1501			1 ppm	
260. Methylcyclohexane	NIOSH 1500			0.5 ppm	
261. Methylcyclohexanol	NIOSH S374			0.5 ppm	
262. o-Methylcyclohexanone	NIOSH 2521			0.5 ppm	
263. Methylcyclopentadienyl-Mn-Tricarbonyl as Mn.		In-house		0.004 mg/M³	Total Mn by AAS, & 240 L air vol.
264. Methylene Bis (4-cyclohexylisocyanate).		In-house		0.02 mg/M³	DL based on 15 L air vol.
265. 4,4'-Methylene-Bis-(2-chloroaniline).	OSHA 24			3.6 µg/M³	DL based on 100 L air vol.
266. Methylene Bisphenyl Isocyanate (MDI).	OSHA 47			2.6 µg/M³	DL based on 15 L air vol.
267. Metribuzin		In-house		0.1 mg/M³	DL based on 120 L air vol.
268. Mica	GRAV & ID142	In-house		0.02 mg/M³	Regulated as Quartz if >1% Quartz, 400 L.
269. Mineral Wool Fiber	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
270. Molybdenum Insoluble Compounds, as Mo.	ID121, ID125			4 µg/M³	as Mo, DL based on 480 L air vol.
271. Monocrotophos		In-house		0.008 mg/M³	DL based on 240 L air vol.
272. Monomethyl Aniline	NIOSH S153			0.1 ppm	
273. Morpholine	NIOSH S150			0.5 ppm	
274. Naphthalene	OSHA 35			80 ppb	
275. Nickel Soluble Compounds as Ni.	ID121, ID125			4 µg/M³	As Ni, DL based on 480 L air vol.
276. Nickel Carbonyl		In-house		0.002 mg/M³	Based on total Ni & 240 L air vol.
277. Nickel Sulfide Roasting, Fume & Dust, as Ni.		OSHA ID121		4 µg/M³	As Ni, DL based on 480 L air vol.
278. Nitric Acid		ID127		0.5 ppb	DL based on 96 L air vol.
279. p-Nitroaniline	NIOSH S7			0.5 ppm	
280. p-Nitrochlorobenzene	NIOSH 2005			0.1 ppm	
281. Nitrogen Dioxide		ID109, ID182		0.2 ppm	DL based on 3 L air vol.
282. Nitroglycerin (NG)	OSHA 43			2 ppb	DL based on 15 L air vol.
283. 2-Nitropropane	OSHA 46			0.025 ppm	
284. Nitrotoluene	NIOSH 2005			0.1 ppm	
285. Nonane		NIOSH 1500		0.2 ppm	Use NIOSH method for Heptane.
286. Nuisance Particulates, Total Dust.	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
287. Octachloronaphthalene	NIOSH S97			0.05 mg/M³	
288. Octane	NIOSH 1500			0.5 ppm	
289. Oil Mist, (Mineral)	GRAV & In-house			0.1 mg/M³	DL varies based on oil & 480 L air vol.
290. Osmium Tetroxide		In-house		0.002 mg/M³	Neutron Activation Analysis, Total Os.
291. Oxalic Acid		In-house		0.02 mg/M³	DL based on 480 L air vol.
292. Oxygen Difluoride			XXXX		
293. Ozone		In-house		0.01 ppm	Chemiluminescence, direct read.
294. Paraffin Wax fume		In-house		0.5 mg/M³	DL based on 120 L air vol.
295. Paraquat respirable dust	NIOSH 5003			0.1 mg/M³	DL based on 90 L air vol.
296. Pentaborane		In-house		0.005 mg/M³	Based on B & 240 L air vol.
297. Pentaerythritol, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
298. Pentane	NIOSH 1500			0.5 ppm	DL based on 10 L air vol.
299. 2-Pentanone (Methyl Propyl Ketone).	NIOSH 1300			0.5 ppm	DL based on 10 L air vol.
300. Perchloroethylene (Tetrachloroethylene).	NIOSH 1003			0.05 ppm	DL based on 10 L air vol.
301. Perchloryl Fluoride		In-house		0.8 mg/M³	Based on F & 240 L air vol.
302. Perlite	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
303. Persulfates			XXXX		
304. Petroleum Distillates (Naphtha).	OSHA 48			<260 mg/M³	DL based on 3 L air vol.
305. Phenothiazine		In-house		0.1 mg/M³	DL based on 240 L air vol.
306. Phenyl Ether (Vapor)	NIOSH S72			0.1 ppm	
307. Phenyl Glycidyl Ether (PGE).	NIOSH S74			0.1 ppm	
308. Phenylmercaptan		OSHA 26		0.1 ppm	Use OSHA method for Methyl Mercaptan.
309. Phenylhydrazine	NIOSH S160			5 mg/M³	DL based on 120 L air vol.

SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
310. Phenylphosphine			XXXX		
311. Phorate (Thimet)		In-house		0.003 mg/M³	DL based on 480 L air vol.
312. Phosdrin (Mevinphos)	NIOSH 2503			0.001 mg/M³	DL based on 240 L air vol.
313. Phosphine	OSHA ID160			0.015 ppm	DL based on 36 L air vol.
314. Phosphoric Acid		OSHA ID111		0.01 mg/M³	DL based on 480 L air vol.
315. Phosphorus Oxychloride		In-house		0.002 mg/M³	DL based on PO_4^{-3} & 240 L air vol.
316. Phosphorus Pentasulfide		In-house		0.025mg/M³	DL based on 60 L air vol.
317. Phosphorus Trichloride		NIOSH 6402		1.1mg/M³	DL based on 24 L air vol.
318. Phthalic Anhydride		In-house		0.36mg/M³	DL based on 27 L air vol.
319. m-Phthalodinitrile		OSHA 37		0.5 mg/M³	Use OSHA method for Acrylonitrile.
320. Picloram (Tordom)		In-house		0.03 mg/M³	DL based on 60 L air vol.
321. Picric Acid (2,4,6-Trinitrophenol).	NIOSH 5228			0.04 mg/M³	DL based on 180 L air vol.
322. Piperazine Dihydrochloride		In-house		1 ppm	DL based on 10 L air vol.
323. Plaster of Paris Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
324. Platinum Metal		In-house		0.2 µ/M³	DL based on 480 L air vol.
325. Portland Cement	GRAV & ID142			0.02 mg/M³	Use Quartz std if >1% Quartz.
326. Potassium Hydroxide		OSHA ID121		0.03 mg/M³	Stems on water soluble K⁺ & 480 L air.
327. Propargyl Alcohol		NIOSH 1400		0.1 ppm	Use NIOSH method for Isopropanol.
328. Propionic Acid		In-house		0.03 ppm	DL based on 10 L air vol.
329. Propoxur (Baygon)		In-house		0.003 mg/M³	DL based on 60 L air vol.
330. n-Propyl Acetate	NIOSH 1450			0.5 ppm	DL based on 10 L air vol.
331. Propyl Alcohol	NIOSH 1401			0.5 ppm	
332. n-Propyl Nitrate	NIOSH S227			1 ppm	
333. Propylene Dichloride	NIOSH 1003			0.5 ppm	
334. 1,2-Propylene Glycol Dinitrate.		OSHA 43		0.2 mg/M³	Use OSHA 43 for EGDN, & 15 L air vol.
335. Propylene Glycol Monomethyl Ether.		OSHA 53		0.5 ppm	Use OSHA method for Cellosolve.
336. Propylene Oxide	NIOSH 1612			0.1 ppm	
337. Pyridine	NIOSH 1613			0.5 ppm	
338. Resorcinol		In-house		0.02 mg/M³	DL based on 120 L air vol.
339. Rhodium Metal		In-house		0.1 µ/M³	DL based on 480 L air vol.
Insoluble Compounds as Rh.		In-house		0.1 µ/M³	DL based on 480 L air vol.
Soluble Compounds as Rh		In-house		0.1 µ/M³	DL based on 480 L air vol.
340. Ronnel		In-house		0.002 mg/M³	DL based on 120 L air vol.
341. Rosin Core Solder Pyrolysis Products, as Formaldehyde.	OSHA 53	In-house			Sample for Formaldehyde (OSHA 53) and Abietic Acid (OSHA In-house) as per Chemical Information File.
342. Rouge, (Total dust)	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
343. Silica—Amorphous Diatomaceous Earth (uncalcined).	GRAV & ID142			0.02 mg/M³	If >1% Quartz, use Quartz standard.
Precipitated Silica-Silica Gel.					
344. Silica—Crystalline Cristobalite.	OSHA ID142			0.06 mg/M³	DL based on 816 L air vol.
Quartz	OSHA ID142			0.02 mg/M³	DL based on 480 L air vol.
Silica, Fused	GRAVIMETRIC			0.02 mg/M³	If >1% Quartz, use Quartz standard.
Tridymite	OSHA ID142			0.05 mg/M³	
Tripoli	OSHA ID142			0.02 mg/M³	Quartz analysis.
345. Silicon	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
346. Silicon Carbide	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
347. Silicon Tetrahydride (Silane).		In-house		0.002 mg/M³	DL based on Si anal & 240 L air vol.
348. Silver Metal	OSHA ID121			0.5 mg/M³	DL based on 480 L air vol.
Soluble Compounds as Ag	OSHA ID121			0.5 µ/M³	DL based on 480 L air vol.
349. Soapstone, Total	GRAV. & ID142			0.02 mg/M³	If >1% Quartz, use Quartz standard.
350. Sodium Azide		In-house		0.06 mg/M³	DL based on 15 L air vol.
351. Sodium Bisulfite		In-house		0.04 mg/M³	Based on Na & 480 L air vol.
352. Sodium Fluoroacetate		In-house		0.04 mg/M³	Based on Na & 480 L air vol.
353. Sodium Hydroxide		OSHA ID121		0.04 mg/M³	Based on Na & 480 L air vol.
354. Sodium Metabisulfite		In-house		0.04 mg/M³	Based on Na & 480 L air vol.
355. Starch, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
356. Stearates	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
357. Stoddard Solvent	OSHA 48			<260 mg/M³	DL based on 3 L air vol.
358. Styrene Monomer (Phenylethylene, Vinyl Benzene).	OSHA 9			3.1 ppm	
359. Subtilisins (Proteolytic Enzymes).			XXXX		

SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
360. Sucrose, Total Dust	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
361. Sulfur Dioxide	OSHA ID107			0.07 mg/M³	DL based on 24 L air vol.
362. Sulfur Monochloride		In-house		0.01 mg/M³	Based on Cl^- & 15 L air vol.
363. Sulfur Pentafluoride			XXX		
364. Sulfur Tetrafluoride		In-house		0.05 mg/M³	Based on F^- & 15 L air vol.
365. Sulfuryl Fluoride		Field test		0.1 ppm	Miran 1A & 1B: MIN. Detectable Conc.=0.1 ppm at 11.5 um.
366. Sulprofos		In-house		0.03 mg/M³	DL based on 60 L air vol.
367. Talc (Non-Asbestiform)	GRAVIMETRIC	Particle count		0.02 mg/M³	Same as nuisance particulate TLV.
368. Tantalum, Metal & Oxide Dust.	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV
369. Temephos		In-house		0.02 mg/M³	DL based on 60 L air vol.
370. Terphenyls	NIOSH 5021			0.1 ppm	
371. 1,1,2,2-Tetrachloroethane	NIOSH 1019			0.1 ppm	
372. Tetraethyl Lead (as Pb)		In-house		0.004 mg/M³	DL based on 240 L air vol & total Pb.
373. Tetrahydrofuran	NIOSH 1609			1 ppm	
374. Tetramethyl Lead (as Pb)		In-house		0.004 mg/M³	DL based on 240 L air vol & total Pb.
375. Tetrasodium Pyrophosphate.		In-house		0.015 mg/M³	Based on Na & 480 L air vol.
376. Thallium (Soluble Compounds).		OSHA ID121		0.03 mg/M³	DL based on 480 L air vol.
377 4,4'-Thio-bis(6-tertbutyl-m-cresol).		In-house		0.04 mg/M³	DL based on 120 L air vol.
378. Thioglycolic Acid		In-house		0.07 ppm	DL based on 10 L air vol.
379. Thionyl Chloride		In-house		0.01 mg/M³	Based on Cl^- & 15 L air vol.
380. Tin Oxide		In-house		0.03 mg/M³	DL based on 480 L air vol.
Organic compounds, as Sn		In-house		0.01 mg/M³	Only Org-Sn's listed in Chem Info File.
381. Titanium Dioxide	GRAVIMETRIC			0.02 mg/M³	Same as nuisance particulate TLV.
382. Toluene	NIOSH 4000			0.02 ppm	DL based on 10 L air vol.
383. Toluene-2,4-diisocyanate (TDI).	OSHA 42			0.36 ppb	DL based on 15 L air vol.
384. o-Toluidine	NIOSH 2002			0.1 ppm	
385. p-Toluidine		NIOSH 2002		0.1 ppm	Use NIOSH method for o-Toluidine.
386. m-Toluidine		NIOSH 2002		0.1 ppm	Use NIOSH method for o-Toluidine.
387. Tributyl Phosphate	OSHA-NIOSH S208			0.5 mg/M³	DL based on 100 L air vol.
388. 1,1,2-Trichloro-1,2,2,-trifluoroethane.	NIOSH 1020			1.4 ppm	DL based on 1.5 L air vol.
389. Trichloroacetic Acid		NIOSH 1603		0.1 ppm	Use NIOSH method for Acetic Acid.
390. 1,2,4-Trichlorobenzene		NIOSH 5517		0.5 ppm	DL based on 10 L air vol.
391. Trichloroethylene	NIOSH 1022,3701			0.2 ppm	DL based on 3 L air vol.
392. 1,2,3-Trichloropropene	NIOSH 1003			0.5 ppm	DL based on 10 L air vol.
393. Triethylamine	NIOSH S152			0.5 ppm	
394. Trimellitic Anhydride		In-house		0.001 mg/M³	DL based on 480 L air vol.
395. Trimethyl Phosphate		In-house		0.6 ppm	DL based on 120 L air vol.
396. Trimethylamine		In-house		0.5 ppm	DL based on 10 L air vol.
397. Trimethylbenzene		In-house		0.02 ppm	DL based on 10 L air vol.
398. 2,4,6-Trinitrotoluene (TNT)	OSHA 44			0.021 mg/M³	
399. Triorthocresyl Phosphate	OSHA-NIOSH S200			0.01 mg/M³	DL based on 100 L air vol.
400. Triphenylamine		In-house		0.5 ppm	DL based on 10 L air vol.
401. Tungsten, as W Insoluble Compounds.		In-house		0.002 mg/M³	480 L & Neutron Activation Analysis.
Soluble Compounds		In-house		0.002 mg/M³	480 L & Neutron Activation Analysis.
402. Uranium Insoluble Compounds.		In-house		0.8 µg/M³	DL based on 480 L air vol.
Soluble Compounds		In-house		0.8 µg/M³	DL based on 480 L air vol.
403. N-Valeraldehyde		OSHA 68		1 ppm	Use OSHA method for Acetaldehyde
404. Vanadium, as (V_2O_5) Respirable Dust.	OSHA ID125			0.004 mg/M³	Based on total V analysis & 480 L
Fume	OSHA ID125			0.004 mg/M³	Based on total V analysis & 480 L
405. Vegetable Oil Mist	GRAVIMETRIC				Same as nuisance particulate TLV.
406. Vinyl Acetate	NIOSH 275			0.01 ppm	
407. Vinyl Bromide	OSHA 8			0.2 ppm	
408. Vinyl Cyclohexene Dioxide		In-house		0.5 ppm	DL based on 10 L air vol.
409. Vinyl Toluene	NIOSH 1501			0.5 ppm	
410. Vinylidene Chloride	OSHA 19			0.05 ppm	
411. VM&P Naphtha	OSHA 48			<260 mg/M³	DL based on 3 L air vol.
412. Welding Fumes (Total Particulate).	GRAV. & ID125				See Det. Lim. for specific metals
413. Xylene (o-,m-,p-isomers)	NIOSH 1501			0.02 ppm	DL based on 12 L air vol.

SAMPLING AND ANALYTICAL METHODS—Continued

Number analyte	Validated method	Other method	No method	Det limit [1]	Comments
414. m-Xylene-alpha,alpha'-diamine.		In-house		0.1 ppm	DL based on 10 L air vol.
415. Xylidine	NIOSH 2002			2.5 mg/M³	DL based on 20 L air vol.
416. Zinc Chloride fume		OSHA ID121		0.006 mg/M³	Based on Zn & 480 L air vol.
417. Zinc Stearate		OSHA ID121		0.003 mg/M³	Based on Zn & 480 L air vol.
418. Zinc Chromates, as (CrVI)	OSHA ID103			0.4 µg/M³	As Cr^{+6}. DL based on 480 L air vol.
419. Zinc Oxide Fume	GRAV & ID121,			0.003 mg/M³	Total Zn. Does not differentiate fume & dust.
Dust	ID125	ID143		0.003 mg/M³	
420. Zirconium Compounds	GRAV & ID121			1 mg/M³	DL based on 480 L air vol.

1. Detection Limits (DL) are approximate values based on the analytical procedures recommended air volume or the air volume cited in the "comments" section.
2. "In-house" refers to analytical methods used by OSHA that have not been fully validated by either NIOSH or OSHA. These procedures have been developed by OSHA or were taken from the literature. Some literature methods may not have been used by OSHA as yet.

NIOSH ANALYTICAL METHODS FOR PEL UPDATE

No.	Analyte	NIOSH Validated Method	Other NIOSH Method
1.	Acetaldehyde	NIOSH 3507	
2.	Acetic acid	NIOSH 1603	
3.	Acetic anhydride	NIOSH 3506	
4.	Acetone	NIOSH 1400	
5.	Acetonitrile	NIOSH 1606	
7.	Acrolein	NIOSH 2501	
10.	Allyl alcohol	NIOSH 1402	
11.	Allyl chloride	NIOSH 1000	
12.	Allyl glycidyl ether (AGE)	NIOSH 5346	
17.	Ammonia	NIOSH 6701	
20.	Ammonium Sulfamate (Ammate)	NIOSH 5348	
21.	Aniline	NIOSH 2002	
22.	ANTU (Alpha-Naphthyl Thiourea)	NIOSH 5276	
23.	Arsenic	NIOSH 7900	
25.	Beryllium & compounds	NIOSH 7102	
26.	Boron Oxide	NIOSH 500, 600	
28.	2-Butanone (MEK)	NIOSH 2500	
40.	2-Butoxy ethanol	NIOSH 1403	
41.	n-Butyl acetate	NIOSH 1450	
43.	sec-Butyl alcohol	NIOSH 1401	
44.	tert-Butyl alcohol	NIOSH 1400	
45.	n-Butyl alcohol	NIOSH 1401	
46.	n-Butyl glycidyl ether (BGE)	NIOSH 581	
48.	Butyl mercaptan	NIOSH 5350	
50.	p-tert-Butyltoluene	NIOSH 1501	
51.	Calcium carbonate (Limestone, Marble)	NIOSH 500, 600	
53.	Calcium hydroxide	NIOSH 7020	
54.	Calcium oxide	NIOSH 7020	
56.	Calcium Sulfate (Plaster of Paris)	NIOSH 500, 600	
57.	Camphor, synthetic	NIOSH 1301	
63.	Carbon Dioxide	NIOSH 5249	
64.	Carbon Disulfide	NIOSH 1600	
65.	Carbon Monoxide	NIOSH 6340	
67.	Carbon Tetrachloride (Tetrachloromethane)	NIOSH 1003	
70.	Cellulose (paper fiber)	NIOSH 500, 600	
72.	Chlorinated Camphene (Toxaphene)	NIOSH 587	
75.	1-Chloro-1-nitropropane	NIOSH 2011	
76.	o-Chlorobenzylidene malonitrile		NIOSH 304
79.	Chlorodifluoromethane		NIOSH 1020
80.	Chloroform	NIOSH 1003	
81.	Chloropentafluoroethane		NIOSH 1020
82.	beta-Chloroprene	NIOSH 1002	
83.	o-Chlorostyrene		NIOSH 1003
84.	o-Chlorotyrene		NIOSH 1003
84.	Chlorostyrene		NIOSH 1003

NIOSH ANALYTICAL METHODS FOR PEL UPDATE—Continued

No.	Analyte	NIOSH Validated Method	Other NIOSH Method
86.	Chromic Acid & Chromates	NIOSH 7600	
87.	Chromium, metal	NIOSH 7024, 7300	
92.	Cobalt as Co Metal dust & fume	NIOSH 7027, 7300	
95.	Copper, Fume	NIOSH 7029, 7200, 7300	
96.	Crag Herbicide (Sesone)	NIOSH S356	
101.	Cyclohexanol	NIOSH 1402	
102.	Cyclohexanone	NIOSH 1300	
105.	Cyclopentene		NIOSH 1500
107.	DDT (Dichlorodiphenyl-trichloroethane)	NIOSH S274	
109.	Demeton (Systox)	NIOSH 5514	
111.	2,6-Di-tert-Butyl-p-cresol		NIOSH 226
113.	Dibutyl Phosphate		NIOSH 5017
114.	2-N-Dibutylaminoethanol		NIOSH 2007
115.	1,1-Dichloro-1-nitroethane	NIOSH 1601	
117.	Dichloroacetylene		NIOSH 1003
118.	o-Dichlorobenzene	NIOSH 1003	
119.	p-Dichlorobenzene	NIOSH 1003	
120.	1,1-Dichloroethene	NIOSH 1003	
121.	Dichloroethyl Ether	NIOSH 1004	
122.	Dichlorofluoromethane	NIOSH 2516	
123.	1,3-Dichloropropene		NIOSH 1003
134.	Diisobutyl ketone	NIOSH 1300	
136.	Dimethyl Sulfate		NIOSH 301
137.	Dimethylaniline (N,N-Dimethylaniline)	NIOSH 2002	
139.	Dioxane (Diethylene Dioxide)	NIOSH 1602	
143.	Dipropylene Glycol Methyl Ether	NIOSH S69	
151.	Epichlorohydrin	NIOSH 1010	
152.	Ethanolamine	NIOSH 2007	
155.	Ethyl Acrylate	NIOSH 1450	
156.	Ethyl Benzene	NIOSH 1501	
157.	Ethyl Bromide	NIOSH 1011	
158.	Ethyl Ether	NIOSH 1610	
160.	Ethyl Silicate	NIOSH S264	
161.	Ethylene Cholorhydrin	NIOSH 2513	
162.	Ethylene Dichloride (1,2-Dichloroethane)	NIOSH 1003	
163.	Ethylene Glycol	NIOSH 5500	
164.	Ethylene Glycol Dinitrate	NIOSH 2507	
166.	N-Ethylmorpholine	NIOSH S146	
174.	Fluorotrichloromethane	NIOSH 1006	
177.	Furfural	NIOSH 2529	
178.	Furfuryl Alcohol	NIOSH S365	
183.	Glycido (2,3-Epoxy-1-propanol)	NIOSH 1608	
185.	Graphite (natural, respirable)	NIOSH 500, 600	
186.	Gypsum, Total dust-n-Heptane	NIOSH 500, 600	
188.	n-Heptane	NIOSH 1500	
189.	Hexachlorobutadiene	NIOSH 307	
190.	Hexachlorocyclopentadiene		NIOSH 306
191.	Hexachloroethane	NIOSH 1003	
194.	n-Hexane	NIOSH 1500	
195.	Hexane Isomers		NIOSH 1500
196.	2-Hexanone	NIOSH 1300	
197.	Hexone (Methyl Isobutyl Ketone	NIOSH 1300	
199.	Hydrazine	NIOSH 3503	
200.	Hydrogen Bromide	NIOSH 7903	
201.	Hydrogen Cyanide	NIOSH 7904	
202.	Hydrogen Fluoride	NIOSH 7903	
204.	Hydrogenated Terphenyls		NIOSH 5021
205.	2-Hydroxypropyl Acrylate		NIOSH 543
212.	Isoamyl Alcohol	NIOSH 1402	
213.	Isobutyl Alcohol	NIOSH 1401	

NIOSH ANALYTICAL METHODS FOR PEL UPDATE—Continued

No.	Analyte	NIOSH Validated Method	Other NIOSH Method
214.	Isooctyl Alcohol		NIOSH 1400
215.	Isophorone	NIOSH 2508	
218.	Isopropyl Acetate	NIOSH S50	
219.	Isopropyl Alcohol	NIOSH 1400	
220.	Isopropyl Ether	NIOSH S368	
221.	Isopropyl Glycidyl Ether (IGE)	NIOSH S77	
222.	Isopropylamine	NIOSH S147	
223.	N-Isopropylaniline		NIOSH 2002
225.	Ketene	NIOSH S92	
226.	Limestone, Total Dust	NIOSH 600, 600	
227.	Magnesite, Total Dust	NIOSH 500, 600	
233.	Marble, Total Dust	NIOSH 500, 600	
235.	Mesityl Oxide	NIOSH 1301	
238.	Methoxychlor		NIOSH S371
241.	Methyl Acetate	NIOSH S42	
242.	Methyl Acetylene/Propadiene Mixture (MAPP)	NIOSH S85	
244.	Methyl Alcohol	NIOSH S59	
245.	Methyl Bromide	NIOSH 2520	
246.	Methyl Chloride	NIOSH 1001	
247.	Methyl Chloroform (1,1,1-Trichloroethane)	NIOSH 1003	
248.	Methyl Ethyl Ketone Peroxide		NIOSH 3508
250.	Methyl Formate	NIOSH S291	
251.	Methyl Iodide	NIOSH 1014	
253.	Methyl Isobutyl Carbinol (Methyl Amyl Alcohol)	NIOSH 1402	
256.	Methyl-(N-Amyl)Ketone	NIOSH 1301	
258.	Methyl Silicate		NIOSH S264
259.	alpha-Methyl Styrene	NIOSH 1501	
260.	Methylcyclohexane	NIOSH 1500	
261.	Methylcyclohexanol	NIOSH S374	
262.	o-Methylcyclohexanone	NIOSH 2521	
269.	Mineral Wool Fiber	NIOSH 500, 600	
272.	Monomethyl Aniline	NIOSH S153	
273.	Morpholine	NIOSH S150	
274.	Naphthalene	NIOSH 1501	
276.	Nickel Carbonyl		NIOSH 6007
278.	Nitric Acid	NIOSH 7903	
279.	p-Nitroaniline	NIOSH S7	
280.	p-Nitrochlorobenzene	NIOSH 2005	
281.	Nitrogen Dioxide		NIOSH 6700
282.	Nitroglycerin (NG)	NIOSH 2507	
283.	2-Nitropropane	NIOSH 2528	
284.	Nitrotoluene	NIOSH 2005	
285.	Nonane		NIOSH 1500
286.	Nuisance Particulates, Total dust	NIOSH 500, 600	
287.	Octachloronaphthalene	NIOSH S97	
288.	Octane	NIOSH 1500	
295.	Paraquat respirable dust	NIOSH 5003	
298.	Pentane	NIOSH 1500	
299.	2-Pentanone (Methyl propl ketone)	NIOSH 1300	
300.	Perchloroethylene (Tetrachloroethylene)	NIOSH 1003	
302.	Perlite	NIOSH 500, 600	
304.	Petroleum Distillates (Naphtha)	NIOSH 1500	
306.	Phenyl Ether (Vapor)	NIOSH S72	
307.	Phenyl Glycidyl Ether (PGE)	NIOSH S74	
309.	Phenylhydrazine	NIOSH S160	
312.	Phosdrin (Mevinphos)	NIOSH 2503	
314.	Phosphoric Acid	NIOSH 7903	
317.	Phosphorus Trichloride		NIOSH 305
321.	Picric Acid (2,4,6-Trinitrophenol)	NIOSH S228	

NIOSH ANALYTICAL METHODS FOR PEL UPDATE—Continued

No.	Analyte	NIOSH Validated Method	Other NIOSH Method
323.	Plaster of Paris Total Dust	NIOSH 500, 600	
327.	Propargyl Alcohol		NIOSH S65
330.	n-Propyl Acetate	NIOSH 1450	
331.	Propyl Alcohol	NIOSH 1401	
332.	n-Propyl Nitrate	NIOSH S227	
333.	Propylene Dichloride	NIOSH 1003	
336.	Propylene Oxide	NIOSH 1612	
337.	Pyridine	NIOSH 1613	
342.	Rouge, (Total Dust)	NIOSH 500, 600	
343.	Silica—Amorphous Diatomaceous earth (uncalcined)—Precipitated silica-Silica gel		NIOSH 7501
344.	Silica—Crystalline		
	Cristobalite	NIOSH 7500	
	Quartz	NIOSH 7500	
	Tridymite	NIOSH 7500	
	Tripoli	NIOSH 7500	
345.	Silicon	NIOSH 500, 600	
346.	Silicon Carbide	NIOSH 500, 600	
353.	Sodium Hydroxide		NIOSH 7401
355.	Starch, Total Dust	NIOSH 500, 600	
357.	Stoddard Solvent	NIOSH 1550	
360.	Sucrose, Total Dust	NIOSH 500, 600	
361.	Sulfur Dioxide		NIOSH 6004
367.	Talc (Non-asbestiform)	NIOSH 500, 600	
370.	Terphenyls	NIOSH 5021	
371.	1,1,2,2-Tetrachloroethane	NIOSH 1019	
372.	Tetraethyl Lead (as Pb)	NIOSH 2533	
373.	Tetrahydrofuran	NIOSH 1609	
374.	Tetramethyl Lead (as Pb)	NIOSH 2534	
380.	Tin as Sn		NIOSH 5504
382.	Toluene	NIOSH 1500, 1501	
383.	Toluene-2,4-diisocyanate (TDI)	NIOSH 2535	
384.	o-Toluidine	NIOSH 2002	
385.	p-Toluidine		NIOSH 2002
386.	m-Toluidine		NIOSH 2002
387.	Tributyl Phosphate	NIOSH S206	
388.	1,1,2-Trichloro-1,2,2-trifluoroethane	NIOSH 1020	
389.	Trichloroacetic Acid		NIOSH 1603
390.	1,2,4-Trichlorobenzene		NIOSH 5517
391.	Trichloroethylene	NIOSH 1022, 3701	
392.	1,2,3-Trichloropropane	NIOSH 1033	
393.	Triethylamine	NIOSH S152	
399.	Trlorthocresyl Phosphate	NIOSH S209	
401.	Tungsten, as W		
	Insoluble compounds	NIOSH 7074	
	Soluble compounds	NIOSH 7074	
404.	Vanadium, as (V_2O_5)		
	Respirable dust		NIOSH 7504
	fume		NIOSH 7504
406.	Vinyl Acetate	NIOSH 275	
407.	Vinyl Bromide	NIOSH 1009	
409.	Vinyl Toluene	NIOSH 1501	
410.	Vinylidene Chloride	NIOSH 1015	
411.	VM&P Naphtha	NIOSH 1550	
412.	Welding fumes (Total particulate)	NIOSH 7200	
413.	Xylene (o-,m-,p-isomers)	NIOSH 1501	
415.	Xylidine	NIOSH 2002	
419.	Zinc Oxide		
	Fume	NIOSH 7502	

NIOSH ANALYTICAL METHODS FOR PEL UPDATE—Continued

No.	Analyte	NIOSH Validated Method	Other NIOSH Method
	Dust	IMOSH-7502	

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Copies of Supplements 2 through 6 are available upon request by calling or writing: Ms. Regina Flahie, Office of Regulatory Analysis, Room N3627, U.S. Department of Labor-OSHA, 200 Constitution Ave. N.W., Washington, DC 20210 (202) 523-7283.

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I. Introduction and Executive Summary

Introduction

The Occupational Safety and Health Administration (OSHA) is proposing to amend its existing air contaminant standards 29 CFR 1910.1000, Tables Z-1, Z-2, and Z-3. The amendments would lower the 8-hour time weighted average permissible exposure limits (PELS) for about 100 substances now listed on the "Z" tables, raise the limit for one chemical, set exposure limits for about 190 substances currently not regulated by OSHA, set short term exposure limits for 70 substances, and, in some cases, set limits for ceiling and skin exposures.

Background

Congress enacted the Occupational Safety and Health Act of 1970 (the Act) to achieve several goals, one of which was to protect workers from occupational health hazards. Congress acknowledged the role of occupational exposure in the development of diseases, and addressed in the Act the need to quickly establish minimum health standards to control exposure to hazardous substances. To accomplish Congress' intent, OSHA adopted initial exposure limits for approximately 430 chemicals. Four hundred of these exposure limits were based on the recommendations of the American Conference of Governmental Industrial Hygienists (ACGIH), and 21 were from the American National Standards Institute. The list of exposure limits was to be updated, improved, and expanded as new knowledge and techniques were developed. To date OSHA has promulgated extensive health standards for only 24 individual chemicals. The rulemaking under consideration here would set exposure limits for about 430 chemicals based on the 1987-88 Threshold Limit Values of the ACGIH, and recommendations of the National Institute for Occupational Safety and Health (NIOSH) of the U.S. Department of Health and Human Services.

The OSH Act requires the Agency to consider the feasibility of proposed standards. Executive Order 12291 (46 FR 13197) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires OSHA to consider the impact of the proposed regulation on small entities. This analysis covers these requirements.

Approach

Because this rulemaking involves about 430 chemicals, OSHA has prepared the regulatory impact analysis in two phases. Phase I involved the use of a number of secondary data bases to collect information on the chemicals to be regulated and the industries in which they are used. These data bases provided information on the toxicity and health effects of exposure to the chemicals, and current information on engineering controls in use and emergency response procedures. Two data bases provided information on employee exposures. The 1982 National Occupational Exposure Survey (NOES) was based on a sample of about 4,500 businesses. The data base developed from this survey contains an estimate of the number of persons occupationally exposed to hazardous substances by Standard Industrial Classification (SIC). The second data base was OSHA's Integrated Management Information System (IMIS). The IMIS contains the results of air samples taken since 1979 by OSHA industrial hygienists in the course of compliance inspections. Both the NOES an IMIS data bases provided valuable information on the nature and extent of employee exposures to the substances to be regulated; however, they did not provide complete information on all substances. Supplementary information was obtained from industrial hygienists and engineers. These experts identified exposure controls in use and the number and size of plants most likely to be affected by this rulemaking. These sources have provided OSHA with a substantial body of information of chemical use, exposures and controls.

Phase II of the data collection effort involved a sampling survey of over 5,300 firms in industries where chemical exposures were believed to pose potential problems. The survey, conducted during the first part of 1988, gathered data on chemicals, processes, exposures and controls currently in use. These additional data have permitted OSHA to refine the Phase I preliminary estimates of technical and economic feasibility. In addition, site visits to over 100 plants are underway to verify the data collected to date on chemicals, processes, controls, and employee exposures. The reports covering these site visits will be submitted to the docket by July 15, 1988.

OSHA has used contractors to assist in these data collection efforts. Three contractors have supplied expert knowledge on the industries affected and the engineering controls needed to reach the proposed exposure levels. These contractors and Kearney/Centaur Division of A.T. Kearney, Meridian Research, and CONSAD. Fu Associates provided datas base management support during all phases of this project. Washington Consulting Group designed the sample for the surveyed firms and KCA Research conducted the telephone interviews of these firms.

Employee Exposure and Benefits

Revising OSHA's Z-Table limits for hazardous substances is expected to result in reduced risk of chemically-related disease among exposed employees. Exposure to substances included in the rulemaking has been associated with a variety of adverse health effects, including impairment of organ system functions, mucous membrane irritation, neuropathy, narcosis, allergic sensitization, respiratory disease, cardiovascular disease, and cancer.

Using data collected from the survey of over 5,300 establishments, OSHA estimates that between 5.8 million and 6.5 million employees are potentially exposed to the 160 hazardous substances identified in the survey. OSHA also estimates over 1.2 million employees are currently exposed above the proposed exposure limits for these substances. Table I-1 summarizes OSHA's estimates of the number of workers currently at risk of adverse health effects. OSHA estimates that promulgation of the proposed exposure limits will result in a potential reduction of over 11,000 work-related illness cases per year, over 8,000 lost-workday illness cases per year, and over 147,000 lost workdays due to illness per year. OSHA's preliminary estimate is that industry compliance with the proposed exposure limits will result in a reduction of 250 fatalities caused by exposure to substances that cause cancer, respiratory disease, cardiovascular disease, or liver or kidney disease.

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TABLE I-1

ESTIMATED NUMBER OF WORKERS POTENTIALLY AT RISK OF EXPERIENCING ADVERSE EFFECTS, BY TYPE OF ADVERSE EFFECT*

ADVERSE HEALTH EFFECT	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MINIMUM ESTIMATE	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MAXIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE PROPOSED LIMITS FOR SUBSTANCES, MINIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE PROPOSED LIMITS FOR SUBSTANCES, MAXIMUM ESTIMATE
NUISANCE EFFECTS	4,729,417	5,804,846	829,487	892,725
ODOR AND TASTE EFFECTS	718,522	809,537	59,102	59,102
SYSTEMIC TOXICITY	3,233,319	3,818,742	250,282	256,909
MUCOUS MEMBRANE IRRITATION	12,077,315	15,813,663	59,969	1,021,197
METABOLIC INTERFERENCES	2,277,113	2,345,975	746,879	746,879
LIVER/KIDNEY DISEASE	2,321,573	2,488,604	383,581	384,876
OCULAR DISTURBANCES	194	194	0	0
RESPIRATORY DISEASE	3,765,717	4,023,525	639,717	654,319
CARDIOVASCULAR DISEASE	164,576	164,576	44,355	44,355
NEUROPATHY	1,231,744	1,349,421	201,760	210,203
NARCOSIS	4,601,993	6,381,859	526,021	547,731
CANCER	3,663,053	3,784,374	499,716	499,716
ALLERGIC SENSITIZATION	2,710,576	2,903,153	296,444	297,255

*Double counting of employees simultaneously exposed to more than one substance in different adverse health effects categories, prevents the summation of workers exposed to all adverse health effects in this table.

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Nonregulatory Alternatives

OSHA believes that there are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with exposure to the chemicals under consideration. OSHA believes that the tort liability laws and Workers' Compensation do not provide adequate worker protection due to market imperfections. Some employers have not complied with the standards recommended by professional organizations. The deleterious health effects resulting from continued high levels of exposure to hazardous substances require a regulatory solution.

Technological Feasibility

Consistent with OSHA regulations and policy, engineering controls and work practices to control employee exposure are preferred over the use of personal protective equipment.

Engineering controls involve the use of local exhaust ventilation, general ventilation, isolation of the worker and enclosure of the source of emissions, process modifications, equipment modifications, and substitution of non-hazardous chemicals. These methods may be used alone or in combination depending upon the industrial processes involved.

These controls are widely used and will effectively control exposures either by themselves, or coupled with changes in work practices.

Perhaps the most widely used technique for controlling chemical exposure is the use of ventilation. General ventilation uses the movement of air within the general work space to displace or dilute the contaminant with fresh outside air. General ventilation may not be the preferred control method, however, due to the large volumes of air movement required. Local exhaust ventilation uses much smaller volumes of air, exhausted from the point or source at which contaminants are generated.

Isolation involves placing a physical barrier between the hazardous operation and the worker. Many modern, automated manufacturing processes are now fully enclosed in ventilated cabinets. The effectiveness of such a control technique depends on the frequency with which the workers have to enter the enclosure during normal operations. In other situations, rather than placing the process or machine in an enclosure, the worker is placed in an enclosure. Many processes which involve potential chemical exposures are operated remotely by operators in air-conditioned booths isolated from the hazardous materials.

Substitution refers to the replacement of a toxic chemical in a particular process or work area with another, less toxic product. Properly applied, substitution can be a very effective control technique. However, care must be taken to ensure that the proposed substitute performs in a similar manner to the product being replaced. In addition, it is essential that the substitute be carefully evaluated to ensure that in controlling one hazard, another different hazard is not inadvertently introduced. The substitute must also be compatible with existing manufacturing equipment and processes.

The success of these techniques will depend on the physical properties of the chemicals and emissions encountered (boiling point, vapor pressure, etc.) and the process operating conditions. In some cases, particularly with cleaning solvents, substitution may provide the quickest and most effective means of reducing exposure. In other situations, a major effort may be required to alter processes or install or expand local or general dilution ventilation.

OSHA believes that existing engineering controls are available to reduce exposure levels to the new proposed levels. Standard controls have been adapted in numerous situations to solve situation-specific problems in all of the industry sectors affected. Detailed industry-specific illustrations of this point are presented in the Technological Feasibility Chapter of this Preliminary Regulatory Impact Analysis.

Costs of Compliance

Costs of compliance with the proposed rulemaking would result from industry actions to lower workers' chemical exposures to the levels proposed. The 1988 sample survey of more than 5,300 firms was drawn from a universe of over one million firms potentially affected by the rule. Table I-5 at the end of this section presents a list of industries included in the analysis.

Survey respondents verified the number of work stations and workers related to each process, the process location and configuration, the controls already in place, and potential chemical exposures above new proposed levels. Process controls in place were compared to a list of control designs needed to limit exposures to new lower levels. Where the required controls were not reported to be in place, a compliance cost per work station was assigned. Process control costs were summed per establishment and certain maintenance workers were assigned a respirator cost. Costs for the surveyed establishments were then weighted (by SIC and size) to represent compliance costs for the universe of affected plants.

The survey found that about 500,000 establishments reported using the chemicals being regulated. Of this number, about 100,500 would incur some costs to comply with the proposed rule. The total estimated annualized capital plus annual operating costs are $927.83 million. Table I-2 presents the annual cost by industry sector, for large and small (fewer than 20 employees) plants.

Among all industry sectors affected by this proposal, about 101,200 establishments are estimated to incur, on average, an annual cost of $9,200.

Economic Impact

OSHA prepared two estimates of the economic effects of the proposal on potentially affected firms. The two estimates were based upon No Cost-Passthrough ("worst case") and Total Cost-Passthrough ("best case") scenarios.

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TABLE I-2

ANNUAL OPERATING AND ANNUALIZED CAPITAL COST OF COMPLIANCE BY INDUSTRIAL SECTOR (a)

SIC (b)	SIC DESCRIPTION	LARGE PLANTS	SMALL PLANTS	ANNUAL COST
20	FOOD PROD. (c)	$21,704,100	$11,789,000	$33,493,100
21	TOBACCO (c)	$19,700	$0	$19,700
22	TEXT. MILL (c)	$23,308,400	$6,170,000	$29,478,400
23	APPAREL PROD. (c)	$23,604,300	$8,139,900	$31,744,200
24	LUMBER & WOOD	$20,534,800	$175,551,300	$196,086,100
25	FURNITURE	$7,915,300	$6,805,300	$14,720,600
26	PAPER PROD.	$30,966,900	$290,800	$31,257,700
27	PRINTING & PUB.	$15,263,300	$60,425,000	$75,688,300
28	CHEMICAL PROD.	$31,765,500	$8,612,100	$40,157,600
29	PETRO. REFINING	$6,800,700	$414,600	$7,215,300
30	RUBBER & PLASTICS	$53,256,200	$22,225,900	$75,482,100
31	LEATHER PROD.	$1,464,400	$1,115,100 (c)	$2,579,500
32	STONE & CLAY	$15,079,300	$7,463,300	$22,542,600
33	PRIM. METAL	$34,721,200	$5,612,400	$40,333,600
34	FAB. METALS	$50,927,100	$5,010,300	$55,937,600
35	MACHINERY	$43,986,300	$13,754,100	$57,740,400
36	ELEC. MACH.	$26,210,900	$7,570,500	$31,781,400
37	TRANS. EQUIP.	$20,884,600	$26,214,500 (c)	$47,099,100
38	INSTRUMENTS	$10,257,300	$3,207,400	$13,464,700
39	MISC. MANUF.	$13,861,200	$4,334,300	$18,195,500
40	R.R. TRANS.	$532,200	$0	$532,200
45	AIR TRANS.	$1,828,900	$0	$1,828,900
47	TRANS. SERV.	$1,853,100	$0	$1,853,100
49	ELEC. GAS. SAN.	$19,373,900	$3,314,500	$22,688,400
50	WHOLESALE TRADE	$1,416,300	$2,638,300	$4,054,600
51	WHOLESALE, NON-DUR	$3,094,200	$5,764,000	$8,858,200
55	AUTO DEALERS (c)	$9,862,500	$2,092,200	$11,954,700
72	PERSONAL SRV. (c)	$15,648,500	$15,639,300	$31,287,800
73	BUSINESS SRV. (c)	$3,701,700	$5,252,100	$8,953,800
75	AUTO REPAIR (c)	$466,800	$1,044,100	$1,510,900
76	MISC. REPAIR SRV.	$469,500	$4,179,000	$4,648,500
80	HEALTH SERV. (c)	$2,413,000	$2,026,400	$4,439,400
TOTAL		$511,372,100	$416,455,900	$927,828,000

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

(a) Costs were calculated by annualizing the capital cost over the projected life of the equipment (10 years) using a 10 percent cost of capital and adding an annual operating and maintenance cost estimated at 10 percent of the capital cost.

(b) Industry sectors not identified in this table include industries with no major cost impact expected, the construction industry, which will be the subject of a separate regulatory analysis, and industries such as mining, over which OSHA has no jurisdiction.

(c) Costs in these sectors were based on expert judgement and secondary data collection. Survey data for SICs 55, 72, 73, 75 and 80 was insufficient to estimate compliance costs.

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In the first scenario it was assumed that all compliance costs would be absorbed by firms in the form of reduced profits. Table I–3 contains a summary of this "worst case" analysis. Under this scenario, the estimated average percent reduction in profits for all affected firms was less than one percent. The estimated reduction in profit of 8 percent for SIC 24, Lumber and Wood Products Manufacturers, was the highest among all industries.

In the second scenario it was assumed that all compliance costs would be passed on to the consumer in the form of higher prices. The potential price increase for an industry sector at the two-digit SIC level was estimated by dividing the sector's compliance cost by its total sales. In this scenario, there would be little impact on market prices; none of the estimated price increases exceeded one-half of one percent (see Table I–4).

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TABLE I-3

ECONOMIC EFFECTS: NO-COST PASSTHROUGH SCENARIO[1]

SIC	Industry	Annual Costs[2] ($ millions)	Total Sales[3] ($ millions)	R.O.R. on Sales (%)[4]	Pre-Reg Profits ($ m)	Post-Reg Profits ($ m)	% Change in Profits
20	FOOD PROD.	33.49	353,780.38	1.9	8,008.04	7,986.29	- 0.2715
21	TOBACCO	0.02	74,030.13	5.3	3,923.60	3,923.59	- 0.0003
22	TEXT. MILL	29.48	60,735.22	2.7	1,765.42	1,747.59	- 1.0100
23	APPAREL PROD.	31.74	74,474.65	2.8	1,813.22	1,793.56	- 1.0845
24	LUMBER & WOOD	196.09	57,994.48	3.9	1,974.51	1,814.21	- 8.1188
25	FURNITURE	14.72	37,648.27	3.5	1,411.02	1,400.96	- 0.7129
26	PAPER PROD.	31.26	103,694.14	3.7	3,778.20	3,761.24	- 0.4489
27	PRINTING & PUB.	75.69	134,830.21	4.8	6,471.85	6,412.25	- 0.9210
28	CHEMICAL PROD.	40.16	272,759.67	3.7	11,738.80	11,714.76	- 0.2048
29	PETRO. REFINING	7.22	196,400.57	2.7	4,964.85	4,960.84	- 0.0808
30	RUBBER & PLASTICS	75.48	86,538.58	4.3	3,423.75	3,376.10	- 1.3918
31	LEATHER PROD.	2.58	15,449.56	2.6	401.69	399.95	- 0.4328
32	STONE & CLAY	22.54	46,094.04	4.1	1,954.99	1,940.73	- 0.7300
33	PRIMARY METALS	40.33	112,564.26	3.3	3,714.62	3,691.27	- 0.6286
34	FAB. METALS	55.94	150,146.41	4.0	6,005.86	5,974.10	- 0.5288
35	MACHINERY	57.74	345,144.89	5.1	17,602.39	17,566.95	- 0.2013
36	ELEC. MACH.	31.78	245,982.70	5.0	12,299.14	12,279.63	- 0.1586
37	TRANS. EQUIP.	47.10	365,427.20	3.9	14,520.25	14,486.69	- 0.2311
38	INSTRUMENTS	13.46	83,359.57	4.9	3,373.26	3,365.00	- 0.2450
39	MISC. MANUF.	18.20	41,870.30	4.4	1,788.56	1,777.39	- 0.6245
40	R.R. TRANS.	.53	43,869.14	10.0	3,969.62	3,969.34	- 0.0072
45	AIR TRANS.	1.83	109,538.08	3.6	3,251.40	3,250.41	- 0.0304
47	TRANS. SERVICES	1.85	12,254.96	2.7	582.18	581.18	- 0.1719
49	ELEC.,GAS & SAN.	22.69	300,254.83	7.0	21,017.84	21,004.06	- 0.0655
50	WHOLESALE TRADE[5]	4.05	13,853.52	2.0	277.07	273.67	- 1.2285
51	WHOLESALE, NON-DUR	8.86	113,848.20	1.5	1,726.26	1,721.48	- 0.2771
55	AUTO DEALERS	11.95	341,574.50	1.9	6,489.92	6,482.81	- 0.1095
72	PERSONAL SERV.	31.29	24,270.74	7.3	1,771.76	1,750.02	- 1.2272
73	BUSINESS SERV.	8.95	22,165.94	6.6	1,462.95	1,455.45	- 0.5126
75	AUTO REPAIR	1.51	45,750.92	5.1	2,492.19	2,491.05	- 0.0457
76	MISC. REPAIR SERV.	4.85	2,665.52	5.5	146.60	142.69	- 2.6696
80	HEALTH SERVICES	4.44	170,234.25	4.5	7,807.72	7,804.54	- 0.0406

Source: U.S. Department of Labor, Occupational Safecy and Health Administration, Office of Regulatory Analysis.

Notes: 1. All values in 1985 dollars.
2. Reproduced from Table VI-1.
3. Dun and Bradstreet, Dun's Marketing Identifiers (DMI) Database.
4. Rate of Return on Sales, Dun and Bradstreet, Industry Norms Database.
5. Consists of SIC 5093 (scrap and waste materials) only.

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Based on this analysis, OHSA concludes that the proposed standard is economically feasible for each sector. The impact on prices is slight and even in the worst cases, the reductions in profitability are small.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (Pub. L. 96-353, 94 Stat. 1664 (5 U.S.C. 601 *et seq.*), OSHA has made a preliminary assessment of how the proposed rulemaking will affect large and small establishments. The results of this preliminary assessment indicate that some small establishments may experience some adverse impact. The smaller profit margins of some small establishments may make it difficult for them to absorb increases in compliance costs. OSHA requests comments on approaches to reduce the impact on small establishments. An important ameliorating factor for each affected firm will be its ability to pass through additional costs to the consumer. The ability of individual firms to do this will be dependent upon product demand elasticities. It is expected that all impacted firms will be able to pass through some portion of their increased costs.

Environmental Impact

The proposed standard has been reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality NEPA regulations, and the Department of Labor's NEPA compliance procedures and is not anticipated to have a significant impact on the external environmental.

TABLE I-4.—ECONOMIC EFFECTS: TOTAL-COST PASSTHROUGH

[Dollars in millions]

SIC/industry	Annual costs	Total sales	Costs as a percent of sales
20—Food products	$33.49	$353,780.38	.0095
21—Tobacco	0.02	74,030.13	.0000
22—Text. mill	29.48	60,735.22	.0485
23—Apparel products	31.74	74,474.65	.0426
24—Lumber and wood	196.09	57,994.48	.3381
25—Furniture	14.72	37,648.28	.0391
26—Paper products	31.26	103,694.14	.0301
27—Printing and publishing	75.69	134,830.21	.0561
28—Chemical products	40.16	272,759.67	.0147
29—Petro. refining	7.22	196,400.57	.0037
30—Rubber and plastics	75.48	86,538.58	.0872

TABLE I-4.—ECONOMIC EFFECTS: TOTAL-COST PASSTHROUGH—Continued

[Dollars in millions]

SIC/industry	Annual costs	Total sales	Costs as a percent of sales
31—Leather products	2.58	15,449.56	.0167
32—Stone and clay	22.54	46,094.04	.0489
33—Prim. metals	40.33	112,564.26	.0358
34—Fab. metals	55.94	150,146.41	.0373
35—Machinery	57.74	345,144.89	.0167
36—Elec. mach	31.78	245,982.70	.0129
37—Trans. equip	47.10	365,427.20	.0129
38—Instruments	13.46	83,359.57	.0162
39—Misc. manuf	18.20	41,870.30	.0435
40—R.R. trans	.53	43,869.14	.0012
45—Air trans	1.83	109,538.08	.0017
47—Trans. services	1.85	12,254.96	.0151
49—Elec. gas and san	22.69	300,254.83	.0076
50—Wholesale trade [1]	4.05	13,853.52	.0293
51—Wholesale, non-dur	8.86	113,848.20	.0078
55—Auto dealers	11.95	341,574.50	.0035
72—Personal services	31.29	24,270.74	1289
73—Business services	8.95	22,165.94	.0404
75—Auto repairs	1.51	45,750.92	.0033
76—Misc. repair serv	4.85	2,665.52	1819
80—Health services	4.44	170,234.25	.0026

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.
[1] Consists of SIC 5093 (scrap and waste materials) only.

Table I-5.—SIC Groups Covered in the OSHA Analysis

Division D. Manufacturing
- Major Group 20. Food and kindred products
- Major Group 21. Tobacco manufactures
- Major Group 22. Textile mill products
- Major Group 23. Apparel and other finished products, made from fabrics and similar materials
- Major Group 24. Lumber and wood products, except furniture
- Major Group 25. Furniture
- Major Group 26. Paper and allied products
- Major Group 27. Printing, publishing, and allied industries
- Major Group 28. Chemicals and allied products
- Major Group 29. Petroleum refining and related industries
- Major Group 30. Rubber and miscellaneous plastics products
- Major Group 31. Leather and leather products
- Major Group 32. Stone, clay, glass, and concrete products
- Major Group 33. Primary metal industries
- Major Group 34. Fabricated metal products, except machinery and transportation equipment
- Major Group 35. Machinery, except electrical
- Major Group 36. Electrical and electronic machinery, equipment, and supplies
- Major Group 37. Transportation equipment
- Major Group 38. Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
- Major Group 39. Miscellaneous manufacturing industries

Division E. Transportation, Communications, Electric, Gas, and Sanitary Services
- Major Group 40. Railroad transportation
- Major Group 44. Water transportation
- Major Group 45. Transportation by air
- Major Group 47. Transportation services
- Major Group 49. Electric, gas, and sanitary services

Division F. Wholesale Trade
- Major Group 50. Wholesale trade—durable goods
- Major Group 51. Wholesale trade—nondurable goods

Division G. Retail Trade
- Major Group 55. Automotive dealers and gasoline service stations

Division I. Services
- Major Group 72. Personal services
- Major Group 73. Business services
- Major Group 75. Automotive repair, services, and garages
- Major Group 80. Health services

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, as derived from Standard Industrial Classification Manual 1972, Executive Office of the President—Office of Management and Budget [1, pp. 5-7].

The listing excludes the construction industry (SICs 15, 16, and 17) which will be the subject of a separate regulatory analysis.

Respondents:

II. Survey of Affected Industries

Chemicals and other hazardous substances are present to some degree in all industries. However, some industry sectors use chemicals more extensively than others and have controls in place which do not always reduce workers' exposures below permissible exposure levels. This chapter presents an overview of those industries which OSHA believes may experience costs and benefits as a result of this rulemaking. In order to estimate and quantify the potential impact of the rule, a sample survey of over 5,300 establishments was conducted during the first part of 1988. The results of the survey provided the basis for the cost and benefit estimates presented in this preliminary Regulatory Impact Analysis (PRIA). A technical description of the survey is presented in Supplement 1.

In order to determine which industries to include in the sample survey, OSHA relied primarily on two data sources: (1) The NIOSH National Occupational

Exposure Survey (NOES) of 1982 and supplementary information from the NIOSH 1972 survey; and (2) data in the OSHA Integrated Management Information System (IMIS). The 1982 NOES database contains a sample of the number of persons exposed by substance and industry from almost 4500 businesses in 98 different geographic areas in the United States. OSHA's IMIS contains the results of exposure samples taken since 1979 by industrial hygienists during the course of compliance inspections. Using these two databases, industries which are likely to use the substances in this rulemaking at levels which might exceed the proposed exposure limits were identified.

As a check on this list of industries, OSHA contracted with about one dozen industrial hygienists and chemical engineers to review the list. Based on their professional knowledge, these experts verified the industries with potential exposure problems. The final list of industries selected for the sample survey included over 30 two-digit and three-digit SICs where it is believed that chemical exposure potentially exceed the proposed levels.

Industry sectors not included in the survey are those where OSHA believes there is little potential chemical exposure or where existing exposures are well controlled. Industries which were not surveyed for these reasons included finance, real estate, insurance and most services and retail trade sectors. The construction industry was also excluded and will be the subject of a separate rulemaking action. Industries such as *mining and certain* transportation sectors were not included since other agencies have safety and health enforcement jurisdiction. Certain industry sectors including textile, apparel, food and tobacco products are expected to incur some costs as a result of this rulemaking, but these were not included in the sample survey. The reasons for not including these sectors were a combination of the limits imposed by the sample size, relatively low hazardous substance exposure levels and the availability of adequate information on the engineering controls currently in use in these industries. (Supplement 1 contains a list of the industry sectors included in the sample survey.)

Industrial hygienists and engineers under contract to OSHA also identified the processes used in the industries surveyed, and the chemicals used in those processes. Expected levels of exposure and the number of employees potentially exposed were estimated. The list of processes and chemicals determined to be in common use in each industry sector was subsequently verified in the sample survey. Supplement 2 identifies the processes and chemicals found at the four-digit level for all industries surveyed.

Establishments to be surveyed were selected based on a statistical sample of all establishments in the surveyed industry sectors. For each SIC, establishments were selected from four size categories:

(a) 0–19 employees
(b) 20–99 employees
(c) 100–249 employees
(d) 250 or more employees

This permitted analysis of the effects of the rulemaking by establishment employment size.

About 5,000 completed responses were required to obtain statistically valid results. The field survey was conducted by KCA Research using Computer-Assisted Telephone Interviewing (CATI). Trained interviewers requested data from each establishment regarding production employment, chemical usage, and exposure guidelines in use. Respondents were asked to verify the presence or absence of chemicals and processes believed to be found in establishments in their industry, and were asked to volunteer information on other chemicals not included on the interviewers' "prompt" list of chemicals in use. For each chemical present, the respondent was asked about amounts used, employee exposure levels, and processes where used. For each process, the respondent was asked questions concerning its configuration, frequency of use, and the types of controls and personal protective equipment in use. This information was used to develop the estimates of costs and benefits presented in this PRIA.

The survey results generally corroborated the preliminary assessments of potential industry exposure and overexposure to chemicals. In the sample of over 5,300 firms, about two-thirds reported chemicals being used in the workplace. Most of the firms which reported no chemical usage were small administrative or distribution units of multi-plant companies. Supplement 2 contains a list of the chemicals and processes found in the survey. Based on the survey, OSHA estimates that over 60 percent of production workers in most of the industries surveyed are potentially exposed to chemicals and about 10–15 percent of these would be overexposed at the levels proposed in this rulemaking. Chapter III presents OSHA's estimates of the benefits occuring from a reduction in the number of employees exposed to these chemicals.

The industry profiles that follows present economic information on industry sectors expected to be affected by the rulemaking. Most but not all of these industries were included in the sample survey. Table II–1 at the end of the chapter, contains employment and establishment data for each industry profiled.

SIC 20—Food and Kindred Products

This major industry group includes establishments that manufacture or process food and beverages for human consumption as well as certain related products such as ice, chewing gum, vegetable and animal fats and oils, and prepared animal feeds [1, pp. 59 to 69]. Increased disposable income, low commodity prices, changing demographics, and the 1986 tax reforms are expected to benefit this industry in the next few years. [2, p. 39–1].

Employment and establishment data are shown in Table II–1. The total 1985 value of SIC 20 shipments ($301.6 billion) was 13 percent of the value of all manufacturing industry shipments; this represented the largest share of any two-digit manufacturing industry. The most important industry within SIC 20 is meat products, accounting for 22 percent of the value of shipments, followed by beverages and dairy products, accounting for 14 percent each [3, Vol 1:8].

In 1985, 1.6 million workers in over 29,000 establishments were employed in SIC 20. About 70 percent of these are production workers [Table II–1]. Employment has declined since 1979. The largest employer is the meat products industry, with 23 percent of the workforce in 1986, followed by preserved fruits and vegetables (15 percent) and beverages (13 percent). Meat and miscellaneous food products both experienced 1986 employment levels slightly above the 1979 peak [4]. The largest number of food products establishments are in the manufacturing or processing of miscellaneous foods and meat products (17 percent and 16 percent, respectively).

Establishments in SIC 20 are similar in size to those in the manufacturing industry as a whole, although there is a smaller concentration of very large establishments. Mean establishment size is 55 workers.

Most recent growth by larger food processors has been through business acquisitions rather than internal expansion. The food and beverage sector is becoming more concentrated and efficient. In most food industries for which data are available, concentration is moderate, with the largest four firms having a 30 percent share of sales. Exceptions can be found in cereal breakfast foods, where the four-firm concentration ratio is just over 75 percent, and in soft drinks, where it is 88 percent [2, pp. 39–1 to 39–39].

In the next few years, most food and beverage producers will benefit from increases in disposable income, favorable trends in consumer purchasing patterns, and continued low commodity prices. Decreased operating costs and expenses have resulted in a 6 percent increase in income in 1985–86 for large food and beverage processors, despite sales gains of only a little more than 1 percent [2, p. 39–1].

In 1985, the median rate of return on assets in the food and kindred products industry was 5.1 percent; this was the third lowest for the 20 two-digit manufacturing industry group. The highest rates of return were registered by the cookie and cracker industry and the blended and prepared flour industry (11.8 percent and 11.1 percent, respectively), followed by the flavoring extracts industry (9.2 percent). At the other extreme, the wine and brandy industry registered a −0.9 percent rate of return on assets in 1985, with an average rate of under 0.1 percent for the 1984–86 period. The cheese and rice milling industries also have very low rates of return on assets (2.2 percent) [5].

SIC 21—Tobacco Manufactures

Establishments in the tobacco manufactures industry produce cigarettes (SIC 211), cigars (SIC 212), chewing and smoking tobacco, and snuff (SIC 213), or they engage in tobacco stemming and redrying (SIC 214) [1, p. 70]. The major worker exposures in these industries are to nuisance dusts generated during the initial handling of tobacco and to chemicals that have been used to treat the tobacco.

Data on employment and establishments for SIC 21 are shown in Table II–1. In 1985, the value of tobacco manufacturing shipments was $18.5 billion, slightly more than 6 percent of the value of shipments for all manufacturing [3, Vol. 1: 8]. SIC 21 has less than 0.3 percent of the total employment or establishments in manufacturing [6, pp. 10, 15]. Three-quarters of the employees in this industry are production workers. The cigarette industry is the most important component of SIC 21, accounting for more than 80 percent of the value of shipments [3, Vol. 1: 8] and 70 percent of employment for this sector, but only 9 percent of establishments [6, p. 15].

Establishments in SIC 21 are large, with a mean size of 296 employees, compared to 55 for all manufacturing. More than half of the establishments in this two-digit SIC have fewer than 20 employees [Table II–1]; and more than 17 percent have 250 or more employees. These large establishments account for more than 85 percent of all employees. The cigarette industry is especially highly concentrated, with a mean establishment size of 2,430 employees. Eleven establishments in the cigarette industry employ 1,000 or more workers, and 99.8 percent of all cigarette manufacturing employees work in these large establishments. Mean establishment sizes in other tobacco industries range from 60 to 135 employees [6, pp. 10, 15]. Employment in the tobacco products industry has declined every year since 1976 (except in 1981), with a total decline in employment of more than 23 percent over the last decade [4].

Most tobacco firms remain profitable because input costs have been relatively stable and prices have increased faster than consumption has declined. The major tobacco companies are continuing to reduce their vulnerability through mergers and diversification [2, pp. 40–1 to 40–7]. Thus, profitablility in the tobacco manufactures industry is good. The 1985 median rate of return on assets (7.7 percent) was the fifth highest median rate of return on assets among firms in the 20 manufacturing industry groups [5].

SIC 22—Textile Mill Products

SIC 22 includes those establishments that perform any of the following six operations: (1) Preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine and cordage; (2) manufacturing broadwoven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; (3) dyeing and finishing fiber, yarn, fabrics, and knit apparel; (4) coating, waterproofing, or otherwise treating fabrics; (5) the integrated manufacturing of knit apparel and other finished articles from yarn; and (6) the manufacture of felt goods, lace goods, nonwoven fabrics, and miscellaneous textiles [1, p. 85].

According to the Department of Commerce, in 1986 shipments for the textile industry increased 4 percent. The value of shipments in 1985 ($53.3 billion) has increased 6 percent since 1981. Employment, however, remained on a long-term downward trend, although the 1986 drop was marginal. An upward trend in output and relatively high operating rates helped to keep the drop in employment to a minimum. Also, average hours worked, which increased in the second half of 1985, continued to rise relatively strongly in 1986 [2, p. 41–1].

Table II–1 presents data on the number of establishments and employment in SIC 22. Similar to other manufacturing industries, the mean establishment size in SIC 22 was 64 employees. Between 1981 and 1985, SIC 22 experienced a 15 percent decrease in employment. In 1985, almost 86 percent of the number of employees were production workers [4]. The median rate of return on assets in the textile mill products industry was 5.6 percent in 1985 [5].

SIC 23—Apparel and Other Products

SIC 23 is referred to as the "cutting-up and needle trades," and includes establishments producing clothing and fabricating products by cutting and sewing purchased woven or knit textile fabrics and related materials. These materials may include leather, rubberized fabrics, plastics, and furs. In addition, establishments that manufacture clothing by cutting and joining materials are included [1, p. 97].

SIC 23 includes three types of apparel establishments: (1) The regular or inside factories, which perform the usual manufacturing functions within their own plant; (2) contract factories, which manufacture apparel from materials owned by others; and (3) apparel jobbers, which buy raw materials, design and prepare samples, arrange for the manufacture of clothing from their materials, and sell the finished product [1, p. 97]. According to U.S. Department of Commerce estimates, the 1986 value of shipments for SIC 23 experienced a growth rate of almost 2 percent over 1985 values [2, p. 42–2].

Between 1980 and 1985, SIC 23 was among the top ten SICs to experience the greatest employment decline. Due to large inventories at both retail and wholesale levels and low consumer demand, there were decreases in both shipments and employment in 1985. In several geographic areas, plants were forced to close. The drop in employment has been attributed to the recent rise of imports into the U.S. market and to improvements in industry efficiency through streamlined operations and increased productivity [2, p. 42–2].

The apparel industry is a major employer of women and minorities, employing more than 6 percent of the manufacturing workforce in plants. Due to intense competition in the industry, profits and wages are lower in this industry than in most other manufacturing industries. The price of labor is the single most important cost

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component in the industry, which accounts for the sensitivity that employment levels have to industry growth levels. Production workers make up 85 percent of the apparel work force. Typically, as inventory levels grow, production slows down and employment drops [2, p. 42–2].

In 1986, current-dollar shipments in the apparel industry expanded in value by 3 percent. An increase in consumer demand was the major factor contributing to the upturn. Output levels began to regain former levels of output, and the falling rate of employment of about 1 percent was well below the 3.1 percent annual rate of decline during the 1980–1985 period [2, p. 42–2].

Table II–1 presents employment and establishment for SIC 23 for 1985. During the period of 1981 through 1985, SIC 23 experienced a 10 percent decrease in employment. Almost 84 percent of the total number of employees were production workers [4]. In 1985, the median rate of return on assets in this SIC was 6.3 percent [5].

SIC 24—Lumber and Wood Products

This industry produces logs, pickets and fences, mining timbers, railroad ties, poles and pulpwood. SIC 24 includes establishments that cut timber and pulpwood, merchant sawmills, lath mills, shingle mills, cooperage stock mills, planing mills, and plywood mills and veneer mills engaged in producing lumber and wood basic materials; and establishments that manufacture finished articles made entirely or mainly of wood or related materials [1, p. 107]. According to U.S. Department of Commerce estimates, the logging industry's timber harvest in 1986 was an estimated $8.5 billion, compared with $8.3 billion in 1985 (constant 1982 dollars) [2, p. 4–1].

The Department of Commerce reports that a strong expansion of the market for wood products took place in 1986 due to gains in housing and nonresidential construction activities. Although domestic demand for softwood lumber was strong, Canadian imports displaced American products and contributed to an oversupply, depressing prices. These lower prices lowered U.S. lumber producer profit margins and induced industrywide efforts to restrict imports of lower priced Canadian softwood lumber. In addition to the oversupply caused by the competitive prices in Canada, preventive harvesting to avoid pest damage forced inventories to go up and prices to fall further [2, p. 4–1].

In 1986, similar trends continued in the domestic market for wood products. This was due to a 6 percent rise in housing starts, continued growth in home remodeling and renovation, and strong demand from furniture makers and other end users. However, lower-priced softwood lumber imports from Canada continued to squeeze profits in 1986 [2, p. 4–1].

The Canadian softwood lumber prices brought about a trade agreement in March 1987 between the United States and Canada, in which Canada agreed to set a 15 percent export tax on its softwood lumber. This action has proved to be favorable towards the domestic industry for softwood lumber in the United States. Canadian softwood lumber prices in the United States have risen 3 to 4 percent and imports have decreased about 3 to 4 percent. Since the agreement, Canada's market share has dropped from 33 percent to 28 percent. Market earnings in the domestic industry have increased despite a drop in housing starts, a strong suggestion that the U.S. is benefiting from the higher Canadian prices. It is expected that the trade agreement will keep Canadian softwood prices up and continue to aid the domestic softwood lumber market [7].

Table II–1 presents employment and establishment data form for SIC 24 for 1985, as well as for three of the individual three-digit industry groups. In 1985, the mean establishment size in SIC 24 was 19 employees, which is significantly smaller than the average size in other manufacturing sectors. The median rate of return on assets in this SIC was 7.3 percent [5].

SIC 243—Millwork, Veneer and Plywood

This SIC includes establishments that manufacture fabricated wood millwork, covered with materials such as metal and plastics. According to U.S. Department of Commerce, the value of shipments for SIC 243 was $16.7 billion in 1985, which represents 31 percent of the value of shipments for SIC 24. The value of shipments in SIC 243 increased 21 percent since 1981. In 1985, the number of employees in SIC 243 was about 37 percent of SIC 24. The number of employees in SIC 243 increased by 16 percent in 1985, of which about 83 percent of this total was production workers. Average hourly earnings dropped about 1 percent during that same time period. The number of establishments in SIC 243 in 1985 was about 36 percent of all establishments in SIC 24 [4].

SIC 245—Wood Buildings and Mobile Homes

This SIC includes manufacturers of wood buildings and mobile homes. The 1985 value of shipments for SIC 245 ($6.0 billion) represents 11 percent of the value of shipments for SIC 24 in 1985. The value of shipments in SIC 245 increased 6 percent since 1981. In 1985, the number of employees in SIC 245 was 10.5 percent of SIC 24. The number of employees in SIC 245 increased by 8 percent during this period, of which almost 77 percent of these total employees were production workers. The number of establishments in SIC 245 in 1985 was 4.4 percent of all establishments in SIC 24 [4].

SIC 249

This SIC covers miscellaneous wood products, and includes four four-digit SICs. SIC 249 represents 12 percent of the value of shipments for SIC 24 in 1985. The value of shipments in SIC 249 ($6.8 billion) increased almost 19 percent over 1981. In 1985, the number of employees in SIC 249 was about 15 percent of SIC 24. From 1981 to 1985, the number of employees in SIC 249 decreased by 4 percent, of which almost 84 percent of these employees were production workers. The number of establishments in SIC 249 in 1985 was about 24 percent of all establishments in SIC 24 [4].

SIC 2491 includes establishments that treat wood, sawed or planed in other establishments, with creosote or other preservatives to prevent decay and to protect against fire and insects. This industry also includes the cutting, treating, and selling of poles, posts, and pilings. The Department of Commerce reports that during 1985, there was increased use of treated wood for home improvement projects, such as new decks and all-weather wood foundations. Markets for treated lumber and plywood have been expanding, while markets for treated telephone poles, marine pilings, and railroad ties tend to be cyclical and grow more slowly over the long term. The market for railroad ties in 1985 was strong, as railroads were able to generate enough cash flow to maintain their track systems by replacing worn out ties. In 1986, however, the market for railroad ties declined. About 30 percent of total treated wood shipments are lumber and plywood, of which only about 2 percent has been used for wood foundations [2, p. 4–14]. The Department of Commerce estimated that in 1986, the value of shipments in this industry increased by 5 percent [2, p. 4–14]. SIC 2491 represents 23 percent of the value of shipments for SIC 249 [5]. Employment rose in 1986 by 2.7 percent [2, p. 4–14]. The number of employees in SIC 2491 was almost 16 percent of SIC 249 and SIC 2491 represents almost 11 percent of all establishments in SIC 249 [5].

SIC 25—Furniture and Fixtures

Manufacturers of household, office, public building, and restaurant furniture and office and store fixtures are included in SIC 25 [1, p. 114]. The U.S. Department of Commerce states that producers of furniture and fixtures recently have been benefiting from lower real interest rates, reduction in the value of the dollar versus other major currencies, and changes in the tax laws. In addition, the U.S. furniture industry is undergoing consolidation, so that big firms are becoming larger and dominating a greater share of the market. The remaining smaller firms are finding it more difficult to compete, given the rapid increase in low-priced imports. Moreover, new manufacturing technologies require large capital investments and large volume, neither of which are readily available to small firms [2, p. 44–2].

For the industry, the value of shipments in 1985 increased by 24 percent since 1981. Although furniture manufacturers anticipate stronger demand in the future, these manufacturers remain uncertain as to the duration and extent of increased demand. Therefore, rather than hiring additional workers, producers have increased the average number of hours worked by current employees. This trend was evident in the wood and metal furniture plants, where average overtime hours increased 16 percent and 24 percent, respectively, in the first half of 1986 [2, p. 44–2].

Table II–1 presents employment and establishment data for SIC 25 for 1985. During this period, SIC 25 experienced a 6 percent growth in employment. Almost 80 percent of the total number of employees working in SIC 25 were production workers. In 1985, the median rate of return on assets in the furniture industry was 7.3 percent.

SIC 26—Paper and Allied Products

Establishments in this industry process fiber from trees, wastepaper, and other fibrous materials into end products that are used by both consumers and industry [1, p. 100]. Based on U.S. Department of Commerce estimates, the paper and allied products industry experienced an increase of 14 percent in the value of shipments from 1981 to 1985, and almost 10 percent between 1985 and 1986. The 1985 value of shipments was $93.4 billion [2, p. 5–1].

Growth patterns in the industry vary, depending on the sector. Some sectors of the industry are more closely related to changes in industrial activity, while others are more directly affected by changes in real personal income or demographic factors. The industry's overall demand patterns are closely linked to rates of change in GNP. In 1985, for example, real growth for the industry was judged to be flat, trailing that of GNP. The largest fluctuations in the industry's shipments have occurred in products geared specifically for commercial-industrial use, which are tied to the annual rate of business activity [2, p. 5–1].

Table II–1 presents employment and establishment data for SIC 26 for 1985. From 1981 to 1985, employment declined by approximately 2 percent. Almost 76 percent of the total number of employees were production workers [4]. In 1985, the median rate of return on assets was 7.4 percent [5].

Within SIC 26, there are six, three-digit SIC groups, which are described below. SIC 261 includes manufacturers of pulp from wood or other materials. The Department of Commerce reports that U.S. market pulp prices dropped nearly 10 percent in the first six months of 1986. The main reasons for the decline included a leveling of demand, high operating rates at market pulp mills, large pulp inventories, and new capacity coming into production. By the end of 1985, however, producers' pulp mill inventories had dropped, helping to stabilize pulp prices. About one-fourth of all market pulp companies either shut down some of their mills in 1985 or curtailed production to reduce the oversupply in the market. In 1986, the industry experienced increased productivity, higher prices and improved worldwide demand. For SIC 261, the value of shipments in 1985 increased by 2.5 percent over 1985. SIC 261 represents 3.4 percent of the value of shipments for SIC 26 [2, p. 5–2].

SIC 262 includes manufacturers of paper from wood pulp and other fiber pulp, and manufacturers of converted paper products. SIC 263 includes manufacturers of paperboard. SIC 263 represents 11 percent of the value of shipments for SIC 26. The value of shipments decreased by 3.6 percent. The number of employees in SIC 263 was less than 1 percent of SIC 26 [4].

SIC 264 includes manufacturers of coated or laminated flexible materials used for packaging purposes. In this sector, the value of shipments, which represents 36 percent of the value of shipments for SIC 26, increased by 17 percent during the same period. The number of employees in SIC 264 was 34 percent of SIC 26 [4].

SIC 265 includes manufacturers of setup paperboard boxes from purchased paperboard. Corrugated boxes have taken the place of wooden shipping containers, pallets, and metal drums in the U.S. packaging market in recent years [2, p. 5–6]. Similarly, consumption of folding boxes continued steadily in 1985. This pattern continued in 1986 with shipments of corrugated boxes increasing 5.5 percent and 3 percent for folding boxes. Several important nondurable end users of folding cartons, such as producers of beverages, dry foods, textiles, sporting goods and toys, hardware, candy, and cosmetics, showed significant declines in real growth in 1985, while the market for boxed paper goods either grew slightly or remained fairly level. [2, p. 5–9].

Manufacturers of sanitary food containers, such as paperboard milk cartons and paper serving and eating utensils, are also included in SIC 265. This industry has been strongly influenced by the shift to plastic containers. Having experienced two successive years of decline, in 1986 the industry increased the value of shipments by 2 percent. Since 1983, the most rapid growth area within the sanitary food container industry has been aseptic packaging. This is specially treated paperboard combined with plastic film and aluminum foil. Sanitary paper products have undergone radical changes in manufacturing in recent years; however, due to the non-discretionary nature of most of this industry's relatively high-priced product line, it has developed a stable base from which to expand.

The value of shipments for SIC 265 increased by 16 percent from 1981 to 1985. This three-digit SIC represents 24 percent of the value of shipments for all of SIC 26. In 1985, the number of employees in SIC 265 was 29 percent of SIC 26 [3].

SIC 266 includes manufacturers of building paper and building board from wood pulp and other fibrous materials. Trends in employment and value of shipments have followed overall trends in SIC 26.

SIC 27—Printing, Publishing, and Allied Industries

This industry is divided into a publishing sector and a printing sector. The publishing sector includes newspaper publishing (SIC 271), periodical publishing (SIC 272), book publishing (SIC 2731) and greeting card publishing (SIC 277). The printing sector includes commercial printing (SIC 275), book printing (SIC 2732), and printing trade services (SIC 279) [1, pp. 108–110].

There were approximately 84,270 establishments in the printing and publishing business in 1985. The

majority of these firms (84.1 percent) had fewer than 20 employees, and the mean establishment size was 17 workers. The firms in SIC 27 employed 1.4 million people [Table II–1]. According to the U.S. Department of Commerce, the value of shipments for all printing and publishing establishments in 1985 was 4.9 percent of the value of shipments for all manufacturing industries. Most of the value of shipments in SIC 27 is from the commercial printing sector (32.4 percent). In 1985, the median rate of return on assets was 8.2 percent for the printing and publishing industry.

Foreign trade has not been a major concern for this industry in the past, but imports are starting to increase at a steady rate. The value of imports and exports was fairly equal in 1986 at $1.3 billion each [2, p. 27–2].

The newspaper industry has maintained slow growth in circulation and advertising over the last several years. Most of the growth in circulation has come from the Sunday edition, while daily circulation fell by 0.6 percent. Sales revenues increased by 8.9 percent, from $14.8 billion in 1986 to $16.2 billion in 1987. Advertising revenues rose slightly, but most of this gain was due to rate increases. Total net worth increased by 17.4 percent from 1986 to 1987 [8].

The periodical industry has experienced growth in both advertising receipts and circulation. Advertising revenue increased over 4 percent in 1986, while circulation revenues increased mainly due to the increase in subscriptions for consumer magazines. There was a large increase in the number of new publications entering the market; over 238 new periodicals were published in 1986 [1, p. 27–6].

Both book publishing and printing showed strong gains over the last several years. Sales and employment increased by 3.5 percent and 2.7 percent, respectively. Spurred by the increase in school enrollment, sales of textbooks accounted for 30 percent of total industry sales. Book printing usually follows the path of book publishing, increasing substantially when book publishing has a strong year [1, pp. 27–9 to 27–13].

Miscellaneous publishing and printing consists of newsletters, catalogs, directories, greeting cards, and business forms. This industry has seen steady gains due in part to the success of mail-order catalogs, telephone directories, and newsletters [1, pp. 27–13 to 27–20].

SIC 28—Chemicals and Allied Products

SIC 28 includes establishments that produce basic chemicals, and establishments that manufacture products using chemical processes. There are three general classes of products: (1) Basic chemicals, such as acids, alkalies, salts, and organic chemicals; (2) chemical products to be used in further manufacturing, such as synthetic fibers, plastics materials, dry colors, and pigments; and (3) finished chemical products to be used for consumption, such as drugs, cosmetics, and soaps; or to be used as materials or supplies in other industries, such as paints, fertilizers, and explosives [1, p. 132].

The chemical and allied products industries have experienced small but steady growth over the recent past. Total shipments by the chemical industry increased approximately 1.2 percent in 1986, following a 1.2 percent gain in 1985. Chemical prices have been somewhat stable in the industry since 1982, due to declining energy costs, which are major factors associated with manufacturing costs. Like many other U.S. industries, various sectors within the chemical industry are undergoing structural changes, such as mergers, plant closings, sales of plants, and other adjustments. This industry employs approximately 5 percent of all industrial workers, but more than 10 percent of all U.S. scientists and engineers. As seen in Table II–1, SIC 28 experienced a 6 percent decline in employment between 1981 and 1985. In 1985, 55.4 percent of the total number of employees in SIC 28 were production workers. The value of shipments increased 8.9 percent during the 1981 to 1985 time period. The median rate of return on assets in the chemical industry was 6.3 percent [5].

Within SIC 28, there are eight, three-digit SICs, which are described below. Most known chemicals that are either produced to be used as an end product, by-product, or effluent, or are used as an input in the production of other substances, can be found in SIC 28. In the following descriptions of four-digit SIC groups, examples of chemicals produced are listed.

SIC 281

This SIC includes establishments that manufacture basic industrial inorganic chemicals. SIC 281 represents 10.3 percent of the value of shipments of SIC 28 in 1985. The value of shipments increased 11.4 percent since 1981, and employment declined by 12 percent. Production workers equaled almost 51 percent of all workers. The number of establishments in SIC 281 was 14.5 percent of all establishments in SIC 28 [Table II–1].

SIC 281 is subdivided into four groups. Examples of the products of each four-digit SIC are given below.

SIC 2812 Products—Chlorine, soda ash, caustic potash, caustic soda, washing soda, and sodium bicarboniate.

SIC 2813 Products—Oxygen, acetylene, argon, carbon dioxide, and hydrogen.

SIC 2816 Products—Color pigments, iron colors, iron oxide, lead oxide pigments, mineral colors, titanium pigments, and zinc oxide pigments.

SIC 2819 Products—Sulfuric, hydrochloric, and hydrofluoric acids.

SIC 282

This SIC includes manufacturers of plastics materials and synthetic resins, synthetic rubbers, and cellulosic and other manmade fibers. Plastics make up a variety of products which are used in diverse markets. Packaging and construction account for over 50 percent of consumption, with the remainder going into the transportation, electronics, and medical industries. SIC 282 represents almost 17 percent of the value of shipments of SIC 28. The value of shipments in SIC 282 increased 8.5 percent over the period 1981 to 1985. Industry shipments of plastics in 1986 gained 6.3 percent as volume rose in response to slightly increased demand for materials. However, declining prices of plastic materials held shipments to a 2 percent increase [2, p. 14–1]

Table II–1 gives employment and establishment data for this segment. The number of employees in SIC 282 in 1985 was almost 16 percent of SIC 28 and the number of establishments was 8 percent of all establishments in that SIC. In 1985, employment in SIC 282 declined by 12 percent, and production workers equaled 66.5 percent of all workers [4].

SIC 282 is subdivided into four groups. Examples of the products from each of these four-digit SICs are given below.

SIC 2821 Products—Cellulose plastics materials, phenolic and other tar acid resins, acrylic resins, polyethylene resins, coumarone-indene and petroleum polymer resins, and casein plastics.

SIC 2822 Products—Copolymers of butadiene and styrene, or butadiene and acrylonitrile, and polybutadienes.

SIC 2823 Products—Cellulose, rayon, and triacetate fibers.

SIC 2824 Products—Fibers of acrylic, acrylonitrile, polyvinyl ester, and nylon.

SIC 283

This group includes establishments that manufacture, fabricate, or process medicinal chemicals and pharmaceutical products. The value of shipments in SIC 283 has increased almost 29 percent since 1981. SIC 283 represents 16 percent of the value of shipments of SIC 28 and almost 20 percent of the number of employees. The U.S. Department of Commerce estimated that the pharmaceutical industry experienced a 6.3 percent increase in the value of shipments in 1986. However, after adjusting for price changes, this growth rate was closer to 1.8 percent. Productivity also increased in 1986, growing by approximately 2.6 percent [2, p. 17–1].

As seen in Table II–1, the number of establishments in SIC 283 was almost 12 percent of all establishments in SIC 28. Employment increased by 3 percent since 1981, and production workers equaled approximately 46 percent of all workers in SIC 283. Agar, vitamins, antibiotics, vaccines, and viruses are examples of the products of this SIC.

SIC 284

This SIC includes manufacturers of detergents, emulsifiers, cosmetic, and producers of glycerin. SIC 284 represents 15 percent of the value of shipments of SIC 28. The value of shipments in SIC 284 increased almost 17 percent from 1981 to 1985. In 1985 the value was estimated at $31 billion, which represents about a 2 percent increase after adjusting for price changes over 1985 values [2, p. 16–1].

The number of employees in this SIC was almost 15 percent of SIC 28 and the number of establishments was almost 22 percent. In 1985, employment in SIC 284 had increased by 1 percent since 1981, and production workers equaled approximately 63 percent of all workers in SIC 284 [4].

There are four subgroups within SIC 284. Examples of the products produced by each four-digit SIC are given below.

SIC 2841 Products—Soap, synthetic organic detergents, inorganic alkaline detergents, and crude and refined glycerin from vegetable and animal fats and oils.

SIC 2842 Products—Household, institutional, and industrial plant disinfectants, non-personal deodorants, dry cleaning preparations, household bleaches, and other sanitation products.

SIC 2843 Products—Textile and leather finishing agents, soluble oils and greases.

SIC 2844 Products—Perfumes, cosmetics, home permanent kits, shampoos, shaving products, and talcum powder.

SIC 285

This SIC includes manufacturers of paints and allied paint products such as varnishes, shellacs, and paint removers. The paint industry grew by about 5.3 percent in 1986, a vast improvement over 1985's decline of 2.9 percent. Estimated shipments for 1986 were $11.1 billion, of which architectural coatings accounted for about 41 percent, followed by product coatings (35 percent) and specialty products (24 percent) [2, p. 15–2].

SIC 285 represents about 6 percent of the value of shipments of SIC 28. The value of shipments increased almost 21 percent from 1981 to 1985. The number of employees in SIC 285 was 6 percent of SIC 28 and the number of establishments was 9 percent.

SIC 286

This SIC includes manufacturers of a variety of industrial organic chemicals. Industry shipments of organic chemicals increased approximately 3 percent over 1985, which was the same level of growth experienced in the previous year. In 1985, the value of shipments for SIC 286 was $41.0 billion, representing 21 percent of the value of shipments of SIC 28. The value of shipments in SIC 286 decreased 11.3 percent over the previous year [2, p. 12–6]. The number of employees in SIC 286 was almost 11 percent of SIC 28 and the number of establishments was approximately 7 percent. Employment in SIC 286 increased by 10 percent, and production workers equaled 51 percent of all workers [Table II–1].

There are three subgroups in SIC 286. Examples of products for each four-digit SIC are given below.

SIC 2861 Products—Hardwood and softwood distillation products, wood and gum naval stores, charcoal, natural dyestuffs and natural tanning materials.

SIC 2865 Products—Toluene, benzene, synthetic organic dyes and pigments.

SIC 2869 Products—Alcohols, caprolactum, and ethylene glycol.

SIC 287

This SIC includes establishments that manufacture agricultural chemicals and pesticides. According to the U.S. Department of Commerce, the 1985 value of shipments of SIC 287 ($14.8 billion) represents 7.5 percent of the value of shipments of SIC 28. The value of shipments in SIC 287 decreased 9.6 percent from 1981 to 1985. Employment in SIC 287 represented 5 percent of SIC 28, but has declined by 16 percent since 1981. The number of establishments in SIC 287 was approximately 9 percent of all establishments in SIC 28 and production workers equaled approximately 62 percent [Table II–1].

SIC 2873 includes manufacturers of nitrogenous and mixed fertilizers. The value of shipments of nitrogenous fertilizers in 1986 was $3.43 billion, which represents a decrease of approximately 8.2 percent over 1985 shipments [2, p. 13–1].

SIC 2874 includes manufacturers of phosphatic fertilizers, such as phosphoric acid, made from phosphate rock. The value of shipments of phosphatic fertilizers in 1986 was $4.67 billion, which represents a decrease of approximately 13 percent over 1985 shipments [2, p. 13–3]. Ammonia and phosphoric acid are two substances with potential exposure problems that are produced and or used in SIC 2874.

SIC 2875 includes establishments that mix fertilizers from purchased fertilizer materials. SIC 2879 includes formulators and preparers of ready-to-use agricultural and household pest control chemicals, such as fungicides, insecticides, and herbicides.

SIC 289

This group includes manufacturers of miscellaneous chemical products. For 1985, SIC 289 represents 7 percent ($14.6 billion) of the value of shipments of SIC 28. From 1981 to 1985, the value of shipments in SIC 289 increased 15.5 percent. The number of employees in SIC 289 was almost 10 percent of SIC 28 and has remained unchanged since 1981. The number of establishments in SIC 289 was approximately 19 percent of all establishments in SIC 28. Production workers equaled approximately 62 percent of all workers [Table II–1].

SIC 2891 includes manufacturers of industrial and household adhesives and sealants. Industry shipments for adhesives and sealants in 1986 amounted to $4.2 billion, of which about 60 percent were by synthetic resins and rubber-based adhesives; 20 percent by sealant and caulking compounds; and the remaining 20 percent by natural-based adhesives and miscellaneous compounds [2, p. 15–3].

SIC 2892 includes manufacturers of explosives, such as TNT (Trinitrotoluene). Ethylene glycol dinitrate is one of the products of this SIC which may have potential exposure problems. SIC 2893 includes manufacturers of printing ink, whereas SIC 2895 includes manufacturers of carbon black. SIC 2899 includes manufacturers of miscellaneous chemical products, not elsewhere

classified. Among these three SICs, ethylene glycol, nitrotoluene, hexylene glycol, trimellitic anhydride, and coal dust are all substances with suspected exposure problems that are either produced or used in these sectors.

SIC 29—Petroleum and Related Industries

This industry is divided into petroleum refiners and producers of other related products. Petroleum refineries (SIC 2911) produce fuels (such as gasoline, kerosene, and distillate and residual fuel oils) as well as lubricants and chemical feedstocks. These products are produced through straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes. Other producers in this sector manufacture asphalt and tar products for paving and roofing (SIC 296) and other lubricating oils, greases, and petroleum and coal products (SIC 299) [1, pp. 127–128].

The 1985 value of shipments for SIC 29 ($179.1 billion) was 7.9 percent of the value of shipments for all manufacturing industries. Petroleum refining dominates SIC 29, accounting for 94 percent of this sector's value of shipments [2, pp. 10–6 to 10–14].

The number and size distribution of establishments in SIC 29 are shown in Table II–1, as is total employment. Relative to value of output, SIC 29 has few establishments and low employment, accounting for less than 1 percent of all manufacturing establishments and employment [6, pp. 10, 30].

About 40 percent of the establishments in SIC 29 are petroleum refineries [9], which are large and extremely capital intensive. Production is highly automated; enclosed processes are used throughout. Mean employment size is 105 employees. By contrast, plants in the other industries within SIC 29 are relatively small and less capital intensive, and processes are generally not automated. Mean establishment size in the rest of SIC 29 is 19 employees.

The general pattern of firms in SIC 29 in the 1980s has been one of decline. The real value of petroleum product shipments, consumption of petroleum products, petroleum refining capacity, and employment in SIC 29 all peaked between 1977 and 1981. There has been an upturn since 1985, resulting principally from a sharp decline in crude oil prices in the first half of 1986, which stimulated demand for refinery products [4; 2, pp. 10–1 and 10–2]. Demand for petroleum products is expected to grow only slightly in the short run and to show little long-run growth. In the past, trends have been strongly influenced by sharp fluctuations in the price of crude oil [2, pp. 10–3 and 10–4].

In 1985, imports of refined petroleum products were $18.2 billion, which reflects both the price of crude oil and the volume of imports. The volume of imports is itself strongly influenced by the price of crude oil, since low prices of crude oil tend to reduce imports of refined petroleum products by making domestic refineries more competitive in the production of gasoline. Import penetration has been erratic [2, pp. 10–1 and 10–3].

The profitability of firms in SIC 29 is low. The median 1985 rate of return on assets (4.4 percent) is the second lowest median return on assets of all 20 two-digit manufacturing industries [5].

SIC 30—Rubber and Miscellaneous Plastics Products Industry

This industry sector consists of establishments that manufacture a variety of products from plastic resins and from natural, synthetic, and reclaimed rubber. Although plastic products account for the largest share of the value of shipments of this industry group, the industry also manufactures a variety of rubber products, including tires; inner tubes, footwear, and belting [1, pp. 129–132]. The value of shipments for 1985 was $71.3 billion. This industry is dominated by the miscellaneous plastic products sector (SIC 307 until 1987 and now SIC 308), which accounts for 61 percent of the establishments, 66 percent of the value of shipments, and 70 percent of the employment for the entire industry group [9]. The tire and inner tube (SIC 301) sector and miscellaneous rubber products (SIC 306) sector are the other major components of this industry.

Similar processes are used in manufacturing plastic and rubber products, with the nature and form of the final product determining the process more than the product's components. A product's components, however, determine the types of chemical exposures employees experience. Examples of particularly serious types of exposures are those to the foaming agents that are used in the production of foam rubber or plastic foams and to the styrene used to produce polystyrene or for lamination processes.

As shown in Table II–1, the industry sector has relatively small establishments, 61 percent of which have fewer than 20 employees, with an average of 43 employees per establishment. Employment in this industry grew by 7 percent between 1981 and 1985, with growth in the tire and inner tube and miscellaneous plastic product sectors balancing declines in other sectors [4].

Firms in this industry have above-average profits for manufacturing industries, with a 7.7 percent median rate of return on assets compared with a 7.0 percent median for all manufacturing firms [5].

SIC 31—Leather and Leather Products

The leather and leather products industry (SIC 31) consists of several sectors such as leather tanning (SIC 311); non-rubber footwear (SIC 314), and luggage and leather goods (SIC 315–319), [1, pp. 133–135]. Shipments of leather products and employment in the leather industry have been declining steadily over the past several years, due mainly to the worsening import situation [2, p. 43–1].

According to the U.S. Department of Commerce, the 1985 value of shipments for leather and leather products ($8.6 billion) was down 8.2 percent from 1984. The total represents 0.4 percent of the value of shipments for all manufacturing industries. Non-rubber footwear (SIC 314) makes up most of the value of shipments in this industry with 51.9 percent of the total value [3]. The median return on assets in 1985 for the leather and leather product industry was 6.3 percent [5].

The number of establishments in the leather tanning and finishing industry (SIC 311) has decreased by over 244 establishments, from 384 establishments in 1982 to 140 establishments in 1986. Employment and shipments have also decreased significantly. Since the leather tanning industry is highly dependent on the demand from the non-rubber footwear industry, it is not likely that the situation will improve in the near future [2, pp. 43–1 and 43–2].

The footwear, luggage, and handbag industry (SIC 31, other than 311) has had reductions in sales over the past few years. The non-rubber footwear industry has suffered substantially since 1981 when an import restraint agreement with South Korea and Taiwan expired. Since then, import's share of the domestic market has increased to over 80 percent. In the last few years, production, employment, and domestic shipments have declined substantially [2, p. 43–5].

The luggage and leather goods industry has also seen declines in production, employment, and shipments over the past several years. Imports reached over 52 percent of the domestic market in 1986. Employment has also been declining over the past few years, from 42,000 total employees in 1984 to 37,400 total employees in 1986 [2, pp. 43–12 and 13].

SIC 32—Stone, Clay, Glass and Concrete Products

This industry is made up of products such as cement (SIC 324), concrete (SIC 327), pottery (SIC 326), stone (SIC 328), glass (SIC 321–323), and clay brick (SIC 325). Since these products are primarily used as construction materials, the industry is heavily dependent on the amount of new construction activity in a given year.

There were 21,054 establishments in the stone, clay and glass industry (SIC 32) in 1985. Most of these firms (73.7 percent) employed fewer than 20 people in 1985. The mean establishment size was 28 workers. Total employment was 588,000 in 1985, a decrease of 0.8 percent over the 1984 total employment figure of 593,000 [6].

In 1985, the value of shipments in SIC 32 increased 3.1 percent over 1984. The total value was 2.4 percent of the value of shipments for all manufacturing industries. The value of shipments is evenly distributed over the entire industry, except for the concrete sector (SIC 327) with 35.4 percent of shipments [3]. The median rate of return on assets for SIC 32 was 6.5 percent in 1985 [5].

The concrete industry (SIC 327) has seen considerable improvement in production, employment, and demand in the past several years. The demand for concrete has increased substantially since 1982, when shipments were 23 percent below their current figure. Imports are not a significant factor when dealing with concrete. Since concrete demand depends mainly on non-residential building construction, the demand for concrete should decrease slightly in the near future [2, pp. 2–4 to 2–9].

The glass industry (SICs 321–323) has experienced steady growth over the past two years, mainly in production and shipments. New product introductions have allowed the glass industry to make substantial gains in winning market share. The outlook for continued growth for the glass industry is good [2, pp. 2–9 to 2–12].

Shipments of clay bricks (SIC 325–326) have increased substantially over the past few years, from 6.2 billion bricks in 1983 to 7.3 billion bricks in 1986. The outlook for the industry is for slow growth in the near future [2, pp. 2–12, 13].

SIC 33—Primary Metal Industries

The primary metal industry (SIC 33) is divided into two different sectors: Nonferrous metals and foundries (SIC 333–336) and ferrous metals and foundries (SIC 331–332) [1, pp. 145–152]. This includes the basic iron and steel industry, and the metals industry. Both sectors have been hurt in the recent past by a decline in domestic consumption and the growing number of imports into the United States. The future for these industries, however, looks brighter due to an increase in orders, slowing imports, and a decrease in capacity [10]. These industries have had increases in prices, shipments, and profits in 1987 and 1988, helped by the fall in the dollar.

As seen in Table II–1, the number of establishments in SIC 33 in 1985 totaled 10,101. The majority of these had fewer than 20 employees in 1985. Total employment (808,000 employees in 1985) and production employment (612,000 in 1985) have declined over the last several years, while the average hourly wage of production workers has increased by 2.2 percent from 1984 to 1985 [6]. The mean establishment size was 80 workers.

Production in the steel mill products industry has declined over the past few years, from 88.3 million tons in 1985 to 84.0 million tons in 1986, a decline of 4.9 percent. The 1985 value of shipments ($110.3 billion) in SIC 33 was 4.8 percent of the value of shipments for all manufacturing industries [3]. The median rate of return on assets in 1985 was 5.5 percent for the primary metal industry [5].

The outlook for the steel industry is brighter than just a few years ago. In 1987, the industry is expected to have its first profitable year since 1981. This is due mainly to the large decrease in capacity and employment that the industry has implemented over the last several years. The industry has cut costs of production while prices have remained steady.

The import situation has also improved for the steel industry, due in part to the falling value of the dollar against major competitors such as Japan and Europe. Over the past few years, imports of steel mill products took a large share of the domestic market, an increase of 7.7 percent in the market share from 1979 to 1984. Exports declined during the same time period by 13.7 percent [2, pp. 19–1 to 19–9].

The ferrous castings industry (SIC 332) has shown a poor performance over the past few years. The value of shipments has been steadily decreasing, from $10.8 billion in 1985 to $10.1 billion in 1986, a decline of 7.3 percent. The value of shipments for SIC 332 is forecast to increase 7.1 percent in 1987, although this trend is not likely to continue in the future. Total employment and the number of production workers has also fallen since the early 1980's, by 9.7 percent and 10.0 percent, respectively, from 1979 to 1984 [2, pp. 19–1 to 19–9].

Nonferrous metals can be classified as four primary metals: aluminum, zinc, lead, and copper. The aluminum industry has had mixed progress when it comes to improving their industry. Shipments have increased steadily in the past few years, with a 3.3 percent increase in 1986. The aluminum industry does experience a cost disadvantage due in part to its high electrical costs. Most aluminum producers use very high levels of electricity in their production processes; costs of production fluctuate with electrical utility costs. The industry faces potentially higher electricity rates related to legislative bills designed to reduce acid rain depositions produced by coal burning utilities. The enactment of such legislation is projected to increase power rates to aluminum smelters by over 10 percent.

The zinc industry should have steady growth over the next few years, due mainly to a decline in capacity and an increase in consumption. This has caused the price of zinc to rise, although rather slowly. Domestic consumption was still expected to increase to 960,000 tons in 1987. The value of shipments declined by 18.8 percent in 1986, but it is expected to increase by 7.7 percent in 1987. Total employment and the number of production workers has remained steady for the past several years.

The lead industry has had slow growth over the past few years, due mainly to a decline in demand from products such as gasoline and automobile batteries. Consumption is expected to increase slightly by a modest 2.1 percent in 1987, but to continue increasing into the 1990's. Industry production should also increase slowly, about 2 percent a year for the next few years [2, pp. 20–6 to 20–18].

The copper industry has been undergoing restructuring to remain competitive in the world market. This has forced the industry to decrease capacity and reduce employment [2, pp. 20–6 to 20–18]. The price of copper has been driven up recently due to a decline in inventories. This should allow the industry to turn a significant profit for the first time in several years.

SIC 34—Fabricated Metal Products

The fabricated metal products industry (SIC 34) consists of several different groups: Metal cans and shipping containers (SIC 341); cutlery and hand tools (SIC 342); heating equipment (SIC 343); fabricated structural metal products (SIC 344); screw machine products, bolts, and washers (SIC 345); forgings and

stampings (SIC 348); plating and coating (SIC 347); small arms and ordinance (SIC 348); and miscellaneous wire and fabricated products (SIC 349). SIC 34 excludes machinery and transportation equipment [1, pp. 153–166].

The total number of establishments in the fabricated metal products industry in 1985 was 40,322. The majority of these firms (67.0 percent) employ fewer than 20 people, a change of 0.2 percent since 1984. Total employment in this industry has reached 1.465 million employees, an increase of 0.1 percent since 1984 [6].

The 1985 value of shipments for SIC 34 represents a 2.7 percent increase over 1984. This was 6.1 percent of the value of shipments for all manufacturing industries [3]. The median return on assets for the fabricated metal products industry in 1985 was 7.1 percent [5].

Metal cans (SIC 3411) shipments have been increasing steadily in the past few years, from 92.3 billion units in 1983 to 105.0 billion units in 1986, an increase of over 13.75 percent. This was due mainly to the increase in soft drink and beer cans being shipped. The value of shipments has also increased with a compound annual increase of 3.3 percent from 1979 to 1984. Total employment in the metal cans industry has remained steady with only a slight decrease expected in 1987. The number of production workers has increased slightly with an increase of 0.3 percent from 1985 to 1986. Exports of metal cans have decreased substantially since 1984 when they reached an all-time high of $56.5 million. Since that time they have decreased to $37.5 million in 1986 [2, pp. 6–1 to 6–4].

The fabricated structural metal industry (SIC 3441) produces structural metal components used primarily in the construction industry. Shipments of fabricated structural metal increased 8.0 percent from 1984 to 1985, from $7.5 billion to $8.1 billion in 1985. Total employment has been increasing slowly at an annual rate of 1.0 percent, while the number of production workers has been increasing at an annual rate of 1.4 percent [2, pp. 2–3, 4].

The value of shipments in the screw machine products, bolts, and washers industry (SIC 345) decreased slightly from 1984 to 1987, from $7.5 billion to $7.3 billion. Total employment also decreased from 96,200 in 1984 to 95,600 in 1986. Since the automotive industry is the major customer for this industry, stable automotive sales are the key to economic health for this industry sector [2, pp. 24–1 to 24–6].

SIC 35—Non-Electrical Machinery

The non-electrical machinery industry (SIC 35) is made up of several different sectors: Miscellaneous machinery (SIC 351–356); computer and office equipment (SIC 357); refrigeration and service industry machinery (SIC 358); and miscellaneous machinery and equipment (SIC 359 [1, pp. 167–183].

As seen in Table II–1, the number of establishments in 1985 totaled 77,748. The majority of these (77.1 percent) had fewer than 20 employees in 1985. Total employment and production employment have decreased over the last several years. The 1985 value of shipments ($215.1 billion) in SIC 35 was 9.4 percent of the value of shipments for all manufacturing industries [3]. In 1985, the median rate of return on assets for SIC 35 was 7.5 percent [5].

Miscellaneous machinery (SICs 351–356) has been experiencing an increase in shipment over the past few years. In 1984, the value of shipments was $113.5 billion and since then it has increased to $114.0 billion in 1985. The majority of this increase was from metalworking machinery, which increased from $18.6 billion in 1984 to $19.7 billion in 1985, an increase of 5.7 percent. Total employment in this sector has been declining from 1,153,500 workers in 1984 to 1,117,400 workers in 1985 [2, pp. 23–1 to 23–17, 25–1 to 25–5, and 21–1 to 21–17].

The computer industry (SIC 357) has been facing stagnant demand for its products in the U.S. market [11]. The value of shipments of electronic computing equipment (SIC 3573) has decreased from $53.5 billion in 1984 to $49.2 billion in 1986, a decline of 8.0 percent. Total employment and the number of production workers have also declined since 1984 by 15.5 percent and 27.6 percent, respectively. Imported computer equipment have made significant inroads into the domestic market, due mainly to the standardization of products and the fall in price of computer equipment [2, pp. 28–1 to 28–10].

The refrigeration and service machinery industry (SIC 358) has had exceptional performance since 1984, with a compound annual rate of growth of 5.1 percent from 1979 to 1984. This is due mainly to the increase in new residential construction. Total employment and the number of production workers have also been increasing substantially, although this trend slowed in 1986, probably due to the trade situation. Imports have been steadily increasing, while exports have been decreasing at a steady rate [2, pp. 22–9 to 22–11].

SIC 36—Electric and Electronic Equipment

This industry is made up of several distinct sectors: Transformers and switchgear (SIC 361); electrical industrial apparatus (SIC 362); household appliances (SIC 363); electrical lighting and wiring (SIC 364); consumer electronics and communications equipment (SIC 365–366); electronic components and accessories (SIC 367); and miscellaneous electrical equipment and machinery (SIC 369) [1, pp. 184–195].

There were approximately 28,478 establishments in the electric and electronic equipment industry in 1985, employing over 2 million workers. The majority of these firms (62.4 percent) had fewer than 20 employees. The value of shipments for all electric and electronic equipment establishments in 1986 was $192.7 billion. This was 8.4 percent of the value of shipments for all manufacturing industries. Most of the value of shipments in SIC 36 is from the communication equipment sector (33.9 percent) [3]. The median return on assets for the electric and electronic equipment industry was 7.9 percent in 1985 [5].

The transformer and switchgear industry (SIC 361) has had mixed performance in the last year. While the value of shipments increased for switchgear by 2.5 percent, the value of shipments for transformers decreased by 1.9 percent from 1985 to 1986. Total employment and the number of production workers has remained fairly steady since the early 1980's [2, pp. 26–1 to 26–4].

The electrical industrial apparatus industry (SIC 362) is facing an uncertain future. The value of shipments for this industry has remained fairly steady over the past few years, but shipments in the future are predicted to decline due to weak demand from the automotive industry. Total employment has already begun to decline from 190,300 in 1984 to 178,900 in 1985, a decreases of 6.0 percent. The majority of the industry has been forced to cut operating costs to compensate for the reduced demand [2, pp. 26–4 to 26–6].

The household appliance industry (SIC 363) has had a steady increase in sales since the early 1980's, from $12.6 billion in 1982 to $15.2 billion in 1986, an increase of 19.98 percent [12]. The industry is optimistic about its future, due mainly to the increased residential construction and the increase in disposable income. Imports have not been a substantial burden on this industry, although exports have not

increased substantially either. Total employment and the number of production workers have declined from 1984 to 1986 by 9.1 percent and 9.9 percent, respectively. This decline in employment is due to the recent number of acquisitions within the industry and the need to cut costs of production [2, pp. 44–5 to 44–9].

The value of shipments for the electrical lighting and wiring industry (SIC 364) has been increasing steadily over the last decade, from 11,321 in 1980 to 15,806 in 1985, an increase of 39.6 percent. Total employment and the number of production workers have decreased, although at a slow rate. Performance in this industry is due, in part, to the good performance of the construction industry. Since the electrical lighting and wiring industry depends on both residential and non-residential construction, they are able to withstand a slowdown in one sector as long as the other sector is still profitable [2, pp. 3–2 to 3–5].

The consumer electronics and communication equipment industry (SICs 365–366) has had mixed performance over the past few years. While the communication equipment industry has performed well in the past, the consumer electronics industry has not performed as well, due to the large import volume in this industry. Overall, the value of industry shipments has remained fairly stable, with shipments increasing in the communication equipment industry and shipments decreasing in the consumer electronics industry. Total employment and the number of production workers also follow this pattern, decreasing for consumer electronics and increasing for communication equipment [2, pp. 29–1 to 29–5 and 44–9 to 44–15].

The electronic components and accessories industry (SIC 367) is expected to show record growth over the next few years. Industry shipments were up 8.1 percent, from $39.7 billion in 1986 to $43.0 billion in 1987. This was due, in part, to the strong performance of the defense electronics industry. The number of production workers and total employment has remained fairly steady in 1986 and 1987. Imports are still increasing, but may be slowed due to the fall in the value of the dollar [2, pp. 32–1 to 32–4].

SIC 37—Transportation Equipment

This industry sector includes establishments engaged in manufacturing equipment for land, sea, air, space transportation and includes manufacturers of parts and accessories as well as complete vehicles.

The major subdivisions within this sector are motor vehicles and motor vehicle equipment (SIC 371), aircraft and parts (SIC 372), ship and boat building and repair (SIC 373), railroad equipment (SIC 374), motorcycles, bicycles and parts (SIC 375), guided missiles, space vehicles and parts (SIC 376), and miscellaneous transportation equipment (SIC 379). Establishments in the miscellaneous subdivision manufacture a broad range of products (e.g., from tanks to wheelbarrows) [1, pp. 196–201]. Because the manufacture of transportation equipment involves a wide range of industrial processes, establishments in this sector often include or involve foundries, electroplating operations, various types of hot metal work, welding, laminating, plastic molding, and painting and coating. Thus workers may be exposed to the chemicals generated by a broad variety of processes.

Although the transportation equipment industry includes both very small and very large establishments, it has an unusual number of very large establishments that have thousands of employees. These very large establishments are most likely to be found in plants that produce final equipment on a mass-production basis (e.g., automobile plants, aircraft plants, or tank assembly lines). There is still a place in this industry, however, for smaller establishments, and, as shown in Table II–1, 68 percent of all establishments have fewer than 20 employees.

Because foreign competition plays an important role in this sector, the prosperity of the industry fluctuates with business cycles and with the value of the dollar. Employment in this industry declined between 1981 and 1982 but had recovered to the 1981 level by 1984 and had increased another 4 percent by 1985 [4].

The value of shipments for SIC 37 was $301.4 billion in 1985. The average firm in this industry had a 7.3 percent return on assets in 1985, which is slightly above the median of 7.0 for firms in all manufacturing industries. Some sectors within the two-digit industries had significantly lower returns on assets, although no major component of the industry had a return on assets below 4 percent in 1985 [5].

SIC 38—Measuring, Analyzing and Controlling Instruments

SIC 38 includes manufacturers of instruments used to measure, test, analyze and control. It also includes optical instruments and lenses; surveying and drafting instruments; hydrological, hydrographic, meteorological, and geophysical equipment; search, detection, navigation, and guidance systems and equipment; surgical, medical, and dental instruments, equipment, and supplies; ophthalmic goods; photographic equipment and supplies; and watches and clocks [1, p. 243].

The industries in this SIC rely heavily on research and development activities (R&D) of other industries for sales of their products. According to the U.S. Department of Commerce, increases in research and development expenditures by industry and government in 1986 caused increases in sales of scientific and industrial instruments. High tech firms, which represent a large portion of SIC 38's product market, are the largest investors in research and development, where R&D expenditures are measured as a percentage of gross sales. Firms producing semiconductors, computers and related equipment, office equipment, and software, among others, were major sources of R&D funds in 1986. The pharmaceutical and chemical industries also have relied on R&D to a large extent. In addition, the decline in the price of oil, which raises profits by lowering production costs, is expected to further stimulate R&D expenditures by the chemical industry [2, p. 33–1].

Similarly, government outlays for R&D increased in 1986 by more than 9 percent in current dollars. Most of the R&D expenditures, however, were for defense-related research. In addition, the National Aeronautics and Space Administration (NASA) is expected to invest in new instrumentation for the redesign of the space shuttle and other rocket systems [2, p. 33–4].

According to the U.S. Department of Commerce, the value of shipments in 1985 ($61 billion) increased almost 28 percent since 1981. Between 1981 and 1985, SIC 38 experienced a 1 percent loss in employment. Of all employees, 54.4 percent working in SIC 38 were production workers [4]. In 1985, the median rate of return on assets in this SIC was 7.3 percent [5].

From 1981 to 1985, the value of shipments for SICs 383 and 384 experienced growth, rising 60 and 54.3 percent, respectively. SIC 383 comprises 8 percent of the total value of shipments in SIC 38, while SIC 384 represents 23 percent. In contrast, SIC 387 experienced a drop of 36 percent in the value of shipments, representing only 1.5 percent of the total value of shipments in SIC 38 [5].

SIC 39—Miscellaneous Manufacturing Industries

In any classification scheme, some items inevitably fall outside the scheme. In manufacturing, these miscellaneous industries are included in SIC 39, which contains five three-digit industries that are as dissimilar from one another as is usually the case at the two-digit level in other manufacturing sectors. Most of the industries in SIC 39 produce discretionary durable consumer goods, some of which are luxury goods. Establishments that cannot be grouped together even at the three-digit level are included in SIC 399. At the three-digit level, miscellaneous manufacturing industries include producers of jewelry, silverware, and plated ware (SIC 391); musical instruments (SIC 393); toys and sporting goods (SIC 394); pens, pencils, office and art supplies (SIC 394); and costume jewelry and notions (SIC 396). A sixth category, miscellaneous manufactures (SIC 399), includes producers of brooms and brushes, signs and advertising displays, burial caskets, hard surface floor coverings, and manufacturing industries "not elsewhere classified" [1, pp. 211–218].

The number of establishments and employment in SIC 39 are shown in Table II–1. Nearly three-quarters (72 percent) of these employees are production workers.

Establishments in SIC 39 are generally far smaller than those in manufacturing as a whole, with higher proportions of employees concentrated in small establishments. The mean size of establishments is 11 employees, with 85 percent of establishments having fewer than 20 employees, compared with less than 65 percent for manufacturing establishments as a whole. Relatively few establishments in SIC 39 have 100 or more employees [6].

Miscellaneous manufactures (SIC 399) has the largest share (more than one-third) of the value of shipments for SIC 39 ($28.5 billion in 1985) [3, vol. 1: 8, 22, 24]. The SIC 39 industries were generally hard hit by the 1982 recession. Substantial import competition, aided by the strength of the dollar, has impeded the recovery of many of these industries since 1982, and the import share of new supply doubled between 1980 and 1985 in many industries. Imports account for nearly 60 percent of the new supply of sporting and athletic goods and between one-quarter and three-eighths of new supply in many other industries. The recent decline of the dollar has tended to halt or reverse import penetration to varying degrees [2, pp. 45–2 to 45–11; 46–10 to 46–13]; however, domestic production in SIC 39 will also be affected by the tendency of the doll and toy sector to move offshore [2, pp. 45–2 to 45–11; 46–120 to 46–12].

Generally, this cyclical pattern also is found in this industry at the more disaggregated level. In the latest cycle, the peak-to-trough decline of production, employment, and real value of shipments in many of these industries was between 10 and 25 percent. In some cases (particularly in musical instruments and toys and sporting goods), production and/or employment declined by as much as half. Exceptions to this pattern, however, can be found in the manufacture of dolls, sporting and athletic goods, and costume jewelry, where the real value of shipments grew steadily despite the business cycle. (The apparent contradiction between from this growth and decline in production and employment results from the movement offshore of production facilities of domestic companies.) In miscellaneous manufacturing (SIC 399), 1986 employment was 15 percent above the previous peak, making this the only three-digit industry to regain the peak level [5, 2, pp. 45–3 to 45–11; 46–11 to 46–13].

In terms of profitability, the majority of industries in SIC 39 are more profitable than most manufacturing industries. The median 1985 rate of return on assets (8.0 percent) is the second highest median return on assets of all two-digit manufacturing industries. Median rates of return for four-digit industries within this sector range from 3.4 percent to 9.5 percent [5].

SIC 40—Railroad Transportation

SIC 40 includes establishments that provide line-haul railroad transportation, and switching and terminal establishments. General authority for the working conditions at railroad operations is vested in the Federal Railroad Administration. For the most part, OSHA's standards apply only to off-track operations such as shops and servicing areas. The U.S. Department of Commerce estimates that in 1986, there were 23 individual Class I railroads (those with operating revenues of $50 million or more in 1987 dollars), which accounted for over 95 percent of the freight tonnage handled by the railroad industry. The industry also includes about 480 smaller carriers, including shortlines and switching and terminal companies. The 1986 operating revenue for the railroad industry was estimated as $26.5 billion (1982 dollars), representing an annual loss of about 4 percent. Revenue ton miles were estimated as 880 billion, which represents less than a 1 percent rate of growth [2, p. 55–8]. Between 1980 and 1985, the industries in SIC 40 experienced a serious economic decline, as indicated by the fact that it was the second slowest growing SIC (behind SIC 10, metal mining), and third highest in terms of employment losses (behind SIC 33, primary metals and SIC 35, heavy machinery). During this period, employment declined by approximately 27 percent [2, pp. 13–14]. The median rate of return on assets in 1985 was 4.4 percent [5].

SIC 45—Air Transportation

This SIC includes establishments that provide domestic and foreign transportation by air and also those that operate airports and flying fields and provide terminal services. The Federal Aviation Administration (FAA), U.S. Department of Transportation, enforces rules and regulations governing the safety and health of flight and cabin crew of aircraft in flight. In general, the FAA also has jurisdiction over airline maintenance and ground support personnel. According to the U.S. Department of Commerce, the U.S. airline industry consists of approximately 250 individual commercial air carriers operating over 4,500 aircraft and employing over 355,000 people. In 1985, the industry served 380 million passengers and operated 6 billion cargo ton-miles. Twelve major carriers account for 84 percent of all revenue passenger miles. (The U.S. Department of Commerce defines a major carrier as having at least $1 billion in annual revenue, in 1982 dollars.) The remaining passenger revenue is shared by 16 carriers classified as nationals (each with annual revenues between $75 million and $1 billion in 1982 dollars), which account for about 12 percent, and by the regionals/commuters, which account for 4 percent. The U.S. Department of Commerce estimated the 1986 operating revenue for the airlines industry as $49 billion (1982 dollars), representing an annual growth rate of about 4.9 percent. Revenue passenger miles were estimated as 363 billion, which represents an 8 percent rate of growth [2, p. 55–1]. In 1985, the median rate of return on assets in this sector was 4.3 percent [5].

SIC 47—Transportation Services

SIC 47 includes establishments that furnish services related to transportation. Activities classified in SIC 47 include freight forwarding, arranging transportation for passengers and freight, renting railroad cars, inspection and weighing services; and freight car loading [1, pp. 280–281].

According to the U.S. Department of Commerce, between 1980 and 1985, SIC 47 was the third-fastest growing industry group behind SIC 62 (Securities) and SIC 73 (Business Services) [2, pp. 13–14]. Between 1981 and 1985, SIC 47 experienced a 31 percent increase in employment. Table II–1 presents employment and establishment data for SIC 47. The median return on assets in this SIC was 7.1 percent [5].

SIC 49—Electric, Gas, and Sanitary Services

SIC 49 includes establishments that generate, transmit, and/or distribute electricity, gas, or steam. These establishments may be combinations of any of these services, but also may include other types of services, such as transportation, communications, refrigeration and pipelines for natural gas. Water and irrigation systems, and sanitary systems that collect and dispose of garbage, sewage, and other wastes, also are included in this SIC [1, p. 284].

The utilities covered in SIC 49 have been undergoing many changes in the past few years. The utilities have been in a state of transition due to ongoing changes in regulations regarding utility rates and competition. Some industrial customers have begun producing their own energy and utilities are now competing for customers outside their service areas. This competition has forced structural changes in the industry, especially diversification. Utilities have been forced to upgrade their overall efficiency. With declining interest rates, regulators have been decreasing the allowed rate of return for utilities. This, too, has led to intensified pressures on competition [13, p. 56]. The Federal Energy Regulatory Commission is currently considering whether to allow utilities to open their power lines to other competing utilities. Users would be given the choice of suppliers. With the decreasing rate of return and the increasing competition, utilities have stepped up efficiency in order to offset the impending drop in their profit margins [14, p. 48].

Table II–1 presents employment and establishment data for SIC 49 for 1985. Between 1981 and 1985, SIC 49 experienced a 6 percent growth in employment. In 1985, almost 80 percent of all employees were production workers [4]. The median return on assets was 4.0 percent [5].

Within this SIC, there are seven three-digit SICs, including establishments that generate, transmit, or distribute electrical energy for sale and that operate crude petroleum and natural gas field properties; establishments that transmit and or store natural gas for sale; establishments that provide electric or gas services in combination with other services, only if one service does not constitute 95 percent or more of revenues; establishments that distribute water for sale for domestic, commercial, and industrial use; establishments that collect and dispose of wastes conducted through a sewer system, including such treatment processes as may be provided; establishments that produce and/or distribute steam and heated or cooled air for sale; and establishments that operate water supply systems for the purpose of irrigation [1, pp. 284–286].

SIC 50 and SIC 51—Wholesale Trade

The wholesale trade sector includes establishments engaged in the wholesale selling of merchandise to retailers; industrial, commercial, institutional, farm, or business users; or to other wholesalers or firms that act as agents or brokers in the wholesale buying or selling of merchandise. Wholesale trade is divided into trade in durable goods (SIC 50) and in nondurable goods (SIC 51). This analysis focuses only on a few of the wholesale trade industries (e.g., dealers in scrap and waste materials, SIC 5093; grain, SIC 5153; chemicals and allied products, SIC 5161; farm supplies, SIC 5191; and paints, varnishes, and supplies, SIC 5198 [1, pp. 241, 250, 255–257]. In addition to the types of worker exposures associated with materials handling and receiving, some industries engage in other activities that can lead to significant chemical exposures. For example, assembling, breaking up, and sorting scrap and waste materials (SIC 5093) and storing grain (SIC 5153) are activities that can lead to exposures.

Wholesale trade sales ($1,375 billion in 1985) were fairly equally divided between durable goods and nondurable goods—46 percent and 54 percent, respectively [2, p. 56–1]. Of the approximately 425,000 establishments in wholesale trade, about five-eighths were in durable goods, and three-eighths were in nondurable goods. The specific four-digit industries studied for this analysis include about 11 percent of all wholesale trade establishments [3, pp. 59, 62, 64–65].

Table II–1 shows employment data at the four-digit level. Somewhat less than 60 percent of total employment in wholesale trade is in durable goods, while a little more than 40 percent is in nondurable goods. The specific four-digit industries being analyzed here account for less than 9 percent of all employment in wholesale trade [6].

SIC 55—Automotive Dealers and Service Stations

This industry sector includes retailers of transportation equipment for personal use (new and used automobiles) as well as recreational vehicles (boats, motor homes, and dune buggies); sellers of automobile parts and accessories; and gasoline stations. Although it does not include establishments whose primary business is automotive repair, it does include repair operations that are part of automobile dealerships or service stations. Only those retail outlets that earn more than 50 percent of their revenues from gasoline or lubricating oil sales are included. Many car washes and convenience stores that sell gasoline are excluded, as are traditional full-service gas stations that earn more than 50 percent of their revenues from such activities as repairs, towing, or the sale of auto accessories [1, pp. 285–286]. According to one estimate, this sector includes only 55 percent of all retail motor fuel outlets [15, pp. 6–13]. Although many employees are involved in selling, some are exposed to chemicals during painting or stripping or as a result of the indoor operation of engines or the use of solvents.

As shown in Table II–1, most establishments are relatively small (80 percent have fewer than 20 employees). Only in one sector (i.e., new and used automobile dealerships) do more than half of the establishments have more than 19 employees [9]. Even in this sector, however, 90 percent of the establishments have fewer than 100 employees [4]. Although the typical operation is relatively small, total employment is substantial because of the large number of establishments. New and used automobile dealerships account for 48 percent of total employment, gasoline service stations for 31 percent, and automobile and home supply stores for 16 percent.

Although many firms own only a single establishment, large firms own a significant portion of all establishments, which are operated as chains under leasing or franchising agreements.

The profitability of firms in SIC 55 is below the national average, with a median return on assets of 5.9 percent in 1985; however, this rate of return improved in 1986 as gasoline prices declined, and new car sales increased [5].

SIC 72—Personal Services and SIC 73—Business Services

The personal services industry consists primarily of consumer services. SIC 721, laundry, cleaning and garment

services has the highest potential for overexposure to chemicals. Other segments of SIC 72 include photographic studios (SIC 722); beauty shops, barber shops and shoe repair (SIC 723–725); and funeral service and crematories (SIC 726) [1, pp. 298–300].

As seen in Table II–1, the number of establishments in 1985 totaled 161,004. Almost all of these (98.9 percent) had fewer than 20 employees in 1985. The mean establishment size was 7 employees. The largest single segment of this industry is SIC 7231, beauty shops, which totaled 53,165 firms in 1986 [6]. Total employment (1,056,000 employees in 1985) has increased over the last several years. In 1986, the value of sales was $39.4 billion in the personal services industry, a 6.6 percent increase over 1985 [16]. The median rate of return on assets for the personal services industry was 10.5 percent in 1985 [5].

The business services industry consists of several different sectors. Among the sectors included are mailing, reproduction, and commercial art and photography (SIC 733); building cleaning and maintenance services (SIC 734); and miscellaneous business services (SIC 739), such as photofinishing laboratories and commercial testing laboratories [1, pp. 301–308].

The number of establishments in 1985 totaled 382,628. Almost all of these (90.5 percent) had fewer than 20 employees in 1985. The mean establishment size was 12 workers. Total employment (4,457,000 employees in 1985) has increased over the last several years (4,057,000 employees in 1984) [4]. In 1986, the value of sales was $198.7 billion in the business services industry, a 9.2 percent increase over 1985 [16]. The median rate of return of assets SIC 73 was 11.1 percent in 1985 [5].

SIC 75—Automotive Repair, Services, and Garages

This sector includes establishments that provide automotive repair, rental, leasing, and parking services to the general public, but excludes gasoline stations (SIC 55) and repair shops that are part of automobile dealerships or that service commercial fleets [1, p. 309]. Employees may be exposed to engine emissions in parking garages or repair shops, to a variety of chemical solvents (particularly in painting and stripping), and to dust from body work.

Eighty-five percent of the establishments are automotive repair shops, which is the sector most likely to have significant chemical exposure, and they employ 61 percent of all industry workers [9]. As shown in Table II–1, SIC 75 is dominated by businesses employing fewer than 20 workers (97 percent) with a median return on assets of 9.2 percent in 1985. The profitability of automotive repair and service firms is high, although it varies by size and industry sector. Small firms (under $100,000 in assets) had returns of 16.3 percent in 1985, while large businesses (over $1,000,000) had returns of 3.9 percent. Paint shops (SIC 7535) were the most profitable type of operation, while parking lots (SIC 7523) and parking structures (SIC 7525) registered significantly lower rates of return [5].

SIC 76—Miscellaneous Repair

This industry group includes a wide variety of repair services, differentiated by object repaired and processes used. Industries of particular concern include reupholstery and furniture repair (SIC 7641) and welding (SIC 7692) [1, pp. 312–314]. Reupholstery and furniture repair workers may be exposed to nuisance dusts during wood working, and to solvents; welders may be exposed to fumes.

Nineteen percent of the 56,000 industry establishments in SIC 76 are in SIC 7641 and SIC 7692. These two industries account for approximately 14 percent of all SIC 76 employment [6, pp. 81–82].

The industry is made up almost entirely of very small firms, and the sector has extremely low concentration. Mean business size is 5.5 employees: more than 95 percent of all establishments have fewer than 20 employees, and 65 percent of all workers are employed by establishments of this size. Only 0.2 percent of all miscellaneous repair establishments (with about 6 percent of total employment) have 100 or more employees, and only 17 establishments have 250 or more. The four-digit industries of concern are even more completely dominated by small establishments, with a mean size of 4.8 employees in SIC 7641 and 3.4 employees in SIC 7692 [6, pp. 81–82].

Despite a slight decline in 1981 and 1982, employment in SIC 76 has grown fairly steadily since the 1975 recession, increasing by 23 percent between 1979 and 1984 and by 7 percent between 1984 and 1986. More than 98 percent of all workers are neither administrative nor clerical [4].

Miscellaneous repair firms have high profit rates. The median 1985 rate of return on assets in SIC 76 is 10.0 percent. This rate of return is higher than that of any two-digit manufacturing industry. The median rates of return on assets in SIC 7641 and SIC 7692 are over 11 percent [5].

SIC 80—Health Services

The health services industry encompasses a broad range of medical, surgical, and other health services, both public and commercially owned. These services are provided by a variety of practitioners (e.g., physicians, dentists, osteopathic physicians, chiropractors, optometrists) at a variety of facilities (e.g., hospitals, nursing facilities, outpatient care facilities, medical laboratories) [1, pp. 321–323].

Total expenditures on health care and medical services ($425 billion in 1985) are very large, with 40 percent of this amount going to hospital care and 20 percent to physicians' services. Expenditures on nursing home care, drugs and medical sundries, and dentists' services each accounted for 6 to 8 percent of all health and medical services expenditures [2, p. 54–1].

Data on health care establishments are shown in Table II–1. Although the number of health service establishments (313,000) is very large, 85 percent of these are offices of licensed practitioners. No other three-digit sector within the health services industry accounts for more than 4 percent of health service establishments, and only about 2.7 percent (i.e., 1,500 establishments) are hospitals.

Total health services employment is very large (6.3 million), with hospitals accounting for almost half (i.e., 48 percent) of this workforce. Because of their large numbers, practitioners' offices are next in percentage of workforce employed (24 percent), followed by nursing and personal care homes (18 percent). Mean establishment sizes range from six or fewer employees in practitioners' offices to 250 or more employees in hospitals. The overall mean size of establishments in this industry is 20 employees, with more than 91 percent of these establishments having fewer than 20 employees, and approximately 22 percent of all SIC 80 employees working in establishment of this size. SIC 80 facilities with more than 250 employees employ more than 50 percent of the workforce in this sector, and facilities with more than 100 employees employ more than 60 percent [6; 4].

The health and medical services industry has been expanding rapidly for more than a decade. A variety of factors have caused this increase, including the expansion of the elderly population, the increasing use of sophisticated high-technology equipment, the expanded treatment of expensive diseases, and the increasing costs of malpractice insurance. In addition, between 1985 and 1986, the price for most medical services rose between 6 and 9 percent, compared with 1.5 percent increase in consumer prices. The implementation of Medicare's prospective payment system is also causing major changes in the health care industry [2, pp. 54–1,2].

Hospital care costs have been a major target of cost-cutting measures, resulting in a decline in hospital admissions, a shortening of hospital stays, and substantial industry restructuring, including increased mergers and acquisitions by large chains, vertical integration, diversification of services offered, expanded professional peer review, and more businesslike operations. Major investor-owned nursing home chains also have experienced rapid expansion and acquisition [2, pp. 54–1, 2].

For SIC 80 as a whole, the growth rate in expenditures averaged 12.6 percent per year from 1979 to 1984 and more than 9 percent for the next 3 years [2, p. 54–1]. Employment grew by 31 percent between 1979 and 1986, rising by 2 to 5 percent in each year [4]. The growth picture is fairly consistent across three-digit industries, although expenditures on "other professional services" have shown the most rapid growth of any health service (16.3 percent annually from 1979 to 1984). Expansion has been especially rapid in health maintenance organizations and home health care, both of which have the potential for reducing health costs and substituting, to some degree, for hospital care [2, pp. 54–1 to 54–4].

The median rate of return on assets in health services (5.0 percent in 1985) is relatively low compared with that in manufacturing industries, and hospitals have somewhat lower median rates of return than is the case for health services as a whole. Several "offices" industries, on the other hand, have median rates of return higher than 13 percent. Medical and dental laboratories have median rates of return that are above the median for two-digit manufacturing industries [5].

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TABLE II - 1

Industries With Potential Hazardous Exposures,
Number of Establishments and Employment
(1985)

SIC	Description	Establishments[a] Total Number	Establishments[a] Percent Large[b]	Establishments[a] Percent Small[c]	Employment[d] Total (1,000)	Employment[d] Production Workers (1,000)
20	FOOD AND KINDRED PRODUCTS	29,043	37.14	62.86	1,603	1,118
21	TOBACCO MANUFACTURES	216	46.76	53.24	64	48
22	TEXTILE MILL PRODUCTS	11,023	39.40	60.60	702	607
23	APPAREL PRODUCTS	30,032	33.33	66.67	1,121	945
24	LUMBER & WOOD PRODUCTS, EXCEPT FURNITURE	36,710	19.73	80.27	697	584
243	MILLWORK, VENEER & PLYWOOD	13,921	17.87	82.13	288	190
245	BUILDING & MOBILE HOMES	1,618	40.05	59.95	72	56
249	MISCELLANEOUS WOOD PRODUCTS	5,666	18.73	81.27	77	64
25	FURNITURE AND FIXTURES	16,791	27.16	72.84	494	394
26	PAPER AND ALLIED PRODUCTS	8,750	53.86	46.14	678	512
27	PRINTING, PUBLISHING & ALLIED INDUSTRIES	84,279	15.87	84.13	1,428	789
28	CHEMICAL AND ALLIED PRODUCTS	20,823	32.59	67.41	1,044	578
281	INDUSTRIAL INORGANIC CHEMICALS	3,024	35.42	64.58	142	72
282	PLASTICS & SYNTHETICS	1,666	51.50	48.50	172	114
283	DRUGS	2,454	37.82	62.18	206	95
284	SOAP, CLEANERS, & COSMETICS	4,498	24.59	75.41	148	94
285	PAINTS, VARNISHES, LACQUERS	1,880	36.54	63.46	64	31
286	INDUSTRIAL ORGANIC CHEMICALS	1,528	34.88	65.12	160	82
287	AGRICULTURAL CHEMICALS	1,843	23.77	76.23	59	37
289	MISCELLANEOUS CHEMICAL PRODUCTS	3,930	29.64	70.36	94	54
29	PETROLEUM REFINING & RELATED INDUSTRIES	3,334	28.40	71.60	179	109
291	PETROLEUM REFINING	1,332	33.18	66.82	141	82
295	PAVING & ROOFING MATERIALS	1,222	23.81	76.19	26	20
299	MISCELLANEOUS PETROLEUM & COAL PRODUCTS	780	27.44	72.56	-	-
30	RUBBER & PLASTICS PRODUCTS	18,002	38.85	61.15	786	607
307	MISCELLANEOUS PLASTIC PRODUCTS	14,638	39.62	60.38	550	435
31	LEATHER AND LEATHER PRODUCTS	3,940	29.85	70.15	165	137
311	LEATHER TANNING & FINISHING	480	35.42	64.58	15	12
32	STONE, CLAY, GLASS, & CONCRETE PRODUCTS	21,054	26.26	73.74	588	451

[a] Dun and Bradstreet

[b] 20 or more employees

[c] Fewer than 20 employees

[d] Labstat, U.S. Department of Labor (Database)

TABLE II - 1

Industries With Potential Hazardous Exposures,
Number of Establishments and Employment
(1985)
(continued)

SIC	Description	Establishments[a] Total Number	Establishments[a] Percent Large[b]	Establishments[a] Percent Small[c]	Employment[d] Total (1,000)	Employment[d] Production Workers (1,000)
33	PRIMARY METAL INDUSTRIES	10,101	44.75	55.25	808	612
34	FABRICATED METAL PRODUCTS	46,322	32.96	67.04	1,465	1,084
35	MACHINERY, EXCEPT ELECTRICAL	77,748	22.90	77.10	2,174	1,307
36	ELECTRICAL & ELECTRONIC MACHINERY, EQUIPMENT & SUPPLIES	28,478	37.64	62.36	2,197	1,300
37	TRANSPORTATION EQUIPMENT	16,132	31.58	68.42	1,980	1,257
38	INSTRUMENTS	16,814	29.42	70.58	720	391
39	MISCELLANEOUS MANUFACTURING INDUSTRIES	32,212	15.82	84.18	367	264
40	RAILROAD TRANSPORTATION	2,645	27.30	72.70	359	-
45	TRANSPORTATION BY AIR	11,832	19.46	80.54	522	-
47	TRANSPORTATION SERVICES	35,626	7.56	92.44	276	-
49	ELECTRICAL GAS, & SANITARY SERVICES	21,115	25.71	74.29	915	729
5093	SCRAP & WASTE MATERIALS	7,556	12.61	87.39	92	-
5153	GRAIN	7,523	5.84	94.16	-	-
5161	CHEMICALS & ALLIED PRODUCTS	13,045	8.51	91.49	-	-
5191	FARM SUPPLIES	20,392	4.55	95.45	151	-
5198	PAINTS, VARNISHES, & SUPPLIES	4,033	6.89	93.11	-	-
55	AUTO DEALERS & SERVICE STATIONS	189,214	9.77	90.23	1,890	1,886
72	PERSONAL SERVICES	161,004	3.13	96.87	1,056	-
73	BUSINESS SERVICES	382,626	9.46	90.54	4,457	3,863
75	AUTO REPAIR, SERVICES, & GARAGES	149,260	2.64	97.36	731	614
7641	REUPHOLSTERY & FURNITURE REPAIR	10,655	0.92	99.08	-	-
7692	WELDING REPAIR	9,413	2.21	97.79	-	-
80	HEALTH SERVICES	313,076	8.71	91.29	6,299	5,607

Source: U. S. Department of Labor Occupational Safety and Health Administration, Office of Regulatory Analysis.

[a] Dun and Bradstreet

[b] Labstat, U.S. Department of Labor (Database)

[c] 20 or more employees

[d] Fewer than 20 employees

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References

1. Executive Office of the President. Office of Management and Budget. Standard Industrial Classification Manual. Washington, D.C.: Government Printing Office, 1972.
2. U.S. Department of Commerce. International Trade Administration. 1987 U.S. Industrial Outlook. Washington, D.C.: Government Printing Office, January 1987.
3. U.S. Department of Commerce. Bureau of the Census. 1985 Annual Survey of Manufactures: Industry Statistics. Washington, D.C., 1987.
4. U.S. Department of Labor. Bureau of Labor Statistics. LABSTAT data base. 1987. (Unpublished Data.)
5. Dun and Bradstreet, Inc. Industry Norms and Key Business Ratios. 1987. (Database)
6. U.S. Department of Commerce. Bureau of the Census. County Business Patterns 1984 and 1985. Washington, D.C.: 1986. (Database)
7. Telephone communication with Donald W. Butts and Barbara Wise. U.S. Department of Commerce. Office of Forest Products and Domestic Construction. January 19, 1988.
8. Value Line, Inc. Industry Surveys. December 11, 1987, p. 1767.
9. Dun and Bradstreet, Inc. Dun's Market Identifiers. 1987. (Database)
10. Value Line, Inc. Industry Surveys. October 16, 1987, p. 607.
11. Value Line, Inc. Industry Surveys. November 6, 1987, p. 1077.
12. Value Line, Inc. Industry Surveys. December 25, 1987, p. 135.
13. Utilities industry earnings growth by company projection, 1986. Financial World. January 7, 1986.
14. Utilities industry earnings growth by company projection, 1987. Financial World. January 7, 1987.
15. Sobotka and Co., Inc. Regulatory Impact Analysis for Technical Standards for Underground Storage Tanks. Washington, D.C.: 1987.
16. U.S. Department of Commerce. Bureau of the Census. 1985 and 1986 Annual Survey of Service Industries: Industry Statistics. Washington, D.C., 1987. (Database).

III. Employee Exposures and Benefits

Employee exposures to the substances included in the scope of this rulemaking are associated with a wide variety of acute and chronic illnesses. These include sensory irritation, narcosis, organs system dysfunction, chronic respiratory disease, neurological impairment, allergic sensitization, and cancer. Since OSHA's adoption of existing Federal and consensus standard limits in 1971, toxicologic evidence has become available that shows that adverse health effects can occur as a consequence of exposure to many of the substances listed in OSHA's Z tables, and that such health effects occur even when exposures are maintained at the current Z table limits. In addition, many substances that have come into widespread use or been introduced since 1971 have been shown to be potentially hazardous in the workplace environment. OSHA thus believes that reducing worker exposures to such substances by lowering existing exposure limits or by adding limits for previously unregulated substances will result in a significantly reduced risk of illness to workers.

This chapter describes the methodology used to identify workers potentially exposed to the hazardous substances included in this rulemaking and the expected benefits to those workers resulting from lowering permissible exposure levels. An important existing data base for identifying employees potentially exposed to hazardous substances was OSHA's Integrated Management Information System. The IMIS data were used to project expected benefits resulting from lowering permissible exposure levels to the substances being regulated.

The IMIS data base does not include information on all substances and has more information on some substances than others. IMIS contained research information on about 100 substances among the approximately 430 substances covered by the proposal. While the IMIS data base contains the results for over 100,000 samples of substances currently regulated by OSHA, no plant specific information was available for about 200 of the substances included in this rulemaking but currently not regulated by OSHA. To obtain additional information on employee exposures and on substances not covered by IMIS, a nationwide survey was begun in January 1988, which was designed to collect worker exposure data at over 5,300 establishments nationwide that are believed to be affected by this proposal. The survey results include industry-sector-specific data on the extent of employee exposures to hazardous materials and, in addition, provide specific information on the industrial processes in which these substances are used.

To assess the benefits of the proposed revision to OSHA's Z–Tables, OSHA relied both on the survey and IMIS data and used two basic approaches. The first approach relies on IMIS data combined with raw survey data to estimate the extent to which employees are currently exposed to substances included in this rulemaking. From this analysis, OSHA estimates the reduction in illness cases and disease-related fatalities associated with reducing exposure limits for these substances. The second approach relies solely on the use of the imputed survey data base to generate an exposure profile (the imputed survey file was created using statistical procedures to fill in missing responses to particular questions asked in the survey).

Description of Data Sources Used

To assess the quantitative benefits associated with this rulemaking, the following data were used:

- The proposed exposure limits for substances included in the rulemaking;
- Employee exposure data for these substances;
- Employment data for four-digit SIC code for the base year 1985;
- Annual illness and lost workday rates for the base year 1985; and
- Health effects information on the substances included in the rulemaking.

Employee exposure data for about 160 substances were obtained from OSHA's Integrated Management Information System (IMIS). This data base contains exposure measurements obtained by OSHA compliance officers during the conduct of thousands of health inspections. For each facility inspected, the IMIS file includes information on the number of employees at the facility, results of employee air monitoring for specific substances, and the number of employees potentially exposed to each substance monitored. To perform the benefits assessment, a summary IMIS file was created that contained the following information:

- A list of substances for which personal 8-hour TWA samples were taken, by four-digit SIC and facility inspected
- The number of workers potentially exposed to each substance monitored, by four-digit SIC and facility
- The number of employees at each facility inspected
- The total number of personal 8-hour TWA samples obtained for each substance, by four-digit SIC and facility
- The number of samples taken at each facility that showed concentrations exceeding OSHA's proposed limits.

Only those substances for which OSHA is proposing to reduce an existing 8-hour TWA limit or to add a new 8-hour TWA limit were included in the analysis. A total of approximately 37,500 personal air sample results for about 160 substances were appropriate for use in this analysis. This analysis does not estimate the benefits associated with reducing current ceiling limits or adding new short-term exposure limits (STELs) because the data obtained from the IMIS did not include information on sample duration for ceiling or peak measurements, or OSHA was not able to relate the IMIS data on ceiling or peak measurements to the proposed short-term or ceiling limits.

In addition to the IMIS exposure data, OSHA has completed a telephone interview survey of over 5,300 workplaces that are potentially affected by the revision of OSHA's Z Tables. Data from this survey provide information on substances that are used in a variety of industrial processes at the facilities surveyed, the number of workers involved in these processes, and whether personal exposure measurements taken at the processes exceeded OSHA, ACGIH, or NIOSH limits.

Employment data by four-digit SIC code were obtained from three data sources. For each four-digit SIC represented in the IMIS file, OSHA first relied on 1985 data from the BLS LABSTAT data base [1]. Where data were unavailable for this source at the four-digit SIC level, OSHA relied on Dun & Bradstreet's *Market Identifiers* file for 1985 [2]. Data from 1985 *County Business Patterns* [3] were used to obtain employment data for four-digit SIC groups not represented in either the LABSTAT or Dun & Bradstreet file.

Data on illness and lost workday rates were obtained from the 1985 LABSTAT file for all industries (at the three- and four-digit level) represented in the IMIS file. These data included rates per 100 employees for total illness cases, lost-workday illness cases, and total number of lost workdays.

Estimates of the Number of Potentially Exposed Employees

Estimates of the number of employees potentially exposed to the substances included in this analysis were derived from the IMIS data, OSHA's survey data, and employment data bases. To conduct the analysis, OSHA used the IMIS and survey data separately to derive independent estimates of the number of workers potentially exposed and the number of workers exposed above the proposed limits for each substance. The estimates derived from these two data sources were then combined to yield an overall assessment of the extent of employee exposure, by four-digit SIC, to substances included in this rulemaking. The following sections describe how each of the data bases was used to develop estimates of employee exposures, and how these estimates were then combined.

Estimates Derived From OSHA's IMIS Data Base

For each facility inspected, the IMIS contained information on the number of employees at the facility and the number of employees observed to be potentially exposed to each substance for which personal air samples were collected. For each substance sampled within an industry (at the four-digit level), the estimated number of employees potentially exposed to that substance in the industry was determined by the following formula:

$$\sum \frac{P_f}{E_f} * W = P$$

where

P_f = number of employees observed to be potentially exposed to the substance at a facility;
E_f = total number of employees at the facility;
W = number of production workers in the industry in 1985; and
P = estimated number of employees potentially exposed to the substance in the industry.

The estimated number of workers currently exposed above the proposed limits for each substance was calculated using the following formula:

$$\sum \frac{S_f}{T_f} * P = Z$$

where

S_f = number of samples that exceeded the proposed limit for the substance at all facilities in an industry sector;
T_f = total number of personal samples taken for the substance at all facilities in the industry sector.
P = estimated number of employees potentially exposed to the substance in the industry; and
Z = estimated number of workers in an industry sector currently exposed above the proposed limits for the substance.

Estimates Derived From OSHA's Survey Data

Facilities participating in OSHA's telephone survey provided the following information that was useful for estimating the extent of employee exposure to chemical substances:

- The facility's four-digit SIC code;
- The total number of production employees at the facility;
- The number of employees involved in each process used at the facility;
- The substances used or present in each process;
- The exposure limits used as internal targets or goals at the facility (i.e., OSHA's current limits, ACGIH limits, NIOSH limits, or "Other" limits such as those from material safety data sheets or insurance carriers); and
- Whether employee exposures exceeded the targeted limits for each process/chemical combination present at the facility.

To estimate the number of employees potentially exposed to a given substance in a 4-digit SIC industry group, OSHA assumed that all employees who are involved with processes in which the substance was used or present are potentially exposed. Thus, the formula for estimating the number of employees who are potentially exposed to a substance in a given industry sector is

$$\sum \frac{X_f}{T_f} * W = P$$

where

X_f = number of employees at the facility who are involved in processes using a given substance;
Tf = total production workforce at the facility;
W = the number of production workers in the industry sector in 1985; and
P = estimated number of employees potentially exposed to the substance in the industry sector.

To estimate the number of employees currently exposed above the proposed limits, OSHA relied on survey responses that indicated whether exposure measurements associated with a process exceeded the facility's internal exposure limits. If a facility responded that exposure measurements taken at a process area did not exceed ACGIH, NIOSH, or some "other" set of limits, OSHA assumed that no potentially exposed employee is currently exposed above the proposed limit for any substance associated with the process. On the other hand, if a facility responded that exposure measurements taken at a process did not exceed current OSHA, ACGIH, or "Other" set of limits, OSHA assumed that all potentially exposed employees are currently exposed above the proposed limits for all substances associated with the process. In addition, if the process had certain characteristics that suggested that the proposed limits were not being achieved (i.e., lack of ventilation system or open process used indoors) all employees involved in the process were assumed to be overexposed. The decision logic for determining when employees at a particular process may be overexposed was the same as that used for estimating costs associated with achieving the

proposed limits (see Chapter VI, Costs of Compliance).

Approach for Combining Estimates Derived From the IMIS Data and Survey Data

To obtain an overall estimate of the extent of employee exposures to substances used in each four-digit SIC industry group, OSHA combined the estimates derived separately from the IMIS and survey data. Table III-1 illustrates how these estimates were combined to yield an overall estimate of the extent of employee exposures in SIC 2851. Where estimates for a given substance could be derived from one data set but not the other, the combined assessment uses the available estimates without adjustment. Where estimates could be derived from both data sets for the same substance, the combined assessment is based on the average of the available estimates; this approach has the effect of giving equal weight to estimates derived from either the IMIS or survey data.

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TABLE III-1

ANALYSIS OF EMPLOYEE EXPOSURES IN SIC 2851 DERIVED FROM IMIS DATA, SURVEY DATA, AND BOTH IMIS AND SURVEY DATA COMBINED

NAME	ASSESSMENT FROM IMIS		ASSESSMENT FROM SURVEY		COMBINED ASSESSMENT	
	WORKERS POTENTIALLY EXPOSED	WORKERS ABOVE LIMITS	WORKERS POTENTIALLY EXPOSED	WORKERS ABOVE LIMITS	WORKERS POTENTIALLY EXPOSED	WORKERS ABOVE LIMITS
2-HEXANONE	6,547	727	26,751	0	16,649	364
ACETONE	2,875	96	5,912	*	4,393	147
ALPHA-ALUMINA	1,286	0			1,286	0
BUTOXYETHANOL	2,121	0			2,121	0
BUTYL ACRYLATE	13,302	0			13,302	0
CARBON MONOXIDE	672	672			672	672
CARBON TETRACHLORIDE	5,912	0			5,912	0
COBALT AS CO	4,604	0			4,604	0
CYCLOHEXANONE	6,821	0			6,821	0
DIISOBUTYL KETONE	4,434	0			4,434	0
ETHYLENE GLYCOL			53,429	19,076	53,429	19,076
FURFURAL	2,956	0			2,956	0
HEPTANE	5,454	0			5,454	0
HEXAFLUOROACETONE	41,383	41,383			41,383	41,383
HEXANE	4,678	0			4,678	0
HEXONE	7,131	319			7,131	319
IRON OXIDE DUST AND FUME, AS F	5,173	0			5,173	0
ISOBUTYL ALCOHOL	10,996	0			10,996	0
ISOPHORONE			17,440	0	17,440	0
MAGNESIUM OXIDE FUME, AS MG	10,560	0			10,560	0
METHYL N-AMYL KETONE	9,038	0			9,038	0
MOLYBDENUM, INSOLUBLE COMPOUND	11,853	0			11,853	0
N-BUTYL ALCOHOL			51,803	12,329	51,803	12,329
N-BUTYL GLYCIDYL ETHER	28,030	0			28,030	0
NAPHTHA			296	*	296	*
NUISANCE PARTICULATES	5,040	1,217			5,040	1,217
PERCHLOROETHYLENE	1,973	0			1,973	0
PETROLEUM DISTILLATES, RUBBER	7,885	0			7,885	0
PHTHALIC ANHYDRIDE	4,427	0			4,427	0
STODDARD SOLVENT	6,961	194	28,821	13,113	17,891	6,654
STYRENE	1,508	0	7,464	5,598	4,486	2,799
TIN METAL AND OXIDE	1,286	0			1,286	0
TITANIUM DIOXIDE	2,668	0			2,668	0
TOLUENE	7,538	187	11,750	*	9,644	239

TABLE III-1

(continued)

ANALYSIS OF EMPLOYEE EXPOSURES IN SIC 2851 DERIVED FROM IMIS DATA, SURVEY DATA, AND BOTH IMIS AND SURVEY DATA COMBINED

NAME	ASSESSMENT FROM IMIS		ASSESSMENT FROM SURVEY		COMBINED ASSESSMENT	
	WORKERS POTENTIALLY EXPOSED	WORKERS ABOVE LIMITS	WORKERS POTENTIALLY EXPOSED	WORKERS ABOVE LIMITS	WORKERS POTENTIALLY EXPOSED	WORKERS ABOVE LIMITS
TRIBUTYL PHOSPHATE	244	0			244	0
TRICHLOROETHYLENE	3,695	0			3,695	0
TRIETHYLAMINE	244	0			244	0
TRIMELLITIC ANHYDRIDE	1,626	813			1,626	813
TRIMETHYL BENZENE	8,099	0			8,099	0
VINYL ACETATE	13,302	0			13,302	0
VM & P NAPHTHA	25,909	0			25,909	0
ZINC OXIDE, FUME			3,178	*	3,178	*

*Insufficient data from survey responses to permit an assesment of exposure levels.

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Estimates of the number of employees potentially exposed and the number exposed above the proposed limits are available in Supplement t2, t3, t4, t5, and t6 to this regulatory analysis. In addition to exposure estimate these Supplements also contain process and industry use information by substance. (Copies of these Supplements are available, upon request, from the office of Regulatory Analysis, Room N3627, OSHA.)

Aggregate estimates of the number of employees potentially exposed or exposed above the proposed limits to any substance considered in the analysis are presented by two-digit SIC code in Table III–2. Because an employee may be exposed to more than one substance in a given industry, aggregate estimates of the size of the exposed population are presented as minimum and maximum estimates. Maximum estimates of the size of the exposed population assume that no employee is exposed to more than one substance; minimum estimates assume the greatest possible extent of multiple chemical exposure. For example, if 200 employees are estimated to be exposed to acetone and 300 employees are estimated to be exposed to toluene in a given industry, a minimum of 300 employees is estimated to be exposed to either substance in the industry, and a maximum of 500 employees is estimated to be exposed to either substance in the industry.

Employees exposed above the proposed limits are considered to be "at risk" of adverse health effects. It should be noted that this presentation shows risk reduction in employee equivalent terms; while all (100 percent) of the workers currently exposed above the new proposed limits would benefit from reduced risk, the new lower limits would not eliminate all chemical exposure risk. An estimated five, ten, or twenty percent residual risk equivalent would remain at the new lower limits. Although not quantified, all employees currently exposed to hazardous substances at or below the recommended new levels would experience this residual risk. To obtain an approximation of risk reduction at the lower exposure levels being proposed, OSHA estimated that 95, 80, or 90 percent of the workers currently exposed above the proposed limits (i.e., the midpoint between the minimum and maximum estimates) will benefit from reduced risk after their exposures are lowered to or below the proposed limits. The results of this analysis are also presented by two-digit SIC codes in Table III–2.

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TABLE III-2. NUMBER OF WORKERS EXPOSED AND NUMBER OF WORKERS FOR WHOM RISK IS REDUCED, BY 2-DIGIT SIC

SIC Code	Number of Production Workers	No. Workers Potentially Exposed, Minimum Estimate	No. Workers Potentially Exposed, Maximum Estimate	No. Workers Exposed Above Limits, Minimum Estimate	No. Workers Exposed Above Limits, Maximum Estimate	No. Workers With Reduced Risk, (80% Risk Reduction)	No. Workers With Reduced Risk, (90% Risk Reduction)	No. workers With Reduced Risk (95% Risk Reduction)
20	1,149,971	218,638	275,837	109,289	161,000	108,115	121,630	128,387
21	48,625	1,296	1,298	62	62	50	56	59
22	244,367	147,842	170,842	13,730	16,909	12,256	13,788	14,554
23	994,363	271,934	353,225	13,494	15,894	11,755	13,225	13,959
24	543,695	201,869	318,642	81,184	99,437	72,248	81,279	85,794
25	496,760	189,194	429,107	77,910	96,802	69,885	78,620	82,986
26	667,082	367,943	606,256	66,302	108,383	69,874	78,608	82,975
27	1,255,639	1,069,582	1,198,072	137,557	180,397	127,182	143,079	151,028
28	866,859	788,571	866,570	300,562	426,653	290,886	327,247	345,428
29	178,202	177,058	178,202	133,282	134,096	106,951	120,320	127,005
30	817,652	607,900	810,873	156,191	591,627	299,127	336,518	355,214
31	152,241	41,525	76,274	4,347	5,907	4,102	4,614	4,871
32	587,946	307,033	493,751	56,274	93,588	59,945	67,438	71,184
33	754,180	451,813	719,699	114,179	311,416	170,238	191,518	202,158
34	1,228,572	606,058	1,104,519	138,744	262,805	160,619	180,697	190,735
35	1,508,032	661,605	1,186,259	139,409	197,843	134,901	151,763	160,195
36	1,319,939	693,114	996,305	139,421	169,876	123,718	139,183	146,916
37	1,270,731	708,119	1,015,308	90,357	182,918	109,310	122,974	129,806
38	606,978	374,905	482,051	34,649	35,131	27,912	31,401	33,146
39	417,988	232,354	294,590	53,671	67,160	48,333	54,374	57,395
40	193,605	174,308	180,573	15,421	19,430	13,941	15,683	16,555
45	346,071	127,515	159,158	45,756	45,756	36,605	41,180	43,468
47	85,386	31,917	32,596	1,731	2,382	1,645	1,850	1,953
49	804,200	759,231	775,063	477,380	481,333	383,485	431,420	455,388
50	2,759,479	545,417	1,065,910	193,893	211,291	162,074	182,333	192,462
51	1,147,688	592,777	748,500	226,780	288,088	205,947	231,691	244,562
55	1,470,816	1,017,352	1,470,816	249,123	325,852	229,990	258,739	273,114
72	765,244	551,441	604,813	41,497	46,935	35,373	39,794	42,005
73	4,179,928	2,113,228	2,266,266	347,718	569,457	366,870	412,729	435,659
75	675,834	461,366	593,967	54,146	75,771	51,966	58,462	61,710
76	331,435	252,837	268,243	76,296	139,331	86,251	97,033	102,423
80	6,237,985	2,399,295	2,749,195	46,599	54,400	40,400	45,450	47,975
TOTAL	34,107,493	17,168,039	22,469,780	3,668,060	5,386,824	3,621,954	4,074,696	4,301,071

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Estimates of the Reduction in Illness Cases and Lost Workdays

The BLS LABSTAT data base contains illness and lost workdays rates by SIC code. These rates are expressed as the annual number of illness cases or number of lost workdays per 100 full-time-equivalent employees. Reducing employee exposures to hazardous substances to a level below that associated with adverse health effects will result in a decrease in the number of illness cases and lost workdays.

To assess the impact on illness and lost workday rates of reducing employee exposures, OSHA first examined the relationship between the percentage of workers estimated to be exposed above the proposed exposure limits for the 160 substances included in the study and current illness and lost workday rates. This analysis was conducted at the three-digit SIC code level because of the lack of illness rate data for some of the four-digit SIC code groups. The results of this analysis are presented graphically in Figure III–1. Among three-digit industries for which OSHA has found that no employees are currently exposed above the proposed limits, total illness case rates reported by the BLS for the same industry group are usually less than 0.2 cases per 100 employees per year, and frequently are reported to be zero. In contrast, where OSHA has found that industry groups have more than 2 percent of their workforce exposed above the proposed limits, total illness case rates above 0.2 cases per 100 employees are frequently reported. In no instance does an industry group having 10 percent or more of its workforce exposed above the proposed limits report a total illness case rate of zero. Among three-digit SIC code industry groups for which OSHA has not found employee exposures above the proposed limit, 37 percent of the groups reported an illness rate of zero, 45 percent reported an illness rate of 0.1 to 0.2 cases per 100 employees, and only 18 percent of the industry groups reported an illness rate greater than 0.2 cases per 100 employees (but none above 0.5 cases per 100 employees). Given this distribution of illness rates across these particular industry groups, it is concluded that industry groups in which employee exposures have been controlled to or below the proposed limits will have an illness rate approximating 0.1 cases per 100 employees. It is believed that total illness cases at the three-digit level will be reduced to no more than 0.1 cases per 100 employees after employee exposures are reduced to or below the proposed limits.

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Figure III-1. Relationship Between Employee Exposures to Hazardous Substances and Industry Illness Rates

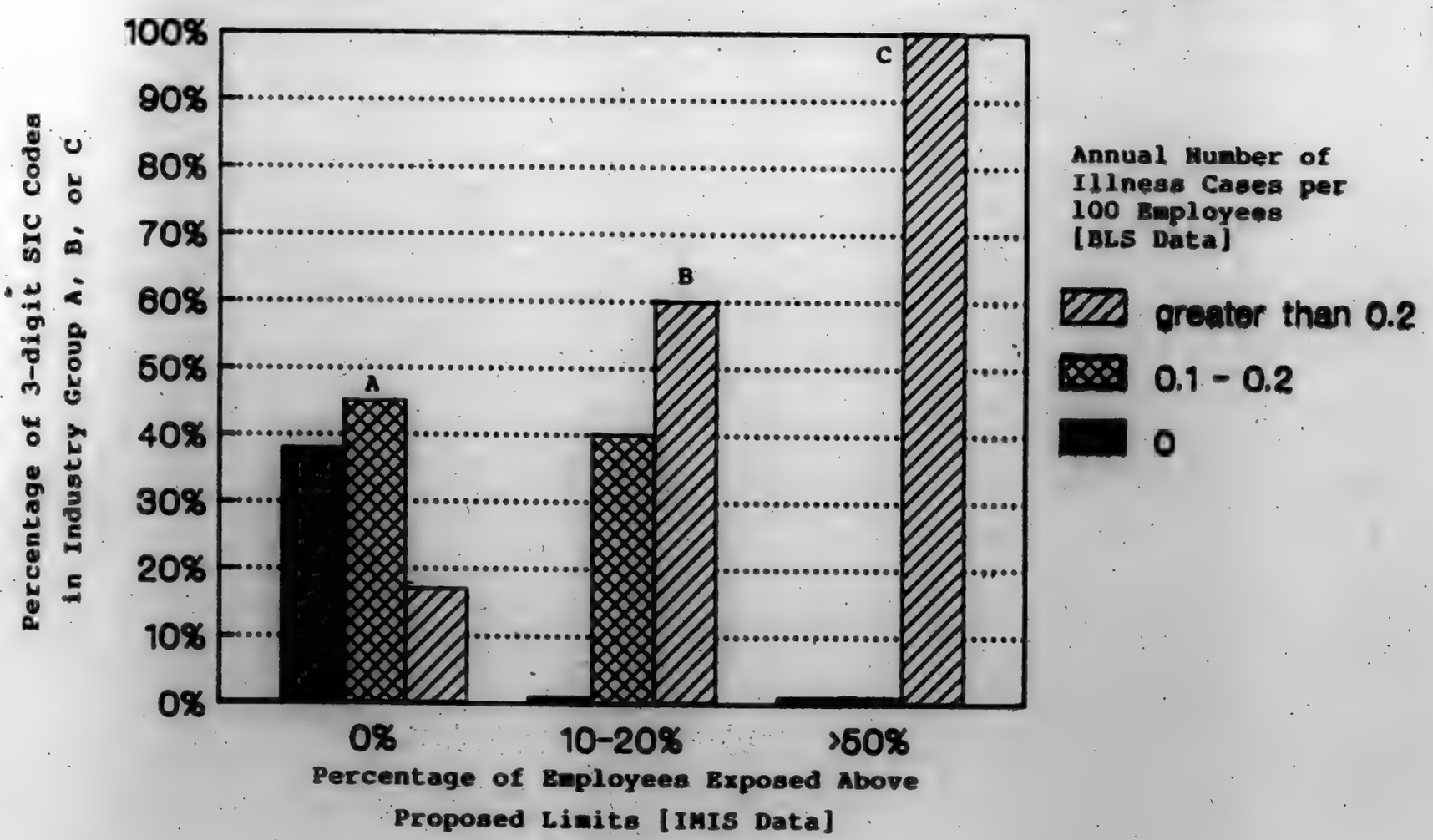

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Figure III-1

OSHA performed a similar analysis that also indicates that the rate of lost-workday illness cases will decline to a base rate of 0.05 cases per 100 employee and the annual rate of lost workdays will decline to 1 per 100 employees after employees exposures are reduced to or below the proposed limits.

OSHA estimated the number of illness cases and lost workdays potentially avoided annually by applying current illness rates to the estimated number of production workers per three-digit SIC group; this yielded an estimate of the annual number of illness cases and lost workdays reported by each three-digit SIC code industry group. It was assumed that, after promulgation of the proposed limits, these industries would experience illness rates of 0.1 cases per 100 employees, 0.05 lost-workday illness cases per 100 employees, and 1 lost workday per 100 employees per year. Using this approach, OSHA estimated that promulgation of the proposed limits will potentially avoid 55,216 illness cases per year, 23,608 lost workday illness cases per year, and 533,197 lost workdays caused by illnesses per year.

The movement to a 0.1 illness rate is presented as a best estimate supported by OSHA's interpretation of the relationship between chemical exposure levels and current industry illness rates. It may be argued, however, that if a 0.1 illness rate were achieved, the reduction in illnesses could not be credited exclusively to OSHA's rulemaking initiative, since some portion of the current BLS illness rate is made up of illnesses associated with exposures to hazardous agents or physical stress (e.g., radiation, noise, ergonomic stress).

While no claim is made that this rulemaking action will reduce illnesses related to these causes, OSHA believes that the benefit estimates related to this proposal of over 55,000 illnesses, over 23,600 lost workday illnesses, and over 533,000 lost workdays avoided each year are reasonable. This is based on the belief that company records, upon which the BLS data are based, rarely show chronic illnesses caused by exposures to toxic substances [4, 6]. The potential level of underreported illnesses in the BLS series is illustrated in a recent report by Landrigan and Markowitz. Using California physicians' reports of occupational illnesses, these authors estimated an occupational illness rate among New York State employees that was more than twice the BLS illness rate [8].

Estimates of the Number of Employees Potentially at Risk by Type of Hazard

In addition to estimating the number of employees exposed to the substances included in this analysis, OSHA also estimated the number of employees who are at risk of experiencing particular types of adverse health effects. To conduct this analysis, each substance included in the rulemaking was assigned to a health hazard category; these assignments were based on the primary health effects that provided the impetus for reducing an existing limit or proposing a new limit for a particular substance. (The assignment of substances to health effect categories is described in detail in Section IV–C of the preamble.) It should be noted that, in some instances, substances included in this rulemaking were grouped together in the preamble according to some basis other than a particular health effect; for example, several substances were grouped together because the ACGIH-recommended limits were derived based on the structural analogy of the grouped substances with that of other substances. For the benefits analysis described here, these substances were re-classified according to the primary health effect associated with exposure to the analogous chemical.

The number of employees estimated to be exposed to substances causing a particular health effect in an industry group was calculated by summing the number of employees exposed to all substances causing the same effect. Aggregate estimates across all affected industry sectors are presented in Table III–3. This table provides estimates of employees potentially exposed to substances in each health group, as well as estimates of employees exposed above the proposed limits for substances in each health group. Employees are frequently at risk from a variety of adverse health effects as a result of concurrent exposure to more than one toxic substance. Thus, the total number of employees considered to be at risk from any type of illness (as estimated in Table III–3) cannot be summed because the sum would result in doublecounting.

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TABLE III-3. ESTIMATED NUMBER OF WORKERS POTENTIALLY AT RISK OF EXPERIENCING ADVERSE EFFECTS, BY TYPE OF ADVERSE EFFECT

ADVERSE HEALTH EFFECT	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MINIMUM ESTIMATE	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MAXIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE PROPOSED LIMITS FOR SUBSTANCES, MINIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE PROPOSED LIMITS FOR SUBSTANCES, MAXIMUM ESTIMATE
NUISANCE EFFECTS	4,729,417	5,804,846	829,487	892,725
ODOR AND TASTE EFFECTS	718,522	808,537	59,102	59,102
SYSTEMIC TOXICITY	3,233,319	3,818,742	250,282	256,909
MUCOUS MEMBRANE IRRITATION	12,077,315	15,813,663	59,969	1,021,197
METABOLIC INTERFERENCES	2,277,113	2,345,975	746,879	746,879
LIVER/KIDNEY DISEASE	2,321,573	2,488,604	383,581	384,876
OCULAR DISTURBANCES	194	194	0	0
RESPIRATORY DISEASE	3,765,717	4,023,525	639,717	654,319
CARDIOVASCULAR DISEASE	164,576	164,576	44,355	44,355
NEUROPATHY	1,231,744	1,349,421	201,760	210,203
NARCOSIS	4,601,993	6,381,899	526,021	547,731
CANCER	3,663,053	3,784,374	499,716	499,716
ALLERGIC SENSITIZATION	2,710,576	2,903,153	296,444	297,255

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Estimates of the Number of Illness-Related Fatalities Avoided

As discussed in the preceding section, OSHA has estimated the number of employees currently at risk of experiencing a variety of adverse health effects brought about by over-exposures to the substances included in this rulemaking. Many of these adverse effects result in lethal outcomes, in particular cancer, cardiovascular effects, chronic respiratory disease, and chronic liver and kidney damage. OSHA also believes that employees who are excessively exposed to substances causing systemic organ damage, neurological impairment, or metabolic effects (i.e., cardiovascular disease through excessive formation of methemoglobin or carboxyhemoglobin, and neurological impairment through cholinesterase inhibition) are at excess risk of incurring a fatal condition.

To estimate the number of fatalities associated with excessive exposure to the 160 substances included in this analysis, OSHA relied on standard U.S. mortality rates and on published estimates of the proportion of fatalities that are believed to be associated with occupational illnesses. These data allowed OSHA to calculate cause-specific mortality rates that are attributable to occupational illnesses (i.e., mortality rates that represent the excess risk of mortality from occupational disease). OSHA then applied these occupationally-related mortality rates to its estimates of the number of employees exposed to the 160 substances of concern at levels above the proposed limits. OSHA's methodology and estimates are presented in Table III–4, and are described in detail below.

TABLE III–4

Estimated Annual Number of Fatalities Caused By Occupational Illness Among Workers Currently Exposed Above Proposed Limits, Using Alternative Assumptions

Cause of Death	U.S. Annual Death Rate Per 100,000 Residents (1985), by Cause[a]	Total Number of Deaths Per Year in U.S., by Cause[b]	Number of Deaths Attributed to Occupational Illnesses, by Cause	Annual Death Rate Per 100,000 Attributed to Occupational Illnesses	Number of Workers Exposed Above Proposed Limits	Annual Number of Fatalities Among This Group of Workers
Cancer	193.3	461,484	46,148[c]	55.3	499,716[g]	276
			23,074[d]	27.7	499,716	138
Chronic Pulmonary Disease	31.3	74,726	2,242[e]	2.7	647,018[h]	17
			747[f]	0.9	647,018	4
Chronic Liver Disease	11.2	26,739	802[e]	1.0	384,229[i]	4
			267[f]	0.3	384,229	1
Cardiovascular, Neurological, and Renal	418.5	999,127	29,974[e]	35.9	1,250,811[j]	449
			9,991[f]	12.0	1,250,811	150
TOTAL, All Causes						293–746

[a] Source: National Center for Health Statistics [5, Table II].
[b] Based on a total residential population in 1985 of 238,740,000. [7, p. 18].
[c] Assumes 10 percent of all cancer deaths are of occupational origin (Landrigan and Markowitz, 1987).
[d] Assumes 5 percent of all cancer deaths are of occupational origin (Landrigan and Markowitz, 1987).
[e] Assumes 3 percent of all deaths are of occupational origin (Landrigan and Markowitz, 1987).
[f] Assumes 1 percent of all deaths are of occupational origin (Landrigan and Markowitz, 1987).
[g] From Table III–3, midpoint estimate of number of workers exposed above proposed limits for potential carcinogens.
[h] From Table III–3, midpoint estimate of number of workers exposed above proposed limits for respiratory toxins.
[i] From Table III–3, midpoint estimate of number of workers exposed above proposed limits for liver toxins.
[j] From Table III–3, midpoint estimate of number of workers exposed above proposed limits for systemic toxins, metabolic toxins, cardiovascular toxins, and neuropathic agents.

Estimate of the Number of Cancer Fatalities

The U.S. National Center for Health Statistics has published cause-specific U.S. mortality rates for 1985 (the most recent data available) [5]. This source reported that the annual U.S. cancer death rate in 1985 was 193.3 per 100,000 residents. Based on a total resident U.S. population of 238,740,000 in 1985 [7, p. 18], the number of cancer deaths that occurred in 1985 was 461,484. Landrigan and Markowitz [8] reviewed several published estimates of the percentage of cancer deaths that are attributable to occupationally-related disease. These estimates range from less than 5 percent to 33 percent of all cancer deaths. Landrigan and Markowitz believe that, as a best estimate, 10 percent of all cancer deaths have an occupational origin.

Using an occupational cancer death estimate of 10 percent and applying it to the estimated number of cancer deaths in 1985, OSHA estimates that 46,148 occupationally-related cancer deaths occurred in the United States in that year. Table III–4 also shows an alternative assessment of occupationally-induced mortality that is based on an assumption that only 5 percent of all cancer deaths are of occupational origin.

As the next step, OSHA estimated the overall cancer death rate among the population which is occupationally exposed to chemicals and the remainder of the population. In 1985, there were an average of 108,856,000 persons employed [9, p. 8]. However, 25,469,200 of these were employed in industries or occupations where there is a low risk of exposure to toxic substances, such as finance, insurance, real estate, and private households [9, pp. 30, 84–88]. The remaining 83,386,800 persons are considered to be occupationally exposed to chemicals in varying degrees. Many would have only intermittent exposure at very low levels. Using the two alternative assumptions of the percentage of all cancer deaths which are of occupational origin (10 percent and 5 percent), OSHA calculated the annual cancer death rate attributed to occupational exposure by dividing the number of cancer deaths attributable to occupational illness by the population exposed, and multiplying by 100,000. If the 10 percent assumption is used, OSHA estimates that the annual cancer mortality rate attributable to occupational exposure to toxic substances is 55.3 per 100,000; with the 5 percent assumption, the rate would be 27.7. OSHA then estimated that there are 499,716 workers currently exposed above the proposed limits to the potential carcinogens included in this rulemaking. Applying the work-related cancer death rates to this population, OSHA estimates that between 138 and 276 cancer fatalities occur each year among these workers and that these fatalities will be prevented by the proposed rule.

In arriving at this estimate, two important offsetting arguments were considered. Because some of these workers may also be exposed to occupational carcinogens that are not covered in this rulemaking (such as asbestos or benzene), the number of occupational cancer deaths attributed to the substances included in this rulemaking may be overestimated. Offsetting this potential overestimate is the fact that the excess mortality rates of 27.7–55.3 per 100,000 workers were developed on the basis of occupational exposures among all exposed workers. However, the excess mortality rate experienced among workers with high average exposures to hazardous chemicals typically runs at least two or three times higher than the national average rate. In consideration of this, OSHA believes that any overestimate of cancer fatalities avoided attributed to regulated chemicals not covered under this rulemaking is offset by the use of a mortality rate which understates the true excess mortality rate among workers with very high exposures to toxic chemicals. (Additional comments on excess mortality rate estimates are included in the final section of this chapter.)

An alternative analysis of the reduction in cancer mortality was conducted using OSHA's quantitative risk assessments for the potential human carcinogens included in this rulemaking (the results of OSHA's risk assessments are presented in the preamble to the proposal). This analysis is presented in table III–5. Using the combined IMIS and survey data, OSHA found that employees are currently exposed above the proposed limits to four of these potential carcinogens (acrylamide, carbon tetrachloride, chloroform, and styrene). Applying OSHA's risk estimates to the estimated number of workers currently overexposed to these substances, OSHA estimates that compliance with the proposed limits will avoid 5,005 cancer fatalities over the working lifetime of the population (i.e., 45 years). The average annual reduction in the number of cancer fatalities avoided over 45 years is estimated to be 111.

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TABLE III–5

ESTIMATES OF CANCER DEATHS POTENTIALLY AVOIDED, BASED ON QUANTITATIVE RISK ASSESSMENTS[a]

Substance	Number of Workers Above Proposed Limit	Estimated Number of Cancer Deaths Current PEL	Proposed PEL	Estimated Number of Potentially Avoidable Cancer Deaths over a Working Lifetime
Acrylamide	7,784	75	8	67
Carbon Tetrachloride	86,682	1,554	798	756
Chloroform	152,170	1,852	31	1,821
Styrene[b]	248,603	4,723	2,362	2,361
TOTAL		8,204	3,199	5,005

[a]Risk assessments are presented in Section IV–C of the preamble.

[b]This figure reflects an average estimate resulting from the combined IMIS and survey data. The 1988 sample survey alone identified just over 30,000 employees overexposed to this chemical. The Styrene Information and Research Center estimates that 224,250 workers make products with styrene.

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Although OSHA has evaluated the cancer risk for 17 potential carcinogens, there were IMIS and survey data for only four of these. Lack of IMIS or survey data means that the substance has not been sampled by an OSHA compliance officer or that none of the survey participants indicated that the substance was used at their facilities. This does not mean that no workers are currently exposed to these substances. Lacking a basis for estimating the extent of employee exposure, OSHA could not estimate the extent of reduction in cancer deaths attributable to the proposed reduction in exposure limits for these substances. To the extent that employee exposure to these carcinogens is reduced, further reductions in the number of cancer deaths will occur.

Estimated Reduction in Occupational Deaths From Causes Other Than Cancer

As shown in Table III–4, OSHA also estimated the number of occupationally-related fatalities that are expected to occur annually among employees exposed to substances associated with adverse health effects other than cancer. To perform this analysis, OSHA relied on an estimate made by Landrigan and Markowitz [7] that between 1 and 3 percent of all non-malignant disease is of occupational origin. Using the 1 and 3 percent figures as alternative assumptions and using the same methodology as that described above for cancer deaths, Table III–4 shows the following:

—Between 4 and 17 deaths caused by respiratory disease are estimated to occur each year among workers exposed to respiratory toxins covered in this rulemaking;

—Between 1 and 4 deaths are estimated to occur each year among workers exposed to liver toxins covered in this rulemaking;

—Between 150 and 449 deaths are estimated to occur each year among workers exposed to systemic toxins, cardiovascular toxins, metabolic toxins, and neurological toxins covered in this rulemaking.

Summing these estimates, OSHA believes that between 155 and 470 non-cancer-related occupational fatalities occur each year. The same offsetting considerations discussed in the analysis of the cancer fatalities avoided under this rule, also apply here. While some substances are being controlled by activity outside of this rulemaking, any overestimate effect is balanced by an underestimate of the real excess mortality rate for workers with high exposure levels to the chemicals under consideration.

In sum, the combined estimate for the number of cancer and non-cancer deaths potentially avoided each year by compliance with the proposed new limits, is between 293 and 746 or an average of 519 fatalities avoided each year.

Additional Comments and an Alternative Method for Estimating Excess Mortality Rates

The analysis described above to estimate the number of fatalities that are potentially preventable relies on published estimates of the proportion of all U.S. fatalities that are believed to result from occupational illnesses. These estimates were used with U.S. cause-specific mortality rate figures to estimate the excess mortality rate among all U.S. workers, by cause of death (shown in Table III–4).

In making these excess mortality rate estimates, OSHA applied the excess number of fatalities across the U.S. working population occupationally exposed to chemicals. Implicit in this approach is an assumption that all workers are at some risk of fatality from all causes of death. In fact, only a portion of the workforce are at risk of fatality from each type of occupational illness. Deaths will occur only among workers who are potentially exposed to carcinogens; no excess deaths will occur among workers who are not so exposed. Similarly, not all workers are at risk of dying from occupationally-related cardiovascular illnesses; only some portion of the workforce are at excess risk and all fatalities resulting from occupationally-related cardiovascular disease will occur among this subset of workers. Because OSHA's excess mortality rate estimates presented earlier were derived by applying the estimated number of work-related fatalities across the exposed U.S. workforce, excess mortality rate figures are likely to be substantially understated.

To assess the magnitude of this bias, OSHA conducted an alternative analysis to estimate the number of work-related fatalities that are expected to occur among workers exposed above the proposed limits. This alternative assessment relied on judgments regarding the general increase in mortality rates that are frequently observed in epidemiologic studies that demonstrate a causal relationship between exposure to toxic substances and excess disease mortality. The alternative assessment is presented in Table III–6.

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TABLE III–6

ALTERNATIVE ASSESSMENT OF NUMBER OF FATALITIES EXPECTED TO OCCUR AMONG WORKERS CURRENTLY EXPOSED ABOVE PROPOSED LIMITS

Cause of Death	U.S. Cause-Specific Mortality Rate, Per 100,000 Residents[a] (1985)	Estimated Excess Mortality Rate Per 100,000 Workers at Risk From Hazard	Number of Workers Exposed Above Proposed Limits	Annual Number of Fatalities Among This Group of Workers
Cancer	193.3	193.3[b]	499,716[c]	966
Chronic Pulmonary Disease	31.3	9.4[d]	647,018[c]	61
Chronic Liver Disease	11.2	3.3[d]	384 229[c]	13
Cardiovascular,	418.5	125.6[d]	1,250,811[c]	1,571
TOTAL				2,611

[a] Source: National Center for Health Statistics [5, Table 11].

[b] Assumes that overall cancer mortality rate among workers at risk is twice the U.S. rate (i.e., a 100 percent excess rate).

[c] From Table III–4.

[d] Assumes that overall disease mortality rate among workers at risk is 1 3 times the U.S rate (i.e., a 30 percent excess risk).

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The overall U.S. cancer mortality rate for 1985 is 193.3 deaths per 100,000 residents (Table III–6). Typically, when causal relationships between exposure and excess lung cancer mortality are found in epidemiologic investigations, the exposed cohort frequently shows a cancer mortality rate of 1.1 to 10 times higher than the general population. For cancers that are more rare than lung cancer, mortality rates among working populations may be 50 times higher then for the general population. An alternative estimate of the number of cancer fatalities expected to occur among the estimated 499,716 workers exposed above the proposed limits for the potential carcinogens could be developed based on the assumption that the overall cancer fatality rate among these workers is twice that of the U.S. population (i.e., 386.6 per 100,000 workers vs. 193.3 per 100,000 residents). The *excess* cancer mortality rate among these workers is therefore assumed to be 193.3 per 100,000 workers (386.0–193.3). Applying this estimated excess cancer mortality rate to the 499,716 workers exposed above the proposed limits yields an estimated 966 cancer deaths occurring annually that are attributable to occupational exposure. This same approach could be used for estimating non-cancer-related fatalities assuming that the overall fatality rate among workers at risk from these illnesses is 1.3 times the corresponding U.S. mortality rate (mortality rates of 1.1 to 1.5 are frequently observed in epidemiologic studies demonstrating causal relationships between exposure and excess fatalities). This amounts to an *excess* mortality rate of 30 percent above the overall U.S. rate.

Applying these excess mortality rate figures to the estimated worker populations exposed above the proposed limits, OSHA estimates that, among these workers, 61 deaths occur annually due to chronic pulmonary disease, 13 deaths occur annually due to liver disease, and 1,571 deaths occur annually due to cardiovascular, neurological, and renal disease. In total, including cancer, OSHA estimates that 2,611 work-related fatalities may be occurring each year among employees who are exposed above the proposed limits for substances included in this rulemaking.

References

1. U.S. Department of Labor. Bureau of Labor Statistics. LABSTAT data base. 1985. (Unpublished Data)
2. Dun and Bradstreet, Inc. Dun's Market Identifiers. 1985. (Database)
3. U.S. Department of Commerce. Bureau of the Census. County Business Patterns 1985. (Database)
4. Office of Technology Assessment. *Preventing Illness and Injury in the Workplace*. 1985.
5. U.S. Department of Health and Human Services. National Center for Health Statistics. Advance Report of Final Mortality Statistics, 1985. Monthly Vital Statistics Report: 36, No. 5, Supplement. August 26, 1987.
6. U.S. Department of Labor. *An Interim Report to Congress on Occupational Diseases*. 1980.
7. U.S. Department of Commerce. Bureau of the Census. *Statistical Abstract of the United States*. 1987.
8. Landrigan, P.J. and S.B. Markowitz. Occupational Disease in New York State—Report to the New York State Legislature. February, 1987.
9. U.S. Department of Labor. Bureau of Labor Statistics. Employment and Earnings. July 1988.

IV. Assessment of Nonregulatory Alternatives

Introduction

The declared purpose of the Occupational Safety and Health (OSH) Act of 1970 is "* * * to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *." Thus, the Act requires the Secretary of Labor, when promulgating occupational safety and health standards for toxic materials or harmful physical agents, to set the standard "* * * that most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity * * *." It is on the basis of this congressional directive that OSHA has initiated regulatory actions to reduce the adverse health effects associated with occupational exposure to hazardous substances.

Market Failure

Economic theory suggests that the need for government regulation is greatly reduced where private markets work efficiently and effectively to allocate health and safety resources. The theory typically assumes perfectly competitive labor markets where workers, having perfect knowledge of job risks and being perfectly mobile among jobs, command wage premiums that fully compensate for any risk of future harm. Thus, theoretically, the costs of occupational injury and illness are borne initially by the firms responsible for the hazardous workplace conditions and, ultimately, by the consumers who pay higher prices for the final goods and services produced by these firms. With all costs internalized, private employers have an incentive to reduce hazards wherever the cost of hazard abatement is less than the cost of the expected injury or illness. The resultant level of safety and health is considered "efficient" in the sense that it minimizes the sum of the costs of hazard prevention and of injury or illness. Perfectly competitive labor markets, however, do not exist for many industrial markets. OSHA, therefore, believes that it must take appropriate actions to provide greater health protection for workers exposed to toxic substances.

Evidence indicates that market forces have not been effective in reducing excessive occupational exposure to hazardous substances, thereby contributing to the consequent development of occupational diseases. In spite of the danger associated with the inhalation or other exposure to hazardous substances, the social costs of production have not been internalized, in part, because of market imperfections and the existence of externalities. Consequently, the amount of protection that the private market will offer to workers differs from the socially desired level.

First, evidence on occupational health hazards in general suggests that in the absence of immediate or clear-cut danger, employees and employers have little incentive to seek or provide information on the potential long-term effects of exposure. Employers faced with potentially high compensatory payments may, in fact, have a disincentive to provide information to employees. When relevant information is provided, however, employers and employees might still find informed decisionmaking a difficult task, especially where long latency periods precede the development of chronic disabling disease. Morever, if signs and symptoms are nonspecific—that is, if an illness could be job-related or could have other causes—employees and employers may not link disease with such occupational exposure.

Second, even if workers were fully informed of the health risks associated with exposure to hazardous substances, many face limited employment options. Nontransferability of occupational skills and high national unemployment rates sharply reduce a worker's expectation of obtaining alternative employment quickly or easily. A worker employed in a foundry, for example, could find it difficult to apply occupational skills to a new job in searching for a safer workplace.

In many regions of the country, the practical choice for workers is not between a safe job and a better paying but more hazardous position, but simply between employment and unemployment at the prevailing rates of pay and risk. In addition to the fear of substantial income loss from prolonged periods of unemployment, the high costs of relocation, the reluctance to break family and community ties, and the growth of institutional factors such as pension plans and seniority rights serve to elevate the cost of job transfer. Thus, especially where wages are more responsive to the demands of more mobile workers who tend to be younger and perhaps less aware of job risks, hazard premiums for the average worker will not fully compensate. Where this is the case, labor market negotiations are unlikely to reflect accurately the value that workers place on health.

In addition to the market imperfections, externalities occur if employers and employees settle for an inefficiently low level of protection from hazardous substances. For the competitive market to function efficiently, only workers and their employers should be affected by the level of safety and health provided in market transactions. In the case of occupational safety and health, however, society shares part of the financial burden of occupationally induced diseases, including the costs of premature death, chronic illness, and disability. Those individuals who suffer from occupationally related illness are cared for and compensated by society through taxpayer support of social programs, including welfare, Social Security, and Medicare. These combined factors of labor market imperfections and the existence of externalities contribute to the failure of the market to supply healthful working conditions in industries where hazardous substances exist.

Tort Liability

The use of liability under tort law is one nonregulatory alternative that has been increasingly used in litigation concerning occupationally related illnesses. Prosser [1] describes a tort, in part, as a "civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages," although he says that "a really satisfactory definition has yet to be found."

If the tort system applies, it would allow a worker whose health has been adversely affected by occupational exposure to a hazardous substance to sue and recover damages from the employer. Thus, if the tort system is effectively applied, it might shift the liability of direct costs of occupational disease from the worker to the firm under certain specific circumstances.

With very limited exceptions, however, the tort system is not a viable alternative in dealings between employees and their employers. All states have legislation providing that Workers' Compensation is either the exclusive or principal remedy available to employees against their employers. Thus, under tort law, workers with an occupational disease caused by exposure to a hazardous substance can only file a product liability suit against a third party manufacturer (e.g., Johns Manville), processor, distributor, sales firm, installer, agency, or contractor. It is often difficult, however, to demonstrate a direct link between an exposure to a hazardous substance and the illness.

In order to pursue litigation successfully, there must be specific knowledge of the magnitude and duration of a worker's exposure to a hazardous substance, as well as the causal link between the disease and the occupational exposure. Usually, it is extremely difficult to isolate the role of occupational exposures in causing the disease, especially if workers are exposed to many toxic substances. This difficulty is further compounded by the long latency periods that are frequently involved. In addition, the liable party must be identifiable, but workers may have several employers over a working lifetime. The burden of proof that an occupational exposure to a hazardous substance occurred, that a specific employer is the liable party, and that the exposure level was significant may prohibit the individual from initiating the suit.

The costs associated with producing information and with litigation itself may be quite substantial. First, information is a public good, which means that once produced it can be transmitted inexpensively to any number of individuals without diminishing the quality or quantity of the information. It is, therefore, difficult to control distribution once the information is produced. A producer of information may find that information produced at great expense can be acquired freely by potential customers, and that consequently, the market for the information has virtually disappeared. As a result, public goods are typically underproduced relative to what is considered economically efficient. This general undersupply of information adversely affects the workers' awareness of the cause of their illness and thus reduces the likelihood that they will pursue tort liability suits.

Second, legal proceedings impose costs on both plaintiffs and defendants. In deciding whether to sue, the tort victim must be sure that the size of the claim will be large enough to cover legal expenses. In effect, the plaintiff is likely to face substantial transaction costs in the form of a contingency fee, commonly 33 percent, plus additional legal expenses. The accused firm must also pay for its defense.

The majority of occupational disease tort activity has involved workers exposed to asbestos. To date, about 25,000 individual plaintiffs have filed asbestos lawsuits in the country. These employees avoided the exclusive remedy of Workers' Compensation by suing suppliers of asbestos instead of employers. A report prepared by the Research Triangle Institute entitled, *Tort Liability and Worker Health: An Examination of the Economic, Legal, and Scientific Issues Surrounding the Occupational Disease Protection Afforded by Tort Law* [2], contains some data pertaining to legal costs and the size of awards. One investigator, for example, found that an average ratio of legal costs to proceeds was 37 percent for a sample of cases. The data, however, do not separate legal fees paid by the defendants and plaintiffs.

Insurance and liability costs are not borne in full by the specific employer responsible for the risk involved. For firms that are insured, the premium determination process is such that premiums only partially reflect changes in risk associated with changes in exposure to hazardous substances. This lack of complete adjustment is the so-called "moral hazard problem," which is the risk that arises from the possible dishonesty or imprudence of the insured. As the insured firm has paid an insurance company to assume some of the risks, that firm has less reason to exercise the diligence necessary to avoid losses. Transfer of risk is a fundamental source of imperfection in markets.[1]

For firms that self-insure or carry liability insurance with a large deductible, the costs of a single claim may be fully borne by the firm. Very small firms, and large firms with a large number of claims, however, may fail to meet the full costs by declaring bankruptcy. For example, the Johns

[1] For a general discussion of moral hazard as a source of market failure, see Arrow [4] and Spence and Zeckhauser [5]. For applications of this concept to employee health and safety, see Chelius [6], Rea [7], and Conrad and General Research Corporation [8, Section 5.1].

Manville Corporation [8] declared bankruptcy to avoid massive claims associated with asbestos-related disease. Although the firm experienced a sharp decline in the value of its stock, it is still in business, while its obligation to pay asbestos-related claims is in considerable doubt. Other asbestos producers including U.N.R. Industries, Inc. and Amatex Corporation have followed the example of the Manville Corporation by filing for bankruptcy [9], further reducing the chances that their workers or others who contract asbestos-related diseases will collect Workers' Compensation or tort liability awards.

Workers' Compensation

The Workers' Compensation system is a result of the perceived inadequacies in liability or insurance systems to compel employers to prevent occupational disease or compensate workers fully for their losses. The system was designed to internalize some of the social costs of production, but in reality, it has fallen short of compensating workers adequately for occupationally related disease. Thus, society shares the burden of occupationally related adverse health effects, premature mortality, excess morbidity, and disability through taxpayer support of social programs such as welfare, Social Security disability payments, and Medicare.

Compensation tends to be inadequate, especially in permanent disability cases, in view of the expiration of benefit entitlements and the failure to adjust benefits for changes in a worker's expected earnings over time. As of January 1987, 8 states still restricted permanent disability benefits either by specifying a maximum number of weeks for which benefits could be paid or by imposing a ceiling on dollar payments [10].

At present, time and dollar restrictions on benefit payments are even more prevalent in the area of survivor benefits. The duration of survivor benefits is often restricted to 10 years, and dollar maximums on survivor payments range from $7,000 to $60,000. In addition, it should be noted that if the employee dies quickly from the occupational illness and has no dependents, the employer need pay only nominal damages under Workers' Compensation (i.e., a $1,000 death benefit).

Finally, in spite of current statutory protection, disability from occupational diseases represents a continuing, complex problem for Workers' Compensation programs. Occupational diseases may take years to develop, and more than one causal agent may be involved in their onset. Consequently, disabilities resulting from occupationally induced illness often are less clearly defined than those from occupationally induced injury. As a result, Workers' Compensation is often a weak remedy in the case of occupational disease. For example, as recently as April 1983, the U.S. Supreme Court refused to hear an occupational disease case *(Richard D. Bunker* v. *National Gypsum Co.)* involving a worker who was diagnosed as having asbestosis 23 years after the expiration of the 3-year time limit allowed by Indiana law for filing a compensation claim [11]. Indeed, there is some evidence indicating that the great majority of occupationally induced illnesses are never reported or compensated [12].

The insurance premiums paid by a firm under the Workers' Compensation system are generally not experience rated—that is, they do not reflect the individual firm's job safety and health record. About 80 percent of all firms are ineligible for experience rating because of their small size. Such firms are class rated, and rate reductions are granted only if the experience of the entire class improves. Even when firms have an experience rating, the premiums paid may not accurately reflect the true economic losses. Segregation of loss experience into classes is somewhat arbitrary, and an individual firm may be classified with other firms that have substantially different normal accident rates. An experience rating is generally based on the benefits paid to workers, not on the firm's safety record. Thus, employers may have a greater incentive to reduce premiums by contesting claims than by initiating safety measures.

In summary, the Workers' Compensation system suffers from several defects that seriously reduce its effectiveness in providing incentives for firms to create safe and healthful workplaces. The scheduled benefits are significantly less than the actual losses to the injured workers, and recovery is often very difficult in the case of occupational diseases. Thus, the existence of a Workers' Compensation system limits an employer's liability significantly below the actual costs of the injury. In addition, premiums for individual firms are unlikely to be specifically related to that firm's risk environment. The firm, therefore, does not receive the proper "signals" and consequently fails to invest sufficient resources in reducing workplace injuries and illnesses. The economic costs not borne by the employer are borne by the employee or, as is often the case, by society through public insurance and welfare programs.

Standards of Other Organizations

Traditionally, representatives of professional organizations have collectively developed voluntary guidelines to assist members in maintaining safe and healthful working conditions for their employees. These guidelines are widely disseminated among members of the organizations and, at times, have been adopted as guidelines by organizations beyond the initiating one as well as by industry groups. In some cases they have become the *de facto* industry standard. Three professional organizations have developed voluntary guidelines in the form of exposure limits for chemical substances: The American National Standards Institute (ANSI); the American Industrial Hygiene Association (AIHA); and the American Conference of Governmental Industrial Hygienists (ACGIH). ANSI has withdrawn its earlier hazardous substance standards and has stated it does not intend to publish any others. The AIHA has a rather limited list of recommended limits. However, the ACGIH has published an extensive list of threshold limit values (TLVs) for many years. The ACGIH is recognized throughout the world for its members' expertise and contribution to industrial hygiene.

In May 1971, OSHA adopted as Federal health standards the exposure limits recommended by ANSI and ACGIH for 425 chemicals. Since that time, advances in scientific knowledge have demonstrated that those limits are not always adequate to protect employee health. Consequently, the ACGIH, the professional organization which continues to develop TLVs, has changed its recommendations yearly to reflect later information. However, adherence to the TLVs developed after 1971 is purely voluntary. Except for imminent hazards, there is no sanction for failure to comply with the limits and many employers have not adopted practices which would control employee exposure to these new levels.

In addition to professional organizations, international bodies such as the European Economic Community, the International Labor Organization, and the World Health Organization have recommended exposure limits for some hazardous substances. While these limits may not be as widely known in the United States as those of U.S. professional organizations, they are made available to the industrial hygiene community through professional journals and meetings. Within the U.S., the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health and Human Services has published recommended exposure limits (RELs) for a number of chemicals. These are publicized through NIOSH Current Intelligence Bulletins and other publications which are widely disseminated.

Although the ACGIH TLVs and the NIOSH RELs are widely recognized by health professionals and employers alike, OSHA has found that some employers are not complying voluntarily with the newer TLVs, the RELs, or the standards of other bodies. Chapter III discussed OSHA's estimates of the extent of exposures in excess of the TLVs, and the adverse health effects resulting from the exposure. OSHA believes that significant numbers of employees are exposed to chemicals at levels exceeding those recommended by other organizations, and that OSHA cannot rely on employers to comply voluntarily with the recommendations. Therefore, OSHA concluded that this nonregulatory alternative is not generating the optimal level of occupational health.

References

1. Prosser, William Lloyd. *Handbook of the Law of Torts.* 4th ed. St. Paul: West Publishing Company, 1971. 1208 Pg.

2. Morris, G.E. *Tort Liability and Worker Health: An Examination of the Economic, Legal and Scientific Issues Surrounding the Occupational Disease Protection Afforded by Tort Law, Final Report.* Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis. Research Triangle Park, North Carolina: Research Triangle Institute, 1982.

3. *Crandall P. vs. Eureka Fluid Works.* U.S. District Court, D. Arizona, No. 81V 82-083-TUC-RMB. September 16, 1983.

4. Arrow, K.J. *Essays in the Theory of Risk-Bearing.* Chicago: Markham Publishing Company, 1971. 278 Pg.

5. Spence, M., and Zeckhauser, R. "Insurance, information, and individual action." *American Economic Review.* 61:380-387, 1971.

6. Chelius, J.R. *Workplace Safety and Health: The Role of Workers' Compensation.* Washington, DC: American Enterprise Institute for Public Policy Research, 1977.

7. Rea, S.A. Jr. "Workmen's compensation and occupational safety under imperfect information." *American Economic Revue.* 71:80-93, March 1981.

8. Conrad and General Research Corp. *Employer Compensation and Control Systems, Final Report.* 1982. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration. Pittsburgh: Conrad Research Corporation, and McLean, Virginia: General Research Corporation, 1982.

9. "Manville's bankruptcy ploy" *Dun's Business Month,* October 1982.

10. *1987 Analysis of Workers Compensation Laws.* Prepared by the U.S. Chamber of Commerce. Washington, D.C., 1987.

11. Young, L.R. "Job-related disease case refused" *J Commerce,* April 18, 1983.

12. Discher, David P.; Kleinmann, G.G.; and Foster, P.J. *National Occupational Hazard Survey-Pilot Study for Development of an Occupational Disease Surveillance Method.* Report No. NIOSH-75-162. Sponsored by the National Institute for Occupational Safety and Health. Department of Environmental Health, Seattle: University of Washington, May 1975.

V. Technological Feasibility

Feasibility Determination

This chapter presents a technological feasibility analysis of industry's ability to meet OSHA's proposed permissible exposure limits (PELs) for a wide range of occupational health hazards. These PELs would include limits on airborne concentrations of substances, and in some instances, direct contact of the skin with the substance.

The control of workplace exposures to toxic chemicals involves combining a variety of standard techniques to solve a situation-specific problem. OSHA believes that existing engineering controls are available to reduce exposure levels to new proposed levels. Standard controls have been adapted in numerous situations to solve situation-specific problems.

In this chapter, a number of process situations where airborne exposures have been controlled by the use of engineering controls are described. OSHA has found examples of successful engineering controls for each of the processes identified in the sample survey and presented in Supplement 2.

Types of Controls

In general, three basic types of controls may be employed to reduce employee exposures:

- Engineering controls
- Work practices and administrative reforms
- Personal protective equipment

Consistent with OSHA regulations and policy, this chapter examines the feasibility of engineering controls and work practices to control employee exposure, in preference to personal protective equipment.

Engineering Controls

Engineering controls involve the use of: Local exhaust ventilation; general ventilation; isolation of the worker and enclosure of the source of emissions; process modifications; equipment modifications; and substitution of non-hazardous chemicals. These methods may be used alone or in combinations of any two or more controls depending upon the needs of a specific situation. Variations in situations usually result from the type of process being used and the number of chemicals in the air. However, these controls are considered standard techniques which will effectively control these variables either by themselves, or coupled with changes in work practices.

Ventilation

Perhaps the most widely used technique for controlling chemical exposures is the use of ventilation. General ventilation uses the movement of air within the general work space to displace or dilute the contaminant with fresh outside air. General ventilation is not typically the preferred control method in most operations due to the large volumes of air movement required. Local exhaust ventilation uses much smaller volumes of air, exhausted from the point at which contaminants are generated to remove the contaminant at the source.

Isolation

Isolation involves placing a physical barrier between the hazardous operation and the worker. Many modern, automated manufacturing processes are now fully enclosed in ventilated cabinets. The effectiveness of such a control technique depends on the frequency with which the workers have to enter the enclosure during normal operations. In other situations, rather than placing the process or machine in an enclosure, the worker may be put into a controlled atmosphere enclosure. Many processes which involve potential chemical exposures are operated remotely by operators in air conditioned booths.

Substitution

Substitution refers to the replacement of a toxic chemical in a particular process or work area with another, less toxic product. Properly applied, substitution can be a very effective control technique. However, care must be taken to ensure that the proposed substitution performs in a similar manner to the product being replaced. In addition, it is essential that the substitute be carefully evaluated to

[8] Johns Manville Corporation, formerly the world's largest asbestos manufacturer, filed for Chapter XI protection under the Federal Bankruptcy Law in August 1982. The company was financially solvent when it filed for bankruptcy but estimated that it would ultimately face a cost of more than $2 billion to settle 52,000 asbestos-related claims. In the meantime, the company's assets have been frozen and successful plaintiffs cannot collect awards [9].

ensure that in controlling one hazard, that another, different hazard is not inadvertently introduced. The substitute must also be compatible with existing manufacturing equipment and processes.

The success of these techniques will depend on the physical properties of the chemicals and emissions encountered (boiling point, vapor pressure, etc.) and the process operating conditions (temperature, pressure, etc.). In some cases, particularly with cleaning solvents, substitution may provide the quickest and most effective means of reducing exposure. In other situations where particular physical or chemical properties are required, major effort may be required to alter processes or install or expand local or general dilution ventilation. The extent to which engineering controls may be effectively used will vary from industry to industry, as well as plant to plant within an industry.

Work Practices and Administrative Reforms

Work practice controls include housekeeping procedures, material handling or transfer procedures, leak detection program, training and personal hygiene. In many cases, it is possible to bring about substantial reduction in employee exposures by applying work practice controls.

Personal Protective Equipment

Where it is impractical to apply engineering or work practice controls, or where their application will not consistently reduce employee exposures below the proposed PELs, personal protective equipment may be used to prevent and reduce exposures.

Industry Engineering Controls

To determine whether engineering controls and work practices can reduce employee exposures to the proposed PELs, OSHA, through its contractors, examined typical work processes found in a cross section of industries. Supplement 2 contains a list of processes identified in the nationwide sample survey of over 5,300 firms. Using this list, industry experts identified which major processes had potential hazardous exposures and may require additional engineering controls or different work practices in order to achieve the proposed PELs. To assess whether those would be feasible for the processes within the industry group, records maintained by OSHA and NIOSH were searched to identify examples of the successful application of controls to these processes. Based upon the judgments of the industry experts, a determination was made as to the probable feasibility of achieving the proposed PELs.

The following are examples of feasible methods of controlling exposure to hazardous substances encountered in processes used in the SICs for which costs and benefits have been identified. Unit costs for these similar controls were used as the basis for the cost projections in Chapter V.

SIC 20—Food and Kindred Products

The levels of ammonia gas encountered in poultry processing (SICs 2016 and 2017) were controlled by the appropriate placement of cut-off valves to freezer coils and by the use of an alarm detection system to monitor ambient air conditions.

In beet sugar refining (SIC 202), exposure to calcium oxide was controlled by replacing slide gates with rotary feeders. A milk products plant (SIC 2023) controlled carbon dioxide exposures by using a hood which fully enclosed the chiller-conveyor line and exhausted air from the system to an exterior baghouse.

Carbon dioxide levels resulting from the use of dry ice were controlled at a meat packing plant (SICs 2011 and 2013) by a stainless steel exhaust hood. Similarly, a poultry dressing plant controlled carbon dioxide emissions by using a slotted blood exhaust ventilation system.

A food processing plant (SIC 202) controlled carbon dioxide exposure by increasing the number of air changes in the packaging room.

SIC 21—Tobacco Products

Tobacco dust and residual pesticide dusts created during cutting and shredding operations are reduced through the use of local exhaust ventilation. This is also used to control emissions of ethyl alcohol-based chemical flavorings during blending operations.

SIC 22—Textile Mill Products

Textiles are dyed at various stages in their manufacture, including unspun fibers, unwoven yarn, and finished fabric. Workers who prepare fabrics from unspun fibers are of particular concern, since they could be potentially exposed to dyes contained on dusts generated during manufacture. In addition, some dyes possess much poorer fastness to wet treatment than do others; persons who launder such clothing are potentially exposed to dyes. Stringent control measures and work practices can prevent such exposure.

Several generally acceptable practices for the control of hazardous materials can be used wherever there is potential for exposure. For example, pressure failure alarms for closed systems and exhaust ventilation can rapidly indicate a system failure that might result in the release of substantial quantities of dyes. Continuous flow indicators, such as water or oil manometers properly mounted at the juncture of a fume hood and duct throat and marked to indicate acceptable airflow, will give a readily observable indication of decreased efficiency in the ventilation system for the hood. Wet methods, vacuum cleaning, or other methods that do not lead to redispersion of settled dust should be used for plant maintenance and sanitation. Dry sweeping or blowing with compressed air should be prohibited.

SIC 23—Apparel

Chemical exposures in the apparel industry occur principally as a result of three exposure sources: Spot cleaning, dry cleaning and contact with treated fabrics.

Spot cleaning and dry cleaning operations can be controlled with the use of local exhaust ventilation and general ventilation. Work practice improvements help reduce solvent exposure during transfer operations. Routine scheduled maintenance is used to detect and control leaks from door gaskets and seals. Contact dermatitis is reduced through the use of disposable gloves and adherence to a personal hygiene program.

SIC 24—Lumber and Wood

The primary worker exposure in the lumber and wood industry is wood dust. For the operation of large equipment (e.g. in debarking and sawmill activities), the operator can be placed in an enclosed control booth, or in the case of moving equipment (e.g. cherry pickers, loaders and cranes), the operator can be located in an enclosed cab. In both cases, air would be filtered and conditioned. In the case of felting or matting process lines, or such equipment as belt sanders, the equipment can be enclosed or hooded and vented to a baghouse. For smaller equipment, such as variety saws, tenoners, and dovetailers, hoods or various types of negative pressure (or combinations of positive and negative pressure) local ventilation devices can be used to control wood dust. In the case of hand-held sanders, a vacuum system can sometimes be applied to the process. Some other wood dust generating equipment can also be enclosed (e.g. planers), but this is generally done for noise control.

SIC 25—Furniture

In the metal office furniture manufacturing sector (SIC 2522), air contaminants from the coating process have been controlled. Prefabricated sheet components for file cabinets are prewashed and coated with polyester or acrylic on a high speed conveyor line. The application process includes manual spraying of cabinets with airless atomizing sprayers and electrostatic spray guns on reciprocators. Manual spraying operations are performed in downdraft booths. Filtered fresh air is supplied through the open top of the booths and removed at the bottom through a water curtain by exhaust fans mounted on the roof of the booth. Spray headers in exhaust plenums clear paint mist from the air stream. Automatic spray booths contain electrostatic spray guns and side draft ventilation. Furthermore, organic solvent vapors in the paint mixing and storage room are controlled by equipping each drum with a heavy barrel cover, an integral agitator, sealed pipe openings, and a closeable access line.

SIC 26—Paper and Allied Products

Pulp mills occur primarily in SIC 2611, but can also be present as part of the operations in SICs 2021 and 2631. High control costs could potentially be incurred because of the large quantities of chemicals used in breaking down pulp to form cellulose and the reactions that occur in the digesting process between these chemicals and the substances contained in the wood fiber. Large quantities of chemicals are also used in the bleaching operations. The digesting and bleaching operations are also very extensive. Large quantities of pulp are generally produced from wood in these mills either for captive use or for shipment to paper and paperboard mills. The type of controls that would be used include ventilation, enclosure and/or process change, but less likely the latter. Various engineering controls have been used by the paper mill industry to prevent the mixing of toxic chemicals in sewer lines. Tanks containing the hazardous chemicals have been isolated and surrounded by dikes. Discharge lines have been re-routed to prevent accidental mixing.

SIC 27—Printing and Publishing

Exposure to solvent vapors in the silk-screening sector of a printing plant (SIC 2751) was controlled by installing a new ventilation system and an exhaust fan.

SIC 28—Chemicals and Allied Products

The plastic materials and resins manufacturing sector (SIC 2821) used a tank with a hinged cover and fixed ductwork as an exhaust when dumping dye and additives into hot methanol.

Dust exposure during the bag opening operation in paint manufacturing (SIC 2851) was controlled by modifying the hood to increase dust capture. Likewise, a new dust collection system (collection hoods) with increased capture velocity was installed for use in the bagging and packaging of pesticides (SIC 287).

Pharmaceutical manufacturers (SIC 2834) addressed the problem of nuisance dust particles by fitting vacuum crescents and elephant trunks on point sources, by fitting chutes with covers, and by placing vacuum attachments on receiving drum covers. Additionally, monitoring was performed from an outside room.

In order to reduce employee exposure to sulfur dioxide while producing sulfur dioxide gas (SIC 2819), sample collection units were enclosed and attached to a fume collection system. Sample waste was recycled to prevent open exposure in process areas. Electronic spent acid interface detectors were installed to eliminate the need for employee visual inspection of intermittently pulled samples. To control TDI exposure in urethane foam manufacturing (SIC 2822), the bun conveyor was enclosed and exhausted. Employee exposure was limited to the startup and finish procedures when installing and removing bun support. A mechanism was designed to support the bun, which eliminated the need for it to be done manually.

The production of paints (SIC 2851) is a batch procedure which involves the following steps: Prebatching, mixing, dispersing, tinting and shading, filling, and storage or shipping. When prebatching or mixing, an employee will slit a bag of dry pigment with a knife and either scoop out the contents for weighing or dump the pigment into the mixer. In some cases, pigments are received in a slurry form and are piped directly into the mixer. Solvents and other raw materials are added into the mixer. Once combined, the mixture is in a past or slurry form. This mixture is then thoroughly dispersed in a roller, ball, or sand mill or a high-speed disperser all of which are generally closed processes. The paste is transferred to a storage tank where thinning or other agents are added. The paint is later drawn off, filtered and packaged in cans or drums. Airborne dust exposures to components in dry pigments occur during the prebatching and mixing operations when the bags of pigments are opened and dumped. Exposure to chemicals in dry pigments can also occur from pigment spillage and empty bag flattening and disposal. Once the batch is in solution in the mixer, there are no further dust emission points. Exposure to solvents can occur during addition of these ingredients to the mixing tanks, during any leaks or spills, and during packaging.

Local exhaust ventilation would be used to control exposures to dusts and fumes in the paint production processes. Pigment dust exposures at the dumping station can be controlled with the use of a vented enclosure kept under negative pressure by a ventilation system. Empty bags would be manually ejected through a side opening into a large plastic disposal bag to minimize dust generation during bag flattening and disposal.

Exposures to solvents would be minimized with the use of portable hoods attached to flexible ductwork. These ventilation hoods could be placed over the liquid dumping process and also the packaging operations if the percentage and volatility of the solvents would result in exposures.

SIC 29—Petroleum Refining

In order to assure the quality of petroleum products and determine quality of waste streams, petroleum refiners must sample their process streams periodically. As with maintenance, workers that sample process streams are at risk of being in close contact with a variety of chemicals. Controls for this operation involve sampling boxes that vent gases and vapors away from the operator and/or shield the operator from accidentally splashed or spilled material.

Process stream samples are taken in the laboratory to determine if their qualities lie within acceptable limits. As laboratory workers perform analyses, they can be exposed to various organic and inorganic chemicals if appropriate engineering controls are not in place or if proper procedures are not used. Exposure controls include exhaust fans and laboratory ventilation hoods.

SIC 30—Rubber and Miscellaneous Plastics Products

To control dust while cutting reinforced plastic, a local exhaust fan was installed at the back of the cutting instrument.

The materials to be mixed in a Banbury mixer used in the production (SIC 3011) are charged into a hopper and then into a chamber which contains the mixing rotors. The rotors mix the materials into a homogeneous mixture, and then are discharged through a drop

door or slide gate. When the hot rubber mixture is discharged, it emits an aerosol which looks like smoke. These aerosols are typically well controlled. The operations and equipment used to charge the mixer can be sources of dust exposures. The powdered chemicals in the operation are weighed in rigid plastic containers or paper bags, all of which are either emptied or dropped into the mixer by workers. This dropping, the handling of these contaminated containers or the crushing of the bags which contained chemicals, all expose the workers to dust. When the rubber and chemicals are charged using a charging conveyor, a dust exposure can result from the use of kaolin as an anti-tack agent. The conveyor belt becomes contaminated by the kaolin. When workers place materials on the conveyor, dust puffs into the worker's breathing zone.

One design which minimizes dust dispersion is the use of an automated batching system to isolate the worker from the dust. Other techniques include the use of rubber bins on a tilt stand to charge carbon black rather than the use of screw conveyors. The kaolin can be replaced by a soap anti-tack agent. To capture the aerosol fumes, a local exhaust hood can be placed by the drop gate between the legs of the mixer. Exhaust hoods may be placed by the hopper vents, on the carbon black charge chute, about the charging door and surrounding the dust ring seal on the mixer ram.

SIC 31—Leather and Leather Products

Toluene exposure in the shoe manufacturing industry (SIC 314) was decreased by revising standard work practices to reduce the contact time between leather and toluene. This also reduced the generation of vapors.

SIC 32—Stone, Clay and Glass Products

In batch mixing of raw materials for glass production (SICs 321 and 322) drysweeping and/or the use of compressed air for cleaning may contribute substantially to the employees overall exposures. By substituting vacuum cleaning systems, worker exposure can be reduced.

SIC 33—Primary Metals Industries

In the primary metal industries (including SICs 331, 332, 333, and 334), the overall size of the process equipment and buildings makes contaminant control difficult. Local exhaust and general ventilation systems used in this industry group must move large volumes of air as compared to similar systems in other industries. Baghouses and other air cleaning devices used in such systems must also be proportionally larger. This effect of scale translates to higher than average control costs, but use of ventilation can control exposures to the proposed levels.

SIC 331—Basic Steel Products

Primary metal products manufacturing (SIC 331) controlled dust with a side draft enclosure exhaust hood and a circular backdraft booth, both driven by a blower-dust collector. Ventilation was provided by a freely suspended hood and conical hood.

The replacement of slide gates on transfer hoppers with butterfly-type valves assisted in dust control in the material handling of electrometallurgical products (SIC 3313).

SIC 332—Iron and Steel Foundries

The arc air process in steel foundries (SICs 3324, 3325) was used during the processing of steel castings to control fumes. In order to ventilate the arc air booths, fumes were exhausted through the back of the booth and fresh air was supplied from above and behind the operator.

Steel foundries (SICs 3324, 3325) used an overhead canopy hood during the induction melting of steel to control fumes. The hood consisted of sheet metal barriers extending down from the roof to the top of the hot metal ladle monorail. Thermal drafts carried the fumes upward into the hood where they were exhausted by ventilators. Mancooler fans behind the workers pushed some fumes under the hood.

Emissions during the oxy-acetylene torch cutoff of risers from steel castings was encountered in iron and steel foundries (SIC 332). Castings were cut in a specially designed booth with a rear exhaust flow and a frontal air supply flow. Air pressure from the cutting nozzle of the torch was directed toward the rear exhaust port for effective dust and fume control.

Fume control of a sandwich-type inoculation in iron foundries (SICs 3321, 3322) was achieved through the use of a commercially available canopy hood. The fume-laden air was exhausted through mobile duct work and cleaned by a fabric collector before being discharged into the surrounding environment. The hood tilted with the furnace so that it always was directly over the ladle for fume capture.

Fume, dust, and gas control from the melting of iron (SICs 3321, 3322) in an arc furnace was achieved by the installation of a hood. The exhausts collected by the hood were filtered by cloth filters before being released into the external environment.

Control of dust and gas emissions from phenolic urethane cold box coremaking in iron foundries (SIC 3321, 3322) included local exhaust ventilation which provided negative pressure at the core box. Parting line gaskets, blow seals, and stripper pin o-rings were regularly maintained for emission control. Exhaust outlets captured excessive dust.

In an iron foundry (SICs 3321, 3322), hot combustion gases were exhausted and flowed through an after burner, cooled, and then passed through a dust collector. Tapping emissions were captured by a canopy hood. General ventilation was provided by mancooler fans.

SIC 333/334—Primary and Secondary Non-Ferrous Metals

Control of emissions from aluminum ore handling and storage (SIC 3334) was addressed with an unloader which uses movable vacuum nozzles to remove alumina and coke from barges. The ore was moved on an enclosed conveyor which was equipped with air exhaust hoods at loading and transfer points. The operator can be situated in an air conditioned cab.

Reduction of alumina dust emissions during ship unloading (SIC 3334) was achieved by automating and controlling operations from an enclosed control booth. Furthermore, mixing operations were hooded and exhausted.

During anode rodding in prebake plants during primary aluminum production (SIC 3334), spent butt remover, butt crushers, cast iron remover, and shot cleaner were exhausted to a bag filter dust collector. Use of induction furnaces and exhaust hooding reduced metal fume exposure during melting. Hoods and slotted hoods were also used. The operator can maintain controls from an enclosed console.

Control of air emissions during potline operations of aluminum smelters (SIC 3334) was achieved through the use of potroom ventilation and automated processes such as the use of hooding which consists of curved and ribbed shields, the employment of a dual draft system, and an exhaust system which leads to a dry scrubber. Other control methods included hooding with rigid air-operated doors which exhausted the emissions through air takeoffs to an expanding duct exhaust manifold which, in turn, was exhausted by a fan. Furthermore, computer-controlled systems existed which could automatically perform production functions without requiring workers to open pots or hood shields above pots.

The mercury cell process may be used in aluminum smeltering (SIC 3334) to produce chlorine gas from brine water. To reduce chlorine gas exposure as a result of this production, the diameter of the brine header was increased to accommodate the gas phase above the liquid phase; the number of cells in the system was increased; the pH of the brine was adjusted; the compressor controls were modified to accommodate surges in pressure; inlet box covers were replaced with better covers; and the brine feed nozzle flange was modified.

Several engineering controls have been recommended for copper smelting locations (SICs 3331, 3341). A preventive maintenance program can be developed and implemented to insure that ventilation and conveyor systems are operating properly. Dead beds can be installed in chutes to break the fall of material and reduce the level of dust generated. Pneumatic aerators can be installed to eliminate the need for manual air lancing in bins and chutes. Industrial vacuum systems can be used.

Collection hoods can be installed at each conveyor transfer point at copper smelter sites (SICs 3331, 3341) to control copper particulate. Primary copper smelting conveyor skirting can be properly adjusted, and fingers installed at discharge points. Inspection doors should not be left open, and the lunchroom/breakroom should be located outside of the reclaim building. General measures throughout copper smelting plants (SICs 3331, 3341) to control copper dust emissions included: Using local exhaust ventilation for localized sources, and general exhaust ventilation for areas with unidentifiable sources; enclosing conveyor belts and transfer points; enclosing the air conveying system for the transfer of flue dusts; enclosing workers' operating vehicles; installing secondary hoods on converters; prohibiting the blowing out of converters while on stack; performing preventive maintenance on balloon flues; not allowing converters to remain rolled out for extended periods of time; and providing cleaning rooms with filtered, tempered, positive pressure air. When hauling slag from the metal smelting operation, slag can be granulated after skimming with high velocity water; a chemical dust suppression system can be used when crushing any cooled slag; and the slag crew can ride downwind from fumes. Further engineering controls include constructing pulpits for operators; close-coupling the ventilation system to the Larry car; using dead beds in calcine loading; enclosing a portion of the building to block wind; and vacuuming the superstructure of the Larry car and any spills.

Controls used to decrease exposures to arsenic, dust and sulfur dioxide at primary copper and lead smelters (SICs 3331, 3332) included upgrading the present ventilation systems; operating electric furnaces at negative pressure; eliminating air lancing as a method of removing concentrates from receiving hoppers; using pneumatic aerators or belt wipes; using wet techniques in storage; reclaiming concentrates; and improving general housekeeping.

Exposures to lead, cadmium, and arsenic at lead and copper smelters (SICs 3331, 3332) were reduced by the replacement of old sintering machines with ones equipped with dust and fume controls and by placing a cover over the charge hole when slag was not being charged into the reverberatory furnace.

Use of a multipurpose crane with an enclosed cab reduced operator exposures to air emissions at carbon bake plants (SIC 3334). The cab was supplied with filtered conditioned air. The crane was equipped with a vacuum system which could aspirate cake from ovens and separate fines.

Controls for exposure to soluble platinum salts in precious metal refining (SIC 3339) included local exhaust ventilation used in jaw crusher and recovery sampling, maintenance of a closed system in refinery through use of glove box filters, the use of borohydrate solution to wash down spills and reduce salts to insoluble platinum metal, and mandatory showers and daily clothing changes.

Controls for the primary non-ferrous metals industry (SIC 333) included local exhaust ventilation systems; general dilution ventilation; covers, hoods and exhaust systems for belts, material handling and transfer systems; enclosure and exhaust of sinter machine area; local exhaust and dilution ventilation for the reverberatory and refinery areas.

The reduction of exposures to inert cadmium and silver dust during a ball mill operation was accomplished by building and equipment process changes such as local exhaust ventilation, hood enclosure of process or worker, and air cleaning equipment.

In the secondary smelting and refining of non-ferrous metals (SIC 334), particulate emissions from a dross mill were reduced by making modifications to the dust collection system and to air volumes drawn through the baghouse. Engineering controls used include increasing fan efficiency through the use of sheaves and belts, installing water sprays on crusher infeeds, running new pipe to localized dust areas, installing additional cleanout ports, and replacing the top of the baghouse.

Employee exposure to nuisance dust from zinc smelters (SIC 3333) was controlled by replacing the dross handling operation with a dross mill. The crusher was replaced with a rotating mixer, thus eliminating fugitive dust from this part of the process.

SIC 336—Non-Ferrous Foundries

Fumes were controlled during the casting of bronze in foundries (SIC 3362) through the use of enclosing hoods. A mobile hood exhausted the ladle at all hot metal transfer points. Flexible ducting connected the hood to a traveling exhaust carriage.

SIC 339—Miscellaneous Primary Metals Products

Manufacturers improved dust control using closed screw conveyors in the transport and manufacture of iron powder (SIC 3399). Open conveyor belts were changed to a closed screw conveyor system. Duct work was totally replaced. Local exhaust was provided for the rotary screens. New baghouses and electrostatic precipitators were also installed.

SIC 34—Fabricated Metal Products

Control of copper dust at a cookware manufacturing plant (SIC 3469) was addressed by unclogging the ventilation system, repositioning cooling fans, and instituting weekly ventilation system inspection and maintenance programs.

A plating shop (SIC 3471) uses extensive local exhaust ventilation to control worker exposure. Each part to the plated undergoes some surface pretreatment. This can consist of shot-peening, abrasive blasting, degreasing, wax or tape masking and other treatments. Parts are manually placed into the tank using an overhead hoist for large parts.

The tanks are set on top of concrete ducts. The floors of the shop and the aisles between the tanks are reinforced concrete, however the area around the perimeter of the tank is open to the basement and covered by steel grating. The ducts are connected to a fan on the roof of the building.

The largest of the hard chrome tanks, holding over 1000 gallons of plating solution, has a two sided lateral exhaust ventilation system. The slot on each side consists of a series of seven slots. The slots are set back from the edge of the tank but an overhanging hood extends to the edge of the tank. A second tank has both a two sided slot ventilation system and a cover. This two piece

cover is hinged to a ventilation manifold and extends beyond the front and rear edges of the tank.

Arc welding is performed in many SICs as an auxiliary process and in several industries such as fabricated structural metals (SIC 3441), as the principal process requiring engineering control. During the welding process, temperatures are sufficiently high to vaporize some of the base material of the electrode and produce large quantities of fumes containing the elements in the electrode and the base metal. Thus welders and other workers in the vicinity are exposed to mixtures of fume-sized particulates and both irritant and toxic gases which in combination may have additive or synergistic physiological effects.

Differences in worker exposure are attributable to a variety of factors including type of welding helmet worn, position of the welding operator, the work environment, arc time, and the availability and performance of ventilation equipment.

Arc time varies greatly due to differences in work schedules, set up times, and the sizes, shapes and types of tasks. Tasks can vary from short-term repairs conducted irregularly to full time production welding.

During arc time the fume is generated within or close to the worker's breathing zone. Background fume concentrations could also be significant if a large number of welders are working or the work is being performed in a relatively confined space.

Because of the numerous factors that can influence exposure levels during welding, four different types of controls can be used for various welding situations. The controls include: (1) Local exhaust ventilation for welding in shops; (2) ambient air cleaning devices to minimize background fume concentrations; and (3) a portable blower for use in confined areas.

Local exhaust ventilation configurations include: A welding bench with a backdraft hood for small to medium work pieces; a fixed close-capture hood placed at the back of a work rest table; a portable close-capture system including electrostatic precipitator; or an exhaust hose incorporated into the structure of the welding gun.

Ambient air cleaning devices are designed to lower background welding fumes which escape collection by the local exhaust system. The ambient air cleaner is expected to surpass general dilution ventilation systems in terms of both fume removal and cost.

A portable blower system works by exhausting fumes from a confined space through a large flexible tube.

SIC 35—Machinery

Employee exposure to welding fumes was controlled in the manufacture of pumps (SIC 3561) through the use of an air lux fume eliminator.

In the milling of tungsten carbide tools (SIC 354), the placement of local exhaust ventilation controlled cobalt exposures during the transfer of carbide.

In farm equipment manufacturing and repair (SIC 3523), paint mist was controlled through sophisticated application techniques as applied to downdraft spray booths. The use of heated paint in the painting of hay stack wagons allowed the airless atomization to take place at relatively low paint pressures. This resulted in low droplet velocity with little rebound.

SIC 36—Electric and Electronic Equipment

Electric lamp manufacturers (SIC 3641) have reduced mercury vapor in lighting plants. Glass pellets used as starters for fluorescent lamps were flame sealed after mercury had been injected into them. Overhead suction velocity of the exhaust system was increased to reduce mercury overexposure. Also, a special vacuum cleaner was employed to clean the turntable.

SIC 37—Transportation Equipment

A four-sided enclosure with electrostatic precipitator ventilation was used on the welding table in the manufacture of travel trailers (SIC 3792).

Engineering controls for styrene exposure in the fiberglass boat works industry (SIC 3732) included flexible duct exhaust ventilation that is transportable to the employee's point of operation.

General recommendations in the reinforced plastic boat making industry included local exhaust, the use of styrene-suppressed resins, and good work practices.

In the manufacturing of aircraft engine parts (SIC 3724), a hood was installed above an abrasive cutoff saw to capture the cobalt dust produced.

In the repairing and rebuilding of railroad cars (SIC 3743), present exhaust fans were relocated, cleaned and serviced and "upblast" roof ventilator fans were installed, thus changing the air every 15 minutes.

SIC 38—Instruments

Many fluxing agents are used in soldering and brazing operations during instrument manufacture. In most cases, these fluxes give off acid or alkali fumes when heated that can irritate the skin. Conducting soldering and brazing operations in well-ventilated areas and use of protective clothing and gloves is recommended.

For many soldering and brazing operations, control of fumes and vapors generated by dilution ventilation will be sufficient. That is, enough fresh air is added to the contaminated air that hazardous concentrations do not develop.

Local exhaust ventilation is the most effective means of control for airborne contaminants produced by the soldering or brazing process. Local exhaust ventilation can be provided by several types of equipment: freely movable hoods, fixed enclosures (booths), and down-draft benches.

A freely movable hood consists of a movable hood attached to a fan. The fan draws air from the work space and exhausts it outdoors, either directly or through a dust collection system. The hoods are normally constructed so that they can be moved into place by the solderer. The air handling system should move air at least 100 feet per minute across the soldering site at even the most remote point from the exhaust opening. It is important that the exhaust hood be placed as near as possible to the work being done. As such, the proper functioning of a freely movable hood is dependent upon good work practices of the solderer.

In some instances soldering or brazing operations carried out in a fixed location can be provided with a fixed enclosure. This is a structure built around the soldering or brazing operation which has a top and at least two sides. A means for drawing air through the work area is provided so that the work space is flushed continuously with fresh air.

Within such an enclosure, work should be arranged and conducted in such a way that the fresh air enters in the enclosure through the worker's breathing zone and then through the work space in which the contaminants are produced. For most fixed enclosures, the air should move at least 100 feet per minute across the entrance to the enclosure.

A third type of local exhaust ventilation system is the down-draft bench or table. The soldering or brazing is performed on a bench or table which has an open grid as the work surface. Air is drawn downward through the grid, into the duct work, and then exhausted.

SIC 39—Miscellaneous Manufacturing

In the manufacturing of hard surface floor coverings (SIC 3996), processes include pre-weighing and blending raw materials, followed by mixing and gelling of the composition in internal batch mixers of the Banbury type or by continuous mixing operations carried out in mixers of the extruder type.

Potential worker exposures may result from dusts of the raw materials as they are handled (automatically or manually) prior to and during charging of the mixer. Fumes and dusts can emanate from leaks on the mixer and from hot, freshly mixed material as it is discharged.

The types of exposures depend on the substances used, though dusts of any type can constitute exposure to nuisance particulates. Applicable exposure controls include local exhaust ventilation at the mixer doors and over conveyor transfer points. The use of good working practices is extremely effective in controlling exposures during the opening of the mixers and the pouring of materials.

SICs 40, 45, 47—Transportation

Cleaning and coating operations are conducted in rail (SIC 40), and air transport industries (SIC 45), as well as in transportation services (SIC 47). These operations require the application of cleaning agents and/or the sandblasting of particles prior to the application of paints or coating. Spraying processes are required for the application of both the cleaning agents and the paints and coatings.

Rail car applications, for example, are generally performed within a large facility, part of which is established as a spray room. The cars are rolled into an enclosed spray area. In manual spray painting rooms, the operator is required to enter and move about the enclosure during spraying. Automatic spray rooms (or booths) are similar but the pressurized spray guns are automatically operated.

Three major spray techniques are used to apply cleaning agents, coatings or paints. These are: Compressed air spraying (low pressure spraying); airless spraying (high-pressure spraying); and electrostatic spraying. The compressed air spray gun atomizes a stream of liquid by impaction with a jet of air. Atomization may take place inside or external to the gun. The air stream and paint droplets intersect the prepared surface. The airless spray gun atomizes the liquid by forcing it through a small orifice under high pressure. The resulting particulate cloud is impelled by the pressure-created momentum toward the surface. Electrostatic spray equipment is based upon the attractive force between two oppositely charged objects. The liquid is atomized by compressed air, airless, or electrostatic techniques. The particles are given either positive or negative charge and the conductive surface to be sprayed is grounded. In general, electrostatic spray techniques result in the lowest exposure levels, followed by airless and then compressed air spraying.

In enclosed spray rooms, particulates enter the operator's breathing zone due to backspray. Exhaust ventilation to control exposure can be designed using down draft or a multiple sidedraft system. Worker positioning in relation to the spray plume is also critical in minimizing exposures. These include minimized line pressure, changing and cleaning of filter banks, enclosure integrity and ventilation maintenance. Personal protective equipment is also generally worn to insure the worker protection.

SIC 49—Electric, Gas and Sanitary Services

Coal-fed power plants present the potential for exposure to coal dust as well as a number of other substances. Coal dust exposure potentially occur in the area where coal is fed into the furnaces. The coal is generally fed into large hoppers off conveyors. Conveyors are filled by front-end loaders from the coal storage area. The operators of the front-end loaders are protected from coal dust exposure with the use of closed, air-conditioned cabs which provide purified breathing air.

SICs 50 and 51—Wholesale Trade

Some firms in this classification receive liquid chemicals in bulk quantities from a tank truck, store them and then redistribute them in smaller containers.

Solvents, for example, emit considerable vapor when poured from one container to another or when a container is being filled, displacing the air in it. Pouring and filling operations are often enclosed to minimize vapor losses (this helps to reduce product loss as well as prevent exposures). In addition, secondary vapor recovery is often incorporated, whereby vapors emitted at the transfer points are captured and returned through a separate circuit to the storage tank from which the volatile liquid is being removed.

SIC 72—Personal Services

To control dry cleaning emissions (SICs 7216, 7217), louvered wall fans and grilled ducts were installed to provide ventilation. Ceiling exhaust fans provided general ventilation. Natural ventilation was provided by through doors in the production area and by louvered panels along walls in the plant. Forced ventilation was provided by ceiling mounted exhaust fans and evaporative coolers. A local exhaust system with a standard single floor pickup exhausted air through a carbon absorption unit to the outside. Gaskets in machinery doors and ductwork needed routine maintenance to prevent deterioration. Various cleaning machines, pressure filter extractors and dryers were used. Dryers and drying cabinets were provided with local exhaust ventilation.

SIC 73—Business Services

Blueprinting and photocopying firms (7332) control ammonia fumes from blueprint duplication machines through use of local exhaust ventilation. The exhaust system is often built into large, high volume machines. Improvements in work practices control exposures during transfer.

SIC 55, 75—Automotive Repair Shops, Dealers

In automobile engine reconditioning lines (SIC 7536), exhaust fans and flexible ducts which extend directly over the engines were installed in order to control carbon monoxide exposure.

SIC 76—Miscelleanous Repair Services

Control techniques for welding fumes (SIC 7692) included a "smoke exhaust" welding gun which captures and removes fumes. These guns have some limitations and are applicable to continuous or semicontinuous flux core or metal inert gas welding operations. Crossdraft airflow was also suggested. The use of a portable fan is not recommended.

SIC 80—Health Services

Many medical and dental practitioners perform surgery in outpatient clinics and private offices outfitted for the procedure. Air contamination in an operating room may consist of waste anesthetic, the propellants of different sprays, scrubbing agents, cleansing agents, methylmethacrylate (released from surgical cement) and the possible decomposition products of the volatile or gaseous agents. The magnitude of gas flow, type of flow circuit and scavenging of waste gases significantly influence the levels of waste gases in the room air. Exposures are usually controlled by general dilution ventilation. Some clinics and offices, which are specifically

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designed for surgical use, may have local exhaust systems installed.

Personal Protective Equipment

In the operations and processes included in Supplement 2 reductions in exposure limits can be achieved through engineering controls and work practice notifications. However, certain generic work activities are more problematical and may require the use of personal protection equipment.

Examples of these are:

Maintenance Activities in all SIC codes. It may be more difficult to control exposures of plant maintenance personnel by using engineering controls except for activities taking place in the maintenance shops. These maintenance employees may work in areas not normally accessed by production workers or may work under conditions which normal production workers do not. Respiratory protection is sometimes the appropriate control technology.

Painting and Coating Activities in all SIC codes. Although spray painting operations are performed in exhausted paint booths, the painting of many larger non-production items, such as construction equipment and heavy machinery, requires that the operator enter the booth. The booth is then primarily a control to prevent migration of the paint spray into other areas of the plant. In these circumstances it is usually necessary to provide respiratory protection to the workers painting.

Exterminating. Exposure of pesticide applicators cannot be controlled through engineering controls because their work does not take place in a fixed place of employment, but rather at a customer's facility. Personal protective equipment and/or work practice controls would therefore be required. EPA has jurisdiction in most situations.

Welding. In certain situations, such as in confined spaces, or where the welder must be positioned directly above the fume plume, welders cannot be sufficiently protected by local exhaust ventilation. Personal protective equipment would be required.

In addition to the above examples, a number of the substances included in this rulemaking carry the designation "Skin." This refers to potential exposure through the skin. Table V–1 presents a list of chemicals for which skin protection would be required. Employees exposed to substances with the "Skin" notation would be required to wear protective equipment, including gloves, long sleeved shirts and coveralls.

Products are commercially available to adequately protect workers from dermal exposure. In some cases the permeability of currently used materials may be inadequate and firms will have to change the specific product now used to one offering greater protection.

TABLE V–1.—INDUSTRIES AND PROCESSES WHERE SKIN PROTECTION HAS BEEN ADDED

SIC No.	Chemical name	Process name
20	CAPTAFOL (DIFOLATAN)	Food Storage and Preservation
	CARBON DISULFIDE	Food Storage and Preservation
24	2-HEXANONE	Coating and Finishing
25	N-BUTYL ALCOHOL	Coating
	2-HEXANONE	Coating and Finishing
	STYRENE (PHENYLETHYLENE)	Lay-up, Molding
26	METHYL ALCOHOL	Chemical Recovery
27	CYCLOHEXANONE	Plate cleaning
	FURFURYL ALCOHOL	Plate cleaning
	2-HEXANONE	Plate cleaning
	HYDROGEN CYANIDE	Plate making/Engraving
	METHYL ALCOHOL	Plate cleaning
28	N-BUTYL ALCOHOL	Blending, Packaging
	CARBON DISULFIDE	Blending, Packaging
	DIAZINON	Blending, Packaging
	DISULFOTON	Blending, Packaging
	2-HEXANONE	Blending, Packaging
	METHYL ALCOHOL	Blending, Packaging
	METHYL PARATHION	Blending, Packaging
	STYRENE (PHENYLETHYLENE)	Lay-up, Molding
30	N-BUTYL ALCOHOL	Finishing, Trimming, Painting
	CARBON DISULFIDE	Compounding, Mixing and Blending
	2-HEXANONE	Solvent Mixing, Molding, Mold cleaning
	STYRENE (PHENYLETHYLENE)	Lamination, Foam Processing
31	CARBON TETRACHLORIDE	Finishing/Degreasing
	DDT	Defoliation/Dissiccation
	2-HEXANONE	Finishing/Degreasing
	HYDROGEN CYANIDE	Beamhouse
	METHYL ALCOHOL	Finishing/Degreasing
	TRIBUTHOCRESYL PHOSPHATE	Finishing/Degreasing
32	CARBON DISULFIDE	Batch preparation
	CARBON TETRACHLORIDE	Batch preparation
	METHYL ALCOHOL	Batch preparation
	STYRENE (PHENYLETHYLENE)	Packaging
	THALLIUM (SOLUBLE)	Batch preparation
	TIN	Final Process
33	HYDROGEN CYANIDE	Ceramisting
34	N-BUTYL ALCOHOL	Coating/Painting
	CARBON TETRACHLORIDE	Degreasing/Cleaning
	STYRENE (PHENYLETHYLENE)	Coating/Packing
35	N-BUTYL ALCOHOL	Coating/Painting
	HYDROGEN CYANIDE	Soldering/Brazing
	1,2-PROPYLENE GLYCOL DINITRATE	Coating
	STYRENE (PHENYLETHYLENE)	Packing/Coating
36	N-BUTYL ALCOHOL	Coating/Painting
	HYDROGEN CYANIDE	Soldering/Brazing

TABLE V–1.—INDUSTRIES AND PROCESSES WHERE SKIN PROTECTION HAS BEEN ADDED—Continued

SIC No.	Chemical name	Process name
	MERCURY (VAPOR)	Soldering/Brazing
	METHYL ALCOHOL	Cleaning
	STYRENE (PHENYLETHYLENE)	Packing/Coating
37	2-HEXANONE	Degreasing
	STYRENE (PHENYLETHYLENE)	Painting, Coating
38	2-HEXANONE	Injection Molding, Foaming
	MERCURY (VAPOR)	Handling of measurement liquids
		Preparation of Special Tubes
		Assembling
	METHYL ALCOHOL	Blending/Packaging
39	N-BUTYL ALCOHOL	Painting, Coating
	2-HEXANONE	Degreasing, Coating
	STYRENE (PHENYLETHYLENE)	Painting, Coating
40	2-HEXANONE	Coating
44	2-HEXANONE	Coating
45	N-BUTYL ALCOHOL	Cleaning/Spraying
	2-HEXANONE	Cleaning/Spraying
	METHYL ALCOHOL	Cleaning/Spraying
47	2-HEXANONE	Coating/Spraying
50	2-HEXANONE	Materials Recev./Packaging
	STYRENE (PHENYLETHYLENE)	Materials Recev./Packaging
51	CARBON TETRACHLORIDE	Materials Recev./Packaging
55	N-BUTYL ALCOHOL	Painting/Coating
72	MERCURY (VAPOR)	Embalming
	METHYL ALCOHOL	Embalming
73	DIAZINON	Exterminating
	DIOXATHION	Exterminating
	PHENOTHIAZINE	Exterminating
75	N-BUTYL ALCOHOL	Painting/Coating
80	N-BUTYL ALCOHOL	Disinfectant and solvent use
	MERCURY (VAPOR)	Preparation of amalgams

VI. Costs of Compliance

Costs of compliance result from the purchase, installation, operation and maintenance of equipment to maintain workers' exposures at or below the levels specified in the proposed standard. Costs are related to the engineering controls needed for specific processes which involve the use of hazardous substances. Existing data sources and expert judgement were used to sort the approximately 430 substances being regulated, by industry and by process within industry segments. Given the large number of substances being regulated, a process orientation rather than a chemical specific focus, was recommended, since prescribed engineering controls can address worker exposure problems to several chemicals, involving the same general process, simultaneously. The approach has proven to be efficient analytically and reduces the problem of double counting the costs of similar or the same engineering controls for separate chemicals involved in the same process or operation.

OSHA has a large amount of exposure data in its Integrated Management Information System and from NIOSH and other sources. But to improve the available information on the use of substances, OSHA decided to engage in a nationwide field survey of affected establishments. This survey, involving over 5,300 establishments in both manufacturing and nonmanufacturing sectors, has provided valuable information on chemical usage by industry process and potential worker exposures to these chemicals. Supplement 1 contains a description of the sample survey design and a statistical evaluation of the data collected.

In order to maximize the efficiency of this nationwide sample survey and limit the number of required sample observations per SIC category, a considerable effort was made to verify chemical by industry usage from existing data sources and to make best estimates of where likely or potential workers exposure problems (and consequently engineering costs) existed. For the purposes of the statistical survey being conducted, the larger the suspected potential exposure/cost problem in a particular industry sector, the more important it was to insure a large enough sample of firms in that sector so as to reduce the standard error of the cost estimates.

The following sections of this chapter outline the methodology adopted to identify:

- Chemicals by their industrial usage and employee exposures
- Processes involving known or suspected schemical exposures and control costs
- Industry costs for the controls needed to reduce industry exposure levels

Linking Hazardous Substances by Industry Use and Employee Exposure

Figure VI–1 presents a flow chart of the methodology used for identifying chemicals by industry use and employee exposure. The first step in the methodology was an analysis of the chemicals for which OSHA proposes new exposure limits. The 1982 NIOSH National Occupational Exposure Survey (NOES) and the OSHA IMIS data files was searched to determine the potential for worker exposure to each of the chemicals on the proposed list. The objective of this analysis was to create a subset of chemicals which are known to be present in specific industries at exposure levels above the proposed limits. These chemicals would then be considered to generate potential compliance costs within a specific industry sector.

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FIGURE VI-1

METHODOLOGY FOR IDENTIFYING CHEMICALS WITH POTENTIAL COST IN EACH 4-DIGIT SIC

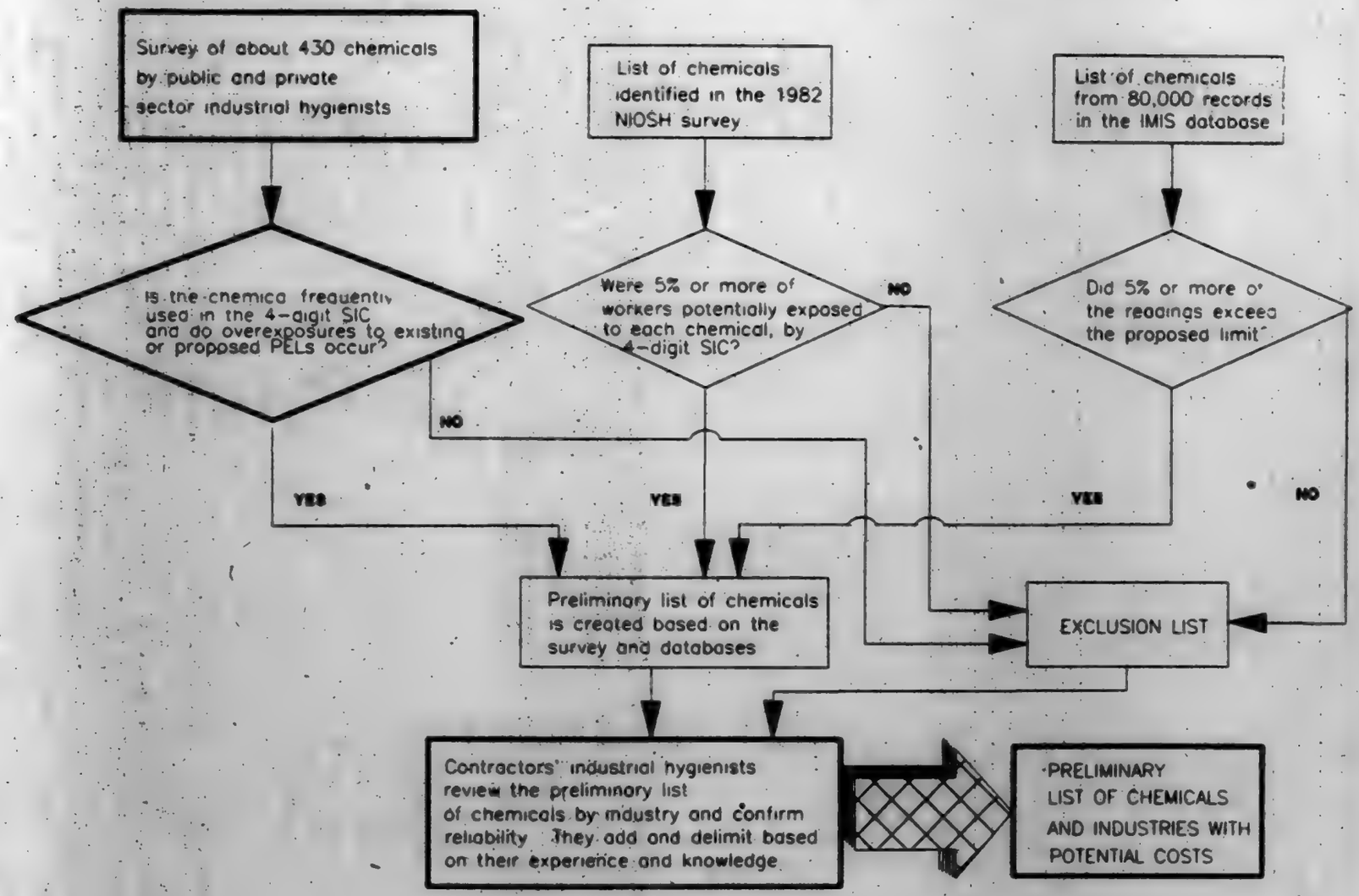

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The 1982 NIOSH National Occupational Exposure Survey (NOES) data (supplemented by results from NIOSH's 1972 survey) provided an estimate of the number of workers potentially exposed to a specific chemical in a four-digit SIC. OSHA divided this estimate by the total number of employees in an industry segment to get a percentage of workers potentially exposed to that chemical. If 5 percent or more of the workers were potentially exposed, that chemical was considered to present a potential cost within the four-digit SIC. For example, in SIC 3011, Tires and Innertubes Manufacturing, 1,532 persons were potentially at risk of exposure to n-hexane at the sample of plants included in the NOES database. This represented 21.9 percent of all workers sampled in the four digit industry sector and this chemical would have a potential cost impact depending upon current exposure levels.

From the OSHA IMIS data, the severity of exposure within a four-digit SIC was estimated. OSHA compared the total number of monitored readings for each chemical with the number of readings which exceeded the proposed limits and calculated the percentage of all sample monitor readings which were above the proposed limits. If there were no readings which exceeded the proposed limits, the chemical was not considered to have a compliance cost within the four digit SIC. If 5 percent or more of the readings exceeded the proposed limits, then the chemical was identified as having a potential compliance cost within the four-digit SIC. For example, in SIC 2841, Paper Coating and Glazing, 22 samples were taken for n-hexane. Thirteen of these, or 59 percent, were above the proposed standard for n-hexane. This chemical, therefore, was believed to have a potential cost impact and questions regarding its use were included in the field survey. Chemicals with non-compliance percentages between zero and 5 percent were evaluated individually by industrial hygienists to determine whether or not specific survey questions needed to be asked about their industrial usage.

In addition to the IMIS and NOES databases, a survey of about one dozen industrial hygienists was conducted (under personal services contracts). The purpose of this survey was to identify any additional hazardous substances or industry sectors not identified in the IMIS or NOES databases with potential exposure problems at new recommended levels. For example, in SIC 2891, Adhesives and Sealants Manufacturing, the surveyed industrial hygienists reported that n-hexane overexposures could exist under the proposed standard. (Overexposures in SIC 2891 were not previously identified in the IMIS or NOES databases.)

The information from all sources was combined to compile a preliminary list of substances with potential compliance costs by four-digit SIC classification. To further refine the list of chemicals, a second group of six industrial hygienists, using personal industry knowledge and the information gathered from the survey of the initial group of industrial hygienists, reviewed once again the chemicals which appeared in the NOES and IMIS datasets. They also made chemicals by industry use linkages when particular chemicals were known to be present in certain SICs, but had not been identified in the NOES and IMIS data bases.

Upon completion of the two-tier industrial hygienist review, a list of chemicals believed to be present at exposure levels above the proposed standard, within specific four-digit SIC industry sectors was finalized. This list identified those industry segments with potential compliance costs needed to comply with the proposed standards. This chemical by industry listing is presented in Supplement 2 of this Appendix.

Industrial Processes and Control Costs

The number of industrial processes, exposure levels and exposure controls in place varies greatly within industry segments. In order to efficiently structure the statistical sample of surveyed firms, it was necessary to make a best estimate of which industry segments were likely to experience compliance costs. As noted above, the survey was designed to limit the standard error for potential high cost industry sectors. To concentrate the survey on the potential high cost sectors, a process orientation was adopted which supplemented and refined the chemical use information. Industry sectors with very low incidence of processes and chemicals with low potential exposure levels (and consequently low potential compliance costs) were included in the sample survey.

A team of engineers and industrial hygienists analyzed each four digit SIC to assess the processes in which worker exposure to listed chemicals occur. Examples of industrial processes included grinding, mixing, spraying, degreasing, separation, bagging and loading. A list of potential cost chemicals and related processes was then developed to identify potentially high impact (cost) industries. Supplement 2 presents the chemical by process listing for each four digit SIC covered by the sample survey. In general, an industry segment with a relatively large number of processes using chemicals with suspected high exposure levels was sampled at the three digit industry level. Industries with fewer processes and low chemical exposures were sampled at the two digit level. (See Supplement 1 for a more detailed explanation of the survey design.)

Each of the over 5,300 respondents in the survey was asked to verify the chemicals used, manufactured or generated by process within the establishment. Thus, chemicals were linked to specific processes, process controls and workers exposed at the process in the surveyed industries. Control methods and costs were then assigned for each process where employee exposures would exceed the proposed PELs.

Controls were assigned to protect workers exposed to all chemicals in total at a process. The controls were designed and costed to lower exposure to the chemical(s) with the greatest change in the permissible exposure limit (PEL). It was the judgment of the experts involved that by assigning controls for the "major" chemicals, exposures for all other chemicals would be controlled. Chemicals and/or processes not included in the proposed standard (e.g., those covered by separate 6(b) rulemaking) were excluded from the survey. Examples of chemicals not included in the survey are asbestos, formaldehyde and benzene.

Survey information collected from each respondent include:

- Type of processes at the establishment;
- Type and amount of chemical used, manufactured, or generated in each process;
- Number of work stations and workers related to the process;
- Potential chemical exposure above the proposed standards (monitoring data, recorded overexposures) at the process;
- Process location (indoors/outdoors), and configuration (size, full enclosure, partial enclosure);
- Ventilation or other controls in place; and
- Economic and other characteristics of the plant.

A computer algorithm was developed to assess survey data to determine if potential worker overexposure and therefore compliance costs occur for each process at an establishment. Figure

VI–2 presents a general diagram of the computer logic adopted for use in the survey. The logic assesses potential overexposures on the basis of: Actual reported monitoring data; statements that overexposures occur; and the particular process location, configuration, type and amount of chemical use and existing controls in place.

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FIGURE VI-2
COMPUTER LOGIC FOR DERIVING INDUSTRY COST OF COMPLIANCE

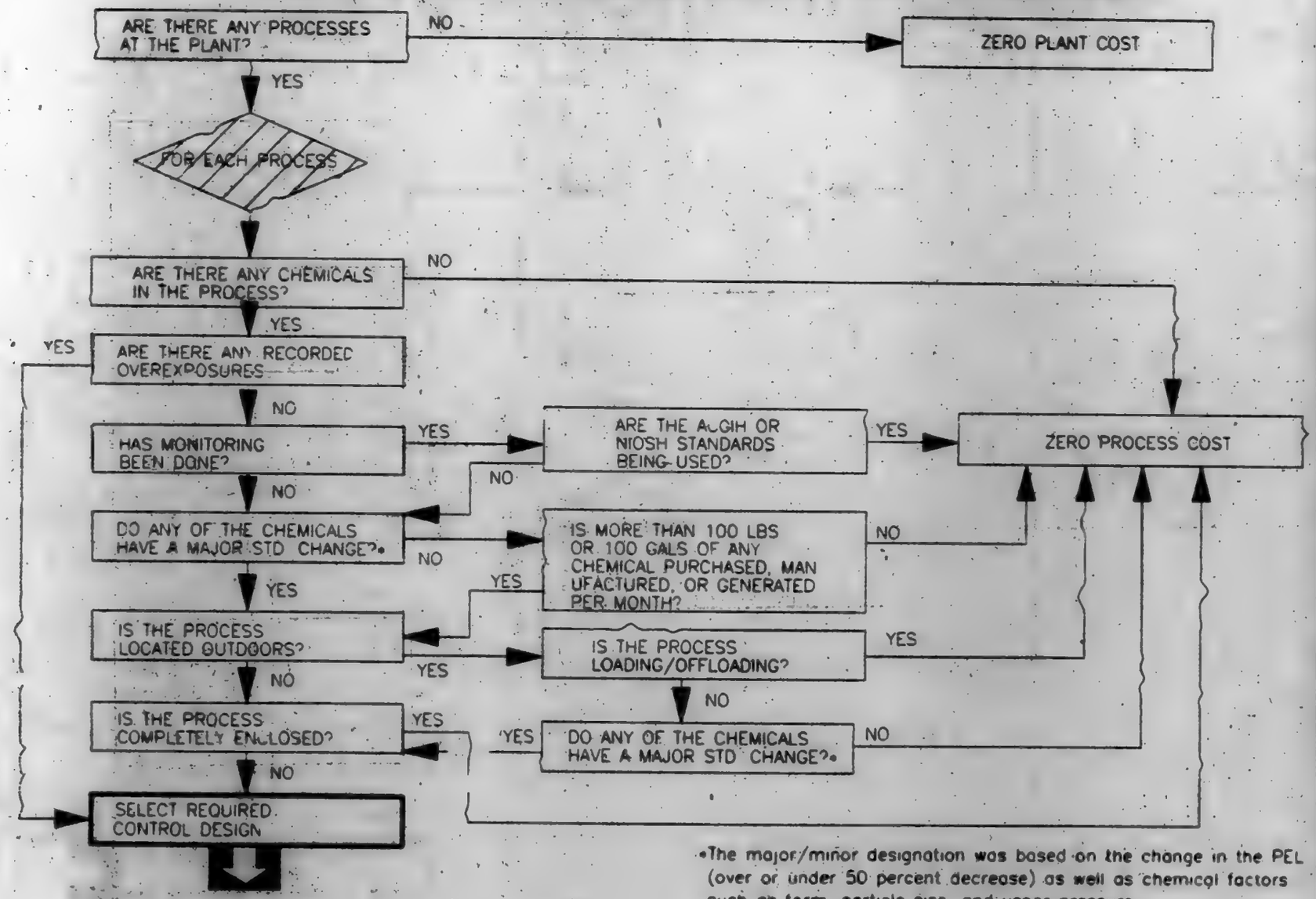

•The major/minor designation was based on the change in the PEL (over or under 50 percent decrease) as well as chemical factors such as form, particle size, and vapor pressure

FIGURE VI-2 (CONTINUED)
COMPUTER LOGIC FOR DERIVING INDUSTRY COST OF COMPLIANCE

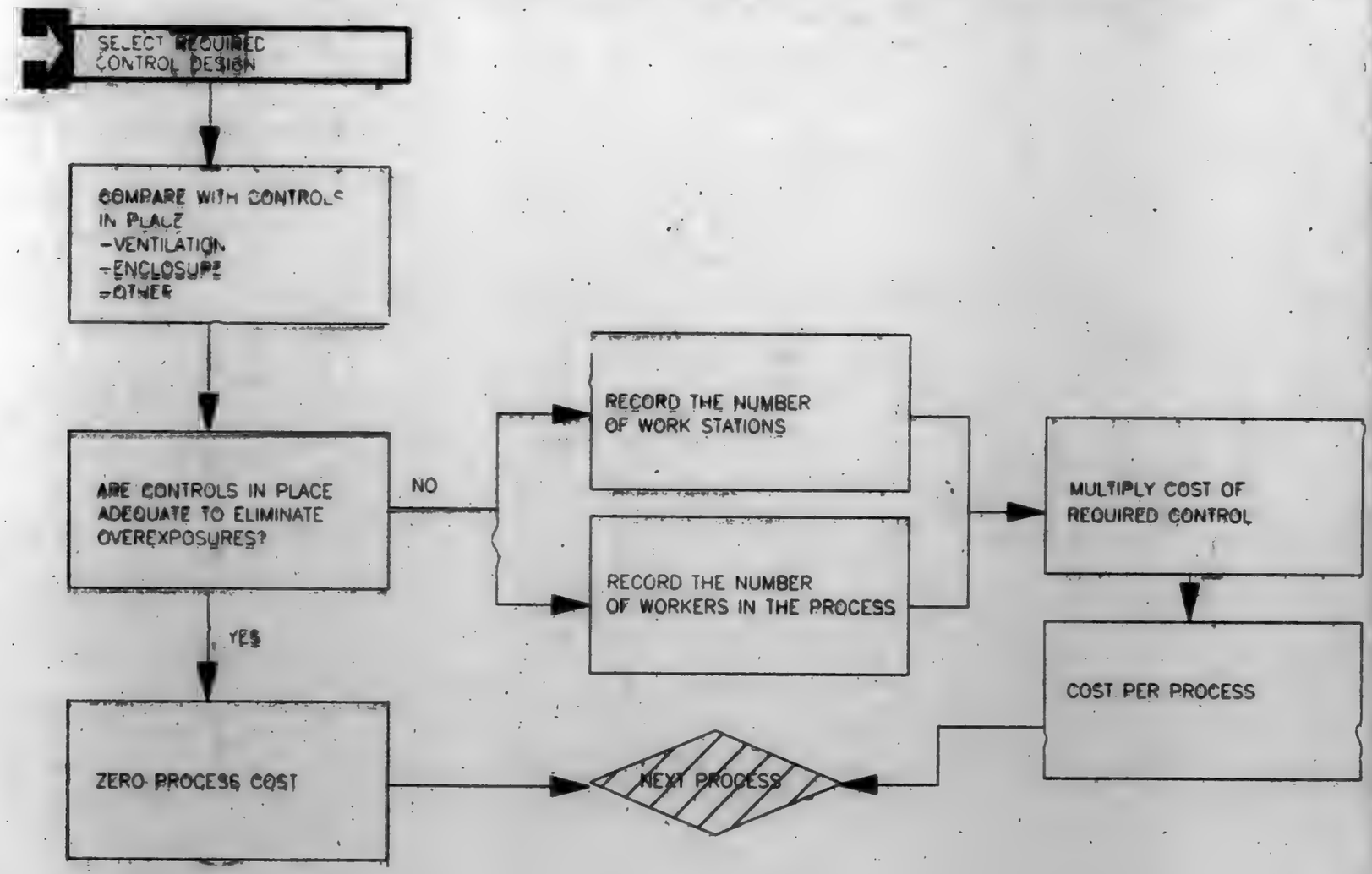

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When a respondent provided actual monitoring data for a process that indicated chemical exposures above the proposed standard, compliance costs were assigned to that process on the basis of prescribed controls for the given process. Where no monitoring data or reports of overexposure were available, the computer algorithm logic examined process and chemical characteristics to determine if workers at the process were potentially exposed to chemicals at levels over the proposed standard. The logic assessed the controls reported to be in place at the process and compared them with a list of controls thought necessary to control exposures in that process within the industry. When the requried controls were reported to be in place, no compliance cost was assigned. When the required controls were not reported to be in place, a compliance cost per work station was assigned.

The computer algorithm determined that some processes within plants had no potential overexposures and consequently no compliance costs. Zero compliance costs resulted where no process and/or chemicals were reported to occur at the establishment. Zero compliance costs also resulted when the respondent had monitored a process using ACGIH or NIOSH standards and found no overexposures. Where only very small quantities of chemicals, none of which were designed as "major" proposed exposure limit changes were present in a process, no overexposure was determined and zero compliance costs assigned. The major/minor designation was based on the proposed change in the PEL (over or under a 50 percent decrease) as well as chemical characteristics such as form, particle size, and vapor pressure.

Process configurations and location also were indications of compliance. Processes which were reported as completely enclosed with no worker entry were assumed to be in complaince with the proposed standard (have no compliance cost). Outdoor loading/offloading processes or other outdoor processes with no chemicals with "major" proposed exposure limit changes were assumed not to require control equipment and costs. Zero compliance costs were also assessed where processes which required control equipment reported that the prescribed equipment was currently in place.

An example of a process which was assigned a cost of compliance to install engineering controls is a coating and spraying process in SIC 2511, Wood Household Furniture. The survey respondent reported that toluene, n-butyl alcohol and xylene were used in this operation. The proposed standard for toluene reduces the existing PEL by 50 percent. This reduction is considered to require concerted exposure control and is considered a "major" proposed exposure limit change. Because workers were involved in the process and the process was reported to be neither located outdoors nor fully enclosed, controls were assumed necessary to insure compliance with the proposed standard. The control required for controlling exposures at this process was determined as local ventilation. The type of local ventilation prescribed in this case is a spray booth at an estimated cost of $3,070 annually per work station. Because the respondent reported no local ventilation, the cost was assigned for the eight work stations reported, resulting in a total estimated annual cost of $24,560 for this process at this site.

Expert engineering and industrial hygiene judgment was used to determine which of the various controls would be necessary to control for exposures by process in the affected industries. Engineering controls identified included exhaust ventilation (local and general); process enclosure; and process change. Some or all of these will be required by affected plants for compliance with the proposed exposure levels. In addition, personal protective equipment such as respirators will be needed for intermittent maintenance activities where engineering controls are not feasible. Skin and eye protection may also be required in certain situations.

The engineers and industrial hygienists classified the approximately 180 specific processes identified in the survey into about 20 process groups for the purpose of assessing required controls and estimating costs. These process groupings were based on similarities in the processes and levels and types of exposures resulting from the process. Factors used to group processes include the chemicals generally invovled in the process, type and usual configuration of the equipment, usual work station design, level and route of exposure, industry group where the process exists and worker tasks in relation to the equipment and exposure route. The process similarities translated into likenesses in required controls such as type of ventilation hood, booth or enclosure, air flow rates, duct configuration and type and size of filters or scrubbers. The compliance costs framework is presented in Figure VI–3. This figure presents the process groups, the industries where the processes were identified, the general classification of controls specified and work station unit costs for the required controls assigned.

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FIGURE VI-3.
COMPLIANCE COST FRAMEWORK AND WORK STATION UNIT COSTS

PROCESS GROUP (1)	INDUSTRY GROUP (SICs)	REQUIRED CONTROL CONFIGURATION (2)	ANNUAL COST PER WORK STATION
Leather Processing, major	31	Local Ventilation	$ 2,510
Leather Processing, minor	31	General Ventilation	$ 220
Electrical & Electronics Manufacture	35	Local Ventilation	$ 2,520
Printing Processes, minor	27, 30, 73, 80	Local Ventilation	$ 1,240
Printing Processes, major	27, 39	Local Ventilation	$ 3,510
Glass Processing, major	32	Local Ventilation	$ 3,890
Glass Processing, minor	32, 36	Enclosure	$ 90
Resource Recovery & Water Treatment, major	28, 29, 33, 49	Enclosure & Local Ventilation	$ 21,900
Resource Recovery & Water Treatment, major	26	Enclosure & Local Ventilation	$ 14,000
Resource Recovery & Water Treatment, minor	26, 29, 49, 50	Enclosure & Local Ventilation	$ 14,000
Foundry Operations, major	33	Local Ventilation	$ 2,520
Foundry operations, minor	33, 39	Local Ventilation	$ 1,820
Grinding, Blasting, & Metalworking, major	25, 33, 36, 39	Local Ventilation	$ 7,200
Metalworking & Welding	All SICs	Local Ventilation	$ 1,140
Coke Ovens	29 (3)	Enclosures, Local Ventilation & Air Purifiers	$150,000

1 The "major" and "minor" designation of process groups refers to the level of the exposure change and consequently the extent of required control configuration costs within a given control and process configuration. For example, leather processing is the general process group and processes within that group are classified based on whether the employee exposure control requires major or minor control costs.

2. The specific required control configuration cost was estimated including all necessary components, such as ductwork, fans, hoods, baghouses, etc.

3 Coke ovens in SIC 33 are not included as they are covered by OSHA's Coke Oven Standard

FIGURE VI-3 (Cont.)
COMPLIANCE COST FRAMEWORK AND WORK STATION UNIT COSTS

PROCESS GROUP	INDUSTRY GROUP (SICs)	REQUIRED CONTROL CONFIGURATION	ANNUAL COST PER WORK STATION
Paper Manufacturing, major	26, 30, 39	Ventilation & Air Purification in Control Rooms	$ 2,900
Paper Manufacturing, minor	All SICs	Local Ventilation	$ 180
High Temperature Drying	All SICs	Local Ventilation	$ 4,740
Layup	3632,3715,3732 3792,3995	Local Ventilation	$ 16,550
Coating, Spraying, & Adhesive Application	All SICs	Local Ventilation	$ 3,070
Chemical Handling & Formulation	All SICs	Local Ventilation	$ 1,760
Material Handling & Inspection, major	All SICs	Local Ventilation & Partial Enclosure	$ 1,120
Material Handling & Inspection, minor	All SICs	General Ventilation	$ 560
Cleaning & General Solvent Use, major	All SICs	Local Ventilation	$ 1,500
Cleaning & General Solvent Use, minor	All SICs	Local Ventilation	$ 710
Waste Collection & Transport	4953, 5093	Respirators (4)	$520 per worker
Painting, Maintenance	All SICs	Respirators (4)	$520 per worker
Welding, Maintenance	All SICs	Respirators (4)	$520 per worker
Zero Cost Processes:			
Laundering	72		
Embalming	72		
Permanents	72		
Anesthesia	80		

4 Use of respirators is considered the only feasible control for these processes due to their intermittent performance and because they are generally not performed at a fixed site.

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The development of unit costs for each control configuration required the development of "model" control designs. Model configurations were selected to provide exposure control at "typical" process/work stations with the specified process group. This costing approach ("model" configurations for "typical" work stations) required the differentiation of some process groupings as major or minor. The major/minor differentiation addresses the expected level of control required.

The control designs were developed by engineers based on their experience in industry and extensive secondary research on operations and exposure situations in each industry sector. This research included an examination of industry and industrial hygiene journals, engineering process reports, and texts. Included in the detailed cost calculations for the control configurations were costs for enclosure construction, baffles, fans, ductwork, filters, scrubbers, baghouses, and all other equipment required for exposure control. All of the costs were developed on a per work station basis so that an average size did not need to be estimated for the process. Investment costs were assigned to each control design on the basis of engineering handbooks and supplier catalogs. Investment costs were annualized over the projected life of equipment (10 years) using a 10 percent cost of capital and adding annual operating and maintenance costs estimated at 10 percent of the capital cost. Respirator costs for use by maintenance workers for intermittent activities were considered annual costs and include the respirator purchase as well as an estimated year's work of cartridges and canisters.

Process control costs were summed per establishment and any maintenance worker respirator requirements cost included. A total annualized capital cost and annual operating cost was developed for each establishment. Costs for the survey establishment were then weighted (by SIC and size) to represent compliance costs for the universe of affected plants.

Projected Impact by Industry Sector

Following the methodology described in the preceding section of this chapter, annual compliance costs were estimated by industry sector. The costs presented are based on the data collected from the over 5,300 survey respondents. (For industries not included in the survey, expert judgment and secondary sources were used for estimating costs.) A small percentage of respondents (less than 5 percent) actually provided monitoring data during the survey. However, based on survey data it was determined that about 86.1 percent of all establishments in the surveyed industries have no exposures in excess of the proposed standard and will not incur any costs to comply with the proposed standard. Only 11.1 percent of all establishments in the surveyed industries will incur costs to provide engineering controls for processes within the plant. However, over 20 percent of the firms which reported using the chemicals being regulated, will incur some engineering control costs. About 2.8 percent of the establishments in the surveyed industries will be required to provide personal protective equipment only for maintenance workers whose intermittent operations cannot be controlled with engineering controls.

Table VI–I presents the total annualized capital and annual operating cost for compliance with the proposed standard by industry. As shown, annual compliance costs are estimated to total $927.8 million. These costs represent an estimate of compliance costs for large and small plants in the universe of establishments to be affected by the proposed standard. Industries with some anticipated cost impact are identified below in order of the total annual compliance costs estimated.

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TABLE VI-1

ANNUAL OPERATING AND ANNUALIZED CAPITAL COST OF COMPLIANCE BY INDUSTRIAL SECTOR (a)

SIC (b)	SIC DESCRIPTION	LARGE PLANTS	SMALL PLANTS	ANNUAL COST
20	FOOD PROD. (c)	$21,704,100	$11,789,000	$33,493,100
21	TOBACCO (c)	$19,700	$0	$19,700
22	TEXT. MILL (c)	$23,308,400	$6,170,000	$29,478,400
23	APPAREL PROD. (c)	$23,604,300	$8,139,900	$31,744,200
24	LUMBER & WOOD	$20,534,800	$175,551,300	$196,086,100
25	FURNITURE	$7,915,300	$6,805,300	$14,720,600
26	PAPER PROD.	$30,966,900	$290,800	$31,257,700
27	PRINTING & PUB.	$15,263,300	$60,425,000	$75,688,300
28	CHEMICAL PROD.	$31,745,500	$8,412,100	$40,157,600
29	PETRO. REFINING	$6,800,700	$414,600	$7,215,300
30	RUBBER & PLASTICS	$53,256,200	$22,225,900	$75,482,100
31	LEATHER PROD.	$1,464,400	$1,115,100 (c)	$2,579,500
32	STONE & CLAY	$15,079,300	$7,463,300	$22,342,600
33	PRIM. METAL	$34,721,200	$5,612,400	$40,333,600
34	FAB. METALS	$50,927,100	$5,010,500	$55,937,600
35	MACHINERY	$43,980,300	$13,756,100	$57,740,400
36	ELEC. MACH.	$24,210,900	$7,570,500	$31,781,400
37	TRANS. EQUIP.	$20,884,600	$26,214,580 (c)	$47,099,100
38	INSTRUMENTS	$10,257,300	$3,207,400	$13,464,700
39	MISC. MANUF.	$13,861,200	$4,334,300	$18,195,500
40	R.R. TRANS.	$532,200	$0	$532,200
45	AIR TRANS.	$1,828,900	$0	$1,828,900
47	TRANS. SERV.	$1,853,100	$0	$1,853,100
49	ELEC. GAS. SAN.	$19,373,900	$3,314,500	$22,688,400
50	WHOLESALE TRADE	$1,416,300	$2,638,300	$4,054,600
51	WHOLESALE, NON-DUR	$3,094,200	$5,764,000	$8,858,200
55	AUTO DEALERS (c)	$9,862,500	$2,092,200	$11,954,700
72	PERSONAL SRV. (c)	$15,648,500	$15,639,300	$31,287,800
73	BUSINESS SRV. (c)	$3,701,700	$5,252,100	$8,953,800
75	AUTO REPAIR (c)	$465,800	$1,044,100	$1,510,900
76	MISC. REPAIR SRV.	$669,500	$4,179,000	$4,848,500
80	HEALTH SERV. (c)	$2,413,000	$2,026,400	$4,439,400
TOTAL		$511,372,100	$416,455,900	$927,828,000

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

(a) Costs were calculated by annualizing the capital cost over the projected life of the equipment (10 years) using a 10 percent cost of capital and adding an annual operating and maintenance cost estimated at 10 percent of the capital cost.

(b) Industry sectors not identified in this table include industries with no major cost impact expected, the construction industry, which will be the subject of a separate regulatory analysis, and industries such as mining, over which OSHA has no jurisdiction.

(c) Costs in these sectors were based on expert judgement and secondary data collection. Survey data for SICs 55, 72, 73, 75 and 80 was insufficient to estimate compliance costs.

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Manufacturing

Lumber and Wood Products (SIC 24). The annual costs of compliance in the lumber and wood products industry are estimated to total $196.1 million. The compliance costs for this sector are heavily weighted by the cost of controls required to lower exposures to the proposed limits for wood dust. The survey indicated that sanding and other "dusty" processes would require controls to lower wood dust exposure. The large number of establishments that must engineer ventilation systems for wood dust control account for the substantial proportion of compliance costs to be incurred by small establishments in this sector.

In addition to wood dust, controls for exposures to solvents and other chemicals in coating processes and exposures to wood preserving chemicals are estimated to result in compliance costs in SIC 24. Overall, about a fourth of all establishments in SIC 24 are estimated to incur compliance costs.

Printing and Allied Industries (SIC 27). Compliance costs in the printing industry sectors (an estimated $75.7 million) would result from ventilation requirements to control exposures to cleaning solvents and ink spray generated within the printing process. A very large number of small establishments are involved in printing and over 4,000 of them would be affected by the proposed standards. The survey indicated that a large number of small establishments currently lack exposure controls and provision of these controls account for the high control costs in this sector.

Rubber and Miscellaneous Plastics Products (SIC 30). Annual costs of compliance in this industry sector are estimated to total about $75.5 million. Controls were required for processes such as molding, and vulcanizing. Worker exposure to chemical vapors require the addition of local ventilation to many processes. The miscellaneous plastic products industry (SIC 3079) accounts for over 20 percent of the annual costs in this sector. The costs in SIC 3079 result from the high proportion of small plants in this sector which will incur costs of compliance. Controls are required in SIC 3079 for many crushing and grinding operations used to prepare plastic material for hot processes.

Machinery Except Electrical (SIC 35) and Electrical Machinery (SIC 36). The machinery manufacturing sectors together are estimated to incur total annual compliance costs of $69.5 million. Machinery except electrical accounts for $57.7 million of this total. The electrical machinery sector is estimated to require $31.8 million in annual compliance costs. Controls in these sectors would be required for exposures to metals, solvents and nuisance dusts.

Fabricated Metal Products Manufacturing (SIC 34). Plating and coating establishments (SIC 347) and miscellaneous fabricated products (SIC 349) would account for a major portion of the $55.9 million annual costs in SIC 34. Worker exposures in this industry sector result from chemicals used in plating processes, solvents and coatings, metals and dusts. The survey indicated that ventilation systems are not now present at many of the processes with chemical exposure.

Transportation Equipment Manufacturing (SIC 37). Annual costs of compliance for SIC 37 are estimated at $47.1 million. Costs in the truck and car body and motor vehicle parts sectors (SICs 3711, 3713, 3714) would account for a large percentage of the costs in SIC 37. Controls may be needed in order to control exposures to heavy metals, solvents, welding fumes and a large variety of other chemicals at large scale hot processes. Additionally, costs in small plants in this sector will include compliance activities to control exposures to styrene and other chemicals in small boat construction, as well as trailer and recreational vehicle insulation.

Primary Metal Manufacturing (SIC 33). The annual costs of compliance in primary metal manufacturing are estimated to total $40.3 million. This estimate derived from the survey may somewhat undercount the compliance costs required in this sector. The cost algorithm assigned costs where prescribed controls were not in place. While many establishments in SIC 33 had controls in place, it is possible that the controls were not all operationally sufficient to control missions to the levels of the proposed standard.

The compliance costs for this sector are heavily weighted by the cost of controls required in large establishments in this segment. Blast furnace establishments, and primary foundries contain large numbers of hot processes which require controls. Control of emissions from hot metal processes to the levels indicated in the proposed standard will require large increases in the amount of air being moved through the ventilation systems. Additionally, costs will be required to enlarge the capacity of scrubbers and baghouse operations.

Chemicals and Allied Products (SIC 28). Annual compliance costs in SIC 28 are estimated to total $40.2 million. Over 25 percent of the costs in SIC 28 are estimated to occur in paints and allied products manufacturing (SIC 2851). The survey indicated that a large proportion of plants will require additional controls for the number and type of substances used in paint and paint product manufacturing. There are many chemicals in this industry segment which present exposure problems in a variety of wet and dry processes, including reaction, separation, crushing, mixing, drying and bagging.

Industry group SIC 282, Plastics Materials, Synthetic Resins, Synthetic Rubber also accounts for a major portion (about 22 percent) of compliance costs in this sector. Compliance costs are related to ventilation and other requirements to control carbon disulfide and other emissions in the manufacture of plastics materials and synthetic rubber.

Food and Kindred Products (SIC 20). Costs are projected for a large number of establishments in this sector. The prepared feeds and feed ingredients, not elsewhere classified (SIC 2048) are estimated to account for a large percentage of the $33.5 million annual costs in SIC 20. Controls may be necessary for dust exposures and chemical fumigants.

Paper and Allied Products (SIC 26). Annual costs in the paper and allied products industry are estimated to be $31.3 million. Much of the estimated costs in SIC 26 will be associated with the cost of controls in large pulp mill and associated operations. Pulp mills are operated separately (these listed in SIC 2611) or as part of paper or paperboard mills (SIC 2821 and SIC 2831 respectively). The cost of compliance in these operations would result from controlling the large quantities of chemicals used in breaking down the pulp to form cellulose and the reactions that occur in the digesting process. The digesting and bleaching operations required further ventilation or enclosure.

Apparel and Other Finished Products (SIC 23) and Textile Mill Products (SIC 22). These sectors have a large number of establishments which may incur compliance costs. The apparel industry is estimated to incur about $31.7 million in annual compliance costs. Many of the affected establishments in SIC 23 may require controls for cleaning solvents such as perchloroethylene as well as nuisance dusts. The $24.5 million annual costs in the textile industry are estimated to result from control of exposures to dusts, solvents, dyes and other substances.

Stone, Clay, Glass and Concrete Product Manufacturing (SIC 32). The stone, clay, glass and concrete product industry is estimated to incur compliance costs of about $22.5 million. A major part of the annual costs in this industry segment may occur in the concrete, gypsum and plaster products (SIC 327) industries. According to the survey, controls in this sector are primarily expected to control nuisance particulates generated during large scale crushing, grinding and sizing operations.

Miscellaneous Manufacturing (SIC 39). This industry accounts for a wide range of products, processes and chemical exposures. About half of the establishments that would incur the $18.2 million annual cost in the industry are believed to be included in SIC 3999, miscellaneous manufacturing not elsewhere classified.

Furniture and Fixtures (SIC 25). Annual costs of compliance in the furniture and fixtures industries are estimated to total $14.7 million. Costs to control wood dust exposures during sanding, cutting and other dusting processes are the major components of compliance costs in this sector. Establishments would also incur costs for control of coatings and solvents. The survey indicated that the furniture sectors which include metal working (SICs 2514, 2515, 2522, 2542, 2591 and 2599) would also require controls for welding fumes and various metal particulates resulting from grinding and other processes.

Instruments Manufacturing (SIC 38). Annual control costs in SIC 38 are estimated to total $13.5 million. Exposures in this sector are to a large number of chemicals used within instruments and to dust, metals and solvents.

Petroleum Refining and Related Products (SIC 29). Petroleum refining may account for a large percentage of the $7.2 million annual costs in SIC 29, even though a relatively limited number of establishments in the petroleum refining industry would require additional controls. This industry has extensive control technology in place as well as many closed processes with few exposed workers.

Other Manufacturing. The lowest costs of compliance in the manufacturing sectors are expected to occur in SIC 21, Tobacco Manufacturers, ($0.02 million) and SIC 31, Leather and Leather Products ($2.6 million). It is estimated that very few plants will incur costs in the tobacco manufacturing industry. In the leather and leather products industry sector, most of the affected establishments produce manufactured leather goods.

Transportation, Communication, Utilities

The transportation and utilities sectors (SICs 40, 45, 47, and 49) include a large number of establishments. However, operations at Railroad (SIC 40), and Air Transport establishments (SIC 45) are subject to regulation by other Federal agencies in addition to OSHA. Consequently, the number of establishments which would incur costs to comply with the proposed standard are limited. For railroads, OSHA's standards normally apply to off-track operations.

Electric, Gas and Sanitary Service Utilities (SIC 49). Annual cost in the utilities sectors are estimated to total $22.7 million. Costs would result from installation and improvement of controls necessary for activities such as boiler/furnace feed preparation in electric services, odorant addition by natural gas companies, and water treatment and purification of water supplies.

Transportation Services Sector (SIC 47). The $1.8 million annual costs in the SIC 47 may primarily be incurred in SIC 4789, transportation services not elsewhere classified. This sector includes establishments which provide incidental services such as cleaning railroad ballast and other rail car maintenance.

Wholesale and Retail Trade

Costs in the wholesale trade sectors (SICs 50, 51), are estimated to total about $12.9 million annually. A large percentage of the total number of establishments which would incur costs to comply with the proposed rule are in SIC 5093, scrap and waste materials, wholesale.

The only retail trade sector expected to incur compliance costs, Auto Dealers (SIC 55) is estimated to incur $12.0 million annually. These costs result from the potentially large number of motor vehicle dealers (SIC 5511) which may incur compliance costs to control exposures to paints, coatings and solvents during vehicle spray and coating operations. The costs result from the installation of paint spray booths.

Services

The services sectors, SICs 72, 73, 75, 78 and 80 are estimated to total about $51.0 in annual compliance costs. The major costs (61.3 percent) in these sectors would result from potential compliance activities in SIC 721, laundry, cleaning and garment services. Establishments in SIC 721 would incur annual operating and annualized capital costs to control exposures for dry cleaning operations.

Additional costs in the service sectors may result from control of solvent chemicals in SIC 734, building services, control of welding fumes at welding repair operations (SIC 7692), control of solvent and photographic chemicals in mailing, reproduction, commercial art and photography and stenographic services (SIC 733), and local ventilation for exposure control in SIC 8071, medical laboratories.

Per Plant Average Costs

Table VI–2 presents the estimated average per plant annual cost of compliance by industry sector. Costs shown in this Table are calculated only for those establishments in a sector which would incur costs. Average per plant annual operating and annualized capital costs for all affected establishments across industry sectors is estimated at $9,200. The per plant cost for large plants is $14,400 and for small plants with fewer than 20 employees, $6,300.

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TABLE VI-2

AVERAGE PER PLANT ANNUAL COSTS AND NUMBER OF AFFECTED PLANTS

SIC (a)	SIC DESCRIPTION	ANNUAL COST OF	TOTAL # PLANTS	# OF AFFECTED PLANTS	% AFFECTED	AVERAGE COST PER AFFED PLANT	AVERAGE COST PER LARGE AFFED PLANT	AVERAGE COST PER SMALL AFFED PLANT
20	FOOD PROD. (b)	$33,493,100	29,843	4,932	16.53%	$6,800	$13,000	$3,600
21	TOBACCO (b)	$40,700	216	3	1.39%	$6,800	$6,400	$0
22	TEXT. MILL (b)	$29,478,400	11,025	2,765	25.08%	$10,700	$26,400	$3,700
23	APPAREL PROD. (b)	$31,744,200	30,032	6,179	20.57%	$5,100	$11,300	$2,600
24	LUMBER & WOOD	$196,056,100	17,383	3,715	21.37%	$52,800	$34,200	$27,400
25	FURNITURE	$14,720,600	13,072	2,001	15.31%	$7,400	$9,900	$5,700
26	PAPER PROD.	$31,257,700	6,583	2,068	31.29%	$15,200	$20,400	$500
27	PRINTING & PUB.	$75,688,300	59,107	4,077	10.28%	$12,500	$10,500	$13,100
28	CHEMICAL PROD.	$40,157,600	15,365	3,680	23.95%	$11,100	$14,500	$5,900
29	PETRO. REFINING	$7,295,300	2,274	378	16.64%	$19,100	$25,700	$3,200
30	RUBBER & PLASTICS	$75,462,100	14,904	4,229	28.26%	$17,800	$24,700	$10,700
31	LEATHER PROD.	$2,579,500	2,196	822	37.43%	$3,100	$11,300	$1,800
32	STONE & CLAY	$22,542,400	13,980	3,958	28.31%	$5,700	$7,900	$3,600
33	PRIM. METAL	$40,333,600	7,640	2,744	35.92%	$14,700	$29,100	$5,900
34	FAB. METALS	$65,957,600	33,946	6,285	18.51%	$5,900	$19,800	$1,800
35	MACHINERY	$57,748,400	62,443	8,059	12.91%	$7,200	$13,300	$2,900
36	ELEC. MACH.	$31,781,400	34,370	4,436	12.91%	$7,200	$13,300	$2,900
37	TRANS. EQUIP.	$47,099,100	12,836	4,644	36.63%	$10,600	$34,400	$3,600
38	INSTRUMENTS	$13,464,700	14,561	1,879	12.91%	$7,200	$13,300	$2,900
39	MISC. MANUF.	$18,195,500	19,677	2,540	12.91%	$7,200	$13,300	$2,900
40	R.R. TRANS.	$532,200	4,716	81	1.68%	$6,600	$6,200	$0
45	AIR TRANS.	$9,828,900	14,487	277	1.88%	$6,600	$6,600	$0
47	TRANS. SERV.	$5,853,100	16,785	281	1.65%	$6,600	$6,600	$0
49	ELEC. GAS. SAN.	$22,688,400	15,935	1,409	8.84%	$16,100	$16,400	$16,400
50	WHOLESALE TRADE	$6,054,600	72,222	1,229	10.05%	$3,300	$7,700	$2,500
51	WHOLESALE, NON-DUR	$3,858,200	26,701	2,665	10.05%	$3,300	$7,700	$2,500
55	AUTO DEALERS (b)	$77,954,700	189,214	3,091	1.63%	$3,000	$6,400	$1,300
72	PERSONAL SERV. (b)	$37,287,800	161,004	12,455	7.73%	$2,500	$27,900	$1,300
73	BUSINESS SERV. (b)	$8,958,800	382,626	4,557	1.19%	$2,000	$6,600	$1,300
75	AUTO REPAIR (b)	$1,510,900	149,268	528	0.35%	$2,900	$14,600	$2,700
76	MISC. REPAIR SERV.	$4,040,500	13,856	2,388	17.23%	$2,000	$2,200	$5,000
80	HEALTH SERV. (b)	$4,439,200	315,076	1,956	0.37%	$3,800	$12,500	$2,100
TOTAL		$827,828,000	1,702,569	101,258	5.95%	$9,200	$14,400	$6,300

(a) Industry sectors not identified in this table include industries with no major cost impact expected, the construction industry, which will be the subject of a separate regulatory analysis, and industries such as mining, for which OSHA does not have jurisdiction.

(b) All data shown for these industries was derived from secondary sources and expert judgement.

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The highest costs on an average per plant basis are expected to occur in SIC 24. Average per plant costs in SIC 24 may total $52,800 in annual operating and annualized capital costs. This per plant cost is heavily weighted by the above average costs which may be incurred by small establishments to control worker exposure to wood dust. Per plant costs in SIC 24 are substantially higher than those in the next highest industry, SIC 30, Rubber and Plastics. The $17,800 per plant costs in this industry result from above average compliance costs estimated for exposure control in molding and vulcanizing in large plants and crushing and grinding operations in small plants.

Although small establishments, account for about 65.0 percent of the 101,200 affected establishments, compliance costs for small establishments are expected to account for roughly 44.9 percent of total industry compliance costs.

References

1. Dun and Bradstreet, Inc., 1985 Count of Establishments, (Database)

VII. Economic Impact, Regulatory Flexibility Analysis and Environmental Impact Assessment

Economic Impact

The economic impacts discussed in this chapter have been estimated following an analysis of data collected through a nationwide sample survey of over 5,300 affected establishments. Two alternative polar assumptions were used in this analysis.

- *Perfectly Elastic Demand or Zero Cost-Passthrough:* All compliance costs are absorbed by the firm in the form of reduced profits. This assumption is the "worst case" scenario, where the maximum reduction in profits to the firm (and industry) results.
- *Perfectly Inelastic Demand or Total Cost-Passthrough:* All compliance costs are passed on to the consumer sector in the form of higher prices. From the perspective of the firm, this is the "best case" scenario. The resulting price increase would be the maximum theoretically possible.

Two points should be noted. First, for the majority of industry sectors, neither assumed market structure would be accurate. In practice, the impacts will almost always produce a price increase smaller than the inelastic demand projection and a reduction in profits smaller than that predicted under perfectly elastic demand conditions. Second, increased firm productivity would mitigate any adverse economic effects of the proposed standard. Productivity effects would be related to reduced worker illness, absence and turnover. In addition, knowledge of improved workplace health conditions could result in higher workforce morale and productivity . The firm would enjoy lower employee training costs (due to the reduced turnover rate) and lower medical benefit and worker compensation claims. Overall productivity increases would be realized by firms that use a relatively fixed-factor production process (i.e., low elasticities of substitution between labor and other factors of production). It is difficult to estimate the magnitude of these productivity and cost reducing effects. Any estimated economic costs of compliance would have to be adjusted downward to reflect these effects. Since data were not available to make any offset estimates, the economic effects of the proposal identified in this chapter, are overstated.

For this analysis, OSHA used a percentage reduction in profits approach to obtain estimates of the short-run economic impacts under the assumption of perfect demand elasticity. These estimates were obtained by using the following formula:

$$\text{Percentage Reduction} = \frac{\text{New Profits}-\text{Old Profits}}{\text{Old Profits}},$$

where New Profits = Old Profits—Compliance Costs, and
Old Profits = (Return on Sales)*(Total Sales).

These calculations were performed at the two-digit SIC level for firms in large and small size-class stratifications (above and below 20 employees). The data used to obtain these estimates was based on Dun and Bradstreet company files [1;2].

The potential impact on prices was used to estimate the market consequences under the second assumption of inelastic demand. This price increase was estimated for each industry at the four-digit SIC level. Total sales values for 1985 were used, the year for which the compliance costs were estimated. (Total sales represent the totality of production that leaves the establishment, whether it is sold to customers or sent to a parent company in a captive transaction. For industries in the service and trade sectors, total sales data were used. The rate of return percentage for each industry sector corrected and transformed gross sales data into more accurate and relevant industry profit estimates.)

For a given firm-size class, the potential price increase was estimated by dividing the total estimated compliance costs for a firm by the sales of that firm. These estimated price effects were then compared to recent industry price series. The intent of this comparison was to evaluate the impact of the compliance cost-generated price increase in light of recent industry price increase experience.

In this scenario, the potential for international trade implications of the proposed standard was explored. It is anticipated that any international trade effects will not be significant given the small value of domestically produced goods and services which are exported (about seven percent of GDP). Also, in recent months, the U.S. dollar has experienced a sharp decline in value relative to the yen and European currencies. Between February 1985 and December 1987, the trade-weighted value of the U.S. dollar fell 46 percent [3]. This depreciation overwhelms any potential adverse international economic effect of the standard.

In Table VII–1 and VII–2, the estimated domestic economic impacts are reported for the two polar methodologies. To derive the percentage change in profits and the costs as a percent of sales, industry sales and rate of return (R.o.R.) on sales data were obtained from Dun and Bradstreet. The total sales data are best estimates for industry sectors potentially impacted by the proposed rulemaking.

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TABLE VII-1

ECONOMIC EFFECTS: NO-COST PASSTHROUGH SCENARIO[1]

SIC	Industry	Annual Costs[2] ($ millions)	Total Sales[3] ($ millions)	R.O.R. on Sales (%)[4]	Pre-Reg Profits ($ m)	Post-Reg Profits ($ m)	% Change in Profits
20	FOOD PROD.	33.49	353,780.38	1.9	8,008.04	7,986.29	- 0.2715
21	TOBACCO	0.02	74,038.13	5.3	3,923.60	3,923.58	- 0.0003
22	TEXT. MILL	29.48	60,735.22	2.7	1,765.42	1,747.59	- 1.0100
23	APPAREL PROD.	31.74	74,474.65	2.8	1,813.22	1,793.56	- 1.0845
24	LUMBER & WOOD	196.09	57,994.48	3.9	1,974.51	1,814.21	- 8.1188
25	FURNITURE	14.72	37,648.27	3.5	1,411.02	1,400.96	- 0.7129
26	PAPER PROD.	31.26	103,694.14	3.7	3,778.20	3,761.24	- 0.4489
27	PRINTING & PUB.	75.69	134,838.21	4.8	6,471.85	6,412.25	- 0.9210
28	CHEMICAL PROD.	48.16	272,759.67	3.7	11,738.80	11,714.76	- 0.2048
29	PETRO. REFINING	7.22	196,400.57	2.7	4,964.85	4,963.84	- 0.0008
30	RUBBER & PLASTICS	75.48	86,538.58	4.3	3,423.75	3,376.10	- 1.3918
31	LEATHER PROD.	2.58	15,449.56	2.6	401.69	398.95	- 0.4328
32	STONE & CLAY	22.54	48,094.04	4.1	1,954.99	1,940.73	- 0.7300
33	PRIMARY METALS	40.33	112,564.26	3.3	3,714.62	3,691.27	- 0.6286
34	FAB. METALS	55.94	150,146.41	4.0	6,005.86	5,974.10	- 0.5288
35	MACHINERY	57.74	345,144.89	5.1	17,602.39	17,566.95	- 0.2013
36	ELEC. MACH.	31.78	245,982.70	5.0	12,299.14	12,279.63	- 0.1586
37	TRANS. EQUIP.	47.10	365,427.20	3.9	14,520.25	14,486.69	- 0.2311
38	INSTRUMENTS	13.46	83,359.57	4.9	3,373.26	3,365.00	- 0.2450
39	MISC. MANUF.	18.20	41,870.30	4.4	1,788.56	1,777.39	- 0.6245
40	R.R. TRANS.	.53	43,869.14	10.0	3,969.62	3,969.34	- 0.0072
45	AIR TRANS.	1.83	109,538.88	3.6	3,251.40	3,250.41	- 0.0304
47	TRANS. SERVICES	1.85	12,254.96	2.7	502.18	501.19	- 0.1719
49	ELEC., GAS & SAN.	22.69	300,254.83	7.0	21,017.84	21,004.86	- 0.0655
50	WHOLESALE TRADE[5]	4.05	13,853.52	2.0	277.07	273.67	- 1.2285
51	WHOLESALE, NON-DUR	8.86	113,848.20	1.5	1,726.26	1,721.48	- 0.2771
55	AUTO DEALERS	11.95	341,574.50	1.9	6,489.92	6,482.81	- 0.1095
72	PERSONAL SERV.	31.29	24,270.74	7.3	1,771.76	1,750.02	- 1.2272
73	BUSINESS SERV.	8.95	22,165.94	6.6	1,462.95	1,455.45	- 0.5126
75	AUTO REPAIR	1.51	45,750.92	5.1	2,492.19	2,491.05	- 0.0457
76	MISC. REPAIR SERV.	4.85	2,665.52	5.5	146.60	142.69	- 2.6696
80	HEALTH SERVICES	4.44	170,234.25	4.5	7,807.72	7,804.54	- 0.0406

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Notes:
1. All values in 1985 dollars.
2. Reproduced from Table VI-1.
3. Dun and Bradstreet, Dun's Marketing Identifiers (DMI) Database.
4. Rate of Return on Sales, Dun and Bradstreet, Industry Norms Database.
5. Consists of SIC 5093 (scrap and waste materials) only.

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TABLE VII-2.—ECONOMIC EFFECTS: TOTAL-COST PASSTHROUGH

SIC	Industry	Annual Costs (dollars millions)	Total Sales (dollars millions)	Costs as a percent of sales
20	Food prod	33.49	353,780.38	0.0095
21	Tobacco	0.02	74,038.13	.0030
22	Text. mill	29.48	60,735.22	.0485
23	Apparel prod	31.74	74,474.65	.0426
24	Lumber & wood	196.09	57,994.48	.3381
25	Furniture	14.72	37,648.28	.0391
26	Paper prod	31.26	103,694.14	.0301
27	Printing & pub	75.69	134,838.21	.0561
28	Chemical prod	48.16	272,759.67	.0147
29	Petro. refining	7.22	196,400.57	.0037
30	Rubber & plastics	75.48	86,538.58	.0872
31	Leather products	2.58	15,449.56	.0167
32	Stone & clay	22.54	48,094.04	.0469
33	Prim. metals	40.33	112,564.26	.0358
34	Fab. metals 5	55.94	150,146.41	.0373
35	Machinery	57.74	345,144.89	.0167
36	Elec. mach	31.78	245,982.70	.0129
37	Trans. equip	47.10	365,427.20	.0129
38	Instruments	13.46	83,359.57	.0162
39	Misc. manuf	18.20	41,870.30	.0435
40	R.R. trans	.53	43,869.14	.0012
45	Air trans	1.83	109,538.88	.0017
47	Trans. services	1.85	12,254.96	.0151
49	Elec, gas & san	22.69	300,254.83	.0076
50	Wholesale trade [5]	4.05	13,853.52	.0293
51	Wholesale, non-dur	8.86	113,848.20	.0078
55	Auto dealers	11.95	341,574.50	.0035
72	Personal services	31.29	24,270.74	.1289
73	Business service	8.95	22,165.94	.0404
75	Auto repairs	1.51	45,750.92	.0033
76	Misc. repair serv	4.85	2,665.52	.1819
80	Health services	4.44	170,234.25	.0026

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.
NOTE.—1. Consists of SIC 5093 (scrap and waste materials) only.

Dun and Bradstreet provided OSHA with this information. The R.O.R. on sales were obtained from summary statistics found in the Dun and Bradstreet Industry Norms Database.

Industry Effects

The estmiated economic impact of the proposed rule from firms potentially affected is summarized in Table VII-1. These estimates represent the maximum industry impact within a market scenario where none of the costs can be passed onto consumers, and there is no productivity offset to costs.

Data in Table VII-1 indicate that the proposed rule will not have a significant impact on profits in most industry sectors. The estimated average change in profits is less than one percent; this amount of profit reduction should not represent a significant economic burden.

The most adversely affected industry sector is SIC 24 with an estimated 8 percent reduction in profits. The only other industry with an impact greater than 2 percent is SIC 76, Miscellaneous Repair Services (2.7 percent). However, even in the worst case, OSHA believes the proposal is economically feasible. In reality, the reduction in profits will be less because part of the costs will be passed on to consumers.

Consumer effects were estimated using a "full cost passthrough" scenario. As demonstrated by the estimates summarized in Table VII-2, the impacts on market prices will not be significant. No price increase would exceed one half of one percent. Changes of this magnitude are within general price movements recorded by producer price and other price indicies.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), OSHA has assessed the impact of the proposed rulemaking on large and small establishments. For this assessment, large establishments are defined as those with 20 or more employees and small establishments as those with 19 or fewer employees. The results of this assessment are summarized in Table VII-3.

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TABLE VII-3

ECONOMIC IMPACTS BY ESTABLISHMENT SIZE

SIC	Industry	Percentage Change in Profits	
		Large	Small
20	FOOD PROD.	- 0.1526	- 3.0770
21	TOBACCO	- 0.0003	- 0.0000
22	TEXT. MILL	- 0.7442	- 7.0804
23	APPAREL PROD.	- 0.7916	- 3.4067
24	LUMBER & WOOD	- 0.6683	-47.3160
25	FURNITURE	- 0.3306	- 4.9038
26	PAPER PRODUCTS	- 0.4613	- 0.1559
27	PRINTING & PUB.	- 0.1579	- 4.1037
28	CHEMICAL PROD.	- 0.1533	- 1.2443
29	PETRO. REFINING	- 0.0754	- 0.3721
30	RUBBER & PLASTICS	- 0.8900	- 9.8232
31	LEATHER PROD.	- 0.2115	- 3.4147
32	STONE & CLAY	- 0.5342	- 1.4208
33	PRIMARY METALS	- 0.5330	- 2.3396
34	FAB. METALS	- 0.5079	- 0.7201
35	MACHINERY	- 0.1402	- 1.7854
36	ELEC. MACH.	- 0.1087	- 2.3924
37	TRANS. EQUIP.	- 0.0782	-21.2970
38	INSTRUMENTS	- 0.1704	- 2.2245
39	MISC. MANUF.	- 0.4920	- 1.3785
40	R.R. TRANS.[1]	n/a	n/a
45	AIR TRANS.[1]	n/a	n/a
47	TRANS. SERVICES[1]	n/a	n/a
49	ELEC., GAS & SAN.[1]	n/a	n/a
50	WHOLESALE, TRADE[2]	- 0.7355	- 1.8818
51	WHOLESALE, NON-DUR	- 0.1776	- 0.3964
55	AUTO DEALERS	- 0.1267	- 0.0778
72	PERSONAL SERV.	- 1.0749	- 1.3488
73	BUSINESS SERV.	- 0.3186	- 0.8749
75	AUTO REPAIR	- 0.0527	- 0.0441
76	MISC. REPAIR SERV.	- 0.8702	- 3.3812
80	HEALTH SERVICES	- 0.0736	- 0.0295

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Notes: 1. Percent of profit attributable to small firms was not available.
2. Consists of SIC 5093 (scrap and waste materials) only.

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Industry sales and profit estimates were based on data from Dun and Bradstreet and the Department of Commerce 1982 Census of Manufacturers [5], Wholesalers [6], Retailers [7], and Services [8]. Sales and profit data for selected transportation sector industries (SIC 40, 45, 47, and 49) were not available for use in this preliminary assessment.

The information summarized in Table VII-3 indicates that some small establishments will experience some adverse impact. The smaller profit margins of some small establishments make it difficult for them to absorb increases in compliance costs. In particular, small establishments in SIC 24 (Lumber and Wood), SIC 37 (Transportation Equipment Manufacturers), and SIC 30 (Rubber and Plastics) show high potential changes in profits. Some of these industries are capital-intensive and the costs are not high in proportion to the capital invested. OSHA requests comments on approaches to reduce the impact on these establishments.

It should be noted that these negative effects result in part from the extreme assumption of perfectly elastic demand. An important ameliorating factor for each firm will be its ability to pass through additional costs to the consumer. The ability of individual firms to do this will be dependent upon product demand elasticities. It is expected that most impacted firms will be able to pass through some portion of their increased costs.

Environmental Impact Assessment

This assessment has been prepared in accordance with provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4325 *et seq.*) as well as the regulations of the Council on Environmental Quality (40 CFR Part 1500), and DOL-NEPA Compliance Procedures (29 CFR Part 11).

OSHA has reviewed the proposal and the information contained in the secondary data bases as well as the information submitted by the contractors' industry experts and has concluded that no significant environmental impacts are likely to occur as a result of this action.

Two environments may be affected by an OSHA regulatory action: (1) The workplace environment; and (2) the general human environment external to the workplace, including impacts on air and water pollution, solid waste, energy, and land use. Usually OSHA regulations have their most significant impacts on the workplace environment since this environment is under the Agency's jurisdiction. Lower and new PELs would benefit the workplace environment because they would reduce worker exposure to toxic substances.

In most cases, the effects of previous OSHA regulations on the external environment have been negligible because of their limited scope and application. Similarly, there is no evidence to indicate that there would be any significant adverse impacts to the external environment as a result of this proposal. As with other OSHA regulations in the past, however, there may be a potential benefit to the environment. The potential benefits and other impacts are briefly summarized here.

Air Pollution

Because of the nature of the emission standards of the Environmental Protection Agency (EPA) (40 CFR Part 61), many industry operations already use engineering controls to reduce the amount of emissions to the atmosphere. This practice is not expected to change as a result of the proposal. OSHA anticipates that controls already in place will continue to operate effectively in reducing emissions under the proposed revisions. Fourteen of the chemicals addressed in this proposal have been recognized by EPA as air pollutants. These are listed below:

- Beryllium
- Carbon Monoxide
- Epichlorhydrin
- Ethylene dichloride
- Hexachlorocyclopentadiene
- Mercury
- Methyl chloroform
- Nitrogen dioxide
- Ozone
- Perchloroethylene
- Sulfur dioxide
- Toluene
- Trichloroethylene

Water Pollution

EPA regulates over 100 of the chemicals addressed in this proposal under the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*). EPA's effluent limitation guidelines (40 CFR Part 427) include (1) standards of performance for all new point sources within specified categories and (2) pretreatment standards for new plants discharging to municipal sewer systems. These limitations would serve to prevent the discharge of effluents into the environment without prior treatment. Moreover, the Federal Water Pollution Control Act Amendments of 1972 required that wastewater effluents be treated by the best practicable technology (BPT) by December 31, 1977 and that the best available technology (BAT) economically achievable be used by December 31, 1983. The EPA effluent limitations establish the degree of effluent quality necessary to meet the BPT and BAT requirements. The BAT and pretreatment standards would essentially mean no discharge of process wastewater to navigable waters and no discharge of incompatible pollutants. These requirements will not change as the result of this proposal and where they continue to be met, effluent quality will not be altered.

Solid Waste Disposal

It does not appear that there would be any significant change in present waste disposal practices for over 80 chemicals addressed by this proposal, or in the maintenance of waste disposal sites. EPA's national emissions standards will continue to provide for the control and maintenance of active and inactive disposals as well as require no visible emissions from these sites.

Energy and Land Use

The implementation of required engineering controls could result in an increase in total energy requirements or costs for general industry. This would be particularly true where controls are not in place. Where general exhaust ventilation is used, there is the expense of heating or cooling the replacement air brought in from the outside. These costs, plus the cost of vacuuming, where necessary, have been included in the annual costs estimated in Chapter VI. In terms of land use, OSHA does not project any significant impact on land use plans, policies or controls. OSHA does not anticipate any significant impact on the short term uses of man's environment or upon the maintenance of long-term productivity.

Other Impacts

The proposal could also have other impacts that may affect the external environment. The proposal could encourage the further use, research, and development of suitable substitutes for hazardous chemicals. This, in turn, would result in a positive environmental effect because fewer hazardous chemicals would be used, emitted to the air, discharged as wastewater effluent, or disposed of as solid waste. The magnitude or probability of these impacts, however, is impossible to quantify.

Overall, the projected impacts of the proposed standard on the external environment are not expected to be significant in view of EPA's regulation of air emissions, water effluents, and solid waste disposal methods.

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Summary

Based on the data summarized in Tables VII–1 and VII–2 and historical information, OSHA has initially concluded that the economic impacts of the proposed rulemaking will not unduly burdensome for firms in the industries potentially affected. However, some industry sub-sectors may experience an adverse economic impact. In addition, the estimates indicate that some small establishments in SICs 24, 30, and 37 may experience a greater impact than larger entities. OSHA requests comments on approaches to reduce the impact on those small establishments. It should be emphasized that these estimates are preliminary. The proposed rule is not expected to have an adverse effect on the environment.

References

1. Dun and Bradstreet, Inc. Industry Norms and Key Business Ratios. 1985. (Database)
2. Dun and Bradsteet, Inc. Dun's Market Identifiers. 1987. (Database)
3. Federal Reserve Board of Governors. Economic Trends. Cleveland: Federal Reserve Bank of Cleveland, December 1987.
4. Liebowitz, S.J. What Do Census Price-Cost Margins Measure? Journal of Law and Economics 25:231–46, 1982.
5. U.S. Department of Commerce, Bureau of the Census. 1982 Census of Manufacturers, Industry Series (selected series). Washington D.C.: U.S. Government Printing Office.
6. U.S. Department of Commerce, Bureau of the Census. 1982 Census of Wholesale Trade, Establishment and Firm Size (Including Legal Form of Organization). Washington D.C.: U.S. Government Printing Office.
7. U.S. Department of Commerce, Bureau of the Census. 1982 Census of Retail Trade, Establishment and Firm Size (Including Legal Form of Organization). Washington D.C.: U.S. Government Printing Office.
8. U.S. Department of Commerce, Bureau of the Census. 1982 Census of Service Industries, Establishment and Firm Size (Including Legal Form of Organization). Washington D.C.: U.S. Government Printing Office.

Supplement 1 to Appendix B—Technical Description of the Sample Survey

1. Introduction

This appendix contains a description of the statistical methodology employed to design and implement the PEL survey. The following topics will be discussed:

- Survey objectives;
- Sampling frame selection;
- Stratification;
- Sample size determination;
- Estimation procedures;
- Data collection method;
- Variance estimation;
- Treatment of non-sampling errors; and
- Survey treatment.

Survey Objectives

Surveys are frequently designed to produce a set of estimates at a predefined level of accuracy. This requires defining the set of quantities to be estimated and specifying their levels of accuracy. Since many variables may ultimately be estimated from the survey, and since no single design can be optimal for all estimates simultaneously, it is customary to define the most important variables for estimation. For this survey, the following variables were identified as those motivating the survey design:

- Cost to industry of the proposed set of new permissible exposure limits (as a group);
- Number of workers potentially exposed to toxic substances; and
- Number of workers affected by the proposed regulations.

Statistical theory dictates that responses be concentrated both in groups which have the highest variability with respect to these variables and in groups representing the majority of establishments in the population. No hard information relating to the variability of the variables mentioned above by industry sector or other relevant breakdown was available at the outset of the survey. Hence, the variability in the number of employees was used as a variability measure. Consistent with the notion that the variability of numbers exposed as well as the variability of cost required to remedy an overexposure are highest in the largest companies, the sample was designed to include a higher proportion of larger establishments.

The sample was drawn so as to insure that the coefficient of variation of estimates (the ratio of the sample standard error to the mean) was within predetermined bounds. The coefficient of variation is a measure of the accuracy of each estimate. A coefficient of variation of 5 percent means that the standard error of the estimate is equal to 5 percent of that estimate. This can be interpreted as saying that the estimate is within two standard errors or 10 percent of the true value with 95 percent probability. Since risks were judged to be different in different sectors, OSHA selected a 5 percent coefficient of variation in the industries using the most chemicals, 7.5 percent in industries with moderate use of chemicals and 10 percent in the service sectors. A table of design specifications in included in Section 5 below.

3. Sampling Frame Selection

The Dun and Bradstreet (D&B) listing was chosen for the PEL survey sampling frame (a listing of establishments from which sample units are selected). This is a nationally based list, containing establishment names as well as each establishment's address, telephone number, SIC code, and number of employees. The Dun and Bradstreet database is regularly refined (every six months) thus minimizing the probability of obtaining out of business or out of scope (e.g., wrong SIC code) establishments when using the frame. The D&B is a commercial listing and its use does not violate any confidentially requirement associated with other frames available to particular agencies in the government.

4. Stratification

Thirty-four groupings of industries (estimation cells) were chosen to be examined for the PEL study. The cell definitions were determined by grouping together industry sectors defined by Standard Industrial Classifications (SICs) which share similar processes and procedures. The cell definitions used for the PEL survey are given in TABLE 1–1.

TABLE 1–1.—DEFINITIONS OF ESTIMATION CELLS

Cell No.	SIC codes included	Description
1	243	Millwork, Veneer, Plywood.
2	245	Wood Bldgs & Mobile Homes.
3	249	Misc. Wood Products.
4	25	Furniture.
5	26	Paper Products.
6	27	Printing & Publishing.
7	281	Indust. Inorganic Chems.
8	282	Plastics & Syn. Resins.
9	283	Drugs.
10	284	Soaps, Detergents & Cleaning.
11	285	Paints, Varnishes, Lacquers.
12	286	Indust. Organic Chems.
13	287	Agricultural Chemicals.
14	289	Misc. Chemical Products.
15	291	Petroleum Refining.
16	295	Paving & Roofing Materials.
17	299	Misc. Petroleum Products.
18	308	Misc. Plastic Products.
19	30 (not 308)	Plastics & Rubber.
20	311	Leather Tanning.
21	31 (not 311)	Leather & Leather Products.
22	32	Stone & Clay.
23	33	Primary Metals.
24	34	Fabricated Metals.
25	35	Machinery.
	36	Electrical Machinery, Instruments.
	38	Misc. Manufacturing.
26	40	R.R. Transportation.
	44	Water Transportation.
	45	Air Transportation.
	47	Transportation Services.
27	46	Pipelines.
28	49	Electrical, Gas & Sanitary.
30	5093	Misc. Durable Goods.
	5153	Grain.
	5161	Chemicals & Allied Products.

TABLE 1–1.—DEFINITIONS OF ESTIMATION CELLS—Continued

Cell No.	SIC codes included	Description
	5191	Misc. Farm Supplies.
	5198	Misc. Paints, Varnishes.
31	55	Auto Dealers.
	75	Auto Repair.
32	7211	Power Laundries, Family & Commercial.
	7213	Linen Supply.
	7215	Coin-operated Laundries & Cleaning.
	7216	Drycleaning Plants, except Rug.
	7218	Industrial Launderers.
	7219	Laundry & Garment Services, nec.
	7221	Photographic Studios, Portrait.
	7231	Beauty Shops.
	7241	Barber Shops.
	7251	Shoe Repair & Shoeshine Parlors.
	7261	Funeral Service & Crematories.
	7299	Miscellaneous Services, nec.
	7332	Blueprinting & Photocopying Services.
	7342	Disinfecting & Pest Control Services.
	7395	Photofinishing Laboratories.
33	7641	Furniture Repair.
	7692	Welding Repair.
34	80	Health Services.
99	37	Transportation Equipment.

For each estimation cell, units on the Dun and Bradstreet sampling frame were classified into one of the four size classes listed below:

Size	Number of Employees
1	0 to 19.
2	20 to 99.
3	100 to 249.
4	250 and above.

For each size class stratum within a cell, the establishments on the frame were further identified by their four digit SIC classification (within the two or three digit sample cell). A separate systematic sample was then selected in each estimation cell/size class stratum. This procedure was accomplished by first selecting one case at random in the size class for the first K units on the frame—where K is the reciprocal of the sampling fraction—and then selecting every Kth unit in the stratum thereafter. Note, from the size class definitions that establishments having zero employees were not included in the survey. Such units were assumed to be out of the scope of the survey.

5. Sample Size Determination and Allocation Within Strata

The total number of establishments selected from the Dun and Bradstreet sampling frame was determined using two stages. The first stage was to compute the target number of respondents for each estimation cell using the standard sample size formula. The formula requires the specification of a target coefficient of variation for estimates.

The coefficients of variation for this survey were set at the following levels:

SIC's	Coefficient of Variation (percent)
24 through 29	5
30 through 39	7.5
40 through 80	10

The units were then allocated to size classes within the estimation cells using Neyman allocation. This method allocates based on the number of establishments in each stratum and on the stratum variability in the key design variable (in this case employment). Size class strata having a large number of establishments on the frame and a high variability in employment (as defined by the population variance) received a greater number of sample units than other strata in the sample. Because the larger size classes often have a high variability in employment, this allocation resulted in "oversampling" the larger size classes in a cell. The required number of cases for each stratum are shown in TABLE 1–2 in the column labeled "Target Number of Respondents."

The number of units actually selected from the D&B frame in each stratum was based on the number of completed cases required for the stratum and on the expected response rate. Almost all sample surveys, especially voluntary surveys, select some number of cases which do not result in a completed interview. In some instances, these will be establishments which have gone out of business, are duplicate cases, or are companies not in the SIC category shown on the frame. Such cases are "Out of Scope". Other establishments, though in scope, refuse to participate or are not reached in the sampling protocol, defined here as a total of five telephone attempts. Experience of surveys similar to the PEL survey indicated that a completion ratio of 50–60% was expected for this survey (the ratio of completed questionnaires to total cases which must be drawn—both in and out of scope). However, to be safe, a larger number of cases were selected and held in reserve from the D&B frame so that, if additional sample units needed to be included to reach the target sample sizes, the cases could be easily obtained.

In fact, for the vast majority of cells, a 60 percent completion ratio was realized. The total number of establishments called in each of the sample strata are shown in TABLE 1–2 in the column labeled "Total Cases Called." In general, this number is equal to the target sample divided by 0.60. The number of completed responses as of May 2, 1988 is shown in TABLE 1–2.

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TABLE 1-2

Number of Firms, Required Sample Sizes, Calls Made and Completes

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
243	0-19	10,986	39	78	53
	20-99	1,995	32	64	34
	100-249	346	12	24	17
	>250	147	48	98	63
	Total	13,474	131	264	167
245	0-19	864	15	25	9
	20-99	385	15	40	28
	100-249	220	17	45	17
	>250	43	30	43	8
	Total	1,512	77	153	62
249	0-19	4,301	37	74	27
	20-99	888	35	70	25
	100-249	129	11	22	8
	>250	44	12	24	8
	Total	5,362	95	190	68
25	0-19	11,505	20	40	23
	20-99	3,254	26	52	35
	100-249	858	13	26	13
	>250	449	73	146	78
	Total	16,066	132	264	149
26	0-19	3,485	20	44	16
	20-99	2,830	30	62	33
	100-249	1,307	30	54	34
	>250	576	184	384	221
	Total	8,198	264	544	304
27	0-19	64,922	45	60	31
	20-99	10,656	34	122	77
	100-249	1,850	12	126	87
	>250	869	88	50	37
	Total	78,297	179	358	232
281	0-19	1,721	20	52	30
	20-99	735	20	52	34
	100-249	189	20	52	29
	>250	157	96	157	75
	Total	2,802	156	313	168

TABLE 1-2, cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
282	0-19	700	20	40	26
	20-99	499	20	40	26
	100-249	184	20	40	25
	>250	175	58	116	52
	Total	1,558	118	236	129
283	0-19	1,289	25	50	28
	20-99	544	25	50	28
	100-249	179	25	50	31
	>250	205	92	184	90
	Total	2,217	167	334	177
284	0-19	3,065	20	40	23
	20-99	767	20	40	28
	100-249	184	20	40	22
	>250	155	70	140	59
	Total	4,171	130	260	132
285	0-19	1,092	20	50	37
	20-99	549	15	40	21
	100-249	100	10	30	15
	>250	45	37	45	30
	Total	1,786	82	165	103
286	0-19	860	20	54	28
	20-99	346	15	44	27
	100-249	95	15	44	26
	>250	92	50	62	35
	Total	1,393	100	204	116
287	0-19	1,306	8	31	15
	20-99	338	9	33	22
	100-249	57	4	23	15
	>250	43	44	44	18
	Total	1,744	65	131	70
289	0-19	2,562	16	38	25
	20-99	918	23	52	31
	100-249	162	9	24	11
	>250	85	51	85	37
	Total	3,727	99	199	104

TABLE 1-2, cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
291	0-19	606	20	50	28
	20-99	227	20	50	25
	100-249	85	20	50	28
	>250	130	59	90	47
	Total	1,048	119	240	128
295	0-19	862	21	46	28
	20-99	237	26	56	39
	100-249	45	10	24	19
	>250	9	8	9	3
	Total	1,153	65	135	89
299	0-19	516	15	32	23
	20-99	186	22	46	31
	100-249	23	4	11	10
	>250	5	5	5	3
	Total	730	46	94	67
308	0-19	8,062	16	32	21
	20-99	4,249	13	26	19
	100-249	1,162	7	14	12
	>250	388	18	36	22
	Total	13,861	54	108	74
30 (not 308)	0-19	1,983	25	50	33
	20-99	722	25	50	37
	100-249	239	25	50	29
	>250	234	48	96	59
	Total	3,178	123	246	158
311	0-19	283	5	24	2
	20-99	125	9	21	8
	100-249	29	4	16	2
	>250	16	5	10	5
	Total	453	23	71	17
31 (not 311)	0-19	2,232	8	16	6
	20-99	610	13	26	21
	100-249	220	13	26	17
	>250	176	13	26	17
	Total	3,238	47	94	61

TABLE 1-2, cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
32	0-19	14,499	15	28	9
	20-99	4,207	34	62	40
	100-249	873	35	64	45
	>250	448	29	53	34
	Total	20,027	113	207	128
33	0-19	4,983	67	201	87
	20-99	2,803	67	201	127
	100-249	1,006	42	126	83
	>250	711	25	75	48
	Total	9,503	201	603	345
34	0-19	29,005	62	113	51
	20-99	11,849	110	200	113
	100-249	2,394	86	157	77
	>250	1,080	62	113	61
	Total	44,328	320	583	302
35,36, 38,39	0-19	112,005	100	200	65
	20-99	30,820	126	188	122
	100-249	7,468	93	137	98
	>250	5,657	80	133	72
	Total	160,950	399	658	357
40,44, & 45	0-19	45,323	20	37	20
	20-99	5,612	20	37	16
	100-249	799	20	37	15
	>250	533	50	91	32
	Total	52,267	110	202	83
46	0-19	439	15	28	23
	20-99	162	15	28	20
	100-249	18	8	18	14
	>250	5	5	5	5
	Total	624	43	79	62
49	0-19	12,982	40	73	48
	20-99	4,046	40	73	57
	100-249	844	40	73	58
	>250	558	150	273	198
	Total	18,430	270	492	361

TABLE 1-2, cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
50 & 51**	0-19	45,422	200	364	237
	20-99	3,464	65	142	101
	100-249	205	30	79	48
	>250	57	57	57	30
	Total	49,148	352	642	416
55 & 75	0-19	284,632	10	30	13
	20-99	20,846	10	30	16
	100-249	1,523	10	30	15
	>250	116	20	60	22
	Total	307,117	50	150	66
72 & 73**	0-19	139,889	120	240	22
	20-99	5,511	30	60	6
	100-249	527	20	40	9
	>250	108	25	50	13
	Total	146,035	195	390	50
7641 & 7692	0-19	18,098	60	110	67
	20-99	289	20	48	32
	100-249	12	10	9	8
	>250	1	1	1	1
	Total	18,400	91	168	108
80	1	233,984	50	91	49
	2	17,174	30	55	36
	3	6,310	30	55	37
	4	3,912	220	400	272
	Total	261,380	330	601	394
37	1	9,863	10	19	6
	2	2,997	10	19	12
	3	1,026	10	19	12
	4	1,072	70	128	72
	Total	14,958	100	185	102

** Refers to SIC Codes: 5093, 5193, 5161, 5191, 5198
** Specifically Sic Codes: 7211,7213,7215,7216,7218,7231, 7241,7251,7261,7299,7732,7342, and 7395

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6. Data Collection Methodology

The data collection method chosen for the survey was Computer Assisted Telephone Interviewing (CATI). In this method the interviewer talks to the respondent on the telephone while sitting in front of a computer screen. Each question to be asked appears on the screen in the proper sequence. CATI systems allow for the responses to be examined during the data collection process. Answers that are out of the possible range of responses or which are not consistent with other answers received earlier in the questionnaire can be immediately identified. Another advantage is that it frees the interviewer up from using a hard copy questionnaire which requires skipping manually to different parts of the questionnaire based upon the responses. Finally, this method saves resources by creating a machine readable record of the responses at the conclusion of the interview, thereby eliminating the need for keypunching.

7. Estimation Procedures

Cost estimates for the PEL study take the form of a combined ratio estimator and can be expressed in the following manner:

$$\hat{cost}_i = \frac{\sum_j \sum_k wgt_{ij} * NRAF1_{ij} * cost_{ijk}}{\sum_j \sum_k wgt_{ij} * NRAF2_{ij} * empl_{ijk}} * (Empl/BLS202_i)$$

where

wgt_{ij} = the weight for cell i and size class j

$NRAF1_{ij}$ = nonresponse adjustment factor

$NRAF2_{ij}$ = nonresponse adjustment factor

$cost_{ijk}$ = cost associated with unit k in the cell i and class j

$empl_{ijk}$ = number of employees at unit k in cell i and class j

$Empl/BLS202_i$ = total employment in cell i from the BLS 202 database.

This estimator benchmarks the estimate obtained from the Dun and Bradstreet sample to Bureau of Labor Statistics BS-202 employment counts for each cell. The benchmarking helps to correct for any deficiencies in the D&B sampling frame. Such a procedure is particularly important in the non-manufacturing industries where establishments are frequently under-represented on the D&B sampling frame.

8. Variance Estimation

As with any sample survey, quantification of sampling error of estimates is an important function. Errors are quantified by computing the standard error of each estimate produced from the survey. Under certain assumptions, the standard error can be used to make probability statements about estimates. For example, an interval equal to two standard errors on either side of an estimate is a 95 percent confidence interval. This means that one can be 95 percent sure that the true value of the quantity being estimated lies somewhere inside that interval.

A replication technique will be used to determine standard errors for the PEL survey. For this method one resamples the original data multiple times to compute standard errors. A replication method was chosen because of two characteristics of the survey. First, some of the estimates which are planned to be produced are nonlinear such as ratio estimates. Second, we are using a nonresponse adjustment factor to adjust the final weights. In both of these situations, replication-type variance estimators are particularly useful.

9. Treatment of Non-Sampling Errors

An important component to any survey effort is the treatment of nonsampling errors. Examples of such errors are:

- Nonresponse bias—error introduced because some selected respondents either do not respond at all (unit nonresponse) or do not respond to a particular question (item nonresponse);
- Response bias—error introduced due the way questions are phrased or the way respondents interpret what is being asked (this also includes error due to deliberate misrepresentation of the answers to questions by respondents).

In the PEL survey, the nonresponse problem was dealt with using two standard methodologies. For unit nonresponse, a mean imputation procedure was used. This procedure assumes that there is no fundamental difference between respondents and nonrespondents and, therefore, usable cases can be reweighted to represent the entire universe. For item nonresponse, an imputation scheme which uses related cases in the respondent group to estimate the missing data was used.

The situation for response bias will be handled by obtaining information from site visits. OSHA will conduct 100 site visits in a cross section of industries. A large portion of these visits will be done on establishments which were also in the telephone survey. Data on key variables collected during the telephone survey will be compared with information obtained from the site visits. This analysis must be undertaken when site visits have been completed.

9.1. Unit Nonresponse Adjustment

In order to adjust the sample for those cases selected from the D&B frame which where called but were out of scope (OOS), out of business (OOB), or in scope but unwilling to participate in the survey, the following approach was used.

- All solicited sample units were assigned a response code based on the following categories:

03 Non-working telephone number
04 Incorrect SIC—out of scope
05 Out of Business (OOB)
06 Not a business or wrong business
07 Duplicate record
08 Could not reach respondent after five attempts
09 Communication barrier
10 Initial refusal
11 Mid-interview refusal (did not answer initial chemical and process questions)
12 Completed interview (completed both initial chemical and process questions)
13 Other nonresponse.

- All units having a response code equal to 08, 09, 10, 11, 12, or 13 were classified as viable sample units (in

scope, in business). Sample units having a response code equal to 12 were classified as both viable and usable. Two nonresponse adjustment weights were assigned to each usable record in the database, based on the ratio of viable to usable sample units in the record's cell and size stratum:

$$NRAF1_{ij} = \frac{\sum_{k=1}^{n_i} I(V_k)}{\sum_{k=1}^{n_i} I(U_k)} \qquad NRAF2_{ij} = \frac{\sum_{k=1}^{n_i} I(V'_k)}{\sum_{k=1}^{n_i} I(U'_k)}$$

where,

i = number of estimation cell

j = number of the size class

$I(V_k)$ = 1 if the kth sample unit is viable,
= 0 otherwise;

$I(U_k)$ = 1 if the kth sample unit is usable,
= 0 otherwise;

V' and U' refer to the precoded employment from the D&B frame for viable and usable units.

NRAF1 is the ratio of viable to usable sample units in the cell/size class stratum. NRAF2 is a weighted ratio of viable to usable units, using the pre-coded employment on the D&B to weight the indicator variable. NRAF2 was used for estimates directly related to employment (e.g., the number of employees in a particular estimation cell). All other estimates used NRAF1 for the nonresponse adjustment weight.

As of May 2, 1988 the response rate experience was as follows:

Response rate=73.2%
Completion rate=81.5%

The response rate is defined as the number of usable cases divided by the number of viable cases. The completion rate is defined as the number of usable cases divided by the total number of cases contacted.

9.2 Item Nonresponse Adjustment/ Imputation

Often survey respondents do not know the answers to some questions or refuse to answer particular questions. In such cases, it is possible to fill in missing values using an imputation scheme. The idea is to use information from both the respondent (answers to other questions which they did supply) and information from other respondents (those answering the missing question) in order to estimate a reasonable response to the missing datum.

The imputation method chosen for the PEL survey is a hybrid method which combines the concepts of a mean imputation and a "hot-deck" imputation. A mean imputation method replaces the missing values on a certain question with the mean value from those respondents answering that question. A hot deck method attempts to find a respondent who matches the respondent having a missing value (in terms of other survey characteristics) and uses the value of the "twin" to replace the missing value. The method used here is a hybrid in the sense that it employs a mean imputation, but only over a small segment of the population which obviously matches the respondent having a missing value.

In particular, the procedure examines three or four digit SIC subgroups within the estimation cell by size class. The mean values of the responses to a particular question of interest in such sample subgroupings were used to impute the missing values in that grouping. In the case of categorical variables (for example, YES/NO questions), a randomization scheme was used which randomly supplied the appropriate set of responses to missing questions based on a probability distribution determined from those who responded.

It should be noted that the values which were placed on the database were not intended to be estimates of the missing reponses. Rather, they are meant to be substitute responses which allow the case to be used in the generation of survey estimates. In the aggregate, estimates produced using imputed data make sense, but may not for the individual establishment. Care was taken in the imputation program to be sure that imputed responses were consistent with other answers for the establishment of interest. Original responses to all questions were retained on the sample record and all responses representing imputed values were identified. One set of questions which was not imputed for was whether monitoring for the presence of certain toxic chemicals was done at the establishment. The data collected as of May 2, 1988 produced an estimate, for those establishments where chemicals or processes were found, that 14.5 percent did monitoring, 65.7 percent did not do monitoring, and 19.8 percent of respondents did not know or refused to answer the question. Of those establishments that did monitor, 25.6 percent provided the requested data.

10. Survey Instrument

As mentioned earlier, data collection for PEL survey was accomplished by Computer Assisted Telephone Interviewing. Prior to calling, a letter was sent to each selected establishment. This letter is shown in Exhibit 1–1. Also, a hard copy version of the PEL questionnaire is given in Exhibit 1–2.

Exhibit 1–1

U.S. Department of Labor
Assistant Secretary for
Occupational Safety and Health
Washington, DC 20210

SIC Code 3479
Metal Coating & Allied Serv.
OMB Approval No. 1218–0142
February 25, 1988.

Mr. John Q. Sample,
Chairman, Anycompany, 123 Sample St., Anytown, US 12345

Dear Mr. Sample: The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor is required by law to set permissible exposure limits for chemical substances in the workplace. Current exposure limits were set 17 years ago using values established by the American Conference of Governmental Industrial Hygienists (ACGIH) and the American National Standards Institute (ANSI).

OSHA has begun a process for revising out-of-date permissible exposure limits. To ensure that any new exposure limits take into account actual workplace conditions, we are conducting a voluntary survey of U.S. business establishments. Included will be questions about specific processes which we believe are performed in your industry and a limited (no more than 10 per process) list of chemicals which we believe are involved in those processes. Your facility was selected to be included in the study.

Decisions regarding new permissible exposure limits will be improved significantly if we have input from as many firms as possible. The interview will take about 30 minutes. Names of responding firms will not be associated with their answers, and all data will be treated as confidential by our contractor.

Please help us expedite the survey process by returning to us, within one week, the enclosed postage paid card with the name and phone number of the person in your organization our contract interviewer should contact. If this card is not received, a representative of our contractor, KCA Research, Inc., will call your office directly to conduct the interview or be directed to the company official designated by you.

Enclosed is a list of the topic areas for the survey. This may help in preparing for the interview.

We appreciate your cooperation and look forward to receiving the information we need from your designated representative.

Sincerely,

John A. Pendergrass,
Assistant Secretary for OSHA.

Enclosure

Topics Covered by Survey

I. *General Firm Characteristics*
—Primary activity at this location
—Approximate numbers of production & maintenance workers
—Number of shifts per day and length of shift

II. *Identification of General Processes Performed by Firm*
—Chemicals used in specific processes or operations and estimated quantities involved
—Approximate number of work stations or assembly lines used and number of workers at each
—Description of process engineering controls such as ventilation and enclosures
—Estimated frequency of process or operation performance
—Description of personal protective equipment used, including respirators, eye, face, and skin protection
—Information regarding exposure monitoring

Exhibit 1–2

_____, we are conducting a survey on behalf of OSHA to assess the current practices of all types of businesses in the handling of toxic and hazardous chemicals. A letter was sent to you informing you of this survey.

1. Did you receive our letter?

1=Yes
2=No

If answer "Yes", begin next paragraph with "As you know."

If answer "No", begin next paragraph with "I'm sorry. Let me summarize what the letter said about the survey".

We are interested in understanding all significant operations or processes in your firm that generate dust, mist, fumes, gases or vapor that your employees might potentially encounter. *Of course, all responses and trade or technological secrets will be kept strictly confidential and no company-specific information will be released to OSHA.*

2. Should I direct my questions to you, or is there someone else in the firm who you feel would be better qualified to answer?

1=Yes, this person will answer survey
2=No, call:
Name _____
Title _____
Phone _____
C=Call back (Set up time for recontact)
R=Refused to answer (Terminate interview)
D=Don't Know/No Response

Let me begin by asking some general questions about your facility.

3. Our records show your firm to be engaged in _____? Is this correct? (Interviewer will read title or brief description for this SIC code.)

1=Yes
2=No, our function here is _____.
C
R
D

4. How many production workers do you have at this location?

1=_____ production workers
C=Call back
R=Refused to answer
D=Don't know

5. How many maintenance workers (for example: painters, welders & cleaning staff) do you employ?

1=_____ maintenance workers
2=Production workers do maintenance functions
3=None, only clerical, managerial, or sales personnel
C
R
D

5a. Of these maintenance workers, how many do painting as their primary work activity?

1=_____ do painting as primary activity
2=None
C
R
D

5b. Of these maintenance workers, how many do welding as their primary work activity?

1=_____ do welding as primary activity
2=None
C
R
D

6. How many shifts per day (24 hr. period) do you have at this location?

1=_____ shifts/24 hr.
C
R
D

I now want to ask you some questions about chemicals which we believe are common among firms in your industry. [These chemicals would be selected on the basis of large volume usage, known toxicity, or known exposure problems in excess of permissable limits as identified from NOES or IMIS or from industry expert opinion].

7. Which of the following chemicals are used, processed, or emitted at your facility?

Chemical A
1=Yes
2=No
C
R
D

[The interviewer will read chemical list specified for this 4-digit SIC. If "Don't Know" (D) is the response, the interviewer will then attempt to clarify the question by reading a list of common synonyms for the chemical. The subsequent answer can then be reassessed as "Yes" or "No"]

8. Are there any other chemicals in major use in your operations that I did not list?

1=Yes (Skip to #6 and add to list)
2=No
C
R
D

9. What is the approximate quantity of chemical A that your facility purchases each week or month?

1=_____ lbs. per week purchased
2=_____ gals. per week purchased
3=_____ lbs. per month purchased
4=_____ gals. per month purchased
C
R
D

Repeat Question #9 until all identified chemicals are quantified.

10. Have exposure limits been adopted by your firm for these chemicals?
1=Yes
2=No
C
R (Skip to #12)
D

11. What exposure limits have been adopted?
1=OSHA PEL's
2=NIOSH REL's
3=ACGIH TLV's
4=Other _____
C
R
D

The next questions are about processes/operations which we believe are common among firms in your industry.

12. Are any of the following processes/operations performed in your facility?
Operation #1
1=Yes
2=No
C
R
D

[Interviewer would read list of up to 6 processes or operations specified for this 4-digit SIC code. This list would be identified from secondary data sources and industry experts. If information regarding relevant processes was not available or sufficient, then this question would be rephrased to elicit process/operation identification from the respondent]

13. Are there any other processes/operations at your facility that I did not list?
1=Yes (Skip to #12 and add to list)
2=No
C
R
D

For each identified process/operation, ask questions 14–25.

14. In Process/Operation 1:
Is Chemical A used?
1=Yes
2=No
C
R
D

REPEAT UNTIL ALL IDENTIFIED CHEMICALS HAVE BEEN ASKED ABOUT USAGE IN THIS PROCESS.

15. How many work stations (or assembly lines) are involved in this process/operation?
1=_____ work stations
2=_____ assembly lines
C
R
D

16. On average, how many workers are directly involved in this process/operation at each work station [or assembly line]?
1=_____ workers/work station
2=_____ workers/assembly line
C
R
D

17. Of these workers, what percent work exclusively at this process/operation?
1=100% (Go to #18)
2=_____%
C
R (Go to #18)
D

17a. For those workers who do not work exclusively at this process/operation, in what other processes/operations are they also employed?
1=_____
C
R
D

18. Is this process/operation a completely enclosed activity?
1=Yes (Skip to #14)
2=No
C
R
D

19. Is this process/operation located outdoors?
1=Yes (Skip to #21)
2=No
C
R
D

20. Is this process/operation ventilated?
1=Yes
2=No
C
R (Skip to #21)

20a. What is the type of ventilation?
1=Local exhaust 1=Yes 2=No
C R D
2=General dilution
3=Natural ventilation
4=Other (specify type)

21. How often is this process/operation performed during each shift?
1=Continuously over entire shift, every shift
2=Daily (specify #/day) _____
3=Weekly (specify #/week) _____
4=Monthly (specify #/month) _____
5=Yearly (specify #/year) _____
6=Other (specify #/period) _____
C
R
D

22. Are respirators routinely used by workers?
1=Yes
2=No (Skip to #23)
C
R
D

22a. What type of respirator?
1=Single use
2=Half-mask cartridge
3=Half-mask canister
4=Full-face cartridge
5=Full-face canister
6=Powered air purifying respirator
7=Air supplied respirator
8=Self-contained breathing apparatus
9=Escape respirator
10=Other _____
C
R
D

23. Do you provide maintenance workers who have exposure to this process with respirators?
1=Yes
2=No
C
R
D

24. Is skin, face, or eye protection used?
1=Yes
2=No (Skip to #25)
C
R
D

24a. What type(s), of skin, face, or eye protection?
1=Long sleeve shirt
2=Coverall
3=Apron
4=Gloves
5=Chemical Protective Clothing
6=Goggles
7=Face Shield
8=Other _____
C
R
D

25. Do you have a hazard communications training program for these workers?
1=Yes
2=No
C
R
D

26. Has environmental monitoring been done at or near this process/operation?
1=Yes
2=No
C
R (Skip to #14 until all processes surveyed)
D

26a. Has this monitoring been designed to evaluate exposure of:
1=potential short term [15 min.] exposures? (STEL)
2=potential 15 minute–8 hour exposures?
3=potential 8–8 hour exposures? (TWA)
C
R
D

26b. During this monitoring, were any chemicals found to be in excess of your adopted exposure guidelines?
1=Yes
2=No
C
R (Skip to #27)
D

26c. Which chemical(s) were found to exceed adopted guidelines?
1=_____
C
R (skip to #27)
D

26d. What activity, work process or operation do you feel is most responsible for the exposures above your adopted guidelines?
1=_____
2=Not able to specify
C
R
D

27. Can you give us your monitoring data for Process 1?
1=Yes
2=No
C
R (Skip to #14)
D

27a. What is the name of the first [next] chemical for which you have monitoring data?
1=_____
C
R
D

27b. Is the data for the work area or for the person (worker)?
1=Area
2=Person
C
R
D

27c. Is the data recorded for the individual worker or the work process?
1=Worker
2=Process
C
R
D

27d. Is the data reported for a short-term peak or an 8 hour TWA (Time Weighted Average)?
1=Short-Term Peak
2=TWA
C
R
D

27e. Is the unit of measurement parts per million or milligrams per cubic meter?
1=PPM
2=Mg/M³
C
R
D

27f. What is the exposure data for this chemical?
1=_____
C
R
D

27g. Do you have exposure estimates for other chemicals used in this process?
1=Yes (Skip to 27a)
2=No
C
R (Skip to #14 until all processes surveyed)
D

28. What do you estimate to be the market value of plant and equipment at your facility?
1=Less than $50,000
2=$50,000–$500,000
3=$501,000–$1,000,000
4=$1 to $5 million
5=$5 to $50 million
6=More than $50 million
C
R
D

29. Can you estimate the annual value of shipments from your facility?
1=Less than $50,000
2=$50,000–$500,000
3=$500,000–$1,000,000
4=$1–$5 million
5=$5–$50 million
6=More than $50 million
C
R
D

Thank you for cooperating with us in our survey.

Supplements Nos. 2, 3, 4, 5, and 6

Copies of these Supplements are available upon request by calling or writing: Ms. Regina Flahie, Office of Regulatory Analysis, Room N3627, U.S. Department of Labor-OSHA, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–7283.

No. 2—Industry Processes and Chemicals, by Four Digit SIC, Identified in the 1988 Sample Survey
No. 3—Employee Exposures by Chemical and Industry, Based on Combined Data from OSHA's Integrated Management Information System and the 1988 Sample Survey
No. 4—Employee Exposures, by Chemical and Industry, Based Upon Data Collected in the 1988 Sample Survey
No. 5—Employee Exposures, by Chemical and Industry, Based Upon Data Contained in OSHA's Integrated Management Information System
No. 6—Hazardous Substance Exposure Data Linked to Industrial Processes Identified in the 1988 Sample Survey.

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Tuesday
June 7, 1988

Part III

Department of Transportation-

Federal Aviation Administration

14 CFR Part 71

Alteration of the San Diego Terminal Control Area, CA; Correction to Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-38]

Alteration of the San Diego Terminal Control Area, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of the San Diego, CA, Terminal Control Area (TCA). Several typographical errors were made in the radials which described the subareas. In addition, some minor editorial changes were made for purposes of clarification.

EFFECTIVE DATE: 0901 UTC, July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-2590 published February 8, 1988, revised the TCA at San Diego, CA (53 FR 3714). Errors were made in the radials which described the subareas. The errors were made in converting from true to magnetic bearings which created boundary lines that did not match. This action corrects that oversight. In addition, some editorial changes, for purposes of clarification, have been made to make the description easier to read and understand.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 88-2590, as published in the Federal Register on February 8, 1988 (53 FR 3714), is corrected as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401 [Amended]

2. Section 71.401(b) is amended as follows:

San Diego, CA [Revised]

Primary Airports

San Diego, CA, (Lindbergh Field), (lat. 32°43'58"N., Long. 117°11'14"W.).

Miramar NAS, Miramar, CA, (lat. 32°52'30"N., long. 117°08'15"W.).

Boundaries

Southern TCA Boundary. A straight line beginning at the intersection of Julian 165° radial and a point 3 miles north of the Mexico Border to lat. 32°33'07"N., long. 117°30'45"W.

Western Boundary. Eastern edge of Warning Area 291 (W-291).

Area A. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Julian VORTAC 262° radial and the eastern edge of Warning Area W-291; then east via the Julian 262° radial to intercept the Mission Bay VORTAC 325° radial, then southeast via the Mission Bay 325° radial to the Julian VORTAC 257° radial, then west via the Julian VORTAC 257° radial to the Oceanside VOR 200° radial, then southwest via the Oceanside 200° radial to the eastern edge of W-291, then north via the eastern edge of W-291 to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the eastern edge of W-291 and the Oceanside 200° radial; then northerly via the Oceanside 200° radial to intercept the Julian 257° radial; then easterly via the Julian 257° radial to intercept the Oceanside 182° radial; then southerly via the Oceanside 182° radial to intercept the Poggi VORTAC 291° radial; then southeasterly via the Poggi 291° radial to intercept the extension of the control zone division line that separates San Diego Lindbergh Field, CA, and San Diego NAS North Island, CA, Control Zones; then via this line on an easterly heading to intercept the Oceanside 171° radial, then southerly via the Oceanside 171° radial to the Poggi 280° radial; then westerly via the Poggi 280° radial to the eastern edge of W-291; then northerly along the eastern edge of W-291 to the point of beginning.

Area C. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 182° radial and the Julian 257° radial; then easterly via the Julian 257° radial to intercept the Mission Bay 325° radial; then southeasterly via the Mission Bay 325° radial to intercept the Oceanside 167° radial; then southerly via the Oceanside 167° radial to intercept the Mission Bay 310° radial; then southeasterly via the Mission Bay 310° radial to the Mission Bay VORTAC; then westerly via the Mission Bay 270° radial to intercept the Oceanside 171° radial; then southerly via the Oceanside 171° radial to intercept the extension of the control zone division line between San Diego Lindbergh Field and San Diego NAS North Island Control Zones; then westerly via the extension line to intercept the Poggi 291° radial; then westerly via the Poggi 291° radial to intercept the Oceanside 182° radial; then northerly via the Oceanside 182° radial to the point of beginning.

Area D. That airspace extending upward from 1,500 feet MSL to and including 2,500 feet MSL and that airspace extending upward from 6,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of Mission Bay 325° radial and the visual extension of the Miramar Runway 28 centerline then easterly via the Runway 28 centerline extension to intercept the Miramar Control Zone 5 SM arc; then southerly via the 5 SM control zone arc to intercept a visual extension of Montgomery Field Runway 28R centerline; then westerly via the Runway 28R centerline to intercept the Oceanside 167° radial; then northerly via the Oceanside 167° radial to the Mission Bay 325° radial; then northwesterly via the mission Bay 325° radial to the point of beginning.

Area E. That airspace extending upward from 3,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Mission Bay 008° radial and the Julian 257° radial; then easterly via the Julian 257° radial to intercept the Oceanside 135° radial; then southeasterly via the Oceanside 135° radial to intercept the Julian 247° radial; then southwesterly via the Julian 247° radial to intercept the Mission Bay 008° radial; then northerly via the Mission Bay 008° radial to the point of beginning.

Area F. That airspace extending upward from the surface to and including 3,200 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Miramar NAS Runway 28 centerline extension and Miramar Control Zone 5 SM arc; then easterly via the visual extension of Miramar NAS Runway 28 centerline to the approach end of Miramar Runway 28; then southeasterly via a stright line to a point intercepting the Miramar Control Zone 5 SM arc at the point where the control zone arc intersects the southern boundary of the Miramar Control Zone extension; then clockwise via the Miramar Control Zone 5 SM arc to intercept the division line of the Miramar and San Diego Montgomery Field Control Zones; then westerly via this separation line to intercept a visual extension

of the Montgomery Field Runway 28R centerline; then westerly via the Montgomery Field Runway 28R centerline extension to intercept the Miramar Control Zone 5 SM arc; then clockwise via the Miramar Control Zone 5 SM arc to the point of beginning.

Area G. That airspace extending upward from the surface to and including 12,500 feet MSL beginning at the intersection of the Oceanside 135° radial and the Julian 247° radial; then southeasterly via the Oceanside 135° radial to intercept the south boundary of the Miramar Control Zone extension; then westerly via the Miramar Control Zone extension southern boundary line to a point intersecting the Miramar Control Zone 5 SM arc; then via a direct line to the approach end of Miramar Runway 28 approach end; then northwesterly via the Miramar Runway 28 centerline and Runway 28 centerline extension to intercept the Miramar Control Zone 5 SM arc; then clockwise via the Miramar Control Zone 5 SM arc to intercept the Julian 247° radial; then northeasterly via the Julian 247° radial to the point of beginning.

Area H. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 135° radial and the Julian 247° radial; then northeasterly via the Julian 247° radial to intercept the Oceanside 130° radial; then southeasterly via the Oceanside 130° radial to the Poggi 007° radial; then southerly via the Poggi 007° radial to the southern boundary line of the Miramar Control Zone extension; then westerly along the southern boudnary line of the Miramar Control Zone extension to intercept the Oceanside 135° radial; then northwesterly via the Oceanside 135° radial to the point of beginning.

Area I. That airspace extending upward from 3,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 130° radial and the Julian 247° radial; then northeasterly via the Julian 247° radial to the Oceanside 121° radial; then southeasterly via the Oceanside 121° radial to intercept the Poggi 020° radial; then southerly via the Poggi 020° radial to intercept an extension of the southern boundary line of the Miramar Control Zone extension; then southwest along this extension line to intercept the Poggi 007° radial; then northerly via the Poggi 007° radial to the Oceanside 130° radial; then northwesterly via the Oceanside 130° radial to the point of beginning.

Area J. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay VORTAC; then northwesterly via the Mission Bay 310° radial to the Oceanside 167° radial; then northerly via the Oceanside 167° radial to the westerly extension of the Montgomery Field Runway 28R centerline; then easterly via the Runway 28R centerline to the separation line between San Diego Montgomery Field and Miramar Control Zones; then easterly via the control zone separation line to intercept the Miramar Control Zone 5 SM arc; then counterclockwise via the Miramar Control Zone 5 SM arc to intercept the southern boundary of the Miramar Control Zone extension; then easterly along the Miramar Control Zone extension southern boundary line extended to intercept the Oceanside 130° radial; then southeasterly via the Oceanside 130° radial to the Julian 207° radial; then southerly via the Julian 207° radial to the Mission Bay 099° radial; then westerly via the Mission Bay 099° radial to the point of beginning.

Area K. That airspace extending upward from 5,600 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Mission Bay 085° radial and the Oceanside 130° radial; then easterly via the Mission Bay 085° radial to intercept the Julian 191° radial; then southerly via the Julian 191° radial to intersect a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the Poggi 121° radial; then northwesterly via the Poggi 121° radial to Poggi VORTAC; then northeasterly via the Poggi 070° radial to intercept the Julian 207° radial; then northeasterly via the Julian 207° radial to intercept the Oceanside 130° radial; then northwesterly via the Oceanside 130° radial to the point of beginning.

Area L. That airspace extending upward from the surface to and including 12,500 feet MSL beginning at the intersection of the Oceanside 171° radial and the Mission Bay 279° radial; then easterly via the Mission Bay 279° radial and the Mission Bay 099° radial to the Mission Bay 10 DME, then clockwise via the Mission Bay 10 DME arc to the Poggi 301° radial; then northwesterly via the Poggi 301° radial to intersect the division line that separates the San Diego Lindbergh Field and San Diego NAS North Island Control Zones; then westerly along this line extended to intercept the Oceanside 171° radial; then northerly via the Oceanside 171° radial to the point of beginning; excluding that airspace (the VFR Corridor in this area and the area Q) extending upward from 3,301 feet to but not including 4,700 feet MSL in an area beginning at the Mission Bay VORTAC; then southeasterly on a line direct to the Hotel del Coronado (south end of Coronado Island); then via the Silver Strand Boulevard to the Mission Bay 10 DME; then counterclockwise via the Mission Bay 10 DME to intersect Interstate 5 (I-5); then northerly via I-5 to the intersection of Highway 94; then on a northerly heading direct to the intersection of the interchange of I-5 and I-805 to intersect the Mission Bay 099° radial; then westerly via Mission Bay 099° radial to Mission Bay to the point of beginning.

Area M. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 099° radial/10 DME; then easterly via the Mission Bay 099° radial to the Mission Bay 13 DME; then clockwise via the 13 DME arc to the Poggi 301° radial; then northwesterly via the Poggi 301° radial to the Mission Bay 10 DME; then northerly via the 10 DME arc to the point of beginning.

Area N. That airspace extending upward from 3,000 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 099° radial/13 DME; then easterly via the Mission Bay 099° radial to the mission Bay 15 DME; then clockwise via the Mission Bay 15 DME arc to the Poggi 301° radial; then northwesterly via the Poggi 301° radial to the Mission Bay 13 DME; then northerly via the 13 DME to the point of beginning.

Area O. That airspace extending upward from 3,500 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 099° radial/15 DME; then easterly via the Mission Bay 099° radial to the Julian 207° radial; then southerly via the Julian 207° radial to the Poggi 070° radial; then southwesterly via the Poggi 070° radial to the Poggi VORTAC; then northwesterly via the Poggi 301° radial to the Mission Bay 15 DME; then northerly via the Mission Bay 15 DME arc to the point of beginning.

Area P. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Poggi 280° radial and the eastern edge of W-291; then easterly via the Poggi 280° radial to intercept the mission Bay 10 DME; then northeasterly via the Mission Bay 10 DME to the Poggi 301° radial; then southeasterly via the Poggi 301°/121° radials to intercept a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the eastern edge of W-291; then northerly via the eastern edge of W-291 to the point of beginning.

Area Q. That airspace extending upward from 2,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 171° radial and an extension of the division line separating the San Diego Lindbergh Field and San Diego NAS North Island Control Zones; then easterly along that division line to intercept the Poggi 301° radial; then southeasterly via the Poggi 301° radial to intercept the Mission Bay 10 DME; then clockwise via the Mission Bay 10 DME arc to intercept the Poggi 280° radial; then westerly via the Poggi 280° radial to the Oceanside 171° radial; then northerly via the Oceanside 171° radial to the point of beginning, excluding airspace contained in the VFR Corridor (See Area L).

Area R. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 135° radial and the Julian 257° radials; then easterly via the Julian 257° radial to intercept the Oceanside 115° radial; then southeasterly via the Oceanside 115° radial to intercept the Poggi 020° radial; then southerly via the Poggi 020° radial to intercept the Oceanside 121° radial; then northwesterly via the Oceanside 121° radial to intercept the Julian 247° radial; then southwesterly via the Julian 247° radial to intercept the Oceanside 135° radial; then northwesterly via the Oceanside 135° radial to the point of beginning.

Area S. That airspace extending upward from 6,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Julian VORTAC 262° radial and the Mission Bay 325° radial; then easterly via the Julian 262° radial to intercept the Oceanside VORTAC 115° radial; then southeasterly via the Oceanside 115° radial to intercept the Julian 257° radial; then westerly via the Julian 257° radial to the Mission Bay VORTAC 008° radial; then southerly via the Mission Bay 006° radial to intercept the Julian 247° radial; then southwesterly via the Julian 247° radial to intercept the Miramar, CA, Control Zone 5 SM boundary; then southerly via the 5 SM control zone arc to intercept the Miramar

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Runway 28 centerline extended; then westerly via the Miramar Runway 28 centerline extension to intercept the Mission Bay 325° radial; then northwest via the Mission Bay 325° radial to the point of beginning.

Issued in Washington, DC on May 26, 1988.

Sheldon Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-12724 Filed 6-6-88; 8:45 am]

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federal register

Tuesday
June 7, 1988

Part IV

Department of Education

Office of Bilingual Education and Minority Language Affairs

34 CFR Part 562

Bilingual Education; Fellowship Program; Final Regulations

VOL 53 ISS 109 JE 7 1988 UMI

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Part 562

Bilingual Education; Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Bilingual Education: Fellowship Program. The Fellowship Program provides financial assistance to full-time students at participating schools, who are in pursuit of a degree above the bachelor's level in areas related to programs for limited English proficient persons such as teacher training, program administration, research and evaluation, and curriculum development. Institutions of higher education (IHEs) are eligible to apply for participation in the Fellowship Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joyce Brown, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2595.

SUPPLEMENTARY INFORMATION: The authority for the Fellowship Program is under section 743 of Part C of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98–511, enacted on October 19, 1984 (20 U.S.C. 3221–3282.

An individual submits an application for a fellowship to an IHE that is approved for participation in the Fellowship Program. Although not eligible for funds, an IHE may apply for participation in the Fellowship Program. A participating IHE forwards to the Secretary names of individuals nominated for fellowships. The Secretary selects Fellows from among the individuals nominated.

On August 16, 1985, the Secretary published final regulations with invitation to comment for the Fellowship Program in the **Federal Register** (50 FR 33308). These regulations included a discussion of the significant comments received. Only minor technical changes have been made in these regulations to conform with 34 CFR Part 500—Bilingual Education: General Provisions.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the final regulations, five parties submitted comments. An analysis of the comments and of the changes in the regulations follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Purpose of the Fellowship Program (Section 562.1)

Comment: One commenter suggested that the program should train teachers (who can also conduct in-service training of other teachers), but not administrators.

Discussion: In order to ensure consistency with the statute, the Secretary believes that the regulations should provide for training of teachers and administrators.

Change: None.

Stipend Restriction (Section 562.5(b)(ii))

Comment: One commenter suggested that there be no requirement concerning the amount of time that a fellowship recipient is gainfully employed.

Discussion: A fellowship recipient may work unlimited hours and still receive assistance for his or her tuition, books, fees, and travel. However, in allocating available funds, the Secretary has concluded that the portion of the award which provides a stipend is appropriately based upon the amount of time that Fellows are gainfully employed.

Change: None.

Evidence of Local or National Need (§ 562.11(e))

Comment: One commenter suggested that universities should survey the potential job market for the graduates of their programs.

Discussion: The Secretary recognizes the potential job market as an important consideration in determining the number of graduates required and has assumed responsibility for conducting such surveys. Fellowship grant funds are only available to Fellows in order to participate in approved university programs. Universities do not receive a portion of the grant funds to conduct any program activities.

Change: None.

Use of Language Proficiency as Selection Criteria (§ 562.30(c)(2))

Comment: One commenter suggested that proficiency in English and another language should be an essential qualification for a fellowship.

Discussion: It is the Secretary's view that since the fellowship assistance is provided to students pursuing graduate degrees in such areas as teacher training, program administration, research and evaluation, curriculum development, and teaching in special alternative instructional programs, language proficiency other than in English may not be necessary in all instances.

Change: None.

Obligation Accountability (§ 562.47)

Comment: One commenter suggested that the university should report on the job performance and career ladder status of the graduates.

Discussion: Graduates frequently find employment at sites other than those where they received training. Therefore, the Secretary concludes that it would be difficult, if not impossible, for the university to report on the job performance and career ladder status of its graduates. Fellowship recipients are required by contractual agreement to report on their employment status.

Change: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the Final Regulations with Invitation to Comment, the Secretary requested comments on whether the regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 562

Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: April 6, 1988.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 562 to read as follows:

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

Subpart A—General

Sec.

562.1 Fellowship Program.
562.2 Who is eligible to apply for assistance under the Fellowship Program?
562.3 What regulations apply to the Fellowship Program?
562.4 What definitions apply to the Fellowship Program?
562.5 What does a fellowship award include?

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

562.10 How does the Secretary approve IHEs for participation?
562.11 What criteria does the Secretary use in reviewing applications for participation?

Subpart C—How Does an Individual Apply for a Fellowship?

562.20 Where does an individual apply?

Subpart D—How does the Secretary Select New Fellows?

562.30 How does the Secretary select new Fellows?
562.31 What is the period of a fellowship?

Subpart E—What Conditions Must be Met by Fellows?

562.40 What is the service requirement for a fellowship?
562.41 What are the requirements for repayment of the fellowship?
562.42 What is the repayment schedule?
562.43 What interest is charged?
562.44 Under what circumstances is repayment deferred?
562.45 What is the length of the deferment of repayment?
562.46 Under what circumstances is repayment waived?
562.47 How shall the recipient account for his or her obligation?

Authority: 20 U.S.C. 3221–3282, unless otherwise noted.

Subpart A—General

§ 562.1 Fellowship Program.

The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs for limited English proficient persons (as defined in 34 CFR 500.3) such as teacher training, program administration, research and evaluation, and curriculum development.

(Authority: 20 U.S.C. 3253)

§ 562.2 Who is eligible to apply for assistance under the Fellowship Program?

(a) An institution of higher education (IHE) that offers a program of study leading to a degree above the bachelor's level as described in § 562.1 may apply for participation in the Fellowship Program.

(b) An individual is eligible to apply for a fellowship under this program if the individual—

(1)(i) Is a citizen, a national, or a permanent resident of the United States;

(ii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iii) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands, Republic of Palau; and

(2) Has been accepted for enrollment as a full-time student in a course of study offered by an IHE approved for participation in the program.

(Authority: 20 U.S.C. 3253)

§ 562.3 What regulations apply to the Fellowship Program?

The following regulations apply to the Fellowship Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 562.

(Authority: 20 U.S.C. 3253)

§ 562.4 What definitions apply to the Fellowship Program?

The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

(Authority: 20 U.S.C. 3231–3282)

§ 562.5 What does a fellowship award include?

(a) *Allowable costs.* A student may use Fellowship funds under the program for—

(1) Tuition and fees—the normal and usual costs associated with the course of study;

(2) Books—up to $250;

(3) Travel—up to $250 for travel to field-study site; and

(4) A stipend, subject to the restrictions in paragraph (b) of this section.

(b) *Stipends.* (1) An individual may receive a Fellowship stipend if he or she is—

(i) A full-time student in a program of study which was approved by the Secretary in accordance with § 562.10; and

(ii) Not gainfully employed more than 20 hours a week or the annual equivalent.

(2) A stipend for an individual participating in the Fellowship Program may not exceed $450 per month.

(Authority: 20 U.S.C. 3255)

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

§ 562.10 How does the Secretary approve IHEs for participation?

(a)(1) The Secretary determines whether to approve an IHE for participation with regard to each proposed language curriculum based on the quality of the application using the criteria listed in § 562.11.

(2) The Secretary awards up to a maximum of 100 points for all the criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the heading for each criterion.

(b) After the IHE's application has been evaluated according to the selection criteria, the Secretary rank orders the application.

(c) Following the rank order, the Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at each IHE—

(1) Based on the IHE's capacity to provide graduate training in the areas proposed for fellowship recipients; and

(2) To the extent feasible, in proportion to the needs of various groups of individuals with limited English proficiency within the geographic area.

(Authority: 20 U.S.C. 3253(a), 3254)

(Approved by the Office of Management and Budget under control number 1885–0001)

§ 562.11 What criteria does the Secretary use in reviewing applications for participation?

(a) *Institutional commitment.* (25 points)

(1) The Secretary reviews each application to determine the quality of the IHE's graduate program of study.

(2) The Secretary considers—

(i) The extent to which the program has been adopted as a permanent graduate program of study;

(ii) The organizational placement of the program;

(iii) The staff and resources which the IHE has committed to the program; and

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(iv) The IHE's demonstrated competence and experience in programs and activities such as those authorized under the Act.

(b) *Quality of faculty members.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the faculty in the academic area.

(2) The Secretary considers the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(c) *Quality of the instructional program.* (20 points)

(1) The Secretary considers the quality of the applicant's program of instruction.

(2) The Secretary considers—

(i) In the case of projects designed to prepare educational personnel for programs for limited English proficient persons that use English and a language other than English, the project incorporates the use of both English and a language other than English, to the extent necessary to develop the participants' competencies as bilingual education personnel;

(ii) The quality of the standards used to determine satisfactory progress in and completion of the program; and

(iii) The interdisciplinary aspects of the program.

(d) *Field based experience.* (15 points)

The Secretary reviews each application to determine the extent to which the program provides field based experience through arrangements with local educational agencies (LEAs), State educational agencies (SEAs) and persons or organizations with expertise in programs for limited English proficient persons.

(e) *Evidence of local or national need.* (10 points)

The Secretary reviews each application to determine the need for more individuals trained above the bachelor's level in proportion to the needs of various groups of individuals with limited English proficiency in the local area, and throughout the country.

(f) *Recruitment plan.* (10 points)

The Secretary considers the IHE's plans for recruiting and selecting nominees using the criteria listed in § 562.30 (b) and (c).

(Authority: 20 U.S.C. 3253(a))

(Approved by the Office of Management and Budget under control number 1885-0001)

Subpart C—How Does An Individual Apply for a Fellowship?

§ 562.20 Where does an individual apply?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) Each participating IHE may establish procedures for receipt of applications from individuals.

(Authority: 20 U.S.C. 3253(a))

Subpart D—How Does the Secretary Select New Fellows?

§ 562.30 How does the Secretary select new Fellows?

(a) The Secretary selects Fellows taking into consideration the rank orders prepared by the IHE, subject to the maximum number of fellowships per language curriculum designated for that IHE.

(b) The Secretary gives preference to individuals intending to study programs for limited English proficient persons in the following specialized areas:

(1) Vocational education.
(2) Adult education.
(3) Gifted and talented education.
(4) Special education.
(5) Education technology.
(6) Literacy.
(7) Mathematics and science education.

(c) In recommending nominees, an IHE shall consider the following criteria:

(1) *Academic record.* The quality of the academic record of the applicant.

(2) *Language proficiency.* The applicant's proficiency in English and, if applicable, the language(s) to be studied.

(3) *Experience.* The extent of the applicant's experience in providing services to, teaching in, or administering programs for limited English proficient persons.

(Authority: 20 U.S.C. 3253(a))

(Approved by the Office of Management and Budget under control number 1885-0001)

§ 562.31 What is the period of a fellowship?

(a) Except as provided in paragraph (b) of this section—

(1) Fellowships may be awarded for a maximum of two one-year periods to a student who maintains satisfactory progress in a post-baccalaureate program of study; and

(2) Fellowships may be awarded for a maximum of three one-year periods to a student who maintains satisfactory progress in a doctoral program of study.

(b) Subject to the availability of funds and where adequate justification is provided by an IHE, the Secretary may extend a fellowship beyond the maximum period to a recipient who, for circumstances beyond his or her control, is not able to complete the program of study in that period.

(c) A recipient of a fellowship who seeks assistance beyond the initial one-year period must be renominated by the participating IHE.

(d) The Secretary may give preference to recipients in their second or third year who maintain satisfactory progress in the program of study prior to approving nominations of new students.

(Authority: 20 U.S.C. 3253(a))

Subpart E—What Conditions Must Be Met by Fellows?

§ 562.40 What is the service requirement for a fellowship?

(a) Upon selection for a fellowship, the recipient shall sign an agreement provided by the Secretary to work for a period equivalent to the period of time that the recipient receives assistance under the fellowship in one or more of the following activities:

(1) Training personnel to develop and conduct programs for limited English proficient persons or teacher training programs at IHEs.

(2) Conducting research related to programs for limited English proficient persons.

(3) Administering programs for limited English proficient persons.

(4) Conducting evaluations of programs for limited English proficient persons.

(5) Developing curriculum materials designed for programs for limited English proficient persons.

(6) Working in any other activity, approved in advance by the Secretary, in accordance with the procedures in § 562.47, which is related to programs and activities such as those authorized under the Act.

(b) A recipient shall begin working in one or more of the activities listed in paragraphs (a) (1) through (6) of this section within six months of the date the recipient ceases to be enrolled at an IHE as a full-time student.

(Authority: 20 U.S.C. 3253(c))

§ 562.41 What are the requirements for repayment of the fellowship?

(a) If a recipient does not work in one of the activities described in § 562.40(a) (1) through (6), he or she shall repay the full amount of the fellowship.

(b) The Secretary prorates the amount a recipient is required to repay based on the length of time the recipient worked in an authorized activity compared with the length of time during which he or she received assistance.

(Authority: 20 U.S.C. 3253(c))

§ 562.44 What is the repayment schedule?

(a) A recipient required to repay all or part of the amount of the fellowship shall—

(1) Begin repayments within six months of the date he or she ceases to be enrolled as a full-time student at an IHE in the Fellowship Program; or

(2) Begin repayments on a date and in a manner established by the Secretary, if he or she ceases to work in an authorized activity, of the prorated amount of his or her obligation.

(b) A recipient must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary. This period may be extended if the Secretary grants a deferment under § 562.44.

(Authority: 20 U.S.C. 3253(c))

§ 562.43 What interest is charged?

(a) The Secretary charges a recipient interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 562.44.

(Authority: 20 U.S.C. 3253(c))

§ 562.44 Under what circumstances is repayment deferred?

The Secretary may defer repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employability in one of the activities described in § 562.40(a)(1)-(6);

(b) Demonstrates to the Secretary's satisfaction that he or she is conscientiously seeking but unable to secure employment in one of the activities described in § 562.40(a)(1)-(6);

(c) Re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States on active duty;

(e) Is in service as a volunteer under the Peace Corps Act; or

(f) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 3253(c))

§ 562.45 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 3253(c))

§ 562.46 Under what circumstances is repayment waived?

The Secretary may waive repayment if the recipient demonstrates the existence of extraordinary circumstances that justify a waiver.

(Authority: 20 U.S.C. 3253(c))

§ 562.47 How shall the recipient account for his or her obligation?

(a) Within six months of the date a recipient ceases to be enrolled as a full-time student at an IHE, the recipient shall submit to the Secretary one of the following items:

(1) A description of the employment in an activity listed in § 562.40(a)(1) through (6) in which he or she is employed.

(2) Repayment required under §§ 562.41 and 562.42.

(3) A request to repay the obligation in installments.

(4) A request for a deferment or waiver as described in §§ 562.44 through 562.46 accompanied by a statement of justification.

(b) A recipient who submits a description of employment under paragraph (a)(1) of this section shall notify the Secretary on a yearly basis of the period of time during the preceding year that he or she was employed in the activity.

(c) A recipient shall inform the Secretary of any change in his or her employment status.

(d) A recipient shall inform the Secretary of any change in his or her address.

(e) A recipient's failure to timely satisfy the requirements in paragraphs (b) and (d) of this section shall result in the recipient being in non-compliance or default status subject to collection action. Interest and costs of collection may be collected in accordance with 31 U.S.C. 3717 and 34 CFR Part 30.

(Authority: 20 U.S.C. 3253(c))

(Approved by the Office of Management and Budget under control number 1885-0001)

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Federal Register
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Wednesday, June 8, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 88–16 of May 20, 1988

Emergency Determination of Additional FY 1988 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207(b) and 101(a)(42), Respectively, of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with Section 207(b) of the Immigration and Nationality Act ("the Act"), and after appropriate consultation with the Congress, I hereby determine that an unforeseen refugee emergency exists and that the admission of an additional 15,000 refugees from Eastern Europe and the Soviet Union during FY 1988, in addition to the 15,000 admissions from this region already authorized in Presidential Determination 88–1, is justified as required by Section 207(b) of the Act.

In accordance with part B of the first sentence of Section 101(a)(42) of the Act, I also determine, after appropriate consultation with the Congress, that nationals of the Soviet Union and persons without any nationality whose country of habitual residence is the Soviet Union may, if otherwise qualified, be considered refugees for the purposes of admission to the United States while still within the Soviet Union.

You are hereby directed to report this Determination to the Congress immediately and to publish it in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, May 20, 1988.

cc: The Secretary of State
The Attorney General
The Secretary of Health and Human Services

[FR Doc. 88-12985
Filed 6-6-88; 3:16 pm]
Billing code 3195-01-M

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Presidential Documents

Presidential Determination No. 88–16 of June 3, 1988

Determination Under Subsection 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618), January 3, 1975 (88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic and the People's Republic of China will substantially promote the objectives of section 402 of the Act.

This determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, June 3, 1988.

[FR Doc. 88–12986
Filed 6–8–88; 3:17 pm]
Billing code 3195–01–M

Editorial note: For the text of the President's letters to the Speaker of the House of Representatives and the President of the Senate, dated June 3, on the waiver continuation, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 23).

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Rules and Regulations

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 795

Payment Limitation of a Married Couple With Respect to Farm Operations

AGENCY: Commodity Credit Corporation (CCC) and Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations set forth at 7 CFR 795.11 relating to the application of maximum payment limitation provisions with respect to farm operations which are conducted by a married couple. In order to provide for an orderly transition in implementing the payment limitation provisions of the 1987 Act for the 1989 crop year, this interim rule amends 7 CFR 795.11 to provide with respect to the 1988 crop year that a husband and wife may be considered to be separate persons so long as they each maintained separate farming operations prior to and after their marriage.

DATES: Effective June 3, 1988. Written comments must be received not later than July 8, 1988, to be assured of consideration.

ADDRESS: Written comments on this interim rule must be submitted to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Section Chief, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Phone (202) 447-4666.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loan and Purchases—10.051; Cotton Production Stabilization—10.052; Emergency Conservation Program—10.054; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Agricultural Conservation Program—10.063; Forestry Incentives Program—10.064; Rice Production Stabilization—10.065; and Conservation Reserve Program—10.069 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560-0096 has been assigned.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Since producers participating in the programs for which this part applies have already planted or are preparing to plant the crops affected by this interim rule, it has been determined that this interim rule shall be effective upon filing with the **Federal Register**. However, comments are requested with respect to this interim rule and such comments shall be considered in developing the final rule.

Statutory Background

A maximum payment limitation for commodity programs was first mandated by section 101 of the Agricultural Act of 1970 (Pub. L. 91-524). The 1970 Act limited payments to $55,000 per person under each of the wheat, feed grain and upland cotton programs for the 1971 through 1973 crops. There were a number of payments authorized under the 1970 Act including land diversion payments, wheat certificate payments, and other payments which were based upon specified prices and parity prices.

The Agriculture and Consumer Protection Act of 1973 (Pub. L. 93-86) made drastic reductions in the maximum payment limitation—down to $20,000 per person for the combined wheat, feed grain, and upland cotton programs. The 1973 Act instituted the concept of established ("target") prices and deficiency payments. The 1973 Act limited combined deficiency and diversion payments for the 1974 through 1977 crops.

The Food and Agriculture Act of 1977 (Pub. L. 95-113) increased the maximum payment limitation but retained the limitation for the combined wheat, feed grain, and upland cotton programs. The 1977 Act limited combined deficiency and diversion payments on wheat, feed grains, and upland cotton to $40,000 for the 1978 crops and $45,000 for the 1979 crops. It also limited rice deficiency payments to a separate total of $52,250 per person for the 1978 crop and $50,000 per person for the 1979 crop. The 1977 Act provided for a combined limitation of $50,000 per person on the total amount of payments which could be received for one or more of the annual programs for each of the 1980 and 1981 crops of wheat, feed grains, upland

cotton, and rice. Minimum loan and purchase rates were provided for wheat and feed grains, but the 1977 Act also provided discretionary authority to reduce the loan and purchase rates to aid export competitiveness. In the event there was any such loan and purchase rate reduction, compensation was to be made available by increasing established price (i.e., deficiency) payments. Such an increase was excluded from any maximum payment limitation.

The Agriculture and Food Act of 1981 (Pub. L. 97–98) continued the $50,000 maximum payment limitation on combined deficiency and diversion payments for the 1982 through 1985 crops. For the first time, a separate $100,000 maximum payment limitation was placed on disaster payments. Both limitations applied to combined payments on wheat, feed grains, upland cotton, and rice. In a manner similar to that provided for in the 1977 Act, discretionary authority was provided for reductions in loan and purchase rates reductions with corresponding increase in deficiency payments that were not subject to the maximum payment limitation. The Extra Long Staple Cotton Act of 1983 (Pub. L. 98–88) amended the 1981 Act to make payments which were available under the Extra Long Staple Cotton Program subject to the maximum payment limitation.

The Food Security Act of 1985 (Pub. L. 99–198) retained the same combined maximum limitation of $50,000 for deficiency and diversion payments and $100,000 for disaster payments for the 1986 through 1990 crops of wheat, feed grains, upland cotton, extra long staple cotton, and rice. However, the potential for direct payments to an individual producer was increased substantially by the 1985 Act, and many types of payments originally were not subject to any maximum payment limitation. The largest payments which originally were not subject to a maximum payment limitation were the additional wheat or feed grain deficiency payments which result from the downward adjustment in the loan and purchase rates, the same as authorized by the 1977 and 1981 Acts. These payments are sometimes referred to as "Findley payments."

Besides the Findley payments, the 1985 Act provided that other direct payments were also not subject to the $50,000 maximum payment limitation. This included payments such as:

—Gains realized by producers from marketing loans under the upland cotton and rice programs when producers are permitted to repay nonrecourse price support loans at less than the original loan principal;
—Loan deficiency payments when producers agree to forego obtaining nonrecourse loans and are paid the difference between the established loan rate and the lower repayment rate under a marketing loan program; and
—Inventory reduction payments.

Legislation enacted in 1986 (Pub. L. 99–500 and Pub. L. 99–591) amended the 1985 Act to impose an overall maximum limitation of $250,000 on the following:

—$50,000 limitation on regular deficiency payments and land diversion payments
—Gains realized from marketing loan repayments
—Loan deficiency payments
—Inventory reduction payments
—Findley payments
—Disaster payments
—Payments representing compensation for resource adjustment.

Substantial revisions of the existing statutory payment limitation provisions effective for the 1989–1990 crops subsequently were made by the Agricultural Reconciliation Act of 1987, as contained in the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). The types of payments subject to the limitations were not changed but these amendments addressed the issues of the eligibility of a producer to receive such payments and the manner in which a "person" will be determined for purposes of applying the maximum payment limitation provisions. With respect to farming operations conducted by a husband and wife, the 1987 Act provides that a husband and wife shall be one person unless they each had separate farming operations prior to their marriage and they maintain such operations separately after their marriage.

Congress provided the Secretary of Agriculture great deference in determining the manner in which these limitations were to be applied by providing that the Secretary shall determine the term "person" for such purposes. From the enactment of the 1970 Act until the enactment of the 1987 Act the various statutes which provided that the Secretary of Agriculture shall make such a determination remained virtually unchanged. Accordingly, since implementation of the 1970 Act, until now, a husband and wife in all instances have been considered to be one person for payment limitation purposes.

This manner of implementation of these provisions with respect to farming operations which are conducted by a husband and wife has been the subject of litigation. The validity of the regulations was upheld in 1981 in *Martin v. Berglund*, 639 F. 2d 647 (10th Cir. 1981). However, on March 31, 1988 the United States District Court for the District of Columbia held that the provisions of 7 CFR 795.11 which set forth the regulations which are applicable to such farming operations were invalid on the basis that they are unconstitutional because they are a burden on the right to marry that is not rationally related to a legitimate government interest. *Women Involved in Farm Economics v. USDA*, Civil Action No. 87–1752 (D. D.C. 1988). In order to provide for an orderly transition in implementing the payment limitation provisions of the 1987 Act for the 1989 crop year, this interim rule amends 7 CFR 795.11 to provide with respect to the 1988 crop year that a husband and wife may be considered to be separate persons so long as they each maintained separate farming operations prior to and after their marriage.

Interim Rule

Accordingly, 7 CFR Part 795 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 7 U.S.C. 1308; Pub. L. 99–500 and Pub. L. 99–591.

2. Section 795.11 is revised to read as follows:

§ 795.11 Husband and wife.

With respect to the 1988 crop year, a husband and wife shall be considered to be one person except that such individuals who, prior to their marriage, were separately engaged in unrelated farming operations will be determined to be separate persons with respect to such farming operations so long as the operations remain separate and distinct from any farming operation conducted by the other spouse if such individuals have executed a Contract to Participate in the 1988 Price Support and Production Adjustment Programs by April 15, 1988. Such individuals must file a form ASCS–561 with the county committee for each such farming operation by July 8, 1988, if they desire to be considered as separate persons under this section.

Signed at Washington, DC, on May 24, 1988.

Milt Heitz,

Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–12811 Filed 6–3–88; 11:47 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–134–AD; Amdt. 39–5964]

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Through –50, and C–9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1309

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive, applicable to certain McDonnell Douglas Model DC–9–10 through –50, and C–9 (Military) series airplanes, which currently requires visual/borescope inspections, and repair or replacement, as necessary, of the aft pressure bulkhead tee cap. This amendment provides for optional eddy current inspections of the fuselage aft pressure bulkhead tee cap from the forward side of the bulkhead and increases the current repetitive inspection intervals. This action also expands the applicability to include certain Model DC–9–30 series airplanes. This action is prompted by reports of cracks in the aft pressure bulkhead tee cap. If this condition is not corrected, bulkhead tee cap cracks may develop, which could result in rapid depressurization and cause severe structural damage to the airplane.

EFFECTIVE DATE: July 15, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6321.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 85–16–03, Amendment 39–5109 (50 FR 30804; July 30, 1985), to require the inspections for cracks, and repair or replacement, as necessary, of the aft pressure bulkhead tee cap, on certain McDonnell Douglas DC–9 series airplanes, was published in the **Federal Register** on February 1, 1988 (53 FR 2765). The comment period for the proposal closed March 28, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters requested that certain editorial changes be made to clarify the identification of the area to be inspected, repetitive inspection procedures, and certain repair procedures. The comments do not significantly affect the intent of the proposed rule. Therefore, the FAA concurs and suggested changes have been incorporated in this final rule, where appropriate.

Since issuance of the Notice, the FAA has reviewed and approved Revision 2 of McDonnell Douglas Alert Service Bulletin A57–191, dated December 22, 1987, which incorporates clarification concerning repetitive inspections and closing actions. The final rule has been revised to incorporate these changes reflected by Revision 2.

The FAA has determined that these revisions are for clarification purposes only; they do not impose any additional economic burden on any operator, nor do they expand the scope of this AD.

The FAA has been queried as to whether this action also supersedes AD 85–06–03, Amendment 39–5014 (50 FR 10936), which addressed this same subject. The FAA notes that AD 85–06–03 was superseded by AD 86–16–03; this action now supersedes AD 86–16–03. Wording in the introduction to the final rule has been revised to clarify this point.

This final rule has also been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously discussed.

It is estimated that 740 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish an optically-aided visal inspection, and 148 manhours per airplane to accomplish high and low frequency eddy current inspections from the forward side of the bulkhead. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $355,200 and $4,380,000, respectively.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC–9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 85–16–03, Amendment 39–5109 (50 FR 30804; July 30, 1985), [which superseded AD 85–06–

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03, Amendment 39-5014 (50 FR 10936; March 19, 1985)], with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10 through -80 and C-9 (Military) series airplanes, Fuselage Number 1 through 1309, certificated in any category. Compliance required as indicated, unless previously accomplished within the last 3,500 landings.

To detect cracks which could result in structural failure of the aft pressure bulkhead, accomplish the following:

A. Prior to the accumulation of the number of landings indicated in the table below, inspect the aft pressure bulkhead attach cap section around the entire periphery of the fuselage in accordance with the following procedures outlined in either paragraph B. or C., below.

TABLE

Accumulated landings as of September 6, 1985	Initial inspection prior to accumulation of the following landings after effective date
35,000 to 49,999	1,500 landings.
50,000 to 59,999	1,000 landings.
60,000 or more	300 landings.

For airplanes with less than 35,000 landings as of September 6, 1985, conduct the initial inspection before the accumulation of 36,500 landings.

Note.—The specific areas of concern include the forward and/or aft face of the upstanding leg of the tee. The area extends outboard to approximately the inboard point of tangency for the .188-inch tee fillet radius on the upstanding leg.

B. Using an optically aided visual inspection technique, inspect from the aft side of the bulkhead in accordance with Option I of McDonnell Douglas Alert Service Bulletin A53-191, Revision 2, dated December 22, 1987 (hereinafter referred to as ASB 53-191).

1. If no tee cracks are found, repeat the optically aided visual inspections at intervals not to exceed 3,500 landings.

2. If tee cracks are found, perform a high frequency eddy current inspection of the aft side of the bulkhead to determine length of cracks.

a. If cracks are within the limits outlined in paragraph 1.D. of the Compliance section of ASB 53-191, perform repetitive high frequency eddy current inspections weekly from aft side of the bulkhead.

(1) If weekly repetitive high frequency eddy current inspections reveal that a previously identified crack has progresed more than 0.5 inch from the original crack tip, or within 18 months after initial detection of crack, whichever occurs first, accomplish the requirements of paragraph B.2.b., below.

b. If cracks have exceeded the limits outlined in paragraph 1.D. of the Compliance section of ASB 53-191, prior to further flight:

(1) Repair by replacing cracked tee cap or splicing in a section of tee cap with a new like part, in accordance with McDonnell Douglas Service Rework Drawing SR08530001 (originally identified as MDC-J060305), dated February 15, 1985. Upon accumulation of 36,500 landings after the repair, conduct repetitive inspections in accordance with paragraph B. or C. of this AD; or

(2) Repair by replacing the cracked tee cap or splicing in a section of tee cap with a new improved part, in accordance with McDonnell Douglas Service Rework Drawing SR08530001, dated February 15, 1985. This constitutes terminating action for the required inspections of the sections of tee cap replaced. Continue repetitive inspections of tee sections not replaced in accordance with paragraph B. or C. of this AD.

C. Using a high and low frequency eddy current inspection technique, inspect from the forward side of the bulkhead in accordance with Option II of ASB 53-191.

1. If no cracks are found, repeat high and low frequency eddy current inspection from the forward side of the bulkhead at intervals not to exceed 15,000 landings.

2. If cracks are found, accomplish the following:

a. If cracks are within the limits outlined in paragraph 1.D. of the Compliance section of ASB 53-191, repeat high frequency eddy current inspections weekly from the aft side of the bulkhead.

(1) If weekly repetitive high frequency eddy current inspections reveal that a previously identified crack has progressed more than 0.5 inch from the original crack tip, or within 18 months after initial detection of the crack, whichever occurs first, accomplish the requirements of paragraph C.2.b., below.

b. If cracks have exceeded the limits outlined in paragraph 1.D. of the Compliance section ASB 53-191, prior to further flight:

(1) Replace cracked tee cap or repair by splicing a section of tee cap with a new like part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001 (originally identified as MDC-J060305), dated February 15, 1985. Upon accumulation of 36,500 landings after the repair, resume repetitive inspections in accordance with paragraph B. or C., above; or

(2) Repair by replacing the cracked tee cap or splicing in a section of tee cap with a new improved part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001, dated February 15, 1985. This constitutes terminating action for the required inspections of the sections of the tee cap replaced. Continue repetitive inspections of tee cap sections not replaced in accordance with paragraph B. or C. of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment supersedes AD 85-06-03, Amendment 39-5014, as superseded by AD 85-16-03, Amendment 39-5109.

This Amendment becomes effective July 15, 1988.

Issued in Seattle, Washington, on May 31, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12845 Filed 6-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-03-AD; Amdt. 39-5961]

Airworthiness Directives; Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, 36A, -40, and -60 airplanes equipped with Bendix Model M-4C and M-4D autopilots and/or Bendix electric trim systems. On airplanes equipped with Bendix Model M-4C and M-4D autopilots and/or Bendix electric trim systems, this amendment requires: (a) The standardization of the function, location and color of the autopilot/manual electric pitch trim system disconnect/interrupt push button; (b) verification that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) changing the LIMITATION section of the Airplane Flight Manual of certain

models together with an associated placard on the main instrument panel. This amendment is the result of a request from the National Transportation Safety Board (NTSB), which while investigating a series of fatal MU-2B accidents, concluded that pilots were becoming confused in the operation of the interrupt/disconnect switches for the electric pitch trim and autopilot systems. Compliance with this AD will preclude pilot confusion and possible loss of airplane.

DATE: *Effective Date:* July 11, 1988; *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Mitsubishi Service Bulletins (S/B) No. 206, dated October 13, 1967, and 066/22-006, dated December 18, 1967, applicable to this AD may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7279. The information may be examined at the Rules Docket, Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For Mitsubishi Aircraft International, Inc. (MAI) Type Certificate (TC) A10SW series airplanes manufactured in the U.S.: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419. For Mitsubishi Heavy Industries, Inc. (MHI) TC A2PC series airplanes manufactured in Japan: Herbert Peters, Aerospace Engineer, Western Aircraft Certification Office, ANM-173W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 297-1367.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring standardization of the control wheel disconnect switches on certain MU-2B airplanes, was published in the **Federal Register** on February 3, 1988 (53 FR 3044). The proposal resulted from a National Transportation Safety Board (NTSB) request that the FAA conduct an investigation of the Bendix M-4 Series autopilot systems as installed on the MU-2B Series airplanes and take such appropriate action as deemed necessary to correct any deficiencies identified. The result of this investigation, with cooperation between MHI, MAI, Beech Aircraft Corporation (licensee for MHI), Bendix Corporation, and the FAA, revealed that there are at least seven different configurations of the disconnect/interrupt switches for the autopilot and electric pitch trim systems. Pilot familiarity with the autopilot disconnect procedures in one MU-2B model airplane does not guarantee the same familiarity with another MU-2B model airplane even if owned by the same operator. This situation could lead to pilot confusion and thus affect the safe operation of another MU-2B Series airplane.

Subsequently MHI and Beech issued S/B No. 206, dated October 13, 1967, and S/B No. 066/22-006, dated December 18, 1967, which covers those MU-2B model airplanes equipped with an FAA approved installation of the Bendix M-4 autopilot by providing one manual electric pitch trim switch configuration or one combination autopilot/interrupt pitch trim disconnect/interrupt switch configuration.

The FAA examined the available information related to the issuance of MU-2B S/B No. 206 and S/B No. 066/22-006, and the mandatory classification of S/B No. 206 by the JCAB. Based on the foregoing, the FAA determined that the condition addressed by these service bulletins is an unsafe condition that may exist on products of this type design certificated for operation in the United States. Consequently, the FAA proposed an AD to correct the condition and be applicable to all Mitsubishi MU-2B model airplanes equipped with a Bendix M-4C or M-4D autopilot and/or a manual electric pitch trim system. This proposed AD would require the incorporation of S/B No. 206 and/or S/B No. 066/22-006 as appropriate to: (a) Standardize the location, functions and color of the disconnect/interrupt switch; (b) verify that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) change the LIMITATION section of certain MU-2B model airplanes together with mounting an associated red placard on the main instrument panel prohibiting coupled autopilot approaches below 125 KCAS or 300 feet AGL.

Interested persons have been afforded an opportunity to comment on the proposal. Two commenters responded. One commenter expressed: (a) Concern and objection over the specific reference to the "Bendtx Model M-4C and M-4D Autopilots and/or Bendix Electric Pitch Trim Systems" installed on the MU-2B aircraft since there is at least one other manufacturer's autopilot on these airplanes; (b) the NPRM, as written, is misleading since it leads to a logical but erroneous interpretation that incorporation of the Mitsubishi service bulletin resolution is limited only to those airplanes with Bendix autopilot installation; and (c) that this specific autopilot is intrinsically responsible for necessitating this resolution. This commenter, however: (a) Supports the improvement the Mitsubishi service bulletins will accomplish through standardization of function, location, and color of autopilot/pitch trim system controls; (b) is of the opinion that all current and future MU-2B autopilot/pitch trim system installations need to comply with this standardization of control and nomenclature regardless of the particular manufacturer; and (c) that the AD should discuss the matter generically without reference to any manufacturer.

The FAA disagrees with the commenter's objection because the NPRM was based on concerns expressed in the NTSB recommendations A-86-132 through A-86-134 of January 9, 1987, which specifically address the Bendix systems. The FAA agrees that the Mitsubishi service bulletins referred to in the NPRM only apply to the Bendix autopilot installations. Similar changes to other autopilots/electric pitch trim systems will be addressed in a future NPRM.

The other commenter stated that paragraphs (d)(2) and (d)(3) in the proposed AD did not specify a separate system functional ground test for the manual electric pitch trim system on airplanes which have both an autopilot system and a manual electric pitch trim system installed and suggested the following change:

(d)(2) If a manual electric pitch trim system is installed with or without an autopilot system, engage * * *

The same commenter stated that a Bendix M-4D autopilot system with a manual electric pitch trim system uses a split trim switch, fed from the autopilot circuit breaker in parallel with the autopilot system, not by a separate electric trim circuit breaker and suggested the following change:

(d)(2)(iv) The electric trim circuit breaker is pulled. (On some MU-2B airplanes without an electric trim circuit breaker, the autopilot circuit breaker/switch is used to disconnect the system in lieu of the electric trim circuit breaker.)

This commenter also stated that the autopilot master switch installation does not depend on the MHI manual electric trim system installation and suggested the following change:

(d)(3)(ii)(B) The autopilot master switch is positioned to "OFF" (on some MU-2B airplanes not equipped with an autopilot

master switch beside the controller, the radio master switch " " ").

This commenter further points out that the revised flight manual procedures provide two distinctly different second-step autopilot disconnect methods, depending on the existing installations. On early MU–2B's the procedure is to use the autopilot master switch, and on later MU–2B's the procedure is to use the radio master switch. However, the MHI service bulletins show the required modification instructions in the event that the existing installation on: (a) An early MU–2B does not have an autopilot; or (b) a later MU–2B's radio master switch does not feed power to the autopilot system.

The FAA concurs that the above requested changes are clarifying corrections. Accordingly, the proposal is adopted with these changes incorporated therein. No comments or objections were received on the FAA determination of the related cost to the public. The FAA has determined there are approximately 274 airplanes affected by this AD. The cost of complying with this AD is estimated to be $400 per airplane, with a total cost estimated to be $109,600 to the private sector. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore I certify that this section (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi: Applies to Model MU–2B, MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 (all serial numbers, with or without the SA suffix) airplanes certificated in any category, equipped with Bendix M–4C or M–4D autopilots and/or Bendix electric pitch trim systems.

Note 1.—The serial number of airplanes manufactured in the United States by Mitsubishi (MAI) under TC A10SW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Inc. (MHI) under TC A2PC have no suffix.

Compliance: Required within the next 200 flight hours or five (5) calendar months, whichever occurs first, unless already accomplished.

To minimize the possibility of confusion in autopilot/manual electric pitch trim disconnect/interrupt switch location, accomplish the following:

(a) Modify the control yoke in the affected model and serial numbered airplanes as follows:

(1) For MU–2B–30 and –35 model airplanes manufactured under TC A2PC equipped with a Japanese Civil Airworthiness Board (JCAB) approved Bendix M–4C autopilot, in accordance with MHI Service Bulletin (S/B) No. 206 dated October 13, 1987, or

(2) For all other MU–2B model airplanes equipped with an FAA approved installation of the Bendix M–4C or M–4D autopilots, in accordance with MHI S/B No. 066/22–006, dated December 18, 1987.

(b) For MU–2B–35 and –36 model airplanes with Bendix autopilots installed in accordance with STC SA1693SW and MU–2B–35, –36A and –60 model airplanes with Bendix M–4D autopilots installed in accordance with approved MAI data, accomplish the following:

(1) Insert additional placard data in the LIMITATION section of the Airplane Flight Manual Supplement (AFMS) as follows: "COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS or 300 FEET AGL NOT PERMITTED."

(2) Fabricate and install a permanent red colored placard in full view of the pilot using white colored letters of a minimum of 0.10 inches in height which state: "COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

(c) Insertion of a copy of this AD in the LIMITATIONS section of the AFMS satisfies the requirements of paragraph (b)(1) of this AD.

(d) Prior to returning the aircraft to service, accomplish a visual configuration check and system functional ground test, and record successful completion in the appropriate airplane maintenance record as prescribed by FAR 91.173, as follows:

(1) Visually verify that:

(i) The disconnect/interrupt switch is red in color and located on the outboard horn of the control wheel; and,

(ii) The disconnect/interrupt switch is properly labeled as shown in Figure 7 of the MHI S/B No. 206 for A2PC airplanes or as shown in Figure 8 or Figure 9, (as appropriate for the control wheel configuration) of MHI S/B No. 066/22–006 for A10SW airplanes, as applicable; and,

(iii) The autopilot circuit breaker is properly labeled.

(2) If a manual electric pitch trim system is installed with or without an autopilot system, engage the system and press the trim button to cause the manual pitch trim wheel to rotate, then verify that after each of the following operations is performed the manual pitch trim wheel stops moving when:

(i) The disconnect/interrupt switch is depressed;

(ii) The Master Electric Power switch is positioned to "OFF;"

(iii) The Radio Master switch is positioned to "OFF" (if installed and so configured),

(iv) The electric trim circuit breaker is pulled. (On some MU–2B airplanes without an electric trim circuit breaker, the autopilot circuit breaker/switch is used to disconnect the system in lieu of the electric trim circuit breaker.)

Note 2.—It is very important to verify that the manual pitch trim wheel stops moving after each of the above operations.

(3) If an autopilot system is installed, with or without a manual electric trim system, engage the system and then verify:

(i) That the autopilot system can be overpowered by pushing or pulling on the control yoke; and,

(ii) That, while overpowering the autopilot, the manual pitch trim wheel stops moving when each of the following operations is performed:

(A) The disconnect/interrupt switch is depressed;

(B) The autopilot master switch is positioned to "OFF" (On some MU–2B airplanes not equipped with an autopilot master switch beside the controller, the radio master switch must be used to disconnect the system in lieu of the autopilot master switch);

(C) The autopilot circuit breaker is pulled.

Note 3.—It is very important that the manual pitch trim wheel stops moving after each of these operations.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM–170W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2003; and on the MAI airplanes, if approved by the Manager, Wichita Aircraft Certification Office, ACE–115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681–7279; or may examine the documents referred to herein at FAA, office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 11, 1988.

Issued in Kansas City, Missouri, on May 26, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–13844 Filed 6–7–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86–7–000; Order No. 473]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued June 1, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of pipeline filings made pursuant to Order No. 473.

SUMMARY: In Order No. 473, 52 FR 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for the delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers claim for delivery allowances.

Attached are the lists provided by the interstate pipelines as required by 18 CFR 271.1104(h) (1987). Where the filing allowed, the lists are divided by pipeline into those natural gas producers who in the opinion of the pipeline do or do not have contractural authority to collect delivery allowances pursuant to an area rate clause.

DATE: As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protest must be filed by September 6, 1988.

ADDRESS: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:
Arthur W. Iler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–5275.

SUPPLEMENTARY INFORMATION:

Lois D. Cashell,

Acting Secretary.

ANR Pipeline Company (ANR)

ANR submitted the following list for which ANR states the area rate clause does provide contractual authority for the first seller to collect the applicable delivery allowance:

Producer	Rate Sch.	ANR contract Number	ANR contract Date
Amerada Hess Corp	181	2163	07–24–79
Do	179	2164	07–24–79
Do	180	2161	07–24–79
Amoco Production Co	547	0931	03–04–70
Do	814	2193	08–10–79
Do	159	1174	06–01–76
Do	821	2605	04–03–80
Do	249	2010	01–01–79
Do	823	2604	04–03–80
Do	801	1254	08–24–78
Do	842	3897	09–10–82
Do	157	1116	06–01–76
Do	160	1015	06–01–76
Do		4173	01–30–84
Do	802	0997	06–24–78
Do	792	2094	09–06–78
Do	809	2356	06–28–79
Do	154	1202	06–01–76
ANR Production Co		3310	06–23–81
Do	54	3345	08–21–81
Do	81	4065	03–18–83
Do	55	0991	10–27–77
Do	32	1040	03–03–77
Do		2303	10–24–78
Do	52	1871	03–06–79
Do	51	1869	02–21–79
Do	17	1045	07–17–75
Do		1870	02–06–79
Arco Oil & Gas Co	791	4161	12–06–83
Do	659	0917	05–01–72
Do	657	1207	09–10–64
Do	712	0989	04–29–77
Do	322	0689	04–16–66
Do	714	1130	07–26–77
Do	722	1037	06–10–77
Do	744	2116	06–13–79
Do	624	0674	04–06–69
Do	760	2794	09–05–80
Do	623	0910	10–09–68
Do	772	3283	06–30–81
Do	284	1080	12–17–63
Do	764	3909	09–29–82
Do	595	0905	04–10–67
Do	322	0689	04–16–66
Do	634	0916	08–03–70
Do	639	1140	05–17–66
Do	786	3953	12–03–82
BHP Petro (Americas) Inc (Form. Energy Res)	136	1160	06–01–53
Do	104	0964	11–22–66
Do	52	1137	06–30–76
Cabot Corp	102	0691	10–01–70
Cabot Petroleum Corp	73	2443	01–08–80
Canadian Occid of Cal		2275	09–26–75
Do		2445	09–28–79
Chevron U.S.A. Inc	45	0913	05–01–66
Chevron U.S.A. Inc. (Formerly Gulf Oil)	518	0987	05–16–77
Do	550	1009	12–28–76
Do	591	2025	01–03–66
Do	541	0962	04–30–74
Do	334	2885	10–15–80
Do	91	1101	01–23–56
Do	633	0946	09–13–72
Do	316	1164	09–21–65
Do	601	0945	10–07–71
Do	208	1147	10–31–60
Do	600	1030	09–20–72
Do	625	1008	09–06–71
Do	314	0562	04–01–66
Cities Service Co	485	2039	06–07–79
Cities Service O&G Corp. (Form. Occidental)		1049	12–31–79
Cities Service O&G Corp. (Form. Oxy Petro)		2409	09–28–79
Do		2274	09–26–79
Cities Service Oil & Gas Corp	469	1041	10–21–77
Do	483	1823	04–03–79
Do	455	1122	06–02–76
Do	310	0908	10–11–68
Do	329	0918	06–03–70
Do	490	2597	05–09–80
Do	481	1822	04–04–79
Do	392	0919	05–01–72
Do	311	0926	04–06–68
Do	453	1261	06–02–76
Do	457	1035	01–24–77
Do	302	0890	04–19–68
CNG Producing Co	48	2299	10–15–79
Do	47	2209	09–27–79
Do	42	2155	07–06–78
Conoco, Inc	342	0924	04–19–66
Do	439	0988	06–28–77
Do	443	1039	06–16–77
Do	557	0825	06–03–70
Do	462	2187	06–06–79
Do	485	3654	03–19–82
Do	347	0926	03–21–66
Do	348	0909	10–07–68
Do	466	2569	03–27–80
Dp	366	0920	05–01–72
Decalta International Corp		2736	10–05–79
Do		2385	11–05–79
Do		2761	12–17–79
El Grande Pipeline Co	1	0510	11–18–66
Elf Aquitane Petro		1140	06–17–66
Exchange Oil & Gas Corp	5	0964	11–22–66
Exxon Co. USA	473	0939	03–13–70
Do	436	0906	09–12–67
Do	503	0936	01–26–72
Fairmont Oil Corp	18	0894	10–01–70
George R. Brown Part (Formerly Highland Res)	10	1002	09–03–71
Do	15	1003	12–03–76
Do	7	0971	01–02–68

Producer	Rate Sch.	ANR contract Number	ANR contract Date
Do	14	0932	01-26-77
Do	12	1036	09-27-72
H.B. Joint Venture (1983)	7	3959	11-18-82
Hamilton Brothers Oil & Gas Corp		0947	09-27-72
Do		1001	09-11-71
Do		0961	05-25-74
Do		0575	09-25-72
Do		0949	11-03-71
Hamilton Brothers Oil Co		0950	05-29-74
Do		0948	11-03-71
Do		1073	09-27-72
Do		0971	01-02-68
Do		0574	09-25-72
Do		0900	09-11-71
Hassie Hunt Expl Co et al	41	0950	11-04-71
Do	46	0934	01-27-77
Do	35	0904	06-25-64
Home Petroleum Corp		0606	12-10-73
Hunt Industries	8	0871	01-02-68
Do	7	1243	07-01-65
Hunt Oil Co	78	1007	02-04-77
Do	75	1027	02-27-74
Do	70	1004	09-03-71
Do	63	0904	06-25-64
Do	66	0871	01-02-68
Do	77	0935	12-08-76
Do	63	0904	06-25-64
Hunt Petroleum Corp	4	1005	09-03-71
Do	9	1029	02-27-74
Do	5	0960	11-04-71
Do	11	1006	02-23-77
Do	8	0979	02-27-74
Hunt Petroleum Corp (Formerly Grand Isle)	7	4250	01-02-68
Do	60	4251	12-08-76
Do	3	4405	07-01-65
Hunt Petroleum Corp (Formerly LA-Hunt)	39	4125	06-25-64
Do	60	4126	12-08-76
Do	48	4130	09-02-71
Do	52	4132	03-01-74
Do	44	4124	01-02-68
Do		4134	12-22-81
Kaiser Francis Oil		3586	01-08-82
Kerr-McGee Corp	112	0892	10-01-70
Do	27	1020	06-01-76
Lamar Hunt Trust Est	46	0934	01-27-77
LLOXY Holdings Inc	18	4114	08-23-83
Marathon Oil Co	161	1092	05-05-79
Do	186	2140	07-19-79
Mesa Operating Ltd Partnership	150	3867	04-16-82
Do	147	3253	16-11-81
Do	155	3914	09-30-82
Do	137	2030	06-01-79
Do	196	1983	04-23-79
Do	111	1985	04-23-79
Do	112	1990	04-23-79
Do	154	3913	09-20-82
Do	75	1045	11-25-75
Do	105	1409	03-07-78
Do	156	3912	09-20-82
Do	153	3915	09-30-82
Do	107	1424	03-29-79
Mobil E&P North America (Formerly Superior)		3033	02-09-81
Do	147	0968	03-19-71
Do	7	1154	10-06-77
Do	208	1158	07-11-78
Do	257	0953	09-27-77
Do	157	0970	02-03-72
Do	201	1156	04-25-78
Do	274	2622	05-08-80
Do		2208	12-07-76
Do	270	0952	10-14-77
Do	188	1152	12-06-76
Do	267	0951	05-11-71
Do		2898	11-04-80
Do	202	1155	04-05-76
Do	262	2598	05-08-80
Do	260	0896	02-24-77
Do	181	0974	12-15-75
Do	237	2405	09-21-79
Do	161	1034	10-10-72
Do	156	1014	09-03-71
Do	125	1168	07-14-67
Do	184	1015	02-24-77
Do	183	1151	12-05-76
Do	186	0957	03-30-77
Do	182	0972	04-01-75
Do	198	0954	09-15-77
Do	250	0897	09-09-71
Do	168	1051	04-30-74
Do	252	0572	10-10-72
Do	245	2899	11-04-80
Do	253	0955	05-17-77
Mobil Oil Exp. & Prod. Southeast Inc	120	1016	09-02-71
Do	37	1229	07-30-85
Do	102	0943	09-21-72
Do	131	0959	05-01-74
Do	100	0944	11-02-71
Do	121	0965	06-11-74
Do	97	1872	01-11-79
Do	120	1017	12-17-76
Do	3	1022	03-07-78
Do	107	0573	09-21-72
Do	132	0899	03-10-77
Do	121	0964	10-29-71
Do	92	2198	09-13-79
Do	106	0898	09-03-71
Do	117	0971	01-02-68
Do	122	1036	03-13-74
Mobil PRDG TX & New Mexico (Formerly Superior)	296	3675	02-04-82
Do	255	1260	08-09-77
Do	279	3674	02-04-82
Do	263	2742	07-31-80
Do	244	2899	10-10-80
Do	268	1119	07-21-77
Do	196	1263	07-22-77
Do	269	1259	07-21-88
Do	254	1121	08-09-77
Do	276	2747	07-31-80
Do	195	1253	07-22-77
Do	243	2714	07-25-80
Do	247	3056	01-16-81
Do	278	3055	01-16-81
Mobil Producing Texas & New Mexico Inc	6	2860	10-10-80
Do	1	1123	07-21-77
Do	2	1262	07-21-77
Do	150	1251	03-07-78
Do	9	3675	02-04-82
Do	5	2715	07-02-80
Murphy Oil Corp	30	1257	03-03-78
Newmont Oil Co		2199	08-17-79
Northwestern Mutual Life Ins Co	3	4429	05-31-85
Do	3	1255	08-04-78
Do	5	2509	02-11-80
Do	2	1256	04-27-78
Do	4	2232	09-12-79
Odeco Oil & Gas Co (Murphy & Ocean)	31	2494	02-28-80
Do	30	2271	09-19-79
Do	46	3930	10-20-82
Do	35	3047	02-04-81
Do	37	3285	05-18-81
Do	18	0903	07-29-77
Do	19	1258	01-13-78
Do	29	2119	07-16-79
Do	20	1252	04-14-78
Do	32	2496	02-28-80
Do	36	3048	02-04-81
Do	33	2497	02-28-80
Pennzoil Co (Formerly Pennzoil Oil & Gas)	49	2278	09-27-79
Do	59	4084	06-10-83
Do	52	3338	06-04-81
Pennzoil Co (Formerly Pennzoil Prod Co)	249	4047	01-11-83
Do	317	2277	09-27-79
Do	234	4084	06-10-83
Do	332	3337	06-04-81
Do	249	1131	06-16-80
Petro-Hunt Corp	4	4266	09-03-71
Do	46	4236	01-27-77
Do	2	4270	02-24-74
Phillips Oil Co	34	1139	09-08-64
Phillips Petro Co (Formerly Aminoil)	79	3157	03-26-81
Do	55	2595	05-01-80
Do	54	2599	05-01-80
Phillips Petro Co (Form. Amer Ind Oil Co)		1044	06-12-75
Phillips 66 Natural Gas Co	4	0861	12-11-45
Do	552	0684	03-21-74
Do		2462	02-07-80
Do	549	0885	01-25-74
Do	610	0864	05-31-77
Phillips Petroleum Co	411	1108	03-05-85
Phillips 66 Natural Gas Co	592	0881	07-08-76
Do	377	0863	12-01-49
Do	585	3042	05-22-79
Do		2516	01-21-80
Do	636	0865	08-29-78
Philips Petroleum Co		2584	04-29-80
Philips 66 Natural Gas Co	591	0882	07-08-76
Do	602	0883	10-01-76
Do	572	0879	12-13-74
Placid Oil Co	39	0904	06-25-64
Do	60	0933	01-26-77
Do	54	0963	05-17-74
Do	40	1163	07-01-68
Do	53	0983	03-01-74
Do		3569	12-22-81
Do	52	1032	03-01-74
Do	45	1012	09-02-71
Do	62	1013	11-10-76
Do	44	0871	01-02-68
Do	49	0981	10-29-71
Pogo Producing Co	55	2276	09-24-79
Do	59	3390	06-20-81
Prosper Energy Corp	6	1010	09-03-71
Do	3	1243	07-01-65
Do	6	1033	02-27-74
Do	4	0936	12-08-76
Do	8	1011	02-04-77
Do	7	0972	01-02-68
Rosewood Res. Inc (Form. Rosewood Pros)		4254	02-27-74
Do		4251	12-08-76
Do		4250	01-02-68
Do	3	4405	07-01-65
Do		4252	09-03-71
Rosewood Resources Inc	44	4124	01-02-68

Producer	Rate Sch.	ANR contract Number	ANR contract Date
Do	39	4125	06-25-64
Do		4134	12-22-81
Do	4	4251	12-08-76
Do	52	4132	03-01-74
Do	2	4270	02-27-74
Do	48	4130	09-02-71
Do	39	4125	06-25-64
Do	7	4268	09-03-71
Samedan Oil Corp	54	4137	06-30-70
Do	55	4138	05-01-72
Do	53	4136	06-03-70
Do	62	4135	05-01-72
Do	58	4140	06-03-70
Do	59	4141	05-01-72
Do	57	4139	05-01-72
Do	56	4142	06-03-70
Santa Fe Energy Co		1050	05-25-75
Do		1945	04-12-79
Shell Offshore Inc	17	0915	08-30-68
Do	22	0914	04-06-71
Do	11	0956	07-18-67
Do	14	0940	05-03-68
Shell Oil Co	314	1142	12-22-84
Do	330	1103	07-30-65
Do	329	1088	07-30-65
Sun Operating Ltd Partnership	739	2711	07-01-80
Do	759	1944	04-10-79
Do	229	0998	11-08-67
Do	736	1124	05-16-78
Do	752	3853	06-30-82
Do	486	0893	10-01-70
Do		3726	06-04-80
TBP Offshore Co		4104	07-25-83
Tenneco Oil Co (For Tenneco Exp Ltd)	9	0912	10-06-76
Texaco Inc	377	2083	08-26-85
Do	513	1000	10-25-74
Do	535	1079	07-01-76
Do	420	0965	06-09-66
Do	166	0921	04-17-68
Do	544	0937	03-06-77
Texaco Producing Inc	431	0871	01-02-68
Texaco Producing Inc (Formerly Getty)	199	0823	05-01-72
Do	435	0942	09-21-72
Do	436	0571	09-21-72
Do	437	0958	05-13-74
Do	168	0921	04-17-68
Do	437	2272	10-06-79
Do	175	0929	04-08-69
Do	439	2154	02-07-77
Do	161	0922	06-03-70
Do	431	0871	01-02-68
Do	414	1125	06-13-77
Do	118	1100	06-06-80
Do	432	1506	09-09-71
Do	174	0911	10-11-68
Do	140	1142	12-22-84
Do	447	2586	05-13-80
Do	435	0941	11-01-71
Do	48	2377	10-10-79
Do	52	2466	02-01-80
Union Exploration Partners Ltd	264	2773	08-25-80
Wagner & Brown		3472	08-19-81
Kerr-McGee Corp	61	1081	07-31-58
Amoco Production Co	490	0271	04-26-67
Arco Oil & Gas Co	225	3910	09-26-82
Do	414	0202	11-13-78
Do	443	3911	09-27-82
Golin R L		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Burk Royalty		2016	04-24-79
Burke Harold E (Formerly Tenneco)		4686	02-26-69
Cabot Petroleum Corp	14	0046	11-08-78
CNG Producing Co (Formerly Tenneco)		4687	01-22-68
Cobra Oil & Gas Corp		1736	12-21-78
Do		2348	11-02-79
Dillard A R Jr		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Estate of H. L. Hunt	39	0606	10-23-69
Do	41	0606	10-23-78
Do	36	0507	07-06-62
Falls Distributing Co		1736	12-21-78
Do		2016	04-24-79
Foran Oil Co (Formerly Tenneco)		4730	12-18-58
Do		4731	05-14-59
Do		4732	03-09-57
Do		4778	03-09-57
Do		4786	03-09-57
Gadeco Inc		2016	04-24-79
Goodin Raymond M Trust		1736	12-21-78
Harvey Nancy D		1736	12-21-78
Do		2348	11-02-79
J. M. Huber Corp	92	0504	11-24-71
Kaiser Francis Oil Co		3984	12-24-58
Kaiser Francis Oil Co (Formerly Tenneco)		4823	05-14-59
Mesa Operating Ltd Partnership		3401	06-20-81
Mesa Operating Ltd Partnership (Formerly Tenneco)		4825	03-09-57
Miller Lois D		1736	12-21-78
Do		2348	11-02-79
Osborne Robert W		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Osborne William G		2016	04-24-79
PNG Operating Co (Formerly Tenneco)		4713	05-14-59
Prentice Napier & Green (Morm Multistate Oil)		0495	10-22-74
Prentice Napier & Green (Formerly Tenneco)		4711	06-28-62
Do		4746	06-28-62
Do		4788	06-28-62
Spess Oil Co Inc (Formerly Multistate Oil Co)		0621	06-27-74
Spess Oil Co. Inc (Formerly Tenneco)		4753	01-22-68
Star Production Inc (Formerly Tenneco)		3768	05-12-82
Tenneco Oil Co	290	0586	04-02-74
Do	362	0351	08-26-62
Do	257	3769	05-13-82
Do	222	0548	01-22-68
Do	412	0298	10-11-77
Do	183	2531	03-24-80
Do	401	0517	02-28-69
Do	399	1397	08-25-60
Do	378	3767	05-13-82
Do	405	0352	09-21-72
Do	187	3934	10-25-82
Do	347	0204	09-22-78
Do	407	0296	03-19-74
Do	350	1949	06-01-74
Do	65	3771	05-13-82
Do	408	3770	05-13-82
Do		3750	04-29-82
Do	411	3768	05-12-82
Do	362	4464	03-27-85
Do	361	1398	10-14-60
Do	139	4465	03-27-85
Tenneco Oil Co (For Multistate Oil)	32	0783	08-26-75
Do	10	0495	10-22-74
Do	9	0496	01-07-75
Do	31	0621	06-27-74
Do	13	2842	05-27-80
Tenneco Oil Co (for Terra Oil)	412	0298	10-14-60
Do	361	1398	10-14-60
Do	407	0296	03-19-74
Do	357	3769	05-13-82
Do	401	0517	02-28-69
Do	408	0299	03-04-75
Do	362	0351	08-26-62
Do	399	1397	08-25-60
Do	411	0300	07-22-76
Do	405	0352	09-21-72
Do	378	3767	05-13-82
Texaco Producing Inc (Formerly Getty)	179	0552	12-22-60
Thomas W S		1736	12-21-78
Vanguard Oil & Co Inc (Formerly Tenneco)		4779	06-26-82
Vita Oil Co (Formerly Tenneco)		4699	06-26-82
Waugh Duane		1736	12-21-78
Waugh Glen A		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Young Walter D		1736	12-21-78
Do		2016	04-24-79
Thomas W. S.		2016	04-24-79

ANR submitted the following list in which ANR contends that it was not intended nor agreed that the area rate clause would provide contractual authority for the first seller to collect the applicable delivery allowance:

***Colorado Interstate Gas Company (CIG)* concurs in the following claims:**

Seller	Rate schedule	Contract No.	Contract date
Martin Oil		879	02-8-77
RJB Gas Pipeline		535	10-2-74
RJB Gas Pipeline		669	12-1-76
RJB Gas Pipeline		704	06-1-77
RJB Gas Pipeline		840	12-1-79
CIG protests the following claims:			
Cabot Corporation	6	122-02	04-1-80

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Seller	Rate schedule	Contract No.	Contract date
Cabot Corporation	11	122-86	09-16-60
Cities Service Oil & Gas Co	431	393	10-12-70
Cities Service Oil & Gas Co	679	624	10-11-79
Cities Service Oil & Gas Co	735	934	03-3-81
Merlin Oil		661	02-06-77
Tenneco	370	73-01	11-15-54
Tenneco	364	73-02	12-30-54
Tenneco	410	79	01-12-55
Tenneco	373	104-06	01-01-65
Tenneco	32	136	12-21-77
Tenneco	400	153	06-30-57
Texaco Inc		110	07-12-79
Texaco Inc		729	01-26-78

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)

Seller	Contract No.	Rate schedule or contract date
Columbia Concurs the Following claims for delivery allowances:		
Castle Gas Co., Inc	AP-20222-PA	12-12-74
Do	AP-22886-PA	06-09-76
Aagerman Associates, Inc	AP-21868-WV	04-22-77
Castle Gas Co., Inc	AP-21827-PA	06-07-77
J.W. Kinzer	7533-KY	10-07-71
Do	7240-KY	01-14-70
Do	7496-KY	09-20-71
Natural Resource Management Corp	7736-WV	03-06-73
NRM Petroleum Corp, et al	AP-20234-WV	12-06-73
Mark R. Worl d/b/a Rockwell Petroleum Co	AP-21388-WV	06-12-76
Do	AP-22304-WV	11-09-77
Natural Resource Management Corp	AP-22336-WV	12-05-77
Union Drilling, Inc	AP-22058-PA	11-09-77
Ashland Exploration, Inc	5153-KY	86
Do	6302-KY	73
Do	6316-KY	171
Mart Oil & Gas Co., Inc	6778-KY	02-20-67
Ashland Exploration, Inc	AP-22944-WV	09-26-78
Do	6257-WV	140
Cities Service Corp	6035-KY	248
Do	6352-WV	281
Do	6632-KY	292
Do	6843-WV	297
Do	7265-WV	327
Do	7365-WV	333
Do	7467-KY	339
Do	7566-WV	347
Do	7692-KY	399
Do	1196-KY	235
Amoco Production Co	LA870091	431
Do	SW20236LA	731
Do	SW21455LA	723
Do	SW22022LA	750

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Do	SW22347LA	760
Do	5653	173
Do	5679	190
Do	5670A	76
Do	5664	304
Do	5639	198
Do	5652	219
Do	5639	539
Do	5658	604
APP Production Inc	SW23912LA	11-21-79
Do	SW26368LA	11-05-81
Arnold Isaac	5695	06-20-63
Atlantic Richfield Co	5659	63
Do	5664	519
Do	5679B	261
Barry Phillip B	5664	07-06-81
BHP Petroleum Company Inc	SW23402TX	140
Do	SW23403TX	10-13-81
Do	SW26341TX	10-13-81
Cabot Petroleum Corp	SW25177LA	74
Do	SW25226TX	75
Do	SW25603TX	76
Carso Oil and Gas Inc	SW23451LA	06-26-79
Case Pomeroy Oil Corp	SW22517LA	9
Do	SW25206LA	20
Chevron USA Inc	SW20570LA	172
Do	SW24205LA	175
Do	SW25200LA	181
Do	SW25227WY	01-08-81
Do	SW25876LA	184
Cities Service O&G Corp	SW23024LA	521
Do	SW20394LA	520
Cities Service O&G Corp. (Was Cotexco)	5670B	6
CNG Producing Co	SW20499LA	44
Do	SW24729LA	54
Do	SW25675LA	57
Do	SW25878LA	58
Columbia Gas Develop Corp	SW20256LA	16
Do	SW20331LA	17
Do	SW20499LA	34
Do	SW20698LA	18
Do	SW21060LA	19
Do	SW21450LA	21
Do	SW21538LA	22
Do	SW21932LA	23
Do	SW21976LA	25
Do	SW22057LA	26
Do	SW23056LA	32
Do	SW23080LA	33
Do	SW23306LA	35
Do	SW23521LA	37
Do	SW23622LA	38
Do	SW23946LA	39
Do	SW24338LA	40
Do	SW25919LA	41
Do	SW26272LA	42
Do	5923	8
Do	5926	9
Do	5928	10
Do	5956A	12
Combined Resources Corp	SW27477OK	05-17-82
Conoco Inc	SW25521LA	476

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Cotton Petroleum Co	5654	06-05-81
Cox Edwin L	5664	06-23-81
CSX Oil & Gas Corp	SW23941LA	59
Do	SW25130LA	60
Devon Energy Corp	SW27476OK	04-23-82
Do	SW27507OK	04-23-82
Diamond Shamrock Offshore, Limited Partnership (Was FMP Operating Co.)	SW20353TX	1
ELF Aquitaine Inc	5647A	06-12-72
Do	5963C	11-14-72
Enstar Petr Inc	5526	11
Exchange Oil & Gas Co	SW20642LA	34
Do	5911	6
Exxon Corp	LA860001	1-27-86
Do	LA860003	02-12-86
Do	LA860004	715
Do	LA860009	03-18-86
Do	LA860011	03-18-86
Do	LA860012	03-18-86
Do	LA860014	03-18-86
Do	SW20575LA	630
Do	SW20605LA	632
Do	SW21019LA	585
Do	SW21094LA	635
Do	SW21448LA	567
Do	SW21453LA	574
Do	SW21558LA	639
Do	SW21860LA	596
Do	SW21902LA	597
Do	SW21907LA	568
Do	SW21996LA	598
Do	SW22061TX	605
Do	SW22344LA	610
Do	SW22567LA	618
Do	SW22578LA	623
Do	SW23691LA	624
Do	SW22691TX	627
Do	SW22964LA	661
Do	SW22967LA	650
Do	SW23084TX	685
Do	SW25421LA	654
Do	SW25506LA	658
Do	SW24245LA	02-23-86
Do	SW24246LA	664
Do	SW24388LA	06-02-86
Do	SW24610LA	06-16-86
Do	SW25908LA	05-12-81
Do	SW25683LA	06-24-81
Do	SW26220LA	679
Do	SW26303LA	681
Do	SW27184LA	04-05-82
Do	SW27419LA	04-22-82
Do	SW27421LA	04-22-82
Do	SW27539LA	683
Do	5647	26
Do	5649A	499
Do	5894	357
Do	5894D	460
Do	5972	541
Felmont Oil Corp	SW22515LA	27
Do	SW22516LA	29
Do	SW24288LA	36
Do	SW24339LA	39
Do	SW25267LA	42
Do	SW25542LA	43
Do	5657	9

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Do	SW20499LA	62
Do	SW22011LA	63
Do	SW23506LA	66
Do	SW25252LA	70
Do	5922	49
Do	5929	52
Getty Oil Co	SW21606LA	223
Do	SW26606TX	524
Do	5662B	26
Do	5946A	393
Do	5963B	396
Do	5964	203
Grace Petr Corp	SW27462OK	05-10-82
Hamilton Brothers Oil Co	SW27474OK	05-17-82
Houston Oil & Mineral Corp	SW25877TX	04-20-81
JR Spiehler, Jr, et al	5668	11-01-79
Koch Inssuiries Inc	SW23481LA	07-16-79
Do	SW23482LA	07-16-79
Do	SW23484LA	07-16-79
Mesa Oper LTD Partnership	SW23029LA	159
Do	SW25878LA	146
Do	SW25965LA	06-15-81
MFP Limited Partnership (Was Hamilton Brothers)	SW27474OK	05-17-82
Mobil Oil Corp	LA860016	105
Do	SW21440LA	75
Do	SW22001LA	78
Mobil Oil Corp (Was Aminex U.S.A., Inc.)	SW22442ATX	272
Mobil Oil Corp. (Was Natreaco)	SW22442GTX	281
Mobil Oil Corp. (Was Canadian Superior)	SW22442CTX	265
Mobil Oil Corp	SW22442TX	240
Do	SW22596TX	258
Do	SW23475LA	111
Do	SW25172LA	127
Do	SW25173LA	128
Do	SW25363LA	130
Do	SW27829AR	06-16-82
Do	SW27832LA	06-05-82
Do	5958	57
Monsanto Company (Currently BHP Petroleum, FERC Order Cancels Rate Schedule #139, Reserves Depleted)	5W23401TX	139
Northwestern Mutual Ins. Co	SW22345LA	1

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Odeco Oil & Gas Co	SW26236LA	38
Oxy Petroleum Inc	SW23393LA	03-22-79
Pelto Oil Co	SW25212LA	12-29-80
Petro Lewis Corp	SW24701TX	06-11-80
Do	SW27460TX	05-10-82
Phillips Oil Co	SW22369LA	571
Do	5661	660
Phillips Petroleum Co	SW21456ALA	780
Do	SW23967LA	781
Do	SW2428LA	725
Do	SW24387TX	777
Do	5655B	273
Do	5946A	515
Do	5963A	519
Samedan Oil Corporation (Was Texas Eastern)	SW21967LA	69
Samedan Oil Corporation (Was Texas Eastern)	SW23923LA	77
Santa Fe Energy Part. L.P	SW23504LA	07-05-79
Do	SW23505LA	07-05-79
Do	SW23910LA	10-29-79
Shell Offshore Inc	SW25219TX	67
Shell Oil Co	SW2464BLA	51
Sun Expl and Prod Co	5844	367
Sun Oil Co	5834	76
Tenneco Expl Ltd	SW21349LA	16
Do	SW21909LA	23
Tenneco Oil Co	5674	96
Texaco Inc	SW20263LA	5
Do	SW20970ALA	539
Do	SW20970BLA	4
Do	SW20970LA	533
Do	SW21445LA	591
Do	SW22439LA	92
Do	SW22824LA	560
Do	SW26363LA	603
Do	5660	4
Do	5661A	463
Do	5665	3
Do	5666	2
Do	5885	306
Do	5903	370
Do	5912	392
Do	5932	454
Do	5938	448
Triumph Energy Inc. (Was Sun Oil Co.)	5658	02-22-82
TXO Production Corp	SW27067OK	01-15-82
TXO Operating Co. (Was Exchange Oil & Gas Co.	5945A	22

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Union Expl Part Ltd (UXP)	SW21889LA	234
Do	SW23922LA	258
Do	5680	12
Do	5906	166
Union Oil Co. of Calif	SW22879LA	246
Union Pacific Resources Co	5374	1
Union Tex Petr Div Allied	SW23079LA	149
Do	SW23501LA	151
Do	5677B	120
Do	5963	111
Columbia protests the following sellers claims for delivery allowances:		
Amtex Oil & Gas, Inc	AP-20689-OH	02-23-76
Do	AP-21652-OH	04-16-77
Amtex Oil & Gas, Inc., et al	AP-22133-OH	11-21-77
Do	AP-22283-OH	05-08-78
Do	AP-22704-OH	09-11-78
Do	AP-22705-OH	09-11-78
Kenoil	AP-20690-OH	03-10-76
Do	AP-21102-OH	03-11-76
Kenoil, et al	AP-21120-OH	05-26-76
Do	AP-21150-OH	07-20-76
Kenoil	AP-21166-OH	07-20-76
Do	AP-22777-OH	12-04-78
Benatty, et al	AP-22703-OH	09-18-78
Major Oil Corp., et al	AP-22716-OH	09-25-78
Kenoil	AP-21235-OH	10-29-76
Do	AP-21283-OH	01-19-77
Do	AP-21691-OH	06-20-77
Kenoil, et al	AP-21748-OH	08-17-77
Energy Investments, et al	AP-22145-OH	12-06-77
Pro Energy Services, Inc	AP-22192-OH	01-18-78
The Oxford Oil Co	AP-20186-OH	11-25-74
Poston Oper. Co., Inc., et al	AP-21796-OH	10-06-77
J.W. Kinzer	7533-KY	10-07-71

Consolidated Natural Gas Transmission Corporation Filed the Following:

Producer	FERC rate schedule No.	Consolidated GPC No. (No R.S. No.)	Disposition
Felmont	R.S. 4, 12		Protest any charges exceeding one cent.
Peake Operating Co		1490—12-14-83	Settled.
		1512—12-14-83	
		2708—01-03-83	
Getty Oil Co	R.S. 465, 471, 472		Settled.

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Producer	FERC rate schedule No.	Consolidated GPC No. (No R.S. No.)	Disposition
Integrated Energy Inc		453 PA—11-04-80	Protest any charges exceeding one cent.
		436 PA—12-12-79	
Convest Energy Corp		3837—10-26-77	Protest any charges exceeding one cent.
		4052—10-05-79	
		4122—03-31-80	
		4073—12-03-79	
		4145—06-09-80	
		4171—06-12-80	
Cities Service Oil & Gas Corp	R.S. 262, 282, 318, 337, 391		Settled.
Texaco Producing Co	R.S. 5		Agree that charges are authorized.
Texas International Co		3901—06-03-77	Protest any charges exceeding one cent.
Chevron	R.S. 360, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 573, 574, 575, 580, 615, 617, 618, 628.		Partly protest any charges exceeding one cent.
Union Oil Company		GPC dated 10-31-24	Protest any charges exceeding one cent.
Cabot		1019—12-01-47	Settled.
		3158—03-30-68	
		4006—10-13-78	
Ashland Exploration, Inc	R.S. 82, 83, 84, 85, 113, 186, 257		Settled.
James F. Scott		471—10-09-51	Partly settled. Protest any charges exceeding one cent.
		3170—05-20-64	
		3395—02-11-50	
		3842—10-19-72	
		4005—09-11-78	
		4063—10-05-79	
		4085—01-10-80	
		4085—01-24-80	
		4172—06-12-80	
		4196—20-31-80	
		4211—12-24-80	
		4227—02-13-81	
		4268—09-10-81	
		4310—02-05-82	
Phillips Petroleum Co	R.S. 395		Protest any charges exceeding one cent.
Pennzoil	R.S. 5, 10		Paid.
Murphy Oil	R.S. 31		Paid.
CNG Producing Co	R.S. 2, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 46, 51, 52, 53, 55.		Paid.
Texas Gas Exploration	R.S. 28, 50, 51, 57, 64		Paid.

El Paso Natural Gas Company (El Paso)

El Paso provided in the following:

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
American Petrofina Co	32	0146	
American Petrofina Co	102	0247	
Amoco Production Co	18	0104	
Amoco Production Co	21	0044	
Amoco Production Co	23	0114	
Amoco Production Co	69	0078	
Amoco Production Co	133	6052	
Amoco Production Co	313	0100	
Amoco Production Co	348	0041	
Amoco Production Co	405	0161	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
Amoco Production Co	411	7187	
Amoco Production Co	438	0169	
Amoco Production Co	605	4909	
Amoco Production Co	617	0224	
Amoco Production Co	631	0103	
ARCO Oil and Gas Co	26	0069	
ARCO Oil and Gas Co	195	4491	
ARCO Oil and Gas Co	336	4439	
ARCO Oil and Gas Co	337	6114	
ARCO Oil and Gas Co	402	4159	
ARCO Oil and Gas Co	406	4167	
ARCO Oil and Gas Co	406	4189	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
ARCO Oil and Gas Co	492	6150	
ARCO Oil and Gas Co	497	4173	
ARCO Oil and Gas Co	500	4209	
ARCO Oil and Gas Co	501	4208	
ARCO Oil and Gas Co	509	4210	
ARCO Oil and Gas Co	514	7144	
ARCO Oil and Gas Co	709	4996	
Chama Petroleum Co		7240	01-15-80
Chevron U.S.A. Inc	104	6336	
Chevron U.S.A. Inc	105	6801	
Chevron U.S.A. Inc	110	4061	
Chevron U.S.A. Inc	111	4498	
Chevron U.S.A. Inc	113	0107	
Chevron U.S.A. Inc	114	6116	
Chevron U.S.A. Inc	115	4043	
Chevron U.S.A. Inc	116	6242	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
Chevron U.S.A. Inc	130	7069	
Chevron U.S.A. Inc	135	0172	
Chevron U.S.A. Inc	140	4912	
Chevron U.S.A. Inc	145	8204	
Conoco Inc	145	4467	
Conoco Inc	316	4820	
Davis, J. L		0001	12-01-53
Energy Reserves Group	58	7354	
Enserch Exploration		813A	12-01-78
Enstar Petroleum Co		602E	12-30-80
Exxon Corp	415	0173	
Fairmont Oil Corp		8811	01-15-78
Getty Oil Co	4	0048	
Getty Oil Co	151	0032	
Getty Oil Co	249	6333	
Getty Oil Co	283	0043	
Getty Oil Co	285	0123	
Getty Oil Co	293	4041	
Getty Oil Co	301	6700	
Getty Oil Co	343	7235	
Getty Oil Co	354	0122	
Getty Oil Co	357	0214	
Getty Oil Co	390	0204	
Getty Oil Co	450	6660	
Getty Oil Co	461	4165	
Getty Oil Co	461	4179	
Getty Oil Co	486	6117	
Getty Oil Co	494	4168	
Getty Oil Co	494	4173	
Grace Petroleum Corp		4539	12-07-59
Grace Petroleum Corp		8181	04-16-73
Grace Petroleum Corp		7732	04-16-73
Gulf Oil Corp	467	0174	
Hassie Hunt Exploration	30	7021	
Hunt Industries, A Partnership	5	7060	
Hunt Oil Co	7	0003	
Hunt Oil Co	34	4014	
Hunt Oil Co	36	6196	
Hunt Oil Co	68	7549	
Hunt Oil Co	72	7652	
Hunt Oil Co	82	5052	
Hunt, H.L., Estate of	27	5106	
Hunt, H.L., Estate of	28	4014	
Hunt, Lamar	3	4112	
Hunt, Lamar	4	4113	
Hunt, N.B.	4	4113	
Hunt, N.B.	5	4112	
Hunt, W.H.	4	4113	
Hunt, W.H.	5	4112	
Marathon Oil Company	135	8169	
Pennington, W.L		8283	03-24-76
Pennzoil Co	42	7938	
Pennzoil Co	43	7963	
Phillips Petroleum Co	32	0094	
Phillips Petroleum Co	436	0175	
Phillips Petroleum Co	465	0187	
Phillips Petroleum Co	497	0196	
Phillips Petroleum Co	496	0194	
Phillips Petroleum Co	499	0198	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
Phillips Petroleum Co	500	0197	
Phillips Petroleum Co	501	0199	
Phillips Petroleum Co	502	0195	
Phillips Petroleum Co	504	0193	
Phillips Petroleum Co	506	0203	
Phillips Petroleum Co	507	0202	
Phillips Petroleum Co	514	0205	
Phillips Petroleum Co	600	8230	
Phillips Petroleum Co	606	0264	
Samedan Oil Corp		8248	04-10-79
Tenneco Oil Co	41	0111	
Tenneco Oil Co	254	6119	
Tenneco Oil Co	334	8804	
Texaco, Inc	17	0105	
Texaco, Inc	18	0117	
Texaco, Inc	19	0047	
Texaco, Inc	21	0121	
Texaco, Inc	199	6244	
Texaco, Inc	328	0157	
Texaco, Inc	346	0162	
Union Oil Co. of California	10	0129	
Union Oil Co. of California	108	0027	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

[In PGA Effective April 1, 1985 in Which the Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Bigbee, Harry L		4539	12-07-59
Bigbee, Harry L		8432	11-12-76
Bigbee, Harry L		8777	12-06-77
Conoco Inc	208	4712	
Davis, J.L		0295	05-02-77
Exxon Corp	475	0181	
Exxon Corp	509	0212	
Exxon Corp	523	0218	
Exxon Corp	539	0247	
Exxon Corp	540	0250	
Exxon Corp	557	0275	
Getty Oil Corp	424	8912	
Gulf Oil Corp	231	7022	
Gulf Oil Corp	444	6956	
Gulf Oil Corp	453	0252	
Gulf Oil Corp	522	8677	
Merrion Oil & Gas Co		4751	04-03-63
Merrion, J. Gregory		4685	01-19-61
Mobil Producing Texas	94	7256	
Mobil Producing Texas	134	8284	
Mobil Producing Texas	140	6956	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

[In PGA Effective April 1, 1985 in Which the Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Mobil Producing Texas	162	705D	
Monsanto Co	51	4714	
Monsanto Co	132	8520	
Phillips Petroleum Co	10	0073	
Phillips Petroleum Co	484	0184	
Phillips Petroleum Co	505	0201	
Union Texas Petroleum	12	0093	
Union Texas Petroleum	84	0004	
Warren Petroleum Co	28	0078	
Warren Petroleum Co	30	0098	
Warren Petroleum Co	43	0126	
Warren Petroleum Co	44	0050	
Warren Petroleum Co	56	0133	
Warren Petroleum Co	60	0190	
Warren Petroleum Co	61	0210	
Warren Petroleum Co	63	0206	
Warren Petroleum Co	64	0209	
Warren Petroleum Co	65	0206	
Warren Petroleum Co	66	0211	
WIG Exploration, Inc	7359		11-09-56
Zia Energy, Inc	6043		08-18-54

EL PASO NATUAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

[In El Paso's Direct Billing Effective October 7, 1986, In Which the Requested Date Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Amoco Production Co	23	0114	
Amoco Production Co	348	0041	
ARCO Oil and Gas Co	492	6150	
ARCO Oil and Gas Co	493	4170	
Bigbee, Harry L		4539	12-07-59
Bigbee, Harry L		8432	11-12-76
Bigbee, Harry L		8777	12-06-77
Mobil Producing Texas and New Mexico Inc	19	0219	
Mobil Producing Texas and New Mexico Inc	159	0274	
Pennington, W.L		8283	03-24-76
Southland Royalty Co		0259	06-04-75

El Paso Natual Gas Company Listing of Sellers With Production-Related Costs—Continued

[In El Paso's Direct Billing Effective October 7, 1986, in Which the Requested Date Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Sun Exploration & Production Co	1	0045	
Sun Exploration & Production Co	174	7169	
Sun Exploration & Production Co	311	0113	
Sun Exploration & Production Co	313	0102	
Warren Petroleum Co	22	0106	
Warren Petroleum Co	28	0076	
Warren Petroleum Co	30	0066	
Warren Petroleum Co	43	0126	
Warren Petroleum Co	44	0050	
Warren Petroleum Co	55	0112	
Warren Petroleum Co	56	0133	
Warren Petroleum Co	60	0190	
Warren Petroleum Co	61	0210	
Warren Petroleum Co	63	0208	
Warren Petroleum Co	64	0200	
Warren Petroleum Co	65	0206	
Warren Petroleum Co	66	0211	
Warren Petroleum Co	67	0039	

Listing of Sellers With Production-Related Costs

[In El Paso Direct Billing Effective October 31, 1986, in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Mobil Producing Texas and New Mexico Inc	149	8630	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs

[In El Paso's Direct Billing Effective December 1, 1986, in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Bow Valley Petroleum, Inc		602E	12-30-80

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs—Continued

[In El Paso's Direct Billing Effective December 1, 1986, in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Mobil Producing Texas and New Mexico Inc	167	0292	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs

[In El Paso's Direct Billing Effective January 30, 1987 in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Union Texas Petroleum Corp	30	0110	
Amoco Production Co	405	0181	
Amoco Production Co	411	7187	
Amoco Production Co	605	4909	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs

[In El Paso's Direct Billing Effective March 1, 1987 in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
MobilOil Exploration & Producing Southeast Inc	133	6791	
Texaco Producing Inc	390	0204	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs

[Pursuant to Order 473 Issued June 3, 1987, at Docket No. RM86-7-000]

Seller name	Rate schedule	Cont. No.	Cont. date
Lewis B. Burleson, Inc		810D	10-22-80
Cities Service Oil & Gas Corp		0378	12-04-80
Cities Service Oil & Gas Corp	419	6043	
Cities Service Oil & Gas Corp	451	8556	
Cities Service Oil & Gas Corp	480	0176	
El Ran, Incorporated		0334	07-01-79

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs—Continued

[Pursuant to Order 473 Issued June 3, 1987, at Docket No. RM86-7-000]

Seller name	Rate schedule	Cont. No.	Cont. date
Estoril Producing Corp		869E	12-15-80
Dameron Petroleum Corp		876C	05-09-80
Grace Petroleum Corp		770G	09-19-81
Grace Petroleum Corp		897H	03-15-82
Hillin Production Co		876C	05-27-80
Shell Western E&P Inc	19	0121	
Shell Western E&P Inc	20	0124	
Shell Western E&P Inc	315	0159	
Tiffany Gas Co		7055	03-30-26
Cities Service Oil & Gas Corp		0378	12-04-80
Cities Service Oil & Gas Corp	419	6043	
Cities Service Oil & Gas Corp	451	8556	
Cities Service Oil & Gas Corp	480	0176	
Shell Western E&P Inc	19	0121	
Shell Western E&P Inc	30	0124	
Shell Western E&P Inc	315	0159	
Tiffany Gas Co		7055	03-30-82

Mississippi River Transmission Corporation (MRT)

MRT filed the following noting that it concurs in the seller's claims for delivery allowances:

First seller	Contract date	Rate schedule No.
Pelto	Sept. 11, 1978	
Cities Service Co.	Oct. 1, 1980	No. 723.
Dalton J. Woods.	Mar. 26, 1980	
Exxon Corp.	Jan. 27, 1973	No. 21.
Tenneco Oil Co.	May 24, 1978	No. 155/340.
Phillips Petroleum Co.	Sept. 15, 1981	No. 15.
Arco Oil and Gas Co.	Aug. 26, 1981	No. 2.
Murphy Oil USA, Inc.	Feb. 23, 1973	No. 6.
Murphy Oil USA, Inc.	Nov. 7, 1983	No. 5.

Mountain Fuel Resource, Inc. (MFG)

MFR Filed the Following:

Producer-Sellers That MFR Believes Are Entitled to the Delivery Allowance

First Seller, Contract Date and Rate Schedule No.

BelNorth Petroleum Co., [Now Enron Oil & Gas Co.] Contract No. 429.
Amoco Production Co., Rate Schedule 507
BelNorth Petroleum Corp. [Now Enron Oil & Gas Co.], Contracts Nos. 125 and 429
BHP Petroleum (Americas) Inc., Rate Schedule 123
Champlin Petroleum Co., Rate Schedule 125
Chevron U.S.A., Inc., Rate Schedule 100
Eason Oil Co.
Getty Oil Co. [now Texaco, Inc.]
Sante Fe Energy Co., Contract No. 280
Southland Royalty Co., Contract No. 256
Southland Royalty Co. & Tom Marsh Inc., Contract No. 172
Superior Oil Co. [now Mobile Oil Corp.], Contract No. 200

National Fuel Gas Supply Corporation (National)

National filed the following list in which it states the sellers are entitled to collect production related costs under section 271.1104 of the Commission's regulations:

List of First Sellers

1. Shell Western E&P Inc.	Rate Schedule 2.
2. Wayne D. Ankerman, W. Douglas Ankerman, Jr.	Gas Sales and Purchase Contract, Dated July 1, 1975.

Natural Gas Pipeline Corporation of America (Natural)

Natural filed the following list of contracts in which it disputes the collection of delivery allowances by the sellers:

Producer date	Contract date	Contract number	R/S or small producer certificate number.
Amoco	01-04-80	1075	
Arco	09-01-67	234	R/S #609
Texaco	09-12-79	1405	
Marsh	03-27-56	370	C/S #73-0021
Gulf	06-11-65	1096	R/S #501
Amoco	10-15-64	301	R/S #404
Anschultz	03-12-81	1904	C/S #71-0783
Tenneco	06-15-61	348	R/S #359
Tenneco	07-07-79	1692	R/S #184
Gulf	01-02-78	1286	R/S #130
Beinorth	06-02-72	573	R/S #17
Arco	09-01-67	240	R/S #609
Marathon	01-24-78	1276	R/S #151
Tenneco	07-09-76	2612	R/S #371
Mitchell	12-27-77	1191	R/S #19
Getty	04-12-71	143	R/S #384
Sun	12-30-77	1299	R/S #344
Getty	09-01-67	496	R/S #385
Getty	10-10-67	236	R/S #160
Hanson	01-15-79	1290	
Enserch	06-19-65	609	R/S #98
Chevron	06-11-65	1095	R/S #501
Chevron	02-29-64	2175	

Northern Natural Gas Company (Northern)

On December 8, 1987, Northern provided the following list of contracts under which producers have asserted a right to collect delivery allowances pursuant to an area rate clause. Northern concurs with these assertions:

Contract number	Producer name	Contract date	R/S or small producer docket
5923	Phillips Petroleum Co.	2-06-52	R/S #18
6026	Maxus Energy Corporation.	10-15-52	
7605	Phillips 66 Natural Gas Co.	10-02-54	
9301	Maxus Energy Corp.	1-25-58	
11329	Texaco Producing Inc.	9-15-60	R/S #162
12295	Farmland Industries Inc.	8-07-56	
12322	Arco Oil & Gas Company.	9-25-56	R/S #376
12995	Phillips 66 Natural Gas Co.	2-09-62	R/S #381
13039	Phillips Petroleum Co.	2-21-62	R/S #386
13732	Farmland Industries Inc.	11-16-62	
15156	SPG Exploration Corp.	8-07-63	
17203	....do	12-30-63	
17577	Exxon Corporation.	4-24-64	R/S #365
17687	Reading & Bates Petroleum Co.	9-21-64	R/S #2
17942	Arco Oil & Gas Company.	9-18-64	R/S #290
17978	Kerr-McGee Corporation.	9-22-64	
18002	Union Oil Co. of California.	11-30-64	R/S #94
18008	Farmland Industries Inc.	11-10-64	
18172	Union Oil Co. of California.	12-04-64	R/S #174
18258	Amerada Hess Corporation.	2-04-65	R/S #126
18436	Exxon Corporation.	4-30-65	R/S #375
15686	SPG Exploration Corp.	7-23-62	
16809	....do	10-27-62	
18808	Amoco Production Co.	10-29-65	R/S #649
18869	Arco Oil & Gas Co.	10-29-65	R/S #566
18911	May John L.	9-13-65	
18972	Southland Royalty Co.	1-03-65	CS65-1
19062	Amoco Production Co.	1-13-66	R/S #652
19102	....do	3-08-66	R/S #449
21016	Exxon Corporation	10-11-67	R/S #365
21634	Benson Mineral Group Inc.	3-29-68	CS72-402
23413	Texaco Producing Group Inc.	9-25-69	R/S #256
26316	Southland Royalty Co.	7-10-70	CS66-1
27094	Phillips 66 Natural Gas Co.	8-02-71	
27669	Kanab Operating Company Ltd.	3-03-72	
28106	Texaco Producing Inc.	3-15-72	R/S #262
28108	Hunt Oil Company.	5-05-72	R/S #74
28709	Texaco Producing Inc.	9-27-72	R/S #268
29097	Grace W R & Company.	12-12-72	CS73-138
30533	Phillips Petroleum Co.	10-30-73	R/S #532
30534	....do	10-30-73	R/S #533
33693	Cabot Corporation.	7-16-75	
34329	Union Texas Petroleum Corp.	1-05-76	R/S #137
34668	Phillips Petroleum Co.	5-21-76	R/S #590
35099	Mobil Oil Explor & Prod Se Inc.	7-19-76	R/S #524
35338	Exxon Corp	8-09-76	R/S #572
35465	....do	8-03-76	R/S #569
36124	Texaco Producing Inc.	2-24-77	R/S #105
36240	Fina Oil & Chemical Co.	3-17-77	
36537	Exxon Corp	5-13-77	R/S #587
36695	Union Exploration Prtnrs Ltd.	6-02-77	R/S #236
36735	Amoco Production Co.	6-03-77	R/S #745

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Contract number	Producer name	Contract date	R/S or small producer docket
37460	Mobil-GC Corporation.	8-19-77	
37582	Amoco Production Co.	11-22-77	R/S #635
37921	Exxon Corporation.	11-23-77	R/S #611
37999	Cabot Corp.	8-23-78	R/S #120
38060	do	8-23-78	R/S #121
38080	Kerr-McGee Corp.	12-16-77	R/S #153
38374	Fairmont Oil Corporation.	3-03-78	R/S #28
38450	Cities Service Oil & Gas Corp.	2-14-78	
38472	do	3-17-78	R/S #476
38486	Monsanto Company.	3-17-78	R/S #137
38517	Elf Aquitaine Incorporated.	3-15-78	
38524	do	3-15-78	
38713	Cabot Corporation.	4-07-78	R/S #123
38754	Exxon Corporation.	5-02-78	R/S #619
39149	Amerada Hess Corporation.	5-25-78	R/S #172
39150	do	5-25-78	R/S #171
39172	Santa Fe Energy Corporation.	6-21-78	
39342	Texaco Incorporated.	8-16-78	R/S #180
39639	Santa Fe Energy Company.	9-01-78	
39721	Benson Mineral Group Inc.	9-27-78	CS72-402
39725	Mobil Oil Explor & Prod Se Inc.	9-14-78	R/S #559
39823	Union Texas Petroleum Corp.	9-05-78	R/S #150
39941	Exxon Corporation.	11-07-78	R/S #655
40303	Chevron USA Incorporated.	1-19-79	
40813	Amoco Production Company.	3-29-79	R/S #806
40863	do	3-28-79	
41220	Maxus Energy Corporation.	6-06-79	R/S #99
41221	Arco Oil & Gas Company.	6-12-79	R/S #743
41252	Cabot Corporation.	6-26-79	
41378	Cities Service Oil & Gas Corp.	7-16-79	R/S #440
41554	Champlin Petroleum Company.	8-14-79	
41687	Texaco Producing Inc.	8-31-79	
41705	Texas Incorporated.	9-17-79	
41914	Anadarko Production Company.	9-21-79	
42218	Mobil Oil Explor & Prod Se Inc.	11-06-79	
42221	Elf Aquitaine Incorporated.	11-06-79	
42223	Koch Industries Incorporated.	11-07-79	
42616	Fairmont Oil Corporation.	1-31-80	
43242	Maxus Energy Corporation.	5-19-80	
43274	do	5-21-80	
43349	Amoco Production Company.	10-10-79	
43614	Santa Fe Energy Company.	7-01-80	
43778	Elf Aquitaine Incorporated.	7-30-80	
44447	Horner Richard R.	1-05-81	
44462	Arco Oil & Gas Company.	12-01-80	
44815	do	3-10-81	
46200	BellNorth Petroleum Corporation.	7-01-81	
46265	Santa Fe Energy Company.	11-03-81	
46655	Phillips 66 Natural Gas Co.	7-01-81	
46662	do	7-01-81	
46713	Cities Service Oil & gas Corp.	4-29-82	
46796	Mesa Operating Limited Prtnshp.	4-14-82	
46903	Kaiser-Francis Oil Company.	6-25-82	
50480	Maxus Energy Corporation.	1-01-83	
56090	Mobil Oil Explor & Prod Se Inc.	12-05-85	

First seller	Contract date	Rate schedule No.
Tenneco Oil Company [1].	April 05, 1965	292
	July 28, 1965	180
	February 25, 1966	198
Quinoco Petroleum Inc.[2].	January 25, 1977	19
	October 05, 1977	6
	October 12, 1977	9
	October 12, 1977	17
	October 12, 1977	18
	September 27, 1978.	11
Santa Fe Energy	May 23, 1972	N/A
	August 2, 1973	N/A
	July 1, 1980	N/A
BellNorth Petroleum Corp.	August 14, 1978	100

[1] Originally reported as Quinoco Petroleum Inc.
[2] Formerly GEO Oil and Gas Company.

Northwest Pipeline Corporation's List of First Sellers and Gas Purchase Contracts For Which Northwest *Protests* The First Seller's Assertion of Contractual Authority To Collect.

Delivery Allowances Pursuant to An Area Rate Clause:

First seller	Contract date	Rate schedule No.
Arco Oil & Gas Co	October 4, 1967	604
	June 12, 1967	312
BellNorth Petroleum Corp.	October 18, 1977	30
	July 01, 1980	5 and 6
	October 13, 1980	N/A
	November 26, 1980.	N/A
	April 17, 1981	1
BHP Petroleum	January 31, 1975	145
Chandler & Simpson.	November 21, 1966.	N/A
Chevron U.S.A., Inc.	January 27, 1960	89
	December 20, 1965.	108
	July 27, 1973	466
	May 30, 1978	N/A
	December 18, 1978.	N/A
	July 31, 1980	N/A
	March 16, 1981	N/A
	April 10, 1983	99
Conoco Inc.	August 25, 1961	408
Exxon Company, U.S.A.	August 23, 1957	210
	November 20, 1961.	396
Getty Oil Company	August 28, 1980	449
Martin Exploration Management.	May 18, 1979	N/A
	April 06, 1982	N/A
Mobil Oil Corporation.	June 06, 1972	484

Northwest Pipeline Corporation (Northwest)

Northwest Provided the following: Northwest Pipeline Corporation's List of First Sellers and Gas Purchase Contracts For Which Northwest *Protests* the First Seller's Assertion of Contractual Authority To Collect.

Delivery Allowances Pursuant to An Area Rate Clause:

Panhandle Eastern Pipe Line Company (Panhandle)

Panhandle submitted the following schedule of contracts receiving delivery allowance based on an area rate clause authorization:

Company name	Contract no.	Contract date
Texaco Producing Co. (Getty Oil Company)	82	04-02-62
Shell Western E&P	838	03-22-60
Reading & Bates Petroleum Co	3245	10-21-81
Mobil Oil Corporation	1137	06-11-69
Union Texas Petroleum Corp	666	07-02-65
Union Texas Petroleum Corp	1182	01-12-70
Diamond Shamrock Exploration Co	832	04-17-61
Energy Minerals Co	1712	01-02-78
J.M. Huber Corporation	456	09-21-35
Hucky Oil Co. (Marathon Oil Co.)	2063	02-13-78
Cities Svs Oil & Gas Corp	1830	10-11-76
Rodman Petroleum Corporation	2542	04-18-80
Premier Resources, Ltd.	1605	11-13-74
Premier Resources, Ltd	1626	12-16-74
Conoco, Inc	2367	11-10-76
Conoco, Inc.	2593	04-01-79

Sea Robin Pipeline Company (Sea Robin)

Sea Robin concurs with its first seller's claims and submitted the following list:

Contract	First seller	Rate schedule
311	Amerada Hess Corp	154
300	Amoco Production Co	536
306	Amoco Production Co	567
319	Amoco Production Co	570
334	Amoco Production Co	674
362	Amoco Production Co	735
389	Amoco Production Co	746
303	Anadarko Production Co	253
309	Anadarko Production	255
401	Canadian Superior Oil U.S.	254
412	Champlin Petroleum Co.	158
312	Chevron USA	61
321	Chevron USA	430
365	Cities Service Oil & Gas	444
421	Cities Service Oil & Gas	496
423	Conoco Inc	477
307	Crystal Exploration	CS
363	ECEE Inc	2
325	Exxon Corp	506
326	Exxon Corp	507
392	Exxon Corp	601
311	Louisiana Land & Explor	20
327	MESA Offshore	CS
357	Mobil Oil Corp	61
358	Mobil Oil Corp	66
390	Mobil Oil Corp	83
403	Mobil Oil Corp	99
415	Mobil Oil Corp	94
404	Mobil Oil Exploration	89
405	Mobil Oil Exploration	88
374	Newmont Oil Co	CS
420	Newmont Oil Co	CS
316	Oxy Petroleum Inc	CS
302	Pennzoil Producing	271
335	Pennzoil Producing	287
361	Pennzoil Producing	313
369	Pennzoil Producing	315
371	Pennzoil Producing	314
382	Pennzoil Producing	N/A
384	Pennzoil Producing	N/A
385	Pennzoil Producing	N/A
386	Pennzoil Producing	N/A
387	Pennzoil Producing	N/A
388	Pennzoil Producing	N/A
311	Phillips Petroleum Co	20
409	Phillips Petroleum Co	50
415	Phillips Petroleum Co	54
418	Phillips Petroleum Co	77
364	Pinto Inc	4
391	Pinto Inc	3
328	POGO	3
330	POGO	1
349	POGO	8
350	POGO	6
351	POGI	12
352	POGI	11
354	POGI	13
368	POGI	19
370	POGI	20
375	POGI	24
377	POGO	26
378	POGO	27
379	POGO	21
380	POGO	22
381	POGO	23
426	POGO	23
328	POGO	3
330	POGO	1
407	Sabine Production Co	13
373	Samedan Oil CS Corp	...
399	Samedan Oil CS Corp	...
417	Samedan Oil CS Corp	42
309	Shell Offshore Inc	458
313	Shell Offshore Inc	20
304	Sonat Exploration	14
333	Sonat Exploration	15
367	Sonat Exploration	2
301	Southern Natural Gas Co	F-9
331	Southern Natural Gas Co	F-12
372	Southland Royalty Co	38
397	Southland Royalty Co	93
419	Southland Royalty Co	125
394	Superior Oil Co	259
400	Superior Oil Co	275
366	TBP Offshore CS Co	...
305	Texaco Production Inc	8
314	Texaco Production Inc	449
332	Texaco Production Inc	472
353	Texaco Production Inc	548
414	Union Expl Partners	254

SOUTHERN NATURAL GAS COMPANY (SONAT)

Name	Contract date	Contract date	Rate schedule
Sonat Concurs in The Claims of the Following:			
Amax Petroleum	02-05-79	051000	NGPA
Amerada Hess Corp	05-16-78	043800	174
Do	04-09-69	025000	156
Amoco Production Co	10-01-80	021201	471
Do	07-15-80	050900	NGPA
Do	01-01-80	019002	442
Do	02-14-63	018000	373
Do	06-20-80	058400	828
Do	06-22-67	021500	502
Anadarko Production	08-08-72	029300	252
Arco Oil & Gas Co	08-09-67	021000	603
Do	05-07-51	001100	381
Do	05-18-74	036000	683
Do	02-20-79	010406	#89
Do	08-09-67	022100	601
Do	09-01-78	007302	552
Do	04-01-78	009601	480
Do	07-01-81	068700	775
Do	02-26-73	031300	572
Do	06-01-82	014601	441
Do	08-09-82	022000	602
Bass, Perry R	10-01-80	014902	9
Do	06-01-84	017401	13
BHP Petroleum	11-01-80	012001	70
Do	01-01-81	012801	69
Callon Petroleum	07-15-80	056900	NGPA
Canadian Oxy	05-20-77	039900	8
Do	04-14-81	068300	CS71-636
Chevron U.S.A., Inc	04-01-79	005901	2
Do	08-01-79	009301	9
Do	04-01-79	010901	13
Do	06-01-79	009301	9
Do	02-13-75	026700	89
Do	06-01-79	009301	9
Do	11-01-78	007501	7
Do	12-01-78	007701	8
Do	05-30-79	048400	NGPA
Do	04-01-79	005901	2
Do	02-01-78	010202	2
Do	05-22-79	050700	169
Do	11-01-77	041700	155
Do	09-03-80	003101	16
Do	01-01-80	003401	16
Do	02-15-71	027800	67
Do	05-28-71	028100	70
Do	05-28-71	028200	71
Do	05-15-78	043600	159
Do	07-01-69	025800	50
Do	07-01-69	025808	50
Do	04-01-79	005901	2
Do	05-01-72	030000	76
Do	04-01-79	005901	2
Do	04-01-79	005901	2
Do	07-08-80	013001	17
Do	06-01-80	013805	188
Do	09-17-73	031600	82
Do	11-01-78	007501	7

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SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Cities Service Oil & Gas	05-09-73	033900	403
Do	08-05-80	058800	492
Conoco, Inc	08-01-81	012101	172
Do	08-05-57	008200	166
Do	08-01-81	012101	172
Do	05-03-77	039900	436
Do	05-06-73	033800	405
Do	08-01-80	058100	475
Cox, Edwin L	08-24-80	058500	CS77-189
Denovo Oil & Gas Inc	01-05-79	046300	NGPA
Diamond Shamrock Partners	09-25-78	052600	104
Do	08-13-77	040200	78
Dynasaic Exploration	03-30-60	014300	CS72-773
Elf Aquitaine Petroleum	06-04-81	067600	1
Do	06-04-81	067300	NGPA
Do	08-05-69	025000	CS71-281
Do	06-04-81	067500	8
Do	06-04-81	067400	7
Exxon Corporation	03-25-68	023200	448
Do	06-25-72	030100	511
Do	10-04-79	002302	126
Do	07-01-83	012002	236
Do	07-01-83	015801	283
Do	12-26-80	061500	572
Do	06-16-79	050800	556
Do	07-01-83	017301	317
Do	07-17-86	016801	355
Do	02-27-88	023100	442
Do	02-23-88	025100	464
Fairmont Oil Corp	11-27-79	053200	35
Do	11-22-78	047100	NGPA
Fina Exploration, Inc	03-01-82	001501	83
First Energy Corporation	06-16-81	072400	NGPA
Hunt Oil Company	06-04-74	035200	76
JFD, Inc	04-20-67	021800	CS71-432
Kerr McGee Corp	02-25-57	023400	51
Do	01-30-86	024500	100
Do	06-06-77	041300	147
Do	07-31-78	044301	168
Do	11-07-77	042100	152
Do	07-31-78	044601	158
Do	06-06-77	041500	148
Do	12-13-76	000801	18
Do	06-06-72	009020	105
Do	02-02-76	042700	154
Do	06-12-80	057400	52
Do	02-15-72	029500	116
Do	01-23-76	004502	52
Do	11-22-78	047100	NGPA

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Kirby Exploration	02-05-79	051000	NGPA
Do	10-03-66	020800	CS76-929
Koch Industries	01-29-81	066100	17
Do	11-22-78	047100	NGPA
Marthon Oil Co	12-29-76	042000	148
Do	04-09-69	025900	108
McMoran Exploration	10-01-82	000103	CS71
Minestome Corp	01-27-78	042500	NGPA
Do	02-18-71	023500	CS66-30
Do	02-01-78	004702	CS71-331
Mobil Oil E&P, S.E	01-19-80	060500	109
Mobil Oil	08-23-76	002502	11
Do	06-11-72	030800	56
Do	09-11-72	030900	56
Do	10-09-69	026100	50
Do	02-27-57	004800	19
Do	07-20-78	044800	55
Do	10-01-81	072200	179
Do	07-09-74	035600	123
Do	05-04-82	014501	32
Do	11-22-78	047100	124
Mosbacher, Robert	08-28-57	007300	NGPA
OCFOGO, Inc	06-12-81	066100	NGPA
Odeco Oil & Gas Co	08-25-76	041900	545
Oxy Petroleum	07-22-82	074700	CS76-834
Pennzoil Oil & Gas	09-01-76	038500	29
Do	09-01-76	038500	17
Do	04-16-79	050500	368
Do	09-01-76	038400	17
Do	01-11-80	013804	168
Do	12-01-82	082000	341
Petro-Lewis Corp	04-01-60	005300	NGPA
Phillips Petroleum Co	01-01-78	000102	239
Do	01-30-89	024500	457
Do	08-08-77	000901	301
Do	08-08-77	041400	611
Do	02-27-78	043700	624
Do	02-09-79	000802	219
Do	11-07-77	042200	616
Do	08-01-78	052300	887
Do	02-01-78	004702	72
Do	09-25-87	022600	800
Do	12-01-78	008301	81
Do	04-09-69	025000	752
Do	02-01-78	004702	300
Do	06-01-79	049100	NGPA
Do	01-01-81	013901	36
Do	06-01-63	006506	175
Pogo Producing Co	12-29-80	064400	NGPA
Do	09-01-76	038500	42
Do	09-01-76	038600	17
Do	01-30-81	064300	NGPA
Do	04-18-79	050600	43

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Do	09-01-76	038400	17
Prince Production Co	04-01-50	005300	NGPA
Prosper Energy Corp	06-04-74	035200	9
Sabine Production Co	07-15-80	057600	NGPA
Do	05-12-89	025500	CS71-999
Shell Offshore, Inc	03-01-81	066800	NGPA
Do	01-13-78	042400	41
Do	05-07-75	037800	32
Do	07-01-79	049800	52
Do	07-01-79	049700	53
Do	08-01-78	045900	49
Do	09-27-66	024000	15
Do	09-27-66	024000	15
Do	09-27-66	024000	15
Do	08-16-76	235800	345
Do	10-03-66	020800	10
Do	10-03-66	020900	10
Shell Onshore Partnership	01-19-82	073600	NGPA
Sonat Exploration Co	11-24-80	060800	NGPA
Do	09-22-80	059000	11
Do	05-13-77	040100	4
Do	02-06-81	064500	13
Do	06-01-78	044100	4
Do	06-24-79	051100	8
Do	05-13-77	068300	19
Do	05-20-78	049400	6
Do	05-13-77	068700	20
Do	09-18-79	051900	10
Do	05-13-77	068800	NGPA
Do	03-16-78	046700	5
Do	09-04-79	051800	9
Do	02-06-81	064200	12
Do	06-19-78	049900	7
Do	11-19-78	007505	1
Do	11-24-80	060800	NGPA
Do	11-27-79	053400	NGPA
Do	12-15-78	044201	NGPA
Sun Exploration	08-05-69	026000	251
Do	08-15-62	017100	666
Tennaco Oil	05-09-73	034000	285
Texaco, Inc	04-06-88	026300	374
Texaco Producing, Inc	03-08-73	051500	428
Texaine Production	10-31-80	058800	NGPA
Triton Oil & Gas Corp	09-01-81	007801	CS71-1103
Union Exploration Ptnrs	02-18-72	029500	210
Union Exploration Ptnrs	02-14-78	004501	244

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Sonat states that it has not paid the invoices of the following:			
Dynamic Exploration	06-18-77	040600	CS72-773
Fairmont Oil Co	11-22-78	047100	NGPA
Getty Oil Company	06-01-78	001301	68
Koch Industries	06-01-79	049000	NGPA

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Do	11-22-78	047100	NGPA
Marthon Oil Co	06-12-77	041600	148
Do	07-27-53	004200	103
Do	01-01-49	004100	103
Sabine Production Co	05-12-89	025500	CS71-999
Sonat Exploration Co	06-16-81	068000	17
Tennaco Oil Co	12-01-79	010006	80

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Do	10-24-80	060200	NGPA
Union Oil of California	01-23-80	054600	NGPA

Tennessee Gas Pipeline Company (Tennessee)

Tennessee concurs in the requests of the following:

Contract No.	Seller	Contract date	Rate schedule
0001	Goldston Oil Corp	12-01-46	062-39
0001	Moebacher, Robert	12-01-46	71-707
0001	Mobil (MPIM)	12-01-46	000028
0002	Suburban Propane	12-09-46	78-0027
0004	Texaco Prod., Inc	05-07-79	000232
0005	Gilliring Oil Co	07-22-48	71-683
0007	Cities Service	10-27-7 [sic]	000009
0009	Sohio Pet Co	04-05-79	000134
0013	Mitchell Engy. Corp	09-01-86	00047
0015	Arco Oil & Gas Co	02-24-50	000332
0016	Chevron USA, Inc	02-17-83	000211
0019	Union Expl. Partners, Ltd	03-16-50	000120
0020	Conoco, Inc	06-05-50	060078
0022	Monsanto	06-04-50	079-88
0024	Mitchell Engy. Corp	01-01-81	0048&5
0025	Arco Oil & Gas Co	01-31-51	000349
0029	Amoco Production Co	02-06-85	000177
0033	Arco Oil & Gas Co	04-01-52	000346
0033	Mobil (MPIM)	04-01-52	00020
0034	Mobil (MPIM)	04-01-52	000031
0037	Amoco	06-01-52	000124
0037	Mobil	06-01-52	
0038	Exxon Co. USA	06-01-52	000006
0039	BYS, Inc	06-01-52	061-69
0039	Exxon Co. USA	06-01-52	000011
0041	Champlin Pet Co	08-15-52	000005
0043	American Petrofina	01-01-80	000060
0046	Sun Expl. & Prod. Co	12-01-52	000011
0051	Texaco, Inc	06-10-53	000054
0052	Carr, Edith Backus Trust	06-17-84	
0054	Berry, Philip B	11-03-53	060-38
0054	Conoco	11-03-53	76-1115
0054	Tenneco Oil Co	06-27-79	074-86
0057	Samson Res. Co	06-27-79	074-86
0061	Texaco Prod., Inc	03-25-7	000270
0066	Champlin Pet Co	12-29-82	000003
0066	Sun Exploration	12-29-82	
0068	Enso, Inc	05-01-79	71-709
0071	Texaco Prod., Inc	09-01-79	000454
0074	Arco Oil & Gas Co	11-01-54	000491
0082	Sun Expl. & Prod. Co	02-01-55	
0084	Sun Expl. & Prod. Co	09-14-77	000303
0086	Arco Oil & Gas Co	04-01-55	000355
0090	Arco Oil & Gas Co	04-01-55	000356
0094	Mobil (Mepna)	05-06-80	000010
0095	Coates Energy	05-10-55	
0096	Arco Oil & Gas Co	05-24-55	000124
0099	Bykes, W.M	07-11-55	
0101	Texaco	07-01-80	67-39
0103	Bright & Co	10-17-55	71-70
0103	Clark, J.O., Jr	10-17-55	71-436
0104	Mobil (MPTM)	11-10-55	000016
0110	Texas Prod., Inc	07-19-82	000276
0111	Arco Oil & Gas Co	01-31-56	000156
0113	Conoco, Inc	01-31-56	000138
0115	Chevron USA, Inc	07-18-78	000249
0116	Chevron USA, Inc	06-30-78	000249
0122	Chevron USA, Inc	07-17-78	000250
0124	Arnold, Daniel C	05-04-84	
0124	Bintliff, David C	05-04-84	71-422

Contract No.	Seller	Contract date	Rate schedule
0124	Moss, Margaret B	05-04-84	
0124	Wheless Industries, Inc	05-04-84	71-305
0124	WWF Oil Corp	05-04-84	71-833
0125	Shell Offshore, Inc	05-16-79	000002
0126	Tenneco Oil Co	07-20-79	000143
0127	Shell (SWEPI)	10-06-78	000028
0129	Arco Oil & Gas Co	06-25-56	000535
0130	Arco Oil & Gas Co	06-10-56	000185
0137	Cities Service O&G Corp		06-14-56000180
0139	Texaco Prod., Inc	06-14-56	000072
0139	Arco Oil & Gas Co	03-01-58	000420
0159	Arco Oil & Gas Co	03-01-58	000420
0160	Arco Oil & Gas Co	03-01-58	000532
0161	Mobil (MFTM)	03-01-58	000055
0164	Sun Expl. & Prod. Co	03-01-58	000364
0167	Sun Expl. & Prod. Co	04-01-58	0104
0168	Energy Reserves	06-02-76	
0171	Shell Offshore Inc	10-05-77	000004
0172	Graham Engy. Ltd	05-18-79	
0173	Mobil (MOEPSI)	09-27-78	000022
0175	Newmont Oil Co	06-01-81	71-510
0177	Louisiana-Hunt Pet Corp	10-12-79	
0178	Louisiana-Hunt Pet Corp	11-01-79	
0178	Placid Oil Co	11-01-79	000027
0178	Rosewood Resources, Inc	11-01-79	
0179	Exxon Co. USA	10-11-79	000183
0180	Exxon Co. USA	10-11-79	000184
0181	Exxon Co. USA	10-11-79	000185
0183	Chevron USA, Inc	02-08-80	000297
0185	Shell Offshore, Inc	11-01-78	000087
0186	Getty Oil Co	11-01-79	00(24)
0188	Hunt Hassie Expl. Co	11-01-79	00024
0188	Sohio Pet Co	11-01-79	000125
0189	Louisiana Land & Expl. Co	03-03-80	00(49)
0189	Union Expl. Partners, Ltd	03-03-80	000944
0190	Chevron USA, Inc	07-11-80	000300
0191	Arco Oil & Gas Co	06-20-59	000239
0192	Cities Svc O&G Corp	08-31-59	000186
0193	Texaco Prod., Inc	09-08-59	000107
0195	Conoco, Inc	08-25-59	000189
0196	Northern Pump Co	04-17-80	71-022
0199	Exxon Co. USA	10-11-79	000188
0203	Amoco Production Co	10-11-79	000264
0205	Exxon Co. USA	11-01-79	000241
0210	BHP Pet (Americas), Inc	08-26-80	000916
0217	Arco	03-01-60	76-0573
0218	Chevron USA, Inc	06-05-80	000434
0224	Edwing, Barry	03-25-80	000017
0224	Energy Reserves	03-25-80	
0226	Exxon Co. USA	06-01-55	000274
0229	Texaco, Inc.	04-08-60	000217
0[illegible]	Carri Oil	04-11-80	073-19
0230	Anadarko Prod. Co	01-06-82	000002
0230	Terra Resources	01-06-82	
0231	Brown Curtis	10-16-61	(71-270)
0231	Gruy Management	10-16-61	(71-270)
0232	Mobil (MOEPSI)	04-27-60	000115
0236	Texaco, Inc	07-01-60	000221
0237	Mobil (Mepna)	07-07-60	000038
0239	Cox, Edwin L	08-19-80	77-189
0241	Fina Oil & Chemical Co	01-11-81	
0247	Sun Expl & Prod., Co	10-04-60	000125
0249	Tenneco Oil Co	04-02-82	000140
0253	Exxon Co. USA	08-01-55	000288
0261	Texaco, Inc	03-10-61	000227
0263	Cities Svs, O&G Crop	08-27-62	000187
0264	Conoco, Inc	03-11-63	000201
0265	Arco Oil & Gas Co	03-24-83	000235
0266	Texaco Prod., Inc	07-15-82	000112
0267	Amerada Hess Corp	08-24-61	000091
0269	Bourg, Harry, Corp	09-15-61	71-819
0271	Tenneco Oil Co	11-01-61	000048
0274	Union Expl. Partners LTD	12-07-61	
0275	Sun Expl. & Prod. Co	12-18-61	000147
0276	Exxon Co. USA	08-01-55	000309
0276	Conoco, Inc	09-06-83	000213
0280	Newmont Oil Co	12-09-85	71-510
0282	Pennzoil Co	05-16-62	00(84)
0283	Phillips Pet Co	05-16-62	000882
0284	Tenneco Oil Co	07-01-62	000126
0285	Tenneco Oil Co	07-01-62	000129
0290	Eubanks, B.R. (M.D.)	06-24-62	

Contract No.	Seller	Contract date	Rate schedule
0290	Chevron USA, Inc	08-24-62	000364
0292	Louisiana-Hunt Pet Corp	08-24-62	
0292	Placid Oil Co	08-24-62	000034
0294	Sun Expl. & Prod. Co	08-24-62	000160
0295	Mobile (MOEPSI)	08-24-62	000116
0300	Exxon	05-08-63	71-919
0301	Enstar Corp	10-30-63	000N/A
0303	Chevron USA, Inc	03-06-64	00372
0307	Mobile (MOEPSI)	05-03-66	000036
0310	Chevron USA, Inc	08-01-65	000382
0311	Chevron USA, Inc	08-01-65	000381
0314	Pennzoil Co	03-23-62	000139
0215	Tenneco Oil Co	04-05-66	000204
0315	Exxon Co. USA	08-01-65	000395
0316	Texaco, Inc	09-01-61	000379
0317	Conoco, Inc	06-30-66	000336
0319	Texaco Prod. Inc	07-05-66	000162
0320	Arco Oil & Gas Co	07-08-66	00318
0321	Cities Svs. O&G Corp	07-12-66	
0331	Tenneco Oil Co	11-01-67	000239
0333	Tenneco Oil Co	11-01-67	000245
0334	Tenneco Oil Co	11-06-67	000247
0335	Tenneco Oil Co	11-01-67	000241
0337	Tenneco Oil Co	11-01-67	83-72
0336	Tenneco Oil Co	11-01-67	000250
0338	Tenneco Oil Co	11-01-67	000251
0340	Koch Industries, Inc	11-20-67	76-73
0340	Phillips Pet Co	11-20-67	000047
0340	Tenneco Oil Co	11-20-67	000227
0345	Tenneco Oil Co	05-17-68	000305
0346	Chevron USA, Inc	05-29-68	000464
0347	Cities Svs. O&G Corp	06-20-68	000228
0348	Arco Oil & Gas Co	06-27-68	000320
0349	Texaco Prod., Inc	07-01-68	000163
0350	Conoco, Inc	07-02-68	000341
0351	Exxon Co. USA	07-25-68	000451
0352	Mobil (MOEPSI)	08-02-68	000046
0357	Arco Oil & Gas Co	01-02-69	000324
0359	Shell Offshore, Inc	01-02-69	000016
0360	Phillips Pet Co	03-17-69	000805
0360	Chevron USA Inc	03-17-69	000468
0365	Cities Svs. O&G Corp	04-22-69	000215
0365	Conoco, Inc	04-22-69	000350
0368	Arco Oil & Gas Co	04-29-69	000527
0369	Texaco Prod., Inc	04-28-69	000177
0372	Chevron USA, Inc	05-29-69	000471
0375	Exxon Co. USA	10-07-69	000407
0377	Amoco Production Co	10-30-69	000544
0378	Chevron USA, Inc	11-25-69	000480
0379	Penzoil Co	12-01-69	000110
0383	Cities Svs. O&G Corp	12-16-69	000322
0384	Texaco Prod., Inc	12-18-69	000178
0385	Arco Oil & Gas Co	12-19-69	000355
0386	Conoco, Inc	12-19-69	000355
0387	Arco Oil & Gas Co	01-05-70	000532
0388	Cities Svs. O&G Corp	01-05-70	000523
0389	Conoco, Inc	01-05-70	000356
0390	Texaco Prod., Inc	01-05-70	000180
0395	Mobil (MPTM)	01-01-76	000026
0396	Arco Oil & Gas Co	05-01-70	000535
0397	Cities Svs. O&C corp	05-01-70	000331
0366	Conoco, Inc	05-01-70	000363
0398	Texaco Prod., Inc	05-01-70	000183
0401	Severg Co., Inc	08-25-70	76-763
0401	Sun Expl. & Prod., Co	08-25-70	000717
0404	Texaco, Inc	10-26-70	000455
0405	Conoco, Inc	10-29-70	000364
0406	Texaco Prod., Inc	10-29-70	000185
0407	Mobil (MEPNA)	11-19-70	000063
0412	Tenneco Oil Co	01-01-71	000273
0415	Tenneco Oil Co	02-01-71	000277
0417	Texaco Prod., Inc	05-11-83	000913
0419	Arco Oil & Gas Co	05-01-71	000005
0420	Texaco, Inc	06-01-71	000464
0422	Amoco	02-06-85	(85-91)
0423	Amoco	06-07-71	000263
0425	Texaco, Inc	07-12-71	000459
0426	Weaver, W. Carlton	07-27-71	71-517
0432	Exxon Co. USA	09-01-71	000486
0433	Amoco Production Co	09-27-71	000576
0434	Tenneco Oil Co	10-01-71	000276
0437	Chevron USA, Inc	10-21-71	000072

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Contract No.	Seller	Contract date	Rate schedule
0440	Mobil (MPTM)	01-01-76	000038
0445	Shell Oil	01-13-78	053-72
0446	Amerada Hess Corp	01-07-72	000160
0448	Conoco, Inc	01-01-81	000378
0450	Hewitt & Dougherty	03-15-72	(71-454)
0462	Shell Offshore, Inc	07-15-72	000024
0470	Mobil (MOEPSI)	06-14-72	000055
0474	Sun Exploration	10-20-72	000663
0474	Odeco Oil & Gas Co	10-20-72	000043
0474	Petro Oil Co	10-20-72	
0475	Cities Svs. O&G Corp	10-20-72	000396
0475	Odeco Oil & Gas Co	10-20-72	000041
0476	Sun Exploration	10-20-72	000390
0476	Odeco Oil & Gas Co	10-20-72	000042
0476	Odeco Oil & Gas Co	10-20-72	
0476	Conoco	10-20-72	
0480	Cities Svs. O&G Corp	11-14-72	000409
0481	Conoco, Inc	11-14-72	000401
0482	Arco Oil & Gas Co	12-22-72	000564
0483	Cities Svs. O&G Corp	12-22-72	000398
0484	Conoco, Inc	12-22-72	000399
0485	Texaco Prod., Inc	12-22-72	000204
0486	Marathon Oil Co	02-01-84	000065
0487	Hunter Co., Inc	04-23-82	72-559
0488	Arco Oil & Gas Co	02-15-80	000006
0489	Arco Oil & Gas Co	02-16-73	000007
0490	Sun Expl. & Prod., Co	02-16-76	000390
0491	Arco Oil & Gas Co	03-01-73	000148
0492	Arco Oil & Gas Co	03-23-71	000003
0494	Texaco Prod., Inc	12-16-78	000011
0496	Sun Expl. & Prod. Co	05-01-76	000009
0498	Sun Expl. & Prod. Co	05-21-76	
0504	Fina Oil & Chemical Co	07-01-79	000094
0509	Texaco, Inc	07-05-73	000498
0508	Tenneco Oil Co	08-06-73	000266
0511	Marshall Expl., Inc	01-13-82	71-853
0515	Tenneco Oil Co	10-30-73	000266
0518	Moebecher, Robert	09-01-80	71-707
0521	Progess Pet Co	11-26-73	074-10
0523	Fair Opting Acct	01-12-79	
0523	Fina Oil & Chemical Co	01-12-79	000072
0524	Arco Oil & Gas Co	01-01-74	000303
0525	Chevron USA, Inc	01-01-74	000053
0527	Conoco, Inc	01-01-74	000413
0528	Champlin Pet Co	03-01-78	000007
0529	Champlin Pet Co	01-01-74	000004
0530	Champlin Pet Co	01-01-74	000021
0531	Fair Opting Acct	05-24-85	71-759
0535	Goldston Oil Corp	01-01-74	082-39
0537	Sohio Pet Co	03-01-78	000003
0538	Sohio Pet Co	03-01-78	000004
0539	Arco Oil & Gas Co	05-02-49	000004
0539	Sohio Pet Co	01-01-79	000020
0539	Sun Expl. & Prod. Co	05-02-49	000037
0544	Odeco Oil & Gas Co	05-17-74	000014
0545	Petro Oil Co	05-17-74	76-461
0550	Texaco, Inc	05-01-80	000055
0553	Texaco, Inc	05-01-80	000056
0554	Texaco, Inc	05-01-80	000280
0554	Texaco, Inc	05-01-80	000260
0556	Texaco, Inc	06-14-74	000508
0557	Texaco Prod., Inc	05-07-79	000012
0559	Tenneco Oil Co	07-10-74	000298
0567	Goldston Oil Corp	01-01-81	082-39
0567	Sun Expl. & Prod. Co	01-10-81	
0568	Sun Expl. & Prod. Co	09-19-74	000171
0568	Sun Expl. & Prod. Co	09-19-74	000170
0570	Phillips Pet Co	09-27-74	000763
0571	Texaco, Inc	05-01-80	000055
0575	Phillips Pet Co	10-22-74	000330
0576	Phillips	10-22-74	
0580	Energy Reserves	11-08-74	000916
0581	Enserch Expl., Inc	11-14-54	000117
0582	Big "S" DRLG Co	12-31-74	71-1029
0587	Arco Oil & Gas Co	01-28-75	000505
0588	Superior Oil Co	07-15-76	000002
0591	Conoco, Inc	02-07-75	000418
0592	Cities Svs. O&G Corp	02-10-75	000415
0598	Amerada Hess Corp	04-29-80	000007
0600	Cities Svs. O&G Corp	05-01-80	000364
0601	Mitchell Energy	05-01-80	82-057
0603	Mitchell Engy. Prod. Corp	05-01-80	

Contract No.	Seller	Contract date	Rate schedule
0605	Conoco, Inc	05-12-75	000133
0606	Cities Svs. O&G Corp	05-22-75	000426
0607	Champlin Pet Co	06-11-75	000097
0610	Tenneco Oil Co	05-12-75	86-087
0611	Tenneco Oil Co	05-13-75	000308
0620	Texaco Prod., Inc	07-14-75	000216
0621	Texaco, Inc	07-14-75	000521
0623	Chevron USA, Inc	07-24-75	000090
0624	Phillips Pet Co	07-25-75	000686
0625	Texaco, Inc	07-31-80	000526
0626	Southland Royalty Co	08-06-75	000076
0628	Odeco Oil & Gas Co	08-20-75	000013
0630	Valhi, Inc	09-05-75	76-165
0631	Sun Expl. & Prod. Co	01-01-80	000258
0632	Texaco, Inc	09-15-75	000529
0634	Conoco, Inc	09-24-75	000426
0636	Cities Svs. O&G Corp	10-01-75	000429
0637	Cities Svs. O&G Corp	10-14-75	000430
0642	Texaco, Inc	12-30-75	000593
0643	Sun Expl. & Prod. Co	01-01-81	000072
0644	Sun Expl. & Prod. Co	01-01-81	000070
0645	Tenneco Oil Co	01-15-76	000344
0648	Tenneco Expl. Ltd	02-26-76	000015
0653	Texaco, Inc	06-01-76	000540
0656	Texaco Prod., Inc	06-07-76	000220
0657	Tenneco Oil Co	06-15-76	000321
0659	Cockrell V H Est. Dec	06-16-76	
0658	Shell Offshore Inc	06-16-76	000001
0661	Texaco Prod., Inc	06-17-76	000218
0662	Sun Expl. & Prod. Co	07-14-81	000013
0663	Texaco, Inc	07-30-76	000146
0664	Mobil (MOEPSI)	08-03-76	000075
0665	Tenneco Oil Co	08-06-76	000322
0666	Tenneco Oil Co	08-06-76	000323
0668	Cities	08-26-76	000004
0668	Tenneco Oil Co	08-26-76	000324
0670	Chevron USA, Inc	08-16-76	000004
0670	Getty	08-16-76	000004
0672	Amoco Production Co	09-10-76	000723
0685	MESA Pet Co	01-17-77	000063
0686	Mobil (MPIM)	03-11-77	000141
0689	Texaco, Inc	04-07-77	000548
0693	Tenneco Oil Co	04-11-77	000327
0694	Marshall Expl., Inc	05-13-77	71-853
0695	Tenneco Expl., Ltd	05-18-77	000022
0703	Petro Oil Co	07-20-77	76-461
0704	Clovelly Oil Co., Inc	05-17-82	75-473
0704	Little Lake	05-17-82	75-475
0705	Clovelly Oil, Co., Inc	05-17-82	75-473
0706	Little Lake Oil Co	05-17-82	83-005
0706	Mesa Pet Co	08-08-77	000089
0707	Mesa Pet Co	08-08-77	000087
0708	NRM operating Co. LP	08-08-77	74-154
0710	Amoco Production Co	08-03-77	000750
0711	Mobil (MOEPSI)	08-25-77	000076
0712	Tenneco Oil Co	08-31-77	000332
0713	Tenneco Oil Co	08-31-77	000331
0714	Southland Royalty Co	09-30-77	000080
0715	Texaco, Inc	09-30-77	000551
0716	Sabine Corp	09-23-77	068-96
0717	Sabine Corp	09-23-77	068-96
0727	Tenneco Oil Co	10-01-79	00336
0728	Tenneco Oil Co	10-01-76	000335
0742	Mesa Pet Co	04-04-78	000097
0744	Tenneco Oil Co	04-14-78	000341
0745	Odeco Oil & Gas Co	04-14-78	000024
0748	Tenneco Oil Co	04-25-78	000339
0750	Tenneco Expl. Ltd	05-18-78	000013
0752	Shell Offshore	05-01-78	000498
0753	Petro Oil Co	05-24-78	76-461
0754	Petro Oil Co	06-01-78	76-461
0765	Houston Oil & MNRLS CORP	04-01-78	000N/A
0768	Sue-Ann Operating Co	08-11-78	79-524
0769	Texaco, Inc	08-25-78	000586
0770	Copeland John L	08-01-78	78-738
0783	Carter Expl. Co	10-09-78	78-416
0790	Mco Res (Integrated) Corp	11-30-78	
0791	Clovelly Oil Co Inc	12-07-78	000N/A
0792	Kerr-McGee Corp	12-01-78	000161
0794	Nelson Jon J	12-14-78	000N/A
0795	Cabot Pet Corp	12-01-78	000070
0797	Shettle, George O	12-29-78	000N/A

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Contract No.	Seller	Contract date	Rate schedule
0807	Texaco Oil Corp	01-04-79	000588
0813	Fairmont Oil Corp	12-01-78	000032
0817	Goldston Oil Corp	01-02-79	000N/A
0818	Car-Tex Prod. Co	01-24-79	
0818	Marshall Expl., Inc	01-24-79	000N/A
0821	Tenneco Oil Co	02-05-79	66-097
0822	Moore McCormack	01-29-79	000N/A
0827	Fina Oil & Chemical Co	01-30-79	000N/A
0828	Tenneco Oil Co	02-27-79	000352
0829	Tenneco Oil co	02-27-79	000353
0837	Conoco	03-14-79	000460
0843	Severg Co., Inc	03-20-79	00N/A
0844	Tenneco Oil Co	03-27-79	000354
0850	Mullins & Prichard	04-19-79	000N/A
0851	Arco Oil & Gas Co	04-19-79	000N/A
0858	Brooklyn Union Expl. Co., Inc	05-02-79	000N/A
0860	Kerr-McGee Corp	05-11-79	000165
0861	Kerr-McGee Corp	05-11-79	000166
0862	Cities Svs. O&G Corp	05-23-79	000482
0872	Samedan Oil Corp	05-01-79	71-430
0873	Santa Fe Engy. Co	06-06-79	71-208
0874	Samedan Oil Corp	05-31-79	71-430
0875	Texaco, Inc	06-19-79	000590
0877	Tenneco Expl., Ltd	06-21-79	000018
0878	Tenneco Oil Co	06-27-79	000418
0879	Civego In	06-19-79	
0879	Sun Expl. & Prod. Co	06-19-79	000N/A
0884	Shell Oil	04-26-79	000N/A
0892	Enss, Inc	05-01-79	(71-1150)
0896	Mobil (MOEPSI)	05-04-79	000111
0897	Tenneco Oil Co	07-25-79	000417
0900	Pennzoil Co	07-27-79	000209
0901	Union Expl. Partners Ltd	08-03-79	000280
0902	Texaco, Inc	07-18-79	000N/A
0903	Texaco, Inc	07-18-79	000N/A
0905	Amoco Production Co	08-06-79	000811
0906	Crest Res. & Expl. Corp	08-14-79	000N/A
0909	Goleton Oil Corp	08-14-79	000N/A
0912	Conoco	08-28-79	000463
0917	Tenneco Expl., Ltd	09-07-79	000020
0919	Texaco, Inc	09-06-79	000N/A
0920	Texaco, Inc	09-06-79	000N/A
0921	Phillips Pet Co	08-01-79	000803
0924	Samedan Oil Corp	09-17-79	71-430
0925	Texaco Prod., Inc	09-25-79	000442
0930	SMK Energy Corp	10-10-79	85-014
0932	Louisiana Land & Expl. Co	10-12-79	000N/A
0933	Hewitt and Dougherty	08-01-79	000N/A
0934	Exxon Co. USA	10-18-79	000N/A
0935	Amax Petroleum	08-20-79	000N/A
0936	Samedan Oil Corp	09-26-79	71-430
0941	Texaco Prod., Inc	06-14-79	000229
0945	Tenneco Oil Co	10-01-79	000293
0948	Exxon Co. USA	10-11-79	000234
0955	Tenneco Oil Co	11-21-79	000N/A
0956	Wilshire Oil Co of Texas	11-07-79	72-829
0960	Champlin Pet Co	03-01-78	000006
0963	Pelto Oil Co	11-06-79	96-461
0979	Texaco, Inc	01-08-80	000N/A
0984	Chevron USA, Inc	01-09-80	000N/A
0990	Arco Oil & Gas Co	02-21-80	000N/A
0991	Southland Royalty Co	03-03-80	000103
1002	Union Expl. Partners, Ltd	04-03-80	000259
1006	Valhi, Inc	05-14-80	76-165
1009	Shell Offshore	05-07-80	000499
10011	Sun Expl. & Prod	05-07-80	076-19
1017	Texaco Prod., Inc	06-03-80	000446
1018	Odedco	06-12-80	000N/A
1021	Tenneco Oil Co	06-19-80	000422
1033	Phillips Pet Co	07-08-80	000053
1034	Phillips Pet Co	07-10-80	000732
1037	Tenneco Oil Co	07-18-80	000421
1038	Pennzoil Co	07-25-80	000N/A
1040	Union Expl. Partners, Ltd	07-25-80	000251
1042	Arco Oil & Gas Co	07-28-80	000754
1044	Tenneco Oil Co	08-01-80	000N/A
1045	Tenneco Oil Co	08-01-80	000N/A
1048	Tenneco Oil Co	08-01-80	000N/A
1050	Arco Oil & Gas Co	08-13-80	000765
1051	Sabine Production Co	08-13-80	000012
1053	Sun Expl. & Prod. Co	08-15-80	000741
1058	Abraxas Pet Corp	07-21-80	000N/A

Contract No.	Seller	Contract date	Rate schedule
1058	Tenneco Oil Co	06-21-80	000423
1060	Sun Expl. & Prod. Co	06-28-80	000N/A
1061	Mobil (MOEPSI)	06-20-80	000127
1067	Towner	12-09-65	
1077	Stone Oil Corp. (Manager)	09-01-80	72-722
1078	Cities Svs. O&G Corp	05-01-80	000376
1080	Amoco Production Co	10-20-80	000829
1081	King Ranch, Inc	10-23-80	79-340
1082	Mission O&G Prog 1979-I	10-24-80	000N/A
1083	Pennzoil Co	10-24-80	000N/A
1089	Moore McCormack Engy., Inc	09-01-80	76-808
1090	Harkins & Co	10-15-80	000N/A
1092	B&P Oil Co	09-01-80	76-913
1094	Tenneco Oil Co	10-30-80	000426
1095	Samedan Oil Corp	10-30-80	000043
1101	Chevron USA, Inc	11-21-80	000161
1104	Conoco, Inc	12-17-80	000474
1105	Tenneco Oil Co	12-01-80	000N/A
1107	Cities Svs. O&G Corp	12-23-80	000494
1108	Arco Oil & Gas Co	12-23-80	000764
1109	Texaco Prod., Inc	12-23-80	000480
1112	Inexco Oil Co	12-22-80	000N/A
1118	Murphy Oil USA, Inc	11-13-80	000034
1119	Anadarko Prod. Co	01-27-81	000261
1122	Zapata Exploration Co	02-03-81	000002
1123	Texas Eastern Expl. Co	01-27-81	000025
1126	Elf Aquitaine, Inc	02-10-81	000N/A
1131	Houston Oil & MNRLS Corp	02-27-81	
1134	Pennzoil Co	03-02-81	000N/A
1136	Shell (SWEPI)	01-01-81	000N/A
1141	Belnorth Petroleum Co	02-16-81	
1142	Texaco, Inc	04-07-81	000N/A
1143	Amoco Production Co	03-16-81	000N/A
1144	Mobil (MOEPSI)	04-01-81	
1146	Kerr-McGee Corp	04-16-81	000183
1150	Stone Oil Corp	04-24-81	000N/A
1156	Tenneco Oil Co	05-21-81	000430
1157	Louisiana Land & Expl. Co	05-01-81	000N/A
1158	Phillips Pet Co	03-01-81	000N/A
1159	Phillips Pet Co	03-01-81	000068
1160	Phillips Pet Co	03-01-81	000688
1161	Arco Oil & Gas Co	05-14-81	000771
1165	Mobil (MOEPSI)	04-02-81	000130
1178	Arco Oil & Gas Co	07-06-81	000773
1188	Louisiana Land & Expl. Co	07-24-81	000N/A
1189	Louisiana Land & Expl. Co	07-24-81	000N/A
1194	Samedan Oil Corp	08-05-81	000045
1195	Tenneco Oil Co	08-05-81	000431
1197	Tenneco Oil Co	08-05-81	000N/A
1208	Graham Expl. Ltd-1980 B-1	08-19-81	000N/A
1214	Huber, J.M. Corp	01-01-81	000020
1224	Sanchez-O'Brien 1980 Int-I	09-28-81	000N/A
1225	Exxon	10-06-81	000N/A
1238	Gilbring Oil Co	10-09-81	000N/A
1240	Amerada Hess Corp	08-11-81	000192
1243	Pyro	08-05-81	000N/A
1247	Kimble Floyd E	10-16-81	000N/A
1260	Texaco Prod., Inc	11-11-81	
1268	Louisiana-Hunt	11-16-81	
1268	Placid Oil Co	11-16-81	000028
1269	PCU, Inc	11-16-81	000N/A
1271	Chevron USA, Inc	11-23-81	000N/A
1272	Texaco, Inc	12-09-81	000N/A
1276	Grace Pet Corp	12-02-81	000N/A
1280	Marshall Expl., Inc	01-13-82	000N/A
1292	Sun Expl & Prod. Co	02-22-82	000N/A
1293	Marshall Expl., Inc	01-29-82	000N/A
1300	Goldston-Oil Corp	03-04-82	
1301	Goldston Oil Corp	03-04-82	000N/A
1310	Barbour Energy Corp	12-02-81	000N/A
1313	Sun Expl. & Prod. Co	03-18-82	000N/A
1319	Florida Expl	03-25-82	000N/A
1344	Conoco, Inc	04-30-82	000258
1346	Placid Oil Co	05-14-82	000N/A
1347	Belden & Blake Corp	03-19-82	000N/A
1349	Elf Aquitane	04-29-82	
1369	PNB Petroleum Corp	06-21-82	
1386	Placid Oil Co	07-15-82	000N/A
1394	Chevron USA, Inc	07-19-82	000N/A
1400	Fentress Gas Transport	03-10-83	000N/A
1405	Tenneco Oil Co	06-16-82	000440
1411	Samedan Oil Corp	06-09-82	000047

Contract No.	Seller	Contract date	Rate schedule
1412	Odeco Oil & Gas Co	06-12-82	00044
1413	Koch Industries, Inc	06-06-82	000020
1414	Kerr-McGee Corp	06-10-82	000187
1415	Phillips Pet Co	06-11-82	000663
1418	Fairmont Oil Corp	07-29-82	000048
1419	Cabotpet Corp	06-13-82	000077
1420	ICI Delaware, Inc	06-09-82	0084-9
1423	Champlin	06-27-82	000N/A
1428	Maj. A Partnership	06-27-82	000N/A
1439	Texaco Prod., Inc	09-10-82	000536
1445	NFC Pet Corp	06-31-82	000N/A
1456	Texaco, Inc	11-02-82	000607
1469	Placid Oil Co	11-19-82	000N/A
1480	Cities	01-05-83	000009
1483	Tenneco Oil Co	03-01-83	000N/A
1489	Texaco Prod., Inc	07-15-83	000542
1507	Sanchez-O'Brien 1980 Int'l	01-18-84	000N/A
1512	Cities	01-26-84	000N/A
1525	Louisiana Land & Expl. Co	05-11-84	000N/A
1525	Louisiana Land & Expl. Co	05-11-84	000N/A
1529	Louisiana Land & Expl. Co	06-04-84	00045
1531	Louisiana Land & Expl. Co	06-22-84	00046
0010	Conoco, Inc	04-01-49	00391
0010	Ralph E. Fair	04-01-49	71-750
0010	Fair Operating Acct	04-01-49	71-759
0010	Tenneco Oil Co	04-01-49	0284
0010	Terra Resources, Inc	04-01-49	00045
0053	Colorado Oil & Gas	09-29-53	00071
0053	Houston O&G Co., Inc	09-29-53	71-571
0111	Arco Oil & Gas Co	01-31-56	000158
0112	Cities Svs. O&G Corp	01-31-56	000505
0112	Canadienoxy OFSH Prod. Co	01-31-56	000001
0112	Cities Svs. O&G Corp	01-31-56	000505
0123	Alexander Clyde H II Trst	11-07-83	
0123	Alexander Creston H	11-07-83	77-275
0123	Alexander Glenn E	11-07-83	77-274
0123	Alexander Helen Mae	11-07-83	78-916
0123	Alexander, L.M. Trst	11-07-83	
0123	Alexander, Margaret Y	11-07-83	
0123	Briggs, Ben R	11-07-83	
0123	Briggs, Hugh M	11-07-83	
0123	Champlin Pet Co	11-07-83	000022
0123	Creekmore Ranch Co	11-07-83	
0123	Dieit, Charles E	11-07-83	
0123	Kinsey, Norman V	11-07-83	71-636
0123	Kinsey, Norman V. Trst	11-07-83	
0123	Phillips Oil Co	11-07-83	
0123	Schroeder, Kay A. Trst	11-07-83	
0123	Wright, Jean A. Trst	11-07-83 (sic)	
0124	Arnold, Daniel C	05-04-84	
0124	Sedliff, David C	05-04-84	71-422
0124	Moss, Margaret B	05-04-84	
0124	Wheless Industries, Inc	05-04-84	71-305
0124	WWF Oil Corp	05-04-84	71-833
0125	Shell Offshore, Inc	05-15-79	000002
0126	Tenneco Oil Co	07-20-79	000143
0127	Shell (SWEPI)	10-06-76	0000028
0128	Arnold, Isaac	10-02-76	71-749
0128	Arnold, Isaac, Jr	10-02-76	71-607
0128	Bank of the SW Nat'l Assn	10-02-76	
0128	Barnhart, Wilhelmina Ann	10-02-76	71-747
0128	Burton, Katherine Cullen	10-02-76	71-770
0128	Cullen, H.R	10-02-76	000001
0128	Cullen, Harry H	10-02-76	71-769
0128	Cullen, Roy H	10-02-76	71-768
0128	Geiselman, Eliz Robertson	10-02-76	71-722
0128	Houston National Bank	10-02-76	
0128	Long, Cornelia Cullen	10-02-76	71-767
0128	Long, Resources Inc	10-02-76	
0128	Marshall, Douglas B	10-02-76	71-771
0128	Marshall, Douglas B, Jr	10-02-76	71-618
0128	Marshall, Hugh Roy	10-02-76	71-779
0128	Marshall, Margaret Cullen	10-02-76	71-746
0128	Neuhaus, W. Oscar	10-02-76	
0128	Portanova, Enrico	10-02-76	71-776
0128	Portanova, Ugo	10-02-76	71-777
0129	Robertson, Alison S	10-02-76	71-761
0128	Robertson, Carroll C	10-02-76	71-774
0128	Robertson, Corbin J	10-02-76	71-775
0128	Robertson, Corbin J., Jr	10-02-76	71-762
0129	Robertson, Lillie T	10-02-76	71-773
0128	Robertson, Wilhelmina C	10-02-76	71-766

Contract No.	Seller	Contract date	Rate schedule
0128	Scott, Mary Hugh	10-02-76	71-751
0128	Southern Nat'l Bank of Houston	10-02-76	
0145	Phillips Pet Co	12-31-56	000799
0232	Mobil (MOEPSI)	04-27-60	000115
0232	Mobil (MEPNA)	04-27-60	000042
0238	Mobil (MEPNA)	07-07-60	000039
0272	Shell Oil Co	11-17-61	000N/A
0304	Phifer, Howard C	10-27-64	(73-497)
0304	Riley, Jim	10-27-64	73-497
0304	Wolsey Oil, Inc	10-27-64	81-119
0312	Amerada Hess Corp	10-25-65	000144
0312	Bayou Resources, Inc	10-25-65	85-109
0312	Bel Oil Corp	10-25-65	(71-833)
0312	Crow, David	10-25-65	(71-833)
0312	Grace Pet Corp	10-25-65	(71-833)
0312	WWF Oil Corp	10-25-65	71-833
0314	Pennzoil Co	03-22-62	000139
0355	Amerada Hess Corp	10-26-68	000150
0355	Bel Oil Corp	10-26-68	(71-833)
0355	Crow, David	10-26-68	(71-833)
0355	Grace Pet Corp	10-26-68	(71-833)
0355	WWF Oil Corp	10-26-68	73-833
0391	Bel Oil Corp	01-16-70	71-516
0391	Sedliff David C	01-16-70	71-422
0391	Hanover Pet Corp	01-16-70	(71-833)
0391	Hillin Oil Co	01-16-70	080-73
0391	Moore McCormack Engy, Inc	01-16-70	78-606
0391	Wheless Industries, Inc	01-16-70	71-305
0391	WWF Oil Corp	01-16-70	71-833
0435	Wheless N H Oil Co	04-23-82	71-597
0478	Canadienoxy OFSH Prod. Co	11-03-72	000003
0513	Curtis, James G	06-01-80	000N/A
0513	Hilty Interest, Inc	06-01-80	000N/A
0513	Hilty, R.E	06-01-80	000N/A
0513	Joyce, J.G	06-01-80	
0513	Joyce & Hilty, Inc	06-01-80	
0513	Joyce O&G, Inc	06-01-80	
0513	Kimbark O&G Co. 82-A Ltd	06-01-80	
0513	Moebacher, Robert	06-01-80	71-707
0513	Poynor, J.T	06-01-80	
0513	Sulak, Daniel J	06-01-80	
0513	Templeton Engy, Inc	06-01-80	
0547	Goldston Oil Corp	06-01-74	082-39
0593	Anderson, Raymond C EST	09-26-84	(71-1029)
0593	Anderson, Thelman J	09-26-84	(71-1029)
0593	Andres, N Buddy	09-26-84	(71-1029)
0593	Benge, Chester B, Jr	09-26-84	
0593	Cutbirth, J Brown	09-26-84	(71-1029)
0593	Edwards, Peter R	09-26-84	
0593	Newman Brothers Drlg. Co	09-26-84	(71-1029)
0593	Reynolds, Rowena M. Trst	09-26-84	
0593	Riddle, J. I	09-26-84	(71-1029)
0593	Sinley, Maria E	09-26-84	
0593	Skinner Corp	09-26-84	(71-1029)
0593	Smith Cecilia Est	09-26-84	(71-1029)
0593	Smith, E.A., Jr	09-26-84	(71-1029)
0593	Smith, Philip A. Jr. Trst	09-26-84	
0593	Smith, W.H	09-26-84	(71-1029)
0593	Stockard, W.A	09-26-84	(71-1029)
0593	Walsh, Shirley A. Trst	06-26-84	
0597	Arco Oil & Gas Co	04-04-75	000694
0724	Wainoco, O&G Co	11-30-77	73-135
0733	Benson, George E. Trst	05-02-84	000N/A
0733	Bevers, Harry L	05-02-84	000N/A
0733	Blake, John D	05-02-84	000N/A
0733	Hamm, R.L., Jr	05-02-84	000N/A
0733	Love Pet Co	05-02-84	78-610
0733	Petromark Res Co. et al	05-02-84	78-610
0740	Mustang Expl. Co., Inc	03-26-76	73-214
0763	Otto, Alfred P	07-27-76	082-17
0765	Houston Oil & Mnrls. Corp	04-02-76	000N/A
0766	Kerr-McGee Corp	01-30-85	000162
0776	Brady, Richard T	08-24-76	000N/A
0776	Broomer, Frank I., Jr	08-24-76	000N/A
0776	Cremer Oil Co	8-24-76	000N/A
0776	Douglass Frank	08-24-76	000N/A
0776	Engelke, Keith, S	08-24-76	000N/A
0776	Engelke, R.H	08-24-76	000N/A
0776	Frost, Adele	08-24-76	000N/A
0776	Grimes, Walter N	08-24-76	000N/A
0776	Jolliffe Oil Co	08-24-76	000N/A
0776	Sherer, Roland C., Jr	08-24-76	000N/A

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Contract No.	Seller	Contract date	Rate schedule
1363	Yankee Expl. Inc	05-06-82	000N/A
1363	Yankee Ohio O&G 1980-2	05-06-82	000N/A
1363	Yankee Ohio O&G 1980-3	05-06-82	000N/A
1363	Yankee Ohio O&G 1981-1	05-06-82	000N/A
1363	Yankee Ohio O&G 1981-2	05-06-82	000N/A
1363	Yankee Ohio O&G 1981-3	05-06-82	000N/A
1365	Brady, Richard T	05-07-82	000N/A
1365	Brooner, Frank I., Jr	05-07-82	000N/A
1365	Brown, Walter F	05-07-82	000N/A
1365	Cramer Oil Co	05-07-82	000N/A
1365	Douglass, Frank	05-07-82	000N/A
1365	Engelke, R.H	05-07-82	000N/A
1365	Grimes Walter N	05-07-82	000N/A
1365	Jellife Oil Co	05-07-82	000N/A
1365	Johnson C Neil, Jr	05-07-82	000N/A
1365	Koy, Billy C	05-07-82	000N/A
1365	Roy, Frank W	05-07-82	000N/A
1365	Lanteer, B.E., Jr	05-07-82	000N/A
1365	Sherrer, Roland C., Jr	05-07-82	000N/A
1365	Thomas, Betsy Co	05-07-82	000N/A
1369	PNB Petroleum Corp	06-21-82	
1377	Cumberland Oil Prod. Co., Inc	05-01-82	000N/A
1408	Bilbo-Angelle Prod. Co	08-13-82	000N/A
1408	Booth, James Trst	08-13-82	000N/A
1408	Burman O&G Co	08-13-82	000N/A
1408	Clements, Eugene J	08-13-82	000N/A
1408	Fairmont O&G Corp	08-13-82	000N/A
1408	Flew, B.L. Jr	08-13-82	000N/A
1408	O'Neil, John E., Jr	08-13-82	000N/A
1408	O'Neil, John E	08-13-82	000N/A
1408	Sicola, Charles	08-13-82	000N/A
1408	Urquhart Hastings, Inc	08-13-82	000N/A
1408	Wiggins, William W., Jr	08-13-82	000N/A
1418	Case-Pomeroy Oil Corp	07-23-82	000022
1486	Conoco, Inc	11-01-77	000154
1488	Sonat Expl	11-01-77	000154
1524	Louisiana Land & Expl. Co	05-11-84	000N/A

Contract No.	Producer	Contract date	R/S
Tennessee Protests the claims for delivery allowances of the following:			
0015	Chevron	02-17-83	0000211
0052	F. William Carr	06-17-84	N/A
0255	Shell	06-01-80	000009
0259	Sun	04-30-82	000133
0263	Cities Service	06-27-82	000167
0264	Conoco	05-11-83	000201
0318	Texaco	06-01-81	000373
0654	Cities Service	06-02-76	000436
0659	Arco	06-17-76	000706
0660	Conoco	06-17-76	000430
0667	Arco	06-10-76	000707
0671	Conoco	06-16-76	000431
0688	Cities Service	04-01-77	000448
0699	Conoco	06-24-77	000440
0845	Partners	04-02-79	N/A
0855	Mesa	04-26-79	000109
0871	Chevron	06-01-79	N/A
0918	Santa Fe	06-31-79	N/A
0926	Phillips	06-31-79	N/A
0929	Jeems Bayou	07-05-79	N/A
0953	CNG	11-07-79	000049
0977	Denison Mines U.S	11-07-79	080-49
1016	Conoco	06-03-80	000457
1032	Canadian Oxy	07-21-80	000008
1043	Arco	07-31-80	000755
1064	Arco	09-30-80	N/A
1254	Nathan McRae	01-01-81	000001
1465	Tenneco	12-06-82	N/A
1527	Mobil	05-22-84	N/A

On October 21, 1987, Tennessee supplemented its list of contracts in which it disputes the seller claims as follows:

0016	Broken Hill Proprietry	02-17-83	N/A
0016	Chevron	02-17-83	211
0016	Petroleum Corp. of Dela.	02-17-83	N/A
0016	Prior Expl	02-17-83	N/A
0052	B.B. Baxter	06-17-84	N/A
0052	E.B. Carr Trust	06-17-84	N/A
0052	F.W. Carr	06-17-84	N/A
0052	F.W. Carr, Jr	06-17-84	N/A
0052	F.R. Carr Trust	06-17-84	N/A
0052	J. Chrysler Trust	06-17-84	N/A
0052	H.C. Green Trusts	06-17-84	N/A
0255	Shell	06-01-80	9
0259	Sun	04-30-82	133
0263	Cities Service	06-27-82	167
0264	Conoco	05-11-83	201
0265	Arco	05-24-83	235
0318	Texaco	06-01-81	373
0654	Cities Service	06-02-76	436
0655	Texaco	06-07-76	220
0659	Arco	06-17-76	706
0660	Conoco	06-17-76	430
0667	Arco	06-10-76	707
0671	Congco	06-15-76	431
0688	Cities Service	04-01-77	448
0699	Conoco	06-24-77	440
0845	Partners	04-02-79	N/A
0855	Mesa	04-26-79	109
0871	F.D. Bergstein	06-01-79	N/A
0871	Brock Exploration	06-01-79	N/A
0871	Brock Expl. 1979-1 Ltd.	06-01-79	N/A
0871	Chaparral Engy Dev't	06-01-79	N/A
0871	Chevron	06-01-79	N/A
0871	G.W. Gowen	06-01-79	N/A
0871	Harbor Oil	06-01-79	N/A
0871	Kennedy & Mitchell	06-01-79	N/A
0871	Laredo Explor	06-01-79	N/A
0871	Newman Operating	06-01-79	N/A
0871	D.M. Olsen Trust	06-01-79	N/A
0871	Rainy River-Nugget '79-1.	06-01-79	N/A
0871	Rainy River-Nugget '79-2.	06-01-79	N/A
0871	A.J. Schottenstein	06-01-79	N/A
0871	M.W. Strong	06-01-79	N/A
0871	Texas Drilling	06-01-79	N/A
0871	L.A. Williams	06-01-79	N/A
0871	B.L. Woolley, Jr	06-01-79	N/A
0918	Santa Fe	06-31-79	N/A
0926	Phillips	06-31-79	N/A
0929	Jeems Bayou	07-05-79	N/A
0953	CNG	11-07-79	49
0967	Convest Energy	12-18-79	N/A
0967	Reading & Bates	12-18-79	N/A
0977	Denison Mines U.S	11-07-79	080-49
1016	Conoco	06-03-80	457
1017	Texaco	06-03-80	446
1032	Canadian Oxy	07-21-80	8
1043	Arco	07-31-80	755
1064	Arco	09-30-80	N/A
1254	Nathan McRae	01-01-81	1
1465	Tenneco	12-06-82	N/A
1494	Conoco	09-06-83	490
1527	Mobil	05-22-84	N/A

Texas Eastern Transmission Corporation (Texas Eastern)

Texas Eastern submitted the following list of first sellers with contractual authority to collect NGPA section 110 production-related costs:

Contract No.	Seller	Contract date	Rate schedule
0776	Steren, Arthur T	05-24-76	000N/A
0779	Copeland, John L	05-01-76	78-799
0793	Brooner, Frank I., Jr	11-21-78	000N/A
0793	Cramer Oil Co	11-21-78	000N/A
0793	Driscoll, Joseph P	11-21-78	000N/A
0793	Engelke, R.H	11-21-78	000N/A
0793	Grimes, Walter N	11-21-78	000N/A
0793	Jellifife Oil Co	11-21-78	000N/A
0793	Sherrer, Roland C., Jr	11-21-78	000N/A
0793	Steren, Arthur T	11-21-78	000N/A
0793	Steren, Barbara E	11-21-78	000N/A
0815	Bourne Oil Co	01-31-79	000N/A
0816	Goldston Oil Corp	01-02-79	000N/A
0956	Kallenberg, Sandra Phillips	12-04-79	000N/A
0960	Phillips, Fred Leonard	12-04-79	000N/A
0962	Reading & Bates Pet Co	12-04-79	000N/A
0966	Whitaker, Fred	12-04-79	000N/A
1022	Denovo Oil & Gas, Inc	06-25-80	
1005	GNC Ency. Corp	07-22-80	000N/A
1006	Shell Offshore, Inc	06-06-80	000062
1073	Devovo Oil & Gas, Inc	10-07-80	
1080	Harkins & Co	10-15-80	000N/A
1085	New England Engy., Inc	10-30-80	
1086	Semedan Oil Corp	10-30-80	000044
1100	Henco O&G Ltd	12-05-80	000N/A
1100	Sierra O&C Co	12-05-80	000N/A
1206	Dynamic Expl., Inc	06-14-81	000N/A
1206	Paragon Res., Inc	06-14-81	000N/A
1206	Struthers O&G Corp	06-14-81	000N/A
1284	Benelty Corp	03-25-82	000N/A
1357	Alexander, Clyde H. II	5-28-82	
1357	Alexander, Creston H	5-28-82	
1357	Alexander, Helen Mae	5-28-82	77-918
1357	Alexander, Margaret V	5-28-82	
1357	Allanos Prod Co	5-28-82	
1357	Anderson Gertrude Feezel	5-28-82	
1357	Anderson, Henry F	05-28-82	(71-198)
1357	Anderson William G	5-28-82	(71-296)
1357	Briggs, Ben R	5-28-82	
1357	Briggs, Hugh M	5-28-82	
1357	Cambell, Nancy D	5-28-82	76-967
1357	Deminex U.S. Oil Co	5-28-82	
1357	Kinsey, Norman V	5-28-82	71-638
1357	Krutsinger, Sue D	5-28-82	76-952
1357	Meck, Judith A Trst	5-28-82	
1357	Norcad, Corp	5-28-82	
1357	North, Jane D	5-28-82	76-953
1357	Schroeder, Kay A Trst	5-28-82	
1357	Wall, Lallage B. Feezel	5-28-82	(71-296)
1357	Woodcock, Linda D	05-28-82	
1357	Wright, Jean A. Trst	05-28-82	
1357	Champlin	05-28-82	76-967
1357	Sun Explo. & Prod	05-28-82	
1363	Alexander, Leslie I.	05-06-82	000N/A
1363	Alpine Cheese Factory, Inc	06-06-82	000N/A
1363	APP Devel Part 1981-A	06-06-82	000N/A
1363	APP Devel Part 1981-B	06-06-82	000N/A
1363	Energy Partners O&G 1980-2	06-06-82	000N/A
1363	Energy Partners O&G 1981-1	06-06-82	000N/A
1363	Energy Partners O&G 1981-2	06-06-82	000N/A
1363	Essex Offshore, Inc	06-06-82	000N/A
1363	Fairmont Oil Corp	06-06-82	000N/A
1363	Harman, Reed	06-06-82	000N/A
1363	Logan, W.L. Trucking Co., Inc	06-06-82	000N/A
1363	Mcnatt, Robert L., Jr	06-06-82	000N/A
1363	Needco O&G Comp Prog II-5	06-06-82	000N/A
1363	Needco O&G Comp. Prog. II-6	06-06-82	000N/A
1363	Needco O&G Comp. Prog. II-7	06-06-82	000N/A
1363	Needco O&G Comp. Prog. II-8	06-06-82	000N/A
1363	Needco O&G Comp. Prog. II-9	06-06-82	000N/A
1363	Needco O&G Comp. Prog. III-1	06-06-82	000N/A
1363	Needco O&G Comp. Prog. III-2	06-06-82	000N/A
1363	Needco O&G Comp. Prog. III-3	06-06-82	000N/A
1363	Needco O&G Comp. Prog. III-4	06-06-82	000N/A
1363	Needco O&G Comp. Prog. III-5	06-06-82	000N/A
1363	Needco O&G Comp. Prog. III-6	06-06-82	000N/A
1363	Oconee Associated	06-06-82	000N/A
1363	Patriot O&G Part	06-06-82	000N/A
1363	Patriot O&G Part 1981 1	06-06-82	000N/A
1363	Sandstone O&G Part 1981-1	06-06-82	000N/A
1363	Shandy O&G Part 1980	06-06-82	000N/A
1363	Shandy O&G Part 1981	06-06-82	000N/A

Contract number	First seller	Contract date	Rate schedule
4829	Adobe Oil & Gas Corporation.	02-13-80	
2698	Amerada Hess Corporation.	01-26-74	165
3108	....do	09-01-76	165
4780	....do	12-12-79	165
4991	....do	07-07-80	191
5774	....do	06-05-81	191
6270	....do	04-01-82	195
6271	....do	04-09-82	194
5503	American Energy Svs, Inc.	10-17-80	
2999	Amoco Production Company.	06-01-76	150
2063	....do	05-01-69	541
2246	....do	06-17-71	8
3069	....do	10-27-75	720
3284	....do	01-17-78	765
3285	....do	01-17-78	765
3286	....do	01-17-78	764
3287	....do	01-17-78	763
3371	....do	04-24-78	636
4628	....do	08-17-79	
4629	....do	08-17-79	
4694	....do	09-26-79	
4735	....do	11-06-79	
4813	....do	01-16-80	
4837	....do	03-05-80	
4887	....do	04-17-80	
4888	....do	04-17-80	
5191	....do	02-12-57	203
5316	....do	01-01-75	87
5418	....do	06-01-80	
5519	....do	11-06-80	
5788	....do	05-11-81	
5962	....do	04-01-81	720
6049	....do	11-01-81	
6050	....do	11-02-81	
6431	....do	05-02-81	150
6488	....do	04-01-82	
4709	Ashtola Production Company.	10-18-79	
4704	....do	10-16-79	
4757	....do	11-29-79	
4814	....do	01-08-80	
6051	....do	12-09-81	
6802	....do	12-20-82	
6135	APC Operating Partnership.	02-01-82	
2958	Arco Oil and Gas Company.	02-26-76	544
1450	....do	07-01-61	459
1870	....do	04-07-67	606
3105	....do	09-02-77	786
4073	....do	03-20-78	554
4797	....do	01-10-80	360
4812	....do	01-07-76	359
5008	....do	03-25-52	34
5333	....do	09-10-76	160
5341	....do	01-01-77	161
5366	....do	01-17-79	36
5370	....do	04-03-79	
5402	....do	09-11-79	365
5404	....do	10-16-79	244
5666	....do	10-01-81	789
6258	....do	05-13-82	
4499	B. J. Gerhart, Inc.	05-01-79	
6254	Berreby Corporation.	05-26-82	
6285	....do	11-15-82	
3255	Bennet, Mills Estate.	07-05-77	
5409	....do	12-04-79	
5410	....do	12-04-79	
5411	....do	12-04-79	
6556	....do	10-01-82	
5339	Barry, Philip B.	01-05-77	
0040	BHP Petroleum Co., Inc.	04-15-47	2
2602	....do	09-01-73	1
5796	....do	08-01-80	122
2912	Browing & Welch, Inc.	06-20-75	
5541	....do	11-25-80	
1128	Burk Royalty Company.	02-04-59	
2916	Cabot Petroleum Corp.,	09-01-75	61
5308	Carr, F. William.	06-06-78	
6102	Carter Exploration Co.	12-15-81	
2925	Case-Pomeroy Oil Corp.	09-01-75	6
4329	....do	03-20-79	11
2863	Ceja Corporation.	04-07-75	
0519	Champlin Petroleum Co.	06-15-53	2
0848	....do	09-14-56	27
7107	....do	05-01-63	2
1802	Chevron U.S.A. Inc.	06-06-67	42
2054	....do	02-15-69	47
2183	....do	11-25-70	64
2228	....do	05-19-71	485 (425)
2482	....do	07-01-72	54
3236	....do	06-03-77	56
5340	....do	06-16-77	215 (42)
5360	....do	10-04-79	254 (106)
5576	....do	01-14-79	215 (42)
5931	....do	06-19-81	664 (623)
6182	....do	03-19-82	
4334	Cities Offshore Production Co.	03-21-79	5 (464)
0461	Cities Svs. Oil & Gas Corp.	04-27-53	355
1909	....do	09-01-67	220
2070	....do	06-16-69	314
2149	....do	06-27-70	330
4071	....do	09-25-78	373
4493	....do	05-07-79	661
4562	....do	06-25-79	669
4777	....do	12-18-79	683
5419	....do	06-23-80	698
5475	....do	09-19-80	
5570	....do	01-06-81	731
5683	....do	07-01-81	377
5719	....do	05-03-81	368
6332	....do	06-06-82	502
6563	....do	09-06-82	370
6352	Clemco	07-15-82	
6454	CNG Producing Company.	09-27-82	60
6495	Cobra Oil & Gas Corp.	09-15-82	
3105	Conoco Inc	03-02-77	483
4652	....do	09-07-79	461
5341	....do	01-01-77	139
5517	....do	11-06-80	473
5966	....do	10-01-81	483
6420	....do	09-09-82	139
0848	Cox, Edwin L. & Berry R.	09-14-56	
6554	Crown Zellerbach Corp.	09-01-82	
6345	D.J.F. Petroleum Corp.	06-01-82	
6192	DeNovo Oil & Gas, Inc.	03-18-82	
6426	Diamond Shamrock Exploration Company.	08-20-82	74
5452	....do	08-15-80	
5040	Dirks Petroleum Corp.	09-15-81	
6009	DOC-NCC Svs. Company.	09-15-81	
5383	Douglas Petroleum, Inc.	05-25-79	
5471	....do	09-12-80	
4719	Dynamic Production, Inc.	10-26-79	
6591	Eastern States Exploration Co.	11-15-82	
5619	Edwin M. Jones Oil Co.	12-05-80	
2966	Elf Aquitaine Petroleum.	02-13-76	
6342	Energy Development Corp.	03-01-82	
6487	....do	09-30-82	
6108	Energy Production, Incorp.	12-31-81	
1805	Energy Reserves Group, Inc.	02-25-66	
1865	Enserch Exploration, Inc.	07-14-67	84
2063	....do	05-01-69	80
2814	....do	10-27-74	87
5511	....do	10-01-80	
6391	Enterprise Energy Corp.	08-10-82	
0461	Exxon Company, U.S.A.	04-27-53	19
1823	....do	05-05-66	401
1890	....do	07-12-67	433
3230	....do	04-25-71	490
2335	....do	02-17-72	505
4880	....do	10-01-79	15
5521	....do	11-10-80	10
5749	....do	06-01-81	12
2786	Enstar Corporation.	08-15-74	34 (SPC)
3294	....do	12-01-77	6
4524	Feliciana Corporation.	05-24-79	
2924	....do	09-01-75	23
4328	....do	03-15-79	33
0739	Fina Oil & Chemical Co.	12-01-55	33
0744	....do	11-25-55	7
5242	....do	02-05-82	40
5573	....do	01-19-81	63
5637	....do	07-21-81	66
3325	Finley Company.	07-20-77	

Contract number	First seller	Contract date	Rate schedule
2786	Florida Exploration Co.	08-15-74	33
6394	....do	09-11-82	
5829	FMP Operating Co, a Limited Partnership.	09-17-81	21 (2)
6184	....do	05-15-82	19 (3)
6397	....do	09-24-82	14 (13)
6255	Franks Petroleum, Inc.	02-15-82	
5619	Frost National Bank D/B/A Pest Oil Co.	12-05-80	
5451	Geodynamics Oil & Gas Inc	06-25-80	
2430	George R. Brown Partnership.	07-19-72	6 (6)
4153	....do	10-20-78	1
5999	Goldston Oil Corporation.	10-01-81	
5962	Grigsby, Jack W.	04-01-81	
5578	Guernsey Petroleum Corp.	01-09-81	
6420	H & J Exploration Co., Inc.	06-15-82	
4812	Hanson Minerals Company.	01-07-79	
5353	....do	06-16-78	
6243	....do	04-01-82	
6337	....do	07-14-82	
1775	Hassie Hunt Exploration Co.	09-15-65	36
2019	....do	01-08-69	37
3240	....do	09-20-77	4
5731	Hawk Petroleum, Inc.	03-29-81	26
6175	Hawkins, H. L., Jr.	03-18-81	
3256	Highland Resources, Inc.	11-21-77	19
4877	Hillard Oil & Gas, Inc.	03-31-80	
5497	....do	09-26-80	
6584	....do	11-01-82	
5574	Hopkins, T. M.	01-13-81	
5993	....do	07-16-80	
4289	Houston Oil & Minerals Corp.	03-01-79	
6383	....do	07-29-82	20
2958	Hunt Oil Company.	02-26-76	28
3121	....do	01-24-77	32
2804	Hunt Petroleum Corp.	10-14-74	13 (1)
5962	....do	04-01-81	(35)
2804	Hunt, Lamar Trust Estate.	10-14-74	9
2804	Hunt, Nelson Bunker Trust Estate.	10-14-74	7
2804	Hunt, William Herbert Trust Estate.	10-14-74	10
5361	....do	12-01-78	2
4614	HNG Oil Company.	06-20-79	4
6322	Inco Oil Corporation.	06-01-82	
1870	J.M. Huber Corporation.	04-07-67	77
5962	Jones-O'Brien, Inc.	04-01-81	
4594	Kamlok, Inc.	07-05-79	
1871	Kerr-McGee Corporation.	04-04-67	93
2919	....do	09-01-76	133
4866	....do	03-01-80	172
5820	....do	06-18-81	157
6159	....do	02-17-82	97
6327	....do	06-30-82	186
5472	Killingsworth & H. Estate.	09-15-80	
6455	Koch Industries, Inc.	09-28-82	21
6039	LaFerrita Oil & Gas Inc.	12-09-81	
2866	LLOXY Holdings, Inc.	04-18-75	2
3201	....do	07-18-77	4
3302	....do	06-02-77	3
4674	....do	09-20-79	10
5542	....do	12-01-80	13
3941	Loftin, John N.	01-24-78	
3239	Logue & Patterson, Inc.	09-16-77	(8)
2143	Louisiana Land & Exploration Company.	07-31-70	6
2882	....do	01-25-74	16
3134	....do	04-12-77	20
3529	....do	06-21-78	28
3964	....do	08-08-78	
4521	....do	05-30-79	35
5540	....do	07-21-81	39
6013	....do	10-15-81	
6014	....do	10-15-81	
6265	....do	05-24-82	40
6396	....do	08-24-82	41
1801	Lyons Petroleum, Inc.	11-01-65	
6362	LOFCO	08-01-82	
4561	M.F. McCain, Inc.	06-01-79	
5496	Magnolia Oil Corporation.	10-14-80	
3513	Maguire Oil Company.	06-01-76	
2623	Marathon Oil Company.	01-26-74	128
2868	....do	04-21-75	132
3104	....do	09-01-76	139
3191	....do	06-21-77	143
3965	....do	07-18-78	156
4082	....do	08-30-78	166
4256	....do	01-17-79	165
4854	....do	03-25-80	173
5358	....do	08-17-78	142
5680	....do	07-02-81	177
6193	....do	08-23-82	178
6415	....do	02-25-81	69
0040	Marr, M.M.	04-15-48	
6026	Marshall Exploration, Inc.	11-17-82	
6399	....do	07-01-82	
6457	McCauley, F.R.	07-18-82	
6538	McCormick Oil & Gas Partnership.	10-01-82	
2973	Mesa Operating Limited Partnership.	03-01-76	(76)
6456	Mesa Operating Limited Partnership.	09-17-82	(152)
4524	Mitchell Energy Corp.	05-24-79	9
5267	....do	05-15-68	35
5385	....do	04-25-79	10
6491	Mobil Exporation & Producing North America.	10-14-82	124 (280)
2055	Mobil Oil Corporation.	02-26-69	454
2336	....do	02-18-72	486
0040	Mobile Oil Exploration & Producing Southeast Inc.	04-15-48	10 (82)
1696	....do	06-07-67	39 (407)
2069	....do	06-06-69	48 (456)
2148	....do	05-17-70	51 (467)
2643	....do	02-25-75	73 (527)
2646	....do	02-25-75	74 (528)
2648	....do	02-25-75	72 (526)
3147	....do	05-17-77	77 (543)
4005	....do	06-31-78	86 (536)
4571	....do	06-29-79	42 (418)
0848	Mobile Producing Texas & New Mexico Inc.	09-14-56	95 (387)
2642	....do	09-01-73	102 (414)
5532	....do	09-06-79	8 (19)
5259	Moore McCormack Energy, Inc.	12-21-81	
4339	Mosbacher, Robert.	10-13-78	
5277	....do	10-05-79	
5555	....do	12-16-80	
0040	Murphy Oil USA, Inc.	04-15-48	
4500	....do	04-30-79	13
6248	....do	03-11-82	14
5263	MPS Production Co.	11-11-66	
3105	Newmont Oil Co.	03-02-77	
5966	....do	10-01-81	
5626	Nicklos Oil & Gas Co.	05-01-80	
5881	....do	03-21-81	
6227	....do	04-14-82	
5415	Northern Pump Co.	03-04-80	
5394	NT Corp.	06-11-82	2
5460	Outline Oil Corp.	08-01-80	
5921	Owl Petroleum Co.	06-13-81	
1725	Oxy Petroleum, Inc.	11-20-64	526
6382	OKC Limited Partnership.	07-15-82	
5372	Pelto Oil Co	03-05-79	
5600	....do	02-02-81	
2589	Penrzoil Co.	07-01-73	97 (251)

Contract number	First seller	Contract date	Rate schedule
5407	do	11-29-79	89 (202)
5550	do	12-10-80	123 (300)
5616	do	01-30-81	
4675	Petrojet, Inc	08-26-79	
5672	do	01-01-81	
5396	Phillips Oil Co	06-14-79	3 (18)
2700	Phillips Petroleum Co.	01-28-74	762 (104)
3088	do	01-25-77	766 (108)
4080	do	09-18-78	768 (110)
4090	do	09-12-78	769 (111)
5547	do	12-16-80	370
5733	do	05-14-81	
5734	do	05-14-81	778 (120)
5853	do	05-14-81	779 (121)
6272	do	05-28-82	597 (90)
6281	do	03-01-82	
6564	do	10-01-82	
6395	Pioneer Production Corp.	07-28-82	71
6560	Pressure Transport.	04-15-82	
4561	Pride Exploration, Inc.	06-01-79	
6336	Pruet Oil Co	05-15-82	
5945	R. Lacy Inc	08-31-81	
5365	Rauch, Gerald.	04-28-79	
5926	Rea Oil & Gas, Inc.	08-17-81	
4828	Riddle Oil Co	02-12-80	
3063	Ross & Glenn Petroleum Inc.	06-01-76	
5687	Sabine Corp	03-23-81	
6203	do	12-15-81	
4944	Samedan Oil Corp.	06-17-80	41
4615	Sevrg Company, Inc.	06-15-79	
4642	do	06-29-79	
5621	do	02-11-81	
1998	Shell Offshore, Inc.	06-27-68	18 (369)
2069	do	10-06-69	21 (379)
1443	Shell Western E&P Inc.	07-01-61	68 (257)
5335	do	01-01-77	133 (400)
5921	do	08-13-81	1 (10)
5961	Sklar & Phillips Oil Co.	08-01-81	
4223	Smith, Harry L.	12-18-78	
5847	SoHio Petroleum Co.	03-02-81	
4995	Strata Corp	07-31-80	
6277	do	06-14-82	
6562	do	09-01-82	
0040	Sun Exploration & Prod. Co.	04-15-48	35
1628	do	09-24-64	474
1635	do	06-25-63	162
1636	do	06-25-63	161
1690	do	03-30-64	426
2958	do	02-26-76	326
3224	do	06-03-77	206
3952	do	10-17-77	91
4198	do	05-08-78	583
4695	do	10-03-79	617
4742	do	04-24-79	23
4889	do	04-21-80	
4958	do	07-02-80	
5239	do	07-25-82	405
5341	do	01-01-77	47
5364	do	02-07-79	282
5731	do	03-20-81	28
6027	do	10-09-81	747
6249	do	04-15-82	330
6455	do	09-27-82	783
6258	Sutton, H.E.	04-01-82	
5818	Tennxco Oil Co.	03-31-81	101
5819	do	03-31-81	113
6385	do	08-16-82	439
6523	do	07-16-82	112
0875	Texaco Inc	12-21-56	160
2396	do	05-22-72	479
3241	do	10-17-77	170
5403	do	01-05-79	97
5417	do	05-12-80	415
5546	do	11-18-80	272
5946	do	06-01-81	
6317	do	04-15-82	
6357	do	06-15-82	
6390	do	06-09-82	
1910	Texaco Producing Inc.	09-01-67	362 (362)
2071	do	06-16-68	372 (372)
2100	do	09-09-69	
2150	do	06-29-70	374 (374)
2975	do	11-19-75	490 (490)
3105	do	03-02-77	539 (539)
4318	do	11-01-78	228 (228)
5366	do	06-20-79	7 (7)
5414	do	03-25-80	264 (264)
5504	do	10-16-80	51 (51)
5646	do	03-02-81	
5670	do	03-24-81	
5719	do	05-03-81	
5723	do	04-30-81	272 (272)
5724	do	04-30-81	490 (490)
5736	do	10-28-80	461 (461)
5745	do	05-20-81	451 (451)
5839	do	07-17-81	520 (520)
5849	do	07-17-81	
5966	do	10-01-81	540 (540)
6014	do	10-15-81	
6260	do	05-18-82	529 (529)
6333	do	07-02-82	532 (532)
6403	do	08-06-82	534 (534)
3254	do	07-15-77	550 (274)
2610	Texas Eastern Eploration Co.	06-24-73	8
2611	do	06-24-73	5
2612	do	06-24-73	6
2613	do	06-24-73	7
2867	do	04-22-75	12
3144	do	05-31-77	13
3161	do	06-15-77	15
3183	do	07-12-77	16
3184	do	07-13-77	17
3196	do	08-08-77	16
3963	do	09-10-78	19
4263	do	01-31-79	20
4612	do	08-06-79	22
5514	do	10-30-80	23
5772	do	06-01-81	26
5592	Texas International Petroleum Co.	12-18-80	
5804	Texlsn Oil Co., Inc.	06-01-81	
6564	do	10-01-82	
6202	Turke, Kehle & Associates.	02-10-82	
2100	TXO Production Corp.	09-06-69	
3508	do	05-06-76	
3982	do	08-14-78	
4269	do	11-01-78	
4892	do	04-22-80	
5347	do	07-25-78	
5365	do	02-01-79	
536815	do	02-15-79	
5865	do	06-01-81	
5972	do	06-01-81	
6347	do	04-15-82	
6393	TXO Operating Co.	07-29-82	35 (63)
1907	Union Expl. Ptnrs., Ltd.	08-24-67	903
2007	do	10-07-68	904
2008	do	10-07-68	201
2828	do	01-06-75	220
2830	do	01-06-75	216
2831	do	01-06-75	221
2832	do	01-06-75	219
3133	do	05-09-77	242
3134	do	05-09-77	235
3966	do	06-14-8	247
4591	do	07-13-79	252
5537	do	12-01-80	265
5660	do	03-25-81	268
4093	Union Texas Petroleum Corp.	09-05-78	148
5392	do	07-31-79	14
5393	do	07-31-79	16
5395	do	07-31-79	20
6384	do	06-18-82	153
6544	do	11-16-82	
4775	W.C. McBride-Siurian Oil Co.	12-07-79	
5752	Warrior Management Co.	05-21-81	
6251	Wofford C.J.	12-01-81	
6266	do	06-01-82	

Texas Eastern submits that the following first seller is without contractual authority to collect production-related costs:

6956	Marathon Oil Company.	12-21-83	180

Texas Gas Transmission Corporation (Texas Gas)

Contract No.	Producer	Rate schedule	Contract date

Texas Gas submitted the following list of first sellers with contract authority to collect delivery allowances:

020	Amerada Hess Corp	9	
023	do	64	
035	American Petrofina Co.	65	
035	C.N.G. Producing	5	
040	SoOhio	14	
040	Amerada Hess Corp	13	
043	Gulf Oil Co	355	
058	Amoco	826	
062	do	779	
063	do	78	
064	do	800	
065	do	815	
066	do	816	
069	ARCO	257	
071	ARCO	222	
074	ARCO	55	
078	ARCO	155	
082	Chevron USA	14	
090	Union Oil of CA	35	
105	The Superior Oil Co	281	
117	Gulf Oil Co	352	

Texas Gas Transmission Corporation (Texas Gas)—Continued

Contract No.	Producer	Rate schedule	Contract date
117	Marsh Engineering Inc.	SP	04-26-83
120	Chevron U.S.A	5	
122	Partners Oil Co	SP	06-12-81
126	Chevron USA	24	
128	Chevron U.S.A	5	
128	Partners Oil Co	SP	09-20-77
131	Chevron U.S.A	41	
132	Sun Explor. & Prod. Co.	537	
132	Chevron U.S.A	40	
132	Exchange Oil & Gas	24	
132	Pelto Oil Co	SP	06-01-67
132	Sun Explor. & Prod. Co.	537	
138	Braun, Belco & Cox	SP	03-13-68
138	Superior Oil Co	136	
138	Amoco Production Co.	662	
144	Conoco, Inc	224	
145	A.C. Glassell, Jr	SP	02-26-77
154	Conoco, Inc	174	
155	Gulf Oil	84	
156	do	233	
156	do	411	
159	do	426	
164	Chevron USA	60	
171	Sun Exploration	536	
171	Exchange Oil & Gas	23	
171	Sun Exploration	536	
173	Cities Service	416	
184	Partners Oil Co	SP	09-13-76
185	Exchange Oil & Gas	35	
188	Gulf Oil	336	
189	Partners Oil Co	SP	07-14-78
206	Gulf Oil Explor. & Prod.		05-13-80
211	Hassie Hunt	20	
217	Dynamic Exploration		11-05-81
233	C.N.G. Producing	4	
235	Norwegian Oil Corp	SP	09-28-65
235	ARCO Oil & Gas Co	560	
235	C.N.G. Producing	7	
235	Exchange Oil & Gas	3	
235	North Central Oil Corp.	7	
237	C.N.G. Producing Co	10	
242	do	56	
246	Chevron USA	25	
254	Houston O&G/ Tenneco.		09-01-77
259	Exxon	143	
261	do	127	
264	Kerr-McGee	74	
328	American Petrofina Co.	96	
329	do	84	
329	Partners Oil Co	SP	09-15-77
342	Gulf	594	
364	Phillips Petroleum Co	693	
366	Amoco	523	
368	do	535	
369	do	540	
384	Pelto Oil Co	SP	03-30-81
387	Texaco (formerly 483).	343	
388	Phillips Petroleum Co	355	
403	Union Oil Co. of CA	36	
406	Samedan Oil Corp		06-26-79
410	Shell	153	
411	do		10-08-79
414	Caroline Hunt Schoellkopf.	5	
416	ARCO Oil & Gas Co	438	
419	Getty Oil Co./Texaco	370	
421	Texaco Producing Inc	115	
423	T.G.E.C	63	
424	T.G.E.C	62	
425	T.G.E.C	66	
431	McMoran/FMP	SP	07-01-80
439	Stone Petroleum	SP	09-22-81
439	Phillips Petroleum Co		09-22-81
446	T.G.E.C	58	
447	Texaco Inc	589	
448	T.G.E.C	56	
449	T.G.E.C	55	
452	Texaco Inc	582	
453	do	583	
454	T.G.E.C	54	
455	T.G.E.C	53	
457	T.G.E.C	48	
459	Sun Exploration & Rosewood.	750	
461	T.G.E.C	42	
462	T.G.E.C	41	
463	T.G.E.C	43	
464	T.G.E.C	44	
465	T.G.E.C	45	
467	T.G.E.C	46	
468	T.G.E.C	47	
469	Superior	69	
472	Texaco Inc	519	
475	Sun Exploration	434	
476	Texaco Inc	476	
477	Texaco	445	
478	Texaco Inc	447	
479	do	209	
480	Superior	13	
481	Texaco Inc	376	
482	Texaco	381	
484	do	382	
486	do	322	
486	do	343	
487	do	233	
495	T.G.E.C	27	
498	T.G.E.C	29	
501	T.G.E.C	34	
502	T.G.E.C	33	
508	Getty/Texaco	91	
510	do	37	
521	Union Oil of CA	60	
522	Union Oil Co. of CA	59	
524	do	167	
525	do	166	
526	do	200/905	
527	do	250	
528	do	204	
531	do	206	
535	Union/Eugene Shoal	237/855	
536	Union Oil Co. of CA	245	
537	do	250	
538	Eugene Shoal Oil Co	25	
542	Union Oil Co. of CA		09-17-80
543	T.G.E.C		09-17-80
544	T.G.E.C	61	
549	Union Texas	63	
557	Exchange Oil & Gas	30	
575	Devon Energy	SP	09-10-80
582	Ergon Exploration Inc.	SP	08-10-80
586	Devon Energy	SP	08-10-80
587	Ergon Exploration Inc.	SP	01-28-77
588	do	SP	03-21-79
601	Hassie Hunt	25	
603	Phillips Petroleum Co	459	
606	Texaco	311	
611	Devon Energy	SP	06-30-58
619	Gulf Oil	455	
622	do	311	
659	Reliance	SP	02-07-79
664	Murphy Oil USA	16	
670	Placid Oil	8	
660	T.G.E.C	1	
662	T.G.E.C	8	
701	Cities Service	-	07-11-79
702	do	-	11-01-79
703	Champlin Pet. & All Others.	-	05-18-81
712	A.C. Glassell, Jr	SP	06-21-74
720	Getty/Texaco	236	
741	Samson Resources Co.	SP	01-06-76
750	Getty/Texaco	237	
750	do	234	
751	do	292	
760	Union Oil Co. of CA	90	
760	Cities Service Oil & Gas.	231	
760	Getty/Texaco	235	
760	Sun Exploration	310	
760	Amoco	22	
761	Phillips Petroleum	23	
762	Kerr-McGee	3	
764	Hunt Oil	1	
768	Sun Explor. Prod. Co., et al.	-	08-02-83
780	Sun Exploration	105	
780	ARCO	386	
780	Conoco, Inc	81	
780	Getty/Texaco	238	
780	Amoco	25	
781	Amoco Production Co.		02-18-80
800	ARCO	188	
801	Mobil Oil	44	
807	ARCO	227	
812	Marathon Oil Co	60	
813	Kerr-McGee	98	
814	Getty/Texaco	201	
819	Hunt Oil	53	
823	MOEPSI	23	
824	MOEPSI	27	
825	Amoco	202	
826	Amoco/Eubanks	243	
827	Amoco	235	
830	ARCO	393	
831	ARCO	436	
832	Union Oil Co. of CA	133	
834	do	134	
842	Getty Oil/Texaco	109	
846	Devon Energy	SP	09-21-84
849	Hunt Oil	56	
851	Amoco	247	
856	Ropplo	SP	04-10-82
856	Amoco	520	
857	Roppolo	SP	06-11-66
857	Amoco	515	
863	Marathon Oil Co	114	
864	Amoco	569	
869	MOEPSI	24	
870	Amoco	252	
879	Placid, Rosewood, & LA-Hunt.	67	
886	Amoco	516	
893	do	840	
910	do	716	
910	do	716	
929	do	430	
977	Harold Brinkley		10-28-81
978	do		12-10-82
2002	T.G.E.C	67	
2024	Kerr-McGee	96	

Trunkline Gas Company (Trunkline)

Trunkline submitted the following schedule of contracts receiving delivery

allowance based on an area rate clause authorization:

Producer name	Contract number	Field or location
Agoil, Inc. (MSE Operation Corp.).	385	LaBahia.
American Petrofina (Fina Oil Chem. Co.).	485 (48c)	Hidalgo.
Aminoil, U.S.A., Inc. (Phillips Pet. Co.).	317	E. Cameron 322/323/.
Do	514	S. Pelto 12.
Amoco Production Co.	40A	Heard R.
Do	99	So. Kaplan.
Do	545 (99)	So. Kaplan.
Do	184	S. Timb. 176/ 181.
Do	216R	N. Bird Is.
Do	356	SS 289/292.
Do	413	S. Timb. 155.
Do	518	Vermillion 14.
Anadarko Production Co. (Anadarko Pet. Corp.).	271	Vermilion 320.
Do	272	E. Cameron 336.
Do	346	El 380A.
Do	369	HIA 369/370.
Do	379	HIA 327/332.
Do	391	HIA 511.
Do	402	HIA 317.
Do	426	E. Cameron 353.
Do	454	E. Cameron 104.
Do	462	El 380B.
Do	473	E. Cameron 359.
Do	541	Brazos A-47.
Arco Oil & Gas Co.	16	Columbus.
Do	27	Columbus.
Do	110x2 (557)	Esther.
Do	193	VM120.
Do	284	SMI261.
Do	310	SMI261.
Do	546 (119X2)	Rioville/ Mermentau.
Do	557	Esther.
Do	47R (334)	San Carlos/E. Edinburg.
Bass Partnership (Bass Enterprises).	507 (116)	Rioville.
Canadian Occidental (Canadian Oxy Offshore).	443	HI A312
Chevron U.S.A., Inc.	500 (119)	Rioville.
Do	182	ST 51/52, SS256/257, SP 16/23.
Do	206	ST 166.
Do	290	SMI 269.
Do	319	WC 532/533.
Chevron U.S.A. Inc.	336	WC 534.
Cities Service Oil & Gas Corp/ Oxy Pet., Inc.	556(13)	Ramsey Columbus.
Cities Service Oil & Gas Corp/ Oxy Pet., Inc. (Canadian Oxy Offshore).	226	ST 148.
Cities Service Oil & Gas Corp/ Oxy Pet., Inc.	297	SMI261.
Cities Service & Gas Corp (Oxy Pet., Inc.).	308	SMI 261.
Cities Services & Gas Corp (Oxy Pet., Inc.).	436	ST 86.
Do	442	HIA 312.
Cities Services & Gas Corp. (Oxy Pet., Inc.).	534	SP 18.
Do	553	SP 12.
Cities Services & Gas Corp. (Oxy Pet., Inc) (Canadian Oxy Offshore).	194	VM 120.
Cities Service & Gas Corp. (Oxy Pet., Inc.).	422	Choc. Bayon.
Conoc, Inc.	164	Kelsey.
Do	192	VM 120.
Do	225	ST 146.
Do	266	SMI 261.
Do	311	SMI 261.
Do	324	Hidalgo.
Do	504 (324)	Hidalgo.
Decalta Internat'l.	438	HI 312.
Denison Mines (US).	496	WC 624.
Diamond Shamrock Corp. (D.S. Off. Partners Ltd.).	268	VM 320 "A".
Do	269	E. Cameron 338.
Do	345	El 380 "A".
Do	370	HIA 369/370.
Do	383	HIA 327/332.
Do	398	HIA 511.
Do	425	E. Cameron 353.
Do	463	EL 380 "B".
Do	520	HIA 542.
Do	554	HIA 365.
Don H. Ford (Laurel).	382	Bonus North.
Edwin L. Cox	235	Christmas.
Elf Aquitaine	583	HIA 365/376.
Do	275	VM 320.
Enstar Petroleum (Enstar Corp.).	353	S. Timb. 86.
Exxon Co. USA	119X	So. Mermentau.
Do	133	Heard.
Do	142	B. Carlin.
Do	145	Kelsey.
Do	201	S. Timb. 172.
Do	337	El 332.
Do	338	W. Cameron 616.
Do	359	HI 337/342/343.
Do	360	W. Cameron 630.
Do	373	W. Cameron 608.
Do	472 (118)	B. Sale/Carlin.
Do	478	S. Timb. 170.
Do	479	S. Timb. 173.
Do	503	LaFe.
Fin-Oil, Inc.	445	HIA 312/313.
Florida Exploration (Odeco Oil & Gas Co.).	358	S. Timb. 86.
Forest Oil Corp. (Edwin L. Cox, Agent) (Templeton Energy).	376	Cage Ranch.
Furth Oil Company.	354	S. Timb. 86.
George D. Weatherston.	151	Kelsey.
Getty Oil Co. (Texaco Producing Inc.).	148	S. Thornwell.
Do	191	VM 120.
Do	386	SMI 268, 269, 281.
Gulf Oil Expl. Prod. Co. (Chevron U.S.A. inc.).	134	Esther.
Do	549 (134)	Esther.
Hamilton Brothers Oil Co.	288	SMI 269, 268, 281.
Hamilton Brothers Oil Co. (Ham. Bros. Exp. Co.).	289	SMI 269, 268, 281.
Hewitt & Dougherty.	42A	Heard Ranch.
Highland Resources (Brown, George R.).	287	SMI 269, 258, 281.
Hunt Industries	291	SMI 269, 268, 281.
Joe D. Price	355	S. Timb. 86.
Ladd Petroleum Corp.	171	Lake Arthur.
Logue & Patterson.	234	O'Brien Ranch.
Mesa Petroleum Co. (Mesa Ltd. Partnership).	318	E. Cameron 332/323.
Do	436	HIA 312.
Do	492	VM 348.
Do	490	SP 12.
Do	491	SP 18.
Mitchell Energy & Dev.	238	Sal Del Ray.
Mobil Oil Corp. (Mobil Prod. TX & New Mexico).	213	SS 293.
Mobil Oil Corp. (MOEPSI).	302A	GI 95.
Do	335	GI 93.
Do	412	S. Timb. 156.
Do	323	VM 23.
Mobil Oil Corp. (Mobil Oil Exp. & Prod.).	535	SP 12.
Do	536	SP 18.
Mobil Oil Corp. (Mobil Prod. TX & New Mexico.).	21	Nona Mills.
Mobil Oil Corp. (Texas Southern Pet. Co.).	42A	Heard.
Mobil Oil Corp. (Mobil Prod. TX & New Mexico).	151	Kelsey.
Monsanto Oil Co.	235	Christmas.
Moore McCormack Energy.	300	Clear Creek.
Odeco Oil & Gas Co.	350	S. Timb. 86.
Do	540	HIA 542.
Pacific Petroleum, Inc. (Zapata).	475	E. Cameron 359.
Pennzoil Producing Co. (Pennzoil Co.).	47	San Carlos.
Petro-Lewis Corp.	267	VM 320.
Do	438	HIA 312.
Phillips Petroleum Co.	348	Erath.
Do	214	Erath.
Phillips Petroleum Co. (Gen. Crude Oil Co.).	174X2	Lakeside.
Placid Oil Co	285	SMI 268, 269, 281.
Reading & Bates	494	Eugene Island 392.
Resources Investment Corp.	376	LaBahia E.
Robert Mestbacher.	477 (97)	SW Esther.
Shell Offshore, Inc.	193	SS 230/241. S. Timb. 162/ 176. SS 274. SP 23/ST 72.
Do	367	HIA 350 WC 633.
Sohio Petroleum Corp.	21	Nona Mills.
Sun Expl. & Prod. Co. (Sun Oil Co.).	62R	Clear Creek.
Sun Expl. & Prod. Co.	147	Bayou Sale.
Do	122	S. Bear Head Cr.
Sun Expl. & Prod Co (Source Petroleum).	160	Shoats Cr.
Sun Expl. & Prod. Co.	262	VM 320.
Do	263	E. Cameron 338 "A" & "B".
Do	344	El 380 "A".
Do	341	E. Cameron 338.
Sun Expl. & Prod. Co (Sun Texas Co.).	347	El 380 "A"
Sun Expl. & Prod. Co.	368	HIA 369/370.
Do	375	HIA 327/332.
Do	380	HIA 511.
Sun Expl. & Prod. Co. (Sun Texas Co.).	427	E. Cameron 353.
Sun Expl. & Prod. Co.	428	E. Cameron 353.
Do	464	El 380B.
Sun Expl. & Prod. Co. (Sun Texas Co.).	465	El 380B.
Do	495	El 392.
Do	497	W. Cameron 624.
Sun Expl. & Prod. Co.	521	HIA 542.
Superior Oil Co. (Mobil Oil Corp.).	185	Twin Island.
Do	212	SS 274 (293).
Do	8	Lakeside.
Do	174	S. Thornwell.
Do	9	Lakeside.
Do	7	Lakeside.
Tenneco Oil Co	10A	McAllan.
Do	209	S. Timb. 169/ 195.
Texas Crude, Inc.	110	Esther.
Texas Eastern (Samedan Oil Co.).	361	E. Cameron 359.
Transco Expl. Co. (TXP Operating Co.).	441	HI 312/313.
Union Oil Co. of Calif. (Union Exp. Part. Ltd).	512 (85)	NFWB.
Do	509 (86)	VM14.
Do	312	VM14.
Do	150	O'Brien.
Wilshire Oil Co. of Texas.	496	W. Cameron 624.
Zapata	474	E. Cameron 359.
Zapata	524	HIA 542

Trunklines states that the following seller is not receiving delivery allowances based on an area rate clause dispute:

Sun Expl. & Prod. Co.	264	W. Cameron 639.

United Gas Pipe Line Company (United)

United submits the following list of first sellers who, in United's opinion, have authority to collect delivery allowances:

Contract	First seller	Rate schedule
6249	Amax Petroleum	CS
1532	Amax Petroleum	NA
6397	Amerada Hess	173
6906	Amerada Hess	183
6877	Amerada Hess	182
6909	Amerada Hess	184
6610	Amerada Hess	176
7980	Amerada Hess	195
6380	Amerada Hess	64
7353	American Petrofina	59
7834	American Petrofina	96
7419	American Petrofina	97
7823	American Petrofina	11
4969	Amoco Production Co	543
4833	Amoco Production Co	443
6547	Amoco Production Co	NA
8364	Amoco Production Co	180
5275	Amoco Production Co	585
7074	Amoco Production Co	282
4603	Amoco Production Co	NA
7877	Amoco Production Co	839
7342	Amoco Production Co	830
6260	Amoco Production Co	757
4854	Amoco Production Co	NJ
6867	Amoco Production Co	NA
1141	Amoco Production Co	79
5859	Amoco Production Co	79
7245	Amoco Production Co	828
7488	Amoco Production Co	NA
6779	Amoco Production Co	NA
6205	Amoco Production Co	759
6415	Amoco Production Co	820
5075	Amoco Production Co	NJ
7107	ANR Production	NA
6523	ARCO	535
4900	ARCO	626
6395	ARCO	527
4254	ARCO	204
6215	ARCO	171
5221	ARCO	657
7092	ARCO	197
7516	ARCO	531
6524	ARCO	419
5976	ARCO	371
6891	ARCO	510
1597	ARCO	49
1600	ARCO	314
4921	ARCO	671
6525	ARCO	311
7583	ARCO	775
7993	ARCO	59
6830	ARCO	258
1388	ARCO	48
6573	Bass Partnership	CS
6676	Belnorth Petroleum	NA
7482	Burk Royalty	CS
7447	C & K Petroleum	CS
7470	C & K Petroleum	CS
6912	Canadian Occidental	CS
7007	Canadian Occidental	CS
7850	Canadian Occidental	CS
6960	Caroline Hunt	2
5997	Champlin	11
4401	Chevron USA	201
6885	Chevron USA	147
4654	Chevron USA	NA
1043	Chevron USA	74
6796	Chevron USA	11
7170	Chevron USA	639
5160	Chevron USA	507
6843	Chevron USA	169
4103	Chevron USA	161
6263	Chevron USA	77
7068	Chevron USA	82
5028	Chevron USA	NA
7430	Chevron USA	NA
7172	Chevron USA	170
4836	Chevron USA	49
8632	Chevron USA	NA
5020	Chevron USA	638
6678	Cities Service O & G	215
7105	Cities Service O & G	695
7341	Cities Service O & G	725
8420	Cities Service O & G	795
2578	Cities Service O & G	NA
4655	Cities Service O & G	795
6707	Cities Service O & G	574
6270	Cities Service O & G	474
5230	Cities Service O & G	390
4869	Cities Service O & G	308
6911	Cities Service O & G	CS
7006	Cities Service O & G	CS
7848	Cities Service O & G	898
5900	Cities Service O & G	363
6312	Cities Service O & G	369
6316	Cities Service O & G	106
7003	Cities Service O & G	353
6888	Cities Service O & G	677
8541	Cities Service O & G	4
6533	Cities Service O & G	651
5758	Cities Service O & G	414
8033	CNG Producing	59
8055	Cockrell Oil	8
4842	Conoco	106
1870	Conoco	143
1885	Conoco	164
4462	Conoco	NA
7726	Conoco	207
7800	Conoco	247
4729	Conoco	329
6884	Cox, Edwin L	CS
7218	Crystal Oil	CS
7562	Cummins & Walker	CS
7563	Cummins & Walker	CS
7154	D Shamrock	111
7552	D Shamrock	70
7647	D Shamrock	82
6842	DECALTA	CS
6900	DECALTA	CS
6682	DECALTA	CS
6478	DECALTA	CS
6704	DECALTA	CS
6827	DECALTA	CS
7881	DECALTA	CS
7934	DECALTA	CS
7730	Denovo O & G	CS
6480	Denovo O & G	CS
7523	Denovo O & G	CS
7849	Denovo O & G	NJ
6367	ECEE	3

Contract	First seller	Rate schedule
4727	Energy Reserves Gro	21
4747	Energy Reserves Gro	34
5637	Energy Reserves Gro	102
8407	ENSENJAY	NA
1386	Enstar Petroleum	CS
5836	Exchange O & G	33
6269	Exchange O & G	36
1433	Exxon Inc	NA
7489	Exxon Corp	158
6454	Exxon	35
7273	Exxon	577
7256	Exxon	148
7405	Exxon	149
1944	Exxon	124
7617	Exxon	580
5175	Exxon	496
6314	Exxon	123
7070	Exxon	NA
7274	Exxon	543
4659	Exxon	414
6490	Exxon	647
7395	Exxon	154
6210	Exxon	599
7275	Exxon	235
7831	Exxon	682
6883	Felmont	35
4874	Felmont	NJ
6844	Felmont	34
6277	Fin Oil Inc	CS
6830	Fin Oil Inc	3
6812	Fin Oil Inc	1
6203	Fin Oil Inc	5
6614	Fin Oil Inc	4
7576	Fin Oil Inc	10
6276	Franks Petroleum	CS
4630	Franks Petroleum	CS
7406	Franks Petroleum	CS
5129	Franks Petroleum	CS
4883	Franks Petroleum	NA
5017	Franks Petroleum	CS
7189	George R. Brown	7
6014	Getty Oil Company	108
5212	Getty Oil Company	382
7134	Getty Oil Company	20
5979	Getty Oil Company	239
6248	Getty Oil Company	417
6140	Getty Oil Company	225
6715	Getty Oil Company	137
7423	Getty Oil Company	34
1603	Getty Oil Company	23
7461	Getty Oil Company	23
6439	Getty Oil Company	75
6560	Getty Oil Company	428
6378	Getty Oil Company	423
6379	Getty Oil Company	422
5830	H.L. Benmert	CS
7933	Hanson Minerals	CS
6057	Hanson Minerals	CS
7480	Hogan Exploration	CS
7837	Hogan Exploration	CS
7334	Hogan Exploration	CS
7584	Hogan Exploration	CS
8460	Hogan Exploration	CS
8409	Hogan Exploration	CS
1561	Houston Oil & Mineral	CS
5792	Howard Hampton	CS
1063	Hunt Oil Co	20
5181	Hunt Oil Co	59
8543	Hunt Oil Co	41
5550	Hunt Oil Co	5
8056	Hunt Oil Co	5
7345	Hunt Oil Co	42
8463	Hunt Oil Co	79
6835	Hunt Oil Co	43
5186	Hunter Co	CS
5692	Hunter Co	CS
7243	Hunter Co	CS
7742	H-M Oil Co	CS
7766	H-M Oil Co	CS
8509	J-O'B Operation	CS
7783	J-O'B Operation	CS
6825	Kerr McGee	167
6855	Kerr McGee	168
7220	Kerr McGee	63
5891	Kilroy	CS
7403	Kling Oil	CS
7770	Kling Oil	CS
7398	Koch Industries	17
6561	Koch Industries	CS
8021	Koch Industries	19
7748	La Land & Exploration	NJ
7530	La Land & Exploration	NA
7462	La Land & Exploration	NA
6483	La Land & Exploration	CS
7975	La Land & Exploration	11
7450	Labelle Petr Inc	12
7077	Lamar Hunt	6
6247	LLOXY Holding Inc	5
6330	LLOXY Holding Inc	7
7136	LLOXY Holding Inc	CS
5176	Logue & Patterson	CS
5056	Logue & Patterson	CS
5102	Logue & Patterson	CS
6591	Marathon Oil Company	38
858	Marathon Oil Company	17
4412	Marathon Oil Company	52
5509	Marathon Oil Company	15
6231	Marathon Oil Company	141
6224	Marathon Oil Company	147
6804	Marathon Oil Company	183
6815	Marathon Oil Company	189
6470	Marathon Oil Company	156
7116	Marathon Oil Company	16
6236	Marathon Oil Company	14
6764	Marathon Oil Company	14
6393	Marathon Oil Company	36
7800	Marathon Oil Company	NA
8763	Marathon Oil Company	36
5555	McMoRan	CS
6967	McMoRan	CS
7246	McMoRan	CS
6789	McMoRan	CS
7111	Mesa Petroleum	141
7112	Mesa Petroleum	140
7982	Mesa Petroleum	158
7784	Mills Bennet	CS
6474	Mitchell Energy	50
6963	Mobil Expl & Prod	80
4476	Mobil Expl & Prod	45
7336	Mobil Expl & Prod	106
4822	Mobil Expl & Prod	6
4703	Mobil Expl & Prod	124
5806	Mobil Expl & Prod	29
6467	Mobil Expl & Prod	84
6536	Mobil Expl & Prod	16
6372	Mobil Expl & Prod	8
4361	Mobil Expl & Prod	25
7986	Mobil Expl & Prod	229
5803	Mobil Expl & Prod	28
6826	Mobil Expl & Prod	124
5810	Mobil Expl & Prod	59
4727	Mobil Pro Texas & NM	NA
5569	Mobil Pro Texas & NM	80
5799	Mobil Pro Texas & NM	132
7031	Mobil Pro Texas & NM	59
6461	Mobil Pro Texas & NM	153
5402	Mobil Pro Texas & NM	148
7374	Mobil Pro Texas & NM	7
7386	Mobil Pro Texas & NM	248
7788	Mobil Pro Texas & NM	NA
4717	Mobil Pro Texas & NM	76
6830	Mobil Pro Texas & NM	NA
4176	Monsanto Oil Co	31
8942	Monsanto Oil Co	111
7021	Monsanto Oil Co	112
1476	Monsanto Oil Co	16
7876	Moebucher, Robert	CS
8545	Moebucher, Robert	NA
4845	Newmont Oil Co	CS
8054	Nicor Exploration	CS
6079	Odeco Oil & Gas	15
6226	Odeco Oil & Gas	40
6231	Odeco Oil & Gas	39
6706	Oxy Petroleum Inc	354
8022	Oxy Petroleum Inc	NJ
5718	Par Oil	NA
6677	Par Oil	NA
6826	Par Oil	CS
7297	Paragon Resources	NA
2698	Pennzoil Producing	276
7751	Pennzoil Producing	442
2670	Pennzoil Producing	216
7400	Pennzoil Producing	216
7507	Pennzoil Producing	NA
6437	Pennzoil Producing	225
7399	Pennzoil Producing	225
2705	Pennzoil Producing	261
5961	Pennzoil Producing	306
6566	Pennzoil Producing	306
8554	Pennzoil Producing	306
8555	Pennzoil Producing	306
2663	Pennzoil Producing	NA
7217	Pennzoil Producing	223
7739	Pennzoil Producing	54
8575	Pennzoil Producing	54
2686	Pennzoil Producing	254
2686	Pennzoil Producing	245
7762	Pennzoil Producing	245
6998	Pennzoil Producing	234
2706	Pennzoil Producing	282
7513	Pennzoil Producing	305
7019	Pennzoil Producing	318
6253	Pennzoil Producing	328
7178	Pennzoil Producing	319
6748	Pennzoil Producing	316
6256	Pennzoil Producing	327
6485	Pennzoil Producing	239
7504	Pennzoil Producing	239
6563	Pennzoil Producing	NA
2692	Pennzoil Producing	2692
6430	Pennzoil Producing	308
6487	Pennzoil Producing	229
7763	Pennzoil Producing	229
7008	Pennzoil Producing	215
7216	Pennzoil Producing	86
5932	Pennzoil Producing	310
2568	Pennzoil Producing	93
6752	Pennzoil Producing	94
7950	Pennzoil Producing	93
2728	Pennzoil Producing	296
8558	Pennzoil Producing	296
7737	Pennzoil Producing	NA
2713	Pennzoil Producing	241
2695	Pennzoil Producing	270
7572	Pennzoil Producing	CS
2716	Pennzoil Producing	291
1060	Pennzoil Producing	252
3100	Pennzoil Producing	210
2828	Pennzoil Producing	253
7955	Pennzoil Producing	253
6366	Pennzoil Producing	329
8573	Pennzoil Producing	329
6820	Pennzoil Producing	330
6576	Pennzoil Producing	330
5973	Pennzoil Producing	312
5975	Pennzoil Producing	311
2703	Pennzoil Producing	240
6079	Petro-Lewis Corp	NA
4663	Phillips Petroleum	466
4727	Phillips Petroleum	984
5101	Phillips Petroleum	487
5807	Phillips Petroleum	39
6489	Phillips Petroleum	640
7424	Phillips Petroleum	675
6946	Phillips Petroleum	53
6916	Phillips Petroleum	357
4818	Phillips Petroleum	30
5105	Phillips Petroleum	493
4816	Phillips Petroleum	442
5836	Phillips Petroleum	10
7265	Phillips Petroleum	NA
7307	Phillips Petroleum	60
7309	Phillips Petroleum	61

Contract	First seller	Rate schedule
7280	Phillips Petroleum	64
7293	Phillips Petroleum	660
7308	Phillips Petroleum	58
7310	Phillips Petroleum	59
7574	Phillips Richard	CS
5013	Phoenix Resources	CS
6659	Pinto Inc	7
6370	Pinto Inc	5
6368	Pinto Inc	6
5780	Pinto Inc	2
6275	Placid Oil	NA
7917	Placid Oil	71
7941	Placid Oil	NA
7650	Pogo	54
5971	Pogo	10
6021	Pogo	26
6733	Pogo	43
5750	Pogo	36
6251	Pogo	37
7179	Pogo	56
6550	Pogo	33
6551	Pogo	32
6552	Pogo	34
6553	Pogo	31
6734	Pogo	44
6735	Pogo	42
6736	Pogo	39
6737	Pogo	41
6738	Pogo	40
7845	Pogo	55
6254	Pogo	36
7820	Pogo	57
7180	Pogo	51
7924	Pogo	58
7819	Pogo	56
5931	Pogo	5
6790	Pogo	47
6791	Pogo	46
6792	Pogo	45
7710	Pogo	NA
7884	Pogo	NA
6793	Pogo	48
6022	Pogo	18
6722	Pogo	35
5972	Pogo	9
5974	Pogo	7
6019	Pogo	16
6020	Pogo	15
6678	Pogo	15
5784	Pogo	4
7409	Pogo Producing Co	NA
6021	Pogo Producing Co	74
7613	Pogo Producing Co	74
5971	Pogo Producing Co	10
6739	Pogo Producing Co	48
6740	Pogo Producing Co	44
6252	Pogo Producing Co	72
6784	Pogo Producing Co	72
7185	Pogo Producing Co	50
6554	Pogo Producing Co	40
6555	Pogo Producing Co	38
6556	Pogo Producing Co	37
6557	Pogo Producing Co	39
6741	Pogo Producing Co	40
6742	Pogo Producing Co	49
6743	Pogo Producing Co	46
6744	Pogo Producing Co	45
6745	Pogo Producing Co	47
7871	Pogo Producing Co	61
6255	Pogo Producing Co	73
7799	Pogo Producing Co	62
7184	Pogo Producing Co	57
7931	Pogo Producing Co	NA
5931	Pogo Producing Co	5
6794	Pogo Producing Co	52
6795	Pogo Producing Co	54
6796	Pogo Producing Co	53
7122	Pogo Producing Co	78
7851	Pogo Producing Co	56
7795	Pogo Producing Co	51
6797	Pogo Producing Co	71
6022	Pogo Producing Co	43
7410	Pogo Producing Co	NA
6723	Pogo Producing Co	43
5972	Pogo Producing Co	6
5974	Pogo Producing Co	7
6019	Pogo Producing Co	16
6020	Pogo Producing Co	68
5764	Pogo Producing Co	4
6643	Pomery Oil Corp	12
7382	Res Invest Corp	CS
4879	Riceland Petroleum	522
6384	Rosewood	20
7141	Samson Resources Co	CS
7870	San Patricio	CS
6691	Saxon Oil Co	CS
7062	Semco	NA
4844	Shell Offshore Inc	12
4937	Shell Offshore Inc	19
6544	Shell Offshore Inc	50
6985	Shell Offshore Inc	55
6824	Shell Oil Co	152
6822	Shell Oil Co	147
6821	Shell Oil Co	153
4753	Shell Oil Co	350
6823	Shell Oil Co	214
6629	Shell Oil Co	50
5190	Shell Western E & P	130
5192	Shell Western E & P	131
8454	Sohio	42
6298	Sonat	F-16
8089	Sooner Resources	CS
7746	Spartman Producing	CS
7816	Sugar Creek	CS
6886	Summit Energy	CS
7291	Sun Expl & Product	534
4626	Sun Expl & Product	202
4727	Sun Expl & Product	218
7370	Sun Expl & Product	376
5995	Sun Expl & Product	21
5081	Sun Expl & Product	514
6469	Sun Expl & Product	382
4921	Sun Expl & Product	290
6473	Sun Expl & Product	352
5113	Sun Expl & Product	499
4617	Sun Exploration	200
6155	Sun Exploration	593
7855	Sun Exploration	299
5996	Sun Exploration	18
6868	Sun Exploration	361
5686	Sun Exploration	530
7425	Sun Exploration	542
4898	Sun Exploration	472
1293	Sun Exploration	270
4393	Sun Exploration	394
7344	Sun Exploration	394
4328	Sun Exploration	374
7272	Sun Gas Company	114
7103	Sun Gas Company	CS
7279	Sun Gas Company	374
6564	Superior Oil Company	89
6457	Superior Oil Company	108
6456	Superior Oil Company	71
7458	Superior Oil Company	NA
6478	Superior Oil Company	6
6685	Superior Oil Company	81
6686	Superior Oil Company	81
6385	TBP Offshore	CS
6373	TBP Offshore	CS
5596	Tenneco Oil Company	289
451	Tenneco Oil Company	89
7350	Tenneco Oil Company	261
7629	Tenneco Oil Company	NA
6970	Tenneco Oil Company	337
7890	Tenneco Oil Company	437
5591	Tenneco Oil Company	2
7836	Tenneco Oil Company	436
1042	Tenneco Oil Company	77
4345	Texaco Inc	108
4346	Texaco Inc	108
1343	Texaco Inc	101
6869	Texaco Inc	101
4712	Texaco Inc	399
5027	Texaco Inc	452
6369	Texaco Inc	564
7090	Texaco Inc	48
516	Texaco Inc	495
4908	Texaco Inc	427
4293	Texaco Inc	199
5570	Texaco Inc	102
7799	Texaco Inc	82
7931	Texaco Inc	123
4386	Texaco Inc	223
7719	Texaco Inc	223
5980	Texaco Inc	534
6408	Texaco Inc	189
7140	Texaco Inc	NA
6391	Texaco Inc	275
7768	Texaco Inc	NA
4675	Texaco Inc	390
7511	Texaco Inc	NA
5114	Texaco Inc	462
4237	Texaco Inc	194
8386	Texaco Inc	NA
5881	Texaco Production	83
4506	Texaco Production	34
6369	Texaco Production	CS
7987	Texoma	6
6876	Transco	47
6951	Transco	50
6665	Trillion Oil	NA
6656	Trillion Oil	NA
7474	Twin Eagle	CS
7251	Union Exploration Par	253
7258	Union Exploration Par	262
5107	Union Exploration Par	207
1365	Union Oil of Calif	856
5341	Union Oil of Calif	NJ
4353	Union Oil of Calif	49
4853	Union Oil of Calif	193
7153	Union Oil of Calif	NA
7365	Union Oil of Calif	523
5854	Union Oil of Calif	127
8028	Union Oil of Calif	CS
7885	Union Texas	NA
7474	Vintage Petroleum	CS
6658	Visa Inc	1
6371	Visa Inc	2
5018	Warren Petroleum	59
7696	Wofford	NA
7948	Zapata Expl	5

United submits the following list of first sellers who have invoiced United for delivery allowances but, in United's opinion, are not entitled to collect delivery allowances:

Contract	Producer	Rate Schedule	Contract date
7107	ANR Production	NA	4-23-80
7482	Burk Royalty	CS	5-12-81
7447	C & K Petroleum	CS	4-27-81
6684	Cox, Edwin L	CS	5-11-79
7562	Cummins & Walker.	CS	7-21-81
7563	Cummins & Walker.	CS	7-22-81
1433	Exxon Inc	NA	5-19-51
6835	Hunt Oil Co	43	1-31-79
5186	Hunter Co	CS	12-10-71
7742	H-M Oil Co	CS	1-14-82
7766	H-M Oil Co	CS	2-07-82
7783	J-O'B Operation	CS	11-23-81
6955	Kerr McGee	168	11-07-79
7220	Kerr McGee	63	10-21-80
5891	Kilroy	CS	9-02-75
7403	Kling Oil	CS	3-01-74

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Contract	Producer	Rate Schedule	Contract date
7112	Mesa Petroleum	140	4-24-80
7676	Mosbacher, Robert.	CS	7-22-81
8646	Mosbacher, Robert.	NA	5-24-83
8626	Par Oil	CS	12-06-84
6079	Petro-Lewis Corp.	NA	9-09-75
6489	Phillips Petroleum.	640	9-22-78
4727	Phillips Petroleum.	664	4-20-67
7122	Pogo Producing Co.	76	5-19-80
7382	Res Invest Corp	CS	11-14-80
7141	Samson Resources Co.	CS	8-05-80
6691	Saxon Oil Co.	CS	5-29-79
8089	Sooner Resources.	CS	9-09-82
6696	Summit Energy	CS	5-25-79
7474	Twin Eagle	CS	4-06-81
4853	Union Oil of Calif.	193	10-14-66

Williams Natural Gas Company (WNG)

WNG submits the following list in which it concurs in the sellers claim of contractual authority to collect production-related costs:

Seller	Contract No.	Contract date
Phillips Petroleum Company	1491	7-23-63
Do	1639	12-30-71
Do	2013	1-15-75
Do	1432	1-23-63
Do	2419	4-14-78
Do	2925	8-11-80
Hondo Oil & Gas Company	2200	12-16-76
Union Pacific Resources Co	0730	3-21-49
Do	1464	8-13-63
Cities Service Oil & Gas Co	0808	7-13-53
Do	1395	7-15-62
Conoco, Inc	2571	3-5-79
Do	2640	3-6-79
Union Texas Petroleum	2655	7-9-79
Getty Oil Company	0660	8-28-45
Do	1182	11-10-58
J.M. Huber	1567	7-8-65
Kerr McGee Corporation	1418	12-22-62
Guthrie Oil Company	1276	10-7-60
Ladd Petroleum Corporation	1446	4-17-63
John Lockridge	3239	2-26-82
Mesa Operating Ltd. Partnership	706	3-12-48
Mobil Oil Corporation	0575	2-28-46
Do	0678	8-17-46
Do	1316	3-1-61
Do	1884	8-31-72
Do	3025	4-23-52
Sun Gas Company	1647	12-30-66
Do	1972	7-8-74
Do	2082	12-10-75
Do	2799	1-17-80
Tenneco Oil Company	1595	12-31-65
Do	1637	10-21-66
Do	1711	9-24-66
Do	3337	3-12-48
Do	3338	3-12-48
Graves Drilling Company	1649	3-10-67
Don Walker	2900	6-30-80
Do	3222	2-12-82

WNG disputes the contractual authority to collect delivery allowances of the following:

Seller	Contract No.	Contract date
Ward Petroleum Corporation	1405	10-4-62
Cabot Corporation	1217	8-11-59
Do	1218	8-12-59
Cities Service Oil & Gas Co	0743	11-18-49
BHP Petroleum (Americas), Inc	3859	4-14-80
Exxon Corporation	1620	5-13-66
Getty Oil Corporation	1757	5-26-70
Do	2416	3-09-78
Superior Oil Company	2826	2-12-80
Multistate Oil Properties	1646	3-6-67
Tenneco Oil Company	1754	10-23-70
Do	2307	8-1-17
Do	2318	8-29-77
Do	2323	9-1-77
Do	2324	9-1-77
Do	3273	5-18-82
Grant Oil Company	3264	5-1-82

Williston Basin Interstate Pipeline Company (Williston Basin)

Williston Basin submits that the following do not have authority to collect maximum delivery allowances:

Williston Basin Contract	First seller field location	Rate schedule number or contract date
P-1-026	Al Aquitaine-Fairview	CS76-44
P-2-084	Amerada Hess Corp.-Tioga	12-4-80
P-2-115	Amerada Hess Corp.-Tioga	RS-95
P-4-055	Amoco Prod. Co.-Elk Basin	RS-409
P-2-006	Amoco Prod. Co.-L. Knife	RS-784
P-1-031	ANR Production-State Line	2-1-78
P-1-031	CSX Oil & Gas-State Line	2-1-78
P-1-031	Lehnbriff Min./LGB-State Line	2-1-78
P-1-031	Utex Oil & Gas-State Line	2-1-78
P-4-006	Arco Oil & Gas-Redtop	RS-812
R-4-012	BHP Petroleum	7-1-68
R-4-015	Beard Oil	7-1-68
R-4-011	Consolidated Oil & Gas	7-1-68
R-4-013	National Coop. Ref.	7-1-68
R-4-014	Sohio Petroleum	7-1-68
R-4-016	Union Oil Company	7-1-68
P-2-063	Chevron U.S.A. (Gulf)-L. Knife	RS-589
R-2-011	Exeter Exploration	7-26-78
R-2-012	Fina Oil & Gas	7-26-78
R-2-012	American Cometra	7-26-78
R-2-012	Koch Exploration	7-26-78
P-1-035	E.M. Nominee (Tenneco)-Fairview	11-19-74
I-1-010	King Resources	11-19-74
P-2-090	Enron Oil & Gas (Holly)-Boxcar Butte	6-14-77
P-2-087	Enron Oil & Gas (Holly)-Boxcar Butte	4-25-76
P-2-092	Enron Oil & Gas (Holly)-Boxcar Butte	6-14-77
P-2-093	Enron Oil & Gas (Holly)-Boxcar Butte	6-14-77
I-1-009	Enstar Petroleum-Fairview	6-2-77
P-1-024	EP Operating (Ensearch)-Fairview	11-30-78
P-1-015	F.U.C.E.-Fairview	10-17-77
P-1-016	F.U.C.E.-Fairview	11-10-77
P-2-096	Hunt, Wm. Hert. Tr.-Boxcar Butte	RS-15
P-2-015	Kerr-McGee-Boxcar Butte	5-31-77
P-2-013	Kerr-McGee-Boxcar Butte	RS-135
P-2-014	Kerr-McGee-Boxcar Butte	RS-144
P-2-016	Kerr-McGee-Boxcar Butte	RS-139

Williston Basin Contract	First seller field location	Rate schedule number or contract date
P-2-011	Kerr-McGee-Boxcar Butte	RS-141
P-2-010	Kerr-McGee-Boxcar Butte	RS-136
D-2-016	Kerr-McGee-Boxcar Butte	1-20-76
P-2-012	Kerr-McGee-Boxcar Butte	RS-146
P-2-020	Kerr-McGee-Boxcar Butte	RS-135
P-1-026	Ladd Petroleum-Fairview	3-17-77
P-1-025	Luff Exploration-Fairview	2-8-77
P-4-106	Natural Gas Proc. (Mobil)-Manderson	RS-212
P-4-096	Newmen Gas.-Manderson	SP(C671-1062)
P-2-021	Oxy Cities Service-Lignite	RS-506
P-1-044	Pennzoil-Fairlew	RS-45
P-2-084	Phillips 66 (Aminoil)-Tioga	RS-8
D-2-008	Phillips Pet.-Williston	RS-541
P-4-109	Sohio Petroleum-Manderson	RS-2
P-2-104	Texakote-Tioga	CS-76-222
P-4-104	Hunt, Hassle-Pavillion	RS-45
P-4-045	Western Gas Proc. (MGPC)-UTE	RS-2
P-1-048	Western Gas Proc. (MGPC)-Fairview	RS-1
P-1-049	Western Gas Proc. (MGPC)-Sioux Pass	5-9-76

Additional Filings—Panhandle Eastern Pipeline Company (Panhandle)

Panhandle on February 17, 1988, provided the following schedule of contracts not receiving delivery allowance based on an area rate clause in dispute:

Company name	Contract No.	Contract date
Rodman Petroleum Corp	2642	04-15-80
Texas American Energy Corp	2695	12-07-79
Premier Resources, Ltd	1605	11-13-74
Do	1626	12-16-74
Conoco, Inc	2367	11-10-78
Do	2593	04-01-79
Sun Exploration & Production Co	2692	12-07-79
Texas American Energy Corp	3055	02-16-81
Do	2627	05-05-80
Do	2661	11-13-79
Do	2326	01-15-79

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 86N-0009]

Clinical Chemistry and Clinical Toxicology Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Administration HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, 21 generic types of class I clinical chemistry and clinical toxicology devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels included them in recommendations to the agency.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of unnecessary premarket notifications thereby freeing agency resources for the review of more complex notifications.

FDA believes that exempting these devices will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting these devices from the 510(k) premarket notification program, where premarket notification will not advance FDA's public health mission, will free additional resources to address pressing regulatory concerns and will make the agency more efficient. The development of exemption criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On May 1, 1987 (52 FR 16102), FDA published a final regulation classifying 220 clinical chemistry and clinical toxicology devices. Also on May 1, 1987 (52 FR 16139), FDA proposed to exempt from premarket notification requirements 21 of those clinical chemistry and clinical toxicology devices. Interested persons were given until June 30, 1987, to comment. No comments were received. Therefore, FDA is adopting the regulation as proposed.

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Criteria for 510(k) Exemptions

FDA is exempting generic types of class I devices from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is unnecessary for the protection of the public health. FDA may grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes of the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Reference

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 9.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j).

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR Part 862 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. A new § 862.9 is added to read as follows:

§ 862.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. Section 862.1190 is amended by revising paragraph (b) to read as follows:

§ 862.1190 Copper test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

4. Section 862.1210 is amended by revising paragraph (b) to read as follows:

§ 862.1210 Creatine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

5. Section 862.1255 is amended by revising paragraph (b) to read as follows:

§ 862.1255 2,3-Diphosphoglyceric acid test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

6. Section 862.1290 is amended by revising paragraph (b) to read as follows:

§ 862.1290 Fatty acids test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

7. Section 862.1305 is amended by revising paragraph (b) to read as follows:

§ 862.1305 Formiminoglutamic acid (FIGLU) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

8. Section 862.1320 is amended by revising paragraph (b) to read as follows:

§ 862.1320 Gastric acidity test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

9. Section 862.1365 is amended by revising paragraph (b) to read as follows:

§ 862.1365 Glutathione test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

10. Section 862.1380 is amended by revising paragraph (b) to read as follows:

§ 862.1380 Hydroxybutyric dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

11. Section 862.1420 is amended by revising paragraph (b) to read as follows:

§ 862.1420 Isocitric dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

12. Section 862.1470 is amended by revising paragraph (b) to read as follows:

§ 862.1470 Lipid (total) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

13. Section 862.1490 is amended by revising paragraph (b) to read as follows:

§ 862.1490 Lysozyme (muramidase) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

14. Section 862.1515 is amended by revising paragraph (b) to read as follows:

§ 862.1515 Nitrogen (amino-nitrogen) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

15. Section 862.1565 is amended by revising paragraph (b) to read as follows:

§ 862.1565 6-Phosphogluconate dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

16. Section 862.1575 is amended by revising paragraph (b) to read as follows:

§ 862.1575 Phospholipid test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

17. Section 862.1640 is amended by revising paragraph (b) to read as follows:

§ 862.1640 Protein-bound iodine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

18. Section 862.1670 is amended by revising paragraph (b) to read as follows:

§ 862.1670 Sorbitol dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

19. Section 862.1720 is amended by revising paragraph (b) to read as follows:

§ 862.1720 Triose phosphate isomerase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

20. Section 862.1815 is amended by revising paragraph (b) to read as follows:

§ 862.1815 Vitamin E test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

21. Section 862.2100 is amended by revising paragraph (b) to read as follows:

§ 862.2100 Calculator/data processing module for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

22. Section 862.3750 is amended by revising paragraph (b) to read as follows:

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§ 862.3750 Guiniro test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

23. Section 862.3850 is amended by revising paragraph (b) to read as follows:

§ 862.3850 Sulfonamide test system.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

Dated: May 19, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-12855 Filed 6-7-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Amendments to the Arkansas Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; correction.

SUMMARY: This notice corrects a final rule published in the **Federal Register** on March 28, 1988 (53 FR 9681) that approved parts of an amendment submitted by the State of Arkansas as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. In the codified section of the notice, OSMRE inadvertently omitted sections of the Arkansas Surface Coal Mining and Reclamation Code from the list of state regulations the Director approved and incorrectly cited a State regulation for which OSMRE requires an amendment.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Corrections

In FR Doc. 88-6663, appearing in the **Federal Register** Monday, March 28, 1988, page 9681, the following corrections are made:

1. In paragraph (d) of § 904.15, on page 9685, the following sections are added in numerical order: 784.20(a) (1) and (2), 784.20(b)(1), 784.20(e), 807.11(d)(2)(v), 845.13(b)(2)(i), 845.15(b)(1) (i) and (ii), and 845.15(b)(2).

2. Paragraph (b) of § 904.16, on page 9685, is corrected by changing "1000(51)" to "1000(50)".

Date: May 30, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-12882 Filed 6-7-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-3373-6]

State Underground Injection Control Programs; Illinois

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Notice of the U.S. EPA's action to terminate withdrawal proceedings.

SUMMARY: The U.S. EPA announces the termination of withdrawal proceedings regarding Illinois' Class II Underground Injection Control (UIC) program administered by the Illinois Department of Mines and Minerals (IDMM). The State has primary enforcement responsibility for this program under section 1425 of the Safe Drinking Water Act (SDWA) as amended, 42 U.S.C. 300h-4. This action terminates the withdrawal process that was initiated on December 12, 1986, when the Governor of Illinois was notified by the Administrator that the U.S. EPA was initiating procedures to withdraw program authority from the State. A public hearing to discuss withdrawal was held on July 8, 1987, in Ina, Illinois and was followed by a thirty (30) day comment period.

Since that time, the U.S. EPA's audits of the program, which were conducted on August 28–30, 1987 and March 7–11, 1988, have shown significant improvement in the program to such an extent that it has been determined that the program is effective in protecting Underground Sources of Drinking Water (USDW). As a result, the U.S. EPA has terminated withdrawal proceedings.

EFFECTIVE DATE: April 1, 1988.

ADDRESSES: Copies of documents regarding this action are available at the following address for review. Underground Injection Control Section (5WD-TUB-6), Safe Drinking Water Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Crivello, Safe Drinking Water Branch (5WD-TUB-6), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-2929.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1981, Illinois applied for primary enforcement responsibility (primacy) for the State's Class II UIC program under section 1425 of the SDWA. The SDWA established the Class II UIC program to protect USDW from possible adverse impacts that could result from the improper injection of fluids associated with the production of oil and gas.

On February 1, 1984, the U.S. EPA granted primacy to Illinois. The State designated the IDMM as the implementing agency. This authorization of primacy is codified at 40 CFR 147.701. In approving Illinois' primacy, the U.S. EPA also approved the State's program description, Memorandum of Agreement, and associated program commitments from the IDMM. These program commitments included implementing an effective program of regulations and enforcement to ensure that USDW would be protected.

In April 1986, the U.S. EPA conducted a routine evaluation of the State's Class II program administered by the IDMM. The evaluation raised a number of questions about the program; as a result, the U.S. EPA conducted a detailed, in-depth evaluation which culminated in the report entitled, *Evaluation of the Illinois Department of Mines and Minerals, Division of Oil and Gas, Class II Underground Injection Control Program Report.* This report outlined a number of concerns that the U.S. EPA had about the program and its ability to ensure protection of USDW. The report included corrective actions that needed to be instituted by the DMM in order to achieve a program that would be effective in protecting USDW. This report was transmitted to the Director of the IDMM on December 13, 1985. Throughout 1986, Region V representatives met with representatives of the State of Illinois; however, these negotiations failed to bring about the necessary program changes. In July, 1986, the Region V Administrator notified the Governor of Illinois of his intention to recommend to the U.S. EPA Administrator that the State's authority to administer the Class II program be withdrawn.

In November of 1986, another audit of the program was conducted by the U.S. EPA, Region V. Region V personnel reviewed records and interviewed the IDMM's personnel to determine if the recommendations outlined in the previous report had been put into practice. The results of the audit showed that significant progress had not been made. These results were compiled into a report entitled *Fiscal Year 1986 End of the Year Evaluation of the Illinois Department of Mines and Minerals, Division of Oil and Gas, Class II Underground Injection Control Program.* This report was transmitted to the State in December 1986.

On December 17, 1986, the U.S. EPA Administrator notified the Governor of Illinois that authority to administer the Illinois Class II program would be withdrawn unless the State could show that its program was effective in protecting USDW.

A public hearing was held on July 8, 1987, to solicit comments from the public and regulated community on the U.S. EPA's proposed action to withdraw primacy from the State. By this time Region V had observed several improvements in the State's program. These included the addition of a technical staff to review permits and conduct file reviews, a compliance manager to direct and track enforcement activities, and the assignment of existing field personnel solely to UIC activities.

Beginning on August 26, 1987, Region V conducted an audit of the present UIC program. The results of this audit showed that the State had made significant improvements to its program. These improvements included the following:

- In 1987, a new UIC Manager position was created and filled. In addition, five (5) technical positions, an enforcement coordinator, and an additional field inspector were all added to the State UIC program. Five (5) field inspectors and a pollution control officer previously assigned to petroleum and UIC activities were reassigned to exclusively UIC activities.
- Prior to 1987, the State did not request any Federal funds nor was the program included in the State budget. In 1987, the State applied for and received $188,669 in Federal grant funds which were used to fund the addition of UIC staff, data management equipment, and office equipment.

The State applied for an FY '88 grant in July, 1987. This application was approved on September 29, 1987.

- The IDMM completed a verified inventory of Class II injection wells in the State. To date, the inventory shows 13,256 Class II wells in the State.
- UIC permit applications were being reviewed by a technical staff composed of geologists, petroleum engineers, an enforcement coordinator, and a hydrologist.
- File reviews were being conducted by technically trained staff and were qualitative as well as quantitative. In the grant application for FY '88, which was approved by Region V, the State committed to complete all file reviews by July 1, 1992. This was to be accomplished by completing approximately 730 well record reviews per quarter.
- The State had established a UIC inspection program that was separate from the oil and gas program. This resulted in more resources being devoted to the monitoring of Class II injection activities, and a more informed and better trained field staff.
- The IDMM had computerized its data management function. This allowed better tracking of inspections and Mechanical Integrity (MI), and required operators to perform remedial actions. 1987 was the first year in which the IDMM required operators to perform remedial action. 1987 was the first year in which the IDMM required operators to perform pressure tests on existing Class II wells.
- The IDMM had taken steps to identify wells that lacked MI, and required operators to perform remedial actions. In 1987, the IDMM began requiring their operators to perform pressure tests on existing Class II wells.

After evaluating these actions, the U.S. EPA was able to determine that the State's Class II UIC program was effective in protecting USDW. As a result, the U.S. EPA has notified the Governor of Illinois of its decision to terminate withdrawal proceedings. The U.S. EPA will continue to provide close oversight of the program and take whatever actions are necessary to insure that the State continues to provide effective protection of USDW from contamination by injection activities. The U.S. EPA will do this through periodic program evaluations, grant funding and workplan review, independent enforcement actions, and if necessary, can begin withdrawal procedures again.

Authority: 42 U.S.C. 300f-300j.

Dated: April 21, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-10895 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6F3366, 7F3542/R965; FLR-3382-8]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide iprodione in or on caneberries and potatoes. This regulation to establish the maximum permissible level for residues of iprodione in or on these raw agricultural commodities was requested by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on June 8, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1900.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of March 19, 1986 (51 FR 9514) and November 25, 1987 (52 FR 45237), which announced that Rhone-Poulenc, Inc., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted pesticide petitions (PP 6F3366 and PP 7F3542 for potatoes and caneberries, respectively) to EPA proposing that 40 CFR Part 180 be amended by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dischlorophenyl)-2,4-dioxol-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on potatoes at 0.5 part per million (ppm) and in or on caneberries at 25.0 ppm.

There were no comments received in response to the notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The data considered include:

1. A three-generation rat reproduction study using dosage levels of 0, 250, 500, and 2,000 ppm with a no-observed-effect

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level (NOEL) of 500 ppm (25 milligrams per kilogram of body weight per day (mg/kg bwt/day)), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day);

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 mg/kg bwt, resulting in a teratogenic NOEL equal to or greater than 60 mg/kg bwt;

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, resulting in a teratogenic NOEL equal to 90 mg/kg bwt (considered supplementary under current guidelines and may be upgraded to minimum with additional information);

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 168, 600, and 3,600 ppm (4.2, 15, and 90 mg/kg bwt/day) with a NOEL of 168 ppm (4.2 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking include an appropriate toxicology laboratory animal metabolism study and a potato processing study. The metabolism study is currently under review by Agency scientists. The Agency expects the potato processing study to be submitted within 4 months.

The acceptable daily intake (ADI) based on the NOEL of 4.2 mg/kg bwt/day from the 1-year dog feeding study and using a hundredfold safety factor, is calculated to be 0.04 mg/kg bwt/day. The theoretical maximum residue contribution from the proposed tolerances are 0.000835 mg/kg/day and utilizes 2.09 percent of the ADI. These tolerances and the previously established tolerances utilize a total of 110.0 percent of the ADI for the U.S. population average.

Although the TMRC based on all established tolerances for iprodione exceeds the ADI, the Agency believes that the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level.

3. Residues are frequently reduced when foods are processed or prepared for human consumption.

4. Not all crops contributing to the TMRC are likely to be consumed by an individual.

There are no regulatory actions pending against the registration of iprodione. The metabolism of iprodione in plants and animals, except for general laboratory animal metabolism, is adequately understood for purposes of the tolerances. An analytical method, gas liquid chromatography using an electron capture detector, is available in Volume II of the *Pesticide Analytical Manual* for enforcement purposes.

The pesticide is useful for the purposes for which the tolerances are sought. Based on the data and information considered by the Agency, it is concluded that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

This tolerance for potatoes will expire 1 year after the date of publication of this final rule. Based on the review of the potato processing data, the Agency will determine whether the issuance of a permanent tolerance is appropriate.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399(a) is amended by adding and alphabetically inserting the commodities caneberries and potatoes, to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Caneberries	25.0
* * * * * * *	
Potatoes	[1] 0.5
* * * * * * *	

[1] This tolerance expires June 8, 1989.

[FR Doc. 88-12786 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300187A; FRL-3363-7]

Definitions and Interpretations; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.1 by adding an entry for blackberries in the commodity definitions and by revising the existing commodity definition for caneberries. The amendment, which will define the commodity terms for tolerance purposes, was requested by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: June 8, 1988.

ADDRESS: Written objections, identified by the document control number, [OPP-300187A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 28, 1988 (53 FR 15239), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a request to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the IR–4 Technical Committee that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose an amendment to 40 CFR 180.1(h) to add "blackberries" to the general category of commodities listed in column A and to define that commodity as "*Rubus subatus* (including dewberries, lowberries, boysenberries, marionberries, olallieberries, Oregon evergreen berries, coryberries, Himalayaberries, Lucretiaberries, bingleberries, mammoth blackberries, phenomenalberries, rossberries, Lavacaberries, nectarberries, Shawnee blackberries, Cheyenne blackberries, Cherokee blackberries, huilberries, Chesterberries, black satin berries, Dirksen thornless berries, darrowberries, ravenberries, rangerberries, and varieties and/or hybrids of these)" by inserting these corresponding commodities in the specific commodities listing in column B. The IR–4 requested this amendment in order to more specifically define the commodity term "blackberries."

The commodity terms "blackberries," "boysenberries," and "dewberries" are also listed in column B of 40 CFR 180.1(h) as specific raw agricultural commodities for the general commodity "caneberries." In order to make the crop definition for caneberries consistent with the blackberry definition, the commodity terms "blackberries," "dewberries," and "boysenberries" are deleted from the specific commodities listing corresponding to the general commodity "caneberries" and replaced by the commodity term "*Rhubus* spp. (including blackberries)," so that the entry in column B reads as follows: "*Rubus* spp. (including blackberries); *Rubus caesium* (youngberries); *Rubus loganbaccus* (loganberries); *Rubus occidentalis, idaeus,* and *strigosus* (red and black raspberries); and varieties and/or hybrids of these."

The Agency concludes that tolerances established for the general category commodity "caneberries" and blackberries should be adequate to cover pesticide residues on the corresponding specific commodities based on the botanical relationship of the commodities and the similarity of the pest problems and pesticide application methods.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by revising the definition for caneberries and by adding a definition for blackberries, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	* * * * *
Blackberries.	*Rubus subatus* (including binglebertries, black satin berries, boysenberries, Cherokee blackberries, Chesterberries, Cheyenne blackberries, coryberries, darrowberries, dewberries, Dirksen thornless berries, Himalayaberries, huilberries, Lavacaberries, lowberries, Lucretiaberries, mammoth blackberries, marionberries, nectarberries, olallieberries, Oregon evergreen berries, phenomenalberries, rangerberries, ravenberries, rossberries, Shawnee blackberries, and varieties and/or hybrids of these).
* * * * *	* * * * *
Caneberries.	*Rubus* spp. (including blackberries; *Rubus caesius* (youngberry); *Rubus loganbaccus* (loganberry); *Rubus occidentalis, idaeus,* and *strigosus* (red and black raspberries); and varieties and/or hybrids of these.
* * * * *	* * * * *

[FR Doc. 88-12889 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 94

[PR Docket No. 87-5]

Amendment of Parts 2, 22, and 94 of the Rules Regarding Use of the 928–960 MHz Band for Point-to-Multipoint Operations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the Report and Order in PR Docket 87–7, published at 53 FR 11855, April 11, 1988.

EFFECTIVE DATE: June 8, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, (202) 634–2443.

Erratum

(Released: April 20, 1988.

In the matter of amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the rules and regulations to re-channel the 900 MHz multiple address frequencies PR Docket 87–5, RM–5208; amendment of § 94.65(a)(1) of the rules to revise footnote 3 in the frequency table to make the frequencies available for use by any Part 94 Eligible, RM–5362; Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) footnote 3 of the rules to permit operation of mobile remote meter reading systems on a primary basis on the exclusive power radio service frequencies in the 952.3625–952.8375 MHz Band, RM–5178; Amendment of Part 94 of the rules to permit intrasystem communications among multiple address system master stations, RM–5383.

On March 14, 1988, the Commission released a Report and Order (FCC 88–88, 53 FR 11855 April 11, 1988) in the above captioned proceeding. This document makes corrections to Appendix B as shown below.

1. On page 11858, in the first column, the last sentence of the introductory text in § 94.65(a)(1) the grandfathering date for 25 kHz channels is hereby changed to May 11, 1988.

2. In § 94.73(a) the Table is amended by revising footnotes [1] and [3] to read as follows:

(a) * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–12835 Filed 6–7–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces prohibitions on deliveries to foreign processors in the exclusive economic zone (EEZ) of yellowfin sole taken in directed fisheries in the Bering Sea and Aleutian Islands Area. This action is taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), and is necessary to limit joint venture processing (JVP) to the amount of yellowfin sole specified for JVP. It is intended to assure optimum use of groundfish and promote the orderly conduct of the groundfish fisheries.

DATES: This closure is effective from 2359 GMT, June 3, 1988, through December 31, 1988. Comments will be accepted through June 20, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patricia A. Peacock (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by rules appearing at 50 CFR 611.93 and Part 675.

In 1988, the initial JVP apportionment (53 FR 894, January 14, 1988) for yellowfin sole in the Bering Sea and Aleutian Islands Area was 189,544 metric tons (mt). An 8,000-mt reapportionment from the reserve (53 FR 12772, April 19, 1988) increased the total JVP apportionment to 197,544 mt. NMFS estimates that 195,044 mt of yellowfin sole will be taken by June 3, 1988. The Regional Director has determined that the remaining amount, 2,500 mt, of the yellowfin sole TAC apportioned to JVP, is needed for bycatch in other directed fisheries delivering to foreign processors in the U.S. EEZ during the remainder of the fishing year. Consequently, NOAA is prohibiting the delivery to foreign processors in the EEZ of any yellowfin sole taken in a directed fishery. Foreign processors in the EEZ may not receive yellowfin sole taken in a directed fishery.

Under § 675.20(a)(7), when the Regional Director determines that an unharvested amount of a target species is necessary for bycatch in fisheries for other groundfish species, the Secretary of Commerce will publish a notice in the **Federal Register** prohibiting directed fishing for that target species for the remainder of 1988. Directed fishing is defined in § 675.2.

Based on the Regional Director's estimate that joint ventures targeting on species other than yellowfin sole will require a bycatch of 2,500 mt of yellowfin sole, the amount of yellowfin sole available to foreign processors receiving directed catches of yellowfin sole is 195,044. To avoid exceeding the JVP for yellowfin sole, U.S. fishermen delivering catches to foreign processors in the EEZ must cease directed fishing for yellowfin sole at 2359 GMT June 3, 1988.

Under § 675.20(g)(2), interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

Classification

The Assistant Administrator for Fisheries, NOAA finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for public comment. Immediate effectiveness of this notice is necessary to prevent the available quota of JVP for yellowfin sole from being exceeded. This action is taken under the authority of § 675.20(b) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: June 3, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 88–12920 Filed 6–3–88; 5:04 pm]

BILLING CODE 3510–22–M

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[1] For multiple address operations see § 94.65(a)(1)(iv).

[3] For multiple address operations see § 94.65(a)(1)(iv). When an omnidirectional transmitting antenna is authorized in the 2150–2160 MHz band, the maximum power shall be 60dBm.

Proposed Rules

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 33; Doc. No. 5636S]

General Crop Insurance Regulations; Wheat Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by amending the Wheat Endorsement, 7 CFR 401.101, to clarify the quality adjustment of what in relation to the U.S. Grain Standards (7 CFR 810.2201 *et seq.*).

DATES: *Comment date:* Written comments, data, and opinions on this proposed rule must be received not later than July 8, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, to provide the General Crop Insurance Regulations (7 CFR Part 401) and various crop endorsements including the Wheat Endorsement (7 CFR 401.101), found at 52 FR 28452.

Upon review of these regulations, FCIC determined that the test weight used for quality adjustment was not in accordance with the U.S. Grain Standards as was intended. The section currently provides that, a test weight of 53 pounds per bushel will be used as criteria to determine the adjustment without reference to wheat class. To conform to the U.S. Grain Standards, the test weight by class of wheat insured should be used.

For this reason, FCIC proposes to amend the Claim for Indemnity section of the Wheat endorsement to incorporate, by reference, the U.S. Grain Standards as to those factors which are relevant to the insured's claim.

This proposed rule is designed to become effective beginning with all wheat planted in the spring of 1989.

It is the intention of FCIC to file this rule as a final rule by the next appropriate filing date of December 31, 1988, for those counties with an April 15 cancellation date, as provided in section 9 of the Wheat Endorsement. However, this action will have the effect of not providing appropriate provisions for test weight by class for those insured who produce fall planted 1989 wheat.

For this reason, and in order to provide an equitable determination for insureds producing both spring and fall planted wheat, FCIC intends to administratively consider claims for indemnity submitted by fall planted wheat insureds on the same basis as outlined in this rule.

FCIC invites public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments should be sent to Peter F. Cole, Federal Crop Insurance Corporation, Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250.

All written comments received pursuant to this rule will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations; Wheat endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), by amending the Wheat Endorsement (7 CFR 401.101), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. In the Wheat Endorsement in § 401.101, the introductory text of

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paragraph 7.b.(2) is revised to read as follows:

§ 401.101 Wheat endorsement.

* * * * *

7. Claim for Indemnity.

b. * * *

(2) Mature wheat production, which due to insurable causes, grades U.S. No. 5 or Sample Grade because of test weight, total damage, or shrunken and broken kernels, or which grades garlicky, smutty, or ergoty, (all as graded by a grain grader licensed by the Federal Grain Inspection Service or a licensed grader under the United States Warehouse Act) will be adjusted by:

* * * * *

Done in Washington, DC, on May 12, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-12696 Filed 6-7-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-88-015]

Pork Promotion, Research, and Consumer Information Program; Procedures for Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Pork Promotion, Research, and Consumer Information Order was implemented September 5, 1986, as authorized by the Pork Promotion, Research, and Consumer Information Act of 1985. The Act requires that the Secretary conduct a referendum among eligible pork producers and importers of porcine animals, pork, and pork products between 24 months and 30 months after the issuance date of an Order to determine whether the Order should be continued. Accordingly, the referendum must be held on or after September 5, 1988, but not later than March 5, 1989. It is proposed that the representative period for the referendum will be the period from November 1, 1986, to September 6, 1988. Registration for and voting in the referendum will occur on September 7 and 8, 1988. This proposed rule sets forth the procedures for conducting the required initial referendum.

DATE: Written comments, data and opinions on the proposed rule must be received by June 23, 1988, to be sure of consideration.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610-So., P.O. Box 96456, Washington, DC 20090-6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512-1 and has been classified as a non-major rule under the criteria contained therein.

This action has also been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule would establish procedures for the conduct of a referendum to determine whether the Pork Promotion, Research, and Consumer Information Order should be continued. It permits all eligible pork producers and importers of porcine animals, pork, and pork products to register and to vote. Participation in the referendum is voluntary. Votes may be cast by mail or in person at county offices of the Extension Service. The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis was not prepared.

The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for pork and pork products. The program is financed by an assessment of 0.25 percent of the market value of domestic porcine animals and an equivalent amount on imported porcine animals and imported pork and pork products. Pursuant to the Act, an Order was made effective September 5, 1986, and the collection of assessments began on November 1, 1986.

The Act requires that a referendum be conducted during a period beginning not earlier than 24 months after the issuance of the Order and ending not later than 30 months after the issuance of the Order to determine whether the Order should be continued. The referendum is to be conducted among persons who were producers of porcine animals or importers of porcine animals, pork, or pork products during a representative period specified by the Secretary for the purpose of determining whether the Order should be continued. The Order shall be continued only if it is approved by a majority of persons voting in the referendum. If continuation of the Order is not approved by a majority of those persons voting in the referendum, the Secretary shall terminate collection of assessments under the Order within six months after the Secretary determines that the continuance of the Order is not favored by a majority of those persons voting in the referendum and shall terminate the Order in an orderly manner as soon as practicable after such determination.

The Act specifies that the referendum shall be conducted in such manner as prescribed by the Secretary.

The proposed rule sets forth procedures to be followed in conducting the referendum. The proposed rule includes provisions concerning definitions, supervision of the referendum, registration, voting procedures, reporting the referendum results, and disposition of the ballots and records. It is proposed that the referendum be conducted at county Extension Service offices under the supervision of the county Extension Service agent and that the Agricultural Stabilization and Conservation Service (ASCS) of the Department will assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

It is proposed that the representative period for the referendum will be the period from November 1, 1986, to September 6, 1988. Registration for and voting in the referendum will occur on September 7 and 8, 1988. Absentee ballots will be available from the State ES office on dates to be determined prior to registration.

These proposed procedures for the conduct of a referendum to determine whether the Pork Promotion, Research, and Consumer Information Order should be continued are similar to the referendum procedures contained in a March 28, 1988, final rule (53 FR 9853) under the Beef Promotion and Research Program. In developing the proposed rule, as with other rules, we have considered recommendations from interested persons, including in this instance, the National Pork Board. We believe that the industry is familiar with the procedures which are proposed. In light of the proposed September 7 and 8, 1988, dates to conduct the referendum, it is essential that a final rule be in place so that all interested persons can be made aware in a timely manner of the referendum procedures as adopted. Accordingly, we believe that a comment period of less than 30 days is appropriate in light of the circumstances described above and that the 15-day comment period will provide adequate time for interested persons to comment on the proposed referendum rules.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Marketing agreements, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that Title 7 of the CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801-4819.

2. Add new Subpart E to read as follows:

Subpart E—Procedure for the Conduct of Referendum

Definitions

Sec.

1230.601 Act.
1230.602 Administrator.
1230.603 Agricultural Stabilization and Conservation County Committee.
1230.604 Agricultural Stabilization and Conservation Service.
1230.605 Agricultural Stabilization and Conservation Service County Executive Director.
1230.606 Department.
1230.607 Deputy Administrator.
1230.608 Extension Service.
1230.609 Extension Service Agent.
1230.610 Imported Pork and Pork Products.
1230.611 Importer.
1230.612 Order.
1230.613 Person.
1230.614 Porcine Animal.
1230.615 Pork.
1230.616 Pork Product.
1230.617 Producer.
1230.618 Referendum.
1230.619 Registration period.
1230.620 Representative period.
1230.621 Secretary.
1230.622 State.
1230.623 United States.
1230.624 Voting period.

Referendum

1230.625 General.
1230.626 Supervision of referendum.
1230.627 Eligibility.
1230.628 Time and place of registration and voting.
1230.629 Facilities for registering and voting.
1230.630 Registration form and ballot.
1230.631 Registration and voting procedure.
1230.632 List of registered producers and importers.
1230.633 Challenge of eligibility.
1230.634 Receiving ballots.
1230.635 Canvassing ballots.
1230.636 ASCS county office report.
1230.637 ASCS State office report.
1230.638 Results of the referendum.
1230.639 Disposition of ballots and records.
1230.640 Instructions and forms.

Subpart E—Procedure for the Conduct of Referendum

Definitions

§ 1230.601 Act.

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) and any amendments thereto.

§ 1230.602 Administrator.

"Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated, the authority to act in the Administrator's stead.

§ 1230.603 Agricultural Stabilization and Conservation County Committee.

"Agricultural Stabilization and Conservation County Committee," also referred to as "ASC county committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee.

§ 1230.604 Agricultural Stabilization and Conservation Service.

"Agricultural Stabilization and Conservation Service," also referred to as "ASCS" means the Agricultural Stabilization and Conservation Service of the Department.

§ 1230.605 Agricultural Stabilization and Conservation Service County Executive Director.

"Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS County Executive Director" means the person employed by the ASC county committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office, or the person acting in such capacity.

§ 1230.606 Department.

"Department" means the United States Department of Agriculture.

§ 1230.607 Deputy Administrator.

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1230.608 Extension Service.

"Extension Service" also referred to as "ES" means the Extension Service of the Department.

§ 1230.609 Extension Service Agent.

"Extension Service Agent" also referred to as "ES Agent" means an employee of the Extension Service of the Department.

§ 1230.610 Imported Pork and Pork Products.

"Imported Pork and Pork Products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the tariff or customs numbers identified in regulations issued pursuant to the Order.

§ 1230.611 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.612 Order.

"Order" means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.613 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1230.614 Porcine Animal.

"Porcine Animal" means a swine, that is raised—

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seed stock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.615 Pork.

"Pork" means the flesh of a porcine animal.

§ 1230.616 Pork Product.

"Pork Product" means an edible product produced or processed in whole or in part from pork.

§ 1230.617 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce and who is subject to assessment.

§ 1230.618 Referendum.

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act during a period beginning not earlier than 24 months after issuance of the Order and ending not later than 30 months after the issuance of the Order whereby persons who have been producers and importers during a representative period shall be given the opportunity to vote to determine whether the continuance of the Order is favored by a majority of producers and importers voting.

§ 1230.619 Registration period.

"Registration period" means the 2-day period of September 7 and 8, 1988, for registration of producers and importers desiring to vote in a referendum. The registration period shall be the same days as the voting period.

§ 1230.620 Representative period.

"Representative period" means the period November 1, 1986, to September 6, 1988, which is established pursuant to section 1622(a) of the Act.

§ 1230.621 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Secretary's stead.

§ 1230.622 State.

"State" means each of the 50 States.

§ 1230.623 United States.

"United States" means the 50 States and the District of Columbia.

§ 1230.624 Voting period.

"Voting period" means the 2-day period of September 7 and 8, 1988, for voting in a referendum.

Referendum

§ 1230.625 General.

(a) A referendum to determine whether eligible producers and importers favor the continuance of the Order shall be conducted in accordance with this subpart.

(b) The Order shall continue only if the Secretary determines that the Order is approved or favored by a majority of the producers and importers casting valid ballots in a referendum.

(c) The referendum shall be conducted at the county offices of the Extension Service of the Department.

(d) The Agricultural Stabilization and Conservation Service of the Department shall assist in the conduct of the referendum.

§ 1230.626 Supervision of referendum.

The Administrator (AMS) shall be responsible for conducting the referendum in accordance with this subpart.

§ 1230.627 Eligibility.

(a) *Eligibility Producers.* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer shall be entitled to cast only one ballot in the referendum.

(b) *Eligible Importers.* Each person who was an importer during the representative period is entitled to register and vote in the referendum. Each importer shall be entitled to cast only one ballot in the referendum.

(c) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer or corporate importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible entity (other than an individual producer or importer) such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer or importer corporation, partnership, or other eligible entity shall certify that he or she is authorized by such entity to take such action.

(d) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of porcine animals as a producer or in the importation of porcine animals, pork or pork products into the U.S. as an importer shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer or importer if he or she is an eligible producer or importer separate from the group.

§ 1230.628 Time and place of registration and voting.

The referendum shall be held for 2 days beginning on September 7, 1988, and ending on September 8, 1988. Eligible persons shall register and vote following the procedures in § 1230.631. Except for absentee ballots, the registration and voting shall take place on September 7 and 8, 1988, at each county ES office during regular office hours.

§ 1230.629 Facilities for registering and voting.

Each county ES office shall provide: (a) Adequate facilities and space to permit producers and importers to register and to mark their ballots in secret and (b) a sealed box or other suitable receptacle for registration forms and ballots which shall be kept under observation during registration and voting hours and secured at all times. Copies of the Order shall be available for review.

§ 1230.630 Registration form and ballot.

A registration form/envelope marked "PARK REFERENDUM" (Form LS–43–1) and ballot (Form LS–43) shall be used for voting in person. The information required on the registration form, which is printed on an envelope, includes name, address, phone number, and voter status (producer or importer). The registration form/envelope also contains a certification statement, referenced in § 1230.631(a)(1). The ballot requires producers and importers to check a "yes" or a "no." A similar registration form and ballot (Form LS–42) shall be used for absentee voting.

§ 1230.631 Registration and voting procedure.

(a) *Registering and voting in person.* (1) Each producer and importer desiring to vote in the referendum shall register on the days of voting at the ES office for the county in which the producer's or importer's residence is located or at the ES office serving the county in which the producer's or importer's residence is located. Producers or importers other than individuals shall register at the ES office in the county in which their headquarters office or business is located or at the ES office serving the county in which the entities' headquarters office or business is located. Producers and importers will be required to list their names on the voter registration list (Form LS–43–2) prior to receiving a registration from and ballot. To register, each producer or importer shall complete the registration form/envelope and certify that they or the entity they represent were producers or importers during the specified representative period and if voting on behalf of an entity referred to in § 1230.627 they are authorized to do so.

(2) Each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1230.628. Eligible persons who enter their names on the voter registration list (Form LS–43–2) will receive a registration form/envelope (Form LS–43–1), an envlope marked "PORK BALLOT" (LS–42–2), and a ballot (Form LS–43). Voting shall be by secret ballot under the supervision of the local county ES agent or designee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in the envelope marked "PORK BALLOT", seal it and place it in the completed and signed registration form/envelope marked "PORK REFERENDUM", seal that envelope and personally place it in a box marked "Ballot Box" or other designated receptacle.

(b) *Absentee voting.* (1) Eligible producers or importers unable to vote in person may request and obtain a combined absentee registration form and absentee ballot (Form LS–42) and two envelopes—one marked "PORK BALLOT" (Form LS–42–2) and the other marked "PORK REFERENDUM" (Form LS–42–1) by mail from the State ES office of the State in which they reside if individuals, or where their headquarters office or business is located, if a corporation or other entity. To facilitate mailing of absentee ballots the "PORK REFERENDUM" envelope will be preaddressed with the address of the appropriate county ES office if:

(i) The person or other entity referred to in § 1230.627 requesting the absentee ballot includes in the address his or her county of residence or county in which the headquarters office or business is located or

(ii) The county in which the residence, headquarters office, or business is located can be otherwise determined.

Only one absentee registration form and absentee ballot will be provided to each eligible producer or importer. Form LS–42 must be requested in writing and will be available for distribution from State ES offices from August 1, 1988, to August 26, 1988. The State ES office shall enter on the absentee voter request list (Form LS–42–3) the name and address of each person or entity requesting an absentee ballot and the date the Form LS–42 was mailed. A copy of the applicable absentee voter request list (Form LS–42–3) prepared by the State ES office shall be provided to the appropriate county ES agent who shall deliver it to each ASCS county office as provided for in § 1230.635 for absentee voter verification.

(2) To register, eligible producers or importers must complete and sign the registration form (Form LS–42), and certify that they or the entity they represent were producers or importers during the specified representative period and if voting on behalf of an entity referred to in § 1230.627, they are authorized to do so.

(3) A producer or importer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS–42 and seal the completed ballot in a separate envelope marked "PORK BALLOT" and place it in a second envelope marked "PORK REFERENDUM" along with the signed registration form. Producers and importers shall print and sign their names on the envelope marked "PORK REFERENDUM" and mail it to the ES office of the county in which they reside or the ES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed to the ES office in the county in which its headquarters office or business is located or the ES office serving the county in which its headquarters office or business is located.

(4) Absentee ballots must be received in the county ES office by the close of business, September 1, 1988. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "PORK REFERENDUM" envelope containing the registration form and ballot, the county ES agent or designee shall place it, unopened in a secure ballot box. The county ES agent or his designee shall enter the names of absentee voters on the voter registration list (Form LS–43–2).

(5) A person casting an absentee ballot which is not recorded as being received or which is received after the deadline specified in this section may vote in person at the appropriate county ES office on the days of the referendum.

§ 1230.632 List of registered producers and importers.

The voter registration list (Form LS–43–2) shall be available for inspection during the voting period on September 7 and 8, 1988, at the county ES office and on September 12, 1988, at the ASCS county office. At the ASCS county office it shall be posted during regular office hours in a conspicuous public location.

§ 1230.633 Challenge of eligibility.

(a) *Challenge period.* During the days of the referendum, the names of challenged voters may be reported to the ES county agent who will refer them to the ASCS county office. After that, the names of challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business on September 12, 1988.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person. Any such challenge must be in writing and signed by the person making the challenge.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer or importer who has been challenged and notify challenged producers and importers as soon as practicable, but not later than 5 business days after the ending date of the voting period. If the ASC county committee or its representative is unable to determine whether a person was a producer or importer during the representative period, it may require the person to submit records such as sales documents, purchase documents, or other similar documents to prove that the person was a producer or importer during the representative period.

(d) *Challenged ballot.* The registration form/envelopes (Form LS–43–1) containing the ballots cast by producers and importers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved: Envelops containing absentee voter registration forms and absentee ballots (Forms LS–42) of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers and importers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after an appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county committee or its representative may file an appeal at the ASCS county office within 3 business days after notification of such decision. Such person may be required to provide documentation such as sales documents or purchase documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable, but in all cases not later than the 9th business day after the ending date of the referendum. The ASC county committee's determination on an appeal is final.

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§ 1230.634 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) It was cast in the county ES office prior to the close of business on September 8, 1988, or

(b) An absentee ballot was received in the county ES office not later than close of business on September 1, 1988.

§ 1230.635 Canvassing ballots.

(a) *Counting the ballots.*

The county ES agent or designee shall deliver:

(i) The sealed ballot box,

(ii) The voter registration list (Form LS–43–2) and

(iii) The absentee voter request list (Form LS–42–3) to the ASCS county office by the close of business on the first business day after the end of the voting period.

ASCS county employees and the county ES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS–43–2) and the absentee voter request list (Form LS–42–3) to determine properly registered voters. The ballots of producers or importers voting in person whose names are not on the voter registration list (Form LS–43–2) shall be declared invalid. Likewise, the ballots of producers or importers voting absentee, whose names are not on the absentee voter request list (Form LS–42–3) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened.

(2) The valid ballots shall be counted on September 22, 1988. ASCS county office employees shall remove the sealed "PORK BALLOT" envelopes from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. When removing the "PORK BALLOT" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "PORK BALLOT" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows:

(i) Number of eligible producers and importers casting valid ballots,

(ii) Number of producers and importers not favoring the Order,

(iii) Number of producers and importers not favoring the order,

(iv) The number of challenged ballots,

(v) The number of challenged ballots deemed ineligible,

(vi) Number of invalid ballots, and

(vii) The number of spoiled ballots.

(b) *Invalid ballots.* Ballots shall be declared invalid if a producer or importer voting in person has failed to sign the voter registration list (Form LS–43–2), or an absentee voter's name is not on the absentee voter request list (Form LS–42–3), or the registration form or ballot was incomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or a "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

§ 1230.636 ASCS county office report.

The ASCS county office shall notify promptly the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1230.635. The results of the referendum in each county may be made available to the public immediately after the ballots have been counted and any necessary verification of accuracy has been completed. A copy of a report of those results shall then be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

§ 1230.637 ASCS State office report.

Each ASCS State office shall promptly transmit to the Deputy Administrator a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1230.638 Results of the referendum.

(a) The Deputy Administrator shall promptly submit to the Administrator the results of the referendum. The Administrator shall promptly prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum shall be issued by the Department in an official press release and published in the **Federal Register**. State reports, and related papers shall be available for public inspection in the office of the Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

§ 1230.639 Disposition of ballots and records.

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

§ 1230.640 Instructions and forms.

The Administrator may prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Done at Washington, DC, on June 2, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–12857 Filed 6–7–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the management and supervision of FmHA Multiple Family Housing Loan and Grant Recipients to incorporate provisions of the Tax Reform Act of 1986. This action is needed by certain applicants and prospective applicants in their decisionmaking regarding loans for Rural Rental Housing (RRH) projects purchased, constructed or rehabilitated after 1986. Such applicants or prospective applicants would expect to derive tax credits from their investment in RRH projects. Also, this action is needed to inform FmHA staff members of their responsibilities with regard to the Tax Reform Act.

The FmHA also proposes to amend the same regulations to establish authorization to transfer unused rental assistance (RA) without a borrower's request but with right of appeal.

DATE: Comments must be submitted on or before August 8, 1988.

ADDRESSES: Send written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, Telephone: (202) 382–9725. All written comments will be available for public inspection during normal working hours.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Loan Officer, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5321–S, Washington, DC 20250, Telephone: (202) 382–1613.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Before passage of the Tax Reform Act of 1986, RRH borrowers were able to report operating "losses" on their investment in RRH projects due to accelerated depreciation and mortgage interest paid on such properties. Such "losses" could legitimately be applied against other income for tax purposes. The Tax Reform Act of 1986 replaces this type of incentive with tax credits. Section 515(p) of the Housing Act of 1949, has been amended to reflect the provisions of the Tax Reform Act of 1986. This amendment to the regulation implements the amendment to the Housing Act of 1949 setting forth conditions, regarding renting of the project, under which borrowers may quality for the tax credit without undue penalties caused by FmHA occupancy requirements. This amendment further provides safeguards for higher income tenants who may be displaced by the borrower's election to receive tax credits. Finally, this amendment will not affect projects not receiving tax credit consideration and will not materially affect existing tenant selection criteria.

During the course of administering the rental assistance (RA) program, the FmHA has experienced two concerns. First, there has been limited RA appropriation to meet the total RA need nationwide. Second, the FmHA has observed in some instances that a few projects have not needed or utilized their full RA allotment on a sustained basis. The FmHA proposes to transfer sustained unused portions of RA allocations, as provided for in the rental assistance agreement, Form FmHA 1944–27, to other projects, to fully utilize available unused RA funds. Such decisions would be appealable by the borrower.

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, 10.411 10.415 and 10.427 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs-Housing and Community Development, Loan programs-Housing and Community Development, Low- and Moderate income housing-Rental, Reporting requirements.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23, 2.70

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B to Subpart C is amended by revising paragraph VI. D. 2. e. (1), by redesignating paragraphs VI E and F as paragraphs VI F and G respectively, and by adding a new paragraph VI E to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

D. * * *

2. * * *

e. * * *

(1) The borrower or management agent will request that such prospective tenant provide this information on a voluntary basis to enable monitoring or compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent will complete this item based on personal observation or surname.

* * * * *

E. *Tax Credit Compliance.* The Tax Reform Act of 1986 permits certain (RRH) borrowers to receive tax credits for low-income housing projects if: 20 percent or more of the units are occupied by very low-income tenants, or 40 percent or more of the units are occupied by tenants whose annual adjusted income is 60 percent or less of the area median gross income.

1. Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI F of this Exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow the borrowers to meet their tax credit requirements.

2. When the District Director (DD) determines that vacancies of at least six months duration exist and that such vacancies threaten the financial viability of the project, the borrower may be required to rent to other eligible applicants.

3. Borrowers requesting Internal Revenue Service (IRS) tax credits must honor the remaining period of a tenant's lease and, unless material noncompliance or other good cause to terminate occupancy as described in paragraph XIV A of this Exhibit exists, renew the tenant's lease or establish other mutually acceptable housing arrangements.

* * * * *

3. In Exhibit B, paragraph VII D is amended by changing the reference "paragraph VI F of this Exhibit" to read "paragraph VI G of this Exhibit."

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4. In Exhibit B–1, paragraph No. 3 is amended by adding a new item h to read as follows:

Exhibit B–1 Management Plan Requirements for FmHA Multiple Family Housing Projects

* * * * *

3. * * *

h. What will the policy be toward higher income tenants when borrowers are concerned with renting to low-income tenants, so as not to jeopardize their tax credits?

* * * * *

5. In Exhibit E, paragraphs XI B 1 b and 2 b are amended by changing the reference "paragraph VI E of Exhibit B" to read "paragraph VI F of Exhibit B."

6. In Exhibit E, paragraph XI B 4 is amended by changing the reference "paragraph VI E 3" to read "paragraph VI F 3."

7. Exhibit E to Subpart C is amended by adding a new paragraph XV B 5 c to read as follows:

* * * * *

XV. Suspending or Transferring Existing Rental Assistance Agreements

B. * * *

5. * * *

c. If, at the end of the initial year of a Rental Assistance Agreement, the borrower has not used a portion of the RA units for an ensuing 12-month period, the State Director may transfer the number of unused units, minus one, to another project. This would apply only if the current contract is on Form FmHA 1944–27 and when:

(1) The borrower has made the efforts described in paragraphs 5a (2) (i), (ii) and (iii) to market the project to tenants needing RA.

(2) The District Director has reviewed the project occupancy list, waiting list, and any other data available and verified that there is no apparent RA need in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(4) If the borrower appeals the decision, the appeal is resolved in accordance with Subpart B of Part 1900 of this chapter, before any transfer action is taken.

(5) The transfer will be completed in accordance with paragraph XV A 2 of this Exhibit.

* * * * *

Date: May 5, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88–12915 Filed 6–7–88; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg Y; Docket Number R–0386]

Statement of Policy on Banking Market Extension Mergers and Acquisitions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement; Withdrawal.

SUMMARY: In 1982, the Board of Governors of the Federal Reserve System ("Board") proposed for comment a policy statement setting forth guidelines for analyzing the competitive effects of market extension acquisitions (the "Guidelines"). The Guidelines described the circumstances under which market extension proposals might be subject to intensive examination by the Board or the relevant Federal Reserve Bank before a determination is made regarding competitive effects. Because of the current competitive situation in the financial services industry, the Board has decided not to adopt the Guidelines.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Jr., Deputy General Counsel, (202/452–3430); or Pamela G. Nardolilli, Senior Attorney, Legal Division (202/452–3689); Stephen A. Rhoades, Section Chief, Division of Research and Statistics (202/452–3906). For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202/452–3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On February 26, 1982, the Board released for public comment Guidelines that it proposed to use to identify those merger or bank acquisition cases that raised significant issues under the probable future competition doctrine and would require a detailed staff analysis. 47 FR (017 (1982). the proposed Guidelines contained four criteria, all of which would have to be met before intensive analysis of the transaction would be undertaken.

Since the Guidelines were proposed, there have been significant changes in the financial services industry that have affected the usefulness of the Guidelines as a screen to determine those cases that raise probable future competition issues. Since 1980, for example, the powers of thrift institutions have been expanded greatly, and thrifts have increasingly taken advantage of these powers to broaden the range and amount of their services. In addition, during this same period, there has been a marked broadening of geographic expansion opportunities through relaxation of state branching and multi-bank holding company restrictions and interstate banking initiatives. The Board's experience under the Guidelines has been that the combination of these two developments has affected the application of the criteria of the probable future competition doctrine in such a manner that it would be applicable, if at all, in only a very few banking markets.

Although the Board has decided not to adopt the Guidelines, the Board will examine mergers and acquisitions under the probable future competition doctrine in appropriate cases using the standards enunciated by the courts. In addition, the Department of Justice Merger Guidelines provide guidance for analyzing market extension mergers. 49 FR 26823 (1984).

Accordingly, in light of the above, the proposed policy on Market Extension Guidelines is withdrawn, effective June 2, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–12828 Filed 6–7–88; 8:45 am]

BILLING CODE 6210–01–M

12 CFR Part 225

[Docket No. R–0637]

Regulation Y; Limitations on Nonbank Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed rules to implement provisions of the Competitive Equality Banking Act of 1987 ("CEBA") (Pub. L. No. 100–86), relating to so-called nonbank banks. CEBA amended the definition of "bank" in the Bank Holding Company Act ("BHC Act") to include certain banking institutions that had previously been outside that definition (so-called "nonbank banks"). CEBA also contained a grandfather provision that permitted nonbanking companies that controlled nonbank banks as of March 5, 1987, to retain control of the institution and not be treated as a bank holding company for purposes of the BHC Act if the company and its subsidiary nonbank bank observe certain restrictions. These limitations generally restrict nonbank banks from commencing new activities of cross-marketing programs with affiliates after March 5, 1987, increasing their assets at an annual rate of more than 7 percent during any 12-month period commencing after August 10, 1988, or permitting overdrafts on behalf of affiliates or incurring such overdrafts at a Federal Reserve Bank. 12 U.S.C. 1843(f) (2) and (3).

To implement these limitations, the proposed rules: (1) Define the term "activity"; (2) clarify the scope of the cross-marketing limitation; (3) describe how the 7 percent annual asset growth rate will be computed; and (4) clarify the restriction on overdrafts.

This proposed rulemaking also amends the definition of "bank" in Regulation Y to correspond with the definition set forth in CEBA.

DATE: Comments must be submitted on or before July 18, 1988.

ADDRESSES: Comments, which should refer to Docket No. R–0637, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William Wiles, Secretary; or may be delivered to Boom B–2223 between 8:00 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file, and may be inspected at Room B–1122 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information regarding §§ 225.2, 225.51, 225.52 and 225.145, contact J. Virgil Mattingly, Deputy General Counsel (202/452–3430) or Robert D. Frierson, Attorney (202/452–3711); for information regarding § 225.53, contact Oliver I. Ireland, Associate General Counsel (202/452–3625), or Elaine M. Boutilier, Senior Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System; or for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: CEBA amended the Bank Holding Company Act of 1956 ("BHC Act") by expanding the definition of "bank" to include any bank the deposits of which are insured by the Federal Deposit Insurance Corporation as well as any other institution that accepts demand deposits or accounts with third party payment capabilities and is engaged in the business of making commercial loans. This new definition covers certain institutions that had not previously been covered by the BHC Act ("nonbank banks") and prevents banking and nonbanking companies from forming new nonbank banks.

CEBA also contains a grandfather provision that permits a nonbanking company that controlled a nonbank bank on March 5, 1987, to retain the nonbank bank and not be treated as a bank holding company if the company and its subsidiary nonbank bank observe certain limitations designed to prevent unfair competition with banks owned by bank holding companies and to reduce risks posed to the payments system by nonbank banks. With certain limited exceptions, the grandfathered parent company may not acquire more than 5 percent of the assets or shares of any additional bank or thrift institution after March 5, 1987, and the grandfathered nonbank bank may not—

(1) engage in any activity after March 5, 1987, unless it was lawfully engaged in that activity as of March 5, 1987;

(2) offer or market products or services of an affiliate that are not permissible for bank holding companies under the BHC Act or permit its products or services to be offered or marketed by an affiliate engaged in activities not permissible for bank holding companies under the BHC Act, unless the specific cross-marketing activity was conducted as of March 5, 1987, and then only in the same manner as conducted as of that date;

(3) permit an overdraft (including intraday overdrafts) by an affiliate, or incur an overdraft in its account at a Federal Reserve Bank on behalf of an affiliate; and

(4) increase its assets at an annual rate of more than 7 percent during any 12-month period beginning August 10, 1988.[1]

A grandfathered company must divest its nonbank bank within 180 days if the company or nonbank bank fails to comply with any of these limitations. 12 U.S.C. 1843(f)(4).

On August 21, 1987, the Board issued a Statement of Guidance ("Statement") to assist affected companies in complying with CEBA's requirement to report to the Board within 60 days of the statute's enactment regarding their ownership of a nonbank bank. Many of the companies filing these reports raised several questions as to the meaning of CEBA's limitations as they apply to the activities, cross-marketing programs, growth rate and overdrafts of grandfathered nonbank banks and asked the Board to initiate a rulemaking proceeding to implement these limitations. Accordingly, the Board is requesting comment on the following proposed rules that address the issues and questions raised regarding CEBA's limitations on nonbank banks.

1. *Activity limitation.* As noted, CEBA restricts a nonbank bank to those activities in which it was lawfully engaged as of March 5, 1987. A number of companies have asked for guidance on the meaning of the term "activity". In light of the comments and data received and a careful review of the legislative history, the Board believes the term denotes any discrete line of banking or nonbanking business. In applying the definition of activity, the proposed rule focuses on five major categories of activities: deposits, loans, trust services, payment and clearing services, and nonbanking activities.

Deposit Activities. The proposed rule provides that the following deposit-taking activities constitute separate lines of activity for purposes of CEBA: (1) Demand deposits; (2) non-demand deposits from which third-party payments may be made generally; and (3) time or savings deposits. Thus, a nonbank bank that offered only time and savings deposits on March 5 could not begin to offer demand deposits.

Some reporting comanies have commented to the Board that the activity limitation in CEBA intended no distinction between insured demand deposits and other types of deposits if they are also insured. As explained in the interpretive rule, this position is contrary to the express terms of the statute as well as its legislative history. Under the BHC Act, a nonbank bank that refrained from offering demand deposits to avoid being a "bank" before CEBA could not begin to accept demand deposits after enactment of CEBA, because if it had accepted demand deposits on March 5, 1987, it would have been a bank in violation of the BHC Act. As noted, under CEBA a nonbank bank is limited to those activities in which it was *lawfully* engaged on March 5. The interpretation urged by those commenters would permit nonbank banks to convert themselves into full service banks by offering both demand deposits and commercial loans, a result the Senate debates and Conference Report clearly state would not be permitted under the activity limitations.[2]

Lending Activities. For the same reasons a nonbank bank that makes commercial loans cannot accept demand deposits, a nonbank bank that accepts demand deposits but refrained form making commercial loans to avoid coverage under the BHC Act before CEBA, as most of the nonbank banks did, would not be permitted to begin to make commercial loans after CEBA. Such a nonbank bank could not have lawfully made commercial loans prior to CEBA and, therefore, cannot begin to make them after CEBA. The rule would define commercial loan consistent with the Report of Condition and the

[1] 12 U.S.C. 1843(f) (2) and (3).

[2] Comments of Senator Proxmire (floor manager), 133 Cong. Rec. S4054 (March 27, 1987); H. Rep. No. 100–261 100th Cong., 1st Sess. 124–25 (1987).

Supreme Court's decision, to include any loan to a business as well as loans to individuals for business purposes.

The proposed rule delineates three lines of consumer lending activity for purposes of CEBA: consumer lending, loans secured by the borrower's home, and credit card lending activities. As explained in the interpretive rule, this distinction draws upon the Board's bank holding company regulation by analogy. 12 CFR 225.25(b)(1). That regulation as well as the bank Report of Condition treat these types of lending as distinct lines of activity. Under the proposed rule, home equity loans would be treated as a loan secured by the borrower's residence and not as a consumer loan.

The proposed rule provides two additional categories of loans: loans to depository institutions and to state and local governments (but not including the purchase of their securities). To address questions raised by reporting companies, the proposed rule also defines the terms "engaged in" and "as of March 5, 1987" as used in the activity limitation.

Trust Activities. The proposed rule defines trust activities, in accordance with prior Board practice, as falling within the following three categories which provide properly separate activities: (1) Trustee, executor, or administrator for personal trusts and estates; (2) Trustee, investment advisor or investment manager for employee benefit plans; and (3) Corporate trust services, including acting as transfer, paying or fiscal agent.

Clearing and Payment Services. Clearing and payment services reflect a depository institution's orientation toward either consumers or commercial entities. The proposed rule treats the following payment-related services as discrete activities: (1) Transaction services for consumer accounts; (2) transaction services for business accounts; (3) clearing or custody of securities; (4) acting as a correspondent bank for other depository institutions; and (5) acting as a broker or dealer in government securities.

Nonbanking Activities. Finally, consistent with the normal meaning given to the term "activity" under the BHC Act, the proposed rule treats any separate line of nonbanking business as an activity. The proposed rule refers to the list of permissible nonbanking activities under the Board's Regulation Y as examples of separate lines of business activity. That regulation sets out 24 permissible nonbanking activities in broad categories (*e.g.*, data processing, discount securities brokerage, investment advisory services, leasing, management consulting, and foreign exchange activities). 12 CFR 225.25(b). The Board's rules also list other activities that are not permissible but in which some banks engage under state law (*e.g.*, real estate development, real estate brokerage, and real estate syndication). 12 CFR 225.126. The proposed rule points out that a nonbank bank engaged on the grandfather date in one aspect of a nonbanking activity (*e.g.*, leasing airplanes) could lease any type of product (*e.g.*, railroad cars).

2. *Cross-Marketing.* CEBA's second limitation prohibits a grandfathered nonbank bank from engaging in certain cross-marketing activities with an affiliate unless it was so engaged on the March 5, 1987, grandfather date. Unlike the activity limitation, which applies to separate lines of business, the cross-marketing limitation applies product-by-product and service-by-service. Thus, under the statute, nonbank bank may not offer or market the products or services of an affiliate unless the product or service is one that a bank holding company may offer, or allow one of its products or services to be offered or marketed by an affiliate engaged in activities not permissible for a bank holding company. There is an exception for products or services offered or marketed on the grandfather date, but only "in the same manner in which they were being offered or marketed as of that date." To implement this exception, the proposed rule provides that the means of offering or marketing the product or service must remain the same as of the grandfather date. For example, an affiliate not using direct mailings as a marketing technique as of the grandfather date for a particular product or service of a nonbank bank may not commence this type of marketing after the grandfather date. The Board is seeking comment on the effect that this interpretation would have on institutions conducting activities under the cross-marketing exception.

The proposed interpretive rule, which will appear as 225.145, describes the types of permissible cross-marketing permitted by CEBA. The rule also points out that the cross-marketing limitation would not prohibit an affiliate of a nonbank bank that was marketing the bank's boat loans from continuing to market that type of loan product or from changing the specific terms and conditions of the loan. The affiliate could not, however, begin to offer or market another product or service of the bank, such as a deposit account, trust service, or a different loan product.

The proposed rule also clarifies the scope of the grandfather exception to the cross-marketing provision and defines the terms "offer or market" and "as of March 5, 1987" used in that provision.

3. *Seven Percent Annual Asset Growth Limitation.* As noted, a nonbankbank's asset growth under CEBA is limited to an annual rate of 7 percent during any twelve-month period, beginning one year after the date of enactment of CEBA, that is, beginning after August 10, 1988. A number of reporting companies raised questions about the application of this limitation.

In the Statement, the Board indicated that it would use the average asset data from call reports in determining compliance with this limitation in order to minimize regulatoty and reporting burden.[3] The question has arisen, however, as to how the total assets of the institution will be determined on August 10, 1988, the initial base date for applying the limitation. The terms and legislative history of CEBA indicate that during the one year period between August 10, 1987 (the date of enactment of CEBA) and August 10, 1988, the 7 percent growth rate would not be applicable. Accordingly, the proposed rule provides that the growth rate will apply only to periods commencing on or after August 10, 1988.

The proposed rule provides two methods to determine the initial base for computing the growth rate. First, because, as discussed below, the proposed rule seeks to monitor compliance with the growth limit on a quarterly basis using the call reports, the rule provides that the institution may choose to use the average total assets reported on the call report for the quarter ending September 30, 1988, as the initial base for measuing compliance, instead of its actual total assets on August 10, 1988. Use of the average asset figure for the third quarter would avoid additional reports and monitoring problems arising as a result of the growth rate limitation becoming effective in the middle of a reporting quarter.

[3] The Conference Report on CEBA directs the Board "in determining compliance with the 7 percent growth rate, to utilize a procedure which computes the grandfathered institution's growth rate on an average basis." H. Rep. No. 100-261, 100th Cong. 1st Sess. 125 (1987).

Banking institutions with $100 million in assets or more must file with their reports of condition their average total assets over the quarter calculated either on a daily basis or a weekly basis (*i.e.*, an average of the Wednesday of each week of the quarter). Institutions with less than $100 million may report using an average of four month-end figures.

The Board also seeks comment on an alternative which would permit the institution, if it chooses to use the total assets reported on its books on August 10, 1988, as its initial base figure. If the nonbank wishes to use this figure, the proposed rule requires it to report to the Board this amount by September 30, 1988, in order that the Board may monitor compliance with the growth limitation. Under this alternative, compliance with the growth rate for then initial 12-month period (August 10, 1988 to August 9, 1989) will be measured by comparing the bank's average total assets for the third quarter of 1989 with the bank's total assets on August 10, 1988.[4]

Under CEBA, the 7 percent annual growth rate is applied "during any 12-month period" after August 10, 1988. The proposed rule would provide that the growth rate would be applied on a rolling 12-month basis, commencing for those institutions electing to use the average assets for the third quarter of 1988 for the initial base, with the end of the third quarter of 1988 (September 30, 1988). The initial 12-month period for these institutions would expire with the close of the third quarter of 1989 (September 30, 1989). Compliance with the growth rate over this initial 12-month period will be measured by comparing the average total assets reported for the third quarter 1989 with the average total assets reported for the third quarter in the preceding year (*i.e.*, the 3rd quarter 1988).[5] After this initial 12-month period, compliance would be measured for all nonbank banks quarterly by comparing the average total assets from the call report for each quarter after the 3rd quarter 1989 (*i.e.*, the 4th quarter 1989 *et seq.*) with the average total assets for the same quarter in the preceding year (*i.e.*, 4th quarter 1988 *et seq.*). The quarterly monitoring would assure that distortions resulting from seasonal fluctuations in asset growth during the year or window-dressing transactions would be avoided.

4. *Overdrafts.* The fourth limitation on nonbank banks prohibits a nonbank bank from permitting an overdraft for an affiliate and from incurring an overdraft in its account with a Federal Reserve Bank on behalf of an affiliate.[6] All overdrafts by affiliates in their accounts at nonbank banks are prohibited by the statute.[7] To implement the statutory language prohibiting overdrafts on behalf of affiliates by nonbank banks at Federal Reserve Banks, the proposed rule provides that an overdraft by a nonbank bank in the nonbank bank's account at a Federal Reserve Bank shall be deemed to be on behalf of an affiliate whenever: (1) A nonbank bank holds an account for an affiliate from which third party payments can be made; and (2) the aggregate balance of all of an affiliate's accounts with the nonbank bank is less, at the time the nonbank bank incurred an overdraft in its account at a Federal Reserve Bank, than the aggregate balance of all of the affiliate's accounts maintained by the nonbank bank at the opening of business on the day on which the nonbank bank incurred the overdraft.

This proposed rule would define "on behalf of an affiliate" based on activity in the affiliate's accounts at the nonbank bank. Whenever an affiliate draws down or has drawn down the aggregate balance of all its accounts at the nonbank bank during the same time period that the nonbank bank incurs an overdraft at its Reserve Bank, the overdraft will be deemed to be "on behalf of the affiliate." A transfer between an affiliate's accounts at the nonbank bank would not affect the aggregate balance in the affiliate's accounts. The affiliate would not necessarily have to overdraw an account with the nonbank bank for an overdraft at the Reserve Bank to be deemed to be on its behalf; rather, the debits posted to the aggregate of its accounts at the nonbank bank would only have to exceed the credits posted to the aggregate of its accounts on the day of the overdraft prior to or during the time that the overdraft occurred. This proposed rule presumes that any drawdown by an affiliate when the nonbank bank is overdrawn with the Federal Reserve has contributed to the overdraft in the nonbank bank's account at its Reserve Bank, and therefore the overdraft at the Reserve Bank is considered "on behalf of the affiliate." To facilitate administration of this rule, nonbank banks would be required to report to their Reserve Bank accounts held for affiliates from which third party payments could be made.

In addition to the CEBA overdraft restrictions, the Board is considering imposing a zero "cap" for purposes of the Board's general risk reduction program on all nonbank banks that offer to their affiliates accounts with third party payment capabilities. Under the risk reduction program overdrafts in excess of the zero cap would result in counseling by the Reserve Bank or other action as described in the Board's "Policy Statement Regarding Risks on Larger-Dollar Wire Transfer Systems," 50 FR 21,120 (May 22, 1985), rather than divestiture under CEBA. The Board requests comments on the imposition of the zero cap.

Posting. Posting is the procedure whereby the debit or credit adjustments resulting from payments transactions are made to the appropriate account. In order for nonbanks banks to avoid overdrafts at Reserve Banks, they must know when entries will be posted to their accounts. Similarly, posting rules are necessary to determine whether an overdraft has occurred at a nonbank bank. Without posting rules, nonbank banks could evade the purpose of the statute by posting entries at such times of the day as to mask overdrafts. Accordingly, the Board is proposing posting rules for nonbank banks' Federal Reserve accounts and affiliates' accounts at nonbank banks.

These rules are designed solely to control risk in accordance with CEBA. They do not apply to depository institutions not covered by CEBA and are in addition to rules applicable to depository institutions' accounts at Federal Reserve Banks under the Board's general risk reduction policy. These rules differ from those incorporated in the Board's risk reduction policy because they focus solely on loss exposure and do not consider manipulation of cap capacity or other factors that are considered under the general risk reduction policy.

Posting by Federal Reserve Banks. Under the proposed rules, Reserve Banks will post funds and book-entry securities transfers as they are made.

[4] Use of the average total assets for the third quarter 1989 should very closely approximate total assets on August 10, 1989, which date falls very near the center of the third quarter.

[5] For those institutions using the actual August 10, 1988 figure, the initial 12-month period would commence on August 10, 1988 and expire on August 9, 1989. Thereafter, compliance with the growth rate would be measured over the same 12-month periods applicable to institutions that chose to use the 3rd quarter of 1988 as their initial base. For example, for those institutions using the actual August 10, 1989 figure, the second 12-month period would compare average total assets for the fourth quarter of 1989 with the average total assets for the 4th quarter of 1990.

[6] CEBA excludes certain industrial banks from the definition of "bank" in the BHC Act. This exemption is lost, however, if the industrial bank violates the overdraft restriction. The following discussion regarding nonbank banks also applies to industrial banks with the exception of the primary dealer exemption which does not apply to industrial banks.

[7] This overdraft prohibition does not prevent nonbank banks from making loans to affiliates consistent with other laws, *e.g.*, sections 23A and 23B of the Federal Reserve Act, applicable bank lending limits, and CEBA's restriction on new activities. A nonbank bank that was not making commercial loans prior to March 5, 1987, would violate the new activity restrictions of CEBA by making loans to affiliates after that date. Where a debit is posted to an account, overdraws the account, and is not covered by a loan at that time, it is an overdraft and not a loan.

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For check, ACH, and noncash transactions, net settlement entries, and nonelectronic transactions, all credits will be posted as of the opening of business and all debits at the close of business.

With regard to discount window loans, the Board proposes to post credits for discount window loans as of the close of business on the day the loan is made, and to post debits for repayment of loans as of the close of business at the maturity of the loan.

This procedure differs from the posting rules used by the Board's ex post monitoring system under the risk reduction program. Although the ex post monitor method used in the risk reduction program is familiar to depository institutions, the Board believes that it is inappropriate to apply its posting rules to nonbank banks for the purposes of applying the CEBA overdraft restrictions. The ex post monitor posting rules were developed for a voluntary program which does not involve the serious divestiture (or loss of exemption, in the case of industrial banks) consequences that result from an overdraft under CEBA. In some cases, such as overdrafts due to certain ACH debits, divestiture based on the ex post monitor posting rules may be inequitable. The Board is continuing to review the ex post monitor in light of this and other issues, but the posting rules adopted for purposes of CEBA monitoring should not be considered a precedent for any revisions to the ex post monitor.

In addition to the posting rules, Reserve Banks will pay particular attention to depository transfer checks and ACH cash concentration debits used by affiliates of nonbank banks. These transactions are likely to present risks that are not addressed by the proposed posting rules. For example, where an affiliate of a nonbank bank deposits depository transfer checks with a nonbank bank in order to transfer funds to its account at the nonbank bank from its account at another depository institution, it is likely that the check will be returned in the event of failure of the affiliate. Failure of the affiliate, in turn, may precipitate failure of the nonbank bank. The returned check will come back to the Federal Reserve after the day when the credits for these transactions are posted to a nonbank bank's account, and therefore the risks presented by these returns are not addressed by posting rules. Consequently, where appropriate to protect against risk of return of these transactions, nonbank banks may be required to establish a special clearing balance at their Reserve Bank to be maintained at all times at a sufficient level to protect against these risks.

Posting by Grandfathered Banks. Because depository institutions' rights with respect to their customers differ from the rights that a Reserve Bank has with respect to transactions that it processes, particularly in the area of check and ACH transactions, the posting rules do not require nonbank banks to post all transactions for CEBA monitoring purposes at the same time that the transactions are posted by Reserve Banks. The Board proposes to permit nonbank banks to post checks and ACH transfers at any time during the day of the transaction—*i.e.*, settlement day for ACH transactions or the day of presentment or credit to the nonbank bank for check transactions—so long as debits are posted no later than the time that the nonbank bank's account at the Reserve Bank is debited for the transaction for purposes of CEBA overdraft monitoring, and credits are posted no earlier than the time when the credit for the transaction is posted to the nonbank bank's account for the purposes of CEBA overdraft monitoring. Accordingly, nonbank banks may keep two sets of books for posting: one for affiliates and another for the rest of its customers. No posting to an affiliate's account is necessary if a nonbank bank returns a check or an ACH debit transfer in accordance with applicable law.

Exemptions. CEBA provides two exemptions from the restriction on overdrafts. One exemption is for overdrafts on behalf of an affiliate that is a primary dealer, where the overdraft is fully secured;[8] and the other exemption is for inadvertent computer or inadvertent accounting errors that are beyond the control of both the grandfathered bank and the affiliate.

Primary Dealers. CEBA defines a primary dealer as one that is recognized as a primary dealer by the Federal Reserve Bank of New York. Currently, there are 42 such primary dealers, but only eight are affiliated with nonbank banks. Some of these eight primary dealers do not currently clear book-entry securities transfers through their nonbank banks.

CEBA does not prohibit primary dealers from incurring overdrafts at affiliated nonbank banks and the affiliated nonbank banks from incurring overdrafts at their Federal Reseve Bank on behalf of the primary dealer affiliate, provided that these overdrafts are fully secured, "as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve Book entry system." [9] The proposed regulation defines "fully secured" as secured by a fully perfected security interest in specific, identified obligations listed in the statute with a market value that, in the Reserve Bank's judgment, is sufficiently in excess of the amount of the overdraft to provide a margin of protection against a volatile market or the chance that the securities would need to be liquidated quickly.

The Board is considering establishing a cap or ceiling on the level of securities-related overdrafts to be permitted by any one nonbank bank. Such a cap would be set through self-evaluation procedures similar to those used in the risk reduction program, and nonbank banks exceeding the cap would be counseled or subject to other action by their Federal Reserve Bank, in accordance with the Board's risk reduction policy. The Board requests comment on the appropriateness of establishing such a cap. Although CEBA exempts secured primary dealer overdrafts from the overdraft restrictions, the legislative history of DEBA clearly indicates that Congress was not confering a right to overdrafts at the Federal Reserve on primary dealers. Nonbank banks affiliated with primary dealers may have limited abilities to fund themselves in the markets and therefore may place undue reliance on access to the discount window or otherwise unnecessary requests for extensions of Fedwire to complete deliveries of inventories of securities that it is not able to fund overnight.

Inadvertent Errors. CEBA also exempts from the overdraft restrictions those overdrafts resulting from inadvertent computer or inadvertent accounting errors that are beyond the control of both the nonbank and the affiliate. The proposed regulation defines such inadvertent errors as those resulting in an overdraft that was not reasonably foreseeable or preventable by the nonbank bank or the affiliate. A misposting of an entry by a Reserve Bank would not result in an overdraft in a nonbank's account because no extension of credit had been made. Similarly, a misposting of an entry by a nonbank bank to an affiliate's account would not result in an overdraft.

Inadvertent computer errors would include problems where a nonbank bank or affiliate could not avoid book-entry securities overdrafts from inbound securities transfers, because it could not originate off-setting outbound transfers of securities or where a nonbank bank received a book-entry securities transaction sent to it in error. On the other hand, if a Federal Reserve Bank's computer should go down so as to prevent a Fedwire funds transfer from being sent to the nonbank bank, any overdraft due to outbound Fedwire funds transfers would be within the control of the nonbank bank, because the nonbank bank could have waited until it had sufficient funds in its account to cover the outbound transfer.

5. *Other Issues:* Four nonbank banks that had not commenced business as of the date of enactment of CEBA filed reports with the Board claiming grandfather rights under CEBA. The proposed rule states that these institutions do not qualify for grandfather rights under the terms of CEBA.

In order to be entitled to grandfather rights under CEBA, the nonbank bank must have become a bank as a result of enactment of CEBA and may only engage in activities in which it was engaged on March 5, 1987. An institution that was not FDIC-insured and did not accept demand deposits or make commercial loans on the March 5 grandfather date or on August 10, 1987, the date of enactment of CEBA, would not have become a bank as a result of enactment of CEBA. Thus, it would not be entitled to grandfather rights. Indeed, even if the nonbank bank somehow were entitled to grandfather rights, its activities would be limited to those in which it was lawfully engaged on March 5. On that date, the four nonbank banks had not commenced operations and therefore were not engaged in any activities. Thus, they could not thereafter commence any activities without loss of their grandfather privileges.

Finally, the rule notes that under the terms of CEBA, a company that controls a nonbank bank would lose its grandfather status if it or the subsidiary bank acquires an additional bank or thrift or violates the activity limitations in CEBA.

Initial Regulatory Flexibility Act Analysis

Of the items required to be obtained in an initial regulatory flexibility analysis by 5 U.S.C. 603(b), the first ("a description of the reasons why action by the agency is being considered") and the second ("a succinct statement of the objectives of, and legal basis for, the proposed rule") are found elsewhere in this preamble.

The proposed rule contains reporting and record-keeping requirements for purposes of measuring overdrafts and annual growths. CEBA requires the Board to enforce the prohibition on overdrafts and the limit on annual growth enacted by CEBA. To do so, the Board must have a means of measuring those overdrafts and the annual growth. The Board proposes that all of these requirements be applicable to all nonbank banks and industrial banks subject to the rule regardless of size. The small entities most likely to be affected by this rulemaking are the industrial banks that are subject to the limitations on overdrafts. According to Board records on overdrafts under the current risk reduction policy, however, very few industrial banks reporting to the Board have incurred overdrafts since the enactment of CEBA. Thus, it does not appear that a substantial number of industrial banks will be affected by the rule. The Board considered exempting small banks from the rule's requirements, but CEBA does not provide an exemption according to the size of the nonbank bank or industrial bank.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), the Board proposes to amend 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3108, 3108, 3907 and 3909.

2. In § 225.2 paragraphs (a) through (f) and (g) through (l) are redesignated as paragraphs (b) through (g) and (i) through (n) respectively; new paragraphs (a) and (h) are added; and newly redesignated paragraph (b) is revised to read as follows:

§ 225.2 Definitions.

* * * * *

(a) "Affiliate" means any company that controls, is controlled by, or is under common control with, a bank or nonbank bank.

(b)(1) "Bank" means:

(i) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h); or

(ii) An institution organized under the laws of the United States which both:

(A) Accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) Is engaged in the business of making commercial loans.

(2) The term "bank" does not include those instititutions qualifying under the exceptions listed in section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

* * * * *

(h) "Nonbank bank" means any insitution that:

(1) Became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. No. 100-86), on the date of such enactment (August 10, 1987); and

(2) Was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

* * * * *

3. Subpart F, consisting of §§ 225.51 through 225.53, is added immediately following Subpart E to read as follows:

Subpart F—Limitations on Nonbank Banks

Sec.
225.51 Limitations on activities.
225.52 Limitation on annual rate of asset growth.
225.53 Limitation on overdrafts.

Subpart F—Limitations on Nonbank Banks

§ 225.51 Limitation on activities.

(a) *General limitation.* A nonbank bank may not engage in any activity in which such nonbank bank was not lawfully engaged as of March 5, 1987.

(b) *Activity defined.* For purposes of the limitation in this section, the term "activity" means any line of banking or nonbanking business. The following lines of banking or nonbanking business shall be considered a separate activity for purposes of paragraph (a) of this section:

(1) Taking demand deposits;

(2) Taking other deposits with general third-party payment powers, such as NOW accounts or other non-demand transaction accounts;

(3) Taking time or savings deposit accounts without third-party payment powers;

[8] This exemption does not aply to industrial banks.

[9] An overdraft is on behalf of a primary dealer affiliate only to the extent that the primary dealer has drawn down its accounts at the nonbank bank on that day.

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(4) Making commercial loans (as defined in Schedule RC–C to the Report of Condition) as well as commercial real estate loans, agricultural loans, and loans to individuals for other than family, household, personal or charitable purposes;

(5) Making loans to depository institutions;

(6) Holding obligations (other than securities) of states and political subdivisions in the U.S. (as defined in Schedule RC–C of the Report of Condition);

(7) Making loans to individuals for personal, household, family, or charitable purposes (other than loans described in paragraphs (b) (6) and (9) of this section);

(8) Making loans secured by the borrower's residence;

(9) Credit card lending;

(10) Acting as a trustee, executor, administrator, guardian, managing agent, custodian or in any similar capacity for personal accounts;

(11) Acting as a trustee, investment advisor, or investment manager for employee benefit plans or investment companies registered under the Investment Company Act of 1940;

(12) Acting as a corporate trustee, including registrar, transfer agent, paying agent, fiscal agent, custodian of assets, or any similar capacity;

(13) Providing transaction services for consumer accounts;

(14) Providing transaction services for business accounts;

(15) Providing clearing or custody for securities; and

(16) Acting as a correspondent for other depository institutions.

(17) Engaging in any nonbanking activity, such as underwriting government and other obligations that state member banks are authorized to underwrite, dealing in such securities, acting as a broker for securities, providing investment advice, acting as an insurance agent, acting as a futures commission merchant, or any other activity listed in § 225.25(b) of Subpart C or § 225.128 of this part is considered to be a separate activity for purposes of this section.

§ 225.52 Limitation on Annual Rate of Asset growth.

(a) *Seven percent annual growth rate limitation.* A nonbank bank shall not increase its assets at an annual rate of more than 7 percent during any 12-month period specified in subsection (b).

(b) *Period for determining compliance.* Except as provided in paragraph (d) of this section, a nonbank banks's annual rate of asset growth for purposes of this section shall be determined on a rolling twelve-month basis, commencing initially with the end of the third calendar quarter of 1988 and commencing thereafter with the end of each succeeding calendar quarter *(i.e.* December 31, March 31, June 30, September 30 *et seq.*).

(c) *Computation of annual rate of asset growth.* A nonbank bank's annual rate of asset growth for purposes of this section for each 12-month period described in paragraph (b) of this section shall be computed by comparing its average total assets as reported on Schedule RC–K of its Report of Condition for each calendar quarter ending after August 10, 1988, with the average total assets of the nonbank bank as reported on Schedule RC–K of its Report of Condition for the same calendar quarter of the previous year.

(d) *Alternative method for computing growth over initial 12-month period.* In lieu of using the average total assets for the third quarter of 1988 as the initial base figure for computing the growth rate as described in paragraph (b) of this section, a nonbank bank may elect to use as its initial base for applying the annual growth rate specified in paragraph (a) of this section its total assets as of August 10, 1988, provided it reports to the Board by September 30, 1988 this figure. For such an institution, compliance with the growth rate for the initial 12-month period commencing August 10, 1988, and expiring August 9, 1989, shall be measured by comparing the average total assets reported by the institution on Schedule RC–K of its Report of Condition for the third quarter of 1989 with its total assets on August 10, 1988. For 12-month periods commencing with the fourth quarter of 1988, compliance by such institutions with paragraph (a) of this section shall be measured in accordance with paragraphs (b) and (c) of this section.

§ 225.53 Limitation on overdrafts.

(a) *Definitions.* For purposes of this section—

(1) "Account" means a reserve account, clearing account, or deposit account as defined by the Board's Regulation D (12 CFR 204.2(a)(1)(i)), that is maintained at a Federal Reserve Bank or nonbank bank.

(2) "Cash item" means:

(i) A check other than a check classified as a noncash item; or

(ii) Any other item payable on demand and collectible at par that the Federal Reserve Bank of the District in which the item is payable is willing to accept as a cash item.

(3) "Discount window loan" means any credit extended by a Federal Reserve Bank to a nonbank bank pursuant to the provisions of the Board's Regulation A (12 CFR Part 201).

(4) "Inadvertent accounting error" means an error involving the recordation of entries to an account of a nonbank bank or affiliate that results in an overdraft that was not reasonably foreseeable or could not have been prevented through the maintenance of procedures reasonably adopted by the nonbank bank or the affiliate to avoid such overdraft.

(5) "Inadvertent computer error" means an error resulting from a computer malfunction or from computer processing of adjustments in an account of a nonbank bank or affiliate, or initiation of transactions with a nonbank bank or affiliate, that results in an overdraft that was not reasonably foreseeable or could not have been prevented through the maintenance of procedures reasonably adopted by the nonbank bank or the affiliate to avoid such overdraft.

(6) "Industrial bank" means an institution as defined in 12 U.S.C. 1841(c)(2)(H).

(7) "Noncash item" means an item handled by a Reserve Bank as a noncash item under the Reserve Bank's "Collection of Noncash Items Operating Circular" (*e.g.*, a maturing bankers' acceptance or a maturing security, or a demand item, such as a check with special instructions or an item that has not been preprinted or post-encoded).

(8) "Other nonelectronic transactions" include all other transactions not included as funds transfers, book-entry securities transfers, cash items, noncash items, automated clearing house transactions, net settlement entries, and discount window loans (*e.g.*, original issue of securities or redemption of securities).

(9) An "overdraft" occurs whenever the Federal Reserve Bank, nonbank bank or industrial bank holding an account posts a transaction to the account of the nonbank bank, industrial bank or affiliate that exceeds the balance of the account as determined by the posting rules set forth in paragraphs (d) and (e) of this section.

(10) "Transfer item" means an item as defined in Subpart B of Regulation J (§ 210.25 *et seq* of this title).

(b) *Restriction on overdrafts*—(1) *Affiliates.* Neither a nonbank banks nor an industrial bank shall permit any affiliate to incur any overdrafts in an account with the nonbank bank or industrial bank.

(2) *Nonbank banks or industrial banks.* (i) Neither a nonbank bank nor an industrial bank shall incur any overdraft in its account at a Federal Reserve Bank on behalf of an affiliate.

(ii) An overdraft by a nonbank bank or industrial bank in its account at a Federal Reserve Bank shall be deemed to be on behalf of an affiliate whenever: (A) A nonbank bank or industrial bank holds an account for an affiliate from which third-party payments can be made; and (B) the aggregate balance of all of the affiliate's accounts with the nonbank bank or industrial bank is less, at the time the nonbank bank or industrial bank incurred an overdraft in its account at a Federal Reserve Bank, than the aggregate balance of all of the affiliate's accounts maintained by the nonbank bank or industrial bank at the opening of business on the day on which the nonbank bank or industrial bank incurred the overdraft in its account at the Federal Reserve Bank.

(c) *Permissible overdrafts*—(1) *Inadvertent error.* An overdraft by a nonbank bank or its affiliate, or an industrial bank or its affiliate that results from an inadvertent computer error or inadvertent accounting error (as defined in paragraph (a) of this section) is a permissible overdraft not subject to paragraph (b) of this section.

(2) *Fully secured primary dealer affiliate overdrafts.* (i) An overedraft is a permissible overdraft not subject to paragraph (b) of this section if:

(A) The overdraft is incurred by an affiliate of a nonbank bank, which affiliate is recognized as a primary dealer by the Federal Reserve Bank of New York in the affiliate's account at the nonbank bank, or if the overdraft is incurred by a nonbank bank on behalf of its primary dealer affiliate in the nonbank bank's account at a Federal Reserve Bank; and

(B) The overdraft is fully secured by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book-entry system.

(ii) An overdraft is fully secured under paragraph (c)(2)(i) of this section when the nonbank bank can demonstrate that the overdraft is secured, at all times, by a fully-perfected security interest in specific, identified obligations described in paragraph (c)(2)(i) of this section with a market value that, in the judgment of the Reserve Bank holding the nonbank bank's account, is sufficiently in excess of the amount of the overdraft to provide a margin of protection in a volatile market or in the event the securities need to be liquidated quickly.

(d) *Posting by Federal Reserve Banks.* For purposes of determining the balance of an account under this section, payments and transfers by nonbank banks and industrial banks processed by the Federal Reserve Banks shall be considered posted to their accounts at Federal Reserve Banks as follows:

(1) *Funds transfers.* Transfer items shall be posted:

(i) To the transferor's account at the time the transfer is actually made by the transferor's Federal Reserve Bank;

(ii) To the transferee's account at the time the transferee's Reserve Bank sends the transfer item or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(2) *Book-entry securities transfers against payment.* A book-entry securities transfer against payment shall be posted:

(i) To the transferor's account at the time the entry is made by the transferor's Reserve Bank; and

(ii) To the transferee's account at the time the entry is made by the transferee's Reserve Bank.

(3) *Discount window loans.* Credit for a discount window loan shall be posted to the account of a nonbank bank or industrial bank as of the close of business on the day the loan is made. Debit for repayment of a discount window loan shall be posted to the account of the nonbank bank or industrial bank as of the close of business on the day of maturity of the loan.

(4) *Automated clearing house transfers, cash items, noncash items, net settlement entries and other nonelectronic transactions.* Total aggregate credits for these transactions and entries shall be posted to the account of a notebank bank or industrial bank as of the opening of business on settlement day. Total aggregate debits for these transactions and entries shall be posted to the account of a nonbank bank or industrial bank as of the close of business on settlement day.

(e) *Posting by nonbank banks and industrial banks.* For purposes of determining the balance of an affiliate's account under this section, payments and transfers through an affiliate's account at a nonbank bank or industrial bank shall be posted as follows:

(1) *Funds transfers.* (i) Fedwire transfer items shall be posted:

(A) To the transferor affiliate's account no later than the time the transfer is actually made by the transferor's Federal Reserve Bank;

(B) to the transferee affiliate's account no earlier than the time the transferee's Reserve Bank sends the transfer item, or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(ii) For funds transfers not sent or received through Federal Reserve Banks, debits shall be posted to the transferor affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer. Credits shall not be posted to the transferee affiliate's account before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(2) *Book-entry securities transfers against payment.*

(i) A book-entry securities transfer against payment shall be posted: (A) To the transferor affiliate's account not earlier than the time the entry is made by the transferor's Reserve Bank; and (B) to the transferee affiliate's account not later than the time the entry is made by the transferee's Reserve Bank.

(ii) For book-entry securities transfers against payment that are not sent or received through Federal Reserve Banks, entries shall be posted:

(A) To the buyer-affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer; and

(B) To the seller-affiliate's account not before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(3) *Credits.* Credits for cash items, noncash items, ACH transfers, net settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account by the nonbank bank or industrial bank on the day of the transaction (i.e., settlement day for ACH transactions or the day of credit for check transactions), but no earlier than the Federal Reserve Bank's opening of business on that day.

(4) *Debits.* (i) Debits for cash items, noncash items, ACH transfers, net settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account by the nonbank bank or industrial bank on the day of the transaction (*e.g.*, settlement day for ACH transactions or the day of presentment for check transactions), but no later than the Federal Reserve Bank's close of business on that day.

(ii) If a check drawn on an affiliate's account or an ACH debit transfer received by an affiliate is returned by the nonbank bank or industrial bank in accordance with applicable law and agreements, no entry need be posted to the affiliate's account for such time.

(f) *Reporting requirements*—(1) *Initial report.* Any nonbank bank or industrial bank that holds an account for any affiliate from which third-party payments can be made shall report to

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the Board within 60 days of the final adoption of this rule all such accounts offered to affiliates.

(2) *Continuing reports.* Whenever a nonbank bank or industrial bank opens or closes an account from which third-party payments can be made for an affiliate, it shall immediately report such action to the Board.

4. § 225.145 is added to read as follows:

§ 225.145 Limitations established by the Competitive Equality Banking Act of 1987 on the activities and growth of nonbank banks.

(a) *Introduction.* Effective August 10, 1987, the Competitive Equality Banking Act of 1987 ("CEBA") redefined the term "bank" in the Bank Holding Company Act ("BHC Act") to include any bank the deposits of which are insured by the Federal Deposit Insurance Corporation as well as any other institution that accepts demand or transaction accounts and is engaged in the business of making commercial loans. 12 U.S.C. 1841(c). CEBA also contained a grandfather provision for certain companies affected by this redefinition. CEBA amended section 4 of the BHC Act to permit a company that on March 5, 1987, controlled a nonbank bank (an institution that became a bank as a result of enactment of CEBA) and that was not a bank holding company on August 9, 1987, to retain its nonbank bank and not be treated as a bank holding company for purposes of the BHC Act if the company and its subsidiary nonbank bank observe certain limitations imposed by CEBA.[1] These limitations are codified in sections 4(f)(2) and (3) of the BHC Act and generally restrict nonbank banks from commencing new activities or cross-marketing programs with affiliates after March 5, 1987, increasing their assets at an annual rate exceeding 7 percent during any 12 month period after August 10, 1988, or permitting overdrafts on behalf of affiliates or incurring such overdrafts at a Federal Reserve Bank. 12 U.S.C. 1843(f)(2) and (3). CEBA also prohibits, with certain limited exceptions, a company controlling a grandfathered nonbank bank from acquiring directly or indirectly after March 5, 1987, more than 5 percent of the assets or shares of a bank or thrift institution. During the course of the Board's consideration of the reports required by CEBA to be filed with the Board by companies that controlled nonbank banks on March 5, 1987, several questions arose as to the scope of these limitations. The Board's views regarding these questions are set forth below and in Subpart F of Regulation Y. (12 CFR Part 225).

(b) *Congressional Findings.* At the outset, the Board notes that the scope and application of the Act's limitations on nonbank banks must be guided by the Congressional findings set out in section 4(f)(3) of the BHC Act. In that section, Congress found that nonbank banks controlled by grandfathered companies, because of their relationships with affiliates, may be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness. Congress also found that nonbank banks may be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. Accordingly, section 4(f)(3) states that the purpose of the nonbank bank limitations is to minimize any potential adverse effects or inequities by restricting the activities of nonbank banks until further Congressional action in the area of bank powers could be undertaken. Similarly, the Senate Report accompanying CEBA states that the restrictions CEBA places on nonbank banks "will help prevent existing nonbank banks from changing their basic character * * * while Congress considers proposals for comprehensive legislation; from drastically eroding the separation of banking and commerce; and from increasing the potential for unfair competition, conflicts of interest, undue concentration of resources, and other adverse effects." S. Rep. No. 100–19, 100th Cong., 1st Sess. 12 (1987). See also H. Rep. No. 100–261, 100th Cong., 1st Sess. 124 (1987), (the "Conference Report").

(c) *Activity Limitation*—(1) *Activity Defined.* The first limitation established under section 4(f)(3) restricts a nonbank bank to those activities in which it was lawfully engaged as of March 5, 1987. Consistent with the terms and purposes of the legislation and the explicit Congressional directive to minimize potential adverse potential adverse effects or inequities by limiting the activities of grandfathered nonbank banks, the Board believes that the term activity" in this limitation means any line of banking or nonbanking business. This definition does not, however, envision a product-by-product approach to the activity limitation. The Board believes it would be helpful to set out the considerations it will take into account in applying the activity limitation of section 4(f)(3) in the context of the following major categories of bank activities: deposit-taking, lending, trust or fiduciary services, clearing or payment services, and other types of activities engaged in by banks.

(2) *Types of Deposit-Taking Activities.* With respect to deposit-taking, the Board believes that there would generally be at least three distinct types of activity for purposes of section 4(f)(3): Demand deposits, other accounts with general third party payment powers, such as NOW accounts, and time and savings accounts without general third party payment powers. In reaching this conclusion, the Board has relied on the fact that the BHC Act's definition of "bank" itself distinguishes between demand deposit-taking, non-demand transaction accounts, and other forms of deposit activities. Moreover, it is clear from the terms and intent of CEBA that the activity limitation in section 4(f)(3) would prevent, and was designed to prevent, nonbank banks that prior to the enactment of CEBA had refrained from accepting demand deposits in order to avoid coverage as a "bank" under the BHC Act, from starting to take these deposits after enactment of CEBA and thus becoming full-service banks.

(3) *Demand Deposit-Taking Activity.* Under the activity limitation, a nonbank bank may engage only in activities in which it was "lawfully engaged" as of March 5, 1987. Because the nonbank bank could not have been engaged lawfully on March 5, 1987, in both demand deposit and commerical lending activity, the nonbank bank could not thereafter commence the demand deposit-taking or commerical lending activity that it did not conduct on March 5, 1987. The legislative history of this provision confirms this reading. Both the Senate and the Conference Reports regarding CEBA state that this provision confining nonbank banks to activities in which they were lawfully engaged on March 5, 1987, would "prevent[ing] the nonbank bank from, for example, both offering demand deposits and engaging in the business of making commercial loans * * *". H. Rep. No. 100–261 at 124–25; S. Rep. No. 100–19 at 32. The Board notes that absent this interpretation a nonbank bank that acceptd only savings and time deposits and made both consumer and commercial loans could, contrary to the stated purpose of the CEBA, convert

[1] 12 U.S.C. 1843(f). Such a company is treated as a bank holding company, however, for purposes of the anti-tying provisions in section 106 of the BHC Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) and the insider lending limitations of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b). The company is also subject to certain examination and enforcement provisions to assure compliance with CEBA.

itself into a full-service bank. For these reasons, the Board concludes that the term "activity" in section 4(f)(3) differentiates between demand deposits and other types of deposit activity and that an institution that accepted only time and savings deposits as of March 5, 1987, would be engaged in a new activity if it began to accept demand deposits after that date.

(4) *Transaction Accounts.* Similarly, the Board considers nondemand deposits withdrawable without restriction by check or other similar means to constitute a separate line of business for purposes of applying the activity limitation in section 4(f)(3). Thus, an institution that on March 5, 1987, offered only time and savings accounts that were not withdrawable by check could not thereafter begin a transaction account business by offering, for example, NOW accounts or other types of transaction accounts. In this regard, the Board notes that historically the provision of checking accounts has been viewed as a separate activity and in the past served to differentiate commercial banks and thrifts institutions, industrial banks and similar institutions. The conduct of this activity also involves different expertise and technical programs than is involved in offering non-checking savings and time deposits. As noted above, the definition of bank in the BHC Act as amended by CEBA also itself distinguishes between demand deposits, transaction accounts and other non-checkable deposits.

(5) *Lending Activities Generally.* With respect to lending activity, CEBA and the BHC Act also distinguish between commerical and consumer lending and, in the Board's view, these types of lending constitute separate and distinct lines of business or activity for purposes of CEBA. Under the definition of "bank" in the BHC Act in effect both prior to and after enactment of CEBA, a nonbank bank that offered demand deposits and made consumer loans could not engage in the business of making commercial loans without losing its nonbank bank status. Thus, insofar as the bank definition is concerned, commerical lending is an activity separate and apart from other types of lending.

(6) *Commerical Lending Activity.* As noted, the activity limitation in section 4(f)(3) of CEBA would prevent a nonbank bank from both offering demand deposits and engaging in the business of making commercial loans since such an institution could not have been "lawfully engaged" in both of these activities on March 5, 1987, insofar as the BHC Act is concerned. Moreover, in order for the activity restriction to achieve its stated legislative purpose of preventing a nonbank bank from offering both demand deposits and commerical loans (H. Rep. No. 100–261 at 124–25), the term "activity" in section 4(f)(3) must differentiate between commerical and consumer lending. Otherwise, there would be nothing to prevent a nonbank bank that accepted deposits and made consumer but not commerical loans as of March 5, 1987, as many of the nonbank banks stated in their CEBA reports, from commencing this activity after that date without loss of grandfather privileges under CEBA. Accordingly, the Board concludes that such a nonbank bank would be engaged in a new activity if it began to make commerical loans after that date and would lose its entitlement to grandfather rights under CEBA.

(7) *Legislative History.* The Board notes that the legislative history of a predecessor to this provision of CEBA states that the activity limitation for nonbank banks was intended "to prevent an institution engaged in a limited range of functions from expanding into new areas and becoming, in essence, a full-service bank". H. Rep. No. 99–175, 99th Cong., 1st Sess. 13 (1985). The House Report goes on to state that, "[t]hus, in particular a nonbank bank that is a 'consumer bank' (i.e., it engaged in no commerical lending to avoid the existing definition of bank) would not be permitted to begin to engage in commerical lending after being grandfathered under this Act." *Id.*

(8) *Other Types of Consumer Lending Activity.* The proposed rule differentiates between three distinct lines of consumer lending activity for purposes of CEBA: consumer lending, loans secured by the borrower's residence, and credit card lending activities. This distinction between types of specialized lending is reflected in the Board's regulations that specify the types of lending activities permissible for bank holding companies. Section 225.25(b)(1) of the Board's Regulation Y (12 CFR 225.25(b)(1)) reflects the separate types of lending activity conducted by specialized companies offering consumer loans, credit cards, mortgage loans and commerical finance. The Board believes that a credit card business as well as home mortgage lending are recognized, discrete lines of business activity. Indeed, CEBA itself recognizes a distinction in the case of credit card activity by creating a specific exemption from the bank definition for banks that engage only in credit card operations. The Board has also approved a number of proposals by bank holding companies to establish specialized credit card banks, and has long permitted bank holding companies to engage in the mortgage lending business as a separate line of business activity. In light of existing law, industry practice and the legislative history of CEBA, the Board concludes that credit card lending and lending secured by the borrower's residence would constitute separate lines of lending activity for purposes of applying the limitation on nonbank bank activities in section 4(f)(3). Thus, a nonbank bank that was engaged in consumer lending activity as of March 5, but did not engage in home mortgage lending or credit card lending would not be able to commence these activities after March 5 without loss of its grandfather benefits under CEBA.

(9) *Change in Types of Consumer Loans Permitted.* This interpretation of the term "activity" would not prohibit a bank that was offering one type of consumer loan on the grandfather date from offering a different type of consumer loan thereafter. For example, a bank that offered consumer automobile loans on the grandfather date could offer consumer boat loans thereafter, but could not commence a mortgage lending business or credit card business unless it was so engaged on March 5, 1987. See H. Rep. No 99–175, *supra* at 13 (a grandfathered nonbank bank could offer a customer a consumer loan to purchase a boat even if no such loans were outstanding on the grandfather date, if other consumer loans, such as consumer loans to purchase a car, were outstanding on that date). Similarly, a nonbank bank that was lawfully engaged in the commercial lending business as of March 5, 1987, could offer any type of commercial loan thereafter and would not be limited to the precise types of commercial loans offered on March 5.

(10) *Definition of Commercial Loans.* For purpose of the activity limitation, the Board believes the term "commercial loan" should include loans to sole proprietorships, partnerships, corporations and other business enterprises, whether secured or unsecured, as defined in Schedule RC–C of the report of condition, as well as commercial real estate loans, and agricultural loans, and loans to individuals for the purposes other than personal, family, household, or charitable purposes. It should be noted, however, that the nonbank bank could not engage in other types of lending, such as issuance of standby letters of

credit of foreign exchange. The determination as to whether other types of lending or lending-type activity would constitute a new activity would depend upon the characteristics of the lending activity and should not be commenced without discussion with the Board.

(11) *Loans to Depository Institutions.* Loans to depository institutions are not included under the activity "commercial loan," but would constitute a separate and distinct activity. This lending activity constitutes a unique service, generally referred to as the federal funds market, in which all types of depository institutions participate. It has traditionally been treated separately from the commercial lending market and the Board believes it should continue to be regarded as a separate and distinct activity.

(12) *Trust Activities.* With respect to trust activities, the Board has traditionally viewed these activities as falling within three main categories: trustee, executor, or administrator for personal trusts and estates; trustee, investment advisor, or investment manager for employee benefit plans; and corporate trust services, including voting as transfer, paying or fiscal agent. Accordingly, these lines of activity would properly constitute separate activities under section 4(f) (3).

(13) *Clearing and Payment Activities.* Clearing and payments services also include several distinct activities. These activities reflect, in part, a depository institution's orientation toward either consumer or commercial entities. Accordingly, the Board considers the following payment-related services to be examples of discrete activities: transaction services for consumer accounts; transaction services for business accounts; clearing or custody of securities; clearing merchant credit card drafts; and acting as a correspondent bank for other depository institutions.

(14) *Transaction Services.* Transaction services for consumer accounts include but are not limited to check-based payment services, receiving preauthorized transactions (e.g. automated clearinghouse transactions), limited funds transfers (*e.g.* through Fedwire or CHIPS), and providing consumers access to a point-of-sale network. Transaction services for business accounts include, but are not limited to, check-based payment services, originating and receiving preauthorized transactions (e.g. automated clearinghouse transactions), funds transfers (e.g. through Fedwire or CHIPS), and operating a point-of-sale network for the use of business customers. The distinction between consumer transaction services and business transaction services is consistent with the distinction in the BHC Act between commercial and consumer lending.

(15) *Securities Clearing and Custody.* The Board considers clearing and custody of securities, unrelated to trust activities, as a safekeeping or agency activity involving investment instruments and therefore an activity separate and different from funds based transaction services.

(16) *Correspondent Services.* The Board considers providing correspondent services to other depository institutions.

(17) *Nonbanking Activities.* With respect to other types of nonbanking activity, section 4(f) (3) would not permit a grandfathered nonbank bank to expand into new business activities. Thus, for example, a grandfathered nonbank bank could not commence after March 5, 1987, any new types of nonbanking activities, including, for example, discount securities brokerage, full service securities brokerage for financially sophisticated customers, investment advisory services, acting as a broker or dealer in government securities or other bank-eligible securities, acting as an underwriter in government securities, foreign exchange advisory or transaction services, personal property leasing, real property leasing, data processing for third parties, insurance agency activities, insurance underwriting, management consulting, futures commission merchant, or any of the other types of nonbanking activities listed in § 225.25(b) of Regulation Y or that have been determined to be impermissible for bank holding companies (e.g. real estate investment and development or real estate syndication). A nonbank bank engaged on the grandfather date in one aspect of nonbanking activity (*e.g.* leasing airplanes) could commence leasing any type of product (*e.g.* railroad cars).

(18) *Meaning of "Engaged in".* In order to be "engaged in" an activity, a nonbank bank must demonstrate that it had a program in place to provide a particular product or service associated with the grandfathered activitiy to a customer and that it was in fact offering the product or service to the customer as of March 5, 1987. Thus, a nonbank bank is not engaged in an activity as of March 5, 1987, if the product or service in question was in a planning state as of that date but had not been offered or delivered to a customer. Consistent with prior Board interpretations of the term activity in the grandfather provisions of section 4, the Board does not believe that a company may be engaged in an activity on the basis of a single isolated transaction. For example, a nonbank bank that held an interest in a single real estate project would not thereby be engaged in real estate development for purposes of this provision, unless evidence was presented indicating the interest was held under a program to commence real estate investment or development business.

(19) *Meaning of "As of".* The board believes that the grandfather date "as of March 5, 1987" as used throughout section 4(f)(3) should refer to activities engaged in on March 5, 1987, or a reasonably short period preceding this date not exceeding thirteen months. Activities that the institution had terminated prior to March 5, 1988, however, would not be considered to have been conducted or engaged in "as of" March 5. Moreover, in order for the activity to qualify as being conducted "as of" March 5, it must have been conducted while the institution was a nonbank bank. Activities conducted while the institution was a full-service bank but not after it was converted to a nonbank bank, would not be permissible for the nonbank bank even if the activity had been conducted within a few months of March 5, 1987.

(d) Cross-Marketing Activity—(1) *In General.* Section 4(F)(3) also limits cross-marketing activities by nonbank banks and their affiliates. Under this provision, a nonbank bank may not offer or market a product or service of an affiliate unless the product or service may be offered by bank holding companies generally under section 4(c)(8) of the BHC Act. In addition, a nonbank bank may not permit any of its products or services to be offered or marketed by or through a nonbank affiliate unless the affiliate engages only in activities permissible for a bank holding company under section 4(c)(8). These limitations are subject to an exception for products or services that were being so offered or marketed as of March 5, 1987, but only in the same manner in which they were being offered or marketed as of the grandfather date.

(2) *Examples of Impermissible Cross-Marketing.* The Conference Reort illustrates the application of this limitation to the following two covered transactions: (i) products and services of an affiliate that are not permissible under the BHC Act, and (ii) products and services of the nonbank bank. In the first case, the restrictions would prohibit, for example, a company from marketing life insurance or automotive supples through its affiliate nonbank bank because these products are not generally permissible under the BHC Act. H. Rep. NO. 100–261 *supra* at 126. In the second case, a nonbank bank may not permit its products or services to be offered or marketed through a life insurance affiliate or automobile parts retailer because these affiliates engage in activities prohibited under the BHC Act. *Id.*

(3) *Permissible Cross-Marketing.* On the ther hand, a nonbank bank could offer to its customers consumer loans from an affiliated mortgage banking or consumer finance company. These affiliates could likewise offer their customers the nonbank bank's products or services provided the affiliates engaged only in activities permitted for bank holding companies under the closely-related to banking standard of section 4(c)(8) of the BHC Act. If the affiliate is engaged in both permissible and impermissible activities within the meaning of section 4 (c)(8) of the BHC Act, the affiliates could not offer or market the nonbank bank's products or services.

(4) *Product Approach to Cross-Marketing Restriction.* Unlike the activity restrictions, the cross-marketing restrictions of CEBA apply by their terms to individual products and services. Thus, an affiliate of a nonbank bank engaged in nonbanking activites that are not permissible for bank holding companies that was marketing a particular product or service of a nonbank bank on the grandfather date could continue to market that product and, as discussed below, could change the terms and conditions of the loan. The nonbank affiliate could not, however, begin to offer or market another product or service of the nonbank bank such as a deposit account, trust service or a different type of loan product (unless the affiliate engaged only in permissible activities as described in paragraph (d)(3) of this section. Thus, a securities underwriting company that as of March 5, 1987, offered or marketed to its customers automobile loans from an affiliated nonbank bank could not begin to offer or market to its customers checking accounts from the bank without losing its grandfather privileges under CEBA.

(5) *Change in Terms and Conditions Permitted.* The cross-marketing restrictions would not, however, limit the ability of the institution to change the specific terms and conditions of the particular grandfathered product or service. The Conference Report indicates a legislative intent not to lock into place the specific terms or conditions of a grandfathered product or service. For example, a nonbank bank marketing a three-year, $5,000 certificate of deposit through an affiliate under the exemption could offer a one-year $2,000 certificate of deposit with a different interest rate after the grandfather date. Modifications that alter the type of product, however, are not permitted. Thus, a nonbank bank that marketed through affiliates on March 5, 1987, only certificates of deposit could not commence marketing MMDA's or NOW accounts after the grandfather date.

(6) *Grandfather Provision for Cross-Marketing.* A product or service not permissible for bank holding companies under section 4(c)(8) of the BHC Act would nevertheless be permitted to be offered or marketed by a nonbank bank under the cross-marketing provisions of section 4(f)(3) under certain conditions if they were offered or marketed as of the March 5, 1987 grandfather date. In the Board's opinion, the terms "offered or marketed" in the cross-marketing restrictions refer to the presentation to a customer of an institution's products or service through any type of program, including telemarketing, advertising brochures, direct mailing, personal solicitation, customer referrals, or joint marketing agreements or presentations. An institution must have offered or actually marketed the product or service on March 5 or shortly before that date (as discussed above) to qualify for the grandfather privilege. Thus, if the cross-marketing program was in the planning stage on March 5, 1987, the program would not qualify for grandfather treatment under CEBA.

(7) *Limitations on Cross-marketing to "in the same manner".* Under the cross-marketing provision, products or services qualifying for grandfather treatment may continue to be offered or marketed but only "in the same manner" in which they were offered or marketed as of March 5, 1987. Thus, the means of offering or marketing the products or services must remain the same as on the grandfather date. Accordingly, an affiliate not using direct mailings as a marketing technique as of the grandfather date for a particular product or service of the nonbank bank may not commence this type of marketing after the grandfather date.

(8) *Eligibility for Cross-Marketing Grandfather Exemption.* The Conference Report also clarifies that entitlement to an exemption is specific to an institution. An affiliate that was not engaged in cross-marketing products or services as of the grandfather date may not commence these activities under the exemption even if such activities were being conducted by another affiliate.

(e) *Eligibility for Grandfathered Nonbank Bank Status.* In reviewing the CEBA reports, the Board notes that a number of institutions that had not commenced business operations on August 10, 1987, the date of enactment of CEBA, claimed grandfather privileges under section 4(f)(3) of CEBA. To qualify for grandfather privileges under section 4(f)(3), the institution must have "bec[o]me a bank as a result of the enactment of [CEBA]" and must have been controlled by a nonbanking company on March 5, 1987. 12 U.S.C. 1843(f)(1)(A). An institution that did not have GDIC insurance on August 10, 1987, and that did not accept demand deposits or transaction accounts or engage in the business of commercial lending on that date, would not have become a "bank" as a result of enactment of CEBA. Thus, institutions that had not commenced operations on August 10, 1987, could not qualify for grandfather privileges under section 4(f)(3) of CEBA. This view is supported by the activity limitations of section 4(f)(3), which, as noted, limit the activities of grandfathered nonbank banks to those in which they were lawfully engaged as of March 5, 1987. A nonbank bank that had not commenced conducting business activities on March 5, 1987, could not after enactment of CEBA engage in any activities under this provision.

(f) *Enforcement of Nonbank Bank Limitations.* The Board notes that enforcement of the limitations on nonbank banks is specified in section 4(f)(4) of the BHC Act. Under that section, the grandfather provisions in section 4(f)(1) of this Act cease to apply if a nonbank bank subsidiary fails to comply with the limitations in section 4(f)(3). In that event, the Act requires the grandfathered company to "divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption."

Board of Governors of the Federal Reserve System, June 2, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–12829 Filed 6–7–88; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 575, 576, and 577

[No. 88-423]

Federal Savings and Loan Insurance Corporation; Receivers

Date: May 25, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), hereby seeks comments on proposed regulations that will govern the determination of claims filed against the FSLIC as Receiver for failed savings and loan institutions, and of requests for injunctive or declaratory relief arising from threatened actions by the FSLIC as Receiver. These proposed regulations incorporate interim procedures that have been in effect since July 1, 1986, and will continue to be in effect pending adoption of final regulations governing the matters addressed herein. Those interim procedures were adopted pursuant to 12 U.S.C. 1437 (1982), and were published in the **Federal Register** on April 21, 1988 (53 FR 13105).

DATE: Comments must be received by August 8, 1988.

ADDRESS: Send comments to Director, Information Section, Office of the Secretariat, Fedeal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services office at 801 18th St. NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Christopher Bellotto, Assistant General Counsel, (202) 377-7401; or Judith L. Friedman, Associate General Counsel, (202) 377-7399; Adjudication Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On November 8, 1985, the Board proposed amendments and revisions to its regulations governing the conservatorship and receivership of associations chartered by the Board or the accounts of which are insured by the FSLIC. Board Res. No. 85-1007, 50 FR 48070 (November 27, 1985). Pending final adoption of the proposed amendments and revisions, the Board, on April 21, 1988, provided public notice of interim procedures in order to assist claimants and other persons affected by threatened actions by the FSLIC as Receiver in the filing of Requests for Expedited Relief, claims against the FSLIC as Receiver, and appeals from decisions of the FSLIC as Receiver. Board Res. No. 88-229, 53 FR 13105 (April 21, 1988).

The purpose of the proposed regulations is to provide a uniform procedure under which persons seeking relief from actions threatened by the FSLIC as Receiver for a failed institution, or seeking to recover funds or gain other relief from an FSLIC receivership, may exhaust their administrative remedies at the Board. The Board regards such exhaustion of administrative remedies as a prerequisite to the availability of judicial review of actions by the FSLIC as Receiver. These proposed regulations supplement the regulations proposed by the Board in its rulemaking, begun November 27, 1985, addressing the powers of the FSLIC as Receiver.

The Board wishes to clarify that, although the proposed regulations regarding claims filed with the FSLIC as Receiver state that a loan participant may be a claimant, the regulations do not purport to make a binding determination that all loan participants are claimants. The Board, in its Notice of Proposed Rulemaking issued November 8, 1985, made it clear that the FSLIC as Receiver of an institution, the accounts of which are insured by the FSLIC, recognizes the validity of certain secured obligations of insured institutions, entered into pursuant to legal authority, and the right of a secured creditor in certain circumstances to cause the liquidation of collateral. Further, the FSLIC as Receiver may recognize the holder of a participating interest in a loan in which the Receiver also holds a participating interest, or which the Receiver services, as one having an ownership interest and not a creditor of the insured institution in receivership. In the event, however, that a Receiver disputes a creditor's claim to a security interest in an asset of the institution or a participant's characterization of its status, the Receiver may require such creditor or other entity to establish its claimed status pursuant to these procedures; and the Receiver in such cases may take such action as is deemed necessary to protect the Receiver's interest in any asset. Commenters are particularly directed to § 575.2(i)(1)(iv) of the proposed regulations, which provides that "Claimant" may include loan participants.

Copies of the Board's administrative decisions are available from the Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC. The Board's administrative decisions may also be accessed on the Westlaw and Lexis computer research systems.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule would apply.* The proposed rules would apply to all Claimants, Petitioners, and Receiverships without regard to size.

3. *Impact of the proposed rule on small entities.* The Board believes that the proposed rules will not have any disparate effect on small entities. The proposed rules are a refinement of existing procedures and would make it easier for small businesses and/or individuals to represent themselves before the Board without incurring extensive costs for legal services.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above **SUPPLEMENTARY INFORMATION,** the Board is soliciting comment on the rule as proposed.

List of Subjects in 12 CFR Parts 575, 576, and 577

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby purposes to amend Chapter V, by adding new Parts 575, 576, and 577, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. Subchapter D is amended by adding new Parts 575, 576, and 577 to read as follows:

PART 575—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF CLAIMS FILED WITH THE FSLIC AS RECEIVER

Sec.

575.1 Purpose.
575.2 Definitions.

Subpart A—Notice to Potential Claimants

575.3 Publication of notice.
575.4 Proof of claim.
575.5 Republication of notice.
575.6 Uninsured depositors.

Subpart B—Procedure for Initial Review of Claims

575.7 Agents of the Special Representative.
575.8 Control log for proofs of claim.
575.9 Reviews of proof of claim.
575.10 Review on the merits of a claim.
575.11 Initial determination.

Subpart C—Procedure for Review of Claims Retained for Further Review

575.12 Special Representative and Claims Counsel.
575.13 Elements of review.
576.14 Claims on an expedited basis.

Subpart D—Standards for Determination of Claims

575.15 Burden of proof.
575.16 Exclusion from claims procedure.
575.17 Application of claims procedure.
575.18 Criteria for the determination of claims for provision of services, supplies and materials.
575.19 Claims to security, priority or preference.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 575.1 Purpose.

(a) The purpose of these procedures is to provide for the uniform administration and determination of claims filed with the FSLIC as Receiver in all receiverships in the Federal Home Loan Bank/FSLIC system. These procedures are to be followed by Special Representatives and managing officers of the receiverships to assure compliance with the Federal Regulations governing the processing and determination of claims, and to insure uniformity of notices to claimants, documentation of claims, determination of the merits of claims by allowance or disallowance in whole or in part, payment of claims, and the review process. Full compliance with and exhaustion of these procedures is a prerequisite to review by the Federal Home Loan Bank Board ("Bank Board"). Judicial review of the disallowance in whole or in part of a claim against the assets of the FSLIC as Receiver is available only after exhaustion of these procedures and review and final agency action by the Bank Board.

(b) The Bank Board, and its Office of General Counsel, have made it clear that the FSLIC as Receiver of an institution, the accounts of which are insured by the FSLIC, recognizes the validity of certain secured obligations of insured institutions, entered into pursuant to legal authority, and the right of a secured creditor in certain circumstances to cause the liquidation of collateral. Further, the FSLIC as Receiver may recognize the holder of a participating interest in a loan in which the Receiver also holds a participating interest, or which the Receiver services, as one having an ownership interest and not a creditor of the insured institution in receivership.

(c) The Bank Board, is providing these procedures, is not directing the FSLIC as Receiver to require such secured creditors to observe all such noticed procedures as a precondition of exercising valid liquidation rights pursuant to valid security contracts entered into by an insured institution as authorized under its governing law prior to the appointment of the Receiver. Nor is the Bank Board directing the FSLIC as Receiver to subject such holders of participating interests that are not creditors of the insured institution in receivership generally to such procedures. In the event, however, that a Receiver disputes a creditor's claim to a security interest in an asset in which the institution has an interest or a participant's characterization of its status, the Receiver may require such creditor or other entity to establish its claimed status pursuant to these procedures; and the Receiver in such cases may take such action as is deemed necessary to protect the Receiver's interest in any asset.

§ 575.2 Definitions.

For the purposes of these procedures, the procedures for Requests for Review, and the procedures for Requests for Expedited Relief, the following definitions shall apply.

(a) "Administrative expenses of the association" means those reasonable expenses for services actually provided for the association by nonemployee professionals, such as accountants, attorneys, appraisers or examiners, that in the opinion of the Special Representative actually benefited the association of the receivership estate.

(b) "Affected Person" means a person, corporation, partnership or other legal entity that owns or has an interest in real or personal property, or is otherwise obligated on a debt which is secured by real or personal property, against which the Receiver threatens to take action that may affect, impair, diminish or terminate such interest. By way of example only, if the Receiver posts for foreclosure pursuant to a deed of trust, the legal owner or owners of the real estate encumbered with the lien sought to be foreclosed would be an "Affected Person."

(c) "Agent of the Special Representative" means an employee of the Receiver designated by the Special Representative to perform certain functions, which include but are not limited to maintaining a tracking system of the claims filed with the Receiver and performing an initial review of the Proofs of Claim submitted to the Receiver.

(d) "Applicant" means any person or entity that asserted a claim against the Association of the Receives and seeks review by the Bank Board.

(e) "Association" means a savings and loan association or savings bank for which the Bank Board has appointed the FSLIC as Receiver.

(f) "Board" means the Federal Home Loan Bank Board, as defined in 12 CFR 500.10 or its authorized agent.

(g) "Certificate of Mailing" means a written statement certifying that the referenced document has been placed in the United States mail, first class, postage prepaid, on the date specified.

(h) "Claim" means the assertion of a right to payment or other relief against an association or the Receiver; provided, however, that it shall not include the right to deposit insurance which, if appropriate, is paid by FSLIC Corporate, or a Request for Expedited Relief which is filed with the Bank Board. All claims shall be submitted in writing in a Proof of Claim.

(1) "Claim" includes but is not limited to:

(i) Demand for recoupment, set-off, security, priority, or preference;

(ii) Request to foreclose or to oppose foreclosure by the Receiver on security property or assets of the association;

(iii) Demand for interest, penalties, fees or the recognition or nonrecognition of liens securing equitable subordinated claims;

(iv) Administrative expenses of the association, provided, however, that a proof of claim need not be filed for services that were actually rendered, within 30 days prior to the Receiver's taking possession, by accountants, attorneys, appraisers or examiners; such services will be considered for priority payment by the Receiver as explained in Subpart D of this Part 575, if in the opinion of the Receiver such services are of benefit to the receivership;

(v) Demand by employees of the association for wages and salaries, including vacation, severance, sick leave pay and contributions to employee benefits plan; provided that a proof of claim need not be filed for wages, salaries, and benefits earned within 30 days prior to the appointment of the Receiver that do not exceed $2,000, which wages, salaries, and benefits will be considered for priority payment by the Receiver as explained in Subpart D of this Part 575.

(2) "Reconcilable claim(s)" means a claim that may be allowed in whole

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based upon the Receiver's review of the books and records of the association or the Receiver in the absence of additional fact finding or additional consideration of related legal issues.

(3) "Claim(s) retained for further review" means those claims that are not Reconcilable Claims.

(i) "Claimant" means any person or entity asserting a claim against the association or the Receiver.

(1) A Claimant may include but is not limited to:

(i) Holder(s) of claim(s) that appear on the face of the books or records of the association, or are otherwise known to the Receiver, on the date of the appointment of the Receiver;

(ii) Holder(s) of claim(s) that appear on the face of the books or records of the association or the Receiver, or are otherwise known to the Receiver subsequent to the date of the appointment of the Receiver;

(iii) Holder(s) of claim(s) that arise from acts or omissions of the Receiver;

(iv) Holder(s) of a participation interest in a loan originated by the association or in which the association is participating;

(v) Borrower(s);

(vi) Guarantor(s);

(vii) Secured creditor(s) or unsecured creditor(s);

(viii) Mechanic's, materialmen's or other lien holder(s) or person(s) or entities that seek to obtain a mechanic's, materialmen's or other lien against assets of the association or assets in which the Receiver has or seeks to assert an interest; or

(ix) Any person(s) or entities seeking to recover civil money damages or equitable relief against the association or the Receiver.

(2) Claimants, at their election, may be represented by an agent, who shall be designated and identified to the Receiver in writing by name and address. Upon such designation, all correspondence and communication shall be between the Special Representative and the agent for the Claimant. For purposes of these procedures the term claimant shall be deemed to include any properly designated agents of the Claimant.

(j) "Claims Counsel" means legal counsel retained to represent the Receiver, as designated by the Special Representative with the consent of the General Counsel, to perform specified tasks, hereinafter described.

(k) "Claims procedures" means the Procedures for the Administration and Determination of Claims Filed with the FSLIC as Receiver.

(l) "Current bills" means those administrative expenses of the Receiver incurred on or subsequent to the date of the appointment of the Receiver, and includes costs, expenses and debts of the Receiver.

(m) "Depositor" or "Accountholder" means the holder of a withdrawable account or accounts in an association.

(n) "Director, OFSLIC" means the Director of the Office of the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.20.

(o) "Filed with" or "served upon" means actually received.

(p) "FSLIC" means the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.4.

(q) "General Counsel" means the General Counsel to the Bank Board, as defined in 12 CFR 500.17, or an attorney(s) in the Office of General Counsel ("OGC") designated by the General Counsel.

(r) "Insurance Division, OFSLIC" means the Insurance Division of the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.20(a).

(s) "Legal holiday" means those days designated as a legal holiday by the President or the Congress of the United States of America.

(t) "Petitioner" means an Affected Person filing and Request for Expedited Relief.

(u) "Proof of Claim" means the form specified by the Director, OFSLIC, with the concurrence of the General Counsel, upon which a claim shall be submitted in writing. The Claimant shall have a continuing duty to supplement and update information contained therein, including but not limited to advising the Receiver in writing of the Claimant's current address.

(v) "Publish" is defined at 12 CFR 549.1(a).

(w) "Receiver" means the FSLIC or the Federal Deposit Insurance Corporation as Receiver as appointed by the Bank Board pursuant to applicable federal law.

(x) "Receiver's record" means all notices to claimants, Proof(s) of Claim, anything required by the procedures and any documentation and other writings compiled by the Special Representative that form the basis and rationale for the Receiver's determination as to the allowance or disallowance in whole or in part of a claim.

(y) "Request for Expedited Relief" means a written request submitted by an Affected Person to the Bank Board in accordance with applicable procedures. A Request for Expedited Relief is not a "claim" as defined in paragraph (h) of this section.

(z) "Special Representative" means individual(s) designated as Special Representative(s) for the FSLIC as Receiver for an association as stated in the Board Resolution appointing the FSLIC as Receiver. The Director, OFSLIC, with the concurrence of the General Counsel, shall designate the Special Representative(s) for each receivership who will have primary responsibility for the administration of the claims procedure. The Special Representative(s) shall conduct the claims procedure, including the determination of the merits of claims.

Subpart A—Notice to Potential Claimants

§ 575.3 Publication of notice.

In accordance with the existing regulations and orders of the Board, promptly after the date of appointment, the Receiver shall publish notice to all potential claimants of the association as shown on the books and records of the association, or as otherwise may be known to the Receiver, of their right to present claims to the Receiver and simultaneously shall mail to such claimants at their last known address:

(a) A notice of their right to present claims to the Receiver,

(b) A Proof of Claim form, and

(c) A copy of the "Procedures and Instructions for Filing Claims with the FSLIC as Receiver."

Demands by Accountholders for deposit insurance will be determined by the Insurance Division, OFSLIC, in a separate proceeding and not pursuant to this Claims Procedure.

§ 575.4 Proof of claim.

The notice shall provide that a Proof of Claim shall be filed with the Receiver on or before a specified date, which is not less than 90 days from the date of the first publication of such notice.

§ 575.5 Republication of notice.

Such notice shall be republished 30 days and 60 days after the date of the first publication. The Special Representative shall retain copies of the published notices in the files of the Receiver.

§ 575.6 Uninsured depositors.

(a) These Claims Procedures do not apply to claims by depositors, which will be determined by the Insurance Division, OFSLIC, under applicable procedures. Uninsured depositors will receive a Certificate of Claim in Liquidation for any uninsured amount on deposit. A copy of that Certificate will be provided to the Receiver by the Insurance Division.

(b) The Receiver will retain the Certificate for the period of the receivership. When there is a distribution to general creditors, such claims will be paid pro rata with others of the same priority out of the assets of the receivership.

(c) A depositor also may be a claimant under this Claims Procedure for other claims not based upon insurance of accounts. The FSLIC need not file a claim for amounts of deposits on which it pays insurance or otherwise satisfies its insurance obligation.

Subpart B—Procedure for Initial Review of Claims

§ 575.7 Agents of the Special Representative.

The Special Representative shall designate as many agents, as, in the opinion of the Special Representative, are necessary and appropriate to review and process claims filed with the Receiver and to perform functions as assigned by the Special Representative ("agent of the Special Representative"). The Special Representative, in consultation with the General Counsel, shall designate from the law firm(s) retained to advise the Receiver as many Claims Counsel as are necessary to assist in the claims process. Such law firm(s) shall act under the supervision of and be advised by the General Counsel.

§ 575.8 Control log for proofs of claim.

All Proofs of Claim filed with the Receiver shall be recorded by entry into a control log in the chronological order by the date on which such Proof of Claim was filed with the Receiver. The control log shall include the name of each claimant and an assigned serial number.

§ 575.9 Reviews of proof of claim.

After each Proof of Claim is entered into the control log, an agent of the Special Representative shall review the Proof of Claim to determine whether it has been properly filed in accordance with the directions contained in the Notice to Claimants and the Proof of Claim form ("properly filed").

(a) If a Proof of Claim is found not to be properly filed, a copy of it shall be returned to the claimant promptly with a written explanation of the deficiencies in it ("deficiency notice"). The deficiency notice shall advise the claimant that a corrected Proof of Claim must be filed with the Receiver within the later of 30 days from the date of the mailing of the deficiency notice or the filing date published under § 575.4, and that failure to correct the deficiencies before the expiration of the later time period may result in disallowance of the claim.

(b) In the discretion of the Special Representative, if material deficiencies in the Proof of Claim are not timely corrected, the claim may be disallowed in whole or in part. The determination of disallowance for failure to correct deficiencies in the Proof of Claim shall be in writing and explain the deficiencies that remain and shall be mailed promptly to the Claimant by certified mail, return receipt requested, and regular mail with a certificate of mailing. A copy of the determination, the certificate of mailing, and the receipt card, if any, shall be maintained in the files of the Receiver for the duration of the receivership, and shall become part of the administrative record.

(c) The originals of a Proof of Claim, deficiency notice, and any corrected Proof of Claim shall be retained in the files of the Receiver and shall become part of the record with respect to such claim.

(d) When a Proof of Claim or any corrected Proof of Claim is determined to be properly filed, the claim shall be promptly assigned to an agent of the Special Representative for initial review on the merits. A properly filed corrected Proof of Claim shall supersede a previously filed deficient Proof of Claim for purposes of review on the merits.

§ 575.10 Review on the merits of a claim.

The review on the merits shall determine whether each claim:

(a) Is a Reconcilable Claim that the Special Representative may allow in whole based upon the books and records of the association or the Receiver, which books and records appear to be reliable and to provide no basis for disallowance; or

(b) Is a claim that should be retained for further review, which claim the Special Representative cannot allow in whole or disallow in whole or in part in the absence of further review or investigation.

§ 575.11 Initial determination.

The Special Representative shall notify each Claimant within 180 days after the end of the 90 day notice period, as set forth in the regulations, or after receipt of the properly filed Proof of Claim, whichever is later, whether the claim is allowed in whole or retained for further review. The notice shall be in writing and shall be mailed to the Claimant by certified mail, return receipt requested, and by regular mail with a certificate of mailing.

Subpart C—Procedure for Review of Claims Retained for Further Review

§ 575.12 Special Representative and Claims Counsel.

The Role of the Special Representative and Claims Counsel:

(a) The Special Representative shall be the decisionmaker, and the Claims Counsel shall provide legal advice to the Special Representative. The Special Representative, in his discretion, may assign the tasks of review of claims to Claims Counsel or to other agents of the Special Representative, subject to the oversight and direction of the Director, Operations and Liquidation Division, OFSLIC, with the advice and consent of the General Counsel.

(b) In exercising this discretion, the Special Representative shall consider:

(1) The nature of the task;

(2) The issues involved in the claim; and

(3) Where no significant legal issue is presented, the cost-savings involved in assigning to a non-attorney agent of the Special Representative those tasks, such as preparing and forwarding notices to the Claimant, that do not require an attorney or that can be performed by a non-attorney at the direction and under the supervision of Claims Counsel.

(c) References to the Special Representative in the provisions of § 575.13, "Elements of review," therefore, include such agents of the Special Representative.

§ 575.13 Elements of review.

(a) Upon assignment, an agent of the Special Representative shall review promptly the Proof of Claim and documentation submitted by the Claimant in support of the claim and determine whether additional documentation or other writings or materials are necessary to reach a determination with respect to the claims.

(b) In connection with the compiling of such documentation, the Special Representative may require the claimant to provide additional information or documentation in support of the claim. Specifically, the Special Representative may:

(1) Notify the Claimant in writing to file with the Receiver, within 30 days, additional documentation or written information if, in the opinion of the Special Representative, it appears that such additional documentation or other written information would assist in the determination of the claim;

(2) Notify the claimant to make available for inspection and copying any relevant, non-privileged documents or

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written information in the custody of or subject to the control of the claimant or his agent at a reasonable time, upon reasonable notice, and at the Receiver's expense;

(3) Notify the claimant to file with the Receiver within 30 days a sworn written response to written questions posed on behalf of the Receiver ("response to written questions").

(c) The Special Representative may, at a reasonable time after reasonable notice, review documents or other written information relevant to the claim in the custody of or subject to the control of any person or entity, including the writing from any persons including the claimant or his employees, and may obtain sworn statements in which statements, documents or other writings shall be made part of the Receiver's record. In connection with the gathering of this documentation or information, the Special Representative may require the Claimant to make such documentation or information available to the Special Representative or to assist or cooperate with the Special Representative in obtaining it.

(d) The Special Representative shall, upon the request of a Claimant provide an opportunity, at a reasonable time after reasonable notice to the Special Representative, to inspect and copy at the Claimant's expense any non-privileged documents or other written information relevant to the claim that are in the custody of or subject to the control of the Receiver.

(1) All requests to inspect or to copy such documents shall be in writing, shall be specific, shall not request materials already in the possession of or otherwise available to the Claimant, and shall be framed so as to avoid undue burden or expense to the Receiver.

(2) A written request that fails to comply with such requirements shall be subject to denial by the Special Representative.

(3) The Special Representative may defer response to document requests until it has decided whether to retain the claim for further review. The Special Representative may decide to deny a document request from a Claimant if it determines to allow the claim in whole.

(e) The Special Representative may grant requests by a Claimant to appear before an agent of the Special Representative, or may require Claimants to appear before an agent of the Special Representative, to give statements, or to discuss the claim or documentation.

(f) The Special Representative or his agent, subject to the approval of the Special Representative, may negotiate compromises or settlements of claims. Claimant's oral statements shall be reduced to writing, sworn to, and made a part of the Receiver's record. Statements by Claimants and Receiver's Representatives and their agents made during settlement discussions and in written communications for purposes of settlement shall not be part of the Receiver's Record and shall be treated in accordance with Federal Rule of Evidence 408.

(g) The Special Representative may require the Claimant in writing to submit a memorandum addressing legal issues the resolution of which would assist in the determination of the claim ("request for memorandum"). The request for memorandum shall be mailed to the Claimant by certified mail, return receipt requested, and regular mail with a certificate of mailing, and shall advise the Claimant that the memorandum shall be filed with the Receiver no later than 30 days after the date of mailing of the request for memorandum. The request for memorandum, return receipt, certificate of mailing, and any memorandum filed by the Claimant shall be made a part of the Receiver's record.

(h) The Special Representative shall inform the Claimant in writing that the Special Representative, in his sole discretion, may disallow in whole or in part any claim in the event the Claimant fails:

(1) To provide to the Special Representative, as requested and within the time period specified, the additional documentation or written information, responses to written questions, or memorandum;

(2) To make available for inspection and copying any non-privileged documents in the Claimant's custody or subject to the Claimant's control; or

(3) To appear and give a sworn statement upon notice by the Special Representative.

(i) The Special Representative shall compile a Receiver's record consisting of: The Proof(s) of Claim, all documents or other writings and sowrn written statements submitted by or obtained from the Claimant or his agent; all sworn statements and documents or other writings obtained from persons or entities other than the Claimant, and all documents or other writings in the custody or subject to the control of the Special Representative which, in the opinion of the Special Representative, are relevant to the claim; and all notices from the Special Representative to the Claimant.

(j) After compiling the Receiver's record, the Special Representative shall notify the Claimant in writing of the compilation of the record ("notice of record"). The notice of record shall itemize, in the form of an index, those documents, statements, and other writings that are to be made a part of the record and shall advise the Claimant to provide the Receiver with any additional documents, statements, written information or other writings for inclusion in the record within 30 days of the date of the mailing of the notice of record. The Special Representative shall mail the notice of record by certified mail, return receipt requested, and by regular first class mail and execute a certificate of mailing. Thereafter, the Special Representative shall prepare the Receiver's record, which shall include the documents as described in the index, the notice of record, and any additional documents provided by the Claimant in response to the notice of record. The Receiver's record will be made available to the Claimant, at a reasonable time and upon reasonable notice, for inspection and copying at the Claimant's expense.

(k) Claims Counsel shall consult with the Special Representative and provide such confidential, privileged legal advice as may be necessary to assist the Special Representative to reach a proposed determination with respect to the claim.

(l) After evaluating the information contained in the Receiver's record, the Special Representative shall promptly prepare a memorandum presenting and analyzing the legal and factual issues raised by the claim, and recommending a proposed determination ("proposed determination memorandum"). The Special Representative also shall prepare a proposed determination of claim in the form of proposed findings of fact and conclusions of law ("proposed determination").

(m) It is anticipated that the Special Representative may assign to Claims Counsel the task of providing legal advice regarding the elements of the claim including assistance in drafting the proposed determination and proposed determination memorandum. In that event, Claims Counsel shall prepare and submit the proposed determination and proposed determination memorandum to the Special Representative for review, comments, changes or adoption. In the event the Special Representative requires changes to be made in the proposed determination or proposed determination memorandum, Claims Counsel shall make such changes and the revised notice of proposed determination and proposed determination memorandum once adopted shall supersede the prior proposed determination and

memorandum. Upon adoption by the Special Representative, the proposed determination memorandum and the proposed determination shall be made a part of the Receiver's record. The superseded proposed determination and memorandum shall not be made a part of the Receiver's record.

(n) The Special Representative shall promptly mail the proposed determination to the Claimant by certified mail, return receipt requested, and regular first class mail, and execute a certificate of mailing.

(o) If the Claimant does not file a request for reconsideration as specified in paragraph (p) of this section, the proposed determination shall constitute the Receiver's Determination, and the Special Representative shall notify the Claimant in writing of his right to obtain review of the Receiver's Determination by the Bank Board, in accordance with the applicable regulations and procedures. The notice shall state that such review by the Bank Board is a prerequisite to obtaining judicial review.

(p) The proposed determination shall advise the Claimant of his right to file with the Receiver, within 30 days from the date of mailing of the notice, a written request for reconsideration ("request for reconsideration").

(1) The request for reconsideration shall state the specific grounds for any objection to proposed findings of fact or conclusions of law and may present proposed alternative findings of fact and conclusions of law. The request for reconsideration should present more than mere conclusory objections to proposed findings of fact or conclusions of law.

(2) If the Claimant does not object to a proposed finding of fact or conclusion of law in the request for reconsideration, such fact or conclusion shall be conclusively established against the Claimant.

(3) If the request for reconsideration is not timely filed with the Receiver, any objections to the proposed findings of fact and conclusions of law, in the absence of an extension of time by the Special Representative or a showing of good cause, may be deemed to be waived by the Claimant.

(4) The Special Representative shall promptly reply in writing to the request for reconsideration ("Special Representative's reply"). The Special Representative's reply will state whether the Special Representative agrees or disagrees with the contentions contained in the request for reconsideration and explain modifications, if any, recommended by the Special Representative to the proposed determination. The Special Representative's reply will be mailed to the Claimant by the Special Representative by certified mail, return receipt requested, and regular mail with a certificate of mailing.

(5) The request for reconsideration and the Special Representative's reply shall become part of the Receiver's record.

(6) After considering the Receiver's record, the Receiver will issue a determination on the claim ("Receiver's Determination"), signed on behalf of the Receiver by the Special Representative, in the form of findings of fact and conclusions of law.

(q) The Special Representative will promptly mail to the Claimant by certified mail, return receipt requested, and by regular mail with a certificate of mailing, the Receiver's Determination and a statement of the Claimant's right to obtain review of the Receiver's Determination by the Bank Board. The statement shall inform the Claimant that requesting such review by the Bank Board is a prerequisite to obtaining judicial review, and shall enclose a copy of the procedures for obtaining review. The Receiver's Determination and the executed return receipt, if any, will be made a part of the Receiver's record, whereupon the Receiver's Record, which is the basis for any Request for Review to the Bank Board will be deemed closed.

(r) The Special Representative shall maintain the Receiver's record in the office of the Receiver of the duration of the receivership and for a period of six (6) months following termination of the receivership by the Bank Board upon the conclusion of the final audit.

(s) The Receiver shall issue to the Claimant a "Record of Claim" stating the amount of any claim recognized, in whole or in part, and shall maintain a copy of the Record of Claim for processing with other valid claims according to its respective priority.

§ 575.14 Claims on an expedited basis.

A Claimant may make a written request to the Receiver that a claim be processed on an expedited basis. The burden shall rest upon the Claimant to establish good cause for expedited processing of a claim. The standard for good cause shown shall be substantial harm to the Claimant in the absence of expedited processing. It shall be in the sole discretion of the Receiver whether to direct that a claim be accorded expedited processing. The Receiver shall notify the Claimant in writing, by certified mail, return receipt requested, and regular mail with a certificate of mailing, of his decision on the request, and in the event the request is granted, the schedule for such expedited processing.

Subpart D—Standards for Determination of Claims

§ 575.15 Burden of proof.

The burden of proof shall rest upon the Claimant to establish the claim by a preponderance of the evidence. Preponderance of the evidence means evidence that when fairly considered produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto.

§ 575.16 Exclusion from claims procedure.

A proof of claim need not be filed for certain administrative expenses of the association enumerated in § 575.17 of this part, and for employee wage claims of $3,000.00 or less.

§ 575.17 Application of claims procedure.

(a) Administrative expenses of the association and employee wage/benefit claims are claims and thus are subject to the requirements of the claims procedure except as provided in § 575.2 (h)(1)(iv), (v) of this part.

(b) Services or material providers and association employees shall be provided with Proof of Claim forms to submit to the Receiver to obtain payment of administrative expenses of the association and appropriate employee wage/benefit claims.

(c) Federal law preempts any state law that directs prompt payment of employees wages/benefits upon employment termination. The Special Representatives are urged to assure affected employees that their claims for wages/benefits will receive expeditious consideration.

§ 575.18 Criteria for the determination of claims for provision of services, supplies and materials.

No claim for provision of services and supplies and materials shall be allowed in full in the absence of:

(a) Evidence that the services, supplies or materials were provided in good condition or at an acceptable market or professional level.

(b) Evidence that the services, supplies or materials were provided on the dates and in the quantities as claimed.

(c) Evidence that the charges or fees are based upon actual services rendered or materials provided and are commensurate with the appropriate geographical market, professional, or trade standards for the services or

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materials provided on the applicable dates.

(d) Evidence that any payments already made on a claim by the Association or the Receiver have been deducted from the claim set out in the Proof of Claim filed with the Receiver.

(e) A determination by the Special Representative that there is pending no judicial or other proceeding involving the claim and that there exists no judgment or other final determination in a proceeding on the claim.

(f) A determination made by the Special Representative that the Receiver does not have any set-off rights or counterclaims against the Claimant.

(g) A determination by the Special Representative that the claim does not appear to be fraudulent or otherwise reasonably suspect and thus should not be allowed.

§ 575.19 Claims to security, priority or preference.

With the exception of certain payments established and set out in the implementing Board Resolution or other orders or resolutions of the Board, which payments are to be made promptly and are excluded from requirements of the claims procedure, all claims to security, priority, or preference shall be claims retained for further review within the claims procedure. This will afford the Special Representative the opportunity, in consultation with Claims Counsel, to determine whether the Receiver has a basis or grounds upon which to challenge the granting of a security interest in receivership estate assets. Secured Claimants who require a decision upon their claims more rapidly than the 180 days provided for initial review should file a request as specified in Subpart C, § 575.14 of this part, explaining how a delay in decision could cause them harm.

PART 576—PROCEDURES FOR THE PROCESSING AND DETERMINATION ON REVIEW OF DETERMINATIONS OF THE FSLIC AS RECEIVER

Sec.
576.1 Purpose.
576.2 Notice of right to file a Request for Review.
576.3 Filing of a Request for Review.
576.4 Content of Request for Review.
576.5 Basis for Board Decision.
576.6 Burden of proof.
576.7 Issuance of Decision.
576.8 Decision in writing.
576.9 Denial of claim.
576.10 Requests for extension of time or waiver of other procedural requirements.
576.11 Satisfaction of claim certificate.
576.12 Procedural questions.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 576.1 Purpose.

The following procedures will be used for the processing and determination on review of determinations of the Federal Savings and Loan Insurance Corporation ("FSLIC") as Receiver.

§ 576.2 Notice to right of file a Request for Review.

Claims denied in whole or in part by the FSLIC as Receiver are subject to review by the Federal Home Loan Bank Board ("Bank Board") upon timely filing of a Request for Review. Should the FSLIC as Receiver deny the claim in whole or in part, the parties will be so notified in writing and this notice will explain the right to review before the Bank Board and include a copy of the review procedures. All Requests for Review must comply strictly with the procedures outlined in this Part 576. Failure to comply with these procedures may result in dismissal of the Request for Review.

§ 576.3 Filing of a Request for Review.

(a) A Request for Review of a Receiver's Determination must be filed within 60 calendar days from the date indicated on the notice of determination that the claim has been disallowed in whole or in part.

(b) All Requests for Review are deemed to be filed when received and date/time stamped by the Bank Board.

(c) A Request for Review (original and 1 copy) must be filed with the Bank Board at the following address: Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, Docket Clerk, 1700 G Street NW., Washington, DC 20552.

The Request must include a signed statement certifying that a copy has been mailed or hand delivered to the Receiver.

(d) All submissions (*i.e.*, the Request, Response, and all other related filings) must include an original and 1 copy as well as a signed statement certifying that a copy has been sent to the opposing party(ies) and any other interested party. Failure to comply with this requirement may result in the return of the filing as incomplete and could adversely affect the party's rights to proceed.

(e) The Receiver shall provide the Bank Board, within 10 days of receipt of the Request for Review, with a copy of the Receiver's record of the proceeding, which has been deemed by the Receiver to be complete, true, and correct. The Receiver may, within the same time period, file a Response to the Request for Review, which shall be served upon the Requestor.

(f) The Receiver shall make available to the Requestor, or any interested party, during normal business hours (9 a.m. to 5 p.m. Monday through Friday, excluding Federal holidays), at the offices of the Receiver's representative, the opportunity to review the Receiver's record of the proceeding. At the request of any Requestor or interested party, the Receiver shall provide copies of the Receiver's record. The costs of duplication shall be borne by the party requesting the copies.

(g) A Request for Review must be filed within the time provided under this section. Failure to file a Request for review within the time period provided under this section constitutes waiver of any objection to the Receiver's Determination. A timely Request filed with the Bank Board in accordance with these procedures is mandatory to obtain judicial review of the Receiver's determination. Any part of the Receiver's Determination that the Request for Review does not contest shall not later be the subject of judicial review.

§ 576.4 Content of Request for Review.

(a) To be deemed complete a Request for Review must include:

(1) A clear and concise statement of the facts and arguments on which the Request is based;

(2) A clear and concise statement of the alleged factual and legal errors in the Receiver's Determination, including citations to applicable statutes, regulations, and legal authority, and to the Receiver's record; and

(3) If the Request is based on facts not available to the Receiver at the time of issuance of the Receiver's Determination, a separate identification and statement of all such facts upon which the Request is based.

(b) The Bank Board anticipates that in most cases a preliminary review of the Request and the Receiver's record will be made within 60 days of the date that the Receiver's record was received. At that time, the parties will be notified in writing that:

(1) The Administrative Record is complete and is closed; or

(2) More information is needed (in which case further instructions will be included); or

(3) The Bank Board anticipates that an additional 30, 60 or 90 days may be necessary before preliminary review can be completed.

§ 576.5 Basis for Board Decision.

(a) The Administrative Record that forms the basis of the Bank Board's Decision generally consists of the Request for Review, the Receiver's Record, and any Response to the Request for Review submitted by the Receiver or other interested party(ies).

(b) Any materials in addition to those in paragraph (a) of this section may be admitted to the Administrative Record only upon an Order of the Bank Board to allow supplementation of the Administrative Record. Any party may, by motion, request leave to supplement the record; however, such motions will be granted only upon a showing of good cause. A finding of good cause by the Bank Board generally requires that the moving party demonstrate that the argument, documentation, information, or evidence sought to be admitted or considered was not readily available when the claim was before the Receiver's representatative; or that the submission was made to, but improperly excluded by, the Receiver's representative; or some similar compelling reason why the submission was not included in the Receiver's Record.

(c) A motion for leave to supplement the record made after the party's initial submission of a Request for Review or Response, must be supported by good cause demonstrating why the supplemental matter could not have been included with the initial submission.

(d) Upon a finding by the Bank Board that the record provides a sufficient basis for rendering a Decision, the record will be closed. The parties will be notified by the Bank Board of the closing of the record.

(e) The Bank Board may make its own findings of fact and conclusions of law based upon the Administrative Record.

§ 576.6 Burden of proof.

The burden of proof rests at all times with the Requestor.

§ 576.7 Issuance of Decision.

Within 180 days from the date the record is closed, the Bank Board will issue a Decision on the merits of the Request, determining the extent of entitlement to the claim or any portion thereof. Alternatively, within 30 days from the date that the record is closed, the Bank Board, in its sole discretion or based upon the advice or request of the General Counsel, may entertain oral argument, or other supplementary proceedings, in which case a Decision will be issued within 180 days of the completion of such supplementary proceedings.

§ 576.8 Decision in writing.

The Bank Board's Decision will be issued in writing. It will set forth the reasons for the Decision and will constitute final agency action for the purpose of seeking judicial review.

§ 576.9 Denial of claim.

If no Decision is issued by the Bank Board within the time frame specified in § 576.7 of this part, and the Bank Board has not given notice to the parties requesting review that the Bank Board has in its discretion extended the time limit on its own motion, the Receiver's Determination will become the Decision of the Bank Board. This Decision will be final agency action for the purpose of seeking judicial review.

§ 576.10 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any procedural requirements set forth in this Part may result in dismissal of the Request for Review. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

§ 576.11 Satisfaction of claim certificate.

(a) If the Bank Board determines that the claim, or any portion of the claim, is to be allowed, Claimants must, to secure payment, promptly execute and deliver to the Bank Board a "Satisfaction of Claim" certificate, which will be provided to the Claimant with the Decision.

(b) If the Bank Board determines that only a portion of a claim is allowable, the "Satisfaction of Claim" certificate will specify the portion found allowable. A claim or any portion of a claim not specifically allowed by the Bank Board is deemed denied and constitutes a final agency action for purposes of seeking judicial review.

§ 576.12 Procedural questions.

Any questions concerning the procedures outlined in Part 576 may be addressed, in writing, to: Adjudication Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

PART 577—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF REQUESTS FOR EXPEDITED RELIEF FROM DECISIONS OR THREATENED ACTIONS OF THE FSLIC AS RECEIVER

Sec.
577.1 Purpose.
577.2 How to file a Request for Expedited Relief.
577.3 Content of Request for Expedited Relief.
577.4 Decision.
577.5 Requests for extension of time or waiver of other procedural requirements.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 577.1 Purpose.

Requests for Expedited Relief seek extraordinary intervention by the Federal Home Loan Bank Board ("Bank Board") with respect to the Federal Savings and Loan Insurance Corporation (FSLIC) as Receiver. All Requests will be scrutinized for strict compliance with the procedural requirements set forth in Part 577. Failure to comply with these requirements may result in denial of the expedited relief requested.

§ 577.2 How to file a Request for Expedited Relief.

(a) These procedures must be complied with fully and within the prescribed time periods. Any noncompliance or lateness may result in denial of the Request unless a waiver of procedure or an extension of time has been granted for good cause shown. These procedures are fully applicable to the FSLIC as Receiver.

(b) Any decision or threatened action by the FSLIC as Receiver may be the subject of a Request for Expedited Relief seeking extraordinary intervention by the Bank Board outside of the routine claims process. Requests for Expedited Relief must be filed within five work days from the date of the notice of FSLIC as Receiver's decision or threatened action. All Requests for Expedited Relief are deemed to be filed when received and date/time stamped by the Bank Board at the office specified in paragraph (d) of this section. When notice of such a decision or threatened action is delivered by mail, three additional work days will be allowed for the filing of the Request.

Example: A notice of foreclosure is a "threatened action" by the FSLIC as Receiver. If the FSLIC as Receiver issues a notice of foreclosure letter dated January 1, of a foreclosure sale scheduled for February 1, the Request for Expedited Relief must reach the Bank Board and be date-time stamped within five work days of January 1. If the FSLIC as Receiver's notice was delivered by U.S. mail, the Request for Expedited Relief must reach the Bank Board and be date/time stamped within eight work days of January 1. Work days are Monday through Friday, excluding weekends and Federal holidays.

(c) All submissions are deemed to be filed when received, and date/time stamped by the Federal Home Loan

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Bank Board at the office specified in paragraph (d) of this section.

(d) The original and one copy of the Request for Expedited Relief, and any supporting documents, must be filed with: Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, Docket Clerk, 1700 G Street NW., Washington, DC 20552.

(e) A copy of the Request for Expedited Relief, and any supporting documents, must be mailed or hand delivered to the Receiver at the following address(es):

(Receiver's address)

(f) All submissions to the Bank Board must include a signed statement certifying that an additional copy has been sent or hand delivered to the FSLIC as Receiver on the date the submission was filed with the Bank Board at the address(es) listed in paragraph (e) of this section.

§ 577.3 Content of Request for Expedited Relief.

(a) A Request for Expedited Relief does not involve a determination on the merits of a claim. It is solely a request to the Bank Board to intercede by instructing the FSLIC as Receiver to do or to refrain from doing some act. Accordingly, to obtain the relief requested, the Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which the Request is based;

(2) A clear and concise statement of any alleged factual and/or legal errors or omissions made by the FSLIC as Receiver;

(3) Citations to applicable statutes, regulations or other legal authority;

(4) All relevant documentation that supports the Request;

(5) An assessment of the likelihood of success on the merits of the underlying claim;

(6) A clear and concise statement of the probable imminent and irreparable harm likely to occur if expedited relief is not granted; and

(7) A signed statement certifying that the FSLIC as Receiver has been mailed or hand delivered a copy of the Request on the same day that the Request was filed with the Bank Board.

(b) The FSLIC as Receiver shall file its Response and all supporting documentation within five (5) work days from the date a Request for Expedited Relief is filed with the Bank Board. The time limitations discussed above with regard to delivery by U.S. mail are also applicable to the FSLIC as Receiver. The Receiver's Response shall contain legal and factual arguments in opposition to the Request for Expedited Relief. A copy of that Response and all supporting documentation must be sent or hand delivered to the party requesting expedited relief and the Receiver must certify that it has done so.

(c) The Request for Expedited Relief, the supporting documentation, as well as the Receiver's Response and supporting documentation, will form the basis for the administrative record on which the Bank Board will make its determination.

§ 577.4 Decision.

(a) The party requesting expedited relief shall be known as the Petitioner.

(b) The burden of proving entitlement to expedited relief rests at all times with the Petitioner.

(c) Upon receipt, the Request for Expedited Relief will be reviewed to assure compliance with all procedural requirements. If the Request is procedurally deficient it may be dismissed and the parties will be so notified.

(d) If the Request is properly filed and is a matter capable of resolution and no additional information is needed, a Decision on the Request will be issued by the Bank Board as soon as practicable. It will state the reasons for the determination and will constitute final agency action for purposes of securing judicial review.

(e) If additional information is required for resolution of the Request, notification in writing will be made by the Bank Board of the need for such information. The Bank Board will order that the information be submitted by a date certain. If no further information is needed for resolution of the Request, a Decision will be issued by the Bank Board as soon as practicable.

(f) Unauthorized supplemental pleading will not be considered by the Bank Board in the absence of good cause shown. To show good cause for an otherwise unauthorized supplemental pleading, a party must demonstrate the existence of new and material evidence that was not readily available at the time of the initial filing despite the party's due diligence.

(g) If appropriate, the Bank Board may, upon motion of a party or its own motion, issue an Order instructing the FSLIC as Receiver to stay temporarily its threatened action or decision pending resolution of the Request for Expedited Relief. Such Order will be granted where necessary to maintain the status quo for the time required for the Bank Board to consider the Request for Expedited Relief. The issuance of such an Order does not, however, prohibit the FSLIC as Receiver from making any preparations legally required in advance of its threatened action (*e.g.*, reposting foreclosure). Any such stay will remain in full force and effect for a period of time sufficient to enable the party requesting relief to be provided with the Bank Board's Decision and an opportunity to seek judicial review of that Decision. Such time will be at least five (5) work days from the date of the Decision where delivery of the Bank Board's Decision is by express (overnight) delivery service and eight (8) work days if by certified or regular U.S. mail.

§ 577.5 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any of the procedural requirements set forth in this Part 577 herein may result in denial of the Request for Expedited Relief. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Protest and Appeals Procedures Concerning Determinations of Social and Economic Disadvantaged Status as a Condition of Eligibility

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to establish procedures governing protests of the social and economic disadvantaged status of certain small businesses and appeals of SBA's determinations of such status. These procedures would apply to certifications of disadvantaged status for purposes of the Defense Department's (DoD's) Small Disadvantaged Business Set-Asides and Small Disadvantaged Business Evaluation Preferences, authorized under section 1207 of Pub. L. 99-661, the Subcontracting Program authorized by section 8(d) of the Small Business Act and for any other Federal procurement program, excluding SBA's section 8(a) program, which requires SBA to determine social and economic disadvantage as a condition of eligibility.

DATES: SBA invites public comment on these procedures. Such comments must be received on or before July 8, 1988 to ensure their consideration in formulating a final rule.

ADDRESS: Interested parties should submit written comments to: Francisco Marrero, Director, Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, U.S. Small Business Administration, Room 618, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jane Palagrove Butler, Deputy Director, Office of Program Eligibility, (202) 653-6813.

SUPPLEMENTARY INFORMATION: Section 1207(a) of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99-661, set a goal that 5 percent of the total combined Department of Defense (DoD) obligations (i.e., procurement; research, development, test and evaluation; construction; and, operation and maintenance) for contracts and subcontracts awarded during fiscal years 1987, 1988 and 1989 be entered into with (1) small disadvantaged business (SDB) concerns, (2) historically Black colleges and universities, and (3) minority institutions. It defines SDBs in accordance with the provisions of section 8(d) of the Small Business Act [15 U.S.C. 636(d)]. For the purpose of achieving the 5 percent goal, section 1207 of Pub. L. 99-661 authorizes the use of SDB set-asides and SDB price preferences, which permit an SDB to receive a contract as the low bidder if its bid price is up to 10 percent higher than the next non-SDB bidder's price. In DoD's implementing regulations, published in interim form on May 4, 1987 (52 FR 16263) and February 19, 1988 (53 FR 5114), DoD defers to SBA to decide protests and appeals of small disadvantaged status.

These rules would establish the procedures for SBA's handling of protests and appeals of disadvantaged status related to SDB set-asides and SDB evaluation preferences, the subcontracting program authorized under section 8(d) of the Small Business Act and other Federal procurement programs, excluding SBA's 8(a) program, which require SBA to determine disadvantaged status.

This rule proposes to establish a new Subpart B of Part 124, entitled "Disadvantaged Status Protest and Appeal Procedures." This rule would also redesignate the existing Part 124 as Subpart A, entitled "Section 8(a) and Section 7(j) Programs."

The following discussion identifies and explains key provisions in this proposed procedural rule. Section 124.601 would describe in general terms the purpose of Subpart B. This subpart would set forth the procedures to be used whenever SBA is asked to make a determination whether a particular concern is "disadvantaged" for purposes of the DoD's SDB set-asides and SDB evaluation preferences, SBA's section 8(d) subcontracting program, and any other Federal contracting program, except SBA's section 8(a) program, which requires SBA's determination of "disadvantaged" status.

In Subpart B, SBA would define small disadvantaged business (SDB) in accordance with section 8(d) of the Small Business Act [15 U.S.C. sec. 636(d)], as required by Public Law 99-661, and would define social and economic disadvantage for purposes of section 8(d) by adopting the section 8(a) program definitions of such terms found in §§ 124.105 and 124.106 of this part. Under section 8(d) a contracting officer shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. In addition, SBA's definition of SDB would implement the requirement of Public Law 99-661 that the majority of the earnings of an SDB must accrue to the socially and economically disadvantaged individuals associated with the concern. This rule would pertain only to protests of disadvantaged status. Protests and appeals relating to the size of the disadvantaged concern are governed by the procedures set forth in Part 121 of this Title. Regulations pertaining to aspects of the section 8(d) program other than protests of disadvantaged status are set forth at § 125.9 of this Title.

Section 124.602 would set forth definitions of terms found in Subpart B of this part. Small Disadvantaged Business (SDB) would be defined as required by section 1207(a) of Public Law 99-661. Some terms, such as social disadvantage, would be defined with reference to Subpart A of this part to clarify that SBA is proposing to use section 8(a) definitions for purposes of protests and appeals of disadvantaged business status.

Section 124.603 would identify those individuals who have standing to bring protests. This section would permit SDB protests to be filed in connection with any specific SDB set-aside requirement or any requirement for which an SDB is the apparent low bidder as a result of having invoked its SDB evaluation preference. Such protests could be brought by any concern submitting an offer for the requirement, by the contracting officer, or by the SBA. This section would also provide that protests in connection with an 8(d) subcontract could be brought by the procuring activity contracting officer or by SBA. Any other interested small business subcontractor or the prime contractor would be permitted to submit information to the contracting officer to persuade the contracting officer to initiate a protest, but the interested subcontractor or the prime contractor would not be permitted to initiate a protest directly. A protest of disadvantaged business status for other Federal procurement programs which require SBA to determine social and economic disadvantage, specifically excluding SBA's section 8(a) program, could be filed by the Federal agency official responsible for determining program eligibility (generally the contracting officer), SBA or any other interested party. SBA determines social and economic disadvantage as a condition of program participation for every concern admitted to the section 8(a) program. Such determinations are not subject to protest.

Section 124.604 would establish SBA's Director of the Office of Program Eligibility (OPE) as the individual empowered to determine whether a protested concern is disadvantaged.

Section 124.605 would require all protests, except those brought by the contracting officer or SBA, to be filed with the contracting officer. It also would require protests brought by the contracting officer or SBA to be referred directly to the SBA Office of Program Eligibility. This section would establish the time frames under which protests must be filed in order to be considered timely. For protests relating to SDB set-asides or SDB evaluation preferences which are brought by a concern submitting an offer for the requirement, the protest would be required to be received by the contracting officer prior to the cost of business on the fifth business day after bid opening for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions. If the protesting concern were to provide oral notice to the contracting officer within the five-day period, the protest would be considered timely if the contracting officer receives a confirming letter postmarked no later than one day after the date of the oral protest. For 8(d) protests brought by an interested party to be considered timely, it would be required to be received by the

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contracting officer prior to the completion of performance by the intended 8(d) subcontractor. For SDB set-asides, SDB evaluation preference and 8(d) purposes, a protest by the contracting officer or SBA would be considered timely whenever it is filed. Protests, in connection with any procurement, which are filed by any person before bid opening or notification of intended award would be considered untimely and returned to the protestor without action. This section would list the supporting materials which should be provided to SBA in connection with any protest. It would also require the contracting officer to refer to SBA all protests received in a timely fashion.

Section 124.606 would establish the grounds for protests of disadvantaged status and would define social and economic disadvantage. Public Law 99-661 adopts the provisions of section 8(d) of the Small Business Act and implementing regulations of such section which requires the contracting officer to presume social and economic disadvantage for Black Americans, Hispanic Americans (individuals whose ancestry and culture are rooted in South America, Central America, Mexico, Cuba, Dominican Republic, Puerto Rico, Spain or Portugal), Native Americans (American Indians, Eskimos, Aleuts or Native Hawaiians), Asian Pacific Americans (individuals with origins from Japan, China, Phillipines, Vietnam, Korea, Samoa, Guam, U.S. Territory of the Pacific Islands, Northern Mariana Islands, Cambodia or Taiwan), Subcontinent Asian Americans (individuals with origins from India, Pakistan, Bangladesh or Sri Lanka) as well as for current section 8(a) program participants. Individuals who the contracting officer or prime contractor could not presume to be socially and economically disadvantaged by virtue of group membership or section 8(a) program participation would be required to establish social and economic disadvantage in accordance with the provisions of section 8(a) of the Small Business Act, and the implementing regulations, 13 CFR Part 124, Subpart A. This section would also set forth a requirement that a protest regarding social disadvantage must demonstrate that the protested concern is not actually owned and controlled by one or more socially disadvantaged individuals, or that the individuals who own and control the protested firm have not been subjected to, or have overcome racial or ethnic prejudice or cultural bias. The section would require that protests challenging economic disadvantage must demonstrate that the protested concern is not owned and controlled by one or more economically disadvantaged individuals.

Section 124.607 would state that no specific form is required for a protest but that the protest must be sufficiently specific to provide reasonable notice as to the ground(s) upon which it is based and to call into question the disadvantaged status of the protested concern. However, this section would require a contracting officer to forward all timely protests regardless of their specificity. Contracting officers would not be authorized to dismiss protests for lack of specificity. Such protests could be dismissed only by SBA. Such dismissal could be appealed pursuant to § 124.610 of this part.

Section 124.608 would require SBA to notify the protestor, the contracting officer and the protested concern that a protest has been received, the date the protest was received, and whether the protest will be considered or dismissed for lack of specificity. This section would also authorize the Director of OPE to request that the protested concern submit any documentation necessary to make a determination of disadvantaged status, and would require a protested concern to return the requested documents within 10 days. In addition, this section would provide procedures for a concern currently participating in the 8(a) program, or a concern which has been found by SBA in connection with a protest under this Part to be disadvantaged within the previous six months to certify by sworn statement that its status has not changed since 8(a) certification or the disadvantaged status determination, and would allow this certification to substitute for the submission of completely new documents.

Section 124.609 would establish a 15-day time period during which SBA must make a status determination, would authorize SBA to make a summary finding of non-disadvantaged status when a protested concern fails to return the required documents in a timely manner, and would establish the procedures to be followed after the withdrawal of a protest. This section would also set forth the materials which would be considered in a disadvantaged status determination. The section would further provide the procedures for notification to the contracting officer, protestor and protested concern.

This section would describe the basis for a determination of disadvantaged status by SBA for those firms which are not currently in the section 8(a) program or which have not been determined to be disadvantaged by SBA in the preceding 6 month period. SBA would compile a protest record in such cases and would base its determination solely on the documentation found in the record. The protest record would consist of documents provided by the protestor, protested concern, SBA and others. Depending on the issue protested, SBA could request that further documentation be submitted and/or could incorporate some of its files into the protest record. This section would clarify that, regardless of the grounds stated in the protest, SBA would examine each aspect of the disadvantaged business status, including allocation of the company's earnings, ownership and control as well as social and economic disadvantage.

In addition, the section would set forth the impact of a determination by SBA that the firm is not a disadvantaged business. In such circumstances, this section would provide that the concern previously found not to be disadvantaged could certify itself as disadvantaged for future SDB set-asides, SDB evaluation preferences, section 8(d) subcontracts, and certain other Federal procurement programs provided that it has overcome or changed the circumstances which caused this determination. This section would further require that the contracting officer shall treat such certification as a protest of the concern's disadvantaged status and forward it to SBA for a new determination. If a firm which is an 8(a) program participant were found not to be disadvantaged, such determination would not terminate the concern's 8(a) program participation. However, such determination would cause SBA to initiate 8(a) Program termination proceedings in accordance with the provisions of § 124.112 of this part. Finally, the section would delineate those actions which would be construed as a misrepresentation status.

Section 124.610 would set forth procedures for appealing a determination by the Director of OPE, and would name the Associate Administrator for Minority Small Business and Capital Ownership Development as the deciding official for such appeals. This section would also specify the grounds under which an appeal could be brought, and would provide that additional information or changed circumstances would not be considered in the appeal process. Finally, this section would provide that the decision of the AA/MSB&COD would be the final decision of SBA. SBA would be required to provide a copy of the final decision to the protested concern, the contracting officer and the protestor, to the extent permitted by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

In cases where the contract performance has begun and the AA/MSB&COD reverses the decision of the Director of SBA's Office of Program Eligibility, such reversal would not apply to the instant SDB acquisition or other procurement requirement to which the protest relates, but would apply to that concern for purposes of its future certification of SDB status.

Compliance With the Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

Regulatory Flexibility Act

This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* Section 603 of the Regulatory Flexibility Act requires an agency to prepare a regulatory flexibility analysis whenever the agency is required by Section 553 of the Administrative Procedure Act (5 U.S.C. § 553) to publish a notice of proposed rulemaking. This rule is exempted from such requirements by 5 U.S.C. 553(b)(A) because it would establish SBA procedures for challenging disadvantaged status.

Executive Order 12291

SBA certifies that this proposed rule is not a major rule for purposes of Executive Order 12291. The rule, if adopted in final form, would set forth agency procedures for determining disadvantaged status. Utilization of and compliance with such procedures is not expected to entail significant costs and would not approach an annual economic impact of $100 million.

Paperwork Reduction Act

SBA certifies that this proposed rule would not impose any new reporting or recordkeeping requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. SBA forms 1010A, 1010B, and 413, appearing in § 124.608, have been approved by the the Office of Management and Budget under control numbers 3243-0015, 3245-0015, and 3245-0188, respectively.

List of Subjects in 13 CFR Part 124

Administrative practice and procedure, Government procurement, Minority business, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, as authorized by sections 5(b)(6), 8(a) and 8(d) of the Small Business Act [15 U.S.C. sections 634(b)(6), 636(a) and 636(d)], SBA hereby proposes to amend 13 CFR Part 124 as follows:

PART 124—[AMENDED]

1. The authority citation is proposed to be revised to read:

Authority: 15 U.S.C. 634(b)(6), 637(a), 637(d). Public Law 99-661 [Section 1207].

2. The title of Part 124 is proposed to be revised to read "Minority Small Business and Capital Ownership Development/Small Disadvantaged Business Status Protest and Appeal Procedures."

3. Sections 124.1 through 124.503 are proposed to be redesignated as Subpart A, entitled "Section 8(a) and Section 7(j) Programs".

4. New Subpart B (consisting of §§ 124.601 through 124.610), entitled "Disadvantaged Business Status Protest and Appeal Procedures" is proposed to be added as follows:

Subpart B—Disadvantaged Business Status Protest and Appeal Procedures

Sec.

124.601 Introduction.
124.602 General definitions.
124.603 Who may protest the disadvantaged status of a concern.
124.604 Who makes disadvantaged status determinations.
124.605 Protest procedures.
124.606 Grounds of protest.
124.607 Form and specificity of protest.
124.608 Notification of protest.
124.609 Making the disadvantaged status determination.
124.610 Appeals of disadvantaged status determinations.

Subpart B—Disadvantaged Business Status Protest and Appeal Procedures

§ 124.601 Introduction.

(a) This subpart sets forth the procedures to be used whenever the SBA is asked to make a determination as to whether a particular concern is "disadvantaged" for purposes of Department of Defense's (DoD's) Small Disadvantaged Business (SDB) set-aside contracts and SDB evaluation preferences, authorized by section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99-661, SBA's section 8(d) subcontracting program, and any other Federal procurement program requiring SBA to determine social and economic disadvantage as a condition for eligibility. These procedures are separate and distinct from those governing size protests and appeals.

(b) In determining the disadvantaged status of a protested concern, the SBA shall utilize the definitions of social and economic disadvantage and other eligibility requirements established in Subpart A of Part 124 of this title for the SBA's section 8(a) program, including the requirements placed on ownership and control. In addition, for purposes of SDB set-asides and SDB evaluation preferences only, there is the additional requirement that the majority of the earnings of the concern directly accrue to the disadvantaged individual who owns and controls it. SBA shall apply these definitions in accordance with the presumption contained in section 8(d) of the Small Business Act [15 U.S.C. 636(d)].

(c) All protests relating to whether a concern is a "small" business for purposes of any Federal program requiring such a condition for eligibility, including SDB set-asides and SDB evaluation preferences, are to be filed pursuant to the procedures set forth in § 121.9 of these regulations. The rules contained in Part 121 apply to all such size determinations. For purposes of SDB set-asides, SDB evaluation preferences and the section 8(a) subcontracting program, the size standard contained in the solicitation is the applicable size standard for the requirement. An appeal of such a size determination may be made pursuant to § 121.11 of these regulations.

§ 124.602 General definitions.

Appeal. A request for re-examination of the initial SBA determination regarding a protest.

Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD). The SBA official who is responsible for appeals of disadvantaged status.

Control See § 124.104, Title 13, CFR.

Current Section 8(a) Program Participant. Any business concern which is approved for participation in the section 8(a) program as of the date of the concern's Representations and Certifications on the contract at issue.

Economic Disadvantage. See § 124.106, Title 13, CFR.

Office of Program Eligibility (OPE). The SBA office within the Office of Minority Small Business and Capital Ownership Development which is responsible for making determinations regarding protests of disadvantaged status.

Ownership. See § 124.103, Title 13, CFR.

Protest. An initial challenge of the disadvantaged status of a business concern.

Small Disadvantaged Business (SDB) Concern. A business concern, including

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mass media, (1) which is small as defined pursuant to section (3) of the Small Business Act and implementing regulations at 13 CFR Part 121; (2) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals as defined by §§ 124.105 and 124.106, Title 13, CFR; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; (3) which has the majority of its earnings accruing directly to such individuals; and (4) whose management and daily business operations are controlled by one or more of such individuals.

Social Disadvantage. See § 124.105, Title 13, CFR.

§ 124.603 Who may protest the disadvantaged status of a concern.

(a) In connection with a specific SDB set-aside requirement or a requirement for which the apparent low bidder is an SDB which has invoked its SDB evaluation preference, the following entities may protest the disadvanteaged stastus of a concern which is the apparent low responsible offeror:

(1) Any other concern which submitted an offer for that requirement;

(2) The procuring agency contracting officer; and

(3) The Small Business Administration.

(b) In connection with an 8(d) subcontract, the procuring agency contacting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other small business subcontractors and the prime contractor may submit information to the contracting officer in an effort to persuade the contracting officer to initiate a protest.

(c) Protests of disadvantaged status relating to other Federal procurement programs, excluding SBA's section 8(a) program, which require SBA to determine social and economic disadvantaged as a condition of eligibility, may be filed by the Federal agency official responsible for determining program eligibility, and any other interested party.

§ 124.604 Who makes disadvantaged status determinations.

In response to a protest challenging the disadvantaged status of a concern, the SBA's Director of the Office of Program Eligibility (OPE) in the Office of Minority Small Buisiness and Capital Ownership Development (MSB&COD) shall determine whether the concern is disadvantaged.

§ 124.605 Protest procedures.

(a) *Filing.* (1) Except in cases where the contracting officer of SBA initiates a protest, all protests shall be directed to the procuring agency contracting officer responsible for the particular requirement.

(2) In cases where the contracting officer initiates a protest, he/she shall file the protest with SBA in accordance with paragraph (c) of this section and shall provide notification in accordance with § 124.608 of this part.

(3) In cases where SBA initiates a protest, the protest shall be referred to the Office of Program Eligiblity within the Office of MSB&COD and notification shall be provided in accordance with § 124.608 of this part.

(b) *Timeliness of Protest*(1) *SDB Set-aside and SDB Evaluation of Preference Protests.*—(i) *Written SDB Set-Aside Protest.* In order for a written protest submitted by a business concern in connection with a specific SDB set-aside requirement to be considered timely, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions.

(ii) *Written SDB Evaluation Preference Protest.* In order for a protest by a business concern to be timely when challenging the SDB status of an apparent low bidder which has invoked its SDB evaluation preference, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the receipt from the contracting officer of notification of the prospective awardee

(iii) *Oral Protests.* A protest for SDB set-asides or SDB evaluation preferences shall also be considered timely if made orally to the contracting officer with the allotted 5-day period, and the contracting officer thereafter receives a confirming letter postmarked no later than one calendar day after the date of such telephone protest.

(iv) A protest by the contracting officer or SBA shall be timely for the purpose of the SDB acquisition in question whether filed before or after award.

(v) A protest received after the time limits set forth above shall not be considered.

(2) *Section 8(d) Protests.* (i) In order for a protest in connection with an 8(d) subcontract to be considered timely, it must be received by the contracting officer prior to the completion of performance by the intended 8(d) subcontractor.

(ii) A protest received after subcontract performance by the intended 8(d) subcontractor shall not be considered.

(3) Protests, in connection with any procurement, which are filed by any person before bid opening or notification of intended award, whichever applies, shall be considered premature and shall not be forwarded to SBA, but shall be returned to the protestor without action.

(c) *Referral to SBA.* (1) Any contracting officer who receives a timely protest shall promptly forward such protest to the SBA's Director of the Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, 1441 L Street NW., Washington, DC 20416.

(2) When a contracting officer receives a protest and refers it to the SBA, such referral shall contain the following:

(i) The protest and any accompanying materials;

(ii) The date on which the protest was received and a determination as to timeliness;

(iii) A copy of the protested concern's self-certification as to disadvantaged status; and

(iv) The date of bid opening or the date notification of the apparent successful efferor was sent to all unsuccessful offerors, as applicable.

(3) A protest by a Federal agency in connection with a procurement program requiring SBA to determine social and economic disadvantage as a condition of eligibility shall be accompanied by any materials in the possession of the agency which cause it to question the disadvantaged status of the concern.

§ 124.606 Ground of protest

(a) Protests challenging the social disadvantage of the protested concern must demonstrate that the protested concern is not owned and controlled by one or more socialy disadvantaged individuals as defined by Subpart A of this part. A protest could challenge the social disadvantage of the protested concern by submitting evidence that:

(i) The individuals who own and control the protested concern have not been subjected to, or have overcome racial or ethnic prejudice or cultural bias, or

(ii) The individuals associated with the protested concern who could be considered socially disadvantaged do not actually own and control the protested concern.

(b) Protests challenging the economic disadvantage of the protested concern must demonstrate that the protested concern is not owned and controlled by one or more economically disadvantaged individuals as defined in Subpart A of this part.

§ 124.607 Form and specificity of protest.

(a) No specific form is required for a protest under this subpart.

(b) A protest must be sufficiently specific to provide reasonable notice as to the ground(s) upon which the protested concerns's disadvantaged status is challenged and to call into question the disadvantaged status of the protected concern. A protest merely alleging that the protested concern is not disadvantaged, without setting forth any basis for the allegation, will not be deemed to specify adequate grounds for the protest. Some basis for the belief stated in the protest must be given. However, the contracting officer shall forward all protests received to SBA for a decision on whether to pursue the determination of disadvantaged status.

(c) Protests which do not contain sufficient specificity may be dismissed by the SBA.

(d) A dismissal by the Director of OPE of a protest for lack of specifity may be appealed to SBA's AA/MSB&COD pursuant to § 124.609 of these regulations.

§ 124.608 Notification of protest.

(a) Upon receipt of a protest challenging the disadvantaged status of a concern, the Director of OPE shall immediately notify the protestor and the contracting officer of the date such protest was received and whether it will be processed or dismissed for lack of specificity.

(b) In cases where the protest is sufficiently specific, the Director of OPE shall also immediately advise the protested concern of the receipt of the protest and forward to the protested concern a copy of the protest.

(1) In such cases, the Director of OPE is authorized to ask the protested concern to provide any or all the following information and documentation: a completed SBA Form 1010A, "Statement of Personal Eligibility" for each individual claiming disadvantaged status; a completed SBA Form 1010B, Statement of Business Eligibility;" a completed SBA Form 413, "Personal Financial Statement" for each individual claiming disadvantaged status; whether the protested concern, or any of its owner(s), officers or directors have applied for admission to or participated in the SBA's section 8(a) program and if so, the name of the company which applied for 8(a) participation and the date of the application; business tax returns for the last two completed fiscal years; personal tax returns for the last two years for all officers, directors and for any individual owning at least 5% of the business entity; business financial statements for the last two completed fiscal years; articles of incorporation, corporate by-laws, or partnership agreements, as appropriate; and any other information which the Director of OPE deems necessary to permit a determination as to the social and/or economic disadvantaged status of the protested concern.

(2) Unless the protest presents specific information which would call into question the veracity of the application documents filed by a current participation in SBA's section 8(a) program, such a concern may submit, in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit by its owner, managing partner, President or Chief Executive Officer that the 8(a) application and any amendments thereto remain accurate, and that circumstances concerning the ownership and control of the business have not changed since the application. If the ownership and/or control of the business have changed since the date of the 8(a) application, the protested concern must comply with paragraph (b)(1) of this section.

(3) In cases where a concern's disadvantaged status has been protested and upheld by SBA within the preceding six months, the concern may submit in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit by its owner, managing partner, President or Chief Executive Officer stating that the circumstances concerning the ownership and control of the business have not changed since SBA's determination of social and economic disadvantage. If the ownership and/or control of the business have changed since the date of SBA's determination of social and economic disadvantage, the protested concern must comply with paragraph (b)(1) of this section.

(4) Notwithstanding the exceptions in paragraph (b)(2) and (3) of the section, the Director of OPE is authorized to request any document which he/she deems necessary to determine disadvantaged status.

(c) Within 10 working days of the date that notification of the protest was received from the Director of OPE, the protested concern must deliver to the Director of OPE by hand or by mail the information and documentation requested pursuant to paragraph (b)(1) of this section. Materials submitted by mail must be received by the close of business on the 10th working day.

§ 124.609 Making the disadvantaged status determination.

(a) *General.* The Director of OPE shall make a disadvantaged status determination within 15 working days after receipt of a protest challenging such status, or as soon thereafter as possible. If, in connection with an SDB acquisition or other procurement requirement, the SBA cannot make such a determination within 15 working days, the Director of OPE shall inform the contracting officer responsible for the particular requirement when a determination is expected to be made.

(b) *Time Limits for Response.* If the information and documentation requested by SBA under § 124.608(b) is not received by the Director of OPE within the 10-day period as required by § 124.608(c), SBA may determine the protested concern to be non-disadvantaged.

(c) *Withdrawal of Protest.* Once properly instituted by the filing of a specific disadvantaged status protest, the determination may be completed by the SBA even if the protest is withdrawn or the SDB acquisition or other procurement requirement in question is cancelled or awarded. The continuation of the disadvantaged status determination is discretionary with the SBA.

(d) *Basis for Determination.* (1) Except with respect to a concern which is a current participant in SBA's section 8(a) program or a concern authorized by § 124.608(b) of this Part to submit an affidavit concerning its disadvantaged status, the disadvantaged status determination shall be based on the protest record as supplied by the protestor, protested concern, SBA or others.

(2) If deemed necessary or appropriate, the SBA may make a part of the protest record information in its files and information submitted in response to requests to the protestor, the protested concern, the contracting officer, or other persons for additional specific information. The nature of the inquiry will dictate the type of documentation requested.

(3) In determining disadvantaged status, SBA shall review ownership and control of each protested firm as well as social and economic disadvantage regardless of the grounds specified in the protest.

(e) *Disadvantaged Status Determination.* The SBA shall base its disadvantaged status determination

upon the record, including reasonable inferences therefrom. SBA shall render a written determination including the basis for its findings and conclusions.

(f) *Summary Determination for Current 8(a) Participant or Concern Recently Determined by SBA to be Disadvantaged.* The SBA may summarily determine that a concern is socially and economically disadvantaged if that concern is a current participant in the SBA's section 8(a) program or has been determined by SBA to be disadvantaged within the previous 6 month period unless the protested concern cannot or fails to submit an affidavit authorized by § 124.608(b) of these regulations.

(g) *Notification of Determination.* After making its disadvantaged status determination, the SBA shall immediately notify the contracting officer, the protestor, and the protested concern of its determination. No later than one business day thereafter, SBA shall provide by certified mail, return receipt requested, a copy of its written determination to the protested concern and, consistent with the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), to all other parties to the proceeding.

(h) *Results of an SBA Disadvantaged Status Determination.* (1) A disadvantaged status determination becomes effective immediately and remains in full force and effect unless and until reversed upon appeal by SBA's AA/MSB&COD pursuant to § 124.610 of this part.

(2) A concern which was determined to be non-disadvantaged may certify itself as a disadvantaged business for purposes of future SDB evaluation preferences, future SDB acquisitions, 8(d) subcontracts, and other Federal procurement programs requiring disadvantaged status as a condition for eligibility *provided* that it has a good faith belief that it has changed the conditions upon which the determination of non-disadvantaged status was based. At the time of such certification, the concern shall notify the contracting officer that it was previously determined to be non-disadvantaged. However, if such concern is the lowest responsive offeror for an SDB acquisition, or for any requirement by invoking its SDB evaluation preference, or is otherwise deemed eligible for a Federal procurement program requiring disadvantaged status as a condition for eligibility, the contracting officer shall treat such certification as a protest of the concern's disadvantaged status and shall forward it to SBA pursuant to § 124.605(c) of this part. SBA shall process a protest based on such certification in accordance with the provisions of this Part.

(3) If a current 8(a) participant is found to be non-disadvantaged as a result of failure to submit the affidavit permitted by § 124.608(b)(ii) of this part, the concern will be subject to the same certification and notice requirements specified in paragraph (i)(2) of this section. However, a determination of non-disadvantaged status will not automatically terminate the concern's 8(a) program participation. A hearing before an administrative law judge is required before a firm can be terminated from the 8(a) program, *see* § 124.112 of this part.

(i) *Misrepresentation of Disadvantaged Status.* (1) A concern which was determined to be non-disadvantaged and which has not overcome or changed the circumstances which caused this determination *cannot* certify itself to be disadvantaged for future SDB acquisitions, 8(d) subcontracts, and other Federal procurement programs requiring disadvantaged status as a condition for eligibility. A certification of disadvantaged status by such a firm may be deemed a misrepresentation of disadvantaged status.

(2) A concern which was previously determined to be non-disadvantaged and certifies, in good faith, that it is a disadvantaged business for a subsequent SDB acquisition, SDB evaluation preference, 8(d) subcontract, or other Federal procurement program requiring disadvantaged status as a condition for eligibility, must nevertheless inform the contracting officer that it previously had been determined by the SBA to be non-disadvantaged. Failure to advise the contracting officer of such a non-disadvantaged status determination by the SBA may be deemed a misrepresentation of disadvantaged status.

§ 124.610 Appeals of disadvantaged status determinations.

(a) Appeals to re-examine disadvantaged status determinations may be filed with the SBA's AA/MSB&COD by any of the following:

(1) The concern whose disadvantaged status was determined by the Director of OPE;

(2) The original protestor; and

(3) The procuring agency contracting officer responsible for the SDB acquisition or other procurement requirement in question.

(b) Notice of an appeal must be provided to the protested concern, the original protestor, and the procuring agency contracting officer responsible for the SDB acquisition or other procurement requirement in question.

(c)(1) An appeal must be in writing and must be received by the Associate Administrator for Minority Small Business and Capital Ownership Development, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416, no later than 5 working days after the date of receipt of such determination.

(2) An untimely appeal shall be dismissed.

(d) Grounds for Appeal. The SBA will re-examine a disadvantaged status determination only if there was a clear and significant administrative error in the processing of such decision, or if the Director of OPE completely failed to consider a significant fact contained within the materials supplied by the protestor or the protested concern. Disadvantaged status determinations shall not be re-examined based on additional information or changed circumstances which were not disclosed to the Director of OPE at the time of his/her decision.

(e) No specific form is required for the appeal. However, the appeal must identify the disadvantaged status determination for which a re-examination is sought, set forth a full and specific statement of the reasons as to why the disadvantaged status determination is alleged to erroneous pursuant to paragraph (d) of this section, and present arguments in support of such allegations.

(f) An appeal may proceed to completion even though an award of the SDB acquisition or other procurement requirement which prompted the initial protest has been made. In such a case, however, a reversal by the AA/MSB&COD shall not apply to the awarded SDB acquisition or other procurement requirement and shall have future effect only.

(g) The appeal will be decided by the AA/MSB&COD within 5 working days of its receipt, if practicable.

(h) The appeal decision shall be based on all the information and documentation in the record. A copy of the decision shall be provided to the protested concern and, to the extent consistent with the Privacy Act and the Freedom of Information Act, to all parties to the proceeding. Such decision shall be provided by certified mail, return receipt requested.

(i) The decision of the AA/MSB&COD is the final decision of the Small Business Administration.

Date: June 2, 1988.

James Abdnor,
Administrator.

[FR Doc. 88-12878 Filed 6-7-88; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-84-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9-80 and MD-88 series airplanes, that would have required the inspection and modification of the power feeder cable installation. This proposal revises the proposed rule by incorporating a redesigned line block in the power feeder cable installation, and expands the applicability to include additional airplanes. This action is taken as a result of a recent report of an APU generator power feeder cable electrically shorting to the airplane structure.

DATE: Comments must be received no later than July 15, 1988.

ADDRESS: Send commets on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No 87-NM-84-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-84-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the inspection and modification of the generator power feeder cable installation on certain McDonnell Douglas DC-9-80 series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on September 9, 1987, (52 FR 33948). That action ws prompted by a report of an APU generator power feeder cable electrically shorting to the airplane structure. This condition, if not corrected, could result in a fire on board the airplane below the cabin floor.

In its comments to the proposal, the airplane manufacturer reported that repetitive inspections of known correct power feeder cable installations have revealed evidence of the trough and trough cover migrating from the below-floor clamp area to an area as far back as completely out of the floor transition hole. To ensure that the power feeder cables are adequately protected in the below-floor transition areas, the line block has been redesigned to incorporate a protective shield that will provide additional protection to the trough and trough cover installation at the transition areas.

The FAA has reviewed and approved McDonnell Douglas MD-80 Service Bulleting 24-100, dated March 30, 1988, which describes the modification instructions to install a redesigned line block with the power feeder cable installation on McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 series airplanes.

The FAA has determined that it is necessary to revise the Notice to propose installation of this redesigned line block in the power feeder cable installation in accordance with McDonnell Douglas MD-80 Service Bulleting 24-100, dated March 30, 1988. Additionally, the applicability of the proposed rule would be expanded to include additional affected airplane models. Since this action would expand the scope of the proposed AD, the comment period has been reopened to provide adequate time for public comment.

This supplement to the original Notice has been revised to remove all references to the use of "later FAA-approved revision of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the proposed AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph C.

It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modification parts are being provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $384,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is

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not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, McDonnell Douglas Model DC-9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket 87-NM-84-AD, published in the **Federal Register** on September 9, 1987 (52 FR 33948), as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 airplanes, certificated in any category, as listed in McDonnell Douglas Model MD-80 Service Bulletins 24-94, Revision 1, dated May 28, 1987, and 24-100, dated March 30, 1988. Compliance required within 12 months after the effective date of this airworthiness directive (AD), unless previously accomplished.

To eliminate a potential source of fire ignition from the generator power feeder cable electrically shorting, accomplish the following:

A. For airplanes identified in McDonnell Douglas MD-80 Service Bulletin 24-94, Revision 1, dated May 28, 1987: Inspect for power feeder cable damage, and repair the cable, if necessary; then modify the cable installation, in accordance with the Accomplishment Instructions of that service bulletin.

B. For airplanes identified in McDonnell Douglas MD-80 Service Bulletin 24-100, dated March 30, 1988: Modify the power feeder cable installation in accordance with the Accomplishment Instructions of that service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on May 31, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12846 Filed 6-7-88; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Exchange Recordkeeping Regarding Clearing Organizations' Trade Registers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") requires exchange clearing organizations to maintainn a record regarding transactions on the exchange in futures and options contracts. As part of that requirement, each clearing organization's trade register must include for each futures or option transaction a customer type indicator. In light of the Commission's routine surveillance needs, as well as the increased number of special studies undertaken by the Commission regarding the trading of stock index futures and options on such futures contracts, the Commission is proposing to expand the required reporting of customer type indicators to include two specified categories of trades in these contracts, specifically index arbitrage and substitution transactions.

Although the Commission's existing reporting systems have worked well, the Commission believes that the proposed enhancements to exchange audit trail systems will greatly facilitate the compilation of accurate information concerning the execution times of trades involving index arbitrage and substitution transactions on an even more accurate and timely basis without resorting to as many special calls for information from traders or futures commission merchants.

DATE: Comments must be received by July 8, 1988.

ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Customer Type Indicator".

FOR FURTHER INFORMATION CONTACT: John Mielke, Associate Director or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-3310 or 254-6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Clearing organizations of commodity futures and option exchanges are required under the rules of the Commodity Futures Trading Commission ("Commission") to maintain a "trade register." Commission Rule 1.35 , 17 CFR 1.35 (1987). These records, along with others required to be maintained by futures commission merchants, introducing brokers and members of contract markets, memorialize the process by which customer orders are entered and executed on futures exchanges. This provides the Commission and the self-regulating exchanges with the ability to reconstruct the execution of trades on the basis of a written record.

The customer type indicator required under the Commission Rule 1.35(e), 17 CFR 135(e) (187), requires that the trade registers of exchange clearing organizations indicate the type of account for which each trade was effectuated. The customer type indicators include trading for a floor broker's own account (Type 1), trading for the floor broker's clearing member's house account (Type 2), trading for another member present on the exchange floor (Type 3), or trading for any other type of customer (Type 4).

This information has been used particularly by the exchanges and the Commission in analyzing potential trade practice abuses in the execution of trading orders.

In addition, the Commission and exchanges maintain large trader reporting systems for surveillance purposes. See, 17 CFR Parts 17 and 18 (1987). The Commission's large-trader reporting system tracks large positions in all futures markets. Option large trader reports are provided to the Commission through the exchanges. See, 17 CFR Part 16 (1987). Thus, the Commission's large trader reporting system enables it to follow and anaylze on a day-to-day basis the current large positions in all futures and option markets. This reporting system further enables the Commission to study and analyze market positions after-the-fact. In this regard, the database generated from the large trader reporting system has been particularly useful in connection with the Commission's studies of trading in various contract markets.

In conducting special studies of trading in certain stock index futures and options on futures contracts on particular days, the Commission has relied upon its larger trader reports in conjunction with requests to, and the inspection of books and records of, particular traders or futures commission merchants for additional or confirming information and has shared these data with the Securities and Exchange Commission. The CFTC believes that further studies and analyses of these markets likely will be undertaken in the future. Although the Commission's existing reporting systems have worked well, the Commission believes that the proposed enhancements to exchange audit trail systems will greatly facilitate the compilation of accurate information concerning the execution times of trades involving index arbitrage and substitution transactions on an even more accurate and timely basis without resorting to as many special calls for information from traders or futures commission merchants. Thus, the Commission is proposing to add two additional customer type indicators that must be specified on the clearing organization's trade register.

By collecting such information, however, the Commission is in no way expressing or implying the view that index arbitrage or substitution transactions are in any way suspect. To the contrary, the Commission has stated its belief that such transactions are economically beneficial by linking more closely the cash and futures or option markets. Indeed, such arbitrage and susbstitution trading serves to increase the efficiency of the markets, benefitting all users of the markets. Rather, the Commission's determination to require this information reflects its desire to increase the accuracy and timeliness of these data, enabling it better to reconstruct and analyze the working of the markets.

II. The Proposed Rules

The Commission is proposing under new Commission Rule 1.3(rr) to define index arbitrage or index substitution transactions as a trading strategy through which offsetting trades—purchases in one market and sales in the other that are of approximately equal magnitude and are executed nearly simultaneously—are made in stock index futures, or options on those futures, and a portfolio of stocks based on a perceived price discrepancy between the two markets. Index substitution is a form of index arbitrage in which an institution sells a basket of stocks from its portfolio and purchases an equivalent amount of stock index futures contracts or options on those futures in response to a perceived price discrepancy between the two markets. Further, as proposed, the trade register of clearing organizations would be required to reflect by customer-type-indicator ("CTI") trades for a clearing member's house accounts to effect index arbitrage or substitution transactions (Type 5) and trades for any other type of futures or option customer to effect an index arbitrage or substitution transaction (Type 6). It should be noted that proposed CTIs 5 and 6 are in lieu of CTIs 2 and 4. That is, where trading effectuates index arbitrage or substitution transactions in stock index futures or options on such futures, CTI 2 and 4 no longer would be used. All other transactions continue to be identified as they are currently. Consistent with their current responsibilities under Rule 1.35, the exchanges and the clearing members would be required effectively to monitor the accuracy of their reporting.

Finally, the Commission notes that those positions which are made by a member for an omnibus account of a second clearing or non-clearing member, futures, commission merchant or foreign broker must indicate the customer-type-indicator code for the customer for whom the trade ultimately was executed. Accordingly, the proposed rule clarifies that a clearing member or futures commission merchant could not treat all positions traded through an affiliated firm simply as the customer omnibus or house omnibus positions of that firm. In this connection, the Commission specifically requests comment as to when and under what circumstances, if ever, omnibus account trades would involve portions of the transaction for different ultimate customers that would require different CTIs. Should any such situation be identified, the Commission further invites comments as to the proposed treatment, for CTI purposes, of such transactions.

III. Other Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 *et seq.* requires that agencies, in proposing rules, consider the impact of these rules on small entities. These proposed rules add two categories of customer type indicator which are required to be recorded on the trade register of the clearing association of an exchange. The Commission has previously determined that exchanges and their clearing associations are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reason, and pursuant to § 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission in particular invites comments from any firms or other persons which believes the promulgation of these amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The Commission has determined that because the proposed rules merely modify existing codes which currently must be reported, the proposed rules will not cause an increase in the paperwork burden. Nor do the proposed rules duplicate any other reporting requirement.

Persons wishing to comment on the information which would be required by these proposed rules should contact

Robert Neal, Office of Management and Budget (OMB), Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to the OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in 17 CFR Part 1

Clearing associations, definitions, exchanges, reporting requirements, trade register, records.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(11), 4c, 4g, 5, 5a, and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j), 6c, 6g, 7, 7a, and 12a(5), the Commodity Futures Trading Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7, 8, 9, 12, 12a, 12c, 13a–1, 16, 19, 21, 23 and 24.

2. Section 1.3 is proposed to be amended by adding a paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) *Index arbitrage and substitution transactions.* This term means a trading strategy through which offsetting trades—purchases in one market and sales in the other that are of approximately equal magnitude and are executed nearly simultaneously—are made in stock index futures, or options on those futures, and a portfolio of stocks based on a perceived price discrepancy between the two markets. Index substitution is a form of index arbitrage in which an institution sells a basket of stocks from its portfolio and purchases an equivalent amount of stock index futures contracts or options on those futures in response to a perceived price discrepancy between the two markets.

3. Section 1.35(e) is proposed to be revised to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

* * * * *

(e) *Contract markets.* Each contract market shall maintain or cause to be maintained by its clearing organization a single record which shall show for each futures or option trade, including those made by a member for an omnibus account of another clearing member, futures commission merchant or foreign broker: the transaction date, time (as described in paragraph (g) of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and the appropriate symbol from below indicating the buying and selling customer or option customer types. The customer and option customer type indicator shall show, with respect to each executed trade, whether that activity was:

Activity	Customer type indicator
Trading for the floor trader's own account	1
Trading for the house account of the floor broker's clearing member:	
To effect an index arbitrage or substitution transaction as defined in section 1.3(tt) of this Chapter, or	5
For any other reason	2
Trading by the floor broker for another member present on the exchange floor, or an account controlled by such member, or	3
Trading for any other type of customer or option customer:	
To effect an index arbitrage or substitution transaction as defined in section 1.3(tt) of this Chapter	6
For any other reason	4

The record required by this paragraph (e) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission in accordance with the provisions of § 1.38, and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (e) shall be maintained in a format and coding structure approved by the Commission (1) in hard copy or on microfilm as specified in § 1.31 and (2) for 60 days in computer-readable form on compatible tapes or discs.

* * * * *

Issued in Washington, DC this *1st* day of June, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-12846 Filed 6-7-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of N,N-Dimethylamphetamine into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place N,N-dimethylamphetamine into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA (21 U.S.C. 811(h)). This intended action is based on a finding by the DEA Administrator that the scheduling of N,N-dimethylamphetamine in Scheudle I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacture, distribution and possession of N,N-dimethylamphetamine.

FOR FURTHER INFORMATION CONTACT: Howard McCain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be temporarily scheduled under the emergency provision of the CSA if that substance if not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA by regulation (28 CFR 0.100). In making a finding that scheduling a substance temporarily in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows:

(4) History and current pattern of abuse;

(5) The scope, duration and significance of abuse; and

(6) What, if any, risk there is to the public health.

House Report 98-885 which accompanied Pub. L. 98-473 states that "This new procedure (emergency scheduling) is intended by the committee to apply to what has been called 'designer drugs', new chemical analogs or variations of existing controlled substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." N,N-dimethylamphetamine is an analogue of amphetamine and methamphetamine, both of which are Schedule II stimulants with a high potential for abuse, and as such is the type of substance which Congress intended to be considered for emergency scheduling.

Chemically, N,N-dimethylamphetamine is N,N,alpha-trimethylbenzeneethanamine or N,N,alpha-trimethylphenethylamine. N,N-dimethylamphetamine also has been called N-methylmethamphetamine. It is prepared as the dextrorotatory isomer in clandestine laboratories from N-methylephedrine. It is usually found as the hydrochloride salt.

N,N-dimethylamphetamine belongs to the phenylispropylamine class of compounds. Many compounds within this structural class are abused for their central nervous system stimulant and/or hallucinogenic effects. N,N-dimethylamphetamine is an analogue of amphetamine and methamphetamine, both of which are potent central nervous system stimulants and substances with a high potential for abuse. N,N-dimethylamphetamine differs from amphetamine by having two methyl groups on the amine nitrogen; it differs from methamphetamine (N-methylamphetamine) by having one additional methyl group on the nitrogen. All three compounds contain those structural features consistent with the production of central nervous system stimulation, the most outstanding pharmacological feature of amphetamine and amphetamine-type drugs.

Available scientific data show that the know pharmacological effects of N,N-dimethylamphetamine are similar to those produced by amphetamine and methamphetamine. Studies in mice show that N,N-dimethylamphetamine increases spontaneous locomotor activity after intraperitoneal administration, an indication of central stimulant activity. Similar to methamphetamine, administration of N,N-dimethylamphetamine to rats and mice is associated with a significant long-term depletion of dopamine levels in the caudate nucleus. Based on the substantial structural similarity of N,N-dimethylamphetamine to amphetamine and methamphetamine and actual evidence of N,N-dimethylamphetamine's central nervous system stimulant activity in rodents, it is expected that N,N-dimethylamphetamine will behave as an amphetamine-like central nervous system stimulant in humans.

Forensic laboratories had reported the identification of N,N-dimethylamphetamine in drug evidence submissions infrequently in the late 1970's. With the increased illicit production of methamphetamine from ephedrine and the subsequent restrictions placed on the purchase of ephedrine in some areas, clandestine laboratory operators substituted N-methylephedrine for ephedrine in the methamphetamine synthesis. This modification of the synthetic process produces the controlled substance analogue, N,N-dimethylamphetamine. Since 1987, forensic laboratories in at least California, Alabama, Colorado, Iowa, Idaho, Utah and Florida have reported the identification of substantial quantities of N,N-dimethylamphetamine in drug evidence submissions. During that same time period, DEA has disrupted six clandestine laboratories manufacturing N,N-dimethylamphetamine in California. Capacities of the laboratories ranged up to several hundred pounds of N,N-dimethylamphetamine.

There have been no reports of deaths or injuries specifically attributed to the abuse of N,N-dimethylamphetamine as yet. It is likely that individuals abusing this substance do not know that they are taking N,N-dimethylamphetamine but think that they are taking methamphetamine. N,N-dimethylamphetamine has been sold and trafficked as methamphetamine or speed. Thus, any injuries or adverse effects associated with the use of N,N-dimethylamphetamine are likely to be reported as methamphetamine or speed related incidents. N,N-dimethylamphetamine's structural similarity to methamphetamine and its central nervous system stimulant effect strongly suggest that abuse of this substance will lead to health and safety risks similar to those produced by amphetamine and methamphetamine. Since N,N-dimethylamphetamine is only manufactured in clandestine laboratories, there are additional risks associated with its abuse. The health and safety hazards associated with the abuse of amphetamine and methamphetamine are well established. According to national estimates of emergency room mentions from the Drug Abuse Warning Network (DAWN), there were over 5500 emergency room mentions associated with the use of methamphetamine and speed during the first nine months of 1987. Abuse of N,N-dimethylamphetamine is likely to cause similar types of emergency room episodes and may contribute to those attributed to methamphetamine.

The above data show that the continued, uncontrolled clandestine production, distribution and abuse of N,N-dimethylamphetamine will pose an imminent hazard to the public safety. DEA is unaware of any commercial manufacturer or supplier of N,N-dimethylamphetamine in the United States. DEA is also unaware of any recognized therapeutic use of this substance in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator of DEA has considered the following factors relative to making a determination of whether temporarily scheduling N,N-dimethylamphetamine under the CSA is necessary to avoid an imminent hazard to the public safety:

(1) Its history and current pattern of abuse;

(2) The scope, duration and significance of abuse; and

(3) What, if any, risk there is to the public safety.

Based on a consideration of these factors and other relevant information, the Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that scheduling N,N-dimethylamphetamine in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Secretary for Health, delegate of the Secretary of the Department of Health and Human Services, of his intention to temporarily place N,N-dimethylamphetamine into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for N,N-dimethylamphetamine under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published. Because the Administrator finds that it is necessary to temporarily place N,N-dimethylamphetamine into Schedule I to avoid an imminent hazard to the public

safety, the final order, if issued, will be effective on the date of publication in the Federal Register. Further, it is the intention of the Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this proposal and the date that a notification has been transmitted to the Assistant Secretary of Health.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the temporary placement of N,N-dimethylamphetamine into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of a substance with no legitimate medical use or manufacture in the United States.

It has been determined that the temporary placement of N,N-dimethylamphetamine into Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Paragraph (g)(6) is added to § 1308.11 to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(6) N,N-dimethylamphetamine (Some other names: N,N,alpha-trimethylbenzene-ethenamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers	1480

Dated: May 27, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88–12842 Filed 6–7–88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the adequacy of an amendment submitted by the State of Kansas to amend its permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments to the Kansas program eliminates the present Kansas Mined Land Conservation and Reclamation Board and transfers the Mined Land Office and its functions to the Kansas Department of Health and Environment.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Kansas' proposed modification of its program not received on or before 4:00 p.m. on July 8, 1988, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request July 5, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William J. Kovacic at the Kansas City Field Office by the close of business on or before June 23, 1988. If no one contacts Mr. Kovacic to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person contacts Mr. Kovacic, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office. Copies of the Kansas program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office, OSMRE Headquarters Office, and the Office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240; Telephone: (202) 343–5492.

Mined Land Conservation & Reclamation Board, 107 West 11th Street, P.O. Box 1418, Pittsburg, Kansas 66762; Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 Federal Register (46 FR 5892). Subsequent actions concerning proposed amendments are codified at 30 CFR 916.12, 916.15, 916.16, and 916.20.

II. Submission of Amendments

On April 29, 1988 (Administrative Record No. KS–424) the State of Kansas submitted to OSMRE an amendment to its approved regulatory program. The proposed amendment (Kansas House Bill #3009) was signed by the Governor, with an effective date of July 1, 1988. However, the rule would not take effect for the purpose of the Kansas program until OSMRE had approved and published it as a final rule Federal Register notice. The proposed amendment eliminates the present

Kansas Mined Land Conservation and Reclamation Board and transfers the Mined Land Office and its functions to the Kansas Department of Health and Environment.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Kansas satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than Kansas City, Missouri, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on June 23, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

A written statement should be filed at the time of the hearing to assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate response and appropriate questions.

The public hearing will continue on the specified date with all persons scheduled to comment being heard first, and those persons in the audience who wish to comment being heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: May 27, 1988.

[FR Doc. 88–12883 Filed 6–7–88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 327

Shoreline Management at Civil Works Projects

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The rule provides policy and guidance on the management of shorelines of Corps of Engineers managed Civil Works water resource projects. This proposal is being made to incorporate changes deemed necessary to better meet new and changing conditions.

DATES: Comments must be submitted on or before 22 July 1988.

ADDRESS: Comments may be mailed to HQUSACE, CECW–ON, Washington, DC 20314–1000. Request written comments indicate the section or paragraph number the comment is addressing.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, (202) 272–0247.

SUPPLEMENTARY INFORMATION: The changes to § 327.30 are necessary to clarify and strengthen the regulation for more effective management and to enhance the public enjoyment of Corps water resource development projects. Some portions of the regulation have been reworded and/or relocated to a different portion.

The name of § 327.30 is changed from Lakeshore Management to Shoreline Management. The title Lakeshore Management does not reflect the scope of the program. Shoreline Management does address the fact that all shorelines, lakes or rivers, are covered by this regulation. This more clearly allows its application to situations where the Corps holds fee simple title to the shoreline.

Section 327.30(d)(4). The emphasis on community docks is reduced.

Section 327.30(e)(4) requires each project Shoreline Management Plan to include a process to deal with activities which may be requested but not specifically addressed by the Shoreline Management Plan.

Section 327.30(e)(7) requires the poeriodic review of Shoreline Management plans to determine the need for update. When changes are needed, the plan will be formally updated through the public particpation process.

Section 327.30(h)(1) presents the requirements of section 6 of Pub. L. 97–140 as it applies to Shoreline Management.

Section 327.30(h)(2) presents the requirements of section 1134(d) of the Water Resources Development Act of 1986 (Pub. L. 99–662) as it applies to Shoreline Management.

Section 327.30(i) requires permitted facilities to be operated, used and maintained in a safe, healthful condition at all times.

Section 327.30(j) provides more detailed guidence on how to measure density of development.

Section 327.30(k). The schedule of fees Shoreline Management Permits will be published separately.

Section 327.30, Appendix A, paragraph 2.c(7) increases the emphasis on electrical service and equipment safety.

Section 327.30, Appendix A, paragraph 2.c(10)-(13) includes more detailed guidance on the issuance of vegetation modification permits.

List of Subjects in 36 CFR Part 327

Public lands, Water resources, Natural resources, Resource management.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Approved.

Pat M. Stevens IV,

Colonel, Corps of Engineers, Chief of Staff.

For the reasons set out in the preamble, the U.S. Army Corps of Engineers proposes to amend 36 CFR Part 327 as follows:

PART 327—[AMENDED]

1. The authority citation for Part 327 continues to read as follows:

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Authority: Section 4, Act of December 22, 1944, 58 Stat. 889, as amended (16 U.S.C. 460d).

2. Section 327.30 is proposed to be amended by adding text and revising the section heading to read as follows:

§ 327.30 Shoreline management at civil works projects.

(a) *Purpose.* The purpose of this regulation is to provide policy and guidance on management of shorelines of Civil Works projects.

(b) *Applicability.* This regulation is applicable to all field operating agencies with Civil Works responsibilities. This regulation is not applicable to project lands when such application would result in an impingement upon existing Indian rights.

(c) *References.* (1) Section 4, 1944 Flood Control Act, as amended (16 U.S.C. 460d).

(2) Section 10, River and Harbor Act of 3 March 1899 (33 U.S.C. 403).

(3) National Historic Preservation Act of 1966 (Pub. L. 89–665; 80 Stat. 915) as amended (16 U.S.C. 470 *et seq.*).

(4) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

(5) The Clean Water Act (33 U.S.C. 1344, *et seq.*).

(6) The Water Resources Development Act of 1986 (Pub. L. 99–662).

(7) Title 36, Chapter III, Part 327, Code of Federal Regulations, "Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers."

(8) Executive Order 12088 (13 Oct 78).

(9) 33 CFR Parts 320–330, "Regulatory Programs of the Corps of Engineers."

(10) ER 1130–2–400, "Management of Natural Resources and Outdoor Recreation at Civil Works Water Resource Projects."

(11) EM 385–1–1, "Safety and Health Requirements Manual."

(d) *Policy.* (1) It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works water resource development projects under Corps jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public while maintaining environmental safeguards to ensure a quality resource for use by the public. The objectives of all management actions will be to achieve a balance between permitted private uses and resource protection for general public use. Public pedestrian access to and exit from these shorelines shall be preserved. For projects or portions of projects where Federal real estate interest is limited to easement title only, management actions will be appropriate within the limits of the estate acquired.

(2) Private shoreline uses may be authorized in designated areas consistent with approved use allocations specified in Shoreline Management Plans. Private shoreline uses are not allowed on water resource projects where construction was initiated after 13 December 1974, or on water resource projects where no private shoreline uses existed as of that date. Any existing permitted facilities on these projects will be grandfathered until the facilities fail to meet the criteria set forth in § 327.30(h).

(3) A Shoreline Management Plan, as described in § 327.30(e), will be prepared for each Corps project where private shoreline use is allowed. This plan will honor past written commitments. The plan will be periodically reviewed and revised, as necessary. Shoreline uses that do not interfere with authorized project purposes, public safety concerns, or violate local norms should be allowed unless the public participation process identifies problems in thse areas. If sufficient demand exists, consideration should be given to revising the shoreline allocations (e.g. increases/decreases). Maximum public participation will be encouraged as set forth in § 327.30(e)(6). Shoreline management plans are not required for those projects where construction was initiated after 13 December 1974 or on projects not having private facilities as of that date. In that case, a statement of policy will be developed by the district commander to establish and present the shoreline management policy. This policy statement will be subject to the approval of the division commander. For projects where two or more agencies have jurisdiction, the plan will be cooperatively prepared with the Corps as coordinator.

(4) Where commercial or other public launching and/or moorage facilities are not available within a reasonable distance, group owned mooring facilities may be allowed in Limited Development Areas to limit the proliferation of individual facilities. Generally only one permit will be necessary for a group owned mooring facility with that entity, if incorporated, or with one person from the organization designated as the permittee and responsible for all moorage spaces within the facility. No charge may be made for use of any permitted facility by others nor shall any commercial activity be engaged in thereun.

(5) The issuance of a private shoreline use permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. The public's right of access and use of the permit area must be maintained and preserved. Owners of permitted facilities may take necessary precautions to protect their property from theft, vandalism or trespass, but may in no way preclude the public right of access to the water surface or public land adjacent to the facility.

(6) Shoreline use permits will only be issued to individuals or groups with contiguous private property or legal right of access to public lands.

(e) *Shoreline Management Plan.*—(1) *General.* The policies outlined in § 327.30(d) will be implemented through preparation of Shoreline Management Plans, where private shoreline use is allowed.

(2) *Preparation.* A Shoreline Management Plan is prepared as part of the Operational Management Plan. A moratorium on accepting applications for new permits may be placed in effect from the time an announcement of creation of a plan or formal revision of a plan is made until the action is completed.

(3) *Approval.* Approval of shoreline management plans rests with division commanders. After approval, one copy of each project Shoreline Management Plan will be forwarded to HQUSACE (CECW–ON) WASH DC 20314–1000. Copies of the approved plan will also be made available to the public.

(4) *Scope and Format.* The Shoreline Management Plan will consist of a map showing the shoreline allocated to the uses listed in paragraph e. below, related rules and regulations, a discussion of what areas are open or closed to specific activities and facilities, how to apply for permits and other information pertinent to the Corps management of the shoreline. The plan will be prepared in sufficient detail to ensure that it is clear to the public what uses are and are not allowed on the shoreline of the project and why. A process will be developed and presented in the Shoreline Management Plan that prescribes a procedure for review of activities requested but not specifically addressed by the Shoreline Management Plan.

(5) *Shoreline Allocation.* The entire shoreline will be allocated within the classifications below and delineated on a map. A map of sufficient size and scale to clearly display the shoreline allocation will be conspicuously displayed in the project administration office and will serve as the authoritative reference. Reduced or smaller scale maps may be developed for public dissemination but the information contained on these must be identical to that contained on the display map in the project administration office. No changes will be made to these maps except through the formal update process. District commanders may add specific constraints and identify areas having unique characteristics in addition to the allocation classifications described below.

(i) *Limited Development Areas.* Limited Development Areas are those areas in which private facilities and/or activities may be allowed consistent with § 327.30(h) and Appendix A. Modification of vegetation by individuals is allowed only following the issuance of a permit in accordance with Appendix A. Potential low and high water conditions and underwater topography should be carefully evaluated before shoreline is allocated as Limited Development Area.

(ii) *Public Recreation Areas.* Public Recreation Areas are those areas designated for commercial concessionaire facilities, Federal, state or other similar public use. No private shoreline use facilities and/or activities will be permitted within or near designated or developed public recreation areas. The term "near" depends on the terrain, road system, and other local conditions, so actual distances must be established on a case by case basis in each project Shoreline Management Plan. No modification of land forms or vegetation by private individuals or groups of individuals is permitted in public recreation areas.

(iii) *Protected Shoreline Areas.* Protected Shoreline Areas are those areas designated to maintain or restore aesthetic, fish and wildlife, cultural, or other environmental values. Shoreline may also be so designated to protect unstable shoreline from erosion, to prevent development in areas that are subject to excessive siltation, rapid dewatering, or exposure to high wind, wave, or current action and/or in areas in which development would interfere with navigation. No shoreline use permits for floating recreation facilities will be allowed in protected areas. Some modification of vegetation by private individuals, such as clearing a narrow meandering path to the water, or limited mowing, may be allowed only if the district commander determines that the activity will not adversely impact the environment or physical characteristics for which the area was designated as protected.

(iv) *Prohibited Access Areas.* Prohibited Access Areas are those in which public access is not allowed or are restricted for safety or security reasons. These could include hazardous areas near dams, spillways, hydroelectric power stations, work areas, water intake structures, etc. No shoreline use permits will be issued in Prohibited Access Areas.

(6) *Public Participation.* District commanders will ensure public participation to the maximum practicable extent in Shoreline Management Plan formulation, preparation and subsequent revisions. This may be accomplished by public meetings, group workshops, open houses or other public involvement techniques. When master plan updates and preparation of the Shoreline Management Plans are concurrent, public participation may be combined and should consider all aspects of both plans, including shoreline allocation classifications. Public participation will begin during the initial formulation stage and must be broad-based to cover all aspects of public interest. The key to successful implementation is an early and continual public relations program. Projects with significant numbers of permits should consider developing computerized programs to facilitate exchange of information with permittees and to improve program efficiency. Special care will be taken to advise citizen and conservation organizations; Federal, state and local natural resource management agencies; the media; commercial concessionaries; congressional liaisons; adjacent landowners and other concerned entities as during the formulation of Shoreline Management Plans. Notices shall be published prior to public meetings to assure maximum public awareness. Public notices shall be issued by the district commander allowing for a minimum of 30 days for receipt of written public comment in regard to the proposed Shoreline Management Plan or any major revision thereto.

(7) *Periodic Review.* Shoreline Management Plans will be reviewed periodically by the district commander to determine the need for update. If sufficient controversy or demand exist, consideration should be given, consistent with other factors, to a process of reevaluation of the shoreline allocations and the plan. When changes to the Shoreline Management Plan are needed, the plan will be formally updated through the public participation process.

(f) *Instruments for Shoreline Use.* Instruments used to authorize private shoreline use facilities, activities or development are as follows:

(1) *Shoreline Use Permits.* (i) Shoreline Use Permits are issued and enforced in accordance with provisions of Title 36, Chapter III, § 327.19 of the Code of Federal Regulations, for private floating recreation facilities.

(ii) Shoreline Use Permits are required for private structures/activities of any kind (except boats) in waters of Civil Works projects whether or not such waters are deemed navigable and where such waters are under the primary jurisdiction of the Secretary of the Army and under the management of the Corps of Engineers.

(iii) Shoreline Use Permits may be issued for non-floating structures on waters deemed commercially non-navigable, when such waters are under management of the Corps of Engineers.

(iv) Shoreline Use Permits are also issued for land vegetation modification activities which do not involve disruption to land form.

(v) Permits should be issued for a term of five years. To reduce administration costs, one year permits should be issued only when the location or nature of the activity requires annual reissuance.

(vi) Shoreline Use Permits for erosion control may be issued for the life or period of continual ownership of the structure by the permittee and his/her legal spouse.

(2) *Department of the Army Permits.* Dredging, construction of fixed structures, including fills and combination fixed-floating structures and the discharge of dredged or fill material in waters of the United States will be evaluated under authority of section 10, River and Harbor Act of 3 March 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344) in accordance with references (c)(2) and (c)(5).

(3) *Real Estate Instruments.* Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the appropriate real estate element. Shoreline Management Plans should identify the types of activities that require real estate instruments and indicate the general process for obtaining such permits.

(g) *Transfer of Permits.* Shoreline Use Permits are non-transferable. They become null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.

(h) *Existing Facilities Now Under Permit.* Implementation of a Shoreline Management Plan shall consider existing permitted facilities and prior Corps commitments implicit in their issuance.

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(1) Section 6 of Pub. L. 97–140 provides that no lawfully installed dock or appurtenant structures shall be required to be removed prior to 31 December 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on 29 December 1981, if such property is maintained in usable condition, and does not occasion a threat to life or property.

(2) In accordance with section 1134(d) of Pub. L. 99–662, any houseboat, boathouse, floating cabin or lawfully installed dock or appurtenant structures in place under a valid shoreline use permit as of 17 November 1986 cannot be forced to be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after 31 December 1989 if it meets the three conditions below except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project.

(i) Such property is maintained in a usable and safe condition,

(ii) Such property does not occasion a threat to life or property, and

(iii) The holder of the permit is in substantial compliance with the existing permit.

(3) All such floating structures and appurtenances will be formally recognized in an appropriate Shoreline Management Plan. Permits for these structures will be reissued to new owners. If the holder of the permit fails to substantially comply with the terms of the document, it may be revoked and the holder required to remove the structure, in accordance with the terms of the document as to notice, time, and appeal.

(i) *Facility Maintenance.* Permitted facilities must be operated, used and maintained by the permittee in a safe, healthful condition at all times. If determined to be unsafe, it will be corrected within 60 days or removed, at the permittee's expense. The applicable safety and health prescriptions in EM 385–1–1 should be used as a guide.

(j) *Density of Development.* The density of private floating recreation facilities will be established in the Shoreline Management Plan for all portions of Limited Development Areas consistent with ecological and aesthetic characteristics. The facility density in Limited Development Areas should, if feasible, be determined prior to the development of adjacent private property. The density of floating facilities will not be more than 50 percent of the Limited Development Area in which they are located. Density will be measured by determining the linear feet of shoreline as compared to the width of floating facilities plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. When a Limited Development Area or a portion of a Limited Development Area reaches maximum density, notice should be given to the public and facility owners in that area that no additional floating facilities will be allowed. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft. Docks should not extend out from the shore more than one-third of the width of a cove at normal recreation or multipurpose pool. In those cases where current density of development exceeds the density level established in the Shoreline Management Plan, the density will be reduced to the preacribed level through attrition or by employing more expeditious guidelines as necessary to protect the shoreline environment.

(k) *Permit Fees.* Fees will be collected for shoreline use permits in accordance with the provisions of reference 3a. The fee schedule will be published separately.

Appendix A to § 327.30—Guidelines for Granting Shoreline Use Permits

1. General

a. Decisions regarding permits for private floating recreation facilities will consider the operating objectives and physical characteristics of each project. In developing shoreline management plans, district commanders will give consideration to the effects of added private boat storage facilities on commercial concessions for that purpose. Consistent with established policies, new commercial concessions may be alternatives to additional limited development shoreline.

b. Permits for individually or group owned shoreline use facilities may be granted only in Limited Development Areas when the sites are not near commercial marina services and such use will not despoil the shoreline nor inhibit public use or enjoyment thereof. Charges will be made for Shoreline Use Permits in accordance with the separately published fee schedule.

c. Permits may be granted within Limited Development Areas for ski jumps, floats, boat moorage facilities, duck blinds, and other private floating recreation facilities when they will not create a safety hazard and inhibit public use or enjoyment of project waters or shoreline. A Corps permit is not required for temporary ice fishing shelters or duck blinds when they are regulated by a state program.

d. Group owned boat mooring facilities may be permitted where practicable (e.g. where physically feasible in terms of access, water depths, wind protection, etc.).

2. Applications for Shoreline Use Permits

a. Applications for private shoreline use permits will be reviewed with full consideration of the policies set forth in this and referenced regulations, and the Shoreline Management Plan. Fees associated with the Shoreline Use Permit shall be paid prior to issuing the permit. Plans and specifications of the proposed facility shall be submitted and approved prior to the start of construction. Submissions should include engineering details, structural design, anchorage method, and construction materials; the type, size, location and ownership of the facility; expected duration of use; and an indication of willingness to abide by the applicable regulations and terms and conditions of the permit. Permit applications shall also identify and locate land-based support facilities and any specific safety considerations.

b. Permits will be issued by the district commander or his/her authorized representative on ENG Form 4264–R (Application for Shoreline Use Permit) (Appendix B). Computer generated forms may be substituted for ENG Form 4264–R provided all information is included. The computer generated form will be designated, "ENG Form 4264–R–E, Oct 87 (Electronic generation approved by USACE, Oct 87)".

c. The following are guides to issuance of shoreline use permits:

(1) Use of boat mooring facilities, including piers and boat (shelters) houses, will be limited to watercraft mooring and storage of gear essential to watercraft operation.

(2) Private floating recreation facilities, including boat mooring facilities shall not be constructed or used for human habitation or in a manner which gives the appearance of converting Federal public property on which the facility is located to private, exclusive use. New docks with enclosed sides (i.e. boathouses) are prohibited.

(3) No private floating facility will exceed the minimum size required to moor the owner's boat or boats plus the minimum size required for an enclosed storage locker for oars, life preservers and other items essential to watercraft operation. Specific size limitations may be established in the project Shoreline Management Plan. All vessels must be moored within the authorized slip dimension.

(4) All private floating recreation facilities or boat mooring facilities will be constructed in accordance with plans and specifications, approved by the Corps, or a written certification from the builder, stating the facility is structurally safe, will accompany the initial submission of the plans and specifications.

(5) Procedures regarding permits for individual facilities shall also apply to permits for non-commercial group mooring facilities.

(6) Facilities anchored to the shore shall be securely anchored by means of moorings which do not obstruct the free use of the shoreline, nor damage vegetation or other natural features.

(7) Electrical service and equipment leading to or on private mooring facilities must not pose a safety hazard nor conflict with other recreational use. Electrical installations must be weatherproof and meet all current applicable electrical codes and regulations. The facility must be equipped with quick disconnect fittings mounted above the flood pool elevation. All planned electrical installations must be certified in writing by a state registered electrician. A copy of the electrical certification must be provided to the resource manager before a permit can be issued or renewed. The resource manager will require immediate removal or disconnection of any electrical equipment that is not certified and safely maintained. All new electrical lines should be installed underground. Existing overhead lines will be allowed, as long as they meet all applicable electrical codes, regulations and above guidelines, to include compatability and safety related to fluctuating water levels.

(8) Private floating recreation facilities will not be placed so as to interfere with navigation, or create a safety or health hazard.

(9) The district commander may place special conditions on the permit when deemed necessary.

(10) Vegetation modification is allowed, including but not limited to, cutting, pruning, chemical manipulation by licensed applicator, removal or seeding of, vegetation by private individuals on project lands only in those areas designated in the project Shoreline Management Plan as Limited Development Shoreline Areas or Protected Shoreline Areas. An existing (as of 1 July 1987) vegetation modification permit, within a shoreline allocation which normally would not allow vegetation modification, should be grandfathered. Permittees will not create the appearance of private ownership of public lands.

(11) The term of a vegetation modification permit will be for five years. Where possible, such permits will be consolidated with other shoreline management related permits into a single permit. The district commander is authorized to issue vegetation modification permits of less than five years for one-time requests or to aid in the consolidation of shoreline management permits.

(12) The permittee may delineate the government property line, as surveyed and marked by the government, in a clear but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan and the conditions of the permit. This delineation may include, but is not limited to, boundary plantings and fencing. The delineation will be accomplished at no cost to the government.

(13) No permit will be issued for vegetation modification in Protected Lakeshore Areas until the environmental impacts of the proposed modification are assessed.

(14) The original of the completed permit application is to be retained by the permittee. A duplicate will be retained in the Resource Manager's office.

3. Permit Revocation

Permits may be revoked by the district commander when it is determined that the public interest requires such revocation or when the permittee fails to comply with terms and conditions of the permit or of this regulation. Permits for duck blinds and ice fishing shelters will be issued to cover a period not to exceed 30 days prior to and 30 days after the season. Short-term permits for one-time activities will continue to be issued by the district commander as necessary.

4. Removal of Facilities

Facilities not removed when specified in the permit or when requested after termination or revocation of the permit will be treated as unauthorized structures pursuant to Title 36, Chapter III, Part 327.20, of the Code of Federal Regulations.

5. Posting of Permit Number

Each district will procure 5" x 8" or larger printed permit tags of light metal or plastic for posting on floating facilities. The permit display tag shall be posted on a floating facility and/or on the land area covered by the permit, so that it can be visually checked, with ease in accordance with instructions provided by the resource manager.

Appendix B to 3327.30—Application for Shoreline Use Permit [Reserved]

Appendix C to § 327.30—Shoreline Use Permit Conditions

1. This permit is granted solely to the applicant for the purpose described on the opposite side of this form.

2. The permittee agrees to and does hereby release and agree to save and hold the Government harmless from any and all causes of action, suits at law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to persons or property, including a permitted facility, growing out of the ownership, construction, operation or maintenance by the permittee of the permitted facilities.

3. Ownership, construction, operation, use and maintenance of a permitted facility are subject to the Government's navigation servitude.

4. No attempt shall be made by the permittee to forbid the full and free use by the public of all navigable waters or lands at or adjacent to the permitted facility or to unreasonably interfere with navigation in connection with the ownership, construction, operation or maintenance of a permitted facility.

5. The permittee agrees that if subsequent operations by the Government require an alteration in the location of a permitted facility or if in the opinion of the district commander a permitted facility shall cause unreasonable obstruction to navigation or that the public interest so requires, the permittee shall be required, upon written notice from the district commander to remove, alter, or relocate the permitted facility, without expense to the Government.

6. The Government shall in no case be liable for any damage or injury to a permitted facility which may be caused by or result from subsequent operations undertaken by the Government for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. This includes any damage that may occur to private property if a facility is removed for noncompliance with the conditions of the permit.

7. Ownership, construction, operation, use and maintenance of a permitted facility are subject to all applicable Federal, state and local laws and regulations. Failure to abide by these applicable laws and regulations may be cause for revocation of the permit.

8. This permit does not convey any property rights either in real estate or material; and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, state or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility.

9. The permittee agrees to construct the facility within the time limit agreed to on the permit issuance date. The permit shall become null and void if construction is not completed within that period. Further, the permittee agrees to operate and maintain any permitted facility in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, natural, environmental, or cultural resources values and in a manner so as to minimize the degradation of water quality.

10. The permittee shall remove a permitted facility within 30 days, at his/her expense, and restore the waterway and lands to a condition accepted by the resource manager upon termination or revocation of this permit or if the permittee ceases to operate or maintain a permitted facility. If the permittee fails to comply to the satisfaction of the resource manager, the district commander may remove the facility by contract or otherwise and the permittee agrees to pay all costs incurred thereof.

11. The use of a permitted boat dock facility shall be limited to the mooring of the permittee's watercraft and the storage, in enclosed locker facilities, of his/her gear essential to the operation of such watercraft.

12. Neither a permitted facility nor any houseboat, cabin cruiser, or other vessel moored thereto shall be used for human habitation or in any manner which gives the appearance of converting the public property, on which the facility is located, to private use.

13. Facilities granted under this permit will not be leased, sub-let or provided to others by means of engaging in commercial activity(s) by the Permittee or his/her agent for monetary gain. This does not preclude the permittee from selling total ownership to the facility.

14. Boat mooring buoys and flotation units of floating facilities shall be constructed of materials that will not become waterlogged or sink when punctured.

15. Floating structures are subject to periodic inspection by authorized Corps representatives. The permittee will be notified of any deficiencies, at which time he/she has 30 days to submit a written schedule for correction to the resource manager. No deviation or changes from approved plans will be allowed without prior written approval of the resource manager.

16. Floating facilities shall be securely anchored to the shore in accordance with the approved plans by means of moorings which do not obstruct general public use of the shoreline or adversely affect the natural terrain or vegetation.

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17. The permit display tag shall be posted on a floating facility and/or on the land areas covered by the permit so that it can be visually checked with ease in accordance with instructions provided by the resource manager.

18. No vegetation other than that prescribed in the permit will be damaged, destroyed or removed. No vegetation of any kind will be planted, other than that specifically prescribed in the permit.

19. No change in land form such as grading, excavation or filling is allowed.

20. This permit is non-transferable. Upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void.

21. By 30 days written notice, mailed to the permittee by certified letter, the district commander may revoke this permit whenever the public interest necessitates such revocation or when the permittee fails to comply with any permit condition or term. The revocation notice shall specify the reasons for such action. If the permittee, requests in writing a hearing from the resource manager within the 30 day period, the district commander shall grant such hearing at the earliest opportunity. In no event shall the hearing date be more than 60 days from the date of the hearing request. A final decision shall be rendered in writing at the conclusion of such hearing and mailed to the permittee by certified letter.

22. Notwithstanding the condition cited in paragraph 21 above, if in the opinion of the district commander, emergency circumstances dictate otherwise, the district commander may summarily revoke the permit.

23. When vegetation modification on these lands is accomplished by chemical means, the program will be in accordance with appropriate Federal, state and local laws, rules and regulations. The use of all chemicals requires advance approval by the resource manager and should be applied by licensed applicator.

24. The resource manager or his/her authorized representative shall be allowed to cross the permittee's property, as necessary, to inspect facilities and/or activities under permit.

25. When vegetation modification is allowed, the permittee may delineate the government property line in a clear, but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan.

26. If the ownership of a permitted facility is sold or transferred, the permittee will notify the Resource Manager of the action prior to finalization. The new owner must apply for a Shoreline Use Permit within 14 days or remove the facility and restore the use area within 30 days from the date of ownership transfer.

27. If permitted facilities are removed for storage or extensive maintenance, the resource manager may request all portions of the facility be removed from public property.

Appendix D to 327.30—Permit [Reserved]

[FR Doc. 88-12823 Filed 6-7-88; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 86, and 600

[FRL 3393-5]

Control of Refueling and Evaporative Emissions From New Motor Vehicles and Engines and Gasoline and Alcohol Blends Volatility

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: EPA has scheduled a public workshop to discuss the need to revise the refueling and evaporative emission test procedures associated with the onboard refueling and volatility control programs proposed on August 19, 1987 (52 FR 31182 and 52 FR 31274, respectively). EPA had assumed that the adoption of onboard refueling control systems would address the control of potentially significant gasoline vapor emissions not otherwise addressed by the evaporative test procedures or standards. In particular, EPA expected the adoption of integrated onboard system designs, which have excess vapor control capacity most of the time (i.e., between refuelings) which would be available to control evaporative emissions in situations more severe than current test conditions, but typical of high-ozone days.

Since the time of the proposals, a number of manufacturers have indicated their preference for non-integrated onboard system designs which would not be able to control these excess evaporative emissions. To the extent that manfuacturers adopt such non-integrated onboard designs, changes in the proposed test procedures appear necessary in order for the procedures to ensure that non-integrated systems provide the same degree of control in-use as integrated systems, especially under those ambient conditions occurring when ozone is a problem. Also, the same concerns would be present were EPA to promulgate gasoline volatility controls and their associated test procedure modifications prior to promulgating onboard refueling controls, as again there would be no excess capacity available for important air quality situations not currently addressed by EPA's test procedures.

This workshop is designed to foster discussion of these issues and the possible solutions that EPA may propose later this year. In addition, because manufacturers have requested an opportunity to present issues related to the proposed refueling and evaporative emission test procedures, a portion of the workshop will also be devoted to these issues.

DATE: The workshop is scheduled for Thursday, June 30, 1988 from 9:30 a.m. to 4:30 p.m.

ADDRESS: The workshop will be held at EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Tad Wysor, SDSB-12, U.S. Environmental Protection Agency, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105 (313) 668-4332.

SUPPLEMENTARY INFORMATION: EPA's interest in a workshop at this time stems from the design approaches that many manufacturers appear to be following in response to EPA's onboard refueling Notice of Proposed Rulemaking (NPRM) (see SUMMARY, above). EPA has expressed a continuing concern that gasoline vapor emissions in situations more severe than EPA's current test procedures may represent a significant in-use emission problem. Some of these situations were highlighted in both the onboard refueling NPRM (52 FR 31185) and the volatility NPRM (52 FR 31291). Such concerns include driving patterns which repeatedly load the canister without any opportunity for purging (i.e., multiple diurnals); "running losses" (uncontrolled fuel tank vapors generated during vehicle operation); and the effects on these and other situations of the higher-than-average temperatures characteristic of high ozone days. EPA had expected that onboard control system designs would address many of these concerns.

At the time of the onboard and volatility proposals, EPA expected that manufacturers would likely choose "integrated" refueling control designs for reasons of simplicity, space, and cost. Integrated systems in this context consist of a single charcoal canister which is connected to the fuel tank in such a way which allows vapors to freely flow to the canister at all times. Because of these characteristics, as well as the reasonably worst-case nature of the refueling test procedure itself, EPA's assumption was that the great majority of vapors generated in the fuel tank on high-ozone days would be controlled.

However, many manufacturers at this time appear to be considering non-integrated refueling control systems which incorporate separate more conventionally-sized evaporative canisters and separate purge systems. The capacity of the refueling canister in such systems would not be available to control excess evaporative emissions.

The capacity of the evaporative canister and purge on vehicles with these systems will likely be insufficient to control vapor emissions under many high ozone conditions.

EPA's concern is that while the proposed refueling and evaporative test procedures may adequately address control of such emissions from vehicles with integrated systems, non-integrated and conventional evaporative systems certified under the proposed test procedures would not likely be effective. Since EPA believes that the control of evaporative emissions in most situations typical of high ozone days is crucial to improving ozone-related air quality, EPA wishes to raise these issues and discuss possible test procedure modifications at the earliest possible date.

Possible Changes to Test Procedures

To the extent that some manufacturers may prefer non-integrated systems, EPA believes that changes in the proposed test procedures may be necessary to ensure that non-integrated designs will control excess vapor emissions on days when ozone control is most needed. While the test procedures as they relate to integrated systems may need minor refinements, EPA's primary concern is the performance on non-integrated refueling control systems.

The most direct way to resolve many of EPA's concerns would be to change test cell, diurnal and/or fuel temperatures to better represent high-ozone day conditions and to add the direct measurement of running losses. However, the Agency would prefer to avoid the inconvenience and cost of such changes if simpler revisions would achieve the same goal. One such alternative might be to add one or more additional diurnal head builds to the test procedure to increase the capacity of the evaporative emission control system. Also, an engineering review of the fuel system may be sufficient to ensure that there are no design features (e.g., limiting orifices, valves) Which would allow tank pressure build-up and in-use running losses and avoid the need to measure such emissions.

While the primary focus of these modifications is the non-integrated onboard system, the engineering review of the fuel system mentioned above may also be necessary in the testing of vehicles with integrated onboard systems. It is also possible that the test procedure for vehicles with intergrated systems could be simplified—for example, by deleting the diurnal heat build, if this could be shown to be superfluous based on the other aspects of the proposed sequence (such as the SHED measurement of refueling emissions and the integrated nature of the control system).

Finally, if temperatures of any part of the test procedure are changed to better represent high-ozone-day experience, the selection of the tempertures becomes and issue. EPA is analyzing temperature data on high-ozone days and will have results by the time of the workshop. A closely related issue is the question of which ASTM class to base test conditions and test fuel RVP. As proposed, EPA expects in-use gasoline volatility controls to be implemented which will result in equivalent emission reductions throughout the country regardless of ASTM class. However, EPA has received comments from the oil industry that the cost of RVP reductions is dramatically higher below 9 pounds RVP. If EPA were to promulgate less than the proposed proportional control in Class A and B areas, worst-case vehicle emissions would then tend to occur in these areas rather than in Class C areas. Under such a scenario, EPA would need to consider basing any revised test procedure temperatures on Class A or Class B high-ozone-day temperatures and/or revising the test fuel RVP to match in-use volatility in these areas.

Depending on the outcome of discussions at the workshop and any subsequent data received, EPA intends to propose changes to the test procedures proposed in both the volatility and refueling NPRMs as a part of the supplemental NPRM of the onboard refueling rulemaking (see 52 FR 31205). The purpose of this notice and the associated workshop is to provide as much advance notice as possible and also to help ensure that any proposed revisions are based on all available information.

Outline of the Workshop

The workshop will involve presentations by EPA staff and open discussion on the above mentioned and other pertinent issues. Staff presentations will include analyses of current ozone nonattainment area temperatures, in-use trip sequence data, and excess evaporative emissions under these conditions. EPA staff will then describe possible test procedure changes and entertain discussion of them. Finally, as some manufacturers have requested, there will be an opportunity for attendees to raise issues related to the already proposed refueling and evaporative test procedures.

The Agency encourages broad industry and public participation in this workshop and invites thorough technical evaluation of these issues.

Date: May 31, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-12860 Filed 6-7-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Atlantic Billfishes

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic Fishery Management Council, in cooperation with the New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Mangement Councils, has submitted the Fishery Management Plan for Atlantic Billfishes (FMP) for review by the Secretary of Commerce. Comments from the public are invited.

DATE: Comments will be accepted until August 1, 1988.

ADDRESSES: Send comments to Rodney C. Dalton, Fishery Operation Branch, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of the FMP and supporting documents may be obtained from the South Atlantic Fishery Management Council, Southpark Building, Suite, 306, 1 Southpark Circle, Charleston, SC 29407, telephone 803-571-4366.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton (FMP Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Councils under the authority of the Magnuson Fishery Conservation and Management Act, which requires the Secretary of Commerce, upon receipt of the FMP, immediately to publish notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the FMP.

The FMP proposes regulations for managing the foreign and domestic fisheries for Atlantic billfishes within the exclusive economic zone in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea). The FMP proposes to (1) prohibit the sale of blue marlin, white marlin, sailfish, and

spearfish caught in specified portions of the Atlantic Ocean; (2) establish minimum size limits for blue marlin, white marlin, and sailfish; (3) prohibit possession of billfishes taken by pelagic longline and drift net vessels; (4) restrict possession of billfishes to those taken by rod and reel; and (5) require catch and effort reports from billfish tournaments.

On September 25, 1987, the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for this FMP (52 FR 36096). Proposed regulations based on this FMP are scheduled to be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: June 3, 1988

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-12919 Filed 6-3-88; 3:00 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Hard Red Winter Wheat; Protein Equipment Calibration

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Beginning June 13, 1988, the Federal Grain Inspection Service (FGIS) will implement a new calibration for near infrared reflectance (NIR) instruments for Hard Red Winter wheat protein determinations.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., USDA/FGIS/Resources Management Division, Room 0628-S, P.O. Box 96454, Washington, DC 20090-6454; telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: A new Hard Red Winter (HRW) calibration for near infrared reflectance instruments will be implemented for protein determinations. The calibration was developed with the assistance of the USDA Agricultural Research Service Instrumentation Research Laboratory and the Agricultural Marketing Service Statistics Branch. New NIR values for the national standard reference samples will be used to detect instrument drift and keep the NIR's aligned with the Kjeldahl laboratory at the FGIS Technical Center in Kansas City.

Beginning Monday, June 13, 1988, the new calibration will be implemented in FGIS field offices and the official agencies in their circuits in the following sequence:

1. Wichita, KS; Moscow, ID;
2. Kansas City, MO; St. Louis, MO; Omaha, NE;
3. Grand Forks, ND; Duluth and Minneapolis, MN;
4. Beaumont, Corpus Christi, Galveston, Pasadena, and Plainview, TX; Belle Chasse, Destrehan and Lutcher, LA;
5. Olympia, WA; Portland, OR; Sacramento, CA.

A technical review of the new calibration indicates that the effect on the national system should be minimal. However, the precise impact of the new calibration at any given location cannot be accurately predicted.

To insure that the HRW calibration reflects the new varieties being grown by producers and is therefore as precise as possible, FGIS plans to update the calibration annually using a five year rollover of data.

Dated: June 3, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88-12914 Filed 6-7-88; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Incidental Take-Sea Turtles.

Form Numbers: Agency—N/A; OMB—0648-0178.

Type of Request: Reinstatement of a previously approved collection.

Burden: 12 respondents; 1 reporting hour.

Needs and Uses: Each year waters in the Texas area are closed to delay harvest of small brown shrimp until they reach a larger, more valuable size. To minimize economic hardship on shrimp fishermen, NOAA has recently issued regulations allowing shrimp operations in waters 15 miles and beyond, which are generally closed during the "Texas" closure period. Shrimp fishing in these waters, however, could result in the capture, injury, or killing of endangered or threatened sea turtles. To comply with the requirements of the Endangered Species Act, NOAA has set a limit on the allowable take of turtles. The proposed reporting requirement will be used to monitor the taking of sea turtles during shrimp trawling operations in June and July.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: By fishing trip.

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Griffen, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-12853 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Bureau of Standards.

Title: Malcolm Baldrige National Quality Award Application.

Form Numbers: NBS—N/A; OMB—N/A.

Type of Request: Existing collection in use without an OMB control number.

Burden: 60 respondents; 4,800 reporting hours.

Needs and Uses: The National Quality Award was established by Public Law 100-107, the "Malcolm Baldrige National Quality Improvement Act." The Act's purpose is to establish and conduct a national quality improvement program. To support this effort, an Award will be given to: (1) Promote quality awareness, (2) recognize quality achievements of U.S. companies, and (3) publicize quality successes, which can be adopted by other companies. The information provided by companies seeking the award will be used in evaluating the applicants.

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Affected public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Timothy Sprehe, 395-3765.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-12864 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 10, 1988 the Department of Commerce published the preliminary results of its admipistrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period August 2, 1985 through November 30, 1986.

We gave interested parties an opportunity to comment. We received comments from the respondent. Based on our analysis, we have changed our results from those presented in the preliminary results.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1988 the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 7774) the preliminary results of its administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The products covered by this review are low-fuming brazing copper rod and wire ("LFB"), principally of copper and zinc alloy ("brass"), or varied dimensions in terms of diameter, whether cut to length or coiled, whether bare or flux-coated, currently classifiable under Tariff Schedules of the United States Annotated numbers 612.6205, 612.7220, and 653.1500 and Harmonized System item numbers 7407.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60, and 8311.90.00.

The review covers one manufacturer/exporter of LFB from New Zealand to the U.S., McKechnie Metal Products Limited ("McKechnie"), and the period August 2, 1985 through November 30, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the respondent.

Comment 1: McKechnie argues that since it bought forward U.S. currency to cover exchange rate fluctuations, the Department should use these forward rates in its calculation of dumping margins rather than the rates in effect on the actual sale dates.

Department's Position: In accordance with § 353.56 of our regulations, we made all currency conversions at the rates, certified by the Federal Reserve Bank, in effect on the U.S. sale dates.

Comment 2: McKechnie argues that the Department should have adjusted for the physical differences between the coiled merchandise that McKechnie sold in the U.S. and the straightened merchandise that McKechnie sold in the home market.

Department's Position: We agree and have adjusted our calculations accordingly.

Final Results of the Review

Based on our analysis of the comments received, we have changed our results from those presented in the preliminary results and determined that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
McKechnie	8/02/85-11/30/86	2.61

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 2.61 percent shall be required. This deposit requirement is effective for all shipments of low-fuming brazing copper rod and wire from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: May 19, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-12910 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-007]

Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 15, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on potassium permanganate from Spain. At the request of the respondent we held a public hearing on February 19, 1988. Based on our analysis of the issues raised at the hearing, the final results of review are changed from those presented in the preliminary results.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1051) the preliminary results of antidumping administrative review of the antidumping duty order on potassium permanganate from Spain (49 FR 2277, January 19, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of potassium permanganate currently classifiable under item 420.2800 of the Tariff Schedules of the United States Annotated. This product is currently classifiable under HS item 2841.60.00. Potassium permanganate is an inorganic chemical produced in free flowing, technical and pharmaceutical grades.

The review covers Asturquimica, S.A. and the period January 1, 1986 through December 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request to Asturquimica, we held a public hearing on February 19, 1988. Asturquimica submitted additional information to support its claims for adjustment publication of the preliminary determination. It is the Department's policy not to accept new data after publication of a preliminary determination; therefore, this information was not considered in making our final determination.

Comment 1: Asturquimica asserts that the Department should have "lagged" the exchange rate to adjust for fluctuations in the exchange rate. As an alternative, Asturquimica suggests that the Department use an average home market price based on a whole year or half year instead of the monthly weighted-average price the Department used for comparison to United States price.

Department's Position: We disagree. Section 353.56(b) of the Commerce Regulations is a special rule for *fair value* investigations which allows us to compensate for price differences resulting from sustainted changes or temporary fluctations in prevailing exchange rates. No provision is made for this adjustment in section 751 administrative reviews.

In this review, since all comparisons involved purchase price transactions, we made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank. In accordance with the Department's normal policy, we calculated a monthly weighted-average home market price for comparison to United States price. This satisfies the requirement of section 773(a) of the Tariff Act that foreign market value shall be ascertained as of the date of purchase, in the case of purchase price transactions, or as of the date of resale in the United States by a related importer.

To include home market sales taking place many months after the export sale, in the computation of foreign market value, as respondent suggests, would significantly impair an exporter's ability to maintain his export prices at not less than foreign market values, since those later prices could not be known as of the date of the U.S. sale.

Comment 2: Asturquimica claims that an adjustment should be made for additional handling charges in Spain. Asturquimica did incur these expenses on Spanish sales but did not incur them on United States sales; therefore, an adjustment for this difference is appropriate.

Department's Position: We agree. Since these expenses would be deducted from the U.S. selling price, it is necessary to also deduct them from home market selling prices to achieve a proper comparison. Therefore, we have recalculated the foreign market value to include a deduction for brokerage/handling charges.

Comment 3: Asturquimica claims that an adjustment should be made for technical services provided in the home market. These services are provided to Asturquimica's home market customers when these customers have problems with their potassium permanganate, and in many cases, these services are provided by Asturquimica to its customers' customers.

Department's Position: We disagree. Asturquimica claims an adjustment for technical services to account for the salaries and travel expenses of two chemical engineers who perform the services at issue. The provision of these services is considered to be of a promotional nature establishing a buyer/seller relationship rather than providing services for specific sales. Verification in a prior review established that the engineers contact customers prior to sales, and no information in the current response indicated that their activities have changed. Therefore, no adjustment was allowed.

Comment 4: Asturquimica claims that an adjustment should be made for advertising. Asturquimica states that it meets the requirement of § 353.15 of the Commerce Regulations that the exporter must demonstrate that it has incurred advertising costs on behalf of its customers and that these costs would then be attributed to later sales of the merchandise by the customers.

Department's Position: We agree. After further review of the information on the record, we agree that an adjustment for advertising is appropriate. The advertising in question was directed both to Asturquimica's customers and to the customers' clients. As such, it is partially an assumption of the purchasers' selling costs and partially an indirect selling expense. An advertising amount proportional to sales to distributors as a share of total sales has been allowed as an adjustment of prices to distributors. We have adjusted our calculation of foreign market value to include a deduction for advertising.

Comment 5: Asturquimica claims that a circumstance of sale adjustment should be made for invoice processing costs. Asturquimica's invoices are processed by an unrelated firm which charges Asturquimica for these services on the basis of the number of invoices processed. It claims that all invoice costs are the same. Asturquimica maintains that because the Department's comparison of prices in each market is on a per ton basis, not on a per sale basis, this adjustment should be allowed since Asturquimica incurred a greater ton per cost on sales in Spain, where each sale was at a significantly lower quantity.

Department's Position: While Asturquimica provided the total charged to it for "services of invoicing, process, verification and control of same", Asturquimica did not actually pay a charge for each invoice for the sales under consideration. Therefore, as no expense could be considered to be directly related to any particular sale, no adjustment was allowed.

Comment 6: Asturquimica claims that an adjustment should be made for differences in levels of trade. In Spain, Asturquimica sells to wholesalers who sell to end users. In the United States, Asturquimica sells to an importer who sells to distributors who sell to end users.

Department's Position: We disagree. In calculating foreign market value, the Department used only sales to wholesalers, which we determined to be at the same level of trade as Asturquimica's customer in the United

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States. Therefore, no adjustment is necessary.

Comment 7: Asturquimica points out a clerical error made in the calculation of the weighted-average home market price.

Department's Position: We agree and have corrected this error in our final determination. The Department has also corrected a programming error found after publication of the preliminary determination.

Comment 8: The petitioner submits that the Department improperly adjusted U.S. price by adding the amount of indirect taxes rebated to Asturquimica under the provisions of Spain's Regimen Transitorio del IVA program. Petitioner submits that the taxes were rebated because the goods were in inventory on January 1, 1986, and not "by reason of exportation." Asturquimica maintains that the potassium permanganate in inventory at the beginning of the review period was exported during the period and Asturquimica received the rebate for the exported material. Asturquimica received no such rebate on potassium permanganate sold in Spain.

Department's Position: The Department allowed Asturquimica's claim for adjustment for rebated taxes in our preliminary determination based on information contained in its response to our questionnaire. However, after review of Title IX of Value Added Law 30/1985 we have determined that no adjustment for this rebate is appropriate. Article 72.1(a) provides as follows:

"Taxpayers with a volume of sales of more than 50 million pesetas during the year immediately preceding the date the Value Added Tax comes into force may deduct 6% of the acquisition price, including IGTE, of all tangible goods or their component parts, listed in their inventory at said date, as long as the acquisitions of such goods was subject to taxation under the IGTE and not exempt thereof * * *".

This provision clearly states that the rebate was paid to Asturquimica because the goods were in inventory on January 1, 1986 and not because these goods were exported. Asturquimica did not receive a rebate on sales in Spain because that merchandise was not in inventory on January 1, 1986. It is also clear from this provision that if the potassium permanganate sold in Spain during the review period had been in inventory on January 1, 1986, Asturquimica would have received a rebate on those sales.

For an adjustment to be made, the rebate must have been due to the exports of the product. This is not the case in this situation. Therefore, the Department has recalculated United States price without taking into account an adjustment for rebated taxes.

Final Results of Review

Based on our analysis of the comments received, the final results are changed from those presented in the preliminary results of review and we determine that a margin of 16.16 percent exists for Asturquimica, S.A. for the period January 1, 1986 through December 31, 1986.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a) (1) of the Tariff Act, a cash deposit of estimated antidumping duties of 16.16 percent shall be required. This deposit requirement is effective for all shipments of Spanish potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: June 1, 1988.

[FR Doc. 88-12908 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

Sorbitol From France; Final Results of Antidumping Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 21, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on Sorbitol from France. The review covers one manufacturer of this merchandise and the period April 1, 1986 through March 31, 1987.

We gave interest parties an opportunity to comment on the preliminary results. We received no comments and the final results remain unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; Telephone (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 13142) the preliminary results of its administrative review of the antidumping duty order on sorbitol from France (47 FR 15391, April 9, 1982). The respondent, Roquette Freres requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of French crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries and pharmaceuticals. Such merchandise is currently classifiable under item number 493.6820 of the *Tariff Schedules of the United States Annotated* and item number 2905.44.0000 of the Harmonized System. The review covers the one known French exporter of crystalline sorbitol to the United States, Roquette Freres, and the period April 1, 1986 through March 31, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from those we presented in the preliminary results, and we determine that a margin of 0.49 percent exists for the period April 1, 1986 through March 31, 1987.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentage above.

Further, since the margin for Roquette Freres for the review period is less than 0.50 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties, as required by section 751(a)(1) of the Tariff Act, on shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1987 and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: May 19, 1988.

[FR Doc. 88-12909 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-068]

Spun Acrylic Yarn From Japan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke in part.

SUMMARY: In response to requests by eight respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on spun acrylic yarn from Japan. The review covers eight exporters of this merchandise and the period April 1, 1986 through March 31, 1987. The review indicates no shipments during the period.

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order with respect to certain firms.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 43781) the final results of its last administrative review of the antidumping duty order on spun acrylic yarn from Japan (45 FR 24127, April 8, 1980). In accordance with § 353.53(a) of the Commerce Regulations, eight exporters requested that we conduct an administrative review, and we published the initiation on May 20, 1987 (52 FR 18937). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of spun acrylic plied yarn for machine knitting, currently classifiable under TSUSA items 310.5015 and 310.5040. Spun acrylic yarn is currently classifiable under HS item number 5509.32.00.

The review covers eight exporters of Japanese spun acrylic yarn and the period April 1, 1986 through March 31, 1987. There were no known shipments of this merchandise by these firms to the United States during the period.

Preliminary Results of the Review and Tentative Determination to Revoke in Part

As a result of our review, we preliminarily determine that the following margins exist during the period:

Manufacturer/exporter	Time period	Margin (percent)
C. Itoh & Co., Ltd.	Apr. 86-Mar. 87	[1] 29.05
Gunze Sangyo, Inc.	do	[1] 29.05
Itomen & Co., Ltd.	do	[1] 18.33
Mitsubishi Corporation.	do	[1] 20.25
Mitsui & Co., Ltd.	do	[2] 0
Michimen Corporation.	do	[1] 23.19
Nissho Iwai Corporation.	do	[1] 18.33
Teijin Shoji Kaisha, Ltd.	do	[1] 29.05

[1] No shipments during the period; margins from fair value investigation

[2] No shipments during the period; margin from last review in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 6 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

These exporters requested partial revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, have agreed in writing to an immediate suspension of liquidation and reinstatement in the order under

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circumstances specified in the written agreement. These firms have not shipped this merchandise for more than four years. We asked our Tokyo office to verify that there had been no shipments of this merchandise to the United States during the last four years. Itoman and Mitsui refused to allow verification and Mitsubishi could not substantiate that there had been no sales for the last four years. Therefore, the Department used the best information available in determining the cash deposit for those firms and we deny their request for revocation.

Therefore, we tentatively determine to revoke the antidumping duty order on spun acrylic yarn from Japan with respect to C. Itoh & Co., Ltd, Gunze Sangyo, Inc., Nichimen Corp., Nissho Iwai Corp., and Teijin Shoji Kaisha, Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise exported by these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Further, as provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based on the above margins. For any shipments from the one remaining known manufacturer/exporter not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for that firm (49 FR 22368, May 29, 1984). For any further entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipment occured after March 31, 1987 and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese spun acrylic yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C., 1675 (a)(1), (c)), and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 354).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 19, 1988.

[FR Doc. 88-12911 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Tip Top Associates From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Dismissal of appeal.

Tip Top Associates (Appellant) filed an appeal with the Secretary of Commerce under section 307 of the Coastal Zone Management Act in response to an objection by the South Carolina Coastal Council (State) to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. P/N 87-3B-351 for the filling of 0.74 acres of wetlands for the construction of a roadway over Cowford Creek in Horry County, South Carolina.

Since the filing of this appeal, the State has determined that the proposed activity is consistent with South Carolina's Coastal Zone Management Program. This determination is based on new information submitted by the Appellant which indicates that the proposed roadway will provide access for a fire station. In addition, the Appellant has agreed to address mitigation for unavoidable losses in the project design. This mitigation will be coordinated with the State.

Upon notification by the parties that this matter has been resolved amicably, the appeal has been dismissed. Tip Top Associates is barred from filing another appeal from the South Carolina Coastal Council's objection to Tip top Associates' original consistency certification.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: June 1, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 88-12865 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Application for Permit; Duke University Marine Laboratory (P371A).

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Duke University Marine Laboratory, Pivers Island, Beaufort, North Carolina 28516.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Mammals:* Atlantic bottlenose dolphin (*Tursiops truncatus*), 300.

4. *Type of Take:* Potential harassment while determining if seasonal or inter-annual population exist; individual identification; and an examination of the social organization of the dolphins.

5. *Location of Activity:* North Carolina coastal and estuarine waters.

6. *Period of Activity:* 2 Years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: June 2, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-12849 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5 p.m. on June 28, 1988, and from 8:30 a.m. to noon on June 29, 1988. The meeting will be held at the Doubletree Hotel, 2 Portola Plaza in Monterey, California 93940. The purpose of the meeting is to review the equating of new forms of the Armed Services Vocational Aptitude Battery. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than June 15, 1988.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1988.

[FR Doc. 88-12860 Filed 6-7-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 21-24 June 1988.

Time: 0830-1600 hours.

Place: Redstone Arsenal, Huntsville, Alabama.

Agenda: The Army Science Board Independent Evaluation Panel of the Stinger Missile System will meet for briefings by MICOM, the Program Executive Office, and the contractor. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-12874 Filed 6-7-88; 8:45 am]

BILLING CODE 3710-08-M

Privacy Act of 1974, Altered System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of an altered system of records.

SUMMARY: The Department of the Army is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice on July 8, 1988, unless comments are received which result in a contrary determination.

ADDRESS: Send any comments to Commander, U.S. Army Information Systems Command, ATTN: AS-OPS-MR (Mr. Cliff Jones), Fort Huachuca, Arizona 85613-5000. Telephone (602) 538-8588, AUTOVON: 879-8588.

SUPPLEMENTARY INFORMATION: The Army's system of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published to date in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22080) May 29, 1985 [Compilation]
FR Doc. 86-14667 (51 FR 23576) June 30, 1986
FR Doc. 86-19534 (51 FR 30900) August 29, 1986
FR Doc. 86-25274 (51 FR 40479) November 7, 1986
FR Doc. 86-27580 (51 FR 44361) December 9, 1986
FR Doc. 87-8140 (52 FR 11847) April 13, 1987
FR Doc. 87-11379 (52 FR 18798) May 19, 1987
FR Doc. 87-15611 (52 FR 25905) July 9, 1987
FR Doc. 87-19688 (52 FR 32329) August 27, 1987
FR Doc. 87-26438 (52 FR 43932) November 17, 1987
FR Doc. 88-8671 (53 FR 12971) April 20, 1988
FR Doc. 88-10355 (53 FR 16575) May 10, 1988

The alteration consists of categories of individuals covered by the system being expanded to include all family members of Department of Army civilians who receive care in an Army operated or Army regulated activity and all persons suspected of abusing or neglecting family members to include contractors that work in Army operated or Army regulated activities. Categories of records in the system is being expanded to include Medical and Family Advocacy Case Management Team records and records concerning child abuse occurring in Army operated or regulated activities.

An altered system report, as required 5 U.S.C. 552a(o) of the Privacy Act was submitted on May 16, 1988 to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

This record system was previously published in the Federal Register at 50 FR 22223, May 29, 1985.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1988.

A0917.10DASG

SYSTEM NAME:

Family Advocacy Case Management Files.

SYSTEM LOCATION:

Primary: Commander, U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI-QPD, Fort Sam Houston, TX 78234-6070.

Secondary: Office of the Surgeon General, Headquarters, Department of the Army, ATTN: DASG-AOR, 5109 Leesburg Pike, Falls Church, VA 22041-3258, U.S. Army medical treatment facility and/or office on post, camp, or station where file was initiated or, in some cases, subsequently transferred upon reassignment of military member.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) All family members entitled to care at Army medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities and all persons suspected of abusing or neglecting such family members.

(2) All family members of Department of Army civilians who receive care in an Army operated or regulated activity.

(3) All persons suspected of abusing or neglecting family members described in items (1) and (2) above to include contractors that work in Army operated or Army regulated activities.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and Family Advocacy Case Management Team records of suspected or established cases of child abuse or neglect and cases of spouse abuse to include child abuse occurring in Army operated or regulated activities, extracts of law enforcement investigative reports, correspondence, family advocacy case management team reports, follow-up and evaluative reports, and other supportive data relevant to individual family advocacy case management files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Child Abuse Prevention and Treatment and Child Abuse Prevention and Treatment and Adoption Program Reform Act, 42 U.S.C. 5101, *et seq*; 5 U.S.C., section 301; 10 U.S.C., section 3013; E.O. 9397.

PURPOSE(S):

(1) To provide child abuse and neglect and spouse abuse treatment services. Services include mental health, education, counseling, health care, protection, foster care, safe shelter, legal and referral for members and former members of the uniformed services, civilians, and dependents receiving care under Army auspices or in an Army regulated or operated facility;

(2) To determine qualifications and suitability of Department of Army civilians and contractors for duty assignments and fitness of Army personnel for continued military services;

(3) To perform research studies and compile statistical data concerning uniformed services personnel, civilians, and dependents receiving medical care under Army auspices, or services through an Army operated or regulated activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Departments and agencies of Executive Branch of government in performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and spouse abuse;

(2) The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies;

(3) Federal, state, or local governmental agencies when it is deemed appropriate to use civilian resources in counseling and treating individuals or families involved in child abuse or neglect or spouse abuse; or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; or when a state, county, or municipal child protective service agency inquires about a prior record of substantiated abuse for the purpose of investigating a suspected case of abuse;

(4) National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and accreditation bodies for professional certification and accreditation such as joint Commission for the Accreditation of Hospitals.

(5) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, magnetic tape or disc, punched cards, machine listings, and other computerized or machine readable media.

RETRIEVABILITY:

By name of the suspected abused child or spouse or abusive spouse, parent, or care taker and the name and/or SSN of the military member (Information may be indexed by the name of SSN of an Army employee, member, or contracted employee).

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and on a need-to-know basis only. Computer terminals are located in supervised areas with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Spouse records are retained in decentralized office files for 5 years after the end of the year in which the case is closed and are then destroyed. Child records are retained in decentralized office files until the child is age 23 after which the record is destroyed. Records (DD Form 2486) in the central registry at the primary location are retained until the child is age 23 after which information is erased/destroyed; information on adults is retained for 5 years after the end of the year in which the case was closed and is then erased.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of Army, 5109 Leesburg Pike, Falls Church, VA 22041-3258.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information about them should contact either the commander of the medical center or hospital where treatment was received or the Central Registry at the U.S. Army Patient Administration Systems and Bioistatistics Activity, ATTN: HSHI-QPD, Fort Sam Houston, TX 78234-3070.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure". Individual should provide his/her full name, SSN, current address, date and location, details that will assist in locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing inital determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, state and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (i.e., social workers, physicians—including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system which fall within 5 U.S.C., section 552a(k)(2) and (5) are exempted from the following provisions of Title 5 U.S.C., section 552a(d).

[FR Doc. 88-12881 Filed 6-7-88; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Privacy Act of 1974; New Record System

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of a new record system subject to the Privacy Act.

SUMMARY: The Defense Logistics Agency proposes to add a new record system subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice July 8, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. David Henshall, DLA-XAM Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6130. Telephone (202) 274-6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22867) May 29, 1985 (DoD Compilation)
FR Doc. 85-30123 (50 FR 51698) December 20, 1985
FR Doc. 86-17259 (51 FR 27443) July 31, 1986
FR Doc. 86-19035 (51 FR 30104) August 22, 1986
FR Doc. 87-21654 (52 FR 35904) September 18, 1987
FR Doc. 87-22481 (52 FR 37495) October 7, 1987
FR Doc. 88-03220 (53 FR 04442) February 16, 1988
FR Doc. 88-06858 (53 FR 09865) March 28, 1988

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on May 27, 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 3, 1988.

S322.51 DLA-LZ

SYSTEM NAME:

Training Cohort Data Base.

SYSTEM LOCATION:

Naval Automation Data Facility (NAVDAF), Naval Training Center, Building 2040, Orlando, FL 32813-5018.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military officers and enlisted personnel who entered active duty after July 1, 1971, or who became a member of a reserve component after October 1, 1979; DoD civilian employees of the military services since December 31, 1976.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records, some of which are organized into year-of-entry cohorts. These records are copied from existing data files and reports (see Sources below). Longitudinal information consists of Social Security Account Number; demographic and accession-related information such as age, sex, race, ethnicity, mental aptitude scores, physical characteristics, date of entry; military personnel information such as rank, term of service, promotion dates; training and occupational information such as inservice schooling, on-the-job training, and military occupation with corresponding dates; training outcome and job performance measurements; and sparation-related information such as eligibility to reenlist.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113; 10 U.S.C. 131; 10 U.S.C. 136; E.O. 9397.

PURPOSE(S):

The purpose of the system of records is to provide a central facility that will support the DoD training community in the following activites: Reviewing training requirements and assessing occupational trends; examining training attrition patterns, training management options, methods, and efficiency; tracking occupational skill and experience inventories, and changes in occupation pipelines; and developing training, performance, readiness linkages to support research and planning activitives.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the blanket routine uses set forth at the beginning of the DLA listings of systems of records which are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape and disk.

RETRIEVABILITY:

Retrievable by Social Security Account Number. .

SAFEGUARDS:

At NAVDAF, tapes are stored in a locked vault in the machine room. This is a controlled access area which can be accessed only by the AP Security Officers, OIC, or tape librarian. Tapes are mounted for processing by use of the Tape Management System whereby each tape contains a unique I.D. and account number. Only authorized users can issue job control instructions at program run time to instruct the operator in mounting appropriate tapes. Back-up tapes are stored in a separate locked vault located at the opposite end of the facility.

Disk storage is protected with passwords at both account and file levels. The password protection also controls type of access to the file.

The original tapes are maintained in a locked room, with restricted access, at Defense Training and Performance Data Center, 3280 Progress Drive, Orlando, FL 32826-3229

RETENTION AND DISPOSAL:

These files consitute a historical data base and are permanent.

SYSTEM MANAGER AND ADDRESS:

Manager, Training Cohort Data Base, Defense Training and Performance Data Center (TPDC), 3280 Progress Drive, Orlando, FL 32826-3229.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager.

Written requests for information should contain SSAN, date of birth, and date of entry into military service, as well as current address and telephone number at which the individual can be reached.

For personal visits, the individual should provide acceptable identification, such as driver's license or military identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents are contained in DLA Regulation 5400.21, 32 CFR Part 1286.

RECORD SOURCE CATEGORIES:

The military services; the Defense Manpower Data Center, Defense Logistics Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR. Doc. 88-12883 Filed 6-7-88; 8:45 am]

BILLING CODE 3910-01-M

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Department of the Navy

Privacy Act of 1974; New Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of a new system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy is adding a new record system subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice July 8, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000, telephone: 202-697-1459, autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

FR Doc 88-8485 (51 FR 12908) April 16, 1986
FR Doc 88-10763 (51 FR 18068) May 16, 1986 [Compilation]
FR Doc 88-12648 (51 FR 19884) June 3, 1986
FR Doc 88-19207 (51 FR 30377) August 26, 1986
FR Doc 88-19208 (51 FR 30393) August 26, 1986
FR Doc 88-28635 (51 FR 45931) December 23, 1986
FR Doc 87-1144 (52 FR 2147) January 20, 1987
FR Doc 87-1145 (52 FR 2149) January 20, 1987
FR Doc 87-5783 (52 FR 8500) March 18, 1987
FR Doc 87-9886 (52 FR 15530) April 29, 1987
FR Doc 87-13560 (52 FR 22871) June 15, 1987
FR Doc 87-27707 (52 FR 45846) December 2, 1987
FR Doc 88-10871 (53 FR 17240) May 16, 1988

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on May 16, 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1988.

N01754-8

SYSTEM NAME:

Navy Child Development Services Program.

SYSTEM LOCATION:

Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps service members and their families or dependents. In certain locations, DOD civilian employees may be eligible for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains personal information such as name; SSN; case no.; home address and telephone number; insurance coverage; names of parents and children; performance rating; complaints; background information, including medical, education references, and prior work experience, information from NIS, the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Family Home Care program; and reports of fire, safety, housing, and environmental health inspections. Childrens' records will also include developmental profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; 42 U.S.C. 5106, and Executive Order 9397.

PURPOSE(S):

To develop child care programs that meet the needs of children and families, provide child and family program eligibility and background information; verify health status of children and verify immunizations, note special program requirements; consent for access to emergency medical care; data required by USDA programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Naval Military Personnel Command and Navy and Marine Corps Family Service Centers, including Child Development Centers.

To Federal officials involved in Child Care Services, including child abuse.

To State and local officials involved with Child Care Services if required in the performance of their official duties.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or computer disks.

RETRIEVABILITY:

By last name of member and SSN.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel. Building or rooms are locked outside regular working hours.

RETENTION AND DISPOSAL:

Records are kept for two years after individual is no longer in the Child Development Program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Child Development Services (NMPC-851), Naval Military Personnel Command, Washington, DC 20370-5000.

NOTIFICATION PROCEDURES:

Written requests may be addressed to the appropriate Navy or Marine Corps activity concerned (see Directory of the Department of the Navy Mailing Addresses). Individuals should provide proof of identity and full name.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the Systems Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from individuals either applying as child care providers or participant of the Family Home Care program; background checks from State and local authorities; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family home care monitors and parents of children enrolled.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(2). The exemption rule for this system is contained in SECNAVINST 5211.5 series (32 CFR Part 701).

[FR Doc. 88-12862 Filed 6-7-88; 8:45 am]

BILLING CODE 3810-01-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on June 27-29, 1988. The meeting will be held at the Applied Physics Laboratory, Johns Hopkins University, Johns Hopkins Road, Laurel, MD 20717. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on June 27; and commence at 8:00 a.m. and terminate at 5:30 p.m. on June 28; and commence at 8:00 a.m. and terminate at 5:00 p.m. on June 29, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include technical briefings and discussions addressing OSD/Joint Service Coordination, the military embedded computer market, Navy program requirements for Next Generation Computer Resources and ruggedization technology. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Date: June 2, 1988.

Jane M. Virga,

Lieutenant, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 88-12852 Filed 6-7-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-416-000, et al.]

Kansas Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 3, 1988.

Take notice that the following filings have been made with the Commission:

1. Kansas Power and Light Company

[Docket No. ER88-416-000]

Take notice that on May 25, 1988, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated May 3, 1988, with the City of St. John, St. John, Kansas for wholesale electric service to that community. KPL states that this contract provides essentially for a ten year extension of the original terms of the presently approved contract. The proposed effective date is August 1, 1988. In addition, KPL states that copies of the contract have been mailed to the City of St. John and the State Corporation Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light and Power Company

[Docket No. ER88-417-000]

Take notice that on May 25, 1988, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Service Agreements ("Agreements", described below as "Agreement A" dated December 21, 1987, "Agreement B" dated January 9, 1988, and "Agreement C" dated January 12, 1988) between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Boston Edison Company (BECO) and, effective February 29, 1988, a proposed termination in accordance with the terms of Agreement A.

CL&P states that: Agreement A provides for service to BECO for the transmission of BECO's purchase of entitlements in electric capacity and associated energy from a certain generating unit on the system of Public Service Electric & Gas Company and of electric system capacity and associated energy from the systems of Long Island Lighting Company and Con Edison Company of New York, Inc.; Agreement B provides for the transmission of BECO's purchase of electric system capacity and associated energy from the system of the Connecticut Municipal Electric Energy Cooperative; and Agreement C provides for the transmission of BECO's purchase of (i) entitlements in electric capacity and associated energy from certain generating units on, and (ii) electric system capacity and associated energy from, the system of The United Illuminating Company.

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of each of the Agreements. The transmission charges are determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 52 for the weekly charge, or 12 for the monthly charge, and (ii) the number of kilowatts of capacity and energy purchased by BECO during such week or month.

CL&P requests that the Commission waiver its standard notice periods and permit the rate schedule to become effective as of December 21, 1987, and permit Agreement A to terminate in accordance with its own terms, effective February 29, 1988.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and BECO (Boston, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. The Connecticut Light and Power Company

[Docket No. ER88-418-000]

Take notice that on May 25, 1988, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule and, effective April 30, 1988, a proposed termination in accordance with the terms of said rate schedule, with respect to a Transmission Service Agreement (Agreement) dated November 1, 1987 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Braintree Electric Light Department (Braintree).

CL&P states that the Agreement provides for service to Braintree for the transmission of the purchase of an entitlement in electric capacity and associated energy from a certain generating unit in which the Connecticut Municipal Electric Energy Cooperative (CMEEC) has an entitlement.

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 12, and (ii) the number of kilowatts of capacity and energy purchased by Braintree during each such month of the Term. Such transmission charge is reduced in recognition of payments made by Braintree to other systems also providing transmission service.

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CL&P requests that the Commission waive its standard notice periods and permit the Agreement (i) to become effective as of November 1, 1987, (ii) to supersede a prior transmission service agreement (CL&P Rate Schedule FERC No. 364, WMECO Rate Schedule FERC No. 289), thus automatically terminating the prior agreement, and (iii) to terminate, in accordance with its own terms, effective April 30, 1988.

WMECO has filing a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and Braintree (East Braintree, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. The Connecticut Light and Power Company

[Docket No. ER88-419-000]

Take notice that on May 25, 1988, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Service Agreement (Agreement) dated January 6, 1988 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) South Hadley Electric Light Department (South Hadley).

CL&P states that the Agreement provides for service to South Hadley for the transmission of South Hadley's purchase of electric system capacity and associated energy from the system of Littleton Electric Light & Water Department (Littleton).

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Agreement. The weekly transmission charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 52, and (ii) the maximum number of kilowatts of capacity and energy South Hadley purchases from Littleton during an hourly period of each such week of the Term. The transmission charge is reduced in recognition of payments made by South Hadley to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice periods and permit the Agreement to become effective as of January 6, 1988.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and South Hadley.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER88-420-000]

Take Notice that on May 25, 1988, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 3 to the Contract for Electric Service between PNM and the City of Gallup, New Mexico (City). Amendment No. 3 provides for an industrial incentive Rate under which PNM will grant a rate discount to City to enable City to retain retail customer loads of 8,000 kW or greater and to encourage new loads of 3,000 kW or greater. PNM's proposed discount to City will be in the form of a demand rate discount of $4.80/kW per month to City for each kW sold and delivered by City to such retail customer(s). City agrees to make an at least equal reduction in rates to such retail customer(s) through either a demand or an energy charge reduction.

Copies of the filing have been served upon City and the New Mexico Public Service Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER88-413-000]

Take notice that on May 24, 1988, Public Service Electric and Gas Company (PSE&G) on Newark, New Jersey tendered for filing an agreement for the sale of power to Boston Edison Company (Edison). Pursuant to the power sales agreement PSE&G sold to Edison 50 MW of system power during the period January 1, 1988 through January 31, 1988.

PSE&G requests waiver of the Commission's requirements to permit the power sales agreement to become effective as of the commencement of the transaction, January 1, 1988. Copies of the filing have been served upon Edison.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER88-414-000]

Take notice that on May 24, 1988, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which become effective with service on and after October 1, 1987. This filing includes a revised Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement the tariff change from the Public Utility Commission of Oregon.

PGE states that the filing shows that the base ASC is 34.57 mills/kWh, which when added by the third quarter Power Cost Adjustment of 0.89 mills/kWh results in a net ASC of 35.46.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. The Union Light, Heat and Power Company

[Docket No. ER88-415-000]

Take notice that on May 24, 1988, The Union Light, Heat and Power Company tendered for filing a Service Agreement with the City of Williamstown, Kentucky.

The tendered Service Agreement supersedes an existing agreement dated August 1, 1977. No change in rates or charges is proposed in the tendered Service Agreement. An effective date of August 1, 1987, has been requested.

Copies of the filing were served upon the City of Williamstown, Kentucky, and upon the Kentucky Public Service Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER88-423-000]

Take notice that on May 26, 1988, Wisconsin Electric Power company (Wisconsin Electric) tendered for filing a letter agreement and related revisions to FERC Rate Schedule No. 57. The filing increases the firm contract demand of Wisconsin Public Power Inc. SYSTEM (WPPI SYSTEM) to 76 MW from 50 MW, and increases the firm capacity charge. According to Wisconsin Electric, these changes are occasioned by the transfer of nine industrial customers from Wisconsin Electric's retail service to the City of Menasha's retail service. In exchange for the right to service these customers, WPPI SYSTEM has agreed to purchase the electrical requirements of these customers from Wisconsin Electric for a five-year period. The tendered letter agreement also provides for the sale to the City of Menasha of certain distribution facilities useful in serving these customers, as well as the establishment of two new points of interconnection to augment reliability during the period of transition.

Wisconsin Electric requests an effective date coincident with the full physical integration of the nine industrial customers into the Menasha electric system or at such other time shortly thereafter as the parties may agree to coincide with the completion of the billing transfer of the nine customers. Wisconsin Electric states that it will promptly notify the commission of this date. Wisconsin Electric states the WPPI SYSTEM joins in the requested effective date. Accordingly, Wisconsin Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on the City of Menasha, WPPI SYSTEM and the Public Service Commission of Wisconsin.

Comment date: June 20, 1988, in accordance with standard Paragraph E at the end of this notice.

10. John H. Dickson

[Docket No. ID-2342-000]

Take notice that on May 23, 1988, John H. Dickson tenderd for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position	Corporation
Treasurer	Massachusetts Electric Company.
Treasurer	New England Power Company.
Treasurer	New England Power Company.
Vice President, Treasurer, Director.	New England Energy Incorporated.
Treasurer, Director	NEES Energy.
Vice President, Treasurer.	England Power Service Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Joseph Harrington

[Docket No. ID-2343-000]

Take notice that on May 23, 1988, Joseph Harrington tenderd for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position	Corporation
Vice President	Narragansett Energy Resources Company.
Vice President	New England Power Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Howard W. McDowell

[Docket No. ID 2344-000]

Take notice that on May 23, 1988, Howard W. McDowell tendered for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position	Corporation
Assistant Treasurer, Controller.	Massachusetts Electric Company.
Controller	New England Powdr Company.
Controller	The Narragansett Electric Company.
Controller	New England Power Service Company.
Director, Treasurer, Assistant Secretary.	Granite State Electric Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Central Vermont Public Service Corporation

[Docket No. ER88-421-000]

Take notice that on May 26, 1988, Central Vermont Public Service Corporation (Central Vermont) tendered for filing, pursuant to Commission Regulations 18 CFR 35, an initial rate of a Purchase Agreement between Central Vermont and Commonwealth Electric Company (CEC).

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. Application of Potomac Electric Power Company for authority to Purchase Securities of Other Public utilities

[Docket No. EC88-20-000]

Take notice that on May 25, 1988, Potomac Electric Company (Pepco) tendered for filing its application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, 16, U.S.C. 824(b), and Part 33 of the Regulations of the Federal Energy Regulatory Commission, 18 C.F.R. 33.1 *et seq.*, for an Order authorizing the purchase or other acquisition of securities of other public utilities for investment purposes only, and not for the purpose of influencing, controlling or merging with any public utility. Pepco proposes to limit its holding, ownership or possession of securities to not more than one percent of the permanent outstanding capitalization of any public utility. Additionally, Pepco requests a modification of the reporting requirement contained in 18 C.F.R. 33.8 to require only an annual report, and a waiver of the Exhibit D filing requirement set forth in 18 C.F.R. 33.3 Copies of the application are on file with the Commission and are available for public inspection.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considerd by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Action Secretary.

[FR Doc. 88-12903 Filed 6-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8761-003; Project No. 3882-001; Project No. 4244-001]

PRODEK, Inc., Georgia-Pacific Corp., Long Lake Energy Corp.; Availability of Environmental Assessments and Findings of No Significant Impact

June 3, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major license listed below and has assessed the environmental impacts of each of the proposed developments.

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MAJOR LICENSE APPLICATIONS

Project No.	Project Name	State	Water body	Town or nearest county	Applicant
9761-003	Ozlegh	Oklahoma	Verdigris River	Rodgers Co	PRODEK, Inc.
2982-001	Thomas/Northumberland	New York	Hudson River	Washington and Saratoga Counties.	Georgia-Pacific Corporation.
4244-001	do	do	do	do	Long Lake Energy Corporation.

An Environmental Assessment (EA) was prepared for each of the above proposed projects. Based on independent analysis of the above actions as set forth in each EA, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement for these projects will not be prepared.

Copies of each EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20428.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12801 Filed 6-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2954-014

Town of Vidalia, Louisiana and Catalyst, Old River Hydroelectric Limited Partnership; Availability of Environmental Assessment and Finding of No Significant Impact

June 3, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for an amendment of license listed below and has assessed the environmental impacts of the proposed development.

AMENDMENTS OF LICENSE

Project No.	Project name	State	Water body	Nearest town or county	Applicant
2954-014	Old River	LA	Mississippi and Old Rivers.	Concordia	Town of Vidalia, Louisiana and Catalyst Old River Hydroelectric Limited Partnership.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on an independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this amendment would not have significant effects on the quality of the human environment. Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20428.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12802 Filed 6-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-396-000, et al.]

Trunkline Gas Company et al.; Natural Gas Certificate Filings

June 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88-405-000]

Take notice that on May 18, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-398-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install a new delivery point for an existing gas sales customer and to construct and operate certain appurtenant facilities under the certificate issued in Docket No. CP82-426-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to install a new delivery point for Public Service Electric and Gas Company (Public Service) located at approximate milepost 1631.7 on Transco's Caldwell loop in Clifton, Passaic County, New Jersey. Transco proposes to construct and operate a tap, sales meter, regulating station and appurtenances at the subject delivery point which would be designed for a maximum daily rate of 7,200 Mcf. It is indicated that Public Service's total Rate Schedule CD-3 contract demand and firm transportation allocation would remain at 417,749 Mcf per day. Transco states that deliveries to the deliver point would be offset by a corresponding reduction in Transco's deliveries at Public Service's Roseland delivery point.

It is stated that Transco has sufficient capacity to accomplish deliveries at the proposed point without detriment or disadvantage to existing gas sales customers. Transco further states that the addition of the delivery point would have no effect on Transco's peak day or annual volumetric deliveries to Public Service or other existing sales customers.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP88-404-000]

Take notice that on May 24, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston 77251, filed in Docket No. CP88-404-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point for an existing gas sales customer under the certificate issued in Docket No. CP82-553-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct a meter station and appurtenant facilities in Palm Beach County, Florida in order to make sales to Florida Public Utilities Company (FPU). It is stated that the proposed delivery point would provide for delivery of up to 83,880 therms of natural gas per day for FPU.

It is indicated that the total volumes to be delivered would not exceed the presently authorized volume limitation and that the proposed delivery point is not prohibited by FGT's tariff. FGT further states that this proposal would not adversely affect FGT's ability to delivery gas to existing customers and that it would have a negligible impact on FGT's peak day and annual deliveries.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP88-390-000]

Take notice that on May 19, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP88-390-000 a request pursuant to § §157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a sales tap, lateral line and appurtenant facilities under its blanket certificate issued in Docket Nos. CP83-59-000, CP83-59-001 and CP83-59-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to La Salle Refinery (La Salle) in Wichita County, Texas. It is stated that abandonment of the facilities, which primarily consist of approximately 25 feet of 4-inch pipeline, would be accomplished through removal. Lone Star further states that it has not obtained a letter of consent from La Salle. However, the refinery has been dismantled and no gas has been delivered to it since 1978 or earlier, it is asserted. It is also asserted that no other customers are served from the affected facilities. Finally, Lone Star advises that sales to La Salle were made at the appropriate rate as provided by state authorities.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP88-403-000]

Take notice that on May 23, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP88-403-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, Lone Star requests permission and approval to abandon all of the remaining portion of Line A18, consisting of approximately 660 feet of 4-inch and 19,330 feet of 6-inch, pipeline facilities in Wichita County, Texas.

It is stated that the portion of its Line A18 proposed to be abandoned is a transmission lateral which has heretofore carried gas from Lone Star's Line A to its lines A18-5 and A18-6. Lone Star further states that service to customers served from Lines A18-5 and A18-6 has been terminated with their consent, and that abandonment authorization has been obtained for these lines pursuant to § 157.216(b) of the Commission's Regulations in Docket Nos. CP88-277-000 and CP88-130-000, respectively. It is further stated that no customers have ever been served from the portion of Lone Star's Line A18 proposed to be abandoned, and that the facilities have deteriorated to the extent that significant repair and maintenance expense would be incurred by Lone Star in order to keep the line in service.

Comment date: June 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

Great Lakes Gas Transmission Company

[Docket No. CP88-397-000]

Take notice that on May 18, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88-397-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport additional gas volumes for TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that the TransCanada-Great Lakes gas transportation contract dated September 12, 1967, as amended, currently provides for transportation by Great Lakes of up to a maximum of 667,500 Mcf per day of volumes (the actual contract quantity is currently less, based on back-off arrangements previously approved by the Commission) from an existing interconnection between the facilities of Great Lakes and TransCanada on the International Boundary at Emerson, Manitoba, to existing points on the International Boundary located at Sault St. Marie and St. Clair, Michigan (Sault St. Marie and St. Clair Interconnections). Applicant states that TransCanada has requested the transportation of an additional 37,500 Mcf per day to be delivered at the St. Clair Interconnection, which is necessary to enable TransCanada to meet the needs of distribution companies in Eastern Canada who have requested additional service. To provide this service, an Amendatory Agreement dated February 8, 1988, has been executed which provides for an increase in the firm transportation volumes by 37,500 Mcf per day to a total of 925,000 Mcf per day. Great Lakes indicates that it has filed a petition with the Economic Regulatory Administration to amend its existing authorization to import and export gas to provide for these additional volumes.

Comment date: June 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. K N Energy, Inc.

[Docket No. CP88-401-000]

Take notice that on May 20, 1988, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88-401-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to transport natural gas on behalf of Eaton Corporation, Good Samaritan Health Care Corporation, Coleman Powermate, Inc. and J. A. Baldwin Mfg. Co. (Shippers), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport on behalf of Shippers, on an interruptible basis for a term of one year, up to the Maximum Daily Transportation Quantity of 7,110 Mcf of gas per day. Applicant, it is said, would

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receive such gas at existing receipt points located in Fremont County, Wyoming and Weld County, Colorado.

Applicant states that it would redeliver thermally equivalent quantities of gas, for the account of Shippers, at the City Gate Kearney, Nebraska.

For this transportation service, Applicant indicates that it would charge each Shipper a transportation rate of 63.17 cents per Mcf, plus a fuel reimbursement quantity.

Comment date: June 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP88-405-000]

Take notice that on May 24, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-405-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Panhandle Trading Company (PTC), marketer, under Applicant's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Applicant requests authority to transport up to 15,000 Dt per day on behalf of PTC pursuant to a transportation agreement dated March 31, 1988, among Applicant and PTC. It is stated that the agreement provides for Applicant to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. Applicant states that it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss to Consumers Power Company in Elkhart County, Indiana for various end-users.

The Applicant further states that the estimated daily and estimated annual quantities would be 3,000 dt and 1,095,000 respectively. It is stated that service under section 284.223(a) commenced on April 1, 1988, as reported in Docket No. ST88-3590.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12804 Filed 6-7-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180053; FRL-3393-2]

Computer Science Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Science Corporation (CSC) will perform work specified in a Delivery Order issued under an existing EPA contract. This work will be done for the EPA Office of Pesticides and Toxic Substances (OPTS), and will require access to certain information submitted to EPA under FIFRA section 7. This information is defined as confidential business information (CBI) in FIFRA section 7(d). This information will be transferred to CSC as authorized by 40 CFR 2.307(h)(3). This action will enable CSC to fulfill the terms of the contract and serves to notify affected persons.

DATE: CSC will be given access to this information no sooner than June 13, 1988.

FOR FURTHER INFORMATION CONTACT:

Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4460).

SUPPLEMENTARY INFORMATION: Under Delivery Order 303 of EPA Contract No. 68-01-7176, CSC will provide, at EPA Regional Offices, data entry services on production data submitted by pesticide procedures under section 7 of FIFRA.

This Delivery Order will not be subcontracted by CSC.

The Office of Pesticide Programs has determined that access by CSC to information on all pesticide chemicals is necessary for the performance of this Delivery Order.

This information is entitled to confidential treatment, having been submitted to EPA under section 7 of FIFRA.

In accordance with the requirements of 40 CFR 2.307(h)(2), CSC shall not use the information for any purpose other than purpose(s) specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. No information will be provided to CSC until the above requirements have been fully satisfied. Records of information provided to CSC will be maintained by the Delivery Order Officer for this contract in the EPA Office of Pesticide and Toxic Substances. All information supplied to CSC by EPA for use in connection with this Delivery Order will be returned to EPA when CSC has completed its work.

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-12764 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180054; FRL-3393-3]

Research Triangle Institute and Engineering & Economics Research, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Research Triangle Institute (RTI) and its subcontractor, Engineering & Economics Research, Inc. (EER) will perform work specified in a Delivery Order issued under an existing EPA contract. This work will be done for the EPA Office of Pesticide Programs and will require access to certain information submitted to EPA under FIFRA and FFDCA. This information may have been claimed as confidential business information (CBI) by submitters. This information will be made available to RTI and EER as authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.308(h)(2), respectively.

This action will enable RTI and EER to fulfill the terms of the Delivery Order and serves to notify affected persons.

DATE: RTI and EER will be given access to this information no sooner than June 15, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail:

Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 212, CM#2, 1921 Jefferson Davis Highway Arlington, VA (703-557-4460).

SUPPLEMENTARY INFORMATION: Under Delivery Order 35 of EPA Contract No. 68-01-7350, RTI and EER will evaluate and suggest improvements to office systems for processing old chemicals and amendments to pesticide registrations. This productivity study will enable the Office of Pesticide Programs (OPP) to improve the efficiency and effectiveness of the pesticide registration process.

The Office of Pesticide Programs has determined that access by RTI and EER to information submitted in and with applications for product registration is necessary for the performance of the Delivery Order.

This information may be entitled to confidential treatment, having been submitted to EPA under sections 3 and 6 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), RTI and EER shall not use the information for any purpose other than purpose(s) specified in the Delivery Order; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. No information will be provided to RTI and EER until the above requirements have been fully satisfied. Records of information provided to RTI and EER will be maintained by the Delivery Order Officer for this contract in the Office of Pesticide Programs. All information supplied to RTI and EER by EPA for use in connection with this Delivery Order will be returned to EPA when RTI and EER have completed their work.

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-12765 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240081; FRL-3282-9]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 30 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Owen F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC.

Office location and telephone number: Room 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703)-557-7893.

SUPPLEMENTARY INFORMATION: This notice lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in February through April 1988. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 88 0001. State of Alabama Dept. of Agriculture & Industries. Registration is for Menthol to be used on honeybee colonies to control honeybee tracheal mites. *Acarapis woodi* Rennie. February 11, 1988.

EPA SLN No. AL 88 0002. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Asana XL Insecticide 0.66 Emulsible Concentrate to be used on

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cotton to control various pests. February 11, 1988.

Arizona

EPA SLN No. AZ 88 0002. Drexel Chemical Co. Registration is for Drexel Dimethoate 2.67 to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0003. Helena Chemical Co. Registration is for Helena Dimethoate 267 EC to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0004. Setre Chemical Co. Registration is for Dimethoate 4 EC to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0005. Setre Chemical Co. Registration is for Dimethoate 267 E.C. to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0006. J.R. Simplot Co. Registration is for Dimethoate 267 EC to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0008. USDA-ARS Carl Hayden Bee Research Center. Registration is for Zimecterin to be used on rural areas within southern pinal country to control wild honeybees (killing drones). March 8, 1988.

EPA SLN NO. AZ 88 0009. Nor-Am Chemical Co. Registration is for Carzol SP to be used on apples to control thrips. March 15, 1988.

Arkansas

EPA SLN No. AR 88 0001. FMC Corp. AG Chem. Group. Registration is for Command 4 EC Herbicide to be used on soybeans for preemergency control of various grasses. March 24, 1988.

EPA SLN No. AR 88 0002. Hoechst-Roussel Agri-Vet Co. Registration is for Whip R 1 EC Herbicide to be used on rice for preharvest control of various grasses. March 28, 1988.

California

EPA SLN No. CA 88 0006. Goldsmith Seed, Inc. Registration is for Lorox DF Herbicide Ornamental to be used on lupine grown for seed to control weeds. February 4, 1988.

EPA SLN No. CA 88 0007. Santa Cruz County Agriculture Commission. Registration is for Volck Supreme Spray to be used on blueberries, boysenberries, currants, dewberries, elderberries, gooseberries, and huckleberries to control aphids and spider mite eggs. February 25, 1988.

EPA SLN No. CA 88 0008. Bencich Farms. Registration is for Dusting Sulphur to be used on field-grown chives to control powdery mildew. March 14, 1988.

EPA SLN No. CA 88 0011. E.I. du Pont de Nemours & Co., Inc. Registration is for DuPont Benlate 50 DF Fungicide to be used on pistachios to control shoot blight. April 11, 1988.

Colorado

EPA SLN No. CO 88 0001. Ciba-Geigy Corp., AG Div. Registration is for Ridomil 2E Fungicide to be used on lettuce for use in combintion with protectant fungicides to control downy mildew. February 23, 1988.

EPA SLN No. CO 88 0002. Pennwalt Corp. Registration is for Topsin M 70W Fungicide to be used in-furrow on beans to control *fusarium* spp. and *Rhizoctonia* spp. February 23, 1988.

EPA SLN No. CO 88 0003. Dow Chemical USA. Registration is for Tordon 22K Weed Killer to be used on grainland between crops of small grain and in non-cropland areas to control various weeds, February 23, 1988.

EPA SLN No. CO 88 0004. Platte Chemical Co. Registration is for Clean Crop Diazinon 4% Garden Dust to be used on prairie dog burrows and ground squirrel burrows to control rodent fleas. February 23, 1988.

Connecticut

EPA SLN No. CT 88 0004. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used on clothing to control ticks (chiggers and mosquitoes). April 4, 1988.

EPA SLN No. CT 88 0005. McLaughlin Gormley King Co. Registration is for Evercide Concentrate to be used on *Taxus* species to control adult black vine weevils. April 8, 1988.

Florida

EPA SLN No. FL 88 0004. E.I. du Pont de Nemours & Co. Registration is for Du Pont Lannate LV Insecticide to be used on radishes to control beet armyworms. March 8, 1988.

Georgia

EPA SLN No. GA 88 0002. Pennwalt Corp. Registration is for MANEB Plus Zinc F4 to be used on turnips, mustards, collards, and kale to control downy mildew. March 10, 1988.

EPA SLN No. GA 88 0003. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Lexone DF Herbicide to be used on winter wheat to control weeds. April 12, 1988.

Idaho

EPA SLN No. ID 88 0001. Valley Chemical Co. Registration is for Valley's Best I Potato Treat Powder, with Bark Dust to be used on potatoes to control *Fusarium* and *Rhizoctonia* diseases. February 22, 1988.

EPA SLN No. ID 88 0002. Wilbur-Ellis Co. Registration is for Soil Prep to be used on Irish potatoes to control verticillium disease. March 22, 1988.

EPA SLN No. ID 88 0005. American Cyanamid Co. Registration is for Thimet 20–G Soil and Systemic Insecticide to be used on barley to control Russian wheat aphids. March 22, 1988.

Iowa

EPA SLN No. IA 88 0002. Elanco Products Co. Registration is for Treflan 5 EC MTF to be used on crambe to control weeds (for seed protection only). April 15, 1988.

Louisiana

EPA SLN No. LA 88 0002. FMC Corp. Ag Chemical Group. Registration is for Command 4 EC Herbicide to be used on various grasses to control weeds. March 4, 1988.

EPA SLN No. LA 88 0003. Hoechst-Roussel Agri-Vet Co. Registration is for Whip R 1EC Herbicide to be used on rice for preharvest control of various grasses. March 18, 1988.

EPA SLN No. LA 88 0004. FMC Corp. Registration is for Command 6 EC Herbicide for preemergence application to various grasses for weed control. April 11, 1988.

EPA SLN No. LA 88 0005. Ciba-Geigy Corp. Registration is for Dual 5E Herbicide to be used on tabasco peppers to control annual annual grasses and certain broadleaf weeds. April 13, 1988.

Maine

EPA SLN No. ME 88 0001. Mobay Corp. Ag. Div. Registration is for Di-Syston 8 to be used on oats to control aphids. April 11, 1988.

Michigan

EPA SLN No. MI 88 0001. Michigan Dept. of Agriculture and Plant Pest Management. Registration is for Menthol to be used on honeybee colonies to control tracheal mites. March 25, 1988.

EPA SLN No. MI 88 0002. Michigan Dept. of Agriculture and Plant Pest Management. Registration is for Dipel 6L Work Killer to be applied to forests to control gypsy moths. April 14, 1988.

EPA SLN No. MI 88 0003. Crystal Refining Co. Registration is for Stoddard Solvent to be used on carrots, dill, parsley, parsnip, and celery field transplant beds to control weeds. April 15, 1988.

Mississippi

EPA SLN No. MS 88 0003. FMC Corp. AG Chem. Group. Registration is for Command 4 EC Herbicide to be used on various grasses to control weeds. March 10, 1988.

Missouri

EPA SLN No. MO 88 0002. Uniroyal Chemical Co. Registration is for Omite 6 E to be used on apples to control motile mites. March 21, 1988.

EPA SLN No. MO 88 0003. Elanco Products Co. Registration is for Treflan 5 EC to be used on crambe to control weeds (for seed production only). April 15, 1988.

Nebraska

EPA SLN No. NE 88 0001. FMC Corp. Registration is for Command 4 EC Herbicide to be used on preemergence soybeans to control various weeds. March 11, 1988.

Nevada

EPA SLN No. NV 88 0001. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Dimethoate 267 to be used on wheat to control aphids (green bugs). March 9, 1988.

New Mexico

EPA SLN No. NM 88 0001. Mobay Corp., Agricultural Chemicals Division. Registration is for Di-Syston 8 to be used on wheat to control aphids and mites. April 5, 1988.

North Carolina

EPA SLN No. NC 88 0001. Mobay Corp. Agricultural Chemical Division. Registration is for Di-Syston 15% Granular to be used on Christmas trees to control aphids, Nantucket pine tip moth, and scales mites. April 6, 1988.

North Dakota

EPA SLN No. ND 88 0001. U.S. Dept. of Agriculture, Animal Plant Health Inspection Service, Damage Control. Registration is for Gas Cartridge for Coyotes to be used on red fox and gray fox dens to control foxes. April 8, 1988.

Oregon

EPA SLN No. OR 88 0001. Ciba-Geigy Corp. Registration is for Igran 80 W Herbicide to be used on cottonwood stands to control weeds. March 13, 1988.

EPA SLN No. OR 88 0002. Platte Chemical Corp. Registration is for Clean Crop R Rampart 10G to be used on hops to control aphids. March 17, 1988.

Pennsylvania

EPA SLN No. PA 88 0001. Morgan International Products, Inc. Registration is for Rethrocide to be used on horses to control biting flies. March 18, 1988.

South Carolina

EPA SLN No. SC 88 0002. Morgan International Products, Inc. Registration is for Rethrocide to be on horses to control biting flies. February 25, 1988.

EPA SLN No. SC 88 0003. PPG Industries. Registration is for Cobra Herbicide to be used on soybeans to control witchweeds (*striga asiatica*). March 9, 1988.

South Dakota

EPA SLN No. SD 88 0001. South Dakota Dept. of Agriculture, Division of Regulatory Services. Registration is for Menthol to be used on honeybee hives to control mites. March 7, 1988.

Tennessee

EPA SLN No. TN 88 0003. FMC Corp. Ag. Chem. Div. Registration is for Command 4 EC Herbicide to be used on soybeans for preemergence control of various weeds and grasses. March 12, 1988.

Utah

EPA SLN No. UT 88 0001. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Dimethoate 267 to be used on fruit and nut crops to control aphids. March 8, 1988.

EPA SLN No. UT 88 0002. Mobay Corp. Registration is for Bayleton 50% WP to be used on various fruit crops to control cytospora canker and wood-rotting organisms (*fomes* and *polyprus*). March 15, 1988.

EPA SLN No. UT 88 0003. Mobay Corp. Registration is for Di-Syston 8 to be used on grasses grown for seed to control aphids and mites. April 12, 1988.

Virginia

EPA SLN No. VA 88 0001. Mobay Corp. Registration is for Nemacur 3 to be used on tobacco to control nematodes, wireworms, flea beetles, and cutworms. April 14, 1988.

EPA SLN No. VA 88 0002. Virginia Department of Forestry. Registration is for Arsenal Applicator Concentrate to be used on white pine for site preparation and release. April 18, 1988.

Washington

EPA SLN No. WA 88 0003. Wilbur Ellis Co. Registration is for Wilbur-Ellis Diuron DF to be used on perennial bluegrass grown for seed to control weeds. March 1, 1988.

EPA SLN No. WA 88 0004. McLaughlin Gormley King Co. Registration is for MGK Big Game Repellent Powder BGR–P to be used on Young Douglas-fir seedlings to control mountain beaver damage March 1, 1988.

EPA SLN No. WA 88 0005. E.I. du Pont De Nemours and Co. Registration is for Karmex DF to be used on established perennial bluegrass as a growth regulator. March 25, 1988.

EPA SLN No. WA 88 0006. Platte Chemical Co. Registration is for "Clean Crop" Diuron 80 WDG to be used on established perennial bluegrass grown for seed. March 25, 1988.

EPA SLN No. WA 88 0007. Uniroyal Chemical Co. Registration is for Omite-6 to be used on pear and apple orchard floors to control spider mites. March 29, 1988.

EPA SLN No. WA 88 0008. Uniroyal Chemical Co. Registration is for Omite-CR to be used on hops to control spider mites. March 31, 1988.

EPA SLN No. WA 88 0009. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vendex 50WP Miticide to be used on raspberries to control two-spotted mites. April 13, 1988.

EPA SLN No. WA 88 0010. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vendex 4L Miticide to be used on raspberries to control two-spotted mites. April 13, 1988.

Wisconsin

EPA SLN No. WI 88 0001. Griffin Corp. Registration is for Kocide 101 to be used on ginseng to control *Alternaria* leaf and stem blight. April 16, 1988.

EPA SLN No. WI 88 0002. Rohm & Haas Co. Registration is for Goat 1.6E Herbicide to be used on dormant spearmint and peppermint to control certain annual broadleaf weeds. April 18, 1988.

Wyoming

EPA SLN No. WY 88 0002. Mobay Corp. Registration is for Di-Syston 8 to be used on barley to control aphids. February 22, 1988.

EPA SLN No. WY 88 0003. Mobay Corp. Registration is for Di-Syston 8 to be used on barley to control aphids. February 22, 1988.

(Sec. 24 as amended, 92 Stat. 835 [7 U.S.C. 136]).

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–12772 Filed 6–7–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL—3391–1]

Air Pollution Control Grants; Maintenance of Effort for FY 88 State of Texas Texas Air Control Board

AGENCY: Environmental Protection Agency.

ACTION: Notice and opportunity for public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces an opportunity for public hearing and comment on a tentative determination

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that the Texas Air Control Board (TACB) should be allowed a reduced Maintenance of Effort (MOE) level for FY88, consistent with section 105(b) of the Clean Air Act (CAA).

Hearing Opportunity: If written requests for a public hearing are received by July 8, 1988 the Agency will hold a hearing in Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Joan E. Brown, State programs Section, Air, Pesticides and Toxics Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–7206, (FTS) 255–7206.

SUPPLEMENTARY INFORMATION: Section 105(b) of the CAA, 42 U.S.C. 7405(b), specifies that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, *after notice and opportunity for public hearing*, determines that a reduction in expenditures is attributable to a non-selective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of government. . . ." [Emphasis added.] This statutory requirement is repeated in EPA's "State and Local Assistance" regulations at 40 CFR 35.210(a).

On July 15, 1985, the TACB submitted an application for a grant for Federal fiscal year 1986 (FY 86) under section 105 of the Clean Air Act. At that time the application indicated that the TACB would meet the MOE requirements of the CAA since state funds appropriated to the program for FY 86 were greater than had been appropriated for FY 85. This appropriation would have been sufficient to allow the TACB to expend at least as much in FY 86 as was expended in FY 85 on other than nonrecurrent expenditures. However, subsequent to submittal of the application, the TACB was required by Executive Order (No. MW-36) from the Governor to structure a plan to achieve a 13% reduction in spending from the existing FY 86–87 State general revenue appropriations, and to implement the plan not later than March 1, 1986. Since the Executive Order directed all State agencies and universities to structure and implement such a plan to achieve a 13% reduction in spending, this appears to qualify as a non-selective reduction in expenditures in the programs of all executive branch agencies of the State of Texas.

As a result of the State budget reduction, the TACB expenditures for FY 86 for other than non-recurrent expenditures were $58,504 less than for FY 85. Therefore, the TACB has requested that the Regional Administrator acknowledge and approve a reduction in the MOE requirement of the CAA effective for FY 86. The MOE reduction, if approved, will allow the FY 86 shortfall in recurrent expenditures of $58,504 and lower the prior MOE level established in FY 85 by this amount. The total recurrent expenditures for FY 86 were $10,643,606 compared to the prior FY level of $10,700,110.

During FY 87, the State of Texas continued its budget reduction efforts, and EPA (Region 6) has authorized FY 87 and FY 88 assistance to TACB only conditionally, requiring complete reporting on the apparent extent of the initial (FY 86) shortfall and resolution of the MOE issue. With considerable effort, the TACB has avoided any further shortfall, and has reported that recurrent expenditures of at least $10,658,986 are expected for FY 87, exceeding the reduced FY 86 level, but not meeting the level established in FY 85. During each of these fiscal years, TACB has substantially met all of its air pollution control program commitments, despite the difficulties of reduced budgets. The current Cooperative Agreement with TACB under section 105 of the CAA calls for State expenditures to meet or exceed the FY 87 level.

This notice provides an opportunity for a public hearing as required by the Clean Air Act. EPA will hold the hearing only if actual requests for a public hearing are received. Unless written requests for a hearing on this request for an authorized reduction in the MOE requirement for FY 86 are received by EPA, Region 6 (Dallas) by July 8, 1988, we will proceed to make a determination as indicated.

Date: May 25, 1988.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 88-12686 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3232/T564; FRL-3383-8]

Triflumizole; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for combined residues of triflumizole and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole), in or on certain raw agricultural commodities. These temporary tolerances were requested by Uniroyal Chemical Co., Inc.

DATE: These temporary tolerances expire April 1, 1989.

FOR FURTHER INFORMATION CONTACT: By Mail:

Lois Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 238, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557–1900.

SUPPLEMENTARY INFORMATION: Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525, has requested in pesticide petition (pp) 5G3232 the establishment of temporary tolerances for combined residues of triflumizole (1-(1-((4-chloro-2(trifluoromethyl) phenyl)imino)-2-propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-3-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on the raw agricultural commodities apples at 0.5 part per million (ppm); grapes at 2.0 ppm; pears at 0.5 ppm; meat and fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk and eggs at 0.05 ppm; meat byproducts of poultry at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.5 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 600-EUP-84, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Uniroyal Chemical Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 1, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: May 31, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-12688 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3383-4]

California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Scope of Waiver of Federal Preemption.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its exhaust emissions standards and procedures governng light-duty vehicles. The amendments established an "offsets program" for the 1983 model year which allowd manufacturers to certify and sell in California a limited number of federally-certified light-duty vehicles, otherwise unavailable in California. California also adopted amendments which allowed offsetting of diesel particulate emissions for the 1985 model year, established procedures which prohibit manufacturers from carrying over year-end emissions deficits to successive model years and extend the "offsets program" to 1988 and subsequent model years.

EPA finds these amendments to be within the scope of previous waivers of Federal preemption granted to California for its emissions standards applicable to light-duty vehicles and its accompanying enforcement procedures.

DATES: Any objections to the findings in this notice must be filed by July 8, 1988. Otherwise, at the expiration of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing in a subsequent Federal Register Notice.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of the California amendments at issue in this notice, a decision document containing an explanation of EPA's determination and documents used in arriving at this determination are available for public inspection during normal working hours (8:00 a.m. to 3:00 p.m.) at the Environmental Protection Agency, Central Docket Section, (Docket EN–87–07) Room 4 South, Washington Information Center, 401 M Street SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Ms. Bengle as noted below.

FOR FURTHER INFORMATION CONTACT: Carol Bengle and Patrick Schlesinger, Attorney/Advisors, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–2518.

SUPPLEMENTARY INFORMATION: EPA has determined that CARB's amendments are within the scope of waivers of Federal preemption previously granted pursuant to section 209(b) of the Clean Air Act, as amended (Act).[1] Specifically, the amendments allow a limited number of light-duty vehicles certified to Federal standards, and otherwise unavailable in California, to be sold in the State through 1988 and subsequent model years. These amendments require that the higher emissions of the Federal vehicles be "offset" by the lower emissions of vehicles which are certified to an have emissions below California's standards. The amendments also make California assembly line testing, warranty requirements, compliance test procedures and tune-up label specifications applicable to the federally-certified vehicles brought into California under this program. Further amendments allowed offsetting of diesel particulate emissions for the 1985 model year only and prohibited manufacturers from carrying over year-end emission deficits to successive model years.

These amendments do not undermine California's determination that its standards, in the aggregate, are at least as protective as Federal standards, are not inconsistent with section 202(a) of the Act and raise no new issues regarding previous waivers of Federal preemption. A full explanation of EPA's determination is contained in a decision document which my be obtained from EPA as noted above. Since these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these finding by July 8, 1988 EPA will consider holding a public hearing to provide interested persons an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings. Otherwise, these findings shall become final at the expiration of this 30-day period.

This decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's requirements in order to sell motor vehicles in California. For this reason, EPA hereby determines and finds, pursuant to section 307(b) of the Act, that this decision is of nationwide scope and effect.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Additionally, a Regulatory Impact Analysis is not being prepared under Executive Order 12291 for this

[1] 45 FR 54132 (August 14, 1980), 49 FR 18887 (May 3, 1984) [waiver of emissions standards]; 37 FR 14831 (July 25, 1972) and 44 FR 61055 (October 23, 1979) [waiver of emissions warranty]; 45 FR 54128 (August 14, 1980) [waiver of assembly-line test procedures]; 43 FR 9344 (March 7, 1978), 43 FR 15490 (March 7, 1978) and 43 FR 25729 (June 14, 1978) [waiver of compliance testing requirements].

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"within the scope" determination since it is not a rule.

This action is also not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: May 31, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-12985 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 25, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Yvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: None

Title: Section 76.33, Standards for rate regulation

Action: New collection

Respondents: State or local governments, businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden:

1,000 Responses

100,250 Hours

Needs and Uses: The Commission adopted a Second Report and Order in MM Docket No. 84-1296 which concerns the regulation of cable television basic subscriber rates by local franchising authorities and established standards for determining whether a cable system faces effective competition. Section 76.33(a) requires certain documentation to be filed with the Commission by cable operators and franchising authorities which would enable the Commission to resolve disputes concerning applicability of signal availability standard. Section 76.33(b) requires franchising authorities to give formal notice to the public when establishing rates for provision of cable service which provides the public an opportunity to comment.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-12894 Filed 6-7-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection.

Title: Project Status Summary.

Abstract: FEMA Form 76-51, Project Status Summary, is used by the Federal Emergency Management Agency to monitor public assistance projects approved under Public Law 93-288, as amended. Applicants for disaster assistance will use the form to describe current permanent restorative project status and outline any problems or circumstances expected to result in the applicant's inability to complete restorative work by the approved termination date or within the cost or scope of work conditions set forth in the approval of the project application. Failure to provide the information on the form could jeopardize the applicant's eligibility for Federal disaster assistance.

Type of Respondents: State or local governments.

Number of Respondents: 500.

Burden Hours: 1,000.

Frequency of Recordkeeping or Reporting: Semi-annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: May 31, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-12899 Filed 6-7-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200125.

Title: Port of New Orleans Lease Agreement.

Parties: Board of Commissioners of the Port of New Orleans (Board), Continental Grain Company.

Synopsis: The proposed agreement supersedes and cancels the Parties' basic lease (Agreement No. 224-000915, as amended); and provides for the lease of the Original Wharf and Wharf Extension located at Westwego, La.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: June 3, 1988.

[FR Doc. 88-12900 Filed 6-7-88; 8:45 am]

BILLING CODE 6730-01-M

Shipping Conditions in the United States/Korea Trade; Further Enlargement of Time To Reply to Petition

On March 16, 1988, the Commission published notice of the filing by Navios Management, Inc., d/b/a/ Pacific America Line ("PACAM"), of a petition for rulemaking ("Petition") under section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 (1)(b) ("section 19"). PACAM, a Panamanian-flag common carrier in the U.S./Korea trade, had alleged that the cargo preference laws of the Republic of Korea ("ROK"), which reserve for ROK-flag carriers virtually all of ROK's waterborne steel exports, subject to a waiver system, resulted in irreparable harm to PACAM. The notice requested comments from interested parties by April 15, 1988. The comment period was subsequently extended to May 17, 1988, in response to requests for enlargement of time from the U.S. Department of State ("DOS") and from the two ROK-flag carriers whose tariffs PACAM specifically requested be suspended—Hyundai Merchant Marine Co., Ltd. ("Hyundai") and Pan Ocean Shipping Co., Ltd. ("Pan Ocean").

Comments were received from DOS, Hyundai and Pan Ocean. All make reference to the fact that following negotiations in late April between U.S. and ROK government officials, the Korean Maritime and Port Administration ("KMPA") announced, on May 13, 1988 in a letter to the U.S. Embassy in Seoul, that it "is in the process of reviewing current cargo reservation policies including the relaxation of the liner service waiver system," and that "KMPA would take necessary steps so that up to 30% of total volume of steel products" in the U.S.-Korea trade, currently reserved for ROK-flag vessels, "would be released to the open competition."

DOS indicates that it has requested the U.S. Embassy in Seoul to seek further clarification from KMPA on its "intended implementing procedures and their effects on shippers in the U.S. trade." To permit DOS to gather additional details, DOS relays its and the Department of Transportation's request that the comment period be extended to July 1, 1988, "the date on which KMPA proposes to introduce the relaxation of the steel product cargo reservation."

Hyundai and Pan Ocean argue that the KMPA announcement evidences that PACAM's concerns are being satisfied, and that therefore its Petition should be denied and the proceeding discontinued on the ground that no Section 19 relief is warranted. Alternatively, they suggest that if the Commission is not inclined to terminate the proceeding at this time, the comment period should be extended until July 1, 1988, noting KMPA's communication to DOS that it will endeavor to have in place the new regulation opening the steel trade by that date.

The Commission views the KMPA announcement with cautious optimism. The announcement does not effectuate an actual change in ROK policy or regulation, nor is it precise as to what KMPA's actions will be and when they will occur. Moreover, it remains to be seen whether KMPA's indication that it will open "up to 30%" of the trade actually means "30%" of the trade, as interpreted by DOS, or a percentage less than that.

Nevertheless, the announcement, coupled with DOS' communication with KMPA as to the timing of the intended action, suggests the potential for a satisfactory resolution of this particular complaint as well as progress toward that end. In order to ensure that these recent and soon-anticipated developments receive full consideration by the Commission before it acts upon the Petition, the Commission has determined to extend the comment period to July 15, 1988, to allow time for KMPA to implement its new policy and for all interested parties, including PACAM, to comment on its effectuation.

THEREFORE, IT IS ORDERED, that the period to file additional comments (in an original and 15 copies) in this proceeding is enlarged to July 15, 1988.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 12907 Filed 6-7-88; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL RESERVE SYSTEM

Cobank Financial Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Cobank Financial Corporation, San Luis Obispo, California; to engage *de novo* in commercial lending pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12836 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

First Wisconsin Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

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question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 23, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire Milwaukee Title Insurance Service, Inc., Milwaukee, Wisconsin, and thereby engage in general title insurance agency services pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated*, Minneapolis, Minnesota; to acquire Security Insurance Agency, Doland, South Dakota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Doland, South Dakota. Comments on this application must be received by June 30, 1988.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12825 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hazel Keefe*, Tequesta, Florida; to acquire 30.58 percent of the voting shares of Southern Wisconsin Bancshares, Mineral Point, Wisconsin.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charlies Travis Henderson*, Oklahoma City, Oklahoma; to acquire an additional 81.64 percent of the voting shares of Choctaw Bancorp, Inc., Choctaw, Oklahoma, and thereby indirectly acquire Choctaw State Bank, Choctaw, Oklahoma.

2. *Joy Osterberg*, to acquire 4.18 percent; William H. Osterberg, to acquire an additional 8.65 percent; Osterberg Land Company, to acquire 4.52 percent; Franklin W. Johnson, to acquire 4.29 percent; and Lee Peterson, to acquire 3.67 percent; (all of Craig, Nebraska); Walter W. Clark, to acquire an additional 21.21 percent; Marcia V. Clark, Custodian for D.J. CLark, to acquire an additional 0.35 percent; and Marcia V. Clark, Custodian for Lori Jo Clark, to acquire an additional 0.35 percent; (all of Omaha, Nebraska); Kirby L. and/or Gay L. Larson, to acquire an additional 2.88 percent; Merlin W. Nelson, to acquire an additional 4.49 percent; Chester L. Andreasen, to acquire 1.13 percent; Stan Andreasen, to acquire 1.13 percent; Layne Baker, to acquire 4.18 percent; R. G. Lindstrom Farms, Inc., to acquire 2.09 percent; Willmer and/or Mildred Moseman, to acquire an additional 4.93 percent; Julie Ann Johnson, to acquire 1.13 percent; Marilee Sue Nelson, to acquire 1.13 percent; and Mutual Insurance Co. of Oakland, to acquire 1.24 percent; (all of Oakland, Nebraksa); of the voting shares of Oakland Financial, Inc., Omaha, Nebraska, and thereby indirectly acquires Farmers and Merchants National Bank of Oakland, Oakland, Nebraska.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12826 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

Montgomery Bancorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 24, 1988.

A. **Federal Reserved Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Montgomery Bancorp*, Rocky Hill, New Jersey; to acquire 100 percent of the voting shares of Montgomery National Bank, Rocky Hill, New Jersey.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *B.M.J. Financial Corp.*, Bordentown, New Jersey; to acquire 100 percent of the voting shares of Southern Ocean State Bank, Little Egg Harbor Township, New Jersey.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Lexington Bancshares, Inc.*, Lexington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Fayette Banking Company, Lexington, Kentucky, a *de novo* bank.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *FNB Newton Bankshares, Inc.*, Covington, Georgia; to acquire 100 percent of the voting shares of Heritage Trust, Conyers, Georgia.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bankcorp, Inc.*, Naperville, Illinois; to acquire 100 percent of the voting shares of Continental Illinois Bank of Deerfield, National Association, Deerfield, Illinois, and Continental Bank of Buffalo Grove, N.A., Buffalo Grove, Illinois.

2. *Shelby County Bancorp, Inc.*, Shelbyville, Illinois; to acquire 100 percent of the voting shares of Strasburg State Bank, Strasburg, Illinois.

F. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Fidelity Bancorp, Inc.*, Medford, Wisconsin; to become a bank holding company by acquiring 99.2 percent of the voting shares of Medford National Bank, Medford, Wisconsin.

2. *Lena Spitzer Limited Partnership*, Streeter, North Dakota; to become a bank holding company by acquiring 58.8 percent of the voting shares of Streeter Insurance Agency, Inc., Streeter, North Dakota, and thereby indirectly acquire State Bank of Streeter, Streeter, North Dakota. Comments on this application must be received by June 30, 1988.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado Western Bancorp, Inc.*, Montrose, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Montrose, Montrose, Colorado.

2. *Miners Bancshares, Inc.*, Frontenac, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Miners State Bank, Frontenac, Kansas.

3. *First Merrill Company*, Omaha, Nebraska; to acquire 100 percent of the voting shares of Security State Bank, Ansley, Nebraska.

4. *Two Rivers Bank Corporation*, Grand Junction, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Grand Junction, Grand Junction, Colorado.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12827 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0129]

Allergan Hydros, Inc; Premarket Approval of Hydron B. (Polymacon) Bifocal Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Allergan Hydron, Inc., Woodbury, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Hydron B. (polymacon) Bifocal Contact Lens. The supplemental application includes authorization from Salvatori Ophthalmics, Inc., Sarasota, FL, to incorporate information in that firm's approved application for Synsoft® (polymacon) Bifocal Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of March 18, 1988, of the approval of the application.

DATE: Petitions for administrative review by July 8, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On January 21, 1988, Allergan Hydron, Inc., Woodbury, NY 11797, submitted to CDRH a supplemental application (P780007/S28) for premarket approval of the Hydron B (polymacon) Bifocal Contact Lens. The lens is indicated for daily wear by not-aphakic persons with nondiseased (healthy) eyes that require a spherical correction in the power range from −6.00. diopters (D) +4.00 D with up to +3.50 D add power for the correction of presbyopia. The eyes may exhibit astigmatism of 2.00 D or less that does not interfere with visual acuity. The lens is to be disinfected using either a heat (thermal) or a chemical (not heat) disinfection system. The supplemental application includes authorization from Salvatori Ophthalmics, Inc., Sarasota, FL 34234, to incorporate the information contained in its approved premarket approval application for the Synsoft® (polymacon) Bifocal Contact Lens (P840008; Docket No. 85M-0037).

On April 17, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of P840008 submitted by Salvatori Ophthalmics, Inc. FDA approved that application. On March 18, 1988, CDRH approved the subject supplemental application (P780007/S28) by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a

new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 8, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 27, 1988.

John C. Villforth

Director, Center for Devices and Radiological Health.

[FR Doc. 88-12858 Filed 6-7-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fortymile River Draft Environmental Impact Statement

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a Draft Environmental Impact Statement (DEIS) covering placer mining within portions of the Fortymile River watershed, which drains into Fortymile National Wild, Scenic, and Recreational River.

The Fortymile River watershed is located approximately 120 miles southeast of Fairbanks, Alaska, and encompasses nearly 3.1 million acres of land. The drainage lies within the Upper Yukon-Canada Subregion physiographic province. At issue are the cumulative impacts of multiple placer mining operations on the environment; in particular, water quality and visual resources.

A Proposed Action and four alternatives incorporating management options ranging from emphasis on regulations under 43 CFR 3809 to a "no action" alternative are presented. The Proposed Action evaluates BLM's surface management practices in the affected watershed. Environmental consequences of all the alternatives are analyzed and presented.

DATES: The DEIS will be available for review and comments from approximately June 13, 1988, to August 12, 1988. Comments received after August 12 may be too late to be integrated into the Final EIS (FEIS). Public meetings will be held to take comments on the DEIS at the dates and places listed below: July 26, 1988, at the Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska; July 27, 1988, at the BLM Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska; and August 3, 1988, at Chicken School, Chicken, Alaska. All meetings begin at 7:00 p.m.

ADDRESSES: Comments on the DEIS should be sent to Richard F. Dworsky, 3809 EIS Project Manager, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Richard Dworksy—Project Manager, or Page Spencer—Technical Coordinator, at (907) 271–3114.

Lester K. Rosenkranse,

Acting State Director.

[FR Doc. 88-12856 Filed 6-7-88; 8:45 am]

BILLING CODE 4310-84-M

Salt Lake District, (UT-020-88-4212-14); Sale of Public Lands in Summit County, Utah, U-54152, U-54153, U-54154; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—sale of public lands; U-54152, U-54153, U-54154.

SUMMARY: The following described land has been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value shown:

Parcel No.	Legal description	Acreage	Value	Preference right bidder
U-54152	T. 3N., R. 10E., SLM Sec. 20, NE¼-NE¼.	40.00	$9,000	
U-54153	T. 1S., R. 8E., SLM Sec. 10, SE¼-SE¼.	40.00	10,000	
U-54154	T. 1N., R. 8E., SLM Sec. 18, NE¼-NE¼.	40.00	8,000	

The above described land will be sold in order to dispose of lands which because of location and other characteristics are difficult and uneconomical to manage. The sale is consistent with the Bureau's planning system and the public interest will be served by offering these lands for sale.

The lands described are hereby segregated from appropriation under the public lands laws, including the mining laws, pending disposition of this action.

The above described land will be offered for sale on August 17, 1988, by sealed bid under competitive procedures. All bids must be received by 10 a.m. on August 17, 1988, at the Bureau of Land Management (BLM) Salt Lake District Office at 2370 South 2300 West, Salt Lake City, Utah 84119. Bids will be open and a high bidder declared at 11 a.m. on August 17, 1988. No bids will be accepted for less than the appraised fair market value shown above.

Bids may be made by a principal or duly qualified agent. Qualified bidders include: Citizens of the United States 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, instrumentality or political subdivision authorized to hold property; and any entities capable of holding lands or interests therein under the laws of the state within which the lands to be conveyed are located. Entities include, but are not limited to, associations, partnerships, and other legal entities.

Each bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM, for not less than one-third of the amount bid and shall be enclosed in a sealed envelope clearly marked "Bid for Public Land, Tract Number U_____" (tract numbers are shown above). If two or more bids for the same amount are received, the apparent high bidder shall be determined by supplemental biddings pursuant to 43 CFR 2711.3–1(c).

The terms and conditions applicable to the sale are:

1. The high bidder shall submit the remainder of the full bid amount within 90 days from date of sale. Failure to submit the full bid price prior to, but not including the 90th day following the sale, shall result in the disqualification of the bidder and the deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/hers obligation and withdraw the tract for sale, if he determines that consummation of the sale would be inconsistent with provisions of any existing law or collusive or other activities have hindered or restrained free and open bidding or consummation of the sale would encourage or promote speculation in public lands.

3. The patent will contain a reservation for ditches and canals and be subject to all valid existing rights.

4. All minerals will be reserved to the United States inlcuding the right of ingress or egress for mineral development.

5. The United States does not, by the terms of this sale, guarantee to any party physical or legal access to the tract of land being sold.

6. In the event that any of the lands offered for sale are not sold on the date of the sale, they shall continue to be offered for sale at the appraised fair market value on the third Wednesday of each succeeding month after that date until sold or until further notice. Any person wishing to purchase any of these lands after the initial date of sale must present his/her bids to the BLM office shown above accompained by a certified check, postal money order, bank draft or cashier's check for not less than one-third of the amount bid. All applicable terms and conditions as listed above will continue to apply regardless of when the land is actually sold except there will be no preference right bidder privilege after the original date of sale.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, BLM, 2370 South 2300 West, Salt Lake City, Utah, 84119. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Deane H. Zeller,

District Manager.

Date: May 25, 1988.

[FR Doc. 88-12859 Filed 6-7-88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-920-08-4220-10; A-9606]

Arizona; Partial Cancellation of Withdrawal Application

May 31, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of partial cancellation.

SUMMARY: Withdrawal Application A-9606 has been withdrawn by the Soil Conservation Service.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241–5534.

SUPPLEMENTARY INFORMATION: The Soil Conservation Service, Department of Agriculture, filed withdrawal application A-9606 on June 21, 1976, in support of the Harquahala Watershed Project. A right-of-way permit has been granted to the Flood Control District of Maricopa County for the purpose of constructing, operating and maintaining this project and a withdrawal is not required. The Soil Conservation Service has withdrawn their request and the application is cancelled insofar as it affects the following described land:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 8 W.,
Sec. 17, N½.

The area described contains 320 acres in Maricopa County.

The land has been determined suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The land will continue to be segregated from appropriation under the public land laws, including the mining laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-12830 Filed 6-7-88; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

Upper Delaware Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: June 24, 1988, 7:00 PM.*

INCLEMENT WEATHER RESCHEDULE DATE: July 8, 1988.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764–0158; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 USC 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to

*Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

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land and water use in the Upper Delaware region. The agenda for the meeting will surround General business of the Council; Delaware River Basin Commission plans for drought warning regulation changes; tree harvesting seminar.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Alec Gould,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 88-12822 Filed 6-7-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-405-408 (Preliminary)]

Electrolytic Manganese Dioxide from Greece, Ireland, and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-405-408 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Greece, Ireland, and Japan of electrolytic maganese dioxide (EMD), provided for in item 419.44 of the Tariff Schedules of the United States,[1] that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 18, 1988.

[1] EMD is also provided for in subheading 2820.10.00 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to a petition filed on May 31, 1988, by Chemetals, Inc., Baltimore, MD, and Kerr-McGee Chemical Corp., Oklahoma City, OK.

Participation in the investigations—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on June 20, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact George Deyman (202-252-1193) not later than June 16, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions—Any person may submit to the Commission on or before June 22, 1988, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 2, 1988.

[FR Doc. 88-12880 Filed 6-7-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-377 (Final)]

Internal Combustion Engine Forklift Trucks from Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of internal combustion engine forklift trucks with lifting capacity of 2,000 to 15,000 pounds,[2] provided for in item 692.40 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also determines, pursuant to section 735(b)(4)(a), that there is not material injury by reason of massive imports of the subject LTFV merchandise from Nissan Motor Co., LTD (Nissan) and Toyo Umpanki Co., LTD over a short period of time to the extent that it is necessary to impose the duty retroactively.[3]

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Background

The Commission instituted this investigation effective November 24, 1987, following a preliminary determination by the Department of Commerce that imports of certain internal combustion engine forklift trucks from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 23, 1987 (52 FR 48582). The hearing was held in Washington, DC, on April 13, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 31, 1988. The views of the Commission are contained in USITC Publication 2082 (May 1988), entitled "Internal Combustion Engine Forklift Trucks from Japan: Determination of the Commission in Investigation No. 731-TA-377 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 2, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-12861 Filed 6-7-88; 8:45 am]

BILLING CODE 7020-02-M

[2] Such trucks are operator-riding forklift trucks, powered by gasoline, propane, or diesel fuel, of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. This determination also includes imports of less-than-complete forklift trucks defined as imports which include a frame by itself or a frame assembled with one or more component parts.

[3] Commissioner Eckes dissented with respect to critical circumstances on imports from Nissan.

Requests for Comments Concerning the Institution of a Section 751(b) Review Investigation; Porcelain-On-Steel Teakettles From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient enough to warrant the institutions of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 731-TA-299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan. The purpose of the proposed 751 review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of porcelain-on-steel teakettles from Taiwan if the antidumping duty order regarding such merchandise were to be modified or revoked.[1]

FOR FUTHER INFORMATION CONTACT: Daniel Leahy (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On November 26, 1986, the Commission published in the **Federal Register** its determination in investigation No. 731-TA-299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan (51 FR 42946). The Commission determined that an industry in the United States was materially injured by reason of imports from Taiwan of porcelain-on-steel cooking ware which had been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). On December 2, 1986, the Department of Commerce issued an antidumping order, notice of which was published in the **Federal Register** (51 FR 43416).

On April 21, 1988, the Commission received a request filed on behalf of M. Kamenstein, Inc., pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731-TA-299 (Final), as it pertains to porcelain-on-steel teakettles. Under § 207.45 of the Commission's Rules of Practice and Procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." Notice of the Commission's determination was published in the **Federal Register** of November 26, 1986. The petitioner contends that the circumstances of this case constitute "good cause" for conducting an immediate review.

On May 11, 1988, the Commission received a submission, filed on behalf of General Housewares Corporation (GHC), opposing the § 751 review request. Counsel for GHC states that contrary to the allegations in the review request, GHC did not permanently cease teakettle production in March of 1987. According to counsel, GHC has produced teakettles as recently as December of 1987 and still maintains its teakettle production capacity. GHC contends that it has only temporarily suspended teakettle production while a design group develops a new generation of teakettle shapes that can be profitably produced. In its submission, GHC notes that teakettles are but one of 100's of individual cookware items subject to the Commission's final determination. Counsel for GHC argues that temporary suspension of production of one or more items cannot warrant the reversal of a final affirmative determination. Counsel further contends that the allegations in the request do not come close to meeting the Commission's standard for a showing of "good cause." Therefore, according to counsel, the Commission should give no further consideration to this request for an early review of its determination and should not even submit the matter for comment by interested parties.

On May 13, 1988, an additional submission was filed with the Commission on behalf of M. Kamenstein, Inc. Counsel reiterated that

[1] For purposes of this notice, porcelain-on-steel teakettles are teakettles not having self-contained heating elements, of steel and enameled or glazed with vitreous glasses. Porcelain-on-steel teakettles are provided for in item 654.08 of the Tariff Schedules of the United States and subheading 7323.94.00 of the proposed Harmonized Tariff Schedule of the United States (U.S.I.T.C. Pub. 2030).

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their petition seeks a review of the dumping order only as it pertains to teakettles. Counsel also challenged GHC's statement that it has not permanently ceased production of teakettles. Counsel contends that the consumer is being required to pay additional costs (duties) on imports of an item that is simply not made in the United States and may never be made in the United States. Counsel added that this fact underscores why the dumping duty as to teakettles should be revoked, and why there is good cause for an immediate investigation.

Written comments requested—Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: Petitioner alleges that, in March 1987, the sole domestic producer of porcelain-on-steel teakettles ceased production. Petitioner also alleges that the termination of the antidumping order on porcelain-on-steel cooking ware from Taiwan, insofar as it covers teakettles, would not cause material injury or the threat thereof to a U.S. industry producing the like product.

The Commission also invites comment on the meaning of "good cause." In particular, comments on the intent of the "good cause" standard, as well as the differences between "changed circumstances" and "good cause," are sought. The petitioner made the following assertions in support of its argument for a finding of "good cause": Petitioner claims that GHC, the sole domestic producer of porcelain-on-steel teakettles, must have known prior to the Commission's determination in investigation No. 731–TA–299 (Final) that it planned to cease production of teakettles and that failure to inform the Commission of its plans constitutes misfeasance or fraud on the part of GHC. Second, petitioner asserts that the Commission's original determination was predicated on the supposition that domestic teakettle production would remain viable. Petitioner argues that, since this supposition has proven false, there has been a mistake of fact which renders the original proceeding unfair. The petitioner acknowledged that the concepts of misfeasance, fraud and mistake of law or fact were cited by the Commission in a Memorandum Opinion concerning a prior 751 review request relating to welded carbon steel standard pipes from India as requirements for a finding of good cause for a review investigation before 24 months from the publication of a dumping or subsidy order. The petitioner states that even if this case doesn't fall strictly within the cited criteria a review case is still warranted. According to petitioner, the fact is that there is no domestic production of enamelware teakettles, and therefore consumers are being burdened with additional costs for which no domestic benefit is being accrued. Further, petitioner contends that the cited criteria are too narrow in that they did not contemplate that a domestic producer would cease production so soon after the issuance of a dumping order.

Written submissions—In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202–252–1000.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 3, 1988.

[FR Doc. 88–12379 Filed 6–7–88; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–254]

Certain Small Aluminum Flashlights and Components Thereof; Denial of Petition for Reconsideration and Disposition of Two Procedural Motions

AGENCY: U.S. International Trade Commission.

ACTION: Denial of petition for reconsideration, grant of motion to supplement petition, and denial of motion to reply.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1096. Hearing impaired individuals may contact the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: On January 25, 1988, the Commission issued an Action and Order finding no violation of 19 U.S.C. 1337. Subsequently, complainant Mag Instrument Inc. (Mag) moved for reconsideration of that determination. Mag also moved to supplement its petition and to reply to the responses to its petition. The Commission has determined to deny the petition for reconsideration, to grant the motion to supplement the petition, and to deny the motion to reply.

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 2, 1988.

[FR Doc. 88–12862 Filed 6–7–88; 8:45 am]
BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–290–292 and 731–TA–403–404 (Preliminary)]

Thermostatically Controlled Appliance Plugs and Probe Thermostats Therefor From Canada, Hong Kong, Japan, Malaysia, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada, Malaysia, and Taiwan of thermostatically controlled appliance

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

plugs and probe thermostats therefor,[2] provided for in item 711.76 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Governments of Canada, Malaysia, and Taiwan. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada, Hong Kong, Japan, Malaysia, and Taiwan of thermostatically controlled appliance plugs and probe thermostats therefor which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 15, 1988, petitions were filed with the Commission and the Department of Commerce by Triplex Inter Control (USA), Inc., St. Albans, VT, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of thermostatically controlled appliance plugs and probe thermostats therefor from Canada, Malaysia, and Taiwan and by reason of LTFV imports from Canada, Hong Kong, Japan, Malaysia, and Taiwan. Accordingly, effective April 15, 1988, the Commission instituted preliminary countervailing duty investigations Nos. 71–TA–290–292 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–400–404 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 26, 1988 (53 FR 14961). The conference was held in Washington, DC, on May 6, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 31, 1988. The views of the Commission are contained in USITC Publication 2067 (June 1988), entitled "thermostatically Controlled Appliance Plugs and Probe Thermostats Therefor from Canada, Hong Kong, Japan, Malaysia, and Taiwan."

Issued: June 1, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88–12863 Filed 6–7–88; 8:45 am]
BILLING CODE 7020–02–M

[2] For purposes of the investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically, a common wall receptical) with a small cooking appliance of 2,000 watts or less (typically, a griddle, deepfryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of: (1) A probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set. The term probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically, small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

[Investigation No. 337–TA–262]

Certain Venetian Blind Components; Change of Notice of Investigation

Notice is hereby given that the patent identified in the notice of investigation as U.S. Letters Patent 4,352,285 should be identified as U.S. Letters Patent 4,352,385, and the registered trademark identified as registered Trademark No. 522,363 should be identified as registered Trademark No. 522,365.

The Secretary is requested to publish this Notice in the Federal Register.

Respectfully submitted,

Lynn I. Levine,
Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

Dated: June 1, 1988.

[FR Doc. 88–12864 Filed 6–7–88; 8:45 am]
BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[No. MC–C–30090]

National Industrial Transportation League—Petition for Declaratory Order On Negotiated Motor Common Carrier Rates

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: The Commission instituted this declaratory order proceeding by decision served April 22, 1988, 53 FR 15454 (April 25, 1988). The due date for comments was set as June 9, 1988. Petitioner, The National Industrial Transportation League, has requested that the time for filing comments be extended to permit full consideration of the issues involved in this proceeding by the Regular Common Carrier Conference and the American Trucking Associations, Inc. The request is reasonable, and will be granted.

DATE: Comments may be filed on or before July 25, 1988.

ADDRESSES: Send an original and 10 copies of comments referring to No. MC–C–30090 to: Room 1324, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to: James E. Barley, Executive Vice President, The National Industrial Transportation League, 1090 Vermont Avenue, NW., Suite 410, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Andrew J. Nosacek, (202) 275–1712 or Richard B. Felder, (202) 275–7691. [TDD for hearing impaired: (202) 275–1721].

Decided: June 2, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,
Secretary.

[FR Doc. 88–12866 Filed 6–7–88; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Applied Science Laboratories

By Notice dated April 4, 1988, and published in the Federal Register on April 11, 1988; (53 FR 11918), Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
4-Methylaminorex (1590)	I
Methadone (9250)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer

of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration

Dated: May 31, 1988.

[FR. Doc. 88-12839 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration; First State Chemical Co., Inc.

By Notice dated March 22, 1988 and published in the Federal Register on March 29, 1988 (53 FR 10160), McNeilab Inc., DBA First State Chemical Company, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: May 31, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-12838 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; First State Chemical Co., Inc.

By Notice dated March 23, 1988, and published in the Federal Register on March 30, 1988; (53 FR 10303), McNeilab Inc., DBA First State Chemical Company, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Codine (9050)	II
Dihydrocodeine (9120)	II
Oxycodeine (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 31, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-12840 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Marion Laboratories, Inc.

By Notice dated February 8, 1988, and published in the Federal Register on February 12, 1988; (53 FR 4234), Analytical Systems, Division of Marion Laboratories, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Phencyclidine (7471)	II
1-piperidinocyclohexanecarbonitrile (8603)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 31, 1988.

[FR Doc. 88-12837 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Notice of Registration; McNeilab Inc.

By Notice dated March 30, 1988, and published in the Federal Register on April 6, 1988; (53 FR 11353), McNeilab Inc., Welsh and McKean Roads, Spring House, Pennsylvania 19477, made application to the Drug Enforcement Administration to be registered as an importer of difenoxin (9168), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1311.42, the Deputy Assistant Administrator hereby orders that the application submitted by above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 31, 1988.

[FR Doc. 88-12836 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Regulation; Syncates Associates, Inc.

By Notice dated April 6, 1988, and published in the Federal Register on April 12, 1988; (53 FR 12067), Syncates Associates, Inc., 10663 Rockley Road, Houston, Texas 77099, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments of objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer

of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-12841 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS #1100-88]

Legalization; English Language/ Citizenship, Standard Test

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Immigration and Naturalization Service (INS) is pursuing the development and implementation of a standardized English language/basic citizenship skills examination for legalization purposes. This notice is to request written proposals from capable entities who are interested in participating in this effort. The Service expects that the existence of a standardized test will facilitate the manner in which those applicants for adjustment to permanent residence under section 245A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), can demonstrate that they comply with the requirements of section 245A(b)(1)(D)(i)(I) of the Act.

DATE: Written proposals from parties interested in developing and administering an alternative testing process based on the criteria in the supplementary information must be received by close of the business day (5:00 p.m.) or or before July 8, 1988.

ADDRESS: Written proposals should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

The information collection requirements contained in this notice of proposed rulemaking are being submitted to OMB for clearance in accordance with the provisions of the Paperwork Reduction Act.

Comments concerning and questions regarding the public use information collection contained in this notice should be directed to: Office of Management and Budget, Office of Information Regulatory Affairs, 3225 17th Street and Pennsylvania Avenue, Washington, DC 20010. Attn: DOJ Desk Officer, Room 3208; and to the Department of Justice Clearance office.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of status of certain qualified aliens in a two-step adjustment process. Section 245A(b)(1)(D)(i) of the Immigration and Nationality Act, as amended, Pub. L. 99-603 ("ACT") provides in pertinent part that legalized aliens seeking adjustment of status to permanent resident under section 245A(a) of the Act must, unless otherwise exempt, demonstrate that they ". . . meet the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). In order to facilitate the manner in which legalized aliens can demonstrate that they comply with these requirements, the INS is pursuing the development and implementation of a standardized English language (reading and writing) and basic citizenship skills examination as an alternative testing method. In response to a public notice published in the Federal Register on March 18, 1988 (FR 8702), to announce the Service's consideration of implementation of a standardized English language/ citizenship test for legalization purposes, a total of six comments from both outside and inside the Service were received. Upon review and careful consideration of all comments, the following changes were made to clarify and expand on the selection criteria which appeared in draft form in the March 18th public notice: Criterion number (3) has been amended to more clearly define the testing entity's latitude in changing the content of the test after its approval by INS; selection criterion number (4) regarding the use of the Federal Textbooks on Citizenship has been changed to add the words, "contents of" before the words "test questions", and to revise the expected date of availability of these texts. This criterion has also been expanded to address concerns expressed by two commentors regarding the proficiency level of the test questions; criterion number (7) has been amended to clarify that it is the applicant who may be required to pay a fee to the testing entity to cover the costs of test administration and scoring. One commentor suggested that the time limit allowed for scoring the tests and reporting the results thereof, be extended from five (5) to fifteen (15) business days to allow the testing entity sufficient time to collect test materials from test centers and score and check results before sending a roster to INS. The commentor expresses concern that a five (5) day turnaround would require scoring at each test site which, while possible, would increase the risk of error in scoring the tests. In an effort to avoid the possibility of errors in the scoring process, while at the same time taking into consideration the time constraints involved in the permanent residence phase of the legalization program, the Service is amending selection criterion number (9) to provide for a fifteen (15) day turnaround. New criterion number (12) was added to require the testing entity to verify the identity of the person taking the test. Finally, the supplementary information is amended to make it clear that the applicant is not restricted to taking the standardized test. This will be implemented as an optional testing method. The applicant can elect to be tested in the required proficiencies by an INS officer. If adopted, the standardized test could be made available to applicants for naturalization as well. Acceptance of a program will not restrict the INS from accepting or developing other alternative testing methods. The agreement by INS to accept any alternative testing program will be non-financial. The INS shall incur no financial liability and intends to make no payments to any entity participating in this program. The INS agrees to accept the test results of the program or programs it has approved.

The following criteria and requirements are provided for submission of proposals: 1) The testing entity must have demonstrated experience in developing and administering reliable standard examinations in the English language and Civics areas (for example, tests are currently recognized and accepted by an established public or private institution of learning recognized as such by a qualified state certifying agency); 2) The testing entity will be required to meet with INS representatives to review the test copy and to set the standards for passing test scores. The test should be structured as a pass/fail and should be accomplished with a maximum of thirty (30) minutes; 3) Once the INS approves a test, the contents will not be changed by the testing entity unless explicitly approved or otherwise directed by the INS; 4) The content of test questions must come from the revised (1987) Federal Textbooks on Citizenship, which are expected to be available from

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the Government Printing Office by June, 1988. The level of the test questions must be compatible with the lowest level of readability of these textbooks; 5) The testing entity will be required to field test the examination prior to implementation in cooperation with the INS; 6) The testing entity must be capable of administering the examination over a broad geographical area of not less than a statewide basis. In administering the examination, the testing entity will be responsible for obtaining and managing adequate testing locations, controlling the time period in which the testing is to be accomplished, staffing the administration of the test, and furnishing supplies; 7) Any fee charged the applicant by the testing entity to cover the cost of the administration and scoring of the test will be a reasonable fee to be agreed upon by INS and the testing entity. If the applicant fails the test, he/she shall be given the opportunity to be re-tested one time at no additional cost. The re-test shall be a variance of the initial test; 8) The testing entity will be required to publicize the availability of the examination to legalization applicants. The INS will also maintain a register of the approved entity or entities. This register will be made available to the public; 9) The testing entity will be responsible for scoring the examination and must provide the results to the applicant and INS within fifteen (15) business days from the date of the test; 10) The testing entity must provide for test security. INS will review the procedures the entity has or will establish to provide for test security and integrity; 11) INS reserves the right to determine, through inspection or other means, the continued reliability and integrity of the test. Any testing entity approved by INS may be removed from the register for good cause; and 12) The testing entity will be responsible for verifying the identity of the person taking the test.

Richard E. Norton,

Associate Commissioner, Examinations.

Date: May 10, 1988.

[FR Doc. 88-12843 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-10-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 88-4]

Notice of Inquiry; Works of Architecture

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of inquiry; Works of architecture.

SUMMARY: The Copyright Office of the Library of Congress issues this notice of inquiry to advise the public that it is examining the scope of copyright and other forms of legal protection currently accorded works of architecture and the need, if any, for protection beyond that now available.

The Office invites comments from architects, builders of and contractors for commercial and residential structures, government agencies, academics, and interested members of the public.

DATE: Initial comments should be received by September 16, 1988. Reply comments should be received by November 18, 1988.

ADDRESS: Interested persons should submit ten copies of their written comments as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, Room 403, First and Independence Avenue SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: William Patry, Policy Planning Advisor to the Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8350.

SUPPLEMENTARY INFORMATION: At the request of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary and the Subcommittee on Patents, Copyrights, and Trademarks of the Senate Committee on the Judiciary, the Copyright Office is examining the scope of copyright and other forms of legal protection (e.g., contractual, trade dress, and unfair competition) currently accorded works of architecture as well as two- and three-dimensional works related to architecture. The Office is also examining whether there is a need for protection beyond that currently available, including whether perceived deficiencies are capable of resolution through contractual agreements, what form increased protection, if any, should take, and the impact such enhanced protection would have on competition and the public.

The Berne Adherence Bills

H.R. 1623, the original bill introduced by Representative Kastenmeier on March 16, 1987 to implement the provisions of the Berne Convention for the Protection of Literary and Artistic Property, proposed to amend the Copyright Act to provide explicitly for protection of certain buildings and structures, subject, however, to certain exceptions and limitations. See also H.R. 2962 (Moorhead, introduced on behalf of the Administration).

Section 5 of H.R. 1623 would have amended 17 U.S.C. 102(a) by including "architectural works" as a protected form of subject matter. Section 4(a) defined "architectural works" as: "Buildings and other three-dimensional structures of an original artistic character, and works relative to architecture, such as building plans, blueprints, designs, and models." Section 9 of the bill would have provided a new 17 U.S.C. 120(a) containing limitations on works of architecture, including protection for only the "artistic character and design" and not the "processes or methods of construction;" an exemption for the making, distribution or public display of pictures, paintings, and photographs of works of architecture located in publicly accessible locations; a statutory right of owners of a building embodying an architectural work to have minor alterations made in order to enhance its utility; a prohibition against the seizure or destruction of infringing buildings; and finally, a limitation on the copyright owner's ability to obtain an injunction restraining the construction of an infringing building to only those situations where construction of the building has not been substantially completed.

During the extensive hearings held by the Subcommittee on Courts, Civil Liberties and the Administration of Justice on Berne adherence, there was little reference to whether the requirements of Article 2(1) of the Paris text of Berne [1] mandated the explicit treatment of architectural works in the manner contemplated by H.R. 1623. Two witnesses testified that Berne may not require such treatment. The American Institute of Architects submitted a written statement to the Subcommittee stating a preference for a provision of the Copyright Act making it an act of infringement to construct a building based on reproduction of copyright architectural plans. The AIA stated, however, that it was not then seeking protection for the buildings themselves.

In light of the minimalist approach taken to Berne adherence and the lack of a consensus that U.S. law needed revision in order to comply with Article 2(1) of Berne, the clean bill version of H.R. 1623—H.R. 4262—as introduced on March 28, 1988 and passed by the House of Representatives on May 10, 1988, deleted the above-mentioned provisions of H.R. 1623 concerning architectural works, and instead amended the definition of "pictorial, graphic, and sculptural works," in 17 U.S.C. 101 to encompass, in relevant part, "diagrams, models, and technical drawings, . . . including architectural plans."

[1] Article 2(1) provides in relevant part that the expression "literary and artistic works" protected under the Convention includes "works of architecture" and "illustrations, maps, plans, sketches and three-dimensional works relevant to architecture."

The Committee Report accompanying the bill explained:

> The Committee concluded that existing United States law is compatiable with the requirements of Berne. In addition to a degree of protection under copyright against copying of plans and separable artistic works, additional causes of action for misappropriation may be available under state contract and unfair competition theories.
>
> The bill leaves, untouched, two fundamental principles of copyright law: (1) That the design of a useful article is copyrightable only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from and are capable of existing independently of the utilitarian aspects of the useful article; and, (2) that copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such does not extend to the reproduction of the useful article itself.
>
> Specifically, this means that even though the shape of a useful article, such as a building, may be aesthetically satisfying and valuable, the copyright law does not protect the shape. This test of separability and independence from the utilitarian aspects of the useful article does not depend upon the nature of the design—that is, even if the appearance of the useful article is determined by aesthetic, as opposed to functional considerations, only those pictorial, sculptural or graphic elements, if any, that can be identified separately from the shape of the useful article are copyrightable. Even if the three-dimensional design contains a separate and independent artistic feature (for example, a floral relief design on flatware or a gargoyle on a building), copyright protection would not cover the over-all configuration of the useful article as such.
>
> In the case of architectural works, in addition to protection for separable, artistic sculpture or decorative ornamentation, purely non-functional or monumental structures may be subject to copyright.
>
> The Committee has not amended section 113 of the Copyright Act and intends no change in the settled principle that copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such, does not extend to the reproduction or manufacture of the useful article itself.

H.R. Rep. No. 100-609, 100th Cong., 2d Sess. 50-51 (1988).

The Senate, in its original Berne adherence legislation, proposed provisions on architectural works identical to those found in H.R. 1623. See S. 1301 (introduced May 29, 1987) by Senator Leahy, *see also S. 1971* (Hatch, on behalf of the Administration). Similarly, in reporting S. 1301 out of the Committee on the Judiciary, the Senate deleted these earlier provisions, replacing them instead with a revision to the definition of pictorial, graphic and sculptural works to expressly include architectural plans. This approach was also based on the minimalist theory of Berne adherence and the Committee's conclusion that: "U.S. Copyright Law, as modified by this Act, and other state and federal remedies, protect architectural works to the extent required by the Berne Convention." S. Rep. No. 100-352, 100th Cong., 2d Sess. 9 (1988). At the same time, the Committee noted that it "deliberately leaves in place the final sentence" of the definition of "pictorial, graphic, and sculptural works," which states that the design of a useful article (as also defined in Section 101) such as a building or structure will be considered a protected pictorial, graphic, or sculptural work.

> Only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of the utilitarian aspects of the article.

S. Rep. No. 100-352 at 9.

Case Law

The case law has, on the whole, made a distinction between copyright in architectural plans and protection for the architectural structure. See *Demetriades v. Kaufman*, 88 Civ. 0648 (S.D.N.Y. filed March 8, 1988). But Cf. *Herman Frankel Org. v. Wolfe*, 184 U.S.P.Q. 819 (E.D. Mich. 1974). Some courts have awarded damages based on the profits derived by the defendant from sales of the houses. See *Robert R. Jones Associates v. Nino Homes*, CCH Copr. L. Rep. ¶26,165 (E.D. Mich. 1987); *Arthur Ruttenberg Corp. v. Dawney*, 647 F. Supp. 1214 (M.D. Fla. 1986): *Aitken, Hazen, Hoffman, Miller, P.C. v. Empire Construction Co.*, 542 F. Supp. 252 (D. Neb. 1982).

Issues have also arisen over who is the copyright owner of architectural drawings: the commissioning party or the architect. See *Aitken, Hazen, Hoffman & Miller, supra.; Meltzer v. Zoller*, 520 F. Supp. 847 (D.N.J. 1981). Cf. generally, *Aldon Accessories Ltd. v. Spiegel, Inc.*, 738 F.2d 548 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984) with *Easter Seal Society for Crippled Children and Adults of Louisiana, Inc. v. Playboy Enterprises*, 815 F.2d 323 (5th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3661 (U.S. March 28, 1988) (No. 87-482) and *Community for Creative Non-Violence v. Reid*, No. 87-7051 (D.C. Cir. filed May 20, 1988).

Other forms of protection have also been sought for design aspects of buildings. *Associated Hostworks of California v. Moss*, 207 U.S.P.Q. 973 (W.D.N.C.) (trade dress); *White Tower System, Inc. v. White Castle System of Eating Houses Corp.*, 90 F.2d 67 (6th Cir.), *cert. denied*, 302 U.S. 1937 (id.); *Fotomat Corp. v. Cochran*, 437 F. Supp. 1231 (D. Kan. 1977) design of building found to operate as service mark). But cf. *Demetriades v. Kaufman, supra.* (denying preliminary injunction under Lanham Act section 43(a) and finding that plaintiff was unlikely to prove, on the merits, that a residential house had acquired secondary meaning, and stating conclusion that "extending section 43(a) protection to individual, residential designs would work a profound mischief in both the law and the home-building industry.")

Design patent protection has been found applicable to architectural components, although these decisions are sparse and relatively old. *Riter-Conley Mfg. Co.* v. *Aiken*, 203 F. Supp. 699, 702 (3d Cir. 1913); Ex Parte Foshay, 7 U.S.P.Q. 121 (Pat. Off. Bd. App. 1930).

Although unfair competition may provide remedies in some circumstances, courts in specific cases have held unfair competition claims to be preempted by section 301 of the Copyright Act. *Demetriades* v. *Kaufman, supra.*; *Schuchart & Associates* v. *Solo Serve Corp.*, 540 F. Supp. 928, 943-945 (W.D. Tex. 1982).

Contractual arrangements, to the extent enforceable under state law, of course, provide another avenue of protection.

Nature of the Inquiry: The Office's examination touches on three broad areas: (1) The type of copyright and other forms of protection (i.e., contractual, trade dress, unfair competition, etc.) currently accorded works of architecture and works related

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to architecture; (2) the need, if any, for protection beyond that now available including whether perceived deficiencies are capable of resolution through private consensual arrangements; and (3) the laws and actual practices of foreign countries in protecting works of architecture and works related to architecture.

Specific Questions: The Office seeks comments in the following specific areas:

Subject Matter and Scope of Protection

1. What forms of legal protection are presently available to protect works of architecture and works related to architecture?

2. Is that protection sufficient to foster the economic and aesthetic interests of those involved in the creation and exploitation of such works?

3. If not, should the creators of works of architecture and works related to architecture have the exclusive right under the Copyright Act or other forms of protection to authorize the reproduction of their works? Should copyright or other forms of protection be extended to buildings or structures provided they contain externally or internally conceptually separable elements as to form or design, and if so, what test should be used to determine whether conceptual separability exists? Cf. *Esquire* v. *Ringer*, 591 F.2d 796 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 908 1979); *Kieselstein-Cord* v. *Accessories by Pearl, Inc.*, 632 F.2d 989 (2d Cir. 1980); *Carol Barnhart, Inc.* v. *Economy Cover Corp.*, 773 F.2d 411 (2d Cir. 1985); *Brandir International, Inc.* v. *Cascade Pacific Lumber Co.*, 5 U.S.P.Q. 2d 1099 (2d Cir. 1987).

If copyright of other forms of protection should not be extended to the buildings or structures themselves, should it be extended to prevent the construction of buildings or structures based on infringing architectural plans, drawings, elevations, or three-dimensional models; and, if so, would such a right, in practice, nevertheless result in protection of buildings or structures?

What is the effect of 17 U.S.C. 102(b) and *Baker* v. *Selden*, 101 U.S. 99 (1879) on such protection? Can a building or structure be a "copy" of architectural plans it is derived from, and if so, does it make a difference whether the building or structure itself constitutes a copyrightable work?

4. What is the effect of architects' use of classical or other public domain elements such as designs that are staple, commonplace, or familiar in the industry?

5. If protection should be granted to buildings or structures, what should the scope of that protection be? Should the standard for infringement of buildings or structures be the same as for traditional copyrighted works of the arts, i.e., substantial similarity? How would recent decisions on the total concept and feel test apply to infringement of works of architecture?

6. Should the owner of the intellectual property rights in a protected work of architecture have the right to prohibit others from constructing an otherwise infringing work if those others have created their work without the aid of the original plans, drawings, elevations, or three-dimensional models, such as by viewing the protected work or by taking its measurements? Should the owner of the intellectual property rights in a protected building have the right to require destruction of completed or uncompleted buildings or structures? What would the appropriate monetary remedies be for infringement of a protected work of architecture or work related to architecture?

7. If the owner of the intellectual property rights in a work of architecture conveys those rights, should he or she still have the right to prohibit alterations to the work, and if so, what kind of alterations, all or only those that are not of a practical or technical nature necessary for maintenance or repair? If he or she should have the right to prohibit alterations (or at least those of a non-utilitarian purpose or effect), and the owner of the material embodiment of the work makes unauthorized alterations, what should the the available remedies be?

Should the owner of the intellectual property rights in a work of architecture ever have the right to require or demand the destruction of infringing buildings or structures or to prohibit their removal from a specific site?

8. Should the owner of the intellectual property rights in a protected work of architecture that has been altered without consent have the right to prohibit his or her association or authorship with the work?

9. Assuming rights should be granted to works of architecture, how long should the term of protection be, and if federal rights are involved, including copyright, what should the extent of preemption of state law be?

10. If rights were granted to works of architecture, should there be an exemption for the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations if the work is located in a place accessible to the public, and if so, should the exemption be limited to noncommercial uses? What role would the fair use doctrine play if protection were granted?

11. Who should the initial owner of intellectual property rights in a protected work of architecture be, and how would the work for hire doctrine in the Copyright Act affect ownership questions? How are questions of ownership of intellectual property rights in works related to architecture presently resolved? Does that system work effectively? How would the copyright concept of joint ownership operate if protection were extended to works of architecture?

Contractual Practices

12. Can private, consensual agreements resolve any perceived deficiencies with the current state of protection for works of architecture and works related to architecture?

Foreign Law and Practices

13. What is the nature and extent of protection granted in foreign countries to works of architecture and works related to architecture and how is that protection actually accorded in practice? Are foreign practices relevant or applicable to practices in the United States?

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday, in Room 401, James Madison Memorial Building, Library of Congress, First and Independence Avenue SE., Washington, DC 20559.

Dated: May 26, 1988.

Ralph Oman,

Register of Copyrights.

William J. Welsh,

Deputy Librarian of Congress.

[FR Doc. 88-12872 Filed 6-7-88; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Partially Open Meeting; Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Translators Fellowships Section) to the National Council on the Arts will be held on June 10, 1988, from 9:00 a.m.-6:00 p.m., and on June 11, 1988, from 9:00 a.m.-12:00 noon, in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 has been changed. This notice supersedes the previous notice in Vol. 53, No. 101 FR 18938, May 25, 1988.

A portion of the meeting will be open to the public on June 11, 1988, from 11:00 a.m.-12:00 noon, for a policy issues discussion.

The remaining sessions of this meeting on June 10, 1988, from 9:00 a.m.-6:00 p.m., and on June 11, 1988, from 9:00 a.m.-11:00 a.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of § 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-12932 Filed 6-7-88; 8:45 am]

BILLING CODE 7537-01-M

Media Program Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Program Advisory Panel (Children's Television Series on the Arts Section) to the National Council on the Arts will be held on June 8, 1988, from 10:00 a.m.-6:00 p.m., and on June 9, 1988, from 10:00 a.m.-5:30 p.m., in room M09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

June 6, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-12943 Filed 6-7-88; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources Section) to the National Council on the Arts will be held on June 22, 1988, from 8:30 a.m.-6:30 p.m., in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel Review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-12831 Filed 6-7-88; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 23-24, 1988, from 9:00 a.m.-5:00 p.m., in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 23, 1988, from 9:00 a.m.-5:00 p.m., on June 24, 1988, from 9:00 a.m.-11:00 a.m., and on June 24, 1988, from 1:30 p.m.-5:00 p.m., for a guidelines and policy issues discussion.

The remaining sessions of this meeting on June 24, 1988, from 11:00 a.m.-12:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(b) of § 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts

[FR Doc. 88-12832 Filed 6-7-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 1.99, "Radiation Embrittlement of Reactor

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Vessel Materials," describes general procedures acceptable to the NRC staff for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-12870 Filed 6-7-88; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and made available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, CE 802-5 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 3.45, "Nuclear Criticality Safety for Steel-Pipe Intersections Containing Aqueous Solutions of Fissile Materials." This guide is being developed to describe procedures acceptable to the NRC staff for preventing criticality accidents in the storage and processing of aqueous solutions of fissile materials in steel-pipe intersections. This guide endorses ANSI/ANS-8.9-1987, "Nuclear Criticality Safety Criteria for Steel-Pipe Intersections Containing Aqueous Solutions of Fissile Material."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the guide (including any implementation schedule) and the value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by August 5, 1988.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 88-12871 Filed 6-7-88; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collections: Proposed 10 CFR 71, Transportation Regulations: Compatibility with the International Atomic Energy Agency (IAEA).

3. The form number if applicable: Not applicable.

4. How often the collection is required: At each shipment of radioactive material in NRC approved packages.

5. Who will be required or asked to report: Licensees subject to 10 CFR Part 71 who transport radioactive material, or who transfer radioactive material to a carrier for transport, in an NRC approved package.

6. An estimate of the number of responses: 350.

7. An estimate of the total number of hours needed to complete the requirement or request: 2,700.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract:

NRC is proposing to add a requirement that a Type B package approved under NRC regulations be assigned a serial number which uniquely identifies each packaging which conforms to the approved design and which is legibly and durably marked on the outside of each packaging. NRC is also proposing to require that a request for renewal of a package design approval certificate or a quality assurance program approval combine all previously submitted material which is still applicable in a consolidated application for renewal. Lastly, NRC proposes to require that shipment records required under 10 CFR Part 71 identify any NRC approved package by serial number in addition to the model number as presently required.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Vartkes Broussalian (202) 395-3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 18th day of May 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88-12869 Filed 6-7-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactor Designs; Open Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on June 22, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 22, 1988—8:30 A.M. until the conclusion of business

The Subcommittee will review the draft SER of the Modular HTGR conceptual design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date June 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-12868 Filed 6-7-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Closed Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on June 21, 1988, Room 1046, 1717 H Street NW., Washington, DC.

Most of the meeting will be closed to protect privileged commercial information.

The agenda for the subject meeting shall be as follows:

Tuesday, June 21, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the Westinghouse revised ECCS Evaluation Model for 2-Loop Upper Plenum Injection (UPI) plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-12867 Filed 6-7-88; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 21-22, 1988, at the Embassy Suites Hotel, 1250 22d Street NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in the Ambassador Room, first floor, at 9:00 a.m. June 21, 1988. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. in the Consulate Room, also on the first floor, on June 21, 1988.

The full Commission will convene at 2:00 p.m. on June 21, 1988 with a panel of researchers to identify major PPS issues, their implications and appropriateness for PROPAC'S research agenda. The meeting will be held in the aforementioned combined rooms. The full Commission meeting on June 22, 1988 will begin at 9:15 a.m. in the same rooms.

Donald A. Young,

Executive Director.

[FR Doc. 88-12875 Filed 6-7-88; 8:45 am]

BILLING CODE 8820-BW-M

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POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program—Postal Service/State of Utah Department of Social Services

AGENCY: United States Postal Service.

ACTION: Notice of Matching Program—U.S. Postal Service/State of Utah Department of Social Services.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate in a computer matching program with the State of Utah Department of Social Services to identify any postal employees who owe child support obligations in Utah or monies to Utah as a result of receiving public assistance benefits to which they are not entitled.

DATE: The match is expected to begin about June 1988.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 8121, Washington, D.C. 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office (202) 268–5161.

SUPPLEMENTARY INFORMATION: The Office of Recovery Services of the State of Utah Department of Social Services has legal authority to enforce child support obligations and collect public assistance overpayments and other obligations owed to the State of Utah and its agencies. On May 4, 1987, the Postal Service published notice (52 FR 16324) of a computer match to assist that office in its efforts to identify current postal employees who are (1) absent parents owing child support obligations in the State of Utah, including those owed to the State as a result of benefits paid to dependents; and (2) recipients of Aid to Families with Dependent Children or Medicaid benefits to which they are not entitled. That match resulted in substantial savings to the AFDC and Medicaid programs by locating absent parents of dependent recipients and enforcing the child support obligations of those parents. USPS has agreed to participate in a follow-up match in compliance with the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). Set forth below is the information required by paragraph 5.f.(1) of these guidelines. A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and State of Utah Department of Social Services (U–DSS).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the U–DSS will submit to the USPS a computer tape of the names, social security account numbers (SSANs), and dates of birth of persons owing monies under any or all of the following three program areas for which the Office of Recovery Services of the U–DSS has collection enforcement responsibility: (1) Child support, (2) Aid to Families With Dependent Children, and (3) Medicaid. The USPS will match that tape against its payroll system files (USPS 050.020, Finance Records—Payroll System) for the purpose of identifying postal employees who are obligors under any of these three programs and will disclose to the Office of Recovery Services of U–DSS the following information about resultant "hits": Name SSAN, date of birth, home address, facility where employed, and gross wage information.

The validity of "matched" employee/obligor information will be verified by an investigator of the Office of Recovery Services of the U–DSS. Subsequent actions to collect outstanding debts owed by those employees for delinquent child support or benefits paid may include enforcement of standing court orders, service of legal process when a court order has not been issued, or other appropriate action. In those cases involving State Medicaid funding when insurance coverage was in effect, the recipient or insurance carrier or both will be contacted concerning reimbursement. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosue of this information is authorized by routine use Nos. 28 and 32 in USPS 050.020, Payroll System (most recently published in 52 FR 6251 of March 2, 1987).

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin about June 1988 and end no later than December 1988.

d. *Security:* The USPS personnel who perform the match will (a) have the only USPS access to the U–DSS computer tape, (b) use it for the sole purpose of the match as officially stated and for no other purpose, and (c) safeguard it from unauthorized access. Likewise the postal employee information disclosed to the U–DSS will be used by authorized U–DSS personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will neither retain nor copy the tape provided by U–DSS and must return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Other Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88–12881 Filed 6–7–88; 8:45 am]

BILLING CODE 7710–12–M

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Matching Program to Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Program", the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources. The notice published in the **Federal Register**, February 19, 1987 (52 FR 5231) is amended by adding to the list of record systems that are matched against the SSS–8 the following system of records:

Office of Personnel Management—OPM/GOVT–1, General Personnel Records—Central Personnel Data File, published in 49 FR 36949 (September 20, 1984).

The matching will begin June 1, 1988.

Congressional Notice

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

Dated: May 26, 1988.

Samuel K. Lessey, Jr.,

Director of Selective Service.

[FR Doc. 88–12867 Filed 6–7–88; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2314]

New York; Declaration of Disaster Loan Area

The City of Cohoes, Albany County in the State of New York constitutes a disaster area because of damages from a severe fire which occurred on May 15, 1988. Applications for loans for physical damage may be filed until the close of business on July 28, 1988, and for economic injury until the close of business on February 28, 1989 at the address listed below: Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	8.000%
Businesses without credit available elsewhere	4.000%
Businesses (EIDL) without credit available elsewhere	4.000%
Other (non-profit organizations including charitable and religious organizations)	9.000%

The number assigned to this disaster is 231405 for physical damage and for economic injury the number is 662300.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: May 27, 1988.

James Abdnor,

Administrator,

[FR Doc. 88–12876 Filed 6–7–88; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0076]

Beneficial Capital Corp.; Revocation of License

Notice is hereby given that the license to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act), issued to Beneficial Capital Corp., 645 Fifth Avenue, Suite 1900, New York, New York 10022 has been revoked. Beneficial Capital Corp., was licensed by the Small Business Administration on May 15, 1961.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the revocation was effective on May 5, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 2, 1988.

[FR Doc. 88–12877 Filed 6–7–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 159 (9th Mtg.), Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the 9th meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held on June 29–July 1, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of the eighth meeting's minutes, (3) review of DOD/FAA activity on GPS selective availability, (4) discussion of Air Force letter concerning 21 satellites, (5) discussion of ICAO FANS/4 Meeting, (6) report of the GPS integrity channel working group, (7) review of EUROCAE WG–28 activities, (8) review of draft documents submitted for the Committee Report, (9) assignment of tasks, (10) other business, and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 26, 1988.

R.K. Reichenbach,

Acting Designated Officer.

[FR Doc. 88–12847 Filed 6–7–88; 8:45 am]

BILLING CODE 4910–13–M

MARITIME ADMINISTRATION

Docket S–829

Intent To Consider a Change in Policy Governing Proceedings Under Section 605(c) of the Merchant Marine Act, 1936, as Amended; Extension of Deadline for Comments

On May 13, 1988, notice was published in the **Federal Register** (53 FR 17134), Docket S–829, notifying U.S.-flag liner operators operating in the foreign trade that the Maritime Subsidy Board (Board) intends to consider a change in its policy governing proceedings under section 605(c) of the Merchant Marine Act, 1936, as amended, on applications for operating-differential subsidy (ODS). The notice indicated that the Board intends to consider ending its practice of requiring an intervenor to serve the same U.S. coastal area or range of U.S. ports as those involved in the application for ODS in order to obtain standing in a section 605(c) proceeding.

Farrell Lines Incorporated (Farrell) has requested an extension of 30 days to July 9, 1988, in the filing of comments in Docket S–829. However, the Board believes that an extension of 14 days should provide adequate time for Farrell to complete and file its comments in this matter.

The deadline for submitting comments concerning this proposal is extended to 5:00 pm on June 24, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By Order of Maritime Subsidy Board.

Dated: June 6, 1988.

James E. Saari,

Secretary.

[FR Doc. 88–12904 Filed 6–7–88; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 25]

Surety Companies Acceptable on Federal Bonds; Termination of Authority Voyager Guaranty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Voyager Guaranty Insurance Company, of Jacksonville, Florida, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

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The Company was last listed as an acceptable surety on Federal Bonds at 52 FR 24628, July 1, 1987.

With respect to any bonds currently in force with Voyager Guaranty Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 287–3919.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

Dated: May 25, 1988.

[FR Doc. 88–12822 Filed 6–7–88; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encourage to so indicate:

The U.S. Elections, State and Local Government: Philippine Political Leaders' Study Program

The Office of Private Sector Programs, Initiative Grants and Bilateral Accords Division will assist in supporting a three-week international exchange program for Filipino political leaders on U.S. local, state, and national government and the November 1988 elections. During the first two weeks of this program, participants will visit two regions of the United States where they will examine different municipal/county and state systems, their structures, decision making processes, and funding relationships with each other and the federal government. The participants will also evaluate the U.S. electoral process and monitor the elections. The remainder of the exchange program will take place in Washington, DC after November 8th, where these leaders will evaluate the potential impact of the Presidential and Congressional elections on U.S.-Filipino relations. Leaders from the Philippines will be selected by USIA representatives abroad. A U.S. not-for-profit institution with knowledge of Filipino social, political and economic issues as well as considerable expertise on American municipal, county, and state government—and access to American political and economic leaders—will design and execute this project.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. Please refer to this specific program by name in your letter of interest. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiatives—Philippine Leaders), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: May 23, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88–12866 Filed 6–7–88; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 13, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–12945 Filed 6–6–88; 11:06 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting (FR, 53 FR 19366, Friday, May 27, 1988) on June 1, 1988, include an additional item, which was closed to public observation:

Administrative Action under section 206(h) of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board unanimously voted to add this item to the closed agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meeting.
2. Merger under section 205(h) of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Termination of Conservatorship. Closed pursuant to exemption (8).
4. Assistance under section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemption (8).
5. Review of Delegations of Authority. Closed pursuant to exemption (2).

The meeting was held at 2:42 p.m., in the Amway Grand Plaza Hotel, Pearl Room/Hotel Concourse Level, Pearl at Monroe, Grand Rapids, Michigan 49503.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88–12983 Filed 6–6–88; 12:32 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

June 16, 1988; 8:30 a.m. Open Session
June 17, 1988; 8:30 a.m. Closed Session
June 17, 1988; 8:35 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 16, 1988. Open Session (8:30 a.m. to 12 Noon)

1. 1988–1989 Budget Overview
2. Major Changes—1990–1993
   a. Programmatic
   b. Administrative
   c. Policy
3. Planning Issues

Thursday, June 16, 1988. Open Session (1:30 to 5:45 p.m.)

3. Planning Issues (continued)
4. Strategic Considerations
   a. Science Trends
   b. Demographics and Education
   c. Agency Relationships
   d. Legislative Agenda

Friday, June 17, 1988. Closed Session (8:30–8:35 a.m.)

5. Minutes—May 1988 Meeting
6. NSB and NSF Staff Nominees

Friday, June 17, 1988. Open Session (8:35–11:00 a.m.)

7. 1990 Budget Consideration
8. NSB Discussion
   a. Positioning NSF for the 1990's
   b. Further Considerations for FY 1990 Budget

Thomas Ubois,

Executive Officer.

[FR Doc. 88–12921 Filed 6–6–88; 8:59 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 6, 1988:

A closed meeting will be held on Tuesday, June 7, 1988, at 2:30 p.m. An open meeting will be held on Friday, June 10, 1988, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10) permit consideration of the schedules matters at a closed meeting.

Commissioner Fleischman, as duty officer, vote to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 7, 1988, at 2:30 p.m., will be:

Formal order of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Institution of administrative proceeding.

The subject matter of the open meeting scheduled for Friday, June 10, 1988, at 10:00 a.m., will be:

1. Consideration of whether to issue a release that would discuss and synthesize exemptive, interpretive, and no-action positions regarding the applicability of U.S. broker-dealer registration requirements to foreign entities engaged in securities activities involving U.S. investors. The release would propose for comment a rule, based on these positions, that would exempt from broker-dealer registration foreign entities that deal with certain U.S.

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institutional investors under limited conditions, or that restrict their activities to certain non-U.S. persons. For further information, please contact John Polanin, Jr. at (202) 272-2846.

2. Consideration of whether to publish for comment a release proposing a regulation that would clarify the extraterritorial application of the registration provisions of the Securities Act of 1933. The regulation would provide generally that any offer or sale that occurs within the United States is subject to section 5 of the Securities Act and any offer or sales that occurs outside of the United States would not be subject to section 5. For further information please contact Samuel Wolff at (202) 272-3240.

3. Consideration of whether to issue a notice of and order for hearing on the application of Advisers Management Trust (the "Fund") and Sentry Life Insurance Company ("Sentry"), Sentry Variable Account II and Sentry Variable Account I ("Separate Accounts") (collectively "Applicants") which requests 'exemptive relief under section 6(c) from section 17(a)(1) of the Investment Company Act of 1940 ("Act") to permit Applicants to implement a distribution plan adopted pursuant to Rule 12b-1 that would allow payments from Fund assets to be received by Sentry, its affiliates and unaffiliated insurance companies whose separate accounts invest in the Fund. For further information, please contact Jeffrey M. Ulness at (202) 272-2828.

4. Consideration of whether to propose for public comment amendments to rules 12b-1 and 17d-3 under the Investment Company Act of 1940 and form N-1A under the Securities Act of 1933. The amendments to rule 12b-1 would clarify and enhance the standards under which a registered open-end management investment company ("fund") can adopt or continue a plan ("12b-1 plan") to use fund assets to pay costs associated with the distribution of fund shares; attempt to ensure that payments under a distribution plan are made on a current basic and are for specific destribution services actually provided to the funds; and prohibit funds with 12b-1 plans from being held out as "no-load" funds or otherwise promoted in a misleading manner. The proposed amendments to Rule 17d-3 would expand the ability of affiliated funds, their principal underwriters and their affiliated persons to finance jointly their distribution efforts without prior Commission approval. Finally, the proposed amendment to form N-1A, the registration statement for funds, would require an additional disclosure to be made regarding the amount of payments under distribution plans. For further information please contact Rochelle G. Kauffman at (202) 272-3048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272-2091.

Jonathan G. Katz,
Secretary.
June 2, 1988.

[FR Doc. 88-12913 Filed 6-3-88; 4:30 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published June , 1988 (Mailed June 1, 1988).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (EDT) Wednesday, June 8, 1988.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: A.C. Reynolds High School Auditorium, Reynolds School Road, Asheville, North Carolina.

STATUS: Open.

ADDITIONAL MATTER: The following items are added to the previously announced agenda:

C—POWER ITEMS

*2. Agreement No. TV-74414A with The University of Tennessee at Knoxville for a Cooperative Project to Enhance Telecommunication Capabilities with the Installation and Utilization of an Optical Fiber Demonstration Link.

F—UNCLASSIFIED

7. Agreement with U.S. Department of the Navy Covering Arrangements for Cooperation in Research and Development Work and Related Agreement with American Welding Institute.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-6000 or 632-6000 (News Desk), Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business, requires the subject matter of this meeting be changed to include the additional items shown above and that no earlier announcement of this change was possible.

"This item was approved by individual Board members. This would give formal ratification to the Board's actions.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: June 3, 1988.

Marvin Runyon,
Director and Chairman.
C.H. Dean, Jr.,
Director.
John B. Waters,
Director.

[FR Doc. 88-12944 Filed 6-6-88; 11:06 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Technical Information Service

Intent To Grant Exclusive Patent License; Cetus Corp.

Correction

In notice document 88-11107 appearing on page 17744 in the issue of Wednesday, May 18, 1988, make the following correction:

In the first column, in the first paragraph, in the 10th line, "4,670,567" should read "4,670,467".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51704; FRL-3370-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-0233 beginning on page 15130 in the issue of Wednesday, April 27, 1988, make the following corrections:

1. On page 15130, in the second column, in the 10th line, the date should read "June 5, 1988".

2. On the same page, in the second column, in the 15th line, the date should read "June 6, 1988".

3. On page 15131, in the third column, under P 88-977, in the second line, "Naphthyl" was misspelled.

4. On page 15133, in the third column, after the 27th line, insert P 88-1027.

5. On page 15134, in the first column, under P 88-1036, in the fifth line "26,000" should read "26,600".

6. On page 15136, in the third column, the second entry for P 88-1092 should be removed.

7. On page 15137, in the second column, P 88-1106 should read P 88-1108.

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Definition of Small Business Travel Agencies

Correction

In rule document 88-11693 beginning on page 18220 in the issue of Wednesday, May 25, 1988, make the following correction:

§ 121.2 [Corrected]

On page 18821, in the second column, in § 121.2, in the table, in the third column, "$.05" should read "$0.5".

BILLING CODE 1505-01-D

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Part II

Nuclear Regulatory Commission

10 CFR Part 71

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA); Proposed Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering revising its regulations for the safe transportation of radioactive material to make them compatible with those of the International Atomic Energy Agency (IAEA) and thus with those of most major nuclear nations of the world. Although several substantive changes are proposed in order to provide a more uniform degree of safety for various types of shipments, the Commission's basic standards for packaging radioactive material remain unchanged. These regulations apply to all NRC specific licensees who place in transit byproduct, source, or special nuclear material. The Department of Transportation is also proposing a corresponding rule change to its Hazardous Materials Transport Regulations. In addition, three Petitions for Rulemaking concerning the transportation of low-specific-activity (LSA) radioactive material are considered in this notice, and the criteria for approval of packages for the air transport of plutonium are proposed to be included in 10 CFR Part 71.

DATES: Submit comments by October 6, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to Room 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m.

Examine comments received and regulatory analysis at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

Obtain single copies of the regulatory analysis from: Donald R. Hopkins, Radiation Protection and Health Effects Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3784.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Radiation Protection and Health Effects Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3784.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1983, the NRC published in the **Federal Register** (48 FR 35600) a final revision of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." That revision, in combination with a parallel revision of the hazardous materials transportation regulations of the U.S. Department of Transportation (DOT), brought United States domestic transport safety regulations at the Federal level in accord with relevant portions of the International Atomic Energy Agency (IAEA) design and performance requirements to the extent considered feasible. This action made U.S. regulations compatible with the domestic regulations of most of the international community.

In 1980, 1982, and November 1983, the IAEA assembled revision panels to draft changes for the scheduled 1984 revision of its transportation regulations. The revision was eventually issued in early 1985. The revision panels, which consisted of representatives of most major countries involved in nuclear material transportation, made IAEA regulations more compatible with U.S. regulations through some of their decisions. When NRC and DOT were finalizing their transportation regulations in 1983, they anticipated some of the changes that IAEA was making in the revision of its regulations. The 1983 NRC and DOT rules were written to incorporate, to the extent possible, some of the IAEA changes. Where it was not possible to incorporate IAEA changes, the 1983 rules were written so as to minimize the number of changes that would have to be made when the IAEA revision was completed. Those changes and other changes, not anticipated by NRC and DOT in 1983, are being incorporated into this proposed rulemaking.

Discussion of Major Changes

The major proposed changes to 10 CFR Part 71 are additional accident test requirements for certain packages, an expansion in the number of radionuclides with listed limits for the quantity of radioactive material in a single package, a number of changes in the listed limits, simplification of the fissile material transport classes, updating requirements for shipment of low-specific-activity materials and inclusion of the criteria for air transport of plutonium. These major changes are discussed in the following paragraphs.

Additional Accident Test Requirements

A deep water immersion test has been added to the regulations for a Type B package containing irradiated nuclear fuel in excess of 10^5 Ci (37PBq). If such a package were lost in relatively shallow coastal waters due to the sinking or capsizing of a ship or barge, the probability is high that an attempt would be made to recover the package and its contents. The deep immersion test (200 m) requirement, which can be satisfied through engineering evaluation or actual physical test (§ 71.41), is to assure that the package containment system does not rupture from the water pressure at 200 m (656 ft) which would create radiological problems for the recovery operation or an additional environmental risk.

While the NRC staff believes that many existing Type B cask designs now approved by NRC will satisfy this additional test without need for modification, adding the test to the regulations will assure that foreign casks and future U.S. designs will also have the ability to survive deep immersion in water. Adding the deep immersion test to the regulations also introduces the cost involved in having licensees analyze existing package designs to assure and demonstrate that presently approved casks for transporting irradiated nuclear fuel satisfy the requirement. These costs can be avoided if no additional casks of the same design will be fabricated beyond a specified date, and if the casks will not be used for international transport beyond a specified date. In that case, existing casks of the approved design can continue to be used domestically with no further qualification regarding deep immersion.

A dynamic crush test has been added to the Type B package rules in addition to the 9 m (30 ft) drop test for packages which are minimally vulnerable to damage in the drop test, but which have a high potential for radiation hazard if package failure occurs. The crush test requirement, which can also be satisfied through provisions of 71.41, is applied to packages which are both lightweight, up to 500 kg (1100 lb) and low density (up to 1,000 kg/m^3, i.e., 1 g/cm^3), and which have a high radioactive material content (over 1000 A_2) in normal form. The dynamic crush test consists of the drop of a 500 kg (1,100 lb) mild steel plate from 9 m onto the package resting on an unyielding support. IAEA applies the crush test in place of the 9 m drop test for the lightweight packages specified.

In the absence of experience using the crush test, and because the crush test and drop test evaluate different features of a package, NRC is requiring both the crush test and the 9 m drop test for lightweight packages.

There are a limited number of lightweight, low density, and high radioactive material content package designs to which the crush test would apply. Of these, some would pass the crush test so that no package design modification would be necessary. A limited amount of analysis would suffice to requalify the package design to the new standards. If the package design is not used internationally, and no further packages will be fabricated after a specific date, no effort to satisfy the new crush test standard would be necessary, and existing packages could be used in domestic transportation to the end of their useful lives.

Changes in Radionuclide Limits

The preamble to the August 5, 1983 revision of 10 CFR Part 71 (48 FR 35600) noted that the IAEA, as part of its effort to maintain the continued adequacy of the regulations, had adopted a modified system for determining A_1 and A_2 values. The A_1 and A_2 values are the maximum quantity of a particular radionuclide permitted in Type A packages in special form and normal form, respectively. Type A packages are those which provide adequate containment, shielding, and criticality control under normal conditions of transport and minor accidents, but are not designed to survive severe transportation accidents. Instead, there are limits placed on Type A package radioactive material contents. Accident resistant packages are identified as Type B. Radioactive material in special form is either a nondispersible solid or sealed in a capsule so that the dispersibility, and therefore the radiological hazard, of the radioactive material is diminished. This system of limiting the radioactive content of Type A packages to A_1 and A_2 values depending on the dispersibility of the contents is the regulatory scheme for limiting the potential radiological hazard of a serious transportation accident involving packages of radioactive material.

The IAEA's modified system for determining A_1 and A_2 values is based on achieving essentially the same limitations on potential accident radiological hazards as its predecessor system. However, the new system has the following advantages:

1. It states the radiation protection criteria employed more clearly;

2. It incorporates the data and conclusions on metabolic pathways provided over the years 1977–1981 by the International Commission on Radiological Protection (ICRP);

3. It includes dosimetric routes not previously considered; and

4. It harmonizes IAEA regulations with ICRP recommendations on radiological safety in Publications ICRP–26 and ICRP–30.[1]

The effect of IAEA's adoption of this new system for calculating A_1 and A_2 values, and the subsequent incorporation of the new values in U.S. domestic regulations, is that most current A_1 and A_2 values are changing in this revision. Of the 284 radionuclide entries in 10 CFR Part 71, A_2 values are being raised in 129 cases and lowered in 95 cases. Of the A_1 values, 144 are being raised and 73 are being lowered. Based on our most current knowledge of radioactive material shipments in the United States,[2] the economic impacts of these changes are not likely to be large. However, any situations where a potential exists for significant economic impacts as a result of changes in the A_1 or A_2 values should be brought to the Commission's attention in public comments.

The new IAEA system for calculating A_1 and A_2 values is described in Appendix I, "The Q System for the Calculation of A_1 and A_2 Values," of IAEA Safety Series No. 7, "Explanatory Material for the IAEA Regulations for the Safe Transport of Radioactive Material (1985 Edition)." Single copies of Appendix I are available free of charge from the contact for this rulemaking.

Expansion of Radionuclide List

Based on numerous proposals for additions to the table of radionuclides in which limits are listed for the quantity of radioactive material in a single package, IAEA concluded that its table needed to include all radionuclides which have the potential for transportation. As a result, Table A–1 in Part 71, which provides A_1 and A_2 values, has been expanded from 284 entries to 378 entries. Because there now should be few instances where unlisted radionuclides would be transported, the rules for calculating values for unlisted radionuclides have been simplified. The determination of limits for unlisted radionuclides, except for very conservative values, will be made subject to Commission approval.

Simplification of Fissile Material Classes

As a result of the evolution of the fissile material criteria, IAEA recognized that the current three fissile classes could be combined and simplified into a single system. The effect of the simplification of the IAEA system now being proposed for U.S. regulations is:

1. Elimination of the three fissile class designations;

2. Establishment of a single set of criteria for all packages of fissile materials;

3. Use of the transport index as the primary control of accumulations of packages in transport under nearly all conditions; and

4. Use of special arrangements for packages which do not meet the criteria.

Updating of Requirements for Shipment of LSA Material

Over the last two major revisions of its transport regulations, IAEA has been working to update its requirements for shipment of LSA material to recognize the developing need for transportation of irradiated and contaminated parts and equipment from decommissioned nuclear plants. Although these developing LSA requirements were not factored into U.S. regulations when last updated in 1983, it is believed that the IAEA standards are now mature enough to be adopted as U.S. standards.

Updating of the LSA regulations consists of the following:

1. An expansion of the LSA definition to include new types of material;

2. A new definition of "surface contaminated object" (SCO) which is treated in a manner similar to LSA material; and

3. An increase of specific activity limits for nondispersible, nonrespirable forms of LSA material while at the same time limiting the quantity of LSA material which can be shipped in other than a Type B package. The package quantity limit is intended to limit external radiation levels produced as a result of shielding loss in a transportation accident.

The NRC and DOT have overlapping statutory authority for the regulation of the transportation of radioactive material, so the regulations of either or both agencies may apply, depending on the circumstances involved. In order that DOT may act as the only regulator of LSA materials and SCO in quantities below those where external radiation levels become important, the NRC is proposing a new exemption in § 71.10.

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[1] ICRP publications are available for sale at Pergamon Press, Inc., Maxwell House, Fairview Park, Elmsford, NY 10523.

[2] Transport of Radioactive Material in the United States, SRI International, SAND84–7174, April 1985, is available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

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This provision would exempt licensees from most provisions of 10 CFR Part 71 for shipment and carriage of LSA/SCO materials which can be transported in bulk without packages (LSA–I and SCO–I), and also in their shipment and carriage of LSA/SCO materials in packages containing up to a $2A_1$ quantity of radioactive material. At this level of activity, NRC regulations become applicable and Type B packages, the design of which must be approved by NRC, are required. This action, if adopted, would have the effect of raising the threshold level of radioactivity at which NRC regulates shipments of LSA radioactive material from the Type B quantity level to the level at which Type B packages are required.

Although the regulations proposed by the NRC at § 71.10 specify $2A_1$ as the level of contained radioactive material which causes NRC regulations and Type B packages to become applicable, the IAEA corresponding standard is expressed as an external radiation level at 3 m from the unshielded material or object of 1 rem/hr (10 mSv/h). The value A_1 for any specified radionuclide is the quantity of that radionuclide as a point source which produces a radiation level of 1 rem/h at a distance of 3 m. Considering that LSA and SCO materials are bulk sources with considerable self-shielding, the value $2A_1$ was chosen as a close approximation of the IAEA standard of 1 rem/h at 3 m. The NRC staff, in implementing this IAEA standard in 10 CFR Part 71, takes the position that the radiation level standard would be very difficult for the industry to apply, and that expressing the limit in units of radioactivity would be a more reasonable approach. The approach recommended by the staff will make U.S. regulations inconsistent with those of IAEA, although in an area where there is little international transport. The NRC is particularly interested in whether industry shares the NRC staff view that this limit should be expressed as a limit on radioactivity because a radiation level limit as adopted by IAEA is impractical for the industry to implement.

Part 71 Inclusion of Criteria for Air Shipment of Plutonium

As a result of Congressional action in 1975, Pub. L. 94–79 prohibited the NRC from licensing the air shipment of plutonium in any form until the NRC certified to the Congress that a safe container had been developed and tested such that the container "will not rupture under crash and blast-testing equivalent to the crash and explosion of a highflying aircraft." The NRC developed and certified to the Congress package criteria which it believed corresponded to the Public Law and published these criteria in NUREG–0360, "Qualification Criteria to Certify a Package for Air Transport of Plutonium," dated January 1978. This rulemaking action would amend 10 CFR Part 71 to include these criteria in §§ 71.64, 71.74, and 71.88.

It is the Commission's view that the import/export or domestic transport of plutonium by air pursuant to the requirements of Pub. L. 94–79, as implemented by §§ 71.64, 71.74, and 71.88 of this part, is not affected by section 5062 of Pub. L. 100–203. Certification of containers for the air transport of plutonium for shipments subject to section 5062 and the development of appropriate test criteria for such certification are not within the scope of this proposed rule. These matters will be considered by the Commission separately from this rulemaking action.

Detailed Changes

Detailed substantive changes as proposed by the NRC for public comment are described in the following paragraphs, arranged by section number:

1. Section 71.4, "Definitions," would be amended as follows:

—The definition of fissile classes would be deleted to correspond to the major change of eliminating fissile classes. Fissile material would be defined as the listed radionuclides, and the definition of fissile radionuclides would be deleted.

—The definition of low-specific-activity (LSA) material would be extensively changed to correspond to that of IAEA. The one remaining significant difference would be the addition of a provision in NRC regulations for transportation of contaminated earth in a closed vehicle in unpackaged form. Extensive removal of contaminated earth has been found necessary in decommissioning facilities in the United States, a process apparently not yet required in most other IAEA Member States. Most LSA material would be subsequently exempted from Part 71 control by the provisions of § 71.10, "Exemption for low level materials." The DOT regulations would specify the requirements for packaging LSA material.

—The grandfather clause for special form radioactive material encapsulation would be updated.

—A new definition of Surface Contaminated Object (SCO) would be added to correspond to the parallel definition in IAEA regulations. SCO would be treated in the regulations similarly to LSA materials, with industrial packaging required for most applications. As with LSA materials, most SCO would be exempted from Part 71 control by the provisions of § 71.10, "Exemption for low level materials."

—Some progress has been made in expressing radiological limits in dual units, in that limits currently expressed in units of Rems and Curies now also show the International System of Units (SI) equivalents in Sieverts and Bequerels along with the customary units. In most cases the limits in customary units have been extended to 3 significant figures so they are equal to the limits expressed in SI units to a tenth of a percent. Limits on length, pressure, weight, and temperature are expressed in SI units in the current 10 CFR Part 71, with approximate values in customary units following in parentheses. Those values in customary units have been extended to 3 significant figures to make them equal to the limits expressed in SI units. The objective of this approach is to maintain consistency with international regulations while allowing U.S. shippers to use the units with which they are most familiar. In the case of the special limits on shipments of plutonium in NRC regulations, for which there are no comparable international rules, the limits expressed in SI units have been carried out to three significant figures to make them equal to the U.S. limits expressed in customary units. The end result of this effort is that licensees can use either limit expressed in the regulations as they are considered to be equal. The Commission is particularly interested in public comments on this method of expressing dual units in the regulations.

2. Section 71.5, "Transportation of licensed material," would be amended to correct a number of referencing errors.

3. Section 71.10, "Exemption for low level materials," would be amended to include exemptions for LSA material and SCO. The categories LSA–I and SCO–I would be limited to very low concentrations of radioactive material which would be allowed to be transported unpackaged. Their exemption would be specified separately in a new paragraph 71.10(c), without restriction on total quantity. LSA–II and LSA–III materials and SCO–II would be required to be packaged and thus would be specified in paragraph 71.10(b) of the regulations with a package quantity limit as explained earlier in this preamble.

4. Section 71.12, "General License: NRC-approved package," would be amended in paragraph (e) to clarify that previously approved fissile material packages would be subject to the restrictions of 71.13, "Previously approved package."

5. Section 71.13, "Previously approved package," would be amended to update the restrictions for packages approved under previous editions of the regulations. In line with parallel provisions of IAEA transport regulations, packages acceptable under the 1967 NRC transport regulations (which correspond to the 1967 IAEA regulations) can no longer be manufactured for use but may continue to be used. These packages must be marked with a unique serial number for identification and control. International use of these packages requires multilateral approval of all countries involved in their use. Packages acceptable under the 1973 NRC transport regulations (which correspond to the 1973 IAEA regulations) can be manufactured until the end of 1995. They will be subject to multilateral approval for international use of the package after 1992. Approvals for any package design can be upgraded to present status through an application which demonstrates that current standards are satisfied.

6. Section 71.14, "General license: DOT specification container," would be amended to reflect the 1985 IAEA grandfathering provisions.

7. Sections 71.16–71.24, general licenses for foreign approved packages and for fissile material packages, would be amended to clarify that those general licenses are subject to the quality assurance requirements of Subpart H of Part 71, requirements already imposed by § 71.101, but whose applicability has been misunderstood by some persons. Minor technical changes have also been introduced to make those general license provisions correspond to standards in IAEA transport rules.

8. Section 71.31, "Contents of application," would be amended so that § 71.31(a)(3) may be satisfied by submittal of a "quality assurance program description" as required by § 71.37 or by "reference to a previously approved quality assurance program" in an application for package design approval. Whether or not an applicant has a previously approved quality assurance program to which it can refer, the applicant should recognize that the package design work necessary to develop the descriptions included in its application for NRC approval must be done under the quality assurance program eventually approved by NRC regarding that package design. To avoid the situation where package design work is invalidated because changes become necessary in a quality assurance program under which the package design work was done, an applicant may wish to obtain approval of its quality assurance program prior to investing a large amount of effort in the package design program. The NRC encourages new applicants, who do not yet have NRC approved quality assurance programs, to obtain at least a partial approval of the design portion of the program. In addition, § 71.37(b) was moved to § 71.31(c) as a more appropriate location.

9. A new § 71.38, "Renewal of a certificate of compliance or quality assurance program approval," would extend the concept of "timely renewal" from the NRC licensing regulations in 10 CFR Parts 30, 40, and 70 to the package design and quality assurance approvals in 10 CFR Part 71. Submittal of an application for renewal of a package certificate of compliance or quality assurance approval at least 30 days prior to its expiration would automatically extend the expiration date of the existing approval until the NRC makes a final decision regarding the application. The provision also would require that a renewal application consolidate the prior approval and all subsequent revisions.

10. Section 71.43, "General standards for all packages," would be amended as follows:

—Paragraph (c) would require that a positive fastening device protect against a rise in internal pressure;

—Paragraph (d) would require that behavior of materials under irradiation be considered in assuring the absence of significant chemical, galvanic, or other reaction among package components and the package contents;

—Paragraph (f) would continue to require that there be "no significant increase" in external radiation levels as a result of subjecting a package to the normal conditions of transport. The IAEA has quantified that increase as being no more than 20 percent, a value the NRC staff believes is too large for the consequences of normal handling or minor accidents which can occur more than once during transport and for which no corrective action normally would be taken. The NRC proposes to continue to approve shielding retention of package designs on an ad hoc basis until what it considers to be a more reasonable standard is determined.

—Paragraph (h) would continue to prohibit continuous venting during transport but would allow intermittent venting when the associated operational controls are approved by the Commission. While the IAEA regulations no longer prohibit continuous venting, that prohibition would be continued in NRC transport regulations because the staff considers continuous venting to be poor engineering practice.

11. Section 71.51, "Additional requirements for Type B packages," would be amended as follows:

—Paragraph (a)(1), as in § 71.43(f), would continue to require that there be "no significant increase" in external radiation levels as a result of subjecting a package to the normal conditions of transport notwithstanding the IAEA's determination that a 20 percent increase constitutes no significant increase; and

—Paragraph (a)(2) would reduce allowable krypton-85 releases under the hypothetical accident conditions from 10,000 Ci to 10 A_2 or 2,700 Ci (10TBq).

12. Section 71.52, "Exemption for low-specific-activity (LSA) packages," would be written as two exemptions from certain Type B package requirements for packages containing only LSA material and transported as exclusive use. The broader of these exemptions, in paragraph (b), would be identical to the present exemption, but would be conditioned to expire one year after the effective date of these amendments. While it is in effect, the broader exemption of paragraph (b) would deal with nonapplicability of accident resistance requirements to quantities of LSA material in excess of Type B quantities in a single package, recognizing the very low toxicity of low-specific-activity radioactive material. Elimination of that provision would subject LSA material in excess of the quantity $2A_1$ in a single package to all Type B package standards including the hypothetical accident conditions. The one-year delay in discontinuing this exemption is intended to allow the industry to develop and fabricate enough Type B waste packages to satisfy the need which would be brought on if this change were adopted. Information provided to NRC indicates that only 5 Type B waste packages are now in existence, while many more would be needed to satisfy the need which would be created if this proposed change were adopted.

The more narrow exemption of paragraph (a) would continue to

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recognize the low toxicity of LSA material, but to a lesser extent than paragraph (b), by providing an exemption from the Type B requirement in § 71.51(a)(1) which limits the loss or dispersal of radioactive contents under normal conditions of transport. That provision requires that leak-tightness of a Type B package be demonstrated to a sensitivity of 10^{-6} A_2, a specification unnecessary for the low toxicity LSA material. Although it would be exempt from the sensitivity provision, the LSA package design would still have to satisfy the general standard of § 71.43(f) that there be no loss or dispersal of radioactive contents as a result of subjecting a package to the normal conditions of transport.

13. Section 71.53, "Fissile material exemptions" would be amended as follows:

—Present § 71.53(b), specifying an exemption for natural and depleted uranium which has been irradiated in a thermal reactor, would be deleted because the material described would, by definition, no longer be fissile material; and

—The existing paragraph (g) would be redesignated § 71.53(f), and it would place an additional limitation on the nitrogen-to-uranium atomic ratio.

14. Section 71.57, "Specific standards for a Fissile Class I package," and Section 71.61, "Specific standards of a Fissile Class III shipment," would be deleted because the three fissile classes would be combined into new section 71.59, "Standards for arrays of fissile material packages."

15. A new section 71.61, "Special requirement for irradiated nuclear fuel shipments," imposing a deep water immersion test would be added.

16. Section 71.63, "Special requirements for plutonium shipments," would be revised to accept a suggestion received from the E. I. DuPont Savannah River Plant during the last major revision of 10 CFR Part 71. The suggestion was that the special requirements for solid form and double containment now applied to shipments of all isotopes of plutonium be applied only to the extremely radiotoxic isotopes of plutonium (excluding plutonium-241) and to other extremely radiotoxic radionuclides as well (including, for example, americium-241 and actinium-227). While this suggestion was favorably received, it was beyond the scope of that rulemaking action and is proposed now. While the change seems reasonable from the health and safety standpoint, any significant technical and economic impacts of the change should be included in comments to the Commission so they may be considered.

17. Section 71.73, "Hypothetical accident conditions," would be amended to add a dynamic crush test for certain packages, and to make minor modifications to the thermal test in accordance with changes made to IAEA regulations. Times specified for the immersion tests seem superfluous and have been deleted. Determination of acceptance under the standard should not depend on the time of immersion.

18. Section 71.75, "Qualifications of special form radioactive materials," would add an alternative method to qualify a special form capsule under the tests prescribed in the specified standard of the International Organization for Standardization (ISO).

19. Section 71.77, "Tests for special form radioactive material," would add an alternative method to qualify special form radioactive material under the specific impact and temperature tests prescribed in the specified standard of the ISO.

20. Section 71.85, "Reports," would include a new paragraph (c) to require reporting by a licensee if any conditions of approval in the certificate of approval were not observed in making a shipment.

21. Section 71.97, "Advance notification of shipment of nuclear waste," would be amended to redefine the level of radioactivity at which advance notification is required for shipments of spent nuclear fuel and radioactive waste to make that level more uniform across the range of radionuclides transported. The new level specified would correspond to that at which the DOT imposes its routing and training requirements, and to that at which IAEA imposes additional administrative requirements such as multilateral shipment approvals. The effect of this change is expected to decrease the overall number of packages subject to advance notification and to increase reporting of packages containing large amounts of transuranic alpha-emitting nuclides.

Other Regulatory Actions

Three petitions for rulemaking were filed with the NRC in connection with the rules for transporting LSA radioactive material. The substance of the three petitions was essentially the same, to request that NRC exempt LSA materials from its requirements in 10 CFR Part 71. This would have left the regulation of all LSA material to the DOT. The control of LSA material, as with the control of all radioactive material, was divided at that time, as it is today, between NRC and DOT. DOT controlled carriers and shippers of small quantities of all radioactive materials through provisions in its regulations in 49 CFR, while NRC controlled shippers of fissile material and of larger quantities of other radioactive materials through its regulations in 10 CFR and its licensing program.

The petitioners were the Energy Research and Development Administration (now the U.S. Department of Energy) in its letter dated July 23, 1975 (PRM–71–1); the American National Standards Institute (ANSI) Committee N14 in its letter dated March 10, 1976 (PRM–71–2); and Chem-Nuclear Systems, Inc., in its letter dated November 22, 1976 (PRM–71–4). All three petitioners argued that the control NRC was exerting over transportation of LSA materials created an inconsistency between NRC regulations and those of the IAEA and should be discontinued. A proposed rule that would have provided the exemption for LSA materials requested in the petitions was published by NRC for public comment on August 17, 1979 (44 FR 48234). Prior to finalization of that rule, however, a deficiency in the new LSA requirements, as proposed, was recognized so that the entire LSA proposal, including the exemption, was withdrawn. In the interim, the deficiency in the LSA requirements in the IAEA regulations was recognized and corrected. That correction is discussed under the "major changes" section of this preamble. The correction introduces a distinction between the requirements for small quantities of LSA material and those for larger quantities. This distinction is implemented in the U.S. regulatory scheme as one set of requirements in DOT regulations for small quantities of LSA material and as a different set of requirements in NRC regulations for larger quantities of LSA material.

As a result of these changes in LSA requirements, the exemption requested in the three petitions cannot be provided. The requirements proposed for inclusion in NRC regulations are consistent with the regulatory schemes of both DOT and IAEA. Because the level of radioactivity at which NRC controls are imposed in the proposed rule is somewhat higher than in the current rule, there is an exemption provided in § 71.10 for LSA materials up to the level where NRC regulations impose additional packaging requirements. This exemption is of limited scope, however, and does not satisfy the intent of the petitions. For the above reasons, the NRC plans to deny the three petitions if changes proposed for the LSA portions of this rulemaking are carried forward to the final rule.

Finding Of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

The Commission's "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG–0170,[8] dated December 1977, is NRC's generic environmental impact statement (EIS) covering all types of radioactive material transportation by all modes (road, rail, air, and water). From the Commission's latest survey of radioactive material shipments and their characteristics, "Transport of Radioactive Material in the United States," SAND 84–7174, April 1985, we can conclude that current radioactive material shipments are not so different from those evaluated in NUREG–0170 as to invalidate the results or conclusions of that EIS. Environmental impacts associated with this proposed rulemaking are evaluated in "Regulatory Analysis of Proposed Changes to NRC Regulations on Packaging and Transportation of Radioactive Material," draft dated November 1987, prepared for NRC by Pacific Northwest Laboratory, Richland, Washington.

NUREG–0170 established the non-accident related radiation exposures associated with transportation of radioactive material in the United States as 9800 person-rem which, based on the conservative linear radiation dose hypothesis, resulted in 1.7 genetic effects and 1.2 latent cancer effects per year. More than half this impact resulted from shipment of medical-use radioactive materials. Accident related impacts were established at about 1 genetic effect and 1 latent cancer fatality for 200 years of transporting radioactive materials. The principal nonradiological impacts were found to be 2 injuries per year and less than 1 accidental death per 4 years. In contrast, non-accident related radiation exposures associated with this rulemaking would be increased by 2 person-rem/y (.02 person-sieverts/y) while accident related impacts would be decreased by 4.5 person-rem/y (.045 person-sieverts/y). Nonradiological traffic injuries would be increased by 0.24 per year and by 0.012 traffic deaths per year (less than 1 accidental death per 80 years). These impacts are judged to be insignificant compared to the baseline impacts established in NUREG–0170.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are also available from Donald R. Hopkins, Radiation Protection and Health Effects Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3784.

Paperwork Reduction Act Statement

The proposed rule would amend information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from the contact identified earlier.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Backfit Analysis

The factors which must be considered in a backfit analysis associated with changes in transportation regulations are evaluated in the "Regulatory Analysis of Proposed Changes to NRC Regulations on Packaging and Transportation of Radioactive Material," draft dated November 1987. That evaluation shows very small changes in accident risks as a result of the adoption of the proposed revision, but some reduction in maximum consequences given an accident. The evaluation shows broad improvement in NRC regulatory consistency with IAEA at an initial cost of $1,800,000 and a continuing annual cost of $1,700,000 per year (Table S.1).

The continuing costs are associated with the addition of a new limit on the quantity of LSA radioactive material allowed in a single transportation package. This new limit is considered internationally to be a necessary safety requirement to limit the consequences of a severe transportation accident involving LSA material.

The initial costs are chiefly associated with industry upgrading of its package safety analyses to include the proposed new accident crush and immersion tests and with the NRC review of those new analyses. The estimated costs are overstated because of the assumption that all licensees using packages approved under earlier regulatory standards would take immediate steps to upgrade the package analyses so the package approvals would reflect approval under the latest revised standards. Although that is a prudent assumption absent any reasonable basis for predicting actual licensee reaction, there is little reason licensees would take any immediate action to upgrade their package approvals. Both domestic and international regulations are based on the responsible agency's confidence that packages built to a design approved under earlier standards are adequately safe for continued use, although new package construction to that design would be limited and international use after 1992 would require approval by all countries through which the package is to be transported. In actual practice, some package approvals would never be upgraded; those that would be upgraded would be done over a period of several years as guidance and experience in upgrading becomes available.

Although the regulatory analysis shows a small reduction in accident risks from the proposed changes and some reduction in maximum consequences given an accident, the primary benefit of this rulemaking action would be to achieve consistency in radioactive material transportation regulations between the United States and the rest of the world. This consistency would not only facilitate the free movement of radioactive materials between countries for medical, research, industrial, and nuclear fuel cycle purposes, but it would also contribute to safety by concentrating the efforts of the world's experts on a single set of safety

[8] Copies of NUREG–0170 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

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standards and guidance [those of the IAEA] from which individual countries could develop their domestic regulations. In addition, the accident experience of every country that bases its domestic regulations on those of the IAEA could be applied to every other country with consistent regulations to improve its safety program.

In summary, the benefits and costs associated with this proposed rulemaking are of two categories. The first consists of changes to make U.S. regulations compatible with those of the IAEA. This effort provides major benefits including a substantial increase in the overall protection of the public health and safety, and it is associated with short-term and relatively minor costs which are justified in view of this increased protection. The second category consists of the additional limit imposed on shipments of LSA material. This effort is associated with significant ongoing costs, but internationally the new limit is considered to be a necessary safety requirement to limit the consequences of a severe transportation accident involving LSA material.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects NRC licensees, including operators of nuclear power plants, who transport or deliver to a carrier for transport relatively large quantities of radioactive material in a single package. These companies do not generally fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 71

Hazardous materials transportation, Incorporation by reference, Nuclear materials, Packaging and containers, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is considering adoption of the following amendments to 10 CFR Part 71.

Accordingly, 10 CFR Part 71 is proposed to be revised as follows:

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

Subpart A—General Provisions

Sec.
71.0 Purpose and scope.
71.1 Communications.
71.2 Interpretations.
71.3 Requirement for license.
71.4 Definitions.
71.5 Transportation of licensed material.

Subpart B—Exemptions

71.7 Specific exemptions.
71.9 Exemption of physicians.
71.10 Exemption for low-level materials.

Subpart C—General Licenses

71.12 General license: NRC-approved package.
71.13 Previously approved package.
71.14 General license: DOT specification container.
71.16 General license: Use of foreign approved package.
71.18 General license: Fissile material, limited quantity per package.
71.20 General license: Fissile material, limited moderator per package.
71.22 General license: Fissile material, limited quantity, controlled shipment.
71.24 General license: Fissile material, limited moderator, controlled shipment.

Subpart D—Application for Package Approval

71.31 Contents of application.
71.33 Package description.
71.35 Package evaluation.
71.37 Quality assurance.
71.39 Renewal of a certificate of compliance or quality assurance program approval.
71.39 Requirement for additional information.

Subpart E—Package Approval Standards

71.41 Demonstration of compliance.
71.43 General standards for all packages.
71.45 Lifting and tie-down standards for all packages.
71.47 External radiation standards for all packages.
71.51 Additional requirements for Type B packages.
71.52 Exemption for low-specific-activity (LSA) packages.
71.53 Fissile material exemptions.
71.55 General requirements for fissile material packages.
71.59 Standards for arrays of fissile material packages.
71.61 Special requirement for irradiated nuclear fuel shipments.
71.63 Special requirements for plutonium and other high toxicity radionuclide shipments.
71.64 Special requirements for plutonium air shipments.
71.65 Additional requirements.

Subpart F—Package and Special Form Tests

71.71 Normal conditions of transport.
71.73 Hypothetical accident conditions.
71.74 Plutonium accident conditions.
71.75 Qualification of special form radioactive material.
71.77 Tests for special form radioactive material.

Subpart G—Operating Controls and Procedures

71.81 Applicability of operating controls and procedures.
71.83 Assumptions as to unknown properties.
71.85 Preliminary determinations.
71.87 Routine determinations.
71.88 Air transport of plutonium.
71.89 Opening instructions.
71.91 Records.
71.93 Inspection and tests.
71.95 Reports.
71.97 Advance notification of shipment of nuclear waste.
71.99 Violations.

Subpart H—Quality Assurance

71.101 Quality assurance requirements.
71.103 Quality assurance organization.
71.105 Quality assurance program.
71.107 Package design control.
71.109 Procurement document control.
71.111 Instructions, procedures, and drawings.
71.113 Document control.
71.115 Control of purchased material, equipment, and services.
71.117 Identification and control of materials, parts, and components.
71.119 Control of special processes.
71.121 Internal inspection.
71.123 Test control.
71.125 Control of measuring and test equipment.
71.127 Handling, storage, and shipping control.
71.129 Inspection, test, and operating status.
71.131 Nonconforming materials, parts, or components.
71.133 Corrective action.
71.135 Quality assurance records.
71.137 Audits.

Appendix A—Determination of A_1 and A_2

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 301, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 780-783.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 71.3, 71.43, 71.45, 71.55, 71.59 (a) and (b), 71.63, 71.65, 71.87, 71.88, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 71.0 Purpose and scope.

(a) This part establishes—

(1) Requirements for packaging, preparation for shipment, and transportation of licensed material; and

(2) Procedures and standards for NRC approval of packaging and shipping procedures for fissile material and for a quantity of other licensed material in excess of a Type A quantity.

(b) The packaging and transport of licensed material are also subject to other parts of this chapter (e.g., Parts 20, 21, 30, 40, 70, and 73) and to the regulations of other agencies (e.g., the U.S. Department of Transportation (DOT) and the U.S. Postal Service [1]) having jurisdiction over means of transport. The requirements of this part are in addition to, and not in substitution for, other requirements.

(c) The regulations in this part apply to any licensee authorized by specific license issued by the Commission to receive, possess, use, or transfer licensed material if the licensee delivers that material to a carrier for transport or transports the material outside the confines of the licensee's facility, plant, or other authorized place of use. No provision of this part authorizes possession of licensed material.

(d) Exemptions from the requirement for license in § 71.3 are specified in § 71.10. General licenses for which no NRC package approval is required are issued in §§ 71.14–71.24. The general license in § 71.12 requires that an NRC certificate of compliance or other package approval be issued for the package to be used under the general license. Application for package approval must be completed in accordance with Subpart D of this part, demonstrating that the design of the package to be used satisfies the package approval standards contained in Subpart E of this part as related to the tests of Subpart F of this part. The transport of licensed material or delivery of licensed material to a carrier for transport is subject to the operating controls and procedures requirements of Subpart G of this part, to the quality assurance requirements of Subpart H of this part, and to the general provisions of Subpart A of this part, including DOT regulations referenced in § 71.5.

§ 71.1 Communications.

All communications concerning the regulations in this part should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be delivered in person at the Commission offices at 1717 H Street NW., Washington, DC, or its offices at 11555 Rockville Pike, Rockville, Maryland.

[1] Postal Service Manual (Domestic Mail Manual), section 124.3, which is incorporated by reference at 39 CFR 111.1 (1974).

§ 71.2 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 71.3 Requirement for license.

Except as authorized in a general license or a specific license issued by the Commission, or as exempted in this part, a licensee subject to the regulations in this part may not—

(a) Deliver any licensed material to a carrier for transport; or

(b) Transport licensed material.

§ 71.4 Definitions.

The following terms are as defined here for the purpose of this part. To ensure compatibility with international transportation standards, all limits in this part are given in terms of dual units: The International System of Units (SI) followed or preceded by U.S. standards or customary units. The U.S. customary units are not exact equivalents but are rounded to a convenient value providing a functionally equivalent unit. For the purpose of this part, either unit may be used.

"A_1" means the maximum activity of special form radioactive material permitted in a Type A package. "A_2" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package. These values are either listed in Appendix A of this part, Table A–1, or may be derived in accordance with the procedure prescribed in Appendix A of this part.

"Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

"Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

"Containment system" means the assembly of components of the packaging intended to retain the radioactive material during transport.

"Conveyance" means any vehicle, aircraft, vessel, or hold, compartment, or defined deck area of a vessel.

"Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance or of a large freight container with a minimum length of 6 m (19.7 ft) by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. Any loading or unloading must be performed by personnel having radiological training and resources appropriate for safe handling of the consignment. Specific instructions for maintenance of exclusive use shipment controls must be issued in writing and included with the shipping paper information provided to the carrier by the consignor.

"Fissile material" means plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium which has been irradiated in thermal reactors only are not included in this definition. Certain exclusions from fissile material controls are provided in § 71.53.

"Low-Specific-Activity (LSA) material" means radioactive material with limited specific activity which satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) *LSA–I.* (i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Contaminated earth in a closed transport vehicle for which the estimated average specific activity does not exceed $10^{-5}A_2/g$.

(2) *LSA–II.* (i) Water with tritium concentration up to 27.0Ci/λ (1TBq/λ); or

(ii) Material in which the radioactive material is distributed throughout and the estimated average specific activity does not exceed $10^{-4}A_2/g$ for solids and gases, and $10^{-5}A_2/g$ for liquids.

(3) *LSA–III.* Solids (e.g., consolidated wastes, activated materials) in which:

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive

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material per package by leaching when placed in water for seven days would not exceed 0.1 A_2; and

(iii) The estimated average specific activity of the solid does not exceed $2\times10^{-3}A_2/g$.

"Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of one year under the heat test specified in § 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

"Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

"Normal form radioactive material" means radioactive material which has not been demonstrated to qualify as "special form radioactive material."

"Optimum interspersed hydrogenous moderation" means the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

"Package" means the packaging together with its radioactive contents as presented for transport.

(1) "Fissile material package" means a fissile material packaging together with its fissile material contents.

(2) "Type B package" means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (102 lb/in²) gauge or a pressure relief device which would allow the release of radioactive material to the environment under the tests specified in § 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983 was designated only as Type B. Limitations on its use are specified in § 71.13.

"Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of this part. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(1) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 mm (0.197 in); and

(3) It satisfies the requirements of § 71.75. A special form encapsulation designed in accordance with the requirements of § 71.4 of this part in effect on June 30, 1983, and constructed prior to July 1, 1985, and a special form encapsulation designed in accordance with the requirements of § 71.4 of this part in effect on June 30, 1989, and constructed prior to July 1, 1991 may continue to be used. Any other special form encapsulation must meet the requirements of this paragraph.

"Specific activity" of a radionuclide means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

"State" means the 50 States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"Surface Contaminated Object (SCO)" means a solid object which is not itself radioactive having radioactive material not exceeding the following limits distributed on its surfaces. SCO must be in one of two groups:

(1) *SCO–I.* A solid object on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1.08×10^{-6} $\mu Ci/cm^2$ (4 Bq/cm^2) for beta and gamma emitters, or 1.08×10^{-5} $\mu Ci/cm^2$ (0.4 Bq/cm^2) for alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1.08 $\mu Ci/cm^2$ (4×10^4 Bq/cm^2) for beta and gamma emitters, or 0.108 $\mu Ci/cm^2$ (4×10^3 Bq/cm^2) for alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1.08 $\mu Ci/cm^2$ (4×10^4 Bq/cm^2) for beta and gamma emitters, or 0.108 $\mu Ci/cm^2$ (4×10^3 Bq/cm^2) for alpha emitters.

(2) *SCO–II.* A solid object on which the limits for SCO–I are exceeded and on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1.08×10^{-2} $\mu Ci/cm^2$ (400 Bq/cm^2) for beta and gamma emitters or 1.08×10^{-3} $\mu Ci/cm^2$ (40 Bq/cm^2) for alpha emitters;

(ii) The fixed contamination on the surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 21.6 $\mu Ci/cm^2$ (8×10^5 Bq/cm^2) for beta and gamma emitters, or 2.16 $\mu Ci/cm^2$ (8×10^4 Bq/cm^2) for alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 21.6 $\mu Ci/cm^2$ (8×10^5 Bq/cm^2) for beta and gamma emitters, or 2.16 $\mu Ci/cm^2$ (8×10^4 Bq/cm^2) for alpha emitters.

"Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(1) For nonfissile material packages, the number expressing the maximum radiation level in millirem per hour at 1 meter from the external surface of the package; or

(2) For fissile material packages, the number expressing the maximum radiation level in millirem per hour at 1 meter from the external surface of the package, or the number determined under § 71.59, whichever number is larger.

"Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in Table A–1 of this part or may be determined by procedures described in Appendix A of this part.

"Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

"Uranium—natural, depleted, enriched."

(1) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder essentially uranium-238).

(2) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(3) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

§ 71.5 Transportation of licensed material.

(a) Each licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR Parts 170–189 appropriate to the mode of transport.

(1) The licensee shall particularly note DOT regulations in the following areas:

(i) Packaging—49 CFR Part 173: Subparts A and B and §§ 173.401–173.478.

(ii) Marking and labeling—49 CFR Part 172: Subpart D, §§ 172.400–172.407, and §§ 172.436–172.440.

(iii) Placarding—49 CFR Part 172: §§ 172.500–172.519, 172.556, and Appendices B and C.

(iv) Accident reporting—49 CFR Part 171: §§ 171.15 and 171.16.

(v) Shipping papers—49 CFR Part 172: Subpart C.

(2) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(i) Rail—49 CFR Part 174: Subparts A–D and K.

(ii) Air—49 CFR Part 175.

(iii) Vessel—49 CFR Part 176: Subparts A–F and M.

(iv) Public Highway—49 CFR Part 177.

(b) If DOT regulations are not applicable to a shipment of licensed material by rail, highway, or water because the shipment or the transportation of the shipment is not in interstate or foreign commerce, or to a shipment of licensed material by air because the shipment is not transported in civil aircraft, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were in interstate or foreign commerce or in civil aircraft. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with or made to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Subpart B—Exemptions

§ 71.6 [Reserved]

§ 71.7 Specific exemptions.

On application of any interested person or on its own initiative, the Commission may grant any exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property or the common defense and security.

§ 71.8 [Reserved]

§ 71.9 Exemption of physicians.

Any physician licensed by a State of the United States to dispense drugs in the practice of medicine is exempt from § 71.5 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption must be licensed under 10 CFR Part 35 or the equivalent Agreement State regulations.

§ 71.10 Exemption for low-level materials.

(a) A licensee is exempt from all requirements of this part with respect to shipment or carriage of a package containing radioactive material having a specific activity not greater than 0.002 $\mu Ci/g$ (74 KBq/kg).

(b) A licensee is exempt from all requirements of this part, other than §§ 71.5 and 71.88, with respect to shipment or carriage of the following packages, provided the packages contain no fissile material or the fissile material exemption standards of § 71.53 are satisfied:

(1) A package containing no more than a Type A quantity of radioactive material;

(2) A package in which the only radioactive material is low-specific-activity (LSA) material or surface contaminated objects (SCO), provided the quantity of radioactive material in that package does not exceed $2A_1$.

(c) A licensee is exempt from all requirements of this part, other than §§ 71.5 and 71.88, with respect to shipment or carriage of low-specific-activity (LSA) material in group LSA–I and surface contaminated objects (SCO) in group SCO–I.

§ 71.11 [Reserved]

Subpart C—General Licenses

§ 71.12 General license: NRC-approved package.

(a) A general license is hereby issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(2) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of Subparts A, G, and H of this part; and

(3) Submits in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, prior to the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(d) This general license applies only when the package approval authorizes use of the package under this general license.

(e) For a Type B or fissile material package, the design of which was approved by NRC prior to (the effective date of this regulation), the general license is subject to the additional restrictions of § 71.13.

§ 71.13 Previously approved package.

(a) A Type B package previously approved by the NRC but not designated as B(U) or B(M) in the identification number of the NRC Certificate of Compliance may be used under the general license of § 71.12 with the following additional conditions:

(1) Fabrication of the packaging was satisfactorily completed by August 31, 1986, as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A package used for a shipment to a location outside the United States is subject to multilateral approval as defined in § 173.403(o) of DOT regulations in 49 CFR Part 173; and

(3) A serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(b) A Type B(U) package, a Type B(M) package, or a fissile material package, previously approved by the NRC but without the designation "–85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of § 71.12 with the following additional conditions:

(1) Fabrication of the package is satisfactorily completed by December 31, 1985, as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A package used for a shipment to a location outside the United States after

December 31, 1992, is subject to multilateral approval as defined in § 713.403(o) of DOT regulations in 49 CFR Part 173; and

(3) After December 31, 1990, a serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(c) The NRC will approve modifications to the design and authorized contents of a Type B package, or a fissile material package, previously approved by the NRC provided—

(1) The modifications are not significant with respect to the design, operating characteristics, or safe performance of the containment system when the package is subjected to the tests specified in §§ 71.71 and 71.73; and

(2) The modification to the package satisfies the requirements of this part.

(d) The NRC will revise the package identification number to designate previously approved package designs as B(U) or B(M), as appropriate, and with the identification number suffix "-85" after receipt of an application demonstrating that the design meets the requirements of this part.

§ 71.14 General license: DOT specification container.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in the regulations of DOT in 49 CFR Parts 173 and 178.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the specification; and

(2) Complies with the terms and conditions of the specification and the applicable requirements of Subparts A, G, and H of this part.

(d) This general license is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States after August 31, 1986, except by multilateral approval as defined in § 173.403(o) of DOT regulations in 49 CFR Part 173.

§ 71.16 General License: Use of foreign approved package.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate which has been revalidated by DOT as meeting the applicable requirements of 49 CFR 171.12.

(b) Except as otherwise provided in this section, the general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the applicable provisions of Subpart H of this part.

(c) This general license applies only to shipments made to or from locations outside the United States.

(d) This general license applies only to a licensee who—

(1) Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

(2) Complies with the terms and conditions of the certificate and revalidation and with the applicable requirements of Subparts A, G, and H of this part. With respect to the quality assurance provisions of Subpart H of this part, the license is exempt from design, construction, and fabrication considerations.

§ 71.18 General license: Fissile material, limited quantity per package.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part if the material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when a package contains no more than a Type A quantity of radioactive material, including only one of the following:

(1) Up to 40 g of uranium-235;

(2) Up to 30 g of uranium-233;

(3) Up to 25 g of the fissile radionuclides of plutonium, except that for encapsulated plutonium-beryllium neutron sources in special form, an A_1 quantity of plutonium may be present; or

(4) A combination of fissile radionuclides in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in paragraphs (c) (1), (2), and (3) of this section does not exceed unity.

(d) This general license applies only when, except as specified below for encapsulated plutonium-beryllium sources, a package containing more than 15 g of fissile radionuclides is labeled with a transport index not less than the number given by the following equation, where the package contains x g of uranium-235, y g of uranium-233, and z g of the fissile radionuclides of plutonium:

$$\text{Minimum Transport Index} = \{0.40x + 0.67y + z\}\left(1 - \frac{15}{x+y+z}\right).$$

For a package in which the only fissile material is in the form of encapsulated plutonium-beryllium neutron sources in special form, the transport index based on criticality considerations may be taken as 0.026 times the number of grams of the fissile radionuclides of plutonium in excess of 15 g. In all cases, the transport index must be rounded up to one decimal place and may not exceed 10.0.

§ 71.20 General license: Fissile material, limited moderator per package.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part if the material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when—

(1) The package contains no more than a Type A quantity of radioactive material;

(2) Neither beryllium nor hydrogenous material enriched in deuterium is present;

(3) The total mass of graphite present does not exceed 150 times the total mass of uranium-235 plus plutonium;

(4) Substances having a higher hydrogen density than water, e.g., certain hydrocarbon oils, are not present, except that polyethelene may be used for packing or wrapping;

(5) Uranium-233 is not present, and the amount of plutonium does not exceed 1 percent of the amount of uranium-235;

(6) The amount of uranium-235 is limited as follows:

(i) If the fissile radionuclides are not uniformly distributed, the maximum amount of uranium-235 per package may not exceed the value given in Table I of this part; or

(ii) If the fissile radionuclides are distributed uniformly (i.e., cannot form a lattice arrangement within the packaging), the maximum amount of uranium-235 per package may not exceed the value given in Table II of this part; and

(7) The transport index of each package based on criticality considerations is taken as 10 times the number of grams of uranium-235 in the package divided by the maximum allowable number of grams per package in accordance with Table I or Table II of this part, as applicable.

TABLE I.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL PACKAGE APPLICABLE TO § 71.20(c)(6)(i)

[Nonuniform Distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per package
24	40
20	42
15	45
11	48
10	51
9.5	52
9	54
8.5	55
8	57
7.5	59
7	60
6.5	62
6	65
5.5	68
5	72
4.5	76
4	80
3.5	86
3	100
2.5	120
2	164
1.5	272
1.35	320
1	660
0.92	1,200

TABLE II.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL PACKAGE APPLICABLE TO § 71.20(c)(6)(ii)

[Uniform Distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per package
4	84
3.5	92
3	112
2.5	146
2	240
1.5	560
1.35	800

§ 71.22 General license: Fissile material, limited quantity, controlled shipment.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part if limited material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when a package contains no more than a Type A quantity of radioactive material and no more than 400 g total of the fissile radionuclides of plutonium encapsulated as plutonium-beryllium neutron sources in special form.

(d) This general license applies only when the fissile radionuclides in the shipment exceed none of the following:

(1) 500 g of uranium-235;

(2) 300 g total of uranium-233, and the fissile radionuclides of plutonium;

(3) A total quantity of uranium-233, uranium-235, and the fissile radionuclides of plutonium so that the sum of the ratios of the quantity of each radionuclide to the quantity specified in paragraphs (d)(1) and (d)(2) of this section exceeds unity; or

(4) 2,500 g total of the fissile radionuclides of plutonium encapsulated as plutonium-beryllium neutron sources in special form.

(e) This general license applies only when shipment of these packages is made under procedures specifically authorized by DOT in accordance with 49 CFR Part 173 of its regulations to prevent loading, transport, or storage of these packages with other fissile material shipments.

§ 71.24 General license: Fissile material, limited moderator, controlled shipment.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part, if limited material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when—

(1) No package contains more than a Type A quantity of radioactive material;

(2) The packaging does not incorporate lead shielding exceeding 5 cm in thickness, tungsten shielding, or uranium shielding;

(3) Neither beryllium nor hydrogenous material enriched in deuterium is present;

(4) The total mass of graphite present does not exceed 150 times the total mass of uranium-235 and plutonium;

(5) Substances having a higher hydrogen density than water, e.g., certain hydrocarbon oils, are not present, except that polyethylene may be used for packing or wrapping;

(6) For fissile contents containing no uranium-233 and less than 1 percent total plutonium if the fissile radionuclides are—

(i) Not uniformly distributed, the maximum amount of uranium-235 per consignment does not exceed the value given in Table III of this part; or

(ii) Distributed uniformly and cannot form a lattice arrangement within the packaging, the maximum amount of uranium-235 per shipment does not exceed the value given in Table IV of this part;

(7) For fissile contents containing uranium-233 or more than 1 percent plutonium, the total mass of fissile material per shipment is limited so that the sum of the number of grams of

uranium-235 divided by 400, the number of grams of plutonium divided by 225, and the number of grams of uranium-233 divided by 250 does not exceed unity as expressed in the formula

$$\frac{\text{grams uranium-235}}{400\ \text{g}} + \frac{\text{grams plutonium}}{225\ \text{g}} + \frac{\text{grams uranium-233}}{250\ \text{g}} < 1;$$

(8) The transport must be direct to the consignee without any intermediate transit storage; and

(9) Shipment of these packages is made under procedures specifically authorized by DOT in accordance with 49 CFR Part 173 of its regulations to prevent loading, transport, or storage of these packages with other fissile material shipments.

TABLE III.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(i)

[Nonuniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
20	520
15	560
11	600
10	640
9.5	655
9	675
8.5	690
8	710
7.5	730
7	750
6.5	780
6	810
5.5	850
5	900
4.5	950
4	1,000
3.5	1,100
3	1,250
2.5	1,500
2	2,050
1.5	3,400
1.35	4,000
1	6,500
0.92	15,000

TABLE IV.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(ii)

[Uniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
4	1,050
3.5	1,150

TABLE IV.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(ii)—Continued

[Uniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
3	1,400
2.5	1,800
2	3,000
1.5	7,000
1.35	10,000

Subpart D—Application for Package Approval

§ 71.31 Contents of application.

(a) An application for an approval under this part must include, for each proposed packaging design, the following information.

(1) A package description as required by § 71.33;

(2) A package evaluation as required by § 71.35; and

(3) A quality assurance program description as required by § 71.37 or a reference to a previously approved quality assurance program.

(b) Except as provided in § 71.13, an application for modification of a package design, whether for modification of the packaging or authorized contents, must include sufficient information to demonstrate that the proposed design satisfies the package standards in effect at the time the application is filed.

(c) The applicant shall identify any established codes and standards proposed for use in package design, fabrication, assembly, testing, maintenance, and use. In the absence of any codes and standards, the applicant shall describe and justify the basis and rationale used to formulate the package quality assurance program.

§ 71.33 Package description.

The application must include a description of the proposed package in sufficient detail to identify the package accurately and provide a sufficient basis for evaluation of the package. The description must include—

(a) With respect to the packaging—

(1) Classification as Type B(U), Type B(M), or fissile material packaging;

(2) Gross weight;

(3) Model number;

(4) Identification of the containment system;

(5) Specific materials of construction, weights, dimensions, and fabrication methods of—

(i) Receptacles;

(ii) Materials specifically used as nonfissile neutron absorbers or moderators;

(iii) Internal and external structures supporting or protecting receptacles;

(iv) Valves, sampling ports, lifting devices, and tie-down devices; and

(v) Structural and mechanical means for the transfer and dissipation of heat; and

(6) Identification and volumes of any receptacles containing coolant.

(b) With respect to the contents of the package—

(1) Identification and maximum radioactivity of radioactive constituents;

(2) Identification and maximum quantities of fissile constituents;

(3) Chemical and physical form;

(4) Extent of reflection, the amount and identity of nonfissile materials used as neutron absorbers or moderators, and the atomic ratio of moderator to fissile constituents;

(5) Maximum normal operating pressure;

(6) Maximum weight;

(7) Maximum amount of decay heat; and

(8) Identification and volumes of any coolants.

§ 71.35 Package evaluation.

The application must include the following:

(a) A demonstration that the package satisfies the standards specified in Subparts E and F of this part;

(b) For a fissile material package, the allowable number of packages which may be transported in the same vehicle in accordance with § 71.59; and

(c) For a fissile material shipment any proposed special controls and precautions for transport, loading, unloading, and handling and any proposed special controls in the event of an accident or delay.

§ 71.37 Quality assurance.

(a) The applicant shall describe the quality assurance program (see Subpart H of this part) for the design; fabrication, assembly, testing, maintenance, repair, modification, and use of the proposed package.

(b) The applicant shall identify any specific provisions of the quality assurance program which are applicable to the particular package design under consideration, including a description of the leak testing procedures.

§ 71.38 Renewal of a certificate of compliance or quality assurance program approval.

(a) Except as provided in paragraph (b) of this section, each Certificate of Compliance or Quality Assurance Program Approval expires at the end of the day, in the month and year stated in the approval.

(b) In any case in which a person, not less than 30 days prior to the expiration of an existing Certificate of Compliance or Quality Assurance Program Approval issued pursuant to the part, has filed an application in proper form for renewal of either of those approvals, the existing Certificate of Compliance or Quality Assurance Program Approval for which the renewal application was filed shall not expire until final action on the application for renewal has been taken by the Commission.

(c) In applying for renewal of an existing Certificate of Compliance or Quality Assurance Program Approval, an applicant must submit a consolidated application which incorporates all changes to its program that are incorporated by reference in the existing approval certificate into as few referenceable documents as reasonably achievable.

§ 71.39 Requirement for additional information.

The Commission may at any time require additional information in order to enable it to determine whether a license, certificate of compliance, or other approval should be granted, renewed, denied, modified, suspended, or revoked.

Subpart E—Package Approval Standards

§ 71.41 Demonstration of compliance.

(a) The effects on a package of the tests specified in § 71.71 (Normal Conditions of Transport) and the tests specified in § 71.73 (Hypothetical Accident Conditions) and § 71.61 (deep immersion test) must be evaluated by subjecting a specimen or scale model to a specific test, or by another method of demonstration acceptable to the Commission, as appropriate for the particular feature being considered.

(b) Taking into account the type of vehicle, the method of securing or attaching the package, and the controls to be exercised by the shipper, the Commission may permit the shipment to be evaluated together with the transporting vehicle.

(c) Environmental and test conditions different from those specified in §§ 71.71 and 71.73 may be approved by the Commission if the controls proposed to be exercised by the shipper are demonstrated to be adequate to provide equivalent safety of the shipment.

§ 71.43 General standards for all packages.

(a) The smallest overall dimension of a package must not be less than 10 cm (3.94 in).

(b) The outside of a package must incorporate a feature, such as a seal, that is not readily breakable and that, while intact, would be evidence that the package has not been opened by unauthorized persons.

(c) Each package must include a containment system securely closed by a positive fastening device that cannot be opened unintentionally or by a pressure that may arise within the package.

(d) A package must be of materials and construction that assure that there will be no significant chemical, galvanic, or other reaction among the packaging components, among package contents, or between the packaging components and the package contents, including possible reaction resulting from inleakage of water to the maximum credible extent. Account must be taken of the behavior of materials under irradiation.

(e) A package valve or other device, the failure of which would allow radioactive contents to escape, must be protected against unauthorized operation and, except for a pressure relief device, must be provided with an enclosure to retain any leakage.

(f) A package must be designed, constructed, and prepared for shipment so that under the tests specified in § 71.71 (Normal Conditions of Transport) there would be no loss or dispersal of radioactive contents, no significant increase in external surface radiation levels, and no substantial reduction in the effectiveness of the packaging.

(g) A package must be designed, constructed, and prepared for transport so that in still air at 38 °C (100 °F) and in the shade, no accessible surface of a package would have a temperature exceeding 50 °C (122 °F) in a nonexclusive use shipment or 85 °C (185 °F) in an exclusive use shipment.

(h) A package must not incorporate a feature intended to allow continuous venting during transport.

§ 71.45 Lifting and tie-down standards for all packages.

(a) Any lifting attachment that is a structural part of a package must be designed with a minimum safety factor of three against yielding when used to lift the package in the intended manner, and it must be designed so that failure of any lifting device under excessive load would not impair the ability of the package to meet other requirements of this subpart. Any other structural part of the package which could be used to lift the package must be capable of being rendered inoperable for lifting the package during transport or must be designed with strength equivalent to that required for lifting attachments.

(b) Tie-down devices:

(1) If there is a system of tie-down devices which is a structural part of the package, the system must be capable of withstanding, without generating stress in any material of the package in excess of its yield strength, a static force applied to the center of gravity of the package having a vertical component of 2 times the weight of the package with its contents, a horizontal component along the direction in which the vehicle travels of 10 times the weight of the package with its contents, and a horizontal component in the transverse direction of 5 times the weight of the package with its contents.

(2) Any other structural part of the package that could be used to tie down the package must be capable of being rendered inoperable for tying down the package during transport, or must be designed with strength equivalent to that required for tie-down devices.

(3) Each tie-down device which is a structural part of a package must be designed so that failure of the device under excessive load would not impair the ability of the package to meet other requirements of this part.

§ 71.47 External radiation standards for all packages.

A package must be designed and prepared for shipment so that the radiation level does not exceed 200 mrem/h (2 mSv/h) at any point on the accessible external surface of the

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package and the transport index defined in § 71.4 does not exceed 10. For a package transported as exclusive use by rail, highway, or water, radiation levels external to the package may exceed these limits, but must not exceed any of the following limits:

(a) Radiation levels on the accessible external surface of the package must not exceed 200 mrem/h (2 mSv/h) unless the following conditions are met, in which case the limit is 1000 mrem/h (10 mSv/h):

(1) The shipment is made in a closed transport vehicle;

(2) Provisions are made to secure the package so that its position within the vehicle remains fixed during transportation; and

(3) There are no loading or unloading operations between the beginning and end of the transportation;

(b) Radiation levels at any point on the outer surface of the vehicle must not exceed 200 mrem/h (2 mSv/h), including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure if used), and on the lower external surface of the vehicle;

(c) Radiation levels at any point 2 m from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle), or, in the case of a flat-bed style vehicle, at any point 2 m from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle) must not exceed 10 mrem/h (0.1 mSv/h); and

(d) Radiation levels in any normally occupied positions of the vehicle must not exceed 2 mrem/h (.02 mSv/h), except that this provision does not apply to private carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with § 19.12 of this chapter.

§ 71.51 Additional requirements for Type B packages.

(a) Except as provided in § 71.52, a Type B package, in addition to satisfying the requirements of §§ 71.41–71.47, must be designed, constructed, and prepared for shipment so that under the tests specified in—

(1) Section 71.71 (Normal Conditions of Transport), there would be no loss or dispersal of radioactive contents, as demonstrated to a sensitivity of 10^{-6} A_2 per hour, no significant increase in external surface radiation levels, and no substantial reduction in the effectiveness of the packaging; and

(2) Section 71.73 (Hypothetical Accident Conditions), there would be no escape of krypton-85 exceeding $10A_2$ in one week, no escape of other radioactive material exceeding a total amount A_2 in one week, and no external radiation dose rate exceeding 1 rem/h (10 mSv/h) at 1 m from the external surface of the package.

(b) Compliance with the permitted activity release limits of paragraph (a) of this section must not depend upon filters or upon a mechanical cooling system.

§ 71.52 Exemption for low-specific-activity (LSA) packages.

(a) A package need not satisfy the requirement of § 71.51(a)(1) which limits the loss or dispersal of radioactive contents if it contains only low-specific-activity material and is transported as exclusive use, but is subject to §§ 71.43–71.47 of this part, including § 71.43(f).

(b) A package need not satisfy the requirements of § 71.51 if it contains only low-specific-activity material and is transported as exclusive use, but is subject to §§ 71.41 through 71.47 of this part, including § 71.43(f). This paragraph (b) expires on (*one year after effective date*).

§ 71.53 Fissile material exemptions.

The following packages are exempt from fissile material classification and from the fissile material standards of § 71.55 and § 71.59, but are subject to all other requirements of this part:

(a) A package containing not more than 15 g of fissile material. If material is transported in bulk, the quantity limitation applies to the conveyance;

(b) A package containing homogeneous hydrogenous solutions or mixtures where:

(1) The minimum ratio of the number of hydrogen atoms to the number of atoms of fissile radionuclides (H/X) is 5,200;

(2) The maximum concentration of fissile radionuclides is 5 g/l; and

(3) The maximum mass of fissile radionuclides in the package is 800 g, except for a mixture where the total mass of plutonium and uranium-233 exceeds 1 percent of the mass of uranium-235, the limit is 500 g. If the material is transported in bulk, other than by aircraft, the quantity limitations apply to the conveyance;

(c) A package containing uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with a total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, if the fissile radionuclides are distributed homogeneously throughout the package contents and do not form a lattice arrangement within the package;

(d) A package containing any fissile material if it does not contain more than 5 g of fissile radionuclides in any 10 l volume, and if the material is packaged so as to maintain this limit of fissile radionuclide concentration during normal transport;

(e) A package containing not more than 1 kg of plutonium of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of those radionuclides; or

(f) A package containing liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by weight, with total plutonium and uranium-233 not more than 0.1 percent of the mass of uranium-235 and with a minimum nitrogen-to-uranium atomic ratio (N/U) of 2.

§ 71.55 General requirements for fissile material packages.

(a) A package used for the shipment of fissile material must be designed and constructed in accordance with §§ 71.41–71.47. When required by the total amount of radioactive material, a package used for the shipment of fissile material must also be designed and constructed in accordance with § 71.51.

(b) Except as provided in paragraph (c) of this section, a package used for the shipment of fissile material must be so designed and constructed and its contents so limited that it would be subcritical if water were to leak into the containment system or liquid contents were to leak out of the containment system so that, under the following conditions, maximum reactivity of the fissile material would be attained:

(1) The most reactive credible configuration consistent with the chemical and physical form of the material;

(2) Moderation by water to the most reactive credible extent; and

(3) Close full reflection of the containment system by water on all sides.

(c) The Commission may approve exceptions to the requirements of paragraph (b) of this section if the package incorporates special design features that ensure that no single packaging error would permit leakage, and if appropriate measures are taken before each shipment to ensure that the containment system does not leak.

(d) A package used for the shipment of fissile material must be so designed and constructed and its contents so limited that under the tests specified in § 71.71 (Normal Conditions of Transport)—

(1) The contents would be subcritical

(2) The geometric form of the package contents would not be substantially altered;

(3) There would be no leakage of water into the containment system unless, in the evaluation of undamaged packages under § 71.59(b)(1), it has been assumed that moderation is present to such an extent as to cause maximum reactivity consistent with the chemical and physical form of the material; and

(4) There will be no substantial reduction in the effectiveness of the packaging, including:

(i) No more than 5 percent reduction in the total effective volume of the packaging on which nuclear safety is assessed;

(ii) No more than 5 percent reduction in the effective spacing between the fissile contents and the outer surface of the packaging; and

(iii) No occurrence of an aperture in the outer surface of the packaging large enough to permit the entry of a 10 cm (4 in) cube.

(e) A package used for the shipment of fissile material must be so designed and constructed and its contents so limited that under the tests specified in § 71.73 (Hypothetical Accident Conditions), the package would be subcritical. For this determination, it must be assumed that:

(1) The fissile material is in the most reactive credible configuration consistent with the damaged condition of the package and the chemical and physical form of the contents;

(2) Water moderation occurs to the most reactive credible extent consistent with the damaged condition of the package and the chemical and physical form of the contents; and

(3) There is reflection by water on all sides, as close as is consistent with the damaged condition of the package.

§ 71.59 Standards for arrays of fissile material packages.

(a) A fissile material package must be controlled by either the shipper or the carrier during transport to assure that an array of such packages remains subcritical. To enable this control, the designer of a fissile material package shall derive a number "N" based on all the following conditions being satisfied, assuming packages are stacked together in any arrangement and with close reflection on all sides by water:

(1) Five times "N" undamaged packages with nothing between the packages would be subcritical;

(2) Two times "N" damaged packages, if each package were subjected to the tests specified in § 71.73 (Hypothetical Accident Conditions) would be subcritical with optimum interspersed hydrogenous moderation; and

(3) The value of "N" cannot be less than 0.5.

(b) The transport index based on nuclear criticality control shall be obtained by dividing the number 50 by the value of "N" derived using the procedures specified in paragraph (a) of this section. The value of the transport index for nuclear criticality control may be zero provided that an unlimited number of packages is subcritical such that the value of "N" is effectively equal to infinity under the procedures specified in paragraph (a) of this section. Any transport index greater than zero must be rounded up to the first decimal place.

(c) Where a fissile material package is assigned a nuclear criticality control transport index—

(1) Not in excess of 10, that package may be shipped by any carrier, and that carrier provides adequate criticality control by limiting the sum of the transport indexes to 50 in a non-exclusive use vehicle and to 100 in an exclusive use vehicle.

(2) In excess of 10, that package may only be shipped by exclusive use vehicle or other shipper controlled system specified by DOT for fissile material packages. The shipper provides adequate criticality control by limiting the sum of the transport indexes to 100 in an exclusive use vehicle.

§ 71.61 Special requirement for irradiated nuclear fuel shipments.

A package for irradiated nuclear fuel with activity greater than 10^6 Ci (37 PBq) must be so designed that if it were immersed under a head of water of at least 200 m, there would be no rupture of the containment system. For demonstration purposes, an external gauge pressure of at least 2 MPa (290 psi) is considered to meet these conditions.

§ 71.63 Special requirements for plutonium and other high toxicity radionuclide shipments.

(a) Radioactive materials with an A_2 value of 0.01 Ci (0.37 GBq) or less being shipped in a quantity in excess of 20 Ci (0.74 TBq) per package must be shipped as a solid.

(b) Radioactive materials with an A_2 value of 0.01 Ci (0.37 GBq) or less being shipped in a quantity in excess of 20 Ci (0.74 TBq) per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of Subparts E and F for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 (Normal Conditions of Transport), the separate inner container must not release its contents as demonstrated to a sensitivity of 10^{-6} A_2/h. If the entire package is subjected to the tests specified in § 71.73 (Hypothetical Accident Conditions), the separate inner container must restrict the loss of its contents to not more than A_2 in one week. Solid radioactive materials in the following forms are exempt from the requirements of this paragraph:

(1) Reactor fuel elements;

(2) Metal or metal alloy; and

(3) Other radioactive material bearing solids that the Commission determines should be exempt from the requirements of this section.

§ 71.64 Special requirements for plutonium air shipments.

(a) A package for the shipment of plutonium by air subject to § 71.88(a)(4), in addition to satisfying the requirements of §§ 71.41–71.63, as applicable, must be designed, constructed, and prepared for shipment so that under the tests specified in—

(1) Section 71.74 (Plutonium accident conditions)—

(i) The containment vessel would not be ruptured in its post-tested condition and the package must provide a sufficient degree of containment to restrict accumulated loss of plutonium contents to not more then an A_2 quantity in a period of 1 week;

(ii) The external radiation level would not exceed 1 rem/h at a distance of 2.95 ft (0.9 m) from the surface of the package in its posttested condition in air; and

(iii) A single package and an array of packages is demonstrated to be subcritical in accordance with this part, except that the damaged condition of the package must be considered to be that which results from the plutonium accident tests in § 71.74 rather than the hypothetical accident tests in § 71.73; and

(2) Paragraph 71.74(c), there would be no detectable leakage of water into the containment vessel of the package.

(b) With respect to the package requirements of paragraph (a), there must be a demonstration or analytical assessment showing that—

(1) The results of the physical testing for package qualification would not be adversely affected to a significant extent by—

(i) The presence, during the tests, of the actual contents that will be transported in the package, and

(ii) Ambient water temperatures ranging from 0.6 °C (+33 °F) to 38 °C (+100 °F) for those qualification tests involving water, and ambient atmospheric temperatures ranging from

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−40 °C (−40 °F) to +54 °C (+130 °F) for the other qualification tests.

(2) The ability of the package to meet the acceptance standards prescribed for the accident condition sequential tests would not be adversely affected if one or more tests in the sequence were deleted.

§ 71.35 Additional requirements.

The Commission may, by rule, regulation, or order, impose requirements upon any licensee in addition to those established in this part as it deems necessary or appropriate to protect public health or to minimize danger to life or property.

Subpart F—Package and Special Form Tests [1]

§ 71.71 Normal conditions of transport.

(a) *Evaluation.* Evaluation of each package design under normal conditions of transport must include a determination of the effect on that design of the conditions and tests specified in this section. Separate specimens may be used for the free drop test, the compression test, and the penetration test if each specimen is subjected to the water spray test before being subjected to any of the other tests.

(b) *Initial conditions.* With respect to the initial conditions for the tests in this section, the demonstration of compliance with the requirements of this part must be based on the ambient temperature preceding and following the tests remaining constant at that value between −29 °C (−20 °F) and +38 °C (100 °F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system must be considered to be the maximum normal operating pressure, unless a lower internal pressure consistent with the ambient temperature considered to precede and follow the tests is more unfavorable.

(c) *Conditions and tests*—(1) *Heat.* An ambient temperature of 38 °C (100 °F) in still air, and insolation according to the following table:

INSOLATION DATA

Form and location of surface	Total insolation for a 12-hour period (g cal/cm²)
Flat surfaces transported horizontally:	
Base	None
Other surfaces	800

[1] The package standards related to the tests in this subpart are contained in Subpart E.

INSOLATION DATA—Continued

Form and location of surface	Total insolation for a 12-hour period (g cal/cm²)
Flat surfaces not transported horizontally	200
Curved surfaces	400

(2) *Cold.* An ambient temperature of −40 °C (−40 °F) in still air and shade.

(3) *Reduced external pressure.* An external pressure of 25 kPa (3.63 lb/in²) absolute.

(4) *Increased external pressure.* An external pressure of 140 kPa (20.3 lb/in²) absolute.

(5) *Vibration.* Vibration normally incident to transport.

(6) *Water spray.* A water spray that simulates exposure to rainfall of approximately 5 cm/h (1.97 in/h) for at least one hour.

(7) *Free drop.* Between 1.5 and 2.5 hours after the conclusion of the water spray test, a free drop through the distance specified below onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected. For fissile material packages, this free drop must be preceded by a free drop from a height of 0.3 m (0.984 ft) on each corner or, in the case of a cylindrical fissile material package, onto each of the quarters of each rim.

CRITERIA FOR FREE DROP TEST (WEIGHT/DISTANCE)

Package weight		Free drop distance	
Kilograms	(Pounds)	Meters	(Feet)
Less than 5,000	(Less than 11,000).	1.2	(3.94)
5,000 to 10,000	(11,000 to 22,000).	.9	(2.95)
10,000 to 15,000.	(22,000 to 33,100).	.6	(1.97)
More than 15,000.	(More than 33,100).	.3	(.984)

(8) *Corner drop.* A free drop onto each corner of the package in succession, or in the case of a cylindrical package onto each quarter of each rim, from a height of 0.3 m (0.984 ft) onto a flat, essentially unyielding, horizontal surface. This test applies only to fiberboard or wood rectangular packages not exceeding 50 kg (110 lbs) and fiberboard or wood cylindrical packages not exceeding 100 kg (220 lbs).

(9) *Compression.* For packages weighing up to 5,000 kg (11,000 lbs), the package must be subjected, for a period of 24 hours, to a compressive load applied uniformly to the top and bottom of the package in the position in which the package would normally be transported. The compressive load must be the greater of the following:

(i) The equivalent of five times the weight of the package; or

(ii) The equivalent of 13 kPa (1.89 lb/in²) multiplied by the vertically projected area of the package.

(10) *Penetration.* Impact of the hemispherical end of a vertical steel cylinder of 3.2 cm (1.26 in) diameter and 6 kg (13.2 lbs) mass, dropped from a height of 1 m (3.28 ft) onto the exposed surface of the package which is expected to be most vulnerable to puncture. The long axis of the cylinder must be perpendicular to the package surface.

§ 71.73 Hypothetical accident conditions.

(a) *Test procedures.* Evaluation for hypothetical accident conditions is to be based on sequential application of the tests specified in this section, in the order indicated, to determine their cumulative effect on a package or array of packages. An undamaged specimen may be used for the water immersion tests specified in paragraphs (c) (5) and (6) of this section.

(b) *Test conditions.* With respect to the initial conditions for the tests, except for the water immersion tests, to demonstrate compliance with the requirements of this part during testing, the ambient air temperature before and after the tests must remain constant at that value between −29 °C (−20 °F) and +38 °C (100 °F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system must be the maximum normal operating pressure unless a lower internal pressure consistent with the ambient temperature assumed to precede and follow the tests is more unfavorable.

(c) *Tests.* Tests for hypothetical accident conditions must be conducted as follows:

(1) *Free Drop.* A free drop of the specimen through a distance of 9 m (29.5 ft) onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected

(2) *Crush.* Subjection of the specimen to a dynamic crush test by positioning the specimen on a flat, essentially unyielding, horizontal surface so as to suffer maximum damage by the drop of a 500 kg (1,100 pounds) mass from 9 m (29.5 ft) onto the specimen. The mass must consist of a solid mild steel plate 1 m (3.28 ft) by 1 m and must fall in a horizontal attitude. The crush test is required only when the specimen has a mass not greater than 500 kg (1,100 lbs), an overall density not greater than 1,000 kg/m³ (62.4 lbs/ft³) based on external dimensions, and radioactive contents greater than 1,000 A_2 not as special form radioactive material.

(3) *Puncture.* A free drop of the specimen through a distance of 1 m (39.4 in) in a position for which maximum damage is expected, onto the upper end of a solid, vertical, cylindrical, mild steel bar mounted on an essentially unyielding, horizontal surface. The bar must be 15 cm (5.91 in) in diameter, with the top horizontal and its edge rounded to a radius of not more than 6 mm (0.236 in) and of a length as to cause maximum damage to the package, but not less than 20 cm (7.87 in) long. The long axis of the bar must be vertical.

(4) *Thermal.* Exposure of the specimen fully engulfed, except for a single support system, in a hydrocarbon fuel/air fire of sufficient extent and in sufficiently quiescent ambient conditions to provide an average emissivity coefficient of at least 0.9, with an average flame temperature of at least 800 °C (1,472 °F) for a period of 30 minutes, or any other thermal test which provides the equivalent total heat input to the package and which provides a time averaged environmental temperature of 800 °C. The fuel source shall extend horizontally at least 1 m (3.28 ft), but shall not extend more than 3 m (9.84 ft), beyond any external surface of the specimen, and the specimen shall be positioned 1 m (3.28 ft) above the surface of the fuel source. For purposes of calculation, the surface absorptivity coefficient must be either that value which the package may be expected to possess if exposed to the fire specified or 0.8, whichever is greater; and the convective coefficient must be that value which may be demonstrated to exist if the package were exposed to the fire specified. Artificial cooling must not be applied after cessation of external heat input and any combustion of materials of construction must be allowed to proceed until it terminates naturally.

(5) *Immersion—all packages.* A separate, undamaged specimen must be subjected to water pressure equivalent to immersion under a head of water of at least 15 m (50 ft). For test purposes, an external pressure of water of 150 kPa (21.7 lb/in²) gauge is considered to meet these conditions.

(6) *Immersion—fissile material.* For fissile material subject to § 71.55, in those cases where water inleakage has not been assumed for criticality analysis, immersion under a head of water of at least 0.9 m (3 ft) in the attitude for which maximum leakage is expected.

§ 71.74 Plutonium accident conditions.

(a) *Test conditions—Sequence of tests.* A package must be physically tested to the following conditions in the order indicated to determine their cumulative effect.

(1) Impact at a velocity of not less than 129 m/sec (423 ft/sec) at a right angle onto a flat, essentially unyielding, horizontal surface, in the orientation (e.g., side, end, corner) expected to result in maximum damage at the conclusion of the test sequence.

(2) A static compressive load of 31,600 kg (70,100 lbs) applied in the orientation expected to result in maximum damage at the conclusion of the test sequence. The force on the package must be developed between a flat steel surface and a 5 cm (1.97 in) wide, straight, solid, steel bar. The length of the bar must be at least as long as the diameter of the package and the longitudinal axis of the bar must be parallel to the plane of the flat surface. The load must be applied to the bar in a manner that prevents any members or devices used to support the bar from contacting the package.

(3) Packages weighing less than 227 kg (500 lbs) must be placed upon a flat, essentially unyielding, horizontal surface and subjected to a weight of 227 kg (500 lbs) falling from a height of 3 m (9.84 ft) and striking in the position expected to result in maximum damage at the conclusion of the test sequence. The end of the weight contacting the package must be a solid probe made of mild steel. The probe must be the shape of the frustum of a right circular cone, 30.5 cm (12 in) long, 20.3 cm (8 in) in diameter at the base, and 2.54 cm (1 in) in diameter at the end. The longitudinal axis of the probe must be perpendicular to the horizontal surface. For packages weighing 227 kg (500 lbs) or more, the base of the probe must be placed on a flat, essentially unyielding horizontal surface and the package dropped from a height of 3 m (9.84 ft) onto the probe, striking in the position expected to result in maximum damage at the conclusion of the test sequence.

(4) The package must be firmly restrained and supported such that its longitudinal axis is inclined approximately 45° to the horizontal. The area of the package which made first contact with the impact surface in paragraph (a)(1) of this section must be in the lowermost position. The package must be struck at approximately the center of its vertical projection by the end of a structural steel angle section falling from a height of at least 45.7 m (150 ft). The angle section must be at least 1.83 m (6 ft) in length with equal legs at least 12.7 cm (5 in) long and 1.27 cm (0.5 in) thick. The angle section must be guided in such a way as to fall end-on, without tumbling. The package must be rotated approximately 90° about its longitudinal axis and struck by the steel angle section falling as before.

(5) The package must be exposed to luminous flames from a pool fire of JP-4 or JP-5 aviation fuel for a period of at least 60 minutes. The luminous flames must extend an average of at least 0.914 m (3 ft) and no more than 3.05 m (10 ft) beyond the package in all horizontal directions. The position and orientation of the package in relation to the fuel must be that which is expected to result in maximum damage at the conclusion of the test sequence. An alternate method of thermal testing may be substituted for this fire test provided that the alternate test is not of shorter duration and would not result in a lower heating rate to the package. At the conclusion of the thermal test, the package must be allowed to cool naturally or must be cooled by water sprinkling, whichever is expected to result in maximum damage at the conclusion of the test sequence.

(6) Immersion under at least 0.914 m (3 ft) of water.

(b) *Individual free-fall impact test.* (1) An undamaged package must be physically subjected to an impact at a velocity not less than the calculated terminal free-fall velocity at mean sea level at a right angle onto a flat essentially unyielding horizontal surface, in the orientation (e.g., side, end, corner) expected to result in maximum damage.

(2) This test is not required if the calculated terminal free-fall velocity of the package is less than 129 m/sec (423 ft/sec) or if a velocity not less than either 129 m/sec (423 ft/sec) or the calculated terminal free-fall velocity of the package is used in the sequential test of paragraph (a)(1) of this section.

(c) *Individual deep submersion test.* An undamaged package must be physically submerged and physically subjected to an external water pressure of at least 4.14 MPa (600 lbs/in²).

§ 71.75 Qualification of special form radioactive material.

(a) Evaluation of the contents of a single package for qualification as special form must include a determination of the effect on a specimen of those contents of the tests specified in § 71.77.

(1) Specimens (solid radioactive material or capsules) to be tested must be as normally prepared for loading in a single package, with the radioactive material duplicated as closely as practicable.

(2) A different specimen may be used for each of the tests.

(b) The specimen must not break or shatter when subjected to the impact, percussion, or bending tests.

(c) The specimen must not melt or disperse when subjected to the heat test.

(d) After each test, leak-tightness or indispersibility of the specimen must be determined by a method no less sensitive than the following leaching assessment procedure. For a capsule resistant to corrosion by water and which has an internal void volume greater than 0.1 ml (6.10×10^{-3} in^3), an alternative to the leaching assessment is a demonstration of leak-tightness of 10^{-4} torr-l/s (.03 lb-in/s) (based on air at 25 °C (77 °F) and one atmosphere differential pressure) for solid radioactive content, or 10^{-3} torr-l/s (3×10^{-4} lb-in/s) for liquid or gaseous radioactive content.

(1) The specimen must be immersed for 7 days in water at ambient temperature. The water must have a pH of 6–8 and a maximum conductivity of 10 μmho/cm at 20 °C (68 °F). Encapsulated material is not subject to the 7-day requirement.

(2) The water with specimen must then be heated to a temperature of 50 °C±5 °C (122°±9 °F) and maintained at this temperature for 4 hours.

(3) The activity of the water must be determined at that time.

(4) The specimen must then be stored for at least 7 days in still air of humidity not less than 90 percent and a temperature not less than 30 °C (86 °F).

(5) The specimen must then be immersed in water having a pH of 6–8 and a maximum conductivity of 10 μmho/cm at 20 °C, and the water with specimen heated to 50 °±5 °C (122°±9°F) and maintained at this temperature for 4 hours.

(6) The activity of the water must be determined at that time.

(7) The activities determined in paragraphs (d)(3) and (d)(6) of this section must not exceed 0.0541 μCi (2 kBq).

(e) A specimen that comprises or simulates radioactive material contained in a sealed capsule need not be subjected to the leak-tightness procedure specified in this section provided it is alternatively subjected to any of the tests prescribed in the International Organization for Standardization document ISO/TR4826–1979(E), "Sealed radioactive sources—Leak test methods",[3] which are acceptable to NRC.

§ 71.77 Tests for special form radioactive material.

(a) *Impact test.* The specimen must fall onto a flat, horizontal, essentially unyielding surface from a height of not less than 9 m (29.5 ft).

(b) *Percussion test.* The specimen must be placed on a sheet of lead which is supported by a smooth solid surface and struck by the flat face of a steel billet so as to produce an impact equivalent to that resulting from a free fall of 1.4 kg (3.09 lbs) through 1 m (39.4 in). The flat face of the billet must be 25 mm (0.984 in) in diameter with the edges rounded to a radius of 3±0.3 mm (0.118±0.0118 in). The lead, of hardness number 3.5 to 4.5 on the Vickers scale and not more than 25 mm (0.984 in) thick, must cover an area greater than that covered by the specimen. A fresh surface of lead must be used for each impact. The billet must strike the specimen so as to cause maximum damage.

(c) *Bending test.* The test is applicable only to long, slender sources with both a minimum length of 10 cm (3.94 in) and a length to minimum width ratio not less than 10. The specimen must be rigidly clamped in a horizontal position so that one half of its length protrudes from the face of the clamp. The orientation of the specimen must ensure that the specimen will suffer maximum damage when its free end is struck by the flat face of a steel billet. The billet must strike the specimen so as to produce an impact equivalent to that resulting from a free vertical fall of 1.4 kg (3.09 lb) through 1 m (39.4 in). The flat face of the billet must be 25 mm (0.984 in) in diameter with the edges rounded off to a radius of 3±0.3 mm (0.118±0.0118 in).

(d) *Heat test.* The specimen must be heated to a temperature of not less than 800 °C (1472 °F) in an atmosphere which is essentially air, and held at that temperature for a period of 10 minutes and must then be allowed to cool.

(e) A specimen that comprises or simulates radioactive material contained in a sealed capsule need not be subjected to the following:

(1) The impact test and the percussion test of this section provided it is alternatively subjected to the Class 4 impact test prescribed in the International Organization for Standardization document ISO 2919–1980(E), "Sealed radioactive sources—Classification";[4] and

(2) The heat test of this section provided it is alternatively subjected to the Class 6 temperature test specified in the International Organization for Standardization document ISO 2919–1980(E), "Sealed radioactive sources—Classification." [5]

Subpart G—Operating Controls and Procedures

§ 71.81 Applicability of operating controls and procedures.

A licensee subject to this part, who under a general or specific license transports licensed material or delivers licensed material to a carrier for transport, shall comply with the requirements of this Subpart G, with the quality assurance requirements of Subpart H of this part, and with the general provisions of Subpart A of this part.

§ 71.83 Assumptions as to unknown properties.

When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the known properties have credible values that will cause the maximum neutron multiplication.

§ 71.85 Preliminary determinations.

Prior to the first use of any packaging for the shipment of licensed material—

(a) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects which could significantly reduce the effectiveness of the packaging;

(b) Where the maximum normal operating pressure will exceed 35 kPa (5.06 lb/in^2) gauge, the licensee shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure to verify the capability of that system to maintain its structural integrity at that pressure; and

(c) The licensee shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by the Nuclear Regulatory Commission. Prior to applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the Commission.

[3] Available from American National Standards Institute, 1430 Broadway, New York, NY 10018.

[4] Ibid.

[5] Ibid.

§ 71.87 Routine determinations.

Prior to each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this part and of the license. The licensee shall determine that—

(a) The package is proper for the contents to be shipped;

(b) The package is in unimpaired physical condition except for superficial defects such as marks or dents;

(c) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(d) Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(e) Any pressure relief device is operable and set in accordance with written procedures;

(f) The package has been loaded and closed in accordance with written procedures;

(g) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(h) Any structural part of the package which could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies the design requirements of § 71.45;

(i)(1) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable. The level of non-fixed radioactive contamination may be determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the non-fixed contamination levels. Except as provided under paragraph (i)(2) of this section, the amount of radioactivity measured on any single wiping material when averaged over the surface wiped, must not exceed the limits given in Table V of this part at any time during transport. Other methods of assessment of equal or greater efficiency may be used. When other methods are used, the detection efficiency of the method used must be taken into account, and in no case may the non-fixed contamination on the external surfaces of the package exceed 10 times the limits listed in Table V.

TABLE V.—REMOVABLE EXTERNAL RADIOACTIVE CONTAMINATION WIPE LIMITS

Contaminant	Maximum permissible limits		
	Bq/cm^2	μCi/cm^2	dpm/cm^2
Beta-gamma emitting radionuclides; all radionuclides with half-lives less than 10 days, natural uranium; natural thorium; uranium-235; uranium-238; thorium-232; thorium-228 and thorium-230 when contained in ores or physical concentrates	0.40	1.08×10^{-5}	22.0
All other alpha emitting radionuclides	0.04	1.08×10^{-6}	2.2

(2) In the case of packages transported as exclusive use shipments by rail or highway only, the non-fixed radioactive contamination at any time during transport must not exceed 10 times the levels prescribed in paragraph (i)(1) of this section. The levels at the beginning of transport must not exceed the levels prescribed in paragraph (i)(1) of this section;

(j) External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in § 71.47 at any time during transportation; and

(k) Accessible package surface temperatures will not exceed the limits specified in § 71.43(g) at any time during transportation.

§ 71.88 Air transport of plutonium.

(a) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this part or included indirectly by citation of 49 CFR Chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed for individual human application; or

(2) The plutonium is contained in a material in which the specific activity is not greater than 0.002 μCi/g (74 Bq/g) of material and in which the radioactivity is essentially uniformly distributed; or

(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form and is shipped in accordance with § 71.5 of this part; or

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the Commission.

(b) Nothing in paragraph (a) of this section is to be interpreted as removing or diminishing the requirements of § 73.24 of this chapter.

(c) For a shipment of plutonium by air which is subject to paragraph (a)(4) of this section, the licensee shall, through special arrangement with the carrier, require the following operational controls.

(1) A plutonium package weighing less than 40 kg (88 lbs), and having its height and diameter both less than 50 cm (19.7 in), must be stowed aboard the aircraft on the main deck or the lower cargo compartment in the aft-most location that is possible for cargo of its size and weight. Any other plutonium package must be stowed aboard the aircraft on the main deck in the aft-most location that is possible for cargo of its size and weight. No other type of cargo may be stowed aft of a plutonium package.

(2) A plutonium package must be secured and restrained to prevent shifting under normal transport. A plutonium packaging weighing 40 kg (88 lbs) or more must be securely cradled and tied down to the main deck of the aircraft such that the tiedown system is capable of providing package restraint against the following inertial forces acting separately relative to the deck of the aircraft: Upward, 2g; Forward, 9g; Sideward, 1.5g; Downward, 4.5g.

(3) A plutonium package weighing less than 40 kg (88 lbs), and having its height and diameter both less than 50 cm (19.7 in), must not be transported aboard an aircraft carrying other cargo bearing the "Explosive A" label. Any other plutonium package must not be transported aboard an aircraft carrying other cargo bearing any of the following hazardous material labels:

Explosive A
Explosive B
Explosive C
Spontaneously Combustible
Dangerous When Wet
Organic Peroxide
Non-Flammable Gas
Flammable Liquid
Flammable Solid
Flammable Gas
Oxidizer
Corrosive

The above restriction does not apply to hazardous material cargo labeled solely as:

Radioactive I
Radioactive II
Radioactive III

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Magnetized Materials
Poison
Poison Gas
Irritant
Etiologic Agent

§ 71.89 Opening instructions.

Prior to delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to or otherwise made available to the consignee for the consignee's use in accordance with § 20.205 of this chapter.

§ 71.91 Records.

(a) Each licensee shall maintain for a period of 3 years after shipment a record of each shipment of licensed material not exempt under § 71.10, showing where applicable—

(1) Identification of the packaging by model number and serial number;

(2) Verification that there are no significant defects in the packaging, as shipped;

(3) Volume and identification of coolant;

(4) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(5) For each item of irradiated fissile material:

(i) Identification by model number and serial number;

(ii) Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

(iii) Any abnormal or unusual condition relevant to radiation safety.

(6) Date of the shipment;

(7) For fissile packages and for Type B packages, any special controls exercised;

(8) Name and address of the transferee;

(9) Address to which the shipment was made; and

(10) Results of the determinations required by § 71.87.

(b) The licensee shall make available to the Commission for inspection, upon reasonable notice, all records required by this part.

(c) The licensee shall maintain, during the life of the packaging to which they pertain, sufficient quality assurance records to furnish documentary evidence of the quality of packaging components which have safety significance and of services affecting quality. The records to be maintained include results of the determinations required by § 71.85, of monitoring, inspection, and auditing of work performance during the design, fabrication, assembly, testing, modification, maintenance, and repair of the packaging. Where some person other than the licensee provides these services, a certification from that person that the services have been performed and that adequate records of them are being maintained will suffice.

§ 71.93 Inspection and tests.

(a) The licensee shall permit the Commission, at all reasonable times, to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, produced, tested, stored, or shipped.

(b) The licensee shall perform, and permit the Commission to perform, any tests the Commission deems necessary or appropriate for the administration of the regulations in this chapter.

(c) The licensee shall notify the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter at least 45 days prior to fabrication of a package to be used for the shipment of licensed material having a decay heat load in excess of 5 kW or with a maximum normal operating pressure in excess of 103 kPa (14.9 lb/in^2) gauge.

§ 71.95 Reports.

The licensee shall report to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days—

(a) Any instance in which there is significant reduction in the effectiveness of any Type B or fissile approved packaging during use;

(b) Details of any defects with safety significance in Type B or fissile packaging after first use, with the means employed to repair the defects and prevent their recurrence; and

(c) Instances in which the conditions of approval in the certificate of compliance were not observed in making a shipment.

§ 71.97 Advance notification of shipment of nuclear waste.

(a) Except as specified in paragraph (b) of this section, prior to the transport or delivery to a carrier for transport of licensed material outside the confines of the licensee's plant or other place of use or storage, each licensee shall provide advance notification to the governor of a State, or the governor's designee, of the shipment to, through, or across the boundary of the State.

(b) Advance notification is required only when—

(1) The licensed material is required by this part to be in Type B packaging for transportation;

(2) The licensed material other than irradiated fuel is being transported to, through, or across State boundaries to a disposal site or to a collection point for transport to a disposal site;

(3) The quantity of licensed material in a single package exceeds the smallest of the following:

(i) 3,000 times the A_1 value of the radionuclides as specified in Appendix A, Table A–1 for special form radioactive material;

(ii) 3,000 times the A_1 value for the radionuclides as specified in Appendix A, Table A–1 for normal form radioactive material; or

(iii) 30,000 Ci(1.11 PBq); and

(4) The quantity of irradiated fuel is less than that subject to advance notification requirements of 73.37(f) of this chapter.

(c) *Procedures for submitting advance notification.* (1) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter.

(2) A notification delivered by mail must be postmarked at least 7 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(3) A notification delivered by messenger must reach the office of the governor or of the governor's designee at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the **Federal Register** on June 30, 1987 (52 FR 24357).

(ii) The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available upon request from the Director, State, Local and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(4) The licensee shall retain a copy of the notification as a record for 1 year.

(d) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of nuclear waste must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the nuclear waste shipment;

(2) A description of the nuclear waste contained in the shipment, as specified in the regulations of DOT in 49 CFR Part 172, §§ 172.202 and 172.203(d);

(3) The point of origin of the shipment and the 7-day period during which departure of the shipment is estimated to occur;

(4) The 7-day period during which arrival of the shipment at state boundaries is estimated to occur;

(5) The destination of the shipment, and the 7-day period during which arrival of the shipment is estimated to occur; and

(6) A point of contact with a telephone number for current shipment information.

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee in accordance with this section will not be met shall telephone a responsible individual in the office of the governor of the State or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for 1 year.

(f) *Cancellation notice.* (1) Each licensee who cancels a nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or the governor's designee previously notified and to the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter.

(2) The licensee shall state in the notice that it is a cancellation and shall identify the advance notification which is being cancelled. The licensee shall retain a copy of the notice as a record for 3 years.

§ 71.99 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, (the Act) or Title II of the Energy Reorganization Act of 1974, as amended, or any regulation or order issued under the acts. A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Act for violation of sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act, or section 206 of the Energy Reorganization Act of 1974, as amended; or any rule, regulation, or order issued under the Acts, or any term, condition, or limitation of any license issued under the Acts, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued under the Acts may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Subpart H—Quality Assurance

§ 71.101 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging which are important to safety. As used in this subpart, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's activities including procurement of packaging. The licensee shall apply the applicable criteria in a graded approach and to an extent that is consistent with their importance to safety.

(c) *Approval of program.* Prior to the use of any package for the shipment of licensed material subject to this subpart, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(d) *Existing package designs.* The provisions of this paragraph deal with packages which have been approved for use in accordance with this part prior to January 1, 1979, and which have been designed in accordance with the provisions of this part in effect at the time of application for package approval. Those packages will be accepted as having been designed in accordance with a quality assurance program which satisfies the provisions of paragraph (b) of this section.

(e) *Existing packages.* The provisions of this paragraph deal with packages which have been approved for use in accordance with this part prior to January 1, 1979, have been at least partially fabricated prior to that date, and for which the fabrication is in accordance with the provisions of this part in effect at the time of application for approval of package design. These packages will be accepted as having been fabricated and assembled in accordance with a quality assurance program which satisfies the provisions of paragraph (b) of this section.

(f) *Previously approved programs.* A Commission-approved quality assurance program which satisfies the applicable criteria of Appendix B of Part 50 of this chapter and which is established, maintained, and executed with regard to transport packages will be accepted as satisfying the requirements of paragraph (b) of this section. Prior to first use, the licensee shall notify the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of its intent to apply its previously approved Appendix B program to transportation activities. The licensee shall identify the program by date of submittal to the Commission, Docket Number, and date of Commission approval.

§ 71.103 Quality assurance organization.

(a) The licensee * shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate in writing the authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(b) The quality assurance functions are—

(1) Assuring that an appropriate quality assurance program is established and effectively executed; and

(2) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the safety-related

* While the term "licensee" is used in these criteria, the requirements are applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package prior to the time a package approval is issued.

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functions have been performed correctly.

(c) The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to—

(1) Identify quality problems;

(2) Initiate, recommend, or provide solutions; and

(3) Verify implementation of solutions.

(d) The persons and organizations performing quality assurance functions shall report to a management level which assures that the required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.

(e) Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom.

(f) Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this section are being performed must have direct access to the levels of management necessary to perform this function.

§ 71.105 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time, consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this section. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(c) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

(1) The impact of malfunction or failure of the item to safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

(d) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to assure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program which they are executing.

§ 71.107 Package design control.

(a) The licensee shall establish measures to assure that applicable regulatory requirements and the package design, as specified in the license for those materials and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to assure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the materials, parts, and components of the packaging.

(b) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following:

(1) Criticality physics, radiation shielding, stress, thermal, hydraulic, and accident analyses;

(2) Compatibility of materials;

(3) Accessibility for inservice inspection, maintenance, and repair;

(4) Features to facilitate decontamination; and

(5) Delineation of acceptance criteria for inspections and tests.

(c) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the package approval require NRC approval.

§ 71.109 Procurement document control.

The licensee shall establish measures to assure adequate quality is required in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this part.

§ 71.111 Instructions, procedures, and drawings.

The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 71.113 Document control.

The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must assure that changes to documents are reviewed and approved.

§ 71.115 Control of purchased material, equipment, and services.

(a) The licensee shall establish measures to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery.

(b) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications prior to installation or use of the material and equipment. The licensee shall retain or have available this documentary evidence for the life of the package to which it applies. The licensee shall assure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(c) The licensee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 71.117 Identification and control of materials, parts, and components.

The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must assure that identification of the item is maintained by heat number, part number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 71.119 Control of special processes.

The licensee shall establish measures to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

§ 71.121 Internal inspection.

The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examination, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products is not carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 71.123 Test control.

The licensee shall establish a test program to assure that all testing required to demonstrate that the packaging components will perform satisfactorily in service is identified and performed in accordance with written test procedures which incorporate the requirements of this part and the requirements and acceptance limits contained in the package approval. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to assure that test requirements have been satisfied.

§ 71.125 Control of measuring and test equipment.

The licensee shall establish measures to assure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified times to maintain accuracy within necessary limits.

§ 71.127 Handling, storage, and shipping control.

The licensee shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 71.129 Inspection, test, and operating status.

(a) The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items which have satisfactorily passed required inspections and tests where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

§ 71.131 Nonconforming materials, parts, or components.

The licensee shall establish measures to control materials, parts, or components which do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 71.133 Corrective action.

The licensee shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a

significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 71.135 Quality assurance records.

(a) The licensee shall maintain sufficient written records to furnish evidence of activities affecting quality. The records must include the following: design records, records of use and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records must include closely related data such as qualifications of personnel, procedures, and equipment. Inspection and test records must, at a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. Records must be identifiable and retrievable. Records pertaining to the fabrication of the package must be retained for the life of the package to which they apply. Records pertaining to the use of the package for shipment of radioactive material must be retained for a period of 3 years after the shipment.

(b) The licensee shall establish a records retention program which is consistent with the applicable regulations, designating factors such as duration, location, and assigned responsibility.

§ 71.137 Audits.

The licensee shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including reaudit of deficient areas, must be taken where indicated.

Appendix A—Determination of A_1 and A_2

I. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these regulations are given in Table A–1. The curie values specified are obtained by extending the Terabecquerel (TBq) figure, after conversion to Curies, (Ci) to 3 significant figures. This ensures that the magnitude of A_1 and A_2 in Ci is always equal to that in TBq to a tenth of 1 percent.

II. For individual radionuclides whose identities are known, but which are not listed in Table A–1, the determination of the values of A_1 and A_2 shall require Commission approval, except that the values of A_1 and A_2 in Table A–2 may be used without obtaining Commission approval.

III. In the calculations of A_1 and A_2 for a radionuclide not in Table A–1, a single radioactive decay chain in which radionuclides are present in their naturally occurring proportions and in which no daughter nuclide has a half-life either longer than 10 days or longer than that of the parent nuclide shall be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than 10 days or greater than that of the parent nuclide, the parent and those daughter nuclides shall be considered as mixtures of different nuclides.

IV. For mixtures of radionuclides whose identities and respective activities are known, the following conditions shall apply:

(a) For special form radioactive material:

$$\sum_i \frac{B(i)}{A_1(i)} \quad \text{less than or equal to } 1$$

(b) For other forms of radioactive material

$$\sum_i \frac{B(i)}{A_2(i)} \quad \text{less than or equal to } 1$$

where B(i) is the activity of radionuclide i and $A_1(i)$ and $A_2(i)$ are the A_1 and A_2 values for radionuclide i, respectively.

Alternatively, an A_2 value for mixtures may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity of nuclide i in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide i.

V. When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph IV. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters or beta/gamma emitters, respectively.

TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{225}Ac	Actinium(89)	0.6	16.2	1×10^{-3}	0.270	5.8×10^{4}
^{227}Ac		40	1080	2×10^{-5}	5.41×10^{-4}	7.2×10^{1}
^{228}Ac		0.6	16.2	0.4	10.8	2.2×10^{6}
^{105}Ag	Silver(47)	2	54.1	2	54.1	3.1×10^{4}
^{108m}Ag		0.6	16.2	0.6.2	16.2	6.6×10^{2}
^{110m}Ag		0.4	10.8	0.4	10.8	4.7×10^{3}
^{111}Ag		0.6	16.2	0.5	13.5	1.6×10^{5}
^{26}Al	Aluminum(13)	0.4	10.8	0.4	10.8	1.9×10^{-2}
^{241}Am	Americium(95)	2	54.1	2×10^{-4}	5.4×10^{-3}	3.2
^{242m}Am		2	54.1	2×10^{-4}	5.41×10^{-3}	8.1×10^{5}
^{243}Am		2	54.1	2×10^{-4}	5.41×10^{-3}	1.8×10^{-1}
^{37}Ar	Argon(18)	40	1080	40	1080	1.0×10^{-5}
^{39}Ar		20	541	20	541	3.4×10^{1}
^{41}Ar		0.6	16.2	0.6	16.2	4.3×10^{7}
^{42}Ar		0.2	5.41	0.2	5.41	2.6×10^{3}
^{73}As	Arsenic(33)	0.2	5.41	0.2	5.41	1.7×10^{6}

TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{73}As		40	1080	40	1080	2.4×10^{4}
^{74}As		1	27.0	0.5	13.5	1.0×10^{6}
^{76}As		0.2	5.41	0.2	5.41	1.6×10^{6}
^{77}As		20	541	0.5	13.5	1.1×10^{6}
^{211}At	Astatine(85)	30	811	2	54.1	2.1×10^{6}
^{193}Au	Gold(79)	6	162	6	162	9.3×10^{5}
^{194}Au		1	27.0	1	27.0	4.1×10^{5}
^{195}Au		10	270	10	270	3.7×10^{5}
^{196}Au		2	54.1	2	54.1	1.2×10^{5}
^{198}Au		3	81.1	0.5	13.5	2.5×10^{5}
^{199}Au		10	270	0.9	24.3	2.1×10^{5}
^{131}Ba	Barium(56)	2	54.1	2	54.0	8.7×10^{4}
^{133m}Ba		10	270	0.9	24.3	6.1×10^{5}
^{133}Ba		3	81.1	3	81.1	4.0×10^{3}
^{140}Ba		0.4	10.8	0.4	10.8	7.3×10^{4}
^{7}Be	Beryllium(4)	20	541	20	540	3.5×10^{5}
^{10}Be		20	541	0.5	13.5	1.4×10^{-3}
^{205}Bi	Bismuth(83)	0.6	16.2	0.6	16.2	4.2×10^{4}
^{206}Bi		0.3	8.11	0.3	8.11	9.9×10^{4}
^{207}Bi		0.7	18.9	0.7	18.9	2.2×10^{5}
^{210m}Bi		0.3	8.11	3×10^{-3}	0.811	6.5×10^{-4}
^{210}Bi		0.6	16.2	0.5	13.5	1.2×10^{6}
^{212}Bi		0.3	8.11	0.3	8.11	1.5×10^{7}
^{247}Bk	Berkelium(97)	2	54.0	2×10^{-4}	5.41×10^{-3}	1.0
^{249}Bk		40	1080	8×10^{-2}	2.16	1.8×10^{3}
^{76}Br	Bromine(35)	0.3	8.11	0.3	8.11	2.6×10^{6}
^{77}Br		3	81.1	3	81.1	7.1×10^{5}
^{82}Br		0.4	108	0.4	10.8	1.1×10^{6}
^{11}C	Carbon(6)	1	270	0.5	13.5	8.4×10^{6}
^{14}C		40	1080	2	54.0	4.6
^{41}Ca	Calcium(20)	40	1080	40	1080	1.1×10^{-1}
^{45}Ca		40	1080	0.9	24.3	1.9×10^{4}
^{47}Ca		0.9	24.3	0.5	13.5	5.9×10^{5}
^{109}Cd	Cadmium(48)	40	1080	1	27.0	2.6×10^{3}
^{113m}Cd		20	540	9×10^{-3}	2.43	2.3×10^{3}
^{115m}Cd		0.3	8.11	0.3	8.11	2.6×10^{4}
^{115}Cd		4	108	0.5	13.5	5.1×10^{5}
^{139}Ce	Cerium(58)	6	162	6	162	6.5×10^{3}
^{141}Ce		10	270	0.5	13.5	2.8×10^{4}
^{143}Ce		0.6	16.2	0.5	13.5	6.6×10^{5}
^{144}Ce		0.2	5.41	0.2	5.41	3.2×10^{3}
^{248}Cf	Californium(98)	30	811	3×10^{-3}	8.11×10^{-3}	1.5×10^{3}
^{249}Cf		2	54.1	2×10^{-4}	5.41×10^{-3}	3.1
^{250}Cf		5	135	5×10^{-4}	1.35×10^{-2}	1.3×10^{2}
^{251}Cf		2	54.0	2×10^{-4}	5.41×10^{-3}	1.8
^{252}Cf		0.1	2.70	1×10^{-3}	2.70×10^{-2}	6.5×10^{2}
^{253}Cf		40	1080	6×10^{-3}	1.62	2.9×10^{4}
^{254}Cf		3×10^{-3}	8.11×10^{-2}	6×10^{-4}	1.62×10^{-2}	8.5×10^{3}
^{36}Cl	Chlorine(17)	20	541	0.5	13.5	3.2×10^{-2}
^{38}Cl		0.2	5.41	0.2	5.41	1.3×10^{5}
^{240}Cm	Curium(96)	40	1080	2×10^{-2}	0.541	2.0×10^{3}
^{241}Cm		2	54.1	0.9	24.3	1.5×10^{4}
^{243}Cm		40	1080	1×10^{-2}	0.270	3.3×10^{3}
^{243}Cm		3	81.1	3×10^{-4}	8.11×10^{-3}	4.2×10^{1}
^{244}Cm		4	1080	4×10^{-4}	1.08×10^{-2}	8.2×10^{5}
^{245}Cm		2	54.1	2×10^{-4}	5.41×10^{-3}	1.0×10^{-1}
^{246}Cm		2	54.1	2×10^{-4}	5.41×10^{-3}	3.1×10^{-1}
^{247}Cm		2	54.1	2×10^{-4}	5.41×10^{-3}	9.1×10^{-6}
^{248}Cm		4×10^{-3}	1.08	5×10^{-5}	1.35×10^{-3}	3.1×10^{-3}
^{55}Co	Cobalt(27)	0.5	13.5	0.5	13.5	3.1×10^{6}
^{56}Co		0.3	8.11	0.3	8.11	3.0×10^{4}
^{57}Co		8	216	8	216	8.5×10^{3}
^{58m}Co		40	1080	40	1080	5.9×10^{5}
^{58}Co		1	27.0	1	27.0	3.1×10^{4}
^{60}Co		0.4	10.8	0.4	10.8	1.1×10^{3}
^{51}Cr	Chromium(24)	30	811	30	811	9.2×10^{4}
^{129}Cs	Cesium(55)	4	108	4	108	7.6×10^{5}
^{131}Cs		40	1080	40	1080	1.0×10^{5}
^{132}Ce		1	27.0	1	27.0	1.5×10^{5}

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TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{134m}Cs		40	1080	9	243	7.4×10^{6}
^{134}Cs		0.6	16.2	0.5	13.5	1.2×10^{3}
^{135}Cs		40	1080	0.9	24.3	8.8×10^{-4}
^{136}Cs		0.5	13.5	0.5	13.5	7.4×10^{4}
^{137}Cs		2	54.0	0.5	13.5	8.7×10^{1}
^{64}Cu	Copper(29)	5	135	0.9	24.3	3.8×10^{5}
^{67}Cu		9	243	0.9	24.3	7.9×10^{5}
^{159}Dy	Dysprosium(66)	20	541	20	541	5.7×10^{3}
^{165}Dy		0.6	16.2	0.5	13.5	8.2×10^{6}
^{166}Dy		0.3	8.11	0.3	8.11	2.3×10^{6}
^{169}Er	Erbium(68)	40	1080	0.9	24.3	8.2×10^{4}
^{171}Er		0.6	16.2	0.5	13.5	2.4×10^{5}
^{147}Eu	Europium(63)	2	54.1	2	54.0	4.1×10^{4}
^{148}Eu		0.5	13.5	0.5	13.5	6.1×10^{4}
^{149}Eu		20	541	20	540	8.3×10^{3}
^{150}Eu		0.7	18.9	0.7	18.9	1.7×10^{6}
^{152m}Eu		0.6	16.2	0.5	13.5	2.2×10^{6}
^{152}Eu		0.9	24.3	0.9	24.3	1.9×10^{3}
^{154}Eu		0.8	21.6	0.5	13.5	1.5×10^{3}
^{155}Eu		20	541	2	54.1	1.4×10^{3}
^{156}Eu		0.6	16.2	0.5	13.5	5.4×10^{4}
^{18}F	Fluorine(9)	1	27.0	0.5	13.5	9.3×10^{7}
^{52}Fe	Iron(26)	0.2	5.40	0.2	5.40	7.3×10^{6}
^{55}Fe		40	1080	40	1080	2.2×10^{3}
^{59}Fe		0.8	21.6	0.8	21.6	4.9×10^{4}
^{60}Fe		40	1080	0.2	5.41	2.0×10^{-2}
^{67}Ga	Gallium(31)	6	162	6	162	6.0×10^{5}
^{68}Ga		0.3	8.11	0.3	8.11	4.0×10^{7}
^{72}Ga		0.4	10.8	0.4	10.8	3.1×10^{6}
^{146}Gd	Gadolinium(64)	0.4	10.8	0.4	10.8	1.8×10^{4}
^{148}Gd		3	81.1	3×10^{-4}	8.11×10^{-3}	2.9×10^{1}
^{153}Gd		10	270	5	135	3.6×10^{3}
^{159}Gd		4	108	0.5	13.5	1.1×10^{4}
^{68}Ge	Germanium(32)	0.3	8.11	0.3	8.11	7.0×10^{3}
^{71}Ge		40	1080	40	1080	1.6×10^{5}
^{77}Ge		0.3	8.11	0.3	8.11	3.6×10^{6}
^{3}H	Hydrogen(1)		See T-Tritium			
^{172}Hf	Hafnium(72)	0.5	13.5	0.3	8.11	4.2×10^{2}
^{175}Hf		3	81.1	3	81.1	1.1×10^{4}
^{181}Hf		2	54.1	0.9	24.3	1.6×10^{4}
^{182}Hf		4	108	3×10^{-3}	0.811	2.2×10^{-4}
^{194}Hg	Mercury(80)	1	27.0	1	27.0	9.7×10^{2}
^{195m}Hg		5	135	5	135	4.0×10^{5}
^{197m}Hg		10	270	0.9	24.3	6.6×10^{5}
^{197}Hg		10	270	10	270	2.5×10^{5}
^{203}Hg		4	108	0.9	24.3	1.4×10^{4}
^{163}Ho	Holmium(67)	40	1080	40	1080	2.2
^{166m}Ho		0.6	16.2	0.3	8.11	1.8
^{166}Ho		0.3	8.11	0.3	8.11	6.9×10^{5}
^{123}I	Iodine(53)	6	162	6	162	1.9×10^{6}
^{124}I		0.9	24.3	0.9	24.3	2.5×10^{5}
^{125}I		20	541	2	54.1	1.7×10^{4}
^{126}I		2	54.1	0.9	24.3	7.8×10^{4}
^{129}I		Unlimited	Unlimited	Unlimited	Unlimited	1.6×10^{-4}
^{131}I		3	81.1	0.5	13.5	1.2×10^{5}
^{132}I		0.4	10.8	0.4	10.8	1.1×10^{7}
^{133}I		0.6	16.2	0.5	13.5	1.1×10^{6}
^{134}I		0.3	8.11	0.3	8.11	2.7×10^{7}
^{135}I		0.6	16.2	0.5	13.5	3.5×10^{6}
^{111}In	Indium(49)	2	54.1	2	54.1	4.2×10^{5}
^{113m}In		4	108	4	108	1.6×10^{7}
^{114m}In		0.3	8.11	0.3	8.11	2.3×10^{4}
^{115m}In		6	162	0.9	24.3	6.1×10^{6}
^{189}Ir	Iridium(77)	10	270	10	270	5.2×10^{4}
^{190}Ir		0.7	18.9	0.7	18.9	6.2×10^{4}
^{192}Ir		1	27.0	0.5	13.5	9.1×10^{3}
^{193m}Ir		10	270	10	270	5.7×10^{4}
^{194}Ir		0.2	5.41	0.2	5.41	8.5×10^{5}
^{42}K	Potassium(19)	0.2	5.41	0.2	5.41	6.0×10^{6}

TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{43}K		1.0	27.0	0.5	13.5	3.3×10^{5}
^{81}Kr	Krypton(36)	40	1080	40	1080	2.1×10^{-2}
^{85}Kr		6	162	6	162	8.4×10^{2}
^{85}Kr		20	541	10	270	4.0×10^{3}
^{87}Kr		0.2	5.41	0.2	5.41	2.8×10^{7}
^{137}La	Lanthanum(57)	40	1080	2	54.1	4.4×10^{-2}
^{140}La		0.4	10.8	0.4	10.8	5.6×10^{5}
LSA	Low Specific Activity Material Definition (See § 71.4).					
^{172}Lu	Lutetium(71)	0.5	13.5	0.5	13.5	4.6×10^{3}
^{173}Lu		8	216	8	216	1.5×10^{3}
^{174m}Lu		20	541	8	216	5.4×10^{3}
^{174}Lu		8	216	4	108	5.7×10^{3}
^{177}Lu		30	811	0.9	24.3	1.1×10^{5}
MFP	Mixed Fission Products (use formula for mixture or Table A–2).					
^{28}Mg	Magnesium(12)	0.2	5.41	0.2	5.41	5.2×10^{6}
^{52}Mn	Manganese(25)	0.3	8.11	0.3	8.11	4.4×10^{5}
^{53}Mn		Unlimited	Unlimited	Unlimited	Unlimited	3.6×10^{-3}
^{54}Mn		1	270	1	27.0	8.3×10^{3}
^{56}Mn		0.2	5.41	0.2	5.41	2.2×10^{7}
^{93}Mo	Molybdenum(42)	40	1080	7	189	38
^{99}Mo		0.6	16.2	0.5	13.5	4.7×10^{5}
^{13}N	Nitrogen(7)	0.6	16.2	0.5	13.5	1.5×10^{9}
^{22}Na	Sodium(11)	0.5	13.5	0.5	13.5	6.3×10^{3}
^{24}Na		0.2	5.41	0.2	5.41	8.7×10^{6}
^{92m}Nb	Niobium(41)	0.7	18.9	0.7	18.9	1.4×10^{6}
^{93m}Nb		40	1080	6	162	1.1×10^{3}
^{94}Nb		0.6	16.2	0.6	16.2	1.9×10^{-1}
^{95}Nb		1	27.0	1	27.0	3.9×10^{4}
^{97}Nb		0.6	16.2	0.5	13.5	2.6×10^{7}
^{147}Nd	Neodymium(60)	4	108	0.5	13.5	8.0×10^{4}
^{149}Nd		0.6	16.2	0.5	13.5	1.1×10^{7}
^{59}Ni	Nickel(28)	40	1080	40	1080	8.11×10^{-2}
^{63}Ni		40	1080	30	811	4.6×10^{1}
^{65}Ni		0.3	8.11	0.3	8.11	1.9×10^{7}
^{235}Np	Neptunium(93)	40	1080	40	1080	1.4×10^{3}
^{236}Np		7	189	1×10^{-3}	2.70×10^{-2}	6.0×10^{5}
^{237}Np		2	54.1	0.5	13.5	6.9×10^{-4}
^{239}Np		6	162	0.5	13.5	2.3×10^{5}
^{185}Os	Osmium(76)	1	27.0	1	27.0	7.3×10^{-2}
^{191m}Os		40	1080	40	1080	1.2×10^{6}
^{191}Os		10	270	0.9	24.3	4.6×10^{4}
^{193}Os		0.6	16.2	0.5	13.5	5.3×10^{5}
^{194}Os		0.2	5.41	0.2	5.41	1.1×10^{3}
^{32}P	Phosphorus(15)	0.3	8.11	0.3	8.11	2.9×10^{5}
^{33}P		40	1080	0.9	24.3	1.6×10^{5}
^{230}Pa	Protactinium(91)	2	54.1	0.1	2.70	3.2×10^{4}
^{231}Pa		0.6	16.2	6×10^{-6}	1.62×10^{-3}	4.5×10^{-2}
^{233}Pa		5	135	0.9	24.3	2.1×10^{4}
^{201}Pb	Lead(82)	1	27.0	1	27.0	1.7×10^{6}
^{202}Pb		40	1080	2	54.1	5.9×20^{-3}
^{203}Pb		3	81.1	3	81.1	3.0×10^{5}
^{205}Pb		Unlimited	Unlimited	Unlimited	Unlimited	5.8×10^{-5}
^{210}Pb		0.6	16.2	9×10^{-3}	0.243	8.8×10^{1}
^{212}Pb		0.3	8.11	0.3	8.11	1.4×10^{6}
^{103}Pd	Palladium(46)	40	1080	40	1080	7.5×10^{4}
^{107}Pd		Unlimited	Unlimited	Unlimited	Unlimited	4.8×10^{-4}
^{109}Pd		0.6	16.2	0.5	13.5	2.1×10^{-4}
^{143}Pm	Promethium(61)	3	81.1	3	81.1	3.4×10^{3}
^{144}Pm		0.6	16.2	0.6	16.2	2.6×10^{3}
^{145}Pm		30	811	7	189	1.4×10^{2}
^{147}Pm		40	1080	0.9	24.3	9.4×10^{2}
^{148m}Pm		0.5	13.5	0.5	13.5	2.1×10^{4}
^{149}Pm		0.6	81.1	0.5	13.5	7.5×10^{5}
^{151}Pm		3	16.2	0.5	13.5	4.2×10^{5}
^{208}Po	Polonium(84)[3]	40	1080	2×10^{-3}	0.541	5.9×10^{2}

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TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{209}Po		40	1080	2×10^{-2}	0.541	1.7×10^{1}
^{210}Po		40	1080	2×10^{-2}	0.541	5.41×10^{3}
^{142}Pr	Praseodymium(59)	0.2	5.41	0.2	5.41	1.2×10^{4}
^{143}Pr		4	108	0.5	13.5	6.6×10^{4}
^{188}Pt	Platinum(78)	0.6	16.2	0.6	16.2	6.8×10^{4}
^{191}Pt		3	81.1	3	81.1	2.3×10^{5}
^{193m}Pt		40	1080	9	243	2.0×10^{5}
^{193}Pt		40	1080	40	1080	3.7
^{195m}Pt		10	270	2	54.1	1.6×10^{5}
^{197m}Pt		10	270	0.9	24.3	1.2×10^{7}
^{197}Pt		20	541	0.5	13.5	8.8×10^{5}
^{236}Pu	Plutonium(94)	7	189	7×10^{-4}	1.89×10^{-2}	5.3×10^{3}
^{237}Pu		20	541	20	541	1.2×10^{4}
^{238}Pu		2	54.1	2×10^{-4}	5.41×10^{-3}	1.7×10^{1}
^{239}Pu		2	54.1	2×10^{-4}	5.41×10^{-3}	6.2×10^{-2}
^{240}Pu		2	54.1	2×10^{-4}	5.41×10^{-3}	2.3×10^{-1}
^{241}Pu		40	1080	1×10^{-2}	0.270	1.1×10^{3}
^{243}Pu		2	54.1	2×10^{-4}	$5.41-10^{-3}$	3.9×10^{-3}
^{244}Pu		0.3	8.11	2×10^{-4}	5.41×10^{-3}	1.9×10^{-3}
^{223}Ra	Radium(88)	0.6	16.2	3×10^{-2}	0.811	5.0×10^{4}
^{224}Ra		0.3	8.11	6×10^{-2}	1.62	1.6×10^{5}
^{225}Ra		0.6	16.2	2×10^{-2}	0.541	3.9×10^{-4}
^{226}Ra		0.3	8.11	2×10^{-2}	0.541	1.0
^{228}Ra		0.6	16.2	4×10^{-2}	1.08	2.3×10^{3}
^{81}Rb	Rubidium(37)	2	54.1	0.9	24.3	8.2×10^{-6}
^{83}Rb		2	54.1	2	54.1	1.9×10^{4}
^{84}Rb		1	27.0	0.9	24.3	4.7×10^{4}
^{86}Rb		0.3	8.11	0.3	8.11	8.11×10^{4}
^{87}Rb		Unlimited	Unlimited		Unlimited	6.6×10^{-9}
Rb (natural)		Unlimited	Unlimited		Unlimited	1.8×10^{-8}
^{183}Re	Rhenium(75)	5	135	5	135	1.0×10^{5}
^{184m}Re		3	81.1	3	81.1	4.2×10^{3}
^{184}Re		1	27.0	1	27.0	1.9×10^{4}
^{186}Re		4	108	0.5	13.5	1.9×10^{5}
^{187}Re		Unlimited	Unlimited		Unlimited	3.8×10^{-8}
^{188}Re		0.2	5.41	0.2	5.41	1.0×10^{5}
^{189}Re		4	108	0.5	13.5	4.9×10^{5}
Re (natural)		Unlimited	Unlimited		Unlimited	2.4×10^{-8}
^{99}Rh	Rhodium(45)	2	54.1	2	54.1	6.7×10^{4}
^{101}Rh		4	108	4	108	1.2×10^{3}
^{101m}Rh		2	54.1	0.9	24.3	1.2×10^{3}
^{102}Rh		0.5	13.5	0.5	13.5	5.2
^{102m}Rh		40	1080	40	1080	3.2×10^{7}
^{105}Rh		10	270	0.9	24.3	8.2×10^{5}
^{222}Rn	Radon(86)	0.2	5.41	4×10^{-9}	0.108	1.5×10^{5}
^{97}Ru	Ruthenium(44)	4	108	4	108	5.5×10^{5}
^{103}Ru		2	54.1	0.9	24.3	3.2×10^{4}
^{105}Ru		0.6	16.2	0.5	13.5	6.6×10^{5}
^{106}Ru		0.2	5.41	0.2	5.41	3.4×10^{3}
^{35}S	Sulfur(16)	40	1080	2	54.1	4.3×10^{4}
^{122}Sb	Antimony(51)	0.3	8.11	0.3	8.11	3.9×10^{5}
^{124}Sb		0.6	16.2	0.5	13.5	1.8×10^{4}
^{125}Sb		2	54.1	0.9	24.3	1.4×10^{3}
^{126}Sb		0.4	10.8	0.4	10.8	8.3×10^{4}
^{44}Sc	Scandium(21)	0.5	13.5	0.5	13.5	1.8×10^{7}
^{46}Sc		0.5	13.5	0.5	13.5	3.4×10^{4}
^{47}Sc		9	243	0.9	24.3	8.2×10^{5}
^{48}Sc		0.3	8.11	0.3	8.11	1.5×10^{6}
SCO	Surface Contaminated Object Definition (See § 71.4).					
^{75}Se	Selenium(34)	3	81.1	3	81.1	1.4×10^{4}
^{79}Se		40	1080	2	54.1	7.0×10^{-2}
^{31}Si	Silicon(14)	0.6	16.2	0.5	13.5	3.9×10^{7}
^{32}Si			1080	0.2	5.41	1.7×10^{1}
^{145}Sm	Samarium(62)	20	541	20	541	2.6×10^{3}
^{147}Sm	Unlimited	Unlimited	Unlimited		Unlimited	2.0×10^{-9}
^{151}Sm		40	1080	4	108	2.6×10^{1}
^{153}Sm		4	108	0.5	13.5	4.4×10^{3}

TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{113}Sn	Tin(50)	4	108	4	108	1.0×10^{4}
^{117m}Sn		6	162	2	54.1	8.0×10^{4}
^{119m}Sn		40	1080	40	1080	4.4×10^{3}
^{121m}Sn		40	1080	0.9	24.3	3.9×10^{1}
^{123}Sn		0.6	16.2	0.5	13.5	8.5×10^{3}
^{125}Sn		0.2	5.41	0.2	5.41	1.1×10^{5}
^{126}Sn		0.3	8.11	0.3	8.11	2.8×10^{-2}
^{82}Sr	Strontium(38)	0.2	5.41	0.2	5.41	6.4×10^{4}
^{85m}Sr		5	135	5	135	3.2×10^{7}
^{85}Sr		2	54.1	2	54.1	2.4×10^{6}
^{87m}Sr		3	81.1	3	81.1	1.2×10^{7}
^{89}Sr		0.6	16.2	0.5	13.5	2.9×10^{4}
^{90}Sr		0.2	5.41	0.1	2.70	1.5×10^{3}
^{91}Sr		0.3	8.11	0.3	8.11	3.6×10^{6}
^{92}Sr		0.2	5.41	0.2	5.41	1.3×10^{7}
T	Tritium(1)	40	1080	[1] 40	[1] 1080	9.7×10^{3}
^{178}Ta	Tantalum(73)	1	27.0	1	27.0	1.1×10^{6}
^{179}Ta		30	811	30	811	1.2×10^{3}
^{183}Ta		0.8	21.6	0.5	13.5	6.2×10^{3}
^{157}Tb	Terbium(65)	40	1080	10.8	270	1.5×10^{1}
^{158}Tb		1	27.0	0.7	18.9	1.9
^{160}Tb		0.9	24.3	0.5	13.5	1.1×10^{4}
^{95m}Tc	Technetium(43)	2	54.1	2	54.1	2.2×10^{4}
^{96m}Tc		0.4	10.8	0.4	10.8	3.8×10^{7}
^{96}Tc		0.4	10.8	0.4	10.8	3.2×10^{5}
^{97m}Tc		40	1080	40	1080	1.5×10^{4}
^{97}Tc		Unlimited	Unlimited		Unlimited	1.4×10^{-3}
^{98}Tc		0.7	18.9	07	18.9	2.4×10^{-3}
^{99m}Tc		8	216	8	216	5.2×10^{6}
^{99}Tc		40	1080	0.9	24.3	1.7×10^{-3}
^{116}Te	Tellurium(52)	0.2	5.41	0.2	5.41	1.8×10^{5}
^{121m}Te		5	135	5	135	7.0×10^{3}
^{121}Te		2	54.1	2	54.1	6.3×10^{4}
^{123m}Te		7	189	7	189	9.1×10^{3}
^{125m}Te		30	811	9	243	1.8×10^{4}
^{127m}Te		20	541	0.5	13.5	4.0×10^{4}
^{127}Te		20	541	0.5	13.5	2.6×10^{6}
^{129m}Te		0.6	16.2	0.5	13.5	2.5×10^{4}
^{129}Te		0.6	16.2	0.5	13.5	2.0×10^{7}
^{131m}Te		0.7	18.9	0.5	13.5	8.0×10^{5}
^{132}Te		0.4	10.8	0.4	10.8	3.1×10^{5}
^{227}Th	Thorium(90)	9	243	1×10^{-3}	0.270	3.2×10^{4}
^{228}Th		0.3	8.11	4×10^{-4}	1.08×10^{-2}	8.3×10^{2}
^{229}Th		0.3	8.11	3×10^{-5}	8.11×10^{-4}	2.1×10^{-1}
^{230}Th		2	54.1	2×10^{-4}	5.41×10^{-3}	1.9×10^{-2}
^{231}Th		40	1080	0.9	24.3	5.3×10^{3}
^{232}Th		Unlimited	Unlimited		Unlimited	1.1×10^{-7}
^{234}Th		0.2	5.41	0.2	5.41	2.3×10^{4}
Th (natural)		Unlimited	Unlimited		Unlimited	2.2×10^{-7}
^{44}Ti	Titanium(22)	0.5	13.5	0.2	5.41	1.7×10^{3}
^{200}Tl	Thallium(81.1)	0.8	21.6	0.8	21.6	5.8×10^{5}
^{201}Tl		10.8	270	10.8	270	2.2×10^{5}
^{202}Tl		2	54.1	2	54.1	5.41×10^{4}
^{204}Tl		4	108	0.5	13.5	4.3×10^{2}
^{167}Tm	Thulium(69)	7	189	7	189	8.11×10^{4}
^{168}Tm		0.8	21.6	0.8	21.6	9.1×10^{5}
^{170}Tm		4	108	0.5	13.5	6.0×10^{3}
^{171}Tm		40	1080	10.8	270	1.1×10^{3}
^{230}U	Uranium(92)	40	1080	1×10^{-2}	0.270	2.7×10^{4}
^{232}U		3	81.1	3×10^{-4}	8.11×10^{-3}	2.1×10^{1}
^{233}U		10.8	270	1×10^{-3}	2.70×10^{-3}	9.5×10^{-3}
^{234}U		10.8	270	1×10^{-3}	2.70×10^{-3}	6.2×10^{-3}
^{235}U	Unlimited		Unlimited		Unlimited	2.1×10^{-8}
^{236}U		10.8	270	1×10^{-3}	2.70×10^{-3}	6.3×10^{-3}
^{238}U	Unlimited		Unlimited	Unlimited	Unlimited	3.3×10^{-7}
U (natural)	Unlimited		Unlimited	Unlimited	Unlimited	7.1×10^{-7}
U (enriched 5% or less)	Unlimited	Unlimited	Unlimited	Unlimited	(see Table A–3).	

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TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
U (enriched more than 5%).		10.8	270	1×10^{-3}	2.70×10^{-2}	(see Table A–3)
U (depleted)	Unlimited		Unlimited		Unlimited	(see Table A–3)
^{48}V	Vanadium(23)	0.3	8.11	0.3	8.11	1.7×10^{5}
^{49}V		40	1080	40	1080	8.11×10^{3}
^{178}W	Tungsten(74)	1	27.0	1	27.0	3.4×10^{4}
^{181}W		30	811	30	811	5.0×10^{3}
^{185}W		40	1080	0.9	24.3	9.7×10^{-3}
^{187}W		2	54.1	0.5	13.5	7.0×10^{-5}
^{188}W		0.2	5.41	0.2	5.41	1.0×10^{4}
^{123}Xe	Xenon(54)	0.2	5.41	0.2	5.41	1.3×10^{6}
^{133}Xe		0.2	5.41	0.2	5.41	1.2×10^{7}
^{127}Xe		4	108	4	108	2.8×10^{4}
^{131m}Xe		40	1080	40	1080	1.0×10^{5}
^{133}Xe		20	541	20	541	1.9×10^{5}
^{135}Xe		4	108	4	108	2.5×10^{5}
^{87}Y	Yttrium(39)	2	54.1	2	54.1	4.5×10^{3}
^{88}Y		0.4	10.8	0.4	10.8	1.4×10^{4}
^{90}Y		0.2	5.41	0.2	5.41	2.5×10^{5}
^{91m}Y		2	54.1	2	54.1	4.1×10^{7}
^{91}Y		0.3	8.11	0.3	8.11	2.5×10^{4}
^{92}Y		0.2	5.41	0.2	5.41	9.5×10^{5}
^{93}Y		0.2	5.41	0.2	5.41	3.2×10^{6}
^{169}Yb	Ytterbium(70)	3	81.1	3	81.1	2.3×10^{5}
^{175}Yb		30	811	0.9	24.3	1.8×10^{5}
^{65}Zn	Zinc(30)	2	54.1	2	54.1	8.0×10^{3}
^{69m}Zn		2	54.1	0.5	13.5	3.3×10^{6}
^{69}Zn		4	108	0.5	13.5	5.3×10^{7}
^{88}Zr	Zirconium(40)	3	81.1	3	81.1	1.7×10^{4}
^{93}Zr		40	1080	0.2	5.41	3.5×10^{-3}
^{95}Zr		1	27.0	0.9	24.3	2.1×10^{4}
^{97}Zr		0.3	8.11	0.3	8.11	2.0×10^{6}

[1] Also, for liquids only, a concentration limit of not greater than 27.0 Ci/λ (1 TBq/λ).

TABLE A–2—GENERAL VALUES FOR A_1 AND A_2

Contents	A_1		A_2	
	(TBq)	(Ci)	(TBq)	(Ci)
Only beta or gamma emitting nuclides are known to be present	0.2	5	0.02	0.5
Alpha emitting nuclides are known to be present or no relevant data are available.	0.10	2.70	2×10^{-5}	5.41×10^{-4}

TABLE A–3—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM/THORIUM

Thorium and Uranium Enrichment* wt % ^{235}U present	Specific Activity	
	Ci/g	g/Ci
0.45	5.0×10^{-7}	2.0×10^{6}
0.72	7.06×10^{-7}	1.42×10^{6}
1.0	7.6×10^{-7}	1.3×10^{6}
1.5	1.0×10^{-6}	1.0×10^{6}
5.0	2.7×10^{-6}	3.7×10^{5}
10.0	4.8×10^{-6}	2.1×10^{5}
20.0	1.0×10^{-5}	1.0×10^{5}
35.0	2.0×10^{-5}	5.0×10^{4}
50.0	2.5×10^{-5}	4.0×10^{4}
90.0	5.8×10^{-5}	1.7×10^{4}
93.0	7.0×10^{-5}	1.4×10^{4}
95.0	9.1×10^{-5}	1.1×10^{4}

TABLE A–3—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM/THORIUM—Continued

Thorium and Uranium Enrichment* wt % ^{235}U present	Specific Activity	
	Ci/g	g/Ci
Natural Thorium	2.2×10^{-7}	4.6×10^{6}

*The figures for uranium include representative values for the activity of the uranium-234 which is concentrated during the enrichment process. The activity for Thorium includes the equilibrium concentration of Thorium-228.

Dated at Rockville, MD, this 23rd day of May 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

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Antitrust Division

Antitrust Guidelines for International Operations; Notice

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DEPARTMENT OF JUSTICE

Antitrust Division

Antitrust Guidelines for International Operations

The Antitrust Division of the United States Department of Justice has drafted new Antitrust Guidelines for International Operations. The Guidelines are intended to advise the business community, the legal profession, and interested members of the public of the general legal and economic analysis undertaken by the Department in making prosecutorial decisions under the antitrust laws regarding international business conduct. The Department will apply the general analysis reflected in the Guidelines reasonably and flexibly to particular facts and circumstances. The Guidelines should not be understood to affect any other considerations relevant to the exercise of prosecutorial discretion by the Department of Justice.

The Guidelines are not intended to create or recognize any legally enforceable right in any person. They are not intended to affect the admissibility of evidence or in any other way necessarily to affect the course or conduct of litigation. Moreover, changes in the relevant statutory framework, legal precedent, and methods of internal Department analysis may occur over time. Because these changes will not always be simultaneously reflected in amendments to the Guidelines, the positions stated in the Guidelines should not be regarded as affecting any future action which may be appropriate under the antitrust laws. Parties seeking to know the Department's specific enforcement intentions with respect to any particular transaction should consider seeking a Business Review pursuant to 28 CFR 50.6.

The draft Guidelines are not subject to the notice and comment or the other requirements of the Administrative Procedure Act, but the Department welcomes the views of the business and legal communities and of the general public on all matters which are or might appropriately and beneficially be addressed in the Guidelines. Views should be submitted in writing by August 8, 1988, to Deborah A. Garza, Chief of Staff and Counselor to the Assistant Attorney General, Antitrust Division, Room 3114, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530, (202) 633–2452.

ANTITRUST GUIDELINES FOR INTERNATIONAL OPERATIONS

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Part I. Introduction

The U.S. antitrust laws represent the legal embodiment of our nation's commitment to a free market economy. The competitive process of the free market ensures the most efficient allocation of resources and the maximization of consumer welfare. Similarly, international markets unimpeded by private and governmentally imposed barriers to trade ensure the production of goods based on the comparative advantages of all producers.

The Department of Justice (the "Department") focuses its antitrust enforcement efforts on anticompetitive conduct that effects U.S. consumer welfare. To be effective, of course, U.S. antitrust enforcement must reach some conduct that occurs outside the United States and that involves foreign actors. For example, an international cartel of private producers cannot impose higher prices on U.S. consumers with impunity simply by holding its cartel meetings outside the United States. On the other hand, U.S. antitrust enforcement does not reach conduct that has only a remote effect on U.S. consumer welfare. To justify the exercise of the Department's enforcement authority, conduct must have a direct, substantial, and reasonably foreseeable anticompetitive effect on U.S. commerce. In addition, in some cases, considerations of international comity may require the Department to consider the significant interests of other nations that may also have jurisdiction over transnational conduct in determining whether to challenge that conduct.

These Guidelines are intended to provide practical guidance concerning the Department's internal antitrust enforcement policies and procedures as they apply in a variety of international contexts. The remainder of Part I of these Guidelines describes the most relevant applicable antitrust laws enforced by the Department; the legal and economic analysis the Department employs in assessing certain types of business conduct under those laws for enforcement purposes; the jurisdictional rules that govern the Department's enforcement policy; considerations of international comity that may affect the Department's discretion in asserting jurisdiction in a particular case; circumstances under which the existence of foreign sovereign compulsion may lead the Department not to prosecute anticompetitive conduct; and the analysis the Department employs in assessing certain antitrust issues that may arise in the context of international "trade frictions" or disputes under the U.S. trade laws. Part II of these Guidelines consists of seventeen hypothetical cases that illustrate the enforcement policies described in Part I.

These Guidelines are intended only to provide general guidance as to how the Department analyzes certain commonly occurring issues affecting its own enforcement decisions. Several important caveats therefore apply to use of the Guidelines. First, these Guidelines should not be taken as expressing any view regarding the applicability of the laws of other nations.[1] American businesses engaged in or contemplating transactions with foreign partners or activities abroad should consider the applicability of foreign laws relating to business activities affecting commerce in those nations. Second, these Guidelines are not intended to substitute for the advice of experienced private antitrust counsel or for formal guidance under the Department's Business Review procedure.[2] Third, although the Department believes that the analysis stated in these Guidelines is economically and legally correct and consistent with the trend in the courts, these Guidelines are not intended to be a restatement of the law. In addition, readers should also separately evaluate the risk of private litigation by competitors, consumers, and suppliers, as well as the risk of enforcement by state prosecutors under state and federal antitrust laws.

A. Applicable Antitrust Laws Enforced by the Department

The following is a brief summary of antitrust laws enforced by the Department that are likely to have the greatest significance in planning international business transactions.[3]

1. Sherman Act

Section 1 of the Sherman Act sets forth the basic antitrust prohibition against contracts, combinations, or conspiracies "in restraint of trade or commerce among the several States, or with foreign nations."[4] Section 2 of the Sherman Act prohibits monopolization, attempts to monopolize, and conspiracies to monopolize "any part of trade or commerce among the several States, or with foreign nations."[5] Section 6a defines the jurisdictional reach of the Sherman Act with respect to non-import foreign commerce.[6]

Violations of the Sherman Act may be prosecuted as civil or criminal violations, depending on the circumstances.[7] Criminal violations of the Sherman Act are punishable by fines and imprisonment. The Sherman Act provides that corporate defendants may be fined up to $1 million and individual defendants may be fined up to $100,000 and sentenced to up to three years of imprisonment. Under the Criminal Fine Enforcement Act of 1984[8] and the Sentencing Reform Act of 1984,[9] however, for felony violations continuing or committed after December 31, 1984, a corporate defendant may be fined up to $1 million, twice the gross pecuniary loss by victims, or twice the corporation's gross pecuniary gain from the violation, whichever is greatest. An individual defendant may be fined up to $250,000, twice the gross pecuniary loss by victims, or twice the defendant's gross pecuniary gain from the violation, whichever is greatest.[10] For antitrust felony violations committed or continuing on or after November 1, 1987, the U.S. Sentencing Commission's Sentencing Guidelines[11] require convicted corporate defendants to be fined a minimum of $100,000 and require convicted individuals to be fined a minimum of $20,000. The Sentencing Guidelines also generally require individuals to serve a minimum of four months in jail (with probationary provisions).[12] In a civil proceeding, the Department may obtain injunctive relief[13] or actual damages for injury incurred by the U.S. government as the purchaser of goods or services as a result of a violation.[14]

2. Clayton Act

Section 7 of the Clayton Act expands on the general prohibitions of the Sherman Act by prohibiting any merger or acquisition "where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."[15] Section 15 of the Clayton Act empowers the Attorney General to seek a court injunction preventing consummation of a merger that would violate section 7.[16]

3. Hart-Scott-Rodino Act

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("H–S–R Act")[17] added section 7A to the Clayton Act to provide the Department and the FTC with several procedural devices to facilitate enforcement of the antitrust laws with respect to anticompetitive mergers and acquisitions. The H–S–R Act requires businesses to notify the Department and the FTC of proposed mergers or acquisitions that would exceed certain size-of-parties and size-of-transaction thresholds,[18] provide certain information relating to reportable transactions,[19] and wait for a prescribed period—15 days for cash tender offers and 30 days for all other transactions—before consummating the

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[1] The U.S. government is a party to voluntary guidelines that discourage participation by international business enterprises (including U.S. businesses) in anticompetitive trade practices. *See* Code of Conduct for Multinational Enterprises adopted by the Council of the Organization for Economic Cooperation and Development (June 1976). The United States is also committed to a program of cooperation with foreign competition authorities, including joint efforts to improve the enforcement efforts of each participating nation under its own law. *See, e.g.*, Revised Recommendation of the [OECD] Council Concerning Cooperation Between Member Countries in Restrictive Business Practices Affecting International Trade, OECD Document C (86) 44 (Final) (May 21, 1986); Agreement Relating to Bilateral Cooperation Regarding Restrictive Business Practices, June 23, 1976, United States-Federal Republic of Germany, 27 UST 1956, TIAS No. 8291, *reprinted in* [1969–1983 Transfer Binder] Trade Reg. Rep. ¶ 50,263; Agreement Relating to Cooperation on Antitrust Matters, June 29, 1982, United States-Australia, TIAS No. 10365, *reprinted in* [1969–1983 Transfer Binder] Trade Reg. Rep. 50,440; Memorandum of Understanding as to Notification, Consultation and Cooperation with Respect to the Application of National Antitrust Laws, Mar. 9, 1984, United States-Canada, *reprinted in* 5 Trade Reg. Rep. ¶ 50,464. In addition, the Justice Department has been and will continue to be engaged in efforts to achieve international liberalization of trade policies where legitimate public goals can be served through less restrictive measures.

[2] 28 CFR 50.6.

[3] The Federal Trade Commission ("FTC") may also proceed in a civil action under section 5 of the Federal Trade Commission Act ("FTC Act") (15 U.S.C. 41–57c) against conduct that violates the Sherman and Clayton Acts. The FTC also has exclusive authority to enforce the FTC Act's prohibition against "unfair methods of competition" and "unfair or deceptive acts or practices." 15 U.S.C. 45. In addition, historically, the FTC, rather than the Department, has enforced the Robinson-Patman Act, 15 U.S.C. 13–13c, 21. Only the Department, however, is authorized to prosecute criminal violations of the antitrust laws.

[4] 15 U.S.C. 1 (1982). The Wilson Tariff Act, 15 U.S.C. 8–11 (1982), which essentially parallels and is coextensive with section 1 of the Sherman Act, specifically prohibits conspiracies in restraint of U.S. import trade.

[5] 15 U.S.C. 2 (1982).

[6] 15 U.S.C. 7 (1982). *See* discussion at I.C.1., *infra*

[7] *See* discussion at I.B.1., *infra*, concerning when conduct that violates the Sherman Act will be subject to criminal prosecution by the Department.

[8] Pub. L. 98–596, 18 U.S.C. 3623 (repealed eff. Nov. 1, 1987, by the Comprehensive Crime Control Act of 1984, Pub. L. 98–473, section 235(a)(1)).

[9] Chapter II of the Comprehensive Crime Control Act of 1984, Pub. L. 98–473, as amended by the Criminal Fine Improvements Act of 1987, Pub. L. 100 185, section 6, 18 U.S.C. 3571.

[10] The Criminal Fine Enforcement Act governs crimes continuing or committed after December 31, 1984, but before November 1, 1987. (Although 18 U.S.C. 3623 was repealed by the Sentencing Reform Act as of November 1, 1987, it continues to govern fines for offenses continuing or committed between January 1, 1985 and October 31, 1987.) The Sentencing Reform Act governs crimes continuing or committed on or after November 1, 1987. The Criminal Fine Improvements Act, which amended 18 U.S.C. 3571 to include alternative fines of twice the gain or twice the loss, was approved on December 11, 1987.

[11] Sentencing Guidelines and Policy Statement, United States Sentencing Commission (April 13, 1987).

[12] *See* Sentencing Guidelines and Policy Statement, United States Sentencing Commission section 2R1.1 (April 13, 1987).

[13] 15 U.S.C. 4 (1982).

[14] 15 U.S.C. 15a (1982).

[15] 15 U.S.C. 7.

[16] 15 U.S.C. 25.

[17] 15 U.S.C. 18a.

[18] 15 U.S.C. 18a(a).

[19] 15 U.S.C. 18a (a), (d); 16 CFR 803.1 (1987).

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transaction.[20] The Department or the FTC may request additional information concerning a transaction and thereby extend the waiting period by 10 days beyond the receipt of the requested information for cash tender offers and 20 days beyond receipt of the requested information for all other transactions.[21]

The H–S–R Act and the FTC rules implementing the H–S–R Act exempt from the premerger notification requirements certain international transactions—typically those having little nexus to U.S. commerce—that otherwise meet the thresholds set forth in the Act.[22] Failure substantially to comply with the H–S–R Act is punishable by civil penalties of up to $10,000 for each day a violation continues.[23] Injunctive relief may also be obtained to remedy a failure to comply with the H–S–R Act.[24] Businesses may seek an interpretation of their obligations under the H–S–R Act from the FTC pursuant to regulations set forth at 16 CFR 803.30 (1987).

4. National Cooperative Research Act of 1984

The National Cooperative Research Act of 1984 ("NCRA")[25] clarifies substantive application of the U.S. antitrust laws to joint research and development ("R&D") activities. The NCRA requires U.S. courts to judge the competitive effects of joint R&D in properly defined, relevant technology markets under a rule-of-reason standard that balances the procompetitive benefits of joint R&D against any potential anticompetitive effects.[26] The NCRA also limits the monetary relief that may be obtained in civil suits against participants in joint R&D to actual, rather than treble, damages where the challenged conduct is within the scope of notification filed by the joint R&D venture with the Attorney General and the FTC.[27]

[20] 15 U.S.C. 18a(b).

[21] 15 U.S.C. 18a(e).

[22] 16 CFR 801.1(e), 801.1(k), 802.50–802.52. Case 4 illustrates when a merger between two foreign firms engaged in commerce in the United States would be subject to the premerger notification requirements of the H–S–R Act. With respect to transactions to which the H–S–R Act premerger notification requirements do not apply, the Department may request parties voluntarily to provide information concerning the transaction, or may issue Civil Investigative Demands ("CIDs").

[23] 15 U.S.C. 18a(g)(1).

[24] 15 U.S.C. 18a(g)(2).

[25] 15 U.S.C. 4301–4305.

[26] 15 U.S.C. 4302.

[27] 15 U.S.C. 4303(a).

5. Webb-Pomerene Act

The Webb-Pomerene Act [28] provides an antitrust exemption for the formation and operation of associations of otherwise competing businesses to engage in collective export sales. The exemption applies only to the export of "goods, wares, or merchandise." [29] It does not apply to conduct that would have an anticompetitive effect in the United States or that injures domestic competitors of members of an export association.[30] Associations seeking an exemption under the Webb-Pomerene Act must file their articles of agreement and annual reports with the FTC, but pre-formation approval from the FTC is not required.[31]

6. Export Trading Company Act of 1982

Title III of the Export Trading Company Act of 1982 (the "ETC Act") [32] enables any person engaged in U.S. export trade to obtain an export trade certificate of review. Such a certificate confers immunity from suit under state and federal antitrust laws for activities that are specified in and comply with the certificate. The Secretary of Commerce issues the certificate with the concurrence of the Attorney General. To obtain a certificate, an applicant must show that proposed export conduct:

(1) Will result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Will not unreasonably enhance, stabilize, or depress prices in the United States of the class of goods or services covered by the application;

(3) Will not constitute unfair methods of competition against competitors engaged in the export of the class of goods or services exported by the applicant; and

(4) Will not include any act that may reasonably be expected to result in the sale for consumption or resale in the United States of such goods or services.[33]

Although an export trade certificate of review provides significant protection under the antitrust laws, it has important limitations. A certificate provides no protection to persons that are not identified as an applicant or as a member of an applicant. Conduct that falls outside the scope of a certificate or that violates the terms of the certificate remains fully subject to criminal sanctions as well as to private and governmental civil enforcement actions. A certificate that is obtained by fraud is void from the outset and thus offers no protection under the antitrust laws. And, finally, a certificate confers no protection from prosecution under foreign laws.

The Secretary of Commerce may revoke or modify a certificate if the Secretary or the Attorney General determines that the applicants' export activities have ceased to comply with the four statutory criteria described above.[34] The Attorney General may also bring suit under section 15 of the Clayton Act "to enjoin conduct threatening a clear and irreparable harm to the national interest." [35] In addition, the ETC Act creates a private cause of action for injunctive relief and actual damages for individuals injured by export conduct that does not comply with the statutory criteria.[36] In any such private action, certificated conduct is presumed to be valid.[37] The prevailing party is entitled to costs and attorneys' fees.[38]

The Commerce Department, in consultation with the Justice Department, has issued guidelines setting forth the standards for reviewing applications for export trade certificates of review.[39] Those guidelines contain several examples illustrating application of the certification standards to specific conduct in export trade, including vertical restraints, horizontal restraints, and technology licensing arrangements.

B. Enforcement Policy

The Department focuses its antitrust enforcement efforts against private restraints of trade that reduce U.S. consumer welfare by artificially restricting output and/or raising prices. The Department is not concerned with conduct that solely affects competition in foreign markets and could have no direct, substantial, and reasonably foreseeable effect on competition and consumers in the United States. Nor is the Department concerned with the export conduct of U.S. firms except where that conduct has a direct, substantial, and reasonably foreseeable anticompetitive effect on price and/or

[28] 15 U.S.C. 61–65.

[29] 15 U.S.C. 61.

[30] 15 U.S.C. 62.

[31] 15 U.S.C. 65.

[32] 15 U.S.C. 4011–4021.

[33] See 15 U.S.C. 4013(a).

[34] 15 U.S.C. 4014(b)(2).

[35] 15 U.S.C. 4016(b)(5).

[36] 15 U.S.C. 4016(b)(1).

[37] 15 U.S.C. 4016(b)(3).

[38] 15 U.S.C. 4016(b)(1). (b)(4).

[39] See Department of Commerce, International Trade Administration, Guidelines for the Issuance of Export Trade Certificates of Review (2d ed.), 50 FR 1786 (Jan. 11, 1985) (hereinafter cited as "ETC Guidelines").

output in the United States [40] or where the U.S. government is the purchaser, or substantially funds the purchase, of affected goods or services.[41]

Unlike many of the legal rules businesses encounter in their international dealings, the U.S. antitrust laws do not provide a checklist of detailed regulatory requirements. Instead, they establish competitive principles that have served as the basis for a system of flexible court-made rules governing the competitive activities of businesses affecting U.S. commerce.[42] Certain well-developed principles and rules, discussed and illustrated in these Guidelines, have evolved to guide business conduct under those laws.

Despite the literal terms of section 1 of the Sherman Act, which condemns "[e]very contract [or] combination * * * in restraint of trade," it has long been recognized that section 1 prohibits only unreasonable restraints of trade. Almost all productive activity involves cooperation among persons and firms and some ancillary restrictions affecting their independent commercial decision-making that literally can be said to restrain trade. The courts, however, have recognized that cooperative activity more often than not increases productive efficiency and therefore benefits consumer welfare.[43] The Department views as "unreasonable" (and therefore illegal under section 1) only restraints of trade that would create or facilitate the exercise of market power—that is, the power significantly to restrict output and/or to raise (or depress) price in a relevant market for a nontransitory period of time—where the risk of anticompetitive behavior is not outweighed by efficiencies that would bring about a net increase in consumer welfare.[44]

"Naked" restraints of trade which have no significant economic potential other than to restrict price and/or output in a market are so inherently anticompetitive that they are conclusively presumed to be unreasonable. They are therefore condemned under the antitrust laws without inquiry into the precise harm they have caused.[45] The most common examples of such naked restraints are price-fixing and bid-rigging schemes among competitors. Such restraints are often prosecuted as criminal violations under the Sherman Act.[46]

On the other hand, conduct that is plausibly related to some economic integration of the parties' operations (beyond simply the coordination of price and/or output) that may result in increased production—conduct such as joint ventures for production or R&D, vertical nonprice distribution arrangements, and intellectual property licensing arrangements—is analyzed on a case-by-case basis under a "rule-of-reason" standard.[47] The Department essentially asks two questions under a rule-of-reason analysis. First, would the restraint reduce competition in a relevant market by creating or facilitating the exercise of market power—that is, the power to restrict output and/or raise (or depress) price? A number of market conditions are relevant to answering this question. For example, if there are many competitors that are not parties to the restraint, or if entry into the relevant market is easy, then any attempt to exercise market power by the parties to the restraint would be frustrated by competition from existing or new competitors. Second, would any risk of an anticompetitive effect be offset by significant efficiency benefits that would result from integrating the parties' operations (by contract or otherwise) and that would bring about a net increase in consumer welfare? [48] If it would, then the net effect of the restraint would not be anticompetitive, and the restraint would not be unlawful.

An arrangement need not be procompetitive to be lawful, however. The antitrust laws condemn only anticompetitive conduct; competitively neutral conduct is beyond their proscriptive force. Thus, the Department generally examines the procompetitive justifications for particular conduct only if a preliminary economic analysis indicates that the conduct would likely create or facilitate the exercise of market power; if it would not, then there is no need to identify and weigh the procompetitive benefits of the conduct or to determine whether there is a less restrictive way to achieve those benefits.

The following is a brief description of the Department's basic method of analyzing the competitive effects of five types of conduct: criminal violations of the Sherman Act; mergers; joint ventures; vertical nonprice distribution

[40] Under special circumstances, the export conduct of U.S. firms conceivably could have such an effect—for example, where domestic competitors accounting for a substantial share of a market in which entry by new firms would be difficult and in which total supply (for both foreign and domestic markets) is fixed (or very inelastic) agreed on the level of their exports in order to reduce supply and raise prices in the United States. Such an effect might also result if conduct that ostensibly involves exports is actually designed to affect the price of products that are to be resold in the United States.

[41] Where the U.S. government substantially funds the purchase of goods and services by a foreign government, the effect of anticompetitive conduct with respect to the sale of those goods or services falls not only on the foreign government which is the nominal purchaser, but also (and primarily) on American taxpayers who are the consumers of the philanthropic benefits of the funding and who are deprived of the benefits of competition guaranteed by the federal antitrust laws. *See, e.g.*, United States v. Standard Tallow Corp., 1988–1 Trade Cas. (CCH) ¶ 67,913 (S.D.N.Y. 1988) (consent decree) (barring suppliers from fixing prices or rigging bids for the sale of tallow financed in whole or in part through grants or loans by the U.S. government); United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199 (1968); United States v. Anthracite Export Ass'n, Civ. No. 9171 (M.D. Pa. Nov. 12, 1970) (consent decree).

[42] "The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even when the premise is open to question, the policy unequivocally laid down by the Act is Competition." Northern Pacific R. Co. v. United States, 356 U.S. 1, 4–5 (1958).

[43] See, e.g., Business Electronics Corp. v. Sharp Electronics Corp., No. 85–1910, 56 U.S.L.W. 4367 (U.S. May 2, 1988) (hereinafter cited as "Sharp").

[44] When a firm or a combination of firms is able artificially to restrict output and maintain price above a competitive level, the result is a transfer of wealth from buyers to sellers and a misallocation of society's resources. The exercise of market power by buyers has wealth transfer and resource misallocation effects analogous to those associated with the exercise of market power by sellers.

[45] *See, e.g.*, Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1, 19–20 (1979) (in characterizing conduct under the per se rule, inquiry must focus on whether the effect and purpose of a practice "are to threaten the proper operation of our predominantly free-market economy—that is, whether the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output, * * * or instead one designed to 'increase economic efficiency and render markets more, rather than less, competitive' "), *citing* United States v. United States Gypsum, 438 U.S. 422, 441 n.16 (1978); National Collegiate Athletic Ass'n v. Board of Regents of University of Oklahoma, 468 U.S. 85, 103–04 (1984) ("Per se rules are invoked when the surrounding circumstances make the likelihood of anticompetitive conduct so great as to render unjustified further examination of the challenged conduct.").

[46] *See* discussion at I.B.1, *infra*.

[47] *See, e.g.*, National Society of Professional Engineers v. United States, 435 U.S. 679, 692 (1978); Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., *supra* n.45; National Collegiate Athletic Ass'n v. Board of Regents of University of Oklahoma, *supra* n.45; Northwest Wholesale Stationers, Inc. v. Pacific Stationary & Printing Co., 472 U.S. 284, 289–90 (1985); FTC v. Indiana Federation of Dentists, 476 U.S. 447, 458–59 (1986); Sharp, *supra* n.43.

[48] Such efficiencies typically result if the parties possess complementary skills and assets or if the arrangement would allow them to take advantage of significant economies of scale or scope in production, distribution, or research. Cognizable efficiencies are those that would enable the parties to produce greater output at the same or less cost, or to produce new products or services or undertake R&D that would not be produced or undertaken without such cooperation.

arrangements; and intellectual property licensing arrangements.

1. Criminal Offenses Under the Sherman Act

A "naked" agreement (or common plan) between or among competitors to restrict output and/or raise (or depress) price, which is per se unlawful,[49] is prosecuted as a criminal violation of the Sherman Act.[50] An agreement is "naked" if its sole purpose and effect is to restrict output and/or raise (or depress) price—that is, if it is not plausibly related to some economic integration of the parties' operations (beyond simply the coordination of price and/or output) that may result in increased production. The most common examples of such agreements are price-fixing and bid-rigging schemes among competitors. Criminal prosecution of such agreements is particularly appropriate because of their unambiguously anticompetitive effect, the difficulty of detecting such agreements (which usually are covert), and the fact that the conspirators usually know (or should know) that their conduct is unlawful.[51]

Neither an express agreement nor overt acts pursuant to an agreement are necessary to make out a violation of section 1. Nor is it necessary that a particular agreement be successful, or that it has an actual, demonstrable anticompetitive effect; all that is necessary is a "meeting of the minds."

To constitute unlawful "price-fixing," it is not necessary that conspirators agree to charge exactly the same price for a product or service. For example, agreements among competitors to raise their individual prices by a specified amount, to maintain a specified profit margin, to adopt a standard formula for computing price, or to notify one another before reducing price may also violate section 1 of the Sherman Act.

It is no justification for a naked price or output restricting agreement that competition is too rigorous, that prices are "unreasonably low," or that some firms may exit the market in the absence of such an agreement. Under our free-market system, the unencumbered forces of competition allocate society's scarce resources by motivating firms to satisfy the demands of consumers as efficiently as possible. Those firms that are unsuccessful in responding to the market may fail, but their exit from the market will free resources to be invested by more efficient firms or in areas of the economy where they are more highly valued by society. In this way, consumers (including consuming industries) benefit from the highest quality and variety of products and services at the lowest cost.

The Department's analysis of international price and output agreements among competitors and various substantive and jurisdictional issues that typically arise with respect to such agreements is illustrated in Case 14 (International Cartel Activity), Case 16 (Voluntary Export Restraint), and Case 17 (Settling a Trade Case).

2. Mergers

As a general matter, the Department recognizes that mergers and acquisitions play a crucial, beneficial role in our economy. They can discipline ineffective management and facilitate the movement of investment capital and productive assets through the economy to more highly valued uses. They may also enable industries to undertake restructuring necessary to remain competitive in changing markets, allow the realization of significant joint-operating efficiencies, and enable the combined firm to provide new products or better products than either firm could provide separately. Mergers are anticompetitive only when they would enable firms that remain in the market following the merger unilaterally or jointly to exercise market power.

The standards and principles the Department applies in analyzing mergers are set forth in detail in the Department's Merger Guidelines.[52] As stated in the Merger Guidelines, the goal of the Department's merger enforcement policy is to prohibit those mergers that would create, enhance, or facilitate the exercise of market power in the United States.[53] Where only a few firms account for most of the sales of a product or service for which there are no good substitutes, those firms might be able tacitly or explicitly to coordinate their actions to restrict output and raise price. Other things being equal, where collusion among firms is necessary to exercise market power, such collusion is more likely to occur and be successful among a small group of firms in a highly concentrated market. Reaching and enforcing agreement concerning output or price would be difficult and costly—and would be more likely to be detected by criminal prosecutors—if many firms would have to be included to make collusion successful. Therefore, a merger that would reduce the number of sellers of a product or service in a geographic market to only a few might substantially lessen competition unless other factors, such as the threat of entry by new sellers, would frustrate the exercise of market power.[54]

Market Definition. The first step in the Department's merger analysis is to identify the relevant market or markets that would be affected by the merger and the firms that compete in that market or those markets.[55] The Merger Guidelines provide a paradigm for defining the relevant product and geographic markets that is based on analysis of the likely demand response of consumers and supply response of suppliers to an anticompetitive price increase.[56] The result of applying this paradigm is to identify a group of products (the "product market") and a geographic area (the "geographic market") with respect to which sellers could exercise market power if they were able to coordinate their actions so as to act like a monopolist. Stated another way, market definition identifies which sellers would have to coordinate their pricing and/or output decisions to exercise market power. Market definition is illustrated in Case 1 of these Guidelines.

Analysis of Relevant Competitive Factors. If merging firms compete in the same product and geographic market, the Department next determines whether the elimination of competition between them is likely to create or facilitate the exercise of market power. To make this determination, the Department focuses first on the level of concentration in the market that would exist after the merger and the increase in concentration that would be caused by the merger.[57] If market concentration would remain low after the merger, or if concentration would increase only slightly, the Department would conclude without detailed examination of other factors that the merger poses no significant threat to competition.[58] In other cases, however, the Department would proceed to examine all other relevant factors bearing on whether the merger would likely result in the ability to restrict output and/or raise price.

The Department considers a number of factors that may indicate that a firm's current market share either overstates or understates its competitive significance. One such factor is recent or ongoing changes in market conditions. For example, if a technology that is important to long-term competitive viability is not available to a particular firm, the Department may conclude that the historical market share of that firm overstates its future competitive significance. The Department will consider the reasonably predictable effects of changes in market conditions in interpreting market concentration and market share data.[59] The Department will also consider special factors affecting the competitive significance of foreign firms, such as government restrictions on imports or exports.[60] The way the Department treats trade restraints in analyzing the likely competitive effects of a merger is discussed in greater detail below and illustrated in Case 2.

In addition to factors that affect the future competitive significance of individual firms, the Department also considers the likelihood and scope of substantial new entry into the relevant market,[61] the likelihood of expansion by fringe firms,[62] and other factors (such as heterogeneity of the relevant product and historical market performance) that may affect the ease and profitability of collusion in the relevant market.[63] If entry into the relevant market is so easy that existing competitors could not successfully raise price for any significant period of time, the Department is unlikely to challenge a merger in that market.[64] For this purpose, the time it would take to enter the relevant market at a minimally efficient scale of operation and the level of expected entry in response to a price increase are at least as important as the fact that entry can occur. Entry may be hindered, for example, by the need for scarce or specialized resources, the need to achieve a substantial share of the market in order to realize important economies of scale, or stagnation or decline in the relevant market that would make new entry unlikely to occur.[65] As the difficulty of entry into the market increases, so does the likelihood that the Department will challenge a merger that would result in a high degree of concentration in the relevant market.[66]

The Department also generally will not challenge a merger if the parties can establish by clear and convincing evidence that the merger would result in significant net efficiencies that could not be achieved except through the merger and that the merger would therefore likely result in a net benefit to consumer welfare.[67] The parties must establish a proportionately greater level of expected net efficiencies as the competitive risks of the merger increase.[68]

Foreign Competition. Nothing in the U.S. antitrust laws restricts foreign investment in the United States on the basis of the national origin of the investment. The Department's antitrust enforcement policy therefore does not discriminate against or in favor of firms on the basis of citizenship; the Department is concerned solely with the competitive effects of a transaction.

The existence of foreign competition is, however, relevant to the Department's analysis of any merger, whether or not one of the parties is foreign. Competition by foreign firms that are not involved in a merger may make the exercise of market power in the United States following a merger impossible if those firms would likely increase their sales in the United States significantly in response to a significant and nontransitory price increase.

On the other hand, constraints on foreign supply, such as U.S. import quotas and foreign export restraints, may prevent or limit a response by foreign producers to an anticompetitive price increase in the United States. Existing foreign competitors are not excluded from a relevant market solely because their sales in the United States are subject to such restrictions. Nevertheless, any such constraint on the ability of foreign firms to respond to a price increase—and thus to frustrate an attempt to exercise market power in the United States—is an important competitive fact that the Department considers in assigning market shares and in interpreting the significance of market shares and market concentration data.

Thus, while the Department's analysis under the Merger Guidelines expressly recognizes the significant competitive

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[49] *See* nn.45–46 and accompanying text, *supra*.

[50] Some section 2 violations, for example, those involving physical violence against a competitor, may also be prosecuted as criminal violations.

[51] The Department traditionally has prosecuted criminally conduct possessing four characteristics: (1) (except for monopolization involving physical violence) the conduct involves agreements among competitors; (2) the agreements have as their inherent likely effect the raising (or in the case of monopsony, the lowering) of price and restricting of output (2A) without the promise of any significant integrative efficiencies; (3) the agreement or plan is generally covert and fraudulent; and (4) the conspirators generally are aware of the probable anticompetitive consequences of their conduct. *See* "Criminal Enforcement of the Antitrust Laws: Targeting Naked Cartel Restraints," Remarks of Charles F. Rule, Assistant Attorney General, Antitrust Division, Department of Justice, before the 36th Annual ABA Antitrust Section Spring Meeting, March 24, 1988. These characteristics are not, however, legal constraints on the cases that may be prosecuted criminally. *Id.*

In addition to prosecution under the Sherman Act, in appropriate circumstances, naked horizontal agreements may also be prosecuted under a wide variety of other federal statutes, including statutes prohibiting mail and wire fraud (18 U.S.C. 1341, 1343); conspiracy to defraud the government (18 U.S.C. 371); making false statements to a government agency (18 U.S.C. 1001); tax offenses (26 U.S.C. 7201); and the Racketeer Influenced and Corrupt Organization ("RICO") law (18 U.S.C. 1962(c)). In addition to fines and incarceration, the Department may, in appropriate cases, also seek to obtain injunctive relief, actual damages under the Clayton Act (15 U.S.C. 15a), and civil penalties up to treble damages under the False Claims Act (31 U.S.C. 3729).

[52] U.S. Department of Justice Merger Guidelines (June 14, 1984) (hereinafter cited as "Merger Guidelines"), *reprinted in* 2 Trade Reg. Rep. (CCH) ¶¶ 4491–96.

[53] Merger Guidelines section 1.

[54] *See id.* The ease and profitability of collusion is less relevant where a merger involves an acquisition by a single dominant firm (a firm that has a market share of at least 35 percent) of another firm in the market. In that case, the dominant firm might itself be able to exercise market power by restricting its own output and raising price. The Department is likely to challenge a merger between any firm with a market share of at least one percent and a dominant firm unless changing market conditions [Merger Guidelines section 3.21], the financial condition of the firm (*id.* at section 3.22), ease of entry into the market (*id.* at section 3.3), and significant efficiencies that are likely to result from the merger (*id.* at section 3.5) indicate that the merger would not be anticompetitive (*id.* at section 3.12).

[55] *Id.* at section 2.

[56] *Id.* at section 2.1 (product market definition) and section 2.3 (geographic market definition).

[57] To assist in interpreting market data, the Department uses the Herfindahl-Hirschman Index ("HHI") of concentration. The HHI is calculated by summing the squares of the market shares of individual firms in the market. The HHI gives proportionately greater weight to larger firms to reflect their relative importance in collusive interaction. Merger Guidelines at section 3.1.

[58] The Department divides the spectrum of market concentration as measured by the HHI (which ranges from near zero in an atomistic market to 10,000 in the case of a pure monopoly) into three regions that can be broadly characterized as unconcentrated (post-merger HHI below 1000), moderately concentrated (post-merger HHI between 1000 and 1800), and highly concentrated (post-merger HHI above 1800). Merger Guidelines section 3.1. Mergers that would result in an HHI of less than 1000 are not challenged because the structure of the market itself indicates that the successful exercise of market power by one or more firms is unlikely. The Department also would not challenge a merger that resulted in moderate concentration if the level of concentration would increase by 100 HHI points or less, or a merger that resulted in high concentration if the level of concentration would increase by 50 HHI points or less. In those cases, the merger would not significantly increase concentration in the market. These regions of the HHI are thus "safe harbors." *Id.* at section 3.11. *But see* n. 56, *supra*. The Department does not automatically challenge mergers resulting in concentration above these thresholds; rather, much more extensive analysis of factors other than concentration data is necessary to conclude that such mergers would create, enhance, or facilitate the exercise of market power.

[59] Merger Guidelines at section 3.2.

[60] *Id* at section 3.23.

[61] *Id* at section 3.3.

[62] *Id.* at section 3.33, n.20 and section 3.43.

[63] *Id.* at section 3.4.

[64] *Id.* at section 3.3.

[65] *Id.* at section 3.3, n.21. *See also* "Merger Enforcement Policy: Protecting the Consumer," Remarks of Charles F. Rule, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, before the 1987 National Institute, American Bar Ass'n Section of Antitrust Law, Oct. 9, 1987, at pp. 10–12.

[66] Merger Guidelines at section 3.3.

[67] *Id.* at section 3.5.

[68] *Id.*

impact of foreign competition, the Department also recognizes the effect of trade restraints in insulating U.S. firms from foreign competition. The Department's analysis of special factors affecting the competitive significance of foreign firms is illustrated in Case 2 of these Guidelines.

The Department's analysis of a merger between a domestic and a foreign firm (including issues relating to market definition) is illustrated in Cases 1 and 2. Case 3 illustrates the Department's analysis of a merger involving a foreign potential competitor. Case 4 illustrates the circumstances in which the Department might challenge a merger between two foreign firms.

3. Joint Ventures

A joint venture is essentially any collaborative effort, short of a merger, among firms with respect to production, R&D, distribution, and/or marketing of products or services. Joint ventures may be created for a variety of good business reasons. For example, joint ventures may be created to take advantage of complementary skills or economies of scale in production, marketing, or R&D; to spread risk; or, when the venture involves a foreign entity, to give an international enterprise a "local flavor." Like mergers, legitimate joint ventures and their ancillary restraints are analyzed under a rule-of-reason standard and are condemned only if they would have an anticompetitive effect that is not outweighed by procompetitive benefits.[69]

Simply labelling an arrangement a "joint venture" is not controlling for antitrust purposes, of course. The Department's prosecutorial decisions are based on substance rather than form. Accordingly, the Department would not hesitate to prosecute criminally an arrangement among competitors that was not plausibly related to economic integration of the parties' operations that might result in increased production, but that appeared to be simply a device to restrict output and/or raise (or depress) prices. Efficiency rationalizations constructed after the fact will not save what is actually a naked bid-rigging or price-fixing cartel; claimed integrative efficiencies must have been apparent at the time of the formation of the venture.[70]

[69] *See, e.g.*, Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1 (1979); National Collegiate Athletic Ass'n v. Board of Regents, 468 U.S. 85 (1984).

[70] A legitimate joint venture and its operating rules will almost invariably be conducted in the open. When an arrangement's purpose is at issue, other things being equal, the fact that an arrangement is covert will tend to suggest to the Department that the arrangement is not a legitimate joint venture.

Rule-of-Reason Analysis. The Department's rule-of-reason analysis of joint ventures involves two steps. First, the Department examines the joint venture's likely effect on competition in the market (or markets) in which the joint venture proposes to operate or in which the economic integration of the parties occurs (the "joint venture market"). Second, the Department determines whether the joint venture would likely have any anticompetitive effect in other markets in which the venture members also compete or might compete ("spill-over" markets). Relevant markets for this purpose are defined using the market definition principles set forth in the Merger Guidelines.[71]

Step 1—Joint Venture Market. The Department first determines whether the joint venture would likely have an anticompetitive effect in the joint venture market. If the joint venture participants do not currently compete in the joint venture market and are not likely to begin doing so in the near future independently of the joint venture, the Department can determine without detailed examination of other factors that the joint venture poses no significant threat to competition in that market. There may also be little or no anticompetitive effect in the joint venture market if the joint venture is structured so that participants would continue to compete against each other in that market,[72] or if the joint venture would serve only to create additional capacity. In other cases, however, the Department must proceed to examine other factors bearing on whether the joint venture is likely to create, enhance, or facilitate the exercise of market power in the joint venture market.

If a joint venture or any of its restraints would eliminate or restrict competition between or among participants in the joint venture market, the Department would determine whether complete integration of the price and output decisions of the joint venture participants through merger would be anticompetitive. As in merger analysis, the Department focuses first on the level of concentration in the joint venture market after the joint venture is formed and the increase in concentration that would result from formation of the joint venture. If this analysis indicates that a merger of the joint venture participants could not be anticompetitive (because it would fall within a "safe harbor"[73]), then the Department can conclude without detailed examination of other factors that the joint venture would not likely have any anticompetitive effect in the joint venture market, and proceed to step 2. The Department need not independently examine the competitive effect of the venture's restraints in the joint venture market, since those restraints could have no greater anticompetitive effect than would the complete elimination of competition between the joint venture participants in that market.

If market concentration data indicates, however, that a merger of the joint venture participants might be anticompetitive, the Department proceeds to consider other factors bearing on the likely competitive effects of the joint venture, including ease of entry into the joint venture market and significant net integrative efficiencies that would result from the joint venture.[74] The Department recognizes, however, that a joint venture may have a less restrictive effect on the independent decision-making of joint venture participants with respect to price and output than would an outright merger. For that reason, the joint venture might be unlikely to create, enhance, or facilitate the exercise of market power in light of the relevant market circumstances, whereas a complete merger would be likely to do so. Moreover, net efficiencies that would result from the joint venture would be more likely to outweigh any anticompetitive risks. In addition, the parties may be able to structure their joint venture, for example, to include operational safeguards, in order to eliminate or reduce substantially any threat to competition from the joint venture.

As is implicit in this analysis, the Department in general is concerned about the effect of a joint venture in the joint venture market when the venture creates or facilitates the exercise of market power as a result of being overinclusive. Although the exclusion of competitors from participation sometimes has been the focus of antitrust concern in the past, exclusion from membership in a joint venture rarely is anticompetitive. Limiting the number of participants in a joint venture will not harm U.S. consumers, since the monopoly profits earned by the joint venture will be the same regardless of the number of participants in the joint venture.

In fact, selectivity in the membership of a joint venture generally enhances a joint venture's procompetitive potential. An enforcement policy that required joint ventures to open membership to all who sought it (or to license the product of an R&D joint venture to all who sought licenses) would decrease the incentives to form joint ventures, particularly those formed to undertake risky endeavors such as R&D and innovative manufacturing. First, the inability to exclude those who would bring little, if anything, to the joint venture, or those who would fail to share fully in the risks, would decrease the efficiency of the joint venture and reduce the expected reward from successfully accomplishing the joint venture's mission. Second, an enforcement policy that denied a joint venture the ability to select its members might encourage firms to forego risky endeavors in the hopes of being able to gain access through antitrust litigation to the fruits of the successful endeavors of others. Thus, only where a joint venture is the only one of its kind possible in the relevant market is there any possibility of concern about the exclusionary effects of limited membership.

Step 2—Spill-Over Markets. The Department next determines whether the joint venture or any of its ancillary restraints[75] would likely have an anticompetitive "spill-over" effect in other markets in which the joint venture participants compete or might compete. For example, an association of widget manufacturers formed to purchase joint transportation services may possess no monopsony power with respect to purchasing such services, but under certain circumstances may be able to use the association to coordinate the price and output of widgets. Spill-over analysis is likely to be particularly relevant where U.S. firms form a joint venture to operate in a foreign market. In that case, the Department generally is not concerned about the venture's effect on competition in the foreign market[76] but may be concerned about the exchange of competitively sensitive information among competitors in the U.S. market, for example.

In some cases, because of procedural or operational safeguards incorporated in a joint venture, an elaborate structural analysis will not be necessary in order to conclude that neither the joint venture nor its ancillary restraints poses a threat of anticompetitive spill-over effects. Examples of safeguards that can minimize the risk of spill-over effects include a requirement that certain types of sensitive business information be disclosed only to neutral third parties, a requirement that meetings involving representatives of the venture members be monitored by knowledgeable counsel, or a requirement that accurate and complete records of such discussions be maintained.[77]

Of course, no significant anticompetitive risks would necessarily exist even in the absence of such safeguards if conditions in the spill-over market would make successful collusion unlikely. Therefore, even if safeguards are not used by the joint venture, before challenging a joint venture or its ancillary restraints, the Department would examine market concentration and other relevant economic factors to determine whether there would likely be any anticompetitive effects in a spill-over market.[78] There might be no significant anticompetitive effects, for example, where the joint venture members account for only a small percentage of the spill-over market, or where there are strong disincentives for the joint venture members to collude in the spill-over market.[79] If the structural characteristics of the relevant spill-over market indicated that an anticompetitive effect was possible, then the Department would consider whether the efficiency benefits of employing a particular ancillary restraint outweighed any threat to competition in the spill-over market.[80]

The Department's analysis of production, research, and distribution joint ventures is illustrated in Case 5 (Joint Bidding), Case 6 (Research and Development Joint Venture) and Case 7 (Distributing a Foreign Competitor's Product).

4. Vertical Nonprice Distribution Restraints

Vertical nonprice distribution restraints are arrangements between firms operating at different levels of the manufacturing or distribution chain (for example, between a manufacturer and a wholesaler or a wholesaler and a retailer) that restrict the conditions under which firms may purchase, sell, or resell goods.[81] As the Supreme Court recognized in *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*,[82] vertical nonprice restraints are often procompetitive.[83] They generally promote competition by allowing a manufacturer to achieve efficiencies in the distribution of its products and by permitting firms to compete through different methods of distribution. Firms entering a market, for example, can use such restrictions "to induce competent and aggressive retailers to make the kind of investment in capital and labor that is often

[71] Merger Guidelines section 2.

[72] *See* United States v. Alcoa Aluminium Ltd., 605 F. Supp. 619 (W.D. Ky. 1985) (creating a "competitive rules" production joint venture to cure competitive problems that would have resulted from a merger of the parties).

[73] *See* n.58, *supra*.

[74] *See* I.B.2., *supra*.

[75] To be "ancillary," a restraint must be plausibly related to the legitimate ends of the joint venture—that is, the restraint must not be a "naked" agreement which is designed simply to restrict output and/or to raise price in some market other than the joint venture market. *See* discussion of naked restraints of trade at nn.45–49 and accompanying text, *supra*. For example, the Department would likely regard a secondary agreement in a joint venture to produce pocket calculators that restricted competition in the production of ball point pens not to be plausibly related to the integration of the parties' operations achieved by the joint venture. Such a restraint may therefore be subject to prosecution, possibly as a criminal violation of the Sherman Act.

[76] This would be the case unless the U.S. government through payments or financing would substantially bear the cost of an affected transaction. *See* discussion at n.41 and accompanying text, *supra*, and Case 5.

[77] With respect to shipping associations, for example, the Department has suggested three safeguards against anticompetitive spill-over effects. First, association members would not be required to tender all of their shipments through the association, but would be free to use rates negotiated by any other association and rates that members negotiated independently. Second, negotiations between an association and a carrier or shipping conference would be conducted on a confidential basis by an officer or employee of the association who is not also an employee of a member. Third, all communications between the association and individual members would be kept confidential. *See* "The Antitrust Division's Approach to Shippers' Associations," Remarks of Charles F. Rule, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Before the Chemical Manufacturers Association, Oct. 21, 1985 (setting forth guidelines for assessing the competitive effects of shipping associations) (hereinafter cited as "Shippers Speech"). *See also* Letter from Charles F. Rule, Assistant Attorney General, Antitrust Division, to Jerome J.C. Ingels of Petroleum Independents Cooperative, Inc., March 9, 1988 (indicating no present intention to challenge proposed association of natural gas producers to negotiate and market services that members are too small to provide alone, where several safeguards against anticompetitive conduct are in place); ETC Guidelines, 50 Fed. Reg. at 1794–1798 (discussing, *inter alia*, conditions of certification relating to exchange of competitively sensitive information).

[78] *See* Shippers Speech, *supra* n.77.

[79] *See, e.g.*, Letter from William F. Baxter, Assistant Attorney General, Antitrust Division, to Irving B. Yoskowitz, Vice President and General Counsel, United Technologies Corp., October 27, 1983 (disincentives to collusion among joint venture participants in spill-over markets).

[80] *See* discussion of efficiencies at I.B.2., *supra*.

[81] Another way to describe vertical arrangements is as agreements involving the owners of complementary inputs; under this terminology, horizontal agreements are those involving the owners of substitute inputs.

[82] 433 U.S. 36, 54–57 (1977).

[83] An agreement between a manufacturer and one or more distributors setting the resale price of the manufacturer's product is per se illegal. However, a vertical distribution restraint is per se illegal only if it includes some agreement on price or price levels; a distribution restraint that may only affect price is analyzed under the rule of reason. *See* Sharp, *supra* n.43, 56 U.S.L.W. at 4362.

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required in the distribution of products unknown to the consumer." [84] Such restrictions can also serve to protect investments by a manufacturer's dealers in service and promotion related to the manufacturer's brands from other dealers who do not make such investments but cut their price in order to take advantage of the full-service dealers' investments (the so-called "free-rider" problem). As the Supreme Court has recognized, vertical nonprice restraints can in this way increase competition among competing manufacturers (or interbrand competition), which is the primary concern of antitrust law.[85] Eliminating the free-rider problem is only one way in which vertical nonprice restraints can enhance competition.

Under special market conditions, certain vertical nonprice restraints conceivably might serve to facilitate collusion among competing manufacturers with respect to the price and/or output of their products.[86] For example, dealers might induce all or almost all suppliers of a product to award exclusive territories in order to facilitate a cartel at the dealer level by reducing the number of dealers that must collude and protecting colluding dealers from the threat of outside competition in response to anticompetitive pricing. In addition, suppliers might attempt to facilitate collusion among dealers where dealer collusion would be more practical or less costly than direct collusion among the suppliers and the suppliers can share in the resulting monopoly profits.[87]

Vertical nonprice restraints will not facilitate such collusion, however, unless three necessary (but not sufficient) market conditions exist after a restraint is imposed: (i) The "primary" level of the market that instigates the restraint (the manufacturer level or the dealer level) must be very highly concentrated; (ii) firms at the "secondary" level of the market using the restraint (or very similar restraints) must account for a large portion of sales in that market; and (iii) entry into the primary market must be difficult.[88] Unless the level of the market instigating the restraint is very highly concentrated, it is implausible that vertical nonprice restraints would serve to coordinate and police pricing and/or output decisions among competitors at that level without an express agreement among them.[89] A vertical nonprice restraint is also unlikely to result in successful collusion unless the combined market share of firms at the secondary level of the market using the restraint is large; otherwise, secondary level firms not subject to the same or similar restraints would likely frustrate any collusion.[90]

Under special market conditions, a vertical restraint might also result in the anticompetitive exclusion [91] of rivals from the market by denying them access to an essential input or to essential distribution facilities. A restraint (for example, an exclusive dealing arrangement) will not have an anticompetitive exclusionary effect in a relevant market unless three necessary (but not sufficient) market conditions exist: (i) The market in which firms using the restraint operate (the "nonforeclosed" market) must be very highly concentrated and leading firms in the market must use the restraint; (ii) firms subject to the restraint must control a large share of the "foreclosed" market; and (iii) entry into the "foreclosed" market must be difficult. Anticompetitive exclusion is not likely to result from a vertical nonprice restraint if any of these conditions are absent. Unless the firms imposing the restraints are very few in number, control most or all of the "nonforeclosed" market, and are currently earning monopoly profits, they will have neither the incentive nor the ability effectively to exclude other competitors from the market through a foreclosure strategy. In addition, unless the restraint applies to all or a very large portion of firms in the "foreclosed" market, rivals could simply use remaining available capacity to enter or expand in the market.[92]

Even if the minimum necessary conditions exist, of course, other market conditions may prevent a particular nonprice vertical restraint from having either a collusive or an exclusionary effect in any relevant market. Moreover, any competitive effect may be outweighed by the procompetitive benefits of the arrangement.

As a general matter, the Department employs a two-step analysis to determine whether a particular vertical nonprice restraint is likely to be anticompetitive.

Step 1. First, the Department takes a "quick look" at the degree of concentration in the relevant markets and at the market shares of firms employing the restraint to determine whether the restraint could plausibly have an anticompetitive effect.[93] If the necessary market conditions for successful collusion or anticompetitive exclusion—most significantly, high concentration at the level instigating the restraint—are not met, the Department can quickly determine that a restraint is not anticompetitive. In addition to the necessary minimum conditions described above, if a particular firm using a restraint has a small market share (e.g., ten percent or less), its use of the restraint normally would not be anticompetitive. Firms with such small market shares do not possess market power individually, and are unlikely to be important to any cartel [94] or agreement to facilitate a cartel or to any exclusionary scheme. Of course, if there were evidence that a small firm employing restraints was part of an unlawful cartel among competitors, the Department would not hesitate to investigate its activities and, if appropriate, prosecute those activities criminally.

In most cases, the minimum necessary conditions will not exist, and a cursory examination of the restraint under step 1 will indicate that the vertical restraint is safe from legal challenge by the Department. If the minimum necessary market conditions for either collusion or anticompetitive exclusion do exist, however, the Department proceeds to a closer rule-of-reason analysis to determine the restraint's likely net effect on consumer welfare.[95]

Step 2. The Department first assesses the likelihood that entry by new firms at either of the relevant market levels would frustrate any collusion or exclusion scheme. As in the case of merger analysis, the Department's focus is on whether significant entry would occur within a relatively short period of time in response to an anticompetitive price increase.[96] If entry is sufficiently difficult that it cannot be expected to reduce substantially any anticompetitive potential of the restraint, then the Department proceeds to consider other factors, including whether the restraint has had an exclusionary effect (if there is sufficient experience from which to judge); whether the restraint has survived for a long period; whether the restraint is "airtight" (considering, for example, the severity of penalties for abrogating the terms of a restraint); whether market conditions are conducive either to collusion or to anticompetitive exclusion; and whether use of the restraint results in significant integrative efficiencies producing benefits to consumer welfare that outweigh the risk of potential anticompetitive harm. Where vertical restraints have been in existence for a sufficient length of time to make it possible to evaluate their competitive effects, the Department would look primarily to an analysis of those effects. All other things being equal, the Department would more likely challenge a restraint that may have an anticompetitive effect if there is a history of collusion by firms at either level of the market.

Case 8 of these Guidelines illustrates the Department's vertical analysis in the context of a foreign firm's use of an exclusive distribution arrangement in the United States. The Department's vertical analysis in the context of various types of intellectual property licensing arrangements is also discussed below and illustrated in Cases 10, 11, and 12.

5. Intellectual Property Licensing Arrangements

For the purpose of antitrust analysis, intellectual property (e.g., patents, copyrights, trade secrets, and know-how) is essentially comparable to any other form of tangible or intangible property that is created, transferred, or used in the production of goods or services. At one time, antitrust policy proceeded on the assumption that intellectual property rights and the licensing of those rights conflicted with the goals of the antitrust laws because intellectual property rights were thought to create "monopolies." Intellectual property—even a patent—does not, however, necessarily confer an economic monopoly or even market power on its owner. A patent is merely a legally cognizable property right to the exclusive use of technical information specified in the patent grant. The patent remains subject to competition from information outside its scope that is an economic substitute for the patented product or process. For example, two patented pharmaceuticals may be economic substitutes for the same medical indication, and any attempt by one patent owner to raise the price of its drug would result in substitution toward the other drug.

To the extent that a patent or some other form of intellectual property does confer some competitive advantage on its owner (even to the extent of conferring a true economic monopoly) it is still comparable to other kinds of property that yield similar benefits. A new, state-of-the-art production facility, for example, may give its owner a competitive advantage in the form of lower production costs, perhaps for a significant period of time. The owner of intellectual property is fully entitled to enjoy whatever market power the property itself confers. Respecting the rights of an intellectual property owner to enjoy the full value of the property it has created provides an incentive for the innovative effort required to create intellectual property. The results of that innovative effort, in turn, expand society's knowledge and wealth and increase productive efficiency.

Licenses. Licenses of patents and other forms of intellectual property are contracts transferring to the licensees a right to use intellectual property. The licensing of intellectual property benefits consumers by expanding access to technology and bringing it to the marketplace in the quickest and most efficient manner. Licensing permits the owner of technology to, in effect, combine the owner's assets with the manufacturing and distribution assets of others. By permitting the owner to exploit the owner's intellectual property as efficiently and effectively as possible, licensing also increases the perceived value of intellectual property and increases incentives to invest in creating the property in the first place.

Particular restraints in intellectual property licenses can play an important role in encouraging the efficient development and use of licensed technology. This may be essential to ensure that new technology realizes its maximum legitimate return and benefits consumers as quickly and efficiently as possible. A licensor, for example, may encourage a licensee to make investments that are necessary to develop and promote the licensed technology by giving the licensee some exclusive use of that technology. Similarly, allowing the owner of intellectual property to reserve some exclusive use of the licensed property to itself encourages efficient licensing of technology where the owner of intellectual property otherwise might choose not to license its property at all.[97]

Rule of Reason Analysis. Because of their generally procompetitive nature, the Department analyzes the competitive effects of intellectual property licenses and their restrictions under a rule of reason, unless the underlying transfer of technology is a sham [98] or the license restrictions restrain competition between the licensor and licensees and bear no relationship to the underlying transfer of technology. Under the rule-of-reason analysis, the license and its ancillary restrictions are considered to be unlawful only if they are used to facilitate collusion or suppress competition in some relevant market and the risk of anticompetitive effects is not outweighed by the procompetitive benefits of the restrictions.

The Department does not normally inquire whether a particular license restriction is necessary to accomplish its procompetitive goals, or whether some less restrictive alternative could be used to achieve the same goals. In general, the Department considers the cumulative effects of all restrictions in an intellectual property license: if cumulatively the restrictions would have no significant anticompetitive effects or if any anticompetitive effects would be outweighed by the cumulative procompetitive benefits of the licensing arrangement, then none of the restrictions would be challenged.

The rule-of-reason analysis the Department applies to intellectual property licenses is the same as it applies to all other integrative contracts. Restrictions in a license may explicitly or implicitly entail horizontal restraints,

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[84] Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. at 52 n.19.

[85] *See* Sharp, 56 U.S.L.W. at 4369 (quoting *Continental T.V.*, 433 U.S. at 52 n.19).

[86] The general standards and specific principles the Department applies in analyzing the competitive effects of vertical nonprice distribution restraints are set forth in detail in the Department's Vertical Restraints Guidelines. U.S. Department of Justice Vertical Restraints Guidelines, Jan. 23, 1985 (hereinafter cited as "Vertical Restraints Guidelines"). The Supreme Court noted in Sharp, 56 U.S.L.W. at 4369, however, that "support for the cartel-facilitating effect of vertical nonprice restraints was and remains lacking."

[87] *But see id.*

[88] Vertical Restraints Guidelines section 3.21.

[89] If the Department had evidence of such an agreement, of course, the agreement would likely be prosecuted as a violation of section 1 of the Sherman Act.

[90] Vertical Restraints Guidelines section 3.21.

[91] All contracts between two parties in some sense exclude non-contracting parties. The antitrust laws are concerned, however, only with exclusion that will result in the ability to exercise power over price and/or output in a relevant market. *See* National Society of Professional Engineers v. United States, 435 U.S. 679, 687–90 (1978); Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36, 49 (1977); Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918).

[92] Vertical Restraints Guidelines section 3.22.

[93] *Id.* at section 4.1.

[94] *See* Merger Guidelines section 4.134.

[95] Vertical Restraints Guidelines at section 4.2.

[96] *Id.* at section 4.21.

[97] For examples of other procompetitive intellectual property license restrictions, see "The Antitrust Implications of International Licensing: After the Nine No-no's," Remarks by Charles F. Rule before the Legal Conference sponsored by the World Trade Association and the Cincinnati Patent Law Association (Oct. 21, 1988).

[98] A license is regarded as a sham if the parties demonstrably are not interested in conveying and receiving intellectual property rights, but rather are using the license as a guise to cover an effort to restrict output and/or raise price in some other market. Restrictions on competition accompanying a sham license may be per se unlawful and, where appropriate, prosecuted criminally.

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vertical restraints, or both, depending on the relationship of the parties. A horizontal restraint is one that limits competition between the licensor and licensee in one or more markets [99] in which they are actual or potential competitors.[100] A vertical restraint is one that does not eliminate horizontal competition between the licensor and licensee, but may limit competition between the intellectual property owner and other owners of intellectual property, or between the licensee and other licensees who are not parties to the license. In each instance the Department seeks to determine whether the license restriction would create or facilitate the unilateral or concerted exercise of market power.

The Department's analysis of technology license restrictions under the rule of reason is generally guided by two principles. First, the antitrust laws do not proscribe licensing arrangements that simply represent an effort by the owner of intellectual property fully to appropriate the inherent value of the technology. The potential for appropriating that value is the economic incentive to engage in risky and costly R&D in the first place. Second, the antitrust laws do not require the owner of technology to create competition in its own technology.

Horizontal Restraints. If the licensor and licensee are competitors in the technology market in which the intellectual property being licensed competes, or if the licensor and licensee are competitors in some other market that is affected by restrictions in the license, then the license and its restraints are properly analyzed as a horizontal agreement. A license restriction might, for example, prohibit a licensee that owns a competing technology from selling products that could be made using the competing technology in the United States. This is a horizontal restraint.[101] Alternatively, a license may be tantamount to the licensee's acquisition of the licensor's technology in a market. Again, if the licensee owns a competing technology (or is one of only a very few persons that could be expected to develop a competing technology), then this is properly analyzed as a horizontal restraint.

Horizontal restraints in an intellectual property license would be analyzed as a joint venture.[102] The Department would begin its analysis by defining the relevant technology or other market or markets that would be affected by the horizontal restraint. The Department would not assume that a patent or other piece of intellectual property delimited the relevant market. As explained above, there may be economic substitutes for that property which would make any attempt to exercise unilateral market power impossible.

After defining the relevant market or markets in which the licensee and licensor compete and that are affected by a horizontal restraint, the Department would apply the analysis set forth in the Merger Guidelines to determine whether the complete elimination of competition between the licensee and licensor in that market by virtue of their merger would be anticompetitive.[103] Even if a complete merger of the parties would be anticompetitive, however, the restraint would not necessarily be anticompetitive, since it may not restrict competition in the relevant market or markets as completely as would the total economic integration entailed by a merger. The Department would therefore examine the precise nature and extent of the elimination of price and output decision-making that would result from the license restriction.[104] If the Department's analysis disclosed that restrictions in a license could be significantly anticompetitive, then the Department would go on to assess their competitive benefits and whether the benefits outweigh the likely anticompetitive effects. In general, the Department will consider the cumulative effects—both procompetitive and anticompetitive—of all the restrictions, rather than examining each restriction in isolation.

As with any joint venture, the Department would generally not be concerned that a horizontal intellectual property licensing arrangement (for example, a patent pool) was not opened to competitors, even if it was the only possible venture in the relevant market.[105] A patentee should not be compelled to forego its statutory right to exclude the world from sharing in its invention simply because it has chosen not to exclude a few. The anticompetitive effects from selectively allowing some but not all competitors to participate in a horizontal intellectual property agreement will rarely, if ever, outweigh the procompetitive incentives to innovate and to exploit new technologies guaranteed by that selectivity.

Vertical Restraints. Because an intellectual property license typically involves the combination of complementary inputs—that is, the licensor and licensee do not compete in any market affected by the license—any restrictions in the license will best be characterized as vertical restraints. The Department will challenge purely vertical restraints in intellectual property licenses only in exceptional circumstances. For example, it is unlikely that vertical restraints in a license for technology that has no economic substitutes would ever be challenged by the Department. An exclusive license to a single licensee carries too little, if any, risk of collusion and too great an inherent procompetitive potential to warrant antitrust condemnation. Vertical restraints in an intellectual property license are analyzed in the same way the Department analyzes vertical restraints generally,[106] although intellectual property licensing arrangements are even more likely than other kinds of vertical agreements to produce significant procompetitive benefits.

The Department's analysis of various common types of intellectual property licensing arrangements is illustrated in Cases 10, 11, and 12 of these Guidelines. Case 10 illustrates the Department's analysis of purely vertical restrictions in a patent license. Case 11 illustrates the Department's analysis of an exclusive patent cross-license with grantbacks. Case 12 illustrates the Department's analysis of a know-how technology transfer agreement with exclusive territories.

C. Jurisdictional Considerations

Just as the acts of U.S. citizens in a foreign nation ordinarily are subject to the law of the country in which they take place, the acts of foreign citizens in the United States ordinarily are subject to U.S. law. The reach of the U.S. antitrust laws is not limited solely to conduct and transactions that occur within the United States, however. As a general matter, conduct relating to U.S. import trade that harms consumers in the United States is subject to the jurisdiction of the U.S. antitrust laws regardless of where such conduct technically occurs or the nationality of the parties involved. Thus, for example, applying the Sherman Act to restrain or punish a private international cartel, the purpose and effect of which is to restrict output and raise prices to U.S. consumers, is both appropriate and necessary to effective enforcement of that Act. On the other hand, the Sherman Act would not properly be applied to the activities of U.S. and/or foreign firms in foreign markets that had no direct, substantial, or reasonably foreseeable effect on competition or consumers in the United States.[107]

1. Foreign Trade Antitrust Improvement Act

The jurisdictional limits of the Sherman Act as it applies to conduct involving non-import foreign commerce are described in the Foreign Trade Antitrust Improvement Act ("FTAIA").[108] The FTAIA limits Sherman Act jurisdiction over non-import foreign commerce. It provides that the Sherman Act:

> shall not apply to conduct involving trade or commerce (other than import trade and commerce) with foreign nations unless
> (1) such conduct has a direct, substantial, and reasonably foreseeable effect—
> (A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or
> (B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and
> (2) such effect gives rise to a claim under the provisions of [the Sherman Act], other than this section.
> If [the Sherman Act] applies to such conduct only because of the operation of paragraph (1)(B), then [the Sherman Act] shall apply to such conduct only for injury to export business in the United States.

By its terms, the FTAIA applies only to certain types of cases under the Sherman Act; conduct involving import commerce and mergers and acquisitions remain subject to the arguably lesser jurisdictional thresholds of sections 1 and 2 of the Sherman Act and section 7 of the Clayton Act, respectively. Nevertheless, the FTAIA essentially codified a standard that the Department generally applies in Sherman Act import commerce cases and cases under section 7 of the Clayton Act as well. The Department attempts to give practical meaning to the terms "direct, substantial, and reasonably foreseeable" by taking action in those cases where there is or would be a significant adverse effect on consumers in the United States.

2. Foreign Sovereign Immunities Act

Under the Foreign Sovereign Immunities Act [109] foreign sovereigns and their instrumentalities are immune from suit in U.S. courts, except under specifically delineated circumstances. The most commonly applied exception in antitrust cases is the so-called "commercial acts" exception. Under that exception, foreign sovereigns and their agencies and instrumentalities may be sued for their commercial activities.[110] Application of this exception to the Foreign Sovereign Immunities Act is illustrated in Case 14 of these Guidelines.

D. Factors Affecting the Department's Discretion in Asserting Jurisdiction

In enforcing the antitrust laws, the Department recognizes that considerations of comity among nations—the notion that foreign nations are due deference when acting within their legitimate spheres of authority—properly play a role in determining "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation." [111] Moreover, the pattern of U.S. trade suggests that an unlimited application of the antitrust laws in the international context could significantly affect the sovereign interests of foreign nations and have far-reaching and potentially detrimental effects on U.S. foreign relations without significantly benefitting U.S. consumer welfare. Thus, even where conduct would affect U.S. consumers, as a matter of comity and in the exercise of its prosecutorial discretion, the Department considers the significant interests of other nations in every case in which they may be implicated.[112] In fact, the Department is committed to consider the legitimate interests of other nations in accordance with recommendations of the Organization for Economic Cooperation and Development (OECD) and with bilateral agreements with several foreign governments.[113]

In determining whether it would be reasonable to assert jurisdiction or seek particular remedies in a given case, the Department first considers whether any significant interests of foreign nations would in fact be affected by such exercise of jurisdiction. Experience shows that in most cases a country's application of its competition laws to protect its own consumers will not adversely affect the significant interests of other sovereigns. If it appeared that applying U.S. antitrust laws to particular transnational conduct would have such an effect, however, the Department generally would consider the following six factors:

(1) The relative significance, to the violation alleged, of conduct within the United States as compared to conduct abroad;

(2) The nationality of the persons involved in or affected by the conduct;

(3) The presence or absence of a purpose to affect United States consumers or competitors;

(4) The relative significance and foreseeability of the effects of the conduct on the United States as compared to the effects abroad;

(5) The existence of reasonable expectations that would be furthered or defeated by the action; and

(6) The degree of conflict with foreign law or articulated foreign economic policies.[114]

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[99] For example, a license might restrict the persons to whom or prices at which the parties can license competing technologies. Or, a license might restrict the price and/or output decisions of the parties with respect to some product that they do or would sell in competition with each other. *See* Anderwit, "Analysis of Patent Pools Under the Antitrust Laws," 53 Antitrust L.J. 611 (1984).

[100] *See* I.B.2., *supra*.

[101] That does not mean, of course, that the restraint is anticompetitive and, therefore, unlawful. So long as the restriction is not part of a sham licensing scheme disguising a naked cartel, it should be analyzed under a rule of reason.

[102] *See* I.B.3., *supra*.

[103] *See* Merger Guidelines sections 2.1–2.4.

[104] *See* I.B.3., *supra*.

[105] *See* discussion of joint venture analysis at I.B.3., *supra*.

[106] *See* I.B.4., *supra*.

[107] *See* 15 U.S.C. 6a (1982), discussed below. *See also* McGlinchy v. Shell Chemical Co., 1988–1 Trade Cas. (CCH) ¶ 67,973 (9th Cir. 1988) (effect on a competitor, as opposed to competition, not sufficient); Burlm-Pharm GmbH v. Pfizer Inc., 593 F. Supp. 1202 (S.D.N.Y. 1984); Lizmuigo Tours, Div. of Caribbean Tourism Consultants, Ltd. v. Travel Impressions, Ltd., 617 F. Supp. 630 (E.D.N.Y. 1985); Papst Motoren GmbH & Co. v. Kanematsu-Gosho (U.S.A.) Inc., 1988–1 Trade Cas. (CCH) ¶ 68,024 (S.D.N.Y. 1988).

[108] 15 U.S.C. 6a (1982).

[109] 28 U.S. 1330, 1602–1611 (1982).

[110] *See id.* at section 1605(a)(2); *see, e.g.*, Laker Airways v. Sabena, Belgian World Airlines, 731 F.2d 909, 925 (D.C. Cir. 1984).

[111] Hilton v. Guyot, 159 U.S. 113, 164 (1895). *See generally* McCulloch v. Sociedad Nacional, 372 U.S. 10 (1963); Lauritzen v. Larsen, 345 U.S. 571 (1953); The Charming Betsy, 6 U.S. (2 Cranch) 64 (1804).

[112] In lieu of bringing an enforcement action, of course, the Department may consult with affected foreign sovereigns through appropriate diplomatic channels to eliminate or substantially to reduce anticompetitive effects in the United States.

In the Department's view, government actions should not be subject to dismissal on the basis of comity. A decision by the U.S. government to prosecute an action amounts to a determination by the Executive Branch that the interests of the United States supercede the interests of any foreign sovereign and that the challenged conduct is more harmful to the United States than would be any injury to foreign relations that might result from the antitrust action. Thus, government suits do not create the risk raised by private actions that a judicial finding of liability will intrude on the legitimate interests of foreign sovereigns.

[113] *See* n.1, *supra*.

[114] Similar factors are included in proposed legislation which would govern the exercise of jurisdiction by U.S. courts in private antitrust litigation that arises out of disputes involving foreign or transnational conduct. S. 836, 100th Cong., 1st Sess. (1987); S. 397, 99th Cong., 2d Sess. (1986).

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In addition, in extraordinary circumstances, the Executive Branch may take into account the effect of antitrust prosecution on the United States' foreign relations.[116]

E. Foreign Sovereign Compulsion

In some cases, foreign sovereign authorities may have compelled private parties to engage in conduct that has an anticompetitive effect on U.S. commerce. A sensible approach to the antitrust laws that accommodates notions of comity supports the reading of an implied (and thus limited) defense to application of the U.S. antitrust laws based on foreign sovereign compulsion. As discussed above,[116] Congress enacted our antitrust laws against the background of well-recognized principles of international comity among nations which give due deference to the lawful acts of foreign sovereigns acting within their legitimate spheres of authority. That deference is most acutely called for when a foreign sovereign has actually compelled the conduct in question.[117] Indeed, in a system of international trade where the United States can be found negotiating for certain export restraints, it would be anomalous not to recognize the existence of foreign sovereign compulsion.

Under the following circumstances, therefore, the Department will not prosecute anticompetitive conduct that has been compelled by a foreign sovereign.[118] First, a foreign sovereign actually must have compelled the anticompetitive conduct [119] in circumstances in which a refusal to comply with the foreign sovereign's mandate would give rise to significant penalties (as opposed to the mere denial of benefits, for example). It is not enough that private anticompetitive conduct is merely encouraged, permitted by, or consistent with the laws or policies of the foreign sovereign. While such foreign government encouragement or permission may be taken into account in a general comity analysis, it will not have the determinative effect of actual compulsion; the lack of compulsion may also be strongly indicative of the fact that enforcing our antitrust laws would not impinge significantly on the national interests of the foreign sovereign.

Second, the foreign sovereign's command must have been within the scope of its authority under its own laws. For this purpose, a foreign government's formal assertion concerning the existence and meaning of its domestic law ordinarily would be conclusive.

Third, deference to the foreign state's actions must be warranted under the circumstances. This criterion is not intended to swallow the notion of foreign sovereign compulsion. Consistent with accepted principles of international comity, however, the Executive Branch may determine in a given case that the national interests of the United States are more significantly affected than are those of the foreign sovereign, or that the compelled conduct would be more harmful to the United States than would be any potential for injury to U.S. foreign relations that may result from an antitrust suit.

Finally, although territorial tests are often difficult to apply, and are therefore often not useful, in cases where the compelled conduct plainly has occurred wholly or primarily in the United States, the Department will not generally recognize foreign sovereign compulsion as a defense. An example of conduct occurring in the United States as to which the defense would not apply is a foreign government requirement that a U.S. subsidiary of a foreign firm organize a cartel in the United States with other U.S. firms to fix the price at which products would be sold in some local U.S. market.

Foreign sovereign compulsion should be distinguished from the federalism-based state action doctrine. The state action doctrine applies to private anticompetitive conduct that is taken pursuant to clearly articulated state policies and is subject to active state supervision, as well as to conduct that actually is compelled by a state.[120] The Sherman Act doctrine of state action embodies the notion that the U.S. Congress should not be presumed to have intended to interfere with the authority of the states "constitutionally to regulate their domestic commerce." [121] Because our federal structure of government is designed to secure to the states a wide range of regulatory alternatives, the U.S. Supreme Court has held that state compulsion is too strict a standard to employ in state action cases.[122] The federal government retains authority under the Supremacy Clause to void any state cartel program that has a noxious effect on interstate commerce. In contrast, the sovereign compulsion defense serves the quite different purpose of preventing direct clashes with the most significant interests of foreign sovereigns. This purpose is advanced most directly when the foreign government has actually compelled the challenged conduct.[123]

In addition, a standard like that of the state action doctrine would be difficult to apply in the international context. Given the complexity and novelty of foreign legal systems and the difficulty of obtaining foreign-located evidence, private firms would have many opportunities to attempt to evade legitimate application of the U.S. antitrust laws wherever there was an arguable foreign national policy underlying anticompetitive conduct. In addition, the use of an "active supervision" standard of the sort applied in state action cases would require difficult inquiries into the foreign sovereign's conduct of its own affairs.[124]

Difficult legal and policy issues nonetheless may arise when a foreign government instigates, but does not strictly compel, export restraints by firms within its jurisdiction. Considerations of international comity may lead the Department not to challenge export restraints that clearly have arisen from the decision and actions of a foreign government and are intended to promote significant national economic interests of that sovereign, even if the restraints formally have not been compelled. This is especially true if the foreign government has instigated the restraints at the request of the U.S. government. The Department's analysis of this kind of situation is illustrated in Case 16, which deals with a voluntary export restraint.

Businesses may obtain greater certainty concerning their liability for conforming to the anticompetitive order of a foreign government by seeking to obtain an opinion of the Department under its Business Review Procedure.[125] Case 14 of these Guidelines addresses the issue of foreign sovereign compulsion in the context of a cartel governing sales made in the United States.[126]

F. International Trade Friction and the U.S. Trade Laws

Governmental and private conduct undertaken pursuant to the U.S. trade laws, or to resolve disputes causing international trade friction, often affects competition in markets serving U.S. consumers. This may occur, for example, when an antidumping or countervailing duty case leads to the imposition of additional duties or to resolution under provisions in the law that allow for restrictions on the prices or quantities of imported products. Foreign imports may also be limited by voluntary export restraints that may have been adopted by a foreign government unilaterally at the request of the U.S. government.

The individual or joint conduct of U.S. firms seeking U.S. government protection from foreign competition generally is immune from prosecution under the antitrust laws. Under the *Noerr-Pennington* doctrine,[127] the courts have construed the Sherman Act—in light of interests implicated by the First Amendment to the U.S. Constitution—not to interfere with individual or collective petitioning of the U.S. federal or state governments, even when the government action sought would have an anticompetitive effect.

Ostensible petitioning conduct is not immune, however, when it is in fact a mere sham concealing a direct restraint by the parties. Examples of sham petitioning include, in certain circumstances, the meritless invocation of administrative procedures to delay a competitor's entry or to deny its access to government processes and the deliberate misleading of the government during such administrative proceedings.[128] The threat to consumer welfare from such abuse may be substantial. Although most litigated findings of sham petitioning have involved a pattern of abuse, in appropriate circumstances, a single anticompetitive abuse of governmental processes may suffice. Application of the sham exception to the *Noerr-Pennington* doctrine is illustrated in Case 13, which deals with the filing of a sham patent claim under section 337 of the 1930 Tariff Act in order to exclude imports.

Since the *Noerr-Pennington* doctrine rests on a construction of the Sherman Act that is derived at least in part by reference to the First Amendment right to petition, that doctrine may not apply to the petitioning of foreign governments by U.S. and foreign firms.[129] Nevertheless, for reasons of comity, the Department's policy is not to prosecute the legitimate petitioning of foreign governments by foreign or U.S. firms in circumstances in which the United States protects such activities by its own citizens. This point is illustrated in Case 15, which deals with a foreign government-imposed export restraint.

Of course, the mere involvement of U.S. or foreign government officers, allegations of U.S. trade law violations, or an alleged intention to resolve international trade frictions, will not protect naked agreements among competitors to restrict output or fix prices. The U.S. trade laws, for example, set forth specific procedures for settling disputes under those laws. Any agreement among competitors that does not strictly comply with those procedures may be prosecuted in appropriate cases, perhaps even as criminal price-fixing. The Department's analysis of agreements made in response to trade disputes is illustrated in Case 17.

Conclusion

The vast majority of international business transactions, like most domestic transactions, do not raise antitrust concerns. One of the purposes of these Guidelines is to ensure that uncertainty about the Department's enforcement policy in international contexts does not cause businesses to limit unobjectionable transactions or to avoid efficient and productive arrangements that benefit consumers. At the same time, these Guidelines make plain the Department's commitment to prosecute naked restraints of trade, such as horizontal price-fixing, bid-rigging, and market allocation, that have no plausible connection to achieving significant integrative efficiencies and almost certainly reduce output and/or raise prices to the detriment of U.S. consumer welfare.

Part II. Illustrative Cases

The following hypothetical case discussions illustrate how the Department would apply the foregoing analysis in seventeen representative fact situations. In most cases, the outcome of the Department's analysis will depend on the specific facts and circumstances of the case. These hypothetical case discussions therefore do not provide absolute answers to the factual and economic questions the Department would ask in analyzing particular conduct and transactions under the antitrust laws. Rather, they are intended to provide a coherent framework for that analysis. By providing this analytical framework, the Department hopes to provide U.S. and foreign businesses with a better understanding of when and why the Department is likely to take antitrust enforcement action in particular cases.

Case 1—Foreign Acquisition by a U.S. Firm

Alpha Corporation, a U.S. firm that manufactures and sells product X in the United States, proposes to acquire all of the stock of Beta Corporation, a Japanese firm that also sells X in the United States. X is a piece of high technology hardware that is used in several military and civil aerospace applications. There are no known substitutes for X for those applications, and no other known applications for X.

Alpha is the largest supplier of X in the United States. It supplies approximately 25 percent of all U.S. consumption. Beta, the world's leading

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[116] *See, e.g.*, Department of Justice Press Release, dated Nov. 20, 1984 (announcing President's decision to close grand jury investigation for foreign policy reasons). The Department does not believe, however, that this factor should properly be considered by courts in the context of either private litigation or in litigation initiated by the United States, since the conduct of foreign relations is constitutionally reserved to the Executive Branch.

[117] *See* I.D., *supra*.

[118] Recognizing this defense also ensures that U.S. and foreign firms will not be unfairly subjected to prosecution under the U.S. antitrust laws for activities compelled by another sovereign. In the absence of considerations of comity and direct conflict with the significant national interests of a foreign sovereign, however, abstract and undefined notions of "fairness" to firms that engage in anticompetitive conduct should not obstruct the legitimate prosecution of antitrust offenses that directly, substantially and foreseeably affect U.S. consumers in direct contravention of the U.S. antitrust laws.

[119] Foreign sovereign compulsion is not properly regarded as a legal defense in antitrust suits brought by the United States, however. A decision by the United States to prosecute an action amounts to a determination by the Executive Branch that the challenged conduct is more harmful to the United States than would be any injury to foreign relations that might result from the antitrust action. Thus, government suits do not create the risk raised by private actions that a judicial finding of liability for compelled conduct will significantly interfere with the conduct of foreign relations by the Executive Branch. As a practical matter, however, the Department generally would not challenge conduct to which the foreign sovereign compulsion defense would apply in private litigation. *See* Brief for the United States as Amicus Curiae Supporting Petitioners, Matsushita Elec. Ind. Co., Ltd. v. Zenith Radio Corp., No. 83-2004 (June 1985).

[120] *See* Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962); Bectodel Nacional, *supra*, n.111, 372 U.S. at 22.

[121] *See* Parker v. Brown, 317 U.S. 341 (1943); Southern Motor Carriers Rate Conference, Inc. v. United States, 471 U.S. 48 (1985).

[122] Southern Motor Carriers, *supra* n.120, 471 U.S. at 56.

[123] *Id.*, 471 U.S. at 66.

[124] *Id.*

[125] 28 CFR 50.6.

[126] For an example of an arrangement as to which the Department concluded that the defense of sovereign compulsion would apply, see Exchange of Letters between Japanese Ambassador Yoshio Okawara and Attorney General William French Smith, May 7, 1981, *reproduced in* U.S. Import Weekly (BNA), May 13, 1981, at M-1 to M-2.

[127] *See* Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mine Workers of America v. Pennington, 381 U.S. 657 (1965); and California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972). The doctrine developed out of these cases is known as the *Noerr-Pennington* doctrine.

[128] *See* California Motor Transport Co. v. Trucking Unlimited, *supra*, n.127, 404 U.S. at 515–516.

[129] *See* Occidental Petroleum Corp. v. Buttes Oil & Gas Co., 461 F.2d 1261 (9th Cir.) (per curiam), *cert. denied*, 409 U.S. 950 (1972); Australia/Eastern U.S.A. Shipping Conf. v. United States, 537 F. Supp. 807, 812–13 (D.D.C. 1982). *But See* Coastal States Marketing, Inc. v. Hunt, 694 F. 2d 1358, 1364–67 (5th Cir. 1983).

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producer of X, supplies approximately 15 percent of U.S. consumption. X imports from Japan, the European Economic Community ("EEC"), and Brazil collectively account for approximately 40 percent of current U.S. consumption, and the level of X imports from these countries has been rising.

Discussion

Because Alpha and Beta are both engaged in commerce in the United States, the proposed acquisition clearly is subject to section 7 of the Clayton Act, which prohibits mergers and acquisitions that may substantially lessen competition or tend to create a monopoly "in any line of commerce . . . in any section of the country."[130]

The Department's first step in analyzing the likely competitive effects of this merger would be to define the relevant market or markets that would be affected by the merger. As discussed in Part I of these Guidelines, a market is formally defined as a group of products or services ("product market") and a geographic area ("geographic market") as to which a hypothetical monopolist (that is, the only current and future seller of a product or service in an area) could profitably raise price significantly above the prevailing level.

Product Market

To define the relevant product market (or markets) that would be affected by this merger, the Department would begin by considering separately each product (narrowly defined) sold by Alpha and Beta in the United States. The Department would then ask what would happen if a hypothetical monopolist of that product imposed a significant and nontransitory increase in price (usually five percent for one year). If the price increase would cause so many buyers to shift to other products that it would not be profitable to impose, then the Department would add to the product group the product that was the next best substitute and ask the same question again until a group of products had been identified with respect to which a hypothetical monopolist would impose a significant and nontransitory price increase.[131] Ultimately, this process would identify all products with which the products sold by Alpha and Beta do or would compete in response to a significant and nontransitory price increase.

Of course, existing buyers might differ in their ability to use particular substitute products and the ease with which they could substitute those products for the product of the merging firms. Therefore, even though an across-the-board price increase might cause such significant substitution that it would not be profitable, if sellers could discriminate in the prices they charged to different groups of buyers, then sellers might be able to raise price only to buyers who could not easily substitute away. If such price discrimination were possible, the Department would consider defining additional, narrower product markets consisting of particular uses of the product as to which a hypothetical monopolist could exercise market power.[132]

X comprises the relevant product market in this case. Under the facts of this case, Alpha and Beta each produce only X, and there are no known substitutes for X for any group of buyers.

Geographic Market

After defining the relevant product market, the Department would next define the relevant geographic market. The purpose of defining a relevant geographic market is to establish a geographic boundary that roughly separates producers that are important factors in the competitive analysis (that is, that would undercut collusion) from those that are not.

To define the relevant geographic market in this case, the Department would begin by considering Alpha's locations (or the location of each of its plants) in the United States [133] and asking what would happen if a hypothetical monopolist imposed a significant and nontransitory increase in the price of X at that location. If so many buyers would shift to X produced in other areas that the price increase would not be profitable, then the Department would add the location from which production would be the next best substitute and ask the same question again.[134] Ultimately, this process would identify all areas, foreign and domestic, in which producers do compete or would compete with Alpha in response to a significant and nontransitory increase in the price of X.

Although direct evidence of the likely effect of a future price increase might sometimes be available (for example, in the form of evidence as to how consumers have responded to price increases in the past), the Department normally would infer that effect from reliable circumstantial evidence. In evaluating geographic substitutability, the Department would consider all relevant evidence, but would give particular weight to shipment patterns, evidence that U.S. consumers had actually considered shifting their purchases of X to producers located in other areas in response to changes in competitive variables, differences or similarities in price movements over a period of years that are not explainable by parallel changes in factors such as the cost of inputs, transportation and local distribution costs, and excess capacity of producers outside Alpha's location.[135]

Of course, buyers might differ in the ease with which they could shift to products produced outside of Alpha's location. As in the case of product market definition, if sellers could discriminate in the prices they charged to buyers in different locations, then the Department would consider defining additional, narrower geographic markets in which a hypothetical monopolist could exercise market power.[136]

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[130] 15 U.S.C. 18 (1982). Section 7 of the Clayton Act applies to a transaction if the parties are engaged "in commerce or in any activity affecting commerce." *Id.* An acquisition may also be challenged under section 1 of the Sherman Act, 15 U.S.C. 1 (1982), which prohibits contracts, combinations, and conspiracies "in restraint of trade or commerce among the several States, or with foreign nations." An anticompetitive merger may be challenged under section 1 if it would have a "direct, substantial and reasonably foreseeable" effect on U.S. domestic or import commerce. *See* 15 U.S.C. 7 (1982). The Department's substantive analysis is the same under both section 7 and section 1. *See* Merger Guidelines section 1.

[131] *See* Merger Guidelines section 2.11. Under some analytical approaches, production substitution (the ability to shift the use of production and distribution assets from producing and selling one product to producing and selling another) is reflected in the description of the relevant product market. The Department, however, defines the relevant product market by reference to demand substitution and accounts for production substitution when it identifies firms in the relevant market. *Id.* at section 2.21 & n.9, and I.B.2., *supra*.

[132] *See* Merger Guidelines section 2.12. Price discrimination requires that sellers be able to identify those buyers and that other buyers not be able profitably to purchase and resell the product to them. *Id.* at n.8.

[133] Because a firm can compete at the same time in a number of economically discrete geographic markets, it is possible that Alpha and Beta also compete in markets in which U.S. consumers do not participate. For example, they may compete in Japanese markets. Because the Department is concerned about U.S. consumer welfare, it would not be concerned about the merger's competitive effects in those markets.

[134] *See* Merger Guidelines section 2.21.

[135] *Id.* at section 2.22.

[136] *Id.* at section 2.23. A U.S. Department of Defense requirement that contractors use X produced in the United States would preclude U.S. contractors from shifting to X produced outside the United States in response to a price increase in the United States, at least for military applications. Foreign-produced X might still be a supply alternative for civilian aerospace applications of X, however. If that were the case, the Department would likely define a national market for the sale of

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Geographic price discrimination against a group of buyers is more likely to occur when other buyers cannot easily purchase and resell the relevant product to the group of buyers. Such arbitrage is particularly difficult where the product is sold on a delivered basis and where transportation costs are a significant percentage of the final cost.[137]

In this case, the facts that Beta and other producers in Japan, the EEC, and Brazil currently account for approximately 40 percent of X consumption in the United States and X imports from those countries have been rising suggest that U.S. consumers would shift to X produced by firms in those areas in response to a price increase in the United States. This would not necessarily be true in all cases where there are some imports, however. For example, foreign firms might have difficulty establishing reputations for quality and service and/or distribution and marketing networks in the United States that would be necessary to expand their sales, they might already be operating at full capacity, or exchange rates might be unfavorable.

Foreign firms may also be prevented by trade restraints from expanding their sales in the United States. Such restraints, however, would not cause foreign competitors to be excluded from the relevant market. Instead, the effect of such restraints in limiting the supply response of foreign firms would be considered in assigning market shares to affected foreign firms and in interpreting market share and market concentration data. As explained in greater detail in Case 2 of these Guidelines, the Department would heavily discount existing imports by foreign firms if import restraints would prevent those firms from responding to a price increase in the United States. Assuming no significant incidence of arbitrage, the inclusion of actual import sales in the market could significantly overstate the competitive check provided by foreign firms and, therefore, understate the likelihood of anticompetitive pricing following the merger.

Identifying Firms in the Relevant Market

The Department would include in the relevant market all firms that currently sell X in the market plus all firms that could easily and economically begin selling X in the relevant market using existing production and distribution facilities within one year of a significant price increase.[138] It is important to note that firms that could readily convert their facilities to produce X within one year might nevertheless find it difficult to market or distribute X in the United States, or for some other reason might find the substitution to be unprofitable. The Department would not include those firms in the relevant market. The Department might, however, consider their competitive significance (along with the competitive significance of firms that would not be included in the market because they must construct significant new facilities) in evaluating the likelihood of new entry in response to a domestic price increase.[139]

Assigning Market Shares

The Department normally would include in the relevant market the total sales or total capacity of all domestic firms (or plants) in the market, unless the facts indicated that total sales or capacity would overstate the competitive significance of a particular firm or group of firms.[140] If some portion of a firm's output would not be used to respond to a price increase (because it was already contractually committed, for example), then the Department might exclude that portion of the firm's output from the market.[141] Market shares would be expressed either in dollar terms (through the measurement of sales, shipments, or production), or in physical terms (through the measurement of sales, shipments, production, capacity, or reserves). As a practical matter, the availability of data would determine which measurement base the Department used. If it had a choice, however, the Department would use dollar sales or shipments if X was a branded or relatively differentiated product. It would use capacity, production, or reserves if X was a relatively homogeneous and undifferentiated product.[142]

As to foreign firms, if market shares generally were to be assigned on the basis of dollar sales or shipments, the Department would count in the market dollar sales in,[143] or shipments to, the relevant market. If market shares generally were to be assigned on the basis of capacity, reserves, or production, the Department would count in the market foreign capacity, reserves, or production likely to be devoted to the relevant market in response to a price increase.[144] Total foreign capacity would not be counted in the market if a foreign firm lacked specialized distribution facilities needed to supply additional demand in the United States. In addition, the Department might use current shipments for foreign firms if the Department were unable to obtain adequate data to quantify reliably the amount of capacity, reserves, or production that would be devoted to the United States in response to a price increase.[145] Finally, the Department might assign a single, aggregate market share to a country or group of countries if there were insufficient data available to allocate shares between individual firms or if firms in that country or group of countries coordinated their production or sales into the United States.[146]

Interpreting and Assessing Market Data

In some circumstances, current market shares calculated as described above may still either overstate or understate the competitive significance of foreign firms. Import restraints, for example, might cause current import sales and shipment data to overstate the future competitive significance of foreign firms.[147] Conversely, a lack of data concerning foreign capacity might cause the Department to use market share data that understate the true competitive significance of foreign competitors.

If current market share data would give a distorted view of the market, the Department would consider qualitative evidence relating to the competitive significance of foreign competitors in interpreting the significance of such data.[148] Thus, for example, despite the

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X for U.S. military applications and a second market for the sale of X for civilian applications (which might be an international market), unless producers of X were unable to discriminate in the price they charged to purchasers for military use and purchasers for civilian use.

[137] *Id.* at n.11.

[138] *See* Merger Guidelines section 2.21. Firms that would need to make significant modifications to existing facilities or to construct new facilities to produce and sell X would not be included in the relevant market. Their role in constraining an anticompetitive price increase would be considered in evaluating ease of entry into the relevant market generally. *Id.* at section 3.3.

[139] *See* Merger Guidelines section 2.21.

[140] *See id.* at section 2.4.

[141] *Id.* Whether and to what extent the Department would exclude such output from the market would depend on the extent to which that output could either be resold to buyers in the relevant market or would free up the output of other producers to be sold in the relevant market.

[142] *See* Merger Guidelines section 2.4.

[143] If varying exchange rates made comparable dollar calculations for firms in different countries difficult, the Department might use unit volume sales instead of dollar sales. *Id.* at section 2.4 & n.12.

[144] The Department's treatment of import quotas that constrain the ability of foreign producers to increase their exports to the United States is discussed in Case 2 of these Guidelines.

[145] *See* Merger Guidelines section 2.4.

[146] *Id.*

[147] *See* discussion in Case 2.

[148] *See* Merger Guidelines section 3.23.

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inability to quantify precisely the supply response of foreign competitors, the Department would consider strong qualitative evidence that there was significant worldwide excess capacity that could readily be devoted to the United States in response to a post-merger price increase.[149]

Competitive Analysis

In analyzing the likely competitive effects of this merger, the Department would focus first on the level of post-merger concentration in the relevant market and the increase in concentration that would result from the merger as measured using the Herfindahl-Hirschman index ("HHI").[150] If concentration in the relevant market for X would remain low after the merger (for example, if ten equally-sized firms would remain in the market), or if concentration would be only slightly increased, the Department would conclude without further detailed examination that the merger posed no significant threat to competition.[151] Otherwise, the Department would proceed to examine other factors bearing on whether the merger would likely result in market power.

The HHI thresholds set forth in the Department's Merger Guidelines are not bright line tests. A merger in a highly concentrated market may result in absolutely no ability to exercise market power if any attempt to restrict output and/or raise price would be frustrated by new entry or expansion by fringe firms or if other factors would make successful collusion implausible.[152] In addition, efficiencies that could only be achieved through the merger may be so great that, despite its anticompetitive potential, the merger's net effect would be to benefit U.S. consumer welfare. The parties to the merger would have the burden of establishing such efficiencies on the basis of clear and convincing evidence.

In considering whether efficiencies justify condoning an otherwise potentially anticompetitive merger, the Department would compare the estimated cost savings from the claimed efficiencies (less the cost of consolidating the operations of the merging firms) against the expected harm to competition that might result from the merger. In general, the Department would require a greater level of expected efficiencies as the level of anticompetitive risks posed by the merger increased. The Department would consider such efficiencies as economies of scale, better integration of production facilities, plant specialization, and lower transportation costs. The Department would also consider the reduction of general selling, administrative and overhead expenses, although these types of efficiencies, as a practical matter, would be more difficult to prove. The Department would not consider claimed efficiencies if comparable savings reasonably could be achieved through other, less anticompetitive, means.

Case 2—Merger Analysis Involving Trade Restraints

The facts of this case are the same as the facts in Case 1, plus the following facts. Japanese producers of X are subject to a voluntary export restraint ("VER") limiting the quantity of their X exports to the United States. Shipments from the EEC are subject to binding U.S. import quotas, some of which limit X imports to a fixed quantity (i.e., fixed quotas), and some of which limit X imports to a percentage of U.S. production (i.e., percentage quotas). X imports from Brazil are subject to a tariff that was imposed as a result of a countervailing duty proceeding under the U.S. trade laws.

Discussion

The VER, quotas, and tariff would affect the way the Department assigns and interprets market shares and market concentration data in this case. Foreign competitors would not be excluded from the relevant market solely because their sales in the United States are subject to quotas or VERs. That is because it is difficult to assess the effectiveness and longevity of such restraints and to measure the likely offsetting supply responses of producers that are not subject to the restraints. A restraint that applied only to the EEC, for example, might have only a limited effect on the extent of foreign competition faced by domestic firms if non-EEC firms could readily shift shipments to the United States from countries that do not limit EEC imports or if they could purchase X from EEC firms and resell it in the United States. Given the limitations on available data, it often is impossible to quantify the precise effect of trade restraints.

Nevertheless, the Department would recognize in this case that Japanese and EEC firms that are subject to an effective and binding restraint[153] could not increase their shipments to the United States in response to a price increase by domestic producers. They therefore could not constrain a domestic price increase. In fact, in the case of an effective, binding percentage quota, a reduction in domestic production would actually lead to reduced imports by foreign firms subject to the quota, making successful collusion among domestic firms more likely.[154]

The Department would consider the supply-restraining effect of the EEC quotas and Japanese VER in assigning market shares and interpreting market share and market concentration data. First, the Department would not assign to the EEC and Japanese firms market shares that exceeded the level of shipments that the quotas or VER permitted those firms to make.[155] Second, the Department would consider the impact of the quotas and VER in assessing the significance of market concentration data calculated on the basis of those market shares.

To the extent that actual sales or shipments by EEC and Japanese firms overstated their future competitive significance because the restraints limited the ability of those firms to expand shipments in response to a price increase in the United States, concentration data based on those sales or shipments would tend to understate the risk of anticompetitive harm. For example, if a cartel of domestic producers restricted their output of X in order to drive up prices in the United States, EEC firms bound by the percentage quota would be forced to reduce their U.S. shipments along with the domestic cartel. Therefore, although EEC firms would be assigned market shares up to the amount permitted to be shipped to the United States under the current quota level, their competitive significance would be heavily discounted.[156]

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[149] *Id.*

[150] As explained in Part I of these Guidelines, the HHI is calculated by summing the squares of the individual market shares of all firms included in the relevant market. *See* Merger Guidelines section 3.1. The maximum possible HHI, which would result if one firm accounted for 100 percent of a market, is 10,000. *Id.* at n.14.

[151] *Id.* at section 3.11. *See also* discussion at I.B.2., *supra*.

[152] *See* Merger Guidelines sections 3.3, 3.4; *see also* discussion at I.B.2., *supra*.

[153] An "effective" trade restraint is one that cannot be substantially avoided through diversion and arbitrage. A trade restraint is "binding" if firms would sell more than the restraint ceiling if the restraint did not exist. A restraint is not binding if, for example, although it would allow firms to ship 100 units of a product to the United States, those firms currently ship only 60 units.

[154] Merger Guidelines at section 3.23.

[155] *Id.* at section 2.6.

[156] In the extreme situation where there was an effective, binding trade restraint that placed a fixed or percentage limitation on imports from all or virtually all foreign sources, foreign firms would usually be accorded little, if any, competitive significance in the Department's analysis. *Id.* at section 3.23 & n.19.

Similarly, if the VER in this case would prevent Japanese firms from expanding their shipments to the United States, current U.S. sales by Japanese firms would tend to overstate their competitive significance. This does not mean that the Department would discount Beta's market share, however. The purpose of discounting the market shares of foreign firms that are subject to import restraints is to recognize that those firms would not inhibit the exercise of market power by domestic firms. A merger between Alpha and Beta, on the other hand, would increase the likelihood of successful collusion by domestic firms by making such collusion more profitable—following the merger, a domestic cartel would control a greater percentage of sales in the relevant market.

If Brazilian firms have been shipping X subject to the tariff into the United States, the tariff by itself would not likely inhibit Brazilian producers in responding to a significant and nontransitory price increase in the United States. If the tariff were prohibitive, however, such that Brazilian firms were not currently selling in the United States, then those firms would be included in the market only if a price increase would make shipments to the United States under the tariff profitable.

Case 3—Acquisition of a Foreign Potential Competitor

The facts of this case are the same as the facts in Case 1, except that neither Beta Corporation nor any other foreign producer of X currently sells X in the United States. It is assumed that the geographic scope of the relevant market is limited to the United States. It is further assumed that it would take Beta at least 18 months to establish sufficient distribution facilities to begin selling X in the United States, if it chose to do so.[157]

Discussion

Because Beta does not compete in the U.S. market for X, this merger could have a significant anticompetitive effect only if Beta would enter the market independently in the near future if it did not merge with Alpha,[158] the U.S. market for X were very highly concentrated, and Beta were one of only a very few other firms capable of entering the U.S. market for X in response to an anticompetitive price increase. Even if the U.S. market for X were very highly concentrated, eliminating only one of several potential entrants would not have any significant anticompetitive effect.

In determining whether Beta actually would enter the U.S. market for X independently (or through a "toe-hold" acquisition) but for this merger, the Department would consider evidence that Beta actually intended to enter the market (including, for example, internal management studies, expansion plans, actual investments and other steps toward entry), past attempts by Beta to enter the market, and whether independent entry would be profitable.

Even if Beta would enter the U.S. market for X independently if it did not merge with Alpha, the Department would be concerned about the competitive impact of the merger only if the U.S. market for X were very highly concentrated (that is, if the HHI exceeded 1800).[159] In that case, the Department would ask whether Beta was one of only a very few firms capable of entering the market (for example, because few or no other firms possessed technology needed to enter the market). If that were the case, then the Department would consider whether the merger would result in significant integrative efficiencies that could only be achieved through the merger and that would outweigh any threat of anticompetitive harm to U.S. consumers.[160]

Case 4—Merger of Two Foreign Firms

Beta Corporation and Delta Corporation are among the leading diversified electronics companies in Country A. They are the two most significant producers outside the United States of product X, a highly advanced and expensive electronic device with important and unique capabilities. Both companies' facilities for producing X are located in Country A. Beta and Delta together supply approximately 60 percent of X consumption in the United States, accounting for more than $110 million in sales. Each company has at least $15 million (book value) in assets located in the United States, although none of those assets are used to produce or sell X. Beta and Delta each make X sales in the United States through agreements with independent distributors.

Beta has announced that it intends to purchase all of the stock of Delta. After conducting a preliminary investigation, the Department has determined that there is a relevant U.S. market for the sale of X that includes Beta and Delta as sellers. That market is highly concentrated (the post-merger HHI would significantly exceed 1800 points), and concentration will increase substantially as a result of the merger (i.e., by more than 100 HHI points). It therefore appears that the merger may have an anticompetitive effect in the United States unless other factors, such as ease of entry into the market, would make the exercise of market power unlikely or unless efficiencies resulting from the merger would offset any potential anticompetitive effect. Although both Beta and Delta also sell other products in the United States, it does not appear that the merger could have an anticompetitive effect with respect to any of those other products.

Discussion

Because Beta and Delta both sell X in the United States, the merger clearly is subject to section 7 of the Clayton Act. The Department's Merger Guidelines explain when the Department ordinarily would challenge a merger or acquisition under section 7. That analysis is described in Part I.B.2., *supra*, and is illustrated in Cases 1, 2, and 3.

The U.S. antitrust laws represent a fundamental and important national policy that generally must be protected when U.S. commerce is significantly affected, even when doing so requires bringing an enforcement action against conduct or transactions that occur outside the United States. Nevertheless, applying the U.S. antitrust laws to such conduct or transactions can sometimes conflict with the legitimate interests of other nations. As a matter of comity and in the exercise of its prosecutorial discretion, the Department considers such interests in deciding whether to challenge a transaction involving foreign firms.[161]

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[157] Firms that could easily and economically begin selling in the United States within one year of a significant and nontransitory price increase would be included as competitors in the relevant market. *See* Merger Guidelines section 3.21.

[158] Applying a more speculative test would insulate inefficient management from the threat of takeover without necessarily inducing independent entry and would thus lead to decreased consumer welfare. *See, e.g.*, B.A.T. Indus. Ltd., [1985–1987 Transfer Binder-FTC Complaints and Orders] (CCH) ¶ 22,218 (FTC Dec. 17, 1984).

[159] *See* Merger Guidelines section 4. Even in that case, the Department would not likely challenge the merger if Alpha had a market share of five percent or less (i.e., if it were a "toe-hold" merger). Given the insignificant role that small firms usually play in collusive interactions, a merger between a potential entrant and a firm with only five percent of the market may have the same competitive effect as new entry and may, in effect, merely convert a fringe firm into a significant competitive factor in the market. *Id.* at section 4.134.

[160] *Id.* at section 3.5. *See also* discussion of efficiencies, *supra*, at I.B.2.

[161] Indeed, the United States is committed to considering the legitimate interests of other nations in accordance with recommendations of the Organization of Economic Cooperation and Development (OECD) and bilateral agreements with several foreign governments. *See* n.1, *supra*.

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The Department would not challenge the merger in this case, notwithstanding any possible anticompetitive effect the merger might have on U.S. commerce. Since both of the merging firms are foreign and all of their assets involved in producing and distributing X are located outside the United States, it would be very difficult, if not practically impossible, to obtain effective relief that would preserve competition in the United States.

This does not mean that the Department would never challenge a merger between foreign firms that would have a substantial anticompetitive effect in the United States, however. The Department might reach a different conclusion in this case, for example, if either Alpha or Beta had facilities used to produce X located in the United States, even though both had their corporate headquarters and most of their assets outside the United States. In that case, the Department would probably request additional information concerning the likely competitive effects of the merger, using procedures under the Hart-Scott-Rodino Act, CIDs, or informal requests, as appropriate. If the Department concluded after reviewing such information that the merger would be anticompetitive, then the Department would likely challenge the merger. If X production facilities belonging to Alpha or Beta located in the United States would constitute a viable business standing alone or if acquired by another company, the merger might be permitted to go forward conditioned on the divestiture of all or a portion of those facilities to a suitable buyer approved by the Department. The Department might seek the views of the government of Country A concerning the impact of various alternative remedies on that country's national interests.

Hart-Scott-Rodino Premerger Notification Requirements

Foreign firms that have all of their assets used to produce and sell the relevant product located outside of the United States (and the merger of which therefore would not be subject to challenge by the Department under the foregoing analysis) might still be required by the Hart-Scott-Rodino Act to file premerger notification with the Department and the FTC. An acquisition by one foreign corporation of the stock of another foreign corporation is exempt from the premerger notification requirements of that Act only if (i) the acquisition would not confer control of a U.S. issuer having annual net sales or total assets of $25 million or more, or of any issuer with assets located in the United States having a book value of $15 million or more; or (ii) aggregate annual net sales of the merging firms in the United States are less than $110 million and the aggregate book value of their assets in the United States is less than $110 million.[162] In this case, neither exception is satisfied. The acquisition of Delta's stock would give Beta control over Delta's assets in the United States, which have a book value of more than $15 million, and the combined U.S. sales of Beta and Delta exceed $110 million. The parties would therefore be required to file premerger notification under the Hart-Scott-Rodino Act.

Case 5—Joint Bidding

Several U.S. electrical equipment manufacturers and engineering firms have established a consortium for the purpose of submitting a bid on an extremely large project in Country A to develop a nationwide system of hydroelectric power plants. The consortium includes three of the ten largest U.S. equipment manufacturers and three of the ten largest U.S. engineering firms. No other American or foreign firms have been invited to join the consortium. Four similar consortia supported by the Japanese, British, Korean, and German governments, respectively, are also preparing bids.

The U.S. parties have formed the consortium because a smaller group would not have the technical capabilities needed to carry out the project and a substantial portion of most members' resources is already committed to contracts for sales and construction work in the United States and other countries. The project will require at least ten years to complete.

Country A is financing the project through a 30-year loan from the United States government. The interest rate on the loan is substantially below the current commercial rate of lending and payments on the loan do not come due until the fifteenth year. As a result, the present value of the expected future repayment of the loan is less than half of the value of the project. Because of the importance of this project, several senior U.S. government officials have been strong supporters of the U.S. consortium.

Discussion

This case involves issues of joint venture analysis. As discussed in Part I.B.3., joint ventures often play an important role in promoting the growth and international competitiveness of the U.S. economy by achieving significant integrative efficiencies and adding new capacity to the market. Legitimate joint ventures—those that involve significant economic integration of members' operations beyond the mere coordination of their pricing and output decisions—are judged under a rule-of-reason analysis. Only those joint ventures that create anticompetitive risks that are not outweighed by substantial efficiencies resulting from the joint venture are proscribed. Normally, the Department would not be concerned about this consortium's effect on competition for an overseas project.[163] In the absence of U.S. government funding (discussed below), the Department would not challenge a joint venture—or even outright bid-rigging—by U.S. firms on a purely foreign project on the basis of the competitive effects of such conduct in a foreign market.

In this case, however, the U.S. government is substantially funding the overseas project through a noncommercial rate loan.[164] As a general matter, the Department considers there to be a sufficient effect on U.S. interests to support the assertion of jurisdiction where, as a result of its payment or financing, the U.S. government bears more than half of the cost of the transaction.[165] In that case, any anticompetitive conduct with respect to the transaction would have the primary effect of harming U.S. taxpayers. In this case, since the present value of the expected future repayment of the loan is less than half the value of the transaction, more than half of the

[162] *See* 16 CFR 802.51.

[163] *But see* discussion of potential "spill-over" effects in markets in which U.S. consumers participate, *infra*.

[164] *See e.g.*, United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199 (1968) (exports funded by U.S. AID Program were not "exports" under Webb-Pomerene Act and were thus subject to the Sherman Act); *see also* United States v. Standard Tallow Corp., 1968–1 Trade Cas. [CCH] ¶ 67,913 (S.D.N.Y. 1968) (sales of tallow to Egyptian government funded by U.S. AID Program).

[165] For the purpose of determining when more than half of the cost of a transaction is borne by the U.S. government, the Department applies the standards used to determine whether export conduct is eligible for certification under the Export Trading Company Act of 1982, 15 U.S.C. 4011–4021 (1982). *See* ETC Guidelines, 50 FR at 1790–1800. The requisite U.S. government involvement could include the actual purchase of goods by the U.S. government for shipment abroad, a U.S. government grant to a foreign government that is specifically earmarked for the transaction, or a U.S. government loan specifically earmarked for the transaction that is made on such generous terms that it amounts to a grant. U.S. government interests would not be sufficiently implicated with respect to a transaction that is funded by an international agency for which the U.S. government does not supply a major portion of funding or a transaction in which the foreign government receives non-earmarked funds from the United States as part of a general government-to-government aid program.

cost of the transaction is being borne by the U.S. government.

Assuming that the U.S. government is funding the project, the initial question in this case is whether the consortium is a legitimate joint venture that should be analyzed under a rule of reason, or a naked restraint of trade that should be treated as per se unlawful. This consortium would be treated as per se illegal if it were a sham designed to disguise naked bid-rigging. There is no reason to believe that the consortium in this case is a sham, however. The consortium appears to be intended to achieve legitimate integrative efficiencies. It does not simply eliminate competition among consortium members; rather, it enables them to compete more effectively against other consortia by combining complementary assets.[166]

Step 1—Joint Venture Market

If, as in this case, the joint bidding consortium was not a sham, the Department would first determine whether the consortium would have an anticompetitive effect in the market in which the consortium will compete. It appears from the facts of this case that no single consortium member or smaller group could be a credible bidder on the project. If that were true, then the consortium would not eliminate any competition among bidders and this case would raise no antitrust concern with respect to competition for the project (although, as discussed below, the Department might be concerned about anticompetitive spill-over effects in U.S. markets).

If the consortium did eliminate competition among its members (that is, if some subset of the consortium could credibly have bid on the project), then the Department would analyze the consortium's competitive effects as though the consortium were a merger of the consortium members in the market in which the consortium will compete. Assuming that the consortium will compete only for the project in this case, the relevant market would likely be defined as the group of consortia willing and able to perform the project.

[166] Such a sham might exist if the consortium members had originally intended to bid separately but agreed to bid collectively in order to hold the bids down and then to allow one pair of engineering firm and equipment manufacturer to perform the contract and provide some quid pro quo to the other members. The true intention of the parties would be covert and the consortium would be merely diversionary. The consortium would not have been formed to achieve efficiencies from the economic integration of the parties' operations; rather, its goal would have been to reduce competition among the bidders.

As in merger analysis, the Department would focus first on the level of concentration in the market after the consortium is formed and the increase in concentration as a result of forming the consortium. If each of the five bidding consortia is a comparable participant in the market (that is, if each faces comparable costs and is equally able to perform the contract), then the Department would consider each of the consortia to be equal in size and competitive significance.

The Department would measure concentration in the market by dividing the number of bidders into one and multiplying by 10,000 (the HHI of a single-firm market).[167] If a single team of one U.S. engineering firm and one U.S. equipment manufacturer could credibly bid on and perform the project, for example, then the consortium would reduce the number of bidders in the market from seven (three U.S. bidding consortia and four foreign bidding consortia) to five. Market concentration with seven bidders would be approximately 1428, and market concentration with five bidders would be 2000 and an increase in concentration of more than 50 points. The consortium would result in a highly concentrated market.[168] The Department would therefore proceed to consider other relevant factors bearing on the likelihood that the U.S. consortium would be anticompetitive.

In particular, the Department would determine whether there were many other potential bidders for the hydroelectric power plant project. A market may be competitive even if there are only five, or even two, actual bidders if there is a large pool of potential bidders. The number of actual bidders may be limited by the costs of bidding (e.g., the cost of forming the consortium, formulating the bid, and, perhaps, qualifying to bid). If the costs of bidding are substantial, then only a few potential bidders would be expected to bid on a given project. The Department would therefore not be concerned about the U.S. consortium in this case if it appeared that there were many other potential bidders that could have competed for the project; five bidders would simply be the market's optimal number of actual bidders.

Although the analysis of this consortium may seem complex, it is useful to keep two points in mind. First, if the project were purely foreign, without the involvement of substantial U.S. government funding, then the Department would not challenge the consortium regardless of the circumstances. Second, even if antitrust analysis were required because of, for example, substantial U.S. government funding, it would often be clear that a particular joint venture is reasonably required to maximize the competitiveness of the joint venture members.

Step 2—Spill-Over Markets

The Department would next determine whether the consortium or any of its ancillary restraints would likely have any anticompetitive "spill-over" effects in other markets in which the consortium members do or would compete. Under certain circumstances, the consortium in this case might facilitate collusion among members with respect to the price and/or output of electrical equipment or engineering services or on bidding for projects in the United States. In formulating the consortium's bid, for example, consortium members might exchange sensitive business information that could be used to coordinate prices or output in the United States.

Such spill-over effects may be of no concern if none of the information the consortium members might share about the hydroelectric power plant project in Country A would be relevant to competition among consortium members in the United States, or if the consortium included safeguards against anticompetitive spill-over effects resulting from the exchange of sensitive information. For example, the consortium might include safeguards designed to prevent the disclosure of sensitive business information to persons that are actively engaged in managing the competitive activities of individual consortium members in spill-over markets.[169] Of course, even if such safeguards were not used, the consortium would raise no significant concerns if the relevant spill-over

[167] If the U.S consortium would continue to compete on other U.S. government funded projects and/or projects in the United States, then the Department's analysis might be different. For example, if potential competing bidders were capacity-constrained, such that they would not be available to compete on all projects, then the Department would have to take that into account in assigning market shares and measuring concentration in the relevant market. The Department would also likely be more concerned with the possibility of anticompetitive collusion if there were many repeated bidding opportunities, since in that case it might be easier to coordinate a bid-rigging cartel.

[168] *See* n.58, *supra*.

[169] *See* nn.75–80 and accompanying text, *supra*. The existence of such safeguards, of course, would not preclude the Department from prosecuting any unlawful agreement that resulted notwithstanding such precautions (perhaps because the parties failed to observe safeguards).

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market were not concentrated, the consortium members represented a small share of the spill-over market, entry into the spill-over market were easy, or other factors would make successful collusion in the spill-over market unlikely.

If the consortium did raise any significant antitrust concern, the informal encouragement given to the consortium or its members by U.S. government officials would not confer any kind of antitrust immunity. If bidding consortia and other joint ventures engaged in exporting goods or services desire greater certainty about their potential antitrust liability, they can seek to obtain a business review from the Department or a certificate of review under the Export Trading Company Act.[170] Export conduct is not eligible for certification under the Export Trading Company Act, however, if the U.S. government bears more than half the cost of purchasing the exported goods or services.

Case 6—Research and Development Joint Venture

The first, third, and fourth largest producers of X-metal in the United States, which supply 35, 15, and 10 percent of U.S. X-metal consumption, respectively, have entered into an agreement with Beta Corporation, a British company that is one of the largest X-metal producers in the EEC. The parties plan to engage in joint R&D to develop a process for producing X-metal from sources other than the traditionally used X-ore. X is found in a variety of shales located throughout the world, but no one has found an economical way to produce X from these shales. Beta and several X-metal producers, including each of the U.S. parties to the agreement, are independently engaged in laboratory research activities. So far, none of this research has yielded a workable process or shown any promise of doing so.

Under the agreement, the parties will form a British company. Each party will own one-fourth of the shares of this company, and each will designate one-fourth of the members of the board of directors. Each of the venture members has agreed to conduct all of its R&D activities devoted to seeking new processes for producing X-metal from shale through this new British company. They have also agreed to provide the company with past and projected price and cost data relating to their production and sale of X-metal from X-ore.

[170] 26 CFR 80.8 and 15 U.S.C. 4011–4021 (1988).

The new British company will seek to obtain patents on any new process it develops. It will grant to the U.S. venture partners exclusive licenses to all patent rights and use of know-how in North America. Beta will be given similar rights to patents and know-how in the United Kingdom, other EEC countries, and all the British Commonwealth countries except Canada. The U.S. parties have agreed not to market X-metal produced using licensed technology in territory reserved to Beta. Beta has agreed not to sell X-metal produced using licensed technology in North America.

Discussion

As is the case with all international agreements, the Department's review of the agreement in this case would focus on the agreement's likely competitive effects in the United States. Although the joint venture's activities will be conducted overseas by the new British company, the agreement will directly affect R&D competition among firms that do or could produce and sell X-metal in the United States, as well as the sale of X-metal in the United States by Beta.[171]

The agreement in this case involves both horizontal and vertical restraints. First, the agreement to coordinate the R&D efforts of the parties should be analyzed as a joint venture that eliminates competition among horizontal competitors in a relevant R&D market. The licensing agreement should be analyzed as a vertical restraint.

Joint Venture Analysis. Joint R&D activities often have substantial procompetitive effects by promoting the development of new technologies, products, and processes that otherwise would not be available and that could substantially improve the efficiency of firms serving U.S. consumers. The specific benefits that can be derived from joint R&D include sharing the often substantial economic risks involved in R&D; increasing the efficiency of R&D efforts by exploiting economies of scale or scope beyond what individual firms could realize, or by pooling important information or complementary skills; and overcoming the "free-rider" disincentive to invest in R&D by including likely end-users of the R&D in undertaking the research efforts and sharing the costs. An R&D joint venture can also provide a low-cost means of transmitting information created by the venture, minimizing transactions costs, and allowing venture members to use information at its actual zero marginal cost.

NCRA. Congress formally recognized the procompetitive benefits of joint R&D when it enacted the National Cooperative Research Act of 1984 ("NCRA").[172] The NCRA, among other things, prohibits courts from condemning a joint R&D venture on antitrust grounds unless the joint venture is proven to have anticompetitive effects in a properly defined, relevant market that outweigh the joint venture's procompetitive benefits.[173] The NCRA also limits the monetary relief that may be obtained in civil suits challenging conduct that is within the scope of notification filed by the joint R&D venture with the Attorney General and the FTC.[174]

The NCRA includes in the definition of joint R&D the patenting and licensing of the results of an R&D joint venture. It excludes (i) any exchange of competitively sensitive information among competitors "that is not reasonably required to conduct the research and development that is the purpose" of the venture; (ii) any agreement or conduct restricting competition among venture members with respect to producing or marketing products, processes, or services other than the intellectual property (e.g., patents or know-how developed through the joint venture; or (iii) any agreement or conduct restricting the sale, licensing, or sharing of intellectual property developed outside the joint venture or restricting or requiring participation in other R&D activities that is "not reasonably required to prevent misappropriation of proprietary information" that is contributed by any joint venture member or that results from the joint venture.[175]

Conduct excluded from application of the NCRA is not necessarily unlawful, of course. Unless a collateral restraint has no plausible connection to the legitimate conduct of the joint venture, it is analyzed under the rule of reason.[176]

[171] Both section 7 of the Clayton Act and section 1 of the Sherman Act would apply to the formation of this joint R&D venture because of the acquisition of shares of the new British company, a person whose activities at least "affect" U.S. commerce. 15 U.S.C. 18. In addition, the licensing of technology produced by the joint venture to U.S. firms would occur "in commerce." The formation of the joint venture may be subject to the premerger notification requirements of the Hart-Scott-Rodino Act. *See* 16 CFR 801.40.

[172] Pub. L. No. 98–462, codified at 15 U.S.C. 4301, *et seq.* (1984). *See* I.A.A., *supra*.

[173] 15 U.S.C. 4302.

[174] 15 U.S.C. 4305(a). Joint R&D ventures within the scope of the notification also can recover attorneys' fees expended in successfully defending against a private antitrust suit.

[175] 15 U.S.C. 4302(b).

[176] *See* I.S.S., *supra*.

Nor would the fact that some excluded conduct was part of the joint venture agreement which result in the denial of benefits under the NCRA with respect to the remainder of the joint venture's activities that do fall within the Act's definition of R&D activity.

Rule-of-Reason Analysis

The rule of reason condemns only joint R&D activities that, on balance, are anticompetitive.[177] If no anticompetitive effectives are likely, the joint venture and its restraints are lawful; it is not necessary to inquire as to the joint venture's precise procompetitive benefits. On the other hand, the existence of possible anticompetitive effects does not automatically condemn the joint venture. The risk of anticompetitive effects must be weighed against any likely procompetitive benefits of the joint venture. As Congress has recognized, as a general matter, the greater the cost of R&D relative to a single firm's budgetary limits, or the greater the economies of scale that can be achieved through the jointly conducted R&D, the more likely is that the procompetitive benefits of joint R&D activity will outweigh any potential anticompetitive effects.[178]

As described in Part I of these Guidelines, the Department applies a two-step rule-of-reason analysis to R&D joint ventures.[179] First, the Department considers whether the joint venture would have a significant anticompetitive effect in the relevant market or markets in which the ventures will compete. Second, the Department considers whether the joint venture would serve as a mechanism to coordinate the restriction of output in other markets in which the venture members compete or might compete.

Step 1—Joint Venture Markets

Applying the principles set forth in the Department's Merger Guidelines,[180] the Department would first identify the relevant R&D market and firms competing in that market. The Department would include in the relevant R&D market all firms that, judged objectively, have the incentive and ability, either alone or cooperatively, to undertake R&D comparable to the R&D proposed to be undertaken by the joint venture in this case. The Department would consider, among other things, such firms' business objectives, facilities, existing technologies and technologies under development, and other relevant available assets. Firms would not have to be competitors in producing or selling X-metal to be included in the relevant R&D market. Moreover, because of the mobile nature of information, foreign R&D competitors would probably be significant competitive factors.

The Department generally would consider all possible comparable R&D efforts to be equal in size and competitive significance. As a general rule, an anticompetitive effect is unlikely where there are at least four comparable R&D efforts underway or where there is a substantial potential for such efforts by firms or groups of firms included in the market. While the actual or potential existence of four comparable R&D efforts creates a "safe harbor," however, the fact that there are fewer than four actual or potential R&D competitors does not necessarily mean that a particular R&D joint venture is anticompetitive. Fewer R&D competitors may provide adequate competition, particularly if the joint venture members can conduct R&D outside of the joint venture. Moreover, a joint venture that includes a large portion or even all of the competitors in an R&D market may be necessary in a particular case for successful R&D.[181]

Even if a merger of the joint venture members would give them the power to restrict the output of R&D, a joint venture may pose less anticompetitive risk than a complete merger. In this case, the venture members are precluded from engaging outside the joint venture in R&D into X-metal extraction from shale; however, they can continue to compete in the production of X-metal using other processes. Similarly, because the firms retain their independent management, the coordination necessary by the venture members to exercise market power would be more difficult than in the case of an outright merger.

Moreover, the restriction on the venturers' ability to engage in competing R&D is reasonably necessary to the successful operation of the venture, and the Department would weigh the potential anticompetitive effects of this restriction against its procompetitive benefits. The restriction is probably designed to avoid the threat that a venture member would "free ride" on the venture's efforts. Such free-riding could occur if a member used information provided by others to the joint venture in that member's own private R&D efforts and did not share the benefits of the R&D with other venture members. Without this restriction, firms might be reluctant to disclose information to the venture, thus significantly impeding the success of the venture.

Step 2—Spill-Over Markets. Next, the Department would determine whether the venture would likely have any anticompetitive spill-over effects in product or service markets in which the joint venture members currently compete. In this case, the venture members' exchange of competitively sensitive price and cost data relating to their X-metal production using existing technology might conceivably facilitate collusion with respect to the sale of X-metal unless adequate safeguards were implemented to prevent anticompetitive use of the information. The fact that the joint venture's activities are to be carried out through a separately incorporated entity is one such safeguard which might be supplemented by independent staffing of that entity and other steps to ensure that competitively sensitive information does not flow back to the venture members. Even if such safeguards were not used, however, the joint venture in this case would raise no significant spill-over concerns if entry into the relevant X-metal market were easy (it appears from the facts of this case that the X-metal market is highly concentrated) or other factors would make collusion in that market unlikely. The Department would also weigh the risk of anticompetitive spill-over effects against the procompetitive benefits of the joint venture.

Licensing Arrangement. If the joint venture itself is lawful, then the Department would next consider the competitive effects of the joint venture licensing arrangements. Under the joint venture agreement, the three U.S. members of the joint venture will be granted exclusive licenses to all patent rights and know-how developed by the joint venture. In addition, Beta has agreed not to sell X-metal produced using licensed technology in the United

[177] This assumes, of course, that the R&D venture and its collateral restraints represent a legitimate integration of efforts to produce valuable R&D. A joint venture that was not formed to pursue R&D, but was formed merely to disguise a naked scheme to fix prices or allocate territories or customers for the sale of some product or service would be viewed as a sham, and might be prosecuted criminally. A collateral joint venture restraint that merely fixed the price of goods as to which the technology was of no importance or of only trivial importance to efficient production of those goods would also not be lawful.

[178] House Conf. Rep. No. 1044, 98th Cong., 2nd Sess., 1206.

[179] *See* I.S.S., *supra*.

[180] *See* Merger Guidelines section 2 and Cases 1, 2, and 3.

[181] House Conf. Rep. No. 1044, *supra* n. 178.

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States.[182] The joint venture company is the licensor and the individual joint venture members are the licensees. These license restrictions are properly analyzed as vertical restrictions because, by the terms of the joint venture agreement, the joint venture participants are prohibited from competing with the joint venture in developing related technology.[183] The licensing restrictions should therefore be analyzed as described in Parts I.B.4. and I.B.5. and Case 12 of these Guidelines.

The licensing of techonlogy owned and developed by multiple parties should be treated no more harshly than technology owned and developed by a single entity. The license restrictions in this case would be found to be anticompetitive only if they would facilitate collusion among owners of competing technologies or exclude competing technologies from the market by "tying up" all or nearly all of the licensees capable of exploiting competing new technology. The granting of exclusive licenses generally does not raise a competitive issue because a technology owner has no obligation to create competition in its own technology. Here, in fact, there will be competition among the three American companies and other companies outside the joint venture using current technology or shale-extraction technology developed by others. Any competing shale-extraction technology can be licensed to X-metal producers outside the joint venture or even to the joint venture members themselves, since they are not prevented by the terms of the joint venture agreement from licensing competing technologies.

As is true with respect to all analysis under the rule of reason, the Department would not challenge the license restrictions in this case if they were not anticompetitive, without regard to the presence or absence of procompetitive benefits. If the restrictions posed a significant anticompetitive threat, the Department would then consider any offsetting procompetitive benefits. The Department would consider, for example, the benefits of exclusive licenses in providing incentives to licensees to develop and market products using the technology without fear from free-riders.

[182] This restriction is consistent with the policy underlying section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, as amended by 19 U.S.C. 1337a, which allow a U.S. process patent holder to obtain relief against the importation of products produced using a process covered by a valid U.S. process patent.

[183] To the extent that any horizontal restraint on technology development was an issue, it would be resolved in step 1 of the analysis.

Case 7—Distributing a Foreign Competitor's Product

Alpha Corporation and Beta Corporation are significant, but not dominant, manufacturers of machine tools in the United States and the Federal Republic of Germany, respectively. Neither company makes substantial sales in the other company's home country. Alpha has agreed to appoint Beta as its exclusive distributor in the EEC, and Beta has agreed to appoint Alpha as its exclusive distributor in North America. Both appointments will be for a period of five years.

Some of Alpha's and Beta's products are directly interchangeable in use. Most, however, are either complementary (that is, they can be used in conjunction with each other) or have special features that substantially differentiate them. Alpha and Beta recongize that neither company is likely to promote imports of the other that are directly interchangeable with its own products. But each believes that their total exports under this arrangement will be significantly greater than if an independent distributor were used. In addition, Alpha reasonably believes that the ability to offer a full line of machine tools by handling Beta's products will enable Alpha to compete more effectively against competing machine tool manufacturers in the United States.

Under the proposed distributorship arrangement, Alpha and Beta will each pay a predetermined price (based on factory costs), and will be free to resell the imported machine tools at whatever price they choose. In addition, Alpha and Beta have agreed that they will prohibit their distributors in other countries from re-exporting machine tools produced by either Alpha or Beta into the EEC or North America.

Discussion

The appointment of an exclusive foreign distributor by a U.S. firm does not by itself raise concern under the U.S. antitrust laws. Such an arrangement normally would not affect consumers in the United States. Where the parties are actual or potential competitors, however, a reciprocal distribution arrangement such as the one presented in this case raises at least the possibility that it might amount to an unlawful scheme to allocate markets between the parties or that it otherwise might adversely affect competition in a relevant market affecting U.S. consumers. This case therefore initially raises a question of characterization: should the distribution arrangement between Alpha and Beta be treated as per se unlawful market allocation between horizontal competitors, or should it be examined under a rule-of-reason analysis that recognizes the arrangement's potential procompetitive benefits?

The reciprocal distribution arrangement in this case does not appear to be a naked agreement to restrict output and/or raise price. Rather, the arrangement appears to involve an economic integration of the parties' operations (beyond simply the coordination of price and output)that may result in increased output.[184] Although Alpha and Beta both produce machine tools, some of which are directly interchangeable, their product lines appear to largely complementary. Moreover, Alpha reasonably believes that its ability to offer a full line of machine tools under the distribution arrangement will enable it to compete more effectively against other machine tool manufacturers in the United States. The fact that this arrangement is open and notorious makes it less likely (though not impossible) that the arrangement is designed to facilitate naked price-fixing.

The Department would therefore analyze the distribution arrangement under the rule of reason. Applying the principles and standards set forth in the Department's Merger Guidelines, the Department would first determine whether eliminating competition between Alpha and Beta would have an anticompetitive effect in a relevant market for the sale of machine tools to U.S. consumers.[185] If the complete elimination of competition between Alpha and Beta through merger would not be anticompetitive (for example, because existing competitors or new entrants would frustrate any attempt to exercise market power or because of procompetitive benefits that would outweigh any anticompetitive effects), then the distribution arrangement or restriction prohibiting Beta and its distributors from re-exporting Alpha's or Beta's machine tools also would not be anticompetitive.

If a merger of Alpha and Beta would be anticompetitive, then the Department would look more closely at the nature of the restrictions imposed by this distribution arrangement.[186] The

[184] *See* an.45 and 46 and accompanying text, *supra.*

[185] *See* I.B.2., *supra.*

[186] Of course, a restriction that had no plausible connection to the efficient operation of the distribution arrangement, but was simply a naked attempt to restrict output and/or fix price, would be analyzed independently and might be subject to

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distribution arrangement may be its terms pose less of a risk of creating or facilitating the exercise of market power than would an outright merger between Alpha and Beta. For example, if there were no restriction against transshipping by Beta's worldwide distributors, any attempt by Alpha to exercise market power in the United States might be undercut by competition form Beta's distributors. Even with the transshipping restriction, the distribution agreement may not allow perfect coordination of the price and output of the two companies' machine tools in the United States. If that were true, then other factors (such as ease of entry or the procompetitive benefits of the arrangement) may establish that, on balance, the distribution arrangement would not be anticompetitive, even though a merger would be anticompetitive.[187]

Case 8—Exclusive Vertical Distribution Arrangements

As in Case 7, Alpha Corporation and Beta Corporation are significant, but not dominant, manufacturers of machine tools in the United States and the Federal Republic of Germany, respectively. The relevant market for the sale of machine tools is not highly concentrated. Although some of the machine tools produced by Alpha and Beta are directly interchangeable in use, most are complementary or substantially different. Beta makes substantial sales in the United States. It has appointed Delta Distribution Inc. as its exclusive distributor of machine tools in the United States. Beta chose Delta because of Delta's substantial experience and expertise in the promotion and sale of machine tools. Beta's other worldwide distributors are prohibited from selling Beta's machine tools in the United States or to firms that intend to transship Beta's machine tools to the United States.

For a number of years, Alpha has been selling machine tools in the United States through a large number of non-exclusive independent distributors, selling to whichever distributors sent in orders. During the period that it has employed this distribution method, Alpha's market share has gradually declined. To halt this decline, Alpha has recently selected Delta as its exclusive U.S. distributor. Alpha believes that Delta will more affectively distribute Alpha's brand of machine tools because of Delta's expertise and because, under Alpha's new distribution system, the exclusive right to distribute Alpha's products will result in better promotion and servicing of Alpha's tools. Alpha initially was concerned that Delta might be less aggressive in promoting Alpha's line of machine tools because Delta also distributed Beta's line. However, Alpha ultimately concluded that, since Beta's line largely complemented Alpha's line, both product lines would benefit if Delta could market both. Alpha prohibited Delta from distributing the machine tools of any other supplier of machine tools except for those of Beta, however. In selecting Delta, Alpha chose among several competing distributors.

Discussion

This case illustrates the use of two types of vertical nonprice restraints: the grant of an exclusive territory to a distributor and the requirement that a distributor deal exclusively with the products of a limited number of manufacturers. The appointment of an exclusive U.S. distributor (or a group of exclusive distributors, each with an exclusive territory that represents only part of the United States) by a manufacturer generally raises no significant antitrust concern. Indeed, such arrangements can substantially enhance interbrand competition. For example, granting distributors exclusive territories may encourage distributors to provide substantial promotion and post-sale services that are necessary to gain recognition for, or build up good will in, the manufacturer's brand by preventing other distributors that do not provide these services from "free-riding."[188] Under the rule of Reason, of course, the Department would challenge a vertical restraint only if it would have a significant anticompetitive effect in some relevant market, regardless of whether the parties have a procompetitive explanation for the restraint.

Exclusive Territories/Transhipping Prohibition. Under certain market conditions, widespread use of exclusive territories by leading manufacturers conceivably might facilitate collusion among distributors of competing manufacturers. Such collusion would be possible in this case, however, only if: (i) The relevant market for the sale of machine tools were very highly concentrated; (ii) distributors subject to exclusive territories accounted for a large portion of the market; and (iii) entry into distribution were difficult. Even then, a careful analysis of all relevant factors might indicate that Beta's use of exclusive territories would not facilitate collusion with respect to the output or price of competing brands of machine tools or, if it would, that the procompetitive benefits of Beta's distribution arrangement outweighed the risk of anticompetitive effects.

In this case, it is clear that the appointment of Delta as exclusive U.S. distributor by both Alpha and Beta would pose no significant risk of collusion. Because there are many machine tool manufacturers in the relevant market, coordinating and policing the pricing and output activities of those manufacturers would be very difficult, if not impossible, without an explicit agreement among them. Rival manufacturers would have an incentive to cheat by selling directly to consumers or by dealing with non-colluding distributors. Therefore, even if each machine tool manufacturer in the relevant market were vertically integrated into distribution or distributed through exclusive distributors, it would be extremely unlikely that the manufacturers could successfully develop, police, and benefit from a scheme to facilitate collusion at the dealer level.

Exclusive Dealing Requirement. Alpha's restriction on Delta's ability to deal with machine tool manufacturers other than Alpha and Beta also would not be anticompetitive. In fact, exclusive (or partially exclusive) distributorships generally pose no antitrust concern. Instead, they generally enhance efficiency and increase interbrand competition. For example, an exclusive dealing requirement may enable the manufacturer to protect its investment in services, such as advertising and training, provided to dealers, that the dealer might otherwise use to sell the goods of competing manufacturers. Exclusivity can also ensure that the dealer devotes optimal effort and attention to promoting the manufacturer's brand rather than that of a rival. In this case, because Beta's line of machine tools largely complements Alpha's line, the exclusivity arrangement might encourage Delta to promote both lines without divided loyalty to either.

Under certain market conditions, a restraint that required a distributor to deal exclusively in the product of one or a limited number of manufacturers conceivably might have the effect of excluding rival manufacturers from the market by denying them access to

prosecution even though the reciprocal distribution arrangement itself and other restraints related to it were lawful. Thus, for example, the Department would not hesitate to prosecute a side agreement by the parties in this case covertly to fix the price of an unrelated product not covered by the distribution arrangement that they purported to sell in competition with one another.

[187] *See* I.B.3., *supra*, and Case 8.

[188] *See* I.B.4., *supra.*

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essential distribution facilities. Such an effect would be plausible, however, only if: (i) The manufacturing market were highly concentrated and leading manfacturing employed the same or very similar restraints; (ii) distributors subject to the restraint controlled a large share of the market; and (iii) entry into the distribution market were difficult. As with the threat of collusion, these three conditions are the minimum necessary (but not sufficient) conditions required to create a plausible risk of anticompetitive exclusion. Other factors, including the procompetitive benefits of the exclusive dealing arrangement, might indicate that the restraint is competitively neutral or even procompetitive.[189]

In this case, it appears that there are a number of distributors other than Delta with which competing machine tool manufacturers could deal. Moreover, the relevant machine tool market is not highly concentrated. Therefore, even if all existing distributors were subject to exclusive dealing arrangements (so that machine tool manufacturers seeking to enter the market would have to integrate into distribution or establish a new distributor), there could be no anticompetitive effect in the relevant machine tool market.

Case 9—A Multinational Operation

Alpha Corporation is a large, well-known multinational corporation headquartered in New York City. Alpha manufactures printing machines in New Jersey. It exports its printing machines only to Latin American countries. It uses overseas subsidiaries to manufacture and sell its products throughout the rest of the world. Although Alpha's patents on its printing machines expired years ago, Alpha and its subsidiaries collectively have retained a dominant position in most markets because of superior sales and service organizations, accumulated know-how, and low manufacturing costs.

The Alpha system of management involves a strong "profit center" concept. Individual subsidiaries are judged by their ability to develop sales in their assigned territories. Normally, when an order comes in to one Alpha subsidiary from the assigned territory of another, the recipient sends it on, or suggests that the consumer contact directly the subidiary assigned to the territory.

The Alpha group of companies comprises three subsidiaries. Alpha (U.K.) Limited manufactures Alpha products and sells them throughout the United Kingdom, the Republic of Ireland, and the Commonwealth, except Canada. Alpha (U.K.) was a wholly-owned subsidiary of Alpha when it was formed in 1954, but 40 percent of its stock is now publicly held as a result of a 1964 public stock offering. Beta Corporation is a wholly-owned Canadian subsidiary of Alpha that manufactures and sells Alpha products only in Canada. Alpha G.m.b.H., incorporated in the Federal Republic of Germany, manufactures and sells Alpha products in the Common Market countries other than the United Kingdom and the Republic of Ireland and all other countries except the Commonwealth, Canada, the United States, and Latin America. Alpha acquired Alpha G.m.b.H. in 1951 from four large individual investors. Alpha now holes 56 percent of the stock of Alpha G.m.b.H. The remaining 44 percent is evenly divided among the four original investors.

Alpha plans to sell an additional seven percent of its stock holdings in Alpha G.m.b.H., which would leave Alpha with 49 percent of the stock of Alpha G.m.b.H., but effective working control. Alpha is also negotiating to sell 50 percent of the stock of Beta Corporation to a Canadian corporation which purchases the stock of Canadian companies for investment purposes.

Discussion

This case involves the issue of intra-enterprise conspiracy. In *Copperweld Corp.* v. *Independence Tube Corp.*,[190] the Supreme Court held that, because a parent corporation and its wholly-owned subsidiary have a "complete unity" of economic interests, they are not independent actors capable of conspiring to restrain trade within the meaning of section 1 of the Sherman Act.[191] The Court declined to decide whether the same result would apply where a subsidiary is less than wholly-owned.[192] In the Department's view, however, the policies underlying the Sherman Act (as discussed in *Copperweld*)[193] support the conclusion that a parent corporation and any subsidiary corporation of which the parent owns more than 50 percent of the voting stock are a single economic unit under common control and are thus legally incapable of conspiring with one another within the meaning of section 1.[194] If a parent company controlled a significant but less than majority share of the voting stock of a subsidiary, the Department would make a factual inquiry to determine whether the parent corporation actually had effective working control of the subsidiary.

In this case, the Department would likely view Alpha and its subsidiaries as a single economic entity incapable of conspiring among themselves because Alpha holds a majority voting stock interest (100 percent, 60 percent, and 56 percent, respectively) in each of them. Alpha's sale of its majority interests in the German and Canadian subsidiaries would probably not change that conclusion. Alpha would retain nearly a majority stock interest and apparent effective working control since it appears that the remaining stock interests in both subsidiaries would be held by passive investors that do not represent any independent competitive interests. As a practical matter, Alpha and the subsidiaries should continue to function as a single economic entity, and there would be no change in the essential competitive situation. If it appeared, however, that Alpha relinquished effective working control over either subsidiary, then Alpha and that subsidiary would not be viewed as a single economic entity, and any agreement between them would be subject to normal antitrust rules under section 1 of the Sherman Act.

Case 10—Vertical Restraints in a Patent License

AutoGlass Corporation is a leading U.S. producer of windshields and other automobile glass. It markets these products to automakers and in the automotive aftermarket throughout the world. AutoGlass has no other business. AutoGlass invents a new, scratch-resistant transparent coating for automobile glass applications and obtains U.S. and foreign product patent protection for this material, which it calls AGPLEX. AutoGlass discovers broad interest in AGPLEX from safety eyeglass manufacturers, who believe that such a material would revolutionize the safety eyeglass market because of the superiority of AGPLEX-coated safety eyeglasses as compared to the uncoated safety eyeglasses that currently dominate the market, which are prone to scratching and breaking.

Amer-Eye Company, one of many safety eyeglass manufacturers in the United States, obtains an exclusive, field-of-use license under AutoGlass' U.S. patent to make and sell safety eyeglasses coated with AGPLEX in the United States. Amer-Eye's AGPLEX license forbids Amer-Eye from manufacturing and selling safety eyeglasses coated with any other material. Amer-Eye is not prohibited from continuing to manufacture and sell uncoated safety eyeglasses. The license requires Amer-Eye to pay royalties based on its total unit sales of safety eyeglasses, regardless of whether they are coated with AGPLEX.

British Optics Corporation, one of several British safety eyeglass manufacturers, is granted an exclusive license by AutoGlass to make and sell safety eyeglasses coated with AGPLEX in the United Kingdom and in all other member countries of the EEC. British Optics' license is subject to the same manufacturing restriction and royalties payment provision that are contained in Amer-Eye's license. British Optics has been selling safety eyeglasses in the United States (accounting for five percent of U.S. consumption) and would have liked a license under AutoGlass's U.S. patent, as well. Otherwise, British Optics cannot sell safety eyeglasses coated with AGPLEX in the United States.

AutoGlass's licenses of its other patents throughout the world have no arguable effect on U.S. commerce.

Discussion

As is the case with international agreements generally, the Department's consideration of the patent licenses in this case would be limited to the effects of the licenses on U.S. commerce. Otherwise, the Department's substantive analysis of the licenses in this case would be identical to its analysis of similar agreements in a purely domestic context.

Rule of Reason Analysis

Unless the underlying transfer of technology is a sham, or the license restrictions restrain competition between the licensor and licensee and bear no relationship to the underlying transfer of technology, the restrictions in an intellectual property license are analyzed under the rule of reason. There is no indication that the licenses to Amer-Eye and British Optics in this case are a sham or that any of the restrictions would restrain competition between either of them and AutoGlass. The licenses appear to be of great value to the licensees. Therefore, the Department would analyze the licenses in this case under a rule of reason.

This case demonstrates application of the rule of reason to purely vertical restraints in a patent license. AutoGlass does not compete in the safety eyeglass market, and there is no indication that either Amer-Eye or British Optics compete with AutoGlass in any relevant technology market. The license therefore does not restrain horizontal competition between AutoGlass and its licensees.

The license restrictions in this case would be anticompetitive only if they would (i) facilitate collusion in the sale of all safety eyeglasses [195] or in the licensing of technologies that compete with AGPLEX or (ii) exclude competing technologies from the market by "tying up" so much of the potential eyeglass manufacturing capacity that no competing technology could effectively enter the market. In determining whether any or all of the vertical restraints in Amer-Eye's license in this case would be anticompetitive, the Department would apply the rule of reason analysis set forth in Part I.B.4.

On the facts of this case, the Department could quickly conclude that neither collusion nor anticompetitive exclusion is likely. First, it does not appear that the restrictions in this case would facilitate collusion with respect to the output and/or pricing of either safety eyeglasses or coating technologies. None of the license restrictions would tend to facilitate collusion among the many competing safety eyeglass manufacturers in the United States—the grant of an exclusive license to one of those manufacturers would not enable AutoGlass to help police a cartel among safety eyeglass manufacturers or make it any easier for all safety eyeglass manufacturers to reach agreement. Nor, on the facts of this case, does it appear that the license is intended to or would have the effect of facilitating collusion among AutoGlass and owners of competing technologies, since no other competing technologies appear to exist. Moreover, even if competing coating technologies are developed, AutoGlass's prior decision to grant only one U.S. license would not appear to make collusion between AutoGlass and any other competing technology owner any more likely than if AutoGlass tried to exploit the safety eyeglass field on its own.

Second, it does not appear from the facts of this case that the license restriction would exclude rival technologies from the market. There are many other safety eyeglass manufacturers in the market that could develop and use competing technologies. There also is no indication that entry into the manufacture and sale of safety eyeglasses would be difficult.

The Department would not be concerned about the ability of manufacturers of non-coated safety eyeglasses to compete with Amer-Eye. The antitrust laws do not condemn even monopolies that are obtained through the offering of superior products. Nor do they require patentholders to make their technology open to all. Others are free to attempt to develop technologies that would compete with AGPLEX and, in the meantime, AutoGlass and its licensees are entitled under our patent laws to enjoy whatever competitive advantages may result form AutoGlass's innovation.

Because it is clear that the license arrangements in this case are not anticompetitive, it is irrelevant whether the restrictions in those licenses are efficient. The Department would determine not to challenge the restrictions without further analysis. Even in the rare case where vertical restrictions in a technology license raise a significant anticompetitive risk, however, the Department would consider their procompetitive benefits before condemning them. The following are some of the beneficial competitive effects of the restrictions presented in this case.

Exclusive Licenses. The principal value of a patent is the right to its exclusive use, and a licensor may properly seek to transfer this right to another in the form of an exclusive license to practice the patent generally, or for a specific purpose. Licensing the patent in this way may maximize the return on the patentee's investment in innovation. Exclusivity also may facilitate more efficient development and promotion of the patent by the licensee without fear of free-riding from other licensees (or even the patentee). For example, it may encourage the licensee to develop mini-innovations which, although they may not be patentable, would nevertheless make the technology more valuable to

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[189] *See* I.B. 4., *supra*.

[190] 467 U.S. 752 (1984).

[191] *Id.* at 771, 776.

[192] *Id.* at 767.

[193] *Id.* at 767–771.

[194] This standard is consistent with the Department's longstanding practice under section 7 of the Clayton Act of treating as a merger any stock acquisition that would facilitate coordination of the price and output decisions of the acquiring and acquired firms. The acquisition of more than 50 percent of the stock of another firm, for example, is always treated as a merger despite the continued existence of a significant minority interest. In such cases, the Department presumes that the acquired and acquiring firms will coordinate their behavior. Of course, the Department may also challenge under section 7 stock acquisitions that involve less than 50 percent of the stock of the acquired company.

[195] If AGPLEX proved to be so superior to uncoated safety eyeglasses that it truly monopolized the relevant market, then the coordination of competition among producers of AGPLEX-coated eyeglasses would not violate the antitrust laws. Those laws do not require an intellectual property owner to create competition in its own technology. The collusion concern would exist only if the licenses and their restrictions would facilitate collusion among competitors in a larger market (if one exists) that includes uncoated safety eyeglasses and eyeglasses coated with some substance other than AGPLEX.

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consumers.[198] While this case involves an exclusive field-of-use license, other forms of exclusive licenses—for example, granting the licensee exclusive rights to sell the patented product in some area of the United States or to some class of customers—provide similar benefits, and the Department analyzes such restrictions under the rule of reason as well.[197]

Restriction on Use of Competing Technologies. AutoGlass's requirement that Amer-Eye use only AGPLEX to coat its safety eyeglasses can also be procompetitive.[198] This restriction gives Amer-Eye a strong incentive to develop and aggressively market the licensed technology.

Royalties Based on Total Sales. The Department generally is not concerned with the amount of license royalties or the way in which license royalties are paid. Licensees will pay for the licensed technology what they think the technology is worth. Moreover, various types of royalty payment provisions such as, for example, package licensing and royalties on sales of products made from a patented process, encourage licensees to develop and promote the licensed technology efficiently by enabling the licensee to use the technology in combination with other inputs in order to produce the final product at the lowest possible cost. Such restrictions also may save licensors the costs of monitoring licensees' production to determine how much of that production utilizes the licensed technology. The total-sales royalty provision in this case also effectively supports the prohibition on the licensees' use of other coating materials.

Case 11—Exclusive Patent Cross-Licenses With Grantbacks

Alpha Corporation, a U.S. Firm, is the second largest seller of product X in the United States. Beta Corporation, a Japanese firm, is the largest seller of X in Japan. Alpha and Beta each possess both U.S. and Japanese process patents covering certain technologies they use in manufacturing product X. Alpha and Beta do not currently market significant amounts of X in each other's home country.

Alpha and Beta agree to cross-license one another to practice their relevant foreign patents. Alpha grants to Beta the exclusive right (exclusive even of Alpha) to practice Alpha's Japanese patents, and Beta grants to Alpha the exclusive right (exclusive even of Beta) to practice Beta's U.S. patents. Each license has an exclusive grantback clause: If Beta makes any patented improvements on Alpha's technology, Beta will assign the U.S. rights to such improvements to Alpha; if Alpha makes any patented improvements on Beta's technology, Alpha will assign the Japanese rights to such improvements to Beta. Alpha and Beta also agree that if either of them makes any improvements on its own technology, an exclusive license will be granted to the other party to practice such improvements in the other party's home country. Finally, Alpha and Beta agree that X they produce with licensed technology will not be marketed in the home country of the other party. In sum, the overall effect of the license arrangements between Alpha and Beta is that Alpha will have the exclusive right to practice both its own and Beta's technology, and all improvements thereon, in the United States and Beta will have comparable rights in Japan.

Discussion

As is the case with international agreements generally, the Department's consideration of the process patent licenses in this case would be limited to their effects on U.S. commerce. Otherwise, the Department's substantive analysis of these arrangements would be identical to its analysis of similar technology licensing arrangements arising in a purely domestic context.

Rule of Reason Analysis

Unless the underlying transfer of technology is a sham, or the license restrictions restrain competition between the licensor and licensee and bear no relationship to the underlying transfer of technology, the restrictions in an intellectual property license are analyzed under the rule of reason.[199] Here, there is nothing to suggest that the technology being transferred is valueless or insignificant to each licensee in the manufacture of product X.

The license arrangements in this case contain several types of restrictions that are frequently found in international patent licensing arrangements. First, each party, as licensee, has agreed to grant back to the licensor rights in any improvements that the licensee develops in the licensor's technology. Second, each party, as licensor, has agreed to grant the licensee rights to practice any improvements that the licensor develops in its own technology. Third, all of the existing and future rights being granted are exclusive—even as to the granting party. Finally, the licenses have the effect of restricting competition between the parties in the marketing of products they produce using the licensed technologies.

In this case, the cumulative competitive effect of the license restrictions is indistinguishable from an acquisition by Alpha of Beta's technology insofar as its use to compete in the United States is concerned. Although the Department would consider the cumulative competitive effects of the license and its restrictions, it would be helpful to discuss each of the restrictions individually, since they need not be used together in a license. Because Alpha and Beta own competing technologies for producing X,[200] restrictions contained in the cross-licenses on Alpha's and Beta's use of those technologies are properly analyzed as horizontal restraints.

Cross-Licensing. In general, the cross-licensing of competing or potentially competing technologies is procompetitive because it expands access to technology. In this case, for example, the cross-license allows Alpha and Beta each to use an alternative technology to which it otherwise would not have access, but which may be more efficient than its own technology. The license arrangement in effect allows Alpha and Beta to choose between the technologies based on their relative

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[198] *See* "The Antitrust Implications of International Licensing: After the Nine No-no's." Remarks by Charles F. Rule before the Legal Conference sponsored by the World Trade Association and the Cincinnati Patent Law Association (Oct. 21, 1988).

[197] The exclusivity of British Optics' license to make and market safety eyeglasses coated with AGPLEX in the EEC would not appear to affect U.S. commerce. The fact that would-be American exporters of AGPLEX-coated safety eyeglasses will not possess European AGPLEX licenses, and thus may not be able to sell such eyeglasses in the EEC, would not have the requisite direct effect on U.S. commerce to trigger antitrust concern.

[198] The similar restriction in British Optics' license would not appear to affect U.S. commerce. *See* n. 197.

[199] For example, exclusive cross-licensing arrangements with exclusive grantback features, such as the arrangements in this case, can conceivably be used anticompetitively by firms that currently compete or that foresee such competition, and wish to eliminate or forestall it by entering into sham licensing arrangements that divide territories or customers, or otherwise allocate markets.

[200] For the purpose of this case, it is assumed that the technologies owned by Alpha and Beta are substitutes. As a practical matter, however, it often is difficult to determine whether particular technologies are substitutes, complements, or both. For example, while X produced using either Alpha's or Beta's technology may be viewed as functionally interchangeable by consumers, it may be possible to produce X more efficiently using the technologies of Alpha and Beta together, rather than by using either technology alone. In other cases, patents may be pure complements, or may be blocking (such that one cannot be used without the other), and thus may not be substitutes at all.

efficiencies in producing X. Similarly, if their technologies are at least partially complementary (that is, if in some circumstances, they would be more efficient when used together), the cross-license may enable Alpha and Beta to compete more effectively against the owners of other technologies. The cross-license may also allow Alpha and Beta to avoid protracted and expensive, good-faith litigation over the validity and infringement of their respective patents.

Grantbacks. A grantback feature in a patent license also is often procompetitive.[201] Where practicing a patent is likely to lead to further innovations in the patented technology (whether or not such innovations are patentable), a grantback may enable a patentee to avoid the possibility that such innovation by the licensee will either make obsolete the patentee's own technology or effectively prevent the patentee from itself developing further improvements in its technology.

A grantback also may serve to compensate the patentee for improvements developed by the licensee that the licensee could not have developed without access to the patentee's technology. In this case, for example, where Beta's ability to develop improvements on Alpha's technology may require actual practice of Alpha's patents, Alpha is entitled to be compensated for conferring this benefit on Beta, and a grantback of any U.S. rights to such improvements is a logical choice for such compensation. Such a grantback could also increase the efficiency of bargaining for a license,[202] which directly benefits the parties and ultimately inures to the benefit of consumers.

Conveyance of Rights to Future Improvements by Licensor. The fundamental purpose of a patent license, like other technology transfers, is to allow the licensee to use the technology efficiently to his and the licensor's mutual benefit, as well as to the benefit of consumers. Such use often will require significant investment by the licensee. Licensees may be reluctant to make such investments, however, if there is a significant risk that the patentee will improve the underlying technology and make the originally-licensed technology obsolete. Thus, just as a grantback may protect a licensor from adverse effects deriving from improvements on the licensed technology by the licensee, an agreement allowing the licensee to use any improvements in the technology developed by the licensor can protect the licensee's investment in the technology.

Exclusivity. Exclusivity associated with patent cross-licenses and grantbacks is also generally procompetitive. Exclusivity is in fact inherent in the patent grant itself; the patent laws do not require patentees to create additional competitors. Exclusivity may also encourage licensees to maximize their promotion and utilization of the licensed technology without free-rider concerns, and allow a patent owner to maximize the return on his investment in R&D efforts to acquire the patent.

Restriction on Competition between Licensor and Licensee. Currently, U.S. patent law does not forbid the importation and sale of products made overseas with a process patented in the United States.[203] Although a U.S. process patentee may have other rights to prevent such importation and sale,[204] restrictions in process patent licenses that guard against such importation and sale can be procompetitive by enabling the U.S. process patent owner to exploit his technology more effectively overseas without fearing that such licensing will disrupt his exploitation of the technology in the United States.

As noted above, the cumulative effect of the licensing arrangement, insofar as U.S. commerce is concerned, is the effective acquisition by Alpha of Beta's technology, including any of Beta's improvements on that technology, with respect to its application in the United States. If an outright acquisition of Beta's technology would not violate the antitrust laws, then neither would these licenses violate the law. The Department would therefore begin its analysis in this case by defining, and examining the structure of, the relevant market in which the technologies of Alpha and Beta compete. That market would include (i) all other technologies that appear to be functional substitutes for the licensed technologies in producing X and (ii) technologies used to produce products that are reasonable substitutes for X to which consumers would switch if the price of X were significantly increased. After identifying the technologies the market (which typically will be international in scope),[205] market shares would be assigned that reflect the relative efficiency of those technologies.

The Department's analysis of technology markets is generally a qualitative one, focusing on the relative efficiency of the available technologies and the time that it would like take for comparably efficient alternative technologies to be brought to the market. Where technologies have been in competition for some time (for example, in this case, the technologies used to produce the current generation of X and close substitutes for X), differences in market share may be a reasonable proxy for differences in the relative efficiency of technologies. In cases involving emerging technologies, where there are no available proxies for the relative efficiency of technologies, the Department must qualitatively assess the likely future strength of such technologies in the market as well as whether alternative technologies would likely be brought to the market sufficiently promptly so as to undercut any attempted exercise of market power.

In the case, the Department would consider a number of factors. First, among other factors, the Department would consider whether X accounts for such a small share of the relevant produce market that any attempt to exercise market power with respect to technologies used to produce X would be frustrated by consumers switching to close substitutes for X.[206] Second, the Department would consider whether other firms also possess patents or valuable know-how that could be used to produce X or to produce products that would be close substitutes for X. Third, the Department would consider whether the patents of either Alpha or Beta have

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[201] *See* Transparent-Wrap Machine Corp. v. Stokes & Smith Co., 329 U.S. 637 (1947) (holding that a grantback is not per se unlawful); *see also* ABA Antitrust Section, Monograph No. 6, U.S. Antitrust Law in International Patent and Know-how Licensing 59–62 (1981).

[202] Essentially, the grantback functions as consideration to the patentee in a contract to develop the licensed technology, in which the price has been determined ex ante (in the form of a grantback), rather than ex post (that is, after the improvements have been achieved), when bargaining might be difficult because of the bilateral monopoly position of the parties.

[203] The Congress, however, frequently has considered amendments to the patent laws that would close this loophole; *see, e.g.*, S. 538, 100th Cong., 1st Sess. (1987).

[204] *See* section 337a of the Tariff Act of 1930, 19 U.S.C. 1337a.

[205] Patents, of course, grant exclusive rights to the use of the underlying technology only to the geographic extent of the granting authority's jurisdictional reach. For example, a patent granted by the U.S. Patent and Trademark Office provides only the exclusive right to make, use, or sell the patented invention in the United States. Technologies typically are granted intellectual property protection in various national markets. And as a general matter, a technology developed and patented in Japan can readily be patented and transferred to compete in the United States.

[206] As discussed in part I.B.5. of these Guidelines, individual patents and patented products may compete in a market with many other economic substitutes.

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expired or are soon to expire, such that other firms could use the technologies (or improvements or variations thereon) to produce a product that would compete with X or close substitutes for X.

If X sales account for only a small share of the relevant product market that includes X, for example, the licensing arrangement in this case may be important to enable Alpha (in the United States) and Beta (in Japan) to compete more effectively against other products in the market, but it may confer no market power on either or both of them. On the other hand, if there were no close substitutes for X and the licensed technologies would be clearly superior to all available alternative technologies for making X, then an effective acquisition by Alpha of Beta's technology as applied in the U.S. market for X might be anticompetitive. Because in this case it appears that there are producers of X other than Alpha and Beta, it is not clear the extent to which this license would increase concentration in the relevant market. Moreover, the Department would consider the other relevant market factors that would be considered when evaluating a merger or acquisition.[207]

If the Department concluded after examining all of the relevant circumstances that the licensing arrangement in this case would have a significant anticompetitive effect, then the Department would consider whether competitive benefits that would result from the arrangement would outweigh the likelihood of anticompetitive harm. As noted above, by eliminating the possibility of competition from one another, Alpha and Beta each may be better able efficiently to develop and market their combined technologies. It may be difficult to develop consumer acceptance for their technologies unless substantial investment is made in education and training. In that case, particularly if there were other available technologies in the market, the net effect of the restrictions might be procompetitive. If the licensing arrangement would have significant anticompetitive effects, the burden would be on the parties to show that the benefits resulting from it would outweigh those effects.

Case 12—Know-How Technology Transfer Agreement With Exclusive Territories

Alpha Corporation is a small, but growing, Massachusetts corporation that possesses valuable unpatented know-how that is used to produce product X. Alpha has not been successful in exporting X to other countries. Alpha proposes to enter into a twenty-year technology transfer agreement with a German firm, Beta Corporation, under which Alpha will convey its know-how to Beta. Beta is a large, well-financed multinational corporation that does not currently produce X, but produces closely related products and wishes to produce and sell X in the EEC. As part of the technology transfer agreement, Beta will agree not to sell X in the United States, whether it is manufactured with Alpha's know-how or any other technology, for the duration of the agreement.

Alpha is negotiating a similar agreement with Epsilon Corporation, a large Japanese firm which currently produces X. Epsilon's technology has permitted it to obtain only a small share of the Japanese market, and to make even more limited sales in the United States. Epsilon believes that Alpha's technology will increase Epsilon's production efficiency and improve the quality of the X it produces. Epsilon insists that Beta be barred from selling X in Japan, Australia, and East Asia. The prohibition would apply to all X produced by Beta, whether or not it was produced using Alpha's know-how.

Discussion

As is the case with respect to international agreements generally, the Department's consideration of the know-how transfer agreements in this case would be limited to their effects on U.S. commerce. Otherwise, the Department's substantive analysis of the agreements would be identical to its analysis of similar technology licensing arrangements arising in a purely domestic context.

Know-How

Know-how is useful technical information concerning productive activity that is not generally known or accessible but is not protected by a patent.[208] Like patented technology, know-how represents the fruits of inventive activity that is stimulated by the legal protection of property.[209] Because of the essentially similar roles that know-how transfers and patent licensing play in the competitive process, the Department generally analyzes them in the same way. In fact, precisely because know-how is not statutorily defined and protected by a government grant, restrictions in agreements transferring know-how may be even more essential to protecting procompetitive investment in valuable technology. Because know-how is not necessarily susceptible to precise definition, however, in some cases it may be more difficult to distinguish a legitimate know-how transfer from a sham arrangement shielding a naked cartel. In appropriate cases, therefore, the Department may be required to determine whether the know-how that is transferred is of significant economic value.

Rule-of-Reason Analysis

Unless the underlying transfer of technology is a sham, or the license restrictions restrain competition between the licensor and licensee and bear no relationship to the underlying transfer of technology, the restrictions in a know-how license are analyzed under the rule of reason.[210] That analysis focuses on whether a restriction in such an agreement would likely lead to the unilateral or concerted exercise of market power in any market.

The proposed agreements in this case involve restrictions commonly found in international technology licensing arrangements. Beta and Epsilon will be restricted from using Alpha's know-how to compete with Alpha in selling X in the United States. Indeed, Beta and Epsilon will be restricted from selling X manufactured by any means in the United States. Finally, Beta will be restricted from selling X, regardless of how it was manufactured, in foreign markets that Epsilon wishes to reserve for itself. Although the restrictions have procompetitive potential as discussed below, the Department would not challenge a know-how licensing arrangement that, under the relevant circumstances, did not raise a significant anticompetitive risk, regardless of whether the parties could establish the competitive benefits of the restrictions.

Restriction on Sale of X in Competition with Licensor

In this case, Beta and Epsilon are not identically situated as existing or potential competitors of Alpha in the U.S. X market. Epsilon possesses competing technology, and does in fact compete with Alpha in the relevant market. Thus, the Department would analyze the restriction on Epsilon's sales of X in the United States—to the extent such sales are or could be made without access to Alpha's know-how—as a horizontal restraint. The effect of the restriction may be approximated to that of a merger of Alpha and Epsilon. The Department would therefore identify the relevant market for X as set forth in the Merger Guidelines and determine whether the structural and other characteristics of that market might subject it to the exercise of market power if Epsilon and Alpha coordinated the price and output of X. The Department would analyze the cumulative effect of Alpha's license to Epsilon in view of Alpha's license to Beta, which excludes Beta from entering the U.S. market for X.

Beta, on the other hand, does not currently compete with Alpha in the U.S. market for X and does not appear from the facts of this case to be a potential competitor[211] in that market through the development of its own technology. The Department's concern with this restriction would be with its possible exclusion of X produced with competing technology from the U.S. market. Under the terms of the license, Beta cannot provide an entry vehicle for X produced with technologies that compete with Alpha's. If Beta were uniquely capable of developing competing know-how and entering the U.S. market with it, then the restriction in Beta's license could be anticompetitive, assuming that Alpha (alone or in tacit concert with a few other leading competitors) had market power. However, if Beta were not uniquely positioned to use competing technology, if there were several firms that could sell X in the United States using their own competing technologies, or if the U.S. market for X were not highly concentrated, then the restriction in Beta's license would have no anticompetitive effect.

If the foregoing analysis showed that excluding Beta and/or Epsilon from selling X in the United States could be anticompetitive, the Department would determine whether the risk of anticompetitive effects would be outweighed by the restriction's procompetitive effects. The restriction on sales of X by Beta and Epsilon in the United States could be procompetitive by encouraging transfer of the know-how in the first place. As is true with respect to all forms of intellectual property, the creator of know-how is not required to transfer it, and may not do so if he would thereby reduce the value of the know-how. Extending the prohibition to all X, no matter how it is produced, could save Alpha—and probably Beta, Epsilon, and consumers as well—the costs of monitoring compliance with a narrower restriction. It might be difficult, for example, for Alpha to discover and prove that a particular product was made using its know-how. Moreover, even if Alpha could prove that a product was made using know-how very similar to its own, there might be significant dispute and litigation to resolve whether the transferee's know-how was developed independently. Of course, in this case, U.S. consumers would not be the primary beneficiaries of the transfer of Alpha's know-how to Beta and Epsilon. Therefore, depending on the nature and the degree of the anticompetitive risk, the Department might determine that the license should not restrict Beta and/or Epsilon from selling in the United States X made using other technologies.

Foreign Territorial Restrictions on Licensees

The territorial restriction on competition between Beta and Epsilon would not appear to have any direct effect on U.S. commerce and would therefore not fall within the subject matter jurisdiction of the U.S. antitrust laws.[212] Even in a domestic context, however, the grant of exclusive territories to licensees of a single technology generally would not be anticompetitive. Such restrictions often will promote the development and dissemination of the technology—indeed, the assignment of exclusive territories may be viewed by the licensor as necessary to encourage licensees to invest the resources required to develop and exploit the licensed technology and to invest in "mini-innovations" that would significantly increase its value.

Case 13—Anticompetitive Use of Section 337

Alpha Corporation, a major U.S. chemical company, is the sole U.S. producer of product X, an artificial fiber with unique and valuable properties. Alpha owns a U.S. process patent covering its technology for producing X.

Beta Corporation, a small Italian specialty chemical producer, has developed a new, substantially less costly process to produce X. Although Beta has never sold X outside of its decides to explore marketing opportunities in the United States. Beta's new process would enable it to sell X profitably in the United States at a lower price than Alpha can profitably offer.

Alpha, believing that Beta's imports would threaten Alpha's X sales in the United States, files an action under section 337 of the 1930 Tariff Act[213] to prohibit the importation of Beta's X into the United States, alleging that Beta's process is covered by Alpha's U.S. process patent. Alpha's technical staff has advised Alpha's management that Beta's process is substantially different from and outside the scope of, Alpha's patent. Alpha's management nevertheless initiates the section 337 case, hoping that the cost delay, and uncertainty resulting to Beta from having to defend the proceeding will deter Beta, and ultimately others, from attempting to compete in the United States.

Discussion

Section 337 of the 1930 Tariff Act permits the U.S. International Trade Commission to order the exclusion of imported products that infringe domestic intellectual property rights or that are made abroad using a process that is protected by a U.S. process patent. Like other laws that protect rights in intellectual property, when properly used, section 337 helps to preserve incentives for the procompetitive creation and efficient exploitation of innovative technology.[214]

If Alpha had a reasonable basis for believing its process patent covered Beta's process, Alpha's invocation of section 337 procedures to seek the exclusion of Beta's X would be perfectly lawful. In this case, however, Alpha does not believe that its process patent is infringed by Beta's technology. Alpha's purpose in filing the action is not to protect its process patent rights, but to exclude a rival's noninfringing product from the United States by imposing prohibitive additional costs on its sales into the United States.

The Supreme Court has held that a firm's efforts to obtain action by the U.S. federal government or any state government does not violate the Sherman Act even when the result of that action would be anticompetitive.[215]

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[207] *See* I.B.1., *supra*.

[208] *See* Kilpatrick and Mahinka, "Antitrust and the International Licensing of Trade Secrets and Know-how: A Need for Guidelines," 9 Law & Pol'y in Int'l Bus. 725, 728 (1977).

[209] *See* Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 485 (1974).

[210] If the transferred know-how in this case were of trivial importance to the efficient production of X, for example, the agreement might be a mere sham intended to restrict output and raise the price of X. There is no indication in this case, however, that Alpha's know-how is valueless to Beta and Epsilon and merely an excuse for Alpha, Beta, and Epsilon to form a cartel for the sale of X.

[211] *See* Case 3 and Merger Guidelines section 4.

[212] *See* I.C.1., *supra*; *See also* Foreign Trade Antitrust Improvement Act, 15 U.S.C. 6a (1982).

[213] 19 U.S.C. 1337a (1976).

[214] *See generally* discussion at I.B.3, *supra*.

[215] *See* Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mine Workers v. Pennington, 381 U.S. 657 (1965); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972) (extending protection to the seeking of redress in the courts); *see also* I.F., *supra*.

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The *Noerr-Pennington* doctrine does not, however, protect petitioning activity that in fact is a mere "sham" concealing "what is nothing more than an attempt to interfere directly with the business relationships of a competitor."[216] Alpha's conduct in filing what it believed to be a meritless claim appears to fall within the sham exception. Where such misuse of governmental processes is part of a scheme to monopolize a relevant market, it might violate section 2 of the Sherman Act.[217]

On the other hand, if Alpha merely had some doubt as to whether Beta's process infringed its patent when it filed the 337 action, a sham would not be established even if Beta ultimately prevailed in court. Because the very nature of an action under section 337 is to exclude a competitors' products, such an action should not be considered to be a sham unless the petitioner believed it to be baseless. Only then is it possible to conclude that the petitioner's only genuine motivation is to interfere directly with the legitimate business relationships of a competitor.

Case 14—International Cartel Activities

Alpha Corporation, a large multinational corporation incorporated in Delaware, mines X-ore abroad and processes it into X-product, which it sells in the United States and other countries. Alpha owns 75 percent of a subsidiary which it organized in Country A to operate a large X-ore mine there.

Beta Corporation, which is headquartered in Country A, mines X-ore in five overseas countries and sells X-ore and X-product in a number of countries, including the United States. A majority of the common stock of Beta is owned by the Delta Investment Corporation, a diversified investment company which is in turn majority owned and controlled by the government of Country A.

Epsilon Corporation is a European-based fruit company that sells large quantities of fruit juices through its own retail outlets located in the United States. Epsilon recently discovered a very large X-ore deposit on one of its overseas fruit plantations, and has been selling X-ore abroad.

Beta, Epsilon, and the four other foreign X-ore producers (but not Alpha) recently attended a secret meeting in Country A at which they formed a cartel and agreed on quotas and prices for all of their X-ore production. Beta is the only one of these foreign X-ore producers that sells X-ore or X-product directly to purchasers in the United States, but the others all sell substantial amounts of X-ore to foreign brokers. The cartel members collectively account for a large portion of the world's X-ore production, and with Alpha would account for substantially all world X-ore production. More than 25 percent of world X-ore production is consumed in the United States. The government of A has notified Alpha that it wants Alpha to pledge to the cartel members that it will abide by the agreed-upon quotas and prices.

Discussion

This naked, private cartel agreement among horizontal competitors to fix the price and quantity of a product sold to U.S. consumers would be prosecuted—probably criminally—as a clear violation of the U.S. antitrust laws unless considerations of comity, foreign sovereign compulsion, or foreign sovereign immunity counseled otherwise with respect to particular defendants. The only possible effect of the agreement would be to reduce output and raise the price of X-ore; the agreement is unrelated to any integration of assets or operations that might achieve significant efficiencies. Moreover, the parties have entered into the agreement secretly in an attempt to conceal the true nature of their activities and to defraud consumers into believing that they are benefitting from active competition among X-ore producers. In view of the large percentage of world X-ore production that is sold in the United States, it seems clear that the cartel would have a direct, substantial, and reasonably foreseeable effect on U.S. import trade, and thus the Department would consider challenging it under section 1 of the Sherman Act.[218]

For reasons explained in Part I of these Guidelines, the Department generally will not seek to prosecute anticompetitive conduct that a foreign sovereign actually compels under circumstances in which a refusal to comply would give rise to significant penalties, the foreign sovereign's command is within the scope of its authority under its own laws, and U.S. deference to the foreign sovereign's action is warranted under the circumstances.[219] In this case, however, the fact that the government of A has importuned Alpha to abide by the cartel agreement would not excuse Alpha's participation. Although the government of A has made it clear that it wishes Alpha to join the cartel, it has not attempted to compel Alpha to do so.

Due to considerations of comity, the Department might refrain from prosecuting conduct that has arisen from the decision and action of a foreign sovereign even in the absence of strict legal compulsion.[220] It does not appear that considerations of comity would lead the Department to refrain from prosecuting the cartel in this case, however. The cartel is neither required nor contemplated by any law or articulated economic policy of the government of A. The cartel also covers X-ore production and sales that occur substantially outside of Country A. Indeed, it appears that the cartel's purpose and effect is not primarily to regulate the economy of Country A, but rather to raise prices to consumers in the United States and other markets. Given the substantial effect the cartel would have on U.S. consumers, and the lack of any connection to legitimate regulation by Country A of its economy, there does not appear to be any reason to defer to the jurisdiction of Country A and refrain from prosecuting the cartel.

The fact that Beta is indirectly controlled by the government of A would not immunize Beta for its participation in the cartel. Immunity from suit under the Foreign Sovereign Immunities Act [221] does not extend to the commercial activities of an entity controlled by foreign government.[222]

The facts in this case do raise questions of personal jurisdiction with regard to some of the cartel members.[223] Alpha, which is a U.S. corporation, and Epsilon, which has extensive (although unrelated) business operations in the United States, clearly are subject to the jurisdiction of the U.S. courts. Beta sells X-ore and X-product directly in the United States, and is therefore likely to have sufficient contacts with the United States to subject it to U.S. jurisdiction. Whether there is personal jurisdiction over the remaining foreign cartel members is less clear. Even if a potential defendant in a criminal antitrust action is outside the jurisdiction of the United States, however, the Department may file an indictment or other process against that individual or firm and hold it outstanding indefinitely. Moreover, if defendants possess property in the United States, under certain circumstances that property may be seized to induce their consent to the jurisdiction of a U.S. court.[224]

Case 15—Government-Imposed Export Restraints

Alpha Corporation, a corporation that is organized under the laws of Country A, is a wholly-owned subsidiary of Beta Corporation, a U.S. company. Alpha manufactures product X in Country A, and exports a portion of its X production to the United States. The other five X producers in Country A, which also sell X in the United States, are all locally owned.

The sales and profits of U.S. producers of X have fallen because of increased imports of X from Country A. U.S. producers of X have been seeking U.S. legislation that would substantially curtail X imports from Country A. The government of Country A is concerned that these legislative efforts might succeed. It therefore asks X producers in Country A to form an advisory council to advise the government on how to counter the threat of U.S. import barriers. Alpha joins the other X producers in Country A in advising the government of Country A to issue an order limiting the amount of X that may be exported to the United States and allocating the export quota among the X producers in Country A in proportion to their current U.S. sales. The government of Country A does so. Violations of the quota allocations are subject to significant sanctions by the government of Country A.

Discussion

The export restraint in this case has been imposed by the government of Country A. A foreign government's imposition of controls over exports by its own producers is normally considered to be a sovereign function of the state, and compliance with those controls is therefore normally not subject to U.S. antitrust enforcement regardless of its effect on U.S. commerce.[225]

The Department would not likely challenge Alpha's conduct in joining the X producers of Country A in recommending export restraints to the government of Country A. As discussed in Part 1 of these Guidelines, the Supreme Court has held that the Sherman Act does not make unlawful the collective petitioning of government by competitors even if the desired government action would have an anticompetitive effect.[226] What has become known as the *Noerr-Pennington* doctrine does not, however, protect collective activity that is in fact a mere "sham" concealing a direct restraint of trade by the parties. Examples of sham petitioning include the meritless invocation of administrative procedures to delay a competitor's entry or to deny it access to governmental processes, and deliberate misrepresentations to the government during such administrative proceedings.[227]

The major question presented in this case is whether the *Noerr-Pennington* doctrine or some analogous doctrine protects efforts to cause a foreign government to impose restraints that would have a direct and significant anticompetitive effect in the United States. Because the *Noerr* case itself turned on an interpretation of the Sherman Act in light of the constitutional guarantees of the First Amendment,[228] the *Noerr-Pennington* doctrine may not itself apply to the petitioning of foreign governments by U.S. or foreign firms.[229] Nevertheless, for reasons of comity, the Department generally will not prosecute the legitimate petitioning of foreign governments by foreign or domestic firms in circumstances in which the *Noerr-Pennington* doctrine would protect such activities in the United States.

On the facts of this case, the petitioning does not appear to be a sham. The Department would therefore not challenge Alpha's activity in joining with other X producers in Country A to recommend the imposition of export restraints.[230] The fact that this activity occurred in the context of an advisory council appointed by the government of Country A supports this conclusion, but the conclusion would be the same even if Alpha and the other X producers has proposed the restraints to the government of A on their own initiative.

Discussion

This case raises two issues. First, is there an agreement among the X producers in Country A? Second, would a U.S. antitrust enforcement action be appropriate in view of the involvement of the government of Country A and the request by the U.S. government officials that the government of A act to resolve the trade friction?

Agreement. As discussed at Part I.B.1., *supra*, an unlawful conspiracy to restrain trade under section 1 of the Sherman Act does not require an express agreement; a "meeting of the minds" is sufficient. As a general matter, mere parallel conduct, without more, is not enough to establish the requisite agreement. That is because parallel conduct by competitors in some cases can be equally consistent with both agreement and with independent decision-making. A conspiracy may well be inferred from parallel conduct, however, where the parties appear to have a rational economic motive for engaging in the conspiracy (e.g., to restrict output and raise price) and it would not be in the economic self-interest of individual firms to engage in the conduct alone.[231]

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[216] *Noerr*, 365 U.S. at 144.

[217] The offense of unlawful monopolization under section 2 of the Sherman Act has two elements: (i) the possession of monopoly power in a relevant market (i.e., the power to restrict output and raise price) and (ii) willful acquisition or maintenance of that power through anticompetitive or predatory acts, as opposed to growth or development as a consequence of superior product, business acumen, or "historic accident." *See* United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966). The offense of unlawful attempt to monopolize has three elements: (i) a specific intent to monopolize a relevant market; (ii) the use of anticompetitive or predatory means to obtain that end; and (iii) a "dangerous probability" that the attempt will be successful. If it appears that there is no dangerous probability of success, the Department will not inquire further. In assessing the probability of successful monopolization, the Department considers the market share of the firm and concentration in the market, ease of entry, ability of existing firms to expand capacity, and other factors bearing on the likelihood that the firm allegedly engaging in the attempted monopolization could actually exercise the power to restrict output and raise price.

[218] *See* discussion at I.B.1., *supra*.

[219] *See* I.E., *supra*.

[220] *See* discussion at I.D., *supra*.

[221] 28 U.S.C. 1605(a)(2).

[222] *See* I.C.2., *supra*.

[223] *See* Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102 (1987).

[224] *See* 15 U.S.C. 6, 11.

[225] *See* Letter from William F. Baxter, Assistant Attorney General, Antitrust Division, Department of Justice, to Sir Roy Denman, Delegate Head, Commission of the European Commission (Oct. 21, 1982) (concerning steel export restraints); Letter from Sir Roy Denman to William F. Baxter, Assistant Attorney General, Antitrust Division, Department of Justice (Oct. 21, 1982) and attachments; Exchange of letters between William French Smith, Attorney General, Department of Justice, to Yoshio Okawara, Ambassador of Japan (concerning automobile export restraints), *reprinted in* U.S. Import Weekly (BNA) May 13, 1981, pp. M-1–M-2.

[226] *See* Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mineworkers v. Pennington, 381 U.S. 657 (1965); *see also* I.F., *supra* and Case 13.

[227] *See* discussion of anticompetitive use of section 337 of the 1930 Tariff Act at Case 13.

[228] *Noerr*, 365 U.S. at 138; *See also* California Motor Transport Co. v. Trucking Unlimited, 404 U.S. at 514–15.

[229] *See* Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331 F. Supp. 92, 108 (C.D. Cal. 1971), *aff'd*, 461 F.2d 1261 (9th Cir.), *cert denied*, 409 U.S. 950 (1972); Australia/Eastern U.S.A. Shipping Conf. v. United States, 537 F. Supp. 807, 812–13 (D.D.C. 1982). *But see* Coastal States Marketing, Inc. v. Hunt, 694 F.2d 1358, 1364–67 (5th Cir. 1983).

[230] Nor would the Department challenge the activities of U.S. X manufacturers in seeking legislated U.S. import restrictions. Since those activities involve the petitioning of the U.S. government, the *Noerr-Pennington* doctrine clearly would apply.

[231] Matsushita Electric Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

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This case conceivably might involve a "hub and spoke" conspiracy, in which an independent third party (the "hub") coordinates collusion among competitors (the "spokes"). Comity considerations aside, if the Minister of A were acting as the coordinator for a private conspiracy among Country A's X producers to restrict exports to the United States, the Department might seek to prosecute this arrangement as an unlawful export cartel. The fact that the "hub" of the conspiracy is the Minister of A would not insulate the private-party "spokes" in the conspiracy.

Comity Considerations. Mere foreign government acquiescence would not shield privately-imposed anticompetitive restraints clearly aimed at a U.S. market. For reasons of comity, however, the Department would not likely challenge a voluntary export restraint that clearly arose from the decision and official action of the government of A in response to specific trade concerns expressed by the U.S. Government. As a matter of prosecutorial discretion, in deciding whether to challenge particular conduct, the Department would consider the potential impact of a U.S. antitrust enforcement action on Country A's national interests as well as on the United States' relationship with the government of Country A. The Department's action in a particular case would depend on the totality of the circumstances.[232]

Case 17—Settling a Trade Case

The three largest American producers of product X, which together account for 85 percent of domestic X production, have filed a petition under the U.S. trade laws seeking the imposition of antidumping duties on X imported from producers in Country A. Country A is the largest foreign source of X sold in the United States. The U.S. Department of Commerce has preliminarily found dumping margins [233] ranging from three to 40 percent, amounting to a weighted average among all respondents of 15 percent. Petitioners have continued to argue that the margins are substantially greater.

The X producers in Country A meet and decide to offer to settle the case with the U.S. X producers. A representative of the X producers' association in Country A informs counsel for the U.S. petitioners that each X producer in Country A will raise its U.S. prices by 15 percent if the U.S. firms agree to withdraw their petition.

Discussion

An agreement among domestic and foreign competitors to raise the price of products imported into the United States would be per se unlawful under the U.S. antitrust laws. The fact that the agreement purported to settle a dumping case would not constitute a defense.

An agreement among foreign competitors to restrict output and/or raise price in response to an antidumping investigation is exempt from application of the antitrust laws only to the extent that the agreement is reached and carried out strictly in accordance with the suspension agreement provisions of the antidumping law.[234] Congress has enacted detailed rules governing the effects of a suspension on the rights and obligations of affected domestic and foreign industries and setting forth the procedures that the Department of Commerce must follow before it may suspend an antidumping investigation.[235] The Commerce Department may suspend an antidumping investigation only when foreign firms accounting for substantially all of the relevant imports agree with the Commerce Department that they will (i) cease exports of the relevant product to the United States; (ii) eliminate sales made at less than fair value (LTFV); or (iii) eliminate the injurious effects of the exports by raising their prices to a level that does not completely eliminate the LTFV sales.[236] The Commerce Department must find the suspension agreement to be in the public interest following notice and comment by interested parties, including consumers.[237] If exporters or interested parties so request, the Commerce Department must continue the investigation even after it is suspended; if it ultimately is determined that the antidumping laws have not been violated, the suspension agreement is voided and the investigation is terminated.[238]

An agreement by exporters with respect to the price of their exports that met all of the relevant statutory criteria and safeguards and was accepted by the Commerce Department in accordance with the procedures set forth in the antidumping law would enjoy an implied antitrust exemption. No exemption, however, would extend to an agreement that was made outside or beyond the scope of the provisions of the antidumping law or to any anticompetitive provisions in a suspension agreement that were not necessary to comply with the antidumping law.[239]

In this case, the agreement proposed by the X producers of Country A to the U.S. petitioners to raise their prices would not qualify for exemption under the antidumping law. In particular, there is no implied immunity under the U.S. antidumping laws for private anticompetitive agreements between or among U.S. and foreign producers in connection with the withdrawal of an antidumping petition. If the U.S. X producers agreed to withdraw their petition on the basis of a promise by their foriegn competitors to raise the price of exports to the United States, both the U.S. and foreign producers would be subject to action under the antitrust laws. The additional fact that certain officials of the government of Country A suggested that X producers in Country A settle the U.S. trade case would provide no protection since compliance with this suggestion would not require the X producers to act outside the provisions of the antidumping law.

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[232] If the United States did decide that an antitrust action was appropriate under all of the circumstances, such an action would not be subject to dismissal in the U.S. courts on comity-related grounds. The Constitution charges the Executive Branch with responsibility for the conduct of the foreign relations of the United States. It would be improper for a court to review the constitutional actions of the Executive Branch in the case. *See Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964); *Underhill v. Hernandez*, 168 U.S. 250 (1897).

[233] Generally speaking, a dumping margin is the amount by which a foreign firm's domestic prices exceed the price of its exports to the United States or the amount by which its export prices to the United States are below its fully-allocated cost of production, whichever is greater.

[234] 19 U.S.C. 1673 *et seq.*

[235] 19 U.S.C. 1673c(b)–(i).

[236] 19 U.S.C. 1673c.

[237] 19 U.S.C. 1673c(d), (e); 19 CFR 353.42(h).

[238] 19 U.S.C. 1673c(g), (f)(3).

[239] *See, e.g.*, Letter from Charles F. Rule, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Mr. Makoto Kuroda, Vice-Minister for International Affairs, Ministry of International Trade and Industry (July 30, 1986) (concluding that a suspension agreement did not violate U.S. antitrust laws on the basis of factual representations that the agreement applied only to products under investigation, that it did not require pricing above levels needed to eliminate sales below foreign market value, and that assigning weighted-average foreign market values to exporters who were not respondents in the investigation was necessary to achieve the purpose of the antidumping law).

A detailed discussion of the provisions in various U.S. trade laws that allow agreements or other measures to restrict import competition is beyond the scope of these Guidelines. It is important to bear in mind, however, that private anticompetitive agreements entered into outside the specific framework of U.S. trade law provisions allowing for such agreements enjoy no exemption from the antitrust laws merely because they arise in the context of a trade dispute.

Charles F. Rule,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 752

Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These amendments to OPM's regulations revise current adverse action policy which appears to limit agencies' ability to take actions based on performance under 5 CFR Part 752. The define "current continuous employment," "similar positions," and "indefinite suspension" in regulation. They clarify the types of personnel actions, the categories of employees, and specific agencies covered by adverse action procedures. Finally, they make technical and clarifying changes.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Timothy M. Dirks, (202) 653–8551.

SUPPLEMENTARY INFORMATION:

General

OPM published proposed amendments to Parts 340 and 752 on March 27, 1987 (52 FR 9867), and received comments from 17 agencies and three unions. The bulk of the comments covered the proposed procedures in Part 340. Because of the nature of those comments, nearly all of which disagreed with the need for procedures of appeals, a decision has been made not to go forward with final issuance of the proposed regulations in Part 340 until further study of the issues and options has taken place.

Agency and union comments on Part 752 are itemized in the sections below, and decisions on the final regulations are noted and explained.

Part 752: Adverse Actions

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

Section 752.201 Coverage.

Comment: A union stated its belief that the definition of "current continuous employment" (which called for a period of employment "without a break of a workday") would mean that an employee who had completed a probationary period and who was then even 1 day in a nonpay status would not be covered by these procedures. The same commenter felt that the definition of "same or similar positions" would unduly deprive any competitive service employees of procedural protections if they had changed jobs to ones with different requirements. An agency recommended that OPM add the word "substantially" before the words "the same qualifications" in the definition of "same or similar positions." This would permit positions with minor differences in qualification requirements to be still considered similar positions for determining whether an employee had met the requirements for current continuous service.

Response: OPM realizes that the law providing coverage for employees in the competitive service is somewhat confusing and not self-explanatory. The confusion arises because there are employees in the competitive service who serve in two types of appointments. The majority serve under career, career-conditional, or certain other nontemporary appointments which require a probationary or trial period of service. Of this group, only those employees who have yet to complete the necessary probationary or trail period (required either because their current appointment is their first period of Government services, or because they have been appointed from a register to a different position) are excluded from Part 752 protections. Once they complete the current probationary period, they do not have to serve another probationary period, even after a break in Government service, unless they are again appointed from a register. (See 5 CFR Part 315.) The definitions of "current continuous employment" and "similar positions" do not apply to this group.

A much smaller group of competitive service employees serve in appointments (such as temporary appointments pending establishment of a register (TAPER), *status quo*, or special tenure appointments) which require no probationary or trial period. It is this second group of employees to which our regulatory definitions are addressed. The law (5 U.S.C. 7501) intended to provide for coverage of this second group once the employees have completed one year of current *continuous* employment in the same or similar positions. It was not intended to require that all employees in the competitive service, including those who have completed the necessary probation or trial period, meet the one year of current continuous employment requirement.

To make it clearer what the law means, OPM is revising the statements of employees covered and employees excluded to show which groups are covered and which are not. OPM is also revising the definition of "current continuous employment" to show that continuous employment means employment without a break in Federal civilian service. Time in a leave or nonduty, nonpay steuts counts toward completion of the period of current continuous employment for adverse action purposes. In addition, OPM agrees with the commenters that the definition of "similar positions," a term introduced in statute in lieu of the pre-CSRA term "same line of work," may be too narrow, and is revising it to reflect that the duties and qualifications for the positions are close enough so that the incumbent could be readily interchanged between the two positions without undue interruption.

Section 752.203(d) Representation.

Comments: Three unions asked why OPM deleted the statement in the current regulation which states that employees covered by the terms of the negotiated agreement are governed by its terms and by 5 U.S.C. 7114(a)(5) for representation purposes. One of these commenters believed such a change would deny employees any right to representation. Another stated that this change strikes language favoring union representation of such employees.

Response: OPM continues to believe that the deleted language was misplaced in this section and could be read incorrectly to narrow representational rights for employees against whom a suspension of 14 days

or less is proposed. 5 U.S.C. 7114(a)(5) applies to representation during grievances and appeals. By its citation of this section, the current regulation could be read to mean that bargaining unit employees may only be represented by their union representatives after an adverse action is proposed. However, under 5 U.S.C. 7503(b)(3), all employees against whom such a suspension is proposed have the right to "an attorney or other representative" (which of course can include a union representative). Therefore, the employee may choose a representative of his or her choice in responding to an agency's proposal to suspend. Because 5 U.S.C. 7114(a)(5) does apply to representation of employees covered by a negotiated bargaining agreement for the purposes of challenging (i.e., grieving) an agency's action, OPM is deleting reference to 5 U.S.C. 7114(a)(5) in this section and adding to a new § 752.203(f) on grievance rights under this subpart.

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Pay, or Furlough for 30 Days or Less

Section 752.401(a) Adverse actions covered.

Comments: One union recommended that the regulation not be revised to reflect the decision of the U.S. Court of Appeals for the Federal Circuit in *Lovshin* v. *Department of the Navy*, 767 F.2d 834 (Fed. Cir. 1985), *cert. denied*, 106 S. Ct. 1623 (1986), that performance-based actions may be taken under the procedures of Chapter 75. The union stated that the case was untested and could be overturned. It also opined that allowing performance actions to be taken under Part 752 would violate the merit principle in 5 U.S.C. 2301(b)(6) requiring an opportunity to correct performance prior to removal.

Response: While the regulatory change does reflect *Lovshin*, it is also consistent with OPM's position that Part 752 is available for taking performance-based actions if the agency can meet the standard of "such cause as will promote the efficiency of the service" and can prove its case under the preponderance of the evidence standard required for actions taken under this part. This position is reflected in the final regulation which does not restrict or qualify an agency's authority to use Part 752 for taking performance-based adverse actions. Further, the *Lovshin* case has been tested as evidenced by the Supreme Court's refusal to overturn the lower court's earlier decision which was decided by a full panel of judges.

Section 752.401(b) Actions excluded.

Comments on paragraph (b)(7): A union commented that OPM should not say that the termination of a temporary or term promotion is not an adverse action, since OPM and MSPB had agreed that if a promotion were temporary the employee would be given Part 752 rights if the promotion lasted more than a specific period of time (two years). The union believes that the decision cited by OPM in its proposal—*Phipps* v. *Department of Health and Human Services*, 767 F.2d 895 (Fed. Cir. 1985)—is not well-established and should be very narrowly interpreted. An agency stated its belief that the intent of the *Phipps* decision went beyond temporary promotions in the competitive service and that unless OPM specifies that this section of the regulations applies also to excepted service employees, agencies with employees in the excepted service would be required to go through with needless rituals of adverse actions whenever a clearly temporary promotion extended beyond the times set in current Part 752. A second agency recommended that OPM make it clear that such a termination of a promotion would only be excluded if the employee was informed in advance of the temporariness of the promotion.

Response: With respect to the union's comments, OPM, notes that the original appeal right was a creation of the Civil Service Commission and was not dictated nor reinforced by judicial decisions. OPM also notes that MSPB has affirmed and applied the *Phipps* decision in *Mosley* v. *Department of the Navy*, MSPB Dkt. No. PH07528510766 (1986). With respect to the comment that *Phipps* should be applied beyond temporary promotions in the competitive service and also cover all returns from clearly temporary promotions, OPM agrees that nothing in *Phipps* indicated that it was intended to cover only returns from temporary promotions in the competitive service. In OPM's current regulations on temporary promotions, in fact, the language covers all returns from temporary promotions. It is OPM's intent that the exclusion of the return from all promotions of a temporary nature cover both competitive and excepted service employees. Accordingly, this recommended change has been made.

With respect to informing the employee of the temporariness of a promotion before it takes place, OPM agrees that the employee should be on notice that the promotion is to be temporary, and has made the recommended change.

Recommendation of a new exclusion: An agency has recommended that OPM add a specific exclusion of the reduction in grade of employees who are granted pay retention under 10 U.S.C. 1586. Employees of military departments who sign rotation agreements under this section of law have restoration rights to their former positions upon return from overseas assignments. If the agency cannot restore an employee to his or her former grade, it will assign the employee to a lower grade but with retained pay.

Comment: Currently, OPM's regulations only exclude actions which entitle employees to *grade* retention. OPM believes this very specific exclusion is better not expanded to cover situations when pay, but not grade retention is granted because each pay retention situation must be reviewed on its merits to determine if adverse action procedures are appropriate, i.e., because of a reduction in the rate of base pay previously paid to the employee. In addition, and as the agency pointed out, the MSPB ruled in *Fromer* v. *DOD*, 29 M.S.P.R. 481 (1985) that an employee who received the benefit of pay retention under 10 U.S.C. 1586 is not entitled to the procedural and appellate rights of 5 U.S.C. Chapter 75. Thus, the MSPB decision will be available to serve as precedent in future cases covered by 10 U.S.C. 1586.

Section 752.401(d) Employees excluded.

Comments: A union asked why OPM omitted Presidential appointees.

Response: Since the statute specifically excludes such employees from coverage of 5 U.S.C. Chapter 75, OPM considered that there was no necessity to exclude them by regulation. Nevertheless, because of the considerable complexity of coverage and exclusion, OPM has revised this subsection to clarify which employees the law *excludes*, including Presidential appointees. (OPM has also revised 5 CFR 752.401(c) to spell out which employees the law *includes*.)

Section 752.402 Definitions.

Comments on Subsection (b), Current continuous employment and (g), Same or similar positions: The comments on these definitions were the same as those on 5 CFR 752.201.

Response: See OPM's response to the above comments.

Comments on Subsection (e), Indefinite suspension: One union questioned OPM's authority to regulate indefinite suspensions.

Response: Indefinite suspensions, which have been in use for many years, are provided for in FPM Chapter 752 and were covered in earlier FPM supplemental material. They have also been sanctioned by the courts (e.g., *Jankowitz* v. *United States*, 533 F.2d 538 (Ct.Cl. 1976), and *Wiemers* v. *Merit Systems Protection Board*, 792 F.2d 86 (Fed. Cir. 1985), (pending criminal proceedings); and *Thomas* v. *General Services Administration*, 756 F.2d 86 (Fed. Cir. 1985), pending inquiry]). As a form of suspension, they are within OPM's authority to regulate under 5 U.S.C. 7514. OPM's definition covers both indefinite suspensions during criminal proceedings and subsequent actions, with a shortened notice period under the "crime provision" in section 7513(b)(1), or during agency investigation or inquiry, with the usual 30-day notice required by that section.

Comments on Subsection (b), Suspension: Several agencies also questioned the inclusion of enforced leave as a form of suspension, some because of the uncertain state of the case law and others because the inclusion of periods of annual and sick leave as suspensions seems to contradict the statute's definition of suspension as being in a *nonpay* status. (5 U.S.C. 7501(2).)

Response: MSPB and the U.S. Court of Appeals for the Federal Circuit indicated earlier the involuntary placement of an employee in a leave status for more than 14 days does in some instances constitute a constructive suspension and thus an appealable adverse action. OPM's proposed regulations reflected these holdings. More recently, the Federal Circuit expanded on the earlier case law and held that indefinite periods of enforced leave and periods of enforced leave of more than 14 days constitute appealable adverse actions. (*Pittman* v. *MSPB*, No. 87–3215 (Fed. Cir. Nov. 4, 1987).)

Although OPM agrees that including periods of paid leave in the definition of suspension would be inconsistent with the definition of suspension in 5 U.S.C. 7501(2) (and has not done so in the final regulations), agencies must be aware that if they choose to use indefinite periods of enforced leave or enforced leave of more than 14 days, they should follow Part 752 adverse action procedures to propose and effect the action, and give the employee appropriate notice of appeal rights, or face the possibility that a third party will reverse their action of the basis of harmful procedural error.

Section 752.404 Procedures.

Comments on Subsection 752.404(b), Notice of proposed action: An agency recommended that OPM revise paragraph (3) to allow agencies the discretion to choose among alternatives when they determine that an employee cannot be kept at the worksite during the notice period of an adverse action. One agency recommended that OPM not delete current subparagraph (3)(iii) in light of the MSPB's earlier decision in *Pittman*. Another agency suggested that OPM clarify proposed subparagraph (3)(iii) to distinguish it from current subparagraph (3)(ii) since both of these concern situations where the employee may be absent from the agency during the notice period. Finally, an agency recommended broadened language in subparagraph (3)(v) to allow agencies to place employees in paid, nonduty status before as well as during the advance notice period.

Response: OPM agrees that agencies should have the choice of alternatives in the unusual times when the employee cannot be allowed to stay at the worksite because his or her continued presence could pose a threat to the employee or others, result in lost or damaged Government property, or otherwise jeopardize legitimate Government interests. Thus, OPM has revised the subsection to allow agencies to select among the alternatives, rather than considering them in sequential order.

With respect to the current provision allowing the employee to be placed on enforced leave during the notice period when the agency has medical documentation demonstrating physical or mental incapacitation, OPM believes that the use of enforced leave during the notice period would be a constructive suspension under the Federal Circuit's decision in *Pittman* (see above) and has implemented the proposed deletion of this provision.

In regard to two paragraphs dealing with situations where the employee is absent from the agency (that is, when the employee has requested leave, or when he or she is absent for reasons not originating with the agency, such as incarceration), OPM has merged these two paragraphs to show that these are both situations where the employee's absence from the worksite can be charged to an appropriate leave category.

Finally, OPM has revised subparagraph (3)(v), using language parallel to that in the crime provision procedures (5 U.S.C. 752.404(d)(1)), to allow agencies more flexibility to place employees in a nonduty, paid status while initiating and effecting an action.

Comments of Paragraph 752.404(d)(1), "Crime provision": An agency notes that 5 U.S.C. 7513(b) does not limit the actions covered by it to removal or indefinite suspension.

Response: Though the statute does not limit the use of the crime provision to specific adverse actions, OPM notes that the whole purpose of the crime provision is to effect the action in a shortened period of time so that the employee can be removed quickly from the workplace. OPM does not believe that an agency could justify the need for such an abbreviation of procedures in the case of a reduction in grade or pay where the employee will remain at the workplace. OPM does agree, however, that time-specific suspensions, since they involve the temporary removal of the employee from the workplace and placement in a nonduty, nonpay status, may be used as appropriate with the crime provision. Accordingly, the final paragraph has been changed to cover removals and suspensions, including indefinite suspensions.

Comments of Subsection (e), Representation: See comments on proposed 5 CFR 752.203(d).

Response: See OPM's response to comments on proposed 5 CFR 752.203(d).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O 12291, Federal Regulation.

Regulator Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 752

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 752 of Title 5 of the Code of Federal Regulations as follows:

PART 752—ADVERSE ACTION

1. The authority citation for Part 752 is revised as set forth below; and all other authority citations throughout Part 752 are removed:

Authority: 5 U.S.C. 7504 and 7514; 5 U.S.C. 1302, Pub. L. 96–454; Section 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Section 752.405 also issued under 5 U.S.C. 1302 and 7513; Subpart F also issued under 5 U.S.C. 7543.

2. Paragraphs (b), (c), and (d) of § 752.201 are revised to read as follows:

§ 752.201 Coverage.

* * * * *

(b) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completd a probationary or trial period;

(2) An employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee with competitive status who occupies a position under Schedule B of Part 213 of this chapter;

(4) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;

(5) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3);

(6) An employee of the Government Printing Office; and

(7) An employee of the Administrative Office of the U.S. Courts.

(c) *Exclusions.* This subpart does not apply to a suspension for 14 days or less:

(1) Of an administrative law judge under 5 U.S.C. 7521;

(2) Taken for national security reasons under 5 U.S.C. 7531;

(3) Taken under a provision of statute, other than one codified in 5 U.S. Code, which excepts the action from Subchapter I, Chapter 75 of Title 5, U.S. Code;

(4) Of a reemployed annuitant; or

(5) Of a National Guard Technician.

(d) *Definitions.* In this subpart—

(1) "Day" means a calendar day.

(2) "Current continuous employment" means a period of employment immediately preceding a suspension action in the same or similar positions without a break in Federal civilian employment of a workday.

(3) "Similar positions" mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

(4) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

3. In § 752.203 paragraph (d) is revised, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added to read as follows:

§ 752.203 Procedures.

* * * * *

(d) *Representation.* Section 7503(b)(3) of title 5 of the United States Code provides that an employee covered by this part whose suspension is proposed in entitled to be represented during the action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

* * * * *

(f) *Grievances.* The employee may file a grievance through the agency administrative grievance system under Part 771 or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(3) of title 5 U.S.C., and the terms of any collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

* * * * *

4. The heading of Subpart D is revised to read as follows:

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

5. Section 752.401 is revised to read as follows:

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to the following actions:

(1) Removals;

(2) Suspensions for more than 14 days, including indefinite suspensions;

(3) Reductions in grade;

(4) Reductions in pay; and

(5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to:

(1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(2) The reduction in grade of a supervisor or manager who has not completed the probatinary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;

(3) A reduction-in-force action under 5 U.S.C. 3502;

(4) A reduction in grade or removal under 5 U.S.C. 4303;

(5) An action against an administrative law judge under 5 U.S.C. 7521;

(6) A suspension or removal under 5 U.S.C. 7532;

(7) Actions taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(8) Action that entitles an employee to grade retention under Part 536 of this chapter, and an action to terminate this entitlement;

(9) A voluntary action by the employee;

(10) Action taken or directed by the Office of Personnel Management under Part 731 or Part 754 of this chapter;

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;

(13) Cancellation of a promotion to a position not classified prior to the promotion;

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment; or

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation.

(c) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at 5 U.S.C. 105, the U.S. Postal Service, or the Postal Rate Commission and who has completed 1 year of current continuous employment in the same or similar positions;

(4) A Postal Service employee covered by Pub. L. 100-90 who has completed one year of current continuous employment in the same or similar positions and who is either a supervisory or management employee or an employee engaged in in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee with competitive status who occupies a position in Schedule B of Part 213 of this chapter;

(6) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this chapter, provided that the employee has completed a trial period of 1 year after initial appointment in such position;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;

(8) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3);

(9) An employee of the Government Printing Office; and

(10) An employee of the Administrative Office of the United States Courts.

(d) *Employees excluded.* This subpart does not apply to:

(1) An individual appointed by the President;

(2) An employee in a Schedule C appointment;

(3) An employee in a statutorily excepted position that has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President or the head of an agency;

(4) A reemployed annuitant;

(5) A National Guard technician; or

(6) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, who is appointed under chapter 73 of tile 38, United States Code.

6. Section 752.402 is revised to read as follows:

§ 752.402 Definitions.

(a) "Day" means a calendar day.

(b) "Current continuous employment" means a period of employment or service immediately preceding an adverse action in the same or similar postions without a break in Federal civilian employment of a workday.

(c) "Furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(d) "Grade" means a level of classification under a position classification system.

(e) "Indefinite suspension" means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

(f) "Pay" means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

(g) "Similar positions" mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

(h) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days.

7. In § 752.403, paragraph (a) is revised to read as follows:

§ 752.403 Standard for action.

(a) An agency may take an adverse action, including a performance-based adverse action, under this subpart only such cause as will promote the efficiency of the service.

* * * * *

(8) In § 752.404, the second sentence of paragraph (b)(1), the introductory text to paragraph (b)(3), and paragraph (b)(3)(ii) through (iv) are revised; paragraph (b)(3)(v) is removed; the fourth sentence of paragraph (c)(3), and paragraphs (d)(1) and (e) are revised to read as follows:

§ 752.404 Procedures.

* * * * *

(b) *Notice of proposed action.* (1) * * * The agency may not use material that cannot be disclosed to the employee of his or her representative or designated physician under § 297.204(c) of this chapter to support the reasons in the notice.

* * * * *

(3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

* * * * *

(ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of § 752.404(d)(1) of this part, the "crime provision." This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

(c) * * *

(3) * * * If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning disability retirement. * * *

(d) *Exceptions.* (1) Section 7513(b) of title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension (including indefinite suspension). The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days. When the circumstances require that the employee be kept away from the worksite, the agency may place him or her in a nonduty status with pay for such time as is necessary to effect the action.

* * * * *

(e) *Representation.* Section 7513(b)(3) of title 5 of the United States Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release

from his or official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

* * * * *

9. In § 752.405, paragraph (b) is revised to read as set forth below.

§ 752.405 Appeal and grievance rights.

* * * * *

(b) *Grievance rights.* As provided at 5 U.S.C. 7121(c)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, and employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

[FR Doc. 88-13048 Filed 6-8-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911, 915, 918, 923, and 982

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish assessment rates under Marketing Order Nos. 911, 915, 918, 923, and 982 for the 1988–89 fiscal year established for each order. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1988, through March 31, 1989 [§ 911.227]; April 1, 1988, through March 31, 1989 [§ 915.227]; March 1, 1988, through February 28, 1989 [§ 918.225]; April 1, 1988, through March 31, 1989 [§ 923.228]; July 1, 1988, through June 30, 1989 [§ 982.333].

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 911 [7 CFR Part 911] regulating the handling of limes grown in Florida; 915 [7 CFR Part 915] regulating the handling of avocados grown in South Florida; 918 [7 CFR Part 918] regulating the handling of fresh peaches grown in Georgia; 923 [7 CFR Part 923] regulating the handling of sweet cherries grown in designated counties in Washington; and 982 [7 CFR Part 982] regulating the handling of filberts/hazelnuts grown in Oregon and Washington. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes, 34 handlers of Florida avocados, 18 handlers of Georgia peaches, 65 handlers of Washington cherries, and 30 handlers of Washington-Oregon filberts/hazelnuts subject to regulations under their respective orders, and approximately 260 Florida lime producers, 300 Florida avocado producers, 300 Georgia peach producers, 3,200 Washington cherry producers, and 1,600 Washington-Oregon filbert/hazelnut producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (Committee) met on April 13, 1988, and unanimously recommended 1988–89 marketing order expenditures of $233,500 and an assessment rate of $0.15 per bushel of fresh limes shipped under M.O. 911. In comparison, 1987–88 fiscal year budgeted expenditures were $258,000 and the assessment rate was $0.15 per bushel. Major expenditure categories in the 1988–89 budget are $108,000 for program administration, $25,000 for market development, and $100,500 for research. Assessment income for 1988–89 is expected to total $210,000, based on shipments of 1,400,000 bushels of limes. Interest income will amount to approximately $7,000. Committee reserve funds will be available to cover the anticipated $16,500 deficit for 1988–89.

The Avocado Administrative Committee (Committee) met on April 13, 1988, and unanimously recommended 1988–89 marketing order expenditures of $193,500 and an assessment rate of $0.11 per bushel of fresh avocados. In comparison, 1987–88 fiscal year budgeted expenditures were $200,000 and the assessment rate was $0.11 per bushel. Major expenditure categories in the 1988–89 budget are $107,300 for program administration, $25,000 for market development, and $61,200 for research. Assessment income for 1988–89 is expected to total $132,000, based on shipments of 1,200,000 bushels of avocados. Interest income will amount to approximately $5,000. Committee reserve funds will be available to cover the anticipated $56,500 deficit for 1988–89.

The Georgia Peach Industry Committee met on April 7, 1988, and unanimously recommended 1988–89 marketing order expenditures of $14,306.08 and an assessment rate of $0.005 per bushel of fresh peaches. Assessment income for 1988–89 is expected to total $6,695 based on shipments of 1,339,000 bushels of peaches. Interest income will amount to approximately $5,010.08. Committee reserves and other available funds will be available to cover the anticipated $2,600 deficit for 1988–89.

The Stone Fruit Executive Marketing Committee met on April 14, 1988, and unanimously recommended 1988–89 marketing order expenditures for Washington sweet cherries. Expenditures of $97,210 and an assessment rate of $2.50 per ton of sweet cherries under M.O. 923 were recommended. In comparison, 1987–88 budgeted expenditures were $85,100 and the assessment rate was $2.00 per ton. On May 16, 1988, the Washington Cherry Marketing Committee met again and revised their assessment rate to $2.00 per ton of sweet cherries. Assessment income for 1988–89 is estimated at $88,000 based on a crop estimate of 44,000 tons of cherries. Committee reserves and other funds will be available to cover the anticipated $9,210 deficit for 1988–89.

The Filbert/Hazelnut Marketing Board (Board) conducted a telephone vote on April 22, 1988, and unanimously recommended 1988–89 marketing order expenditures of $424,100 and an assessment rate of $14.00 per ton of filberts/hazelnuts. In comparison, 1987–88 marketing year budgeted expenditures were $366,590 and the assessment rate was $14.00 per ton. Major expenditure categories in the 1988–89 budget are $63,400 for administration, $245,000 for promotion, and $100,000 for the emergency reserve fund. Assessment income for 1988–89 is expected to total $280,000 based on a crop estimate of 20,000 tons of filberts/hazelnuts. Interest and incidental income is estimated at $31,000. The Board may expend operational reserve funds of $113,100 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 911.227, 915.227, 918.225, 923.228, and 982.333, and is based on committee recommendations and other information. A proposed rule was published in the May 13, 1988, issue of the **Federal Register** [53 FR 17056]. Comments on the proposed rule were invited from interested persons until May 23, 1988. One comment was received from the Washington Cherry Marketing Committee, in which they requested the establishment of a revised assessment rate.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publications in the **Federal Register** [4 U.S.C. 553].

List of Subjects in 7 CFR Parts 911, 915, 918, 923, and 982

Avocados, Cherries, Filberts, Florida, Georgia, Hazelnuts, Limes, Marketing agreements and orders, Peaches, Washington.

For the reasons set forth in the preamble, new §§ 911.227, 915.227, 918.225, 923.228, and 982.333 are added as follows:

1. The authority citation for 7 CFR Parts 911, 915, 918, 923, and 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 911.227, 915.227, 918.225, 923.228, and 982.333 are added to read as follows:

Note: These sections will not appear in the Code of Federal Regulations.

PART 911—LIMES GROWN IN FLORIDA

§ 911.227 Expenses and assessment rate.

Expenses of $233,500 by Florida Lime Administrative Committee are authorized, and an assessment of $0.15 per bushel of assessable limes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.227 Expenses and assessment rate.

Expenses of $193,500 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.11 per bushel of assessable avocados is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 918—FRESH PEACHES GROWN IN GEORGIA

§ 918.225 Expenses and assessment rate.

Expenses of $14,306.08 by the Industry Committee are authorized, and an assessment rate of $0.005 per bushel of peaches is established for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.228 Expenses and assessment rate.

Expenses of $97,210 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $2.00 per ton of assessable cherries is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

§ 982.233 Expenses and assessment rate.

Expenses of $424,100 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at $0.02 per pound of assessable filberts/hazelnuts for the 1988–89 marketing year ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1988.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-13012 Filed 6-8-88; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Parts 1033 and 1046

[Docket Nos. AO-166-A57 and AO-123-A58]

Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the pooling provisions of the Ohio Valley and Louisville-Lexington-Evansville milk orders. One amendment provides that a pool distributing plant physically located in the Louisville-Lexington-Evansville marketing area would be regulated under that order irrespective of the market in which the plant has a majority of its fluid milk products distribution. A conforming amendment is made in the Ohio Valley order. Also, another amendment pertains only to the Louisville-Lexington-Evansville order. This amendment modifies slightly the method for accounting for excess diversions to nonpool plants. The amendments are based on industry proposals considered at a public hearing held in Louisville, Kentucky, June 30–July 1, 1987. The amendments are necessary to reflect structural changes in the market and to promote orderly and efficient marketing of milk by producers and handlers.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 15, 1987; published June 19, 1987 (52 FR 23396).

Recommended Decision: Issued January 7, 1988; published January 14, 1988 (53 FR 807).

Final Decision: Issued April 28, 1988; published April 28, 1988 (53 FR 14804).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley and Louisville-Lexington-Evansville orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in each order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing areas.

List of Subjects in 7 CFR Parts 1033 and 1046

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1033 and 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.56 is amended by revising the first sentence of paragraph (a) through the first comma and adding a new paragraph (c) to read as follows:

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraphs (b) and (c) of this section,

* * * * *

(c) A plant qualified pursuant to § 1033.12(a) which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

3. Section 1046.7 is amended by revising paragraph (e) to read as follows:

§ 1046.7 Pool plant.

* * * * *

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act, except:

(i) A plant that qualifies as a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month; and

(ii) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the pooling requirements of another Federal order on the basis of route disposition if the plant is located in the Louisville-Lexington-Evansville marketing area and this order's Class I price applicable at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition; and

(3) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

4. Section 1046.13 is amended by adding a new paragraph (c)(4) to read as follows:

§ 1046.13 Producer milk.

* * * * *

(c) * * *

(4) Any milk diverted in excess of the limits prescribed in paragraph (c)(3) of this section shall not be producer milk. The diverting handler shall designate the farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

* * * * *

Signed at Washington, DC, on: June 3, 1988.

Kenneth A. Gilles,
Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-13013 Filed 6-8-88; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Diagnostic Misadministration Report Form

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for the medical use of byproduct material to indicate the form to be used for reporting diagnostic misadministrations. This action is intended to inform the public of the development and availability of the form that medical licensees must use to meet this reporting requirement.

EFFECTIVE DATE: June 9, 1988.

ADDRESSES: A copy of Form NRC 473 may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies are available from James H. Myers, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0635.

FOR FURTHER INFORMATION CONTACT: James H. Myers, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0635.

SUPPLEMENTARY INFORMATION: The NRC amended its regulations for the medical use of byproduct material to require licensees to report certain diagnostic misadministrations to the NRC on a special NRC form. This matter was discussed in the final rule revising 10 CFR Part 35 (51 FR 36932, October 16, 1986).

The NRC staff has developed the form, and the Office of Management and Budget (OMB) has approved its use. The NRC is amending its regulations to insert the form number in the regulatory text. A copy of the form will be mailed to NRC medical use licensees.

This amendment is a minor administrative change to an existing final rule. It merely adds the form number for an NRC form to the codified rule. The number had been omitted because OMB had not completed its review. Based on this, good cause exists to find that the notice and public procedure provisions of the Administrative Procedure Act are unnecessary pursuant to the exemption provision found in 5 U.S.C. 553(b)(B). Therefore, the amendment is effective upon publication in the Federal Register.

Administrative Statements

Environmental Impact: Categorical Exclusion.

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget under OMB Number 3150–0140.

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

Regulatory Text

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553 the NRC is adopting the following amendment to 10 CFR Part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.33 [Amended]

2. In § 35.33, paragraph (c) is amended by removing footnote 1 and by inserting "Form NRC 473" in place of "Form NRC —" in the second sentence.

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Dated at Rockville, MD, this 27th day of May 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-12985 Filed 6-8-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-23-AD; Amdt. 39-5844]

Airworthiness Directives; Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 87-20-02, Amendment 39-5728, applicable to certain Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes. AD 87-20-02 requires incorporation of the airspeed limitations required by AD 86-21-07 and also adds provisions for removing these limitations with the incorporation of modifications identified in Beech Mandatory Service Bulletin (SB) 2188, dated May 1987. A check of the accuracy of weight and balance data for all airplanes and of the ruddervator static balance for the Models C35 through V35B is also required. The revision specified herein will allow installation of Mike Smith Aero, Inc. (MSA) Tail-Safe external angles per Supplemental Type Certificate (STC) SA1649CE in lieu of the Beech stabilizer reinforcements for Models S35, V35, V35A, and V35B airplanes. This revision will relieve operators of the unnecessary burden of removing or trimming these Tail-Safe angles to accommodate the Beech stabilizer reinforcement.

DATES: *Effective Date:* June 15, 1988. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Beech Mandatory Service Bulletin No. 2188, dated May 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, KS 67201-0085; telephone 316-681-7279. This information may be examined at the Rules Docket, FAA Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Yanez, FAA, Wichita Aircraft Certification Office, ACE-120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: This amendment revises AD 87-20-02, Amendment 39-5728 (52 FR 35683; September 23, 1987) applicable to all Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes except those modified per Supplemental Type Certificate (STC) SA2149CE (straight tail conversion). AD 87-20-02 incorporated the airspeed limitations required by DA 86-21-07 to preclude producing airloads within the flight envelope that could result in structural failure of the V-tail. AD 87-20-02 also has provisions for removing these limitations. One provision is the installation of the Beech stabilizer reinforcement. This installation requires the removal or trimming of previous modifications installed by STC. Subsequent to issuance of AD 87-20-02, Mike Smith Aero, Inc. (MSA) performed a structural test that demonstrated that the MSA Tail-Safe modification, installed per STC SA1649CE for Models S35, V35, V35A, and V35B airplanes, is equivalent to the Beech stabilizer reinforcement. This revision to AD 87-20-02 will permit the use of the Tail-Safe modification in lieu of the Beech stabilizer reinforcements.

Therefore, the FAA is revising AD 87-20-02 by allowing the use of the MSA Tail-Safe external angles installed per STC SA1649CE, for Models S35, V35, V35A and V35B airplanes, in lieu of the Beech stabilizer reinforcements. In addition, minor editorial clarifications have been made to the AD. This action relieves an unnecessary burden on those operators which have installed MSA Tail-Safe external angles, imposes no additional burden on any person, and precludes unnecessary modification or alteration of airplanes equipped with Tail-Safe external angles MSA STC SA1649CE. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this amendment is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to relieve unnecessary economic burden by further modification to the aircraft. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 87-20-02, Amendment 39-5728, as follows:

Beech: Applies to all Model 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B (all serial numbers) airplanes certificated in any category except to those Models S35, V35, V35A and V35B airplanes modified per Supplemental Type Certificate (STC) SA2149CE (straight tail conversion).

Compliance: Required as indicated, unless already accomplished.

To minimize the possibility for in-flight failures due to inadequate strength of the V-tail, and/or adverse flight characteristics resulting from operation outside the aft limit of the center of gravity envelope, accomplish the following:

(a) Prior to further flight after the effective date of this AD, unless accomplished per AD 86-21-07:

(1) For Models 35, 35R, A35, B35, C35, D35, E35, F35 or G35:

(A) Fabricate and install on the instrument panel as near as possible to the airspeed indicator and in clear view of the pilot the following placard using letters of 0.10 inch minimum height. "Never exceed speed, V_{NE} 144 MPH (125 knots) IAS; Maximum structural cruising speed, V_{NO} 136 MPH (117 knots) IAS; Maneuvering speed, V_A, 127 MPH (110 knots) IAS."

(B) Mark the outside surface of the airspeed indicator with lines of approximately 1/16 inch by 3/16 inch as follows:

(i) Red line at 144 MPH (125 knots), and

(ii) Yellow line at 136 MPH (117 knots), and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(C) Place a copy of AD 86-21-07, or AD 87-20-02, or AD 87-20-02R1 in the Pilot's Operating Handbook and FAA approved Airplane Flight Manual (POH/AFM) and observe the specified limits.

(D) Operate the airplane in accordance with these speed limitations.

(2) For Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B:

(A) Fabricate and install on the instrument panel as near as possible to the airspeed indicator and in clear view of the pilot the following placard using letters of 0.10 inch minimum height. "Never exceed speed, V_{NE} 197 MPH (171 knots) IAS; Maximum structural cruising speed, V_{NO} 177 MPH (154 knots) IAS; Maneuvering speed, V_A, 132 MPH (115 knots) IAS."

(B) Mark the outside surface of the airspeed indicator with lines of approximately 1/16 inch by 3/16 inch as follows:

(i) Red line at 197 MPH (171 knots), and

(ii) Yellow line at 177 MPH (154 knots), and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(C) Place a copy of AD 86-21-07, or AD 87-20-02 or AD 87-20-02R1 in the POH/AFM and observe the specified limits.

(D) Operate the airplane in accordance with these speed limitations.

(3) For all applicable models, fabricate and install on the instrument panel, over the existing "Utility Category" placard the following placard using letters of 0.10 inch minimum height: "Normal Category Operation Only" and operate the airplane accordingly.

(4) The requirements of paragraph (a) may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him which is not used under Part 121 or 135. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed in FAR 43.9.

(b) Within the next 12 calender months after the effective date of this AD, for Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes accomplish the following:

(1) Visually inspect the empennage, aft fuselage and ruddervator control system in accordance with the appropriate kit instructions specified in Beech Service Bulletin (SB) 2188. Perform the following corrective actions as defined by these instructions:

(A) Replace or repair structural components as required.

(B) Set the elevator, rudder and tab system travels, cable tensions and rigging as specified in the appropriate airplane maintenance or shop manual as referenced in SB 2188.

(2) Remove all external stabilizer reinforcements incorporated per STC SA845GL, SA846GL, SA1650CE, SA2286NM or SA2287NM. Seal or fill any residual holes with appropriate size rivets. The internal stub spar incorporated by SA1649CE and SA1650CE may be retained. The external angles installed per STC SA1649CE may also be retained by properly trimming the leading edge section to permit the installation of the stabilizer reinforcement per paragraph (b)(4) of this AD. For Models S35, V35, V35A and V35B, the external angles installed per STC SA1649CE may be retained in lieu of the stabilizer reinforcement per paragraph (b)(4) of this AD. If any other modification has been incorporated on the stabilizer, notify the Wichita Aircraft Certification Office, telephone (316) 946-4409 prior to accomplishing paragraph (b)(4) of this AD.

(3) Determine the accuracy of the static balance of the ruddervator by reviewing the airplane records. If any repainting, modification, repair to the ruddervators has been made since the last balance, check the static balance of the ruddervator and balance as necessary using the methods and criteria specified in the appropriate Airplane Maintenance or Shop Manual. These manuals are referenced in SB 2188.

(4) Following completion of paragraph (b)(1), (b)(2), and (b)(3) of this AD, install stabilizer reinforcements in accordance with Beech SB2188, unless the Tail-Safe external angles are installed per STC SA1649CE for Models S35, V35, V35A, and V35B. Install warning placards and set elevator nose down trim in accordance with Beech SB 2188 and for Models C35, D35, E35, F35, and G35 replace ruddervator tab control cables with larger diameter cables in accordance with SB 2188.

(5) Place the revision/supplement to the POH/AFM specified in SB 2188 in the airplane. Assure that the correct POH/AFM, as listed in the latest revision to the appropriate Type Certificate Data Sheet (TCDS), is installed in the airplane.

(c) Upon completion of the requirements of paragraph (b) of this AD, as applicable, within the next 12 calender months after the effective date of this AD, for all 35 Series airplanes determine the accuracy of airplane basic empty weight and balance information using one of the following three methods:

(1) Method Number 1:

(A) Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA approved weighing, or from factory delivery, to date of compliance with this AD.

(B) Inspect the airplane and compare the actual configuration of the airplane to the configuration described in the weight and balance documentation, and

(C) If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g. paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data by using either method number 2 shown in paragraph (c)(2) of this AD or weigh the airplane as specified in paragraph (c)(3) of this AD.

(2) Method Number 2:

(A) Assemble the following equipment:

(1) One certified platform scale having a range of 750 to 1000 pounds capable of supporting the nose wheel without contacting the rest of the airplane.

(2) One scale ramp of sufficient incline to allow rolling the nose wheel onto the scale.

(3) One gear strut inflation system capable of inflating the gear struts to full extension.

(B) Procedure:

(1) Prepare the airplane for weighing, utilizing steps 2, 3 and 4 of the Weighing Instructions in the Weight and Balance Section of the POH/AFM.

Ensure that the scale and airplane are on a level hangar floor and the aircraft is shielded from any wind.

(2) Inflate the main gear struts to maximum extension and completely deflate the nose strut. Inflate tires to the correct tire pressures as listed in appropriate Maintenance or Shop Manual.

CAUTION: When deflating the nose strut, the aircraft may drop suddenly.

(3) Adjust the height of the scale platform to 12 inches above the hangar floor.

(4) Position the nose wheel onto the scale ensuring that the remainder of the airplane does not contact the scale and verify the proper wheel height. Set the parking brake and/or chock the main wheels.

(5) Record the net weight from the scale.

(6) Remove the nose wheel from the scale.

(7) Adjust the gear struts, per the appropriate Maintenance or Shop Manual, to the proper extension lengths.

(8) Subtract the following unusable, less undrainable, fuel from the current airplane Basic Empty Weight, CG and Moment:

	Weight (lbs)	Arm (in)	Moment (in-lbs)
For all Airplanes; and	34.5	79.1	2,730
In addition, for Airplanes with 10 gallon wing auxiliary tanks; or	5.0	94.0	470
In addition, for Airplanes with 20 gallon auxiliary fuselage tanks	3.0	133.0	399

(9) Multiply the net weight obtained in paragraph (5) by 93.25 to obtain moment.

(10) Divide the weight obtained in paragraph (8) into the moment obtained in paragraph (9) to determine a value for X.

(11) Calculate a value of CG from: CG=92.50−1.01X.

(12) Subtract the CG obtained in paragraph (11) from the CG obtained in paragraph (8).

(13) If the results of paragraph (12) indicate the difference in CG to be less than 0.5 inches, continue to use the basic empty airplane weight and CG data listed in the existing airplane records as the basis for computing the weight and CG for the loaded airplane using the criteria specified in the POH/AFM, Weight and Balance Section.

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(14) If the results of paragraph (12) indicate the difference in CG to be more than 0.5 inches, determine the basic empty weight and CG of the airplane using Method Number 3.

Note: Sample Calculation:

Basic Empty Weight (BEW) (lbs.)	2,094.5
Arm (in.)	78.3
Moment (in-lbs.)	161,650

Paragraph (5):

Nose Wheel Weight (lbs.)	341

Weight (lbs)	Arm (in)	Moment (in-lbs)
Paragraph (8):		
2,094.5	78.3	161,650
−34.5	79.1	−2,730
2030.0	(*)	158,920

$$*Arm = \frac{(158920)}{(2030.0)} = 78.29$$

Paragraph (9): Moment = (341 lbs) × (83.25 in) = 28388 in-lbs.

Paragraph (10):

$$X = \frac{(28388 \text{ in-lbs})}{(2030.0 \text{ lb})} = 13.98 \text{ in.}$$

Paragraph (11): CG = 92.50 in. − (1.01) × (13.98 in) = 78.38 in.

Paragraph (12): Difference = (78.29 in) − (78.38 in) = 0.09 in.

Airplane is within xx in tolerance, therefore Paragraph (13) applies. ±0.5 in tolerance, therefore Paragraph (13) applies.

(3) Method Number 3:

(1) Determine the basic empty weight and CG of the empty airplane using the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the POH/AFM, Weight and Balance Section.

(d) Upon completion of the requirements of paragraphs (b) and (c), as applicable, remove the following that were installed in accordance with AD 86-21-07, Amendment 39-5474, or in accordance with paragraph (a) of this AD.

(1) The airspeed placards and airspeed indicator markings, and resume operations observing the original limits.

(2) The copy of AD 86-21-07, or AD 87-20-02, or AD 87-20-02R1 from the POH/AFM.

(3) The "Normal Category Operations Only" placard.

(e) Special Flight Permit may be issued in accordance with FAR 21.197 to operate airplanes to a base in order to comply with the requirements of paragraph (b) thru (d) of this AD.

(f) An equivalent method of compliance with this AD may be used when approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085 or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106

This amendment revises AD 87-20-02, Amendment 39-5728, which superseded AD 86-21-07, Amendment 39-5474.

This amendment becomes effective on June 15, 1988.

Issued in Kansas City, Missouri, on May 31, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-12929 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-14-AD; Amdt. 39-5955]

Airworthiness Directives; British Aerospace (BAe) PLC Jetstream Model 3101 (Includes Model 3100) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC Jetstream Model 3101 (includes Model 3100) airplanes, which requires the incorporation of instructions into the Airplane Flight Manual (AFM) describing pilot actions to be used in the event of erratic torque/EGT indications, and checks and adjustments, where necessary, of the propeller governor low RPM setting. Dual engine torque oscillations in the range of 40-45% have been reported in an accident in which the prop RPM levers were improperly set for take off. This AD will substantially reduce the tendency for engine torque oscillations due to such improperly positioned RPM levers when engine power is set close to take off power and thus precludes the possibility of degraded performance and loss of airplane control. It also provides remedial procedures as part of the emergency procedures section of the AFM should such a situation occur due to any cause.

DATES: *Effective Date:* June 16, 1988. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Garrett Engine Division (GED) Service Bulletin (SB) TPE331-76-0023, Revision 1, dated May 6, 1988, applicable to this AD, may be obtained from GED, Post Office Box 5217, Phoenix, Arizona 85010; Telephone (602) 225-2548, or British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. BAe Jetstream 3101 Document Number HP.4.10, Advance Amendment Bulletin, Issue 1, dated April 13, 1988, applicable to this AD may be obtained from British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., FAA, Project Support Section Foreign, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: Dual engine torque oscillations in the range of 40-45% have been reported in an accident involving a BAe Model 3101 airplane in which the prop RPM levers were improperly set for takeoff. These dynamic oscillations resulted from an interaction of the hydromechanical fuel controller and the propeller governor while the engine power was set close to the thermodynamic limit of the engine. Investigation into this complex phenomenon by the airplane manufacturer has shown that divergent oscillations may occur at a propeller govgrnor RPM setting of 94% when the power lever is advanced to maximum power. Resetting the propeller governor low RPM setting to 95.5%-96.0% will reduce the tendency for severe torque oscillations in most cases, except where a rapid power lever movement is made. As a result, GED has issued SB TPE331-76-0023, Revision 1, dated May 6, 1988 which provides instructions on how to check the propeller governor low RPM setting and how to adjust that setting if needed.

In addition, the procedures incorporated into the Emergency Procedures section of the AFM provide crew procedures to properly respond to conditions of erratic torque/EGT or indications of erratic torque/EGT due to any cause. The Civil Aviation Authority of the United Kingdom (CAA-UK) has issued Advance Amendment Bulletin, Issue 1, dated April 13, 1988, as an amendment to the AFM which incorporates the erratic torque/EGT indications procedures into the Emergency Procedures Section of the AFM. The CAA-UK, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified this amendment as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Garrett SB TPE331-76-0023, Revision 1, dated May 6, 1988, as well as the issuance of Advance Amendment Bulletin, Issue 1, dated April 13, 1988, and the mandatory classification of this amendment by CAA-UK.

Based on the foregoing, the FAA has determined that the conditions described herein are unsafe conditions that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued making compliance with Garrett SB TPE331-76-0023, Revision 1, dated May 6, 1988, and the insertion of the Advance Amendment into the BAe Jetstream Model 3101 AFM mandatory on all BAe PLC Jetstream Model 3101 (includes Model 3100) airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace (BAe) PLC: Applies to Jetstream Model 3101 (includes Model 3100) (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated unless already accomplished.

To reduce the possibility of engine torque oscillations resulting from improperly set propeller RPM levers and to provide remedial procedures if such a situation does occur from any cause, accomplish the following:

(a) For airplanes with in-service engines, within the next 50 hours time-in-service after the effective date of this AD, or prior to further flight for airplanes when any overhauled or replacement engine or propeller governor is installed, check the propeller governor low RPM setting as described in Section 2, Accomplishment Instructions, of Garrett Engine Division (GED) Service Bulletin (SB) TPE331-76-0023, Revision 1, dated May 6, 1988.

(1) If the low RPM setting is in between 95.5% to 96%, inclusive, no further action is required per this paragraph of the AD unless a replacement engine or propeller governor is subsequently installed.

(2) If the low RPM setting is not in between 95.5% or 96% inclusive, prior to further flight adjust the low RPM setting to the range of 95.5% to 96% as described in the above SB.

(b) Within 7 calendar days from the effective date of the AD, insert Advance Amendment Bulletin No. 1, dated April 13, 1988, into the Airplane Flight Manual, BAe Document No. HP.4.10, facing Page 4, Section 3, and operate the airplane accordingly.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium; Telephone (322) 513.3830 ext. 2710/2711.

All persons affected by this directive may obtain copies of the appropriate document(s) referred to herein upon request to Garrett Engine Division, Post Office Box 5217, Phoenix, Arizona 85010; Telphone (602) 225-2548, or British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on June 16, 1988.

Issued in Kansas City, Missouri, on June 1, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-12928 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 82F-0254]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Glyceryl Tristearate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of glyceryl tristearate. This

action responds to a petition submitted by Kay-Fries, Inc.

DATES: Effective June 9, 1988; objections by July 11, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 3, 1982 (46 FR 36869), FDA announced that a petition (FAP 2A3639) had been filed by Kay-Fries, Inc., 10 Link Drive, Rockleigh, NJ 07647, proposing that the food additive regulations be amended to provide for the safe use of glyceryl tristearate as a crystallization accelerator, lubricant, release agent, and compressing aid to be used in or on food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed uses of this food additive are safe, and that the regulations should be amended to allow for the use of this substance as a crystallization accelerator, formulation aid, lubricant and release agent, surface-finishing agent, and winterization and fractionation aid for use in or on food. FDA has listed this additive under the name "glyceryl tristearate" to reflect conventional chemical nomenclature practice.

Some of the technical effects for which FDA is regulating the additive (formulation aid, surface-finishing agent, and winterization and fractionation aid) were not listed in the filing notice. The agency is taking this action because, after reviewing the petition, it concluded that it was necessary to include these technical effects in the regulations to fully reflect the uses requested by the petitioner. Furthermore, the agency did not include the technical effect "compressing aid" because that technical effect is included under the term "formulation aid," as defined in § 170.3(o)(14) (21 CFR 170.3(o)(14)).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

Any person who will be adversely affected by this regulation may at any time on or before July 11, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Director or Deputy Director of the Center For Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.811 is added to Subpart I to read as follows:

§ 172.811 Glyceryl tristearate.

The food additive glyceryl tristearate may be safely used in food in accordance with the following prescribed conditions:

(a) The food additive (CAS Reg. No. 555–43–1) is prepared by reacting stearic acid with glycerol in the presence of a suitable catalyst.

(b) The food additive meets the following specifications:

Acid number	Not to exceed 0.5.
Iodine number	Not to exceed 1.0.
Saponification number.	168–192.
Hydroxyl number	Not to exceed 5.0.
Free glycerol content	Not to exceed 0.5 percent.
Unsaponifiable matter	Not to exceed 0.5 percent.
Melting point (Class II).	69 °C–71 °C.

(c) The additive is used or intended for use as follows when standards of identity established under section 401 of the Act do not preclude such use:

Uses	Limitations
1. As a crystallization accelerator in cocoa products, in imitation chocolate, and in compound coatings.	Not to exceed 1 percent of the combined weight of the formulation.
2. As a formulation aid as defined in § 170.3(o)(14) of this chapter, lubricant and release agent as defined in § 170.3(o)(18) of this chapter, and surface-finishing agent as defined in § 170.3(o)(30) of this chapter in food.	Not to exceed 0.5 percent.
3. As a formulation aid as defined in § 170.3(o)(14) of this chapter in confections.	Not to exceed 3.0 percent of the combined weight of the formulation.
4. As a formulation aid as defined in § 170.3(o)(14) of this chapter in fats and oils as defined in § 170.3 (n)(12) of this chapter.	Not to exceed 1.0 percent of the combined weight of the formulation.
5. As a winterization and fractionation aid in fat and oil processing.	Not to exceed 0.5 percent by weight of the processed fat or oil.

(d) To assure safe use of the additive:

(1) In addition to the other information required by the act, the label or labeling of the additive shall bear the name of the additive.

(2) The label of the additive shall bear adequate directions to provide a final product that complies with the limitations prescribed in paragraph (c) of this section.

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–12941 Filed 6–8–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 201

[Docket No. 87N–0371]

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Reye Syndrome Warning

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making permanent the regulation that requires a Reye syndrome warning on the labeling of oral and rectal over-the-counter (OTC) human drug products containing aspirin. The current regulation expires on June 6, 1988, unless extended by FDA. In addition, the agency is revising the warning statement to state clearly that Reye syndrome is reported to be associated with aspirin. These actions are based primarily on the results of a study by the Public Health Service (PHS) Reye Syndrome Task Force and the report of the Institute of Medicine's Committee on Reye Syndrome and Medication Use. The PHS study confirms earlier reports of an association between Reye syndrome and aspirin use in children and teenagers with chicken pox or flu.

EFFECTIVE DATES: Continuation of the current warning statement effective June 9, 1988; revision of the warning statement effective December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8040.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of March 7, 1986 (51 FR 8180), FDA published a final regulation requiring the following labeling statement on oral and rectal OTC drug products containing aspirin: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness." FDA took this action to aid in increasing the public's awareness of the association between the use of aspirin and Reye syndrome [1] and to bring uniformity and consistency to the labeling of aspirin and aspirin-containing drug products in the marketplace. The 1986 regulation was based, in large part, on the results of a "pilot study" conducted by PHS which showed an association between the use of aspirin and the onset of Reye syndrome.

The 1986 final rule also provided that the regulation would expire June 6, 1988, 2 years from the effective date, unless the agency acted to extend it. This 2-year period was to allow for the completion and evaluation of further research by PHS, known as the "main study," into the association between Reye syndrome and various exposure factors, including the use of aspirin.

1. The PHS Main Study.

The PHS main study confirmed the results of the pilot study and found a large, statistically significant association between Reye syndrome in children and teenagers and the ingestion of aspirin during previous illnesses. The PHS report, entitled "Reye Syndrome and Medications—Report of the Main Study," November 12, 1986, was prepared by the PHS Reye Syndrome Task Force (Ref. 1). The PHS report was evaluated by the Institute of Medicine (IOM) of the National Academy of Sciences in a report entitled "The PHS Study of the Reye Syndrome: Review of a Continuing Study—Report Number 6—Review of the PHS Continuing Study by the Committee on the Reye Syndrome and Medications," February 1987 (Ref. 2). A report of the main PHS study was published in the *Journal of the American Medical Association* on April 10, 1987 (Ref. 3). These reports have been placed on display with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 87N–0371. Additional background information may be found in Docket Nos. 82N–0158 and 85N–0553.

The PHS main study concluded that the association between Reye syndrome and aspirin is consistent with estimates of risk determined in earlier studies and reflects the strength of the epidemiologic association observed in those studies. The study reinforced the importance of reducing the use of aspirin in the treatment of children and teenagers with chicken pox and flu-like illnesses. FDA believes that the available evidence supports the continuing need to maintain a high level of public awareness of the association between the use of aspirin in children and teenagers with chicken pox and flu and the incidence of Reye syndrome.[2] Accordingly, based on the results of this PHS research, in the Federal Register of January 22, 1988 (53 FR 1796), FDA published a proposed rule to make permanent the requirement regarding the Reye syndrome warning.

2. Public Education Program

In its efforts to create and maintain a high level of public awareness of the association between the use of aspirin in children and teenagers and the incidence of Reye syndrome, FDA has conducted an extensive public education program in addition to the required warning information on aspirin product labeling. FDA has initiated public educational activities on Reye syndrome for several years, beginning in 1982. Earlier educational efforts were directed at raising the awareness of Reye syndrome among parents of young children. More recently, FDA has focused its educational program towards teenagers who may still be unaware of the association between Reye syndrome and aspirin use for their age group during the flu or chicken pox. Accordingly, during 1987, the agency distributed approximately 40,000 posters to high schools and colleges warning of the association between Reye syndrome and the ingestion of aspirin during illness with the flu or chicken pox. In addition, FDA distributed public service announcements to approximately 2,000 radio stations, and sent advertisements to approximately 11,000 daily and weekly newspapers across the United States, with the message consistently directed toward teenagers.

The aspirin industry, through the Aspirin Foundation of America, has also conducted an extensive public education program during the past several years. Public service announcements were distributed to television and radio stations around the

[1] Reye syndrome is a rare but serious illness affecting children and teenagers. Characteristically, its onset follows illness due to influenza B, influenza A, or chicken pox as the child or teenager appears to be getting well. Reye syndrome is a degenerative disease of the brain; the symptoms include nausea, vomiting, and behavioral changes.

[2] The preliminary results of another Reye syndrome study, conducted by Yale University, have been presented to FDA. These results support the conclusion of the PHS study. The final report from the Yale study is expected within the next several months.

country, as well as the major networks, beginning in the spring of 1985 and continuing in each of the succeeding three flu seasons. As with the FDA efforts, recent educational initiatives have sought to reach teenage audiences, by featuring teenage television and radio personalities in public service announcements. Several retail grocery and pharmacy stores and chains have also participated in a number of educational efforts regarding Reye syndrome.

3. Decline in Incidence of Reye Syndrome

The Centers for Disease Control has reported that the number of cases of Reye syndrome has declined significantly between 1980 (658 cases) and 1985 (93 cases). Moreover, according to a study published in *Pediatrics* in June 1987 ("National Patterns of Aspirin Use and Reye Syndrome Reporting, United States, 1980 to 1985") [Ref. 4], pediatric aspirin use during that same time also declined. These favorable trends appear to be continuing, with 101 Reye syndrome cases reported for 1986 in the *Morbidity and Mortality Weekly Report* (Ref. 5). Although the data show a decline in Reye syndrome cases over the past few years, the fact that 101 cases were reported as recently as 1986 indicates the continuing need for a clear and uniform Reye syndrome warning on aspirin-containing drug products and for a continued public education program.

II. Highlights of the Final Rule

As described further below, all the comments received on the proposed rule expressed support for continuing the Reye syndrome warning requirement. The final rule, therefore, makes permanent the requirement that all orally and rectally administered OTC aspirin products bear an appropriate Reye syndrome warning.

The final regulation revises the warning statement to make clear that aspirin use in children and teenagers has been reported to be associated with Reye syndrome. Specifically, the final regulation amends the previous warning by adding the phrase "reported to be associated with aspirin" at the end, so that the new Reye syndrome warning reads as follows: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness *reported to be associated with aspirin.*" FDA believes the revision is appropriate and necessary to reflect the PHS study finding of a large, statistically significant association between Reye syndrome and the ingestion of aspirin during chicken pox or flu. As with the 1986 regulation, this revised warning, once fully implemented, will provide consumers with a clear and consistent message and will continue to ensure consistency and uniformity in the marketplace.

The final rule also continues the requirement in the 1986 regulation that the Reye syndrome warning be "prominent." Such prominence is achieved, in part, by the regulation's continuing requirement that the Reye syndrome warning be the first warning on the label under the "WARNINGS" heading. In addition, in order to call consumers' attention to the revised wording of the Reye syndrome warning, FDA is interpreting the requirement for prominence as requiring, for a period of 1 year, an attention-getting statement on the principal display panel of the product.

Finally, the revised warning is required to appear on affected product packages that are initially introduced or initially delivered for introduction into interstate commerce by December 9, 1988. Until the effective date of the revised Reye syndrome warning, the current Reye syndrome warning requirement remains in effect.

III. Comments

The proposal provided 60 days for public comment. FDA received 17 comments on the proposed rule. The comments were submitted by drug companies, pharmaceutical trade associations, consumer groups, professional medical associations, congressional representatives, individual health practitioners, and groups representing the interests of victims of Reye syndrome. All comments generally supported a continued requirement for a Reye syndrome warning. A summary of the comments received by FDA during the comment period and the agency's response to them follows:

1. Text of Warning Statement

Several comments expressed concern about the precise language of the warning statement. The major concern raised was that the warning should be revised to make clear the concept of an association between Reye syndrome and aspirin use. One comment also recommended that the warning's reference to "chicken pox or flu symptoms" be removed, contending that reports of Reye syndrome associated with aspirin use have not been limited to patients suffering from varicella or influenza. Another comment urged that the warning note the potential fatal consequences of Reye syndrome. This comment argued that individuals do not always appreciate the seriousness of a warning unless it discloses the consequences that can result if the warning is not heeded.

FDA agrees with the suggestion that the warning statement should be revised to make clear that aspirin use in children has been reported to be associated with Reye syndrome. Now that the PHS study has been completed and has reported a large, statistically significant association between Reye syndrome and aspirin use, FDA believes it is appropriate and necessary that the warning statement indicate this association. Accordingly, the warning statement has been revised to read: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin."

FDA does not believe that the other issues raised by the comments warrant changes in the final rule. FDA believes it appropriate at this time that the warning continue to refer to "chicken pox and flu symptoms" because these symptoms were the symptoms of most of the antecedent illnesses in the PHS study on which FDA is relying as the scientific justification for the warning requirement. In addition, FDA believes that the warning's reference to Reye syndrome as a "serious illness" is sufficient for consumers to appreciate the medical importance of the warning statement. Accordingly, based on the data available at this time, FDA does not believe that further changes to the warning statement in the final rule are now necessary.

2. Prominence of Required Warning

Several comments suggested that the required Reye syndrome warning be given more prominence on aspirin drug product labeling. Comments variously urged that the warning statement be made conspicuous through large type size or be set off by use of a contrasting color. One comment recommended that the entire warning statement be boxed.

FDA agrees that it is essential to bring the Reye syndrome warning to the attention of the consumer. In order to achieve this, the final rule continues the requirement in the current regulation that the Reye syndrome warning appear "prominently" on the label. This includes the requirements that the Reye syndrome warning appear as the first warning on all labeling of aspirin drug products under the heading "Warnings"; that the warning must appear on the immediate container label and on the retail package; and that the warning must appear on all product labeling that contains warnings. These provisions thus help assure that the warning statement will be seen and read by the consumer.

In addition, because the text of the Reye syndrome warning is being revised, FDA interprets the "prominence" requirement in the regulations (21 CFR 201.15 and 201.315(b)(1)), in the unique circumstances presented here, as requiring that the principal display panel call consumers' attention to the new warning. Specifically, FDA interprets this as requiring manufacturers of aspirin and aspirin-containing drug products to provide an attention-getting statement, such as a "flag," alerting consumers to the revised Reye syndrome warning. A phrase using the words "new" and "warning," such as one of the following phrases, should be used: (1) "See new warning for children/teens"; (2) "Read new label warning"; or (3) "Read new warning for children/teens." To assure that consumers are alerted to the new warning, the language of the attention-getting statement must: (i) Appear on the principal display panel; (ii) be carried in type size which is conspicuous; and (iii) be carried for 1 year after the revised Reye syndrome warning statement is added to the labeling. For that 1-year period, FDA will view as misbranded any aspirin or aspirin-containing OTC drug product whose principal display panel fails to contain an appropriate attention-getting statement.

FDA is not prescribing a minimum type size or use of contrasting color for the warning. However, under section 502(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(c)), a drug is misbranded if a required labeling statement is not sufficiently prominent to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Agency regulations state that a labeling statement may lack the prominence and conspicuousness required by section 502(c) of the act by reason, among others, of "[s]mallness or style of type in which such * * * statement * * * appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter." (21 CFR 201.15(a)(6).) In its surveillance of OTC drug products FDA routinely examines the warning statements on aspirin products to be sure that these requirements regarding prominence and conspicuousness of the warning statements have been met.

3. Australian Study

One comment said the proposed warning statement is acceptable as currently worded and advised against changing the language to make it more stringent. The comment was reacting to a letter referenced in the proposal which advocated a stronger warning statement. The comment contended that the association between Reye syndrome and aspirin is not supported by all studies. Specifically, the comment referred to an Australian study that found no correlation between the use of aspirin and the occurrence of Reye syndrome. The comment concluded that the current warning statement is sufficient in light of the lack of complete agreement among the studies.

FDA does not find the results of the Australian study cited by the comment to be persuasive. The Australian study, reported in *Pediatrics* (Ref. 6), is a retrospective review of medical records of patients hospitalized during a 10-year period between 1973 and 1982. Unlike the PHS study, the Australian study was not controlled. Moreover, medication histories for the period before hospitalization were based on chart reviews, a less reliable method of gathering data than that followed in the PHS study. The reported cases in the Australian study were predominantly in a very young age group, in which metabolic errors may be indistinguishable from Reye syndrome. Therefore, the identification of cases as Reye syndrome cases in the Australian study is questionable. The approach of applying new criteria to a review of older medical records is certainly not as reliable as the rigorous approach prospectively developed and applied in the PHS studies. The agency continues to believe that the evidence from research to date clearly indicates a strong association between Reye syndrome and the ingestion of aspirin.

4. Adult-only Aspirin

One comment suggested that FDA permit labeling for aspirin-containing drug products that are not intended for use by children or teenagers to bear this special warning statement: "Warning: This medicine is not for children or teenagers. Children and teenagers should not use this medicine because of concerns about Reye Syndrome, a rare but serious illness."

FDA does not agree with this suggestion. As stated more fully in the proposal of December 17, 1985 (50 FR 51400), FDA believes that the public interest is best served by assuring that the same warning statement is used on all products covered by the regulation. This approach eliminates the potential for consumers being confused by various forms of the warning statement.

5. Other Salicylates

Another comment recommended that the labeling warning statement be required not only for aspirin and aspirin-containing drug products, but for all products containing salicylates.

FDA notes that the scientific research to date, on which the Reye syndrome warning statement requirement is based, focuses on the association between Reye syndrome and aspirin, rather than on the broader category of drug products containing nonaspirin salicylates. Indeed, the PHS study reported that there were too few subjects with reported exposures to nonaspirin salicylates for a meaningful analysis. FDA believes at the present time that priority must be given to continuing the warning on aspirin and aspirin-containing products. FDA will consider extending the scope of the warning requirement to nonaspirin salicylates at some time in the future, if warranted by further research or other appropriate information.

6. Changing the Marketing Status of Certain Aspirin Products

Several comments suggested that FDA require that aspirin be removed as an ingredient from compounds that may be used by individuals under 21 years of age. Another comment proposed that aspirin be available for children and adolescents only under a physician's prescription.

FDA believes that continuing to require a Reye syndrome warning statement on aspirin and aspirin-containing OTC drug products is sufficient and that the more drastic measures of banning use of aspirin in products for individuals under 21 years of age or limiting such products to prescription use are unnecessary. As noted, the latest epidemiological data indicate a marked decline in the incidence of Reye syndrome among children and adolescents since 1980. FDA does not believe that removing aspirin from compounds used by individuals under 21 years of age would be justifiable because other aspirin-containing compounds would still be readily available for administration to children and teenagers. Moreover, the agency believes that OTC aspirin-containing products properly labeled with the Reye syndrome warning statement can be safely used in the proper circumstances by individuals

under 21 years of age. Therefore, FDA disagrees with the suggestion that aspirin for individuals under 21 years of age be made available only under a physician's prescription.

7. Labeling in Spanish

Two comments suggested that the current warning statement would be more effective if it were also required to be in Spanish.

Under FDA labeling regulations (21 CFR 201.15(c)), labeling may be written in the predominant local language when it is distributed solely in the Commonwealth of Puerto Rico or in a Territory where the predominant language is one other than English. Although in the 50 states all required labeling must appear in English, the regulations do not preclude the distribution of labeling in a language other than English, in a special format, or in Braille along with the conventional English language labeling. FDA encourages the preparation of labeling to meet the needs of non-English speaking or special user populations so long as such labeling fully complies with agency regulations.

Effective Dates

The agency believes it is of the utmost importance that there be no time gap in the requirement for a Reye syndrome warning statement on aspirin and aspirin-containing drug products. The available evidence supports the continuing need to maintain a high level of public awareness of the risks of use of aspirin in children and teenagers. In addition, no additional costs associated with labeling changes would result from this action, since it would simply require the continued use of labeling already prepared. Because of the importance to the public health of assuring that the labeling of all oral and rectal OTC aspirin products bears a Reye syndrome warning, the Commissioner finds good cause for making effective immediately that part of this final rule which makes a Reye syndrome warning statement a permanent requirement. Accordingly, § 201.314 is revised by deleting paragraph (h)(5) effective June 9, 1988.

This final rule also amends the warning statement to read: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin." To provide aspirin drug product manufacturers with adequate lead time to make the necessary printing changes, this provision is effective December 9, 1988. After December 9, 1988 any orally or rectally administered aspirin or aspirin-containing product that does not contain the revised warning statement and that is initially introduced or initially delivered for introduction into interstate commerce is misbranded under sections 201(n) and 502 (a) and (f) of the act (21 U.S.C. 321(n) and 352 (a) and (f)). As noted earlier, until the effective date of the revised Reye syndrome warning, the current Reye syndrome warning requirement remains in effect.

Also as noted in the response to comment number 2 above, after December 9, 1988, FDA will view as misbranded under section 502 of the act any aspirin drug product subject to this regulation that is initially introduced or initially delivered for introduction into interstate commerce and that does not contain an appropriate attention-getting statement on the principal display panel. To assure that consumers are alerted to the new warning statement for at least the equivalent of a single flu season, the attention-getting statement is to be carried on the principal display panel of each product subject to this regulation that is initially introduced or initially delivered for introduction into interstate commerce until December 11, 1989.

FDA believes that a 6-month effective date for the revised warning statement gives manufacturers sufficient time to make the required labeling changes. FDA recognizes, however, that there may be a few small manufacturers for whom, for various financial or other reasons, it is impossible to comply with the revised labeling provision of this final rule by the effective date. In these unusual circumstances, FDA will consider requests for limited extensions. Such requests should be sent to Office of Compliance, Center for Drug Evaluation and Research (HFD–300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and should document both the need for a extension and the duration of time requested.

III. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act. This regulation requires manufacturers to incur costs for making one-time typesetting changes to the Reye syndrome warning statement in the product label. The warning statement appears on the immediate container label and, in those cases where the immediate container is not the retail package, also on the retail package label. In addition, the warning statement must appear on any labeling that contains warnings. Therefore, this action may require one-time typesetting changes for as many as three labels per product.

In addition, this regulation requires manufacturers to incur costs for making one-time typesetting changes to the principal display panel on a product's label to include an attention-getting statement or flag bringing to the consumer's attention the warning statement.

Any costs incurred by manufacturers as a result of discarding outdated label inventories would be negligible because the regulation gives 6 months of update labels before products are initially introduced or initially delivered for introduction into interstate commerce.

FDA estimates that the regulation will impose direct one-time costs associated with changing product labels that total less than $6 million. Therefore, the agency has determined that the final rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. References

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

(1) "Reye Syndrome and Medications—Report of the Main Study," Public Health Service Reye Syndrome Task Force, November 12, 1985.

(2) "The PHS Study of the Reye Syndrome: Review of a Continuing Study—Report Number 6—Review of the PHS Continuing Study by the Committee on the Reye Syndrome and Medications," Institute of Medicine of the National Academy of Sciences, February 1987.

(3) Hurwitz, E.S., et al., "Public Health Service Study of Reye's Syndrome and Medications, Report of the Main Study," *Journal of the American Medical Association*, 257(14): 1905–1911, 1987.

(4) Arrowsmith, J.B., et al., "National Patterns of Aspirin Use and Reye Syndrome Reporting, United States, 1980 to 1985," *Pediatrics*, 79:858–863, June 1987.

(5) *Morbidity and Mortality Weekly Report*, Vol. 36, No. 41, October 23, 1987.

(6) Orlowski, James P., et al., "A Catch in the Reye," *Pediatrics*, 80:838–842, November 1987, C0001, Docket No. 87N–0371, Dockets Management Branch.

List of Subjects in 21 CFR Part 201

Drug, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 continues to read as follows:

Authority: Secs. 501, 502, 701, 52 Stat. 1049–1051 as amended, 1055–1056 as amended (2 U.S.C. 351, 352, 371); 21 CFR 5.10; § 201.21 also issued under secs. 301, 505, 52 Stat. 1042–1043 as amended, 1052–1053 as amended (21 U.S.C. 331, 355).

2. Section 201.314 is amended by revising the warning statement in paragraph (h)(1) and by removing (h)(5) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(h)(1) * * * "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin."

* * * * *

Dated: May 25, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–13056 Filed 6–7–88; 11:35 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 82–17, Notice 3]

Alternate Designs for Bridges

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of policy statement.

SUMMARY: This notice provides a restatement of FHWA policy requiring the development of alternate designs for major bridges to be constructed with Federal-aid highway funds. The policy statement includes modifications which are based on an analysis of data considered over a period of 9 years concerning alternate designs.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Nickerson, Review and Design Branch, Bridge Division, (202) 366–4592, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366–1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On December 4, 1979, the FHWA issued a Technical Advisory [TA] entitled Alternate Bridge Designs. This Technical Advisory was intended to stimulate competition in the design of safe and economical bridge structures and, at the same time, through the competitive bidding process, to take advantage of the prevailing economic conditions which would provide a finished structure at the lowest possible cost without sacrificing safety, quality, or aesthetics.

A memorandum was issued to all Regional Federal Highway Administrators on April 22, 1981, to strengthen FHWA's effort in promoting the use of alternate bridge designs among all State and local governments, including those that have adopted Certification Acceptance. On September 23, 1981, a second memorandum to all Regional Federal Highway Administrators requested each division office to review and revise its administrative procedures to ensure that alternate bridge designs would be incorporated in all major bridge projects. Guidelines were presented in still a third memorandum on June 16, 1982, to all Regional Federal Highway Administrators, so that FHWA field offices could take appropriate measures to assure themselves that the spirit and intent of alternate bridge designs were being followed. On May 12, 1983, the FHWA published a Notice of policy statement [48 FR 21409] which replaced the existing TA with a consolidated formal FHWA policy on alternate bridge designs.

Discussion

With over 9 years experience with the use of alternate designs for well over 100 major bridges, an in-depth review of the results of this policy was performed with the clear conclusion that the policy has resulted in more cost-effective designs and better use of the highway tax dollar.

Project specific data, including design costs, engineering estimates and low bids, were received for 128 projects during the years 1979 through 1987. These projects had an average bid cost of $16 million representing over $2 billion worth of work that were bid with alternates in 39 different States with low bids ranging from $1.5 million to $66 million. For completed projects, cost data was reviewed on construction engineering, claims and overruns. An analysis of this data was performed in numerous ways. The following summarizes the more significant results:

1. The term "saving" to be used as a measure of effectiveness of this policy, can be defined different ways:

a. As the difference between the lowest bid received for each of the two alternates.

b. As the difference between the lowest bid received and the lowest estimate.

c. As the difference between the lowest bid for one alternate and the lowest bid for the other alternate adding the design fee of the "losing" alternate to the difference.

d. Same as paragraph "c" above, but also adding the difference in construction engineering, if any, that is identifiable for different types of bridges.

Using any of the above methods, the data clearly indicates substantial savings are accruing as a result of this policy. Complete data was available on only 47 projects which allowed a determination of savings in paragraph "d" above to be made. For these projects, a 3 percent of low bid "penalty" was assessed to any bridge with a concrete low bid (data indicates construction engineering for concrete bridges is an average of 3 percent higher than for steel bridges; this can be attributable to the "state-of-the-art" type of construction being used, e.g., cable stayed and segmental). This sample of the data indicates an average savings per project of over $2 million!

There are also less quantifiable savings, such as, does the presence of an alternate result in lower bids for both types? Of the 128 projects, the lowest bid was lower than the lowest final estimate in over 75 percent of the time. This would indicate the presence of alternates in reducing bridge prices. Also, the presence of an alternate involves material suppliers and subcontractors in the pre-bid phase, allowing the contractor to further reduce his proposal amount to be more competitive with the alternate design.

2. The decision to use or not use alternate designs is made at the beginning of the design phase when estimates of bridge costs are, at best, crude. Since we have to assume that the estimates prepared at bidding time are more representative of anticipated costs, it is noteworthy that over 25 percent of the time, the type of bridge with the lowest estimate was not the bridge type

with the lowest bid. Thus, using estimates as the only measure to determine type of bridge for a given location would have a very significant error rate. Final estimates varied from 74 percent to 157 percent of the low bid.

3. There is no "clear" trend discernible in the data indicating advantages of: one type of bridge over another; state versus consultant designs; change in pattern over the 9 year period; or, one material over the other.

Using this above mentioned analysis as a base, the current FHWA policy, as detailed in 48 FR 21409 was reviewed to determine if modifications were appropriate. One change resulting from this review is the change from $5 million to $10 million as the minimum size structure for which alternate designs must be considered. This revision is based on the review findings that the amount saved per structure may not be justified for the lesser cost structures considering the design fees and time involved in the preparation of another set of plans. However, we still suggest that the Highway Department consider alternate designs for the lower cost structures in appropriate locations, or utilize contractor redesign options.

In addition to the above, the following changes to the existing policy are being made:

1. Paragraph number 4 indicates alternate designs are required when estimates are "reasonably" close to each other. The word "reasonably" is subject to wide interpretation. The results of this review, as indicated above show that estimating accuracy is not, by itself, a very good basis for making this determination. Therefore, this paragraph is deleted, and a requirement for estimates to be prepared for all alternates has been added. In the past, estimates were not provided for all alternates preventing use of this information in the decision making process.

2. The reference to value engineering in paragraph number 5 has been deleted. FHPM 6-1-1-9 adequately addresses this issue.

3. The reference to alternate structural components in paragraph number 6 has been deleted. These are items that should be addressed in all bridge reviews, not just major bridges.

4. The requirement for submission of a State plan for further project development in paragraph number 8 has been deleted. This is not for pertinent to alternate designs.

5. A new paragraph has ben added to insure that the alternate structures will be designed on the same basis or philosophy. This ensures equal treatment of the various materials being considered for the design.

Based on the aforementioned analysis, the FHWA is revising its policy on alternate designs and strategies in the process of selecting the type of bridge to be constructed.

The final FHWA policy is as follows:

1. For bridges with estimated construction costs greater than $10 million, preliminary plan development should be based on engineering and economic evaluation of acceptable alternate designs.

2. Alternate designs should consider the utilization of competitive materials and/or structural types.

3. Designs prepared for each alternate shall be prepared using the same design philosophy (i.e., load factor design, finite element, etc.) for each. In addition, the design/construction requirements for the entire bridge (substructure, foundations, deck) shall be designed with compatible requirements.

4. Economic evaluation of preliminary estimates should take into consideration, to the maximum extent possible, the relative accuracy of estimates for state-of-the-art type methods of construction.

5. Estimates are to be prepared for all alternate designs being studied at the preliminary engineering phase.

6. A determination of FHWA approval and participation in the development of alternate or simple project plans, specifications and estimates for bridges will be made after evaluation of a State's submittal of preliminary bridge plans and cost studies. Recognizing that the States are experienced and have broad expertise in factors pertinent to bridge type selection in their States, the FHWA will review comprehensive State studies and subsequent recommendations as a primary factor in reaching preliminary bridge plan approval decisions. At the same time, FHWA approvals will be based upon the need to ensure safe, efficient and cost-effective bridge projects which meet the aesthetic and structural requirements of the site and are based upon the latest proven technology and techniques.

7. This policy shall not be interpreted as deterring any State or FHWA field office from considering alternate designs for any other type or classification of structure which they would consider appropriate.

This policy is written with the intent of taking advantage of the evolving state-of-the-art of bridge construction and fluctuating economic conditions in the market place while not compromising sound engineering, safety, quality control, or aesthetics.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental review of Federal programs and activities apply to this program.)

Issued on: June 3, 1988.

Robert E. Farris,

Deputy Administrator.

[FR Doc. 88-13006 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3394-3; NC-036]

Approval and Promulgation of Implementation Plans; North Carolina; Short Term Compliance Method for SO_2

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by the State of North Carolina on December 15, 1987. This revision establishes procedures for compliance with SO_2 emissions limits for fuel-burning sources that would ensure protection of the short-term National Ambient Air Quality Standards (NAAQS) for SO_2.

DATES: This action will be effective August 8, 1988, unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

ADDRESSES: Copies of the documents relevant to this final action are available for public inspection during normal business hours at:

EPA Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Gregg M. Worley of EPA Region IV at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On December 7, 1982 (47 FR 54934), EPA approved, for all but 24 sources in the State of North Carolina, a revision to the State's regulation 15 NCAC 2D.0516 which relaxed the SO_2 limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO_2 emissions for all fuel-burning sources from 2.3 pounds per million BTU heat input (lb/MBTU) to 1.6 lb/MBTU by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO_2 stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, **Federal Register** notice that if future modeling could show that the relaxed SO_2 limit of 2.3 lb/MBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

In its review of the State's submittal for two of these sources, EPA became aware of deficiencies in North Carolina's compliance test method for SO_2. The regulation, 15 NCAC 2D.0501(c)(4), gave fuel burning sources subject to compliance determinations for sulfur dioxide the option of determining compliance via stack sampling or fuel sulfur analysis. The method used for fuel sampling, however, did not assure compliance with the short-term SO_2 NAAQS.

Regulation 2D.0501, Compliance with Emission Control Standards, was originally federally approved on May 31, 1972 (37 FR 10884), and has since had 13 revisions federally approved. The ninth of these revisions, which added section (c)(4), was federally approved December 19, 1986 (51 FR 45468). Paragraph (c)(4) was then amended to specify the testing methods for fuel analysis. This amendment was federally approved on November 19, 1986 (51 FR 41786).

As a result of its review, EPA informed North Carolina that the regulation should require that any source choosing fuel analysis must do the analysis in such a manner that the NAAQS will be adequately protected. In response to EPA's findings, North Carolina amended their rule 15 NCAC 2D.0501(c)(4) and submitted it to EPA for approval on December 15, 1987. Also contained in this submittal were changes to the Part II Visibility Plan and requests for delegations of authority for NSPS and NESHAP revisions. The visibility portion will be covered in another notice while the NSPS and NESHAP revisions will go through the normal delegation process.

The revised rule has been reviewed by EPA and deemed acceptable because it assures that the short-term SO_2 standards will be protected. It specifies that the fuel sample to be tested is a composite of at least three or twenty-four samples taken at equal time intervals from the fuel being burned over a three-hour or twenty-four-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded. It specifies how the test is to be carried out for compliance purposes. The new rule does not require sources which are fuel testing as part of a continuous monitoring program to use the same procedure as those fuel testing for compliance purposes. The rule also requires that the compliance test be done at least once per year.

Final Action

EPA is approving revisions to North Carolina's regulation 15 NCAC 2D.0501(c)(4), which details procedures for demonstrating compliance with sulfur dioxide emission limits from fuel-burning sources. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 8, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 8, 1988.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: June 3, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(57) Revisions to 15 NCAC 2D.0501(c)(4) were submitted by the North Carolina Department of Natural Resources and Community Development on December 15, 1987.

(i) Incorporation by reference.

(A) Letter of December 15, 1987, to the Environmental Protection Agency from the North Carolina Department of Natural Resources and Community Development and revised paragraph (c)(4) of 15 NCAC 2D.0501, adopted by the North Carolina Environmental Management Commission on December 10, 1987.

(ii) Additional material—none.

[FR Doc. 88-12960 Filed 6-8-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3394-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule denying petition and notice of policy determination.

SUMMARY: On February 5, 1988, a panel of the United States Court of Appeals for the District of Columbia Circuit unanimously remanded a final rule of the Environmental Protection Agency, determining that the Agency had failed to comply with the requirements of the Administrative Procedure Act, 5 U.S.C. 553 (1982). *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317 (D.C. Cir. 1988). This notice withdraws the Agency's final rule appearing at 51 **Federal Register** 41624 (November 18, 1986) denying McLouth's petition and announces the Agency's policy

regarding application of certain models to petitions for exclusion of wastes under 40 CFR 260.20 and 260.22.

EFFECTIVE DATE: June 9, 1988.

ADDRESSES: The RCRA regulatory docket for this notice is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The docket for this notice contains all materials included in the original docket compiled for the Agency's previously published proposed and final rules regarding McLouth Steel Products Corporation. The reference number for this docket is "F-86-CHDP-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For information concerning the remand of the Agency's final decision, contact Josh Sarnoff, Office of General Counsel (LE-132S), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7706. For technical information concerning the Agency's review of McLouth Steel's delisting petition, contact Scott Maid, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4703.

SUPPLEMENTARY INFORMATION:

I. Withdrawal of Final Rule

On November 18, 1986, the Environmental Protection Agency (EPA or Agency) denied a final exclusion, pursuant to the Resource Conservation and Recovery Act (RCRA) 3001(f), 42 U.S.C. 6921(f), and to 40 CFR 260.20 and 260.22, to McLouth Steel Product Corporation (McLouth) for its dust/sludge from the primary production of steel in electric furnaces (currently listed as EPA Hazardous Waste No. K061) generated at its Trenton, Michigan facility. 51 Federal Register 41324 (November 18, 1986). In reaching this decision, EPA applied a mathematical Vertical and Horizontal Spread (VHS) model to predict the concentrations of hazardous constituents that might escape from this waste into ground water. McLouth filed a petition for review of this rulemaking with the United States Court of Appeals for the District of Columbia Circuit challenging the Agency's action on numerous grounds.

On February 5, 1988, a unanimous panel of the Court of Appeals held for McLouth, finding that the Agency had given "the effect of a rule to its 'VHS model' * * * without having exposed the model to the comment opportunities required for rules by the Administrative Procedure Act, 5 U.S.C. 553 (1982)." 838 F.2d 1317, 1319 (D.C. Cir. 1988). The Court remanded the Agency's decision. Therefore, the Agency is today withdrawing its final decision to deny McLouth's petition for exclusion. As a result of the remand, the Agency will re-evaluate McLouth's delisting petition in a manner consistent with the court's opinion. However, in accordance with the Court's decision, McLouth must continue to treat its K061 waste as hazardous unless it is, in the future, granted an exclusion by the Agency for this waste.

II. Agency Policy Regarding Application of Models

In discussing the Agency's options after remand, the Court in *McLouth* stated that it "did not mean to imply that EPA must continue treating the VHS model as a binding rule. EPA may choose to treat the model in the future as a non-binding policy. If it does so, however, it must truly exercise discretion in individual delisting cases, remaining open to all challenges to the use of the VHS model as well as its application in each individual delisting petition." 838 F.2d at 1324. EPA intends to process McLouth's petition consistently with this guidance provided by the Court.

EPA also intends to process other petitions consistently with the Court's guidance. Until such time as EPA determines to promulgate the VHS model (or other models) as a rule, EPA will treat the model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the VHS model where proposed to be applied.

EPA notes that it has also announced the availability of the related Organic Leachate ("OLM") Model. 51 Federal Register 41082 (November 13, 1986). As with the VHS model, EPA will treat the OLM model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the OLM model where proposed to be applied.

III. Effective Date

This rule is effective immediately. Because withdrawal of the improperly promulgated final rule of November 18, 1986 is consistent with the decision of the DC Circuit in *McLouth*, providing an immediate effective date for this rule, which withdraws the November 18, 1986 rule, meets the requirements of RCRA 3010(b)(3), 42 U.S.C. 6930(b)(3), and of the Administrative Procedures Act 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The withdrawal of a previously published final denial decision will not impose an economic burden on this facility since it does not affect the manner in which the petitioned waste must be handled. Despite the withdrawal of a denial decision, this facility is to continue managing its waste as hazardous. There is no additional economic impact, therefore, due to today's rule. This notice is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This notice will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment and does not change existing requirements for the management of its waste. The overall economic impact, therefore, on small entities would be small. Accordingly, I hereby certify that this notice will not have a significant economic impact on a substantial number of small entities. This notice, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: June 1, 1988.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-12959 Filed 6-8-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 761 and 796

[OPTS 29000A; FRL-3354-6]

Polychlorinated Biphenyls and Chemical Fate Testing Guidelines; Incorporation by Reference; Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyls regulations, (40 CFR Part 761), and in the Chemical Fate Testing Guidelines, (40 CFR Part 796). Several of the incorporated test methods have been revised by ASTM. In this document, EPA is adding the revised test methods to the regulations and guidelines cited above so that the revised test methods can be used to meet the testing requirements found in those provisions.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202)-554-1404).

SUPPLEMENTARY INFORMATION: On April 5, 1988, EPA issued a proposed rule to update several ASTM test methods which are incorporated by reference, and which have been revised by ASTM. (53 FR 11104). The revised test methods will be used to meet the testing requirements found in the PCB regulations at 40 CFR Part 761 and the Chemical Fate Testing Guidelines found at 40 CFR Part 796.

In the proposed rule, the table of old and new designations for the test methods, showed the new designation for ASTM D 3178 as being "ASTM D 3178-66". This is incorrect. ASTM D 3178 was last revised in 1984, therefore, the correct, and current designation for this test method is "ASTM D 3178." The designation is corrected in this final rule.

EPA allowed interested persons 30 days to comment on the revised test methods. No comments were received, therefore, EPA is adopting the revised test methods as proposed, in accordance with provisions in 1 CFR Part 51. Copies of the revised test methods may be obtained from the TSCA Public Docket Office, in Room NE-G004, at the address given above.

The designations of the old test methods and the equivalent designations of the new test methods (current versions of the same test methods) are as follows:

New designations	Old designations
ASTM D 93-85	ASTM D 93-80.
ASTM D 240-87	ASTM D 240-76 (Reapproved 1980).
ASTM D 923-86	ASTM D 923-81.
ASTM D 2158-85	ASTM D 2158-80.
ASTM D 2879-86	ASTM D 2879-75 (Reapproved 1980).
ASTM D 3178-84	ASTM D 3178-73 (Reapproved 1979).

A. Executive Order 12291

Under Executive Order 12291 (E.O. 12291), issued February 17, 1981, EPA must judge whether a rule is a major rule and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as that term is defined in section 1(b) of E.O. 12291. Therefore, EPA has not prepared a Regulatory Impact Analysis. This rule has not been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities, and therefore, does not require a regulatory flexibility analysis. This rule merely updates certain American Society for Testing and Materials (ASTM) test methods, which are incorporated by reference in the PCB regulations and in the Chemical Fate Testing Guidelines, to the current version of the same test methods. Since no negative economic impact is expected upon any business entity from the promulgation of this rule, EPA hereby certifies that this rule will not have a significant economic impact on small entities.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*, does not apply to this rule since no information collection and recordkeeping are involved.

List of Subjects in 40 CFR Parts 761 and 796

Environmental protection, Chemicals, Hazardous substances, Health, Labeling, Laboratories, Polychlorinated Biphenyls, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: May 26, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 761—[AMENDED]

1. In Part 761:

a. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

§ 761.19 [Amended]

b. In § 761.19, paragraph (b), the entries "ASTM D 93-80," "ASTM D 240-76 (Reapproved 1980)," "ASTM D 923-81," "ASTM D 2158-80," and "ASTM D 3178-73 (Reapproved 1979)," are revised to read "ASTM D 93-85," "ASTM D 240-87," "ASTM D 923-86," "ASTM D 2158-85," and "ASTM 3178-84," respectively.

§ 761.60 [Amended]

c. In § 761.60 the following changes are made:

i. In paragraph (a)(3)(iii)(B)(*6*), the references "ASTM D 93-80," "ASTM D 240-76 (reapproved 1980)," "ASTM D 2158-80," and "ASTM D 3178-73 (reapproved 1979)," are revised to read "ASTM D 93-85," "ASTM D 240-87," "ASTM D 2158-85," and "ASTM D 3178-84," respectively.

ii. In paragraph (g)(1)(ii), the phrase "American Society for Testing and Materials method D-923," is revised to read "ASTM D 923-86."

iii. In paragraph (g)(2)(ii), the phrase "American Society for Testing and Materials method D 923-81," is revised to read "ASTM D 923-86."

§ 761.75 [Amended]

d. In § 761.75, paragraph (b)(8)(iii), the phrase "ASTM Standard D 93-80," is revised to read "ASTM D 93-85."

PART 796—[AMENDED]

2. In Part 796:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 796.1950 [Amended]

b. In § 796.1950, paragraph (b)(2)(i), the phrase "ASTM Method D 2879-75

[Reapproved 1980]," and the phrase "ASTM D 2879–75 (Reapproved 1980)" are both revised to read "ASTM D 2879–83."

[FR Doc. 88-12857 Filed 6-8-88; 8:45 am]
BILLING CODE 4160-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302 and 303

Child Support Enforcement Program; Disregard of Child Support Payments

AGENCY: Office of Child Support Enforcement (OCSE).

ACTION: Final rules.

SUMMARY: These final rules implement section 2640 of the Deficit Reduction Act of 1984 (DRA) which amends the Social Security Act to require that the first $50 collected on a monthly support obligation be paid to the Aid to Families with Dependent Children (AFDC) family. This amount does not affect the family's AFDC eligibility or the amount of assistance to which they are entitled. In addition, this final rule revises current requirements which result in AFDC families not receiving the $50 pass-through when support payments are made to a State IV–D agency or a legal entity of the State or political subdivision on time but are not received on time by the agency responsible for final distribution of the collection.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, (202) 245–0079.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 2640 of the DRA (Pub. L. 98–369) amended section 457(b) of the Social Security Act (the Act) to require States to pay the first $50 of support collected on the monthly support obligation to the AFDC family. This statute also amended section 402(a)(8)(A) of the Act to require States to disregard "the first $50 of any child support payments received in such month" when determining AFDC eligibility and the amount of the AFDC payment. The result of these changes is that AFDC families affected by this statute will have up to $50 of additional disposable income each month.

Interim Final Regulatory Provisions

Interim final regulations published on September 10, 1984 (49 FR 35804) amended paragraphs (b)(1) and (b)(2) of 45 CFR 302.51 to conform Child Support Enforcement program regulations with amended section 457(b) of the Act. The resultant distribution policy is that the first $50 of a current support collection is paid to the AFDC family. If the current support collection is less than $50, that amount is paid to the family.

These regulations apply to collections of current support only, not to collections of arrearages and provide that, if an AFDC family receives support from more than one absent parent, only the first $50 of the total amount collected shall be paid to the family.

45 CFR 302.32(b) of current regulations requires the IV–D agency to inform the IV–A agency of the amount collected on the monthly support obligation as determined under § 302.51(a). State IV–D agencies and State IV–A agencies should consult on the best means of transmitting information on amounts collected and monthly support obligations to facilitate the payments by the IV–A agencies to AFDC families and the related disregard in determining AFDC eligibility and payments.

Related interim final regulations were published in the Federal Register (49 FR 35538) on September 10, 1984 by the Office of Family Assistance (OFA) to address AFDC program requirements concerning the $50 disregard.

Changes in Response to Comments

In addition to changes made in response to comments, this final regulation includes a technical change to the fourth sentence in paragraph (b)(1) of § 302.51. The word "represents" is changed to "represent".

In response to comments from an advocacy group, this final regulation revises the definition of "date of collection" contained in paragraph (a) of § 302.51. This final regulation defines the "date of collection" as the date a payment is received by the IV–D agency or the legal entity of the State or political subdivision actually making the collection, whichever is earliest. It deletes the separate definition of date of collection in interstate cases and makes a conforming change to § 303.7(c)(7)(iv).

Response to Comments

We received eleven comments on the interim final regulation. Ten were from State and local government agencies and one was from an advocacy group. A discussion of these comments and our responses follows:

Comment: One State agency and two local jurisdictions requested clarification regarding whether incentives are paid on the $50 payment made to the family under these regulations.

Response: The State is eligible for incentives on the $50 payment to the family. Prior to enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378), only amounts collected which were used to reimburse assistance payments were eligible for incentive payments under section 458 of the Act. Section 5 of Pub. L. 98–378 amended section 458 of the Act effective October 1, 1985 to provide incentives on all AFDC and non-AFDC collections, regardless of whether they are retained by the State or paid to the family. Section 5 of Pub. L. 98–378 also amended section 458(a) of the Act through September 30, 1985 to provide incentives on the $50 payment prior to the October 1, 1985 effective date of the expanded incentive payments system. Therefore, incentives will be paid on the $50 payments beginning with the effective date of October 1, 1984 and will continue to be paid on such payments thereafter.

Comment: One State agency recommended that a $50 increase in the AFDC payment standard for all AFDC recipients be substituted for the $50 payment.

Response: These regulations merely implement the requirements in the amended statute. This recommendation cannot be implemented under current law.

Comment: One State commented that the October 1, 1984 effective date does not permit States to plan for program changes.

Response: The effective date is statutory and cannot be changed by regulation. The program changes required by these regulations should not be substantial, since both IV–A and IV–D agencies are already involved in distributing money to families and therefore have mechanisms in place for distribution.

Comment: Two State agencies asked if the $50 disregard includes spousal support.

Response: The $50 payment applies to both child and spousal support. This conforms to section 12 of Pub. L. 98–378 which requires State IV–D agencies to collect spousal support if a support obligation has been established with respect to the spouse and the IV–D agency is enforcing the child support order.

Comment: One State commented on the administrative difficulty of disregarding the $50 payment for purposes of AFDC benefits while ensuring that this amount is considered in the computation of Food Stamp benefits.

Response: The statute mandates the disregard only for determining AFDC eligibility and the amount of the assistance payment. Under current statute, no comparable disregard applies to the computation of Food Stamp benefits.

Comment: One State and one advocacy group recommended that either the IV–D agency issue the $50 payment to the family or States be given the flexibility to determine which agency makes the payment to the family.

Response: The IV–A agency already has a system for making assistance payments each month to individuals receiving AFDC. We believe the administrative burden will be less if the IV–A agency makes these $50 payments as well. However, the regulations do not prohibit the IV–A agency from entering into an agreement with the IV–D agency to make the payments, as long as the IV–A agency retains overall responsibility for the payments.

Comment: One State agency recommended that no disregard be allowed on direct support payments retained in violation of 45 CFR 232.12(b)(4). (This section requires that support payments received by an AFDC applicant or recipient from an absent parent be paid to the IV–D agency.)

Response: Cooperation of an AFDC applicant or recipient in obtaining support is required under title IV–A of the Act and regulations at 45 CFR 232.12. If an AFDC applicant or recipient refuses to cooperate without good cause as determined under 45 CFR 232.41, the IV–A agency must deny assistance to the caretaker relative and provide assistance to the eligible child(ren) in the form of a protective payment. However, if there is an AFDC payment made on behalf of a child, the first $50 of current support must be paid to the family pursuant to section 457(b)(1) of the Act (regardless of whether it is received directly by the family). The amount of the assistance payment or the actions of the payee do not affect distribution of the support collection.

Comment: Two State agencies recommended that each household be paid $50 from the support collection when the children for whom support is collected are living in different households.

Response: We agree with the commenters that, in the situation described above, each family should receive a $50 payment as a result of a support collection. If the collection is insufficient, the amount collected should be prorated between the households.

Comment: One State agency recommended we add to § 302.51(b)(1) that "* * * in no case shall the total amount paid and disregarded exceed $50 per month per assistance unit." This would prevent duplicate payments when an AFDC family receives a direct payment from one absent parent and the IV–D agency makes a current support collection from another absent parent in the same month.

Response: We believe that this issue is adequately addressed in § 302.51(b)(1) which provides that only the first $50 of the total amount collected for the family shall be paid to them. If a family receives a direct payment from one absent parent and the IV–D agency collects current support from another absent parent for the same month, the State would recover the direct payment in full if it has already paid $50 to the family from the IV–D collection. If the State recovers all but $50 from the direct payment, any other IV–D collections for that month would be distributed without making another $50 payment. For this reason, we are not revising the language contained in the interim final regulations.

Comment: One advocacy group opposed limiting the $50 payment to amounts paid from current support only.

Response: Section 457(b) of the Act as amended by section 2640 of the DRA refers to "amounts as are collected periodically which represent monthly support payments." We interpret this phrase to refer to current support payments only. This is consistent with our 1975–76 policy interpretation of a similar provision in the original law which established the Child Support Enforcement Program under title IV–D of the Act (Pub. L. 93–647). Under that provision, 40 percent of the first $50 collected which represented partial or complete payment of the support obligation for the current month was passed through to the AFDC family. This policy interpretation encourages voluntary and timely compliance with support orders. Congress clearly intended the $50 payment to serve the purpose of promoting cooperation of both absent parents and custodial parents. This purpose can be promoted only if incentives are tied to compliance with the support order when each payment is due.

After consideration of this comment and concern that $50 payments should be made to AFDC families whenever a current support payment is received timely by a legally accountable public entity, this final rule revises the date of collection for distribution purposes. This regulation defines the date of collection for distribution purposes in all cases as the date on which payment is received by the IV–D agency or the legal entity of the State or political subdivision actually making the collection, whichever is earliest. It deletes reference to the legal entity of the State or political subdivision "making the collection on behalf of the IV–D agency" to ensure that, when payments are received timely by entities other than the IV–D agency, regardless of whether or not the entity is under cooperative agreement with the IV–D agency, the date of collection is tied to the initial point of receipt.

This revision to the definition of the date of collection will reduce the possibility that payments made on time will be distributed as payments on arrearages because of delays in transmitting collections between legal entities of the State or between States. It also furthers the intended purpose of the statute, i.e., to encourage voluntary and timely compliance with support orders. We would like to stress that the legal entity of the State or political subdivision actually making the collection includes Clerks of the Court, whether or not under cooperative agreement with the IV–D agency, and the wage withholding agency, if it is not the IV–D agency.

We have deleted the separate definition of date of collection for interstate cases because that definition may result in distribution of current support paid timely as past-due support. Under that definition, even if an absent parent paid support timely in the responding State, the definition of date of collection for interstate cases allowed the initiating State to consider the date it received the collection as the collection date and to distribute the payment as an arrearage if a payment was not forwarded by the responding State timely or several payments were forwarded in one month. For example, if the responding State collected the July support obligation on July 28 and the initiating State received the payment on August 2, the payment was considered a current payment for August and the family received the $50 pass-through for August. If the responding State then collected the August payment on August 10 and the initiating State received this payment on August 15, it was considered an arrearage payment for the July support obligation. No $50 payment was made to the AFDC family for July even though the absent parent paid his support timely. Deleting this definition will ensure payment of $50 to the AFDC family when support is paid timely and avoid possible inequities resulting from delays in forwarding payments by responding States in interstate cases.

OCSE published proposed regulations implementing the requirements of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378) in the **Federal Register** (49 FR 36780) on September 19, 1984. These regulations included a proposal to require the collection date for distribution purposes in interstate cases to be the date the payment is received by the IV–D agency of the State in which the collection is made and in wage withholding cases the date the employer withholds the wages. Comments from State IV–D agencies cited the high cost of reprogramming their automated systems to comply with such a change and the difficulty of tracking and monitoring payments when the responding State and the employer do not specify the date of collection. As a result of these comments, the proposed changes were not included in the final regulation published in the **Federal Register** on May 9, 1985 (50 FR 19634). However, since that time, problems with States distributing current support as past-due support and not paying $50 to AFDC families because of the date of collection definition persist. We believe that the problem has grown to the point that this change is essential to ensure support collections are treated accurately for distribution. States have been aware of the potential for this change for over three years.

We did not tie the date of collection to the date the employer withholds wages because IV–D agencies cannot control employer pay practices, especially in interstate wage withholding cases. However, States should strictly enforce the requirement that employers must remit amounts withheld within 10 days of the date the absent parent is paid. States also have no way of verifying when an absent parent made a payment other than to track receipt by the IV–D agency (or its agent) or the legal entity of a State or political subdivision actually making the collection, whichever is earliest.

With respect to interstate cases, final regulations published February 22, 1988 in the **Federal Register** (53 FR 5248) require responding States to indicate when the payment was received by the initial point of receipt within the State IV–D agency when forwarding payments to the responding State (see 45 CFR 303.7(c)(7)(iv)). We are making a conforming change to that section to require responding States to notify initiating States of the initial point of receipt by the IV–D agency or local entity of the State or political subdivision actually making the collection, whichever is earlier. Therefore, initiating States will know the date of collection in interstate cases, thereby removing one of the problems cited by States in response to the change when it was proposed in September of 1984.

Comment. One advocacy group requested clarification on the treatment of lump sum payments in cases where a delay occurs in sending a $50 payment resulting in more than one payment going to a family in a later month.

Response: Lump sum payments resulting from the State's delay in forwarding $50 pass-through payments will be disregarded as if they had been made in the months the support collections were received. If the State collects current support and does not make the $50 payment that month, the IV–A agency will disregard the payment whenever it is made to the family. This is consistent with the intended purpose of the statute, which is to provide the obligor an incentive to make regular and timely payments so that his or her family will receive the $50 pass-through for each month in which current support is paid.

Comment. Two State agencies requested clarification regarding whether the $50 payment applies to court-ordered support only.

Response: The $50 payment applies to any support which has been assigned to the State pursuant to section 402(a)(26) of the Act, and is distributed under section 457(b) of the Act, including voluntary support.

Comment. One State agency requested clarification regarding the effective date of the $50 payment provision.

Response: The statute requires an effective date of October 1, 1984. Thus, States must make the first $50 payment from current support collected for the month of October, 1984.

Paperwork Reduction Act

This regulation contains no information collection requirements which require Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511.)

Executive Order 12291

The Secretary has determined that this document does not meet any of the criteria for a major rule as described by Executive Order 12291. The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980. The administrative costs are expected to be negligible (less than $500,000) and the effect of additional disregards is expected to be less than $7.5 million, of which $3.7 million is the Federal share. Therefore this proposed regulation does not meet the threshold for an economic analysis under E.O. 12291.

List of Subjects in 45 CFR Part 302

Child Support, Grant programs/social programs, Penalties, Reporting and recording requirements, Unemployment compensation.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: February 19, 1988.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: May 10, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, 45 CFR Parts 302 and 303 are amended as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 302.51 is amended by republishing the introductory text and revising paragraphs (a) and (b)(1) as follows:

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a) For the purposes of distribution under this section, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. (The IV–D agency may round off the converted amount to whole dollar amounts for the purposes of distribution under this section, § 302.52 and § 303.52.) Effective June 9, 1988, the date of collection shall be the date on which the payment is received by the IV–D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

(b) * * *

(1) Of any amount that is collected in a month which represents payment on the required support obligation for that month, the first $50 of such amount shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section. If the amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first $50 of the amount which represents the required support obligation for the month in which the support was collected. If amounts are collected for one family which represent support payments from two or more absent parents, only the first $50 of the amount collected which represents the total required support obligation for the month in which the support was collected shall be paid to the family under this paragraph. No payment shall be made to a family under this paragraph for a month in which there is no child support collection.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 303.7(c)(7)(iv) is revised to read as follows:

§ 303.7 Provision of services in interstate IV–D cases.

* * * * *

(c) * * *

(7) * * *

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments to the location specified by the IV–D agency in the initiating State no later than 10 days after the collection is received by the responding State IV–D agency except with respect to certain Federal tax refund offset collections as specified in § 303.72(h)(5) of this part. The IV–D agency must include sufficient information to identify the case, indicate when the payment was received at the initial point of receipt by the IV–D agency or legal entity of the State or political subdivision actually making the collection, whichever is earlier, and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Code issued by the General Services Administration.

* * * * *

[FR Doc. 88–12805 Filed 6–8–88; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–232; RM–5694 and RM–6056]

Radio Broadcasting Services; Bethalto and Collinsville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238A to Bethalto, Illinois, as a first FM service, at the request of Bethalto Broadcasting. Additionally, a counterproposal filed by Bethalto Broadcasting proposing to allot Channel 238A to Collinsville, Illinois, instead, is dismissed at the petitioner's request. With this action, this proceeding is terminated.

DATES: Effective July 11, 1988; The window period for filing applications on Channel 238A at Bethalto will open on July 12, 1988, and close on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–232, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), is amended by adding the entry Bethalto, Channel 238A to Illinois.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–12870 Filed 6–8–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–588; RM–6107]

Radio Broadcasting Services; University Park, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of State College Communications Corp., substitutes Channel 246A for Channel 244A at State College, Pennsylvania, and modifies its license for Station WQWK(FM) to specify the newly allotted channel. Channel 246A can be allotted to University Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) west which will accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 40–48–32 and West Longitude 77–56–38. Canadian concurrence has been received since University Park is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–588, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–8300, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for University Park, Pennsylvania, is amended by removing Channel 244A and adding Channel 246A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12675 Filed 6-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-535; RM-5806]

Radio Broadcasting Services; Atlantic, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Nishna Valley Broadcasting Co., Inc. (formerly Valley Broadcasting, Inc.), substitutes Channel 279C for Channel 279C1 at Atlantic, Iowa, and modifies the license of Station KJAN-FM to specify the higher powered channel. Channel 279C can be allocated to Atlantic in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Station KJAN-FM's construction permit. The coordinates for this allotment are North Latitude 41-23-53 and West Longitude 95-28-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-535, adopted April 7, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Atlantic, Iowa is amended to remove Channel 279C1 and add Channel 279C.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10638 Filed 6-8-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Energy Acquisition Regulation (DEAR) and implements the requirements of section 1534(a)(2) of the Department of Defense (DOD) Authorization Act, 1986 (Pub. L. 99-145, November 8, 1985), as amended by Section 3131 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100-180, December 4, 1987) and section 305(a) of the Act titled "Making Further Continuing Appropriations For the Fiscal Year Ending September 30, 1988" (Pub. L. 100-202, December 22, 1987). The proposed DEAR amendments apply to all Department of Energy (hereinafter "DOE" or "the Department") management and operating (M&O) contractors, including DOE's national laboratories. These regulations are intended to provide the following clarification: under M&O contracts, the costs of self-initiated contractor legislative liaison activities to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are unallowable lobbying costs. The cost however, of providing information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to contract performance or proposed legislation in response to a request from Members of Congress or State legislatures, and their staff members, continues to be an allowable contract cost, irrespective of whether such information or advice was requested or supplied through the DOE.

EFFECTIVE DATE: The requirements of this amended regulation are effective, retroactively, as of January 14, 1987.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy Division (MA-422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586-8175.

Edward Weber, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Washington, DC 20585, (202) 586-1526.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Public Hearing
III. Public Comments

I. Background

Section 1534(a)(2) of Pub. L. 99-145 provided that costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are not allowable contract costs. The DOE's original implementation of this statutory cost prohibition on contractor lobbying activities involved two steps.

Prior to enactment of section 1534(a)(2), the contract clauses at DEAR 970.5204-13, Allowable costs and fixed-fee (CPFF management & operating contracts), and 970.5204-14, Allowable costs and fixed-fee (support contracts), specified that lobbying costs were unallowable. A decision was made that the existing lobbying cost prohibition found at DEAR 970.5204-13(a)(31) and 970.5204-14(e)(29) would be retained as written. Hence, the referenced-contract clauses required to be included in M&O contracts were not amended.

The DOE determined, however, that the existing cost principle criteria (DEAR 970.3102-7, Lobbying costs, effective 4-1-84) used by Contracting Officers for determining allowability of M&O contractor legislative liaison costs required amendment for consistency with congressional intent. In the applicable conference reports, Congress directed that DOE's regulations be consistent, to the maximum extent practicable, with the regulations promulgated by the Secretary of Defense, e.g., S. Rep. No. 116, 99th Congress, 1st Session, 515 (1985). Accordingly, DOE promulgated a completely revised set of lobbying cost principles predicated primarily upon the regulations applicable to DOD contracts contained at Federal Acquisition Regulation (FAR) 31.205-22, Legislative lobbying costs, with certain DOE modifications, as a proposed rule in the **Federal Register** (51 FR 7471, Mar. 4, 1986).

In response to the ensuing public comments and Congressional correspondence, the Department substantially revised the proposed lobbying cost principle criteria, as explained in the final rule published in the **Federal Register** (52 FR 1603, Jan. 14, 1987). As then amended, the Department's cost principles governing M&O contractor lobbying costs generally provided that the cost of monitoring legislative proceedings and the cost of responding to Congressional requests for information were allowable, but the cost of activities intended to influence legislation were unallowable. Based on Senate recommendations, the proposed cost principle was revised to contain provisos specifying: (1) The cost of providing requested information to Congress or State legislatures would be allowable if the contractor concurrently provided the DOE with the information supplied to Congress; and (2) requests requiring contractor travel were to be processed through the DOE.

Pursuant to the Conference Report (H. Rep. No. 446, 100th Congress, 1st Session, 941 (1987) applicable to section 3131 of Pub. L. 100-180) and section 305(a) of Pub. L. 100-202, the DOE was directed to delete these cost provisos from its implementing regulation. A brief description of the DEAR amendments being promulgated today follows:

Under DEAR Subpart 970.31 *et. seq.*, entitled "Contract Costs Principles and Procedures," DOE's cost principle criteria, policies and procedures previously specified in DEAR subsection 970.3102-7, are now incorporated in a new contract clause entitled "Legislative Lobbying Cost Prohibition" at DEAR 970.5204-17, as further described below. As amended, DEAR subsecction 970.3102-7 contains guidance on the use of the new clause. Also, DEAR section 970.3103, Contract clauses, has been amended to prescribe mandatory use of the new clause in all M&O contracts.

Under DEAR Subpart 970.52, entitled "Contract Clauses for Management and Operating Contracts," subsections 970.5204-13 and 970.5204-14 are amended to incorporate particular language clarifications and additions necessary to implement the cost prohibitions at section 1534(a)(2) of Pub. L. 99-145, as amended by section 3131 of Pub. L. 100-180 and section 305(a) of Pub. L. 100-202.

Also, DEAR subsection 970.5204-17, Legislative lobbying cost prohibition, is added as a new contract clause. It incorporates the cost principle criteria previously contained in subsection 970.3102-7, as amended for consistency with sections 3131 and 305(a) of Pub. L. 100-180 and 100-202, respectively. DOE's intent is to incorporate the definitive cost principle criteria applicable to legislative liaison activities being promulgated today into all DOE M&O contract awards or modifications as if that criteria had been included in the regulations promulgated on January 14, 1987.

II. Procedural Requirements

A. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. DOE submitted the rule to the Office of Management and Budget (OMB) for review. The OMB concluded its review.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354. The Act requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection and record keeping requirements are imposed by this rule.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020). Consequently, neither an environmental impact statement nor an environmental assessment pursuant to NEPA are required.

E. Public Hearing

The Department has concluded that this rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, the Department did not plan to hold a public hearing on this rule.

III. Public Comments

This final rule is based on the Notice of Proposed Rulemaking (NOPR) published by DOE in the **Federal Register** on Mar. 7, 1988 (53 FR 7318) and pursuant to which public comments were invited for the 30-day period ending April 6, 1988. Public comments were received from three universities. The public comments and suggestions to the NOPR, and a description of DOE action taken in response thereto, are summarized in the paragraphs that follow:

Comment: One commenter questioned the propriety of application of the proposed rule to all M&O contracts as opposed to "covered contracts" as defined in section 1534 of Pub. L. 99-145.

Response: In the Department's original implementation of section 1534 cost prohibitions, the issue of applicability was discussed at length in the DOE final rule under the subject heading "Comments Regarding Applicability of Section 1534" (52 FR 1603; Jan. 14, 1987. At that time, the DOE determined that the statutory cost prohibitions were generally unallowable under longstanding Departmental regulatory provisions for M&O contracts. It was decided that separate cost principle criteria for "covered" and "non-covered" contracts would not be established. The numerous reasons cited in support of DOE's decision at that time remain valid. Accordingly, no changes have been made to the proposed rule based upon this comment.

Comment: One commenter submitted three concerns. Those concerns have been summarized by DOE. Each of the

summarized concerns, followed by DOE's response, are published below.

(1) *Comment on DEAR subsection 970.3102–7:* Rather than just make a cross-reference in subsection 970.3102–7 to the new contract clause at subsection 970.5204–17, it is requested that a presentation of cost principles and guidance on the use of the prescribed contract clause would be useful and instructive.

Response: Proposed DEAR subsection 970.3102–7 has been revised to provide guidance on the use of the new clause. As amended, this subsection now specifies that the applicable cost principle criteria are contained in the new contract clause at subsection 970.5204–17 and changes to such cost principle criteria constitute a deviation within the meaning of subsection 970.3160–3. In addition, an explicit requirement to incorporate the new contract clause in all M&O contracts was established at DEAR subsection 970.3103.

(2) *Comment on DEAR subsection 970.5204–17:* The new contract clause entitled "Legislative Lobbying Cost" has been partially revised and is unnecessarily complicated as a consequence of previous partial revisions that were made at least twice in recent years. Also, paragraphs (a)(3) and (b)(1) could be combined. The commenter believed the entire clause should be rewritten.

Response: The DOE published an original set of cost principle criteria on January 14, 1987, as previously discussed in this final rulemaking. The only significant change promulgated today is the deletion of the two cost principle provisos found by Congress to be objectionable. The DOE does not share the commenter's view that paragraphs (a)(3) and (b)(1) should be combined into one statement. The cost prohibitions contained in paragraph (a)(3) apply to the cost of contractor initiated legislative liaison activities which are knowingly conducted for purposes of influencing legislation (lobbying). Paragraph (b)(1) applies to requests for information initiated by Members of Congress or State legislatures and allowability of resultant contractor costs incurred when responding to such requests. No changes were made to the proposed rule based upon this comment.

(3) *Comment on DEAR subsection 970.5204–17(f):* The commenter objected to proposed paragraph (f) by alleging that certain allowable activities specified in paragraph (b), when taken together with the requirements of paragraph (f), for keeping time logs of employee lobbying activity, could be interpreted to constitute unallowable lobbying activities. The commenter recommended that paragraph (f) be eliminated or modified to clarify that certain activities specified in (b) would not be considered "lobbying."

Response: In the opinion of the DOE the commenter has taken an unnecessarily narrow interpretation of the proposed language. The intent of proposed paragraph (f) was to specify that the contractor need not create additional records to support the allowability of claimed costs beyond those records normally required when employee legislative liaison activities constitute 25 percent or less of an employee's compensated time during a calendar month. To avoid potential misinterpretations, however, the word "lobbying" has been replaced with the words "legislative liaison activities" and the word "defined" has been replaced with the word "delineated."

Comment: One commenter, a university, stated that it:

"* * * applauds the clarification that the costs of providing information in response to requests from Congress or State legislatures continue to be allowable and are distinctly different from lobbying costs which are unallowable.

Further, we believe the stipulation that time logs, calendars or similar records need not be created for the purpose of providing evidence of compliance with this regulation makes eminent good sense. The implementation of the regulation should save future unproductive bickering over cost disallowances."

Response: The DOE objective sought to be achieved by incorporating the new contract clause at DEAR subsection 970.5204–17 in M&O contracts is the reduction of potential disagreements. The commenter is cautioned, however, that where an employee's legislative liaison activities represent more than 25 percent of the employee's compensated time during a calendar month, time logs or other records, in addition to those normally maintained to support allowable costs, would be required to support the allowability of claimed costs associated with legislative liaison activities.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons outlined in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on June 1, 1988.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for DEAR Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

2. Section 970.3102–7 is revised to read as follows:

970.3102–7 Legislative lobbying costs.

Contractor costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are not allowable contract costs and shall not be reimbursed by DOE. This statutory based cost prohibition (See 42 U.S.C. 7256a, as amended) is specified in the applicable cost principles clauses at 970.5204–13(e)(31) or 970.5204–14(e)(29). Definitive cost principle criteria for determining the types of legislative liaison activity costs which are not reimbursable under M&O contracts are set forth in the contract clause at 970.5204–17. The referenced clauses are effective, retroactively, as of January 14, 1987, and any change made to the cost principle criteria specified therein constitutes a deviation requiring Procurement Executive approval pursuant to 970.3160–3.

3. Section 970.3103 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) as follows:

970.3103 Contract clauses.

(a) * * *

(b) The legislative lobbying cost prohibition clause at 970.5204–17 shall be included in all M&O contracts.

4. In section 970.5204–13, the section heading, the title to the clause, and subparagraph (e)(31), are revised to read as follows:

970.5204–13 Allowable costs and fixed-fee (Management and Operating contracts).

Allowable Costs and Fixed-Fee (Management and Operating Contracts) (June 1988)

* * * * *

(e) * * *

(31) Cost incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

* * * * *

5. In section 970.5204–14, the clause is amended by revising the title and subparagraph (e)(29), to read as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

Allowable Costs and Fixed-Fee (Support Contracts) (June 1988)

* * * * *

(e) * * *

(29) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

* * * * *

6. Section 970.5204–17 is added to read as follows:

970.5204–17 Legislative lobbying cost prohibition.

Legislative Lobbying Cost Prohibition (June 1988).

(a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.

(b) Costs of the following activities are expected from the coverage of (a) above; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:

(1) Providing Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous, including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) from Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. Reasonable costs for transportation, lodging, or meals incurred by contractor employees for the purpose of providing such information or advice shall also be reimbursable; provided such costs also comply with the allowable cost provisions of the contract.

(2) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract if authorized by the Contracting Officer.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.

(d) The contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the contractor's certification that the requirements and standards of this clause have been complied with.

(e) The contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.

(f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) an employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this paragraph are met, the contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f) (1) and (2) of this paragraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.

(g) During contract performance, the contractor should resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning compliance with this clause.

[FR Doc. 88–13009 Filed 6–8–88; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80333–8033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule, extension of effective date.

SUMMARY: An emergency interim rule redefining directed fishing for sablefish in the sablefish hook-and-line fishery in the exclusive economic zone (EEZ) in the Gulf of Alaska is in effect until June 7, 1988. The Secretary of Commerce extends the emergency interim rule for an additional 90 days (through September 5, 1988). This regulation is necessary to preclude targeting on sablefish in areas where only incidental catch of sablefish is allowed. This measure is intended to assure that an orderly sablefish fishery is carried out consistent with the allocation objectives of the North Pacific Fishery Management Council.

EFFECTIVE DATE: This rule is effective from 0001 hours, Alaska Daylight Time, June 7, 1988 through 2400 hours Alaska Daylight Time, September 5, 1988.

ADDRESS: Copies of the environmental assessment may be obtained from James W. Brooks, Acting Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: Under section 305(e)(2)(B) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule redefining directed fishing for sablefish in the hook-and-line fishery in the Gulf of Alaska (53 FR 7938, March 11, 1988; corrected at 53 FR 9772, March 25, 1988). That rule was effective for 90 days, from March 9 until June 7, 1988. The Secretary extends the emergency interim rule for an additional 90 days under section

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305(e)(3)(B) of the Magnuson Act because conditions justifying the emergency action remain unchanged. The 90-day extension will preclude targeting sablefish in areas where the directed fishery has closed. Further information is contained in the preamble to the published emergency rule.

The North Pacific Fishery Management Council (Council) reviewed the results of the emergency rule at its April 13–15, 1988, meeting and also a draft regulatory amendment that will implement the same measure as contained in the emergency rule. The Council has agreed to the extension.

All provisions of the emergency interim rule remain in effect through September 5, 1988.

This extension of the emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of that order. This action is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that Order.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: June 6, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.2 [Amended]

2. In § 672.2, in the temporary definition of *Directed fishing * * * 1988*, the date "March 9, 1988" is revised to read "June 7, 1988" and the date "to June 7, 1988" is revised to read "through September 5, 1988."

[FR Doc. 88-12904 Filed 6-8-88; 2:23 pm]

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Proposed Rules

Federal Register
Vol. 53, No. 111
Thursday, June 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket Nos. AO-245-A9 & AO-256-A7]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Secretary's Decision on Proposed Amendment of Marketing Orders 907 and 908, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and rederendum order.

SUMMARY: This decision recommends further amendment of Marketing Order Nos. 907 [7 CFR Part 907] and 908 [7 CFR Part 908] and directs that referenda be conducted to determine if navel and Valencia orange producers, under their respective marketing orders, favor the various amendment proposals. The proposed amendments would change the provisions of the marketing orders concerning the structure of the Navel and Valencia Orange Administrative Committees (committees). These committees are established under their respective marketing orders for the purpose of administering the programs. The amendment proposals include an alteration in committee size and composition, a limitation on tenure for members of the Valencia Orange Administrative Committee, a change in the basis for industry representation on the committees, the inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of oranges disposed of in all outlets in the determination of nominating rights, and conforming changes. The proposed changes are expected to provide a more flexible framework for apportioning committee membership among segments of the industries based upon their relevant dominance in the respective industries.

DATE: The referenda period for the purposes of determining if navel and Valencia orange producers under their respective marketing orders, favor the various amendment proposals will be held from June 21 through July 8, 1988. The representative periods for purposes of the referenda herein ordered are November 1, 1987, through June 1, 1988, for navel oranges and February 1, 1987, through January 31, 1988, for Valencia oranges.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued June 4, 1986, and published in the June 6, 1986, issue of the Federal Register [51 FR 20664]. The Recommended Decision was issued June 1, 1987, and published in the June 8, 1987, issue of the Federal Register [52 FR 21546].

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

These proposed amendments to the order were formulated on the record of a public hearing held June 10–12, 1986, at Visalia, California to consider the proposed further amendments of Marketing Order No. 907 [7 CFR Part 907] regulating the handling of navel oranges grown in Arizona and designated part of California and Marketing Order No. 908 [7 CFR Part 908] regulating the handling of Valencia oranges grown in Arizona and designated part of California, hereinafter referred to collectively as the "orders." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674 *et seq.*], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders [7 CFR Part 900]. The Notice of Hearing contained amendment proposals submitted by: The Sequoia Orange Company, Inc.; R. E. Herrick of Belridge Farms and Packing Company; the Navel and Valencia Orange Administrative Committees established under the orders, hereinafter referred to collectively as the "committees," and the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA). The proposal pertained to committee size and composition, a limitation on tenure for members of the Valencia Orange Administrative Committee, changing the basis for industry representation on the committees, inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of all oranges in all outlets in determining nominating rights, and conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on June 1, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by July 8, 1987. Eleven exceptions were received. Those from the committees' attorney James E. Andrews (NOAC/VOAC); the committees' manager Billy J. Peightal (Peightal); William K. Quarles, Jr., Vice President, Government Affairs, Sunkist Growers, Inc. (Sunkist); Doris S. Freedman, Director of Regulatory Affairs, U.S. Small Business Administration (SBA); Robert E. Herrick, Vice President, Belridge Packing Co. (Belridge); Fred P. LoBue, Jr., LoBue Bros. (LoBue); and Perry L. Walker of Riverbend Farms, Inc. (Riverbend) were received within the comment period. The exceptions from James A. Moody, counsel for Sequoia Orange Company, Inc. (Sequoia), and Richard J. Pescosolido, Foothill Farms (Foothill), were received late but were considered. All exceptions were opposed to one or more aspects of the Recommended Decision and are discussed in detail later in this document.

The Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*]. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of

the proposed rule on small businesses for the purpose of the RFA.

The Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O.'s 907 and 908 are predominately small businesses, the orders themselves are tailored to the size and nature of these small businesses.

It is estimated that approximately 125 handlers of California-Arizona navel oranges are regulated under Marketing Order No. 907 and approximately 115 handlers of California-Arizona Valencia oranges are regulated under Marketing Order No. 908. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the RFA, an agricultural service firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of navel and Valencia oranges would fall within that definition. In addition, there are about 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000. The majority of California-Arizona navel and Valencia orange handlers and producers may be classified as small entities.

The proposed amendments to the orders include provisions which could give additional orange industry organizations representation on the committees. The first material issue proposes to authorize, but not mandate, an increase in the size of the committees from 11 up to 13 members.

In separate material issue, for the Valencia orange industry, it is proposed to limit the number of consecutive terms of office which members of the Valencia Orange Administrative Committee may serve to three two-year terms. (Tenure is already limited to three two-year terms. (Tenure is already limited to three two-year terms for members of the Navel Orange Administrative Committee.)

The third material issue concerns changes in the basis for industry representation on the committees. This material issue contains several interconnected, proposed amendments which are discussed below.

Three main nominating entities are proposed with the first being the "cooperative marketing organization," or at the option organization, the growers affiliated with that organization, which disposed of the largest percentage of the total volume of navel and Valencia oranges disposed of by all handlers in all outlets during the fiscal (navel oranges) or marketing (Valencia oranges) year during which nominations are made. This differs from current order provisions in that this nominating entity represents the cooperative marketing organization with the largest percentage of total dispositions rather than 50 percent of the total volume of oranges handled. By removing the "in excess of 50 percent" requirement, the proposed provision eliminates the present problem of there being no mechanism whereby the largest cooperative marketing organization may nominate individuals to serve on the committees if it handles less than 50 percent of the total volume of all oranges handled. The term "cooperative marketing organization" best describes the dominant marketing organization and the exception from the NOAC/VOAC, which is discussed later in the text, supports the use of this term.

The second type of nominating entity under this proposal would be individual handlers and groups of handlers who declare themselves to be nominating entities. Handlers not affiliated with the largest cooperative marketing organization would be able to combine with any other handler or handlers for the purpose of forming nominating entities. This would give handlers flexibility to maximize their opportunities for representation on the committees.

The third type of nominating entity would be comprised of growers who are not affiliated with the largest cooperative marketing organization or with any of the declared individual handlers or declared groups of handlers.

The formation of three nominating entities—the largest cooperative marketing organization; declared handlers or groups of handlers not affiliated with the above; and growers not affiliated with the above—would provide a more flexible framework for apportioning committee membership.

The proposed change that the first, third, fourth, and in the case of 13-member committees, sixth positions nominated by a nominating group are growers and the second and fifth positions are handlers would provide that at least half of the members of each committee are grower members.

The proposed change that nominating rights be determined on the basis of the current fiscal (navel oranges) or marketing (Valencia oranges) year in which nominations are made would provide the most up-to-date information for determining such rights. However, a cut-off date for current-year dispositions, determined by the Secretary, will need to be established because, in some years, it may be necessary to begin the nomination process before all shipments had been made.

The proposed change that a simple majority would be considered as constituting a quorum and any action of a committee would require six concurring votes for an 11-member committee and seven concurring votes for a 12- or 13-member committee would be sufficient to reflect industry sentiment on all issues.

The proposed change to allow declared individual handlers and declared groups of handlers to develop slates of candidates for their grower and handler members on the committees with grower nominations by mail balloting would encourage handler interest in the orders.

The proposed change to allow growers affiliated with an independent handler entity, or an entity comprised of cooperatives and independent members, to nominate members to the committees through mail balloting would allow growers more opportunity to participate in the nominations of both grower and handler members.

The proposed change to allow a grower to participate as a part of only one nominating entity regardless of the number of handlers to whom such grower delivered oranges would continue to allow each grower to have an equal vote in elections. Growers would be free to choose the slate of candidates they feel would best represent their interests.

The fourth material issue which proposes including a definition of Capper-Volstead cooperative in the orders would identify entities eligible to nominate members through action of their boards of directors.

The fifth material issue which proposes that the volume basis for determining nominating rights would be the total volume of oranges "disposed of in all outlets" would be in line with the tree crop basis which is used for determining prorate bases and allotments.

To the extent that these proposals give industry organizations increased representation in the nominating process and on the committees, these organizations could incur some costs. Such costs would include additional time that might be spent by the handler groups and growers in nominating members to the committees and by new committee members in completing qualification statements and acceptance letters as required by the USDA. Another cost would be the time required to attend committee meetings and to conduct other committee business to the extent that these costs might not be fully reimbursable by the committees. However, these costs are not expected to be significant and would be offset by the benefits of the new procedures. Under the current order, nomination groups are rigidly fixed, and the largest cooperative marketing organization which handled more than 50 percent of the total volume of oranges handled is represented by five members. The proposed procedures would recognize the changing structure of the orange industry and allow handlers and growers to form groups with those of similar interests. In addition, the additional flexibility to increase the committee size would allow more representation for handlers and growers on the committees.

Determination of Material Issues

In the Recommended Decision, only one material issue was presented. That issue included amendment proposals concerning committee size and composition, eligibility to nominate, the number of concurring votes required to carry motions, limitation of tenure for members of the VOAC, and conforming changes. Exceptions to this format were received form Peightal and LoBue. Foothill and Belridge support voting on the amendments as one issue, while Riverbend, Sequois, Sunkist, and the SBA had no specific comments. Peightal stated that in a joint meeting on June 23, 1987, the committees voted to request the Secretary to divide the proposed amendments into four material issues, believing that growers would be better able to differentiate between those issues which they support and those issues which they do not support if the issues were divided. The four material issues suggested were: (1) Committee size; (2) tenure; (3) nomination procedures; and (4) adding the term "Capper-Volstead cooperative." Peightal stated that the committees secured broad industry support for the amendment they proposed at the June 1986 hearing. The Recommended Decision modified those proposals, and Peightal stated that the committees no longer have a basis to conclude that there is the support that previously existed. LoBue recommended that growers be allowed to vote on three separate issues: (1) Committee size; (2) nominating procedures; and (3) tenure for VOAC members.

Based on the comments received, the decision was made to divide the proposals into the following votable issues: (1) Authorizing up to 13-member committees; (2) limiting tenure for VOAC members; (3) changing the basis of industry representation on the committees; (4) including a definition of Capper-Volstead cooperative in the orders; and (5) changing the volume basis for nominations.

Findings and Conclusions

The material issues of record are as follows:

(1) Amend the orders to authorize increasing committee size up to 13 members.

(2) Amend the Valencia Orange Marketing Order to limit consecutive terms of office to three two-year terms for Valencia Orange Administrative Committee members.

(3) Amend the orders to change the basis of industry representation on the committees by establishing new nomination procedures which include the establishment of three types of nominating entities.

(4) Amend the orders to include a definition of Capper-Volstead cooperatives to identify entities eligible to nominate members through action of their boards of directors.

(5) Amend the orders to determine nominating rights based on the total volume of oranges "disposed of in all outlets."

The material issues, findings and conclusions, rulings, general findings, and regulatory provisions of the Recommended Decision published in the Federal Register [52 FR 21546, June 8, 1987] are hereby incorporated herein and made a part hereof subject to the following clarifications, modifications, and discussion:

(1) Committee Size

There were several proposals at the hearing relative to committee size, ranging from 11 to 13 members. The Recommended Decision proposed an increase in committee size from 11 to 13 members. Thirteen-member committees could better reflect the diversity of the industry and yet provide a workable forum for the expression of views. Exceptions received from the NOAC/VOAC, Peightal, and LoBue were opposed to this increase. The NOAC/VOAC and Peightal disagreed with the findings in the Recommended Decision that the preponderance of testimony indicated there would be significant benefits derived from adding members to the committees and indicated that there was limited support for 13-member committees in the industry and that the proposal would not pass in referendum. LoBue stated that an increase in committee membership in unnecessary and burdensome, and it could be a problem for the industry to find a total of six additional regular and alternate committee members who are capable and willing to serve. Sequoia, Foothill, and Riverbend submitted briefs also opposing the USDA position unless concurrent changes in nomination and/or voting requirements were made. Sunkist had no specific comments.

Based on the exceptions, an increase in committee size is unnecessary at this time. While enlarging the committees could increase the opportunty for representatives of more industry organizations to serve on the committees, an increase in the number of committee members should not be mandated. Therefore, the committees should remain at 11 members and the allocation process described in the Recommended Decision is modified to reflect 11-member committees. However, authority should be added to the orders to allow the committees to be increased in size through informal rulemaking to up to 13 members. Such increases could be made to address any future changes in the structure of the industries. The allocation process, in the case of a 12- or 13-member committee is discussed in material issue No. 3. Therefore, §§ 907.20 and 908.20 should be revised to allow the committees, with the approval of the Secretary, to increase up to 13, the total number of members on the committees.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions and denied.

(2) Tenure and Retroactive Tenure for VOAC Members

The Recommended Decision proposed limiting consecutive terms of office to three two-year terms for Valencia Orange Administrative Committee (VOAC) members, including the non-industry members, and making this retroactive to February 1, 1984. Current provisions of the order do not limit the number of two-year terms that members may serve. Limitation of tenure could promote increased industry participation and involvement in the administration of the Valencia orange marketing order. A similar tenure limitation was implemented in January 1985 for Navel Orange Administrative Committee (NOAC) members. Briefs filed by the NOAC/VOAC, Peightal, and LoBue were opposed to this change. They pointed out the Valencia growers rejected tenure limitation in an August 1984 referendum, and that implementation of a tenure limitation would result in a loss of experienced members. As to the retroactive feature, all were vigorously opposed to its adoption. Opponents claimed that this

would result in the VOAC losing all or most of its experienced members at one time, causing major disruptions in the continuity of the administration of the order. Sequoia and Foothill submitted briefs supporting the USDA position, while the SBA, Riverbend, Sunkist, and Belridge had no specific comments on this issue.

Regular turnover of members on the VOAC would provide for a beneficial input of new ideas and perspectives and promote increased industry participation and involvement in the administration of the Valencia orange marketing order. The proposed amendment to § 908.21 includes a provision for limiting the tenure of VOAC members, including the non-industry member, to three consecutive terms. It would serve no useful purpose to limit the tenure for alternates or additional alternates because such alternates serve only during the absence of a member or in the event of a members death, removal, resignation, or disqualification. However, under this provision, grower member would be precluded from serving as handler members, and *vice versa*, to extend their eligibility to serve. Therefore, § 908.21 should be so amended.

However, in accordance with the exceptions, the proposed retroactive feature is dropped. Since all members will be nominated pursuant to new procedures, it would be appropriate to look upon the newly-formed VOAC as a completely new committee and to begin the six consecutive year limitaion on all new members at the same time.

The Recommended Decision discussed procedures for the possibility that nominations could be conducted in the middle of the current terms. At the time of publication, NOAC members were in the middle of a term while VOAC members were ending their current term. However, the situation is now reversed. The current term of office for the NOAC ends September 30, 1988, while the current VOAC term of office ends January 31, 1990. Thus, nominations will be conducted for a new NOAC term of office and in the middle of the VOAC term of office. Therefore, the procedures outlined in the Recommended Decision are modified as follows: Nominations for the initial term of office for the NOAC will be for the next regularly scheduled term of office which begins October 1, 1988. The 1988–90 term of office under the proposed committee structure would be a full term for purposes of the tenure provision contained in § 907.21.

Since nominations will likely be conducted for the VOAC in the middle of a term, the initial nomination procedure, as set out in this final decision, would create two short terms of office. It would not be appropriate to count both partial terms as full terms for the purposes of the tenure limitation provision nor would it be desirable to delay nominations pursuant to this proposed amendment until early 1990 when the next regular term would begin. Therefore, the partial term of office which exceeds 12 months would be considered a full term of office for the purposes of the tenure provision, and the partial term of office of less than 12 months would not be considered a full term for the purposes of the tenure provision. Thus, an individual serving the shorter of the two partial terms would not be penalized by losing one-third of that member's three-term eligibility simply because the committee was restructured.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

(3) Basis for Representation on the Committees

Several interconnected, proposed amendments are included in this material issue.

Central Marketing Organization

The Recommended Decision proposed three nominating entities, the first being the "central marketing organization" with the largest percentage of total dispositions rather than the "cooperative marketing organization" which handled more than 50 percent of the total volume of oranges handled. The NOAC/VOAC filed an exception to the use of the term "central marketing organization." They stated in their exception that the term "cooperative marketing organization" is well understood, thus the proposed change would create confusion. No other comments were received concerning this term.

Currently, the largest central marketing organization in the orange industries would qualify as nominating entity 1. It is well understood in the industries that that entity is referred to as the largest "cooperative marketing organization." The exception points out that confusion may exist between the terms "central marketing organization" and "cooperative marketing organization." Therefore, to avoid confusion and in recognition of current industry use, the first nominating entity will be referred to as the largest "cooperative marketing organization."

To the extent that these revisions agree with issues raised in the exception, the comments have been adopted. Otherwise, for the reasons stated above, the exception is denied.

Nominating Entities

The Recommended Decision proposed three nominating entities: (1) The largest central marketing organization (which is now described as the largest cooperative marketing organization); (2) declared handlers or groups of handlers not affiliated with the above; and (3) growers not affiliated with either of the above. Exceptions to this proposal were received from Sequoia, Foothill, and LoBue. These exceptions stated that the proposal was cumbersome, unnecessary, and could violate antitrust laws. Sequoia pointed out that this procedure would require an extreme amount of time and effort to form handler groups and that all of the effort would be borne by the smaller handlers, as Sunkist Growers, Inc. and Central California Orange Growers Cooperative (CCOGC) already have defined entities. Foothill stated that this proposal allows entities which are protected under the Capper-Volstead Act to share market strategy and planning with entities that are not protected. Lobue disagreed with a perceived requirement that would force handlers whose growers belong to cooperatives which do not centrally market to participate in one nominating entity.

In response to the Sequoia comment, the second group of nominating entities would be comprised of handlers who first handle oranges. While it is true that the grouping of handlers for nomination purposes will call for an expenditure of time and effort on the part of handlers who choose to form nominating entities, the result of that expenditure would be increased representation on the committees for those handlers. This provision does not require handlers to participate in the formation of nominating entities. Thus, those handlers who find no benefit in such procedures may chose not to utilize them. Growers who deliver oranges to such handlers would then be able to seek committee representation under nomination group three (growers not affiliated with the major cooperative or a declared nominating entity).

In reference to the LoBue exception, handlers who market for cooperatives are not required to form nominating entities only with other such handlers. Handlers who market oranges for CCOGC, for example, would not be required to form a nominating entity only with other handlers who market oranges for CCOGC. In addition, marketers of fruit who are not first handlers are not eligible to form nominating groups.

As to Foothill's comments, nominating groups are formed for nomination purposes only. The fact that such groups are formed does not authorize members of such groups to engage in activities that could violate antitrust laws.

For the reasons stated above, the exceptions are denied.

Grower-Member Formula

The Recommended Decision proposed that when the first and second categories of nominating entities made nominations, the first position nominated would be a grower position, the second a handler, the third a grower, and so forth. Such an apportionment would have provided that at least half of the committee members would be grower members. Sequoia and LoBue filed exceptions to this proposal.

Sequoia stated that the alternate allocation of grower and handler seats to each handler group could lead to six or more handlers on the committees. LoBue stated that the proposed amendments could put the growers in a minority on their own administrative committees. While the proposal as contained in the Recommended Decision could have resulted in six handlers on a 13-member committee, there would have been no possible situation in which there were more than six handler members on a committee.

However, record evidence supports that it is desirable that growers be in the majority on the committees. Thus, a revised method of allocating grower/handler positions should be adopted. The first, third, fourth, and in the case of 13-member committees, sixth positions nominated by category 1 or 2 nominating entities would be filled by growers; the second and fifth positions would be filled by handlers. This change would result in growers having a majority on the committees except in the unlikely event that only nominating entity 2 groups are formed, each with the right to nominate even numbers of members. In that case, membership on the committees could be six grower members and six handler members. Proposed §§ 907.20(d)(1) and 908.20(d)(1) as contained in the Recommended Decision have been revised to reflect the changes described above.

For an 11-member committee, members will be allocated in a method similar to that described in the Recommended Decision. Each nominating entity would earn the right to nominate one member, one alternate member and one additional alternate member, for each 10.0 percent attributable to such entity of the total volume of oranges disposed of by all handlers in all outlets during the current fiscal year (navels) or marketing year (Valencias) in which nominations are made. This method would apply when no entity in the largest cooperative marketing organization category, or the declared handlers or groups of declared handlers category has more than 50 percent of total dispositions.

When one of these entities has more than 50 percent of total dispositions, that entity would qualify for no more than five committee members and their alternates. The following formula would be used to determine the percentage of the remaining total volume of dispositions required of other entities to qualify to nominate a member:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

This formula is necessary due to the five-member limitation. Under the method whereby a nominating entity earns the right to nominate one member for each 10.0 percent of total dispositions, such entity would reach the five-member limit at 50 percent of total dispositions. If such entity controls more than 50 percent of total dispositions, the amount such entity controls above 50 percent could not be used by that entity to earn further committee representation. In this case, rights to nominate the remaining five handler or grower members should be apportioned over the remaining volume of dispositions, which would equal less than 50 percent of total dispositions. The above formula would provide other entities with the right to nominate one member, one alternate member and one additional alternate member, for each one-fifth of the remaining volume of total dispositions controlled by such entities. For example, if the largest cooperative marketing organization (Group A) controls 58 percent of total dispositions, two declared handler groups (Groups B and C) control 24 and 7 percent of total dispositions, respectively, and the unaffiliated growers (Group D) control 11 percent of dispositions, the members would be allocated as follows: The number of seats which the largest cooperative marketing organization may nominate is limited to five. Because the largest cooperative marketing organization controls more than 50 percent of total dispositions, the percentage required to nominate each member, plus an alternate member and additional alternate member for the remaining entities, is calculated as follows:

$$\frac{50\%-8\%}{5} = 8.4\%$$

The following table shows member allocation to the four groups:

Groups	A	B	C	D	Totals
Percent controlled	58	24	7	11	100% disposition.
Number of seats allocated based on 8.4% per seat	5	3	1	1	10

If the committees, with the aproval of the Secretary, increase committee size to 12- or 13-member committees, then the percentage of total dispositions required by an entity to nominate one member, one alternate member, and one additional alternate member would be 9.09 percent and 8.33 percent, respectively, in the case of an entity in the largest cooperative marketing organization category, or the declared handlers or groups of declared handlers category having more than 50 percent of total dispositions, such entity would be limited to five members on a 12-member committee and 6 members on a 13-member committee. In either case, six member positions would remain to be allocated among other entities. In order to allocate the remaining six positions, the following formula would be used:

$$\frac{50\%-(\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

As in the example for an 11-member committee, this formula would provide the percentage of total dispositions required of an entity to qualify to nominate a member, alternate member and additional alternate member.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

Non-Industry Member

The Recommended Decision did not adopt the proposed changes in the

qualification and selection criteria for non-industry members. Exceptions were received from Sequoia, Foothill, and Riverbend. Sequoia stated that the position for a non-industry member should be abolished or made a "truly responsive public position." Sequoia further stated that, in its present state, the position serves no useful purpose and is harmful to the interests of the public at large and minority interests in the industry. Foothill stated that the non-industry member should not be selected by the committees but by the Secretary from nominees submitted by all interested groups except the committees. Riverbend stated that the non-industry member should represent consumer interests, and that each committee should submit to the Secretary one nominee who was selected unanimously. Then, if no unanimous selection is made, all nominees should be submitted to the Secretary for selection by the Secretary.

Non-industry members are persons who are not growers or handlers, or employees, agents, or representatives of a grower or handler, or of a central marketing organization, as is required by §§ 907.22(f) and 908.22(f) of the respective orders. The non-industry member provides an independent point of view in committee deliberations. The USDA carefully reviews and analyzes all nominees for non-industry member positions on all committees to ensure that their qualifications are in compliance with order requirements. In response to Riverbend's exception, the current procedure provides that the committees shall choose nominees for the non-industry member positions and allows (but does not require) the Secretary to either approve the individual nominees or to select from other qualified candidates. This procedure provides for committee input into the nomination process. The discretion to select appropriate members rests with the Secretary.

For the reasons stated above, the exceptions are denied.

Determination of Nomination Rights on the Current or Prior Fiscal (Navel Oranges) or Marketing (Valencia Oranges) Year

The Recommended Decision proposed that nominating rights be determined on the basis of the fiscal (navel oranges) or marketing (Valencia oranges) year prior to that in which nominations are made. Currently, the marketing orders prescribe that this calculation be made on the basis of the current fiscal (naval oranges) or marketing (Valencia oranges) year. In the case of both navel and Valencia oranges, it has often been necessary to use the information on shipments for a partial year in order to ensure that nominations are made in time to select a new committee in a timely manner. The proposal sought to provide a sufficient period of time to conduct nominations after the percentages are computed on the basis of a full year and before the term of office begins. Exceptions to this proposal were received from the NOAC/VOAC, LoBue and Sequoia. These exceptions proposed using current year dispositions as this would give the most up-to-date information. The NOAC/VOAC and LoBue stated that the industry is and has always been in a continuous state of change and committee membership should reflect this in as timely as a manner as possible.

The Recommended Decision did not provide for the use of current year dispositions for fear that the failure to utilize end-of-season shipments could alter entities' volume percentages. However, it has been determined that such end-of-season shipments are usually quite low in volume and their exclusion would not be expected to alter the relative percentages of dispositions between industry entities. Accordingly, this proposed rule provides for use of current year dispositions.

Because it may be necessary to begin the nomination process before all shipments have been made, a cut-off date for current year depositions, determined by the Secretary, should be established. Using the most current information available would best reflect the changing structure of the industries and provide the most representative committees possible. After gaining experience in the revised nomination process, the committees may find that particular times each season would be most appropriate as the cut-off dates. Thus, the committees should be authorized, subject to the approval of the Secretary, to recommend such dates to be used each year for nomination purposes.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

Voting

The Recommended Decision proposed that seven votes (a simple majority) on a 13-member committee would be considered as constituting a quorum and that seven affirmative votes would be necessary to pass any committee motion. Riverbend and Belridge filed the only exceptions to this proposal.

Riverbend proposed that a "super-majority" of nine affirmative votes should be required to initiate prorate during a season. After ten weeks of regulation, a unanimous committee vote should be required to continue any existing prorate regulation. Belridge suggested that the committee members must be able to agree by more than a simple majority vote.

A "super-majority" requirement that up to three-fourths of the committee be required to pass a motion would enable a small portion of the industry to nullify the views of the majority. The current proposal ensures that no one entity will have a majority of seats on a committee. On an 11-member committee, no one entity would have more than five seats, and six votes are required to pass a motion. Therefore, the "super majority" requirement appears to be unnecessarily stringent, considering the nature of committee deliberations and voting history.

For the reasons stated above, these exceptions are denied.

While the proposal in the Recommended Decision was drafted in terms of a 13-member committee, this proposal would require a simple majority, regardless of committee size, to constitute a quorum. Thus, in the case of an 11-member committee, six members shall constitute a quorum and any committee action shall require at least six concurring votes and in the case of 12- or 13-member committees, seven members shall constitute a quorum and any committee action shall require at least seven concurring votes.

Selection of Grower and Handler Members

The Recommended Decision proposed that growers affiliated with an independent handler entity or an entity comprised of Capper-Volstead cooperatives and independent handlers should nominate grower members to the committees. The committees had proposed that handlers select slates of candidates for nomination. The Recommended Decision also proposed allowing declared individual handlers and declared groups of handlers (that is, individual or groups of handlers who declare themselves to be nominating entities), to nominate handler members without grower ratification. The NOAC/VOAC filed the only exception. They stated that the recommended nomination procedures would discourage the formation of handler coalitions since handlers would be excluded from participation in grower-member nominations, and growers would be excluded from participating in handler-member nominations. In addition, the NOAC/VOAC stated that the procedure would be too time consuming and complex. The NOAC/VOAC comment advocates handler selection of grower and handler slates of candidates with grower approval in a ratification process.

In accordance with record evidence, growers should have more opportunity to participate in the nomination of both grower and handler members. In considering the exceptions of the NOAC/VOAC, it was determined that this nomination procedure should be amended to allow verifiable grower participation. Thus, handlers' coalitions should be allowed, with the input of the growers they represent, to develop slates of grower and handler candidates for nomination. Such slates would be developed by single nominating entities or handler coalitions comprising a nominating entity. After nominating entities are informed by the USDA of the number and type of members their entity would be authorized to nominate, the handlers involved would consult their growers and develop a slate of candidates for nomination containing, at a minimum, one eligible candidate for each member, alternate member, and additional alternate member for each position the coalition is allowed. The USDA would use the slate of candidates for nomination, developed by each nominating entity, for mail balloting among those growers who delivered their fruit to the handler or group of handlers which make up that nominating entity. Since the cooperative marketing organization which makes up nominating entity 1 may choose to allow their growers to vote directly rather than to nominate by vote of their board of directors, this procedure would also apply to a grower vote of nominating entity 1 growers. Thus, the Recommended Decision is modified to allow handlers in nominating entities 1 and 2 to develop slates of candidates for nomination with grower ratification by mail balloting conducted by the USDA. In addition, growers affiliated with such handlers would be able to nominate by writing in candidates' names on the mail ballots.

At the hearing, the NOAC/VOAC proposed a method whereby handlers would conduct mail balloting among their own growers and certify the results to the USDA. Using this method, however, the USDA would be unable to ascertain if all growers had been contacted and unable to review the results of the balloting. Therefore, mail balloting of growers should be conducted by the USDA. Such balloting should also allow for write-in candidates. In the case of a nominating entity being a cooperative, the cooperative's board of directors should be allowed to decide on its nominees. In nominating entities made up of cooperatives and independents, mail balloting would be conducted among all growers affiliated with the nominating entity. Further authority should be included to allow the committees to recommend, subject to the approval of the Secretary, regulations to implement these nomination procedures.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

The USDA will conduct the initial committee nominations using interim procedures to be developed. Such procedures will include notifying handlers of their volume percentages and the percentages required to be allocated member positions; requesting the formation of handler coalitions; determining the number of members each nominating entity will receive and notifying each nominating entity of such number; requesting slates of candiates for nominations from nominating entities 1 and 2; holding candidate selection meetings for nominating entity 3 growers; mailing ballots to growers in nominating entities 1, 2, and 3; and tallying the results of such mail balloting.

Grower Participation In One Or More Nominating Entities

The Recommended Decision proposed that if a grower delivers fruit to more than one declared handler or group of handlers, the grower would vote for grower members to represent the nominating entity to which the grower delivered the greatest volume of fruit. Therefore, a grower could participate as a part of only one nominating entity regardless of the number of handlers to whom oranges were delivered. An exception to this proposal was filed by the NOAC/VOAC. Under the NOAC/VOAC's initial proposals, grower voting would be weighted within each handler entity based on each grower's percentage of all oranges handled by such handlers in such entity. Thus, a grower delivering oranges to more than one entity could have participated in the nominating process of each such entity on a weighted basis. The NOAC/VOAC stated that this is a better procedure than the Recommended Decision's proposal because it is far less difficult and costly to administer, and it would ensure that growers are not "disenfranchised" with regard to part of their tonnage.

The NOAC/VOAC proposal could provide those growers with greater production a greater voice in the nominating process than those with less production. Under the orders, each grower has an equal vote in nominations. Weighting the votes of growers could subordinate the interests of smaller growers to those of larger growers in committee decisionmaking.

Growers should choose the nominating entity in which they desire to cast their vote if they deliver oranges to more than one such entity. Growers would be free to choose the slate of candidates they felt would best represent their interests. The USDA would ensure that growers vote for only one slate of candidates. The provision entitling each grower one vote as proposed in the Recommended Decision should remain unchanged.

For the reasons stated above, the exception is denied.

(4) Capper-Volstead Cooperatives

The Recommended Decision proposed that in the case of Capper-Volstead cooperatives which declare themselves as nominating entities, the cooperatives' boards of directors could nominate committee members. The NOAC/VOAC filed an exception to this proposal, stating that each Capper-Volstead cooperative is controlled by its own by-laws with regard to voting and that "there is no reason to force those handlers to act as a unit through a Board of Directors." As stated in the Recommended Decision, Capper-Volstead cooperatives which declare themselves to be nominating entities are not required to nominate committee members through their boards of directors. If they so choose, the cooperatives' boards of directors may authorize their growers to nominate directly. Handlers who market for cooperatives other than the largest cooperative marketing organization, are not required to form nominating entities only with other such handlers. For example, a handler who markets oranges for a cooperative would not be required to be in the same nominating entity as other handlers who market for that cooperative. The handler could join another nominating entity and that handler's growers would be part of the new nominating entity for the purposes of nominations.

For the reasons stated above, the exception is denied.

The definition of Capper-Volstead cooperatives should be made a part of the order. Currently, such a definition is

found in §§ 907.104(a)(1) and 908.104(a)(1) of the administrative rules and regulations of the navel and Valencia orange marketing orders, respectively. For purposes of clarifying the orders, the definition should be added to the order as contained in the Recommended Decision.

(5) Volume Basis for Determining Nominating Rights

The first nominating entity, the largest cooperative marketing organization, is also referred to as the organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the fiscal (naval oranges) or marketing (Valencia oranges) year prior to that in which nominations are made. This differs from current order provisions in that this nominating entity represents the cooperative marketing organization with the largest percentage of total dispositions rather than the cooperative marketing organization which handled more than 50 percent of the total volume of oranges handled, as currently provided in §§ 907.22(b) and 908.22(b) of the navel and Valencia orange marketing orders, respectively. The Recommended Decision proposed that the volume basis for determining nominating rights would be the total volume of oranges "disposed of in all outlets" rather than the volume of oranges "handled to fresh domestic channels, including Canada" as currently specified in the orders. Total dispositions to all outlets would include by-products, animal feed, charitable donations, and exports in addition to fresh domestic shipments. Exceptions to this proposal were filed by Sequoia, Riverbend, the SBA, and Belridge. No other comments on this proposal were received. Sequoia suggested that this proposal is contrary to law because it would allow voting rights for unregulated oranges and favors large entities, those in District 2 (with the capacity to export) and entities with juice plants. Sequoia stated that the Recommended Decision gives no justification for this radical departure from current practice. Riverbend felt that establishing nomination rights by total tree crop would skew committee representation away from growers who are most effected by prorate and towards growers who are least affected. The SBA suggested that the use of total dispositions as a basis for nominations would tend to favor the largest central marketing organization on the committees and that it would permit growers and handlers not subject to regulation to have a greater voice in determining whether the committees would recommend the imposition of volume controls in the fresh domestic market. Belridge stated that by using total dispositions, unregulated oranges would determine who is regulated and how they are regulated. They also suggested that it would be unfair for districts with no regulation to participate in deciding the amount of regulation to be imposed on competing regulated districts.

The use of total dispositions in all outlets for all nominating entities would be in line with the tree crop basis which is used for determining prorate bases and allotments. Further, while exported fruit and fruit that is processed into juice or otherwise utilized is not regulated under the marketing orders, the market for such fruit and subsequent disposition of such fruit has an impact upon the fresh domestic market and committee deliberations on the need for and level of regulation. In addition, if only fresh domestic shipments are used in determining nominating rights, the rights of an individual nominating entity could be voided by an unusual event, such as a freeze, which could affect the suitability of fruit for the fresh market but not for other outlets.

Therefore, it has been determined that the use of total dispositions in all outlets would more accurately reflect each entity's proportion of the industry and impact on the industry in general. Further, this provision would increase the potential for each committee as a whole to reflect the industries as a whole. In order for the committees to make decisions for the benefit of the industries at large, it is necessary for the committees to have at their disposal in the decisionmaking process the experience and knowledge of the industries at large.

For the reasons stated above, the exceptions are therefore denied.

If this issue (use of total dispositions) fails in referendum, nominating rights would then be determined as currently defined in the orders, that is, on the basis of the total volume of oranges handled in fresh domestic channels, including Canada, during the fiscal (navel oranges) or marketing (Valencia oranges) year in which nominations are made.

Conforming Changes

A proposal in the notice of hearing by the USDA was that consideration be given to making such other changes in the orders as may be necessary to make the entire orders conform to any amendments that may result from this proceeding. This proposal was received at the hearing without opposition, and such changes as are necessary will be incorporated into the orders.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the changes in the recordkeeping and reporting provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

Marketing Orders

Annexed hereto and made a part hereof are the documents entitled, respectively, "Order Amending the Order, As Amended, Regulating the Handling of Navel Oranges Grown in Arizona and Designated Part of California," and "Order Amending the Order, As Amended, Regulating the Handling of Valencia Oranges Grown in Arizona and Designated Part of California." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that referenda be conducted in accordance with the procedure for the conduct of referenda [7 CFR 900.400 *et seq.*], to determine whether the issuance of the annexed orders, as amended and as hereby proposed to be amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, are approved or favored by producers, as defined under the terms of the orders, who during the representative period, were engaged in the production areas in the production of navel or Valencia oranges in the aforesaid production areas.

The representative periods are hereby determined to be November 1, 1987, through June 1, 1988, for navel oranges and February 1, 1987, through January 31, 1988, for Valencia oranges.

The agents of the Secretary to conduct such referenda are hereby designated to be Robert J. Curry and Kurt J. Kimmel, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1755 N. Gateway, Suite B, Fresno, California 93727; and Raymond C. Martin, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing orders and agreements, Navel, Oranges, and Valencia.

Proposed Order Amending the Order Regulating the Handling of Navel Oranges Grown in Arizona and Designated Part of California

Part 907 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], and the applicable rules of practice and procedure effective thereunder [7 CFR Part 900], a public hearing was held upon proposed amendments to Marketing Order No. 907 [7 CFR Part 907] regulating the handling of navel oranges grown in Arizona and designated part of California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said order, as amended and as hereby further amended, regulates the handling of navel oranges grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act;

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of navel oranges; and

(5) All handling of navel oranges grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date thereof, all handling of naverl oranges grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

The provisions of the proposed marketing order, amending the order, contained in the Recommended Decision issued by the Administrator on June 1, 1987, and published in the **Federal Register** [52 FR 20664, June 8, 1987], shall be and are the terms and provisions of this order, amending the order, subject to changes in §§ 907.19, 907.20, 907.21, 907.22, 907.23, 907.24, 907.26, 907.27, 907.29, 907.30, and 907.104, and are set forth in full herein.

It is proposed to amend Part 907 as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 907.19 is added to read as follows:

§ 907.19 Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

3. Section 907.20 is revised to read as follows:

§ 907.20 Establishment and membership.

(a) There is hereby established a Navel Orange Administrative Committee which, as soon as nominations are made pursuant to § 907.22 and selections are made pursuant to § 907.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate member, or additional alternate member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) The committee may, with the approval of the Secretary, increase up to 12, the number of grower and handler members on the committee.

(c) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 907.22 and selections made pursuant to § 907.23.

4. Section 907.21 is revised to read as follows:

§ 907.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin October 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office.

5. Section 907.22 is revised to read as follows:

§ 907.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section, who declare themselves to be nominating entities, or the body of growers who deliver navel oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided,* That no handler may participate as a member of more than one nominating entity: *Provided further,* That if a handler coalition forms and qualifies for a member position but no slate of candidates for nominations is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further,* That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) compriasing such entities or by the growers who deliver to the handler(s) comprising such entities:

Type of member to be nominated:	Type of business engaged in by declared handler:	States of candidates for nomination developed by:	Nominations made by
Grower/Handler	Capper-Volstead cooperative	Board of Directors	Board of Directors or growers at the option of the Board
Grower/Handler	Independent	Handlers	Growers.
Grower/Handler	Combination of Capper-Volstead cooperative and independent.	Handlers	Growers.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current fiscal year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member.)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to above	5

Provided, That should the number of grower and handler members of the committee be increased to 11 or 12, pursuant to § 907.20 (b), the percentages required for nominating rights shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and in the case of a committee with 12 grower and handler members, the maximum number of members which may be nominated by any one nominating entity shall increase to six: *Provided further,* That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table applicable to the other nominating entities shall change according to the following formulas: For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate;}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.99	9
100.00	10

Provided, That should the number of grower and handler members of the committee be increased to 11 or 12, pursuant to § 907.20(b), the percentages required for nominating rights shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and the maximum number of members which may be nominated shall increase to 11 or 12, respectively: *Provided further,* That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formulas; For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate;}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(e) If nominations for members positions pursuant to paragraphs (c) and (d) total less than 10 for a committee of 11 members pursuant to § 907.20(b), or less than 11 or 12 for a committee of 12 or 13 members, respectively, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided,* That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section: *Provided further,* That should the number of grower and handler members of the committee be increased to 12, pursuant to § 907.20(b), no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of six members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section.

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	3 growers, 1 handler.
5	3 growers, 2 handler.
6*	4 growers, 2 handler.

* In the case of a committee with 12 grower and handler members.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided,* That growers may cast votes for candidates who do not appear on the ballots: *Provided further,* That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided,* That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

6. Section 907.23 is revised to read as follows:

§ 907.23 Selection.

From the nominations made pursuant to § 907.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member: *Provided,* That the Secretary shall select 11 or 12 members of the committee and an alternate an additional alternate for each member in the case of a 12- or 13-member committee, respectively, established pursuant to § 907.20(b). From the nominations made pursuant to § 907.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

7. Section 907.24 is revised to read as follows:

§ 907.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 907.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 907.22.

8. Section 907.26 is revised to read as follows:

§ 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

9. Section 907.27 is revised to read as follows:

§ 907.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member, and, in the absence of such alternate, the additional alternate shall so act: *Provided,* That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 907.29 [AMENDED]

10. Section 907.29 is amended by removing paragraph (n).

11. Section 907.30 is amended by revising the heading and paragraph (a) to read as follows:

§ 907.30 Voting procedures.

(a) A majority of the committee shall constitute a quorum, and any action of the committee shall require at least six concurring votes for an 11-member committee, and at least seven concurring votes for a 12- or 13-member committee established pursuant to § 907.20(b).

* * * * *

§ 907.104 [Removed]

12. Section 907.104 is removed.

Proposed Order Amending the Order Regulating the Handling of Valencia Oranges Grown in Arizona and Designated Part of California

Part 908 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], and the applicable rules of practice and procedure effective thereunder [7 CFR Part 900], a public hearing was held upon proposed amendment of Marketing Order No. 908 [7 CFR Part 908] regulating the handling of Valencia oranges grown in Arizona and designated part of California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said order, as amended and as hereby further amended, regulates the handling of Valencia oranges grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act;

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of Valencia oranges and;

(5) All handling of Valencia oranges grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date thereof, all handling of Valencia oranges grown in the production area shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

The provisions of the proposed marketing order, amending the order, contained in the Recommended Decision issued by the Administrator on June 1, 1987, and published in the **Federal Register** [52 FR 20664, June 8, 1987], shall be and are the terms and provisions of this order, amending the order, subject to changes in §§ 908.19(a), 908.20, 908.21, 908.22, 908.23, 908.24, 908.26, 908.27, 908.29, 908.30, and 908.104, and are set forth in full herein.

It is proposed to amend Part 908 as follows:

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended 7 U.S.C. 601–674.

13. A new § 908.19a is added to read as follows:

§ 908.19a Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

14. Section 908.20 is revised to read as follows:

§ 908.20 Establishment and membership.

(a) There is hereby established a Valencia Orange Administrative Committee which, as soon as nominations are made pursuant to § 908.22 and selections are made pursuant to § 908.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) The committee may, with the approval of the Secretary, increase up to 12, the number of grower and handler members on the committee.

(c) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 908.22 and selections made pursuant to § 908.23.

15. Section 908.21 is revised to read as follows:

§ 908.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided,* That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next, succeeding term of office.

16. Section 908.22 is revised to read as follows:

§ 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section who declare themselves to be nominating entities, or the body of growers who deliver Valencia oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided,* That no handler may participate as a member of more than one nominating entity: *Provided further,* That if a handler coalition forms and qualifies for a member position but no slate of candidates for nomination is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further,* That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or the growers who deliver to the handler(s) comprising such entities:

Type of member nominated	Type of business engaged in by declared handler	State of candidates for nomination developed by—	Nominations made by—
Grower/handler	Capper-Volstead cooperative	Board of directors	Board of directors or growers at the option of the board.
Do	Independent	Handlers	Growers.
Do	Combination of Capper-Volstead cooperative and independent.	Do	Do.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current marketing year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made	Number of members which may be nominated (an alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 and above	5

Provided, That should the number of grower and handler members of the committee be increased to 11 to 12, pursuant to § 908.20(b), the percentages required for nominating rights, shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and, in the case of a committee with 12 grower and handler members, the maximum number of members which may be nominated by any one nominating entity shall increase to six: *Provided further,* That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table for other nominating entities shall change according to the following formulas: For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate;}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made	Number of members which may be nominated (an alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.99	9
100.00	10

Provided, That should the number of grower and handler members of the committee be increased to 11 to 12, pursuant to § 908.20(b), the percentages required for nominating rights, shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and the maximum number of members which may be nominated shall increase to 11 or 12, respectively: *Provided further,* That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change to the following formulas: For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(e) If nominations for member positions pursuant to paragraphs (c) and (d) of this section total less than 10 for a committee of 11 members pursuant to § 907.20(b), or less than 11 or 12 for a committee of 12 or 13 members, respectively, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided,* That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section: *Provided further,* That should the number of grower and handler members of the committee be increased to 12, pursuant to § 908.20(b), no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of six members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section.

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	3 growers, 1 handler.
5	3 growers, 2 handlers.
*6	4 growers, 2 handlers.

*In the case of a committee with 12 grower and handler members.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided,* That growers may cast votes for candidates who do not appear on the ballots: *Provided further,* That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 908.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided,* That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

17. Section 908.23 is revised to read as follows:

§ 908.23 Selection.

From the nominations made pursuant to § 908.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member: *Provided,* That the Secretary shall select 11 or 12 members of the committee and an alternate and additional alternate for each member in the case of a 12- or 13-member committee, respectively, established pursuant to § 908.20(b). From the nominations made pursuant to § 908.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

18. Section 908.24 is revised to read as follows:

§ 908.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 908.22.

19. Section 908.26 is revised to read as follows:

§ 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the

committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

20. Section 908.27 is revised to read as follows:

§ 908.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member and, in the absence of such alternate, the additional alternate shall so act: *Provided*, That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 908.29 [Amended]

21. Section 908.29 is amended by removing paragraph (n).

22. Section 908.30 is amended by revising the title and paragraph (a) to read as follows:

§ 908.30 Voting procedures.

(a) A majority of the committee shall constitute a quorum, and any action of the committee shall require at least six concurring votes for an 11-member committee, and at least seven concurring votes for a 12- or 13-member committee established pursuant to § 907.20(b).

* * * * *

§ 908.104 [Removed]

23. Section 908.104 is removed.

Signed at Washington, DC, on June 6, 1988.

Kenneth A. Gilles,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-13030 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 998

[Docket No. AMS-FV-88-066]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Proposed Incoming and Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1988 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites written comments on changes in the current incoming and outgoing quality regulations and the terms and conditions of indemnification for 1988 crop peanuts. Two changes would be made in current incoming quality regulations. The first change would limit the quantity of loose shelled kernels in farmers' stock peanuts which can be acquired by handlers to improve the quality of storage peanuts and peanuts ultimately sold for edible use. The second would allow handlers to acquire peanuts with higher moisture levels in recognition of industry practices. With regard to outgoing quality regulations, the screen sizes used in grading minimum quality peanuts would be increased to remove small kernels. Such kernels tent to be immature and contribute to quality problems. The proposed changes are intended to improve the minimum quality of peanuts available for edible channels. The final change regarding indemnification would streamline the clearance procedures used in making indemnificaiton payments to handlers incurring losses in disposing of rejected peanuts.

DATE: Comments must be received by June 24, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. The comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement 146 [7 CFR Part 998; 53 FR 20291, June 3, 1988], regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 67 handlers of peanuts subject to regulations under Peanuts Marketing Agreement 146 [7 CFR Part 998], and there are about 46,950 peanuts growers in the 18 states covered under the program. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas cover 16 states. Based upon the most current information, peanut production in 1987 is expected to total 3.6 billion pounds, 3.1 percent less than 1986, and 18.6 percent less than the record 1984 production of 4.4 billion pounds. The 1987 production value is expected to be $1.02 billion; 1986 production value was $1.07 billion.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanuts industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The peanut marketing agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with practically all U.S. shellers participating. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principle producer of aflatoxin) to be diverted to nonedible uses. Each lot of peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department of Agriculture or in laboratories approved by the Peanut Administrative Committee. The committee works with the Department of Agriculture in administering the marketing agreement program. The sampling and chemical analysis quality control programs are administered by the Department of Agriculture. Having complied with these requirements, provision is made for indemnification of sheller losses if the committee for Food and Drug Administration (FDA) deems the peanuts unsuitable because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulations specify the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulations require shellers to mill peanuts to meet certain quality specifications before such peanuts can be sold for edible outlets. Foreign material and damaged and immature peanuts are removed in this operation. Each lot of milled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. The end result is that only good quality peanuts end up in human consumption outlets.

The following changes in the incoming and outgoing quality regulations and indemnification procedures were unanimously recommended by the committee for the 1988 crop year.

The 1988 incoming quality regulations would be changed in two ways from the 1987 regulations. Paragraph (d)(1) of § 998.100 would be changed to provide that no handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, unless they are held separately until milled or shipped directly to a plant for prompt shelling. This change is intended to improve the quality of lots of peanuts milled for human consumption by limiting the quantity of loose shelled kernels in each lot. Experience has shown that loose shelled kernels tend to have a higher incidence of aflatoxin than other components of farmers' stock peanuts. Loose shelled kernels are peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

The second change in the current incoming regulations would allow handlers to acquire or receive peanuts which can be dried to up to 10.49 percent moisture. Under paragraph (b)(1) of § 998.100 of the current incoming quality regulations, generally peanuts must be dried to 10.00 percent mositure and moisture determinations on farmers' stock peanuts are required to be rounded to the nearest whole number, except that when the moisture level is 10.01 percent to 10.49 percent, the moisture determination is required to be carried to the hundredths place. According to the committee, this has placed an undue burden on producers because their peanut drying equipment is not engineered to the point of drying peanuts on the farm with a maximum of 10 percent moisture without overdrying. This has resulted in an excessive amount of splitting during the milling process, which is not desirable. The change in the moisture limit, and the elimination of the exception concerning moisture determinations for farmers' stock peanuts to be carried to the hundredth place is expected to correct this problem without causing quality problems during storage.

Several changes are proposed in the 1988 outgoing quality regulations from those in effect for 1987 crop peanuts. One change would increase the sizes of the slotted screens used for determining fall through in minimum quality whole kernels. The table in paragraph (a) of § 998.200 would specify U.S. No. 1 screen-sizes (slotted) for all types of whole peanuts, including those in No. 2 Virginia. Currently, only screens with round openings are specified and used for determining fall through for split, broken, and whole kernels of No. 2 Virginia type peanuts.

Fall through includes sound split and broken kernels and whole kernels which pass through specified screen openings and must be disposed of in inedible outlets. The screen openings for whole Runner type peanuts would be changed from a 14/64 x 3/4 inch slot to a 16/64 x 3/4 inch slot, for whole Spanish and Valencia type peanuts from a 13/64 x 3/4 inch slot to a 15/64 x 3/4 inch slot, and for whole Virginia type including No. 2 Virginia peanuts, from a 14/64 x 1 inch slot to a 15/64 x 1 inch slot. With the proposed changes, No. 2 Virginia type peanuts would be graded using a 17/64 inch round screen for split and broken kernels and a 15/64 x 1 inch slotted screen for whole kernels. The use of slotted screens in determining fall through of whole kernels in No. 2 Virginias would cause all Virginia type peanuts to be graded similarly.

The proposed screen opening changes are intended to improve the minimum quality available for edible trade channels. Research data which has been presented by scientists at North Carolina State University and the National Peanut Research Laboratory in Dawson, Georgia, clearly identify damaged kernels, loose shelled kernels and small immature kernels as the highest risk components in *Aspergillus Flavus* mold contamination. The screen size changes for all types of peanuts would eliminate the small kernels, which tend to be immature, from edible channels. This would lessen the chances of unwholesome peanuts entering such channels and would improve the flavor of peanuts and peanut products.

Some representatives from some peanut product manufacturers have contended that the proposed size changes would eliminate a sizable volume of peanuts which are currently being used. Others indicated that this section would cause them financial problems because they have made long term commitments into 1988-89 to supply peanut butter and other products using the peanuts to be removed from use. The proponents of the action acknowledged that some impact on supply would occur. However, they indicated that the proposed action continues the industry's goal of providing wholesome peanuts to edible channels that can be used safely and with confidence. The intent of removing small whole kernels from edible channels is to eliminate a category of peanuts that is known to be a major contributor to *Aspergillus Flavus* mold and aflatoxin.

These proposed changes are expected to remove five percent or less of the 1988 crop from edible channels based on shipments from 1976 to 1985. Hence, no material effect on the price of better quality peanuts is expected because of these changes. The price differences between the peanuts to be removed and the next better quality in 1984 and 1985 when large crops were produced averaged about five cents per pound. In 1986 and 1987 when short crops were produced, the differences were nearer 20 cents per pound. The short crops in 1986 and 1987 resulted from sharply reduced yields due to dry weather. If yields return to more normal levels, the 1988 production should be sharply higher. Within the last 25 years, dry weather

has not caused similar reductions in yields for three consecutive years.

One change is proposed in the Terms and Conditions for Indemnification for 1988 crop peanuts. This change would streamline the clearance procedures in making indemnification payments to handlers incurring crop losses due to aflatoxin. This would be done by paying handlers "quota" indemnification prices on eligible poundage up to 60 percent of the handler's net quota farmers' stock acquisitions. Sixty percent is the conversion factor for converting farmers' stock to shelled peanuts. This limitation would insure that no handler would receive indemnification payments at quota price levels for more peanuts than were actually acquired as quota peanuts. Approved claims on poundage in excess of that amount would be paid at "additional" indemnification prices, which are lower than quota prices. This distinction reflects market price differences between "quota" and "additional" peanuts.

The current clearance process requires a great deal of staff time. The proposed change is intended to reduce the amount of time the committee's staff now spends on handling certain indemnification claims and to make the system more efficient.

It is the Department's view that the proposed changes would help the peanut industry in providing that only good quality, wholesome peanuts for edible channels, which is vital to maintaining and expanding markets for peanuts and products such as peanut butter, cookies, and candies. The change in the moisture determination requirements would relieve an undue burden on peanut producers and, as such, would not result in additional costs. The proposed limitations on loose shelled kernels are expected to improve the quality of storage peanuts, thereby providing good quality peanuts for edible channels and reducing the committee's indemnification costs.

The committee's view is that the changes in the screen sizes for determining fall through are necessary to provide edible channels with good quality peanuts and to maintain the peanut industry's good quality image. No shortage of peanuts or substantial price increases are expected because of this action. The changes proposed in the indemnification procedures are intended to improve the clearance procedures by reducing staff time currently spent on handling certain claims. This proposed change would not be detrimental to handlers or the program.

Based on the above, the Administrator of AMS has determined that the proposed changes would not have a significant economic impact on a substantial number of small entities.

The committee's recommendation, other information, and all written comments timely received in response to this request for comments will be considered before deciding whether or not to implement this proposal.

A comment period of less than 30 days is deemed appropriate for this proposal. The peanut crop year begins on July 1 and growers and handlers should be given as much notice as possible of the procedures and regulations applicable to 1988 crop peanuts which may be adopted as a result of this proposal so they can plan their operations.

List of Subjects in 7 CFR Part 998

Marketing agreement, peanuts.

For the reasons set forth in the preamble, 7 CFR Part 998 is proposed to be amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 [53 FR 20291, June 3, 1988] continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 998.100, paragraph (b)(1), *Moisture and foreign material*, and paragraph (d), *Loose shelled kernels*, are revised for 1988 crop peanuts to read as follows:

§ 998.100 Incoming quality regulation—1988 crop.

* * * * *

(b) *Moisture and foreign material.*—(1) *Moisture.* Except as provided under paragraph (e) of this section, *Peanuts*, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmers' stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

* * * * *

(d) *Loose shelled kernels.* No handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Handlers may separate from the loose shelled kernels received with farmers' stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{13}/_{64}$ x 1 inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the outgoing quality regulation (§ 998.200). If the kernels which ride the prescribed screens are not separated from the kernels which do not ride the prescribed screens, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

* * * * *

3. In § 998.200, paragraph (a) *Shelled peanuts*, is revised for 1988 crop peanuts to read as follows:

§ 998.200 Outgoing quality regulation—1988 crop peanuts.

The following modify or are in addition to the peanut marketing agreement restrictions of § 998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this section, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than—

(1) A total of 1.50 percent unshelled peanuts and damaged kernels;

(2) A total of 2.50 percent unshelled peanuts and damaged kernels and minor defects except for "No. Two Virginia," which may not exceed 3.00 percent;

(3) 9.00 percent moisture; or

(4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade.

The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits." The term "fall through," as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follows:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	17/64-inch round.	16/64 x 3/4-inch slot.
Spanish and Valencia.	16/64-inch round.	15/64 x 3/4-inch slot
Virginia	17/64-inch round.	15/64 x 1-inch slot.

* * * * *

4. Paragraph (v) of § 998.300 *Terms and conditions of indemnification* is revised for 1988 crop peanuts to read as follows:

§ 998.300 Terms and conditions of indemnification—1988 crop peanuts.

* * * * *

(v) For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA–ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association, and verified. Handlers electing non-physical supervision shall receive "quota" indemnification prices on peanuts indemnified, and they shall not be required to furnish Area Association verification. However, under no circumstance shall a handler be paid "quota" indemnification prices on poundage greater than 60 percent of the net "quota" Segregation 1 farmers' stock peanuts acquired by the handler.

* * * * *

Dated: June 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–13011 Filed 6–8–88; 8:45 a.m.]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–49–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspections of certain main landing gear (MLG) support link assemblies, and replacement, if necessary. This action would require the modification, or replacement, of the MLG support link assemblies with a new improved design. This additional modification is necessary to prevent failure of the support link shaft which, if not corrected, could result in damage to the wing and/or hydraulic system.

DATE: Comments must be received no later than August 1, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–49–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–49–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 68–17–01, Amendment 39–1228, effective June 15, 1971, to require the inspection for cracking of certain MLG support links, and replacement, if necessary. That action was prompted by reports of cracking in the bearing boss areas, caused by stress corrosion.

Since the issuance of that AD, there have been reports of cracking and/or corrosion of the MLG support link shaft. This cracking and corrosion has been attributed to the interference between the MLG support link shaft and the support link bushing, and/or lack of lubrication between the MLG support link shaft and bushing.

AD 68–17–01 requires replacement, if necessary, of certain MLG support links with a new link that is not susceptible to the stress corrosion that was experienced on the original links. Although there have been no reports of stress corrosion cracking problems on MLG support links replaced in accordance with AD 68–17–01, the FAA has determined that reworking them by installing lubrication provisions for the shaft, and reworking the bushing to eliminate the interference with the shaft, will correct the corrosion and cracking

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associated with the MLG support link shaft.

Cracking or corrosion of the MLG support link shaft, if not detected and corrected, could result in the failure of the MLG support link shaft and damage to the wing and/or hydraulic system.

The FAA has reviewed and approved Boeing Service Bulletin 727–32–306, Revision 1, dated February 25, 1988, which describes the procedure for reworking the support link by the installation of lubrication fittings, and reworking the bushings.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 68–17–01, to require inspection and, if necessary, replacement of the MLG support link shafts; and inspection and, if necessary, reworking or replacing of the MLG support links and certain support link bushings; in accordance with the service bulletin previously mentioned.

It is estimated that 1,285 airplanes of U.S. registry would be affected by this AD, that it take approximately 22 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,130,800.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 68–17–01, Amendment 39–835, as amended by Amendment 39–1228, with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727–32–306, Revision 1, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the support link shaft, which could result in damage to the wing and/or hydraulic system, accomplish the following:

A. Within the next 1,000 hours time-in-service since the last inspection in accordance with AD 68–17–01, and thereafter at intervals not to exceed 1,000 hours time-in-service until the requirements of paragraph B., below, are accomplished, perform an ultrasonic inspection of the P/N 65–19657–4, –5, –9, or –13 main landing gear (MLG) support link in accordance with Paragraph II, Accomplishment Instructions, Part I—Inspection Data, B. Ultrasonic Inspection Data of Boeing Service Bulletin 32–90, Revision 1, dated May 29, 1968, or Boeing Service Bulletin 32–169, dated May 25, 1971. If any cracks are detected, prior to further flight, perform visual and magnetic particle inspections of the MLG support link shaft as described in paragraph B., below, and replace or modify the MLG support link and bushing accordingly.

B. Within the next 5,000 hours time-in-service or two years after the effective date of this AD, whichever occurs sooner, perform a visual inspection of the MLG support link shaft for corrosion and a magnetic particle inspection for cracks. If any corrosion and/or cracks are detected in the MLG support link shaft, prior to further flight, repair or replace in accordance with Section 32–01–02 of the Boeing 727 Landing Gear Overhaul Manual. In addition, replace or modify the MLG support link, P/N 65–19657–4, –5, –9, –11, –13, –15, –16, or –18, and associated bushings, as necessary, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–32–306, Revision 1, dated February 25, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 31, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–12930 Filed 6–8–88; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240, 249, 270, and 274

[Rel. Nos. 33–6778; 34–25777; IC–16421; File No. S7–8–88]

Reporting Requirements for Issuer's Change of Fiscal Year; Financial Reporting Changes; Period To Be Covered by First Quarterly Report After Effective Date of Initial Registration Statement

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rules.

SUMMARY: The Commission today is publishing for comment proposed amendments to Regulations 13A and 15D under the Securities Exchange Act of 1934 that would revise the reporting and filing requirements for an issuer that changes its fiscal year end and for a successor issuer with a different fiscal year from its predecessor. Amendments also are proposed to Form 8–K to require reporting of a change in fiscal year. Rule 30b1–3 under the Investment Company Act of 1940 is proposed to govern the reporting requirements for investment companies that change their fiscal year end. A new accounting Rule 3–06 and other amendments to the accounting and proxy rules relating to financial reporting are proposed. Finally, amendments to the quarterly reporting rules are proposed to modify the period covered in a new registrant's first quarterly report.

DATE: Comments should be received by the Commission on or before August 8, 1988.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–8–88. All comment letters received will be available for public inspection and coping in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Howard P. Hodges or Joseph S. Aleknavage, (202) 272–2553, Office of the Chief Accountant of the Division of Corporation Finance, or Barbara J. Green, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. With respect to investment companies contact Lawrence A. Friend, (202) 272–2106, Office of Disclosure and Review, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed revisions to Rules 12b–25,[1] 13a–10,[2] 13a–13,[3] 14a–3,[4] 15d–10,[5] and 15d–13[6] under the Securities Exchange Act of 1934 ("Exchange Act"),[7] as well as proposed revisions to Forms 8–K[8] 10–K,[9] 10–Q,[10] 20–F,[11] and 12b–25.[12] A new accounting Rule 3–06 and amendments to Rule 3–12[13] of Regulations S–X[14] also are proposed. With respect to investment companies, proposed new Rule 30b1–3 and proposed amendments to Rules 8b–16[15] and 30b1–2[16] and Form N–SAR[17] under the Investment Company Act of 1940 ("Investment Company Act")[18] are being published for comment.

I. Executive Summary

Current Exchange Act Rules 13a–10 and 15d–10, titled "Interim Reports," set forth reporting requirements applicable when an issuer changes its fiscal year end. Pursuant to these rules, the issuer is required to file an "interim report" with the Commission to provide financial and other information about any "interim period" of three or more months resulting when the issuer changes its fiscal year end. The interim period runs from the end of the most recently concluded fiscal year to the opening date of the new fiscal year[19] and must be reported in the format required for the issuer's annual report. The Commission has required such reports to assure that a continuous financial and business history of issuers will be filed publicly and available to investors and the marketplace.

Rules 13a–10 and 15d–10 were adopted in 1948[20] and have not been revised to take account of the rules requiring quarterly reporting on Form 10–Q, which were adopted in 1970.[21] Rules 13a–10 and 15d–10 also have not been updated to conform to revised timing requirements for filing Form 10–K, the annual reporting form used by most public companies.[22] The amendments proposed in this release are intended to update these rules and integrate them with the current periodic reporting requirements. Further, amendments to Rules 13a–10 and 15d–10 are proposed to codify current rule interpretations and address issues concerning quarterly reporting that are raised repeatedly by registrants when changing their fiscal year end.

A. Transition Reports

The proposed amendments would restructure substantially Rules 13a–10 and 15d–10. To avoid confusion with other reports, such as quarterly reports, that also commonly are referred to as interim reports, the reports required pursuant to Rules 13a–10 and 15d–10 would be designated "transition reports," and the period resulting when an issuer changes its fiscal year called a "transition period."[23]

Current Rules 13a–10 and 15d–10 require that transition reports be filed on the appropriate annual reporting form, usually Form 10–K, for any transition period of three or more months. The proposals would require transition reports for all transition periods, regardless of length, but permit issuers to use the abbreviated reporting format of Form 10–Q for reporting on transition periods of less than six months. Transition reports on Form 10–K would be required for transition periods of six or more months. Like current Rules 13a–10 and 15d–10, the proposed amendments would permit issuers to file unaudited financial statements for transition periods shorter than six months and require that separate audited financial statements for such periods be filed in the next annual report.

To conform the filing requirements for transition reports to those applicable to Forms 10–Q and 10–K, the proposals would change the current 120 day filing period for transition reports to 45 days, in the case of a transition report on Form 10–Q, and 90 days, in the case of a transition report on Form 10–K. The proposed amendments also would codify the reporting requirements for an issuer changing its fiscal year end for a particular fiscal year after the end of that year, and would make clear the obligation to file an annual report for any fiscal year that ended before the issuer determined to change its fiscal year end.

B. Quarterly Reporting Requirements

The proposed rules would codify the staff practice of requiring quarterly reports for each quarterly period within the transition period. Under the proposed rules, the issuer would continue to have the option to file such quarterly reports based upon the quarters of either the old or newly adopted fiscal year. Issuers also would, in most circumstances,[24] be required to

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[1] 17 CFR 240.12b–25.
[2] 17 CFR 240.13a–10.
[3] 17 CFR 240.13a–13.
[4] 17 CFR 240.14a–3.
[5] 17 CFR 240.15d–10.
[6] 17 CFR 240.15d–13.
[7] 15 U.S.C. 78a *et seq.*
[8] 17 CFR 249.308.
[9] 17 CFR 249.310.
[10] 17 CFR 249.308a.
[11] 17 CFR 249.220f.
[12] 17 CFR 249.322.
[13] 17 CFR 210.3–12.
[14] 17 CFR 210.1–01–.12–30.
[15] 17 CFR 270.8b–16.
[16] 17 CFR 270.30b1–2.
[17] 17 CFR 274.101.
[18] 15 U.S.C. 80a–1 *et seq.*

[19] For example, if an issuer whose most recent fiscal year ended on December 31, 1987 decides to change its fiscal closing date to June 30, 1988, the period for which a report must be filed under either Rule 13a–10 or 15d–10 would be January 1, 1988 through June 30, 1988.

[20] Release No. 34–4194 (December 17, 1948) [13 FR 8325–28].

[21] Rules 13a–13 and 15d–13 were adopted in Release No. 34–9004 (October 28, 1970) [35 FR 17537].

[22] In 1970, the Commission revised Form 10–K. Among other changes, the time for filing Form 10–K was shortened from 120 to 90 days after the end of the fiscal year. Release No. 34–9000 (October 21, 1970) [35 FR 16919].

[23] Although current Rules 13a–10 and 15d–10 refer to interim reports and interim periods, for clarity, this Release will use the term "transition" instead of "interim" when discussing the current rules as well as the proposed amendments.

[24] Issuers would not be required to file a quarterly report for a quarterly period of the old fiscal year where the last day of the quarter also is the last day of the transition period.

file a quarterly report for any quarterly period of the old fiscal year that ended before the date on which the issuer determined to change its fiscal year end.

Further, the proposals would give needed guidance as to when an issuer must begin filing quarterly reports on the basis of the newly adopted fiscal year. The proposals would make it clear that no reports on the new basis would be required for any period before the issuer's determination to change its fiscal year end. The requirement to file quarterly reports on the new basis would begin with the first quarter in the new fiscal year that ends after the issuer determined to change its year end.

C. Successor Issuers

Unlike the current rules, the proposed amendments would specify transition reporting requirements for successor issuers only where they have a different fiscal year end from that of the predecessor. Successor issuer reporting where the successor and predecessor have the same fiscal year end is covered by other current rules. As proposed, a successor issuer would be required to file a transition report for the transition period between the close of the fiscal year covered by the last annual report of its predecessor and the date of succession. The proposed amendments would cover explicitly all successor issuers; currently, only those with securities registered on Form 8-B [24] are covered. Current Rule 15d-10 has no provision governing the transition reporting of successor issuers; such a provision would be added.

D. Foreign Private Issuers

Historically, a change in fiscal year has been rare for foreign private issuers. Where the circumstances have arisen, however, the transition reporting obligations of such issuers have been addressed on a case-by-case basis. The proposed amendments would spell out transition reporting requirements for foreign private issuers authorized to file annual reports on Form 20-F. A foreign private issuer with a transition period of less than six months would be permitted to file a transition report on Form 20-F with responses to only a few specified items and unaudited financial statements. For a transition period of six or more months, a foreign private issuer would file a Form 20-F containing responses to all items required when the Form is used as an annual report, including audited financial statements.

[23] 17 CFR 249.209b.

E. Proposed Amendments to Form 8-K

A proposed new item of Form 8-K would require an issuer to report in a Form 8-K the determination to change its fiscal year end and the date of its new fiscal year end. The Form 8-K would be required to be filed within 15 days after the date of the issuer's decision to adopt a new fiscal year.

F. Filing Fees and Extensions of Time

The proposed amendments would make explicit that no filing fee is required for transition reports. Proposed amendments to Rule 12b-25 and Form 12b-25 would add transition reports to those reports for which an extension of time for filing is available.

G. Investment Companies

New Rule 30b1-3 under the Investment Company Act is proposed to provide for transition reporting obligations of registered investment companies. The new Rule would require investment companies that change their fiscal year end to file a report on Form N-SAR within 60 days of either the close of the resulting transition period or the date of the determination to change the fiscal year end, whichever is later.

H. Proposed Amendments to the Accounting and Proxy Rules

A proposed new accounting Rule 3-06, to be added to Regulation S-X, would codify the staff's practice of accepting, under the specified circumstances, financial statements covering a nine to 12 month period in satisfaction of a requirement for financial statements for either one year or one year of a multiple year period. A parallel note is proposed to be added to Rule 14a-3(b)(1) [25] of the proxy rules.

I. Proposed Amendment to Assure Timely Financial Statements of First-Time Registrants

Rule 3-12 of Regulation S-X is proposed to be amended to specify that the most recent audited financial statements in a registration statement under the Securities Act of 1933 (the "Securities Act") [27] or on Form 10 [28] under the Exchange Act may not be more than one year and 45 days old if the issuer was not a reporting company before filing the registration statement. Such amendment would be consistent with those requirements of Rule 3-01 of Regulation S-X [29] that set limits on the age of financial statements in a registration statement of a newly reporting company.

J. Quarterly Reporting Obligations for New Registrants

In addition, the Commission is proposing amendments to Rules 13a-13 and 15d-13, the quarterly reporting rules. Under the current rules, a new registrant is not required to file its first quarterly report with updated financial statements until 45 days after the end of the first fiscal quarter ending after the date of effectiveness of its registration statement. The accounting rules permit financial statements in an initial registration statement to be up to 134 days old on the date of effectiveness. Thus, in cases where an initial registration statement is declared effective between 91 and 134 days after the end of a fiscal quarter or year, the new registrant is not required to file a separate quarterly report for the quarter prior to the date of effectiveness. To close this gap, the proposed amendments would require a new registrant to file its first report on Form 10-Q for the quarter commencing with the end of the latest quarterly or annual period covered by the most recent financial statements included in its registration statement.

An Appendix in Part VI of this Release ("Appendix") sets forth examples to illustrate the application of the proposed rules to some typical reporting situations.

II. Discussion

A. Reporting Fiscal Year Changes

1. *Current Transition Reporting Requirements.* Current Rules 13a-10 and 15d-10 [30] require an issuer that changes its fiscal year to file a separate report on its annual reporting form [31] covering the resulting transition period if the transition period covers a time span of three or more months. The report must be filed within 120 days after the close of the transition period or the date of the determination to change the fiscal year end, whichever is later. The financial statements included in the report need not be audited if the transition period is less than six months and separate audited financial statements for the

[24] 17 CFR 240.14a-3(b)(1).
[27] 15 U.S.C. 77a *et seq.*
[28] 17 CFR 249.210.
[29] 17 CFR 210.3-01.

[30] Rule 13a-10 applies to issuers with securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78*l*]. Rule 15d-10 applies to issuers with securities registered under the Securities Act and filing Exchange Act reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78*o*(*d*)].

[31] The annual reporting form used by most public companies is Form 10-K, but, in the case of most foreign private issuers, Form 20-F is used.

transition period are filed in the next annual report. If the transition period is shorter than three months, no separate report audited financial statements covering the transition period are filed with the next annual report.

2. *Proposed Transition Reporting Requirements—a. Transition Reporting on Forms 10-Q and 10-K.* The proposed amendments to Rules 13a-10 and 15d-10 would require an issuer to file reports for all transition periods, including those of less than three months. Transition reports for periods shorter than six months, however, would be filed on Form 10-Q, the quarterly reporting form, rather than Form 10-K.[32] For transition reports covering transition periods of six or more months, issuers would continue to use Form 10-K.[33] Issuers would be required to provide all information requested in the textual items of the reporting forms, as well as the required financial information.[34] Technical changes to make the description and cover sheets of and General Instructions to Forms 10-Q and 10-K consistent with the proposed amendments also are proposed.

Permitting the use of Form 10-Q for transition periods of up to six months would extend the period between an issuer's audited financial statements to up to 17 months.[35] A six month cutoff would balance the costs of preparing audited financial statements with the investor's need for timely audited financial statements. Allowing the use of Form 10-Q also would reduce substantially the reporting obligations of those issuers that change their fiscal year end by three but less than six months.

The Commission requests comment on the proposed six month cutoff as well as alternative cutoffs based upon a shorter period, such as three months, or a longer period, such as seven or eight months. The Commission specifically solicits comment on what the additional costs of providing information on transition periods of less than three months would be, if any, given that the audited information must be filed with the next annual report. Comment also is requested on the extent of the additional benefits that would be provided to investors by requiring transition reports for periods of less than three months, in light of the fact that audited financial statements for such periods would be required in any event with the next annual report.

b. *Provisions on Changing a Fiscal Year After the Year End.* The current rules do not specify the reporting requirements where an issuer decides to change its closing date for a particular fiscal year after the end of that fiscal year. Under current interpretations of the rules, an issuer must file an annual report for the recently concluded fiscal year if the issuer had not changed its fiscal year end before concluding the fiscal year.

The proposed amendments would codify the interpretation by requiring that an issuer file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end.[36] This date, as evidenced by minutes of the board of directors or an authorized committee thereof, would be the date reported in the issuer's Form 8-K.[37]

The proposed amendments also would codify the current interpretive position that a transition report can be used only for periods of less than 12 months. This requirement would assure that audited financial statements would be provided by the issuer at least every 17 months.

c. *Filing Requirements for Transition Reports.* Under current Rules 13a-10(a) [38] and 15d-10(a),[39] a transition report must be filed within 120 days after the close of the transition period or after the date of the determination to change the fiscal closing date, whichever is later. The proposed amendments would change the time for filing transition reports to parallel current requirements applicable to Forms 10-Q and 10-K. Thus, those transition reports on Form 10-K would be filed 90 days after the later of these two events [40] and those on Form 10-Q would be filed 45 days after the later of these two events.[41]

d. *Auditing Requirements For Financial Information in Transition Reports.* Current Rules 13a-10(c) [42] and 15d-10(b) [43] permit an issuer to file financial statements that are not audited with a report covering a transition period shorter than six months. The issuer must file with its next annual report separate audited financial statements covering the transition period. A transition report covering a period of six or more months must include separate audited financial statements.

The proposed amendments would not change an issuer's obligation with respect to providing audited financial statements for the transition period. As proposed, financial statements in transition reports on Form 10-K would be audited, while unaudited financial statements would be permitted in transition reports on Form 10-Q. This parallelism with the requirements of Form 10-K and 10-Q was a reason for using the six month mark to distinguish between transition periods that would be reported on quarterly forms and those on annual forms.

The proposed Rules would require transition reports on Form 10-K to include either financial statements, which may be unaudited, for the comparable period of the prior year, or a footnote, which may be unaudited, giving specified information for the comparable period of the prior year.[44] The prior year footnote information would have to state, at a minimum, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles, and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also would have to be shown, if applicable. Per share data based upon such income or loss and net income or loss would be required to be presented

[32] *See* proposed Rules 13a-10(c) and 15d-10(c) and Appendix Examples 1.a., 1.b., & 1.d.
[33] *See* proposed Rules 13a-10(b) and 15d-10(b) and Appendix Examples 1.c., & 1.e.
[34] Form 10-Q provides a more abbreviated reporting format than Form 10-K. In addition to condensed unaudited financial information and an updating of management's discussion and analysis of financial condition and results of operations, Form 10-Q calls for information relating to a limited number of subjects such as legal proceedings, changes in securities, defaults on senior securities and the submission of matters to a security holder vote. In contrast, Form 10-K requires audited financial statements and more comprehensive disclosure about the business of the issuer and its operations and activities during the reporting period.
[35] The proposals would allow an issuer to go 17 months without filing audited financial statements in the case where an issuer changes its fiscal year end with a resulting transition period of 5 months. For example, an issuer with a December 31 year end that changes its fiscal year end to May 31, 1988 would be permitted to file a Form 10-Q including unaudited financial statements covering the transition period from January 1, 1988 through May 31, 1988. The issuer would not be required to file audited financial statements until August 29, 1989, the due date for its next annual report covering the newly adopted fiscal year from June 1, 1988 through May 31, 1989.

[36] *See* proposed Rules 13a-10(a) and 15d-10(a).
[37] For a discussion of the proposed new item of Form 8-K, *see* II.A.2.h., "Reporting Fiscal Year Changes on Form 8-K," *infra*.
[38] 17 CFR 240.13a-10(a).
[39] 17 CFR 240.15d-10(a).

[40] *See* proposed Rules 13a-10(b) and 15d-10(b) and Appendix Examples 1.c. & 1.e.
[41] *See* proposed Rules 13a-10(c) and 15d-10(c) and Appendix Examples 1.a., 1.b., & 1.d.
[42] 17 CFR 240.13a-10(c).
[43] 17 CFR 240.15d-10(b).
[44] *See* proposed Rules 13a-10(b) and 15d-10(b).

in conformity with applicable accounting standards.[45]

Consistent with existing requirements for Form 10–Q, a transition report on Form 10–Q would be required to include financial information about the comparable period of the prior year.[46] As under the current rules, separate audited statements of income and cash flow covering the transition period would be required to be filed as part of the first annual report for the newly adopted fiscal year.[47] The Commission solicits comment on whether the audited statement on cash flow should be permitted to cover the period from the end of the last fiscal year through the end of the newly adopted fiscal year. Under the proposed rules, as under the current rules,[48] the annual report need not contain a separate audited balance sheet for a transition period of less than six months provided that an audited balance sheet as of the end of the prior fiscal year is filed. The proposed amendments also would specify that notes to the financial statements for the transition period included in the annual report may be integrated with the notes for the full fiscal period.

e. *Quarterly Reporting When an Issuer Changes Its Fiscal Year.* Issuers frequently seek guidance from the staff as to the precise application of the quarterly reporting requirements in change of fiscal year circumstances. The proposed amendments to Rules 13a–10 and 15d–10 are intended to clarify the requirements for filing quarterly reports in such circumstances.[49]

The proposed amendments would codify the current staff practice of requiring issuers to file quarterly reports during the transition period. The proposed amendments also would continue to afford companies the option of filing such quarterly reports based on the quarters of either the old or newly adopted fiscal year.[50] Under either option, an issuer still would be required to file a quarterly report for any quarter of the old fiscal year that ended before the date on which the issuer determined to change its fiscal year end (except, of course, where the last day of the quarter also is the last day of the transition period).[51]

The proposed amendments would specify the time by which an issuer must begin filing quarterly reports on the basis of the newly adopted fiscal year. Under the proposals, an issuer would be required to begin filing quarterly reports on the new basis with the quarterly report for the first quarter of the new fiscal year ending after the issuer determined to change its fiscal year end.[52] No reporting on the new basis of those quarterly periods ending before the issuer's determination to change its year end would be required.

The switch in quarterly reporting from the old to the new fiscal year may result in a period of less than three months that would not be covered by a separate report on Form 10–Q. Such a period, however, would be covered on a cumulative basis in the next report on either Form 10–Q or Form 10–K or in a transition report, depending on when the switch occurred.[53]

Form 10–Q requires data for the comparable period of the prior fiscal year. Issuers that change to new fiscal years that do not coincide with the end of a quarter of the previous fiscal year frequently have inquired as to the need to recast prior year quarterly financial information so that reports on Form 10–Q for the new fiscal year include information for the comparable periods of the prior year. In those cases in which recasting of prior year financial information has not been practicable or was inordinately costly, issuers have been permitted to forego recasting the prior year financial information where adequate information has been provided as to seasonal and other factors that would affect the trends reflected by the data. The proposed amendments codify this approach. A new Note to paragraphs (c) and (d) of Rules 13a–10 and 15d–10 would permit issuers to file quarterly reports for the quarters of the new fiscal year without recasting data for the prior fiscal year, where recasting either is not practicable or cannot be cost-justified, if the issuer furnishes (1) financial statements for the quarters of the preceding fiscal year most nearly comparable to the quarters in the newly adopted fiscal year; (2) an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected; (3) an assessment of the comparability of the data; and (4) a representation as to the reason the recasting has not been undertaken. The Note also would be applicable to prior year information in transition reports on Form 10–Q.[54]

f. *Transition Reporting for Successor Issuers.* Current Rule 13a–10(b)[55] sets forth reporting requirements for successor issuers that have securities registered on Form 8–B.[56] Under the Rule, every issuer having securities registered on Form 8–B is required to file a transition report concerning its predecessor covering the transition period between the close of the fiscal year coverd by the predecessor's last annual report and the beginning of the successor's first fiscal year after the succession. The transition report must be filed within 120 days after the close of the transition period. If the report covers a period of less than six months, the financial statements filed therewith need not be audited, but, if they are not audited, the issuer must file with its next annual report separate audited financial statements covering the transition period. Rule 15d–10 currently has no parallel provision.[57]

While current Rule 13a–10(b) applies to successions even where the successor and predecessor do not have a different fiscal year, the proposed amendments would specify transition reporting requirements only for successor issuers with a different fiscal year end from that of the predecessor.[58] No transition report would be required where the successor issuer and the predecessor have the same fiscal year end.[59] Under such circumstances, the successor would continue on the same reporting schedule as that of the predecessor.[60]

The proposed amendments would cover explicitly all successor issuers,[61] not just those with securities registered on Form 8–B.[62] Companies with reporting obligations pursuant to section 15(d) would be covered by a parallel provision added to Rule 15d–10. There is no reason to treat section 15(d) company successor issuers differently from other successor issuers in this respect.[63]

The proposed rules for transition reporting of successor issuers would correspond generally to the transition reporting rules applicable when other issuers change their fiscal year end. The principal difference would be the period covered in the transition report. Under the proposals, the transition period to be reported by successor issuers would end on the date of the succession, rather than on the last day of the old fiscal year, in order for the transition report to reflect the predecessor's operations separately from those of the combined entity.

As with the proposed rules generally governing changes in fiscal year, the proposed amendments would require, for a transition period shorter than six months, the successor issuer to file a transition report, containing information about the predecessor, on Form 10–Q with unaudited financial statements. The report would be filed 45 days after the date of the succession The next annual report of the successor issuer would be required to include audited statements of income and cash flow for the transition period. For a transition period of six or more months, the successor issuer would be required to file the transition report on Form 10–K with audited financial statements 90 days after the date of the succession.

g. *Transition Reporting for Foreign Private Issuers.* Foreign private issuers that file annual reports on Form 20–F[64] are not required to file quarterly reports on Form 10–Q. These issuers are required to file annual reports on Form 20–F within six months after the end of the fiscal year. Current Rules 13a–10 and 15d–10 do not address separately the transition reporting requirements of foreign private issuers.

A change in fiscal year has been rare for foreign private issuers, and the resulting transition reporting obligations have been addressed on a case-by-case basis. The factors taken into account have included the different reporting obligations of such issuers under U.S. law, and the different reporting requiremens and practices of the domicile country.

The Commission is proposing amendments to Rules 13a–10 and 15d–10 that would set forth separate transition reporting requirements for foreign private issuers.[65] Under the proposed amendments, a foreign private issuer that has changed its fiscal year end would be required to file a Form 20–F to report on any transition period. However, where the transition report covers a transition period of less than six months, the issuer would be required to respond only to a limited number of specified items on Form 20–F. These items, which cover most of the subjects covered in a Form 10–Q, include: Item 3, Legal Proceedings; Item 9, Management's Discussion and Analysis of Financial Condition and Results of Operations; Item 15, Defaults Upon Senior Securities; Item 16, Changes in Securities and Changes in Security for Registered Securities; and either Item 17 or 18, Financial Statements.[66] The Commission requests comment on the appropriateness of the Items selected and on whether additional Form 20–F Items should be included.

Unaudited financial statements would be permitted in a transition report on Form 20–F covering a period of less than six months if the next annual report on Form 20–F included audited statements of income and cash flow for the transition period. Comment is requested on whether, alternatively, the Commission should permit foreign private issuers to file transition reports on Form 20–F responding only to the selected Items and including unaudited financial statements where the transition period is six of fewer months in length, rather than less than six months, in view of the semi-annual interim financial reporting that is required by some exchanges or is customary for some foreign private issuers. Comment also is solicited on whether the Commission should excuse foreign private issuers from providing financial statements in transition reports for periods shorter than six months if they are not required otherwise to develop such statements under the laws or practices of their domicile country, or any exchange upon which their securities trade. If such an exception were made, the Commission would not anticipate relieving such issures of the obligation of file audited financial statements covering such transition periods when the next audited financial statements are required to be filed.

Where a transition report on Form 20–F covers a period of six or more months, the foreign private issure would be required to respond to all of the items to

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[45] The proposals for prior year footnote information would track Rule 3–03(aa) of Regulation S–X [17 CFR 210.1–02[aa]] except that disclosure of income taxes would be required under the proposals because such information is pertinent to understanding the fluctuations in earnings and earnings trends.

[46] *See* II.A.2.e., "Quarterly Reporting When an Issuer Changes Its Fiscal Year," *infra*, for a discussion of a proposed Note to paragraphs (c) and (d) of Rules 13a–10 and 15d–10 that addresses difficulties in providing comparable period financial information.

[47] *See* Proposed Rules 13a–10(c) and 15d–10(c).

[48] *See* Rule 13a–10(b) [17 CFR 249.13a–10(d)] and Rule 15d–10(c) [17 CFR 240.15d–(c)].

[49] *See* proposed Rules 13a–10(d) and 15d–10(d).

[50] Thus, under the proposals, an issuer with a December 31 year end that decided on February 1, 1988 to change its year end to October 31, 1988 would have the option of filing quarterly reports either for the quarters of the old fiscal year ending March 31, June 30, and September 30, 1988 or for the periods coinciding with quarters of the new fiscal year ending January 31, April 30, and July 31, 1989. If the same issuer had decided on June 1, 1988 to change its year end to October 31, 1988, the issuer already would have filed a quarterly report for the quarter ending March 31, 1988 but still would have the option to file the quarterly reports either for the quarters of the old fiscal year ending June 30 and September 30, 1988 or for the period coinciding with the quarter of the new fiscal year ending July 31, 1989.

[51] For example, an issuer with a December 31 year end that decides on October 15, 1988 to change its year end to November 30, 1988 would be required to file by November 14, 1988 a quarterly report on Form 10–Q for the quarter ending September 30, 1988 of the old fiscal year. If the same issuer decided on October 15, 1988 to change its year end to September 30, 1988, the issuer would not be required to file a quarterly report on Form 10–Q for the quarterly period ending September 30, 1988 of the old fiscal year, because the last day of the quarter would be the same as the last day of the transition period. In that event, a transition report on Form 10–K would be required to be filed to cover the period from January 1, 1988 through September 30, 1988.

[52] In the first example in footnote 51, a Form 10–Q would be required for the first quarter (ending February 28, 1989) of the new fiscal year.

[53] For example, an issuer with a December 31 year end decides on June 1, 1988 to change its year end to October 31, 1988 and begins filing quarterly reports based on the quarters of the new fiscal year with the quarterly report for the quarter ending July 31, 1988. Under the proposals, the period from April 1 through April 30, 1988 would not be covered by a separate report on Form 10–Q but would be covered on a cumulative basis in the quarterly report filed for the quarter ending July 31, 1988.

[54] The proposals would not require an issuer that decides to change its year end after having filed quarterly reports based on the old fiscal year to file new Form 10–Qs for those quarters of the new fiscal year already concluded. However, pursuant to Item 302(a) (5) of Regulation S–K [17 CFR 229.302(a) (5)], specified issuers must provide selected financial data for each full quarter of the two most recent fiscal year in their annual report on Form 10–K. Accordingly, the first annual report on Form 10–K of such an issuer after a fiscal year change would be required to contain quarterly information for the new fiscal year.

[55] 17 CFR 240.13a–10(b).

[56] Form 8–B is a registration form mainly used for the securities of an issuer that has no registered securities but has succeeded to an issuer with registered securities.

[57] Rule 15d–6 [17 CFR 240.15d–6], like Rule 12g–3 [17 CFR 240.12g–3], sets forth reporting requirements of successor issuers, but does not specify requirements for transition reporting of successor issuers.

[58] *See* proposed Rules 13a–10(e) and 15d–10(e).

[59] Other current reporting requirements for successor issuers and the Division's current interpretive positions respecting disclosures by successor issuers would not be affected. In particular, where there is a change in accounting basis between the successor and predecessor, the quarterly or annual report for the period in which the succession occurs would be required to state separately the income and cash flow statements to reflect the periods prior and subsequent to the succession.

[60] *See* Rules 12g–3 and 15d–5.

[61] *See* Rule 12b–2 [17 CFR 240.12b–2], which defines succession and, correlatively, successor.

[62] Currently, many successions are reported on Form 8–K in lieu of Form 8–B. *See* Release No. 34–9072 (February 19, 1971) [36 FR 3804].

[63] Where the successor issuer and the predecessor have a different fiscal year end and the succession is solely for the purpose of forming a holding company or changing the state of incorporation, the succession would be viewed as any other change in fiscal year and not subject to the provisions of proposed Rules 13a–10(e) and 15d–10(e).

[64] Form 20–F is used by foreign private issuers as a registration statement, as well as an annual report. A Canadian foreign private issuer may use Form 20–F as either a registration statement or annual report only if the issuer does not have or had not had during the 12 months prior to the filing of the registration statement or annual report any class of securities registered under section 12(b) [15 U.S.C. 78*l*(b)] or a reporting obligation under Section 15(d) and such issuer had not issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10–K.

[65] *See* proposed Rules 13a–10(f) and 15d–10(f).

[66] The only subject covered in a separate Item in Form 10–Q that would not be included in a transition report on Form 20–F is the submission of matters to a security holder vote. This subject is not covered as a separate Item in Form 20–F.

which such issuers must respond when Form 20–F is used as an annual reporting form.[67] Audited financial statements would be required for transition reports on Form 20–F that cover a period of six or more months. The proposals would specify that a transition report on Form 20–F shall not cover a period longer than 12 months. Technical changes also are proposed to make the description and cover sheet of and General Instructions to Form 20–F consistent with the proposed amendments.

The proposed amendments would require that a transition report on Form 20–F covering a period of less than six months be filed within three months after either the close of the transition period or the date of the determination to change the fiscal year, whichever is later. A three month filing period is proposed because of the difficulties foreign private issuers may have in preparing reports not required by the laws or customs of their domicile countries or exchange upon which their securities are traded. The Commission requests comment as to whether the proposed three month filing period is too long for investors' needs and whether a shorter period, such as two months of 45 days, should be used. Comment also is solicited on the problems foreign private issuers may have in complying with a three month filing requirement and whether the period should be longer, such as four, five or six months.

Under the proposals, a transition report on Form 20–F covering six or more months would required to be filed within six months after the later of the close of the transition period or the date of the determination to change the fiscal year. The six month filing period proposed parallels the period provided for annual reports on Form 20–F. Comment is requested on the proposed six month filing period, and whether a shorter period, such as three or four months, should be used. Finally, comment also is requested on whether separate provisions for the transition reporting obligations of foreign private issues are necessary or whether such obligations should continue to be determined on a case-by-case basis.

h. *Reporting Fiscal Year Changes on Form 8–K.* The Commission also is proposing amendments to require an issuer to report in a Form 8–K its decision to adopt a new fiscal year in response to a new Item 8. Under the proposals, the issuer would report both the date of its determination to change its fiscal year end and the date of its new fiscal year end.[68] A current report on Form 8–K would be required to be filed within 15 days after the date of the issuer's determination to change its fiscal year end. Formalizing the means of notifying shareholders and the trading markets of a change in reporting periods should eliminate confusion and misapprehension as to the reasons for issuers' financial reports not being filed and should provide an orderly and reliable mechanism for getting news of the change to investors.

i. *Filing Fees and Extensions of Time.* Rules 13a–13 and 15d–13 do not require a filing fee for quarterly reports on From 10–Q. Rules 13a–1[69] and 15d–1[70], however, do requre issuers to pay a $250 filing fee upon filing an annual report. The current rules do not address filing fees for transition reports, even though transition reports currently are filed on the anual reporting form. The proposed amendments to Rules 13a–10 and 15d–10 would make it explicit that no filing fee is required for a transition report. [71]

The Commission also is proposing amendments to Rule 12b–25, Form 12b–25, and the description of the Form. Rule 12b–25 provides an extension of time for filing if an issuer gives notification of Form 12b–25 of its inability to file on a timely basis a report on Form 10–K, 20–F, 11–K, 10–Q or N–SAR and the reasons therefor. The proposed amendments would add transition reports to those reports covered by the Rule and Form.[72] Consistent with the current extension periods for Forms 10–K and 10–Q, the extension for a transition report on Form 10–K would be 15 calendar days after the due date and the extension for a transition report on Form 10–Q five calendar days after the due date.

j. *Transition Reporting for Investment Companies.* Instead of filing annual and quarterly reports on Forms 10–K and 10–Q, registered management investment companies file semi-annual reports on Form N–SAR, while unit investment trusts file only annual reports on Form N–SAR.[73] Therefore, the Commission is proposing to (1) exempt registered investment companies from Rules 13a–10 and 15d–10, [74] and (2) adopt a new Rule under the Investment Company Act specifying their transition reporting obligations.[75] The new Rule would require investment companies that change their fiscal year end to file a report on Form N–SAR within 60 days of either the close of the resulting transition period or the date of the determination to change the fiscal year, whichever is later.[76]

Under the proposed Rule, the transition report filed by a management investment company would cover a period no longer than six months, and a report filed by a unit investment trust would cover a period no longer than 12 months. These are the periods ordinarily covered by a report on Form N–SAR. The new Rule would not specify the period the transition report must cover and, in certain circumstances, an investment company would have a choice between two periods.[77] Like the proposed amendments to Rules 13a–10 and 15d–10, proposed new Rule 30b1–3 would specify that no filing fee would be required for a transition report.

Comment is requested on the proposed new Rule and, in particular, whether the Commission should specify the period the transition report must cover and, if so, what that period should be.[78]

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[67] *See* General Instruction G(b) of Form 20–F specifying that an annual report on Form 20–F shall include the information specified in Parts I, III and IV of the Form.

[68] *See* discussion of the provisions on changing a fiscal year after the end of that particular year at II.A.2.b., *supra*.

[69] 17 CFR 240. 13a–1.

[70] 17 CFR 240. 15d–1.

[71] *See* proposed Rules 13a–10(h) and 15d–10(h).

[72] *See* proposed Rule 12b–25(a) and (b)(2)(ii).

[73] *See* Rules 30a–1 and 30b–1 under the Investment Company Act [17 CFR 270.30a–1 and 270.30b1–1]. Form N–SAR is filed under both the Exchange Act and the Investment Company Act.

[74] *See* proposed Rules 13a–10(g) and 15d–10(g).

[75] *See* proposed new Investment Company Act Rule 30b1–3. Investment companies electing to be regulated as business development companies must comply with the Exchange Act periodic reporting requirements applicable to entities other than investment companies, including the filing of forms 10–K and 10–Q. Accordingly, such companies would be subject to the provisions of Exchange Act Rules 13a–10 and 15d–10 rather than proposed new Investment Company Act Rule 30b1–3.

[76] Investment companies filing Form N–SAR must do so within 60 days of the end of the reporting period. *See* Rule 30b1–1.

[77] A management investment company making a determination on January 15 to change its fiscal year end from December 31 to February 28 could not file a report for the period from July 1 to February 28 because the period would be longer than six months. Rather, the investment company would file a report, no later than 60 days after January 15, either (1) covering the transition period beginning July 1 and ending August 31 or (2) covering the period from July 1 to December 31, and then file, no later than 60 days after February 28, a report for the transition period from January 1 to February 28.

[78] In addition, the Commission is proposing technical amendments to Rules 8b–16 [17 CFR 270.8b–16] and 30b1–2 [17 CFR 270.30b1–2], and Form N–SAR under the Investment Company Act to correct erroneous references to Rule 30b1–3. The references should be to Rule 30b1–1 which, until 1985, was designated as rule 30b1–3. *See* Release No. 33–6691 (July 1, 1988) [50 FR 27940].

3. *Other Proposed Financial Reporting Changes.*—a. *Amendments to the Accounting and Proxy Rules To Permit Reliance on Nine Month Statements.* Where an issuer has changed its fiscal year, the staff historically has accepted audited financial statements covering a period of nine to 12 months in satisfaction of various requirements for one year of financial statements.[79] Where there is a requirement for filing financial statements for a multiple year period, the filing of financial statements that include one period of nine to 12 months has been deemed to satisfy a filing requirement of one year, if for all other years in the time period financial statements covering the full years are provided.[80] The Commission is proposing to codify this practice by adding new Rule 3–06 to Regulation S–X. The proposed new Rule would apply to financial statements in proxy and information statements, registration statements and Exchange Act reports.[81] A parallel provision would be added to the proxy rules in the form of a new Note 2 to Rule 14a–3(b)(1) to provide that separate audited financial statements covering a consecutive period of 33 months or more, including any transition periods, would fulfill the requirement for statements of income and cash flow for the three most recent fiscal years.[82] However, registered investment companies would not be covered by the proposed new Rule and Note because they are subject to different reporting requirements.[83]

b. *Amendment to Rule 3–12.* An amendment to Rule 3–12 of Regulation S–X is being proposed to assure more timely financial statements of first-time issuers.[84] Currently, an issuer that was not a reporting company before filing a registration statement could change its fiscal year end and attempt to file and have declared effective a registration statement with financial statements up to 18 and one-half months old.[85] The proposed amendment, which would codify current staff practice, would specify that the most recent audited finanical statements in a registration statement filed under the Securities Act or on Form 10 under the Exchange Act that relates to the securities of an non-reporting issuer may not be more than one year and 45 days old at the date of effectiveness of the registration statement. The proposed amendment would apply only to companies not yet in the Exchange Act reporting system because their financial and business history would not be available to investors and the marketplace. The proposed one year and 45 day cutoff for the age of non-reporting company financial statements would be consistent with those requirements of Rule 3–01 of Regulation S–X that limit the age of the financial statements in a registration statement of a company that previously has not been reporting pursuant to the requirements of the Exchange Act.[86]

B. Quarterly Reporting: First Report to be Filed on Form 10–Q. Current Rules 13a–13 and 15d–13 require that after an issuer's first registration statement becomes effective, reports be filed on Form 10–Q commencing with the first quarter ending after effectiveness. Because financial statements in a registration statement may be up to 134 days old when the registration statement becomes effective,[87] a registrant with a December 31 year end whose registration statement became effective on April 14, including financial statements as of December 31 of the prior year, would not be required to file a quarterly report for the quarter ending on March 31. Instead, the registrant would be required to file its first report on Form 10–Q for the quarter ending June 30.

The proposed amendments to these rules eliminate any such gap in the reporting period between the financial information included in a registration statement and the first report on Form 10–Q. Under the proposals, the registrant described above would be required to file a quarterly report for the quarter ending March 31.[88] The requirement to file quarterly reports would commence with the first fiscal quarter following the most recent fiscal year or full quarter for which financial statements were included in the registration statement.[89]

As proposed, a first-time registrant would be required to file its first Form 10–Q the later of 45 days after the effectiveness of the registration statement, or the date on which such report would have been required to be filed if the issuer had been a reporting company as of its last fiscal quarter. Thus, the registrant described above would be required to file its first quarterly report for the quarter ending March 31 within 45 days after April 14, the date of effectiveness. As is currently the case, first-time registrants generally would be required to commence filing quarterly reports at the time specified, regardless of whether they have operations during this period.[90]

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[79] *See* Rule 3–05(b) of Regulation S–X [17 CFR 210.3–05(b)] and Rule 14a–3(b)(1) of the proxy rules. Rule 3–05(b) is referred to in Form 8–K under the Exchange Act and the Securities Act registration statement forms (except Form S–18 [17 CFR 239.28]).

[80] *See* Rules 3–02(a) [17 CFR 210.3–02(a)] and 3–05(b) of Regulation S–X, Rule 14a–3(b)(1) of the proxy rules, and Item 21(d) of Form S–18. The Securities Act registration statement forms (except Form S–18) and Exchange Act Forms 8–K, 10, and 10–K all require financial statements prepared in accordance with Regulation S–X.

[81] Where there has been a significant acquisition by the issuer, proposed new Rule 3–06 also would permit the filing of financial statements of the company being acquired covering a period of nine to 12 months in satisfaction of a requirement for one year of financial statements, if the required financial statements for all other periods cover the full time span. In addition, under the proposals, the filing of financial statements covering a period of nine to 12 months would satisfy a requirement for one year of financial statements where the Commission so permits pursuant to Rule 3–13 of Regulation S–X [17 CFR 210.3–13].

[82] This provision also would apply to information statements. *See* Rule 14c–3(a)(1) [17 CFR 240.14c–3(a)(1)], which requires that the information specified in Rules 14a–3(b)(1) through (b)(11) [17 CFR 240.14a–3(b)(1)–(11)] also be given to shareholders who receive information statements.

[83] *See* Rule 3–18 of Regulation S–X [17 CFR 210.3–18].

[84] *See* proposed new paragraph (d); current paragraphs (d) and (e) would be redesignated.

[85] Rule 3–01(b) of Regulation S–X [17 CFR 210.3–01(b)] permits specified registrants to use unaudited financial statements that are at least as current as the third fiscal quarter of the most recently completed fiscal year if their registration statement is filed within 45 days after the end of the most recent fiscal year. Thus, under the current rules, a first-time registrant under the Securities Act with a December 31, 1987 year end that changed its year end in 1988 to May 31, 1988 could file unaudited financial statements covering the transition period from January 1, 1988 through May 31, 1988 and unaudited financial statements covering the subsequent nine months ending February 28, 1989 in a registration statement and attempt to have that registration statement declared effective on July 14, 1988. The most recently audited financial statements in the registration statement would cover the year ending December 31, 1987.

[86] Rule 3–01(b) provides that the audited financial statements of the prior fiscal year may not be used more than 45 days after the end of the current fiscal year, unless the specified circumstances in Rule 3–01(c) [17 CFR 210.3–01(c)] exist, which include the requirement that the registrant be filing reports pursuant to section 13 [15 U.S.C. 78m] or 15(d). In addition, Rule 3–01(a) [17 CFR 210.3–01(a)] requires a registrant that has been in existence for less than one fiscal year to file audited financial statements within 135 days of the date of filing the registration statement.

[87] Rule 3–12(a) of Regulation S–X [17 CFR 210.3–12(a)].

[88] *Cf.* Rule 15d–2 [17 CFR 240.15d–2], which eliminates a similar reporting gap by requiring an issuer whose registration statement becomes effective after a fiscal year end without financial statements as of such fiscal year end in the prospectus to file a special report within 90 days of effectiveness on the form appropriate for annual reports of the registrant. The special report must include audited financial statements for the last full fiscal year.

[89] *See* proposed Rules 13a–13(a) and 15d–13(a).

[90] Generally, the staff has taken the position that registrants under the Securities Act whose

Continued

III. Request For Comments

Any interested persons wishing to submit written comments on the proposed amendments to Exchange Act Rules 12b–25, 13a–10, 13a–13, 14a–3, 15d–10, and 15d–13, Forms 8–K, 10–K, 10–Q, 20–F, and 12b–25, proposed new Investment Company Act Rule 30b1–3, the proposed amendments to Investment Company Act Rules 8b–16 and 30b1–2 and Form N–SAR, proposed new Rule 3–06 and the proposed amendment to Rule 3–12 of Regulation S–X, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[51]

IV. Cost-Benefit Analysis

To evaluate the costs and benefits associated with the proposed amendments to Exchange Act Rules 12b–25, 13a–10, 14a–3, and 15d–10, Forms 8–K, 10–K, 10–Q, 20–F, and 12b–25, proposed new Investment Company Act Rule 30b1–3, the proposed amendments to Investment Company Act Rules 8b–16 and 30b1–2 and Form N–SAR, proposed new Rule 3–06 and the proposed amendment to Rule 3–12 of Regulation S–X, the Commission requests commentators to provide views and data as to the costs and benefits associated with these proposals.

The proposed amendments to Rules 13a–10 and 15d–10 would require that transition reports be filed for all transition periods, including those of less than three months. Currently, transition reports are not required for transition periods of less than three months, although separate audited financial statements must be filed to report on such transition periods with the issuer's next annual report. This change could result in some additional reporting costs to those issuers that change their fiscal year end by less than three months, although, in light of the subsequent auditing requirement, such costs may not be significant.

On the other hand, the proposals would permit domestic issuers to file transition reports covering transition periods shorter than six months on the abbreviated reporting format of Form 10–Q. Foreign private issuers would use Form 20–F and respond only to certain specified items. As all transition reports currently are required to be filed on the more lengthy and comprehensive annual reporting forms, this change could result in substantial cost savings for those issuers that change their fiscal year end by three but less than six months.

The proposals also would require issues to file a Form 8–K announcing a change in fiscal year end, which could impose some additional costs. However, the other proposals generally would codify current rule interpretations by the staff, which would provide specific guidance to issuers on the transition and quarterly reporting requirements and lessen administrative burdens on the Commission in responding to inquiries concerning such requirements. Further, the proposals would clarify and thereby provide certainty for the transition and quarterly reporting requirements when an issuer changes its fiscal year end.

The proposed new Rule under the Investment Company Act, which is tailored to an investment company's annual or semi-annual reporting obligations, would codify and clarify current practices and should not impose any new costs or obligations on investment companies.

The Commission also requests views and data as to the costs and benefits associated with amending Rules 13a–13 and 15d–13 to require a new registrant to file its first report on Form 10–Q for the first quarterly period other than the fourth quarter ending after the annual or quarterly period covered by the most recent financial statements included in its effective registration statement. This proposed revison would benefit investors by providing more timely and complete financial information about a first-time registrant for the period following the latest financial information in an effective registration statement.

V. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to Exchange Act Rules 12b–25, 13a–10, 13a–13, 14a–3, 15d–10, and 15d–13, Forms 8–K, 10–K, 10–Q, 20–F, and 12b–25, proposed new Investment Company Act Rule 30b1–3 and the proposed amendments to Investment Company Act Rules 8b–16 and 30b1–2 and Form N–SAR, proposed new Rule 3–06 and the proposed amendment to Rule 3–12 of Regulation S–X. The analysis notes that the proposed amendments are intended to update the rules concerning transition reporting, integrate them with the current periodic reporting system, codify staff rule interpretations and address issues concerning quarterly reporting raised repeatedly by registrants when changing their fiscal year end. The proposed amendments to the quarterly reporting rules are intended to eliminate a reporting gap by modifying the period for which a new registrant's first quarterly report must be filed.

The proposed amendments to Rules 13a–10 and 15d–10 may not result in any significant increase in reporting, recordkeeping or compliance requirements, althought the Commission has solicited comment on the additional costs, if any, of reporting on transition periods of less than three months, given the requirement that audited information covering such periods be filed with the issuer's next annual report. These proposed amendments may result in a significant decrease in reporting, recordkeeping or compliance requirements for those issuers that change their fiscal year end by three but less than six months. The proposed amendments to Form 8–K and to Rules 13a–13 and 15d–13 may result in additional reporting requirements for some issuers. However, the other proposed amendments would neither increase nor decrease reporting, recordkeeping or compliance requirements.

The following significant alternatives were considered: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities. Such alternatives, however, were found not to be consistent with the goals of the Exchange Act as it relates to the protection of investors. A copy of the analysis may be obtained by contacting Barbara J. Green, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

registration statements are declared effective shortly before the end of their fiscal year, thereby creating Exchange Act reporting requirements pursuant to section 15(d), are required to file annual and quarterly reports even where the registrant has not commenced operations; for example, where the registrant is in the process of a best efforts offering and has not yet met the minimum, or where an acquisition by the registrant has not yet been completed pending regulatory approval.

[51] 15 U.S.C. 78w(a).

VI. Appendix

1. Examples of Reporting Under the Rule Proposals for a Domestic Issuer with a Dec. 31 Year End that Files Periodic Reports Pursuant to Section 13 or 15(d) of the Exchange Act

a. Decision made early in year to change year end to date already past with resulting transition period shorter than six months:

On March 1, 1988 the issuer decides to change year end to Jan. 31, 1988
—15 days after March 1, 1988 would file an 8–K
—90 days after Dec. 31, 1987 would file a 10–K covering full year from Jan. 1, 1987 through Dec. 31, 1987
—45 days after March 1, 1988 would file a transition report on Form 10–Q covering the transition period from Jan. 1, 1988 through Jan. 31, 1988
—45 days after April 30, 1988 would file a 10–Q covering the first quarter ending April 30, 1988 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter; the 10–K covering the full year from Feb. 1, 1988 through Jan. 31, 1989 would include audited financial statements for the month of January 1988

b. Decision made early in year to change year end to future date with resulting transition period shorter than six months:

On Feb. 1, 1988 the issuer decides to change year end to May 31, 1988
—15 days after Feb. 1, 1988 would file an 8–K
—90 days after Dec. 31, 1987 would file a 10–K covering full year from Jan. 1, 1987 through Dec. 31, 1987
—Either 45 days after Feb. 29, 1988 would file a 10–Q covering the period ending Feb. 29, 1988 coinciding with a quarter of the new fiscal year or 45 days after March 31, 1988 would file a 10–Q covering the quarter ending March 31, 1988 of the old fiscal year
—45 days after May 31, 1988 would file a transition report on Form 10–Q covering the transition period from Jan. 1, 1988 through May 31, 1988
—45 days after Aug. 31, 1988, would file a 10–Q covering the first quarter ending Aug. 31, 1988 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter; the 10–K covering the full year from June 1, 1988 through May 31, 1989 would include audited financial statements for Jan. 1, 1988 through May 31, 1988

c. Decision made early in year to change year end to future date with resulting transition period six months or longer:

On Feb. 1, 1988 the issuer decides to change year end to Sept. 30, 1988
—15 days after Feb. 1, 1988 would file an 8–K
—90 days after Dec. 31, 1987 would file a 10–K covering full year from Jan. 1, 1987 through Dec. 31, 1987
—45 days after March 31, 1988 and June 30, 1988 would file 10–Qs covering the quarters ending March 31, 1988 and June 30, 1988, respectively
—90 days after Sept. 30, 1988 would file a transition report on Form 10–K covering the transition period from Jan. 1, 1988 through Sept. 30, 1988
—45 days after Dec. 31, 1988, would file a 10–Q covering the first quarter ending Dec. 31, 1988 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter

d. Decision made late in year to change year end to date already past with resulting transition period shorter than six months

On Nov. 1, 1988 the issuer decides to change year end to Jan. 31, 1988
—45 days after Sept. 30, 1988 would file a 10–Q covering the quarter ending Sept. 30, 1988 of the old fiscal year
—15 days after Nov. 1, 1988 would file an 8–K
—45 days after Nov. 1, 1988 would file a transition report on Form 10–Q covering the transition period from Jan. 1, 1988 through Jan. 31, 1988
—90 days after Jan 31, 1989 would file a 10–K covering full year from Feb. 1, 1988 through Jan. 31, 1989, with regular timing of quarterly and annual reporting continuing thereafter; the 10–K would include audited financial statements for January 1988

e. Decision made late in year to change year end to date already past with resulting transition period six months or longer:

On Nov. 1, 1988 the issuer decides to change year end to Sept. 30, 1988
—15 days after Nov. 1, 1988 would file an 8–K
—90 days after Nov. 1, 1988 would file a transition report on Form 10–K covering the transition period from Jan. 1, 1988 through Sept. 30, 1988
—45 days after Dec. 31, 1988, would file a 10–Q covering the first quarter ending Dec. 31, 1988 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter

2. Examples of Reporting Under the Rule Proposals for a Management Investment Company Issuer With a December 31 Year End That Changes its Fiscal Year

a. On Feb. 1, 1988 decides to change year end to April 30
—60 days after April 30 would file Form N–SAR covering the period from Jan. 1 to April 30

b. On Feb. 1, 1988 decides to change year end to Sept. 30
—60 days after March 31 would file Form N–SAR covering the period from Jan. 1 to March 31

c. On April 1, 1988 decides to change year end to Jan. 31
—60 days after Aril 1 would file Form N–SAR covering the period from Jan. 1 to Jan. 31

d. On Oct. 1, 1988 decides to change the year end to Nov. 30
—60 days after Nov. 30 would file Form N–SAR covering the period from July 1 to Nov. 30

e. On Nov. 1, 1988 decides to change the year end to Jan. 31
—60 days after Nov. 1 would file Form N–SAR covering the period from July 1 to July 31

f. On Nov. 1, 1988 decides to change the year end to Sept. 30
—60 days after Nov. 1 would file Form N–SAR covering the period from July 1 to Sept. 30

VII. Statutory Basis

The amendments are being proposed pursuant to Sections 7 and 19(a) of the Securities Act of 1933, Sections 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934, and Sections 8, 30, and 38 of the Investment Company Act of 1940.

List of Subjects in CFR Parts 210, 240, 249, 270 and 274

Reporting and recordkeeping requirements, Securities.

VIII. Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26)) * * *

2. By adding new § 210.3–06 to read as follows:

§ 210.3–06 Financial statements covering a period of nine to twelve months.

Except with respect to registered investment companies, the filing of financial statements covering a period of nine to 12 months shall be deemed to satisfy a requirement for filing financial statements for a period of one year where:

(a) The issuer has changed its fiscal year;

(b) The issuer has made a significant business acquisition for which financial statements are required under § 210.3–05 of this chapter and the financial statements covering the interim period pertain to the business being acquired; or

(c) The Commission so permits pursuant to § 210.3–13 of this chapter.

Where there is a requirement for filing financial statements for a time period exceeding one year but not exceeding three consecutive years (with not more than 12 months included in any period reported upon), the filing of financial statements covering a period of nine to

12 months shall satisfy a filing requirement of financial statements for one year of that time period only if the conditions described in either paragraph (a), (b), or (c) of this section exist and financial statements are filed that cover the full fiscal year or years for all other years in the time period.

3. By amending § 210.3–12 by redesignating current paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding new paragraph (d) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(d) The age of the most recent audited financial statements included in a registration statement filed under the Securities Act of 1933 or filed on Form 10 [17 CFR 249.210] under the Securities Exchange Act of 1934 shall not be more than one year and 45 days old at the date the registration statement becomes effective if the registration statement relates to the security of an issuer that was not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.12b–25 by revising paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 20–F, 11–K, N–SAR or 10–Q.

(a) If all or any required portion of an annual or transition report on Form 10–K, 20–F, 11–K or a quarterly or transition report on Form 10–Q required to be filed pursuant to section 13 or 15(d) of the Act and the rules thereunder or if all or any portion of a semi-annual, annual or transition report on Form N–SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(2) * * *

(ii) Either the subject annual report, semi-annual report or transition report on Form 10–K, 20–F or 11–K, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report or transition report on Form 10–Q, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

* * * * *

3. By revising § 240.13a–10 to read as follows:

§ 240.13a–10 Transition reports.

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening date of its new fiscal year; *Provided, however,* That an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) If the transition period covers a period of six or more months, a report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards.

(c) If the transition period covers a period of less than six months, a report pursuant to this section shall be filed for the transition period not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on Form 10–Q (§ 249.308a of this chapter), shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period need not be filed in the annual report, if the audited balance sheet as of the end of the fiscal year prior to the transition period is filed.

(d) Every issuer that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year; and

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end.

Note to paragraphs (c) and (d): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason reconciling has not been undertaken.

(e) Every successor issuer with securities registered under Section 12 of this Act that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. If the transition period covers a period of six or more months, the report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than 30 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, the report shall be filed for the transition period on Form 10–Q (§ 249.308a of this chapter) not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section.

(f)(1) Paragraphs (a) through (e) of this section shall not apply to foreign private issuers authorized to use Form 20–F (§ 249.220f of this chapter) for annual reports required by Rule 13a–1 (§ 240.13a–1) of this chapter).

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) If the transition period covers a period of six or more months, the report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of less than six months, the report for the transition period shall be filed on Form 20–F responding to Items 3, 9, 15, 16, and 17 or 18. Such report shall be filed within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by either Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S–X (§ 210.10–01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period.

(g) The provisions of this rule shall not apply to investment companies required to file reports pursuant to Rule 30b1–1 (§ 270.30b1–1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(h) No filing fee shall be required for a transition report filed pursuant to this section.

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer authorized to use Form 20–F for annual reports required by Rule 13a–1 or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.2. to that form.

4. By amending § 240.13a–13 by revising paragraph (a) to read as follows:

§ 240.13a–13 Quarterly Reports on Form 10–Q (§ 249.308a of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to Section 12 of the Act and is required to file annual reports pursuant to Section 13 of the Act on Form 10–K (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a) of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10–Q as of its last fiscal year, whichever is later.

* * * * *

5. By amendment § 240.14a–3 by redesignating the Note to paragraph (b)(1) as Note 1 and adding Note 2 to paragraph (b)(1) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) * * *

Note 2: For purposes of complying with § 240.14a–3, if the registrant, other than a registered investment company, has changed its fiscal closing date, financial statements for period that covers a consecutive time span of 33 months or more (not more than 12 months included in any period reported upon) will be deemed to satisfy the requirements for statements of income and cash flow for the three most recent fiscal years.

* * * * *

6. By revising § 240.15d–10 to read as follows:

§ 240.15d–10 Transition reports.

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening date of its new fiscal year; *Provided, however,* that an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) If the transition period covers a period of six or more months, a report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited.

Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards.

(c) If the transition period covers a period of less than six months, a report pursuant to this section shall be filed for the transition period not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on Form 10–Q (§ 249.308a of this chapter), shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period need not be filed in the annual report, if the audited balance sheet as of the end of the fiscal year prior to the transition period is filed.

(d) Every issuer that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year; and

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end.

Note of paragraphs (c) and (d): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding period of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year the most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, as assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(e) Every successor issuer that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. If the transition period covers a period of six or more months, the report shall be filed for the transition period of the form appropriate for annual reports of the issuer not more than 90 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, the report shall be filed for the transition period on Form 10–Q (§ 249.308a of this chapter) not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section.

(f)(1) Paragraph (a) through (e) of this section shall not apply to foreign private issuers authorized to use From 20–F (§ 249.220f of this chapter) for annual reports required by Rule 15d–1 (§ 240.15d–1 of this chapter.)

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) If the transition period covers a period of six or more months, the report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. Such report shall be filed within six months after either the close of the transition period of the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of less than six months, the report for the transition period shall be filed on Form 20–F responding to Items 3, 9, 15, 16, and 17 or 18. Such report shall be filed within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S–X (§ 210.10–01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period.

(g) The provisions of this Rule shall not apply to investment companies required to file reports pursuant to Rule 30b1–1 (§ 270.30b1–1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(h) No filing fee shall be required for a transition report filed pursuant to this section.

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer authorized to use Form 20–F for annual reports required by Rule 15d–1 or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.2. to that form.

7. By amending § 240.15d–13 by revising paragraph (a) to read as follows:

§ 240.15d–13 Quarterly reports on Form 10–Q (§ 249.308a of this Chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to the Securities Act of 1933 and is required to file annual reports pursuant to Section 15(d) of the Securities Exchange Act of 1934 on Form 10–K (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interm period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10–Q as of its last fiscal quarter, whichever is later.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read, in part, as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.* * * *

2. By amending § 249.220f by revising the section heading and paragraphs (a) and (b), and adding a new paragraph (d) as set forth below.

Form 20–F is amended by revising the cover sheet above the line beginning with the words "Commission file number" and revising paragraphs (a) and (b) of, and adding a new paragraph (d) to General Instruction A as set forth below.

Note: The text of Form 20–F does not appear in the Code of Federal Regulations.

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any non-Canadian foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act (the "Exchange Act"), or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) A Canadian foreign private issuer may use this form as a registration statement under section 12(g) of the Exchange Act or as an annual or transition report under section 13(a) for a class of securities registered under section 12(g) only if such issuer does not have or has not had during the 12 months prior to the filing of the registration statement or annual or transition report any class of securities registered under section 12(b) of the Exchange Act or a reporting obligation (suspended or active) under section 15(d) of the Exchange Act and if such issuer has not issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10–K (§ 249.310 of this chapter).

* * * * *

(d) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the issuer changes its fiscal year end.

* * * * *

Form 20–F:

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHAnNGE ACT OF 1934 [*FEE REQUIRED*]

OR

☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [*FEE REQUIRED*]

For the fiscal year ended _____;

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

For the transition period from _____

* * * * *

General Instructions

A. Rule as to Use of Form 20–F.

(a) Any non-Canadian foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) A Canadian foreign private issuer may use this form as a registration statement under section 12(g) of the Exchange Act and as an annual or transition report under section 13(a) for a class of securities registered under section 12(g) only if such issuer does not have or has not had during the 12 months prior to the filing of the registration statement or annual or transition report any class of securities registered under section 12(b) of the Exchange Act or a reporting obligation (suspended or active) under section 15(d) of the Exchange Act and if such issuer has not issued its securities in a transaction to acquire by merger, consolidation, exchange or securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10–K (§ 249.310 of this chapter).

* * * * *

(d) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the issuer changes its fiscal year end.

* * * * *

3. By amending Form 8–K (§ 249.308) by renumbering current instructions B.2. through B.4. as B.3. through B.5. to the General Instructions to Form 8–K, adding a new instruction B.2., and adding new Item 8 as set forth below.

Note: The text of Form 8–K does not appear in the Code of Federal Regulations.

§ 249.308 Form 8–K, for current reports.

* * * * *

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports

1. * * *

2. A report on this form pursuant to Item 8 is required to be filed within 15 days after the date on which the registrant makes the determination to use a fiscal year end different from that used in its most recent filing with the Commission.

* * * * *

Item 8. Change in Fiscal Year.

If the registrant determines to change the fiscal year from that used in its most recent filing with the Commission, the date of such determination and the date of the new fiscal year end shall be reported.

* * * * *

4. By amending § 249.308a by revising the section heading, the second sentence and adding two new sentences after the second sentence as set forth below.

Form 10–Q is amended by revising General Instructions A.1. and A.2. and revising the cover sheet above the line beginning with the words "Commission file number" as set forth below.

Note: The text of Form 10–Q does not appear in the Code of Federal Regulations.

§ 249.308a Form 10–Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * A quarterly report on this form pursuant to § 240.13a–13 or § 240.15d–13 of this chapter shall be filed within 45

days after the end of the first three fiscal quarters of each fiscal year, but no quarterly report need be filed for the fourth quarter of any fiscal year. Form 10–Q also shall be used for transition and quarterly reports required to be filed pursuant to § 240.13a–10 or § 240.15d–10 of this chapter. Such transition or quarterly reports shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the registrant changes its fiscal year end.

FORM 10–Q

* * * * *

General Instructions

A. Rule as to Use of Form 10–Q.

1. Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–13 (17 CFR 240.13a–13) or Rule 15d–13 (17 CFR 240.15d–13). A quarterly report on this form pursuant to Rule 13a–13 or Rule 15d–13 shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

2. Form 10–Q also shall be used for transition and quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–10 (17 CFR 240.13a–10) or Rule 15d–10 (17 CFR 240.15d–10). Such transition or quarterly reports shall be filed in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10 applicable when the registrant changes its fiscal year end.

* * * * *

FORM 10–Q

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

☐ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended _____

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

* * * * *

5. By amending § 249.310 by revising the section heading and the text of the section, except for the first and last sentences as set forth below.

For 10–K is amended by revising General Instruction A, except for the first and last sentences, and the cover sheet above the line designated for the "Exact name of the registrant as specified in its charter" as set forth below.

Note: The text of Form 10–K does not appear in the Code of Federal Regulations.

§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

*** * * This form also shall be used for transition reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the registrant changes its fiscal year end. However, all schedules required by Article 12 of Regulation S–X may, at the option of the registrant, be filed as an amendment to the annual or transition report not later than 120 days after the end of the fiscal year covered by the report. * * ***

* * * * *

FORM 10–K

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 *[FEE REQUIRED]*

For the fiscal year ended _____

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 *[NO FEE REQUIRED]*

For the transition period from _____ to _____

Commission file number _____

* * * * *

6. By amending § 249.322 by revising the first sentence as set forth below. Form 12b–25 is amended by revising the cover sheet above the line reading "Read Attached Instruction Sheet Before Preparing Form. Please Print or Type," paragraph (b) of Part II, and the first sentence of Part III as set forth below.

Note: The text of Form 12b–25 does not appear in the Code of Federal Regulations.

§ 249.322 Form 12b–25, notification of late filing.

This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K, 20–F, or 11–K or a quarterly or transition report on Form 10–Q required by Section 13 or 15(d) of the Act or a semi-annual, annual or transition report on Form N–SAR required by section 30 of the Investment Company Act of 1940.* * *

FORM 12b–25

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

NOTIFICATION OF LATE FILING

(Check One)

☐ Form 10–K ☐ Form 11–K ☐ Form 20–F ☐ Form 10–Q

☐ Form N–SAR

For Period Ended: _____

☐ Transition Report on Form 10–K

☐ Transition Report on Form 20–F

☐ Transition Report on Form 10–Q

☐ Transition Report on Form N–SAR

For the Transition Period Ended: _____

* * * * * *

Part II—Rules 12b–25 (b) and (c)

* * * * * *

(a) * * *

(b) The subject annual report, semi-annual report, transition report on Form 10–K or Form 20–F, or portion thereof will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q, or portion thereof will be filed on or before the fifth calendar day following the prescribed due date; and

* * * * *

PART III—Narrative

State below in reasonable detail the reasons why Form 10–K, 11–K, 20–F, 10–Q, N–SAR, or the transition report or portion thereof could not be filed within the prescribed period.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–39; the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1, *et seq. * ***

2. By revising § 270.8b–16 to read as follows:

§ 270.8b–16 Amendments to registration statement.

Every registered management investment company which is required to file a semi-annual report on Form N–SAR, as prescribed by rule 30b1–1 [17 CFR 270.30b1–1], shall amend the registration statement required pursuant to Section 8(b) by filing, not more than 120 days after the close of each fiscal year ending on or after the date upon which such registration statement was filed, the appropriate form prescribed for such amendments.

3. By revising § 270.30b1–2 to read as follows:

§ 270.30b1–2 Semi-annual report for totally-owned registered management investment company subsidiary of registered management investment company.

Notwithstanding the provisions of rules 30a–1 and 30b1–1, a registered investment company that is a totally-owned subsidiary of a registered management investment company need not file a semi-annual report on Form N–SAR if financial information with respect to that subsidiary is reported in the parent's semi-annual report on Form N–SAR.

4. By adding §270.30b1–3 to read as follows:

§ 270.30b1–3 Transition reports.

Every registered investment company filing reports on Form N–SAR that changes its fiscal year end shall file a report on Form N–SAR not more than 60 calendar days after the later of either the close of the transition period or the date of the determination to change the fiscal year. In the case of a management investment company, the transition report shall not cover a period longer than six months; in the case of a unit investment trust, the transition report shall not cover a period longer than 12 months. No filing fee shall be required for a transition report filed pursuant to this rule.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq. * ***

2. By revising § 274.101 to read as follows:

§ 274.101 Form N–SAR, semi-annual report of registered investment companies.

This form shall be used by registered investment companies for semi-annual or annual reports to be filed pursuant to rule 30a–1 [17 CFR 270.30a–1] or 30b1–1 [17 CFR 270.30b1–1] in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder (same as § 249.300 of this chapter).

By the Commission.

June 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12975 Filed 6–8–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Consideration of Vocational Factors

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulation reflect longstanding policies followed by the Social Security Administration in making disability determinations and remove an ambiguity which exists in the present regulations regarding the factors that are considered when it is determined that a claimant is not disabled because he or she is able to do his or her past work. These proposed regulations do not reflect a substantive change in policy' they are intended only to clarify the longstanding agency implementation of the provisions of the Social Security Act (the Act) and their legislative history relating to disability determinations.

DATES: To be sure that your comments are considered, we must receive them no later than August 8, 1988.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulvard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7415.

SUPPLEMENTARY INFORMATION: Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act provide that an individual shall be determined to be under a disability "* * * only if his * * * impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *." This statutory language contemplates consideration of a claimant's vocational factors of age, education, and work experience only in connection with the inquiry into the claimant's ability to do other work, not the kind of work done in the past.

In adjudicating a claim for benefits based on disability, we use a five step sequential evaluation process set out at §§ 404.1520 and 416.920. At step four of this process, if the claim has not been allowed or denied under one of the first three steps, we determine whether the claimant is able to do the work he or she did in the past. If the claimant can do work he or she did in the past, the claimant is not disabled. If he or she cannot do that past work, we must then decide at the fifth and final step whether, considering the claimant's age, education, and work experience, the claimant can perform other work which exists in the national economy.

In various sections throughout 20 CFR Part 404, Subpart P, including Appendix 2 to that Subpart and Part 416, Subpart I, and in Social Security Rulings (SSRs) our policy is consistently stated that the vocational factors of age, education, and work experience are considered only in determining whether a claimant is capable of doing any work other than that he or she did in the past.

Although section 223(d)(2)(A) and 1614(a)(3)(B) of the Act and the regulations we have promulgated to reflect these provisions contemplate consideration of the vocational factors only in connection with the inquiry we make a step five of the sequential evaluation process into the ability of the claimant to do other work, §§ 404.1560 and 416.960 do not state this longstanding interpretation of the statute with sufficient clarity. The existing ambiguity in these regulatory provisions was recently pointed our in

Velazquez v. Heckler, 802 F. 2d 680 (3d Cir. 1986). To remove this ambiguity, we propose to amend these two provisions to state, pursuant to our longstanding implementation of these provisions of the Act and their legislative history, that the vocational factors of age, education, and work experience are not considered in determining whether a claimant is able to do his or her past relevant work.

These proposed changes emphasize at what step in the sequential evaluation process the vocational factors of age, education, and work experience are considered. The current regulations §§ 404.1560 and 416.960 are being clarified to emphasize that consideration of whether a person can do past relevant work involves only the comparison of residual functional capacity with the physical and mental demands of that work and does not involve consideration of vocational factors.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. SSA estimates these changes will have little or no impact on title II or title XVI benefit payments or administrative costs. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only disability claimants and beneficiaries under title II and title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget. All information necessary to make the disability decisions discussed in these regulation is presently collected using forms which have the Office of Management and Budget's clearance.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: December 2, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 1, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950——)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

20 CFR Part 404, Subpart P, is amended as follows:

1. The authority cRation for Subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 223(a) and (i), 222(c), 223, 225 and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b) and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425 and 1302; sec. 505(a) of Pub. L. 96–265; 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1805.

2. Section 404.1560 is revised to read as follows:

§ 404.1560 When your vocational background will be considered.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, a child's insurance benefits based on disability before age 22 and we cannot decide whether you are disabled on medical evidence alone, we will consider your residual functional capacity together with your vocational background.

(b) *Past Relevant Work.* We will first compare your residual functional capacity with the physical and mental demands of the kind of work you have done in the past. If you still have the residual functional capacity to do your past relevant work, we will find that you can still do your past work, and we will determine that you are not disabled, without considering your vocational factors of age, education, and work experience.

(c) *Other Work.* If we find that you can no longer do the work you have done in the past, we will then consider your residual functional capacity together with your vocational factors of age, education, and work experience to determine whether you can do other work (jobs) that exists in significant numbers in the national economy.

PART 416—SUPPLEMENTARY SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, are amended as set forth below.

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1805.

2. Section 416.960 is revised to read as follows:

§ 416.960 When your vocational background will be considered.

(a) *General.* If you are age 18 or older and applying for benefits based on disability and we cannot decide whether you are disabled on medical evidence alone, we will consider your residual functional capacity together with your vocational background.

(b) *Past Relevant Work.* We will first compare your residual functional capacity with the physical and mental demands of the kind of work you have done in the past. If you still have the residual functional capacity to do your past relevant work, we will find that you can still do your past work, and we will determine that you are not disabled, without considering your vocational factors of age, education, and work experience.

(c) *Other Work.* If we find that you can no longer do the work you have done in the past, we will then consider your residual functional capacity together with your vocational factors of age, education, and work experience to determine whether you can do other work (jobs) that exists in significant numbers in the national economy.

[FR Doc. 88-12996 Filed 6-8-88; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Reduction Because of Entitlement to Other Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration proposes to amend its regulations in the case of a deceased insured individual who is simultaneously entitled to retirement and disability benefits. Specifically, this proposed regulation delineates those persons who may elect the type of benefit that will be the basis for monthly payments due to the insured before the insured's death.

DATES: To be sure that your comments are considered, we must receive them no later than August 8, 1988.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Duder, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 594–7459.

SUPPLEMENTARY INFORMATION:

Background

Section 404.407(c) of the regulations provides that in cases of simultaneous entitlement to retirement and disability insurance benefits (RIB/DIB), the insured individual will receive the larger benefit unless he or she elects to receive the smaller. An insured individual age 62 to 65 may be entitled to a higher benefit if he or she receives the DIB. However, because of the way the maximum family benefits are computed, the auxiliaries who are entitled on the record may share a smaller maximum family benefit. Thus, an individual entitled to both RIB and DIB may elect the smaller of the two benefits in order to maximize total family benefits.

Generally, an individual must be alive when an application for benefits is filed. However, in the case of a deceased insured individual, an application for DIB may be filed by someone other than the insured individual within 3 months after the month of the insured individual's death. In this regard, the regulations at § 404.612(d) provide that a person qualified to receive benefits due the deceased can file an application for DIB after the death of the insured individual. However, strict interpretation had been made of § 404.407(c) so that no one other than the insured individual (or proper applicant on behalf of a living insured individual) could make the election described in § 404.407(c). This can result in an overpayment if the insured individual was entitled to RIB during his or her lifetime, but died before his or her DIB claim was filed or adjudicated. Under current policy, overpayments in family maximum cases are created because even though the DIB monthly benefit is higher than the RIB monthly benefit, the RIB family maximum is higher than the DIB family maximum. The regulations do not currently provide for anyone other than the insured individual to exercise the § 404.407(c) election. A favorable adjudication of a DIB claim subsequent to the death of an insured individual who was receiving RIB payments could result in an overpayment for the period during which the insured was simultaneously entitled to both benefits. An overpayment can occur if the family maximum is lowered as a result of the DIB and no one is authorized to elect the RIB on behalf of the deceased insured.

Proposed Change

We propose to amend § 404.407(c) to state that a person defined in § 404.612(a) (if the claimant is competent), (c) (if the claimant is incompetent), or (d) (if the insured individual is deceased) may make the election described in § 404.407(c).

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because there will be no significant costs in implementing these proposed regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations do not impose any new recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, Disability Insurance.

Dated: February 12, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 6, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart E of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. In § 404.407 paragraph (c) is revised to read as follows:

§ 404.407 Reduction because of entitlement to other benefits.

* * * * *

(c) *Entitlement to old-age insurance benefit and disability insurance benefit.* Any individual who is entitled for any month after August 1965 to both an old-age insurance benefit and a disability insurance benefit shall be entitled to only the larger of such benefits for such month, except that where the individual so elects, he or she shall instead be entitled to only the smaller of such benefits for such month. Only a person defined in § 404.612(a), (c), or (d) may make the above described election.

* * * * *

[FR Doc. 88-12997 Filed 6-8-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-3-87]

Income Taxes; Exclusion From Gross Income of Qualified Scholarships

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exclusion from gross income of qualified scholarships. Changes to the applicable law were made by the Tax Reform Act of 1986. These regulations would provide necessary guidance to Internal Revenue Service personnel who administer the Internal Revenue Code and members of the public who are subject to these laws.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 8, 1988. These amendments are proposed to be generally effective for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-3-87) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:LR:T) (202-566-3287) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 117 and 6041 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations under section 117 and section 6041 to the changes made by section 123(a) of the Tax Reform Act of 1986 (1986 Act) (Pub. L. 99-514, 100 Stat. 2112).

In General

The 1986 Act amended section 117 of the Code, relating to the exclusion from gross income of scholarships or fellowship grants. Section 117(a) provides that gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(ii). An individual who is not a candidate for a degree must include in gross income any amount received as a scholarship or fellowship grant. Proposed § 1.117-6(c)(4) defines the term candidate for a degree. Proposed § 1.117-6(c)(1) provides that a qualified scholarship is any amount received by an individual as a scholarship or fellowship grant and used for qualified tuition and related expenses. As defined in proposed § 1.117-6(c)(2), qualifed tuition and related expenses are tuition and fees required for enrollment or attendance at an educational organization, and fees, books, supplies, and equipment required for courses of instruction. Qualified tuition and related expenses do not include any amount received as a scholarship or fellowship grant and used for room and board or incidental expenses such as travel, research, or clerical help. Thus, any such amount is not excludable from gross income.

Under proposed § 1.117-6(h), any amount of a scholarship or fellowship grant in excess of the amount permitted to be excluded from gross income under proposed § 1.117-6(b) is considered earned income for purposes of section 63(c)(5) (relating to the standard deduction for dependents) and section 6012(a)(1)(C)(i) (relating to dependents required to make returns of income).

Section 117(d) provides that gross income does not include any amount received as a qualified tuition reduction. This document does not provide proposed regulations with respect to section 117(b). Proposed regulations addressing matters relating to section 117(d) are expected to be provided by another regulations project.

Scholarships Representing Payment for Services

The general rule providing for an exclusion from gross income of qualified scholarships is limited under section 117(c) to qualified scholarship amounts that do not represent payment for teaching, research, or other services by the recipient required as a condition to receiving the qualified scholarship. Section 117(c) also applies to qualified tuition reductions (as defined under section 117(d)).

Under proposed § 1.117-6(d)(1), that portion of a scholarship or fellowship grant that represents payment for services is included in gross income, regardless of whether such services are required of all candidates for the degree as a condition to receiving the degree.

Proposed § 1.117-6(d)(2) provides that a scholarship or fellowship grant represents payment for services when the grantor requires the recipient to perform services in return for the granting of the scholarship or fellowship. A requirement that the recipient pursue studies, research, or other activities primarily for the benefit of the grantor is treated as a requirement to perform services. The granting of a scholarship or fellowship is considered to be in return for services whether such services are required to be performed before, concurrent with, or after receiving the scholarship or fellowship grant.

If only a portion of a scholarship or fellowship grant represents payment for services, the grantor must determine the amount of the scholarship or fellowship grant (including any reduction in tuition or related expenses) to be allocated to payment for services. Proposed § 1.117-6(d)(3) provides rules for determining what portion of the scholarship or fellowship grant must be allocated by the grantor to payment for services, and indicates some of the factors to be considered in making that allocation. If the recipient includes in gross income the amount allocated by the grantor to payment for services and such amount represents reasonable compensation for these services, then any additional amount of a scholarship or fellowship grant received from the same grantor that meets the requirements of proposed § 1.117-6(b) is excludable from gross income.

Effectie Date Rules

Section 117, as amended by the 1986 Act, generally applies to taxable years beginning on or after January 1, 1987. However, under proposed § 1.117-6(f), section 117, as in effect prior to its amendment by the 1986 Act, continues to apply to a scholarship or fellowship granted before August 17, 1986, whenever received. In addition, section 117, as in effect prior to its amendment by the 1986 Act, applies in the case of a scholarship or fellowship granted after August 16, 1986, and before January 1, 1987, to the extent of any amount received prior to January 1, 1987, that is attributable to expenditures incurred before January 1, 1987.

For purposes of the effective date rules, proposed § 1.117-6(f)(2) provides that a scholarship or fellowship is granted when the grantor either notifies the recipient of the award or notifies an organization or institution acting on behalf of a specified recipient of the award to be provided to such recipient. If the notification is sent by mail, notification occurs as of the date the notice is postmarked. If evidence of a postmark does not exist, the date on the award letter is treated as the notification date.

Under proposed § 1.117-6(f)(3), a scholarship or fellowship is considered granted before August 17, 1986, to the extent that, in a notice of award made before that date, the grantor made a firm commitment to provide the recipient with a fixed cash amount or a readily determinable amount. For purposes of this section, a condition that the recipient remain in good standing or maintain a specific grade point average, or a requirement that the recipient show continuing financial need is not taken into account in determining whether the grantor made a firm commitment to provide the scholarship or fellowship grant for more than one academic period.

Under proposed § 1.117-6(f)(3)(i), amounts treated as a scholarship or fellowship granted before August 17, 1986, must be applied against qualified tuition and related expenses before any amount treated as a scholarship or fellowship granted after August 16, 1986, may be eligible for exclusion as a qualified scholarship.

In addition, proposed § 1.117-6(f)(3)(i) provides that if a scholarship or fellowship initially awarded before August 17, 1986, is granted for a period exceeding one academic period (for example, a semester), amounts received in subsequent academic periods are treated as granted before August 17, 1986, only if: (a) The amount awarded for the first academic period is described in the original notice of award as a fixed cash amount or readily determinable amount; (b) the original notice of award contains a firm commitment by the grantor to provide the scholarship or fellowship grant for more than one academic period; and (c) the recipient is not required to reapply to the grantor in order to receive the scholarship or fellowship grant in future academic periods.

Proposed § 1.117-6(f)(3)(ii) provides that amounts received in subsequent academic periods that were not initially described in the notice of award as either fixed cash amounts or readily determinable amounts are treated as granted before August 17, 1986, but only to the extent of the amount granted for the initial academic period.

Reporting and Withholding Requirements

Under proposed § 1.6041-3(q), unless a scholarship or fellowship grant represents payment for services by the recipient, neither the grantor nor the educational organization attended by the recipient is required to file a return of information with respect to such grant. However, there are reporting and withholding requirements for scholarship or fellowship grants to nonresident aliens under section 1441 of the Code.

Under proposed § 1.117-6(d)(4), any amount of a scholarship or fellowship grant that represents payment for services is considered wages for purposes of section 3401(a). Therefore, such amounts are subject to section 3402 (relating to withholding for income taxes) and the grantor is subject to section 6051 (relating to reporting wages of employees) and is required to file Form W-2 with respect to scholarship or fellowship amounts representing payment for services. However, according to the rules set forth in sections 3121(b), 3306(c), and the regulations thereunder, the application of sections 3101 and 3111 (relating to the Federal Insurance Contributions Act (FICA)), or section 3301 (relating to the Federal Unemployment Tax Act (FUTA)) depends upon the nature of the employment and the status of the organization. When only a portion of a scholarship or fellowship grant represents payment for services, the grantor is subject to the reporting and withholding requirements only with respect to the portion that represents such payments.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB also send copies to those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Ruth Hoffman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, pesonnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.61-1 Through 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.6000-1 Through 1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6041-3(q) also issued under 26 U.S.C. 6041(a).

Par. 2. A new § 1.117-0 is added to read as follows:

§ 1.117-0 Outline of regulations pertaining to scholarships and fellowship grants.

(a) Section 1.117-1—Exclusion of amounts received as a scholarship or fellowship grant in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(b) Section 1.117-2—Limitations applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(c) Section 1.117-3—Definitions applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

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(d) Section 1.117-4—Items not considered as scholarships or fellowship grants in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(e) Section 1.117-5—Federal grants requiring future service as a federal employee pertaining to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(f) Section 1.117-6—Qualified scholarships.

Par. 3. Section 1.117-1 is amended by revising the heading to read as set forth below, inserting "and before August 17, 1986," after "July 28, 1958," in the first sentence of paragraph (b)(2)(i), and adding a new paragraph (c) to read as follows:

§ 1.117-1 Exclusion of amounts received as a scholarship or fellowship grant in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

* * * * *

(c) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 4. Section 1.117-2 is amended by revising the heading to read as set forth below, inserting "and before August 17, 1986," after "December 31, 1961," in the first sentence of paragraph (b)(1)(iii), and adding a new paragraph (c) to read as follows:

§ 1.117-2 Limitations applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

* * * * *

(c) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 5. Section 1.117-3 is amended by revising the heading to read as set forth below, inserting "of the Internal Revenue Code of 1954" after "151(e)(4)" in the first sentence of paragraph (b), inserting "of the Internal Revenue Code of 1954" after "151(e)(4)" in the last sentence of paragraph (b), and adding a new paragraph (f) to read as follows:

§ 1.117-3 Definitions applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

* * * * *

(f) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 6. Section 1.117-4 is amended as follows:

1. The heading is revised as set forth below.

2. The first sentence is revised by inserting "(a) *Applicability.*" before "The".

3. Paragraphs (a), (b), and (c) are redesignated as paragraphs (1), (2), and (3).

4. Paragraphs (1) and (2) of paragraph (3) as redesignated are redesignated as paragraphs (i) and (ii).

5. The second sentence of paragraph (3)(ii) as redesignated is amended by removing "subparagraph (1)" and adding in its place "subparagraph (i)".

6. A new paragraph (b) is added to read as set forth below.

§ 1.117-4 Items not considered as scholarships or fellowship grants in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

* * * * *

(b) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 7. Section 1.117-5 is amended by revising the heading to read as set forth below, adding a second sentence to paragraph (f), and adding a new paragraph (g) to read as follows:

§ 1.117-5 Federal grants requiring future service as a federal employee pertaining to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

* * * * *

(f) *Effective date.* * * * This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987.

(g) *Special rule; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 8. A new § 1.117-6 is added to read as follows:

§ 1.117-6 Qualified scholarships.

(a) *Outline of provisions.* This outline lists the paragraphs contained in § 1.117-6.

(a) Outline of provisions.
(b) Exclusion of qualified scholarships.
(c) Definitions.
(1) Qualified scholarship.
(2) Qualified tuition and related expenses.
(3) Scholarship or fellowship grant.
(i) In general.
(ii) Items not considered as scholarships or fellowship grants.
(4) Candidate for a degree.
(5) Educational organization.
(6) Examples.
(d) Inclusion of qualified scholarships and qualified tuition reductions representing payment for services.
(1) In general.
(2) Payment for services.
(3) Determination of amount of scholarship or fellowship grant representing payment for services.
(4) Characterization of scholarship or fellowship grants representing payment for services for purposes of the reporting and withholding requirements.
(5) Examples.
(e) Recordkeeping requirements.
(f) Effective date.
(1) In general.
(2) When a scholarship or fellowship is granted.
(3) Scholarships or fellowships granted before August 17, 1986.
(i) In general.
(ii) Amounts received in subsequent academic periods that were not initially described as fixed cash amounts or readily determinable amounts.
(iii) Examples.
(4) Expenditures incurred before January 1, 1987.
(g) Reporting and withholding requirements.
(h) Characterization of scholarship or fellowship grants exceeding amounts permitted to be excluded from gross income for purposes of the standard deduction and filing requirements for dependents.

(b) *Exclusion of qualified scholarships*—(1) Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), subject to the rules set forth in paragraph (d) of this section. Generally, any amount of a scholarship or fellowship grant that is not excludable under section 117 is includable in the gross income of the recipient for the taxable year in which such amount is received, notwithstanding the provisions of section 102 (relating to exclusion from gross incomes of gifts). However, see section 127 and the regulations thereunder for rules permitting an exclusion from gross income for certain educational assistance payments. See also section 162 and the regulations thereunder for the deductibility as a trade or business expense of the educational expenses of an individual who is not a candidate for a degree.

(2) If the amount of a scholarship or fellowship grant eligible to be excluded as a qualified scholarship under this paragraph cannot be determined when the grant is received because expenditures for qualified tuition and related expenses have not yet been incurred, then that portion of any amount received as a scholarship or fellowship grant that is not used for qualified tuition and related expenses within the academic period to which the scholarship or fellowship grant applies must be included in the gross income of the recipient for the taxable year in which such academic period ends.

(c) *Definitions*—(1) *Qualified scholarship.* For purposes of this section, a qualified scholarship is any amount received by an individual as a scholarship or fellowship grant (as defined in paragraph (c)(3) of this section), to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses (as defined in paragraph (c)(2) of this section). To be considered a qualified scholarship, the terms of the scholarship or fellowship grant need not expressly require that the amounts received be used for tuition and related expenses. However, to the extent that the terms of the grant specify that any portion of the grant cannot be used for tuition and related expenses or designate any portion of the grant for purposes other than tuition and related expenses (such as for room and board, or for a meal allowance), such amounts are not amounts received as a qualified scholarship. See paragraph (e) of this section for rules relating to recordkeeping requirements for establishing amounts used for qualified tuition and related expenses.

(2) *Qualified tuition and related expenses.* For purposes of this section, qualified tuition and related expenses are—

(i) Tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii); and

(ii) Fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

In order to be treated as related expenses under this section, the fees, books, supplies, and equipment must be required of all students in the particular course of instruction. Incidental expenses are not considered related expenses. Incidental expenses include expenses incurred for room and board, travel, research, clerical help, and equipment and other expenses that are not required for either enrollment or attendance at an educational organization, or in a course of instruction at such educational organization. See paragraph (c)(6), Example (1) of this section.

(3) *Scholarship or fellowship grant*—(i) *In general.* Generally, a scholarship or fellowship grant is a cash amount paid or allowed to, or for the benefit of, an individual to aid such individual in the pursuit of study or research. A scholarship or fellowship grant also may be in the form of a reduction in the amount owed by the recipient to an educational organization for tuition, room and board, or any other fee. A scholarship or fellowship grant may be funded by a governmental agency, college or university, charitable organization, business, or other source. To be considered a scholarship or fellowship grant for purposes of this section, any amount received need not be formally designated as a scholarship. For example, an "allowance" is treated as a scholarship if it meets the definition set forth in this paragraph. However, a scholarship or fellowship grant does not include any amount provided by an individual to aid a relative, friend, or other individual in the pursuit of study or research if the grantor is motivated by family or philanthropic considerations.

(ii) *Items not considered as scholarships or fellowship grants.* The following payments or allowances are not considered to be amounts received as a scholarship or fellowship grant for purposes of section 117:

(A) Educational and training allowances to a veteran pursuant to section 400 of the Servicemen's Readjustment Act of 1944 (58 Stat. 287) or pursuant to 38 U.S.C. 1631 (formerly section 231 of the Veteran's Readjustment Assistance Act of 1953).

(B) Tuition and subsistence allowances to members of the Armed Forces of the United States who are students at an educational instutition operated by the United States or approved by the United States for their education and training, such as the United States Naval Academy and the United States Military Academy.

(4) *Candidate for a degree.* For purposes of this section, a candidate for a degree is—

(i) A primary or secondary school student;

(ii) An undergraduate or graduate student at a college or university who is pursuing studies or conducting research to meet the requirement for an academic or professional degree; or

(iii) A full-time or part-time student at an educational organization described in section 170(b)(1)(A)(ii) that—

(A) Provides an educational program that is acceptable for full credit towards a bachelor's or higher degree, or offers a program of training to prepare students for gainful employment in a recognized occupation, and

(B) Is authorized under Federal or State law to provide such a program and is accredited by a nationally recognized accreditation agency.

The student may pursue studies or conduct research at an educational organization other than the one conferring the degree provided that such study or research meets the requirements of the educational

organization granting the degree. See paragraph (c)(6), Examples (2) and (3) of this section.

(5) *Educational organization.* For purposes of this section, an educational organization is an organization described under section 170(b)(1)(A)(ii) and the regulations thereunder. An educational organization is described in section 170(b)(1)(A)(ii) if it has as its primary function the presentation of formal instruction, and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. See paragraph (c)(6), Example (4) of this section.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On September 1, 1987, A receives a scholarship from University U for academic year 1987–1988. A is enrolled in a writing course at U. Suggested supplies for the writing course in which A is enrolled include a word processor, but students in the course are not required to obtain a word processor. Any amount used for suggested supplies is not an amount used for qualified tuition and related expenses for purposes of this section. Thus, A may not include the cost of a word processor in determining the amount received by A as a qualified scholarship.

Example (2). B is a scholarship student during academic year 1987–1988 at Technical School V located in State W. B is enrolled in a program to train individuals to become data processors. V is authorized by State W to provide this program and is accredited by an appropriate accreditation agency. B is a candidate for a degree for purposes of this section. Thus, B may exclude from gross income any amount received as a qualified scholarship, subject to the rules set forth in paragraph (d) of this section.

Example (3). C holds a Ph.D in chemistry. On January 31, 1988, Foundation X awards C a fellowship. During 1988 C pursues chemistry research at Research Foundation Y, supported by the fellowship grant from X. C is not an employee of either foundation. C is not a candidate for a degree for purposes of this section. Thus, the fellowship grant from X must be included in C's gross income.

Example (4). On July 1, 1987, D receives a $500 scholarship to take a correspondence course from School Z. D receives and returns all lessons to Z through the mail. No students are in attendance at Z's place of business. D is not attending an educational organization described in section 170(b)(1)(A)(ii) for purposes of this section. Thus, the $500 scholarship must be included in D's gross income.

(d) *Inclusion of qualified scholarships and qualified tuition reductions representing payment for services*—(1) *In general.* The exclusion from gross income under this section does not apply to that portion of any amount received as a qualified scholarship or qualified tuition reduction (as defined under section 117(d)) that represents payment for teaching, research, or other services by the student required as a condition to receiving the qualified scholarship or qualified tuition reduction, regardless of whether all candidates for the degree are required to perform such services. The provisions of this paragraph (d) apply not only to cash amounts received in return for such services, but also to amounts by which the tuition or related expenses of the person who performs services are reduced, whether or not pursuant to a tuition reduction plan described in section 117(d).

(2) *Payment for services.* For purposes of this section, a scholarship or fellowship grant represents payment for services when the grantor requires the recipient to perform services in return for the granting of the scholarship or fellowship. A requirement that the recipient pursue studies, research, or other activities primarily for the benefit of the grantor is treated as a requirement to perform services. A requirement that a recipient furnish periodic reports to the grantor for the purpose of keeping the grantor informed as to the general progress of the individual, however, does not constitute the performance of services. A scholarship or fellowship grant conditioned upon either past, present, or future teaching, research, or other services by the recipient represents payment for services under this section. See paragraph (d)(5), Examples (1), (2), (3) and (4) of this section.

(3) *Determination of amount of scholarship or fellowship grant representing payment for services.* If only a portion of a scholarship or fellowship grant represents payment for services, the grantor must determine the amount of the scholarship or fellowship grant (including any reduction in tuition or related expenses) to be allocated to payment for services. Factors to be taken into account in making this allocation include, but are not limited to, compensation paid by—

(i) The grantor for similar services performed by students with qualifications comparable to those of the scholarship recipient, but who do not receive scholarship or fellowship grants;

(ii) The grantor for similar services performed by full-time or part-time employees of the grantor who are not students; and

(iii) Educational organizations, other than the grantor of the scholarship or fellowship, for similar services performed either by students or other employees.

If the recipient includes in gross income the amount allocated by the grantor to payment for services and such amount represents reasonable compensation for those services, then any additional amount of a scholarship or fellowship grant received from the same grantor that meets the requirements of paragraph (b) of this section is excludable from gross income. See paragraph (d)(5), Examples (5) and (6) of this section.

(4) *Characterization of scholarship or fellowship grants representing payment for services for purposes of the reporting and withholding requirements.* Any amount of a scholarship or fellowship grant that represents payment for services (as defined in paragraph (d)(2) of this section) is considered wages for purposes of sections 3401 and 3402 (relating to withholding for income taxes), section 6041 (relating to returns of information), and section 6051 (relating to reporting wages of employees). The application of sections 3101 and 3111 (relating to the Federal Insurance Contributions Act (FICA)), or section 3301 (relating to the Federal Unemployment Tax Act (FUTA)) depends upon the nature of the employment and the status of the organization. See sections 3121(b), 3306(c), and the regulations thereunder.

(5) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On November 15, 1987, A receives a $5,000 qualified scholarship (as defined paragraph (c)(1) of this section) for academic year 1988–1989 under a federal program requiring A's future service as a federal employee. The $5,000 scholarship represents payment for services for purposes of this section. Thus, the $5,000 must be included in A's gross income as wages.

Example (2). B receives a $10,000 scholarship from V Corporation on June 4, 1987, for academic year 1987–1988. As a condition to receiving the scholarship, B agrees to work for V after graduation. B has no previous relationship with V. The $10,000 scholarship represents payment for future services for purposes of this section. Thus, the $10,000 scholarship must be included in B's gross income as wages.

Example (3). On March 15, 1987, C is awarded a fellowship for academic year 1987–1988 to pursue a research project the nature of which is determined by the grantor, University W. C must submit a paper to W that describes the research results. The paper does not fulfill any course requirements. Under the terms of the grant, W may publish C's results, or otherwise use the results of C's research. C is treated as performing services for W. Thus, C's fellowship from W represents payment for services and must be included in C's gross income as wages.

Example (4). On September 27, 1987, D receives a qualified scholarship (as defined in paragraph (c)(1) of this section) from University X for academic year 1987–1988. As a condition to receiving the scholarship, D performs services as a teaching assistant for X. Such services are required of all candidates for a degree at X. The amount of D's scholarship from X is equal to the compensation paid by X to teaching assistants who are part-time employees and not students at X. D's scholarship from X represents payment for services. Thus, the entire amount of D's scholarship from X must be included in D's gross income as wages.

Example (5). On June 11, 1987, E receives a $6,000 scholarship for academic year 1987–1988 from University Y. As a condition to receiving the scholarship, E performs services as a researcher for Y. Other researchers who are not scholarship recipients receive $2,000 for similar services for the year. Therefore, Y allocates $2,000 of the scholarship amount to compensation for services performed by E. Thus, the portion of the scholarship that represents payment for services, $2,000, must be included in E's gross income as wages. However, if E establishes expenditures of $4,000 for qualified tuition and related expenses (as defined in paragraph (c)(2) of this section), then $4,000 of E's scholarship is excludable from E's gross income as a qualified scholarship.

Example (6). During 1987 F is employed as a research assistant to a faculty member at University Z. F receives a salary from Z that represents reasonable compensation for the position of research assistant. In addition to salary, F receives from Z a qualified tuition reduction (as defined in section 117(d)) to be used to enroll in an undergraduate course at Z. F includes the salary in gross income. Thus, the qualified tuition reduction does not represent payment for services and therefore, is not includable in F's gross income.

(e) *Recordkeeping requirements.* In order to be eligible to exclude from gross income any amount received as a qualified scholarship (as defined in paragraph (c)(1) of this section), the recipient must maintain records that establish amounts used for qualified tuition and related expenses (as defined in paragraph (c)(2) of this section) as well as the total amount of qualified tuition and related expenses. Such amounts may be established by providing to the Service, upon request, copies of relevant bills, receipts, canceled checks, or other documentation or records that clearly reflect the use of the money. The recipient must also submit, upon request, documentation that established receipt of the grant, notification date of the grant, and the conditions and requirements of the particular grant. Subject to the rules set forth in paragraph (d) of this section, qualified scholarship amounts are excludable without the need to trace particular grant dollars to particular expenditures for qualified tuition and related expenses.

(f) *Effective date*—(1) *In general.* The rules of this section generally apply to taxable years beginning on or after January 1, 1987. However, section 117, as in effect prior to its amendment by the Tax Reform Act of 1986 (1986 Act), continues to apply to scholarships and fellowships granted before August 17, 1986, whenever received. In addition, section 117, as in effect prior to its amendment by the 1986 Act, applies in the case of scholarships and fellowships granted after August 16, 1986, and before January 1, 1987, to the extent of any amount received prior to January 1, 1987, that is attributable to expenditures incurred before January 1, 1987.

(2) *When a scholarship or fellowship is granted.* For purposes of this section, a scholarship or fellowship is granted when the grantor either notifies the recipient of the award or notifies an organization or institution acting on behalf of a specified recipient of the award to be provided to such recipient. If the notification is sent by mail, notification occurs as of the date the notice is postmarked. If evidence of a postmark does not exist, the date on the award letter is treated as the notification date.

(3) *Scholarships or fellowships granted before August 17, 1986*—(i) *In general.* For purposes of this section, a scholarship or fellowship is considered granted before August 17, 1986, to the extent that, in a notice of award made before that date, the grantor made a firm commitment to provide the recipient with a fixed cash amount or a readily determinable amount. A notice of award is treated as containing a firm commitment even if the scholarship or fellowship grant is subject to a condition that the recipient remain in good standing or maintain a specific grade point average. In addition, a requirement that the recipient file a financial statement on an annual basis to show continuing financial need is not treated as a requirement to reapply to the grantor. If a scholarship or fellowship, initially awarded before August 17, 1986, is granted for a period exceeding one academic period (for example, a semester), amounts received in subsequent academic periods are treated as granted before August 17, 1986, only if—

(A) The amount awarded for the first academic period is described in the original notice of award as a fixed cash amount or readily determinable amount;

(B) The original notice of award contains a firm commitment by the grantor to provide the scholarship or fellowship grant for more than one academic period; and

(C) The recipient is not required to reapply to the grantor in order to receive the scholarship or fellowship grant in future academic periods.

Scholarship or fellowship amounts treated as granted before August 17, 1986, must be applied against qualified tuition and related expenses before any amount of a scholarship or fellowship treated as granted after August 16, 1986, may be eligible for exclusion as a qualified scholarship.

(ii) *Amounts received in subsequent academic periods that were not initially described as fixed cash amounts or readily determinable amounts.* If the notice of award of a scholarship or fellowship grant satisfies the requirements of paragraph (f)(3)(i) of this section but does not describe the amount to be received in subsequent academic periods as either a fixed cash amount or readily determinable amount, then the amount received in each subsequent academic period that is treated as granted before August 17, 1986, may not exceed the amount granted for the initial academic period. To the extent that any amount received in a subsequent academic period, under the same notice of award, exceeds the amount received in the initial academic period, the excess amount is treated as a scholarship or fellowship granted after August 16, 1986.

(iii) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On January 7, 1985, A receives a notice of award under a federal program of a $500 scholarship for the academic period Spring 1985. A receives the $500 in February 1988. For purposes of this section the $500 scholarship is granted before August 17, 1986, and thus is subject to section 117 prior to its amendment by the 1986 Act.

Example (2). On May 7, 1986, B received a notice of award of a scholarship in the amount off $4,000 annually for four years. The total amount of this scholarship is a fixed cash amount. Thus, $16,000, the total amount of the scholarship for all four years, is subject to section 117 prior to its amendment by the 1986 Act.

Example (3). On May 7, 1986, C is notified of the award of the Y scholarship that will pay for C's tuition, room, and board for four years. The total amount of the Y scholarship is readily determinable. Thus, the total amount of the Y scholarship for all four years is subject to section 117 prior to its amendment by the 1986 Act.

Example (4). On May 7, 1986, D is notified that she is the recipient of a scholarship to attend university Z. The scholarship is not conditioned upon the performance of services by D. The notice provides that Z will award scholarship funds for four years and specifies

that D will receive $5,000 during the first year. D is not required to reapply in order to receive scholarship funds during years 2 through 4. However, the notice does not specify the scholarship funds to be received in years 2 through 4. The $5,000 received in year 1 is treated as granted before August 17, 1986, because this amount is a fixed cash amount described in the notice of award. In addition, because Z has made a specific commitment to provide scholarship funds during years 2 through 4 without requiring D to reapply for the scholarship, an amount from Z not exceeding $5,000 per year is treated as granted before August 17, 1986, during years 2 through 4. Thus, if D receives $4,000 from Z in year 2, the entire $4,000 is treated as granted before August 17, 1986. If, in year 3, D receives $6,000 from Z, only $5,000 of the amount received is treated as granted before August 17, 1986. The additional $1,000 received in year 3 is treated as granted after August 16, 1986. Whether this additional $1,000 is excludable from D's gross income depends upon the amount of qualified tuition and related expenses (as defined in paragraph (c)(2) of this section) incurred by D in year 3. Thus, if D's qualified tuition and related expenses for year 3 are $6,000, the entire $6,000 is excludable from D's gross income.

Example (5). Assume the same facts as in Example (4) except that D's qualified tuition and related expenses in year 3 are $5,500. D excludes the $5,000 that is treated as granted before August 17, 1986. However, this $5,000 must be applied against the total qualified tuition and related expenses of $5,500 owed by D for year 3 before any amount received from a scholarship or fellowship granted after August 16, 1986, may be excluded. The additional $1,000 received by D that is treated as granted after August 16, 1986, is excludable to the extent of $500, the amount by which qualified tuition and related expenses exceed the amount that is treated as granted before August 17, 1986. The remaining $500 scholarship amount must be included in D's gross income.

Example (6). Assume the same facts as in Example (4) except that D's qualified tuition and related expenses for year 3 are $5,000. The amount of D's qualified tuition and related expenses for year 3 is equal to the scholarship amount from Z treated as granted before August 17, 1986. Thus, no part of the $1,000 treated as granted after August 16, 1986, is excludable from D's gross income.

(4) *Expenditures incurred before January 1, 1987.* In the case of scholarships and fellowships granted after August 16, 1986, and before January 1, 1987, amounts received prior to January 1, 1987, that are attributable to expenditures incurred prior to January 1, 1987, are subject to section 117 as in effect prior to its amendment by the 1986 Act. For purposes of this section, an expenditure is incurred when it becomes properly due and payable by the recipient. However, expenditures relating to an academic period beginning after December 31, 1986, paid by the recipient before January 1, 1987, prior to the time when the recipient is billed for such expenditures, are not treated as expenditures incurred before January 1, 1987. Thus, if in December 1986 an educational organization billed a scholarship recipient for expenses relating to the academic period beginning in January 1987, and the recipient used scholarship amounts received prior to January 1, 1987, to pay the expenses on January 5, 1987, the scholarship amounts used to pay such expenses are considered attributable to expenditures incurred prior to January 1, 1987. If, however, on December 31, 1986, a scholarship recipient used scholarship amount to pay expenses relating to the academic period beginning in January 1987, before the recipient was billed for such expenses, the amounts used are not treated as attributable to expenditures incurred before January 1, 1987.

(g) *Reporting and withholding requirements.* For return of information requirements, see section 6041, 6051, and the regulations thereunder. For withholding from scholarships or fellowship grants representing payment for services, see sections 3401, 3402, and the regulations thereunder. For withholding from scholarships or fellowship grants of nonresident aliens, see section 1441 and the regulations thereunder. For the application of FICA, see sections 3101 and 3111. For the application of FUTA, see section 3301.

(h) *Characterization of scholarship or fellowship grants exceeding amounts permitted to be excluded from gross income for purposes of the standard deduction and filing requirements for dependents.* For purposes of section 63(c)(5) (relating to the standard deduction for dependents) and section 6012(a)(1)(C)(i) (relating to dependents required to make returns of income), any amount of a scholarship or fellowship grant in excess of the amount permitted to be excluded from gross income under paragraph (b) of this section is considered earned income. For example, on June 11, 1987, A, a student who has no other earned or unearned income for the year and can be claimed as a dependent on another taxpayer's return of tax, receives a $1,000 scholarship for room and board. The $1,000 must be included in A's gross income because it is not a qualified scholarship under paragraph (b) of this section. However, for purposes of sections 63(c)(5) and 6012(a)(1)(C)(i), the $1,000 is earned income. Accordingly, A is not required to file a return of tax for 1987 because A's gross income ($1,000) does not exceed A's standard deduction ($1,000) and A has no unearned income.

Par. 9. In § 1.6041-3, paragraph (q) is added to read as follows:

§ 1.6041-3 Payments for which no return of information is required under section 6041.

* * * * *

(q) Amounts paid to individuals as scholarships or fellowship grants, as defined in § 1.117-6(c)(3). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services, as defined in § 1.117-6(d)(2).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-12891 Filed 6-6-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-016]

Electrical Safety-Related Work Practices

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of hearing; extension of written comment period.

SUMMARY: This notice schedules an informal public hearing on the proposed standard on electrical safety-related work practices, which was published in the **Federal Register** on November 30, 1987 (52 FR 45530; correction notice: 53 FR 2047). It also extends the period for submission of written comments on the proposed rule.

DATES: The hearing will begin on August 9, 1988, at 9:30 a.m. and may continue for more than one day based on the number of notices of intention to appear which are received.

Notices of intention to appear at the public hearing must be postmarked by July 11, 1988.

Testimony and evidence to be introduced into the hearing record must be postmarked by July 29, 1988. Written comments by persons not appearing at the hearing must also be postmarked by July 29, 1988.

ADDRESSES: The informal public hearing will be held in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Four copies of written comments must be sent to Docket Office, Docket S-016, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Rm. N3670, Washington, DC 20210.

Four copies of notices of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall, OSHA, U.S. Department of Labor; 200 Constitution Avenue NW., Rm. N3647, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Rm. N3647, Washington, DC 20210, (202-523-8615). For information on how to submit notices of intention to appear, see the section of this notice entitled "Public Participation."

Proposal: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Rm. N3647, Washington, DC 20210, (202-523-8148).

SUPPLEMENTARY INFORMATION: On November 30, 1987, OSHA published a proposed standard on electrical safety-related work practices (52 FR 45530; correction notice: 53 FR 2047). The requirements of the standard were proposed to supplement the existing electrical installation requirements contained in 29 CFR Part 1910, Subpart S. Interested parties were given until February 29, 1988, to submit written comments on the proposal, to file objections, and to request a hearing.

Public Hearing

OSHA has received 45 comments on the proposal, including 6 requests for a hearing. In response to the objections raised and hearing requests received and in accordance with section 6(b)(3) of the Occupational Safety and Health Act, OSHA has scheduled an informal public hearing to be held on August 9, 1988. The hearing is being held to examine all issues raised by the proposal, including, but not limited to, the following:

(1) The United Steelworkers of America (Exhibit 4-45) objects to the removal of existing regulations, such as § 1910.265(c)(12), on the grounds that the existing provisions are more protective than the corresponding provisions in the proposal. OSHA requests information on which of the existing regulations that were proposed to be removed are more protective than the electrical safety-related work practices proposed to be added to 29 CFR Part 1910, Subpart S.

(2) The United Steelworkers of America (Exhibit 4-45) also argues that the proposal is too performance oriented. OSHA requests information on whether or not the proposal is too performance oriented, on what specific provisions are vague and unenforceable, and on what changes could be made to these provisions to make them enforceable.

(3) Two of the hearing requests object to the scope of the proposal (proposed § 1910.331). The Edison Electric Institute (Exhibit 4-10) objects to the application of the proposal to work on or near electric utilization installations within an electric power generating plant. The National Arborists Association (Exhibit 4-30) objects to the proposal's coverage of the tree care industry. In view of these objections, OSHA requests information on the issue of whether or not the scope of the standard is appropriate as proposed.

(4) Three of the hearing requests object to the proposed requirements related to training (proposed § 1910.332). They claim that the proposal's training provisions are inadequate and do not provide sufficient protection from electrical hazards. The AFL-CIO (Exhibit 4-32) suggests that the requirements be expanded to cover the qualifications of the trainer, duration of the training, and demonstration of effectiveness of the training. The United Steelworkers of America (Exhibit 4-45) suggests that all workers be required to receive training and that the amount of required training be increased. The International Brotherhood of Teamsters (Exhibit 4-26) objects to OSHA's failure to provide a description, in objective terms, of what exposure to electrical hazards would trigger the training provisions. In view of these objections, OSHA requests information on the issue of whether or not the proposed training requirements would provide adequate protection from electrical hazards. OSHA also requests specific modifications of the language proposed in § 1910.332 that would improve employee safety.

(5) Three of the hearing requests object to the proposed requirements for lockout and tagging of electric circuits and equipment (§ 1910.333(b)). The Edison Electric Institute (Exhibit 4-10) argues that OSHA's proposal is inconsistent with tagging procedures in use by electric utilities which provide sufficient protection to employees. The International Brotherhood of Teamsters (Exhibit 4-26) requests that the lockout and tagging provisions be strengthened. They argue that tags should not be permitted to be used without locks and that there should be one lock per employee working on a given piece of equipment. The AFL-CIO (Exhibit 4-32) recommends that the lockout and tagging provisions be expanded to cover non-electrical as well as electrical hazards. OSHA requests comments on the issue of whether or not the lockout and tagging requirements proposed in § 1910.333(b) are reasonable and appropriate for the protection of employees.

(6) The Edison Electric Institute (Exhibit 4-10) objects to the requirements proposed in § 1910.333(c)(3)(ii) pertaining to work by qualified persons near overhead power lines. They argue that only trained and experienced utility linemen should be permitted to install electrical protective equipment on overhead power lines and that anyone other than these employees, line-clearance tree trimmers, and communications workers should be required to maintain a minimum clearance of 10 feet from overhead power lines. OSHA therefore requests public comment on the issue of whether or not the standard should allow other qualified employees to come closer than 10 feet to overhead power lines and, if so, under what circumstances.

(7) Three of the hearing requests object to the manner in which the proposal differentiates between "qualified persons" and "unqualified persons." (The term "qualified person" is currently defined in existing § 1910.399.) The Edison Electric Institute (Exhibit 4-10), the International Brotherhood of Teamsters (Exhibit 4-26), and the National Arborists Association (Exhibit 4-30) are concerned that the definition, in conjunction with the training requirements proposed in § 1910.332, is vague and would pose enforcement and compliance problems. OSHA requests public comment on how the standard could be changed to make the definition of "qualified person" more clear and the standard more enforceable.

(8) The Amalgamated Clothing and Textile Workers Union (Exhibit 4-44) objects to OSHA's use of data that covers only an 18-month period and is over ten years old. OSHA is planning to submit additional accident data at the hearing and invites the public to submit electrical accident information as well.

(9) The International Brotherhood of Teamsters (Exhibit 4-26) suggests that recommendations contained in the National Institute for Occupational Safety and Health's (NIOSH) December 1986 Alert, *Request for Assistance in Preventing Fatalities of Workers Who Contact Electrical Energy*, be included in the standard. The hearing request specifically suggests adopting NIOSH's recommendations on the institution of a "buddy system" and on training for emergencies (including medical training). OSHA requests comments on whether or not such provisions should be included in the standard.

(10) The International Brotherhood of Teamsters (Exhibit 4–26) also objects to the proposal's differences from NFPA 70E, the national consensus standard that covers electrical safety work practices. In view of this objection, OSHA invites public comment on whether or not the standard as proposed would be more effective in protecting employees from electrical hazards than NFPA 70E and on how the differences from NFPA 70E affect employee safety.

(11) Two of the hearing requests (Exhibits 4–10 and 4–45) also contain comments on numerous provisions contained in the proposal. OSHA invites additional public comment on any of the requirements contained in the proposal.

Public Participation

Under section 6(b)(3) of the Occupational Safety and Health Act, and 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in this notice will be provided at an informal public hearing, which will begin on Tuesday, August 9, 1988, in Washington, DC.

Notice of Intention to Appear at Hearing. All persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear with Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8615. Filing of this notice entitles the participant to present information orally and to question witnesses at the hearing. This notice must be postmarked by July 11, 1988.

The notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office, must contain the following information:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and a summary of the evidence proposed to be adduced at the hearing.

Filing of Testimony and Evidence Before the Hearing. Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony including all documentary evidence to the OSHA Division of Consumer Affairs. This material must be postmarked by July 29, 1988. This material will be available for inspection and copying at the OSHA Docket Office.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

Conduct of the Hearing. The hearing will commence at 9:30 a.m. on August 9, 1988, in the Auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Written Comments. Interested persons are invited to submit written comments on the issues raised in the proposal and summarized in this notice. Written comments must be postmarked on or before July 29, 1988, and submitted, in quadruplicate, to the Docket Office, Docket No. S–106, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3670, Washington, DC 20210. (The telephone number of the Docket Office is (202) 523–7894.) Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Certification of Record and Final Determination After Hearing. Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued, or a determination will be made not to issue a rule, based on the entire record of the proceeding, including the written comments and data received from the public.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 2nd day of June 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–12925 Filed 6–8–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BERC–303–P]

Medicare Program; Health Maintenance Organizations and Competitive Medical Plans; Coordinated Open Enrollment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current Medicare requirements for enrollment of beneficiaries in health maintenance organizations (HMOs) and competitive medical plans (CMPs). It would require all HMOs and CMPs that have Medicare contracts to conduct open enrollment at least during the entire month of November of each year. During this period and any other open enrollment period provided by the organization it would be required to accept, without restriction and up to the limits of its capacity, all eligible Medicare beneficiaries who apply for enrollment in the order in which they apply. We also propose that all organizations contract with HCFA on a calendar year basis in order to facilitate the statutory requirement that individuals who enroll during the annual "coordinated enrollment period" will not have premium charges increased or additional benefits decreased for 12 months. These provisions would implement section 1876(c)(3)(A)(ii) of the Act, as amended by section 2350(a) of the Deficit Reduction Act of 1984 (Pub. L. 98–369). Establishment of a coordinated open enrollment period would give Medicare beneficiaries a better opportunity to consider the advantages of enrolling in an HMO or CMP and to compare the benefits offered and premiums charged by participating organizations. It would also serve to sharpen competition among these organizations.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 8, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–303–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Mayland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC, 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC–303–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT:

Frank Emerson, (301) 966–5650 (Reimbursement Issues).
Joan Mahanes, (301) 966–4642 (Issues other than reimbursement).
Stephen Balcerzak, (202) 245–0108 (Operational Issues).

SUPPLEMENTARY INFORMATION:

I. Background

A. General

A health maintenance organization (HMO) or a competitive medical plan (CMP) may be described generally as an organization that provides health care services, on a prepaid basis, to a group of persons who are enrolled as members.

Section 1876 of the Social Security Act (the Act), as amended by section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248, authorizes the Secretary to enter into contracts with HMOs and CMPs (herein referred to as eligible organizations) under which the organizations receive payment from the Health Care Financing Administration (HCFA) in return for providing Medicare covered services to Medicare beneficiaries who enroll in the organizations. Under this section of the Act, two types of contracts are available to eligible organizations: one that permits payment on a reasonable cost basis, and one that provides for payment on a risk basis.

B. Payments to Eligible Organizations

1. Reasonable Cost Payment

Under the reasonable cost payment method, payment is made to the eligible organization(s) on an interim basis using a monthly capitation rate. At the end of the eligible organization's contract term, payments are adjusted to equal the reasonable cost of the covered services the eligible organization furnished to its Medicare enrollees, using as a model the Medicare payment principles that are commonly used to calculate reasonable costs (as defined in section 1861(v) of the Act) for providers of services (also see Medicare regulations at 42 CFR 417.530 through 417.576).

2. Risk Payment

The authority to enter into risk contracts was established to encourage eligible organizations to participate in Medicare in a competitive manner and to provide incentives to competition in the health care field. In general, risk basis eligible organizations are paid each month, in advance, a predetermined rate for each Medicare beneficiary enrolled in the organization; the monthly capitation rate is not subject to adjustment based on actual use of services. The regulations implementing this authority are located at 42 CFR Part 417, Subpart C.

Section 1876 (a), (e), and (g) of the Act provides a process of prospective payment based on the Secretary's annual determination of an adjusted average per capita cost (AAPCC) for each class of Medicare enrollees in an eligible organization. In order to determine the appropriate payment amount, enrolled beneficiaries are first grouped into classes according to the following demographic factors: age, sex, Medicaid status, disability status, institutional status, and other relevant factors that HCFA determines have a significant effect on the use and costs of health care services. The AAPCC is an actuarial estimate made by HCFA of the average per capita cost that would have been incurred by the Medicare program on behalf of each class of Medicare enrollee of the organization if that class of enrollee had received its covered services from fee-for-service providers and suppliers in the same or similar geographic area serviced by the eligible organization.

In general, eligible organizations receive a monthly per capita payment in advance for each beneficiary who is registered in HCFA's records as a Medicare enrollee of the organization. The per capita payment equals 95 percent of the AAPCC for each class of enrollee.

This payment is subject to a reconciliation process to take into account any differences between the organization's actual number of Medicare enrollees in each class and the number of individuals estimated to be enrolled in each class when determining the amount of advanced payment.

Prior to each contract period, for purposes of determining whether or not a risk organization must provide its Medicare enrollees with additional benefits during the contract period, the following actions take place:

(1) HCFA furnishes to each eligible organization a per capita rate of payment for each class of Medicare enrollee (§ 417.584(b)(2)).

(2) Taking into account the information provided by HCFA in: (1) Above, the organization computes and provides to HCFA an estimated monthly per capita average payment rate (APR) based on the organization's anticipated enrollment distribution among the various classes of enrollees (§ 417.590).

(3) The organization computes and provides to HCFA its adjusted

community rate (ACR), which is then reviewed and approved (or modified, if necessary) by HCFA. The ACR is the equivalent of the premium that the organization would have charged Medicare enrollees for a benefit package limited to Medicare covered services independently of Medicare payments to the organization (for example, as if Medicare was not making payments to the organization) using the same financial assumptions the organization uses for its non-Medicare enrollees.

If the risk organization's ACR for Medicare covered services is less than the organization's APR for these services, the organization must either accept a reduced monthly payment from HCFA or provide its Medicare enrollees with additional benefits (in the form of additional services, a reduction in premiums or copayments, or a combination of these). The additional benefits must be at least equal in value to the difference between the ACR and the APR, unless the organization requests a reduction in its monthly payment from HCFA or requests that HCFA withhold a part of the value of the additional benefits it would otherwise be required to provide to its Medicare enrollees and place it in a benefit stabilization fund (BSF). The withholding of amounts in a BSF is for the purpose of stabilizing fluctuations in the availability of the additional benefits provided by an organization to its Medicare enrollees. An organization may request a withdrawal from its fund when the organization notifies HCFA of its ACR and APR for a future contract period to prevent excessive fluctuations in the provision of required additional benefits for that contract period. Regulations at §§ 417.580 through 417.586 implement those portions of the Act pertaining to an organization's BSF and the amount HCFA pays an organization for its Medicare enrollees who are enrolled on a risk basis.

Under section 1876(c)(2)(B) of the Act and § 417.440(b)(2) of the regulations, a Medicare enrollee of an organization may elect to pay for optional supplemental services that are offered by the organization in addition to the additional benefits required above. Subject to the approval of HCFA, a risk organization may also require Medicare enrollees to accept and pay for mandatory supplemental services that the organization selects and HCFA approves. (§ 417.440(b)(3)).

C. Contract and Enrollment Requirements

The original HMO/CMP legislation also established certain requirements with respect to contracts and enrollment procedures under section 1876 of the Act. These requirements apply to all eligible organizations, those under cost contracts and those under risk contracts.

Section 1876(i)(1) of the Act and §§ 417.474 and 417.490 of the regulations, require that each contract entered into between HCFA and an eligible organization will be for a term of at least 12 months and will be automatically renewable unless HCFA or the organization decides not to renew. During the annual term of the contract, all organizations including cost contractors, must guarantee the provision of all services required under the contract. Section 1876(c)(3)(A)(ii) of the Act and §§ 417.413(f) and 417.428 of the regulations require that each eligible organization have an annual open enrollment period for Medicare beneficiaries of at least 30 days duration. The statute and regulations also require that an eligible organization must enroll beneficiaries on a first-come, first-served basis during open enrollment unless it has received a waiver of the open enrollment requirement. An organization may apply for a waiver of the open enrollment requirement if compliance would prevent adherence to required limitations on enrollment of Medicare or Medicaid beneficiaries (for example, 50 percent of membership), or result in an enrollment substantially nonrepresentative of the population of the organization's geographic area.

An organization may also request permission to limit enrollments because of capacity limitations. In determining its enrollment capacity, an organization may reserve a reasonable number of vacancies for anticipated new groups (such as employer group health plans contracting with the organization) or new members of existing group contracts. Amended section 1876(c)(3)(B) of the Act and § 417.460(b) of the regulations provide that beneficiaries may file notice at any time of their intention to terminate their enrollment in an eligible organization and that the disenrollment will be effective with the first of the following month.

D. Deficit Reduction Act of 1984 (DEFRA)

Section 2350(a)(1) of DEFRA amended the open enrollment provisions under section 1876(c)(3)(A) of the Act. Section 1876(c)(3)(A)(ii) of the Act as amended, requires that for each area served by more than one eligible organization, the Secretary must establish (after consultation with these organizations) a single 30-day period each year during which all the organizations serving the area must provide for open enrollment. (Hereafter, this process will be referred to as coordinated open enrollment.) Eligible organizations may, at their option, provide for additional open enrollment periods as they deem appropriate.

Section 1876(c)(3)(A)(ii) of the Act as amended also requires the Secretary to determine an organization's rate of payment in a manner that assures that beneficiaries enrolling during the coordinated open enrollment period will not have their premiums increased or their benefits decreased for the 12 month enrollment period for which the beneficiary is enrolling. Section 2350(a)(2) of DEFRA authorized the Secretary to phase in coordinated open enrollment over a period of 3 years, if the Secretary determined that a single 30-day open enrollment period for all areas was not administratively feasible by the end of the 3-year period.

In considering this legislation, Congress expected the Secretary to take necessary measures to assure that an appropriate portion of an eligible organization's enrollment capacity is reserved to accommodate Medicare enrollees during coordinated open enrollment.

II. Major Provisions of the Proposed Regulations

In order to implement the statutory directive that annual per capita rates (AAPCC) be determined in a manner that assures that the benefit package not be decreased and premiums not be increased for at least 12 months for individuals who enroll during the coordinated open enrollment period, a single nationwide open enrollment period is necessary. Since payment rates are effective for 12 months beginning January 1, the effective date of enrollment for beneficiaries who enroll during the coordinated open enrollment period should also be January 1. However, until now we have been unable to produce the AAPCC figures early enough in a year to allow enough time to complete the necessary steps for holding a coordinated open enrollment that would result in the new enrollments taking effect the following January 1. This was because in several data areas, the major one being the final inpatient hospital prospective payment system (PPS) rates were not ready in time to allow us to calculate the AAPCC before September 7, allowing too little time for organizations to consider these rates, submit their benefit packages and ACR proposals for HCFA review, conduct a 30-day open enrollment, and process the enrollments by January 1.

Section 4062 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) enacted December 22, 1987 prescribes the update factors in advance for hospitals subject to PPS. As a result, we now have the PPS update factor prior to August 1. This statutory change makes it possible to calculate, and make available, the AAPCC rates by August 1 of each year.

This in turn also gives us time to complete the additional steps to implement coordinated open enrollment.

The provisions of the proposed regulations are discussed below.

A. Enrollment

In § 417.204(d), we propose that HMOs contracting under Subpart B (pre-TEFRA contracts) hold their annual open enrollment period during the month of November of each year.

In § 417.426(a), we propose that all organizations must provide a coordinated open enrollment period for Medicare beneficiaries during the month of November of each year (as opposed to a nonspecified 30-day period), in addition to any other open enrollment period the organization may provide.

In § 417.428(b), we propose that an eligible organization approaching its enrollment capacity must obtain a waiver of the open enrollment requirement. The waiver must specify a reasonable number of vacancies to be set aside for Medicare beneficiaries during the coordinated open enrollment period. The waiver request must be submitted to HCFA at least 90 days before the beginning of its coordinated open enrollment period. HCFA would evaluate the organization's submittal and notify the organization as to whether its proposal was approved or disapproved. If the organization fails to submit this information on a timely basis or fails to offer enrollment to the number of Medicare beneficiaries HCFA approves, HCFA could under the provisions of § 417.496(b), terminate or not renew the contract. Also, HCFA will refuse to process new enrollments for a plan that has failed to comply with coordinated open enrollment requirements until the following November's coordinated open enrollment.

In § 417.450, we propose that the effective month of coverage for a Medicare beneficiary who enrolls in an eligible organization during the organization's annual November coordinated open enrollment period would be the following January.

B. Benefit Protection

We would amend § 417.449 by adding paragraph (c) to specify that for Medicare beneficiaries who are enrolled in an organization for all or any part of a calendar year, the organization may not reduce any of the additional benefits required by statute or any of the mandatory or optional supplemental benefits offered by the organization, to which the beneficiaries are entitled, through December 31 of that year.

In a new paragraph (f) in § 417.452, we propose that the organization may not increase the beneficiaries liability for any premium or other charges that may apply to any benefits offered by the organization under the contract during the calendar year. We also propose that both § 417.460(c) and § 417.452(f) specify that organizations must notify Medicare enrollees prior to November 1 of benefit or premium changes that will be effective for the following calendar year.

In addition, in a new paragraph § 417.454(b), we propose that an organization may not increase charges to Medicare beneficiaries who are enrolled in an organization for all or any part of a calendar year, through December 31 of that year.

C. Contract Period Requirements

In § 417.401, we propose to add the definition of "calendar year" to mean the 12-month period of time beginning January 1 and ending December 31.

In § 417.474, we propose to add a new paragraph (d) to require that all organizations contract on a calendar year basis. For organizations currently contracting on other than a calendar year basis (or organizations seeking an initial contract to begin on any date other than January 1), the term of the first renewal contract (or first contract, for newly contracting organizations), after the effective date of these regulations, would begin the day after the date the organization's current contract terminates (or for new organizations the date the organization selects) and extend through December 31 of the following year, so that subsequent renewals will be on a calendar year basis.

In § 417.490, we propose that an organization's contract be renewed automatically for the next 12-month period beginning the following January 1 unless HCFA or the organization decides not to renew, or unless HCFA has extended the contract under the provisions at § 417.474, so that the contract term ends on December 31.

In § 417.494(a)(3), we would exempt an eligible organization from the requirement that it notify its Medicare enrollees of a contract termination if it terminates its contract on December 31 solely for the purpose of immediately beginning a calendar year contract. Likewise, HCFA would not notify the general public about the contract termination.

D. Risk Payment

We would revise § 417.584(b)(2) to provide that HCFA will make the payment rates for the following calendar year's contract period available not later than August 1 of each year.

In § 417.800 (a) and (c), we propose that if the contract period extends for more than one calendar year (in accordance with § 417.474(d)), the organization must prepare separate ACR and APR computations for each of the two calendar years in the contract period.

In § 417.582(d), we propose that a risk organization notify HCFA not later than September 15 before the beginning of the contract period of its ACR and APR calculations for the following year.

In § 417.584(f), we propose to add that if a contract extends for more than one calendar year, (under § 417.474(d)), the terms and conditions concerning computation of the ACR specified in § 417.594(a) through (e) apply separately in each of the two calendar years in the contract period.

In § 417.597, we are clarifying that requests for withdrawals from the benefit stabilization fund (BSF) apply to the period covered by the ACRs and APRs.

E. Other Changes

In §§ 417.401, 417.474(c), 417.582(d)(1), (2), and (e)(2), 417.594(b)(5), and 417.596(c)(1), we propose to make minor changes to conform these sections to the open enrollment and calendar year contract proposals.

III. Significant Issues Considered in Developing Proposal Regulations

A. Benefit Protection

As stated earlier, section 1876(c)(3)(A)(ii) of the Act requires the Secretary to determine an eligible organization's rate of payment in such a way that the Medicare beneficiaries who enroll during a coordinated open enrollment period will not have "premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective."

1. Benefit Protection for Persons Not Enrolling During a Coordinated Open Enrollment Period

We considered whether the benefit protection established under this section of the Act should apply to beneficiaries who enroll in the organization during

open enrollment periods other than the November coordinated open enrollment period. We determined all beneficiaries who are enrolled in the organization should be assured that benefits will not be decreased nor charges increased for a definite period of time. However, beneficiaries who enroll during open enrollment periods other than the November coordinated open enrollment period (as well as beneficiaries who are already enrolled in the organization as of January 1 of any year) should be guaranteed that charges will not be increased or benefits decreased through December 31 of the current year. This policy mirrors our current practice, except that HCFA will no longer permit organizations to impose premiums previously waived by the organization if HCFA must reduce payments under the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177, (also known as the Gramm-Rudman-Hollings Act).

2. Supplemental Services

We considered whether the benefit protection established under this section of the Act should apply to the provision of supplemental services authorized under section 1876(c)(2) of the Act. Supplemental services are services an organization may offer, in addition to certain additional benefits required by statute, for which the Medicare enrollee may elect to pay or, subject to the approval of HCFA, a risk organization may require Medicare enrollees to accept and pay for. We determined that the benefit protection clause set forth in the statute does apply to supplemental services because the statute does not distinguish between additional benefits required by statute and additional benefits that the beneficiary may elect or be required by the organization to purchase.

3. Contract Period

In meeting the benefit protection and rate determination requirements of the statute, we considered permitting the contract periods of risk organizations and periods of benefit protection for those enrolling during a coordinated open enrollment period to differ. We concluded that this would not be feasible since it would confuse Medicare beneficiaries, who would be treated differently by organizations depending on whether they enrolled during coordinated open enrollment or at some other time. Such a proposal would also be difficult for plans to administer since Medicare enrollees would be entitled to different benefits depending on whether they enrolled during coordinated open enrollment or any other enrollment period. Also, it would put the organization at risk of being incorrectly paid for services provided to their enrollees. As previously described in this preamble, a process of prospective payment was created for risk organizations whereby an organization receives monthly advance payments and determinations are made regarding additional benefits that must be provided to enrollees during a contract period based on certain calculations that are related to the organization's per capita rate of payment established under section 1876(a)(1)(A) of the Act. Per capita rates must be determined by HCFA on an annual basis (section 1876(g)(2) of the Act). Therefore, if the organization's contract were to expire during the period when coordinated open enrollment beneficiaries are protected from premium increases or benefit decreases, the organization would be forced to maintain the same benefit plan for those individuals even though the period of time on which benefit calculations were based had lapsed, and even though new calculations may indicate a need for premium or benefit changes in the new contract period.

We considered avoiding the situation of two sets of enrollees and plans operating simultaneously by extending the contract and the terms of the contract (payments and benefits established) for up to an additional 11 months with no change in payment rates. However, we concluded that this would not be reasonable because the calculations (that is, the prospective payment rates and benefit determination process) should be updated at least once every 12 months.

In view of these problems, we concluded that our proposed rules must require that the contract period and the 12 month benefit protection period coincide with a calendar year. (An exception would be made for organizations in transition to a calendar year contract period, as discussed in Section D below.)

B. National Coordinated Open Enrollment Period

Having established the need for the contract period and benefit protection period to be the same, we determined that it would be administratively more practical to establish a single month, nationwide, when all organizations would conduct a single coordinated open enrollment period rather than having different coordinated open enrollment periods for each geographic area. A single nationwide coordinated enrollment period would prevent hardships in several different circumstances. For instance, we believe that as new organizations proliferate, geographic areas will overlap creating the potential for different coordinated open enrollment periods for different sections of an organization's geographic area. It would be difficult for organizations to comply with this arrangement. A national coordinated open enrollment period for all organizations could be advertised more easily than different enrollment periods for different areas, and should result in additional convenience to Medicare beneficiaries planning changes in their health insurance. A national coordinated open enrollment period could result in an increase in enrollments as beneficiaries will have the opportunity to compare, at the same time, the advantages of enrolling in an eligible organization over remaining in the fee-for-service Medicare system.

Also, we have had experience, since the final HMO/CMP regulations were published in 1985, with some organizations choosing not to renew their contracts at the conclusion of their terms. A single national coordinated open enrollment period would facilitate the transfer of enrollees from non-renewing organizations to other organizations in the area. Without a single coordinated open enrollment period, organizations could simply close enrollment (assuming the required 30-day open enrollment period had been or would be conducted within a 12-month period) to enrollees wishing to transfer from non-renewing organizations.

In order to facilitate a calendar year period in which benefits would not be decreased nor charges increased, we selected the month of November as the 30-day period during which all eligible organizations must conduct a coordinated open enrollment. Applications for enrollment received during November could all be processed in time to make January the month in which a new enrollee's effective date of coverage would begin.

We believe January is the preferred month for several reasons. First, based on our contract experience to date with eligible organizations, January has been the month in which the majority of the contract periods have begun. Therefore, of the 12 months in a year, January would appear to be acceptable to the greatest number of risk organizations. Second, the Medicare statute provides that the AAPCC will be on a calendar year basis, and a 12-month calendar year payment ratebook (a table of per capita rates of payment for each class of Medicare enrollee in the organization based on a calendar year) coincides best with the necessary actuarial calculations we must make, both in terms of the availability of data and our workload.

Third, we considered exempting organizations in whose geographic area no other eligible organizations compete for enrollees since their inclusion is not required under the statute. However, the statute does not bar us from requiring those organizations to participate, and we have determined that their inclusion would simplify administration of the national coordinated open enrollment period.

Fourth, we considered whether coordinated open enrollment should apply to HMOs still contracting on a risk basis under rules in effect prior to the effective date of TEFRA. Section 114(c)(1)(B) of TEFRA provides that the TEFRA amendments to section 1876 of the Act will not apply with respect to services furnished by HMOs which had risk-sharing contracts in effect on the effective date of the TEFRA amendments for the following 5 year period (that is, until February 1, 1990). There are four HMOs contracting on this basis. Section 2350 of DEFRA does not distinguish between pre-TEFRA risk contractors and TEFRA contractors, and we believe that a single coordinated open enrollment period applicable to all contractors best serves the interest of the Medicare program. For these reasons, and because section 114(c)(1)(B) of TEFRA does not preclude our amending the regulations affecting enrollment in pre-TEFRA risk contracts (42 CFR Part 417, Subpart B), we propose to amend § 417.204(d) to provide that pre-TEFRA risk contracts hold their annual 30-day open enrollment period during the month of November. We have made this change so that all HMOs and CMPs with Medicare contracts will hold an open enrollment period simultaneously in November, to simplify administration of the national coordinated open enrollment period for HCFA, and for the convenience of beneficiaries who may wish to enroll.

C. Consultation Process

Section 1876(c)(3)(A)(ii) of the Act as amended, requires that the Secretary consult with affected organizations concerning the timing of the coordinated open enrollment period. Because of the reasons set forth above, we are proposing to establish a single national coordinated open enrollment period each November with coverage effective the following January. We will carefully consider comments from organizations on the timing of the enrollment period.

D. Transition to Coordinated Open Enrollment

We considered how best to effectuate a smooth transition to coordinated open enrollment for risk organizations that are not currently contracting on a calendar year basis (that is, how organizations might make a transition to a January through December contract period). One option might be for the organization to enter into a contract with HCFA for a period of less than 12 months. For example, if a contract period ends July 31, a new contract could be established for the period August through December in order that another new contract could be established for a period of 12 months beginning January 1 of the following calendar year. However, the statute requires each contract to be for at least one year. Another option is to "extend" the contract period already in effect through December 31 of a calendar year. In this case, if a contract period would normally end July 31, HCFA would extend the term of the contract to the following December 31 so that a new contract period could be established for a period of 12 months beginning January 1. The extension period would, in this situation, cover that period August 1 through December 31. However, in accordance with the current regulations at § 417.494(a), an eligible organization would have to agree to extend the term of its contract in order for it to be extended. HCFA could not unilaterally require organizations to agree to a contract modification. Universal compliance with the coordinated open enrollment provisions of the statute would therefore be jeopardized. A third alternative, the one we selected, is to require that an organization's next contract renewal term, (or new organizations' initial contract term, if effective on any date other than January 1) extend through December 31 of the following year.

As stated in section II. of this preamble, we are proposing to require recalculation of the monthly Medicare payment and additional benefits for the calendar year following the contract effective date as if that calendar year was an annual contract period renewal (§ 417.590). The alternative to this approach would be to continue with the same terms through the entire term of the contract for the first 12 months of the contract. We chose to require that rates be adjusted on January 1 during the contract term, believing that it would be inequitable to risk organizations for payment arrangements to remain in effect for up to 23 months. Additionally, we believe it is the intent of the statute that payment rates should be reviewed and updated annually.

We believe the transition process we have proposed would not unduly burden eligible organizations that extend their contracts under § 417.474(d). We would exempt organizations that choose to terminate their contracts on December 31 and execute new ones effective January 1 from meeting the requirement of § 417.494(c) concerning notification of termination to Medicare enrollees, since this notification process is directed toward organizations that do not intend to re-execute their contracts immediately. However, these organizations would not be exempt from notifying enrollees of modifications in their contracts as required under § 417.494(a)(2). Notification under this circumstance would occur earlier than usual for organizations that do not now contract on a calendar year basis. After this one instance, notification would normally be required only when the contract is renewed annually. Existing contracts are renewed annually in any case, and most new organizations prefer to update their plans on January 1 in order to reflect new AAPCC rates and current costs (APR and ACR).

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers as small entities.

Currently, the statute requires eligible organizations to enter into Medicare contracts for a term of at least 12 months and have an annual open enrollment period of at least 30 days duration. This proposed rule would require eligible organizations to hold an

annual coordinated open enrollment of all Medicare beneficiaries during the month of November each year. Further, the proposal would require all organizations to contract on a calendar year basis.

We believe that these changes would have a minimal economic impact in light of the fact that most eligible organizations have already selected the calendar year contracting period. Also, the selection of a single open enrollment period would provide a more effective and less confusing process for all parties concerned.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have, therefore, not prepared a regulatory flexibility analysis.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

Sections 417.428(b)(1) and (4), 417.474(c), 417.494(a)(3), 417.592(d), 417.594(b)(5), 417.596, 417.597, and 417.598, of this rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we have submitted a copy of this document to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements.

The requirements contained in the above-mentioned sections were approved by EOMB, and the EOMB approval number is 0938–0406. However, the approval expired in April 1988. Therefore, we have required an extension of that approval.

In addition, § 417.428(b) of this proposed rule contains information collection requirements that have not been approved by EOMB. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of this preamble.

List of Subjects in 42 CFR Part 417

Administrative practice and procedures, Health maintenance organizations (HMO), Medicare, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR Part 417, would be amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102, 1033(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395bb, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act, as amended (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. Section 417.204(d) is revised to read as follows:

§ 417.204 Qualifying condition: Membership.

* * * * *

(d) *Standard: Open enrollment.* An HMO will enroll title XVIII beneficiaries on a first-come, first-served basis, up to the limit of its capacity, and will hold an open enrollment period not less than annually during the entire month of November for beneficiaries on that basis. This requirement may be waived by the Secretary if the organization's compliance would result in a failure to meet the requirements of § 417.204(c)(1) or would result in a membership that is substantially nonrepresentative of the population in the area it serves. For purposes of this subpart, a subgroup of enrollees is generally not considered to make the membership substantially nonrepresentative unless its proportion among all the HMO's enrollees exceeds by at least 10 percentage points its proportion in the general population in the same enrollment area (see § 417.205(a)(1)), based on such census and other data as the Secretary finds appropriate.

3. In § 417.401, the introductory text is republished, the definition for "Benefit stabilization fund" is revised and new "calendar year" and "coordinated open enrollment period" definitions are added to read as follows:

§ 417.401 Definitions.

As used in this subpart, unless the context indicates otherwise—

* * * * *

Benefit stabilization fund means a fund established by HCFA at the request of an eligible organization with a new risk contract to withhold a portion of the per capita payments available to the organization for payment in a subsequent calendar year for the purpose of stabilizing fluctuations in the availability of the additional benefits provided by the organization to its Medicare enrollees.

Calendar year means the 12 month period of time beginning January 1 and ending December 31.

Coordinated open enrollment period means the month of November of each year, during which all contracting eligible organizations must enroll Medicare beneficiaries in the order in which they apply and without restrictions except as authorized in this part.

* * * * *

4. Section 417.413 is amended by revising the heading for paragraph (f) and paragraph (f)(1) to read as follows:

§ 417.413 Qualifying condition: Operating experience and enrollment.

* * * * *

(f) *Standard: Open enrollment period.* (1) Except as specified in paragraph (f)(2) of this section, an organization must enroll Medicare beneficiaries on a first-come, first-served basis to the limit of its capacity and provide at least one annual open enrollment period of at least 30 days duration for Medicare beneficiaries including the entire month of November each calendar year.

* * * * *

5. Section 417.426 is revised to read as follows:

§ 417.426 Open enrollment requirements.

(a) *Basic requirements.* (1) Eligible organizations must provide open enrollment for Medicare beneficiaries for at least 30 consecutive days during the month of November of each year, the annual coordinated open enrollment period. Organizations may provide for additional open enrollment periods as they deem appropriate, consistent with the requirements of this part, except an organization that has failed to comply with the requirements for a coordinated open enrollment period may not enroll any additional Medicare beneficiaries until the next annual coordinated open enrollment period.

(2) During any open enrollment period, the organization must enroll eligible Medicare beneficiaries in the order in which their applications are received and until its enrollment capacity is reached.

* * * * *

(b) *Capacity to accept new enrollees.* (1) An eligible organization that is approaching capacity that wishes to limit enrollment must obtain a waiver of the open enrollment requirement as provided in this section. This waiver will specify a reasonable number of vacancies to be set aside for Medicare beneficiaries during the coordinated open enrollment period.

(2) An organization that proposes to limit enrollments because of its capacity, as described in paragraph (b)(1) of this section, must notify HCFA at least 90 days before the beginning of any open enrollment period, including the coordinated open enrollment period, and at that time, provide HCFA with the number of vacancies set aside for Medicare beneficiaries and with its reasons for limiting enrollment.

(3) HCFA will evaluate and approve or disapprove the organization's submittal under paragraphs (b) (1) and (2) of this section.

(4) The organization must promptly notify HCFA if there is any change in its enrollment capacity.

(c) *Reserved vacancies.* In addition to any vacancies set aside under paragraphs (b) (1) and (2) of this section, an organization may set aside a reasonable number of vacancies for an anticipated new group contract or for anticipated new members of an existing group contract that will have its enrollment period after the Medicare coordinated open enrollment period during the current and upcoming contract year—

(1) Subject to HCFA's approval; and

(2) On condition that any vacancies set aside that are not filled within a reasonable period of time after the beginning of the group contract enrollment period be made available to Medicare beneficiaries and other nongroup applicants under the requirements of this subpart.

6. In § 417.440, paragraph (e) is redesignated as (f), paragraph (d) is redesignated as (e), paragraph (c) is redesignated as (d), and a new paragraph (c) is added to read as follows:

§ 417.440 Entitlement to health care services from an organization.

* * * * *

(c) *Prohibition on reduction of benefits.* For Medicare beneficiaries who are enrolled in an organization for all or any part of a year, the organization may not reduce any of the benefits to which the beneficiaries are entitled under the contract through December 31 of that year. Organizations must notify Medicare enrollees prior to November 1 of any benefit or premium changes that will be effective for the following calendar year.

* * * * *

7. Section 417.450 is amended by adding a new paragraph (b)(3) to read as follows:

§ 417.450 Effective date of coverage.

* * * * *

(b) *Exceptions.* * * *

(3) If a Medicare beneficiary enrolls during the coordinated open enrollment period specified in § 417.426(a)(2), the effective month of coverage is the following January 1.

* * * * *

8. In § 417.452, paragraph (d)(1) is revised and a new paragraph (f) is added to read as follows:

§ 417.452 Liability of Medicare enrollees.

* * * * *

(d) *Optional supplemental benefits plan.* (1) The organization may offer its Medicare enrollees a supplemental benefit plan to cover deductible and coinsurance amounts, or services not covered under Medicare, or both as provided in § 417.440(b)(2) and (3).

* * * * *

(f) *Limitation on liability for Medicare beneficiaries.* The liability of beneficiaries who are enrolled in an organization for all or any part of a year may not be increased through December 31 of that year, for those charges permitted under paragraphs (a) or (b) of this section. Organizations must notify Medicare enrollees prior to November 1 of benefit or premium changes that will be effective for the following calendar year.

9. In § 417.454, paragraph (b) is redesignated as (c), and a new paragraph (b) is added to read as follows:

§ 417.454 Charges to Medicare enrollees.

* * * * *

(b) Any organization may not increase the charges specified in paragraph (a)(1) and (2) of this section to Medicare beneficiaries who are enrolled in the organization for all or any part of a year, through December 31 of that year.

* * * * *

10. Section 417.474 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 417.474 Effective date and term of contract.

* * * * *

(c) The contract must specify the duration of its term. However, the initial term of the contract must be at least 12 months, but not more than 23 months; and any subsequent term must be for a period of 12 months, except as specified in paragraph (d) of this section.

(d) For contracts entered into or renewed after [effective date of the regulations] the term of the contract will extend for at least 12 months and extend through December 31.

11. Section 417.490 is revised to read as follows:

§ 417.490 Renewal of contract.

(a) A contract with an organization is renewed automatically for the next 12-month period (except as provided in § 417.474(d), unless HCFA or the organization decides not to renew in accordance with § 417.492.

(b) In special cases where the term of a contract is more than 12 months in accordance with § 417.474(d), the contract is renewed automatically effective January 1 for the next 12-month period unless HCFA or the organization decides to renew in accordance with § 417.492.

12. Section 417.494 is amended by revising paragraph (a)(3) to read as follows:

§ 417.494 Modification or termination of contract.

(a) *Modification or termination by mutual consent.* * * *

(3) Unless an organization's contract is terminated on December 31 for purposes of immediately beginning a new contract period on January 1 of a calendar year, an organization must notify its Medicare enrollees, and HCFA will notify the general public, at least 30 days before the termination date.

* * * * *

13. Section 417.584 is amended by revising paragraph (b)(2) to read as follows:

§ 417.584 Payment to organizations with risk contracts.

* * * * *

(b) *Determination of rate.* * * *

(2) HCFA furnishes each organization with its per capita rate of payment for a calendar year for each class of Medicare enrollees not later than August 1 of the preceding year.

* * * * *

14. Section 417.588 is amended by revising paragraph (b) to read as follows:

§ 41.588 Computation of adjusted average per capita cost (AAPCC)

* * * * *

(b) *Advance notice to the organization.* Before the beginning of a contract period, HCFA makes available to each risk contracting organization (or prospective risk contracting organization, if requested) the specific adjustment factors HCFA has used in determining the payment rates.

* * * * *

15. Section 417.590 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 417.590 Computation of the average of the per capita rates of payment.

(a) *Computation by the organization.* As indicated in § 417.584(b), prior to the start of each calendar year, HCFA determines an organization's per capita rate of payment for each class of Medicare enrollees for that calendar year. For purposes of determining an organization's required additional benefits (see § 417.592), an organization must compute a weighted average of these per capita rates of payment based on the organization's anticipated enrollment distribution. This computation must be done separately for Part A and Part B enrollees and Part B-only enrollees and is subject to HCFA's review and approval. If, in accordance with § 417.474(d), the contract period extends for more than one calendar year the organization must prepare separate computations for the months in each of the two calendar years in the contract period.

* * * * *

(c) *Contract periods in excess of 12 months.* If, in accordance with § 417.474(d), a contract period extends for more than one calendar year, paragraphs (a) and (b) of this section apply separately to the months in each of the two calendar years in the contract period.

16. Section 417.592 is amended by revising paragraph (d)(1), paragraph (d)(2) introductory text, and paragraph (e)(2) to read as follows:

§ 417.592 Determination of required additional benefits.

* * * * *

(d) *Notification to HCFA.* (1) No later than September 15 of the year preceding the calendar year for which HCFA's payment rates are announced, the organization must submit to HCFA its ACR proposal and the weighted average of its per capita rates of payment (as computed under § 417.590) for the following calendar year.

(2) If the proposed ACR is less than the average of the per capita rates of payment to be made at the beginning of the calendar year, the organization must provide HCFA with—

* * * * *

(e) *Exception.* * * *

(2) The reduction in the monthly payment must, over the course of the calendar year, be equal in value to the difference between the proposed ACR and the average of the per capita rates of payment, or meet the requirements of § 417.422(b)(1)(ii).

17. Section 417.594 is amended by revising paragraph (b)(5) and by adding a new paragraph (f) to read as follows:

§ 417.594 Computation of ACR

* * * * *

(b) *Initial rate calculation*

* * * * *

(5) The initial rate calculation must not carry forward any losses experienced by the organization during any months prior to the calendar year for which it is being calculated. The organization must submit supporting documentation to assure HCFA that rates do not include past losses but only premiums for the price of additional benefits and services of the upcoming contract period.

* * * * *

(f) *Coordinated open enrollment.* If, in accordance with § 417.474(d), a contract extends for more than one calendar year, paragraphs (a) through (e) of the section apply separately to the months in each of the two calendar years in the contract period.

18. Section 417.596(c)(1) is revised to read as follows:

§ 417.596 Establishment of a benefit stabilization fund.

* * * * *

(c) *Limitations on the amounts withheld*—(1) *Limit per contract period.* Except as provided in paragraph (c)(3) of this section, HCFA will not withhold in a benefit stabilization fund more than 15 percent of the difference between an organization's ACR and the average of its per capita rates of payment as determined under §§ 417.590 through 417.594 for a given calendar year.

* * * * *

19. In § 417.597, paragraph (a) introductory text and paragraphs (b), (c)(2), and (d) are revised, paragraph (b)(4) is removed, and paragraph (c) introductory text is republished to read as follows:

§ 417.597 Withdrawal from a benefit stabilization fund.

(a) *Notification to HCFA.* An organization's request to make a withdrawal from its benefit stabilization fund for use during a contract period must be made when the organization notifies HCFA of its ACR and the average of its per capita rates of payment. The request for withdrawal applies to the period covered by the ACR and average of its per capita rates of payment. In making its request the organization must—

* * * * *

(b) *Criteria for HCFA approval.* HCFA approves an organization's request for a withdrawal from its benefit stabilization fund only if—

(1) The organization's estimated average of its per capita rates of payment is less than that for the previous period;

(2) The proposed ACR is significantly higher than that for the previous period; or

(3) The organization's—

(i) Estimated revenue requirements in its proposed ACR for providing the additional benefits it is presently providing are significantly higher than the revenue requirements it earlier estimated were required for providing these benefits; and

(ii) Proposed ACR results in an additional benefits package that is less in total value than its existing ACR.

(c) *Basis for denial.* HCFA will not approve an organization's request for a withdrawal from its benefit stabilization fund if the withdrawal allows the organization to—

* * * * *

(2) Refinance losses that occurred prior to, or avoid losses in, the period for which the withdrawal is requested.

(d) *Form of payment.* Payment of monies withdrawn from a benefit stabilization fund is made, in equal parts, as an additional amount to the monthly advance payment made to the organization under § 417.584 during the period for which the withdrawal is requested.

* * * * *

(Catalog of Federal Domestic Assistance Program Nos. 13.773 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance.)

Dated: May 13, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved May 26, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-13125 Filed 6-8-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6927]

Proposed Flood Elevation Determinations; Colorado et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
COLORADO	
DeBeque (town), Mesa County	
Roan Creek:	
Approximately 1,200 feet downstream of County Road 44	*4909
Approximately 25 feet upstream of County Road 44	*4813
Approximately 1,380 feet upstream of County Road 44	*4818
Maps are available for review at Town Hall, 343 Minter Street, DeBeque, Colorado. Send comments to The Honorable James Lounds, Mayor, Town of DeBeque, Town Hall; 343 Minter Street, DeBeque, Colorado 81630.	
FLORIDA	
Center Hill (city), Sumter County	
Juniper Creek: Within community	*90
Maps available for inspection at the City Building, Center Hill, Florida. Send comments to The Honorable James H. Huett, Mayor, City of Center Hill, P.O. Box 38, Center Hill, Florida 33514.	
Umatilla (city), Lake County	
Lake Flirt: Entire shoreline	*80
Lake Genevar: Entire shoreline	*75
Lake Ella: Entire shoreline	*71
Lake Mary: Entire shoreline	*71
Lake Enola: Entire shoreline	*71
Lake Umatilla: Entire shoreline	*70
Crescent Lake: Entire shoreline	*78
East Lake: Entire shoreline	*80
Lake Pearl: Entire shoreline	*80
Lake Owen: Entire shoreline	*70
Muscle Lake: Entire shoreline	*70
Lake Yale: Entire shoreline	*81
Maps available for inspection at the City Hall, Umatilla, Florida. Send comments to The Honorable Ed Permenter, Mayor, City of Umatilla, City Hall, P.O. Box 420, Umatilla, Florida 32784.	
IDAHO	
Cascade (city), Valley County	
North Fork Payette River:	
At southern-most corporate limit	*4727
Approximately 850 feet downstream of State Highway 55	*4730
Approximately 4,370 feet upstream of State Highway 55 (near Cascade Airport)	*4732
Approximately 140 feet upstream of State Highway 55 (near Cascade dam)	*4739
Maps are available for review at City Hall, 108 East Market, Cascade, Idaho. Send comments to The Honorable John Cloninger, Mayor, City of Cascade, P.O. Box 451, Cascade, Idaho 83611.	
McCall (city), Valley County	
North Fork Payette River:	
Approximately 1,450 feet downstream of West Lake Street/State Highway 55	*4,991
Approximately 880 feet downstream of West Lake Street/State Highway 55	*4,994
Maps are available for review at City Hall, 212 Park Street, McCall, Idaho.	
Send comments to The Honorable John J. Allen, Jr., Mayor, City of McCall, P.O. Box 721, McCall, Idaho 83638.	
INDIANA	
Johnson County (unincorporated areas)	
West Fork White River:	
About 2,500 feet downstream of county boundary	*647
Just downstream of county boundary	*651
Pleasant Run Creek:	

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Just upstream of County Line Road	*678
About 1,500 feet upstream of State Route 135	*725
Honey Creek:	
At mouth	*857
Just downstream of 700 North Road	*774
Turkey Fee Creek:	
At mouth	*680
About 1,400 feet upstream of 800 North Road	*709
Mooremilk Creek:	
At mouth	*864
About 2.4 miles upstream of 900 West Road	*790
Auburn Branch:	
At mouth	*718
Just downstream of Illinois Central Gulf Railroad	*731
Driftwood River:	
At county boundary	*868
At confluence of Big Blue River	*860
Sugar Creek:	
At mouth	*880
About 1.32 miles upstream of Conrail	*886

Maps available for inspection at the Office of Planning and Zoning, Courthouse Annex, 86 West Court, Franklin, Indiana.

Send comments to The Honorable William A. Ray, Chairman, County Board of Commissioners, Johnson County, Courthouse Annex, 86 West Court, Franklin, Indiana 46131.

IOWA

Elliott (city), Montgomery County

East Nishnabotna River:	
Just upstream of State Highway 48	*1,070
About 2,900 feet upstream from State Highway 48	*1,071
Elliott Creek:	
About 0.38 mile upstream of mouth	*1,070
About 0.27 mile upstream of Burlington Northern railroad	*1,084
Tributary A:	
Just upstream of mouth	*1,070
Just upstream of Burlington Northern railroad	*1,075

Maps available for inspection at the City Hall, 210 Main Street, Elliott, Iowa.

Send comments to The Honorable Robert E. Allen, Mayor, City of Elliott, City Hall, 210 Main Street, Elliott, Iowa 51532.

KANSAS

Caldwell (city), Sumner County

Fall Creek:	
About 0.7 mile downstream of U.S. Highway 81	*1,106
Just downstream of county road (about 0.9 mile upstream of U.S. Highway 81)	*1,115

Maps available for inspection at the City Hall, 14 West Central, Caldwell, Kansas.

Send comments to The Honorable Thomas R. Herron, Mayor, City of Caldwell, City Hall, 14 West Central, Caldwell, Kansas 67022.

Oxford (city), Sumner County

Arkansas River:	
About 1,900 feet downstream of Atchison, Topeka, and Santa Fe Railway	*1,145
Just downstream of Atchison, Topeka, and Santa Fe Railway	*1,146
Just upstream of Atchison, Topeka, and Santa Fe Railway	*1,151
About 3,800 feet upstream of U.S. Highway 160	*1,156

Maps available for inspection at the City Hall, 321 South Sumner, Oxford, Kansas.

Send comments to The Honorable Richard Rodman, Mayor, City of Oxford, Box 337, Oxford, Kansas 67119.

Sumner County (unincorporated areas)

Arkansas River:	
About 500 feet downstream of county boundary	*1,138
Just downstream of Atchison, Topeka, and Santa Fe Railway	*1,146
Just upstream of Atchison, Topeka, and Santa Fe Railway	*1,151
About 1.7 miles upstream of U.S. Highway 160	*1,157
Just upstream of State Highway 38	*1,167
About 2.2 miles downstream of confluence of Cowskin Creek Outlet	*1,207
Bluff Creek:	
Just upstream of county road (downstream of Oklahoma, Kansas, and Texas Railroad)	*1,102
Just downstream of county road (about 3.8 miles upstream of U.S. Highway 81)	*1,120
Cowskin Creek:	
About 2,800 feet upstream of Hillside Road	*1,227
About 400 feet upstream of county boundary	*1,233
Fall Creek:	
Just upstream of county road (downstream of Oklahoma, Kansas, and Texas Railroad)	*1,104
About 2.1 miles upstream of U.S. Highway 81	*1,120
Explosive Creek:	
Just upstream of county road (about 1.3 miles downstream of Line Street)	*1,195
Just downstream of Atchison, Topeka, and Santa Fe Railway	*1,204
Ninnescah River:	
Just upstream of Atchison, Topeka, and Santa Fe Railway	*1,200
About 1,500 feet upstream of county boundary	*1,257
Slate Creek:	
At confluence of Spring Creek	*1,211
Just downstream of county road (upstream of confluence of Spring Creek)	*1,218

Maps available for inspection at the County Engineer's Office, County Courthouse, Wellington, Kansas.

Send comments to The Honorable Wallace Wolf, Chairman, County Commissioners, Sumner County, County Courthouse, Wellington, Kansas 67152.

Wellington (city), Sumner County

Slate Creek:	
Just upstream of county road (upstream of confluence of Spencer Creek)	*1,175
About 1.0 mile upstream of confluence of Spring Creek	*1,218
Hargis Creek:	
At mouth	*1,175
Just downstream of Hargis Creek Dam	*1,209
Hargis Creek Lake: Within community	*1,237
Rock Island Slough:	
At mouth	*1,185
Just downstream of Atchison, Topeka, and Santa Fe Railway	*1,189
Just upstream of Atchison, Topeka, and Santa Fe Railway	*1,195
Just downstream of Harvey Avenue	*1,198
Just upstream of Harvey Avenue	*1,202
Just downstream of Lake Road	*1,222
Just upstream of Lake Road	*1,227
About 4,380 feet upstream of Lake Road	*1,231

Maps available for inspection at the Engineer's Office, City Hall, 317 South Washington, Wellington, Kansas.

Send comments to The Honorable Gordon Tackett, Mayor, City of Wellington, City Hall, 317 South Washington, Wellington, Kansas 67152.

KENTUCKY

Knox County (unincorporated areas)

East Fork Lynn Camp Creek:	
At mouth	*1,071
Just downstream of Pitville Road (About 2,100 feet upstream of Indian Creek Road)	*1,100
Lynn Camp Creek:	
About 1,200 feet downstream of confluence of East Fork Lynn Camp Creek	*1,070
About 0.5 mile upstream of Back Street	*1,089

Maps available for inspection at the County Courthouse, Barbourville, Kentucky.

Send comments to The Honorable Carnell Spinks, Judge Executive, Knox County, P.O. Box 665, Barbourville, Kentucky 40906.

LOUISIANA

Vernado (village), Washington Parish

Tschopiapa Creek:	
Approximately 2,900 feet downstream of State Route 468-1	*114
Approximately 4,160 feet upstream of State Route 21	*127

Maps available for inspection at the City Hall, Pearodi Street, Vernado, Louisiana.

Send comments to The Honorable Daniel Ferrara, Mayor of the Village of Vernado, Washington County, P.O. Box 156, Vernado, Louisiana 70497.

MAINE

Lovell (town), Oxford County

Kezar Lake:	
Entire shoreline of Kezar Lake within community	*385
At Lower Bay	*385
At Middle Bay	*385
At Upper Bay	*385
At Seco River	*385
At the Narrows	*385
At Farrington Pond at approximately 50 feet downstream of its confluence with Sucker Brook	*385
At Sucker Brook from its confluence with Kezar Lake to approximately 0.3 mile downstream of Foxboro Road	*385
At Kezar River from corporate limits to approximately 125 feet downstream of State Route 93	*385
At Praye Brook from corporate limits to approximately 0.5 mile upstream of State Route 5	*885

Maps available for inspection at the Town Hall, Lovell, Maine.

Send comments to The Honorable Gordon Eastman, Chairman of the Town of Lovell Board of Selectmen, Oxford County, Town Hall, P.O. Box 218, Lovell, Maine 04051.

Wayne (town), Kennebec County

Wilson Pond: Entire shoreline within community	*245
Dexter Pond: Entire shoreline within community	*248
Berry Pond: Entire shoreline within community	*246
Androscoggin Lake: Entire shoreline within community	*288
Pocasset Lake: Entire shoreline within community	*289
Pickerel Pond: Entire shoreline within community	*289
Lovejoy Pond: Entire shoreline within community	*385

Maps available for inspection at the Selectman's Office, Wayne, Maine.

Send comments to The Honorable Donald Eaton, Chairman of the Town of Wayne Board of Selectmen, Kennebec County, Town Offices, Pond Road, Wayne, Maine 04284.

Wilton (town), Franklin County

Wilson Stream:	
Approximately 3,270 feet downstream of Sutherland and Route 133 Bridge	*376
Approximately 65 feet upstream of State Route 156 Bridge	*496
Approximately 850 feet upstream of Canal Street Bridge	*576

Maps available for inspection at the Town Manager's Office, Wilton, Maine.

Send comments to The Honorable Leslie Brown, Chairman of the Town of Wilton Board of Selectmen, Franklin County, Town Offices, P.O. Box 547, Wilton, Maine 04294.

MICHIGAN

Grant (township), Cheboygan County

Black River:	
About 1.9 miles downstream of confluence of Section Seven Creek	*612
About 0.8 mile upstream of confluence of Long Lake Creek	*618
Twin Lakes: Along shoreline	*661

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Black Lake: Along shoreline	*646

Maps available for inspection at the Township Hall, 1640 North Black River Drive, Cheboygan, Michigan.

Send comments to The Honorable Clarence G. Archambo, Township Supervisor, Township of Grant, Township Hall, 1640 North Black River Drive, Cheboygan, Michigan 49721.

Lockport (township), St. Joseph County

St. Joseph River:	
About 1,400 feet downstream of Constantine Road	*730
Just downstream of Stargis Dam	*808
About 480 feet upstream of Covered Bridge Road	*820
Portage River:	
About 3.4 miles downstream of South Lake Road	*808
About 2,480 feet upstream of Carpenter Road	*812

Maps available for inspection at the Supervisor's Home, 16581 M-86, Three Rivers, Michigan.

Send comments to The Honorable Robert J. Waddell, Supervisor, Township of Lockport, Township Hall, 58982 Holton Road, Three Rivers, Michigan 49093.

Mottawa (township), St. Joseph County

St. Joseph River: Within community	*629
Prairie River:	
Just upstream of Findley Road	*691
Just downstream of Fillmore Road	*692

Maps available for inspection at the Township Hall, 112 South Clark, Centreville, Michigan.

Send comments to The Honorable Clayton Pointer, Township Supervisor, Township of Mottawa, Township Hall, 112 South Clark, Centreville, Michigan 49032.

Saint Louis (city), Gratiot County

Pine River:	
About 1.1 miles downstream of Main Street	*713
About 0.8 mile upstream of State Street	*724

Maps available for inspection at the City Hall, 108 Saginaw, Saint Louis, Michigan.

Send comments to The Honorable Paul Kleiser, Mayor, City of Saint Louis, City Hall, 108 Saginaw, Saint Louis, Michigan 48880.

Victor (township), Clinton County

Looking Glass River:	
Just upstream of Chandler Road	*806
At county boundary	*812

Maps available for inspection at the Township Hall, 6794 East Price Road, St. Johns, Michigan.

Send comments to The Honorable Robert Remus, Township Supervisor, Township of Victor, Township Hall, 6794 East Price Road, St. Johns, Michigan 48879.

NEW YORK

Dunnesburg (town), Schenectady County

Schoharie Creek:	
Approximately 1.37 miles upstream of the downstream corporate limits	*332
At the upstream corporate limits	*395

Maps available for inspection at the Town Hall, Dunnesburg, New York.

Send comments to The Honorable William Parks, Supervisor of the Town of Dunnesburg, Schenectady County, Town Hall, Dunnesburg, New York 12056.

Montebello (village), Rockland County

Mahwah River:	
At downstream corporate limits	*386
At confluence of Golf Course Brook	*394
At Pond View Acres Road	*334
Approximately .69 mile upstream of upstream corporate limits	*354
Spook Rock Brook:	
At downstream corporate limits (Grandview Avenue)	*386
At confluence of Spook Rock Brook Left Channel	*436
At upstream corporate limits	*471
Spook Rock Brook Left Channel:	
At confluence with Spook Rock Brook	*436
At upstream corporate limits	*471
Golf Course Brook:	
At confluence with Mahwah River	*324
At Heather Hill Road	*328
At Pine Tree Farms Drive	*376
At Dam No. 7	*471
Approximately 290 feet upstream of Spook Rock Road	*482
Hilltop Tree Brook:	
At downstream corporate limits (1st downstream crossing of Grandview Avenue)	*386
Approximately 300 feet upstream of Wesley Chapel Road	*420
Montebello Creek:	
At confluence with Mahwah River	*308
At upstream corporate limits	*319

Maps available for inspection at 67 Haverstraw Road, Suffern, New York.

Send comments to The Honorable Kathryn Ellsworth, Mayor of the Village of Montebello, Rockland County, 57 Haverstraw Road, Suffern, New York 10921.

NORTH CAROLINA

Cherokee County (unincorporated areas)

Nottely River:	
About 2.0 miles downstream of U.S. Route 64	*1,526
About 3.3 miles upstream of Snowhill Road	*1,830
Martin Creek:	
About 0.5 mile downstream of Martin Creek Road	*1,561
Just downstream of State Road 1584	*1,850
Slow Creek:	
At mouth	*1,580
About 0.54 mile upstream of Fain Cove Road	*1,678
Peachtree Creek:	
About 0.45 mile downstream of U.S. Route 64	*1,564
About 1.04 miles upstream of Mission Road	*1,783
Hiwassee River:	
About 1.57 miles downstream of confluence of Peachtree Creek	*1,564
About 1.4 miles upstream of confluence of Peachtree Creek	*1,572
Valley River:	
About 0.2 mile downstream of U.S. Route 19	*1,718
Just downstream of U.S. Route 19	*1,724
Just upstream of U.S. Route 19	*1,730
About 100 feet downstream of U.S. Route 19 Bypass	*1,772
Tatham Creek:	
About 0.12 mile downstream of Norfolk Southern Railway	*1,772
Just downstream at U.S. Route 19	*1,787

Maps available for inspection at the County Courthouse, Murphy, North Carolina.

Send comments to The Honorable Bill Green, County Manager, Cherokee County, County Courthouse, Murphy, North Carolina 28906.

Hoke County (unincorporated areas)

Raft Swamp:	
About 2,730 feet downstream of SR 1105	*194
About 3,300 feet upstream of Stone Road 211	*206
Puppy Creek:	
At mouth	*147
About 1.5 miles upstream of U.S. Route 401	*265
Rockfish Creek:	
At county boundary	*123
About 1,950 feet upstream of confluence of Mill Creek	*206

Maps available for inspection at the County Courthouse, Raeford, North Carolina.

Send comments to The Honorable William K. Cowan, County Manager, Hoke County, P.O. Box 295, Raeford, North Carolina 28376.

Orrum (town), Robeson County

Lumber River: Within community	*82

Maps available for inspection at the Town Hall, Orrum, North Carolina.

Send comments to The Honorable Wilton Calder, Mayor, Town of Orrum, P.O. Box 64, Orrum, North Carolina 28369.

Robeson County (unincorporated areas)

Lumber River:	
About 3.6 miles downstream of State Road 904	*61
About 3.1 miles upstream of SR 1310	*296
Jacob Swamp:	
At mouth	*107
Just upstream of SR 2418	*132
Little Jacob Swamp:	
At mouth	*114
About 1,800 feet upstream of SR 2513	*125
Bear Swamp:	
At mouth	*126
Just downstream of CSX railroad	*163
Just upstream of CSX railroad	*170
Just downstream of State Road 710	*184
Back Swamp:	
At mouth	*129
About 2.1 miles upstream of SR 1186	*176
Saddletree Swamp:	
About 3,500 feet downstream of SR 1529	*129
About 1,300 feet upstream of SR 1736	*156

Maps available for inspection at the County Courthouse, 500 North Elm Street, Lumberton, North Carolina.

Send comments to The Honorable James E. Martin, County Manager, Robeson County, County Courthouse, 500 North Elm Street, Lumberton, North Carolina 28358.

OHIO

Byesville (village), Guernsey County

Wills Creek:	
About 700 feet upstream County Route 347	*800
About 4,800 feet upstream Main Street	*802

Maps available for inspection at the Mayor's Home, Byesville, Ohio.

Send comments to The Honorable Art Valentine, Mayor, Village of Byesville, P.O. Box 8, Byesville, Ohio 43723.

Cumberland (village), Guernsey County

Buffalo Fork:	
About 600 feet upstream of Perry's Den Road	*831
At CSX railroad	*894
Collins Fork:	
At mouth	*804
About 900 feet upstream of Rimrock Rock	*837

Maps available for inspection at the City Hall, 342 Main Street, Cumberland, Ohio.

Send comments to The Honorable James A. McGinney, Mayor, Village of Cumberland, City Hall, 342 Main Street, Cumberland, Ohio 43732.

Guernsey County (unincorporated areas)

Wills Creek:	
About 3,500 feet downstream of Wills Creek Valley Road	*754
About 1.0 mile upstream of Main Street	*802
Hospital Tributary:	
About 2,500 feet downstream of Toland Drive	*780
About 2,200 feet upstream of Echleberry Road	*797
Leatherwood Creek:	
At mouth	*900
Just upstream of CSX railroad	*902
Crooked Creek:	
At mouth	*786
About 2,900 feet upstream of Phillips Road	*864
Buffalo Fork:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
About 3,200 feet downstream of Perry's Dam Road	*827
At confluence of Collins Fork	*834
Collins Fork:	
At mouth	*834
About 630 feet upstream of Renrock Road	*857
Maps available for inspection at the County Courthouse, 626 Steubenville Avenue, Cambridge, Ohio.	
Send comments to The Honorable Thomas J. Colson, President, Board of Commissioners, Guernsey County, County Courthouse, 836 Steubenville Avenue, Cambridge, Ohio 43725.	
Lore City (village), Guernsey County	
Leatherwood Creek: Within community	*820
Maps available for inspection at the Mayor's Home, Lore City, Ohio.	
Send comments to The Honorable James Doull, Mayor, Village of Lore City, P.O. Box 98, Lore City, Ohio 43755.	
Quaker City (village) Guernsey County	
Leatherwood Creek:	
About 1,400 feet downstream of Pike Street	*868
Just upstream of Private Drive	*875
Smith Creek:	
At mouth	*869
Just downstream of Crawford Lane	*875
Maps available for inspection at the Village Hall, Quaker City, Ohio.	
Send comments to The Honorable Edward Butler, Mayor, Village of Quaker City, 257 Fair Street, Quaker City, Ohio 43773.	
Shelby (city), Richland County	
Black Fork Mohican River:	
Just downstream of CSX railroad	*1,075
Just upstream of the confluence of West Branch	*1,096
Toby Run:	
At mouth	*1,088
Just downstream of Conrail	*1,091
Just upstream of Conrail	*1,098
Just downstream of Vernon Road	*1,104
Shiloh Fork Creek:	
At mouth	*1,089
Just downstream of Private Drive	*1,115
Just upstream of Private Drive	*1,122
About 400 feet upstream of Mansfield Avenue	*1,134
West Branch Black Run:	
About 2,080 feet upstream of State Street	*1,083
About 0.79 mile upstream of State Street	*1,102
Hartman Sanpshaw Ditch:	
At mouth	*1,079
About 1,380 feet upstream of West Smiley Avenue	*1,097
West Branch:	
At mouth	*1,094
About 1,250 feet upstream of South Gamble Street	*1,097
Maps available for inspection at the City Hall, 23 West Main Street, Shelby, Ohio.	
Send comments to The Honorable William Thompson, Mayor, City of Shelby, City Hall, 23 West Main Street, Shelby, Ohio 44875.	
OKLAHOMA	
Lone Grove (city), Carter County	
Tallaferro Creek:	
Approximately 1.6 miles downstream of Myall Road	*834
At U.S. Route 70	*888
Tallaferro Creek Tributary A:	
At confluence with Tallaferro Creek	*870
Approximately 0.2 mile upstream of Kelly Lane	*886
Wolf Creek:	
At confluence with Cottonwood Creek	*824
At Newport Road	*882
Maps available for inspection at the City Hall, Highway 70 East, Lone Grove, Oklahoma.	
Send comments to The Honorable Dewinda Ford, Mayor of the City of Lone Grove, Carter County, P.O. Box 304, Lone Grove, Oklahoma 73443.	
OREGON	
Mosier (city), Wasco County	
Rock Creek:	
Approximately 100 feet downstream of U.S. Route 30 (Interstate 84)	*53
Approximately 30 feet downstream of Union Pacific Railroad	*90
Approximately 650 feet upstream of Rock Creek Road	*112
Approximately 1,200 feet upstream of Rock Creek Road (at southwest corporate limits)	*136
Maps are available for review at City Hall, Second and Oregon Streets, Mosier, Oregon.	
Send comments to The Honorable Hugh Preston, Mayor, City of Mosier, P.O. Box 468, Mosier, Oregon 97040.	
PENNSYLVANIA	
Brady (township), Huntingdon County	
Juniata River:	
Approximately .4 mile downstream of State Route 655	*585
Approximately .4 mile upstream of CONRAIL	*591
Sacklers Creek:	
Approximately .4 mile downstream of LR 31040	*760
At upstream side of State Route 655	*783
Approximately .7 mile upstream of State Route 655	*810
Maps available for inspection at the Township Building on State Route 655, Mill Creek, Pennsylvania.	
Send comments to The Honorable Paul W. Brown, Chairman of the Township of Brady Board of Supervisors, Huntingdon County, HCR 61, P.O. Box #557, Mill Creek, Pennsylvania 17060.	
Burgettstown (borough), Washington County	
Raccon Creek:	
At downstream corporate limits	*970
At upstream corporate limits	*994
Maps available for inspection at the Borough Building, 113 Main Street, Burgettstown, Pennsylvania.	
Send comments to The Honorable Dean Allison, Council President of the Borough of Burgettstown, Washington County, 113 Main Street, #306, Burgettstown, Pennsylvania 15021.	
Deer Lake (borough), Schuylkill County	
Pine Creek:	
At downstream corporate limits	*475
At upstream corporate limits	*488
Maps available for inspection at the Fire Hall, Ash Road, Deer Lake, Pennsylvania.	
Send comments to The Honorable David B. Crouse, Council President of the Borough of Deer Lake, Schuylkill County, 306 Lake Front Drive, Deer Lake Orwigsburg, Pennsylvania 17961.	
Fallowfield (township), Washington County	
Pigeon Creek:	
Approximately 0.5 mile downstream of State Route 581	*623
Approximately 0.7 mile upstream of Monongahela-Bentleyville Road Bridge (upstream crossing)	*916
Maple Creek:	
Approximately 1.3 miles downstream of 1st Road Bridge upstream of corporate limits	*768
Approximately 1.2 miles upstream of State Route 822	*964
Maps available for inspection at the Township Building, R.D. 1, Charleroi, Pennsylvania.	
Send comments to The Honorable Frank Kevech, Chairman of the Township of Fallowfield Board of Supervisors, Washington County, R.D. 1, Box 475, Charleroi, Pennsylvania 15022.	
Fleetwood (borough), Berks County	
Willow Creek:	
At downstream corporate limits	*404
At upstream corporate limits	*470
Unnamed Tributary to Willow Creek:	
At downstream corporate limits	*371
Approximately .2 mile downstream of Farm Lane	*394
Upstream corporate limits	*399
Maps available for inspection at the Borough Building, 15 North Franklin, Fleetwood, Pennsylvania.	
Send comments to The Honorable Alexander Szoke, Council President of the Borough of Fleetwood, Berks County, 15 North Franklin, Fleetwood, Pennsylvania 19522.	
Franklin (township), Beaver County	
Connoquenessing Creek:	
Approximately 2.7 miles downstream from State Route 65	*852
At Fombell Road	*880
At upstream corporate limits	*899
Maps available for inspection at the Township Building, R.D. 1, Box 141, Fombell, Pennsylvania.	
Send comments to The Honorable G. William Stenk, Chairman of the Township of Franklin Board of Supervisors, Beaver County, R.D. 1, Box 141, Fombell, Pennsylvania 16123.	
Franklin (township), Greene County	
South Fork Tenmile Creek:	
At downstream corporate limits	*901
Approximately 200 feet upstream of the upstream corporate limits	*968
Maps available for inspection at the Township Building, 566 Rolling Meadows Road, Waynesburg, Pennsylvania.	
Send comments to The Honorable Robert Anderson, Chairman of the Township of Franklin, Greene County, 566 Rolling Meadows Road, P.O. Box 752, Waynesburg, Pennsylvania 15370.	
Franklin (township), Huntingdon County	
Spruce Creek:	
At downstream corporate limits	*627
Approximately 2,000 feet upstream of T-549 bridge	*1,039
Maps available for inspection at the Franklin Township Secretary Wayne Harpster's house, in the Village of Pennsylvania Furnace, Pennsylvania.	
Send comments to The Honorable John B. Lake, Chairman of the Township of Franklin Board of Supervisors, Huntingdon County, R.D. #4, Tyrone, Pennsylvania 16686.	
Greensboro (borough), Greene County	
Monongahela River:	
Approximately 765 feet downstream of the downstream corporate limits	*798
At the upstream corporate limits	*800
Maps available for inspection at the Borough Building, Greensboro, Pennsylvania.	
Send comments to The Honorable Walter Watson, Council President of the Borough of Greensboro, Greene County, P.O. Box 38, Greensboro, Pennsylvania 15338.	
Greenwich (township), Berks County	
Maiden Creek:	
At downstream corporate limits	*327
At upstream corporate limits	*379

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Mill Creek:	
At confluence with Sarsany Creek	*377
At upstream corporate limits	*426
Unnamed Tributary to Mill Creek:	
At confluence with Mill Creek	*399
At approximately 80 feet upstream from second crossing of State Route 737	*488
Maps available for inspection at the Township Secretary's Office, R.D. 1, Box M63, Leetsdale, Pennsylvania.	
Send comments to The Honorable John Gasman, Jr., Chairman of the Township of Greenwich, Berks County, R.D. 1, Box M63, Leinhartsville, Pennsylvania 19534-9801.	
Juniata (township), Huntingdon County	
Juniata River:	
Downstream corporate limits	*503
Upstream corporate limits	*514
Raystown Branch Juniata River:	
Confluence with Juniata River	*509
Approximately 25 feet upstream from Township Route 438	*608
Maps available for inspection at the Township Building, Piney Ridge Road, Juniata, Pennsylvania.	
Send comments to The Honorable Charles A. Hall, Chairman of the Township of Juniata Board of Supervisors, Huntingdon County, R.D. #3, Huntingdon, Pennsylvania 16652.	
Kidder (township), Carbon County	
Black Creek:	
Approximately 370 feet downstream of Maddies Lane	*1,306
Downstream of Interstate 80 Eastbound	*1,742
Dilldown Creek:	
At confluence with Mud Run	*1,538
Approximately 1,100 feet upstream of dam #3	*1,570
Mud Run:	
Approximately 600 feet downstream of confluence with Laural Run	*1,479
At confluence of Dilldown Creek	*1,536
Maps available for inspection at the Municipal Building, L.R. 13039, Lake Harmony, Pennsylvania.	
Send comments to The Honorable Charles Geele, Chairman of the Township of Kidder Board of Supervisors, Carbon County, Municipal Building, P.O. Box 374, Lake Harmony, Pennsylvania 18624.	
Leinhartsville (borough), Berks County	
Maiden Creek:	
At approximately 100 feet below downstream corporate limits	*368
At approximately 140 feet above upstream corporate limits	*370
Maps available for inspection at the Borough Building, 18 Willow Street, Leinhartsville, Pennsylvania.	
Send comments to The Honorable Kerry Fink, President of the Borough of Leinhartsville, Berks County, 18 Willow Street, Leinhartsville, Pennsylvania 19534.	
Marion (township), Beaver County	
Connoquenessing Creek:	
At downstream corporate limits	*870
At upstream side of CONRAIL bridge	*882
At upstream corporate limits	*900
Maps available for inspection at the Township Secretary's residence, R.D. 2, New Brighton, Pennsylvania.	
Send comments to The Honorable Thomas George, Chairman of the Township of Marion Board of Supervisors, Beaver County, R.D. 2, Fombell, Pennsylvania 16123.	
Mill Creek (borough), Huntingdon County	
Juniata River:	
Downstream corporate limits	*595
Upstream corporate limits	*599
Maps available for inspection at the Borough Building, Valley Street, Mill Creek, Pennsylvania.	
Send comments to The Honorable Kenneth Banks, President of the Borough of Mill Creek Council, Huntingdon County, HCR 61, Mill Creek, Pennsylvania 17060.	
Miller (township), Huntingdon County	
Standing Stone Creek:	
Approximately 450 feet downstream LR. 31112	*884
Approximately 0.64 mile upstream from LR. 31056	*926
Maps available for inspection at the Huntingdon Township Secretary Patricia MacNeil's Home, L.R. 31042, Huntingdon, Pennsylvania.	
Send comments to The Honorable James Borkhamer, Jr., Chairman of the Township of Miller Board of Supervisors, Huntingdon County, R.D. #2, Box 273, Huntingdon, Pennsylvania 16652.	
Millville (borough), Columbia County	
Little Fishing Creek:	
At downstream corporate limits	*612
At upstream corporate limits	*645
Maps available for inspection at the Borough Building, State Street, Millville, Pennsylvania.	
Send comments to The Honorable Millard Ludwig, President of the Borough of Millville, Columbia County, Main Street, Millville, Pennsylvania 17846.	
Minersville (borough), Schuylkill County	
West Branch Schuylkill River:	
Approximately 1,155 feet downstream of Sunbury Street	*695
Approximately 1,000 feet upstream of Conrail Railroad Bridge	*702
Maps available for inspection at the Municipal Building, #2 E. Sunbury Street, Minersville, Pennsylvania.	
Send comments to The Honorable James Mendini, Mayor of the Borough of Minersville, Schuylkill County, Municipal Building, Minersville, Pennsylvania 17954.	
New Sewickley (township), Beaver County	
Brush Creek:	
Just upstream of the Pennsylvania Turnpike	*924
At upstream corporate limits	*972
Maps available for inspection at the Township Building, R.D. 1, Box 12, Miller Road, Rochester, Pennsylvania.	
Send comments to The Honorable Dwayne Rapf, Chairman of the Township of New Sewickley Board of Supervisors, Beaver County, R.D. 1, Box 12, Miller Road, Rochester, Pennsylvania 15074.	
Oneida (township), Huntingdon County	
Standing Stone Creek:	
Approximately 430 feet downstream of downstream crossing of State Route 26	*629
Approximately 0.35 mile upstream of downstream crossing of State Route 26	*631
At the confluence of Chilcoat Run	*645
Approximately 0.2 mile upstream of upstream crossing of State Route 26	*647
Murray Run:	
Approximately 0.11 mile downstream of State Route 26	*890
At upstream corporate limits	*991
Chilcoat Run:	
At confluence of Standing Stone Creek	*645
Approximately 50 feet upstream of L.R. 31046	*654
Maps available for inspection at the Township Municipal Building, 115 Stone Creek Road, Huntingdon, Pennsylvania.	
Send comments to The Honorable John Wagner, Chairman of the Township of Oneida Board of Supervisors, Huntingdon County, R.D. #2, Huntingdon, Pennsylvania 16652.	
Orwigsburg (borough), Schuylkill County	
Mahanoon Creek:	
At downstream corporate limits	*535
Upstream side of State Route 443	*560
Approximately 1,850 feet upstream of State Route 443	*600
Maps available for inspection at the Municipal Building, 209 N. Warren Street, Orwigsburg, Pennsylvania.	
Send comments to The Honorable Clair Stayer, Council President of the Borough of Orwigsburg, Schuylkill County, P.O. Box #128, Orwigsburg, Pennsylvania 17961.	
Penn Forest (township), Carbon County	
Dilldown Creek:	
At confluence with Mud Run	*1,538
Approximately 1.3 miles upstream of confluence with Mud Run	*1,570
Mud Run:	
Approximately 1,140 feet downstream of T-516 (North Old State Road)	*1,479
Approximately 1.4 miles upstream of State Route 903	*1,585
Maps available for inspection at the Township Building, Star Route 903, Jim Thorpe, Pennsylvania.	
Send comments to The Honorable Alfred Feuerstein, Chairman of the Township of Penn Forest Board of Supervisors, Carbon County, Star Route, Jim Thorpe, Pennsylvania 18229.	
Ruscombmanor (township), Berks County	
Willow Creek:	
At downstream corporate limits	*474
Approximately 30 feet upstream of Pumphouse Road	*570
Unnamed Tributary A to Willow Creek:	
At confluence with Willow Creek	*476
Approximately 20 feet upstream of T-987	*548
Unnamed Tributary B to Willow Creek:	
At corporate limits	*479
Approximately 980 feet upstream of corporate limits	*503
Little Manatawny Creek:	
At corporate limits	*486
Approximately 2,370 feet upstream of corporate limits	*515
Unnamed Tributary to Little Manatawny Creek:	
At downstream corporate limits	*483
Approximately 1,590 feet upstream of corporate limits	*525
Maps available for inspection at the Township, Secretary Rose Ellen Muth's Office, R.D. 3, Box 3386, Fleetwood, Pennsylvania.	
Send comments to The Honorable Earl Matthias, Chairman of the Township of Ruscombmanor Board of Supervisors, Berks County, R.D. 5, Box 5467, Fleetwood, Pennsylvania 19522.	
South Manheim (township), Schuylkill County	
Bear Creek:	
At downstream corporate limits	*473
At upstream corporate limits	*628
Maps available for inspection with Ms. Dawn Hoffman, Township Secretary, R.D. 1, Box 207 A, Auburn, Pennsylvania.	
Send comments to The Honorable Chris Ingaglio, Chairman of the Township of South Manheim, Schuylkill County, R.D. 2, Box 274, Auburn, Pennsylvania 17922.	

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Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Spruce Creek (township), Huntingdon County	
Juniata River:	
Approximately 1,800 feet downstream of the confluence with Spruce Creek	*761
Approximately 2,250 feet upstream of State Route 45	*769
Spruce Creek:	
At confluence with Juniata River	*765
Approximately 0.6 mile upstream of T-602	*827
Maps available for inspection at the Township Secretary's House, R.D. #1, Box 97, Tyrone, Pennsylvania.	
Send comments to The Honorable Sidney N. Hamer, Chairman of the Township of Spruce Creek Board of Supervisors, Huntingdon County, Spruce Creek, Pennsylvania 16683.	
Union (township), Huntingdon County	
Juniata River:	
Approximately 0.8 mile downstream of abandoned bridge	*587
Approximately 0.4 mile upstream of CONRAIL	*591
Upstream of State Route 829	*601
Maps available for inspection Township Secretary Robert Fisher's home, Township Road #424 (off Hill Street), Union, Pennsylvania.	
Send comments to The Honorable Sidney M. Hesster, Chairman of the Township of Union Board of Supervisors, Huntingdon County, R.D., Mapleton Depot, Pennsylvania 17052.	
Warriors Mark (township), Huntingdon County	
Warriors Mark Run:	
Approximately 3,580 feet downstream of Burkett Road	*1,091
Approximately 370 feet upstream of State Route 550	*1,098
Little Juniata River:	
At downstream corporate limits	*814
At downstream side of Legislative Route 07030	*856
Maps available for inspection at the Warriors Mark Township Building (behind Larry Smith's house), Warriors Mark, Pennsylvania.	
Send comments to The Honorable L. Stewart Reif, Chairman of the Township of Warriors Mark, Huntingdon County, Warriors Mark, Pennsylvania 16877.	
SOUTH CAROLINA	
City of Barnwell, Barnwell County	
Salkehatchie River:	
About 700 feet downstream of CSX railroad	*166
About 2,000 feet upstream of CSX railroad	*166
Turkey Creek:	
About 1.3 miles downstream of Clinton Street	*154
Just downstream of Bryan Street	*169
Just upstream of Bryan Street	*176
About 0.9 mile upstream of Wellington Drive	*178
Jordan Branch:	
About 0.52 mile downstream of Main Street (State Route 70)	*168
About 0.3 mile upstream of Main Street (State Route 70)	*217
Maps available for inspection at the City Hall, Barnwell, South Carolina.	
Send comments to The Honorable Rodman Lemon, Mayor, City of Barnwell, City Hall, P.O. Box 776, Barnwell, South Carolina 29812.	
Lake View (town), Dillon County	
Bear Swamp Creek:	
About 1,030 feet downstream of 1st Avenue	*75
About 300 feet upstream of 4th Avenue	*82
Maps available for inspection at the Town Hall, Lake View, South Carolina.	
Send comments to The Honorable Robert T. Smith, Mayor, Town of Lake View, Town Hall, P.O. Box 624, Lake View, South Carolina 29563.	
TEXAS	
Burleson County (unincorporated areas)	
Davidson Creek:	
At confluence with Davidson Creek Tributary 1	*314
Approximately .5 mile upstream of confluence with Copperas Hollow Creek	*332
Davidson Creek Tributary 1:	
At confluence with Davidson Creek	*314
Approximately 0.5 mile upstream of Southern Pacific Railroad	*364
Copperas Hollow Creek:	
Approximately 130 feet downstream of most downstream corporate limits	*348
Approximately .4 mile upstream of the most upstream corporate limits	*383
Elm Branch:	
Approximately 450 feet downstream of confluence with Elm Branch Tributary 1	*338
Approximately .5 mile upstream of County boundary	*398
Elm Branch Tributary 1:	
At confluence with Elm Branch	*341
At County boundary	*371
Old River Tributary 1:	
Approximately 1,240 feet downstream of confluence with Old River Tributary #2	*226
Approximately 1.0 mile upstream of the upstream most County boundary	*346
Maps available for inspection at the Burleson County Judge's Office, Buck Street, Caldwell, Texas.	
Send comments to The Honorable Woods A. Caperton, Burleson County Judge, County Courthouse, P.O. Box 768, Caldwell, Texas 77836.	
Sonora (city), Sutton County	
Dry Devil's River:	
Approximately 125 feet downstream of downstream corporate limits	*2,116
Approximately 0.56 mile upstream of upstream crossing of U.S. Route 277	*2,137
Lowrey Draw:	
At confluence with Dry Devil's River	*2,125
Approximately 0.36 mile upstream of upstream corporate limits	*2,136
Meadow Creek:	
At confluence with Lowrey Draw	*2,131
At upstream corporate limits	*2,144
Maps available for inspection at the City Hall, 201 N. E. Main, Sonora, Texas.	
Send comments to The Honorable Billy Gosney, Mayor of the City of Sonora, Sutton County, 201 N. E. Main, Sonora, Texas 76950.	
VERMONT	
Brighton (town), Essex County	
Island Pond Brook:	
At confluence with Pherrins River	*1,173
Downstream side of Island Pond Road	*1,179
Island Pond: For its entire shoreline	*1,175
Pherrins River:	
At confluence with Island Pond Brook	*1,173
Upstream side of second crossing of State Route 114	*1,181
Maps available for inspection at the Town Manager's Office Vault, Town Hall, Island Pond, Vermont.	
Send comments to The Honorable Joseph Wade, Chairman of the Town of Brighton Board of Selectmen, Essex County, Town Hall, Pleasant Street, Island Pond, Vermont 05846.	
VIRGINIA	
Culpeper (town), Culpeper County	
Mountain Run:	
Approximately 2,000 feet downstream of Southern Railway	*348
At U.S. Route 522 (Evans Street)	*358
At upstream corporate limits at Lake Pelham Dam	*366
Maps available for inspection at the Town Engineer's Office, 118 West Davis Street, Culpeper, Virginia.	
Send comments to The Honorable Guilford W. Griffin, Manager of the Town of Culpeper, Culpeper County, 118 West Davis Street, Culpeper, Virginia 22701.	
Richmond County, unincorporated areas	
Rappahannock River: Entire shoreline within community	*7
Maps available for inspection at the Clerk's Office Record Room, County Office Building, Second Floor, 100 Court Street, Warsaw, Virginia.	
Send comments to The Honorable Stephen K. Whiteway, Richmond County Administrator, P.O. Box 956, Warsaw, Virginia 22572.	
Urbanna (town), Middlesex County	
Rappahannock River:	
Entire shoreline within community	*7
Shoreline at the confluence of Urbanna Creek and Rappahannock River	*7
Maps available for inspection at the Town Hall, Urbanna, Virginia.	
Send comments to The Honorable Carl Classen, Administrator of the Town of Urbanna, Middlesex County, P.O. Box 179, Urbanna, Virginia 23175.	
WEST VIRGINIA	
City of Paden (city), Tyler and Wetzel Counties	
Ohio River:	
At downstream corporate limits	*634
At upstream corporate limits	*635
Maps available for inspection at the City Hall, Paden City, West Virginia.	
Send comments to The Honorable John Ice, Mayor of the City of Paden City, Tyler and Wetzel Counties, City Hall, P.O. Box 11, Paden City, West Virginia 26159.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
California	San Diego County (unincorporated areas).	Sweetwater River (above reservoir).	Approximately 3,340 feet downstream of the confluence of Harbison Canyon Creek.	*481	*481
			Just upstream of third bridge in the Singing Hills Golf Course.	*452	*453
			Just upstream of Oak Drive	*395	*397
			Just upstream of Steel Canyon Road	*350	*351
			Just downstream of Campo Road—Highway 94	*309	*316
			Just above the Sweetwater Authority Ford	*255	*256
			Just above the Sweetwater River Reservoir	*248	*248
		Mexican Canyon Creek overflow.	Approximately 2,100 feet downstream of Jamul Drive.	None	*443
			At confluence with Mexican Canyon Creek	None	*414
		Mexican Canyon Creek	Approximately 240 feet upstream of footbridge	None	*590
			Just upstream of Jamul Drive	None	*491
			At confluence with Mexican Canyon Creek Overflow.	None	*414
			At the confluence with the Sweetwater River	None	*361
		Harbison Canyon Creek	Approximately 620 feet upstream of Patrick Drive.	None	*1,038
			Approximately 30 feet upstream of Noakes Street.	None	*950
			Approximately 320 feet upstream of Gladiola Lane.	None	*900
			Approximately 50 feet downstream of Warfield Way.	None	*860
			Approximately 20 feet upstream of Collier Way	None	*814
			Approximately 1,980 feet downstream of Collier Way.	None	*760
			Approximately 3,630 feet downstream of Collier Way.	None	*690
			Approximately 5,110 feet upstream of Dehesa Road.	None	*620
			Approximately 2,180 feet upstream of Dehesa Road.*	None	*590
			Approximately 90 feet upstream of Dehesa Road.	None	*570
		San Diego River	Approximately 10,500 feet upstream of Riverford Bridge.	None	*397
			Approximately 7,500 feet upstream of Riverford Bridge.	None	*393
			Approximately 3,400 feet upstream of Riverford Bridge.	None	*375
			Approximately 40 feet upstream of Riverford Bridge.	None	*368
			Approximately 1,600 feet downstream of Riverford Bridge.	None	*360
			Approximately 2,100 feet downstream of Riverford Bridge.	None	*354
		Santa Maria Creek (San Pasqual Valley area).	Approximately 1,700 feet upstream of Bandy Canyon Road.	None	*400
			Approximately 90 feet upstream of Bandy Canyon Road.	None	*396
		Santa Ysabel Creek	Approximately 2,880 feet upstream of State Highway 78.	None	*433
			Approximately 160 feet upstream of State Highway 78.	None	*426
			Approximately 2,540 feet downstream of State Highway 78.	None	*413
			Approximately 23,570 feet upstream of Interstate Highway 15.	None	*356
			Approximately 21,760 feet upstream of Interstate Highway 15.	None	*350
		South Fork Moosa Canyon Creek.	Approximately 230 feet upstream of Live Oak	None	*539
			Just upstream of Oak Shadows Drive	None	*526
			Just downstream of Lawrence Welk Drive	None	*506
			Approximately 3,850 feet downstream of Old Castle Road.	None	*475
			Approximately 2,065 feet downstream of Old Castle Road.	None	*460
			Approximately 110 feet upstream of Old Castle Road.	None	*440
		Box Canyon (alluvial fan)	Approximately 1,680 feet upcanyon from USGS Gaging Station # 10255800 in a northeast direction.	None	# 3

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 800 feet upcanyon from USGS Gaging Station # 10255800 in a northeast direction.	None	# 2
		Unnamed canyon (alluvial fan)	Approximately 1,700 feet upcanyon from the intersection of sections 23, 24, 25, and 26 in T9S and R5E in a southwest direction.	None	# 3
			Approximately 1,000 feet upcanyon from the intersection of sections 23, 24, 25, and 25 in T9S and R5E in a southwest direction.	None	# 2
		El Vado Canyon (alluvial fan)	Approximately 2,100 feet upcanyon from the western corner of the intersection of sections 6 and 7 in T10S and R6E in a northwest direction.	None	# 2
			Approximately 1,400 feet downcanyon from the western corner of the intersection of sections 6 and 7 in T10S and R6S in a southeast direction.	None	# 1
		Henderson Canyon (alluvial fan).	Approximately 12,300 feet upcanyon from the intersection of Montezuma Road and Catarina Drive in a northwest direction.	None	# 3
			Approximately 9,000 feet upcanyon from the intersection of Montezuma Road and Catarina Drive in a northeast direction.	None	# 2
			Approximately 6,000 feet upcanyon from the intersection of Montezuma Road and Catarina Drive in a northwest direction.	None	# 1
		Borrego Palm Canyon (alluvial fan).	Approximately 2,000 feet downcanyon from USGS Gaging Station # 10255810 in a southeast direction.	None	# 4
			Approximately 4,500 feet upcanyon from the State Park Headquarters in a western direction.	None	# 3
		Fire Canyon (alluvial fan)	Approximately 8,750 feet upcanyon from the intersection of Whip Drive and Verbena Drive in a western direction.	None	# 2
			Approximately 6,500 feet upcanyon from the intersection of Whip Drive and Verbena Drive in a western direction.	None	# 1
		Hellhole Canyon (alluvial fan)	Approximately 12,000 feet upcanyon from the intersection of Palm Canyon Drive and Dismonds Road in a southwest direction.	None	# 3
			Approximately 7,000 feet upcanyon from the intersection of Palm Canyon Drive and Dismonds Road in a southwest direction.	None	# 2
		Dry Canyon (alluvial fan)	Approximately 9,000 feet upcanyon from the intersection of Broken Arrow Road and Tilting Drive in a southwest direction.	None	# 2
			Approximately 6,500 feet upcanyon from the intersection of Broken Arrow Road and Tilting Drive in a southwest direction.	None	# 1
		Culp-Tubb Canyon (alluvial fan).	Approximately 6,500 feet upcanyon from the intersection of Country Club Road and Wagon Road in a southwest direction.	None	# 4
			At the Tubb Canyon Spring Dike	None	# 3
			Approximately 1,000 feet east of the southern tip of the Tubb Canyon Spring Dike.	None	# 2
			At the intersection of Country Club Road and Borrego Springs Road.	None	#1
		Coyote Canyon (alluvial fan)	Approximately 2,000 feet downcanyon from USGS Gaging Station # 10255800 in a southeast direction.	None	#6
			Approximately 9,000 feet downcanyon from USGS Gaging Station # 10255800 in a southeast direction.	None	#5
			Approximately 14,800 feet downcanyon from USGS Gaging Station # 10255800 in a southeast direction.	None	#4
		Coalescent alluvial fan areas: Coyote Canyon, Box Canyon or unnamed canyon (alluvial fans).	At the intersection of sections 31 and 32 in T9S and R6E with Sections 5 and 6 in T10S and R6E.	None	#3
			At the intersection of sections 4, 5, 8 and 9 in T10S and R6E.	None	#2
			At the intersection of Santa Rosa Drive and Di Giorgio Road.	None	#1
			At the Borrego Valley Airport	None	#1

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			At the intersection of sections 13, 14, 23, and 24 in T10S and R6E.	None	#1
		Borrego Palm Canyon, Fire Canyon, or Hellhole Canyon (alluvial fans).	At the intersections of Lasy S Drive and St. Vincent Drive.	None	#2
			At the intersection of Whip Drive and Ocotillo Circle.	None	#2
			At Christmas Circle	None	#2
		Dry Canyon or Culp-Tubb Canyon (alluvial fans).	At the intersection of Country Club Road and Tilting Drive.	None	#2
			At the intersection of County Club Wagon Road.	None	#2
			At the intersection of De Anza Road and Country Club Road.	None	#1
Maps are available for review at the San Diego County Department of Public Works, 5555 Overland Avenue, San Diego, California 92123. Send comments to Mr. Brian Bilbray, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Suite 335, San Diego, California 92101.					
Idaho	City of Caldwell, Canyon County.	Boise River	Approximately 300 feet downstream of Union Pacific Railroad.	*2,349	*2,348
			Just upstream of Chicago Street	*2,351	*2,352
			Just downstream of U.S. Highway 84	*2,355	*2,355
			Approximately 2,800 feet upstream of Plymouth Street at corporate limit.	*2,364	*2,365
			Approximately 6,225 feet upstream of Plymouth Street.	*2,367	*2,367
Maps are available for review at the City Engineers Office, City of Caldwell, 621 Cleveland Street, Caldwell, Idaho. Send comments to The Honorable Peter B. Cowles, Mayor, City of Caldwell, P.O. Box 1177, Caldwell, Idaho 83606.					
Indiana	Town of Waterloo, DeKalb County.	Cedar Creek	Just upstream of County Route 28	None	*881
			Just downstream of Center Street	None	*889
Maps available for inspection at the Clerk Treasurer's Office, Town Office, 385 West Walnut, Waterloo, Indiana. Send comments to The Honorable Stephen B. Walter, Town Board President, Town of Waterloo, Town Office, 385 West Walnut, Waterloo, Indiana 46793.					
Kentucky	City of Carrollton, Carroll County.	Ohio River	About 546 miles below Headwaters at Pittsburgh.	None	*466
			About 542 miles below Headwaters at Pittsburgh.	None	*469
		Kentucky River	At mouth	None	*466
			About 1.2 miles above mouth	None	*466
Maps available for inspection at the City Hall, Carrollton, Kentucky. Send comments to The Honorable Bill Welty, Mayor, City of Carrollton, City Hall, P.O. Box 156, Carrollton, Kentucky, 41008.					
Massachusetts	Weymouth, town, Norfolk County.	Hingham Bay	At Lower Neck Cove	*12	*13
			At Parnell Street and Fort Point Road	*12	*13
			At east side of Slate Island	*12	*15
			At southwest side of Slate Island	*12	*15
			At north side of Slate Island	*12	*17
			At Rose Cliff	*12	*17
			At north side of Grape Island	*12	*18
			At Lower Neck	*12	*18
			At Upper Neck	*12	*18
		Weymouth Fore River	At approximately 300 feet south of Paomet Road and Wessagusett Road intersection.	*12	*14
			At approximately 120 feet inland of shoreline by the intersection of Shore Drive and Ocean Avenue.	*12	*15
			Entire shoreline along Regatta Road from approximately 100 feet east of Bradmere Way extended to approximately 100 feet northeast of North Street extended.	*12	*17
		Weymouth Back River	At approximately 1,050 feet downstream of the end of Broad Beach Road.	*12	*15
Maps available for inspection at the Planning Department, Town Hall, 75 Middle Street, Weymouth, Massachusetts. Send comments to The Honorable Brian McDonald, Chairman of the Town of Weymouth Board of Selectmen, Norfolk County, Town Hall, 75 Middle Street, Weymouth, Massachusetts 02188.					
North Carolina	City of Lumberton, Robeson County.	Lumber River	About 1.8 miles downstream of Chippewa Street.	*113	*113
			About 2,300 feet downstream of confluence of Boar Swamp.	*127	*127
		Jacob Swamp	About 900 feet upstream of SR 2269	*114	114
			Just upstream of Contempora Drive	None	*124
		Little Jacob Swamp	At mouth	*114	*114

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
		Five Mile Branch	Just upstream of SR 2513	None	*125
			At mouth	*124	*124
		Meadow Branch	Just downstream of Meadow Road	*126	*138
			At mouth	*124	*124
		Pole Cat Branch	Just upstream of Fayetteville Road	*133	*133
			At mouth	*126	*126
		Ivey Branch	Just upstream of Fayetteville Road	*133	*130
			At mouth	*125	*125
		Saddletree Swamp	Just upstream of Fayetteville Road	*130	*133
			At mouth	*124	*124
		Saddletree Swamp Tributary	About 3,500 feet downstream of SR 1529	None	*129
			At mouth	None	*124
			Just downstream of SR 1544	None	*142

Maps available for inspection at the City Hall, Lumberton, North Carolina.
Send comments to The Honorable David Weinstein, Mayor, City of Lumberton, P.O. Box 1388, Lumberton, North Carolina 28359.

Ohio	City of Cambridge, Guernsey County.	Wills Creek	About 3,500 feet downstream of Wills Creek Valley Road	*794	*794
			About 600 feet downstream of Interstate 70	*800	*800
		Leatherwood Creek	At mouth	*800	*800
			About 1,300 feet upstream of Vocational Road	*801	*801
		Crooked Creek	About 1.0 mile upstream of Bloomfield Road	None	*796
			Just downstream of Glenn Highway	None	*797

Maps available for inspection at the City Hall, 1131 Steubenville Avenue, Cambridge, Ohio.
Send comments to The Honorable C. Charles Schaub, Mayor, City of Cambridge, City Hall, 1131 Steubenville Avenue, Cambridge, Ohio 43725.

Vermont	Hartford, town, Windsor County.	Connecticut River	At downstream corporate limits (extended)	*345	*346
			At upstream corporate limits (extended)	*388	*387
		White River	At confluence with the Connecticut River	*354	*355
			At upstream corporate limits	*408	*401
		Ottauquechee River	At Quechee Dam	*575	*574
			At upstream corporate limits	*656	*657

Maps available for inspection at the Town Hall, 15 Bridge Street, White River Junction, Vermont.
Send comments to The Honorable Ralph Lehman, Manager of the Town of Hartford, Windsor County, 15 Bridge Street, White River Junction, Vermont 05001.

Harold T. Duryee,
Administrator, Federal Insurance Administration.
Issued: June 3, 1988.
[FR Doc. 88-12961 Filed 6-8-88; 8:45 am]
BILLING CODE 6718-21-M

Notices

Federal Register
Vol. 53, No. 111
Thursday, June 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 3, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Foreign Agricultural Service Application for Import Licenses for Dairy Products under Section 22 FAS-922, 923, 923A, 924 and 924A Recordkeeping; Annually Individuals or households; Businesses or other for-profit; Federal agencies or employees; 800 responses; 864 hours; not applicable under 3504(h) Richard P. Warsack (202) 447-5270
- Forest Service Application for Temporary Employment FS-6100-23 Annually Individuals or households; 12,000 responses; 6,000 hours; not applicable under 3504(h) Penny McGill (703) 235-2046

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88-13010 Filed 6-8-88; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Oil and Gas Leasing in the Bridger-Teton National Forest; Wyoming

AGENCY: Forest Service, USDA.

ACTION: The Department of Agriculture, Forest Service, is revising its March 24, 1988, **Federal Register** Notice of Intent to prepare an Environmental Impact Statement (EIS) for oil and gas leasing in the Teton-Bridger East portion of the Bridger-Teton National Forest. The Bridger-Teton National Forest is located in Fremont, Park, Teton, Sublette, and Lincoln Countries, Wyoming.

SUMMARY: Oil and gas leasing in the West Bridger portion of the National Forest was the subject of a recently completed Environmental Assessment. Information contained in that document and the comments we received indicate that the proposed action may have a significant effect on the environment; therefore, there is a need to continue the National Environmental Policy Act (NEPA) process and prepare an EIS. Because an EIS is currently being prepared for the Teton-Bridger East portion of the Forest, the West Bridger EIS and the Teton-Bridger East EIS will be combined. This will result in a single Forest-wide EIS for oil and gas leasing in the Bridger-Teton National Forest. Public involvement (scoping) was previously undertaken concerning oil and gas leasing in both portions of the National Forest. The significant issues which were identified, will be incorporated into the ongoing NEPA process. J.S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, Ogden, Utah 84401 is the responsible official. The Bureau of Land Management (BLM), Department of the Interior, will be invited to participate as a cooperating agency.

The Draft EIS will be available for review about January 1989. Public meetings on the draft document will be held following distribution and an announced review period. Notice of the date, time, and place for the public meetings will be announced in the local media. The Final EIS is scheduled to be completed about July 1989.

ADDRESS: Questions concerning the proposed action and EIS or information about public meeting dates and places should be directed to Al Koschmann, Forest Engineer, Bridger-Teton National Forest, Box 1888, Jackson, Wyoming 83001, Phone (307) 733-2752.

DATE: Any comments concerning the proposed action should be sent to the above address by July 11, 1988.

T. A. Roederer,
Deputy Regional Forester Resources.
Date: May 31, 1988.
[FR Doc. 88-12927 Filed 6-8-88; 8:45 am]
BILLING CODE 3410-11-M

Intent to Prepare an Environmental Impact Statement on Activities Including Timber Harvest and Road Construction/Reconstruction; Kootenai National Forest, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed Forest Service activities including timber harvest and road construction/reconstruction in the Yaak River drainage of the Three Rivers District, Kootenai National Forest, Lincoln County, Montana. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they

may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 1, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to James F. Rathbun, Forest Supervisor, Kootenai National Forest, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to John Righter, District Ranger, Three Rivers Ranger District, Troy Ranger Station, 1437 N. Hgwy 2, Troy, MT 59935.

SUPPLEMENTARY INFORMATION: The Forest Service will prepare an environmental impact statement to determine the environmental effects, including cumulative impacts, of proposed Forest Service activities over the next 3 to 5 years that includes timber harvest and road construction/reconstruction in the Yaak River drainage of the Three Rivers District. In preparing the Environmental Impact Statement, the Forest Service will identify and consider a range of alternatives for the proposed actions. One of these will be no further timber harvest or road construction/reconstruction. Other alternatives will examine and consider various levels of timber harvest and road construction/reconstruction.

The Ninth Circuit Court of Appeals on May 11, 1988 (amended decision) held that an environmental assessment prepared for the reconstruction of the Porcupine-Sullivan portion of the Yaak 92 road failed to comply with NEPA. The court enjoined the Forest Service from further road reconstruction and timber sales. The court specifically found that road reconstruction, timber sales, and feeder roads were connected actions that must be analyzed. The court concluded that connected actions and unrelated, but reasonably foreseeable, future actions may result in cumulative effects and must be considered. This Environmental Impact Statement will assess the impacts of the proposed actions, any connected actions and the cumulative impacts of past, present and reasonably foreseeable actions in the area of the proposed actions.

The Environmental Impact Statement will consider the proposed actions based upon the management direction in the Kootenai National Forest Land and Resource Management Plan. The Kootenai National Forest Land and Resource Management Plan was completed in September of 1987. The Plan establishes Forestwide Management direction as well as more specific Management Area direction across the forest. The Yaak area contains a number of management areas, including some that allow for timber harvest, while maintaining or enhancing other resources, such as wildlife habitat. One Forestwide Management goal is to harvest the maximum amount of high risk lodgepole pine marketable, in order to minimize losses from the mountain pine beetle.

James F. Rathbun, Supervisor of the Kootenai National Forest is the responsible official.

Public participation will be important during the analysis. The first point of public participation is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identifying additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies and task assignments.

Public scoping has occurred during several environmental assessments that were prepared for portions of the Yaak drainage during the last few years. Public scoping also occurred during preparation of the Forest Land and Resource Management Plan. Issues were developed during those efforts. Due to these recent public scoping efforts, no additional public scoping meetings are planned at this time. However, to promote timely participation, the Forest Service is and will be seeking public participation during the scoping process through announcements in the local papers, posters at public establishments in the Yaak drainage, and mailings to known interested parties.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October, 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Yaak River drainage participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978) and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by February 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

John Hughes,

Deputy Regional Forester.

[FR Doc. 88-12926 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-11-M

Vegetation Management Program in the Southern Region; Revised Notice of Intent to Prepare Three Environmental Impact Statements

The revised Notice of Intent revises the Notice of Intent published in the **Federal Register** on Page 32345, September 11, 1986. Changes have been made in the scheduled dates for public review of the three Draft EIS's, and in completion dates for the three Final EIS's. The revised Notice of Intent follows:

The Department of Agriculture, Forest Service, will prepare three Environmental Impact Statements (EIS's) for proposed vegetation management programs in three areas of the Southern Region: Appalachian Mountains, Ozark and Ouachita Mountains, and Coastal Plain/Piedmont. These documents will cover National Forest System lands within the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and a portion of West Virginia.

The analyses for the EIS's will consider a range of alternative Vegetation Management Programs. The alternatives will identify the methods to be used in treating the vegetation and the activities that involve vegetation management. Methods under consideration include herbicide application, mechanical and manual techniques, prescribed burning, and grazing as a biological tool. Activities that involve treatment of vegetation include site preparation for natural and artificial reforestation, pre-commercial thinning, timber stand improvement, conifer and hardwood release, pre-harvest treatment for oak regeneration, wildlife habitat improvement, right-of-way maintenance (roads, trails, utilities and railroads), range improvement and fuels treatment. These activities are performed by USDA Forest Service personnel, cooperators, and contractors.

Federal, State and local agencies, any affected Indian tribes, and other individuals or organizations who may be interested in or affected by the decision will be invited by letter to participate in the process. Other interested publics may send comments as indicated below. No formal hearings or public meetings are planned at this time. The process for each of the three areas will include:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the Regional and local issues to be considered and analyzed.
3. Determining the disciplines needed on the interdisciplinary team.
4. Focusing on social, physical, and biological issues for each EIS.
5. Identifying cooperating agencies.
6. Identifying groups or individuals interested or affected by the decisions.

John E. Alcock, Regional Forester, Southern Region, Atlanta, Georgia is the responsible official.

The Draft EIS on the Coastal Plain/Piedmont Forest and National Grasslands should be available for public review by May 1989, with the Final EIS scheduled to be completed by October 1989.

The Draft EIS for the Appalachian Forest should be available for public review by November 1989, with the Final EIS scheduled to be completed by April 1990. The Draft EIS for the Ozark/Ouachita Forests should be available for public review by January 1990, with the Final EIS scheduled to be completed by June 1990.

Written comments and suggestions concerning the analyses, the EIS's, or EIS process should be sent to Regional Forester, Souther Region, 1720 Peachtree Road NW., Atlanta, Georgia 30367.

Questions about the proposed actions and EIS's should be directed to Stephen McCorquodale, Vegetation Management EIS Team Leader, Souther Region, Phone (404) 347-7076.

Date: June 2, 1988.

John E. Alcock,

Regional Forester, Region 8.

[FR Doc. 88-12924 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 7109-01, 7109-2]

Actions Affecting Export Privileges; Forson Elektronische Geraete GmbH

In the matter of Josef Forstner, individually and doing business as FORSON ELEKTRONISCHE GERAETE GmbH, Respondents, [Docket Numbers 7109-01, 7109-2].

Summary

Pursuant to the May 3, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is hereby affirmed in part and modified in part, Joseph Forstner, both individually and doing business as Forson Elektronische Geraete GmbH, both with an address of Breintenfurter Strasse 183, A-1120 Veinna, Austria, is denied all U.S. export privileges for a period of ten (10) years from the date hereof.

Order

On May 3, 1988, the Administrative Law Judge entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge with the following exceptions:

1. The word "indefinite" in Footnote 5 of the order is hereby deleted. Denial periods imposed under § 387.8 of the Regulations have a maximum length of 5 years and thus are more accurately "limited" rather than indefinite under the generally accepted definition of that term.

2. The word "indefinite" in lines 7 and 16 of paragraph VI of the order is deleted. See discussion in 1. above.

This constitutes final agency action in this matter.

Date: June 2, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

United States Department of Commerce, Office of Administrative Law Judge

Decision and Order

In the Matter of Josef Forstner individually and doing business as Forson Elektronische Geraete GmbH Respondents, [Docket Nos. 7109-01, 7109-02].

Appearance for Respondent: Dr. Eric Agstner, A-1010 Wien, Tuchlauben 11, Austria.

Appearance for Agency: Anthony Hicks, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, Washington, DC 20230.

Preliminary Statement

On July 20, 1987, the Office of Export Enforcement (OEE), United States Department of Commerce ("Agency"), issued a charging letter to Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH (hereinafter collectively referred to as "Respondent").[1] The

[1] When the charging letter was issued, the Office of Export Enforcement was a part of the International Trade Administration of the U.S. Department of Commerce. On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), the Office of Export Enforcement was moved to the newly created Export Administration.

charging letter alleges that Respondent violated Sections 387.5 of the Export Administration Regulations (15 C.F.R. Parts 368–399), ("the regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.App. §§ 2401–2420 (1982)), ("the Act").[2]

Respondent's answer to the initial charging letter, dated August 25, 1987, was filed with this office on August 31, 1987. Counsel for Respondent acknowledges in his "Preliminary Position on Issues and Procedure", dated September 24, 1987, that Respondent did not request a hearing. Pursuant to Section 388.14 of the regulations, this matter is adjudicated on the record without a hearing. Both Agency Counsel and Respondent made written submissions to the record, which closed on January 25, 1988.[3]

Facts

There has been no apparent dispute over the essential facts in this proceeding. On or about December 20, 1982, Respondent ordered a U.S.-origin computer (Govt. Exh. 1), controlled under Commodity Control Number 1565A for reasons of national security (Govt. Exh. 2), from the Austrian subsidiary of a U.S. parent corporation (Govt. Exh. 1). To fill the order, the Austrian company obtained the computer from the U.S. parent's Dutch subsidiary, which shipped the computer to the Austrian subsidiary under the U.S. parent's distribution license, No. V1013–002 (Govt. Exh. 3). Technische Gewerbliche Abendschule (TGA), a technical commercial engineering school, located in Vienna, Austria, was listed on the purchase invoice as the ultimate consignee (Govt. Exh. 1). The computer was delivered to TGA on June 23, 1983 (Govt. Exh. 4). The computer was signed for by the director of the school (Govt. Exh. 13, 14).

On or about May 19, 1983, Respondent ordered another computer from the same Austrian subsidiary (Govt. Exh. 5). This computer was also controlled for reasons of national security (Govt. Exh. 2). The Austrian subsidiary filled the order in the same manner, except that Fuchs GmbH, an Austrian company also located in Vienna, was listed on the purchase invoice as the ultimate consignee of the computer (Govt. Exh. 5, 8). On or about November 21, 1983, the computer was delivered to Fuchs GmbH (Govt. Exh. 5, 7).

Despite the delivery of the two computers, which were delivered to TGA and Fuchs GmbH, respectively, the Respondent never actually sold the computers to either institution nor relinguished control over either system (Govt. Exh. 8, 13, 14, 16). During May, 1984, a U.S. Department of Commerce Export Control Attache in Vienna, Austria attempted to conduct an onsite post-shipment check to verify the end use of these computers. During this check, he was unable to locate either of the computers at Fuchs GmbH or TGA.[4] He tried, with the assistance of the Austrian officials, to contact Respondent but was unable to discuss the matter with the Respondent directly (Govt. Exh. 8).

Through the Austrian officials, Respondent revealed to the Export Control Attache, that he had sold the computers to others, but would not reveal the identity of the end-users. Subsequently, on December 13, 1984, the Export Control Attache served interrogatories on the Respondent asking him to reveal the location of the two computers (Govt. Exh. 11, 12). Respondent never replied to the interrogatories.[5]

Discussion

Respondent is charged with concealing the location of U.S.-origin equipment, directly or indirectly, from an official of the U.S. government in the course of an investigation instituted under the Act. The Agency alleges that the whereabouts of the two computers is a fact material to the investigation. Both of the computers are controlled for reasons of national security and it is important for the Agency to know their whereabouts, because of the possibility that they may have been exported to a prescribed destination (Govt. Submission at 7). Such end-user inquiries and verification are a legitimate part of the export control process.

Respondent claims that the Order of April 10, 1985, punishes him for the same actions that this proceeding seeks to address, and therefore this proceeding is unfair. He also asserts that under Austrian law, he does not have to answer the Agency's interrogatories or produce the requested information.

The Order of April 10, 1985 was an indefinite denial order which placed the Respondent on the Table of Denied parties for failing to answer the interrogatories given to him by the Agency, thus violating Section 387.8 of the regulations. This section makes failures to (1) answer interrogatories, (2) respond to requests for admission, or (3) produce documents, violations punishable by denying export privileges to persons for up to five years, or until they comply with Agency's request or show good cause for not doing so, whichever is sooner.

In the proceeding before this Tribunal, the Respondent is now charged with concealing material facts in the course of an investigation, thus violating Section 387.5 of the regulations. This section of the regulations makes it a violation for any person to conceal any material fact to an official of a United States agency or through any other person or foreign official in the course of an investigation instituted under the Act.

The Respondent is correct in his assertion that the same continued conduct on his part is the basis for both proceedings. The Order of April 10, 1985 was an interim measure and the action taken here is the follow-up procedure.

Respondent asserts that because of superceding Austrian law, he need not comply with the United States regulations. He argues that the re-exportation of these computers is controlled by both Austrian law as well as the U.S. regulations (Resp.

[2] The alleged violation occurred on or about December 7, 1984 (Govt. Exh. 8). At that time, the regulations were continued in effect by an Executive Order issued under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706 (1982)). Between March 31, 1984 and July 12, 1985, the regulations were continued in effect by Executive Order 12470 (49 Fed. Reg 13099, April 3, 1984).

[3] Originally, by Order of the undersigned Administrative Law judge, dated October 17, 1987, the record in this matter was to close on December 19, 1987. However this time period was extended on requests from both Counsel for Respondent and Counsel for the Agency.

[4] When the Attache contacted the officials at TGA, he was informed that no computer had ever been ordered for purchase. When he tried to contact officials at Fuchs GmbH, he learned that the company, represented as an installment subcontractor of Forson Elektronische Geraete GmbH, did not appear to exist. It was not registered in the commercial listings, and the address it had been recorded at was a run-down apartment building (Govt. Exh. 8).

[5] For this failure to respond to the Agency's interrogatories (Govt. Exh. 8), Respondent has been placed on the Table of Denied Parties by the order of April 10, 1985 (Govt. Exh. 10). Such Indefinite Denial Orders have routinely been issued where a party declines to respond to inquiries respecting the status or disposition of controlled items. Respondent has asked, in both his answer to the charging letter and his submission for the record, to be removed from this list.

By the order of the hearing commissioner, on April 10, 1985, (50 Fed. Reg. 15206, April 17, 1985), and Sections 387.8(c) and 388.19)(b) of the regulations, Respondent may have this denial order vacated by either answering the interrogatories and producing the requested material, or making a showing of good cause for failure to do so, or Respondent may wait until the order terminates automatically, five years from the date it went into effect.

Submission at 2). Respondent claims that after receiving the equipment, both TGA and Fuchs GmbH decided not to keep the computers. Respondent claims that under Austrian law, any subsequent sale was not subject to the regulations and, therefore, he is not required to reveal the present location of the computers.

Respondent argues that revealing the whereabouts of these computers to the Agency contradicts his rights under Austrian law and cites Article 305 of subparagraph 4 of the Austrian code of civil procedure.[6] Respondent further cites the Supreme Court of Austria, which, he says, has interpreted this section of the code as entitling an individual to refuse presentation of documents if they are classified as trade or business secrets.[7]

These assertions are not accepted. Persons involved in exports from the United States, particularly of restricted items, pledge to furnish end-user data. The Export Administration Act of 1979, as amended, and the regulations promulgated thereunder, comprise the law which governs the export and reexport of goods and technology from the United States.[8] The Act applies extraterritorially and authorizes the U.S. executive branch to restrict re-exports of U.S.-origin goods and technology to foreign countries. The United States has asserted its right to protect end-user controls. This has resulted in the exercise of powers imposing licensing requirements and other restrictions on purchasers of U.S.-origin goods and technology, even where the goods or technology are outside the United States, and without regard to how many times the goods or technology have changed hands. If the Respondent wishes to conduct trade with the United States, he must submit to these regulations as he represented he would do at the time these exports were approved.

Respondent relies on his characterization of the sale of the computers from TGA and Fuchs Geraete to him as two separate and unique transactions, and these provisions of Austrian law, in asserting that he is privileged from responding to the Agency's interrogatories. This reliance is misplaced. Respondent has presented nothing to controvert the evidence produced by the Agency, which established that there were no sales to either TGA or Fuchs GmbH. The evidence produced, including a statement by Mr. Leitner of TGA, indicates that both of these transactions were merely transparent schemes (Govt. Exh. 14).[9] Thus, the Austrian law cited does not apply.[10]

Protective Orders are routinely issued in these proceedings where appropriate. If Respondent felt that the information the U.S. officials needed for their investigation was a truly confidential business secret, the release of which would damage his pecuniary or business interests, he could and should have requested such an order. An abrupt and continued refusal to cooperate with the Agency officials was, and is, inappropriate.[11]

Findings

Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, violated the regulations, in that Respondent concealed material facts from the Agency during the course of an investigation regarding the sale of two computers, in violation of § 387.5 of the regulations. These computers were U.S.-origin goods controlled under section 5 of the Act for national security reasons, and were not sold to companies named in the original export documents as the end users, but instead went to some other destination, which Respondent refuses to disclose.

Based on the above findings of fact, I conclude that an Order denying U.S. export privileges for a period of 10 years to Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete, GmbH, from the date a final order becomes effective in this proceeding, is appropriate. The final order in these proceedings will constitute the final administrative disposition and action, on these charges, against Respondent.

Order

I. For a period of 10 years from the date of the final Agency action,

[6] Respondent translates this provision:

§ 305 The presentation of other documents can be refused:

1.
2.
3.
4. If the party, by presenting the document, would (either) violate an officially recognized duty of secrecy, of which it has not validly been resolved, or a secret of arts or business;
5.

(Resp. Submission at 3, citing *ZivilprozeBordnung, ZPO*)

[7] This decision is translated:

"To business-secrets also belong information about business conclusions and business conditions; this applies especially also to reasonable sources of purchase, which defendant is not obliged to name. He was therefore entitled to refuse presentation of relevant documents at all"

(Resp. Submission at 3, citing "Decision of the Austrian Supreme Court, 14.10.1969, File number 4 Ob 346/69" *see* Österreichische Blätter, Mai–Juni 1970, page 78).

Respondent further relies on the following definition of business secrets:

"Commercial or enterprise secrets are facts, in relation to the company, of commercial or technical character, which are only known to a certain and limited number of persons and not accessible, or only with difficulties, to others, which also, according to the will of those entitled shall not be spread except among those informed, which finally make commercial reason to the owner of the business or enterprise not to disclose them."

(Resp. Submission at 3, citing *Österreichische Juristenzeitung*, volume 22, page 673 of November 13, 1967)

[8] *See The Extraterritorial Application of National Laws* (D. Lange, G. Born 1987) at 21.

[9] In his statement Mr. Leo Leitner, the director of TGA, the Technical Trade Evening School in Vienna, stated that he was contacted by Respondent Forstner in May, 1983. Respondent offered to install a computer in the school at that time for demonstration purposes (this being a common offer). This agreement was to entail the loan of the computer, cost free, which Mr. Leitner believed to be consistent with a promotional effort to build good will with the school. The equipment was put on display at the school in mid-June and never actually put into operation. It was removed, at Mr. Leitner's request before the end of the school year on July 1983. Mr. Leitner further stated that he never indicated that the school was purchasing the computer, nor discussed any details of the arrangement with Respondent, with the manufacturer (Govt. Exh. 14).

[10] In making his own determination that a foreign law should govern, Respondent has not shown that the law upon which he applies bars the production of the items the Agency is seeking, nor has he submitted any evidence that he has even made an effort to secure permission from authorities to make the information available. *See United States v. Vetco Inc.*, 691 F.2d 1281, 1289 (9th Cir. 1981), *Societe Internationale pour Participations Industrielles et Commerciale, S.A. v. Rogers*, 357 U.S. 197, 205 (1958).

It is also noted that the U.S. official conducting the inquiry, appears to have done so with the approval and assistance of the Austrian government (Govt. Exh. 8).

[11] Even if Austrian law was accepted to possibly grant a privilege to this individual, Respondent has made no showing that the information he seeks to withhold is so privileged. No information has been presented to this Tribunal to support a finding that the answers to the Agency's interrogatories are in fact a properly protected commercial or business secret. "Responsibility for deciding the question of privilege properly lies in an impartial independent judiciary, not in the party claiming the privilege and not in a party litigant. "*NLRB v. Capitol Fish Co.*, 294 F.2d 868, 876 (5th Cir. 1961).

It does not appear that the merits of the claims of privilege respecting documents relating to this case be addressed without reference to the documents, or at least some specific description of them. Counsel may not arrogate to themselves the determination of the validity and applicability of their claimed basis for asserting privilege. It may only be determined after some consideration of the contents of documents by an independent reviewer. Simply states, if an exporter cannot or will not comply with the end user and other requirements they may not participate in the export of U.S.-origin goods.

Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, Breintenfurter Strasse 183, A–1120 Vienna, Austria and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) as a party or as a representative of a party to a validated export license application;

(ii) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) in obtaining or using any validated or general export license or other export control document;

(iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. By Order of April 10, 1985 (50 Fed. Reg. 15206, April 17, 1985), as modified on June 4, 1985 (50 Fed. Reg. 24588, June 11, 1985) Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, and others were denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities and technical data. This indefinite denial order was to remain in effect until the Respondents furnished responsive answers to the written interrogatories and produced the requested reports, or until they gave adequate reason for their failure or refusal to do so or until five years from the date of that Order, whichever occurred first. Upon approval, this Order will constitute such final disposition of the administrative proceeding initiated by the agency as a result of its investigation relating to the matters which gave rise to the indefinite denial order. The indefinite denial Order of April 5, 1985 (50 Fed. Reg. 13208, April 17, 1985), as modified by Order of June 4, 1985 (50 Fed. Reg. 24558, June 11, 1985) will be superceded and revoked when this Order becomes effective. Review of the record relating to the Respondents originally named in that Order reflect that all have now been addressed. The following entries will be deleted from the said Table:

Joseph Forstner, individually and doing business as Forson Elektronische Geraete GmbH, Breintenfurterstrasse 183, A–1120 Vienna, Austria

Fuchs GmbH, a/k/a F.F. Elektronische Geraete GmbH, Schoenbrunnerstrasse 237, A–1120, Vienna, Austria

F.F. Elektronische Geraete GmbH, a/k/a/ Fuchs GmbH, Schoenbrunnerstrasse 237, A–1120, Vienna, Austria.

From the effective date of this Order it alone will be the basis for any entry on the Table of Denied Orders until modified (15 C.F.R. Part 388 (Supp. No. 1, 1987)).

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. § 2412(c)(1)).

Date: May 3, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88–12916 Filed 6–6–88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Caribbean Basin Business Promotion Council; Change in Meeting Location

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: This is the second meeting of the Caribbean Basin Business Promotion Council (Council). The Council consists of 28 private sector members and eight U.S. Government representatives and was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice will also be forwarded to the interagency CBI Task Force.

Time and Place

June 17, 1988 from 8:00 a.m. to approximately 5:30 p.m. The meeting will take place in Room "C" at the Sands Hotel, Highway 187, Isla Verde, Carolina, Puerto Rico. The Sands Hotel is approximately a five-minute drive from the Luis Munoz Rivera International Airport.

Proposed Agenda

1. Discussion of Puerto Rico's Caribbean Development (936) Program as it relates to economic development in the Caribbean Basin.

2. Investment climate reviews of Barbados, Costa Rica, Dominica, Grenada, Jamaica, and St. Lucia provided by country government representatives.

3. Analysis of CBI investment survey conducted by the U.S. Department of Commerce.

4. Review of Council's work plan and country visit assignments by Council members.

5. Discussion on Congressional and Administration outlook for CBI.

Public Participation

The meeting will be open to public participation and a period will be set aside for oral comments or questions, beginning on or around 5:00 p.m. on June 17. Any member of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. Seating is available to the public.

FOR FURTHER INFORMATION CONTACT: Paul D. Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3020, Washington, DC 20230. Telephone (202) 377–0703. Copies of the minutes of the Council's meeting will also be available at the above office 30 days after the meeting.

Date: June 3, 1988.

Gordon Studebaker,

Director, CBI Center.

[FR Doc. 88–12982 Filed 6–8–88; 8:45 am]

BILLING CODE 3510-FP-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Committee will convene separate public meetings as follows:

Council—will convene its 63rd regular meeting at the Hotel Pierre, De Diego Avenue, Santurce, Puerto Rico, on June 30, 1988, at 9 a.m., to discuss the status of fishery management plans (FMPs) under development; the habitat issue; regulatory impact review and other issues related to the Magnuson Fishery Conservation and Management Act 601 Standards, as well as discuss other administrative matters. The public meeting will adjourn at approximately 5 p.m., and reconvene July 1, 1988, from 9 a.m. to noon if necessary.

Administrative Committee—will convene at the Council's office (address below), June 29, 1988, at 2 p.m., to consider an auditors' and the Liaison Funds reports, as well as other matters related to the Council's regular operations. The public meeting will adjourn at 6 p.m.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918–2577; (809) 753–4926.

Date: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–12988 Filed 6–8–88; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene separate public meetings at The Reach Hotel, Simonton Street at the Ocean, Key West, FL, as follows:

Council: will convene July 12, 1988, at 8:30 a.m., to discuss committee reports; review the stock status of the butterfish fishery; discuss revisions to the regulatory impact review for Shrimp Amendment 4; review and make recommendations on the Tortugas Shrimp Sanctuary Closure (public testimony beginning at 1:30 p.m.); discuss and approve draft Amendment 3 to the Mackerel Fishery Management Plan (FMP), and review regulatory alternatives in the Reef Fish Amendment 1 Options Paper, selecting preferred alternatives. The Council will recess at 5 p.m. On July 13 at 8:30 a.m., the Council will continue discussion of the Reef Fish Amendment 1 Options Paper and recess at 5 p.m. On July 14 at 8:30 a.m., the Council will review regulatory alternatives in the Mackerel Amendment 4 Options Paper, selecting preferred alternatives, and review reports of the Marine Fisheries Advisory Committee and South Atlantic Fishery Management Council reports. The Council will adjourn at 5 p.m.

Committees: will convene July 11, 1988, at 1 p.m., with the Administrative Policy Committee, followed by meetings of the Habitat and Budget Committees. Adjournment is at 5 p.m. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone (813) 228–2815.

Date: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–12989 Filed 6–8–88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will convene a public meeting on June 20, 1988, at 11 a.m., at the Council's office (address below), to compile technical information to be included in Amendment #4 to the Pacific coast groundfish fishery management plan. In addition, the GMT will review information on landings of groundfish by the commercial groundfish industry and projections of catch rates for the remainder of 1988. Other issues pertaining to management of the groundfish fishery may be discussed also. The public meeting will adjourn on June 22.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–8352.

Date: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–12990 Filed 6–8–88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will convene separate public meetings, June 21–24, 1988, at the Holiday Inn on Salter Path Road, Atlantic Beach, NC, to discuss large pelagics, king and Spanish mackerel, snapper grouper, and other fishery management business. In addition, the Council's Executive/Finance Committee will convene to develop the Council's 1989 budget. A detailed agenda will be available to the public on or about June 6, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-12901 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Plan Monitoring Team (PMT) will convene a public meeting on June 14, 1988, at 1 p.m., at the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Honolulu Laboratory, 2570 Dole Street, Honolulu HI, to: (1) review remaining final modules for inclusion in the bottomfish 1987 annual report, and status of the report; (2) review team management recommendations for inclusion in the annual report and submission to the Western Pacific Council, and (3) discuss other PMT business, i.e. review draft fishing power criteria for the Northwestern Hawaiian Islands bottomfish vessels, review Bottomfish Amendment 2 proposed rules, etc. The public meeting will adjourn at 3 p.m.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-12902 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals; Issuance of Permit; Dr. Howard E. Winn

On March 7, 1988, notice was published in the Federal Register (53 FR 7224) that an application had been filed by Dr. Howard E. Winn, Graduate School of Oceanography, University of Rhode Island, Kingston, Rhode Island 02881, for a scientific research permit to tag endangered marine mammals in the Western North Atlantic Ocean.

Notice is hereby given that on May 20, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Suite 805, Washington, DC 20235; and

Director, Northeast Region, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, Massachusetts 01930.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-12873 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Minco Products, Inc.; Correction

In the notice which appeared on Monday, May 23, 1988, Vol. 53, No. 99, at page 18331, FR doc. 88-11405:

(1) In line 4 & 5 delete "joint owner of the invention," and;

(2) In line 19 delete", and to Minco".

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-12938 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for a Proposed Beach Erosion Control Project in the Vicinity of Great Egg Harbor Inlet and Peck Beach, Ocean City, NJ

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is an evaluation of the alternatives for the prevention of further erosion of the Ocean City, New Jersey beach and the improvement of navigation through the adjacent Great Egg Harbor Inlet. The purpose of any consequent work would be to stabilize the shoreline at a predetermined width, to provide shore property protection, and to lessen the hazards of inlet navigation.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DSEIS should be addressed to Dr. Teruo Sugihara, (215) 597-4333, U.S. Army Corps of Engineers, U.S. Custom House, CENAP-PL-E, 2nd and Chestnut Streets, Philadelphia, PA 19106-2991.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed document evaluates a study area approximately 8 miles in length and includes the land between Surf Road and 59th Street in Ocean City. This area is subject to daily and storm wave action which create severe beach erosion problems. Hazardous navigation conditions exist in Great Egg Harbor Inlet due to shallow shoals in the channel. These shoals are causing incident waves to break making negotiation of the channel by boaters difficult in most sea conditions and nearly impossible during storms.

b. The authority for the proposed project is the committee resolution of December 15, 1970 under the provisions of section 201 of Pub. L. 89-298 as presented in H.D. 91-160 and as reauthorized with a provision for construction of separable elements under section 831(1) of the Water Resources Development Act of 1986 (Pub. L. 99-662).

2. Alternatives

In addition to the no action alternative the alternatives considered for the correction of the beach erosion and of the hazardous channel navigation fall into structural and non-structural categories. The structural measures to correct the beach erosion include bulkheads, seawall, revetments, offshore breakwaters, groins, beach restoration/nourishment, and beach sills. Nonstructural measures are flood insurance, development regulations, and land acquisition. The structural measures to improve channel navigation are jetties and periodic dredging of the inlet. Non-structural measures include waiting for the tides, periodic channel survey and marking, boater relocation, regulated usage, and improving navigation aids.

3. Scoping

a. Initial studies which consist of a Environmental Statement (September 25, 1970), a Draft Navigation Impact Study (October 16, 1970 filing date in the Federal Register), and a Beach Erosion Control—Navigation Study (completed in December 1985 for the New Jersey Department of Environmental Protection) were prepared by the Corps of Engineers for this study area.

b. The anticipated scoping process will involve preliminary coordination with Federal, State, and local agencies. Participation of the general public and other interested parties and organizations will be invited by means of a public notice. Based on the input of these agencies and the interested public, a decision to have a formal scoping meeting will be made.

c. The significant issues and concerns that have been identified include the impacts of the project on acquatic biota, water quality, intertidal habitat, shallow water habitat, cultural resources, and economics.

4. Availability

It is estimated the DSEIS will be made available to the public in December 1988.

Robert L. Callegari,

Chief, Planning Division.

[FR Doc. 88-12934 Filed 6-8-88; 8:45 am]

BILLING CODE 3710-AS-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on the Role of Unmanned Vehicles in Support of Naval Warfare will meet on June 30 through July 1, 1988. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on June 30; and commence at 8:00 a.m. and terminate at 4:00 p.m. on July 1, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on remotely-operated and autonomous vehicle technology. The agenda will include technical briefings and discussions addressing current state-of-the-art in remotely-operated and autonomous vehicle technology, and the operational utility of such platforms in support of naval warfare objectives. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Date: June 6, 1988.

Jane M. Virga,

Lieutenant, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 88-12947 Filed 6-8-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 11, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 6, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: NEW

Title: The Evaluation of the Rehabilitation Services Administration Training Program for Interpreters for Deaf Individuals

Frequency: One time only

Affected Public: Individuals or households; State or local governments; non-profit institutions
Reporting Burden:
Responses: 985
Burden Hours: 906
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will collect information from individuals, deaf referral centers/agencies, Vocational Rehabilitation offices, and Interpreter Training Programs under the Rehabilitation Act of 1973, as amended. The Department will use the information to determine the need for interpreters for deaf persons and to evaluate the effectiveness of Federal funded training programs.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: List of Hearing Officers Recordkeeping
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 0
Burden Hours: 0
Recordkeeping:
Recordkeepers: 16,000
Burden Hours: 1,600
Abstract: This list is used by State public agencies receiving Education of Handicapped Act, Part B funds. The information is used to inform interested parties of the training and abilities of persons serving as impartial hearing officers.

Office of Special Education and Rehabilitative Services

Type of Review: NEW
Title: Data Collection Forms for Evaluation of Independent Living Services
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 170
Burden Hours: 2,252
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: These forms will be used by Independent Living Centers that have been funded under Title VII, Part B of the Rehabilitation Act of 1973, as amended. The Department will use the information to determine grantee compliance with Independent Living Center standards.

[FR Doc. 88-13014 Filed 6-8-88; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.025A]

Notice Reopening the Closing Date for Transmittal of Applications for State and Multi-State Projects for Deaf-Blind Children and Youth Under the Services for Deaf-Blind Children and Youth Program for Fiscal Year 1988

Purpose: On November 16, 1987, the Office of Special Education and Rehabilitative Services (OSERS), published a notice in the Federal Register at 52 FR 44333 establishing February 19, 1988 as the deadline for the transmittal of applications for FY 1988 awards under the Services for Deaf-Blind Children and Youth program, Priority 1: State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025A). The competition is being reopened to accommodate requests from certain States that are being served presently through a continuation grant to a Multi-State Deaf-Blind Service Project and wish to apply independently or that are receiving no services.

Deadline for Transmittal of Applications: July 12, 1988.
Applications Available: June 10, 1988
Available funds: $400,000
Estimated Average Award: $100,000
Project Period: Up to 36 months
Applicable Regulations: (a) The regulations for the Services for Deaf-Blind Children and Youth Program, 34 CFR Part 307; (b) the Education Department General Administrative Regulations (EDGAR), 34 CFR 74, 75, 77, 78 and 79; and (c) the annual funding priority for this program.

For Applications or Information: Severely Handicapped Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3511-M/S 3409), Washington, DC 20202. Telephone (202) 732-1177.

Program Authority: 20 U.S.C. 1422.
Dated: June 6, 1988.

L. Michael Herrell,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88-13015 Filed 6-8-88; 8:45 am]
BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3394-1]

Prevention of Significant Deterioration of Air Quality (PSD); Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between November 1, 1987 and April 30, 1988, the New York State Department of Environmental Conservation (NYSDEC) issued four final determinations and the New Jersey Department of Environmental Protection (NJDEP) issued two final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the NYSDEC and the NJDEP have made final determinations relative to the sources listed below:

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

NYSDEC Actions
New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001

NJDEP Actions
New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, CN 027 Trenton, New Jersey 08625

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the Federal Register. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

William J. Muszynski,

Acting Regional Administrator.

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Metal Container Corp	New Windsor, New York	Installation of a beverage can surface coating facility	NYSDEC	PSD Permit Approval	11/30/87
Bergen County	Ridgefield, New Jersey	Construction of four 715 tons per day municipal waste incinerators, four lime silos, a ferrous metal shredder, and a 20,000 gallon oil storage tank.	NJDEP	PSD Permit Approval	12/23/87
WES Gloucester Company	West Deptford, New Jersey	Construction of two 287.5 tons per day municipal waste incinerators, one lime storage silo, and ash handling area.	NJDEP	PSD Permit Approval	1/14/88
Eastman Kodak, Co	Rochester, New York	Construction of a photographic film coater	NYSDEC	PSD Non-Applicability Determination	2/17/88
TBG Cogeneration Corporation	Bethpage, New York	Construction of a 49.9 MW cogeneration facility consisting of two natural gas turbine generators and one steam turbine generator.	NYSDEC	PSD Permit Approval	4/3/88
Albany Cogeneration Associate	Colonie, New York	Construction of a 26 MW gas turbine and deactivation of four existing boilers.	NYSDEC	PSD Non-Applicability Determination	4/13/88

[FR Doc. 88-12961 Filed 6-8-88; 8:45 am]
BILLING CODE 6560-50-M

[OPP-00262; FRL-3394-5]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, July 18 and Tuesday, July 19, 1988, beginning at 8:30 a.m. each day and ending by 3:30 p.m. on Tuesday, July 19.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. (703) 486-1234.

FOR FURTHER INFORMATION CONTACT: By mail. Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1115C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7090.

SUPPLEMENTARY INFORMATION: This will be the thirty-first meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the March 1988 meeting of SFIREG.
2. Regional reports.
3. Working Committee reports
4. Other topics which may arise.

Dated: June 2, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-12962 Filed 6-8-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010789-002
Title: Israel Westbound Conference
Parties: Zim Israel Navigation Co., Ltd., Farrell Lines, Inc., Lykes Bros. Steamship Company, Inc.
Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 206-011150-001
Title: Atlantic Westbound Stabilization Agreement
Parties: North Europe-U.S. Atlantic Conference, South Europe/U.S.A. Freight Conference, North Europe-U.S. Gulf Freight Association
Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

By Order of the Federal Maritime Commission.

Dated: June 6, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-12974 Filed 6-8-88; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Pandair Freight, Inc.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1514
Name: Pandair Freight, Inc.
Address: 1055 Post Road, Fairfield, CT 06430
Date Revoked: May 6, 1988
Reason: Surrendered license voluntarily
License Number: 2823
Name: Joseph Frank Fraile dba JFF International Forwarding

Address: 2132A E. Dominguez St., Long Beach, CA 90810
Date Revoked: May 17, 1988
Reason: Surrendered license voluntarily
License Number: 2460
Name: Centurion Shipping Co. Ltd.
Address: 1200 Main St., Bridgeport, CT 06601
Date Revoked: May 20, 1988
Reason: Surrendered license voluntarily

Robert G. Drew,
Director, Bureau of Domestic Regulation.

[FR Doc. 88-12952 Filed 6-8-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Eastern Iowa Bancshares, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 1, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eastern Iowa Bancshares, Ltd.*, Cascade, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Onslow Savings Bank, Onslow, Iowa.

2. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Century Bancorp, Inc., Circle Pines, Minnesota, and thereby indirectly acquire Centennial Bank, Circle Pines, Minnesota.

3. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Peoples Bancshares Corporation, Van Wert, Ohio, and thereby indirectly acquire The Peoples Bank and Trust Company, Van Wert, Ohio.

Board of Governors of the Federal Reserve System, June 3, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-12946 Filed 6-8-88; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 to (1) supplement current project grants for Sexually Transmitted Diseases (STD) Prevention/Training (P/T) Centers to provide funds for Acquired Immunodeficiency Disease Syndrome (AIDS) professional education training programs and (2) establish one new STD P/T Center under the professional education component of the STD Research, Demonstrations, and Public and Professional Education Grant Program which includes AIDS professional education training.

CDFA Number and Regulation

The Catalog of Federal Domestic Assistance Number is 13.978. Regulations governing Grants for STD Research, Demonstrations, and Public and Professional Education are codified in Part 51b, Subparts A and P of Title 42, Code of Federal Regulations.

Authority

This program is authorized by section 318(b) of the Public Health Service Act [42 U.S.C. 247c(b)], as amended; section 301(a) [42 U.S.C. 241(a)], as amended.

Objective

The objective of these awards is to support professional training programs of STD clinical patient management and AIDS education within the national network of STD P/T centers. This will be accomplished primarily by training health care professionals (both public and private sector), physicians-in-training, key program staff of AIDS Prevention Programs, and selected others in concepts and procedures related to the prevention of AIDS and in the diagnosis, management, prevention, patient counseling, standards of care, and program development related to STD control.

Eligible Applicants

Eligible applicants for the supplemental funds are the STD P/T centers (Baltimore, Birmingham, Chicago, Cincinnati, Dallas, Denver, Long Beach, Newark, San Juan, and Seattle) presently receiving grant funds.

Eligible applicants to establish a new training center are official public health agencies of State and local governments, in the *Northeastern/New England Area* (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) or the *Western Area* (Arizona, California, Utah, Hawaii, Nevada, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, and the Republic of Palau).

Applications are being limited to the official State and local health agencies because of the emphasis on public health management, clinical training in full-time STD clinics, and STD disease intervention and control.

Priority consideration will be given to funding one new STD P/T center in either of the above areas where the site of the facility is: (1) In a high incidence area of reported AIDS and STD cases relative to all other States and major cities in the nation or is close enough to one or more high incidence areas that prospective trainees from such areas are unlikely to view either the distance or the transportation options as barriers to the training provided; and (2) located beyond 150 miles of an existing STD P/T center to avoid the competition for trainees that is likely to occur within such a shared catchment area.

Availability of Funds

Approximately $800,000 is available for Fiscal Year 1988 under this announcement. Funding estimates outlined may vary and are subject to change.

Supplemental Applications—Approximately $500,000 to $600,000 will be available in Fiscal Year 1988 to fund up to ten supplements to existing STD P/T centers with an average award of $50,000 to $60,000. Funding is expected to be awarded on or about September 1, 1988.

Competing Applications—Approximately $200,000 to $300,000 is expected to be awarded to fund one new STD P/T center and funding is expected to be awarded on or about September 1, 1988. It is expected that the grant will be for a 12-month budget period, in a 1–5 year project period.

Review and Evaluation Criteria

Competing Supplemental applications from current STD P/T centers for funds to provide AIDS-related training will be reviewed and evaluated based on the following:

1. The extent to which AIDS-related training are proposed and where they are not proposed, the reasoning behind the decision to demur;
2. The extent to which AIDS-related training proposed is developed with consideration given to the Curriculum Guidelines or includes acceptable reasoning for any departures from the Guidelines;
3. The extent to which AIDS-related training proposed appears to meet documented needs and to be instructionally sound;
4. Evidence suggesting that any AIDS-related training proposed has been coordinated with local/regional recipients of HRSA AIDS ETCs and that disruptive conflict or competition for a limited number of trainees will be avoided;
5. The extent to which the P/T center can assure that it will be able to acquire the additional training facilities needed to provide the AIDS-related training proposed without disrupting or curtailing the current schedule or required compliment of STD clinical training or STD intervention outreach training, where that instruction is also now provided.
6. The extent to which the applicant is willing to arrange for the instructors selected to teach any AIDS-related courses to meet with the project officer and CDC staff to discuss the instructional offerings planned before curricula are finalized.

Competing applications for a new STD P/T center will be reviewed and evaluated based on the following:

1. The ability to meet the objectives of the program;
2. Evidence that the P/T center will be located in a health department clinic that:
   a. Is dedicated to the diagnosis and treatment of STD patients;
   b. Serves an average of at least 300 patients per 40 weekly service hours;
   c. Serves patients of sufficient demographic variety and morbidity; and
   d. Is accessible to trainees and patients;
3. Evidence of a satisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation.
4. Evidence that the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; and that the P/T center activities will be effectively coordinated with both the basic control components of the local STD program and CDC to assure a quality national model;
5. The extent to which long- and short-term objectives address the applicant's expected role in meeting the STD 1990 Objectives for the Nation;
6. The extent to which methods will be evaluated for effectiveness and the long- and short-term objectives will be tracked to measure achievement;
7. Evidence of the capability of complying with the CDC documents entitled "Quality Assurance Guidelines for STD Clinics, 1988" (QAG) and revised STD guidelines published in CDC's *Morbidity and Mortality Weekly Report (MMWR)*.
8. Evidence of the capability of complying with the "Sexually Transmitted Disease Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training".
9. Evidence of a commitment from a local university medical school to participate with the applicant in the establishment of a P/T center.
10. Duties and qualifications of individuals performing activities for the training centers and organizational relationship of proposed centers to existing program structure;
11. An itemized budget with accompanying justification, which is clearly and thoroughly explained, reasonable, and consistent with the intended use of grant funds.

Grantee Financial Participation

There are no grantee cost participation requirements for this program.

Application Submission and Deadline

The original and two unbound copies of the application (PHS 5161-1, revised 3/88) must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305. Supplemental and competing grant applications are due on or before July 1, 1988.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria addressed in 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Requirements: Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Recipients must comply with the document titled: Content of Aids-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988) (53 FR 6034, February 29, 1988).

Where To Obtain Additional Information

A full description of the program, including areas of interest, program requirements, criteria for review of applications, application forms (PHS 5161-1), and other materials may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, (404) 842-6575 or FTS 236-6575.

Technical assistance may be obtained from Yvonne Green, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, (E02) Atlanta, GA 30333, (404) 639-2775 or FTS 236-2775.

Dated: June 3, 1988.

Robert L. Foster,
Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 88-12953 Filed 6-8-88; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88D-0017]

Conditions Under Which Homeopathic Drugs May Be Marketed; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7132.15 entitled "Conditions Under Which Homeopathic Drugs May Be Marketed"—May 31, 1988, that prescribes conditions under which homeopathic drugs may be marketed. FDA developed the compliance policy guide in response to the significant increase in the importation and domestic marketing of homeopathic drug products that are being offered for use (or promoted) significantly beyond recognized or customary practice.

ADDRESS: Written requests for single copies of FDA Compliance Policy Guide 7132.15 may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.).

FOR FURTHER INFORMATION CONTACT: Joel Davis, Center for Drug Evaluation and Research (HFD-335), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8104.

SUPPLEMENTARY INFORMATION: Until recently, homeopathic drugs have been marketed on a limited scale by a few manufacturers who have been in business for many years an have predominantly served the needs of a limited number of licensed practitioners. Today, the homeopathic drug market has grown into a multimillion dollar industry in the United States based in part on a significant increase in the importation and domestic marketing of over-the-counter (OTC) homeopathic drug products. FDA has prepared Compliance Policy Guide 7132.15 entitled "Conditions Under Which Homeopathic Drugs May Be Marketed"—May 31, 1988, to provide guidance on the regulation of OTC and prescription homeopathic drugs and to delineate conditions under which homeopathic drugs may be marketed.

Compliance Policy Guide 7132.5 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of Compliance Policy Guide 7132.5 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

This notice is issued under 21 CFR 10.85.

Dated: May 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12940 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0176]

AKZO Chemie America; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that AKZO Chemie America has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethyl(2-ethylhexyl) hydrogenated tallow ammonium chloride as a decolorizing agent in the clarification of refinery sugar liquors.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A3826) has been filed on behalf of AKZO Chemie America, McCook, IL 60525, proposing that Part 172 (21 CFR Part 172) be amended to provide for the safe use of a dimethyl[2-ethylhexyl] hydrogenated tallow ammonium chloride as a decolorizing agent in the clarification of refinery sugar liquors.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement s not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12936 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0139]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and thermal stabilizer in poly-1-butene resins and butene/ethylene copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5090.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4677) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and thermal stabilizer in poly-1-butene resins and butene/ethylene copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12939 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0175]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for an increase in the weight-percent of butene-1 in propylene/butene-1 copolymers for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4061) has been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2-5 Kasumigaseki 3-Chome, Chiyoda-KU, Tokyo 100, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for an increase in the weight-percent of butene-1 in propylene/butene-1 copolymers for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12940 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0167]

Cook Pacemaker Corp.; Premarket Approval of Sensor® Model Kelvin® 500 Pulse Generator, Model K Unipolar Temperature Sensing Lead, Model 5000 Transceiver, and Model 50 Lead Tester

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cook Pacemaker Corp., Leechburg, PA, for premarket appoval, under the Medical Device Amendments of 1976, of the Sensor® Model Kelvin® 500 Unipolar Cardiac Pulse Generator, Model K Unipolar Temperature Sensing Lead, Model 5000 Transceiver, and Model 50 Lead Tester. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of April 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by July 11, 1988.

ADDRESS: Written request for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-3171.

SUPPLEMENTARY INFORMATION: On December 16, 1987, Cook Pacemaker Corp., Leechburg, PA 15656, submitted to FDA an application for premarket approval of Sensor® Model Kelvin® 500 Unipolar Pulse Generator, Model K Unipolar Temperature Sensing Lead, Model 5000 Transceiver, and Model 50 Lead Tester. The device is indicated for use as a cardiac pacing system. FDA filed the application on December 28, 1987.

On March 11, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, DCRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at DCRH—Contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of DCRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will

[Docket No. 87F-0389]

Pfizer Central Research, Pfizer, Inc.; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced that Pfizer Central Research, Pfizer, Inc., had filed a food additive petition proposing that the food additive regulations be amended to provide for the use of polydextrose in peanut butter spread (53 FR 2093; January 26, 1988). The food product to which polydextrose would be added was inadvertently described as peanut butter spread, rather than peanut spread, in accordance with 21 CFR 102.23. This notice removes the word "butter" from the last line under the heading "SUMMARY" and the last line of the first paragraph under the heading "SUPPLEMENTARY INFORMATION" of the January 26, 1988, notice.

DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-1457, appearing on page 2093, third column, in the issue of Tuesday, January 26, 1988, under the heading "SUMMARY" in the last line, and under the heading "SUPPLEMENTARY INFORMATION" in the last line of the first paragraph, the word "butter" is removed to make it clear that the proposed use of polydextrose is in peanut spread in accordance with 21 CFR 102.23.

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12937 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

BEST COPY AVAILABLE

publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 11, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21) U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 1, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-12942 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OIS-301-N]

Quarterly Listing of Program Issuances

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General Notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, and statements of policy that were published beginning December 21, 1987 (the date OBRA was enacted) through March 1988 that relate to the Medicare program. Section 4035(c) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) requires that we publish such a list of issuances in the Federal Register every three months. The notice contains sufficient information to determine the subject matter of publications. It also tells where individuals and organizations may review the documents in their entirety and how subscriptions can be obtained.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin (For Issuance Information Only) (301) 966-5265.

Matt Plonski (For Regulation Information Only) (301) 966-4662.

Paul Kosco (For Informational Letters Only) (202) 245-0197.

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 32 million Medicare beneficiaries. Administration of the program involves effective communications with regional offices, state governments, various providers of health care and fiscal intermediaries and carriers who process claims and pay bills and others. To effectively communicate interpretations of the various statutes on which the program is based, we issue regulations under authority granted the Secretary under section 1871 of the Social Security Act (the Act) and also issue various manuals, memoranda and statements necessary to efficiently administer the program.

Section 4035(c) of OBRA '87 added a new section 1871(c)(1) of the Act to require that we publish in the Federal Register no less frequently than every three months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability. The requirement applies to items issued beginning December 21, 1987. Section 4035(c)(1)(B) clarifies that regulations published in accordance with section 1871(a) of the Act under which the Secretary prescribes regulations necessary to carry out the administration of the Medicare program are not subject to this publication requirement. Nonetheless, since the intent of section 4035 is to provide operational and policy statements to the general public and organizations, and some of our regulations may also contain such statements, for the sake of completeness of the listing we are including regulations (proposed and final) published.

This initial publication lists the manual instructions and program memoranda and regulations published beginning December 21, 1987 through March 1988. In this listing of recently published items we do not specifically identify interpretive and substantive rules. It is our policy that all substantive rules are included in regulations.

A. How To Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, or regulations to determine whether any are of particular interest. We have divided this listing into four tables.

Table I gives a brief description of each of the various manuals and memoranda that HCFA maintains. Our manuals and memoranda are organized according to the user of the materials, e.g. hospital manual, skilled nursing facility manual, intermediary manual. The summaries in Table I allow the reader to determine whether routine issuances are of interest. As discussed below, it is possible for members of the public or organizations to subscribe to our manuals and routinely receive all issuances. Table I includes the HCFA publication number, e.g., Rural Health Clinic Manual (HCFA-Pub. 27), necessary to enter a subscription.

Table II lists, for each of the appropriate manuals, a transmittal number unique to that instruction and a brief statement of the subject matter included. The subject matter in a transmittal may consist of a single instruction or many. Holders of HCFA manuals substitute or add pages accompanied by the transmittal to existing manuals to bring other materials already in the manual up to date. While Table II lists the subject matter of the transmittal, often it is necessary to use information in a transmittal in conjunction with information currently in the manuals. Therefore, subjects listed in Table II may not be dealt with exhaustively. This table also includes program memoranda, program information letters, and technical information letters. These memoranda and letters are not available in the subscription series.

Table III lists all Medicare regulations published in the Federal Register during this period. For each item we list the date published, the title of the regulation, and the parts of the Code of Federal Regulations (CFR) which have changes.

Table IV gives the location and telephone number for each of the 50 regional depository libraries. The role of the libraries is discussed in section C. How to Review Listed Material.

B. How To Obtain Listed Material

- Manuals

An individual or organization interested in routinely receiving any listed manual and revisions to it may purchase a subscription to that manual. Subscribers should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238. National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA. 22161. Telephone (703) 487-4630.

At this time, selective manuals and transmittals cannot be purchased. An individual or organization can only subscribe to the whole manual (e.g. HCFA-Pub. 13-3) not just selective transmittals. Interested parties should identify the manual(s) they want to subscribe to and contact either GPO or NTIS by letter or telephone. GPO or NTIS will give complete details on how to obtain a subscription.

- Regulations

Regulations are published in the daily Federal Register. Interested individuals may purchase individual copies or may subscribe to the Federal Register by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202)783-3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. How To Review Listed Material

Individuals or organizations that do not wish to purchase subscriptions may review identified items at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the Federal Depository Libraries. Some may have arrangements to transfer material to local libraries not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, regional depository libraries, listed in Table IV, receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may contact the closest regional depository library for assistance in reviewing material.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. We are providing an information contact person to answer general questions concerning items included in issuances or regulations. Individuals are expected to procure copies of material either locally or through a subscription service. We are exploring the possibility of making selective issuances available for sale.

Questions concerning items in Tables I or II, may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 668 East High Rise, 6325 Security Blvd., Baltimore, MD 21207; Telephone (301) 966-5265. Please do not use this contact to request copies of the listed items.

Questions concerning the regulations in Table III may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966-4662.

Questions concerning the informational letters may be addressed to Paul Kosco, Policy Planning Liaison Staff, Office of Prepaid Health Care, Room 423H Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington DC 20210, Telephone (202) 245-0197.

Table I—Description of Manuals and Memoranda

Part A Intermediary Manual (HCFA-Pub. 13)

The Part A Intermediary Manual is designed for Medicare intermediaries which process claims from providers of services (e.g., hospitals, skilled nursing facilities, home health agencies) under the Medicare program. The manual encompasses the policies and procedures which govern the intermediaries' administrative and financial responsibilities for claims review, bill payment, applying utilization safeguards, and other responsibilities assigned to them. This manual consists of four parts.

- Part 1—Administration (HCFA-Pub. 13-1)
- Part 2—Audits-Reimbursement-Program Administration (HCFA-Pub. 13-2)
- Part 3—Claims Processing (HCFA-Pub. 13-3)
- Part 4—Audits (HCFA-Pub. 13-4)

Medicare Carriers Manual (HCFA-Pub. 14)

The Medicare Carriers Manual is designed for use by Medicare carriers which process claims under the supplementary medical insurance part of Medicare (i.e., the part which helps pay for doctors' services, outpatient care, physical therapy, home health care, and other health services and supplies covered by this part of the program). It encompasses the policies and procedures which govern their administrative and financial responsibilities for claims review, bill payment, applying utilization safeguards and other responsibilities assigned to them. This manual consists of three parts.

- Part 1—Administration (HCFA-Pub. 14-1)
- Part 2—Program Administration (HCFA-Pub. 14-2)
- Part 3—Claims Processing (HCFA-Pub. 14-3)

Program Memoranda (Non-Manual Issuances)

These transmittals are used to communicate information or requests for action of a one-time only, non-recurring nature. They are issued to:

- Intermediaries (HCFA-Pub. 60A)
- Carriers (HCFA-Pub. 60B)
- Intermediaries/Carriers (HCFA-Pub. 60A/B)
- Regional Offices

General (HCFA-Pub. 51)
Medicare (HCFA-Pub. 52)
Program Integrity (HCFA-Pub. 53)
Standards and Certification (HCFA-Pub. 54)
Professional Review Organizations (HCFA-Pub. 55)
Medicaid (HCFA-Pub. 56)

State Operations Manual (HCFA-Pub. 7)

This manual contains instructional materials governing State agency responsibilities for making initial and subsequent health and safety certifications as to whether providers of health care services are in compliance with the conditions for participation in the Medicare program.

Regional Office Manual (HCFA-Pub. 23)

The Health Care Financing Administration Regional Office Manual contains administrative and procedural instructions to HCFA Regional Offices. This manual consists of six parts.

- General (HCFA-Pub. 23-1)
- Medicare (HCFA-Pub. 23-2)
- Operational Reviews (HCFA-Pub. 23-3)
- Standards and Certification (HCFA-Pub. 23-4)
- For Future Use (HCFA-Pub. 23-5)
- Medicaid (HCFA-Pub. 23-6)

Peer Review Organization Manual (HFCA-Pub. 19)

This manual is issued to Peer Review Organizations (PROs). It encompasses the policies and procedures which govern the PRO's responsibilities for determining whether medical services provided (or proposed to be provided) are reasonable and necessary for the diagnosis and treatment if the services could effectively be furnished on an outpatient basis. The PROs also review whether the quality of services provided

meets professionally recognized standards of health care.

Hospital Manual (HCFA-Pub. 10)

This manual is issued to hospitals participating in the Medicare program. It contains the policies and procedures applicable to the delivery of hospital services to Medicare beneficiaries, billing procedures, coverage requirements, and related matters governing hospital performance under the Medicare program. This manual also includes a Christian Science Supplement (HCFA-Pub. 32).

Home Health Agency Manual (HCFA-Pub. 11)

This manual is issued to home health agencies participating in the Medicare program. It contains the policies and procedures applicable to the delivery of home health services to Medicare beneficiaries, billing procedures, coverage requirements, and related matters governing their performance under the program.

Skilled Nursing Facility Manual (HCFA-Pub. 12)

This manual is issued to skilled nursing facilities participating in the Medicare program. It contains the policies and procedures applicable to their delivery of skilled nursing facility services to Medicare beneficiaries, billing procedures, coverage requirements, and related matters governing their performance under the program.

Rural Health Clinic Manual (HCFA-Pub. 27)

This manual is intended for use by independent rural health clinics participating in the Medicare program. The manual contains a consolidation of instructions necessary for properly submitting their bills for services to Medicare patients.

Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29)

This manual is intended for use by non-hospital operated renal dialysis facilities participating in the Medicare program. It contains all instructions necessary for the facility to properly submit renal dialysis bills for services to Medicare patients.

Hospice Manual (HCFA-Pub. 21)

This manual is intended for use by independent or provider-based hospices. It contains coverage information and all instructions necessary for hospices to properly submit bills for services to Medicare patients.

Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9)

This manual is issued to both outpatient physical therapy providers and comprehensive outpatient rehabilitation facilities participating in the Medicare program. The manual contains the policies and procedures applicable to the delivery of physical therapy and rehabilitative services to Medicare beneficiaries, claims processing instructions, billing procedures, coverage requirements and related matters governing providers' performance under the Medicare program.

Coverage Issues Manual (HCFA-Pub. 6)

This manual contains national coverage decisions and sets forth whether specific medical items, services, treatment procedures or technologies can be paid for under the Medicare program.

Provider Reimbursement Manual (HCFA-Pub. 15)

The Provider Reimbursement Manual provides instructions for determining the amount of reimbursement for providers of services participating in the Medicare program. It describes the methods of calculating payments for inpatient hospital and skilled nursing facility (SNF) services under the prospective payment system (PPS), as well as the methods of computing reasonable costs for provider services, including hospital and SNF services not reimbursed under PPS. The Provider Reimbursement Manual consists of two parts.

Part I of the manual describes the reimbursement methods and how various provider expenditures are treated under Medicare reimbursement. Part II contains instructions for completing the cost reporting forms which must be filed annually by providers.

Part I—Provider Reimbursement Manual (HCFA-Pub. 15-1)

- Reimbursement for ESRD and Transplant Services (HCFA-Pub. 15-27)

Part II—Provider Reimbursement Manual

- Cost Reporting—General (HCFA-Pub. 15-II-A)
- Hospital, Skilled Nursing Facility and Health Care Complex Cost Report (HCFA-Pub. 15-II-C)
- Instructions for the Home Health Agency Cost Report (HCFA-Pub. 15-II-D)
- Outpatient Physical Therapy and Outpatient Speech Pathology Provider Cost Report (HCFA-Pub. 15-II-F)
- Cost Reporting for Providers with All-Inclusive Rates or No-Charge Structures (HCFA-Pub. 15-II-G)
- Instructions for Independent Renal Dialysis Facility Cost Report (HCFA-Pub. 15-II-I)
- Home Office Cost Statement (HCFA-Pub. 15-II-J)
- Provider Cost Report Reimbursement Questionnaire (HCFA-Pub. 15-II-K)
- Hospital and Hospital Health Care Complex Cost Report (HCFA 2552-83) (HCFA-Pub. 15-II-L)
- Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report (HCFA-Pub. 15-II-M)
- Hospice Cost Report (HCFA-Pub. 15-II-N)
- Hospital and Hospital Health Care Complex Cost Report (HCFA 2552-84) (HCFA-Pub. 15-II-O)
- Instructions for Home Health Agency Cost Report (HCFA-Pub. 15-II-Q)
- Hospital and Hospital Health Care Complex Cost Report (HCFA 2552-84) (HCFA-Pub. 15-II-S)
- Organ Procurement Agency and Tissue Typing Laboratory Cost Report (HCFA-Pub. 15-II-U)
- Skilled Nursing Facility Prospective Payment Cost Report (HCFA-Pub. 15-II-AD)

Health Maintenance Organizations/ Competitive Medical Plans Manual (HCFA-Pub. 75)

The HMO/CMP Manual is for the use of Health Maintenance Organizations and Competitive Medical Plans contracting with Medicare. The Manual includes instructions concerning how to apply for a contract, administer the contract once it is received (including enrollment, services, appeals), and obtain payment from Medicare for enrollees' health services.

Informational Letters

The Health Maintenance Organization/Competitive Medical Plans (HMO/CMP) information letters are addressed to contracting HMOs/CMPs. These letters provide guidelines that are of general applicability to HMOs/CMPs and cover both general and technical information.

Table II—Medicare Manual Instructions

December 21, 1987–March 1988

Trans No.	Manual/Subject/Publication Number
	Intermediary Manual
	Part 1—Fiscal Administration (HCFA-Pub. 13-1)
116	• Coordination of Medicare with the Federal Grants-In-Aid Program (Medicaid)
	Intermediary Manual
	Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13-2)
350	• Contractor Performance Evaluation Program—FY 88
	Intermediary Manual
	Part 3—Claims Process (HCFA-Pub. 13-3)
1365	• Skilled Nursing Facility Level of Care Custodical Care
1366	• Adjustment Bills Medical Review of Comprehensive Outpatient Rehabilitation Facility (CORF) Claims
1367	• Update Information to be Included by All Contractors Description of MSP Data Exchange Tape Format External Tape Label Magnetic Tapes MSP Data Exchange Tape Record Layout
1368	• Fee Schedules Coordination Between Intermediaries and Carriers
1369	• Definitions Contested Workers' Compensation Claims Lump-Sum Payment which Represents Commutation of Future Benefits Private Right of Action Authorities of Agreeing to Compromise or Waive Medicare Claim Data Exchange from Workers' Compensation Agencies Action by Intermediary Where Facts Indicate Medical Benefits May Be Payable by DOL Under Federal Black Lung Program Medicare Made Party to Workers' Compensation Hearing Conditional Workers' Compensation Claims Effect of Lump-Sum Compromise Settlement Apportionment of a Lump-Sum Compromise Settlement of a Contested Workers' Compensation Claim Medicare Paid for Services Which Should Have Been Paid for by Workers' Compensation
1370	• Services of Interns and Residents Review of Form HCFA-1450 for Inpatient and/or Outpatient Billing PRO Reporting on Medical Review Edits for PRO Report on Medical Review
1371	• Definition of Emergency Inpatient and Outpatient Services Definition of an Emergency Service Hospital Benefit Period (Spell-of-Illness) Services Not Provided Within the United States Claims for Payment for Emergency Hospital Services and Services Outside the United States Intermediary Preparation of the Medicare Benefit Notice Completion of Form HCFA-1533, Medicare Benefit Notice
1372	• Medical Services Furnished to ESRD Beneficiaries by Source Outside EGHP Prepaid Health Plan Special Rules for Services Furnished by Source Outside EGHP Prepaid Health Plan Claims Processing timeliness Establishing Pacemaker Registry Records—Pacemaker Related ICD-9-CM Procedure Codes
1373	• HCFA Common Procedure Coding System (HCPCS)
1374	• Claims Processing Timeliness Prepayment Medical Review (MR
1375	• Claims Processing Timeliness
1376	• Medical Review of Home Health Services Home Health Certifiction and Plan of Treatment Data Elements Medical Update and Patient Information Treatment Codes for Home Health Services Addendum to the Plan of Treatment/Medical Update Intermediary Medical Information Request Medical Review of Home Health Services Postpayment Audit
1377	• Definitions Services Reimbursable Under Liability Insurance General Effect of Liability Insurance on Medicare Payments Effect of Payment by Liability Insurer on Deductible and Utilization Provider Billing Rights and Responsibilities Provider Actions Identification of Liability Situations Development to Ascertain if Liability Claim Has Been or Will Be Filed Action by Intermediary Where a Liability Claim is Filed
IM-88-1	• Determining the Amount of Indemnification
	Carriers Manual
	Part 1—Fiscal Administration (HCFA-Pub. 14-1)
110	• Coordination of Medicare with the Federal Grants-In-Aid Program (Medicaid)
	Carriers Manual
	Part 2—Program Administration (HCFA-Pub. 14-2)
99	• Other Considerations
100	• Contractor Performance Evaluation Program—FY 88
101	• Medical Review Functional Criterion
	Carriers Manual
	Part 3—Claims Process (HCFA-Pub. 14-3)
1225	• Additional Benefits Payable Because Prior Determination Revised
1226	• Area Carrier-Suppliers Services Prepayment Controls Development of Prepayment Screens
1227	• Prohibition Against Billing for Unassigned Services Which Are Determined to be Medically Unnecessary
1228	• Update Information to be Included by ALL Contractors Description of MSP Data Echange Tape Format External Tape Label Magnetic Tapes MSP Data Exchange Tape Record Layout Criteria for MSP Issues
1229	• Definitions Effect of Payments Under Workers' Compensation Plan Lump-Sum Payment Which Represents Commutation of Future Benefits Private Right of Action Authorities for Agreeing to Compromise or Waive Medicare's Claim Limitation in Workers' Compensation Law on Period of Time During Which Medical Benefits Are Provided or Total Amount That Can Be Paid for Medical Care Data Exchange from Workers' Compensation Agencies

Trans No.	Manual/Subject/Publication Number
	Action by Carrier Where Facts Indicate Medical Benefits May Be Payable by DOL Under Federal Black Lung Program
	Conditional Workers' Compensation Claims
	Effect of Lump-Sum Compromise Settlement
	Medicare Made Party to Workers' Compensation Hearing
	Apportionment of a Lump-Sum Compromise Settlement of a Contested Workers' Compensation Claim
	Duplicate Payment Received by Physician/Supplier
1230	• Interns and Residents
	Determining the Monthly Capitation Payment for a Physician's Services to Maintenance Dialysis Patients
1231	• Payment for Physician's Service Furnished to Dialysis Inpatients
1232	• Medical Services Furnished to ESRD Beneficiaries by Source Outside EGHP Prepaid Health Plan
	Special Rules for Services Furnished by Source Outside EGHP Prepaid Health Plan
1233	• Separate Line Items
	Explanatory and Denial Message
	Overflow of Information
1234	• Transferring Request for Medicare Payment
1235	• Determining Reasonable Charges for Physicians' Services Furnished in Outpatient Settings
	Changes to the Advance Copy of the New ICD-9-CM Codes
1236	• Instructions for Implementing the Balanced Budget and Emergency Deficit Reduction Act of 1987
1237	• Bill Review of Home Dialysis Supplies
	Payment for Home Dialysis Supplies and Equipment
1238	• Medicare Participating Physicians/Supplier Directory (MEDPARD)
1239	• Limits on Charges of Nonparticipating Physicians
	Limits on Actual and Prevailing Charges for Overpriced Procedures
	• Limits on Charges for Anesthesia Associated with Cataract and Iridectomy Surgery
	Limits on Payments and Charges for Other Services and Items
1240	• Prepayment Controls General

Trans No.	Manual/Subject/Publication Number
IM-88-1	• Determining the Amount of Indemnification
	Program Memorandum
	Intermediaries (HCFA-Pub. 60A)
A-87-17	• Instructions For Implementing the Balanced Budget and Emergency Deficit Reduction Act of 1987
A-87-18	• Installing the Medicare Code Editor (MCE) and Outpatient Code Editor (OCE) Online
A-87-19	• Special Denial and Limitation of Liability Activity Report
A-87-20	• Effect of Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 on Recent Medicare Program Rules
A-88-1	• Clarification of SNF Level of Care
A-88-2	• Status of Distribution of Home Health Forms, Training Material and Scheduling of Training
A-88-3	• Changes to the Advance Copy of the New ICD-9-CM Codes
A-88-4	• Payment for Organ Procurement Services
	Program Memorandum
	Intermediaries (HCFA-Pub. 60B)
B-87-16	• Participating Physician and Supplier Enrollment Process
B-87-17	• Use of Correct Charge Data in Updating Reasonable Charges For Colonoscopy/Sigmoidoscopy HCPCS Codes for Fee Screen Year 1988
B-88-1	• Provisions of Budget Reconciliation Legislation
B-88-2	• Notice of New Interest Rate Applicable on Clean Claims
B-88-3	• FY 88 Reasonable Charge Update and Participation Program—Physicians
B-88-4	• Participating Physician and Supplier Program
B-88-5	• Guidelines for Pricing Certain HCPCS Code Revisions
	Program Memorandum
	Intermediaries/Carriers (HCFA-Pub. 60A/B)
AB-88-1	• Report of Physicians/Practitioners, Providers, and/or Other Health Care Suppliers Sanctioned/Reinstated
AB-88-2	• Statutory Bases for Denials for the Purposes of Sections 1879 and 1842(l) Determinations
AB-88-3	• Report of Physicians/Practitioners, Providers, and/or Other Health Care Suppliers Sanctioned/Reinstated
AB-88-4	• HMO Directory
	State Operations Manual
	Provider Certification (HCFA-Pub. 7)
204	• Outpatient Occupational Therapy (OOT) and Occupational Therapists in Independent Practice (OTIP)—Citations
	Providers of Outpatient Occupational Therapy

Trans No.	Manual/Subject/Publication Number
	Occupational Therapy Services Provided by OTIPs
205	• Emphasis, Components and Applicability
	Team Composition
	Type of Facility—Application of SNF or ICF Regulations
	Use of Part A or Part B of the Survey Report
206	• Utilization Review
	Regional Office Manual
	(Medicare) (HCFA-Pub. 23-2)
299	• Retention of Documentation
	Target Dates
	Control of ACERs
	ACERS FOR Multi-Regional Contractors
	Evaluation of Contractors Under Experimental Contracts
	Rating the Performance Criteria
	Correction Action
	ACER Format
	Contractor Profile
	Executive Summary
	Performance Criteria
	Special Reviews
300	• Uniform Contractor Evaluation Program (UNICEP)
	Regional Office Manual
	(Standards and Certification) (HCFA-Pub. 23-4)
31	• Processing Initial Applications for Licenses/Exemptions
	Processing Renewal Applications for Licenses
32	• Options for Operating Under a Correction or Reduction Plan—ICFs/MR Only
	Application of Section 1919
	State Elects Plan of Correction Option
	State Elects Reduction Plan Option
IM-87-1	• Organ Procurement Organizations (OPOs)—Citations
	Application Process
	Designation Procedures
	Regional Office Manual
	(Peer Review Organization Manual) (HCFA-Pub. 19)
19	• Description of PHDDS
	Creation of PHDDS Tape Files
	Submission of PHDDS Tapes of HCFA
	Hospital Manual (HCFA-Pub. 10)
526	• Bill Preparation Where Medical Benefits Are Secondary to Group Health Plans for Employed Beneficiaries/Spouses and the Disabled
527	• Fee Schedules
	Coordination Between Intermediaries and You
528	• Completion of Form HCFA-1450 for Inpatient and/or Outpatient Billing

Trans No.	Manual/Subject/Publication Number
529	• Claims Processing Timeliness
530	• HCFA Common Procedure Coding System (HCPCS)
531	• Claims Processing Timeliness
532	• Definitions
	Possible Coverage Also Under Auto Medical or No Fault Insurance or Employer Group Health Plan
	Contested Workers' Compensation Claims
	Lump-Sum Commutation of Future Benefits
	Private Right of Action
	Handling of Cases Involving Work-Related Conditions
	Special DOL Coverage Rules
533	• Retention of Health Insurance Records
534	• Submitting Inpatient Bills in No-Payment Situations
IM-88-1	• Determining the Amount of Indemnification
	Christian Science Sanatorium
	Hospital Manual Supplement (HCFA-Pub. 32)
17	• Bill Preparation For Cost Reimbursement Hospitals Where Medicare Benefits Are Secondary to Group Health Plans For Employed Beneficiaries and Spouses
18	• Claims Processing Timeliness
	Home Health Agency Manual (HCFA-Pub. 11)
203	• Data Elements Needed to Render Home Health Coverage Determination
	Home Health Certification and Plan of Treatment
	Medical Update and Patient Information
	Treatment Codes For Home Health Services
	Addendum to the Plan of Treatment/Medical Update
	Intermediary Medical Information Request
	Postpayment Audits
204	• Claims Processing Timeliness
	Home Health Certification and Plan of Treatment
	Medical Update and Patient Information

Trans No.	Manual/Subject/Publication Number
	Treatment Codes for Home Health Services
	Addendum to the Plan of Treatment/Medical Update
	Intermediary Medical Information Request
	Postpayment Audits
205	• Definitions
	Possible Coverage Also Under Auto Medical or No Fault Insurance or Employer Group Health Plan
	Lump-Sum Compromise Settlement
	Lump-Sum Commutation of Future Benefits
	Private Right of Action
	Handling of Cases Involving Work-Related Conditions
206	• Data Elements Needed to Render Home Health Coverage Determination
	Home Health Certification and Plan of Treatment
	Medical Update and Patient Information
	Treatment Codes for Home Health Services
	Addendum to the Plan of Treatment/Medical Update
	Intermediary Medical Information Request
	Postpayment Audits
IM-88-1	• Determining the Amount of Indemnification
	Skilled Nursing Facility Manual (HCFA-Pub. 12)
262	• Covered Level of Care
	Custodial Care
263	• Claim Processing Timeliness
264	• Definitions
	Possible Coverage Also Under Auto Medical or No Fault Insurance or Employer Group Health Plan
	Lump-Sum Compromise Settlement
	Lump-Sum Commutation of Future Benefits
	Private Right of Action
	Handling of Cases Involving Work-Related Conditions
IM-88-1	• Determining the Amount of Indemnification

Trans No.	Manual/Subject/Publication Number
	Rural Health Clinic Manual (HCFA-Pub. 27)
23	• Claims Processing Timeliness
24	• Claims Processing Timeliness
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29)
31	• Claims Process Timeliness
	Hospice Manual (HCFA-Pub. 21)
17	• Claims Processing Timeliness
IM-88-1	• Determining the Amount of Indemnification
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9)
68	• Completion of Form-1450 For Billing CORF, Outpatient Physical Therapy, Occupational Therapy or Speech Pathology Services
	Medical Review of Comprehensive Outpatient Rehabilitation Facility (CORF) Claims
69	• Claims Processing Timeliness
70	• Request for Payment
	Coverage Issues Manual (HCFA-Pub. 6)
21	• Streptokinase Infusion
22	• Power-Operated Vehicles That May Be Used as Wheelchairs
23	• Index
	Provider Reimbursement Manual (HCFA-Pub. 15-1)
	Part I
342	• Ambulatory Surgical Procedures Performed on an Outpatient Basis by Hospitals
	Application of the ASC Payment Method to All-Inclusive Rate Hospital
343	• Adjustment of the Outpatient Interim Rate to Recognize the Change in Payment for Ambulatory Surgical Center Procedures
	Provider Reimbursement Manual
	Part II
	(Skilled Nursing Facility Prospective Payment Cost Report)
	(HCFA-Pub. 15-II-AD)
1	• Cost Reporting Periods Beginning On or After October 1, 1988

Publication date	File number	Subject
HMO/CMP Program Information Letters:		
02/29/88	OPHC/PPL 88-01	Insolvency Protection for HMO/CMP Members.
02/04/88	OFM 88-02	Implementation of the Gramm-Rudman-Hollings Legislation and the OBRA '87—Information.
02/26/88	OFM 88-03	Revised Demographic Reports for the Period April 1985 through September 1985—Information.
02/29/88	OFM 88-04	Impact of OBRA-87, Section 4012, Upon Your Organization—Information.
03/14/88	OFM 88-05	Changing Treasury Financial Communications System (TFCS) Bank Information for HMOs/CMPs, and HCPPs.
03/14/88	OFM 88-06	Status of Implementation of OBRA-87, Section 4012—Information.
03/25/88	OFM 88-07	Schedule of 1988 Risk Contract Briefings—Information.

Publication date	File number	Subject
HMO/CMP Technical Information Letter: 01/29/88	Bulletin OFM 88-01	Impact of OBRA-87, Section 4012, Upon Your Organization—Information.

Table III—Regulations Published December 21, 1987–March 1988

Publication date/cite	CFR part	Regulation title
Final Rules:		
01/21/88 (53 FR 1617)	405	Medicare Program; End Stage Renal Disease Program; Responsibilities of Network Organizations.
03/01/88 (53 FR 6526)	405, 413, 441, 482, 485, 498	Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols.
03/02/88 (53 FR 6625)	405, 406, 409, 410, 413, 416, 421, 424, 489, 498.	Medicare Program; Conditions for Medicare Payment (Correction Notice Issued 03/21/88) (53 FR 9174).
03/29/88 (53 FR 10077)	413	Medicare Program; Changes to the Lesser of Costs or Charges Provisions.
Proposed Rules:		
01/19/88 (53 FR 1363)	419	Medicare Program; Medicare Coverage of Immunosuppressive Drugs.
02/19/88 (53 FR 5008)	405, 406, 407	Medicare Program; Hospital Insurance Entitlement and Supplementary Medical Insurance Enrollment and Entitlement.
03/02/88 (53 FR 6572)	413	Medicare Program; Program for Kidneys Sent to Foreign Countries or Transplanted in Non-Medicare Beneficiaries.
03/16/88 (53 FR 8854)	405, 431, 433, 434, 456, 462, 466, 473, 476, 489.	Medicare and Medicaid Programs; Changes to Peer Review Organizations Regulations.
03/22/88 (53 FR 9537)	405, 412, 413, 489	Medicare Program; Miscellaneous Changes Affecting Payment for Inpatient Hospital Services.
03/31/88 (53 FR 10404)	74, 405	Medicare, Medicaid and Clinical Laboratories Improvement Act (CLIA) Patient Confidentiality Rules.
Notices:		
01/27/88 (53 FR 2291)		Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers; Correction Notice.
02/12/88 (53 FR 4158)		Medicare Program; Supplementary Medical Insurance Premiums.
03/11/88 (53 FR 7976)		Medicare Program; Peer Review Organization Contracts; Solicitation of Statement of Interest From In-State Organizations.
03/28/88 (53 FR 9969)		Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting.
03/31/88 (53 FR 10431)		Termination of Capital Expenditure Review Agreements Under Section 1122 of the Social Security Act.

Table IV—Regional Depository Libraries

Auburn Univ. at Montgomery Library, Documents Department, Montgomery, AL 36193, (205) 279-9110
University of Alabama Library, Documents Dept., Box S, (205) 348-8040, University, AL 35486
Dept. of Library Archives and Public Records, Third Floor—State Cap., Phoenix, AZ 85007, (602) 255-1035
University of Arizona Library, Government Documents Dept., Tucson, AZ 85721, (602) 626-1671
California State Library, Govt. Publications Section, P.O. Box 2037, Sacramento, CA 95809, (916) 322-1572
Univ. of Colorado Library, Government Pub. Division, Boulder, CO 80309, (303) 492-8834
Denver Public Library, Govt. Pub. Department, 1357 Broadway, Denver, CO 80203, (303) 573-5152
Connecticut State Library, Government Documents Unit, 231 Capitol Documents Unit, Hartford, CT 06115, (302) 566-1971
Univ. of Florida Libraries, Library West, Documents Department, Gainesville, FL 32601, (904) 392-0357
Univ. of Georgia Libraries, Government Reference Dept. Athens, GA 30602, (404) 542-8949
Univ. of Hawaii Library, Govt. Documents Collection, 2550 The Mall, Honolulu, HA 96822, (808) 948-8230
Univ. of Idaho Library, Documents Section, Moscow, ID 83843, (208) 885-6344
Illinois State Library, Information Services Branch, Centennial Building, Springfield, IL 62756, (217) 782-7587
Indiana State Library, Serials and Documents Section, 140 North Senate Avenue, Indianapolis, IN 46204, (317) 232-3678
Univ. of Iowa Libraries, Govt. Publication Department, Iowa City, IA 52242, (319) 353-3318
University of Kansas, Doc. Collect, Spencer Library, Lawrence, KS 66045, (913) 864-4662
Univ. of Kentucky Libraries, Govt. Pub. Department, Lexington, KY 40506, (606) 257-2839
Louisiana State Univ. Library, BA/Docs. Dept., Middleton Library, Baton Rouge, LA 70803, (504) 388-2570
Louisana Technical Univ. Library, Documents Department, Ruston, LA 71272, (318) 257-4962
University of Maine, Raymond H. Fogler Library, Documents Depository, Orono, ME 04469
University of Maryland, McKeldin Library Doc. Div., College Park, MD 20742, (301) 454-3034
Boston Public Library, Government Docs. Dept., Boston, MA 02117, (617) 536-5400, ext. 295
Detroit Public Library, Sociology Department, 5201 Woodward Avenue, Detroit, MI 48202, (313) 833-1000
Michigan State Univ., P.O. Box 30007, 735 E. Michigan Avenue, Lansing, MI 48909, (517) 373-0640
University of Minnesota, Govt. Pub. Division, 409 Wilson Library, Minneapolis, MN 55455, (612) 373-7813
Univ. of Mississippi Library, Documents Department, University, MS 38677, (601) 232-7091 ext. 7
Univ. of Montana, Mansfeld Library, Documents Division, Missoula, MT 59812, (406) 243-6700
Nebraska Library Comm., Federal Document, 3420 P Street, Lincoln, NB 68508, (402) 471-2045
University of Nebraska Lincoln, D.L. Love Memorial Libary, Documents Division LL201N, Lincoln, NB 68508, (402) 472-2562
University of Nevada Library, Govt., Pub. Department, Reno, NA 89557, (702) 784-6579
Newark Public Library, Social Services Division, 5 Washington Street, Newark, NJ 07102, (201) 733-7812

University of New Mexico, Zimmerman, Library, Government Pub Dept., Albuquerque, NM 87131, (505) 277-5441
New Mexico State Library, Reference Department, P.O. Box 1629, Santa Fe, NM 87503, (505) 827-2033
New York State Library, Empire State Plaza, Albany, NY 12230, (518) 474-5563
Univ. of North Carolina At Chapel Hill Library, BA/SS Div. Documents, Chapel Hill, NC 27514, (919) 933-1151
North Dakota State Univ. Library, Govt. Documents Department, Fargo, ND 58105 (701) 237-8886, (In cooperation with)
Univ. of North Dakota, Chester Fritz Library, Documents Department, Grand Forks, ND 58202 (701) 777-1646
State Library of Ohio, Documents Department, 65 South Front Street, Columbus, OH 43215, (614) 466-0511
Oklahoma Dept. of Libraries, Government Documents, 200 NE 18th Street, Columbus City, OK 73105, (405) 521-2502
Oklahoma State Univ. Library, Documents Department, Stillwater, OK 74078, (405) 042-8546
Portland State Univ. Library, Documents Department, P.O. Box 1151, Portland, OR 97207, (503) 229-3673
State Library of Penn., Government Pub. Section, P.O. Box 1601, Harrisburg, PA 17105, (717) 787-3752
Texas State Library, Public Service Department, P.O. Box 12927, Austin, TX 78711, (512) 475-6725
Texas Tech Univ. Library, Govt. Documents Department, Lubbock, TX 79409, (806) 742-2268
Utah State University, Merrill Library, U.M.C. 30, Logan, UT 84321, (801) 750-2802
University of Virginia, Alderman Library, Public Doc., Charlottesville, VA 22901, (804) 924-3133
Washington State Library, Documents Section, Olympia, WA 98504, (206) 753-1027
West Virginia Univ. Library, Documents Department, Morgantown, WV 26506, (304) 293-3640
Milwaukee Public Library, 814 West Wisconsin Avenue, Milwaukee, WI 53233, (414) 278-3000
State Hist. Library of Wisconsin, Government Pub. Section, 816 State Street, Madison, WI 53706 (608) 262-4347
Wyoming State Library, Supreme Ct./Lib. Building, Cheyenne, WY 82002, (307) 777-7281

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: May 12, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-12995 Filed 6-8-88; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-020-08-4333-10; GP8-145]

Burns District Advisory Council Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice: Burns District Advisory Council Tour.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976, that a field tour involving the Burns District Advisory Council will be held on Thursday, July 7, 1988, through Friday, July 8, 1988.

The agenda for the tour will include the Steens Mountain area on Thursday, July 7th, to discuss the following programs: Recreation, wilderness, and tenure and livestock grazing. The tour will move to the Trout Creek Mountains area on July 8th to discuss long-term management plans for livestock grazing and interrelationships with wilderness, wildlife, riparian and land tenure adjustment programs.

DATES: The tour will be held from 9:00 a.m. (Pacific Standard Time) on Thursday, July 7, 1988 until 6:00 p.m. on Friday, July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Bureau of Land Management, Burns District Office, HC 74-12533, Hwy 20 West, Hines, Oregon, 97738. Phone (503)-573-5241.

SUPPLEMENTARY INFORMATION: The tour is open to the general public. However, interested persons will need to furnish their own transportation, meals and lodging. The tour will leave the Burns District Office at 9:00 a.m. (Pacific Standard Time) on July 7th and return at approximately 6:00 p.m. on July 8th. Advisory Council Members will lodge at Fields, Oregon, on the night of July 7th. Individuals wishing to participate on the tour should contact the Burns District Office at the above address.

Dated: June 2, 1988.

Donald R. Cain,

Associate District Manager.

[FR Doc. 88-12996 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-33-M

[OR-050-4410-10;GP8-150]

Oregon; Prineville District Advisory Council Meeting/Tour

June 1, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on June 30, 1988. The meeting will be in the form of a field tour and will begin at 8:00 AM at the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, OR 97754. The purpose of the tour will be to view the riparian demonstration areas on Camp Creek and Bear Creek and discuss riparian management opportunities in the Prineville District.

The tour is open to the public, however, transportation will not be provided. Anyone wishing to accompany the tour is requested to contact the District Manager at the above address prior to June 24, 1988.

Dated: June 1, 1988.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 88-12999 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-33-M

[NV-943-08-5420-10-ZFKB; N-48550]

Proposed Issuance of Disclaimer of Interest; Nevada

June 1, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A portion of the mineral interest in the lands described below was inadvertently and erroneously conveyed to the United States in an exchange consummated in 1968. The United States proposes to disclaim and release that mineral interest to the exchange proponent.

DATES: *Protest or Comment Date:* Comments and protests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, prior to September 12, 1988.

Effective Date: Disclaimer of any mineral interest of the United States shall issue on September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, 702-784-5413.

SUPPLEMENTARY INFORMATION: The United States of America, pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), does hereby give notice of its intention to disclaim and release any mineral interest in the following described land:

Mount Diablo Meridian, Nevada

T. 30 N., R. 53 E.,

Sec. 5, lots 1–4, S½N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 9, SE¼NW¼.
T. 31 N., R. 53 E.,
Sec. 31, lot 4.

The described lands aggregate 694.93 acres in Elko County.

After review of the offical records, exchange file, and conveyance documents, it is the position of the Bureau of Land Management that a portion of the mineral interest in the lands mentioned above is found to have been inadvertently and erroneously conveyed to the United States.

Any person wishing to submit a protest or comments on the above disclaimer should do so in writing before the expiration of 90 days from the date of publication of this notice. If no protests are received, the disclaimer will be effective on the date shown above.

Edward F. Spang,
State Director, Nevada.
[FR Doc. 88–12961 Filed 6–8–88; 8:45 am]
BILLING CODE 4310–HC–M

[AK–040–88–4213–21; AA–54718]

Realty Action; FLPMA Lease Proposal Near Old FAA Farewell Landing Field, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Notice is hereby given that pursuant to Section 302 of The Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1732), Barry Scott Mileur of Palmer, Alaska, has submitted a lease proposal to resolve his occupancy trespass of public land located approximately ten miles west southwest of the old FAA Farewell Landing Field and approximately 55 miles southeast of McGrath, Alaska, on the left or western bank of the Windy/Middle Fork of the Kuskokwim River, north of the Trimokish Hills within the following general legal description:

Seward Meridian, Alaska

T. 28 N., R. 27 W., (unsurveyed),
Sec. 26, NW¼SW¼ those portions with improvements;
Sec. 27, NE¼ SE¼ those portions with improvements.
Containing approximately 2.0 acres.

The above lands would be offered noncompetitively to the prospective lessee under a 3-year renewable lease at no less than fair market rental. The proposed lease would authorize existing improvements used as a base camp for the lessee's trapping operations. Only applications by the above prospective lessee, who built the improvements, and who has the appropriate licenses from the State of Alaska, will be accepted. The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease in accordance with 43 CFR 2920.6. The general terms and conditions for leases are found in 43 CFR 2920.7.

DATE: For a period up to and including July 22, 1988, interested parties may submit comments.

ADDRESS: Comments must be submitted to the Anchorage District Manager, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn (907) 267–1214.

Lann Buoy,
Acting District Manager.
[FR Doc. 88–12993 Filed 6–8–88; 8:45 am]
BILLING CODE 4310–JA–M

[ID–040–07–4212–11; I–25474]

Realty Action; Classification for Recreation and Public Purpose Lease; Custer County, ID, Correction

AGENCY: Bureau of Land Management, Interior.

REALTY ACTION: Classification for Recreation and Public Purpose Lease of Public land in Custer County, Idaho; Correction.

SUMMARY: Correction of Notice of Realty Action published in Vol. 53 No. 97. Thursday, May 19, 1988, page 17982. The notice is corrected deleting the published legal description and replacing it with the following correct legal description:

T. 11 N., R. 18 E. B.M.,
Section 27: NE¼NW¼NE¼.
Dated: June 3, 1988.

Jerry W. Goodman,
District Manager.
[FR Doc. 88–13000 Filed 6–8–88; 8:45 am]
BILLING CODE 4310–GG–M

Realty Action: Exchange of Public Lands, Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: N–47854; Exchange of public mineral interests in Washoe County, Nevada.

SUMMARY: The proposed action is the exchange of mineral estates between the United States and White Pine Lumber Company. The surface estate of these lands was traded in 1975. The following described public mineral estate has been examined and through the development of land use planning decisions based on public input, resources considerations, regulations and Bureau policies, it has been determined that the proposed exchange is consistent with section 206 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976.

Mount Diablo Meridian, Nevada (Public Mineral Estate)

	Acres
Township 41 North, Range 18, M.D.M.:	
Section 01: Lots 1, 2, 3, 4, S½ N½	440.29
Section 02: Lots 1, 2, SE¼ NE¼	
Township 41 North, Range 19 East, M.D.M.:	
Section 03: Lots 3, 4, S½ NW¼, SW¼	963.97
Section 04: Lots 1, 2, 3, 4, S½ N½, S½(all)	
Township 42 North, Range 18 East, M.D.M.:	
Section 01: SW¼NW¼, S½ W½	2,430.36
Section 02: Lot 2, S½NE¼, SE¼	
Section 11: E½NE¼	
Section 12: SE¼	
Section 13: Lots 2, 3, 6, W½ NE¼NE¼, SE¼NE¼NE¼, NW¼NE¼, S½NE¼	
Section 22: E½E½	
Section 24: Lots 4, 5, 6, 7, S½ NW¼, N½SW¼, SW¼SE¼	
Section 26: E½E½	
Section 35: E½E½, SW¼ NE¼, W½SE¼	
Section 36: Lots 1, 2, 3, 4, W½ E½, W½W½, SE¼SW¼	
Township 42 North, Range 19 East, M.D.M.:	
Section 18: E½	1,954.97
Section 20: NE¼	
Section 21: N½, N½S½	
Section 23: E½, E½W½	
Section 26: SE¼NE¼	
Section 30: Lots 2, 4, SW¼ NE¼, SE¼NW¼	
Section 31: NE¼NW¼	
Section 34: SW¼SW¼	
Section 35: WNE¼, E½NW¼, NE¼SW¼, NW¼SE¼	
Containing	5,789.59

Sam Jaksick, White Pine Lumber Company, P.O. Box 1430, Reno, NV, 89505, seeks to acquire the above described public mineral estate in exchange for the following private mineral estate.

Mt. Diablo Meridian, Nevada; (Private Mineral Estate)

	Acres
Township 40 North, Range 22½ East, M.D.M.:	
Section 01: Tract 37	82.67
Township 40 North, Range 23 East, M.D.M.:	
Section 06: Lots 14, 15, SE¼SW¼	120.00
Section 07: SW¼NE¼, NE¼NW¼, W½SE¼	160.00
Section 09: Tract 51A, W½NW¼, NW¼SW¼	160.00
Section 16: Tract 51B, 51D, E½SE¼	160.00
Section 17: SW¼NW¼, NE¼SW¼, S½SE¼	160.00
Section 18: NE¼NE¼	40.00
Section 20: Tract 53C, lot 3	
Section 21: Tract 53B, 53D, lot 2, E½NE¼, SW¼NE¼, NE¼SE¼	277.83
Section 27: N½SW¼	80.00
Section 28: SE¼NE¼, N½SE¼	120.00
Township 41 North, Range 19 East, M.D.M.:	
Section 20: E½W½	160.00
Township 41 North, Range 22 East, M.D.M.:	
Section 03: S½SW¼	80.00
Section 04: SW¼NE¼, SE¼NW¼, NW¼SE¼, SE¼SE¼	160.00
Section 06: Lot 2, SW¼NE¼	80.76
Section 10: S½NE¼, NE¼NW¼	120.00
Section 11: SW¼NW¼, NE¼SE¼, S½SE¼	160.00
Section 12: S½SW¼, SW¼SE¼	120.00
Section 13: NE¼, N½NW¼, N½SE¼, SE¼SE¼	360.00
Township 41 North, Range 23 East, M.D.M.:	
Section 03: SW¼NE¼	40.00
Section 07: SE¼NE¼	40.00
Section 08: SW¼NW¼, W½SW¼	120.00
Section 13: W½SE¼	80.00
Section 16: S½SW¼, N½SE¼, SW¼SE¼	200.00
Section 17: SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼	280.00
Section 18: Lot 4 (SW¼SW¼)	39.65
Section 19: Lot 1 (NW¼NW¼), E½NW¼, W½SE¼	199.61
Section 21: NW¼NE¼, E½W½	200.00
Section 24: NW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼	200.00
Section 26: NE¼NE¼, S½NE¼, S½NW¼, NW¼SW¼	240.00
Section 27: NE¼SE¼, S½SE¼	120.00
Section 28: N½NW¼, SW¼NW¼	120.00
Section 30: W½E½	160.00
Section 31: NW¼NE¼, SE¼NE¼, E½SE¼	160.00
Township 42 North, Range 21 East, M.D.M.:	
Section 35: SW¼NE¼	40.00
Containing	4,920.92

An exchange of the respective surface estates was completed in 1975, with the U.S. and White Pine retaining their respective mineral estates. The exchange will result in the reunification of the surface and mineral estates in High Rock Canyon and 49 Mountain. The exchange would greatly enhance the present and future uses of the adjacent land and the respective surface estates. The exchange would allow the respective mineral estates to be managed compatibly with the surface estates. In High Rock Canyon, the minerals would be managed by BLM in accordance with the Cowhead-Massacre Management Framework Plan (MFP), an Area of Critical Environmental Concern Management Plan, and public land laws. On 49 Mountain, White Pine Lumber Company would be able to manage their private lands, surface and mineral estate, in accordance with their own best management practices.

The proposed exchange will benefit the public and allow improved management of public lands. The public interest will be well served by making this exchange. The value of the mineral estates is approximately equal. Exchange of the subject lands is consistent with planning system decisions in the Cowhead-Massacre MFP.

Publication of this notice in the Federal Register shall segregate the subject public mineral estate from all other forms of appropriation under the mining laws for a period of two years. The exchange is expected to be completed before the end of that period.

Detailed information concerning the proposed exchange, including the environmental analyses, mineral report and land report are available for review at the Surprise Resource Area Office, 602 Cressler Street, Cedarville, CA 96104, and Susanville District Office, 705 Hall Street, Susanville, CA 96130.

DATE: On July 25, 1988, interested parties may submit comments to the District Manager, Susanville.

ADDRESS: Comments should be sent to: District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Comments will be evaluated by the Nevada State Director of the Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Pete Humm, Susanville District Office, at (916) 257–5361, or Joe McFarlan, Surprise Resource Area Office, at (916) 279–6101.

Date: May 20, 1988.

C. Rex Cleary,
Susanville District Manager.
[FR Doc. 88–12936 Filed 6–8–88; 8:45 am]
BILLING CODE 4310–40–M

[CO–942–08–4520–12]

Colorado; Filing of Plats of Survey

May 17, 1988.

The plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., May 17, 1988.

The plat representing the depend resurvey of portions of the First Standard Parallel North (south boundary), west boundary, and subdivisional lines and C.E. Number 176, and the survey of the subdivision of sections 30 and 31, T. 5 N., R. 98 W., Sixth Principal Meridian, Colorado, Group No. 820, was accepted May 9, 1988.

This survey was executed to meet certain administrative needs of this Bureau.

All inquires about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,
Chief, Cadastral Surveyor for Colorado.
[FR Doc. 88–12903 Filed 6–8–88; 8:45 am]
BILLING CODE 4310–JB–M

[NM–940–08–4220–11; NM NM 011409; NM NM 020760]

Proposed Continuation of Withdrawals; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Air Force proposes that the 26,559.23-acre mineral withdrawals for Kirtland Air Force Base (formerly Sandia Base), continue for an additional 25 years. The land would remain closed to location and entry under the mining laws and to

leasing under the mineral leasing laws. The surface estate is acquired and not subject to the public land laws.

DATE: Comments should be received by September 7, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, NM 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505–988–6554.

The Department of the Air Force, proposes that the existing land withdrawals made by Public Land Order Nos. 1257 and 1428 be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 9 N., R. 3 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, S½;
Sec. 3, lots 3, 4, S½NW¼;
Sec. 12;
Sec. 13, N½N½.
T. 10 N., R. 3 E.,
Sec. 34, SW¼;
Sec. 35, SE¼SW¼.
T. 9 N., R. 4 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, S½;
Sec. 2, lots 2, 3, 4, 5, S½N½, S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼, E½SW¼, SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, E½W½;
Sec. 8 to 13, inclusive;
Sec. 14, lots 1, 2, 3, 4, 5, N½, E½SE¼, part of survey 1023, Tr. A–E;
Secs. 15 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, E½W½;
Secs. 20 to 22, inclusive;
Sec. 23, lots 1, 2, 3, 4, 5, E½NE¼, SW¼, NE¼, S½, part of survey 1023, Tr. A–E;
Secs. 24 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, E½W½;
Sec. 32;
Sec. 33, S½N½, S½;
Secs. 34 to 36, inclusive.
T. 10 N., R. 4 E.,
Sec. 29, S½S½N½, S½;
Sec. 30, lots 3, 4, S½ of lot 2, S½SE¼N W¼, E½SW¼, SE¼;
Sec. 31, lots 1, 2, E½, E½NW¼;
Sec. 32, all except 3.87 acres in the NE¼NE¼SE¼, comprising water reservoir of the City of Albuquerque.

The areas described aggregate approximately 26,559.23 acres in Bernalillo County.

The purpose of the withdrawals are to protect the lands for the Air Force mission needs in research, testing and development activities. The research projects conducted at Kirtland Air Force Base are essential to our national defense and national interests. The withdrawals segregate the lands from location and entry under the mining laws and from leasing under the mineral laws. The lands are not subject to operation of the general land laws because the surface estate has been acquired by the United States. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Mangement will undertake such investigations as are necessary to determine the existing a potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Larry L. Woodard,
State Director.

Dated: May 25, 1988.

[FR Doc. 88–12935 Filed 6–8–88; 8:45 am]
BILLING CODE 4310–FB–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31262]

International Paper Co.; Exemption

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, retroactively exempts from prior approval under 49 U.S.C. 11343, *et seq.* the control by International Paper Company of two Class III railroads, the Longview, Portland and Northern Railway Company and the Mississippi Export Railroad Company, subject to standard labor protective conditions.

DATES: This decision is effective on June 12, 1988. Petitions to reopen must be filed by June 29, 1988.

ADDRESSES: Send petitions referring to Finance Docket No. 31262 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Edward D. Greenberg, 1054 31st Street, NW., Suite 200, Washington, DC 20007–4492.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: June 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,
Secretary.

[FR Doc. 88–12950 Filed 6–8–88; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Consent Decree in Action To Enjoin Discharge of Water Pollutants; City of Eunice

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. City of Eunice*, Civil Action No. , was lodged with the United States District Court for the Western District of Louisiana on May 22, 1988. The consent decree establishes a compliance schedule for the Louisiana wastewater treatment plant owned and operated by the City of Eunice to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the City's National Pollutant Discharge Elimination System Permit and the applicable regulations relating to the discharge of pollutants. The consent decree also requires payment of a civil penalty of $20,000 in three installments, to be completed by July 1, 1989. The consent decree calls for the City to achieve compliance by October 1, 1989.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. City of Eunice*, D.J. Ref. No. 90–5–1–1–2943.

The consent decree may be examined at the office of the United States Attorney, Western District of Louisiana, 3B 12 Federal Bldg., Shreveport, La. 71101; at the Region VI office of the Environmental Protection Agency, First Interstate Bank Tower at Fountain Place, 1445 Ross Ave., Dallas, Tx. 75202, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–13003 Filed 6–8–88; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Settlement Agreement Pursuant to Clean Air Act; Washington Department of Transportation

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 19, 1988 a proposed settlement agreememnt in *United States v. State of Washington Department of Transportation*, Civil Action C–87–63T, was lodged with the United States District Court for the Western District of Washington. The complaint filed by the United States alleged violations of the Clean Air Act, and the asbestos NESHAP by defendant during defendant's removal of a steam pipe from the Puyallup River Bridge in Tacoma, Washington. The settlement agreement requires defendant to pay a civil penalty of $17,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. State of Washington Department of Transportation*, D.J. Ref. No. 90–5–2–1–880. The proposed settlement agreement may be examined at the Office of the United States Attorney, 3600 Seafirst 5th Avenue, Seattle, Washington 98104 and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the settlement agreement may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–13004 Filed 6–8–88; 8:45 am]
BILLING CODE 4401–01–M

Lodging of Consent Decree Pursuant to Clean Air Act; Ambler Warehousing Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 26, 1988 a proposed Consent Decree in *United States v. Ambler Warehousing Corp. et al.* was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed consent decree concerns violations by the defendants of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos. The proposed decree imposes a civil penalty of seventeen thousand ($17,000) dollars and requires that all defendants comply with the asbestos NESHAP in the future and that subsequent asbestos related activity be conducted only by properly trained contractors.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ambler Warehousing Corp., et al.*, D.J. Ref. 90–5–2–1–1098.

The proposed consent decree may be examined at the Office of the United States Attorney, 601 Market Street, Philadelphia, Pennsylvania 19107, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–13001 Filed 6–8–88; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to the Clean Air Act; Avco Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 19, 1988, a proposed consent decree in *United States and the Metropolitan Government of Nashville and Davidson County v. Avco Corporation*, civil action no. 3–87–0631, was lodged with the United States District Court for the Middle District of Tennessee. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Air Act against the defendant for continuing violations of applicable portions of the federally-approved and enforceable Nashville-Davidson County State Implementation Plan ("SIP").

Pursuant to the partial consent decree, Avco is required to equip two (2) spray paint booths with a VOC control system by June 30, 1988; to use exclusively complying coatings at thirteen (13) spray paint booths on and after June 30, 1988; and to pay a civil penalty of $266,667.20 to the United States and $66,666.80 to Metro within sixty (60) days of entry of the partial consent decree. The partial consent decree also imposes stipulated penalties upon Avco for failure to meet the timetable established for compliance. Along with entry of the partial consent decree, the parties will enter a stipulation dismissing certain of Avco's counterclaims against the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the Metropolitan Government of Nashville and Davidson County v. Avco Corporation*, D.J. Ref. 90–5–2–1–1109.

The proposed partial consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, Room 879, 801 Broadway, Nashville, Tennessee 37203, or the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30364. Copies of the partial consent

decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at a cost of $.10 per page or $1.80.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13002 Filed 6-8-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984, Industry-University Center for Glass Research

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Industry-University Center for Glass Research at the New York State College of Ceramics, Alfred University, Alfred, New York ("the Center") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 16, 1988, disclosing changes in the Center's membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Center advised that Aluminum Company of America and M&T Chemicals, Inc. have become members of the Center.

No other changes have been made in either the membership or planned activity of the Center.

On August 11, 1986, the Center filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 10, 1986, 51 FR 32262. On February 24, 1987, the Center filed an additional written notification. The Department published notice in the **Federal Register** in response to the additional notification on March 19, 1987 (52 FR 8681).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-13005 Filed 6-8-88; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise sections 2, 3 and 4 of the Appendix A Technical Specifications to be consistent with a replacement upgrade of the San Onofre Nuclear Generating Station, Unit 1 Nuclear Instrumentation System (NIS). The modification would consist of a complete replacement of the NIS detectors, cabling, and signal processing equipment. Certain existing output devices and cable routing would be retained. The licensee stated that the proposed revisions to the technical specifications would assure appropriate limiting conditions for operation and surveillance requirements for the upgraded NIS. The safety analyses of transients and accidents are reviewed in the application. Because the new NIS detectors are not symmetrical with respect to the reactor, a revised dropped control rod analysis is presented which is the analysis most affected by the upgraded nuclear instrumentation system.

The Need for the Proposed Action

The proposed amendment is required to permit the licensee to replace the Nuclear Instrumentation System.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for hearing in connection with this action was published in the **Federal Register** on May 18, 1988 (53 FR 17809). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 15, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 3rd day of June, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12966 Filed 6-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21 issued to Washington Nuclear Project No. 2 (WNP-2), located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise License Condition 2.c(16), Attachment 2, Item 3(b) to read "The licensee shall implement (installation or upgrade) requirements of R.G.1.97, Rev. 2 for flux monitoring prior to startup following the fourth refueling outage." The license currently requires this implementation following the third outage. The licensee has installed flux monitoring instrumentation. However, the installation is not yet environmentally qualified according to Regulatory Guide 1.97.

The proposed action is in accordance with the licensee's application for amendment dated December 23, 1987, as supplemented by letter dated January 15, 1988.

The Need for the Proposed Action

The proposed change to the Technical Specification will make it possible to continue operation of the facility while efforts continue to meet the requirements of R.G.1.97.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Operating License. The proposed revision will allow the facility to operate even through the flux monitoring installation does not yet meet the environmental qualification requirements of R.G.1.97. The revisions have been found to be acceptable because this is a relatively new system and no licensee is meeting the qualification requirements applicable at WNP-2. Furthermore, the licensee has demonstrated a good faith effort toward achieving compliance with the license condition. The proposed changes do not increase the probability of consequences of an accident because there is existing qualified instrumentation to provide operators with sufficient data to assess reactor conditions (e.g., control rod position monitors, and reactor vessel level and pressure monitors) in the unlikely event of an accident condition prior to implementation. No changes are proposed in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed amendment to the license involves qualification of monitoring instrumentation located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** April 5, 1988 (53 FR 11154). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there is no significant environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. Denial of the request would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2, dated December, 1981.

Agencies and Person Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 23, 1987 and supplement dated January 15, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 31st day of May, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, and V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12967 Filed 6-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co. and Yankee Nuclear Power Station; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station (YNPS) located in Rowe Township, Massachusetts.

Identification of Proposed Action

The amendment would consist of a change to the operating license authorizing an extension to the expiration date for YNPS from November 4, 1997 to July 9, 2000, a period of two years and eight months.

The proposed amendment to the license is responsive to the licensee's application dated September 15, 1987 and as supplemented on December 2, 1987. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility

Operating License No. DPR–3, Yankee Atomic Electric Company, Yankee Nuclear Power Station, Docket No. 50–029," dated June 2, 1988.

Summary of Environmental Assessment

The NRC staff reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for YNPS. The evaluation was based on the licensee's September 15, 1987 and December 2, 1987 submittals, the plant Final Safety Analysis Report and plant Technical Specifications.

Radiological Impacts

Although the population in the vicinity of YNPS has increased slightly, it is likely to remain stable for the period of the extension; thus, the site requirements of 10 CFR Part 100 are now and would still be met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances. The net annualized environmental impacts attributable to the uranium fuel cycle, which form the basis for Table S3 of 10 CFR Part 51, remain essential unchanged from those previously considered. The environmental impacts attributable to transportation of fuel and waste to and from the plant, with respect to normal conditions of transport and possible accidents in transport would be minimal. In addition, the proposed additional period of reactor operation would not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with the NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. Technical Specifications are in place to ensure continued compliance with these requirements during any additional period of operation.

Non-Radiological Impacts

The NRC review identified no anticipated additional degradation of the habitat surrounding the plant with regard to indigenous plant and animal species for the additional period of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection from non-radiological effluent discharges for the period of the license extension. The staff also performed an assessment of impact on historic properties in accordance with revisions to 36 CFR Part 800 (Historic Preservation Act) effective October 1, 1986. No significant impact on any historic properties was identified with the license extension.

The staff also verified the licensee's cost/benefit analysis provided in the September 15, 1987 submittal and discussions with respect to commitment of resources and alternatives and found them to be valid.

Finding of No Significant Impact

The staff has reviewed the proposed change to the expiration date of the YNPS Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on October 21, 1987 (52 FR 39311). No request for hearing or petition to leave to intervene was filed following this notice.

For further details with respect to this action see the application for amendment dated September 15, 1987 and as supplemented on December 2, 1987 and the Environmental Assessment dated June 2, 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW. Washington, DC 20555 and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

For the Nuclear Regulatory Commission.

Marton B. Fairtile,

Project Manager, Project Directorate I–3, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 2nd day of June 1988.

[FR Doc. 88–12906 Filed 6–8–88; 8:45am]

BILLING CODE 7590–01–M

Commonwealth Edison Co., Zion Generating Station, Units 1 and 2; Order Imposing Civil Monetary Penalty

[Docket Nos. 50–295 and 50–304 Licenses No. DPR–39 and DPR–48 EA 87–211]

I

Commonwealth Edison Company (licensee) is the holder of Operating Licenses No. DPR–39 and DPR–48 (licenses) issued by the Nuclear Regulatory Commission (NRC/Commission) on April 6 and November 4, 1973. The licenses authorize the licensee to operate Zion Generating Station in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on September 21 through October 28, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated January 4, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated February 3, 1988. In its response, the licensee admits certain violations, disagreed that its pressure isolation valve testing program was inadequate, denied that Violation B occurred as stated in the Notice, took partial exception to Violation C, and requested mitigation of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix of this Order, that the violations occurred as stated and that the penalty proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of One Hundred Thousand Dollars ($100,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Regional Administrator, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137; and to the NRC Resident Inspector at Zion.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland this 26th day of May 1988.

Appendix—Evaluation and Conclusion

In a letter dated February 3, 1988, the licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties (Notice) dated January 4, 1988. In its response the licensee (1) admitted to two of the four violations documented in the Notice, (2) denied that Violation B had occurred, (3) admitted to Violation C in part, subject to qualifications, (4) asserted that it had aggressively pursued correction of pressure isolation valve testing deficiencies, and (5) requested mitigation of the civil penalty based on its prompt corrective actions, its prior performance indicating responsiveness for regulatory concerns, and its denial that one of the violations had occurred. Provided below are (1) a restatement of contested Violation B, a summary of the licensee's response to Violation B, and the NRC's evaluation of the contested violation; (2) a restatement of Violation C (which the licensee has admitted in part), a summary of the qualifications associated with licensee's admission of Violation C, and the NRC's evaluation of the licensee's qualifications; (3) the NRC's assessment of the licensee's corrective actions concerning its Pressure Isolation Valve (PIV) testing program; (4) the NRC's evaluation of the licensee's arguments in support of mitigation of the proposed civil penalty; and (5) the NRC's conclusion.

I. Evaluation of Violation B

A. Restatement of Violation B

10 CFR Part 50, Appendix B, Criterion XI, as implemented by Commonwealth Edison Company's Quality Assurance Topical Report, CE–1–A, requires, in part, that a test program be established to assure that all testing required to demonstrate that structures, systems, and components will perform satisfactorily in service is identified and performed in accordance with written test procedures.

Contrary to the above, as of October 26, 1987, the licensee's test program failed to assure that all testing, required to demonstrate that pressure isolation check values will perform satisfactorily in service, was performed in accordance with written test procedures. The procedure did not provide adequate direction as to when procedures were required to be performed. Specifically, during the refueling outage from March 1987 through August 1987, and after the safety injection which occurred on July 29, 1987, check valve leakage testing was not specified nor done to assure that the LPI/RHR check values were installed correctly and functioning as pressure isolation barriers prior to plant startup.

B. Summary of Licensee's Response

In its Febraury 3, 1988, response, the licensee contends that procedures in place as of July 29, 1987, provided adequate direction as to when the PIV tests were to be performed. The licensee asserts that testing of the PIV's after the safety injection on July 29, 1987 was not required because: (1) Testing after a single valve actuation does not measurably decrease the already low level of risk from check valve failures as determined by testing every refueling outage, (2) the NRC has accepted Zion's testing program without requiring a test after each valve actuation, and (3) the testing programs in place at the majority of PWRs do not require testing more frequently than every refueling outage.

C. NRC Evaluation

1. The licensee asserts that testing check valves following valve actuation (such as after the July 29, 1987 safety injection) does not affect check valve failure probability. That assertion is not relevant to this violation. This violation resulted from the licensee's failure to establish an adequate program to assure that testing required to demonstrate that components would perform satisfactorily in service was carried out.

2. The licensee asserts that the NRC has accepted Zion's testing program without requiring a test after each valve actuation. The licensee states that in a January 25, 1980 meeting, the NRC staff described how annual testing of check valves could reduce risk from check valve failures to an acceptable level. The licensee states that, in the formulation of the February 29, 1980 Confirmatory Order, and in Inspection Report Nos. 50–295/80–14 and 50–304/80–14, the NRC established the position that Zion's testing program was acceptable without the requirement to test after every valve actuation. It also cites the NRC endorsement of the Zion Probabilistic Safety Study (ZPSS) and NUREG–1150 results as further indication of NRC acceptence absent commitments to perform testing following each valve actuation.

The NRC's Confirmatory Order issued on February 29, 1980 and the licensee's letters to the NRC dated March 14 and 28, 1980 described criteria for PIV testing. The Order specified the testing to be performed and the letters stated that procedures had been revised incorporating the requirement that these check valves will be tested whenever the primary coolant system pressure is brought to within 100 psig of the system design pressure on the low pressure side of these check valves. After the July 29, 1987 safety injection, check valve testing was not done to assure that the LPI/RHR check valves were installed correctly and functioning as pressure isolation barriers prior to plant startup, even though the primary coolant system pressure was brought to within 100 psig of the system design pressure on the low pressure side of these check valves.

Neither the NRC Confirmatory Order issued February 29, 1980, nor Inspection Report Nos. 50-295/80-14 and 50-304/80-14, nor the NRC endorsement of the ZPSS and NUREG-1150 involved a detailed review of, or acceptance of, the PIV testing program and procedures being implemented by the licensee.

3. The determination of how and when to test PIVs is based on written commitments made by the licensee as well as on Orders and Technical Specifications. The Confirmatory Order of February 29, 1980 which contained specific requirements for testing PIV's was imposed on Zion Station because, unlike the majority of PWRs, Zion is located in a high population density area. Regulatory requirements for each facility are unique and requirements imposed on other licensees are not relevant to this case.

D. NRC Conclusion

The NRC concludes that the PIVs had not been tested at the frequency required by the February 29, 1980 Confirmatory Order nor as described in letters to the NRC. Therefore, the NRC concludes that the violation did occur as stated in the Notice.

II. Discussion of Violation C

A. Restatement of Violation C

10 CFR Part 50, Appendix B, Criterion II, as implemented by Commonwealth Edison Company Quality Assurance Topical Report, CE-1-A, requires, in part, that the licensee comply with NRC Safety Guide 33, dated November 1972. Safety Guide 33 states that the requirements and recommendations in proposed standard ANS-3.2, "Standard for Administrative Controls for Nuclear Power Plants," dated November 2, 1972 (issued as ANSI N18.7), provide an adequate basis for complying with the quality assurance program requirements of Appendix B to 10 CFR Part 50. ANSI-3.2, Section 5.4, requires that each procedure be reviewed periodically to ensure that the procedures in current use provide the best possible instructions to the operators.

Contrary to the above, periodic reviews of test procedures PT-2P, PT-2M, and PT-2N, RHR Hot Leg and Cold Leg Injection Check Valve Leak Check, were not performed from November 1980 through August 1987 to ensure that the best possible instructions were provided to the operators.

B. Summary of Licensee Response

The licensee admits the violation in part, with the following qualifications: (1) The licensee did perform periodic reviews of the subject procedures, and (2) the periodic procedure review is outlined in Zion Administrative Procedure ZAP 5-51-3, under which guidelines the periodic procedure reviews were performed. The licensee interpreted the violation to address the adequacy of the periodic reveiw.

C. NRC Evaluation

In August 1979, ZAP 5-51-3, "Periodic Procedure Review," established the licensee's periodic procedure review program. As implemented at Zion, procedures were considered to be reviewed when the procedures were performed and the results were evaluated. However, the NRC concludes this does not constitute a periodic review of the procedure, as required by ANSI-3.2, Section 5.4. In addition, guidance was not provided in the procedures to ensure that, as the procedures were being used, that an evaluation of adequacy of the procedures was conducted. Several procedural deficiencies had not been identified by the licensee's review process.

D. NRC Conclusion

Based on the above, the NRC concludes that the violation did occur as stated in the Notice.

III. Assessment of Corrective Actions for Pressure Isolation Valve Test Program Deficiencies

A. Summary of Licensee's Response

The NRC letter dated January 4, 1988, from A.B. Davis to J.J. O'Connor, transmitting the Notice of Violation and Proposed Imposition of Civil Penalty, stated:

"We are particularly concerned that CECo continued to maintain, until shortly before the October 30, 1987 Enforcement Conference that its PIV testing program was adequate to test the pressure isolation function of the PIV's and that it did meet regulatory requirements."

The licensee response to this issue asserts that once CECo had become aware of specific test procedure deficiencies that had effectively prevented it from satisfying test requirements and commitments, it immediately began an aggressive program of rectifying the deficiencies and retesting the check values.

B. NRC Evaluation

While the NRC agrees that corrective actions began as early as September 24, 1987, execution of these actions was not performed in accordance with the licensee's quality assurance program and required significant NRC involvement to ensure that PIV testing was performed correctly. The following are examples:

—After the NRC inspectors informed licensee management of specific PIV testing concerns on September 23, 1987, radiographic testing (RT) of some PIVs was conducted on September 24, 1987. However, review of the radiographs was not performed by Quality Control (QC) until October 5, 1987, after NRC inquired about documentation of the RT, review of the results, and acceptance criteria used to evaluate the results. As of March 18, 1988, the licensee had not provided to the NRC the acceptance criteria used for that QC review. The licensee later had these valves leak tested because of ambiguities associated with the use of radiography as a PIV test method.

—On about October 2, 1987, the NRC asked whether calibrated test instrumentation was used for leak testing valves. On October 6, 1987, the inspectors learned that a flowmeter had been used in the past which was not in the licensee calibration program and had not been calibrated following repairs in 1982. This finding resulted in invalidation of all PIV testing performed since 1982, including the retesting of PIVs after September 23, 1987.

—The licensee's response also states that on November 13, 1987, upon submittal of the proposed Technical Specifications (TS) regarding pressure isolation valve testing, the station immediately implemented the proposed TS by issuing a standing order to operating shift personnel. On December 21, 1987, the resident inspector noted that the standing order had not yet been issued. A standing order was subsequently placed in the shift engineers' office on December 21, 1987, as a result of the resident's inquiry.

C. NRC Conclusion

The NRC agrees that by November 24, 1987, the licensee completed all PIV testing on both units using calibrated instrumentation and in accordance with its Quality Assurance program; however, NRC involvement was required to ensure that test procedures were adequate to demonstrate the operability of PIVs and that the Technical Specification requirements were implemented in accordance with the licensee's commitment. The NRC concluded that the licensee's corrective actions did not reflect an aggressive response to identified concerns.

IV. Assessment of Civil Penalty Escalation and Mitigation

A. Summary of Licensee Arguments for Mitigation

The licensee believes that credit should be given for prompt corrective actions in response to the identified concerns, couple with its past performance with regard to responsiveness to regulatory concerns. The licensee states that implementation of the regulatory improvement program in February 1984 has improved awareness of regulatory requirements, and that the absence of Severity Level III violations since 1983, except for the HVAC issue, which was attributed to original construction, is indicative of improved regulatory performance. The licensee states that Zion Station does not diminish the importance of any Level IV or V violations that were incurred during the past years; however, those violations do not indicate a lack of management initiative or unresponsiveness to regulatory concerns.

B NRC Evaluation

The NRC does not agree that the licensee took an aggressive approach to resolving identified concerns. Although the licensee's responsiveness to identified concerns has been enhanced by its regulatory improvement program, the program was ineffective in this case. A large number of quality program violations associated with PIV testing were identified. Although the licensee's responsiveness has been improving in many areas, in this case the corrective actions were not prompt and were only minimally acceptable.

The licensee's past performance in the area of testing has only been satisfactory (i.e., rated Category 2 in the latest SALP) and there have been several licensee event reports and violations related to testing and control of test equipment. Therefore, mitigation of the proposed civil penalty based on the licensee's past performance in this area is not considered appropriate.

C. NRC Conclusion

Based on the above, the NRC concludes that a sufficient basis has not been provided to mitigate the proposed civil penalty.

V. Conclusion

After careful consideration of the licensee's response, the NRC staff has concluded: (1) That Violations B and C described in the Notice occurred as stated, (2) that the licensee's corrective actions did not reflect an agressive response to identified concerns, and (3) a sufficient basis was not provided for mitigation of the proposed civil penalty. The NRC staff considers the violations to collectively constitute cause for significant concern and are appropriately classified in the aggregate as a Severity Level III violation. Accordingly, a civil penalty in the amount of One Hundred Thousand Dollars ($100,000) should be imposed.

[FR Doc. 88-12969 Filed 6-8-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 83 and 76 to Facility Operating Licenses Nos. DPR-42 and DPR-60, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota. The amendments are effective as of the date of issuance.

The amendments change the high flux, power range (low setpoint) in Specification 2.3.A.1.b from equal to or less than 25% of rated power to equal to or less than 40% of rated power.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing in connection with this action was published in the Federal Register on March 25, 1988 (53 FR 9832). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the Federal Register on May 31, 1988, at FR 19831.

For further details with respect to this action, see (1) the application for amendments dated November 3, 1987, (2) Amendments Nos. 83 and 76 to Licenses Nos. DPR-42 and DPR-60, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Project Manager, Project Directorate III-1, Division of Reactor Projects-III, IV, V & Special Projects.

[FR Doc. 88-12970 Filed 6-8-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 30-14066, License No. 35-18336-01 EA 87-178]

Osage Wireline Service; Order Imposing Civil Monetary Penalties

I

Osage Wireline Service, Cleveland, Oklahoma (the licensee) is the holder of Materials License No. 35-18336-01 issued by the Nuclear Regulatory Commission (the NRC or Commission) on December 14, 1978, and amended in its entirety on June 28, 1985. The license authorizes the licensee to use sealed sources for oil and gas well logging in accordance with the conditions specified therein.

II

A routine inspection of the licensee's activities was conducted on August 17, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 22, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by two letters received by the NRC Region IV office on January 28, 1988.

In its responses, the licensee denied two violations, contended that one violation was "unnecessary" and stated that the civil penalties would be detrimental to its survival. Consequently, by letter dated February 16, 1988, the NRC provided the licensee with the opportunity to submit financial information on its recent profit and loss and its net worth. The licensee subsequently submitted its corporate income tax returns for 1985 and 1986 and financial statements for 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that violation C.3.a should be withdrawn and the civil penalties reduced accordingly, and that violation C.4 should be amended, but that the remaining violations occurred as stated and that the penalties proposed for these violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of One Thousand Four Hundred Fifty Dollars ($1,450) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in Section II above, as amended by this Order, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 27th day of May 1988.

Appendix—Evaluation and Conclusion

On December 22, 1987, a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) was issued for the violations identified during a routine NRC inspection. Osage Wireline Service responded to the Notice by two letters received in the NRC Region IV office on January 28, 1988, and subsequent statements of the corporate financial status. The licensee denied two violations, stated that one violation was "unnecessary" and requested complete mitigation of the civil penalties. The NRC's evaluation and conclusion regarding the licensee's agreements are as follows:

I. Restatement of Violation A

Section 8.3.2 of the procedures submitted with the license application states that neutron source handling shall be performed using the approved handling tool only.

Contrary to the above, on August 17, 1987, a Licensee's representative stated to the NRC inspector that he routinely handled the neutron source with his hands.

This is a repeat violation.

Summary of Licensee's Response

The licensee denies routinely handling the neutron source, but admits that Section 8.3.2 of the Procedure states that neutron sources shall be handled by approved handling tools only. The licensee claims that this rule does not consider practical application of source maintenance, and that there are times when touching a source is inevitable. The licensee argues that the words, "routinely handle" unfairly invoke thoughts of negligence and complacency, that it has always done the best job to avoid contact or exposure, and that therefore a penalty for this matter is unjust.

NRC Evaluation of Licensee's Response

The licensee denies only that the neutron source was handled with the hands *routinely*. The frequency of such handling is not the only important issue. Also important is that the source was handled with the hands in violation of Section 8.3.2. of procedures. The NRC does not consider it ever necessary to touch a neutron source and maintains that neutron source handling should always be performed using approved handling tools. Therefore, Violation A occurred as stated.

Restatement of Violation B

Section 8.5.1 of the procedures submitted with the license application states that a radiation survey of the job site will be performed before and after each job.

Contrary to the above, on 13 occasions during the period of December 17, 1986 through August 17, 1987, radiation surveys of job sites were not performed before and after each job.

Summary of Licensee's Response

The licensee admits to not performing job surveys on 13 occasions, despite the requirement of section 8.5.1 of the Procedure Manual that surveys will be performed before and after each job. However, the licensee argues that some situations exist where these surveys are not warranted, in the view of its company representative. It states that "interpretations" differed from regulations, but its representatives were not negligent in overall safety practices of job surveys, and that a penalty for this violation is unjust.

NRC Evaluation of Licensee's Response

The NRC maintains that radiation surveys of job sites should always be performed before and after each job in order to determine that there is no contamination. Moreover, the licensee committed to following its procedures which clearly required that surveys be performed before and after each job. Therefore, violation B remains as stated.

Restatement of Violation C.1

License Condition 16 requires that the licensee conduct a physical inventory every 6 months to account for all sealed sources received and possessed under the license, and maintain records of such inventories for 2 years from the date of each inventory.

Contrary to the above, records of inventories of sealed sources were not maintained from August 1985 until August 1987.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.1 remains as stated.

Restatement of Violation C.2.a

License Condition 17 requires that the Licensee transport licensed material or deliver licensed material to a carrier for transport in accordance with the provisions of 10 CFR Part 71. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170–189.

49 CFR 172.300(a) requires that each person who offers for transport a package containing hazardous material mark each package in a manner required by Subpart D of Part 172. 49 CFR 172.301(a) requires, in part, that a package having a rated capacity of 110 gallons or less be marked with the proper shipping name and identification number (preceded by "UN" or "NA" as appropriate). 49 CFR 172.310(a) requires, in part, that in addition to any other markings, each package of radioactive material which conforms to the requirements for Type A or Type B packaging be plainly and durably marked with the words "TYPE A" or "TYPE B" as appropriate.

Contrary to the above, as of August 17, 1987, sources T–951 (4.85 curies of americium-berylium) and CSV–650 (2 curies of cesium) had been transported and the transportation containers, with a rated capacity of less than 110 gallons, used to ship these sources were not marked with the proper shipping name and identification number or with the words "TYPE A" or "TYPE B" as appropriate.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.2.a remains as stated.

Restatement of Violation C.2.b

49 CFR 172.403 requires, in part, that unless excepted from labeling by Sections 173.421 through 173.425, each package of radioactive material be labeled, as appropriate, with a RADIOACTIVE WHITE-I, a RADIOACTIVE YELLOW-II, or a RADIOACTIVE YELLOW-III label.

Contrary to the above, as of August 17, 1987, sources T–951 (4.85 curies of americium-berylium) and CSV–650 (2 curies of cesium) had been transported and the packages were not labeled as required by 49 CFR 172.403, nor were they excepted from labeling.

This is a repeat violation.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.2.b remains as stated.

Restatement of Violation C.3.a

License Condition 18 requires, in part, that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application dated October 22, 1979 and letter dated January 16, 1985.

Section 2 of the procedures submitted with the license application requires that thermoluminescent dosimeter (TLD) Gamma-Neutron badges be processed on a quarterly basis.

Contrary to the above, as of August 17, 1987, employee badges for the fourth quarter of 1986 were not processed.

Summary of Licensee's Response

The licensee denies that TLD badges were not processed for the fourth quarter of 1986 and offers as evidence two reports from the TLD processor dated April 22 and April 24, 1987.

NRC Evaluation of Licensee's Response

The NRC has determined that the licensee processed TLD badges for the fourth quarter of 1986, and that the violation should be withdrawn. The NRC notes, however, that the badges for the fourth quarter of 1986 were worn through the first quarter of 1987 and therefore were not returned for processing on a quarterly basis, as required.

Restatement of Violation C.3.b

Section 3 of the procedures submitted with the license application requires that all sources of radioactivity be kept locked in the Licensee's Radioactive Material storage unless actually in use.

Contrary to the above, from August 15 until August 17, 1987, a 2 curie cesium-137 source and a 4.85 curie americium-beryllium source were not kept locked in the licensee's Radioactive Material storage but were stored on a truck.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.b remains as stated.

Restatement of Violation C.3.c

Section 8.5.3 of the procedures submitted with the license application states that the results of surveys of the job site will be recorded on the Radiation Survey Data Sheet.

Contrary to the above, no record of the results of surveys of job sites was maintained for the period December 19, 1986 through August 15, 1987.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.c remains as stated.

Restatement of Violation C.3.d

The licensee's letter of January 16, 1985, states that a specified individual had assumed the position of Radiation Safety Officer (RSO).

Contrary to the above, as of August 17, 1987, the specified RSO was no longer employed by the Licensee, and the duties of the RSO had been performed by an unauthorized RSO since about December 17, 1986.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.d remains as stated.

Restatement of Violation C.3.e

Figure #9 submitted with the license application diagrams the required configuration that neutron source holders shall have when being housed in shielded containers.

Contrary to the above, as of August 17, 1987, neutron source holders housed in shielded containers did not have the required configuration.

Summary of Licensee's Response

The licensee admits the violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.e remains as stated.

Restatement of Violation C.4

10 CFR 20.201(b) requires that each licensee shall make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in 10 CFR Part 20, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present.

10 CFR 20.105(b)(1) and (2) require that no licensee possess, use, or transfer licensed material in such manner as to create in any unrestricted area radiation levels which, if an individual were continuously present in the area, could result in his receiving a dose in excess

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of 2 millirems in any hour or 100 millirems in any 7 consecutive days.

Contrary to the above, from August 17, 1987 until approximately December 17, 1987, surveys had not been made of the unrestricted areas adjacent to the radioactive source storage area.

Summary of Licensee's Response

The licensee admits this violation, but notes that the cited dates of the violation are in error.

NRC Evaluation of Licensee's Response

The NRC has determined that the violation occurred, but agrees with the licensee that the dates as cited were erroneous. The citation is therefore corrected to read as follows:

Contrary to the above, from aproximately December 17, 1986 until August 17, 1987, surveys had not been made of the unrestricted areas adjacent to the radioactive source storage area.

Restatement of Violation C.5

10 CFR 20.203(e) requires, in part, that areas in which licensed material in an amount exceeding 10 times the quantity specified in Appendix C of 10 CFR Part 20 are stored or used be conspicuously posted with a sign or signs bearing the words "CAUTION RADIOACTIVE MATERIALS" or "DANGER RADIOACTIVE MATERIALS."

Contrary to the above, as of August 17, 1987, the storage area which contained licensed material in an amount exceeding 10 times the quantity specified in Appendix C of 10 CFR Part 20 was not posted with a sign or signs bearings the words "CAUTION RADIOACTIVE MATERIALS" or "DANGER RADIOACTIVE MATERIALS."

Summary of Licensee's Response

The licensee admits that the storage area was not posted with signs that read "CAUTION RADIOACTIVE MATERIALS" or "DANGER RADIOACTIVE MATERIALS." However, the licensee asserts that the area was posted with a sign which read "Caution, radiation area," and that this sign had been approved by the NRC during a previous inspection in 1983. For this reason, the licensee claims that citation for this violation was "unnecessary."

NRC Evaluation of Licensee's Response

In 10 CFR Part 20 "Caution Radiation Area" and "Caution Radioactive Materials" or "Danger Radioactive Materials" have different and distinct meanings. 10 CFR 20.203(b) requires that a radiation area be posted with the words "Caution Radiation Area" and 10 CFR 20.202(b)(2) defines a radiation area as any area accessible to personnel in which there exists radiation at such levels that a major portion of the body could receive in any one hour a dose in excess of 5 millirems or in any 5 consecutive days a dose in excess of 100 millirems. However, 10 CFR 20.203(e) requires that areas in which licensed materials in an amount exceeding 10 times the quantity specified in Appendix C are stored or used be posted "Caution Radioactive Materials" or "Danger Radioactive Materials." The licensee's storage area should have been posted in accordance with the requirements of 10 CFR 20.203(e). In addition, the NRC has no evidence that this sign had been approved during a previous inspection in 1983. Therefore, violation C.5 remains as stated.

Restatement of Violation C.6

10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. As defined in 10 CFR 20.3(a)(7), an unrestricted area is any area to which access is not controlled by the licensee for purposes of protection of individual's from exposure to radiation and radioactive materials.

Contrary to the above, on August 17, 1987, a cesium-137 source (serial No. CSV–650) was stored in an open transportation container in a truck parked in an open garage, an unrestricted area, and was not secured against unauthorized removal.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.6 remains as stated.

Restatement of Violation C.7

10 CFR 20.401(a) requires that each licensee maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required.

Contrary to the above, as of August 17, 1987, exposure records for the second quarter of 1987 were not maintained for employees for whom such monitoring was required.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.7 remains as stated.

II. Summary of Licensee's Request for Mitigation

The licensee argues that the proposed civil penalties are not needed to "improve management control over licensed activities," that the attitude by members of its company is not "complacent" towards compliance with NRC requirements, that, due to economic hardship, the balance of responsibility has been shifted to members of its organization who were not ready for additional loads of work, that due to different interpretation of requirements, sections B, C.1, C.3.b, C.3.d, and C.5 were not clear to its new RSO, that it has spent an additional $3,500 on a private consultant, and that it has had three management changes and should not be punished for the deeds of previous management. In addition, the licensee argues that civil penalties are reserved for gross negligence including disrespect for authority, and that as it has been receptive and quick to make corrections necessary for full compliance, the civil penalties are excessive and unwarranted. Moreover, the licensee argues that the civil penalties are detrimental to its survival.

NRC Evaluation of the Licensee's Request for Mitigation

It is management's responsibility to ensure that it is actively involved in its licensed program and is aware of NRC regulatory requirements and that NRC regulatory requirements are understood and followed. Confusion on the part of the licensee management is not a basis for mitigation.

As stated in the NRC's Enforcement Policy, civil penalties may be imposed for violations in order to emphasize the need for lasting remedial action and to deter future violations and are not reserved for gross negligence or disrespect for authority. With regard to the licensee's argument that it was quick to make corrections necessary for full compliance, the NRC has determined that the licensee's corrective actions were only such as would be expected, and did not provide a basis for mitigation of the civil penalties. Finally, although the Enforcement Policy states that the economic impact of civil penalties should not be such that it puts the licensee out of business or adversely affects a licensee's ability to safely conduct licensed activities, costs incurred by a licensee in obtaining professional consulting services in order to maintain its licensed activities in compliance with the Commission's regulations are not considered as a basis for civil penalty mitigation. The NRC has reviewed the licensee's corporate tax returns for 1985 and 1986 and financial statements for 1987. It is the NRC's conclusion that payment of the civil penalties would not create an undue hardship and adversely affect the licensee's ability to safely conduct licensed activities.

III. NRC Conclusion

In consideration of the licensee's responses to the NOV, the NRC staff has withdrawn Violation C.3.a. Concomitantly, the civil penalty for Violation C, which was $500, has been reduced to $450. The licensee has not provided an adequate basis for further mitigation of the civil penalties. The civil penalties for violations A and B, $500 each, remain unchanged. Consequently, civil penalties in the amount of $1,450 should be imposed.

[FR Doc. 88–12971 Filed 6–8–88; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142
Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549

Revisions

Form 10–K, File No. 270–48
Form 10–Q, File No. 270–49
Form 8–K, File No. 270–50
Form 20–F, File No. 270–156
Form 12b–25, File No. 270–71

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 12b–25 under the Securities Exchange Act of 1934 and related amendments. The proposed revisions relate to the reporting requirements applicable when an issuer changes its fiscal year end and the quarterly reporting requirements for a first time registrant. With respect to Form 10–K, approximately 9,486 respondents are affected and an estimated 1,701 burden hours are required per person. With respect to Form 10–Q, approximately 9,518 respondents are affected and an estimated 190 burden hours are required per response. With respect to Form 8–K, approximately 11,850 respondents are affected and an estimated 6 burden hours are required per response. With respect to Form 20–F, approximately 132.75 respondents are affected and an estimated 2,110 burden hours are required per response. With respect to Form 12b–25, approximately 4,286 respondents are affected and an estimated 2.5 burden hours are required per response.

Submit general comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Direct any comments concerning the accuracy of the estimated average burden hours for compliance to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and to Robert Neal at the above address.

Jonathan G. Katz,
Secretary.
June 2, 1988.

[FR Doc. 88–12976 Filed 6–8–88; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–25776; File No. SR–MSRB–88–2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Advertising

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1988, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation of rule G–21 (hereafter referred to as the "proposed rule change") concerning the content of municipal securities advertisements. The proposed rule change states that the use of current yield information in municipal securities advertisements without other yield information would be materially misleading under rule G–21. Thus, dealers may not show only current yield in municipal securities advertisements. However, a municipal securities advertisement may include current yield if, at a minimum, the advertisement also includes the lowest of yield to call or yield to maturity and the type size of the current yield is no larger than other yield information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Board received an inquiry whether including current yield information in municipal securities advertisements, alone or with other yield information would be materially misleading. The Board also was asked if a dealer may advertise current yield if other information is included but is in smaller print.

The Board frequently has stated that the yield to call or yield to maturity is the most important factor in determining the fairness and reasonableness of the price of any given transaction in municipal securities. Such yields typically are used as a basis for dealers and customers to evaluate an investment in municipal securities. The disclosure of yield to call or yield to maturity is the long-standing practice of the municipal securities industry and this practice is reflected in rule G–15(a) which requires dealers to disclose yield to call or yield to maturity on customer confirmations. A customer who purchases a municipal security relying only on the current yield information disclosed in an advertisement would be confused upon receipt of the confirmation when the yield to call or yield to maturity of the security is different. Moreover, a customer would not be able to compare municipal securities advertised at a current yield with those advertised at a yield to call or yield to maturity. The Board determined that the use of current yield information in municipal securities advertisements without other yield information would be materially misleading under rule G–21. Thus, dealers may not show only current yield in municipal securities advertisements.

The Board also determined that, while showing only current yield information in advertisements is materially misleading, if advertisements also include, at a minimum, the lowest of yield to call or yield to maturity, current

yield may be used if all the information is clearly presented as discussed below. The Board notes that including yield to call or yield to maturity in municipal securities advertisements would give customers a more realistic view of the yield they can expect to receive on the investment and would enable them to compare the security advertised with other municipal securities. In addition, the yield to call or yield to maturity information would be consistent with the yield information disclosed on customer confirmations. If the yield to call is used, the call date and price also should be noted.

The Board is concerned that, even if dealers comply with this interpretation of rule G–21 and include current yield and other yield information in municipal securities advertisements, such advertisements still could be misleading due to the size of type used and the placement of the information. For example, it would not be appropriate for the type size of the current yield to be larger than other yield information. Thus, whether a particular advertisement is materially misleading requires the appropriate regulatory body, for example, an NASD District Business Conduct Committee, to consider a number of objective and subjective factors. The Board urges the regulatory authorities to continue to review advertisements on a case-by-case basis to make a determination whether any such advertisements, in fact, are misleading.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are—

Designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12977 Filed 6–8–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

May 27, 1988.

The Midwest Stock Exchange, Inc. ("MSE") on May 6, 1988, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-3490	DRAM	Micron Technology Inc., Common, $.10 Par Value.
7-3491	ORCL	Oracle Systems Corp., Common, $.01 Par Value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-3492	PGULF	Pegasus Gold, Inc., Common, No Par Value.
7-3493	SHON	Shoney's Inc., Common, $1.00 Par Value.

The MSE applied to withdraw UTP on Pegasus Gold, Inc., because it was recently listed on the American Stock Exchange and is thus ineligible to be traded on a UTP basis. The MSE applied to withdraw UTP in Shoney's Inc., because the issuer will soon undergo a recapitalization that will significantly reduce the value of the security.

Comments

Interested persons are invited to submit on or before June 17, 1988, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Commentators are requested to address whether they believe the requested withdrawal of UTP would be consistent with section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in such security, the character of such trading, the impact

of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under section 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12979 Filed 6–8–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25772; File No. SR-PHLX 88-09]

Self-Regulatory Organizations; Approval of Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Value Line Arithmetic Average Computation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on February 26, 1988, a proposed rule change to revise the method of computation of the Value Line Composite Stock Average Index ("XVL Index") underlying index option contracts to an arithmetic average from a geometric average.

The proposed rule change was published for comment in Securities Exchange Act Release No. 25442 (March 10, 1988). No comments were received.

The PHLX has traded the XVL Index utilizing a geometric average computation since January 11, 1985.[3] Currently, the XVL Index contracts traded at the PHLX are American style option contracts, although the Commission also has approved the trading of European style options on the Value Line Index.[4]

The proposed rule change would revise the method of computation of the XVL Index to an arithmetic average from a geometric average. The XVL Index is the only index option that currently is calculated on a geometric average. Geometric averaging tends to underperform an arithmetic average and the geometric averaging of the XVL Index has resulted at times in substantial disparities between prices of the XVL futures and options contracts and the level of the underlying cash index.

The Exchange notes that geometric averaging of the XVL Index has created investor confusion and impedes efforts by market participants to develop precise hedges between the index contracts and their portfolios of underlying common stocks.

Partial accelerated approval of the rule change was granted by the Commission on March 18, 1988 to allow the Exchange to add series of near term arithmetically averaged XVL Index contracts to compliment such series of XVL Index contracts that were listed for trading calculated on a geometric average.[5] Accordingly, the Exchange has not added any new contract months of the XVL Index calculated on a geometric average and by December 1988 such options contracts will be phased out. Until that time, there may be some arithmetic and geometric series open simultaneously.[6]

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[7] The index options currently traded are based on an arithmetic index. The Commission has received no comments on switching the XVL Index to this method of confirmation. Additionally, the Commission notes that the Commodities Futures Trading Commission recently has approved a Kansas City Board of Trade proposal to revise the method of computation of the XVL future to an arithmetic average from a geometric average. The Commission believes that adopting a corresponding change for index options contracts trading on the PHLX will facilitate market participants ability to hedge their respective options and futures positions with index products that are based on a uniformly calculated index.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: June 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–12978 Filed 6–8–88; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19–4 (1987).

[3] Trading the XVL Index utilizing a geometric average computation was approved in Securities Exchange Release No. 21392 (October 10, 1984) 49 FR 40097.

[4] *See* Securities Exchange Release No. 24508 (May 22, 1987) 52 FR 20658. An American style option may be exercised by its holder anytime before expiration. A European style option, however, can be exercised only on the last trading day prior to its expiration.

[5] *See* Securities Exchange Release No. 24565 (March 18, 1988) 53 FR 9722.

[6] The Exchange has disseminated information to minimize confusion between products during this overlay period.

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1986).

[Rel. No. IC–16422; 812–6997]

Applications, Hearings, Determinations, etc.: HT Insight Funds, Inc.

June 3, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: HT Insight Funds, Inc. ("Applicant").

Relevant 1940 Act Sections: Order requested under section 6(c) granting exemptions from sections 13(a)(2), 18(f)(1) and 22(f) and (g) of the 1940 Act and pursuant to section 17(d) and Rule 17d–1 thereunder permitting certain arrangements.

Summary of Application: Applicant seeks an order (i) under section 6(c) of the 1940 Act exempting the proposed deferred compensation plan for directive (the "Plan") to be adopted by Applicant and all future investment companies to which Lazard Freres & Co., its affiliates or its subsidiaries may serve as investment advisers, principal underwriters, administrators and/or sponsors (the "Companies"), from sections 13(a)(2), 18(f)(1) and 22(f) and (g) of the 1940 Act; and (ii) under section 17(d) of the 1940 Act and Rule 17d–1 thereunder permitting certain transactions to be effected by the Companies and certain of their directors pursuant to the Plan.

Filing Date: The application was filed on February 26, 1988, and amended on June 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application

will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of services by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC 450 5th Street NW., Washington, DC 20549. Applicant, One Rockefeller Plaza, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is an open-end, diversified investment company that currently has five investment portfolios: HT Insight Government Fund, HT Insight Managment Fund, HT Insight Tax-Free Money Market Fund, HT Insight Convertible Fund and HT Insight Equity Fund (collectively referred to as the "Funds"). HT Insight Government Fund (the "Government Fund"), HT Insight Cash Management Fund (the "Cash Fund"), and HT Insight Tax-Free Money Market Fund (the "Tax-Free Fund") (collectively, the "Money Market Funds") are money market funds that seek to provide investors with as high a level of current income (which, in the case of HT Insight Tax-Free Money Market Fund, is exempt from federal incomes taxes) as is consistent with their investment policies and with preservation of capital and liquidity. HT Insight Convertible Fund (the "Convertible Fund") seeks to provide investors with capital appreciation and current income. Capital preservation also is an objective. HT Insight Equity Fund (the "Equity Fund") seeks to provide investors with capital appreciation. Current income is a secondary objective.

2. Applicant's board of directors consists of eight directors, a majority of whom are not "interested persons" of Applicant within the meaning of section 2(a)(19) of the 1940 Act. Each of the directors who is not an employee of Lazard Freres & Co. ("Lazard"), the sponsor, administrator and distributor of Applicant, Harris Trust and Savings Bank, the investment adviser, or their respective affiliates, receives from Applicant an annual retainer fee of $800 for services as a director. In addition, directors of Applicant are paid a fee of $200 for each board and/or committee meeting they attend. Applicant pays no other renumeration to its directors or officers. The amounts paid to the directors are, and are expected to continue to be, insignificant in comparison to the total net assets of Applicant.

3. The purpose of the Plan is to permit individual directors to elect to defer receipt of their directors' fees, in order to avoid diminution or loss of Social Security benefits to which directors may otherwise be entitled, to enable the directors to defer payment of income taxes on such fees, or for other reasons. Applicant further believes that the availability of such a deferred fee arrangement will enhance its ability to attract and retain directors of high caliber.

4. The Plan will allow an individual director to elect to defer receipt of the annual retainer or meeting fees or both that otherwise would become payable for services performed as a director or committee member after the effective date of the election. The election must be made in writing prior to, and will take effect as of, the beginning of the calendar year, or in the case of any director elected to the board in the year the Plan takes effect, or for a director elected in other than the last calendar quarter of a year, the beginning of the calendar quarter immediately following. The election shall continue in effect until terminated by notice in writing, such termination to take effect on the first day of the calendar year beginning after receipt of the notice of termination. An election shall be irrevocable as to payments deferred in accordance with the election.

5. Each deferred fee will be credited at the time when it otherwise would have been payable to an account on Applicant's books that will be established for each electing director. All amounts in such an account (including interest credited thereto) will bear interest at a rate equivalent to the rate applicable to 90-day U.S. Treasury Bills as determined at the beginning of each calender quarter. Interest will be credited to the account quarterly at the end of each calendar quarter. Amounts in the account will not be evidenced by any note or other security or funded or secured in any way. The Fund's obligation to make payments of amounts accrued under the Plan will be a general unsecured obligation payable solely from the Fund's general assets and property.

6. All amounts credited to a deferred payment account pursuant to a proper election by a director shall be paid to the director on (i) the first business day of the year in which the director attains the age of 70, or (ii) the first business day of the year next succeeding the year in which the director ceases to serve as a member of the board of directors.

7. The director may elect to receive all amounts credited to the account in one lump-sum payable on the first business day of the calendar year in which payment is to be made, or in 10 or fewer installments, which installments are payable on the first business day of each year commencing with the calendar year in which payment is to begin, as per the director's specifications in making the election. If the payment is to be made in installments, the amount of each installment shall be equal to a fraction of the total amount credited to the director's account at the time of payment, the numerator of which shall be one and the denominator of which shall be the remaining number of unpaid annual installments.

8. If the director dies at any time before all amounts in the account have been paid, Applicant shall make one lump-sum payment to such person or persons as the director shall designate in the written notice of election filed with Applicant, or in the absence of such designation, to the director's estate. No deferred amount or unpaid portion thereof may be transferred or assigned by a director except as per a written designation to take effect upon the death of the director, or the laws of descent and distribution.

9. Deferral of director's fees in accordance with the Plan will have a negligible effect on Applicant's assets, liabilities, net assets and net income per share. Furthermore, the Plan will not obligate Applicant to retain a director in such a capacity, nor will it obligate Applicant to pay any (or any particular level of) director's fees to any director. Rather, it merely permits a director to elect to defer receipt of director's fees that he would otherwise receive on a current basis from Applicant.

10. Participation in the Plan will be limited to those directors who are not "interested persons" of the Applicant within the meaning of section 2(a)(19) of the 1940 Act. Therefore the deferred fee arrangement will be available to all directors who receive director's fees from Applicant, i.e., the directors who are not employees of Harris Trust and Savings Bank, the Funds' Investment Adviser, or Lazard or their respective affiliates. It is anticipated that the Plan will be made available to directors of future Companies that may be added to the group of investment companies to which Lazard serves as investment adviser, sponsor, administrator and/or distributor.

11. Applicant contends that the effect of the Plan would be to defer the payment of fees that Applicant otherwise would be obligated to pay on a current basis as services are performed by the director. Applicant further contends that liabilities created by the credits under the agreement would be offset by essentially equal fund assets, which would not otherwise exist if the trustee's fees were paid on a current basis. Applicant contends that there is no expectation of profits being generated through Applicant or other investments on behalf of a director since Applicant would be undertaking no funding or investment commitment under the Plan and the interest earned by the director during the deferral period would not be tied to Applicant's investment performance.

12. Applicant submits that the exemption requested is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that participation in the plan would not be less advantageous to the company than to its participating directors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12980 Filed 6-8-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1064]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1989 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering national, competitive programs under the Soviet and Eastern European Research and Training Act. All grants will be annual and based on an open, national competition among applying organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in fiscal year 1989 under a program administered by the Department of State.

Organization of Notice

This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 16, 1988.

Applications Delivered by Mail

An application sent by mail must be addressed to R. Raymond Platig, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street NW., Washington, DC 20009.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the U.S. Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of State, INR/RES, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street, NW., Washington, DC.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Satudays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions.

The full purposes of the Act and the eligibility requirements are set forth in Pub. L. 98-164, Title VIII, 97 Stat. 1047-50. Under Title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the field of Soviet and Eastern European and related studies. Applying organizations or institutions should have the capability to conduct *competitive award programs that are national in scope.* Programs of this nature are those that make awards which are based upon

an open, nationwide competition incorporating peer group review mechanisms. Applications sought are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the Soviet Union and Eastern Europe by proposing:

(1) *National programs* which award contracts to American institutions of higher education or not-for-profit corporations in support of postdoctoral or equivalent level research projects, such contracts to contain shared-cost provisions;

(2) *National programs* which offer graduate, postdoctoral and teaching fellowships for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Soviet, Eastern European and related studies; and those which facilitate research collaberation between Government and private specialists in these fields;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the Soviet Union and Eastern Europe in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Moreover, support for publications, library activities and conferences will be constrained by the following policies:

—*Publicotions.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in unique or special circumstances, in which cases the funds should be supplied by peer-review organizations with national competitive programs.

—*Library Activities.* Title VIII funds should not be used for library preservation, cataloging or modernization. However, a national peer-review organization with Title VIII funds could offer modest support to efforts directed toward developing an effective, long-term and well-coordinated strategy to address the serious library needs of the field.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the qualitative improvement of the professional cadres in the field. Therefore, Title VIII grants generally should not be made solely to support a particular conference or series of conferences. Rather conference funding should come from one or more of the national peer-review organizations receiving Title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area, though with emphasis on the USSR.

Part III

Available Funds

Congress has authorized and the President has requested for Fiscal Year 1989 $5.0 million for the Title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the bill appropriating funds for the Department of State.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made over two or more years.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one or two page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, though bulky submissions are discouraged.

Budget

Applicants should familiarize themselves with OMB Circular No. A–110, "Grants and Agreements with Institutions of Higher Education * * * Unform Administrative Requirements," and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct administrative expenses by program element, and indirect costs; *NB* Indirect costs are limited to 10 percent of total grant agreements. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested Title VIII grant funds;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) Whether payment is requested on a reimbursable basis or by advance methods; re the letter, for grants above $125,000, advance funds will be made through a letter of credit, but if less than $120,000, advance of funds will be made by Treasury checks through wire transfers;

(5) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *Part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Soviet-Eastern European field (40 point); and

(3) Budget and cost effectiveness (20 points).

Further Information

For further information, contact Dr. E. Raymond Platig, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR/RES, U.S. Department of State, Washington, DC 20520. Telephone: (202) 632–2025 or 632–5924.

Dated: May 25, 1988.

E. Raymond Platig,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 88–12981 Filed 6–8–88; 8:45 am]

BILLING CODE 4710–32–M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–59]

Termination of Section 301 Investigation; India's Restrictions on Access for Almond Imports

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to terminate an investigation under section 301.

SUMMARY: On Feb. 20, 1987, the U.S. Trade Representative initiated an investigation of India's policies and practices with respect to the importation of almonds. On May 31, 1988, the United States and the Government of India reached agreement on providing enhanced access to the Indian market for imported almonds. In light of this agreement, the investigation under section 301 of the Trade Act of 1974, as amended, has been terminated.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Office of Asia and the Pacific, (202) 395–6813, Richard Parker, Office of the General Counsel, (202) 395–6800, or Ellen Terpstra, Office of Agricultural Affairs, (202) 395–5006, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On Jan. 6, 1987, the California Almond Growers Exchange filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Government of India engages in acts, policies, and practices that are unreasonable or discriminate against imports and burden or restrict U.S. commerce.

On Feb. 20, 1987, the U.S. Trade Representative initiated an investigation of the Indian government's policies and practices affecting efforts to obtain fair and equitable access to the Indian market for almonds (52 FR 6412). The United States and India have concluded an agreement providing enhanced access to the Indian market for almonds, which will take effect in the current Indian fiscal year. Since this dispute has been satisfactorily resolved, we have terminated the investigation.

Judith Hippler Bello,

General Counsel.

[FR Doc. 88–12972 Filed 6–8–88; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; City of Wilmington, New Hanover County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advice the public that a supplement to a final environmental impact statement will be prepared for a proposed highway project in the City of Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790–2850.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare a supplemental final environmental impact statement (EIS) on a proposal to construct a four-lane divided roadway in Wilmington, North Carolina. The original EIS for the improvements (FHWA–NC–EIS–77–03–F) was approved on September 24, 1980. The proposed improvements provided for a four-lane partial access control highway on new location from US 117 (Castle Hayne Road) to US 74 (Eastwood Road) including a Downtown Spur beginning at Water Street northward to US 117. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand.

Subsequent to approval of the Final EIS in 1980, several changes in the recommended alignment have evolved. The Supplemental EIS will address these alignment changes with respect to traffic conditions and environmental aspects such as wetland encroachments; noise, and air quality analysis. The overall project area demographic and municipal planning data will also be updated.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting with neighborhood groups and local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft supplemental EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 3, 1988.

Roy Shelton,

District Engineer, FHWA Raleigh, North Carolina.

[FR Doc. 88–13066 Filed 6–8–88; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Initial Determination of Noncompliance With Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, Contained in Trucks Manufactured by Mercedes Benz Truck Co.

The National Highway Traffic Safety Administration (NHTSA) has issued an initial determination, pursuant to section 152(a) of the National Traffic and Motor Vehicle Safety Act (the Safety Act), 15 U.S.C. 1412(a), that model L1317 trucks manufactured by Mercedes-Benz Truck Company between February 29, 1984 and December 17, 1985 fail to comply with the Brake Power and Brake Recover requirements of Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, 49 CFR 121.5.4.2 and 5.4.3. NHTSA has noted that the brake systems of the subject vehicles would not meet the deceleration and stopping requirements of these sections of Standard No. 121 in testing on a

dynamometer when the dynamometer load equivalent is set at the subject trucks' rear axle Gross Axle Weight Ratings.

Mercedes has advised NHTSA that it manufactured and sold model L1317 3,309 trucks having the brake system that is the subject of this initial determination.

The Associate Administrator for Enforcement of NHTSA notified Mercedes of the agency's initial determination by letter dated June 1, 1988. In a letter dated June 2, 1988, Mercedes furnished notification to NHTSA that in response to the NHTSA initial determination Mercedes has decided to provide notification of the agency's determination to owners and to offer owners a modification of the subject vehicles consisting of appropriate amendments to the gross axle weight ratings of the vehicles and, upon request of the owners, installation of rear brake chambers having greater capacity than that of the brake chambers furnished as original equipment. Mercedes also stated its intention to comply with the requirements of 49 CFR Parts 573 and 577, which provide for manufacturers' notification of noncompliances to the agency and to owners and it stated its agreement that NHTSA could, in any subsequent proceeding with respect to the notification and remedy campaign, treat the initial determination of noncompliance as having the same effect as a final determination of noncompliance pursuant to section 152(b) of the Safety Act, 15 U.S.C. 1412(b).

NHTSA has placed a copy of the information on which its initial determination is based in the public file of the agency, located at Room 5108, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued on June 6, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-13007 Filed 6-8-88; 4:29 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

[Number 100-02]

The Office of the Inspector General and Delegation of Authority to the Inspector General

Dated: May 3, 1988.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b), and 5 U.S.C. 301 and 302, it is hereby ordered that:

1. Establishment of the Office of the Inspector General (OIG)

a. There is hereby established within the Department of the Treasury, *the Office of the Inspector General*, which shall conduct and supervise audits and investigations relating to programs and operations within the Department as detailed in this order.

b. *The Office of the Inspector General* shall also provide leadership and coordination and recommend policies for activities designed to:

(1) Promote economy, efficiency, and effectiveness in the administration of Departmental programs and activities;

(2) Prevent and detect fraud, waste, and abuse in Departmental programs and operations; and

(3) Inform the Secretary and Deputy Secretary of any problems or concerns with the administration of such programs and operations and the need for the progress of corrective action.

c. *The Office of the Inspector General* shall be independent of all other offices and bureaus within the Department.

d. *The head of the Office of the Inspector General* shall be the Inspector General (IG) who shall be appointed by the Secretary of the Treasury and who shall report to and operate under the general supervision of the Secretary and/or the Deputy Secretary.

e. *No officer or employee of the Department* shall prevent the Inspector General from initiating, carrying out, or completing any duly authorized audit or investigation, or prevent any duly appointed officer or employee of the Office of the Inspector General from obtaining access to any information or documentation which the Inspector General has determined is necessary to the execution of an audit or investigation.

2. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Investigations

a. *The Inspector General* is hereby delegated the authority to receive, analyze and evaluate allegations of illegal acts, violations of the Rules of Conduct of the Treasury Department and of the bureaus, violations of the merit system, and any other misconduct concerning any official or employee of any Treasury office or bureau or, in the case of alleged illegal acts or misconduct, and Treasury contractor, subcontractor, or offeror.

b. *All employees and officials of the Department of the Treasury* shall report to the Inspector General all matters which they believe raise questions of illegality or wrongdoing pursuant to paragraph a. above. Employees and officials who work in bureaus or offices with internal affairs or inspection offices, shall report such matters either to the head of those offices or to the Inspector General.

c. *The Inspector General* is hereby delegated the authority to initiate, organize, conduct, direct and control investigations of any allegations received pursuant to paragraph a. above, concerning the Department's senior officials, i.e., Presidential appointees, SES members, and GS or GM-15s and above.

d. If the allegation to be investigated involves a non-senior official or employee of a Treasury law enforcement bureau, the Inspector General shall refer the investigation to that bureau's internal affairs or inspection office and shall receive a full report of the investigation and any action taken on the matter referred.

e. If the allegation to be investigated involves a non-senior official or employee of a Treasury bureau or office that does not have an internal affairs or inspection office, the Inspector General may refer the investigation to a bureau which has such an office, which will undertake the investigation and will prepare a full report for the Inspector General of the investigation and of any action taken on the matter referred.

f. Paragraphs d. and e. above notwithstanding, the Inspector General shall conduct any investigation which he or she is directed to conduct by the Secretary or Deputy Secretary concerning any allegation of misconduct by an official, employee or contractor of the Treasury. The Inspector General may also conduct any investigation which involves alleged notorious conduct or other matter which, in his or her opinion, is especially sensitive or of Departmental significance.

g. If an allegation involves a matter which is appropriate for the Departmental or a bureau grievance or appeal procedure, or other routine management action, the Inspector General may refer such matter to the appropriate office or bureau for handling.

h. This Order does not change or reduce the authority of Treasury offices or bureaus which had established internal affairs and inspection offices as of July 18, 1978, to conduct investigations in accordance with their own internal procedures, with the exception of those investigations being conducted by the Inspector General. However, when the Inspector General gives notice to a bureau or office that an OIG investigation is being conducted in that bureau or office, no internal investigation will be initiated and any ongoing investigation into the same matter will immediately cease.

i. *All law enforcement bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current investigative activities.

j. *The Inspector General* may review, evaluate, and approve all departmental and bureau programs, plans, policies and operations for investigative misconduct and may make recommendations for changes.

k. *The Inspector General* shall require, receive, review, and analyze all reports informing the Secretary or Deputy Secretary of any significant problems, abuses, or deficiencies disclosed in any bureau or office investigation and the actions taken to correct them.

l. *The Inspector General* may, at his or her discretion, report the results of the investigation of any senior official to the Secretary or Deputy Secretary or other appropriate management official for action.

m. *The Inspector General* is hereby delegated authority to receive all matters referred to the Department of the Treasury by the Special Counsel of the Merit Systems Protection Board, regarding allegations or prohibited personnel practices. He or she may investigate such matters or, as appropriate, may refer such matters for investigation to a law enforcement bureau internal affairs or inspection office, except for matters concerning the Internal Revenue Service (IRS), which shall be referred directly to that bureau.

n. *The Inspector General* shall receive and review reports of investigations by any bureau or office conducting such investigations, except for IRS, and may prepare or delegate to the appropriate bureau or office for preparation, final reports to the Special Counsel for review and signature of the Deputy Secretary or Under Secretary as the Secretary's designees, except for IRS which shall prepare its own final reports to the Special Counsel.

3. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Audits

a. *The Inspector General* is hereby delegated complete authority for performing internal audits of all Treasury bureaus and offices, with the exception of the law enforcement bureaus. The law enforcement bureaus are the: Internal Revenue Service, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and U.S. Secret Service.

b. *The Inspector General* may audit or authorize law enforcement bureau internal affairs or inspection offices to audit any Treasury program, activity, or function, including any Treasury or bureau contractor, subcontractor, or offeror.

c. *The Inspector General* shall coordinate all requests submitted by IGs from other Government departments and agencies for audits services within the Department.

d. *The Inspector General and, as appropriate, the Heads of Internal Audit in the law enforcement bureaus* shall distribute copies of final audit reports to all headquarters and field officials reponsible for taking corrective action on matters covered by those reports.

e. *The Inspector General* shall keep the Secretary or Deputy Secretary informed of any significant problems, abuses, or deficiencies disclosed in audits and the actions taken to correct them.

f. *The Inspector General* is responsible for formulating Departmental audit policies and priorities and assuring implementation of Federal audit standards in the Department.

g. *The Inspector General* may review, evaluate, and approve law enforcement bureau internal affairs and inspection offices' programs, plans, policies, reports and operations for internal auditing and may make recommendations for changes.

h. *The Inspector General* shall receive and may review and analyze all law enforcement bureau internal affairs and inspection offices' audit plans and reports as a basis for evaluating audit services to management.

i. *All law enforcement Bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current audit activities.

4. Authority of the Inspector General for Intelligence Activities

a. Pursuant to section 4 of Executive Order 12334, *the Inspector General shall, together with the General Counsel*, to the extent permitted by law, report to the President's Intelligence Oversight Board, concerning intelligence activities that he or she has reason to believe may be unlawful or contrary to Executive order or Presidential directive.

b. *All Treasury employees* shall report to the Inspector General, the General Counsel, or the head of the inspection or internal affairs office of their bureau, any matters which they believe raise questions or propriety or legality under Executive Order 12333.

c. At appropriate intervals, *The Inspector General* shall review any foreign intelligence activities of the Treasury Department to determine whether any such activities raise questions of propriety under Executive Order 12333. Any questions arising from this review as to the legality of such activities shall be referred to the General Counsel.

d. *All laws enforcement bureau internal affairs and inspection offices* shall review at appropriate intervals the activities of their bureaus in their relations with the United States foreign intelligence agencies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be reported to the Inspector General who shall refer to the General Counsel any illegal activities.

5. Personnel Authority

a. *The Inspector General* may obtain as needed, under procedures he or she develops, investigative, audit, and support personnel from law enforcement bureau internal affairs and inspection offices for conducting investigations or audits under his or her direct supervision. Any detailed personnel shall remain on the rolls of the service or office from which they were detailed but will report exclusively to the Inspector General regarding the matter being investigated or audited.

b. *Bureau heads* shall consult with the Inspector General in recruiting and selecting candidates to head the internal affairs or inspection offices of the law enforcement bureaus. Bureau heads shall, prior to issuance, submit annual performance evaluations of incumbent heads of internal affairs or inspection offices to the Inspector General for review.

6. Regulatory Authority

The Inspector General is hereby delegated authority to promulgate any rules, regulations, directives, memoranda of understanding, policies and procedures necessary to implement his or her duties and responsibilities pursuant to this Order.

7. Cancellation

Treasury Order 100-02, "Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General," dated January 13, 1987.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 88-12954 Filed 6-8-88; 8:45 am]

BILLING CODE 4810-25-M

VOL 53 ISS 111 JE 9 1988 UMI

[Number 100-03]

Functions of the Executive Secretariat

Date: May 27, 1988.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b), and 5 U.S.C. 301, it is hereby ordered that the functions and responsibilities of the Executive Secretariat, including the Executive Secretary, the Special Assistant to the Secretary (National Security), the Secretariat staff, and the Office of Intelligence Support (OIS), are as follows:

1. *The Executive Secretariat* shall perform the following:

a. Receive, screen, assign action for, and maintain records on all official correspondence addressed to the Secretary and Deputy Secretary;

b. Review all materials submitted to the Secretary and Deputy Secretary for completeness, quality and coordination with other offices; and

c. Coordinate execution of tasks involving various offices within the Department, as directed by the Secretary or Deputy Secretary.

2. In addition to the above responsibilities, *the Executive Secretary* shall:

a. Coordinate briefings for the Secretary and Deputy Secretary;

b. Maintain direct liaison with the White House Staff Secretary, the Cabinet Secretary, the Executive Secretary of the National Security Council, and the Executive Secretaries (or equivalent) of the Cabinet Departments;

c. Assist the Secretary and Deputy Secretary with coordination of the Department's policy development;

d. Carry out special tasks as assigned by the Secretary or Deputy Secretary;

e. Clear all Congressional testimony;

f. Approve transmittal of all regulations to the Federal Register; and

g. Review all press releases.

3. *The Special Assistant to the Secretary (National Security)* will report to the Secretary and Deputy Secretary. For purposes of administrative and managerial control, the Special Assistant to the Secretary (National Security) and the Office of Intelligence Support (OIS) will be part of the Executive Secretariat. The Special Assistant to the Secretary (National Security) (hereinafter the Special Assistant) will:

a. Provide day-to-day intelligence support to the Secretary and other officials;

b. Represent Treasury on intelligence community committees and maintain continuous liaison with elements of the community;

c. Review and coordinate all agreements and arrangements governing Treasury activity in support of one or more agencies within the Intelligence Community, as defined in Executive Order 12333, and for any Intelligence Community activity in support of one or more subordinate organizational units of the Treasury Department.

(1) Any proposed agreement or arrangement involving one or more Treasury agencies acting either on a recurring or ad hoc basis in support of one or more Intelligence Community agencies, or vice versa, shall be reduced to writing and transmitted to the Special Assistant, who shall consult with the General Counsel before submitting the agreement or arrangement to the Secretary or Deputy Secretary for review and approval.

(2) The Special Assistant is authorized to review and monitor, at his discretion, all such agreements and arrangements now in effect, and to report to the Secretary or Deputy Secretary on a continuing basis regarding their status.

(3) In exigent circumstances, the Special Assistant can approve requests of a noncontroversial nature made under subparagraph (1). As soon as possible thereafter, the Special Assistant shall consult with the General Counsel and submit the approved request to the Secretary or Deputy Secretary for review and concurrence.

(4) Subordinate organizational units of the Treasury Department shall notify the Special Assistant each time they act pursuant to any agreement approved under this or any predecessor Order.

(5) This Order shall not affect in any way the normal reporting relationships and operational responsibilites of Treasury officials. This Order does not apply to the routine exchange between the Intelligence Community and the Treasury Department of substantive intelligence information and recurring reports.

4. *The Office of Intelligence Support (OIS),* under the direction of the Special Assistant, will:

a. Screen and distribute to appropriate Treasury officials relevant State Department telegrams;

b. Prepare daily cable summaries and regular wire service news summaries on items of issues to Treasury officials;

c. Screen and distribute intelligence reports and publications to appropriate Treasury officials; and

d. Provide other intelligence support to the Secretary and other Treasury officials as appropriate.

5. *Cancellation.* This Order supersedes Treasury Orders (TO):

a. Paragraphs 4.e., 4.f. and 4.g. of TO 100-02, "Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General," dated January 13, 1987; and

b. TO 100-03, "Functions of the Executive Secretariat," dated January 13, 1987.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 88-12955 Filed 6-8-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held July 6 and 7, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566-9259, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on July 6 and 7 in Room 7005 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the reveiw and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of § 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in § 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-12964 Filed 6-8-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 111
Thursday, June 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

June 7, 1988.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, June 17, 1988, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of April and May Meetings
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV.
Proposed Project Concept:.Hearing on Congressional Exemption from Civil Rights Laws
V.
Resolution: Restrictions on Commissioners' and Special Assistants' Days
VI.
Resolution: Conduct of Future Commission Meetings
VII. Regional Forums: Update
VIII. Voting Rights Panel: Alabama, Louisiana, Mississippi, and Missouri
IX. SAC Report: "Minority Political Participation in Selected Alabama Jurisidictions"
X. SAC Report: "Bigotry and Violence in Illinois"
XI. SAC Report: "Missouri Human Rights Agencies"
XII. SAC Report: "Desegregating Cabrini-Green"
XIII. SAC Recharters

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,

Solicitor, 376-8514.

[FR Doc. 88-13130 Filed 6-7-88; 3:15 pm]

BILLING CODE 6335-01-M

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 18651, May 24, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 6, 1988.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Special Meeting of November 23, 1987.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Docket re: TCM-195b, Revision 1, Emergency Feed Program.
4. Memorandum re: Section 416(b) Revised Fiscal Year 1988 Commodity Determination.
5. Memorandum re: Public Law 480 for Fiscal Year 1988-(CZ-286, Resolution No. 25, Amendment 3).
6. Resolution re: Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1988, CZ-286, Resolution No. 25, Amendment 1, Amendment 2, Amendment 3, and Amendment 4.
7. Resolution re: Ratification of the Secretary's Approval of Export Sales of CCC-Owned Dairy Products for Export During Fiscal Year 1988.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475-5490.

Dated: June 6, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88-13096 Filed 6-7-88; 2:19 pm]

BILLING CODE 3410-05-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday June 14, 1988. 10:00 a.m.

PLACE: 999 E Street, NW., Washington DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 16, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-16—Michael A. Nemeroff on behalf of the American Medical Association and the American Medical Political Action Committee.
Draft AO 1988-20—Jack Quin on behalf of Glaxo, Inc.
Draft AO 1988-22—J. Miles Reid on behalf of San Joaquin Valley Republican Associates.
Draft AO 1988-23—Stephen Finley.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone; 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88-13124 Filed 6-7-88; 2:52 p.m.]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 53, No. 111
Thursday, June 9, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 80-90]

Radio Broadcasting Services

Correction

In rule document 87-23983 beginning on page 39774 in the issue of Friday, October 23, 1987, make the following correction:

§ 73.202 [Corrected]

On page 39779, in the first column, in § 73.202(b), in the table for "Iowa", the Channel number for "Atlantic" should read "279C1".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400

[OMB-14-F]

Medicare and Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations

Correction

In rule document 88-10063 beginning on page 16267 in the issue of Friday, May 6, 1988, make the following corrections:

1. On page 16268, in the third column, in the table, under "Current OMB control numbers", the 15th entry should read "0938-0386".

2. On the same page, in the same column, in the table, under "Sections in 42 CFR that contain collections of information", in the 15th line from the bottom, "417.596, 417.598" should read "417.596-417.598".

13. On the same page in the same column, in the seventh line from the bottom, "431.56" should read "431.55".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Correction

In notice document 88-12670 appearing on page 20687 in the issue of Monday, June 6, 1988, make the following correction:

In the third column, in the second line, "failed" should read "filed".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit Program; Lower Living Standard Income Level

Correction

In notice document 88-10754 beginning on page 17258 in the issue of Monday, May 16, 1988, make the following corrections:

1. On page 17259, in the second column, in Table 3, in the first column, in the third line "Baltimore, MA" should read "Baltimore, MD".

2. On page 17260, in Table 4, in the first column, in the fifth line, "(4,440)" should read "(4,740)". Also in Table 4, in the second column, in the fourth line, "(7,760)" should read "7,760".

3. On the same page, in the second column, the signature should read Roberts T. Jones.

BILLING CODE 1505-01-D

federal register

Thursday
June 9, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701 etc.

Permanent Regulatory Program; Surface Mining Activities; Underground Mining Activities; Bond and Insurance Requirements; Performance Standards; Notice of Reinstatement of Suspended Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 800, 816 and 817

Permanent Regulatory Program; Surface Mining Activities; Underground Mining Activities; Bond and Insurance Requirements; Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reinstatement of suspended rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior is reinstating eight suspended rules that were upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *NWF v. Hodel*. These rules had been suspended by OSMRE in response to decisions issued by the U.S. District Court for the District of Columbia in *In Re: Permanent II*. Generally, the rules concern the definition of *support facilities*, incremental bonding, phased bonding, the retention of highwalls in permanent impoundments, coal waste refuse pile compaction, and the construction of coal waste refuse piles using lifts greater than two feet thick.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Richard O. Miller, Chief, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202-343-5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Reinstated Rules
III. Procedural Matters

I. Background

On February 21, 1985 (50 FR 7274), and November 20, 1986 (51 FR 41952), OSMRE published in the **Federal Register** two notices suspending certain portions of its permanent program rules. On July 10, 1985 (50 FR 28186), OSMRE also published in the **Federal Register** an interim final rule which, among other things, suspended the definition of support facilities at 30 CFR 701.5. These rules were suspended in response to decisions issued by the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation* (*In Re: Permanent II*), 21 ERC 1193 (D.D.C. 1984) (*Round I*); 21 ERC 1724 (D.D.C. 1984) (*Round II*); 22 ERC 1557 (D.D.C. 1985) (*Round III-VER*); and 629 F. Supp. 1519 (D.D.C. 1985) (*Round III*).

As noted in the two suspension notices, neither was intended to affect the right of the Secretary of the Interior to appeal the district court's decisions on any of the suspended rules. 50 FR 7274; 51 FR 41952. Appeals were filed, and on January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision which upheld a number of the suspended rules. *NWF v. Hodel*, No. 84-5743 (D.C. Cir. Jan. 29, 1988). As explained in detail under the following heading, II. Discussion of Reinstated Rules, this notice reinstates those suspended rules which the court of appeals upheld.

In *NWF v. Hodel* the court of appeals repeatedly recognized the discretion vested in the Secretary to use reasoned and expert judgment in interpreting the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1201 *et seq.* Slip op. at 43 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)), 59 (*citing Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 844-45 (1984); and *Chemical Mfrs. Ass'n v. NRDC*, 470 U.S. 116, 125 (1985)), 80-81, 104-105, 107, 133-134 and 137-138.

On the issue of whether the Secretary is required to promulgate rules that elucidate or elaborate upon the general environmental performance standards of the Act, the court of appeals ruled that "we read the Act, in light of its legislative history * * * to afford the Secretary discretion, absent an express statutory instruction to regulate, to decide whether fleshing out is appropriate in light of other concerns. Chief among those concerns is the need to accommodate widely varying local conditions that will not admit of a single, nationwide rule." *Id.* at 80-81 (footnote omitted). Nevertheless, when proposing to delete previously fleshed-out standards, "if [the Secretary] determines there is no need to 'flesh out' the statute, [he] must 'flesh out' his explanation [in the preamble to the rule] so that [the court] can review the rationality of his decision." *Id.* at 84.

OSMRE will interpret the reinstated rules in accordance with the court of appeals' decision in *NWF v. Hodel*, the notices of final rulemaking under which the rules originally were promulgated, and this reinstatement notice. For convenience, in the following discussion the corresponding rules for surface and underground mining activities are cited together as sections 816/817.

II. Discussion of Reinstated Rules

Section 701.5 Definitions.

OSMRE is reinstating the suspended definition of *Support facilities* at 30 CFR 701.5, as promulgated on May 5, 1983 (48 FR 20392). The reinstated definition provides: "*Support facilities* means those facilities resulting from, or incident to, an activity identified in paragraph (a) of the definition of 'surface coal mining operations' in § 700.5 of this chapter and the areas upon which such facilities are located. Support facilities may consist of, but need not be limited to, the following facilities: Mine buildings; bath houses; coal loading facilities; coal crushing and sizing facilities; coal storage facilities; equipment and storage facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; facilities used to treat and store water for mine consumption; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including roads. 'Resulting from or incident to' an activity connotes an element of proximity to that activity."

The district court in *In Re: Permanent II* had ruled that the Act does not allow the Secretary to limit the definition of *support facilities* on the basis of geographic proximity. 21 ERC at 1202. The court of appeals in *NWF v. Hodel* reversed the district court and reinstated the definition. Slip op. at 148-150.

In reinstating the definition, the court of appeals ruled: "The statutory language neither plainly precludes the consideration of distance from the mine site nor dictates a functional test * * *. The Secretary's definition of support facilities does not impose a strict proximity test, but rather considers both function and distance to be relevant * * *. While it would have been contrary to the language and spirit of the Act to promulgate a per se distance rule cutting off coverage of coal mining support facilities otherwise subject to the Act *solely* because they were not adjacent to or nearby the mine site * * * it is not an irrational reading of the statute to conclude that distance may be 'an element of proximity,' * * * to be weighed among other factors." *Id.* at 149-150 (emphasis in original).

Notwithstanding the court of appeals' decision, however, OSMRE intends to propose a rule removing the definition of *support facilities* from 30 CFR 701.5. As noted in the July 10, 1985, notice suspending the definition, OSMRE has determined that the definition is not needed. (50 FR 28187). OSMRE appealed the district court ruling so that even in the absence of a definition proximity could be considered by the regulatory authority in identifying support facilities.

Section 800.11(b) Incremental bonding.

Section 800.13(a)(2) Phased bonding.

OSMRE is reinstating 30 CFR 800.11(b), as promulgated on July 19, 1983 (48 FR 32932), to allow the applicant for a surface coal mining and reclamation permit to post a performance bond for less than the entire permit area. Reinstated paragraph (b)(1) provides: "The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit." Reinstated paragraphs (b)(2) to (b)(4) set out additional bonding procedures for the initial and successive increments of the permit area.

OSMRE also is reinstating 30 CFR 800.11(a)(2), as promulgated on July 19, 1983 (48 FR 32932). Reinstated paragraph (a)(2) provides: "With the approval of the regulatory authority, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under [30 CFR] 800.14 and 800.15. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail."

The district court in *In Re: Permanent II* had ruled that to the extent it allowed the applicant to post a performance bond for an area less than the entire area to be mined within the initial permit term, § 800.11(b) contradicted the Act and its legislative history. 21 ERC at 1744. With respect to § 800.13(a)(2), the district court ruled that the Act "does not give the Secretary authority to break the bond into specific phases of reclamation." *Id.* at 1744. The court of appeals in *NWF v. Hodel* reversed the district court and upheld the rules. Slip op. at 56-62.

In upholding the incremental bonding approach of § 800.11(b) and the phased bonding approach of § 800.13(a)(2), the court of appeals "defer[red] to the reasonable interpretation ultimately proffered by the Secretary," and ruled that section 509(c) of the Act "reasonably could be read by the Secretary to permit his approval of *alternative bonding methods* that will fulfill the purposes of the Act." *Id.* at 59 (emphasis in original).

In upholding § 800.11(b), the court of appeals ruled: "The district court rejected incremental bonding because the area covered by such a bond could be (and likely would be) smaller than the area to be mined in the course of one permit term. But under the Secretary's prescription, no surface area could be disturbed until the regulatory authority determined that the amount of bond posted for that area was sufficient to assure completion of the reclamation plan in the event of forfeiture. * * * True, the regulation allows an operator to confine bonding ahead to that portion of the permitted area that the operator plans to affect in the near future. But as long as the bond is calculated * * * at the full cost of reclaiming that particular increment of the land, and the size and configuration of the increment * * * are appropriate for efficient reclamation, we do not see how the arrangement appreciably heightens the risk that any land will be left unreclaimed." *Id.* at 60-61.

In upholding § 800.11(a)(2), the court of appeals continued: "Phased bonding, too, measures up to the standard we deem critical. We reiterate that '[t]he total of the phase bonds must be sufficient to cover costs to the regulatory authority to complete the reclamation plan, and bond[s] covering all three phases must be posted before disturbance of the area or increment bonded.' " *Id.* at 61 (citation omitted, brackets in original).

The court of appeals concluded: "In sum, the Secretary reasonably construed § 509(c) of the Act, and responsibly determined that the incremental and phased bonding programs he authorized fulfilled the statutory objective: to ensure, to the extent feasible, completion of the reclamation plan in the event that an operator defaults." *Id.* at 62.

Sections 816.49(a)(9)/817.49(a)(9) Impoundments.

OSMRE is reinstating 30 CFR 816.49(a)(9)/817.49(a)(9), as promulgated on September 20, 1983 (48 FR 43994), to allow the retention of underwater highwalls in permanent impoundments. Reinstated paragraphs (a)(9) provide: "The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users."

The district court in *In Re: Permanent II*, in remanding §§ 816.49(a)(9)/817.49(a)(9) was "wary of permitting highwalls to remain in impoundments under an 'implied' exception to [the approximate original contour (AOC) requirement of § 515(b)(3) of the Act], when Congress did not even permit the retention of highwalls when granting express exemptions from AOC." 620 F. Supp. at 1571. The court of appeals in *NWF v. Hodel* reversed the district court and reinstated the rules. Slip op. at 134-136.

In upholding §§ 816.49(a)(9)/817.49(a)(9), the court of appeals ruled: "The Act * * * on its face, does not support the district court's interpretation. Unlike the other two AOC variances, the water impoundment grading requirements do not include a highwall elimination requirement. Instead, an operator wishing to create a permanent water impoundment must show, among other things, that 'final grading will provide safety and access for proposed water users.' SMCRA 515(b)(8)(E).

"* * * Congress in this case has not stated that highwalls completely submerged in an authorized impoundment must be removed. The Secretary in turn has considered policies in favor of the general highwall elimination requirement and concluded that they do not necessitate removing those highwalls in every water impoundment case. This is the type of judgment we would expect Congress to leave to the agency given the task of implementing and enforcing their complex regulatory scheme. The district court should have given greater deference to the Secretary's interpretation of the statute." *Id.* at 137-138 (footnote and citation omitted).

Sections 816.81(c)(2)/817.81(c)(2) Coal mine waste: General requirements.

Sections 816.83/817.83 Coal mine waste: Refuse piles.

OSMRE is reinstating 30 CFR 816.81(c)(2)/817.81(c)(2), as promulgated on September 20, 1983 (48 FR 44006), to allow the construction or modification of coal waste refuse piles with compaction that does not attain ninety percent of the maximum dry density determined in accordance with the standard Proctor method, provided they achieve a long-term static safety factor of 1.5. Reinstated paragraphs (c)(2) provide: "The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction."

OSMRE also is reinstating 30 CFR 816.83/817.83, as promulgated on September 20, 1983 (48 FR 44006), to allow the construction of coal refuse piles using lifts of greater than two feet thickness, provided they achieve a long-

term static safety factor of 1.5. The relevant portions of reinstated §§ 816.83/817.83 provide: "Refuse piles shall meet * * * the requirements of * * * [§] 77.215 of [30 CFR]." As explained in the preamble to the final rule: "Construction of the refuse pile in compacted lifts of 2-feet maximum thickness is required under § 77.215 * * *. However, MSHA's [the Mine Safety and Health Administration's] District Manager may approve thicker layers * * * when maintenance of a 1.5 minimum safety factor is supported by engineering data." 48 FR 44015. Under the reinstated rules, layers or lifts thicker than two feet may be used in accordance with § 77.215 when approved by the regulatory authority.

The former rules had provided: "The coal processing waste shall be—(1) Spread in layers no more than 24 inches in thickness; and (2) Compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank." 30 CFR 816.85(c) (1) and (2)/817.85(c) (1) and (2) (1982).

The district court in *In Re: Permanent II* had remanded §§ 816.81(c)(2)/817.81(c)(2), ruling: "The former regulations contained a specific design criteria relative to compaction; the new regulations have rejected that in favor of a performance standard. This is in direct contravention of section 515(f) [of the Act] and, even if the Act leaves discretion with the Secretary for the selection of which design criteria are necessary, the failure to explain the rejection of the previous compaction standard renders the current regulations arbitrary and capricious." 620 F. Supp. at 1536 (footnote omitted). For similar reasons the district court remanded §§ 816.83/817.83 to the extent they allowed the construction of coal refuse piles using lifts of greater than two feet thickness. *Id.* The court of appeals in *NWF v. Hodel* reversed the district court and reinstated both of these rules. Slip op. at 73–78.

In upholding §§ 816.81(c)(2)/817.81(c)(2) and 816.83/817.83, the court of appeals ruled: "The district court remanded revised §§ 816.81 and 816.83 insofar as they fail to provide absolute requirements for lift thickness and post-compaction density, or other satisfactory 'how to' rules * * *. In thus remanding, the district court misconstrued the Act; as [the appellant] no longer contests, the district judge incorrectly read section 515(f) [of the Act] to mandate design standards for the mine waste at issue, *i.e.*, non-impounding coal mine waste refuse piles. We find that the Secretary did not contravene section 515(f), and that he adequately explained his departures from the earlier regulations; we therefore reverse the district court on this matter." *Id.* at 73 (citation omitted).

On the issue of compaction, the court of appeals continued: "Not only did the Secretary relate how changes in the definition of waste rendered the 1979 rule obsolete; he also addressed the critical concerns motivating adoption of the ninety percent compaction rule in 1979: stability and incombustibility. Stability, the Secretary observed, has always been, and continues to be, assured by the generous 1.5 long-term safety rating. The compaction density standard, he intimated, was a superfluous requirement that unnecessarily burdened mine operators * * *. He concluded, we think reasonably, that '[t]he specific numerical requirement for compaction [density] is * * * more appropriately determined based upon the particular design, site conditions and waste characteristics.' " *Id.* at 76–77 (footnote and citations omitted, brackets in original).

On the issue of lift thickness, the court of appeals concluded: "Given the propriety of eliminating the ninety percent compaction standard, we need not tarry over the Secretary's allowance for variances from the two-foot lift rule. Mine operators must obtain mine regulator approval before constructing a waste disposal site * * *. Lift thickness has regulatory significance only as a means of assuring adequate compaction * * *. It can be expected, therefore, that mine operators will succeed in obtaining a variance from the two foot lift requirement only when compaction adequate to assure stability and incombustibility remain feasible." *Id.* at 77–78 (footnotes and citation omitted).

The reinstated rules apply on Indian lands through cross-referencing in the Federal program for Indian lands at 30 CFR Part 750.

Effect on State Programs

Following reinstatement of these rules, OSMRE will evaluate the permanent State regulatory programs approved under section 503 of the Act to determine whether any changes in these State programs are necessary. If the Director determines that certain State program provisions should be amended to be made no less effective than the reinstated rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

No new information collection requirements that would require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* are imposed by the reinstated rules.

Executive Order 12291

The Department of the Interior has determined, in accordance with the criteria of Executive Order 12291 (February 17, 1981), that the reinstated rules are not major and do not require a regulatory impact analysis for the same reasons that promulgation of the rules in 1983 was not major.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the reinstated rules will not have a significant economic effect on a substantial number of small entities for the same reasons that promulgation of the rules in 1983 did not have such an effect.

National Environmental Policy Act

The publication of this reinstatement notice is categorically excluded from the NEPA (National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*) process by the Department of the Interior Departmental Manual, which at 516 DM 2, Appendix 1.10, excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." None of the exceptions to individual actions within categorical exclusions, listed at 516 DM 2.3A(3), apply to this notice. A Categorical Exclusion Determination for this notice is on file in the OSMRE Administrative Record located at 1100 L Street, NW., Washington, DC.

III. Procedural Matters

Effect of Reinstatement in Federal Program States and on Indian Lands

The reinstated rules apply through cross-referencing in the Federal program States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal Programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. OSMRE also has proposed to implement a Federal program for the State of California. 52 FR 39504 (October 22, 1987).

Author

The author of this notice is Albert A. Kashinski, Branch of Regulatory Programs, Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior, 18th and E Streets, NW., Washington, DC 20240; Telephone: 202–343–5207 (Commercial or FTS).

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 800

Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 800, 816 and 817 are amended as set forth below:

Date: June 1, 1988.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

§ 701.5 [Amended]

2. In § 701.5, the definition of *Support facilities* is reinstated in full.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER PERMANENT REGULATORY PROGRAMS

3. The authority citation for Part 800 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 95–87, and Pub. L. 100–34.

§ 800.11(b) [Amended]

4. Section 800.11(b) is reinstated in full.

§ 800.13(a)(2) [Amended]

5. Section 800.13(a)(2) is reinstated in full.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

6. The authority citation for Part 816 is revised to read as set forth below, and all other authority citations in Part 816 are removed.

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), and Pub. L. 100–34, unless otherwise noted.

§ 816.49(a)(9) [Amended]

7. Section 816.49(a)(9) is reinstated in full.

§ 816.81(c)(2) [Amended]

8. Section 816.81(c)(2) is reinstated in full.

§ 816.83 [Amended]

9. Section 816.83 is reinstated in full.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

10. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), and Pub. L. 100–34.

§ 817.49(a)(9) [Amended]

11. Section 817.49(a)(9) is reinstated in full.

§ 817.81(c)(2) [Amended]

12. Section 817.81(c)(2) is reinstated in full.

§ 817.83 [Amended]

13. Section 817.83 is reinstated in full.

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Part III

Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Criterion for De Minimis Exceptions to Full Compliance With the Jail Removal Requirement; Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Proposed Regulation To Establish an OJJDP Policy and Criterion for De Minimis Exceptions to Full Compliance With the Jail Removal Requirement of Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Proposed rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 262(d)) (42 U.S.C. 5672(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, *et. seq.* (JJDP Act), proposes to revise its Formula Grants Regulation to establish an OJJDP policy and criterion for determining full compliance with de minimis exceptions to the jail removal requirement of section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act, as amended.

DATE: Interested persons are invited to submit written comments on or before July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Director, State Relations and Assistance Division, OJJDP, 633 Indiana Avenue NW., Room 768, Washington, DC 20531, (202) 724–5924.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Section 223(a)(14) of the JJDP Act requires that States participating in the Formula Grants Program "(14) provide that, beginning after the five-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1989, promulgate regulations which make exceptions with regard to the detention of juveniles accused of non-status offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearance within twenty-four hours after being taken into custody (excluding weekends and holidays) * * *" Section 223(a)(14) limits this exception to areas that are outside a standard metropolitan statistical area.

Section 223(c) of the JJDP Act further provides that a State's

"(c) * * * Failure to achieve compliance with the requirements of subsection (a)(14) within the five-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that: (1) The State is in substantial compliance with such requirement through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed three additional years."

Section 31.303(f)(6)(iii) of the OJJDP Formula Grants Regulation, which was published in the June 20, 1985, Federal Register, at pages 25550–25561, 28 CFR Part 31, establishes three ways for a State to demonstrate full compliance with the section 223(a)(14) requirement. First, "Full compliance is achieved when a State demonstrates that the last submitted monitoring report, covering a full and actual 12 months of data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violations of section 223(a)(14)." (28 CFR 31.303(f)(6)(iii).

The remaining two ways to demonstrate full compliance involve the legal concept of de minimis. First, a State may be found in full compliance with de minimis exceptions where all instances of noncompliance violated a State law, court rule, or other statewide executive or judicial policy; the instances of noncompliance do not indicate a pattern or practice; an enforcement mechanism exists; and, an acceptable plan has been developed to eliminate the noncompliant incidents (28 CFR 31.303(f)(6)(iii)(A)).

The second way a State may demonstrate full compliance with de minimis exceptions is to achieve a rate of noncompliant incidents, per 100,000 juvenile population in the State, that falls below the maximum rate determined by OJJDP to constitute a de minimis rate as set forth below and proposed to be added to the subject Formula Grants Regulation as 28 CFR 31.303(f)(6)(iii)(B). OJP Office of General Counsel Legal 76–7 provides the legal basis for the OJJDP to use the de minimis principle. That is, the OJJDP may tolerate a limited number of instances of noncompliance (the legal opinion addressed the deinstitutionalization of status offenders requirement) that are of "slight consequence" or "insignificant" in making a determination regarding a State's achieving full compliance.

A potential consideration in a State's ability to demonstrate full compliance with de minimis exceptions to jail removal is the presence of Federal wards. If public comments indicate the need to address this issue, a limited exceptional circumstance may be added to 28 CFR 31.303(f)(6)(iii)(B).

II. Policy and Criterion for De Minimis Exceptions to Full Compliance With the Jail Removal Requirement

The criterion presented below and set forth in the proposed regulation will be applied by OJJDP in determining whether a State has achieved and, once achieved, has maintained, a numerical finding of full compliance with de minimis exceptions with the jail and lockup removal requirement of section 223(a)(14). Also specified is the time frame for submitting information which each State must provide when requesting an initial or subsequent finding of full compliance with de minimis exceptions under 28 CFR 31.303(f)(6)(iii)(B).

Discussion of Criterion

The criterion for making a finding of full compliance with de minimis exceptions is that the incidents of noncompliance are insignificant or of slight consequence in terms of the total juvenile population in the state.

In applying this criterion, OJJDP will compare each State's noncompliance rate per 100,000 population under age 18 to the average rate that has been calculated for 12 states (three states from each of the four Bureau of Census regions). The 12 states selected by OJJDP were those having the lowest rates of noncompliance per 100,000 juvenile population, and which had an adequate system of monitoring for compliance. Those states using the non-MSA exception, provided for in Section 223(a)(14), were not included in calculating the average. Inclusion of these states would have created an artificially low average because the exception expires in 1989.

The information provided by the 12 States' 1986 Monitoring Reports indicated an average annual rate of nine (9) incidents of noncompliance per 100,000 juvenile population. Consequently, those states which have a noncompliance rate in excess of 9 per 100,000 juvenile population will be considered presumptively ineligible for a finding of full compliance with de minimis exceptions, pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

Where a State can demonstrate, however, that recently enacted changes in State law which have gone into effect can reasonably be expected to have a substantial, significant and positive impact on the State's level of compliance, OJJDP will consider this exceptional circumstance in making its determination of full compliance with de minimis exceptions. This exceptional circumstance will only be applied where the legislation is expected to produce full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

OJJDP deems it to be a requirement of critical importance that all States requesting a subsequent finding of full compliance with de minimis exceptions annually demonstrate continued and meaningful progress toward 100 percent compliance in order to remain eligible for a finding of full compliance with de minimis exceptions pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

List of Subjects in 28 CFR Part 31

Grant programs-law, Juvenile delinquency, Reporting and recordkeeping requirement.

Proposed Regulation

PART 31—[AMENDED]

1. The authority citation for Part 31 continues to read as follows:

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

2. A new paragraph (f)(6)(iii)(B), currently designated as "Reserved" in 28 CFR 31.303, is added to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(6) * * *

(iii) * * *

(B)(*1*) *Standard.* The State must demonstrate that each of the following requirements has been met.

(*i*) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*2*) *Exception.* When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with *de minimis* exceptions under the numerical *de minimis* standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the State's achieving full (100%) compliance or full compliance with *de minimis* exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(*3*) *Progress.* Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical *de minimis* standard set forth in paragraph (f)(6)(iii)(B)*(1)(i)* and *(ii)* of § 31.303, must annually demonstrate, in its request for a finding of full compliance with *de minimis* exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with *de minimis* exceptions.

(*4*) *Request Submission.* Determinations of full compliance and full compliance with *de minimis* exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with *de minimis* exceptions under paragraph (f)(6)(iii)(A) or (B) of § 31.303. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's Formula Grant Award.

* * * * *

Executive Order 12291

This regulation does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) an effect on the economy of $100 million or more, (b) major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This proposed rule, if promulgated, will not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

No new collection of information requirements are contained in this guideline (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Deliquency Prevention.

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Part IV

Environmental Protection Agency

40 CFR Part 471

Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Proposed Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 471

[OW-FRL-3319-4]

Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing to amend 40 CFR Part 471 which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources in the nonferrous metals forming and metals powders point source category. Today's proposed amendments only affect facilities that conduct tube reducing operations in the nickel-cobalt forming subcategory (Subpart C) and in the zirconium-hafnium forming subcategory (Subpart I). EPA agreed to propose these amendments in a settlement agreement with General Electric Company and INCO Alloys International. The agreement settles a dispute between these companies and EPA that was the subject of petitions for review of the final nonferrous metals forming regulation promulgated by EPA on August 23, 1985 (50 FR 34242).

The proposed amendments include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct discharges; and (2) certain modifications to the pretreatment standards for new and existing indirect discharges (PSNS and PSES). After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATE: Comments on this proposal must be submitted on or before July 11, 1988.

ADDRESS: Send comments to Mr. George M. Jett, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: ITD Docket Clerk, Proposed Nonferrous Metals Forming Rule (WH-552).

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street SW., Washington, DC. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

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I. Legal Authority

The amendments described in this notice are proposed under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217 as amended by the Water Quality Act of 1987). These amendments are also being proposed in response to the Settlement Agreement in INCO Alloys International, Inc., and General Electric Co., v. U.S. Environmental Protection Agency, Nos. 86-3091 and 86-3092 (6th Cir.).

II. Background

A. Rulemaking

On March 5, 1984, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines, New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals forming and metal powders (nonferrous metals forming) point source category (49 FR 8112). The final regulation for the nonferrous metals forming point source category was promulgated on August 23, 1985 (50 FR 34242) and established effluent limitations guidelines and standards to control specific toxic, nonconventional and conventional pollutants for ten subcategories in the nonferrous metals forming and metal powders point source category. Only two of these subcategories, the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I), are affected by today's proposal.

The subcategories are comprised of various elements or building blocks which are used to calculate the final effluent limits for each discharger. Today's proposal only affects the tube reducing building blocks in Subparts C and I. Tube reducing is a forming operation which may combine amines and nitrates or nitrites in the coolant-lubricant with the high energy input of the process to generate nitrosamine compounds in the wastewater discharge. In sampling conducted by the Agency, nitrosamines have been found in tube reducing process wastewaters. Accordingly, in the final regulation the Agency required that there be no discharge of process wastewater pollutants from tube reducing operations in Subpart C and I. The Agency costed contract hauling as the model treatment technology for these subcategories.

B. Settlement Agreement for Nonferrous Metals Forming

After publication of the nonferrous metals forming regulation, INCO Alloys International, General Electric Co., Oregon Metallurgical Corporation, Teledyne Wah Chang, AMAX Inc. and Westinghouse Corp. filed petitions for review of the regulation.

Oregon Metallurgical Corp., Westinghouse and Teledyne Wah Chang subsequently dismissed their petitions for review of the regulation. AMAX Inc. entered into a settlement agreement with EPA on June 29, 1987. That agreement is not the subject of this proposal. The two remaining petitioners, INCO Alloys International and General Electric Company entered into a settlement agreement with the Agency on November 5, 1986 which resolved all issues raised by these petitioners. That agreement, which is the subject of this proposed rulemaking, only affects the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I). Copies of the Settlement Agreement have been sent to all EPA Regional Offices and to applicable State permitting authorities.

As part of this Settlement Agreement, on November 5, 1986 the parties jointly requested the United States Court of Appeals for the Sixth Circuit to stay the effectiveness of those portions of 40 CFR Part 471 which EPA is proposing to amend, pending final action by EPA on the proposed amendments. On February 17, 1987 the Court entered an order staying the following sections of the

regulation promulgated on August 23, 1985: 40 CFR 471.31(d); 471.32(d); 471.33(d); 471.34(d); 471.35(d); 471.91(g); 471.92(g); 471.93(g); 471.94(g); and, 471.95(g). EPA is today proposing to amend these sections in accordance with the settlement agreement. All limitations and standards contained in the final nonferrous metals forming regulation published on August 23, 1985 which are not specifically listed in the attached proposed amendments are not affected by today's rulemaking.

III. Proposed Amendments to the Nonferrous Metals Forming and Metal Powders Regulation

The regulation promulgated in 1985 stated that there shall be no discharge of process wastewater pollutants from tube reducing spent lubricants. Since EPA found a nitrosamine compound (N-nitrosodiphenylamine) in a sample taken from a tube reducing spent lubricant used at one facility at a concentration of 28.2 mg/l, EPA established a zero discharge requirement to prevent the release of nitrosamine compounds into the environment from tube reducing spent lubricant wastewater. GE and Inco expressed concern that this regulation would require contract hauling of the process waste stream even in cases where there are no measurable amounts of nitrosamines. EPA now proposes to allow the discharge of tube reducing spent lubricant in the nickel-cobalt and zirconium-hafnium forming subcategories, as an alternative limitation, provided that the spent lubricant process wastewater is analyzed once a month and found not to contain concentrations of three nitrosamines in excess of the method detection limits established for EPA's approved test method 1625 (40 CFR Part 136). These nitrosamines and corresponding limits are 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-proylamine. These three nitrosamines are members of the family of nitrosamine compounds which are referenced in section 307 of the Clean Water Act of 1977. The Agency believes that demonstrating the presence or absence of these three nitrosamine compounds should indicate the presence or absence of the other nitrosamine compounds since they are all formed from the same precursors, i.e., nitrates or nitrates and amines. If, after six months of sampling, none of the samples of the tube reducing lubricant wastewater is found to contain nitrosamines above the concentrations stated above, the frequency of sampling may be reduced to once per quarter. It should be noted that under the alternative limitation we are proposing, there would be no mass allowance for any pollutant discharged.

Nitrosamines can be formed in the presence of precursors under the conditions created by the tube reducing process. If nitrosamines are found in tube reducing spent lubricant, the best method to remove them is to change the tube reducing lubricant to a new formulation in which the precursors are not present; if the precursors are absent, then nitrosamines are not likely to be formed. The Agency believes this control method is technically feasible and should not result in any economic impact beyond that expected under the original regulation. The cost of the new tube reducing lubricant should not be significantly more than the cost of the old tube reducing lubricant. In any case, the facility retains the option of complying with the current regulation (i.e., no discharge of process wastewater pollutants), which as stated earlier, is based on contract hauling. EPA determined that this technology was economically achievable during the initial nonferrous metals forming rulemaking. For all these reasons, EPA finds that this proposed amendment is economically achievable. This alternative limitation should result in similar effluent reduction benefits as the previously promulgated limitation since plants will be prevented from discharging measurable amounts of nitrosamines. The proposed amendment has the additional advantage of creating an incentive to avoid the formation of nitrosamine compounds in the tube reducing process. All other relevant findings made in the original rulemaking are incorporated by reference into this proposal.

Subparagraph (5) of the proposed amendment specifies that the concentration limits for the three nitrosamine compounds listed in subparagraph (2) apply at the point of discharge from the tube reducing process. This provision is intended to make clear that the discharge limits of subparagraph (2), which are expressed in terms of concentration, are not to be met merely by means of dilution. It does not mean, however, that the wastewater must be *sampled* at the point of discharge from the tube reducing process. Nor does it imply that the wastewater must be sampled before being treated or commingled with other wastewater.

To the contrary, because of difficulties in analyzing for nitrosamines at very low concentration levels in an oily matrix, it may very well be necessary to treat the tube reducing spent lubricant wastewater before sampling to determine compliance with subparagraph (2). And, in order to treat the wastewater in an economical manner, it may very well be necessary to commingle it with other wastewater before treatment. Subparagraph (5) allows commingling or treatment of the tube reducing spent lubricant wastewater before sampling. However, if commingling occurs before sampling, any dilution caused by the other wastewaters must be taken into account in determining compliance with the concentration limits of subparagraph (2). This would mean that the concentrations of the three nitrosamine compounds in the commingled wastewater would have to be sufficiently lower than the discharge concentrations specified in subparagraph (2), so that, after back-calculating to account for the dilution, it can be determined that the concentrations of the three nitrosamine compounds at the point of discharge from the tube reducing process did not exceed the concentration limits set forth in subparagraph (2). Subparagraph (5) provides that, where sampling occurs after commingling, the analytical method used must be sensitive enough to measure the three nitrosamine comounds at levels sufficiently low as to permit a back-calculation to account for the dilution.

IV. Environmental Impact of the Proposed Amendments to the Nonferrous Metals Forming Regulation

The proposed amendment described above may affect 58 facilities in the nickel-cobalt forming and zirconium-hafnium forming subcategories. Under this proposal tube reducing operations would be allowed to discharge wastewater under controlled conditions but would not be allowed to increase the mass of pollutants allowed to be discharged by the August 1985 regulation. Therefore, this regulation should not have any significant environmental impact.

V. Economic Impact of the Proposed Amendments

The proposed amendments do not alter the model technologies for complying with the nonferrous metals forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 50 FR 34242). EPA concluded at that time that the regulation was economically achievable. Since today's proposed amendments are based on the same model technologies,

EPA's conclusions as to economic impact and achievability are unaffected.

VI. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Public Law 96-354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 23, 1985 final nonferrous metals forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (49 FR 8775). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 471

Metals, Nonferrous metals forming, Water pollution control, Waste treatment and disposal.

Dated: June 2, 1988.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA proposes to amend 40 CFR Part 471 as follows:

PART 471—NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY

1. The authority citation for Part 471 continues to read as follows:

Authority: Secs. 301, 306(b), (c), (e), and (g), 306(b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1316 (b), (c), (e), and (g), 1316(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

2. Section 471.31 is amended by revising paragraph (d) to read as follows:

§ 471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(d) *Tube Reducing Spent Lubricant—Subpart C—BPT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

3. Section 471.32 is amended by revising paragraph (d) to read as follows:

§ 471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(d) *Tube Reducing Spent Lubricant—Subpart C—BAT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N/nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

4. Section 471.33 is amended by revising paragraph (d) to read as follows:

§ 471.33 New source performance standards (NSPS).

* * * * *

(d) *Tube Reducing Spent Lubricant—Subpart C—NSPS.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

5. Section 471.34 is amended by revising paragraph (d) to read as follows:

§ 471.34 Pretreatment standards for existing sources (PSES).

* * * * *

(d) *Tube Reducing Spent Lubrication—Subpart C—PSES.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N/nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further

discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

6. Section 471.35 is amended by revising paragraph (d) to read as follows:

§ 471.35 Pretreatment standards for new sources (PSNS).

* * * * *

(d) *Tube Reducing Spent Lubricant—Subpart C—PSNS.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

7. Section 471.91 is amended by revising paragraph (g) to read as follows:

§ 471.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(g) *Tube Reducing Spent Lubricant—Subpart I—BPT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

8. Section 471.92 is amended by revising paragraph (g) to read as follows:

§ 471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(g) *Tube Reducing Spent Lubricant—Subpart I—BAT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

9. Section 471.93 is amended by revising paragraph (g) to read as follows:

§ 471.93 New source performance standards (NSPS).

* * * * *

(g) *Tube Reducing spent Lubricant—Subpart I—NSPS.*

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

10. Section 471.94 is amended by revising paragraph (g) to read as follows:

§ 471.94 Pretreatment standards for existing sources (PSES).

* * * * *

(g) *Tube Reducing Spent Lubricant—Subpart I—PSES.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (a)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph(g)(3) of this; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

11. Section 471.95 is amended by revising paragraph (g) to read as follows:

§ 471.95 Pretreatment standards for new sources (PSNS).

* * * * *

(g) *Tube Reducing Spent Lubrication—Subpart C—PSNS.* (1) There shall be no disharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/1 of N/nitrosodiphenylamine, and 0.020 mg/1 of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or opeator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

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Thursday
June 9, 1988

Part V

Department of Health and Human Services

Office of Human Development Services

Administration for Native Americans; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13612-891]

Administration for Native Americans; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), Department of Health and Human Services.

ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, and Native American Pacific Islanders social and economic development projects.

SUMMARY: The Administration for Native Americans announces the availability of fiscal year 1989 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Native American tribes and organizations through the support of both social and economic development projects and the strengthening of local governance capabilities.

DATES: The closing dates for receipt of applications are October 14, 1988, February 10, 1989 and May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 245-7727 or Dwaine LeBeau (202) 245-7714, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201-0001.

SUPPLEMENTARY INFORMATION

A. Introduction and Program Purpose

The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Indian Tribes and American Indian, Native Hawaiian, and Native American Pacific Islanders groups through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Pub. L. 93-644, 88 Stat. 2324, 42 U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders (American Samoan Natives and indigenous peoples of Guam and the Commonwealth of the Northern Mariana Islands).

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) Governance: To assist tribal governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) Economic Development: To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. Expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress.

ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

All projects funded by ANA must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of specific projects is not for those programs which operate indefinitely or have need for ANA funding on a recurring basis.

Goal 1: Governance. Effective governance is a necessary foundation and condition for social and economic development of Indian tribes and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal governments; (2) increasing the ability of tribes and Native American groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes and Native American groups can better define and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Goal 2: Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA expects tribal governments and other Native American organizations to move toward coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (Federal and non-Federal) toward locally determined priorities, and affect that community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing dependency on public funds.

C. Eligible Applicants

The following organizations which are NOT current grantees of ANA are eligible to apply for a grant award under this announcement:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated non-profit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Incorporated non-profit Native Hawaiian organizations;
- National or regional incorporated non-profit Native American organizations with Native American community-specific objectives
- Non-profit incorporated Native American Pacific Islander organizations whose primary purpose is serving the indigenous peoples of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States. Funding for Native American Pacific Islanders projects is subject to the availability of specific appropriations during FY 1989.

With the exception of Alaska Native grantees, current grantees of ANA whose project period terminates in Fiscal Year 1989 (October 1, 1988—September 30, 1989) are also eligible to apply. (The Project Period is noted in Block 9 of the "Financial Assistance Award".) This program announcement does not apply to current grantees with multi-year projects when applying for continuation funding for their second or third budget periods.

Alaska Native applicants are not eligible under this program announcement because a separate program announcement for Fiscal Year 1989 funding will be published specifically for Alaska Native applicants.

D. Available Funds

Approximately $15 million of financial assistance is available under this program announcement for American Indian and Native Hawaiian projects.

Up to $500,000 is available under this announcement for Native American Pacific Islanders projects, subject to the availability of specific appropriations, as provided for in section 816(c) of the Native American Programs Act of 1974, as amended.

Each tribe or Native American organization is eligible to receive no more than one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake more complex and in-depth projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three year period. It should also be noted that funding after the first budget period of a multi-year project will be non-competitive.

The budget period for each multi-year project grant will be 12 months. The non-competitive funding for the second and third years will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, ANA's continued belief that the project is in the public interest, and compliance with applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with Section 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0960-0016. The application kits containing the necessary forms may be obtained from: Edith Clark, Administration for Native Americans, Office of Human Development Services, DHHS, Room 5300 North Building, 330 Independence Avenue, SW., Washington, DC 20201-0001, Attention: No. 13612-891, (202) 245-7727.

Application Submission

One signed original and two copies of the grant application, including all

attachments, must be hand delivered or mailed to: Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, Hubert H. Humphrey Building, Room 345F, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: ANA 13612–891.

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.
- The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA). The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted in a timely manner under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;
- That the application proposes project objectives which are responsive to the Program Announcement; and,
- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project and to determine its likelihood of success. A proposed project should reflect the purposes of ANA's SEDS philosophy and program goals (as described under *Introduction and Program Purpose* of this announcement) and increase the probability of greater self-sufficiency for a specific tribe or Native American community. The five programmatic and management criteria are closely related to each other and are considered in judging the overall quality of an application. Points will be given only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application presents long-range goals, within the context of the community's comprehensive social and economic development goals, which the proposed project address. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist and be coordinated with the project are described. These resources may be human, natural or financial in nature, including other Federal and non-Federal resources.

(2) *Capabilities and Qualifications.* (10 points)

Resumes or position descriptions of key personnel, including those of consultants, are included. Resumes indicate that the staff are qualified to carry out the project activities and that overall quality project management is assured.

(3) *Project Objectives and Activities.* (45 points)

The application proposes specific project objectives and activities. The objective work plan is presented in annual increments for all project objectives and activities and demonstrates that these objectives and activities:

- Are measurable and quantifiable;
- Are based on a fully described and locally determined balanced strategy for governance and for social and economic development;
- Clearly address the community's long range goals;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective and major activities under each objective will be accomplished; and
- Specify who will accomplish the activities under each objective.

(4) *Results or Benefits Expected.* (20 points)

The proposed project will result in specific, measurable outcomes which will clearly contribute to the overall development of the community and its members. The specific information provided on expected outcomes is the basis upon which the outcomes can be evaluated at the end of the project.

(5) *Budget.* (10 points)

The budget fully explains and justifies the line items in the budget categories in Part III, Section B of the Budget Information. Sufficient detail is included to facilitate determination of allowability, relevance to the project, and cost benefits for the entire length of the proposed project.

J. Guidance to Applicants

The following policies, pointers, and instructions are provided to assist applicants in developing a competitive application.

(1) *Program Guidance*

- ANA reviewers of applications have indicated they are better able to judge the feasibility and practicality of a proposed economic development project when the applicant has utilized a business plan to discuss the project. ANA has included sample business plans in the application kit. It is strongly suggested that an applicant use these as a guide in the development of an application. The more information given a review panel on a proposed business project, the better able it is to evaluate the potential for success.
- ANA does not fund on the basis of need. ANA funds projects presenting the strongest prospects for fulfilling a community's governance, social, or economic development.
- In discussing the problems or needs of the community being addressed in the application, sufficient background and/or history of the community should be included to ensure that the feasibility of the proposed project will be understood by reviewers.
- The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community.
- In Part IV, Section A of the application package, *Resources Available to the Proposed Project*, the applicant should address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions to those settlements, and explain the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.
- Supporting documentation or other testimonies from concerned interests other than the applicant may be used to provide support for the feasibility of the project.

(2) *Technical Guidance*

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.
- There is no maximum or minimum amount of Federal funds that may be requested.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- ANA will not fund essentially identical projects serving the same constituency.
- ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a Federally recognized tribe must be from the governing body.
- The Cover Page (included in the Kit) should be the first page of an application.
- The Approach page (Section B, Part IV) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.
- If a profit making venture is being proposed, revenue must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income and used in accordance with the deduction alternative. (See 45 CFR 74.42(c).)
- Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs multiple years to complete) and describe the results to be achieved by the end of each budget period of the total project period.
- The applicant should specify the entire project period length on the cover page of the Form 424, Block 16, not the length of the first budget period. In cases where the application's contents propose one length of project period and the Form 424 cover page specifies a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the governing one.

(3) *Projects or Activities that generally will not meet the purposes of this Announcement.*

The following activities are inconsistent with the policies of ANA:

- Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- Proposed feasibility studies, business plans, marketing plans, or written materials such as manuals that are not an integral part of the applicant's long-range development plan. ANA is not interested in funding 'wish lists' of business possibilities. ANA expects evidence of solid investment of time and thought on the part of the applicant to any development of business plans, etc.
- On-going social service delivery, expansion or continuation of existing social service delivery programs.
- Core administrative functions or other activities that essentially support the applicant's administrative functions.
- Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development).
- Project plans or strategies clearly not determined or developed at the local level.
- Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes.
- Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity.
- Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at the end of the project period.
- Lack of demonstrated coordination with non-ANA resources.
- Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project.
- The purchase or real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch. 3, Sec. E.).
- Use of ANA grant funds for a monetary share of capital investment for a business.

ANA will critically evaluate applications within which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment), franchises or management fees are major components of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

ANA will also critically evaluate projects reflecting heavy reliance on use of outside consultants, especially where consultants have prepared the application and have provided themselves a major role in the proposed project.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 14, 1988, February 10, 1989 and May 26, 1989.

L. Receipt of Applications

Applications must either be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. ANA shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 28, 1988.

William Lynn Eagles,

Commissioner, Administration for Native Americans.

Approved: May 31, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-12956 Filed 6-8-88; 8:45 am]

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federal register

Thursday
June 9, 1988

Part VI

Department of Justice

Office of Juvenile Programs

Office of Juvenile Justice and Delinquency Prevention

Removal of Juveniles From Adult Jails and Lockups, Grants; Notice of Solicitation of Applications

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Removal of Juveniles From Adult Jails and Lockups, Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of a solicitation of applications for a grant program to provide support to selected State agencies to enhance statewide strategies to achieve full compliance with the Juvenile Justice and Delinquency Prevention (JJDP) Act provision, section 223(a)(14), Removal of Juveniles from Adult Jails and Lockups.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 223(b)(6) [42 U.S.C. 5634(b)(6)] of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), announces a Special Emphasis program entitled: Removal of Juveniles from Adult Jails and Lockups: Assistance for Eligible States Currently Not In Substantial Compliance with section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act.

DATES: Applications must be delivered to OJJDP by 5:00 p.m. e.s.t., July 25, 1988. Applications meeting all requirements and conditions will be awarded no later than September 30, 1988. Applications will be processed as they are received. A letter of intent to apply must be delivered to OJJDP on or before July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Stein, State Relations and Assistance Division (202/724–5921), OJJDP, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

I. Introduction

To assist states in coming into full compliance with the jail removal mandate, OJJDP is making available $3 million of Fiscal Year 1988 Special Emphasis funds under Part B, Subpart II of Title II of the JJDP Act for awards to States and territories that have failed to demonstrate substantial compliance with the requirement for removal of juveniles from adult jails and lockups pursuant to section 223(a)(14). OJJDP projects that funds will be made available to 21 eligible states and one territory based upon their ability to respond to the conditions of this program. The base allocation for eligible states will be $100,000, and $25,000 for the territory, with the remainder distributed on the basis of relative percentage of population under 18 years of age. The maximum initial allocation will be $200,000. In the event an eligible state declines to apply, those funds will be redistributed among participating states.

The funds must be used to support jail removal strategies including training, the development and implementation of operational guidelines, the establishment and operation of temporary secure and nonsecure holding facilities, or reimbursement arrangements to units of local government for payment to service providers. States not receiving funding from the FY 1987 Special Emphasis Jail Removal Initiative may use a maximum of $50,000 for staffing and planning purposes in relation to removing the barriers to achievement of jail removal.

II. Eligibility

Eligible to apply are state agencies designated under section 223(a)(1) of the JJDP Act in states and teritories where substantial compliance with section 223(a)(14) was not demonstrated in the State's 1986 Monitoring Report, submitted pursuant to section 223(a)(15) of the JJDP Act. Excluded from eligibility are those states which, based upon the 1986 Monitoring Report, cannot demonstrate compliance with the requirements of section 223(a)(12)(A), the deinstitutionalization of status offenders provision of the Act. Also excluded are those states, in compliance with section 223(a)(12)(A), which, pursuant to their 1986 Monitoring Reports, will be in full compliance with de minimis exceptions of section 223(a)(14) when the numerical rate of the de minimis policy is issued by OJJDP. Eligible states and the territory are identified below:

Alaska
Colorado
Florida
Idaho
Iowa
Illinois
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Nebraska
New Hampshire
Northern Mariana Islands
Oklahoma
South Carolina
Utah
Vermont
Wisconsin

III. Notice to State Agencies

Concurrent with the publication of this notice, eligible state agencies will be receiving a letter from OJJDP outlining detailed application requirements and conditions, deadlines for submission of full applications, and availability of technical assistance.

Date: June 6, 1988.

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–13016 Filed 6–8–88; 8:45 am]
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H.R. 1430/Pub. L. 100–324
Merchant Marine Decorations and Medals Act. (May 30, 1988; 102 Stat. 576; 3 pages) Price: $1.00

H.R. 4083/Pub. L. 100–325
To amend title 5, United States Code, to authorize the establishment of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, and for other purposes. (May 30, 1988; 102 Stat. 579; 5 pages) Price: $1.00

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Rules and Regulations

Federal Register
Vol. 53, No. 112
Friday, June 10, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection, Weighing, and Appeal Inspection Services Performed in Canada

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is increasing its fees by approximately 103 to 134 percent for official inspection, weighing, and appeal inspection services performed in Canada under the United States Grain Standards Act (USGSA), as amended. This increase is intended to cover, as nearly as practical, the FGIS costs of providing grain inspection and weighing services in Canada.

EFFECTIVE DATE: June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, P.O. Box 96454, Washington, DC, 20090-6454, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Mr. W. Kirk Miller, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services do not meet the requirements for small entities.

Final Action

In the March 16, 1988, Federal Register (53 FR 8821) FGIS proposed increases in the fees for official inspection, weighing, and appeal inspection services performed in Canada under the United States Grain Standards Act (USGSA). Three comments were received regarding the proposed increase in fees. The commenters represented operational interests of grain handlers and processors and an association of ship owners, charterers, operators and agents providing overseas and coastal services to and from eastern Canadian seaports as well as ports on the St. Lawrence River and the Great Lakes.

The commenters recognized the need for a fee increase but opposed the magnitude of the proposed increase because of the potential adverse effect on shipments of grain from the St. Lawrence seaway, and the impact on the price of grain.

Based upon all information available, including comments received and analysis of recent FGIS program costs and revenue, FGIS has determined that it will increase fees for inspection and weighing services performed in Canada by approximately 103 to 134 percent rather than the 124 to 159 percent shown in the March 16, 1988, Federal Register (53 FR 8821). FGIS has reviewed its recent Canadian services cost and revenues and found that costs continue to exceed revenue. While a fee increase is necessary, a reduction of approximately 9.4% in the proposed level of fees is made in this final rule.

In fiscal year 1987, FGIS revenues for inspection and weighing services in Canada totaled $227,000 and operating costs totaled $378,000 resulting in a loss of $151,000, which depleted the applicable operating reserves. Fiscal year 1988 (October 1, 1987 through March 31, 1988) revenues for inspection and weighing services in Canada have been $102,800, while operating costs were $139,000, resulting in a loss of $36,200, which has continued to deplete the operating reserve. The immediate fee increase will reduce the estimated revenue deficit during the remainder of fiscal year 1988 and cover estimated costs in subsequent years.

FGIS had projected fiscal year 1988 operating costs to be approximately $403,000 and revenues to be approximately $306,000 (assuming the fees, as proposed, were to be implemented on June 1, 1988). Projections based upon the most current information are for fiscal year 1988 costs to be approximately $365,000, and revenues to be approximately $287,000 (assuming the fees in this final rule were implemented June 1, 1988). Since costs would be reduced, a reduction in the level in the proposed fee increase is possible.

FGIS recognizes that the level of fees may affect demand for service. Nonetheless, the USGSA, as amended (7 U.S.C. 71 *et seq.*), requires that FGIS charge and collect reasonable fees that cover the estimated cost to the Service for performing official inspection, weighing, and appeal inspection services, including related administrative and supervisory costs. FGIS continually monitors its cost, revenue, and operating reserve levels to assure that there are sufficient resources for the Service's operations. FGIS has continued to reduce staffing levels in Canada and to take other cost-saving measures in an effort to provide cost-effective services without endangering its ability to respond to the grain industry's need for quality service.

Operating costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment. While the demand for the services FGIS provides may fluctuate, certain costs remain constant in order to provide quality service on demand.

Pursuant to the Administrative Procedures Act, 5 U.S.C. 553, good cause is found for making this final rule effective upon publication in the Federal Register because the inspection, weighing, and appeal inspection programs in Canada are operating at losses, the applicable operating reserves are seriously depleted and it is important to have revenues cover costs as soon as possible.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

For the reasons set out in the preamble, 7 CFR Part 800 of the regulations is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.71 (a), Schedule B is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

SCHEDULE B.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA[1]

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday thru Saturday)	Nonregular workday (Sunday and holiday)
(1) Original inspection services and official weighing services: [2]		
(i) Contract services (per hour per service representative)	$103.00	$130.00
(ii) Noncontract service (per hour per service representative)	137.00	172.00
(2) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection services, the applicant will be assessed the noncontract original inspection hourly fee.

[3] Board appeal inspections are based on file samples. See § 800.71, Schedule A for Board Appeal fees.

* * * * *

Dated: May 23, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–13075 Filed 6–9–88; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 617]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 617 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 385,000 cartons during the period June 12 through June 18, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 617 (§ 910.917) is effective for the period June 12 through June 18, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on June 7, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 11–2 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5 U.S.C. 533, it is further found that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of this Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.917 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.917 Lemon Regulation 617.

The quantity of lemons grown in California and Arizona which may be handled during the period June 12, 1988, through June 18, 1988, is established at 385,000 cartons.

Dated: June 8, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–13256 Filed 6–9–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 946

[AMS–FV–88–013FR]

Irish Potatoes Grown in Washington; Amendment No. 6 to Continuing Handling Regulation to Relax the Minimum Size Requirement for Round Red Potatoes and Reduce the Minimum Quantity Exemption

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the minimum size requirement for high quality, round red potatoes from 1⅞ inches to 1 inch in diameter and lowers the minimum quantity exemption from 20 hundredweight to 5 hundredweight per day. The reduced size requirement will also apply to imported round red potatoes during the months of July and August. The intent of these actions is to meet current demand for smaller, high quality round red potatoes and to decrease the volume of uninspected, low quality potatoes entering fresh market channels.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946 (7 CFR Part 946), as amended, regulating the handling of Irish potatoes grown in the State of Washington. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 360 producers in the production area. There are about 25 potato importers subject to the requirements of the potato import regulation. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes and importers of potatoes may be classified as small entities.

Fresh shipments of Washington round red potatoes have risen from 96,900 hundredweight (cwt.) in 1981–82 to 235,000 cwt. in the 1986–87 season. This increase has been continuous except for a drop in 1985–86. As of April 30, 1988, total fresh shipments of Washington potatoes are down from the previous season; however, fresh round red shipments are up to 300,000 cwt. compared with 235,000 cwt. during a corresponding period last year. Round red potatoes in Washington currently comprise approximately 5 percent of total fresh shipments, and less than 1 percent of total production. Over 97 percent of the round red potato crop is utilized in the fresh market, where consumer preference and demand determine sales. With these potatoes subject to buyer scrutiny, size, shape, and overall quality are of vital importance in meeting the consumer preference.

The handling requirements for fresh Washington potatoes are specified in § 946.336 (53 FR 8143, March 14, 1988). The current requirements for round red potatoes specify that they be shipped under the following conditions. Round red potatoes must grade at least U.S. No. 2 and must have a minimum diameter of 1⅞ inches (47.6 mm) except size "B" (1⅝ inches minimum diameter) may be shipped if otherwise grading U.S. No. 1. Furthermore, the maturity requirement for round red potatoes is that they shall not be more than "moderately skinned."

This rule reduces the minimum size requirement for U.S. No. 1 round red potatoes from 1⅞ inches to 1 inch minimum diameter. This rule also decreases the minimum quantity exemption from 20 cwt. to 5 cwt. per day. These changes were recommended by the State of Washington Potato Committee to become effective beginning with the 1988–89 season which commences July 1.

A proposal inviting comments on this action was published in the **Federal Register** on April 14, 1988 (53 FR 12423). Interested persons were invited to submit comments until May 16, 1988. No comments were received.

The relaxed size requirement affords producers and handlers the opportunity to meet current market demand for small, high quality round red potatoes. This change is expected to benefit consumers by providing them with a product they desire, and producers and handlers by increased sales. This relaxation should not adversely affect the market for larger round red potatoes.

Under the current regulation, handlers are able to ship up to 20 cwt. per day without regard to inspection and assessment requirements. This exemption allows the unregulated movement of small, noncommercial quantities of potatoes that are essentially for home use. It is believed that requiring such potatoes to meet the quality standards imposed under the marketing order is unnecessary. However, the current 20 cwt. amount is believed to be greater than that customarily purchased by individuals for their own use, and provides an avenue for substandard potatoes to enter the commercial fresh market. Reducing this minimum quantity exemption to 5 cwt. addresses the committee's concern that too many uninspected, low quality potatoes are ending up in fresh market channels. This exemption is more in line with exempt amounts provided under similar marketing orders covering other major potato producing areas. The purpose of this change is to lower the amount of low quality potatoes entering fresh market channels.

Other exemptions currently provided are unchanged. The grade, size, cleanness, maturity, and pack requirements are not applicable to shipments of potatoes for livestock feed, charity, seed, prepeeling, other processing, or export. Shipments to these outlets are also free from inspection requirements.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas

of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation (§ 980.1, 34 FR 8043) specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (M.O. 945) during each month of the marketing year and that for round white types, they be based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31, and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year.

The quality standards imposed upon imports of red skinned, round type potatoes are based on that type grown in Washington during the months of July and August. During the remainder of the year, the import requirements are based upon those in effect for potatoes grown in Colorado Area 2.

During the July 1 through August 31 period, round red skinned potatoes which are at least one inch in diameter may be imported if they otherwise grade at least U.S. No. 1. No change is required in the language of § 980.1 or § 946.336(i) *Applicability to imports.*

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 533, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** in that: (1) The 1988 harvest of Washington red potatoes will begin in early July, and this action should be effective July 1, and (2) a July 1 effective date will permit all shippers to take advantage of the relaxed size requirement and thus meet current consumer demand.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR Part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is amended by revising paragraphs (a)(2) (i) and (f) to read as follows.

Note: This regulation will appear in the Code of Federal Regulations.

§ 946.336 Handling regulation.

* * * * *

(a) * * *

(a)(2) *Size*—(i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter, except round red varieties may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

* * * * *

(f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 5 hundredweight of potatoes per day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment over 5 hundredweight of potatoes.

* * * * *

Dated: June 7, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–13077 Filed 6–9–88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-057]

Importation of Sheep

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of sheep into the United States. This is necessary because there is considerable interest in importing large numbers of sheep into the United States from New Zealand. These anticipated importations of sheep have created a demand for quarantine services for sheep in excess of the services available at existing federal facilities.

First, we are adding requirements for approval of privately operated quarantine facilities for sheep imported into the United States from countries free of foot-and-mouth disease and rinderpest. These amendments are needed to ensure that private facilities meet minimum standards for disease control. Second, we indicate the ports of entry for sheep intended for quarantine at a privately operated quarantine facility. This amendment is needed to ensure that these sheep are entered into the United States only at ports at which the appropriate federal personnel are available to provide services. Third, we are adding health certification requirements and other requirements concerning quarantine upon arrival in the United States for sheep from New Zealand. These amendments are needed to ensure protection against the introduction into the United States of communicable livestock diseases.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations), among other things, regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various livestock diseases.

In the **Federal Register** of March 2, 1988 (53 FR 6656–6666, Docket No. 86–009), we proposed to amend the regulations by: (1) Adding requirements for approval of privately operated quarantine facilities for sheep imported into the United States from countries free of foot-and-mouth disease and rinderpest; (2) indicating the ports of entry for sheep intended for quarantine at a privately operated quarantine facility; and (3) adding health certification requirements and other requirements concerning quarantine upon arrival in the United States for sheep from New Zealand. A document correcting two typographical errors was published in the **Federal Register** on March 14, 1988 (53 FR 8301).

As announced in the proposal, two public hearings were held; one in Portland, Oregon, on March 15, 1988, and another in Washington, DC, on March 17, 1988. Also, in the proposal we invited written comments and indicated that consideration would be given to comments postmarked or received on or before April 1, 1988. Twenty-eight persons made statements at the first hearing; ten, at the second. Several persons who spoke at one or both of the public hearings also submitted written comments. Eighty written comments were received. Persons submitting either oral or written comments included a feedlot and slaughterhouse operator, sheep producers, animal breeding and veterinary consultants, importers and exporters of agricultural commodities, members of Congress, APHIS employees, and representatives of the New Zealand government, wool growers' and other sheep producers' associations, animal protection organizations, state departments of agriculture, livestock exporters' associations, the national association representing the meat packing and processing industries, other trade associations, a public port and a state association of public ports, and other interested individuals.

All comments have been carefully considered, and those that raised objections or suggested changes are discussed in this supplementary information. Except as explained below, we have adopted the provisions of the proposed rule as a final rule for the reasons set forth in the proposal and in this document.

Standards for Privately Operated Quarantine Facilities for Sheep

Standards Not Limited to Portland Facility

Earlier this year one shipment of sheep from New Zealand was imported into the United States through a facility in Portland, Oregon, that was specifically approved for that importation. Several persons' comments are based on their familiarity with the Portland facility. We emphasize, however, that the standards for approval of a privately operated quarantine facility contained in the proposed rule were not designed solely for the Portland facility, but for any privately operated quarantine facility for sheep otherwise eligible for entry into the United States.

Opposition to Use of Privately Operated Facilities

Several commenters objected to allowing the importation of sheep into the United States through privately-operated quarantine facilities. They maintained that we are setting precedents for private quarantine facilities far below present standards and that we should only allow use of government operated quarantine facilities to avoid compromising our import rules. No changes are made based on these comments. No evidence has been presented to us that establishes that implementing this final rule would present a significant risk of introducing communicable livestock diseases. Further, based on the rationale set forth in the proposal and in this document, it has been determined that sheep imported into the United States in compliance with the provisions of this final rule and the other applicable provisions of the regulations would not present a significant risk of introducing communicable livestock diseases.

Quarantine Facility Standards Not Limited to Sheep From New Zealand

New § 92.45 contains requirements for approval of privately operated quarantine facilities for sheep from all countries free of rinderpest and foot-and-mouth disease (FMD). (The importation of certain animals, including sheep, from countries not declared free of rinderpest and FMD is prohibited except for specially authorized importations through the Harry S Truman Animal Import Center, a maximum security quarantine facility in Fleming Key, Florida.) Commenters asserted that, since the standards for these facilities are written for the importation of sheep from any country free from FMD and rinderpest, they are geared for the worst health status of these animals that is likely to be encountered in the range of supplying countries. These commenters suggested that, considering the animal health status of sheep from New Zealand, the standards should be written specifically for that country in order to avoid penalizing its sheep exporters. No changes are made based on this comment. The standards contained in the final rule apply to privately operated quarantine facilities housing any sheep otherwise eligible for entry into the United States regardless of the country of origin. The health certification requirements would differ depending on the animal health status and the animal health programs in the country of origin. Once it is determined that the sheep meet the health certification requirements and are eligible for entry through a privately operated quarantine facility, the standards necessary to ensure that sheep in the facility do not present a risk of spreading communicable livestock diseases are, generally, uniform.

Cooperative Agreement: § 92.45(a)

We proposed that a privately operated quarantine facility for sheep must be operated in accordance with a cooperative agreement executed by the operator or other designated representative of the facility and by the Administrator. Commenters suggested that the regulations should require a cooperative agreement between the privately operated quarantine facility and the state in which it is located. They also suggested, generally, that state officials should assume authority and responsibility co-equal and parallel to that of federal officials in all aspects of the operation of privately operated quarantine facilities for sheep.

No changes are made based on these comments. The statutory mandate to establish and enforce regulations concerning the importation of certain animals, including sheep, is directed to the Secretary of Agriculture by federal animal quarantine laws. Cooperation with the States is critical to the control and eradication of animal diseases in the United States, and Animal and Plant Health Inspection Service (APHIS) employees work closely with State officials. However, the ultimate authority for regulating the importation of these animals rests with the federal government. This responsibility cannot be delegated to the States.

Availability of Personnel to Provide Services

The proposed rule (§ 92.45(b)) provided that approval of any quarantine facility shall be contingent upon a determination by the Administrator that adequate personnel are available to provide services required by the facility if approved. Commenters questioned whether adequate personnel will be available to properly monitor privately operated quarantine facilities if there are budget cuts and administrative cutbacks.

Our inclusion of this provision in the regulations acknowledges that there may be instances in which the Administrator will determine that adequate APHIS personnel are not available to provide services and will have to refuse approval of a facility for that reason. However, this should not preclude the Agency from having a mechanism in place to facilitate the importation of animals for those importations for which personnel are available.

Supervision of the Facility: § 92.45(b)(1)

We also proposed that the facility must be maintained under the supervision of a Veterinary Services veterinarian. One commenter requested that the complete range of the supervisory veterinarian's authority be specified in detail.

No changes are made based on this request. We think that this final rule adequately identifies the range of the

supervisory veterinarian's authority. As indicated in the proposed rule at 53 FR 6657, the requirement for supervision is intended to ensure that the facility operates in accordance with all applicable rules and regulations. It is the supervisory veterinarian's responsibility to exercise discretion and judgment within the framework of the regulations to ensure that the regulations are enforced. Of course, other supervisory personnel are available to advise on-line personnel as they implement their responsibilities.

Physical Plant Requirements: Location; § 92.45(b)(2)(i)

The proposed location requirements provided, in part, that the quarantine facility must be located within the immediate area of the port of entry to minimize the possibility of introduction and dissemination of diseases by the imported sheep while in transit from the point of entry to the quarantine facility.

One commenter suggested that we specify a distance that the facility must be located from domestic livestock in order to help ensure the biosecurity of the facility.

We have determined that the facility should be located at least ½ mile from any livestock to help ensure the biosecurity of the facility. Although it is impossible to specify an exact minimum distance beyond which a disease agent could not be spread, both science and experience indicate that a distance of at least ½ mile should be adequate to help preclude the transmission of any animal disease agent into or from the facility. We have added this ½ mile requirement to the final rule.

Several other commenters requested that the regulations be more specific on the distance allowed between the port of entry and the facility. No changes are made based on this comment. Under § 92.3(j) of the final rule, sheep may be entered into the United States through a number of ports. Some of these ports will be in large metropolitan areas with the nearest concentration of livestock many miles away. Others may be in towns with rural areas and concentrations of livestock within a very short distance of the port. Considering the diversity of the places in which persons may consider locating quarantine facilities, it is difficult to stipulate a maximum distance from the port of entry that would be "within the immediate area of the port of entry." We would risk requiring what may in some circumstances prove unjustified and burdensome for the importer or, in other circumstances, finding that our regulations would allow construction of a facility in a location that could prove inadequate to ensure prevention of disease spread. Prospective importers consult with APHIS officials in the initial stages of considering construction of a privately operated quarantine facility. Any importer will have an opportunity to check with agency officials to confirm that the location requirements would be met for any facility before that person has made any firm decisions about the location of the facility.

Physical Plant Requirements: Construction; § 92.45(b)(2)(ii)

—Walls, Floors, and Ceilings

Paragraph (A) of the proposed construction requirements provided that all solid walls, floors, and ceilings of the quarantine facility must be constructed of materials that are substantially impervious to moisture and that can withstand continued cleaning and disinfection. Some commenters suggested that the requirement should only apply to the floors and to the walls up to a height of five feet, based on the assertion that only those surfaces which would be cleaned and disinfected between shipments and with which the sheep have direct contact would need to be impervious to moisture.

In our judgment, all surfaces would need to be cleaned and disinfected between shipments to help ensure that disease agents would not be spread from one lot of sheep to another. The surfaces nearest the sheep would be most likely to be contaminated by disease agents, with the risk of surface contamination decreasing with distance from the animals. Of course, the floors and the lower part of the walls, with which the sheep, their excrement, or discharges have contact, would need more frequent or more intensive cleaning and disinfection. The upper part of the walls and the ceilings would require considerably less maintenance to keep them clean and disinfected. We have determined that surfaces that require less maintenance, such as ceilings and the upper part of the walls, would not need to be substantially impervious to moisture in order to be adequately cleaned and disinfected. We are changing the provision in the final rule with respect to ceilings and the upper part of the walls to require only that these surfaces must be able to withstand cleaning and disinfection between shipments.

—Doors and Other Openings

Paragraph (B) of the proposed construction requirements provided that the quarantine facility building must be constructed with each entryway equipped with a series of two solid doors, and with other openings covered with screening 16 mesh or finer, unless the Administrator specifically approves other types of doors and openings as adequate to prevent the entry of insects.

Some commenters suggested that there should be no requirement for screening unless the animals quarantined in the facility originate from a country affected with known vector-borne diseases exotic to the United States. We disagree. As suggested by one commenter, even if the animals quarantined in the facility originate from a country not known to be affected with vector-borne diseases exotic to the United States, screening would be needed to eliminate the risk of introduction of any vector-borne disease from outside the facility. The fact that the facility is screened would help establish that any vector-borne disease that might appear among the animals in quarantine would be of foreign, rather than domestic, origin.

Other commenters suggested that the 16 mesh or finer screening requirement is inappropriate, based on the assertion that it would create ventilation problems that may cause greater health problems for the sheep in quarantine than any potential problems that could be caused by insects. We reject the assertion that the screening requirement would cause ventilation problems and jeopardize the health of the sheep in quarantine. The final rule contains separate requirements to ensure adequate ventilation in a facility. Both the ventilation and screening requirements are needed to help ensure the biosecurity of the facility.

With respect to the requirement that each entryway be equipped with a series of two solid doors, one commenter suggested specific circumstances under which double doors would not be needed. It is not necessary to make any further change in the regulations to allow for approval of alternative types of doors and openings. As indicated above, the regulation as proposed provided that the Administrator may specifically approve the use of other types of doors and openings.

—"Lot"

The standards also contain provisions to ensure that disease agents would not be spread among different lots of sheep within the same facility. The term "lot" first appears in paragraph (C) of the construction requirements and is used several times in the standards. Several commenters requested clarification of this term.

The term "lot" was intended to mean a group of sheep that have been held on a premises with opportunity for commingling (physical contact with other sheep in the group or with their excrement or discharges) at any time since 30 days prior to export to the United States. We have included this clarification in the final rule. Generally, for large importations of a group of feeder lambs that have qualified for health certification during the same period in an isolation area, a facility will house a single lot of animals. However, the regulations are written to allow a facility to accommodate more than one lot of sheep at a time.

—Ventilation Systems

Paragraph (E) of the proposed construction requirements provided that the quarantine facility building must have a separate ventilation system for each lot of sheep that is housed in the facility. One commenter asserted that there would be no basis for this requirement as long as different shipments of sheep are separated by physical barriers within the quarantine facility.

No changes are made based on this comment. We included this requirement to help eliminate the possibility of spread of airborne diseases, such as ovine pneumonia, from one lot to another within the facility. If different lots of sheep share a common ventilation system, separation of these lots by physical barriers would not necessarily be adequate to prevent the spread of airborne diseases from one lot to another. We have clarified paragraph (E) in the final rule by stipulating that the quarantine facility building must have a separate, controlled, forced air ventilation system for each lot of sheep housed in the facility if the facility is approved to handle more than one lot of sheep. This is the type of ventilation system necessary to help ensure that disease agents would not be spread among different lots of sheep within the same facility.

—Separate Feed Storage Area

Paragraph (F) of the proposed construction requirements provided that the quarantine facility building must have a separate feed storage area. One commenter requested that this requirement be modified to allow for alternative means of receiving animal feed, such as delivery to the feeders by a system of chutes or daily truck deliveries to the facility, as long as the truck is sufficiently disinfected.

The requirement for a separate feed storage area was based on the premise that a supply of feed would be stored in the facility. However, if arrangements are made for an adequate supply of feed for the sheep without storing feed in the facility, a separate feed storage area would not be necessary.

We have amended the proposed rule to allow for alternate means of receiving feed in the facility. This revision includes a provision requiring that any vehicle entering the quarantine facility building to deliver feed be cleaned and disinfected under the supervision of a Veterinary Services inspector with a disinfectant authorized in § 71.10 of Title 9, Code of Federal Regulations, immediately before entering and before leaving the building. This is necessary to help prevent the spread of any disease agent into or from the quarantine facility building.

—Standards for the Necropsy Area

One commenter who is familiar with the facility in Portland, Oregon, asserted that the proposed minimum standards applicable to the necropsy room would be inadequate. He suggested additional requirements for more efficient ventilation to get rid of noxious odors, floor drains with a minimum diameter of four inches, and adequately sloped floors to speed up drainage.

No changes are made based on this comment. The final rule contains other provisions which, if properly enforced, will ensure the adequacy of the ventilation system and control of surface drainage. Specifically, paragraph (E) of the construction requirements requires that the quarantine facility building have a ventilation capacity sufficient to control moisture and odor at levels that are not injurious to the health of the sheep in quarantine. Also, paragraph (H) of the sanitation and security requirements (§ 92.45(b)(2)(iii)(H)) provides that arrangements shall exist for control of surface drainage into or from the facility in a manner adequate to prevent any significant risk of livestock diseases being spread into or from the facility. While floor drains are not specifically required, they are a standard feature for the control of surface drainage from buildings such as quarantine facilities. We are unable to substantiate that requiring that these drains have a certain minimum diameter would ensure control of surface drainage, since there are numerous other factors which also affect surface drainage, such as the water table, the water pressure, the angles at which the pipes are placed, the number and location of drain openings, and the frequency of cleaning manure and other excreta from the drains.

Physical Plant Requirements: Sanitation and Security; § 92.45(b)(2)(iii)

—Use of Disinfectants

Paragraph (E) of the proposed sanitation and security requirements provided that arrangements must exist for sufficient stocks of a disinfectant authorized in § 71.10 of Title 9, Code of Federal Regulations. One commenter objected to this requirement. Apparently the commenter read this requirement as binding the operator of the facility to use of a single disinfectant product. This is not the case. Section 71.10 allows the use of a number of disinfectants, all of which have bactericidal and virucidal properties.

—Disposal of Wastes

Paragraph (F) of the proposed sanitation and security requirements provided that arrangements must exist at the facility for disposal of wastes by incineration or a public sewer system that meets all applicable environmental quality control standards. Several commenters raised questions concerning the feasibility of disposal of large amounts of manure by incineration or disposal in a public sewer system. It was suggested that applicable environmental quality control standards might require burial of manure from the facility. We agree and have changed the rule to allow burial as an alternate means of disposal, if in conformance with all applicable environmental quality control standards. Also, we note that § 92.15 of the regulations prohibits the removal of any manure from the facility until the release from quarantine of the animals producing the manure.

—Disposal of Sheep Carcasses

Paragraph (G) of the proposed sanitation and security requirements provided that arrangements must exist for disposal of sheep carcasses by incineration or burial, in conformance with all applicable environmental quality control standards. Referring to the Portland facility, several commenters questioned whether provisions had been made for the disposal of an entire shipment of sheep in case that should become necessary. Other commenters suggested that our regulations should include specific requirements for disposal in the event of a disease outbreak in the facility.

There is a site available for disposal of an entire shipment of sheep from the Portland facility in the unlikely event that it becomes necessary. As indicated in the regulation, the disposal is to be in conformance with all applicable environmental quality control

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standards. Those standards are not within APHIS authority to set. To ensure that our agency is not assenting to or facilitating action not in conformance with environmental quality control standards, we require that the operator of the facility provide a certification executed by an appropriate government official indicating compliance with the applicable laws for environmental protection (§ 92.45(b)(4)).

One commenter suggested that we could safely add an additional means of carcass disposal: refrigerated storage of any carcasses until the completion of the quarantine period, with disposal by rendering thereafter. We agree. Storing the sheep carcasses in the facility in a freezer at a temperature below 20 degrees Fahrenheit would be adequate to avoid any risk of disease spread from the carcasses. Scientific data indicate that grinding and then heating sheep carcasses for at least one hour at a temperature of not less than 285 degrees Fahrenheit would be adequate to destroy any animal disease organisms. We have added a provision to the final rule to allow rendering under these conditions.

Some commenters asked that we modify the carcass disposal requirement to allow refrigeration of any carcasses until the end of the quarantine, and then allow their disposal in any manner acceptable to local officials. These commenters asserted that there would be no basis for limiting the means of disposal of sheep that died or were destroyed during the quarantine period once the other sheep in the same shipment have cleared quarantine. No changes are made based on these comments. While we are confident that these carcasses would not present a risk of introducing exotic diseases into the United States, not limiting their disposal to the options discussed above could allow the spread of diseases such as salmonellosis. Decaying animal tissue would rapidly attract vermin and become a source of infectious bacteria. Incineration, burial, and rendering, under the conditions explained above, are the only viable options for carcass disposal that would not present disease risk. For that reason, we find it necessary to limit carcass disposal to these options.

Suggested Physical Plant Requirements

Commenters made several other suggestions to enhance the security and operation of a quarantine facility, such as a visual and electrical method to monitor and control entry doors, bonded security guards, fencing, and instruments to gauge the ammonia level in the facility. No changes are made based on these comments. While we do not dispute that certain additions could marginally enhance the security and operation of a facility, we have determined that compliance with the standards contained in this final rule will be adequate to ensure that sheep in the facility do not present a risk of spreading communicable livestock diseases.

Operating Procedures: § 92.45(b)(3)

—Showering Requirements

Several commenters objected to the proposed requirements that personnel shower when entering and leaving the sheep-holding area, and when leaving the necropsy area after conducting a necropsy. One commenter suggested that it should not be necessary to shower after conducting a necropsy unless the person is actually leaving the facility. No changes are made based on these comments. As suggested by one commenter, one reason for the requirement for showering upon entry is as an additional precaution against possible disease transfer from domestic livestock. We reaffirm the rationale stated in the proposal at 53 FR 6658 which indicated that the operating requirements are necessary to preclude transmission of any animal disease agent into the facility, from the facility, and from one lot of sheep to another within the facility. Further, the possibility of exposure to disease is greater in conducting a necropsy than with other sheep-handling activities. To help ensure that the person who conducted the necropsy would not present any risk of transferring any disease organisms to sheep in the facility, we find it necessary to require showering upon leaving the necropsy area after conducting a necropsy even if the person is not actually leaving the facility.

—Contact with Other Lots of Sheep

We also proposed to prohibit any person entering the sheep-holding area from having contact with other lots of sheep within the facility and with ruminants and swine outside the facility for a period of time determined by the supervising veterinarian as necessary to prevent a risk of spreading communicable livestock diseases. One commenter indicated that the specific period of time should be stated and have the force of law to help prevent disease from escaping from a quarantine facility. No changes are made based on this comment. This period of time would vary, depending on the health status of the sheep at the time the person was in the sheep-holding area. The supervisory veterinarian will be familiar with the health status of the sheep and will be able to determine the specific period of time on a case by case basis.

—Maintenance of Daily Log

As a part of the operating procedures, we proposed to make the operator of the quarantine facility responsible for maintaining a current daily log for each lot of sheep. Commenters suggested that maintaining the log should be the responsibility of the Veterinary Services veterinarian supervising the facility. We agree that the supervisory veterinarian could more appropriately assume responsibility for this log since that person will be supervising the activities that will be recorded in the log. The final rule includes this change. The operator of the facility will remain responsible for keeping the log for twelve months following the release of the sheep from quarantine and making it available to Veterinary Services personnel upon request.

Environmental Requirements: § 92.45(b)(4)

Several commenters contended that the responsibility for certifying compliance with all applicable laws for environmental protection should rest with the APHIS Administrator, not with an unspecified government official. No changes are made based on this comment. The responsibility for making judgments to determine compliance with the environmental protection laws associated with the operation of a quarantine facility is not within the APHIS Administrator's authority. That authority rests with other federal, state, and local officials.

Health Certification Requirements for Sheep from New Zealand

Types of Sheep Covered by the Health Certificate

One commenter apparently assumed that the health certification requirements were only for sheep that would be consigned from the port of entry directly to a slaughtering establishment. This is incorrect. The health certification requirements for sheep from New Zealand do not include provisions to allow consignment of the animals from the port of entry directly to a slaughtering establishment.

Other commenters argued that lambs for slaughter should be the only sheep allowed to be imported into the United States from New Zealand. They asserted, generally, that if these sheep were consigned directly to slaughter, they would not mix with the domestic flock, and would present less of a disease risk. No changes are made based on this comment. APHIS imposes restrictions on the importation of animals into the United States only insofar as necessary to prevent the introduction of communicable animal diseases. There is no veterinary medical basis for limiting the sheep imported from New Zealand to lambs for slaughter. We are confident that any sheep from New Zealand brought into the United States under the regulations would not present a risk of introducing communicable animal diseases.

Responsibility for Issuing Health Certificates

Our proposal provided that the health certification could be made by any veterinarian authorized by the Government of New Zealand to do so. The proposal provided further that if the veterinarian issuing the certificate was not a salaried veterinarian of the national veterinary services of New Zealand, the certificate would have to be endorsed by a salaried veterinarian of New Zealand's national veterinary services. Several commenters suggested that the health certification should be the responsibility of APHIS officials. In our opinion, the suggested requirement is not warranted in order to ensure the validity of the health certification. For animals imported into the United States from countries free of foot-and-mouth disease and rinderpest, we depend on officials of the national veterinary services of the exporting countries for export health certifications. Our veterinary services officials furnish similar export health certifications for animals exported from the United States.

Scrapie

Proposed paragraph (a)(1) of the health certification requirements included a requirement to certify New Zealand's freedom from scrapie. Also, under proposed paragraph (a)(4), the health certificate must contain a statement that the sheep is not the first generation progeny of a sire or dam that has been affected with scrapie. Several commenters suggested that the requirement in proposed paragraph (a)(4) would be unnecessary, considering that New Zealand has never had an outbreak of scrapie and that it imposes stringent import requirements for sheep. We had included this requirement in the proposal as a precautionary measure to minimize the risk of any offspring offered for importation into the United States being affected with scrapie. However, upon further consideration of the facts mentioned by the commenters, plus our judgment that New Zealand has a surveillance system adequate to detect scrapie in the unlikely event that it should occur there, we concur with the commenters. We have deleted this provision from the final rule.

Spayed Females

Under the proposed health certification requirements, all spayed females would be exempt from the brucellosis testing requirements and spayed females intended for slaughter would be exempt from the tuberculosis testing requirements. In order for spayed females to qualify for these exemptions, we proposed to require certification that the spaying operation was conducted under the direct supervision of a salaried veterinarian of the national veterinary services of New Zealand.

One commenter suggested that other veterinarians specially authorized by the New Zealand veterinary services should be allowed to supervise and certify the operation. Other commenters maintained that the option of spaying females should not be allowed, based on their assertions of a probability of error and abuse and a subsequent disease risk. Still other commenters objected, asserting that the procedure is not normally done in New Zealand and that the cost would be prohibitive.

We are confident that, if the operation is conducted under the direct supervision of a salaried veterinarian of the national veterinary services of New Zealand, properly certified female sheep would not present a risk of introducing tuberculosis or brucellosis into the United States. Limiting supervision to these persons is necessary to help ensure compliance. We recognize that spaying females may not be a viable option for most people exporting sheep from New Zealand to the United States. However, the fact that many people may not find the option workable should not preclude us from leaving it as an alternative for those who may choose to use it. Therefore, the provision remains as proposed.

Inspection of the Sheep

Another proposed health certification requirement was for the sheep to be inspected by the certifying veterinarian and found free of evidence of communicable disease within seven days prior to movement to the isolation area.

Several commenters asked that "communicable disease" be defined or that we furnish a list of communicable diseases. We are using the term "communicable disease" as already defined in § 92.1: "[a]ny contagious, infectious, or communicable disease of domestic livestock, poultry or other animals."

Some commenters maintained that inspection by the certifying veterinarian of a large number of sheep within a 7-day period would be a physical impossibility. We did not intend to require that a single veterinarian inspect an inordinate number of sheep within a limited period. For large shipments, several veterinarians will be needed to assume this responsibility. Each veterinarian will certify those sheep that he or she has inspected.

Also, commenters requested clarification as to whether the isolation area could be a separate area on the farm or the pre-export feedlot assembly point. Under the final rule, either of these places could be an isolation area if it meets the requirements of the regulations. An isolation area is an area in which sheep intended for export are held and have no physical contact with other sheep except sheep scheduled for the same shipment.

Premises Free from Disease

As a precautionary measure, we also proposed provisions requiring a determination of freedom from certain diseases on any premises on which the sheep had been at any time during 12-month period to moving to the isolation area. A 12-month period of freedom from tuberculosis, bluetongue, and brucellosis was specified; a 6-month period was specified for freedom from other diseases of livestock.

One commenter questioned whether the reference to brucellosis meant only brucellosis variety ovis. That is what was intended since it is the variety of brucellosis to which sheep from New Zealand would most likely have been exposed. We have specified brucellosis variety ovis in the final rule.

Other commenters suggested that bluetongue be removed from the provision, since that disease is not known to exist in New Zealand. Upon further consideration, we have determined that this requirement can be deleted without any increased disease risk. We believe that the testing and survey requirements for bluetongue in New Zealand will be adequate to ensure that sheep imported in compliance with these requirments would not present a risk of having the disease.

Another commenter questioned the rationale for the provision. He asserted that the time periods for freedom from the diseases are not technically justifiable. No further changes are made based on this comment. It is not possible to specify a definite minimum time after which certain diseases could be

guaranteed not to recur in a herd of sheep. We acknowledge that arguments could be made for greater or lesser time periods. A longer time was specified for freedom from tuberculosis and brucellosis in part because we have control and eradication programs for these diseases and, for that reason, want to take additional precautions to ensure that no sheep are convalescent carriers of these diseases.

Individual Identification

The proposed health certification requirements included a requirement for individual identification of the sheep using an eartag or bangle tag approved by the Administrator as being tamper-resistant. We further proposed to require that the eartag or bangle tag conform to an alpha-numeric system which uses the letters "NZ" followed by no more than 6 numbers and that it provide unique identification for each sheep.

Some commenters contended that the proposed individual identification requirement would be too stringent a requirement for feeder lambs. Their suggestions included: (1) A system of number ranges assigned to specific properties or origin to allow individual identification back to the farm of origin; (2) use of an ear mark system used by New Zealand sheep farms; or (3) a provision that each sheep must be identifiable to its farm of origin, without specifying the method. Other commenters argued that the proposed requirement was too lax. Some suggested requirements that an eartag be placed in each ear, not just one ear. Others suggested requiring a tattoo in addition to an eartag, and records tracking the exact location of the sheep after their release from quarantine.

No changes are made based on these comments. In order to ensure the validity of the certification for each sheep, to ensure that the sheep presented at the port of entry is in fact the animal referred to in the accompanying documents, and to avoid mistakes in recording laboratory results or possible diagnosis of disease, it is necessary to establish and maintain a single means of identifying sheep for the entire importation process. In our judgment, the requirements in the final rule are the minimum requirements that would be adequate to provide identification of individual sheep. The first three suggestions would not provide for identification of individual sheep. While we do not dispute that the other suggestions could decrease the possibility of error in tracing back sheep, we think the requirements in the final rule are sufficient.

Movement to the Isolation Area

One commenter objected to the proposed requirement that an official designated by the national veterinary services of New Zealand supervise the cleaning and disinfection of the means of conveyance in which sheep are moved to the isolation area. He indicated that the certification would be costly and difficult to achieve administratively because sheep for export will be obtained from a wide geographical area. The commenter suggested that a statement by the driver of the vehicle or certification by the trucking firm should suffice. No changes are made based on this comment. In our judgment limiting supervision to officials designated by the New Zealand government is warranted in order to help ensure compliance.

Isolation Period

Several commenters questioned the validity of the requirement for keeping the sheep in an isolation area for a period of at least 60 days immediately prior to export. They suggested, generally, that the period is not defensible from a biological standpoint. Also, they asserted that this requirement presents practical problems for the handling of animals intended for slaughter because, with a 60-day isolation period, they are likely to reach marketing weight prior to their release from quarantine in the United States. Another commenter pointed out the possibility of other countries imposing a similar requirement on livestock exported from the United States as his reason for objecting to the proposed requirement.

As indicated in the proposal at 53 FR 6661, a 60-day isolation period was proposed as a reasonable time for conducting all of the prescribed tests and treatments, and an adequate time within which a disease that a sheep might be harboring would manifest itself. With the changes in the proposed testing requirements, which are discussed below, in addition to the other requirements of the final rule, we have determined that 30 days will be an adequate isolation period for these purposes if all the applicable requirements are met within that period. If retesting for tuberculosis should be necessary, the period would be extended as explained below. Also, certification that a sheep has been free from evidence of communicable diseases and exposure to communicable diseases during the 60-day period immediatley prior to export is still required. As noted in the proposal, the importation of sheep which have been exposed to any disease within 60 days period to their exportation is prohibited by 21 U.S.C. 104.

Handling on an "All-in, All-out Basis"

We also proposed to require that all sheep entering the isolation area be handled on an "all-in, all-out" basis. Commenters requested that we reconsider this requirement. They explained that in setting up shipments it is customary to assemble 10–20% more animals than are ordered by the overseas buyer to allow for sorting and rejection for health status and for other reasons. It was suggested that the exporter should have the option of holding animals rejected for non-health reasons for subsequent shipments.

The requirement as written would not preclude holding animals rejected for non-health reasons for a later shipment. However, if these sheep are to be grouped with new sheep entering the isolation area for treatment and testing, then they would have to qualify for health certification as a part of the later group. The 30-day countdown for the isolation period would not begin until all sheep designated for qualification during that isolation period have entered the isolation area.

Tuberculosis Testing

One commenter questioned why a tuberculosis test is proposed for sheep from New Zealand, except for wethers and spayed females intended for slaughter, when the same test is not required for the importation into the United States of sheep from some other countries in which tuberculosis is known to exist. Determination of whether to require testing for a disease for animals imported into the United States is based on factors such as the nature of the disease and how it is spread, the prevalence of the disease in the country of origin, and the effectiveness of any eradication or control programs in the country of origin. Tuberculosis is prevalent in the opossum population in New Zealand. Transfer of the disease to other ruminants, such as sheep, is not uncommon. Efforts on the part of New Zealand have not yet been fully successful in eradicating tuberculosis from their livestock population. It is our veterinary medical judgment that the test and certification of freedom from the disease is necessary to ensure that these sheep would not present a risk of spreading the disease.

We proposed that all sheep in the isolation area, except both wethers and spayed females intended for slaughter, be tested for tuberculosis within 60 days

prior to export, with removal of any sheep that tested positive, and retesting of the remainder of the sheep in the isolation area after no less than 60 days. We reconsidered the timing of this testing as a part of examining the comments on the length of the isolation period. We have determined that the same intended effect, that is, certification of the sheep's freedom from tuberculosis, can be achieved by requiring the test for tuberculosis within 30 days prior to export. If any animals tested positive, the retest of the remainder of the sheep in the isolation area would still be required after a period of 60 days. This 60-day interval between tests is necessary to ensure the accuracy of the second test.

Brucellosis Testing

We proposed to require the standard direct complement fixation test for brucellosis for all sheep in the isolation area, except wethers and spayed females.

One commenter asserted that the enzyme-linked immunosorbent assay (ELISA) test is a more accurate test and suggested that it be required for brucellosis testing instead of the standard direct complement fixation test. We are currently evaluating the ELISA procedures. Upon completion of the evaluation we will propose whatever changes, if any, appear warranted in the brucellosis testing requirements.

Commenters also made several disparate suggestions on brucellosis testing. It was suggested that APHIS: (1) Test all sheep, based on the assertion that spayed females can transmit the disease; (2) test only breeding rams, based on the assertion that the disease is a disease of entire males only; and (3) in lieu of testing, allow certification that the flock of origin is free of brucellosis. Based on scientific data, we disagree with the assertions in suggestions 1 and 2. Brucellosis is an infection that manifests itself in the uro-genital tract. Only sexually intact animals are capable of spreading the disease. Although brucellosis is much more common among breeding rams, it has also been found in ewes and usually results in abortions. The regulations require testing only for sexually intact animals. These animals will probably be added to United States breeding flocks. The brucellosis testing is necessary to help eliminate the risk of any further spread of the disease among United States flocks.

Certification of Freedom from Akabane

We proposed testing all sheep in the isolation area for Akabane using the virus neutralization test.

—Additional Means of Certification

Some commenters contended that testing should not be required for Akabane, based on assertions that the disease is not known to exist in New Zealand; the only proven vector of the disease, a midge *(Culicoides brevitarsis)*, does not exist in New Zealand; and statements that recent surveys of the cattle, sheep, and goat populations of New Zealand have proven negative for the disease. Some commenters contended that a statement that New Zealand is free of the disease would be sufficient certification. Other commenters suggested that, instead of testing, we should allow certification of flocks as being free of Akabane and other vector-borne diseases. Some of these commenters specifically suggested certification based on serological surveys of flocks of origin that could detect a 5 percent infection rate at a 95 percent confidence level.

Although Akabane may not be known to exist in New Zealand, it is our understanding that sheep, cattle and goats have been imported into New Zealand from a country in which Akabane is known to exist under conditions that would not be adequate to qualify them for entry into the United States and, in our judgment, may not have been adequate to preclude the introduction of that disease into New Zealand. Further, *Culicoides brevitarsis* is not the only proven vector of Akabane. According to the scientific literature, the mosquito is also a vector and it is known to exist in New Zealand. We accept that surveys of the ruminant populations of New Zealand have proven negative for Akabane. However, we question whether the number of animals sampled to date would be an adequate basis for removing all Akabane requirements from the regulations.

While not concurring fully with some of the commenters' statements, we have concluded, based in part on comments and a review of documentation from the New Zealand government, that the certification requirement discussed below would be adequate to ensure that sheep imported into the United States from New Zealand would not present a risk of introducing Akabane.

We are adding an option that may be used instead of certification based on tests for all sheep to be exported to the United States, namely, certification that sheep are from flocks determined to be free of Akabane. The determination that a flock of origin of sheep is free of Akabane must be based on negative results from a biometrically designed serological survey of the flock designed to detect a one percent infection rate at a 99 percent confidence level. Further, each survey must have been conducted within four months prior to movement of the sheep to the isolation area and must have been conducted by officials designated by the national veterinary services of New Zealand. The test administered must be the same as that required for testing during the isolation period.

To facilitate understanding of these requirements, we are adding definitions of "flock" and "flock of origin." A "flock" means all sheep under common ownership or supervision that are grouped on one or more parts of any single premises; or all sheep under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with animals from the other premises, or with their excrement or discharges. Also, a "flock of origin" means the flock of which the sheep have been a part for the 4 months immediately prior to movement to the isolation area or for their entire lives, whichever period of time is less.

Wethers and Spayed Females

One commenter suggested that wethers and spayed females should be exempt from any testing requirement for Akabane, based on the assertion that the real significance of Akabane is with breeding sheep, not with feeder lambs. We disagree. Akabane is a vector-borne disease. Whether or not an animal is sexually intact is not relevant to transmission of vector-borne diseases. To be eligible for importation into the United States, wethers and spayed females will have to be certified free of Akabane as a result of testing during the isolation period or as a result of a serological survey of the flock of origin, as explained above.

—Is One Virus Neutralization Test Adequate for Detecting Akabane?

Other commenters found the proposed testing requirements for Akabane inadequate. One maintained that one virus neutralization test is entirely inadequate; another suggested that the entire lot of sheep should be rejected if one sheep tests positive. No changes are made based on these comments. The regulations provide that, if any sheep test positive, they must be removed from

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the isolation area, and after no less than 30 days, the remainder of the sheep in the isolation must be retested and found negative to the test. The virus neutralization test is recognized world-wide throughout the veterinary medical community as a standard means of diagnosing Akabane. It is impossible to achieve one hundred percent assurance of protection against the introduction into the United States of any exotic disease. However, as explained above in this section, "Certification of Freedom from Akabane," we believe the testing and survey requirements contained in the final rule are adequate to ensure protection against the introduction of Akabane into the United States.

Bluetongue and Epizootic Hemorrhagic Disease Testing

We proposed testing for bluetongue and epizootic hemorrhagic disease for all sheep in the isolation area only if any sheep in the isolation area had had an opportunity for exposure to either of these diseases within 12 months prior to entering the isolation area. The proposed regulation indicated that opportunity for exposure would exist if during that 12-month period, a sheep had been on a premises that, at any time during the time the sheep was on that premises or at any time during the 2-year period prior to the movement of the sheep to that premises, had contained sheep from a country not free of the disease. Several commenters objected to any certification requirements, based on their assertions that neither these diseases nor their vectors have been reported to exist in New Zealand.

We do not fully accept the commenters' rationale for having no requirement with respect to these diseases. Although bluetongue is not known to exist in New Zealand, it is our understanding that sheep have been imported into New Zealand from a country in which bluetongue is known to exist under conditions that would not be adequate to qualify them for entry into the United States. Further, although vectors may not be reported to exist, according to the scientific literature, both bluetongue and epizootic hemorrhagic disease may also be spread by infected semen. However, for the same reasons as discussed above for Akabane, we have concluded that, for those sheep for which individual testing was proposed, a certification requirement parallel to the Akabane requirement would be adequate to ensure freedom from these diseases.

Therefore, we are adding an option for certification that sheep are from flocks determined to be free of bluetongue and epizootic hemorrhagic disease. As with Akabane, the determinations that a flock of origin of sheep is free of bluetongue and epizootic hemorrhagic disease must be based on negative results from biometrically designed serological surveys of the flock designed to detect a one percent infection rate at a 99 percent confidence level. Further, each survey must have been conducted within four months prior to movement of the sheep to the isolation area and must have been conducted by officials designated by the national veterinary services of New Zealand. The tests administered to the selected sampling of sheep and the interpretation of the test results must be the same as those required for testing during the isolation period.

Other Suggestions Regarding Testing for Diseases and Parasites

Commenters also mentioned the possibility of sheep from New Zealand having diseases or parasites other than those for which certification is required. Some maintained that this possibility warrants prohibiting the entry of the animals. Others argued that we should add other testing or treatment requirements. Their concerns focused on: internal parasites, such as liverflukes, sheep tapeworms, and nematodes; leptospirosis; malignant catarrhal fever; biotypes associated with the shipping fever complex, and a variety of arboviruses other than those for which we require certification (Akabane, bluetongue, and epizootic hemorrhagic disease). We carefully considered each of these suggestions, and have concluded that no additional requirements are warranted based on these comments. It is not feasible to test or treat for every possible disease or parasite that sheep could have. Generally, we do not deem that the risk presented by sheep from New Zealand with respect to these diseases and parasites warrants any additional specific requirements at this time. There are ample requirements in the regulations for certifying the sheep, and the premises on which they have been for a period of time, free of communicable diseases and free from exposure to communicable diseases. There are also provisions allowing the Administrator to impose additional requirements for the sheep in quarantine in specific cases if needed to determine their health status, prevent spread of disease among sheep in quarantine, and prevent escape of animal disease agents from the facility. If the disease status of sheep in New Zealand changed so that sheep from that country would present a significant risk of introducing any exotic communicable disease into the United States livestock population, we would amend our regulations to ensure that the disease would not enter the United States.

Commenters suggested that we review and modify testing requirements as experience with several importations may indicate. One commenter was specifically referring to the requirements for arboviruses. We reiterate that the testing requirements contained in this final rule are those that have been determined to be necessary at this time to ensure protection against the introduction of communicable livestock diseases. Whenever we become aware that any requirements are no longer appropriate, we will initiate action to modify them as necessary.

Ectoparasites

The ectoparasite provisions in the proposed rule included a requirement for treatment of all sheep for ticks by being dipped once in a 0.125 per cent concentration of the pesticide coumaphos. We also proposed a specified lime sulfur dip treatment for psorergates mites.

Commenters requested that we allow certification that the sheep are from an area that is free of ticks in lieu of the dipping requirement. No changes are made based on this comment. We neither dispute nor affirm that some areas in New Zealand are free of some varieties of ticks. However, we deem the requirement for dipping the best way to ensure that the sheep are free from ectoparasites when shipped to the United States.

Commenters contended further that the choice of the pesticide should be the responsibility of the national veterinary services of New Zealand because those officials would be aware of better pesticides as they enter the market and could stipulate which pesticide to use. No changes are made based on this comment. We do depend on the national veterinary services of New Zealand to apply criteria and exercise discretion in determining whether health certification standards are met. However, it is an APHIS responsibility to set standards, and we think it would be an abrogation of that responsibility to delegate standard-setting, even for decisions such as which pesticides are efficacious for destroying ectoparasites.

Commenters also maintained that there are probably "better and more modern" pesticides than those specified in the proposal. They asserted further that the 0.125 concentration of coumaphos would be relatively high for the treatment of lambs. We do not dispute that there are other pesticides that would serve the same purpose. However, the efficacy of both the lime sulfur dip and coumaphos for these treatments is well-documented. In addition, they are both readily available and relatively inexpensive. Further, according to the manufacturer's instructions, the .125 concentration of coumaphos is the minimum concentration effective for dipping sheep for ticks. If we are presented with documentation suggesting that another pesticide would be preferable, we will evaluate the information and propose any changes that might be indicated.

The proposed ectoparasite provisions also included a requirement that the certifying veterinarian inspect the sheep and find them free of ectoparasites within 72 hours prior to their being loaded on the means of conveyance for transport to the United States. Commenters pointed out that this would be very difficult to achieve, due to the large numbers of sheep. We have determined that sheep that have been shorn within 60 days prior to the treatment for ticks would not need to be inspected to determine their freedom from ectoparasites. Wool on a sheep interferes with the effectiveness of the ectoparasite treatment. Although it is generally recognized that treatments for ectoparasites are not 100 percent effective, the sheep that have been shorn as specified would be much less likely to have ectoparasites after their treatment. In our judgment, these sheep could be safely imported into the United States without further inspection for ectoparasites. Those sheep that have not been shorn as specified would still need to be inspected to ensure their freedom from ectoparasites.

Health Certification: Shearing

Other commenters suggested that the health certification provisions should include a requirement that the sheep be shorn within two weeks prior to export. They asserted that shearing would prevent the wool from qualifying for incentive payments under the Wool Act of 1954 and would reduce health risks. The issue of determining whether wool qualifies for incentive payments is not within APHIS authority. Nor do we consider it necessary to require shearing in order to reduce health risks. As explained above, sheep that have been shorn as specified are exempted from the inspection requirements in the ectoparasite provisions.

Quarantine upon Arrival

—Length of Quarantine

The proposed regulations also included a requirement for quarantine of the sheep upon arrival in the United States for a period of not less than 30 days. One commenter said that the quarantine period should be increased to 45 days. He did not give the basis for his suggestion. Several other commenters objected to the not-less-than-30-day requirement based, generally, on what they perceived as its inconsistency with the requirement in § 92.11 for a quarantine period of not less than 15 days for swine and ruminants other than cattle imported from any part of the world except Canada. Some of these commenters suggested that the requirement specify not less than 15 days.

No changes are made based on these comments. Several commenters apparently read the not-less-than-15-day quarantine requirement as requiring only a 15-day quarantine. It has been our experience that sheep imported into the United States have been quarantined for at least 30 days in order to confirm their freedom from communicable diseases. Quarantine upon arrival is important because shipment causes stress for the sheep. Animals under stress are more likely to manifest signs of disease. The "not less than 30 day" requirement more accurately reflects the time needed for testing and confirmation of freedom from disease.

—Testing During Quarantine

The proposed provisions concerning quarantine upon arrival also provided for testing of all sheep in quarantine for brucellosis variety ovis. Also, the proposed provisions provided that the Administrator might find it necessary, in order to determine that the animals are free from communicable disease, to require other tests duplicative of the pre-embarkation tests or additional tests. The provision required that the sheep test negative to these tests also.

Several commenters requested clarification as to whether the tests duplicative of the pre-embarkation tests are mandatory or discretionary. The only test that is mandated during quarantine in the United States is the test for brucellosis variety ovis. The other tests are discretionary, based upon the Administrator's determination that they are necessary to determine that the animals are indeed free from communicable diseases.

Other commenters objected to the brucellosis testing requirements and reiterated the objections they voiced to the pre-embarkation testing requirements. No changes are made based on these comments. Considering the nature of the disease and the efforts that are being expended to eradicate brucellosis in this country, we confirm that the brucellosis testing requirements are necessary to confirm that the sheep have remained negative to the disease.

Some commenters maintained that we should also require retesting of the sheep for bluetongue and Akabane during their quarantine, based on the assertion that the animals could be exposed and contract the disease while en route from New Zealand to the quarantine facility in the United States. We are not adding specific requirements for these tests. The animals will have been certified and found free of the diseases prior to leaving New Zealand. These are vector-borne diseases. We think the probability of the animals being infected en route is too remote to justify a specific requirement for testing for these diseases during quarantine. The final rule contains provisions allowing testing for these diseases, or any other disease, if the Administrator determines that the testing is necessary.

Antibiotics

Several commenters suggested that we add a prohibition against the use of antibiotics for the sheep during their quarantine. They asserted that antibiotics could mask symptoms of any number of serious communicable diseases. No changes are made based on this comment. Apparently these commenters assumed that antibiotics would be given prior to any attempt to make a diagnosis. This is not the case. If a sheep shows signs of illness during quarantine, the supervisory veterinarian will take action to make a diagnosis prior to allowing any treatment. After a diagnosis has been made, if it is determined that treatment with antibiotics would be beneficial, the supervisory veterinarian would be exercising sound veterinary medical judgment by allowing the treatment. Antibiotics affect bacteria, but do not affect viruses and therefore, would not mask viral infections, such as bluetongue or Akabane.

Humane Standards

Two organizations recommended that APHIS establish humane standards for the sea transport of sheep, and include these standards in this rulemaking. These organizations also recommended establishment of a certification program to ensure enforcement of the suggested standards. They further requested that our regulation authorize at least one competent observer from an animal protection organization to be present at any given time during the unloading of the ship and transport of the animals to the quarantine facility to monitor the

handling and physical condition of the arriving animals.

No changes are made based on these comments. Although APHIS is concerned about the humane treatment of sheep while in transit to the United States, the establishment of regulations concerning this aspect of the import operation is not within our statutory mandate.

Executive Order 12291 and Regulatory Flexibility Act

—Response to Comments

A number of commenters noted their concurrence with the Executive Order 12291 and Regulatory Flexibility Act Statement in the proposed rule and affirmed or elaborated on points contained in that statement. Several other commenters indicated that they disagreed with our analysis, but they did not submit any data to support their assertions.

Some commenters disagreed with our estimate that approximately 162,000 sheep that might not otherwise be imported into the United States will be imported annually under this final rule. Our estimate was based on the quota set by New Zealand for sheep allowed to be exported from New Zealand to the United States annually. Commenters submitted projections of effects on the economy based on an estimate of 270,000 to 360,000 sheep. These commenters indicated that their estimated range was that of the only importer who has requested a permit to import large numbers of sheep. However, according to that importer's statement at the public hearing in Portland, Oregon, his program calls for the annual import of approximately 180,000 lambs from New Zealand through the port of Portland. Considering the logistics of any importation, we deem this an outside estimate for that importer. We realize that other people may also import sheep into the United States through privately operated quarantine facilities. However, to date no one has indicated any interest in doing that.

Although we readily acknowledge that any estimate is imperfect, with the information available to us at this time, it remains our best estimate that approximately 162,000 sheep that might not otherwise be imported into the United States will be imported annually under this final rule. If sheep importations should become 224,000 head annually, as suggested by the commenters, then the amount of lamb available in the United States would increase 6 percent with a 2.4 percent estimated decrease in price (1.8 cents per pound), based on a lamb price of $0.75 per pound. This is much less than the current year-to-year fluctuation in United States lamb production and price.

Commenters differed as to whether a uniform supply of lamb is currently available. Some contended that sheep imported under this final rule would provide a constant supply of fresh lamb in the markets, thereby creating more lamb consumption, improving demand for lamb products and resulting in consistent prices for domestic growers as well as importers. Others maintained that current production does not leave seasonal gaps, and that United States lamb producers are in the process of increasing production sufficiently to meet any foreseeable demand in domestic markets. According to United States Department of Agriculture reports, the percent of the annual lamb slaughter that is processed each quarter of a year shows fluctuations from 23.4 percent to 27.1 percent for the 4-year period from 1984 through 1987. Additional regular supplies of lamb, whether from domestic production or regular importations, would have little, if any, effect on seasonal variations. Further, as indicated above, the impact on lamb prices of a 6 percent increase in the amount of lamb available in the United States (the largest projection suggested by commenters), would be much less than the current year-to-year fluctuation.

Several commenters who indicated that they raise sheep asserted that they oppose allowing the importation of sheep through privately operated quarantine facilities because they do not want any additional economic competition. This is not a valid reason to preclude the entry of these animals. The regulations in 9 CFR Part 92 are established pursuant to animal quarantine and related laws which generally provide authority to take action to prevent the introduction or dissemination of certain diseases. These statutory provisions do not provide authority for establishing prohibitions based merely on factors relating to economic competition. In addition, although the Department considers economic issues in accordance with Executive Order 12291 and the Regulatory Flexibility Act, these economic issues must be considered within the framework of animal quarantine and related laws.

Some commenters cautioned the agency to avoid putting constraints on the importation of sheep to protect local markets, thereby erecting a non-tariff trade barrier and inviting reciprocal action by other countries. No changes are made based on this comment. The requirements contained in the final rule are those requirements that have been determined to be necessary to protect against the introduction into the United States of communicable animal diseases.

Executive Order 12291 and Regulatory Flexibility Act Statement

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Before the effective date of this rule, the expected domestic lamb slaughter for calendar year 1988 was approximately 930,100,000 pounds, live weight. With the adoption of this rule, we anticipate that approximately 162,000 sheep that might not otherwise be imported into the United States may be imported annually. It is expected that all of these animals will be slaughtered within two to three months after importation. This will add approximately three percent to the amount of lamb available for marketing in the United States, and could decrease slightly, probably no more than one cent per pound, the price paid to the producer for lamb. According to the 1982 Census of Agriculture, there are 99,306 farms producing lambs, sheep, and wool. Using sales per farm of under $100,000 from lambs, sheep, and wool as the definition of a small sheep business, there are 86,237 such businesses in the United States, according to the 1982 Census of Agriculture. Of these 49,052 farms had sales of lambs, sheep, and wool valued at less than $10,000 per year. It should be noted that raising sheep for slaughter is not the sole source of business income for most United States sheep producers.

We anticipate that the importation of sheep through privately operated quarantine facilities will have a negligible effect on the wool supply in the United States. This is because the sheep will have been shorn shortly before entering the United States. The importation will generate additional activity for a few other businesses: the importers, the feedlot operators that feed the lambs, the feed mills that supply the feed, the meat packing plants that slaughter the lambs, and the wholesale and retail distributors of the finished product.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Miscellaneous

We have also made nonsubstantive changes to avoid ambiguity and present the provisions of this rule more clearly.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579-0040.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. Section 92.1 is amended by adding, in alphabetical order, the following:

§ 92.1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, to whom authority has been or may be delegated to act in the Administrator's stead.

* * * * *

§ 92.3 [Amended]

3. In § 92.3, a new paragraph (j) is added to read as follows:

§ 92.3 Ports designated for the importation of animals and birds.

* * * * *

(j) *Ports and privately operated quarantine facilities for sheep.* Sheep may be entered into the United States at any port specified in paragraph (a) of this section, or at any other port designated as an international port or airport by the U.S. Customs Service and quarantined at privately operated quarantine facilities provided the applicable provisions of §§ 92.2, 92.4(a), 92.7, 92.8, 92.44, and 92.45 are met.

§ 92.5 [Amended]

4. In paragraph (a)(1) of § 92.5, "and 92.40" is changed to "92.40, and 92.44."

5. In paragraph (a)(2) of § 92.5, "and 92.36," is changed to "92.36, and 92.44,"

§ 92.11 [Amended]

6. In the first sentence of paragraph (b)(1) of § 92.11, "other than sheep from New Zealand and" is inserted after "Swine and ruminants".

7. In paragraph (b)(2) of § 92.11, the following sentence is added at the end of the paragraph:

§ 92.11 Quarantine requirements.

* * * * *

(b) * * *

(2) * * * Sheep imported from New Zealand shall be subject to § 92.44 of this part.

* * * * *

§ 92.12 [Amended]

8. In § 92.12, the heading for the section and the heading for paragraph (a) are revised to read as follows:

§ 92.12 Animal quarantine facilities.

(a) *Privately operated quarantine facilities.*

9. In § 92.12, paragraph (a) is amended by removing the words "non-Governmental quarantine facility" and adding "privately operated quarantine facility" in their place.

10. In the second, fourth, sixth, eighth, and eleventh sentences of paragraph (a) of § 92.12, the words "Deputy Administrator, Veterinary Services," are removed and "Administrator" is added in their place.

11. In § 92.12, the heading for paragraph (b) is amended to read:

(b) *Quarantine facilities maintained by Veterinary Services.*

12. In § 92.12, the third sentence in paragraph (b) is amended by replacing "Veterinarian Services" with "Veterinary Services".

13. New §§ 92.44 and 92.45 are added to read as follows:

§ 92.44 Sheep from New Zealand.

No sheep from New Zealand shall be imported or entered into the United States unless in accordance with paragraphs (a) and (b) of this section.

(a) *Health certification requirements.* No sheep shall be imported into the United States from New Zealand unless accompanied by a health certificate. The certificate shall be either signed by a salaried veterinarian of the national veterinary services of New Zealand or signed by a veterinarian authorized by the national veterinary services of New Zealand and endorsed by a salaried veterinarian of the national veterinary services of New Zealand (the endorsement represents that the veterinarian signing the certificate was authorized to do so). The certificate shall certify that:

(1) New Zealand is free from rinderpest, foot-and-mouth disease, contagious pleuropneumonia, surra, and scrapie.

(2) The sheep was born in New Zealand and has never been in any country other than New Zealand.

(3) The sheep is not the first generation progency of a sire or dam imported into New Zealand from a country specified in § 94.1 of this chapter as having rinderpest or foot-and-mouth disease.

(4) If the sheep is a spayed female, the spaying operation was conducted under the direct supervision of a salaried veterinarian of the national veterinary services of New Zealand (for the purposes of this section, "direct" supervision means that the supervising person must be physically present during the operation).

(5) The sheep was inspected by the certifying veterinarian and found free of evidence of communicable disease within seven days prior to movement to an isolation area (for the purposes of this section an "isolation area" shall mean an area in which sheep intended for export are held and have no physical contact with other sheep except sheep scheduled for the same shipment).

(6) Any premises on which the sheep had been at any time during the 12-month period prior to moving to the isolation area, had been free of any

evidence of tuberculosis and brucellosis variety ovis for the 12-month period immediately preceding the date of movement of the sheep from that premises, and had been free of outbreaks of any other communicable disease of livestock for the 6-month period immediately preceding the date of movement of the sheep from the premises. This certification shall be made insofar as can be determined by the certifying veterinarian, based on information available from the owners of the premises, the owners of the sheep, and other sources.

(7) Prior to moving the sheep to the isolation area, each sheep was individually identified using an identification eartag or bangle tag meeting the following specifications:

(i) The eartag or bangle tag is approved by the Administrator as being tamper-resistant; and

(ii) The eartag or bangle tag conforms to an alpha-numeric system which uses the letters "NZ" followed by no more than 6 numbers and provides unique identification for each sheep.

(8) If moved to the isolation area from another premises, (i) the sheep was moved in a means of conveyance which, immediately prior to loading the animal, was cleaned and disinfected with a disinfectant specified in § 71.10 of this chapter under the direct supervision of an official designated by the national veterinary services of New Zealand; and

(ii) The sheep had no physical contact with other animals (except sheep scheduled for the same shipment) during transit to the isolation area.

(9) The sheep was kept in the isolation area for a period of at lest 30 days immediately prior to export, under the supervision of a full-time salaried veterinarian of the national veterinary services of New Zealand. The 30 day period began when all sheep designated for qualification during a single isolation period had entered the isolation area.

(10) All sheep which entered the isolation area were handled on an "all-in, all-out" basis, except for sheep removed in accordance with this section.

(11) *Tuberculosis testing.* All sheep in the isolation area, except wethers and spayed females intended for slaughter, were subjected to an intradermal tuberculin test utilizing mammalian Purified Protein Derivative (PPD) tuberculin and tested negative within 30 days prior to export. If any sheep tested positive, they were removed from the isolation area, slaughtered, examined, and found to have no tubercular lesions, and after no less than 60 days, the remainder of the sheep in the isolation area were retested and found negative to such test. Negative test results mean that the supervisory veterinarian detected no response using both visual examination and manual palpation techniques at the site of the injection 72 hours after the injection.

(12) *Brucellosis testing.* All sheep in the isolation area, except wethers and spayed females, were subjected to the standard direct complement-fixation test for brucellosis variety ovis and tested negative within 30 days prior to export. Negative test results mean less than fifty percent fixation (2 plus) in a serum dilution of 1:10. If any sheep tested positive, they were removed form the isolation area, and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(13) *Certification of freedom from Akabane, bluetongue, and epizootic hemorrhagic disease.*

(i) *Akabane.* All sheep in the isolation area either were from flocks of origin determined to be free of Akabane as provided in paragraph (a)(13)(iv) of this section or were tested for Akabane as provided in this paragraph. If the determination of freedom from Akabane was made by testing, all sheep in the isolation area tested negative to the virus neutralization test for Akabane at a serum dilution of 1:4 within 30 days prior to export. If any sheep tested positive, they were removed from the isolation area, and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(ii) *Bluetongue.* All sheep in the isolation area were required to be certified as free from bluetongue only if, during the 12-month period prior to movement to the isolation area, any sheep in the isolation area had been on a premises that, at any time during the time the sheep was on that premises or at any time during the 2-year period prior to the movement of such sheep to that premises, had contained sheep from a country not free of bluetongue. Certification, if required, was made either by determining that all sheep in the isolation area were from flocks of origin determined to be free of bluetongue as provided in paragraph (a)(13)(iv) of this section or by testing all sheep in the isolation area for bluetongue as provided in this paragraph. If the determination of freedom from bluetongue was made by testing all sheep in the isolation area, all sheep tested negative to the agar gel immunodiffusion (AGID) test for bluetongue within 30 days prior to export. If any sheep tested positive, they were removed from the isolation area and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(iii) *Epizootic hemorrhagic disease.* All sheep in the isolation area were required to be certified as free from epizootic hemorrhagic disease only if, during the 12-month period prior to movement to the isolation area, any sheep in the isolation area had been on a premises that, at any time during the time the sheep was on that premises or at any time during the 2-year period prior to the movement of such sheep to that premises, had contained sheep from a country not free of epizootic hemorrhagic disease. Certification, if required, was made either by determining that all sheep in the isolation area were from flocks of origin determined to be free of epizootic hemorrhagic disease as provided in paragraph (a)(13)(iv) of this section or by testing all sheep in the isolation area for epizootic hemorrhagic disease as provided in this paragraph. If the determination of freedom from epizootic hemorrhagic disease was made by testing all sheep in the isolation area, all the sheep tested negative to the agar gel immunodiffusion (AGID) test for epizootic hemorrhagic disease within 30 days prior to export. If any sheep tested positive, they were removed from the isolation area and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(iv) *Serological surveys of flocks of origin.* The determination that a flock of origin of sheep is free of Akabane, bluetongue, or epizootic hemorrhagic disease shall be based on negative results from a biometrically designed serological survey of the flock for the specific disease. The survey must be designed to detect a one percent infection rate at a 99 percent confidence level. Each survey must have been conducted within four months prior to movement of the sheep to the isolation area and must have been conducted by officials designated by the national veterinary services of New Zealand. The tests administered to the sample of sheep and the interpretation of test results must be the same as those required for testing during the isolation period. (For the purposes of this section, a "flock" shall mean all sheep under common ownership or supervision that are grouped on one or more parts of any single premises; or all sheep under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with animals from the other premises, or with their excrement or discharges. Also, for the purposes of this section, a "flock of origin" shall mean the flock of which a sheep has been a part for the 4 months immediately prior to movement to the isolation area or for its entire life, whichever period of time is less.)

(14) *Ectoparasites.* (i) Within 10 days prior to export, all sheep were treated for ticks by being dipped once in a 0.125 per cent concentration of the pesticide coumaphos.

(ii) Within 10 days prior to export, but at least 3 days after the treatment referred to in paragraph (a)(14)(i) of this section, all sheep were treated once for psoroergates mites by being dipped in a 2 per cent lime sulfur dip. To ensure efficacy of the treatment, either a wetting agent shall be added to the dip prior to dipping the sheep, or the dip shall be heated to maintain a temperature of 95–105 degrees F. throughout the dipping process.

(iii) The name of the pesticide, the concentration used to treat the sheep, and the dates of treatment.

(iv) Any sheep not shorn within 60 days prior to the treatment for ticks referred to in paragraph (a)(14)(i) of this section was inspected by the veterinarian signing the health certificate and was found free of any ectoparasites within 72 hours prior to being loaded on the means of conveyance which transported the sheep to the United States.

(15) The sheep has remained free from evidence of communicable diseases and exposure to communicable diseases during the 60-day period immediately prior to export.

(16) *Movement from the isolation area to the port of embarkation.* The sheep was moved from the isolation area to the port of embarkation in a means of conveyance which, immediately prior to loading the sheep, was cleaned and disinfected under the direct supervision of an official designated by the national veterinary services of New Zealand with a disinfectant specified in § 71.10 of this chapter. Such movement was by the most expeditious route that would prevent possible exposure to disease in transit. From the time of cleaning and disinfecting the means of conveyance through the unloading of the sheep for export to the United States, there have been no other sheep aboard the means of conveyance.

(b) *Quarantine upon arrival.* (1) As a condition of entry into the United States, upon arrival at the port of entry, sheep from New Zealand shall be quarantined for not less than 30 days, counting from the date of entry into the approved quarantine facility.

(2) In order to qualify for release from quarantine, the sheep shall be tested as follows:

(i) All sheep, except wethers and spayed females, shall be subjected twice, with an interval of at least 15 days between tests, to the standard direct complement-fixation test for brucellosis variety ovis and receive negative test results (less than fifty percent fixation, 2 plus) in a serum dilution of 1:10; and

(ii) All sheep shall test negative to any other test that may be determined necessary by the Administrator to determine their freedom from communicable diseases. These tests may be duplicative of the tests required under paragraph (a) of this section or may be additional tests.

(c) *Sheep refused entry.* A sheep imported or offered for entry into the United States that is not accompanied by a health certificate as required by paragraph (a) of this section or that is found upon inspection at the port of entry to be affected with a communicable disease or to have been exposed to a communicable disease, shall be refused entry and shall be handled thereafter in accordance with 21 U.S.C. 103 or quarantined, or otherwise disposed of as the Administrator may direct.

(Approved by the Office of Management and Budget under control number 0579–0040)

§ 92.45 Standards for approval of privately operated quarantine facilities for sheep, and handling procedures for the importation of sheep.

(a) *Cooperative agreement.* No facility shall operate as a privately operated quarantine facility for sheep unless it is operated in accordance with a cooperative agreement excuted by the operator or other designated representative of the facility and by the Administrator, and unless such cooperative agreement includes all the requirements of this section and includes a requirement that the cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator in accordance with the provisions of § 92–12 of this part.

(b) *Approval of facilities.* To qualify for designation as an approved privately operated quarantine facility [1] and to retain such approval, the facility and its maintenance and operation must meet the minimum requirements of this section. Approval of any quarantine facility shall be contingent upon a determination by the Administrator that adequate personnel are available to provide services required by the facility if approved. The cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator in accordance with the provisions of § 92.12 of this part.

(1) *Supervision of the facility.* The facility shall be maintained under the supervision of a Veterinary Service veterinarian.

(2) *Physical plant requirements.* The facility shall comply with the following requirements:

(i) *Location.* The quarantine facility shall:

(A) Be located at one of the ports listed in § 92.3(j) of this part;

(B) Be located within the immediate area of the port of entry to minimize the possibility of introduction and dissemination of diseases by the imported sheep while in transit from the point of entry to the quarantine facility; and

(C) Be located at least one-half mile from any livestock.

(ii) *Construction.* The quarantine facility building shall:

(A) Be constructed so that the surfaces of the floors and the surfaces of that part of the walls with which the sheep, their excrement, or discharges have contact are constructed of materials that are substantially impervious to moisture and that can withstand continued cleaning and disinfection;

(B) Be constructed so that the ceiling and that part of the walls with which the sheep, their excrement, or discharges do not have contact can withstand cleaning and disinfection between shipments;

(C) Be constructed with each entry way equipped with a series of two solid doors, and with other openings covered with screening 16 mesh or finer; unless the Administrator specifically approves other types of doors and openings as adequate to prevent the entry of insects;

(D) Be constructed so that different lots of sheep in the facility at the same time are separated by physical barriers in such a manner that sheep in a given lot do not have physical contact with sheep in another lot, or with their excrement, or discharges (for the purposes of this section a "lot" shall mean a group of sheep that have been held on a premises with opportunity for commingling (physical contact with

[1] The importation of sheep which have been exposed to any disease within 60 days prior to their exportation is prohibited by 21 U.S.C. 106.

[1] Information as to the identity of such facilities may be obtained from the Administrator, Animal and Plant Health Inspection Service, U.S. Departent of Agriculture, Washington, DC 20250.

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other sheep in the group or with their excrement of discharges) at any time since 30 days prior to export to the United States);

(E) Have a ventilation capacity sufficient to control moisture and odor at levels that are not injurious to the health of the sheep in quarantine;

(F) Have a separate, controlled, forced air ventilation system for each lot of sheep that is housed in the facility if the facility is approved to handle more than one lot of sheep at a time;

(G) Have a separate feed storage area, if feed is stored in the facility;

(H) Have office space for recordkeeping available for use by Veterinary Services personnel;

(I) Have a necropsy area with facilities adequate for specimen preparation and equipped with a refrigerator-freezer for storing specimens for laboratory examination;

(J) Have a separate area for washing clothes and equipment used in the facility;

(K) Have a shower at the entrance to the sheep-holding area and the necropsy area and a clothes storage and change area at each end of the shower area; and

(L) Have a storage area for equipment necessary for quarantine operations.

(iii) *Sanitation and security.* Arrangements shall exist for:

(A) Equipment and supplies necessary to maintain the facility in a clean and sanitary condition, including insect and pest control equipment and supplies;

(B) Separately maintained equipment and supplies for each lot of animals;

(C) A supply of potable water adequate to meet all watering and cleaning needs;

(D) Power cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment;

(E) Sufficient stocks of a disinfectant authorized in § 71.10 of this chapter;

(F) Disposal of wastes by burial, incineration or in a public sewer system in compliance with all applicable environmental quality control standards;

(G) Upon the death or destruction of any sheep, disposal of the carcass, in conformance with all applicable environmental quality control standards, by incineration, by burial, or by storing the sheep carcasses in the facility in a freezer at a temperature below 20 degrees Fahrenheit and upon release of the lot of sheep from the facility, disposing of any carcasses by grinding and then heating them for at least one hour at a temperature of not less than 285 degrees Fahrenheit;

(H) Control of surface drainage into or from the facility in a manner adequate to prevent any significant risk of livestock diseases being spread into or from the facility;

(I) Protective clothing and footwear adequate in quantity to ensure that workers at the facility have clean clothing and footwear at the start of each workday and at any time such articles become soiled or contaminated;

(J) A receptacle for soiled and contaminated clothing in the clothes change area located nearest the entrance to the sheep-holding area;

(K) A security system which prevents persons not authorized entry to the facility and animals outside the facility from having contact with sheep in quarantine. Such a system shall include a daily log to record the entry and exit of all persons entering the facility; and

(L) Feed and bedding for sheep in quarantine must originate in an area not under quarantine because of cattle fever ticks (see Part 72 of this chapter) and must be stored in the facility in a manner which adequately protects these supplies against infestation by vermin and against spoilage.

(3) *Operating procedures.* To retain designation as an approved quarantine facility, the following procedures shall be observed at the facility at all times:

(i) *Personnel.* Access to the facility shall be granted only to persons working at the facility or to persons specifically granted such access by the Veterinary Services veterinarian.

(A) All personnel granted access to the sheep-holding area shall:

(*1*) Wear clean protective clothing and footwear upon entering the sheep-holding area;

(*2*) Change protective clothing and footwear when they become soiled or contaminated;

(*3*) Shower when entering and leaving the sheep-holding area;

(*4*) Shower when leaving the necropsy area after conducting a necropsy; and

(*5*) Be prohibited from having contact with any sheep other than the lot of sheep to which the person is assigned and be prohibited from having contact with ruminants or swine outside the quarantine facility.

(B) The operator of the facility shall handle soiled and contaminated clothing worn within the quarantine facility in a manner approved by the Veterinary Services veterinarian as adequate to preclude transmission of any animal disease agent from the facility.

(ii) Any other person who enters the sheep-holding area, in addition to those persons granted access in paragraph (b)(3)(i) of this section, shall be prohibited from having contact with other lots of sheep within the facility and with ruminants and swine outside the facility for a period of time determined by the supervising veterinarian as necessary to prevent a risk of spreading communicable livestock diseases.

(iii) Any vehicle entering the quarantine facility building to deliver feed shall be cleaned and disinfected under the supervision of a Veterinary Services inspector with a disinfectant authorized in § 71.10 of the regulations immediately before entering and before leaving the facility.

(iv) *Handling of the sheep in quarantine.* The sheep in the quarantine facility shall be handled in compliance with the following requirements:

(A) Each lot of sheep to be quarantined shall be placed in the facility on an "all-in, all-out" basis. No sheep shall be taken out of the lot while it is in quarantine except for diagnostic purposes and no sheep shall be added to a lot while the lot is in quarantine.

(B) The portion of the quarantine facility from which a lot of sheep has been released shall be thoroughly cleaned and disinfected under supervison of a Veterinary Services inspector with a disinfectant authorized in § 71.10 of this chapter, before a new lot is placed in that portion of the facility.

(v) *Records.* It shall be the responsibility of the supervisory veterinarian to maintain a current daily log for each lot of sheep, recording such information as the individual identification of the sheep, source or origin of the sheep in the lot, total number of sheep in the lot when imported, number of dead or injured sheep when the lot arrived, the date the lot was placed into the facility, the general condition of the sheep each day, record of any medications administered to the sheep, number of deaths each day in the lot during the quarantine period, necropsy results, laboratory findings on sheep that died during the quarantine period, date of prescribed tests and results, Department import permit numbers of each lot, the date the lot was removed from the facility, and any other observations pertinent to the general health of the sheep in the lot. The operator of the facility shall hold the log for 12 months following the date of release of the sheep from quarantine and shall make it available to Veterinary Services personnel upon request.

(4) *Environmental requirements.* It shall be the responsibility of the operator of the facility to provide a certification executed by an appropriate government official indicating compliance with the applicable laws for environmental protection.

(5) *Additional requirements.* Additional requirements as to location, security, physical plant and facilities, sanitation, and other items may be imposed by the Administrator in each specific case in order to assure that the quarantine of the sheep in each facility will be adequate to enable determination of their health status, prevent spread of disease among sheep in quarantine, and prevent escape of animal disease agents from the facility.

(c) *Request for approval.* Requests for approval of a privately operated quarantine facility shall be made by writing to the Administrator, APHIS, USDA, 6505 Belcrest Road, Hyattsville, MD 20782. The request should include the full name and mailing address of the applicant and the location and street address of the facility for which approval is sought. Requests for approval and plans for proposed facilities shall be submitted no less than 90 days before the proposed date of entry of the first lot of sheep into the quarantine facility.

(d) *Withdrawal or denial of approval.* (1) Approval of any facility may be refused and approval of any approved quarantine facility may be withdrawn at any time by the Administrator, for any of the reasons provided in paragraph (d)(2) of this section. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action. If there is a conflict as to any material fact, the operator, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action, in accordance with rules of practice which shall be adopted for the proceeding. However, such withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written confirmation shall be given to the operator of the facility as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal or denial of approval when the requirements for approval are not complied with, approval will be automatically withdrawn by the Administrator when the operator of any approved facility notifies the Area Veterinarian in Charge for the State in which the facility is located, in writing, that the facility is no longer in operation.[3]

(2) Except as provided in paragraph (d)(4) of this section, the approval of a privately operated quarantine facility for sheep may be denied or withdrawn if:

(i) Any requirement of this section is not complied with; or

(ii) The operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime under any law regarding the importation or quarantine of any animal or bird; or

(iii) The operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime involving fraud, bribery, or extortion or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or

(iv) The approved quarantine facility has not been used to quarantine sheep for a period of one year.

(3) For the purposes of this section, a person shall be deemed to be responsibly connected with the business of the quarantine facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder or owner of 10 per cent or more of its voting stock, or an employee in a managerial or executive capacity.

(4) The denial or withdrawal referred to in paragraph (d)(2) of this section shall not be solely based upon the convictions of those persons responsibly connected with an approved privately operated quarantine facility for sheep if, after issuance of a complaint and upon receipt of notification from the Administrator of the denial or withdrawal, the operator of the approved quarantine facility enters into a consent agreement with the Administrator, in which it is agreed that the responsibly connected person identified in the notification shall not ever be associated with the approved quarantine facility and the operator complies with the provisions of the agreement. Violation of the consent agreement shall constitute independent grounds for withdrawal of approval of an approved quarantine facility.

(Approved by the Office of Management and Budget under control numbers 0579-0040)

[3] The name and address of the Veterinarian in Charge of any State are available from the Administrator, APHIS, USDA, 6505 Belcrest Road, Hyattsville, MD 20782.

Done in Washington, DC, this 7th day of June, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-13184 Filed 6-9-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-04-AD; Amdt. 39-5956]

Airworthiness Directives; British Aerospace Model BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive, applicable to British Aerospace Model BAC 1-11 series airplanes, which currently requires inspection and repair or replacement of parts or material pertaining to the airframe intake plenum to the auxiliary power unit (APU); placement of a placard on the control panel; and changes in operational procedures in the airplane flight manual (AFM). This amendment requires a revision of the AFM to update certain procedures, and provides an alternate service bulletin, alternate part numbers, and alternate material for the accomplishment of the inspections required by the existing AD.

DATES: Effective July 18, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend AD 68-01-01, Amendment 39-998 (35 FR 104; May 28, 1970), applicable to British

Aerospace Model BAC 1-11 series airplanes, by revising certain AFM procedures, and providing an alternate service bulletin, alternate part numbers, and alternate material for the accomplishment of certain required inspections, was published in the **Federal Register** on February 26, 1988 (53 FR 5801).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the proposed rule.

The other commenter noted that a statement in the preamble to the Notice, which indicated that the proposed AD was prompted by "recent system improvements," was inaccurate. The commenter stated the revision is required solely to re-introduce certain limitations into Section 2 of the airplane flight manual (AFM) which had been inadvertently removed some time ago. The FAA does not fully concur with the commenter. The intent of this AD, as specified in the preamble to the Notice, is not only to update the AFM procedures that are obsolete and inappropriate, but also to provide operators with the option of using the latest standard of non-return valves and other materials available and the most recently-introduced service information to accomplish the requirements of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,600.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 68-01-01, Amendment 39-998 (35 FR 104; May 28, 1970), as follows:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes.

Compliance required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent heat damage or fire in the airframe plenum of the auxiliary power unit (APU) installation, accomplish the following:

A. For use of the APU on the ground, accomplish the following:

1. Visually check the fiberglass surround of the APU intake of the fuselage immediately behind the intake grill for evidence of heat discoloration. If evidence of heat is present, remove the non-return valve located in the APU air delivery duct, Part No. 525180, and replace with a serviceable Part No. 525180 or modified Part No. 1398B000, 1398B000/1398B999, or 3031B000.

2. Install a placard adjacent to the APU control panel in clear view of the pilot and amend the airplane flight manual limitations Section 2, to read as follows: "Close APU air delivery valve when starting an engine from an external supply or by cross-feeding air from an operating engine. Close APU air delivery valve and shut down APU for takeoff and flight operations." When all actions required by paragraph B., below, are accomplished, the placard may be removed or the foregoing amendment to the airplane flight manual should be deleted, as appropriate.

3. Remove all APU plenum chamber sound proofing.

B. For operational use of the APU in flight, accomplish the following:

1. Remove non-return valve, Part No. 525180, located in the APU air delivery duct and replace with non-return valve, Part No. 1398B000, 1398B000/1398B999, or 3031B000, in accordance with British Aerospace BAC 1-11 Service Bulletins 36-PM3254 or 36-PM4812.

2. Perform the following modifications in accordance with British Aerospace BAC 1-11 Service Bulletin 53-PM3148:

a. Install additional fire-proof, stainless steel skin over existing light alloy outer skin on top of the fuselage, between Stations 936 and 958 to isolate the APU plenum chamber from the fin structure.

b. Replace the light alloy wall separating the APU plenum chamber from the hydraulic compensator unit compartment by installing a stainless steel wall enlarging the hydraulic compensator box and replacing light alloy structural parts with stainless steel.

c. Install revised spring loaded door in the bulkhead at Station 936 and modify the hydraulic compensator drain box and drain outlet.

3. Install sealing plates around the control guard, located above the rudder power control units, and over the hole in the fin rear spar, to provide restriction to the airflow into the fin, in accordance with British Aerospace BAC 1-11 Service Bulletin 55-PM3177.

4. Install an additional bi-metallic temperature sensor in parallel with the existing mercury sensor in circuitry for controlling the electrically actuated primary temperature valve located in the low pressure bleed flow duct to the heat exchanger, in accordance with British Aerospace BAC 1-11 Service Bulletin 21-PM 2780A, or install Graviner bi-metallic sensor in accordance with BAC 1-11 Modification 21-PM-2545 Part A.

5. Perform a magnetic check to identify "felt metal" jet pipe installed on the APU manufactured from type "430" stainless steel post PM 209 in accordance with British Aerospace BAC 1-11 Service Bulletin 49-A-PM3313. Thoroughly inspect the jet pipes thus identified for cracks adjacent to the weld. Replace cracked pipes with serviceable pipes manufactured from 430 or 347 material. Jet pipes identified as manufactured from "430" stainless steel and found by inspection to be in a serviceable condition, may continue in operation provided that the inspection is performed thereafter at intervals not to exceed 160 hours time in service. Type "430" jet pipes must be removed from service upon accumulating 3,000 hours time in service.

6. Add a new paragraph at the end of Section 2, Page 15, of the BAC 1-11 airplane flight manual entitled "APU Supply and Air Conditioning," to read as follows:

"The following limitations on the use of the APU air supply and integrated air system shall be observed to limit the time of exposure of the common duct to the simultaneous delivery of air from the engines and the APU.

a. Whenever an engine is being started by air from an external supply or by cross-feeding air from the other engine, the APU air delivery valve shall be closed.

b. When one or both engines are running and the APU is supplying air for both air conditioning systems, the master valve switch for each system must be set to APU.

If the APU is only supplying air for one system, the master valve switch for that system must be set to APU and, for the system not in use, the master valve switch must be set to CLOSE and isolation valve switch must be set to CLOSE.

c. After take-off and when changing the source of supply from the APU to the engines, the APU air delivery valve switch must be set to CLOSE immediately on completion of the change-over drill. Refer to Section 4."

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment revises AD 68-01-01, Amendment 39-998.

This Amendment becomes effective July 18, 1988.

Issued in Seattle, Washington, on June 3, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-13020 Filed 6-9-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-18]

Alteration of VOR Federal Airways; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to final rule.

SUMMARY: This action corrects the description of Federal Airway V-66 by changing the Abilene radial from 253°T to 252°T and changes the descriptions of V-76 and V-94 by describing airway segments as being "direct" routes instead of describing these segments via their en route radial components. This action is necessary because the Hyman, TX, very high frequency omni-directional radio range (VOR) has been decommissioned and should not be included in the airway description.

EFFECTIVE DATE: 0901 UTC, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-10146 was published on May 9, 1988, and amended the descriptions of V-66, V-76 and V-94 that are located in the vicinity of Hyman, TX (53 FR 16387). Inadvertently, an en route radial between Midland, TX, and Abilene, TX, was described as the intersection of the Midland 081°T and the Abilene, TX, 253°T radials. Abilene should be the 252°T radial. Also, due to the decommissioning of the Hyman, TX, VOR, the descriptions of airway segments in V-76 and V-94 are being amended to delete all reference to the Hyman, TX, VOR. These actions are minor in nature and do not significantly affect the configuration of controlled airspace or the routing of the airways involved.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88-10146, as published in the **Federal Register** on May 9, 1988, (53 FR 16387) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-66 [Amended]

By removing the words "Midland, TX; Hyman, TX, INT Hyman 074° and Abilene, TX, 251° radials;" and substituting the words "Midland, TX; INT Midland 081° and Abilene, TX, 252° radials;"

V-76 [Amended]

By removing the words "Big Spring; Hyman, TX; San Angelo, TX;" and substituting the words "Big Spring; San Angelo;"

V-94 [Amended]

By removing the words "Midland, TX; Hyman, TX; Tuscola, TX;" and substituting the words "Midland, TX; Tuscola;"

Issued in Washington, DC, on June 2, 1988.

Temple H. Johnson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-13018 Filed 6-9-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25622; Amdt. No. 1375]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on May 27, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 25, 1988

Omaha, NE—Millard, NDB Rwy 12, Amdt. 9
Omaha, NE—Millard, RNAV Rwy 12, Amdt. 5
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN Rwy 13, Amdt. 21
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN Rwy 18, Amdt. 18
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN Rwy 31, Amdt. 22
Madison, WI—Dane County Regional-Truax Field, RADAR–1, Amdt. 14

. . . Effective July 28, 1988

Hartford CT—Hartford-Brainard, LDA RWY 2, Orig.
Hartford CT—Hartford-Brainard, NDB RWY 2, Amdt. 1
Dalton, GA—Dalton Muni, LOC RWY 14, Amdt. 3
Dalton, GA—Dalton Muni, NDB RWY 14, Orig.
Dalton, GA—Dalton Muni, NDB RWY 14, Amdt. 3, *Cancelled*
Lawrenceville, GA—Gwinnett County-Briscoe Field, VOR/DME RWY 7, Orig.
Champaign-Urbana, IL—University of Illinois-Willard, VOR RWY 4L, Amdt. 10
Champaign-Urbana, IL—University of Illinois-Willard, VOR/DME RWY 22R Amdt. 7
Champaign-Urbana, IL—University of Illinois-Willard, LOC BC RWY 14R, Amdt. 7
Champaign-Urbana, IL—University of Illinois-Willard, NDB RWY 32L, Amdt. 10
Champaign-Urbana, IL—University of Illinois-Willard, ILS RWY 32L, Amdt. 11
Champaign-Urbana, IL—University of Illinois-Willard, RADAR–1, Amdt. 6
Park Rapids, MN—Park Rapids Muni, VOR/DME RWY 13, Amdt. 6
Park Rapids, MN—Park Rapids Muni, NDB RWY 31, Amdt. 3
Park Rapids, MN—Park Rapids Muni, MLS RWY 31 (Interim), Amdt. 3
Warroad, MN—Warroad-Swede Carlson Field, NDB RWY 31, Amdt. 5
Le Roy, NY—Le Roy, VOR–A, Orig.
Syracuse, NY—Syracuse Hancock Intl, ILS RWY 28, Amdt. 30
Wilmington, NC—New Hanover County, ILS RWY 34, Amdt. 20
Kenosha, WI—Kenosha Muni, VOR RWY 14, Amdt. 7
Kenosha, WI—Kenosha Muni, VOR RWY 24R, Orig.
Mineral Point, WI—Iowa County, NDB Rwy 22, Amdt. 3

. Effective June 30, 1988

Blythe, CA—Blythe, VOR/DME RWY 26, Amdt. 5
Blythe, CA—Blythe, VOR–A, Amdt. 6
Rifle, CO—Garfield County, LOC/DME–A, Amdt. 1
La Grange, GA—Callaway, VOR RWY 13, Amdt. 14
La Grange, GA—Callaway, LOC RWY 31, Orig., *Cancelled*
La Grange, GA—Callaway, ILS RWY 31, Orig.
Hailey, ID—Friedman Memorial, NDB/DME–A, Orig.
Sparta, IL—Sparta Community-Hunter Field, NDB RWY 18, Orig.
Sparta, IL—Sparta Community-Hunter Field, NDB RWY 18, Amdt. 4, *Cancelled*
Lewistown, MT—Lewistown Muni, VOR RWY 7, Amdt. 12
Monroe, NC—Monroe, NDB RWY 23, Amdt. 4, *Cancelled*
Raleigh/Durham, NC—Raleigh/Durham, ILS RWY 5L, Orig.
Astoria, OR—Port of Astoria, Copter VOR/DME 063, Orig.
Pittsburgh, PA—Greater Pittsburgh Intl, VOR/DME or TACAN RWY 14, Orig.
Big Spring, TX—Big Spring McMahon-Wrinkle, VOR/DME RWY 17, Amdt. 5
Big Spring, TX—Big Spring McMahon-Wrinkle, VOR/DME RWY 35, Amdt. 5

. Effective May 26, 1988

Roanoke, VA—Roanoke Regional/Woodrum Field, NDB RWY 33, Amdt. 8
Roanoke, VA—Roanoke Regional/Woodrum Field, ILS RWY 33, Amdt. 8

Effective May 12, 1988

Detroit, MI—Willow Run, ILS RWY 23L, Amdt. 4

January 28, 1988

Salt Lake City, UT—Salt Lake City Intl, ILS Rwy 34L, Amdt. 38

[FR Doc. 88–13017 Filed 6–9–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), DOJ.

ACTION: Final rule.

SUMMARY: This Final Rule amends DEA's regulations concerning registration of researchers handling controlled substances in Schedule II to both modify and decrease the information which such researchers must supply on an application for registration. This change will lessen the burden of applicants for research registration for Schedule II controlled substances who do not intend to manufacture or import these controlled substances by eliminating the requirement that they list the drug codes for these substances on their applications for registration.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred A. Russell, Chief, Regulatory Support Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone (202) 633–1570.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the Federal Register on February 9, 1988 (53 FR 3757) to amend portions of 21 CFR Part 1301. This proposed rulemaking provided an opportunity for interested parties to submit comments or objections in writing on or before March 10, 1988. No comments or objections were received.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that this rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to Sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) and delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that 21 CFR Part 1301 be amended as follows:

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.32 is amended by revising paragraph (d), redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and adding a new paragraph (e), as follows:

§ 1301.32 Application forms; contents; signature.

* * * * *

(d) Each application for registration to handle any basic class of controlled substance listed in Schedule I (except to conduct chemical analysis with such classes) and each application for registration to manufacture a basic class of controlled substance listed in Schedule II shall include the Administration Controlled Substances Code Number, as set forth in Part 1308 of this chapter, for each basic class to be covered by such registration.

(e) Each application for registration to conduct research with any basic class of controlled substance listed in Schedule II shall include the Administration Controlled Substances Code Number, as set forth in Part 1308 of this chapter, for each such basic class to be manufactured or imported as a coincident activity of that registration. A statement listing the quantity of each such basic class or controlled substance to be imported or manufactured during the registration period for which application is being made shall be included with each such application. For purposes of this paragraph only, manufacturing is defined as the production of a controlled substance by synthesis, extraction or by agricultural/horticultural means.

* * * * *

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: April 29, 1988.

[FR Doc. 88–13120 Filed 6–9–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 3 and 160

[CGD 88-037]

Changes to Honolulu and Guam Marine Inspection Zones and Captain of the Port Zones and Deletion of Delegation of Authority

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule reassigns various Coast Guard Marine Inspection and Captain of the Port Zones within the Fourteenth Coast Guard District to reflect organizational changes in the Coast Guard. The Coast Guard is establishing a Marine Safety Office in Guam which will assume responsibility for the discharge of Coast Guard marine safety functions for Guam and the Commonwealth of the Northern Mariana Islands from the Marine Safety Office in Honolulu. Additionally, this rule removes the regulation which authorized the Commander, Marianas Section to exercise the authority of the Captain of the Port within the waters surrounding Guam and the Commonwealth of the Northern Mariana Islands under the direction of the Captain of the Port Honolulu. Since Marine Safety Office Guam is being established as a separate unit, the delegated authority from the Captain of the Port Honolulu is no longer necessary. These organizational changes will not affect any Coast Guard services to the public.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Clark, Program Analyst, U.S. Coast Guard, Office of Marine Safety and Environmental Protection, Planning Staff, 2100 Second Street SW., Washington, DC 20593-0001. Telephone (202) 267-0784. Normal working hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. These amendments are matters relating to agency organization and are exempt from the notice and comment requirements of 5 U.S.C. 553(b). Since this rule reflects current organizational changes being placed in effect and has no substantive effect, good cause exists to make it effective in less than 30 days after publication under 5 U.S.C. 553(d). The rulemaking merely changes Marine Inspection and Captain of the Port Zones to conform with changes in the Coast Guard's internal organization and removes a delegation of Captain of the Port authority which was extended from the Captain of the Port Honolulu to the Commander, Marianas Section. There will be no adverse effect on the public since Fourteenth Coast Guard District units will continue to perform all functions affecting the public that were previously performed.

Drafting Information

The principal persons involved in drafting this rulemaking are Commander M.W. Mastenbrook, Project Manager, Fourteenth Coast Guard District Marine Safety Division; and Lieutenant Commander R.W. Bogue, Project Counsel, Fourteenth Coast Guard District Legal Office.

Discussion

Effective June 1, 1988, the Coast Guard will establish Marine Safety Office Guam. A Marine Safety Office is a consolidation of the Marine Inspection Office and the Captain of the Port Office. In 1982 the Coast Guard closed the Marine Safety Office in Guam due to budgetary constraints. The responsibility for discharging the Marine Inspection and Captain of the Port functions for Guam was assigned to Marine Safety Office Honolulu. In consideration of time and distance factors, a special delegation of Captain of the Port authority was extended from the Captain of the Port Honolulu to Commander, Marianas Section so that the latter could exercise such authority under the direction of the former, especially in emergency situations. Now, with the significant increase of commercial vessel traffic and other marine activities in Guam and the Commonwealth of the Northern Mariana Islands, the Coast Guard considers it to be a more effective use of its resources to have two Marine Safety Offices to serve the Central and Western Pacific instead of one. While enabling more efficient internal management and enhancing performance of missions, this reorganization will not affect any Coast Guard services to the public.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided for in section 1(a)(3) of the Order. It is considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be minimal and further evaluation is unnecessary. This final rule places no requirements on any sector of the public. It will not affect Coast Guard services delivered to the public. The rule reflects a change in internal Coast Guard organization, streamlining the logistics and support functions. In accomplishing this, some functions, and personnel, will be transferred from one location to another. Since the impact of the final rule is minimal, the Coast Guard certifies that it will not have a significant adverse economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 160

Administrative practice and procedures, harbors, hazardous materials transportation, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

In consideration of the foregoing, Parts 3 and 160 of Title 33 of the Code of Federal Regulations is amended as set forth below.

PART 3—[AMENDED]

1. The authoriry citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. In § 3.70-10, paragraphs (b) and (c) are revised to read as follows:

§ 3.70-10 Honolulu Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The Honolulu Marine Inspection Zone and the Honolulu Captain of the Port Zone boundaries are the boundaries of the Fourteenth Coast Guard District, except for the Territory of Guam and the Commonwealth of the Northern Mariana Islands.

(c) Required notifications to the Officer in Charge, Marine Inspection and/or the Captain of the Port, Honolulu may be made in American Samoa to: United States Coast Guard Liaison Office, American Samoa, P.O. Box 249, Pago Pago, American Samoa 96799.

3. Section 3.70-15 is added to read as follows:

§ 3.70-15 Guam Marine Inspection Zone and Captain of the Port Zone.

(a) The Guam Marine Inspection Office and Captain of the Port Office are in Agana, Guam.

(b) The Guam Marine Inspection Zone and the Guam Captain of the Port Zone are comprised of the area of the Territory of Guam and the Commonwealth of the Northern Mariana Islands.

PART 160—[AMENDED]

4. The authority citation for Part 160 is revised to read as follows:

Authority: 33 U.S.C. 1221, 49 CFR 1.46.

§ 160.5 [Amended].

5. In § 160.5, paragraph (d) is removed.

Dated: June 3, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-13026 Filed 6-9-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 88-03]

Special Local Regulations; Base to Base Swim; San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Base to Base Swim. This event will be held on 11 June 1988 at Pier 2 Naval Station San Diego, California to Boat Landing, Naval Amphibious Base Coronado, California. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 8:00 a.m. on 11 June 1988 and terminate at 10:00 a.m. on 11 June 1988.

FOR FURTHER INFORMATION CONTACT: LT C.A. Stock, U.S. Coast Guard Group San Diego, 2710 North Harbor Drive, San Diego, California 92101 Tel: (619) 557-5815.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until 20 April 1988, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 88-03) and the specific section of the rule to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LT K.S. Gregory, project officer, Eleventh Coast Guard District Boating Affairs Office, and LT G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The Naval Station San Diego's "Base to Base Swim" will be conducted on 11 June 1988 at Pier 2 Naval Station San Diego, California to Boat Landing, Naval Amphibious Base Coronado, California. Approximately 200 swimmers are expected to participate in this event and could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-11-88-03 is added to read as follows:

§ 100.35-11-88-03 Base to Base Swim, San Diego, California.

(a) *Regulated Area:* The following area will be closed intermittently to all vessel traffic: that portion of the San Diego Bay beginning at Pier 2 Naval Station San Diego, California to Boat Landing Naval Amphibious Base Coronado, California. The area will be opened for ten minutes on the hour, to allow the transit of spectators.

(b) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. "Official patrol vessels" consist of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned and/or approved, by Commander, U.S. Coast Guard Group San Diego for each event.

(1) Spectators shall not anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel a spectator shall come to an immediate stop and comply with all directions given. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the Commander, U.S. Coast Guard Group San Diego. He may terminate the event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(c) *Effective Dates:* These regulations are effective from 8:00 am to 10:00 am on 11 June 1988.

Dated: June 6, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 88-13025 Filed 6-9-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Hampton Roads, VA; Regulation 88-01]

Security Zone Regulations; Lynnhaven Roads, Lower Chesapeake Bay and Atlantic Ocean Off Dam Neck, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing two security zones. One is located in Lynnhaven Roads of the Lower Chesapeake Bay, Virginia Beach, Virginia. The other in the waters of the Atlantic Ocean adjacent to State Military Reservation, Camp Pendleton and Fleet Combat Training Center Atlantic, Dam Neck, Virginia Beach, Virginia. The security zones are needed to secure the obligation of the United

States to protect representatives of foreign governments who will be in the Norfolk/Virginia Beach area during the period.

EFFECTIVE DATES: These regulations become effective at 8:00 a.m., EDST, on June 12, 1988. They terminate at 5:00 p.m., EDST, on June 18, 1988, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.M. Farley at USCG Marine Safety Office Hampton Roads, 200 Granby Mall, Norfolk, Virginia 23510-1888, (804) 441-3306.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making (NPRM) was not published for these regulations and they are being made effective in less than 30 days from the date of this publication. Publishing a NPRM and advance notice of these security zones would be contrary to the public interest since early disclosure of the dates of the security zones could jeopardize the safety of the foreign representatives who will be in the Norfolk/Virginia Beach area during the period by providing subversive elements and foreign terrorists advance notice of their presence. In addition, 5 U.S.C. 553 does not apply to these regulations since they involve a military and foreign affairs function of the United States.

Drafting Information

The drafters of this regulation are Lieutenant J.M. Farley, project officer for the Captain of the Port Hampton Roads, Virginia and Commander R.J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Coast Guard is establishing two security zones. One is located in Lynnhaven Roads of the Lower Chesapeake Bay, Virginia Beach, Virginia. The other is located in the waters of the Atlantic Ocean adjacent to State Military Reservation, Camp Pendleton and Fleet Combat Training Center Atlantic, Dam Neck, Virginia Beach, Virginia. The security zones are needed to secure the obligation of the United States to protect representatives of foreign governments who will be in the Norfolk/Virginia Beach area during the period.

The security zones will be marked by special purpose buoys with flashing yellow lights. The Lynnhaven Roads Security Zone buoys will be set at positions 36°56'09" N. latitude, 076°05'04" W. longitude; 36°55'53" N. latitude, 076°04'04" W. longitude; and 36°55'37" N. latitude, 076°03'04" W. longitude. The Dam Neck Security Zone buoys will be set in positions 36°48'58" N. latitude, 075°57'32" W. longitude; 36°49'43" N. latitude, 075°55'33" W. longitude; 36°47'44" N. latitude, 075°55'03" W. longitude; 36°46'06" N. latitude, 075°54'32" W. longitude; and 36°45'41" N. latitude, 075°56'34" W. longitude.

Persons and vessels within the security zones are required to obey any direction or order of the Captain of the Port or a representative of the Captain of the Port, who may board and search any vessel, ask any individual within the security zone to present identification, and remove any person, vessel, article, or thing from the security zones. Within the Lynnhaven Roads Security Zone, swimmers, surf fishermen, rowboats, small open rafts, surfboards, windsurfers, small open sailboats (e.g., sailboards, "Hobie" cats, daysailers), and other non-self-propelled vessels without accessible closed compartments will be permitted to enter the security zone without obtaining permission from or reporting their presence to the Captain of the Port or a representative of the Captain of the Port. Divers will not be permitted within the security zone.

Self-propelled vessels and any vessels with accessible closed compartments (including sailing vessels, rafts, and rowboats that have accessible closed compartments) will be required to check in with a representative of the Captain of the Port before entering the security zone. These vessels will be required to come along side one of the Coast Guard patrol boats or vessels of a Federal, state, local, or private agency assisting the Captain of the Port enforce the security zone and identify the individuals aboard. Patrol boats will be stationed along the boundary of the security zone.

Within the Dam Neck Security Zone, swimmers, surf fishermen, rowboats, small open rafts, surfboards, windsurfers, small open sailboats (e.g., sailboards, "Hobie" cats, daysailers), and other non-self-propelled vessels without accessible closed compartments will be permitted to enter the security zone from the beach adjacent to the security zone without obtaining permission from or reporting their presence to the Captain of the Port or a representative of the Captain of the Port. Self-propelled vessels and any vessels with accessible closed compartments (including sailing vessels, rowboats, and rafts that have accessible closed compartments) will not be permitted to enter the security zone without permission from the Captain of the Port or a representative of the Captain of the Port. Divers will not be permitted within the security zone.

Coast Guard patrol vessels will be on scene at all times while the zones are in effect to notify boaters of zone restrictions and enforce the security zones. Coast Guard patrol vessels will be monitoring channels 13 and 16 VHF-FM. Members of other Federal, state, local, and private agencies will assist the Captain of the Port in enforcing these regulations.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. A new § 165.T0531 is added to read as follows:

§ 165.T0531 Security Zones: Virginia Beach, Virginia.

(a) *Locations.* (1) Lynnhaven Roads Security Zone: The waters of Chesapeake Bay enclosed by a line drawn from Lynnhaven Inlet East Obstruction Light, at position 36°54'24" N. latitude, 076°05'24" W. longitude; thence along the eastern channel boundary of Lynnhaven Inlet to 36°56'09" N. latitude, 076°05'04" W. longitude; thence to the shore at 36°55'32" N. latitude, 076°02'45" W. longitude.

(2) Dam Neck Security Zone: The waters of the Atlantic Ocean within a line drawn from the shore at 36°48'55" N. latitude, 075°57'58" W. longitude; thence to 36°49'23" N. latitude, 075°55'33" W. longitude; thence to 36°46'06" N. latitude, 75°54'32" W. longitude; thence to the shore at 36°45'38" N. latitude, 075°56'57" W. longitude.

(b) *Definitions.*

"Representative of the Captain of the Port" means a Coast Guard commissioned or petty officer who has been designated by the Captain of the Port.

(c) *General Regulations.* (1) The general regulations in § 165.33 of this part do not apply to these security zones.

(2) Each person or vessel in the security zones shall immediately obey any direction or order of the Captain of the Port or a representative of the Captain of the Port.

(3) The Captain of the Port, a representative of the Captain of the Port, or a member of a Federal, state, or local law enforcement agency who is assisting the Captain of the Port enforce the security zone may board and search any vessel within the security zone and ask any individual within the security zone to present identification.

(4) The Captain of the Port or a representative of the Captain of the Port may remove any person, vessel, article, or thing from the security zones.

(d) *Regulations for Lynnhaven Roads Security Zone.* (1) Except as provided in this paragraph, no person or vessel may enter the security zones without the permission of the Captain of the Port or a representative of the Captain of the Port.

(2) Individuals may enter the security zone to swim on the surface of the water without obtaining the permission of the Captain of the Port, but may not use any type of diving equipment, including snorkles or artificial breathing devices.

(3) Individuals may enter the security zone to surf fish (surfcasting) without obtaining the permission of the Captain of the Port.

(4) Rowboats, small open rafts, surfboards, windsurfers, small open sailboats, and other vessels that do not have accessible closed compartments may operate within the security zone without the permission of the Captain of the Port.

(5) Self-propelled vessels and vessels with accessible closed compartments may operate in the security zone if the vessel reports its presence to the Captain of the Port or a representative of the Captain of the Port before entering the security zone. The vessel shall come alongside a Coast Guard patrol boat or the vessel of a Federal, state, local, or private agency that is assisting the Captain of the Port enforce the security zone and identify the individuals aboard the vessel. Patrol boats are stationed along the boundary of the security zone.

(e) *Regulations for Dam Neck Security Zone.* (1) Except as provided in this paragraph, no person or vessel may enter the security zones without the permission of the Captain of the Port or a representative of the Captain of the Port.

(2) Individuals may enter the security zone to swim on the surface of the water without obtaining the permission of the Captain of the Port, but may not use any type of diving equipment, including snorkles or artificial breathing devices.

(3) Individuals may enter the security zone to surf fish (surfcasting) without obtaining the permission of the Captain of the Port.

(4) Rowboats, small open rafts, surfboards, windsurfers, small open sailboats, and other vessels that do not have accessible closed compartments may operate within the security zone without the permission of the Captain of the Port if they enter the security zone from the beach immediately adjacent to the security zone.

(f) *Effective Date.* These regulations become effective at 8:00 a.m., EDST, on June 12, 1988. They terminate at 5:00 p.m., EDST, on June 18, 1988, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia.

Dated: June 6, 1988.

G.N. Naccara,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Hampton Roads, Virginia.

[FR Doc. 88-13059 Filed 6-9-88; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 87-4]

Registration Decision; Registration and Deposit of Computer Screen Displays

AGENCY: Copyright Office, Library of Congress.

ACTION: Final registration decision, policy.

SUMMARY: This notice of a registration decision is issued to inform the public that the Copyright Office of the Library of Congress has determined that all copyrightable expression owned by the same claimant and embodied in a computer program, or first published as a unit with a computer program, including computer screen displays, is considered a single work and should be registered on a single application form. The notice also confirms the applicability to computer screen displays of 37 CFR 202.3(b)(3) concerning registration of all copyrightable expression in a unit of publication and 37 CFR 202.3(b)(6) concerning one registration per work. In order to clarify copyright claims in computer screen displays, applicants, will be accorded an option of depositing visual reproductions of computer screens along with identifying materials for the computer code. Where a work contains different kinds of authorship, the registration class will be determined on the basis of which authorship predominates. 37 CFR 202.3(b)(2).

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

EFFECTIVE DATE: June 10, 1988.

SUPPLEMENTARY INFORMATION:

Registration of Computer Screen Displays; Policy Decision

1. Background

Original computer programs are works of authorship protected by copyright, whether they are in high level computer language (source code) or machine language (object code), *William Electronics, Inc. v. Artic International Inc.*, 685 F.2d 870 (3d Cir. 1982); and since 1964, the Copyright Office has registered computer programs as literary works. Section 101 of the Copyright Act of 1976, title 17 of the United States Code, defines a computer program as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." Copyright registration is made for original computer programs in the literary work classification upon submission of an appropriate application, fee, and deposit identifying the work. In general, the first 25 pages or the equivalent and the last 25 pages or the equivalent of computer source code should be deposited in seeking registration. 37 CFR 202.20(c)(2)(vii).

The Copyright Act also provides that "[i]n no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. 102(b).

The courts have held in several videogame cases that pictorial and graphic screen displays can be copyrighted as audivisual works. *M. Kramer Manufacturing Co., Inc. v. Andrews*, 783 F.2d 421 (4th Cir. 1986); *Williams Electronics, Inc. v. Artic International, Inc.*, 685 F.2d 870 (3d Cir. 1982); *Stern Electronics, Inc. v. Kaufman*, 669 F.2d 852 (2d Cir. 1982).

Consistent with the videogame precedents, the Copyright Office in the past has registered pictorial screen displays that meet the ordinary standard of original, creative authorship. Single registrations have been made for the videogame displays and the computer

program code, as well as separate registrations for the display and the code. Under present practices, however, the Office does not register separately textual screen displays, reasoning that there is no authorship in ideas, or the format, layout or arrangement of text on the screen, and that any *literary* authorship in the screen display would presumably be covered by the underlying computer program—itself a literary work. Moreover, the regulations specify one registration per work. 37 CFR 202.3(b)(6).

Most claimants, consistent with Copyright Office regulations, have made only one registration for the computer program and have assumed that the registration covers any copyrightable authorship in the screen displays, without any need for a separate registration. The Copyright Office agrees with this interpretation of the regulations and registration practices.

Judicial decisions do not yet lend clear guidance on the copyrightability of screen displays (other than videogame displays), apart from the computer program. One court has held that protection of computer programs extends only to source and object code and not to input formats. *Synercom Technology, Inc. v. University Computing Company*, 462 F. Supp. 1003 (N.D. Tex. 1978). Others have protected the structure, sequence and organization of certain business-related programs, including the text and artwork of their audiovisual displays. *Broderbund Software, Inc. v. Unison World, Inc.*, 648 F. Supp. 1127 (N.D. Cal. 1985); *Whelan Associates, Inc. v. Jaslow Dental Laboratory, Inc.*, 797 F.2d 1222 (3d Cir. 1986). Most recently, in *Digital Communications Associates, Inc. v. Softklone Distributing Corp.*, 659 F. Supp. 449 (N.D. Ga. 1987), the court held the copyright in a computer program does not extend to the screen displays, but held valid a separate claim in a screen based on "compilation" of the menu terms.

The Copyright Office is currently holding a large number of claims to register textual and pictorial screen displays separate from the underlying programs that generate them. The *Softklone* decision, if generally followed, would seem to require a separate claim to copyright in screen displays in order to enjoy copyright protection. This decision seemed to cast doubt on the scope of copyright in computer programs where no separate registration was made for the screen displays. In order to consider whether a modification of existing registration practices is necessary, the Copyright Office held a public hearing on September 9 and 10, 1987, and solicited public comments. 52 FR 28311 (1987).

2. Summary of Comments

Twelve witnesses testified in the hearings held September 9th and 10th. In addition, 35 written comments were received.

Of the witnesses giving oral testimony, three took the position that computer screens should be registered separately from the underlying computer program. Two witnesses taking this position argued that only through separate registration could users become aware of the extent of copyright claims in computer screens. The third witness believed that computer screens should be registered separately because they represent fundamentally different authorship from the underlying computer program code.

Several witnesses favored giving the applicant an option either to register the computer screens and underlying program on a single application, or alternatively, to make two registrations—one for the program and one for the screen display. Proponents of this position agreed with those favoring separate registration that the authorship in the screen displays differs from the authorship in the computer program code. Nevertheless, witnesses for this position believed applicants should be able to protect their screens on the basis of a single registration of the underlying program if that were the course they chose to follow. They stressed that, although separate registration should be allowed at the claimant's option, it was essential that the Office's registration practices make clear that those claimants who *elect* a single registration nevertheless have full copyright protection for any original computer screens.

Several witnesses took the position that only a single registration, should be permitted for a published computer program and any authorship contained in the screens. The rationale for this position was that a published computer program is "a unitary work with a multiplicity of elements which are molded into a cohesive, integrated whole."

A fourth position endorsed by one witness would allow only a single registration to be made in most instances. However, as an exception to the general rule, a separate registration of elaborate, fanciful computer screen displays would be permitted where the audiovisual authorship is predominant over the computer code authorship and clearly identifiable as a separate work.

The comments received after the hearing (including some from those who had testified) largely tracked the themes expressed in the hearing. A few commentators urged greater restrictions on the application of the copyright law to protect computer programs. One commentator argued that the copyright law should not be applied to computer programs at all, and that protection should be limited to what is available under the patent law. Another commentator urged limiting protection to authorship revealed in the material deposited in the Copyright Office.

In summary, the public comments, both oral and written, fall into three main categories: mandatory separate registration of screens and program code; mandatory single registration of screens and program code; and single or separate registration at the option of the claimant.

3. Overview of Policies Adopted by the Copyright Office

The Copyright Office carefully considered all the testimony and written comments submitted with respect to computer screens. The Office has decided generally to require that all copyrightable expression embodied in a computer program, including computer screen displays, and owned by the same claimant, be registered on a single application form. This policy applies to unpublished computer programs as well as to published programs. The Office finds that in the interest of a clear, consistent public record, our registration practices should discourage piecemeal registration of parts of works. Ordinarily, where computer program authorship is part of the work, literary authorship will predominate, and one registration should be made on application Form TX. Where, however, audiovisual authorship predominates, the registration should be made on Form PA.

Under existing Copyright Office regulations, only one registration can be made for the same version of a particular work owned by a given claimant. 37 CFR 202.3(b)(6). In such cases, all copyrightable elements embodied in the work are covered by the single registration. Moreover, the Office generally prefers a single registration for a work that contains discrete authorship components, but is published together as a unit. 37 CFR 202.3(b)(3). Finally, where a work contains authorship elements that fall into two or more classes, the application should be filed in the authorship class that predominates. 37 CFR 202.3(b)(2). This principal applies even if the work has two or more authors who have created either a unitary, a collective, or a joint work.

In considering the issue of computer screen displays, the Copyright Office concludes there is no sound basis for departing from the principles of these regulations in the case of computer programs and related screens.

In order to reflect better for the public record the copyright claims in computer screens, applicants will in the future be permitted to deposit visual reproductions of the computer screen displays along with reproductions of any accompanying sounds and the identifying material for the computer program code. The Office will examine the visual or audiovisual deposit and make a determination whether the deposit reveals copyrightable authorship.

4. One Registration Per Work

The long-standing principle of one registration per work has significant advantages for copyright claimants, the public, and the Copyright Office and provides a uniformity not available if multiple registrations were optional.

Copyright claimants are able to register all copyrightable elements contained in their work with a single application and fee.

The public is benefited through the maintenance of a clear, accurate, easily understandable public record. Permitting multiple registrations of parts of works would increase confusion among those attempting to use the records of the Copyright Office. Subdividing claims might also result in multiple infringement actions and multiple claims for statutory damages, based on separate registration.

The Copyright Office benefits by having a simplified administrative process.

Proponents of separate registration, either on a mandatory or optional basis, contend that the nature of authorship embodied in the computer program code is substantially different from the authorship typically embodied in computer screens. All witnesses agreed that the same screen displays can be generated by substantially different computer program code.

Even accepting that the nature of authorship in screens may be different from computer program code authorship, this does not alter the fact that the computer program code and screen displays are integrally related and ordinarily form a single work. Indeed, those commentators who favor either single or separate registration at the claimant's option must concede that the program code and screens are conceptually a single work.

In creating copyright subject matter, it is common to merge several different types of authorship to form a single work. Motion pictures are a clear example of a work in which the different creative talents of many contributors (writers, directors, editors, camera persons, etc.) are combined to create a single work. Under the regulations of the Copyright Office, where such a work is owned by a single owner, only one registration is generally possible.

Several commentators favored more restrictive registration practices. They contended that the registration should specify the boundaries of the copyright claim in order to provide greater guidance to users.

While the Copyright Office is sympathetic to users who may have difficulty in determining the scope of copyright in computer software, the registration practices of the Copyright Office cannot precisely determine the scope of protection in any work. The Office seeks to create a public record of the copyright claim that generally gives a clear, accurate picture of the authorship and narrows the issues that might otherwise be contested in time-consuming, expensive litigation. We attempt to keep out of the public record any frivolous, unsound, or otherwise unjustified claims. In this way, we assist the public and the courts. Ultimately, of course the courts determine the precise scope of protection.

5. Predominant Authorship Standard

As new technologies emerge, new means of expression are submitted to the Copyright Office for copyright registration. The registration decisions that are initially reached by the Office are often a matter of first impression. Such was the case when arcade videogames were first submitted to the Office for registration. The Office decided to permit an audiovisual registration of the displays, sometimes separate from the underlying computer program, and sometimes with the program as a single registration.

The Copyright Office has now decided to treat videogame displays the same as other works that include authorship in a computer program and screen displays. A single registration will be made for the audiovisual authorship and any related computer program code owned by the same claimant. Separate registrations will not be made. If audiovidual authorship predominates, the single registration should be made in Class PA.

The courts have not fully examined the implications of protection for screen displays except in the videogame context where standardization of user interface screens is not a significant public policy issue. The practices adopted today by the Office should facilitate judicial consideration of the relationship between computer program code authorship and screen displays.

6. "Nature of Authorship" Description

The "nature of authorship" for a computer program should be described in space 2 of the application form. An applicant may give a general description such as "entire work" or "computer program." This description would cover any copyrightable authorship contained in the computer program code and screen displays, regardless of whether identifying material for the screens is deposited. An applicant may include a reference to the authorship in screen displays, e.g. "computer program code and screen displays." Such a designation would require a deposit of visual reproductions showing sufficient copyrightable authorship to support a claim to copyright in the screen display.

Applicants should not refer to elements such as "menu screens;" "structure, sequence, and organization"; layout or format; and the like.

The *Compendium of Copyright Office Practices II*, as issued in 1984, sets forth that registration will not be made for the "algorithm" of a computer program or the "formatting," "functions," "logic," or "system design." *Compendium II*, § 325.02(c).

The Office has a well-established practice of refusing to register claims to copyright in mere format of text or images; this practice is based on the statutory prohibition against copyright in ideas, systems, concepts, or discoveries. 17 U.S.C. 102(b). *See also Morrissey v. Proctor & Gamble Co.*, 379 F.2d 675 (1st Cir. 1967) and *Atari Games Corp. v. Oman* (unpub. op., Civ. No. 88–0021, D.D.C. May 25, 1988). Of course, if the screen display images consist of original, creative pictorial expression, then copyright may be claimed in that expression. The courts will determine the scope of copyright protection in appropriate cases.

7. Deposit of Visual Reproductions of Computer Screen Display

The deposit requirement for registration of a computer program remains unchanged. When the authorship is described in general terms this deposit is sufficient to cover the entire claim, including any copyrightable authorship in the screen displays. Deposit of identifying material related to

the screens is possible but not ordinarily required.

However, when specific reference to a screen display is included in the application, the deposit must include visual or audiovisual reproductions of the screen displays. Visual reproductions shall consist of printouts, photographs, drawings or a ½ inch VHS videotape of the screens.

8. Implementation

The Copyright Office is not presently proposing any changes in the regulations. The basic policies of one registration per work, a single registration for different authorship combined in a single unit of publication, and a single registratrion based on predominant authorship, are already reflected in the regulations. The optional deposit of visual or audiovisual reproductions of computer screen displays as a supplement to the deposit of other identifying material has not yet been incorporated into the deposit regulations because the deposit regulations reflect minimum requirements. The regulations will be modified at a later time. This Notice of a Policy Decision will inform the public of the registration and deposit requirements relating to computer screen displays.

The Copyright Office will also modify Compendium II of Copyright Office Practices. The examination and registration of machine-readable works present many unique issues. The Copyright believes it is preferable to treat these in detail in a work such as the Compendium rather than in regulations that are intended to have general applicability.

9. Impact of This Policy Decision on Earlier Registrations

The policies announced in this computer screen displays decision constitute in essence a confirmation of the general registration policies first adopted in the 1978 registration regulations. Before opening this public proceeding, the Office held the general view that a single registration was sufficient to protect the copyright in a computer program, including related screen displays, without a specific claim to screen display authorship on the application and without deposit of identifying material disclosing the screen display. Since this decision confirms the validity of a single registration policy, the Office assumes that this decision makes clear to the public and the courts our view that multiple claims are unnecessary, and indeed not appropriate, to assert copyright in the screen displays.

Therefore, those past registrants who made a single registration for computer program code and screen displays should be reassured that the registrations are valid. The Office will not make a new basic or supplemental registration in order to allow a specific claim in the screen displays nor will the Office now accept the deposit of identifying material for the screens because all of the copyrightable authorship has already been registered.

In those cases where separate registrations were made for computer program code and the screen displays, the registrations are also valid if, in each case, the registration is based on original, creative authorship. In future, in accordance with this policy decision, the Office intends that a single registration should be made for a work consisting of a computer program and accompanying screen display that are owned by a single claimant. The registration class (literary, visual arts, or audiovisual, for example) will be determined on the basis of which authorship predominates.

Dated: June 3, 1988.

Ralph Oman,

Register of Copyrights.

Approved by:

William J. Welsh,

Acting Librarian of Congress.

[FR Doc. 88-13029 Filed 6-9-88; 8:45 am]

BILLING CODE 1410-07-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 27 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Except for the money order restriction, which was previously published in the Federal Register and is now revised and retained, the revisions are minor, editorial, or clarifying.

EFFECTIVE DATE: June 19, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 27, dated June 19, 1988. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt is from the Summary of Changes section of the transmittal letter for issue 27.

Summary of Changes

Section 122.31b, *Address Elements*, and 122.31, *Return Address*, are revised to recommend that the street and number and apartment number, or box number, or general delivery, or rural or highway contract route designation and box number, be included in the address on all mail matter whenever possible (*Postal Bulletin* (PB) 21672, 5-12-88).

The following Exhibits 122.63 are updated: 122.63e, Optional Area Distribution Center (ADC) Labeling List for Use with Presort First-Class Mailings Only; 122.63f, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Second-Class Publications (*Postal Bulletin* 21668, 4-14-88; effective 5-7-88); 122.63h, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Third- and Fourth-Class Irregular Parcels: 122.63k, State Labeling List for Mailer Prepared Third- and Fourth-Class Irregular Parcels; 122.63l, Bulk Mail Center (BMC) Labeling List for Mailer-Prepared Bulk Rate Third- and Fourth-Class Machinable Parcel Mailings; 122.63p, Originating Mixed States Labeling List for Mailer Prepared Second-Class Publications; 122.63q, Originating Mixed States Labeling List for Mailer Prepared Third-Class Letter and Third- and Fourth-Class Flat Size Mail; and 122.63r, Originating Mixed States Labeling List for Mailer Prepared Third- and Fourth-Class Irregular Parcels. The new or changed listings appear in bold type. Mandatory date for compliance with the change from Glen Falls NY 128 to Mixed Albany 120 is July 2, 1988. See *Postal Bulletin* (PB) 21672, 5-12-88. Changes in 122.63e and 122.63q that appear in PB 21672, 5-12-88, became mandatory June 4, 1988. Changes in Exhibits 122.63h, k, l, p, q, and r that appear in PB 21673, 5-19-88, become mandatory August 27, 1988.

In section 123.5, *Sexually Oriented Advertisements*, 123.57, *Disposal of Application for Listing*, is revised to delete the requirement that the Forms 2201, *Application for Listing Pursuant to 39 U.S.C. 3010*, themselves be retained for five years provided the information on the forms is entered into a computer data bank where it will be kept for that period of time.

Section 124.55, *Switchblade and Ballistic Knives*. DMM 124.552 requires a postmaster, before making delivery of a parcel containing switchblade and ballistic knives, to satisfy himself that the addressee is within one of the groups permitted to receive such a parcel. However, previously DMM 124.56 prohibited any markings on a parcel containing firearms or switchblade and ballistic knives to indicate its contents. To resolve this dilemma, 124.552 is changed to require a postmaster who *has knowledge* that a parcel contains the above items, to satisfy himself that the addressee is permitted to receive the parcel. The change imposes the same obligation on the carrier responsible for delivery to the addressee. Changes are also made to 124.553 to clarify that a written statement on mailability cannot be required of a mailer but only requested, and only of mail not sealed against inspection. Mail sealed against inspection cannot be detained.

In part 154, *Plant Load Operations*, section 154.625a, *Highway Transportation Trailers*, is revised to provide that reimbursement for each highway transportation trailer will be equal to the actual daily cost to the Postal Service to lease the trailer, times the number of detention periods determined per 154.625. Sections 154.142, and 154.143 are revised for language consistency and 154.271 is revised to update a position title (PB 21672, 5-12-88).

Sections 480, 690 and 790, ancillary services for second-, third-, and fourth-class mail, are revised by the addition of a section (495, new 693, and 795) to clarify forwarding and return treatment instructions for pieces in these classes of mail that have mail of a higher class enclosed or attached in accordance with section 136, *Mixed Classes of Mail* (PB 21672, 5-12-88).

Section 494, *Refunds for Duplicate Notices*, is added to clarify Postal Service policy concerning the circumstances under which fees will be refunded for duplicate address correction notices sent to publishers of second-class publications. Publishers of second-class publications may receive a refund of fees paid for duplicate address correction notices in two types of situations. First, for publishers participating in Address Change Service (ACS), a refund is authorized when a publisher receives duplicate tape notices. Second, a refund is authroized for fees paid for duplicate notices provided by a computerized Forwarding System/Central Mark-Up Unit (CFS/CMU) on Forms 3579, Undeliverable Second-, Third- and Fourth-Class Matter. To be eligible for a refund of fees, publishers must submit documentation that substantiates the number of duplicate notices received (PB 21672, 5-12-88).

In section 642.13, *Authorization at Additional Offices*, previous section 642.134 has been deleted. No need is seen now to require a mailer to submit a sample copy of third-class material being mailed at special rates solely because it is mailed from an office authorized pursuant to the procedures in 642.13. Deletion of this requirement complies with 642.11 and 642.12.

Section 642.42, *Record of Postage Paid*, is revised to state clearly that mailings made at the regular bulk third-class rates while an application for special bulk rates is pending may be eligible for a refund of the difference between the amount paid at the regular rates and the amount due at the special rates regardless of the method used to pay postage. Postage for such mailings may be paid by any means available for the payment of postage on bulk third-class mailings, including permit imprints, precanceled stamps, or meter stamps (PB 21672, 5-12-88).

Section 694, *Address Correction* (for third-class mail), is revised to provide post offices with the option of weighing large quantities of identical weight third-class pieces to determine the number of pieces subject to the address correction fee, if the pieces (a) originate from a single mailer, and (b) bear only the *Address Correction Requested* endorsement.

Section 723.3, *Enclosures* (mailed with bulk bound printed matter) is revised to allow samples of merchandise enclosed with bound printed matter to be identified as "free gifts" where it is clear that they are being offered to the addressee in a marketing effort to encourage the sale of the gift products. The marketing effort may also promote the sale of bound printed matter. Samples of merchandise must comprise only an incidental portion of each bound printed matter mailpiece (PB 21672, 5-12-88).

Section 941, *Money Orders*, is revised to retain the restriction instituted in August 1987, that imposed a $10,000 per day limit on the amount of money orders one person can purchase. The Postal Service, in cooperation with the Department of the Treasury, is participating in the broad federal effort to curb illegal drug activity through all reasonable means, including making it more difficult to convert ("launder") the cash proceeds from drug sales into apparently legitimate financial accounts and instruments. The purchase limit applies on a daily basis to each postal customer whether the purchases are made at one time or throughout the day, regardless of the postal facility or facilities used. There are no exceptions to this restriction (PB 21672, 5-12-88).

Minor, nonsubstantive changes include: 122.141; 122.142 (title); 122.143; 149.333d2; 149.343b3; 149.441e4b; 149.442a1; 149.81; 159.431; 296.11; 296.32; 367.232; 452.1f; 452.2; 464.32b; 492.3; 622.164; 667.132; 763.22; 767.224.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
27	June 19, 1988	53 FR—

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-13056 Filed 6-9-88; 8:45 am]

BILLING CODE 7710-12-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-38

[FPMR Temp. Reg. G-48, Supp. 2]

Federal Motor Vehicle Expenditure Control

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: FPMR Temp. Reg. G-48, dated August 6, 1986, established policy, procedures, and reporting requirements concerning the implementation of Title XV, Subtitle C—Federal Motor Vehicle Expenditure Control, Pub. L. 99-272, Consoldiated Omnibus Budget Reconciliation Act of 1985. This supplement extends the expiration date

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of FPMR Temp. Reg. G–48 until June 30, 1990, unless sooner superseded or canceled. This supplement also announces the availability of a document entitled "Standardized Statements of Work for Fleet Management Services," which provides additional guidance to agencies that are required to perform fleet cost comparison studies mandated by the law and FPMR Temp. Reg. G–48. Other guidance documents pertaining to cost identification are currently under development and will be provided to the affected agencies when completed.

DATES: Effective date: June 10, 1988.

Expiration date: June 30, 1990.

Comment date: Comments must be received on or before July 15, 1988.

ADDRESS: Comments should be addressed to the General Services Administration (FBF), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: William T. Rivers, Fleet Management Division (703) 557–8276.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–38

Government property management, Motor vehicles.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter G to read as follows:

Federal Property Management Regulations, Temporary Regulation G–48, Supplement 2

May 13, 1988

To: Heads of Federal agencies.

Subject: Federal motor vehicle expenditure control.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation G–48. It also advises affected agencies of the availability of additional guidance for the performance of motor vehicle cost comparison studies.

2. *Effective date.* This supplement is effective upon publication in the Federal Register.

3. *Expiration date.* This supplement expires June 30, 1990, unless sooner superseded or canceled.

4. *Background.* FPMR Temp. Reg. G–48, dated August 6, 1986, implemented the provisions of Title XV, Subtitle C—Federal Motor Vehicle Expenditure Control, Pub. L. 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985. The law and the regulation require agencies which operate 300 or more motor vehicles to take several actions regarding their motor vehicle operations and activities. Guidance for some of those required actions is still being devloped. It is expected that completion of all required actions by the affected agencies may take up to 2 years. Therefore, it is necessary to extend the expiration date until June 30, 1990.

5. *Explanation of changes.*

a. The expiration date in par. 3 of FPMR Temp. Reg. G–48 is revised to June 30, 1990.

b. Agencies subject to FPMR Temp. Reg. G–48 are required to perform comprehensive and detailed studies comparing the cost of their motor vehicle fleet operations with other alternatives. An accurate statement of work (SOW) is needed for those agencies to prepare a solicitation for their fleet needs and perform valid cost comparisons. To assist the agencies in developing their SOWs, GSA awarded a consultant contract for developing a standardized SOW for each of the basic fleet management functions. The contractor was required to consider both the Government's program needs and the capabilities of the private sector so that commercial competition would be fostered as much as possible. The final product of that contract is a document entitled "Standardized Statements of Work for Fleet Management Services." Copies of that document have been furnished to the designated fleet managers of the affected agencies. Use of the standardized SOW by those agencies is optional.

(1) The contractor-provided SOW is generic in nature. Using agencies may tailor the SOW to meet their specific fleet needs. The SOW is intended to provide guidance and to serve as a building block for an agency solicitation. The initiating agency's contracting officer and motor vehicle management staff must make all final decisions regarding the format, scope, and specific clauses to be used in their solicitation.

(2) Additional guidance concerning cost elements to be considered for the performance of the cost comparison studies, as well as for the establishment and operation of cost accounting systems, is also being developed. As those documents are completed, copies will be provided automatically to the affected agencies.

6. *Agency comments.* Comments or inquiries concerning the impact of this regulation should be submitted to the General Services Administration (FBF), Washington, DC 20406, not later than July 15, 1988, for consideration and possible incorporation into a permanent regulation.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88–13040 Filed 6–9–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 87–017]

Assistance Towing Licenses; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting an error in the preamble previously published in the Federal Register May 24, 1988 (53 FR 18559).

FOR FURTHER INFORMATION CONTACT: Lcdr. G. R. Kaminski, Office of Marine Safety, Security, and Environmental Protection (G–MVP). Phone (202) 267–0218.

SUPPLEMENTARY INFORMATION: This notice corrects a citation in the preamble which appeared in the Federal Register on May 24, 1988 (53 FR 18559). On page 18562, column 1, paragraph 4, the last sentence is corrected to read: The OMB approval numbers are listed in 46 CFR 10.107.

Dated: June 3, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–13027 Filed 6–9–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[FCC 88–168]

Amateur Radio Service; Amendment of the Amateur Service Rules To Change the Identification Procedure for Amateur Stations Operated by Aliens Holding Reciprocal Permits

AGENCY: Federal Communications Commission.

ACTION: Rule amendment.

SUMMARY: The rule amendment adopted herein requires that stations operated by aliens under reciprocal permits shall transmit the alien's home call sign, preceded by the appropriate letter-numeral designating the station location, separated by the slant mark "/" or by the word "stroke" or "slash" during radiotelephone operations. The rule change is necessary in order to conform to the internationally recognized format. The effect of the amendment is uniformity in station identification by aliens.

EFFECTIVE DATE: July 18, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 9, 1988.
Released: May 24, 1988.

By the Commission:

In the matter of Amendment of § 97.313 of the Commission's Rules Concerning Identification Procedure for Amateur Stations Operating Under a Reciprocal Permit.

1. On May 14, 1987, The American Radio Relay League, Inc. (ARRL) filed a petition to amend § 97.313 of the Commission's Rules, 47 CFR 97.313. ARRL proposes that the order in which the information is given in the station identification procedure for amateur stations operated by aliens under reciprocal permits be reversed. Currently, the rules require that the call sign issued by the alien's country be transmitted first, followed by the United States prefix letter and station location. ARRL states that its request is based on an International Amateur Radio Union (IARU) resolution to standardize call sign identification for stations operating under reciprocal agreements. Additionally, ARRL indicates that the United Kingdom, France, the Federal Republic of Germany and Switzerland have already implemented the IARU recommended standard.

2. We agree with ARRL that it is in the public interest to conform amateur station identification procedures to the IARU recommended standard. This minor change in procedure will have no adverse impact on the amateur community, and, in fact, will conform our Rules to the internationally recognized format. Therefore, we are amending § 97.313 as requested by ARRL. In addition, this *Order* authorizes the Chief, Private Radio Bureau to amend the amateur service rules to require the same station identification procedure for Canadian amateur stations operating in the United States, if the existing bilateral agreement with Canada is revised to permit such procedure. *See* the Convention Between the United States and Canada Relating to the Operation by Citizens of Either Country of Certain Radio Equipment or Stations in the Other Country (T.I.A.S. No. 2508).

3. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that this rule amendment will not have a significant economic impact on a substantial number of small entities because such entities may not use the amateur radio service for commercial radiocommunications. *See* § 97.3(b) of the Commission's Rules, 47 CFR 97.3(b).

4. The amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. Because the substantive change in the rules made herein is of minor effect involving merely a reversal of the order in which station identification information is given, we find good cause to dispense with the prior notice and comment procedure of the Administrative Procedure Act. *See* section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B).

6. In view of the foregoing, *It is ordered*, pursuant to the authority contained in 47 U.S.C. 154(i) and 303(r), that the petition of *ARRL is granted* and Part 97 of the Commission's Rules *Is amended* as set forth below, effective July 18, 1988.

7. A copy of this Order will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Aliens, Call Signs, Amateur radio, Radio.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read, as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.313 is revised to read as follows:

§ 97.313 Station identification.

When the station is operated under a reciprocal permit, the call sign transmitted in the identification procedure must be that issued to the station by the licensing country, preceded by the appropriate letter-numeral designating the station location, separated by the slant mark "/" or by the word "stroke" or "slash" during radiotelephone operations. At least once during each intercommunication, the identification announcement must include the geographical location as nearly as possible by city and state, commonwealth or possession, stated in the English language.

[FR Doc. 88–12833 Filed 6–9–88; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[Acquisition Cir. AC–87–3, Supp. 1]

Monitoring Contractor Compliance With Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC–87–3 extends the expiration date to June 16, 1989. The intended effect is to extend the policies and procedures established in AC–87–3, which revised Part 519 of the regulation to provide uniform procedures for monitoring contractor compliance with subcontracting plans and for reporting actions under section 211 of Pub. L. 95–507.

DATES:

Effective date: June 17, 1988.

Expiration date: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations, (VP), (202) 523–4765.

SUPPLEMENTARY INFORMATION: This rule was not published for public comment because it has no impact beyond the internal operations of the agency. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from

Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it relates to the internal operations of the agency. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Part 519

Government procurement.

PART 519—[AMENDED]

1. The authority citation for 48 CFR Part 519 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 519 is amended by the following supplement to Acquisition Circular AC–87–3.

GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION ACQUISITION CIRCULAR AC–87–3; SUPPLEMENT 1

May 31, 1988.

To: All GSA contracting activities.
Subject: Monitoring contractor compliance with subcontracting plans.

1. *Purpose.* This supplement extends the expiration date of the General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC–87–3.

2. *Effective date.* June 17, 1988.

3. *Expiration date.* Acquisition Circular AC–87–3 and this supplement will expire on June 16, 1989, unless canceled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–13030 Filed 6–9–88; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 53, No. 112
Friday, June 10, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, and 1004

[Docket Nos. AO–14–A82, AO–71–A77 and AO–166–A65; AMS–88–105]

Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the New England, New York-New Jersey and Middle Atlantic Federal milk orders. One group of proposals would establish the same classification schems and fluid milk products definition under all three orders. Proponents claim that these changes are necessary to assure that regulated handlers operating throughout the region will pay the same price for milk used in the same manner under the respective orders. Another proposal would replace the present seasonal "take-out/pay-back" plan for paying producers with a seasonal base-excess payment plan under the New England and New York-New Jersey orders. Proponents contend that the current seasonal payment plan does not provide an appropriate incentive to producers to level out seasonal fluctuations in their milk production patterns.

Other proposals submitted that will be considered at the hearing deal with only an individual order. One of the proposals that will be heard at the hearing would reimburse New York-New Jersey handlers for some of the extra costs involved in supplying Class I milk to New York City metropolitan handlers. Still other proposals would increase transportation differentials under the New York-New Jersey order which is needed, according to proponents, to offset rising costs of transporting milk.

Other proposals that will be considered, most of which are technical in nature, related to shipping requirements for plants and bulk tank units, how much milk may be moved off the market and still be priced under the order and the location at which such milk is priced and the dates when handlers are required to pay producers.

DATES: The hearing will convene at 1:30 p.m. local time, on June 27, 1988, and at 1:30 p.m. local time on July 11, 1988.

ADDRESSES: The hearing will be held at the Holiday Inn-Fairgrounds, State Fair Boulevard & Farrell Road (New York State Thruway—Exit 39), Syracuse, New York 13209, (315) 457–8700, on June 27, 1988, and at the Center of New Hampshire-Holiday Inn, 700 Elm Street, Manchester, New Hampshire 03101, (603) 625–1000, on July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn-Fairgrounds, State Fair Boulevard & Farrell Road (New York State Thruway—Exit 39), Syracuse, New York 13209, beginning at 1:30 p.m. local time, on June 27, 1988, with an additional session also to be held at the Center of New Hampshire-Holiday Inn, 700 Elm Street, Manchester, New Hampshire 03101, beginning at 1:30 p.m. local time, on July 11, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1001, 1002 and 1004

Milk marketing orders, Milk Dairy products.

The authority citation for 7 CFR Parts 1001, 1002 and 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposals That Would Amend All Three Orders

Proposed by Agri-Mark, Dairylea Cooperative, Inc., Eastern Milk Producers Cooperative Association, and Pennmarva Dairymen's Federation

Proposal No. 1

This proposal would provide for a uniform "Fluid milk product" definition by revising §§ 1001.17, 1002.15 and 1004.15 in their entirety to read as follows:

Section 1001.17 (and the same for §§ 1002.15 and 1004.15) Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means all skim milk and butterfat in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, any mixture of cream, milk or skim milk containing less than 10% butterfat, milkshake and ice milk mixes containing less than 20 percent total solids and any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in consumer-type packages), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), whey, eggnog, yogurt, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, pancake mixes, buttermilk biscuit mixes, whipped topping mixtures, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, any product which contains 6 percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Proposed By Agri-Mark and Eastern Milk Producers Cooperative Association:

Proposal No. 2

This proposal would provide for a uniform "Fluid cream product" definition by revising §§ 1001.18 and 1004.18 and adding a new § 1002.15a to read as follows:

Section 1001.18 (the same for §§ 1002.15a and 1004.18) Fluid cream product.

"Fluid cream product" means cream (including aerated cream and sterilized cream) or any mixture (including a cultured mixture) of cream and milk or skim milk containing not less than 10 percent butterfat. The term also includes sour cream, frozen cream, fortified cream, reconstituted cream and any mixture of milk or skimmed milk and cream containing 10 percent or more butterfat, with or without the addition of other ingredients.

Proposal No. 3

This proposal would provide for a uniform "Classes of utilization" section by revising §§ 1001.40, 1002.41 and 1004.40 to read as follows:

Section 1001.40 (and the same for 1002.41 and 1004.40) Classes of utilization.

* * * * *

(a) (and (b) for § 1002.41) *Class I milk.* (conforming changes only).

(b) ((c) for § 1002.41) *Class II milk.* Except as provided in paragraph (c) ((d) for § 1002.41) of this section, Class II milk shall include all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) ((d) for § 1002.41) of this section;

(2) In packaged inventory at the end of the month of products specified in paragraph (b)(1) ((c)(1) for § 1002.41) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Sour cream, sour cream products (e.g. dips);

(ii) Plastic cream, frozen cream, and anhydrous milkfat;

(iii) Cottage cheese (all forms);

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts and frozen dessert mixes.

(v) Any concentrated milk product in bulk form other than that specified in paragraph (c) ((d) for § 1002.41) of this section;

(vi) Custards, puddings, pancake mixes, and buttermilk biscuit mixes; and

(vii) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(c) ((d) for § 1002.41) *Class III milk.* Class III milk shall include all skim milk and butterfat:

(1) Used to produce:

(i) Cheese, other than cottage cheese in any form;

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk form that is used to produce Class III products;

(v) Evaporated milk or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any other dairy product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in paragraph (b)(1) ((c)(1) for § 1002.41) of this section in bulk form;

(3) In fluid milk products, and products specified in paragraph (b)(1) ((c)(1) for § 1002.41) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) (c)(1) for § 1002.41) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition (of the respective order).

(d) In shrinkage assigned pursuant (to the respective order) to the receipts (specified in the appropriate assignment section of the respective order).

Proposal No. 4

This proposal would provide for a uniform "Class II price" by adding to §§ 1001.50, 1002.50a and 1004.50 a new paragraph (b) ((c) for § 1001.50e) defining the price for Class II milk and redesignating paragraph (b) as (c) defining the price for Class III milk (except in § 1002.50a redesignate (c) as (d)) to read as follows: § 1001.50 (and the same for §§ 1002.50a and 1004.50) Class prices.

* * * * *

(b) ((c) for 1002.50a) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to §§ 1001.51a, 1002.50b, and 1004.51a respectively (as proposed) for the month plus the amount that the value computed pursuant to paragraph (b)(1) ((c) (1) for

1002.50a) of this section exceeds the value computed pursuant to paragraph (b)(2) ((c)(2) for § 1002.50a) of this section, except that in no event shall the final Class II price be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to (§§ 1001.51, 1002.50, and 1004.51 respectively) and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) ((c)(1) for § 1002.50a) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed (as proposed below).

* * * * *

Proposed by Pennmarva Dairymen's Federation

Proposal No. 5

In §§ 1001.40, 1002.41 and 1004.40 revise paragraph (b) ((c) for § 1002.41) so as to uniformly classify all skim milk and butterfat required to be reported by a handler pursuant to the respective order as follows:

Section 1001.40 (and the same for §§ 1002.41 and 1004.40) Classes of utilization.

* * * * *

(b) ((c) for § 1002.41) *Class II milk.* Except as provided in paragraph (c) ((d) for § 1002.41) of this section, Class II milk shall include all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) ((d) for § 1002.41) of this section;

(2) In packaged inventory at the end of the month of products specified in paragraph (b)(1) ((c)(1) for § 1002.41) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Sour cream, sour cream products (e.g. dips);

(ii) Plastic cream, frozen cream, and anhydrous milkfat;

(iii) Cottage cheese (all forms) and all other cheese except natural cheddar cheese;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids;

(v) Any concentrated milk product in bulk form other than that specified in paragraph (c) ((d) for § 1002.41) of this section;

(vi) Custards, puddings, pancake mixes, and buttermilk biscuit mixes; and

(vii) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(viii) Any milk product in dry form other than nonfat dry milk powder;

(ix) Evaporated milk or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(x) Any other dairy product not otherwise specified in this section.

(c) ((d) for § 1002.41) *Class III milk.* Class III milk shall include all skim milk and butterfat:

(1) Used to produce:

(i) Natural cheddar cheese;

(ii) butter;

(iii) Nonfat dry milk powder;

(iv) Any concentrated milk product in bulk form that is used to produce Class III products;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in paragraph (b)(1) ((c)(1) for § 1002.41) of this section in bulk form;

(3) In fluid milk products, and products specified in paragraph (b)(1) ((c)(1) for § 1002.41) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) ((c)(1) for § 1002.41) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim in such product that was included within the fluid milk product definition (of the respective order).

(d) In shrinkage assigned pursuant (to the respective order) to the receipts (specified in the appropriate assignment section of the respective order).

Proposal No. 6

Add new §§ 1001.21, 1002.18, and 1004.21 to read as follows:

Section 1001.21 (same for 1002.18 and 1004.21) Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to §§ 1001.51a, 1002.50b, and 1004.51a respectively (as proposed) and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price.* "Butter price" means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows.

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) *Edible whey price.* "Edible whey prices" means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

Proposal No. 7

This proposal would provide for a uniform "Class II price" by adding to §§ 1001.50, 1002.50a and 1004.50 a new paragraph (b) ((c) for 1002.50a) defining the price for Class II milk, redesignating paragraph (b) as paragraph (c) ((c) as (d) for § 1002.50a) and revising and also adding a new paragraph (d) ((e) for § 1002.50a) to read as follows:

Section 1001.50 (and the same for §§ 1002.50a and 1004.50) Class prices.

* * * * *

(b) ((c) for § 1002.50a) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division, Agricultural Marketing Service, USDA, and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1001.51a, 1002.59b and 1004.51a respectively, (as proposed) for the month, adjusted pursuant to the monthly adjustments detailed in paragraph (d) of this section, plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price for the month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices.

(c) ((d) for § 1002.50a) *Class III price.* The Class III price shall be the basic formula price for the month adjusted pursuant to the monthly adjustments detailed in paragraph (d) ((e) for § 1002.50a) of this section.

(d) ((e) for § 1002.50a) The "basic formula price" and "basic Class II formula price" shall be adjusted each month, as follows:

Month	Orders 1&2	Order 4
January	$0.09	$0.05
February	.02	.04
March	−.05	−.03
April	−.09	−.07
May	−.12	−.10
June	−.11	−.09
July	.02	.05
August	.10	.12
September	.06	.08
October	.05	.06
November	.06	.08
December	.06	.09

Revise §§ 1001.54, 1002.22(m)(1) and 1004.53 to provide for a uniform public announcement of prices by the market administrator as follows:

1. The market administrator shall announce publicly on or before the 5th day of each month, the Class I price for the following month (for Order 2 only, at the 201–210 and 1–10 mile zones).

2. The market administrator shall announce publicly on or before the 15th day of each month, the tentative Class II price for the following month (for Order 2 only, at the 201–210 and 1–10 mile zones).

3. The market administrator shall announce publicly on or before the 5th day after the end of each month, the Class III price (for Order 2 only, at the 201–210 and 1–10 mile zones), and the final Class II price for such month (for Order 2 only, at the 201–210 and 1–10 mile zones).

4. The market administrator shall announce publicly on or before the 5th day after the end of each month (for Order 2 and 4 only) the producer butterfat differential for the preceding month.

Proposed by Agri-mark, Eastern Milk Producers Cooperative Association, and Pennmarva Dairymen's Federation

Proposal No. 9

This proposal would add a uniform "Basic Class II formula price" section to orders 1001, 1002, and 1004 as follows:

Section 1001.51a (and the same for 1002.50b and 1004.51a) Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1001.51 (and §§ 1002.59 and 1004.51 respectively) for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to §§ 1001.21, 1002.18, and 1004.21 respectively (as proposed by Pennmarva) and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

Proposals Amending Orders 1 and 2

Proposed by the Dairy Institute of New York

Proposal No. 10

In § 1002.27 Suspension and cancellation of designation, revise the introductory text of paragraph (g) and add a new paragraph (k) to read as follows:

Section 1002.27 Suspension and cancellation of designation.

* * * * *

(g) Except as provided by paragraph (k) of this section, no pool plant or pool unit designation shall be suspended or cancelled for failure to meet the requirements of § 1002.28(a) except under the following conditions:

* * * * *

(k) The designation of any pool plant pursuant to § 1002.24 or any pool unit pursuant to § 1002.25(e) shall be cancelled unless 15 percent or more of the producer milk received at such plant or unit during any of the months of August, December and January and 25 percent during the months of September through November is utilized as Class I–A milk.

Proposal No. 11

This proposal would provide for uniform shipping requirements for the New England and New York-New Jersey orders by changing either proposed paragraph (k) of § 1002.27 or § 1001.5b(b), whichever the Secretary deems to be more appropriate.

Proposed by Agri-Mark, Dairylea Cooperative, Inc. and Eastern Milk Producers Cooperative Association

The following proposals would replace the "Louisville" type seasonal production incentive plan of the New England and New York-New Jersey orders with a seasonal base-excess plan as follows:

Proposal No. 12

Add a new "BASE-EXCESS PLAN" section in its entirety to Orders 1001 and 1002 as follows:

Section 1001.90 (and the same for § 1002.92) Base milk.

"Base milk" means milk received from a producer by a pool handler which is not in excess of such producer's daily base computed pursuant to § 1001.92 (or § 1002.94) multiplied by the number of days in such month on which such producer's milk was so received: Provided, That with respect to any producer on every-other-day delivery, the day of nondelivery prior to a day of delivery, although such prior day is in the preceding month, shall be considered as a day of delivery for purposes of this paragraph.

Section 1001.91 (and the same for § 1002.93) Excess milk.

"Excess milk" means milk received from a producer by a pool handler which is in excess of base milk received from such producer during the month.

Section 1001.92 (and the same for § 1002.94) Computation of base for each producer.

For the months of January through July and December of each year, the market administrator shall compute, subject to the rules set forth in § 1001.93 (or § 1002.95), a base for each producer described in paragraphs (a) through (d) of this section by dividing the applicable quantity of milk receipts specified in such paragraph by 122 less the number of days, if any, during the applicable base-forming period of August through November for which it is shown that the day's production of milk of such producer was not received by a pool handler as described in the applicable paragraphs (a) through (d) of this section under which such producer's base is computed: Provided, That in no event shall the number of days used to compute a producer's base pursuant to this section be less than 90.

(a) For any producer, except as provided in paragraphs (b) through (d) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the preceding months of August thorugh November.

(b) For any producer whose milk was received during the preceding August through November period at a plant which became a pool plant due to route disposition in the marketing area during or after such August through November period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during such August through November period by pool handlers as producer milk and at such plant as a nonpool plant.

(c) For any producer who was a producer under Orders 1, 2 or 4 for a minimum of 90 days during the months of August through November, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer by pool handlers under those orders throughout the August through November period.

(d) Any producer who made no qualifying milk deliveries during the base-forming period of August through November shall have a base, and any other producer shall have a floor under this base, reflecting the percentage of his average daily deliveries of producer milk each month as set forth in the following table. A new base is earned on the basis of his milk deliveries during the subsequent August through November period.

Month:	Percentage of production as base
January and February	70
March through June	60
July	70
December	70

Section 1001.93 (and the same for § 1002.95) Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base computed pursuant to paragraphs (a) through (d) of § 1001.92 (or § 1002.94) shall be effective for the subsequent months of January through July, inclusive, and December.

(b) A base computed pursuant to paragraphs (a) through (d) of § 1001.92 (or § 1002.94) may be transferred only in its entirety to another dairy farmer and only upon discontinuance of milk production because of the entry into military service of the baseholder.

(c) Base transfers shall be accomplished only through written application to the market administrator on forms prescribed by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: Provided, That if a base is held jointly, except as provided in paragraph (e) of this section, the entire base only is transferable and only upon receipt of such application signed by all joint holders.

(d) If a producer operates more than one farm he shall establish a separate base with respect to producer milk delivered from each such farm: Provided, That if such farms and herds are combined into one dairy farm, the separate bases may be combined into one base subject to approval of the market administrator.

(e) Only one base shall be allocated with respect to milk produced by one or more persons where a dairy farm is jointly owned or operated: Provided, That in the case of a base established

jointly, if a copy of the partnership agreement setting forth as a percentage of the total interest of the partners in the base is filed with the market administrator before the end of the base-forming period, then upon termination of the partnership agreement each partner will be entitled to his stated share of the base to hold in his own right or to transfer in conformity with the provisions of paragraph (b) or (c) of this section (including transfer to a partnership of which he is a member). Such termination of partnership shall become effective as of the end of any month during which an application for such division of base signed by each member of such partnership is received by the market administrator.

(f) Two or more producers with bases may combine such bases upon the formation of a bonafide partnership operating from one farm. Such a combination shall be considered a joint base under paragraph (e) of this section.

(g) Subject to approval by the market administrator, the name of the baseholder may be changed to that of another member of the baseholder's immediate family but only under circumstances where the base would be applicable to milk production from the same herd and on the same farm.

Section 1001.95 (and the same for § 1002.97) Announcement of base.

On or before January 1 of each year, the market administrator shall notify each producer, the handler receiving his milk, and the cooperative association of which he is a member, of the daily base established by such producer.

Proposal No. 13

Revise the first sentence of the introductory text of § 1001.52 Plant location adjustments, to read as follows:

Section 1001.52 Plant location adjustments.

The Class I, base, excess and blended prices computed under §§ 1001.50 and 1001.61 shall be subject to plant location adjustments based upon the zone locations of plants.* * *

* * * * *

Proposal No. 14

In §§ 1001.61 and 1002.71, remove paragraphs (c) and (d); designate the introductory text as paragraph (a); redesignate paragraph (a) as (1), paragraph (b) as (2), (for § 1002.71 only (b–1) as (2–a)), paragraph (e) as (3), paragraph (f) as (4), and paragraph (g) as (5); and add new paragraphs (b) and (c) to read as follows:

Section 1001.61 Computation of basic blended price, excess milk price and base milk price. (and the same for § 1002.71 Computation of the uniform price, excess milk price and base milk price.)

* * * * *

(b) The excess milk price for milk of 3.5 percent butterfat content applicable to plants located in Zone 21 (the 201–210 mile zone), for the months of January through July and December, will be the basic blended price minus $1.00.

(c) The base milk price for milk of 3.5 percent butterfat content applicable to plants located in Zone 21 (the 201–210 mile zone), for the months of January through July and December will be computed as follows:

(1) Compute the total volume of base and excess milk for all handlers included in the computations pursuant to paragraph (a) of this section.

(2) Compute the aggregate value of the difference between the basic blended price and the excess milk price by multiplying the hundredweight of excess milk computed in (1) of this paragraph by $1.00.

(3) Compute the base milk price by dividing the aggregate value computed in (2) of this paragraph by the hundredweight of base milk computed in (1) of this paragraph and add the result to the basic blended price.

Proposal No. 15

In § 1001.62 Announcement of blended prices and butterfat differential, revise paragraph (b) to read as follows:

Section 1001.62 Announcement of blended prices and butterfat differential.

* * * * *

(b) The 13th day after the end of each month the zone, blended, base and excess prices for the months of January through July and December or the zone blended prices for the months of August through November resulting from the adjustment of the blended, base and excess prices for such month, as computed under § 1001.61, by the location adjustments set forth in § 1001.52.

Proposal No. 16

In § 1001.71 Handlers' producer-settlement fund debits and credits, revise paragraph (a) as follows:

Section 1001.71 Handlers' producer-settlement fund debits and credits.

* * * * *

(a) * * *

(1) Compute the sum of the following amounts:

(i) The product obtained by multiplying the quantity of pool milk by the basic blended, base, and excess prices computed under § 1001.61 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53; and

(ii) The product obtained by multiplying the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under § 1001.9(d) by the basic blended price as computed under § 1001.61 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53.

(2) For any cooperative association in its capacity as a handler under § 1001.9(d) multiply the quantities of milk moved to each pool plant by the basic blended, base and excess prices computed under § 1001.61 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53; and to the result add the value determined under § 1001.60.

* * * * *

Proposal No. 17

In § 1001.73 Payments to producers, revise paragraph (b) to read as follows:

Section 1001.73 Payments to producers.

* * * * *

(b) On or before the 20th day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month at:

(1) For the months of August through November not less than the basic blended price per hundredweight computed under § 1001.61 (a) adjusted by the location adjustment applicable under 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76, minus the amount of the payment made to the producer under paragraph (a) of this section.

(2) For the months of January through July and December, not less than the base milk price computed pursuant to § 1001.61(c) with respect to base milk received from such producer and not less than the excess milk price computed pursuant to § 1001.61(b) with respect to excess milk received from such producer with both prices adjusted by the location adjustment applicable under §§ 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76 minus the amount of payment made to the producer under paragraph (a) of this section.

(3) If the handler has not received full payment from the market administrator under § 1001.72(b) by the date payments are due under this paragraph, he may reduce pro rata his payments to producers by an amount not to exceed such underpayment. Such payments shall be completed after receipt of the balance due from the market administrator by the next following date for making payments under this paragraph.

* * * * *

Proposal No. 18

In § 1002.22 Additional duties of the market administrator, revise paragraph (m)(2) to read as follows:

Section 1002.22 Additional duties of the market administrator.

* * * * *

(m) * * *

(2) The 15th day of each month, the uniform, base and excess prices for the months of January through July and December or the uniform price for the months of August through November pursuant to § 1002.71 applicable at the 201–210 mile zone and at the 1–10 mile zone pursuant to § 1002.82.

* * * * *

Proposal No. 19

In § 1002.87 Handler's pool debit or credit, revise the introductory text and paragraph (a)(1) by changing the words "uniform price" to read "uniform, base and excess prices".

Proposal No. 20

In § 1002.80 Time and rate of payments, the introductory text of paragraph (a) is revised to read as follows:

Section 1002.80 Time and rate of payments.

(a) On or before the 25th day of each month each handler shall make payment, pursuant to paragraphs (b), (c), (d), (e) and (f) of this section, to each producer for all pool milk delivered by such producer during the months of August through November at not less than the uniform price computed pursuant to § 1002.71(a) and during the months of January through July and December at not less than the base milk price computed pursuant to § 1002.71(c) with respect to base milk received from such producer or the excess milk price computed pursuant to § 1002.71(b) with respect to excess milk received from such producer, subject to the following adjustments:

* * * * *

Proposed by Pennmarva

Proposal No. 21

In proposed § 1002.94 Computation of base for each producer, add the following paragraph (c) in lieu of that proposed by Agri-Mark, Dairylea and Eastern to read as follows:

Section 1002.94 Computation of base for each producer.

* * * * *

(c) For any producer who on August 1 was an Order 4 (Middle Atlantic) producer and who held such status in all or part of the two months of August and September and who otherwise was a producer only under this part for all of the remaining August through November period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer by pool handlers under both orders throughout the August-November period.

* * * * *

Proposed by Canajoharie Cooperative Milk Producers, Inc.

Proposal No. 22

This proposal would revise § 1001.61 Computation of basic blended price, paragraphs (c) and (d) and § 1002.71 Computation of the uniform price, paragraphs (c) and (d) by increasing the takeout/payback amounts to be equal to the same percentage of the blend prices that prevailed at the time the seasonal plan first became effective.

Proposal No. 23

This proposal would revise § 1001.75 Statements to producers, and § 1002.80 Time and rate of payments, by adding a paragraph that would require handlers to furnish producers with the takout/payback rate at the time that final payment is made.

Proposals Amending Order 1 Only

Proposed by the National Farmers Organization, Inc.

Proposal No. 24

In § 1001.5b Supply plant, revise paragraph (b) by reducing the required shipping percentages from "15" percent to "10" percent in the months of August and December, and from "25" percent to "15" percent in the months of September through November, and provide the Director of the Dairy Division or the market administrator the authority to increase the shipping requirements from the proposed levels to the present levels if marketing conditions require additional deliveries to pool plants.

Proposal No. 25

In § 1001.15 Diverted milk, revise paragraph (c) by increasing the diversion limitation from "35" percent to "50" percent in the months of September through November, and from "45" percent to "60" percent in other months, and provide the Director of the Dairy Division or the market administrator the authority to decrease the diversion percentages allowed from the proposed levels to the present levels if marketing conditions require additional deliveries to pool plants.

Proposed by Brookside Farm Dairy

The following proposals would eliminate the requirement that milk purchased from a pool plant by a producer-handler must be physically unloaded and reloaded at the pool plant.

Proposal No. 26

In § 1001.10 Producer-handler, revise the first sentence of paragraph (d) to read as follows:

Section 1001.10 Producer handler.

* * * * *

(d) The producer-handler receives no fluid milk products except from such handler's own production and from pool plants either by transfer or diversion pursuant to § 1001.15.

* * * * *

Proposal No. 27

In § 1001.15 Diverted milk, revise paragraphs (a) and (b) by removing the words "that is not a plant of a producer-handler".

Proposed by Agri-Mark

Proposal No. 28

In § 1001.32 Reports regarding individual producers and dairy farmers, revise paragraph (c) by replacing the number "10" with "5".

Proposal No. 29

Revise § 1001.78 in its entirely to read as follows:

Section 1001.78 Charges on over due accounts.

Any producer—settlement fund account balance due from or to a handler under §§ 1001.72, 1001.77, or 1001.78, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one percent effective the following day.

Proposed by Eastern Connecticut Dairy Committee

Proposal No. 30

Revise § 1001.40 Classes of utilization, to provide for a three class classification scheme as follows:

1. Class I: no change

2. Class II: all current Class II products except those manufactured to balance markets, or butter, powder and cheddar cheese.

3. Class III butter, powder and cheddar cheese.

Proposal No. 31

Revise § 1001.50 Class prices, to provide a price for the proposed Class II products that would more accurately reflect their true value to the processor (i.e., a price that would be higher than the present Class II price).

Proposal by Marcus Dairy, Inc.

Proposal No. 32

In § 1001.52 Plant location adjustments, revise paragraph (a)(4)(i) through the first comma and add a new paragraph (a)(6) to read as follows:

Section 1001.52 Plant location adjustments.

* * * * *

(a) * * *

(4) * * *

(i) The Connecticut counties of Fairfield (except the towns and cities located within 15 miles of the New York/Connecticut state border and located on a line north of the towns of Wilton, Weston, Easton and Trumbull), * * *

* * * * *

(6) Zone 10 shall include the Connecticut county of Fairfield (only the towns and cities located within 15 miles of the New York/Connecticut state border and located on a line north of the towns of Wilton, Weston, Easton and Trumbull).

* * * * *

Proposed by the Dairy Institute of New York

Proposed No. 33

In § 1001.52 Plant location adjustments, remove the Connecticut countries of Fairfield and New Haven from Zone 5 and add them to Zone 4.

Proposal Amending Order 2 Only

Proposed by Agri-Mark, Dairylea Cooperative, Inc., and Eastern Milk Producers Cooperative Association

Proposal No. 34

Revise the first sentence of § 1002.6 Producer, up to the first comma, to read as follows:

Section 1002.6 Producer.

"Producer" means any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption and who delivers pool milk as specified in § 1002.14 to a pool plant.

* * * * *

Proposal No. 35

In § 1002.14 Pool milk, revise paragraph (b) as follows:

Section 1002.14 Pool milk.

* * * * *

(b) Milk not approved by a duly constituted regulatory agency for fluid consumption.

* * * * *

Proposal No. 36

In § 1002.25 Bulk tank units, revise paragraph (c) by removing the first proviso to read as follows:

Section 1002.25 Bulk tank units.

* * * * *

(c) Except as set forth in paragraphs (c)(1) through (5) of this section, a handler may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit; *Provided,* That a handler pursuant to paragraph (a)(4) of this section may not add farms to a pool unit during the months of July through March unless his Class I–A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case he may add only the smallest number of farms necessary to provide sufficient milk to cover such class I–A utilization.

* * * * *

Proposal No. 37

In § 1002.27 Suspension and cancellation of designation, revise paragarph (b), redesignate paragraphs (c) through (j) as (d) through (k), and add a new paragraph (c) to read as follows:

Section 1002.27 Suspension and cancellation of designation.

* * * * *

(b) The designation of any plant which in any month is not approved by a health authority as a source of milk for the marketing areas shall be automatically suspended at the beginning of the second month following the month that the handler receives notice that the plant does not have health approval as a source of milk for the marketing area unless the absence of health approval is a temporary condition covering a period of not more than 15 days; provided, that the designation of a plant approved by a health authority as a source of milk for the marketing area, even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of unapproved skim milk from such plant, shall not be suspended pursuant to this provision.

(c) The designation of a plant pursuant to § 1002.24 shall be suspended at the beginning of the second month following and consecutive 12-month period in which the plant failed to receive any pool milk or at the beginning of the second month following a month in which there is a failure to maintain the facilities and equipment that constitute a plant pursuant to § 1002.8(a).

* * * * *

Proposed by Oak Tree Farm Dairy, Inc.

Proposal No. 38

This proposal would adopt under the New York/New Jersey order the "Route disposition" definition of the Middle Atlantic order.

Proposal No. 39

Revise § 1002.14 Pool milk, be adding the following to the end of the introductory text:

"This definition shall also include any milk that does not qualify to be pooled under another Federal order."

Proposal No. 40

Revise § 1002.24 Regular pool plants, § 1002.25 Bulk tank units, and § 1002.28 Temporary pool plants by specifying for plants and bulk tank units the following percent or more of their receipts of skim milk and butterfat in milk from dairy farmers and units that must be classified as Class I–A in the marketing area or as Class I–A on the basis of transfers to pool plants:

1. 30 percent or more during the combined three-month period of September through November;

2. 20 percent or more during the months of January, February, July, August, and December;

3. 10 percent or more during the combined four-month period of March through June, except, if the combined utilization during the September through November period was 45 percent or more then this utilization requirement need not be met.

Proposal No. 41

Revise § 1002.50a Class prices to:

1. Provide for advance Class II pricing similar to what has been adopted in other orders, however, the usual exception that states that the final Class II price shall be not less than the Class III price should say under this order that the final Class II price shall be not less than the Class III price plus 50 cents nor more than the Class III price plus 60 cents.

2. Provide for a Class III price which would be the present M–W price plus 40 cents.

Proposal No. 42

This proposal would adopt under the New York-New Jersey order those provisions of the Middle Atlantic order which deal with the classification of milk. As such, the "CLASSIFICATION" sections of 1002 (i.e., §§ 1002.40–1002.46) would be replaced by §§ 1004.40 through 1004.44 which are as follows: § 1004.40 Classes of utilization; § 1004.41 Shrinkage; § 1004.42 Classification of transfers and diversions; § 1004.43 General rules; § 1004.44 Classification of producer milk. However, the Classes of utilization section of 1002 would be revised to provide for a three-class classification scheme as follows:

1. Class I–A and I–B milk would be all fluid milk products.

2. Class II would be all cheese, frozen desserts, yogurt, eggnog, whey used in milk powder and skim milk powder, and other than Class I and Class III.

3. Class III would be butter, low fat butter, milk powder, skim milk powder, condensed in consumer packages, candy and confectionary, dumpage, shrinkage and lab use.

Proposed by Dellwood Foods, Inc.

Proposal No. 43

Revise §§ 1002.24 Regular pool plants, 1002.25 Bulk tank units, 1002.26 Operating requirements and 1002.28 Temporary pool plants to:

1. Specify for pool handlers a shipping percentage of 15 percent for September through January.

2. Eliminate the provisions for the issuance of a "call" for shipments of milk.

Proposed by Farmland Dairies

Proposal No. 44

Revise § 1002.15 Fluid milk product to:

1. Specifically include UHT (ultra high temperature) milk, cream in consumer packages, ice cream mix and milk shake mix as fluid milk products.

Proposed by Friendship Dairies, Inc.

Proposal No. 45

Revise § 1002.15 Fluid milk product to read as follows:

Section 1002.15 Fluid milk product.

"Fluid milk product" means all skim milk and butterfat in the form of milk, fluid skim milk, filled milk, cultured or flavored milk drinks, concentrated fluid milk disposed of in consumer packages, and any mixture of cream (other than frozen desserts, frozen dessert mixes, whipped topping mixtures, evaporated milk, plain or sweentened condensed milk or skim milk, sterilized milk or milk products in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil), providing the ph of the product is greater than 4.6 at the time of leaving the plant of last receipt; also, provided that when any fluid milk product is fortified with nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Proposed by Agri-Mark

Proposal No. 46

In § 1002.31 Producer payroll reports, revise paragraph (b) by replacing the words "last day" with "25th day".

Proposed by Dairylea Cooperative, Inc. and Eastern Milk Producers Cooperative Association

The following 7 proposals would update the payment date provisions of the NY–NJ order. Proposals 49 through 53 would become effective with milk received on and after January 1, 1990.

Proposal No. 47

In § 1002.22 Additional duties of the market administrator, revise paragraph (m)(2) by changing "15th" day of each month to read "14th" day of each month.

Proposal No. 48

In § 1002.31 Producer payroll reports, revise paragraph (b) by changing the "last" day of each month to read "25th" day of each month.

Proposal No. 49

Revise the introductory text of § 1002.50a Class prices, to read as follows:

Section 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the price set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.61. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before the last day of the month at not less than the Class II milk price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51 and 1002.61 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

* * * * *

Proposal No. 50

In § 1002.80 Time and rate of payments, redesignate paragraphs (a) and (b) as paragraphs (b) and (c) and revise, add a new paragraph (a), and redesignate paragraphs (c) through (f) as paragraphs (d) through (g) to read as follows:

Section 1002.80 Time and rate of payments.

(a) On or before the last day of the month, each handler shall make payment to each producer for milk received from such producer during the first 15 days of the month at not less than the Class II milk price for the proceding month.

(b) On or before the 20th day of the month, each handler shall make payment to each producer the balance due for all milk received from such producer during the preceding month at not less than the uniform price for such month, subject to the following adjustments:

* * * * *

(c) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before the date on which the payments are otherwise due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraphs (a) and (b) of this section.

* * * * *

Proposal No. 51

Revise § 1002.85 Payments to the producer-settlement fund, by substituting the "16th" day of each month for the "21st" day of each month.

Proposal No. 52

Revise § 1002.86 Payments out of the producer-settlement fund, by substituting the "17th" day of each month for the "22nd" day of each month.

Proposal No. 53

In § 1002.89 Cooperative payments for marketwide services, revise paragraph (f)(1) by substituting the "20th" day of each month for the "25th" day of each month.

Proposed by NY Farm Bureau

The following 4 proposals would establish a partial payment and rules for final payment under the NY–NJ order. Proposals 54 through 57 would become effective with milk received on and after January 1, 1990.

Proposal No. 54

Revise the introductory text of § 1002.50a Class prices, to read as follows:

Section 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the price set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before the last day of the month at not less than the Class II milk price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 18th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

* * * * *

Proposal No. 55

In § 1002.80 Time and rate of payments, redesignate paragraphs (a) and (b) as paragraphs (b) and (c) and revise, add a new paragraph (a), and redesignate paragraphs (c) through (f) as paragraphs (d) through (g), to read as follows:

Section 1002.80 Time and rate of payments.

(a) On or before the last day of the month, each handler shall make payment to each producer for milk received from such producer during the first 15 days of the month at not less than the Class II milk price for the proceding month.

(b) On or before the 20th day of the month, each handler shall make payment to each producer the balance due for all milk received from such producer during the proceding month at not less than the uniform price for such month, subject to the following adjustments:

* * * * *

(c) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before the date on which the payments are otherwise due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraphs (a) and (b) of this section.

* * * * *

Proposal No. 56

Revise § 1002.85 Payments to the producer-settlement fund, by substituting the "18th" day of each month for the "21st" day of each month.

Proposal No. 57

Revise § 1002.86 Payments out of the producer-settlement fund, by substituting the "19th" day of each month for the "22nd" day of each month.

Proposed by Friendship Dairies, Inc.

Proposal No. 58

In § 1002.26 Operating requirements, revise paragraph (a) by adding a new paragraph (i) to read as follows:

Section 1002.26 Operating requirements.

* * * * *

(a) * * *

(i) The person operating a pool plant will not be found to be in violation of paragraph (a) if: he has offered to dispose of milk as Class I–A milk in the marketing area at a price determined by § 1002.50a and adjusted by:

(a) The rates specified in § 1002.51(c)

(b) Actual gathering costs

(c) Premium payments to producers

(d) Seasonal costs or charges incurred by the handler, which are paid to the producer or cooperative

(e) actual transportation costs, including hauling from the farm to plant of first receipt, which are not paid for by the producer

* * * * *

The following four proposals would: (1) Change the point of pricing milk from the 201–210 zone to the 1–10 zone; (2) change the differential rate from 2.2 cents per 10-mile zone up to the 201–210 zone and from negative 1.5 cents per 10-mile zone beyond the 201–210 zone to negative 3.3 cents beyond the 1–10 zone; (3) give the market administrator the authority to adjust column B of the differential rate schedule, on an annual basis to reflect the actual cost of shipping fluid milk from farms in such zones to the marketing area; (4) from the differential rate schedule of § 1002.51(c) take columns A and B and create a new table to be placed in reserved § 1002.52; and (5) revise § 1002.82 to refer to § 1002.52 rather than § 1002.51(c) column B.

Proposal No. 59

In § 1002.50a Class prices, revise paragraph (a) to provide for the pricing of milk at the 1–10 mile "city" zone as follows:

Section 1002.50a Class prices.

* * * * *

(a) For Class I–A milk, from the effective date hereof the Class I price in the 1–10 mile freight zone shall be the basic formula price for the second preceding month plus $3.36.

* * * * *

Proposal No. 60

In § 1002.51 Transportation differentials, revise paragraph (c) to read as follows:

Section 1002.51 Transportation differentials.

* * * * *

(c) The differential rates applicable at plants shall be as set forth in the following schedule. Except, that the market administrator on an annual basis shall adjust the rates in column B to reflect the actual cost of shipping fluid milk from farms in such zones to the marketing area:

[Cents per Cwt.]

(A) Freight Zone Miles	(B) Classes I–A and I–B	(C) Class II
1 to 10	−0	8
11 to 20	−3.3	8
21 to 25	−6.6	8
26 to 30	−6.6	7
31 to 40	−9.9	7
41 to 50	−13.2	7
51 to 60	−16.5	6
61 to 70	−19.8	6
71 to 75	−36.1	6
76 to 80	−36.1	5
81 to 90	−41.4	5
91 to 100	−44.7	5
101 to 110	−48.0	4
111 to 120	−51.3	4
121 to 125	−54.6	4
126 to 130	−54.6	3
131 to 140	−57.9	3
141 to 150	−61.2	3
151 to 160	−64.5	2
161 to 170	−67.8	2
171 to 175	−71.1	2
176 to 180	−71.1	1
181 to 190	−74.4	1
191 to 200	−77.7	1
201 to 210	−81.0	0
211 to 220	−84.3	0
221 to 225	−87.6	0
226 to 230	−87.6	−1
231 to 240	−90.9	−1
241 to 250	−94.2	−1
251 to 260	−97.5	−2
261 to 270	−100.8	−2
271 to 275	−104.1	−2
276 to 280	−104.1	−3
281 to 290	−107.4	−3
291 to 300	−110.7	−3
301 to 310	−114.0	−4
311 to 320	−117.3	−4
321 to 325	−120.6	−4
326 to 330	−120.6	−5
331 to 340	−123.9	−5
341 to 350	−127.2	−5
351 to 360	−130.5	−6
361 to 370	−133.8	−6
371 to 375	−137.1	−6
376 to 380	−137.1	−7
381 to 390	−140.4	−7
391 to 400	−143.7	−7
401 and over	−147.0	−8

* * * * *

Proposal No. 61

Add to § 1002.52 columns A and B of the table in § 1002.51(c).

Proposal No. 62

Revise § 1002.82 Location differentials, paragraph (a) by replacing the reference "1002.51(c)" with "1002.52".

Proposed by the NJ Milk Industry Association, Inc.:

Proposal No. 63

This proposal would: (1) Change the direct delivery amount from 15 cents to 22 cents; (2) change the payment area from the I–70 mile zones to the 1–150 mile zones. (3) change the differential rate from 2.2 cents to 2.5 cents per 10-mile zone up to the 201–210 zone; (4) change the negative differential rate from 1.5 cents to 2.5 cents per 10-mile zone beyond the 201–210 zone; and (5) eliminate all zone price differentials on Class II milk.

In § 1002.51, paragraph (c) is revised to read as follows:

Section 1002.51 Transportation differentials.

* * * * *

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

(A) Freight Zone Miles	(B) Classes I–A and I–B (Cents per Cwt.)
1 to 10	+72.0
11 to 20	+69.5
21 to 25	+67.0
26 to 30	+67.0
31 to 40	+64.5
41 to 50	+62.0
51 to 60	+59.5
61 to 70	+57.0
71 to 75	+54.5
76 to 80	+54.5
81 to 90	+52.0
91 to 100	+49.5
101 to 110	+47.0
111 to 120	+44.5
121 to 125	+42.0
126 to 130	+42.0
131 to 140	+39.5
141 to 150	+37.0
151 to 160	+12.5
161 to 170	+10.0
171 to 175	+7.5
176 to 180	+7.5
181 to 190	+5.0
181 to 200	+2.5
201 to 210	+0.0
211 to 220	−2.5
221 to 225	−5.0
226 to 230	−5.0
231 to 240	−7.5
241 to 250	−10.0
251 to 260	−12.5
261 to 270	−15.0
271 to 275	−17.5
276 to 280	−17.5
281 to 290	−20.0
291 to 300	−22.5
301 to 310	−25.0
311 to 320	−27.5
321 to 325	−30.0
326 to 330	−30.0
331 to 340	−32.5
341 to 350	−35.0
351 to 360	−37.5
361 to 370	−40.0
371 to 375	−42.5
376 to 380	−42.5
381 to 390	−45.0
391 to 400	−47.5
401 and over	−50.0

* * * * *

Proposed by the Dairy Institute of New York

Proposal No. 64

Revise § 1002.55 to read as follows:

Section 1002.55 Transportation credits.

(a) For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 15 cents per hundredweight shall be computed.

(b) A credit shall be computed on Class I–A and Class I–B milk received by a handler in a pool or partial pool unit and delivered to plants in the metropolitan area as follows:

	Credit, per hundredweight
Plants located in:	
Bronx and Westchester	5
Rest of New York City	10
Nassau	10
Suffolk	15

Proposed by Kraft, Inc.

Proposal No. 65

Revise § 1002.55 to read as follows:

Section 1002.55 Transportation credits.

(a) For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 15 cents per hundredweight shall be computed.

(b) For each handler that operates a plant, a transportation credit shall be computed on milk shipped from a plant to a pool plant that distributes Class I–A milk in the marketing area as follows:

(1) Multiply the number of hundredweights shipped and utilized in Class I times 0.26 cents times the number of miles between the transferor plant and the transferee plant.

(c) For each handler who transfers milk from a plant to a pool plant that distributes Class I–A milk in the marketing area, an assembly credit shall be computed at a rate of 8 cents per hundredweight on the milk utilized in Class I.

(d) For purposes of this section, the distances to be computed shall be on the basis of the shortest highway mileage as determined by the market administrator, with fractions rounded up to the next whole mile.

Proposals Amending Order 4 Only

Proposed by Pennmarva Dairymen's Federation

Proposal No. 66

In § 1004.12 Producer, revise paragraph (e) to read as follows:

Section 1004.12 Producer.

* * * * *

(c) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received at the location of the nonpool plant to which the milk is diverted.

* * * * *

Proposed by Brookwood Farms and High's Dairies, Inc.

Proposal No. 67

Revise § 1004.15 Fluid milk product, up to the proviso, by adding to the list of products that are not fluid milk products, buttermilk or buttermilk blend for use in baking on the premises by a retail business, as follows:

Section 1004.15 Fluid milk product.

"Fluid milk product" means milk, skim milk (including concentrated and reconstituted milk or skim milk), buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, and (except ice cream, ice cream mixes, ice milk mixes, milkshake mixes, eggnog, YOGURT, condensed or evaporated milk, buttermilk or buttermilk blend for use in on premises baking by a retail business, and any product which contains 6 percent or more nonmilk fat (or oil)) any mixture in fluid form of cream and milk or skim milk containing less than 10 percent butterfat:

* * * * *

Proposed by Agri-Mark, Dairylea Cooperative, Inc. and Eastern Milk Producers Cooperative Association

Proposal No. 68

In § 1004.92 Computation of base for each producer, revise paragraph (c) to read as follows:

Section 1004.92 Computation of base for each producer.

* * * * *

(c) For any producer who was a producer under Orders #1, #2 or #4 for a minimum of 90 days during the months of August through December, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer by pool handlers under those orders throughout the August through December period.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 69

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrators of each of the aforesaid marketing orders or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, New England, New York-New Jersey and Middle Atlantic Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: June 7, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-13161 Filed 6-9-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1230

[No. LS-88-035]

Pork Promotion, Research, and Consumer Information Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would amend the Pork Promotion, Research, and Consumer Information Order to (1) require market agencies which sell on behalf of a producer porcine animals used for breeding to collect assessments on such animals and remit them to the National Pork Board; (2) modify the requirements for annual reports from organizations receiving funds distributed by the National Pork Board; (3) require the use of USDA data to determine the number of pork producers in each State when nominating producers by petition to the National Pork Producers Delegate Body; and (4) make a minor editorial change for clarification. These proposed changes are designed to clarify the intent of the order and would improve assessment collection procedures and facilitate preparation and submission of reports.

DATE: Comments must be received by July 11, 1988.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610-S, Post Office Box 96456, Washington, DC 20090-6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2610, South USDA Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, 202/447-2650.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as a nonmajor rule under the criteria contained therein.

This action has also been reviewed under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* This proposed rule would (1) require market agencies to collect assessments on porcine animals classed as breeding stock and remit them to the Board; (2) permit State pork producer associations receiving less than $10,000 in assessments annually to submit unaudited annual financial statements to the Board; (3) specify that the latest available USDA data would be used by the department in determining the number of pork producers in each State for the purpose of nominating producers to the National Pork Producers Delegate Body; and (4) make a clarifying editorial change in § 1230.58.

Most market agencies, i.e., livestock auction markets, commission firms who sell livestock on behalf of producers would be classified as small businesses under the RFA.

Since the same form currently used by market agencies in reporting and remitting assessments to the Board on feeder pigs and slaughter hogs sold on behalf of producers would be used for breeding stock, this proposed requirement to collect and remit assessments on breeding stock would not appreciably increase market agencies reporting and record keeping.

Most of the breeding stock are sold through private sales in which the producer (seller) is required to remit the assessment, so the additional collection and remittance activity for market agencies under this proposed rule should be minimal.

Modifying the requirements that annual financial reports for State pork producer associations be prepared by a certified public accountant would reduce the cost of reporting for State pork producer associations receiving less than $10,000 in annual assessments. The cost savings would result in increased funding available for financing promotion and research programs. Requiring the use of USDA data in connection with the National Pork Producers Delegate Body will not have any economic impact upon small entities. The data have been used by the Department to verify nominations of producers by petition as necessary during the Delegate Body nomination process since the order was implemented.

For these reasons, the Administrator of the Agricultural Marketing Service has determined that this proposed action will not have a significant economic effect on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all procine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383) and assessments began on November 1, 1986.

The order requires that producers pay to the Board an assessment of 0.25 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The order specifies that purchasers of feeder pigs and slaughter hogs shall collect an assessment on these animals if assessments are due. The order further stipulates that for the purpose of collecting and remitting assessments, persons engaged as a commission merchant, auction market or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the order. Under that section, purchasers of porcine animals are required to collect assessments from producers upon the sale of porcine animals, if an assessment is due, and remit such assessment to the Board by the 10th day of the month following the month in which porcine animals were marketed. In § 1230.71(b)(1) of the order, a purchaser is any person buying feeder pigs or market hogs, and, for purposes of collection and remittance of assessments, any person engaged as a commission merchant, an auction market, or livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a producer is a purchaser. That section does not currently provide for collection and remittance of assessments on breeding stock by a purchaser who is a commission merchant, auction market, or similar market agency sold for or on behalf of a producer. The order does specify that producers remit assessments due on breeding stock upon sale. Even though most porcine animals marketed annually as breeding stock are sold through private sales, some producers' market porcine animals used as breeding stock through market agencies. Therefore, to bring uniformity and consistency to the order language for collecting and remitting assessments on all porcine animals sold through a market agency, it is proposed that § 1230.71 be revised to specify that those purchasers who are commission merchants, auction markets, or similar market agencies in the business of selling porcine animals for or on behalf of producers collect and remit assessments on such animals sold as breeding stock. Producers selling breeding stock through private sales would continue to remit assessments upon sale of such porcine animals.

Section 1230.74(b) of the order requires that organizations receiving distributions of funds from the Board shall furnish the Board with an annual report prepared by a certified public accountant (CPA) of all funds distributed to such organizations. State pork producer associations receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72 (a) and (b). As a result, these State associations are subject to this CPA audit provision of the order. However, some of the smaller State pork producer associations receive relatively small amounts of assessments and the cost of an annual report prepared by a CPA could represent a significant proportion of their total annual assessments. There were 45 State pork producer associations which received distributed assessments in 1987. The amount of annual assessments distributed ranged from less than $1,000 to more than $970,000. Thirteen States received less than $10,000 and four of those States received less than $2,000. To minimize the cost of annual financial reports for the smaller States, the National Pork Board has recommended that any State pork producer association receiving less than $10,000 in distributed assessments annually be exempted from the required annual report prepared by a CPA and instead be permitted to submit to the Board an unaudited financial statement prepared by or for the association. Such unaudited financial statements would have to be certified by at least two members of the association. Additionally, each such State pork producer association would be required to submit a CPA-audited annual financial statement at least once every 5 years or more frequently if the Board or the Secretary deems it to be necessary. States receiving less than $2,000 in distributed assessments would be audited by the Board once every 5 years in lieu of the annual financial statement prepared by a CPA every 5 years. It is proposed that § 1230.74 (Prohibited use of distributed assessments) be amended to include these provisions. Additionally, it is proposed that § 1230.74(b) be amended to specify that the annual report from State pork producer associations is a financial statement which is audited rather than prepared by a CPA.

It is also proposed that the latest available published USDA data be used to determine the number of pork producers in a State for purposes of determining the number of pork producer signatures needed for nominations of pork producers to the National Pork Producers Delegate Body by written petition. The Delegate Body is appointed each year by the Secretary from pork producers who are nominated by State pork producer associations or who are nominated by written petition. Members are appointed for a 1-year term. Under § 1230.32(b)(2), pork producers in a State may be nominated for appointment to the Delegate Body by written petition signed by 100 producers in that State or by 5 percent of the producers in that State, whichever number is less.

In the 1987 and 1988 nominations and appointments to the Delegate Body, the

Department has used, when necessary, data contained in the latest available issue of the "Hogs and Pigs" report prepared by the USDA's Agricultural Statistics Board, National Agricultural Statistics Service to determine the number of pork producer signatures needed. That report enumerates the number of farming operations with hogs in each State for a calendar year. It is proposed that § 1230.32(b)(2) be amended to require that the number of pork producers in a State will be determined by the Department based on such latest available information.

This rule also proposes an editorial change in § 1230.58(g). This section delineates the powers and duties of the National Pork Board. The phrase, "To appoint or employ such persons as staff * * *" would be revised to read, "To appoint or employ staff persons * * *" This proposed change in the wording of this phrase would not change the Board's powers conferred in subsection (g) but would eliminate the ambiguity which exists in the current regulations.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For reasons set forth in the preamble, it is proposed that 7 CFR Part 1230, be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Revise § 1230.32(b)(2) to read as follows:

§ 1230.32 Conduct of election.

* * * * *

(b)(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with procine animals.

* * * * *

3. Revise §1230.58(g) to read as follows:

§ 1230.58 Powers and duties of the Board.

* * * * *

(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

* * * * *

§ 1230.71 [Amended]

4. Section 1230.71 (b)(2), (b)(3), and (b)(4) redesignated (b)(3), (b)(4), and (b)(5), respectively, and a new (b)(2) added to read as follows:

* * * * *

(b) * * *

(2) Assessments on procine animals raised as breeding stock which are sold by a commission merchant, auction market, or livestock market in the business of receiving such procine animals for sale on commission for or on behalf of a producer shall be collected and remited by the commission merchant, auction market, or livestock market selling such porcine animals.

* * * * *

5. Section 1230.74(b) is revised to read as follows and a new (c) is added:

§ 1230.74 Prohibited use of distributed assessments.

* * * * *

(b) Except as provided for in paragraph (c) of this section, organizations receiving distributions of assessments from the Board shall furnish the Board with an annual financial statement audited by a certified public accountant of all funds distributed to such organization pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

(c) State pork producer associations as defined in § 1230.25 receiving distributions of assessments pursuant to § 1230.72 which receive less than $10,000 in assessments annually may satisfy the requirements of paragraph (b) of this section by providing unaudited annual financial statements to the Board prepared by State association staff members or individuals who prepare annual financial statements for the State association provided that such financial statements are attested to and certified by two members of the State association. Notwithstanding any provision herein to the contrary, State associations receiving less than $10,000 in distributed assessments annually, which submit unaudited annual financial statements to the Board, shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years or more frequently if deemed necessary by the Board or the Secretary. If State pork producer associations receive less than $2,000 in distributed assessments annually, the Board may elect to conduct its own audit of those State associations annual financial statements every 5 years in lieu of the required financial statement.

Done at Washington, DC, on June 6, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-13078 Filed 6-9-88; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 584

[No. 88-454]

Transactions With Affiliates

Date: June 2, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), pursuant to and in accordance with Section 408 of the National Housing Act as amended by the Competitive Equality Banking Act of 1987 ("CEBA"), is proposing to amend its regulations pertaining to transactions between institutions whose accounts are insured by the FSLIC ("insured institutions") and affiliates of those insured institutions. The proposed amendments (i) define and clarify the applicability of the limitations and prohibitions specified in sections 23A and 23B of the Federal Reserve Act and (ii) clarify the applicability of the limitations and prohibitions specified in the Board's regulations existing prior to the enactment of CEBA. The proposed amendments are intended to further the Congressional intent codified in CEBA of providing parity between a bank and a thrift holding company with respect to the treatment of transactions between the subsidiary depository institution and its affiliates engaged in activities permissible for a bank holding company under the Bank Holding Company Act and the regulations thereunder. The Board requests comments on all aspects of this proposal. In addition, the Board is soliciting comments on whether amendments to its regulations governing transactions with affiliates, in addition to those proposed herein, are necessary or appropriate in light of the CEBA.

DATE: Comments must be received on or before August 9, 1988.

ADDRESS: Send comments to: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Steven J. Gray, Attorney (202) 377–7506; Kevin A. Corcoran, Deputy Director, (202) 377–6962; V. Gerard Comizio, Director, (202) 377–6411, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6450; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 10, 1987, President Reagan signed into law the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552. The CEBA addresses a number of important issues relating specifically to the thrift industry, including the recapitalization of the FSLIC, emergency acquisitions of troubled thrift institutions, and potential areas for improvement in the examination and supervisory process. Among the provisions contained in the CEBA are sections 104(d) and 110, which amend section 408 of the National Housing Act ("NHA"), 12 U.S.C. 1730a, by adding new subsections (p) and (t) respectively. Subsection (p) provides, in effect, that the limitations and prohibitions on transactions with affiliates applicable to subsidiary insured institutions of savings and loan holding companies prior to the enactment of the CEBA will not apply to transactions between a subsidiary insured institution and its affiliates engaged in activities permissible for a bank holding company under section 4(c) of the Bank Holding Company Act ("BHCA"), 12 U.S.C. 1843(c). Those transactions will, instead, be subject to the limitations and prohibitions of sections 23A and 23B of the Federal Reserve Act ("FRA"), 12 U.S.C. 371c and 371c-1. In addition, subsection (p) prohibits certain cross-marketing practices by an insured institution subsidiary of a diversified savings and loan holding company and its affiliates. Subsection (p) further provides that the Corporation may prescribe regulations for the purpose of defining and clarifying the applicability of the provisions of sections 23A and 23B of the FRA.

New subsection 408(t) of the NHA exempts transactions between insured institutions (and their subsidiaries) that have common ownership from the provisions of subsection 408(d) of the NHA restricting certain transactions between a subsidiary insured institution and its affiliates. Specifically, new subsection 408(t) provides, in pertinent part, that "an insured institution that is a subsidiary of an insured institution or insured institutions the voting stock of which is 80 percent owned by the same company shall not be subject * * * to the provisions of [408(d) of the NHA] as to transactions with such parent insured institution or affiliate insured institutions (and their subsidiaries) * * *." In addition, new subsection (t) prohibits an insured institution (or its subsidiaries) from purchasing a low quality asset (as defined in section 23A of the FRA) from another insured institution (or its subsidiaries) in any transaction exempted by that subsection. Transaction exempted by 408(t) must be on terms and conditions that are consistent with safe and sound financial practices.

As described in greater detail below, the Board is proposing amendments to its regulations to (i) incorporate, with certain modifications discussed hereinafter, the provisions of Sections 23A and 23B of the FRA into proposed new 12 CFR 584.3–1 and 584.3–2 and (ii) clarify which transactions involving subsidiary insured institutions and their affiliates are subject to proposed new 12 CFR 584.3–1 and 584.3–2 or 12 CFR 584.3 of the Board's existing regulations. The Board is soliciting comments from interested parties on all aspects of the proposed amendments and, in particular: (i) Whether any additional definition and clarification of the applicability of the relevant statutory and regulatory provisions is necessary, (ii) whether and, to what extent, it is necessary or appropriate for the Board to approve transactions that exceed the quantitative or qualitative limitations of section 23A incorporated into new 12 CFR 584.3–1, and (iii) whether and, the extent to which, the provisions of Part 584, including proposed §§ 584.3–1 and 584.3–2, should be applicable to transactions between a subsidiary insured institution and its subsidiaries and/or to transactions between subsidiaries of a subsidiary insured institution and other affiliates of such insured institution.

A. Solicitation of Comments Beyond Proposal

The Board is concerned that the new statutory scheme, created by CEBA, to govern transactions between holding company subsidiary insured institutions and their affiliates is somewhat confusing, frought with anomalies and, potentially inconsistent. For example, whereas section 408(d) of the NHA and 12 CFR 584.3 thereunder prohibit certain transactions and allow for prior approval, without any specified quantitative limits, by the PSA of other transactions, section 23A of the FRA generally permits "covered transactions" up to threshold limits. Moreover, whereas 12 CFR 584.3 is (except as specifically provided therein) applicable to transactions between a subsidiary insured institution and its service corporation subsidiaries but is not applicable to transactions between such service corporations and their parent institution's other holding company affiliates, the inverse is the case under section 23A of the FRA. Similarly, 12 CFR 584.3 is applicable to transactions between a subsidiary insured institution and entities outside of the holding company structure that are under the control of a person that controls the holding company, but section 23A is not applicable to transaction with such commonly controlled entities outside the holding company structure.

Accordingly, the Board is soliciting comments on whether amendments to its regulations, in addition to the amendments proposed herein, are necessary or appropriate to provide for a workable scheme of transactions with affiliates regulation. In light of the policies embodied in the transactions with affiliates provisions of the CEBA of "leveling the playing field" between bank and thrift holding companies with respect to transactions between depository institutions and their affiliates and generally liberalizing the restrictions on transactions between subsidiary insured institutions and their affiliates, the Board requests commenters to address whether it would be desirable, to the extent practicable and subject to supervisory considerations, that all (or as many as possible) subsidiary insured institutions be subject to one set of rules with respect to transactions with their affiliates. Such a set of rules could, for example, be based upon the limitations and prohibitions contained in sections 23A and 23B of the FRA. Accordingly, the Board seeks public comments on whether and, to what extent, the Board's regulations at 12 CFR 584.3 could or should subject transactions between a subsidiary insured institution and its affiliates to prohibitions and limitations based on those contained in sections 23A and 23B of the FRA without transgressing the requirements of section 408(d) of the NHA.

It should also be noted that the Board has proposed for comment amendments to 12 CFR 563.41(a) and 12 CFR 563.43(a) (the "Conflict Rules") to remove any potential for conflict between those regulatory provisions and section 408(d)(6) of the NHA, 12 U.S.C. 1730(d)(6), which requires the prior approval of the FSLIC on a case-by-case basis of certain transactions between an

insured institution and its affiliates.[1] The effect of those proposed amendments would be to make the Conflict Rules inapplicable to transactions with affiliates that are already subject to transactions with affiliates regulation pursuant to provisions of the NHA. Transactions between an insured institution that is not a subsidiary of a savings and loan holding company and affiliated persons of that insured institution (as defined by 12 CFR 561.29) would continue to be subject to the Conflicts Rules. The Board may also review the Conflict Rules to determine what, if any, additional amendments to those provisions are warranted. Once such review is completed the Board will, if warranted, solicit public comment on proposed amendments to the Conflicts Rules. At this time, the Board is not specifically soliciting comment with respect to the Conflict Rules.

B. Amendments to Part 584

In accordance with section 406 of the NHA, as amended by the CEBA, the Board is proposing to amend Part 584 of its regulations to provide that transactions between an insured institution subsidiary of a savings and loan holding company and an affiliate of the insured institution, which is engaged only in business activities which the Board of Governors of the Federal Reserve System ("FRB"), by regulation or order has determined to be permissible for bank holding companies under section 4(c)(8) of the BHCA, are subject to the provisions of sections 23A and 23B of the FRA, as implemented in proposed new 12 CFR 584.3–1 and 584.3–2. Transactions between an insured institution subsidiary of a savings and loan holding company and its affiliates that are engaged in business activities that the FRB has not determined to be permissible for bank holding companies, or that the Board has determined, by regulation, to not be a permissible nonbanking activity for savings and loan holding companies, will continue to be subject to the provisions of 12 CFR 584.3.[2] In addition, the Board proposes to incorporate the exemption from subsection 406(d) of the NHA provided by new subsection 406(t) of the NHA into Part 584.

Specifically, the Board proposes to (i) amend paragraph (a) of 12 CFR 584.3 to exempt transactions between an insured institution subsidiary of a savings and loan holding company and its affiliates engaged only in permissible savings and loan holding company nonbanking activities ("permissible nonbanking activities") form the provisions of that regulation, (ii) add new paragraph (i) to 12 CFR 584.3 to exempt transactions between an insured institution that is a subsidiary of another insured institution or insured institutions that are at least 80 percent owned by the same holding company and such parent or affiliate insured institutions (and each other's subsidiaries) from the provisions of that section, (iii) add new 12 CFR 584.3–1, which explicitly applies to transactions between an insured institution subsidiary of a savings and loan holding company and its affiliates engaged only in permissible nonbanking activities and incorporates, with certain modifications, the terms and provisions of Section 23A of the FRA into the Board's regulations, and (iv) add new 12 CFR 584.3–2, which explicitly applies to transactions between an insured institution subsidiary of a savings and loan holding company and its affiliates engaged only in permissible nonbanking activities and incorporates, with certain modifications, the terms and provisions of Section 23B of the FRA into the Board's regulations.

New § 584.3(i) incorporates the exemption from the otherwise applicable restrictions on affiliated transactions provided by new subsection 406(t) of the NHA. Pursuant to new § 584.3(i), transactions between (i) a subsidiary insured institution and its parent insured institution (and such parent's subsidiaries) and (ii) insured institutions (and each other's subsidiaries) that are at least 80 percent owned by the same holding company are exempt from the provisions of 12 CFR 584.3. Such transactions will, however, depending upon the types of activities engaged in, be subject to the provisions of proposed new 12 CFR 584.3–1 and 584.3–2.[3] Thus, the exemption provided by new § 584.3(i) will be applicable only when both of the insured institutions involved in a specific transaction, directly or through a subsidiary, are (i) in a parent/subsidiary relationship or (ii) are subject to at least 80 percent common ownership.

The Board wishes to note that transactions between a subsidiary insured institution and its own service corporation subsidiaries are not explicitly covered by new subsection 406(t) of the NHA. Accordingly, the Board is considering whether it is appropriate to continue to apply 12 CFR 584.3 to transactions between subsidiary insured institutions and their own service corporation subsidiaries that are not exclusively engaged in permissible nonbanking activities and, as discussed in greater detail below, the Board specifically solicits comments on that issue.

New 12 CFR 584.3–1 tracks the terms and provisions of section 23A of the FRA with modifications designed to clarify the applicability of such terms and provisions to insured institutions. The new regulations defines "covered transactions" and limits an insured institution's cumulative covered transactions with any one affiliate to no more than 10 percent of the institution's regulatory capital (as defined in 12 CFR 561.13) and with all affiliates, that are engaged exclusively in permissible nonbanking activities, in the aggregate to no more than 20 percent of the institution's regulatory capital. In order to provide for operating flexibility, the regulation delegates authority to an insured institution's Principal Supervisory Agent ("PSA") (as defined in 12 CFR 561.35) to approve covered transactions in excess of the quantative thresholds, provided that the PSA determines that the transaction would not be detrimental to the interests of the savings account holders of the specific insured institution or to the insurance risk of the Corporation with respect to that institution. The Board specifically seeks comment as to the appropriateness of the proposed delegation and whether the PSA approval mechanism also should be available with respect to qualitative criteria contained in section 23A. The Board also specifically requests comments on what recordkeeping requirements would be appropriate for insured institutions to document transactions with affiliates that do not require a specific approval and whether the Board should provide particularized, explicit authority for its supervisory agents to unwind transactions with affiliates that, after review by an examiner and appropriate supervisory staff, are deemed to be unsafe and unsound.

Proposed new 12 CFR 584.3–1(e) lists the exemptions from the provisions of the new regulation. In this regard, the Board specifically requests comment as to whether the exemption, in proposed 12 CFR 584.3–1(e)(2), for giving immediate credit to an affiliate for uncollected items received in the ordinary course of business may expose an insured institution to undue risk and whether any limitations should be imposed on such extensions of credit.

The definition of affiliate contained in proposed new 12 CFR 584.3–1 modifies the definition of that term in section 23A of the FRA by including as affiliates those subsidiaries of a subaidiary insured institution that are engaged in activities that the insured institution would not be authorized to engage in directly. The proposed definition of affiliate would, in effect, generally remove, subject to safety and soundness considerations, the regulatory prohibitions and limitations on transactions between a subsidiary insured institution and its subsidiaries that are exclusively engaged in permissible nonbanking activities and are not engaged in any activities that the insured institution would not be authorized to engage in directly. Such proposed definition of affiliate would, however, subject transactions between a service corporation subsidiary and its parent institution's other holding company affiliates to the regulatory prohibitions and limitation contained in proposed 12 CFR 584.3–1 and 584.3–2. The Board is aware that application of the definition of affiliate as contained in proposed 12 CFR 584.3–1 would mark a departure from current practice in the thrift industry whereby transactions between a service corporation subsidiary and its parent institution's other holding company affiliates are not subject to the provisions of 12 CFR 584.3. It would, on the other hand, create an additional option for savings and loans that is presently available to insured banks under sections 23A and 23B in the form of the "operating subsidiary", and it would further CEBA's mandate to "level the playing field" between bank and thrift holding companies.

The Board is concerned that utilization of two divergent difinitions of the term "affiliate" will lead to confusion in the thrift industry. Accordingly, as previously noted, the Board is soliciting comments as to the most appropriate manner, under Part 584, to treat (i) transactions between a subsidiary insured institution and its subsidiaries; (ii) transactions between subsidiaries of a subsidiary insured institution and other holding company affiliates of such insured institution; and (iii) transaction between a subsidiary insured institution and affiliates that are not subsidiaries of the holding company. More specifically, the Board solicits comments on the following questions:

(i) Whether and to what extent, transactions between a subsidiary insured institution and its subsidiaries should be subject to any regulatory restrictions?[4]

(ii) Whether and to what extent, transactions between subsidiaries of a subsidiary insured institution and other holding company affiliates of such insured institution should be subject to any regulatory restrictions?

(iii) Whether it is appropriate, for simplicity and uniformity reasons, to treat subsidiaries of subsidiary insured institutions as affiliates in all cases for purposes of Part 584? and;

(iv) Whether and to what extent, distinctions can and should be made between the treatment of affiliates that are holding company subsidiaries and other entities that are currently treated as affiliates, e.g., companies controlled by a natural person that is a controlling person of the holding company?

Proposed new § 584.3–1 requires all covered and exempt transactions between a subsidiary insured institution and its affiliates to be on terms and conditions consistent with safe and sound thrift practices and prohibits an insured institution from purchasing "low-quality" assets (as defined therein) from an affiliate. Finally, the regulation requires that all of a subsidiary insured institution's extensions of credit to an affiliate must be secured by collateral in specified amounts.

New 12 CFR 584.3–2 tracks, with minor modifications [e.g., the term "insured institution" is substituted for "member bank" throughout the regulation), the terms and provisions of Section 23B of the FRA. The new regulation provides that a subsidiary insured institution may engage in certain transactions with an affiliate of the insured institution only if the terms and conditions of the transaction are substantially the same, or at least as favorable to the insured institution, as those prevailing at the time for comparble transactions with nonaffiliated companies. In the absence of comparable transactions, the regulation requires the terms and conditions of the transaction to be the same as those that, in good faith, would be offered to or would apply to nonaffiliatied companies. In addition, an advertising restriction is imposed on insured institutions, their subsidiaries, and affiliates with respect to advertisements stating or suggesting that the insured institution shall in any way be responsible for the obligations of its affiliates.

The Board intends new Sections 584.3–1 and 584.3–2 to apply to transactions between a subsidiary insured institution and those of its affiliates that are exclusively engaged in permissible nonbanking activities. That an affiliate is engaged in more than one permissible nonbanking activity will not affect the applicability of the new provisions provided the affiliate is engaged only in permissible nonbanking activities. In general, new §§ 584.3–1 and 584.3–2 represent a liberalization, dictated by the CEBA, of the transactions with affiliates restrictions applicable to insured institutions and those of their affiliates that are engaged only in permissible nonbanking activities. The new regulations contain their own set of defined terms including: "Covered transaction," "control," "subsidiary," "securities," "low-quality asset," and "permissible nonbanking activity." The proposed new regulation would define the term "insured institution" to have the same meaning as given that term under 12 CFR 583.6.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporate above in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The proposed rule would not have a substantial impact on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap, or conflict with this proposal.

5. *Alternative to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 584

Holding Companies, Savings and loan association, Securities.

Accordingly, the Board hereby proposes to amend Part 584, Subchapter

[1] See Bd. Res. No. 86–287, 52 FR 15230 (April 28, 1986).

[2] See, Board Res. No. 87–1296, 53 FR 312 (January 6, 1988) in which the Board adopted amendments to its regulations to, among other things, revise 12 CFR 584.2–2 regarding permissible nonbanking activities of savings and loan holding companies.

[3] Generally, transactions directly between insured institutions with the requisite relationship will be exempted from the provisions of proposed 12 CFR 584.3–1. See proposed 12 CFR 584.3–1(e).

[4] In this regard the Board notes that, although 12 CFR 583.15 includes a service corporation subsidiary of a subsidiary insured institution within the definition of "affiliate" for purposes of the transactions with affiliates provisions of 12 CFR 584.3, a service corporation subsidiary of an insured institution that is not part of a holding company structure (a "stand alone institution") is not included in the definition of "affiliated person" contained in 12 CFR 561.29 and, therefore, transactions between such stand alone institution and its service corporations would not be subject to comparable transactions with affiliates regulation.

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F, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

1. The authority citation for Part 584 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1728, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp. p. 1071.

2. Amend § 584.3 by revising the introductory text of paragraph (a); and by adding a new paragraph (i) to read as follows:

§ 584.3 Transactions with affiliates.

(a) *Prohibited transactions.* Except as provided by §§ 584.3–1 and 584.3–2, no subsidiary insured institution of a savings and loan holding company shall:

* * * * *

(i) *Common ownership exemption.* The provisions of this section shall not apply to:

(1) Transactions between an insured institution that is a subsidiary of an insured institution and such parent insured institution (or such parent insured institution's subsidiaries); or

(2) Transactions between insured institution's (and each other's subsidiaries) the voting stock of which is at least 80 percent owned by the same holding company.

An insured institution may not, however, purchase a low quality asset (as defined in § 584.3–1) from another insured institution, and any transaction with another insured institution (or its subsidiaries) under this section must be on terms and conditions that are consistent with safe and sound financial practices.

3. Add new § 584.3–1 to read as follows:

§ 584.3–1 Transactions with affiliates that are exclusively engaged in permissible nonbanking activities.

(a) *Scope of section.* This section, in conjunction with § 584.3–2, exclusively governs transactions between an insured institution subsidiary of a savings and loan holding company or subsidiaries of such institution and those affiliates of the insured institution that are engaged exclusively in permissible nonbanking activities (as defined in paragraph (c) of this section).

(b) *Restriction on transactions with affiliates.* (1) An insured institution and its subsidiaries may engage in a covered transaction with an affiliate that is engaged exclusively in permissible nonbanking activities only if:

(i) In the case of any such affiliate, the aggregate amount of covered transactions of the insured institution and its subsidiaries will not exceed 10 per centum of the regulatory capital of the insured institution (as defined in § 561.13 of this chapter);

(ii) In the case of all such affiliates, the aggregate amount of covered transactions of the insured institution and its subsidiaries will not exceed 20 per centum of the regulatory capital of the insured institution (as defined in § 561.13 of this chapter); and

(iii) In the case of covered transactions in excess of the quantitative limitations contained in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, prior written approval of the Corporation is obtained. Such approval may be granted if the Corporation finds that such covered transaction would not be detrimental to the interests of the savings account holders of the specific insured institution or to the insurance risk of the Corporation with respect to that institution. The Principal Supervisory Agent (as defined in § 561.35 of this chapter) shall have authority to give prior written approval on behalf of the Corporation to any such covered transaction requiring approval under this paragraph (b)(1)(iii), provided that such transaction does not raise a significant issue of law or policy.

(2) For the purpose of this section, any transaction by an insured institution with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliated.

(3) An insured institution may not purchase a low-quality asset from an affiliate unless the insured institution, pursuant to an independent credit evaluation, committed itself to purchase such asset prior to the time such asset was acquired by the affiliate.

(4) Any covered transactions and any transactions exempt under paragraph (e) of this section between an insured institution and an affiliate shall be on terms and conditions that are consistent with safe and sound financial institution practices.

(c) *Definitions.* For the purpose of this section—

(1) The term "affiliate" with respect to an insured institution means—

(i) Any company that controls the insured institution and any other company that is controlled by the company that controls the insured institutions;

(ii) Any insured institution subsidiary of the insured institution;

(iii) Any company—

(A) that is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the insured institution or any company that controls the insured institution; or

(B) In which a majority of its directors or trustees constitute a majority of the persons holding any such office with the insured institution or any company that controls the insured institution;

(iv)(A) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the insured institution or any subsidiary or affiliate of the insured institution; or

(B) Any investment company with respect to which an insured institution or any affiliate thereof is an investment advisor as defined in section 80a–2(a)(20) of Title 15; and

(v) Any company that the Corporation determines by regulation or order to have a relationship with the insured institution or any subsidiary or affiliate of the insured institution, such that covered transactions by the insured institution or its subsidiary with that company may be affected by the relationship to the detriment of the insured institution or its subsidiary; and

(2) The following shall not be considered to be an affiliate.

(i) Any company, other than an insured institution, that is a subsidiary of the insured institution, unless the subsidiary is engaged in activities that the insured institution would not be authorized to engage in directly;

(ii) Any company engaged solely in holding the premises of the insured institution;

(iii) Any company engaged solely in conducting a safe deposit business;

(iv) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(v) Any company where control results from the exercise of rights arising out a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law or regulation, for a period of one year from the date of the exercise of such rights or the effective date of this section, whichever date is later, subject, upon application, to authorization by the Corporation for good cause shown of extensions of time for not more than one year at a time, but such extensions in the aggregate shall not exceed three years;

(3)(i) A company or shareholder shall be deemed to have control over another company if—

(A) Such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(B) such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(C) The Corporation determines, after notice and opportunity for hearing, that such company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company; and

(ii) Notwithstanding any other provisions of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (e)(1)(iii) of this section or if the company owning or controlling such shares is a business trust;

(4) The term "subsidiary" with respect to a specified company means a company that is controlled by such specified company;

(5) The term "insured institution" has the same meaning as given that term under § 583.6 of this subchapter.

(6) The term "company" means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes an "insured institution";

(7) The term "covered transaction" means with respect to an affiliate of an insured institution—

(i) A loan or extension of credit to the affiliate;

(ii) A purchase of or an investment in securities issued by the affiliate;

(iii) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Corporation by order or regulation;

(iv) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company; or

(v) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate;

(8) The term "aggregate amount of covered transactions" means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions;

(9) The term "securities" means stocks, bonds, debentures, notes, or other similar obligations;

(10) The term "low-quality asset" means an asset that falls in any one or more of the following categories:

(i) An asset classified as "substandard", "doubtful", or "loss" or treated as "other assets especially mentioned" in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(ii) An asset in a nonaccrual status;

(iii) An asset on which principal or interest payments are more than thirty days past due; or

(iv) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor; and

(11) The term "permissible nonbanking activities" means those services and activities permissible for bank holding companies pursuant to section 4(c)8 of the Bank Holding Company Act and the regulations and orders thereunder.

(d) *Collateral for certain transactions with affiliates.* (1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by an insured institution shall be secured at the time of the transaction by collateral having a market value equal to—

(i) 100 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit, if the collateral is composed of—

(A) Obligations of the United States or its agencies;

(B) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) Notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(D) A segregated, earmarked deposit account with the insured institution;

(ii) 110 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of obligations of any State or political subdivision of any State;

(iii) 120 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or

(iv) 130 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.

(2) Any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit at least equal to the minimum percentage required at the inception of the transition.

(3) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(4) The securities issued by an affiliate of the insured institution shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the insured institution.

(5) The collateral requirements of this paragraph (d) shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is at least equal to the credit involved in the transaction.

(e) *Exemptions.* The provisions of this section, except paragraph (b)(4) of this section, shall not be applicable to—

(1) Any transaction, subject to the prohibition contained in paragraph (b)(3) of this section, with an insured institution—

(i) Which controls 80 per centum or more of the voting shares of the insured institution;

(ii) In which the insured institution controls 80 per centum or more of the voting shares; or

(iii) In which 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the insured institution;

(2) Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(3) Making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate that is fully secured by—

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) A segregated, earmarked deposit account with the insured institution;

(4) Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in paragraph (b)(3) of this section, purchasing loans on a nonrecourse basis from affiliated insured institutions; and

(5) Purchasing from an affiliate a loan or extension of credit that was originated by the insured institution and sold to the affiliate subject to a repurchase agreement or with recourse.

4. Add new § 584.3–2 to read as follows:

§ 584.3–2 Transactions with affiliates; additional standards.

(a) *Scope of section.* This section, in conjunction with § 584.3–1, exclusively governs transactions between an insured institution subsidiary of a saving and loan holding company or its subsidiaries and affiliates of the insured institution that are engaged exclusively in permissible nonbanking activities (as defined in paragraph (c) of § 584.3–1).

(b) *In general.*—(1) *Terms.* An insured institution and its subsidiaries may engage in any of the transactions described in paragraph (b)(2) of this section only—

(i) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such insured institution or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies.

(ii) In the absence of comparable transactions, on terms and other circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

(2) *Transactions covered.* Paragraph (b)(1) of this section applies to the following:

(i) Any covered transaction with an affiliate.

(ii) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

(iii) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

(iv) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the insured institution or to any other person.

(v) Any transaction or series of transactions with a third party—

(A) If an affiliate has a financial interest in the third party, or

(B) If an affiliate is a participant in such transaction or series of transactions.

(3) Transactions that benefit an affiliate. For the purpose of this section, any transaction by an insured institution with any person shall be deemed to be a transaction with an affiliate of such insured institution if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

(c) *Prohibited transaction*—(1) *In general.* An insured institution or its subsidiary—

(i) Shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted—

(A) Under the instrument creating the fiduciary relationship,

(B) By court order, or

(C) By law of the jurisdiction governing the fiduciary relationship; and

(ii) Whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such insured institution.

(2) *Exception.* Paragraph (c)(1)(ii) of this section shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the insured institution who are not officers or employees of the insured institution or any affiliate thereof.

(3) *Definitions.* For the purpose of this paragraph (c)(3)

(i) The term "security" has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934; and

(ii) The term "principal underwriter" means any underwriter who, in connection with a primary distribution of securities—

(A) Is in privity of contract with the issuer or any affiliated person of the issuer;

(B) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(C) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(D) *Advertising restriction.* An insured institution or any subsidiary or affiliate of an insured institution shall not publish any advertisement or enter into any agreement stating or suggesting that the insured institution shall in any way be responsible for the obligations of its affiliates.

(e) *Definitions.* For the purpose of this section—

(1) The term "affiliate" has the meaning given to such term in § 584.3–1 of this Subchapter (but does not include any company described in paragraph (c)(2) of such seciton or any "insured institution");

(2) The terms "insured institution", "subsidiary", "person", "permitted activities" and "security" (other than security as used in paragraph (c) of this section) have the meanings given to such terms in § 584.3–1 of this subchapter; and

(3) The term "covered transaction" has the meaning given to such term in § 584.3–1 of this Subchapter (but does not include any transaction which is exempt from such definition under paragraph (e) of such section).

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88–13087 Filed 6–9–88; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 16

[Docket No. RM87–33–000]

Hydroelectric Relicensing Regulations Under the Federal Power Act

May 24, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations governing the relicensing of hydroelectric power projects. The proposed changes include revised requirements for an application for a new license, a process for pre-filing consultation with resource agencies, and new standards and factors for evaluating relicensing application. The proposed rule also revises the procedures for an application for a nonpower license, a minor license, and an exemption from licensing upon expiration of an existing license. The Commission proposes new provisions relating to acceleration of a license expiration date and site access for potential competing applicants. This proposal implement, in part, changes to the Federal Power Act made by the Electric Consumers Protection Act of 1986.

DATE: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by September 8, 1988.

ADDRESS: All filings should refer to Docket No. RM87–33–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357–8530.

SUPPLEMENTARY INFORMATION: This is a summary of a Notice of Proposed Rulemaking in Docket No. RM87–33–000 issued May 24, 1988. All persons interested in obtaining the full text of this document for inspection and copying may do so during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426. In addition, the Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that the proposed relicensing regulations, is promulgated, will not have a significant economic impact on a substantial number of small entities, or that, even if the rule were to have a significant economic impact on a substantial number of small entities, it will be to their benefit.

The Paperwork Reduction Act [1] and the Office of Management and Budget's (OMB) regulations [2] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this proposed rule have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (Attention: Marian Obis, Office of Information and Resource Management (202) 357–8173). Comments on the informaiton collection provisions of this proposed rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

The Commission has determined that no environmental assessment or environmental impact statement is necessary for the requirements proposed in this NOPR.[3] The Commission has categorically excluded certain actions from the requirement that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment. The proposed rule is procedural in nature and therefore falls within one of the categorical exclusions.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Electric power.

In consideration of the foregoing, the Commission proposes to amend Parts 4 and 16 of Chapter I, Title 18, Code of Federal Regulations.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 4.60 is amended by adding a new paragraph (c) to read as follows:

§ 4.60 Applicability and notice to agencies.

* * * * *

(c) Unless an applicant for a license for a minor water power project requests in its application that the Commission apply the following provisions of Part I of the Federal Power Act when it issues a minor license for a project, the Commission will waive:

(1) Section 4(b), insofar as it requires a licensee to file a statement showing the actual legitimate costs of construction of a project;

(2) Section 4(e), insofar as it relates to approval by the Chief of Engineers and the Secretary of the Army of plans affecting navigation;

(3) Section 6, insofar as it relates to the acceptance and expression in the license of terms and conditions of the Federal Power Act that are waived in the licensing order;

(4) Section 10(c), insofar as it relates to a licensee's maintenance of depreciation reserves;

(5) Sections 10(d) and 10(f);

(6) Section 14, with the exception of the right of the United States or any state or municipality to take over, maintain, and operate a project through condemnation proceedings; and

(7) Sections 15, 16, 19, 20 and 22.

3. In § 4.61, paragraph (f)(3) is revised to read as follows:

§ 4.61 Contents of application.

* * * * *

(f) * * *

(3)(i) If an application for a license for a minor water power project that will not occupy any public lands or reservations of the United States does not contain a statement that the applicant requests the Commission to apply the provisions of Part I of the Federal Power Act enumerated in § 4.60(c), the applicant:

(A) Must provide a reasonably accurate description of all project works and features; and

(B) Must identify, in Exhibit G of its application, the owners of all lands necessary for the construction and operation of the project, but

(C) Need not show a project boundary.

(ii) If an application for a license for a minor water power project contains a statement that the applicant requests the Commission to apply the provisions of Part I of the Federal Power Act enumerated in § 4.60(c), the applicant must show the project boundary on the map it submits as Exhibit G to its application, as specified in § 4.41(h)(2).

(iii) If an application for a license for a minor water power project proposes that the project would occupy any public lands or reservations of the United States, the applicant must show the

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[1] 44 U.S.C. 3501–3520 (1982).

[2] 5 CFR Part 1320 (1987).

[3] Regulations Implementing National Environmental Policy Act, 52 FR 47 897 (Dec. 17, 1987) (to be codified at 18 CFR Part 380).

project boundaries on public lands and reservations on the map it submits as Exhibit G to its application, as specified in § 4.41(h)(2).

* * * * *

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

4. The authority citation for Part 16 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

5. Sections 16.1 through 16.5 are revised and designated Subpart A, to read as follows:

Subpart A—General Provisions

Sec.
16.1 Applicability and purpose.
16.2 Definitions.
16.3 Public notice of projects under expiring licenses.
16.4 Acceleration of a license expiration date.
16.5 Site access for a competing applicant.

Subpart A—General Provisions

§ 16.1 Applicability and purpose.

This part applies to the filing and processing of an application for:

(a) A new license, a nonpower license, or an exemption from licensing for a hydroelectric project with an existing license subject to the provisions of sections 14 and 15 of the Federal Power Act.

(b) A new license or an exemption from licensing for a hydroelectric project with an existing minor license or minor part license not subject to the provisions of sections 14 and 15 of the Federal Power Act because those sections were waived pursuant to section 10(i) of the Federal Power Act.

§ 16.2 Definitions.

For purposes of this part:

(a) "New license" means a license, except an annual license, for a water power project that is issued under Section 15 of the Federal Power Act after an initial license expires.

(b) "New license application filing deadline", as provided in section 15(c)(1) of the Federal Power Act, is the date 24 months before the expiration of an existing license.

(c) "Nonpower license" means a license for a nonpower project.

(d) "Resource agency" means a Federal or state agency with responsibilities in the area of flood control, navigation, irrigation, recreation, fish or wildlife, or cultural or other relevant resources of the state in which a project is or will be located.

§ 16.3 Public notice of projects under expiring licenses.

In addition to the notice of a licensee's intent to file or not to file an application for a new license provided in § 16.6(d), the Commission will publish a table showing the projects whose licenses will expire during the succeeding five years in its annual report in the **Federal Register**. The table will:

(a) List the licenses according to their expiration dates and

(b) Contain the following information: license expiration date; licensee's name; project number; type of principal project work licensed, *e.g.*, dam and reservoir, powerhouse, transmission lines; location by state, county, and stream; location by city or nearby city when appropriate; whether the existing license is subject to sections 14 and 15 of the Federal Power Act; and plant installed capacity.

§ 16.4 Acceleration of a license expiration date.

(a) *Request for acceleration.* (1) A licensee wishing to install new capacity at its project may file with the Commission, in accordance with the formal filing requirements in Subpart T of Part 385 of this chapter, a written request for acceleration of the expiration date of its existing license, containing the statements and information specified in § 16.6(b).

(2) The Commission will deem a request for acceleration to be a notice of intent under § 16.6 and the filing of a request for acceleration will obligate the licensee to make available the information specified in § 16.7.

(b) *Notice of request for acceleration.* Upon receipt of a request for acceleration, the Commission will give notice of the licensee's request and provide a 45-day period for comments by interested persons by:

(1) Publishing notice in the **Federal Register**;

(2) Publishing notice once every week for four weeks in a daily or weekly newspaper published in the county or counties in whch the project or any part thereof or the lands affected thereby are situated; and

(3) Notifying appropriate Federal and state resource agencies by mail.

(c) *Commission order.* If it is in the public interest, the Commission will issue an order accelerating the expiration date of the license to five years from the date of the Commission order.

§ 16.5 Site access for a competing applicant.

After an existing licensee has filed a notice of intent under § 16.6, if a potential applicant for a new license or a nonpower license for a project has complied with the first stage consultation provisions of § 16.8(b)(1) and has notified the existing licensee in writing, the existing licensee must allow the potential applicant to enter upon or into designated land, buildings, or other property in the project area at a reasonable time and under reasonable conditions, including reasonable liability conditions, conditions for compensation to the existing licensee for energy generation lost as a result of modification of project operations that may be necessary to provide access, and in a manner that will not adversely affect the environment, for the purposes of:

(a) Conducting a study or gathering information required by a resource agency under § 16.8 or by the Commission pursuant to § 4.32 of this chapter, or

(b) Holding a site visit for a resource agency under § 16.8.

§ 16.15 [Redesignated as § 16.6]

6. Section 16.15 is redesignated as § 16.6.

§ 16.7 [Removed]

7. Section 16.7 is removed.

§ 16.16 [Redesignated as § 16.7]

8. Section 16.16 is redesignated as § 16.7.

9. Sections 16.8 through 16.13 are revised to read as follows and, together with newly redesignated §§ 16.6 and 16.7, are designated as Subpart B.

Subpart B—Applications for Projects Subject to Sections 14 and 15 of The Federal Power Act

* * * * *

§ 16.8 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files an application for a new license, a nonpower license, an exemption from licensing, or a surrender of a project, a potential applicant must consult with the relevant Federal and state resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the Federal agency administering any United States lands utilized or occupied by the project, the appropriate state fish and wildlife agencies, and the certifying agency under section 401 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will provide a list of known appropriate Federal and state resource agencies upon request.

(b) *First stage of consultation.* (1) A potential applicant must provide each of the appropriate resource agencies and the Commission with the following information:

(i) Detailed maps showing proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all existing and proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the existing project and any proposed changes, with a description of any exisiting or proposed diversion of a stream through a canal or a penstock;

(iii) A summary of the existing operational mode of the project and any proposed changes;

(iv) Identification of the environment affected or to be affected, the significant resources present, and the applicant's existing and proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, both existing and proposed, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations; and

(vi) A tentative schedule and location for the initial meetings or conference calls provided for in paragraph (b)(2) of this section.

(2) After each agency has had 30 days to review the information submitted by the potential applicant under paragraph (b)(1) of this section, the potential applicant will:

(i) Hold a joint meeting(s) or conference call(s), including an opportunity for a site visit, with all pertinent agencies to review the information and to determine the data and studies to be provided by the potential applicant as part of the consultation process, and

(ii) Inform the Commission in advance of the time and place of each meeting or conference call.

(3) Thirty days after the meeting or conference call held under paragraph (b)(2) of this section during which there is agreement by all participants that all the information required by § 16.8(b)(1) has been provided, an agency will provide a potential applicant with written comments identifying its final determination of necessary studies to be performed or information to be provided by the potential applicant.

(4)(i) If a potential applicant disagrees with a resource agency either as to whether a study is reasonable and necessary or as to the manner in which a study should be performed, the potential applicant may refer the request to the Director of the Office of Hydropower Licensing for resolution if:

(A) The study is not routinely conducted on the type of project proposed, or

(B) The manner in which the resource agency has required that the study be performed is not routinely used on the type of project proposed.

(ii) If the potential applicant does not refer the request for a study under paragraph (b)(4)(i) of this section or if the potential applicant disagrees with the Director's determination and does not conduct a requested study or conducts a study in a manner different from that requested, the potential applicant must fully explain the basis for its disagreement in its application.

(5) The first stage of consultation ends when all participating agencies provide the written comments required under paragraph (b)(3) of this section.

(c) *Second stage of consultation.* (1) A potential applicant must conduct its own studies independently of any other applicant, unless the potential applicant and any other potential applicant agree to do otherwise, and

(2) A potential applicant is not obligated to share the results of a study with a competing applicant.

(3) A potential applicant must perform all reasonable studies and obtain all information requested under paragraph (b) of this section:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (*e.g.* minimum flow study) or technical feasibility of the project (*e.g.* study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, the impact of the project on important natural or cultural resources (*e.g.* resource surveys), suitable mitigation measures, or to minimize impact on significant resources (*e.g.* wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After a new license is issued, if the studies can be conducted only after construction or operation of proposed facilities (*e.g.* turbine-related fish mortality studies), would determine the success of mitigation measures (*e.g.* post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(4)(i) If, after the end of the first stage of consultation in paragraph (b)(5) of this section, a resource agency requests that the potential applicant conduct a study not previously identified, the potential applicant will promptly initiate the study, unless the Director of the Office of Hydropower Licensing determines under paragraph (b)(3) of this section that the study is unreasonable or unnecessary.

(ii) The study results will be treated as additional information, and

(iii) Filing and acceptance of an application will not be delayed because the study is not complete before the application is filed.

(5) A potential applicant must provide each agency with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission, and

(B) Responds to any comments and recommendations made by any resource agency during the first stage of consultation;

(ii) The results of all studies requested by that resource agency in the first stage of consultation, including a discussion of the results and any proposed mitigation and enhancement measures; and

(iii) A written request for review and comment.

(6) A resource agency will have 60 days to provide written comments on the information submitted by a potential applicant under paragraph (c)(5) of this section.

(7) If the written comments provided under paragraph (c)(6) indicate that a resource agency has a substantive disagreement with a potential applicant's proposed mitigation and enhancement measures, the potential applicant will:

(i) Hold a joint meeting(s) or conference call(s) with all pertinent resource agencies to discuss and to attempt to reach agreement on its plan for environmental mitigation and enhancement measures, and

(ii) Inform the Commission in advance of the time and place of each meeting or conference call.

(8) The potential applicant and the resource agencies may conclude the second stage or consultation with a document embodying any agreement among them regarding environmental

mitigation and enhancement measures and any issues that are unresolved.

(9) The potential applicant must describe all disagreements with a resource agency on technical or environmental mitigation or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency.

(10) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraphs (c)(5) and (6) and no resource agency has responded with substantive disagreements, or

(ii) It has complied with paragraph (c)(7), if any resource agency has responded with substantive disagreements.

(11) The end of the second stage of consultation is the filing of an application.

(d) *Third stage of consultation.* When an applicant files such application documents with the Commission, it must serve on every resource agency consulted, and any state, municipal, interstate, or Federal agency which is authorized to assume regulatory supervision over the land, waterways, and facilities to be included within the nonpower project, a copy of:

(1) Its application for a new license, a nonpower license, an exemption from licensing, or a surrender of the project; and

(2) Any deficiency correction, revision, supplement, or amendment to the application.

(e) *Resource agency waiver of compliance with consultation requirements.* (1) If all the appropriate resource agencies waive or are deemed to have waived, compliance with any requirement of this section, the applicant need not comply with that requirement.

(2) A resource agency is deemed to have waived compliance with the requirements of this section if the resource agency fails to:

(i) Participate in a joint meeting or conference call under paragraph (b)(2) or (c)(7) of this section;

(ii) Identify any necessary data or studies under paragraph (b)(5) of this section; or

(iii) Provide written comments under paragraph (c)(6) of this section.

(f) *Application requirements documenting consultation and any disagreements with resource agencies.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) of this section, and must include:

(1) Any resource agency letter containing comments, recommendations, and proposed terms and conditions;

(2) Notice of any remaining disagreement with a resource agency on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement, and

(ii) Information on any environmental mitigation or enhancement measure, including the basis for the applicant's disagreement with the resource agency.

(3) With regard to certification requirements for a license applicant under section 401 of the Clean Water Act:

(i) A copy of the water quality certification, or

(ii) A copy of the request for certification, including proof of the date on which the certifying agency received the request in accordance with applicable law governing filings with that agency;

(4) Evidence of any waivers under paragraph (e) of this section or § 16.10(a)(13)(ii);

(5) Evidence of all attempts to consult with a resource agency, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with relevant comprehensive state and regional water resource development plans and programs.

(g) *Confidentiality of pre-filing submissions.* If a potential applicant requests confidential treatment of any information in its pre-filing submissions, the Commission will treat that request in accordance with the confidentiality provisions in § 388.112 of this chapter.

§ 16.9 Applications for new licenses and nonpower licenses for projects subject to sections 14 to 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an applicant for a new license or nonpower license for a project subject to sections 14 and 15 of the Federal Power Act.

(b) *Filing requirement.* (1) Except as provided in paragraph (b)(2) of this section, an applicant for a license under this section must file its application at least 24 months, but no more than 30 months, before the existing license expires.

(2) The requirement in paragraph (b)(1) of this section does not apply if an applicant has filed an application for a new license or nonpower license more than 30 months before the license expired and before September 8, 1988.

(3) An application for a license under this section must meet the requirement of § 4.32 (except that an applicant will have until 18 months before the expiration of the existing license to correct a deficiency in its application), and as appropriate, §§ 4.41, 4.51, or 4.61 of this chapter.

(4) The requirements of § 4.35 of this chapter do not apply to a license under this section, except that the Commission will reissue a public notice of application in accordance with the provisions of § 16.9(d).

(5) If the Commission rejects or dismisses an application pursuant to the provisions of § 4.32 of this chapter, the application may not be refiled after the new license application filing deadline specified in § 16.9(b).

(c) *Deficiency notices and final amendments.* (1) The Office of Hydropower Licensing will review an application filed under this section and will notify the applicant of any deficiency within 90 days of the filing of the application.

(2) All amendments to an application, including correction of any deficiency and the final amendment, must be filed with the Commission no later than 18 months before the existing license for the project expires.

(d) *Commission notice.* (1) Upon acceptance of an application for a new license or a nonpower license, the Commission will give notice of the application and of the dates for comment, intervention, and protests by:

(i) Publishing notice in the **Federal Register**;

(ii) Publishing notice in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal and state resource agencies by mail.

(2) Within 60 days after the new license application filing deadline, the Commission will issue a notice on the processing deadlines established under § 4.32 of this chapter, estimated dates for further processing deadlines under § 4.32 of this chapter, and on any final amendment deadline established under paragraph (c) of this section and will:

(i) Publish the notice in the **Federal Register**;

(ii) Provide the notice to appropriate Federal and state resource agencies, and

(iii) Serve the notice on all parties to the proceedings pursuant to § 385.2010 of this chapter.

§ 16.10 Information to be provided by applicant for new license.

(a) *Information to be supplied by all applicants.* All applicants for a new license under this part must file the following information with the Commission:

(1) A discussion of the plans and ability of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service, including efforts and plans to:

(i) Increase capacity or generation at the project;

(ii) Coordinate the operation of the project with any upstream or downstream water resource projects; and

(iii) Coordinate the operation of the project with the applicant's or other electrical systems to minimize the cost of production.

(2) A discussion of the need of the applicant over the short and long term for the electricity generated by the project, including:

(i) The reasonable costs and reasonable availability of alternative sources of power that would be needed by the applicant or its customers if the applicant is not granted a license for the project.

(ii) A discussion of the license in fuel, capital, and any other costs that would be incurred by the applicant or its customers to purchase or generate power necessary to replace the output of the licensed project, if the applicant is not granted a license for the project.

(iii) The effect of each alternative source of power on:

(A) The applicant's customers;

(B) The applicant's operating and load characteristics; and

(C) The communities served or to be served, including any reallocation of costs associated with the transfer of a license from the existing licensee.

(3) The following data showing need and the reasonable cost and availability of alternative sources of power:

(i) The average annual cost of the power produced by the project, including the basis for the calculation;

(ii) The projected resources required by the applicant to meet the applicant's capacity and energy requirements over the short and long term including:

(A) Energy and capacity resources, including the contributions from the applicant's generation, purchases, and load modification measures (such as conservation, if considered as a resource), as separate components of the total resources required;

(B) A reasonable analysis, including a statement of system reserve margins to be maintained for energy and capacity; and

(C) If load management measures are not viewed as resources, the effects of such measures on the projected capacity and energy requirements indicated separately;

(iii) For alternative sources of power, including generation of additional power at existing facilities, restarting deactivated units, the purchase of power off-system, the construction or purchase and operation of a new power plant, and load management measures such as conservation:

(A) The total annual cost of each alternative source of power to replace project power;

(B) The basis for the determination of projected annual cost; and

(C) A discussion of the relative merits of each alternative, including the issues of the period of availability and dependability of purchased power, average life of alternatives, relative equivalent availability of generating alternatives, and relative impacts on the applicant's power system reliability and other system operating characteristics; and

(iv) The effect on the direct providers (and their immediate customers) of alternate sources of power.

(4) If an applicant uses power for its own industrial facility and related operations, the effect of obtaining or losing electricity from the project on the operation and efficiency of such facility or related operations, its workers, and the related community.

(5) If an applicant is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation.

(6) A comparison of the impact on the operations and planning of the applicant's transmission system of receiving or not receiving the project license, including:

(i) An analysis of the effects of any resulting redistribution of power flows on line loading (with respect to applicable thermal, voltage, or stability limits), line losses, and necessary new construction of transmission facilities or upgrading of existing facilities, together with the cost impact of these effects;

(ii) An analysis of the advantages that the applicant's transmission system would provide in the distribution of the project's power; and

(iii) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements in relation to the project and other principal interconnected system elements. Power flow and loss data that represent system operating conditions may be appended if applicants believe such data would be useful to show that the operating impacts described would be beneficial.

(7) If the applicant has plans to modify existing project facilities or operations, a statement of the need for, or usefulness of, the modifications, including at least a reconnaissance-level study of the effect and projected costs of the proposed plans and any alternate plans, which in conjunction with other developments in the area would be best adapted to comprehensive development of the river basin.

(8) If the applicant has no plans to modify existing project facilities or operations, at least a reconnaissance-level study to show that the project facilities or operations in conjunction with other developments in the area would be best adapted to comprehensive development of the river basin and could not or should not be modified to improve development of the site.

(9) A statement describing the applicant's financial and personnel resources to meet its obligations under a new license.

(10) If an applicant proposes to expand the project to encompass additional lands, a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

(11) A statement regarding the extent to which the project is consistent with any state or Federal comprehensive plan for improving or developing a waterway, as described in § 2.19 of this chapter, unless the applicant has already provided that information in its documentation of the consultation process under § 16.8(f)(6).

(12) The applicant's electricity consumption efficiency improvement program, as defined under section 10(a)(2)(C) of the Federal Power Act, including:

(i) A statement of the applicant's record of encouraging or assisting its customers to conserve electricity and a description of its plans and capabilities for promoting electricity conservation by its customers; and

(ii) A statement describing the compliance of the applicant's energy conservation programs with any applicable regulatory requirements.

(13)(i) A request for certification under section 401(a)(1) of the Clean Water Act, if the applicant is filing:

(A) An application for a new license; or

(B) Any material amendment, as defined under § 4.35(b) of this chapter, to plans of development proposed in an application for a license.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act under the same circumstances as set out in § 4.38(e)(2) of this chapter.

(b) *Information to be provided by an applicant who is an existing licensee.* An existing licensee that applies for a new license must provide:

(1) The information specified in paragraph (a) of this section.

(2) A statement of measures taken or planned by the licensee to ensure safe management, operation, and maintenance of the project, including:

(i) A description of existing and planned operation of the project during flood conditions;

(ii) A discussion of any warning devices used to ensure downstream public safety;

(iii) A discussion of any proposed changes to the operation of the project or downstream development that might affect the existing Emergency Action Plan, as described in Subpart C of Part 12 of this chapter, on file with the Commission;

(iv) A description of existing and planned monitoring devices to detect structural movement or stress, seepage, uplift, equipment failure, or water conduit failure, including a description of the maintenance and monitoring programs used or planned in conjunction with the devices; and

(v) A discussion of the project's employee safety and public safety record, including the number of lost-time accidents involving employees and the record of injury or death to the public within the project boundary.

(3) A description of the current operation of the project, including any constraints that might affect the manner in which the project is operated.

(4) A discussion of the history of the project and record of programs to upgrade the operation and maintenance of the project.

(5) A summary of any generation lost at the project over the last five years because of unscheduled outages, including the cause, duration, and corrective action taken.

(6) A discussion of the licensee's record of compliance with the terms and conditions of the existing license, including a list of all incidents of noncompliance, their disposition, and any documentation relating to each incident.

(7) A summary of any acquisition of land or land rights associated with the project.

(8) A summary of the ownership and operating expenses that would be reduced if the project license were transferred from the existing licensee.

(9) A statement of annual fees paid under Part I of the Federal Power Act for the use of any Federal or Indian lands included within the project boundary.

(c) *Information to be provided by all applicants other than existing licensee.* An applicant that is not an existing licensee must provide:

(1) The information specified in paragraph (a) of this section.

(2) A statement of the applicant's plans to manage, operate, and maintain the project safely, including:

(i) A description of the differences between the operation and maintenance procedures planned by the applicant and the operation and maintenance procedures of the existing licensee;

(ii) A discussion of any measures proposed by the applicant to implement the existing licensee's Emergency Action Plan, as described in Subpart C of Part 12 of this chapter, and any proposed changes;

(iii) A description of the applicant's plans to continue safety monitoring of existing project instrumentation and any proposed changes; and

(iv) A statement indicating whether or not the applicant is requesting the licensee to provide transmission services under section 15(d) of the Federal Power Act.

(d) *Extended deadline for certain applicants.* If an applicant must file an application under § 16.9 within 90 days from September 8, 1988, that applicant may provide the information required in this section (except for that specified in paragraph (a)(1)) within 90 days from the date on which it files the application.

§ 16.11 Nonpower licenses.

(a) *Information to be provided by all applicants for nonpower licenses.* (1) An applicant for a nonpower license must provide the following information with its application:

(i) The information required by § 4.51 or § 4.61 of this chapter;

(ii) A description of the nonpower purpose for which the project is to be used;

(iii) A showing of how the nonpower use conforms to a comprehensive plan for improving or developing a waterway(s) for beneficial uses;

(iv) A statement of any impact that converting the project to nonpower use may have on the power supply of the system served by the project, including the additional cost of power if an alternative generating source is used to offset the loss of the project's generation;

(v) The state, municipal, interstate, or Federal agency, which is authorized and willing to assume regulatory supervision over the land, waterways, and facilities to be included within the nonpower project;

(iv) Copies of written communication and documentation of oral communication that the applicant may have had with any jurisdictional agency or governmental unit authorized and willing to assume control over the project and the period of time during which the agency or unit would exercise control;

(vii) A statement that demonstrates that the applicant has complied with the requirements of § 16.8(d)(2);

(viii) A proposal that shows the manner in which the applicant plans to remove or otherwise dispose of the project's power facilities;

(ix) Any proposal to repair or rehabilitate any nonpower facilities;

(x) A statement of the costs associated with removing the project's power facilities and with any necessary restoration and rehabilitation work; and

(xi) A statement that demonstrates that the applicant has resources to ensure the integrity and safety of the remaining project facilities and to maintain the nonpower functions of the project until the governmental unit or agency assumes control over the project.

(2) If an applicant must file an application for a nonpower license under § 16.9 within 90 days from September 8, 1988, that applicant may provide information required in paragraph (a) of this section (except the information specified in paragraph (a)(1)(i)), within 90 days drom the date it files the application.

(b) *Termination of a proceeding for a nonpower license.* The Commission may deny an application for a nonpower license and turn the project over to any any agency that has jurisdiction over the land or reservations if:

(1) An existing project is located on public lands or reservations of the United States,

(2) Neither the existing licensee nor any other entity has filed an application for a new license for the project,

(3) No one has filed a recommendation to take over the license pursuant to § 16.14, and

(4) The agency that has jurisdiction over the land or reservations demonstrates that it is able and willing to:

(i) Accept responsibility for the nonpower use of the project, and

(ii) Pay the existing licensee for its net investment in the project and any severance damages specified in section 14(a) of the Federal Power Act.

(c) *Duration of nonpower license.* A nonpower license is effective until:

(1) The Commission determines that a state, municipal, interstate, or Federal agency has jurisdiction over, and is willing to assume responsibility for, the land, waterways, and facilities included within the nonpower license; or

(2) The Commission approves a plan for removal of project structures and restoration of the land, the project structures are removed, and the land is restored.

§ 16.12 Application for exemption from licensing by a licensee whose license is subject to sections 14 and 15 of the Federal Power Act.

(a) An existing licensee whose license is subject to sections 14 and 15 of the Federal Power Act may apply for an exemption for the project.

(b) An applicant for an exemption under paragraph (a) of this section must meet the requirements of Subpart K or Subpart J of Part 4 of this chapter, and §§ 16.5, 16.6, 16.7, 16.8, 16.9 (b) and (d), 16.10(a) (2) through (13), 16.10(b), 16.10(d), and 16.9(c) (except (1)(ii)).

(c) The Commission will process an application by an existing licensee for an exemption for the project in accordance with §§ 16.9(c) (1)(i), (2), (3), (4), (5), and 16.9(e).

(d) If a license application is filed in competition with an application for exemption filed by the existing licensee, the Commission will decide among the competing applications in accordance with the standards of § 16.13(a) and not in accordance with the provisions of § 4.37(d)(2) of this chapter.

§ 16.13 Standards and factors for issuing a new license.

(a) The Commission will consider the following factors to determine whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest:

(1) The plans and ability of the applicant to comply with the terms and conditions of a license;

(2) The plans and ability of the applicant to manage, operate, and maintain the project safely, and in a manner most likely to provide efficient and reliable electric service;

(3) The need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers;

(4) If the applicant is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the tribe's need for electricity generated by the project;

(5) The existing and planned transmission services of the applicant, including system reliability, costs, and other applicable economic and technical factors;

(6) Whether the plans of the applicant will be achieved, to the greatest extent possible, in a cost-effective manner;

(7) The provisions of section 10 of the Federal Power Act.

(b) If there are only insignificant differences between the final applications of an existing licensee and a competing applicant after consideration of the factors enumerated in paragraph (a) of this section, the Commission will base its decision on the existing licensee's record of compliance with the terms and conditions of the existing license.

(c) An existing licensee that files an application for a new license in conjunction with an entity or entities that are not currently licensees of the project will not be considered an existing licensee for purposes of section 15 of the Federal Power Act and Part 16 of these regulations.

10. Section 16.14 is revised and §§ 16.15 through 16.17 are added and designated as Subpart C, to read as follows:

Subpart C—Takeover Provisions for Projects Subject to Sections 14 and 15 of The Federal Power Act

Sec.

16.14 Departmental recommendation for takeover.

16.15 Commission recommendation to Congress.

16.16 Motion for stay by Federal department or agency.

16.17 Procedures upon Congressional authorization of takeover.

Subpart C—Takeover Provisions for Projects Subject to Sections 14 and 15 of the Federal Power Act

§ 16.14 Departmental recommendation for takeover.

(a) A Federal department or agency may file a recommendation that the United States exercise its right to take over a hydroelectric power project with a license that is subject to sections 14 and 15 of the Federal Power Act. The recommendation must:

(1) Be filed no earlier than five years before the license expires and no later than the end of the comment period specified by the Commission in:

(i) A notice of application for a new license, a nonpower license, or an exemption for the project, or

(ii) A notice of an amendment to an application for a new license, a nonpower license, or an exemption;

(2) Be filed in accordance with the formal requirements for filings in Subpart T of Part 385 of the Commission's regulations and be served on each relevant Federal and state resource agency, all applicants for new license, nonpower license or exemption, and any other party to the proceeding;

(3) Specify the project works that would be taken over by the United States;

(4) Describe the proposed Federal operation of the project, including any plans for its redevelopment, and discuss the manner in which takeover would serve the public interest as fully as non-Federal development and operation; and

(5) State whether the agency intends to undertake the operation of the project.

(b) A department or agency that files a takeover recommendation becomes a party to the proceeding.

(c) An applicant for a new license, a nonpower license, or an exemption that involves a takeover recommendation may file a reply to the recommendation, within 120 days from the date the takeover recommendation is filed with the Commission. The reply must be filed with the Commission in accordance with Part 385 of the Commission's regulations and the applicant must serve a copy of such a reply on the agency recommending the takeover and on any other party to the proceeding.

§ 16.15 Commission recommendation to Congress.

Upon receipt of a recommendation from any Federal department or agency, a proposal of any party, or on the Commission's own motion, and after notice and opportunity for hearing, the Commission may determine that a project may be taken over by the United States, issue an order on its findings and recommendations, and forward a copy to Congress.

§ 16.16 Motion for stay by Federal department or agency.

(a) Within 30 days of the date on which an order granting a new license or exemption is issued, a Federal department or agency that has filed a takeover recommendation under § 16.14 may file a motion under § 385.2010 of this chapter to request a stay of the effective date of the license or exemption order.

(b)(1) If a Federal department or agency files a motion under paragraph (a) of this section, the Commission will stay the effective date of the order issuing the license or exemption for two years.

(2) The stay issued under paragraph (b)(1) may be terminated either:

(i) Upon motion of the department or agency that requested the stay, or

(ii) By action of Congress.

(c) The Commission will notify Congress if:

(1) It issues an order granting a stay under paragraph (b)(1);

(2) Any license or exemption order becomes effective by reason of the termination of a stay; or

(3) Any license or exemption order becomes effective by reason of the expiration of a stay.

(d) The Commission's order granting the license or exemption will automatically become effective:

(1) Thirty days after issuance, if no stay is granted, provided that no appeal or rehearing is filed;

(2) When the period of the stay expires; or

(3) When the stay is terminated under paragraph (b)(2) of this section.

§ 16.17 Procedures upon Congressional authorization of takeover.

If Congress authorizes the takeover of a hydroelectric power project as provided under section 14 of the Federal Power Act:

(a) The Commission or its designee will notify the existing licensee in writing of the authorization at least two years before the takeover occurs; and

(b) The licensee must present any claim for compensation to the Commission:

(1) Within six months of issuance of the notice of takeover, and

(2) As provided in section 14 of the Federal Power Act.

11. Section 16.18 is added as Subpart D, to read as follows:

Subpart D—Annual Licenses For Projects Subject to Sections 14 and 15 of the Federal Power Act

§ 16.18 Annual licenses for projects subject to sections 14 and 15 of the Federal Power Act.

(a) This section applies to projects with licenses subject to sections 14 and 15 of the Federal Power Act.

(b) The Commission will issue an annual license to an existing licensee upon expiration of its existing license to allow:

(1) The licensee to continue to operate the project while the Commission reviews any applications for a new license, a nonpower license, an exemption, or a surrender;

(2) The orderly removal of a project, if the United States does not take over a project and no new power or nonpower license or exemption will be issued; or

(3) The orderly transfer of a project to:

(i) The United States, if takeover is elected, or

(ii) A new licensee, if a new power or nonpower license is issued to that licensee.

(c) An annual license issued under this section will be renewed automatically, unless the Commission orders otherwise.

12. Sections 16.19 through 16.22 are added as Subpart E, to read as follows:

Subpart E—Projects With Minor and Minor Part Licenses

Sec.

16.19 Procedures for an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project with a license not subject to sections 14 and 15 of the Federal Power Act.

16.20 Applications for relicense for a minor hydroelectric power project or for a minor part of a hydroelectric power project with a license not subject to sections 14 and 15 of the Federal Power Act.

16.21 Operation of projects with a minor or minor part license after expiration of a license.

16.22 Application for an exemption by a licensee with a license for a project not subject to sections 14 and 15 of the Federal Power Act upon expiration of the license.

Subpart E—Projects With Minor And Minor Part Licenses

§ 16.19 Procedures for an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project with a license not subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project that is not subject to sections 14 and 15 of the Federal Power Act.

(b) *Licensing proceeding.* An applicant for a license for a project with an expiring license not subject to sections 14 and 15 of the Federal Power Act must file its application under section 4(e) of the Federal Power Act.

(c) *Notification procedures.* (1) An existing licensee with a minor license or a license for a minor part of a hydroelectric project must file a notice of intent pursuant to § 16.6(b) of this part.

(2) If the license of an existing licensee expires on or after October 17, 1993, the licensee must notify the Commission as required under § 16.6(b) at least five years, but no more than five and one-half years, before the expiration of the existing license.

(3) If the license of an existing licensee expires on or after October 16, 1992, but before October 17, 1993, the licensee must notify the Commission as required under § 16.6(b) by October 18, 1988.

(4) If the license of an existing licensee expires on or before October 15, 1992, the licensee must notify the Commission as required under § 16.6(b) by August 5, 1988.

(5) The Commission will give notice of a licensee's intent to file or not to file an application for a new license in accordance with § 16.6(d).

(d) *Requirement to make information available.* A licensee must make the information described in § 16.7 available to the public for inspection and reproduction when it gives notice to the Commission under paragraph (c) of this section.

§ 16.20 Applications for relicense for a minor hydroelectric power project or for a minor part of a hydroelectric power project with a license not subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an application for relicense for a minor hydroelectric power project or for a minor part of a hydroelectric power project with a license that is not subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to file.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, an applicant must file an application for relicense at least 24 months, but no more than 30 months, before the expiration of the existing license.

(2) The requirement in paragraph (b)(1) of this section does ot apply if:

(i) An applicant filed an application for relicense more than 30 months before the license expired and before September 9, 1988, or

(ii)(The license is due to expire within three years of September 8, 1988.

(3) If an applicant files for relicense for a project whose license is due to expire within three years of September 8, 1988, it must file an application at least 12 months before the date on which the existing license expires.

(c) *Requirements for an processing of applications.* An application for relicense must meet the requirements of and will be processed in accordance with §§ 4.32, 4.35, 4.38, 4.37, 16.8, 16.9(c) and (d), and 16.10 and must be processed in accordance with §§ 4.41, 4.51, and 4.61, as appropriate.

(d) *Applicant notice.* An applicant that proposes to expand an existing project to encompass more land must notify by certified mail at the time it files an application for a new license:

(1) Any person who is an owner of record of an interest in property within the proposed project boundary, and

(2) Any Federal, state, municipal, or other local governmental agency that may be interested in or affected by the application.

§ 16.21 Operation of projects with a minor or minor part license after expiration of a license.

(a) A former licensee of a minor or minor part project that has filed an application for a new license may continue to operate the project after the minor or minor part license expires if the Commission has not acted on its application.

(b) If the former licensee has not filed an application for a new license, the Commission may issue an order allowing the former licensee with a minor or minor part license to continue to operate its project.

§ 16.22 Application for an exemption by a licensee with a license for a project not subject to sections 14 and 15 of the Federal Power Act upon expiration of the license.

(a) *Applicability.* This section applies to an existing licensee with a license for a project not subject to section 14 and 15 of the Federal Power Act.

(b) *Information requirements.* An applicant for an exemption must meet the requirements of § 16.12.

(c) *Standard of comparison.* If an application is filed in competition with an application for exemption by a licensee, the Commission will decide among competing applications in accordance with the standards of § 4.37(d)(2) of this chapter.

13. Section 16.23 and 16.24 are added as Subpart F, to read as follows:

Subpart F—Procedural Matters

Sec.

16.23 Prohibitions against filing an application for a new license.

16.24 Disposition of a project for which no timely application is filed.

Subpart F—Procedural Matters

§ 16.23 Prohibitions against filing an application for a new license.

(a) An existing licensee that informs the Commission that it does not intend to file an application for a new license, nonpower license, or exemption for a project, as required by § 16.6, may not file an application for a new license for the project.

(b) An existing licensee that fails to file an application for a new license, a nonpower license, or an exemption for a project at least 24 months before the expiration of the existing license for the project may not file an application for a new license for the project.

§ 16.24 Disposition of a project for which no timely application is filed.

(a) If an existing licensee that indicates in the notice filed pursuant to § 16.6 that it will file an application for a new license, a nonpower license, or an exemption, does not file its application at least 24 months before its existing license expires, and no other applicant files an application within that time or all pending applications filed before the new license application filing deadline are subsequently rejected or dismissed pursuant to § 4.32 of this chapter, the Commission will issue a public notice soliciting applications from potential applicants other than the existing licensee.

(b) A potential applicant that files a notice of intent within 90 days from the date of the public notice issued pursuant to paragraph (a):

(1) May apply for a license under section 4(e) of the Federal Power Act and Part 4 of this chapter within 18 months of the date on which it files its notice, and

(2) Must comply with the requirements of §§ 16.8 and 16.10 of this part.

(c) The existing licensee must file a schedule for the filing of a surrender application for the project, for the approval of the Director of the Office of Hydropower Licensing, three months:

(1) After the new license application filing deadline, if the existing licensee indicated in its notice of intent filed pursuant to § 16.6 that it would not file an application and no applications for a new license were filed;

(2) After the due date established for any notice of intent issued under paragraph (a) of this section, if no notices of intent were received; or

(3) After the due date for any application filed under paragraph (b)(1) of this section, if not application has been filed.

(d) Any application for surrender must be filed according to the approved schedule, must comply with the requirements of § 16.8 of this part, and must provide for disposition of any project work.

[FR Doc. 88-12905 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 141, 260 and 357

[Docket No. RM88-18-000]

Statement of Cash Flows To Replace Statement of Changes in Financial Position in FERC Annual Report Forms

Issued June 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to replace the current "Statement of Changes in Financial Position" in its Annual Report Form Nos. 1, 1-F, 2, 2-A and 6 for electric utilities, natural gas companies and oil pipeline companies with a "Statement of Cash Flows." This action is in response to the Statement of Financial Accounting Standards No. 95 issued in November 1987 by the Financial Accounting Standards Board, the standards setting body for the accounting profession. The purpose of the proposed statement is to provide relevant detailed information about a company's cash receipts and cash payments, classified by operating, investing and financing activities. The Statement of Cash Flows is effective and must be implemented for fiscal periods ending after July 15, 1988.

The Commission notes that the proposed change in statements in the annual report forms will not require any change in the Commission's regulations in Parts 141, 260 and 357.

DATE: An original and 14 copies of the written comments must be received by the Commission by July 6, 1988.

ADDRESS: All filings should refer to Docket No. RM88-18-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: This is a summary of a Notice of Proposed Rulemaking in Docket No. RM88-18-000 issued June 6, 1988. All persons interested in obtaining the full text of this document for inspection and copying may do so during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC

20425. In addition, the Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8007. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

The Paperwork Reduction Act [1] and the Office of Management and Budget's (OMB) regulations [2] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this proposed rule have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. [Attention: Marion Obia, Office of Information and Resource Management (202) 357-8173]. Comments on the information collection provisions of this proposed rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend the annual report forms referenced in Parts 141, 260 and 357 in Chapter I, Title 18 Code of Federal Regulations.

By the direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13079 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[1] 44 U.S.C. 3501-3520 (1982).

[2] 5 CFR Part 1320 (1987).

DEPARTMENT OF STATE

Bureau of Personnel

22 CFR Part 20

[SD-216]

Retirement; Benefits for Certain Former Spouses

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to add regulations to 22 CFR to implement sections 831, 832, and 833 of the Foreign Service Act of 1980, as amended, which requires the Foreign Service Retirement and Disability System to provide benefits for certain former spouses. These proposed regulations specify what types of benefits will be offered and how the Department of State will administer them.

DATES: Comments must be received on or before June 30, 1988.

ADDRESS: Send comments to Director, Foreign Service Retirement Division, Department of State, Room 1251, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Gertrude L. Wieckoski, (202) 647-3315.

SUPPLEMENTARY INFORMATION: These regulations are issued under authority of Chapter 8 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3901 *et seq.*). They apply to section 831, 832, and 833 of the Act as created by section 204 of Pub. L. 100-238 of January 8, 1988, (101 Stat. 1770-1773).

The regulations set forth conditions under which certain former spouses of current or former Foreign Service employees may receive retirement benefits, survivor benefits, and/or access to Federal group health insurance program.

Foreign spouses eligible for benefits are those who (1) were former spouses as of February 14, 1981, (2) were married for at least 10 years to an employee, and (3) were married for at least five years during which the employee was a participant in the Foreign Service retirement system. (Marriage to an employee during a period of service under a Foreign Service appointment which did not confer participation in the Foreign Service retirement system will not count towards meeting this last requirement.)

In addition, any former spouse who remarries or remarried before reaching the age 55 is disqualified from access to these benefits.

A qualifying former spouse may receive a retirement annuity between the time the employee retires and his or her death equal to one half of the employee's and his or her death equal to one half of the employee's annuity if their marriage lasted throughout the employee's government service. If the marriage did not span that entire period, the former spouse receives a pro rata share of one half of the amount received by the employee. The pro rata share in determined by the length of marriage over the years of creditable service used to determine the annuity. Surviving former spouses may receive 55% of the full annuity to which the employee was entitled.

The annuities paid to former spouses do not reduce the amount received by the employee or effect the survivor or potential survivor benefit to a current spouse. Annuities become payable as of December 22, 1987 or upon the retirement of the employee whichever is later, and will be adjusted for inflation under the same rules as apply for retired employees.

The regulations also set forth procedures under which former spouses may apply for benefits with the Department of State.

List of Subjects in 22 CFR Part 20

Retirement, Pensions, Foreign service.

For reasons set out in the preamble, it is proposed that 22 CFR Part 20 be added as follows:

PART 20—BENEFITS FOR CERTAIN FORMER SPOUSES

Sec.

20.1 Definitions.
20.2 Funding.
20.3 Qualifications.
20.4 Retirement benefits.
20.5 Survivor benefits.
20.6 COLA.
20.7 Waiver.
20.8 Effect on other benefits.
20.9 Application procedure.

Authority: 22 U.S.C. 3901 *et seq.*

§ 20.1 Definitions.

As used in this part, unless otherwise specified, the following have the meaning indicated:

"COLA" means cost-of-living adjustment in annuity.

"Creditable service" or "service" means employment or other periods that are counted under sections 816, 817, or 854 in determining retirement benefits.

"Disability annuitant" means a participant in FSRDS or FSPS entitled to a disability annuity under section 808 of the Act or subchapter V, Chapter 84, Title 5 U.S. Code, and a

"Disability annuity" means a Foreign Service annuity computed under those sections.

"FSRDS" means the Foreign Service Retirement and Disability System established by Subchapter I, Chapter 8, of the Act.

"FSPS" means the Foreign Service Pension System established by subchapter II, chapter 8, of the Act.

"Former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during service of the participant which is creditable under chapter 8 of the Act with at least 5 years occurring while the participant was a member of the Foreign Service.

"Full annuity" equals the annuity the former participant would be eligible to receive except for deductions made to provide survivor benefits or because of payment of a portion of the annuity to others.

"Participant" means a person who contributes to the Fund identified in § 20.2. Such person may participate in either FSRDS or FSPS.

"Principal" means a participant or former participant whose service forms the basis for a benefit for a former spouse under this part.

"Pro rata share", in the case of a former spouse of a participant or former participant, means the percentage obtained by dividing the number of months during which the former spouse was married to the participant during the creditable service of the participant by the total number of months of such creditable service. In the total period, 130 days constitutes a month and any period of less than 30 days is not counted. When making this calculation for a former spouse married to a participant during a period the participant earned extra service credit under section 817 of the Act, the number of months of such extra service credit earned during that period of the marriage shall be added to the total number of months of the marriage.

§ 20.2 Funding.

Benefits under this part are paid from the Fund maintained by the Secretary of the Treasury pursuant to section 802 of the Act but are not authorized to be paid except to the extent provided therefor. Appropriations for such Fund are authorized by section 821(a) of the Act.

§ 20.3 Qualifications.

To be eligible for retirement or survivor benefits under this part, a former spouse must—

(a) Have been a former spouse on February 14, 1981;

(b) After becoming a former spouse, not have remarried before attaining age 55;

(c) In the case of any retirement benefit under § 20.5, elect this benefit instead of any survivor annuity for which the former spouse may simultaneously be eligible under this or another retirement system for Government employees; and

(d) Submit an application to the Department of State by June 22, 1990 in accordance with § 20.9 unless that date is extended as authorized by that section. The deadline for submission of an application for survivor benefits under § 20.5 will be deemed to have been met if the former spouse submits an application for retirement benefits within the deadline.

§ 20.4 Retirement benefits.

(a) *Type of benefits.* (1) A former spouse who meets the qualification requirements of § 20.3 is entitled to a share of any Foreign Service annuity (other than a disability annuity) or any supplemental annuity computed under section 806(a), 823 or 824 of the Act to which the principal is entitled under FSRDS and to any Foreign Service annuity (other than a disability annuity) or annuity supplement computed under sectin 824 or 825 of the Act of 5 U.S.C. 8415 to which the principal is entitled under FSPS.

(2) A former spouse of a disability annuitant is entitled to a share of benefits to which the annuitant would qualify under paragraph (a) he or she not been disabled based on the actual age and service of the annuitant.

(b) *Share.* The share of a participant's benefits to which a qualified former spouse is entitled is—

(1) 50 percent of the benefits described in § 20.4(a) if the former spouse was married to the participant throughout the latter's creditable service; or

(2) A pro rata share of 50 percent of such benefits if the former spouse was not married to the participant throughout such creditable service.

(c) *Reduction of benefits.* If retirement benefits of a principal are reduced because of reemployment, attainment of eligibility for Social Security benefits or for any other reason, the amount of the share payable to a former spouse is correspondingly reduced during the period of the reduction.

(d) *Commencement, termination and suspension.* (1) Entitlement to retirement benefits under this section (except for a former spouse of a disability annuitant) shall commence on the latter of—

(i) The day the principal becomes entitled to benefits described in § 20.4(a); or

(ii) December 22, 1987.

(2) Entitlement to retirement benefits under this section for a former spouse of a disability annuitant shall commence on the latter of—

(i) The date the principal would qualify for benefits (other than a disability annuity) described in § 20.4(a) the basis of the principal's actual age and service;

(ii) The date the disability annuity begins; or

(iii) December 22, 1987.

(3) Entitlement to retirement benefits under this section shall terminate or be suspended on the earlier of—

(i) Last day of the month before the former spouse dies or remarries before attaining age 55;

(ii) Date benefits of the principal terminate or are suspended because of death, recall, reemployment, recovery from disability or for any other reason.

(4) Entitlement to benefits under this section shall be resumed for a former spouse, following their suspension, on the date they are resumed for the principal.

§ 20.5 Survivor benefits.

(a) *Type of benefits.* A former spouse who meets the eligibility requirements of § 20.3 is entitled to survivor benefits equal to one of the following; whichever is applicable:

(1) 55 percent of the full annuity to which the principal was entitled on the commencement or recomputation date of the annuity in the case of a principal who dies while in receipt of a Foreign Service annuity computed under section 806, 808, 823, 824, or 855 of the Act of 5 U.S.C. 8415;

(2) 55 percent of the annuity to which the principal was entitled at death in the case of a principal who dies while in receipt of a Foreign Service annuity computed under 5 U.S.C. 8452;

(3) 55 percent of the full annuity to which the principal would have been entitled if he or she retired (or returned to retirement status) on the date of death computed—depending on the provision that would be used to compute an annuity for a surviving spouse of the principal—under section 806(a), 823, 824, or 855(b) of the Act of 5 U.S.C. 8415 and using the actual service of the principal, in the case of a principal who dies while in active service, including service on recall or reemployment while annuity is suspended or reduced; or,

(4) 55 percent of the full annuity computed under 5 U.S.C. 8413(b) that the principal could have elected to receive

commencing on the date of death or, if later, commencing on the date the principal would have attained the minimum retirement age described in 5 U.S.C. 8412(h), in the case of a principal while entitled to a deferred annuity under 5 U.S.C. 8413(b), but before commencement of that annuity. A survivor annuity under this paragraph may not commence before the date the principal would have attained the minimum retirement age.

(b) *Effect of Election of Alternate Form Annuity.* If a principal elects an alternate form annuity under section 829 of the Act or 5 U.S.C. 8420a, survivor benefits for a former spouse under this section shall, nevertheless, be based on what the principal's annuity would have been had the principal not withdrawn retirement contributions in a lump sum.

(c) *Reduction Because of Receipt of Other Survivor Benefits.* If a former spouse is in receipt of a survivor annuity based on an election by the principal under section 806(f) or 2109 of the Act, the survivor benefits for the former spouse under this section shall be reduced on the effective date by the amount of such elected survivor annuity.

(d) *Commencement and Termination.* Entitlement to survivor benefits under this section—

(1) Shall commence on the latter of—

(i) The date the principal dies;

(ii) December 22, 1987; and

(2) Shall terminate on the last day of the month before the former spouse dies or remarries before attaining age 55.

§ 20.8 COLA.

(a) *Retirement benefits.* A retirement annuity payable to a former spouse under § 20.4 is adjusted for cost-of-living increases under section 535 or 856 of the Act in the same manner as the annuity of the principal. The first such increase for a former spouse shall be prorated under the applicable section in the same way the first increase for the principal is adjusted, irrespective of whether the annuity to the former spouse commences on the same date as the annuity to the principal. If the benefit of a former spouse is based in part on an annuity supplement payable to a principal under 5 U.S.C. 8421 which is not adjusted by COLA, then that portion of the benefit payable to a former spouse is not adjusted by COLA.

(b) *Survivor benefits.* (1) Survivor annuities payable to a former spouse are adjusted for COLA under section 828 or 858 of the Act in the same manner as annuities are or would be adjusted for other survivors of the principal.

(2) A survivor annuity payable to a former spouse under section 20.51(a) shall be increased from its commencing date pursuant to paragraph (c)(2) of section 828 of the Act or 8462 of title 5, U.S. Code, by all COLA received by the principal at death, irrespective of the date of death and in instances where death occurred prior to December 22, 1987, by all COLA that would have been paid to a survivor annuitant from the date of death until December 22, 1987.

(3) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(2) shall be pro-rated pursuant to 5 U.S.C. 8462(c)(4).

(3) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(3) or (4) shall be pro-rated pursuant to paragraph (c)(1) of section 826 of the Act or 8462 of Title 5, U.S. Code.

§ 20.7 Waiver.

A former spouse entitled to an annuity under this part may decide to decline all or any part of the annuity for personal reasons. An annuity waiver shall be in writing and sent to the Retirement Division (PER/ER/RET), Department of State, Washington, DC 2050. A waiver may be revoked in writing at any time. Payment of the annuity waived prior to receipt by the Retirement Division of the revocation may not be made.

§ 20.8 Effect on other benefits.

Payment to a former spouse under this part shall not impair, reduce, or otherwise affect benefits paid under the Act to the principal or other persons.

§ 20.9 Application procedure.

(a) *Submission of Application.* To be eligible for retirement or survivor benefits under this part, a former spouse must submit a properly executed and completed application to the Department of State by June 22, 1990 or, if an exception is made for compelling cause to this deadline, within 60 days following the date of the letter from the Department transmitting the application to the former spouse. The application must be delivered or mailed to the Retirement Division (PER/ER/RET), Room 1251, Department of State, Washington, DC 20520.

(b) *Request for Application.* The Department of State has attempted to mail applications to all former spouses of whom it is aware that it believes may be eligible for benefits under this part. Any eligible former spouse who does not have an application at the time this part is published in the Federal Register must communicate with the Department as soon as possible and request an application. Request may be in person or by mail to the address in § 20.9(a) or by telephoning the Retirement Division on area code 202-647-9315. A request by letter must include the typed or printed full name and current address of the former spouse. It shall also give the dates of marriage and divorce or annulment that establish eligibility and fully identify the Foreign Service employee or former employee in question and state the agency of current or last employment.

(c) *Payment of Benefits Delayed.* Payment of benefits cannot be made to a former spouse until the application for benefits is approved by the Retirement Division of the Department. Upon such approval, benefits will be paid to an eligible former spouse retroactively, if necessary, back to the commencing date determined under this part.

George S. Vest,

Director General of the Foreign Service and Director of Personnel.

May 12, 1988.

[FR Doc. 88-13127 Filed 6-9-88; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 173 and 174

[CGD 82-015]

RIN 2115-AA82

State Marine Casualty Reporting; Accident Report Thresholds

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of comment period.

SUMMARY: A notice of proposed rulemaking [53 FR 13417] published April 25, 1988, proposed raising the reporting requirement threshold to $400 in Parts 173 and 174 of Title 33, Code of Federal Regulations. Public comments were invited by June 24, 1988. The Coast Guard has decided to extend the comment period by 30 days to allow wider distribution of the notice through boating publications and provide more time for public comment.

DATE: Comments must be received on or before July 25, 1988.

ADDRESSES: Comments should be submitted to Commandant [G-LRA-2], [CGD 82-015], U.S. Coast Guard, Washington, DC 20593-0001. Comments may be delivered to and will be available for examination and copying at the Marine Safety Council (G-LRA-2), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Office of Navigation Safety and Waterway Services (202) 267-0979.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to submit written views, data or arguments on these proposed rules. Persons submitting comments should include their names and addresses, identify this Notice (CGD 82-015) and give the reasons for the comment. Persons desiring acknowledgement that their comments have been received should include a stamped, self-addressed postcard or envelope. All comments received by the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing has been scheduled, but one may be held at a time and place to be set in a later notice in the Federal Register, if requested by persons raising a genuine issue and it is determined that the rulemaking will benefit from oral presentations.

The notice of proposed rulemaking published on April 25, 1988, provided that public comments should be received by June 24, 1988. The proposed rulemaking would raise the threshold for reporting vessel accidents, involving only property damage, to $400 from the current $200. The rulemaking uses an indexing formula based on the Gross National Product (GNP) deflator figures. This indexing formula would be applied to the reporting threshold annually to determine when it needed to be raised. The NPRM also asked questions about raising the threshold to a level higher than $400; using types of damage instead of dollar amounts; uses made of property damage statistics; impacts of receiving less information/data if the reporting threshold is raised above $400; and what measures could be taken to improve boater compliance with accident reporting requirements.

Dated: June 3, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-13028 Filed 6-9-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rules revise the existing rules for administration of the Reclamation Reform Act of 1982 (RRA). The rules are being revised to incorporate several amendments to the RRA that are contained in the Omnibus Budget Reconciliation Act of 1987 (1987 Budget Act), which was enacted on December 22, 1987. The amendments address audits for compliance with Reclamation law; water rates for land held under extended recordable contracts, underpayments for irrigation water deliveries to landholdings, and treatment of revocable trusts.

DATES: Written comments on the proposed rules must be submitted on or before July 11, 1988. The Bureau will also conduct public hearings on June 20, 22, and 24, 1988, to receive oral testimony on the proposed rules. Details about the hearings, such as dates, times, locations, can be found below in the section entitled "Supplementary Information." Written comments and testimonies received at the hearings will be considered when the final version of the proposed rules are being prepared.

ADDRESSES: Written comments on the proposed rules must be submitted to Terry Lynott, Assistant Commissioner-Resources Management; Bureau of Reclamation; Denver Office, Code D-115; P.O. Box 25007; Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: James R. Handlon; telephone (202) 343-5204.

SUPPLEMENTARY INFORMATION:

Background

The RRA, title II, Pub. L. 97-293 (96 Stat. 1263), was signed into law by President Reagan on October 12, 1982. The Act modernized Reclamation law. Final rules and regulations implementing the RRA were published in the Federal Register on December 6, 1983. Those rules were revised on April 13, 1987, primarily to add provisions for implementing section 203(b) of the Act. That section mandated that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in a landholding in excess of 160 acres. On October 26, 1987, the rules were again revised. The purpose of this revision was to eliminate "gifted land" as a type of land transaction subject to the involuntary acquisition provisions of the rules.

Proposed Revisions

The Bureau is now proposing to revise the rules to incorporate provisions implementing the new RRA amendments contained in the 1987 Budget Act.

Audits—The first amendment, section 224(g) mandates the Secretary of the Interior to conduct a thorough audit of compliance with Reclamation law by individuals and legal entities. The amendment requires the Secretary, at a minimum, to complete audits of landholdings and operations exceeding 960 acres within 3 years. During each of these 3 years, the Secretary is also required to submit a report to Congress summarizing audit findings and actions that have been taken to correct instances of noncompliance.

The Bureau has initiated its audit efforts. However, since this amendment places no new requirements on landholders themselves, the Bureau proposes not to add any additional audit language to the rules. The existing provision, § 426.10(i), addresses audits and provides landholders with sufficient information regarding this topic. However, in order to ensure that the Secretary has the information necessary to perform the required audits, the Bureau proposes to revise the language in § 426.10(a) to clarify that districts, prior law and new law recipients, and persons operating irrigation land under management arrangements or consulting agreements must provide information and records upon request by the Secretary.

Extended recordable contracts—The second amendment, section 224(h), clarifies that the provisions of section 205(c) of the RRA are applicable to all recordable contracts entered into prior to October 12, 1982. Basically, section 205(c) requires that the full-cost rate must be paid for water deliveries to land held under an extended recordable contract. Prior to the amendment, this provision applied only to landholders subject to the discretionary provisions (sections 203 through 208) of the RRA. Prior law recipients were permitted to receive irrigation water at the contract rate for the entire length of the extended recordable contract.

These rules propose to revise § 426.11(i)(4) of the rules so that both prior law recipients and recipients subject to the discretionary provisions are required to pay the full-cost rate for

land under extended recordable contract. In accordance with the 1987 amendment, the rules provide that the full-cost rate for prior law recipients became effective on December 23, 1987, and is not retroactive to water delivered prior to that date.

Currently, the rules provide that the interest rate in determining the appropriate full-cost water rate for deliveries to land under an extended recordable contract is in section 202(3) of the RRA and in § 426.7(f)(1) of the current rules. The Department of the Interior (Department) has determined that this interest rate would also apply to prior law recipients who come under the provisions of section 205(c) by virtue of section 224(h). Therefore, the Bureau proposes to revise § 426.7(f) of the rules to reflect the fact that the full-cost interest rates applying to a prior law recipient with leased land is different from the interest rate applying to land held by a prior law recipient under extended recordable contract.

Underpayments—We propose to add a new section to the rules to incorporate the third RRA amendment, section 224(i). This amendment provides that when the Secretary finds that any individual or legal entity has not paid the required amount for irrigation water delivered to a landholding, he shall collect the amount of any underpayment with interest accruing from the day the required payment was due until paid. This requirement of law is reflected in § 426.23 of the proposed rules. The "Severability" provision, which is designated as section 426.23 in the existing rules, has been redesignated as section 426.24 in the proposed rule.

Revocable trusts—The last of the RRA amendments revises the trust section of the RRA, section 214, by adding a subsection providing that land in a revocable trust will be attributed to the grantor if (1) the trust is revocable at the discretion of the grantor or the trust revokes or terminates by its terms once a specific time period has expired and (2) revocation or termination results in title to the land reverting either directly or indirectly to the grantor. The Bureau proposes to revise §§ 426.6(b)(4) and (d)(6) of the current rules to incorporate this amendment.

Executive Order 12291

The Department of the Interior has determined that the proposed rules do not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required and has not been prepared.

National Environmental Policy Act

A draft FONSI (finding of no significant impact) and a draft supplement to the April 1987 environmental assessment, which address the environmental impacts of the proposed rules, have been prepared and are available for public review. Copies of these documents may be obtained upon request from the Bureau offices located in Boise, Idaho; Sacramento, California; Boulder City, Nevada; Salt Lake City, Utah; Billings, Montana; and Washington, DC. Comments on the FONSI and the supplement to the 1987 environmental assessment may be incorporated with comments on the proposed rules.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as is required by 44 U.S.C. 3501 et seq. and assigned clearance numbers 1006–0005 and 1006–0006.

Small Entity Flexibility Analysis

The proposed rules will not have a significant economic effect on a substantial number of small entities. Only a small number of landholders farming land irrigated by Reclamation projects westwide will be affected by any provision of section 5302 of the 1987 Budget Act. Two of these provisions, the audit and underpayment provisions, are expected to result in little or no economic effect on landholders. The other two provisions, which address revocable trusts and extended recordable contracts, may impact a small number of landholders. However, such landholders will be able to mitigate the potential impacts by altering their trust agreements or, in the case of extended recordable contracts, by becoming subject to the discretionary provisions or selling the recordable contract land before the extended contract period actually matures.

Hearings

Three public hearings will be held to receive oral testimony on the proposed rules. All hearings will begin at 10 a.m. and will continue until all testimony has been heard. Oral statements will be limited to 10 minutes. Speakers will not be permitted to trade their time to obtain a longer oral presentation; however, the hearings officer may allow any person additional time after all other comments have been heard. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order, but will be recalled after all the scheduled speakers have been heard. Speaker requests will be scheduled up to 2 working days preceding the hearings and any subsequent requests will be handled on a first-come-first-served basis following the scheduled presentations.

Hearings will be held on the dates and at the locations shown below. Individuals or organizations wishing to speak at the hearings should contact the office listed after each hearing location:

San Francisco Hearing

Date: June 20, 1988
Location: San Francisco, California, Sheraton Inn, 1177 Airport Boulevard, Burlingame, California
Contact: Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, Telephone: (916) 978–5033

Denver Hearing

Date: June 22, 1988
Location: Stouffer Concourse Hotel, 3801 Quebec Street, Ballroom C, Denver, Colorado
Contact: Bureau of Reclamation, Denver Office, Division of Water and Land Technical Services, Attention: Code D–400, Box 25007, Denver, Colorado 80225, Telephone: (303) 236–6065

Washington, DC Hearing

Date: June 24, 1988
Location: Department of the Interior, Main Interior Building, Room 7000B, 18th and C Streets NW., Washington, DC
Contact: Commissioner, Bureau of Reclamation, Attention: Code 400, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 343–5204 or 5104

List of Subjects in 43 CFR Part 426

Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, it is proposed to amend Title 43, Chapter I, of the Code of Federal Regulations by amending Part 426 to read as set forth below.

Dated: May 20, 1988.

C. Dale Duvall,
Commissioner, Bureau of Reclamation.

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for Part 426 is revised to read as follows:

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, title II, 96 Stat. 1263, as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; and the Reclamation Act of 1902, as amended and supplemented 32 Stat. 388, (43 U.S.C. 371 et seq.).

2. Section 426.6 is amended by revising paragraphs (b)(4) and (d)(6) to read as follows:

§ 426.6 Ownership entitlement.

* * * * *

(b) * * *

(4) Trusts.

(i) An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitations imposed by title II nor the ownership provisions of prior law for land held in this capacity, provided, the trust agreement is in writing and is approved by the Secretary, identifies the beneficiaries, describes the interests of the beneficiaries and in the case of revocable trusts, the trust agreement also identifies the grantor(s) of all lands held in the trust, identifies the person(s) or entity (entities) who may revoke the trust and to whom title to the lands held in the trust will be conveyed upon the revocation of the trust. The Secretary shall be notified of any changes in the above conditions.

(ii) In the case of irrevocable trusts and revocable trusts other than those described in (b)(4)(iii) of this section, the lands held in the trust will be attributed to the beneficiary or beneficiaries of the trust according to the interest held in the trust by each beneficiary. The eligible acreage attributable to to each beneficiary in trust land in combination with other land directly or indirectly owned by such beneficiary shall not exceed that beneficiary's ownership entitlement unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition process provided in § 426.10.

(iii) In the case of revocable trusts which may be revoked at the discretion of the grantor(s) of the lands held in the trust and such revocation results in title to the trust lands reverting to the grantor(s) either directly or indirectly, or if the terms of the trust require that it be revoked or terminated upon the expiration of a specified period of time and such revocation or termination results in the title to the lands held in the trust reverting either directly or indirectly to the grantor(s), the lands held in that trust will be attributed to the grantor(s) of the lands. Therefore, in the case of such revocable trusts, the eligible acreage attributable to each grantor in trust land in combination with other land directly or indirectly owned by such grantor shall not exceed that grantor's ownership entitlement unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition process provided in § 426.10. However, a revocable trust in which a grantor retains the power to change the beneficiaries or to modify the terms of the trust, but does not provide that the title to trust property will revert to the grantor upon revocation or termination shall not result in an attribution to the grantor of the trust property.

(iv) If the attribution of trust property described in (b)(4)(iii) of the section results in the grantor of such property becoming subject to the payment of full cost for irrigation water delivered to lands within his landholding, such full cost will not apply to the grantor if the trust agreement was revised before April 20, 1988, to avoid or preclude the attribution of the trust property to the grantor. If such a trust agreement was not so revised by that date, the grantor must pay full cost for irrigation water delivered to that portion of the grantor's landholding that exceeds the non-full-cost entitlement, commencing December 23, 1987, until such trust agreement is so revised.

(A) The application of this rule may be illustrated by the following:

Example (1). Bank X is the trustee for five irrevocable trusts, each of which has more than one beneficiary. The irrevocable trusts contain 1,280, 960, 640, 880, and 400 acres, respectively. The land in the irrevocable trusts is in districts which have amended their contracts to conform to the discretionary provisions of title II. Since the ownership and pricing limitations of title II do not apply to Bank X as trustee for the trusts and all beneficiaries who are qualified recipients are within their respective ownership entitlements, all 4,080 acres in the five irrevocable trusts are eligible to receive irrigation water at the contract rate. However, if a beneficiary owned directly or indirectly other irrigation land which, when combined with his beneficial interest in the subject irrevocable trusts, caused him to exceed the 960-acre ownership limitation, either that beneficiary or the trustee would be required to designate the nonexcess land for which irrigation water could be supplied, depending upon whether the land to be so designated is directly held by the beneficiary or the trust.

Example (2). Farmer X, a qualified recipient, provides in his will for the establishment of a trust and the conveyance of 640 acres of his land receiving irrigation water into that trust for his minor child upon his death. Farmer X designates his brother as trustee of that testamentary (irrevocable) trust. The land is located in a district which has amended its contract to come under the discretionary provisions of title II. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer X dies, and the testamentary trust he has established is activated. The brother, as trustee, is entitled to receive irrigation water for the land in trust as well as the land he owns.

Note: The land placed in the testamentary trust by Farmer X is counted against his ownership entitlement during his lifetime as long as the land remained in his ownership.

Example (3). Farmer X, a qualified recipient, owns 960 acres eligible to receive irrigation water in a district subject to the provisions of title II. He decides to place 160 acres of his land in an irrevocable trust with his daughter as the life tenant. The 160 acres of trust land shall be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land shall be attributed to Farmer X or to the person upon whom she is dependent.

Example (4). ABC Corporation, a prior law recipient, establishes a revocable trust and places 160 acres of land receiving irrigation water in the trust for the benefit of J. Jones. Under the terms of the revocable trust, the trust will terminate and title to the 160 acres will revert back to ABC Corporation in 10 years. All 160 acres of the land in trust is attributed to the corporation with all stockholders attributed an indirect interest in proportion to their percent of stock held in the Corporation.

Example (5). As in Example (4) above, ABC Corporation establishes a trust for the benefit of J. Jones, which is revocable at the discretion of ABC Corporation, the trustor. But Corporation X, a fully independent legal entity, rather than Corporation ABC, contributes the 160 acres to the trust. In this example, the 160 acres is attributed to the beneficiary of the trust, J. Jones, since the criteria for attribution to the grantor (Corporation X) have not been met; namely, the 160 acres will revert in 10 years to the trustor (Corporation ABC), not the grantor, and the grantor does not have the power to revoke the trust.

Example (6). Farmer X, a qualified recipient, places 960 acres of land receiving irrigation water in a trust for his son. The trust agreement provides that the trust shall expire in 20 years, and ownership of the trust land shall be vested in Corporation Y, of which Farmer X is a part owner with 5 percent interest. Because title to 5 percent of the trust land will revert indirectly to Farmer X upon termination of the trust, 48 acres (960 × 5 percent) of the trust land is attributed to Farmer X. The remaining 912 acres of trust land is attributable to the beneficiaries of the trust. If Farmer X's interest in Corporation Y changes during the term of the trust, the amount of trust land attributed to Farmer X will change accordingly.

* * * * *

(d) * * *

(6) See § 426.6(b)(4).

* * * * *

3. Section 426.7 is amended by revising paragraph (f) to read as follows:

§ 426.7 Leasing and full-cost pricing.

* * * * *

(f) Interest rate calculations for full cost. In determining full cost, the interest rates to be used will be determined by the Secretary of the Treasury as follows:

(1) Interest rates applicable to (i) qualified recipients, (ii) limited recipients receiving water on or before October 1, 1981, and (iii) extented recordable contract land owned by prior law recipients after December 22, 1987.

(A) The interest rates for expenditures made on or before October 12, 1982, shall be the greater of 7⅛ percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year in which the expenditures were made by the United States.

(B) The interest rate for expenditures made after October 12, 1982, shall be the arithmetic average of (*1*) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year in which the expenditures are made and (*2*) the weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(2) Interest rates applicable to (i) limited recipients not receiving irrigation water on or before October 1, 1981, and (ii) prior law recipients, except for land owned under extended recordable contract after December 22, 1987. The interest rate shall be determined as of the fiscal year preceding the fiscal year in which expenditures are made except that the interest rate for expenditures made before October 12, 1982, shall be determined as of October 12, 1982. The interest rate shall be based on the arithmetic average of (A) the computer average interest payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance and (B) the weighted average yield on all interest-bearing marketable issues sold by the Treasury.

Note to Paragraph (f)(2): Prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the full-cost interest rate specified in paragraph (f)(1) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981.

4. Section 426.10 is amended by revising paragraph (a) to read as follows:

§ 426.10 Information requirements.

(a) *In general.* Districts, qualified recipients, limited recipients, prior law recipients and natural persons or legal entities operating irrigation land under an agreement described in § 426.7(a)(1) shall provide the Secretary upon request in a form suitale to the Secretary such records and information as the Secretary may deem reasonably necessary to implement Pub.L. 97–293 and Federal Reclamation law.

* * * * *

5. Section 426.11 is amended by revising paragraph (i)(4) to read as follows:

§ 426.11 Excess land.

* * * * *

(i) * * *

(4) Water rates for land under extended recordable contracts. Land under recordable contract may continue to receive irrigation water deliveries at the non-full-cost rate for the original disposition period of the recordable contract. The rate for irrigation water deliveries to land under recordable contract during the extended contract period shall be determined as follows: (i) For land under recordable contract held by qualified and limited recipients, the non-full-cost rate shall apply until the date 18 months after the date the Secretary resumes the processing of excess land sales, or until the extended contract period expires, whichever occurs first, and after the date 18 months from the date the Secretary resumes the processing of excess lands sales, water deliveries shall be made at the full-cost rate through the effective termination date of the extended recordable contract, (ii) for land under extended recordable contract held by prior law recipients, water deliveries shall be made at the full-cost rate described in § 426.7(f)(1) commencing December 23, 1987, through the effective termination date of the extended recordable contract.

(A) The principles of this rule may be illustrated by the following:

Example (1). Landowner X entered into a recordable contract on June 27, 1972. The recordable contract provided for a 10-year disposition period which ended on June 27, 1982. However, Landowner X was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The district in which the land is located amended its contract to conform to the discretionary provisions on January 1, 1983. Since Landowner X had 5 years remaining on the original recordable contract when the moratorium was imposed, the contract will be extended for 5 years from the date the processing of the sale is resumed. The resumption date will be determined by the Secretary. Landowner X must pay the full-cost rate, however, for any irrigation water delivered to the land under extended recordable contract beginning 18 months from the date the moratorium is lifted.

Example (2). Landowner Y entered into a recordable contract with a 10-year disposition period on June 27, 1976. Landowner Y was prevented from selling the land by the Secretarial moratorium of June 27, 1977. At that time, 9 years remained in the disposition period of the recordable contract. The district in which the land is located amended its contract to conform with the discretionary provisions of title II on January 1, 1983. The Secretary resumes the processing of the excess land sale on May 21, 1984. The original disposition period of the recordable contract expires on June 27, 1986, which is more than 18 months after the Secretary resumed the processing of the excess land sale. Therefore, Landowner Y must pay the full-cost rate for water deliveries to that land beginning June 27, 1986, for the duration of the extended contract period. The extended contract period will expire on May 21, 1993, 9 years after the Secretary resumed the processing of the excess land sale.

Example (3). Landholder Z entered into a recordable contract on June 27, 1974. The recordable contract provided for a 10-year disposition period that ended on June 27, 1984. However, Landowner Z was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The Secretary resumed the processing of excess land sales on May 21, 1984. Landholder Z had 7 years remaining on his recordable contract when the moratorium was imposed; therefore, the contract will be extended for 7 years from May 21, 1984, or until May 21, 1991. Landholder Z's land is located in a district that remains subject to prior law, and Landholder Z has not made an irrevocable election to become subject to the discretionary provisions. Since Landholder Z is a prior law recipient and the land was under extended recordable contract prior to December 23, 1987, water deliveries to this land prior to December 23, 1987, were properly made at the contract rate. However, for all water deliveries taking place on or after December 23, 1987, Landholder Z must pay the full-cost rate, as described in § 426.7(f)(1), through the effective termination date of the extended recordable contract.

* * * * *

6. Section 426.23 is redesignated as § 426.24, and new 426.23 is added to read as follows:

§ 426.23 Interest on underpayments.

When the Bureau finds that any individual or legal entity subject to Federal Reclamation law has not paid the required amount for irrigation water delivered to a landholding pursuant to Reclamation law, the Bureau will collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The due date is the date the required payment should have been paid by the district to the United States for water delivered to a landholding. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the period of underpayment.

[FR Doc. 88-13206 Filed 6-9-88; 8:45 am]
BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 86-112; FCC 88-126]

FM Broadcast Translator Stations and FM Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Further Notice of Proposed Rulemaking (Further Notice)*, the Commission proposes to amend the rules to extend the recent action permitting noncommercial educational translators that are assigned to reserved frequencies (channels 200–220), and owned and operated by the primary station licensee, to use alternative signal delivery technologies to rebroadcast the signal of their primary FM station to all noncommercial educational FM translators operating on reserved channels. The rule change proposed herein will facilitate the delivery of noncommercial educational FM programming to remote and currently underserved areas by enabling parties that are not primary station licensees, such as community and other local groups, to obtain programming for translators they would operate. In addition, the Commission requests comment on whether authorization of broadcast auxiliary intercity relay microwave facilities to deliver signals to noncommercial educational translators should be on a secondary basis so as to minimize the impact on the availability of these facilities for use with full-service FM stations.

DATES: Comments must be submitted on or before July 11, 1988, and reply comments on or before August 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making (Further Notice)* in MM Docket No. 86–112, FCC 88–125, adopted March 24, 1988, and released April 15, 1988. The full text of this Commission decision, including the proposed amendments to the rules, is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, Northwest, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. In the *Report and Order* in MM Docket No. 86–112, FCC 88–125, adopted March 24, 1988, and released April 15, 1988, the Commission amended its rules to authorize noncommercial educational FM translators that are assigned to reserved frequencies (channels 200–220), and that are owned and operated by the primary station, to rebroadcast signals that are relayed from the primary station by satellite, microwave, or any technical means deemed suitable by the licensee. Previously, the Commission's rules limited all FM translators to rebroadcast of signals received over-the-air from the primary station or another translator. This rule change did not alter the secondary status of noncommercial translators, nor the requirement that in any conflict that arises with a full service station, the translator operator is obligated to resolve the conflict or cease operation of the translator.

1. In the *Further Notice of Proposed Rule Making (Further Notice)* in MM Docket 86–112, FCC 88–126, adopted March 24, 1988, and released April 15, 1988, the Commission is proposing to amend its rules to permit all noncommercial educational FM translators assigned to reserved frequencies (channels 200–220), and owned and/or operated by parties other than the primary station, to use alternative delivery technologies to relay the signals of their FM stations. The Commission believes that extension of the authority to use alternative signal delivery technologies to all noncommercial translators, whether owned by the primary station licensee or by third parties, may be more effective in extending noncommercial educational FM programming to remote areas than the more limited rule change adopted in the *Report and Order*. Accordingly, the Commission proposes to amend § 74.1231 of its rules to provide that all noncommercial translators assigned to reserved channels, and owned and/or operated by third parties, may receive signals for rebroadcast via any technical means, including microwave and satellite, the licensee of the translator deems suitable. It seeks comment on all aspects of the proposed rule change as set forth at the end of this summary.

2. In order to realize the full benefits of this proposal and the rule change adopted in the *Report and Order*, the Commission also intends to authorize the use of broadcast auxiliary intercity relay microwave facilities to deliver signals to noncommercial translators. In the *Notice of Proposed Rule Making* in this proceeding, 51 FR 15026 (April 23, 1986), the Commission proposed to authorize such facilities to serve noncommercial educational translators on a parity basis with those that serve full-service stations. However, the Commission recognizes that the broadcast auxiliary frequencies are congested in many areas, particularly in the larger markets, and that the rule changes it is making in this proceeding likely will increase the demand for these frequencies. It therefore seeks comment on whether authorization of broadcast auxiliary stations that carry programming to noncommercial translators should be made on a secondary basis, to minimize the impact on the availability of broadcast auxiliary channels, or whether, with respect to these facilities, translators should enjoy parity with full-service FM stations. A secondary authorization would permit the use of broadcast auxiliary channels to deliver signals to noncommercial translators only where such use would not interfere with the use of those channels by full-service stations.

3. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

4. *Initial Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will authorize the use of alternative signal delivery technologies to rebroadcast the signal of noncommercial educational FM stations to all noncommercial translators assigned to reserved channels, even those owned and/or operated by parties other than the primary station. The effects of this proposed rule change on small entities, such as local organizations, intending to use alternative signal delivery technologies for their owned and/or operated noncommercial expected to be beneficial. Public comment is requested on the initial regulatory flexibility

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analysis set out in full in the Commission's complete decision.

5. The proposed rule change contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours imposed on the public.

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 11, 1988, and reply comments on or before August 10, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 74

Radio broadcasting.

Part 74 of Title of the Code of Federal Regulations is proposed to be amended to read as follows.

PART 74—[AMENDED]

1. The authority citation for Part 74 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 74.501 is proposed to be amended by revising paragraph (b) to read as follows:

§ 74.501 Classes of aural broadcast auxiliary stations.

* * * * *

(b) *Aural broadcast intercity relay station.* A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, between FM radio broadcast stations and their co-owned FM booster stations, between noncommercial educational FM radio stations assigned to reserved channels (Channels 200–220), or other purposes as authorized in § 74.531.

* * * * *

3. 47 CFR 74.531 is proposed to be amended by redesignating paragraphs (c) through (g) as (d) through (h) and adding new paragraph (c) to read as follows:

§ 74.531 Permissible service.

* * * * *

(c) An aural broadcast intercity relay station is authorized to transmit aural program material between a noncommercial educational FM station and a noncommercial educational FM translator station assigned to a noncommercial educational reserved channel (Channels 200–220). This use shall not interfere with or otherwise preclude use of these broadcast auxiliary stations transmitting aural programming between the studio and transmitter location of a broadcast station or between broadcast stations as provided in paragraphs (a) and (b) of this section.

* * * * *

4. 47 CFR 74.532 is proposed to be amended by revising paragraph (a) to read as follows:

§ 74.532 Licensing requirements.

(a) An aural broadcast STL or intercity relay station will be licensed only to the licensee or licensees of broadcast stations other than international broadcast stations, and for use with broadcast stations, noncommercial educational FM translator stations assigned to reserved channels or FM booster stations owned entirely by or under common control of the licensee of the primary station.

* * * * *

5. 47 CFR 74.1231 is proposed to be amended by revising paragraph (b) to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(b) Except as set forth in paragraphs (f) and (g) of this section, an FM translator may be used only for the purpose of retransmitting the signals of a primary FM broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a noncommercial educational FM translator station operating on a reserved channel (Channels 200–220) may use alternative signal delivery means, including, but not limited to, satellite and microwave facilities.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-13053 Filed 6-9-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; Contracting by Negotiation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering an addition to DoD FAR Supplement at 215.406-2 to permit the Contracting Officer the flexibility to establish Contract Line Item Numbers (CLIN's), SUBCLIN's or ELIN's for an equipment's recurring costs and separate CLIN's, SUBCLIN's or ELIN's for the same item's nonrecurring costs. The purpose of this separation is to obtain price history data which reflects only recurring costs; these data can then be used in a price analysis.

DATE: Comments must be received by the DAR Council at the address shown below on or before July 11, 1988, to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD (P&L) MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-102 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Historical price data files are used to conduct price comparisons to determine fair and reasonable prices for follow-on acquisitions of support equipment items. These files have been unreliable because unit prices in the files reflect a combined total of recurring production costs and nonrecurring design and development costs. If recurring and nonrecurring costs for items cannot be identified in the price history files, accurate price comparisons cannot be performed causing it to be difficult for the contracting officer to determine fair and reasonable prices for similar items required in the future.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because Contractors already develop this data in the formulation of their proposals. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other concerned parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 215 as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 215.406-2 is amended by adding paragraph (b) to read as follows:

215.406-2 Part I—The Schedule.

* * * * *

(b) *Section B, Supplies or Services and Prices/Costs.*

(S-70) Contract price history files can be distorted by the allocation of nonrecurring costs to the recurring costs of an item. These distortions can make future comparisons between item prices unreliable and of limited use. Accordingly, the contracting officer may require that the recurring and nonrecurring costs for deliveries be segregated in the solicitation and resultant contract, by using the procedures at 204.7104.

[FR Doc. 88-13084 Filed 6-9-88; 8:45 a.m.]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 601, 604 and 605

[Docket No. 80225-8025]

Style Guide, Regional Fishery Management Councils, Other Applicable Law, Guidelines for Council Operations and Administration

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to revise regulations and guidelines concerning the operation of Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This action implements parts of Title I of Pub. L. 99-659, which amends the Magnuson Act; clarifies instructions of the Secretary of Commerce on other statutory and regulatory requirements affecting the Councils; and adjusts the fishery management planning and development procedures in line with recommendations of two fishery management studies commissioned by NOAA in 1986. This action includes the uniform standards for the operation of the Councils required by the Magnuson Act.

DATE: Comments must be received by August 9, 1988.

ADDRESS: Send comments on this proposed rulemaking to: Richard H. Schaefer, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1825 Connecticut Ave., NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, telephone (202) 673-5263.

SUPPLEMENTARY INFORMATION: Section 302(f)(8) of the Magnuson Act requires each Council to determine its organization, and prescribe its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce. This action repromulgates the Secretary's uniform standards governing the operations of the Councils. It includes: (1) Implementation of parts of Title I of Pub. L. 99-659; (2) supplementary instruction on requirements affecting the Councils under other applicable law; (3) guidelines for the fishery management process; and (4) guidelines for (a) Council Statements of Organization, Practices, and Procedures, (b) Council organization, (c) employment practices, (d) financial management systems, and (e) recordkeeping. Included are some of the changes to the fishery management process approved by the Under Secretary that had been recommended by the two fishery management studies commissioned by NOAA in 1985 and 1986: the NOAA/Council Task Group Report, and the NOAA Fishery Management Study. These two studies, each of which generated wide public comment, were undertaken to assess the Magnuson Act fishery management system after ten years of operation, with a view to making administrative and legislative improvements.

Other 1986 efforts to examine the Magnuson Act system, including the Mackerel Investigative Committee, the joint New England and Mid-Atlantic Council proposal, and the Center for Ocean Management Systems conference on Rethinking Fishery Management, have figured in the development of these regulations and guidelines. Some of the ideas are derived from procedures successfully implemented by the Councils over the years. Selected material from the Magnuson Act Operations Handbook and from the Operational Guidelines for the Fishery Management Process has been updated and included.

Three new parts and one subpart have been added: (1) Part 500—Definitions, is designed ultimately to consolidate the definitions, word usages, and abbreviations that apply to Chapter 6 of the CFR in one place. For purposes of this revision, only those definitions broadly connected with Parts 601–605 are included; definitions and word usages uniquely associated with particular topics remain in their appropriate section. (2) Part 601, Subpart D—Membership, addresses requirements affecting Council members individually, such as appointment, term, removal, conduct, compensation, financial disclosure, and so forth. (3) Part 604—Other Applicable Law—describes the requirements of other law that the Secretary has determined to be applicable to the fishery management process. (4) Part 605—Guidelines for Council Operations and Administration—provides guidance for the development of (a) fishery management plans, and (b) each Council's Statement of Organization, Practices, and Procedures (SOPP).

The basic structure and authorities under the Magnuson Act were not changed by Title I of Pub. L. 99-659; however, certain requirements were modified or added. Provisions reflecting approved Task Group and Study recommendations are identified with an asterick (*) in the following descriptive text. Statutory procedures addressed in these regulations include:

Council Structure and Operation

*(1) Nomination and Appointment of Council Members**

Section 601.33(b) defines "knowledgeable and experienced" to clarify the basis on which governors nominate and the Secretary appoints. This section also includes the Pub. L. 99-659 requirement that governors consult commercial and recreational fishing representatives in the nomination

process, and that the Secretary ensure a fair apportionment of membership. An oath of office, recommended by the Fishery Management Study, is included. The financial disclosure requirements of Pub. L. 99-659 are set forth in § 601.27. In addition, NOAA is making a technical amendment, recommended by the Study, to eliminate confusion regarding geographic proprietorship of a Council seat. By deleting the obligatory and at-large classification, governors are required to submit nominations for every vacancy regardless of perceived interstate representational patterns. It does not change the State representation nor the Governor's obligation to nominate three names for each vacancy. It does, however, provide greater flexibility for the Secretary in choosing among names provided by the Governors, because individual seats would not be designated. NOAA particularly solicits comments on these provisions.

(2) Council Procedures for Protection of Confidential Statistics

Section 601.27 specifies that Council procedures must be consistent with procedures of the Secretary and the laws and regulations of a State submitting them, and expresses NOAA policy with regard to Council member and staff access to confidential statistics, pursuant to Pub. L. 99-659. These regulations supplement 50 CFR Part 603, which is being revised to regionalize the access system. Section 605.21 specifies that the Council SOPP should include these procedures.

(3) Security Investigations and Clearances

Section 601.28 provides expanded and updated instruction regarding the security clearance process. Paragraphs (h), (i), and (j) require the submission of any lawful disclosure agreement, required by the National Security Council or other lawful Directive, that may be developed in the future. (Public Law 100-202 prohibits the use of appropriated funds during FY 88 to require submission of, to implement, or to enforce the current Government-wide Non-Disclosure Agreement Form SF-189, "Classified Information Non-Disclosure Agreement.")

Fishery Management Process

(4) Role of Council Advisory Groups

Section 605.2(d) highlights the functions of the advisory groups and specifically defines advisory group involvement in the fishery management planning and development process, as per Pub. L. 99-659. This section, in combination with Part 605, Subpart B, suggests an operational structure that responds to recommendations from both commissioned studies. Part 605, Subpart B, describes a process whereby issues can be identified and resolved, and available expertise is called upon on a continuing basis, including relevant NMFS offices, State and academic scientists, advisory groups, planning teams, and others as appropriate.

(5) The Conservation Standard

In a separate action, NOAA is in the process of developing amendments to the guidelines for two of the national standards (§§ 602.11 and 602.12), precipitated in part by recommendations of the NOAA Fishery Management Study. The Study recommended that NOAA be responsible for determining a biologically acceptable catch for each managed fishery—the total allowable removals from the resource which would maintain a healthy and productive resource into the future. The Study's intent was that stocks be maintained at some level above that which preserves the minimum spawning stock from recruitment overfishing. The Study sought a conservation standard such that stocks are not continually driven to or maintained at the threshold of overfishing. NOAA is currently in the process of developing this conservation standard through a series of NMFS/Council workshops.

(6) The Stock Assessment and Fishery Evaluation (SAFE) Report

As part of this separate action to amend the guidelines for national standards 1 and 2, NOAA is also proposing that a periodic Scientific Assessment and Fishery Evaluation (SAFE) document or set of documents be prepared or aggregated as a summary of the best biological, social, and economic information available to a Council when it needs such data to determine annual harvest levels or OYs for species in each fishery management unit.

Recognizing the need for early public involvement in developing new approaches, NOAA is including the SAFE proposal language in § 625.13 of *these* guidelines—analogous to an Advance Notice of Proposed Rulemaking—to invite public comment early in the process. However, as indicated above, NOAA intends to present the SAFE proposal again as part of the proposed amendments to national standard guidelines 1 and 2.

While the Secretary has responsibility for assuring that the SAFE report is produced, it is not intended to be exclusively authored by NOAA. The SAFE report may be produced by any combination of talent from Council, academic, government, or other sources. The SAFE reports are not required to be revised each year, except as there have been new developments or significant changes in a fishery. Although the contents of SAFE reports are not mandatory, certain basic descriptive data on the stocks and industry should be included.

The SAFE report is designed to provide a tracking tool for assessing the relative achievement of FMP objectives. It would establish a time-series data base indicating the relative health of stocks and the industry dependent on them. Including social and economic information in the same document or set of documents with biological information does not diminish the integrity of either type of information. By providing a summary of the best scientific information available for each type of data required in the determination of OY, subject to Council and outside peer view, the SAFE report is designed to improve the ability of Councils to derive OY or any specified harvest level as the Act prescribes.

Other Applicable Law

(7) Administrative Operations and Employment Practices

Section 604.3 address the statutes in this category, which include the Federal Tort Claims Act, the Fair Labor Standards Act, conflict of interest statutes, Workmen's Compensation, and Unemployment Compensation.

(8) The Fishery Management Decision Process

Section 604.4 addresses laws in this category, which require consideration of environmental, paperwork, and/or economic and social impacts, or establish rules of procedure for public and State participation or access. They include the Administrative Procedure Act, the National Environmental Policy Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, Executive Order 12291, and Executive Order 12612.

(9) Uses of Oceans and Coastline

Section 604.5 explains how the following statutes affect the fishery management process: the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Marine Protection, Research, and Sanctuaries Act.

Administrative Management Systems

(10) Employment Practices

Section 605.25 establishes guideline standards to be implemented in each Council's SOPP, for staffing, recruitment, details, personnel actions, salary and wage administration, benefits, and travel reimbursement.

(11) Financial Management

Section 605.26 sets out the cooperative agreement requirements and details relevant portions of Office of Management and Budget (OMB) Circular A-110 governing financial management systems, procurement, property and space management, and financial reporting. It establishes audit schedules and criteria for programmatic funding.

(12) Recordkeeping

Section 605.27 addresses the requirements for FMP administrative records, Privacy Act records, and Freedom of Information Act requests.

In summary, the proposed regulations/guidelines have been directed to providing uniform standards and guidelines which clarify the system and strengthen accountability at both the administrative and programmatic levels.

Classification

The Under Secretary for Oceans and Atmosphere has determined that this proposed rule is not a "major" rule under E.O. 12291 requiring a regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact until specific management decisions contained within specific FMPs are made; until a given FMP is developed there is no basis for evaluating the consequences of these management decisions. Economic impact on small entities is addressed at a later date through regulatory flexibility analyses for individual FMPs. For the same reasons, the General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10. Section 601.37 proposes a collection-of-information requirement subject to the Paperwork Reduction Act which has been approved by the Office of Management and Budget under Control No. 0648-0192 This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612, and is issued in compliance with Executive Order 12291.

Dated: June 6, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 600, 604, and 605 are proposed to be added, and Part 601 is proposed to be revised as set forth below:

PART 600—STYLE GUIDE

Sec.

600.1 Definitions.
600.2 Word usage.
600.3 Abbreviations.

Authority: 16 U.S.C. 1801 *et seq.*

§ 600.1 Definitions.

The terms used in these regulations/guidelines (Parts 600, 601, 604, and 605) have the meanings that are prescribed in section 3 of the Magnuson Act, 16 U.S.C. 1802. In addition, the following definitions apply:

Advisory group—means a Scientific and Statistical Committee (SSC) or Advisory Panel (AP) established by a Council under the Magnuson Act.

Allocation—means direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.

Assistant Administrator—means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration or a disignee.

Center—means one of the National Marine Fisheries Service (NMFS) major research centers that supervise the operations of approximately 25 fishery science laboratories throughout the United States.

Council—means one of eight Regional Fishery Management Councils established under the Magnuson Act: New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, North Pacific, Western Pacific.

Exclusive economic zone (EEZ)—means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery magagement—means the system used to conserve and allocate the fishery resource—including research and data collection; specification of objectives and management measures; establishment, enforcement, and evaluation of regulations.

Fishery management plan (FMP)—means a document that contains a systematic description of a given fishery and the objectives and management measures for the fishery. Required and discretionary contents appear in section 303 of the Magnuson Act. Guidelines for contents of an FMP appear in the NMFS *Operational Guidelines: Fishery Management Plan Process*, Phase II, 1985.

Fishery management unit (FMU)—means a fishery or that portion of a fishery identified in an FMP relevant to the FMP's management objectives. The choice of an FMU depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.

Grants Officer—means the NOAA official who signs, on behalf of the government, the cooperative agreement providing funds to the Council.

Highly migratory species—means the species of tuna which in the course their life cycle spawn and migrate over great distances of the ocean, including, but not limited to:

Albacore, *Thunnus alalunga;*
Bigeye tuna, *Thunnus obesus;*
Bluefin tuna, *Thunnus thynnus;*
Southern bluefin tuna, *Thunnus maccoyii;*
Yellowfin tuna, *Thunnus albacares;* and;
Skipjack tuna, *Euthynnus pelamis.*

Industry—means both recreational and commercial fishing, and includes the harvesting, processing, and marketing sectors.

Magnuson Act—means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)

Management measure(s)—means one or more technique(s) through which the objectives for a given fishery are achieved; a management measure embodied in a regulation has the force of law.

Plan Team—means a Council working group selected from agencies, institutions, and organizations having a role in the research and/or management of fisheries, whose primary purpose is to assist the Council in the preparation and/or review of FMPs, amendments, and supporting documents for the Council, and/or SSC and AP.

Region—means one of five NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical regions.

Regional Director (RD)—means the director of a NMFS Regional Office or a designee. Regional Directors serve on the various Councils, as specified by § 605.33. RDs may arrange for the administrative services offered by the DOC Regional Administrative Support Centers.

Secretary—means the Secretary of Commerce or a designee.

Stock assessment—means the process of collecting and analyzing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible, to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behavior of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to "assess and specify the present and probable future condition of a fishery," (as is required by the Magnuson Act), and are summarized in the Stock Assessment and Fishery Evaluation (SAFE) or similar document.

Stock Assessment and Fishery Evaluation (SAFE)—means a document or set of documents that provides Councils with a summary of the most recent biological condition of species in a fishery management unit, and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It provides, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Under Secretary—means the Under Secretary of Commerce for Oceans and Atmosphere, who is Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

§ 600.2 Word usage.

(a) *Must* is used, instead of "shall", to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson Act, the logical extension thereof, or of other applicable law.

(b) *Shall* is used only when quoting statutory language directly, to avoid confusion with the future tense.

(c) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

(d) *May* is used in a permissive sense.

(e) *May not* is proscriptive; it has the same force as *must not*.

(f) *Will* is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(g) *Could* is used when giving examples, in a hypothetical permissive sense.

(h) *Can* is used to mean "is able to" as distinguished from "may."

§ 600.3 Abbreviations.

(a) *Fishery management terms.*

ABC—acceptable biological catch
DAH—estimated domestic annual harvest
DAP—estimated domestic annual processing
EEZ—exclusive economic zone
FMP—fishery management plan
FMU—fishery management unit
JVP—joint venture processing
MSY—maximum sustainable yield
OY—optimum yield
PMP—preliminary fishery management plan
TAC—total allowable catch
TALFF—total allowable level of foreign fishing

(b) *Legislation.*

APA—Administrative Procedure Act
CZMA—Coastal Zone Management Act
ESA—Endangered Species Act
FOIA—Freedom of Information Act
MFCMA—Magnuson Fishery Conservation and Management Act
MMPA—Marine Mammal Protection Act
MPRSA—Marine Protection, Research, and Sanctuaries Act
NEPA—National Environmental Policy Act
PA—Privacy Act
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act

(c) *Federal agencies.*

CEQ—Council on Environmental Quality
DOC—Department of Commerce
DOI—Department of the Interior
DOS—Department of State
EPA—Environmental Protection Agency
FWS—Fish and Wildlife Agency
NMFS—National Marine Fisheries Service
NOAA—National Oceanic and Atmospheric Administration
OMB—Office of Management and Budget
SBA—Small Business Administration
USCG—United States Coast Guard

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

Subpart A—General

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Subpart B—Boundaries

601.11 Intercouncil boundaries.
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601.39 Council member compensation.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 601.1 Purpose and scope.

(a) This part governs the jurisdiction, organization, practices, and procedures of the eight Regional Fishery Management Councils (Councils) established by the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), 16 U.S.C. 1801 *et seq.* The Councils are institutions created by Federal law, whose actions must conform to the uniform standards established by the Secretary of Commerce in this part.

(b) The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

Subpart B—Boundaries

§ 601.11 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Councils.* The boundary begins at the intersection point of Connecticut, Rhode Island, and New York at 41 16'16.249" N. latitude and 71 54'28.477" W. longitude and proceeds south 37 22'32.75" E. to the point of intersection with the outward boundary of the exclusive economic zone (EEZ) as specified in the Magnuson Act.

(b) *Mid-Atlantic and South Atlantic Councils.* The boundary begins at the seaward boundary between the States of Virginia and North Carolina, and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

(c) *South Atlantic and Gulf of Mexico Councils.* The boundary coincides with the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson Act, and 83 00' W. longitude, proceeds northward along that meridian to 24 35' N. latitude (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquessas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Island, the Marquessas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

§ 601.12 Intercouncil fisheries.

If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(a) Designate a single Council to prepare the FMP for such fishery and any amendments to such FMP, in consultation with the other Councils concerned; or

(b) Require that the FMP and any amendments be prepared jointly by all the Councils concerned.

(1) A jointly prepared FMP or amendment must be adopted by a majority of the voting members, present and voting, of each participating Council. Different conservation and management measures may be developed for specific geographic areas, but the FMP should address the entire geographic range of the stock(s).

(2) In the case of joint FMP or amendment preparation, one Council will be designated as the "administrative lead." The "administrative lead" Council is responsible for the preparation of the FMP or any amendments and other required documents for submission to the Secretary.

(3) None of the Councils involved in joint preparation may withdraw without Secretarial approval. If Councils cannot agree on approach or management measures within a reasonable period of time, the Secretary may designate a single Council to prepare the FMP or may issue the FMP under Secretarial authority.

Subpart C—Uniform Standards for Organization, Practices, and Procedures

§ 601.21 Purpose.

Section 302(f)(6) of the Magnuson Act, 16 U.S.C. 1852(f)(6), requires each Council to determine its own organization, practices, and procedures for carrying out its functions in accordance with such uniform standards as are prescribed by the Secretary. This subpart provides these uniform standards.

§ 601.22 Council statement of organization, practices, and procedures.

(a) Councils are required to publish and make available to the public a Statement of Organization, Practices, and Procedures (SOPP) in accordance with such uniform standards as are prescribed by the Secretary. The purpose of the SOPP is to inform the public how the Council operates within the framework of the Secretary's uniform standards.

(b) Accordingly, within 180 days of the effective date of these regulations, Councils must prepare and submit for Secretarial review and approval amendments to their current SOPPs which are consistent with the guidelines in Part 605, statutory requirements of the Magnuson Act, and other applicable law. Upon approval of a Council's SOPP amendment by the Secretary, a Notice of Availability will be published in the Federal Register, including an address where the public may write to request copies.

(c) Councils may deviate, where lawful, from the guidelines with appropriate supporting rationale, and Secretarial approval of each amendment to a SOPP would constitute approval of any such deviations for that particular Council.

§ 601.23 Employment practices.

Council members (except for Federal government officials) and staff are not Federal employees subject to Office of Personnel Management (OPM) regulations. Council staffing practices are set forth in each Council's Statement of Operating Practices and Procedures. (See Part 605 for guidelines concerning Council personnel matters and standards.)

§ 601.24 Budgeting, funding, and accounting.

The Councils' administrative operations are governed by the requirements of OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations), and A–122 (Cost Principles for Nonprofit Organizations), and the Council Statement of Organization, Practices, and Procedures.

§ 601.25 Support services.

Section 302(f)(3) of the Magnuson Act directs the Secretary to provide the Councils with administrative support services necessary for their effective functioning.

(a) Section 302(f)(4) of the Magnuson Act directs the Administrator of the General Services Administration to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any agency or instrumentality of the United States.

(b) Section 302(f)(2) of the Magnuson Act authorizes all Federal agencies to detail personnel on a reimbursable basis to the Council after consulting with the Assistant Administrator.

(c) NOAA regional offices are assigned to arrange for services and support to each Council as follows:

Council	Servicing field unit
New England	Northeast Region, NMFS
Mid-Atlantic	Northeast Region, NMFS
South Atlantic	Southeast Region, NMFS
Caribbean	Southeast Region, NMFS
Gulf of Mexico	Southeast Region, NMFS
Pacific	Northwest Region, NMFS
North Pacific	Alaska Region, NMFS
Western Pacific	Southwest Region, NMFS

(d) Transfer of funds between NMFS and Councils. Once funds are provided to the Councils, they cannot be transferred from a Council to a NMFS Center or Region, or any other Federal agency. Councils can request that NOAA transfer funds identified for Council programmatic activities to NMFS' Centers or Regional Offices.

(1) Councils may not reimburse, or otherwise pay for, NOAA employees' travel, per diem, or other expenses to participate in Council activities.

(2) Regional Offices or Centers may not transfer funds to the Council, or in any way purchase products, services, or supplies directly from the Councils. Any transfer of funds or purchases of any type must be made through NOAA, with appropriate documents prepared by the Assistant Administrator, to secure the services or goods from the Councils.

§ 601.26 Other applicable law.

Under section 303(a)(1)(C) of the Magnuson Act, an FMP must be "consistent with the national standards, the other provisions of this Act, and any other applicable law." Part 604 sets forth the Secretary's determination and

announcement to the public of other law that is considered applicable to the fishery management process.

§ 601.27 Protection of confidentiality of statistics.

(a) Each Council must establish appropriate procedures applicable to it and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council member or advisory group access and the prevention of conflicts of interest, except that such procedures must be consistent with procedures of the Secretary, and, in the case of statistics submitted to the Council by a Staste, the confidentiality laws and regulations of that State.

(b) NOAA does not release or allow access to confidential information in its possession to Council members and members of Council advisory groups. Council staff access to such data is granted after Councils have:

(1) Documented a need for unaggregated data and

(2) Established procedures to ensure the confidentiality of such information as required by the Magnuson Act.

Subpart D—Membership

§ 601.31 Purpose.

This subpart sets forth obligations under law and Secretarial policy that affect Council members individually. It provides information for the public regarding the nomination process, qualification for Council membership, compensation, and conduct while in office.

§ 601.32 Terms of Council members.

Voting members (other than principal State officials, the RD, or other designees) are appointed for a term of three years and may be reappointed. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office will be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than the normal three years if necessary to provide for balanced expiration of terms of office.

§ 601.33 Appointments.

(a) Each year approximately one-third of the appointed members' terms expire; members will be appointed or reappointed by the Secretary from lists of nominees submitted by March 15 of each year by the Governors of each constituent State. Governors must submit the names of three nominees for each applicable vacancy. These procedures also apply when a vacancy occurs prior to the expiration of a member's term.

(b) The Governors are responsible for nominating only those persons who meet the qualification requirements of the Magnuson Act; they must provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests, and each nominee is knowledgeable and experienced in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council;

(1) At least three years' experience in the harvesting, processing, or market of fish or fish products;

(2) At least three years' experience promoting fishing for pleasure, amusement, relaxation or consumption. This may include operating a recreational fishing business;

(3) Former or current officer or leadership role in a State, regional, or national organization made up of representatives of any of the interests described in § 601.33(b)(1) and (2);

(4) At least three years' experience managing and conserving natural resources, including at least one year interacting with industry, government bodies, academic institutions, and public agencies. This would include experience serving as a member of a Council, Advisory Panel, or Scientific and Statistical Committee.

(5) At least three years' experience representing consumers of fish or fish products through participation in local, State, or national organizations, or performing other activities specifically related to the education and/or protection of the consumer of marine resources.

(6) At least three years' experience in teaching, journalism, writing, or researching matters related to fisheries, fishery management and fishery resource conservation. Such experience includes both natural and social sciences.

(7) At least three years' consulting or legal experience in areas directly related to fisheries resource management, conservation, or use, including interacting with officials of local, State, or Federal agencies.

(c) To assist in identifying necessary qualifications, each nominee should furnish to the appropriate Governor's office a current résumé or equivalent, describing career history—with particular attention to experience related to the above criteria. Nominees may provide such information in any format they wish. Career and educational history information sent to the Governors should also be sent to the Office of Fisheries Conservation and Management.

(d) If the Secretary determines that any nominee is not qualified, the Secretary will notify the appropriate Governor of that determination. The Governor may then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(e) Each member State must have at least one appointed voting member serving on the Council who has been nominated by the Governor of that State. If a Governor fails to submit a list of qualified nominees within the time allotted, and if that State is *not* already represented by one appointed voting member, the seat will remain vacant until three qualified nominations are received and have been acted upon by the Secretary.

(f) If a Governor fails to submit a list of qualified nominees within the time allotted, and that member State is already represented by one appointed voting member, then the new member(s) will be appointed from the list of names submitted by the Governors of the other constituent States.

(g) The Secretary must ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within Council jurisdiction are fairly represented as voting members.

§ 601.34 Oath of office.

As trustees of the Nation's fishery resources, all voting members must take an oath specified by the Secretary as follows: I, _____, as a duly appointed member of a Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is freely given and without mental reservation or purpose of evasion.

§ 601.35 Rules of conduct.

(a) Council members, as Federal officeholders, are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds. In particular, the following provisions apply:

(1) 18 U.S.C. 201—prohibits offer or acceptance of anything of value to influence any official act;

(2) 18 U.S.C. 203, 205—prohibits officials from representing anyone before a Federal court or agency in a matter involving a specific party in which the United States has a direct and substantial interest and in which the official has worked personally and substantially.

(3) 18 U.S.C. 207—prohibits a former official from representing others before a Federal agency concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or which was under the person's official responsibility.

(4) 18 U.S.C. 208—prohibits official acts in a matter in which the official has a personal financial interest. This prohibition does not apply to a financial interest of a Council voting member or Executive Director if the official obtains a waiver under 18 U.S.C. 208(b), or if the financial interest is in a harvesting, processing, or marketing activity that has been disclosed in a report filed under § 601.37.

(5) 18 U.S.C. 209—prohibits an official from receiving compensation for preforming Federal duties from a source other than the United States Government. This restriction does not apply to an official who has served for 130 days or less in a 365-day period.

(6) 18 U.S.C. 210, 211—prohibits offer or acceptance of value to procure appointment to public office.

(7) 18 U.S.C. 1905—prohibits disclosure of trade secrets or confidential commercial information except as provided by law.

(8) 18 U.S.C. 1913—prohibits use of appropriated funds to influence a member of Congress to favor or oppose any legislation or appropriation. However, this prohibition does not apply when responding to a request from a member of Congress or a Congressional Committee. Personal communications of a Council member or employee at his own expense that are indentified as such are not prohibited.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, which apply to Council members, both members and employees of the Councils must comply with these standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, State, county, or municipal elective office.

(2) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election, or on account of his or her political affiliation.

(3) No Council member or employee may pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(4) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. However, an Executive Director may retain a financial interest in harvesting, processing or marketing activities, and participate in matters of general public concern on the Council which might affect that interest, if that interest has been disclosed in a report filed under § 601.37.

(5) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(6) No Council member or employee of the Council may engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

(7) No Council member or employee of the Council may use Council property on other than official business. Such property must be protected and preserved from improper or deleterious operation or use.

(8) No Council member may participate

(i) Personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter in which he or she has a financial interest; or

(ii) In any matter of general public concern which is likely to have a direct and predictable effect on a member's financial interest unless that interest is in harvesting, processing, or marketing activities and has been disclosed in a report filed under § 601.37. For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the member is serving as officer, director, trustee, partner or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

§ 601.36 Removal.

The Secretary may remove for cause any Secretarially-appointed member of a Council in accordance with section 302(b)(5) of the Magnuson Act wherein the Council concerned first recommends removal by not less than two-thirds of the voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 601.37 Financial disclosure.

(a) The Magnuson Act requires the disclosure by Council nominees, appointees, voting members, and Executive Directors of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," or such other form as the Secretary, or designee,

may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Other voting members and Executive Directors must file the report with the Executive Director of the appropriate Council prior to taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file, and made available for public inspection at reasonable hours at the Council offices. A copy of the form may be obtained from the appropriate Regional Office.

(b) The provisions of 18 U.S.C. 208 do not apply to an individual who has filed a financial report under this section regarding an asset that has been reported.

§ 601.38 Security investigations and clearances.

(a) Access to security classified material is governed by security regulations and procedures pursuant to E.O. 12356, effective August 1, 1982. No person may have access to classified information unless that person has been determined to be trustworthy, and unless access is necessary for the performance of official duties. This determination, referred to as a security clearance, shall be based on an investigation in accordance with the standards and criteria of Department Administrative Order (DAO) 207–4. The authority having custody of the classified information determines whether the requester has a need to know the information in the performance of the requester's official duties. The noncritical sensitive position has access to information classified as CONFIDENTIAL or SECRET which is normally sufficient for Council purposes; however, clearance for access to TOP SECRET information may be granted by the Secretary following regular Federal procedures. Foreign nationals may not receive security clearance; however, with the consent of the Director, DOC Office of Security, classified information may be released to a foreign national.

(b) All Council members, staff, and members of advisory groups are individually required to protect classified information and may be subject to sanctions if they violate E.O. 12356, 18 U.S.C. 793, 794, or 952, or the National Security Act (50 U.S.C. 401 *et seq.*)

(c) Security clearances are required for all Council members and Executive Directors. Other staff and advisory group members may be required to obtain clearances at the Councils' discretion. Those who have not been cleared may not participate in meetings closed for reasons of national security, or have access to any classified information.

(d) To initiate security assurances, Council members, staff, and members of advisory groups and nominees must submit two documents to initiate security assurances:

(1) An FBI fingerprint card (FD–258), and

(2) A Standard Form 85, "Data for Nonsensitive or Noncritical-Sensitive Position."

(e) The Standard Form 85 is a multi-use biographical form developed by the Office of Personnel Management. The following instructions apply to completion of the SF–85:

(1) The form must be typed.

(2) Blocks 1, 2, 3, and 4 are self-explanatory.

(3) Block 5 must contain a title of a Council-related position, e.g., "Council member", "Council staff", "advisory group member."

(4) Block 6 must contain "NMFS, Wash. DC 20235."

(5) Block 7 must contain date and places of residence for the most recent five (5) year period.

(6) Blocks 8, 10, 11, 12, and 13 are self-explanatory.

(7) Block 9 must be marked "Noncritical-Sensitive."

(8) Block 14 must specifically list the nominee's employment for the most recent five (5) year period.

(9) The form must be signed and dated.

(f) Form FD–258 is the standard fingerprint card used by the FBI. Fingerprints are not maintained on file with the FBI but are destroyed once the criminal history check has been completed. Individuals may have their fingerprints taken at their local police department or at the personnel/security office of any Federal agency willing to provide the service.

(g) The security determination is valid for five (5) years.

(h) Individuals who are renominated and who have not undergone security processing within the five-year period will be required to submit a new processing package, including fingerprints.

(i) In addition to submission of SF–85 and FD–258, Council members, staff, and members of advisory groups will be required to submit a Non-Disclosure Agreement *in order to complete the clearance process,* as lawfully required by any National Security Council or other lawful Directive in accordance with its terms. Final security clearances will become effective only upon receipt by the DOC Office of Security of any lawfully required Non-Disclosure Agreement.

(j) After notification of appointment, new Council members should submit any lawfully required Non-Disclosure Agreement to the Office of Fisheries Conservation and Management through the RDs as quickly as possible.

(k) All other individuals are encouraged to submit any lawfully required Non-Disclosure Agreement simultaneously with the SF–85 and FD–258 to expedite final clearances.

(l) Councils should maintain adequate records to determine when to initiate renewal requests as clearances expire. It will be the responsibility of Council staffs to request (through the Office of Fisheries Conservation and Management), as appropriate:

(1) Initial and renewal security clearances for State designees/alternates, and all members of advisory groups, (SSC, AP, team members, etc.); and

(2) Initial and renewal security clearances for Council staff.

(m) Security clearances for U.S. Fish and Wildlife Service, U.S. Coast Guard, U.S. Department of State, and Marine Fisheries Commission non-voting members are obtained by the respective agencies. However, Council staffs are advised to verify periodically that these members have valid clearances in effect.

§ 601.39 Council member compensation.

(a) The voting members of each Council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for a GS–18 in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

(b) Council members whose eligibility for compensation has been established in accordance with NOAA guidelines will be paid on a contract basis without deductions being made for Social Security or Federal and State income taxes. A report of compensation will be furnished each year as required by the Internal Revenue Service. Such compensation may be paid on a full day's basis whether in excess of eight hours a day or less than eight hours a day. The time is compensable where the individual member is required to expend a significant private effort which substantially disrupts the daily routine to the extent that a work day is lost to the member. "Homework" time in preparation for formal Council meetings is not compensable. State officials may be compensated at the GS–18 level if they can document they are on leave without pay (LWOP). (LWOP does not include annual leave, holidays, or weekends.)

(c) Non-government Council members receive compensation for:

(1) Days spent in actual attendance at a meeting of the Council or jointly with another Council.

(2) Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.

(3) Meetings of standing committees of the Council if approved in advance by the Chair.

(4) Individual member meeting with scientific and technical advisors when approved in advance by the Chair and a substantial portion of any day is needed.

(5) Conducting or attending hearings when authorized in advance by the Chair.

(6) Other meetings involving Council business when approved in advance by the Chair.

(d) The Council Chair must submit the Regional Office annually a report of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.

PART 604—OTHER APPLICABLE LAW

Sec.
604.1 Definitions.
604.2 Categories.
604.3 Administrative operations and employment practices.
604.4 The decision process.
604.5 Uses of oceans and coastline.

Authority: 16 U.S.C. 1801 *et seq.*

§ 604.1 Definitions.

The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

§ 604.2 Categories.

Section 304(a)(1)(B) of the Magnuson Act, 16 U.S.C. 1854(a)(1)(B), requires that each FMP or amendment be reviewed for consistency with the national standards, the other provisions of the Magnuson Act and other applicable law. The list of laws affecting the Councils and their operations are grouped, for ease of description, into three general categories: those dealing with administrative operations and employment practices; those dealing with the fishery management decision process; and those dealing with other uses of the oceans and coastline. More detailed guidance is cited throughout this part and also appears in the NMFS *Operational Guidelines.*

§ 604.3 Administrative operations and employment practices.

Statutes in this category apply, in part, to Council staff, Council members, and members of Council advisory groups. These statutes include the Federal Tort Claims Act, 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671–80; the Fair Labor Standards Act, 29 U.S.C. 201; the anti-lobbying statute, 18 U.S.C. 1913; the Trade Secrets Act, 18 U.S.C. 1905; the bribery and conflict of interest statutes, 18 U.S.C. 201, 203, 205, 207, 208, 209, 210, and 211; Workmen's Compensation, 5 U.S.C. 8101 *et seq.;* and Unemployment Compensation, 5 U.S.C. 8501 *et seq.* Applicability of these statutes is detailed in Part 601, Subpart D, and Part 605, Subpart C.

§ 604.4 The decision process.

This category of laws applies to the fishery management decision process, and requires consideration of environmental, paperwork, and/or economic and social impacts, or establishes rules of procedure for public participation or access. These statutes include the Administrative Procedure Act (APA), 5 U.S.C. 551–553; the National Environmental Policy Act (NEPA), 42 U.S.C. 4321; the Paperwork Reduction Act (PRA), 49 U.S.C. 3501; and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601. Procedures under these statutes and under Executive Orders (E.O.) 12291 and 12612 are described as follows:

(a) *Administrative Procedure Act (APA).* Sections of the APA (5 U.S.C. 551–559) establish procedural requirements applicable to decisionmaking of Federal agencies. The purpose is to ensure public access to the rulemaking process, protect the rights of individuals under the Privacy Act and make available to the public information requested under the Freedom of Information Act. The effect on the Magnuson Act process is: To require a minimum 15- to 30-day public comment period for proposed rules and a 30-day delayed effectiveness date for final rules, with justification possible for waiving or shortening both; to require the Council to maintain security of personal records of Council members, employees, consultants under contract, and advisory group members; and to require NOAA to respond to requests for information under specified criteria for denial and time limits. Required procedures under these statutes are detailed in sections 604.34 and 605.25.

(b) *E.O. 12291.* This Executive Order (E.O.) applies to the issuance of new rules, the review of existing rules, and the development of legislative proposals concerning regulations. The E.O. requires that: regulatory objectives and priorities be established with the aim of maximizing net benefits to society; rules be developed with a cost/benefit approach when possible; the chosen regulatory approach or alternative be the one with the least net cost to society; regulatory action should not be undertaken unless the potential benefits outweigh the potential costs to society; and administrative decisions be based on adequate information concerning the need for and consequences of the proposed government action. The E.O. also requires that a semi-annual regulatory agenda be prepared. The effect on the Magnuson Act process is to require all rules to be reviewed by OMB unless covered by specific exemption, and to require a Regulatory Impact Analysis if the rule is "major". A prior determination whether the rule is major or nonmajor and whether the rule complies with the above requirements is made based on a Regulatory Impact Review.

(c) *National Environmental Policy Act (NEPA).* NEPA requires that the effects of Federal activities on the environment be assessed. NEPA's purpose is to ensure that Federal officials weigh and give appropriate consideration in policy formulation, decisionmaking, and administrative actions to environmental values and ecological, economic and social benefits and costs and that the public is provided adequate opportunity to review and comment on the impact of major Federal actions. NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions that significantly affect the quality of the human environment. NEPA's effect on the Magnuson Act process is that a draft EIS, or environmental assessment for a finding of no significant impact, must be prepared. NEPA procedures are detailed in NOAA Directives Manual (NDM) 02–10.

(d) *Paperwork Reduction Act (PRA).* The PRA requires agencies to minimize paperwork and reporting burdens whenever collecting information from the public. PRA's effect on the Magnuson Act process is that if an FMP requires any form of information collection from the public, that collection must receive OMB approval. To obtain OMB approval, a written justification must be submitted. In addition, formal Council input is needed each Spring when the overall NMFS

information collection budget request is formulated for submission to OMB. Procedures under the PRA are detailed in NDM 56–11.

(e) *Regulatory Flexibility Act (RFA).* The RFA establishes the principle that where Federal regulation is necessary, the regulation should be tailored to the regulated entity's size and capacity to bear the regulatory burden. RFA's effect on the Magnuson Act process is to require a determination of whether a proposed rule is likely to have a significant economic impact on a substantial number of small entities. If the determination is affirmative, initial and final regulatory flexibility analyses must be prepared to accompany the proposed and final rules respectively. These analyses must consider the benefits and costs of compliance, with particular emphasis on the effects of the rule on the competitive position, cash flow and liquidity, and ability of the small entity to remain in the market. The RFA also requires a projection of reporting and record-keeping requirements.

(f) *E.O. 12612.* This E.O. requires Executive departments and agencies, in formulating and implementing policies, to be guided by federalism principles and criteria. Federalism principles and criteria involve close consultation with the States in any actions which have substantial direct effects on the States or on the distribution of power and responsibility between and among the levels of government. The effect on the Magnuson Act process is to require the Councils to identify federalism issues before submitting management programs to the Secretary for approval. Any principal State official opposed to adoption of an FMP or amendment may file a dissenting report explaining the nature of the State's objection and its relation to the policies of the executive order. (See § 605.24(a)(3)(iv).)

§ 604.5 Uses of oceans and coastline.

This category of laws also applies to the fishery management process, and deals with the competing uses of the ocean, the protection of certain living marine resources and their habitats, and the management of the nation's coastal areas. These statutes include the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451; the Endangered Species Act (ESA), 16 U.S.C. 1361; 1531; the Marine Mammal Protection Act (MMPA), 16 U.S.C. and Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA), 16 U.S.C. 1431. Procedures under these statutes are described as follows:

(a) *Coastal Zone Management Act (CZMA).* The principal objective of the CZMA is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. Section 307(c) of the CZMA requires that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program to the maximum extent practicable. CZMA's effect on the Magnuson Act process is to require determination that an FMP has no direct effect on the coastal zone, or is consistent with the State's approved coastal zone management program to the maximum extent practicable. Proceddres under the CZMA are detailed in 15 CFR Part 930.

(b) *Endangered Species Act (ESA).* The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by the Department of Interior (DOI), which generally has jurisdiction over terrestrial and freshwater species, and the Department of Commerce (DOC), which generally has jurisdiction over marine species. With respect to endangered or threatened sea turtles, DOC has jurisdiction while the turtles are in the water and DOI while the turtles are on land. Conflicts between the ESA and Federal actions are to be resolved by a consultation process between the project agency and DOC and/or DOI, as appropriate. ESA's effect on the Magnuson Act process is to require biological assessment and consultation with NMFS or the Fish and Wildlife Service (FWS) if an FMP or amendment may affect endangered or threatened species or cause destruction or adverse modification of any designated critical habitat. The consultation must conclude that there is no likelihood of jeopardy to any listed species, or, if jeopardy exists, reasonable and prudent alternatives approved by NMFS or FWS must be adopted before the FMP can be approved.

(c) *Marine Mammal Protection Act (MMPA).* The MMPA establishes a moratorium on the taking of marine mammals and a ban on the importation of marine mammal products with certain exceptions. Responsibility is divided between DOC (whales, porpoises, seals, and sea lions) and DOI (other marine mammals) to issue permits and to waive the moratorium for specified purposes, including incidental takings during commercial fishing operations. The Magnuson Act amended the MMPA to extend its jurisdiction to the EEZ. MMPA's effect on the Magnuson Act process is that if the FMP has an effect on the marine mammal population, certain information must be included in the EIS, and the FMP should indicate whether permits are needed for any incidental takings.

(d) *Marine Protection, Research and Sanctuaries Act (MPRSA).* Title III of the MPRSA authorizes the Secretary to designate as marine sanctuaries areas of the marine environment that have been identified as having special national significance due to their resource or human-use values. The Marine Sanctuaries Amendments of 1984 amend this Title to include, as consultative agencies in determining whether the proposal meets the sanctuary designation standards, the Councils affected by the proposed designation. The Amendments also authorize the Council affected to prepare draft regulations for the Secretary's approval, consistent with the Magnuson Act national standards and the goals and objectives of the proposed designation, for fishing within the EEZ as it may deem necessary to implement a proposed designation.

PART 605—GUIDELINES FOR COUNCIL OPERATIONS/ ADMINISTRATION

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Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 605.1 Purpose and scope.

(a) This part sets forth guidelines for the development of fishery management plans and for the organization, practices, and procedures of the Councils.

(b) The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

Subpart B—Operations

§ 605.11 General.

The primary functions of each Council are to develop, monitor, evaluate, and propose amendments to FMPs and associated regulations for each fishery that requires conservation and management within its geographical area of authority. The following describes the Councils' and the Secretary's roles and responsibilities and sets out key activities necessary to produce FMPs, amendments, and annual specifications acceptable for review by the Secretary. It is designed to—

(a) Bring to bear the necessary expertise on all aspects of the process;

(b) Be responsive to other applicable law, the public interest, and shifts in Council priorities and objectives; and

(c) Ensure the quality, relevance, reliability, and independence of science in the management process.

§ 605.12 Use of available expertise.

Councils should use all available expertise as necessary and appropriate in carrying out their functions. This includes experts within NMFS with Magnuson Act responsibilities, at State and academic institutions, Scientific and Statistical Committees (SSCs), Advisory Panels (APs), plan teams, and/or other working groups established to assist in the processes described below.

§ 605.13 Use of the best available scientific information.

Management decisions must be based on the best scientific information available concerning the present and probable future condition of the stocks.

(a) The Stock Assessment and Fishery Evaluation (SAFE) report is a document or set of documents that provides Councils with a summary of the most recent biological condition of species in the fishery management unit (FMU), and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It summarizes, on a periodic basis, the best scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(1) The Secretary has the responsibility to assure that a SAFE report is prepared, reviewed annually, and changed as necessary for each FMP. The Secretary or Council may call on any combination of talent from Council, State, university, or other sources (but at a minimum must include Council and NMFS representatives) to acquire and analyze data and produce the SAFE report.

(2) The SAFE report provides information for determining annual harvest levels from each stock, documenting significant trends or changes in the resource and fishery over time, and assessing the relative success of existing State and Federal fishery management programs. In addition, the SAFE report may be used as a basis to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(3) Each SAFE report must be scientifically based, and cite data sources and interpretations.

(b) Each SAFE report should contain information on which to base harvest specifications. Examples are:

(1) Estimates of total biomass and/or spawning biomass for each stock in the FMU;

(2) Estimates of the annual surplus production (ASP) and maximum sustainable yield (MSY) for each stock in the FMU;

(3) Description of the estimated biomass, ASP, and MSY in previous years relative to those estimates for the current or next year;

(4) Description of the model or assumptions on which these estimates are based and a discussion of the reliability of each estimate;

(5) If a stock is below the level which will produce MSY, estimated time necessary to allow a stock to rebuild to MSY, threshold or other specified level under various harvest levels, and prevailing environmental conditions; and

(6) Significant changes (if any) in the habitat or ecosystem since it was last described in the FMP, an amendment to the FMP, or previous SAFE report.

(c) Each SAFE report should contain information on which to assess the condition of the recreational and commercial fishing industries and fish processing industries. Examples are:

(1) Estimate of the amount of fish harvested from each stock in the FMU, by gear type and area, in the most recent three years and in the year immediately prior to implementation of the FMP governing fisheries for (or in) the FMU. If applicable, a description of the amount of fish harvested in the same time period by wholly domestic, joint venture and foreign fisheries;

(2) The approximate ex-vessel value of the harvested fish described in paragraph (c)(1) of this section;

(3) Amounts and estimated value of each type of processed products derived from the harvested fish described in paragraph (c)(1) of this section;

(4) Estimates of the numbers of commercial vessels by gear type and in terms of individual vessels involved in each fishery for (or in) the FMU;

(5) Estimates of the number of commercial fishermen employed in each fishery for (or in) the FMU;

(6) The numbers of processing plants, floating and shore-based, individual and by product type, involved in processing the harvested fish described in paragraph (c)(1) of this section;

(7) Estimates of the amount of fish harvested by recreational fishermen from the FMU;

(8) Estimates of the numbers of recreational fishermen who harvested fish from the FMU;

(9) Estimates of the number of charter vessels and party boats involved in the recreational fishery; and

(10) The estimated value of the recreational fishery for (or in) the FMU.

(d) Each SAFE report may contain additional economic, social, ecological, and other information pertinent to the success of management or the achievement of objectives of each FMP. Examples are:

(1) Enforcement actions taken and penalties assessed and collected over the most recent three years under an implemented FMP;

(2) Significant changes (if any) in State regulations pertinent to the FMU and their known or anticipated effects on stocks in the FMU;

(3) Significant changes (if any) in related fisheries which may affect the fishing effort for (or in) the FMU; and

(4) Potential conservation and management problems, their possible causes and solutions.

§ 605.14 Planning.

(a) *General.* Councils must establish procedures for identifying, on a continuing basis, fishery management issues and needs. The procedures established must ensure consideration of, and responsiveness to, the SAFE, economic and social impact analyses, enforcement experience, public perceptions and proposals, management priorities and long-term management goals and objectives. In its planning process, the Councils should define the FMU, determine the need for management, identify data and information needs, examine the range of issues to be addressed, propose management objectives, and schedule future actions.

(b) *Data Collection Program (DCP).* (1) The Magnuson Act authorizes collection of information and data which would be beneficial in determining whether an FMP is needed for a fishery or in preparing an FMP. Councils may request that the Secretary implement a

DCP for a fishery which would provide the types of information and data specified by the Councils. If the need for data is justified for conservation and management and approved by OMB under the Paperwork Reduction Act, the Secretary will approve such a DCP and issue proposed regulations to implement the program within 60 days and establish an estimated date of availability of the data. If the Secretary determines the need for a DCP is not justified, the Council must be informed in writing of the reason(s) for the determination within a reasonable period of time.

(2) NOAA is authorized under the Magnuson Act and other statutes to collect proprietary or confidential commercial or financial information and provide nonconfidential aggregations of such data to fulfill a Council's request. Information and data that would disclose proprietary or confidential commercial or financial information regarding individual fishing operators or fish processing operations would not be provided to the Council except as provided in § 601.27 and Part 603.

§ 605.15 Fishery management objectives.

Each FMP and amendment, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to achieve, i.e., the management objectives to be attained in regulating the fishery under consideration. (See § 602.10, national standard guidelines, which sets out the role of objectives in the development and review process.)

§ 605.16 Establishment of management measures.

(a) The Council develops management measures to achieve optimum yield (OY), and the management objectives of the Council. The Council must propose management measures that are consistent with the national standards, other sections of the Magnuson Act, and other applicable law. The Council must prepare draft regulations that implement the management measures for submission to the Secretary with the FMP or amendment. Supporting documents required by other applicable law (see Part 604) must accompany the Council submission. Procedural detail may be found in the *NMFS Operational Guidelines*.

(b) Prior to the Council's adoption of the management measures:

(1) The Council must prepare a regulatory analysis of the economic and social effects of alternate management measures and their effectiveness in achieving the objectives in the FMP. The analysis must discuss the need for Federal action, and the benefits and costs of each alternative, and the effects on small entities and fishery-dependent communities. The analysis must include a conclusion concerning the expected net economic and social benefits to be achieved by each alternative management measure or system. To the extent such net benefits cannot be quantitative, qualitative estimates must be provided.

(2) The SSC must advise the Council on the adequacy of all support analyses and whether they are based on the best scientific information available, and on the efficacy of proposed management measures.

(3) NOAA and the Coast Guard, upon request of a Council, must provide written comments pertaining to the feasibility and cost of alternatives relative to enforcement and on vessel safety implications of the management measures.

(4) The Council may solicit comment from the AP, and any other interested group or individual concerning the effects and probable effectiveness of the proposed alternatives.

Subpart C—Administration

§ 605.21 Council Statement of Organization, Practices, and Procedures (SOPP).

Council SOPPs required under § 601.22 must, at a minimum, implement the standards outlined below in this subpart. As appropriate, these sections may be incorporated by reference. Councils should also include in their SOPPs implementation of § 601.27 on protection of confidentiality of statistics. In addition, they may wish to include selected regulatory sections from Parts 601 and 604, as circumstances warrant.

§ 605.22 SOPP checklist.

The following is an outline/checklist of the sections in Subpart C for use in developing each Council's SOPP:

605.23 Council organization.

(a) Officers and terms of office.
(b) Designees.
(c) Designations of Regional Directors.
(d) Advisory groups.
(e) Working groups.
(f) Committees.

605.24 Council meetings and hearings.

(a) Meetings.
(1) General.
(2) Notice.
(3) Conduct.
(4) Record.
(5) Closed meetings.
(6) Frequency and duration.
(7) Location.
(b) Hearings.
(1) General.
(2) Notice.
(3) Conduct.
(4) Record.

605.25 Employment practices.

(a) Staffing.
(b) Experts/consultants.
(c) Details.
(d) Personnel actions.
(e) Salary/wage.
(f) Recruitment.
(g) Leave.
(h) Employee benefits.
(i) Travel reimbursement.
(j) Foreign travel.

605.26 Financial management.

(a) Cooperative agreements.
(b) Procurement.
(c) Property management.
(d) Space management.
(e) Accounting system.
(f) Audits.
(g) Financial reports.

605.27 Recordkeeping.

(a) Administrative records for FMPs.
(b) Disposition of records.
(c) Permanent records.
(d) Privacy Act.
(e) Freedom of Information Act.

§ 605.23 Council organization.

(a) *Officers and terms of office.* The Chair must be elected from among the voting members by a majority vote of the voting members present and voting. The term of office for the Chair may not exceed one year; however, the Chair may be eligible for re-election as set forth in the Council's SOPP. The Council may establish other officers as deemed necessary and set their terms of office.

(b) *Designees.* (1) The Magnuson Act authorizes only the principal State officials, the Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. The Chair of the Council must be notified in writing, in advance of any meeting at which a designee will initially represent the Council member, the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chair, in advance, a list of several individuals who may act as designee, provided that the list designates who would serve if more than one designee is in attendance.

(2) Reimbursement of travel expenses to any meeting must be limited to the member, or, in the case of the absence of the member, one designee—in any case, one person.

(c) *Designation of Regional Directors.* The Regional Directors serve as voting members on the Councils as follows:

Council	Regional Director
New England	Northeast Region
Mid-Atlantic	Northeast Region
South Atlantic	Southeast Region
Caribbean	Southeast Region
Gulf of Mexico	Southeast Region
Pacific	Northwest/Southwest Region*
North Pacific	Alaska Region
Western Pacific	Southwest Region

*The Southwest Regional Director is the NMFS spokesman on the Council and votes on fishery matters primarily or exclusively off California. The Northwest Regional Director is the spokesman and votes on fishery matters primarily or exclusively off Oregon and Washington.

(d) *Advisory groups.* Each Council must establish a Scientific and Statistical Committee (SSC) and may establish such other Advisory Panels (APs) as necessary or appropriate to assist it in carrying out its functions. Size is discretionary within the resources budgeted to the particular Council. Each Council must specify procedures in its SOPP for continuing involvement of its advisory groups in the development or amendment of FMPs. Procedures for appointing members of these groups should also be specified in the SOPPs.

(1) *Scientific and Statistical Committee (SSC).* The SSC provides expert scientific and technical advice to the Council on the development of fishery management objectives and strategies, the scientific information supporting preparation of FMPs, the appropriateness of the ABC and OY levels, the adequacy of the regulatory analysis, and the effectiveness of FMPs once in operation. In providing this advice, the SSC assists the Council in identifying the need for research and data collection and the scientific resources available, and in establishing criteria for framework actions. Membership must be multidisciplinary, and should include biological and social scientists from the Federal and State governments, and private scientific community who are knowledgeable about the fisheries to be managed.

(2) *Advisory Panel (AP).* The AP provides pragmatic advice from individuals most affected by, or interested in, Council matters of fishery management. A balanced representation should be maintained of those who are either actually engaged in harvesting, processing, marketing, or consuming fish, or knowledgeable and interested in the conservation and management of the fisheries within the Council's jurisdiction. With respect to each FMP or amendment under consideration by the Council, the AP should provide advice concerning the recommended OY, the management measures and allocations under consideration, the supporting documentation to any regulatory action, management objectives, and any other subject, as required by the Council.

(e) *Working groups.* Fishery management planning and development of FMPs may be performed by various types of working groups, under the direction of the Council. For example, the Council may establish a Plan Team to assess the need for management, assemble information, conduct and evaluate analyses, evaluate public/industry proposals and comments, and estimate the costs of plan development, implementation, and monitoring. In addition, Councils may use ad hoc groups to address resource user conflicts or other issues.

(f) *Committees.* The Council may appoint standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business.

§ 605.24 Council meetings and hearings.

In fulfilling the Council's responsibilities and functions, the Council members may meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information, or make decisions regarding material before them. To provide for review and decision by the Secretary, recommendations of each of these groups must be documented and available. The documentation must include, at a minimum, a statement of the problem, recommendations for corrective action, likely impact on the affected resource, and likely impact on affected user groups.

(a) *Meetings—(1) General.* The Councils meet in plenary session at the call of the Chair or upon request of a majority of the voting members. Advisory groups may meet with the approval of the Chair. Emergency meetings may be held at the call of the Chair or equivalent presiding officer.

(2) *Notice.* With respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels of a Council, timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, must be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting must also be published in the **Federal Register**.

(3) *Conduct of meetings.* (i) All meetings of the Council advisory and working groups must be open, unless closed in accordance with paragraph (a)(5) of this section. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at regular meetings of the Council, within reasonable limits established by the Chair. A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on foreign fishing applications or fishery management plans developed by the Secretary.

(ii) A majority of the voting members of any Council constitutes a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) Decisions of any Council are by majority vote of the voting members present and voting (except for proposed removal of Council members, see § 601.36). Voting by proxy is not permitted. An abstention does not affect the unanimity of a vote.

(iv) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal State officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file a minority report, it must be submitted at the same time as that of the majority.

(4) *Record.* (i) Minutes of each meeting must be kept and must contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.

(ii) Subject to the procedures established by the Council under § 601.27, and the regulations prescribed by the Secretary under Part 603 relating to confidentiality, the administrative record (including minutes required under paragraph (a)(4)(i) of this section) of each meeting, and records or other documents which were made available to or prepared for or by the Council, SSC, or APs incident to the meeting, must be available for public inspection and copying at a single location in the offices of the Council.

(5) *Closed meetings.* (i) Each Council, SSC, and AP:

(A) Must close any meeting, or portion thereof, that concerns matters or

information that bears a national security classification; and

(B) May close any meeting, or portion thereof, that concerns matters or information that pertains to unclassified national security matters, employment matters, or briefings on litigation in which the Council is interested.

(ii) Closed meetings must be announced in the news media.

(5) *Frequency.* Each Council must meet in plenary session at least once every six months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chair.

(7) *Location.* (i) Each Council must conduct all meetings within its geographic area of concern. In the particular case of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare an FMP jointly, Councils so designated may meet jointly within any of their constituent States for the purpose of developing or amending such a plan or discussing issues of mutual concern.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be accessible to those interested in attending, including consideration of the cost of transportation and lodging.

(b) *Hearings*—(1) *General.* The Magnuson Act directs the Councils to hold public hearings, at appropriate times and in appropriate locations in the geographical area concerned, to provide the opportunity for all interested persons to be heard in the development of FMPs and amendments, and with respect to the administration and implementation of the Magnuson Act. The term "geographical area of concern", for purposes of holding hearings, may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area, but not unless such other Council is first consulted regarding the conduct of such hearings within its area.

(2) *Notice.* Hearings must follow the same procedures for announcement as for Council and advisory group meetings. Timely public notice also should be given to the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(3) *Conduct of hearings.* When it is determined that a hearing is appropriate, the Chair of the Council must designate at least one voting member of the Council to officiate. All points of view must be given a fair chance to be heard.

(4) *Record.* An accurate and timely report of the participants and their views must be provided in writing to the Council and maintained as a part of the Council's official records.

§ 605.25 Employment practices.

The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel-related standards. Council members (except for Federal government officials) and staff are not Federal employees subject to Office of Personnel Management (OPM) regulations.

(a) *Staffing.* Each Council may appoint and assign duties to an Executive Director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of Council functions consistent with budgetary limitations. The Executive Director is responsible to the Council, and the staff is responsible to the Executive Director. Each position must be justified during the budget process described in OMB Circular A-110, or prior to filling a new position established during the course of the cooperative agreement year. Descriptions of the work to be performed must be submitted.

(1) Council staff positions must be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions must be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(2) No employee of the Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election, or on account of his or her political affiliation.

(3) Council members and staff generally have the same protection from individual tort liability as Federal employees for official actions, and are protected by the Federal workmen's compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act (PA).

(4) Council staff are eligible also for unemployment compensation in the same manner as Federal employees.

(b) *Experts and consultants.* As long as funding is available in its budget, each Council may contract with experts and consultants as needed to provide technical assistance not available from NOAA. This includes legal assistance in clarifying issues, but Councils must contact NOAA General Counsel before seeking outside legal advice. Such experts and consultants may not provide services on a continuing basis.

(c) *Details of Government employees.* All Federal agencies are authorized by section 302(f)(2) of the Magnuson Act, 16 U.S.C. 1852(f)(6) to detail personnel to the Council on a reimbursable basis to assist the Council in the performance of its functions. Nonreimbursable details are not precluded. Council requests to the heads of such agencies must contain the purpose of the detail, length of time, compensation to be paid, if any, and the stipulation that the Assistant Administrator be consulted prior to granting the request. Copies of this correspondence will be transmitted to the Assistant Administrator through the servicing Regional Office. Federal employees so detailed retain all benefits, rights, and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments. Assistance in arranging these details may be obtained through the servicing Regional Office.

(d) *Personnel actions.* Subject to these instructions, and within budgetary limits, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. Dismissal will be made for misconduct, unsatisfactory performance, and/or lack of funds, with reasonable notice to the employee.

(e) *Salary and wage administration.* (1) In setting rates of pay for Council staff, the principle of equal pay for equal work must be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

(2) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands, the Northern Mariana Islands, and Puerto Rico. Members from American Samoa will receive post differential. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area. The current rates may be obtained from the applicable NOAA field unit.

(3) The duties of any new position must be contained in a brief description to be submitted to the Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range; the policy of hiring at the beginning rate should be followed except in unusual cases when recruitment of an exceptionally qualified employee is hampered thereby. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time.

(f) *Recruitment.* All personnel vacancies should be filled on a competitive basis, unless unusual circumstances clearly dictate otherwise. For this purpose, the Council may avail itself of the vacancy advertising system operated by NOAA through the servicing Regional Office or any other recruitment tool, including newspapers and local employment agencies.

(g) *Leave.* Council employees should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (e.g., jury duty, military reserve obligations) as determined by the Council. Councils should inform employees that leave is not transferable to or from Federal agencies. Leave is subject to the following limitations:

(1) *Annual leave.* Full-time Council employees may accrue annual leave at rates not to exceed those for Federal employees. Part-time employees accrue leave at the same rate, per hours worked.

(i)(A) Up to three years of service—maximum of 2 hours leave per 40 hours (13 days per year);

(B) Three to 15 years—maximum of 3 hours per 40 hours (20 days per year); and

(C) Over 15 years: maximum of 4 hours per 40 hours (26 days per year).

(ii) If the Council so desires, it may credit prior Federal, State, or local government service for the purpose of determining leave accrual of individual employees. Application of such a policy must be uniform and public.

(iii) Employees may carry over up to 240 hours (30 days) unused annual leave from one calendar year to the next. Amounts remaining above 240 hours will be forfeited. Employees who were authorized to carry over more than 240 hours in accordance with Council SOPPs prior to the effective date of these guidelines may continue under such policy. Under certain conditions, forfeited annual leave may be restored if it was properly scheduled for use and circumstances beyond the employee's control caused the forfeiture. Approval for this restoration must be obtained from the Council Chair or his/her designee, who will refer to the NOAA Personnel Regulations and other source documents for guidance. Lump sum reimbursements not to exceed 240 hours carryover plus current year earnings of unused leave are authorized upon employee separation. (Councils should neither budget nor account separately for anticipated or accrued leave costs payable upon employee separation. Should such costs arise and exceed Council funding availability, NOAA will defray these costs in total.)

(2) *Sick leave.* (i) Full-time Council employees may accrue sick leave at the rate of two hours per week (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. A 20-hour-a-week employee would accrue half the leave accrued by a 40-hour-a-week employee. Accumulation is without limits. Lump sum payments upon separation are not authorized. However, unused sick leave may be credited, upon an employee's retirement, as additional time worked.

(ii) In meritorious cases, Councils may advance up to one year's earnings of sick or annual leave when it is reasonably expected that the advanced leave will be repaid by the employee. This must be approved by the Council Chair or designee (designation must be in writing).

(h) *Employee benefits.* Employee benefits are identified in Councils' SOPP, a copy of which should be provided to each employee. The Council should provide its employees the opportunity to participate in group medical insurance, life insurance, and retirement plans, and pay a reasonable proportion of the cost of such plans. Total employee benefits may not exceed 20 percent (exclusive of FICA) of employees' gross salary, without NOAA approval.

(1) *Medical insurance.* Councils may provide group medical and dental insurance to their employees either through a commercial underwriter or through a State or local government program, within the total percentage limitation previously stated. Councils are not authorized to increase employee salaries in lieu of a medical or dental insurance plan.

(2) *Life insurance.* Councils may provide group life insurance for employees within the total percentage limitation previously stated. An increase in salary in lieu of insurance coverage is not authorized.

(i) *Travel Reimbursement*—(1) *General.*

(i) Each Council must include travel reimbursement procedures in its SOPP. Current per diem and actual subsistence rates contained in the NOAA Travel Handbook apply.

(ii) Actual expenses include transportation by air coach, rail coach, bus or privately owned vehicle (automobile or private plane reimbursed on a per mile basis); room and meals within a reasonable limit established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking, and telephone calls on official business.

(iii) Coach air transportation must be utilized when available. Travel via first class air must be justified on the reimbursement voucher and approved by the Council Chair or his/her authorized representative. Privately owned vehicles (POVs) may be authorized when other modes of transportation are either unavailable or inconvenient. When a POV is authorized for the convenience of the traveler, the reimbursed costs must not exceed the costs of coach air fare. Accommodations equivalent to other-than-first-class should be utilized in the unlikely event that water vessel transportation is required. When substantial savings can be realized by utilizing rail travel, this mode of transportation should be considered when available and adequate.

(2) *Council, AP, SSC Members.* Section 302 (d) and (f) of the Magnuson Act provide that the voting members of each Council, the Executive Director of the Marine Fisheries Commission on each Council, the additional non-voting member of the Pacific Council, and members of advisory groups will be reimbursed for actual expenses incurred in the performance of Council duties. They are not bound by the separate per diem limits for meals and lodging as set forth in the GSA Rules. They are subject, however, to the total reimbursement limits established by the Handbook for actual expenses, and they must itemize their actual expenses up to the specified limit each day. Lodging receipts are required. The rates are included in the GSA Rules. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies.

(3) *Council staff, members of plan teams, and others.* Members of the Council staff and plan teams, invited experts, consultants, or others specifically invited, unlike those described in paragraph (i)(2) of this section, must adhere to the per diem limits or actual expense requirements set forth in the GSA Rules.

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(4) *Non-NOAA team members.* Non-NOAA team members may be reimbursed for travel expenses but receive no other compensation from the Council.

(j) *Foreign travel.* (1) Foreign travel must be approved, in advance, by the Assistant Administrator for Fisheries or designee and by the Grants Officer. Requests for foreign travel approval should be submitted, in writing, at least 15 days in advance to the Assistant Administrator, through the NMFS Office of Management and Budget and the Grants Officer. Routine across-the-border travel to Mexico and Canada is exempt.

(2) Each Council should specify in its SOPP any delegation of authority to approve routine across-the-border travel which has been granted to it by NOAA.

(3) Council Chairmen or their authorized representatives may approve routine across-the-border travel to Canada or Mexico for Council members and employees within specified Federal rules.

(4) Domestic invitational travel for non-Council personnel may be approved by the Council Chairman or his/her authorized representative. Foreign invitational travel must be approved as described in paragraph (j)(1) of this section. The per diem limits or actual expense requirements described above also are applicable to non-Council personnel traveling at Council expense. Payment for NOAA personnel from Council funds is not authorized.

§ 601.23 Financial management.

The Councils' administrative operations are governed by OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and OMB Circular A–122 (Cost Principles for Non-Profit Organizations). A–110 prescribes standards for financial management systems, procurement, property management, financial reporting, cash depositories, and grant close-out procedures. Councils are required to comply strictly with the provisions of the Circulars, DOC regulations and directives, NOAA directives, and terms and conditions of the awards.

(a) *Cooperative agreements.* Councils receive funds through cooperative agreements for two basic types of expenditures: Administrative (or operations) funds to cover general operating expenses, such as salaries, office space, utilities, travel, State liaison activities, etc., and programmatic (or contract) funds primarily designed to fund contracts generated by the Councils for development of FMPs (including amendments) or FMP-oriented information.

(1) *Administrative.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual grants and cooperative agreements will provide such Federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations. Requirements for periodic reports for purposes of NOAA budgetary control are described in individual grants and cooperative agreements issued to the Councils.

(i) *Application for cooperative agreement.* (A) The Council must submit a formal application (Standard Form 424, Federal Assistance Short Form) to the appropriate Regional Director. This application includes a Budget Data Form, a Program Narrative Statement supporting the application, and a Statement of General Assurances. As backup to the Budget Data Form, each Council must prepare a Budget Summary Worksheet for three fiscal/calendar years. The amounts reflected in lines A1 through A8 of the Worksheet are then transferred to the appropriate categories of the Budget Data Form. On the budget submission, Councils should list all contemplated equipment purchases over $500 each; approval of the application will convey approval of these purchases. The Program Narrative Statement should describe in appropriate detail the purpose for which funds are sought, e.g., operational expenses, FMP-oriented contracts, State liaison support.

(B) Upon receiving a recommendation from the Regional Director (RD), the Assistant Administrator will review the application and transmit the application through the RD to the appropriate Grants Officer for processing. If the application is disapproved by the Assistant Administrator, the RD will be contacted and supplied with the reasons for disapproval and the criteria for resubmission.

(ii) *Accounting.* A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. In addition, a Statement of Income and Expenses for the Council must be prepared monthly for the Council membership. Each cash disbursement must be approved by the Council Executive Director. All checks for amounts more than $5,000 require two signatures—the Council Executive Director and another person designated by the Council. The approval authority must be included in any SOPP published after the effective date of this regulation. When budget estimates are submitted to the Assistant Administrator, the uniform account classification titles should be used.

(iii) *Advance of funds.* A Letter of Credit will be established for each cooperative agreement. Drawdowns from the Treasury will be made at the commercial bank through electronic fund transfer from Treasury. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than $10,000. These requirements are under the Department of the Treasury Circular 1075, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (31 CFR Part 205).

(2) *Programmatic*—(i) *Nature of request.* Councils may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest which further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be obtained prior to entering into such arrangements, and each agreement must specify the nature and extent of Council participation. The Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with Agency regulations, which are available from NMFS Regional Offices upon request.

(ii) *Criteria.* NOAA has established the following criteria to guide each year's decisions on programmatic funding:

(A) Proposed projects must be directly related to the formulation of an FMP, amendment, or emergency action (including data collection necessary to determine whether an FMP should be formulated); necessary to evaluate an FMP already in place; or, necessary to obtain information for use in framework FMP management actions.

(B) Proposed projects must be short-term, preferably one year or less but generally not longer than two years.

(C) Proposed projects must avoid duplication of effort and operate as cost efficiently as possible in order to maximize benefits for Federal expenditures. When a Council has identified data needs for a particular fishery, available resources from NOAA, the States, Office of Sea Grant, academic institutions, and other established sources of information should be utilized to avoid duplication of effort. If certain biological, ecological, economic, or social data is needed on a high-priority basis which cannot readily be supplied free-of-charge by NMFS or other institutions, the Councils may be authorized to contract for the information collection and analysis. The SSC of each Council should assist in identifying immediate and longer-range research and data needs.

(iii) *Procedure.* (A) Requests for programmatic funding may be submitted at the same time as the Council's administrative budget, or at other times as requested by the Assistant Administrator. Documentation should include a cover letter explaining the need for the project, how it contributes to an FMP (proposed, developing or existing), and how it meets criteria outlined in this section. An additional factor that is considered during NOAA review is documentation jointly submitted by the Regional Director and Chief Scientist stating that needed information is not available from NOAA or other sources and establishing regional priorities among the various Council requests.

(B) Competing project proposals which meet the above criteria may be funded based on an evaluation of urgency of problem to be addressed, impact of failing to fund, impact of delay in funding, and importance and size of fishery.

(C) Programmatic contract services always must be described in the context of overall Council plans in a particular programmatic area. The relationship of individual contracts to past and projected goals must be reflected in all Council applications for contract funds.

(b) *Procurement.* Draft contracts or solicitations relating to the development or monitoring of FMPs must be submitted to the RD. Proposed sole source procurements over $5,000 and contracts for automated data processing (ADP) equipment purchases and leases must also be submitted to the RD prior to award. Solicitations will not be released, nor contracts awarded, until all substantive issues noted by the RD have been satisfactorily resolved. Proposed sole source contracts over $10,000 must be approved in writing by the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Grants Officer. The cost and financial management principles outlined in OMB Circulars A–122 and A–110 are to be applied fully to all Council procurement actions.

(1) To avoid duplication of work, efforts must be made to use existing support sources (Federal, State, other Councils, etc.) before commercial sources are sought.

(2) Competition must be held for all commercial purchases over $5,000 unless the unique nature of the procurement, unforeseen time constraints, and/or substantiated overall savings (administrative plus contractual) clearly dictate otherwise. All sole source procurements above $5,000 with individuals and commercial vendors will be documented and reviewed by the RD as described above. Such purchases over $10,000 must be approved by the Grants Officer. Internal Council evaluations may be made on unusual and large procurements to ensure their legality, economy, and viability, or the Council may delegate such authorization to its Executive Director or Chair.

(3) Efforts must be made to inform minority firms of planned Council procurements. The *Commerce Business Daily* (CBD) should be considered by each Council as a means of publicizing contemplated contracts.

(4) The purchase or lease of ADP equipment by Councils and its subcontractors requires prior approval by the RD. Such approval will be made only after a cost-benefit analysis (system life cost, lease vs. purchase, compatibility, etc.) by the Council demonstrates the economy of the proposed action.

(5) Councils are authorized to purchase supplies and services from GSA directly. Individual accounts have been set up for each Council, and information is available through Regional Offices.

(c) *Property management.* A listing of Federally-owned (Council) property must be submitted to the Grants Officer annually. Theft of Council property should be reported promptly to local law enforcement personnel, including the FBI, the Grants Officer, and to the Regional Office. Property management procedures must ensure adequate control and protection of Council property at all times. Such procedures are included in Council's SOPP, and must include the following as a minimum:

(1) A perpetual inventory system for all nonexpendable items, e.g., office equipment, furniture, etc.;

(2) Procedures for marking such items as Council property;

(3) Provision for safeguarding sensitive items such as cameras and biological equipment. Insurance should not be obtained.

(4) Procedures to be followed in disposing of surplus items;

(5) Listing of all personnel, including consultants if appropriate, authorized to have access to Council property.

(d) *Space management.* In all cases, reason should be exercised regarding the amount and cost of space acquired. When acquiring office space, Councils may avail themselves of the following:

(1) General Services Administration leasing assistance;

(2) Regional Office assistance;

(3) Direct negotiations within the guidelines stated above.

(e) *Accounting system.* Councils must maintain a document-oriented, obligation-accounting system (with accruals, as necessary, for budget projection purposes) rather than a cash-accounting system. Actual journals and ledgers must be maintained either manually or on an automated system; in either case, however, all obligations must be clearly documented and organized in order to provide quick access and verification by professional auditors. The actual composition (chart of accounts) of the system may vary somewhat from Council to Council. As a minimum, however, the system must provide fiscal control over expenditures in line with those object classes depicted in the Council budget submission. This will allow not only timely submission of the periodic financial status reports, but it will also ensure close coordination between actual spending rates and budgeted amounts so that comparisons and changes can be made at any time. All financial records must be handled in accordance with OMB Circular A–110.

(f) *Audits.* An independent audit is required at least biennially by DOC auditors or an independent public accountant (IPA). All Councils are subject to audit by the Secretary and the General Accounting Office. The scope of the audit may include: conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

(1) If an IPA is to perform the audit, the request for proposals and contract must comply with the Audit Guidelines.

(2) As part of the IPA's examination of Council records, it is requested that they comment on whether efforts have been made by the Council to include small, minority, and women-owned businesses as sources of supplies and services.

(3) In order to provide guidance or provide additional information to the auditors and the Councils on audit-related matters, it is suggested that the

following NOAA personnel be invited to participate in the audit exit conference:

(i) The Grants Officer;

(ii) The Assistant Administrator's staff and/or a representative of the Regional Office;

(g) *Financial reports.* Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF–272) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF–269) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required 90 days following completion of the grant. Guidance for the preparation of these reports and other financial reporting procedures is in Attachment G of OMB Circular A–110.

§ 905.27 Recordkeeping.

(a) *Administrative records for FMPs.* (1) Councils and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments within their geographic area of authority. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel.

(2) Categories of documents which generally constitute an administrative record include the following:

(i) Council meeting agendas;

(ii) Minutes of Council meetings;

(iii) Plan Team reports, if any;

(iv) SSC reports;

(v) AP reports;

(vi) Hearing reports;

(vii) Council reports/recommendations;

(viii) Correspondence relating to the FMP;

(ix) Scoping comments;

(x) Work plan, if any;

(xi) Discussion papers, if any;

(xii) NEPA documents;

(xiii) Regulatory analyses

(xiv) PRA justification

(xv) Proposed regulations;

(xvi) Final regulations;

(xvii) Emergency regulations; and

(xviii) Notices of meetings (Council, SSC, AP, Team).

(b) *Disposition of records.* (1) The goal of an effective disposition program is annually to destroy at least enough unneeded records to equal the volume of records created, while preserving records having long-term or enduring value because of administrative, legal, scientific, or historical importance.

(2) Councils must consult with NOAA before destroying Council records. Financial records (including time and attendance records) should be handled according to the stipulations of OMB Circular A–110. Councils must send records associated with FMPs to the appropriate Region for disposition.

(3) All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they cannot take the original or file copies of records with them; to do so violates Federal law.

(c) *Permanent records.* The designation of a file as "permanent" means that the records are appropriate for offer to the National Archives when 15 years old, unless otherwise specified. Destruction of permanent records is not authorized. The following are examples of permanent files:

(1) *EIS files:* Documents relating EIS's or environmental assessments. Cut off at end of calendar year when created. Permanent retention; no approved disposition at this time.

(2) *Annual report files:* Input for the DOC Annual Reports and related correspondence. Cut off at end of calendar year when created; permanent.

(3) *Meeting files:* Including agendas, minutes, reports, studies and related correspondence. Cut off at end of calendar year; permanent.

(d) *Privacy Act (PA) records.* Each Council will maintain in its office, under appropriate safeguards in accordance with the PA, personnel files on employees, experts and consultants under contract, and advisory group members.

(1) *Maintenance.* A file for each Council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the PA. This file will be available to members to which it pertains on request, and to other members and government officials when a need to know the information in the performance of the requester's official duties is established.

(2) *Protection.* The PA provides the following protection for individuals, including Council employees, except as otherwise limited by law:

(i) An individual is permitted to determine what records pertaining to him/her are collected, maintained, used, or disseminated.

(ii) An individual is permitted to prevent records pertaining to him/her, which have been obtained for a particular purpose, from being used or made available for another purpose without his/her consent.

(iii) An individual is permitted to gain access to information in Federal records pertaining to him/her, to have a copy made of all or any portion of such records, and to correct or amend such records.

(iv) The collection, maintenance, use, or dissemination of any record of identifiable personal information must be in a manner which assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(v) Exemption from the requirements of the PA are permitted only in those cases where there is an important public need for such exemption as has been determined by specific statutory authority.

(vi) Federal agencies are subject to civil suit for any damage which occurs as a result of willful or intentional action which violates any individual's rights under the PA.

(3) *Request for PA information.* Any time an individual is asked to provide information about himself/herself to be maintained in a PA record, the individual must be given a written statement for his/her retention which provides the following information:

(i) The authority (law or executive order) which authorizes the collection of the information, indicating whether the authority either imposes or authorizes any penalty for failing to answer; whether providing the information is mandatory or voluntary;

(ii) The principal purpose for which the information is to be used; and

(iii) Any other uses which may be made of the information. These uses must be limited to those published in the **Federal Register**, and the effect(s), if any, on the individual of not providing all or any of the requested information, both beneficial and adverse.

(4) *Disclosure of PA records.* The disclosure of PA records to the individual to whom they pertain, to a person accompanying the individual, to the parent of a minor, or to a legal guardian comprise a fundamental aspect of the Act. Otherwise, Councils may only disclose PA records under one of eleven situations outlined in NOAA Circular 75–82.

(5) *Disposition of PA records.* Councils must contact NOAA for guidance before disposing of PA records. Examples of PA records with recommended timeframes for disposition are as follows:

(i) Membership files: Containing biographical data on members. Cut off when member leaves Committee; destroy five years later.

(ii) Time and attendance files: Retain for three years following the final financial report for each grant year in accordance with OMB Circular A–110.

(e) *Freedom of Information Act (FOIA).* All FOIA requests must be submitted in writing. The envelope and letter should be clearly marked "Freedom of Information Request."

(1) *Requests.* (i) FOIA requests should be time-and-date stamped upon receipt. Each request must be acknowledged within 10 working days and filled as expeditiously as possible. Time limits for processing FOIA requests start upon receipt of the request for information. In unusual circumstances, the 10-day time limit may be extended up to an additional 10 working days. Discretion should be used in invoking the 1- to 10-day extension provision. Any extension reduces availability by the same number of days of an extension that otherwise can be invoked, if partial or full denial should result in an appeal.

(ii) FOIA requests received by a Council should be coordinated promptly with the Regional Office. The Region will coordinate logging the FOIA request and obtain clearance from the NOAA General Counsel concerning initial determination for release or denial of information (under paragraph (c)(5)(ii) of this section.

(iii) FOIA requests will be controlled and documented in the Region by completion of Form CD–244. Councils may obtain copies of this three-part form from the NOAA Logistics Supply Center at Kansas City or from local GSA stores, and assist the Regional Office in completing the form as well as in assigning an official response date. Copies of the CD–244 should be distributed to the Regional Director (white copy) and the Council (yellow copy), and an information copy with the incoming request should be provided to the NMFS FOIA Officer.

(iv) Councils should recover allowable costs for locating and reproducing information released under the FOIA and forward these funds through the NOAA Freedom of Information Officer to the U.S. Treasury. Appropriate charges are outlined in the DOC Uniform Schedule of Fees.

(2) *Initial denials.* (i) The purpose of the FOIA is to make available to the public all information requested, with some exceptions in nine categories of information. Each Council may determine who may disclose unclassified information in its possession. However, only the Assistant Administrator has been delegated authority to make initial determinations on whether to deny information requested under the FOIA. This authority may not be redelegated. Regions must keep Councils informed.

(ii) Proposals to deny, or partially deny, a request for information should be coordinated with the appropriate Regional Attorney who will, in turn, coordinate with the DOC's Office of General Counsel, and with NOAA's Office of Public Affairs, and NOAA's FOIA Office. No initial denial may be issued until the concurrence of the Department's Office of General Counsel has been obtained.

(iii) After the coordination mentioned in paragraph (e)(2)(ii) of this section, the Assistant Administrator must send a letter to the requesting party denying the request for information. The denial letter should include the following:

(A) The specific exemption(s) which apply and why they apply.

(B) In the case of a partial denial, a statement of the specific manner in which a portion of a record is being provided after deletion of the portions which are determined to be exempt.

(C) A statement of the right to appeal to the DOC General Counsel within 30 days of the receipt of the denial.

(D) A statement that the appeal should include a copy of the original request, the initial denial, the requester's reasons why the records should be made available, and the reasons why the initial denial is believed to be in error.

(E) Copies of the letter of denial, along with the original FOIA request, should be sent to the DOC Office of General Counsel, the NOAA FOIA Officer, and the NMFS FOIA Officer.

[FR Doc. 88–12987 Filed 6–9–88; 8:45 am]

BILLING CODE 3510–22–M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 53, No. 112
Friday, June 10, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-559-802 and C-549-802]

Postponement of Preliminary Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore and Thailand

AGENCY: Import Administration, International Trade Administration; Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Torrington Company, the Department of Commerce (the Department) is postponing its preliminary determinations in the countervailing duty investigations of antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore and Thailand. The preliminary determinations will be made on or before August 29, 1988.

EFFECTIVE DATE: June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Eleanor Shea, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161 or 377-0184.

SUPPLEMENTARY INFORMATION: On April 20, 1988, the Department initiated countervailing duty investigations on antifriction bearings from Singapore and Thailand. In our notices of initiation we stated that we would issue our preliminary determinations on or before June 24, 1988 (53 FR 15084-15086, April 27, 1988).

On May 27, 1988, the petitioner filed a request that the preliminary determinations in these investigations be postponed for 65 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in these investigations, the Department is postponing its preliminary determinations until no later than August 29, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

June 3, 1988.

Joseph A. Spetrini,
Acting Assistant for Import Administration.

[FR Doc. 88-13137 Filed 6-9-88; 8:45 am]
BILLING CODE 3510-DS-M

[C-614-503]

Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On January 4, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand. We have now completed that review and determine the total bounty or grant during the period June 25, 1985 through March 31, 1986 to be NZ$0.31/lb.

EFFECTIVE DATE: June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 47) the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of lamb meat from New Zealand. Such merchandise is currently classifiable under item number 106.3000 of the Tariff Schedules of the United States Annotated and under item numbers 0204.10.00—0, 0204.22.20–0, 0204.23.20–0, 0204.30.00–0, 0204.42.20–2, and 0204.43.20—0 of the Harmonized System.

The review covers the period June 25, 1985 through March 31, 1986 and ten programs: (1) Export Market Development Taxation Incentive ("EMDTI"); (2) Export Performance Taxation Incentive; (3) Livestock Incentive Scheme; (4) Meat Producers Board Price Support Scheme ("MPBPS"); (5) Supplementary Minimum Prices/Lump Sum Scheme ("SMP/LS"); (6) Export Programme Grant Scheme; (7) Export Programme Suspensory Loan Scheme; (8) Export Suspensory Loan Scheme; (9) Regional Development Investigation Grants Scheme; and (10) Regional Development Suspensory Loan Scheme.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the New Zealand Meat Producers Board ("the Board").

Comment 1: The Board contends that the Department's preliminary results, which propose a change from a cents-per-pound to an *ad valorem* assessment rate, are contrary to the duty structure set forth in the Tariff Schedules of the United States ("TSUS"). The Board argues that, because regular duties are assessed in cents-per-pound, Congressional intent suggests that countervailing duties for this product be assessed on a specific-rate basis (*i.e.*, any basis other than *ad valorem*). Further, the Board asserts that importers and exporters made pricing and marketing decisions on a cents-per-pound basis and that such decisions would be rendered hopelessly inaccurate by a change to an *ad valorem* assessment rate. Finally, the Board contends that the Department's method of calculating the amount of the bounty or grant from the MPBPS and the SMP/LS schemes overstated the benefit. Because the benefits from these programs are paid in cents-per-kilogram of carcass weight rather than on the export value of lamb cuts, the Department's calculation of the countervailing duty should be on the same basis as that on which the benefit was bestowed.

Department's Position: Congressional direction concerning the method of collecting regular duties, as manifested in the TSUS, is unrelated to the assessment of countervailing duties. In determining the rate of countervailing duty to be assessed on any product, the Department calculates the amount of the benefit from each program and allocates each benefit over the basis on which it was received (*e.g.*, total sales, total exports, exports to the U.S.).

In our final determination, we considered the fact that the MPBPS and SMP/LS schemes provided benefits on the basis of cents-per-kilogram and determined that the collection of cash deposits of estimated countervailing duties on a specific-rate basis was more appropriate. When assessing countervailing duties, however, the Department concerns itself with countervailing the aggregate benefit received. Allocating that benefit in cents-per-pound, over the volume of exports to the United States, or on an *ad valorem* basis, as a percentage of the value of those exports, makes no difference in the total amount of the countervailing duties collected. For this reason, the Department proposed to change to an *ad valorem* assessment rate, which is consistent with the way countervailing duties are assessed in nearly all other countervailing duty proceedings. Further, with the termination of the MPBPS and SMP/LS schemes, there was no reason to continue collection of cash deposits of estimated countervailing duties on a specific-rate basis. Nonetheless, because importers and exporters made pricing and marketing decisions on a cents-per-pound basis we will assess countervailing duties for the review period in cents-per-pound.

Finally, we agree with the Board's claim that we overstated the benefits received from the MPBPS and SMP/LS schemes. Lamb meat exports to the United States are predominantly cuts, whereas a much larger percentage of New Zealand's total lamb meat exports are carcasses. Consequently, the average value per pound of exports to the United States is much higher than the average value per pound of total exports. Therefore, in our revised calculations, we took into account the fact that benefits from these programs were received on a carcass-weight basis and, by using the ratio of the weight (adjusted for waste) of U.S. sales to total export sales to all countries, we calculated the benefits attributable to lamb meat exports to the United States.

Based on our revision in the method of calculating the amount of benefit from the MPBPS and SMP/LS schemes and the change from our preliminary results to assessing countervailing duties on a specific-rate basis, we determine the total bounty or grant to be NZ$0.31/lb. during the review period. The rate of cash deposit of estimated countervailing duties remains unchanged from the preliminary results.

Comment 2: The Board contends that, when calculating the rate of cash deposit of estimated countervailing duties, the Department did not take into account the reduction in the benefit resulting from the continuing phase-out of the EMDTI program.

Department's Position: In calculating the rate of cash deposit of estimated countervailing duties, we considered changes that occurred prior to publication of our preliminary results. At verification we examined the New Zealand Lamb Company's 1985 and 1986 federal income tax returns. Based on a comparison of the tax credit rate and the normal corporate tax rate, we determined that the rate of the benefit from this program declined after the review period. We reduced the rate for cash deposits of estimated countervailing duties accordingly.

Final Results of Review

After considering all the comments received, we determine the total bounty or grant during the period June 25, 1985 through March 31, 1986 to be NZ$0.31/lb.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final assessed duty under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final assessed duty and refunded to the extent that the estimated duty is higher than the final assessed duty, for merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of a countervailing duty order, which in this case was September 17, 1985 (50 FR 37708).

Therefore, the Department will instruct the Customs Service to assess countervailing duties of NZ$0.25/lb. on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 25, 1985 and before September 17, 1985 and to assess countervailing duties of NZ$0.31/lb. on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 17, 1985 and exported on or before March 31, 1986.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 4.55 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,
Acting Assistant Secretary, Import Administration.

Date: June 3, 1988.

[FR Doc. 88-13138 Filed 6-9-88; 8:45 am]
BILLING CODE 3510-DS-M

University of Colorado et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-115. Applicant: University of Colorado, Boulder, CO 80309-0440. Instrument: FT-IR Spectrometer System, Model IZM01. Manufacturer: BOMEM, Inc., Canada. Intended Use: See notice at 53 FR 15102, April 27, 1988. Reasons for This Decision: The foreign instrument provides an unapodized resolution of .026 cm^{-1}.

Docket Number: 88.129. Applicant: University of California, Los Alamos National Laboratory, Los Alamos, NM 87545. Instrument: Inductively Coupled Plasma-Mass Spectrometer, Model VG PlasmaQuad. Manufacturer: VG Elemental, Ltd., United Kingdom. Intended Use: See notice at 53 FR 15103, April 27, 1988. Reasons for This Decision: The foreign instrument provides detection of less than 0.1 ppb for elements greater than mass eighty (80).

Docket Number: 88-130. Applicant: Dartmouth College, Hanover, NH 03775.

Instrument: Thermal Ionisation Mass Spectrometer, Model VG SECTOR. Manufacturer: VG Instruments, United Kingdom. Intended Use: See notice at 53 FR 15103, April 27, 1988. Reasons for This Decision: The foreign instrument provides precise automated variable multi-collector thermal ionization of isotopic ratios on small samples (100 nanograms.) Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-13136 Filed 6-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on June 23, 1988, 9:30 a.m. at the Old Executive Office Building, Room 208, Washington, DC.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, and academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preperation of annual marketing plans.

Agenda items are as follows:

I. Call to Order.

II. Approval of the Minutes.

III. Congressional Update.

IV. Status Report on Visa Waiver Program.

V. International Airline Issues.

VI. Tourism and Canadian Free Trade Agreement.

VII. USTTA Initiatives: A. Marketing Update; B. Other USTTA Activities.

VIII. Other Business: A. Establish Next Meeting Date.

IX. Adjournment.

A very limited number of seats will be available to observers from the public and the press. To assure clearance for entry to the building, individuals intending to attend must notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Charles E. Cobb, Jr.,

Acting Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 88-1304 Filed 6-9-88; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Singapore

June 7, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 14, 1988.

Authority: E. O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of Singapore, the Government of the United States has agreed to increase the current designated consultation level for Category 606.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 7, 1988.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 14, 1988, you are directed to amend to 490,000 pounds the current limit for man-made fiber textile products in Category 606.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-13081 Filed 6-9-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 11, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 12 and March 11, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 4200 and 53 FR 7963) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926). After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement list 1988:

Cleaning of Magnetic Tapes, Robins Air Force Base, Georgia

Janitorial/Custodial, Airport Building, 9120 NE 47th, Portland, Oregon

Ross Complex, 5411 NE Highway 99, Vancouver, Washington

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-13133 Filed 6-9-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity and a military resale commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: July 11, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity, military resale commodity, and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity, military resale commodity, and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity: Rod, Ground, 5975-00-878-3791.

Military Resale Item No. and Name: No. 650 Dryer, Sweater.

Service: Janitorial/Custodial, U.S. Courthouse and Customhouse, 1716 Spielbusch Avenue, Toledo, Ohio.

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-13134 Filed 6-9-88; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038-0001, Futures Commission Merchant Report on Dealer Options, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. The information collected pursuant to this rule provides a basis for the Commission to monitor the activities of Futures Commission Merchants which are qualified to vend dealer options.

ADDRESS: Persons wishing to comment on this information collection should contact Robert Neal, Office of Management and Budget, Room 3228, NEOB, Washington DC 20502, (202) 395-7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Futures Commission Merchant Report on Dealer Options.

Control Number: 3038-0001.

Action: Extension.

Respondents: Businesses (excluding small businesses).

Estimated Annual Burden: 48.

Estimated Number of Respondents: 12.

Issued in Washington, DC, on June 7, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-13126 Filed 6-9-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 6, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet for the second time on 27 June 1988, from 8:00 a.m. to 5:00 p.m., at Aeronautical Systems Division, Wright-Patterson AFB, OH, and on 28-29 June 1988 from 8:00 a.m. to 5:00 p.m., at Headquarters Air Force Logistics Command, Wright-Patterson AFB, OH.

The purpose of this meeting is to receive briefings and gather information on ASD and AFLC perception of the problem and their efforts to solve them. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-13115 Filed 6-9-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 28-29 June 1988.

Time: 0900-1700 hours, 28 June; 0900-1200 hours, 29 June.

Place: Orlando, Florida.

Agenda: The Army Science Board Ad Hoc Subgroup on Close Combat Training Strategy will be hosted by the office of the Project Management for Training Devices (PMTRADE) and consist of informal discussions with representatives of PMTRADE, Training and Performance Data Center (TPDC), the Naval Training Systems Center (NTSC), and the University of Central Florida. Subjects to be discussed will include simulation networking, embedded training, future endeavors in the area of training and simulation technology, C3I, and indirect fire simulation. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7048.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-13104 Filed 6-9-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Record of Decision To Develop Five Hundred Units of United States Navy Family Housing at the Naval Weapons Station, Earle, New Jersey

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Counsel on Environmental Quality Regulations (40 CFR Part 1500), the United States Navy announces the decision to develop 500 units of military family housing to support the Naval Weapons Station (NWS), Earle, New Jersey. Specific siting criteria are discussed in the Draft and Final Environmental Impact Statements (DEIS/FEIS) prepared for this project and are summarized below. While implementation of this proposed action will not completely satisfy the housing deficit anticipated for the Naval Weapons Station, it will make available a proportionally greater number of affordable units than are currently available within a reasonable commuting distance.

The proposed 500 units encompass two separate development projects, a 200 unit Military Construction "turn-key" project (referred to as the 200 unit MCON project) and a 300 unit development authorized pursuant to the Section 801 Housing Leasing program (referred to as the 300 unit Section 801 project). Both the 200 unit MCON project and the 300 unit Section 801 project will be constructed on government property at the Main Station site as discussed in the FEIS. In fact, this decision is to continue the construction of the 200 units which began in March 1988 pursuant to a Finding of No Significant Impact and subsequently halted pursuant to a court order on 25 March 1987. Included in this decision is the creation of approximately 10 acres of wetlands in mitigation for the 3.2 acres of wetlands inadvertently filled when the construction of the 200 unit MCON project commenced. The design for this wetland creation plan is set forth in the FEIS and the Navy has applied for an Army Corps of Engineers (COE) Clean Water Act Section 404 permit. No construction will begin on those areas that were identified as wetlands or are subject to the pending Clean Water Act Section 404 application (Public Notice 13041-87-0851-J1) until the permit has been issued. In the event that the COE final decision is to deny the Section 404 permit, the Navy will comply with all applicable rules, regulations, and administrative orders.

Existing Congressional funding authority, the considerable effort and money already expended to develop 200 units of MCON housing at the Main Station site, and the ability to mitigate environmental impacts combine to make continues development of those 200 units at that site preferred from among all the alternatives.

An evaluation of potentially available sites on non-government property concluded that no sites provided better physical, environmental, or socioeconomic conditions than the Main Station Section 801 site for which Congressional approval had been received. Based on that analysis and the inability to solicit and select a contractor to develop the housing units in time to meet the Navy's needs, those alternatives which considered sites not on federally owned property are not considered adequate to fulfill the purpose of the proposed project.

The United States Army owned Camp Evans alternative was dismissed as a viable alternative during the comment period for the DEIS. The Navy was notified by the Army that the area is being planned for consolidation of existing Army research and development activities and is no longer available to NWS Earle.

Development of the Wayside alternative for the 300 unit Section 801 project was not selected for a number of reasons. Given the existing community support facilities at the Main Station site, Wayside cannot provide as high a quality of life to the service members or their families as the Main Station site. The existing traffic, noise, and dust from the already congested roadway in the Wayside area, the physical difficulty in obtaining utilities, and the lack of legislative authority to provide these utilities combine to make the Wayside site unsuitable to fulfill the current Navy requirement for this project in a timely fashion.

The DEIS and FEIS discussed a number of short term environmental impacts resulting from construction at the Main Station site. These minor impacts to air quality and noise level which are typical to any construction site are not expected to continue after the actual construction ceases. All practical mitigation measures have been adopted. These measures included, but are not limited to, the use of prudent and proper engineering design procedures.

There were three major physical environmental issues raised during the NEPA process. Those issues included wetlands loss, the potential endangerment to the underlying aquifer, and preservation of the environmental quality of the Hockhocksen Brook area.

As previously discussed, construction of the 200 unit MCON project will result in the permanent loss of 3.2 acres of palustrine wetlands. These wetlands have already inadvertently been filled and the Navy is currently awaiting regulatory approval to create wetlands in mitigation. The wetland mitigation plan and associated Clean Water Act Section 404(b)(1) analysis were incorporated into the FEIS. No construction will begin on those areas that were identified as wetlands or are subject to the pending Clean Water Act Section 404 application until the permit has been issued.

Erosion control and stormwater management plans will be implemented as part of this decision. Summaries of these plans are discussed in the FEIS.

The use of potable water by any or all of the 500 units constructed at the Main Station site will not have an impact on the aquifer underlying NWS Earle. The Navy will not draw on that aquifer underlying NWS Earle. The Navy will not draw on that aquifer to service the units. Instead, it is planned that the 500 units will be supplied potable water from a commercial surface water source that does not draw from the aquifer designated as critical by the State of New Jersey.

The ability of the NWS Earle Sanitary Sewage Treatment Plant to treat the increased sewage flow from the new housing units and maintain the quality of Hockhocksen Brook has been considered. Based on current effluent limitations, the plant now has the functional capacity to adequately treat 250,000 gallons per day, sufficient to accommodate 340 new family housing units. Therefore, concomitant with the decision to construct 500 units at the Main Station site, is the decision to increase the functional capacity of the station sewage treatment plant. In that regard, the Navy has been working with the State of New Jersey Department of Environmental Protection to obtain any necessary approval to upgrade the plant and increase its capacity. Specifically, the Navy will not expand the treatment plant or increase its discharge without first gaining such approval. Similary, the Navy will not connect the sewer extension of the proposed units or occupy any of those units until the required permits or approvals have been issued.

Once the housing is occupied, minor unavoidable impacts will include increased traffic on local roads, slight increases in air pollution from this traffic, and increased human activity in adjacent forest lands.

In regards to the potential socioeconomic impacts resulting from the construction of the 500 units of family housing, the principal issues demonstrated by the greatest expression of public concern involved the ability of the adjacent school districts to educate the Navy dependent children expected to be residing at NWS Earle. Recently, the State of New Jersey enacted special legislation to allow Navy dependent children residing on NWS Earle to attend the Tinton Falls School District. The legislation also provides that the families already residing on NWS Earle at the time of enactment have the option to continue sending their children to the Township of Colts Neck School District or transfer them to the Tinton Falls School District.

The impact to the Tinton Falls School District is expected to be negligible due to the increased amount of federal and state aid becoming available as a result of the influx of Navy dependent children over the next few years. However, the Navy has determined that until all of the units are occupied, there are insufficent funds available to Tinton Falls School District to expend for suitable free public education of these Navy dependents. In order to minimize this short term fiscal impact, the Navy, subject to the limits of current statutory authortity, intends to provide limited supplemental economic assistance necessary to allow Tinton Falls to educate the Navy dependents. It is therefore anticipated that there will be no adverse impact on any of the school districts adjacent to NWS Earle resulting from this decision.

Throughout implementation of this project the Navy will continue its close working relationship with the various interested Federal, state, and local regulatory agencies. Continuing coordination with other agencies will include, but may not be limited to, the following:

- Section 404 Permit (Clean Water Act) administered by New York District of the Army Corp of Engineers (COE), and
- New Jersey Pollution Discharge Elimination System permit for the Station Sewage treatment plant along with requisite approvals for upgrade of the facility administered by the New Jersey Department of Environmental Protection (NJDEP), and
- Coordination with the Tinton Falls School District, and
- Coordination with NJDEP, Army COE, U.S. Fish and Wildlife Service for issues involving the proposed wetland mitigation effort.

Date: June 8, 1988.

Jane M. Virga,

Lt. JAGC, USNR, Assistant Federal Register Liaison Officer.

[FR Doc. 88-13206 Filed 6-9-88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Meeting

Notice was published May 26, 1988, at 53 FR 19023 that the Naval Research Advisory Committee Panel on Automation of Ship Systems and Equipment will meet on June 16-17, 1988. The meeting location has been changed. All sessions of the meeting will be held at the Caffritz Building, 1211 Fern Street, Room A112, Washington, D.C. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2), the place of meeting change is publicly announced at the earliest practical time.

Date: June 8, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Navy Reserve Alternate Federal Register Liaison Officer.

[FR Doc. 88-13209 Filed 6-9-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.103]

Invitation; Applications for New Awards Under the Training Program for Special Programs Staff and Leadership Personnel for Fiscal Year 1988

Purpose: Provides grants to institutions of higher education, and other public and private nonprofit institutions and organizations for projects that improve the operation of the Special Programs for Students from Disadvantaged Backgrounds (Talent Search, Upward Bound, Student Support Services, and Educational Opportunity Centers) by providing training for staff and leadership personnel employed in, or preparing for employment in, such programs and projects.

Deadline for Transmittal of Applications: July 18, 1988.

Applications Available: June 10, 1988.

Available Funds: $1,300,000.

Estimated Range of Awards: $50,000-$250,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 12.

Project Period: 24 months.

Supplementary Information: The Secretary strongly urges that applicants limit their submissions to one application for each topic of training. This request is not intended to limit the number of trainees or the number of sites proposed by an applicant but is a request for a single consolidated application on a topic.

Applicable Regulations

(a) The Training Program for Special Programs Staff and Leadership Personnel Regulations, 34 CFR Part 642, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Funding Priorities

In accordance with 34 CFR 75.105 (c)(1) and 34 CFR 642.34, the Secretary encourages applicants to address the following topics in fiscal year 1988.

(1) Accountability for Funds and Services

Instruction, including written materials, which is designed to enable the project director and a project staff member most involved in the overall management of the project to comply fully with the Special Programs and the Education Department General Administrative Regulations (EDGAR) regulatory provisions relating to accounting for project funds,

documenting the eligibility of project participants, and documenting the services provided to those participants. An applicant under this priority may provide training to carry out these responsibilities under one or more of the Special Programs.

(2) Retention of Students

Instruction, including written materials, which is designed to train Student Support Services project staff in improving the retention of project participants in postsecondary institutions and, to train Upward Bound project staff to improve the retention of project participants in secondary schools. The focus of the training may be directed at clearly defined populations that have abnormally high drop-out rates.

(3) Program Evaluation

Instruction, including written materials, which is designed to enable Special Programs project directors to develop and implement program evaluations that will produce objective and quantifiable data on the impact of program services on project participants.

The Secretary will consider applications addressing other topics if the applicant demonstrates a significant training need in the region to be served.

For Applications or Information Contact: Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, U.S. Department of Education, 7th & D Streets SW., Mail Stop 3323—Room 3060, Washington, DC 20202. Telephone: (202) 732–4804.

Authority: 20 U.S.C. 1070d, 1070d–1d.

Dated: June 6, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary, Postsecondary Education.

[FR Doc. 88–13068 Filed 6–9–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Amended Meeting Notice

On June 6, 1988, notice was published of a meeting of the Industry Supply Advisory Group to the International Energy Agency (IEA), to be held at the offices of the IEA, 2, rue Andre Pascal, Paris, France, on June 13 through 16, 1988 (53 FR 20676). The notice incorrectly stated that the meeting would begin at 1:00 p.m. on June 14. The meeting will begin at 1:00 p.m. on June 13 and continue at 9:00 a.m. on June 14. As stated in the notice, the meeting will continue at 9:30 a.m. on June 15 and 16.

Issued in Washington, DC, 6th June, 1988.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 88–13041 Filed 6–9–88; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No: FWCP.]

Proposed Policy and Procedures To Compensate Costs and Power Losses at Non-Federal Hydroelectric Power Projects and Request for Comments

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposed policy and procedures and request for comments.

SUMMARY: As provided in the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), BPA proposes to establish a process to address compensation claims filed by non-Federal project operators for compensation for revenue and power losses due to the implementation of the Columbia River Basin Fish and Wildlife Program (Program). The Program, adopted by the Northwest Power Planning Council (Council), provides for various actions to protect, mitigate, and enhance Columbia River Basin fisheries.

BPA has received three claims filed by Public Utility Districts (PUDs) as a result of Federal water releases in May and June 1987. Before addressing these claims, BPA intends to take comment upon and adopt generic procedures and standards by which BPA will consider compensation claims.

BPA solicits comments regarding its proposed procedures and standards.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, no later than July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Palensky, Director, Division of Fish and Wildlife, at the address listed above, 503–230–5406. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109–1030, 206–442–4110.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Background on Compensation

Section 4(h)(11)(A) of the Northwest Power Act provides that:

> The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River shall . . . exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with this subsection.

The Northwest Power Act does not establish procedures or standards to guide BPA in compensating non-Federal project operators for costs resulting from actions taken by Federal agencies pursuant to the Northwest Power Act. Since enactment, in 1980, and adoption of the Program by the Council in 1982, BPA had not received any compensation claims. However, between August and December 1987, BPA received three claims. All were based upon Federal water releases in May and June of 1987. These claims were filed by the Public Utility District No. 1 of Douglas County (Douglas PUD) on July 29, 1987; the Public Utility District No. 1 of the Chelan County (Chelan PUD) on October 5, 1987; and the Public Utility District of Grant County (Grant PUD) on November 25, 1987.

BPA anticipates that future claims may involve water releases and stream flows possibly created by implementation of the water budget (see next section). Consequently, BPA is providing background information to assist interested parties as they consider issues that may be raised by the existing and future compensation claims. BPA is also providing information concerning the claims resulting from the implementation of the 1987 water budget because those claims indicate several issues likely to be raised by future claims. BPA will determine a response to these claims according to BPA's adopted final procedures and standards.

B. Background on the Water Budget

1. The Water Budget.

Section 303 of the Council's Program establishes a 4.64 million acre foot (maf) water budget that augments stream flows to aid the downstream migration of juvenile fish between April 15 and June 15 each year. Of the total water budget, 3.45 maf are to be provided at Priest Rapids Dam on the Columbia River, and 1.19 maf at Lower Granite on the Snake River.

As provided in the Program, two Fish Passage Managers, established by the Council, may request water budget flows at Priest Rapids Dam on the Columbia River. Water budget flows for the Snake River are provided by releases from Dworshak and Brownlee Dams in addition to uncontrolled runoff from the Snake River basin. For both the Columbia and the Snake Rivers, the Program provides that water budget flow requests "must be greater than the firm power flows and less than 140 kcfs [thousand cubic feet per second]." [Program Section 303(a)(2)] At the Priest Rapids project on the Columbia, firm power flows are specified as 76 average weekly kcfs; at the Lower Granite project on the Snake, 85 kcfs in May, decreasing to 80 kcfs in June. In 1987, the Council modified its Program as follows: "Experimental water budget procedures shall be implemented for at least water years 1987 and 1988." [Program Section 303(c)(1)]

2. Implementing the 1987 Water Budget

The claims received by BPA may not involve the water budget as described in the Council's Program, but may stem from a decision by the U.S. Army Corps of Engineers (Corps) to facilitate an additional request by the Fish Passage Managers for flows at John Day dam of 220 kcfs. As a result of releases made by the Corps to meet this request, stream flows at Priest Rapids were an average of 155.5 kcfs for 16 days, exceeding the 140 kcfs level established in the Council's Program. Chelan, Douglas, and Grant PUDs determined that these excess flows utilized water they otherwise would have received from upstream Federal facilities later in the year when they could have made use of it. Because they were unable to use the water, they claim the release reduced their ability to generate electricity at their projects.

C. Claims Resulting from the 1987 Water Budget

1. Chelan PUD

Chelan PUD has requested the return of 13,058 MWh due to water it spilled at the Rocky Reach project. Chelan PUD claims the spill resulted from flows that exceeded the turbine capacity at that project. "Because the spilled energy would have been conserved to be released during a useful period given the low water conditions in the Region, the District further requests that the energy be returned during a period when the energy is useful."

2. Douglas PUD

Douglas PUD has requested the "* * * return of 2,067 MWh to the Wells Project * * *" as the "* * * known loss suffered by the project from the direct spill related to the excessive Water Budget Requests." Douglas claims these losses occurred because the flows exceeded the turbine capacity at the Wells project. Had water budget flows remained at 140 kcfs or less, the 2,067 MWh Douglas PUD is claiming would not have been spilled, and might have been sold at a later date.

3. Grant PUD

Grant PUD has requested payment of $590,279 or 37,947 MWh of replacement energy delivered "* * * in equal hourly amounts over a six-day period." This claim is based on the flows in excess of 140 kcfs that were "* * * in no way attributable to the development and operation of the District's projects."

D. Proposal for Addressing Compensation Claims

Since BPA does not have procedures or standards in place, BPA has determined to hold these claims in abeyance until BPA has established procedures and standards. Accordingly, by this publication in the Federal Register, BPA seeks comment on: (1) The policy and process BPA intends to use to address these and any possible future claims; and (2) the issues posed by the three claims received to date.

After receipt of comment, BPA will establish final procedures and standards and publish its determination in the Federal Register. BPA will follow these procedures and standards to consider the claims it has received.

E. Review Under the Paperwork Reduction Act

The collections of information concerning compensation claims for revenue or power losses were approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–1200. It is estimated that the number of responses per year will be 3 and that the annual respondent burden is 30 burden hours per fiscal year (i.e., 3 claims at 10 hours per claim).

Comments pertaining to the Paperwork Reduction Act aspects of this information collection must be filed within 30 days of this Notice. Address Paperwork Reduction Act comments to: Janice M. Schmidt, U.S. Department of Energy, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

II. Compensation Claim Issues

BPA is requesting comments on the following issues as well as its proposed compensation policy. Comments are welcomed on any other issues concerning compensation claims.

1. What opportunities should BPA provide for public comment and review? Should BPA file a Federal Register notice every time it receives a compensation claim? What other notification and opportunities for comment should be provided?

2. Should BPA reserve the right to elect whether it compensates with replacement power or revenues? If BPA payments are in replacement power, how and when should power be supplied? Should BPA not compensate by providing cash payments for lost revenues? In handling future compensation claims, should BPA maintain a budget to fund the cost of replacement power or cash payments?

3. How should BPA determine if a project has experienced power or revenue losses from measures imposed to mitigate effects "not attributable to the development and operation of such project?" The Northwest Power Act provides that compensation can be paid only for those costs and powar losses which result from measures imposed to mitigate effects not attributable to the

development and operation of the non-Federal project. How should BPA determine fish passage mortality due to increased travel time through the Columbia River Power System and other factors, and how should BPA attribute these and other factors to each project for which a claim has been filed?

4. What should BPA compensate? BPA interprets section 4(h)(11)(A)(ii) to require compenstion only for measures to protect, mitigate, and enhance fish and wildlife that are taken to implement specific provisions in the Council's Program. If an action is taken for other reasons or is not specifically included in the Council's Program, should the Administrator be responsible for compensation?

5. Is the release of water by the Corps or Bureau of Reclamation an "imposition" of a measure within the meaning of the statutory language? Or does the statutory language only envision mandated physical changes or operation restrictions at the facility?

6. On what basis should BPA determine whether an action of another Federal agency implements a measure in the Council's Program or is independent of the Council's Program? What effect should consideration of other purposes for which water is stored and released have on claims?

7. How should BPA determine which costs should be compensated? How should BPA determine the value of lost power? How should BPA consider the ability of claimants to market power they claim to have lost? Should BPA's determination be different if the flows were in excess of turbine capacity, as opposed to merely being in excess of market? How should BPA determine the available markets? Should BPA evaluate actions the claimant could have taken to mitigate the effects of a measure resulting in a claim? Should BPA also evaluate actions the claimant may have taken that exacerbated the effects of a measure resulting in a claim?

III. Proposed Fish and Wildlife Compensation Policy and Procedures

Section 1. Definitions

A. "Claimant" means any non-Federal hydroelectric power project owner or operator requesting compensation under this policy.

B. "Basin" means the Columbia River and its tributaries (within the borders of the United States).

C. "Costs and Power Losses" means those non-Federal hydroelectric power projects' monetary and electric power losses directly caused as a result of imposition of a measure by a Federal agency to implement specific provisions in the Council's Fish and Wildlife Program. In order to qualify for compensation, costs and power losses must be directly attributable to measures in the Council's Program imposed to mitigate fish and wildlife effects which are not attributable to the development and operation of the non-Federal project which is the subject of a claim.

D. "Council" means the Pacific Northwest Electric Power and Conservation Planning Council established by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501.

E. "Federal Agencies" in this case means those Federal agencies, other than BPA, which are responsible for managing, operating, or regulating hydroelectric power projects, including the U.S. Army Corps of Engineers (Corps), the Bureau of Reclamation (Bureau), and the Federal Energy Regulatory Commission (FERC).

F. "Federal Project" means any federally owned hydroelectric project on the Columbia River or its tributaries.

G. "Imposed" refers to fish and wildlife obligations or restrictions which a non-Federal hydroelectric power project must implement or comply with because of Federal law, regulation, or order applicable to the project.

H. "Program" means the Columbia River Basin Fish and Wildlife Program and amendments thereto adopted by the Northwest Power Planning Council.

Section 2. Conditions for Compensation Payment

A. The Administrator will consider compensation requests only from non-Federal hydroelectric power projects located within the Columbia River Basin.

B. The Administrator will consider compensating only those costs and power losses which result from measures imposed to mitigate effects not attributable to the development and operation of the non-Federal hydroelectric power project which is the subject of a claim.

C. Costs and power losses must result from a fish and wildlife measure which has been imposed upon the claimant by a Federal agency implementing specific provisions in the Council's Program.

D. Claimants for compensation must provide information and analyses that demonstrate:

1. Costs or power losses which have been incurred as a result of an imposed fish and wildlife measure;

2. Any actions that were, or could have been, taken by the claimant to mitigate or reduce the impact created by the fish and wildlife measure; and

3. Any actions that were taken by the claimant that increased or exacerbated the impact created by the fish and wildlife measure.

Section 3. Requirements for Claimants

A. For claims received after the effective date of this policy, claimants for compensation shall submit a written claim to BPA within 120 days after a cost or power loss occurs.

B. Claimants shall demonstrate the methods and formulae used to quantify monetary costs and/or power losses.

C. Claimants shall include a detailed description of how the action by a Federal agency implemented specific provisions in the Council's Fish and Wildlife Program.

D. Claimants shall demonstrate that any claimed costs and power losses are the results of measures imposed to mitigate fish and wildlife effects that are not attributable to the project's development and operation.

E. Claimants shall provide such additional information as the Administrator may require to justify compensation payments.

F. Compensation must be signed by the chief executive officer or duly authorized representative of the claimant, that the contents are true and accurate.

Section 4. The Administrator's Decisionmaking Process

A. Review of Claims for Compensation. The Administrator shall review each compensation claim in a timely manner to determine whether the claim contains sufficient information to enable the Administrator to make a decision consistent with the requirements of 4(h)(11)(A)(ii) and criteria of this policy.

B. Insufficient Information. The Administrator may reject claims containing insufficient information to evaluate a claim, or the Administrator may request submission of additional information supporting the claim. Reasons for the Administrator's action shall be explained in writing.

C. Decisions on Compensation Claims. Upon completion of analysis, the Administrator shall approve or deny a claim either in whole or in part. Any adjustments to the claim shall be documented by the Administrator.

Section 5. Form of Compensation Payment

It is within the Administrator's discretion to compensate qualifying non-Federal hydroelectric operators with power or cash.

A. Payment with Power. Compensation to claimants under this policy for power losses will normally be made in the form of power. Compensation power shall be delivered at times convenient to BPA.

B. Payment with Cash. Compensation to claimants under this policy for cash losses will normally be made in the form of cash.

Section 6. Records and Access to Information

A. Claimants must maintain such records as will permit the Administrator to audit, inspect, or otherwise review any aspect of power operations, construction or operation for which compensation is sought or paid.

B. Documents submitted to BPA shall be available to the public.

Section 7. Public Notice

A. Notice of Receipt of Claim

The Administrator shall provide written notice of receipt of compensation claims to interested parties. The notice shall:

1. Indicate the name and address of the claimant;

2. Describe the action alleged by the claimant which resulted in the claim;

3. Indicate the amount and type of compensation sought;

4. Invite interested parties to comment within 30 days; and

5. Indicate the availability of the claim to the public.

B. Interested Parties

Interested parties include:

1. State and Federal Fish and Wildlife Agencies in the Pacific Northwest;

2. Indian Tribes of the Columbia Basin;

3. BPA Customers;

4. Non-Federal Project Operators;

5. U.S. Army Corps of Engineers;

6. Federal Energy Regulatory Commission;

7. Bureau of Reclamation;

8. Pacific Northwest Power Planning Council; and

9. Any other persons requesting notice.

C. Notice of Approval/Disapproval

The Administrator shall provide written notice to interested parties of final action taken for all claims. The notice shall:

1. Indicate the name and address of the claimant;

2. Describe the action alleged by the claimant which resulted in the claim;

3. Indicate the compensation sought;

4. Invite interested parties to comment within 30 days; and

5. Indicate the availability to the public of the claim and decision documents.

Issued in Portland, Oregon, on May 17, 1988.

Jack Robertson,

Deputy Administrator, Bonneville Power Administration.

[FR Doc. 88-13139 Filed 6-9-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-25-NG]

Czar Gas Corp., Inc.; Application To Import Natural Gas from and Export Natural Gas to Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 26, 1988, of an application filed by Czar Gas Corporation Inc. (Czar) for blanket authorization to import up to 146 Bcf of natural gas to Canada, and to export up to 146 Bcf of natural gas from Canada, over a two-year period beginning on the date of first delivery. Czar, a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, is a wholly owned subsidiary of Czar Resources Ltd. Czar proposes to import or export natural gas for its own account or act as a broker for both U.S. and Canadian purchasers and suppliers. Czar intends to utilize existing pipeline facilities for transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 11, 1988.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Czar currently imports natural gas under an existing authorization issued in DOE/ERA Opinion and Order No. 137 which expires July 17, 1988. Under this authorization Czar has imported 2.928 Bcf as of December 31, 1987. Under the broader blanket authority sought in this proceeding, Czar intends to import natural gas from Canadian suppliers including Czar Resources Ltd., for sale on a short-term or spot market basis to U.S. purchasers or for eventual return and sale to Canadian markets. Similarly, the export authorization sought by Czar would permit it to export U.S. produced gas for sale to spot-market purchasers in Canada or eventually, in the U.S. The specific terms of each import or export sale would be negotiated on an individual basis, including price and volume. Czar asserts that the sale of Canadian natural gas imports will be made pursuant to terms dictated by the prevailing economic conditions in the domestic market and that surplus U.S. natural gas supplies will be exported to Canada on the basis of their competitiveness and need by U.S. purchasers. Czar futher asserts that it intends to import or export gas through the following points and pipelines:

Entry Point	Pipelines
1. Sumas, Washington	Northwest Pipeline Corp.
2. Eastport, Idaho	Pacific Gas Transmission Co.
3. Detroit, Michigan	Panhandle Eastern Pipeline Co.
4. Emerson, Manitoba	Great Lakes Gas Transmission Co.
5. Monchy, Saskatchewan	Northern Border Pipeline Co.
6. Niagara Falls, Ontario	Tennessee Gas Pipeline Co.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue

of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for the gas in their responses on the requested export authority. The applicant asserts that this import and export arrangement will be in the public interest in that the pricing terms for each import or export sale must be competitive in the U.S. and Canadian gas markets served or no sales will be made. Parties opposing the arrangement bear the burden of overcoming this assertion.

Czar requests that an authorization be granted on an expedited basis. An ERA decision on Czar's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

All parties should be aware that if the ERA approves this requested blanket import/export it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility. Further, if the ERA approves this requested blanket import/export, it may permit the import or export of the gas at any existing point of entry and through any existing transmission system. ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., July 11, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedure be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Czar's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 2, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 13141 Filed 6-9-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-403-000, et al.]

Arizona Public Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 26, 1988.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER88-403-000]

Take notice that on May 19, 1988, Arizona Public Service Company (APS) tendered for filing a Five Year Power Sale Agreement (Agreement) between San Diego Gas & Electric Company (SDG&E) and APS, executed May 5, 1988.

The tendered Agreement provides for the sale of as much as 230 MW per hour of energy on a firm basis, by APS to SDG&E. Purchases of energy must be pre-scheduled by SDG&E 24 hours in advance. The Agreement provides for sales to commence on June 1, 1989 and to terminate on December 31, 1994. The Agreement provides for an energy rate which is the greater of 87% of SDG&E's decremental energy cost or APS' incremental energy cost. In addition, a reservation charge is also proposed, initially establish at $1.90/kw/month and escalating at 10 cents/kw/month each calendar year thereafter. In the event that SDG&E elects not to pre-schedule any firm energy, a credit of 1.8 cent/day (escalating at 0.1 cent/day each calendar year thereafter) will be allowed and applied against the monthly reservation charge.

A copy of this filing has been served upon San Diego Gas & Electric Company, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: June 13, 1988, in accordance with Standard Paragraph E at the end of this document.

2. Southern California Edison Company

[Docket No. ER88-404-000]

Take notice that on May 20, 1988, Southern California Edison Company (Edison) tendered for filing a Letter Agreement which updates Exhibit B to the Agreement for Integration and Interruptible Transmission of Non-Firm Energy Purchased by Vernon from the State of California Department of Water Resources (CDWR) between Edison and the City of Vernon, California (Vernon) (Agreement), designated Rate Schedule FERC No. 172.

The Letter Agreement provides updated Vernon-CDWR purchase agreements which are attached to the Agreement as Exhibit B.

Edison requests and Vernon supports waiver or prior notice requirements as contained in Section 35.3 of the Commission's regulations and respectfully request an effective date of January 3, 1985.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Comment date: June 13, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Indiana, Inc.

[Docket No. ER88-405-000]

Take notice that on May 20, 1988, Public Service Company of Indiana, Inc. (PSI) tendered for filing pursuant to the Interconnection Agreement, dated March 9, 1971, as amended, by and between the United States of America, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), Southern Indiana Gas and Electric Company (SIGECO), and Public Service Company of Indiana, Inc. (Public Service) a Seventh Supplemental Agreement to become effective June 1, 1988, pursuant to § 35.2 of the Commission's Regulations.

The Seventh Supplemental Agreement inserts a new Service Schedule D—Short Term Power which deletes the existing Service Schedule D.

Copies of the filing were served upon Southern Indiana Gas and Electric Company, Hoosier Energy Rural Electric Cooperative, Inc., and the Indiana Utility Regulatory Commission.

Public Service Company of Indiana, Inc. has requested waiver of the Commission's Notice requirement to permit an effective date of June 1, 1988.

Comment date: June 13, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER88-407-000]

Take notice that on May 20, 1988, Pennsylvania Power & Light Company (PP&L) tendered for filing a Capacity and Energy Sales Agreement, dated January 28, 1988 between PP&L and Baltimore Gas and Electric Company (BG&E).

The Agreement provides for the sale by PP&L to BG&E of 5.94 percent of the net capacity and energy output of each unit of PP&L's Susquehanna Steam Electric Station located in Salem Township, Luzerne County, Pennsylvania. The Agreement also provides that PP&L will provide transmission service for BG&E from the Susquehanna Steam Electric Station to PP&L's points of interconnection with BG&E's transmission systems. The Agreement further provides PP&L will sell BG&E Daily Generating Capacity Megawatts to be used by BG&E solely for Pennsylvania-New Jersey-Maryland Interconnection installed capacity accounting purposes. PP&L proposes that the filing be effective upon the date the Commission accepts the Agreement filing as a rate schedule.

Copies of the filing were served upon BG&E, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: June 13, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER88-408-000]

Take notice that on May 20, 1988, Portland General Electric Company (PGE) tendered for filing new Service Agreements with the Colockum Transmission Company, Inc., Puget Sound Power & Light Company, and Snohomish County Public Utility District No. 1 made under the Company's second revised Electric Service Tariff, Volume No. 1.

PGE requests effective dates of February 1, 1988, February 1, 1988, and April 1, 1988, respectively, and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing were served upon parties having Service Agreements with PGE, parties to the Intercompany Pool Agreement (Revised), the intervenors in Docket No. ER77-131, and the Oregon Public Utility Commission.

Comment date: June 13, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accor dance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13149 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-355-000, et al.]

El Paso Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ER88-355-000]

June 3, 1988.

Take notice that on May 26, 1988, El Paso Electric Company (EPE) tendered for filing a supplement to its filing dated April 19, 1988.

Comment date: June 10, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Montana Power Company

[Docket No. ER88-423-000]

June 6, 1988.

Take notice that on May 27, 1988, Montana Power Company (Montana) tendered for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and conservation Act, Pub. L. 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate have an effective date of September 29, 1987 and, therefore, request waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Michael J. Del Giudice

[Docket No. ID-2345-000]

June 6, 1988.

Take notice that on May 27, 1988, Michael J. Del Giudice tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation	Classification
Director	Orange and Rockland Utilities, Inc.	Public utility.

Position	Corporation	Classification
General partner.	Lazard Freres & Co.	Investment banking firm.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER88-434-000]

June 6, 1988.

Take notice that on May 31, 1988, Arizona Public Service Company (APS) tendered for filing a Transmission Service Agreement (Agreement) between APS and the Department of the Navy (Navy). The Agreement provides for the transmission of up to 2.157 MW of the Navy's recently required allotment of preference power from the Parker-Davis Project.

The Agreement provies for APS to wheel the Navy's preference power allocations and make delivery of such power at a distribution voltage level of service. The proposed rate level is identical to that for rates on file with the Commission for similar type service.

No new facilities or modifications to existing facilities are required to provide service under the Agreement.

APS, has agreed to begin service on June 1, 1988 and thus, with the concurrence of the Navy, requests wavier of the Commission's Notice Requirements so service may begin on such date.

Copies of this filing have been served on the Navy and the Arizona Corporation Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Connecticut Light and Power Company, et al.

[Docket No. ER88-430-000]

June 6, 1988.

Take notice that on May 27, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Service Agreement (Agreement) dated February 6, 1968 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Green Mountain Power Corporation (GMP).

CL&P states that the Agreement provides for service to GMP for the transmission of GMP's purchase of electric system capacity and associated energy from the system of the Connecticut Municipal Electric Energy Cooperative (CMEEC).

The transmission charge rate is an annual rate developted in accordance with Appendix A and Exhibits I, II and III thereto of the Agreement. The transmission charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 52 for the weekly charge, or 12 for the monthly charge, and (ii) the number of kilowatts of capacity and energy purchased by GMP during such week or month.

CL&P requests that the Commission waive its standard notice period and permit the Agreement to become effective as of February 6, 1968 and to supersede a prior transmission service agreement (CL&P Rate Schedule FERC No. 341, WMECO Rate Schedule FERC No. 273), thus automatically terminating the prior transmission service agreement.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and GMP (South Burlington, VT).

CL&P further states that the filing is in accordance with § 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER88-426-000]

June 6, 1988.

Take notice that on May 27, 1988, Commonwealth Edison Company (Edison) tendered for filing changes in its FERC Order No. 84 Rate Schedule for third-party purchase and resale transactions. Edison also submitted a Notice of Cancellation with respect to Rate Schedule FPC No. 15 (Sales at Wholesale for Petroleum Conservation).

Edison's FERC Order No 84 Rate Schedule, as revised, provides that (1) when Edison voluntarily engages in third-party purchase and resale of electric power or energy or voluntarily provides transmission service for such transaction and (2) where the energy transmitted is such transaction is priced according to the purchased energy price from third-party systems, Edison will charge the receiving party:

a. the amount Edison pays the supplying party; plus

b. 5.00 mills per kilowatthour (for transmission investment) for energy transmitted during on-peak hours and 1.50 mills per kilowatthour for energy transmitted during off-peak hours (in no event shall the total of such amounts for any one day exceed $0.8 times the highest average number of kilowatts delivered in any hour during the day); plus

c. 1.00 mill per kilowatthour for difficult to quantify costs; plus

d. the cost of transmission losses and revenue taxes incurred that would not otherwise have been incurred.

Edison requests expedited consideration of the filing and an effective date coincident with the Commission's order accepting the rate change for filing. Accordingly, Edison requests waiver of the Commission's notice requirements, to the extent necessary.

Copies of this filing were served upon the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Public Service Commission of Wisconsin, the Iowa State Commerce Commission, the Minnesota Public Utilities Commission, and all parties to Edison's Interconnection Agreements.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Connecticut Light and Power Company, et al.

[Docket No. ER88-424-000]

June 6, 1988.

Take notice that on May 27, 1988, Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule (1) a purchase agreement with respect to various gas turbine units between CL&P and the United Illuminating Company (UI). The agreement, dated December 1, 1985, provides for CL&P to sell capacity and associated energy from certain of its gas turbine units and provide transmision service under the agreement; (2) a transmission service agreement between CL&P and Western Massachusetts Electric Company ("WMECO", together with CL&P, the "NU Companies") and UI. The agreement, dated January 6, 1987, provides for transmission service to UI for their purchase of electric capacity and associated energy from the Connecticut Municipal Electric Energy Cooperative; (3) a transmission service agreement (collectively, the "Agreements") between the NU Companies and UI. The agreement, dated January 12, 1988, provides for transmission service to UI for their exchange of electric capacity and associated energy from various units or system capacity on the system of Boston Edison Company.

CL&P requests that the Commission waive its standard notice period and allow the rate schedule to become effective on December 1, 1985.

WMECO has filed a Certificate of Concurrence pertaining to the Agreements, dated January 6, 1987 and January 12, 1988.

CL&P states that a copy of this rate schedule has been mailed to UI (New Haven, Connecticut), and WMECO.

CL&P further states that the filing is in accordance with § 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Connecticut Light and Power Company, et al.

[Docket No. ER88-429-000]

June 6, 1988.

Take notice that on May 27, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule and, effective February 29, 1988, a proposed termination in accordance with the terms of said rate schedule, with respect to a Transmission Service Agreement (Agreement) dated January 1, 1988 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) New England Power Company (NEP).

CL&P states that the Agreement provides for service to NEP for the transmission of NEP's purchase of electric system capacity and associated energy from the system of the Long Island Lighting Company (LILCO).

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Agreement. The monthly transmission charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 12, and (ii) the number of kilowatts of capacity and energy purchased by NEP during such month.

CL&P requests that the Commission waive its standard notice periods and permit the Agreement to become effective as of January 1, 1988, and to terminate, in accordance with its own terms, effective February 29, 1988.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and NEP (Westborough, MA).

CL&P further states that the filing is in accordance with § 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Light and Power Company, et al.

[Docket No. ER88-428-000]

June 6, 1988.

Take notice that on May 27, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Service Agreement (Agreement) dated November 1, 1967 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Holyoke Gas & Electric Department (Holyoke).

CL&P states that the Agreement provides for service to Holyoke for the transmission of Holyoke's purchase of electric capacity and associated energy from North Attleboro Electric Department.

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Agreement. The monthly transmission charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 12, and (ii) the number of kilowatts of capacity and energy purchased by Holyoke during such month.

CL&P requests that the Commission waive its standard notice period and permit the Agreement to become effective as of November 1, 1967.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and Holyoke (Holyoke, MA).

CL&P further states that the filing is in accordance with § 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Connecticut Light and Power Company, et al.

[Docket No. ER-88-427-000]

June 6, 1988.

Take notice that on May 27, 1988, Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule: (1) A sales agreement with respect to various fossil generating units between CL&P and Public Service Company of New Hampshire (PSNH). The agreement dated November 1, 1985 provides for CL&P to sell capacity and associated energy along with related transmission service from one of CL&P's fossil units and other fossil units in which CL&P has entitlements; (2) a purchase agreement with respect to various gas turbine units between CL&P and PSNH. The agreement, dated November 1, 1988, provides for CL&P to sell capacity and associated energy from certain of its gas turbine units and provide transmission service under the agreement; (3) a transmission service agreement between CL&P and Western Massachusetts Electric Company ("WMECO", together with CL&P, the "NU Companies") and PSNH. The agreement, dated November 1, 1988, provides for transmission service to PSNH for their purchase of electric capacity and associated energy from the Connecticut Municipal Electric Energy Cooperative; (4) a transmission service agreement between the NU Companies and PSNH. The agreement, dated May 1, 1987, provides for transmission service to PSNH for their purchase of electric capacity and associated energy from various units on the system of the United Illuminating Company. Also tendered for filing are proposed terminations of the second, third, and fourth agreements listed above, in accordance with the terms of the agreements.

CL&P requests that the Commission waive its standard notice periods and allow the rate schedule to become effective on November 1, 1985, and allow the second, third, and fourth agreements listed above to terminate, in accordance with their own terms, effective April 30, 1987, October 31, 1987, and April 30, 1988, respectively.

WMECO has filed a Certificate of Concurrence pertaining to the transmission service agreements dated November 1, 1988 and May 1, 1987.

CL&P states that a copy of this rate schedule has been mailed or delivered to PSNH (Manchester, New Hampshire), and WMECO.

CL&P further states that the filing is in accordance with § 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power & Light Company

[Docket No. ER87-554-004]

June 6, 1988.

Take notice that on May 27, 1988, Wisconsin Power & Light Company tendered for filing a Compliance Refund Report, Docket No. ER87-554. The refund is for the period August 1, 1987 through December 31, 1987. Copies of the filing were served upon the affected jurisdictional customers and the Public Service Commission of Wisconsin.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this document.

12. Central Louisiana Electric Company, Inc.

[Docket No. ER88-433-000]

June 6, 1988.

Take notice that on May 27, 1988, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing proposed revisions to its FERC Rate Schedules WR-1 and FA-W for service to the Towns of Boyce and Elizabeth, Louisiana. CLECO states that the revised rates would increase revenues by $150,720 on an annual basis with $51,775 of this total made effective in the first year. The proposed rates are filed to recover increased costs including increased operating expenses and capital costs. The revised rate schedule is proposed to become effective on July 27, 1988.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Connecticut Light and Power Company, et al.

[Docket No. ER88-431-000]

June 6, 1988.

Take notice that on May 27, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule and, effective February 21, 1988, a proposed termination in accordance with the terms of said rate schedule, with respect to a Transmission Service Agreement (Agreement) dated January 1, 1988 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Chicopee Municipal Lighting Plant (CMLP).

CL&P states that the Agreement provides for service to CMLP for the transmission of CMLP's purchase of an entitlement in electric capacity and associated energy from a certain generating unit on the system of the United Illuminating Company (UI).

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Agreement. The transmission charge is determined by the product of: (i) The appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 12 for the monthly charge, or 52 for the weekly charge, and (ii) the number of kilowatts of capacity and energy purchased by CMLP during such month or week. Such transmission charge is reduced in recognition of payments made by CMLP to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice periods and permit the Agreement to become effective as of January 1, 1988, and to terminate, in accordance with its own terms, effective February 21, 1988.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and CMLP (Westborough, MA).

CL&P further states that the filing is in accordance with § 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. Connecticut Light and Power Company, et al.

[Docket No. ER88-425-000]

June 6, 1988.

Take notice that on May 27, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule and, effective April 6, 1987, a proposed termination in accordance with the terms of said rate schedule, with respect to a Transmission Service Agreement (Agreement) dated April 7, 1986 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Massachusetts Municipal Wholesale Electric Company (MMWEC).

CL&P states that the Agreement provides for service to MMWEC for the transmission of MMWEC's purchase of electric capacity and associated energy from certain generating units in which the Connecticut Municipal Electric Energy Cooperative (CMEEC) has entitlements.

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II, and III thereto of the Agreement and is charged on either a weekly or a monthly basis. The transmission charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kw-yr) divided by fifty-two for the weekly charge, or twelve for the monthly charge, and (ii) the number of kilowatts MMWEC purchases from CMEEC during such week or month. The transmission charge is reduced in recognition of payments made by MMWEC to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice periods and permit the Agreement to become effective as of April 7, 1986, and to terminate, in accordance with its own terms, effective April 6, 1987.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and MMWEC (Ludlow, MA).

CL&P further states that the filing is in accordance with § 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

15. Gulf States Utilities Company

[Docket No. ER88-558-019]

June 6, 1988.

Take notice that on May 27, 1988, Gulf States Utilities Company (Gulf States) tendered for filing, pursuant to Commission letter dated April 18, 1988, a compliance report for the total refund plus interest to the Brazos Electric Power Cooperative, Inc. Gulf States states that it has included the workpapers showing the computation of the refund and interest calculation for the affected customer.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

16. Tucson Electric Power Company

[Docket No. ER88-432-000]

June 6, 1988.

Take notice that on May 27, 1988, Tucson Electric Power Company (Tucson) tendered for filing pursuant to 18 C.F.R. § 35.12, an agreement entitled "1990-2011 Power Sale Agreement Between Tucson Electric Power Company and Salt River Project Agricultural Improvement and Power District."

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13060 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6482-004]

Alternate Energy Resources, Inc.; Availability of Environmental Assessment

June 6, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Big Mosquito Creek Power Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project, and has concluded that approval of the proposed project with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13061 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 2789-011.

c. Date filed: March 18, 1988.

d. Applicant: Allegheny Electric Cooperative, Inc. (licensee); Allegheny Electric Cooperative, Inc. and The Connecticut Bank and Trust Company, National Association (transferees).

e. Name of Project: Raystown Hydroelectric Project.

f. Location: On the Raystown Branch of the Juniata River in Huntington County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Anthony C. Adonizio, Deputy General Counsel, Allegheny Electric Cooperative, Inc., P.O. Box 1266, Harrisburg, PA 17108, (717) 233-5704.

i. FERC Contact: Michael Dees (202) 376-9414.

j. Comment Date: June 29, 1988.

k. Description of Transfer: On March 18, 1988, Allegheny Electric Cooperative, Inc. (licensee/transferee), and The Connecticut Bank and Trust Company, National Association (transferee), filed a joint application for transfer of the major license for the Raystown Hydroelectric Project No. 2789. The proposed transferee will not result in any changes in the project. The transferees state that they would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "Comments," "Notice of intent to file competing application", "Protest" or "Motion to intervene", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13062 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-409-000, et al.]

Natural Gas Company of America et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Company of America

[Docket No. CP88-409-000]

June 3, 1988.

Take notice that on May 25, 1988, Natural Gas Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-409-000 a request pursuant to § 157.205 of the Regulations for authorization to increase deliveries of natural gas to Northern Illinois Gas Company (NIGas) at one delivery point by shifting a portion of NIGas' entitlement at another point, under Natural's blanket certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to increase deliveries to NIGas at the City of Rochelle delivery point, Ogle County, Illinois, by 6,900 Mcf, from 13,100 Mcf per day to 20,000 Mcf per day, and to decrease deliveries to NIGas at the Rockford delivery point, Winnebago County, Illinois, by 6,900 Mcf per day. It is stated that the load shift can be accomplished without any change in NIGas' total daily entitlement from Natural. It is asserted that the shift is required because the City of Rochelle has decided to convert a coal-fired boiler to natural gas with a resulting increase in its system load. It is further asserted that no customers on NIGas' or on Natural's systems would be negatively impacted by the change.

Natural also proposes to replace its metering facilities at the Rochelle delivery point, replacing a 4-inch turbine meter with a 6-inch turbine meter, at a cost of $18,200, to be reimbursed by NIGas.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP88-425-000]

June 6, 1988.

Take notice that on May 27, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., filed in Docket No. CP88-425-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related jurisdictional facilities necessary to deliver gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under the certificate authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

AER proposes to construct and operate a sales tap on its Line 28-1 in Cowley County, Kansas, to deliver gas to ALG for service to Mark Lewis, a domestic residential customer who would use approximately 140 Mcf per year and about 2 Mcf on a peak day.

AER states that the gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

AER states that the gas delivered and resold by ALG to the end user would be priced in accordance with the currently filed rate schedules authorized by the Kansas Corporation Commission.

Comment date: July 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88-408-000]

June 6, 1988.

Take notice that on May 24, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-408-000 pursuant to § 147.205 and § 157.216(b) of the Commission's regulations for authorization to abandon natural gas sales and transportation service to Shell Oil Company (Shell) Norco, St. Charles Parish, Louisiana, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the contract has terminated and that Shell has consented to the proposed abandonment. United further states that its facilities will remain in place in anticipation of future service at this location.

Comment date: July 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13083 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-178-000]

Algonquin Gas Transmission Co.; Petition of Algonquin Gas Transmission Co. for Authority to Flow Through Direct Billed Order No. 473 Surcharge

June 6, 1988.

Take notice that on May 27, 1988, Algonquin Gas Transmission Company ("Algonquin") petitioned the Federal Energy Regulation Commission ("Commission") for authority to flow through to its customers any direct billed charges that Algonquin may be required to pay to its pipeline suppliers as a result of retroactive Order No. 473 surcharges incurred by its suppliers. Algonquin notes that its petition is made in light of the surcharges made by CNG Transmission Corporation ("Consolidated") to direct bill Algonquin (and others) certain surcharges under Order No. 473.

All as is more fully set forth in its petition, Algonquin states that it proposes to flow through charges from its suppliers based on its customers' actual purchases during the applicable period under rate schedules where the gas supply originates. Algonquin requests any necessary waivers of the Commission's Regulations to effect the proposed flow through direct billing.

Algonquin submits that its proposal will avoid raising current rates by inclusion of extraordinary costs in its purchased gas adjustments, and that the use of actual past purchases will more closely match costs incurrence with cost responsibility.

Algonquin states that it has previously flowed through refunds it has received under said Order No. 473.

Algonquin also states that it has served copies of its petition upon all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-13084 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-61-000]

Bayou Interstate Pipeline System; Changes in Rates

June 6, 1988.

Take notice that on May 31, 1988, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) Sixth Revised Sheet No. 4 to be effective August 1, 1988.

Bayou states that the tariff sheets were filed pursuant to the Purchased Gas Cost Adjustments provision contained in section 15 of Bayou's tariff. A copy of the filing is being mailed to Bayou's jurisdictional sales customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211. All such motions or protests must be filed on or before June 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-13085 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-95-001]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

June 7, 1988.

Take notice that Canyon Creek Compression Company (Canyon) on May 31, 1988, filed under protest, proposed changes in its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 1A to become effective May 1, 1988.

Canyon states that the intent of this filing is to revise Canyon's rates originally submitted on March 31, 1988, in the subject docket (Original Filing) to reflect the changes ordered by the Commission in its "Order Accepting for Filing and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Hearing" issued on April 29, 1988, in the above referenced docket (April 29 Order).

Canyon also states that the instant compliance filing is being made under protest and is in no way intended to represent agreement by Canyon with any of the principles and justification attending the April 29 Order. Nor is this filing to be construed as a waiver of any rights Canyon may have with proceedings in connection therewith.

A copy of this filing was mailed to Canyon's customers and all parties set out on the official service list at Docket No. RP88-95-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before June 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-13085 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ88-2-2-000 and TA88-1-2-006]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1988.

Take notice that on May 31, 1988, East Tennessee Natural Gas Company (East Tennessee) hereby files ten copies of the following revised tariff sheets to Original Volume No. 1 its FERC gas Tariff to be effective July 1, 1988:

Thirty-Ninth Revised Sheet No. 4
Substitute Thirty-Seventh Revised Sheet No. 4
Replacement Thirty-Fourth Revised Sheet No. 4

East Tennessee states that the purpose of these revisions is to reflect PGA Rate Adjustments pursuant to section 22.2 of the General Terms and Conditions of East Tennessee's Tariff. Thirty-Ninth Revised Sheet No. 4 reflects a current adjustment for the quarterly period July-September, 1988. Substitute Thirty-Seventh Revised Sheet No. 4 and Replacement Thirty-Fourth Revised Sheet No. 4 reflect adjustments to East Tennessee's previously effective Demand D_1 and D_2 rates pursuant to the Commission's Order on April 29, 1988, in Docket No. TA88-1-2-005.

East Tennessee states the Current Purchased Gas Cost Rate Adjustments reflected on Thirty-Ninth Revised Sheet No. 4 consist of a 26.66 cents per dekatherm adjustment applicable to the gas rate, a 6.26 cents per dekatherm adjustment applicable to Rate Schedule SWS, and a 3 cents per dekatherm adjustment applicable to the D_1 component of the demand rates.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests to intervene in Docket No. TQ88-2-2-000 should be filed on or before June 13, 1988. All such motions or protests to intervene in Docket No. TA88-1-2-006 should be filed on or before June 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13152 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-44-004]

El Paso Natural Gas Co.; Proposed Change in Rates

June 6, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on June 1, 1988, tendered for filing revised tariff sheets to its FERC Gas Tariffs, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A to reflect certain modifications to the rates suspended until July 1, 1988 at Docket No. RP88-44-000.

El Paso states that the rates set forth on the revised tariff sheets differ from the rates in the compliance filing (revised) filed March 6, 1988 at Docket No. RP88-44-000 in that such rates have been adjusted for the removal of the take-or-pay buyout and buydown costs, an increase in throughput quantity, and certain other adjustments.

El Paso states that in a related filing, El Paso filed a series of inter-related and inter-dependent documents which constitute El Paso's Open Access Plan ("Plan"). Alternate tariff sheets included in the filing reflect certain further adjustments to El Paso's rates based on the proposals set forth in such Plan.

El Paso states that a principal element of its plan is its proposal to recover its take-or-pay buyout and buydown costs in accordance with Commission Order No. 500. Based on such filing, the tariff sheets tendered removed all of the buyout and buydown costs, including amortization, return and taxes, from its cost of service resulting in a reduction in the sales rate of $.2545 per dth. El Paso proposes to reflect this reduction in Docket No. RP88-44-000 rates irrespective of the effective date assigned to its Order No. 500 filing.

El Paso states that it has further reduced the proposed rates to reflect an increase in projected throughput

volumes from a level of 2,444 MDth/d reflected in the originally filed rates to the level of 2,794 MDth/d in proposed revised rates. Costs for both sales and transportation were reallocated to reflect such increased throughput, and rates were adjusted based on such allocated costs divided by the volumes for each sales and transportation rate schedule. In addition, all field transportation and production area service rates are further reduced to levels below those required to recover the allocated costs.

El Paso further states that it tendered alternate tariff sheets to reflect implementation of El Paso's Open Access Plan. El Paso is requesting an effective date of July 1, 1988 for the filings comprising its Plan. In the event the authorizations and effective date sought in such filing are granted, El Paso proposes to remove from the non-gas component of its sales rates those gas costs associated with its own cost-of-service production (RFX), and include those costs for recovery in the gas cost component of its sales rates on a unit of production basis through its Purchased Gas Cost Adjustment provision. In addition, El Paso proposes to implement the cost sharing policy adopted by Order No. 500 by providing (i) that El Paso will absorb 25 percent of its buyout and buydown costs (ii) that 25 percent of the jurisdictional portion of such costs will be included in a fixed take-or-pay cost charge to its sales customers and (iii) that the remaining 50 percent of such costs will be included in a surcharge applicable to sales and third-party transportation quantities transported by El Paso.

El Paso requested that the Federal Energy Regulatory Commission ("Commission") grant such waiver of its Regulations Under the Natural Gas Act as may be deemed necessary in order to permit effectiveness of the alternate tariff sheets and the rates set forth therein, on July 1, 1988, and appropriate waivers be granted. In the event the authorization for El Paso's Plan is not approved by July 1, 1988 El Paso requests the revised tariff sheets be placed in effect on July 1, 1988, and appropriate waivers be granted.

El Paso requested that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.66 of its Regulations, so as to permit the tendered tariff sheets to become effective July 1, 1988, as provided for in the Commission's Regulations.

Copies of the filing were served upon all interstate pipeline system customers of El Paso, all interested state regulatory commissions and parties of record in Docket No. RP88-44-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13087 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-184-000]

El Paso Natural Gas Co; Proposed Changes in FERC Gas Tariff

June 6, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on June 1, 1988, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed changes would add a Section 21, Take-or-Pay Buyout and Buydown Cost Recovery, to the General Terms and Conditions which would serve to establish the procedures by which El Paso will recover from its Customers, as prescribed by Order No. 500, a portion of the payments to its natural gas suppliers made in settlement of claims arising under its gas purchase agreements or to terminate or suspend such agreements (referred to herein as "buyout" or "buydown" payments or costs).

El Paso states that, as permitted by Order No. 500, the proposed tariff sheets reflect (i) the exclusion from rates and an absorption by El Paso of twenty-five percent (25%) of its buyout and buydown costs; (ii) inclusion of the jurisdictional portion of twenty-five percent (25%) of such costs in fixed charges (i.e., direct billing based on deficiency percentages) to its jurisdictional sales-for-resale customers; and (iii) inclusion of fifty percent (50%) of such cost in a surcharge applicable to all units of throughput (based on the projected throughput underlying the rates pending in Docket No. RP88-44-000 as adjusted by filing of same date under separate cover). No rate coverage under the provisions of Order No. 500 is sought or intended for buyout or buydown payments to affiliates. El Paso proposes that the direct billed charge and throughput charge be recovered over an amortization period of between three and five years, which may be subject to further adjustment for good cause shown as described in El Paso's filing.

El Paso states that this filing is one part of several being filed concurrently which comprise inter-related and inter-dependent components of El Paso's Open Access Plan.

El Paso requested that the Federal Energy Regulatory Commission ("Commission") grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.66 of its Regulations, so as to permit the tendered tariff sheets to become effective July 1, 1988, as provided for in the Commission's Regulations.

Copies of the filing were served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13088 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-44-000, RP85-58-017 and CP88-203-000][1]

El Paso Natural Gas Co.; Informal Settlement Conference

June 6, 1988.

Take notice that an informal settlement conference will be convened in the above-referenced proceeding on June 21, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426.

The parties and the Commission Staff are invited to attend. Persons willing to become parties must move to intervene pursuant to the Commission's Regulations (18 CFR 385.214 (1985)) and have their motion granted.

For additional information, contact Cynthia A. Govan (202) 357-5330 and Hollis J. Alpert (202) 357-8460.

Lois D. Cashell,

Acting Secretary

[FR Doc. 88-13090 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

El Paso Natural Gas Co.; Proposed Tariff Change and Petition for Waivers

June 6, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on June 1, 1988, filed a Notice of Proposed Tariff Change and Petition for Waivers to institute rate and tariff changes to complement other proposals El Paso filed concurrently in order to effectuate a comprehensive plan designed to permit El Paso to become a permanent open-access transporter with limited continuing merchant functions.

Specifically, El Paso requests waiver of § 154.305(d) of the Federal Energy Regulatory Commission's ("Commission") Regulations, Paragraph 19.7 of its FERC Gas Tariff, First Revised Volume No. 1, and any other applicable regulations and tariff provisions, such that El Paso may suspend billing of the otherwise applicable Account 191 surcharge effective on the first day of the first month following the issuance of an acceptable order approving El Paso's Gas Inventory Charge ("GIC") filing. El Paso further proposes that if the above requested waiver is granted, that El Paso be permitted, effective on that same date, to remove from the non-gas component of its sales rates those gas costs, associated with its Reserve for Exploration ("RFX") production, and include those costs for recovery in the gas cost component of its sales rates on a unit-of-production basis through its PGA. In connection therewith, El Paso tendered a *pro forma* tariff sheet which provides for the incorporation of the RFX costs into the defintion of costs to be recovered through the PGA mechanism.

El Paso requested waiver of the Commission's Regulations and its FERC Gas Tariff to permit the foregoing proposals to become effective on the same date that El Paso's GIC filing is approved.

Copies of the filing were served upon El Paso's interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary

[FR Doc. 88-13086 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[1] Docket No. CP88-203-000 has not been consolidated with Docket Nos. RP88-44-000 and RP85-58-017.

[Docket No. RP88-182-000]

Gas Research Institute; Annual Application

June 6, 1988.

Take notice that on June 1, 1988, the Gas Research Institute (GRI) filed herein an application requesting advance approval of its 1989-1993 Five-Year R&D Plan and 1989 R&D Program, and the funding of its R&D activities for 1989 pursuant to the Natural Gas Act and the Commission's Regulations thereunder, particularly 18 CFR 154.38(d)(5).

GRI states that its application demonstrates compliance with the Commission's Regulations, the requirements of Opinion No. 263, Opinion and Order Amending and Approving Gas Research Institute's 1988 Research and Development Program and Related Five-Year Plan for 1988-1992, Docket No. RP87-71-000, issued September 29, 1987, and the ongoing provisions of a Stipulation and Agreement reached by the parties to the proceedings in Docket No. RM77-14 and approved by the Commission in Opinion No. 11, Opinion and Order Approving the Initial Research Development and Demonstration Program of Gas Research Institute, Docket No. RM77-14, issued March 28, 1978. GRI proposes to incur contract obligations in 1989 totaling approximately $174,945,000. GRI proposes to spend in 1989 approximately $177,645,000 in actual cash outlays for the portion of contract obligations incurred in the past that will be due in 1989, and the portion of contract obligations incurred in 1989 that will be due in 1989. To fund its program, GRI's application seeks approval for the collection of $158,749,000 through jurisdictional rates and charges during the twelve (12) months ending December 31, 1989 to support GRI's R&D activities in 1989. The difference is proposed to be funded from a mostly jurisdictional end-of-year cash balance projected to be approximately $21,110,000 as of December 31, 1988. Applicant states that its application was filed in accordance with the provision of Order No. 566 which requires "RD&D organizations" to submit, annually, a five-year program plan at least 180 days prior to the commencement of the five-year period of the plan, which is scheduled to commence on January 1, 1989.

GRI states that the proposed unit cost of GRI's 1989 R&D Program is 1.51 cents per Mcf of equivalent, the same unit cost now in effect, and proposes that current tariffs pertaining to GRI funding be continued in effect through December 31, 1989. This Annual R&D Funding Unit is proposed to be applied to the services included in GRI's Program Funding Services in 1989 which include jurisdictional, direct sale and intrastate volumes of GRI's members and which are estimated to be 10,516.4 Bcf.

GRI states that last year the Commission in Opinion No. 283 directed GRI to fund a study with an appropriate research organization that would examine GRI's budget and program efforts, and to submit the study to the Commission as part of its application. GRI contracted with the National Academy of Science (NAS) to conduct the study. GRI states that an NAS report can be expected to be available on or about July 22, 1988. GRI states it intends to promptly submit the report to the Commission and to make it available to all interested persons, including the parties to this proceeding.

GRI's filing was accompanied by workpapers providing detail about its application. These workpapers are

BEST COPY AVAILABLE

available for inspection in the Commission's Public Reference Branch.

In addition, take note that procedurally, the FERC staff will conduct an analysis of GRI's application and prepare a Commission Staff Report which will be served on all parties and filed with the Commission as a public document on July 29, 1988. Comments on the Staff Report, or other comments by all parties except GRI, should be filed with the Commission on or before August 15, 1988. GRI's reply comments should be filed on or before August 30, 1988. It should be noted that the Commission's Regulations (18 CFR 381.206) provided for a petition seeking advance Commission approval of rate treatment of RD&D expenditures will be determined and billed according to the procedures for direct billing set forth in 18 CFR 381.107.

Any person desiring to intervene to be heard, or to make any protest with reference to said application should, on or before June 27, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a comment, protest, or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR 385.211 and 385.214). All comments or protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to this proceeding or to participate as a party in any hearing which might be held herein, other than those listed in the Appendix who are automatically entitled to participate, must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13091 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-20-000]

HPC Operating Inc. (Successor to HLH Petroleum Corp.); Petition To Reopen

Issued June 6, 1988.

Take notice that on May 3, 1988, HPC Operating, Inc. (HPC) filed a petition requesting that final well category determinations be reopened for the Louis Werner Sawmill Co. St. Regis Nos. 1 and 2 wells. Based on applications filed by HPC's predecessor operator, HLH Petroleum Corporation, the Texas Railroad Commission (Texas) determined that these wells, located in Panola County, Texas, qualified for the Natural Gas Policy Act Of 1978 (NGPA) section 102(c)(1)(C) status. HPC suspects that the applications inadvertantly contained misstatements of material facts. To determine if its suspicions are true, HPC is conducting an investigation. HPC requests the Commission to reopen the well category determinations subject to the outcome of its investigation.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure, 18 CFR 385.214 and 385.211 (1987). All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13092 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-5-000]

Midwestern Gas Transmission Co; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 7, 1988.

Take notice that on May 31, 1988 Midwestern Gas Transmission Company (Midwestern) hereby files ten copies of the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1988:

Thirty-Sixth Revised Sheet No. 5
Alternate Thirty-Sixth revised Sheet No. 5
Second Revised Sheet No. 20
Sixth Revised Sheet No. 21

Midwestern states that the purpose of the filing is to reflect an increase of 44.85 cents per dkt applicable to the gas component of Midwestern's sales rates, a decrease of $2.18 applicable to the CD-1 D_1 demand rate and an adjustment of 7.42 cents applicable to the CD-1 D_2 demand rate. Midwestern states that Alternate Thirty-Sixth Revised Sheet No. 5 reflects a surcharge to amortize unrecovered gas costs, which Midwestern will implement effective July 1, 1988, if the Commission denies its request to change the amortization period required by § 154.310 of the Commission Regulations. Midwestern states that Revised Sheets No. 20 and 21 reflect minor modifications to its CD-1 Rate Schedule concerning operational coordination.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13153 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-25-003]

Mississippi River Transmission Corp.; Rate Change Filing

June 7, 1988.

Take Notice that on May 27, 1988, Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tariff sheet	Proposed Effective Date
Substitute Eighth Revised Sheet No. 4A	Mar. 1, 1988.
Substitute Ninth Revised Sheet No. 42	Mar. 1, 1988.
Substitute Sixth Revised Sheet No. 50	Jan. 1, 1988.

MRT states that the purpose of the filing is to comply with the conditions set forth in the Commission's May 19, 1988 order which required MRT to file revised tariff sheets to reflect any changes in the take-or-pay amounts incurred from United Gas Pipe Line Company ("United") and to eliminate the references to the D-1 allocation methodology from its tariff.

MRT claims that the overall impact of the take-or-pay charges contained therein on MRT's jurisdictional customers is an annual decrease of $3.6 million in costs from that contained in MRT's March 30, 1988 filing in this docket. The annual fixed take-or-pay charges that MRT will incur from United have declined from $12.3 million to $7.8 million.

MRT requests waiver of any provisions of its FERC Gas Tariff and any Rules or Regulations of the Commission, including the notice requirements of § 154.22, which may be required to assure that the filed tariff sheets become effective as proposed.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-13134 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 7, 1988.

Take notice that National Fuel Gas Supply Corporation ("National") on May 31, 1988, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, six copies of the following tariff sheet:

Fourteenth Revised Sheet No. 4.

National states that the purpose of the filing is to reflect the PGA rate changes in compliance with Order Nos. 483 and 483-A.

National states that Fourteenth Revised Sheet No. 4 reflects an overall decrease of 1.74 cents per Dth. The change results from a decrease in current purchased gas costs only.

The proposed effective date of the tariff sheet is July 1, 1988.

National states that copies of this filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such petitions or protests should be filed on or before June 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13155 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-179-000]

Northern Natural Gas Co.; Division of Enron Corp.; Notice of Filing

June 6, 1988.

Take Notice that on May 27, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1,

First Revised Sheet No. 52g.2
First Revised Sheet No. 52g.3

Section 3 of Northern's Firm Deferred Delivery Rate Schedule (FDD-1) provides that Northern shall annually evaluate its estimated capability to provide such service and reflect any changes in the amount and length of such service by filing such changes with the Commission. Northern has evaluated its ability to provide service hereunder for the 1988/89 heating season and, accordingly, files the above tariff sheet to reduce the volumetric level of service available under Rate Schedule FDD-1 during the coming cycle year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13093 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-183-000]

Northern Natural Gas Co., Division of Enron Corp.; Filing

June 7, 1988.

Take notice that on May 31, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Original Volume No. 2,

First Revised Sheet No. 527

Northern states that this tariff sheet was filed to incorporate within Rate Schedule T-11 a Sept. 1, 1987 Amendment to Agreement executed by North Central Public Service Company, a Division of Iowa Public Service Company (North Central) and Northern which revised the method used to calculate the minimum annual bill. Northern proposes to reduce the minimum annual bill obligation of North Central by the equivalent volume of natural gas purchased on an interruptible basis at Janesville, Wisconsin by North Central under its CD-1 Service Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13156 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-59-000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1988.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on May 31, 1988, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern states that it is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.5980 to be effective July 1, 1988 through September 30, 1988. Northern further states that it intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13094 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-181-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 7, 1988.

Take notice that Sea Robin Pipeline Company (Sea Robin), on May 31, 1988, tendered for filing proposed rate changes to its FERC Gas Tarriff, Original Volume Nos. 1 and 2. The proposed rate changes are based on the twelve-month period ending February 29, 1988, as adjusted, for changes which are known and measurable through November 30, 1988. Overall revenues under the proposed tariff sheets are projected to be approximately $7,663,515 less than the revenues which would be generated on the same volumes at the rates currently in effect. Sea Robin requests an effective date of July 1, 1988.

Sea Robin states that the costs underlying the proposed rates have been classified and allocated and rates have been designed in accordance with modified fixed-variable principles. The transportation volumes included in the rate derivation reflect representative volume levels for Part 284 transportation. If further states that revenues attributable to transportation for Gulf Oil Corporation under Rate Schedule X-5 have been credited to the cost of service at the contract rate as in prior rate cases, pursuant to the Commission's Remand Order dated September 25, 1987 in Docket No. RP80-55-011 *et al.*, which reversed and remanded Opinion Nos. 227-A and 227-B.

Sea Robin proposes to utilize the current filing as its compliance with the requirements of § 154.303(e) of the Commission's regulations.

Copies of the filing have been served upon Sea Robin's jurisdictional customers and the Public Service Commission of the State of Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13157 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ88-2-9-000 and TM88-1-9-000]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

June 6, 1988.

Take notice that on May 27, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1988:

Original Volume No. 2

Item A:
- Eighth Revised Sheet No. 5
- Seventh Revised Sheet No. 6

Second Revised Volume No. 1

Item B:
- Seventh Revised Sheet No. 20
- Fourth Revised Sheet No. 20A
- Seventh Revised Sheet No. 21

Item C:
- Second Revised Sheet Nos. 31 through 36

Tennessee states that the purpose of the revisions listed under items A and B is to reflect a Purchased Gas Adjustment to its rates consisting of a Current Adjustment to Gas Rates of 10.83 cents and a Current Adjustment to Demand Rates of 4 cents. The filing also reflects the removal from Gas and Demand Rates of Surcharges to Amortize Unrecovered Gas Costs previously implemented in its January PGA.

Tennessee states that the purpose of the revisions listed under Item C is to reflect direct billing of production related costs incurred by Tennessee pursuant to Order No. 94 and Order No. 473.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington DC 20426, in accordance with Rules 206 and 214 of the

Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-13005 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM88-1-25-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 27, 1988 certain revised tariff sheets. Transco states that the revised tariff sheets reflect a storage "tracking" increase effective January 1, 1988 and storage "tracking" decreases effective February 1, 1988 and April 22, 1988 in accordance with Sections 26 of Transco's General Terms and Conditions. Section 26 provides for, among other things, changes in rates for storage service rendered under Transco's Rate Schedule S-2 to reflect changes in charges by Texas Eastern Transmission Corporation (Tetco) under Tetco's Rate Schedule X-28.

Transco states that as a result of Commission Order Accepting Compliance Filing, subject to Conditions dated Dec. 31, 1987 in Docket No. RP85-177, *et al.*, Tetco increased its rates applicable to X-28 service with an effective date of January 1, 1988. On February 8, 1988, the Commission clarified its December 31, 1987 order in the Docket No. RP85-177, *et al.* proceedings and severed and approved only those portions of the RP86-177 rate settlement pertaining to existing services.

Further, Transco states that on Feb. 19, 1988, Tetco filed in compliance with the Commission's Feb. 8, 1988 order which filing provided for, among other things, a rate decrease effective February 1, 1988 related to Texas Eastern's X-28 rate schedule. Subsequently, on March 24, 1988 Tetco Filed revised tariff sheets in Docket No. RP85-81 which reflected a reallocation of costs as part of the implementation of its transportation service pursuant to Subpart B of Part 284 of the Commission's Regulations. This reallocation of costs resulted in a decrease in charges applicable to service under Tetco's X-28 rate schedule. These rates were accepted, subject to refund, by Commission order dated April 22, 1988 to be effective on such date.

Transco states that it included in the instant filing Second Substitute Alternate Fifty-First Revised Sheet No. 12 to be effective May 1, 1988. The purpose of this sheet is to incorporate the aforementioned S-2 rate change effective April 22, 1988 with rate changes resulting from Transco's compliance filing of April 29, 1988 in Docket No. RP88-68 which rate changes are proposed to be effective May 1, 1988. Transco calculates the net increase in charges to be approximately $228,000 annually from the rates included in Transco's currently effective rates.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commission's.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All such motions or protests should be filed on or before June 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88- 13096 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-180-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

June 7, 1988.

Take notice that Trunkline Gas Company (Trunkline) on May 31, 1988 tendered for filing revised tariff sheets which reflect an increase in rates. Trunkline requests an effective date of July 1, 1988.

Trunkline states that the filed tariff sheets implement a general rate increase of $86 million annually. Trunkline states that the primary reason for the filing of these revised tariff sheets is to adjust its rates for sales and transportation services to bring the revenues to be derived therefrom into line with total costs. Trunkline noted that in traditional cost areas, management efficiency and cost control have reduced operating expenses from prior periods.

Trunkline states that the accompanying Statement of Nature, Reason and Basis for the Proposed Change in Rates accompanying its filing outlines the various factors which have given rise to the rate adjustments for sales services and transportation services to which this Section 4 filing applies.

Trunkline stated that the filing reflects representative projected throughput volume levels for all currently effective sales and transportation services.

Copies of this notice and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13158 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-49-001 and TA89-3-49-002]

Williston Basin Interstate Pipeline Co.; Tariff Change

June 7, 1988.

Take notice that on May 27, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff, tariff sheets to be effective as proposed.

Williston Basin states that in an effort to clear up the pending deferred account issues raised by the Commission in its April 29, 1988 order in Docket No. TA88-3-49-000, prior to its submitting its next regularly scheduled PGA filing to reflect deferred account calculations, it is filing a compliance filing in Docket Nos. TA88-1-49-001 and TA88-3-49-002. Williston Basin further states that the filing also includes revisions to rates originally filed in Docket Nos. TA88-2-49-000, RP87-115-000, TQ88-1-49-000 and TA88-4-49-000 to carry forward the revised gas costs developed in this compliance filing. Additionally, Williston Basin also submitted Substitute Fifth Revised Sheet No. 11 in Docket No. RP87-92-000 to reflect the Commission's Order No. 472-C issued in Docket Nos. RM87-3-019, *et al.*

Williston Basin states that with regard to the revised gas cost calculations submitted in Docket No. TA88-1-49-001, the effect is to decrease the Company's First Revised Volume No. 1 sales rates by 14.018 cents per Dkt and to decrease the Original Volume No. 2 Rate Schedule X-1 rate by 21.784 cents per Dkt as compared to the October 13, 1987 compliance rates effective September 28, 1987 in Docket No. TA87-4-49. It states that rate decreases relative to the original September 30, 1987 filing in Docket No. TA88-1-49 are 14.756 cents and 11.228 cents per Dkt, respectively.

Williston Basin states that with regard to the revised gas cost calculations submitted in Docket No. TA88-3-49-002, the effect of these tariff sheets is to increase the Company's First Revised Volume No. 1 sales Rate Schedules G-1 and SGS-1 relative to the original March 31, 1988 filing in Docket No. TA88-3-49 by 28.698 cents. It states that First Revised Volume No. 1 Rate Schedule E-1 and Original Volume No. 2 Rate Schedule X-1 are unchanged from the original March 31, 1988 filing in Docket No. TA88-3-49.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection. All such motions to intervene or protests are due on or before June 27, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13159 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

June 7, 1988.

Take notice that on May 31, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, North Dakota 58501, tendered for filing as part of its FERC Gas Traiff the following tariff sheets:

First Revised Volume No. 1

Eleventh Revised Sheet No. 10

Original Volume No. 2

Thirteenth Revised Sheet No. 10

Williston Basin states that it also filed, pending the resolution of Williston Basin's Request for Rehearing filed May 27, 1987 in Docket No. TA88-3-49-000, the following alternate tariff sheet as part of its FERC Gas Tariff to reflect the proposed twelve month surcharge amortization originally requested in Docket No. TA88-3-49, filed March 31, 1988:

First Revised Volume No. 1

Alternate Eleventh Revised Sheet No. 10

The Company requests an effective date for the tariff sheets of August 1, 1988.

Williston Basin states that Eleventh Revised Sheet No. 10 and Alternate Eleventh Revised Sheet No. 10 (First Revised Volume No. 1) reflect an increase in the Cumulative Gas Cost Adjustment for Rate Schedules G-1, SGS-1 and E-1 of 6.137 cents per Dkt as compared to the Cumulative Gas Cost Adjustment contained in the Company's May 2, 1988 quarterly PGA filing in Docket No. TQ88-1-49-000. These changes reflect a cumulative gas cost adjustment from the average base cost of purchased gas of a negative 44.772 cents per Dkt as supported in the Schedule D-1 workpapers.

Williston Basin states that it filed Thirteenth Revised Sheet No. 10 (Original Volume No. 2) reflecting a 6.137 cent per Dkt increase in the cumulative gas cost adjustment for Rate Schedule X-1 from the Cumulative Gas Cost Adjustment contained in the Company's May 2, 1988 quarterly PGA filing in Docket No. TQ88-1-49-000.

Pursuant to the Commission's Regulations and the terms of Williston Basin's Purchased Gas Adjustment Provision, the gas purchases reflected in this filing have been priced at the rates to be paid during the PGA effective period. These amounts are subject to future revision upon resolution of pending litigation an/or other disputes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection. All motions to intervene or protests are due on or before June 27, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13007 Filed 6-9-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Development of Advanced Process Technologies for the Steel Industry

AGENCY: Department of Energy.

ACTION: Notice of program interest.

SUMMARY: The Department of Energy (DOE), Office of Industrial Programs, is interested in receiving unsolicited proposals for research and development of innovative process technologies for the steel industry. Laboratory or bench-scale research, which has the potential for continuing through pilot-scale developement, is desired. Any resulting awards will be made under the Steel Initiative Program, the goal of which is the development of new technologies that increase significantly the energy efficiency and overall productivity of processes that produce steel. Technologies of interest are those which improve the competitiveness of the U.S. steel industry through reduction, elimination, or replacement of entire unit operations. Incremental improvements to existing operations are neither sought nor encouraged. Unsolicited proposals will be evaluated for technical merit, the concept's applicability to the U.S. domestic steel industry, industry's commitment to the project as evidenced by the cost sharing

proposed (amount, type, and source), the appropriateness of the proposed project structure as shown in the Statement of Work and the management plan, and the research capabilities and qualifications of the proposer(s). DOE will select only proposals which are meritorious, based on the above evaluation, and which represent a unique or innovative idea, method, or approach.

This notice does not commit the Government to make an award. A decision to award will be determined through evaluation of proposals received and the availability of funds.

Industrial concerns or partnerships, including partnerships between industry and National Laboratories, universities, and non-profit organizations, are encouraged to submit unsolicited proposals.

Proposals must contain the following information: (1) A description of the proposed research; (2) a critical review of existing and emerging technologies on a worldwide basis that are or could be competitive with the proposed technology, which concludes that the proposed research is timely, does not duplicate work being pursued elsewhere, and is significantly more competitive (in terms of potential product value improvement) than existing or emerging technology; (3) an economic evaluation indicating the potential for at least a 10% improvement in product value due to a reduction in manufacturing costs and improvement in product characteristics, and an estimate of economic benefit to the overall U.S. steel industry; (4) an estimate of the potential energy savings attributable to the implementation of the proposed technology; (5) a Management Plan including a Statement of Work, project schedule, work breakdown structure, task assignments, spending plan, milestones, and decision points; (6) industry cost-sharing commitments, by Phase, and a description of the form of cost-sharing (cash, in-kind, etc.); Steel Initiative legislation requires that total cost-sharing must be at least 30 percent of the funding provided by DOE; (7) an estimate of the total R&D costs required to reach the stage of technology development at which Government funding will no longer be required, including a breakdown by type of cost and by task for the required federal funds and total manpower breakdown by task; (8) evidence and a schedule showing that the proposed technology has the potential for commercialization within ten years; and (9) the qualifications and capabilities of the proposing organization(s) and individuals responsible for performing the work. Additional information may be subsequently requested by DOE during review of submitted proposals. Standard Form (SF) 424 and DOE Form 1600.5, "Assurance of Compliance", must be executed prior to any award.

ADDRESS: Each unsolicited proposal submitted must be physically separate from any other proposals submitted. Five (5) copies of each proposal, including the signed original, should be submitted to: U.S. Department of Energy, Office of Industrial Programs, CE-142, Room 5F-034, 1000 Independence Avenue SW., Washington, DC 20585. Attn: Mr. W.E. Eckhart, Program Manager.

Questions relating to this NPI should be directed to the above address or to Mr. Eckhart, at (202) 586-8668. Proposers should become familiar with the Steel Initiative Management Plan, which may be obtained from Mr. Eckhart.

DOE reserves the right to support or not support any or all proposals. DOE assumes no responsibility for any costs associated with proposal preparation. Detailed information concerning assistance policy and procedures is contained in the Department of Energy Assistance Regulations, 10 CFR Part 600, copies of which are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

DATES: This notice is effective until May 1, 1989. DOE will evaluate the unsolicited proposals submitted in response to this notice prior to this date, and may extend the effective period depending on the results of those evaluations.

Issued at Washington, DC, on May 23, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88-13140 Filed 6-9-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During Week of April 22 Through April 29, 1988

During the Week of April 22 through April 29, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 3, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 22 through Apr. 29, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 17, 1987	Economic Regulatory Administration, Washington, DC.	KRZ-0522	Interlocutory. *If granted:* Russell B. Newton, Jr., Larry D. Delpit and Conald M. LeDoux would be joined to a Proposed Remedial Order issued to Kern Oil & Refining Company, Case No. KRZ-0522.
Apr 6, 1988	Pyrofax/Wise Oil & Fuel, Hardin, KY	RR277-2	Request for Modification/Recession. *If granted:* The March 25, 1988 Decision and Order issued to Wise Oil & Fuel (Case No. RF277-11) regarding the firm's application in the Pyrofax refund proceeding would be modified.
Apr 25, 1988	Amoco/Colorado, Denver, CO	RM251-109	Request for Modification/Recession. *If granted:* The January 7, 1987 Decision and Order issued to Colorado (Case No. RQ251-336) regarding the State's second stage refund application in the Amoco II refund proceeding would be modified.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Apr. 22 through Apr. 29, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 25, 1988	Glen Milner, Seattle, WA	KFA-0183	Appeal of an Information Request Denial. *If granted:* The April 5, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Glen Milner would receive access to a Joint Nuclear Weapons Publications System Publication entitled "TP-45-51A", in its entirety.
Apr. 25, 1988	Marathon/Township Oil Co., Washington, DC	RF250-4	Request for Modification/Recession. *If granted:* The December 18, 1987 Decision and Order issued to Township Oil Company (Case No. RF250-2733) regarding the firm's application in the Marathon Oil refund proceeding would be modified.
Apr. 25, 1988	Mobil/Farmers Union Central Exchange, St. Paul, MN.	RR225-26 RR225-27 RR225-28 RR225-29	Requests for Modification/Recession. *If granted:* The March 18, 1988 Decision and Order issued to Farmers Union Central Exchange (Case Nos. RF225-5291, RF225-5292, RF225-5293 & RF225-10680) regarding the firm's applications in the Mobil Oil refund proceeding would be modified.
Apr. 26, 1988	Petroleum Heat/Catanzaro Oil & Heating, Wappingers Falls, NY.	RR285-1	Request for Modification/Recession. *If granted:* The April 18, 1988 Decision and Order issued to Catanzaro Oil & Heating Company (Case No. RF285-12) regarding the firm's application in the Petroleum Heat & Power Company refund proceeding would be modified.
Apr. 28, 1988	Citizens Gas & Coke Utility, Indianapolis, IN	KFR-0044	Request for Modification/Recession. *If granted:* The April 8, 1988 Decision and Order issued to Citizens Gas & Coke Utility (Case No. RS272-7233) regarding the firm's application for refund in the crude oil refund proceeding would be modified.
Apr. 28, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0062	Interlocutory. *If granted:* The Office of Hearings and Appeals would clarify the method of computing interest on the overcharges determined in the April 1, 1988 Remedial Order issued to Thomas P. Reidy, Inc.
Apr. 29, 1988	Carbonit Houston, Inc. and Richard W. Johnson, Houston, TX.	KRD-0620	Motion for Discovery. *If granted:* Discovery would be granted to Carbonit Houston, Inc. and Richard W. Johnson in connection with the Statement of Objections submitted by the firm in response to a Proposed Remedial Order (Case No. KRO-0620).
Apr. 29, 1988	Jeff Nesmith, Washington, DC	KFA-0184	Appeal of an Information Request Denial. *If granted:* The March 29, 1988 Freedom of Information Request Denial issued by the Superconducting Super Collider (SSC) Site Task Force would be rescinded, and Jeff Nesmith would receive access to information regarding site proposals for the SSC.

REFUND APPLICATIONS RECEIVED

[Week of April 22 through April 29, 1988]

Date	Name of Firm	Case No.
04/25/88	Tri-County Gas Company	RF258-53
04/25/88	Baker Propane Company	RF253-54
04/25/88	Garstang Gas Company	RF253-55
04/25/88	MFA Oil Company	RF253-56
04/26/88	DeFelice Marine	RF305-7
03/10/88	Northern Petroleum, Inc	RF265-2531
04/26/88	Delta Marine, Inc	RF305-8
05/05/87	Davis Oil Company	RF225-11022
04/29/88	Suburban L-P Gas Company, Inc	RF225-11023
04/29/88	Plymouth Oil, Inc	RF250-2745
04/28/88	Kenneth E. Nylen	RF265-2533
04/28/88	Charles Van Blarcom	RF265-2534
04/27/88	Propane Service of Crete, Inc	RF265-2532
04/26/88	Odessa L.P.G. Transport, Inc	RF299-64
04/24/88	Vickers/Iowa	RQ1-449
04/22/88	Vickers/Texas	RQ1-450
04/22/88 thru 4/29/88	Crude Oil Refund Applications Received	RF272-48624 thru RF272-48226
4/22/88 thru 4/29/88	Gulf Oil Refund Applications Received	RF300-6468 thru RF300-6550

[FR Doc. 88-13142 Filed 6-9-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During Week of April 29 Through May 6, 1988

During the Week of April 29 through May 6, 1988, the applications listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt of an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 3, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED

[Week of Apr. 29 through May 6, 1988]

Date	Name	Case No.
05/23/88	Girling & Coutts	RF225-11024
11/24/87	Harper Propane Service	RF253-57
02/05/88 thru 5/6/88	Atlantic Richfield (ARCO), Refund Applications Received	RF304-1 thru RF304-2970
04/29/88 thru 05/06/88	Gulf Oil Refund Applications Received	RF300-55511 thru RF300-55534
04/29/88	Flame Gas Company	RF308-1
04/29/88 thru 5/6/88	Crude Oil Refund Applications Received	RF272-49227 thru RF272-49260 and RF272-54839 thru RF272-55534
05/02/88	Mobil Oil Corporation	RF305-9
05/02/88	Sears, Roebuck & Company	RF299-85
05/03/88	Ocean Drilling	RF305-10
05/03/88	Outrider Truck Stop	RF265-2635
05/06/88	Robert Scurn	RF265-2636 RF306-2

[FR Doc. 88-13143 Filed 6-9-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During Week of May 6 Through May 13, 1988

During the Week of May 6 through May 13, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 3, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 6 through May 13, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 12, 1988	Consolidated Edison Company of New York, Inc., et al., Philadelphia, Pennsylvania.	KFS-0009	Request for Stay. *If granted:* The March 15, 1988, Decision and Order issued to Shell Oil Company (Case No. KFX-0048) would be stayed regarding disbursement of crude oil refunds.
Apr. 19, 1988	Kenneth Walker, Abilene, Texas	KRZ-0065	Interlocutory. *If granted:* The March 3, 1988 Decision and Order issued to Kenneth Walker, Southwestern States Marketing and the Economic Regulatory Administration would be vacated and the remedial order proceeding (Case No. HRO-0258) transferred to another tribunal.
May 8, 1988	Economic Regulatory Administration, Washington, DC.	KRD-0032	Motion for Discovery. *If granted:* Discovery would be granted to the Economic Regulatory Administration, in connection with a Proposed Remedial Order issued to Gear Petroleum Company (Case No. HRO-0144).
May 8, 1987	Economic Regulatory Administration, Washington, DC.	KRZ-0063	Interlocutory. *If granted:* The Economic Regulatory Administration would be permitted to withdraw the affidavit of Richard Martin and substitute in its place the affidavit of Kishore Parekh, in the Gear Petroleum proceeding (Case No. HRO-0144).
May 9, 1988	Texas, Austin, Texas	KEG-0033	Petition for Special Redress. *If granted:* The Office of Hearings and Appeals would review the proposed expenditures for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 6 through May 13, 1988]

Date	Name and location of applicant	Case No.	Type of submission
May 9, 1988	U.A. Local Union No. 412, Albuquerque, New Mexico.	KFA-0165	Appeal of an Information Request Denial. *If granted:* The April 8, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and the U.A. Local Union No. 412 would receive access to information on payroll reports of Cobb Mechanical for a project at the Los Alamos National Labs.
May 11, 1988	Mississippi, Jackson, Mississippi	KEG-0034	Petition for Special Redress. *If granted:* The Office of Hearings and Appeals would review the proposed expenditures for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
May 12, 1988	William A. Hewgley, Kingston, Tennessee	KFA-0166	Appeal of an Information Request Denial. *If granted:* The April 21, 1988, Freedom of Information Request Denial issued by Mr. John C. Layton, Department of Energy (DOE), would be rescinded, and Mr. Hewgley would receive access to certain DOE information.
May 13, 1988	Decker & Hallman, Atlanta, Georgia	KFA-0167	Appeal of an Information Request Denial. *If granted:* The April 15, 1988 Freedom of Information Request Denial issued by the Office of Oil and Gas, Energy Information Administration, would be rescinded and Decker and Hallman would receive access to a list of all respondents to the EIA-782B survey "Reseller/Retailers' Monthly Petroleum Product Sales Report."
May 13, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0084	Interlocutory. *If granted:* The Office of Hearings and Appeals would impose sanctions against Kenneth Walker for his failure to comply with the March 3, 1988 evidentiary hearing order (Case No. KRX-0042).

Date received	Name of refund proceeding/name of refund applicant	Case number
5/6/88	Belridge/Hawaii	RO6-451
5/11/88	National Helium/Ohio	RO3-452
5/6/88 thru 5/13/88	Crude oil refund applications received	RF272-55535 thru RF272-56234
5/6/88 thru 5/13/88	Gulf Oil refund applications received	RF300-6641 thru RF300-6772
5/6/88 thru 5/13/88	ARCO refund applications received	RF304-2971 thru RF304-3026
5/10/88	Plaza Skelly	RF265-2637
5/10/88	Rays Skelly Station	RF265-2638
5/10/88	Buras Fuel Dock	RF305-11
5/16/88	Ray Summers, Inc	RF265-2643
5/16/88	S & M Gas Service	RF265-2644
5/13/88	M & W Propane Company, Inc	RF265-2639
5/13/88	Triple H Truck Stop	RF265-2640
5/13/88	Triple H Truck Stop	RF265-2641
5/13/88	Fortmeyer Electric and Gas	RF265-2642

[FR Doc. 88-13144 Filed 6-9-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $19,824.44 obtained as a result of the Consent Order which the DOE entered into with Pedersen Oil, Inc., a reseller-retailer of petroleum products located in Silverdale, Washington. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0147.

FOR FURTHER INFORMATION CONTACT: Matthew Paul, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distibute to adversely affected parties $19,824.44 plus accrued interest obtained by the DOE under the terms of a Consent Order entered into with Pedersen Oil, Inc. Pedersen entered into the Consent Order in order to settle its potential civil liabilities arising from an ERA audit of the firm's motor gasoline pricing practices during the peroid May 1, 1979 through September 30, 1979.

OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that bought motor gasoline form Pedersen during the consent order period. In order to obtain a refund, each claimant will generally be required to submit a schedule of its monthly purchases of motor gasoline from Pedersen and to demonstrate that it was injured by Pedersen alleged regulatory violations. A claimant identified by the ERA during its audit of Pedersen will not be required to submit the above-referenced purchase volume information. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when submission of claims is authorized.

Residual funds in the Pedersen escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99-509, Title III.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 3, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order; Implementation of Special Refund Procedures

Name of Firm: Pedersen Oil, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0147

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 208, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Pedersen Oil, Inc. (Pedersen).

I. Background

Pedersen was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and was located in Silverdale, Washington. A DOE audit of Pedersen's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. More specifically, the audit revealed that between May 1, 1979 and September 30, 1979, Pedersen may have violated the DOE's pricing regulations with respect to its sales of motor gasoline.

In order to resolve its potential civil liabilities arising from the ERA's audit, Pedersen entered into a Consent Order with the DOE on October 15, 1981. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Pedersen does not admit any such violations.

Under the terms of the Consent Order, Pedersen was required to deposit $23,617 into an escrow account for ultimate distribution by the DOE.[1] On May 11, 1982, Pedersen made a deposit of $9,802.44, its only payment into the account. Since that payment was made, Pedersen's assets have been liquidated and a successor firm is also in bankruptcy. Therefore, no further payments are expected. Pedersen, however, was eligible for a refund of $10,222 in a proceeding instituted by OHA to distribute funds remitted to the DOE by the Mobil Oil Corporation. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Because of Pedersen's outstanding obligation to the DOE under the terms of its Consent Order, OHA transferred the full amount of Pedersen's refund in the Mobil proceeding to the Pedersen consent order fund. *Mobil Oil Corporation/National Acceptance Company of California*, 18 DOE ¶ 85,554 (1987). The Pedersen fund now contains $19,824.44 in principal, or 84% of the amount Pedersen was required to deposit under the terms of the Consent Order. This decision concerns the establishment of procedures for the distribution of the funds in the Pedersen escrow account. Comments are solicited on these proposed procedures.

[1] The actual settlement between Pedersen and the DOE totaled $25,000. Of that sum, Pedersen made direct payments totaling $1,383 to the following end-user customers, all located in Tacoma, Washington: Barbie Lumber, Erdahl Trucking, Heinke Painting, Baxter Manufacturing, Jim Lemon's Doors and Cabinets, United Services, Allstate Elevator and Time D.C., Inc. These direct refunds were based upon the ERA's calculations of Pedersen's alleged overcharges. Because these firms have already received refunds for the matters settled by the Pedersen Consent Order, they will not be eligible for a further refund in this proceeding. The balance of the settlement amount, $23,617, was to be deposited into an escrow account for ultimate distribution by the DOE.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who may have been injured by alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

In keeping with the goals of the Subpart V regulations, we will attempt to provide refunds to claimants who demonstrate that they were injured by Pedersen's alleged overcharges in its sales of motor gasoline during the May 1, 1979 through September 30, 1979 consent order period. Residual funds in the Pedersen escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. No. 99-509, Title III. *See* 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. To facilitate this process, we intend to rely, in part, on the information gathered by the ERA during its audit of Pedersen. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) *(Marion)*. The ERA identified 20 firms that were allegedly overcharged by Pedersen and calculated the amount of the alleged violations. Based on this information, we have calculated potential refunds for each of these firms. The firms, together with their potential refunds, are listed in the Appendices to this Decision. The total amount of the Pedersen settlement allocated to the ERA-identified purchasers is $11,046.

The ERA specifically noted, however, that it was unable to identify all of the customers whom Pedersen allegedly overcharged. In order to determine the potential refunds for these purchasers, we propose to adopt a volumetric refund presumption. This presumption assumes that Pedersen's alleged overcharges were spread evenly over all of the gallons of motor gasoline that Pedersen sold during the consent order period.

Under the volumetric presumption, the potential refund for a previously

unidentified claimant will be calculated by multiplying the number of gallons of motor gasoline that it purchased from Pedersen during the consent order period times a volumetric factor of $0.0025 per gallon.[2] In addition, successful claimants will receive proportionate shares of the interest that has accrued on the Pedersen escrow account. The total amount of the Pedersen consent order funds alloted to unidentified claimants is $8,792.[3]

The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982); *see also* 10 CFR § 205.286(b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 5,800 gallons of Pedersen motor gasoline in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether it was injured by its purchases from Pedersen, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous Subpart V proceedings, we propose to adopt certain presumptions concerning injury in this case. An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

[2] Because we were unable to determine the number of gallons of motor gasoline that Pedersen sold to its customers who received direct refunds, *see* supra note 1, and to the 20 ERA-identified purchasers, we computed the volumetric factor by dividing $21,207.44 (the $19,824.44 deposited into the Pedersen escrow, plus the $1,353 Pedersen paid out in direct refunds) by 8,561,862, the total number of gallons of motor gasoline sold by the firm during the consent order period.

[3] The ERA allocated $13,150 of the Pedersen settlement to identified purchasers and the remainder of the settlement, $10,467, to unidentified end-users. Because the Pedersen escrow account contains only 84% of the principal specified in the Consent Order, we reduced these amounts accordingly.

1. *Presumptions Concerning Injury:* The presumptions we plan to adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end users of Pedersen motor gasoline, certain types of regulated firms, and cooperatives were injured by their purchases from Pedersen. In addition, we will presume that resellers and retailers of Pedersen gasoline submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Pedersen motor gasoline and those who sold it on consignment were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

a. End Users; First, in accordance with prior Subpart V proceedings, we will presume that end-users, *i.e.*, ultimate consumers of Pedersen motor gasoline whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end-users need only document their purchase volumes of Pedersen motor gasoline to demonstrate that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives; Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or coopsrative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will not be covered by this presumption.

c. Reseller and Retailer Small Claims; Third, we will presume that a reseller or a retailer seeking a refund of $5,000 or less, excluding accrued interest, were injured by Pedersen's pricing practices. Without this presumption, such an applicant would have to gather records dating as far back as 1973 in order to demonstrate that it absorbed Pedersen's alleged overcharges. The cost to the applicant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Therefore, a small claimant must only document the volumes of motor gasoline it purchased from Pedersen in order to demonstrate injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). ERA-identified resellers and retailers seeking small claims refunds have to submit only a statement verifying their purchases from Pedersen and indicating their willingness to rely on the information contained in the ERA audit files. Resellers and retailers of Pedersen motor gasoline that are seeking refunds in excess of $5,000 must follow the procedures that are outlined below in Section 2.

d. Spot Purchasers; Fourth, resellers and retailers that were spot purchasers of motor gasoline from Pedersen, *i.e.*, made only sporadic, discretionary purchases, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able recover the full amount of its purchase price from its customers, including any alleged overcharges included in its costs. *See Vickers* at 85,396–97. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

e. Consignees; Finally, we propose to adopt the presumption that consignees of Pedersen motor gasoline were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Pedersen's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. Non-Presumption Demonstration of Injury; A reseller or retailer that claims a refund in excess of $5,000 will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for each grade of motor gasoline that is purchased from Pedersen. Cost banks should cover the period May 1, 1973, through July 15, 1979, for retailers, and April 30, 1980, for resellers of Pedersen motor gasoline.[4] If a firm no longer has records of contemporaneously calculated cost banks for a particular grade of motor gasoline, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period, November 1, 1973, through July 15, 1979, for retailers and April 30, 1980, for resellers; and

(3) A monthly schedule of the firm's sales of the product during the period November 1, 1973, through July 15, 1979, for retailers and April 30, 1980, for resellers.

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Pedersen were higher than average market prices for the same level of distribution.[5]

[4] We generally require applicants to submit cost banks that continue until a product's price decontrol date. Retailers and resellers of motor gasoline, however, were only required to maintain banks through July 15, 1979, and April 30, 1980, respectively, rather than the January 27, 1981 decontrol date of motor gasoline.

[5] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Pedersen for each grade of motor gasoline during the May 1, 1979 through September 30, 1979 consent order period.

If a reseller or retailer that is eligible for a refund in excess of $5,000 does not submit the cost bank and purchase price information described above, it can still apply for a refund of $5,000, plus accrued interest, using the small claims presumption. If, however, a firm provides the above-mentioned data and we subsequently conclude that the firm should receive a refund of less than the $5,000 small claims threshold, the firm cannot opt for a full $5,000 refund.

III. Applications for Refund

Applications for Refund should not be filed at this time. Before implementing the procedures outlined in this Proposed Decision, we intend to publicize the Decision in order to solicit comments from any interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register**. Comments should be sent to: Pedersen Oil, Inc. Refund Proceeding, Case No. HEF–0147, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Pedersen Oil, Inc. pursuant to the Consent Order executed on October 15, 1981 will be distributed in accordance with the foregoing decision.

Appendix 1

Pedersen Oil, Inc. Case No.: HEF–0147

	Share of settlement [1]
First purchasers:	
Gull Oil Company, 3404 4th Avenue S., Seattle, WA 98134	$5,617.16
Fletcher Oil Company, 471 North Curtis Rd., Boise, ID 83706	90.41
Maxwell Oil Company,[2] 701 S. Plum, Olympia, WA 98507	319.44
Robert Buehler, 1104 N. Callow, Bremerton, WA 98312	115.43
Stann Dunn, 730 Bay Street, Port Orchard, WA 98366	170.86
Earl Fuller, 5686 S.E. Olalla Bursly Road, Olalla, WA 98359	150.57
Time Oil Company, 2737 West Commodore, Seattle, WA 98199	906.67
Hi-way Market, 6230 Bethel Ave. SE., Port Orchard, WA 98366	165.65
Irondale Grocery, Star Rt #1, Port Townsen, WA 98368	213.07
Hank's Grocery, 3629 Shico Way NW., Bremerton, WA 98310	165.74
Doug McGee's Arco, 402 Sleater Kinney Road NE., Olympia, WA 98503	421.00
Mel's Mobil, 140 Highway 101 S., Brinnes, WA 98320	185.74
Nebert Bros., 1233 E. First Street, Port Angeles, WA 98362	20.06
Roy's Auto Specialty, 480 Madison Ave. N. Bambridge Island, WA 98110	105.40
Gene Fetty, Rt #1, Box 11, Port Townsend, WA 98368	856.26
Virgil Robbins, 109 Elma Monte Road, Elma, WA 98541	190.72
Hansville Repair, Rt #2, Box 201, Hansville, WA 98340	135.51
Total	10,534.05

[1] This figure does not include accrued interest.
[2] Last known address: firm is no longer in business.

Appendix 2

Pedersen Oil, Inc. Case No.: HEF–0147

	Share of settlement [1]
First purchasers *addresses unknown:*	
E. Hansen	$498.89
W. Pitt [2]	10.04
Barnards [2]	5.02
Total	511.95

[1] This figure does not include accrued interest.
[2] As explained in the Decision, we do not intend to process claims for less than $15.

[FR Doc. 88–13145 Filed 6–9–88; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3394–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Significance of Food Processing By-products as Contributors to Animal Feed—Phase I—Food Processing Industry Survey. (EPA ICR # 1435).

Abstract: This survey of the food processing industry seeks to learn what percentage of by-products from processed raw agricultural commodities become feed for livestock. Ultimately the Agency will use the survey data to help establish safe tolerance levels for food and feed additives.

Respondents: Food Processors.

Estimated Burden: 7,500 hours.

Frequency of Collection: On occasion.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St. SW., Washington, DC 20460;

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503 (Telephone (202) 395–3084).

Dated: June 2, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–13111 Filed 6–9–88; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3395-1]

Availability of Environmental Impact Statements Filed May 30, 1988 Through June 3, 1988

Responsible Agency: Office of Federal Activities, General Information, (202) 382–5073 or 382–5075.

EIS No. 880173, Final, EPA, VI, Cruz Bay Wastewater Facilities Plan, Development and Evaluation, Construction Grant, St. John, VI, Due: July 11, 1988, Contact: Machael Verbaar, (212) 264–6720.

EIS No. 880174, Draft, FHW, MD, I–695/Baltimore Beltway, US 40 West to MD–170 and MD–295/Baltimore-Washington Expressway, MD–46 to the Baltimore City Line Improvements, Funding and 404 Permit, Baltimore and Anne Arundel Counties, MD, Due: July 25, 1988, Contact: Ronald Carmichael, (301) 962–4010.

EIS No. 880175, Draft, EPA, FL, MXG, Gulf of Mexico Ocean Dredged Material Disposal Site (ODMDS) Designation for Fine Grained Dredged Material from the Pensacola Navy Homeport Project and Other Future Projects, FL, Due: July 25, 1988, Contact: Reginald Rogers, (404) 347–2126.

EIS No. 880176, Draft, BLM, AK, Fortymile River Watershed, Multiple Placer Mining Management Plan, Approval, Implementation and 404 Permit, Upper Yukon-Canada Subregion, AK, Due: August 12, 1988, Contact: Richard Dworsky, (907) 271–3114.

Dated: June 7, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–13150 Filed 6–9–88; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3395-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments; Prepared May 23 through May 27, 1988

Availability of EPA comments prepared May 23, 1988 through May 27, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DA–COE–F32048–Mi, Rating E02, Sault Ste. Marie Federal Facilities, Operation, Maintenance and Minor Improvements, Extension of Operations thru 31 January +2 Weeks and Additional Information, Implementation, Chippewa County, MI.

Summary: EPA has determined that the expected environmental impacts may be adverse and significant. EPA requested additional information on the effects the lengthened season of proposed activities will have on water quality, submerged vegetation, benthic ecosystems, fisheries and deer. In addition, EPA requested information on shoreline erosion, structures, and oil spill frequency and cleanup.

ERP No. DS–FHW–D40050–MD, Rating EC2, Relocated MD–32 Improvements, MD–108 to Pindell School Road, Project Location Reevaluation, Funding and 404 Permit, Howard County, MD.

Summary: EPA has concerns with the impacts to groundwater, farmland, and the W.R. Grace Washington Research Center potential hazardous waste site. EPA recommends that possible impacts to farmland and the potential hazardous waste site be discussed in greater detail in the final EIS. EPA also recommends the installation of groundwater monitoring wells near the study area.

ERP No. D–FHW–K50005–CA, Rating EC2, Twin Bridges Replacement across Chorro Creek, South Bay Boulevard, Funding and 404 Permit, City of Morro Bay, San Luis Obispo County, CA.

Summary: EPA expressed environmental concerns because this document did not discuss the potential impacts of siltation on downstream habitats, especially marsh vegetation. EPA also requests a more specific mitigation plan.

ERP No. D–NPS–L61169–AK, Rating LO, Bering Land Bridge National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: EPA had no objections to the action as described in this document. The proposed action, Alternative 2, would provide reasonable protection for park resources and values while providing flexibility for a variety of uses.

ERP No. D–NPS–L61170–AK, Rating EC2, Yukon-Charley Rivers National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: EPA expressed environmental concerns due to the potential adverse impacts of human activity on the endangered Peregrine falcon. More information was requested on the implementation of human use restrictions in the Peregrine habitat.

ERP No. D–NPS–L61171–AK, Rating LO, Kenai Fjords National Park, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: EPA has no objections to the actions as proposed in this document.

Final EISs

ERP No. F–COE–E36124–KY, Upper Cumberland River Basin Area Flood Damage Reduction Plan, Implementation, Harlan, Baxter, Loyall and Rio Vista Cities, Harlan County, KY.

Summary: EPA feels the comments on the draft EIS are satisfactorily addressed in this document.

Note: The above summary should have appeared in the 6–3–88 FR Notice.

Dated: June 7, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–13151 Filed 6–9–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–00092; FRL–3396–4]

Biotechnology Science Advisory Committee; Subcommittee on Premanufacture Notification Review; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Premanufacture Notification Review. This subcommittee will advise EPA on a premanufacture notification (PMN) submitted to EPA by BioTechnica Agriculture Inc. (BTA), in compliance with the Toxic Substances Control Act (TSCA). The meeting will be open to the public although some parts of the meeting may be closed for discussion of confidential business information.

DATES: The meeting will be held on Thursday, July 14, 1988, from 10 a.m. to 5 p.m Requests to speak at the BSAC Subcommittee meeting and written comments for consideration by the BSAC Subcommittee should be submitted by July 5, 1988.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written comments for consideration by the BSAC Subcommittee and requests to speak at the meeting should be identified with the docket control number "[OPTS–00092]" and should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M St. SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. I (1982)) which requires that timely notice of each meeting of a Federal advisory committee be published in the Federal Register. This notice announces that the EPA will convene a 1-day meeting of the Biotechnology Science Advisory Committee Subcommittee on Premanufacture Notification Review (BSAC Subcommittee) on July 14, 1988.

BTA has voluntarily submitted four PMNs for EPA review under TSCA section 5 as requested in the Agency's June 26, 1986 Statement of Policy (51 FR 23326). The PMN microorganisms are four strains of *Bradyrhizobium japonicum* which have been genetically engineered to carry genes for antibiotic resistance that came from microorganisms in a different genus. BTA plans to conduct small-scale field tests in two locations to evaluate the ability of the genetically engineered *B. japonicum* strains to compete and form nodules on soybean plants. The antibiotic resistance genes will provide a means of monitoring the survival and location of the PMN strains under field conditions.

I. Announcement of the Receipt of Premanufacture Notification

A notice announcing the receipt of the PMNs designated as: P 88–1275, P 88–1276, P 88–1277, and P 88–1278 appeared as part of the weekly notice of PMNs published in the Federal Register of May 26, 1988 (53 FR 19035). These PMNs are the subject of this meeting of the BSAC Subcommittee. Please consult that Federal Register notice for specific information on these PMNs. Copies of the PMN submission are available in the public file identified with the docket control number OPTS–51706, and copies are available on request from the TSCA Assistance Office by calling (202) 554–1404.

II. Purpose of the Meeting

The BSAC Subcommittee will meet to advise EPA in its review of these PMN microorganisms under the authority of section 5 of TSCA. EPA has decided that expert assistance is desirable because risk assessment for genetically modified microorganisms released to the environment is a new area. The current limitations in scientific data on such releases require the Agency to conduct case specific studies. As scientific data on environmental releases becomes available, general principles for review of these releases may be established. Since such principles are not yet established, EPA plans to consult with experts outside the agency during its review of certain PMN microorganisms.

EPA will develop a risk assessment, estimate the benefits associated with the new substances, and reach a regulatory decision. The risk assessment will be based on the advice of the BSAC Subcommittee, the information submitted in the PMN, and other available information. The risk assessment will estimate the benefits associated with field experiments using the PMN microorganisms, and evaluate whether any risk associated with the PMN microorganisms may be unreasonable.

Members of the BSAC Subcommittee will review EPA's draft risk assessment and advise the Agency of their own assessment of the available data on the potential hazards and likely exposures to the PMN microorganisms. The subcommittee members will review any written comments provided by the public in advance of the meeting and will assist in identifying additional information that may be necessary to determine whether the environmental release of the microorganism may present an unreasonable risk to human health or the environment. After this public meeting, EPA may request additional information from the PMN submitter.

EPA has authority to allow manufacture and use, to prohibit release or to impose restrictions on manufacture and use of the PMN microorganisms. EPA has 90 days to review the PMN. The review period may be extended by agreement between BTA and EPA, or unilaterally by EPA under section 5(c) of TSCA. EPA has established a file, OPTS–00092 that specifically concerns this meeting of the BSAC Subcommittee on Premanufacture Notification Review. The risk assessment as well as public comments on the PMN submission will be available in this public docket after July 1, 1988.

III. Public Comment and Participation

The meeting will be open to the public although parts of the meeting may be closed to allow disussion of confidential business information. Members of the BSAC Subcommittee will hear the comments of individuals who have requested the opportunity to speak. EPA will also describe in more detail its approach to risk assessment for these PMN microorganisms.

IV. Subject of the Meeting

The PMN microorganisms being reviewed by EPA are four strains of genetically engineered *Bradyrhizobium japonicum.* BTA has selected two parent strains of *B. japonicum:* USDA 110 and an isolate from a field in Pepin County, Wisconsin. Genes for streptomycin/spectinomycin resistance from *Shigella flexneri* and termination sequences from *Escherichia coli* were genetically engineered into each parent strain resulting in two PMN microorganisms. A different construction using kanamycin/neomycin resistance genes from *Klebsiella pneumoniae* were genetically engineered into each parent strain. As a result, a total of four new microorganisms (containing genetic material from different genera) were created. BTA has conducted research on some of the PMN microorganisms in contained facilities such as laboratories,

growth chambers, and greenhouses, and now wishes to continue its research and development (R&D) activities by conducting small-scale field trials.

There will be two small-scale field trials: (1) To determine the effect of the insertion of marker genes into *B. japonicum* on competition and symbiotic performance under field conditions and (2) to compare different methods of applying *B. japonicum* to soybean seeds. The field trials will be conducted in: (1) A 100 acre field at BTA's Chippewa Agricultural Station near Arkansaw in Pepin County, Wisconsin and (2) a 77 acre field at McAllister Seed Company's facilities near Mount Pleasant in Henry County, Iowa.

The use of these PMN microorganisms which are "marked" with the introduced antibiotic resistance genes will allow BTA to monitor the survival and location of these PMN microorganisms under actual field conditions. These field tests are one step in BTA's attempt to develop strains of *B. japonicum* with an increased ability to convert atmospheric nitrogen to forms of nitrogen utilized by crop plants. The identification of a genomic site suitable for integration of genetic material without affecting normal cell growth or symbiotic function is an important step in developing a commercial product.

BTA has submitted information concerning: the identity of the organism, genetic engineering techniques used, exposure data, human health considerations, the locations of the proposed field test, design and supervision of the tests, methods of application, monitoring and control procedures, and environmental fate and effects.

BTA voluntarily submitted the PMNs on May 3, 1988, although these microorganisms are part of BTA's R&D activities. The company took this action in compliance with EPA's "Statement of Policy" published in the Federal Register of June 26, 1986 (51 FR 23313). In that notice, EPA stated that certain microbial products were subject to TSCA, and requested commercial researchers intending to release new living microorganisms into the environment to report their activities to the Agency, rather than to conduct such activities under the exemption for R&D provided by section 5(h)(3) of TSCA. These microorganisms developed by BTA are subject to PMN requirements, because they contain genetic material from more than one taxonomic genus, and therefore are defined as new microorganisms in the 1986 Statement of Policy.

Dated: June 7, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-13210 Filed 6-9-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400017; FRL-3395-5]

Computer Sciences Corp. Inc.; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Comptuer Sciences Corporation, and their subcontractor, CRC Systems, Incorporated of Fairfax, VA for access to information which has been submitted to EPA under sections 303, 311, 312, and 313 of the Emergency Preparedness and Community Right-to-Know Act of 1986, also known as Title III. Some of the information may be claimed or determined to be trade secret information.

DATE: Access to the trade secret information submitted to EPA will occur no sooner than June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Newburg-Rinn, Acting Chief, Public Data Branch (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G008, 401 M Street SW., Washington, DC 20460, (202-382-3758).

SUPPLEMENTARY INFORMATION: Under the Superfund Amendments and Reauthorization Act of 1986 (SARA), industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA.

Under contract number 68-01-7170, CRC Systems, Incorporated, 11242 Waples Mill Road, Fairfax, VA 22030, as subcontractors to Computer Sciences Corporation, 6100 Gatehouse Road, Falls Chruch, VA, will develop an automated Section 313 Toxic Release Inventory submission form on personal computer diskette as an enhancement to the Section 313 Toxic Release Inventory mainframe computer system. Specifically, CRC Systems Incorporated will analyze the requirements for a TRI automated form, determine the feasibility of modifying existing automated form software and develop and test software for a TRI automated submission form.

In accordance with 40 CFR 2.306(j), EPA has determined that Computer Science Corporation and their subcontractors, CRC Systems, Incorporated will require access to trade secret information under SARA to successfully design and develop an automated TRI form. CRC Systems personnel will be given access to SARA section 313 submissions and related documents. Some of the information may be claimed or may be determined to be trade secret. Personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures.

EPA is issuing this notice to inform all submitters of information under sections 303, 311, 312, and 313 of SARA that EPA may provide Computer Sciences Corporation and their subcontractors, CRC Systems, Incorporated access to these trade secret materials on a need-to-know basis. All access to SARA trade secret information under this contract will take place at the Title III Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, Computer Sciences Corporation will return all materials to EPA.

Clearance to access to SARA trade secret information under this contract is scheduled to expire on September 30, 1990.

Dated: May 30, 1988

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-13113 Filed 6-9-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400016; FRL-3395-4]

Planning Research Corp.; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Planning Research Corporation, and their subcontractors, Sycom, Incorporated of Chantilly, VA for access to information which has been submitted to EPA under sections 303, 311, 312, and 313 of the Emergency Preparedness and Community Right-to-Know Act of 1986, also know as Title III. Some of the information may be claimed or determined to be trade secret information.

DATE: Access to the trade secret information submitted to EPA will occur no sooner than June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Newburg-Rinn, Acting Chief, Public Data Branch (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G008, 401 M Street SW., Washington, DC 20460, (202-382-3758).

SUPPLEMENTARY INFORMATION: Under the Superfund Amendments and Reauthorization Act of 1986 (SARA), industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA.

Under contract number 68-01-7361, Sycom Incorporated, 14532 Lee Road, Chantilly, VA 22021, as subcontractor to Planning Research Corporation, will assist the Office of Toxic Substances, Information Management Division in design, development, implementation, and maintenance of the Toxic Chemical Release Inventory data base in response to the requirements of sections 303, 311, 312, and 313 of SARA. Specifically, Sycom, Incorporated will establish and maintain a data base, called the Toxic Chemical Release Inventory, and an associated document tracking system for the purpose of electronically storing data collected by the EPA in accordance with the requirements of SARA, Title III section 313.

In accordance with 40 CFR 2.306(j), EPA has determined that Sycom, Incorporated will require access to trade secret information under SARA to successfully test and maintain the Title III document tracking system and Toxic Chemical Release Inventory data base. For example, Sycom Incorporated personnel will be given access to SARA sections 303, 311, 312, and 313 submissions and related documents. Some of the information may be claimed or may be determined to be trade secret. Personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures.

EPA is issuing this notice to inform all submitters of information under sections 303, 311, 312, and 313 of SARA that EPA may provide Sycom, Incorporated access to these trade secret materials on a need-to-know basis. All access to SARA trade secret information under this contract will take place at the Title III Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, Sycom, Incorporation will return all material to EPA.

Clearance to access to SARA trade secret information under this contract is scheduled to expire on September 30, 1991.

Dated: May 30, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-13114 Filed 6-9-88; 8:45 am]

BILLING CODE 6560-50-M

NE-G008, 401 M Street SW., Washington, DC 20460, (202-382-3758).

SUPPLEMENTARY INFORMATION: Under the Superfund Amendments and Reauthorization Act of 1986 (SARA), industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA.

Under contract number 68-01-7361, Sycom Incorporated, 14532 Lee Road, Chantilly, VA 22021, as subcontractor to Planning Research Corporation, will assist the Office of Toxic Substances, Information Management Division in design, development, implementation, and maintenance of the Toxic Chemical Release Inventory data base in response to the requirements of sections 303, 311, 312, and 313 of SARA. Specifically, Sycom, Incorporated will establish and maintain a data base, called the Toxic Chemical Release Inventory, and an associated document tracking system for the purpose of electronically storing data collected by the EPA in accordance with the requirements of SARA, Title III section 313.

In accordance with 40 CFR 2.306(j), EPA has determined that Sycom, Incorporated will require access to trade secret information under SARA to successfully test and maintain the Title III document tracking system and Toxic Chemical Release Inventory data base. For example, Sycom Incorporated personnel will be given access to SARA sections 303, 311, 312, and 313 submissions and related documents. Some of the information may be claimed or may be determined to be trade secret. Personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures.

EPA is issuing this notice to inform all submitters of information under sections 303, 311, 312, and 313 of SARA that EPA may provide Sycom, Incorporated access to these trade secret materials on a need-to-know basis. All access to SARA trade secret information under this contract will take place at the Title III Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, Sycom, Incorporation will return all material to EPA.

Clearance to access to SARA trade secret information under this contract is scheduled to expire on September 30, 1991.

Dated: May 30, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-13116 Filed 6-9-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service; Planning Subcommittee; Meeting

1. The Planning Subcommittee will hold its fifth meeting on: June 28, 1988, 9:30 a.m., 1919 M Street NW., Washington, DC 20554, Room 856.

2. The purpose of this meeting is to review the working parties' reports and the Chairman's report to the Advisory Committee and to discuss future work.

3. The agenda of the meeting is as follows:

a. Call to order by the chairman
b. Adoption of the minutes of the fourth meeting
c. Review and discussion of the final reports of each Working Party and Advisory Group Chairman
d. A review of the Interim Report submitted to the FCC
e. Further work to be performed by the Planning Subcommittee
f. Other business
g. Date and location of next meeting

4. This meeting is open to the public.

5. Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Chairman.

6. For further information please contact:

Chairman J.A. Flaherty, (212) 965-2213, or William Hassinger, (202) 632-6460.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-1305 Filed 6-9-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1732]

Petitions for Reconsideration and Applications for Review of Actions in Rule Making Proceedings

June 3, 1988.

Petitions for reconsideration and applications for review have been filed in the Commission rule-making proceeding listed in this Public notice and published pursuant to 47 CFR 1.429(e). The full text of these document are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed June 27, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Santa Isabel, Puerto Rico and Christiansted, Virgin Islands) (MM Docket No. 85-211, RM-4740) Number of petitions received: 2.

Subject: Amendment of Part 74 of the Commission's Rules to Provide for Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators, (MM Docket No. 86-112, RM-5219) Number of petitions received: 3.

Subject: Amendment of § 73.606(b), Table of Allotments, TV Broadcast Stations. (Grand Junction, Colorado) (MM Docket No. 86-148, RM-4931) Number of petitions received: 1.

Application for Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Atlanta, Texas) (MM Docket No. 86-87, RM-5094) Number of applications received: 1.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-13052 Filed 6-9-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[Notice No. 3, June 7, 1988]

Federal Savings and Loan Advisory Council Meeting

AGENCY: Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

DATE(S):

June 21, 1988, 9:00 a.m.-5:00 p.m.
June 22, 1988, 9:00 a.m.-11:30 a.m.

ADDRESS: Hotel Washington, 15th and Pennsylvania Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: John M. Buckley, Jr. (202) 377-6577, Debra J. Ahearn (202) 377-6824.

SUPPLEMENTARY INFORMATION:

Proposed agenda:

1. Thrift Industry concerns
2. Major Legal Issues
3. Emerging Issues for the Thrift Industry

4. Investment Banking and Thrift Institutions

John M. Buckley, Jr.,
Secretary.
[FR Doc. 88-13177 Filed 6-8-88; 10:05 am]
BILLING CODE 6720-10-M

Larue Federal Savings and Loan Association, Hodgenville, KY; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5 (d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for LaRue Federal Savings and Loan Association, Hodgenville, Kentucky, on June 3, 1988.

Dated: June 6, 1988.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-13070 Filed 6-9-88; 8:45 am]
BILLING CODE 6725-01-M

North America Savings and Loan Association, a Federal Savings and Loan Association, Costa Mesa, CA; Appointment Of Receiver

Notice is hereby given that pursuant to the authority contained in section 5 (d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for North America Savings and Loan Association, A Federal Savings and Loan Association, Costa Mesa California on June 3, 1988.

Dated: June 6, 1988.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-13071 Filed 6-9-88; 8:45 am]
BILLING CODE 6725-01-M

[No. AC-718]

First Empire Federal Savings & Loan Association, Charleston, WV; FHLLB No. 3216; Final Action; Approval of Conversion Application

Date: May 20, 1988.

Notice is hereby given that on May 17, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Empire Federal Savings and Loan Association, Charleston, West Virginia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-13072 Filed 6-9-88; 8:45 am]
BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

[Petition No. P5-88]

Matson Navigation Co., Inc.; Application for Section 35 Exemption; Filing

Notice is given that Matson Navigation Company, Inc. ("Matson") has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a. Specifically, Matson seeks an order from the Federal Maritime Commission exempting Matson from compliance with the provisions of section 2, Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844 and the Commission's rules in 46 CFR 550.3 (f) and 550.3 (o) so that Matson may file (1) on not less than one day's notice new or reduced rates (other than general rate decreases or "across the board" decreases) and (2) on not less than seven working days notice increases in rates (other than general rate increases or "across the board" increases), for rate items listed in Matson's tariffs in the trade between the United States Pacific Coast and Hawaii.

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than July 15, 1988. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on David F. Anderson, Associate General Counsel, Matson Navigation Company, Inc., Post Office Box 7452, San Francisco, California 94120.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street NW., Room 11101.

Tony P. Kominoth,
Assistant Secretary.
[FR Doc. 88-13135 Filed 6-9-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Marilyn N. Bateman

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 24, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Marilyn N. Bateman,* Sumner, Washington; to acquire up to 16.9 percent of the voting shares of Valley Bancorporation, Sumner, Washington, and thereby indirectly acquire Bank of Sumner, Sumner, Washington.

2. *Michael J. Corliss,* Seattle, Washington; to acquire 16.9 percent of the voting shares of Valley Bancorporation, Sumner, Washington, and thereby indirectly acquire Bank of Sumner, Sumner, Washington.

Board of Governors of the Federal Reserve System, June 6, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-13035 Filed 6-9-88; 8:45 am]
BILLING CODE 6210-01-M

Bankshares Corp. of Niceville, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 1, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Bankshares Corporation of Niceville,* Niceville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples National Bank of Niceville, Niceville, Florida.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Vista Bancorporation,* Van Buren, Arkansas; to become a bank holding company by acquiring at least 61.59 percent of the voting shares of Citizens Bank and Trust Company, Van Buren, Arkansas.

Board of Governors of the Federal Reserve System, June 6, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-13036 Filed 6-9-88; 8:45 am]
BILLING CODE 6210-01-M

F & M Bank Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *F & M Bank Corp.,* Timberville, Virginia; to engage *de novo* through its subsidiary, TEB Life Insurance Company, Timberville, Virginia, in the reinsurance of credit life and accident and health insurance presently being sold by Farmers & Merchants Bank, the wholly-owned subsidiary of F & M Bank Corp., and F & M Bank Corp. in connection with their extensions of credit pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Timberville, Virginia, the surrounding areas of Rockingham and Shenandoah County, Virginia, and the southern portion of Hardy County, West Virginia, the Elkton area and the southern portion of Page County, Virginia.

B. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community Bankshares, Inc.,* Cornelia, Georgia; to engage *de novo* through its subsidiary, Community Family Credit, Inc., Cornelia, Georgia, in making, acquiring, or servicing loans or other extensions of credit for its account or for the account of others, such as would be made by a consumer finance or a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Georgia.

Board of Governors of the Federal Reserve System, June 6, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-13037 Filed 6-9-88; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Mental Health Council; Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Cancellation of meeting notice.

SUMMARY: Public notice was given in the Federal Register on May 11, 1988, Volume 53, No. 91, on Page 16784 that the National Advisory Mental Health Council, NIMH, would meet on June 13 at 9:00 a.m. in the Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857. This meeting has been cancelled.

Date: June 6, 1988.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 88-13192 Filed 6-9-88; 8:45 am]
BILLING CODE 4160-20-M

Centers for Disease Control

Committees; Establishment Renewal, Termination, etc.; AIDS Prevention Advisory Committee

ACTION: Notice of establishment—CDC AIDS Prevention Advisory Committee.

Pursuant to Federal Advisory Committee Act, 5 U.S.C., Appendix 2, the Centers for Disease Control (CDC) announces the establishment by the Secretary of Health and Human Services, on May 11, 1988, of the following Federal advisory committee:

Designation: CDC AIDS Prevention Advisory Committee.

Purpose: This Committee will advise the Director, CDC, regarding objectives, strategies, and priorities for AIDS

prevention efforts including maintaining surveillance of AIDS and HIV infection, the epidemiologic and laboratory study of AIDS and HIV, information/education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Authority for this Committee will expire May 11, 1990, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: June 6, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-13063 Filed 6-9-88; 8:45 am]

BILLING CODE 4160-18-M

National Institute for Occupational Safety and Health Board of Scientific Counselors; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors (BSC).

Date: June 28-29, 1988.

Place: Auditorium A, Centers for Disease Control, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Time and Type of Meeting:

Open 9 a.m.-5 p.m., June 28.

Open 8:30 a.m.-12 noon, June 29.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, BSC, NIOSH, CDC, 1600 Clifton Road NE., Atlanta, Georgia 30333. Telephone: Commercial: (404) 639-3343, FTS: 236-3343.

Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, an overview of NIOSH, a discussion of the function of the Board, review of past Board activities, and current and planned activities for the Board.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: June 6, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-13062 Filed 6-9-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committee; Amendment of Meeting Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is amending a public advisory committee meeting notice of the General and Plastic Surgery Devices Panel to reflect an addition to the open committee discussion agenda. Notice of the June 24, 1988, meeting was published in the **Federal Register** of May 20, 1988 (53 FR 18162).

SUPPLEMENTARY INFORMATION: In FR Doc. 88-11381, appearing at page 18162 in the **Federal Register** of May 20, 1988, a change is made under the heading "General and Plastic Surgery Devices Panel." On page 18162, second and third columns, the *Open committee discussion* paragraph is revised to read as follows:

Open Committee Discussion

The committee will discuss premarket approval applications (PMA's) for a collagen device for temporary embolization and a polypropylene suture. The committee may discuss a PMA for a biosynthetic temporary skin substitute and a nylon suture, and may also discuss a reclassification petition for nonabsorbable polyamide surgical sutures (Docket No. 88P-0136).

Dated: June 3, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-13055 Filed 6-7-88; 11:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Boston District Office, chaired by E.J. McDonnell, District Director. The topic to be discussed is health messages on food labeling.

DATE: Tuesday, June 21, 1988, 10 a.m. to 12 p.m.

ADDRESS: Superior Court, Room 11/12, Route 6A, Barnstable, MA 02630.

FOR FURTHER INFORMATION CONTACT: Paula Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Avenue, Stoneham, MA 02180, 617-279-1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: June 3, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-13057 Filed 6-9-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Medicare Physician Identification and Eligibility System (MPIES)," HHS/HCFA/BPO No. 09-70-0525. We have provided background information about the proposed system in the "**SUPPLEMENTARY INFORMATION**" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See date section for comment period.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on June 7, 1988. The new system of records will become effective August 9, 1988, unless HCFA receives comments which would necessitate alterations to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room C-M-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Phillip Brown, Division of Operational Initiatives, Office of Program Administration, Bureau of Program Operations, Health Care Financing Administration, Room 367 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301-966-7156.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records and to collect data under the authority of section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272) which mandates that: "The Secretary of Health and Human Services shall establish a system, for implementation not later than July 1, 1987, which provides for a unique identifier for each physician who furnishes services for which payment may be made under Title XVIII of the Social Security Act." Because the deadline could not be met, HCFA requested and received an extension of the implementation date to October 1, 1988.

HCFA has decided to identify physicians with a system comprised of unique physician identification numbers (UPIN) and records entitled Medicare Physician Identification and Eligibility Records (MPIER). The UPIN is comprised of a combination of six letters and numbers. The MPIER is the physician record established with the data collected. The UPIN is affixed to the MPIER. HCFA will establish a Registry to assign a UPIN to each physician who wishes to provide services under Medicare. The Registry will be responsible for maintaining physician data, as well as assigning the UPIN.

Enrollment information will be obtained from data currently available in the carrier's system. This data will be submitted to each related individual physician for verification and signature before submission to HCFA for assignation of an identifier. Duplicate data for two or more physicians will be investigated by the carrier to determine if the identified physicians are the same, or different individuals. Once assured of no duplication, HCFA will notify the carrier of the appropriately assigned UPIN. The carriers will issue the UPINs to the physicians.

Aside from the enrollment data, the MPIES and carrier's systems will enable HCFA to determine whether a physician, whose services are billed to the program, is entitled to Medicare reimbursement. The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility criteria, inasmuch as the information is collected for administering payments to physicians in accordance with Title XVIII of the Social Security Act. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: June 2, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0525

SYSTEM NAME:

Medicare Physician Identification and Eligibility System (MPIES) HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration (HCFA) (Paper Media), 6325 Security Boulevard Baltimore, Maryland 21207. (Contact system manager for location of Magnetic Media computerized records.) Medicare Carriers (See Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All physicians, as defined by section 1861(r) of Title XVIII of the Social Security Act, who request and/or receive Medicare reimbursement for their medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains a unique physician identification number (UPIN) for each physician and information concerning a physician's birth, residence, medical education, and eligibility information for Medicare reimbursement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9202(g) of Pub. L. 99-272; 1832(a)(2) (B)(i) and (F); 1833(a)(1) (C) and (G); 1842(a)(1), (b)(3)(B)(ii), (b)(3)(D), (b)(3)(E), (b)(4)(D)(iii), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (h)(1), (h)(4), (h)(5), and (j); 1861 (q), (r), (s)(1) and (aa)(1)(A); and 1862 of Title XVIII of the Social Security Act.

PURPOSE OF THE SYSTEM:

To maintain unique identification of each physician requesting and/or receiving Medicare reimbursement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

(2) A congressional office from the record of an individual physician in response to an inquiry from the congressional office at the request of that individual physician.

(3) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(4) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(5) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) The Department of Health and Human Services (HHS), or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or

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the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(6) The Department of Justice for investigation and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) State Licensing Boards for review of unethical practices or nonprofessional conduct.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved alphabetically by the physicians' name or by their UPIN.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with HHS *ADP Systems Manual*, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are retained indefinitely, except in the instance of a physician's death, in which case HCFA would retain such records for a 10 year period following the physician's death.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Room 300 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the physician's name, date of birth, and medical school.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURE:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it; e.g., why it is inaccurate, irrelevant, incomplete or not current. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from carriers (which verify the data with the individual physician concerned). Information in these records concerning physicians' eligibility for Medicare reimbursement is obtained either directly or through Medicare Regional Offices, contractors, and PROs; from the Department of Justice; State or local judicial systems; medical licensing and certification agencies or organizations; and medical societies and associations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35296
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 6320 Craig Street, Suite 100, Indianapolis, Indiana 46250-0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue, Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government, Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michighan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 506, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Sequros de Servicio de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico 00936-3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083-3815,
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monone, Wisconsin 53713

[FR Doc. 88-13045 Filed 6-9-88; 8:45 am]
BILLING CODE 4120-03-M

National Institutes of Health

National Cancer Institute; Open Meeting; Cancer Therapeutics Program Project Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, on August 9-10, 1988, Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public on August 9 from 8 a.m. to 8:30 a.m., to review adminsitrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in §§ 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and § 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 9 from 8:30 a.m. to adjournment on August 10 for the review, discussion and evaluation of individual program project applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitue a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Dr. Philip L. Perkins, Executive Secretary, Westwood Building, Room 820, Bethesda, Maryland 20892 (301/496-2330) will provide substantive program information.

Dated: June 2, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-13116 Filed 6-9-88; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Open Meeting of Allergy and Clinical Immunology Subcommittee Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee, and its subcommittees on June 23, 1988, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 10:10 a.m. on June 23, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in § 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and § 10(d) of Pub. L. 92-463, the meeting of the Allergy and Clinical Immunology Subcommittee and the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10:10 a.m. on June 23, until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301-496-7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 2, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-13117 Filed 6-9-88; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Open Meeting of Clinical Applications, Prevention and Treatment Subcommittee, Epidemiology and Technology Transfer Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications, Prevention and Treatment Subcommittee, and the Epidemiology and Technology Transfer Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on June 27-30, 1988, in Conference Room 6, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:10 a.m. on June 27 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in §§ 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and § 10(d) of Pub. L. 92-463, the meeting of the Clinical Applications, Prevention and Treatment Subcommittee, and the Epidemiology and Technology Transfer Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:10 a.m. until recess on June 27, from 8:30 a.m. until recess on June 28, from 8:30 a.m. until recess on June 29, and from 8:30 a.m. until adjournment on June 30.

These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and

personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. James A. Ferguson, Acting Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 704, Bethesda, Maryland 20892, telephone (301–496–7630), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 2, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-13118 Filed 6-9-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1812]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposals by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submissions; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

AUTHORITY: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 3, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Enterprise Zone Development.
Office: Community Planning and Development.
Description of the Need for the Information and its Proposed Use: This program allows HUD to designate up to 100 Federal enterprise zones in communities that indentify areas meeting certain statistical distress criteria. The designated zones will receive coordinated local, State, and Federal attention to further their economic development. Information collected will be used to make zone designations and provide program progress reports required in the statute.
Form Number: HUD–40003.
Respondents: State or Local Governments.
Frequency of Responses: Annually.
Estimated Burden Hours: 4,650.
Status: New.
Contact: Michael T. Savage, HUD, (202) 755–6587, John Allison, OMB, (202) 395–6880.

Date: May 31, 1988.

Proposal: Lead-Based Paint Hazard Elimination in Public Housing.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: Section 566 of the Housing and Community Development Act of 1987 amends Section 302 of the Lead-Based Paint Poisoning Prevention Act to require Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to maintain records on tenant and purchaser notification, testing by location, and abatement by location and method. The PHAs and IHAs are also required to provide tenants and purchasers a copy of all positive lead-based paint test results.
Form: None.
Respondents: State or Local Governments and Non-profit Institutions.
Frequency of Respondents: Recordkeeping and On Occasion.
Estimated Burden Hours: 453,325.
Status: Revision.
Contact: Thomas Sherman, HUD, (202) 755–5830, John Allison, OMB, (202) 395–6880.

Date: May 31, 1988.

Proposal: Management Review Report, Continuation Sheet, and Management Review.
Office: Housing.
Description of the Need for the Information and its Proposed use: The information is needed by HUD to conduct on-site reviews of project operations. HUD uses the information colleted to evaluate the quality of project management, determine the causes of project problems, and devise corrective actions to stabilize projects and prevent defaults.
Form Number: HUD–9834, 9834A, and 9834B.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 4,480.
Status: Reinstatement.
Contact: Judith L. Lemeshewsky, HUD, (202) 426–3944, John Allison, OMB, (202) 395–6880.

Date: June 2, 1988.

[FR Doc. 88-13148 Filed 6-9-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting of FWS Migratory Bird Regulations Committee

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee will meet to review preliminary information on the status of waterfowl on the breeding grounds and the status of other migratory birds in 1988.

DATE: June 21, 1988.

ADDRESS: The meeting will be held in the North Penthouse, Room 8068, Main Interior Building, 18th and C Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone AC 202–254–3207.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, DC on June 21 at 8:30 a.m. in the North Penthouse, Room 8068, Main Interior Building to receive and consider staff reports on the 1988 status of migratory birds.

The reports will include preliminary waterfowl breeding population estimates, pond indexes, and other information on habitat conditions on the breeding grounds. The status of other migratory birds will be reviewed as is usual at the early season regulations meeting. The primary purpose of opening the meeting to the Consultants and others is to provide all interested parties with preliminary information about the impact of continuing drought conditions on prairie and parklands breeding habitats. Additional information and a more complete assessment of 1988 conditions will be presented to the Committee at the regularly scheduled waterfowl status meeting to be held in Denver, Colorado on July 25, 1988. The status of other migratory birds will also be reviewed and regulations recommendations developed.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, this meeting will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Date: June 7, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-13201 Filed 6-9-88; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[OR-080-84-6332-02; GP8-154]

Off-Road Vehicle Designations; Salem District, OR

June 2, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision.

SUMMARY: All public lands administered by the Bureau of Land Management in the 404,000-acre Westside and Eastside Planning Areas, Salem District, Oregon, are hereby designated as open, limited or closed to off-road motorized vehicle use.

The 404,000 acres affected by the designations are scattered throughout a 13-county area in western Oregon comprising the Bureau of Land Management's Alsea, Clackamas, Santiam, Tillamook and Yamhill Resource Areas. The open, limited and closed designations are the result of land-use decisions made in the Westside Salem and Eastside Salem Management Framework Plans (MFP) approved September 9, 1983, and September 30, 1983, respectively. Comments received from public meetings and numerous written responses on the draft MFP documents were considered in the decisionmaking process.

All designations are final as published today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals. These designations will remain in effect until rescinded to modified by the Salem District Manager.

A. Open Designations

Areas which are designated open comprise 344,100 acres of public land (85 percent of the two planning areas). An open designation was determined appropriate for these lands since off-road motorized vehicle use is: (1) A legitimate recreational activity; (2) essential to the conduct of authorized uses other than recreation; and (3) not expected to adversely affect natural, scenic or cultural resources.

B. Limited Designations

Areas which are designated limited comprise 50,461 acres of public land (13 percent of the two planning areas). These areas are:

1. Developed Recreation Sites—16 sites totaling 845 acres. Motorized vehicle use is limited to designated roads.

2. Areas of Critical Environmental Concern—nine areas totaling 9,040 acres. Motorized vehicle use is limited to existing roads.

3. Visual Resource Management Class II Areas—scattered parcels totaling 15,700 acres. Motorized vehicle use is limited to existing roads and trails.

4. Older Forest Retention Areas—scattered parcels totaling 17,700 acres. Motorized vehicle use is limited to existing roads and trails.

5. Wildlife Areas—scattered parcels totaling 7,176 acres. Motorized vehicle use is precluded annually from August 1 through the closing date of Oregon's Roosevelt elk hunting season (usually in November) in the Slick Rock-Warnick Creek and Homestead Tie Road areas.

C. Closed Designations

Areas which are designated closed comprise 9,439 acres of public land (two percent of the two planning areas). These areas are:

1. Table Rock Wilderness—a designated Wilderness totaling 5,750 acres.

2. Pacific City Municipal Water Supply—an area totaling 80 acres.

3. Areas of Critical Environmental Concern—12 areas totaling 3,609 acres including:

a. Big Canyon (280 acres)
b. Carolyn's Crown (280 acres)
c. Grass Mtn. (730 acres)
d. High Peak-Moon Creek (1,525 acres)
e. Litle Grass Mtn. (42 acres)
f. Little Sink (80 acres)
g. Lost Prairie (60 acres)
h. Marys Peak (105 acres)
i. Saddleback Mtn. (135 acres)
j. Sheridan Peak (305 acres)
k. The Butte (40 acres)
l. Valley of the Giant (47 acres)

Expect for the Tillamook Resource Area, maps showing the location of all areas within the Westside and Eastside Planning Areas designated as either closed or limited to off-road motorized vehicle use are available for public

review at the Salem District Office, 1717 Fabry Road SE., Salem, OR 97306, Tel: (503) 399–5646. Maps covering designations in the Tillamook Resource Area are available for public review at the Tillamook Resource Area Headquarters, 6615 Officers Row, Tillamook, OR 97141, Tel: (503) 842–7546.

Van W. Manning,
District Manager.

[FR Doc. 88–13105 Filed 6–9–88; 8:45 am]
BILLING CODE 4310–33–M

[CA–060–08–4212–14; CA–21592]

California Desert District, Noncompetitive Sale of the United States Reversionary Interest in the Title to Recreation and Public Purposes Act Patent, Morongo Sanitary Landfill, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Noncompetitive (Direct) Sale of Reversionary Clause in Recreation and Public Purposes Act Patent 1230733.

SUMMARY: The United States reversionary interest in the title to the following described lands has been determined to be suitable for disposal under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

San Bernardino Meridian, California

T. 1 S., R. 4 E.,
Sec. 27: E½SW¼NW¼, S½NW¼SW¼ NW¼, SW¼SW¼NW¼, SE¼NW¼;
containing 75.00 acres.

These lands were conveyed to the County of San Bernardino by Patent 1230733 (February 5, 1963) pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869, *et seq.*). In accordance with the approved plan of development, a condition of the patent, the County of San Bernardino operates and maintains the Morongo sanitary landfill site on the lands.

The United States interest to be conveyed to the County of San Bernardino will consist of all provisions of Patent 1230733 which provide for (1) review and modification of charges for entrance to or use of the land or facilities thereon, and (2) reversion of title to the United States for any reason including but not limited to noncompliance with the approved plan of development, transfer of title or control of the lands by the patentee, and changes in land use by the patentee. All other existing patent terms, conditions and reservations not related to the United States interest to be conveyed will remain in effect.

The United States reversionary interest in Patent 1230733 is being offered at direct sale to the County of San Bernardino. The sale will be made on or about August 22, 1988. The appraised value of the remaining United States interest is 750 dollars. Sale of the reversionary interest is consistent with land use planning decisions and existing policy. There is no conflict with State or local plans and zoning. The public interest would be served by completing the sale.

Additional information concerning the sale is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619–256–3591) and the California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District at the above address. In the absence of any objections, this realty action shall become the final determination of the Department of the Interior, and the required payment requested from the County of San Bernardino. Such payment in full shall be in accordance with 43 CFR 1822.1–2.

Date: June 2, 1988.

E. Vernon Stephens,
Acting District Manager.

[FR Doc. 88–13043 Filed 6–9–88; 8:45 am]
BILLING CODE 4310–40–M

[OR 44113]

Realty Action: Notice of Direct Sale Benton County, Oregon

June 2, 1988.

AGENCY: Bureau of Land Management, Interior; [(OR–060–08–4212–14: GP8–153)]

ACTION: Notice of Realty Action.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of section 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2050; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the fair market value:

Willamette Meridian, Oregon,

T. 14 S., R. 5 W.,
Sec. 18, Lot 1.
Containing 0.72 acre in Benton County, Oregon.

The land has not yet been appraised. Anyone wishing to know appraised value may inquire at the address shown below.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from appropriation under the public land laws, including the mining laws except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The parcel is difficult and uneconomic to manage as a part of the public lands and is not suitable for management by another Federal department or agency. The parcel is suitable for agricultural production and has been thought to be in private ownership for many years. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered to Charles F. and Esther M. Jensen, and Prince V. and Irene M. Baker, using direct sale procedures authorized under 43 CFR 2711.3–3. The parcel will be sold to Charles F. Jensen, et al., at fair market value without competitive bidding. The land will be conveyed subject to a reservation to the United States for rights-of-way for ditches or canals under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Detailed information concerning the sale is available for review at the Salem District Office.

For a period of 45 days from the data of publication of this notice, interested parties may submit comments regarding the proposed sale of the land to the Alsea Area Manager, 1717 Fabry Road SE., Salem, OR 97306. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this action will become the final determination of the Department of the Interior.

Paul Jeske,
Acting Alsea Area Manager.

[FR Doc. 88–13042 Filed 6–9–88; 8:45 am]
BILLING CODE 4310–33–M

[NV–920–07–4133–12]

Review of Mineral Reports on WSAs; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the availability of 25 mineral surey reports produced by the U.S. Gelogoical Survey/U.S. Bureau of Mines on 26 Bureau of Land Management Wilderness Study Areas (WSAs) in Nevada. Announcement of a 60-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94–579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain Bureau of Land Management (BLM) WSAs to determine the mineral values, if any, that may be present. In Nevada, 25 new reports on WSAs have been completed. This is the second set of reports to be released. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on the WSAs. New public comment information/data will be screened by the BLM. The State Director of that agency may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

DATES: The public review of the 25 mineral survey reports named in this notice shall begin on June 15, 1988, and shall continue for 60 days (August 15, 1988).

ADDRESS: All data and written comments should be directed to the State Director (NV–920), Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520. Copies of 23 bulletins may be purchased from: Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80255. One report is available through the U.S. Geological Survey's Map Distribution section and one report is available only through the Bureau at the Reno address noted below.

FOR FURTHER INFORMATION CONTACT: Jack Crowley, Minerals Division, (702) 784–5138, or Dave Wolf, Wilderness Coordinator, (702) 785–5748, Nevada State Office, Bureau of Land Management, P.O. Box. 12000, 850 Harvard Way, Reno, Nevada 89520.

SUPPLEMENTARY INFORMATION: The 25 mineral reports available for review and for purchase are listed below. The price noted on bulletins is that charged by the Books and Open-File Reports Section, U.S. Geological Survey (303–276–7476) and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

High Rock Lake WSA, Humboldt County (USGS 1707–A). $1.25.
East Fork High Rock Canyon WAS, Humboldt and Washoe Counties (USGS 1707–B). $1.25.
Little High Rock Canyon WSA, Humboldt and Washoe Counties (USGS 1707–C). $1.25.
High Rock Canyon WSA, Washoe County (USGS 1707–D). $1.25.
Bluebell and Goshute Peak WSAs, Elko County (USGS 1725–C). $3.50.
Rough Hills WSA, Elko County (USGS 1725–D). $1.25.
Goshute Canyon WSA, Elko and White Pine Counties (USGS 1725–E). $1.50
Blue Lakes WSA, Humboldt County (USGS 1726–D) $1.50.
Black Rock Desert WSA, Humboldt County (USGS 1726–E) $1.50.
Desatoya Mountains WSA, Churchill and Lander Counties (USGS 1727–A) $1.50.
Clan Alpine Mountains WSA, Churchill County (USGS 1727–B) $1.50.
Mount Grafton WSA, Lincoln and White Pine Counties (USGS 1728–F) $2.00.
South Pahroc Range WSA, Lincoln County (USGS 1729–A) $1.25.
Mormon Mountains WSA, Lincoln County (USGS 1729–B) $1.50.
Meadow Valley Range WSA, Lincoln and Clark Counties (USGS 1729–C) (price to be set).
Mount Stirling WSA, Clark and Nye Counties (USGS 1730–B) $1.50.
Blue Eagel WSA, Nye County (USGS 1731–D) $1.25.
Antelope WSA, Nye County (USGS 1731–E) $1.75.
Park Range WSA, Nye County (USGS 1731–F) $1.25.
Silver Peak WSA, Esmeralda County (USGS 1731–G) $1.50.
Riordans Well WSA, Nye County (USGS 1731–H) $3.25.
North Fork of the Little Humboldt River WSA, Humboldt County (USGS 1732–A) $1.00.
Little Humboldt River WSA, Elko County (USGS 1732–B) $2.00.
Muddy Mountains WSA, Clark County (USGS MF–171458–C) $1.50.[1]
Pine Creek (Red Rocks Escarpment) WSA, Clark County (USGS MF–1522) $5.00.[2]

[1] Available from USGS Map Distribution Section.
[2] Available from BLM Nevada State Office, Reno, NV. USGS out-of-print.

The reports are also available for review in the offices of the BLM in Nevada. Those are in Reno, Elko, Winnemucca, Carson City, Ely, Las Vegas, Battle Mountain, Caliente and Tonopah. Libraries with copies include the Nevada State Library in Carson City; the Government Documents Section of the University of Nevada, Las Vegas, Library; and the Mines Library of the University of Nevada, Reno. Community libraries which have been sent copies are located in the following Nevada cities: Fallon, Minden, Elko, Winnemucca, Pioche, Yerington, Hawthorne, Lovelock, Ely, Austin, Eureka, Caliente, Tonopay, Pahrump, Goldfield and Battle Mountain. Upon receipt of additional mineral survey reports on Nevada WSAs, additional comment periods will be held.

Date: June 1, 1988.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 88–13106 Filed 6–9–88; 8:45 am]
BILLING CODE 4310–HC–M

Minerals Management Service

Development Operations Coordination Document; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company U.S.A., Unit Operator of the Mississippi Canyon Block 280 Federal Unit Agreement No. 14–08–0001–20235, has submitted a DOCD describing the activities it proposes to conduct on the Mississippi Canyon Block 280 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on June 1, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and

Unitization Section; Unitization Unit; Telephone (504) 736–2860.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 3, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–13107 Filed 6–9–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1619, Block 93, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on June 2, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53685). Those practices and procedures are set in revised § 250.34 of Title 30 of the CFR.

Date: June 3, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–13108 Filed 6–9–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1666 and 1667, Blocks 289 and 290, respectively, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATES: The subject DOCD was deemed submitted on June 3, 1988. Comments must be received on or before June 27, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 3, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–13109 Filed 6–9–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, Telephone 202–395–7313.

Title: Park Use Survey—Craters of the Moon N.M., Bryce Canyon N.P., Glen Canyon N.R.A., Denali, N.P.

Abstract: Results of the surveys will be used in operational, planning and management activities designed to support actual public use activities and needs

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Individuals and Households

Annual Responses: 2,200

Annual Burden Hours: 352

Bureau Clearance Officer: Russell K. Olsen, 523–5133

Russell K. Olsen,

Chief, Administrative Service Division.

[FR Doc. 88–13023 Filed 6–9–88; 8:45 am]

BILLING CODE 4310–88–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: June 7, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) and (2) Farmland Foods, Inc., P.O. Box 7527, Kansas City, MO 64116;
(3) P.O. Box 403, Denison, IA 51442;
(4) Richard T. Porath or William J. Wall, P.O. Box 403, Denison, IA 51442.

Noreta R. McGee,

Secretary.

[FR Doc. 88–13073 Filed 6–9–88; 8:45 am]

BILLING CODE 7035–01–M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

I. Parent Corporation and Address of Principal Office:

Emco Limited, 1108 Dundas Street, London, Ontario, CN, N5W 3A7.

Emco Limited was incorporated under the Laws of the Province of Ontario, Canada.

II. Wholly-Owned Subsidiaries Which will Participate In the Operations, and Jurisdiction of Incorporation:

Name and Address	Jurisdiction of Incorporation
Waltec Inc., 471 Dundas Street, Cambridge, Ontario, N1R 5X9.	Province of Ontario, CN.
Delta Fawcet Inc., 250 Baseline Road E., Bowmanville, Ontario, L1C 1A4.	Province of Ontario, CN.
BPCO Inc., 10, 500 Cotes de Liesse, Suite 200, Lachine, Quebec, H8T 3E3.	Province of Quebec, CN.

Noreta R. McGee,

Secretary.

[FR Doc. 88–13074 Filed 6–9–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Consent Degree Pursuant to the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental, Response, Compensation and Liability Act; Texas Eastern Pipeline Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Texas Eastern Transmission Corporation, d/b/a Texas Eastern Gas Pipeline Company*, Civil Action No. H88–1917, was lodged with the United States District Court for the Southern District of Texas on June 6, 1988. The Consent Decree concerns clean-up actions and cost recovery at 80 compressor station sites along a gas pipeline owned and operated by the Defendant. The compressor station sites are located in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, Tennessee, and Texas. A list of the compressor station sites is contained in Appendix A hereto. The complaint in this action alleges that the Defendant improperly managed and disposed of polychlorinated biphenyls and associated pipeline fluids at these compressor station sites. The Consent Decree provides that the Defendant will undertake a comprehensive program to clean up disposal pits and surface soils at the sites, conduct studies to determine if further clean-up is needed in off-site soils and groundwater, institute measures to eliminate discharges of pipeline liquids in the future, pay a civil penalty of $15 million, reimburse the federal government for past investigation and monitoring costs of up to $1.5 million, and reimburse the United States for similar future costs in an amount up to $18 million.

The Department of Justice will receive for sixty (60) days from the date of publication of this notice, written comments related to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Texas Eastern Transmission Corporation, d/b/a Texas Eastern Gas Pipeline Company*, D.J. Ref. No. 90–5–1–1–2820.

The Consent Decree may be examined at: (1) The Office of the United States Attorney, Southern District of Texas, Courthouse and Federal Building, 515 Rusk Avenue, 3rd Floor, Houston, Texas 77002; (2) the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530; (3) the United States Environmental Protection Agency, Document Control Center (Pesticides.TSCA), 401 M Street SW., Washington, DC 20460; and (4) the following Regional offices of the Environmental Protection Agency: Region II, 26 Federal Plaza, New York, New York 10278; Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107; Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365; Region V, 230 South Dearborn Street, Chicago, Illinois 60604; Region VI, 1201 Elm Street, Dallas, Texas 75270; and Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the Consent Decree may be obtained in

person or by mail from the Environmental Enforcement Section, Land and Natural Resources Divison of the Department of Justice. Please enclose a certified check payable to "Treasurer, United States of America" for $33.40 (10 cents per page) to cover the costs of copying.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

Appendix A; Texas Eastern Transmission Corporation Compressor Station Sites

Alabama

Barton

Illinois

Lick Creek (10)
Norris City (11)

Indiana

Batesville (15)
French Lick (13)
Oakland City (12) (Princeton)
Seymour (14)

Arkansas

Bald Knob (06)
Donaldson (02)
Hope (03)
North Little Rock (05)
Pollard (08) (Fagus)
Walnut Ridge (07) (Egypt)

Kentucky

Danville
Owingsville
Tompkinsville

Louisiana

Caillou Island
Castor
Gillis
Grand Chenier
Greenwood Field
Iowa Plant
Lake Raccourci
LaRose
Monroe
New Roads
Opelousas
Pointe Au Chien
Providence
St. Francisville
White Castle
6" Line #4 MP 5.28 (located near Claiborne Parish, La. approximately 4.5 miles W.N.W. of Bernice, La.)
24" Line #11 MP 281.61 W. Red River (located approx. 14 mi. N.W. of Coushatta, La.)
24" Line #11 MP 282 E. Red River (located approx. 14 mi. N.W. of Coushatta, La.)

Ohio

Athens
Berne
Five Points (17) (Circleville)
Lebanon (16)
Somerset (18) (Crooksville)
Summerfield (19) (Sarahsville)
Wheelersburg

Tennessee

Gladeville
Mt. Pleasant

Maryland

Accident

Mississippi

Clinton
Egypt
Kosciusko
Union Church
Yazoo

Missouri

Oran (09)
10" Line #1–0 MP 9.81 (located approx. 3 mi. S.W. of Campbell, Mo.)

New Jersey

Hanover
Lambertville (26)
Linden (27A)

Pennsylvania

Armagh
Bechtelsville
Bedford (22A)
Bernville
Chambersburg (23)
Connellsville (21)
Delmont
Eagle (25)
Entriken
Grantville
Holbrook
Lilly
Marietta (24)
Marietta (24A)
Perulack (Leidy)
Rockwood (22)
Shermans Dale
Uniontown (21A)
Wind Ridge (20)

Texas

Atlanta
Blessing
Booth
Cherco
Hempstead
Huntsville
Joaquin
Longview (01)
Lufkin
Mont Belvieu
Petronilla
Provident City
Santa Fe
Thomaston
Tivoli
Vidor

[FR Doc. 88-13120 Filed 6-9-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-18]

Donald F. Kern D.D.S.; Revocation of Registration

This proceeding before the Drug Enforcement Administration (DEA), was inititated by an Order to Show Cause (Order) issued January 25, 1988, by the Deputy Assistant Administrator, Office of Diversion Control. The Order porposed to revoke DEA Certificate of Registration AK0624999, previously issued to Doanld F. Kern, D.D.S. of Virginia Beach, Virginia (Respondent). The statutory basis for the Order to Show Cause under 21 U.S.C 824(a)(2) was the Respondent's conviction in the United States District Court for the Eastern District of Virginia of distribution of cocaine in violation of 21 U.S.C. 841(a)(1), a felony offense under the Controlled Substances Act.

By the letter dated March 4, 1988, Respondent requested a hearing on the issues raised by the Order to Show Cause. The case was docketed before Administrative Law Judge Francis L. Young who issued an order for prehearing statements. In this order, Judge Young specifically cautioned Respondent that failure to timely file a prehearing statement would be considered a waiver of the hearing. Respondent failed to file a prehearing statement. After soliciting the opinion of Government counsel, Judge Young found that Respondent's failure to file a prehearing statement indicated that Respondent had no case to present and the administrative proceedings were then terminated.

The Administrator concurs with Judge Young that there is no need for a hearing in this matter since Respondent had failed to demonstrate that he has a case that he wishes to present. This agency has consistently held that failure to timely file a prehearing statement as ordered can lead to a finding that a party has waived its opportunity for a hearing. *See Medical Center Pharmacy,* Docket No. 87–66, 53 FR 13202 (1988); *Homested Pharmacy of Boston, Inc.* Docket No. 83–33, 49 FR 7304 (1984), and cases cited therein. Accordingly, the Administrator find that Respondent has waived his opportunity for a hearing and how enters his final order without a hearing and based on the investigative file and the record as it appears. 21 CFR 1301.54(d), 1301.54(e) and 1301.57.

The Administrator finds that beginning in June 1985, Federal and state law enforcement officials received evidence that Respondent was selling quantities of cocaine to various individuals throughout the Tidewater, Virginia area. Their investigation also revealed that Respondent was financing the distribution of over a kilogram of cocaine and had done so on at least 2 separate occasions.

Based on the above, Respondent was arrested and charged with distribution of cocaine, a felony relating to controlled substances. In a debriefing session with DEA agents, Respondent, accompanied by his attorney, admitted that he had bought and sold cocaine numerous times in the two years prior to his arrest. On June 19, 1987, Respondent was convicted in the United States District Court for the Eastern District of Virginia of distribution of cocaine, a violation of 21 U.S.C. 841(a)(1).

Title 21 U.S.C. 824(a)(2) authorizes the Administrator to revoke a Certificate of Registration upon a finding that a registrant "has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States or of any State, relating to any substance defined in this subchapter as a controlled substance."

Having found that Respondent has been convicted of a felony relating to controlled substances and that such constitutes ground for revocation of Respondent's Certificate of Registration, the Administrator concludes that such registration should be revoked. Therefore, pursuant to authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator orders that DEA Certificate of Registration AK6624999 previously issued to Respondent be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of Respondent's registration be, and they hereby are, denied.

This order is effective July 11, 1988.

June 3, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-13121 Filed 6-9-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-13]

Raymond Lyman, D.M.D., Revocation of Registration

On January 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (Order) to Raymond Lyman, D.M.D., 28 N. Main St., Blanding, Utah (Respondent). The Order proposed to revoke Respondent's DEA Certificate of Registration, AL2383862, on grounds that Respondent is not currently authorized to handle controlled substances in the State of Utah. On January 29, 1988, the Order was served on Respondent who then requested a hearing to determine all issues raised by the Order. Before a hearing date was set, the Government moved for a summary disposition of the case alleging that the Division of Occupational and Professional Licensing of the State of Utah (DOPL) had revoked Respondent's State license to practice dentistry on May 20, 1987, and that, therefore, Respondent was not duly authorized to possess, prescribe, dispense or otherwise handle controlled substances in the State of Utah. The motion was supported by an order from the Director of the DOPL revoking Respondent's State license to practice dentistry.

On April 4, 1988, Respondent filed a response to the Motion for Summary Disposition, asserting that his license was revoked for one year on April 27, 1987, that his attorney had filed a motion with "the board," apparently seeking Respondent's reinstatement, and that within four to six weeks Respondent would be authorized to handle controlled substances in Utah. In response, the Government filed a letter from the Director of the DOPL stating that the Respondent had not contacted their office and even if he had done so it would be unlikely that he would become licensed in the near future. Respondent provided no documentation to the contrary. On May 9, 1988, the Administrative Law Judge granted the Government's motion for summary disposition and recommended that Respondent's registration be revoked.

The Administrator has consistently held that a practitioner may not be registered if he is not authorized to handle controlled substances by the State in which he practices. 21 U.S.C. 823(f) and 824(a)(3). *Emerson Emory, M.D.,* Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.,* Docket No. 85–8, 50 FR 34206 (1985).

In the instant case, the action by the Division of Licensing is conclusive, and it is clear that Respondent's license to practice dentistry has been revoked. In such a case, a Motion for Summary Disposition is properly entertained and must be granted. It is settled that when no fact question is involved, an adversarial hearing is not required. *U.S. v. Consolidated Mines and Smelting Co., Ltd.,* 455 F.2d 432, 453 (9th Cir. 1971); *see NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, Local 433,* 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, M.D.,* Docket No. 77–29, 43 FR 11873 (1978); *Philip E. Kirk, M.D.,* Docket No. 82–36, 48 FR 32887 (1983), *Aff'd sub nom Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator finds the Respondent is not licensed in the State of Utah and concurs with the recommendation of the Administrative Law Judge that Respondent's registration should be revoked and any pending applications should be denied. Therefore, pursuant to 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), the Administrator hereby orders that Certificate of Registration AL2383862, previously granted to Raymond Lyman, D.M.D. is revoked. The Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied.

This Order is effective immediately.

John C. Lawn,

Administrator.

June 3, 1988.

[FR Doc. 88-13122 Filed 6-9-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-93]

Leo R. Miller, M.D.; Revocation of Registration

On December 10, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leo R. Miller, M.D. (Respondent) on New York, New York, proposing to revoke his DEA Certificate of Registration AM1852474, and deny any pending applications for renewal of that registration. The statutory basis for the proposed revocation was that Respondent's continued registration would be inconsistent with the public interest based upon: (1) His lack of authority by the State of New York to dispense Schedule II controlled substances; (2) his prescribing of controlled substances to drug dependent individuals for maintenance purposes without being registered to do so; and, (3) his prescribing of controlled substances outside the scope of professional practice and not for a legitimate medical purpose.

Respondent, through counsel, requested a hearing by letter dated January 21, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following

prehearing filings, a hearing was held in Washington, DC on September 9, 1987. Judge Young issued his opinion and recommended ruling, findings of facts, conclusions of law and decision on December 31, 1987. Respondent filed exceptions to the Administrative Law Judge's opinion and recommended ruling. The Administrative Law Judge transmitted the record in this matter to the Administrator on April 12, 1988. The Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The Administrative Law Judge found that an investigation conducted in 1983 by authorities from the State of New York resulted in the revocation of Respondent's privileges to utilize New York State triplicate prescriptions by the New York State Department of Health. The Health Department also assessed a $35,000 civil penalty against Respondent. This action effectively terminated Respondent's authority to prescribe and dispense Schedule II controlled substances. In 1987, the Commissioner of Education, State of New York, Board of Regents, placed Respondent's license to practice medicine in the State of New York on probation for two years. The Commissioner found Respondent guilty of professional misconduct in that he unlawfully prescribed controlled substances not in good faith and not for a legitimate medical purpose during the period 1976 through August 1983 on a regular basis to at least 40 patients who were habitual drug users, in order to keep such users comfortable in their habits.

The Administrative Law Judge found that Respondent wrote hundreds of prescriptions for Tuinal, a combination short acting and intermediate acting Schedule II barbituate during 1981 and 1982. When questioned about these prescriptions by a New York State investigator, Respondent stated he would rather give the individuals prescriptions than have them get the drugs on the street. At the hearing in this matter, Respondent continued to maintain that patients were better off receiving Tuinal in a controlled situation, such as under his care, than obtaining it on the street. The Administrative Law Judge concluded that Respondent did not exhibit an appropriate awareness of the potential danger of controlled substances and the hazards they may pose to individuals particularly susceptible to those hazards, and that Respondent should not be entrusted with a DEA registration.

On February 22, 1988, Respondent filed exceptions to the opinion and recommended ruling of the Administrative Law Judge. Respondent argued that the action of the New York State licensing agency, placing Respondent on probation and requiring his prescribing and dispensing practices to be monitored, should be given greater deference by the Administrative Law Judge. The Administrative Law Judge, in his opinion and recommended ruling, found that the monitoring of Respondent's prescribing practices by the New York State Office of Professional Medical Conduct is not sufficiently strict to be an effective deterrent. The Administrative Law Judge relield instead on the findings of both the New York Department of Health and the New York Board of Regents which concluded that Respondent's activities were unprofessional and constituted unlawful prescribing of controlled substances.

Respondent also argues that the Administrative Law Judge incorrectly found that some of Respondent's patients were habitual users of controlled substances. Respondent indicates that the Administrative Law Judge based that conclusion on Respondent's written statement. In his opinion and recommended ruling, the Administrative Law Judge indicates that New York State authorities found these patients to be habitual users of controlled substances, and that he found no reason to reject that conclusion.

Respondent further argues that the Administrative Law Judge failed to consider the testimony of Dr. Yapalater. Dr. Yapalater's testimony, that Respondent prescribed controlled substances for legitimate medical purposes, if contradicted by the testimony of Dr. Edelman as well as the findings of the New York Department of Health and the New York Board of Regents. The weight of the evidence requires a finding that Respondent prescribed controlled substances, not in good faith, and not for legitimate medical purposes from 1977 through August 1983.

Respondent finally aargues in his exceptions that the recommended "penalty" of the Administrative Law Judge is too severe in light of the length of time that has passed since Respondent's violations and the fact that New York State has returned Respondent's privileges to utilize triplicate prescriptions. The revocation of a DEA Certificate of Registration is not a penalty or a punative measure. It is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused controlled substances or their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be trusted with the responsibility carried by such a registration. It should also be noted that there was no evidence in the record that the State of New York had reinstated Respondent's triplicate prescription authority. Respondent first mentioned such a possibility in his exceptions to the Administrative Law Judge's opinion and recommended ruling. The Government has had no opportunity to respond to Respondent's statement, which emphasizes the necessity for an open hearing where each party has the opportunity to respond to evidence presented by the other party to the proceeding. The Administrator will not consider such proffered documents unless they are properly admitted into evidence and the opposing party has an opportunity to object to or rebut such evidence.

The Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked because the evidence demonstrated that Respondent could not be trusted with a registration. The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that based upon Respondent's past conduct with regard to the prescribing of controlled substances to individuals who had a history of drug abuse over an extended period of time, his registration is inconsistent with the public interest.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM1852474 previously issued to Leo R. Miller, M.D., be, and it hereby is, revoked. Any pending applications for renewal of that registration are hereby denied.

This order is effective July 11, 1988.

John C. Lawn,
Administrator.

Dated: June 6, 1988.

[FR Doc. 88-13123 Filed 6-9-88; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibiliites under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Information on the Employment Cost Index: 1220-0038, BLS 3038A, 3038B, 3038C, 3038D, 3038E/T, and 3038E/M
Quarterly,
State and local governments, Business or other for-profit; non-profit institutions; small business or organizations
22,364 responses; 22,564 hours; 6 forms
Employment Cost Index measures trends in employee compensation costs. The ECI is used to analyze the relationships between changes in productivity, employment, output prices, and compensation costs. The survey covers the private nonfarm economy and State and local governments.

Paul E. Larson,
Departmental Clearance Officer.

[FR Doc. 88-13186 Filed 6-9-88; 8:45 am]
BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice Langlade County, Wisconsin from General Wage Determination No. WI88-2 and Oconto County, Wisconsin from General Wage Determination No. WI88-15 dated January 8, 1988.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting an SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC88-1 (Jan. 8, 1988) ..... pp. 78, 81-82, 84.
Virginia:
VA88-17 (Jan. 8, 1988) ..... p. 1160b.
VA88-18 (Jan. 8, 1988) ..... p. 1160f.

Volume II

Wisconsin:
WI88-2 (Jan. 8, 1988) ..... p. 1087.
WI88-15 (Jan. 8, 1988) ..... p. 1161.
Listing by location (index) ..... p. 1i.

Volume III

California:
CA88-2 (Jan. 8, 1988) ..... p. 48.
Colorado:
CO88-4 (Jan. 8, 1988) ..... p. 120.
Hawaii:
HI88-1 (Jan. 8, 1988) ..... pp. 132-133, 135.
Idaho:
ID88-1 (Jan. 8, 1988) ..... pp. 142, 147.
North Dakota:
ND88-1 (Jan. 8, 1988) ..... p. 222.
ND88-3 (Jan. 8, 1988) ..... p. 234.
Washington:
WA88-1 (Jan. 8, 1988) ..... pp. 360-365, 368, 375-376.
WA88-2 (Jan. 8, 1988) ..... pp. 386, 389-389, 393.
WA88-6 (Jan. 8, 1988) ..... p. 412.
WA88-7 (Jan. 8, 1988) ..... pp. 414, 416-418.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of June 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-12923 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 20, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 20, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 31st day of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Worker/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Bentley Industries, Inc. (IUE)	Evans City, PA	5/31/88	5/6/88	20,695	Display Fixtures.
Chicago Pneumatic Tool Co. (OPEIS)	Utica, NY	5/31/88	5/12/88	20,697	Tools.
Comelison Engine, Maintenance Co., Inc. (Company).	Seminole, OK	5/31/88	5/19/88	20,698	Rebuild Engines, Supply Parts & Labor.
Commercial Testing & Engineering Co	Charleroi, PA	5/31/88	5/19/88	20,699	Analyzes Coal.
Diamond Power Specialty (USWA)	Lancaster, OH	5/31/88	5/16/88	20,700	Blower Cleaning Equipment.

APPENDIX—Continued

Petitioner (Union/Worker/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Foster Grant Co. (RWDSU)	Leominster, MA	5/31/88	5/12/88	20,701	Lenses and Glass.
General Electric Co. (Workers)	Evendale, OH	5/31/88	5/20/88	20,702	Aircraft Engines & Parts.
Health-Tex, Inc.—(Diamond Hill) (ACTWU)	Cumberland, RI	5/31/88	5/18/88	20,703	Children's Clothing.
Jaton, Corporation (ILGWU)	Boston, MA	5/31/88	5/18/88	20,704	Ladies Skirts.
Mellon Bank Corp. (Workers)	Pittsburgh, PA	5/31/88	5/18/88	20,705	Financial Services.
Omnisport, Inc. (ACTWU)	Woonsocket, RI	5/31/88	5/16/88	20,706	Athletic Award Jackets.
Omphies Inc. (Workers)	Lawrence, MA	5/31/88	5/20/88	20,707	Womens' Footwear.
Presswell Records Mfg. Co. (Workers)	Ancora, NJ	5/31/88	5/19/88	20,708	Pressed Vinyl Phonograph Records.
Westwood Lighting Group, Inc. (ACTWU)	Paterson, NJ	5/31/88	5/13/88	20,709	Lamps & Accessories.
Whitney Supply Co. (Workers)	Tulsa, OK	5/31/88	5/19/88	20,710	Oil Country Tubular Goods, Oil Field Supplies.

[FR Doc. 88-13167 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 23, 1988—May 27, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,540; Sunbury Dress, Cranston, RI

TA-W-20,546; Chrysler Corp., Milwaukee, WI

TA-W-20,547; Cambridge Shirt Manufacturing Co., Hazelton, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,596; International Paper Co., Gardiner Sawmill, Gardiner, OR

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,565; J I Case Co., Burlington, IA

U.S. imports of wheel-type front-end loaders and backhoes which include the loader backhoes declined absolutely and relative to domestic shipments in 1987 compared to 1986.

TA-W-20,570; Mesa Limited Operating Partnership, Amarillo, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,629; Seco Tools, Fairfield, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,588; Curtis Bay Towing, Philadelphia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,590; Taylor Marine, Philadelphia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,576; Colorado Westmoreland, Inc., Orchard Valley West Mine, Paonia, CO

U.S. imports of bituminous steam coal are negligible.

TA-W-20,602; USS Vandergrift Plant, Vandergrift, PA

U.S. imports of electrical steel sheet and strip declined absolutely and relative to domestic shipments in 1987 compared to 1986.

TA-W-20,589; McAllister Towing, Camden, NJ

The Workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

AFFIRMATIVE DETERMINATIONS

TA-W-20,571; National Broach & Machine, Mt. Clemens, MI

A certification was issued covering all workers engaged in the production of gear manufacturing machines separated on or after March 12, 1987.

TA-W-20,573; Texaco, Inc., Comptroller's Dept., New Orleans, LA

A certification was issued covering all workers separated on or after March 7, 1987.

TA-W-20,535; M.H. Fine Co., Allston, MA

A certification was issued covering all workers separated on or after March 9, 1987.

TA-W-20,567; K P Exploration, Inc., Houston, TX

A certification was issued covering all workers separated on or after March 14, 1987.

TA-W-20,567A; K P Exploration, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after March 14, 1987.

TA-W-20,567B; K P Exploration, Inc., Guymon, OK

A certification was issued covering all workers separated on or after March 14, 1987.

I hereby certify that the aforementioned determinations were issued during the period May 23, 1988-May 27, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated May 31, 1988.

[FR Doc. 88-13168 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,416]

SKF Industries, Inc., Hornell Division, Hornell, NY; Negative Determination on Reconsideration

On May 6, 1988, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of SKF Industries, Inc., Hornell Division, Hornell, New York. The Department's denial notice was published in the Federal Register on April 5, 1988 (53 FR 11147).

The Maple City Lodge #1975 claims that bearing accessory products are being imported from SKF in Sweden. The union also claims that when production ceases at Hornell, SKF will import ball units from a corporate plant in Mexico.

On reconsideration, the Department found that the Hornell plant had increased company imports of bearing accessories during the period applicable to the petition. However, accessory production at Hornell was minor in 1987 and the workers at Hornell were not separately identifiable by product.

Unit ball production at Hornell was not transferred to Mexico during the Department's investigation. However, a basis for certification may arise when this production is transferred and company imports of unit balls occur. At that time, a new petition for worker adjustment assistance would be appropriate.

Further, investigation findings show that the customer, mentioned by the union in its application for reconsideration, had increased purchases from SKF in 1987 compared to 1986.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for adjustment assistance to workers and former workers at SKF Industries, Inc., Hornell Division, Hornell, New York.

Signed at Washington, DC, this 27th day of May 1988.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 88-13169 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20, 452]

3M Co. Rochester, NY; Affirmative Determination Regarding Application for Reconsideration

By an application postmarked May 6, 1988, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of the 3M Company, Rochester, New York. The negative determination was published in the Federal Register on May 3, 1988 (53 FR 15752)

The petitioner claims that 3M imports from Italy replaced finished coated X-ray film produced at Rochester in 1987. The petitioner also claims that imported finished coated X-ray film was included in Rochester's X-ray production data for 1987.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of May 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-13170 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-81-C]

Drummond Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Mary Lee No. 1 Mine (I.D. No. 01-00515) and its Mary Lee No. 2 Mine (I.D. No. 01-00821) both located in Walker County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes to install and maintain a carbon monoxide monitoring system utilizing belt air to ventilate the active working places as follows:

3. An early warning detection system would be installed. A low-level carbon monoxide detection system would be installed in all belt entries utilized as intake aircourses. The low-level CO system would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 ppm above the ambient level and an audible signal would sound at 15 ppm above the established ambient level. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system would initiate the fire alarm signals at an attended surface location where there is two-way communication. This responsible person would notify the working sections and other personnel who may be endangered, when the established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and deleting electrical malfunctions.

4. The CO monitoring system would be visually examined at least once each coal producing shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If at any time the CO monitoring system or any portion of the system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using hand-held CO detecting devices.

6. The details for the fire detection system including, but not limited to, type of monitor and specific sensor location on the mine map would be included as a part of the Ventilation System and Methane Dust Control Plan.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 11, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 2, 1988.

[FR Doc. 88-13171 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribed procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the Federal Register (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated September 18, 1987, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.19, Subpart Z, and 1910.1001, pertaining to revisions relating to Asbestos, Tremolite, Anthophyllite and Actinolite as published in the Federal Register of June 20, 1986 (51 FR 22732) and (2) 29 CFR 1910.1001, 1910.1101, and 1926.58, pertaining to corrections and revisions relating to Asbestos, Tremolite, Anthophyllite and Actinolite as published in the Federal Register of October 17, 1986 (51 FR 37004). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on July 18, 1986. These standards were effective on September 17, 1987. By an additional letter, dated January 7, 1988, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.1001, 1910.1101, and 1926.58, pertaining to amendments and corrections relating to Asbestos, Tremolite, Anthophyllite and Actinolite as published in the Federal Register of April 30, 1987 (52 FR 15722) and (2) 29 CFR 1910.1001, 1910.1101, and 1926.58, pertaining to amendments, corrections and revisions relating to Asbestos, Tremolite, Anthophyllite and Actinolite as published in the Federal Register of May 12, 1987 (52 FR 17752). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on November 6, 1987. These standards were effective on January 14, 1988.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved Maryland State plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, Occupational Safety and Health Administration, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner, Maryland Division of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3700, Third Street and Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 10, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania this 2nd day of February 1988.

Linda R. Anku,

Regional Administrator.

[FR Doc. 88-13172 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-26-M

North Carolina Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On February 1, 1973, notice was published in the Federal Register (28 FR 3041) of the approval of the North Carolina plan and the adoption of Subpart I to Part 1952 containing the decision.

The North Carolina Plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "When * * * any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State Plan shall be required." By letter dated July 22, 1986 from Michael D. Ragland, Deputy Commissioner for Safety and Health, Occupational Safety and Health Division, North Carolina Department of Labor, to Alan C. McMillan, Regional Administrator, and incorporated as a part of the State Plan, the State submitted the following amended State standards comparable to Federal Standards: Revised 29 CFR 1926.55, Gases, Vapors, Fumes, Dusts, and Mists, dated June 20, 1986; Revised 29 CFR

1926.58, Asbestos, Tremolite, Anthophyllite, and Actinolite, dated June 20, 1986.

These standards were promulgated by filing with the North Carolina Attorney General and became effective on September 1, 1986; pursuant to the North Carolina Occupational Safety and Health Act of 1973 (Chapter 295, General Statutes).

2. Decision

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to the Federal standards. The State standards are hereby approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, North Carolina Department of Labor, 11 West Edenton, Raleigh, North Carolina 27611; Office of the Regional Administrator, Suite 587, 1375 Peachtree Street, NE., Atlanta, Georgia 30367; and Director of Federal State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the North Carolina State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are essentially identical to the comparable Federal standards and are deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 10, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Atlanta, Georgia, this 2nd day of October 1987.

Note.—This document was received by the Office of the Federal Register June 7, 1988.

Karen L. Mann,

Regional Administrator.

[FR Doc. 88-13173 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-26-M

Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.

2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.

3. Adoption by the Wyoming Health and Safety Commission.

4. Review and approval by the Governor.

5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated February 3, 1988, from John T. Chambers, Assistant Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.1001: Asbestos, Tremolite, Anthophyllite, and Actinolite; 52 FR 17752, May 12, 1987; 29 CFR 1910.145: Specifications for Accident Prevention Signs and Tags, 51 FR 182, September 19, 1986).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, Section 27-11-105(a)(viii).

State standards for 29 CFR 1910.1001: Asbestos, Tremolite, Anthophyllite, and Actinolite and 29 CFR 1910.145: Specifications for Accident Prevention Signs and Tags were adopted by the Health and Safety Commission of Wyoming on August 14, 1987 (effective October 13, 1987), pursuant to Wyoming statute 1977, Section 27-11-105. These State standards are substantially identical to the Federal standard actions, except for the following minor differences: (a) Paragraph numbering; (b) minor wordage appropriate to the Wyoming statues.

2. Decision

The above State Standards have been reviewed and compared with the relevant Federal Standard. It has been determined that the State standards are substantially identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective June 10, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado this 4th Day of April, 1988.

Bobby E. Glover,

Acting Regional Administrator.

[FR Doc. 88-13174 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-736 et al.]

Proposed Exemptions; Spencer Cliff Corporation Profit Sharing et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Attnetion: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Spencecliff Corporation Profit Sharing Plan (the Plan) Located in Honolulu, Hawaii

[Application No. D-7361]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain real property (the Property) to Spencecliff Corporation (the Employer) and the transfer of an existing lease on the Property from the Plan to the Employer, provided the Plan receives no less than fair market value for the Property at the time of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan having approximately 1,027 participants and total assets of $2,205,448 as of August 31, 1987. The Employer, the sponsor of the Plan, is a corporation engaged primarily in the food service and restaurant business in the State of Hawaii.

2. The subject Property is located in the Moanalua light industrial section of Honolulu near Honolulu International Airport. The Property is comprised of two lots (Lot 104 and Lot 105) with a total land area of 44,959 square feet, both of which were acquired prior to passage of the Act in 1974, and improvements consisting of a two-story combination flight kitchen, warehouse and office building constructed on about 22,000 square feet of the Property. Lot 104 was purchased from an unrelated party, while Lot 105 was purchased from the Employer. The improvements were constructed on the Property with Plan funds before passage of the Act. The Property (including the land) is currently leased to Sky Chefs, a division of Flagship International, Inc. (Flagship) and is subleased to American Pacific Transport Company, Ltd. (American Pacific). The applicant represents that Flagship and American Pacific are unrelated to the Plan and to the Employer. The present rent for the Property is $136,992 per annum, to be renegotiated after December 31, 1995. The lease is scheduled to terminate twenty years after that date. The current lessee built an additional warehouse structure on the land in 1970. That additional warehouse is not owned by the Plan and is not involved in the proposed transaction.

3. The Plan obtained an appraisal on the Property on February 23, 1987 (supplemented by a letter dated December 18, 1987) from Larry Medeiros (Medeiros), a real estate appraiser located in Honolulu. The applicant represents that Medeiros is independent of the Plan and the Employer. The purpose of the appraisal is to estimate the fair market value of the leased fee interest (lessor's interest) in the Property under the existing lease. The applicant represents that the value of the lessor's interest rather than a fee simple valuation is the relevant value because the Property is being sold subject to an existing lease to parties unrelated to the Plan or the Employer. Medeiros made a search of land values in the immediate areas of the Property for recent comparable transactions involving the transfer of fee interests of properties under similar zoning. Placing emphasis on the income approach to value, Medeiros capitalized the current and expected rental income on the Property and added to that figure the lessor's interest in the leased land. Accordingly,

Medeiros estimated that the fair market value of the lessor's interest in the Property (including the improvements owned by the Plan) as of January 1, 1987, was approximately $1,500,000.

4. In a letter dated January 30, 1987, the Honolulu area office of the Department concluded, as a result of an investigation of the activities of the Plan, that the Property accounted for too high a percentage of Plan assets and that the investments of the Plan were not sufficiently diversified. Thus, the Plan proposes to sell the Property to the Employer. The Employer will pay no less than current fair market value for the Property at the time of sale, based on an updated independent appraisal. The sale will be entirely for cash, and the Plan will pay no commissions or fees in regard to the transaction. The Property will be sold subject to the existing lease, which will be transferred to the Employer at the time of sale. The Plan will reinvest the proceeds of the sale in assets which should produce as much or more income and appreciation for the Plan and which should increase the diversification of Plan investments.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property will be entirely for cash and the Plan will pay no commissions or fees in connection with the sale; (2) the Employer will pay no less than current fair market value for the Property, based on an updated independent appraisal; (3) the proceeds of the sale will be reinvested in assets which should produce as much or more income and appreciation as the Property; and (4) the transaction will increase the diversification of the assets of the Plan.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Meridian Bancorp, Inc. Savings Plan (the Plan), Located in Reading, Pennsylvania

[Application No. D-7440]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale for cash on March 31, 1987 by the Plan to Meridian Bancorp, Inc. (the Sponsor), a party in interest with respect to the Plan, of a unit of limited partnership interest in Plantation Place Mortgage Company, Ltd. (Partnership 1) and a unit of limited partnership interest in Winston Apartments Mortgage Company (Partnership 2), for a price consisting of the face value of such units (the Units) plus quarterly distributions accrued thereon from July 1, 1986 through March 31, 1987, provided said price was no less than the fair market value of the Units at the date of the Sale.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective March 31, 1987.

Summary of Facts and Representations

1. The Plan is a defined contribution thrift plan covering approximately 4,013 paticipants as of December 22, 1987. As of December 31, 1986, the Plan's assets totalled $48,732,656.17. Investment decisions for the Plan are made by Meridian Investment Company (the Investment Manager), a subsidiary of the Sponsor. Meridian Trust Company (the Trustee), another subsidiary of the Sponsor, is the trustee of the Plan.

2. Partnership 1 was formed to provide a $1,300,000 second mortgage loan to Plantation Place Associates, Ltd. (Borrower 1), a limited partnership formed for the purpose of acquiring a 164-unit garden apartment complex located in Arlington, Texas. The loan requires quarterly payments of interest only at the rate of 13% per annum on the outstanding principal balance thereof, which is due on March 1, 1990. Although the loan is without recourse to the borrower, it is secured by a second lien on the apartment complex and is personally guaranteed by the husband of the general partner of Partnership 1. The first mortgage on the property is approximately $2,780,000. The applicants represent that Mrs. Phyllis A. Katz (Mrs. Katz), the general partner of Partnership 1, is not a party in interest with respect to the Plan and that neither the Sponsor nor any of its subsidiaries had any dealings with Mrs. Katz prior to the Plan's acquisition of the Units.

3. Partnership 2 was formed to provide a $2,100,000 first lien mortgage loan to Winston Apartments Company (Borrower 2) for a 112-unit garden apartment project in San Antonio, Texas. When Partnership 2 made its commitment to issue its permanent loan in 1980, the project had not yet been constructed. The project was completed and the mortgage loan was funded in May 1981. The permanent loan is a first mortgage loan providing for quarterly payments of interest only at the rate of 12% per annum on outstanding principal balance of the loan, which is due in full on December 31, 1991. The loan is without recourse to the borrower. The applicants represent that Mr. Aaron B. Katz (Mr. Katz), the general partner of Partnership 2 (and the husband of Mrs. Katz), is not a party in interest with respect to the Plan and that neither the Sponsor nor any of its subsidiaries had any dealings with Mr. Katz prior to the Plan's acquisition of the Units.

4. In 1985, Meridian Title Insurance Company, a wholly-owned participating subsidiary of the Sponsor, acquired substantially all the assets of Congress Title Corporation, of Cherry Hill, New Jersey, which had theretofore maintained the Congress Title Corporation Profit Sharing Plan (the CTC Plan). As part of this acquisition, the CTC Plan was terminated, its assets (totalling approximately $923,000) were transferred to the Plan's Fund B, which invests primarily in certificates of deposit, Treasury bills and notes, and other short-term investments. The Units were among the assets transferred to the Plan effective April 1, 1986, although they were not actually received by the Plan until approximately July 1, 1986. The face value of the Unit in Partnership 1 was $65,000; that of the Unit in Partnership 2 was $83,160. (These face values equal the amounts of capital contributed to the Partnerships by the CTC Plan). When the Units were transferred to the Plan, the Investment Manager reviewed the private placement memoranda and certain other documents forwarded by the trustees of the CTC Plan. Appraisal reports dated November 5, 1985, for the projects owned by the Partnerships were among the documents received. The Sponsor and the Trustee did not question the appropriateness of the Plan's investment in the Units because, among other things, they appeared to be the equivalent of secured loans structured to yield returns of 13% and 12%, respectively.[1]

5. Although quarterly distributions were made by each of the Partnerships through the second quarter of 1986, reflecting corresponding debt service payments under the loans from the Partnerships, no further distributions were made due to defaults under these loans. The Plan continued to accrue the scheduled quarterly distributions as income, however, in accordance with its regular accounting procedures. Correspondence received in late 1986 and early 1987 from the general partners of both Partnerships indicated that, as a result of a serious downturn in the rental real estate market in the southwestern United States, the loans to both Partnerships could not be repaid under their existing terms. Partnership 2's limited partners were asked to accept a reduced rate of repayment. For the loan from Partnership 1, abatement and modification of debt service for two years or less was requested. The Plan has received no further communication regarding these loans from the general partners of the Partnerships.

[1] The Department is expressing no opinion herein as to whether the acquisition and holding of the Units violated any provision of Part 4, Subtitle B, of Title I of the Act.

6. In early 1987 after receiving the above mentioned communications from the general partners of the Partnerships, the Trustee, the Investment Manager, and the Sponsor focused upon the deteriorating conditions of both Partnerships and determined that: (a) Quarterly distributions from both Partnerships were in default; (b) there was no market for the Units; (c) by their terms, the Units were not freely transferable; (d) the depressed economic conditions in the areas where the Partnerships' projects were located had materially impaired the value of the Units; (e) the Plan could not continue to carry the Units at face value; (f) the Units may not have been appropriate investments for the Plan's Fund B, and the quality and risks associated with the Units were not fully explained to the Plan's fiduciaries; (g) the participants in the Plan's Fund B should not bear the loss from these deteriorating investments; and (h) it was not in the best interest of the Plan and its participants and beneficiaries to keep the Units in the Plan. Therefore, on March 31, 1987, the Trustee, upon direction of the Investment Manager, transferred the Units to the Sponsor, which paid the Plan cash in the amount of $157,374.60, representing the combined face values of the Units ($65,000 + $83,160) plus quarterly distributions accrued but unpaid on the Units from July 1, 1986 through December 31, 1986 ($9,214.60). The amount of unpaid quarterly distributions accrued for the period January 1, 1987 through March 31, 1987 was excluded from the price paid by the Sponsor on March 31, as the Plan had not then accrued such distributions on its books. However, in March 1988 the Sponsor paid the Plan $4,607.30 by check, representing the aggregate amount of the unpaid accrued distributions on the Units for the period January 1, 1987 through March 31, 1987 (i.e.: $2,112.50 due from Partnership 1 plus $3,494.80 due from Partnership 2). According to the Trustee, the Plan did not pay any commissions or other expenses in regard to effecting the sale of the Units to the Sponsor, and the costs incurred by the Plan with respect to the Units from the time the Plan acquired them to the date of transfer to the Sponsor are so minimal as to be unascertainable.

7. Formal transfer of the ownership of the Units on the books of the Partnerships was effected as of March 31, 1988, after obtaining the required consent of the general partners thereof. Prior to that date, the Plan and the Sponsor agreed that even if the general partners would not consent to said formal transfer, the Plan and the Sponsor would, as between themselves, treat the Units as having been purchased by the Sponsor and would file all required tax returns on that basis. The applicants have sought counsel as to whether the sale of the Units on March 31, 1987 without the prior approval of the general partners of the Partnerships is a valid and legally binding sale as between the Plan and the Sponsor. They have obtained an opinion of counsel concluding that the sales on March 31, 1987 of the Units by the Plan to the Sponsor constitute legally binding and valid sales as between the Plan and the Sponsor.

8. Mr. Milton Slater, Vice President for Investor Relations of American Residential Properties, Inc., which represents the general partners of the Partnerships, has confirmed that as a result of the soft market conditions in Texas where both of the properties financed by the Partnerships are located, the fair market values of the Units did not exceed (and may have been considerably lower than) their face values as of March 31, 1987. The applicants represent that the difference, if any, between the fair market value of the Units on March 31, 1987 and the amounts paid by the Sponsor to the Plan on that date and in March of 1988 as the purchase price for the Units will not disqualify the Plan if such payments are subsequently determined to be employer contributions for purposes of the limitations imposed by the Code.

9. In summary, the applicants represent that the sale of the Units to the Sponsor by the Plan satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The Investment Manager and the Trustees determined that it would be in the best interests of the Plan and its participants and beneficiaries to dispose of the Units to avoid having the participants and beneficiaries bear the loss from these deteriorating investments because their value had been impaired and they were producing no income, had no market, and were not freely transferable; (b) the sale price paid by the Sponsor on March 31, 1987 was not less than the fair market value of the Units on that date; (d) the Sponsor represents that the Plan would not be disqualified if the difference between (i) the combined fair market values of the Units on March 31, 1987, and (ii) the amounts paid to the Plan by the Sponsor on March 31, 1987 and in March 1988, were treated as employer contributions for purposes of the limitations imposed by the Code; and (e) the Plan did not pay any commissions or other expenses in regard to effecting the sale of the Units to the Sponsor.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

McInerney & Dillon, Professional Corporation, Profit Sharing Plan and Trust (the Plan), Located in Oakland, California

[Application No. D-7467]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed loan by the Plan to McInerney & Dillon, P.C., the Plan sponsor, under the terms and conditions described in this notice of proposed exmeption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. McInerney & Dillon, P.C., the Plan sponsor (the Plan Sponsor), is a law firm in Oakland, California, consisting of seventeen attorneys.

The Plan had approximately $1,150,000 in assets as of December 31, 1987. As of February 2, 1988, the Plan had twenty-one participants. The Trustees of the Plan are William H. McInerney and Haradon M. Dillon.

2. Pursuant to Prohibited Transaction Exemption 86-80 (PTE 86-80) July 2, 1986, 51 FR 24247), the Plan lent $175,000

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to the Plan Sponsor for a period of sixty months (the First Loan).

3. The trustees are requesting an exemption for a second loan (the Second Loan) by the Plan to the Plan Sponsor for an amount sufficient to repay the current outstanding principal of the First Loan and for an additional amount of $140,000 to provide leasehold improvements, furniture and fixtures for additional office space to be used by the Plan Sponsor. The total outstanding balance of the Second Loan would be less than 35% of the Plan's assets.

4. The proposed Second Loan will be repaid in equal monthly installments of interest and principal over a period of sixty (60) months, will accrue interest at a rate of one and one-half percent (1½%) over the prime rate set by the Bank of America on the date of the Loan and will be adjusted quarterly thereafter. The Loan will be collateralized by a promissory note and security agreement duly effected in accordance with California law. Financing statements will be filed in appropriate state and county offices as required by the Uniform Commercial Code as adopted in California. The Loan will be secured by a first security interest in the accounts receivable of the Plan Sponsor. The applicant represents that the accounts receivable will be maintained at no less than 200% of the outstanding balance of the Loan at all times and will not be otherwise encumbered. The accounts receivable are not conditioned upon future performance by the Plan Sponsor, but are due and payable upon receipt by the Plan Sponsor's clients. Finally, the applicant represents that the financial statements of the Plan Sponsor for the past two years illustrate the ability of the Plan Sponsor to generate the income with which to repay the Loan to the Plan.

5. George A. Malloch, Esq. (Mr. Malloch), of the San Francisco Law firm of Kaplan, Russin, Vecchi, Eytan & Collins, independent fiduciary for the Plan with respect to PTE 86–80, represents that the trustees and plan administrator of the Plan discharged their fiduciary responsibilities with respect to PTE 86–80 fully, correctly, and timely; that the First Loan and Loan payments have been property accounted for by the Plan; and that all Loan payments have been promptly paid when due.

Mr. Malloch also has agreed to serve as the independent fiduciary with respect to the proposed Second Loan. Mr. Malloch represents that he is qualified to serve in this capacity by virtue of his experience as an attorney with practice in business and tax law, and is aware of the duties, responsibilities and liabilities entailed in acting as independent fiduciary with respect to the Loan. Mr. Malloch further represents that he is not in any way related to the Plan Sponsor, the Plan or any of the principals thereof.

Mr. Malloch states that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries since, in his opinion, the rate of return to the Plan would be a fair market return and would be one of the better performing assets in the Plan's portfolio. Mr. Malloch further states that the proposed Loan would be adequately secured by the accounts receivable of the Plan Sponsor.

Mr. Malloch represents that he reached this opinion after reviewing the Plan's most recent financial statements and the Plan's overall investment portfolio in terms of the Plan's liquidity requirements and the general diversification requirements of Plan assets.

In his capacity as independent fiduciary, Mr. Malloch will receive all Loan payments for the Plan, and will have the authority and responsibility of enforcing the terms of the Loan and accompanying security agreements, including making demand for timely payment, bringing suit or other timely process against the Plan Sponsor in the event of default, and monitoring the performance of the Loan, specifically including, but not limited to, ensuring that the value of the collateral securing the proposal Loan remains at no less than 200% of the outstanding balance of the Loan.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria under section 408(a) of the Act because: (a) The Loan will be approved, monitored, and enforced by an independent fiduciary; (b) the Loan will be secured by the value of the accounts receivable of the Plan Sponsor, which will at all times be no less than 200% of the outstanding balance of the Loan; (c) the Loan will be for no more than 25% of the Plan's assets; and (d) the Plan's independent fiduciary has determined that the Loan is prudent and in the best interest of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bethel Clinic Employees' Profit Sharing Plan and Trust (the Plan), Located in Wichita, Kansas

[Application No. D–7516]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 71–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to the Bethel Clinic Building Company, L.P., Kansas limited partnership (the Partnership) and a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either the sum of $450,000 or the fair market value of the Property on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 33 participants and total assets consisting of cash, securities, and the Property valued at $1,555,340.95, as of December 31, 1987. The plan was created on December 21, 1968, and on January 1, 1985, was "frozen" as to funding contributions and participants. With respect to the Plan, the latest favorable determination letter was issued on September 9, 1987, by the Internal Revenue Service. The trustee for the Plan is BANK IV Wichita, N.A. (the Trustee), formerly designated as Fourth National Bank and Trust Company of Wichita.

2. During 1985, the Bethel Clinic, Inc. (Bethel), which had been the sponsoring employer of the Plan, was acquired as a wholly owned subsidiary by Wichita Clinic, P.A. (Wichita), a major health care enterprise with 500 employees and located principally in Wichita, Kansas. At the time of this acquisition, only the 13 medical practitioners of Bethel became employees of Wichita; all other employees of Bethel remained employees of Bethel. However, all employees of Bethel, and the medical practitioners who transferred their employment to Wichita, became participants in the pension benefit plans of Wichita.

3. The Trustee proposes to enter into a transaction in which the Plan will sell the Property to the Partnership for a cash amount which will be not less than the greater of either $450,000 or the fair market value of the Property on the date of the Sale. All expenses and costs incurred by the Plan in acquiring and holding the Property will have been completely recovered from the lease of the Property to Bethel pursuant to a prior exemption and from the Sale. The applicant represents that the Sale will not only provide an orderly liquidation and termination of the Plan, but will enable the Plan to avoid disqualification by the Internal Revenue Service pursuant to section 401(a)(26) of the Code, if the Plan is maintained after December 31, 1988. In addition, the applicant represents that the proposed transaction will avoid a forced sale of the Property or a disorderly distribution in kind of Plan assets to Plan participants in the form of unmarketable fractional interests in the Property.

4. The Property is a medical clinic and two single-family residences located on 1.31 acres at 201 Pine Street, 315 and 317 Southeast Second Street and 202, 208, and 212 Harrison Street in Newton, Kansas. The Property was purchased by the Plan for $407,100, and leased to Bethel, pursuant to an exemption under section 406(a) of the Act [*See* Prohibited Transaction Exemption 78–2, (PTE 78–2), 43 FR 7746, February 24, 1978]. The Trustee represents that all the requirements of PTE 78–2 have been complied with since the exemption was granted. The Partnership consists of limited partners, who are the 13 medical practitioners transferred from Bethel to Wichita employment and a general partner, which is Wichita Clinic Building Corporation (WCBC), a wholly owned subsidiary of Wichita. The Wichita building facilities in Wichita, Kansas are owned by WCBC.

5. The Trustee, a qualified, independent fiduciary with respect to the Plan, retained Mr. Roger P. Turner, MAI, a qualified, independent appraiser, with Roger Turner Company, Wichita, Kansas to appraise the Property. Mr. Turner determined that the Property had a fair market value of $450,000 as of January 15, 1988. This appraisal was based upon the continued use of the clinic in conjunction with operation of the Newton Health Care Bethel Hospital, located across the street from the Property. At the time of the Sale the Trustee will also select the independent appraiser to enable the Trustee to determine the consideration to be paid for the Property. The Trustee, as independent fiduciary of the Plan, has found that the Sale is appropriate and in the best interests of the Plan and its participants and beneficiaries.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan will sell the Property for the greater of $450,000 or at its fair market value as determined by a qualified, independent appraiser; and (c) the Plan will be able to terminate and distribute, in a timely manner, benefits to its remaining participants.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Brentwood Orthopedics, Inc. Defined Benefit Pension Plan and Trust (the Plan), Located in Warrensville Heights, Ohio

[Application No. D–7533]

Proposed Exemption

The department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain Firearms (The Firearms) to Edward L. Andrews, M.D. (Dr. Andrews), a party in interest with respect to the Plan, provided that the price paid is the higher of either the Plan's original purchase price for the Firearms, plus the expenses incurred by the Plan in connection with the holding and maintenance of the Firearms, or the fair market value of the Firearms on the date of sale.

Summary of Facts and Representations

1. The Plans is a defined benefit plan which, as of August 31, 1987, had seven participants and total assets of $1,228,000. The trustees of the Plan are Dr. Andrews and Therese R. Andrews, his wife (Mrs. Andrews; together, the Trustees).

2. The Plan's sponsor is Brentwood Orthopedics, Inc. (the Employer), located at 4110 Warrensville Center Road, Warrensville Heights, Ohio. The Employer is a professional corporation organized and operating under the laws of the State of Ohio. The Employer has been engaged in the practice of medicine since August 27, 1970. The Employer adopted the Plan, effective August 31, 1976. Dr. Andrews is an officer director, and the controlling shareholder of the Employer.

3. The applicant represents that the Plan is significantly overfunded and will be terminated during 1988. Approximately 3% of the Plan's assets consists of the Firearms. The Firearms are 34 commemorative Firearms, which were specially manufactured to commemorate particular events and were produced in limited quantities. The applicant states that the Firearms are of investment quality and were purchased and held solely as an investment for the Plan.[2] The Firearms were purchased in lots of various size during the years 1977 to 1981. The Plan paid a total of $50,745 for the Firearms. The Firearms were all purcahsed from William R. Richman (Mr. Richman), FFL Dealer, Collector and Gun Appraiser, d/b/a Fort Defiance Colt Commemorative Firearms in Defiance, Ohio. Mr. Richman is not related to Dr. Andrews, personally, or to the Employer.

The Firearms have been held, since their acquisition, by the Trustees. Specifically, the Trustees state that the Firearms have been located in a safe that Dr. Andrews had installed in his home for the purpose of holding the Firearms and have not been displayed to other persons. All expenses associated with the holding of the Firearms have been charged to the Plan. However, the safe was not purchased with Plan assets, but by Dr. Andrews, individually, acting in his capacity as a Trustee of the Plan.

4. The Firearms were appraised on December 31, 1987 by Mr. Richman, an independent, qualified appraiser, as having a wholesale market value of $37,675. By letter dated May 2, 1988, Mr. Richman states that the current retail market value of the Firearms would be about 20–25% more than the stated wholesale market value. Thus, if the Firearms were sold with a retail markup of 25%, the fair market value of the Firearms would be approximately $47,093.75.

5. The applicant states that since the Plan will be terminating and distributions will be made to the participants, it is necessary to liquidate the Plan's assets. The applicant states further that a sale of the Firearms to an independent party would involve a broker dealer, who would charge approximately 10% of the sales price as a commission for his services. In addition, the Firearms may have to be

[2] The Department is expressing no opinion as to whether the acquisition of the Firearms by the Plan violated any provision of Part 4 of Title I of the Act.

sold singly or in smaller lots, which could reduce the total amount the Plan would receive. Therefore, Dr. Andrews proposes to purchase the Firearms directly from the Plan for cash at the higher of either the Plan's original purchase price for the Firearms, plus the expenses incurred by the Plan in connection with the holding and maintenance of the Firearms, or the fair market value of the Firearms as of the date of the transaction. Mr. Richman states that he will update his appraisal for the Firearms for purposes of the proposed transaction. The Plan would not pay any brokerage commissions or other expenses with respect to the sale.

6. The Trustees believe that the proposed transaction would be in the best interest of the Plan and its participants and beneficiaries. By selling the Firearms to Dr. Andrews, the Plan will be able to eliminate the problems of finding multiple buyers and paying brokerage commissions. In addition, the Plan will be able to obtain a higher selling price for all of the Firearms and avoid any delay in the distribution of the Plan's assets.

7. In summary, the applicant represents that the proposed transaction will meet the statutory requirements of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the greater of either the fair market value of the Firearms as determined by an independent, qualified appraiser, or the original purchase price paid by the Plan for the Firearms, plus the expenses incurred by the Plan in connection with the holding and maintenance of the Firearms; (c) the Plan will not be required to pay any brokerage commissions or other expenses with respect to the sale; and (d) the Trustees have determined that the sale of the Firearms is in the best interest of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Charles D. Pemberton Self-Employed Retirement Plan (the Plan), Located in Lubbock, Texas

[Application No. D–7541]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan by the Plan of $45,000 (the Loan) to Charles D. Pemberton (Mr. Pemberton), the owner-employee and participant in the Plan and a disqualified person with respect to the Plan, provided that the terms and conditions of the proposed Loan be no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the proposed Loan.[3]

Summary of Facts and Representations

1. The Plan is a profit-sharing plan the sole participants in which are Mr. Pemberton and his wife. As of March 11, 1988, the fair market value of the Plan's assets was $281,365.49.

2. The Plan proposed to lend to Mr. Pemberton $45,000 to be used as operating funds by Mr. Pemberton in his capacity as distributor and sales representative for Lazy Boy furniture. The Loan would be secured by 3,588 shares of Lazy Boy stock. The value of these shares, as traded on the New York Stock Exchange on March 15, 1988, was $57,856.50. The Loan will be secured additionally by two undeveloped parcels of real estate located in the Alto Village, in Lincoln County, New Mexico. On January 29, 1988, Rod Adamson, owner of Adamson Appraisal Company, Ltd. in Ruidoso, New Mexico, stated that the fair market values of the two parcels were $14,000 and $17,000, respectively. Accordingly, the applicant offers $88,856.50 in security for the proposed Loan. The security interest in the collateral will be recorded with the Secretaries of State of Texas and New Mexico using Form CCC–1. The applicant represents that if the value of the collateral should decline, additional collateral will be made available to keep the collateral at no less than 175% of the outstanding principal balance of the Loan at all times.

3. The Loan will be at a rate 2% above the prime rate of First National Bank at Lubbock as of the date of the Loan for a five year period with quarterly payments of principal and interest on the unpaid balance. The interest rate will be adjustable annually on the anniversary date of the Loan.

4. On March 14, 1988, Jimmie R. Holder, Senior Vice President of Lubbock National Bank of Lubbock, Texas, stated that his bank would make a comparable loan to the applicant on the same terms and conditions.

5. In summary, the applicant represents that the proposed transaction will satisfy the provisions of section 4975(c)(2) of the Code because: (a) The Loan will be adequately secured at all times; (b) No more than 25% of the Plan's assets will be invested in the Loan; and (c) Mr. Pemberton, who is the Plan trustee and sole participant (aside from his wife) in the Plan, desires that the transaction be consummated.

Notice to Interested Persons: Because Mr. Pemberton and his wife are the only participants in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Colorado Imaging Associates, P.C. Profit Sharing Plan (the Plan), Located in Littleton, Colorado

[Application No. D–7549]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale to Neal Goodman, M.D. (Dr. Goodman), Paul K. Danner, M.D. (Dr. Danner), David A. Raetz, M.D. (Dr. Raetz), and Kenneth B. Reynard, M.D. (Dr. Reynard), of certain diamonds (the Diamonds) from their individually directed accounts in the Plan (the Accounts), provided that the sale price be no less than the retail fair market value of the Diamonds on the date of sale as established by an independent qualified appraiser.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with individually directed separate accounts, sponsored by Colorado Imaging Associates, P.C. (the Plan Sponsor), a Colorado professional corporation engaged in the practice of medicine, specializing in radiology. Dr. Goodman is the President, Drs. Danner and Reynard are Vice-Presidents, and Dr. Raetz is the Secretary-Treasurer of the Plan Sponsor. Drs. Goodman, Danner, Raetz and Reynard are each 25% shareholders of the Plan Sponsor, and are also Trustees of the Plan. Drs. Danner and Raetz are also administrators of the Plan. As of February 15, 1988, the Plan had eleven participants. As of June 30, 1987, the Plan had net assets of $2,513,326.

2. The diamonds were purchased for $124,140 from unrelated third parties in June and July of 1977 for general investment purposes. The Diamonds have not been used by the Plan or by any party in interest and have held in a safe-deposit box in the name of the Trustees since their acquisition by the Plan. Drs. Goodman, Danner, Raetz and Reynard have determined that it is in their best interest and that of their Accounts to sell the Diamonds to themselves. In view of the weak gemstone market and the high expenses in selling the Diamonds to unrelated third parties, they have determined that the sale of the Diamonds to themselves would provide the greatest return to the Accounts at the lowest expense.

3. On January 15, 1988, Edward H. Paul, of Cherry Creek Gems, Inc., an independent qualified appraiser of gems in Denver, Colorado, based on an examination of the original grading certificates of the Diamonds issued by the Gemological Institute of America, and on examination of the Diamonds themselves, estimated the fair retail market value of the Diamonds to be $236,200. Specifically, he set the fair market value of the four diamonds in Dr. Goodman's account at $107,832; of the two diamonds in Dr. Danner's account at $78,021; of the two diamonds in Dr. Raetz's account at $36,659; and the one diamond in Dr. Reynard's account at $13,897.

4. Accordingly, the Plan proposes to sell the diamonds in the individually directed separate accounts of Drs. Goodman, Danner, Raetz and Reynard (the Doctors) in the Plan to the Doctors for cash for the fair market retail values of the Diamonds as established by an independent qualified appraiser as of the date of sale, with no costs or expenses to be paid by the Plan or the Accounts.

5. In sumary, the applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) The Diamonds will be sold by the Accounts to the Doctors for their fair market retail values as determined by a qualified and independent appraiser as of the date of sale; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) neither the Plan nor the Accounts will incur any expense with respect to the sale; and (d) the Doctors, who are the only participants whose individual accounts are affected by this proposed exemption, have determined that the proposed transaction would be in the interest of their individual accounts in the Plan, and desire that the transaction be consummated.

Interest to Interested Persons: Because Drs. Goodman, Danner, Raetz and Reynard are the only persons in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joseph L. Robers III of the Department, telepone (202) 523–8881. (This is not a toll-free number.)

D.W. Brown, M.D., Inc., Defined Benefit Plan and Trust (the Plan), Located in Sacramento, California

[Application No. D–7579]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of a certain parcel of unimproved real property and related water rights (the Property) to Donald W. Brown, M.D. (Dr. Brown) and Margaret R. Brown, his wife (Mrs. Brown; together, the Browns) both of whom are parties in interest with respect to the Plan, provided that the sales price for the Property is not less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of June 30, 1987, had two participants and total assets of $387,577.50. The Browns are the trustees of the Plan (together, the Trustees).

2. The Plan is sponsored by D.W. Brown, Inc. (the Employer), a California medical corporation specializing in nuclear medicine. The Employer is location at 3911 Dunster Way, Sacramento, California. Dr. Brown is the president and 100% shareholder of the Employer. The Browns are the only participants in the Plan.[4]

3. The Property consists of approximately 83 acres of unimproved flood-irrigated farmland, together with 9¼ shares of related water rights in the Handy Ditch Company. The Property is located at 1084 North County Road 17 in Larimer County Colorado. The Property was purchased by the Plan on February 14, 1986 from P. Richardson, J. Wright and E. Price (the Sellers), all of whom are unrelated parties, for $165,680. The Plan paid $110,120 in cash and gave a note (the Note) to the Sellers for $55,560 to cover the balance of the purchase price. The Note bears interest at a rate of 9% per annum, beginning March 14, 1986, with monthly payments $447.05. A final payment on the Note in the amount of $50,133.89 will be due on January 1, 1996. As of March 14, 1988, the principal balance on the Note was $54,728.87. The applicant states that as of February 28, 1988, the Plan had received $12,693.34 in income on the Property and had incurred total expenses, including interst on the Note, of $19,377.32.

The Property is adjacent to another parcel of real property owned by the Browns, in their individual capacities (the Adjacent Property). However, the applicant states that the Property has not been leased to, or otherwise used by, the Browns or any other party in interest with respect to the Plan.

4. The applicant represents that the Plan acquired the Property as an investment. However, there has been no net farm income from the Property for the Plan because the prices for farm commodities which are produced by the Property have been very low during the past few years. The applicant states that prices for farm properties in Larimer County, Colorado, are being adversely impacted by a depressed farm economy. In addition, residential and commercial development in the nearby town of Berthoud, Colorado, has suffered from a downturn in the local economy. Therefore, the applicant states that it is unlikely that the Property will appreciate in value or that the Plan will realize any substantial income from the Property in the near future.

5. The Property was appraised on March 30, 1988 by Lawrence I. Melton, Jr. and Barry J. Floyd, S.R.A., of the Northern Colorado Appraisal Company

[3] The applicant represents that Charles D. Pemberton, a self-employed owner-employee, and his wife are the sole participants under the Plan. Hence, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[4] Because the Browns are the only participants in the Plan and the Employer is wholly-owned by Dr. Brown, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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in Loveland, Colorado (the Appraisal), as having a fair market value of $150,000. The appraisal includes a valuation of approximately $45,000 for the related water rights on the Property. The Appraisal states that the Property was appraised as if it were free and clear of mortgage indebtedness, assessments, and liens of any kind other than taxes. The Appraisal also states that the valuation of the Property has taken into consideration the possible special value of the Property to the Browns as a result of their ownership of the Adjacent Property. However, the Appraisal concludes that there is no "special value" of the Property to the Browns as a result of the ownership of the Adjacent Property.

6. The Browns propose to purchase the Property from the Plan for cash. The purchase price would be the greater of either the fair market value of the Property or the sum of the total acquisition cost and total net carrying costs to the Plan for the Property, as of the date of the transaction. The Appraisal will be updated as of the date of sale. As of February 26, 1988, the approximate sum of the total acquisition cost and total net carrying costs incurred by the Plan was $172,363.98. The Browns state that they will assume all obligations and liabilities of the Plan under the Note. Therefore, the amount owed on the Note will be subtracted from the total price to be paid by the Browns for the Property, and cash equal to the difference between the amount owed on the Note and the total proposed purchase price will be paid to the Plan.

The applicant states that the proposed purchase price guarantees that the Plan will receive a net cash amount for the Property which is equal to the total cash outlays of the Plan (i.e. the original purchase price plus expenses, including interest paid on the Note) in connection with the Property, less any income received by the Plan on the Property as of the date of sale. The Trustees represent that the proposed transaction would be in the best interest of the Plan because the transaction will make the Plan "whole" with respect to the total cost of the Property to the Plan as an investment. The applicant states that the proposed purchase price is greatert than any price that currently could be obtained from an unrelated party. In addition, no brokerage commissions or other expenses will be incurred by the Plan in connection with the sale. Finally, the proposed transaction will allow the Plan to reinvest the sale proceeds in investments which yield substantially higher returns for the Plan than the Property.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive an amount which is the greater of either the fair market value of the Property, as established by the Appraisal, or the total cash outlays of the Plan in connection with the Property, less any income received by the Plan on the Property as of the date of sale; (c) the Plan will not pay any commissions or other expenses with respect to the sale; and (d) the Trustees, who are the only participants in the Plan, have determined that the proposed sale is in the best interest of the Plan.

Notice to Interested Persons: Because the Browns are the only participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975 (c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-13147 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 88-51; Exemption Application No. D-6642 et al.]

Grant of Individual Exemptions; Orchard, Hiltz & McCliment, Inc., et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate).

The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Orchard, Hiltz & McCliment, Inc. Profit Sharing Plan (the Plan) Located in Southfield, Michigan

[Prohibited Transaction Exemption 88-51; Exemption Application No. D-6642]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The prospective transfer of title (the Sale) of certain real property owned by the Plan to Orchard, Hiltz & McCliment, Inc. (the Employer) pursuant to a land contract (the Contract) amended by the parties on July 18, 1986; and (2) the past extension of credit by the Plan to the Employer under the Contract in connection with the Sale; provided that the terms and conditions of both transactions are as favorable to the Plan as those obtainable in an arm's-length transaction between unrelated parties.

EFFECTIVE DATE: The effective date of Transaction 1 will be the date of the final grant of this proposed exemption. The effective date of Transaction 2 will be July 18, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on March 18, 1988 at 53 FR 9002.

Written Comments

The Department received one written comment and no requests for a hearing. The commenter, representing the Employer, requested that the Notice be corrected to reflect that the date the initial Contract was entered into was June 27, 1984 and not July 27, 1984 as stated in the Notice. The Department concurs in this change. The commenter also requested clarification regarding the language contained in the Notice concerning payment of excise taxes. The Deapartment concurs that the language should read as follows:

> The Employer has agreed to pay all applicable excise taxes concerning prior prohibited transactions which occurred through July 18, 1986. Such payment shall be made within 60 days of the date the exemption is granted.

After consideration of the record, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Frank E. Irish, Inc. Profit Sharing Plan (the Plan)

[Prohibited Transaction Exemption 88-52; Located in Indianapolis, IN; Exemption Application No. D-7151]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale, for $141,000, of an undivided one-half interest (the Interest) in certain improved real property by the individually-directed account (the Account) in the Plan of Mr. John T. Irish (Mr. Irish) to Mr. Irish, a party in interest with respect to the Plan, provided the amount paid for the Interest is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13350.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Medical Center of Delaware, Inc. Retirement Plan (the Plan) Located in Wilmington, DE

[Prohibited Transaction Exemption 88-53; Exemption Application No. D-7244]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective May 22, 1985, to the past sale and purchase of publicly-traded securities, on May 22, 1985, between the Plan and the endowment fund of the Medical Center of Delaware, Inc., provided that the Plan received not less than the fair market value of the securities it sold and paid not more than the fair market value for the securities it purchased.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1988 at 53 FR 9009.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Modern Display Service, Inc. Employees Profit Sharing Plan (the Plan) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 88-54; Exemption Application No. D-7248]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the sale by the Plan of a parcel of improved real property located in Salt Lake City, Utah for the greater of $340,000 or the fair market value on the date of the sale to THA Investments (THA), a limited partnership in which the trustee of the Plan owns limited and general partnership interests; and (2) the assignment of a third party lease by the Plan to THA.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 6, 1988 at 53 FR 11355.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

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General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-13148 Filed 6-9-88; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

Copyright Office

Mandatory Deposit; New Procedure for Requesting Prompt Exercise of Right To Demand Under the Motion Picture Agreement

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of change in procedure.

SUMMARY: This notice informs the public of a change in procedure regarding the processing of requests for prompt exercise of the Librarian's contractual right to demand return of motion pictures pursuant to paragraph 5(a) of the Motion Picture Agreement. Under paragraph 5(a), when a depositor submits a written request asking the Library promptly to exercise its right to demand, the Library has 90 days to respond. Under the new procedures, written requests under paragraph 5(a) must be addressed directly to the Deposits and Acquisitions Division of the Copyright Office.

EFFECTIVE DATE: June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION: Under the Copyright Act of 1976, Title 17 U.S.C. 407, the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit two copies of the work in the Copyright Office for the use or disposition of the Library of Congress. Section 408 also requires deposit of two copies of published works in connection with applications for copyright registration. By establishing deposit requirements, Congress intended to provide a useful legal record of the copyrighted work that meets both the practical needs of depositors and the acquisitions needs and wants of the Library. In keeping with these policies, the statute authorizes the Copyright Office of issue regulations liberalizing the deposit requirements. With respect to motion pictures, the regulations permit the deposit of only one copy.

In addition to reducing the number of copies to be deposited, the Library and the Copyright Office in cooperation with motion picture industry representatives developed a contract known as the Motion Picture Agreement to allow permanent deposit of motion pictures on a delayed basis when the commercial marketing of prints has somewhat abated. The Agreement, available since 1948 except for a short period during initial implementation of the 1976 Copyright Act, provides that a motion picture may be returned to the depositor in exchange for a contractual promise to deposit, upon demand, a best edition copy of archival quality.

The Agreement places time restrictions upon the Library's discretion to issue a demand for an archival copy. Under paragraph 5 of the Agreement, discretion to issue a demand is limited to one of two circumstances. Under paragraph 5(a), when a depositor, within two years from deposit, submits a written request asking the Library promptly to exercise its right to issue a demand, the Library has 90 days to decide whether to issue a demand. If no paragraph 5(a) request is made by the depositor, paragraph 5(b) authorizes a two-year period from the date of the deposit for the Library to decide whether to issue a demand.

In order to invoke the procedure requiring prompt exercise of the Library's right to demand, many depositors have included the request with the deposit materials submitted to the Examining Division of the Copyright Office in connection with registration of the claim to copyright. Since the decision to issue a demand is made by another operating division—the Deposits and Acquisitions Divisions of the Copyright Office—the failure to provide this Division with direct notice has created problems in meeting the 90-day deadline.

In order successfully to carry out the responsibilities of paragraph 5(a) of the Motion Picture Agreement, it is necessary that the Deposit and Acquisitions Division receive directly the request for prompt exercise of demand. Therefore, the Library is announcing new procedures.

Beginning immediately, all written requests under paragraph 5(a) of the Motion Picture Agreement must be sent directly to the Deposits and Acquisitions Division, Attention: Motion Picture Administrative Assistant, Copyright Office, Library of Congress, Washington, DC 20559. The content of the request shall include the title of the work(s) covered by the request, printed descriptive material about each work, and a reference to paragraph 5(a) of the Motion Picture Agreement. If the request is submitted simultaneously with motion picture registration materials, a carbon copy of the request must be included with the required registration materials.

Dated: May 9, 1988.

Ralph Oman,

Register of Copyrights.

Approved by,

James H. Billington,

The Librarian of Congress.

[FR Doc. 88-13031 Filed 6-9-88; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-59]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautics Technology Competitiveness.

DATE AND TIME: June 28, 1988, 8:30 a.m. to 4:0 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Mr. John S. Burks, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2807.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Aeronautics Technology Competitiveness, chaired by Mr. Louis F. Harrington, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda:

June 28, 1988.

8:30 a.m.—Review of Action Groups Assessments.

10:30 a.m.—Prepare Final Report Outline and Conclusions.

4 p.m.—Summary and Task Assignments

4:30 p.m.—Adjourn.

June 6, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-13032 Filed 6-9-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-60)]

NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee.

DATE AND TIME: June 20, 1988, 8:30 a.m. to 5:30 p.m., June 21, 1988, 8:30 a.m. to 11 p.m., June 22, 1988, 8:30 a.m. to 11 p.m., June 23, 1988, 8:30 a.m. to 11 p.m., and June 24, 1988, 8:30 a.m. to 1 p.m.

ADDRESS: Hyannis Regency Inn, Route 132, Hyannis, MA 02601.

FOR FURTHER INFORMATION CONTACT: Mr. A. V. Diaz, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee reports to the Space and Earth Science Advisory Committee (SESAC), Space Applications Advisory Committee (SAAC) and Life Sciences Advisory Committee (LSAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Office of Space Station (OSS) on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss the OSSA strategic planning, Space Station Utilization planning and the Subcommittee's future activities. The group is chaired by Dr. Franklin Lemkey and is composed of 15 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Monday, June 20.

8:30 a.m.—Orientation to Committee, Procedures and Responsibility.

9 a.m.—Office of Space Science and Applications (OSSA) Strategic Plan.

9:30 a.m.—Space Station Program Status.

10:30 a.m.—OSSA Integrated Requirements/Reference Payloads for Phase I Station.

11 a.m.—Information System/Telescience Testbedding.

11:30 a.m.—Utilization Studies.

12 Noon—NASA Office of Commercial Programs.

12:30 p.m.—NASA Office of Aeronautics and Space Technology.

2 p.m.—Space Science and Science in Space Tutorials.

5:30 p.m.—Adjourn.

Tuesday, June 21.

8:30 a.m.—SSSAAS Meeting Objectives/Guidelines and International Forum for the Scientific Uses of the Space Station (IFSUSS).

9:30 a.m.—Memoranda of Understanding.

10 a.m.—Status of Space Station Science Operations Management Concept Study (SSSOMC).

11 a.m.—Space Station Utilization Plan.

12 Noon—Results of OSSA Testbed Program.

7:30 p.m.—Primary Splinter Groups Discuss Pressurized Volume and Attached Payloads.

11 p.m.—Adjourn.

Wednesday, June 22.

8:30 a.m.—Information Systems Issues and Concerns.

10:15 a.m.—Operations and Management Issues and Concerns.

7:30 p.m.—Discipline Splinter Groups to discuss Operations and Management Issues and Concerns.

11 p.m.—Adjourn.

Thursday, June 23.

8:30 a.m.—Current Space Station configuration and Its Evolution from the Critical Evaluation Task Force (CETF), Evolution of Assembly Sequence, Payload Accommodations, Trial Payload Manifest.

11:15 a.m.—International Accommodations.

7:30 p.m.—Discipline Splinter Groups incorporate space station accommodation information and consolidate splinter group findings and recommendations.

11 p.m.—Adjourn.

Friday, June 24.

8:30 a.m.—Subgroup Reports.
10:45 a.m.—Conclusions and Recommendations to OSSA/SESAC.
1 p.m.—Adjourn.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-13033 Filed 6-9-88; 8:45 am]
BILLING CODE 7510-01-M

[Notice (88-58)]

NASA Wage Committee; Renewal

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the Committee Management Secretariat, General Services Administration, NASA has determined that the Renewal of the NASA Wage Committee is in the public interest in connection with the performance of duties imposed upon NASA by law.

FOR FURTHER INFORMATION CONTACT: Deborah C. Green, National Aeronautics and Space Administration, Code NPM, Washington, DC 20546 (202/453-2022).

SUPPLEMENTARY INFORMATION: The function of this Committee is to provide recommendations to NASA relating to a survey of wages and the establishment of wage schedules for trades and labor employees in the Cleveland, Ohio, Wage area. NASA has been designated as the "lead agency" for the area under Federal Personnel Manual Supplement 532-1.

June 6, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-13034 Filed 6-9-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Research Experiences for Undergraduates Program; Availability of Grants

I. Program Description

A. Purpose and Scope

One of the National Science Foundation's principal goals is to assure an adequate supply of high quality mathematicians, scientists and engineers for the future. This requires continuing efforts to attract talented students into research careers in these fields, and to help ensure that they receive the best education possible. The undergraduate years are critical in the educational sequence, as career-choice points and as the first real opportunities for in-depth study.

There is wide-spread agreement [1] that active research experience is one of the most effective techniques for training undergraduates for careers in mathematics, science and engineering, and that too few such experiences are now available. NSF has established the *Research Experiences for Undergraduates Program* (REU) to help meet this need.

REU plans to provide opportunities annually to several thousand undergraduate students to participate in active mathematics, science and engineering research experiences. REU projects will involve students in meaningful ways in either ongoing research programs or research projects specially designed for this purpose.

NSF is particularly interested in increasing the participation in research of women, minority [2] and disabled students. Projects involving students who are members of these groups are particularly solicited.

Although the categories of awards that are described in this announcement are expected to include the majority of projects supported through the REU program, additional mechanisms for providing undergraduate research experiences will be considered by the NSF.

Proposals are invited for support of projects that typically will fit into two major categories: (1) *REU Sites* and (2) *REU Supplements.*

* *Sites* grants will be based on independent proposals to initiate and conduct undergraduate research participation projects for a number of students appropriate to the discipline and the setting. Most REU Sites projects are expected to be within the scope of a single discipline and/or single academic department. Interdisciplinary proposals are also acceptable, but multiple discipline or multiple department proposals without a common project focus or orientation are discouraged.

* *Supplements* to ongoing NSF research grants to provide research experiences for a small number of undergraduate students are also encouraged.

Projects may be carried out during the summer months, during the academic year, or both. The Foundation will consider requests for support of one, two or three years duration. Proposals will not be accepted for the REU program.

B. Eligibility Criteria and Limitations

1. Eligible Institutions

All U.S. institutions conducting research in the disciplines normally supported by NSF are eligible to apply. Thus, proposals will be accepted from colleges and universities, from such nonacademic research institutions as government or industrial laboratories, or from combinations thereof. There is no restriction on the number of proposals that may be submitted per institution.

2. Eligible Fields

The Foundation considers proposals for REU support in most of the fields of science and engineering. NSF normally will not support biomedical research with disease-related goals, including work on the etiology, diagnosis, or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals. Animal models of such conditions, or the development or testing of drugs or other procedures for their treatment also generally are not eligible for support. NSF does not normally support technical assistance, pilot plant efforts, research requiring security classification, the development of products for commercial marketing, or market research for a particular product or invention.

3. Eligible Individuals

Principal Investigator. A single individual should be designated as Principal Investigator. This individual will be responsible for overseeing all aspects of the award. However, it is expected that additional investigators will be involved in many of these projects, particularly in projects involving development and operation of REU Sites.

Student Participants. Undergraduate student participants must be citizens or permanent residents of the United States and its possessions. An undergraduate student is a student who is enrolled in a degree program (part-time or full-time) leading to a bachelor's degree. High school graduates who have not yet enrolled and students who have received their bachelor's degree and are no longer enrolled as undergraduates are not eligible.

4. Eligible Activities and Costs

REU award costs, expected to average $4,000 per student for Sites and somewhat less for Supplements, may include stipends for students, salaries of involved faculty, relevant student housing costs, indirect costs, and a modest allowance for supplies. Student stipends for full time summer activity should be at least $2,000, for either type of award, with pro rata equivalent stipends for part-time academic year participation.

C. Deadlines

Proposals for the support of REU Sites are due no later than October 10 annually. Award notification will be made to the extent possible by late January.

Proposals for REU Supplements will be accepted at any time, and require 2-3 month's processing time. Supplement requests should be submitted as early in the fiscal year as possible.

II. Preparation and Submission of Proposals

A REU Sites

Funds for the establishment of REU Sites may be requested from any of NSF's research directorates: Biological, Behavioral and Social Sciences; Computer and Information Science and Engineering; Engineering; Geosciences; and Mathematical and Physical Sciences.

Proposals should be prepared following the guidelines contained in the NSF document "Grants for Research and Education in Science and Engineering" (NSF 83-57, rev. 11/87) and the following instructions. Fifteen copies of the proposal should be submitted. Each copy of the proposal should contain:

—The Cover Sheet (found in Appendix II of the REU program announcement). Clearly indicate the NSF research directorate and/or division to which the proposal is directed on the top left box of the form. A list of these can be found in the REU Program Announcement.
—The Budget form 1030 (found in Appendix III of the REU Program Announcement).
—The Project Summary Form (found in Appendix IV of the REU Program Announcement).
—The Current and Pending Support Form (found in Appendix V of the REU Program Announcement.
—Statement of prior support. If either the Principal Investigator or the Co-principal Investigator received prior support from NSF's REU Program, the proposal must include a section entitled *"Results from prior NSF Support"*. This section must describe the earlier REU project(s) and outcome(s) in sufficient detail to permit reviewers to reach an informed conclusion regarding the value of the results achieved. The following information must be included in this summary statement:

• The NSF award number, amount, and period of support;
• Title of the project;
• A summary of the results of the completed work. (To facilitate review, this summary must not exceed-for REU—three double-spaced pages); and
• A list of publications and/or formal presentations acknowledging the NSF award (copies of such papers are not to be submitted with the proposal).

Each proposal should reflect the unique combination of the proposing institution's interests and capabilities. Cooperative regional arrangements among institutions will be considered so that a project might increase the quality or availability of undergraduate research experiences.

REU Sites projects must have a well defined common focus. This is usually achieved within the scope of a single discipline or academic department, although an interdisciplinary proposal with cohesively integrated projects is acceptable. In general, multiple-discipline or multiple-department proposals are not encouraged.

The proposal should discuss the features of the proposed project in sufficient detail that it can be evaluated in accordance with the goals of the REU program and the criteria articulated in section III. The narrative description of the program should not exceed 15 double-spaced pages in length. The narrative should include a description of:

Nature of Student Activities

NSF believes undergraduate research experiences have their greatest impact in situations that lead the participants from a relatively dependent status to an independent one as great as their competence warrants. In this context, proposals must present plans that will ensure the regular development of student-faculty interaction and student-student communication. Proposals should address the philosophy of the approach to undergraduate research training being taken, and should provide detailed descriptions of examples of projects in which students will become involved.

The Research Environment

The facilities and equipment available to support these undergraduate research experiences should be summarized. A tabular summary or similar indication of graduates continuing their education at the graduate level may be incorporated here.

Student Participants

Student recruitment and selection processes and criteria should be clearly described. A major goal of the program is to involve students in research who might not otherwise have the opportunity, particularly those from institutions where research programs are limited. This especially includes women, minority, and disabled students. For this reason, projects whose student participants include significant fractions outside the host institution, and that present convincing plans for involving underrepresented student groups will receive special consideration in the award selection process.

The number of students per project should be appropriate to the institutional setting and to the manner in which research is conducted in the discipline. However, developing collegial relationships and interactions is an important part of the project opportunity. Therefore the Foundation expects that the norm for REU Sites will be about 8 students, and proposals involving fewer than 4-6 students are discouraged.

The following items should also be included in the proposal (these items do not count as part of the 15 page narrative limit):

Budget

The proposal should include a detailed project budget and budget justification, as described in NSF 83-57, rev. 11/87. Use the NSF Form 1030 in Appendix III of the REU Program Announcement. As a guide to budget development, student stipends for summer projects are expected to be at least $2,000 with academic year stipends comparable on a pro rata basis. All student costs should be entered at line F. of Form 1030. Total costs are expected to average around $4,000 per student. The amount of total indirect costs allowed for REU (enter at line I of form 1030) is limited to 25% of student stipends. Institutional commitment to the project should be clearly described and may include such items as faculty salaries, student housing, travel, tuition, reduced indirect costs or lab use.

An REU Site involving 8 students (where travel is anticipated) might have the following budget distribution:

[1] *Undergraduate Science, Mathematics and Engineering Education*, Report of the National Science Board Task Committee on Undergraduate Science and Engineering Education, National Science Foundation, March 1986; *National Priorities for Undergraduate Science and Engineering Education*, National Higher Education Associations Task Force, American Council on Education, 1985.

[2] For the purpose of this announcement, minorities are defined as members of those racial and ethnic groups underrepresented in science and engineering: American Indian, Blacks, Hispanics, Native Alaskan or Native Pacific Islander.

student stipends—$16,000; student travel—$2,400; student subsistence—$5,600; materials and supplies—$800; indirect costs (at 25% of student stipends)—$4,000; for a total of $28,800. This distribution is meant as an example only. Budgeted amounts may be more or less than shown. Institutions may choose to absorb some of these expenses as their commitment to the REU Site. Various NSF Directorates may permit a modest allowance for other expenses (such as faculty support) or even exclude some of those listed in the example. It is advisable to check with the appropriate Directorate/Division when questions of budget are concerned (see Program Announcement).

Biographical Sketches and Individual Support

A biographical sketch (not to exceed 1 page) for each of the key personnel and list of recent publications (last five years), *involving and identifying undergraduate authors*, should be included. An asterisk should be used to identify undergraduate students who served as co-authors. A table must be provided which summarizes each individual's current and pending research support from all sources.

Note: The Principal Investigator must have submitted NSF form 98A (Final Project Report) for all completed NSF funded projects.

Proposals must be received in the Foundation by 5:00 p.m. on October 10 annually to insure inclusion in the competitive review process established for this program.

Materials required:

15 legible copies of the complete proposal;

One copy of NSF form 1225 (found in Appendix I of the REU Program Announcement) attached to the signature copy of the proposal only;

Three sets of *extra* forms, each stapled into a unit and containing

One copy of the Cover Sheet
One copy of the Budget, and
One copy of the Project Summary Form.

These materials should be submitted to:

Data Support Services Section, REU, National Science Foundation, Room 223, 1800 G Street NW., Washington, DC 20550.

B. REU Supplements

Funding may be requested from any of NSF's directorates to supplement an ongoing NSF research grant or contract. As with other supplement requests, these should be sent directly to the NSF Program Officer who was designated as the cognizant program official when the research award was made.

Requests for supplemental funding should be in the form of a letter, signed by both the principal investigator and the appropriate institutional official. This letter should state clearly that this is a REU Supplement request, and should articulate in some detail the form and nature of the prospective student(s)'s involvement in the research project(s). If the student(s) has not been preselected, a brief description of the selection process and criteria should be included. If the student(s) has been preselected, the grounds for selection and a brief biographical sketch of the student should be included. Normally funds will be available for up to two students, but exceptions will be considered for training additional minority, physically disabled and women students.

The request letter should be accompanied by a signed budget page including information about the funds requested and their proposed use. Use NSF Form 1030 for this purpose. As a guide to budget development, student stipends for summer projects are expected to be at least $2,000 with academic year stipends comparable on a pro rata basis. All student costs should be entered at line F. of Form 1030. Total costs are expected to average about $4,000 per student. The amount of total indirect costs allowed for REU Supplements (enter at line I of form 1030 is limited to 25% of the student stipends. Attach the letter of request and form 1030 of the Cover Sheet (Appendix II of the REU Program Announcement) and a Project Summary Form (Appendix IV of the REU Program Announcement) and mail to the appropriate NSF Program Director.

III. Proposal Evaluation

REU Sites proposals will be evaluated by external merit review, involving scientists, engineers and mathematicians drawn from the academic and industrial community.

REU Supplements proposals will be evaluated by NSF program staff.

The same general evaluation criteria will be applied to all REU proposals:

- The appropriateness and value of the educational experience for the student(s), particularly the appropriateness of the research project(s) for undergraduate involvement and the nature of student participation in the these activities.
- The quality of the supervisor(s) and attendant facilities, including any specialized equipment and its availability to student participants, and the proposer's experience with undergraduate research activities.
- The overall merit of the research activities.
- Additional criteria will be applied to proposals to establish REU Sites:
- The adequacy of procedures for selecting participants, and for matching selected participants with research supervisors;
- The quality of plans for student preparation and followthrough designed to promote continuation of student interest and involvement in research;
- The effectiveness of arrangements for managing the project;
- The record of the institute in motivating students to pursue careers in mathematics, science or engineering;
- The degree of institutional commitment to the project;
- The plans for involving underrepresented groups in research.

IV. Program Assessment

The National Science Foundation periodically reviews its programs to assess whether they are achieving their goals. Evaluation of the REU program necessarily involves assessing the impact of the research experience on the undergraduate participants. The Project Summary Form included in the REU Program Announcement as Appendix IV requests information about the makeup of the anticipated student participants. Those receiving REU awards must keep track of the makeup of the actual student participants. The student profile information should be submitted at the time of the Final Project Report. However, in some cases, this information may be requested by NSF prior to the date of completion of the award.

V. NSF Contacts

The REU Program Announcement may be obtained by contacting: NSF Forms and Publications, Room 232, National Science Foundation, Washington, DC 20550, (202) 357–7861.

VI. Other Programs

NSF Guide to Programs (NSF 86–40) briefly describes all Foundation programs, most of which are open to all institutions. It is available at most institutions or may be obtained at no cost by contacting the Forms and Publications Unit, Room 232, NSF, Washington, DC 20550 (202/357–7861). Some programs of special interest to undergraduate faculty are described below.

- The NSF has several programs directed toward improving *precollege* science, mathematics and technology education. In most cases, college and university faculty write proposals and direct the projects supported by these programs. For information on *Applications of Advanced Technologies, Informal Science Education, Instructional Materials Development, or Research in Teaching and Learning*, contact the Division of Materials Development, Research and Informal Science Education, Room 635, NSF, Washington, DC 20550 (202/357–7452). For information on *Science and Mathematics Education Networks, Teacher Preparation, Teacher Enhancement, or Presidential Awards for Excellence in Science and Mathematics Teaching*, contact the Division of Teacher Preparation and Enhancement, Room 635, NSF, Washington, DC 20550 (202/357–7073).
- Information on *Graduate Research Fellowships* and *Minority Graduate Research Fellowships* may be obtained by contacting the National Research Council, 2101 Constitution Avenue, Washington, DC 20418.
- The *Undergraduate Faculty Enhancement Program* (UFE) offers Grants for Undergraduate Faculty Seminars and Conferences to provide opportunities for groups of faculty to learn about new techniques and new developments in their fields. Awards are made to conduct seminars, short courses, workshops or similar activities for groups of faculty members from outside the grantee institution. For further information about the Undergraduate Faculty Enhancement Program, contact the Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).
- Through *Research Opportunity Awards* (ROA), faculty members at institutions with limited research opportunities may work with investigators who already hold or are applying for an NSF research grant. The experience gained under ROA may help the faculty member from the participating institution to become more competitive in submitting an independent research proposal, and may provide experience that will be reflected in improved teaching at the home institution. Full-time faculty members interested in ROA collaborations must make their own arrangements with a host investigator and institution. Formal application to NSF is made by the host institution as part of an initial proposal to NSF or, if an award already is in progress, as a supplement to that award. For further information about Research Opportunity Awards, contact the Research Opportunities Award Program, Room 1225, NSF, Washington, DC 20550 (202/357–7456)
- The *Research in Undergraduate Institutions* (RUI) activity is part of the Foundation's effort to broaden the base for science and engineering research and to enhance the scientific and technical training of students. The objectives of the RUI activity are to strengthen the research environments in academic departments that are oriented primarily to undergraduate education in science and engineering, and to promote the coupling of research and education at predominantly undergraduate institutions. RUI provides support for research and research equipment for investigators in non-doctoral departments in predominantly undergraduate institutions. RUI proposals are evaluated and funded on a competitive basis by NSF's research programs. For further information contact the Division of Research Initiation and Improvement, Room 1225, NSF, Washington, DC 20550 (202/357–7456).
- NSF's *Facilitation Awards for Handicapped Scientists and Engineers* (FAH) activity enhances opportunities for disabled individuals to participate in research. Funds are provided to purchase special equipment, modify equipment, or provide other services required specifically for the work undertaken on an NSF-supported project (see NSF 84–62, Rev 5–87). Funds from regular program budgets are provided for handicapped senior personnel, other professionals, and students, as a supplement to an existing award or as part of a new award. General inquiries may be made to the Coordinator, Facilitation Awards for Handicapped Scientists and Engineers, Room 1225, NSF, Washington, DC 20550 (202/357–7456).
- The *Minority Research Initiation* Program (MRI) supports research by minority scientists and engineers who hold full-time faculty or research-related positions, who (1) are members of ethnic minority groups that are significantly underrepresented in the science and engineering career pool; (2) have not previously received Federal research support as faculty members; and (3) wish to initiate research efforts on their campuses, thereby increasing their ability to compete successfully for other research support. Information about programs for minority scientists and engineers may be obtained from the MRI Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7350).
- The *Visiting Professorships for Women* Program (VPW) enables experienced women scientists and engineers to undertake advanced research at a host institution—a university or 4-year college which has the necessary facilities. In addition to her research responsibilities, the visiting professor undertakes lecturing, counseling and other activities to increase the visibility of women scientists in the academic environment of the host institution, and to provide encouragement for other women to pursue science, mathematics or engineering careers. Additional information may be obtained by contacting the VPW Program Director, Room 1225, NSF, Washington, DC 20550 (202/357–7734).
- The *Research Opportunities for Women Scientists and Engineers* Program (ROW) is designed to provide opportunities for independent research for women who previously have not been principal investigators, or who are reentering the research community. Additional information may be obtained by contacting the ROW Coordinator, NSF, Washington, DC 20550 (202/357–7734).
- The *Undergraduate Curriculum Development Program* includes two components: Engineering Curriculum Development and Calculus Curriculum Development.

—The *Undergraduate Curriculum Development in Engineering Program* is designed to revise and improve undergraduate engineering education. There is a pressing need to revise the curricula of undergraduate engineering education with a view toward more emphasis on the laboratory experience and on technology-driven fields such as design, manufacturing, and computer-integrated engineering. There is also a need to explore the use of new technologies to improve the quality and productivity of the undergraduate engineering education system. Additional information about this program may be obtained from the Undergraduate Curriculum Development in Engineering Program, Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

—The *The Undergraduate Curriculum Development in Mathematics Program* supports proposals that will have significant impact on the nature of calculus instruction in this Nation through the development of model curricula and prototypical instructional materials. For additional information contact the Office of Undergraduate Science, Engineering

and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

• MOSIS is a joint NSF/DARPA Program that allows qualifying universities to use the DARPA fast turnaround VLSI implementation facility as part of university based research and educational programs. Students taking undergraduate VLSI design courses can now have digital systems that they design, fabricated and packaged and returned to them for testing and experimentation. For more information, contact the Division of Microelectronic Information Processing Systems, Room 414, NSF, Washington, DC 20550 (202/357–7853).

• The goal of the *Instrumentation and Laboratory Improvement Program* is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory and/or field courses in science, mathematics or engineering. For additional information contact the Office of Undergraduate Science, Engineering and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357–7051).

• The *Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled* is an undergraduate program that supplements efforts at the pre-college level to address the underrepresentation of women, minorities and the disabled in the Nation's ranks of science and engineering professionals. There are two activities:

—*Comprehensie Projects for Minorities* supports the establishment of regional centers designed to increase the minority presence in science and engineering and to strengthen such efforts in institutions with significant minority enrollments, and

—*Prototype and Model Projects for Women, Minorities and the Disabled* encourages institutions to create special outreach programs for these target audiences.

For more information, contact the Office of Undergraduate Science, Engineering, and Mathematics Education, NSF, Washington, DC 20550 (202/357–7051).

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities, and the disabled to compete fully in any of the programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

Catalogue of Federal Domestic Assistance Numbers:

47.041 Engineering
47.049 Mathematical and Physical Sciences
47.050 Geosciences
47.051 Biological, Behavioral and Social Sciences
47.053 Scientific, Technological and International Affairs
47.070 Computer and Information Sciences and Engineering

Animal Welfare

If any REU activity is likely to involve experiments using nonhuman vertebrate animals or in maintaining such animals in captivity, the "Animal Welfare" block on the cover sheet must be checked. In such proposals, the narrative also must contain an assurance that the proposing institution complies with the relevant guidelines issued by the National Institutes of Health in the *Guide for the Care and Use of Laboratory Animals* (NIH Publication 85–23, Revised 1985). The particular attention of proposers is directed to "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training" to be found in the appendix to that Guide. Individuals desiring a copy of these Guidelines can obtain one from the Division of Research Services, Building 31, Room 4B59, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. (NSF does not maintain a supply of this document.)

Robert Watson,

Head, Office of Undergraduate Science, Engineering, and Mathematics Education, National Science Foundation.

[FR Doc. 88–13038 Filed 6–9–88; 8:45 am]

BILLING CODE 7555–01–

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–440, 50–441]

Cleveland Electric Illuminating Co.; Receipt of Petition for Director's Decision

Notice is hereby given that Ms. Connie Kline, Ms. Theresa Burling, Mr. Russ Bimber, and Mr. Ron O'Connell, on behalf of Concerned Citizens of Lake County, Concerned Citizens of Geauga County, and Concerned Citizens of Ashtabula County, have supplemented their request that the U.S. Nuclear Regulatory Commission require the Cleveland Electric Illuminating Co. to correct certain alleged deficiencies in its Emergency Preparedness Information Handbook for the Perry Nuclear Facility and to redistribute a corrected handbook.

This supplement to the petition is being handled as a request for action pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. Copies of the amended petition are available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room for the Perry Nuclear Power Plant at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 6th day of June, 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88–13100 Filed 6–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co; Issuance of Amendments to Facility Operating License

The U.S. Nucler Regulatory Commission (Commission) has issued Amendment No. 85 to Facility Operating License No. NPF–9 and Amendment No. 66 to Facility Operating License NPF–17 issued to Duke Power Company, (the licensee), which revised the Technical Specifications for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina. The amendments were effective as of the date of issuance.

The amendments changed Technical Specifications 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels for fuel rods in reconstitutible fuel assemblies to be reinserted in the reactor core during a refueling outage.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 29, 1988 (53 FR 15478). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 17991) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of human environment.

For further details with respect to the action see (1) the application for amendment dated April 1, 1988, which modified a letter dated February 5, 1988, (2) Amendment No. 85 to License No. NPF–9, and Amendment No. 66 to License No. NPF–17, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 1st day of June 1988.

For the Nuclear Regulatory Commission.

Dail S. Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects I/II.

[FR Doc. 88–13101 Filed 6–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Lighting Co. (Shoreham Nuclear Power Station); Exemption

I

Long Island Lighting Company (the licensee) is the holder of Facility Operating License No. NPF–36 which authorizes operation of thie Shoreham Nuclear Power Station (SNPS). The facility is a boiling water reactor and is currently at a power level not to exceed 121.8 megawatts thermal (five percent of full rated power) at the licensee's site located in Suffolk County, New York. This license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

10 CFR 50.54(w), requires that each commercial power reactor licensee shall, by June 29, 1982, take reasonable steps to obtain on-site property damage insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Nuclear Regulatory Commission (the Commission) (NRC) that it possesses on equivalent amount of protection covering the facility, provided, among other things, that this insurance must have a minimum coverage limit no less than the combined total of (i) that offered by either American Nuclear Insurers (ANI) and Mutual Atomic Energy Reinsurance Pool (MAERP) jointly or Nuclear Mutual Limited (NML); plus (ii) that offered by Nuclear Electric Insurance Limited (NEIL), the Edison Electric Institute (EEI), ANI and MAERP jointly, or NML as excess property insurance. On August 5, 1987, the NRC amended this regulation to require a minimum coverage limit for the reactor station site of either 1.06 billion dollars or whatever amount of insurance is generally available from private sources, whichever is less (52 FR 28983).

III

The licensee prior to this change was required to carry the full amount of on-site primary property damage insurance coverage (620 million dollars). By letter dated November 23, 1987, the licensee requested an exemption to reduce the amount of primary property damage insurance from the full amount of 1.06 billion dollars to 337 million dollars. The licensee states that the requirement to fully comply with the regulation is an undue financial hardship and burden. Maintaining a lower level of primary property damage insurance will reduce the capital cost for SNPS by 2.4 million dollars a year until LILCO is authorized to operate SNPS at power levels greater than five percent of full rated power. By letter dated November 23, 1987 the licensee provided its technical justification that 337 million dollars of primary property damage insurance provides an adequate level of coverage to clean up or return the SNPS plant to a condition ready for decommissioning, if necessary, following an accident.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a) are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) present special circumstances. 10 CFR 50.12(a)(2)(iii) describes the special circumstances in that the exemption would provide relief from this regulation if compliance would result in undue hardship or costs in excess of those contemplated when the regulation was adopted, or that costs are significantly in excess of those incurred by others similarly situated.

By letter dated November 23, 1987, the licensee requested a schedular exemption from one of the requirements of 10 CFR 50.54(w)(1) as amended August 5, 1987 (52 FR 28963). The licensee has requested that it not be required to carry the full amount (1.06 billion dollars) of the required on site property insurance until such time as it is authorized to operate the SNPS at a power greater than five percent of full power. This limit is based on LILCO's current low power operating license issued July 3, 1985. Issuance of a full power license for SNPS has been delayed due to the unprecedented litigation of emergency planning issues.

LILCO contends that imposition of the full amount of required on-site damage insurance prior to when it is authorized to operate SNPS at power levels greater than five percent of full rated power would result in the following:

1. Undue hardship based on New York State cost accounting requirements,

2. Cost in excess of those contemplated when the regulation was adopted based on its current 121.8 MW(t) operating limit, and

3. The costs are significantly in excess of those incurred by others similarly situated (each operating at 50 MW(e)).

LILCO has requested that in lieu of the current required coverage, that it be allowed to carry 337 million dollars of on-site insurance. LILCO calculated this amount based on the results and methods from NUREG/CR–2801 used to derive the current 1.06 billion dollar required amount.

IV

The staff has reviewed the licensee's request for the schedular exemption and finds that requiring the licensee to carry the full amount of on-site property damage insurance coverage, 1.06 billion dollars, as required by 10 CFR 50.54(w)(1), results in undue hardship, costs in excess of those contemplated when the regulation was adopted and costs in excess of those incurred by others similarly situated.

The staff also concludes that issuance of this schedular exemption will have no significant effect on the safety of the public or the plant. Further, the licensee has shown special circumstances as described in the staff's supporting safety evaluation to support the schedular exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this schedular exemption will have no significant impact on the environment (May 19, 1988, 53 FR 17992).

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a)(1) the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. As indicated above, compliance with 10 CFR 50.54(w)(1) would result in undue costs considering the current operational restrictions placed on the Shoreham facility, and that the cost is significantly in excess of the relative cost incurred for similar insurance by the other facilities operating at similar power ranges covered by the rule. Thus, special circumstances as described in § 50.12(a)(2)(iii) exist. Consequently, the exemption falls within special circumstances determined by the Commission to be sufficient to support the exemption. Therefore, the Commission hereby approves the following exemption:

The licensee is exempt from the requirement to carry on-site property damage insurance coverage in the full amount called for by 10 CFR 50.54(w)(1) until such time that an authorization to operate SNPS at power levels grater than five percent is granted, provided that the licensee maintain such on-site property damage insurance in an amount not less than 337 million dollars.

The applicant's letter dated November 23, 1987, and the NRC staff's letter and Safety Evaluation dated May 31, 1988, related to this action are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11768.

The exemption is effective from August 5, 1987.

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-13102 Filed 6-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-19452, License No. 49-21004-01, EA 88-107]

Riverton Memorial Hospital—Health Trust, Inc. Order Modifying License

I

Riverton Memorial Hospital—Health Trust, Inc., Riverton, Wyoming, is the holder of specific byproduct material License No. 49-21004-01 issued by the Nuclear Regulatory Commission (Commission/NRC) pursuant to 10 CFR Parts 30, 31, and 35. The license authorizes the licensee to use (1) any byproduct material specified by 10 CFR 35.100 and 35.200 (under the new revised 10 CFR Part 35, this requirement is under Subparts D, E, and F) for diagnostic procedures, (2) any byproduct material listed in 10 CFR 31.11 for *in vitro* studies, and (3) iodine-131 for diagnosis and treatment of hyperthyroidism and cardiac dysfunction. The license was originally issued on June 2, 1982; was most recently amended on July 22, 1987; was due to expire on May 31, 1987; and is currently in effect pursuant to a timely application for renewal in accordance with 10 CFR 2.109.

II

The licensee's facility was initially inspected on September 12, 1983. As a result of that inspection, the licensee was cited for a violation concerning its failure to conduct a quarterly Radiation Safety Committee meeting.

The licensee facility was next inspected during a special, unannounced inspection conducted on September 30 and October 1, 1986. As a result of this inspection, numerous violations were discovered and, therefore, an enforcement conference was held with the licensee on November 4, 1986. At the enforcement conference, the licensee expressed concern over its ability to staff the hospital's nuclear medicine program with adequately trained personnel. Specifically, the licensee was searching for a staff radiologist who could also fill the vacant Radiation Safety Officer (RSO) function.

Subsequently, a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 21, 1987. In the NOV, the licensee was cited for failure to (1) restrict the use of licensed materials to physicians who are authorized and qualified, (2) properly follow procedures for the assay of molybdenum-99, (3) have personnel wear dosimetry when working with licensed material, (4) conduct linearity tests on the dose calibrator, (5) conduct quarterly Radiation Safety Committee meetings, (6) conduct leak tests of sealed calibration sources, (7) conduct physical inventories of sealed calibration sources, and (8) notify NRC of the hospital's name change. The NRC letter of January 21, 1987, specifically highlighted the fact that the licensee had need for increased management attention to the radiation protection program. To emphasize the importance of complying with NRC requirements, a Two Thousand Five Hundred Dollar ($2,500) Civil Penalty was proposed.

The licensee responded to the NOV and Proposed Imposition of Civil Penalty by letters dated February 12 and 13, 1987. After consideration of the licensee's response to the violations and request for mitigation of the Civil Penalty, the NRC concluded that the violation did occur and that the Civil Penalty should not be mitigated. Consequently, the Civil Penalty was imposed by Order dated June 11, 1987. The licensee paid the Civil Penalty by letter dated June 19, 1987.

On March 24, 1988, members of the Region IV inspection staff again conducted a special, unannounced radiation safety inspection of the licensee's facility. Resulting from this inspection and an April 15, 1988, enforcement conference, the following violations were identified: (1) Performance of a therapy procedure by unauthorized individual (Repeat violation, Inspection No. 86-01) (2) failure of the Radiation Safety Committee to meet quarterly (Repeat violation, Inspection Nos. 83-01, 86-01), (3) failure to instruct a nuclear medicine department worker, (4) failure to perform a physical inventory of sealed sources (Repeat violation, Inspection No. 86-01), (5) failure to make a record of a diagnostic misadministration, (6) failure to secure a copy of a radioactive materials license on which a visiting physician was named, (7) failure to include all required information on records for radiopharmaceutical administrations, and (8) failure to notify NRC of authorized users who were named on the license but who were no longer in the licensee's employ. Several of these violations were repeat violations.

At the April 15, 1988, enforcement conference, the licensee again expressed concern regarding its inability to secure adequately trained personnel to staff the nuclear medicine department. In discussing this concern, the NRC staff observed that the licensee's representatives present at the Enforcement Conference were also unaware of the NRC's rules and regulations. In particular, the radiologist who had serving as RSO for about a year was unfamiliar with the license and its provisions. Both the administrator and the radiologist were unfamiliar with the mechanics of seeking an amendment to the license, neither was aware of the current license amendment, and both were confused as to whether their consultant or the licensee was processing a request to amend the license. Moreover, the chief technologist had been demoted about 6 months previous to the inspection, and that position had been filled by an interim supervisor who recently gave notice of his intent to leave the licensee's employ. The only qualified nuclear medicine technologist had terminated her employment with the licensee following the March 24, 1988, inspection.

Prior to the April 15, 1988, enforcement conference, a Confirmation of Action Letter (CAL) was issued on March 29, 1988. The CAL confirmed the licensee's commitment to establish written controls, to notify the staff that they were specifically precluded from conducting therapeutic administrations, to submit specific information on a departmental meeting, and to submit the qualifications of the RSO in order that he could be authorized to conduct therapeutic procedures. The licensee has subsequently fulfilled these commitments.

III

Based on (1) the NRC inspections of September 30 and October 1, 1986, and March 24, 1988, that identified numerous violations, several of which were repeat violations, and (2) the licensee's admitted inability to staff the nuclear medicine department with adequately trained personnel, NRC concludes that the radiation safety program at Riverton Memorial Hospital has not been properly implemented. Consequently, without the further action ordered here, I lack the reasonable assurance that the health and safety of the public will be adequately protected. Accordingly, immediate action is required to provide assurance that licensed activities will be properly supervised and conducted. Therefore, I have determined, pursuant to 10 CFR 2.204, that the public health, safety, and interest require that the license should be modified, as described below, effective immediately, and that no prior notice is required.

IV

Accordingly, pursuant to sections 81, 161(b), (i), and (o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30 and 35, it is hereby ordered, that effective immediately:

License No. 49-21004-01 is modified to require that:

A. The licensee notify the NRC Region IV office by telephone prior to the effective date of any employment termination of any personnel directly involved in the nuclear medicine department's licensed activities. For any employment termination where licensee has had less than 24 hours prior notice, the licensee will notify the NRC Region IV office promptly but no later than 12 noon of the next business day after its becoming aware of such personnel's departure. The personnel subject to this notification requirement include (1) the RSO, (2) authorized users, (3) the interim nuclear medicine department supervisor, and (4) technologists who are currently involved in, or subsequent to the date of this Order, technologists who are in the future involved in licensed activities.

B. An independent party, qualified in the area of radiation safety, perform quarterly audits of the Radiation Safety Program. The audit program shall continue for a period of 1 year. The credentials of the independent party and the proposed audits shall be submitted to NRC Region IV for review and approval within 30 days of the date of this order.

Audits shall be conducted for the purpose of evaluating the effectiveness of the radiation safety program in assuring adherence to NRC requirements and safe performance of licensed activities. These audits shall include, at a minimum:

1. Assessment of management control and oversight of the program.

2. Evaluation of the adequacy of staffing levels, training and qualification of personnel involved in licensed activities, and implementation of the program.

3. Observation and evaluation of the performance of personnel engaged in licensed activities.

4. Assessment of the quality and accuracy of records required to be maintained concerning licensed activities.

The first such independent audit shall be conducted within 1 month of the NRC's notification to the licensee of NRC's approval of the audit program. The results of each audit shall be simultaneously provided to the Hospital Administrator and the Regional Administrator, NRC Region IV, within 2 weeks of completion of the audit. The hospital shall provide to the Regional Administrator, NRC Region IV, within 30 days of receipt of the results of each audit, a description of the corrective actions taken for each recommendation by the independent party and justification for any recommendation not accepted.

The Regional Administrator, NRC Region IV, may in writing, relax or rescind any of these conditions for good cause shown.

V

The licensee or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. *An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.*

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 3rd day of June 1988.

[FR Doc. 88-13103 Filed 6-9-88; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program—Postal Service/City of New York Human Resources Administration

AGENCY: United States Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/City of New York Human Resources Administration.

SUMMARY: The Postal Service plans to participate in a computer matching program at the request of the City of New York Human Resources Administration in its efforts to detect fraud, waste, and abuse in the public assistance programs administered by the agency. The match will compare certain portions of the Postal Service's Payroll System File with the City's master file of public assistance clients.

DATE: The match is expected to begin about June 1988.

ADDRESS: Send any comments to USPS Record Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 8121, Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying Monday through Friday between 9:00 a.m. and 4:00 p.m. at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, USPS Records Office (202) 268-5161.

SUPPLEMENTARY INFORMATION: On February 4, 1987, the Postal Service published notice (52 FR 3518) of a computer match of certain portions of the Postal Service's Payroll System File (050.020, Finance Records—Payroll System) with the City of New York Human Resources Administration's (NY HRA) master file of public assistance clients. The purpose of the match was to assist NY HRA in its efforts to identify and current postal employees receiving public assistance, food stamps, or Medicaid benefits from the City of New York to which they were not entitled. That match resulted in the identification and removal of several employees from the benefit rolls and the reduction of benefits of other employees who failed to report USPS earnings—with a net savings of monies substantially in excess of the cost of the match. USPS has agreed to participate in a follow-up match in compliance with the Revised Supplemental Guidance for Conducting Computerized Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). Set forth below is the information required by paragraph 5.f.(1) of these guidelines. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and City of New York Human Resources Administration (NY HRA)

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the NYB HRA will submit to the USPS a computer tape of its recipients of public assistance, food stamps, or Medicaid benefits identified by name and social security account number (SSAN). The USPS will match that tape, using name and SSAN, against its payroll system file (USPS 050.020, Finance Records—Payroll System) of current postal employees in the City of New York. The purpose of this match is to identify any current postal employees who are receiving benefits to which they are not entitled under these programs. In instances where SSANs match ("hits"), the USPS will disclose to the NY HRA the following information from its payroll file: Name, SSAN, date of birth, home address, date started on payroll, facility where employed, and gross wage information.

The validity of "matched" employee/benefit recipient information will be verified by the NY HRA. Case files will be evaluated, recipients interviewed to obtain supplementary verification of employment, and written notice of appeal rights given to recipients prior to initiation of steps to have benefits terminated or reduced. Subsequent actions may include the collection of outstanding debts owed by those employees for past benefit overpayments; the reduction, suspension or termination of benefit payments; and other appropriate action against those employees fraudulently receiving benefits, but only after the individual has been afforded due process. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 40 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System (most recently published in 52 FR 6251 of March 2, 1987).

c. *Period of the Match:* The matching program will be on a one time basis and is expected to begin about June 1988 and end no later than December 1989.

d. *Security:* The USPS personnel who perform the match will (a) have the only USPS access to the NY HRA computer tape, (b) use it only for the purpose of the match, and (c) safeguard it from unauthorized access. Likewise, postal employee information disclosed to the NY HRA will be used by authorized NY HRA personnel only for the purpose of the match and will be safeguarded from unauthorized access. All information exchanged as a result of this matching program will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by the NY HRA and must return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this matching project.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-13119 Filed 6-9-88; 8:45 am]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1988, shall be at the rate of 25 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1988, 30.1 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 69.9 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: June 2, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-13044 Filed 6-9-88; 8:45 a.m.]

BILLING CODE 7905-01-M

SMALL BUSINESS ADMINISTRATION

Discontinuance of Consideration of Disaster Declaration Requests

The Small Business Administration is experiencing a severe shortage of operating funds for the administration of the disaster loan programs authorized by section 7(b) of the Small Business Act. The Agency has taken every possible step to conserve salary and expense funds so as to continue disaster loan-making operations as long as possible. Additionally, the Agency has realigned funds to help sustain salaries and expenses for the disaster loan programs. However, the need for additional operating funds has become so acute as to require further action to avoid the unlawful expenditure of funds which have not been appropriated.

Accordingly, I have determined that, beginning June 3, 1988, it is necessary to cease to consider any requests for disaster declarations, or to issue an SBA disaster declaration pursuant to a declaration of a major disaster by the President, or to designate an economic injury disaster loan area pursuant to a designation by the Secretary of Agriculture, until either a supplemental appropriation for the current fiscal year is approved, or an appropriation for the fiscal year beginning October 1, 1988 is approved.

Further, there can be no assurance that the Agency will be able to accept or process applications for disasters already declared, or make disbursements on loans already approved, until additional funds are available.

James Abdnor,

Administrator.

Date: June 6, 1988.

[FR Doc. 88-13099 Filed 6-9-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-20]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 30, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Council, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (ACG-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 8, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23455	Reeve Aleutian Airways, Inc	14 CFR 121.574(a) (1), (3), and (4)	To extend Exemption No. 4682 that allows petitioner to carry and operate aboard petitioner's aircraft certain oxygen storage, generating, and dispensing equipment for medical use by patients requiring emergency medical attention.
25560	Lake Mead Air, Inc	14 CFR 21.181 and 135.143	To allow petitioner and all other single-engine Part 135 operators to operate in accordance with an approved minimum equipment list based upon a master minimum equipment list for single-engine aircraft.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25233	Alaska Air Carriers Association	14 CFR 43.3(g)	To extend Exemption No. 4802 that allows pilots employed by petitioner's member air carriers to continue to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in Part 135 operations. Grant, May 23, 1988, Exemption No. 4802A.
015NM	Avions Dassault-Breguet Aviation	14 CFR 25.813(e)	To permit installation of fixed partitions with doors in the cabin of Falcon 900 aircraft. Denial, May 16, 1988, Exemption No. 4838.

[FR Doc. 88-13021 Filed 6-9-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-88-21]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 30, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue NW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (3), and (g) of § 11.27 of Part 11 of the Federal Aviation regulations (14 CFR Part 11).

Issued in Washington, DC, on June 6, 1988.

Denise D. Hall,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
23938	Flying Tiger Line, Inc.	14 CFR 121.547 and 121.583(a)(8)	To extend Exemption No. 4110A that allows petitioner to carry employee dependents on its B-727-100 freighter aircraft under certain conditions set forth in that exemption.
24608	Pan American World Airways.	14 CFR 121.433(c)(1)	To amend Exemption No. 4833 to allow petitioner, when performing training and checking under that exemption, to permit Line Oriented Flight Training (LOFT) to be accomplished prior to proficiency training.
25684	Northeast Jet Center Ltd.	14 CFR 91.1191(a)(4); 135.165(a) (5) and (6); and 135.165(b) (5), (6), and (7).	To allow petitioner to conduct certain extended overwater flights with only one long-range navigation system and one HF communications system.
25818	Gkridhar Gopal	14 CFR 61.39(a)(4)	To allow petitioner to obtain a flight test for the Commercial Pilot Certificate before his 18th birthday.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
13188	American Airlines Flight Academy.	14 CFR 61.63(d)(92) and (3)	To extend Exemption No. 4652 that allows the use of an approved visual simulator by American Airlines for applicants for a Cessna 500 (CE-500) type rating who have completed the training course of American Airlines as approved by the FAA pursuant to § 121.424(d). Grant, May 31, 1988, Exemption No. 4652A.
21780	United States Air Force Auxiliary.	14 CFR 61.118	To allow Civil Air Patrol members holding private pilot certificates to be reimbursed for fuel, oil, and maintenance while serving on official Civil Air Patrol missions. Grant, May 27, 1988, Exemption No. 4042B.
22578	Ray's Flight Systems d/b/a/ Airline Crew Training.	14 CFR 61.63(d) (2) and (3); 61.157(d) (1) and (2); and Appendix A of Part 61.	To extend Exemption No. 3544, as amended, that allows petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements. Grant, May 31, 1988, Exemption No. 3544C.
23713	SimuFlite Training International Division.	14 CFR 61.57(a)(1), (c), and (d); 61.58(c) (1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2); and (e) (1) and (2); Appendix A of Part 61; and Appendix H of Part 121.	To amend Exemption No. 3931C that allows petitioner to use the FAA-approved simulators to meet certain training and testing requirements. Grant, May 31, 1988, Exemption No. 3931D.
23907	Bolivar Aviation	14 CFR 141.65	To allow petitioner to recommend graduates of its approved certification courses for flight instructor and airline transport certificates and ratings without taking the FAA's written tests. Grant, May 27, 1988, Exemption No. 4045B.
23921	Flight Safety International	14 CFR 61.57(a)(1), (c), and (d); 61.58(c) (1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); Appendix A of Part 61; and Appendix H of Part 121.	To amend Exemption No. 4058, as amended, that allows petitioner to use the FAA-approved simulators to meet certain training and testing requirements. Grant, May 31, 1988, Exemption No. 4058D.

Petitions for Exemption—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25428	Vieques Air Link, Inc.	14 CFR 135.243(b)(3)	To allow petitioner to operate without the requirement that its pilots hold an airline transport certificate. In the alternative, petitioner requests an exemption from § 135.293(a)(4) to allow its pilots to be exempt from the instrument approach procedures required for tests and checks. Denial, June 1, 1988, Exemption No. 4093B.
25595	Continental Airlines	14 CFR 135.159(a)	To allow petitioner and certain commuter airlines in which petitioner has an ownership interest to operate Embraer-120 (EMB-120) and Beech-1900 (B-1900) airplanes without being equipped with a gyrocopic rate-of-turn indicator. A backup, third attitude indicator would be substituted for the gyrocopic rate-of-turn indicator. Grant, June 3, 1988, Exemption No. 4039.

[FR Doc. 88-13022 Filed 6-9-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 6, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 7018 and 7018-A.
Type of Review: New Collection.
Title: Employer's Order Blank for Forms—Form 7018; Agricultural Employer's Order Blank for Forms—Form 7018-A.
Description: Form 7018 and Form 7018-A allows taxpayers who must file information returns a systematic way to order information tax forms materials.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 923,000.
Estimated Burden Hours Per Response: 12 minutes.
Frequency of Response: Annually.
Estimated Average Reporting Burden: 46,150 hours.

OMB Number: 1545-0956.
Form Number: 5500EZ.
Type of Review: Revision.
Title: Annual Return of One-Participant Pension Benefit Plan.
Description: Form 5500EZ is an annual return filed by a one participant or one participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 300,000.
Estimated Burden Hours Per Response: 1 hour 25 minutes.
Frequency of Response: Annually.
Estimated Average Reporting Burden: 211,635 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-13048 Filed 6-9-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0012.
Form Number: 3189.
Type of Review: Reinstatement.
Title: Lay Order Application and Approval.
Description: Customs Form 3189 is used to extend the time for merchandise or baggage to remain on a wharf or pier from the allowed 5 days after a vessel has entered. It is also used in extending the time limit in the case of transferring zone restricted merchandise into Customs territory.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,400.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 5,998 hours.

OMB Number: 1515-0097.
Form Number: None.
Type of Review: Extension.
Title: Customs Regulations Relating to Copyrights.
Description: Copyright owners who choose to record a copyright with Customs for import protection must establish validity of the copyright, pay an administration fee, and provide samples and other information to aid Customs officers in identifying piratical copies.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 600 hours.
Clearance Officer: John Poore (202) 566-9181, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.

BEST COPY AVAILABLE

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–13049 Filed 6–9–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue N.W., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8655.

Type of Review: New.

Title: Reporting Agent Authorization.

Description: These forms allow taxpayers to designate a reporting agent to file certain employment tax returns on magnetic tape, and to submit Federal tax deposits. These forms allow IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized reporting agents. Reporting agents are persons or organizations preparing and filing magnetic tape equivalents of Federal tax returns and/or submitting Federal tax deposits.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: On Occasion.

Estimated Average Reporting Burden: 8,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–13050 Filed 6–9–88; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

[T.D. 88–30]

Conditional Accreditation of a Commercial Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of conditional accreditation of a commercial laboratory.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), ComSource, Inc., 809 Tatar Street, Pasadena, Texas 77506, applied to Customs for accreditation to analyze imported petroleum and petroleum products and organic chemicals.

Customs has determined that the application is complete and acceptable. Therefore, under the provision of § 151.13(c), ComSource, Inc., is conditionally accredited to analyze the products named below for the characteristics indicated in all Customs districts.

Petroleum and petroleum products, for:
- API gravity,
- sediment and water (S&W),
- distillation characteristics and
- antiknock index; and

Organic chemicals in bulk and in liquid form, for:
- identity and
- composition.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446).

Dated: May 26, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88–13110 Filed 6–9–88; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Pub. L. 92–463, the Veterans Administration gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 M Street NW., Washington, DC August 2 through August 5, 1988. The session on August 2, 1988, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on August 3, 4, and 5, 1988, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the August 2nd session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On August 3–5, 1988, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6) and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Jon Peters, Program Manager, Rehabilitation Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420 (Phone: 202–233–5177) at least five days before the meeting.

Dated: May 31, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–13060 Filed 6–9–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 112
Friday, June 10, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.–June 15, 1988.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. TWRA Petition for Rulemaking—Carrier Practices and Tariff Rules Affecting Rate Applicability.
2. Proposed Rule to Permit Correction of Administrative or Clerical Errors in Service Contracts.

Portion Closed to the Public:

1. Proposed General Rate Increase of Five Percent in the Puerto Rico/Virgin Islands Trade.

CONTACT PERSON FOR MORE INFORMATION: Tony P. Kominoth, Assistant Secretary, (202) 523–5725.

[FR Doc. 88–13167 Filed 6–8–88; 10:34 am]

BILLING CODE 6730–01–M

Corrections

Federal Register
Vol. 53 No. 112
Friday, June 10, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1425

Cooperative Marketing Associations

Correction

In rule document 88-12256 beginning on page 19882 in the issue of Wednesday, June 1, 1988, make the following correction:

On page 19882, in the second column, in the first complete paragraph, in the last line, "1993" should read "1983".

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. 2]

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

Correction

In proposed rule document 88-12194 beginning on page 19923 in the issue of Wednesday, June 1, 1988, make the following corrections:

§ 1446.106 [Corrected]

1. On page 19924, in the first column, in § 1446.106(c), in the second line, insert subparagraph designator "(1)" after "*credit*".

2. On the same page, in the second column, in § 1446.106(c)(1), in the fourth line, "contaract" should read "contracted".

3. On the same page, in the same column, in § 1446.106(c)(1)(i)(A), in the fourth line, "disposed" should read "dispose".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

Correction

In notice document 88-11246 beginning on page 17968 in the issue of Thursday, May 19, 1988, make the following correction:

On page 17968, in the third column, in the table, under "Category", in the last line, "393" should read "339".

BILLING CODE 1505-01-D

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1501

Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Interpretation

Correction

In rule document 88-11690 beginning on page 19281 in the issue of Friday, May 27, 1988, make the following correction:

On page 19282, in the second column, in the eighth line, "May" should read "November".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225-88-2082]

Memorandum of Understanding Between the State Administration of Import and Export Commodity Inspection of the People's Republic of China and the Food and Drug Administration; Cerasicoure for Food Use

Correction

In notice document 88-11074 beginning on page 17764 in the issue of Wednesday, May 18, 1988, make the following correction:

On page 17764, in the second column, under FOR FURTHER INFORMATION CONTACT, in the fifth and sixth lines, the telephone number should read, "301-443-1583."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-08-4212-12]

Realty Action: Exchange of Public Lands

Correction

In notice document 88-10590 appearing on page 16915 in the issue of Thursday, May 12, 1988, the subject heading is corrected to read as set forth above.

BILLING CODE 1505-01-D

federal register

Friday
June 10, 1988

Part II

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3403

Small Business Innovation Research Program; Administrative Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3403

Small Business Innovation Research Program; Administrative Provisions

AGENCY: Cooperative State Research Service; USDA.

ACTION: Final rule.

SUMMARY: This document establishes Part 3403 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) program conducted under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. Number 99-591, 100 Stat. 3341.

The issuance of this rule establishes the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program.

EFFECTIVE DATE: June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky, Chief, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, Room 112, Justin Smith Morrill Building, 15th and Independence Avenue SW., Washington, DC. 20251-2200. (Telephone: (202) 475-5024.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this rule have been approved under OMB Document Nos. 0524-0022, 0524-0025, and 0524-0028.

Classification

This rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.212, Small Business Innovation Research (SBIR Program). For the reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, and pursuant to the Notice found at 52 FR 22831, June 16, 1987, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

This document establishes Part 3403 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) program conducted under the authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes as made applicable by section 101(a) of Pub. L. Number 99-591, 100 Stat. 3341, and the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). This rule establishes and codifies the procedures to be followed in the solicitation of competitive small business innovation research proposals, the evaluation of such proposals, and the award of grants under this program.

On April 20, 1988, the Department published a Notice in the Federal Register (53 FR 13048) proposing the establishment of this regulation and inviting comments from interested individuals and organizations. Comments were requested by May 20, 1988. No comments were received.

List of Subjects in 7 CFR Part 3403

Grants programs—agriculture, Grant administration.

The Department therefore adds Part 3403 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations as follows:

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

Subpart A—General Information

Sec.
3403.1 Applicability of regulations.
3403.2 Definitions.
3403.3 Eligibility requirements.

Subpart B—Program Description

3403.4 Three-phase program.

Subpart C—Preparation and Submission of Proposals

3403.5 Requests for proposals.
3403.6 General content of proposals.
3403.7 Proposal format for phase I applications.
3403.8 Proposal format for phase II applications.
3403.9 Submission of proposals.

Subpart D—Proposal Review and Evaluation

3403.10 Proposal review.
3403.11 Phase I evaluation criteria.
3403.12 Phase II evaluation criteria.
3403.13 Availability of information.

Subpart E—Supplementary Information

3403.14 Terms and conditions of grant awards.
3403.15 Notice of grant awards.
3403.16 Use of funds; changes.
3403.17 Other Federal statutes and regulations that apply.
3403.18 Other conditions.

Authority: 5 U.S.C. 301.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. Number 99-591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). The Small Business Innovation Development Act of 1982, as amended, mandates that each Fedeal agency with an annual extramural budget for research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage minority and disadvantaged participation in technological innovation. The U.S. Department of Agriculture (USDA) will participate in this program through the issuance of competitive research grants which will be administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS).

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3403.2 Definitions.

As used in this part:

(a) "*Ad hoc* reviewers" means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific or technical merit of grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

(b) "Awarding official" means any officer or employee of the Department who has the authority to issue or modify research project grant instruments in behalf of the Department.

(c) "Budget period" means the interval of time into which the project period is divided for budgetary and reporting purposes.

(d) "Department" means the Department of Agriculture.

(e) "Funding agreement" is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

(f) "Grantee" means the small business concern designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(g) "Minority and disadvantaged small business" is a concern:

(1) Which is at least 51 percent owned by one or more minority and disadvantaged individuals or, in the case of any publicly owned business, one in which at least 51 percent of the voting stock is owned by one or more minority and disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

For purposes of this program, a minority and disadvantaged individual is defined as a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans.

(h) "Peer review group" means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

(i) "Principal investigator" means a single individual designated by the grantee in the grant application and approved by the Department who is responsible for the scientific and technical direction of the project.

(j) "Program solicitation" is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in selected areas and invites proposals from small business concerns in response to those needs.

(k) "Project" means the particular activity within the scope of one of the research topic areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(l) "Project period" means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

(m) "Research or research and development (R&D)" means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(n) "Research project grant" means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

(o) "Small business" means a concern which at the time of award of phase I and phase II funding agreements meets the following criteria:

(1) Is organized for profit, independently owned or operated, is not dominant in the field in which it is proposing, has its principal place of business located in the United States, has a number of employees not exceeding 500 (full-time, part-time, temporary, or other) in all affiliated concerns owned or controlled by a single parent concern, and meets the other regulatory requirements outlined in 13 CFR Part 121. Business concerns, other than licensed investment companies, or State development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, *et seq.*, are affiliates of one another when directly or indirectly one concern controls or has the power to control the other or third parties (or party) control or have the power to control both. Control can be exercised through common ownership, common management, and contractual relationships. The term "affiliates" is defined in greater detail in 13 CFR 121.3(a). The term "number of employees" is defined in 13 CFR 121.2(b). Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

(2) Is at least 51 percent owned, or in the case of a publicly owned business at least 51 percent of its voting stock is owned, by United States citizens or lawfully admitted permanent resident aliens.

(3) Is the primary source of employment of the principal investigator of the proposed effort at the time of award and during the conduct of the proposed research. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the small business. Primary employment with the small business applicant precludes full-time employment with another organization.

(4) Is the primary performer of the proposed research effort. Because the program is intended to increase the use of small business firms in Federal research or R&D, the term "primary performer" means that a minimum of two-thirds of the research or analytical

work must be performed by the proposing organization under phase I grants. For phase II awards, a minimum of one-half of the research or analytical effort must be conducted by the proposing firm.

(p) "Subcontract" is any agreement, other than one involving an employer-employee relationship, entered into by a Federal Government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

(q) "United States" means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

(r) "Women-owned small business" means a concern that is at least 51 percent owned by a woman or women who also control and operate it. "Control" as used in this context means exercising the power to make policy decisions. "Operate" as used in this context means being actively involved in the day-to-day management of the concern.

§ 3403.3 Eligibility requirements.

(a) Each organization submitting a proposal must qualify as a small business for research purposes, must be the primary employer of the principal investigator at the time of award and during the conduct of the actual research, and must be the primary performer of the research and development effort. In addition, the work must be performed by the small business concern in the United States.

(b) Joint ventures and limited partnerships are eligible to apply for and to receive research grants under this program provided that the entity created qualifies as a small business in accordance with section 2[3] of the Small Business Act (15 U.S.C. 632) and as defined in § 3403.2(o) of this part.

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research program will be carried out in three separate phases described below. The first two phases are designed to assist USDA in meeting its research and development objectives and will be supported with Federal funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in phases I and II through the use of private, non-Federal funds.

(a) Phase I is the initial stage in which the scientific and technical merit and feasibility of an idea related to one of the research areas described in the program solicitation is evaluated, normally for a period not to exceed 6 months.

(b) Phase II is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only those small businesses previously receiving phase I awards are eligible to submit phase II proposals. For each phase I project funded the awardee may apply for a phase II award only once. Phase I awardees who for valid reasons cannot apply for phase II support in the next fiscal year funding cycle may apply for support not later than the second fiscal year funding cycle.

(c) Phase III is the pursuit of commercial objectives resulting from the Federally supported work carried out in phases I and II. This portion of the project is performed by the small business firm and privately funded by a non-Federal source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business firm and a provider of follow-on capital for a specified amount of funds to be made available to the small business for further development of their effort upon achieving certain mutually agreed upon technical objectives during phase II.

Subpart C—Preparation and Submission of Proposals

§ 3403.5 Requests for proposals.

(a) *Phase I.* A program solicitation requesting phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. The solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved, forms to be completed and submitted with proposals, and special requirements. A notice will be published in the **Federal Register** informing the public of the availability of the program solicitation.

(b) *Phase II.* For each fiscal year in which funds are made available for this purpose, the Department will send a letter requesting phase II proposals from the phase I grantees eligible to apply for phase II funding in that fiscal year. The letter will contain information sufficient to enable eligible applicants to prepare grant proposals and will include forms to be submitted with proposals as well as special requirements.

§ 3403.6 General content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific research activities. A firm must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR phase I or phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic. However, an organization may submit separate proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. Duplicate proposals will be returned to the applicant without review.

(d) Phase I applicants should submit a research proposal of no more than 25 pages, including cover page, budget, and all proposal-related enclosures or attachments. The text must be prepared on only one side of the page using standard 8½" x 11" white paper, with no type smaller than elite regardless of whether it is single or double spaced. In the interest of equity to all proposers, no additional attachments, appendixes, or references beyond the 25-page limitation will be considered in the proposal evaluation process, and proposals in excess of the 25-page limitation will not be considered for review or award. In addition, supplementary materials, revisions, and/or substitutions will not be accepted after the due date for proposals. For phase II applicants, this page limitation does not apply.

§ 3403.7 Proposal format for phase I applications.

(a) *Cover sheet.* Photocopy and complete Form CSRS–667 in the program solicitation. The original of the cover sheet must at a minimum contain the pen-and-ink signatures of the proposed principal investigator(s) and the authorized organizational official. A proposal which does not contain the signature of the authorized organizational official will not be considered a legal document and will be returned to the proposing small business firm without review. All other copies of the proposal must also contain a cover sheet, but facsimile or photocopied signatures will be accepted. The title should be a brief (80-character maximum), clear, specific designation of the research proposed. It will be used to provide information to Congress and also will be used in issuing press releases. Therefore, it should not contain highly technical words. In addition, phrases such as "investigation of" or "research on" should not be used.

(b) *Project summary.* Photocopy and complete Form CSRS–668 in the program solicitation. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords, to be provided in the last block on the page, should characterize the most important aspects of the project. The project summary of successful proposals may be published by USDA and, therefore, should not contain proprietary information.

(c) *Technical content.* The main body of the proposal should include:

(1) *Identification and significance of the problem or opportunity.* Clearly state the specific technical problem or opportunity addressed and its importance.

(2) *Background and rationale.* Indicate the overall background and technical approach to the problem or opportunity and the part that the proposed research plays in providing needed results.

(3) *Relationship with future research or research and development.* Discuss the significance of the phase I effort in providing a foundation for the phase II R&D effort. State the anticipated results of the approach if the project is successful (phases I and II). This should address: The technical, economic, social, and other benefits to the Nation and to users of the results such as the commercial sector, the Federal Government, or other researchers; the estimated total cost of the approach relative to benefits; and, if appropriate, any specific policy issues or decisions which might be affected by the results.

(4) *Phase I technical objectives.* State the specific objectives of the phase I research or research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(5) *Phase I work plan.* This work plan must provide an explicit, detailed description of the phase I research or research and development approach. The plan should indicate the tasks to be performed as well as how and where the work will be carried out. The phase I effort should attempt to determine the technical feasibility of the proposed concept. The work plan should be linked with the technical objectives of the research and the questions the effort is designed to answer. Therefore, it should flow logically from § 3403.7(c)(4) of this part. This section should constitute a substantial portion of the total proposal.

(6) *Related research or research and development.* Describe the significant research or research and development activities from relevant literature that are directly related to the proposed effort, including any conducted by the principal investigator or by the proposing firm, how it relates to the proposed effort, and any planned coordination with outside sources. The proposer must persuade reviewers that he or she is aware of related research in the selected subject.

(d) *Key personnel and bibliography.* Identify key personnel involved in the effort, including information on their directly related education and experience. For each key person, provide a chronological list of the most recent representative publications in the topic area during the preceding 5 years, including those in press. List the authors (in the same order as they appear on the paper), the full title, and the complete reference as these usually appear in journals. Where vitae are extensive, summaries that focus on most relevant experience or publications may be necessary to meet the proposal size limitation in phase I.

(e) *Facilities and equipment.* Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchased must be fully justified under this section.

(f) *Consultants.* Involvement of university or other consultants in the planning and research stages of the project is permitted and may be particularly helpful to small firms which have not previously received Federal research awards. If such involvement is intended, it should be described in detail. Proposals should include letters from proposed consultants indicating willingness to serve.

(g) *Potential post application.* Briefly describe:

(1) Whether and by what means the proposed research appears to have potential commercial application; and

(2) Whether and by what means the proposed research appears to have potential use by the Federal Government.

(h) *Current and pending support.* If a proposal, substantially the same as the one being submitted, has been previously funded or is currently funded, pending, or about to be submitted to another Federal agency or to USDA in a separate action, the proposer must provide the following information:

(1) Name and address of the agency(s) to which a proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(2) Date of actual or anticipated proposal submission or date of award, as appropriate.

(3) Title of proposal or award, identifying number assigned by the agency involved, and the date of program solicitation under which the proposal was submitted or the award was received.

(4) Applicable research topic area for each proposal submitted or award received.

(5) Title of research project.

(6) Name and title of principal investigator for each proposal submitted or award received.

USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies.

(i) *Cost breakdown on proposal budget.* Photocopy and complete Form CSRS–55 in the program solicitation only for the phase under which you are currently applying. (An applicant for phase I funding should not submit both phase I and II budgets.) Please note the following in completing the budget:

(1) *Salaries and wages.* Indicate the number and kind of personnel for whom salary support is sought. For key personnel, also indicate the number of work months of involvement to be supported with USDA funds (see blocks labeled "CSRS Funded Work Months").

(2) *Equipment.* Performing organizations are expected to have appropriate facilities, suitably furnished and equipped. However, items of equipment may be requested provided that they are specifically identified and adequately justified. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than 2 years and an acquisition cost of $500 or more per unit. Vesting of title to equipment purchased with funds provided under an SBIR funding agreement will be determined by USDA. Awardees should plan to lease expensive equipment.

(3) *Travel.* The inclusion of travel will be carefully reviewed with respect to need and appropriateness for the research proposed. Foreign travel may not be included in the phase I budget.

(4) *Subcontracting limits.* Subcontracting may not exceed one-third of the research or analytical effort during phase I. In addition, subcontractors must perform their portion of the work in the United States. If subcontracting costs are anticipated, they should be indicated in block I, "All Other Direct Costs," on the budget sheet. A breakdown of subcontractual cost is required. For proposals involving subcontractual or consulting arrangements, USDA strongly encourages the applicant to submit an agreement or letter of intent signed by the subcontractor or consulting firm's authorized organizational official.

(5) *Fee.* A reasonable fee is permitted under this program. All fees are subject to negotiation with USDA. If a fee is requested, the amount should be indicated in block I, "All Other Direct Costs," on the budget sheet.

(6) *Indirect costs.* If available, the current rate negotiated with the cognizant Federal negotiating agency should be used. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA. A proposer may elect not to charge indirect costs and, instead, use all grant funds for direct costs. If a negotiated rate is used, the percentage and base should be indicated in the space allotted under item K on the budget sheet. If indirect costs are not charged, the phrase "None requested" should be written in this space.

(7) *Cost-sharing.* Cost-sharing is permitted for proposals under this program; however, cost-sharing is not required nor will it be an evaluation factor in considering the competitive merit of proposals submitted.

(j) *Research involving special considerations.* (1) If the proposed research will involve either recombinant DNA molecules or human subjects at risk, the proposal must so indicate. In the event that the project is funded, the proposer may be required to have the research plan reviewed and approved by an appropriate "Institutional Review Board" prior to commencing actual substantive work. It is suggested that proposers contact local universities, colleges, or nonprofit research organizations which have established such reviewing mechanisms to have this service performed.

(2) Guidelines to be applied and observed when conducting such research are:

(i) *Recombinant DNA Molecules.* "Guidelines for Research Involving Recombinant DNA Molecules" issued by the National Institutes of Health. (See 51 FR 16958–16965 and any subsequent revisions.)

(ii) *Human Subjects at Risk.* Guidelines issued by the Department of Health and Human Services. (See 45 CFR Part 46.)

(k) *Proprietary information.* (1) If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided the information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend also appears in the designated area at the bottom of the proposal's cover sheet (Form CSRS–667).

For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of, or in connection with, the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in pages _____ of this proposal.

(2) USDA by law is required to make the final decision as to whether the information is required to be kept in confidence.

(3) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. The proprietary information included should be limited, set off on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Also, trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be keyed and set off on separate page. Proposals or reports which set off any large amount of information may be found unacceptable by USDA.

(l) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organizational management and financial information to assure the responsibility of the proposer. Form CSRS-666 ("Organizational Information") and Form CSRS-665 ("Assurance of Compliance with the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964, as amended") are used for this purpose and are contained in the program solicitation. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only.

§ 3403.8 Proposal format for phase II applications.

(a) *Cover sheet.* Follow instructions found in § 3403.7(a) of this part.

(b) *Project summary.* Follow instructions found in § 3403.7(b) of this part.

(c) *Phase I results.* A synopsis of the phase I research results should be included in the phase II application. This synopsis should contain a discussion of the overall background, phase I technical approach, and feasibility conclusions.

(d) *Proposal.* Since phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under phase I. However, the outline contained in § 3403.7(c) of this part should be followed, tailoring the information requested to the phase II project.

(e) *Cost breakdown on proposal budget.* (1) For phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period. Form CSRS–55, "Proposal Budget", is to be used for this purpose and may be photocopied as necessary.

(2) *Travel.* Foreign travel may be included as necessary in the phase II budget. Such a request will be reviewed with respect to need and appropriateness for the research proposed and therefore should be adequately justified in the proposal.

(3) *Subcontracting limits.* The instructions found in § 3403.7(i)(4) of this part apply to phase II proposals except that the subcontracting limit is changed from one-third to one-half of the research or analytical effort.

(f) *Organizational management information.* Each phase II awardee will be asked to submit an updated statement of financial condition.

(g) *Follow-on funding commitment.* If the proposer has obtained a contingent commitment for phase III follow-on funding, it should be forwarded with the phase II application.

§ 3403.9 Submission of proposals.

The program solicitation for phase I proposals and the letter requesting phase II proposals will provide the deadline date for submitting proposals, the number of copies to be submitted, and the address where proposals should be mailed or delivered.

Subpart D—Proposal Review and Evaluation

§ 3403.10 Proposal review.

(a) All research grant applications will be acknowledged.

(b) Phase I and phase II proposals will be judged competitively in a two-stage process, based primarily upon scientific or technical merit. First, each proposal will be screened by USDA scientists to ensure that it is responsive to stated requirements contained in the program solicitation. Proposals found to be responsive will be technically evaluated by peer scientists knowledgeable in the appropriate scientific field using the criteria listed in § 3403.11 or § 3403.12 of this part, as appropriate. Proposals found to be nonresponsive will be returned to the proposing firm without review.

(c) Both internal and external peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, Government, and non-profit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(d) Technical reviewers will base their conclusions and recommendations on information contained in the phase I or phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposal should be self-contained and written with the care and thoroughness accorded papers for publication.

(e) Final decisions will be made by USDA based upon the ratings assigned by reviewers and consideration of other factors, including the potential commercial application, possible duplication of other research, any critical USDA requirements, program balance, and budget limitations. In addition, the follow-on funding commitment will be a consideration for phase II proposals.

§ 3403.11 Phase I evaluation criteria.

USDA plans to select for award those proposals offering the best value to the Nations, with approximately equal consideration given to each of the following criteria except for item (a) which will receive twice the value of any of the other items:

(a) The scientific/technical quality of the phase I research plan and its relevance to the stated objectives, with special emphasis on innovativeness and originality.

(b) Importance of the problem or opportunity and anticipated benefits of the proposed research, if successful.

(c) Adequacy of the phase I objectives to show incremental progress toward proving the feasibility of approach.

(d) Qualifications of the principal investigator(s), other key staff and consultants, and the probable adequacy of available or obtainable instrumentation and facilities.

§ 3403.12 Phase II evaluation criteria.

(a) A phase II proposal may be submitted only by a phase I awardee. The phase II proposal will be reviewed for overall merit based on the following criteria with each item receiving approximately equal weight except for paragraph (a)(1) of this section, which will receive twice the value of any of the other items:

(1) The scientific/technical quality of the proposed research, with special emphasis on innovativeness and originality.

(2) Degree to which phase I objectives were met (as indicated in phase I final report.)

(3) The technical, economic, and/or social importance of the problem or opportunity and anticipated benefits if phase II research is successful.

(4) The adequacy of the phase II objectives to meet the problem or opportunity.

(5) The qualifications of the principal investigator(s) and other key personnel to carry out the proposed work.

(6) Reasonableness of the budget requested for the work proposed.

(b) In the event that two or more phase II proposals are of approximately equal technical merit, the follow-on funding commitment for continued development in phase III will be an important consideration. The value of the commitment will depend upon the degree of commitment made by non-Federal investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to the funding requested from USDA in phase II.

§ 3403.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR Part 1.

Subpart E—Supplementary Information

§ 3403.14 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the Federal Acquisition Regulation (48 CFR Part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

§ 3403.15 Notice of grant awards.

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Principal Investigator(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authorities under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described above.

§ 3403.16 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original appoved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the Department without additional financial support for such additional period(s) as the Department determines may be necessary to complete or fulfill the purposes of an approved project. Such extension shall be conditioned upon prior request by the grantee and approval in writing by the Department.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the Department prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded;

(3) Result in a need or claim for the award of additional funds; or

(4) Involve transfers or expenditures of amounts requiring prior approval as set forth in the Departmental regulations or in the grant award.

§ 3403.17 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1.1—USDA implementation of Freedom of Information Act

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–102, A–110, A–87, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 3403.18 Other conditions.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, DC, this 7th day of June, 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88-13160 Filed 6-9-88; 8:45 am]

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federal register

Friday
June 10, 1988

Part III

The President

Executive Order 12642—Designation of the Secretary of Defense as the Presidential Designee Under Title I of the Uniformed and Overseas Citizens Absentee Voting Act

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Presidential Documents

Title 3—

The President

Executive Order 12642 of June 8, 1988

Designation of the Secretary of Defense as the Presidential Designee Under Title I of the Uniformed and Overseas Citizens Absentee Voting Act

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99–410) ("the Act"), it is hereby ordered as follows:

Section 1. The Secretary of Defense is hereby designated as the "Presidential designee" under Title I of the Act.

Sec. 2. In order to effectuate the purposes of the Act, the Secretary of Defense is hereby authorized to delegate any or all of the functions, responsibilities, powers, authority, or discretion devolving upon him in consequence of this Order to any person or persons within the Department of Defense.

Ronald Reagan

THE WHITE HOUSE,
June 8, 1988.

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H.R. 3978/Pub. L. 100-326

To designate certain national forest system lands in the States of Virginia and West Virginia as wilderness areas. (June 7, 1988; 102 Stat. 584; 2 pages) Price: $1.00

H.R. 3987/Pub. L. 100-327

To designate the United States Post Office Building located at 500 West Chestnut Expressway in Springfield, Missouri, as the "Gene Taylor Post Office Building." (June 7, 1988; 102 Stat. 586; 1 page) Price: $1.00

H.J. Res. 530/Pub. L. 100-328

Designating May 1988 as "Take Pride in America Month." (June 7, 1988; 102 Stat. 587; 1 page) Price: $1.00

S. 1988/Pub. L. 100-329

To amend the Merchant Marine Act, 1920, and for other purposes. (June 7, 1988; 102 Stat. 588; 3 pages) Price: $1.00

S. 1989/Pub. L. 100-330

South Pacific Tuna Act of 1988 (June 7, 1988; 102 Stat. 591; 11 pages) Price: $1.00

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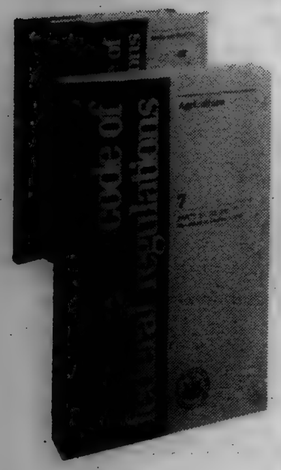

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Amendment of Delegations of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This final rule amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department. It clarifies the authority of the Assistant Secretary for Economics to make long-range, worldwide, economic analyses of supply, demand, and trade in farm products and the financial and monetary aspects of agricultural affairs. This change will result in an improved process for developing long-range estimates and provide more consistent and reliable baseline data for agencies with responsibilities requiring the use of such projections. In addition, it removes the authority of the Assistant Secretary for Economics to conduct a feasibility study for the monitoring of foreign direct investment in U.S. real estate. Further, it authorizes the Assistant Secretary for Economics to coordinate energy programs under the Defense Production Act of 1950 and Federal Civil Defense Act of 1950. Last, it makes minor editorial changes.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Laura B. Snow, Chief, Management Analysis Branch, Administrative Services Division, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 447-7590.

SUPPLEMENTARY INFORMATION: This final rule clarifies the authority of the Assistant Secretary for Economics and the Administrator, Economic Research Service (ERS), to make long-range, worldwide, agricultural economic analyses. This authority has been interpreted as falling within the scope of the Assistant Secretary's existing delegation at 7 CFR 2.27(a)(3) and the ERS Administrator's delegation at 7 CFR 2.84(a)(2). However, due to administrative oversight, the long-range nature of these analyses has never been explicitly stated under the delegations of authority to the Assistant Secretary for Economics and ERS Administrator, although it has been referenced as belonging to the Assistant Secretary for Economics under the authorities of the Under Secretary for International Affairs and Commodity Programs at 7 CFR 2.21(d)(3). This final rule amends the redesignated delegation at 7 CFR 2.27(a)(2) and the delegation at 7 CFR 2.84(a)(2) to include long-range analyses.

In accord with the Assistant Secretary for Economics' authority for long-range economic research and analyses, this final rule delegates authority from the Secretary of Agriculture to the Assistant Secretary for Economics to establish interagency committees to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections. The Assistant Secretary for Economics has redelegated this authority to the Chairman, World Agricultural Outlook Board. This change will result in an improved process for developing long-range estimates and provide more consistent and reliable baseline data for agencies with responsibilities requiring the use of such projections.

In addition, this final rule removes the existing delegation to the Assistant Secretary for Economics at 7 CFR 2.27(a)(12) and the ERS Administrator at 7 CFR 2.84(a)(6) to conduct a study of the feasibility of establishing a system to monitor foreign direct investment in U.S. real estate. This study was completed in October 1979 and published under the title, "Monitoring Foreign Ownership of U.S. Real Estate; A Report to Congress." No further requirement exists under the authority of the International Investment Survey Act of 1976 (22 U.S.C. 3101 et seq.).

Further, this final rule amends the authority of the Assistant Secretary for Economics at 7 CFR 2.27(c) to include the coordination of energy programs among the functions and responsibilities assigned under the Defense Production Act of 1950 and the Federal Civil Defense Act of 1950. This change conforms to the responsibilities assigned by Departmental Regulation 1800-1, "Department Emergency Preparedness Responsibilities" (September 14, 1983). The Assistant Secretary for Economics has redelegated authority for coordination of energy programs to the Director, Office of Energy, in new 7 CFR 2.88(a)(5).

Last, this final rule makes minor editorial changes to correct typographical errors, improve readability, and remove a reference to the Program and Budget Review Board at 7 CFR 2.27(e). The latter Board no longer exists.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies)

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953. Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

§ 2.27 [Amended]

2. Section 2.27 is amended by removing paragraph (a)(12); by redesignating paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2), respectively; by redesignating paragraphs (a)(5) through (a)(11) as (a)(3) through (a)(9);

and by redesignating paragraphs (a)(13) through (a)(17) as (a)(10) through (a)(14).

3. Section 2.27 is further amended by removing the word "economics" in redesignated paragraph (a)(11) and inserting in its place the word "economic"; by removing the word "and" in its first appearance in the 11th line of paragraph (c) and by adding "; and the coordination of energy programs" before the period at the end of paragraph (c); by removing the word "Intra-agency" in paragraph (d)(2)(i) and inserting in its place the word "intra-agency"; by removing the word "Coordinating" in paragraph (d)(3) and inserting in its place the word "Coordination"; by removing the words "for consideration by the Program and Budget Review Board" in paragraph (e)(1); by removing the word "assumption" in paragraph (f)(4) and inserting in its place the word "assumptions"; by removing the word "compounds" in paragraph (g)(3)(iv) and inserting in its place the word "components"; and by revising the heading to paragraph (a), revising redesignated paragraph (a)(2), and adding a new paragraph (h) to read as follows:

§ 2.27 Delegations of authority to the Assistant Secretary for Economics.

(a) *Related to economic research and statistical reporting.* * * *

(2) Conduct economic and social science research and analyses relating to (i) food and agriculture situation and outlook; (ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers; (iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs; (iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and (v) rural people and communities, as authorized by Title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

* * * * *

(h) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

Subpart K—Delegations of Authority by the Assistant Secretary for Economics

4. Section 2.84 is amended by removing paragraph (a)(6) and redesignating paragraphs (a)(7) through (a)(11) as (a)(6) through (a)(10).

5. Section 2.84 is further amended by removing the date "1945" in paragraph (a)(1) and inserting in its place the date "1948"; by removing the word "a" in the fourth line of paragraph (a)(4) and inserting in its place the word "any"; by removing the word "economics" in redesignated paragraph (a)(6) introductory text and inserting in its place the word "economic"; by removing the citation "7 U.S.C. 3201" in redesignated paragraph (a)(6)(iii) and inserting in its place the citation "7 U.S.C. 3291"; and by revising paragraph (a)(2) to read as follows:

§ 2.84 Administrator, Economic Research Service.

(a) *Delegations.* * * *

(2) Conduct economic and social sciences research and analyses relating to (i) food and agriculture situation and outlook; (ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers; (iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs; (iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and (v) rural people and communities, as authorized by Title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

* * * * *

6. Section 2.86 is amended by removing the citation "§ 2.27 (a), (d), (e), and (f)" in the introductory text of paragraph (a) and inserting in its place the citation "§ 2.27 (a), (d), (e), (f), and (h)"; by removing the word "enonomy" in paragraph (a)(3)(iii) and inserting in its place the word "economy"; by removing the word "assumption" in paragraph (a)(3)(iv) and inserting in its place the word "assumptions"; by redesignating the subparagraphs (*a*), (*b*), and (*c*) in paragraph (a)(4)(ii) as (A), (B), and (C); by removing the word "Coordinating" in paragraph (a)(4)(iii) and inserting in its place the word "Coordination"; and by adding a new paragraph (a)(5) to read as follows:

§ 2.86 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* * * *

(5) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

* * * * *

7. Section 2.88 is amended by removing the citation "§ 2.27(g)" in the introductory text of paragraph (a) and inserting in its place the citation "§ 2.27 (c) and (g)"; and by adding a new paragraph (a)(5) to read as follows:

§ 2.88 Director, Office of Energy.

(a) *Delegations.* * * *

(5) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), concerning coordination of energy programs.

§ 2.89 [Amended]

8. Section 2.89 is amended by removing the citation "§ 2.27(a)(11)" in the introductory text of paragraph (a) and inserting in its place the citation "§ 2.27(a)(9)".

For Subpart C:

Richard E. Lyng,

Secretary of Agriculture.

Dated: June 7, 1988.

For Subpart K:

Ewen M. Wilson,

Assistant Secretary for Economics.

Dated: May 17, 1988.

[FR Doc. 88-13168 Filed 6-10-88; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-067]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations governing the interstate movement of swine to include Oregon in the list of validated brucellosis-free states.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5961.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations in 9 CFR Part 78 (referred to below as the regulations) prescribe conditions for the interstate movement of cattle, bison, and swine. States, areas, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for animals are based upon the disease status of the herd, area, or state from which the animal originates.

In an interim rule published in the Federal Register and effective February 16, 1988 (53 FR 4361–4362, Docket Number 87–158), we amended § 78.43 of the regulations, which lists validated brucellosis-free states, to include Oregon. Comments on the interim rule were required to be postmarked or received on or before April 18, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action allows breeding swine to move interstate from Oregon without being tested for brucellosis. The groups affected by this action are herd owners in Oregon. We expect the economic effect to be minimal; however, of the estimated 900 breeding swine herd owners in Oregon, very few, 30 or less, will ship swine interstate for breeding purposes.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 4361–4362 on February 16, 1988.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 8th day of June 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-13224 Filed 6-10-88; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

Access Authorization Fee Schedule for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule charged for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. The amendments comply with current regulations in Parts 11 and 25 which provide that NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting the investigations. The amendments also inform licensees that they have the option, for an additional cost, of having their applications processed in an expedited manner.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4124.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. On April 1, 1988, OPM increased the rate that it charges the NRC for conducting access authorization background investigations. Since the fees that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect OPM's rate increase. OPM has increased the rate in charges for background investigations by $150,

or approximately 8 percent. NRC is passing this additional cost to the licensees. The amendments also inform licensees that they have the option, for an additional cost, of having their applications processed in an expedited manner. These changes comply with current regulations in Parts 11 and 25 which provide the NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by the OPM for conducting the investigations.

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in effective date because the amendments are of a minor and administrative nature dealing with a routine adjustment in access authorization fees.

Environmental Impact: Categorical Exclusion

The NRC had determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046 and 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4124.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Each NRC licensee or other organization which may require access to classified information or Special Nuclear Material in connection with a license or application for a license will be affected by this final rule. Less than 14 entities are currently required to meet the requirements of 10 CFR Parts 11 and 25. Because none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. Section 11.15(e) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC–U requiring full field investigation	$2,127
ii. NRC–U requiring full field investigation (expedited processing)	$2,645
iii. NRC–U based on certification of comparable full field background investigation	[1] 0
iv. NRC–U or R renewal	[1] 15
v. NRC–R	[1] 15
vi. NRC–R based on certification of comparable investigation	[2] 0

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,127 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a National Agency Check investigation is necessary, a fee of $1520 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of $2,127 will be assessed prior to the conduct of the investigation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. (31 U.S.C. 9071).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. Appendix A is revised to read as follows:

Appendix A—Fees for NRC Access Authorization

Category	Fee
Initial "L" Access Authorization	[1] $15
Reinstatement of "L" Access Authorization	[1] $15
Extension or Transfer of "L" Access Authorization	[1] $15
Initial "Q" Access Authorization	$2,127
Initial "Q" Access Authorization (expedited processing)	$2,645
Reinstatement of "Q" Access Authorization	[2] $2,127
Reinstatement of "Q" Access Authorization (expedited processing)	[2] $2,645
Extension or Transfer of "Q"	[2] $2,127
Extension or Transfer of "Q" (expedited processing)	[2] $2,645

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,127 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Rockville, Maryland, this 1st day of June, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-13238 Filed 6-10-88; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 50

Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) believes that the agency's mission to protect the public health and safety and the environment can best be served by a policy of cooperation with State governments which unites the common goals of the NRC and the States. Accordingly, it is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. In accordance with this policy statement, the NRC will keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States, and NRC will respond in a timely manner to State requests for information and State recommendations concerning matters within NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between the NRC and its licensees and applicants, in order that State representatives may attend as observers, and NRC will allow State observation of NRC inspection activities. The NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. The NRC will not consider State proposals for instruments of cooperation to conduct independent inspection programs of NRC-regulated activities without close cooperation with, and oversight by, the NRC. This policy statement is intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. Instruments of cooperation between the NRC and the States, approved prior to the effective date of this policy statement will continue to be honored by the NRC.

The Commission invites interested States, licensees, applicants, and members of the public to comment on the policy before it becomes final agency policy. The comment period will expire 30 days following the date of publication in the Federal Register. The proposed policy will be followed in the interim, except for those paragraphs in the policy statement and Implementation section dealing with State proposals for instruments of cooperation for participation in inspections and inspection entrance and exit meetings. The Commission will not act on these specific types of State-proposed instruments of cooperation until the comment period expires and the policy statement is published as a final policy statement.

DATES: The comment period expires on July 13, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. Federal workdays. Comments may also be delivered to the NRC Public Document Room, 1717 H Street NW., Washington, DC, between 7:45 a.m. and 4:15 p.m. Copies of comments received may be examined at the NRC Public Document Room.

FOR FURTHER INFORMATION CONTACT: Carlton C. Kammerer, Director for State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-0321, or Jane Mapes, Senior Attorney, Division for Rulemaking and Fuel Cycle, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1642.

SUPPLEMENTARY INFORMATION:

I. Background

The Atomic Energy Act of 1954 (the Act) was amended in 1959 to add section 274, "Cooperation With States". Section 274 of the Act provides the statutory basis for NRC/State cooperation in nuclear matters and prescribes the framework for State regulation of certain nuclear materials and facilities. The focus of section 274 is primarily on protecting the public from radiological hazards of source, byproduct, and special nuclear materials below critical mass. Under section 274, the Federal Government, primarily NRC, is assigned exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of any nuclear production or utilization facility, except for certain authority over air emissions granted to States by the Clean Air Act.

The NRC has had extensive formal and informal interaction with the States throughout its history. The Agreement State Program, under section 274b of the Act, is an example of a formal program where the NRC relinquishes its regulatory authority over certain radioactive materials to the States. There are currently 29 Agreement States regulating approximately 65 percent of those licensees nationwide that use or manufacture those types of radioactive material. The Agreement State Program operates under two Commission Policy Statements, one for entering into section 274b agreements and one for periodically reviewing Agreement State radiation control programs for adequacy in protecting public health and safety and for compatibility with NRC programs. This policy statement supports continuation of the Agreement State Program and is not meant to affect it.

This policy statement is not intended to affect rights to notice and to participate in hearings granted to States by statute or NRC regulations.

Under 10 CFR Part 9, Subpart D, the NRC has provided procedures for handling requests for an NRC representative to participate or provide information in judicial or quasi-judicial proceedings conducted by States or other courts and agencies. This policy statement supports these procedures and does not affect them.

Under 10 CFR 50.55a, the NRC has recognized the role of the States within the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code (ASME Code) System. This policy statement does not affect the State and NRC relationship as laid out in the ASME Code.

The State Liaison Officer Program, established in 1976, provides a focal point in each of the 50 States and the Commonwealth of Puerto Rico for communication between NRC and the States. The Governor-appointed State Liaison Officer is intended to be the principal person in the State to keep the Governor informed of nuclear regulatory matters of interest to the Governor, to keep other State officials informed of these matters, and to respond to NRC inquiries.

Other areas in which NRC and States have worked together include environmental monitoring around the premises of nuclear power plant facilities and participation in the Conference of Radiation Control

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Program Directors, Inc., which addresses radiological health in areas such as diagnostic and therapeutic X-rays, radioactive materials, and other related activities.

Under subsection 274i of the Act, the Commission is authorized, in carrying out its licensing and regulatory responsibilities, to enter into a Memorandum of Understanding (MOU) with any State to perform inspections or other functions on a cooperative basis as the NRC deems appropriate. According to the legislative history of section 274, subsection 274i clarifies the Commission's existing authority under subsection 161f which enables the NRC to obtain the services of State personnel to perform functions on its behalf as may be desirable.

NRC has entered into MOUs with several States under subsection 274i of the Act. MOUs have helped to facilitate environmental review during construction of nuclear power plants. At one point, there was a perceived need to broaden the basis for formal cooperative instruments with States under subsection 274i beyond that of water quality MOUs. As a result, general or "umbrella" MOUs were negotiated, with subagreements on specific issues such as low-level waste package and transport inspections. Two unique agreements were negotiated with Oregon: one concerning the sharing of proprietary information regarding the Trojan facility and the other covering coordination of the State and NRC resident inspector programs at Trojan. Additionally, the NRC has documented the protocol that States must follow to be permitted to observe certain NRC activities in "letter agreements."

In recent years, States have taken the initiative to monitor more closely commercial nuclear power plants and other nuclear production or utilization facilities within, and adjacent to, their State boundaries by becoming better informed and, in some cases, more involved in activities related to the regulation and operation of those facilities. It was this increased interest by States to become more actively involved in NRC activities that caused the NRC to re-examine those agreements previously negotiated with States and to determine a uniform policy for how future State proposals should be handled.

In developing this policy statement to be used to respond to future State proposals, the Commission, recognizing that the regulatory responsibilities assigned exclusively to the NRC by the Act cannot be delegated, has considered: (1) Those activities it deems appropriate for States to conduct on a cooperative basis and are desirable for State personnel to perform on behalf of the NRC; and (2) its oversight responsibility to ensure that NRC standards, regulations, and procedures are met where State representatives carry out NRC functions. Further, it is the Commission's intention to provide uniformity in its handling of State requests.

II. Statement of Policy

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment. Furthermore, the NRC is committed to the full and timely disclosure of matters affecting the public and to the fair and uniform handling of all agency interactions with the States, the public, and NRC licensees.

Accordingly, the NRC will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States. The NRC will respond in a timely manner to a State's requests for information and its recommendations concerning matters within the NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers. Additionally, at the State's request, State representatives will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

The Commission recognizes that the involvement of qualified State representatives in NRC radiological health and safety programs has the potential for providing additional safety benefit. Therefore, the NRC will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings. State participation in NRC programs would allow qualified State representatives, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC. State activities will normally be conducted under the oversight of an authorized NRC representative with the degree of oversight dependent upon the activity involved. In the proposal to enter into an instrument of cooperation, the State must identify those activities for which cooperation with the NRC is desired. The State must propose a program that: (1) Recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Federal standards and regulations; (3) specifies minimum education, experience, training, and qualification requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abides by NRC protocol not to be publicly disclose inspection findings prior to the release of the NRC inspection report.

Consistent with section 274(c) of the Act, the NRC will not consider State proposals for instruments of cooperation that do not include the elements listed above, which are designed to ensure close cooperation and consistency with the NRC inspection program. As a practical matter, the NRC is concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy statement, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative.

Instruments of cooperation between the NRC and the States, approved prior to the date of this policy statement will continue to be honored by the NRC. The NRC strongly encourages those States holding these agreements to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement.

III. Implementation

As provided in the policy statement the NRC will routinely keep State Liaison Officers informed on matters of interest to the States. In general, all State requests should come from the State Liaison Officer to the appropriate NRC Regional Office. The NRC will make every effort to respond as fully as possible to all requests from States for information on matters concerning nuclear production or utilization facility safety within 30 days. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities. State representatives are free to attend as observers any public meeting between the NRC and its applicants and licensees. The appropriate Regional Office will routinely inform State Liaison Officers of the scheduling of public meetings upon request. State requests to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

NRC will consider State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement. NRC may develop inspection plans along with qualified State representatives using applicable procedures in the NRC Inspection Manual. Qualified State representatives may be permitted to perform inspections in cooperation with, and on behalf of, the NRC under the oversight of an authorized NRC representative. The degree of oversight provided would depend on the activity. For instance, State representatives may be accompanied by an NRC representative initially, in order to assess the State inspectors' preparedness to conduct the inspection individually. Other activities may be conducted as a team with NRC taking the lead. All enforcement action will be undertaken by the NRC.

The Commission will decide policy matters related to agreements proposed under this policy statement. Once the Commission has decided the policy on a specific type of agreement, similar State-proposed agreements may be approved, consistent with Commission policy, by the Executive Director for Operations in coordination with the Office of Governmental and Public Affairs. A State-proposed instrument of cooperation will be documented in a formal MOU signed by NRC and the State.

Once the NRC has decided to enter into an MOU for State involvement in NRC inspections, a formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. Final agreements will be subject to periodic reviews and may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

Additionally, once State involvement in NRC activities at a nuclear production or utilization facility is approved by the NRC, the State is responsible for meeting all requirements of an NRC licensee and applicant related to personal safety and unescorted access for State representatives at the site.

Dated at Rockville, Maryland, this 8th day of June, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-13256 Filed 6-10-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R-0620]

Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation J—Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks (12 CFR Part 210) to conform that regulation to the regulation the Board adopted on May 13, 1988, implementing the Expedited Funds Availability Act of 1987 (Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229)).

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Senior Attorney, Legal Division (202/452-2489); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: In August 1987, Congress enacted the Expedited Funds Availability Act (Title VI of Pub. L. 100-86). The Act seeks to ensure the prompt availability of funds and the expedited return of checks. On May 13, 1988, the Board issued a new regulation (Regulation CC—Availability of Funds and Collection of Checks—12 CFR Part 229) to implement the Expedited Funds Availability Act (53 FR 19372 (May 27, 1988)). Subpart C of Regulation CC established new rules, applicable to depository institutions and certain other financial institutions, designed to speed the collection and return of checks. These rules cover the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check indorsement standards, and other related changes to the check collection system.

Prior to the passage of the Expedited Funds Availability Act, the Board had established, under the authority of the Federal Reserve Act, a regulation to govern the collection of checks and other items by Federal Reserve Banks (Subpart A of Regulation J (12 CFR Part 210)). When the Board published its proposed Regulation CC for comment (52 FR 47112 (Dec. 11, 1987)), it also proposed a number of amendments to Regulation J to conform that regulation to the new check collection and return rules proposed in Subpart C of Regulation CC. Although approximately 1,000 comments were received on the combined proposal, no comments specifically addressed the proposed amendments to Regulation J.

The Board has adopted amendments to Subpart A of Regulation J. These changes generally conform Regulation J to the rules established in Subpart C of Regulation CC. The changes are therefore technical in nature; the substantive issues were considered during the rulemaking proceeding that resulted in the adoption of Regulation CC. The conforming amendments, *inter alia*:

1. Change the title of Regulation J from "Collection of Checks and Other Items and Wire Transfers of Funds" to "Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks" to distinguish Regulation J from Regulation CC ("Availability of Funds and Collection of Checks"), and make it clear that Regulation J covers only checks cleared or returned through a Federal Reserve Bank and wire transfers transmitted over the Federal Reserve Communications System, while Regulation CC covers all checks. A similar change is being made to the title of Subpart A.

2. Amend the authority citations to include the Expedited Funds Availability Act.

3. Conform the definitions of Regulation J to those adopted for Regulation CC where appropriate.

4. Provide for the handling by Reserve Banks of returned checks that the Reserve Banks did not handle during the forward collection process.

5. Conform the provisions regarding returned checks to the provisions of Regulation CC that eliminated the right of charge-back provided for in the Uniform Commercial Code and Regulation J prior to these amendments.

6. Remove the requirement that a paying bank give notice of nonpayment in the case of large-dollar returns. (This requirement is now in Regulation CC.)

In addition, the Board is eliminating footnote 2 to § 210.2(g) of Regulation J. Section 210.2(g) restricts the definition of "item" to instruments that can be collected at par. Footnote 2 states that "[t]he Board publishes a 'Memorandum on Exchange Charges,' listing the banks that would impose exchange charges on cash items and other checks forwarded by Reserve Banks and therefore would not pay at par." Since November 1980, no banks have imposed exchange charges on items forwarded by Reserve Banks, and the Board has discontinued publication of the "Memorandum." Consequently, footnote 2 no longer serves any purpose, and the Board is deleting it from Regulation J. Although the Board did not publish the removal of the footnote for comment along with the other proposed changes, the Board finds that publication is unnecessary under 5 U.S.C. 553(b).

The amendments the Board is adopting are technical in nature and are not expected to have any significant economic effect on small entities (see 5 U.S.C. 601 *et seq.*), nor do they impose any burdens on the public under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 210

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 210 of the Code of Federal Regulations is amended as set forth below:

1. The title of Part 210 is revised to read as follows:

PART 210—REGULATION J (COLLECTION OF CHECKS AND OTHER ITEMS AND WIRE TRANSFERS OF FUNDS BY FEDERAL RESERVE BANKS)

2. The authority citation for Part 210 is revised to read as follows:

Authority: Federal Reserve Act, sec. 13 (12 U.S.C. 342), sec. 11(i) (12 U.S.C. 248(i)), sec. 16 (12 U.S.C. 248(o) and 360), and sec. 19(f) (12 U.S.C. 464); and the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*)

3. The title of Subpart A is revised to read as follows:

Subpart A—Collection of Checks and Other Items By Federal Reserve Banks

4. Section 210.1 is revised to read as follows:

§ 210.1 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), section 11(i) (12 U.S.C. 248(i)), section 16 (12 U.S.C. 248(o) and 360), and section 19(f) (12 U.S.C. 464); the Expedited Funds Availability Act (12 U.S.C. 4001 et seq.); and other laws. This subpart governs the collection of checks and other cash and noncash items and the handling of returned checks by Federal Reserve Banks. Its purpose is to provide rules for collecting and returning items and settling balances.

5. In § 210.2, paragraph (e) and (f) and the undesignated paragraph at the end of paragraph (g) are revised, footnote 2 in paragraph (g) is deleted, paragraph (j) is revised, paragraphs (k) and (l) are redesignated as paragraphs (l) and (m), a new paragraph (k) is added, the introductory text of redesignated paragraph (l) is revised, and the undesignated paragraph at the end of § 210.2 is revised to read as follows:

§ 210.2 Definitions.

* * * * *

(e) "Cash items" means—

(1) A check other than one classified as a noncash item under this section; or

(2) Any other item payable on demand and collectible at par that the Reserve Bank of the District in which the item is payable is willing to accept as a cash item. "Cash item" does not include a returned check.

(f) "Check" means a draft, as defined in the Uniform Commercial Code, that is drawn on a bank and payable on demand. "Check as defined in 12 CFR 229.2(k)" means an item defined as a check in 12 CFR 229.2(k) for purposes of Subpart C of Part 229.

(g) * * *

Unless otherwise indicated, "item" includes both a cash and a noncash item, and includes a returned check sent by a paying or returning bank. "Item" does not include a check that cannot be collected at par, or an "item" as defined in § 210.26 that is handled under Subpart B.

* * * * *

(j) "Paying bank" means—

(1) The bank by which an item is payable unless the item is payable or collectible at or through another bank and is sent to the other bank for payment or collection;

(2) The bank at or through which an item is payable or collectible and to which it sent for payment or collection; or

(3) The bank whose routing number appears on a check in magnetic characters or fractional form and to which the check is sent for payment or collection.

(k) "Returned check" means a cash item or a check as defined in 12 CFR 229.2(k) returned by a paying bank, including a notice of nonpayment in lieu of a returned check, whether or not a Reserve Bank handled the check for collection.

(l) "Sender" means any of the following that sends an item to a Reserve Bank for forward collection:

* * *

* * * * *

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in 12 CFR 229.2 applicable to Subpart C of Part 229, and the terms not defined herein or in 12 CFR 229.2 have the meanings set forth in the Uniform Commercial Code.

6. Paragraph (b) of § 210.3 is revised to read as follows:

§ 210.3 General provisions.

* * * * *

(b) *Binding effect.* This subpart, together with Subpart C of Part 229 and the operating circulars of the Reserve Banks, are binding on all parties interested in an item handled by any Reserve Bank.

* * * * *

7. Paragraph (a)(1) of § 210.6 is revised to read as follows:

§ 210.6 Status, warranties, and liability of reserve bank.

(a)(1) *Status and Liability.* A Reserve Bank shall act only as agent or subagent of the owner with respect to an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the proceeds available for use by the sender. A Reserve Bank may be liable to the owner, to the sender, to a prior collecting bank, or to the depositary bank's customer with respect to a check as defined in 12 CFR 229.2(k). A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care, except as provided in paragraph (b) of this section and except as provided in Subpart C of Part 229.

* * * * *

8. Paragraph (b) of § 210.7 is revised to read as follows:

§ 210.7 Presenting items for payment.

* * * * *

(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item—

(1) At a place requested by the paying bank;

(2) In the case of a check as defined in 12 CFR 229.2(k), in accordance with 12 CFR 229.36;

(3) At a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through or at a paying bank;

(4) Under a special collection agreement consistent with this subpart; or

(5) Through a clearinghouse and subject to its rules and practices.

* * * * *

9. Section 210.9 is revised by redesignating footnote 3 as footnote 2, and revising the first sentence of paragraph (e) to read as follows:

§ 210.9 Payment.

* * * * *

(e) *Liability of Reserve Bank.* Except as set forth in 12 CFR 229.35(b), a Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraph (a), (b), and (c) of this section.

* * *

10. Section 210.10 is revised to read as follows:

§ 210.10 Time schedule and availability of credits for cash items and returned checks.

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item or returned check received by it (or sent direct to another Reserve office for the account of that Reserve Bank) is counted as reserves for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender or paying or returning bank. The Reserve Bank shall give either immediate or deferred credit in accordance with its time schedule to a sender or paying or returning bank other than a foreign correspondent. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given for any cash item or returned check, and may defer availability after credit is received by the Reserve Bank for a period of time that is reasonable under the circumstances.

11. Section 210.12 is revised to read as follows:

§ 210.12 Return of cash items and handling of returned checks.

(a) *Return of cash items.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as provided in § 210.9(a) of this subpart, may, before it has finally paid the item, return the item in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in 12 CFR 229.2(k), other than directly or indirectly from a Reserve Bank, and that determines not to pay the check, may send the returned check to its Reserve Bank in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating Circular. A returning bank may send a returned check to its Reserve Bank in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular.

(c) *Paying bank's and returning bank's agreement.* By sending a returned check to a Reserve Bank, the paying bank or returning bank—

(1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or returning bank to which the returned check is sent) to handle the returned check subject to this subpart and to the Reserve Banks' operating circulars;

(2) Makes the warranties set forth in 12 CFR 229.34; and

(3) Agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

(i) The paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;

(ii) Any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or

(iii) Any warranty made by the Reserve Bank under 12 CFR 229.34.

(d) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled a returned Check based on—

(1) The alleged failure of the paying or returning bank to have the authority to give the authorization in paragraph (c)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the returned check; or

(3) Any warranty made by the Reserve Bank under 12 CFR 229.34,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(e) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or, if the returning bank is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if—

(1) The Reserve Bank made seasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and

(2) The paying or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

(f) *Reserve Bank's responsibility.* A Reserve Bank shall handle a returned check, or a notice of nonpayment, in accordance with Subpart C of Part 229 and its operating circular. A Reserve

Bank may permit or require the paying or returning bank to send direct to another Reserve Bank a returned check with respect to which the depositary bank is located within the other Reserve Bank's District, in accordance with § 210.4(b).

(g) *Settlement.* A subsequent returning bank or depositary bank shall settle for returned checks in the same manner as for cash items presented for payment.

12. Paragraph (a) of § 210.13 is revised to read as follows:

§ 210.13 Unpaid items.

(a) *Right of charge-back.* If a Reserve Bank does not receive payment in actually and finally collected fund for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of the item from the sender, paying bank, or returning bank from which it was received, whether or not the item itself can be sent back. In the event of recovery, neither the owner or holder of the item, nor the sender, paying bank, or returning bank from which it was received, shall have any interest in any reserve balance or other funds in the Reserve Bank's possession of the bank failing to make payment in actually and finally collected funds.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13181 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

Foreign Banks; Country Exposures Concentration

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: In a December 1987 amendment, (52 FR 49156, December 30, 1987) § 346.23 of the FDIC Rules and Regulations was amended to specify that country exposures by insured branches of foreign banks operating as such on November 19, 1984 must be within prescribed limits by June 14, 1988. The Board of Directors is extending the time for compliance with these limits until year end.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, Division of Bank Supervision, (202) 898-6850, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On December 17, 1987, the FDIC extended the time for complying with § 346.23 of its regulations (concerning allowable exposures to foreign countries) to June 14, 1988. The FDIC is now further extending the time for compliance to December 31, 1988. The FDIC expects to have completed its review of Part 346 and to have issued final amendments to Part 346 by that date.

In accordance with 5 U.S.C. 553, the FDIC has found that prior notice and a delayed effective date with respect to this amendment are unnecessary, as the amendment delays the imposition of requirements that are already imposed by existing regulation. Since the amendment only provides for an extension of time for compliance with certain portions of the regulation and imposes no burden upon banks or the public, it is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 346

Bank deposit insurance, Foreign banks, Banking, Banks, Banking, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FDIC hereby amends Part 346 of title 12 of the *Code of Federal Regulations* as follows:

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 continues to read as follows:

Authority: Secs. 5, 6, 13, P.L. 95-369, 92 Stat. 613, 614, 624 (12 U.S.C. 3103, 3104, 3108); Secs. 5, 7, 9, 10, P.L. 797, 64 Stat. 876, 877, 881, 882, (12 U.S.C. 1815, 1817, 1819, 1820).

2. Part 346 is amended by revising the third sentence of § 346.23 to read as follows:

§ 346.23 Country exposure concentrations.

* * * Insured branches operating as such on November 19, 1984 will be given until December 31, 1988 to reduce any existing excess exposure, including commitments. * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 7th day of June 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-13242 Filed 6-10-88; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 620

Disclosure to Shareholders; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published final amended regulations under Part 620 on May 11, 1988 (53 FR 16696). The final amendments to Part 620 relate to disclosure of loans involving a greater than normal risk of collectibility to senior officers and directors and their immediate families and affiliated organizations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 13, 1988.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444

or

James Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4483, TDD (703) 883-4444

(12 U.S.C. 2252(a) (9) and (10)).

Dated: June 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-13216 Filed 6-13-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: A final rule for flight restrictions in the vicinity of Grand Canyon National Park was published in the Federal Register on June 2, 1988 (53 FR 20264). This action publishes a chart to supplement the text of the final rule.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3491.

Issued in Washington, DC., on June 6, 1988.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

BILLING CODE 4910-13-M

BEST COPY AVAILABLE

[FR Doc. 88-13010 Filed 6-10-88; 8:45 am]
BILLING CODE 4910-13-C

SFAR 50-2:
SPECIAL FLIGHT RULES IN THE VICINITY OF
GRAND CANYON NATIONAL PARK

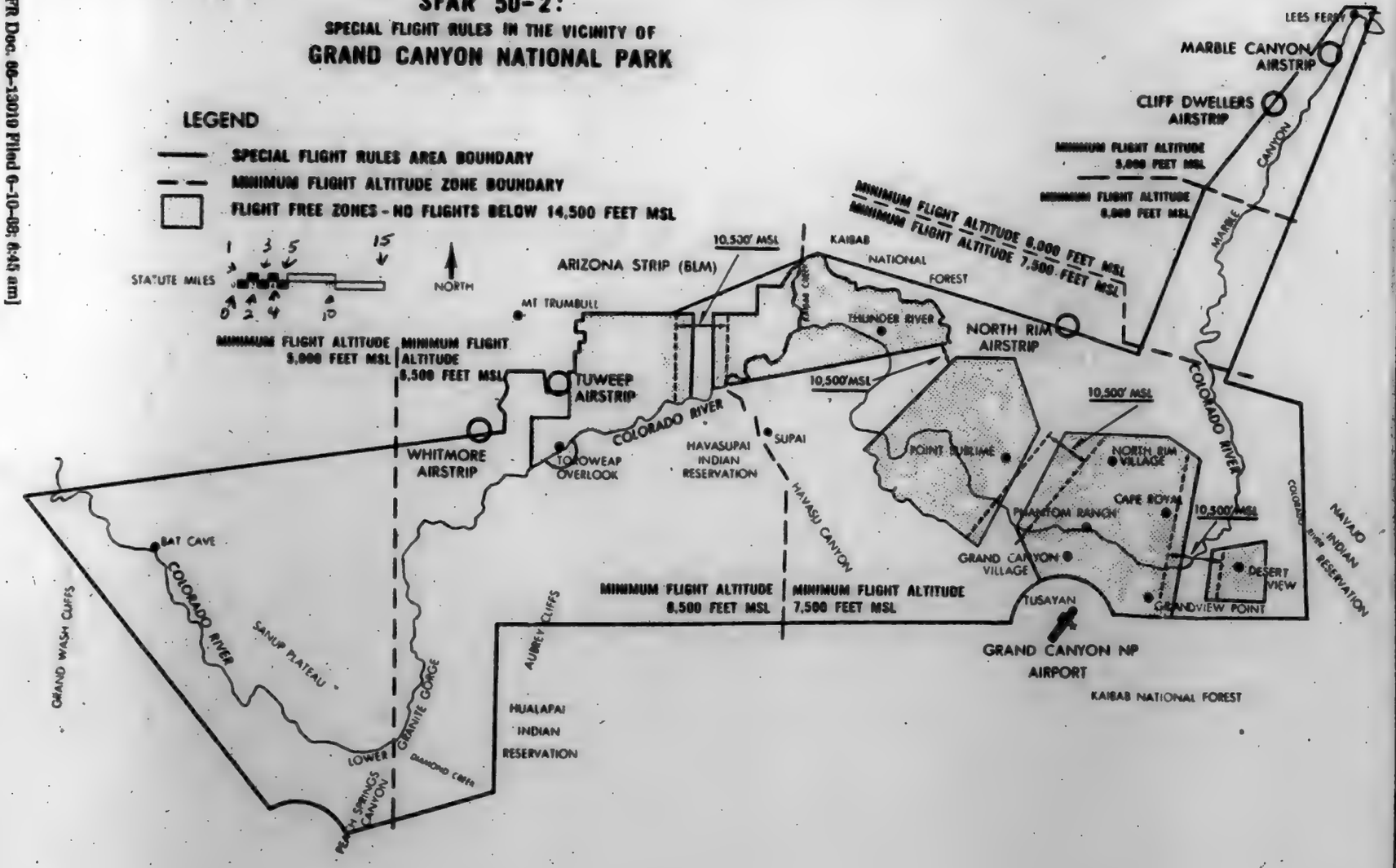

14 CFR Part 99

[Docket No. 25113; Amdt. 99-13]

Security Control of Air Traffic; Modification of the U.S. Air Defense Identification Zones (ADIZ); Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to the final rule.

SUMMARY: In the May 20, 1988, issue of the Federal Register, the FAA published a final rule for modification of the U.S. Air Defense Identification Zones (53 FR 18216). The Final Rule contains some errors that require corrections. This document serves to correct typographical errors and terminology usage in the final rule.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

Adoption of the Corrections

Accordingly, pursuant to the authority delegated to me, Docket No. 25113; Amdt. No. 99-13, as published May 20, 1988, (53 FR 18216) is corrected as follows:

1. On page 18216, in the second column, third full paragraph, in the third line, remove "to" and add "the".

§ 99.1 [Corrected]

2. In § 99.1(b)(1) on page 18217, remove "latitude" and add "longitude".

3. In § 99.1(b)(3) on page 18217, in the second column, in the third line, remove "the Southern Border" and add "an".

4. In § 99.1(b)(5) on page 18217, remove "Hawaiian" and add "Hawaii".

§ 99.23 [Corrected]

5. On page 18218, in the second column, in § 99.23, in the eighth line, add the word "direct" after the word "average".

§ 99.42 [Corrected]

6. In § 99.42 on page 18218, remove all semicolons after the word "to".

§ 99.43 [Corrected]

7. In § 99.43 on page 18218, remove all semicolons after the word "to".

Issued in Washington, DC, on June 7, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-13160 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 80591-8091]

Commodity Control List; Recording and Reproducing Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule revises Export Control Commodity Number (ECCN) 1572A, which controls recording or reproducing equipment. This revision has resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national security interests.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature regarding equipment controlled for export under ECCN 1572A, call Joseph Westlake, Computer Systems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377-2279.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) These collections have been appoved by the Office of Management and Budget under control number 0625-0001 and 0625-0140. This rule reduces the regulatory burden on exporters by removing the written assurance requirement regarding exports of technical data under 1572A.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Exective Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 379 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 379 and 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citations for Parts 379 and 399 continue to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 379—[AMENDED]

§ 379.4 [Amended]

2. Section 379.4 is amended by removing paragraph (f)(3).

PART 399—[AMENDED]

Supplement No. 1 to § 399.1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1572A is amended by revising the heading and the "List of Types of Recording and/or Reproducing Equipment Controlled by ECCN 1572A" to read as follows:

1572A Recording or reproducing equipment, "recording media," and specially designed components and accessories therefor.

* * * * *

List of Types of Recording and/or Reproducing Equipment, "Recording Media" and Specially Designed Components and Accessories Therefor Controlled by ECCN 1572A

Note: For equipment that may be used in conjunction with electronic computers, see ECCN 1565.

(a) Recording or reproducing equipment using magnetic techniques, *except:*

(i) When specially designed for:

(1) Audio programs on tape or disk;

(2) Analog recording or reproducing of video programs on tape or disk; *or*

Note: This paragraph (a)(i)(2) does not apply to:

(a) Magnetic heads mounted on servo-mechanisms that include piezoelectric transducers and have a gap width less than 0.75 micrometer (29.5 microinches);

or

Note: Gap width is the dimension of the gap parallel to the relative movement between tape and head.

(b) Cylindrical structures used to record or reproduce video signals in a helical scan system recorder or reproducer;

(3) Digital reproducing (*i.e.*, play-back only) of video programs from tape or disk;

(ii) When specially designed to use magnetic card, tag, label or bank check "recording media" with a magnetic surface area not exceeding 85 cm^2 (13 sq. ins.);

(iii) Analog magnetic tape recorders having all of the following characteristics:

(A) Bandwidth at maximum speed not exceeding 300 kHz per track;

(B) "Recording density" not exceeding 2,000 magnetic flux sine waves per linear cm (5,080 magnetic flux sine waves per linear inch) per track;

(C) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (A) or (B) above;

(D) Tape speed not exceeding 155 cm/s (61 inches per second);

(E) Number of recording tracks (excluding audio voice track) not exceeding 28;

(F) Start-stop time not less than 20 ms;

(G) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of no less than ± 5 microsecond;

(H) Using only direct or FM recording;

(I) Not ruggedized for military use;

(J) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (from below −40°C to above +55°C); *and*

(K) Not specially designed for underwater use;

Note: Analog instrumentation recording equipment permitting the recording of digital signals (*e.g.*, using a high density digital recording (HDDR) module) and having all the characteristics in paragraph (a)(iii) above are not controlled by this ECCN 1572.

(iv) Digital recording or reproducing equipment having all of the following characteristics:

(A) Cassette/cartridge tape drives or magnetic tape drives that do not exceed:

(*1*) A "maximum bit packing density" of 131 bits per mm (3,300 bits per inch) per track; *or*

(*2*) A "maximum bit transfer rate" of 2.66 million bits per second;

(B) Not ruggedized for military use;

(C) Not specially designed for underwater use; *and*

(D) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (from below −40°C to above +55°C);

(b) Recording or reproducing equipment using laser beams that produce patterns or images directly on the recording surface or reproduce from such surfaces, *except:*

(i) When specially designed for the production of audio or video disk masters for the replication of entertainment- or education-type disks;

(ii) Facsimile equipment such as that used for commercial weather imagery and commercial wire photos and text;

(iii) Consumer-type reproducers for audio or video disks employing non-erasable media; *or*

(iv) When specially designed for gravure (printing plate) manufacturing;

(c) Graphics instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 kHz;

(d) "Recording media" used in equipment controlled by (a) or (b) above, *except:*

(i) Magnetic tape having all of the following characteristics:

(A) Specially designed for television recording and reproduction or for instrumentation;

(B) Being a standard commercial product;

(C) Not designed for use in satellite applications;

(D) Been in use in quantity for at least two years;

(E) A tape width not exceeding 25.4 mm (1 inch);

(F) A magnetic coating thickness not less than:

(*1*) 2.0 micrometers (0.079 mil) if the tape length does not exceed 1,450 m (4,760 feet); *or*

(*2*) 5.0 micrometers (0.1975 mil) if the tape length does not exceed 6,000 m (19,710 feet);

(G) A magnetic coating material consisting of doped or undoped gamma-ferric oxide or chromium dioxide;

(H) A base material consisting only of polyester;

(I) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted); *and*

(J) A retentivity not exceeding 0.16 T (1,600 gauss);

(ii) Magnetic tape having all of the following characteristics:

(A) Specially designed for television recording and reproduction or for instrumentation;

(B) Being a standard commercial product;

(C) Not designed for use in satellite applications;

(D) Been in use in quantity for at least two years;

(E) A tape width not exceeding 50.8 mm (2 inches);

(F) A magnetic coating material consisting of doped or undoped gamma-ferric oxide or chromium dioxide;

(G) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted); *and*

(H) A tape length not exceeding 1,096 m (3,600 feet);

(iii) Video or audio magnetic tape in cassette having all of the following characteristics:

(A) Specially designed for television or audio recording and reproduction;

(B) Being a standard commercial product;

(C) A rated intrinsic coercivity not exceeding 120 kA/m (1,500 oersted);

(D) A retentivity not exceeding 0.30 T (3,000 gauss);

(E) A tape length not exceeding 550 m (1,805 feet); *and*

(F) A magnetic coating thickness not less than 2.0 micrometers (0.079 mil);

(iv) Computer magnetic tape having all of the following characteristics:

(A) Designed for digital recording and reproduction;

(B) A magnetic coating certified for a maximum "packing density" of 2,460 bits per cm (6,250 bits per inch) or 3,560 flux changes per cm (9,042 flux changes per inch) along the length of the tape;

(C) A magnetic coating thickness not less than 3.6 micrometers (0.142 mil);

(D) A tape width not exceeding 25.4 mm (1 inch);

(E) A tape length not exceeding 1,100 m (3,609 feet);

(F) Been in civil use for at least two years; *and*

(G) The base material consists only of polyester;

(v) Computer flexible disk cartridges having both of the following characteristics:

(A) Designed for digital recording and reproduction; *and*

(B) Not exceeding a "gross capacity" of 17 million bits;

(vi) Rigid magnetic disk "recording media" having all of the following characteristics:

(A) Being a standard commercial product;

(B) Non servo-written;

(C) A "packing density" not exceeding 866 bits per cm (2,200 bits per inch);

(D) Not exceeding 80 tracks per cm (200 tracks per inch); *and*

(E) Conforming to any of the following specifications:

(*1*) Unrecorded single disk cartridges (front loading (2315-type)) designed to meet ANSI X3.52–1976;

(*2*) Unrecorded single disk cartridges (top loading (5440-type)) designed to meet International Standard ISO 3562–1976;

(*3*) Unrecorded six-disk packs (2311 type) designed to meet ANSI X3.46–1974 or International Standard ISO 2864–1974(E); or

(*4*) Unrecorded eleven-disk packs (2316 type) designed to meet ANSI X3.58–1977 or International Standard ISO 3564–1976;

Advisory Note 1: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of equipment controlled by paragraph (a) above, as follows, or "recording media" in reasonable quantities for use with this equipment, controlled by paragraph (d) above:

(a) Analog magnetic tape recorders having all of the following characteristics:

(1) A bandwidth at maximum tape speed not exceeding 300 kHz;

(2) A "recording density" not exceeding 2,000 magnetic flux sine waves per linear cm (5,080 flux sine waves per linear inch) per track;

(3) Not ruggedized for military use;

(4) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (−40°C to above +55°C);

(5) Not specially designed for underwater use;

(6) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (1) or (2) above;

(7) Tape speed not exceeding 152.4 cm/s (60 inches per second);

(8) Number of recording tracks (excluding audio voice track) not exceeding 28 channels;

(9) Start-stop time not less than 25 ms; *and*

(10) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of no less than ±1.0 microsecond;

(b) Systems having all of the following characteristics:

(1) Designed for use in civil aircraft or helicopters to record flight data for safety or maintenance purposes;

(2) Been in normal civil use for more than one year;

(3) No more than 100 input channels; *and*

(4) A sum of the individual channel recording bandwidth not exceeding 500 Hz;

(c) Incremental recorders or reproducers having all of the following characteristics:

(1) Designed for discontinuous sampling or collection of data in an incremental manner;

(2) The maximum tape speed, at the maximum stepping rate, does not exceed 50.8 mm (2 inches) per second;

(3) Not ruggedized for military use;

(4) Not rated for continuous operation in ambient temperatures from below 233 K to above 328 K (from below −40°C to above +55°C);

(5) Not specially designed for underwater use; *and*

(6) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (a)(1) or (a)(2) above;

(d) Digital magnetic recorders having both of the following characteristics:

(1) Specially designed for seismic or geophysical applications; *and*

(2) Operating in the frequency range from 5 Hz to 800 Hz.

Advisory Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of computer tape in cassettes or cartridges having all of the following characteristics:

(a) Designed for digital recording and reproduction;

(b) A magnetic coating certified for a "packing density" of 3,940 bits per cm (10,008 bits per inch) along the length of the tape;

(c) A tape width not exceeding 2.54 cm (1 inch);

(d) A tape length not exceeding 1,100 m (3,609 feet); *and*

(e) In civil use for at least two years.

Advisory Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of magnetic tape controlled by paragraph (d) above having all of the following characteristics:

(a) Intended for being put into cassettes or cartridges under a commercial agreement;

Note: Magnetic tape controlled under this Advisory Note shall be used only for insertion into cassettes or cartridges specially designed for television or audio recording or reproduction.

(b) Being a standard commercial product;

(c) Not designed for use in satellite applications;

(d) Been in use in quantity for at least two years;

(e) A tape width not exceeding 25.4 mm (1 inch);

(f) A magnetic coating thickness not less than 2 micrometers (0.079 mil);

(g) A magnetic coating material consisting of doped or undoped gamma-ferric oxide;

(h) A base material consisting only of polyester;

(i) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted);

(j) A retentivity not exceeding 0.16 T (1,600 gauss); *and*

(k) A tape length not exceeding 6,500 m (21,320 feet).

Advisory Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "recording media" controlled by paragraph (d) above having all of the following characteristics:

(a) Specially designed magnetic tape for television recording or reproducing equipment;

(b) Being a standard commercial product;

(c) A tape width not exceeding 25.4 mm (1 inch);

(d) A magnetic coating material consisting of chromium dioxide;

(e) A base material consisting only of polyester; *and*

(f) A rated intrinsic coercivity not exceeding 80 kA/m (750 oersted).

Advisory Note 5: Licenses are likely to be approved for export to satisfactory end-users in County Groups QWY of reasonable quantities of magnetic tape controlled by paragraph (d) above, having all of the following characteristics:

(a) It is for use in civil television recording and reproducing applications;

(b) The magnetic coating material consists of undoped gamma-ferric oxide;

(c) The rated intrinsic coercivity does not exceed 28 kA/m 350 oersted);

(d) The tape width does not exceed 50.8 mm (2 inches); *and*

(e) A base material consists only of polyester.

Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of analog magnetic tape recorders controlled by paragraph (a) above, and specially designed components and "recording media" therefor controlled by paragraph (d) above, for use with those recorders, provided that:

(a) The equipment is for a legitimate civil end-use and is reasonable for that use;

(b) Details of such equipment have previously been submitted to the Office of Export Licensing and a determination has been made that the equipment is eligible for special treatment;

(c) The analog magnetic tape recorders are limited as follows:

(1) Characteristics are not superior to those defined in Advisory Note 1(a) (1) to (8);

(2) Equipped with tape derived (off-tape) servospeed control and with a time displacement (base) error of not less than ±0.8 microsecond at a tape speed of 152.4 cm (60 inches) per second and not less than ±1.6 microseconds at any lower tape speed measured in accordance with applicable IRIG and EIA documents.

Advisory Note 7 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of recording and reproducing equipment, as follows:

(a) Graphic instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 KHz, and not containing a cathode ray tube with a fiber optic face plate;

(b) Analog magnetic tape recorders with all the following characteristics:

(1) Bandwidth of up to:

(i) 4 MHz per track and having up to 28 tracks; *or*

(ii) 2 MHz per track and having up to 42 tracks;

(2) Tape speed of 610 cm (24 inches) per second or less;

(3) Not designed for underwater use;

(4) Not ruggedized for military use; *and*

(5) Recording density not exceeding 6,532 magnetic flux sine waves per cm;

(c) Instrumentation digital recorders having all of the following characteristics:

(1) "Packing density" of 13,125 bits per cm or less;

(2) Maximum of 28 tracks;

(3) Tape speed of 305 cm (12 inches) per second or less;

(4) Not designed for underwater use; *and*

(5) Not ruggedized for military use;

(d) Magnetic tape appropriate for use with magnetic tape recorders free from control or exportable under this Advisory Note, or under any other Advisory Note for the People's Republic of China of any ECCN, provided that the tape length, "packing density" and "recording density" do not exceed the performance limits of the magnetic tape recorders;

(e) Disks appropriate for use with disk drives free from control or exportable under this Advisory Note, or under any other Advisory Note for the People's Republic of China of any ECCN, provided that the "packing density" and inner and outer diameters do not exceed the performance limits of the disk drives;

(f) Video magnetic tape recorders specially designed for television recording.

Note 8. The following are definitions of terms used in ECCN 1572:

"Recording media"—

All types and forms of specialized media used in recording techniques, including but not limited to tapes, drums, disks and matrices.

"Recording density" for direct recorders—

The recording bandwidth divided by the tape speed.

"Recording density" for FM recorders—

The sum of the carrier frequency and the deviation divided by the tape speed.

"Packing density" for digital recorders—

The number of bits per second per track divided by the tape speed.

Note: For the definition of the terms related to "digital computers" or "software," see ECCN 1565 or 1566.

Dated: June 8, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-13265 Filed 6-10-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM87-25-000]

Filing Fees Under the Independent Offices Appropriations Act of 1952; Correction

Issued June 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction notice to the final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued Order No. 494, a final rule amending its filing fees under the Independent Offices Appropriations Act of 1952, on April 6, 1988. 53 FR 15,374 (Apr. 29, 1988). The revisions to §§ 375.308(m) and 375.314(gg) in the final rule are incorrect because those paragraphs were removed and their substance restated in §§ 375.308(e)(2) and 375.314(c)(8)(ii) by the final rule in Order No. 492, Regulations Delegating Authority, issued on April 5, 1988. 53 FR 16,058 (May 5, 1988). This notice directs that revisions in Order No. 494 concerning delegated authority to waive filing fees be made to the current provisions.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

Lois D. Cashell,

Acting Secretary.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

PART 375—[AMENDED]

1. The authority citation for 18 CFR Part 375 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act of 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101-7352, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Federal Power Act, 16 U.S.C. 791-825c, as amended; Natural Gas Act, 15 U.S.C. 717-717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

2. In § 375.308, paragraph (e)(2) is revised to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(e) * * *

(2) Fees prescribed in §§ 381.502, 381.505, 381.509, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106 of this chapter;

* * * * *

3. In § 375.314, paragraph (c)(8)(ii) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(c) * * *

(8) * * *

(ii) The fees prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter and the fees in § 381.601 of this chapter in accordance with § 381.106 of this chapter.

* * * * *

[FR Doc. 88-13078 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 381

[Docket No. RM87-25-000]

Filing Fees Under the Independent Offices Appropriations Act of 1952; Correction

Issued June 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued Order No. 494, a final rule amending its filing fees under the Independent Offices Appropriations Act of 1952, on April 6, 1988. 53 FR 15374 (Apr. 29, 1988). The regulatory text of § 381.208(b) of the Commission's regulations should have referred to the fee for a report under § 284.223(d) rather than to the fee for an application under that provision. This notice corrects that reference.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

In § 381.208, paragraph (b) is corrected to read as follows:

§ 381.208 Requests under the blanket certificate notice and protest procedures.

* * * * *

(b) If a fee for a report under § 284.223(d) of this chapter has been paid for an existing transportation authorization pursuant to § 284.223(a) of this chapter, then no fee is assessed for the authorization under the blanket certificate notice and protest procedures.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13195 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Reid-Rowell, Inc. The NADA provides for use of a dichlorophene/toluene capsule as an anthelmintic in dogs and cats. Elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 102-673, sponsored by Reid-Rowell, Inc. (formerly Reid-Provident Laboratories, Inc.), 901 Sawyer Rd., Marietta, GA 30062. The NADA provides for use of Anaverm (dichlorophene/toluene) capsules for removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. As required by the withdrawal of approval, this document removes the sponsor's drug labeler code from 21 CFR 510.600(c)(2) and 21 CFR 520.580(b)(2).

In addition, because the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600(c)(1) is amended by removing the firm from the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing "Reid-Provident Laboratories, Inc." and in paragraph (c)(2) by removing "000063."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.580 [Amended]

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(2) by removing "000063."

Dated: June 6, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-13269 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 11, 13, 20, 21, 23, 125, 151, 175, 176, 177, and 271

Reporting and Recordkeeping Requirements

Jan. 22, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau is amending its program regulations by publishing the statements concerning information collection requirements required by the Office of Management and Budget. These technical amendments are being done to conform with 5 CFR Part 1320 by codifying such statements as part of its rules.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Cathie L. Martin, Chief, Branch of Directives and Regulatory Management, Bureau of Indian Affairs, Room 334—Interior South, 18th and C Streets NW., Washington, DC 20240; telephone number (202) 343-3577.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (April 1, 1981) gave the Office of Management and Budget approval authority over agency collections of information from the public. The Office of Management and Budget requires that an agency that has collections of information contained in its regulations publish approved OMB control numbers for such collections in the **Federal Register** to ensure that this information is available to the public and that it is included in the Code of Federal Regulations.

This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. The Department has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has also determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This technical amendment includes only OMB control numbers for

information collection requirements in 25 CFR Parts 11, 13, 20, 21, 23, 125, 151, 175, 176, 177, and 271. These rules are procedural in nature and therefore are not subject to notice and comment requirements as provided by 5 U.S.C. 553(b).

List of Subjects

25 CFR Part 11

Courts, Indians-law, Law enforcement, Penalties, Reporting and recordkeeping.

25 CFR Part 13

Courts, Indians-law, Infants and children.

25 CFR Part 20

Administrative practice and procedure, Child welfare, Indians, Public assistance programs.

25 CFR Part 21

Government contracts, Indians, Intergovernmental relations.

25 CFR Part 23

Administrative practice and procedure, Child welfare, Grant programs—Indians, Grant programs—social programs, Indians, Reporting and recordkeeping requirements.

25 CFR Part 125

Indians—claims, Reporting and recordkeeping requirements.

25 CFR Part 151

Indians—lands.

25 CFR Parts 175, 176 and 177

Electric power, Indians—lands, Irrigation.

25 CFR Part 271

Administrative practice and procedure, Government contracts, Indians, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Parts 11, 13, 20, 21, 23, 125, 151, 175, 176, 177 and 271 of Title 25, Chapter I of the Code of Federal Regulations are amended as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2. Interpret or apply sec. 1, 36 Stat. 596; 25 U.S.C. 200, unless otherwise noted.

2. The title of § 11.1 is revised and a new paragraph (f) is added to read as follows:

§ 11.1 Application of regulations and information collection.

* * * * *

(f) *Information collection.* The information collection requirements contained in §§ 11.27 and 11.28 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0094. The information is collected by Courts of Indian Offenses having jurisdiction over tribal members in civil and criminal matters when such members seek to be married or divorced. The information is used by the Courts of Indian Offenses to issue marriage licenses and divorce decrees. Response is required to obtain a benefit.

PART 13—[AMENDED]

3. The authority citation for 25 CFR Part 13 continues to read as follows:

Authority: 25 U.S.C. 1952.

4. A new § 13.2 is added to read as follows:

§ 13.2 Information collection.

The information collection requirement contained in § 13.11 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0112. The information is being collected when federally recognized tribes request reassumption of jurisdiction over child custody proceedings. The information will be used to determine if reassumption of jurisdiction over Indian child custody proceedings is feasible. Response is required to obtain a benefit.

PART 20—[AMENDED]

5. The authority citation for 25 CFR Part 20 continues to read as follows:

Authority: 25 U.S.C. 13; sec. 20.21 also issued under Pub. L. 98–473.

6. A new § 20.4 is added to read as follows:

§ 20.4 Information collection.

The information collection requirements contained in §§ 20.10, 20.11, 20.22, 20.23, and 20.24 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0017. The information is collected to determine applicant eligibility for services. The information will be used to determine eligibility and to insure uniformity of services. Response is required to obtain a benefit.

PART 21—[AMENDED]

7. The authority citation for 25 CFR Part 21 continues to read as follows:

Authority: Sec. 3, 48 Stat. 596, as amended; 25 U.S.C. 454.

8. A new § 21.9 is added to read as follows:

§ 21.9 Information collection.

The information collection requirements contained in §§ 21.3 and 21.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0113 and 1076–0110, respectively. The information in § 21.3 is being collected to determine how contract funds are utilized. The information will be used to measure performance of the contractor and plan for future contracts. The information in § 21.6 is collected to specify the services or assistance to be rendered and the plan for expenditure of funds to be turned over to the state or agency. The information will be used to determine the adequacy of services and utilization of the budget provided by the contracting agency. Response is required to obtain a benefit.

PART 23—[AMENDED]

9. The authority citation for 25 CFR Part 23 continues to read as follows:

Authority: 5 U.S.C. 301; secs. 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

10. Section 23.4 is amended by redesignating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 23.4 Information collection.

(a) The information collection requirement contained in § 23.13 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0111. The information is collected in a notice from the court in order to certify payment of appointed counsel in the child custody proceedings. The information will be used to determine if an individual Indian involved in the Indian child custody proceeding is eligible for payment of appointed counsel's attorneys fees and to determine if any state statutes provide for coverage of attorney fees under these circumstances. Response is required to obtain a benefit.

* * * * *

PART 125—[AMENDED]

11. The authority citation for 25 CFR Part 125 continues to read as follows:

Authority: Act of March 2, 1889, c. 405, sec. 17, 25 Stat. 888, 895; Act of June 10, 1896, c. 398, 29 Stat. 321, 334; Act of May 21, 1928, c. 602, 45 Stat. 984; Act of June 18, 1934, c. 576, sec. 14, 48 Stat. 987, 25 U.S.C. 474.

12. A new § 125.7 is added to read as follows:

§ 125.7 Information collection.

The information collection requirements contained in §§ 125.4 and 125.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0004. The information is being collected to solicit information necessary to make a determination of eligibility for Sioux benefits. The information will be used to determine eligibility for payment. Response is required to obtain a benefit.

PART 151—[AMENDED]

13. The authority citation for 25 CFR Part 151 continues to read as follows:

Authority: R.S. 161; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended; 53 Stat. 1129; 63 Stat. 606; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 388; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, and 1495, and other authorizing acts.

14. A new § 151.14 is added to read as follows:

§ 151.14 Information collection.

The information collection requirements contained in §§ 151.9 and 151.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. The collection of information is from Indian tribes or individuals who desire to acquire land in trust and who must identify the party(ies) involved and a description of the land involved. The information will be used by the Bureau to acquire the land in trust on behalf of the Indian tribes and individuals. Response is required to obtain a benefit.

PART 175—[AMENDED]

15. The authority citation for 25 CFR Part 175 continues to read as follows:

Authority: Sec. 2, 49 Stat. 1698; 54 Stat. 422; and 5 U.S.C. 301, unless otherwise noted.

16. A new § 175.56 is added to read as follows:

§ 175.56 Information collection.

The information collection requirements in §§ 175.4, 175.25, and 175.32 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. The information is being collected to obtain information on needed electrical services. The information will be used to determine eligibility for service and gather needed information for billing. Response is required to obtain a benefit.

PART 176—[AMENDED]

17. The authority citation for 25 CFR Part 176 continues to read as follows:

Authority: Sec. 7, 62 Stat. 273; 5 U.S.C. 301.

18. A new § 176.22 is added to read as follows:

§ 176.22 Information collection.

The information collection requirements contained in §§ 176.4, 176.16, and 176.54 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. The information is being collected to obtain information on needed electrical services. The information will be used to determine eligibility for service and gather needed information for billing. Response is required to obtain a benefit.

PART 177—[AMENDED]

19. The authority citation for 25 CFR Part 177 continues to read as follows:

Authority: Sec. 5, 43 Stat. 476, 45 Stat. 210, 211; 5 U.S.C. 301.

20. A new § 175.55 is added to read as follows:

§ 177.55 Information collection.

The information collection requirements in §§ 177.4, 177.8, 177.12, and 177.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. The information is being collected to obtain information on needed electrical services. The information will be used to determine eligibility for service and gather needed information for billing. Response is required to obtain a benefit.

PART 271—[AMENDED]

21. The authority citation for 25 CFR Part 271 continues to read as follows:

Authority: Sec. 102, Pub. L. 93–638, 88 Stat. 2203, 2206 (25 U.S.C. 450f).

22. A new § 271.5 is added to read as follows:

§ 271.5 Information collection.

The Office of Management and Budget has approved, under 44 U.S.C. 3501 *et seq.*, the information collection requirements in §§ 271.14, 271.17, 271.18, and 271.21 under assigned control number 1076–0068; § 271.33 under control number 1076–0090; and §§ 271.41, 271.42, 271.44, 271.46, 271.47, and 271.49 under control number 1076–0091. The information for #1076–0068 is being collected to determine the eligibility of applicants, to protect the service population, and safeguard Federal funds and other resources. The information is used to determine eligibility and to permit the Bureau to administer, monitor and evaluate contract programs. The information for #1076–0090 is being collected to ensure that the trust responsibilities are not abrogated and to protect, preserve and perpetuate the resources of an Indian tribe or individual. The information will be used to determine eligibility of trust related activities or functions under proposed contract applications, to protect tribal resources, to insure fair return on such resources and to assure a satisfactory standard of contract performance. The information for #1076–0091 is being collected to insure proper administration, monitoring and evaluation of contracts, as well as to protect Federal funds and the service recipient population. The information will be used to assess program performance, to monitor contract expenditures, and to insure fairness and uniformity of services, including the maintenance of current and accurate records which allow for clear audit facilitating data. Responses are required to obtain a benefit.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–13196 Filed 6–10–88; 8:45 am]

BILLING CODE 4310–02–M

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25 CFR Part 69

Preparation of a Roll of Alaska Natives

February 17, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is removing Part 69 from Title 25 of the Code of Federal Regulations. Part 69 contains procedural rules governing the preparation of a roll of Alaska Natives under the Alaska Native Claims Settlement Act of 1971, as amended. The application and appeal processes for preparing the roll of Alaska Natives were completed in 1981 and the rule is no longer needed. This part has been

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previously redesignated from 25 CFR Part 43h at 47 FR 13327, March 30, 1982.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman, Branch of Tribal Government and Alaska, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Room 6456 Main Interior, 18th and C Streets NW., Washington, DC 20240, telephone number: (202) 343–8526 (FTS 343–8526).

SUPPLEMENTARY INFORMATION: The authority to issue these rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs in the Departmental Manual at 209 DM 8.

The regulations governing the preparation of a roll of Alaska Natives pursuant to section 5 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, were promulgated in 1972 and amended in 1973, 1976, and 1978. In accordance with the Act's provisions for a comprehensive and final enrollment process, strict deadlines for applying for enrollment, appealing adverse determinations and disenrolling those erroneously placed on the roll were contained in the rule. The application process was completed in 1977, the disenrollment process ended in 1978 and the Department's determinations on appeals were completed in 1981. Since 1981 the Department has considered the roll of Alaska Natives to be final and has relied on the finality of the decisions made with regard to that roll to make a complete distribution of monies under ANCSA.

The procedural rule contained in 25 CFR Part 69 therefore has not been needed since 1981 and is being removed. As part of the removal of the rule, any and all delegations associated therewith are also hereby revoked.

The Department is taking this action to remove an obsolete rule from the Code of Federal Regulations. In addition, the Department is concerned that leaving the rule in the Code of Federal Regulations may have led, or may in the future lead, members of the public to conclude mistakenly that the processes of preparing the roll of Alaska Natives are not yet complete and that they may still apply for enrollment, appeal their denial of enrollment or request reconsideration of an earlier appeal decision. The Department wishes to emphasize that those enrollment, appellate and reconsideration processes were completed in 1981, and that neither ANCSA nor the regulations contained in Part 69 provide or authorize any extension or reopening of the processes after that date.

Prior notice, opportunity for public comment, and delay in the effective date are not required for the removal of the rule contained in 25 CFR Part 69 because the rule is procedural in nature. *See* 5 U.S.C. 553 (b)(A) and (d). In addition, public comment on the revocation of the rule is unnecessary because the rule is obsolete and is no longer needed. 5 U.S.C. 553(b)(B).

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 610 *et seq.* Because the application and appeal processes to prepare the roll of Alaska Natives have been completed, the revocation of the procedural rule governing the preparation of the roll is not expected to affect any party economically.

This rulemaking document does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The Department has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required.

The primary author of this rulemaking document is Penny J. Coleman, Branch of Tribal Government and Alaska, Division of Indian Affairs, Office of the Solicitor, Department of the Interior.

List of Subjects in 25 CFR Part 69

Indians—enrollment, Indians—judgment funds.

PART 69—[REMOVED]

For the reasons set out in the preamble, Part 69 of Subchapter F of Chapter I of Title 25 of the Code of Federal Regulations is hereby removed.

Ross O. Swimmer,

Assistant Secretary-Indian Affairs.

[FR Doc. 88–13100 Filed 6–10–88; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1274–88]

Designation of Central or Competent Authority Under Treaties and Executive Agreements on Mutual Assistance in Criminal Matters

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 28 CFR 0.64–1 to authorize the Assistant Attorney General in charge of the Criminal Division to act as the central or competent authority under both treaties and executive agreements between the United States and other countries on mutual assistance in criminal matters that designate the Attorney General or the Department of Justice as such authority. Section 0.64–1 also authorizes the Assistant Attorney General in charge of the Criminal Division to redelegate his authority to his Deputy Assistant Attorneys General and to the Director of the Office of International Affairs. This final rule recognizes that both treaties and executive agreements on international mutual assistance may contain provisions requiring the performance of certain operational functions by a central governmental authority in the United States. The effect of the rule is to authorize the performance of those functions under either type of international agreement by designated individuals within the Criminal Division.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Drew C. Arena, Director, Office of International Affairs, Criminal Division, Department of Justice, Washington, DC 20530; 202–786–3500.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General in charge of the Criminal Division is currently authorized by 28 CFR 0.64–1 to act as the central or competent authority under treaties on mutual assistance in criminal matters between the United States and other countries and to redelegate his authority to his Deputy Assistant Attorneys General and to the Director of the Office of International Affairs. This final rule expands the scope of 28 CFR 0.64–1 to encompass executive agreements, as well as treaties, on mutual assistance in criminal matters.

This rule is not a major rule within the meaning of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 28 CFR Part 0

International agreements, Treaties.

For the reasons stated in the preamble, Title 28, Chapter 1, Part 0, Subpart K of the Code of Federal Regulations is amended as set forth below.

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2309; 6 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 852, 852a, 3597; 31 U.S.C. 1108, 3801 *et seq.*, 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.64–1 is amended by revising the section heading and the first sentence of the section to read as follows:

§ 0.64–1 Central or Competent Authority under treaties and executive agreements on mutual assistance in criminal matters.

The Assistant Attorney General in charge of the Criminal Division shall have the authority and perform the functions of the "Central Authority" or "Competent Authority" (or like designation) under treaties and executive agreements between the United States of America and other countries on mutual assistance in criminal matters which designate the Attorney General or the Department of Justice as such authority.

* * * * *

Date June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–13282 Filed 6–10–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–88–19]

Special Local Regulations for Chesapeake Bay Bridges Swim Race, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the annual Chesapeake Bay Bridges Swim Race, an annual event held in June. An annual notice of the precise dates and times of the Chesapeake Bay Bridges Swim Race will be published in Local Notice to Mariners and Federal Register Notice. The special local regulations govern vessel activities during the swim race. The special local regulations are necessary to restrict general navigation in the regulated area. These regulations are needed to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATE: This regulation is effective on June 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804–398–6204).

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking in the Federal Register on April 18, 1988 (53 FR 12706). Interested persons were requested to submit comments. No comments were received. Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the Federal Register. Delaying the effective date would result in a significant adverse impact on this year's swim, since the required safety for the swimmers would not be provided.

Drafting Information:

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. The regulations as proposed are adopted. By a separate document published elsewhere in this issue of the Federal Register, these regulations are made applicable to the 1988 Chesapeake Bay Bridges Swim Race that will be held on Sunday, June 12, 1988, between 8:00 a.m. and 11:15 a.m.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policy and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.507 is added to read as follows:

§ 100.507 Chesapeake Bay Bridges Swim Races, Chesapeake Bay, Maryland.

(a) *Definitions*—(1) *Regulated Area:* The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00'36" North, longitude 76°23'05" West and the eastern shore at latitude 38°59'14" North, longitude 76°20'00" West, and 500 yards sough of the south span of the bridge from the western shore at latitude 39°00'16" North, longitude 76°24'30" West and the eastern shore at latitude 38°58'38.5" North, longitude 76°20'08" West.

(2) *The Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the operator's vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer.

(c) *Effective period.* This section is effective during the Chesapeake Bay Bridges Swim, and for one hour before the event starts. The Commander, Fifth Coast Guard District publishes a notice in the Federal Register and the Fifth

Coast Guard District Local Notice to Mariners that announces the time and dates that the section is in effect.

Dated: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-13243 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-29]

Special Local Regulations for Chesapeake Bay Bridges Swim Race, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.507.

SUMMARY: This notice implements 33 CFR 100.507 for the Chesapeake Bay Bridges Swim Race, an annual event to be held on June 12, 1988. These special local regulations are needed to provide for the safety of participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim.

EFFECTIVE DATES: The regulations in 33 CFR 100.507 are effective from 8:00 a.m. to 11:15 a.m. on June 12, 1988.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information:

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Fletcher Hanks, the Director of the Race, has submitted an application to hold the Chesapeake Bay Bridges Swim Race on June 12, 1988. Approximately 600 swimmers will start at Sandy Point State Park, swim between the William Lane Jr. Memorial Twin Bridges to the Eastern Shore. Since this event is the type of event contemplated by these regulations and the safety of the participants would be enhanced by the implementation of the special local regulations for the regulated area, the regulations in 33 CFR 100.507 (published elsewhere in this issue of the Federal Register) are being implemented.

Vessel traffic will be permitted to transit the regulated area as the swim progresses, and thus commercial traffic should not be severely disrupted at any time.

Dated: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-13244 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-30]

Special Local Regulations for the Sixth Annual Intra-Harbor Power Boat Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Sixth Annual Intra-Harbor Power Boat Regatta. This event will be held on July 17, 1988, on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. These special local regulations are needed to control vessel traffic within immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The effect will be to restrict general navigation in the Town Point Reach section of the Elizabeth River for the safety of the spectators and participants in the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 12:30 p.m. until 5:30 p.m. local time on July 17, 1988. If inclement weather causes the postponement of the event the regulations will be effective from 12:30 p.m. until 5:30 p.m. on September 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-8204.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The regulations in 33 CFR 100.501 govern the operation of vessels during marine events held on the Elizabeth River in the vicinity of the "Waterside" area of downtown Norfolk, Virginia, and the "Portside" area of downtown Portsmouth, Virginia. The implementation of 33 CFR 100.501, also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and within one hour of the effective period under 33 CFR 100.501. These regulations are implemented by publication of this implementing notice in the Federal Register and a notice in the Local Notice to Mariners.

The Portsmouth Powerboat Association has submitted applications to hold the Sixth Annual Intra-Harbor Powerboat Regatta on July 17, 1988, in the area covered by 33 CFR 100.501. The event is being sponsored by Portsmouth Power Boat Association, Norfolk Festevents, Inc. and the City of Portsmouth.

Since this event is the type of event contemplated by these regulations and the safety of the participants and spectators viewing the event would be enhanced by the implementation of 33 CFR 100.501, those regulations are being implemented.

Date: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-13246 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-33]

Special Local Regulations for Harbor Expo Powerboat Races

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Harbor Expo Powerboat Races to be held on June 18 and 19, 1988, on the waters of the Middle Branch, Patapsco River west of the Hanover Street Bridge, Baltimore, Maryland. It will consist of approximately 45 outboard powerboats racing a designated course within the regulated area. The special local regulations will govern vessel activities during the powerboat races. The regulations are necessary due to the potential danger of the waterway users, the confined nature of the waterway, and the expected spectator craft congestion during the event.

EFFECTIVE DATES: These regulations are effective from 8:00 a.m. until 7:00 p.m., local time, on June 18 and 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until May 23, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide delayed effective date.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The International Outboard Grand Prix is the sponsor of this event. The event will consist of approximately 45 powerboats, ranging from 14 to 18 feet in length, racing on a designated course within the regulated area, on the waters of the Middle Branch, Patapsco River, west of the Hanover Street Bridge. The races will consist of a series of heats. A section of the Middle Branch, Patapsco River, approximately 650 yards west of the Hanover Street Bridge will be closed during the races, except that between heats the Coast Guard Patrol Commander will stop the races to allow vessel traffic to transit the regulated area. Since the waterway will not be closed for extended periods, waterborne traffic should not be severely disrupted.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0533 is added to read as follows:

§ 100.35-0533 Middle Branch, Patapsco River, Baltimore, MD.

(a) *Definitions*—(1) *Regulated area:* The regulated area is bounded by a line drawn from latitude 39°15'39.0" North, longitude 76°37'07.0" West, to latitude 39°15'39.0" North, longitude 76°37'27.0" West, thence to latitude 39°15'22.0" North, longitude 76°37'07.0" West, thence to latitude 39°15'22.0" North, longitude 76°37'07.5" West, and thence to the beginning point.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a Coast Guard commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special local regulations*—(1) Except for participants in the Harbor Expo Powerboat Races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer onboard a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area at any time a race heat is not being run.

Effective Dates: These regulations are effective from 8:00 a.m. until 7:00 p.m., local time, on June 18 and 19, 1988.

Dated: June 1, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-13245 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80348-8122]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NOAA issues an emergency interim rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The rule provides for recordkeeping and reporting of the incidental take and mortalities of sea turtles as required by the Endangered Species Act (ESA).

EFFECTIVE DATES: This rule is effective June 8, 1988 through July 31, 1988.

ADDRESSES: Copies of documents supporting this action may be obtained from Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the reporting requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

Requests for reporting forms, sea turtle identification guides, and resuscitation techniques should be sent to the Director, Galveston Laboratory, NMFS, Avenue U, Galveston, TX 77550.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The amended FMP and current regulations provide for a seasonal closure to shrimping in the exclusive economic zone (EEZ) off Texas not to exceed 60 days, nor be less than 45 days. The objective of this closure is to delay the harvest of small brown shrimp until they reach a larger, more valuable size.

The regulations implementing an identical closure in 1987 contained a reporting requirement for shrimp fishermen whenever an endangered or threatened sea turtle was incidentally taken while trawling off Texas outside of the closed area. This incidental take data is required under section 7(b)(4) of the ESA (16 U.S.C. 1531, *et seq.*). On May 25, 1988 (53 FR 18840), a final rule was published providing for an identical closure from June 1 through July 15, 1988. NOAA expected that regulations requiring the use of turtle excluder devices (TEDs) under the Endangered

Species Act would be in affect during the closure, and therefore no reporting requirement was necessary in the proposed rule (53 FR 12046, April 12, 1988). A restraining order temporarily enjoining the TED regulations came into effect after the proposed rule was filed with the Office of the Federal Register.

This information collection is essential for purposes of protecting and conserving affected sea turtle populations. Efforts have been made to minimize the burden on potential respondents by limiting the requirement to submit a report only to those fishermen who actually take turtles, rather than to all fishermen operating under the regulations. We anticipate that no more than 12 reports will be submitted.

The 15-mile closure is scheduled from June 1 through July 15, 1988. To meet this deadline and to provide adequate protection to sea turtles as required by the ESA, no further opportunity for public hearings and public comment can be provided. Because the reporting requirement is identical to that in the 1987 closure regulations, there is little adverse impact on the affected public.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause (i.e., to implement the data collection required by the ESA in a timely fashion) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide advance opportunity for comment upon this emergency interim rule, or to delay for 30 days its effective date, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been approved by the Office of Management and Budget under OMB Control Number 0648-0178.

The Gulf of Mexico Fishery Management Council prepared an environmental assessment for this rule and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment is available (see ADDRESSES).

The Assistant Administrator determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.5, a new paragraph (c) is added, to be effective from June 6, 1988 through July 31, 1988, to read as follows:

§ 658.5 Reporting requirements.

* * * * *

(c) *Texas closure.* The owner or operator of any fishing vessel that fishes for or lands shrimp or any part thereof during the time of the Texas closure described at § 658.23(c) off Texas west of a line connecting point A (29°32.1' N. latitude, 93°47.7' W. longitude) to point B (26°11.4' N. latitude, 92°53.0' W. longitude), as shown in Figure 3, and who incidentally takes any endangered or threatened sea turtle, must provide the following information regarding any fishing trip to the Director, Galveston Laboratory, NMFS, 4700 Avenue U, Galveston, TX 77550, telephone 409–766–3500, within 24 hours after landing:

(1) Date;

(2) Shrimp vessel name;

(3) Species of turtle caught:

(i) Loggerhead;

(ii) Kemp's ridley; or

(iii) Other (specify, see turtle identification guide).

(4) Status of turtle when released:

(i) Alive; or

(ii) Dead.

(5) Did the turtle have a tag?

(6) If so, what was the tag number?

(7) Coordinates of capture (loran readings or latitude and longitude).

(8) Approximate tow time; and

(9) Additional comments.

[FR Doc. 88-13200 Filed 6-8-88; 4:53 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 80483-8083]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Humbug Mountain, Oregon, to Punta Gorda, California, at midnight, June 7, 1988, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife (ODFW), and the California Department of Fish and Game (CDFG) that the available commercial fishery quota of 63,000 chinook salmon for the area will be accounted for by that time. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the EEZ from Humbug Mountain, Oregon, to Punta Gorda, California, to commercial salmon fishing is effective at 2400 hours local time, June 7, 1988. Comments on this closure will be accepted until June 23, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206–526–6150, or E. Charles Fullerton at 213–514–6196.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 commercial fishery for all salmon species in the subarea from Humbug Mountain, Oregon, to Punta Gorda, California, was established as June 8 through the earlier of June 28 or the attainment of the chinook or coho quota. In its preseason announcement of 1988 management measures, NOAA announced that the commercial fishery from Orford Reef Red Buoy, Oregon, to Horse Mountain, California, would be managed not to exceed a quota of 63,000 chinook salmon through August 31, 1988. The 63,000 chinook salmon quota applies to the areas from Orford Reef Red Buoy, Oregon, to Horse Mountain, California, but the subareas from Orford Reef Red Buoy, Oregon, to Humbug Mountain, Oregon, and from Horse Mountain, California, to Punta Gorda, California, are closed for the entire season, so fishing has occurred only from Humbug Mountain, Oregon, to Punta Gorda, California. Out of the 63,000 chinook quota, only 40,450 were available in this fishery because a total of 22,550 fish were deducted for other fisheries. These fisheries are outlined below:

(1) The commercial fishery for all salmon except coho in the subarea from Sisters Rocks to Chetco Point, Oregon, which closed in Federal waters on May 4, 1988 (53 FR 16415, May 9, 1988), had actual landings totaling 8,850 chinook salmon.

(2) The State of California authorized a special commercial fishery in territorial water (0–3 miles) near Shelter Cove (i.e., between Horse Mountain and Cape Vizcaino, California) during May which was inconsistent with the preseason notice of 1988 management measures. In order to account for this fishery, the number of chinook salmon harvested which had impacts on the Klamath River Management Zone, (i.e., 6,200 fish), are being counted toward the overall chinook quota as provided by § 661.20(a)(3).

(3) The commercial fishery for all salmon except coho in the subarea from Sisters Rocks to Mack Arch, Oregon, is scheduled to open August 15, 1988, with a reserved subarea quota of 7,500 chinook salmon.

Based on the best available information, the commercial fishery catch in the subarea from Humbug Mountain to Punta Gorda is projected to reach the 40,450 fish remaining in the overall chinook quota of 63,000 fish by midnight, June 7, 1988.

Therefore, NOAA issues this notice to close the commercial salmon fishery in the EEZ from Humbug Mountain, Oregon, to Punta Gorda, California, effective 2400 hours local time, June 7, 1988. This fishery will remain closed until further notice to evaluate landings. As provided by the regulations at § 661.21(a)(2), the Secretary of Commerce will reopen the fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. This closure does not affect the commercial fishery for all salmon except coho in the subarea from Sisters Rock to Mack Arch, Oregon, which is scheduled to open August 15, 1988. This notice does not apply to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the NMFS Southwest Regional Director and representatives of the Pacific Fishery Management Council, ODFW, and CDFG regarding a closure of the commercial fishery between Humbug Mountain, Oregon, and Punta Gorda, California. The ODFW and CDFG representatives confirmed that Oregon and California will close the commercial fishery in state waters adjacent to this subarea at midnight, June 7, 1988.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

16 U.S.C. 1801 *et seq.*

Dated: June 8, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-13202 Filed 6-8-88; 5:04 pm]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 70750-7248]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This document modifies the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) which governs domestic and foreign fishing for groundfish in the exclusive economic zone off the coasts of Washington, Oregon, and California. The rulemaking is necessary for enforcement purposes and to reconcile certain inconsistencies between Federal and State groundfish regulations. It is intended to improve coordination between Federal and State management jurisdictions and to strengthen enforcement of domestic groundfish regulations.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150; or E. Charles Fullerton (Director, Southwest Region, NMFS), 213–514–6196.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on January 4, 1982. The FMP has been amended twice. Implementing regulations governing domestic fishing are codified at 50 CFR Part 663.

This rulemaking changes the Federal groundfish regulations to facilitate enforcement and to resolve inconsistencies between Federal and State regulations. The Council discussed this rule and recommended it to the Secretary at its September 1988 meeting.

The rule contains three changes to the groundfish regulations which are described below.

Issue 1—Processing inspection. The rule clarifies the authority of authorized officers to enter buildings, vehicles, piers, or dock facilities where groundfish may be found by making it unlawful for a person in control to refuse such entry.

Issue 2—False statements. The rule prohibits making any false statement, oral or written, to an authorized officer about the taking, catching, harvesting, possession, landing, purchase, sale or transfer of groundfish.

Issue 3—Gear and catch inspection. The rule makes it unlawful to refuse to submit fishing gear or catch under a person's control to inspection by an authorized officer or to interfere with or prevent, by any means, such an inspection.

This rule was proposed in the Federal Register on August 7, 1987 (52 FR 29400), and public comments were requested until September 8, 1987. No comments were received.

One comment was submitted for a similar rule proposed for the Fishery

Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (53 FR 19744, May 27, 1987) which is also relevant to this rulemaking. The commenter recommended for the issue on gear inspection that "catch" as well as "fishing gear" be subject to the prohibition since there have been numerous instances when fishermen have been able to frustrate investigations by throwing illegal catch overboard. NOAA agrees with the need to add "catch" to the prohibition in this rulemaking. However, NOAA prefers to define "catch" as "fish under a person's control" in order to incorporate the term "fish" as defined in the Magnuson Act and thus clearly define what is meant.

Classification

NOAA issues this rule, under authority of section 305(g) of the Magnuson Act, to facilitate enforcement and to reconcile inconsistencies between Federal and State fishery regulations.

This action is not expected to alter the nature of intensity of environmental impacts which were addressed in the supplemental environmental impact statement (SEIS) prepared by the Council for the FMP or in the environmental assessments for the two amendments to the FMP. Notices of a availability of the SEIS and environmental assessments were published on February 12, 1982, 47 FR 6483; March 20, 1984, 49 FR 10618; and October 31, 1986, 51 FR 39768; respectively.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities.

This rule does not contain a collection of the information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 7, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 663 is amended as follows:

PART 663—[AMENDED]

1. The authority citation for Part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.2, the definition of "areas of custody" is added in alphabetical order to read as follows:

§ 663.2 Definitions.

* * * * *

Areas of custody means any vessels, building, vehicles, piers, or dock facilities where fish may be found.

* * * * *

3. In § 663.7, paragraph (b) is revised, the period following paragraph (o) is changed to a semicolon, and new paragraphs (p) and (q) are added to read as follows:

§ 663.7 General prohibitions.

* * * * *

(b) To refuse to allow an authorized officer to board a fishing vessel, or to enter areas of custody, subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

* * * * *

(p) To make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, possession, landing, purchase, sale, or transfer of any fish; or

(q) To refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

[FR Doc. 88-13239 Filed 6-10-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A55]

Milk in the Texas Marketing Area; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative decision would provide transportation credits to handlers for hauling excess producer milk to nonpool plants located outside the State of Texas. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits would apply during the months of March-June and the last half of December and would be limited to milk going into Class II and Class III uses. The credits would be computed at a rate of 2.4 cents per 10 miles. Credits would be limited to handlers who transfer milk from plants located in Zone 1 of the marketing area while credits on milk that is moved directly from farms to nonpool plants would be limited to milk produced in northern Texas and southern Oklahoma. Handlers would also receive a credit to recognize costs associated with hauling milk from higher- to lower-priced areas. The amount of milk to which transportation credits apply would be reduced to the extent that a handler or affiliate of the handler caused milk from outside the State of Texas to be received at plants in the marketing area.

The changes to the order, which are based on proposals considered at a public hearing held on February 2–3, 1988, in Irving, Texas, are necessary to partially compensate handlers for transportation costs incurred in clearing the market of surplus milk production that exceeds local manufacturing capacity.

DATE: Comments are due on or before July 13, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers and partially compensate handlers for costs incurred in providing a service of marketwide benefit.

Prior document in this proceeding: *Notice of Hearing:* Issued December 30, 1987; published January 6, 1988 (53 FR 256).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Texas marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Irving, Texas, on February 2–3, 1988, pursuant to a notice of hearing issued December 30, 1987 (53 FR 256).

The material issues on the record of hearing relate to:

1. Credits to handlers for transporting surplus producer milk; and
2. Whether emergency marketing conditions exist with respect to issue number 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Credits to handlers for transporting surplus producer milk.* The Texas order should be amended to provide transportation credits to handlers for hauling (transferring or diverting) surplus producer milk to nonpool plants located outside the State of Texas for Class II and Class III use during the months of March-June and the last half of December. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits should be computed at a rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance to nonpool plants, as determined by the market administrator, from the nearer of several locations. A transfer credit should apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant. A credit for diverted milk should apply to milk produced in Zones 1, 1–A, or 3 of the marketing area or 19 southern Oklahoma counties that is diverted from a pool plant to a nonpool plant that is in excess of 100 miles from the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the load, or the courthouse of the county where the major portion of the milk on the load

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was produced. In addition, a credit for diverted milk should also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustments) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received. No credit should apply to the total quantity of milk moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during the month should be reduced by the amount of milk that the handler or any affiliate of the handler causes to be received at plants in the marketing area from outside the State of Texas during the month. Such offset should be applied in sequence beginning with the nonpool plant at which the greatest credit would have applied.

The order provisions contained herein to provide transportation credits to handlers are patterned after the proposals that were contained in the hearing notice with modifications that were supported at the hearing to limit the application of any such credits. The modifications are necessary so that Texas order producers would not be inordinately burdened with the cost of disposing of surplus milk associated with other markets, or costs associated with inefficient marketing practices that might be encouraged by the implementation of such credits. The provisions are contained in a new section of the Texas order and carry out the major objectives of the proposals to partially compensate handlers for costs incurred in performing a service of marketwide benefit for producers, namely, the additional cost of hauling surplus milk to distant nonpool plants that is in excess of local manufacturing capacity.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents about two-thirds of the producers who supply the Texas market, proposed that the order be amended to provide for a change in the location at which diverted milk is priced and to reimburse handlers from the producer-settlement fund for costs incurred in transporting surplus milk supplies to alternative outlets during certain months. Specifically, AMPI proposed that milk diverted from farms of producers located in Zone 1 or 3 of the marketing area to nonpool plants located outside the State of Texas be priced as if such milk were received at Dallas, Texas (Zone 1). For milk diverted from farms of producers located in Zone 1–A of the marketing area or in any of 19 southern Oklahoma counties to nonpool plants located outside Texas and southern Oklahoma, AMPI proposed that such milk be priced as if such milk were received at a plant in southern Oklahoma (28 cents less than Class I and blend prices announced in Zone 1 of the Texas order.) The proposed change in the point of pricing for diverted milk would apply during all months of the year.

AMPI also proposed that transportation credits be provided to handlers from the producer-settlement fund for hauling excess milk to nonpool plants outside Texas for Class II and Class III uses during the months of March-June and December of each year. Under the proposals, a transportation credit would apply to the pounds of bulk fluid milk products transferred from a pool plant or diverted from farms of producers located in Zone 1 or 3 of the marketing area to nonpool plants outside Texas at the rate of 3.3 cents per hundredweight for each 10 miles that the nonpool plant is located more than 90 miles from Dallas. AMPI also proposed that such credit apply to the pounds of producer milk diverted from farms located in Zone 1–A of the marketing area or 19 southern Oklahoma counties to nonpool plants located outside Texas and southern Oklahoma that are in excess of 110 miles from the nearer of Burkburnett, Texas or Sulphur, Oklahoma.

AMPI testified that the purpose of the proposed amendments is to provide for a greater degree of equity among all producers in the sharing of the high costs associated with handling surplus milk under the Texas order. AMPI testified that, under current provisions, its producer members bear a disproportionate share of the costs of balancing the fluid milk needs of the market in that its members represent two-thirds of the producer milk while AMPI handles over 80 percent of the Class III producer milk on the market. AMPI testified that of the 30 distributing plants on the market, 14 are totally supplied by the cooperative, 13 are partially supplied by it and three are not supplied by AMPI. In some cases AMPI is a partial supplier on a year-round basis while in other instances AMPI supplies supplemental milk only during the fall months of the year. In total AMPI claims that it balances, to various degrees, the milk supplies of all pool distributing plants on the Texas market.

AMPI also testified that substantial increases in production during the last half of 1987 have resulted in supplies far in excess of the capacity of all plants in the marketing area, which has increased the cost of handling surplus milk. For example, AMPI referred to data released by the market administrator concerning production increases for the State of Texas. For the months of July through December 1987, Texas production (about 94 percent of which is pooled on the Texas market) averaged 10.1 percent above a year earlier. For December 1987, Texas production was up 14.8 percent while milk production in the top ten milk producing counties was up by 20.5 percent. AMPI noted that such counties represented 58 percent of total state production and 62 percent of the Texas production pooled under the order and that all of these counties are located in Zone 1, 1–A or 3 of the marketing area.

In addition to including the major milk producing areas in the marketing area, AMPI testified that 19 southern Oklahoma counties also should be included within the scope of its proposals. AMPI testified that milk produced in such area has historically been associated with the Texas market. For example, AMPI testified that for 1985, 71 percent of the 115 million pounds of milk originating in such area was received at pool plants while 29 percent was diverted to nonpool plants outside Texas. The monthly proportion delivered to pool plants ranged from a high of 96 percent to a low of 47 percent during the year. In 1986, 58 percent of 112 million pounds from this area was received at pool plants, ranging from a high of 90 percent to a low of 35 percent on a monthly basis. In 1987, 48 percent of 113 million pounds was received at pool plants, ranging from 79 percent to 20 percent monthly during the year. AMPI testified that when milk must be diverted off the market, usually milk produced in southern Oklahoma would be the first to be moved and that the producers would receive either a Dallas (Zone 1) or Burkburnett (Zone 1–A) location blend price for their milk.

AMPI testified that its balancing functions and the increases in production have resulted in an increasing volume of surplus milk to be handled by AMPI. For example, AMPI testified that for 1985, it handled 503 million pounds of surplus milk produced in southern Oklahoma and Zones 1, 1–A and 3 of the marketing area. Of this total, 92 percent was processed at AMPI's pooled manufacturing plants located in Zone 1 at Muenster and Sulphur Springs, Texas (Zone 1), while the remaining 39 million pounds was diverted to nonpool plants outside Texas, mainly to other AMPI plants at Oklahoma City and Tulsa, Oklahoma.

AMPI testified that during 1986 the amount of surplus milk increased to 576 million pounds (14 percent increase) with 488 million pounds being processed at Muenster and Sulphur Springs (85 percent) and the remainder being diverted or transferred from the manufacturing plants to nonpool plants outside Texas. For 1987, the amount of the surplus increased to 775 million pounds (a 35 percent increase) with 75 percent being processed at its two Texas manufacturing plants and 155 million pounds being diverted (double that of the previous year) and 35 million pounds (a fourfold increase) being transferred to nonpool plants outside Texas. AMPI testified that large increases in production during the spring are normal, but, that the substantial increase during the fall months of 1987 is of major importance in the volume processed at Muenster and Sulphur Springs and in milk diverted and transferred off the market during such period when the Texas market is usually deficit.

AMPI testified that the increasing volume of milk handled by the cooperative has resulted in substantial increases in the cost of surplus disposal that is borne by the producer members of the association. AMPI testified that the increased costs are a result of the pricing of surplus milk at the plant to which it is diverted and the additional transportation costs of hauling milk to distant outlets. For example, AMPI testified that losses on milk diverted from southern Oklahoma averaged just over 45 cents per hundredweight for 1986 and just over 49 cents per hundredweight during 1987. About two-thirds of such losses were a result of the minus location adjustments that applied at the nonpool plants to which the milk was diverted and one-third from additional hauling costs to such outlets. Losses on milk diverted from the three zones in the Texas marketing area averaged $1.44 per hundredweight in 1986 and just under $1.45 per hundredweight during 1987 with about one-half of such losses being attributed to location adjustments and one-half to extra hauling costs. In total, AMPI testified that its losses on diverted milk were about $254 thousand in 1985, $877 thousand in 1986, and over $1.6 million for 1987. In addition, AMPI testified that it lost an additional $106 thousand in 1986 on milk transferred from its Zone 1 pooled manufacturing plants to nonpool plants outside Texas and about $503 thousand for 1987. AMPI testified that such losses were borne exclusively by its producer members while the benefits of such market clearing activities accrued to all producers and handlers.

AMPI testified that the proposed revision of the producer milk definition to change the pricing point on diverted milk during all months of the year would partially restore equity among all producers who supply the market. AMPI indicated that the value of negative location adjustments (which currently apply at the nonpool plants to which AMPI diverts milk) on producer milk is added to the total pool value of milk in computing the Zone 1 announced uniform price. AMPI testified that the uniform price is thus enhanced because of the minus location adjustments and nonmember producers receive a higher value for their milk. AMPI noted that its member producers also benefit from such higher price, but that they carry the total losses and therefore receive a lower than average return for their milk.

AMPI also testified that the underlying assumptions that provide the basis for pricing milk at the plant to which it is diverted are no longer applicable. According to AMPI, the basis for the lower value of milk at distant manufacturing plants in the production area is that the producers whose milk is shipped to such plants would incur a lesser hauling cost than if their milk were shipped further to distributing plants. AMPI contends that such situation no longer exists since there are no savings in hauling costs when milk must be diverted from Texas and southern Oklahoma to manufacturing plants outside the State of Texas. AMPI contends that the cost of hauling milk that must be diverted to distant nonpool plants is greater than the cost of hauling milk from farms to Texas distributing plants. AMPI also testified that it makes every effort to minimize transportation losses by utilizing the milk of producers located nearest to distributing plants to fulfill the needs of such plants while diverting the milk of more distant producers to manufacturing plants. However, AMPI testified that it is prevented from doing this in certain instances by the terms of other order provisions. In particular, AMPI noted that during the months of September through January at least 15 percent of each producers milk must be delivered to pool plants during the month in order to qualify milk diverted to nonpool plants as producer milk.

AMPI testified that during the months of March–June and December the production of milk within the Texas marketing area exceeds the requirements of distributing plants and that the resulting surplus is beyond the capacity of surplus processing plants in the marketing area. Thus, AMPI testified that during such months handlers should receive a reimbursement out of the producer-settlement fund for costs incurred in transporting such surplus production to nonpool plants outside Texas. AMPI further testified that the Food Security Act of 1985, which amended the Agricultural Marketing Agreement Act of 1937, as amended, provides specific authority for such action. AMPI further testified that the proposal would result in a more equitable sharing among all producers of the costs of handling excess milk supplies. AMPI testified that it would be unfair to make only those producers whose milk must be moved, or those producers whose milk must be moved greater distances because of a lack of nearby plant capacity, to bear the entire additional hauling cost when all producers contribute to the amount of surplus milk. Thus, AMPI concludes that the proposal would be an extension of marketwide pooling whereby all producers share in the proceeds from the sale of milk for fluid uses and the burden of maintaining the reserve supply of milk that is necessary to meet fluid milk needs. Under current conditions of excess supply, AMPI maintains that marketwide pooling does not achieve equity among producers and that therefore disorderly marketing conditions exist.

In support of its proposed rate for determining the amount of the credit to handlers, AMPI introduced the actual hauling costs incurred during 1986 and 1987. Such costs ranged from $1.50 to $1.80 per loaded mile which reflects rates from 3.2 to 3.9 cents per hundredweight per 10 miles. AMPI testified that the lower rates were for hauls with its own equipment while the higher rates were for contract haulers. AMPI testified that it is expected that the use of contract haulers would increase because of the greater amount of surplus milk that must be handled. Nevertheless, AMPI revised its originally proposed 3.6-cent per hundredweight rate to 3.3 cents.

AMPI testified that the credit be calculated on the mileage involved that exceeds the normal farm-to-market distance when supplying the Class I outlets. In this regard, AMPI referred to statistics provided by the market administrator concerning the weighted average distances of milk movements to fluid milk plants located in the pricing zones of the marketing area during two months of 1987. AMPI testified that since milk was moved an average of about 84 miles to supply Zone 1 distributing plants, handlers should

receive a credit for milk produced in Zones 1 and 3 to the extent that such milk is transported to nonpool plants located more than 90 miles from Dallas. For milk produced in Zone 1–A or southern Oklahoma, AMPI revised its original 75-mile limitation upward to 110 miles for credit purposes because the weighted average distance of milk shipments to the distributing plant in Zone 1–A (Burkburnett) exceeded 116 miles. Also, AMPI testified that most of the supply for the distributing plant in Zone 1–A originates in Oklahoma at distances from 101 to 150 miles away from the plant and that milk originating in southeastern Oklahoma (Sulphur) is about 110 miles from Dallas. By incorporating such mileage limitations in the proposal AMPI testified that handlers would be reimbursed only for costs incurred in hauling milk in excess of the costs normally paid by producers to haul milk to their Class I outlet.

AMPI testified that credits should apply to handlers for bulk fluid milk products transferred or diverted to nonpool plants located outside the normal delivery area for Class II or Class III use, rather than only Class III use as would be provided by an alternative proposal. AMPI testified that some of the nonpool plants available have both Class II and Class III operations and that if the alternative proposal was adopted a credit could apply to part of the milk on a load and not to the rest, depending on the classification at the receiving plant. AMPI testified that the cost of hauling the milk would be the same, regardless of the classification. AMPI further testified that the order permits milk diverted to an other order plant to remain pooled under the Texas order so long as all of the milk is classified as Class II or Class III and, thus, the same criteria should apply in determining the amount of hauling credit allowed.

AMPI's proposals were supported by Mid-America Dairymen, Inc., a cooperative association that represents about 15 percent of the producers who supply the Texas market. Southern Milk Sales, Inc., another cooperative association that represents producers who supply the market, testified that if hauling credits are adopted they should apply to milk moved to any location outside Texas. Such testimony was directed to a proposal by handlers that would limit the credit to only northward movements of milk. One proprietary fluid milk handler also supported the proposals in its brief so long as any amendment would assure that sufficient supplies of milk would first be made available to distributing plants.

A group of 10 handlers (Southland Corporation; Baker and Sons Dairy, Inc.; Borden, Inc.; Blue Bell Creameries, Inc.; Dairy Fresh, Inc.; Dean Foods Company; Hygeia Dairy Company; Kinnett Dairies, Inc.; Malone & Hyde Dairy; and Southern Belle Dairy, Inc.) who operate plants in Texas and in various southeastern markets proposed alternatives to the AMPI proposals. The handler's proposals would provide for a lesser hauling credit rate (2.0 to 2.2 cents per 10 miles), a greater distance that milk would have to move before a credit would apply along with the use of more northern basing points to determine such distance, and the application of such credits to only milk that is moved in a northern direction to plants outside Texas. The handlers also proposed that credits should not apply during the first half of December, that credits should not apply to milk produced in Oklahoma and that credits should not apply to milk moved out of Texas if milk was being received in Texas from outside areas during the same month.

The handlers testified that the purpose of the more restrictive proposals is to lessen potential abuses of a transportation credit and to address equity considerations between Texas producers and producers under other orders. They testified that the lower credit rate is intended to assure that there would be no hauling profits that would encourage the hauling of milk further than necessary and to provide no greater hauling incentive for surplus milk than what is provided for hauling milk for fluid use within the Texas marketing area. They also testified that the greater mileage before a credit applies, and the use of more northern basing points to determine such mileage, is intended to prevent a hauling credit for a greater distance than the actual hauling distance. The handlers also testified that a credit should apply only to northward movements of milk to prevent Texas surplus milk from utilizing scarce manufacturing capacity in the Southeast, with the result that displaced surplus milk in the Southeast would then have to be shipped greater distances for disposal, and without a transportation credit. The handlers further testified that a transportation credit for only the last half of December is intended to recognize that milk production normally exceeds the fluid requirements of distributors only during the latter part of the month, while additional supplies are normally needed by distributors during the beginning of the month in preparation for the holiday sales period. The handlers also testified that transportation credits should not apply to milk produced in Oklahoma or to milk shipped out of Texas while milk is being received from outside Texas to prevent Texas producers from bearing the cost of disposing of surplus milk associated with other states and markets. The handlers are particularly concerned that the implementation of any transportation credits for the Texas order could encourage uneconomic movements of milk from other areas to Texas thereby utilizing Texas manufacturing capacity and forcing Texas milk to be hauled to distant manufacturing plants. Handlers contend that Texas producers should not be required to bear the cost of such uneconomic movements of milk.

Handlers also proposed that the change in the point of pricing on diverted milk be limited to those months for which a transportation credit was proposed (rather than year-round as proposed by AMPI), although there was little testimony on this aspect of the proposal. Also, there was virtually no testimony on the handlers' proposal to apply transportation credits to only Class III uses, rather than Class II and Class III uses as proposed by AMPI.

Although handlers presented an alternative to AMPI's proposal, their primary position (expressed both in testimony and in post-hearing briefs) is that no change should be made to the Texas order to accommodate the hauling of surplus milk. Handlers contend that the Texas order carries the reserve milk supplies for other Federal order markets and, as a result, the proposals should be denied for essentially the same reasons that marketwide service payment paposals were denied for several Federal order markets in the Southeast. In this regard, official notice is taken of the Assistant Secretary's final decision concerning the Georgia and certain other marketing areas issued on April 28, 1987 and published on May 1, 1987 (52 FR 15951).

Also, in briefs filed by a number of parties, it is argued that AMPI has been able to recover its seasonal balancing costs through over-order prices and that AMPI does not carry a disproportionate share of the Class III use on the market considering the amount of surplus associated with other markets that is pooled under the Texas order. Such parties argue that AMPI is transporting its own surplus to nonpool plants outside Texas and that such activity is not a service of marketwide benefit to all producers and, therefore, it would not be appropriate to implement a transportation credit that would require all producers to subsidize AMPI's marketing problem. Furthermore, a brief filed on behalf of three handlers argues that previous Department policy set forth in a previous decision to implement transportation credits establishes that a demonstrated service of marketwide benefit is a prerequisite to implementing a transportation credit. In this regard, official notice is taken of the Assistant Secretary's final decision for the Georgia and certain other marketing areas issued on March 30, 1983 and published April 5, 1983 (48 FR 14604).

Also, in their briefs, a number of parties argued that the proposed pricing change on diverted milk would distort the location value of milk and result in non-uniform prices to handlers. They further contend that such pricing is not consistent with the requirements of the Agricultural Marketing Agreement Act of 1937, as amended, since milk would be priced on the basis of where it is produced or normally received rather than at the location where it is physically received.

Two cooperative associations (the National Farmers Organization and the Farmers Union) that do not represent any producers under the Texas order testified in opposition to the adoption of any transportation credits. They contend that if the transportation of surplus milk is subsidized, such milk would displace other milk at northern manufacturing plants, would undercut prices at such plants, and would place downward pressure on manufacturing milk values to the detriment of all producers. The cooperatives contend that it would be inequitable for all producers to have to bear the cost of disposing of Texas surplus milk while Texas producers are benefitting from a Congressionally-mandated higher Class I differential. They contend that the increased returns from the significantly higher differential (which they also contend has encouraged excess milk production in Texas) should be used by AMPI to offset its surplus disposal costs. In addition, in a brief filed on behalf of the National Farmers Organization it is argued that prior decisions of the Department establish that a regional view must be taken when evaluating the equity of proposals intended to compensate handler expenses. In this regard, the brief refers to the previously officially noticed 1987 decision that denied credits for the performance of marketwide services and a 1984 decision that denied a proposed credit for milk in Class III uses under the Texas order. Consequently, official notice is taken of the Assistant Secretary's final decision for the Texas market issued on May 14, 1984 and published on May 17, 1984 (49 FR 20825).

A brief was also filed on behalf of a number of producers under the Texas order who market their milk independently to handlers who operate plants under the Texas order. The producers oppose the implementation of transportation credits. They contend that they are already receiving a reduced blend price because AMPI pools the surplus of other markets under the Texas order, that AMPI is already recovering its balancing costs, and that AMPI has a cost advantage in disposing of surplus milk because its manufacturing pool plants are located near to the source of heavy milk production.

There is no dispute on the record of the proceeding that the dramatic increases in Texas production testified to by AMPI will mean market surpluses in excess of the capacity of manufacturing plants located in the marketing area, particularly during the months of March–June and December. These months have traditionally represented the period of the greatest Class III use of producer milk under the order. During the month of December 1987, the most recent month for which data is included in the record that illustrates the magnitude of the surplus problem, over 60 million pounds of milk produced in the major production areas of the Texas marketing area and southern Oklahoma was processed at AMPI's two pooled manufacturing plants. During the same month, more than 28 million pounds of producer milk was transferred or diverted to nonpool plants outside Texas for surplus disposal. With normal seasonal increases in production, it is likely that the amount of milk in excess of local plant capacity will exceed 45 million pounds per month during the current flush production season.

When milk production exceeds all available nearby plant capacity, such excess production must either be dumped or transported at handler expense to alternative outlets. There is little way that AMPI, or any other handler, can recover the additional cost of hauling such milk to distant plants for surplus disposal. The Act authorizes a transportation credit to handlers from pool funds who perform this service if it is of marketwide benefit. Such service is of marketwide benefit to all producers on the Texas market since the amount of milk produced by all such producers contributes to the amount of surplus milk that cannot be accommodated at existing plants. Thus, the implementation of the transportation credits included herein will result in all producers bearing a portion of the additional hauling costs incurred by handlers in marketing surplus milk. The issuance of such credits is an extension of the marketwide pooling concept wherein all producers share the benefits of the fluid milk sales and the costs of maintaining reserve milk supplies.

As previously stated, a number of parties opposed the issuance of any transportation credits, regardless of the marketing problems confronting Texas handlers as a result of the increases in production by producers. They contend that the proposals should be denied because: (1) The Texas market carries the reserve supplies for other markets; (2) AMPI is not performing a service of marketwide benefit; (3) issues of equity require that a broader, regional view be considered and there is insufficient evidence in the record to address such issue; and (4) the issuance of transportation credits would, inequitably, depress returns to dairy farmers in other areas of the country.

With respect to the first major issue of opposition, it is clear that the Texas market carries reserve supplies of milk for the Texas Panhandle, Lubbock-Plainview, and Rio Grande Valley Federal order markets, where virtually all the milk producers are AMPI members. Consequently, some of the costs of maintaining the reserve supplies for these other markets are being borne by Texas order producers who are not members of AMPI. Opponents thus contend that the proposals should be denied for essentially the same reasons as set forth in the officially noticed 1987 decision. With respect to transportation credits, opponents quote the following from such decision: "Since reserve milk supplies are unevenly distributed among the seven orders, the producers in a market that carries more than its share of the reserve supply burden would be paying for balancing one or more other orders. At the same time, the producers in a market that carries less than its share of the reserve supplies would not pay their share of the necessary balancing costs."

The fact that the Texas market may carry some of the reserve supplies for other markets does not provide a basis for denying the implementation of transportation credits to handlers under the Texas order. There are a number of significant differences that distinguish the Texas situation from that described in the decision denying the issuance of such credits for the several southeastern markets. The primary differences are the geographical limitation of the proposal and the fact that the reserve milk

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supplies for other markets are generally processed at El Paso, Texas, and do not displace Texas order producer milk at plants in the major production areas of northern Texas and southern Oklahoma. As previously indicated, the proposal for the Texas order would limit transportation credits to milk shipped out of the major northern Texas and southern Oklahoma production areas. The excess surplus milk pooled on the Texas market that is associated with the other markets is produced primarily in New Mexico and does not utilize the manufacturing capacity that is available in the heavy milk-producing areas of the Texas market. Such milk is essentially New Mexico milk that is pooled on the Texas market but diverted to AMPI's manufacturing plant at El Paso. The El Paso plant is pooled under the Rio Grande Valley order and the milk normally transferred or diverted to such plant would not be eligible for a transportation credit under the Texas order. Consequently, Texas order producers would incur a blend price reduction only for transportation costs that result from the hauling of milk produced in the major production areas that is in excess of local plant capacity. At the same time, producers supplying the Rio Grande Valley order would incur all of the transportation costs that would result if such milk would have to be shipped to distant outlets for surplus disposal. Consequently, the implementation of transportation credits under the Texas order is not directly linked to the surplus of other markets that is pooled under the Texas order.

Opponents of transportation credits are concerned that New Mexico production could be received and processed at AMPI's Texas balancing plants, with milk produced in the major Texas production areas then being shifted to nonpool plants outside Texas and qualifying for a transportation credit. The distances that such milk would have to be shipped would tend to limit such activity. However, additional provisions are included in the regulatory provisions to deal with these and other similar movements of milk to prevent Texas order producers from incurring a blend price reduction from unnecessary movements of milk to nonpool plants outside Texas.

On the second major point of opposition, opponents argue that AMPI is marketing its own surplus and, thus, is not performing a service of marketwide benefit that warrants compensation from producers under the Texas order. They also contend that AMPI is not bearing a disproportionate share of balancing costs since AMPI does not handle a disproportionate share of the market's Class III use if the amount of other order surplus milk is excluded from the Texas pool. They also contend that AMPI has been able to recover the cost of balancing the needs of distributing plants through its over-order pricing structure.

With respect to this latter point, AMPI has been able to recover at least some of the costs of balancing the needs of some distributing plants through its seasonal over-order pricing program. Under such plan, higher prices are charged to handlers who purchase less milk during the flush production months than was purchased during the previous fall months. However, such pricing plan has not been geared to the recovery of costs associated with marketing or hauling milk to distant outlets that is in excess of all the capacity available at plants in the marketing area. Instead, such over-order pricing is geared to recover costs associated with balancing the increased demand of fluid milk handlers for additional milk in the fall of each year.

Contrary to opponents' views, AMPI does perform a balancing function and carries a disproportionate share of the Class III use under the Texas order. The Texas order pools more than six times the amount of milk that is pooled under the Rio Grande Valley, Texas Panhandle and Lubbock-Plainview orders combined. Thus, only a relatively small amount of Class III use and producer milk would have to be removed from the Texas pool (10 to 13 million pounds per month) for the Texas market to reflect the four-market Class III use of 19 percent during 1987. Consequently, AMPI would still carry a disproportionate share of the Class III use under the Texas order and, as a result, would bear a disproportionate share of the cost of handling such milk. This supports a more equitable sharing of such costs among all producers on the market through the implementation of transportation credits, as authorized by the Act. In addition, even if there was not a substantial dispropostionate sharing of Class III use among handlers, the Act provides the authority to implement transportation credits to handlers who provide a service to producers under marketing conditions where production exceeds all available nearby plant capacity.

With respect to the third major point of opposition to the implementation of transportation credits, opponents contend that regional equity considerations require the denial of the proposal since prior decisions establish a Department policy that a regional view must be taken in evaluating issues of equity among producers. Opponents cite the 1987 decision that denied the issuance of transportation credits for several southeastern markets and a 1983 decision concerning the denial of a proposed reduction to the Class III price (in the form of a credit to handlers) for certain months under the Texas order.

The distinctions between the 1987 decision and the present circumstances were set forth under the first major point of opposition to the implementation of transportation credits under the Texas order. With respect to the 1983 decision, AMPI claimed that it was experiencing losses in operating its two manufacturing plants because of the excessive quantities of milk that had to be processed during certain months of the year. Thus, the issue centered on the profitability or losses associated with operating two manufacturing plants that perform a balancing function for the market.

The proposal was denied for a number of reasons, including the uncertainties over the extent of the claimed losses and because substantial quantities of milk to which the credit would apply were diverted to other plants. There were no claimed manufacturing losses on such milk. Thus, it could not be concluded that the claimed losses at the two plants were a sufficient basis for determining the extent of manufacturing losses in handling the surplus milk associated with the Texas market.

The present case involves transportation costs incurred by handlers on milk that exceeds the capacity of plants in the market that must be hauled to distant outlets. There is no dispute over the costs that are incurred by AMPI, or any handler who hauls milk to distant outlets. The Act specifically authorizes the use of producer funds to compensate handlers for transportation expenses incurred in performing a market-clearing service.

The previous decision also indicated that it has been a longstanding policy that the costs of providing a balancing service should be recovered from the fluid milk handlers that benefit directly from the balancing function and that over-order prices were a mechanism for such recovery of costs. However, the Act has been amended since that decision was written to specifically provide that handlers may be reimbursed by producers for costs incurred in performing a number of services, including the cost of hauling milk to outlets for surplus disposal.

The last major point of opposition concerns the potential impact that surplus Texas production could have on dairy farmers in other areas of the country. Opponents contend that it would be inequitable for such dairy farmers to bear the cost of disposing of Texas surplus production.

The basic impact of pool transportation credits under the Texas order will be on producers who supply the Texas market. This will be through a lowering of their returns from the sale of milk to partially compensate handlers for performing a marketing service of marketwide benefit. It is recognized, however, that surplus milk on the Texas market may result in a lowering of returns to dairy farmers in other areas as well. Surplus production in Texas, or anywhere in the country, places a downward pressure on all milk prices since such milk must be processed into manufactured dairy products that compete for sales in a national market. National supply/demand conditions that establish lower milk values would exist with or without the application of transportation credits to handlers in the Texas market or in other markets. Any resulting decline in the "Minnesota-Wisconsin price," which is an indicator of overall supply/demand conditions for milk in manufacturing uses, would have an impact on returns to all dairy farmers associated with Federal order markets, including those who supply the Texas market. As previously stated, returns to Texas producers would also reflect the credits provided to handlers.

The primary concern is that any transportation credits should not overcompensate handlers for hauling costs. To do so would represent a charge to Texas producers in excess of the value of the service and possibly create incentives for needless movements of milk to generate hauling profits. Consequently, the transportation credits established herein are intended to reimburse handlers only for a portion of the costs incurred so as to discourage any unnecessary movements of milk.

Transportation credits should be applicable only to milk that is produced in the major production areas of northern Texas and southern Oklahoma, as proposed by AMPI. This territory represents the primary production area for the Texas market. This northern milk supply is in excess of the fluid milk needs of the northern population centers and moves as needed to supply the fluid milk requirements of southern population centers located in deficit milk producing areas. When the northern milk supply is not needed for fluid use in either the northern or southern population centers, it is normally processed at manufacturing plants located in Zone 1 of the marketing area.

Zone 1, which contains the major Dallas-Ft. Worth population center, is the heaviest milk producing area. The zone includes eight distributing plants, one supply plant, the two pooled, balancing, manufacturing plants operated by AMPI and a number of nonpool plants at which pooled milk is processed into Class II products. Zone 3 (Waco) is south of Zone 1 and is the second largest milk producing area. It contains only one distributing plant. Milk production in this area is located between the major Zone 1 consumption center and other major consumption areas to the south in Zone 8 (Houston) and Zone 9 (San Antonio). Zone 1–A (Burkburnett) is the third largest milk producing area and is northwest of the population center in Zone 1. There is also only one distributing plant in Zone 1–A. Combined, these three zones represent about 75 percent of the milk produced in Texas that is pooled under the Texas order and more than 60 percent of all the milk pooled under the order. The three zones also include the top 10 milk producing counties in Texas, which represented 58 percent of the total Texas production and 62 percent of the Texas pooled milk during December 1987. These counties experienced more than a 20 percent increase in production from December 1986 to December 1987.

The amount of Oklahoma production pooled on the Texas market decreased from about 16 million pounds per month in 1986 to 15 million pounds per month in 1987. Of the 15 million pounds, about 9.4 million pounds, or 63 percent, was produced in the 19 southern Oklahoma counties located immediately to the north of Zones 1 and 1–A of the Texas marketing area. There is one nonpool plant in this area, located at Lawton, Oklahoma, and that plant is expected to be closed in the near future.

During 1986, AMPI delivered about 90 percent of the southern Oklahoma milk production to Texas pool plants in July, 35 percent in March and an average of 58 percent for the entire year. During 1987, AMPI delivered 79 percent of such milk to Texas pool plants in August, 20 percent in April and an average of 48 percent for the entire year. The remaining proportions were diverted to nonpool plants located outside Texas. As a result, it is apparent that the southern Oklahoma production is an integral part of the supply source for the Texas market and also would be the first milk to be moved to nonpool plants outside Texas when production exceeds local plant capacity. Such milk is moved on a direct-shipped basis from farms to plants in Zones 1 and 1–A of the marketing area or is diverted to nonpool plants outside Texas when it is not needed or when supplies of milk exceed the capacity of plants in Texas. As a result, transportation credits should be applicable to milk produced in southern Oklahoma as well as to milk produced in the three pricing zones of the Texas marketing area that also represent the primary production areas for the Texas market.

The pricing structure of the Texas market reflects the relationship between the production and consumption centers of the market. Zone 1 is the basing point at which Class I prices to handlers and blend prices fo producers are announced under the order. Location adjustments are applied to the Zone 1 Class I and blend prices for other pricing zones in the marketing area and for locations outside the marketing area. The order provides for plus adjustments to the south of Zone 1 and minus adjustments to the north of Zone 1. For example, Class I and blend prices for Zone 3 are increased by 15 cents while such prices are reduced by 25 cents and 28 cents, respectively, for milk received at plants in Zone 1–A of the marketing area and the 19 southern Oklahoma counties. The increasing prices from north to south reflect the need for milk produced in the northern major production areas to move greater distances to supply the milk requirements of plants located in the southern deficit production areas of the market. Thus, location adjustments compensate producers for the greater value of the economic service producers provide to handlers in shipping milk greater distances to supply fluid milk needs. Conversely, when handlers incur greater transportation costs in marketing milk of producers that is in excess of plant capacity, they are providing a service of economic value to producers.

A transportation credit for handlers should be provided for surplus milk that is either transferred or diverted to nonpool plants outside Texas. In either case the credit should be computed at the rate of 2.4 cents per hundredweight per 10 miles for the distances that milk is hauled. Such rate represents 80 percent of the 3-cent per hundredweight hauling cost used to establish location adjustments in the Texas and other Federal order marketing areas to conform with Congressionally-mandated Class I differentials established May 1, 1986. Official notice is taken of the Assistant Secretary's final decision concerning the Texas and certain other marketing areas issued on October 30, 1986 and published November 5, 1986 (51 FR 40176). Such 2.4-cent rate also

represents a reasonable alignment of Class I differentials between Dallas and major cities in other Federal orders located in Arkansas, Oklahoma, Kansas, and Missouri.

The credit rate proposed by AMPI is based on actual hauling costs incurred in shipping milk to nonpool plants outside Texas. However, such rate is excessive in that actual hauling costs are not reflected in location adjustments under the Texas and other nearby orders. As indicated in the officially noticed 1986 decision, location adjustments reflect at most a conservative estimate of hauling costs to avoid hauling profits and to promote hauling efficiencies and encourage milk to move to the nearest alternative outlets. Such precautions for hauling milk for Class I use are even more necessary for hauling milk that is surplus to plant capacity. Incentives are necessary to promote the use of the nearest available outlets for surplus disposal to ensure that returns to producers are not reduced for shipments of milk over greater distances than necessary. Also, the use of such lower rate for transportation credits insures that the hauling incentive for surplus milk is less than what is provided for milk for fluid use.

The handlers' proposed rate is overly conservative and is based on various alignment rates between locations in the Texas marketing area. However, such rates reflected between certain cities disregard the fact that the location adjustments for the major consumption centers of the Texas market are based on a three-cent hauling rate for the additional distances between such consumption centers and the nearest major production area. For example, as set forth in the officially noticed 1986 decision, the plus location adjustment for Zone 9 (San Antonio) is 42 cents per hundredweight. Such adjustment is based on the additional distance that milk must move from Stephenville (Erath County) to San Antonio versus the distance between Stephenville and Ft. Worth. The additional distance of 140 miles at three cents per 10 miles establishes the 42-cent location adjustment. However, such adjustment reflects an alignment rate of considerably less than three cents between Dallas and San Antonio. Consequently, the various alignment rates that result between cities within the Texas marketing area do not necessarily reflect the hauling incentives provided under the Texas order for movements of milk from production areas to alternative consumption centers. In addition, such alignment rates within the Texas marketing area do not reflect the alignment of Class I differentials between Dallas and other Federal order markets to the north.

The transportation credits should apply to milk that is transferred or diverted to any nonpool plant located outside the State of Texas for Class II or Class III use. There was no testimony presented at the hearing or arguments presented in briefs to limit such credits to only Class III uses. In addition, there should be no limitation of credits to only northward movements of milk. Such a limitation would be inconsistent with the implementation of a low credit rate to encourage the use of the nearest available outlets for surplus disposal to minimize the impact of transportation credits on Texas order producers.

The transportation credit to handlers should apply to bulk fluid milk products transferred by handlers from pool plants located in Zone 1 of the marketing area to nonpool plants located outside Texas. The credit should apply to the total distance of the transfer.

The AMPI proposal would have applied a credit to milk that is transferred or diverted from farms of producers in Zones 1 and 3 for the distance in excess of 90 miles between Dallas and the nonpool plants receiving the milk. The basis for the mileage limitation is that producers on the average pay the cost of hauling milk for 90 miles to supply the fluid milk plants in Zone 1 of the marketing area. However, with respect to transfers of milk from pool plants, producers would pay the cost of hauling milk to the plant of first receipt. To the extent that milk is in excess of plant capacity, the transferor handler would incur the cost of hauling milk from the pool plant to the nonpool plant for surplus disposal. Thus, the handler transferring the milk should be reimbursed for the total distance between the pool plant and the nonpool plant for performing such marketing service for producers.

Since the use of Dallas as a basing point and the mileage limitation would not apply for establishing a transportation credit for transfers of milk, it is not necessary to include Zone 3 of the marketing area as an area from which a credit would apply to transfers of milk. Such zone is the southern-most area to which transportation credits would apply and there is only one pool distributing plant located in the area. Any transfer of milk to nonpool plants outside Texas would be expected to originate from the pool plants that are located in Zone 1 of the marketing area. Also, a transportation credit would not apply to transfers of milk from plants located in Zone 1-A of the marketing area or southern Oklahoma. There are no pool plants in southern Oklahoma and only one pool distributing plant in Zone 1-A and there was no proposal to provide credits on transfers of milk from such areas.

It is noted that the intent of the credit proposals is to limit such credits primarily to the major surplus production areas of the market. However, as pointed out at the hearing, milk that originates outside such production areas may be received at pool plants that subsequently transfer milk to nonpool plants outside Texas. Once such milk is commingled in a plant with milk that originated in the major production areas its identity is lost. Thus, any milk that is received at Zone 1 pool plants should be eligible for a transportation credit. However, as set forth later in this decision, the amount of milk eligible for a transportation credit would be reduced to the extent that milk is received from outside the State of Texas. Such offset, in conjunction with the restriction to Zone 1 plants for transportation credits on milk transfers, will tend to limit the application of such credits to milk produced inside the major production areas of the market.

Transportation credits should also be provided to handlers who move milk directly from the farms of producers to nonpool plants located outside the State of Texas. Handlers may divert producer milk from pool plants where the milk is normally received regardless of the location of the pool plant. However, only producer milk that is produced on dairy farms located in Zones 1, 1-A or 3 of the marketing area or in any of 19 specified southern Oklahoma counties would be eligible for a transportation credit. As previously stated, such areas represent the primary production areas that are relied upon to meet the fluid milk needs of the market. Also, milk in these northern production areas would be expected to be the first milk to be moved to nonpool plants outside Texas when production exceeds plant capacity.

The credit should be based on the distance that milk is hauled minus 100 miles. The 100-mile exclusion is basically intended to recognize an approximation of the average hauling distance to distributing plants that is paid for by producers.

AMPI proposed that milk delivered from Zones 1 and 3 should receive a transportation credit on the distance between Dallas and the nonpool plant minus 90 miles. On the other hand, handlers proposed that the credit distance should be based on the

distance between the nonpool plant and the nearer of Gainesville, Sherman, Paris or Mt. Pleasant, Texas, minus 100 miles. With respect to milk produced in Zone 1-A or southern Oklahoma, AMPI proposed that the credit be based on the distance between the nonpool plant and the nearer of Burkburnett, Texas or Sulphur, Oklahoma, minus 110 miles. The handler proposal for Zone 1-A would have used the Burkburnett basing point and the 100-mile exclusion.

It is obvious from data in the record that shipping distances to distributing plants vary significantly. For example, during May 1987, the weighted average distance of milk movements to distributing plants in Dallas was 83 miles, while the weighted average distance of shipments to Ft. Worth and Burkburnett were about 50 miles and 134 miles, respectively. Consequently, a precise distance that milk from the major production areas is shipped to distributing plants, for which the cost of the haul is paid by producers, is not ascertainable. However, it is necessary that some initial distance be excluded. Otherwise, handlers would receive a transportation credit for a hauling distance that is normally paid for by producers. A distance of 100 miles is an approximation of such distance for the four production areas to which a credit would apply. Also, such distance is in excess of the shipping distance observed in Zone 1 of the marketing area, which contains the greatest amount of production and where most of the distributing plants are located. A mileage in excess of the Zone 1 average shipping distance is consistent with the need to insure that handlers are not overcompensated for hauling costs incurred in clearing the market of surplus milk.

In order to insure that handlers are not overcompensated, the distance to which a credit applies should not be based exclusively on the basing points that were proposed by either AMPI or handlers. Rather, one basing point and various other locations should be used to determine the transportation distance for which a credit would apply. The credit should apply to milk that is diverted to a nonpool plant that is in excess of 100 miles from the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the load, or the courthouse of the county where the major portion of the milk on the load was produced. The use of these various locations to determine the distance to which a credit would apply will assure that handlers will not receive a credit for a greater distance than milk was hauled. Such procedure will carry out the objective of the handlers' proposal, but with a greater degree of precision than would be accomplished by the use of the northern basing points as handlers proposed.

In addition to a transportation credit for diverted milk, AMPI also proposed that such milk that originates in the primary production areas should no longer be priced at the location of the plant to which it is diverted if the milk is diverted to a nonpool plant located outside the State of Texas. Such change to the point of pricing on diverted milk was proposed for all months of the year by AMPI and for the flush production months by handlers.

As previously stated, the Texas order provides for both plus and minus location adjustments that reflect the value of the economic service provided by producers in shipping milk alternative distances from production areas to handlers' plants at various locations for fluid uses. Handlers pay for the value of the economic service provided by producers by the application of location adjustments to the Class I price. There are no location adjustments to handlers for milk in Class II or Class III uses since the basic principle is to cover the costs associated with hauling milk to distributing plants for fluid use. Also, there is no pricing incentive provided for hauling milk for manufacturing uses, which compete in a market that is more regional or national in scope than that for fluid milk, since it is more economical for milk to be processed into manufactured products at plants in production areas. Such concentrated products can be transported at a lesser cost than bulk fluid milk products.

Producers are compensated for the transportation service provided to fluid milk handlers by the application of the handler Class I location adjustments to the blend price. Consequently, the producer location adjustments apply to all milk delivered to a plant, regardless of its use, while handlers pay the location adjustment for milk in Class I use. The same location adjustment is applicable to the blend price since the hauling cost is the same for all milk delivered to a handler by a producer regardless of the ultimate use of the milk by the handler.

The concept of pricing diverted milk at the plant where it is received is based on the fact that milk that is in excess of fluid milk needs is normally processed at manufacturing plants that are located near or in the major production areas. Thus, producers whose milk is delivered to such plants normally incur a lesser hauling cost than if their milk is shipped further distances to supply fluid milk plants that are located near or in the major consumption areas of the market. Within the Texas market, the major balancing manufacturing plants, as well as distributing plants, are located in Zone 1 of the marketing area where no location adjustments apply. The distributing plants are located around the Dallas/Ft. Worth consumption centers while the manufacturing plants are located in the major production areas. When the milk supply exceeds fluid milk needs, it is processed at such manufacturing plants and the producers receive the Zone 1 blend price. Also, to the extent that milk in more northern areas (Zone 1-A and southern Oklahoma) where minus location adjustments apply is shipped to such plants in Zone 1, producers are compensated for the hauling costs incurred in shipping milk from the north to the south.

When there is an excessive supply of milk that cannot be processed at plants located within the marketing area, particularly in Zone 1 of the marketing area where the balancing plants are located, it must be processed at alternative outlets, principally nonpool plants that are located outside Texas. When milk is diverted to such distant plants, it is obvious that greater, rather than lesser, hauling costs are incurred. Thus, the underlying assumption that provides a basis for pricing milk at the location of the plant to which it is diverted is not applicable when supplies of milk exceed the capacity of those plants that are located in the primary production areas of the Texas market.

Regardless of the above, no change should be made to the point of pricing on diverted milk, as was proposed, to deal with this transportation problem. Such problem is primarily associated with additional costs incurred by handlers in diverting milk to distant, alternative outlets. Handlers who divert milk to a distant plant account to the pool at a Class II or Class III price, depending on the use of the milk, that is not adjusted for location. Under current provisions, handlers then receive a credit at the blend price payable to producers that is adjusted for the location of the plant to which the milk is diverted. Thus, when milk is diverted to a nonpool plant where a minus location adjustment applies, the handler credit is reduced by such location adjustment.

A reduction in the blend price credit to a handler results in establishing a penalty to a handler for diverting milk to a distant plant for surplus disposal. As a result, a transportation credit for a

handler should include an additional credit that is equal to the difference between the location adjustment that is applicable in the area where the milk is produced and any greater minus location adjustment that is applicable at the nonpool plant outside Texas where the milk is received.

The application of this additional credit on diverted milk basically carries out the intent of the AMPI proposal to change the point of pricing on diverted milk. As previously indicated, a number of parties opposed any such changes as being inconsistent with the location pricing criteria under the Act. They also contend that the point of pricing is not directly related to the authority to provide for credits to handlers for performing a service of marketwide benefit to producers.

Contrary to opponents' views, the problem associated with the cost of diverting surplus milk to distant outlets is a direct result of the excess milk production that is being produced by dairy farmers who supply the Texas market. Handlers who market and provide an outlet for such excess milk provide a service that benefits producers. Consequently, it is precisely the type of service for which the Act specifies that handlers may be compensated by producers. A failure to provide the additional credit on diverted milk would result in penalizing a handler for a cost that is incurred in clearing the market of excess supplies of milk.

Furthermore, the additional transportation credit would not distort the location value of milk or result in non-uniform costs to handlers. As previously stated, there are no location adjustments to handlers for milk in Class II or Class III uses. Consequently, there would be no change in the class price value of milk to handlers as a result of the credit to remove the penalty on handlers that results from blend price location adjustments under marketing conditions that exist when supplies of milk exceed plant capacity. In addition, the application of the additional credit will promote the use of the most efficient and economical marketing practices available to dispose of surplus milk. Most of the milk that is surplus to the needs of the Texas market is diverted to nonpool plants while limited quantities are transferred from pool plants to nonpool plants. It is often more efficient to move milk from farms in certain areas directly to nonpool plants rather than for such milk to be hauled to pool plants, be unloaded and then reloaded for transfer to a nonpool plant. In the absence of the additional diversion credit, a pricing incentive would be provided to handlers to engage in such uneconomic transferring practices to qualify for a transportation credit. Consequently, the application of the additional credit on diverted milk will allow handlers the flexibility to use the most efficient method of disposing of surplus milk.

A brief in opposition to the proposed pricing point change argued that such a change would amount to the compensation of producers based upon their location. Consequently, the brief argues that the proposal would amount to a "nearby" differential that was invalidated in the case of *Zuber vs. Allen* (396 U.S. 168, 1969).

Contrary to the arguments presented in the brief, the issue of a transportation credit for surplus milk (which is now specifically authorized by the Act) is totally different from the differential invalidated by *Zuber*. In *Zuber*, the nearby differential was a payment to dairy farmers who were located in certain areas. The court concluded that the location of farms was not a basis for higher returns since location alone does not establish that producers provided a service of economic value to handlers. The present circumstance concerns a credit from the pool to handlers for providing a service of economic value to producers. Furthermore, the credit from the pool (which lowers returns to producers) does not change the value of milk to handlers at class prices at any location. The credit is necessary so that the handler who diverts the milk is not penalized by blend price location adjustments for providing a service of value for producers, namely, clearing the market of excess milk supplies.

The additional credit on diverted milk should be applicable only during the months of March–June and December. It is during these months, when supplies of milk exceed plant capacity, that handlers provide an economic service of value to producers, for which handlers should be compensated.

Milk is diverted to nonpool plants outside Texas during most months of the year by AMPI, even during those periods when there is obviously capacity available to process additional supplies of milk at the Muenster and Sulphur Springs balancing plants. Consequently, the decision to divert milk to distant plants when there is capacity at plants in the marketing area is a business decision by AMPI. Such movements of milk are not related to the movements of milk to nonpool plants outside Texas that are necessitated by a lack of plant capacity in the marketing area to handle the amount of production available during the flush production months of the year. Consequently, it would be inappropriate to reduce returns to Texas producers to compensate handlers for such movements of milk.

The implementation of the transportation credits to handlers could provide a pricing incentive for inefficient and unnecessary movements of milk. As previously stated, milk that is produced in New Mexico is currently associated with the Texas market, although such milk does not currently displace significant quantities of milk that is produced in the major production area of the Texas market from the plant capacity that is available in the Texas marketing area. However, the existence of a transportation credit under the Texas order would create an economic incentive for such milk to be received at plants in the marketing area, thereby displacing Texas milk that could be hauled to alternative outlets with a transportation credit. Although hauling distances would tend to discourage such movements, the transportation credit would provide some additional incentive for such movements.

With respect to milk produced in other areas transportation credits would provide a significant incentive for uneconomic movements of milk. For example, there is currently an incentive for milk produced in southern Oklahoma to be received at plants in the Texas marketing area because current location adjustments increase the value of milk from north to south to encourage movements of milk to the south. Thus, a portion of the cost of hauling milk southward is currently covered under the order pricing structure. Such pricing, coupled with a transportation credit to move milk to plants outside Texas, would encourage southern Oklahoma milk to be received at plants in the marketing area and encourage Texas milk to be shipped to plants outside the State. Such movements of milk would not be representative of an efficient and economical marketing system since the most northern located milk would be the first milk that would be expected to be moved to nonpool plants outside Texas when plant capacity in the Texas marketing area is inadequate. Texas order producers should not be required to reimburse handlers for such uneconomic movements of milk.

In order to prevent Texas order producers from bearing unnecessary hauling costs, the amount of milk to which a transportation credit would apply should be reduced by the amount of milk from outside the State of Texas that a handler, or any affiliate of the handler, causes to be received at plants in the Texas marketing area. An affiliate of a handler would include a multi-plant handler or cooperative associations operating under a joint marketing agreement. To the extent that milk is received at plants from outside Texas, the lowest possible transportation credit shall be assigned to a handler for any remaining volume of milk shipped to nonpool plants outside Texas. This is accomplished by assigning the offset pounds of milk (the volume of milk received from outside Texas) in sequence beginning with the nonpool plant at which the greatest credit would apply. In addition, no transportation credit should apply to milk shipped to any given nonpool plant during the month if any of such milk is assigned to Class I use. Texas producers should not be required to reimburse handlers for costs incurred in shipping milk to other plants outside Texas for Class I use.

With the implementation of the offset provisions to assure that producers do not reimburse handlers for inefficient movements of milk, it is also necessary to limit transportation credits to handlers for only the last half of December as proposed by handlers. As indicated, the historical supply/demand situation during December is somewhat different than the situation that exists during March–June. To the extent that supplies are in excess of plant capacity during the latter part of the month, shipments of milk to nonpool plants outside Texas during the latter part of the month should not be offset to the extent that milk may be imported from outside Texas during the beginning of the month to meet additional fluid milk needs. By limiting the application of transportation credits to only the December 16–31 period, handlers would not be penalized for market-clearing activities during such period because of the need to obtain additional milk supplies during the first part of the month.

A number of parties raised concerns over the extent to which transportation credits for the Texas market could lead to abuses. In particular, they contended that if transportation credits are implemented, safeguards should be provided to assure that Texas order producers do not bear the cost of transporting surplus milk associated with other markets, that credits do not overcompensate handlers, thus encouraging excessive hauling of milk, and that assurances be provided that milk is first made available to fluid milk plants. The provisions contained herein are designed to specifically minimize any adverse impact of transportation credits on Texas producers, as well as other order producers and fluid milk handlers. The safeguards include a credit rate below transportation costs, a substantial distance that milk must be diverted before a credit applies, and the offset to the amount of milk to which a credit would apply. In addition, the nonpool plants outside Texas that receive milk subject to a credit and the total value of credits will be made available on a monthly basis by the market administrator. Such market information will provide a basis for the continued monitoring of the effectiveness and impact of these provisions by the industry. Other potential safeguards, such as a maximum shipping distance or a notification process to identify the nearest available nonpool plants or the fluid milk needs of distributing plants, do not appear to be necessary. To the extent that additional modifications may be necessary, the amendatory process is available to refine, or eliminate, order provisions as the need may arise through experience with the issue of transportation credits.

2. *The need for emergency action with respect to issue no. 1.* The hearing notice indicated that evidence would be taken at the hearing to determine whether emergency marketing conditions exist to such an extent that omission of a recommended decision and the opportunity to file exceptions thereto under the rules of practice and procedure is warranted. There was a consensus among the hearing participants that the disposal of surplus milk would be a problem for Texas regulated handlers this spring. In anticipation of these marketing conditions, AMPI testified that the amandments emanating from the February hearing should be adopted as expeditiously as possible.

The implementation of the proposed amendments on an emergency basis was opposed by handlers. They testified that it would be inappropriate to issue any transportation credits without providing the industry with the opportunity to fully review and analyze the decision and any amendments resulting from the hearing. They indicated that there is little experience with transportation credits and that it is a highly complex and important issue that is of interest throughout the Federal order system.

The evidence in the record of this proceeding strongly indicates that surplus milk supplies in the Texas market will be substantially larger than normal during the months of March–June this year. It also shows that the capacity of Texas manufacturing plants will not be adequate to process all of the market's excess milk. In addition to the emergency marketing conditions, the Act authorizing transportation credits requires that any amendments resulting from the hearing be implemented not later than 120 days after a hearing is conducted on such issue. The transcript of the proceeding was certified on March 15, 1988, which requires the implementation of amendments by July 13, 1988.

The complexity of the issue and the considerations involved require the issuance of a tentative decision to make it possible to issue an interim rule to implement the proposed provisions within the statutory deadline. This procedure will also give interested parties the opportunity to comment fully, through exceptions, on the decision and proposed amendments.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient

quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Tentative Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents, a Tentative Marketing Agreement regulating the handling of milk, and an Interim Order Amending the Order regulating the handling of milk in the Texas marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

April 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: June 6, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Interim Order Amending the Order Regulating the Handling of Milk in the Texas Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon whih a hearing has been held.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 1126.55 is added to read as follows:

§ 1126.55 Credits to handlers for transporting surplus milk.

For each of the months of March through June and December 16–31, a transportation credit shall be computed for each handler on the amount of producer milk that is classified as Class II or Class III pursuant to § 1126.42 (b)(3) or (d)(2) that such handler transfers or diverts to nonpool plants located outside the State of Texas. Credits established pursuant to paragraphs (a) and (b) of this section shall be computed at the rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance, as determined by the market administrator. The amount of milk eligible for a transportation credit and the amount of such credit shall be established in accordance with paragraphs (a), (b), and (c) of this section subject to the limitations specified in paragraph (d) of this section.

(a) A transfer credit shall apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant.

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1–A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool plant at which the greatest credit would apply

3. In § 1126.60, paragraph (h) is revised to read as follows:

§ 1126.60 Handler's value for computing uniform price.

* * * * *

(h) Deduct any credit applicable pursuant to § 1126.55.

Tentative Marketing Agreement Regulating the Handling of Milk in the Texas Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this tentative marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this tentative marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1126.1 to 1126.86, all inclusive, of the order regulating the handling of milk in the Texas marketing area 7 CFR Part 1126 which is annexed hereto; and

II. The following provisions:

Section 1126.87 Record of milk handled and authorization to correct typographical errors.

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of April 1988 hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Section 1126.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

BY _____

(Name)

(Address)

(Seal)

Attest _____

Date _____

[FR Doc. 88–13162 Filed 6–10–88; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Certificate of Competency (COC) Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The proposed regulation is a complete revision of the Small Business Administration (SBA) COC Regulations, adding eligibility and appeals criteria as well as clarifying other administrative provisions. This action is necessary to reflect a number of changes in procurement laws that have occurred since the last revisions to the current COC regulations. This proposed regulation will provide small business concerns and contracting agencies with definitive guidelines for COC program eligibility and appeals of affirmative recommendations to issue a COC made by our Regional Offices.

DATES: Written comments must be submitted on or before August 12, 1988.

FOR FURTHER INFORMATION CONTACT: John Whitmore, Director, Office of Industrial Assistance, Office of Procurement Assistance, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Telephone No. (202) 653–7035.

SUPPLEMENTARY INFORMATION: Proposed § 125.5(a), the "eligibility" section has been revised for greater clarity. Proposed § 125.5(a) incorporates the provisions currently found at § 125.5 (a) and (c), without making any substantive changes, and adds new provisions to reflect the effect of recent amendments to Section 15 of the Small Business Act, 15 U.S.C. 644.

Under the first new provision, § 125.5(a)(5), a small business concern, to be eligible for a COC, would be required to perform with its own facilities and personnel the portion of the contract now required by section 15 of the Small Business Act, as amended by section 921(c)(2) of the Defense Reauthorization Act of 1987, Pub. L. 99–661 (100 Stat. 3816). 15 U.S.C. 644(o).

Under the second new provision, § 125.5(a)(6), to be eligible for a COC a small business concern would be precluded from performing or subcontracting a significant portion of the contract outside the United States, its trust territories, possessions or the Commonwealth of Puerto Rico. This condition is imposed due to the Agency's determination that (1) award of the contract to a small business concern which would not perform or subcontract the majority of its contract in the United States would not further the purposes of the Small Business Act, and (2) under such circumstances, it would be impossible for the Agency to effectively and accurately evaluate the responsibility of the business to perform or assure performance of its subcontractor in such foreign locations.

Procedural provisions currently found at § 125.5(d)–(g) would be revised and consolidated at § 125.5(b). While the substance of all current provisions would be retained, other changes to the regulations would be made to incorporate new provisions that incorporate language currently found at Subpart 9.4 of the Federal Acquisition Regulation (FAR) (Debarment, Suspension and Ineligibility), and that give effect to the "Guidelines for Nonprocurement Debarment and Suspension" issued by the Office of Management and Budget, 52 FR 20360 (May 29, 1987), and to delineate what has been and is current practice in administering the COC program.

Paragraph § 125.5(b)(4)(i) would give effect to debarments and suspensions under Subpart 9.4 of the FAR, 48 CFR Subpart 9.4. Under that paragraph, if a small business concern, or any of its principals, is on the debarred or suspended bidders list (published monthly pursuant to Office of Federal Procurement Policy Letter 82–1, dated June 24, 1982), it would be presumptively deemed non-responsible by SBA for purposes of issuance of a Certificate of Competency.

Under paragraph § 125.5(b)(4)(ii), the Agency would presume a firm to be non-responsible in two cases. First, if the small business concern or any of its principals has either been convicted of offenses and their case is still under the jurisdiction of a court or suffered a civil judgment within the past three years which would be grounds for debarment or suspension, the Agency would presume that the concern is non-responsible for lack of integrity. Convictions or civil judgments older than three years would be considered as evidence relevant to responsibility on a case-by-case basis, but would not give rise to the presumption. Also, a concern that is six months, or more, delinquent on a debt to the Federal Government would be presumed non-responsible for

lack of financial capacity. This would recognize the thrust of the non-procurement Debarment and Suspension Guidelines and their underlying Executive Order, E.O. 12549, to exclude from participation in its programs individuals and entities who do not satisfy their financial obligation to the Federal Government.

Paragraph § 125.5(b)(4) affirms that the COC procedure is not necessarily limited to a consideration of the deficiencies found by the contracting officer.

Paragraph § 125.5(b)(5)(i) makes clear that SBA's Regional Offices have the authority to deny a COC regardless of the dollar value of the contract involved. It also makes clear that the decision to deny a COC at the Regional Office level is the final Agency decision and that there is no administrative appeal of that decision within SBA.

The proposed regulation would also include for the first time procedures for appeals by contracting agencies of initial Regional Office determinations to issue a COC. Appeal procedures are currently described in Part 19 of the FAR (48 CFR Subpart 19.6). The proposed provisions would be included in § 125.5(b)(5)(ii)(B). Under these proposed provisions, a contracting agency may appeal an SBA Regional Office's decision to issue a COC. The intent of the appeal procedure would be to allow a Department or Agency the opportunity to provide new and additional information or to point out specific errors in interpretation. Contract actions processed utilizing small purchase procedures and COCs issued by the Associate Administrator for Procurement Assistance in the first instance would not be subject to the COC appeal process.

Paragraph 125.5(b)(7) of the proposed regulation is also new. It identifies two circumstances where SBA would reserve the right to reconsider its determination to issue a COC. SBA may seek the opportunity to reconsider its determination where (1) it acquires or develops new and material adverse information regarding the responsibility of a small business concern after the COC was issued but before any contract had been awarded in reliance upon such COC, and (2) where the contracting agency had not awarded the contract within 60 days of issuance of the COC. In the first case, SBA believes it is its duty to reconsider a COC if, prior to award, it has evidence that the company is not responsible, notwithstanding its original determination. In the second case, SBA is concerned that its COC would become stale due to the changed circumstances of the small business concern. In cases where this may be of concern, SBA wishes to retain the right to reconsider its decision to issue a COC to assure itself and the procuring agency that the company remains responsible. This provision does not grant the right to a small business concern denied a COC to request reconsideration of that decision.

Section 125.5(c) would incorporate the provisions currently found at § 125.5(i), relating to determinations under 41 U.S.C. 35(a) (the Walsh-Healey Public Contracts Act). The provision would be amended to incorporate by reference the processing procedures now found in section 50-201.101(b) of Title 41, Code of Federal Regulations, as promulgated by the Department of Labor, regarding contracting officer initiated and protest initiated (both before and after award) Walsh-Healey eligibility determinations.

Section 125.5(d) would incorporate the provision currently found at § 125.5(j). This provision implements the language found at section 8(b)(7)(c) of the Small Business Act, 15 U.S.C. 637(b)(7)(C), which requires procuring agencies and their contracting officers to let contracts to those companies to which SBA has issued a COC without requiring them to satisfy any other requirement with respect to responsibility or Walsh-Healey eligibility.

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. SBA does not anticipate that a substantial number of small businesses will be ineligible for a COC under these amended regulations, if adopted in final form. Moreover, this regulation is not a major rule for purposes of Executive Order 12291 because it is procedural in nature and it not likely in and of itself, to result in annual economic effect of $100 million or more, major increase in costs or a significant adverse effect on any segment of the economy.

Finally, the regulation imposes no recordkeeping requirements and no new reporting requirements subject to the Paperwork Reduction Act 44 U.S.C. 35.

List of Subjects in 13 CFR Part 125

Certificate of competency, Government contracts, Government procurement, Small business, Procurement assistance.

Accordingly, it is proposed that Part 125 of 13 CFR be amended as follows:

PART 125—[AMENDED]

1. The authority citation for Part 125 be revised to read as follows:

Authority: Section 5(b)(6), 8 and 15 of the Small Business Act, 15 U.S.C. 634(b)(6), 637, and 644.

2. Section 125.5 is revised as follows:

* * * * *

Office of Procurement and Technical Assistance

§ 125.5 Certificate of competency program.

The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act, as amended. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that a small business concern (or a group of such concerns) named therein possesses the responsibility and/or Walsh-Healey eligibility to perform a specific Government procurement (or sale) contract.

(a) *COC Eligibility.* To be eligible for the COC program, a firm must meet the following criteria:

(1) It must qualify as a "small business concern" under the applicable size standard for the SIC Code contained in the solicitation as of the date of its self-certification, submitted as part of the concern's offer, or be a "group of such concerns" in the form of a small business Defense Production Pool approved under the Small Business Act; see § 125.7 of this title.

(2) If it is a non-manufacturing small concern which submits an offer on a small business set-aside contract for supplies, it must furnish end items under the contract which have been manufactured by a small business concern in the United States or its trust territories, possessions, and the Commonwealth of Puerto Rico. The responsibility of the small non-manufacturer is certified, not the manufacturer.

(3) If it is a non-manufacturing small concern which submits a bid or offer on an unrestricted procurement utilizing small purchase procedures, it must furnish end items manufactured in the United States or its trust territories, possessions, and the Commonwealth of Puerto Rico. The responsibility of the small non-manufacturer is certified, not the manufacturer. In the event of a tie bid, preference for award shall be given to the concern applying end items produced by a small business concern.

(4) If the concern will provide a kit of supplies or other goods, provided for a special purpose, on a small business set-aside contract, the concern is eligible if it meets the size standard for the SIC Code of the product acquired and more than 50% of the total value of the contents of the kit was manufactured by concerns which would also qualify as small businesses under the size standard applicable to the procurement. The offeror need not itself by the manufacturer of any of the components of the kit; however, each end item comprising the kit must be produced or manufactured in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico. On an unrestricted contract for kits, paragraph (a)(3) of this section would apply.

(5) If the solicitation involved is for supplies, services, or construction, the firm must perform with its own facilitites and personnel the portion of the contract required by the Small Business Act, as amended, (*See* 15 U.S.C. 644) or required by Part 121 of these regulations to be eligible for contract award, or, notwithstanding the absence of any other requirement, the firm must perform at least a significant portion of the contract with its own facilities and personnel.

(6) If the solicitation is for supplies, services, or construction, the firm must perform a significant portion of the contract in the United States of its trust territories, possessions, and the Commonwealth of Puerto Rico.

(b) *Procedures.* (1) Government procurement officers and officers engaged in the sale and disposal of Federal property, upon determining and documenting that a small business concern lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, perseverance and tenacity, shall notify the SBA Regional Office in the geographic area where the principal office of the concern is located of such determination in writing. The referral from the contracting agency shall include 3 copies of the solicitation, an abstract of bids, the pre-award survey, the contracting officer's determination of non-responsibility, and any other justification for the non-responsibility determination.

(2) Award will be withheld by the contracting officer for a period of at least 15 working days (or a longer period if agreed to by the SBA and the contracting agency) following the date of receipt by SBA's Regional Office of the contracting officer's referral (including the materials specified above), in order to permit SBA to investigate and issue a decision as to the bidder's responsibility.

(3) Upon receipt of the contracting officer's referral, the SBA Regional Office will contact the small business concern to inform it of the determination and to offer the concern the opportunity to appeal the determination by applying to SBA for a COC. Upon receipt of the required application and documentation, by the date specified by the Regional Office, SBA personnel may be sent to the applicant's facility to review its responsibility and to make recommendations to the Regional official with authority to approve or deny the application. If the requested application and/or information is not submitted by the date specified by the Regional Office, the case will be dismissed.

(4) The COC procedure is not limited to a consideration of the deficiencies found by the contracting officer. Since SBA makes its own independent evaluation of the elements of responsibility, it may deny a COC for reasons other than those supplied by the contracting officer. In reaching its decision to issue or deny a COC, SBA will use the following presumptions:

(i) A small business concern will be presumed to be non-responsible if the concern, or any of its principals, is on a debarred or suspended bidders list.

(ii) A small business concern will be presumed non-responsible, unless it can rebut the presumption with information deemed sufficient by SBA, if either of the following circumstances exist:

(A) Within the past three years, the concern, or any of its principals, has been convicted of an offense or offenses and the matter is still under the jurisdiction of a court, e.g., the concern or its principals are on probation, serving a suspended sentence, etc., or a civil judgment has been entered against any of the same for any offense that would constitute grounds for debarment or suspension.

(B) The concern is six months or more delinquent on a debt to the Federal Government.

(5) Following review of the information submitted by the applicant small business concern and the information gathered by SBA personnel, the Regional Office will issue its decision on the application for the COC.

(i) If the Regional official's decision is negative, the COC is denied and both the applicant and contracting agency are so notified. The Regional Office may deny a COC, regardless of the dollar value of the contract involved. The Regional Office's decision to deny a COC is the final Agency decision; there is no administrative appeal of that decision.

(ii) If the Regional official's decision is affirmative and the dollar value of the procurement is within the Regional Office's delegated authority, as shown at 13 CFR 101.3–2, the Regional Office will notify the contracting officer of the Regional Office's intention to issue a COC. Following notification from the Regional Office of its intention to issue a COC, if the contracting agency disagrees with the Regional Office's conclusion that the applicant is responsible to perform, the contracting officer and the Regional Office shall make every effect to resolve differences before SBA takes final action on a COC.

(A) Where the contract involved is a small purchase action, following completion of such discussions, or if no disagreement is raised by the contracting agency, the Regional Office will issue the COC. The decision of a Regional Office to issue a COC for a small purchase action constitutes the final SBA decision in such cases.

(B) In the case of contracts other than small purchases, the Regional Office will issue the COC unless the contracting officer requests a formal review by the SBA Central Office.

(*1*) Requests for such appeals shall be filed with the Regional Office processing the COC application. The Regional Office shall accept the appeal, contingent upon a contracting agency agreement to withhold award until the formal appeal process is concluded. Without an agreement from the contracting agency, the Regional Office shall issue the COC. Upon agreement, the Regional Office shall immediately forward the case file to Central Office.

(*2*) The intent of the appeal procedure is to allow contracting agencies the opportunity to submit documentation not previously available to the contracting agency to the SBA or to point out errors in interpretation.

(*3*) The SBA Central Office, upon receipt, of the case file, shall inform the Director, OSDBU at the secretariat level, with a copy to the contracting officer, that the case file has been received and notify the contracting agency that a formal appeal decision may be requested by the Director, OSDBU. If the contracting agency seeks such a decision, it shall so notify the SBA Central Office within 10 working days (or a time period acceptable to both agencies) through the Director, OSDBU of its receipt of the notice under this paragraph (b)(5)(ii)(B)(*3*). Any materials or argument in support of the appeal must be filed within 10 working days (or a period of time agreed upon by both agencies) after SBA receives the request for a formal appeal. The SBA Associate Administrator for Procurement Assistance will make a final determination in writing, and issue or decline to issue the COC.

(iii) For procurements in excess of the Regional Office's delegated authority to approve a COC, the Regional Office

shall refer its recommendation for issuance of the COC to the Associate Administrator for Procurement Assistance, SBA Central Office. The Associate Administrator will cause a review to be made and will either issue or deny the COC. If the Associate Administrator's decision is negative, the applicant and contracting agency are so informed; if it is affirmative, a letter, certifying the responsibility of the firm (the COC) is sent to the contracting agency and the applicant is informed of such issuance by the Regional Office. Except as set forth in paragraph (b)(7) of this section, there shall be no appeal from or reconsideration of the Associate Administrator's decision.

(6) The notification to an unsuccessful applicant following either a Regional Office or Central Office denial will briefly state the reason(s) for denial and inform the applicant that a meeting may be requested with the appropriate SBA regional personnel to discuss the reasons for denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reasons for SBA's action. Such a meeting does not constitute an opportunity to reargue the merits of the Agency's decision to deny the COC. Such meeting will be for the sole purpose of enabling the applicant to improve or correct deficiencies in future cases.

(7) The decision to issue a COC may be reconsidered, at the discretion of SBA, in the following circumstances:

(i) If SBA discovers after issuance of a COC, but before award of any contract, in reliance upon such COC, that the COC applicant submitted material false information or omitted material adverse information relating to the current responsibility of the applicant concern, SBA, in its sole discretion, may request that the contracting agency return the matter for reevaluation of the original decision for purposes of reaffirming or withdrawing the COC.

(ii) If the contract for which a COC has been issued has not been awarded within 60 days, SBA may request that the contracting agency provide the reason for the delay. SBA shall determine from the contracting officer whether the contract will be awarded. If the contracting officer advises that an award is intended to be made, SBA may request that it be allowed to reevaluate its earlier decision for purposes of reaffirming or withdrawing the COC.

(c) *Walsh-Healey Referrals.* A contracting officer, after conducting their own review and documenting that a small business concern is not eligible for award due to the provisions of section 35(a) of Title 41, U.S. Code (the Walsh-Healey Public Contracts Act), must notify SBA of such determination. SBA shall either certify that the concern is eligible under Walsh-Healey for the specific contract or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition.

(1) The contracting officer must comply with § 50-201.101(b)(4) of Title 41, Code of Federal Regulations (41 CFR 50-201.101(b)(4) in making a determination of ineligibility before referring the matter to SBA.

(2) In the event of either a third party protest or a protest received after contract award, but before final completion of the contract, the contracting officer shall follow the procedures in §§ 50-201.101(b)(5) or 50-201.101(b)(7) of Title 41, Code of Federal Regulations (41 CFR 50-201.101(b)(5) or 50-201.101(b)(7)), as appropriate, in making a Walsh-Healey determination.

(d) By the terms of the Small Business Act, as amended, 15 U.S.C. 631 *et seq.*, the COC is conclusive as to responsibility. Where SBA issues a COC to a small business with respect to a particular contract, contracting officers are directed to award the contract without requiring the firm to meet any other requirement with respect to responsibility and Walsh-Healey eligibility.

Date: April 6, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-13277 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-65-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Fokker Model F-28 series airplanes, which would require supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. Some Fokker Model F-28 series airplanes are approaching or, in some cases, have exceeded the manufacturer's original design goal. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Comments must be received no later than August 8, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-65-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 E. Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-65-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidents of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the safe design of the Fokker Model F-28 airplane structure, the manufacturer has conducted a structural reassessment of these airplanes using engineering evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91-60, "Continued Airworthiness of Older Airplanes."

In response to AC-91-60, Fokker initiated the development of a Structural Integrity Program (SIP) for the Model F-28 airplanes, and coordinated their efforts with the operators of Model F-28 airplanes. To make maximum use of service experience and existing maintenance programs, Model F-28 operators have participated with the manufacturer and the FAA in generating the Model F-28 SIP. Advisory Circular 91-60 promotes the preparation and approval of a criteria document for such a program. Fokker developed criteria and guidelines for: (a) Selecting the major areas of the structure, identified as significant structural items (SSI), which are candidates for supplemental inspection by using the lastest engineering analysis techniques; and (b) analyzing existing inspection programs. This Structural Integrity Program is a supplement to the current normal maintenance inspection program to detect fatigue damage, and provides detailed non-destructive inspection (NDI) procedures to supplement the operators' existing inspection programs, as necessary. The program was established on evaluation of full scale and/or detailed tests and/or calculations and/or service experience. The document's purpose is to maintain the structural integrity of the Model F-28. It specifies the requirements for known and anticipated defects associated with fatigue, corrosion, stress corrosion, accidental damage, or manufacturing defects.

The F-28 Structural Integrity Program (SIP) Part I Document No. 28438 provides information addressing retirement lives, stress corrosion, and fatigue inspections. Part II Document No. 28441 provides instructions for the "high time inspections."

The SIP inspection program is based on Model F-28 current usage, durability assessment of the structure using current analysis techniques, and selection of the current (NDI) methods. In order to implement the SIP inspection program, each operator must compare its current structural maintenance program to the SIP requirements. If the current inspections equal or exceed the SIP requirements, no supplemental inspections would be required for that area under the SIP program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

Since the emphasis of the SIP program is on aging aircraft, the inspection program emphasis is on the high time aircraft population. The date and flight hours (or landings) at which modification or replacement is made, would be required to be reported by the operator to the manufacturer for each applicable airplane by fuselage number and/or factory serial number. That particular configuration is then evaluated by Fokker. The inspection threshold and interval will be established, and changes, if needed, would be published in the next revision of the SIP.

Inspection program

The expected fatigue life of each significant structural item (SSI) is determined by a demonstrated life, either by service experience or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatigue life and crack propagation characteristics of each SSI. All inspections are to be accomplished before the airplane exceeds the fatigue life threshold.

The results of the supplemental inspections are to be reported to the manufacturer in accordance with the SIP. This information will be presented in the periodic revisions.

Effects on Existing Maintenance Programs

In developing the SIP, the manufacturer and operators reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SIP program. As a result, the Fokker F-28 SIP allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

This airplane model is manufactured in The Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require supplemental structural inspections and repair or replacement, as necessary, in accordance with the SIP described above.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control number 2120-0056.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD. Implementation of the SIP in an operator's maintenance program is estimated to require 430 manhours per airplane, at an average labor cost of $40 per manhour ($17,200 per airplane). The annual recurring actions are estimated to require an average of 430 manhours per airplane, at an average labor cost of $40 per manhour ($17,200 per airplane). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $877,200 the first year, and $877,200 annually thereafter.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria for the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial

number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to all Model F-28 series airplanes, certificated in any category. Compliance required as indicated in the body of the AD, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Significant Structural Items defined in Fokker Structural Integrity Program, Part I Document No. 28438, dated March 1, 1982, and Revision 9, dated March 20, 1986 and Part II Document 28441, dated February 20, 1984. The non-destructive inspection techniques set forth in the SIP provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to Fokker, in accordance with the instructions of the SIP.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in the SIP.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

The FAA will request **Federal Register** approval to incorporate by reference the manufacturer's service documents identified and described in this proposed directive.

Issued in Seattle, Washington, on June 6, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-13178 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-64-AD]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Fokker Model F-27 series airplanes, which would require supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. Some Fokker Model F-27 series airplanes are approaching or, in some cases, have exceeded the manufacturer's original design goal. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Comments must be received no later than August 8, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-64-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 E. Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-64-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidents of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the safe design of the Fokker Model F-27 airplane structure, the manufacturer has conducted a structural reassessment of these airplanes using engineering evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91-60, "Continued Airworthiness of Older Airplanes."

In response to AC-91-60, Fokker initiated the development of a Structural Integrity Program (SIP) for the Models F-27 airplanes, and coordinated their efforts with the operators of Model F-27 airplanes. To make maximum use of service experience and existing maintenance programs, Model F-27 operators have participated with the manufacturer and the FAA in generating the Model F-27 SIP. Advisory Circular 91-60 promotes the preparation and approval of a criteria document for such a program. Fokker developed criteria and guidelines for: (a) Selecting the major areas of the structure, identified as significant structural items (SSI), which are candidates for supplemental inspection by using the latest engineering analysis techniques; and (b) analyzing existing inspection programs. This Structural Integrity Program is a supplement to the current normal maintenance inspection programs to detect fatigue damage, and provides detailed non-destructive inspection (NDI) procedures to supplement the operators' existing inspection programs, as necessary. The program was established on evaluation of full scale and/or detailed tests and/or calculations and/or service experience. The document's purpose is to maintain the structural integrity of the Model F-27. It specifies the requirements for known and anticipated defects associated with fatigue, corrosion, stress corrosion, accidental damage, or manufacturing defects.

The F-27 Structural Integrity Program (SIP) Part I Document No. 28436 provides information addressing retirement lives, stress, corrosion, and fatigue inspections. Part II Document No. 28411 provides instructions for the "high time inspections."

The SIP inspection program is based on Model F-27 current usage, durability assessment of the structure using current analysis techniques, and selection of the current (NDI) methods. In order to implement the SIP inspection program, each operator must compare its current structural maintenance program to the SIP requirements. If the current inspections equal or exceed the SIP requirements, no supplemental inspections would be required for that area under the SIP program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

Since the emphasis of the SIP program is on aging aircraft, the inspection program emphasis is on the high time aircraft population. The date and flight hours (or landings) at which modification or replacement is made, would be required to be reported by the operator to the manufacturer for each applicable airplane by fuselage number and/or factory serial number. That particular configuration is then evaluated by Fokker. The inspection threshold and interval will be established, and changes, if needed, would be published in the next revision of the SIP.

Inspection Program

The expected fatigue life of each significant structural item (SSI) is determined by a demonstrated life, either by service experience or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatifue life and crack propagation characteristics of each SSI. All inspections are to be accomplished before the airplane exceeds the fatigue life threshold.

The results of the supplemental inspections are to be reported to the manufacturer in accordance with the SIP. This information will be presented in the periodic revisions.

Effects on Existing Maintenance Programs

In developing the SIP, the manufacturer and operators reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SIP program. As a result, the Fokker F-27 SIP allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

This airplane model is manufactured in The Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require supplemental structural inspections, and repair or replacement, as necessary, in accordance with the SIP documents described above.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD. Implementation of the SIP into an operator's maintenance program is estimated to require 225 manhours per airplane, at an average labor cost of $40 per manhour (approximately $9,000 per airplane). The recurring inspections are estimated to require approximately 136 manhours per airplane at an average labor cost of $40 per manhour ($5,520 per airplane). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $342,000 to initially implement the SIP, and $209,760 per year thereafter.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Felxibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-27 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepard for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administartor, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to all Model F-27 series airplanes, certified in any category. Compliance required indicated in the body of the AD, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Significant Structural items defined in Fokker Structural Integrity Program, Part I Document No. 27438, revised February 1, 1987, and Part II Document 27441, dated December 15, 1987. The non-destructive inspection techniques set forth in the SIP provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to Fokker, in accordance with the instructions of the SIP.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in the SIP.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable leve of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

The FAA will request Federal Register approval to incorporate by reference the manufacturer's service documents identified and described in this proposed directive.

Issued in Seattle, Washington, on June 6, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-13179 Filed 6-10-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9175]

General Nutrition, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment; Comment Period

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; comment period.

SUMMARY: This document announces the initiation of a new comment period for a Commission document previously published in the **Federal Register** on Thursday, March 24, 1988.

DATE: Comments must be received on or before August 12, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler, FTC/S-4002, Washington, DC 20580. (202) 326-3090.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-6436, appearing in the **Federal Register** issue for Thursday, March 24, 1988, 53 FR 9666, the date by which comments must be received should now be on before August 12, 1988. The proposed consent agreement has recently been placed on the public record for a period of sixty (60) days. Public comment is invited.

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-13232 Filed 6-10-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[File No. 881 0038]

The Vons Companies et al.; Proposed Consent Agreement With Analysis To Aid Public Comment; Correction

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Thursday, June 2, 1988, 53 FR 20131. The previous document initiated a comment period of sixty (60) days for the proposed consent agreement. The Commission had, however, issued a directive to reduce the public comment period from 60 days to 30 days in order to permit earlier consideration of the consent order.

DATE: Comments will be received until July 5, 1988.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum, FTC/S-3302, Washington 20580. (202) 326-2629.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-12442, appearing in the **Federal Register** issue for Thursday, June 2, 1988, 53 FR 20131, the deadline date for receiving comments should be July 5, 1988.

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-13233 Filed 6-10-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 305

Regulatory Flexibility Act Review of Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice Terminating Regulatory Flexibility Act Review of the Appliance Labeling Rule, and Summary and Analysis of Comments.

SUMMARY: On April 8, 1985, the Federal Trade Commission ("the Commission"), in accordance with the Regulatory Flexibility Act [1] and publication of a Plan for the Periodic Review of Commission Rules,[2] published a notice in the **Federal Register** [3] soliciting comments and data on whether the Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act, 16 CFR Part 305 ("the Rule" or "the Appliance Labeling Rule") has had a significant economic impact

[1] Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1982) ("the RFA").

[2] 46 FR 38118 (July 7, 1981).

[3] 50 FR 13620 (April 8, 1985) ("the Notice").

on small entities,[4] and if it has, whether the Rule should be amended to minimize any such economic impact. The Notice requested that all comments and data be submitted to the Commission no later than May 8, 1985. These comments are summarized in this notice. Based on the comments received, the Commission finds that there is an insufficient basis to conclude that the Appliance Labeling Rule has had a significant economic impact upon a substantial number of small entities. The Commission, therefore, is terminating this proceeding.

DATE: This action is effective as of June 13, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Federal Trade Commission, Division of Enforcement, Washington, DC 20580, 202-326-3035.

SUPPLEMENTARY INFORMATION:

I. Background

Section 324 of the Energy Policy and Conservation Act (EPCA) [5] required the Federal Trade Commission to consider issuing labeling rules for the disclosure of estimated annual energy costs or alternative energy consumption information for at least 13 categories of major household appliances. The statute also required that the disclosures be based on standard test procedures prescribed by the Department of Energy (DOE). On November 19, 1979, the Commission issued a final rule [6] for seven appliance categories: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes washers; (5) water heaters; (6) room air conditioners; and (7) furnaces. The Commission exempted five other categories of appliances [7] either because the cost difference between the least and most efficient appliances was not large enough to be likely to affect consumer purchase decisions, or because the appliances were already highly efficient and not substantial energy users. The Commission recently amended the Rule to include the category of central air conditioners and heat pumps.[8]

The Rule requires that energy information, including energy costs (in dollars) or energy efficiency information (disclosed as energy efficiency ratings (EER)), based on the DOE test procedures, be disclosed on labels and in retail sales catalogs for all covered products except furnaces. The yellow and black labels must include a highlighted energy cost or efficiency disclosure, a range indicating the highest and lowest energy costs or efficiencies for all similar appliance models, and a chart that permits an individual to estimate how much it will cost to run the appliance each year. For furnaces, the energy usage information must be disclosed on separate fact sheets, while the labels on the furnaces themselves disclose energy-saving tips and direct consumers to the fact sheets. For central air conditioners and heat pumps, the label must contain the EER and range information. Additional energy usage and cost information must be either on fact sheets or in a directory.

Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

The statute and the Rule both place responsibility for testing and labeling on manufacturers. The responsibility of retailers is limited to refraining from removing labels or rendering them illegible. Violations are punishable by fines of $100 for each unit in violation.

The Regulatory Flexibility Act requires that the FTC conduct a periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities.[9] The purpose of this review is limited to determining whether the Rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities.

In order to conduct the periodic review of this Rule pursuant to the RFA, the Commission, in the Notice, posed the six questions detailed below for comment. The Commission requested the factual data (e.g., economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

On the basis of the comments received, and for other reasons, discussed below, the Commission lacks sufficient evidence to conclude that the Appliance Labeling Rule has had a significant economic impact on a substantial number of small entities. However, the Commission is initiating today a separate rulemaking proceeding that addresses, among other things, concerns that have been raised in comments in this proceeding.

II. The Comments

There were six questions posed in the Notice. Twenty-five comments were submitted.[10] Seventeen comments came from the industry: Four from trade associations [11] and thirteen from appliance manufacturers. Two of the manufacturers appeared to be larger than "small entities." [12] Nine manufacturers characterized themselves in one way or another as being small businesses [13], and one company, although it appeared from its comment to be a "small entity," did not so characterize itself.[14] Seven comments

[4] The definition of the term "small entity" was set out in the Notice. See footnote 9, below.

[5] Pub. L. 94-163, 89 Stat. 871, 42 U.S.C. 6294 (Dec. 22, 1975).

[6] 44 FR 66466 (Nov. 19, 1979), codified at 16 CFR Part 305.

[7] The appliances exempted were clothes dryers, home heating equipment (other than furnaces), television sets, kitchen ranges and ovens, and humidifiers and dehumidifiers.

[8] 52 FR 46888 (Dec. 10, 1987).

[9] For the purpose of this review under the RFA, the term "small entity" is defined under the Small Business Size Standards, codified at 13 CFR Part 121, and recently revised by the Small Business Administration (49 FR 5024 *et seq.* (Feb. 9, 1984)). The definitions of "small entity" applicable to those business entities covered by the Rule are: For manufacturers of air conditioning and warm-air heating equipment, fewer than 750 employees; for manufacturers of refrigerators, freezers and clothes washers, fewer than 1,000 employees; for manufacturers of other covered appliances, fewer than 500 employees; for wholesalers of electrical appliances, fewer than 500 employees; for department stores, under $12.5 million in annual sales; for retailers of household appliances, under $4.5 million in annual sales; and, for plumbing, heating and air conditioning contractors, under $7 million in annual sales.

[10] The comments have been placed on the public record in this proceeding under category 23 (Regulatory Flexibility Act Review Comments) of Public Record Docket No. 209-18. They are designated 23-1 through 23-25. References to the comments will be made by means of the single-word name of the commenter (last name for individuals, primary name for corporations), the number of the comment, and, when appropriate, the page of the comment. For example, a reference to page 2 of the comment submitted by W.C. Wood Company Limited would be designated as: Wood, 23-6/2.

[11] The Hydronics Institute ("Hydronics"), 23-11; the Manufactured Housing Institute ("MHI"), 23-12; the Air-Conditioning and Refrigeration Institute ("ARI"), 23-14; the Gas Appliance Manufacturers Association ("GAMA"), 23-19.

[12] Admiral Division of Magic Chef, Inc. ("Admiral"), 23-4; First Company ("First"), 23-5.

[13] Dornback Furnace and Foundry Co. ("Dornback"), 23-1; General Machine Corporation ("General"), 23-3; W.C. Wood Company, Ltd. ("Wood"), 23-6 & -7; Bard Manufacturing Company ("Bard"), 23-12; Ford Products Corporation ("Ford"), 23-15; Oneida Royal Inc. ("Oneida"), 23-17, Defiance International ("Defiance"), 23-18; 20th Century Heating and Ventilating Co. ("20th Century"), 23-24; Thermo Products, Inc. ("Thermo"), 23-25.

[14] Consolidated Industries Corp. ("Consolidated"), 23-2.

were received from consumers [15] and one comment was received from a state energy office.[16]

The following discussion treats each question in sequence and the comments received pertaining to that question. As an aid to discussing the questions with respect to which there were several comments, the comments have been divided into two groups—those generally in support of the Rule and those generally in opposition to the Rule. Discussion follows the comments.

A. *Question 1:* Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

Comments in Support of the Rule

The Hydronics Institute is the national trade association for boiler manufacturers and producers of other hydronic heating components.[17] Commenting on behalf of its membership, Hydronics noted that by increasing consumer information, and thereby offering product choice, the labeling program "* * * has been a stimulus to boiler manufacturers to improve the efficiency of their products, as was intended by the Rule. The manufacturers now compete for the contractors' business on the basis of high efficiency, and this has led to installation of more high-efficiency boilers." [18] The Hydronics Institute also noted that the Rule exerted no undue burden on manufacturers.

The three manufacturers who commented in favor of the Rule voiced similar opinions. Ford Products, a manufacturer of hydronic boilers, warm air heating equipment and water heaters, has not found it difficult to comply with the Appliance Labeling Rule to date. Ford believes that uniform testing procedures and labeling make it possible for manufacturers successfully to sell more efficient products that cost more. The Rule, according to Ford, enables manufacturers to explain, using the required information, that the extra cost will be paid back over time by dollar savings resulting from the higher efficiency of the product.[19]

The W.C. Wood Co., a manufacturer of refrigerators and freezers, believes that the Rule has resulted in keener competition between manufacturers to produce more efficient products, which, in turn, has resulted in overall improvements in energy consumption in the home appliance area. Wood believes that the Rule does not place any undue burden on manufacturers, and believes that the Rule benefits manufacturers because

> * * * it gives an honest yardstick for comparison of efficiencies in the market place. A manufacturer who puts an extra effort into achieving superior energy efficiency of his products is able to make this advantage visible." [20] General Machine Corporation, a manufacturer of boilers and furnaces, describes itself as "a very small company." General stated that the Rule benefits its company and the industry in general. In addition, General commented, "* * * it has helped to promote the development and sale of higher efficiency equipment since its inception. The cost of testing and labeling has not caused an economic hardship on us." [21]

Comments in Opposition to the Rule

Seven manufacturers [22] stated that the Rule has had a negative economic impact on them, or on the industry as a whole. Four of these manufacturers [23] shared in the concern that compliance with the DOE test procedures and the Commission's Rule puts them at a competitive disadvantage with respect to their larger competitors. As articulated by Bard:

> The Rule has had a significant economic impact on us as a small manufacturer because we do not have the production requirements as compared to a large manufacturer. The cost to implement the FTC law are the same whether a manufacturer is small or large; however, the fixed cost with a large manufacturer are spread over his large production of units, whereas, our costs to a small manufacturer are much greater in proportion because of our low unit volume. We figure that our unit cost to label will run approximately $10 to $12 per unit and we assume that the larger manufacturer * * * will run approximately 45 [cents] per unit.[24]

The First Company stated that the labeling requirement is extremely burdensome to First and provides no benefit to the public, since most of its furnaces and air conditioning equipment are sold to installing dealers and distributors. First, stated that it has spent over $30,000 on "these labels" over the past three to four years without being able to detect any measurable results.[25]

Admiral noted that small dealers [26] experience a negative economic impact because the cost information on the labels changes from time to time due to the increased national average cost for energy as published by DOE.[27] Admiral pointed out that this can result in labels showing different energy costs (since they are based on different unit cost for energy) on identical models. Consequently, Admiral maintains, "[t]he dealer must sell the floor samples, often at mark downs and physically replace them with new units." [28]

Discussion

The Commission believes that the alleged adverse economic impact and the other concerns raised by these seven manufacturers, while obviously significant and deserving of attention, do not provide a sufficient basis for the Commission to conclude that the Rule has had a significant economic impact upon a substantial number of small entities. Therefore, no modifications to the Appliance Labeling Rule in this proceeding are proposed.

First, Congress was aware that compliance with the mandates in the Energy Policy and Conservation Act (EPCA)[29] would not be without cost

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[15] Parker, 23–8; Pike, 23–9; DeLeo, 23–10; La Penta, 23–20; Angell, 23–21; Stapl, 23–22; Mancini, 23–23.

[16] Iowa Energy Policy Council, State Energy Office of Iowa ("Iowa"), 23–18.

[17] The other main trade associations representing manufacturers of central environmental conditioning systems are GAMA, 23–19 and the ARI, 23–14.

[18] 23–11/1.

[19] 23–15/1.

[20] 23–6/2.

[21] *Id.*

[22] Dornback, 23–1, Consolidated, 23–2, First, 23–5, Bard, 23–12 and 20th Century (all manufacture furnaces; First and Bard manufacture central air conditioners as well) noted their problems and expressed unequivocal opposition to the Rule. Admiral, 23–4 (manufacturing most major appliances, except furnaces and central air conditioners) and Thermo, 23–35 (manufacturing furnaces and air conditioners), while expressing problems with the Rule and suggesting modifications to it, are nonetheless generally in favor of the Rule's objectives of energy conservation and energy usage disclosure.

[23] Dornback, 23–1; Consolidated, 23–2; Bard, 23–12; Thermo, 23–25.

[24] 23–12/1.

[25] 23–5. Of course, the ultimate purchasers here are actually the consumers into whose home the products are installed, and § 305.11(b)(1) of the Rule requires that they be shown fact sheets before purchase.

[26] "Products manufactured by the Admiral and Magic Chef Divisions of Magic Chef, Inc. are distributed nationally through over 7,000 independent dealers. Most of these dealers represent small businesses within the community they serve." Admiral, 23–4/1

[27] Under the Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. Ranges are compiled by the Commission from manufacturers' data derived by following the DOE test procedures, and using the current representative average unit cost for energy as published by DOE annually. The data are submitted to the Commission in accordance with § 305.8 of the Rule.

[28] 23–4/1.

[29] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

when it enacted that law. Moreover, there are a substantial number of comments on the record in the instant proceeding (just discussed) to the effect that the Rule is not unduly burdensome for small entities.

Second, under the statute, in order for a manufacturer to make energy claims, DOE-specified tests must be performed. For example, manufacturers cannot legally make any energy usage or cost representations, including certifications to trade associations for inclusion in directories, without first having performed the DOE test procedure on the basic model in question. This is true irrespective of the Commission's Rule. Consequently, although the representations on fact sheets for furnaces must, by statute and regulation, be based on the DOE test procedures, the cost of performing the test procedures should not be viewed as exclusively a negative economic impact resulting from the labeling requirements of the Commission's Rule.

Finally, with respect to burdens described by the furnace manufacturers and the label problems described by Admiral, the Commission, in a separate rulemaking proceeding commenced today, is considering amendments to the Rule that would address these issues.

B. *Question 2:* Is there a continued need for the Rule and all of its requirements?

Comments in Support of the Rule

Consumer letters frequently expressed that continuing the Rule's requirements is justified because the Rule provides pre-purchase comparative information at the point of purchase.[30]

Two manufacturers commented in favor of the Rule directly in response to this question.[31] For example, Wood believes that the Rule is responsible for energy consumption savings in two ways. First, the disclosures enable the buying public to use energy consumption as a means of comparison when purchasing. Second, because energy usage of appliances is now public information, competition is sharpened between manufacturers to come up with more efficient products.

The Manufactured Housing Institute commented that energy usage information, primarily with respect to furnaces, is indeed important, and that energy usage information should continue to be disseminated for these appliances. MHI believes that, instead of appearing on separate fact sheets, the specific energy usage information should be on labels attached to the furnaces sold in new homes, in order to improve the program.[32] The Hydronics Institute, representing boiler manufacturers, noted that now that the labeling program is in place for furnaces, "[t]o eliminate the labeling requirement would cause new confusion, and might lead to distortion of advertised facts on the part of some producers or installers."[33]

The Iowa Energy Policy Council provided charts with its comment to show the cost effectiveness of buying more efficient appliances. In supporting the notion of continuing the Rule's requirements as to all products, the Council noted, "* * * if a consumer does not have (the energy) information at their disposal, they are not able to make an intelligent informed decision."[34]

Comments in Opposition to the Rule

The four furnace manufacturers [35] agreed that, for furnaces, the requirements of the Rule are not necessary and never were. According to these commenters, the fact sheets are superfluous because the manufacturers provide the energy usage information with materials they already produce in connection with the sale of their products, either independently or in trade-association-produced directories.

Two trade associations, ARI [36] and GAMA [37], share in the opinion that, with respect to furnaces and water heaters, the Rule should no longer apply. According to these associations, because of the way in which these products are marketed, it would make more sense for energy usage disclosures to be made in the trade associations' Directories than on fact sheets. In this way, consumers ultimately would be given the energy usage information by dealers and installers, without unnecessary expenditures to manufacturers.

Discussion

The comments in support of the Rule's continuation make, by themselves, a strong case in favor of the Appliance Labeling Rule. These comments indicate that the Rule is informing consumers about energy efficient characteristics of covered products. However, with respect to the concerns expressed by the furnace manufacturers and their trade associations,[38] the Commission is proposing to amend the Rule to include a directory option for furnace manufacturers in a separate proceeding.

C. *Questions 3:* (a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens that small entities would also experience under standard and prudent business practices?

Apparently, because of the similarity between Question 1 [39] and Question 3(a), comments that are responsive to one of these questions are also responsive to the other. Therefore, for a review of comments that pertain to question 3(a), see the earlier discussion relating to Question 1.

The Hydronics Institute, commenting on behalf of manufacturers of boilers, noted that, although there were initially objections to testing and catalog revisions to accommodate the new data required by the Rule and the DOE test procedures, these changes have been made and the pattern is now accepted as standard practice.[40]

Ford Products noted that "The burdens placed by the Rule are no greater a strain to the small entity than could be expected from the normal performance evaluation and product testing carried out by a manufacturer of heating appliances, using prudent business practices." [41]

D. *Question 4:* What changes, if any, should be made to the Rule that would minimize the economic effect on small entities?

Three manufacturing companies [42] joined with one trade association [43] in suggesting that manufacturers of furnaces be afforded the option of complying with the Rule's disclosure requirements for their products by being listed in a trade association directory like the one currently produced by GAMA. GAMA also suggested that the Rule be modified to allow this option for manufacturers of water heaters as well.

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[30] Parker, 23–8, Pike, 23–9; DeLeo, 23–10; Angell, 23–21; Stapl, 23–22.

[31] Wood, 23–6; Ford, 23–15. It appears that Admiral, 23–4, and General, 23–3, also see a continued need for the Rule (Admiral suggests modifications), but their comments do not articulate this directly.

[32] 23–13.

[33] 23–11/2.

[34] 23–18/2.

[35] Dornback, 23–1; Consolidated, 23–2; First, 23–5; Bard, 23–12. Bard also manufactures central air conditioners and heat pumps, and First also manufactures air conditioning equipment.

[36] 23–14.

[37] 23–19.

[38] See discussion at the end of Question 1.

[39] "Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive impact."

[40] 23–11/2.

[41] 23–15/2.

[42] Ford, 23–15/1; Oneida, 23–17; Thermo, 23–15.

[43] GAMA, 23–19/1–2.

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Three manufacturers of furnaces [44] suggested that the Rule and/or EPCA be amended so that furnaces are not covered.

Admiral [45] and Wood [46] suggested that the Rule be amended so energy usage for covered products other than furnaces and room air conditioners would be expressed in terms other than dollars. This would eliminate the need for periodic update of labels and the resulting consumer confusion and dealer inconvenience.[47] Wood suggested that kilowatt hours per year (kwh/yr) be substituted, while Admiral suggested the use of an energy efficiency rating (EER).

The Manufactured Housing Institute suggested amending the Rule to require that furnaces bear labels showing their EER rating, rather than the labels currently required that simply direct consumers to ask for fact sheets showing that information.[48]

As discussed earlier, there is insufficient evidence for the Commission to conclude that the Rule has had a significant economic impact on a substantial number of small entities. Therefore, the Commission is not amending the Rule in this proceeding.

E. *Question 5:* To what extent does the Rule overlap, duplicate or conflict with other federal, state and local government rules?

Two manufacturers responded directly to this question.[49] Defiance noted its belief that there is no duplication or conflict with other rules, and Ford Products suggested that the Rule could be improved in this regard by insuring that there is consistency in test procedures required by various localities.

Since Section 327 of EPCA establishes that the Commission's Rule will be preemptive of any state regulations, the Commission will make no changes in the Rule.

F. *Question 6:* Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1979 and, if so, what effect do these changes have on the rule or those covered by it?

There were no substantive comments in response to this question.

III. Conclusion

After carefully considering the comments, the Commission believes that they do not present a sufficient basis to conclude that the Appliance Labeling Rule has had a significant economic impact upon a substantial number of small entities. The Commission is therefore terminating this proceeding. However, some of the comments raise issues or make suggestions that are being explored in a separate amendment proceeding.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-13068 Filed 6-10-88; 8:45 am]

BILLING CODE 6750-01-M

[44] Dornback, 23-1/2; Consolidated, 23-2/2; First, 23-6. First also manufactures central air conditioning equipment.

[45] 23-4/2.

[46] 23-7/1-2.

[47] See earlier discussion under responses to Question 1.

[48] 23-13.

[49] Ford, 23-15/2; Defiance, 23-16/2.

DEPARTMENT OF JUSTICE

Justice Management Division

28 CFR Part 11

[Order No. 1280-88]

Debt Collection, Tax Refund Offsets for Collection of Judgments

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice amends Part 11 of Title 28 of the Code of Federal Regulations by establishing procedures for referring to the Secretary of the Treasury debts for collection by offset against Federal income tax refunds. This regulation is intended to strengthen the ability of the Department to collect outstanding debts.

DATES: Comments must be received on or before July 13, 1988.

ADDRESS: Comments should be addressed to Robert C. Niffenegger, United States Department of Justice, Office of the Comptroller, Justice Management Division, Room 1121, 10th Street and Constitution Avenue NW., Washington, DC 20530. All comments submitted in response to this final regulation will be available for public inspection, during and after the comment period, at this address between the hours of 9 a.m. and 5 p.m., Monday through Friday of each week, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert C. Niffenegger (202) 633-5345. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

Section 2653 of the Deficit Reduction Act (31 U.S.C. 3720A) authorizes the Secretary of the Treasury to offset a delinquent debt owed to the Federal Government from the income tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the Government to collect money owed it while adding certain notice requirements and other protections for the debtor. This rule implements section 2653 of the Act.

The statute directs any Federal agency that is owed a past due, legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with regulations issued by the Department of Treasury (Treasury) at 26 CFR 301.6402-6T (1986). Before a Federal agency may give such notice, however, it must first: (1) Make a reasonable attempt to notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor 60 calendar days from the date of the Department's Notice of Intent to present evidence that all or part of the debt is not past due or legally enforceable; (3) consider all evidence the debtor presents before determining that all or part of the debt is past due or legally enforceable; and (4) satisfy any other conditions that the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt. Treasury's rules for offsets against tax refund are currently limited to individual taxpayers for a period beginning on January 1, 1986 and ending June 30, 1988.

The rule provides that, before the Department of Justice will refer a debt to Treasury (through IRS), notice of that intention will be sent to the debtor. This notice will inform the debtor of the nature and amount of the debt, that unless the debt is repaid within 60 calender days from the date of the Department's Notice of Intent, the Department intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor and that the debtor has a right to a review within the Department.

The Department plans to use these procedures vigorously to obtain tax offsets to collect outstanding judgments in favor of the United States. The Department will refer to the IRS for tax refund offset final civil judgments containing money awards and final criminal judgments that include fines and/or other assessments of money.

Since these referrals will be of final judgments, the taxpayer may not raise issues related to the fact or the amount of judgment.

The taxpayer will be provided with notice that the Department plans to refer the taxpayer's judgment debt to the IRS for offset of any Federal tax refund, and will be provided 60 days in which to present evidence that all or part of a civil judgment or a criminal fine and/or assessment is not past-due, or to present evidence that the amount of the civil or criminal judgment debt to be reported to the IRS is not the amount currently owed, or to show that the judgment has been stayed or satisfied.

If the taxpayer does not pay the amount due in the judgment or present evidence that the amount is not past due, nor currently owed in whole or part, nor stayed, nor satisfied, at the end of the notice period, the Department will refer the taxpayer's judgment to the IRS for offset of the taxpayer's Federal tax refund. If the taxpayer responds to the notice and raises objections, the Assistant Attorney General for Administration will review the evidence presented by the taxpayer and determine whether to terminate efforts to offset the judgment, modify the amount to be referred or refer for offset the amount stated in the notice. The Assistant Attorney General for Administration will notify the taxpayer of his or her decision in writing. There is no appeal of this decision.

The statute requires a Federal agency to provide a debtor with notice of a proposed IRS offset and at least 60 days within which to prevent evidence regarding the debt. 31 U.S.C. 3720A(b). Because securing evidence of the date of receipt of the notice is costly and potentially time consuming and the Department considers five days an adequate period for almost all notices to be delivered by mail, the regulations allow five mailing days in addition to the statutory minimum of 60 days from the date of the notice of proposed offset within which the taxpayer may present evidence. The date of the notice is the date shown on the notice letter as its date of issuance. Use of the notice date rather than its receipt date will eliminate confusion and disputes regarding calculation of the 60 day period required by the statute.

Other Matters

This is not a major rule within the meaning of section 1(b) of Executive Order 12291. The Department certifies that this regulation will not have a significant economic impact on a substantial number of small entities. These procedures will only apply to named individuals. Thus, the regulation will not affect any small entities. Accordingly, this rule is exempt from requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612 (Supp. 1986). This rule contains no reporting and record keeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 28 CFR Part 11

Claims.

By virtue of the authority vested in me as Attorney General by 31 U.S.C. 3720A and 28 U.S.C. 301, 509 and 510, Part 11 of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 11—[AMENDED]

1. The authority citation for this Part 11 is proposed to be revised to read as follows:

Authority: 28 U.S.C. 301, 509, 510, 31 U.S.C. 3718, as amended by Pub. L. 99-578, 31 U.S.C. 3720A.

2. Part 11 is proposed to be amended by adding Subpart B, consisting of § 11.10, to read as follows:

Subpart B—Tax Refund Offsets

§ 11.10 Procedures for tax refund offsets for the collection of judgments.

(a) The Department may refer any past-due, non-paid final civil or criminal judgment debts imposed by a court of the United States against an individual to the Secretary of the Treasury for offset. (Judgments in amounts lower than $25.00 or outstanding for longer than ten years are not subject to referral.)

(b) The Department will provide the civil or criminal judgment debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS' prior year's tax records or from information regarding the debt maintained by the Department of Justice. The notice sent to the debtor will inform the debtor that:

(1) The civil or criminal judgment debt is past due;

(2) The Department intends to refer the civil or criminal judgment to the Secretary of the Treasury for offset from income tax refunds that may be due to individuals;

(3) The debtor, within 65 days of the date on the written notice, has an opportunity to:

(i) Present evidence that all or part of a civil judgment debt or a criminal fine and/or assessment is not past-due;

(ii) Present evidence that the amount of the civil judgment debt or criminal fine and/or assessment, as reported to the IRS, is not the amount currently owed;

(iii) Present evidence that the judgment debt has been stayed or satisfied.

(4) If the civil or criminal judgment debtor wishes to contest the offset, he or she must present evidence set forth under paragraph (b)(3) of this section by a date specified in the notice. The debtor must present such evidence to the Assistant Attorney General for Administration at the address specified in the notice. The Assistant Attorney General for Administration will review the evidence and make a determination whether to terminate efforts to offset the judgment, modify the amount to be referred, or refer for offset the amount stated in the notice, and notify the debtor in writing. There is no appeal of this decision.

(5) The authority of the Assistant Attorney General for Administration may be redelegated to subordinate officials as appropriate.

Date: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13238 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[SECNAV Instruction 5211.5C]

Availability of Department of the Navy Records and Publications of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: A new specific exemption rule is proposed to be added to other existing Navy exemption rules for exempted systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, to accomodate a new exempted record system identified as NO1754-3, entitled: Navy Child Development Services Program. Exemption from certain provisions of the Privacy Act must be invoked by rulemaking to protect from access the personal information contained in the new record system.

DATES: Comments must be received on or before July 13, 1988.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch,

BEST COPY AVAILABLE

Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Mrs. Aitken at the above address or telephone: 202-697-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes to exempt certain provisions of a new system of records NO1754-3, "Navy Child Development Services Program" under the provisions of 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

List of Subjects in 32 CFR Part 701

Privacy, Exemption, Investigative Information, Records. Accordingly, it is proposed to amend Subpart G of 32 CFR Part 701 as follows:

PART 701—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552a, 32 CFR Part 296a.

2. Add paragraph (b)(7) to § 701.119.

Subpart G—Privacy Act Exemptions

§ 701.119 Exemptions for specific Navy record systems.

* * * * *

(b) *Naval Military Personnel Command.* * * *

(7) *ID NO1754-3*

System Name. Navy Child Development Services Program.

Exemption. Portions of this system of records are exempt from the following subsections of Title 5 U.S.C. 552a (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2).

Reasons. Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the dispositon of charges; and could jeopardize the safety and well being of parents and their children.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988.

[FR Doc. 88-13202 Filed 6-10-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-368-P]

Medicare Program; Effect of Appeals on the Hospital-Specific Portion of the Prospective Payment Rate

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend and clarify the prospective payment regulations governing administrative and judicial review of payment amounts in order to resolve confusion concerning interpretation of those regulations. In particular, the rule would amend and clarify the provision pertaining to adjustment of the hospital-specific rate under the prospective payment system.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 12, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-368-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you many deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting please refer to file code BERC-368-P. Comments received timely will be available for public inspection as they are received, which generally begins about three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Edward Rees, (301) 966-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list currently contains 475 specific categories.

Section 1886(d)(1) of the Act, as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), provides for a four-year transition period during which a declining portion of the total prospective payment rate is based on a hospital-specific rate per discharge, and a gradually increasing portion is based on a Federal rate per discharge. (Section 107(a)(1) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100-119) extended the transition period through the first 51 days of a hospital's cost reporting period in the fifth year.) The hospital-specific rate is based on a hospital's historical cost in a given base year. The Federal rate is based on the average of the standardized historical costs of all hospitals, urban or rural, national or regional. The Federal rate is based on regional average standardized amounts in the first year of the transition period, and is a blend of regional and national average standardized amounts in the second year through the first 51 days of a hospital's cost reporting period beginning on or after October 1, 1987. Beginning with the 52nd day of a hospital's cost reporting period beginning in Federal fiscal year (FY) 1988, and continuing thereafter, payment for inpatient hospital services is based on national payment rates.

In order to implement the prospective payment system for inpatient hospital services as required by section 1886(d) of the Act, we published the following documents in the Federal Register.

- On September 1, 1983, we published an interim final rule with comment period (48 FR 39752), effective for hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections were issued on October 19, 1983 (48 FR 48467).
- On January 3, 1984, we published a final rule (49 FR 234) to make changes to the regulations as the result of our consideration of the public comments that were received in response to the interim final rule. Technical corrections for this document were issued on June 1, 1984 (49 FR 23010).
- In order to update the prospective payment rates for FY 1985, we published a proposed rule on July 3, 1984 (49 FR 27422) and a final rule on August 31, 1984 (49 FR 34728), for which technical corrections were issued on October 15, 1984.
- On March 29, 1985, we published a final rule (50 FR 12740) redesignating the prospective payment regulations, originally set forth in 42 CFR Part 405 (§§ 405.470 through 405.477), to a new 42 CFR Part 412 (§§ 412.1 through 412.125).
- In order to update the prospective payment rates for FY 1986, we published a proposed rule June 10, 1985 (50 FR 24386) and a final rule on September 3, 1985 (50 FR 35646), for which technical corrections were issued on October 28, 1985 (50 FR 43570).
- On May 6, 1986, we published an interim final rule (51 FR 16772) effective May 1, 1986 or earlier to make changes in the regulations as required by the Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99-272).
- In order to update the prospective payment rates for FY 1987, we published a proposed rule on June 3, 1986 (51 FR 19970), and a final rule was issued on September 3, 1986 (51 FR 31454), for which technical corrections were issued on October 1, 1986 (51 FR 34990).
- On November 24, 1986, we published a final rule with comment period (51 FR 16772) effective October 1, 1986 to make changes in the regulations as required by the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509).
- In order to update the prospective payment rates for FY 1988, we published a proposed rule on June 10, 1987 (52 FR 22080) and a final rule on September 1, 1987 (52 FR 33034), for which technical corrections were issued on September 18, 1987 (52 FR 35350) and October 9, 1987 (52 FR 37769).
- As a result of the enactment of Pub. L. 100-119, we published a notice on October 23, 1987 (52 FR 39637) to describe a temporary extension of the FY 1987 prospective payment rates and the fourth year of the prospective payment system transition period. That extension was effective through November 20, 1987, or for the first 51 days of a hospital's cost reporting period beginning in FY 1988.

B. Issues To Be Addressed in This Proposal

Section 1878 of the Act (implemented by the regulations in 42 CFR Part 405, Subpart R) authorizes administrative and judicial review of certain aspects of prospective payment rates. Medicare regulations currently address this appeals process and the effect of successful appeals by hospitals of the rates (42 CFR 412.72), but there appears to be some continuing public confusion about the applicable provisions. This confusion is particularly evident with respect to issues affecting the hospital-specific rate.

This document outlines the appeals process and the principles governing appeals and remedies resulting from appeals and proposes to reorganize and clarify the regulations to make these rules clear. In addition, to the extent a revision of the rates is permitted, we are proposing changes that would authorize a downward revision under the same conditions that permit an upward adjustment. Errors that inappropriately advantage or disadvantage hospitals should be treated in a like manner.

II. Administrative and Judicial Review

A. The Appeals Process

A fiscal intermediary's determination of a hospital's prospective payment amount is generally appealable. The intermediary must furnish the hospital with written notice reflecting the intermediary's determination of the total amount of reimbursement due the hospital. This written notice, which is called a Notice of Amount of Program Reimbursement (NPR), is with certain exceptions subject to review by the Provider Reimbursement Review Board (hereinafter referred to as the Board).[1]

[1] There is controversy and litigation over whether certain prospective payment determinations may be appealed to the Board prior to the issuance of an NPR. (Compare HCFA Ruling 84-1 (49 FR 22413, May 29, 1984) and *Springdale Memorial Hospital Assn., Inc. v. Bowen*, No. 86-1745 (6th Cir. May 11, 1987) with *Washington Hospital Center v. Bowen*, 795 F.2d 139 (D.C. Cir. 1986); *Doctors Hospital, Inc. v. Bowen*, 811 F.2d 1448 (11th Cir. 1987); *Sunshine Health Systems, Inc. v. Bowen*, 809 F.2d 1390 (9th Cir. 1987); and *St. Francis Hospital v. Bowen*, 802 F.2d 697 (4th Cir. 1986)).

The Board has jurisdiction to review the intermediary's determination under the conditions set forth in section 1878 of the Act. The provisions of that section enable a hospital that has timely filed a cost report and has made a claim for additional reimbursement to obtain a hearing with the Board if, among other things—

- The hospital is dissatisfied with its intermediary's final determination of total program reimbursement due;
- The amount in controversy is $10,000 or more; and
- The hospital files a request for a hearing within 180 days after notice of the intermediary's final determination.

The Board has the power to affirm, modify, or reverse a final determination of the intermediary, and its decision is final unless the Secretary, on the Secretary's motion and within 60 days after the hospital is notified of the Board's decision, reverses, affirms, or modifies that decision. (This authority has been delegated to the Administrator and Deputy Administrator of HCFA. Regulations concerning this review of Board decisions are located at § 405.1875.) Hospitals have a statutory right under section 1878 of the Act to seek judicial review in federal district court of any final decision of the Board or of any reversal, affirmance, or modification of that decision by the Administrator or Deputy Administrator acting for the Secretary.

Section 1878 of the Act also provides that a hospital may obtain judicial review of a question of law or regulations without first securing a hearing before the Board if the Board determines on its own motion, or after consideration of a request for such review, " * * * accompanied by such documents and materials as the Board shall require for purposes of rendering such determination * * *," that it lacks authority to decide such issues. The hospital, even if it has requested expedited judicial review, must nevertheless meet the jurisdictional requirements of section 1878 of the Act.

Consequently, the Board first must determine that it has jurisdiction over the case before it can decide whether the hospital is entitled to expedited judicial review. The Board has 30 days within which to make the expedited review decision once it has determined that it has jurisdiction and it has received all necessary documentation required for the expedited review decision. The determination that it lacks authority to decide an issue in a case over which it has jurisdiction is considered a final decision for purposes of judicial review.

B. The Hospital-Specific Rate

The principal purpose of the prospective payment system is to increase the efficiency of the Medicare program by permitting hospitals to keep payment amounts in excess of their costs and requiring them to absorb costs in excess of payment amounts. (See S. Rep. No. 23, 98th Cong., 1st Sess. 47 (1983), reprinted in 1983 U.S. Code Cong. & Ad. News 143, 187; H.R. Rep. No. 25, 98th Cong., 1st Sess. 132 (1983), reprinted in 1983 U.S. Code Cong. & Ad. News 219, 351; 42 CFR 412.1(a).) Congress found that under the cost-based reimbursement system hospitals lacked incentives for efficiency. (See S. Rep. No. 494, 97th Cong., 2d Sess. 26–67 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 781, 802–03.) Although there were some limits on overall payment amounts, the cost-based method responded to hospital cost increases by providing increased reimbursement.

The change from cost reimbursement to the prospective payment system was expected to redistribute substantial amounts of Medicare funds from inefficient hospitals to efficient hospitals. To cushion these effects, the statute established a four-year transition period before fully national urban and rural payment rates (adjusted for local wages and the higher cost of living in Alaska and Hawaii) would apply. (The length of the transition as originally set forth by Congress was three years, but was extended to four years by section 9102 of Pub. L. 99–272.) As discussed earlier, for each year during the transition, an increasing proportion of the payment rate is based on a "federal" portion (determined by reference to the historical costs of all hospitals in the country or a region), and a declining proportion of the payment rate for each discharge (the "hospital-specific" portion) is based on the historical costs of the particular hospital involved.

To establish a hospital-specific rate, the intermediary first estimated the hospital's allowable costs for the base period (generally, the most recent 12-month or longer cost reporting period ending before September 30, 1983 (§ 412.71(a)). The intermediary then modified the allowable base-period operating costs, based on available data, to make the hospital's reported base-period experience comparable to those same types of costs that would be incurred during the transition period (for example, by removal of nonrecurring costs) (§ 412.71(b)). If the hospital requested it, the intermediary made further modifications to its estimate to take into account FICA taxes and also services reimbursed under Part B of Medicare (Supplementary Medical Insurance) during the hospital's base period, which were to be reflected in prospective payment amounts once the prospective payment system was in place (§ 412.71(c)).

Through this process, the intermediary could take into account any additional data presented by the hospital. Finally, the intermediary divided total allowable operating costs by the number of discharges in the base-period and by the hospital's 1981 case-mix index. The cost per discharge as adjusted by the case-mix index and updated by the applicable updating factor became the hospital's hospital-specific payment rate for the prospective payment system transition period (§ 412.73).

C. Review of the Hospital-Specific Rate

As explained above, determination of the hospital-specific rate involves ascertaining the amount of a hospital's allowable inpatient operating costs during the specified base-period, modifying these costs in certain respects to make them consistent with the types of costs the hospital would be expected to incur under the prospective payment system, converting the total operating costs, as modified, to a cost per discharge, and adjusting the operating cost per case by the hospital's case-mix index.

Disputes may arise over the amount of costs incurred during the base period itself, including amounts that were disallowed for purpose of computing inpatient cost reimbursement for each hospital's base period. In addition, disputes may arise with respect to the modifications to these base-period costs necessary to make the hospital's base-period experience comparable to costs incurred during the transition period. Also, there are potential issues concerning the calculation of the costs on a per discharge basis and the adjustment for the hospital's 1981 case-mix index.

As we noted in the preamble to the final rule published on January 3, 1984 (49 FR 234, 259), the starting point for resolving any of the issues noted above is the legal requirement that the prospective payment rates, including the hospital-specific rate, must be fixed in advance of the period to which the rates apply. This requirement necessarily means that, insofar as the rates depend on particular facts, we must use the best data and information available at the time that the rates are established. Moreover, insofar as the facts depend on an interpretation of the law (for example, whether particular costs are allowable or how they are allocated or apportioned), we must make a good faith attempt to apply the law and regulations as they are understood at that time.

In considering the provisions of section 1886(d) of the Act, as enacted by Pub. L. 98–21 on April 20, 1983, Congress recognized that prospective rates for the transition period would have to be established rapidly in order to bring some 5,500 hospitals into the system at the beginning of their costs reporting periods beginning during FY 1984, which began on October 1, 1983. As the Conference Committee Report stated, "Since the hospital-specific portion of the rate must be determined in advance of the hospital's first fiscal year under the system, the managers expect that *the Secretary will use the best data available at that time* to determine operating costs for the purposes of the phase-in." (H.R. Rep. No. 47, 98th Cong., 1st Sess. 182 (1983). (Emphasis added.)

Prior to the time that a hospital became subject to the prospective payment system, the hospital submitted its base-period costs report to its intermediary and the cost report was audited to disallow costs not permitted under the Medicare statute and regulations. Under the prospective payment system, the intermediary was required to determine its best estimate of the hospital's base-period costs and modifications thereto and to advise the hospital of its determination. Hospitals were given three weeks to submit additional information or request revisions in response to the intermediaries' preliminary estimates, and subsequently 90 days to correct mathematical mistakes. However, in the end, the final rate was determined by the intermediary using its best judgment based on the available information.

Once a hospital has begun operating under the prospective payment system, the intermediary may not revise its estimate or modification except in the following limited circumstances: Where a hospital entering the prospective payment system on or before November 15, 1983 neglected to request certain modifications to correct mathematical errors detected within 90 days of the estimate's issuance; to recognize prospectively the results of successful appeals with respect to settlement of the base-year costs by hospital's; and to exclude retroactively certain fraudulently claimed costs.

The effect of appeals on the hospital-specific rate is a potentially confusing subject because of the two methods available for review. A first method of review (indirect appeal) results when the hospital appeals issues related to its base-period cost report. Since the hospital-specific rate is derived from data in the base-period cost report, revisions of base-period costs have potential implications for the hospital-specific rate. Because a hospital pursuing an indirect appeal is not seeking review of the hospital-specific rate itself and might not seek this review, success does not invalidate the rate. Indirect appeals are wholly separate from challenges to the validity of the hospital-specific rate that involve issues arising from errors in the determination of the rate.

We might have taken the position that the hospital-specific rate, once properly set, would be effective for the entire four-year transition period without the possibility of adjustment based on new information. In light of the transitional and approximate nature of the hospital-specific rate, this would have been a reasonable procedure. Nevertheless, as noted above, current regulations authorize a prospective revision of the hospital-specific rate if additional base-period operating costs are recognized after appeal of the base-period NPR. This prospective adjustment of the rate is made automatically even though the hospital has not challenged the rate or obtained a ruling that the rate is improper.

Moreover, since discharge data were included in the base-period cost report and are adjustable by the intermediary, we believe that more accurate information pertaining to discharge data should be treated in a manner similar to base-period cost data. Accordingly, we propose to revise the regulations to allow prospective adjustment of the hospital-specific rate to account for more accurate base-period discharge information.

A second method of review of the hospital-specific rates (direct appeal) is available, but as explicitly stated in § 412.72(b), the scope of review is limited to whether the intermediary followed the provisions of §§ 412.71 and 412.72. Since the statute requires a prospectively-determined payment rate, § 412.72(b)(3) provides that an appeal of the rate may not be based on data, information, or arguments that were not presented to the intermediary at the time of the intermediary's estimation of the hospital-specific rate. An intermediary's estimate or modifications will be considered legally erroneous, and thus subject to revision, only if the intermediary failed to follow the required calculation procedures, including the requirement to use the best data available. With respect to this latter requirement, an intermediary's estimate or modifications may be revised only if unreasonable and clearly erroneous in light of the data available at the time they were made.

The proposed regulations clarify this policy by specifying that revisions of the hospital-specific rate that meet the criteria of the scope of review, that is, issues involving best data available and clearly erroneous actions, will result in retroactive revision of the rate. These provisions regarding adjustment of the hospital-specific rate would extend to actions that result in either upward or downward changes in the rate.

The distinction between a challenge to costs allowable in the base period itself and a challenge to the hospital-specific rate is critical, since the standard of review differs greatly between the two issues. If a hospital wants to challenge the rate itself, and by so doing obtain retroactive relief in the event of success, it must pursue a direct appeal. In the case of a direct appeal, the current regulations address certain aspects of what constitutes legal error in setting the hospital-specific rate.

The only proper issue on a direct appeal of the hospital-specific rate is whether the intermediary in fact followed the required procedures in establishing the rate, including the requirement to use the best data available. The administrative review process and the courts can examine that issue in each direct appeal and determine whether the intermediaries acted reasonably under the circumstances of each case. If a disallowance was based on a legal interpretation later held incorrect by the courts, the validity of the rates would not be affected if the intermediaries made a good faith attempt to act in accordance with the law and regulations as they were understood when the rates were established. If the rate was unlawfully established (that is, the intermediary acted unreasonably in estimating allowable base-period costs or making modifications to those costs), fully retroactive relief would be granted.

On the other hand, when a hospital successfully appeals disallowances of its base-period costs (that is, in an indirect appeal), the increased costs are recognized in the hospital-specific rate only for subsequent reporting periods under the prospective payment system. If a hospital desires retroactive relief, it must seek that in a direct appeal, where the standard of review is substantially different. A prospective system requires use of data available at the time that rates are established, and the mere fact that the data later prove to have been incorrect does not by itself invalidate the rate.

D. Proposed Clarifications and Changes

The current regulations concerning the calculation of the hospital-specific rate (that is, §§ 412.71 and 412.72) are potentially confusing because they do not clearly separate issues relating to estimation of base-period costs, modifications to those costs prior to the beginning of the prospective payment system, and subsequent adjustments based on later events such as successful appeals. Also, the provisions relating to administrative and judicial review of the prospective payment rate are currently located in a section related to the hospital-specific rate, although these provisions are clearly intended to relate to all issues on appeal.

Therefore, we are proposing to reorganize the provisions in §§ 412.71 and 412.72(a) to make our intent clear. We also propose to redesignate § 412.73 (Determination of the hospital-specific rate) as § 412.72 and § 412.72(a) as § 412.73 so that the provisions concerning determination of the hospital-specific rate would precede the provisions relating to revising that rate. In addition, we would move the provisions on administrative and judicial review now set forth in § 412.72(b) to a new § 412.128 and clarify them as well. Also, we would eliminate § 412.76, which duplicates the provisions of current § 412.72(a)(5) (which would be redesignated as § 412.73(h)). The following table illustrates the proposed redesignation:

Current	New
412.71(a)	412.71(b)
412.71(b)	412.71(c)(1)
412.71(c)(1)	412.71(c)(2)
412.71(c)(2)	412.71(c)(3)
412.71(d)	412.72(e)
412.72(a)	412.73(a)
412.72(a)(1)(ii)(A)	412.73(b)
412.72(a)(1)	412.73(c)
412.72(a)(2)	412.73(d)
412.72(a)(3)	412.73(g)
412.72(a)(4)	412.73(e)
412.72(a)(5)	412.73(h)
412.72(b)(1)	412.128(a)
412.72(b)(2)	412.128(b)(1)
412.72(b)(3)	412.128(b)(2)
412.73	412.72
412.76	deleted

We believe that the regulations addressing adjustment of the hospital-specific rate should result in equitable effects for both the industry and the government. Consequently, we are proposing that both retroactive and prospective adjustments of the hospital-specific rate may result in either increases or decreases in payments. Similar criteria would be applied in determining the effective date of the adjustment regardless of which party benefits from the rate revision.

III. Regulatory Impact Statement

These proposed regulations would clarify and make minor revisions in the regulations governing administrative and judicial review of payment amounts under the prospective payment system. Consequently, we have determined that there is no need for the analysis required by Executive Order 12291 for rules that have a significant impact on the economy. In addition, we certify that an analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 604) because the rule changes would not have a significant economic impact on a substantial number of small entities. Also, we certify that an analysis is not required under section 1102(b) of the Act because this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Other Required Information

A. Paperwork Burden

Section 412.71 contains information collection requirements, which were previously approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3504 and given the approval number of 0938–0288. However, that approval expired on June 30, 1984. Therefore, as required, we will submit a copy of this proposed rule to OMB for its review of these information collection requirements. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of this preamble.

B. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 412 would be amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1302a–1, 1395hh, and 1395ww).

B. Subpart E is amended as follows:

1. The table of contents for Subpart E is amended by revising the titles of §§ 412.71, 412.72, and 412.73, and by removing the title of § 412.78 to read as follows:

* * * * *

Subpart E—Determination of Transition Period Payment Rates

Sec.

* * * * *

412.71 Determination of modified base-period inpatient operating costs.

412.72 Determination of the hospital-specific rate.

412.73 Permissible adjustments of the hospital-specific rate.

* * * * *

2. Section 412.71 is revised to read as follows:

§ 412.71 Determination of modified base-period inpatient operating costs.

(a) *General rule.* The hospital-specific portion of the prospective payment rate is derived from inpatient operating costs that are incurred during a base period and modified for use under the prospective payment system. The modified base-period inpatient operating costs are determined as set forth in this section.

(b) *Estimate of base-period costs.* (1) Except for new hospitals, whose transition period payments are determined under § 412.74, the intermediary estimates each hospital's Medicare Part A allowable inpatient operating costs, as described in § 412.2(c), for the 12-month or longer cost reporting period ending on or after September 30, 1982 and before September 30, 1983.

(2) If the hospital's last cost reporting period ending before September 30, 1983 is for less than 12 months, the base period is recent 12-month or longer cost reporting period ending before such short reporting period, with an appropriate adjustment for inflation.

(c) *Modifications to base-period costs.* (1) Prior to determinig the hospital-specific rate under § 412.72, the intermediary modifies the hospital's allowable base-period inpatient operating costs to make the hospital's base-period experience comparable to the types of costs expected to be incurred during the prospective payment system transition period. The intermediary includes malpractice insurance costs and excludes the following:

(i) Nursing differential costs.[1]

(ii) Medical education costs as described in § 413.85 of this chapter.

(iii) Capital-related costs as described in § 413.130 of this chapter.

(iv) Kidney acquisition costs incurred by hospitals approved as renal transplantation centers as described in § 412.100. Kidney acquisition costs in the base period are determined by multiplying the hospital's average kidney acquisition cost per kidney times the number of kidney transplants performed by the hospital and covered by Medicare Part A during the base period.

(v) Higher costs that were incurred for purposes of increasing base-period costs.

(vi) One-time nonrecurring higher costs or revenue offsets that have the effect of distorting base-period costs as an appropriate basis for computing the hospital-specific rate.

(vii) Higher costs that result from changes in hospital accounting principles initiated in the base period.

(viii) For cost reporting periods beginning on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989, the cost of qualified nonphysician anesthetists' services as described in § 412.113(c).

(2) Before the date it becomes subject to the prospective payment system, a hospital may request the intermediary to further modify its estimated base-period costs to take into account the following:

(i) Services paid for under Medicare Part B during the hospital's base period that will be paid for under prospective payments. The base-period costs may be increased to include estimated payments for certain services previously billed as physicians' services before the effective date of § 405.550(b) of this chapter (October 1, 1983), and estimated payments for nonphysicians' services that were not furnished either directly or under arrangements before October 1, 1983 (the effective date of § 405.310(m) of this chapter), but may not include the costs of anesthetists' services for which a physician employer continues to bill under § 405.553(b)(4) of this chapter.

(ii) The payment of FICA taxes during cost reporting period subject to the prospective payment system, if the hospital had not paid such taxes for all its employees during its base period and is required to participate effective January 1, 1984.

[1] As formerly provided in § 405.430, which was removed from the CFR on September 1, 1983 (48 FR 39811).

(3) If a hospital requests that its base-period costs be modified under paragraph (c)(2) of this section, it must timely provide the intermediary with sufficient documentation to justify the modification and adequate data to compute the modified costs. The intermediary decides whether to use part or all of the data on the basis of audit, survey, and other information available.

3. Section 412.72 is revised to read as follows:

§ 412.72 Determination of the hospital-specific rate.

(a) *Costs on a per discharge basis.* The intermediary determines the hospital's modified base-period operating cost per discharge by dividing the total modified operating costs by the number of discharges in the base period.

(b) *Case-mix adjustment.* The intermediary divides the modified base-period cost per discharge by the hospital's 1981 case-mix index. If the hospital's case-mix index is statistically unreliable (as determined by HCFA), the hospital's base-period costs are divided by the lower of the following:

(1) The hospital's estimated case-mix index.

(2) The average case-mix index for the appropriate classifications of all hospitals subject to cost limits established under § 413.30 of this chapter for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983.

(c) *Updating base-period costs*—(1) *For Federal fiscal year 1984.* The case-mix adjusted base-period cost per discharge is updated by the applicable updating factor, as adjusted for budget neutrality.

(2) *For Federal fiscal year 1985.* The amount determined under paragraph (c)(1) of this section is updated by the applicable updating factor, as adjusted for budget neutrality.

(3) *For Federal fiscal year 1986.* (1) The amount determined under paragraph (c)(2) of this section is updated by—

(A) Zero percent for the first seven months of the hosptial's cost reporting period; and

(B) One-half of one percent for the remaining five months of the hospital's cost reporting period.

(ii) For purposes of determining the updated base-period cost reporting periods beginning in Federal fiscal year 1987 (that is, on or after Ocober 1, 1986 and before October 1, 1987), the update factor for the previous cost reporting period is deemed to have been one-half of one percent.

(4) *For Federal fiscal year 1987.* The amount determined under paragraph (c)(3)(ii) of this section is updated by 1.15 percent.

(5) *For Federal fiscal year 1988 and following.* For purposes of determining the prospective payment rates for sole community hospitals under § 412.92(d), the base-period cost per discharge continues to be updated each Federal fiscal year as follows:

(i) For Federal fiscal year 1988, the update factor is the percentage increase in the market basket index (as described in § 413.40(c)(3)(ii)) minus 2.0 percentage points.

(ii) For Federal fiscal years 1989 and following, the update factor is determined using the methodology set forth in § 412.63(g)(1) through (g)(3).

(d) *Budget neutrality—(1) Federal fiscal year 1984.* For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, HCFA adjusts the target rate percentage used under paragraph (c)(1) of this section. This adjustment is based on a factor actuarially estimated to ensure that the estimated amount of aggregate Medicare payments based on the hospital-specific portion of the transition payment rates is neither greater nor less than 75 percent of the amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1984 under title XVIII of the Act as in effect on April 19, 1983 (the day before enactment of Pub. L. 98–21).

(2) *Federal fiscal year 1985.* For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, HCFA adjusts target rate percentage used under paragraph (c)(2) of this section. This adjustment is based on a factor actuarially estimated to ensure that the estimated amount of aggregate Medicare payment based on the hospital-specific portion of the transition payment rates is neither greater nor less than 50 percent of the amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under title XVIII of the Act as in effect on April 19, 1983 (the day before enactment of Pub. L. 98–21).

(e) *Intermediary's determination.* The intermediary uses the best data available at the time in estimating each hospital's base-period cost, the modifications of those costs authorized by §412.71, and the number of base-period discharges. The intermediary's determination of the hospital-specific rate is final and may not be changed after the first day of the first cost reporting period beginning on or after October 1, 1983, except as provided in § 412.73.

(f) *DRG adjustment.* The applicable hospital-specific cost per discharge is multiplied by the appropriate DRG weighting factor to determine the hospital-specific base payment amount (target amount) for a particular covered discharge.

4. Section 412.73 is revised to read as follows:

§ 412.73 Permissible adjustments of the hospital-specific rate.

(a) *General rule.* In order to preserve its prospective nature, the hospital-specific rate, as determined in accordance with § 412.72, may be adjusted only under the circumstances and at the times specified in this section.

(b) *Prior adjustments.* The intermediary may adjust the hospital-specific rate for any reason before the date the hospital becomes subject to the prospective payment system.

(c) *Inadvertent omissions.* (1) A hospital that becomes subject to the prospective payment system during the period on or after October 1, 1983 and before November 16, 1983 has through November 15, 1983 to request its intermediary to reestimate its modified base-period costs to take into account inadvertent omissions in its previous submissions to the intermediary pertaining to capital-related costs, medical education costs, and the modifications authorized under § 412.71(c)(2).

(2) The intermediary must notify the hospital of any change to its hospital-specific rate as a result of the hospital's request within 30 days of receipt of the additional data.

(3) Any change to modified base-period costs made under this paragraph is made effective retroactively, beginning with the first day of the hospital's first cost reporting period under the prospective payment system.

(d) *Correction of mathematic errors in calculations.* (1) The hospital must report mathematical errors in calculations to the intermediary within 90 days of the intermediary's notification to the hospital of the hospital's initial hospital-specific rate.

(2) The intermediary may also identify mathematic errors and initiate their correction during this period.

(3) The intermediary either makes an appropriate adjustment or notifies the hospital that no adjustment is warranted within 30 days of receipt of the hospital's report of an error.

(4) Corrections of timely-identified errors in calculations are effective with the first day of the hospital's first cost reporting period under the prospective payment system.

(e) *Successful appeal of the hospital-specific rate.* (1) The intermediary must adjust the hospital-specific rate to take into account a successful appeal under § 412.128.

(2) The adjustment is effective retroactively to the date of the intermediary's determination of the hospital-specific rate.

(f) *Correction of errors in the hospital-specific rate.* (1) The intermediary must initiate adjustments in the hospital-specific rate to correct for errors in the calculation based on information that was presented to the intermediary at the time the rate was set.

(2) The standard for intermediary review of the hospital-specific rate is the same as that for hospital appeals under § 412.128.

(3) The adjustment of the hospital-specific rate under this section is effective retroactively to the date of the intermediary's determination of the hospital-specific rate.

(g) *Prospective effect of the adjustments in allowable base-period costs*—(1) *Review of base-period notice of amount of program reimbursement.* The intermediary must adjust the hospital-specific rate to take into account any changes (both upward and downward) in allowable costs for the hospital's base period as the result of any of the following:

(i) A reopening and revision of the hospital's base-period notice of amount of program reimbursement under §§ 405.1885 through 405.1889 of this chapter.

(ii) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under § 405.1821 or § 405.1853 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iii) An affirmation, modification, or reversal of a Provider Reimbursement Review Board decision by the Administrator of HCFA under § 405.1875 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iv) An administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877 of this chapter that is final and no longer subject to review under applicable law or regulations by a higher reviewing authority, and that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(2) *Accounting for a revised number of discharges.* The intermediary must adjust the hospital-specific rate to take into account any revision in the number of discharges reported for the base period.

(3) *Adjustments of the hospital-specific rate.* Adjustments of the hospital-specific rate authorized under this paragraph (g)—

(i) Are effective with the first day of the hospital's first cost reporting period beginning on or after the date of the revision, order, finding, review decision, or granting of the exception, exemption, or adjustment; and

(ii) May not be used to recalculate the hospital-specific rate as determined for cost reporting periods beginning before the date of the revision, order, finding, review decision, or granting of the exception, exemption, or adjustment.

(4) *Retroactive adjustments.* The prospective adjustments to the hospital-specific rate authorized by this paragraph (g) neither limit nor support a retroactive adjustment under paragraph (e) of this section.

(h) *Unlawfully claimed payments.* The intermediary may adjust the hospital-specific rate to exclude payments that were unlawfully claimed as determined as a result of criminal conviction, imposition of a civil judgment under the False Claims Act (31 U.S.C. 3729–3731), or a proceeding for a civil money penalty, assessment, or exclusion from the Medicare program. In addition to adjusting the hospital-specific rate, HCFA recovers both the excess costs reimbursed for the base period and the additional amounts paid due to the inappropriate increase of the hospital-specific rate.

§ 412.76 [Removed]

5. Section 412.76 is removed.

C. Subpart H is amended as follows:

1. The table of contents for Subpart H is amended by adding the title of a new § 412.128 to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

Sec.

* * * * *

412.128 Administrative and judicial review of payment amounts.

* * * * *

2. A new § 412.128 is added to read as follows:

§ 412.128 Administrative and judicial review of payment amounts.

(a) *General rule.* To the extent authorized under section 1878 of the Act and Part 405, Subpart R of this chapter, a hospital may obtain administrative and judicial review of the amount of its payments under the prospective payment system. Review is available to a hospital only upon receipt of its notice of amount of program reimbursement following the close of the reporting period under the prospective payment system about which the hospital is dissatisfied with respect the amount of payment received. (Sections 405.1803 and 405.1807 of this chapter set forth the rules for intermediary determinations and notices of amounts of program reimbursement and the effect of those determinations.)

(b) *Standard of review of payment rates—(1) Bases for invalidating rates.* Consistently with the requirement for prospective rates, a federal or hospital-specific rate may be determined to be invalid in administrative or judicial review only to the extent that—(i) The proper procedure for calculating the rate was not followed;

(ii) A determination was unreasonable and clearly erroneous in light of the data or information available at the time that the determination was made; or

(iii) The intermediary applied legal principles that could not reasonably have been regarded as correct in light of the state of the law and applicable regulations at the time that the determination was made.

(2) *Issues not to be considered.* Issues based on data, information, or arguments that were not presented to the intermediary or to HCFA (with respect to aspects of the rates decided by HCFA) at the time that the rates were established cannot serve as a basis of invalidating the rates.

(3) *Remedy.* To the extent that the payment amounts are determined to be improper as specified under paragraph (b)(1) of this section, fully retroactive relief for the reporting period subject to the administrative or judicial review will be granted.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: February 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–13227 Filed 6–10–88; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 88–57, RM–5643]

Review of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network; and Petition for Modification of the Commission's Rules filed by the Electronic Industries Association

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for reply comments.

SUMMARY: The Commission partially granted a request for extension of time of the reply comment period in this proceeding concerning inside wiring connections to the telephone network. This action was taken as a result of a motion filed by the Telecommunications Industry Association (TIA).

DATES: The date for filing reply comments in this proceeding was extended to May 23, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick J. Donovan, Domestic Services Branch, Common Carrier Bureau, telephone (202) 634–1832.

SUPPLEMENTARY INFORMATION: This is a summary of a Motion for Extension of Time for filing reply comments to the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 88–57 and RM–5643 released March 8, 1988. A complete copy of that NPRM was published at 3 FCC Rcd 1120 (1988), and a summary was published in the Federal Register on March 28, 1988 [53 FR 9952].

Summary of Motion for Extension of Time:

The NPRM required that comments by interested parties be received at the Commission on or before April 29, and that reply comments be received on or before May 16, 1988. TIA requested an extension of time until June 13, 1988 or later for the filing of reply comments. By Order of the Common Carrier Bureau released May 12, 1988, an extension of one week (rather than the four weeks or more requested by TIA) was granted to promote complete responsive comments. Accordingly, parties were given until May 23, 1988 to file reply comments.

Gerald P. Vaughan,

Deputy Chief (Operations), Common Carrier Bureau, Federal Communications Commission.

[FR Doc. 88–13249 Filed 6–10–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–140; FCC 88–120]

FM Translator Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This *Notice of Inquiry (Notice)* initiates a study of the role of FM translators in the provision of broadcast radio service. The purpose of this action is to examine and, where necessary or appropriate, to revise our policy regarding the authorization and operation of FM translators consistent with our overall FM allocation plan. This *Notice* is issued in response to petitions for rule making filed by the National Association of Broadcasters (NAB) and several other parties that raise issues addressing FM translator matters.

DATES: Comments due August 15, 1988; replies due September 15, 1988.

DATES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission *Notice of Inquiry* adopted March 24, 1988, and released June 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Notice of Inquiry

1. The Commission initiated this inquiry in response to petitions for rule making filed by the National Association of Broadcasters (NAB) and several other parties that raise issues addressing FM translator matters. In its petition, the NAB requests further restrictions on FM translators to prevent their use as a means to expand the service areas of primary FM stations and tightened technical rules to prevent interference from translators to full-service stations. The other petitioning parties seek various forms of expansion of the current translator authority, including program origination authority.

2. The *Notice* indicates that the Commission's objective of this proceeding is to examine and, where necessary or appropriate, to revise its FM translator policies to ensure that they are consistent with its overall FM allocations plan. At the outset of this proceeding, the Commission emphasizes that it does not intend to change its longstanding view that the proper role of FM translators is to provide supplementary service to unserved and underserved areas, and to areas unable to receive satisfactory reception within the normal predicted service areas of primary stations. In the *Notice* the Commission states that it is aware of the concerns expressed by NAB and its supporters that translators may have an adverse competitive and technical impact on the service provided by full-service FM stations and the possible need to strengthen the existing limitations on translator operation. It also notes that the requests of the other petitioners to increase use of FM translator facilities to provide new service to underserved areas and to serve the interests of specialized audiences may be generally consistent with the goal of maximizing the number and diversity of mass media outlets. Thus, the *Notice* asks for public comment on all matters that may be relevant to the Commission's general FM translator policies and invites specific proposals for rules and regulations to implement any changes in these policies.

3. In addition, the Commission imposed a general freeze on the acceptance of application for new FM translators or major changes to existing FM translator stations pending final resolution of this proceeding. The freeze will not apply to applications filed prior to the adoption of this *Notice*. Such applications will continue to be processed in accordance with normal procedures. The Commission also is providing an exemption from the general freeze for new noncommercial, educational FM translators seeking assignment to the reserved frequency band in order to permit the implementation of the noncommercial signal delivery rule change adopted March 24, 1988, in the *Report and Order* in MM Docket 86–112, FCC 88–125.

4. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates specified in the Preamble.

All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

5. This *Notice of Inquiry* is issued pursuant to authority contained in sections 4(i) and 303 of the

Communications Act of 1934, as amended.

6. In addition *It Is Ordered* that the petition for waiver of § 74.1231 of these rules for translator station K285CS filed by John Davidson Craver *Is Denied* and that the petition for rule making of John La Tour *Is Denied* to the extent indicated herein. Further, *It is Ordered* that effective immediately as of the close of Commission business on the day of adoption of this *Notice of Inquiry*, and until further notice, the Commission *Will Not Accept* applications for new FM translator stations, except as provided herein above. Any translator application received by the Commission that is not acceptable due to this freeze will be returned, along with any accompanying filing fee, to the applicant.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
H. Walker Feaster, III,
Acting Secretary.

[FR Doc. 88-13250 Filed 6-10-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket 87-121]

Amendment To Permit Short-Spaced FM Station Assignments by Using Directional Antennas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making; extension of comment period.

SUMMARY: This action, requested by Greater Media, Inc., extends the comment and reply comment periods for the *Notice of Proposed Rule Making* in MM Docket 87-121. That Notice (53 FR 12776, April 19, 1988) proposes rules that would permit the use of short-spaced stations, and related matters.

DATES: Comments are due August 5, 1988 and replies due September 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632-9060.

SUPPLEMENTARY INFORMATION:

Order Granting Motion For Extension of Time For Filing Comments

Adopted: May 26, 1988.
Released: May 27, 1988.
By the Chief, Mass Media Bureau.

In the matter of amendment of Part 73 of the Commission's Rules to Permit Short-spaced FM Station assignments by using Directional Antennas, MM Docket No. 87-121.

1. On March 30, 1988, the Commission released a *Notice of Proposed Rule Making* ("*Notice*") in the captioned matter.[1] In the *Notice*, the Commission proposes amending the rules to permit use of short-spaced FM transmitting antenna sites in certain circumstances, use of FM directional antennas by short-spaced stations, and related matters. Comments on the proposal were to be filed on or before May 27, 1988, with replies on or before June 27, 1988. On May 19, 1988, Greater Media, Inc. ("Greater Media") filed a motion requesting that the comment period be extended to August 5, 1988.

2. In its motion, Greater Media appears concerned that the *Notice* expands the scope of this proceeding beyond what was originally contemplated in the initial *Notice of Inquiry* in this proceeding. Specifically, it believes that the proposals in the *Notice* seem to presage a transition to a demand-based allocation sytem which is premised upon contour protection, rather than mileage separations and a Table of Allotments. As evidence of this intention, it alleges that that the *Notices* proposes to introduce the use of directional antennas in the allocation process, to allow short-spaced stations to accept interference, and to reduce the contour protection standards applicable to Class B stations. In view of the complex nature of these purported proposals, Greater Media believes an extension in the comment period is necessary to allow it and other interested members of the industry to complete their review and formulate a satisfactory response.

3. While we agree with Greater Media's assessment of the complexities of the technical issues under study, we believe that Greater Media has overstated the intent of this proceeding regarding the Commission's fundamental channel allotment policy. Nonetheless, in light of the depth and complexity of the proposed interference protection standards, directional antenna issues, and other related technical matters raised in the *Notice*, we believe that additional time for filing comments is warranted, and that the public interest would be served by a grant of Greater Media's request.

4. Accordingly, *It Is Ordered* That the Motion for Extension of Comment and Reply Comment Dates filed by Greater Media, Inc. *Is Granted* and that the dates for filing comments and reply comments are *Extended* to August 5, 1988 and September 5, 1988, respectively.

5. This action is taken pursuant to authority found in sections 4(d) and 303(r) of the Communications Act of 1934, as amended and §§ 0.204(b), 0.283, 1.46 and 1.45 of the Commission's Rules.

Federal Communications Commission.
Alex D. Felker,
Chief, Mass Media Bureau.

[FR Doc. 88-13251 Filed 6-10-88; 8:45 am]
BILLING CODE 6712-01-M

[1] See FCC 88-73, 3 FCC Rcd 1820 (1988).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 80621-8121]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Preliminary Change in Total Allowable Catch and Bag Limits for King and Spanish Mackerel

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a notice of preliminary change in the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel and in the bag limits for the Atlantic group of king mackerel and the Gulf group of Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice proposes (1) for the Gulf migratory group of king mackerel, increases in TAC, allocations, and quotas; (2) for the Gulf magratory group of Spanish mackerel, increases in TAC, allocations, and bag limits; (3) for the Atlantic migratory group of king mackerel, reductions in TAC and allocations, and in the bag limit applicable to the southern area of the exclusive economic zone (EEZ) off Florida; and (4) for the Atlantic migratory group of Spanish mackerel, increases in TAC and allocations. The intended effects are to protect the mackerels while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

DATE: Writen comments must be received on or before June 23, 1988.

ADDRESS: Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FUTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642. Amendment 1 to the FMP was implemented September 22, 1985 (50 FR 34843, August 28, 1985). Amendment 2 was implemented June 30, 1987 (52 FR 23836, June 25, 1987).

In accordance with § 642.27, the Councils appointed an assessment group (Group) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on its 1988 report and recommendations, advice from the Mackerel Advisory Panel and the Scientific and Statistical Committee, and public input, the Councils recommended to the Director, Southeast Region, NMFS, changes to TACs, allocations, quotas, and bag limits.

Specifically, the Councils recommended that, effective with the fishing year beginning July 1, 1988, annual TACs be set at 3.4 million pounts (m. lbs.) for the Gulf magratory group of king mackerel and 5.0 m. lbs. for the Gulf magratory group of Spanish mackerel. The Councils further recommended that, effective for the fishing year which began April 1, 1988, annual TACs be set at 7.0 m. lbs. for the Atlantic migratory group of king mackerel and 4.0 m. lbs. for the Atlantic migratory group of Spanish mackerel. All TACs are within the range of acceptable biological catch determined by the Group.

Under the provisions of the FMP, the recreational and commercial fisheries are each allocated a fixed percentage of each TAC and the Gulf king mackerel commercial allocation is divided into quotas for eastern and western zones. Under the fixed percentages and the proposed TACs, these allocations and quotas would be as follows:

Species		(m. lbs.)	
Gulf King Mackerel—TAC	3.4		
Recreational allocation (68%)		2.31	
Commercial allocation (32%)		1.09	
Eastern zone (69% of 1.09)			0.75
Western zone (31% of 1.09)			0.34
Gulf Spanish Mackerel—TAC	5.0		
Recreational allocation (43%)		2.15	
Commercial allocation (57%)		2.85	
Atlantic King Mackerel—TAC	7.0		
Recreational allocation (62.9%)		4.40	
Commercial allocation (37.1%)		2.60	
Atlantic Spanish Mackerel—TAC	4.0		
Recreational allocation (24%)		0.95	
Commercial allocation (76%)		3.04	

The recreational fishery is regulated by both allocations and bag limits. The Councils recommended no changes in the bag limits applicable to the Gulf group of king mackerel and the Atlantic group of Spanish mackerel. For the Atlantic group of king mackerel, the Councils recommended no change in the three-fish bag limit in the northern area (the EEZ off North Carolina, South Carolina, and Georgia), but recommended a reduction in the bag limit in the southern area (the EEZ off Florida) to two fish per person per trip. For the Gulf group of Spanish mackerel, the Councils recommended increases in the bag limits in the eastern area (the EEZ off FLorida) to four fish per person per trip and in the western area (the EEZ off Alabama, Mississippi, Louisiana, and Texas) to ten fish per person per trip.

The recommended reduction of the bag limit from three to two Atlantic group king mackerel in the southern area is intended to decrease recreational catch in response to the lower TAC and maintain a recreational harvest throughout the season. A substantial portion of the allocation is historically taken in this high-population area where generally favorable fishing conditions allow increased fishing effort. The two-fish bag limit is also consistent with Florida's regulations. The recovering stock of Spanish mackerel in the Gulf allows an increase in the TAC and allocations. A bag limit increase to four fish is recommended in the eastern area where 87 percent of the recreational allocation was taken during the 1986-1987 fishing year. This bag limit is consistent with Florida's regulations. A bag limit increase to ten fish is recommended in the western area where fishing effort and availability of fish are lower and is compatible with recently implemented regulations in Alabama.

A minority report has been submitted by ten members of the Councils requesting that the Secretary reject the Gulf Spanish mackerel bag limits. The report contends that the variable bag limit of ten for Alabama through Texas and four for Florida is not supported by the record, that it fails to manage the stock as a unit throughout its range in violation of National Standard 3, and that it is not fair and equitable as required by National Standard 4. All the issues raised by the minority report and any others raised during the comment period will be considered prior to publication of a notice of final changes.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1988.
James W. Brennan,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

For the reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), introductory text	0.7	1.09
(a)(1)(i)	0.48	0.75
(a)(1)(ii)	0.22	0.34
(a)(2), first sentence	3.59	2.60
(b)(1)	1.5	2.31
(b)(2)	6.09	4.40
(c)(1)	1.42c	2.85
(c)(2)	2.36	3.04
(d)(1)	1.08	2.15
(d)(2)	0.74	0.96

3. In § 642.28, paragraphs (a)(2) and (3) are revised, paragraph (a)(4)(iii) is removed, and a new paragraph (a)(5) is added to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(2) *King mackerel Atlantic migratory group.* (i) Possessing two king mackerel per person per trip from the southern area.

(ii) Possessing three king mackerel per person per trip from the northern area.

(3) *Spanish mackerel Gulf migratory group.* (i) Possessing four Spanish mackerel per person per trip from the eastern area.

(ii) Possessing ten Spanish mackerel per person per trip from the western area.

* * * * *

(5) *Areas.* (i) For the purposes of paragraphs (a)(2) and (4) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraph (a)(3) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

* * * * *

[FR Doc. 88-13281 Filed 6-8-88; 4:53 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMITTEE ON FEDERAL PAY

Meeting

The Advisory Committee on Federal Pay announces that public discussions of the adjustment in Federal white-collar employee pay for October 1988 have been scheduled for Wednesday, July 27, in Suite 600, 1730 K Street NW. They will start at 1:30 p.m.

These discussions are intended to give organizations representing Federal employees or any interested government employees an opportunity to express their views regarding the Pay Agent's proposals. Those wishing to discuss the Agent's proposals with the Committee should notify the Committee by July 25. The telephone number is 653-6193. Written comments should also reach the Committee by July 25—Suite 205, 1730 K Street NW., Washington, DC 20006. Both written submissions and requests for an opportunity to discuss the issues should include a telephone number where the organization or official can be reached.

The Advisory Committee on Federal Pay, established as an independent agency § 5306 of Title 5, United States Code (Pub. L. 91-656, the Federal Pay Comparability Act), is charged with assisting the President in carrying out the policies of § 5301 of Title 5, United States Code. The Committee's fundamental obligation is to present the President with an independent recommendation on Federal pay for the 1.4 million white-collar workers and other employees whose pay is linked to the General Schedule. Section 5306 of Title 5 requires the Committee to make findings and recommendations to the President on the annual adjustment in Federal pay after considering the written views of employee organizations, the President's Agent, other officials of the Government of the United States, and such experts as the Committee may consult.

Lucretia Dewey Tanner,
Executive Director.

[FR Doc. 88-13046 Filed 6-10-88; 8:45 am]

BILLING CODE 6325-43-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-055]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Insect Resistant Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Sandoz Crop Protection Corporation to allow the field testing in the State of North Carolina of genetically engineered tobacco plants, designed to be resistant to lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7769. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 88-038-01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22899—22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Sandoz Crop Protection Corporation of Des Plaines, Illinois, has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be resistant to lepidopteran insects. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Sandoz application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant

impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Sandoz Crop Protection Corporation, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for insect resistance has been inserted into the tobacco chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field test, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible plants with which the experimental tobacco plants could cross-pollinate.

2. Neither the insect resistant gene itself, nor its gene product confers on tobacco any plant pest characteristics.

3. The microorganism from which the insect resistant gene was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant.

4. The vector used to transfer the insect resistance gene to tobacco plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

5. The vector agent, the bacterum that was used to deliver the vector DNA and the insect resistant gene into the plant cells, has been shown to be eliminated and no longer associated with the transformed tobacco plants.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the tobacco genome (i.e., chromosomal DNA). The vector does not survive in the transformed plant. No horizontal movement mechanism is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organisms.

7. The toxic polypeptide produced by the insect resistant gene is called delta-endotoxin. Upon ingestion, the toxin kills only lepidopteran insects. Delta-endotoxin is not toxic to most other insects, wild or domestic birds, fish or mammals.

8. The field test site is 73 feet wide by 200 feet long and is physically isolated from many species of wild plants and animals by irrigation canals and a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40; Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 8th day of June, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–13225 Filed 6–10–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Anchovy Advisory Subpanel, Anchovy Plan Development Team, Scientific and Statistical Committee Anchovy Subgroup, and the Council's Groundfish Fishery Management Plan (FMP) Rewrite Oversight Group will convene public meetings as follows:

Anchovy Advisory Subpanel, Anchovy Plan Development Team, and Scientific and Statistical Committee Anchovy Subgroup—will convene on June 14, 1988, at 10:30 a.m., at the National Marine Fisheries Service, Southwest Regional Office, 300 South Ferry Street, Terminal Island, CA, to discuss performance of the 1987–1988 anchovy fishery, preliminary 1988 spawning biomass assessment, and preliminary 1988–1989 quotas. Recommendations arising from this meeting will be presented to the Pacific Council at its July 13–14, 1988, meeting in Portland, OR, for implementation.

Groundfish FMP Rewrite Oversight Group—will convene June 14, 1988, at 8 a.m., at the Clarion Hotel, Bayshore Room, 401 East Millbrae Avenue, Millbrae, CA, to continue development of the issues and alternative management solutions which comprise Amendment 4 to the FMP. Major issues include species managed by the FMP, procedures for developing and specifying harvest levels and management measures, expediting the experimental fishing permit process, and recreational bag limits for lingcod. The public meeting will adjourn on June 15 at 5 p.m. For further information contact Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: May 26, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–13234 Filed 6–10–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 13, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 25, 1988, the Committee for purchase from the Blind and Other Severely Handicapped published notices (53 FR 9798) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46928).

Comments were received from the current contractor for 2 of the 12 guide file card sets under consideration. He questioned the capability of the workshop to produce those items due to the complexity of the manufacturing process. He indicated that their addition to the Procurement List would cause severe impact on his firm.

Capability of Workshop To Produce

The workshop is the current competitive Government contractor for 8 of the 12 guide file card sets under consideration. The procuring activity waived the inspection of the workshop on the basis that it is currently producing eight of the items under a competitive contract. The National Industries for the Blind has inspected the workshop and verified that it is capable of producing the guide file card sets in compliance with the Government's requirements. Based on the preceding, the workshop is determined capable of producing the guide file card sets in compliance with the Governments' specification and delivery requirements.

Impact

The commenter related that the loss to his firm as a result of the addition would represent about 38.5% of the card file sales of his firm and 3% of the total output of the plant that manufactures the item. He commented further that the addition would result in the loss of 9 jobs in an area of high unemployment. He stated that, if this proposal is approved, the cumulative value of additions to the Procurement List would represent a loss of about $1.5 million by his firm.

The commenter's firm is a division of a corporation which has annual sales of over $154 million. The firm's contract for these items represents about 0.04% of those sales. Taking into consideration the cumulative impact of this action when combined with recent additions to the Procurement List for which that firm was the current contractor, the value represents about 0.7% of the parent firm's sales and 1.3% of the annual sales of the affected division. This is not considered serious impact.

Relative to the comment on the loss of jobs as a result of this action, the Committee recognizes that a significant loss of business may require a firm to lay off or reassign the employees who were formerly producing the commodity involved. However, the primary purpose of the Committee's program is to create job opportunities for blind and severely handicapped individuals who are unable because of their disabilities to obtain competitive employment and to assist in the rehabilitation of those individuals through work (House Report No. 92–228, May 25, 1971). This action will create employment for blind individuals in fulfillment of that purpose.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under Pub. L. 92–28, 85 Stat. 77 (1971) (41 U.S.C. 46–48c), and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1988:

Card Set, Guide File
7530–00–249–5989
7530–00–281–3801
7530–00–281–3804
7530–00–281–3813
7530–00–281–3818
7530–00–281–3819
7530–00–574–7172
7530–00–861–1263
7530–00–861–1270
7530–00–861–1272
7530–00–861–1275
7530–01–175–1553

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88–13235 Filed 6–10–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held 13 July to 15 July 1988, from 9:00 a.m. to 5:00 p.m. at the (COMPRI) Hotel, 2700 Eisenhower Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Kee, IIT Research Institute, 4600 Forbes Blvd., Lanham, MD 20706 (703) 685–1477.

June 8, 1988.

L.M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 88–13255 Filed 6–10–88; 8:45 am]

BILLING CODE 3810–01–M

DIA Scientific Advisory Committee

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of § 10 of Pub. L. 92–463, as amended by § 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been changed as follows: the 16 June 1988 meeting has been rescheduled to the date listed below.

DATE: July 12 1988, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in § 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988

[FR Doc. 88–13203 Filed 6–10–88; 8:45 am]

BILLING CODE 3810–01–M

DIA Scientific Advisory Committee; Tactical Intelligence Information Handling Systems Panel

AGENCY: Defense Intelligence Scientific Advisory Committee.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Scientific Advisory Committee's Tactical Intelligence Information Handling Systems Panel, scheduled for 21 June 1988, that was announced in the Federal Register on Wednesday, 24 February 1988, Vol. 53, No. 36, 5443 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatfield, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988.

[FR Doc. 88–13204 Filed 6–10–88; 8:45 am]

BILLING CODE 3810–01–M

DIA Scientific Advisory Committee

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of § 10 of Pub. L. 92-463, as amended by § 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been changed as follows: The 15 June 1988 meeting has been rescheduled to the date listed below.

DATE: July 13, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in § 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 7, 1988.

[FR Doc. 88-13306 Filed 6-13-88; 8:45 am]

BILLING CODE 3810-01-M

[CFDA No.: 84.117Q]

Notice Inviting Application for New Awards Under the Research and Development Centers Program for Fiscal Year 1989

Purpose: To support a research and development center to study citizenship and character education.

Deadline for Transmittal of Applications: September 16, 1988.

Applications Available: June 17, 1988.

Available Funds: The Department estimates that $500,000 will be available for this competition in fiscal year 1989. However, the actual level of funding is contingent upon final congressional action.

Estimated size of Awards: $500,000.

Number of Awards: 1.

Project Period: Up to 5 years.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs as proposed to be codified in 34 CFR Parts 706 and 708. Applications will be accepted based on the notice of proposed rulemaking published in the **Federal Register** on March 22, 1988 (53 FR 9408). If any substantive changes are made in the final regulations for these programs, applicants will be given an opportunity to revise or resubmit their applications. (b) The Notice of Proposed Biennial Research Priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625). Applications will be accepted based on the Notice of Proposed Biennial Research Priorities. If any substantial changes affecting the priority chosen for this competition are made in the final biennial research priorities, applicants will be given an opportunity to revise or resubmit their applications. (c) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Priorities: The Secretary has chosen from the notice of proposed biennial research priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625) the following as an absolute priority: Citizenship and Character Education. This priority includes understanding the processes of citizenship and character education, concentrating on what is taught and learned in schools and communities, how learning takes place, and determining how education may affect adult participation in civic life.

Within this absolute priority the Secretary invites applications proposing research and related activities designed to provide information to improve the development of those qualities necessary for responsible citizenship through the teaching of history and civics, and to investigate the relationship between student involvement in voluntary associations and adult civic participation. However, applications that meet these invitational priorities will not receive an absolute or competitive advantage over applications within the absolute priority that do not meet these invitational priorities.

Weighting for Selection Criteria: The program proposed regulations at 34 CFR 706.20(e) authorize the Secretary to distribute an additional 10 points among the criteria described in the regulations at § 706.11 to bring the total to a maximum of 100 points. The Secretary will distribute the reserve 10 points as follows: 5 additional points to the criterion at § 706.11(a) (Mission and strategy), bringing the total for this criterion to 20 points; and 5 additional points to the criterion at § 706.11(d) (Technical soundness), bringing the total for this criterion to 25 points.

For Applications Or Information Contact: Dr. Ivor Pritchard, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, Mail Stop 1666, 555 New Jersey Avenue NW., Washington, DC 20208-1666. Telephone Number (202) 357-6223.

There will be a briefing for prospective applicants on July 8, 1988 from 1:00 p.m. to 3:00 p.m. in Room 326, 555 New Jersey Avenue NW., Washington, DC 20208.

Program Authority: 20 U.S.C. 1221e.

Dated: June 7, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-13170 Filed 6-10-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission

June 7, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application. Extension of Time to Complete Construction.

b. Project No.: 2986-007.

c. Date filed: March 28, 1988.

d. Applicant. Massachusetts Bay Power Company.

e. Name of Project: Centennial Island Project.

f. Location: On the Concord River, City of Lowell, Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Kenneth M. Segal, Massachusetts Bay Power Company, P.O. Box 188, Lowell, MA 01853.
Jerome A. Olson, 188 Rea Street, Lowell, MA 01852.

i. FERC Contact: Hossein Ildari, (202) 376-9000.

j. Comment Date: July 7, 1988.

k. Description of Project: On September 26, 1961, an exemption from licensing was issued by the Commission for the subject project. By orders dated July 19, 1985, October 24, 1986, and October 16, 1987, the deadline for completing project construction was extended to September 28, 1988, September 28, 1987, and March 31, 1988. The applicant is now seeking an 18-month extension of time, to September 30, 1989, to complete construction. This public notice is given in addition to the public meeting which was held in the City of Lowell on May 23, 1988, concerning the same subject.

l. Comments Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR, Part 385, Subpart B. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date. Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number. Any of the above named documents must be filed by providing an original and fourteen copies as required by the Commission's regulations to: Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Hossein Ildari, Federal Energy Regulatory Commission, OHL, DPCA, Room 307 RB, at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified herein.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13200 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-231-001]

James River Paper Co.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

June 7, 1988.

On May 27, 1988, James River Paper Company (Applicant), of 100 Island Avenue, Parchment, Michigan, 49004, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The original application was filed on March 1, 1988 and granted on May 4, 1988 (43 FERC § 62,138). The recertification is requested due to a proposed improvement in the operation of the facility that will increase its efficiency and will increase the net electric power production capacity to 123.9 MW. All other facility's characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 20 days after the date of publication of this notice and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13196 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-451-000, et al.]

Northeast U.S. Pipeline Projects; Settlement Discussions

June 7, 1988.

On June 3, 1988, following the Market Technical Conference concerning the open-season applications, the parties met to discuss settlement and consider joint venture proposals to provide new gas service to the Northeast United States. At the end of these discussions, there was consensus that further Settlement Discussions should be scheduled. Accordingly there will be an additional opportunity to discuss settlement on June 30, 1988, at 10:00 a.m., in a room to be announced at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Parties are again encouraged to develop proposals that simplify and consolidate various projects and eliminate any unnecessary or duplicative projects. In order to ensure that the discussions are productive, parties are requested to submit a copy of any settlement proposal that will be addressed to other project sponsors and interested parties and the designated staff contact by June 23.

This will enable parties to review settlement proposals prior to the discussions and will result in meaningful comment and possibly in counterproposals.

FOR FURTHER INFORMATION CONTACT: Lee A. Alexander, Office of the General Counsel, GC-11.3, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9176.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13197 Filed 6-10-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3396-3]

Alternate Concentration Limit Guidance for Hazardous Waste Management Facilities; Part II; Case Studies

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Guidance Document; Case Studies.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of an interim final guidance manual entitled *Alternate Concentration Limit Guidance: Case Studies.* These case studies provide guidance to RCRA facility permit applicants and writers concerning the establishment of Alternate Concentration Limits (ACLs) and they constitute Part II of the ACL Guidance Document. They are designed to supplement Part I of the ACL guidance, *Policy and Information Requirements.* An ACL is one of three possible hazardous constituent concentration limits that can be used to establish the ground water protection standard in the RCRA permit. The other two possible concentration limits are background levels of the hazardous constituents, or maximum concentration levels listed in 40 CFR Part 264 Subpart F. To obtain an ACL, a permit applicant must demonstrate that the hazardous constituents detected in the ground water will not pose a substantial present or potential hazard to human health or the environment at the ACL levels. ACLs are granted through the permit process under 40 CFR Parts 264 and 270 and are established in the context of the facility ground-water protection standard. The 19 factors, or criteria, that are used to evaluate ACL requests are listed in 40 CFR 264.94(b) of the regulation. Detailed information on each of these criteria is not required in every ACL demonstration because each demonstration requires different types

and amounts of information, depending on the site-specific characteristics. These case studies are intended to assist Regional and State personnel in exercising the discretion conferred by regulation in evaluating applications for ACLs submitted pursuant to 40 CFR 264.94. Since the case studies provide examples of data that actual ACL demonstrations may contain, they should also aid ACL applicants in preparing demonstrations. A summary of each of the case studies follows:

Case Study 1 is an example of an ACL application where contamination of ground water at a facility has been detected after permit issuance. In this example, the ground water under the facility is useable as a drinking water source. Since contamination has just been detected, no attenuation of contaminants in the ground water was assumed and the ACLs were derived directly from the allowable exposure concentrations.

Case Study 2 is an example of an ACL application where ground water under the facility is useable as a drinking water source and contamination is confined to the facility property. In this case, attenuation between the waste management unit (the point of compliance) and the leading edge of the contamination was accounted for. The allowable exposure levels were established at the edge of the contamination and were used to calculate the ACLs back at the point of compliance.

Case Study 3a is an example of an ACL application where contaminated ground water has migrated off the facility property. In this example, ground water under the facility is naturally useable as a drinking water source. Since the waste management unit is adjacent to the facility boundary, no attenuation was accounted for in deriving the ACLs.

Case Study 3b is also an example of an ACL application where contamination has migrated off the facility property. The ground water is potentially useable as a drinking water source; however, use is not expected in the near term. Because the facility is closing, no attenuation of the contaminants was assumed and the ACLs were derived directly from the allowable exposure concentrations.

Case Study 4 is an example of an ACL application where contaminated ground water discharges to a river. In this example, ground water under the facility is useable and the river sustains a sport fishery. None of the contaminants have been detected at statistically significant levels in the surface water. The ACLs were derived from allowable surface water exposure levels and current levels found in the ground water.

Case Study 5 is an example of an ACL application where contaminated ground water has migrated off the facility property. In this example ground water under the facility is highly saline. The proposed ACLs rely on fate and transport considerations and were based on the current levels of contamination in the ground water.

DATE: EPA will accept public comments until August 12, 1988. All comments must be postmarked on or before this date.

ADDRESSES: Three copies of written comments should be submitted to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 and identified as follows: F-88-ACLA-FFFF. Copies of the document entitled, *Alternate Concentration Limit Guidance: Case Studies* are available for viewing at all EPA Libraries and in the EPA RCRA Docket (Sub-basement), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from, 9:00 a.m. to 4:00 p.m., Monday through Friday, by appointment only. The Docket will be closed on all Federal holidays. Appointments can be made by calling (202) 475-9327. Copies cost 15 cents per page. In addition, these documents are available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: Alternate Concentration Limit Guidance: Case Studies (NTIS #PB88-214-267).

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000. For technical information contact Jerry Garman, (202) 382-4654.

Dated: May 13, 1988.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-13214 Filed 6-10-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59261; FRL-3396-6]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments by:

T 88-13, June 10, 1988.

T 88-14, June 22, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-59261)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 88-13

Close of Review Period. June 24, 1988.

Importer. Confidential.

Chemical. (G) Organic dye.

Use/Import. (G) Electrostatic imaging toner additive. Import range: Confidential.

T 88-14

Close of Review Period. July 6, 1988.

Manufacturer. Confidential.

Chemical. (G) Acid ester.

Use-Production. (G) Dispersive use. Prod. range: Confidential.

Dated: June 7, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-13211 Filed 6-9-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3396-2]

Sole Source Aquifer Determination for the Cortland-Homer-Preble Aquifer System, Cortland and Onondaga Counties, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the Cortland County Legislature, notice is hereby given that the Region II Regional Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Cortland-Homer-Preble Aquifer System (CHPA), underlying portions of Cortland and Onondaga Counties, New York, satisfies all determination criteria as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. Satisfying the designation criteria resulted in the following findings: the CHPA is the sole source of drinking water for the aquifer service area; there are no viable alternative drinking water sources of sufficient supply; and, if contamination were to occur, it would pose a significant hazard to the public health. As a result of this action, all Federal financially assisted projects proposed for the area will be subject to EPA review to ensure that these projects are designed and constructed such that they do not bring about, or in any way contribute to, conditions creating a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on June 27, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Office of Ground Water Management, Room 842, 26 Federal Plaza, New York, NY 10278. The designation petition submitted may also be inspected during normal business hours at the Cortland County Health Department, Cortland County Office Building, 60 Central Avenue, Cortland, NY 13045.

FOR FURTHER INFORMATION CONTACT: John S. Malleck, Chief, Office of Ground Water Management, EPA Region II, 26 Federal Plaza, Room 842, New York, NY 10278, (212) 264-5635.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e), Pub. L. 93-523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of the determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On September 15, 1987, EPA received a petition from the Cortland County Legislature requesting designation of the CHPA as a sole source aquifer. EPA determined that the petition, after receipt and review of additional information requested on October 28, 1987, was complete. A public hearing was held on March 3, 1988 at the Cortland County Office Building, Cortland, NY, in accordance with all applicable notification and procedural requirements. All comments received during the comment period were in favor of designation.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the technical review process for designating an area under section 1424(e) were: (1) That the aquifer is the sole or principal source (more than 50 percent) of drinking water for the defined aquifer service area, and that the volume of water available from all alternate sources is insufficient to replace the petitioned aquifer; and (2) that contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the CHPA as a sole source aquifer:

1. The CHPA is the sole source of drinking water to approximately 35,000 residents of the defined aquifer service area, which includes the City of Cortland, the Towns of Cortlandville, Homer, Preble, and Scott, and the Villages of Homer and McGraw.

2. There are no reasonable alternative sources capable of supplying a sufficient quantity of drinking water to the population served by the petitioned aquifer system.

3. Although all public water supply wells meet or exceed the appropriate Federal and State drinking water standards, there have been several cases of private well contamination by organic solvents. In addition, the CPHA is considered highly vulnerable to contamination, due to high soil permeability and shallow depth to ground water. Potential sources of contamination include transportation routes, septic systems, highway, rural and urban run-off, commercial and industrial facilities, and agricultural practices.

III. Description of the CHPA, Designated Area and Project Review Area

The CHPA underlines the northwestern portion of Cortland County and the extreme southern portion of Onondaga County, New York. The aquifer system is delineated by the glacial outwash and stratified drift deposits filling five valleys which meet in the vicinity of the City of Cortland, and covers approximately 25 square miles. The designated area is coincident with that defined by the New York State Departments of Environmental Conservation (NYSDEC) and Health as a Primary Water Supply Aquifer.

The aquifer service area is coincident with the designated area. It includes approximately 35,000 residents in the City of Cortland, the Towns of Cortlandville, Homer, Preble, and Scott, and the Villages of Homer and McGraw.

The recharge area for the CHPA is the designated valleys and the upland areas that drain into them. The streamflow source zone is defined as the upstream area of losing streams which flow into the recharge area. In the Cortland-Homer-Preble area, the streamflow source zone is delineated by the boundaries of the Tioughnioga River drainage basin upstream of the southern end of the designated area (near Blodgett Mills, NY).

Because contaminants introduced in any of these areas have the potential to affect the CHPA, the project review area is defined to include the aquifer service area, the recharge area and the streamflow source zone.

A map delineating the designated areas is available, and may be obtained by contacting the person listed previously.

IV. Information Utilized in Determination

The information utilized in this determination included petition submitted by the Cortland County Legislature, various U.S. Geological Survey and New York State reports submitted with the petition, information contained in EPA files, and written and verbal comments from the public. These materials are available to the public and may be inspected during normal business hours at the address listed previously.

V. Project Review

Publication of this determination requires that EPA review proposed projects with Federal financial assistance in order to ensure that such projects do not have the potential to contaminate the CHPA through its recharge zone so as to create a significant hazard to public health. In many cases, these projects may also be analyzed in an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(c). All EIS's as well as any other proposed Federal actions affecting an EPA program, are required by Federal law (under the so-called "NEPA/309" process) to be reviewed and commented upon by the EPA Administrator.

In order to streamline EPA review of the possible environmental impacts on designated sole source aquifers, when an action is to be analyzed in an EIS, the two reviews will be consolidated and both authorities cited. The EPA review under section 1424(e) will be therefore be included in the EPA review of the EIS (under NEPA).

VI. Summary and Discussion of Public Comment

The public comments received expressed strong support for the designation of the CHPA, as petitioned, as a Sole Source Aquifer. Eleven persons, representing local governments and environmental organizations, presented statements at the public hearing. Two written statements in favor of designation were received.

In addition, written comments were received from NYSDEC. These comments were in favor of the designation, but expressed concern that the northern portion of the aquifer system (that portion in Onondaga County), not included in the petition, would not be designated.

The response to NYSDEC's concern is that, whenever possible, the boundaries of sole source aquifers are based on hydrogeologic criteria rather than political boundaries, because contamination of a portion of the aquifer can affect the downgradient portion of the aquifer. The area recommended for designation is consistent with that requested by NYSDEC.

VII. Summary

Today's action affects the CHPA, located in Cortland and Onondaga Counties, New York. Projects with Federal financial assistance proposed for portions of Cortland, Onondaga and Madison Counties will be reviewed to ensure that necessary ground water protection measures are incorporated into them.

Dated: June 3, 1988.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 88-13215 Filed 6-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

June 7, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0107.

Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information.

Form No.: FCC 405-A.

The approval on form FCC 405-A has been extended through April 30, 1991. The June 1987 edition with a previous expiration date of April 30, 1988 will remain in use until updated forms are available.

OMB No.: 3060-0134.

Title: Application for Renewal of Radio Station License.

Form No.: FCC 574-R.

The approval on form FCC 574-R has been extended through April 30, 1991. The September 1987 edition with a previous expiration date of April 30, 1988 will remain in use until updated forms are available.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-13252 Filed 6-10-88; 8:45 am]

BILLING CODE 6712-01-M

Applications Designated for Hearing; Charlottesville, VA et al.

1. The Common Carrier Bureau, under delegated authority, has designated for hearing cellular radio system applications filed during May 23-26, 1988, for Metropolitan Statistical Areas (MSAs) or markets 241-305. These markets include Charlottesville, Virginia; Sheboygan, Wisconsin; Kokomo, Indiana; Columbia, Missouri; Burlington, North Carolina; Midland, Texas; Pascagoula, Mississippi; Burlington, Vermont; and Grand Forks, North Dakota.

2. Substantial and material questions of fact have been raised against these applications which require resolution in a hearing. Peter Lewis and his firm, Lewis Telecom, spent a considerable amount of money in the preparation, marketing and filing of approximately 8,600 applications in twenty markets. The selling price of $3 per application left him with a loss which he estimates at approximately $90,000. Lewis contends that he sustained the loss in the hope that several of his customers would win a lottery and retain Lewis as a consultant. A hearing is necessary to determine whether Peter Lewis or Lewis Telecom had control over the applicants or an ownership interest in their applications. The fact that all of Lewis' customers declined to join settlement groups raises questions as to whether they were acting independently and were in control of their applications. The hearing will also determine whether the applicants were the real parties in interest behind their applications.

3. There may also have been an effort to deceive the Commission by withholding information of a connection between Lewis and the applicants. A misrepresentation issue has therefore been specified. Finally, it also appears that the applicants saw only an application package and not their own completed applications when they signed the certifications and Form 401. Therefore, it is possible the certification may have been false.

4. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the following applications have been designed for hearing:

Applicant	MSA	File No.
Theodore M. Jones	Charlottesville, Virginia	4768a-CL-P-256-A-86
Charles N. Smith III	Sheboygan, Wisconsin	4264a-CL-P-277-A-86
Paula M. Aloi	Kokomo,Indiana	79231-CL-P-271-A-86
Eunice E. Singleton	Columbia, Missouri	78156-CL-P-276-A-86
James C. Dial	Burlington, North Carolina	66719-CL-P-250-A-86
Cedric Riggins	Midland, Texas	86843-CL-P-295-A-86
Robert L. Lambert	Pascagoula, Mississippi	78630-CL-P-252-A-86
Lucille B. Tompkins	Burlington, Vermont	3668a-CL-P-248-A-86

5. James R. Crosby, the tentative selectee in Grand Forks, North Dakota obtained his application from Lewis Telecom. This application was inadvertently granted. The issues designated for hearing are applicable to this permittee. Section 312(a) of the Communications Act states that the Commission may revoke any station license or construction permit because of conditions coming to the attention of the Commission which would warrant refusing to grant a license or permit on an original application. 47 U.S.C. section 312 (a)(2). Accordingly, the Bureau ordered that James R. Crosby show cause why its license or station KNKA-571 should not be revoked.

Applicant	MSA	File No.
James R. Crosby	Grand Forks, North Dakota	76237-CL-P-276-A-86

6. In order to avoid duplicative proceedings if the winning applicants are disqualified and other individuals whose applications appear to have been prepared by Lewis succeed to the top spot, the Bureau also made the following second, third and fourth ranked applicants parties to the proceeding:

Applicant	MSA	File No.
Stephen M. Schmidt	Charlottesville, Virginia	85839-CL-P-256-A-86
Maben D. Herring	Charlottesville, Virginia	78851-CL-P-256-A-86
Clarence D. Ramsey	Grand Forks, North Dakota	70017-CL-P-276-A-86
Agnes A. Allgire	Grand Forks, North Dakota	75638-CL-P-276-A-86
Lowell V. Waddell, Jr	Sheboygan, Wisconsin	85835-CL-P-277-A-86
Daniel W. O'Connell	Sheboygan, Wisconsin	78061-CL-P-277-A-86
Ronald W. Hawkins	Sheboygan, Wisconsin	76212-CL-P-277-A-86
Willie T. Robertson	Columbia, Missouri	85305-CL-P-276-A-86
Agnes M. Poindexter	Midland, Texas	79381-CL-P-295-A-86
Michael deH. Newsom	Midland, Texas	86145-CL-P-295-A-86
Clyde E. Howard III	Burlington, Vermont	75767-CL-P-248-A-86

7. Peter Lewis and Lewis Telecom were also made parties to this proceeding.

8. Pursuant to section 309(e) of the Communications Act of 1934, these applications have been designated for hearing in a consolidated proceeding to resolve the following issues:

(1) To determine all the facts and circumstances surrounding the preparation and filing of the capitoned applications and amendments.

(2) To determine the facts and circumstances surrounding any relationships, agreements or understandings, express or implied, between Lewis and the applicants.

(3) Based on the evidence adduced above whether:

(a) The applicants and permittee are the real parties in interest behind their applications.

(b) The applicants and permittee complied with the § 22.921(b).

(c) The applicants and permittee have misrepresented material facts to the Commission or have lacked candor.

(4) To determine the facts and circumstances surrounding the signing of the certification by each applicant.

(5) Based on the evidence adduced under issue (4) whether the applicants complied with § 22.913 of the Rules.

(6) To determine whether Lucille B. Tompkins will comply with the condition of her loan commitment requiring her to utilize a particular management company.

(7) Based on the evidence adduced under issue (6) whether Lucille B. Tompkins is financially qualified.

(8) Based on all the above whether a grant of the pending applications would be in the public interest, convenience and necessity.

(9) Based on all the above whether James R. Crosby's construction permit should be revoked.

9. A copy of the complete Hearing Designation Order in this proceeding (CC Docket No. 88-278) is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc. 2100 M. Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Federal Communications Commission.

Gerald Vaughan,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 88 13254 Filed 6-10-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

BEST COPY AVAILABLE

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010636-041.

Title: U.S. Atlantic-North Europe Conference ("Conference").

Parties: Atlantic Container Line, B.V.; Dart-ML Limited; Hapag-Lloyd AG; Sea-Land Service, Inc.; A.P. Moller-Maersk Line; Gulf Container Line (GCL), B.V.; P&O Containers (TFL) Limited; Compagnie Generale Maritime (CGM); Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment describes the neutral body self-policing authority of the membership. In particular, it would set forth the rules applicable to those members who are not parties to the North Europe Compliance Agreement ("Compliance Agreement"). Those non-participatory members shall be policed under the rules and procedures set forth in the Conference Agreement rather than those of the Compliance Agreement (FMC No. 203-011180). The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: June 8, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-13264 Filed 6-10-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007690-022.

Title: India, Pakistan, Bangladesh, Ceylon & Burma Outward Freight Conference.

Parties: The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 202-008050-016.

Title: Sri Lanka/U.S.A. Conference.

Parties: The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 202-006650-015.

Title: Calcutta, East Coast of India and Bangladesh/U.S.A. Conference Agreement.

Parties: The Bangladesh Shipping Corporation; The Scindia Steam Navigation Co., Ltd.; The Shipping Corporation of India, Ltd.; Waterman Isthmian Line.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 203-011197.

Title: Japan Line, Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.; Planning and Implementation Agreement.

Parties: Japan Line, Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would permit the parties to discuss, plan and establish a joint service between ports and points in the United States (including Hawaii and Alaska), and ports and points in Canada, New Mexico, the Far East, South and Southeast Asia, India, Pakistan, Bangladesh, the Persian Gulf, Australia, and New Zealand. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: June 8, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-13188 Filed 6-10-88; 8:45 am]

BILLING CODE 6730-01-M

Inquiry on Tariff Automation; Delay in Issuance of Request for Proposals

June 6, 1988.

On May 23, 1988, the Federal Maritime Commission announced that it has delayed release of the Commission's final Request for Proposals (RFP) on the Automated Tariff Filing and Information System (ATFI), originally scheduled on June 10, 1988. Issues raised by the House Subcommittee on Information, Justice, and Agriculture (Subcommittee) and by the Office of Management and Budget (OMB) have prompted this delay.

The Commission remains committed to tariff automation and plans to issue an RFP by August or September, 1988. The Commission intends to reassess the proposed ATFI system in the interim.

The concern expressed by the Subcommittee and OMB center on the "remote retrieval" feature in the proposed system. This feature would allow the shipping public to dial for access to an individual tariff of a carrier or conference and would give access to one tariff at a time. However, it would not provide for sophisticated searches.

Questions concerning the "remote retrieval" feature are based on perceptions that the Commission would compete with existing or intended value-added services offered by private sector firms. The Commission, however, does not intend to provide these value-added services.

The eventual system to be adopted by the Commission will require congressional acceptance through the authorization and appropriations process.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-13292 Filed 6-10-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

June 7, 1988.

Background. Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Proposal to approve under OMB delegated authority the extension, without revision, off the following report:

Report title: Quarterly Report of Condition for a New York State Investment Company and its Domestic Subsidiaries.

Agency form number: FR 2886a.

OMB Docket Number: 7100-0207.

Frequency: Quarterly.

Reporters: New York State Investment Companies.

Annual reporting hours: 864.

Small businesses are not affected.

General description of report:

This report is authorized by Federal law [12 U.S.C. 3105 (b)(1) and 353 et seq.] and by state law [New York State Banking law 513]. Data from Schedule M are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides data used by the New York State Banking Department for supervisory purposes, and by the Federal Reserve in constructing various statistical series, including money stock, bank credit, assets and liabilities of domestically chartered and foreign-related banking institutions, nondeposit sources of funds for commercial banks, and flow of funds accounts.

Board of Governors of the Federal Reserve System, June 7, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13185 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

Atlas Towing Co., Inc. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Atlas Towing Company, Inc.*, Parkersburg, West Virginia; to acquire 5.9 percent of the voting shares of Wesbanco, Inc., Wheeling, West Virginia, and thereby indirectly acquire Wheeling Dollar Bank, Wheeling, West Virginia; New Martinsville Bank, New Martinsville, West Virginia; First-Tyler Bank & Trust Co., Sistersville, West Virginia, Brooke National Bank, Wellsburg, West Virginia; Bank of Sissonville, Sissonville, West Virginia; First National & Trust Co., Wheeling, West Virginia; South Hills Bank, Charleston, West Virginia; Wirt County Bank, Elizabeth, West Virginia; and Mountain State Bank, Parkersburg, West Virginia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Johnson Heritage Bancorp, Ltd.*, Racine, Wisconsin, formerly Heritage Racine Corporation, to acquire 100 percent of the voting shares of Community National Bank, Mukwonago, Wisconsin.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Norwest Bank Nebraska Lincoln, Lincoln, Nebraska, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-13182 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

Delhi Bancshares, Inc., Correction

This notice corrects a previous Federal Register notice (FR Doc. 88-12464) published at page 20367 of the issue for Friday, June 3, 1988.

Under the Federal Reserve Bank of Chicago, the entry for Delhi Bancshares, Inc. is revised to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Delhi Bancshares, Inc.*, Traer, Iowa; to acquire Manchester Insurance Service, Manchester, Iowa; and thereby egage in property and casualty insurance, accident and health insurance, crop and hail insurance, and life insurance and annuly products, pursuant to §§ 225.25(b)(8)(iii) and 225.25(b)(8)(vi) of the Board's Regulation Y.

Comments on this application must be received by June 24, 1988.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-13186 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

Michigan National Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Michigan National Corporation*, Farmington Hills, Michigan; to engage *de novo* through its subsidiary, Independence One Commercial Services Corporation, Philadelphia, Pennsylvania, in making or acquiring for its own account or for the account of others, loans and other extensions of credit, secured or unsecured to individuals and businesses including but not limited to consumer lending, residential and nonresidential real estate lending and commercial lending, and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Heritage Bancshares Corporation*, Willmar, Minnesota; to expand the general insurance activities presently conducted by its subsidiary, Pennock Insurance Agency, from a community with a population of less than 5,000 persons to a community with a population in excess of 5,000 persons pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. These activities will be conducted within a 100 mile radius of Willmar, Minnesota.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-13185 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *William Anthony Rand*, North Little Rock, Arkansas; to acquire an additional 6.0 percent of the voting shares of National Banking Corp., North Little Rock, Arkansas, and thereby indirectly acquire National Bank of Arkansas in North Little Rock, North Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, June 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-13184 Filed 6-10-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Incentive Grants for Injury Control Intervention Projects Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

The Centers for Disease Control (CDC) announces that applications are being accepted for incentive grants to support injury control intervention projects.

Background

Opportunities to understand and prevent injuries and reduce their effects are available. Many interventions to prevent or control injury are available but they have not yet been widely adopted. This grant proposal is to assist States and local health departments in developing, implementing, and evaluating interventions targeted to specific injury problems. The interventions employed must have previously proven successful or have a reasonable expectation of success. To utilize these opportunities will require a broad approach to injury control, incorporating many disciplines that heretofore have not been an integral part of public health efforts.

Grant support is to provide resource support to implement an intervention plan for one or more significant injury problems. It presumes that there already exists or is the framework for an injury control program (with surveillance and evaluation capability and an already defined injury problem).

Goals

A. To establish a State or local intervention program that addresses a significant injury problem or problems.

B. To measure the impact of the intervention(s) in terms of reduced morbidity, mortality, severity, disability, and/or medical costs, and acceptance.

C. To serve as a demonstration to other State and community health agencies considering the implementation of intervention strategies.

Programmatic Interests

The focus of grants should reflect the broadly-based need to control injury morbidity, mortality, severity, disability, and and/or medical costs. *The "1990 Health Objectives for the Nation" emphasize the importance of injury control and should be referenced as applicable to the grant.* Reference should be made if current injury control activities have been designed based on or consistent with "Model Standards: A Guide for Community Preventive Health Services—Second Edition," published by the American Public Health Association.

Authority: The legislative authority for this program is section 392 of the Public Health Service Act. The Catalog of Federal Domestic Assistance number is 13.136.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands.

Availability of Funds

Funds in the amount of about $400,000 are available to support injury control intervention projects. These funds will be awarded in the area of intentional injuries (e.g. homicide, suicide, and child/spouse abuse) as well as unintentional injuries. CDC expects to support up to 6 grants (up to $100,000 each) in Fiscal Year 1988. These incentive grants are intended to help develop or improve injury control intervention programs conducted by State and local health agencies, and are not intended to supplant existing funding for injury control program activities. The initiative will provide grant support for a period of one to three years with the expectation that State or local support will increase during the project period.

Application Review and Evaluation Criteria

Review of the application will be conducted in accordance with PHS Grants Administration Manual Part 134, Objective Review of Grant Applications.

Factors considered in the objective review will are as follows. Also, Percentage ratings repesent the weight given to each criteria.

1. *Understanding the Problem* (15%).
2. *Managerial Ability* (20%).
3. *Personnel* (10%).
4. *Technical Approach* (40%).
5. *Budget and Justification* (NOT SCORED).
6. *The Public Health Importance of Injuries to be Addressed and Proposed Interventions* (10%).
7. *Potential for Replicability of the Intervention Program in Other State and Local Jurisdiction* (5%).

Application and Submission Deadline

A. Application

The original and two copies of the Application Form 5161-1 must be submitted on or before July 15, 1988, to the: Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 225 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

B. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date, or
2. Sent on or before the deadline date and received in time for submission to the objective review committee. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)
3. Applications which do not meet the criteria in 1. or 2. are considered late applications and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information:

A full description of the program, programmatic interest, criteria for review of applications, program requirements, application forms, and other materials may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mail Stop E-14, Atlantic, Georgia 30305, or by calling (404) 842-6575 or FTS 236-6575.

Technical assistance may be obtained from Harvey F. Davis, Jr., M.P.H., Center for Environmental Health and Injury Control Centers for Disease Control Mail Stop F-36, Koger Center Atlanta, Georgia 30333 (404) 488-4662 or FTS 236-4662.

Please note that this announcement is distinct from another notice to be issued by CDC entitled "Cooperative Agreements for the Prevention of Disabilities."

Dated: June 7, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-13190 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Reid-Rowell, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Reid-Rowell, Inc. The NADA provides for use of the combination drug dichlorophene/toluene capsules as an anthelmintic in dogs and cats. The firm requested the withdrawal of approval.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Reid-Rowell, Inc. (formerly Reid-Provident Laboratories, Inc.), 901 Sawyer Rd., Marietta, GA 30062, is the sponsor of NADA 102-673 which provides for use of Anaverm (dichlorophene/toluene) capsules for removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. The NADA was originally approved on September 14, 1976.

In a letter dated October 23, 1987, the sponsor requested the withdrawal of approval because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 102-673 and all supplements thereto is hereby withdrawn, effective June 23, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the entry for "Reid-Provident Laboratoreis, Inc." from the list of sponsors of approved NADA's in 21 CFR 510.600(c)(1) and removing the drug labeler code No. "000063" from 21 CFR 510.600(c)(2) and 520.580(b)(2).

Dated: June 6, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-13272 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0217]

Drug Export; Antihemophilic Factor (Human), Lyophilized Powder

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp. has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Lyophilized Powder to West Germany.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics

Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8085.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an appliction requesting approval for the export of the biological product Antihemophilic Factor (Human), Lyophilized Powder to West Germany. The Antihemophilic Factor (Human), Lyophilized Powder is a modified formulation of the currently licensed product, and is intended for the prevention and control of bleeding in patients with moderate or severe Factor VIII deficiency due to hemophilia A or acquired Factor VIII deficiency. The application was received and filed in the Center for Biologics Evaluation and Research on May 24, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 23, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: June 6, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88-13270 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0216]

Drug Export; Dilaudid Tablets and Dilaudid Oral Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Knoll Pharmaceuticals has filed an application requesting approval for the export of the human drug Dilaudid Tablets and Dilaudid Oral Solution to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Knoll Pharmaceuticals, 30 North Jefferson Rd., Whippany, NJ 07981, has filed an application requesting approval for the export of the drug Dilaudid Tablets and Dilaudid Oral Solution to Canada. Dilaudid is used for the relief of moderate to severe pain. The application was received and filed in the Center for Drug Evaluation and Research on May 27, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 23, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 3, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-13271 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds To Provide Health Services in the Pacific Basin

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of fund availability.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that up to $1.140 million is available under Section 301 of the Public Health Service Act, 42 U.S.C. 241, for projects to build capacity and improve health services and systems, particularly preventive health services, in the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Federated States of micronesia, Republic of the Marshall Islands and the Republic of Palau and to provide technical assistance relative to such projects. Eligible applicants include any public or private nonprofit or for profit entities.

DATE: To receive consideration, applications must be received in the HHS regional office, at the address below, by 3:30 p.m. Pacific Daylight Time of July 15, 1988. Competing applications will be considered "on time" if they are either received on or before the established deadline date, or sent on or before the established deadline date and received in time for orderly processing.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Any application which does not meet the deadline will be returned to the applicant.

ADDRESS: Application for grants is made on PHS form 5161-1 (approved under OMB #0348-0006). Grant application guidelines, applications forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Alan S. Harris, Chief, Office of Grants Management, Public Health Service, Region IX, Room 335, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556-2595.

FOR FURTHER INFORMATION CONTACT: Sheridan L. Weinstein, M.D., Regional Health Administrator, Region IX, U.S. Public Health Service, Room 327, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556-5810.

SUPPLEMENTARY INFORMATION: The funds were appropriated in order to continue implementation of the report of the U.S. Public Health Service entitled *A Report to the Congress on Health Services in the United States Pacific Island Jurisdictions.*

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late competing applications not accepted for processing will be returned to the applicant.

Any application which does not meet the deadline will be returned to the applicant.

ADDRESS: Application for grants is made on PHS form 5161-1 (approved under OMB #0348-0006). Grant application guidelines, applications forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Alan S. Harris, Chief, Office of Grants Management, Public Health Service, Region IX, Room 335, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556-2595.

FOR FURTHER INFORMATION CONTACT: Sheridan L. Weinstein, M.D., Regional Health Administrator, Region IX, U.S. Public Health Service, Room 327, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556-5810.

SUPPLEMENTARY INFORMATION: The funds were appropriated in order to continue implementation of the report of the U.S. Public Health Service entitled *A Report to the Congress on Health Services in the United States Pacific Island Jurisdictions.*

Copies of this report are available by writing to the Regional Health Administrator at the address stated above. The Senate Appropriations Committee report (Senate Report 100-189, October 1, 1987) stated the Committee's expectation that priority be given to health service projects that are preventive in nature.

In accordance with the Public Health Service Report, the purpose of this effort is to assist the governments of the jurisdictions listed above in their efforts to improve their public health programs, and to further develop the infrastructure for supporting such programs. Examples of public health areas that have been identified are environmental health and sanitation, alcohol, drug abuse and mental health, childhood immunization, and maternal and child health. Applications may be submitted by nonprofit or for profit private entities and State and local governments, including the Commonwealth of the Northern Mariana Islands, the Government of American Samoa, the Government of Guam, The Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

HRSA intends (considering the number and quality of applications, the relative needs of the respective populations to be served, and the extent to which program results can be incorporated and maintained by the various governments) to make awards that can most effectively and efficiently continue implementation of the initiative and encourage and support public health program development by the governments of the several jurisdictions. Grants will be awarded for two-year projet and budget periods.

In recognition of these priorities and the extent of funding available, project costs related to construction, acquisition or renovation of health facilities and direct payment of costs of health care which otherwise would be the legal responsibility of the local jurisdiction will not be approved. It is anticipated that grant awards may range from $50,000 to $300,000.

To assure that adequate funds are reserved for project proposals submitted by the governments referenced above for the purposes of improving their public health programs which address areas of need identified in the Report, HRSA has set aside a minimum of $600,000 to fund anticipated requests, which are approvable. These funds will be awarded on a competitive basis directly to the Pacific Basin governments referenced above, taking into consideration the quality and priority of applications submitted and the commitment of the Pacific Basin governments to maintain the capabilities or competencies developed by the projects. All applications received will be reviewed against a single, standard set of criteria that will be provided with the application material.

The Regional Health Administrator, Region IX, in coordination with the Bureau of Health Care Delivery and Assistance, HRSA, will be responsible for appointing a project officer, supervising and monitoring any grants made from these funds and maintaining official grant files on any such awards.

An objective review will be conducted by the Bureau of Health Care Delivery and Assistance, HRSA, and the regional office in San Francisco. Grant awards will be issued by the Bureau.

General regulations of the Department relating to the management of grants (45 CFR Part 74) will apply to this grant.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Guam and the Commonwealth of the Northern Mariana Islands have established such contact points for this review and application packages to be made available under this notice will provide information on the point of contact in these jurisdictions. Since 60 days is allowed for this review, applicants are advised

to discuss projects with, and provide copies of their applications to, contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Office of Grants Management, Region IX.

Catalog of Federal Domestic Assistance

In the OMB Catalog of Federal Domestic Assistance, Health Services in the Pacific Basin Grant Program is listed as Number 13.163.

Dated: March 28, 1988.

David N. Sundwall,

Administrator.

[FR Doc. 88-13193 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Childhood Vaccine Injury Act of 1986; Delegation of Authority; Assistant Secretary for Health

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under (1) Part C, Subtitle 2 of Title XXI of the Public Health Service Act (42 U.S.C. 300aa-25 et seq.), as amended; and (2) §§ 312, 313, 314, and 316 of Pub. L. 99-660 (42 U.S.C. 300aa-1 note and 300aa-4 note), as amended hereafter. This authority excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Health and his subordinates which involved the exercise of the delegated authorities prior to the effective date of delegation.

Dated: June 1, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-13194 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-17-M

Committee to Coordinate Environmental and Health Related Programs (CCEHRP) and CCEHRP Ad Hoc Subcommittee; Annual Report on Carcinogens Meeting; Correction

In notice document 88-12391 appearing on page 20179 in the issue of June 2, 1988, make the following correction:

In the first column, in the first paragraph, after the sentence ending "* * * July 7, 1988.", insert the following sentence, which was inadvertently omitted: "The meeting will begin at approximately 9:30 P.M., and end at approximately 4 P.M., or at the conclusion of the public comment if this occurs prior to 4 P.M."

John Gallivan,

Regulations Officer.

[FR Doc. 88-13257 Filed 6-10-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Cheyenne, Wyoming 82003; WY-920-08-4121-11; W-109378]

Invitation for Coal Exploration License; Converse County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for coal exploration license.

SUMMARY: Triton Coal Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Converse County, Wyoming:

T. 52 N., R. 72 W., 6th P.M., WY,
Sec. 27: Lots 3, 4, 5, 6, 11, 12, 13, 14;
T. 52 N., R. 73 W., 6th P.M., WY,
Sec. 24: Lots 11, 12, 13, 14;
Sec. 25: Lots 11, 12, 13, 14.
Containing 720.64 acres

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration is to construct ground water monitoring wells in the area.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-109378): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in a newspaper once each week for two consecutive weeks beginning the week of April 25, 1988, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Triton Coal Company no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Triton Coal Company, Buckskin Mine, P.O. Box 3027, Gillette, Wyoming 82716, and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003. The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

Hillary A. Oden,

State Director.

[FR Doc. 88-13191 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-84-M

[WY-010-08-4220-10]

Meetings; Spanish Point Caves Withdrawal; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice intent to conduct a public scoping meeting for the Spanish Point Caves Withdrawal, W-101616.

SUMMARY: Pursuant to 43 CFR 2310.3-1(2)(v) a public meeting will be held on Wednesday July 13, 1988 at 7:00 p.m. at the Worland District Office, 101 South 23rd Street, Worland, Wyoming to accept public comment on the proposed Spanish Point Caves Withdrawal. The proposed withdrawal affects 11,415.86 acres of federal mineral estate beneath private surface, and lands administered by the Bureau of Land Management and the Forest Service. These lands are located in Big Horn County, north of Hyattville, Wyoming. The withdrawal will segregate these lands from the operation of the nondiscretionary land laws, including mining claim location under the General Mining Law of 1872, as amended, in order to protect important water recharge and cave areas associated with the Tres Charros and Great Expectations Cave System.

DATES: Written comments may be mailed prior to July 13, 1988. Written or oral comments may also be submitted at the public meeting on July 13, 1988, at 7:00 p.m.

ADDRESS: Worland District Office, Bureau of Land Management, Conference Room 101 South 23rd Street, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: Mark Goldbach, Bureau of Land Management, Worland District Office, Washakie Resource Area, P.O. Box 119, Worland Wyoming, 82401, (307) 347-9871.

Darrell Barnes,

District Manager.

[FR Doc. 88-13218 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-23-M

[ID-020-08-4212-13; I-19668E]

Realty Action, Sale of Public Lands in Oneida County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Oneida County, Idaho.

SUMMARY: the following described land has been examined and through the public supported land use planning process, has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal. This land is hereby segregated from appropriation under the public land laws including the mining laws as provided by 43 CFR 2711.1-2(d).

Name	Boise Meridian, Idaho legal description	Acres	Appraised fair market value	Type of bidding
Gwenford (I-19668E)	T. 15S., R. 35E., B.M., Section 9: SW¼SW¼	40.00	$2,000.00	Modified.

When patented, the land will be subject to a reservation of the oil and gas resources to the United States.

Sale Procedures: The above described land will be sold by modified competitive bidding procedures as follows: All sealed bids (with the parcel name and serial number CLEARLY marked in the lower left hand corner of the envelope) must be received by 1:30 p.m. on the designated sale dates at the Deep Creek Area Office.

Only sealed bids for no less than the appraised fair market value will be accepted. A bid will also constitute an application for the conveyance of the mineral rights except oil and gas. Each bidder must submit a fifty dollar ($50.00) (non-returnable for the high bidder) filing fee for the mineral conveyance (43 CFR 2720.1-2(c)). Each bid shall be accompanied by certified check, postal money order, bank draft, or cashiers check made payable to the Bureau of Land Management for 30 percent (30%) of the bid price. Failure to submit these sums shall result in disqualification of the bid. If two or more valid sealed bids are received for the same amount and are the high bid, a supplemental bidding of the high bidders will be held.

The designated bidder on parcel I-19668E is Andrew Chad Bybee of Pleasantview, Idaho. This designated bidder is offered a preference right to purchase the parcel by matching the highest bid. Failure to accept this offer to purchase within 15 days after the specified sale date or succeeding sale dates shall constitute a waiver of his preference consideration and the next highest bidder will be awarded the sale.

SUPPLEMENTARY INFORMATION: Detailed information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from John R. Christensen, Deep Creek Area Manager, at the Deep Creek Area Office, 138 South Main, Malad, Idaho, 83252, or by calling (208) 766-4766.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Rt. 3, Box 1, Burley, Idaho, 83318. Objections will be evaluated by the State Director who may sustain, vacate, or modify this notice of realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: June 1, 1988.

Marvin R. Begley,

Associate District Manager.

[FR Doc. 88-13217 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permits; Rex Baker et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-728166]

Applicant: Rex Baker Meriette, GA.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

[PRT-728172]

Applicant: Al and Jean Van Hulsen, Grants Pass, OR.

The applicant requests a permit to purchase, in interstate commerce, two pairs of captive-hatched Hawaiian (=nene) geese (*Nesochen (=Branta) sandvicensis*) for the purpose of enhancement of propagation. One pair is to be purchased from Randy Rutz, Port Orchard, Washington, and the other pair will be purchased from Wally Caviness, Bellingham, Washington.

[PRT-728134]

Applicant: Tim Parsley, Silver Spring, MD.

The applicant requests a permit to purchase in interstate commerce six captive born scarlet-chested parakeets (*Neophema splendida*) from Ethel Morton, Alhambra, CA for purposes of display and enhancement of propagation.

[PRT-728285]

Applicant: Clifford E. Sanders, Kingsport, TN.

The applicant request a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. J. M. D'Alton, Bredasdorp, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with those applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days

of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: June 2, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 13278 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits; F.M. "Cotton" Gordon et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-727645]

Applicant: F.M. "Cotton" Gordon, Lake George, CO.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

[PRT-727628]

Applicant: Phoenix Zoo, Phoenix, AZ.

The applicant requests a permit to purchase in interstate commerce from International Animal Exchange one male and two female Parma wallabies (*Macropus parma*) that will be imported into the U.S. by International Animal Exchange (PRT-724754). The wallabies are to be imported from the Wellington Zoo in Wellington, New Zealand for enhancement of the propagation of the species. They were born in captivity at the Wellington Zoo.

[PRT-727958]

Applicant: The Peregrine Fund, Boise, ID.

The applicant requests a permit to export ten captive-born Mauritius kestrals (*Falco punctatus*) born in the United States, to The Conservator of Forests, Forestry Department, Curepipe, Mauritius for release into the wild for the purpose of enhancement of propagation of the species.

[PRT-727418]

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to take, import, export and purchase in interstate or foreign commerce blood, semen, other tissues or whole carcasses from any endangered wildlife throughout the world for scientific research (genetic, reproductive and other biomedical evaluation). The tissues are to be obtained from animals in the wild and in captivity.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 8, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-13279 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permits; Oklahoma City Zoo and New York Zoological Society

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-728140]

Applicant: Oklahoma City Zoo, Oklahoma City, OK.

The applicant requests a permit to import a captive born female black rhinoceros (*Diceros bicornis*) from the National Zoo, New Delhi, India for purposes of enhancement of propagation and exhibition.

[PRT-727965]

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to export two male and two female Cuban crocodiles, (*Crocodylus rhombifer*) born in captivity in the United States at the Bronx Zoo to Fundacao Parque Zoologico de Sao Paulo, Sao Paulo, Brazil for enhancement of propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K, Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: June 7, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-13280 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Facilities on the Outer Continental Shelf (OCS) Adjacenf to California (30 CFR 250.47)

Abstract: Respondents are required to provide the Minerals Management Service (MMS) with information on emissions data and related data from existing and new facilities or modifications to existing and new facilities located on the Federal OCS adjacent to California. The MMS will use this information to identify any potential or existing pollutent emissions and evaluate the potential impact of those operations on the adjacent coastal areas of the State of California.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil and gas lessees.

Annual Responses: 123.

Annual Burden Hours: 3,840.

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Date: June 1, 1988.

Price McDonald,

Associate Director for Offshore Minerals Management.

[FR Doc. 88-13219 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-01-M

National Park Service

[DES 88-33]

Draft Environmental Impact Statement; Katmai National Park and Reserve, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Katmai National Park and Preserve, Alaska and the holding of public hearings and a public meeting.

SUMMARY: For Katmai National Monument and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands and waters within the study area as wilderness. Alternative 2, the proposed action, recommends 294,901 acres or 46 percent of study area lands and waters for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, Alaska 99503. Comments must be received by August 29, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Glacier Bay National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, July 18, 1988, 7:00 p.m., Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held Tuesday, July 19, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, a public meeting will be held on Katmai National Park and Preserve Wilderness DEIS on Wednesday, July 20, 1988, at the National Park Service office at King Salmon at 7:00 p.m. A section 810 will be conducted as part of the meeting.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters, P.O. Box 7, King Salmon, Alaska 99614, phone (907) 246-3305 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC, 18th and C Streets, NW.

Date: June 7, 1988.

Jacob J. Hoopland,

Acting Associate Director, Planning and Development.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review United States Department of the Interior.

[FR Doc. 88-13262 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-70-M

[Des 88-32]

Draft Environmental Impact Statement; Kobuk Valley National Park, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Kobuk Valley National Park, Alaska and the holding of public hearings and public meetings.

SUMMARY: For Kobuk Valley National Park, three alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends 414,720 acres or 27 percent of study area lands for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503. Comments must be received by August 29, 1988, to be considered in the development of the final DIS.

Two formal public hearings have been scheduled to receive oral and written comments on the wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, and Denali National Park and Preserve draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska on Monday, July 18, 1988, at 7:00 p.m., Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held Tuesday, July 19, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, five public meetings will be held on Kobuk Valley National Park Wilderness DEIS. On Monday, July 25, 1988, in the community hall at Kivalina at 2:00 p.m. and in the community hall at Noatak at 7:00 p.m.; Tuesday, July 26, 1988, in the National Park Service visitor center in Kotzebue at 7:00 p.m.; Wednesday, July 27, 1988, in the IRA building in Ambler at 7:00 p.m.; and Thursday, July 28, 1988, in the community building in Kiana at 7:00 p.m. A section 810 review will be conducted as part of the meetings.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters, P.O. Box 1029, Kotzabue, Alaska 99752, phone (907) 442-3890 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington DC, 18th and C Streets, NW.

Dated: June 7, 1988.

Jacob J. Hoglund,

Acting Associate Director, Planning and Development.

Approved.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-13263 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestion on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC 20503, telephone (202) 395-7340.

Title: 30 CFR Part 882—Reclamation on Private Land.

Abstract: Section 408 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, provides that under certain circumstances liens may levied on the private property that has been reclaimed. Part 882 establishes procedures for recovery of the cost of reclamation activities conducted on privately owned lands and is intended to ensure that land owners who acquired the land after a specified date or who benefited from the mining operation will not realize a windfall from the reclamation.

Bureau Form Number: None.

Frequency: As required.

Description of Respondents: States and Indian tribes.

Annual Responses: One.

Annual Burden Hours: One.

Bureau Clearance Office: Nancy Ann Baka (202) 343-5981.

Date: May 19, 1988.

Richard O. Miller,

Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88-13220 Filed 6-10-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

[Order No. 1275-88]

Establishment of the Personnel Policy Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the Department of Justice, it is hereby ordered as follows:

The Personnel Policy Board (PPB), created on October 13, 1987, provides advice to the Attorney General on personnel issues in the Department. The PPB will explore significant human resource management issues of concern to Department components and recommend the development and application of innovative management practices in response to those concerns. Members of the PPB are the Deputy Attorney General, who shall serve as Chairman, the Associate Attorney General, the Solicitor General, the Chief of Staff to the Attorney General, the Associate Deputy Attorney General, the Director of the Federal Bureau of Investigation, the Assistant Attorney General for the Civil Division, the Assistant Attorney General for Administration, and the Chairman of the U.S. Attorneys Advisory Committee.

Dated: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13283 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1276-88]

Establishment of the Research and Development Review Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the Department of Justice, it is hereby ordered as follows:

The Research and Development Review Board (RDRB), created on September 8, 1986, will (1) broaden Department-wide participation in setting research policy and coordinating research activities; (2) consult with criminal justice practitioners, inside and outside the Federal Government, to determine priority areas for further research; and (3) maintain closer liaison and share research findings (as appropriate), with public and private sector agencies and individuals that conduct criminal justice research. The Associate Attorney General shall serve as Chairman of the RDRB and the Assistant Attorney General for Office of Justice Programs shall serve as Vice Chairman. Members of the RDRB are designated by the Attorney General.

Date: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13286 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1278-88]

Establishment of the Special Issues Coordinating Group

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, it is hereby ordered as follows:

The Special Issues Coordinating Group (SICG) is hereby created. The SICG will provide advice directly to the Attorney General and the Deputy Attorney General on matters relating to national security, international affairs, intelligence, counterintelligence, counterterrorism, emergency planning, and continuity of government programs. Members of the SICG shall include the Associate Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Assistant Attorney General for the Office of Legal Counsel, the Assistant Attorney General for the Criminal Division, the Assistant Attorney General for Administration, the Counsel for the Office of Intelligence Policy and Review, and the Special Assistant to the Attorney General for National Security Affairs. The Special Assistant shall also serve as the Executive Officer for the SICG. Other components may be represented as required.

Date: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13287 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1277-88]

Establishment of the Strategic Planning Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the Department of Justice, it is hereby ordered as follows:

The Strategic Planning Board (SPB), created in June 1985, provides advice to the Attorney General on Departmental policy initiatives and long-term strategies to advance them. The SPB will also examine various law enforcement activities within several Departmental components in order to develop overall strategic approaches to be pursued by the Department. Members of the SPB are the Counselor to the Attorney General, who shall serve as the Chairman, the Solicitor General, the Assistant Attorneys General for the Office of Legal Counsel, Office of Legislative Affairs, Office of Legal Policy, Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Land and Natural Resources Division and Tax Division, as well as the Director of the Office of Public Affairs. The Attorney General may designate additional members.

Dated: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13284 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1278-88]

Establishment of the Department Resources Board

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, and in order to recognize the existence of certain policy boards within the Department of Justice, it is hereby ordered as follows:

The Department Resources Board (DRB), created on June 14, 1985, provides advice to the Attorney General on the Department's planning, programming, and budgeting process. In carrying out this primary role, the DRB will assist the Attorney General in the areas of: (1) Strategic/long range planning and policy development; (2) program development; (3) resource guidance and budget formulation; (4) evaluation of policy implementation; (5) issue analysis; and (6) organizational and management improvement. Members of the DRB are the Deputy Attorney General, who shall serve as the Chairman, the Associate Attorney General, and the Assistant Attorney General for Administraion. A Special Assistant to the Attorney General will attend all meetings of the DRB as an observer from the Office of the Attorney General. The Attorney General may designate additional members.

Dated: June 7, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-13285 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 6, 1988, a proposed consent decree in *United States of America v. C.F. & I. Steel Corporation*, Civ. No. 88-C-864, was lodged with the United States District Court for the District of Colorado.

The proposed consent decree resolves a judicial enforcement action brought by the United States against C.F. & I. Steel Corporation ("C.F. & I.") for violations of the Clean Air Act. The complaint filed by the United States alleged that defendant violated the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos during demolition activities that took place at Defendant C.F. & I.'s facility in Pueblo, Colorado.

The proposed consent decree enjoins defendant from violating the asbestos NESHAP in the future. The proposed consent decree also requires defendant to pay a civil penalty of $15,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. C.F. & I. Steel Corporation*, D.O.J. Ref. 90-5-2-1-1191.

The proposed consent decree may be examined at the office of the United States Attorney, District of Colorado, 1200 Federal Office Building, 1961 Stout Street, Denver, Colorado, 80294, and at the Region VIII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Thomas A. Speicher, 999 18th Street — Suite 500, Denver, Colorado, 80202. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 88-13290 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984 West Agro, Inc.—Iodophors Joint Venture

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), West Agro, Incorporated—Iodophors Joint Venture ("Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 24, 1988, disclosing changes in the Joint Venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that Henkel Corporation and Morgan-Gallacher, Inc. have become members of the Joint Venture.

On December 15, 1987, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 15, 1988, 53 FR 1974, as corrected by 53 FR 4232, February 12, 1988.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-13289 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Janssen Inc.

By Notice dated January 6, 1988, and published in the Federal Register on January 15, 1988; (53 FR 1080), Janssen Inc., HC 02, Box 19250, Gurabo, Puerto Rico 00658-9220, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13236 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Penick Corp.

By Notice dated April 12, 1988, and published in the **Federal Register** on April 19, 1988; (53 FR 12831), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Pethidine (meperidine) (9230)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Mixed alkaloids of opium (9648)	II
Concentrate of poppy straw (9670)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13237 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Stepan Chemical Co.

By Notice dated February 17, 1988, and published in the **Federal Register** on February 24, 1988; (53 FR 5480), Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13238 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration; Stepan Chemical Co.

By Notice dated February 18, 1988, and published in the **Federal Register** on February 24, 1988; (53 FR 5478), Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13239 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Upjohn Co.

By Notice dated December 9, 1987, and published in the **Federal Register** on December 15, 1987; (52 FR 47643), Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 2, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-13240 Filed 6-10-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on June 29, 1988, from 9:00 a.m.—5:30 p.m., in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1988, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

June 6, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88-13221 Filed 6-10-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp. (Wolf Creek Generating Station); Issuance of Director's Decision (DD-88-6)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a petition under 10 CFR 2.206 (DD-88-6) filed by Ms. Stevi Stephens and Mr. Robert V. Eye on behalf of the Nuclear Awareness Network (NAN or petitioner). The petitioner asked the U.S. Nuclear Regulatory Commission (NRC) to take enforcement and corrective action related to alleged trespassers on restricted areas at the Wolf Creek Generating Sation. The petitioner alleged that these trespassers may be exposed to undue radiation during normal operation of the facility and that the emergency plan may not be adequate to ensure that trespassers are notified and evacuated during a radiological emergency. The petitioner further alleged that the trespassing is symptomatic of an overall security breakdown at Wolf Creek Generating Station.

The petitioner's request has been denied for the reasons fully described in the Director's Decision Under 10 CFR 2.206, issued on this date, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and the Local Public Document Rooms for the Wolf Creek Generating Station located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the decision within that period.

Dated at Rockville, Maryland, this 20th day of May 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88-13229 Filed 6-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35 and NPF-52 issued to Duke Power Company, et al., (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The amendments would change the Technical Specifications for the Nuclear Service Water (RN) System and its associated Bases. These changes would show that the RN system contains components that are shared between the two units and would allow placing the system in its Engineered Safety Features (ESF) alignment when the number of operable ESF channels is less than required. In addition to the Technical Specification changes proposed by the licensee, a change will be made to the Catawba Emergency Procedures.

The licensee's submittals dated October 16, 1987, and February 18 and May 12, 1988, also included revised Final Safety Analysis Report (FSAR) pages which will be incorporated in a future update to the FSAR. These changes reflect, among other things, deleting the assumption of a simultaneous loss-of-coolant accident and a seismic event. The licensee stated that this assumption is unnecessary in meeting the requirements of General Design Criteria 5 and 44 or the Standard Review Plan (NUREG-0800) and that this event is probabilistically insignificant.

By letter dated January 22, 1988, the NRC staff requested additional information regarding the RN system Technical Specification and FSAR changes. By letter dated February 18, 1988, the licensee responded to the staff's request.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II–3; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated October 16, 1987, as supplemented February 18 and May 12, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 6th day of June 1988.

For The Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–13230 Filed 6–10–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DRP–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The amendment would: (1) Amend paragraph 2.C.(7) of Provisional Operating License DPR–16 to eliminate the requirement for the docketing of inspection results related to the core spray spargers, and obtaining NRC restart authorization for each refueling outage, (2) eliminate the submittal of a special report presenting the results of inservice inspection of the Core Spray Spargers during each refueling outage and (3) propose visual inspections of accessible surfaces in accordance with ASME B&PV Code, Section XI.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petiton for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitoner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificty requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under considertion. A petitoner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitoner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petiton should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2000 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 2nd day of June 1988.

For the Nuclear Regulatory Commission.

Robert L. Ferguson,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–13231 Filed 6–10–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25787; File No. CBOE–88–04]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Market Maker Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19–4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on March 23, 1988, a proposed rule change to incorporate into the obligations of market makers an obligation that they participate in and support the Exchange's automated systems.

The proposed rule change was published for comment in Securities Exchange Act Release No. 25570 (April 11, 1988), 53 FR 12839. No comments were received on the proposed rule change.

The Exchange, in Rule 8.7, currently requires market makers to engage in transactions that constitute a course of dealings reasonably calculated to maintain a fair and orderly market.[3] The Exchange proposes to add an Interpretation to this obligation noting that market makers are expected to participate in and support Exchange sponsored automated programs, including but not limited to its Retail Automatic Execution System ("RAES")[4] and Auto Quote.[5]

In addition, the proposed rule change amends the standard of review applicable to market makers. The CBOE Market Performance Committee ("Committee"), which periodically evaluates market makers to determine whether they have fulfilled their performance standards, reviews, among other things, the quality of markets.[6] The proposed rule change would add an Interpretation to Rule 8.12 noting that the quality of markets includes consideration of a trading crowd's participation in the support for Exchange sponsored automated programs, including but not limited to RAES and Auto Quote.[7]

In its submission to the Commission, the Exchange stated that it is proposing the rule change in order to promote the use of automated systems, in particular RAES and Auto-Quote. The Exchange believes that RAES benefits public customers by providing automatic executions at a guaranteed price. Additionally, the Exchange believes that the use of Auto Quote helps prevent the public dissemination of stale quotations in inactive option series and that other future, automated programs, when developed, will enhance market quality. The Exchange believes that market makers as part of their responsibilities should be required to support these programs.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[8] The

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[1] 15 U.S.C. 78f(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] *See* CBOE Rule 8.7(a).

[4] RAES automatically executes public customer market and marketable limit orders of a certain size (typically ten contracts or fewer) against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system.

[5] Auto Quote is the system that electronically updates market quotes by performing certain mathematical operations on specified input to yield updated quotes in another targeted series. The purpose of the system is to accelerate the updating of market quotes particularly in relatively inactive series.

[6] See CBOE Rule 8.12(a). Other factors that the Committee will review are competition among market makers, observance of ethical standards, and administrative factors.

[7] A finding by the Committee that a market maker has failed to meet minimum performance standards may result in substantial penalties including the suspension, termination, or restriction of its registration or trading activity.

[8] 15 U.S.C. 78f (1982).

Commission recognizes the importance and efficiencies of automated systems, in particular automatic execution systems such as RAES. Because the operation of these systems is dependent on market maker participation, the Commission believes that the Exchange must have authority to require adequate levels of market maker participation if these systems are going to function efficiently and on a continuous basis, including during periods of market volatility.[9]

Accordingly, the Commission believes that it is appropriate for the Exchange to take measures to encourage market maker participation in these systems. The Commission notes that the Exchange has proposed related rule changes to strengthen the market maker eligibility requirements for RAES in equity options [10] and for the Standard and Poor's 500 (SPX) index option traded on the CBOE.[11] The Commission believes such efforts by the Exchange are positive steps in strengthening the integrity of its automated systems and will help ensure the continued operation of these systems, including during periods of unusual price fluctuation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [12] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: June 6, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13281 Filed 6-10-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0413]

Holding Capital Management Corp.; Surrender of License

Notice is hereby given that Holding Capital Management Corporation, 665 Fifth Avenue, 14th Floor, New York, New York 10022 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Holding Capital Management Corporation was licensed by the Small Business Administration on November 19, 1981.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on June 1, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1988.

Robert G. Lineberry,

Deputy Associate Administrator

[FR Doc. 88-13275 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Atlanta, will hold a public meeting from 10:00 a.m. to 3:00 p.m., on Wednesday, July 13, 1988, at the Small Business Administration District Office, 1720 Peachtree Road, NW., Suite 600, Atlanta, Georgia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Wilfred A. Stone, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., 6th Floor, Atlanta, Georgia 30309—(404) 347-4749.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 7, 1988.

[FR Doc. 88-13273 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting at 10:00 a.m., on Wednesday, July 12, 1988, at the Tinker Air Force Base, Area A, Gate No. 1, Building 6001, Arnold Street, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Truman Branscum, District Director, U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Oklahoma City, Oklahoma 73102—(405) 231-4301.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 7, 1988.

[FR Doc. 88-13274 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0294]

Revelation Resources, Ltd.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1988)) for Transfer of Control of Revelation Resources, Ltd. (Licensee), 2929 Allen Parkway, Suite 1705, Houston, Texas 77019, a small business investment company (SBIC) and a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.*)

The licensee is a limited partnership SBIC. Mr. D. Kent Anderson, Limited Partner with 77.4 percent of partnership interest in the licensee and sole shareholder of the Corporate General Partner of the Licensee, Revelation Resources Management Corp. (RRMC) proposes to sell all of his shares of stock of RRMC to Michael R. Walker, the existing individual General Partner of the Licensee.

The Corporate General Partner is defined as "Control Person" in § 107.3 of the SBA Regulations. As such, a change in the ownership of the Corporate General Partner constitutes a change in control of the Licensee.

The Investment Advisor, Corporate General Partner, Individual General Partner and Limited Partners are and will continue to be as follows:

Name	Title or relationship	Percentage of shares owned
Beacon Management Corp (BMC) [1].	Investment Advisor	
Revelation Resources Management Corporation (RRMC) [2].	Corporate General Partner.	0.5
Chris J. Matthews	Managing Partner and V. President & Director of RRMC.	
Michael R. Walker	Individual General Partner and President and Director of RRMC and BMC.	.5
Robert S. Oliver	V. President & Director of RRMC and Managing Director of BMC.	
D. Kent Anderson.[1]	Limited partner	77.4
Fairfield State Bank.	do	7.8
Centerville State Bank.	do	5.1
First Bank, Navasota.	do	8.7

[1] Mr. Anderson is 100% owner of BMC. He is also Chairman of the Board of Directors of Allied Bancshares Capital Corp., an SBIC licensed 11/01/79.

[2] Mr. Anderson is proposing to sell his 100% ownership of RRMC to Mr. Walker. The licensee will retain its corporate name and location.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1988.

Robert G. Lineberry

Deputy Associate Administrator for Investment

[FR Doc. 88-13276 Filed 6-10-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0114.
Form Number: None.
Type of Review: Reinstatement.
Title: Trademark Recordation.
Description: Trademark owners who choose to record their trademarks with Customs for import protection must establish that they own the U.S. trademark, pay the required fee, and provide other information that will aid Customs in their enforcement effort, such as the country of manufacture of goods bearing the recorded trademark.
Respondents: Individuals or households, Businesses or other forprofit, Small businesses or organizations.
Estimated Number of Respondents: 714.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 714 hours.
Clearance Officer: John Poore (202) 566-9181, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-13266 Filed 6-10-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0068.
Form Number: 2688.
Type of Review: Revision.
Title: Application for Additional Extension of Time to File U.S. Individual Income Tax Return.
Description: Internal Revenue Code section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by individuals to ask for an additional extension of time to file U.S. income tax returns after filing for the automatic extension, but still needing more time.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,450,000.
Estimated Burden Hours Per Response: 22 minutes.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 536,638 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-13267 Filed 6-10-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 8, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer,

[9] The effect of inadequate market maker participation was demonstrated during the October 1987 market crash when, because of an unwillingness on the part of some CBOE market makers to participate in RAES, among other factors, the CBOE elected to severely limit its operation. For a full discussion of the performance of options market makers during this time, *see The October 1987 Market Break: A Report by the Division of Market Regulation*, U.S. Securities and Exchange Commission (February 1988) at 8-10.

[10] *See* Securities Exchange Act Release No. 25173 (December 4, 1987), 52 FR 47470, and Amendment No. 1 to the proposed rule change published in Securities Exchange Act Release No. 25820 (April 27, 1988), 53 FR 15826.

[11] *See* Securities Exchange Act Release No. 25821 (April 27, 1988), 53 FR 15935.

[12] 15 U.S.C. 78s(b) (1982).

[13] 17 CFR 200.30-3(a)(12) (1988).

Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1021.
Form Number: 8584.
Type of Review: Resubmission.
Title: Special Allocation Rules for Certain Asset Acquisitions.
Description: Section 1060 of the Internal Revenue Code of 1986 requires the seller and the purchaser of a group of business assets to allocate the consideration for the assets among the assets pursuant to the residual method of allocation. The seller and the purchaser must report certain information concerning the allocation of the consideration.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Response: 1 hour 11 minutes.
Frequency of Response: One time generally.
Estimated Average Reporting Burden: 171,053.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 88-13289 Filed 6-10-88; 8:45 am]
BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 28]

Sureties Companies Acceptable on Federal Bonds: Termination of Authority: Republic-Franklin Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Republic-Franklin Insurance Company, of Utica, New York, under the United States Code, Title 31, § 9304—9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1988.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24923, July 1, 1987.

With respect to any bonds currently in force with Republic-Franklin Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 3, 1988.

Mitchell A. Levine,
Assistant Commissioner, Comptroller Financial Management Service.
[FR Doc. 88-13100 Filed 6-10-88; 8:45 am]
BILLING CODE 4810-35-M

Treasury Direct Book Entry Securities System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice pursuant to 31 CFR 306.23.

SUMMARY: Department of the Treasury Circular No. 300, 4th Revision (31 CFR Part 306), was amended at 53 FR 15553 (May 2, 1988) to authorize the Secretary of the Treasury to publish a notice in the Federal Register announcing those series of Treasury bonds and notes issued before August 1, 1986, that are eligible for conversion and transfer to the TREASURY DIRECT Book-entry Securities System, and the period during which requests for such conversion will be accepted by the Department.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: John E. Logue, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (202) 447-9859.

SUPPLEMENTARY INFORMATION: In August 1986, the Department of the Treasury ceased issuing new Treasury bonds and notes in certificated form and offered them thereafter only in book-entry form. At that time, it established the TREASURY DIRECT Book-entry Securities System for those investors desiring a direct relationship with the Treasury Department. The TREASURY DIRECT system provides investors with a number of beneficial terms and conditions, including the convenience and safety of a direct deposit system for interest and redemption payments.

Because of its various attributes, investors have asked to have TREASURY DIRECT made available for Treasury bonds and notes issued prior to August 1, 1986. In response, the Department amended Part 306 by adding § 306.23, which permits the conversion of such securities at such times as the Secretary of the Treasury may designate by notice published in the Federal Register.

Pursuant to the authority granted, notice is hereby given that all Treasury bonds and notes with maturities on or after December 31, 1990, will, on the receipt of a properly executed request by the owner(s), be accepted for conversion and transfer to the TREASURY DIRECT Book-entry Securities System. Requests will be accepted by the Federal Reserve Banks, acting as fiscal agent of the United States, and by the Department, until further notice.

Dated: June 1, 1988.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 88-13222 Filed 6-10-88; 8:45 am]
BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 113
Monday, June 13, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 20937, Tuesday, June 7, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, June 13, 1988.

CHANGE IN MEETING:

The item below has been added to the agenda:

Closed Session

"Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals"

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, [202] 634-7046.

Date: June 8, 1988.
Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 88-13349 Filed 6-9-88; 11:49 am]
BILLING CODE 6750-06-M

FEDERAL ENERGY REGULATORY COMMISSION

June 8, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: June 15, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NW., Room 6308, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matter to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 679th Meeting—June 15, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 9066-002, Northwest Power Company, Inc.
CAP-2.
Project No. 10405-001, Snoqualmie River Hydro
CAP-3.
Project Nos. 10404-001 and 10406-001, Snoqualmie River Hydro
CAP-4.
Docket No. EL88-44-002, Island Power Company, Inc.
CAP-5.
Project No. 9340-001, Lawrence E. Smith and Veronica P. Smith
CAP-6.
Project No. 9756-001, Edwards T. Navickis
CAP-7.
Project No. 10081-001, County of Tuolumne and Turlock Irrigation District
Project No. 9980-001, Clavey River Hydroelectric Company
CAP-8.
Docket No. EL87-9-000, Electric Consumer Protection Act
CAP-9.
Project No. 8433-001, Liberty County, Montana, the Town of Chester, Montana and MRR
CAP-10.
Docket No. QF88-902-001, McKee Products, Incorporated
CAP-11.
Docket Nos. ER88-273-00 and ER88-594-001, New England Power Pool
CAP-12.
Docket No. ER88-304-001, Niagara Mohawk Power Corporation
CAP-13.
Docket No. EL87-65-001, Minnesota Power & Light Company and Northern States Power Company (Minnesota)
CAP-14.
Docket No. ER88-363-010, Delmarva Power and Light Company
CAP-15.
Docket No. EL87-45-001, The Cities of Marshall, Blue Earth, Mountain Lake, St. James, and Saulk Centre, Minnesota and Hillsboro, North Dakota v. Northern States Power Company—Minnesota
CAP-16.
Docket No. ER87-539-001, Gulf States Utilities Company
CAP-17.
Docket No. ER87-667-001, Gulf States Utilities Company
CAP-18.
Docket Nos. ER86-645-001, ER87-160-001, ER87-160-001 and ER87-160-001, Boston Edison Company
CAP-19.
Docket No. ER86-180-001, Detroit Edison Company
CAP-20.
Docket Nos. E-7777-000 (Phase II), P-2735-001, P-1988-003 and P-339-006, Pacific Gas and Electric Company
CAP-21.
Docket No. EL87-65-000, City of Holyoke Gas and Elecric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department and West Boylston Municipal Lighting Plant v. Boston Edison Company
CAP-22.
Docket No. EL87-14-000, City of Vernon, California v. Southern California Edison Company
CAP-23.
Docket No. EL87-31-000, North Arkansas Electric Cooperative, Inc. v. Arkansas Power & Light Company
CAP-24.
Docket Nos. EL88-3-000 and EL87-55-000, Commonwealth Electric Company v. Boston Edison Company

Consent Miscellaneous Agenda

CAM-1.
Project No. FA87-63-001, Virginia Electric and Power Company
CAM-2.
Project No. RM88-20-000, Five-year Take-or-pay Make-up Provisions in Natural Gas Producer-Pipeline Contracts

Consent Gas Agenda

CAG-1.
Docket No. TA88-6-51-000, Great Lakes Gas Transmission Company
CAG-2.
Docket Nos. CP81-197-028 and CP83-463-009, CNG Transmission Corporation
CAG-3.
Docket Nos. RP88-133-001 and TQ88-28-001, Panhandle Eastern Pipe Line Company
CAG-4.
Docket Nos. RP88-154-001 and TQ88-1-37-001, Northwest Pipeline Corporation
CAG-5.
Docket Nos. RP88-166-000 and RP88-166-000, Raton Gas Transmission Company
CAG-6.
Docket No. TA88-3-25-000, Panhandle Eastern Pipeline Company
CAG-7.
Docket Nos. RP88-80-001 and 003, Texas Eastern Transmission Corporation
CAG-8.
Docket No. RP88-96-001, Southern Natural Gas Company
CAG-9.
Docket No. RP87-70-003, East Tennessee Natural Gas Company
CAG-10.
Docket No. RP88-85-002, Northwest Pipeline Corporation

BEST COPY AVAILABLE

CAG–11.
Docket Nos. RP86–94–005 and RP86–94–006, Sea Robin Pipeline Company
CAG–12.
Docket No. RP86–94–003, Natural Gas Pipeline Company of America
CAG–13.
Docket Nos. RP85–177–053 and RP85–176–010, Texas Eastern Transmission Corporation
CAG–14.
Docket No. TA86–3–43–001, Williams Natural Gas Company
CAG–15.
Docket No. RP85–122–006, Colorado Interstate Gas Company
CAG–16.
Docket No. RP86–80–002, Texas Eastern Transmission Corporation
CAG–17.
Docket No. RP87–61–002, Eastern Shore Natural Gas Company
CAG–18.
Docket Nos. CP86–401–000, CP87–354–003 and CP87–393–003, Southern Natural Gas Company
CAG–19.
Docket No. RP86–86–002, Panhandle Eastern Pipe Line Company
CAG–20.
Docket No. TA86–5–51–001, Great Lakes Gas Transmission Company
CAG–21.
Docket No. RP86–76–001, Tennessee Gas Pipeline Company
CAG–22.
Docket No. TA86–3–49–001, Williston Basin Interstate Pipeline Company
CAG–23.
Docket No. RP86–83–002, Transcontinental Gas Pipe Line Corporation
CAG–24.
Docket Nos. TA81–1–21–023, *et al.* and RP87–55–002, Columbia Gas Transmission Corporation
CAG–25.
Docket No. RP86–43–001, Columbia Gas Transmission Corporation
CAG–26.
Docket No. RP85–58–002, Columbia Gas Transmission Corporation
CAG–27.
Docket No. CP86–201–002, Natural Gas Pipeline Company of America
CAG–28.
Docket No. RP87–46–000, Mountain Fuel Resources and Southwest Gas Corporation v. Northwest Pipeline Corporation
Docket Nos. RP85–13–016, TA86–4–37–003 and TA87–4–37–002, Northwest Pipeline Corporation
CAG–29.
Omitted
CAG–30.
Docket No. RP86–78–001, Transwestern Pipeline Company
CAG–31.
Docket No. TA85–1–53–005, KN Energy, Inc.
CAG–32.
Docket Nos. RP86–51–000 and RP86–164–000, Northwest Pipeline Corporation
CAG–33.
Docket Nos. RP86–52–000, RP86–52–007 and RP86–109–003, Kentucky West Virginia Gas Company
CAG–34.
Docket Nos. RP86–52–000, 001 and RP86–109–000, Kentucky West Virginia Gas Company
CAG–35.
Docket No. OR86–4–000, KK Appliance Company v. Mid-America Pipeline Company
CAG–36.
Docket No. ST86–1898–000, Winterhall Pipeline Corporation
CAG–37.
Docket No. ST86–1–000, Arkansas Western Gas Company.
CAG–38.
Docket No. ST86–1421–000, Transok, Inc.
CAG–39.
Docket No. RI87–553–001, OXY USA Inc.
CAG–40.
Docket No. CI87–660–001, Shell Oil Company, Shell Offshore Inc. and Shell Western E & P Inc.
CAG–41.
Docket Nos. CI86–637–005 and CI86–638–002, ANR Pipeline Company
CAG–42.
Docket No. IN86–5–006, Mobile Exploration and Producing North America, Inc.
CAG–43.
Omitted
CAG–44.
Docket No. CP86–146–001, Placid Oil Company
CAG–45.
Docket No. CP87–174–001, Panhandle Eastern Pipe Line Company and Trunkline Gas Company
Docket No. CP87–455–001, KN Energy, Inc.
CAG–46.
Docket No. CP85–2–001, Northern Natural Gas Company, Division of Enron Corp.
CAG–47.
Docket No. CP83–211–002, Columbia Gulf Transmission Company
CAG–48.
Docket No. CP87–105–002, Midwestern Gas Transmission Company
CAG–49.
Docket No. CP87–547–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–50.
Docket No. CP87–43–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–51.
Docket No. CP87–195–000, CNG Transmission Corp.
CAG–52.
Docket No. CP87–369–000, Lone Star Gas Company, a Division of ENSERCH Corporation
CAG–53.
Docket No. CP86–202–000, Columbia Gas Transmission Corporation
CAG–54.
Docket No. CP86–112–000, Northern Natural Gas Company, a Division of Enron Corp.
CAG–55.
Omitted
CAG–56.
Docket No. CP86–96–000, CNG Transmission Corporation
CAG–57.
Docket No. CP88–58–000, United Gas Pipe Line Company v. Southern Natural Gas Company
CAG–58.
Docket No. CP88–143–000, Columbia Gas Transmission Corporation, Complainant v. Louisiana Intrastate Gas Corporation, Respondent
CAG–59.
Docket No. IS87–14–000, *et al.*, Buckeye Pipe Line Company

I. Licensed Project Matters

P–1.
Project No. 2959–000, City of Seattle, Washington
Project No. 5305–001, Western Power Inc.
Project No. 5863–000, Western Hydro Electric Inc.
Project Nos. 6220–001 and 6221–000, Weyerhaeuser Company
Project No. 6310–000, Gulf Industries, Inc.
Docket No. EL–88–12–101, Snohomish River Basin, CIAP. Applications for license for projects located in the Spobomish River Basin, Washington.

II. Electric Rate Matters

ER–1.
Docket No. EF87–2011–003, United States Department of Energy—Bonneville Power Administration. Order on rehearing addressing the scope of the Commission's jurisdiction to review rates under section 7(k) of the Northwest Power Act.

ER–2.
(A) Docket No. EL87–53–001, Orange and Rockland Utilities, Inc., Rockland Electic Company and Pike County Light & Power Company. Order on rehearing addressing whether states can impose rates exceeding avoided cost on purchases from qualifying facilities.
(B) Docket No. RM88–6–000, Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities and Interconnection Facilities.

ER–3.
Docket No. ER87–34–001, Metropolitan Edison Company. Opinion and order on initial decision concerning Tax Reform Act of 1986.

ER–4.
Docket No. EL87–30–001, Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company and Holyoke Power and Electric Company. Opinion and order determining whether the existing return on equity components of the companies' formula rates are just and reasonable.

ER–5.
Docket No. EL88–10–000, Industrial Cogenerators v. Florida Public Service Commission. Order on complaint concerning right to receive interruptible, back-up maintenance and supplemental power under section 210(h) of the Public Utility Regulatory Policies Act of 1978.

ER–6.
Docket No. EL88–5–000, Commonwealth Electric Company v. Boston Edison Company
Docket No. EL88–5–000, Boston Edison Company v. City of Holyoke Gas and Electric Department
Docket No. EL88–7–000, City of Holyoke Gas and Electric Department v. Boston Edison Company. Order on complaints.

Miscellaneous Agenda

M–1.
Docket No. RM88–22–000, Accounting for Phase-In Plans. Notice of Inquiry.
M–2.
Reserved
M–3.
Reserved
M–4.
(A) Docket No. GP84–23–027 (Phase II), Stowers Oil & Gas Company, A & R Operating Co., Alamac Oil Company, Aspen Petroleum, Inc., Black, Inc., Caddo Petroleum Caprock Engineers, Inc., Dahalo Lease Corporation, Energy-Agri Products, Inc., Ezekiel Energy, The Harlow Corporation, Judy Oil Company, Kaari Oil Company, Inc., Kim Petroleum Co., Inc., Komanche Oil & Gas, Lear Oil & Gas, Inc., Lucky Bird Petroleum, Inc., Magnet Oil, Inc., Meyer Farms, Inc., Dennis Mills Enterprises, Inc., Omega Energy, Panhandle Energy Corp., Panstar Oil & Gas, Inc., Prairie Oil Company, Raven Energy, Inc., Security Petroleum, Drilling, Inc., Sharon Lease Oil Co., Stowers Oil & Gas Company, Tri-Ex Oil & Gas, Inc., Tumble Weed Production Co., Vanderburg Exploration Co., Inc., Vanderburg Production, Inc., Walker Operating Corporation, Bob Wallace Oil, Inc., J. B. Watkins, Wy-Vel Corp., Zena-B Oil & Gas, Inc. and 3 W Oil, Inc. Opinion and order on initial decision (Phase II).
(B) Docket No. GP86–51–008, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc. Order on complaint.

I. Pipeline Rate Matters

RP–1.
(A) Docket No. RP82–56–020, Northwest Pipeline Corporation. Order on rehearing concerning gathering or transmission services.
(B) Docket Nos. RP85–206–036 and RP85–206–039, Northern Natural Gas Company, Division of Enron Corp. Concerning Commission jurisdiction over gathering rates and Part 284 requirement that gathering rates are separately stated in the pipeline's tariff.

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

P–1.
Docket Nos. CP87–478–000 and CP87–480–000, Wyoming-California Pipeline Company. Declaratory order on non-environmental issues.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88–13388 Filed 6–9–88; 3:24 p.m.]
BILLING CODE 6717–01–M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 1.00 p.m., Thursday, June 9, 1988.

PLACE: In the Board Room, 6th Floor, 1709 G St., NW., Washington, DC.
STATUS: Open Meeting.
CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (377–6679).
MATTERS TO BE CONSIDERED:
Investment Portfolio Policy and Accounting Guidelines

Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88–13207 Filed 6–9–88; 9:46 am]
BILLING CODE 6720–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 8, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, June 15, 1988.
PLACE: Room 600, 1730 K Street NW., Washington, DC.
STATUS: Open.
MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Company,* Docket No., WEVA 86–190–R, etc. (Issues include whether the judge erred in vacating a withdrawal order which alleged a violation of a notice to provide safeguards.)
2. *Kaiser Coal Corporation of Sunnyside,* Docket No. WEST 86–225–M. (Issues include whether the judge erred in finding a violation of 30 CFR § 75.205.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).
CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 88–13361 Filed 6–9–88; 1:53 pm]
BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, June 16, 1988.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.
STATUS: Open.
MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed preemption determinations under Regulation CC (Availability of Funds and Collection of Checks) regarding funds availability laws of Illinois, Maine, and New York.

Discussion Agenda

2. Proposed 1988–1989 fee schedules for Federal Reserve check collection and new returned check services.
3. Publication for comment of proposed amendment to Regulation CC (Availability of Funds and Collection of Checks) to restrict certain delayed disbursement practices.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204.

Date: June 8, 1988.

William W. Wiles,
Secretary of the Board.
[FR Doc. 88–13336 Filed 6–9–88; 10:50 am]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Thursday, June 16, 1988, following a recess at the conclusion of the open meeting.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Proposed acquisition of real property by a Federal Reserve Bank.
2. Building proposals regarding the Charlotte Branch of the Federal Reserve Bank of Richmond.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 8, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-13337 Filed 6-9-88; 10:50 am]
BILLING CODE 8210-01-M

POSTAL SERVICE
(Board of Governors)

Addition of Item to the Agenda of June 6, 1988, Meeting

During its June 6, 1988, meeting, the Board of Governors of the United States Postal Service voted to add to its agenda consideration of a filing with the Postal Rate Commission for an opinion and recommended decision concerning a proposed amendment to the Domestic Mail Classification Schedule to provide for the Postal Service to issue regulations to prevent non-daily publications from mailing total market coverage issues at second-class rates.

By unanimous vote, the Board determined, in accordance with 5 U.S.C. section 552b(e)(2), that Postal Service business required that the matter be considered at this meeting even though the item had not been on the agenda of the meeting as originally announced in the Federal Register (see 53 FR 19366, May 27, 1988) and no earlier public announcement of the change was possible.

Requests for information concerning the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,
Secretary.
[FR Doc. 88-13350 Filed 6-9-88; 12:24 pm]
BILLING CODE 7710-12-M

federal register

Monday
June 13, 1988

Part II

Education Department

34 CFR Part 670
Summer Intensive Language Institutes Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 670

Summer Intensive Language Institutes Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the Summer Intensive Language Institutes Program, which is authorized by Section 605 of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99-498. The proposed regulations provide the framework for the operation of summer intensive language institutes and for fellowships for students enrolled in the institutes.

DATE: Comments must be received on or before August 12, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Joseph F. Belmonte, Center for International Education, Room 3054, ROB-3, U.S. Department of Education, Washington, DC 20202. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Telephone: 202-732-3283.

SUPPLEMENTARY INFORMATION: The Secretary is authorized to provide grants to institutions of higher education or combinations of institutions to establish and conduct summer intensive language institutes. The summer institutes are designed to meet the need for intensive language training of advanced foreign language students and, through pre-service and in-service instruction, the professional development and improved language needs of language teachers. The foreign languages taught must be critical to the national economic and political future or must be "neglected" foreign languages, i.e., languages that are not commonly taught but that are important to the nation's economic and political relations.

A summer institute shall provide, during a period of not less than six weeks, intensive foreign language instruction. The content of the intensive instruction provided at the summer institute must be equal to at least one academic year's worth of non-intensive language instruction offered by the institution operating the summer institute. Summer institutes may provide full-time instruction, or part-time instruction in conjunction with instruction provided by a National Resource Center described in 34 CFR Part 656. In either case, the total offering should equal one academic year. Finally, summer institutes may provide stipends to individuals undergoing instruction.

No funds have been appropriated for this program. In the event that funds are appropriated, these regulations would be needed to implement Section 605 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, Pub. L. 99-498.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The applicants would be higher education institution with enrollments well over 500 and would thus not be considered small entities.

Paperwork Reduction Act of 1980

Section 670.21 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, General Services Administration Building, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except for Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 670

Colleges and universities, Education, Fellowships, Foreign Languages, Grant program—education, Reporting and recordkeeping requirements, Testing, Training.

(Catalog of Federal Domestic Assistance Number not yet assigned)

Dated: February 22, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 670 to read as follows:

PART 670—SUMMER INTENSIVE LANGUAGE INSTITUTES PROGRAM

Subpart A—General

Sec.

670.1 What is the Summer Intensive Language Institutes Program?
670.2 Who is eligible to receive a grant?
670.3 What is a summer institute and what activities must each carry out?
670.4 What regulations apply to the Summer Intensive Language Institutes Program?
670.5 What definitions apply to the Summer Intensive Language Institutes Program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

670.20 How does the Secretary evaluate an application under the Summer Intensive Language Institutes Program?
670.21 What selection criteria does the Secretary use to select a grantee?
670.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

670.30 What are allowable costs?
670.31 How are stipends paid to individuals?

Authority: 20 U.S.C. 1124a, unless otherwise noted.

Subpart A—General

§ 670.1 What is the Summer Intensive Language Institutes Program?

(a) Under the Summer Intensive Language Institutes Program, the Secretary awards grants to establish and operate summer institutes that provide intensive instruction in foreign languages to advanced foreign language students and foreign language teachers. The foreign languages taught at an institute must be languages that are either critical to the economic and political future of the United States or generally neglected.

(b) A grantee under this program may use grant funds to pay stipends to individuals undergoing training at the summer institute.

(Authority: 20 U.S.C. 1124a)

§ 670.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education may receive a grant to establish and operate a summer institute.

(Authority: 20 U.S.C. 1124a)

§ 670.3 What is a summer institute and what activities must each carry out?

(a)(1) An institution operating a summer institute under this part shall provide, during a period of not less than six weeks, intensive foreign language instruction that is equal to at least one academic year's worth of language instruction that it offers on a nonintensive basis, in languages that are critical to the economic and political future of the United States or neglected languages, i.e., languages that are not commonly taught but are important to the nation's economic and political relations.

(2) The institution may provide the intensive foreign language instruction on a full-time basis, or on a part-time basis in conjunction with instruction provided by a National Resource Center described in 34 CFR Part 656.

(b)(1) An institution operating a summer institute under this part shall provide its intensive foreign language instruction to advanced foreign language students, language teachers, or both advanced foreign language students and foreign language teachers.

(2) If the institution operates a summer institute that provides intensive instruction to foreign language teachers, the institution shall meet the professional development and improved language needs of those teachers.

(c) An institution operating a summer institute under this part may use a portion of the grant funds it receives to provide stipends to individuals undergoing training at the institute in accordance with § 670.31.

(Authority: 20 U.S.C. 1124a)

§ 670.4 What regulations apply to the Summer Intensive Language Institutes Program?

The following regulations apply to this program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 670.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply To Department Regulations) and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1124a)

§ 670.5 What definitions apply to the Summer Intensive Language Institutes Program?

The following definitions apply to the regulations in this part:

(a) The definitions in 34 CFR 655.4.

(b) The definitions in 34 CFR 657.6.

(c) "Critical foreign languages" means languages designated by the Secretary at 50 FR 31412 on August 2, 1985 as critical to national security, economic, or scientific needs.

(Authority: 20 U.S.C. 1124a)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 670.20 How does the Secretary evaluate an application under the Summer Intensive Language Institute Program?

(a) The Secretary evaluates an application for a grant to establish and operate a summer institute under the criteria in § 670.21.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if the Secretary establishes one or more priorities under § 670.22, the Secretary awards up to 120 possible points.

(c) The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1124a)

§ 670.21 What selection criteria does the Secretary use to select a grantee?

The Secretary uses the following criteria in evaluating applications for grants to establish and operate Summer Intensive Language Institutes:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (20) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c)

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (10) (See 34 CFR 655.31(e))

(f) *Quality of the institute's instructional program.* (25) The Secretary reviews each application to determine—

(1) The quality of the summer institute's language training program;

(2) The extent to which the evaluation of student progress truly measures proficiency against a proficiency scale and not simply time-in-class; and

(3) The extent to which the summer institute employs a sufficient number of scholars or teaching faculty to enable it to carry out its instruction.

(g) *Need and potential impact.* (20) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The potential impact of the proposed project in improving the knowledge of languages at the national level; and

(3) The extent to which the summer institute's plans for selection and training of individual participants will result in an approved supply of specialists in the languages being taught in the summer institute.

(h) *Degree to which priorities are served.* (20) If the Secretary establishes one or more priorities under the provisions of § 670.22, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1124a, 1132)

§ 670.22 What priorities may the Secretary establish?

(a) The Secretary may each year establish priorities for the funding of Summer Intensive Language Institutes from among the following:

(1) Particular foreign languages to be taught.

(2) Levels of language instruction, such as introductory, intermediate, or advanced.

(3) Any combination of the priorities in paragraphs (a) (1) and (2) of this section.

(b) The Secretary announces any priorities in the application notice for the program published in the **Federal Register.**

(Authority: 20 U.S.C. 1124a)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 670.30 What are allowable costs?

(a) *Allowable costs.* Allowable costs under a grant awarded for a summer

institute include, but are not limited to, the costs of—

(1) Faculty and staff salaries;

(2) Teaching materials;

(3) Travel to bring faculty members to and from the summer institute; and

(4) Stipends to individuals undergoing instruction at the summer institute.

(b) *Limitation on allowable equipment costs.* A grantee may not use more than five percent of grant funds for equipment.

(Authority: 20 U.S.C. 1124a)

§ 679.31 How are stipends paid to individuals?

(a) *Stipends.* A grantee operating a summer institute may use grant funds to pay a stipend to an individual who—

(1) Is accepted for enrollment or is enrolled at the institute;

(2)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States; or

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands;

(3) Has the language background necessary to successfully complete the intensive instruction provided by the summer institute, and

(4)(i) If a foreign language student, demonstrates academic achievement in the language being taught by the summer institute as indicated by his or her grade point average or by a standardized competency-based test; or

(ii) If a foreign language teacher, teaches the language being taught at the summer institute.

(b) *Stipend amount.* If a grantee awards a stipend, the stipend amount may not exceed an amount that equals the sum of tuition and fees charged by the summer institute and a subsistence allowance approved by the Secretary and announced in the application notice in the **Federal Register**. The Secretary may approve a subsistance allowance within a range from $1,250 to $2,500.

(c) *Stipend conditions.* (1) An institution operating a summer institute may disburse stipend payments as it determines best meets the needs of the stipend holder.

(2) An institution operating a summer institute may not pay any portion of a stipend to an individual who is no longer enrolled and no longer in good standing at the institute.

(Authority: 20 U.S.C. 1124a)

[FR Doc. 88-13065 Filed 6-10-88; 8:45 am]
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federal register

Monday
June 13, 1988

Part III

Department of Labor

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; H-2A Program Handbook; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; H-2A Program Handbook

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Employment and Training Administration (ETA), Department of Labor, has issued the following handbook to ETA regional offices and to State employment service agencies containing procedures for administering the temporary alien agricultural labor certification ("H-2A") program. The handbook is published below for information of all interested parties. Certain documents contained in the handbook, but published elsewhere (such as regulations), as well as the appendices of the handbook, have been omitted in the reproduction below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Suite N-4456, 200 Constitution Avenue NW., Washington, DC 20210-0001. Telephone: 202-535-0165 (this is not a toll-free number).

Signed at Washington, DC, this 7th day of June, 1988.

Robert A. Scheuff,

Director, U.S. Employment Service.

Directive: ETA Handbook No. 398
To: Regional and State Offices
From: Donald J. Kulick, Administrator, Office of Regional Management
Subject: H-2A Program Handbook

1. *Purpose.* To transmit a handbook providing operating guidelines on the H-2A program.

2. *References.* Immigration Reform and Control Act of 1986 (IRCA); 20 CFR Part 655, Subpart B (H-2A regulations); 20 CFR Part 654, Subpart E, (ETA Housing Regulations); 20 CFR Part 653, Subpart B (Services to MSFWS) and Subpart F (Agricultural Clearance Order Activity); 20 CFR 655.0-655.000; 20 CFR Part 658 (Job Service Complaint System; Monitoring and Enforcement Regulations).

3. *Background.* On November 6, 1986, the President signed IRCA into law. The statute required that regulations governing the temporary alien agricultural worker H-2A program provisions be promulgated in interim final form no later than June 1, 1987. The regulations were published by the Department of Labor in the Federal Register on June 1 1987 at 20 CFR, Part 655, Subpart B. They were effective upon publication and govern all employer applications for temporary alien agricultural worker certifications filed on or after June 1. The public comment period on the interim final rule has expired, and it is probable that final regulations will be promulgated in 1988.

4. *The Handbook.* The handbook has three sections: (1) Operating procedures; (2) special items; and (3) appendices. It is intended to supplement the regulations by providing guidance to SESAs and Regional Offices involved in day-to-day program operations, and must be used in conjunction with the regulations. If future regulatory action results in changes to program operating procedures, the handbook will be amended to conform to the regulations. The handbook supersedes General Administration Letter No. 48-81, and changes #1 and #2 to General Administration Letter No. 48-81. The Employment and Training Administration intends to publish the handbook as an informational notice in the Federal Register.

5. *Action Required.* Regional and State Administrators should distribute the handbook to all staff who are or may be involved in H-2A program activities.

6. *Inquiries.* State agencies should direct inquiries to the appropriate Regional Office. Regional Offices should direct inquiries to the National Office, U.S. Employment Service, Attn: *TEEL.*

7. *Attachment.* H-2A Program Handbook.

Rescissions: GAL 48-81, Changes 1 and 2

Expiration Date: Continuing
ET Handbook No. 398

Preface

The H-2A program is authorized by the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA). The program establishes a means for agricultural employers who anticipate a shortage of domestic workers to apply for permission to bring into the United States nonimmigrant aliens to perform agricultural labor or services of a temporary or seasonal nature. Under the statute, the Attorney General, through the Immigration and Naturalization Service (INS), has the authority for approving an employer's petition to import foreign workers. Before the INS can approve an employer's petition, however, the law requires the employer to apply to the Department of Labor (DOL) for a certification that—

"* * * there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

* * * the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed."

Under Federal Regulations at CFR Part 655, Subpart B, the Department of Labor has established procedures and a systematic process to acquire information sufficient to carry out the requirements of the law. The regulations provide the Department's methodology for the two-fold factual determination on the availability of domestic workers and of any adverse effect which would be occasioned by the use of foreign workers for particular temporary and seasonal agricultural jobs in the United States.

Most of the day-to-day operational responsibility for the program has been delegated in the regulations to the Regional Offices of the Employment and Training Administration and the State Employment Security agencies. Operating guidelines in the handbook are designed to supplement the regulations, and must be used in conjunction with them. Throughout the handbook appropriate sections of the regulations have been reproduced and placed adjacent to the text for ready reference.

(Table of Contents ommitted.)

Chapter I—Program Operating Procedures

A. Filing of Applications

1. Who Can Apply

a. *Employers in Agriculture.* Employers desiring to apply for temporary alien agricultural labor certification for the employment of H-2A workers must meet the definitional indicia of the regulations at 20 CFR 655.100. This part defines "agricultural labor or services" by incorporating the definitions for "agricultural labor" and "agriculture" appearing in Section 3121(g) of the Internal Revenue Code of 1954 (i.e., the FICA or Social Security tax definition) and Section 3(f) of the Fair Labor Standards Act.

b. *Employers with Temporary Jobs.* The regulations at 20 CFR 655.100(c)(2) include a definition for "seasonal or other temporary employment" which is consistent with MSPA provisions. The regulations also adopt for H-2A certification purposes a slightly revised definition of "temporary" employment. Except in unusual situations, temporary employment will be employment for less than twelve (12) months. It is the employer's need, and not the nature of the job, which determines whether a position is, in fact, temporary.

The Regional Administrator (RA) must make a threshold determination as to whether the position is temporary as defined in the regulations. In considering whether the job is temporary, the RA will evaluate the employer's need for the worker. The unavailability of U.S. workers is not material to the RA's determination of whether the position is temporary.

In some circumstances, a temporary labor certification may be issued for a position which is permanent in nature so long as the employer's need for a worker in the position is temporary. For example, under the regulations, H-2A labor certification may be appropriate for a Ranch Manager to replace the employer's permanent manager who is incapacitated due to illness for a specified duration. Although a Ranch Manager is normally considered a permanent job, the employer's need for a replacement worker is temporary.

c. *Employer's Status.* Under the regulations, H-2A applications may be filed by sole employers or by joint employers, provided the definitional requirements of 20 CFR 655.100 are met. An association may file as a sole employer, as a joint employer with its member employers, or as an agent for its member employers.

All parties must sign the application (or authorize an agent to do so), and a letter signed by each member employer authorizing the association to act on its behalf must accompany the application.

The regulations do not preclude a farm labor contractor registered in accordance with MSPA from filing as the employer on an H-2A application. Instructions for handling these applications appear in Chapter II of the handbook.

d. *Agents.* An agent may file an H-2A application on behalf of an employer and sign on behalf of the employer. In such cases, the application must include a signed statement from the employer which authorizes the agent to act on the employer's behalf. The statement must also describe in detail the duties which the agent will perform on the employer's behalf.

e. *Return of Applications.* Applications filed for positions which are not "temporary or seasonal" or are not in "agricultural labor or services" as defined in the regulations cannot be processed under the H-2A provisions. These applications should be returned to the employer with a letter from the RA indicating that the application cannot be accepted for consideration under the H-2A regulations. The letter will briefly describe the reasons why the application is not appropriate for H-2A processing and must contain all the relevant information (including the statement of appeal rights) described in Section 655.106 (c) and (d) of the H-2A regulations. The RA will also notify the local office of the action taken.

In the event applications of this nature might be eligible for consideration under the H-2B or permanent labor certification provisions, Regional Offices should advise employers to this effect in their notices.

2. Where and How to Apply

a. *Filing with Regional Office; Simultaneous Copy to Local Office of the State Employment Service Agency (SESA)* [1]. An employer who desires to use nonimmigrant foreign workers in temporary or seasonal agricultural employment must file a temporary labor certification application, including a job offer for U.S. workers, with the RA having jurisdiction over the State of intended employment and with a simultaneous copy submitted to the local SESA office serving the area of intended employment. Submittal of an application to a SESA does not constitute "filing an application" for H-2A purposes. Applications involving multi-State employment within one Region may be processed according to this procedure, but multi-State employment which encompasses more than one Regional Office area of jurisdiction will require the establishment of special procedures as prescribed by 20 CFR 655.93.

Employers seeking H-2A certification must file an original of the application containing an original signature with the appropriate RA. A duplicate of the application must be submitted simultaneously with the local SESA office. An original signature is not required on the duplicate submitted with the local office.

b. *Mail or Personal Delivery.* The regulations require that applications be filed with the RA no less than sixty (60) days prior to the employer's first estimated date of need. The filing date is the date that the application is received in the Regional Office.

Employers may choose the means by which the application is delivered. However, employers should be urged to select a method of delivery which will ensure receipt of the application by the Regional Office by the required date. The means of delivery should also provide the employer with a record of the filing date of the application.

c. *Separate Submittal for Each Job/Occupation and Date of Need.* More than one alien may be requested on a H-2A application if the aliens are to perform the same type of services in the same occupation in the same area of employment. However, separate applications must be submitted for each distinct occupation for which labor certification is sought. A separate application is also required for each distinct date of need in the same occupation and activity, unless a master application is involved or the Regional Office believes the dates are so close together that separate applications would place an unreasonable burden on the employer.

If harvest workers are requested on an order, but the local office knows, or has reason to believe from prior experience, that the employer is also seeking to have those same workers perform duties in other occupations, such as cooks and cook helpers, the local office must advise the employer that separate H-2A applications for each occupational classification are required. The adverse effect standards and U.S. worker availability criteria will apply to those "support personnel" in accordance with the H-2A regulations.

3. What to Submit

a. *Application Forms.* The regulation at 20 CFR 655.101(b) provide general instructions applicable to the filing of H-2A applications. Employers should continue to use Forms ETA 750 (Application for Alien Employment Certification) and ETA 790 (Agricultural and Food Processing Clearance Order) until a new application form for H-2A purposes is issued by DOL. In the meantime, employers should delete the assurances contained in Part A of Form ETA 750. These assurances are inapplicable to the H-2A certification process. The application includes:

- Form ETA 750, Part A, Offer of Employment, completed and signed by the employer (or agent) describing the job for which H-2A labor certification is being sought, including the number of workers needed and the specific date the workers are needed.
- Form ETA 790, Agricultural and Food Processing Clearance Order, completed and signed by the employer (or agent) describing the job for which recruitment for U.S. workers will be conducted. The form, when submitted by the employer, is actually the

[1] Some SESAs have centralized their administration of the labor certification process. When this has been done, some of the specific responsibilities and procedures set forth for local offices could vary slightly from those described in this handbook. In these instances, local office staff should be guided by separate State/Central office implementing instructions, which must be approved by the Regional Office.

employer's job offer, and does not constitute a clearance order at this point in the process. The clearance order is prepared and submitted to the Regional Office for approval by the SESA, as discussed in Section C of Chapter I of this handbook.

- A signed statement that the employer agrees to abide by the assurances required by the regulations at 20 CFR 655.103. This statement may be attached as an addendum to the application or included on Form ETA 790.
- A statement describing the employer's positive recruitment plan. The plan may be attached as an addendum to the application or included at Item 21 of Form ETA 750, Part A.
- If the application is filed by an agent on behalf of the employer, the signed authorization statement as described in the regulations at 20 CFR 655.101(a)(2).
- If the employer's housing does not yet meet applicable standards, a request for conditional access into the intrastate or interstate clearance system as described in the regulations at 20 CFR 654.403(a).
- If the application is filed by an association, a statement identifying whether the association is a sole employer, joint employer, or agent for its employer members. Documentation to verify the status of the association is required, as is a list of the names and addresses of each member who will employ H–2A workers.

Employers' agents and joint employer associations may submit "master" applications covering virtually identical job opportunities available with a number of employers. Identical job components would normally include such items as description of work to be performed, hours of work, pay, and benefits. Job components which normally differ would include such items as employer's name, address and phone number, number of workers needed, and description of housing. Each job component which differs for each employer must be clearly identified as such in the "master" application package. Although "master" applications may be submitted and accepted by the RA under these circumstances, certifications must still be issued to individual employers, and such employers must be billed individually.

b. *Representations of Agents.* Since they are fully responsible for the accuracy of their agent's representations, employers should be cautioned not to sign blank application forms.

c. *Mandatory Information.* Certain information must be provided in order for the Department of Labor to make its certification determination on the acceptability of the application. All items on Forms ETA 750 and ETA 790 requesting identifying information about the employer, such as the employer's name, address, and telephone number, must be completed.

Further, local offices and RAs should caution employers that an incomplete application could result in delays in processing the employer's request for H–2A workers.

The employer's application cannot be processed unless the following items are completed:

- Form ETA 750, Part A, Items 4–13, 14, 15, 18(a), 18(b), 21, and 24; and
- Form ETA 790, Items 4, 5, 8, 9, 10, 11, 13, 14, 15, 17, and 20.

These items provide information regarding the job specifications and duration of employment and are essential to the labor certification determination process, including a determination on whether the application can be "accepted for consideration", as defined at 20 CFR 655.100(b).

4. When to Apply

a. *Normal Time Frames for Applying and Processing.* The time frames for the application and processing of H–2A certification requests are discussed in the regulations at 20 CFR 655.101. In general, H–2A applications must be filed with the RA and received in the Regional Office a minimum of sixty (60) calendar days prior to the employer's date of need for workers, and the RA must make the certification determination no later than twenty calendar (20) days before the date of need, except when special circumstances apply.

The RA must notify employers of deficiencies within seven (7) calendar days (including holidays and weekends) of the filing date of the application. *This is a statutory requirement.* The employer will be provided with five (5) calendar days from the date of the RA's notice to submit corrections and/or amendments. Corrections or amendments submitted and received by the Regional Office beyond five (5) calendar days will result in a day-for-day postponement of the RA's certification determination. If the fifth-day deadline established by the RA for the employer to submit modifications falls on a weekend or on a holiday when the office would normally not be open for business, the date for submittal of modifications should coincide with the next normal business day.

The sixty-day period will allow time for the RA to review the employer's application, obtain amendments to correct deficiencies, if necessary, and permit time for U.S. worker recruitment prior to the RA's certification determination. The regulations do not specify a minimum recruitment period prior to the issuance of labor certification. Therefore, RAs, local offices, and employers are urged to consult with each other prior to the sixty-day filing date in order to secure an acceptable application as early as possible.

If delays in submitting an acceptable application are directly caused by the State Employment Service Agency (SESA) or the Regional Office, the employer will not be required to extend the recruitment period beyond the date on which the RA must make a certification determination. If the RA has reason to believe that a State agency is not adhering to Employment Service (ES) regulations, the remedial action procedures at 20 CFR Part 658, Subpart H, will be applied.

Further, if the RA fails to notify the employer that the application is deficient and must be amended within the seven (7) calendar days allowed after filing, such delays will not count against the employer's entitlement to a determination twenty (20) days before the date of need, provided that the employer submits the required modifications no later than the five (5) calendar days prescribed in the regulations.

b. *Earlier Applications; Working with SESAs Encouraged.* The time frames of the regulations must be strictly observed in order to allow adequate time for the recruitment of U.S. workers. To avoid delays in issuing temporary labor certification, employers should be encouraged to consult with local office staff before submitting an application and to file applications early. SESAs also should be active in maintaining cooperative relationships with known H–2A employers during the off season in order to keep employers informed of new and emerging program developments and requirements. The period preceding the 60-day filing deadline should be used to provide technical assistance to employers in the preparation of their applications and in developing clearance orders which can be processed expeditiously once the formal filing and recruitment process begins. In addition, local offices must advise the RA of circumstances that may impact agricultural activities, such as an anticipated early harvest because of favorable weather conditions.

If an application is submitted earlier than the minimum 60-day period prescribed in the regulations, Regional Offices should process such applications according to the time frames specified for applications filed on the 60th day before date of need; e.g., review and return for amendment an unacceptable application within 7 calendar days and offer the employer 5 calendar days in which to resubmit the application. However, in no case should certification determinations be made earlier than 20 days before the date of need even though an acceptable application is filed more than 60 days before the date of need, and an employer's certification determination 20 days before the date of need should not be postponed because of an employer's failure to resubmit a timely modification, unless the resubmittal is not filed until later than 46 days before the date of need.

c. *Emergency Situations.* The regulations give the RA special authority to waive the sixty-day filing requirement in emergency situations. In order to qualify for a waiver, the employer:

- Must not have used temporary alien H–2 or H–2A workers in the prior year's agricultural season (see also Chapter I, A, 4, d); or
- Must demonstrate that good and substantial cause exists to warrant the special waiver by the RA. Good and substantial cause may include unforeseen changes in market conditions or unexpected unavailability of previously identified domestic workers whom the employer had planned to use in temporary or seasonal jobs. The regulations do not preclude an employer who did use H–2A (or H–2) workers the past year from being eligible for emergency certification consideration.

In such instances, the local office should notify the RA of the critical circumstances and help the employer expedite the certification process.

To grant a waiver, the RA should have information on what effort the employer has expended in conducting current or recent local recruitment. This could include newspaper, radio, and television advertising within the State and other potential areas of supply. The RA should be able to conclude that outreach or other reliable means of recruitment have failed to produce enough workers, or that workers who have been recruited are suddenly no longer available, and that further recruitment efforts will not produce enough workers in time to fill the employer's needs.

The employer must present a justification for emergency treatment along with the application. This justification should include the employer's explanation of recruitment efforts made (such as contacts with prospective workers or crew leaders), and a description of other circumstances impacting the employer's situation, such as special efforts made to assist former workers in obtaining Special Agricultural Worker (SAW) status or a description of unfulfilled expectations for Special Agricultural Worker (SAW) workers to be available.

The RA may consult the appropriate county extension agent for relevant information and advice on such matters as market conditions and may request that the SESA provide labor market information or obtain such information and forward it to the Regional Office. The employer, on his/her own, may also submit such supporting evidence from the county agent or any other representative of the U.S. Department of Agriculture (USDA). USDA representatives also may submit information to the RA on their own initiative.

The regulations further require that the RA have adequate opportunity to determine U.S. worker availability on an expedited basis before making an emergency labor certification determination. This could be accomplished by a Regional Office in a labor demand area making inquiries of Regional Offices in labor supply areas as to worker availability. If an emergency request appears to be justified, RA's should not unduly delay the processing of such requests by requiring extensive SESA recruitment through the clearance system, and should attempt to complete the processing in one or two weeks.

d. *First-Time Users.* Special provisions of the regulations apply to employers who apply for the first time for H–2A labor certification during the two-year period commencing on June 1, 1987, and ending on May 31, 1989. Employers who have applied previously under the H–2 program are not eligible for this special consideration. The filing and recruitment provisions applicable to other H–2A users have been relaxed to assist first-time applicants who need H–2A workers but lack familiarity with the regulatory system. Local offices are encouraged to assist these employers by providing the guidance needed to fulfill the requirements of the application process.

First-time H–2A employers are entitled to a labor certification determination no later than ten (10) days before the date of need provided that the employer has submitted an acceptable application and job offer which has been "accepted for consideration" according to the regulations at 20 CFR 655.100(b) no later than thirty (30) calendar days before the date of need. In processing such applications, the RA must have a reasonable opportunity to test the labor market prior to a labor certification determination.

This provision in the regulations is designed primarily for the novice employer who does not have the benefit of association membership or advice and assistance from people or entities knowledgeable in the labor certification process. While the RA may waive the filing minimum which applies to other employers, the RA must also determine that the employer has made a *good faith* effort to otherwise comply with the H–2A regulations.

5. Amendments to Applications

a. *Changes in the Number of Workers Requested.* Subject to the limitations described in the regulations and prior to the RA's certification determination, employers may amend their H–2A applications to increase the number of workers requested without additional recruitment. Employers must submit such requests in writing to the RA with a copy to the local office.

Employers requesting an increase which exceeds the twenty percent (or fifty percent for employers of less than ten workers) limitation described in the regulations must also explain in their request to the RA why the need for additional workers was unforeseen and indicate, if applicable, if the crop or commodity would be harmed if certification were delayed by the imposition of further recruitment. Regional staff should verify the employer's assertions concerning the crop or commodity status with the local office or the appropriate county extension agent.

If an employer requests an amendment which reduces the original number of workers, and if U.S. workers recruited against the employer's original labor needs are either in transit to or have arrived at the job site, the RA shall consider the reason for the request and any detriment which might occur to U.S. workers if the change is approved.

The employer is required to comply with the requirements for guaranteeing the first week of wages under 20 CFR 653.501, and should be reminded of this requirement under these circumstances.

b. *Change in Date of Need.* Employers may change the date of need stated in a job order by sending a written request to the RA, with a copy to the local office. The date of need cannot be changed without the RA's written approval.

In considering whether to approve a change in the date of need, the RA shall consider the reasons for the request and any detriment which might occur to U.S. workers who relied upon the original job order.

No change in the date of need is effective until approved by the RA. If a request for a change is made after U.S. workers have departed for the employer's place of employment, the RA may approve the change only upon receiving the employer's written assurance that all such U.S. workers will be provided free housing and subsistence until work becomes available. The employer must provide written information to support a finding that a change in the date of need is necessary. No telephone calls will be accepted.

The RA will respond promptly to the employer and will send copies of the determination to the SESA, which, in turn, will immediately notify all appropriate supply states by telephone followed up with written confirmation on ETA 795. An RA's denial of a request is not subject to further agency review.

c. *Minor Amendments.* Prior to the certification determination and with the RA's approval, employers may make minor modifications to their applications. Minor modifications consist of those changes which will not significantly affect the RA's certification determination, such as a change in the employer's street address, directions to the work site, referral instructions, meal charges, location of housing units, insurance carrier, or estimated amount of time to be spent in a particular crop activity when several activities are involved.

"Minor" modifications do not include modifications such as a change in the number of workers requested or a change in the date of need. Requests for minor changes must be made in writing addressed to the RA, with a copy to the local office. After RA approval in writing, the local office should prepare Form ETA 795 for distribution into the local, intra-, and interstate clearance systems. An RA's denial of a request of this nature is not subject to further agency review.

d. *Modifications after Certification—Terms and Conditions.* (See also Chapter I, Section F, 1) Employers may request modification of the terms and conditions of a certified job offer through written application to the RA. However, all post-certification modifications must be approved by the RA. An employer's assertion of workers' approval of requested changes has no relevance to the RA's decision to approve or disapprove a modification, and the RA's notice of disapproval is not appealable within DOL.

e. *Modifications after Certification—Time Extension.* Employers may request that the RA extend the period of labor certification. Applications to the RA may be made after fifty percent of the work contract period has elapsed.

An employer who seeks a one-time total extension of two weeks or less must apply directly to the INS. DOL cannot grant an extension in cases where INS has already approved an extension request.

Requests for extensions in excess of two weeks must be made in writing supported by documentation showing that the need for the extension was unforeseeable. Justifiable reasons to support a request for an extension might include such factors as weather conditions, unforeseen changes in market conditions or other factors beyond the employer's control. The RA may consider all available information, including local newspaper reports, in deciding whether to approve or deny the request.

The RA may verify the factors cited by the employer with the local office or the county extension agent, as appropriate. The RA may also ask the local office to consult with the county agent to obtain the required verification.

Extensions which, if granted, would extend the entire work period for twelve (12) months or more would run contrary to the temporary employment provisions of the regulations. Such extensions are, therefore, prohibited except in extraordinary situations. A determination as to what constitutes extraordinary circumstances will be made on a case-by-case basis. RAs should consult with the National Office when such circumstances occur.

There are no provisions for an employer to appeal within DOL a denial of a request for an extension. Nor are there appeal provisions for denials of requests for modifications to an application before certification or to the conditions of certification after certification has been granted.

6. Special Procedures for Special Circumstances

The Director, U.S. Employment Service, has the authority under the regulations to establish special procedures for processing and otherwise handling H–2A applications when employers can demonstrate that there is a justifiable need for such procedures. The Director also has the authority to establish special bi-weekly, weekly, or monthly adverse effect wage rates (AEWRs) for occupations characterized by other than a reasonably regular workday or workweek, such as range production of sheep or other livestock, where workers are alone in remote areas and are on call on a twenty-four hour basis, seven days a week.

Special procedures for sheepherder applications and for applications from custom combine operators have been in place for several years, and will continue to apply, subject to periodic updating and other adjustments as become necessary. Regional Offices and SESAs involved in handling those types of certification applications should continue to follow the procedures which have been established by the National Office. See FM No. 108–82 for sheepherder guidelines; procedures for custom combiners are transmitted by memorandum to Regions VI, VII, and VIII each year.

Employers who believe they have situations which call for special consideration may request such consideration by writing directly to: Director, U.S. Employment Service, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210, with a copy to the appropriate RA. Employers should be advised to specify in their letters precisely in what manner their particular employment situation differs from what normally occurs in agriculture, and precisely what adjustment to normal H–2A application processing procedures should be considered. There are no appeal rights within DOL of the Director's denial of a request for special procedures to be established.

B. Contents of Job Offers and Assurances

1. Job Offers

The application of an employer for temporary alien agricultural labor certification must include a job offer. The job offer must include the terms and conditions of employment which will be used in the recruitment of both U.S. and alien workers. As a minimum, the job offer must comply with minimum requirements established in the general agricultural clearance order regulations at 20 CFR Part 653, Subpart F, and must include certain benefits, wages, and working conditions which are needed in order to assure no adverse effect on U.S. workers similarly employed. The job offer or the Form ETA 790 must also include an agreement to abide by the assurances specified in the regulations at 20 CFR 655.103. A short statement to this effect is sufficient.

Certain components of the job offer also must conform to what is "prevailing", "normal" or "common" practice in the area for the occupation. (See Chapter II, Section C.)

a. *Equivalent Treatment of U.S. and Alien Workers.* A basic premise of any labor certification determination is that the employer must offer U.S. workers at least the same opportunities, wages, benefits, and working conditions as those which the employer offers or intends to offer to non-immigrant foreign workers. If such terms and conditions of employment for the aliens have been prearranged through a worker agreement or contract, the employer should be required to furnish a copy of such contract with the application so that the RA may make a threshold determination on the equivalent benefit criteria.

(Furnishing a copy of such contract, however, does not constitute DOL approval of the terms and conditions in the contract, which are subject to further review, and a copy of the alien worker contract should not accompany a job order into clearance.)

At the same time, the employer may not require more of U.S. workers than is being required of the alien workers. For example, if the employer allows alien workers a certain period of breaking in or training time to achieve a required production standard, U.S. workers must be offered at least the same opportunity for reaching the standard without being discouraged.

b. *Housing.* Housing must be available for all non-commuting workers without charge to the workers. "Non-commuting" refers to workers who are not reasonably able to return to their residence within the same day. The job offer should provide a written description of the housing to be provided, including the location, type (dormitory, 5-room frame house, etc.), and number of workers and, where appropriate, family members who can be accommodated. The job offer shall clearly state that housing is provided at no cost to workers.

Family housing is to be made available and provided under certain circumstances. This depends upon a determination by the RA on the practices of employers in the area of employment to provide family housing for workers in the same occupation for which workers are requested. If it is the prevailing practice, as determined by a survey, then such family housing must be provided to workers with families who request such housing arrangements. (See also Chapter II, Section C.)

Housing arrangements may be basically three types, as provided for in the regulations:

• *Employer Provided Housing.* This is housing which is owned or leased through long-term arrangements by the employer for housing temporary agricultural workers. Such housing must comply with the full set of U.S. Department of Labor (DOL) standards (Occupational Safety and Health Administration [OSHA] or Employment and Training Administration [ETA], as applicable). (Also see Chapter II, Section D of handbook.)

If the housing is not in full compliance with such standards at the time of application, the employer must request in writing conditional access to the clearance system with assurance that such housing will be in full compliance at least thirty (30) calendar days before it is to be occupied.

This time frame may be waived for employers whose applications are accepted under emergency or first-time user provisions. However, the requirements to provide adequate housing which meets applicable standards cannot be waived, and certification under the emergency and first-time user provisions cannot be granted for an employer who is providing non-rental housing unless that employer's housing has been inspected and has been found to meet standards.

• *Arrangements for Other Housing.* Employers may make other arrangements for housing, such as rental or public accommodations, which meet standards for such housing. If there are no local or State standards, then such housing must meet the OSHA standards established in the regulations at 29 CFR 1910.142. The employer must provide documentation that such housing is in compliance with local or State standards, if this is the case. This may be in the form of a certificate from the local or State Department of Health office or a statement from the manager or owner of the housing. Local offices should check to be sure that such standards do, in fact, exist. If rental housing is obtained, the employer shall make all the arrangements and pay the rental fee directly to the owner or operator of the housing. Workers shall not be held responsible in any way for paying the rental cost of the accommodation.

Normally, rental housing would consist of a commercial, motel-type accommodation for transients. However, there is nothing to preclude an employer who does not actually own housing on his/her property from renting non-commercial housing from other individuals or entities for the purpose of housing temporary agricultural workers. When this occurs, the local or state standard principle for acceptability of the housing applies. However, SESA's and Regional Offices should examine such situations carefully to ensure that employers in an area are not attempting to circumvent DOL's housing standards by entering into reciprocal rental arrangements as a means to avoid pre-occupancy housing inspections. This is not permissible.

It is not permissible for workers to be required to make deposits for bedding, other items furnished in the accommodations, or for possible damage to accommodations. If workers are subsequently found to have been responsible for damage, the employers may require reimbursement for such damages as prescribed in the regulations. Such reimbursements, however, may not result in a worker's wages going below the Federal minimum wage, unless specifically authorized by FLSA regulations.

• *Range Housing.* Housing for workers primarily engaged in the range production of livestock must meet applicable standards per guidelines issued by DOL. Separate guidelines for sheepherder range housing are presented in FM No. 108–82, July 8, 1982. Other guidelines may be developed as appropriate.

c. *Workers' Compensation.* The job offer shall include a statement that workers' compensation will be provided at no cost to all workers in the occupation for which workers are being sought. The coverage and benefits provided will be at least equal to that provided under the State workers' compensation law for comparable employment. If coverage is in effect at the time of application, the employer will set forth in the application the insurance carrier and the policy number, or, if appropriate, proof of State law coverage. If coverage is not in effect, the employer is required to provide proof of coverage before a labor certification can be granted.

d. *Employer Provided Items.* The job offer shall describe all equipment which will be used by workers in performing the job opportunity. Work equipment may be picking bags, gloves, clippers, knives, files, etc. All such equipment shall be provided by the employer without charge (e.g., any deposit) *except* where the employer asserts that it is the common practice in the crop activity, the geographic area, and occupation for workers to provide such necessary tools and equipment. This would apply regardless of whether the employer subsequently reimbursed workers for such cost. In any event, the employer must clearly document that it is the common practice and obtain written approval in advance from the RA before this exception can be granted. Further,

the costs incurred by the worker in providing his/her own tools, supplies and equipment may not bring the worker's wages below the FLSA minimum for the workweek in which the cost is incurred.

e. *Meals.* The job offer shall specifically describe the arrangements made for feeding workers. If the employer has a centralized cooking and feeding facility, the employer must provide each worker with three meals per day. If the worker is working at the time of scheduled meal time, the job offer must describe the meal arrangement for feeding the worker; e.g., sack lunch, meal catered to field, etc.

In the absence of centralized facilities, the employer may arrange for meals to be provided to the workers by means of a catering service which will deliver meals prepared elsewhere to the employer's facility.

If centralized cooking and eating facilities are not available and catered meals are not provided, the employer must furnish at no cost to the workers convenient cooking and eating facilities of sufficient size and capacity (including utensils) which would enable workers to prepare their own meals. The job offer shall clearly describe such facilities and state that the facilities and necessary utensils are provided at no cost to the workers.

Where meals are provided, the job offer shall also state the daily charge for three meals. Such charge cannot exceed the amount permitted by the regulations at 20 CFR 655.102 or 20 CFR 655.111.

f. *Transportation.*

• *To Place of Employment.* The job offer should describe the arrangements by which the worker will travel to and from the place of employment. If it is the prevailing practice of non-H–2A employers in the area and occupation to advance transportation and subsistence costs (or provide such), the employer shall state in the job offer that transportation and subsistence cost will be advanced. Employers are also required to offer U.S. workers at least the same benefits which are provided H–2A workers; therefore, if transportation will be provided or advanced to H–2A workers, the same must be offered to U.S. workers. The amount of transportation cost will be determined to be at least that by the most economical and reasonable similar common transportation carrier.

If it is not the prevailing practice for non-H–2A employers to advance or provide transportation and subsistence, the job offer must stipulate that the worker will be paid the costs incurred by the worker for transportation and subsistence upon completion of fifty percent of the contract period.

In either case, the amount of the daily subsistence payment will be at least the amount the employer could charge the workers for meals under 20 CFR 655.102(b)(4) and for the time it would take for a worker to travel by the most economical and reasonable common transportation carrier to the job site.

If an employer is subject to FLSA, the employer may not make deductions (for transportation) from the worker's pay or require the worker to incur costs that would result in the pay falling below the Federal minimum wage, unless otherwise specifically authorized by FLSA regulations.

• *From Place of Employment.* The job offer should also state that transportation and subsistence benefits will be provided for workers who complete the work contract period. This means that the employer must offer to pay for (or provide) the worker's transportation home, or wherever the worker began the series of jobs culminating at the current place of employment. If the worker has obtained a subsequent job, but the subsequent employer has not offered to pay for (in advance or by reimbursement) the worker's transportation from the current place of employment to the other employer's place of employment, the current employer must offer to pay for (or provide) such transportation expenses. However, where the subsequent employer has offered to pay for (or provide), in advance or by reimbursement, the worker's transportation from the current place of employment to the subsequent employer's place of employment, the current employer is not required to pay for (or provide) such transportation.

This benefit does not apply to workers who voluntarily quit employment before the end of the contract or who are terminated for cause, providing the employer notifies the Job Service office of such action.

The same deduction or cost incurred limitation described above for incoming transportation applies to return transportation.

• *Between Living Quarters and Work Site.* The job offer shall clearly state that the employer will provide transportation from the place where the employer has provided housing to the actual work site and return at the end of the work day. Such transportation will be without cost to the worker, and the means of transportation shall meet all applicable safety standards.

This benefit is not applicable to local workers who are not eligible for employer-provided housing.

g. *Three-fourths Guarantee.* This provision guarantees the worker an opportunity to work for at least three-fourths of the number of hours in the work days during the period of the contract. The number of hours in the workday is that stated in the job offer. The period of the contract is from the first work day after arrival of the worker at the place of employment until the expiration date of the work contract. If the U.S. or H–2A worker is not offered the opportunity to work for three-fourths of such hours during this period, then the employer must supplement the pay of such worker as though the worker had actually worked such guaranteed employment.

If a worker is paid on a piece rate or other similar incentive system, the worker's average hourly piece rate earnings (if higher than the AEWR) will be used in determining the amount due under this guarantee.

The three-fourths guarantee will not apply to any H–2A worker who may be displaced by a U.S. worker under the fifty-percent rule.

h. *Record.* The job offer shall state that the employer will keep and maintain adequate and accurate payrolls and supporting records in accordance with the provisions of 20 CFR 655.102(b)(7). It is not necessary to describe in detail on the job offer the type of records maintained. Employers also may be required to maintain additional records which may be required by FLSA or MSPA.

i. *Hours and Earnings Statement.* The job offer should state that an hours and earnings statement will be given to each worker when the worker is paid. The statement must be in writing and must be given on a basis no less frequently than on pay day. The earnings records to be provided each worker may be a combination of daily records and a summary statement of earnings and deductions given at the time of actual payment. For example, a worker may be given a statement each day which would show:

• Name and payroll identification number;

• Work starting and ending time;

• Hours worked, including hours offered and actually worked (Note: The reason for not working hours offered should be explained either specifically or by a readily identifiable code.);

• Hourly rate or piece rate;

• If piece rate, the number of units produced; and

• Total earnings.

At the time the worker is actually paid, a check stub or statement may be given which would show:

• Gross wages;

• Itemization of all deductions for meals, Social Security, cash advances, etc. (Note: All deductions not required by law which may be made from worker's earnings must be specifically stated in the job offer.); and

• Net payment.

j. *Rates of Pay.* The job offer should clearly state the rate of pay either by the hour and/or by a piece rate per identifiable unit of production.

If the worker is to be paid by the hour, the rate stated must be at least the highest of the following wage rates:

• The adverse effect wage rate for the State;

• The prevailing hourly wage rate for the occupation in the geographic area of employment as established by a SESA prevailing wage survey which is verified by the National Office; or

• The legal federal or State minimum wage rate.

To cover situations in which the adverse effect wage rate might change during the contract period (usually March or April), the job offer should contain a statement that the employer will pay at least the adverse effect wage rate in effect at the time work is performed. An employer may state in the job offer/order that in the event DOL promulgates a new AEWR during the recruitment or work contract period which is lower than the current AEWR at the time of application, this lower AEWR will become the guaranteed minimum (unless there is a prevailing hourly rate which is higher than the AEWR). Absent this provision in the job order, the employer will not be permitted to pay a lower AEWR should one be published during the contract period.

If the worker is to be paid on a piece rate basis (price per identifiable and measurable unit of production), the job offer must state the piece rate. The unit of production must be clearly described; e.g., a field box of oranges (1⅕ bushels), a bushel of potatoes, an Eastern apple box (1⅕ metric bushels), a flat of strawberries (twelve quarts), etc.

The piece rate wage offer must be at least what is prevailing for the occupation and crop activity in the area of employment. For example, if a State agency survey determined that the prevailing wage rate was $.50 for picking 1⅕ bushels of oranges during the past season, the employer must offer at least this rate of pay on the job offer.

The job offer should also state that if a worker is paid on a piece rate basis and piece rate does not result at the end of the pay period in average hourly piece rate earnings at least equal to the amount the worker would have earned had the worker been paid at the *appropriate hourly rate*, the worker's pay shall be supplemented at that time so that the workers earnings are at least as much as the worker would have earned during the pay period if the worker has been paid at the appropriate hourly wage rate for each hour worked. For example, an employee works forty-two hours during a one-week pay period. The worker picked three hundred and fifty field boxes of oranges @ $.50 per box, with actual earnings of $175.00, or $4.16 per hour. The State AEWR is $5.00 per hour. Had he/she worked by the hour, the worker's earnings would be 42×$5.00=$210.00. Thus, the employee's pay must be supplemented by $35.00 at the end of this pay period.

In the above example, the AEWR is the appropriate hourly wage rate because no prevailing hourly wage rate has been determined by the SESA for the occupation and the area which is higher than the published AEWR. The "appropriate" hourly wage rate in most cases will be the published AEWR. However, if a SESA survey, which is verified by the National Office, results in a prevailing hourly wage rate for the occupation and the area which is higher than the published AEWR, this hourly rate would be the "appropriate" rate. In the event both the published AEWR and the verified prevailing hourly rate are lower than the FLSA minimum, the FLSA minimum will be the standard that must be used.

The job offer should also specify the standards of production for job retention of a worker. If an employer filed an H–2 application in 1977, the productivity standard on the current job offer can be no more than required by the employer in 1977 (or first year in the H–2 or H–2A program after 1977), unless the RA has approved a higher level subsequent to 1977. A new employer who files an application for labor certification for the first time after 1977 will be bound by productivity standards (existing at the time of application) normally required by other employers for the same crop activity in the same geographic area.

The RA may approve a higher minimum upon receiving substantive documentation from an employer in writing justifying a higher standard. Such documentation should show the increase is justified by technological, horticultural, or other labor saving means.

k. *Frequency of Pay.* The job offer shall clearly state the length of the pay period, and the ending day of the week of the payroll period and date (day of week following payroll ending) on which workers will be paid. An example of such an entry would be: "Workers will be paid each Friday for the weekly payroll period ending on the preceding Tuesday."

The employer must pay workers at least as frequently as what is prevailing for employers of similarly employed workers in the area of intended employment, but no less than twice monthly.

l. *Contract Impossibility.* The provision of the regulations at 20 CFR 655.102(b)(12) allows the employer to terminate the work contract of any worker(s) whose services are no longer required for reasons beyond the control of the employer. In the event of such termination, the employer will be bound by the three-fourths guarantee from the first work day after arrival to the date of termination.

If the employer is unable to work out a transfer of the worker to other comparable employment, the employer will be required to offer to return the worker at the employer's expense to the place from which the worker came to work for the employer in accordance with the regulations at 20 CFR 655.102(b)(5)(ii).

If the worker who is terminated under this provision has not been reimbursed for transportation to the job site in accordance with 20 CFR 655.102(b)(5)(i), the worker will be reimbursed for any transportation and subsistence due. If transportation was advanced and subsequently deductions were made from the worker's pay to cover costs, these deductions must be reimbursed to the worker and, if necessary, supplemented up to the inbound transportation level.

m. *Deductions.* The job offer shall specify all deductions not required by law. An employer subject to the Fair Labor Standards Act (FLSA) will not make deductions from pay which would bring the wage below the federal minimum for the work week unless authorized by the FLSA regulations.

n. *Copy of Work Contract.* If an employer develops a written contract between the employer and the worker, the contract must include the terms and conditions of employment specified in the regulations. A copy of such contract will be provided to the worker no later than the day on which the worker begins employment. In order to prevent any possible misunderstanding concerning the agreed upon contract, a sample work contract might be posted in a conspicuous location at the work site or housing facilities for workers. In the absence of a specific separate written work contract incorporating the terms and conditions of the job order, the

terms and conditions of the job order (which must include the requirements in the regulations) and application shall be the work contract, and a copy of the job order must be provided to the worker.

If a written work contract will be used, the job offer should so state, and a copy should be attached to the job offer if possible. (Furnishing a copy of such contract, however, does not constitute DOL approval of the terms and conditions of the contract which are subject to further DOL review.) If there is no written contract, the job offer may include a statement such as: "In the absence of a written contract, the terms and conditions of the clearance job order and application are to be the work contract between the employer and the worker so employed."

c. *Occupational Qualifications.* The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) of 1986, specifically directs that the qualifications for a job offer be appropriate and not be more than the normally accepted qualifications required by non-H–2A employers in "the same or comparable crops". The labor certification determination is based upon a fair test of the labor market for U.S. workers who are *able, willing, qualified* and *eligible* to perform the job for which nonimmigrant workers are requested.

RAs receiving H–2A applications (and local offices receiving copies) from agricultural employers should carefully examine any unusual qualifications imposed by the employer in the job offer. An expedited survey should be made of non-H–2A employers and information obtained as to the minimal qualifications necessary to perform the occupation for which certification is being sought.

In addition to obtaining information from the local office, the RA should examine sources of occupational information such as the *Dictionary of Occupational Titles.* Also, the RA may consult with the State extension service and appropriate representatives of the U.S. Department of Agriculture (USDA) in determining the appropriateness of qualifications. If the RA questions the appropriateness of a required qualification, the burden for proving that the qualification requirement is, in fact, necessary, rests with the employer.

2. Assurances

It will not be necessary for the job offer to include a recitation of the assurances called for in this section (or those in 653.501); nor is a separate signed assurances statement necessary. However, the employer must provide a statement in the job order similar to the following: "The employer agrees to abide by the assurances specified in the conditions of 20 CFR Part 655, Subpart B, including the regulations at 20 CFR 655.103." Although this general statement is acceptable for the job offer, Regional Office and SESA staff should be acquainted with each assurance called for in this section. A brief summary of each follows.

a. *Labor Disputes.* The job opportunity for which an alien worker is being sought must not be vacant because the former occupant is on strike or is being locked out in the course of a labor dispute. Nonimmigrant workers cannot be sought as a means of replacing workers who are no longer encumbering a position because they are involved in a labor dispute.

SESA staff should be alert as to any labor disputes which may involve agricultural employers who file, who had previously filed, or who have filed or have pending a temporary agricultural labor certification application or who have received such a certification. The facts concerning the labor dispute should be reported to the RA. As a minimum, the following facts should be reported:

- The issue(s) involved in the labor dispute;
- The occupation(s) directly involved, including the total number of workers involved in the dispute and the total number of workers employed in the occupation(s); and
- The date the labor dispute began.

When the RA has information on the existence of a labor dispute which could impact directly upon a labor certification determination, the RA must ensure that an official investigation is conducted. Chapter II, Section E of this handbook addresses steps that are taken in that type of situation.

b. *Employment-Related Laws.* The employer agrees to comply with all applicable federal, State, and local employment-related laws (including health and safety laws) and regulations during the period for which labor certification is granted.

It is not likely that a situation will arise when compliance with a local or State law or regulation will preclude compliance with a federal law or regulation, or *vice versa.* Normally, such statutes and regulations are constructed in a fashion which will permit at least minimal compliance with other relevant statutory and regulatory requirements. For example, some States have regulations limiting the maximum amount employers may charge workers for meals to an amount which is less then that permitted as maximum by the H–2A regulations. However, the H–2A regulations (20 CFR 655.102(b)(4)) prescribe that the maximum amount shall "*not be more than* * * * per day * * *"

In the highly unlikely event that SESA's or Regional Offices encounter situations where compliance with all applicable federal, State and local employment-related laws and regulations appears to be not possible, Regional Offices should consult with the National Office for advice and assistance.

If a State agency has reason to believe that the employer may be in violation of employment-related laws such as OSHA, MSPA or IRCA during a period covered by a labor certification, the facts should be reported to the RA for appropriate handling under the provisions of the regulation at 20 CFR 655.110. Such action shall not in any way impede prompt handling and resolution of any worker complaint filed pursuant to the regulations at 20 CFR Part 658, Subpart E.

c. *Rejection and Termination of U.S. Workers.* U.S. workers cannot be rejected for or terminated from employment for other than lawful job-related reasons. Lawful job-related reasons include failure to achieve productivity levels, malingering, or serious misconduct. The employer must report each situation when U.S. workers are refused employment or are terminated, for any reason, in writing to the local office. Local offices shall maintain a record of such actions for at least two years.

d. *Recruitment of U.S. Workers.* The employer agrees to engage in independent positive recruitment of U.S. workers until H–2A workers leave for the employer's establishment and to cooperate with the Employment Service (ES) system in recruiting U.S. workers.

e. *Fifty Percent Rule.* (See also Chapter I, Section F, 4.) This section states that the employer must continue to provide employment to any qualified and eligible U.S. worker who applies until fifty percent of the period of the work contract has elapsed. This requirement begins on the date that foreign workers depart for the employer's place of employment, which is when the employer's obligation to engage in positive recruitment ceases. The employer is required to notify the local office, in writing, of the exact date on which the H–2A workers depart for the employer's establishment.

The employer must keep an active job order on file until the "fifty percent rule" has been met. The expiration date of the local and agricultural clearance order should also be adjusted to reflect the ending date of the fifty percent rule requirement. Of course, if the employer is willing to accept U.S. workers after this date, the local order (and the clearance order, if specifically agreed to) may remain open.

Note: This section does not apply to a "small" employer who certifies to the RA in the application that he/she did not use more than five hundred (500) man-days of agricultural labor during any calendar quarter in the preceding calendar year and is not a member of an association which has applied for labor certification on behalf of its members and has not "associated" with other H–2A employer-applicants under the regulations.

f. *Other Positive Recruitment.* (See also Chapter I, Section D and Chapter II, Section C.) Upon acceptance of the certification application of an agricultural employer, the RA will specify the recruitment effort which must be undertaken by the employer. This shall include specific positive recruitment efforts which are consistent with the efforts expended by non-H–2A agricultural employers of comparable or smaller size when they recruit domestic workers in the area of employment. The RA may require the employer to make efforts which are at least at the same level as the efforts which the employer has or will make to obtain H–2A workers in another country. The RA also has the authority to require the employer to engage in independent positive recruitment out of the area when the RA has specific, reliable, and current information that there is a potential supply of U.S. workers available elsewhere who, if recruited, would likely be able and willing to fill the job opportunities. Such information would normally be considered reliable if it were supplied by another Regional Office or a SESA, although other sources of information may be used.

Positive recruitment is in addition to the circulation of a clearance order through the ES system, and can only be required during the same period that a clearance order is being circulated. The obligation to engage in such positive recruitment efforts will end on the date that H–2A workers depart for the employer's place of work.

The employer must also make an effort to secure U.S. workers through farm labor contractors (crew leaders) where it is the prevailing practice of non-H–2A agricultural employers in the area of employment for the same occupation. The level of effort must be at least equal to that made by such non-H–2A agricultural employers.

Most crew leaders require an override for their services. The H–2A employer must also provide an override which is at least that provided by non-H–2A employers, except that employers are not required to offer an override that includes the provision of housing by the crew leader, since the employer must provide free housing in compliance with the regulations at 20 CFR 655.102(b)(1).

Further, where the employer has centralized cooking and eating facilities, the override offer does not have to contain a provision for this service to be provided by the crew leader.

The positive recruitment requirement is one of the major changes IRCA has made to the temporary agricultural labor certification program, and an employer's failure to conduct positive recruitment specified by the RA must, by statute, result in denial of certification. However, Regional Offices must exercise discretion by taking into account historical and recent recruiting efforts which have been made and must avoid requiring employers to engage in efforts which would likely prove futile.

g. *Retaliation Prohibited.* This section prohibits the employer (either directly or through another person) from engaging in retaliatory action against any person who has sought redress for perceived inequities under the provisions of the H–2A program or assists another person in doing so. This would include retaliatory action against a person who takes any of the following courses of action:

- Files a complaint;
- Institutes or causes legal proceedings to be instituted;
- Testifies or is scheduled to testify in a legal proceeding;
- Consults with an employee of a legal assistance program or an attorney;
- Complains to the employer or to a farm labor contractor; or
- Otherwise exercises or asserts on behalf of himself/herself or others any right or protection afforded by law and regulations.

h. *Fees.* (See also Chapter I, Section E.) Each employer to whom certification is granted in whole or in part must pay a fee for that certification. The fee is not required at the time of application, and fees are not charged for certification redeterminations.

When the RA or certifying officer makes the certification determination (usually twenty calendar days before the date of need), the certification notice will contain a statement indicating that the bill for the fee assessed for processing the application is attached. The fee must be paid within thirty days of the certification determination date.

Failure to pay the certification fee on a timely basis (within thirty days) could result in a finding by the RA that a substantial violation has occurred pursuant to the regulations at 20 CFR 655.110(a). This finding could result in a notice to the employer that a labor certification request will not be granted in the next year for a similar period of time.

C. Acceptance or Rejection of Applications

1. Time Frames

The regulations establish strict time frames within which the RA must notify employers of any deficiencies on their applications for H–2A labor certification. Employers face a correspondingly short time period within which they are required to respond to the RA or face day-for-day postponement of the labor certification determination.

In order for the RA to notify the employer of deficiencies within seven calendar days, procedures must be established to assure the expeditious review of the application upon receipt by the RA. RAs should not return applications for minor errors or deficiencies which have no material effect on the labor certification determination. Acceptance or rejection of an initial application should be determined by the acceptability of the components of the application directly related to worker recruitment and the prevention of adverse effect.

If minor revisions to the application are needed, they should be requested, to the extent possible, by telephone. Regional Offices should bear in mind that the employer's application submitted under the H–2A procedures is not required to have been previously reviewed by the SESA for completeness, and should not apply the same level of precision in reviewing the application which is applied to review of clearance orders submitted by the SESA.

2. Steps in Handling Applications

a. *Regional Office.* Employers must file applications for H–2A labor certification no less than sixty calendar days prior to their estimated dates of need by a means calculated to assure timely delivery and to provide the employer with a record that the application was received by the RA. The Regional Office must date stamp the application upon receipt, and may record the date in the appropriate block of the Endorsements Section of Form ETA 750.

The application must be reviewed as soon as possible after it has been filed. Regional staff may complete the suggested Checklist for Reviewing H–2A Applications which appears in the Appendices for this purpose. The suggested Checklist has been developed to include the steps that employers must take to correct deficiencies and may be used to notify employers of deficiencies in a rejection letter. If the Checklist is used as the basis for a rejection notice, the Regional Office should transmit the accompanying cover letter appearing in the Appendices.

In cases where Regional Offices have a number of applications filed at the same time, and some applications are acceptable while others are not, the applications which require rejection notices should be processed first, and such notices should be mailed before acceptable applications are processed and employers are sent written notices of acceptance. In view of time constraints, rejection notices may be handwritten.

Regional Offices should keep a log of H–2A labor certification activity. The log should record the employer's name, the occupation and number of workers requested, the date of need, the expected and actual certification dates, the date of acceptance, and the actual rejection dates.

b. *Local Offices.* Employers must file a duplicate copy of their H–2A application with the local SESA office serving the area of intended employment. Employers should be advised to select a means of delivery which will assure receipt of the application by the local office no later than sixty calendar days prior to the date of need.

The local office should date stamp the application upon receipt, and immediately prepare a local job order and an agricultural clearance order. When the clearance order has been prepared, the local office should forward a copy to the State office. The State office should begin to prepare the order for intrastate and interstate clearance and take the steps necessary to secure Regional Office approval of the clearance order so that it can be rapidly placed into clearance after the Regional Office accepts the employer's application for consideration and it has been determined that there are not sufficient local workers available.

Recruitment under the local order should begin immediately. The local office should review the job offer portion of the employer's application. If deficiencies are noted, the local office must report them to the RA. Notification by telephone is appropriate for this purpose.

Recruitment for intrastate and interstate workers may not begin until the SESA is notified that the application has been accepted and the clearance order has been approved by the RA. This notification may be made by telephone to the State office and later confirmed by the RA in writing with copies of the acceptance letter to the State and the local office. Due to reduced processing times, the State office should distribute the employer's clearance order into the intrastate and interstate clearance upon telephonic notification of the RA's acceptance.

Employers may amend their applications to correct deficiencies after rejection by the RA. Clearance orders which have been prepared by local offices must also be amended prior to intrastate and interstate recruitment. Local offices may use Form ETA 795 (Agricultural and Food Processing Clearance Memorandum) to report any amendments made to the original application. Form ETA 795 should be attached to the clearance order prior to intrastate and interstate distribution.

3. Acceptance

Clearance orders based on an H–2A job opportunity may not be distributed into the intrastate or interstate clearance system until they are reviewed and approved by the RA in accordance with the agricultural clearance order regulations at 20 CFR Part 653, Subpart F.

Although the regulations set forth no specific time period within which the RA must notify the employer that an application is acceptable, RAs should make every effort to assure that acceptance letters are transmitted in sufficient time for the employer and the ES to conduct an adequate test of the labor market prior to a certification determination.

If the application is filed in a timely manner and meets the adverse effect requirements of the regulations at 20 CFR 655.101–655.103, the RA must promptly notify the employer in writing using next-day delivery service with copies to the SESA. The RA should also notify the SESA by telephone that the employer's application has been accepted so that intrastate and interstate recruitment can commence without delay.

The RA acceptance letter must advise the employer of the specific recruitment obligations outlined in the regulations at 20 CFR 655.105(a). RAs may develop their own notifications or may use the sample letter contained in the Appendices of this handbook. In order to ensure a timely assessment of an employer's recruitment efforts and the results thereof, the RA's notice should require the employer to report on these efforts, preferably within three days of the certification determination date.

4. Rejection—Untimely Applications

Applications for H–2A certification which are received by the RA less than sixty days before the employer's first date of need must be rejected for lack of timeliness, unless the employer meets the guidelines for first time or emergency processing contained in the regulations at 20 CFR 655.101(c)(5) and 20 CFR 655.101(f).

The RA's rejection notice must be mailed no later than the seventh calendar day following the RA's receipt of the application using next-day delivery service. Employers whose applications have been rejected for lack of timeliness may follow the appeal or hearing provisions of the regulations or may refile the application with the RA with a later date of need in order to meet the sixty day filing requirement of the regulations. The RA's determination as to whether a refiled application is timely will be based on the date of the later submission.

5. Rejection—Adverse Effect

Applications which do not meet the adverse effect criteria of the regulations at 20 CFR 655.101–655.103 must be rejected within seven calendar days of filing. The RA's notification must state that the application cannot be accepted because the availability of U.S. workers cannot be adequately tested because the benefits, wages, and/or working conditions do not meet the adverse effect criteria of the regulations.

6. Notice of Rejection

The RA's notice to the employer that an application is unacceptable must be in writing and mailed no later than the seventh calendar day following the RA's receipt of the application, with copies to the SESA. RAs must mail rejection notices in a manner reasonably calculated to assure next day delivery, using commercial express delivery if appropriate.

In some instances, next day delivery may not be possible, and the RA may make special delivery arrangements with employers. For example, an employer may arrange to receive the notice in person at the Regional Office. Similarly, the RA may arrange for overnight delivery to the local or State office where the employer may personally receive the notice.

The employer must be specifically advised of the reasons why the application has been rejected, including citations to the applicable regulations. The notice must offer the employer an opportunity to submit a modified application within five calendar days of the date of the RA's notice. RAs should specify the due date in the notice. In addition, the modifications necessary for an acceptable application must be specifically indicated in the RA's notice.

The RA's notice must also advise employers of their right to an expedited administrative review or a *de novo* hearing. Sample notices are included in the Appendices of the handbook.

The RA may not penalize an employer for delays which are not attributable to the employer. Therefore, an employer's certification date may not be delayed if the RA fails to make the required notification of unacceptability within seven calendar days. The RA's failure to make a timely determination will not cause the certification determination to be extended beyond 20 calendar days before the need, provided the employer's submittal of required modifications is timely.

7. Resubmission with Required Modifications

Employers must submit requested modifications within five calendar days following the date of notification or face day-for-day postponement of their certification date. The employer's obligation to submit modifications within five days is considered to have been met if the required modification notice is postmarked by the 5th day, and is operative even if the RA fails to notify the employer of unacceptability in a timely manner. In such instances, however, the RA may not delay the certification determination for any portion of the delay which was not attributable to the employer.

Employers must send modifications directly to the RA with a duplicate copy to the local SESA office. Upon receipt of its copy, the SESA should prepare Form ETA 795, (Agricultural and Food Processing Clearance Memorandum) containing the employer's modifications, attach it to Form ETA 790 which was previously prepared by the SESA based on the employer's initial submittal. The State agency must extend the modified job order into intrastate and interstate clearance as soon as it receives notice that the modified application has been accepted. RAs may telephone the State office with notification that the application has been accepted.

The employer's modified application must contain all the modifications required by the RA or it cannot be accepted. Modified applications which do not contain all of the changes should be returned to the employer. The employer should be informed that the modified application is unacceptable for consideration because it does not contain the necessary modifications, a certification determination will be further delayed by one day for each day's delay in receiving the modified application, and that this second (and any subsequent non-acceptance notice) is appealable under the regulations.

8. Appeals

Employers seeking expedited administrative review or a *de novo* hearing on the nonacceptance of an application must telegraph such requests to the Chief Administrative Law Judge within seven calendar days of the date of the RA's notice. A copy of the appeal or hearing request must also be sent to the RA. The request should contain any legal arguments which the employer believes will rebut the basis for nonacceptance of the application.

Upon receipt of notification that a request for expedited administrative review or a *de novo* hearing has been filed, the RA must immediately prepare an indexed certified copy of the case file and transmit it to the Chief Administrative Law Judge pursuant to the regulation at 20 CFR 655.112 (a)(1), notwithstanding the timeliness or untimeliness of the request. The RA must mail the appeal file by any means reasonably calculated to assure next day receipt by the Office of the Administrative Law Judges.

Address the appeal file to: Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street NW., Washington, DC 20036.

Every appeal file shall include the following:

- A memorandum of transmittal from the RA to the Chief Administrative Law Judge;
- A completed Form DL 1–126, Records Authentication Certificate, affixed with the seal of the U.S. Department of Labor, and signed by the records custodian and Regional authentication officer;
- An appeal index; and
- A paginated appeal file arranged in "reverse" chronological order, i.e., with the most recent document first.

RAs must also forward a copy of the appeal file by next day delivery to: Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Room N–2101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210

The Administrative Law Judge will act on the employer's request for expedited administrative review within five working days following receipt of the appeal file. The Administrative Law Judge may affirm, reverse, or modify the RA's decision, but may not remand the case file to the RA, or consider new evidence in reaching a decision.

The Administrative Law Judge, in acting on the employer's request for a *de novo* hearing, will schedule a hearing within five working days following receipt of the appeal file, and will render a decision within ten working days following the hearing. The Administrative Law Judge may affirm, reverse, or modify the RA's decision.

The DOL is represented in appeals solely by designated employees in the Office of the Solicitor of Labor. Regional Office and SESA staff are expected to be available to testify at these hearings if the need arises. Pending a decision by the Administrative Law Judge, all communications with the Office of the Administrative Law Judges, the employer, or the employer's representative, must be made through the Solicitor's Office.

D. Recruitment

The active recruitment of U.S. workers is an integral part of the labor certification process. This requires positive action on the part of the employer and coordination and cooperation throughout the Employment Service system. As the statute provides, labor certification may not be issued if "the Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply" upon being advised by the Secretary of a significant number of qualified U.S. workers. The law further states that this effort is in addition to the recruitment through "the interstate employment service system". In making a finding of U.S. worker availability, the RA must have accurate documentation from Employment Service offices and from the employer of the efforts put forth by the employer and the SESA and the recruitment results.

1. Definition of "U.S. Worker"

This term means any worker (non-H–2A) who is legally permitted to work in the United States in the job opportunity. This would include U.S. citizens and aliens who have temporary or permanent resident status or nonimmigrant aliens who have authorization for such employment. Examples of documents evidencing work authorization are set forth in the instructions to INS Form I–9, Employment Eligibility Verification. Special Agricultural Workers (SAW) will also be considered to be U.S. workers under the following conditions:

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a. The worker has applied for adjustment of status, and received INS Form I-688A (Temporary Employment Authorization) granting temporary employment authorization and the authorized period has not expired (Note: Form I-688A is given an alien pending final determination on application for temporary resident status.);

b. A worker who has been granted temporary resident status and has been issued Form I-688, Temporary Resident Card, authorizing employment and travel abroad; in this case the alien has the right to reside in the United States and accept employment in the same manner as an alien lawfully admitted for permanent resident status; or

c. A worker whose status has been adjusted to permanent resident status and has been issued Form I-551, Alien Registration Receipt Card. An alien who has applied for legalization under 8 CFR Part 245a will be considered a U.S. worker under the same circumstances outlined for SAW workers. These are aliens who resided continuously and unlawfully in the United States since January 1, 1982, and who have applied for legalization.

2. Local Recruitment

The actual recruitment of local workers for the job opportunity may be the most important aspect of the recruitment process. The experience of the Employment Service system over the years has indicated that a good proportion of workers responding to employer job offers are from the community in the area of employment.

At the time an agricultural employer files an application for H-2A workers with the RA, a copy is also submitted to the appropriate Employment Service office. The local office uses the job offer part of the application to prepare a local order and begins the recruitment process for U.S. workers in the local area. An agricultural clearance order is not extended intrastate and interstate until the H-2A application and clearance order have been approved by the RA. Referral on the local order will continue until fifty percent of the contract period is completed.

Employers are required to identify on their H-2A applications the total number of workers the employer anticipates hiring in the agricultural labor or service activity during the covered period of employment. For example, the employer may normally use one hundred workers to pick apples, but expects to hire forty local workers, as it has done for a number of years, and, therefore, is seeking H-2A certification for sixty workers for whom housing which meets standards is being provided. In such situations, as housing is not required for local workers, the employer should be advised to file a local job order for the forty workers needed. The local order should offer the minimum wages, benefits, and working conditions in the employer's H-2A job offer, except for housing, transportation, and meals, and local workers referred and hired on this job order should not be counted by the SESA or the Regional Office as being "available" for certification determination purposes on the H-2A application and the clearance order that is processed in conjunction with it. This situation applies only when the local office can substantiate that a separate local job order is being used for recruiting *only* local workers for whom housing is not a condition of employment.

In the example given, when the local office has satisfied the employer's historical local labor needs by filling the local order for 40 workers with 40 local referrals and hires, then the local office would continue to refer local workers on the clearance order to supplement out-of-area referrals being made, and these local referrals would then be counted as "available" for certification determination purposes and reported as such to the Regional Office. When such situations do occur, the Regional Office and the SESA will have to work closely together in order to insure that referrals and "available U.S. workers" are accurately reported.

3. Notice of Required Recruitment

Upon review and determination that the H-2A application meets the requirements of the regulations at 20 CFR 655.101-655.103, the RA advises the employer that the application has been accepted. The notice also advises the employer and the State agency of the recruitment efforts for U.S. workers which must be made, taking into account the acceptability of the employer's positive recruitment plan submitted with the application and incorporating this, where possible, into the notice. This would include specific advertising in newspapers and/or radio, as well as placing the job order into intrastate and interstate clearance to potential supply States. This will be a signal to the local and State Employment Service that recruitment is to be expanded beyond the local geographic area.

The notice shall, when appropriate, also require the employer to perform positive recruitment efforts in specific areas of traditional or expected worker supply other than the area of intended employment. In determining the scope of positive recruitment, the RA will consider:

a. The normal recruitment practices of non-H-2A agricultural employers who employ similar workers and are of comparable or smaller size to the H-2A employer; and

b. Information received from State agencies or other sources that there are a significant number of qualified workers who would likely be available through a face to face interview.

4. Positive Recruitment by Employer (See also Chapter I, Section B, 2)

Positive recruitment is defined in the regulations as "the active participation of an employer or its authorized hiring agent in locating and interviewing applicants in other potential labor supply areas and in the area where the employer's establishment is located in an effort to fill specific job openings".

a. *Positive Recruitment Plan.* At the time of application, the employer must present a plan for conducting positive recruitment of U.S. workers including specific steps to be taken, such as contacting former employees or negotiating with specific farm labor contractors. This plan, which can be a series of brief statements, should address recruitment that will be in addition to the normal filing of a local job order and the extension of the agricultural clearance order through the interstate system. The employer may use Form ETA 750, Part A, Item 21, for this purpose. The employer should describe recruitment efforts for U.S. workers made prior to filing the application, although the RA is precluded from requiring such domestic worker recruitment prior to submittal of an application.

The employer should consider the recruitment efforts and locations which non-H-2A agricultural employers of comparable or smaller size have successfully utilized previously and either set forth a plan or agree to conduct recruitment in the same manner as that conducted by such non-H-2A employers.

The employer should also describe efforts to locate and utilize farm labor contractors when it is the prevailing practice of non-H-2A employers in the area of employment and for the occupation.

b. *Cooperation with the Employment Service.* The employer agrees to comply with the assurances set forth in the regulations at 20 CFR 655.103. One of these assurances is to cooperate with the Employment Service system in the active recruitment of U.S. workers by assisting the Employment Service in preparing agricultural clearance orders and permitting the order to be cleared through the Employment Service system.

This will include advertising the job opportunity in newspapers and/or on radio. This may be required in a language other than English, if the RA believes it is appropriate. When positive recruitment is undertaken and the applicant holding office requests it, similar advertising shall be used in conjunction with such recruitment.

5. Recruitment after Certification (See also Chapter I, Section B, 1)

The employer's positive recruitment obligation continues until the H-2A workers certified have departed for the employer's place of work. In order to establish a cut off time for such active recruitment, the employer must notify the local office in writing of the exact date that the H-2A workers departed for employment. A copy of this communication should also be sent to the RA. The employer cannot be required to engage in positive recruitment efforts on or after the date of departure of H-2A workers for the place of work.

The referral of workers by the Employment Service does not end on the H-2A departure date mentioned above. The employer must keep an active order on file until fifty percent of the work period has been completed, except for "small" employers exempted by the regulations at 20 CFR 655.106(f). The ES system will continue to refer U.S. workers who apply as long as there is an active job order on file. However, active recruitment on the part of the SESA should cease when the employer advises that H-2A workers are enroute to the place of employment.

B. Certification Determinations

1. Definition—RA Role

The regulations define a "temporary alien agricultural certification determination" as the written determination of the RA to approve or deny a temporary alien agricultural certification application. The application is filed directly with the RA.

The RA has the authority to approve or deny, in whole or in part, and to accept for consideration, applications for temporary alien agricultural labor certification. The RA may delegate all or part of this authority to a designated Regional Office staff member. The Regional Certifying Officer would be one obvious designee.

Under the regulations, the RA or a designee usually makes certification determinations. The Director, U.S. Employment Service (or the Director's designee), may also make certification determinations when special circumstances warrant. What constitutes special circumstances will be decided by the Director as the need arises.

2. Denials

The determination to approve or deny certification must be made no later than twenty calendar days before the employer's stated date of need, unless other provisions of the regulations apply. Factors which would delay the issuance of a certification determination include the submittal of an untimely modified application resulting in a day-for-day postponement of the certification date.

If the certification is denied, the determination must be in writing and mailed to the employer by any means reasonably intended to assure next day delivery. A copy of the determination should also be mailed to the SESA.

The RA's denial notice must:

- State the reasons for denial, including citations to the relevant regulatory standards;
- Offer the applicant an opportunity to request an expedited administrative review or *de novo* hearing; and
- State that if the employer does not request an expedited administrative review or a hearing within seven calendar days, no further consideration of the employer's application will be made by any DOL official.

3. Bases for Denial in Whole or in Part

Certification requests may be denied in whole or in part. The RA must deny a temporary alien agricultural labor certification for the employment of H-2A workers in its entirety if sufficient U.S. workers are available to fill all of the employer's job opportunities. If U.S. workers are available to fill a portion of the employer's job opportunities, certification must be denied for that part of the request for which U.S. workers are available.

The regulations provide that no U.S. worker may be referred to an employer unless the worker has been made aware of the terms, conditions, and qualifications for the job, and has indicated that he/she meets the qualifications and is able, willing, and eligible (as defined in the regulations) to take the job. Local offices are encouraged to provide the worker with a copy of Form WH-455 (Information on Wage and Working Conditions), listing the material terms and conditions of the job offer, for this purpose. U.S. workers are not required to read the entire job order, or to have it read to them, to obtain the required pre-referral familiarity with the job offer. No signed statement by the referring ES official or the worker is necessary in order to comply with this requirement.

The RA may consider a U.S. worker likely to sign a work contract with an employer if the RA has information that the worker was referred to the employer and was told by the employer to report for the job opportunity. The RA should also consider as available not only those workers whom the employer has rejected for other than lawful, job-related reasons, but also those workers for whom the employer has provided no reason for rejection. The regulations, therefore, now codify the longstanding practice of DOL to deduct "outstanding" referrals from the employer's certification request.

In order for the RA to make the required determination of unavailability on certification day, the employer's recruitment report (which was required by the RA in the acceptance letter) should be received in the Regional Office no later than three calendar days prior to the scheduled certification date. The RA should advise the employer in the acceptance letter that the certification may be delayed if the report is not received in a timely manner. However, the RA may not deny the certification solely because the written report has not been submitted. If delays are encountered, the RA should contact the employer by telephone to secure the required information. If attempts to do this are unsuccessful, then the RA may delay the certification determination until the employer is contacted or the written report is received.

In addition, the local office should telephone the RA with its own recruitment report no later than three calendar days prior to the certification date. The telephone report should later be confirmed in writing. The local office should also telephone the RA on the date of certification if there has been any change in its earlier report. If no update is provided, the RA will assume the report is final, and will base a certification determination on the facts at hand.

The RA must also deny labor certification if the employer has not complied with the adverse effect criteria in the regulation at 20 CFR 655.102; if the employer has not complied with the workers' compensation requirements at 20 CFR 655.102(b)(2) and provided proof of such coverage; and if the employer has not complied with the positive recruitment requirements set forth by the RA.

The regulations specifically provide that the RA may not certify if an employer has substantially violated a material term or condition of an H–2A labor certification within the past two years. Such violation must initially be raised in the context of the regulations at 20 CFR 655.110, which grants certain appeal rights to the employer. Denial of labor certification on the basis of a substantial violation may not be invoked until the RA's determination has been finalized through the DOL appeal process.

4. Appeals

The administrative appeal provisions relating to a denial of labor certification are the same as those for unacceptable applications. In each case, the provisions in the regulations at 20 CFR 655.112 must be followed.

5. Certifications Granted

The RA's notification to an employer that a temporary labor certification for H–2A workers has been granted in whole or in part should consist of: a letter outlining the terms and conditions of the labor certification (see the Appendices for a sample transmittal letter); and a bill for granting the H–2A certification, in whole or in part, indicating that the fee is nonrefundable and containing instructions for payment within thirty calendar days.

RAs shall transmit certification determinations to the employer by means normally assuring next day delivery. Further, employers may arrange with Regional Office staff for other means of pick up or delivery. RAs should mail copies of the transmittal letter to the State and local offices.

6. Fees

The regulations require that employers will be billed for receiving an H–2A labor certification at the time the certification is granted. Employers will be charged a fee of $100 for each H–2A certification granted (in whole or in part), plus an additional $10 for each H–2A position certified by the RA, up to a maximum fee of $1,000 per certification.

Fees are not charged for redeterminations. If an employer chooses not to petition INS for visas for the total number of workers needed to fill the H–2A positions for which certification has been granted, such a decision does not relieve the employer of the obligation to pay the $10 fee for each job opportunity certified (up to $1,000 maximum).

Procedures for billing and processing payments for fees are contained in FM No. 73–87, July 23, 1987. (See also Appendix J.)

F. Post-Certification Activities

1. Determinations on Changes Requested After Certification

a. *Terms and Conditions.* The labor certification determination is a finding that the labor market has been sufficiently tested for determination of U.S. worker availability and that the adverse effect criteria have been met. Such determination is based upon the terms and conditions of the job offer and assurances. If an employer wishes to make any changes in the *level* of benefits, wages, and working conditions at any time during the work contract period, the employer must make written application to and obtain approval of the RA. The RA must carefully consider the following in making this determination:

- Is the level of benefits more advantageous to workers?
- If the benefits had been offered initially, what effect would there have been on U.S. worker availability? and
- Are the amendments merely technical or procedural?

Each request for change must be reviewed and approval considered on a case by case basis. Where the changes in the level of benefits are the result of DOL regulation changes (AEWRs, meal charges, etc.), the employer need not obtain approval of the RA.

b. *Extension of Time Period.* The temporary agricultural labor certification is for a specific period of time which coincides with the employer's job offer. If H–2A workers are needed beyond this period of time, the certification period may be extended under certain conditions and procedures. Before taking such action, the employer should carefully determine if the period of additional need is of a short term duration of two weeks or less or for a longer term of extension.

- *Short Term Extension.* If the period of extension is two weeks or less, the employer need only apply to the INS. If INS grants the extension, the certification period will be deemed to be that approved by INS. This will not require any action by DOL or the SESA in effecting such changes.

Exception: If the original duration of certification is for a very short period of time, such as one week, INS will not grant a two-week extension. INS's extensions will be limited to a period of time not to exceed the original certification period.

- *Long Term Extension.* If an extension is needed beyond the period which INS would grant on a short-term basis, an employer may apply to the RA for an extension of the certification period. The written request should be made after fifty percent of the work contract period has been completed. The written request should support the request for extension by explaining why the extension could not have been foreseen by the employer at the time of filing the application; and by describing what factors beyond the control of the employer made the extension necessary, such as weather, increased crop forecast, or unforeseen market conditions.

The RA shall not grant an extension if the employer has already been granted a short term extension by INS. Also, the RA shall not grant an extension, except under highly unusual and extraordinary circumstances, where the extension would bring the total certification period to twelve months or more. When such extraordinary circumstances arise the RA should confer with the National Office before making a determination.

Upon consideration of all the facts and information, the RA must grant or deny the certification extension request and notify the employer in writing of the decision. This decision is final agency action, and no further administrative review is permitted. If the extension request is denied, the employer may submit a new temporary alien agricultural labor certification application.

2. Flexibility for Associations in Utilizing Certified Workers

a. *Joint Employer Relationship.* If an association is already identified as a joint employer, the temporary agricultural labor certification granted shall be made jointly to the association and to its specified employer members. The workers may be transferred among employer members of the association under the following conditions:

- Work is limited to that permitted in the certification of the described job opportunity, and housing, which has met applicable standards, is available.
- The association controls the assignment of such workers and maintains a record of such assignments.
- Workers may not be transferred to any employer member who is ineligible to receive workers as a result of certification penalties imposed pursuant to the regulation at 20 CFR 655.110.

b. *Sole Employer Relationship.* The temporary alien agricultural labor certification is granted to the association only. The certified job opportunities, in this case, may be used by any of its members except an ineligible employer member described above.

c. *Association as an Agent.* For purposes of compliance with the fifty percent rule only, an association acting as an agent for its employer members may be permitted to transfer workers among individual growers and will not be considered a joint employer with all the attendant responsibilities by doing so.

3. Redeterminations for Shortfall

After a certification determination has been made, an employer may request a new determination based on non-availability of able, willing, qualified, and eligible U.S. workers. This request may be made at any time after the official determination is rendered by the RA. The employer is not required to wait until the date of need to make an assertion of non-availability.

The regulations provide that a labor certification determination must be made no later than twenty days before the expected date of need, unless reduced by a day-for-day postponement for not timely submitting a corrected acceptable application. Because of this early certification determination, it may happen that workers initially found to be available will not report for work at the time and place needed. Further, the employer may assert that other workers may not be "eligible" in terms of being legally permitted to work in the U.S. or that specific U.S. workers are not able, willing and qualified for the job opportunity.

The employer may request a new determination in such cases. The request may be made by telephone to the RA but must be promptly (within 72 hours) confirmed by the employer in writing. The RA must make a new determination within seventy-two hours after a telephone or written request is received. *This is a statutory requirement.* The following procedures apply:

a. *Workers Not Able, Willing, Qualified, or Eligible.* When an employer asserts that any worker counted as available in the previous determination is not an "eligible" worker (legally entitled to work) or is not able, willing, or qualified to perform the job, the employer must provide a signed statement supporting this assertion within seventy-two hours after making a redetermination request. The employer must identify each worker and provide a specific lawful job-related reason for rejecting or terminating such a worker.

For redetermination requests related to workers alleged to be not able, willing, qualified, or eligible, the burden of proof for such assertions rests with the employer, as the statute provides. Without a written statement of facts from the employer, the RA may not approve a redetermination request of this nature. However, the RA must render a determination to disapprove the request within seventy-two hours of the initial request made by telephone.

b. *Workers Not Available.* If the employer requests a new determination solely on the basis of worker non-availability, the employer is required to submit a written confirmation within seventy-two hours. However, if the employer does not provide a written confirmation within seventy-two hours, the RA may make a new determination to approve the request based solely on the information provided by the employer by telephone, and any confirming information which may be provided by the local office. Again, the RA's redetermination must be made within seventy-two hours after receipt of the employer's request, as required by statute.

c. *Regional Office Review and Determination.* The RA shall review the request promptly and issue a determination within seventy-two hours as specified above. This process should include the following actions:

- The RA may request supporting information on U.S. worker non-availability or other relevant factors from the Job Service order holding office.
- Prior to making a determination, the RA will ascertain through reliable sources of information (SESAs or other) whether able, willing, and qualified replacement U.S. workers are available and can realistically be expected to report to the employer's establishment for work within the seventy-two hours from the date the employer's request was received.

If the RA cannot identify sufficient qualified U.S. workers who are likely to be available, the RA should grant the employer's new determination request in whole or in part. The notification must be in writing and sent by means usually ensuring next day delivery. The RA's determination in this instance shall be the final decision of the Secretary, and no further review will be made by any DOL official. The employer is not entitled to an expedited administrative review or *de novo* hearing before an administrative law judge on redetermination. Employers may submit countervailing evidence to INS in such instances. However, this does not preclude an employer from subsequently filing a new request for a new determination based on subsequent shortfalls of U.S. workers.

4. *Application of the Fifty Percent Rule* (See also Chapter I, Section B, 2)

The fifty percent rule relates to the first half of the total period of the work contract; during this time the employer must continue to provide employment to any qualified, eligible U.S. worker who may apply to the employer for employment. This continues even though labor certification has been granted to an employer, and H–2A workers are at the job site.

The ES system and the employer must actively recruit U.S. workers for the job opportunity until the date that H–2A workers depart for the employer's place of work. From the date of such departure, the order must remain open, and the employer must continue to accept and employ workers who apply for the job opportunity until fifty percent of the period of the work contract (under which the alien worker was hired) has elapsed. The ES System should not actively recruit U.S. workers after the H–2A workers have arrived, but must refer workers who apply to H–2A employers if there is no suitable alternative employment available or if the worker expresses a preference for an H–2A employer's opening.

In addition, the employer must offer to provide housing to any non-commuting worker. If the employer cannot provide employment and housing to both the U.S. worker and H–2A worker, the employer may have to make other arrangements for the H–2A worker. Neither DOL nor the State agency have any active role to play or responsibility in such situations, and should not advise the employer on an appropriate course of action, except on an informal basis. Employers should be advised to consult with INS when such circumstances occur.

There is an exception to the fifty percent rule. It does not apply to a small employer who did not use more than five hundred man days of agricultural labor (as defined by the FLSA) during any calendar quarter during the preceding calendar year and is not a member of an association which has applied for H–2A workers.

5. Application of the Three-Fourths Guarantee

The three-fourths guarantee of employment applies to the entire work contract period, including any extensions thereof. The purpose of such a guarantee is to ensure a certain level of sustained opportunity for employment and wages during the period of labor certification.

As part of the job offer, the employer "shall guarantee to offer the worker employment for at least three-fourths of the workdays of the total period during which the work contract and all extension thereof are in effect". Thus,

any additional wages which may be due as a result of the three-fourths guarantee can be computed only at the end of a season (or termination of the contract period).

The guarantee applies to all employees in the occupation on the job offer, both U.S. and H–2A workers. In applying this guarantee and determining any additional wages due, certain facts must be established.

a. *The Beginning Date and Ending Date of Employment.* The beginning date of the guarantee period is the first workday after arrival of the worker at the place of work. The ending date is the last date of expiration of the work contract and any extensions, or the termination date as established under the contract impossibility clause.

b. *The Number of Workdays between the Established Beginning and Ending Dates of the Guarantee Period.* The normal workdays are established in the job offer; e.g., five days, Monday through Friday; six days, Monday through Saturday; etc. The number of workdays in the established guarantee period are reduced by: (1) non-workdays established in the job offer; (2) worker's Sabbath, unless established as a non-workday; and (3) federal holidays.

c. *The Establishment of Hours of Worktime for the Guarantee Period.* The number of hours in the workday is established by the job offer. The total number of hours of worktime in the contract period is simply the product of workdays established multiplied by specified hours.

d. The three-fourths guarantee of employment is established by computing 75% of the established total hours of worktime in the contract period.

Example 1: An agricultural employer requests workers during the period from July 1, 1987, through September 30, 1987. The job offer specifies eight hours of work for five days each week, Monday through Friday. The workers arrive on June 30, 1987. Therefore, the period of the work contract is for ninety-two calendar days. There are twenty-eight non-workdays during this period of sixty-four workdays: thirteen Saturdays, thirteen Sundays, and two federal holidays. This leaves sixty-four workdays during the contract period. Therefore, the three-fourths guarantee would total three hundred and eighty-four hours (75% of 8 hours/workday x 64 workdays).

The employer must maintain payroll records which show the number of hours offered each day and the number of hours actually worked each day. This daily record should also clearly account for the reason(s) a worker did not work the full number of hours offered.

In essence, the number of hours of available work per day is simply the sum of the number of hours actually worked plus any hours offered but not worked (up to the maximum number of daily work hours specified in the clearance order).

In meeting the three-fourths guarantee, the worker cannot be required to work for more than the number of hours specified for a day on the job offer. Also, the worker cannot be required to work on the worker's Sabbath or a federal holiday.

However, the worker may volunteer to work more than the specified hours for a day or to work on his/her Sabbath or to work on a federal holiday. In such cases, the hours actually worked may be counted toward meeting the three-fourths guarantee. However, the employer may not count any hours offered on such days in which the worker refused or failed to work. If, for example, a worker voluntarily worked four hours on a Sabbath when eight hours were offered by the employer, the employer may take credit only for four hours in meeting the three-fourths guarantee.

Example 2: Example 1 above reflects a three-fourths guarantee of three hundred and eighty-four hours during an employment period from July 1, 1987, through September 30, 1987. Now assume that an H–2A worker's daily record reflects the following data for this period: a total of three hundred and twenty hours actually worked *plus* a total of thirty-two hours which the worker refused within normal, specified workdays. All three hundred and fifty-two of these hours (320+32) may be credited towards the three-fourth guarantee.

In this case the employer would still have to pay the worker thirty-two hours (384–352) of supplemental wages. If the worker is employed by the hour, the supplemental pay would be thirty-two hours times the hourly rate specified on the job offer. If the worker has been paid on a piece rate, or other incentive basis, the worker's average hourly piece rate earnings or the job offer hourly rate, whichever is higher, would be used to calculate the amount due under the guarantee.

Employment Service personnel and other appropriate staff should be familiar with the methodology in calculating the guaranteed wage, but the enforcement of the three-fourths guarantee is the responsibility of the Employment Standards Administration (ESA).

G. Monitoring, Enforcement, Complaints, and Penalties

1. Fraud and Willful Misrepresentation

a. *Referral for Investigation.* The RA must refer the following matters to the Immigration and Naturalization Service and DOL Office of the Inspector General:

- Any possible fraud or willful misrepresentation discovered by the RA prior to final labor certification determination; and
- Any discovery by the RA that the employer is the subject of a criminal indictment or information filed in a court, with respect to the employer's application.

b. *Continued Processing.* Until (and unless) a court or the Immigration and Naturalization Service determines that there was fraud or willful misrepresentation, the RA must continue processing the application of an employer referred for investigation and may eventually grant certification.

c. *Terminated Processing.* Any H–2A application determined by a court or the Immigration and Naturalization Service to involve fraud or willful misrepresentation thereby becomes invalid, and the RA must:

- Terminate consideration of the application; and
- Return the application to the employer, with reasons stated in writing.

2. Employment Service Complaint System (20 CFR Part 658, Subpart E)

If workers hired under the specific conditions of an H–2A job order, or other workers in corresponding employment employed by an H–2A employer, file complaints with the local office under the Employment Service Complaint System regarding alleged noncompliance by employers of H–2A workers, such complaints will be referred promptly by the local office to the appropriate office of the Employment Standards Administration (ESA), Wage and Hour Division, for action and resolution. In referring such complaints, the local office should follow the procedures set forth in the complaint system regulations at 20 CFR Part 658, Subpart E.

The ESA Wage and Hour Division office may report the results of its investigation to the appropriate RA for consideration of employer sanctions under the regulation at 20 CFR 655.110 or for such other action as may be appropriate.

3. Noncompliance with Terms and Conditions of Temporary Alien Agricultural Labor Certifications

a. *Employment and Training Administration (ETA) Investigation of Violations.* Certain investigative functions deemed necessary to carry out provisions of law and regulations have been delegated by the Secretary of Labor to the RA.

In general, matters concerning the obligations of an employer related to the labor certification process are administered and enforced by the ETA, primarily by the appropriate RA in the region of intended employment.

If the RA has reason to believe that an employer has violated a material term or condition of certification, then the RA must either investigate the matter himself/herself, or refer to information and recommendations from an ESA investigation of the matter, to determine one of the following:

- A substantial violation has occurred;
- A less than substantial violation has occurred; or
- No violation has occurred.

By statute, the Secretary of Labor is required to deny an H–2A certification if the employer has committed a substantial violation of a material term or condition of an H–2A certification during the past two years.

The H–2A regulations define a substantial violation, first, as one or more acts of commission or omission by an employer, with respect to which the RA determines:

- That the act(s) is/are significantly injurious to the wages, benefits, or working conditions of 10% or more of the employer's workforce; *and*
- The employer either has failed to comply with penalties or orders imposed pursuant to ESA regulations for such acts; *or* the employer has engaged in a pattern or practice of such acts.

Other acts which are deemed substantial violations include:

- Impeding an ETA or ESA investigation of the employer instituted pursuant to ETA's or ESA's H–2A regulations;
- Not paying required fee(s) in a timely manner;
- Having been found to be currently ineligible to apply for certification due to failure to comply with terms of H–2 certification granted before June 1, 1987; and
- Fraud and/or willful misrepresentation by the employer during the process of applying for labor certification.

If, in the RA's judgment, there were extenuating circumstances involved with any of these actions, the RA should weigh the influence of such circumstances on the situation at issue. The RA may then decide that they were sufficiently ameliorating to preclude a finding that a substantial violation was involved.

Likewise, a less than substantial violation is an act of commission or omission which the RA determines violates the H–2A regulations, but which is not a substantial violation as defined above.

b. *ESA Investigation* (See also 29 CFR Part 501). Certain investigative functions deemed necessary to carry out the provisions of law and regulations have been delegated by the Secretary of Labor to the ESA.

In general, matters concerning the obligations on the work contract between an employer of H–2A workers and the U.S. and H–2A workers are enforced by the ESA, Wage and Hour Division. The ESA, Wage and Hour Division, has the authority and responsibility to conduct investigations and inspections regarding such matters as the payment of required wages, transportation, meals, and housing provided during the period of employment.

The areas where ESA has such jurisdiction are generally limited to actual events that transpire when there is an employer-employee relationship, and an employee's complaint must be limited to events that occur as a result of that relationship in order for ESA to assume responsibility for enforcement.

The RA may use an appropriate ESA investigative report or finding as the basis for determining whether an employer has violated a term or condition of certification.

Regional Offices should provide copies of approved H–2A applications, acceptable amendments to job orders, notices of certification determinations, and any other documentation deemed relevant for enforcement purposes to their Regional ESA counterparts. More specific procedures for the ETA/ESA interface on matters related to H–2A investigations, such as coordination of field work, are being developed and will be provided to Regional Offices (ETA and ESA) at a later date.

4. Penalties

a. *ESA Penalties.* If it is determined that H–2A work contract provisions have been violated, then the ESA, Wage and Hour Division, may take any of the following actions:

- Institute appropriate administrative proceedings, including the enforcement of any contractual obligation, the recovery of unpaid wages, and the assessment of a civil money penalty;
- Petition an appropriate U.S. District Court for injunctive relief, including the withholding of unpaid wages, against any violating employer; and
- Petition an appropriate U.S. District Court for specific performance of contractual obligations.

In addition, the ESA, Wage and Hour Division, must report any violation found to the appropriate RA for ETA in the region where the violation occurred and must forward appropriate investigative information to the RA for consideration. The ESA, Wage and Hour Division, may also recommend to the RA the denial of future labor certification.

All penalties invoked by the ESA, Wage and Hour Division, are treated separately from sanctions available to the RA for ETA. An employer's obligations to comply with ESA penalties does not absolve an employer from potential ETA sanctions.

b. *ETA Sanctions for Substantial Violations.* If the RA determines that a substantial violation has occurred, then the RA must notify the employer that certification will not be granted for the next period of time during a calendar year in which the employer would be expected to request certification.

If the RA determines that two substantial violations have occurred, or the same violation has been repeated, then the RA may notify the employer that certification will not be granted for any period within the next two calendar years.

Likewise, if the RA determines that three or more substantial violations, or repetitions thereof, have occurred, then the RA may notify the employer that certification will not be granted for any period within the next three calendar years.

The RA's notice must be in writing, state the reason(s) for the sanction(s), and offer the employer an opportunity for an administrative review or *de novo* hearing on the sanction(s) within seven calendar days as prescribed in 20 CFR 655.112.

c. *Requirement of Special Procedures for Less Than Substantial Violations.* If the RA determines that a less than substantial violation has occurred, then the RA may require, as a condition for certification, the employer to comply with special procedures designed to enhance the recruitment and retention of U.S. workers in the next year.

Any special procedures required by the RA must be reasonable and no more than deemed necessary to assure employer compliance with criteria for availability of and adverse effect on U.S. workers. These cannot include any requirement that the employer offer better wages, benefits, and working conditions than those specified in the regulations at 20 CFR 655.102.

The following are illustrative of the special procedures which could be imposed, as appropriate:

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- Prohibiting the employer from administering any pre-hiring test of agility or other physical skill;
- Requiring the employer to install extra phone lines and provide extra staff assistance to interview by telephone workers being referred from out of the area;
- Requiring the employer to be available seven days a week, from 8:00 a.m. to 9:00 p.m., to interview applicants during the recruitment period;
- Prohibiting the employer from requiring applicants to provide references as a condition of applying for the job;
- Requiring the employer to extend the minimum training/breaking-in period on the job, if one is normally required;
- Requiring the employer to delegate the authority to make a hiring commitment to an Employment Service representative;
- Requiring the employer to restructure certain job components (such as the substitution of lighter weight ladders for heavier ones); and
- Prohibiting the employer from requiring experience in the occupation when such a requirement is not unequivocally supportable by the DOT.

The RA must notify the employer in writing of any required special procedures. The notice must also state the reason(s) for requiring special procedures, that the special procedures become part of the terms of certification, and that the employer has an opportunity to appeal the requirement of special procedures within seven calendar days.

Failure to comply with the special procedures imposed under appropriate circumstances will result in an employer's otherwise approved labor certification being reduced by twenty-five percent of the job opportunities otherwise approvable.

5. Applicability of Penalties to Associations

a. *Penalties Involving Members of Joint Employer Associations.* If, after appropriate investigation, the RA determines that an individual producer member of a joint employer association has committed a substantial violation, the denial of certification penalty shall apply only to that member of the association unless the RA determines that the association or other association member participated in, had knowledge of, or had reason to know of the violation. In such a case the penalty shall be invoked against the association or other association member as well.

b. *Penalties Involving Associations Acting as Joint Employers.* If the RA determines that an association acting as a joint employer with its members has committed a substantial violation, then the RA's sanction denying certification applies only to the association, unless a member of the association is determined by the RA to have participated in, had knowledge of, or reason to know of the violation.

c. *Penalties Involving Associations Acting as Sole Employers.* If the RA determines that an association acting as a sole employer has committed a substantial violation, then the RA's sanction denying certification to the association means that no individual producer member shall be permitted to employ certified H–2A workers in the crop and occupation for which the H–2A workers had been previously certified. However, any individual producer member of the association may apply for certification in either the capacity of an individual employer or as a member of a joint employer association.

6. Appeals of Penalties

Any administrative penalty assessed by the ESA, Wage and Hour Division, or any sanctions or special requirements imposed by the RA may be appealed by the employer. The manner and time frame for such appeals must be stated in the written notification to the employer and are set forth at 20 CFR 655.112 (for ETA) and at 29 CFR Part 501, Subpart C (for ESA).

7. *Abuses Under Fifty Percent Rule* (See also Chapter I, Section F, 4). The regulations at 20 CFR 655.106(g) implement the provisions of the H–2A program which prohibit persons from withholding U.S. workers under certain circumstances. Any person who has reason to believe that a person or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the job site of H–2A workers in order to force the hiring of U.S. workers may submit a written complaint to the local office. The complaint shall clearly identify the person or entity whom the employer believes has withheld the U.S. workers, and shall specify sufficient facts to support the allegation (i.e., dates, places, numbers, and names of U.S. workers) which will permit an investigation to be conducted by the local office.

Upon receipt of a written complaint, the local office will take the steps listed below.

- Review the complaint to make sure all necessary information has been furnished. If information is missing, the employer should be contacted by phone and requested to supply it.
- Telephone the Regional Office and advise that the local office has received the complaint, and provide relevant information requested by the Regional Office.
- Immediately investigate the complaint, including the conduct of the interviews specified in the regulations. If the local office is unable to conduct some or any of the interviews, the Regional Office should be notified immediately by telephone so the Regional Office can conduct any interviews that the local office cannot conduct.
- Within five (5) working days after receipt of the complaint, prepare and submit directly to the Regional Office (with a copy to the State office) a report of findings, including recommendations, as well as the original of the employer's complaint.

Upon receipt of the original complaint and the report of findings from the local office, the Regional Office will take the following steps:

- Immediately review both and conduct any additional investigation deemed appropriate, including any interviews still needed.
- No later than thirty-six working hours after receipt of the complaint and report of findings, issue written findings to the local office and the employer, with a copy to the State office.

Where the RA determines that the employer's complaint is valid and justified, the RA shall immediately suspend the application of the fifty percent requirement specified in the regulations at 20 CFR 655.103(e), provided that no such suspension shall take place until the interviews required by the regulations at 20 CFR 655.106(g) have been conducted.

Where the RA determines that the employer's complaint is not valid and justified, the RA will notify the employer, the local office, and the State office of the determination in writing.

The RA's determination shall be the final decision of the Secretary of Labor, and no further review by any DOL official shall be given to it.

Chapter II—Special Items

A. Adverse Effect Wage Rates (AEWRs)

This is the hourly wage rate which normally must be offered and paid, as a minimum, to every worker (domestic and alien) for work performed in conjunction with an H–2A application and certification. It is designed to prevent the presence of aliens from adversely affecting the wages of U.S. workers similarly employed.

AEWRs are established for every State, except Alaska, and are published annually in the **Federal Register** in the form of a notice signed by the Director, U.S. Employment Service (USES). The AEWRs correspond to survey findings made by the U.S. Department of Agriculture (USDA), which each year publishes an annual weighted average hourly wage rate for field and livestock workers (combined) for the nineteen USDA regions in which quarterly wage surveys are conducted. The AEWRs are usually published in March or April, and become effective immediately upon publication.

Certified H–2A employers must agree, as a condition for receiving certification, to pay a higher AEWR than the one in effect at the time an application is submitted in the event publication of the annual AEWR coincides with the period of employment covered by an H–2A certification; i.e., where, during the season, the AEWR increases, work performed on or after the date of increase must be compensated at the new AEWR.

There are two current, practical situations where an AEWR would not be the hourly minimum guarantee which is required:

- When a State agency conducts a prevailing wage survey and the results of the survey show a higher prevailing hourly wage rate in the area and the occupation, and the finding is verified in writing by the National Office, the higher prevailing hourly wage is required; and
- Sheepherder and custom combine crew occupations (which involve payment on a monthly basis) are governed by prevailing wage surveys conducted by State agencies which are verified annually by the National Office and transmitted to the Regional Offices.

The H–2A regulations also permit the Director, USES, to establish special AEWRs for other types of occupations under the "special circumstances" provisions of 20 CFR 655.93(b). SESA's and Regional Offices will be informed when any special AEWRs are established.

At present, no computed AEWRs are below the legal FLSA minimum wage. In the event the Federal minimum wage rate should be raised to a level above that of any AEWR, the higher FLSA minimum will be required by the provisions at 20 CFR 655.107(c).

When workers are paid on a piece rate basis, the worker's average hourly price rate earnings for each pay period must equal or exceed the AEWR (or prevailing hourly rate as determined by a SESA survey and verified by the National Office, if applicable). If the earnings for piece rate hours worked fall below this level, the worker's pay must be supplemented to raise the earnings to the AEWR level. If, over a normal pay period, workers perform a combination of tasks which involve payment on both an hourly and piece rate basis, workers must be paid at least the AEWR for *every* hour worked on an hourly pay basis, and the "averaging" principle does not apply to those hours worked.

B. Prevailing Wage Surveys

SESAs should conduct prevailing wage surveys in accordance with the procedures presented in ET Handbook No. 385, P.I–111 through 143. These surveys are needed in order to comply with the regulations governing agricultural clearance orders at 20 CFR Part 653, Subpart F. Generally, surveys should be made once per season in a crop activity where:

- One hundred or more workers were employed during the previous season and may be expected to be employed in the future;
- Temporary alien workers were employed or requested in the previous season, and there is reason to believe H–2A certification will be sought for the coming season; or
- The crop activity has an unusually complex wage structure or there are other factors which argue for the collection of empirical data in order to arrive at an objective determination on acceptable wages.

Because of IRCA and the potential for an influx of "new" employers seeking H–2A workers, SESAs may be faced with the task of having to provide Regional Offices with advice on the acceptability of other than hourly wage rates without the time and opportunity to conduct surveys according to ET Handbook No. 385 procedures. In such cases, Regional Offices and SESAs will have to base their determinations on the best information available which can be gathered during the time available.

Normally, the best sources for information to use in arriving at a decision are open and closed local job orders involving the same or similar occupation, activity, and crop. Telephone requests for information from employers who do not use the Employment Service also are recommended, as are consultations with Cooperative Extension Service staff, colleges and universities with staff conversant in the agricultural sciences, farmworker organizations (including JTPA 404 grantees) and agricultural employer organizations, such as the Farm Bureau. SESAs must also consider whatever documentation the H–2A employer has to submit.

C. Prevailing Practice and Related Determinations

In determining the acceptability of wages, benefits, and working conditions on an employer's H–2A application, the following three basic standards apply:

- The level of benefits being offered to U.S. workers must be no less than the same benefits the employer is offering, intends to offer, or will provide H–2A workers (and *vice versa*). Also, no offer may impose on U.S. workers any restrictions or obligations not imposed on H–2A workers;
- The minimum benefits, wages, and working conditions must be no less than those required by the regulations at 20 CFR 655.102–103 and 20 CFR Part 653, Subpart F; and
- For certain job elements, the employer must offer or must conform the job offer to conditions and standards which are "prevailing", "normal", or "common" practices or standards of other employers who hire U.S. workers in the same area and in the same occupation.

In order to arrive at determinations as to whether certain factors are "prevailing", SESAs are encouraged to conduct formal surveys of employers, as time and resources permit, utilizing the sample-size and data collection/analysis principles required for prevailing wage surveys in ET Handbook No. 385, with survey findings and determinations verified by the Regional Office. If a formal survey is not possible in view of time or budgetary constraints, SESAs must, to the extent that they are available: (1) Utilize expert staff knowledge and experience available in the State agency; (2) informally survey local employers; (3) contact organizations such as the Cooperative Extension Service and the Farm Bureau; and (4) consult with farmworker advocates and other informed sources in order to arrive at a reasonable determination of prevailing, common or normal practice. The criteria that must be followed in determining that a practice (or other program component) is, in fact, *prevailing*, is as follows:

- A majority of employers of U.S. workers in an area (and for an occupation) engage in the practice (or offer the benefit); *and*
- This majority of employers (including both criteria and non-criteria employers for family housing and frequency of payment determinations, but non-criteria employers *only* for advance transportation and crewleader utilization determinations) also employs

a majority of U.S. workers in the occupation in the area.

SESAs must submit their findings in writing to the Regional Office in accordance with timetables established by the RA for this purpose.

If a SESA fails to arrive at a prevailing practice determination on a timely basis, or the Regional Office has reason to question the validity of the SESA's finding, the Regional Office is responsible for arriving at a threshold determination or revising the SESA determination. In so doing, the Regional Office should informally survey other informed sources in the same manner noted above for SESA informal surveys, except that the Regional Office is precluded from conducting surveys of 10 or more non-Federal sources because of Federal data collection and reporting constraints.

This "prevailing" standard and measurement must be used for determinations concerning family housing, transportation advances, frequency of payment, and utilization of farm labor contractors.

For some job components a standard somewhat less than the "prevailing practice" standard applies. Certain requirements are measured by the degree to which they are "normal" or "common", rather than "prevailing". The terms "normal" and "common", although difficult to quantify, for H–2A certification purposes mean situations which may be less than prevailing, but which clearly are not unusual or rare. The degree to which a practice is engaged in (or a benefit is provided) should be determined to be close to what is viewed (and measured) as "prevailing" but the degree by which the practice or benefit is measured and degree of proof needed to establish its acceptability for H–2A purposes is not as formal or stringent as "prevailing" calls for.

The specific requirements for "prevailing" determinations, i.e., a majority of employers who also employ a majority of U.S. workers, do not apply to determinations concerning provision of tools, productivity standards, positive recruitment practices, crewleader override, and occupational qualifications. Although formal SESA surveys are desirable in order to determine the extent of normal or common practice related to these factors, the fact that the standard of measurement is less than the "prevailing" standard means that the Regional Office will be required to exercise its discretion to a greater degree in applying and evaluating these factors on a reasonable basis.

The following discusses job elements where the "prevailing", "normal", or "common" practice principles must be applied and where the Regional Office must make a threshold determination on each element before an employer's application can be accepted:

1. Family Housing

When it is the prevailing practice of employers of U.S. workers in the area of employment and occupation to provide family housing, H–2A employers must provide family housing to workers with families who request that such housing be provided. In arriving at a determination as to whether the provision of family housing is a prevailing practice, RAs and SESAs must look beyond the threshold question on the basic availability of housing which is suitable for families. They must also determine whether it is the active practice of employers to offer this housing as a benefit to migrant workers who need and request it.

If the RA determines:

- That a majority of employers of U.S. workers (including both criteria and non-criteria employers) in an area do offer some family housing; and
- That this majority of employers also employ a majority of the U.S. workers in the occupation in the area;

then H–2A employers who provide housing for singles must also provide some family housing as a benefit in their job offers as being available for workers with families who request it.

In such cases RAs should require that each H–2A employer provide some family housing, but should be reasonable in prescribing the number of such units and time frames for the provision of the housing, taking into account the availability of family housing with other employers in the area and the likelihood of U.S. workers with families being available for the jobs. For example, it would be reasonable to require employers who have housing suitable for families which is readily convertible at minimal expense to do so in fairly speedy fashion, but it would not be reasonable to expect employers to erect or purchase new housing unless there was sufficient lead time involved.

2. Provision of Tools, Supplies, and Equipment

Normally, employers must provide, without charge, all tools, supplies, and equipment to the workers, if they are required to perform the tasks described in the job offer. However, if employers can demonstrate to the RA's satisfaction that it is the common practice in a particular area, crop activity, and occupation for workers to provide their own tools, supplies, and equipment, such an arrangement is permissible, if approved in advance by the RA. The employer must request the RA's approval for such an arrangement, and the burden of proof for convincing the RA that such a practice is, in fact, common is on the employer. Absent a specific, justifiable, approved request from an employer, the RA must require that employers provide necessary tools, supplies and equipment without charge to the worker.

3. Transportation Advances

H–2A employers must offer to advance transportation and subsistence costs (or otherwise provide them) to U.S. workers when it is the prevailing practice of non-H–2A employers in the area and occupation to do so (or when transportation is advanced for H–2A workers).

In order to determine whether such a requirement should be placed on H–2A employers, the RA must make a prevailing practice determination utilizing the techniques and principles discussed at the beginning of the section. In order for the RA to require advance transportation, the RA must find that a majority of the non-H–2A employers in the area and occupation engage in this practice, *and* this majority also employ a majority of the domestic workers in an area and occupation.

4. Productivity Standards

When employers pay by piece rate, they commonly establish minimum productivity standards; e.g., certain minimum levels of production which a worker must achieve in order to retain employment. For employers who have utilized the H–2 program in the past, such standards cannot be more than those which were in place in 1977 (or first year thereafter in which the employer entered the H–2 program), unless the Regional Office subsequently approved a higher minimum. For "new" H–2A employers, such standards cannot be more than those normally required in the activity (such as apple picking) in the area of intended employment.

"New" H–2A employers who specify minimum productivity requirements in their job orders must be able to demonstrate to the RA's satisfaction that these requirements are no more than those normally required by other employers of U.S. workers in the area.

In determining the acceptability of minimum productivity requirements, Regional Offices may ask the employer for the names of other employers who can verify the adequacy of the

employer's requirement. Regional Office staff may also wish to consult with Cooperative Extension Service or college or university personnel with expertise in agricultural sciences for advice and assistance in arriving at a determination.

If time and resources permit, it is recommended that SESA prevailing wage surveys be minimally modified to include information on productivity requirements in order to assist the Regional Office in making a threshold determination for new H–2A employers.

5. Frequency of Payment

Employers are required to pay their workers at least twice monthly, or more frequently if it is the prevailing practice of other employers (both criteria and non-criteria) of U.S. workers in the area of intended employment to do so. A prevailing practice determination on this job element must be made in the manner discussed at the beginning of this section.

6. Employer Positive Recruitment of U.S. Workers (Including Use of Crewleaders and Crewleader Overrides)

The degree to which an H–2A employer is required to engage in independent, positive recruitment is partly measured by the extent to which non-H–2A agricultural employers of comparable or smaller size in the area engage in U.S. worker recruitment, with respect to both effort and location.

For example, if it is normal for employers of U.S. workers in the area to contract with an agent in a distant labor supply State to have the agent visit locations of migrant workers and aggressively recruit them, the H–2A employer would be required to do the same, provided that the non-H–2A employers are not "larger" than the H–2A employer in terms of acreage, crop production, or number of workers normally employed.

Conversely, if similarly sized non-H–2A employers simply rely on "word-of-mouth" advertising or a "HELP WANTED" sign on the gate, the H–2A employer would not be expected to do any more (unless specifically required to by the RA based on the RA finding of U.S. worker availability).

Another factor which has to be considered in determining positive recruitment requirements is the extent to which non-H–2A employers utilize farm labor contractors (crewleaders) to secure U.S. workers. If a majority of non-H–2A employers in an area (who employ a majority of the U.S. workers in the area) use crewleaders, and provide an override (payment usually based on a per worker or per unit of production basis) for the crewleader's services, H–2A employers must be willing to do the same and must provide an override which is no less than that provided by other employers (except that meals and housing may be excluded from override considerations).

In determining the normal recruitment practices of non-H–2A employers, SESAs are required to conduct surveys of employers, as time and resources permit. In the event this cannot be accomplished by the SESA on a timely basis, the Regional Office must make the determination based on its own assessment.

The prevailing practice principle applies to the examination of crewleader utilization (but not override), and the RA's determination must be based on the measurement standard discussed above.

7. Appropriateness of Required Occupational Qualifications

Employers may require potential workers to possess certain qualifications deemed necessary to successfully perform the job duties specified in the job order for which H–2A certification is being sought. Regional Offices should review job offers where such qualifications are required on a case-by-case basis, and relate them to the actual work situation involved.

The statute and the regulations require that such qualifications be consistent with those normally found to be necessary by non-H–2A employers in the same or comparable occupations and crops. Most occupations for which H–2A certification is sought are low skilled in nature, and normally would not require much, if anything, in the way of special skills, training, or experience on the part of the workers. Where special skills, training, or experience are identified as requirements in a job order, the Regional Office must review them for their appropriateness.

In determining the appropriateness of occupational qualifications, the Regional Office should consider normal, accepted practice of non-H–2A employers in the same or comparable occupations and crops as a first step. Reviews of open and closed job orders in local offices and consultations with other employers are recommended for this purpose. Reference to available sources of occupational information, such as the *Dictionary of Occupational Titles* and its supplements, also are recommended, as are consultations with representatives of the Cooperative Extension Service, educators with agricultural expertise, and farmworker advocates and other informed sources.

In the event the non-acceptance of an employer's required occupational qualification is contested by an employer on an informal basis before an H–2A application is officially rejected by a Regional Office, the employer should be advised to submit documentation sufficient to support a finding that the requirement is appropriate because it is consistent with normal and accepted qualifications required by non-H–2A employers in the same or comparable occupations and crops.

The non-acceptability of a required occupational qualification on a job order is sufficient justification for refusing to accept an employer's H–2A application, and the burden of proof for justifying the acceptability of an occupational qualification which is questioned by the Regional Office rests with the employer.

D. Housing Inspections and Requirements

1. Requirements

Employers seeking H–2A certification must have free housing for non-local workers. The housing must meet the OSHA standards specified in the regulations at 29 CFR 1910.142 or, under certain conditions, the ETA standards at 20 CFR 654, unless the employer is providing rental or public accommodation type housing. In this case, local or State standards will apply. Absent local or State standards, the OSHA standards are applicable, and pre-occupancy housing inspections must be conducted. If DOL standards are not applicable, no pre-occupancy inspections need be conducted, and the employer need only document to the RA's satisfaction that the housing complies with the local or State standards which apply to the situation. (Employers also may be subject to additional housing requirements under MSPA.)

Mobile range housing for sheepherders is governed by the special procedures in FM #108–82, and mobile housing provided by Canadian custom combine owners is handled differently.

The SESA is responsible for assuring, through a pre-occupancy inspection, that housing which is governed by OSHA or ETA standards is inspected prior to occupancy, and that the housing meets DOL standards for safety and adequacy. In States where either local or State standards for housing of agricultural workers equal or exceed those at 20 CFR 654 or 29 CFR 1910.142 and are strictly enforced, a formal written cooperative agreement may be secured with another

governmental agency to do the necessary housing inspections.

Although the SESA may not do the actual inspections, the SESA must make the determination required by the regulations at 20 CFR 653.501(d)(2)(xv) before extending agricultural orders into clearance (except under conditional access situations). It is recommended that SESAs complete and attach optional Form ETA 336 to clearance orders to clearly show that the housing has been inspected and meets standards.

2. Conditional Access

The pre-clearance inspection may be delayed if the employer requests conditional access to the clearance system because the housing is not in compliance when the employer files the H–2A application package. The regulations require that this conditional access request contain an assurance that the housing will be available for inspection and will meet DOL requirements at least thirty days before the date of need. RAs should normally grant *pro forma* approval to such requests so the clearance process will not be delayed, and should only question them when there is available evidence that substantial problems exist which indicate strongly that the housing will not be approvable within the time frames noted.

The local office serving the area of an employer granted conditional access shall assure that the housing is inspected no later than thirty calendar days before the employer's stated date of need. If the housing fails to pass inspection, the employer shall be given an additional five calendar days to correct deficiencies noted by SESA staff. If the housing does not meet applicable standards upon reinspection no more than five days later, the local office must immediately notify the RA by telephone. After SESA consultation with the RA, the employer's job order shall be immediately removed from clearance, and, if workers were recruited against the order, the local office shall cooperate with SESAs in other States to locate and notify appropriate workers or crewleaders and to attempt to find alternative comparable employment for them. The RA may not grant a certification to an employer whose housing has not passed inspection.

3. OSHA and ETA Standards

With the exception of rental, public accommodation, mobile combine crew, or sheepherder housing, H–2A employer housing would be expected to comply with OSHA standards set forth at 29 CFR 1910.142, except that ETA standards at 20 CFR 654 apply to:

- Housing built before April 3, 1980, relying upon ETA standards; or
- Housing being constructed before April 3, 1980, relying upon ETA standards; or
- Housing for which a contract for construction was signed before March 4, 1980, relying upon ETA standards.

Employers with more than one housing site may have their housing inspected with either the full set of standards at 20 CFR 654 or 29 CFR 1910.142, whichever applies to each clearly identifiable separate housing site.

4. Variances and De Minimus Notices

The ETA and OSHA standards provide for deviations from particular requirements where there is no direct or immediate threat to occupants' safety or health. Under ETA standards, such deviations are authorized only if the employer applied on or before June 2, 1980, for a permanent structural variance and received written authorization from the RA for ETA to vary from specified ETA standards. Under the OSHA standards, such deviations are noted by field inspectors as *de minimus* violations under section 9(a) of the Occupational Safety and Health Act.

a. *ETA Variances (20 CFR 654.402).* All housing inspected under the regulations at 20 CFR Part 654 must literally meet the full set of ETA standards except when the RA for ETA, consulting with the RA for OSHA, granted a permanent structural variance from a specified standard; under that condition, the housing must meet the terms of the variance. The deadline for permanent variance applications was June 2, 1980.

b. *OSHA De Minimus Notices (29 CFR 1910.142).* OSHA regards ETA variances granted under 20 CFR 654.402 as meeting the *de minimus* provisions of section 9(a) of the Occupational Safety and Health Act.

Minor variations from specific dimensions or ratios of the OSHA standard which, in the judgment of the inspector, will not have a direct or immediate relationship to safety or health of the occupants will be considered *de minimus* according to section 9(a) of the Occupational Safety and Health Act.

If the inspector believes that variations from specific dimensions or ratios may have a direct effect on safety and health, the inspector may consult with OSHA to determine if the variation is considered *de minimus* under section 9(a) of the Occupational Safety and Health Act. The inspector must send a written request to the OSHA Area Director clearly specifying the standard involved, the extent of the variation, and any alternate measures which the employer took to protect the health and safety of workers.

One copy each of the request to the Area Director must be sent immediately to the RAs for ETA and OSHA. The OSHA Area Director will review the request to determine if the variation is considered *de minimus* under section 9(a) of the Occupational Safety and Health Act.

The Area Director, after reviewing the request, will advise the local ES office in writing whether or not the variation is considered *de minimus* according to section 9(a) of the Occupational Safety and Health Act. One copy each of the Area Director's response must be sent immediately to the RAs for ETA and OSHA.

Only when housing varies so substantially from an OSHA standard that it cannot be considered a *de minimus* violation would an employer seek a formal OSHA variance under the elaborate procedures of section 6 of the Occupational Safety and Health Act. According to OSHA variance procedures, affected employees must be given notice and opportunity for a hearing before issuing a variance from OSHA standards.

Should the employer elect to seek a variance under Section 6 (d) it is important to note that it will be necessary that the alternative method, system, or procedure be as safe and healthful as the requirements of the standard from which a variance is sought.

ETA and SESA staff should refer employers to the OSHA Area Director for information and assistance in filing a formal request for variance under section 6 of the Occupational Safety and Health Act if employers inquire about such matters.

E. Determining Labor Disputes

When filing an H–2A application, the employer must assure that the specific job opportunity for which certification is being requested is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute. Further, when the RA makes a certification determination, the RA must subtract from any otherwise approvable request the specific verified number of job opportunities involved which are vacant because of a strike or other labor dispute involving a work stoppage or a lockout in the specific occupation at the place of employment when H–2A workers have been requested for those job opportunities.

Before taking such an action, the RA must verify the existence of a strike, labor dispute, or lockout, and the actual number of vacancies directly attributable thereto through the means of a SESA onsite investigation of the situation and a written report of the findings of that investigation.

The regulations provide that the RA must initiate an investigation upon the receipt of labor dispute information from any source. When such information is received in the Regional Office, the Regional Office should promptly inform the SESA that an onsite review and assessment of the situation should be conducted within five working days. The RA should consult with the SESA to develop mutually agreed upon steps to be taken in conducting the investigation.

Such procedures should require SESA staff to:

- Visit the employer's worksite;
- Interview the employer or the employer's designated representative(s);
- Interview the workers who have allegedly vacated the positions involved; and
- Interview the workers' designated representative(s) or union official(s) involved, if any.

These interviews should be designed to elicit the following information items (at a minimum), as well as any other information deemed appropriate by the Regional Office and the SESA:

- Name, address, phone number, and Social Security number of complaining employee;
- Length of time complaining employee has spent on the job which is the subject of the dispute;
- Use made of employer's grievance procedure, if any;
- Factual determination of whether a position which has been occupied is now vacant for reasons related to the dispute, and the number of such positions; and
- Specific conditions complained about with any evidence to support the complaint.

Within two days after the investigation has been completed, the SESA should prepare a report of its findings and send it to the Regional Office. Based on the SESA report, and any subsequent additional investigation the Regional Office may wish to conduct, the RA should make a determination as to whether a position for which H–2A certification determination (or certification redetermination) is sought is, in fact, vacant (after having been occupied) due to a strike, lockout, or other labor dispute involving a work stoppage. Prior to making this determination, the RA should consult by telephone with the National Office for concurrence.

When a positive determination has been made, the RA should then prepare a memorandum for the file indicating that a finding has been made and that the specific positions vacant because of the dispute will not be included in any otherwise positive H–2A certification determination or redetermination, and giving the reasons therefor. When the situation involves a redetermination matter, the RA's finding should also be transmitted to the appropriate INS District Office responsible for adjudicating employers' petitions for H–2A visas.

The role of the SESA in referring applicants to job orders when there is a dispute involved is governed by the regulations at 20 CFR 652.9, Establishment and Functioning of State Employment Services.

F. Farm Labor Contractors (Crewleaders) as Employers

The H–2A program and the implementing regulations are primarily constructed for the use of employers who own and/or operate a fixed-site establishment and who are seeking workers from out of the area to come to that fixed site. However, there is nothing in the statute or the regulations to preclude an employer who does not fit into this category from utilizing the program. Therefore, bona fide registered farm labor contractors may be eligible to apply for and receive H–2A certification.

Given the extent of the employer's responsibility under these regulations, it is doubtful that many farm labor contractors would apply for certification. Farm labor contractors would be required, as employers, to provide all the minimum benefits specified by the H–2A regulations, including the three-fourths guarantee and the offer of employment to U.S. workers who apply until fifty percent of the contract period has elapsed.

In order for a crewleader to be eligible for H–2A purposes, the crewleader must first meet all the requirements of the definition of "employer" set forth in the regulations at 20 CFR 655.100(b). It must be clear that a contractor will have an employer-employee relationship with the workers, and that the contractor will be responsible for hiring, paying, firing, supervising, or otherwise controlling the work of the employees. It would be advisable to determine, for example, if a contractor deducts Federal Insurance Contribution Act (FICA) withholdings, provides matching contributions, and transmits such to the Internal Revenue Service (IRS) under its own account number.

A farm labor contractor seeking H–2A certification must comply with all the other requirements of the regulations at 20 CFR Part 653 and 20 CFR Part 655, including the requirements that there be a precise anticipated starting date and ending date of employment, and that the anticipated number of days and hours per week for which work will be available must be stated. A vague, unconfirmed itinerary is not acceptable for H–2A filing purposes.

SESA and Regional Office staff should be careful to look behind any applications filed by farm labor contractors to ensure that the contractor is operating in accordance with MSPA requirements, and that the job opportunities for which workers are being sought are bona fide, and all the conditions associated with them comply with applicable laws and regulations. Consultations with ESA and with known fixed-site growers in the area of intended employment are recommended for this purpose.

G. Determining Legal Employment Status of Workers Referred

Under the provisions of IRCA, an employer is exempt from sanctions related to the hiring of an alien who is not authorized to work in the U.S. ". . . with respect to the hiring of an individual who was referred for such employment by a State employment agency . . . if the person or entity (employer) has or retains . . . appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in (the Act) . . . with respect to the individual's referral".

The participation of the SESAs in this employment verification and referral function is a permissible activity for SESAs to undertake, at their option, under their base Wagner-Peyser grant. Specific instructions governing the SESA role when a State wishes to participate are contained in INS regulations at 8 CFR Part 274a, Subpart A 274.6., November 9, 1987.

It is permissible for employers to specify on job orders that workers referred must possess the documentation required to enable the employer to comply with the employment verification requirements of IRCA. It is also permissible for employers to request that SESA's referring U.S. workers on job orders perform the employment verification function, and SESA's which have exercised the option of participating in

the activity should do so. However, it is not permissible for employers to specify on job orders that the SESA making referral *must* perform the function.

For H–2A certification purposes, if a referred worker is unable to produce the documents needed for an employer to comply with the employment verification requirements of the INS regulations, the employer would have a lawful job-related reason for not hiring the worker. Referred workers refused employment for this reason should not be counted as available for certification purposes.

(Appendices ommitted)

[FR Doc. 88–13165 Filed 6–10–88; 8:45 am]
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federal register

Monday
June 13, 1988

Part IV

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, and Income Contingent Loan Programs; Campus-based Programs; Notice of Certified Need Analysis Systems for Academic Year 1988–89

VOL 53 ISS 113 JE 13 1988 UMI

VOL 53 ISS 113 JE 13 1988 UMI

DEPARTMENT OF EDUCATION

Perkins Loan (Formerly National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, and Income Contingent Loan Programs; Campus-based programs

AGENCY: Department of Education.

ACTION: Notice of certified need analysis systems for academic year 1988–89.

SUMMARY: The Secretary of Education announces certified need analysis systems that institutions of higher education may use in calculating a student's financial need or expected family contribution during academic year 1988–89 under the Perkins Loan, College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG), Income Contingent Loan (ICL), and Guaranteed Student Loan (GSL) Programs.

An institution is not required to use a certified need analysis system. However, if an institution uses a certified need analysis system in the calculation of an expected family contribution for the 1988–89 academic year under the Perkins Loan, College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG) (known collectively as the campus-based programs), Income Contingent Loan, and Guaranteed Student Loan (GSL) Programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in Title IV, Part F, of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Richard P. Coppage, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue SW., Room 4018, ROB–3, Washington, DC 20202. Telephone (202) 732–4490.

Program Information

The campus-based and Guaranteed Student Loan programs are "need-based" student financial aid programs. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs.

Institutions participating in the ICL Demonstration Project must make ICLs reasonably available first to all eligible students who demonstrate financial need.

Part F of Title IV of the Higher Education Act of 1965 (HEA), after its amendment by the Higher Education Amendments of 1986, provides detailed formulas for determining a student's expected family contribution for the campus-based, ICL and GSL programs. The statutory formulas specify the criteria, data elements and tables for schedules of expected family contributions for these programs.

As authorized by the HEA and as a service to institutions, the Secretary certifies that an expected family contribution produced by a need analysis system listed in this notice accurately reflects the expected family contribution prescribed by Title IV–F of the HEA.

Each need analysis servicer whose system is listed below as certified by the Secretary is able to calculate an expected family contribution under Title IV–F of the HEA when an applicant provides the data elements necessary for that calculation in a complete and consistent manner. A need analysis servicer's system that performs this function is certified at Level 1.

Under Level 2, the need analysis servicer's system performs the function described under Level 1 and selects applicants for verification under ED instructions for that selection.

Under Level 3, the need analysis servicer's system performs the function described under Level 1 and calculates an expected family contribution under Title IV–F of the HEA, even when an applicant provides incomplete and inconsistent data, through the use of ED edits.

Under Level 4, the need analysis servicer's system performs the function described under Level 1 and calculates an expected family contribution under Title IV–F of the HEA even when an applicant provides incomplete and inconsistent data through the use of ED edits and to selects applicants for verification under ED instructions for that selection.

The following need analysis systems are certified at Level 1:

All-Calc
American College Testing Program, 2255 North Dubuque Road, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040

CARS Administrative Computer System
CARS Information Systems Corporation, 4000 Executive Park Drive, Cincinnati, Ohio 45241, (513) 563–4542

COLLEAGUE
DATATEL, 4375 Fair Lakes Court, Fairfax, Virginia 22033 (703) 968–9000

Electronic Need Analysis System, United States Department of Education
Federal Student Aid Information Center, P.O. Box 84, Washington, D.C. 20044, (800) 333–4636

HESC–ABLE 1988–89
New York State Higher Education Services Corporation, 99 Washington Avenue, Albany, New York 12255, (518) 474–8336

RCN Need Analysis
Regents Computer Network, 150 Causeway Street, Boston, Massachusetts 02114, (617) 727–9500

SAM—Level 1
Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421

The following need analysis systems are certified at Level 2:

Administrator
EDTECH (formerly M-Data, Advanced Process Laboratories, Financial Analysis Service, and CompuGrant), 13464 Northland Drive, Big Rapids, Michigan 49307, (616) 796–8641

COLLEGIATE DATA SYSTEMS—FAMILY CONTRIBUTION AND TSC EDITS
COLLEGIATE DATA SYSTEMS, 3809 Valley Stream Drive, Raleigh, North Carolina 27604, (919) 787–8263

CSA Financial Aid Calculator, 5000 Series
Calculator Systems Associates, 1426, W. Sixth Street, Suite 206, Corona, California 91720, (714) 734–3818

CSA Financial Aid Calculator, 6000 Series
Calculator Systems Associates, 1426, W. Sixth Street, Suite 206, Corona, California 91720, (714) 734–3818

DFAS LEVEL 2 NEED ANALYSIS
Diversified Financial Aid Services, Inc., 2108 East Thomas Road #116, Phoenix, Arizona 85016, (602) 957–0784

National Education Centers
National Education Centers, 1732 Reynolds, Irvine, California 92714, (714) 261–7606

NEED/3000 and PC–NEED
Computing Options Company, 136 East Street, Frederick, Maryland 21701, (301) 662–5592

SAM—Level 2
Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421

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SNAP II (Traditional & Proprietary) Floppy Disk
EDTECH (Formerly M-Data, Advanced Process Laboratories, Financial Analysis Service, and CompuGrant), 13464 Northland Drive, Big Rapids, Michigan 49307, (616) 796–8641

THE Pell and F.C. System
Education Associates Computer Division, Inc., 2018 Naamans Road, Suite B–6, Wilmington, Delaware 19810, (302) 475–8036

The following need analysis systems are certified at Level 3:

RECALC
American College Testing Program, 2255 North Dubuque Road, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040

SAM—Level 3
Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421

Student Aid Reporting and Analysis (SARA)
American College Testing Program, 2255 North Dubuque Road, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040

The following need analysis systems are certified at Level 4:

ACT Student Need Analysis Service (SNAS)
American College Testing Program, P.O. Box 168, Iowa City, Iowa 52243, (319) 337–1040

ATLANTA STUDENT AID—"CALCPLUS"
Atlanta Student Aid, 5037 Bell Drive, Smyrna, Georgia 30080, (404) 434–3445

CareerCom Need Analysis System
CareerCom Corporation, 1801 Oberlin Road, Middletown, Pennsylvania 17057, (717) 939–1981

City University of New York
City University of New York, George Chin, University Director—Student Financial Assistance, 101 W. 31st Street, 7th Floor, New York, New York 10001, (212) 947–8000

College Scholarship Service/College Board Need Analysis System
College Scholarship Service/College Board, 45 Columbus Avenue, New York, New York 10023, (212) 713–8171

DATA-ED NEED ANALYSIS
Xitron Systems, Inc., 71 Route 206 S., Somerville, New Jersey 08876, (201) 526–6700

Director's Assistant, Financial Aid System Need Analysis Calc.
United Edcuation and Software, 3600 South Minnesota, Sioux Falls, South Dakota 57105, (605) 339–3788

EdDGE III+ Need Analysis
Diversified Financial Aid Services, Inc., 2108 East Thomas Road #110, Phoenix, Arizona 85016, (602) 957–0784

EGA SUPER-COMP NEEDS SYSTEM
Earle, Grovatt & Assoc., Inc., 356 Main Street, Matawan, New Jersey 07747, (201) 290–9050

Family Contribution (FC) printed on the Student Aid Report, United States Department of Education
Federal Student Aid Information Center, P.O. Box 84, Washington, D.C. 20044, (800) 333–4636

FARE (Federal Aid Report of Eligibility) and NEED-LINK
EDTECH (formerly M-Data, Advanced Process Laboratories, Financial Analysis Service, and CompuGrant), 13464 Northland Drive, Big Rapids, Michigan 49307, (616) 796–8641

FAST
FAST, Inc. & Donald G. Watson and Assoc., 4015 E. Ashlan, Fresno, California 93726, (209) 222–8564

Graduate and Professional School Financial Aid Service
Educational Testing Service, Rosedale Road, Princeton, New Jersey 08541, (609) 734–5955

INAS, The Institutional Need Analysis System
College Scholarship Service/College Board, Suite 480, 2099 Gateway Place, San Jose, California 95110, (408) 288–6800

IRIS Needs Analysis Package
Michael V. Fox, Vice-President, Software Research Northwest, Inc., 17710 100th Avenue, S.W., Vashon Island, Washington 98070, (206) 463–3030

ISSC-AFSSA
Illinois State Scholarship Commission, Client Services, 106 Wilmot Road, Deerfield, Illinois 60015, (312) 948–8500

MICRO-FAIDS
College Scholarship Service/College Board, Suite 480, 2099 Gateway Place, San Jose, California 95110, (408) 288–6800

Mitchell Sweet & Associates Needs Analysis System
Mitchell Sweet & Associates, 1626 S. Edward Drive, Tempe, Arizona 85281, (602) 968–2900

Need Analysis Assistant Microcomputer System
Educational Testing Service, P–129 Educational Testing Service, Princeton, New Jersey 08541, (609) 734–1194

PHEAA Need Analysis and Packaging System
Pennsylvania Higher Education Assistance Agency (PHEAA), 660 Boas Street, Harrisburg, Pennsylvania 17102, (717) 257–2750

RGM Aid Mangement System
R. Gonzalez Management, Inc., 3409 W. Jefferson Blvd., Los Angeles, California 90018–3235, (213) 732–0573

RGM Instant Need Analysis System
R. Gonzalez Management, Inc., 3409 W. Jefferson Blvd., Los Angeles, California 90018–3235, (213) 732–0573

SAFE System
Information & Communications, Inc., 5601 La Jolla Blvd., La Jolla, California 92037, (619) 454–9765

SNAP (System for Need Analysis Processing)
Cybernetics & Systems, Inc., 550 Water Street, Jacksonville, Florida 32202, (904) 632–8100

Student Aid Management System (SAM)
Sigma Systems, Inc., 1508 Cotner Avenue, Los Angeles, California 90025, (213) 477–1421

USA Funds WhizApp
United Student Aid Funds, Inc., 8115 Knue Road, Indianapolis, Indiana 46250, (317) 576–1160

(Catalog of Federal Domestic Assistance No. 84.038, Perkins Loan (formerly the National Direct Student Loan) Program; 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Guaranteed Student Loan Program. N/A for Income Contingent Loan Program)

Dated: June 2, 1988.

Kenneth D. Whitehead,

Acting Secretary for Postsecondary Education.

[FR Doc. 88–13175 Filed 6–10–88; 8:45 a.m.]

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Part V

Federal Trade Commission

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Notice of Proposed Rulemaking

VOL 53 ISS 113 JE 13 1988 UMI

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Appliance Labeling Rule went into effect on May 19, 1980. Since that time, the Commission has obtained information indicating that modifications to the Rule should be considered. For example, because of interest in the Rule, in January 1983, Commission staff held a public meeting in Washington, DC, to gather comments on the Rule from manufacturers, retailers, consumers and consumer groups, state and federal agencies and other persons. The Commission has continued to receive informal suggestions about Rule modifications and improvements since that meeting. In addition, comments received during the Regulatory Flexibility Act review of the Rule contained useful suggestions on ways to modify the Rule.[1]

After considering all of the information received concerning possible Rule modifications, the Commission is proposing a number of specific changes in the Appliance Labeling Rule. The Commission is also seeking comment on several other parts of the Rule that may warrant changes, including a suggestion that the Rule be amended to permit manufacturers of covered products to label only display models. The Commission has also included a question on the effects, if any, of the appliance efficiency standards contained in recently enacted legislation. Finally, the Commission is seeking comment on whether the Rule's coverage should be expanded to include gas and kerosene space heaters.

DATES: Written comments must be submitted on or before July 28, 1988.

Persons desiring a public hearing on the proposed amendments should advise the Presiding Officer by no later than July 13, 1988. If hearings are scheduled, the date and time of the hearings, as well as the date for submission of prepared witness statements and exhibits, will be announced in a subsequent Notice.

ADDRESS: Written comments and requests for public hearings should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202–326–3642. Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Section 324 of the Energy Public and Conservation Act of 1975 (EPCA)[2] requires the Commission to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances classified as "covered products" by section 322(a) of EPCA: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Before these labeling requirements may be prescribed, the statute requires the Department of Energy (DOE) to develop test procedure that measure how much energy the appliances uses. In addition, DOE is required to determine the representative average costs a consumer pays for the different types of energy available. Congress provided, in section 324(b)(5) of EPCA, that the Commission could exempt from coverage products in categories 1–9 if labeling is not technically or economically feasible, and products from categories 10–13 for the same reason or, alternatively, if labeling would not be likely to assist consumers in making purchasing decisions.

On November 19, 1979, the Commission issued a final Rule covering seven of the twelve appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.[3] The Rule applies to products manufactured after May 19, 1980. The Commission recently amended the Rule to include the category of central air conditioners and heat pumps.[4]

For most product categories, the Rule requires that dollar energy costs and related information be disclosed on labels and in retail sales catalogs. For three of the categories—room air conditioners, furnaces and central air conditioners—dollar energy costs are impractical as the primary energy usage disclosure, for reasons discussed below. For these products, energy efficiency ratings ("EER's") must be disclosed, either on the labels (for room air conditioners and central air conditioners) or on fact sheets (for furnaces).[5] The corresponding cost information must be disclosed on the label for room air conditioners, on fact sheets for furnaces and for central air conditioners on fact sheets or in a directory. These required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures. Even products that the Commission exempted from the Rule's labeling requirements must be tested in accordance with the DOE procedures before energy claims can be made. In addition, certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information.

II. The Modifications: Proposed Amendments and Questions

In today's Federal Register Notice, the Commission is: (1) Announcing and soliciting comments on two proposed amendments concerning furnace requirements; (2) announcing and soliciting comments on a proposed amendment to the requirements for room air conditioners; and (3) soliciting comments on a number of proposals that may lead to amendments. In accordance with a directive in section 336(a) of EPCA, the Commission hereby affords interested persons the opportunity to present their views orally at a public hearing. Those interested in participating in a hearing should notify the Presiding Officer, in writing, by no later than July 13, 1988, at the following address: Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580.

A. Proposed Amendments to Energy Usage Disclosure for Furnaces

1. Background: Current Furance Labeling Requirements

Section 324(c) of EPCA maudates that two disclosures appear on labels. The first is the estimated annual operating cost of the product. The second is a range of estimated annual operating costs for comparable products. An alternative measure of energy consumption (instead of operating cost) may be used if the Commission determines that the disclosure of estimated annual operating costs is not economically feasible or that labeling with energy costs is not likely to assist consumers is making purchasing decisions.

During the promulgation of the original Rule, the Commission concluded that, for home heating and cooling equipment (which includes room air conditioners, central air conditioners and furnaces), the disclosure of energy usage required by § 305.11(b) of the Rule should be in the form of an energy efficiency rating instead of an estimated annual cost of operation. The Commission reached this conclusion because the use of these appliances differs widely due to the variety of climate conditions in the United States. Therefore, a meaningful average energy cost for the operation of these product categories would be very difficult, if not impossible, to quantify on a national basis.

The energy efficiency rating disclosures for these products are derived through the DOE test procedures and are independent of climatic effects on energy usage. Cost information must still be disclosed, but not as the primary energy usage disclosure. It appears in the form of cost grids below the primary EER disclosure on the room air conditioner label.

For furnaces, the Commission determined that energy efficiency and cost information was too complex to disclose on a label and, therefore, was not likely to assist consumers in making purchasing decisions.[6] Further, because consumers often buy from contractors and are unlikely to see specific furnace units before purchase, the Commission determined at that time that labels on furnaces would not be an effective disclosure format. Instead, the Commission required the EER and cost information to be disclosed on a separate energy fact sheet instead of on a label attached to the product. A different type of label containing general energy-saving tips (instead of energy usage information) and referring the consumer to the fact sheet must be affixed to each furnace.

The fact sheets show the various combinations of components available[7] and the overall efficiency of any set of component combinations. In addition, the fact sheets provide cost grids for estimating what that "system" could cost the consumer to operate, depending on geographic location and utility rate structures.

The specific requirements of § 305.11(b)(3) of the Rule are that each fact sheet must show:

The name of the manufacturer or private labeler;
The model number of the furnace;
The capacity of the furnace;
The EER of the furnace;
The applicable ranges of comparability;
Placement of the particular furnace on the range scale;
Yearly cost information; and
A statement that coats and EER's are based on standard government tests.

Retailers must make fact sheets available to customers at their place of business. If retailers make sales away from their place of business, they must show fact sheets to their customers before the sale.

For central air conditioners, the Commission recently adopted a different labeling format. The labels on central air conditioners contain the primary energy disclosure, the EER, and its associated comparability range. They also direct consumers to *either* fact sheets *or* directories for detailed cost information. The Commission now believes that this alternative disclosure system may be an efficient way to provide energy information for furnaces.

2. The Directory Option Amendment

The proposed directory option for furnace manufacturers is identical to what the Commission is allowing for central air conditioner manufacturers. Under this option, manufacturers would comply with the Rule's disclosure requirements by listing required information in a trade association directory, rather than on fact sheets. This option was proposed by the Gas Appliance Manufacturers Association (GAMA)[8] and others during a rulemaking proceeding initiated in 1981 to consider whether two new types of furnaces[9] should be included under the Rule's coverage. The Commission rejected GAMA's proposal because it went beyond the scope of the rulemaking, which was conducted for the sole purpose of determining whether the two new types of furnaces should be covered under the Rule.[10] For reasons detailed below, the Commission believes that GAMA's proposal now merits serious consideration and publishes a proposed amendment to implement it.

At the time of this proposal, GAMA was about to launch a voluntary certification program for furnace manufacturers. The program, which has since been put into effect, is open to all manufacturers of residential-size furnaces. The program involves participating manufacturers submitting to GAMA energy efficiency information derived from tests performed by using the DOE test procedures. GAMA conducts verification testing and maintains an internal enforcement mechanism.[11] The program also includes the publication and distribution of a Directory listing participating manufacturers along with the DOE test-derived efficiency and annual cost information on each of the models they produce.

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[1] 50 FR 13939 (April 8, 1988).

[2] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[3] 44 FR 66466, 16 CFR Part 305 (Nov. 19, 1979). The Statement of Basis and Purpose (SBP) for the Final Rule describes the reasons the Commission exempted the other categories of covered products. *Id.* at 66467–69. The SBP explains that the Commission concluded that Congress intended, through the statutory exemption criteria, to permit product categories to be excluded, "if the Commission found that the cost of the labeling program would substantially outweigh any potential benefits to consumers." *Id.* at 66467–68.

[4] 52 FR 46888 (Dec. 10, 1987).

[5] Generally defined, the energy factor is a measure of the useful output of an appliance's services divided by the energy input. When promulgating the test procedures, DOE, as required by EPCA, developed at least two measures of energy consumption for each appliance category, one, based on estimated dollar cost of operation, and one other—the energy factor. In the case of climate control equipment, DOE used the nomenclature currently followed by the industry to describe the energy factor for those products. Hence, the energy factor for room air conditioners is called the EER (energy efficiency ratio), for furnaces, the AFUE (annual-fuel utilization efficiency), for central air conditioners and the cooling function of heat pumps, the SEER (seasonal energy efficiency ratio), and for the heating function of heat pumps, the HSPF (heating seasonal performance factor). Under the Commission's Rule, all of these acronyms are referred to as the EER (energy efficiency rating) for the sake of simplicity. For the other appliances, this method of energy consumption calculation is simply called the energy factor in the DOE test procedures.

[6] To communicate energy-usage information, including associated costs, relating to a "family" of similar furnaces with the same basic structure and capacity (differences stemming from various ignition systems, burners or venting techniques) would have required a much larger label that was likely to be confusing to consumers.

[7] For example, whether the furnace would be available with a vent damper, standby pilot, automatic ignition, etc.

[8] The Gas Appliance Manufacturers Association is one of the two trade associations representing members of the furnace manufacturing industry. The other principal furnace industry trade association is The Hydronics Institute, Berkeley Heights, New Jersey.

[9] Pulse combustion furnaces and condensing furnaces. The Notice of Proposed Rulemaking was published at 46 FR 38105 (July 24, 1981).

[10] 52 FR 46888 at 46894 (Dec. 10, 1987).

[11] GAMA has randomly selected appliance models tested by an independent laboratory to ensure the accuracy of reported energy efficiency information. In addition, if one GAMA member challenges the validity of another member's energy usage figures in the Directory, GAMA will investigate and determine whether the claimed results are accurate. If they are inaccurate, GAMA will publish the corrected figures in the next issue of its Directory, together with the inaccurate figures they replace. GAMA will also note that the rerating is done involuntarily, if such is the case.

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GAMA contended that this Directory would be superior to the existing fact sheets as an energy usage disclosure system because it would contain information on the majority of models available in the marketplace. This, GAMA suggested, would enable consumers to compare, in one booklet, the various efficiences and estimated energy costs of many models without having to amass a collection of fact sheets from different retail outlets. GAMA indicated that the comparability ranges for furnaces would appear in the front of the Directory in the form presently published by the Commission in the **Federal Register**. In addition, the ranges would be broken down as to furnace type. For example, there would be separate ranges for horizontal or outdoor types of furnaces.

GAMA also suggested that the required labels on individual furnace units could direct consumers to the Directory for efficiency and cost information, rather than to fact sheets. GAMA would distribute the Directory to all GAMA members in quantity, and would make reference copies available to all public libraries.[12] For consumers and others, the Directors would be available at their production cost to GAMA, which was estimated at around $5 a copy.

GAMA contended that this plan would represent a significant potential savings to the industry in production costs of fact sheets. During the rulemaking to include additional furnace types, GAMA estimated that its cost bf producing the Directory would be equal to the cost to one fair-sized manufacturer of producing all its required fact sheets.

To assist manufacturers and the Commission's staff, GAMA also offered to act as a central collection agency for all required submissions of data under § 305.8 of the Rule. Under this plan, manufacturers submit test results to GAMA. GAMA uses the information to prepare the Directory and submits the information to the FTC.[13] Participants in the program include the manufacturers of oil-fired furnaces and boilers as well as manufacturers of gas-fired products. Electric furnace manufacturers have not elected to participate in the program or the directory.[14] Manufacturers who choose not to submit information to GAMA are still required, under EPCA and the Commission's Rule, to submit the required information directly to the Commission.

In sum, GAMA contended that its proposal, if adopted, would:

(1) Provide consumers energy usage information on the majority of available furnace models in one document;

(2) Simplify the data collection and range publication job; and

(3) Result in savings to the industry, and, hence, to consumers.

The Commission's staff originally believed that this alternate proposal fell short of the plan for the dissemination of energy information envisioned in EPCA. In the August, 1983 Furnace Staff Report, staff noted the following objections:

(1) The proposal did not provide for a Directory in every retail outlet;

(2) The proposal envisioned a one-time listing of all the ranges of comparability at the front of the Directory. This did not provide for a disclosure of each individual product's efficiency on the scale, as required by the Commission's Rule;

(3) Staff was concerned that enforcement problems could result as the result of errors in the Directory attributable solely to GAMA;

(4) The Directory could potentially confuse consumers by virtue of its sheer bulk. Since products would be listed by manufacturer, rather than by effeciency, consumers would need considerable skill to use such a Directory;

(5) Since participation in the GAMA program would be voluntary, fact sheets would still be an option. Staff was concerned about the lack of uniformity between these two types of disclosures.

In commenting on the Furnace Staff Report, GAMA contended that it has modified, or plans to modify, the Directory to respond to some of these concerns and that some other concerns are not well-founded. For example, GAMA planned to add a feature to the Directory that would enable consumers, by means of an explanation and directions in the front of the Directory, to place a furnace on an efficiency range scale provided in the Directory. According to GAMA, this feature, which has been included in Directories in the meantime, helps consumers evaluate furnaces. GAMA also contended that the Directories are well distributed. It noted that 20,000 copies of the Directory were being provided annually. Further, in 1986, GAMA began distributing copies through the public library system. GAMA also disagreed that the Directory would be too voluminous for consumers to deal with, and stated that all the information provided on the many products listed was useful and meaningful to today's increasingly sophisticated consumers.

The Commission's review of the Directory indicates that, with the new directions GAMA provides, the Directory is easier to use and, particularly with the assistance of a salesperson, is likely to be an efficient way for consumers to compare furnaces. Further, since the majority of manufacturers are participating in GAMA's program, the concern regarding uniformity because some manufacturers will have fact sheets has substantially abated, Further, the Directory does not appear to pose any special or difficult enforcement issues. GAMA's verification program and internal enforcement mechanism make it likely that errors or misrepresentations will be identified quickly. Further, because the Directory is published semi-annually, errors can be corrected within six months of their appearance. Consequently, in view of the changes GAMA has made and other changes GAMA has indicated a willingness to make, such as including the Commission-published ranges in the Directory, the Commission is proposing to amend the Rule to include the directory option. The proposed amendment includes two minimum distribution requirements—(1) Distribution to substantially all furnace sellers and (2) distribution to others at cost. These requirements parallel the central air conditioner directory option requirements.

3. Product-Specific Labels

In addition to the directory option, the Commission is proposing to modify the disclosure requirements for furnaces to require labels like those now required for central air conditioners. Central air conditioners must bear a label that (1) shows energy efficiency information that is specific to the product to which it will be attached, (2) shows a "generic range" (discussed below) for all central air conditioners, instead of a range for products of a size similar to the labeled model, and (3) contains stronger langauge referring consumers to fact sheets or a directory for additional information. The label does not contain a cost grid, but directs consumers to a directory or fact sheets for cost information. This differs from the label presently required for furnaces, which merely contains general energy-saving tips and refers consumers to the facts sheets for specific energy usage information. The Commission chose this different labeling scheme for central air conditioners to ensure that consumers would have at least minimum energy information, even if they never saw the fact sheets. The Commission is proposing that the type of label that is now mandatory for central air conditioners be required for furnaces.

In lieu of the current "energy-savings tips" label, each proposed furnace label will show the EER of the specific furnace model to which it is attached. (The Commission, however, seeks comment on alternatives to disclosing just the EER of the specific model. For example, whether several EER's could be displayed on the range indicating various features available, which would allow that label to be used on all the relevant models). Directly below the EER, the label will contain a "generic" range of EER's for *all* furnaces that use the type of fuel (gas, oil or electricity) used by the labeled model, rather than the range for models of a similar capacity, as the Rule presently requires (on fact sheets).[15] According to the energy efficiency data the Commission has received and published, as well as the DOE engineers responsible for promulgating and maintaining the energy usage test procedures, there is roughly the same spread of efficiencies throughout all the various capacities. Thus, a single range for any given fuel type encompassing this spread, rather than ranges for fourteen sizes or capacity groupings, is sufficient to inform consumers of what efficiencies they can generally expect to find. Finally, like the central air conditioner labels, the furnace labels would contain stronger language referring consumers to fact sheets or directories for further information regarding efficiency and operating costs.[16]

Thus, under the proposed amendments, to the extent that consumers shopping for furnaces may see display models (if not the specific models they would obtain), they would always see the minimum information required by EPCA (that is, the EER of the product and range information).[17] Further, because the labels state that the availability of additional information is required by Federal law, the proposed labels will increase the likelihood that the additional cost information required by the Rule will be seen by consumers. To the extent that consumers do not see a labeled model before purchase and are not provided required information on fact sheets or in a directory, the fact that the labels can be seen post-sale could aid the Commission's enforcement efforts. Consumers seeing the information on the label post-sale would learn that certain information was not made available to them pre-sale. This may lead to complaints that will help the Commission identify non-complying sellers.

For the reasons stated above, the Commission is proposing two amendments relating to furnaces: (1) That furnace manufacturers be afforded the option of being listed in an industry directory instead of preparing fact sheets; and (2) that furnaces bear product-specific labels like those required for central air conditioners, which will include (a) the EER of the product, (b) information on the range of energy efficiency for all furnaces that use the same type of fuel as the labeled model, and (c) stronger language referring consumers to either fact sheets or a directory for additional information. In addition to seeking comments on the merits of the proposed amendments, the Commission requests information regarding whether, and to what extent, the proposals will reduce the paperwork or other burdens associated with the Rule.

B. Proposed Amendment Creating Generic Ranges for Room Air Conditioners

As just mentioned in connection with the discussion of product-specific labels for furnaces, the Commission is proposing that the Rule be amended to require "generic" ranges for furnaces, instead of fourteen ranges per fuel type, according to capacity rating.[18] The energy efficiency range information the Commission has analyzed and published indicates that generic ranges would also be appropriate for room air conditioners. The DOE engineering staff confirms this view. Because there would be only one range for these products, instead of thirty-five, the paperwork burden associated with labeling these products should be reduced significantly. Consequently, the Commission is proposing to amend the Rule to create a single generic range encompassing the efficiencies of all room air conditioners.

The Commission solicits comments on this proposed amendment and the extent of the possible reduction in paperwork burden that will result from the inclusion of generic ranges for room air conditioners. The Commission also seeks comment on whether generic ranges or a reduction in the number of ranges (for example, where there are many ranges for a product, whether the two smallest, or two largest, categories should be combined) for other product categories would be appropriate, and, if so, whether such a reduction in the number of ranges would reduce the compliance burden of small entities.

C. Other Issues on Which Comment is Sought

There are several additional changes that industry members and others have frequently suggested. To obtain more information on and to determine the extent of interest in these proposals, the Commission is seeking comment on the six issues described below. In addition, the Commission is soliciting information on whether to expand the Rule's coverage to include a category of products for which the Department of Energy has recently developed test procedures, and information on the effects, if any, of newly enacted federal minimum efficiency standards for appliances. Finally, the Commission is seeking comment on any issues of fact, law or policy that the public may believe has a bearing upon the proposed amendments or any other possible changes to the Rule.

1. Energy Usage Descriptor or Labels

As previously mentioned, for five categories of appliances, the Appliance Labeling Rule requires a disclosure of energy cost information on labels and in

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[12] A GAMA Newsletter mailed in May, 1988, indicates that Directories are currently being mailed to all public libraries, including branches.

[13] The Commission's staff agreed to this proposal and accepts the GAMA Directory as a submission under § 305.8 for all participating members.

[14] GAMA has informed the staff that it could accommodate requests from manufacturers wishing to include their electric furnaces in GAMAs certification program, which includes the directory.

[15] There would be three "generic" ranges: one for all furnaces fueled by gas, one for oil-fueled and one for electric furnaces. These three ranges would replace the forty-two ranges presently required—fourteen ranges, according to capacity rating (in Btu's per hour produced), for each of the three fuel types. This proposal preserves the benefits of the Rule while simplifying label printing and reducing its paperwork burden.

[16] The presently required furnace labels suggest that consumers ask for fact sheets, while the proposed labels would use the language of the central air conditioner labels:

Federal Law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

[17] Because many consumers may not see actual furnace units prior to purchase, the proposed rule requires that the EER and range information appear both on the label and in fact sheets or directories. For the same reason, the Commission proposes to amend similar provisions of the current rule pertaining to central air conditioners to require that both the EER and range information appear on the label and in fact sheets or directories. (Because the range information appears on the labels for central air conditioners, the Commission did not require that range information be duplicated in fact sheets or the directory.) The Commission solicits comments on whether the proposed amendment mandating provision of duplicate range information for furnaces and central air conditioners will provide greater net benefits to consumers than the provision that the range information appear only on the label.

[18] The energy usage disclosure scheme recently promulgated by the Commission for central air conditioners and heat pumps also includes generic ranges for the same reasons.

retail sales catalogs.[19] The cost information must be disclosed as the estimated annual dollar cost of operation. This cost disclosure must be based on standardized test procedures developed by the Department of Energy.

The Rule also requires that each required label for these appliance categories show a range of estimated annual costs of operation or efficiencies for all models of a size or capacity comparable to the labeled model.[20] The ranges are published annually in the Federal Register if the upper or lower limits of the range change by 15% or more from the previously published range. If a revised range is not published, a notice must be published that the prior range is still applicable for the next year.

Industry members and others have frequently contended that the use of a dollar figure as the primary disclosure (or "descriptor") of energy usage is confusing and inappropriate.

First, although most appliance models do not change every year (a typical product line may change once every three years), DOE's energy cost calculations change annually because of changes in fuel costs. If this change affects the upper or lower limits of the ranges by 15% or more, new labels are required. Consequently, identical appliances may have labels showing different costs of operation, depending on when they were manufactured. For example, a floor model may show an operating cost and range of costs that are different from the cost and range on an identical, but newer unit delivered to the consumer's home from the warehouse. Similarly, if more than one model is displayed from a product line, it is possible that identical floor models could display different labels; or, models with different features could have labels based on different cost figures, making it difficult for average consumers to compare their energy usage. This is likely to be confusing to consumers as well as retailers. In addition, during the Regulatory Flexibility Act rulemaking, some manufacturers commented that, as a result, some dealers have had to sell floor samples with "outdated" labels at a discount.

Second, when DOE's representative energy costs have changed, but the ranges remain in effect for more than one year (because the ranges have not changed by more than 15%), some consumers, who are familiar with energy cost information, may think the cost information on the labels is inaccurate.[21] Therefore, consumers may be reluctant to use the information in making purchasing decisions. It has already been the case with some appliances that the ranges have not changed for several years in a row. Because the ranges are unchanged, the labels remain the same. This means that the earlier DOE cost figures are still used to compute the cost disclosures for these products.

For products presently labeled with the estimated dollar cost of operation, an alternate energy usage descriptor based on the DOE test procedures may be kilowatt-hours used, or therms used, or both, depending on whether electricity or natural gas or both is consumed when the product is run.[22] For oil-fueled water heaters, a gallon descriptor may be more appropriate. Like an energy factor, such as the EER for furnaces, room air conditioners and central air conditioners, the kilowatt-hour, therm or gallon usage of a product remains constant unless the energy usage characteristics of the product change. However, unlike an EER, with a kilowatt-hour, therm or gallon disclosure, the cost of operating the specific product can be calculated when the per kilowatt-hour, therm or gallon cost is known. General cost information using these terms is already contained in the cost grid.

To obtain more information about this issue, the Commission solicits comment on whether, and to what extent, the use of the estimated annual dollar cost of operation as the primary energy usage descriptor on labels undermines the credibility and usefulness of the labels to consumers when energy costs have changed, but the labels have not. To what extent does this place additional burdens or costs on manufacturers or retailers? Would another way of disclosing energy usage information—for example, kilowatt-hour, therm or gallon usage or an energy factor—convey information more effectively to consumers than the dollar cost disclosure does? If so, what disclosure method would be most appropriate, and would it be compatible with the applicable DOE test procedure?

2. Product Categories

Under the current Rule, product categories have been established for the various covered products in the appendices to the Rule, which list the ranges of comparability.[23] For example, there is only one category for refrigerators, one for refrigerator-freezers, one for freezers, and one for room air conditioners.

It has been frequently suggested by various manufacturers, trade associations and others that these categories are too general and all-inclusive, and that consumers would receive better and more precise information if specific sub-categories were created for refrigerators, refrigerator-freezers, freezers and room air conditioners. For example, for room air conditioners, instead of one set of ranges for all these products, ranges have been suggested for window units, for built-in units, for casement units, etc. For refrigerator-freezers, separate ranges have been suggested for products with partial automatic defrost and for products with fully automatic defrost. Although this proposal would increase the number of types of labels that would have to be produced, it could assist consumers for facilitating comparison shopping for the particular type of appliance desired.

In order to gather more information on this subject, the Commission asks the following questions: Would dividing refrigerators, refrigerator-freezers, freezers and room air conditioners into several more sub-categories, for example, manual defrost, semi-automatic defrost, and automatic defrost for refrigerator-freezers, chest and upright for freezers, and window units, built-in units and casement units for room air conditioners, assist consumers in considering energy consumption aspects of their purchasing decisions? If so, what subcategories should be established? Would the possible benefits of this proposal outweigh any additional burdens (please describe or quantify, if possible) it would entail?

Would such a division encourage energy conservation? If so, how?

3. Label Adhesion Strength

Section 305.11(a)(4)(i) of the current Rule specifies the paper stock and minimum peel adhesion capacity of labels for covered products. In addition to requiring that adhesive labels be applied "* * * so they can be easily removed without use of tools or liquids, other than water," this section requires that label adhesive must have "* * * a minimum peel adhesion capacity of 24 ounces per inch width."

Some industry members have commented that this second specification is too high, thus making the labels too difficult to remove, and that a better approach would be either to eliminate this specification or reduce the adhesion capacity figure.

The Commission would like to have comment on whether the minimum peel adhesion capacity for labels set forth in § 305.11(a)(4) of the Rule should be lowered. If so, what should the minimum peel adhesion capacity be? Is there a performance standard that could be used in lieu of a specified minimum peel adhesion capacity?

4. Directory Option for Water Heaters

GAMA has suggested that the "Directory Option," which the Commission is proposing as an option for manufacturers of furnaces, be made available to manufacturers of water heaters. Appropriate changes to the labeling requirements for these products also would have to be considered in conjunction with this proposal. For example, the current labels, which contain the estimated annual cost of operation, range information and a cost grid, could be replaced with labels with less information and a reference to a directory for additional information.

The Commission solicits comment on whether amending the Rule to give manufacturers the option of replacing the current label with one that provides no energy usage information, or limited information, but directs consumers to an industry directory would increase the likelihood that consumers would be made aware of the energy usage of these products. Would this proposal reduce the costs of complying with the Rule, and if so, to what extent?

5. Labeling Display Models Only

The Maytag Company has suggested that the Rule be amended to permit manufacturers of covered products to label only display models. The Commission views this proposal as limited to display models in retail outlets. Appliances sold as part of new homes would all have to be labeled: it would not be sufficient to label only the appliances in a model home. The purpose of this proposal is to reduce the burden and cost to manufacturers of labeling all units while providing the public with the information required by the Act. The Commission has interpreted EPCA as requiring all models of covered products to display a label containing the energy usage information required by the statute, and, accordingly, the Rule implementing the Act requires each unit to be labeled.[24] In order for the Rule to be changed, the statute would have to be amended. Under section 6(f) of the Federal Trade Commission Act, the Commission can prepare special reports to Congress and submit recommendations for additional legislation.

Before determining whether to begin this process, the Commission seeks public comment on whether an option to label display models only would provide the same, or greater, net benefits to consumers as do labels on all units. How should "display models" be defined?

Would such an option reduce the paperwork burden or other costs of compliance with the Rule?

How could manufacturers assure that all display models were labeled properly? If this amendment were adopted, should the legal responsibility for compliance remain at the manufacturer level or should it be shifted to the retailer level? If legal responsibility were shifted to the retailer level, how would this affect the Commission's ability to enforce the Rule?

Would retailers be willing to accept legal responsibility for assuring that all display models are properly labeled?

6. Proposal to Include Certain Unvented Heaters

EPCA requires that the Commission prescribe labeling rules for any products for which the Department of Energy (DOE) has published a final test procedure to determine energy usage.[25] Section 324(a)(1) of EPCA provides that the Commission shall prescribe labeling rules for the categories of products that include unvented heaters. However, under section 324(b)(5), the Commission can exempt such products from the labeling requirements, if labeling would not be technically or economically feasible. But, even products exempted from the Commission's labeling requirements must be tested according to DOE test procedures in order to make energy claims.

Because DOE has published a final test procedure for unvented heaters (or "space heaters" that do not vent combustion gases to the outside) using natural gas, propane and kerosene,[26] the Commission is considering labeling these products. (The Commission previously considered labeling electric space heaters, for which a DOE test procedure was available earlier, and exempted these products.) Because these products are not vented to the outside and all the heat produced as the result of fuel utilization remains in the area being heated, they are virtually 100% efficient. In addition, they are not major users of energy, which suggests that comparative information on the cost of energy consumed may be of little use to consumers.[27] The economic benefit from labeling these products may not justify the cost and, therefore, be economically feasible. The Commission has previously exempted products from EPCA's labeling requirements on this basis.[28]

The Commission seeks comment on whether (and, if so, why) unvented oil, gas or kerosene heaters fall within the statutory exceptions discussed above.

If the Commission were to require labeling for unvented oil, gas and kerosene heaters, what labeling format and measure of energy efficiency or usage would be appropriate for these products? What would be appropriate size or capacity groupings for these products for purposes of establishing ranges of comparability?

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[19] These are: refrigerators, refrigerator-freezers, dishwashers, clothes washers and water heaters.

[20] For the five products for which the main energy usage descriptor is expressed in dollars, the range figures also must be expressed in dollars. The dollar cost information that is obtained by following the DOE test procedures is derived by using National Average Representative Unit Costs for energy which, as required by section 323(b)(2) of EPCA, DOE must develop and provide to manufacturers. These energy cost figures are incorporated into section 305.9 of the Commission's Rule.

[21] Unfortunately, some industry members and consumer groups have reported that it appears consumers are reacting to "out-of-date" labels by not using the information in their purchasing decisions, even though the labels are not designed to provide exact cost information (they are designed to provide information with which to compare similar products).

[22] Refrigerators and freezers run on electricity. Clothes washers and dishwashers, while they run on electricity, consume hot water (when being tested under the DOE tests) and the energy used to heat the water accounts for approximately eighty percent of the energy use of the product. The labels for these products already contain two energy descriptors—one based on the dollar cost with an electric water heater and the other for a gas water heater. Under the proposal, the two sets of dollar figures would be replaced with kilowatt and therm figures. Labels on water heaters would express energy in terms of kilowatt-hours, therms or gallons (for oil-fueled units).

[23] The specific sub-categories for all covered products were established by the Commission in consultation with DOE (see Appendices A through C to 16 CFR 305).

[24] Section 324(c)(1) states that "* * * a rule prescribed under this section shall require that *each* covered product in the type or class of covered products to which the rule applies bear a label which discloses * * *" (emphasis added).

[25] Under section 323(a) of EPCA, DOE is directed to promulgate test procedures for measuring the energy usage of 13 enumerated product groups, including unvented heaters.

[26] 49 FR 12145 (March 29, 1984).

[27] This distinguishes these products from electric furnaces, which are major users of electricity.

[28] For example, the Commission exempted electric space heaters because the benefits to consumers of labeling these products did not outweigh the additional costs to industry members and consumers and, therefore, was not economically feasible. The cost of testing and labeling was found to be substantial and would increase the products' cost by about 3%. The evidence also did not indicate that labeling would provide information enabling consumers to make more informed decisions because these products are essentially 100% efficient in producing heat and operate with little variation in energy costs. 44 FR 66466 at 66466 (Nov. 19, 1979).

7. The National Appliance Energy Conservation Act

On March 17, 1987, the President signed the National Appliance Energy Conservation Act (NAECA),[29] which establishes minimum efficiency standards for a number of categories of appliances, including the appliances covered by the Commission's Rule.[30] NAECA provides that the existing DOE test procedures, which are used by the industry to comply with the Commission's Rule, will be used to determine compliance with its efficiency standards, and that the standards program will be administered by DOE.

The standards, which take effect at staggered intervals by appliance type over the next four years, will have differing effects on the various categories of appliances. For example, for dishwashers and clothes washers, the standard will require that each model be equipped with a switch that enables consumers to bypass the extra water heating function or the drying function. Since compliance merely requires the installation of a switch, few, if any, models of these appliances are likely to be eliminated from the marketplace. To achieve the standards for the other categories, however, significant engineering modifications may be necessary.

The possible elimination of some of the appliance model population at the lower end of the efficiency scale (or higher end of the operating cost scale), as well as the resultant contraction of the ranges for some appliance categories (even if for only a few years), calls into question whether the Commission's Rule informing consumers of energy usage differences among the remainder will continue to be useful or justifiable in its present form for all the presently covered appliance categories.

The Commission is interested in receiving any comments on whether the Commission's Rule should be repealed or modified in light of NAECA. Specifically, the Commission seeks comment on what effect NAECA's standards will have on the various appliance categories covered by the Commission's Rule. Will a change in appliance models have a bearing on the Rule's ranges of comparability, or on the usefulness of comparative energy usage information in the form presently required by the Rule? Will any such effects be modified over time and, if so, how?

Assuming that one of the results of the standards will be that fewer appliances will be available for some categories, due to the failure of some models to meet the minimum standards, are there any product categories that will be so significantly and permanently affected that the Rule should be amended to modify the ranges for these products or to exclude them altogether?[31]

Section A—Invitation to Comment

All interested persons are hereby notified that they may comment on any issue of fact, law or policy that may have bearing upon the proposed rules. Written comments should be addressed to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580; they will be accepted until July 28, 1988. To assure prompt consideration, comments should be identified as "Appliance Labeling" and furnished, when feasible and not burdensome, in five copies.

While the Commission welcomes comments on any issues that may have bearing upon the proposed rules, there are questions that appear at the end of the discussions of each issue mentioned upon which the Commission particularly desires comment. All comments and testimony should be refereneed specifically to either the Commission's questions or the section of the proposed rules being discussed. The issues of particular interest to the Commission concerning the proposed amendments are identified in the discussion of the amendments in Part II, A and B of the Notice. Other issues upon which the Commission is particularly interested in receiving comments are in Sections C, E and F of the Notice.

The Commission requests that commenters provide representative factual data, in lieu of anecdotal experiences. Individual firms' experiences are relevant to the extent they typify industry experience, in general, or that of similar-sized firms. Comments opposing the proposed rules or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed rules. Comments should be supported by a full discussion of all the relevant facts and/or be based directly on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rules.

Before adopting these proposed rules as final rules, consideration will be given to any written comments timely submitted to the Presiding Officer and on the record of the hearing, if one is held. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

Section B—Public Hearings

Persons desiring a public hearing on the proposed amendments should notify the Presiding Officer by no later than July 13, 1988. If there is interest in a hearing, it will take place in Room 532 of the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, Northwest, Washington, DC, at a time and date that will be announced in a subsequent notice. If a hearing is held, persons desiring an appointment to testify will be required to submit to the Presiding Officer a complete statement in advance. This will be entered into the record in full. However, as a general rule, oral statements should not exceed ten minutes. There will be no opportunity for interested persons to cross-examine witnesses. Further instructions to witnesses will be contained in the notice announcing the hearing.

Section C—Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with Henry B. Cabell, the Presiding Officer, who is responsible for the orderly conduct of the proceeding and who shall have all powers necessary to that end, including the authority to rule on all motions or petitions filed.

Applications for review of a ruling will not be entertained by the Commission prior to its review of the record unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling ground for difference of opinion and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

Section D—Post Comment Period or Hearing Procedures

Interested persons will be afforded 20 days after the close of the hearing, or the close of the comment period if no hearing is held, to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding officer will reject all submissions that are essentially additional written comments, rather than rebuttal. If a hearing is held, the 20-day rebuttal period will commence when the final transcript of the hearing is placed on the public record by the Presiding Officer.

After the close of the rebuttal period, staff will analyze the evidence on the record and prepare and submit a recommendation for the final rule.

Section E—Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this document because it is believed the amendments, if promulgated, "will not have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605).

The proposed amendments relating to energy usage disclosures for furnaces will not have a significant impact because the two proposed changes are likely to offset each other. To the extent that manufacturers will have to prepare the product-specific labels, instead of the labels presently required, they will incur somewhat greater printing expenses. This will be offset, to some extent, by the fact that they will be able to avail themselves of the option to disclose required information in an industry directory and not prepare fact sheets. Overall, there will most likely be a diminuation of printing expense to firms of all sizes.

The proposed amendments relating to the creation of generic ranges for room air conditioners will not have a significant impact because the amendments would result in the same reduction in compliance burden to all affected industry members with no imposition of additional cost. The reduction of the number of room air conditioner ranges from thirty-five to one will mean far less variety in labels produced, which will translate to a savings in compliance cost.

Because these changes are not likely to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and the rules implementing it, a regulatory analysis is unnecessary. If the comments on the other issues raised in this Notice lead to proposed amendments, the Commission will consider whether an analysis under the Regulatory Flexibility Act is necessary.

The above conclusions are based on information presently available to the Commission and its staff. The Commission requests any information that would bear on the question whether the amendments proposed today would have a significant economic impact on a substantial number of small entities. Subsequent to the receipt of such comments, the Commission will decide whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified, under the provisions of section 5 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the propoled regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Section F—Paperwork Reduction Act

The Appliance Labeling Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the rule implementing the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3520. In 1984, the Rule was reviewed and assigned OMB Control No. 3084–0069. This reduction would be due primarily to allowing furnace manufacturers to use the directory option instead of distributing fact sheets. Because the proposed changes to the Appliance Labeling Rule modify existing labeling and recordkeeping requirements, they have been submitted to the Office of Management and Budget for review as required by §1320.13 of the PRA rules. The Supporting Statement submitted to OMB estimates that the adoption of the proposed amendments would reduce the paperwork burden of the Rule by 6,500 burden hours, or approximately 5%. Comment on the information collection aspects of the proposed amendments should be addressed to: Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the Request for OMB Review under the Paperwork Act may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

Section G—Proposed Amendments

PART 305—[AMENDED]

§ 305.11 [Amended]

1. Accordingly, it is proposed that Part 305 be amended by the addition of the following sentence at the end of §305.11(a)(5)(i)(F).

(F) * * *. Each room air conditioner label shall contain a generic range of the efficiencies of all room air conditioners.

2. Further, it is proposed that § 305.11(a)(5)(ii)(C)—(E) of 16 CFR be revised and (F)–(I) be added to read as follows:

§ 305.11 [Amended]

(a) * * *
(5) * * *
(ii) * * *

(C) The energy efficiency rating for furnaces is determined in accordance with § 305.5.

(D) Each furnace label shall contain a generic range of the efficiencies of all furnaces that utilize the same energy source.

(E) Placement of the labeled product on the scale shall be proportionate to the lowest and highest efficiency ratings forming the scale.

(F) The following statement shall appear on the label beneath the range(s) in bold print.

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

(G) A statement that the efficiency ratings are based on U.S. Government standard tests is required on all labels.

(H) The following statement shall appear at the bottom of the label:

IMPORTANT

REMOVAL OF THIS LABEL BEFORE CONSUMER PURCHASE IS A VIOLATION OF FEDERAL LAW (42 U.S.C. 6302).

(I) No marks or information other than specified in this part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6 point type or smaller.

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3. Further, it is proposed that § 305.11(b)(3)(vi) of 16 CFR be revised to read as follows:

* * * * * *

(B) * * *
(3) * * *

(vi) Ranges of comparability and of energy efficiency ratings are found in

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[29] Pub. L. 100-12, 101 Stat. 103 (1987).

[30] In addition to the appliances either covered by or exempted from the Commission's Rule, NAECA also covers pool heaters.

[31] As mentioned earlier, Congress provided, in section 324(b)(1) of EPCA, that the Commission could exempt from coverage products in categories 1–9 if labeling is not technologically or economically feasible, and products from categories 10–15 for the same reason or, alternatively, if labeling would not be likely to assist consumers in making purchasing decisions. The categories, as enumerated in section 322(a) of EPCA, are: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces.

Section 1 of the appropriate appendices accompanying this part. This information is required on fact sheets.

* * * * *

4. Further, it is proposed that § 305.11(c) introductory text and (c)(1) and (c)(3)(vi) of 16 CFR be revised to reads as follows:

* * * * *

(c) Manufacturers of furnances and central air conditioners may elect to disseminate information regarding the efficiencies and costs of operation of their products by means of a directory, or similar publication, provided it meets the following criteria:

(1) *Distribution.* (i) It must be distributed to substantially all retailers and assemblers of central air conditioners and furnances selling or assembling models listed in the directory.

(ii) It must be made available at cost to all other interested parties.

* * * * *

(3) *Contents* * * *

(vi) Ranges or comparability and of energy efficiency ratings are found in Section 1 of the appropriate appendices accompanying this part.

* * * * *

Appendix J to Part 305—[Amended]

5. Further, it is proposed that Appendix J to the rule be amended by the addition of the following sample furnance label, to be designated as "Figure 7":

BILLING CODE 6750-01-M

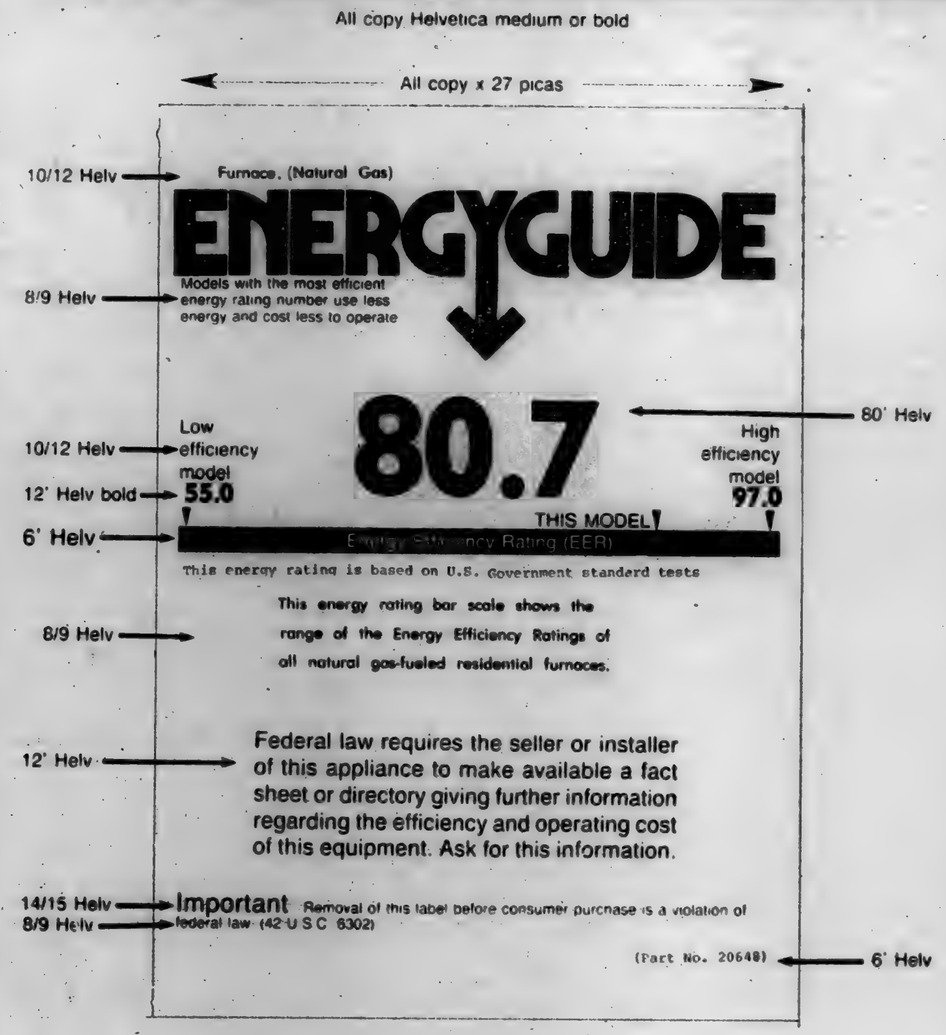

SAMPLE LABEL

Figure 7

BILLING CODE 6750-01-C

BEST COPY AVAILABLE

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for 16 CFR Part 305 is revised to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-13089 Filed 6-10-88; 8:45 am]

BILLING CODE 6750-01-M

federal register

Monday
June 13, 1988

Part VI

Department of Transportation

Coast Guard

33 CFR Parts 126, 154, 155, and 156

Hazardous Materials Pollution Prevention; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 126, 154, 155, 156

[CGD 86-034]

Hazardous Materials Pollution Prevention

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the oil pollution prevention standards to also apply to vessels and facilities which transfer bulk liquid hazardous materials including those intended for incineration at sea. An analysis of data for bulk hazardous liquids materials shows an increase in the number of cargoes transported with a corresponding increase in the number of transfers, posing an ever increasing threat of harm to the navigable waters and the resources therein. These rules, if adopted, would prevent or mitigate the results of a discharge of hazardous materials into the navigable waters and would provide the same level of safety for these materials during transfer operations as currently provided for oil transfer operations.

DATES: Comments must be received on or before September 12, 1988.

ADDRESSES: Comments on the proposal should be submitted to Commandant (G-CMC), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G-CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The Draft Economic Evaluation and the Draft Environmental Assessment and Finding of No Significant Impact have been prepared and may also be inspected or copied at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Szigety, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), Room 1108, (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 86-034) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed.

The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held at a time and place to be set in a subsequent notice in the **Federal Register** if written requests for a public hearing are received from interested persons raising valid issues and desiring to comment orally at a public hearing, and if it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

In the February 7, 1986 issue of the **Federal Register** (51 FR 4766) the Coast Guard proposed amendments in CGD 85-026 to the pollution prevention regulations that would implement the International Convention for Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973) modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (done at London, February 17, 1978) (MARPOL 73/78). A final rule for CGD 85-026 has not been published and the proposal is still under consideration. Both this document, CGD 86-034, and CGD 85-026 propose amendments to Parts 154 and 155. Any discrepancy between the two proposals will be reconciled prior to adoption of final rules.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Kenneth J. Szigety, Project Manager, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion

It has been determined, as described below, that a need exists to regulate bulk liquid hazardous material transfers. In order to minimize the risk of environmental damage from the greatest number of these materials, the Coast Guard proposes to expand the oil pollution prevention regulations to include standards for hazardous material transfers and proposes the expanded regulations as implementation of the Ports and Waterways Safety Act (PWSA), as amended, (33 U.S.C. 1221) instead of the Federal Water Pollution Control Act (FWPCA), as amended, (33 U.S.C. 1321). In the PWSA the Congress found that protection of the marine environment is a matter of national importance and that increased vessel traffic in the nation's ports and waterways creates a substantial hazard to the marine environment. Further, the PWSA authorizes the Secretary of the department in which the Coast Guard is operating to take whatever action is necessary to protect the navigable waters and resources therein. This authority has been delegated to the Commandant of the Coast Guard. The law provides that the action may include, but not be limited to, establishing procedures, measures, and standards for the handling, loading and unloading from vessels of dangerous articles and substances, including oil or hazardous materials as those terms are defined in 46 U.S.C. 2101. Those definitions are as follows:

" 'Oil' includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with water except dredged spoil."

" 'Hazardous material' means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U.S.C. 1803);"

As proposed, the transferring of any hazardous material, except liquefied gases, designated under 46 CFR 153.40 (a), (b), (c), and (e) would be regulated. These materials include those listed in 46 CFR Table 30.25-1, Table 151.05, Table 1 (of Part 153), and those materials that are noxious liquid substances (NLS's) under Annex II of MARPOL 73/78. Each of these materials is included in one or more of the three groups identified as "hazardous materials" in the definition reproduced above.

The proposed regulations would apply only to vessels and facilities which transfer hazardous bulk liquid materials, i.e. transfers to, from, or within any vessel with a capacity of 250 or more barrels of these materials. This minimum vessel capacity distinguishes between large and small vessels carrying hazardous materials and therefore large and small transfers and facilities. These proposed regulations would not apply to small transfers, facilities, and vessels. The proposed regulations would apply only to bulk liquid hazardous materials because the regulations in 33 CFR Parts 154-156 apply only to liquid transfers, while hazardous bulk solid materials are regulated in 33 CFR Part 126 and 46 CFR Part 148. To avoid the confusion that would result in having requirements for liquid bulk transfer operations in both 33 CFR Parts 126 and 156, the Coast Guard is considering establishing those requirements for oil and bulk liquid hazardous materials in only Part 156. Consequently, the Coast Guard is proposing to remove from the list of cargoes of particular hazard contained in § 126.10(d) those bulk liquid hazardous materials that are listed in 46 CFR Table 30.25-1, Table 151.05, or Table 1 (of Part 153), or are NLS's under Annex II of MARPOL 73/78. This will leave only liquefied gases on the list in § 126.10(d). The Coast Guard intends to address the suitability of the existing requirements in 33 CFR Part 126 for liquefied gas operations in a future proposal to be published in the **Federal Register**.

The Coast Guard has determined that most accidental discharges of oil during transfer operations are caused by either human error or equipment failure. The oil pollution prevention regulations in 33 CFR Parts 154, 155, and 156 address these causes. They have been and continue to be instrumental in reducing the number of oil discharges during transfer operations. Before the oil pollution prevention regulations were promulgated, it was estimated that there were approximately 51 spills of oil per 1000 transfers. The current discharge rate for oil is approximately 7.7 spills per 1000 transfers. It is expected that a similar reduction in the number of hazardous material spills would be obtained by expanding the oil pollution regulations.

To expand the applicability of the oil pollution prevention regulations to include vessels and facilities which transfer bulk liquid hazardous materials, numerous sections in the three Parts would need various editorial changes, e.g. adding the words "or bulk liquid hazardous material", or deleting the word "oil". For this Notice of Proposed Rule Making, the Coast Guard lists the sections with the word changes that would occur. For more complex changes, full text is proposed. This should give the reader an overall view of the proposed changes to the pollution regulations. If this proposal is adopted, the final rules will provide full text revisions contianing all changes.

Proposed changes the public should be aware of are:

The public would be relieved from a reporting requirement in § 154.710(a). This section would be revised so that the facility operator would not be required to advise the Captain of the Port (COTP), in writing, of the designations of persons in charge.

The definition of "oil" in Part 155 would change. Because it is proposed to change the authority for these regulations to the PWSA, the new definition would reflect the broad coverage of the PWSA and include oil of any kind, not just petroleum oils. That definition of oil would be added to the definitions in Part 154, and § 155.110 would be revised to except the limited definiton of "oil" contained in Part 151 and add the broader definition of Part 154.

Specific comments on the impacts and costs of complying with the following proposals are requested.

In a view of recent casualties that occurred on ships resulting in pollution incidents from the carriage of oil in a tank forward of a collision bulkhead, the Coast Guard is proposing to delete the phase "an oceangoing" from 33 CFR 155.470. In addition, the Coast Guard is proposing in § 155.470 to extend the prohibition against the carriage of oil in forepeak tanks and other spaces forward of a collision bulkhead in any ship built after 1982 to include hazardous materials.

Section 155.710 would be changed to require a qualified tankerman to be in charge of the transfer of liquid hazardous materials. The change in the requirement for tankermen will have no impact on tankship operations since they are manned by licensed officers who are considered qualified tankermen. Only the transfers to or from tank barges would be affected. The products in Table 151.05 that are non-combustible and non-flammable are not currently required to have a tankerman in charge of the transfer. They must only have special employer-provided training. The proposed regulations require qualified tankermen and some system for producing qualified tankermen for these products would have to be developed by the Coast Guard if this proposal is adopted.

Need

The Coast Guard has evaluated spill data for hazardous bulk materials and determined a need for pollution prevention regulations for these materials. Data came from two sources: the U.S. Army Corps of Engineers (COE) *Waterborne Commerce of the United States* and the Coast Guard Pollution Incident Reporting System (PIRS).

Increases in the amounts of hazardous liquid chemicals transported and the large number of discharges, and the potential development of incineration-at-sea vessels and their attendant waterfront facilities now indicate a need for these pollution prevention regulations.

The COE *Waterborne Commerce of the United States* data, is taken from Part 5, the National Summaries, from 1975-1984, and is the amount (in tons) of foreign and domestic commerce. It is broken down into 41 cargo groups, which are further broken down into categories. In Group 28-Chemicals and Allied Products, there are 15 categories that do not include any hazardous materials, and so were not used in this analysis. The remaining 6 categories were sodium hydroxide, crude oil products, benzene and toluene, sulphuric acid, basic chemicals and products, and miscellaneous chemicals. The amounts of these chemicals transported range from 45,731,335 tons in 1975 to 66,503,153 tons in 1984. An analysis of this data projects an approximate 2.0% increase per year in the amount of hazardous materials transported in the United States.

The PIRS data indicates that 494 hazardous material spills occurred from vessels and facilities from 1973-1986. These numbers are most likely low because, unlike oil which creates a "sheen" on the surface of the water, many hazardous materials do not exhibit this characteristic and the Coast Guard believes a substantial number of these spills are not reported. PIRS also includes data on the amounts of hazardous materials discharged during spills. Discharges range from a high of 228,000 gallons of acrylonitrile to a low of 12 gallons for the particular material. In addition there is a potential for transfers of hazardous materials considered "wastes", i.e., from waterfront facilities to oceangoing vessels, for incineration-at-sea. The extent to which this will occur is not known at this time, since the EPA has announced publicly that it is suspending indefinitely all actions relating to incineration-at-sea and has no plans to revive the program. For more information on incineration-at-sea, see the EPA Notice of Proposed Rulemaking (NPRM), published on February 28, 1985 (50 FR 8222) and the Coast Guard's final rule (date and final rule citation to be inserted) concerning proposed safety requirements for incinerator vessels.

During the ongoing rulemaking processes, the Coast Guard has received comments from the public expressing concern over the lack of regulations for the transfer of hazardous wastes from the waterfront facility to the vessel. One commenter said, "The transfer of the hazardous waste from the transport mode to waterfront facility to the incineration vessel is an area of serious concern as regards the effects of discharges on both human health and

the environment (water, land, and air) in the port area." These proposed regulations would address the concerns raised by this commenter.

Evaluation

The cost of the proposal would be low. The oil pollution prevention regulations already apply to some of these facilities and vessels because they transfer both oil and hazardous materials. Also many facility and vessel owners and operators voluntarily follow these accepted pollution prevention practices because they prevent accidental discharges, and because the owners and operators want to avoid paying penalties and cleanup costs for any spills of hazardous materials.

It is estimated that there are approximately 817 vessels and 300 facilities that transfer bulk liquid chemical products. Of these vessels and facilities, some transfer a material determined to be hazardous under 46 CFR 153.40 and of these, some never transfer oil. This leaves a small population of vessels and facilities that transfer only hazardous materials. The vessels and facilities in this small population that currently do not follow accepted pollution prevention practices would pay most of the costs of complying with these proposed regulations. It is estimated that 25–50% of the 817 vessels and 300 facilities do not follow pollution prevention practices. This results in approximately 205–409 vessels and 75–150 facilities which would pay most of the compliance costs.

The Transportation Systems Center (TSC) in Cambridge, MA prepared a report entitled, *Preliminary Impact Analysis of the U.S. Coast Guard's Proposed Hazardous Substances Pollution Prevention Regulations*, which is included in the docket and is available through the Project Manager listed under "For Further Information Contact". The report identified the impact of applying 33 CFR Parts 154–156 to vessels and facilities which transfer bulk liquid hazardous substances (which have been determined to be hazardous materials) by comparing the proposed requirements to current regulations and existing industry standards and practices. These included: (1) Waterfront Facilities regulations in 33 CFR Part 126; (2) Tank Vessels regulations in 46 CFR Subchapter D; (3) Certain Bulk Dangerous Cargoes regulations in 46 CFR Subchapter O; (4) Occupational Safety and Health Administration regulations in 19 CFR 1919; (5) National Fire Protection Association (NFPA) standards; and (6) American National Standards Institute (ANSI) standards. Those proposed requirements that would necessitate a change in current operations or procedures were then identified and the costs examined.

Explicitly excluded from the TSC report were various sections of the existing regulations found not to be directly applicable to liquid bulk hazardous materials because some of the characteristics of these materials vary too much from those of oil and, hence, would not be included in the text of the proposal without extensive adaptation. Those sections were §§ 154.500, 154.510, 154.520, 154.530, 154.540, 154.545, 155.310, 155.805, and 156.125. However, the Coast Guard, on the basis of it's technical expertise, disagrees with the TSC report concerning those sections and has proposed to apply them to vessels and facilities. Specific comments on the impacts and costs of complying with those sections are requested.

The results of the report indicate that the estimated cost to 200 waterfront facilities would be approximately $282,650 for the preparation of a facility Operations Manual and a Letter of Intent, and approximately $1,099,641 for 817 vessel operators for the preparation of vessel Transfer Procedures, for a total cost of $1,382,291. However, the Coast Guard has estimated that 300 rather than 200 facilities would be covered by this regulation. This would raise the estimated costs for facilities for the preparation of an Operations Manual and a Letter of Intent to $423,975 with the total cost rising to $1,523,616. These costs represent one-time costs which will generally not recur during the average 20 year lifetime of a vessel or facility.

For the reasons discussed above, many of the vessels and facilities handling hazardous materials already follow accepted pollution prevention practices. Since it is estimated that only 25–50% of these vessels and facilities do not follow some pollution prevention practices, the total estimated cost for the proposed revisions is 25–50% of $1,523,616 or $380,904–$761,808. For further information concerning the economic consequences of these proposed regulations, the Draft Economic Evaluation is available as discussed in **ADDRESSES** above.

The benefits of this proposal would be substantial, though most of them are difficult to quantify. These proposals, if adopted, would promote safe transfers of bulk liquid hazardous materials in a realistic and cost effective manner, and would result in the prevention or mitigation of accidental spills of these materials. Many bulk liquid materials are flammable or toxic and when spilled in water spread rapidly and can easily affect the surrounding population. Fewer and less severe accidental spills would result in reduced damage to vessels, less injury to facility personnel and the surrounding population, and less damage to the marine environment. Reducing the number of bulk liquid hazardous material spills would contribute to port safety and protect the marine environment of the port complex and surrounding area.

The benefits which can be quantified are the costs to the public which are avoided when a hazardous bulk liquid spill is prevented. Those costs include the value of the cargo saved, the vessel or facility cleanup costs avoided, vessel delay not experienced, and Coast Guard resources not needed.

When the pollution prevention regulations were first promulgated, 100% of the vessels and facilities which transferred oil became subject to the new regulations and the number of oil discharges was reduced by 84%; however, because many vessels and facilities which transfer bulk hazardous material already follow the pollution prevention practices in 33 CFR Parts 154–156, a corresponding reduction in the number of hazardous material spills would not be expected if these requirements are adopted. If these pollution prevention proposals are adopted, those vessels and facilities which do not currently follow pollution prevention practices when transferring hazardous materials would be required to do so. The number of hazardous material spills would be reduced by an estimated 21–42%.

According to the PIRS data, there were 494 hazardous material spills between 1973 and 1986. A 21–42% reduction in the number of spills results in 104–207 fewer spills. The cost avoided when an oil discharge was prevented in 1985 was approximately $9,171.00 per discharge. It included $875 for cargo not discharged, $550 for vessel delay avoided, $700 for cleanup costs not needed, and $196 for Coast Guard resources saved. These costs are good estimates for the cost associated with avoiding a hazardous material spill because, in many circumstances, oil cleanup technology can be applied to these spills. Using the estimated 104–207 discharges prevented, and the approximate costs of $9,171 per discharge prevented, the quantifiable benefit in dollars of applying the oil pollution prevention regulations to vessels and facilities which transfer bulk hazardous materials would be $907,029–$1,625,029. It exceeds the estimated costs of these proposals of $380,904–$761,808. It should be noted that the cost data is for 20 years while the benefit data is for 14 years, because the Coast Guard started collecting this data in 1973.

These proposed revisions are considered to be non-major under Executive Order 12291 of February 17, 1981 (3 CFR, 1928 Comp., p. 127) and significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and the Office of Management and Budget Bulletin No. 85–9 of January 10, 1985. The total cost to the industry of these revisions would not exceed the $100 million annual threshold to qualify as a major rulemaking, and so a Regulatory Impact Analysis is not required.

The regulations in 33 CFR Parts 154–156 contain the following approved information collections for oil:

Item and Current OMB Control No.
Letter of Intent, 2115–0077
Operations Manual, 2115–0083 and 0076
Amendment to Operations Manual, 2115–0076
Oil Pollution Prevention Records, 2115–0098
Oil Pollution Prevention Alternatives, 2115–0097
Oil Transfer Procedures, 2115–0120
Declaration of Inspection, 2115–0506

Revisions to these collections to include vessels and facilities which transfer bulk liquid hazardous materials have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the U.S. Coast Guard as indicated under the section titled ADDRESSES. The Coast Guard certifies that this proposal would not have a significant economic impact on a substantial number of small entities. This proposal would only apply to large entities, i.e. transfers to, from, or within any vessel with a capacity of 250 or more barrels of oil or hazardous materials.

This regulatory project is not anticipated to have an adverse impact on the environment. It is intended to prevent or mitigate the results of a hazardous material spill into the navigable waters of the United States. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing contained in the PWSA, with respect to structures, prohibits a State or political subdivision thereof from prescribing higher safety equipment requirements or safety standards than those which are proposed by this document.

List of Subjects

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements.

33 CFR Part 154

Oil and hazardous materials pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Oil and hazardous materials pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous materials transportation, Oil and hazardous materials pollution, Reporting and recordkeeping requirements, Water pollution. In accordance with the preceding, it is proposed to amend Subchapter O of Chapter I of Title 33, Code of Federal Regulations as follows:

PART 126—[AMENDED]

1. The authority citation for Part 126 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 126.10 [Amended]

2. By removing the following cargoes from the list in § 126.10(d):

acetone cyanohydrin
acrylonitrile
allyl chloride
butylene oxide
carbon disulfide
chlorosulfonic acid
ephichlorohydrin
ethyl ether
motor fuel antiknock compounds containing lead alkyls
oleum
phosphorous, elemental
propylene oxide
toluene diisocyanate
vinyl ethel ether

3. By revising the introductory text of § 126.15(o) to read as follows:

§ 126.15 Conditions for designation as designated waterfront facility.

* * * * * *

(o) *Control of liquid cargo transfer systems.* When transferring the cargoes listed in § 126.10(d), the waterfront facility transfer system must meet the following:

* * * * * *

PART 154—[AMENDED]

4. The authority citation for Part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

5. By revising the heading of Part 154 to read as follows:

PART 154—OIL AND HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR MARINE TRANSFER FACILITIES

6. By revising § 154.106 to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference" which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, 1100 L St. NW., Room 8401, Washington, DC, and at the U.S. Coast Guard, Port Safety and Security Division, Washington, DC 20593.

(b) The materials approved for incorporation by reference in this part are:

American Society of Mechanical Engineers, United Engineering Center, 345 E. 47 Street, New York, New York 10017

ANSI B16.5 Steel Pipe Flanges and Flange Fittings, 1981

ANSI B16.24 Brass or Bronze Pipe Flanges, 1979

ANSI B31.3 Chemical Plant and Petroleum Refinery Piping, 1987

§§ 154.100, 154.105, 154.110, 154.300, 154.310, 154.325, 154.500, 154.550, 154.570, 154.710, 154.740 [Amended]

7. By amending Part 154 by removing the word "oil" before the word

"transfer" wherever it appears in the following:

(a) § 154.100(b).

(b) The definition of "Person in charge" in § 154.105.

(c) § 154.110(c).

(d) § 154.300(a)(2).

(e) § 154.310(a)(16).

(f) § 154.325(b).

(g) § 154.500(a)(2).

(h) § 154.500(b)(2).

(i) The introductory text of § 154.550(b).

(j) § 154.570(a)(3).

(k) § 154.570(a)(4).

(l) § 154.570(b)(2).

(m) The introductory text of § 154.710.

(n) § 154.710(b).

(o) § 154.710(c).

(p) § 154.710(d)(4).

(q) § 154.710(d)(5).

(r) § 154.710(d)(6).

(s) § 154.740(b).

8. By amending § 154.100 by removing paragraph (c) and revising paragraph (a) to read as follows:

§ 154.100 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to each facility or marina that is capable of transferring, in bulk, oil or any material that is determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c) or (e) to or from any vessel with a capacity of 250 barrels or more.

* * * * *

9. By amending § 154.105 by revising the definition for the word "facility" and adding the definitions for the words "marina", "hazardous material", "MARPOL 73/78", and "oil" in proper alphabetical sequence to read as follows:

§ 154.105 Definitions.

* * * * *

"Facility" means any structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters, used or capable of being used to transfer oil or hazardous materials to or from a vessel.

* * * * *

"Hazardous Material" means a liquid material or substance that is—

(1) flammable or combustible;

(2) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(3) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U.S.C. 1803).

"Marina" means a facility that primarily services pleasure craft.

"MARPOL 73/78" stands for the International Covention for the Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973) as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, February 17, 1978).

* * * * *

"Oil" includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.

* * * * *

§ 154.108 [Amended]

10. By amending § 154.108 (a) and (d) by removing the words "Marine Environment and Systems" and adding, in their place, the words "Marine Safety, Security and Environmental Protection".

§§ 154.300, 154.545 [Amended]

11. By amending Part 154 by removing the words "an oil" and adding, in their place, the word "a" in the following:

(a) § 154.300(f).

(b) The introductory text of § 154.545(d).

12. By revising § 154.310(a)(5)(ii)(*a*) to read as follows:

§ 154.310 Operations Manual: Contents.

(a) * * *

(5) * * *

(ii) * * *

(*a*) The name of the cargo as listed in Appendix II of Annex II of MARPOL 73/78 or listed in the following contained in 46 CFR Chapter I:

(*1*) Table 30.24–1 of § 30.25.

(*2*) Table 151.05 of § 151.05.

(*3*) Table 1 of Part 153.

* * * * *

§ 154.500 [Amended]

13. By amending § 154.500(e)(1) by adding the word, "for oil products," before the words "the words 'oil service' ".

14. By amending § 154.500(h) by removing the words "oil for" after the word "transfer".

§ 154.510 [Amended]

15. By amending § 154.510(a) by removing the words "B31.3a, Petroleum Refinery Piping" and adding, in their place, the words "B31.3, Chemical Plant and Petroleum Refinery Piping".

16. By amending § 154.510(c) by removing the words "of oil" and adding, in their place, the words "operations are completed."

§ 154.545 [Amended]

17. By amending § 154.545 (a) and (d) by removing the word "oil" before the word "containment".

18. By amending § 154.550 by removing the words "of oil" after the word "transfer" in the introductory text of paragraph (a) and revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 154.550 Emergency shutdown.

* * * * *

(c) The means to stop the flow of oil meeting paragraph (a) of this section must stop that flow within—

(1) 60 seconds on any facility or portion of a facility that transfers oil on or before November 1, 1980; and

(2) 30 seconds on any facility that transfers oil after November 1, 1980.

(d) The means to stop the flow of hazardous materials meeting paragraph (a) of this section must stop that flow within—

(1) 60 seconds on any facility or portion of a facility that transfers hazardous materials on or before (insert the effective date); and

(2) 30 seconds on any facility that transfers hazardous materials after (insert the effective date).

§ 154.710 [Amended]

19. By amending § 154.710(a) by removing the words "and has advised the Captain of the Port in writing of his designation" after the words "person in charge".

§§ 154.105, 154.107, 154.108, 154.310, 154.320, 154.500, 154.510, 154.520, 154.525, 154.530, 154.540, 154.545, 154.550, 154.570 [Amended]

20. By amending Part 154 by adding the words "or hazardous materials" after the word "oil" wherever it appears in the following:

(a) The definitions of the words "monitoring device", "tank vessel", and "transfer", in § 154.105.

(b) § 154.107(a)(2).

(c) § 154.108(a)(2)(ii).

(d) § 154.108(a)(2)(iii).

(e) § 154.310(a)(4).

(f) § 154.310(a)(17)(ii).

(g) § 154.310(a)(19).

(h) § 154.320(a)(2).

(i) The introductory text of § 154.500.

(j) The introductory text of § 154.500(c).

(k) § 154.510(a).

(l) § 154.510(c).

(m) § 154.520.

(n) The introductory text of § 154.525.

(o) § 154.525(c).

(p) The introductory text of § 154.530(a).

(q) § 154.540.

(r) § 154.545(a).

(s) § 154.545(c)(1).

(t) § 154.545(c)(2).

(u) § 154.545(d) introductory text.

(v) § 154.545(d)(4).

(w) § 154.550(a) introductory text.

(x) § 154.550(a)(2).

(y) The introductory text of § 154.550(b).

(z) § 154.570(a)(2).

(aa) § 154.570(a)(4).

21. By amending Part 154 by adding the words "hazardous material" after word "oil" in §§ 154.310(a)(18) and 154.530(c).

PART 155—[AMENDED]

22. The authority citation to Part 155 is revised and a note to follow the authority citation is added to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46 except § 155.450 which is issued under 33 U.S.C. 1321(j)(i)(C) E.O. 11735, as amended, 3 CFR, 1971–1975 COMP., p. 793, 49 CFR 1.46. Sections 155.100, 155.110, 155.120, 155.130, 155.350, 155.360, 155.370, 155.380, 155.400, 155.430, 155.440, and 155.470 are also issued under 33 U.S.C. 1903(b); 49 CFR 1.46.

Note: Additional requirements for vessels carrying hazardous materials are contained in 46 CFR Parts 151 and 153.

23. By revising the heading of Part 155 to read as follows:

PART 155—OIL AND HAZARDOUS MATERIALS POLLUTION PREVENTION REGULATIONS FOR VESSELS

24. By amending Part 155 by removing the word "oil" before the word "transfer" wherever it appears in the following:

§§ 155.310, 155.710, 155.720, 155.730, 155.740, 155.750, 155.760, 155.780, 155.785, 155.790, 155.800, 155.805, 155.820 [Amended]

(a) § 155.310(a)(1).

(b) § 155.310(b)(2).

(c) The heading of Subpart C.

(d) § 155.710(a)(1).

(e) § 155.720 introductory text.

(f) § 155.730.

(g) § 155.740 introductory text, (b), and (c).

(h) § 155.750(a) introductory text, (a)(1)(iii) (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (a)(8), (b), and (c).

(i) § 155.760.

(j) § 155.780(c).

(k) § 155.785(a).

(l) § 155.790 (a)(3), (a)(4), and (b)(2).

(m) The heading of § 155.800.

(n) § 155.805(a).

(o) § 155.820(a).

25. By revising § 155.110 to read as follows:

§ 155.110 Definitions.

The definitions in Part 151, except for the word "oil", and in Part 154 of this chapter apply to this part.

§ 155.130 [Amended]

26. By amending §§ 155.130(a)(2)(ii) and 155.130(d) by removing the words "by oil" after the word "pollution".

27. By amending § 155.130(a)(1)(iii) by removing the words "oil being discharged" and adding, in their place, the words "discharges occurring".

28. By revising the heading of § 155.310 to read as follows:

§ 155.310 Cargo discharge containment.

* * * * *

29. By amending Part 155 by removing the word "oil" before the word "loading" in the following:

§ 155.310 [Amended]

(a) § 155.310(a)(1) introductory text.

(b) § 155.310(b)(1).

(c) § 155.310(b)(2).

30. By amending the introductory text of § 155.310(a) by removing the word "oil" before the word "tanker".

31. By amending the introductory text of § 155.310 (a) and (b) by adding the word "as" before the word "cargo".

32. By amending § 155.310 (a)(2) and (b)(4) by removing the words "the oil" and adding, in their place the word "these".

33. By revising the heading of § 155.470 to read as follows:

§ 155.470 Prohibited spaces.

* * * * *

34. By amending § 155.470(a) by removing the word "an oceangoing" and adding in their place the word "a".

35. By amending § 155.470(b) and § 155.770 by removing the words "oil or oily waste" and adding, in their place, the words "oil, oily waste, or hazardous materials".

§ 155.700 [Amended]

36. By amending § 155.700 by removing the words "of oil" after the word "transfer".

§ 155.710 [Amended]

37. By amending § 155.710(a) (1) and (2) by adding the words "or the cargo" after the words "grade of cargo".

§ 155.720 [Amended]

38. By amending the introductory text of § 155.720 by adding the word "transferring" after the words "Part 156 for" and by removing the words "transfers of oil" from both paragraph (a) and paragraph (b) of this section.

§ 155.760 [Amended]

39. By amending § 155.760(a) by removing the words "an oil".

40. By revising § 155.750(a)(9) to read as follows:

§ 155.750 Contents of transfer procedures.

(a) * * *

(9) Procedures for reporting discharges into the water of oil and the materials determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c) or (e);

* * * * *

§ 155.750 [Amended]

41. By amending § 155.760(c) by removing the words "of oil" after the word "discharge".

42. By revising the heading of § 155.770 to read as follows:

§ 155.770 Draining into bilges.

* * * * *

§ 155.780 [Amended]

43. By amending § 155.780(a) by removing the word "oil" after the word "cargo" and by removing the words "of oil" after the word "flow".

44. By amending § 155.780(b) by removing the word "oil" before the words "could siphon" and adding in its place the word "they".

§ 155.785 [Amended]

45. By amending § 155.785(a) by removing the word "oil" after the word "cargo".

§ 155.790 [Amended]

46. By amending § 155.790(a) introductory text by removing the words "transferring oil" and adding in their place the words "conducting transfer operations".

§ 155.310, 155.470, 155.700, 155.710, 155.720, 155.750, 155.780, 155.785, 155.790, 155.800, 155.805, 155.815 [Amended]

47. By amending Part 155 by adding the words "or any material that is determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c), or (e)" after the word "oil" wherever it appears in the following:

(a) § 155.310(a) introductory text.

(b) § 155.310(b) introductory text and (b)(4)

(c) § 155.470(a).

(d) § 155.700

(e) § 155.710(a) introductory text.

(f) § 155.720 introductory text.

(g) § 155.750(a)(5).

(h) § 155.780(a).

(i) § 155.780(b).

(j) § 155.785(a).

(k) § 155.790(a) introductory text.

(l) § 155.790(a)(2).

(m) § 155.790(a)(4).

(n) § 155.800.

(o) § 155.805(a).

(p) § 155.815(a)(5).

PART 156—[AMENDED]

48. The authority citation to Part 156 is revised to read as follows:

Authority: Subpart A is issued under 33 U.S.C. 1231; 49 CFR 1.46. Subpart B is issued under 46 U.S.C. 3715(b); 49 CFR 1.46.

49. By revising the heading of Subpart A to read as follows:

Subpart A—Pollution Prevention Regulations for Oil and Hazardous Material Transfer Operations

* * * * *

50. By revising § 156.100 to read as follows:

§ 156.100 Applicability.

This subpart applies to the transfer of oil or any material determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c), or (e) on the navigable waters or contiguous zone of the United States to, from, or within any vessel having a capacity of 250 barrels or more, except this subpart does not apply to the transfer operation within a public vessel.

§ 156.110 [Amended]

51. By amending § 156.110 (a) and (d) by removing the words "Marine Environment and Systems" and inserting, in their place, the words "Marine Safety, Security and Environmental Protection".

§§ 156.112, 156.113, 156.115, 156.118, 156.120, 156.125, 156.130, 156.150, 156.160, 156.170 [Amended]

52. By amending Part 156 by removing the word "oil" before the word "transfer" or "transfers" wherever it appears in the following:

(a) The introductory text of § 156.112.
(b) § 156.113(a).
(c) § 156.115(a).
(d) § 156.115(b).
(e) The heading of § 156.118.
(f) The introductory text of § 156.118(a).
(g) § 156.118(a)(4).
(h) § 156.118(b).
(i) § 156.118(c).
(j) The heading and introductory text of § 156.120.
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(o) § 156.120(i).
(p) § 156.120(p).
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(s) § 156.120(t)(3).
(t) The introductory text of § 156.120(u).
(u) § 156.120(u)(2).
(v) § 156.120(v).
(w) § 156.120(w) introductory text.
(x) § 156.120(x).
(y) § 156.125(b)(1).
(z) § 156.125(c).
(aa) The introductory text of § 156.130(a).
(bb) § 156.130(b).
(cc) The introductory text of § 156.130(c).
(dd) § 156.150(c)(5).
(ee) § 156.150(e).
(ff) § 156.160(c).
(gg) § 156.170(a).
(hh) § 156.170(c)(1).
(ii) § 156.170(c)(4).
(jj) § 156.170(d).

53. By amending Part 156 by removing the words "an oil" and adding, in their place, the word "the" in the following:

§§ 156.120, 156.125, 156.150, 156.160 [Amended]

(a) § 156.120(p).
(b) The introductory text of § 156.125(a).
(c) The introductory text of § 156.125(b).
(d) § 156.150(f).
(e) § 156.160(a).

54. By revising the heading of § 156.125 to read as follows:

§ 156.125 Discharge cleanup.

* * * * *

§§ 156.107, 156.110, 156.112, 156.118, 156.120, 156.125, 156.130, 156.150, 156.160, 156.170 [Amended]

55. By amended Part 156 by adding the words "or hazardous materials" after the word "oil" wherever it appears in the following:

(a) § 156.107(a)(3).
(b) § 156.110(a)(2)(ii).
(c) § 156.110(a)(2)(iii).
(d) § 156.112.
(e) § 156.118(a)(3).
(f) § 156.120(d).
(g) § 156.120(f).
(h) § 156.120(i).
(i) § 156.120(w)(7).
(j) The introductory text of § 156.125(a).
(k) § 156.125(b)(1).
(l) § 156.125(b)(2).
(m) § 156.130(d).
(n) § 156.150(a).
(o) § 156.160(b).
(p) § 156.160(c).
(q) § 156.170(c)(1)(i).

J. C. Irwin
Vice Admiral, U.S. Coast Guard, Acting Commandant.

Dated: June 3, 1988.

[FR Doc. 88-13024 Filed 6-10-88; 8:45 am]

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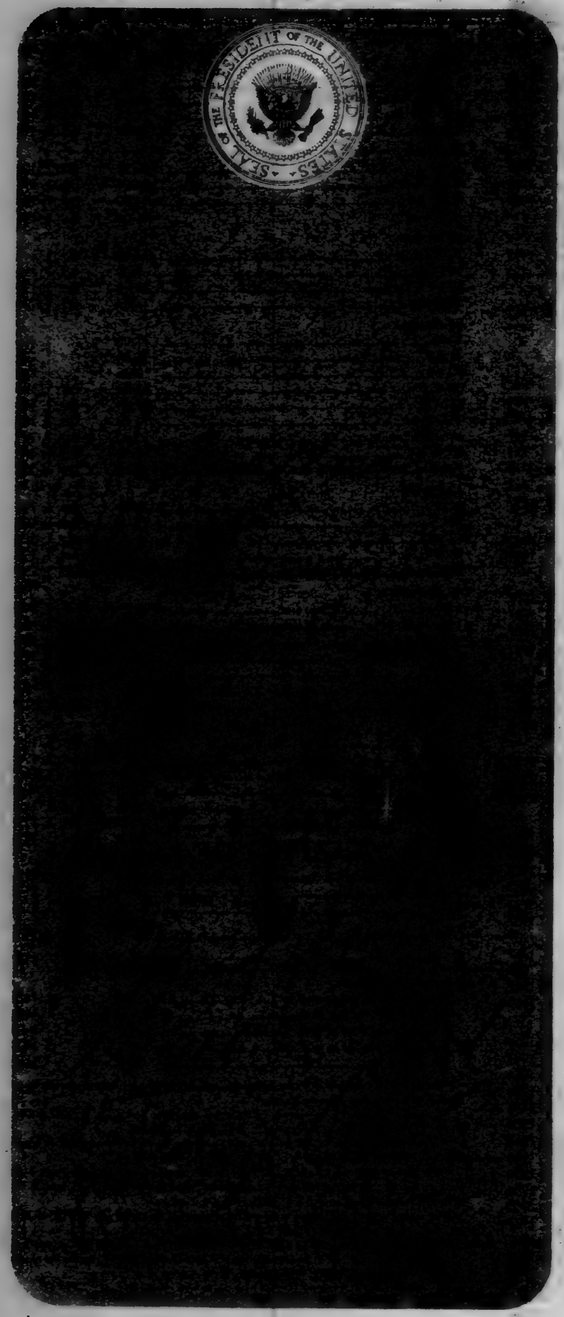

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Tuesday, June 14, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. AMS-FV-88-043FR]

Limes Grown in Florida; Relaxation of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of two interim final rules which relaxed container and pack requirements for Florida limes. These interim final rules reduced the minimum net weight of limes which must be packed in a currently authorized master container from 38 to 35 pounds when that container is used for bagged limes and the container is marked "Master Container." This action permitted the packing of bagged limes in the container without distorting it or damaging the fruit. The first interim final also added a container to the list of containers currently authorized for the shipment of fresh limes. These actions were recommended by the Florida Lime Administrative Committee, which works with the Department in administering the Florida lime marketing order.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained herein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes subject to regulation under the Florida lime marketing order, and approximately 260 lime producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Sections 911.329 and 911.311 were amended by an interim final rule issued on December 31, 1987, and published in the **Federal Register** (53 FR 403, January 7, 1988). Interested persons were invited to submit written comments on the rule until February 8, 1988. No comments were submitted during the specified time. However, the committee subsequently requested that the temporarily relaxed weight requirements specified in the rule for bagged limes packed in a master container be extended indefinitely, based on the unanimous recommendation of the committee at its meeting of March 9, 1988. As a consequence, a second interim final rule was issued on April 1, 1988, and published in the **Federal Register** (53 FR 11831, April 11, 1988), extending the relaxed weight requirements indefinitely. Comments on this rule were due on May 11, 1988, and none were received.

Container requirements for Florida limes are prescribed in § 911.329 in terms of inside dimensions and net weight capacity which handlers must meet when they ship limes outside the production area. Paragraph (a)(2)(v) of that section prescribes the specifications of one of the containers handlers may use for such shipments. That container has inside dimensions of 12¾ × 15¼ × 10¾ inches and is required to contain not less than 38 pounds nor more than 42 pounds net weight of limes.

The January 7 interim final rule was issued based on the committee's report that handlers had been using this container as a master shipping container for bagged limes, but that the container was too small to comfortably hold the 38-pound minimum net weight. This resulted in container distortion and damage to the fruit. Reducing the minimum net weight of the contents of this container to 35 pounds when it was used for bagged limes was recommended to alleviate this problem and to ensure that limes free from damage due to packing would reach the consumer. The January 7 interim rule was in effect from January 7 until March 31, 1988. To differentiate containers of bagged limes from containers of loose limes, the January 7 interim rule also required containers of bagged limes to be marked "Master Container." The minimum weight requirement for containers of loose limes continued to be 38 pounds.

The January 7 interim final rule also added a container with inside dimensions of 11 × 16¾ × 10 inches, containing between 38 and 42 pounds net weight of limes, to the list of currently authorized containers. This container is specified in paragraph (a)(2)(ix) of § 911.329.

Reducing the minimum net weight requirement of the container for bagged limes proved successful during the trial period, and the committee requested that the 35-pound minimum net weight be made a permanent part of the lime container requirements. Therefore, the second interim final rule was issued on April 1 to extend the relaxed weight requirements indefinitely.

Both interim final rules made necessary conforming changes in the container marking requirements specified in § 911.311.

This rule adopts without modification the provisions of the interim final rules which relaxed the container and pack requirement for bagged limes packed in master containers and which added a container to the list of containers authorized for the shipment of fresh limes. This rule also adopts, unchanged, the conforming changes made in the second interim final rule. This rule pertains only to limes grown in the production area.

It is the Department's view that the impact of the relaxed container requirements upon producers and handlers are beneficial and have a positive effect on industry operations. The application of a less restrictive minimum weight for the specified container continues to ensure that limes free from packing damage reach the consumer. The addition of a new container benefits handlers by providing them with a container needed to ship fresh limes to market.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues container and pack requirements currently in effect for Florida limes; (2) shipment of the 1988–89 season Florida lime crop is in progress; (3) this action is based upon the unanimous recommendation of the committee considered at a public meeting; (4) handlers are prepared to continue conducting their operations in accordance with the requirements specified in the interim final rules; and (5) each interim final rule provided a 30-day comment period, and no such comments were received; and (6) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 911 is taken:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§§ 911.311, 911.329 [Amended]

2. Accordingly, the interim final rule amending §§ 911.311 and 911.329 published in the **Federal Register** (53 FR 403, January 7, 1988), and interim final rule further amending §§ 911.311 and 911.329 published in the **Federal Register** (53 FR 11831, April 11, 1988), is adopted as a final rule without change.

Dated: June 9, 1988.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-13416 Filed 6-13-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 925 and 944

[AMS-FV-88-010 FR]

Grapes Grown in a Designated Area of Southeastern California and Table Grapes Imported into the United States; Change in Minimum Size Requirements for Perlette Grapes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum berry size for California Perlette grapes and imported Perlette grapes from 9/16 to 10/16 of an inch starting with the 1989 crop season. This action is intended to provide fresh markets with Perlette grapes of desirable size and promote consumer acceptance of these grapes.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR Part 925), regulating the handling of grapes grown in a designated area of southeastern California. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California desert grapes subject to regulation under this marketing order, and approximately 85 desert grape producers. Also, there are approximately 50 grape importers subject to the requirements of the table grape import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California desert grapes and importers of table grapes may be classified as small entities.

The California Desert Grape Administrative Committee's 1987 Annual Report indicated that table grape shipments for 22 pound boxes had totals in the past three seasons of 7,364,553 in 1987, 8,189,904 in 1986, and 7,441,364 in 1985. The decrease in last year's production was due to inclement weather conditions. Bearing acreage of 18,615 in 1987 was 722 acres more than the 18,093 acres reported in 1986. Available forecasts indicate that table grape supplies should be comparable to those in recent seasons.

Table grape producers are improving their cultural practices to remain competitive and to meet the expectations of the consumer. Table grapes compete with over 250 other items in supermarket produce sections. Since table grapes are usually an impulse item, purchases are based on eye appeal.

Total shipments in 1987 of 22 pound boxes of Perlette grapes were 2,693,356 or approximately 36 percent of the total shipments for all varieties.

Based on prices provided by the Federal-State Market News Service and the committee's handling cost figures, it

is estimated that the on-vine value of California Perlette grapes approximated $23.1 million in 1987. This represents about 45.4 percent of the total value of all varieties of grapes grown in the production area.

Perlette grapes were the dominant variety shipped out of the production area during the last crop year. The "production area" is Imperial County, California, and part of Riverside County and San Diego County, California.

The final rule will change the handling regulation specified at 7 CFR in § 925.304 (52 FR 24443, July 1, 1987) to increase the minimum berry size for California Perlette grapes regulated under the marketing order from 9/16 to 10/16 of an inch in diameter.

Changes will be made in §§ 925.304(a) and 944.503(a)(1) to increase the size of California desert grapes and imported table grapes by increasing the minimum berry size for the Perlette grape variety. This final rule is being issued pursuant to § 925.52 of the order.

Members of the committee believe that increasing minimum berry size for Perlettes will better meet the demands of the consumer. The larger berries of this variety tend to produce a more attractive and uniform pack. Requiring handlers to ship only larger size grapes, which are more desirable in the marketplace, is expected to foster increased consumption and have a positive impact on the industry. Furthermore, the committee believes the increase in the minimum berry size requirement will help consumers identify and distinguish the green-colored, round Perlette grape from other grape varieties of similar color.

Notice of this change was published in the **Federal Register** on March 23, 1988 [53 FR 9450]. Three comments were filed. Two comments, one from a grape grower in the production area and another from a consumer, objected to the proposed change. An industry association, Desert Grape Growers League of California (DGGLC), filed a comment supporting the committee's recommendation.

The grape grower opposed to the change in the berry size requirement contends that the real problem facing the industry is the shipment of sour grapes. The appropriate course of action would therefore be to increase the minimum maturity standards currently in effect rather than the size specifications.

While there may be merit in the assertion that grape growers would benefit from the establishment of tighter maturity requirements, there is no consensus in the industry to do so at the current time. Further, information submitted by the committee and the DGGLC supports the berry size increase as a means of expanding demand and sales of Perlette grapes.

The second opposing comment was filed by a consumer who objects to this action because it would limit his choice to larger, more expensive grapes. Further, supplies available from Mexico would be restricted.

With regard to the first of these objections, again, the preponderance of information supports the committee's claim that consumer demand for larger, more uniformly sized grapes is stronger than that for smaller fruit. On the issue of imports, as is later discussed more fully, the Act requires that this change in the domestic size requirement be made applicable to imports as well. Further, the proposal was mailed to all grape importers of record, and none expressed objection to this change. It is therefore reasonable to conclude that supplies of Perlette grapes would not be significantly affected by this 1/16-inch increase in the minimum berry size requirement.

The DGGLC in support of the committee's recommendation cited a report prepared by an independent marketing order study team in 1986 and published by the Economic Research Service, USDA, entitled "Criteria for Evaluating Federal Marketing Orders: Fruits, Vegetables, Nut and Specialty Commodities." That report notes that "Minimum quality standards can have three impacts related to the objectives of the Act: (1) Increase the retail demand for a product resulting in higher prices and/or increased quantities sold; (2) Reduce marketing margins with benefits accruing to both consumers and producers; and (3) Reduce supply which, with inelastic demand at the farm level, will result in increased total returns to producers for a given crop. With regard to the latter impact, any minimum quality standard which is effective will necessarily restrict quantities marketed, but we argue that supply control should not be the focus of such standards."

According to the DGGLC, the first two items clearly support the increase in the minimum Perlette berry size. Consumers seem to perceive the smaller Perlette berry as an inferior product and this is based on most available trade reports. Wholesalers and retailers request the largest size grapes available because those are what the consumer buys.

The DGGLC further contends that the quality perception problem is reflected in the decreasing price received for the Perlette grape over the past five years.

Year	Price per Lug	Quantity
1987	$12.22	2,693
1986	$12.96	2,792
1985	$13.26	3,135
1984	$15.40	2,500
1983	$15.19	2,800

According to the DGGLC and as the price column shows, there has been steady, downward pressure on the price of Perlettes, even though the supply has remained fairly constant. The DGGLC states that most Perlettes already meet the proposed 10/16 minimum berry size requirement, and this rule change will not restrict or limit domestic and imported Perlette supplies. The majority of the industry also believes that increasing the minimum berry size will not inflict hardships on growers of Perlette grapes.

Quality assurance is very important to the California desert grape industry. Providing the public with acceptable quality fruit which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action increases the quality of Perlette grapes in the marketplace, it will also be of benefit to both California desert grape producers and handlers. This action will not adversely affect marketable supplies of grapes.

This action will not become effective until the 1989 crop season. This will afford producers the time necessary to change their cultural practices in order to meet the increased minimum berry size requirement.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Because this final rule increases the minimum berry size for California Perlette grapes under M.O. 925, this change will be applicable to imported Perlette grapes during the period (April 20 to August 15 each year) that the domestic handling requirements are in effect.

Chile and Mexico are the two main sources of Perlette grape imports to the United States. Imports of Perlette grapes from Chile will be unaffected by this rule because harvesting and shipping of this variety are completed in January, and the domestic handling regulations do not become effective until April 20.

However, the Mexican grape shipping season runs concurrently with that for

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California desert grapes which are regulated under Marketing Order 925.

During 1987, U.S. imports of Mexican grapes totaled 2,597,926 lugs. Of this total, 28 percent represented grapes of the Perlette variety.

While this rule increases the minimum berry size for domestic and imported Perlette grapes for the 1989 and subsequent crop years, exemptions from requirements under the domestic handling regulation will remain unchanged for shipments of the Emperor, Almeria, Calmeria, and Ribier grape varieties. These varieties are exempt from handling requirements because they are not grown in the production area. Imports of these varieties also are exempt from import regulation requirements (§ 944.503, Table Grape Import Regulation 4; 52 FR 8865, March 20, 1987).

Organically grown grapes are exempt from the berry size requirements, and the handling of grapes for processing (raisins, crushing, and other-by-products) is exempt from size, quality, and container requirements. These exemptions are specified in § 925.304(c) and (d).

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is hereby found that increasing the minimum berry size for California Perlette grapes and imported Perlette grapes from 9/16 to 10/16 of an inch starting with the 1989 season will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Marketing agreements and orders, Grapes, California.

7 CFR Part 944

Fruits, Import regulations, Grapes.

For the reasons set forth in the preamble, 7 CFR Parts 925 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 925 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

2. Section 925.304 is amended by revising paragraph (a) to read as follows.

Note.—This regulation will appear in the Code of Federal Regulations.

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.887 through 51.912), except that (1) grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and that (2) grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code [Title 3].

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.503 is amended by revising paragraph (a)(1) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that (1) grapes of the perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and that (2) grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1463.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3)

* * * * *

Dated: June 9, 1988.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–13414 Filed 6–13–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 94

[Docket No. 87–167]

Importation of Animals and Animal Products; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: We are renumbering the footnotes and references to them in 9 CFR Parts 92 and 94 to correct inconsistencies in numbering. This action makes the regulations easier to follow. It creates no substantive changes to the regulations.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathy McCloskey at (301) 436–5533.

SUPPLEMENTARY INFORMATION: We are renumbering the footnotes and references to them in 9 CFR Parts 92 and 94. Before this final rule, some footnotes were numbered by section (each section beginning with a footnote 1), while other footnotes were numbered by part (consecutively throughout the part), according to an earlier style of numbering. We are renumbering the footnotes by section for internal consistency. We have chosen this method of numbering so that footnotes throughout a part will not have to be renumbered each time a footnote is added to or removed from any one section. In § 92.11, we are reserving footnote 4. Also, in § 92.41, footnotes 12 and 13 will be renumbered as 1 and 2, and the footnotes now designated as 1 and 2 in the Cooperative and Trust Fund Agreement will remain 1 and 2 since they are part of the agreement laid out in that section. This action creates no substantive changes in the regulations.

List of Subjects

9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease

Accordingly, we are amending Title 9, Chapter I of the Code of Federal Regulations as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. In § 92.2, footnotes 2, 3, 4, 4a, 15, and 16 and all references within the text are redesignated as 1, 2, 3, 4, 5, and 6, respectively.

§ 92.3 [Amended]

3. In § 92.3, footnote 4a and all references within the text are redesignated as 1.

§ 92.4 [Amended]

4. In § 92.4(d)(1)(iv), footnote 2 and the reference within the text is redesignated as 1.

§ 92.11 [Amended]

5. In § 92.11, footnotes 6, 7, 8, and 9 and all references within the text are redesignated as 1, 2, 3, and 5, respectively.

6. In the undesignated center heading preceding §§ 92.19–92.26, footnote 9 is redesignated as 1.

7. In the undesignated center heading preceding §§ 92.27–92.30, footnote 10 is redesignated as 1.

8. In the undesignated center heading preceding §§ 92.31–92.40, footnote 11 is redesignated as 1.

§ 92.34 [Amended]

9. In § 92.34, footnote 7 and all references within the text are redesignated as 1.

§ 92.41 [Amended]

10. In § 92.41, footnotes 12 and 13 and all references within the text are redesignated as 1 and 2, respectively.

§ 92.42 [Amended]

11. In § 92.42, footnote 16 and all references within the text are redesignated as 1.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

12. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.5 [Amended]

13. In § 94.5, footnote 2 and all references within the text are renumbered as 1

§ 94.6 [Amended]

14. In § 94.6, footnotes 3, 4, 5, 6, and 7 and all references within the text are renumbered as 1, 2, 3, 4, and 5, respectively

§ 94.8 [Amended]

15. In § 94.8, footnote 7a and all references within the text are renumbered as 1.

§ 94.9 [Amended]

16. In § 94.9, footnotes 8 and 9 and all references within the text are renumbered as 1 and 2, respectively.

§ 94.12 [Amended]

17. In § 94.12, footnotes 10 and 9 and all references within the text are renumbered as 1 and 2, respectively, and redesignated footnote 2 is revised to read "See footnote 2 to § 94.9."

§ 94.16 [Amended]

18. In § 94.16, footnote 11 and all references within the text are renumbered as 1.

Done in Washington, DC, this 8th day of June, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–13223 Filed 6–13–88; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0638]

Delegation of Authority to Staff Director for Banking Supervision and Regulation and Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Secretary of the Board, in accordance with 12 CFR 265.2(e)(11), has approved technical amendments to the Board's Rules Regarding Delegation of Authority (12 CFR Part 265) to conform references to the Board's Regulations G, T, and U (12 CFR Parts 207, 220, and 221, respectively) to the totally revised versions of those regulations that became effective in 1983 and 1984.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION: Paragraph (19) of § 265.2(c) is being removed and reserved because the delegated authority granted to the Staff Director for Banking Supervision and Regulation in that subparagraph is no longer necessary in light of the 1983 revision of Regulation G. Paragraph (19) of § 265.2(c) gives the Staff Director for Banking Supervision and Regulation delegated authority to approve repayments of the "deficiency" with respect to stock option or employee stock purchase plan credit in lower amounts and over longer periods of time than those specified in Regulation G. The complete revision of Regulation G (Docket No. R–0457, 48 FR 35070) liberalized the complex rules with respect to credit extended by a corporation to its own employees and officers for the purpose of purchasing the company's stock and eliminated the specific loan reduction schedules and the concept of "deficiency." Consequently, there is no longer a need for delegated authority in this area.

Paragraph (18) of § 265.2(c) gives the Staff Director for Banking Supervision and Regulation delegated authority to approve the issuance of the Board's List of Marginable OTC Stocks. The references in this subparagraph to

sections in Regulations G, T, and U (12 CFR Parts 207, 220, and 221, respectively) are being revised to conform to the renumbering that accompanied the complete revision of the three regulations in 1983 and 1984.

Paragraph (17) of § 265.2(f) gives the Federal Reserve Banks delegated authority to approve applications for termination of registration by persons who are registered under the Board's Regulation G (12 CFR Part 207). The references to sections in Regulation G are being revised to conform to the renumbering that accompanied the complete revision of the regulation in 1983.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment does not have particular effect on small entities.

Public Comment

The provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority, Delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by revising paragraph (c)(18) and removing and reserving paragraph (c)(19) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(18) Under the provisions of §§ 207.6(d), 220.17(d) and 221.7(d) of this chapter (Regulations G, T, and U, respectively) to approve issuance of the list of OTC margin stocks and to add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest.

(19) [Reserved]

* * * * *

3. In § 265.2(f)(17), the reference to "§ 207.1(b)" is revised to read "§ 207.3(a)(2)" and the reference to "§ 207.1(a)" is revised to read "§ 207.3(a)(1)."

Board of Governors of the Federal Reserve System, June 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-13312 Filed 6-13-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This regulation implements Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. This rule amends and makes final the interim regulation, which has been in effect since November 9, 1987, and reflects the FDIC's consideration of the public comments received on that interim regulation.

After consideration of comments received, the FDIC is making one substantive change and several technical changes to the rule. The substantive change would allow eligible banks to amortize over a period of up to seven years losses on reappraisal or sale of real or personal property that was acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or subsequently acquires prior to January 1, 1992. Under the interim rule, such property had to be currently owned to qualify. The technical changes amend the definitions of "qualified agricultural loan" and "agricultural bank" to clarify that the FDIC intends to construe these phrases broadly and add a definition of "agriculturally related other property" to clarify the treatment of losses due to reappraisals and sales of such property. These amendments make the rule retroactively effective to November 9, 1987. The other Federal banking agencies are also adopting substantially identical amendments to their regulations.

EFFECTIVE DATE: The rule is retroactively effective to November 9, 1987. Part 324 will remain in effect indefinitely.

FOR FURTHER INFORMATION CONTACT: William C. Crothers, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–6906.

SUPPLEMENTARY INFORMATION: Title VIII of the Competitive Equality Banking Act of 1987 (the "Statute") permits an agricultural bank to amortize (1) losses on qualified agricultural loans shown on its financial statements for any year between December 31, 1983 and January 1, 1992; and (2) losses suffered as the result of an appraisal of agriculturally related other property that it owned on January 1, 1983, or acquire prior to January 1, 1992. The Statute also requires that the Federal banking agencies issue implementing regulations no later than 90 days after its enactment.

In response to this requirement, the FDIC published and requested comments on an interim regulation (52 FR 41966; November 2, 1987) which has been in effect since November 9, 1987. The other Federal banking agencies (the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency) adopted substantially identical regulations, containing only technical variations necessary to accommodate their slightly different situations.

Discussion of Comments Received

This final rule reflects the FDIC's review of the public comments received. In total, 20 letters have been received from 16 banks and four industry associations. Four banks expressed agreement with the interim regulation as published. Two trade associations are similarly supportive but suggest certain clarifications. The remaining comments largely represent a combination of support for some provisions of the regulation as well as suggestions for change.

Definitions

The definition of *"agricultural bank"* in the final regulation continues to include the agricultural loan volume test (agricultural loans are 25 percent or more of total loans) that is provided by the Statute.

The comment letters suggest that the FDIC should be liberal when applying this test and also that banks should be eligible for new deferrals if they met the loan volume test any time subsequent to December 31, 1983 rather than as of the time a loss would be recognized in financial statements. This suggestion is not adopted because the legislation was directed toward banks with a continuing commitment to agriculture and, given the broad definition of agricultural loans (see discussion below), such banks should not have difficulty meeting this test.

The interim regulation's definition of *"qualified agricultural loan"* incorporated the definitions of "loans to finance agricultural production and other loans to farmers" and "loans secured by farmland" contained in Schedule RC–C of the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income ("call report"). Additionally, as suggested by the Statute, the FDIC retained discretion to deem other types of loans and leases to be "qualified" if the requesting bank demonstrates those loans and leases to be sufficiently related to agriculture.

Several comments suggest that the regulation should include a list of such other kinds of loans which will be deemed sufficiently related to agriculture. One letter recommends that any loan secured by agricultural equipment should be included whether or not the equipment was used in farm production and pointed out that the Statute explicitly mentioned such loans. This would primarily pick up farm implement dealers. It is also suggested that regulators adopt a liberal attitude when determining if loans are closely related to agriculture.

The interim regulation was intended to be liberal and not to use agricultural loan definitions in a restrictive manner in order to exclude banks from participation. Call Report numbers were chosen because they are nearly identical to the statutory definition, are familiar to bankers, readily available and should be sufficient to qualify most agricultural banks. If additional loans are needed it should not be difficult for an agricultural bank to find loans it can readily support as related to agriculture. Loans to farm implement dealers are an obvious example of such loans. However, publishing a formal list of such loan types could be more, rather than less, restrictive. The practical effect of such a list might be that many banks would assume that if a loan type or category was not on the list it would not qualify. Nevertheless, in order to clarify that the regulatory definition of qualified agricultural loans is as broad as the statutory definition and is not intended to be restrictive in the types of loans which may be included in an application, the regulatory definition has been amended to include the statutory reference to loans secured by farm machinery. Banks remain able to use additional types of loans if they can demonstrate that the loans are related to agriculture.

Among the comments received was the suggestion that banks be permitted to include charged-off loans and farm-related property acquired through foreclosure for purposes of the loan volume tests. The interim regulation allowed the use of charged-off loans by virtue of including them in the definition of "qualified agricultural loans." Such loans are still legal assets of the banks, even though off the books, and represent part of the banks' total credit commitment to agriculture. A similar argument seems equally applicable to assets acquired through foreclosure on agricultural loans. Therefore, the final rule provides that such assets will be counted for purposes of the loan volume test in the definition of an agricultural bank.

The definition of an agricultural bank includes the statutory requirement that the bank have total assets of $100 million or less. Comments were received suggesting regulators clarify what happens if a bank is approved for loss deferral and subsequently exceeds the size limitation. Congress did not intend for banks larger than $100 million to defer loan losses. If size was unimportant the law could have easily excluded it. At the same time, it is of little value for a bank to defer a loss one year if it must reverse that deferral the next year because it grew to over $100 million in assets. Therefore, the FDIC expects a bank to meet the definitions of an agricultural bank, including the size limitation, upon initial application *and* as of every quarter-end that new additional agricultural loan losses are to be deferred. Once admitted to the program, any loss which was properly deferred will be allowed to be amortized according to the regulation, regardless of the bank's size, but new losses cannot be deferred once a bank exceeds the size limit.

On the other hand, it is not intended that banks desiring to use loss deferral be allowed to bypass the application and review process by merging with another bank which has already been approved. Conversely, the merger of two banks which are both in the program could result in a bank over $100 million in assets. Mergers involving eligible banks are not expected to be frequent. Therefore, the status of loss deferral subsequent to a merger will be determined on a case-by-case basis. This should be discussed with FDIC representatives in the appropriate regional office and a determination made before a merger transaction is consummated. However, existing approved deferrals of loan losses can continue to be amortized unless the resultant bank's eligibility is formally revoked. No new losses may be deferred if the resultant bank is larger than $100 million in assets.

Loss Amortization

Section 324.3 on loss amortization and reappraisal addresses two issues: (1) Which losses are subject to amortization and (2) how they may be amortized. On the first issue, the rule reflects Congress' clear intent that losses resulting from fraud or criminal abuse not be eligible for amortization. Two comments were received regarding fraud and abuse provisions of the regulation. One indicates that clarification is necessary on what constituted fraud and abuse, suggesting that the filing of a criminal referral report be the determining factor. The other suggestion is that the regulation only address fraud and abuse by executive officers, directors and principal shareholders. Congress intended to help banks suffering from agricultural problems, not problems of employee fraud. In any event, the FDIC does not expect this issue to be a frequently occurring factor in agricultural banks. Most bankers, though not necessarily legally trained, readily recognize fraud and abuse. For these reasons changing the regulation as suggested does not appear warranted.

The interim regulation provided for deferral of loan losses experienced in 1984 and subsequent years. Losses on reappraisal or sale of agricultural property, acquired through efforts to collect the loans the property secured, were also permitted but only if the property was currently owned. Several comment letters considered this inconsistent treatment inappropriate, suggesting that losses from any sales and reappraisals of property which occurred in 1983 or subsequent years be deferred regardless of whether or not the property is still owned by the bank. One of the reasons Congress authorized in the Statute the deferral of reappraisal losses was to remove the accounting pressure to sell such property into already weak markets. This is not a factor if the property has already been

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sold. In addition, unlike sold property, with charged-off loans there generally remains a legal obligation, an asset which could perhaps ultimately be of some value. As to sales, the Statute does not mention deferral at all. Losses on sales were authorized in the regulation merely to make unnecessary the expense of a reappraisal immediately before a sale solely to allow the economic loss to qualify for deferral as a loss on reappraisal rather than be recognized as a loss on a sale. In spite of these reasons, the FDIC is persuaded that such property-related losses are as much a part of the bank's agricultural problem as the original loan loss, and the overriding intent of the legislation is to mitigate the effect of such losses. Therefore, the final rule removes the "currently owned" requirement and provides that losses on holding or selling property will be treated in the same manner as losses on agricultural loans.

The Statute allows amortization of agricultural loan losses that would be reflected on annual financial statements for 1984 through 1991. It also allows amortization for losses resulting from reappraisals on real or personal property acquired in connection with an agricultural loan that the bank would otherwise be required to show on its annual financial statements. To ensure that losses due to reappraisals are treated comparably to loan losses, the final regulation provides that losses from reappraisals that the bank would be required to reflect on financial statements for 1983 through 1991 will be allowed a seven-year amortization period in the same manner as agricultural loan losses generally, i.e., they must be fully amortized by 1998. For the same reason, the regulation provides that losses resulting from reappraisals after 1991 are not eligible for amortization.

With respect to the manner of amortization, the Statute provides that the loss shall be amortized over a period not to exceed seven years as provided in regulations issued by the Federal banking agencies. The regulation provides that amortization shall occur on a quarterly straight-line basis over a period not to exceed seven years beginning in the quarter following the date of loss. Losses sustained in years prior to the effective date of the regulation would be treated as if amortized over seven years beginning in the quarter following the date of the loss. Thus, a bank could take only the amortizations that remain for such a loss after it enters the program.

Comments were received suggesting that this approach to amortization unfairly penalized banks which promptly recognized their loan losses. They suggested that amortization begin in the quarter following enactment of the Statute rather than the quarter following the loss. The FDIC does not believe the rule penalizes banks that were diligent in adjusting their assets. Accepted banking practice and Call Report instructions require banks to record a loss in the period it becomes apparent. Banks that had losses which they declined to recognize would have been in contravention of proper procedures. Therefore, differences in the actual occurrence of an economic loss should be a much greater cause of different timing patterns in loan charge-offs than differences in how quickly management elects to take a loss. The effect of the technique prescribed is to reflect amortization as though the program had been in effect from the first year deferral was allowed. Amortization in this manner does reduce the initial amount of deferred losses which can be established when a bank is accepted into the loss deferral program, but it also reduces the future amortization which must be absorbed. That is not viewed as a penalty, and, the suggested changes are not adopted.

Eligibility

Under the regulation, any bank desiring to participate in the program is required to submit to the appropriate Federal banking agency a proposal establishing both its eligibility and the eligibility of the losses it proposes to amortize. Among the criteria for eligibility is that the proposing bank's current capital must be in need of restoration; but the bank must also be an economically viable, fundamentally sound institution. Some comment letters indicated a belief that these are mutually exclusive conditions and, in any event, neither condition should be used to determine eligibility.

The FDIC does not consider viability and capital inadequacy to be mutually exclusive conditions and has retained these eligibility conditions. A bank can have inadequate capital due to a variety of temporary problems or conditions yet also have enough underlying demand for banking services and earning capacity to restore capital if given sufficient time. Viability is not defined in the regulation. It is a judgment based on many variables. One measure of viability would be whether a bank has traditional funding and earning sources of acceptable quality within its market area sufficient to permit the bank to earn a reasonable profit in a normal economic environment while achieving and maintaining a capital level that provides the capacity to operate throughout the normal downturns in economic cycles without suffering severe financial problems. Usually, a bank will be considered viable if it has a reasonable prospect of remaining a going concern throughout the program and at the end of the amortization period.

The FDIC rejected the suggestion that capital should not have to be in need of restoration and the argument that restoration should mean a return to a historical level of capital that is higher than normal standards of financial prudence would require. Such banks have no need for loss deferral and that approach does not represent the intent of the Statute. Loss deferral is not a generally accepted accounting practice nor is it considered good public policy for the industry in general. Therefore, the use of such techniques to artificially maintain unnecessarily high levels of capital is believed inappropriate. In this instance Congressional intent seems clear since the Statute requires, as an essential condition of eligibility, the submission of a plan to restore capital to a level acceptable to the banking agency. If capital is to be restored to an acceptable level it must, by definition, not already be at an acceptable level.

The regulation does not prescribe any absolute level of capital to be achieved. Some comment letters suggest that acceptable capital levels be defined and others suggest specific ratios to use, not only for eligibility but also for subsequent removal. Part 325 of the FDIC's rules and regulations (12 CFR Part 325) already establishes minimum capital standards for well-run banks in satisfactory financial condition. Banks applying for loss deferral will not be in satisfactory financial condition; and, therefore, capital may be above the six percent minimum cited in Part 325 and still be judged inadequate. Because it is impossible to standardize the conditions of the applicant banks, their management or the economic prospects of their markets, it is also not possible to precisely define acceptable levels of capital. Each bank's individual circumstances will be evaluated during review of the requisite capital plan. This approach parallels current practices under the agency's existing capital forbearance program. Because a determination regarding capital adequacy must be made in each case, a bank should include a statement as to why its capital is "in need of restoration" when applying to amortize loan losses.

There remains the question of removing a bank from the program once it has recovered financially. As a matter of administrative practice, the FDIC does not intend to remove such a bank from the program so long as the bank continues to meet the Conditions on Acceptance prescribed in the regulation. Therefore, once a loan loss has been deferred a bank will have the option to continue to amortize it over the period provided for in the regulation. However, once the bank has recovered sufficiently so that it no longer meets eligibility requirements, no new deferral of loan losses will be permitted.

Conditions on Acceptance

The regulation specifies that any acceptance of a proposal will be subject to certain conditions. These conditions are designed to ensure that a bank continues to meet the eligibility requirements and is properly amortizing losses under the program. One of these conditions is that the bank must agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans not lower than the percentage of such loans in its loan portfolio on January 1, 1986. Some comment letters indicated that they were confused about what assets would be counted as agricultural loans for purposes of calculating this ratio. Any asset meeting the definition of a qualified agricultural loan (see § 324.2(b)) or agriculturally related other property (see § 324.2(c)) may be used in calculating this ratio.

Other Matters

The FDIC's administrative practices implementing the interim regulation included providing the bank instructions covering the possible amortization of future loan losses in the letter granting approval of the bank's application for loss deferral. These instructions typically required the bank to submit a list of future period loan losses and request permission to defer them. It has been decided that advance permission is unnecessary and, once granted initial loss deferral authorization, a bank may continue to defer new eligible losses and report to the FDIC after the fact so long as the eligibility criteria and conditions of acceptance continue to be met. The volume of such losses should be reviewed by the bank to see that they do not invalidate the reasonableness or acceptability of the bank's capital plan. If subsequent review by the FDIC indicates that the bank should not have recorded new deferrals of losses because eligibility criteria and/or conditions of acceptance were not met, such deferrals may be required to be reversed, removed from the bank's books and, if the amount is material, amended Call Reports may also be required.

The interim regulation required a certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors or principal shareholders. One commentor expresses concern over this requirement in that it is not generally possible to be absolutely certain of every circumstance surrounding every loan. The FDIC understands this reluctance and, therefore, a specific form of certification is not dictated in the regulation. Certification to the best of one's knowledge and belief was and is permissible.

Comments suggest that clarification is needed affirming the possibility of participation in both the Capital Forbearance Program and loss deferral and the eligibility of banks subject to administrative actions containing capital provisions. The Capital Forbearance and Loan Loss Deferral programs are similar. A bank in the Capital Forbearance Program or a bank with capital below levels established by 12 CFR Part 325 or that is subject to an enforcement action related to capital can be eligible for loss deferral. Conversely, a bank using loss deferral may also apply for the Capital Forbearance Program. A bank may also apply for both programs simultaneously. Acceptance of a bank's capital plan for loss amortization will normally relieve the bank of any inconsistent provisions dealing with capital in any extant agency order, agreement, or directive. Requests for such relief should be included as part of the bank's proposal to utilize loss amortization.

Special Studies

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the regulations will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in the interim rule were reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 324

Banks, Banking, State nonmember banks.

Accordingly, the interim rule adding 12 CFR Part 324 which was published at 52 FR 41966, Nov. 2, 1987, is adopted as final with the following changes:

PART 324—[AMENDED]

1. The authority citation for Part 324 continues to read as follows:

Authority: 12 U.S.C. 1823(j), 1819, and 12 U.S.C. 1811–1831d.

2. Section 324.2 is revised to read:

§ 324.2 Definitions.

For purposes of this part:

(a) "Agricultural Bank" means a state nonmember bank, except a district bank,

(1) The deposits of which are insured by the Corporation;

(2) Which is located in an area of the country the economy of which is dependent on agriculture;

(3) Which has total assets of $100 billion or less as of the most recent Report of Condition; and

(4) Which has—

(i) At least 25 percent of its total loans in qualified agricultural loans and agriculturally related other property as defined below; or

(ii) Less than 25 percent of its total loans in qualified agricultural loans and agriculturally related other property, but which bank the appropriate state banking authority has recommended to the Corporation and which the Corporation accepts for eligibility under this part or which the Corporation on its own motion deems eligible hereunder.

(b) "Qualified agricultural loan" means—

(1) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farmland" for purpose of Schedule RC–C of the FFIEC Consolidated Reports of Condition and Income or such other comparable schedule as may be in effect;

(2) Loans secured by farm machinery;

(3) Other loans and leases that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Corporation;

(4) The remaining unpaid balance of any loans as described in paragraphs (b)(1), (2) and (3) of this section that have been charged-off since January 1, 1984, and that qualify for deferral under this regulation.

(c) "Agriculturally related other property" means any property, real or personal, that a bank owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, in connection with a qualified agricultural loan. For purposes of

§§ 224.3(a)(4)(i) and 324.5(d) the value of such property shall include amounts previously charged-off.

(d) "Accepting Official" means the Director, Division of Bank Supervision, or his designees.

3. Section 324.3(a)(2) is revised to read:

§ 324.3 Loss amortization and reappraisal.

(a) * * *

(2) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 to 1991 resulting from a reappraisal or sale of agriculturally related other property.

4. Section 324.5(c) is revised to read:

§ 324.5 Eligibility.

* * * * *

(c) There is no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans and agriculturally related other property; and

* * * * *

5. Section 324.6(d) is revised to read:

§ 324.6 Conditions on acceptance.

* * * * *

(d) The bank shall agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain a percentage of agricultural loans and agriculturally related other property to total loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

* * * * *

6. Section 324.7 (a) and (b)(6) introductory text are revised to read:

§ 324.7 Submission of proposals.

(a) A bank wishing to amortize losses on qualified agricultural loans or agriculturally related other property shall submit a proposal to the Division of Bank Supervision regional director of the region in which the bank is located.

(b) * * *

(6) A list of the loans and agriculturally related other property upon which the bank proposes to defer loss including, for each such loan or property, the following information:

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of June.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-13241 Filed 6-13-88; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 612

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts a final rule amending Subpart B of Part 612 that prohibits an officer of a Farm Credit Bank (Bank) from simultaneously serving as an officer or other employee of a Farm Credit System association (association) in its district and prohibits a lower level Bank employee from serving as an officer of an association. The rule permits joint employees at lower levels provided each institution (1) obtains a separate and independent opinion of counsel that the institution has the authority under the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 et seq., to appoint joint employees, and (2) appropriately reflects the expense of the service of each such employee in its financial statements. The regulation has the effect of requiring independent senior management in Farm Credit Banks and associations.

EFFECTIVE DATE: This regulation shall become effective January 1, 1989, provided one or both houses of Congress is in session for at least 30 days between the date of publication of this final rule and January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On April 7, 1987, the FCA published for comment a proposed amendment to Subpart B of Part 612 that would have prohibited an individual from serving simultaneously as an employee for a Farm Credit System (System) bank and an association it supervises. 52 FR 11080. The comment period closed on June 5, 1987.

Comments on the Proposed Rule

Comments were received from banks in nine Farm Credit districts, nine System associations, and one former member-borrower.

One Farm Credit district and six individual associations in another district supported the proposed rule. Two of the associations supporting the rule stated that the Farm Credit Act of 1971 (1971 Act) contemplates a separation by entity of certain functions: funding and supervision are the responsibilities of the Federal land bank (FLB) and the Federal intermediate credit bank (FICB), and lending is the function of the associations. These associations stated their belief that a rule prohibiting an individual from being employed by both a bank and an association supervised by the bank would be appropriate as long as the System operates under such a concept, and agreed that a joint employee may find it difficult to be totally impartial in discharging supervisory responsibilities toward and managing a financial relationship with an association.

The district that supported the proposed regulation requested that some exception be made for persons employed under temporary contractual arrangements for certain services, such as appraisal and credit review.

Comments opposed to the proposed regulation fell into three broad categories: (1) Joint employees are authorized by the Act and the proposed regulation would constitute an unauthorized interference with management prerogative; (2) the proposed regulation would increase costs and reverse management efficiencies; and (3) no conflicts of interest have arisen and should they arise, the FCA's enforcement powers are sufficient to deal with them.

Two exceptions were requested by districts opposing the regulation in the event the proposed regulation became final. One district requested that an exception be made for interim appointments of bank employees to association positions while a vacancy is being filled.

Statutory Changes

All of the comments were received prior to the amendment of the 1971 Act by the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act), and must be considered in that context.

Sections 1.4(8), 1.15(7), 2.1(8), and 2.12(17) (12 U.S.C. 2011(8), 12 U.S.C. 2032(7), 12 U.S.C. 2073(8), 12 U.S.C. 2093(17), respectively) of the 1971 Act prior to amendment by the 1987 Act authorized Federal land banks (FLBs), Federal intermediate credit banks (FICBs), Federal land bank associations (FLBAs) and production credit associations (PCAs) to "provide for such other officers or employees as may be necessary, including joint employees as provided in this Act." Also, prior to the amendment of the 1971 Act by the 1987 Act, the FLB, the FICB, and the bank for cooperatives (BC) in each district were governed by a common district board. Section 5.8(a)(3) of the 1971 Act, prior to its amendment by the 1987 Act, empowered the district board to "Elect or provide for joint officers and employees for the banks in its district which are institutions of the System or, upon agreement with banks in other districts, joint officers and employees for institutions in more than one district."

The 1987 Act provides for a significant restructuring of the System, requiring the merger of the FLB and the FICB in each district into a Farm Credit Bank, eliminating the district board, and permitting mergers between institutions within a district and between certain institutions in different districts. All of titles I and II of the 1971 Act and all of the provisions relating to the district board, including § 5.8(a)(3), were repealed, effective 6 months from date of enactment. New titles I and II, which take effect at that time, set forth corporate powers for the new Farm Credit Bank (Bank), for the FLBAs, and for the PCAs. New title I does not expressly authorize joint employees for Banks, but title II continues to authorize joint employees for associations. System representatives have argued that the authority to have joint employees is within their incidental corporate powers.

Final Rule

After reviewing the comments and taking into consideration the provisions of the 1987 Act, which amends the 1971 Act, the FCA has adopted a final rule that is more narrowly focused than the proposed rule, prohibiting any Bank employee from serving as an officer of the association and prohibiting officers of the Bank from serving as association employees at any level. The final rule permits lower level Bank employees to serve as association employees other than officers, provided each institution (1) obtains a separate and independent opinion of counsel that such joint employment is authorized under the 1971 Act, as amended, and (2) appropriately reflects the cost of the service in its financial statements so that each institution pays only for work done for that institution. The expense of the service must be appropriately reflected in the financial statements so that the earnings of the institutions are accurately reflected.

The FCA believes that joint employees may be used at lower levels without compromising the independence of the association as long as these individuals are not involved in the institutions' decisionmaking process in a manner that could present a conflict of interest. Institutions employing joint employees at lower levels should develop procedures that would require such employees to identify and disclose any potential conflicts to their superiors.

"Officer" is currently defined in § 612.2130(m) to mean the president, vice president, secretary, treasurer, and general counsel and any person not so designated who holds a similar position of authority.

Response to Comments

Unauthorized Interference with Management's Prerogative

A number of commenters cited provisions of the 1971 Act authorizing joint employees and stated that the proposed regulation would constitute an unwarranted intrusion into matters of business judgment which are properly the domain of the institutions' stockholders and boards of directors. The FCA was not persuaded by these arguments even under the 1971 Act prior to amendment. The purpose of the proposed regulation was not to influence hiring decisions, but to further a legitimate regulatory interest in preventing conflicts of interest. FCA regulations governing the conduct of officers and directors of System institutions to prevent even the appearance of conflicts of interest, promulgated pursuant to FCA's general rulemaking authority, have been in effect for many years. The FCA has determined that such regulations are necessary and appropriate for carrying out the purposes of the 1971 Act and sees no conflict with its status as an arms-length regulator in setting minimum standards of conduct for System officers and directors designed to eliminate organizational conflicts of interest that, in the opinion of the FCA, could threaten the safety and soundness of System institutions.

The FCA believes that there is an inherent conflict of interest in a joint management arrangement between the Bank and the associations in its district because the relationship involves the exercise of evaluative judgment and approval authority and requires impartial treatment of other shareholder institutions with which the Bank does not share officers. The rule reflects a judgment by the FCA that a person that is responsible for evaluating the conduct of the operations of an institution is not likely to be able to be totally objective if he or she has participated in the management decisions that produce the results of such operations, especially if his or her performance appraisal is affected by such an evaluation. In addition, the FCA believes that management is most effective when its loyalties are not divided between two boards owing fiduciary duties to two different groups of shareholders.

The FCA believes that the case for independent management is even stronger after the 1987 amendment of the 1971 Act. Under the amended provisions, the associations are likely to emerge as more independent, autonomous institutions that will be more responsive to their shareholders than to the Bank. While the Bank is still charged with the general supervision of the associations and must approve salary scales for their employees, it can no longer remove their chief executive officers. This removal power provided the Bank considerable leverage with associations in the past. Section 5.36 of the 1971 Act, as amended by the 1987 Act states:

> Notwithstanding any other provision of this Act, a farm credit district board, bank board of bank officer or employee shall not remove any director or officer of any production credit association of Federal land bank association. 12 U.S.C. 2274.

The effect of this provision is to allow associations to act more independently of the Bank than they were able to do in the past. The FCA believes that joint management between the Bank and the associations would compromise this independence.

In addition, the 1971 Act now allows FLBAs to become direct lenders, either by merging with PCAs or by a delegation of authority from the Bank. These institutions would have, as the PCAs have always had, a debtor-creditor relationship with the Bank. As a creditor, the Bank must make judgments on the sufficiency of the collateral supporting association loans and the eligibility of loans, in order to evaluate the Bank's security position, the adequacy of its collateral for issuing bonds and the adequacy of its allowance for losses. It is important for the safety and soundness of the Bank that these judgments be made objectively and without the personal bias that may result when the evaluating individual has participated in the association's management or credit decisions.

The FCA recognizes that the relationship between a Bank and the FLBAs that continue to operate in the traditional mode is a different relationship from the relationship with direct lenders, but believes that the prohibition is also appropriate in the traditional context. Many of the conflict-of-interest issues that the regulation addresses are independent of the debtor-creditor relationship, such as required Bank approval of association salary scales, reporting to two different boards owing fiduciary duties to two different constituencies and the

potential for compromise of objectivity in dealing impartially with all stockholders of the Bank. In addition, the supervision of the exercise of the authorities that have been delegated by the Bank to the FLBAs involves an evaluative judgment that should be independent of constraints that would result from having participated in management decisions that produced the results.

Cost and Management Efficiency

The second major concern of the commenters was that operating costs (and, therefore, interest rates) would be increased and management efficiencies achieved through joint management would be reversed. The FCA shares the commenters' concerns for reducing operating costs and achieving management efficiencies. However, the FCA believes that these can and should be achieved by means other than use of management structure that creates an inherent conflict of interest. As the FLBs and the FICBs merge, there will be opportunities for restructuring and streamlining Bank operations in a manner that eliminates joint management between the Bank and associations without significantly increasing costs. Furthermore, additional efficiencies may be achieved if FLBAs and PCAs merge or if associations operating under the same title of the Act merge. Also, allowing joint employees at the lower levels will allow for cost efficiencies without compromising the independence of the institutions.

FCA Enforcement Powers

A number of commenters asserted that no conflicts have actually arisen and that FCA enforcement powers are adequate to deal with them when they do. The commenters pointed out that FCA regulations prohibit employees from participating directly or indirectly in the deliberation on any matter affecting the interests of the employee, any relative of the employee or any entity controlled by the employee.

The conflict of interest addressed by the regulation is an inherent, organizational conflict rather than the self-interested conflict addressed by existing provisions of the FCA's conflict-of-interest regulations. While there is an opportunity for such self-interested conduct under such an arrangement, in that the salary scale of the officers and employees of the association and the appointment and compensation of the chief executive officer is subject to Bank approval, this type of conflict is only a part of the reason for the FCA's concern. The FCA is also concerned about whether the Bank can effectively supervise the debtor-creditor relationship or the delegation of functions where Bank employees are in effect supervising themselves. It is difficult for an individual to be objective in evaluating the results of operations when the individual has participated in management decisions that have produced the results, especially where the individual is evaluated on the basis of those results.

Some commenters have suggested that procedures can be implemented to assure that supervision is carried out in an effective and impartial manner by assigning supervisory responsibilities to persons who are not joint employees. The FCA believes, however, that where the Bank and association share the same management, such an arrangement will have a chilling effect on the willingness of the subordinate employees who are assigned the supervisory responsibilities to criticize the operations of the associations. The regulation is directed at this obvious organizational conflict and the conflicts that are likley to be generated by the joint employees' accountability to two different boards of directors, rather than any specific irregularities.

Furthermore, the FCA believes that it is in the interest of the Bank to avoid even the appearance of conflicts of interest or potential favoritism toward an association with which management is shared in order to reassure non-System financing institutions that discount with the Bank (OFI's) and all other System associations not sharing management with the bank is managed in a non-discriminatory manner in the best interest of all of its equityholders. This will be even more true after the merger of the FLBs and the FICBs, since there will be more associations supervised by the Bank (at least initially) and the Bank will be supervising associations of different kinds.

Exemptions

The FCA did not adopt the suggested exemptions for employees performing specialized services and for employees temporarily detailed until a vacancy is filled. However, permitting joint employees at lower levels will allow for specialized services to be performed by joint employees. Also, under the final rule it will be possible to detail a lower level bank employee to an association on a temporary basis while a vacancy is being filled. The FCA did not adopt the latter requested exemption for senior officers, because the FCA believes that allowing such a procedure at the management level could compromise the independence of associations and possibly undermine the effectiveness of the regulation.

Transition Period

Several commenters requested that if the rule were to be adopted, existing arrangements be "grandfathered" or a grace period be allowed in which to unwind such arrangements, in view of the fact that districts implementing joint management structures have relied in good faith upon FCA's awareness and approval of such arrangements.

Recognizing that some districts will need to unwind such arrangements in an orderly manner, the FCA, in the preamble of the proposed rule, alerted System institutions that they should undertake contingency planning in the event the FCA adopted the regulation. Thus, institutions have been aware of the possible need to unwind joint management arrangements and should have taken this possibility into account in considering structure options under the 1987 Act. However, the rule does provide for a transition period. In view of the significant restructuring of System banks that will take place in 1988, the regulation will not become effective until January 1, 1989. The delayed effective date will provide a grace period that will enable institutions to coordinate the transition with restructuring so as to minimize disruption.

List of Subjects in 12 CFR Part 612

Banks, Banking, Credit, Conduct standards, Ethical conduct.

For reasons stated in the preamble, Part 612 of Chapter VI, Title 12 of the Code of Federal Regulations is amended to read as follows:

PART 612—PERSONNEL ADMINISTRATION

1. The authority citation for Part 612 is revised to read as set forth below and all other authority citations throughout Part 612 are removed.

Authority: Secs. 5.9 and 5.17; 12 U.S.C. 2243 and 2252.

Subpart B—Standards of Conduct for Directors, Officers and Employees

2. Section 612.2150 is amended by adding new paragraph (e) to read as follows:

§ 612.2150 Employees—prohibited acts.

* * * * *

(e) No officer of a Farm Credit Bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank may serve as a officer of an association in its district. Farm Credit Bank employees other than officers may serve as employees other than officers of an association in its district provided each institution obtains a separate, independent opinion of counsel that such joint employees are authorized under the Act and appropriately reflects the expense of such employees in its financial statements.

Dated: June 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-13374 Filed 6-13-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ACE-02]

Designation of Transition Area; Fairmont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Fairmont, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Fairmont State Airfield, Fairmont, Nebraska, utilizing the Fairmont Nondirectional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Fairmont State Airfield, Fairmont, Nebraska, is being established, utilizing the Fairmont NDB as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Fairmont, Nebraska, at and above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

Discussion of Comments

On page 6831 of the Federal Register dated March 3, 1988 (53 FR 6831), the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Fairmont, Nebraska. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One objection was received as a result of the Notice of Proposed Rulemaking. The Air Force contends that the transition area will infringe on an existing low level route (IR-502), which it uses for radar bomb scoring site operations. The FAA believes that the Air Force's concern is not well-founded because civil aviation use of the transition area is anticipated to be so minimal that it will not have any significant adverse effect on Air Force operations. Therefore, the Fairmont transition area designation proposal is being adopted without change.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Fairmont, Nebraska [New]

That airspace extending upward from 700 feet above the surface within a five (5) mile radius of the Fairmont, Nebraska, State Airfield (lat. 40°35'09"N, long. 97°34'10"W); within three (3) miles each side of the 187° bearing of the Fairmont, Nebraska NDB (lat. 40°35'23"N, long. 97°34'04"W) extending from the five (5) mile radius to 8.5 miles south of the NDB.

This amendment becomes effective at 0901 u.t.c. October 20, 1988.

Issued in Kansas City, Missouri, on June 2, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88-13283 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AAL-3]

Establishment of Amchitka Island, AK; Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Amchitka Island, AK, Control Zone and Transition Area. The United States Navy (USN) is activating the Amchitka Island Airport to support the installation and commissioning of the Relocatable Over the Horizon Radar (ROTHR) Facility. This action provides controlled airspace for departure and arrival aircraft in that terminal area.

EFFECTIVE DATE: 0901 UTC, August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On November 18, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Amchitka

Island, AK, Control Zone and Transition Area (52 FR 44130). The USN is activating the Amchitka Island Airport to support the installation and commissioning of the ROTHR Facility. An airport advisory service will be installed to meet criteria for control zone requirements. This action accommodates instrument procedures for arrival and departure aircraft from that terminal. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Amchitka Island, AK, Control Zone and Transition Area. The USN is activating the Amchitka Island Airport to support the installation and commissioning of the ROTHR Facility. This action provides controlled airspace for departure and arrival aircraft in that terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Amchitka Island, AK [New]

Within a 5-mile radius of Amchitka Island Airport (lat. 51°22'37"N., long. 179°15'57"E.).

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Amchitka Island, AK [New]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Amchitka Airport (lat. 51°22'37"N., long. 179°15'57"E.); within 2 miles each side of the 263° bearing from the Amchitka Island Airport extending from the 8.5-mile radius to 14 miles west; within 2 miles north of the 083° bearing and 2 miles south of the 077° bearing from the Amchitka Island Airport, extending from the 8.5-mile radius to 14 miles east.

Issued in Washington, DC, on June 3, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-13294 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 31

Fees for Audits of Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission recently proposed a revision to its method of calculating annual fees for audits of leverage transaction merchants. 53 FR 8932 (March 18, 1988). The fees would be set at 65% of the actual average annual cost of auditing each leverage transaction merchant over a three-year period. The Commission is now adopting the proposed formula and they FY 1988 fee schedule in final form as proposed.

EFFECTIVE DATE: August 15, 1988.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street NW., Washington DC 20581.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, 2033 K Street NW., Washington, DC 20581, telephone number (202) 254-8090.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Futures Trading Act of 1982 (Pub. L. 97-444, 96 Stat. 2294, 2326, January 11, 1983) amended section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission:

to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof the Commission.

The Conference Report accompanying the legislation (H.R. Rep. No. 964, 97th Cong. 2d Sess. 57 (1982)) states that "the conferees intend that the fee schedule addressed by the Conference substitute is to be strictly limited to Commission activities directly related to" eight enumerated Commission functions including "Commission audits of firms which are not members of contract markets or of a registered futures association."

On February 13, 1984, the Commission published interim final rules governing the regulation of leverage transactions. 49 FR 5498. In accordance with those rules, leverage transaction merchants, which are not members of contract markets or registered futures associations, are subject to the audit and financial review program of the Commission. The program includes full-scope and limit-scope financial and sales practice audits. The purpose of the financial audits is to ensure that leverage transaction merchants are complying with the Commission's financial regulations, including net capital, segregation and cover requirements. Sales practice audits include a detailed sample review of customer files for items such as confirmations, month-end statements, recision documents, a review of all advertising material and customer complaints, an examination of the registration status of the firm's sales staff, and a profile of the firm's personnel organization and business structure.

On May 16, 1984, the Commission promulgated fees for these audits of leverage transaction Merchants. 49 FR 20644. Under this regulation, leverage transaction merchants were charged an

FY 1984 audit fee of $8,000, which was, at the time, a conservative estimate of the future costs of auditing each of these firms. No fee was due in FY 1985. See 49 FR 20645. In FY 1986, the Commission maintained the fee for audit of leverage transaction merchants at $8,000, even though the actual costs during FY 1984 and FY 1985 indicated that the actual average cost of auditing the three leverage firms was $14,807. (See 51 FR 21149, June 11, 1986.) In FY 1987, the Commission reviewed the actual average costs for FY 1984, FY 1985 and FY 1986. The actual average cost per firm for those three years had increased to $15,461. However, because the program had only been in place since late FY 1984, the Commission determined to raise the fee by only $1,000 to $9,000. 52 FR 22834. As discussed below, a review of the costs of auditing the three leverage transaction merchants during FY 1985, FY 1986 and FY 1987 yields an actual average cost over the three year period of $30,705 per firm, which prompted the Comission to prepare an amendment to the formula for calculating the audit fee.

In response to the proposed rule the Commission received one comment letter which suggested that the leverage rules could be streamlined thereby reducing the time and costs associated with Commission audits of leverage transaction merchants. No specific comments were received regarding the change in the formula for calculating the fee.

The Commission has therefore determined to adopt the amended formula as proposed.

II. Computation of Fees

Under the final rule, fees are calculated based on the actual cost to the Commission of auditing each of the three leverage transaction merchants. This procedure is similar to that used to calculate annual audit fees for futures exchanges. In calculating the actual cost, the Commission takes into account Commission personnel costs, benefits and administrative costs.

The Commission first determines the personnel costs associated with each audit by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on audits of leverage transaction merchants and other projects under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A-76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead figure varies slightly from year to year as changes occur in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs. The overhead factors in the last three fiscal years are as follows: FY 1985—98%; FY 1986—104%; FY 1987—101%.

The following FY 1988 fee for each leverage transaction merchant is due 60 days after publication of this notice.

	Actual avg. costs by firm, FY 1985-87	FY 1988 fee
First Asset Corp	$10,821	$7,000
Monex International Ltd	54,280	35,300
International Precious Metals Corp	27,014	17,600
Total	92,115	59,900

III. Regulatory Flexibility Act

The final rules in this release affect leverage transaction merchants. Because of the minimum financial requirements for registration of leverage transaction merchants, the Commission does not consider these firms "small entities." Therefore, the requirements of the Regulatory Flexibility Act do not apply to leverage transaction merchants. Accordingly, the Chairman, on behalf of the Commission, certifies that the final fees assessed herein will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 31

Audits of leverage transaction merchants, Fees.

PART 31—LEVERAGE TRANSACTIONS

1. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 6c(c), 7, 7a, 12a(5) and 16a, 31 U.S.C. 9701.

Appendix B—[Amended]

2. Appendix B, paragraph (a) is revised to read as follows:

(a) The Commission shall compute the annual fee for each leverage transaction merchant by computing the actual average annual cost to the Commission of auditing that leverage transaction merchant over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest $100.

* * * * *

Issued in Washington, DC on June 9, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-13395 Filed 6-13-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket No. RM87-5-000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Issued June 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to address possible abuses in the relationship between interstate natural gas pipelines and their marketing to brokering entities. The rule contains standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services.

EFFECTIVE DATE: July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule to address possible abuses in the relationship between interstate natural gas pipelines and their marketing or brokering entity. The rule contains standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services.

II. Background

On November 14, 1986, the Commission issued its "Notice of

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Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines" (NOI).[1] The NOI was issued in response to several petitions for rulemaking[2] and several specific cases which had raised the issue of potential abuse of the pipeline-marketing affiliate relationship.[3] The NOI solicited comments on numerous general issues related to the Commission's legal authority to regulate pipeline marketing affiliate activity including the relevance of antitrust law, examples of existing abuses, and possible remedies. One hundred and seven commenters responded.

On June 2, 1987, the Commission issued a notice of proposed rulemaking on "Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines" (NOPR).[4] The Commission noted that the comments received in response to the NOI appeared to indicate that no industry-wide standards of conduct are being observed and that anticompetitive activities could be occurring. The Commission issued the NOPR to outline its preliminary assessment of what it considered to be prohibited practices by interstate pipelines with marketing affiliates. The Commission also proposed reporting requirements to provide data to reveal where anticompetitive practices are occurring.

In addition, the NOPR discussed remedies for violation of either the substantive standards or the reporting requirements contained in the NOPR.[5] Finally, the NOPR suggested several other approaches for dealing with pipeline-marketing affiliate abuses such as an open season for new transportation authorizations and released gas and a "dual approach" in which open access transportation pipelines could have marketing affiliates, but non-open access transportation pipelines could not have marketing affiliates.

The Commission received approximately eighty-two responses to the NOPR.[6] In addition, at the request of several commenters, the Commission held an Opportunity for Oral Presentation on October 20, 1987. Twenty-five persons presented their views at this hearing.[7] All of the presenters had previously submitted comments in response to the NOI or the NOPR.

III. Discussion of Comments

A. Need For and Coverage of the Rule

1. Need for the Rule

The pipeline commenters argue generally that the rule is unnecessary. They maintain that there have been relatively few cases of anticompetitive behavior in the relationship between pipelines and their marketing affiliates; that those "anecdotal" problem situations occurred mainly when pipelines were adjusting to the new conditions created by the Commission's Order No. 436 initiative; and that pipeline transactions with their affiliates were primarily designed to ease their take-or-pay burdens by developing new means for finding markets for their gas. These factors, they claim, indicate that abuses in the pipeline-marketing affiliate relationship are not widespread, and, in any case, are declining as pipelines adjust to new conditions and ease their take-or-pay burdens. As a result, the pipelines argue, there is no need for a general rule, and individual instances of abuse can be considered and resolved by the Enforcement Task Force or in individual formal Commission proceedings.

By contrast, several independent marketers and other commenters claim the proposed rule does not go far enough and that certain "structural" remedies are necessary. These remedies range from requiring an outright physical separation between the pipeline's staff and the staff of the marketing affiliate to prohibiting dealings between the pipeline and its affiliates altogether, a remedy referred to in the NOPR as "divorcement." One commenter argues that pipelines should be compelled at this time to divest themselves of their marketing affiliates.[8]

Having carefully considered these various comments, the Commission remains convinced of the need for a general rule to establish standards of conduct governing relationships between pipelines and their marketing affiliates, and to require sufficient information to allow the Commission and participants in natural gas markets to monitor those relationships and to prevent anticompetitive abuses.[9]

Given the limited information previously available to the Commission and the public, past instances of abuse were necessarily "anecdotal." Nevertheless, in light of evidence of no prior consensus within the industry about what pipeline marketing affiliate practices were improper, the specific instances of abuse actually adjudicated by the Commission, and the many allegations of unlawful behavior raised to the Commission in response to the NOI and presented to the Enforcement Task Force since last June, there are grounds for Commission concern and Commission action. Moreover, while some pipelines have suggested that continued informal resolution of disputes by the Enforcement Task Force (Task Force) could serve as a substitute for this rule, the Commission disagrees. In fact, the work of the Task Force would have been made far more difficult if not impossible had the Commission not enunciated, at least tentatively, standards of behavior that the Task Force could point to in its dealings with pipelines and complainants. Even some of the pipelines concede the value of having a clearly established code of conduct to guide behavior, rather than operating without established standards and running the risk that pipeline practices would later be found unlawfully discriminatory.

Further, while there has been a decline in recent months in the number of complaints of prohibited affiliate practices, this fact does not argue for dropping the rule. The Commission has no way of knowing whether this decline in complaints signals that the problem is a short-term one that will disappear by itself or whether unlawful practices have decreased because of the attention the Commission has focused on the issue through the NOPR and the Enforcement Task Force. For all these reasons, and the fact that pipelines continue to have economic incentives to show undue preferences toward their marketing affiliates, the Commission concludes that a rule is needed.

However, the Commission does not believe that it is necessary at this time to impose an open-ended information collection requirement. Given the possibility that market affiliate abuses may not be a serious long-term problem as transportation service becomes more competitive, the reporting requirement should be the subject of a review by the Commission after one year and an affirmative Commission decision by December 31, 1989, on whether to continue the reporting requirements as a necessary element of the regulatory framework. Accordingly, the Commission is adopting a sunset provision for the reporting requirement of December 31, 1989. This requirement should meet the Commission's need for more information and protect the public from the possible exercise by pipelines of residual market power over transportation service as the industry moves toward increased competition. The Commission is free to find, at the end of the reporting requirement period which expires December 31, 1989, that there is a need to extend the reporting requirement.

At the same time, the Commission finds no basis in the present record for adopting the more radical "structural" remedies of divorcement and divestiture. In view of the decline in the number of complaints, there is no reason at this time to doubt the effectiveness of the approach proposed in the NOPR. Structural remedies that could impede the ability of affiliated marketers to compete may reduce the choices available to buyers and sellers of gas for moving gas in the marketplace. Several of these have filed comments expressing their support for the continued availability of marketing services by pipeline affiliates. Such structural remedies should be adopted only where they are shown to be necessary to prevent more seriously anticompetitive practices. No such showing has been made on this record.[10] However, the Commission reserves the right to consider and impose such remedies as divorcement and divestiture in specific cases where the circumstances demonstrate they are required.

2. Applicability of the Rule

a. Persons subject to the rule. The Commission proposed standards of conduct and reporting requirements that would apply to any interstate natural gas pipeline that is affiliated with a marketing or brokering entity.[11] Several commenters ask the Commission to define marketing or brokering entity. Some commenters are concerned that the term "marketing affiliate" [12] is too broad. They argue the term can include affiliated gas producers, affiliated local distribution companies, and affiliates such as gathering companies, intrastate pipelines, Hinshaw pipelines, joint venture partnerships, and single purpose "project" affiliates since these entities market and broker natural gas.[13]

These commenters ask the Commission to exclude certain pipeline affiliates from the rule: Intrastate pipelines, gatherers, local distribution companies, and producers; [14] an affiliated production company that brokers gas through pipelines with which it is not affiliated, sells gas of other working interests in a joint venture, or sells gas for a separate affiliated production company; [15] and any affiliated pipeline company that can show a minimal business relationship with a gas marketing entity affiliated solely through common corporate ownership (common parent).[16]

Some commenters state that all pipeline affiliates—not just marketing affiliates—should be included in the rule because the potential for abuse of the pipeline-affiliate relationship is the same whether the gas being transported is owned and sold, or brokered, by the pipeline's marketing or producing affiliate.[17]

The Commission agrees with the commenters who state that the potential for abuse of the pipeline-affiliate relationship exists whether the gas being transported is owned, brokered, or sold by a pipeline's affiliate. The Commission is concerned with a transaction conducted on a pipeline that benefits the pipeline or the corporate group of which it is a part. In such a transaction, there is an economic incentive for the pipeline to favor the transaction. Any affiliate of a pipeline can conduct a transaction which benefits the pipeline or the corporate group of which it is a part. Thus, the Commission is not exempting any affiliate of a pipeline that markets or brokers gas, unless the pipeline does not conduct any transactions with the affiliate. The Commission believes this approach is preferable to defining marketing or brokering entity. A definition may be too restrictive to include all the different types of marketing and brokering arrangements.

There are commenters who believe the rules of conduct and reporting requirements in the NOPR should apply to additional entities such as large producers and their marketing affiliates [18] and to all marketing entities, no matter whether or with whom affiliated, so that costs of compliance with the rule will be the same for all.[19] Some commenters claim the rule should cover intrastate pipelines to prevent circumvention of its requirements [20] and interstate pipelines not affiliated with marketing entities to keep costs uniform for marketing entities and to apply tariff requirement equally.[21]

The Commission will not expand the rule to cover additional entities such as producers and pipelines without marketing affiliates or other entities such as intrastate pipelines. In some instances, the Commission does not have jurisdiction over the entities suggested to be covered by the rule, or has very limited jurisdiction. In any event, in the absence of evidence of abusive practices and in light of the availability of complaint procedures for aggrieved persons, the Commission does not believe extensions of the rule to apply to entities other than pipelines with marketing affiliates is warranted at this time.

Some commenters believe the proposed rule does apply to pipelines without marketing affiliates. They cite

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[1] 51 FR 41982 (Nov. 20, 1986), FERC Stats. & Regs. ¶ 35,523.

[2] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86-19-000, Minnesota Department of Public Service in Docket No. RM87-1-000, and Shell Gas Trading Company in Docket No. RM87-3-000.

[3] Northern Natural Gas Co., Docket No. RP82-71-001 *et al.*, 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., Docket No. RP86-67-001, 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., Docket No. RP86-105-000, 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipeline Co., Docket No. CP86-584-000, 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., Docket No. CP86-277-001 *et al.*, 36 FERC ¶ 61,275 (1986); Texas Gas Transmission Corp., Docket No. CP86-349-001, 36 FERC ¶ 62,274 (1986); Arkla Exploration Co., Docket No. CI86-376-000 *et al.*, 37 FERC ¶ 61,011 (1986); Southern Natural Gas Co., Docket No. CI86-371-000 *et al.*, 36 FERC ¶ 61,401 (1986); Tenneco Oil Co. *et al.*, Docket No. CI86-254-000 *et al.*, 36 FERC ¶ 61,389 (1986).

[4] 52 FR 21578 (June 8, 1987), FERC Stats. & Regs. ¶ 32,445.

[5] The Commission also established by separate announcement an Enforcement Task Force to process complaints and resolve disputes related to marketing affiliates.

[6] The list of the commenters is included in Appendix A.

[7] The list of the presenters is included in Appendix B.

[8] Yankee Gas Company, Yankee Resources, Inc., and Yankee Pipeline Company (Yankee Gas).

[9] According to the trade publication Inside FERC, April 25, 1988, nine major pipelines and pipeline holding companies reported that volumes of gas equal to 33 percent of their transportation volumes were moved or sold by their marketing affiliates in 1987.

[10] However, see discussion below of the special problems raised by selective discounting, pp. 23–28.

[11] To determine affiliation, the definition in section 2(27) of the Natural Gas Policy Act of 1978 was to be applied. Section 2(27) provides "[t]he term 'affiliate,' when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person." The NOPR also stated a 10 percent voting interest shall be a prima facie indici[um] of sufficient "control" to satisfy the NGPA definition of "affiliate." 52 FR at 21505.

[12] Proposed §§ 161.1 and 250.16(a).

[13] *See e.g.*, Affiliated Gas Producers (AGP), Eastern Kentucky Production Company (Eastern Kentucky), Arkla, Inc. (Arkla), Northwest Pipeline Corporation (Northwest), Tennessee Gas Pipeline Company (Tennessee), and Tenngasco Corporation (Tenngasco).

[14] *See e.g.*, Tenngasco, AGP, Eastern Kentucky, Arkla, Consolidated Gas Transmission Corporation (Consolidated Gas), and Indicated Producers (IP).

[15] Eastern Kentucky.

[16] ANR Pipeline Company (ANR).

[17] *See e.g.*, American Paper Institute, Inc. (API), United Gas Pipe Line Company (United), and Ohio Gas Marketing Corporation (Ohio Gas Marketing).

[18] United.

[19] Williams Natural Gas Company (Williams).

[20] Producer Associations and United.

[21] United and Natural Gas Clearinghouse, Inc. (Natural Gas Clearinghouse).

the tariff-related standards, the nontariff standards relating to confirmation of sales of released gas, a log of contacts with shippers, and written procedures to show how prohibited practices have been eliminated; and the reporting requirements as applicable or potentially applicable to interstate pipelines whether or not they have marketing affiliates.[23]

The rule does not apply to pipelines without marketing affiliates. The Commission's proposed rule states that it would apply to any interstate pipeline that is affiliated with a marketing or brokering entity.[24] The Commission has retained this approach.

Some commenters ask the Commission to exempt certain pipelines with marketing affiliates from the requirements of the rule. These commenters cite instances in which they believe there is no possibility for abuse of a pipeline-marketing affiliate relationship, such as where the pipeline is minor,[25] user-owned,[26] or does not provide transportation services to its marketing affiliates.[27] The commenters argue that in these situations there is either not enough transportation capacity involved to have competitive significance or there is no arrangement for transportation between the pipeline and the affiliate. International Paper Company suggests that for user-owned pipelines the rule should apply only if less than half of the throughput of the pipeline is consumed by the pipeline owner or its affiliates.

The Commission agrees with the comments that there is no possibility for abuse of the pipeline-marketing affiliate relationship where the pipeline and marketing affiliate do not conduct any transactions with each other. The Commission, therefore, is exempting pipelines that have marketing or brokering entities if these pipelines do not conduct any transactions with their affiliated marketing or brokering entities. Nevertheless, the Commission emphasizes that any exempted pipelines must immediately come into compliance with these regulations as soon as they conduct any transaction with a marketing affiliate.

b. Test for affiliation. The Commission proposed a test of a 10 percent voting interest as a *prima facie* indication of sufficient control to satisfy the definition of affiliation.[28] Some commenters state that the 10 percent test for affiliation is too broad. In their view, this test would unintentionally include minority investment interests that are not controlling. Instead they propose there should be a presumption of control if the ownership interest is greater than 50 percent [29] or if there is at least 51 percent ownership by a common parent.[30]

The Commission believes a 10 percent voting interest may create a great enough financial interest to influence a pipeline's transactions with a marketing affiliate. The Commission concludes, however, that a strictly numerical test may be too restrictive to encompass the many different kinds of corporate arrangements that result in common financial interests. It is thus adopting a definition of control which emphasizes the authority to direct or cause the direction of the management or policies of a business entity rather than a percentage of ownership or voting rights. A 10 percent voting interest, however, creates a rebuttable presumption of control.

The Commission will also examine on a case by case basis situations in which a pipeline and a marketer are not technically affiliated but the pipeline has a beneficial interest in the marketer or a third party has beneficial interests in both a marketer and a pipeline, in keeping with the decision in *Midwest Gas Users Association v. FERC* [31] in which the court emphasized that entities may not be dealing at arm's length if their economic interests coincide.[32] If the economic interests of a pipeline and a marketer do coincide even though they are not technically affiliated, then the Commission believes the pipeline may give the marketer preferential treatment. In such a case, the Commission may apply the requirements of the rule in an individual proceeding or other provisions of the statutes and regulations it administers, as appropriate.

c. Transactions covered by the rule. The Commission proposed the provisions of the rule should apply to marketing affiliates, and, in some instances, to shippers or persons requesting transportation service. Producer Associations urge that the rule apply to all transactions engaged in by a pipeline and its marketing affiliates whether the affiliates are acting as shippers, brokers, or in any other capacity.

The Commission agrees that the rule should cover all transactions engaged in by pipeline marketing affiliates, no matter what their role. The possibility of preferential treatment exists whether a marketing affiliate is involved in a transaction as a shipper or a broker or in some other role. The final rule therefore covers "transactions" between pipelines and marketing affiliates.

B. Proposals Adopted

1. "First sale" Status For Pipeline Marketing Affiliate Sales

The Commission proposed retaining the "first sale" status of sales by pipeline marketing affiliates,[33] codified in § 270.203(c) of the Commission's regulations.[34] As a result of such status, affiliate sales of certain NGPA categories of gas are not subject to Natural Gas Act (NGA) jurisdiction.[35] If the Commission were to treat these sales not as a "first sale," it would have to review the affiliate's charge for these sales under section 4 of the NGA. The Commission proposed to retain "first sale" status for affiliate sales because it believed it could prevent affiliate abuses by regulating the pipelines and would not need to regulate marketing affiliates. Moreover, maintaining the "first sale" status of sales by marketing affiliates prevents possible circumvention of NGPA maximum lawful prices by pipelines.

The majority of the commenters who addressed this issue agree with the Commission's proposal to retain "first sale" status for pipeline marketing affiliates. Some commenters argue that without freedom from price regulation, marketing affiliates could not compete, that affiliates promote competition, and should have the right to compete on an equal footing with non-affiliated marketers.[36]

Minnesota Department of Public Service believes that marketing affiliate sales should not receive "first sale" status and those sales should be regulated. This commenter argues that the nonregulation of affiliate sales allows a pipeline to spin off its merchant function completely and to charge unjust and unreasonable agency rates or fees for its services. Lastly, it allows a pipeline to segment the market to the advantage of fuel-switchable customers and the detriment of captive customers by releasing low-cost gas reserves through an affiliate to serve its fuel-switchable customers. When this occurs, the pipeline's captive customers lose their long-term reserves and are denied access to a meaningful substitute for the firm, long-term, and low cost supplies.[36]

The Commission confirms its earlier decision not to regulate marketing affiliates' sales. As noted, there is insufficient basis in the record for doubting the effectiveness of the general approach proposed in the NOPR for dealing with pipeline marketing affiliate abuses, and there is no basis for adopting an approach that could impair the ability of marketing affiliates to compete. The Commission believes that all marketers should be allowed to compete on an equal footing.[37] This way there will be more competitors in the marketplace and both producers and consumers will have the benefit of greater options in terms of supply and rates. The Commission appreciates the concerns of the commenters, but believes that it can prevent pipeline marketing affiliate abuses through the standards of conduct and the information collection requirements promulgated in this rulemaking and through its enforcement policies.

2. Tariff-related Standards of Conduct

The Commission proposed certain standards of conduct related to tariffs.[38] Section 161.2 of the proposed rule required pipelines with marketing affiliates to implement all tariff provisions in a uniform manner; enforce tariff conditions strictly as to marketing affiliates, as well as to non-affiliates; refrain from providing marketing affiliates with a higher scheduling and curtailment priority for less essential service that would ordinarily have a lower priority; specify in their tariffs what information and format constitute a valid request for transportation service by shippers; specify in their tariffs a specific period of time or specific milestones for processing requests and process all pending requests in accordance with these specifications; and refile their tariffs to meet these standards.

a. Uniform enforcement of tariffs and strict enforcement of tariff conditions. The Commission proposed that an interstate pipeline with a marketing affiliate implement all tariff provisions in a uniform manner and strictly enforce any conditions that are required by a tariff for marketing affiliates as well as nonaffiliated marketers. (Proposed § 161.2 (a) and (b).) Several commenters argue that pipelines should have discretion in applying tariff provisions.[39] Tennessee claims it is industry practice to allow minor variations in the implementation of tariff provisions in order to provide participants, both affiliated and non-affiliated, a degree of flexibility.[40] For example, there might be slight variations in delivery pressure, measurement techniques, or quality specifications. Tennessee asks the Commission to provide only that pipelines implement tariff provisions uniformly for all shippers and others using their systems. Several commenters believe the purpose of the provision should be to ensure that tariff requirements are applied in a nondiscriminatory manner.[41]

In general, the Commission does not agree that a pipeline should have discretion in applying tariff provisions unless there is discretion in the provision itself or in Commission regulations. The Commission intended the proposed rule requiring the uniform implementation of tariff provisions (proposed § 161.2(a)) to require pipelines to treat similarly situated shippers and others using their system in a similar manner when a pipeline has discretion in the application of a tariff provision. If a pipeline wants to waive a tariff provision, it must apply to the Commission for permission to do so.

NIPSCO maintains it is unrealistic and uneconomical to impose the same obligations on marketing affiliates as on independent entities to establish credit worthiness or make prepayment sufficient to guarantee viability. In addition, this commenter claims a pipeline cannot treat affiliates and nonaffiliates with the same flexibility with regard to receipt and delivery points because the receipt and delivery points of the affiliate are already familiar to the pipeline and better match the delivery requirements of the pipeline. The commenter asks the Commission to design shortcut processing requirements for affiliates rather than condemning the economies inherent in the pipeline/affiliate situation.

The Commission disagrees with the commenter that it is desirable to establish shortcut procedures for pipeline marketing affiliates. The Commission intends this rule generally to create equivalent conditions for all marketers, both affiliates and nonaffiliates. Marketing affiliates must satisfy pipeline tariff requirements for requesting transportation in the same manner as nonaffiliated marketers so that all marketers face the same requirements in making transportation arrangements.

Several commenters claim pipelines have selectively enforced penalty provisions in tariffs. The Maryland People's Counsel argues pipeline tariffs should provide that marketing affiliates will be charged the same penalties and fees that are charged to nonaffiliates. Two commenters address pipeline discrimination in favor of their affiliates with regard to balancing penalties. They state penalty payments made by an affiliate are an intracorporate transfer of funds that has no overall impact on corporate profits.[42] Uniform enforcement of penalty provisions means that the total corporate entity of which the pipeline and the affiliate are a part loses no revenue when the affiliate pays a penalty and is enriched by the amount of nonaffiliate penalties. Therefore, these commenters argue pipelines should not be allowed to retain penalty payments made by an

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[23] Williston Basin Interstate Pipeline Company (Williston Basin) and American Gas Association (AGA).

[24] Proposed §§ 161.1 and 250.16(a).

[25] Iowa Public Service Company (Iowa Public Service).

[26] International Paper Company. Such pipelines transport on behalf of themselves or industrial entities with which they are affiliated.

[27] Arkla.

[28] For purposes of securities laws, a 10 percent voting interest in a public-utility company establishes the presumption that a company is a holding company if it controls or owns the interest or that it is a subsidiary if the interest is held by a holding company. 15 U.S.C. 79b (7) and (8).

[29] Western Gas Marketing Ltd. (Western Gas Marketing).

[30] ANR.

[31] Midwest Gas Users Association v. FERC, No. 86-1140 (D.C. Cir. Nov. 17, 1987).

[32] Slip op. at 25–26. The court enjoined the Commission to examine the "significant and determinative economic fact[s]" of the entities involved.

[33] 52 FR at 21585–21584.

[34] 18 CFR 270.203(c) (1987). That section provides:

(c) *Circumvention rule for certain sales by affiliates.* Any sale by an affiliate of an interstate pipeline, intrastate pipeline, or local distribution company, * * * is that affiliate's first sale under the NGPA unless the Commission, on application, determines not to treat such sales as a first sale.

[35] The categories of gas for which first sales are not subject to the Natural Gas Act are those defined in NGPA sections 102(c), 103(c), and 107(c) (1)–(4), 15 U.S.C. 3312(c), 3313(c), and 3317(c) (1)–(4) (1982).

[36] For example, Texaco, The City of Willcox, Arizona & Arizona Electric Power Cooperative, Inc. (The City of Willcox & AEPCO), and PSI, Inc. (PSI).

[36] The Maryland People's Counsel believes that only a non-Order 436 pipeline can segment the market in this manner. It states that the parent corporation will direct the lowest-cost gas purchases to the marketing affiliate for sales to the competitive market, leaving the higher priced gas to the regulated pipeline for its system supply.

[37] However, the Commission's desire to have independent marketers and pipeline affiliates compete on an equal footing has resulted in a decision to limit to pipelines holding blanket certificates the authority to grant selective discounts to a marketing affiliate. *See* discussion below, pp. 23–26.

[38] Proposed § 161.2, 52 FR at 21585–21586.

[39] *See e.g.*, Northern Indiana Public Service Company (NIPSCO).

[40] *See also* Hudson Gas Systems, Inc. (Hudson) ("Equal or comparable application of the tariff is the objective, not necessarily 'strict enforcement' * * * ") and remarks of City of Willcox, & AEPCO, Oral Presentation, Oct. 20, 1987, Transcript at 162–163. This commenter states penalties were waived by a pipeline when a generating unit became inoperational. They state the rules should permit waivers of tariff rules as long as it is done fairly.

[41] *See e.g.*, Williams.

[42] Ohio Gas Marketing.

affiliate.[43] They suggest that penalties and fees be flowed back to customers via Account 191[44] and that balancing penalties be replaced by charges based on the costs a pipeline incurs due to imbalances.[45]

The Commission agrees with the commenters that penalties and fees must be enforced against marketing affiliates as well as against nonaffiliates. The Commission is requiring the strict enforcement of tariff conditions where there is no discretion in their application. The Commission believes fee and penalty provisions come within this requirement.

With regard to a penalty payment by a marketing affiliate, the Commission agrees with the commenters that such a payment is an intracorporate transfer of funds. The Commission examines penalty payments in the course of a pipeline's rate proceedings. If the Commission determines the circumstances warrant such treatment, the penalties will be credited to the pipeline's cost of service which, in turn, decreases the rates of all pipeline customers. The Commission believes the suggestion to flow back marketing affiliate penalties and fees to the customers may have merit. The Commission may consider such an approach on a case-by-case basis, in rate proceedings for pipelines which conduct transactions with their marketing affiliates, or possibly in another generic proceeding.

Several commenters express concern over the use of selective discounting by pipelines to favor their marketing affiliates. Consolidated Edison Company of New York (Consolidated Edison) asks the Commission to make it clear the requirement for uniform application of tariff provisions applies to discounting or to adopt a separate provision dealing with selective discounting.[46] Hadson believes pipelines should be prohibited from selective discounting in favor of any unregulated affiliate in order to prevent abuses such as affiliates making below cost sales of gas.[47]

Selective discounting is permitted under the Commission's regulations for pipelines transporting gas under Part 284 of the Commission's regulations.[48] Selective discounting was approved by the court in *Associated Gas Distributors*.[49]

While the Commission has approved the grant of selective discounts by pipelines, subject to certain safeguards, it has recognized that selective discounts for pipeline affiliates have the potential for giving rise to undue discrimination. To prevent such discrimination, the Commission has limited selective discounting to pipelines that offer open access transportation under Part 284, and has required pipelines to file with the Commission any discounts offered to an affiliate, allowing interested persons to challenge such discounts. We continue to believe that competition in transportation services, reporting requirements, the additional safeguards adopted in the present rule, and active enforcement efforts will deter anticompetitive behavior by pipelines holding blanket certificates. Such pipelines are open to all shippers and must remain open until the Commission grants an abandonment. They thus make a long-term commitment to nondiscriminatory transportation to all shippers.

Pipelines operating only under section 311 offer no comparable assurance that the discipline of competition will prevent the pipelines from exercising the opportunities for discrimination provided by selective discounting to an affiliate. Section 311 pipelines are not open to all shippers on a nondiscriminatory basis; they provide service only on behalf of local distribution companies and intrastate pipelines. More important, since pipelines may cease section 311 transportation without Commission approval, they make no long term commitment to undertake even this limited form of transportation for others. Therefore, with section 311 operations there is limited competition for discounts, limited availability of discounts, and limited awareness by marketers of the discounts available since only some shippers may receive those discounts. Further, since section 311 pipelines make no long term commitment to provide open transportation, they have an opportunity to manipulate the use of selective discounting in an unduly preferential manner. For example, pipelines could give a discount to an affiliate while they were undertaking section 311(a)(1) transportation and then stop transporting under section 311(a)(1) so they would not have to make comparable discounts to non-affiliates.

Thus, since the transportation provided by section 311 pipelines is only partially policed by competition and the potential for abuse of selective discounting is significant, the Commission is conditioning selective discounting on a pipeline's acceptance of a blanket certificate under Part 284 of the Commission's regulations.[50] If a pipeline has not accepted a blanket certificate under Part 284 it may not charge, in a transaction involving its marketing affiliate, a rate that is lower than the highest rate it charges in any transaction not involving its marketing affiliate.

b. Scheduling and curtailment priority. The Commission proposed that tariffs of pipelines with marketing affiliates must not provide marketing affiliates with a higher scheduling and curtailment priority for "less essential service" that would ordinarily have a lower priority.[51] (Proposed § 161.2(c).) Several commenters ask the Commission to delete or revise this section. These commenters ask the Commission to define the term "less essential service." They ask how priorities are to be determined and whether the section distinguishes only between firm and interruptible service or between end uses as well.[52]

Entrade Corporation (Entrade) claims that pipelines have blatantly favored their marketing affiliates in the past by giving them higher scheduling and curtailment priority. This commenter believes the Commission must promulgate a regulation to prevent a reversion to these practices. ANR suggests that the Commission require pipelines to file tariff provisions specifying the manner in which scheduling and curtailment will be determined by the pipeline and prohibit pipelines from giving scheduling or curtailment priority for marketing affiliates contrary to the priorities granted in the tariff.

Pipelines are prohibited from giving their marketing affiliates scheduling and curtailment priorities simply because they are affiliated entities. In this rule the Commission is requiring a pipeline to process requests for transportation in the order received and to process similar requests in a similar manner. A pipeline is prohibited from giving a marketing affiliate priority in scheduling both by this rule and the rules and orders under Order No. 436 and Order No. 500 which were promulgated and issued pursuant to sections 4 and 5 of the NGA, and section 311(a)(1) of the NGPA. In like manner, a pipeline is prohibited by this rule and other statutes and regulations administered by the Commission from favoring marketing affiliates when it imposes curtailments.

The Commission believes it is desirable to promulgate a regulation to ensure that marketing affiliates are not given scheduling and curtailment priorities solely on account of their affiliation with a pipeline. The Commission is eliminating the phrase "less essential service" because scheduling and curtailment are not dependent on the essentiality of the service.

c. Valid transportation request. The Commission proposed that tariff provisions of pipelines with marketing affiliates must specify what information and format constitute a valid request for transportation service by shippers. (Proposed § 161.2(d).)

El Paso Natural Gas Company (El Paso) supports the proposal, stating the requirement is already part of its tariff which went into effect on Commission approval of its Order No. 436 settlement. Texas Gas Transmission Corporation (Texas Gas) believes that information which is within the knowledge of the shipper or supplier that is required in the proposed transportation request log should become part of the information necessary to constitute a valid request. Otherwise, this commenter believes a pipeline would be under threat of severe penalties for failing to report information which shippers are not required to submit. Finally, Minnesota asks the Commission to issue standard procedures for requesting service on pipelines rather than leaving the procedures up to each individual pipeline.

As is discussed more fully below, the Commission is requiring the information in the transportation request log to be filed only for transactions in which affiliated marketers are involved. The Commission believes information in the log is essential for monitoring a pipeline's conduct with regard to its marketing affiliates. Accordingly, the Commission is requiring a valid transportation request to include items of information within the knowledge of the shipper when a marketing affiliate is involved in a transaction. These items include the affiliation of the requester with the pipeline, the pipeline's affiliation with the person to be provided transportation service, the supplier's affiliation with the pipeline, the producing area of the source of the gas, the state of the end user, and whether the gas is being sold at a loss. A pipeline will thus have the information that the rule requires to be filed with the Commission.

Although the Commission does not believe that this Final Rule should establish only one standard procedure that customers would use in order to make a valid transportation request, the Commission notes that it has established general requirements in individual pipeline cases under Order No. 436. Those general requirements have been intended, in part, to respond to concerns similar to those of Minnesota. The Commission declines, therefore, to adopt a new uniform procedure at this time in the Final Rule.

d. Proposed processing of pending requests according to time periods or milestones. This section, proposed § 161.2(e), is included in the discussion below of proposed § 161.3(a), disposition of transportation requests.

e. Proposed refiling of tariffs. The Commission proposed requiring pipelines to refile their tariffs so that all tariffs are implemented in a uniform manner, strictly enforced, contain no higher scheduling and curtailment priority for marketing affiliates, state what constitutes a valid transportation request, and provide criteria for the processing of requests. (Proposed § 161.2(f).)

Several commenters object to the refiling of tariffs. The City of Willcox & AEPCO states that under section 5(a) of the NGA, the Commission cannot require the refiling of tariffs unless and until it has found specific provisions in the tariffs to be unjust and unreasonable. The commenter believes that when the Commission has approved Order No. 436 tariffs it has found them to be just and reasonable. Other objections are that it is unreasonable to require refiling within 30 days and unnecessary if the pipeline's tariff currently includes the proposed tariff-related standards of conduct.[53] Mountain Fuel Resources, Inc. and Questar Energy (Mountain Fuel) ask whether it is necessary to refile the entire tariff and whether, upon refiling, Commission approval will shield pipelines from complaints based on the form of the tariff.

In this rule, the Commission is requiring the pipeline to file certain tariff provisions. These provisions reflect practices subject to the filing requirements of NGA section 4(c).[54] The Commission also notes that it has required pipelines, because of concern about undue discrimination and preference, since September 1986, to maintain transportation logs and file transportation policies as a condition for approval for approvals under section 7(c) of the NGA, and courts have approved this requirement.[55]

A pipeline that already has the required tariff provisions may file its existing provisions.[56] The Commission will waive fees for those restating tariff provisions. However, if a pipeline does not have the required tariff provisions, it must file new provisions. The Commission will review and evaluate the pipeline's tariff provisions to ensure that they are just and reasonable.[57]

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[43] Maryland People's Counsel and Ohio Gas Marketing.

[44] Maryland People's Counsel.

[45] Ohio Gas Marketing.

[46] Consolidated states the cost of transportation rate discounts to the pipeline is inconsequential by comparison with the opportunity for unregulated profits if discounting to an affiliate drives out competing suppliers and allows the affiliate to become the dominant supplier in the pipeline's market.

[47] Hadson cites a portion of the submission of Transco Gas Company on the NOI in this docket (Exhibit 53 to Appendix A of Transco's NOI comments). Hadson states this submission indicates Transco's unregulated affiliate TEMCO sold gas below its costs for five out of the seven off-peak months from April to October of 1986.

[48] 18 CFR 284.7(d)(5) (1987). See *also* new § 250.16(b)(6)(xix) of this rule, relating to selective discounting reporting requirements.

[49] Associated Gas Distributors v. FERC, 824 F.2d 981, 1008, 1010 (D.C. Cir. 1987). The court held generally that discounting is not unduly discriminatory and, in particular, that discounts in favor of a pipeline's gas trading affiliate are not *per se* unduly discriminatory. The court upheld selective discounting as long as its application conforms to sections 4 and 5 of the NGA, 15 U.S.C. 717c and 717d. The court stated that if a pipeline gives its gas trading affiliate discounts identical to those given to unaffiliated parties in identical circumstances, the discount would not be unlawful merely on account of the affiliation. *See also* Order No. 436, FERC Statutes and Regulations, Regulations Preambles 1982–1985 ¶ 30,665 at 31,548 ("[A] pipeline may not offer a discount to its affiliate simply because of the affiliation. This would be a violation of the prohibition against undue discrimination."); and 31,511 ("[T]he Commission finds that transportation tariffs, terms and conditions, including but not limited to prices, minimum volume or operational requirements, or schedules, that are designed to favor pipeline affiliates over non-affiliated shippers are preferential or unduly discriminatory practices under this rule.").

[50] 18 CFR Part 284 (1987).

[51] Proposed 161.2(c), 52 FR at 21566.

[52] Iowa-Illinois Gas & Electric Company (Iowa-Illinois), NIPSCO, API, and Hadson.

[53] Enron Interstate Pipelines (Enron) and Kentucky West Virginia Gas Company (Kentucky West).

[54] *See* Michigan Wisconsin Pipeline Company, Docket No. RP80-9, Opinion 471, 34 FPC 821, 826 (1965) (Commission ordered pipeline to make its lateral line policy part of its tariff subject to approval of the Commission.

[55] Transcontinental Gas Pipe Line Corporation, 39 FERC ¶ 61,028, 61,082–61,083 (1987), *affirmed sub nom.* New Jersey Zinc Co. v. FERC, Nos. 87–1202, *et al.* (April 15, 1988).

[56] *See* new § 250.16(b)(5). A pipeline must file tariff provisions that contain a complete list of personnel and facilities shared by the pipeline and an affiliated marketer or brokering company; the specific information and format required from a shipper for a valid request for transportation service, including the items required in the transportation request log for transactions involving an affiliated marketer; procedures used to address and resolve complaints by shippers; and procedures used to inform shippers of the availability and pricing of transportation services and the availability of pipeline capacity.

[57] *See* Florida Power & Light Co. v. FERC, 660 F.2d 668, 676–677 (5th Cir. 1981), *cert. denied sub nomine* Fort Pierce Utilities Authority v. FERC, 459 U.S. 1156 (1983). This case involved electric rate tariffs under the Federal Power Act, but, as noted by the court, provisions of the NGA are to be read *in pari materia* with analogous provisions of the FPA. *Id.* at 677 n.23. The court noted that a practice made a part

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Once approved by the Commission, these provisions will constitute terms and conditions upon which a pipeline will provide service.[58]

The tariff provisions to be filed contain information concerning a pipeline's personnel and procedures. To the extent that a pipeline does not have such tariff provisions or its tariff provisions conflict with those required by this rule, the Commission finds its tariffs are unjust and unreasonable. The absence of such tariff provisions would frustrate the regulatory framework adopted in the Final Rule and would not provide the protection of nonaffiliated marketers and deterrence against abuse, discrimination, and preference the Commission deems necessary to protect the public interest.

The Commission is requiring that the tariff filings required in § 250.16 (b)(1) through (b)(4) of the rule be updated quarterly if there are changes.

3. *Nontariff-related Standards*

a. *Proposed disposition of transportation requests and processing of requests.* The Commission proposed to require interstate pipelines with marketing affiliates to process all pending requests within a specific period of time or in accordance with specific milestones, to be specified in advance in their tariff. (Proposed § 161.2(e).) The Commission also proposed to prohibit such pipelines from disposing of transportation requests by affiliates or providing transportation service in response to such requests before disposing of valid pending transportation requests by nonaffiliates which were received by the pipeline prior to the requests of the affiliates. (Proposed § 161.3(a).)

Several commenters state requests cannot be finally resolved in the same order they are received because requests vary in completeness, complexity, capacity problems, the type of gas involved, and the need for facilities. There are also differences between requests for firm and interruptible transportation. These differences require different processing times.[59] They believe the rule would result in the logjamming of requests. That is, an affiliated marketer (and others) could be prevented from implementing even routine transactions if a pipeline received a request from a nonaffiliate requiring study of new facilities, coordination with an upstream or downstream pipeline, resolution of capacity problems, or the receipt of additional information to complete the request.[60]

Other commenters state processing of requests starts in the order received. Disposition of the requests, however, will vary depending on the nature of the request.[61]

The Commission agrees the proposal would discourage efficient processing of transportation requests.[62] The Commission recognizes, as stated by some commenters, that different requests present different degrees of complexity and that they may not be resolved in the order received due to differences in complexity. The Commission expects, however, that all requests that are similar will be processed in a similar manner, such as in terms of the commencement of processing and the time taken for processing. The Commission is requiring a pipeline to process all similar requests for transportation in the same manner.[63]

The Commission intended proposed §§ 161.3(a) and 161.2(e) to ensure that comparable requests for transportation service are processed in turn. The Commission believes comparable requests must be processed in the order received to achieve fairness in the treatment of marketers. In addition, to achieve fairness, similar requests must be resolved in the order they are received. The Commission believes it would be unduly discriminatory for a pipeline to process and resolve a request from an affiliate that was similar in nature to a request from a nonaffiliate when the request from the nonaffiliate was received first, especially when the request from the affiliate and the request from the non-affiliate involve the same or overlapping service. The Commission is thus prohibiting a pipeline from giving its marketing affiliate preference in transactions that include scheduling, transportation, storage, or curtailment priority through a tariff provision or otherwise.[64]

b. Prohibition against revealing confidential information by a pipeline to its marketing affiliate. The rule contains several provisions dealing with a pipeline's treatment of information. To summarize, the Commission is adopting the approach in the rule that a pipeline is prohibited from giving its marketing affiliate any information the pipeline receives from a nonaffiliated shipper to secure transportation service. A pipeline must, however, provide simultaneously to all potential shippers any information related to transportation, sales, or marketing that it gives to a marketing affiliate. A pipeline must also, on request, identify any information relating to released gas that is mitigating the pipeline's take-or-pay liability if it has provided this information to a marketing affiliate. These specific provisions and related comments are discussed below.

The Commission proposed to prohibit interstate pipelines from revealing to their affiliates any confidential information provided by nonaffiliated shippers to secure service. In addition, the proposed rule would have prohibited pipelines from revealing their own confidential information to their affiliates unless they communicated the information contemporaneously to all shippers. (Proposed § 161.3(b).)

The U.S. Department of Justice argues that much of the information provided to a pipeline by a nonaffiliated shipper to obtain transportation service is competitively sensitive and that there is no need for a pipeline to communicate any information provided by competing shippers to its affiliate. The Department also objects to the proposed requirement in the NOPR that all pipelines with a marketing affiliate maintain a daily log recording detailed information on transportation requests involving both affiliates and nonaffiliates.

The Commission agrees that there is no need for a pipeline to disclose any information to a marketing affiliate that is filed with it by a nonaffiliated entity. Moreover, the Commission believes that this competitively sensitive information must not be disclosed by a pipeline to its affiliate. The Commission is thus prohibiting a pipeline from disclosing any information to an affiliate which it receives from a nonaffiliated shipper to secure transportation service.[65] If this prohibition is not effective, the Commission will consider taking further steps to ensure the confidentiality of nonaffiliated shipper submissions to pipelines consistent with its statutory authority.

Similarly, in light of the competitive concerns expressed by the Department of Justice, the Commission is not requiring information concerning transportation requests by nonaffiliated marketers to be filed or otherwise made available to the public except to parties in Commission proceedings, subject to the discovery rules, so that this information will not be disclosed to a marketing affiliate as part of a transportation request log.

The prohibition against revealing information provided by nonaffiliated shippers may be achieved through organizational separation. However, the Commission disagrees with the comments that organizational separation is the only possible means of complying with the requirement not to reveal nonaffiliated shipper information. The Commission believes that other arrangements may be possible, such as segmenting the processing of transportation requests or identifying requests solely by a number rather than by name, which would have the effect of separating knowledge of these requests even though employees might work for both pipeline and its marketing affiliate.

Some commenters want the rule expanded to prohibit a pipeline from giving its affiliate information on available gas supplies, potential customers, and available pipeline capacity whether it is considered confidential or not.[66]

Several commenters argue that pipelines should be barred from sharing transportation-related information with the affiliates (including transportation access and capacity) but should be able to give its marketing affiliate market and supply information. Supply and market intelligence, they reason, can be gained by competing marketers for themselves. Other kinds of confidential business information, such as expansion plans for an affiliate and long range capital investment plans, are types of information a pipeline would normally share with an affiliate. These commenters believe sharing of these kinds of information should not be prohibited.[67]

United Gas argues the proposed rule would also prohibit a marketing affiliate from performing an essential function in the take-or-pay negotiating process.[68] Producers only give take-or-pay credit for gas which is sold.[69] It is thus essential to the pipeline that arrangements are made for the sale of the gas. In addition, negotiations for the release of gas are confidential. United Gas argues it is thus impractical to require disclosure of the information provided by the producer to the pipeline during the negotiation process to nonaffiliated marketers. These commenters believe that the prohibition against sharing confidential information with marketing affiliates unless shared with all shippers contemporaneously should not apply to information supplied by producers in negotiations for take-or-pay relief.

The Commission agrees that a pipeline should be prohibited from sharing transportation, sales, or marketing information with a marketing affiliate unless it makes the information available at the same time to all potential shippers. The Commission believes that information concerning transportation must be available to all who use a pipeline and that to allow otherwise would be to allow a pipeline to use its market power over transportation to the advantage of itself and its corporate affiliates. A pipeline's marketing and sales information is a product of its past market power over transportation. Sharing such information with a marketing affiliate at this time would therefore represent an undue preference by the pipeline toward the affiliate. This information must, therefore, be made available to all shippers if it is to be made available at all in order to counteract the past and present effects of pipeline market power over transportation. The Commission is thus requiring a pipeline to provide information related to transportation, sales, or marketing contemporaneously to all potential shippers to the extent it provides such information to a marketing affiliate.[70]

The Commission does not believe the rule will affect take-or-pay negotiations entered into by a pipeline. Several pipeline commenters state that the producer decides to whom it will sell its gas and who will market its gas. At the present time, producers are aware that both marketing affiliates and independent marketers are available and that they can provide services with regard to released gas. The Commission notes that there are several pipeline commenters who either would or already do provide to those requesting it a list of sources of released gas.[71] In addition, two pipelines informed the Commission in response to an inquiry at the Opportunity for Oral Presentation on October 20, 1987, that nonaffiliated marketers have arranged for transportation of gas that provides the pipeline with take-or-pay relief on its system.[72] This is an indication that released gas can be and is being marketed and transported for nonaffiliated marketers. Accordingly, requiring information concerning released gas to be made available to all marketers should not disrupt take-or-pay negotiations.

c. Prohibition against revealing information filed with transportation requests. The Commission proposed to prohibit pipelines with marketing affiliates from making information filed with transporation requests available to marketing affiliate personnel, any other pipeline, or any other shipper, unless the information were made available on a not unduly discriminatory basis to all potential shippers. (Proposed § 161.3(c).)

Several commenters object to the proposal. They argue that pipelines should not be able to make this information public. Instead, they should be prohibited from disclosing any information filed with a transportation request.[73] The City of Willcox & AEPCO

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of a filed tariff is subject to the Commission's right to review such practice and to pass on changes within it. *Id.* at 677.

[58] Michigan Wisconsin Pipe Line Company, 34 FPC at [illegible]

[59] ANR, Arkla, El Paso, Natural Gas Pipeline Company of America (Natural), and United. Consolidated Gas points to differences in requests concerning transportation of gas from the Appalachian Basin System and that to be transported from interconnecting pipelies.

[60] ANR, Arkla, and Natural. Natural states the processing of requests should not be confused with the priority to be afforded a shipper once its request has been processed and a contract executed. Enron explains transportation requests are evaluated on a first-come, first-served basis. The request date sets priority for receipt and delivery points. Natural Gas states priority for scheduling and curtailment of service relates back to the date a valid request was submitted. This commenter states the request date fixes a shipper's place in the queue under the first-come, first-served rule. Therefore, even if gas starts flowing under a complicated request later than under a subsequent simple request, the complicated request would nonetheless have a higher priority. Once gas begins to flow under the complicated request, it will be scheduled in at a higher priority slot, and will be curtailed later than any subsequent request regardless of when gas flow commenced.

[61] ANR and Williams.

[62] *See e.g.*, Panhandle Eastern Pipe Line Company (Panhandle) and Tenngasco.

[63] *See* new § 161.3(d).

[64] *See* new § 161.3(c).

[65] *See* new § 161.3(e).

[66] Northridge Petroleum Marketing, Inc. (Northridge) and Ohio Gas Marketing.

[67] *See e.g.*, Tennessee and Tenngasco.

[68] United.

[69] Tenngasco.

[70] *See* new § 161.3(f).

[71] Texas Gas and Natural. In supplemental comments, Tenneco and Enron suggested that the Commission require a pipeline to provide a list of all producers and working interest owners and the sources of supply eligible for transportation pursuant to offers of credit under Order Nos. 500 *et seq.* (Supplemental Comments of Enron Interstate Pipelines (filed Nov. 30, 1987) and Additional comments and Responses of Tenneco Gas Pipeline Group, Inc. (filed Nov. 30, 1987).) (See also discussion below, Confirmation of sale of released gas.)

[72] ANR, letter of Jan. 12, 1988, Appendices A and B. From September 1986 through August 1987, less than five percent of the total released gas transported on the ANR Pipeline Company system was transported for an affiliate. The total released gas transported for 1987 was 104,477 dekatherms. On the Colorado Interstate Gas Company system, at least 50 percent of the total released gas transported was transported for nonaffiliates in 1987. The total released gas transported in 1987 was 13,042,031 Mcf.

A letter from Natural dated Nov. 3, 1987 indicates that for the period October through December of 1986, at least three percent of the released gas transported was transported for nonaffiliates.

[73] EXXON Corporation (Exxon), Members of the Northern Distributor Group (Northern Distributor Group), U.S. Department of Justice, and Tenngasco.

state the rule would make it impossible for a shipper to ask a pipeline to convey confidential information about the shipper to a provider of gas without risking disclosure of proprietary information to the shipper's competitors. These commenters believe the proposed rule penalized customers of the pipelines.

Two commenters suggest revisions. Indicated Producers ask the Commission to provide a 60-day period from the time of request before the information would be released to prevent competitive harm. Columbia Gas believes release to other pipelines should be allowed since many transportation requests must be processed through other pipelines.

Several commenters believe that the majority of the information filed with a transportation request will be available to anyone under the log and access requirements through the proposed recordkeeping requirements (proposed § 250.16(b)(6) and (f)).[74] Tennessco states this information should not be available to other parties through the proposed recordkeeping requirements.[75]

The Commission agrees that information filed with transportation requests should not be made available to marketing affiliates. This requirement is now part of the standards of conduct.[76] In addition, the Commission has adopted the approaches, as is indicated above, of having the filing requirements apply only to transactions involving marketing affiliates and of providing a reporting delay mechanism.

d. Capacity information. The Commission proposed to prohibit pipelines with marketing affiliates from providing information to affiliated shippers regarding the availability of capacity for transportation service, unless such offer or information is simultaneously communicated to all potential shippers. "Potential shippers" included all current transportation and sales customers of the pipeline and all persons with pending requests for transportation service or for information regarding transportation service on the pipeline.[77] (Proposed § 161.3(d).)

Two commenters ask the Commission to clarify the term "information * * * regarding the availability of capacity." The term could refer either to general information or to information specific to an affiliate.[78] Most of those commenting on this section assume the information to be or include information provided to an affiliate in response to a specific request from the affiliate.[79]

Commenters who believe the section applied to specific requests for affiliates state it would be overly burdensome to report responses to specific requests from affiliates simultaneously to all potential shippers.[80] They also point to the competitive harm to the affiliate if the response to the affiliate's request is made available to other shippers.[81] These commenters suggest the Commission revise the rule to exempt routine requests by marketing affiliates.

The Commission intended the prohibition against revealing transportation information to an affiliate unless the information was given to all potential shippers to apply to general information concerning transportation. The Commission is requiring a pipeline to make general transportation information available to all potential shippers if it makes this information available to an affiliate.[82] Further, the pipeline must disclose immediately any new or changed general information not available to nonaffiliated marketers if it provides such information to affiliates as part of a response to a specific request from an affiliate. The fact that such new or changed general information is contained in a response to a specific request does not lessen its potential competitive advantage to the affiate, nor insulate the pipeline from disclosing the general information.

e. Independent functioning. The Commission proposed that employees of the interstate pipeline and of the marketing affiliate function independently of each other to the maximum extent possible. The Commission also sought comments on whether organizational separation of personnel and facilitates should be required of any interstate pipeline with a marketing affiliate, so that employees of the pipeline and the marketing affiliate function completely independently of each other. The Commission asked whether shared personnel and facilities should be prohibited.[83] (Proposed § 161.3(e).)

A number of commenters believe complete separation of personnel and facilities should be required,[84] while others believe it should not be required.[85] Some suggest requiring a modified form of separation. They state the operating functions of the pipelines such as sales and transportation should be separate from the operating functions of any marketing affiliate such as supply, acquisition, sales, dispatching, and balancing. They believe, however, that some sharing should be allowed, such as affiliates [86] or support functions including telephone, printing equipment, billing, cash management, personnel, legal, and accounting.[87] Some commenters believe that prohibition against shared personnel and facilities should not apply when a marketing affiliate's activities are restricted to the movement of take-or-pay relief gas.[88]

The Commission does not agree with the commenters who state that a complete separation of pipeline and marketing affiliate personnel and facilities is necessary to prevent unduly discriminatory conduct. The Commission believes less drastic requirement will achieve the same result without imposing one form of organization on all pipelines no matter what their circumstances. The Commission believes the standards of conduct and the reporting requirements proposed in this rule will be a sufficient deterrent to preferential treatment of a marketing affiliated by its affiliated pipeline because its transactions with its marketing affiliates will be open to public scrutiny and because it will be subject to enforcement actions in the event it violates a standard of conduct. The Commission therefore is not mandating organizational separation, but only requiring that it be undertaken to the maximum extent practicable. Different pipelines are faced with different practical circumstances and may not be able to accomplish organizational separation to the same degree. However, in any particular proceeding to consider allegations that a pipeline has improperly shared

[74] Texas Gas and Tennessco.
[75] Tennessco.
[76] *See* new § 161.3(e).
[77] 52 FR at 21586.
[78] See Panhandle and Texas Gas.
[79] *See e.g.*, Columbia Gas Transmission Corporation (Columbia) and Tennessee. Texas Gas, however, assumed the opposite.
[80] For example, Columbia, Enron, and Natural.
[81] Texas Gas and United.
[82] *See* new § 161.3(f).
[83] 52 FR at 21585 and 21580.
[84] Pennzoil Company, Iowa-Illinois, The Process Gas Consumer Group (Process Gas), Indiana Utility Consumer Counselor, Maryland People's Counsel, Minnesota, Consolidated Fuel Supply, Inc. & AMGAS, Inc. (Consolidated Fuel), Entrade, Hadson, Natural Gas Clearinghouse, Northridge, Ohio Gas Marketing, The Producer-Marketer Transportation Group, PSI, Inc., Sunshine Energy Company (Sunshine), Industrial Energy Services Company (IESCO), and Yankee Gas Company (Yankee).
[85] Exxon, Eastern Kentucky, ANR, Arkla, Enron, Interstate Natural Gas Association of America (INGAA), Mountain Fuel Natural Gas, Southern Natural Gas Company (SONAT), Texas Eastern Transmission Corporation (Texas Eastern), Delta Natural Gas Company (Delta), SNG Trading Inc. (SNG), and Tennessco.
[86] El Pasco and Virginia State Corporation Commission (Virginia).
[87] Columbia Gas, Panhandle, Williams, and Enron Gas Marketing, Inc. (Enron Gas Marketing).
[88] Tennessee and Enron Gas Marketing.

information with an affiliate, the degree of organizational entanglement between the two will be a factor to be considered. In any event, the Commission has clarified this section to state that separation of employees and facilities refers to operating personnel. The Commission does not believe it is necessary to require separation of support personnel to prevent the occurrence of undue preferential treatment of a marketing affiliate by its affiliated pipeline.

The Commission does not believe that a requirement to separate employees and facilities of a pipeline and its marketing affiliate to the maximum extent practicable will discourage a pipeline from having a marketing affiliate, even if it is a small pipeline.

A number of commenters are concerned with the effect of the proposed rule on pipelines' ability to mitigate take-or-pay liabilities. Some believe a prohibition against sharing of employees and facilities between a pipeline and its marketing affiliate would reduce the pipeline's ability to mitigate take-or-pay liability.[89] The Commission believes that a pipeline can undertake take-or-pay negotiations even if the pipeline and its marketing affiliate do not share any personnel. Thus, the Commission has retained this requirement.

f. Prohibition of tying. The Commission proposed to prohibit a pipeline's conditioning or tying an agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer/end user) to obtain services from any affiliate of the pipeline, or to an offer by the pipeline to provide or expedite transportation service to its affiliate relating to the released gas.[90] (Proposed § 161.3(f).)

Some commenters state the rule is needed and suggest that it be broadened to preclude tying use of an affiliate or expedited transportation service to any gas that is released, not just released gas subject to take-or-pay relief, and to future purchases by pipelines for system supply.[91] Some commenters state there would be no transportation preference for released gas and ask the Commission not to condition transportation on released take-or-pay liability.[92]

Pipeline commenters directly addressing this section state they do not tie the release of gas to use of an affiliate.[93] Natural states it has no objection to prohibitions against requiring released gas to be sold through an affiliate or giving an affiliate preferential access to released gas. It does object, however, to the prohibition against granting preferential transportation rights for released gas. The commenters believes this prohibition interferes with take-or-pay negotiations. Several commenters believe the Commission should deal with restrictions on take-or-pay relief in the proceedings under Order Nos. 436 and 500 rather than in this rulemaking.[94]

The Commission believes tying an agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer/end-user) to obtain services from any affiliate of the pipeline or to an offer by the pipeline to provide or expedite transportation service to its affiliate for the released gas is an unduly discriminatory practice. The Commission has adopted this provision to prevent this unduly discriminatory practice in the natural gas market.

The Commission does not believe the rule should be broadened to include other releases or purchases of gas. The commenters that favor such action have not provided the Commission with any information that such incidents are occurring. Furthermore, the Commission has no such information from any other source. Therefore, it does not believe that it is appropriate to broaden the rule at this time.

g. Confirmation of sale of released gas. The Commission proposed requiring pipelines with marketing affiliates to confirm, if asked, when independent marketers or producers are selling released gas, so that the pipeline's purchasers may know when these sales are mitigating the pipeline's take-or-pay liability. Any false or misleading information about take-or-pay, such as where a pipeline or an affiliate states there will be a take-or-pay billing credit that will flow to the pipeline customer if the customer purchases gas from the affiliate, was to be considered a violation of the proposed rule's reporting requirements.[95] (Proposed § 161.3(g).)

Pipeline commenters state generally the proposed requirement is not relevant to discriminatory practices, inhibits take-or-pay settlements, and is not needed with regard to the making of false statements.[96]

Several pipeline commenters state they do not know in any given transaction whether independent marketers or producers are selling released gas, so that compliance with the requirement would be impossible.[97] Some commenters state, however, that when the transporting pipeline releases the gas, the pipeline can tell which sources of gas are sources of released gas or result in take-or-pay relief. The exact allocation or disposition of the released gas is determined by the marketer, however, not the pipeline.[98] El Paso states that simply knowing gas is released gas does not mean the transporting pipeline knows what take-or-pay relief will be obtained or by whom. Texas Gas indicates it can tell whether released gas is actually involved in a particular sale or whether take-or-pay credit is received, but not until weeks or months after the sale.

Several commenters refer to a list of released gas. Texas Gas believes the Commission should encourage a list showing where and with what producers a pipeline has entered into release agreements. This commenter was willing to identify publicly all gas it has released by producer and location. Natural states it gives out a list of released gas on its system on request. Tennessee objects to being required to provide a released gas list stating it is not related to the marketing affiliate problem and not warranted to require pipelines with marketing affiliates to provide such a list when pipelines without marketing affiliates are not required to do so.

The Commission agrees with the comments that a pipeline may not know immediately whether a given transaction involves released gas or take-or-pay relief. The Commission believes that whether or not a pipeline knows a given transaction involves released gas or take-or-pay relief, a pipeline does know its sources of gas and can confirm when these sources are sources of released gas or result in take-or-pay relief. The Commission notes that several pipeline commenters have a list of such sources or are willing to provide one.

The Commission has clarified the rule to reflect it is concerned with supplies of gas mitigating the take-or-pay liability of the transporting pipeline. The rule applies to information relating to gas

[89] *See e.g.*, Arkla, Enron, Natural Gas, SONAT, Tennessee, and Transco Gas Company.
[90] 52 FR at 21586.
[91] Entrade, IESCO, and Natural Gas Clearinghouse, respectively.
[92] *See e.g.*, Hadson and NAGASCO, Inc.
[93] ANR and El Paso.
[94] *See e.g.*, El Paso and Natural.
[95] 52 FR at 21586
[96] Exxon, ANR, and El Paso.
[97] *See e.g.*, Columbia Gas INGAA, and Tennessee.
[98] Natural, Panhandle, and Texas Gas.

mitigating the pipeline's take-or-pay liability rather than to specific transactions.[99] The Commission is requiring a pipeline to identify information relating to released gas that is mitigating its take-or-pay liability if the pipeline has provided this information to a marketing affiliate.

For purposes of this provision, the Commission considers any false or misleading information provided under the terms of this Final Rule by pipelines with regard to released gas and take-or-pay credits to be a violation of the reporting requirements. Again, the Commission is acting to prevent competitive abuses resulting from any such intentional inaccuracy as to the take-or-pay credit available from transportation of released gas which could accrue to the benefit of the marketing affiliate.

h. Log of contact with potential shippers. The Commission proposed that pipeline personnel having contact with any potential shippers must maintain logs showing all requests for transportation and their disposition in accordance with applicable Commission regulations and report those data as required by the regulations.[100] (Proposed § 161.3(h).)

Commenters raise several objections to the proposed log requirement. Several commenters ask the Commission to define "contact."[101] Some believe the requirement is too broad if it applies to unauthorized personnel, preliminary or informal communications, or general inquiries.[102] Commenters ask the Commission to restrict the requirement to contact personnel, final transportation requests, and written requests.[103]

The Commission believes, as do some commenters, that this requirement may be duplicative of other requirements such as § 284.13 of the Commission's regulations which is a log of all transportation requests and of the log in § 250.16(b)(6) of the rule which would contain requests by affiliates for transportation service.[104] The Commission also agrees that preliminary contacts by a shipper or marketer with a pipeline may be proprietary in nature.[105] The Commission believes that a log of all contacts with potential shippers is unnecessary and may be detrimental to competition. Therefore, it is not adopting this proposal.

i. Written procedures to show how prohibited practices have been eliminated. The commission proposed requiring pipelines with marketing affiliates to develop written procedures to enable shippers and the Commission to determine how prohibited practices, such as enforcement of tariff requirements, nondisclosure of nonaffiliated shipper information to an affiliate, and preferential disposition of affiliate transportation requests, have been eliminated.[106] (Proposed § 161.3(i).)

Several commenters object to the assumption that the pipelines are guilty of prohibited practices.[107] Kentucky West suggests the Commission revise this section simply to require pipelines to develop written guidelines which ensure transportation services are rendered pursuant to the standards proposed.[108] Other commenters believe written procedures should only be required where prohibited activity has been proved or where there are colorable allegations of a specific anticompetitive practice.[109] Columbia Gas believes the requirement should be eliminated.

The Commission agrees with the comments that the characterization of pipeline conduct is unnecessary and has deleted this reference from the rule. The Commission is requiring the provision of written procedures stating how the pipeline plans to implement the requirements of the standards of conduct. The Commission believes this requirement is necessary because it will inform pipeline employees, marketers, and the Commission of pipeline procedures. The Commission believes these written procedures are all the more necessary because, as stated previously, pipelines do not currently have standards of conduct.

4. *Reporting requirements.* In general, the Commission is adopting the approach that a pipeline must file information on transportation requests in which a marketing affiliate is involved that have commenced 30 days or more earlier. A pipeline must keep the same information for transportation requests in which nonaffiliated shippers are involved, but is not required to file the information which is available only to the Commission or to the public under the Commission's discovery rules.

Both the reporting requirement and the maintenance requirement are limited to the period up to the end of calendar year 1989. As discussed earlier, because there is a possibility that market affiliate abuses may not be a serious long-term problem as transportation service becomes more competitive, the Commission is limiting the reporting requirement. The Commission expects that this will protect the public from the possible exercise by pipelines of residual market power over transportation service as the industry moves toward increased competition. If, at the end of this period, the Commission affirmatively finds a need to extend the reporting requirement it may do so.

The Commission proposed requiring pipelines with marketing affiliates to file certain items of information. These items were (1) a list of personnel and facilities shared with an affiliated marketing or brokering company, (2) the information and format required for a valid request for transportation service, (3) procedures used to address and resolve complaints by shippers and potential shippers, (4) procedures used to inform shippers and potential shippers of the availability and pricing of transportation service and the capacity of the pipeline available for use, (5) tariff provisions containing the first four items, and (6) a log of all requests for transportation service.[110] The log contained a number of separate requirements. (Proposed Part 250.)

The Commission further proposed requiring pipelines with marketing affiliates to make the filings and the log available to the public by providing a paper copy at their principal places of business and copies by mail within seven calendar days of a written request. In addition, the Commission proposed requiring pipelines to provide 24-hour access by electronic means to the data required to be maintained in the log.[111]

Some commenters generally support the proposed reporting requirements.[112] Others believe the proposed reporting requirements were unjustified,[113] and still others believe they should be modified.[114]

Consolidated Edison states that contemporaneous full disclosure is the most effective deterrent to favoritism, undue discrimination, and anticompetitive conduct. Producer Associations believe the public access requirements would mitigate the "insider" advantage of affiliates. This commenter points to the former requirement that self-implementing transportation transactions be reported to the Commission within 48 hours. Order No. 436 repealed this requirement.

The Commission has further considered the reporting requirements and has revised and narrowed some requirements as explained below.

a. Proposed §§ 250.16(b)(1) through (b)(5). The Commission proposed requiring pipelines to file as tariff provisions a list of personnel and facilities shared with an affiliated marketing or brokering company, the information and format required for a valid request for transportation service, procedures used to address and resolve complaints by shippers and potential shippers, procedures used to inform shipper and potential shippers of the availability and pricing of transportation service, and the capacity of the pipeline available for use.

Some commenters believe the information required for a valid transportation request (proposed § 250.16(b)(2)) and procedures to inform shippers of the availability and pricing of transportation service (proposed § 250.16(b)(4)), duplicate information already contained in pipeline tariffs and should not be required.[115] Mid Louisiana Gas Company objects to the refiling and subsequent amendment of tariffs containing the information required in proposed § 250.16(b)(1)–(4) on the ground that multiple filing fees would be incurred.

To the extent that the requirements duplicate existing tariffs, the rule does not require refiling of the tariff. A pipeline must file new tariff provisions with the valid request and availability and pricing information if it does not have existing tariff provisions with those procedures. The Commission will waive fees for those restating tariff provisions. The Commission is requiring that these filings be updated quarterly.

b. Log of transportation requests. The Commission proposed requiring pipelines to file a log of all requests for transportation service. The log would contain a number of specific items of information [116] and would be available to the public. (Proposed § 250.16(b)(6).)

The major objections of those opposed to the transportation request log were that creating and maintaining the log was burdensome and disclosed confidential information.[117] A number of commenters state the requirements would disclose confidential information including key elements or proposed and executed contracts for transportation [118] and information on take-or-pay settlements such as duration and transportation rate discounts.[119] (Confidentiality of information is discussed below.)

The Commission agrees with comments that to protect the confidentiality of competitively sensitive information the reporting requirements in this rule should be consistent with Commission reporting requirements under the open access transportation regulations.[120] Therefore, the Commission will require a pipeline to specify the producing area where the source of gas is located and the state of location of the end user, but will not require it to name the source of gas or the end user. For the same reasons, the Commission will allow for a lag time between the commencement of transportation and public access to the information. (See discussion below.)

The Commission recognizes, as stated by some commenters, that some of the data required by the reporting requirements may already be required by other Commission regulations.[121] However, these other regulations do not require detailed information concerning pipeline-marketing affiliate transactions or nonaffiliate transactions, and, therefore, cannot be used to detect undue discrimination by a pipeline in favor of its marketing affiliate. The Commission believes the items of information required in the final rule are necessary to allow meaningful monitoring of unduly discriminatory conduct by pipelines. The Commission has thus adopted reporting requirements for a pipeline's transactions with its marketing affiliate and record maintenance requirements for a pipeline's transactions with nonaffiliates.

The Commission also agrees with comments that some of the data required, such as the supplier of the gas, the end user, and whether or not the gas is subject to take-or-pay relief, are available from shippers rather than pipelines.[122] The Commission notes that this information (modified to state of location for the end user and producing area for the supplier) must now be supplied only for requests for transportation in which an affiliated marketer is involved. The Commission believes the provision of this information is essential to the prevention and correction of undue discrimination by a pipeline in favor of its marketing affiliate. The Commission has thus adopted the approach that a valid transportation request in which an affiliated marketer is involved must include the items in the transportation request log.

c. *Confidentiality of information.* A number of commenters state that making some of the items of information in the proposed transportation request log available to the public would cause competitive harm to marketers.[123] Almost all such commenters mention the source of the gas and the end user. Other items of information include the affiliation of the requester with the supplier, daily volumes of gas delivered, receipt and delivery points, the transportation rates for the service,

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[99] *See* new § 161.3(l).

[100] 52 FR at 21560.

[101] *See e.g.*, Kentucky West and Entrade.

[102] Arkla, Tennessee, and Panhandle, respectively.

[103] Arkla, City of Willcox & AEP, and AGA, respectively.

[104] *See, e.g.*, Enron, El Paso, Columbia Gas, and INGAA.

[105] *See, e.g.*, NIPSCO and City of Willcox & AEP.

[106] 52 FR at 21560. *See also* at 21560–21561.

[107] *See e.g.*, Columbia Gas, Enron, Kentucky West.

[108] Kentucky West.

[109] Northern Border Pipeline Company (Northern Border) and El Paso, respectively.

[110] Proposed § 250.16 (a) and (b), 52 FR at 21566–21567.

[111] Proposed § 250.16(f).

[112] *See e.g.*, AGD, Producer Associations, Consolidated Edison, Public Service Electric & Gas Company (Public Service), Wisconsin Distributor Group, and Consolidated Fuel.

[113] *See e.g.*, Exxon, Columbia Gas, El Paso, Enron, Natural, and Entrade.

[114] *See e.g.*, Indicated Procedures and United.

[115] Columbia Gas and Enron.

[116] Proposed § 250.16(b)(6) required the following information: (i) Date of receipt of the request; (ii) date of communication if request is received by mail; (iii) date request was accepted as valid; (iv) affiliation of the requester with the pipeline and the extent of the pipeline's affiliation with the person to be provided transportation service; (v) affiliation of the requester with the supplier; (vi) identity of the shipper; (vii) volumes of gas to be transported on a daily basis; (viii) source of the gas; (ix) date service is requested to commence and terminate; (x) receipt and delivery points between which the gas is to be transported and the distance to be transported; (xi) whether service is firm or interruptible; (xii) the end user of the gas; (xiii) transportation rates; (xiv) whether the gas is subject to take-or-pay relief; (xv) whether and by how much the cost of gas to an affiliated marketer exceeds the price received for the sale of the gas by the affiliated marketer; (xvi) the existence and duration of a discount; (xvii) current status of the request including whether it is incomplete, complete and pending, withdrawn, or denied and the reason why (xviii) the position of the request in the transportation request queue; (xix) the disposition of the request including the date the requester was notified of the availability of capacity, the date the contract was executed, the date service actually commenced, and any explanation concerning the disposition of the request; and (xx) any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints.

[117] Burdensome: Exxon, Consolidated Gas, El Paso, Enron, Natural, Seagull, and U.S. Department of Justice.

Disclosure of confidential information: *inter alia*, Exxon, Indicated Producers, Natural Gas Supply Association, Enron, United Gas, and U.S. Department of Justice.

[118] Exxon.

[119] United Gas.

[120] *See e.g.*, 18 CFR 284.106 and 284.223(f) (1987) and comments on Natural and Northern Border.

[121] *See e.g.*, Northern Border, Panhandle, and Tennessee.

[122] *See e.g.*, INGAA, Natural, Panhandle, and Texas Gas.

[123] *See e.g.*, Eastern Kentucky, ANR, AGA, Entrade, and NAGASCO, Inc.

whether the gas is subject to take-or-pay relief, the transaction profits of affiliated marketers, and the status of the request.[124]

The Commission agrees with the commenters that protection of sensitive marketing information is important to the preservation and fostering of competition within natural gas markets. The Commission is, accordingly, requiring the reporting of the producing area in which the source of gas is located and the state of location of the end user rather than their names. In addition, the Commission agrees with comments[125] and has clarified the final rule to require public access to information in the log only after the commencement of transportation. The Commission believes these revisions will protect the confidentiality of the information to be provided. They are also consistent with the Commission's open access transportation provisions.

The U.S. Department of Justice suggests revising the rule to require disclosure only of transactions involving affiliates. The Department objects to disclosure of competitively sensitive nonaffiliate information. It also maintains that nonaffiliates do not need information about each other's shipments to detect discrimination in favor of affiliates. The commenter states they need only details of their own transportation requests (which they have) and the details of the pipeline's transactions with its affiliate to provide the necessary basis for comparison.[126]

The Commission believes, as is implicit in the view of the U.S. Department of Justice, that information concerning transactions of affiliated marketers will be most important for alerting both the Commission and a nonaffiliated marketer as to whether or not undue discrimination may exist. A nonaffiliated marketer will be able to establish whether or not it has been discriminated against by having access to information concerning a pipeline's transactions with its affiliates and comparing that information with its own information concerning its own transactions. Accordingly, the Commission is requiring a pipeline to keep records and file information concerning requests for transportation in which a marketing affiliate is involved.

Information concerning a pipeline's transactions with nonaffiliated shippers will still be necessary, however, to permit comparisons of a pipeline's treatment of different nonaffiliated marketers and the overall treatment of affiliated marketers with the treatment of nonaffiliated marketers. The Commission is thus requiring a pipeline to maintain, but not file, information on requests for transportation service by nonaffiliated shippers. This information will be available to the Commission on request and to the public under the Commission's discovery rules.[127]

d. *Technical changes in the transportation log.* The Commission has made some technical changes in the transportation log as the result of staff review. The Commission has deleted the requirement that shipper affiliation with the supplier be reported as not germane to this rule. The Commission has narrowed the requirement concerning receipt and delivery points so that only one distance, the distance between the receipt and delivery points that are the furthest apart, must be reported, rather than the distances between each pair of receipt and delivery points. The Commission is requiring a pipeline to report the identity of the rate schedule applying to a transportation request. The requirement regarding the reporting of the volume of gas to be transported has been clarified to be the total contract volume and the maximum daily contract volume, as opposed to volumes of gas to be transported. The rule also now specifies that records are to be kept until Dec. 31, 1989 and that information that is to be maintained only must be maintained in computerized form, according to Commission specifications.

5. Supplemental Comments of Enron and Tenneco

Two pipeline commenters filed additional comments and a joint appendix after the Opportunity for Oral Presentation held on Oct. 20, 1987.[128] Both commenters favor the fair and equitable administration of tariff provisions and the use of reporting requirements to achieve the objective of a competitive market.

The Commission agrees in part with Enron's suggestion that it require a pipeline to maintain records of transportation internally and file a monthly transportation request processing report based on the transportation log proposed in the NOPR. The Commission has adopted the requirement that information concerning a transportation request of a nonaffiliate be kept by the pipeline. The Commission is requiring the monthly filing only of data concerning a transportation request of an affiliate.

Both Enron and Tenneco ask the Commission to delete some items from the transportation log.[129] The Commission has not adopted these suggestions because it believes these items of information are needed to establish the comparability of affiliate and nonaffiliate transactions and the existence of unduly discriminatory treatment with regard to gas subject to take-or-pay relief or transactions involving losses.

Both commenters suggest the Commission require a pipeline to provide a list of all producers and working interest owners and the sources of supply eligible for transportation pursuant to offers of credit under Order Nos. 500 *et seq.* The Commission is requiring a pipeline to make this information available to nonaffiliates on request to the extent it makes it available to a marketing affiliate.

The commenters also suggest that the Commission expand the discount reporting rules and revise the current reporting requirement in the Commission's regulations.[130] Enron suggests the Commission require a pipeline to report the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation between the shipper and transporting pipeline, and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point. Enron asks that the discount report be filed 30 days from the end of the preceding month because scheduled volumes cannot be ascertained in time to permit filing within the currently required 15 day period.

The Commission is adopting Enron's suggestion in this rule, as it believes this information will relate discounts to rates and enlarge its knowledge of discounts, and, thus, will enhance its ability to ascertain whether a discount is given on an unduly discriminatory basis. The rule makes reporting of discount information separate from the reporting of the other information in the transportation request log. The rule requires a pipeline to report a discount within 15 days of the close of the pipeline's billing period, as it is currently required to do under § 284.7(d)(5)(iv) of the Commission's regulations. A report of a discount under this rule satisfies a pipeline's obligation to report under that section.

Lastly, Tenneco believes a pipeline should identify the locations of current capacity constraints affecting interruptible transportation service. While the Commission has not specifically dealt with this type of information, it has, as stated previously, required that to the extent a pipeline provides natural gas business related information to an affiliate, this information must be made available contemporaneously to all potential shippers, both affiliated and nonaffiliated. This requirement applies to information concerning capacity constraints.[131]

C. Proposals Not Adopted

1. Open Season

The Commission proposed an open season access period of 10 days before a pipeline could become or resume status as an open access transporter, apply for any other significant transportation authorization, or announce the release of significant gas volumes. The Commission was concerned that a pipeline may provide advance notice to its marketing affiliate that the pipeline intended to seek certain transportation authorizations, thereby providing an unfair advantage to the marketing affiliate who can "queue up" in advance of the formal announcement by the pipeline. Requests received during the open season period would be considered to have been received simultaneously. The Commission stated the effect of this proposal would be to place all persons who express interest in obtaining transportation during the 10 day grace period equally "first" with an equal claim on the transportation to be offered.[132]

Some commenters endorse the proposal[133] and some oppose it.[134] Other commenters request clarification or support portions of the proposal. Several commenters believe open season provisions should be codified, either as part of a marketing affiliates rule or the open access transportation regulations.[135]

The Commission has approved use of an open season in individual proceedings to achieve equal access to the capacity being offered.[136] The open season is intended to counteract any unfair advantage a marketing affiliate might have from receiving advance notice of a pipeline's intent to seek certain transportation authorizations. If information is available to all marketers at the same time on the availability of transportation, there may not be a need for an open season requirement. The Commission will continue to consider an open season on a case by case basis. In addition, while it is not imposing an open season requirement in this rule, the Commission reserves the right to do so in future if it determines it is necessary.

2. "Dual" Approach To Pipeline Marketing Affiliates

In the NOPR the Commission asked for comments on a "dual" approach to pipeline marketing affiliates. This approach would prohibit a pipeline that is not subject to Order No. 436 from having a marketing affiliate, but allow a pipeline that is subject to Order No. 436 to have one.[137] The Commission proposed this approach to encourage a pipeline to become an Order No. 436 pipeline and thereby forego any market power it might have over transportation. The Commission noted, however, that even for Order No. 436 pipelines, its concern remained how the pipeline-marketing affiliate combination should be structured or regulated so as to prevent undue discrimination by the pipeline in favor of its marketing affiliate.

The majority of those commenting on this issue were against barring a non-Order No. 436 pipeline from having a marketing affiliate.[138] These commenters argue that there is no rational basis for the prohibition and that such a prohibition would undercut the voluntary nature of the open access transportation program.

Some commenters, however, supported the proposal.[139] These

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[124] Commenters varied as to when they thought this information had to be made available, for example: when a request for transportation is made (Entrade) and unclear whether information is to be immediately available (Exxon). Producer Associations states there should be a one business day lag in posting changes in the transportation log on the electronic system.

[125] *See e.g.*, Indicated Producers.

[126] U.S. Department of Justice.

[127] 18 CFR 385.401–411 (1987). FERC Stats. & Regs. ¶¶ 28,837–28,848. 52 FR 6957 (Mar. 6, 1987).

[128] Supplemental Comments of Enron Interstate Pipelines (filed Nov. 30, 1987); Additional Comments and Responses of Tenneco Gas Pipeline Group, Inc. (filed Nov. 30, 1987); and Appendix to Comments of Tenneco Gas Pipeline Group and Enron Interstate Pipelines (Joint Appendix) (filed Nov. 30, 1987).

[129] The items eliminated from the NOPR according to the Joint Appendix would be (v) the affiliation of the requester with the supplier and the extent of the pipeline's affiliation with the supplier; (viii) source of gas; (xii) end user; (xiv) whether the gas being transported is subject to take-or-pay relief; (xv) affiliate loss margin; and (xix) disposition of the transportation request.

[130] 18 CFR 284.7(d)(5)(iv) (1987).

[131] The Commission has considered the other suggestions made by the commenters and has adopted provisions which it believes are substantially in agreement with those suggestions. The other suggestions are:

(1) Interstate pipelines must implement and enforce tariff provisions without undue discrimination between affiliated and non-affiliated shippers and potential shippers.

(2) Tariff provisions must specify the procedures for scheduling, allocating and curtailing transportation. These procedures should not depend upon a shipper's affiliation with an interstate pipeline.

(3) Tariff provisions must specify what information and format constitute a valid request for transportation service by shippers, and these tariff provisions must clearly and completely specify these requirements.

(4) Interstate pipelines must use due diligence in processing all pending requests of comparable complexity within a specific period of time, or in accordance with specific milestones, to be specified in advance in their tariff.

(5) Tariffs must be refiled to comply with 1 through 4 above, if they do not already contain these provisions.

(6) Interstate pipelines must file and maintain procedures for accepting and processing of transportation requests including departments which are authorized to receive requests for transportation.

(7) Interstate pipelines must have a code of conduct for employees of the pipeline company and the affiliated marketing companies with regard to information about transactions provided to the pipeline by nonaffiliated shippers to secure open access transportation service except information which is required by the Commission to be reported to the Commission.

(8) Interstate pipelines must have procedures for notifying shippers and potential shippers of all receipt points, delivery points and key pipeline segments at which valid nominations exceed available capacity.

(9) The Commission should adopt a policy stating that an interstate pipeline will not condition or tie its agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer/end user) to obtain services from any marketing affiliate of the pipeline, or to an offer by the pipeline to provide or expedite transportation service to its marketing affiliate related to the released gas.

(10) An interstate pipeline should adopt a policy on the relationship between employees and facilities of the interstate pipeline company and of each of its affiliated marketing companies, including whether there are common employees for any functional activity of the pipeline company and the marketing company.

(11) An interstate pipeline should file procedures used to address and resolve complaints by shippers and potential shippers.

(12) An interstate pipeline should file procedures used to inform affiliated and nonaffiliated shippers and potential shippers of the pricing of transportation services.

[132] 52 FR at 21583.

[133] For example, Panhandle, Hadson, Iowa-Illinois, Northern Distributor Group, United Distribution Company, and The Process Gas Consumer Group, Indiana Utility Consumer Counselor, Maryland People's Counsel, Entrade, and Sunshine.

[134] For example, Enron, Kentucky West, Texas Gas, United Gas, and Public Service Electric & Gas Company (Public Service).

Enron, Texas Gas, United and City of Willcox & AEPCO state an open season is unnecessary in light of the standards of conduct promulgated in this rule and existing requirements in Order No. 436 certificates.

[135] Hadson (supplemental filing), The Producer-Marketer Transportation Group, and IESCO.

[136] Tennessee Gas Pipeline Company, RP87–38–000 *et al.*, 40 FERC ¶ 61,194 (1987) and Pacific Gas Transmission Company, CP87–159–000 *et al.*, 40 FERC ¶ 61,193 (1987).

[137] 52 FR at 21579–21580.

[138] Exxon, ANR, Enron, Kentucky West, National Fuel, Natural Gas, Texas Eastern, Texas Gas, United, AGA, ACD, Consolidated Edison, The Gas Company of New Mexico, The Process Gas Consumer Group, Virginia, Enron Gas Marketing, Western Gas Marketing, and The Producer-Marketer Transportation Group.

[139] Columbia Gas, Iowa-Illinois, Indiana Utility Consumer Counselor, Maryland People's Counsel, PSI, and Sunshine.

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commenters argue that a pipeline should be rewarded for taking the increased risks of becoming an open access transporter and that a pipeline should not be allowed the full benefits of competition via a marketing affiliate until it has accorded its customers the benefits of competition by becoming an open access transporter.

The Commission believes that mandating open access status for a pipeline that wishes to have a marketing affiliate would not resolve its concerns over preferences a pipeline may give to its affiliate. The Commission's concerns about anticompetitive practices are related to open access pipelines as well as non-open access pipelines. Accordingly, the Commission will not pursue the proposed "dual" approach in this rulemaking.[140]

D. Remedies

The Commission outlined remedies it would consider where information indicates that unlawful, unduly discriminatory practices have occurred. Some commenters ask that, in general, the Commission follow Opinion No. 212,[141] which states the policy that "the least severe remedy that will deter illegal actions should be chosen."[142] Individual remedies are described below.

1. Refunds

The Commission proposed that where unlawful, unduly discriminatory practices have occurred, one possible remedy would be to require the pipeline to refund

> an amount reasonably calculated to put actual or prospective shippers and suppliers who were injured by the pipeline's undue discrimination in the position they would have been had the undue discrimination not occurred * * *.[143]

Some commenters believe that the remedy described is damages rather than a refund[144] and that the Commission lacks authority to require damages to be paid.[145] One commenter states that the Commission's remedy in such situations should be based on whether the transportation is unjust and unreasonable;[146] another asserts that the remedy might be abused.[147]

The Commission also proposed requiring pipelines to refund unjust enrichment obtained from its undue discrimination. The City of Willcox & AEPCO asserts that ordering such a refund would violate the filed rate doctrine.

The Commission sees no merit to assertions that it lacks authority to impose its stated remedy for compensation of harm—payment of an amount reasonably calculated to put a shipper injured by a pipeline's undue discrimination in the position it would have been had the undue discrimination not occurred. The Commission has clear authority under section 16 of the NGA (and therefore under the substantially similar provision, section 501 of the NGPA) to return the parties to the *status quo ante*.[148]

The other comments regarding the Commission's remedial powers raise no issues which are not satisfactorily addressed by the text and cases contained in the NOPR.

2. Conditioning Authority

The Commission proposed considering conditioning present or future transportation in a number of ways when information indicated that unlawful, unduly discriminatory practices have occurred. Transportation could be conditioned on (1) loss of priority for some or all transportation arranged by an affiliate; (2) limitation or elimination of the pipeline's authority to transport gas sold or brokered by the marketing affiliate (divorcement); (3) restructuring or corporate structures of pipeline and affiliate to ensure against future undue discrimination; (4) regulating the affiliate in the future as part of the pipeline; and/or (5) divestiture of the affiliate.[149]

Enron Gas Marketing states that the Commission lacks the legal authority to impose such conditions.

The Commission believes that in the presence of unlawful, unduly discriminatory practices, the conditions for transportation it has enumerated for consideration constitute reasonable terms and conditions for which it has the legal authority under section 7 of the NGA and section 311 of the NGPA.[150] However, the Commission is not imposing conditions at this time because it believes the rule it is promulgating here will effectively deter undue discrimination by a pipeline in favor of a marketing affiliate.

a. Divorcement and divestiture. The Commission proposed considering the remedies of divorcement and divestiture as part of its conditioning authority in the event that it found unlawful, unduly discriminatory practices have occurred.[151] Generally, the commenters that oppose use of these measures argue they would reduce competition, eliminate the benefits of vertical integration, and be outside the Commission's legal authority.[152] The commenters that support these measures generally argue that divorcement is the only effective remedy for undue discrimination by a pipeline in favor of its marketing affiliate.[153] NIPSCO states that most abuses will result simply from informal communication between pipeline personnel and the affiliate.

The Commission is not promulgating requirements for divorcement or divestiture in this rule. The Commission believes that the current rule may be sufficient to keep pipeline marketing affiliate abuses from occurring. Should circumstances arise which warrant the application of such measures, however, the Commission believes it has the authority to undertake them. The U.S. Department of Justice expressed the same opinion in the public hearing held in this proceeding.[154] Where necessary, the Commission will consider and impose divorcement or divestiture to prevent a pipeline's undue discrimination in favor of its marketing affiliate.

b. Loss of priority. The Commission proposed conditioning present or future transportation on loss of priority for some or all transportation arranged by an affiliate in the event of instances of undue discrimination. Some commenters state this remedy would penalize third parties who had dealt with the affiliate rather than the offending pipeline.[155] For this reason, The City of Willcox & AEPCO asks that the remedy be prospective only. In addition, this commenter believes that conditioning transportation on loss of priority was beyond the Commission's authority because it would require a pipeline to act contrary to its tariff.

The Commission agrees that penalizing innocent third parties is undesirable. It would, therefore, examine loss of priority as a remedy extensively before applying it. The Commission believes, however, that any transaction in which a marketing affiliate is involved, no matter what its role, presents an opportunity for preferential treatment. Thus, all such transactions may occasion a need for priority loss.

3. Civil Penalties

Another remedy the Commission proposed to consider, as appropriate, was the assessment of civil penalties of up to $5,000 per day for violations of the rule's reporting and recordkeeping requirements.[156] The reporting and recordkeeping requirements applied to all transportation transactions whether authorized under the Natural Gas Act or the Natural Gas Policy Act.[157]

Some commenters object to the imposition of civil penalties. One commenter states that the NGA does not authorize the Commission to impose civil penalties and that the Commission is circumventing the NGA by stating the reporting requirements are proposed pursuant to the NGPA.[158] This commenter believes that unduly discriminatory conduct is prohibited by the NGA, not the NGPA.

Another commenter stated the Commission cannot impose reporting requirements promulgated pursuant to section 501 of the NGPA on transactions occurring under the NGA.

The Commission previously considered the legal rationale for promulgating all the reporting and recordkeeping requirements of the rule pursuant to the NGPA. The Commission stated that in order to implement the NGPA and properly discharge its duties thereunder, it required information concerning all transactions. The Commission found, therefore, that it was necessary and appropriate under section 501 of the NGPA to ensure that the reporting requirements disclose the nature of the transactions being conducted. It also found that it was necessary and appropriate to ground the reporting and recordkeeping requirements on its authority under section 501 of the NGPA and to ensure compliance by application of the civil penalties available under section 504 of the NGPA, whatever the source of the transportation authorization for the transaction.[159]

4. Enforcement Task Force

The Commission also announced in the NOPR that it was establishing an informal fact gathering process. This process consists of an Enforcement Task Force to receive complaints concerning alleged unduly discriminatory activities by marketing affiliates and to initiate preliminary investigations into complaints pursuant to § 1b.6 of the Commission's Rules Relating to Investigations,[160] to verify facts, ascertain the scope of any problem, and attempt informal resolutions. In addition, cases are compiled and analyzed for presentation to the Commission to disclose the nature of the complaints and allow a decision as to whether to institute formal investigations and/or refer matters to the Department of Justice.[161]

Several pipelines commented that the procedures would generate unsubstantiated complaints and could lead to harassment by competitors.[162] Other commenters, consisting of local distribution companies and independent marketers, emphasize the need for prompt resolution of complaints.[163]

The Commission believes the Task Force and the hotline have facilitated the resolution of potential misunderstandings and disputes. They have also assisted in bringing to light some practices which warranted more formal consideration. Commenters who addressed this issue at the oral presentation stated that the hotline was working and that it had a substantial effect on resolving disputes.[164] The Commission anticipates that these procedures will aid in the prompt examination of complaints and intends to continue them.

The Commission also proposed additional procedures to be utilized for complaints consisting of the initiation of hearings in which a pipeline would be directed to show cause why it has not unduly discriminated in favor of its marketing affiliate and formal investigations conducted pursuant to § 1b.5 of the Commission's Rules Relating to Investigations.[165]

AGD states that it is important that pipelines be required to show cause that they have not unduly discriminated and believes the show cause requirement mirrors the "rebuttable presumption" standard urged by the *Associated Gas Distributors* case.[166] NIPSCO responds that shifting the burden of proof in an investigatory proceeding is not authorized by either the NGA or the NGPA. This commenter believes the investigation of undue discrimination is carried out under section 5 of the NGA and that the Commission or the third party making the allegation must bear the burden of proof.

The Commission does not believe issuing a show cause order shifts the burden of proof to the respondent. The show cause order commences a proceeding and puts the respondent on notice that he must appear. The Commission or other complainant still bears the burden of proof as to discrimination.

IV. Regulatory Flexibility Act Statement

When the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), to prepare and make available for public comment an initial regulatory flexibility analysis. This analysis is prepared unless the Commission certifies, pursuant to section 605(b) of the RFA, that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA is intended to ensure careful and informed agency consideration of rules that may affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

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[140] The Commission has, however, conditioned the ability to engage in selective discounting on pipelines' acceptance of a blanket certificate. *See* discussion above, 2.a. Uniform enforcement of tariffs and strict enforcement of tariff conditions.

[141] 20 FERC ¶ 61,352, 61,773 (1984).

[142] Texas Gas and TXG Gas Marketing.

[143] 52 FR at 21561.

[144] *See e.g.*, Arkla, and City of Willcox & AEPCO.

[145] Cases cited included FPC v. Sunray DX Oil Co., 391 U.S. 9, 24 (1968); United Gas Improvement Co. v. Callery Properties, Inc., 382 U.S. 223 (1965); Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246 (1951); FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944); Southern Union Gas Co. v. FERC, 725 F. 2d 98, 102 (10th Cir. 1984); and Public Service Co. of New Hampshire v. FERC, 600 F. 2d 944, 957–958 (D.C. Cir. 1979).

[146] Arkla.

[147] NIPSCO.

[148] Coastal Oil & Gas Corp. v. FERC, 782 F.2d 1249, 1253 (5th Cir. 1986); Cox. v. FERC, 561 F.2d 449, 451 (5th Cir. 1978); Mesa Petroleum Co. v. FPC, 441 F.2d 182 (5th Cir. 1971).

[149] 52 FR at 21562.

[150] In Associated Gas Distributors v. FERC, the court held the Commission has broad powers to deal with undue discrimination including the power under sections 5, 7, and 16 of the NGA. 824 F. 2d 981 (1987). For the exercise of Commission authority, *see, for example*, ANR Pipeline Co., 41 FERC ¶ 61,077 (1987) Opinion No. 288, *rehearing granted in part and denied in part*, 42 FERC ¶ 61,077 (1988), Opinion No. 288–A (binding company engaged in undue discrimination and requiring company to apply to transport gas for its sales customers in the event that it ceases to transport under Part 284 of the regulations).

[151] 52 FR at 21562.

[152] *See e.g.*, INGAA and TXG Gas Marketing.

[153] *See e.g.*, Citizens Energy Corporation, Natural Gas Clearinghouse, Inc., Ohio Gas Marketing, and PSI.

[154] *See* remarks, U.S. Department of Justice, "Opportunity for Oral Presentation" (Oct. 30, 1987) at 128–129.

[155] City of Willcox & AEPCO and Enron Gas Marketing.

[156] 52 FR at 21562.

[157] 52 FR at 21563.

[158] ANR citing Coastal Oil & Gas Corp. v. FERC, 782 F. 2d 1249 (5th Cir. 1986).

[159] 52 FR at 21563.

[160] 18 CFR 1b.6 (1987).

[161] 52 FR at 21561.

[162] Mountain Fuel, Texas Gas, and Williams.

[163] For example, AGD, Public Service, The Process Gas Consumer Group, Citizens Energy, and Ohio Gas Marketing.

[164] Natural Gas and AGD, "Opportunity for Oral Presentation," (Oct. 30, 1987) at 82–83 and 99.

[165] 18 CFR 1b.5 (1988).

[166] Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987).

In this case the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. Most interstate natural gas pipelines that would comply with this rule do not fall within the RFA's definition of small entity because of size. Therefore, the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act Statement

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[187] and its regulations.[188] The Commission believes that the reporting and recordkeeping requirements in this final rule are essential to the discharge of its duties under the enforcement of the NGPA and the NGA.

Interested persons may obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Marian Obis, Office of Information and Resource Management, (202) 357–8173). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

VI. Effective Date

This final rule is effective July 14, 1988.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Natural gas, Selective discounting.

In consideration of the foregoing, the Commission adds Part 161 and amends Parts 250 and 284, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission. Commissioner Stalon concurred with a separate statement attached. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Stalon, Commissioner, Concurring

I will support the rule on the premise that some action to regulate the relationships between interstate pipelines and their marketing affiliates is better than no action. *It* is with reluctance, however, that *I* do so. To constrain and *limit* the *potential for* undue discrimination that arises when a pipeline creates a marketing affiliate, the Commission should develop a market structure designed to ensure that pipelines cannot abuse their monopoly power to the competitive advantage of their affiliates. The solution, in my opinion, is to allow only those pipelines that have accepted a Part 284 blanket transportation certificate to have marketing affiliates. A brief discussion of this issue follows.

The recent development of interstate pipeline marketing affiliates has created a dilemma for the Commission. If there are no particular economic benefits to be derived from the pipeline-marketing affiliate relationship, the need for the affiliate cannot be justified, nonaffiliated marketers can provide the same service with equal efficiency and less risk of monopoly abuse. On the other hand, if economic benefits do arise out of the relationship, these benefits must arise from the pipeline's monopoly power over the transportation of gas. In that case, the marketing affiliate should be regulated. In the light of these conclusions, I find it puzzling that the customers of interstate pipelines support the concept of pipeline marketing affiliates. I find this support informative, however, and I must respect it. Therefore, I have rejected my initial inclination to prohibit marketing affiliates altogether.

When analyzing the pipeline-marketing affiliate relationship, the Commission must keep in mind its regulatory duty of ensuring that pipelines do not exercise their monopoly power to the disadvantage of the natural gas consumer. When the Commission is committed to serving the consumer by disciplining pipelines and producers with market forces, it must attempt to create a market structure for the industry that discourages anticompetitive behavior. Attempts to regulate behavior will be futile if a market structure is left intact that encourages anticompetitive behavior. I believe the Commission has two choices as to how to fulfill its obligation. First, the Commission can prohibit pipelines from creating marketing affiliates altogether; alternatively, it can create a structure whereby competition will effectively discipline the pipeline and its marketing affiliate.

A competitive structure for gas marketing affiliates requires the removal of barriers to the entry and exit of other gas sellers. Producers and non-affiliated marketers need assured access to the pipelines. Additionally, the Commission has a duty under the Natural Gas Act to make sure that pipelines do not shift their monopoly power to unregulated marketing affiliates. The shifting of the monopoly power can occur in two ways: it can occur by the pipeline absorbing some of the cost of the affiliate, and it can occur by the pipeline shifting certain revenue sources to the marketing affiliate. The only feasible way to prevent this manipulation of the pipeline's marketing power is to create circumstances wherein competition will discipline the pipeline and its affiliate. Even then regulators must exercise their ratemaking responsibilities wisely.

In light of these objectives, I believe that an interstate pipeline should be allowed to have a marketing affiliate only when the pipeline has accepted a blanket certificate under Part 284 of our Regulations.[1] The blanket certificate program promulgated under Part 284, along with other recent Commission initiatives, developed a framework designed "to remove certain barriers to competition, to further access to nondiscriminatory transportation and to enhance the environment for market-responsive pricing."[2] Once a pipeline has committed its economic existence to living in a competitive world by accepting a blanket transportation certificate, and thereby has agreed to forego its monopoly power over the sale of gas and much of its monopoly power over transportation, it is plausible to expect market pressures to discipline the pipeline's actions.

This Commission has often blurred the distinction between those pipelines that have accepted a blanket certificate and those that are merely transporting under Part 284 but have not accepted a blanket certificate. In the case of marketing affiliates, the distinction should be drawn. There is one very important distinction between a pipeline that has accepted a blanket certificate and one that is transporting on an open-access basis but has not accepted a blanket certificate. The pipeline that has accepted a blanket certificate has committed itself to competition and nondiscriminatory transportation. On the other hand, pipelines that have not accepted a blanket certificate may be transporting on a nondiscriminatory basis at the present time, but have not committed themselves to do so in the future. It is this commitment that is crucial to the conversion of the industry into one in which nondiscriminatory transportation and competition in gas markets prevails. The pipeline's customers need the pipeline's commitment to transportation to make long-term purchasing commitments.

Even in situations where the pipeline has accepted a blanket certificate, however, I believe there should be a structural and organizational division of the pipeline and its marketing affiliate so that all communication between the parties will be similar to those of the pipeline and independent marketers. Therefore, in addition to the organizational separation required by this rule, I believe there should be separate corporations for the pipeline and the marketing affiliate. The two corporations should not be allowed to share office space or employees. In addition, employees of the two corporations should be prohibited from sharing inside information, and all internal operations and meetings should be carried out separately. If the affiliate is physically and organizationally separate from the pipeline, anticompetitive practices will be more difficult to enter into and easier to detect. Finally, I believe that pipelines with marketing affiliates should be subject to the standards of conduct and reporting requirements established by this rule. With such structural, organizational and behavioral safeguards in place, marketing affiliates of interstate pipelines can exist and operate efficiently with little regulatory intervention.

Charles G. Stalon,

Commissioner.

Concurring Opinion of Commissioner Charles A. Trabandt

I concur in the Final Rule with several observations and a serious reservation with regard to the treatment of organizational separation between interstate natural gas pipelines and their affiliated marketers. I also should note that I share fully the fundamental concerns expressed by Commissioner Stalon in his concurring opinion and support strongly his recommendation that there must be a structural and organizational division of the pipeline and its marketing affiliate in the form of separate corporations. Despite that serious reservation, I am persuaded that the Final Rule will put in place the long-needed regulatory structure to better ensure fair market practices by interstate pipelines and deter (i) undue discrimination against non-affiliated shippers and (ii) preference for marketing affiliates. Consequently, I support the adoption of the Final Rule at this time.

General

The role and significance of unregulated marketing affiliates has grown dramatically since the Commission first focused on this issue in the fall of 1986. Footnote 9 in the Order, at page 5 of the Slip Opinion, cites to a recent trade press survey of major interstate pipelines. From a relatively modest beginning in the 1985–1986 timeframe before and after issuance of Order No. 436, the marketing affiliates by the end of 1987 had achieved a substantial share of transportation volumes on their affiliated pipelines. Reported volumes for some specific interstate pipelines, for example, include the following approximate levels:

Arkla: 182.5 of 297 Bcf total transportation
Coastal: 303 of 1,000 Bcf
Enron: 255 of 900 Bcf
Sonat: 163 of 339 Bcf
Transco: 521 of 1,000 Bcf
United: 326 of 657 Bcf
Williams: 173 of 320 Bcf

Reported volumes for marketing affiliates from only 10 of the 24 major pipelines totaled 2,431 Bcf of the total 9,413 Bcf reported as transportation volumes in 1987 for the 24 pipelines, or approximately 26%. Extrapolation of those levels for all 24 pipelines would suggest that marketing affiliates have a market share at the end of 1987 in the range of approximately 35–43% of total transportation volumes. Also, I would note the growing practice of regulated pipelines to transfer certain functions, such as gas acquisition and aggregation, to unregulated affiliates. By any realistic measure, therefore, the Commission has concluded correctly that such a significant and growing market presence of affiliated, but unregulated, companies must be the subject of generic regulations to establish and enforce standards of competitive conduct.

Such regulations, coupled with reporting requirements to facilitate identification of violations and prompt enforcement action in the event of alleged violations, should have a clear deterrent impact on the activities of otherwise unregulated affiliates. The objective of that regulatory deterrence is to prevent the statutorily prohibited undue preference for affiliates and undue discrimination against non-affiliates under the Natural Gas Act. In the absence of this generic approach, aggrieved parties would be left to case-by-case complaint adjudication under the Natural Gas Act without any established regulatory framework, leading to *ad hoc* processing of complaints and after-the-fact review of alleged violations. Additionally, there should be a regulatory framework for affiliates directly under the Natural Gas Act, rather than the necessity for complainants to seek relief under the antitrust laws. I believe that this generic approach under our Natural Gas Act authorities will provide an appropriate and measured response to the obvious and growing potential for such undue preference and undue discrimination.

Last month, Access Energy Corporation (Access) and Natural Gas Clearinghouse, Inc. (NGC), filed separate Supplemental Comments in this docket. Access and NGC objected strenuously to any suggestion that the abuses that gave rise to this rulemaking in the first instance have somehow diminished or that anticompetitive behavior by pipeline affiliated marketers is diminishing. They argue that the problem is increasing in magnitude, complexity and subtlety, and that these abuses are occurring on pipelines that are operating under blanket certificates pursuant to Order No. 436. Any decrease in the number of complaints to the Enforcement Task Force should not be viewed as a sign that the problem is going away, they state, but rather as attributable to industry awareness of the limitations of the Task Force to address the types of anticompetitive and discriminatory practices which are causing the most problems. While the Task Force has done an admirable job of resolving disputes concerning some of the more blatant forms of discriminatory and anticompetitive practices, it cannot remedy problems which require a structural solution nor practices not yet declared anticompetitive by the Commission. Their petitions discuss a number of such practices which would fall under the provisions of this Final Rule, although the complete organizational separation they seek is not adopted in this Order. Consequently, they argue persuasively, in my judgment, that action on this Final Rule must proceed promptly. Also, their petitions add additional and timely weight to the continued need to require

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[187] 44 U.S.C. 3501–3520 (1982).
[188] 5 CFR 1320.12 (1987).

[1] 18 U.S.C. 284 *et. seq.* (1987).
[2] *See* Notice of inquiry into alleged competitive practices related to marketing affiliates to interstate pipelines. FERC Statutes & Regulations ¶35,539, 35,657.

complete organizational separation in the Final Rule on rehearing.

Observations

1. Exempted Pipelines

The Final Rule exempts from the regulations pipelines which do not conduct any transactions with their affiliated marketer. The Commission emphasizes that any exempted pipelines must immediately come into compliance with these regulations as soon as they conduct any transaction with their marketing affiliate (slip opinion at page 13). To that end, I recommend further that any pipeline claiming exempted status should file a notification to that effect and should file a monthly report stating that there has been no transaction with a marketing affiliate and the exemption continues. Also, at such time a previously exempted pipeline intends to conduct a transaction with an affiliated marketer, the pipeline should come into full compliance with this rule and file a report to that effect at least 15 days before the transaction to ensure application of the rule and public notice.

2 Selective Discounting

a. *Order No. 436 Blanket Certificate Requirement.* With regard to selective discounting by pipelines of transportation rates for marketing affiliates, I agree with the concerns expressed by Consolidated Edison, Hadson, NGC and Access, particularly in light of the earlier discussion about the significant and growing market share of marketing affiliates in the total transportation market and the transfer of regulated functions to unregulated affiliates. Obviously, the combination of the direct access to transportation information and services, the affiliate relationship, discounted transportation rates, and the growing aggregator function provide a potentially potent competitive advantage to marketing affiliates reflected in the recent data and surveys, particularly in terms of market penetration and market share as transportation services become increasingly dominant and expand to new geographic regions. It is clear, therefore, that the Commission must act to ensure that all shippers are on a more or less equal competitive footing.

Unless a pipeline has accepted a blanket certificate under Part 284 to provide transportation services, the pipeline does not provide complete transportation service options and can terminate services without prior Commission approval. Under those services, the pipelines and its marketing affiliate have an inherently preferred position over non-affiliates who remain at the mercy of the pipeline in terms of any longer-range competitive strategy for services. Consequently, the Commission has concluded that pipelines should only be authorized to use selective discounting for any affiliate where the pipeline has accepted a blanket certificate and the competitive positions of affiliates and non-affiliates are on a comparable basis. Similarly, the Commission has acted in Order No. 490, the abandonment policy Final Rule, to limit the additional opportunities for flexibility under that Order to pipelines accepting blanket certificates. Also, the Commission has limited the availability of direct billing for certain take-or-pay costs under Order No. 500 to pipelines accepting a blanket certificate.

I would note that the court in *AGD* approved the selective discounting provisions in Order No. 436, as appropriate to provide pipelines, through their marketing affiliates, a legitimate opportunity to compete with non-affiliates in the open access transportation program. The court noted that such discounting is not *per se* unduly discriminatory, provided that identical discounts are given to non-affiliates in identical circumstances. (*AGD* is discussed in the Slip Opinion at Footnote 49). Since issuance of Order No. 436 and the record in the *AGD* case, however, the Commission has focused more directly on the potential competitive abuses, unduly preferential treatment and unduly discriminatory activity associated with pipeline marketing affiliates in this and other dockets. Also, the market share of such affiliates in the transportation market has grown several orders of magnitude since 1985 and early 1986, and pipelines have the growing tendency of transferring functions to unregulated affiliates. The Commission has concluded that the record here and other statistical data generally demonstrate that marketing affiliates do not need any longer selective discounting to compete against the non-affiliates. That result is particularly clear when the pipeline is providing transportation services under Part 284 without a blanket certificate and where the marketing affiliate thus inherently has a competitive advantage. Consequently, the Commission has determined that the selective discounting authority of the pipeline should not apply to any affiliates unless the pipeline has accepted a blanket certificate.

I also would note that the general thrust of the *AGD* court's analysis of Order No. 436 focused on the negative impacts of undue discrimination against natural gas consumers. Here, the potential for undue preference, undue discrimination, and a regulatory-created competitive advantage for marketing affiliates would persist, unless the Commission conditioned selective discounting for marketing affiliates on acceptance of a blanket certificate, consistent with the *AGD* court's concerns about the negative impact on consumers. In effect, the Commission now believes that selective discounting without a blanket certificate does not conform to the requirements of the NGA. I would also note that Order No. 500 now provides the basic response to the *AGD* court's concerns about the take-or-pay issue and, in any event, the take-or-pay issue should not be allowed to require or support the clearly anti-competitive effects of continuing selective discounting in the absence of a blanket certificate. Rather, on the basis of the record and other information before us, the Commission is compelled here to cease that continued competitive abuse.

b. *Same Discount for Similarly Situated Shippers.* As an additional protection against competitive abuse with regard to selective discounting for marketing affiliates, I believe the Commission also should require that where a pipeline has accepted a blanket certificate and selective discounting is allowed for marketing affiliates, the pipeline must provide the same discounting to all similarly situated shippers seeking a discount. The Final Rule, in Footnote 49 at page 24 of the Slip Opinion, discusses the relevant provisions of Order No. 436 and the discussion in the *AGD* opinion on this issue. Order No 436 prohibits discounts based solely on affiliation, while the *AGD* court held that identical discounts must be provided to non-affiliates in identical circumstances. In other words, as a general rule, the maximum transportation rate may not be discounted for the marketing affiliate, unless the same discount is available generally to all other such shippers.

In the event of an allegation that the pipeline refused to provide the same discount to another non-affiliated shipper, the pipeline would have to demonstrate that the non-affiliated shipper was not eligible by reason of its completely different request for transportation services. The Commission would conclude that, for the purposes of this provision, the shippers are similarly situated when they are seeking services in the same general geographic region and along the same general pipeline route. A simple difference in receipt points, delivery points, or volumes should not be considered as rendering a non-affiliated shipper into a differently-situated, as opposed to similarly-situated, shipper. As a policy matter, the Commission should conclude that the potential for competitive abuse, undue preference and undue discrimination is prevented best by requiring broad uniformity of treatment here with regard to selective discounting of transportation rates as between affiliates and non-affiliates, where the pipeline accepts a blanket certificate.

c. *Immediate Public Disclosure of Affiliate Discount.* Order No. 436 would allow a pipeline to extend a selective discount to a marketing affiliate, but not disclose the fact or amount of the discount to the public for a period of fifteen days after the close of the billing period, as part of the original intent to give the marketing affiliate some competitive opportunity under Order No. 436. In the context of the Commission's decision here to ensure relative competitive parity between affiliates and non-affiliates when a pipeline accepts the blanket certificate, and in light of the significant market share already obtained by marketing affiliates, the Commission now concludes that pipelines must be required to disclose immediately any selective discount for an affiliate of the pipeline (sec. 250.16(b)(6)(xix)). Such immediate public disclosure is particularly important in today's natural gas market, where many transactions are negotiated on a thirty day basis with supply from the dominant spot market.

The Supplemental Comments filed by NGC and Access highlight the competitive harm associated with the current practice and urge adoption of a prior notice requirement. Such a period after the selective discount to the affiliate without public disclosure could provide the affiliate with a substantial competitive advantage over non-affiliates who would be eligible for the same discount, if they only were aware of the existence of the original discount, or the amount of it, to the pipeline's affiliate. Hence, under the Final Rule, any selective discount to an affiliate will be disclosed immediately and all other eligible shippers must be granted the same discount in the same timeframe. Thus, the pipeline and affiliates cannot use delayed disclosure and reporting to preserve the competitive advantage and, to that extent, frustrate this Rule.

3. Disclosure of Information to Non-Affiliates

The Final Rule requires that a pipeline must disclose immediately any new or changed information not available to non-affiliated marketers, if it provides such information to affiliates as part of a response to a specific request from an affiliate. The fact that such new or changed information is contained in a response to a specific request does not lessen its potential competitive advantage to the affiliate, nor insulate the pipeline from disclosing the information. (Slip Opinion, at page 45.) Pipelines and affiliates may not use the specific request as a means of circumventing the requirements of the Final Rule for full disclosure. Stated another way, all information provided to an affiliate must be provided contemporaneously to non-affiliates, regardless of the form or procedure by which it was sought by the affiliate and provided by the pipeline. The fact of a specific request and a specific response does not constitute any exception to that general rule. The result to be prevented here is competitive abuse with regard to the affiliate's activities, undue preference to the affiliate and undue discrimination against non-affiliates, and, as a result, the form of the information exchange between the pipeline and affiliate is irrelevant. Consequently, any information provided by the pipeline to the affiliate must be disclosed to all shippers, irrespective of the manner in which it is provided to the affiliate.

4. False or Misleading Information on Take-Or-Pay

The Final Rule states that the Commission will consider any false or misleading information provided under the terms of this Final Rule by pipelines with regard to released gas and take-or-pay credits to be a violation of the reporting requirements. (Slip Opinion at page 53.) The Commission remains concerned about the pipeline or the marketing affiliate providing any false or misleading information about take-or-pay and the amount of billing credit that will flow to the pipelines as a result of a purchase from the marketing affiliate. Obviously, such false and misleading information could provide the marketing affiliate with a decided competitive advantage in marketing gas and other services to customers of its pipeline affiliate.

That form of competitive abuse would be particularly pernicious and unduly discriminatory to non-affiliates, because customers and non-affiliates have no independent capability to challenge or verify the accuracy of such assertions of significant potential value to customers. The Supplemental Comments filed by Access and NGC highlight current practices of this nature, which have led to significant competitive harm. Consequently, the Commission will consider any such use of false and misleading information related to take-or-pay credit or relief to be a violation of the standards of conduct and intends to respond promptly with enforcement action under this Rule to any allegation of a pipeline or marketing affiliate using such false and misleading information.

5. Divorcement as a Remedy

The Final Rule states that, where necessary, the Commission will consider and impose divorcement or divestiture to prevent a pipeline's undue discrimination in favor of its marketing affiliate. (Slip Opinion at page 78). Further, I believe that the Commission would agree generally that divorcement would be an effective remedy for undue discrimination or undue preference with regard to a marketing affiliate, although not necessarily the only one. For example, where a pipeline and its marketing affiliate have engaged in a pattern of competitive abuses providing the affiliate with substantial market share and *de facto* unregulated market power, I believe the Commission would intend to order divorcement, among other possible actions, as an effective remedy and also to ensure that the pipeline does not continue to benefit in the future from the past competitive abuses. At that point, the more measured approach adopted in the Final Rule as a deterrent action would have to be followed by more decisive action to correct the competitively abusive and discriminatory result for the future. Consequently, interstate pipelines should be on notice not only that we believe we have divorcement authority, but also that we would intend to use it when necessary.

6. Standards of Conduct: Presumptions

The Final Order discusses the issue of burden of proof in an enforcement proceeding (Slip Opinion at page 82). I would note that the discussion in the Final Rule about the Standards of Conduct has established particular presumptions with regard to differing treatment by pipelines of affiliated and non-affiliated shippers under specified circumstances. Those presumptions would be used by the Commission in any enforcement proceeding to determine whether there was a satisfactory explanation for the differing treatment or whether, in the alternative, the differing treatment constituted a competitive abuse involving undue discrimination against non-affiliated shippers or undue preference for affiliated shipper.

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7. Sunsetting Reporting Requirements

The Final Rule adopts a new provision which sunsets the reporting requirements applicable to interstate pipelines under this Rule on December 31, 1989. The preamble discussion calls for a review of the reporting requirement after one year and a Commission decision on whether continuation of reporting is a necessary element of this new regulatory framework. (Slip Opinion at pages 6 and 7). The rationale for sunsetting the reporting requirements is that the perceived affiliate problem may be transitional in nature and may be mitigated or eliminated by competitive forces, once open access transportation and related Commission initiatives are permanently in place. I supported the December 31, 1989, sunset date at the Commission Meeting as a compromise approach to this provision of the Rule.

As the General discussion at the beginning of this separate opinion makes clear, I am persuaded that there is a serious and long term potential for competitive abuse arising from the affiliated relationship between interstate pipelines and their affiliated marketers. The essence of this Final Rule is deterrence of that potential competitive abuse by the establishment of Standards of Conduct, independent functioning, rapid reporting, and prompt enforcement by the Commission. And, this approach is far less drastic than the divorcement or divestiture of marketing affiliates urged by many commenters.

But, this approach can only be fully effective in its essential design if it includes the rapid reporting requirements in the Final Rule. I am not persuaded that competitive forces will be effective enough under any realistic scenario a year from now to eliminate the serious potential for competitive abuse or, for that matter, at any time in the next several years. Consequently, it is quite clear today, in my judgment, that the Final Rule probably would have far less, if not little, deterrent value or enforcement potential without those reporting requirements after the end of 1989.

I also am concerned that the reporting sunset provision will be perceived by interstate pipelines as a signal that the Commission is not committed completely to the new regulatory framework in the Final Rule. Access and NGC indicated in their supplemental comments that the industry perception already was to that effect, with resulting negative impacts in terms of affiliate preferences and non-affiliate discrimination. I believe the Commission must demonstrate its full and unswerving commitment to the aggressive implementation of this new regulatory framework and prompt enforcement action in the event of any alleged violation. The demonstration now of any lesser commitment would serve to reduce materially, if not destroy, the effectiveness of this regulatory deterrence approach. And, if the Commission cannot make that approach effective, the only remaining alternative would be some form of divorcement or divestiture on a generic basis to prevent competitive abuses by affiliates.

Accordingly, I recommend that the Commission on rehearing consider further the reporting sunset provision in the Final Rule. For example, the Commission might decide that a specific sunset provision in not necessary or appropriate at this time, because of the concern about the Commission's commitment to the deterrence approach. Alternatively, the Commission could establish a much more realistic sunset date such as December 31, 1994, five years after the rules are fully operational on interstate pipelines. The Commission also could schedule a formal review at a more realistic time certain, such as three years, without including a specific sunset provision at this time in the Final Rule. In any event, the Commission should address this provision further on rehearing to ensure the longer term effectiveness and viability of the new regulatory framework.

Reservation: Organizational Separation vs. "Independent Functioning"

1. "China Wall" Organizational Separation

My primary reservation about this Final Rule is the provision on so-called "independent functioning," discussed at page 45 of the Slip Opinion. At the outset, I should note that I continue to support strongly the total separation of the interstate pipeline and its marketing affiliate under a "China Wall" requirement. Any lesser degree of separation only invites organizational structures that reduce the regulatory deterrence of the Final Rule, as was argued by many commenters listed in Footnote 85, Access and NGC. Where there is complete separation, the identification of violations and the enforcement of the regulations is made materially more predictable and straightforward, thus enhancing the deterrent effectiveness of the rule. For example, the mere existence of any insider communication or information would establish a *de facto* presumption of a violation under a China Wall requirement, rather than merely raising questions as to the respective functions of the personnel involved, the nature of the communication or information, the relationship of the communication or information to the respective functions, and so forth. Consequently, I would support strongly modification of the Final Rule to impose a China Wall requirement on rehearing.

2. Independent Functioning: Real vs. Symbolic

If, however, the Commission adopts a limitation on certain personnel functions, it should be more precise than the current draft. Previously, the NOPR proposed that all employees of the pipeline and marketing affiliate function independently of each other to the maximum extent possible. That "to the maximum extent possible" requirement anticipated that there may be the need for some common support organization and personnel. Now the draft would reduce the coverage of the rule significantly from "all employees" to only "operating employees", which are undefined, and also would reduce the extent of separation from "to the maximum extent *possible*" to "to the maximum extent *practicable*." A better, more effective and more predictable formulation would be to require that all non-support personnel (i.e. all management, operational, regulatory and technical personnel) of the pipeline must function independently of the marketing affilitate—period—with no qualifiers of any kind. The only personnel who could function together at all (other than completely independently) would be support personnel not engaged in the marketing, sales, transportation and operations of the affiliated companies. Section 161.3(f) in the draft simply leaves too much ambiguity, discretion and flexibility.

Furthermore, the effectiveness of the independent functioning would be enhanced materially if the Final Rule also required that personnel other than support personnel could not be co-located, but must be in separate offices reflecting the separate corporate organizations. In a sense, the Commission is being asked to respect the affiliated, but separate corporate legal entities here, without piercing the corporate veil (however thin) to regulate common activities. Consequently, it should not be too extreme a measure to require that the two affiliates truly function independently, apart from common support personnel, in separate offices under their separate legal identities to prevent better the ease with which they might discriminate without detection and make any enforcement action somewhat less difficult, if a complaint alleges that they have discriminated.

I also would note that the order states on page 47 that the approach of the standards of conduct *plus* reporting requirements in this rule will be a sufficient deterrent, because the pipeline's transactions with affiliates will be disclosed and thus subject to enforcement action, while earlier in the rule we sunset the reporting requirements in a year and a half. Sunsetting the reporting requirements there, plus watering down the independent functioning here adds up to a significant aggregate retreat from the stand taken in the NOPR, despite the data showing marketing affiliates are more dominant and still growing in market share and potential unregulated monopoly power. A better result would obtain if we made the independent functioning requirement here much more real, than the current, arguably hollow and barely symbolic gesture in § 161.3(f). If, on rehearing, we stay with the current § 161.3(f) and also sunset the reporting requirement next year, we will have effectively and unfortunately gutted the rule in its final formulation.

Conclusion

I have concluded that the Commission should issue the Final Rule at this time, while seeking on rehearing to refine the rule by requiring complete "China Wall" organizational separation and adopting the several recommendations discussed in my observations. Modification of the reporting sunset provision is of particular importance to the effectiveness of the regulatory deterrence approach and the new affiliate regulatory framework. On balance, the Final Rule finally will establish a minimal set of enforceable Standards of Conduct for the affiliated marketers of interstate pipelines. That task has taken almost two years to accomplish to this point and, subject to the further refinement on rehearing, the Final Rule should provide the much needed regulatory framework to deter materially the potential competitive abuses resulting from affiliation. The Commission is obligated, in my judgment, to provide that regulatory framework as an essential and fundamental element of a more competitive natural gas market and less regulated natural gas industry.

Charles A. Trabandt,

Commissioner.

Part 161 is added to read as follows:

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

Sec.

161.1 Applicability.

161.2 Definitions.

161.3 Standards of conduct.

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp. p. 142.

§ 161.1 Applicability.

This part applies to any interstate natural gas pipeline that transports gas for others pursuant to Subparts B, G, or H of Part 284 or pursuant to Subparts A or E of Part 157 and is affiliated with a marketing or brokering entity, except a pipeline that does not conduct any transactions with its affiliated marketer.

§ 161.2 Definitions.

For purposes of this part:

"Affiliate," when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

"Control" (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a presumption of control.

"Potential shippers" means all current transportation and sales customers of an interstate natural gas pipeline, and all persons who have pending requests for transportation service or for information regarding transportation service on that pipeline.

§ 161.3 Standards of conduct.

An interstate natural gas pipeline must conduct its business to conform to the following standards:

(a) It must apply a tariff provision relating to transportation in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

(b) It must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

(c) It may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in scheduling, transportation, storage, or curtailment priority.

(d) It must process all similar requests for transportation in the same manner and within the same period of time.

(e) It may not disclose to its affiliate any information to secure transportation service the pipeline receives from a non-affiliated shipper.

(f) To the extent it provides information related to transportation of natural gas and gas sales and marketing to a marketing affiliate, it must do so contemporaneously to all potential shippers, affiliated and non-affiliated, on its system.

(g) To the maximum extent practicable its operating employees and the operating employees of its marketing affiliate must function independently of each other.

(h) It may not condition or tie its agreement to release gas subject to take-or-pay relief to an agreement by the producer, customer, end-user, or shipper relating to any service by its marketing affiliate, any services by it on behalf of its marketing affiliate, or any services in which its marketing affiliate is involved.

(i) If asked by a potential shipper, it must identify any information relating to released gas that is mitigating the pipeline's take-or-pay liability if it has provided this information to its marketing affiliate.

(j) By August 15, 1988, it must file with the Commission procedures that will enable shippers and the Commission to determine how the pipeline is complying with the standards in this section.

PART 250—FORMS

2. The authority citation for Part 250 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp. p. 142; Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

3. Part 250 is amended by adding a new § 250.16 to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* An interstate natural gas pipeline that transports natural gas for others pursuant to Subparts B, G, or H of Part 284 or pursuant to Subparts A or E of Part 157 and is affiliated, as that term is defined in § 161.2 of this chapter, in any way with a marketing or brokering entity, except a pipeline that does not conduct any transactions with its affiliated marketer must:

(1) File FERC Form No. 592 in the manner prescribed in paragraph (b) of this section.

(2) Maintain and provide the information specified in paragraph (c) of this section, and

(3) Maintain all information required under this section from the time the information is received until December 31, 1989.

(b) *What to file.* An interstate pipeline must file the following information in the FERC Form No. 592:

(1) A complete list of operating personnel and facilities shared by the interstate natural gas pipeline and the affiliated marketing or brokering company;

(2) The specific information and format required from a shipper for a valid request for transportation service, including for transactions in which an affiliated marketer is involved, the items of information in paragraph (b)(6) of this section;

(3) Procedures used to address and resolve complaints by shippers and potential shippers;

(4) Procedures used by the natural gas pipeline to inform affiliated and nonaffiliated shippers and potential shippers on the:

(i) Availability and pricing of transportation service, and

(ii) Capacity of the pipeline available for transportation;

(5)(i) Existing tariff provisions that contain the information and procedures required in paragraphs (b)(1) through (b)(4) of this section, or

(ii) New tariff provisions that contain the information and procedures described in paragraphs (b)(1) through (b)(4) of this section; and

(6) A log that contains the following information on all requests for transportation service made by affiliated marketers or in which an affiliated marketer is involved:

(i) The date of receipt of the request,

(ii) The date that the request was accepted as valid,

(iii) The specific affiliation of the requester with the interstate pipeline, and the extent of the pipeline's affiliation, if any, with the person to be provided transportation service,

(iv) The extent of the supplier's affiliation with the interstate pipeline from whom service is requested,

(v) The identity of the shipper making the request for service including designating whether the shipper is a local distribution company, an interstate pipeline, an intrastate pipeline, an end-user, a producer, or a marketer,

(vi) The maximum daily contract volume of gas requested to be transported and the total contract volume of gas requested to be transported over the life of the contract,

(vii) The producing area of the source of the gas requested to be transported,

(viii) The date service is requested to commence and terminate,

(ix) A list of all receipt and delivery points between which the gas is requested to be transported and the distance in pipeline miles between the receipt point and the delivery point that are the furthest apart,

(x) Whether the service requested is firm or interruptible,

(xi) The state of the ultimate end user of the gas,

(xii) The identity of the transportation rate schedules and the transportation rates applicable for such service,

(xiii) Whether any of the gas being transported is subject to take-or-pay relief and, if so, how much,

(xiv) Whether and by how much the cost of the gas to the affiliated marketer exceeds the price received for the sale of the gas by the affiliated marketer, after deducting associated costs, including those incurred for transportation; *i.e.*, whether the gas is being sold at a loss,

(xv) Current status of the request, including whether the request is:

(A) Incomplete,

(B) Complete and awaiting service,

(C) Complete, a contract signed, and awaiting commencement of service,

(D) Complete, service has begun and the Commission docket number assigned to the transaction,

(E) Withdrawn, or

(F) Denied and the reason why,

(xvi) The position of the request in the transportation request queue,

(xvii) The disposition of the request, including the date the requester was notified of availability of capacity, the date the contract was executed, the date service actually commenced, and any explanation concerning the disposition of the request,

(xviii) Any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints, and

(xix) Whether the transportation is being requested, offered or provided at discounted rates, duration of the discount requested, offered or provided, the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation between the shipper and the transporting pipeline, and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point.

(c) *What to maintain.* (1) An interstate pipeline must maintain the information in paragraph (b)(6) of this section for all requests for transportation service made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1989.

(2) The information required to be maintained by this section will be available from August 15, 1988, until December 31, 1989, to:

(i) The Commission on request, and

(ii) The public under Subpart D of Part 385 of this chapter.

(3) The information required to be maintained by this section must be maintained on 9-track magnetic tape or computer disk. The format and specifications for maintenance of the information can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol St. NE., Washington, DC 20426.

(d) *When to file.* (1) The information in paragraphs (b)(1) through (b)(5) of this section and entries in the log specified in paragraph (b)(6) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months must be filed initially with the Commission by August 15, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) of this section until December 31, 1989.

(2) The information required in paragraphs (b)(1) through (b)(5) of this section must be filed quarterly if any changes occur.

(3) The information in paragraph (b)(6) of this section relating to transporation requests must be maintained on a daily basis.

(4) The information in paragraph (b)(6) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending more than six months must be filed:

(i) For the items in paragraphs (b)(6)(i) through (xviii) of this section, at the end of the month following the month any changes occur. A report under this section satisfies a pipeline's obligation to report under § 284.13 of this chapter.

(ii) For the items in paragraph (b)(6)(xix) of this section, within 15 days of the close of the pipeline's billing period. A report of a discount under this section satisfies a pipeline's obligation to report under § 284.7(d)(5)(iv) of this chapter.

(e) *How to file.* (1) Each filing made with the Commission under this section must be made on 9-track magnetic tape or computer disk. The format and specifications for submission of the information prescribed by this section on magnetic tape or computer disk can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol St. NE., Washington, DC 20426.

(2) The magnetic tape or computer disk must be accompanied by one paper printout of the information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol St. NE., Washington, DC 20426.

(3) The magnetic tape or computer disk, and paper printout, submitted must be accompanied by a cover letter. The cover letter must include the file name, file attribute, and recording density of the magnetic tape submitted by the natural gas pipeline company. The cover letter must also include the subscription provided in § 385.2005(a) of this chapter.

(4) The subscription provided in paragraph (d)(3) of this section must certify in addition to the requirements in § 385.2005(a) of this chapter, that the paper printout contains the same information as the magnetic tape or computer disk and that the signer has read and knows the contents of the paper printout are true to the best knowledge and belief of the signer.

(f) *Where to file.* (1) The magnetic tape or computer disk and accompanying paper printout and cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

(2) Hand deliveries of a magnetic tape or computer disk and accompanying paper printout and cover letter may be made to: Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street NE., Washington, DC 20426.

(g) *Public access.* An interstate pipeline must maintain and make available to the public all filings with the Commission under paragraphs (b)(1) through (b)(5) of this section and entries in the log specified in paragraph (b)(6) of this section by providing:

(1) One paper copy at the pipeline's principal place of business during regular business hours;

(2) Copies by mail of any item requested within seven calendar days of a written request, for which the pipeline may charge the cost of postage and fifteen cents per page photocopied or per computer printout page provided; and

(3) 24-hour access, by electronic means, to the data specified in this paragraph that are contained in paragraph (b)(6) of this section.

(h) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to Subpart B, G, or H of Part 284 of this chapter and who knowingly violates the requirements of § 161.3, § 250.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation.

(2) For purposes of this paragraph, in the case of a continuing violation, each day of the violation will constitute a separate violation.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

4. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1978).

5. Section 284.7(d)(5)(ii) is revised to read as follows:

§ 284.7 Rates.

* * * * *

(d) *Rate design.* * * *

(5) *Rate flexibility.* * * *

(ii)(A) Except as provided in paragraph (d)(5)(ii)(B) of this section the pipeline may charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.

(B) If a pipeline does not hold a blanket certificate under Subpart G of this part, it may not charge, in a transaction involving its marketing affiliate, a rate that is lower than the highest rate it charges in any transaction not involving its marketing affiliate.

* * * * *

[FR Doc. 88–13344 Filed 6–13–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8208]

Income Tax; Taxable Years Beginning After December 31, 1953; Treatment of Related Person Factoring Income; Certain Investments in United States Property; and Stock Redemptions Through Related Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the treatment of related person factoring income. The regulations will provide the public with guidance with respect to the interpretation and administration of new provisions concerning the treatment of related person factoring income, which were added by the Tax Reform Acts of 1984 and 1986. This document also contains temporary regulations relating to the determination of the amount of earnings of a controlled foreign corporation invested in United States property. Also included is a temporary regulation providing a special rule for redemptions through the use of related corporations. The temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Except as otherwise provided, the temporary regulations under §§ 1.864–6T and 1.956–3T apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984 and are effective June 14, 1988.

The temporary regulations under §§ 1.956–1T and 1.956–2T are effective June 14, 1988 with respect to investments made on or after June 14, 1988. The temporary regulations under § 1.304–4T are effective June 14, 1988 with respect to acquisitions of stock occurring on or after June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Regarding §§ 1.864–6T and 1.956–3T, contact Barbara Allen Felker of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL–0323–88). Telephone (202) 634–5406 (not a toll-free call). Regarding §§ 1.304–4T, 1.956–1T, and 1.956–2T, contact Rieа M. Lainoff of the Office of the Associate

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Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224. Attention: CC:LR:T (INTL–0323–88). Telephone (202) 566–6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under sections 864(d) and 956(b)(3) of the Internal Revenue Code of 1986. These sections were added to the Internal Revenue Code of 1954 by section 123 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 644, 646) and amended by sections 1201(d)(4), 1221(a)(2), 1223(b)(1), 1275(c)(7) and 1810(c) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2525, 2550, 2568, 2569, 2824). Temporary regulations are also issued amending final regulations under sections 956 and 304 of the Internal Revenue Code of 1986. These regulations are issued under authority contained in section 7805 of the Internal Revenue Code of 1986.

Related Party Factoring

Prior Law

In a typical factoring transaction, a seller of goods or services takes back a receivable from the purchaser and sells the receivable to a third party (a "factor") at a discount. The seller's income on the sale of the goods or services is reduced by the amount of the discount. The factor's income is the excess of the amount collected from the obligor over the amount the factor paid for the receivable.

Under prior law, a number of issues arose as to the treatment of a factoring transaction when the factor is a controlled foreign corporation (CFC) related to the seller. A principal issue was whether the income derived by the CFC was subject to United States tax on a gross basis under section 881 and subject to withholding under section 1442, subject to United States tax on a net basis under section 11, or exempt from tax. A second issue was whether the factoring income was currently taxable to the United States shareholders of a CFC as Subpart F foreign base company income. A third issue was whether receivables purchased by a CFC from its United States parent were investments in United States property under section 956.

Statutory Provisions

The Tax Reform Act of 1984 added new subsection (d) to section 864. The Tax Reform Act of 1986 amended section 864(d). Section 864(d)(1) provides that if a person acquires (directly or indirectly) a trade or service receivable from a related person, any income from the acquired receivable will be treated as if it were interest on a loan to the obligor under the receivable. Section 864(d)(7) exempts related person factoring income from this characterization if (a) the person acquiring the receivable and the related transferor are organized under the laws of the same foreign country; (b) a substantial part of the transferor's assets used in its trade or business are located in that same foreign country; and (c) the transferor of the receivable would not have derived any foreign base company income or income effectively connected with a United States trade or business from such receivable if it had collected the receivable.

Section 864(d)(2) provides that the characterization of income as interest under section 864(d)(1) shall apply for purposes of the foreign tax credit limitation, the foreign personal holding company rules, and the subpart F provisions. Section 864(d)(5)(A) provides that certain special rules in these provisions shall not apply to related person factoring income. Section 864(d)(5)(A)(i) provides that factoring income is not eligible for the exceptions in section 904(d)(2) provided for export financing interest. Therefore, for purposes of calculating the foreign tax credit limitation, factoring income will be treated as passive income, high withholding tax interest or financial services income, as appropriate. In addition, section 864(d)(5)(A)(ii) provides that the de minimis rule of section 954(b)(3)(A) shall not apply to exempt related person factoring income from current taxation under Subpart F. Similarly, section 864(d)(5)(A)(iii) provides that related person factoring income is not eligible for the section 954(c)(2)(B) exclusion from subpart F income for export financing interest derived in the conduct of a banking business. Also, under section 864(d)(5)(A)(iv), the section 954(c)(3)(A)(i) exception for interest income received from related persons organized in the same country does not apply to related person factoring income. Instead, the special same country exception of section 864(d)(7) will apply to such income. (However, if a factored receivable bears stated interest, the interest element must qualify under the same country exception of section 954(c)(3)(A)(i) or another exception in order to satisfy the requirement of section 864(d)(7)(B), *i.e.*, that the related transferor would not have derived any foreign base company income (determined without regard to the de minimis rule of section 954(b)(3)(A)) if it had collected the receivable.)

Section 864(d)(3) defines the term "trade or service receivable" to mean any account receivable or evidence of indebtedness arising out of (a) the disposition by a related person of property described in section 1221(1) (hereinafter referred to as "inventory property") or (b) the performance of services by a related person.

Section 864(d)(4) defines the term "related person" (that is, a person related to the person who acquires the receivable) to mean (a) any person who is a related person under section 267(b); (b) any United States shareholder (as defined in section 951(b)); and (c) any person who is related to such United States shareholder within the meaning of section 267(b).

Section 864(d)(5)(B) provides a special rule for the possessions. Under this section, income recharacterized as interest income under section 864(d)(1) is not eligible for the possessions tax credit under section 936(a)(1) (A) or (B) unless the income is considered to be from sources within a possession after application of section 864(d)(1).

Section 864(d)(6) provides that any income derived by a CFC from a loan to a person for the purpose of financing the purchase of inventory property or services of a related person shall be treated as interest described in section 864(d)(1).

Section 956(a)(1) provides the general rule that the amount of earnings of a CFC invested in United States property at the close of any taxable year is the aggregate amount of such property held, directly or indirectly, by the CFC at the close of the taxable year, to the extent such amount, if distributed, would have constituted a dividend.

The Tax Reform Act of 1984 added new paragraph (3) to subsection (b) of section 956. Section 956(b)(3) provides that a trade or service receivable that is acquired directly or indirectly by a CFC from a related United States person shall constitute an investment in United States property by the CFC if the obligor under the trade or service receivable is a United States person. The Tax Reform Act of 1986 amended section 956(b)(3)(A). As amended, section 956(b)(3)(A) provides that the section 956(b)(2)(H) exception applies to trade or service receivables acquired from related United States persons. Thus, excepted from section 956(b)(3) is an amount of the CFC's assets equal to that portion of its post-1962 earnings and profits which is taxable as United States effectively connected income and

thereby excluded from Subpart F income.

Explanation of Provisions

Section 1.864–8T(a)(1) states the general rule that income derived from a trade or service receivable acquired (directly or indirectly) from a related person shall be treated as if it were interest received on a loan to the obligor under the receivable. Paragraph (a)(1) clarifies that this treatment will apply only for purposes of the foreign personal holding company provisions, the Subpart F provisions (relating to controlled foreign corporations), and the provisions relating to the separate limitations on the foreign tax credit.

Paragraph (b) defines the terms "trade or service receivable" and "related person."

Paragraph (c)(1) provides general rules for determining whether a trade or service receivable has been acquired by a related person. Paragraph (c)(3) provides rules for determining whether a trade or service receivable has been indirectly acquired by a related person. Indirect acquisitions include certain acquisitions through accommodation parties, pass-through entities, swap or pooling arrangements, and financing arrangements.

Paragraph (d) provides an exception from the general rule of paragraph (a)(1) for certain factoring transactions conducted by related persons that are created or organized under the laws of the same foreign country.

Paragraph (e) provides special rules relating to certain provisions generally applicable to interest income that do not apply to factoring income. Paragraph (e)(1) provides special rules relating to the foreign personal holding company provisions and the Subpart F provisions. Paragraph (e)(2) provides special rules relating to the separate limitations on the foreign tax credit. Paragraph (e)(3) provides special rules for the treatment of income derived from factoring transactions in the possessions.

Paragraph (f) provides the effective date of the section.

Section 1.956–3T(a) provides that the term "United States property" includes any trade or service receivable that is acquired (directly or indirectly) from a related person who is a United States person if the obligor under the receivable is a United States person. Paragraph (a) provides that the terms "trade or service receivable" and "related person" have the same meaning given to those terms under § 1.864–8T(b) and that the exception contained in § 1.956–2T(d)(2)(i)(B) for short-term service receivables shall not apply.

Paragraph (b)(1) provides general rules for determining whether there has been an acquisition of a trade or service receivable. Paragraph (b)(2) provides rules for determining whether there has been an indirect acquisition of a trade or service receivable. In this context, certain acquisitions involving accommodation parties, pass-through entities, swap or pooling arrangements, and financing arrangements are described.

Paragraph (c) provides a special rule whereby the substitution of obligors to avoid the application of section 956 may be disregarded.

Investment in United States Property

Explanation of Provisions

As presently in effect, § 1.956–1(b)(4) provides that a CFC will be considered to hold indirectly the investments in United States property held by another foreign corporation controlled by the CFC which is created or availed of by the CFC principally for the purpose of holding United States property. The current test allows CFCs, in certain situations, to circumvent the investment in U.S. property rules by allowing those corporations to transfer assets representing earnings and profits to another CFC and having the transferee invest those earnings in U.S. property.

Section 1.956–1T(b)(4) provides that a CFC will be considered to hold indirectly the investments in United States property held on its behalf by a trustee or nominee or by another foreign corporation controlled by the CFC, if one of the principal purposes for creating, organizing, or funding (through capital contributions or debt) the other foreign corporation is to avoid the application of section 956.

Section 1.956–1(e)(1) provides generally that the amount taken into account with respect to any United States property shall be its adjusted basis, reduced by certain liabilities that constitute a specific charge against the property involved. In the case of an indebtedness incurred by a U.S. company which is guaranteed by its CFC, section 956(c) provides that the U.S. parent's indebtedness will be treated as an investment in U.S. property by the CFC to the extent of the CFC's guarantee. The results in the above transaction may also be achieved through a recourse borrowing by the CFC followed by the on lending of the funds to the U.S. parent with the pledge of the parent's note as security for the CFC's borrowing. In each instance, the creditworthiness of both the CFC and the U.S. parent has been pledged for the purpose of providing funds to the U.S. parent. It has been determined that in the case of an investment in U.S. property consisting of an obligation from a related U.S. person, as defined in section 954(d)(3) and paragraph (e) of § 1.954–1, a liability will not be recognized as a specific charge if the liability is with recourse with respect to the general credit or other assets of the investing controlled foreign corporation. This result reflects the interaction between the section 956(c) limitation with the specific charge exception. Therefore, § 1.956–1T adds paragraph (e)(5) to provide that, in the case of property consisting of an obligation of a related person, the specific charge will not be recognized if the liability representing the charge is with recourse with respect to the general credit or other assets of the investing CFC.

As presently in effect, § 1.956–2(d)(2) provides that a debt obligation of a related domestic corporation which (a) is collected within one year from the time it is incurred, or (b) matures within one year from the time it is incurred but is not collected within such period solely by reason of the inability or unwillingness of the debtor to make payment within such period, is excluded from the definition of "United States property" in determining the amount of a controlled foreign corporation's earnings invested in United States property.

The Service is concerned that, under the current regulations, CFC's may make successive loans with a maturity of less than one year as a means of loaning their earnings to related U.S. corporations on a long term basis in avoidance of section 956.

Section 1.956–2T(d)(2) provides that, for purposes of determining whether an investment is an investment in U.S. property, the term "obligation" shall not include any indebtedness of a U.S. person arising in connection with the provision of services by a controlled foreign corporation to the U.S. person if the amount of such obligation outstanding at any time during the taxable year of the controlled foreign corporation does not exceed an amount which would be ordinary and necessary to carry on the trade or business of the controlled foreign corporation and the U.S. person if they were unrelated. The amount of such obligations shall be considered to be ordinary and necessary to the extent of such receivables that are paid within 60 days.

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Redemptions Through Use of Related Corporations

Explanation of Provision

Section 304(a)(1) of the Code generally provides that the acquisition for property by one corporation (other than by a subsidiary) of the stock of another commonly owned corporation (the issuing corporation) is treated as a distribution of such property in redemption of the stock of the acquiring corporation. Section 304(a)(2) of the Code provides that the acquisition for property by one corporation of the stock of another corporation (the issuing corporation) that is in control of the acquiring corporation shall be treated as a distribution in redemption of the stock of the issuing corporation. Section 304(b)(2) provides that the determination of the amount which is a dividend (and the source thereof) is made as if the property were distributed by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits.

In the context of acquisitions by a foreign affiliate from a domestic affiliate of a commonly owned corporation, section 304 serves precisely the same function as section 956. Section 956 treats loans by a CFC to U.S. affiliates as taxable repatriations. Similarly, section 304 treats an acquisition for cash or other property by a foreign affiliate from a domestic affiliate of a third commonly owned affiliate as a dividend to the extent of the foreign affiliate's earnings and profits. Like section 956, cash or other property paid by the acquiring foreign affiliate to the U.S. selling affiliate is treated as a taxable repatriation to the extent of the acquiring affiliate's earnings and profits.

The regulations under section 956 prevent the avoidance of section 956 by a CFC by providing that an investment in U.S. property made by a foreign corporation that is created or availed of by the CFC principally for the purpose of holding the U.S. property shall be considered to be an investment held by the CFC. *See* § 1.956–1(b)(4). This rule generally prevents a CFC from contributing cash to a lower-tier CFC with no earnings and profits to be used to make an investment in U.S. property in avoidance of section 956. Under § 1.956–1T(b)(4), the anti-abuse rule under section 956 will apply if one of the principal purposes for creating, organizing, or funding (through capital contributions or debt) another foreign corporation is to avoid the application of section 956.

In order to prevent the similar avoidance of section 304, the regulations are amended to adopt a rule, contained in § 1.304–4T, that is similar to the anti-abuse rule of § 1.956–1(b)(4), as modified by § 1.956–1T(b)(4).

Special Analyses

It has been determined that these temporary rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). There is a need for immediate guidance with respect to the provisions contained in this Treasury decision because the provisions of the Internal Revenue Code concerning related person factoring income (sections 864(d) and 956(b)(3)) are applicable with respect to accounts receivable and evidences of indebtedness transferred after March 1, 1984. In addition, there is an immediate need to revise the rules for determining whether there is an investment in United States property under the section 956 regulations and the rules under the section 304 regulations to prevent the avoidance of United States tax. For this reason, it is found impracticable to issue the regulations with notice and public procedure under section 553 of Title 5 of the United States Code.

Drafting Information

The principal authors of these temporary regulations are Barbara Allen Felker, Rice M. Lainoff, Marnie J. Carro, and Ann Zukas of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.301–1 Through 1.305–6 and 1.861–1 Through 1.997–1

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Reorganizations, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended to read as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.864–4T and 1.956–3T also issued under 26 U.S.C. 864(d)(6).

Par. 2. New § 1.864–5T is added immediately after § 1.864–7. The added section reads as follows:

§ 1.864–4T Treatment of related person factoring income (temporary).

(a) *Applicability*—(1) *General rule.* This section applies for purposes of determining the treatment of income derived by a person from a trade or service receivable acquired from a related person. Except as provided in paragraph (d) of this section, if a person acquires (directly or indirectly) a trade or service receivable from a related person, any income (including any stated interest, discount or service fee) derived from the trade or service receivable shall be treated as if it were interest received on a loan to the obligor under the receivable. The characterization of income as interest pursuant to this section shall apply only for purposes of sections 551–558 (relating to foreign personal holding companies), sections 951–964 (relating to controlled foreign corporations), and section 904 (relating to the limitation on the foreign tax credit) of the Code and the regulations thereunder. The principles of sections 861 through 863 and the regulations thereunder shall be applied to determine the source of such interest income for purposes of section 904.

(2) *Override.* With respect to income characterized as interest under this section, the special rules of section 864(d) and this section override any conflicting provisions of the Code and regulations relating to foreign personal holding companies, controlled foreign corporations, and the foreign tax credit limitation. Thus, for example, pursuant to section 864(d)(5) and paragraph (e) of this section, stated interest derived from a factored trade or service receivable is not eligible for the Subpart F de minimis rule of section 954(b)(3), the same country exception of section 954(c)(3)(A)(i), or the special rules for export financing interest of sections 904(d)(2) and 954(c)(2)(B), even if in the absence of this section the treatment of such stated interest would be governed by those sections.

(3) *Limitation.* Section 864(d) and this section apply only with respect to the tax treatment of income derived from a trade or service receivable acquired from a related person. Therefore, neither section 864(d) nor this section affects the characterization of an expense or loss of either the seller of a receivable or the obligor under a receivable. Accordingly, the obligor under a trade or service receivable shall not be allowed to treat any part of the purchase price of property or services as interest (other than amounts treated as interest under provisions other than section 864(d)).

(b) *Definitions.* The following definitions apply for purposes of this section and § 1.956–3T.

(1) *Trade or service receivable.* The term "trade or service receivable" means any account receivable or evidence of indebtedness, whether or not issued at a discount and whether or not bearing stated interest, arising out of the disposition by a related person of property described in section 1221(1) (hereinafter referred to as "inventory property") or the performance of services by a related person.

(2) *Related person.* A "related person" is:

(i) A person who is a related person within the meaning of section 267(b) and the regulations thereunder;

(ii) A United States shareholder (as defined in section 951(b)); or

(iii) A person who is related (within the meaning of section 267(b) and the regulations thereunder) to a United States shareholder.

(c) *Acquisition of a trade or service receivable*—(1) *General rule.* A trade or service receivable is considered to be acquired by a person at the time when that person is entitled to receive all or a portion of the income from the trade or service receivable. A person who acquires a trade or service receivable (hereinafter referred to as the "factor") is considered to have acquired a trade or service receivable regardless of whether:

(i) The acquisition is characterized for federal income tax purposes as a sale, a pledge of collateral for a loan, an assignment, a capital contribution, or otherwise;

(ii) The factor takes title to or obtains physical possession of the trade or service receivable;

(iii) The related person assigns the trade or service receivable with or without recourse;

(iv) The factor or some other person is obligated to collect the payments due under the trade or service receivable;

(v) The factor is liable for all property, excise, sales, or similar taxes due upon collection of the receivable;

(vi) The factor advances the entire face amount of the trade or service receivable transferred;

(vii) All trade or service receivables assigned by the related person are assigned to one factor; and

(viii) The obligor under the trade or service receivable is notified of the assignment.

(2) *Example.* The following example illustrates the application of paragraphs (a), (b), and (c)(1) of this section.

Example. P, a domestic corporation, owns all of the outstanding stock of FS, a controlled foreign corporation. P manufactures and sells paper products to customers, including X, an unrelated domestic corporation. As part of a sales transaction, P takes back a trade receivable from X and sells the receivable to FS. Because FS has acquired a trade or service receivable from a related person, the income derived by FS from P's receivable is interest income described in paragraph (a)(1) of this section.

(3) *Indirect acquisitions*—(i) *Acquisition through unrelated person.* A trade or service receivable will be considered to be acquired from a related person if it is acquired from an unrelated person who acquired (directly or indirectly) such receivable from a person who is a related person to the factor. The following example illustrates the application of this paragraph (c)(3)(i).

Example. A, a United States citizen, owns all of the outstanding stock of FPHC, a foreign personal holding company. A performs engineering services within and without the United States for customers, including X, an unrelated corporation. A performs engineering services for X and takes back a service receivable. A sells the receivable to Y, an unrelated corporation engaged in the factoring business. Y resells the receivable to FPHC. Because FPHC has indirectly acquired a service receivable from a related person, the income derived by FPHC from A's receivable is interest income described in paragraph (a)(1) of this section.

(ii) *Acquisition by nominee or pass-through entity.* A factor will be considered to have acquired a trade or service receivable held on its behalf by a nominee or by a partnership, simple trust, S corporation or other pass-through entity to the extent the factor owns (directly or indirectly) a beneficial interest in such partnership or other pass-through entity. The rule of this paragraph (c)(3)(ii) does not limit the application of paragraph (c)(3)(iii) of this section regarding the characterization of trade or service receivables of unrelated persons acquired pursuant to certain swap or pooling arrangements. The following example illustrates the application of this paragraph (c)(3)(ii).

Example. FS1, a controlled foreign corporation, acquires a 20 percent limited partnership interest in PS, a partnership. PS purchases trade or service receivables resulting from the sale of inventory property by FS1's domestic parent, P. PS does not purchase receivables of any person who is related to any other partner in PS. FS1 is considered to have acquired a 20 percent interest in the receivables acquired by PS. Thus, FS1's distributive share of the income derived by PS from the receivables of P is considered to be interest income described in paragraph (a)(1) of this section.

(iii) *Swap or pooling arrangements.* A trade or service receivable of a person unrelated to the factor will be considered to be a trade or service receivable acquired from a related person and subject to the rules of this section if it is acquired in accordance with an arrangement that involves two or more groups of related persons that are unrelated to each other and the effect of the arrangement is that one or more related persons in each group acquire (directly or indirectly) trade or service receivables of one or more unrelated persons who are also parties to the arrangement, in exchange for reciprocal purchases of the first group's receivables. The following example illustrates the application of this paragraph (c)(3)(iii).

Example. Controlled foreign corporations A, B, C, and D are wholly-owned subsidiaries of domestic corporations M, N, O, and P, respectively. M, N, O, and P are not related persons. According to a prearranged plan, A, B, C, and D each acquire trade or service receivables of M, N, O, and/or P, except that neither A, B, C nor D acquires receivables of its own parent corporation. Because the effect of this arrangement is that the unrelated groups acquire each other's trade or service receivables pursuant to the arrangement, income derived by A, B, C, and D from the receivables acquired from M, N, O, and P is interest income described in paragraph (a)(1) of this section.

(iv) *Financing arrangements.* If a controlled foreign corporation (as defined in section 957(a)) participates (directly or indirectly) in a lending transaction that results in a loan to the purchaser of inventory property, services, or trade or service receivables of a related person (or a loan to a person who is related to the purchaser), and if the loan would not have been made or maintained on the same terms but for the corresponding purchase, then the controlled foreign corporation shall be considered to have indirectly acquired a trade or service receivable, and income derived by the controlled foreign corporation from such a loan shall be considered to be income described in paragraph (a)(1) of this section. For purposes of this paragraph (c)(3)(iv), it is immaterial that the sums lent are not, in fact, the sums used to finance the purchase of a related person's inventory

property, services, or trade or service receivables. The amount of income derived by the controlled foreign corporation to be taken into account shall be the total amount of income derived from a lending transaction described in this paragraph (c)(3)(iv), if the amount lent is less than or equal to the purchase price of the inventory property, services, or trade or service receivables. If the amount lent is greater than the purchase price of the inventory property, services or receivables, the amount to be taken into account shall be the proportion of the interest charge (including original issue discount) that the purchase price bears to the total amount lent pursuant to the lending transaction. The following examples illustrate the application of this paragraph (c)(3)(iv).

Example (1). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation engaged in the financing business in Country X. P manufactures and sells toys, including sales to C, an unrelated corporation. Prior to P's sale of toys to C for $2,000, D, a wholly-owned Country X subsidiary of C, borrows $3,000 from FS1. The loan from FS1 to D would not have been made or maintained on the same terms but for C's purchase of toys from P. Two-thirds of the income derived by FS1 from the loan to D is interest income described in paragraph (a)(1) of this section.

Example (2). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation organized under the laws of Country X. FS1 has accumulated cash reserves. P has uncollected trade and service receivables of foreign obligors. FS1 makes a $1,000 loan to U, a foreign corporation that is unrelated to P or FS1. U purchases P's trade and service receivables for $2,000. The loan would not have been made or maintained on the same terms but for U's purchase of P's receivables. The income derived by U from the receivables is not interest income within the meaning of paragraph (a) of this section. However, the interest paid by U to FS1 is interest income described in paragraph (a)(1) of this section.

Example (3). The facts are the same as in Example (2), except that U is a wholly-owned Country Y subsidiary of FS1. Because U is related to P within the meaning of paragraph (b)(2) of this section, under paragraph (c)(1) of this section, income derived by U from P's receivables is interest income described in paragraph (a)(1) of this section. In addition, the income derived by FS1 from the loan to U is interest income described in paragraph (a)(1) of this section.

(d) *Same country exception*—(1) *Income from trade or service receivables.* Income derived from a trade or service receivable acquired from a related person shall not be treated as interest income described in paragraph (a)(1) of this section if:

(i) The person acquiring the trade or service receivable and the related person are created or organized under the laws of the same foreign country;

(ii) The related person has a substantial part of its assets used in its trade or business located in such foreign country; and

(iii) The related person would not have derived foreign base company income, as defined in section 954(a) and the regulations thereunder, or income effectively connected with a United States trade or business from such receivable if the related person had collected the receivable.

For purposes of paragraph (d)(1)(ii) of this section, the standards contained in § 1.954–2(e) shall apply in determining the location of a substantial part of the assets of a related person. For purposes of paragraph (d)(1)(iii) of this section, a determination of whether the related person would have derived foreign base company income shall be made without regard to the de minimis test described in section 954(b)(3)(A). The following examples illustrate the application of this paragraph (d)(1).

Example (1). FS1, a controlled foreign corporation incorporated under the laws of Country X, owns all of the outstanding stock of FS2, which is also incorporated under the laws of Country X. FS1 has a substantial part of its assets used in its business in Country X. FS1 manufactures and sells toys for use in Country Y. The toys sold are considered to be manufactured in Country X under § 1.954–3(a)(2). FS1 is not considered to have a branch or similar establishment in Country Y that is treated as a separate corporation under section 954(d)(2) and § 1.954–3(b). Thus, gross income derived by FS1 from the toy sales is not foreign base company sales income. FS1 takes back receivables without stated interest from its customers. FS1 assigns those receivables to FS2. The income derived by FS2 from the receivables of FS1 is not interest income described in paragraph (a)(1) of this section, because it satisfies the same country exception under paragraph (d)(1) of this section.

Example (2). The facts are the same as in Example (1), except that the toys sold by FS1 are purchased from FS1's U.S. parent and are sold for use outside of Country X. Thus, any income derived by FS1 from the sale of the toys would be foreign base company sales income. Therefore, income derived by FS2 from the receivables of FS1 is interest income described in paragraph (a)(1) of this section. FS2 is considered to derive interest income from the receivable even if, solely by reason of the de minimis rule of section 954(b)(3)(A), FS1 would not have derived foreign base company income if FS1 had collected the receivable.

(2) *Income from financing arrangements.* Income derived by a controlled foreign corporation from a loan to a person that purchases inventory property or services of a person that is related to the controlled foreign corporation, or from other loans described in paragraph (c)(3)(iv) of this section, shall not be treated as interest income described in paragraph (a)(1) of this section if:

(i) The person providing the financing and the related person are created or organized under the laws of the same foreign country;

(ii) The related person has a substantial part of its assets used in its trade or business located in such foreign country; and

(iii) The related person would not have derived foreign base company income or income effectively connected with a United States trade or business:

(A) From the sale of inventory property or services to the borrower or from financing the borrower's purchase of inventory property or services, in the case of a loan to the purchaser of inventory property or services of a related person; or

(B) From collecting amounts due under the receivable or from financing the purchase of the receivable, in the case of a loan to the purchaser of a trade or service receivable of a related person.

For purposes of paragraph (d)(2)(ii) of this section, the standards contained in § 1.954–2(e) shall apply in determining the location of a substantial part of the assets of a related person. For purposes of paragraph (d)(2)(iii) of this section, a determination of whether the related person would have derived foreign base company income shall be made without regard to the de minimis test described in section 954(b)(3)(A). The following examples illustrate the application of this paragraph (d)(2).

Example (1). FS1, a controlled foreign corporation incorporated under the laws of Country X, owns all of the outstanding stock of FS2, which is also incorporated under the laws of Country X. FS1, which has a substantial part of its assets used in its business located in Country X, manufactures and sells toys for use in Country Y. The toys sold are considered to be manufactured in Country X under § 1.954–3(a)(2). FS1 is not considered to have a branch or similar establishment in Country Y that is treated as a separate corporation under section 954(d)(2) and § 1.954–3(b). Thus, the gross income derived by FS1 from the toy sales is not foreign base company sales income. FS2 makes a loan to FS3, a wholly-owned subsidiary of FS1 which is also incorporated under the laws of Country X, in connection with FS3's purchase of toys from FS1. FS3 does not earn any subpart F gross income. Thus, FS1 would not have derived foreign personal holding company interest income if FS1 had made the loan to FS3, because the interest would be covered by the same country exception of section 954(c)(3).

Therefore, the income derived by FS2 from its loan to FS3 is not treated as interest income described in paragraph (a)(1) of this section, because it satisfies the same country exception under paragraph (d)(2) of this section. Such income is also not treated as foreign personal holding company income described in section 954(c)(1)(A) because the same country exception of section 954(c)(3) also applies to the interest actually derived by FS2 from its loan to FS3.

Example (2). FS1, a controlled foreign corporation incorporated under the laws of Country X, owns all of the outstanding stock of FS2, which is also incorporated under the laws of Country X. FS1 purchases toys from its U.S. parent and resells them for use outside of Country X. As part of a sales transaction, FS1 takes back trade receivables. FS2 makes a loan to U, an unrelated corporation, to finance U's purchase of FS1's trade receivables. Because FS1 would have derived foreign base company income if FS1 had collected the receivables or made the loan itself, the same country exception of paragraph (d)(2) of this section does not apply. Accordingly, under paragraph (c)(3)(iv) of this section, the income derived by FS2 from its loan to U is treated as interest income described in paragraph (a)(1) of this section.

(e) *Special rules*—(1) *Foreign personal holding companies and controlled foreign corporations.* For purposes of sections 551–558 (relating to foreign personal holding companies), the exclusion provided by section 552(c) for interest described in section 954(c)(3)(A) shall not apply to income described in paragraph (a)(1) of this section. For purposes of the sections 951–964 (relating to controlled foreign corporations), income described in paragraph (a)(1) of this section shall be included in a United States shareholder's pro rata share of a controlled foreign corporation's Subpart F income without regard to the de minimis rule under section 954(b)(3)(A). However, income described in paragraph (a)(1) of this section shall be included in the computation of a controlled foreign corporation's foreign base company income for purposes of applying the de minimis rule under section 954(b)(3)(A) and the more than 70 percent of gross income test under section 954(b)(3)(B). In addition, income described in paragraph (a)(1) of this section shall be considered to be Subpart F income without regard to the exclusions from foreign base company income provided by section 954(c)(2)(B) (relating to export financing interest derived in the conduct of a banking business) and section 954(c)(3)(A)(i) (relating to certain interest income received from related persons).

(2) *Foreign tax credit.* Income described in paragraph (a)(1) of this section shall be considered to be interest income for purposes of the section 904 foreign tax credit limitation and is not eligible for the exceptions for export financing interest provided in section 904(d)(2)(A)(iii)(II), (B)(ii), and (C)(iii). In addition, such income will be subject to the look-through rule for Subpart F income set forth in section 904(d)(3) without regard to the de minimis exception provided in section 904(d)(3)(E).

(3) *Possessions corporations*—(i) *Limitation on credit.* Income described in paragraph (a)(1) of this section shall not be treated as income described in section 936(a)(1) (A) or (B) unless the income is considered under the principles of § 1.863–6 to be derived from sources within the possessions. Thus, the credit provided by section 936 is not available for income described in paragraph (a)(1) of this section unless the obligor under the receivable is a resident of a possession. In the case of a loan described in section 864(d)(6), the credit provided by section 936 is not available for income described in paragraph (a)(1) of this section unless the purchaser of the inventory property or services is a resident of a possession.

(ii) *Eligibility determination.* Notwithstanding the limitation on the availability of the section 936 credit for income described in paragraph (a)(1) of this section, if income treated as interest income under paragraph (a)(1) of this section is derived from sources within a possession (determined without regard to this section), such income shall be eligible for inclusion in a corporation's gross income for purposes of section 936(a)(2)(A). If such income is derived from the active conduct of a trade or business within a possession (determined without regard to this section), such income shall be eligible for inclusion in a corporation's gross income for purposes of section 936(a)(2)(B). (These rules apply for purposes of determining whether a corporation is eligible to elect the credit provided under section 936(a).)

(iii) *Example.* The following example illustrates the application of paragraph (e)(3) of this section.

Example. Corporation X is operating in a possession as a possessions corporation. In 1985, X earned $50,000 from the active conduct of a business in the possession, including $5,000 from trade or service receivables acquired from a related party. Obligors under the receivables acquired by X are not residents of the possession. Corporation X also earned $20,000 from activities other than its active conduct of business in the possession. The $5,000 derived by X from the receivables is not eligible for the section 936 credit. However, the $5,000 may be used by X to meet the percentage tests under section 936(a)(2) to the extent that such income is considered to be derived from sources within the possession (for purposes of section 936(a)(2)(A)) or is considered to be derived from the active conduct of a trade or business in the possession (for purposes of section 936(a)(2)(B)), in either case determined without regard to the characterization of such income under this section.

(f) *Effective date.* The provisions of this section shall apply with respect to accounts receivable and evidences of indebtedness transferred after March 1, 1984 and are effective June 14, 1988.

Par. 3. New § 1.956–3T is added immediately after § 1.956–2. The added section reads as follows:

§ 1.956–3T Certain trade or service receivables acquired from United States persons (temporary).

(a) *In general.* For purposes of section 956(a) and § 1.956–1, the term "United States property" also includes any trade or service receivable if the trade or service receivable is acquired (directly or indirectly) after March 1, 1984, from a related person who is a United States person (as defined in section 7701(a)(30)) (hereinafter referred to as a "related United States person") and the obligor under the receivable is a United States person. A trade or service receivable described in this paragraph shall be considered to be United States property notwithstanding the exceptions (other than subparagraph (H)) contained in section 956(b)(2). The terms "trade or service receivable" and "related person" have the respective meanings given to such terms by section 864(d) and the regulations thereunder. For purposes of this section, the exception contained in § 1.956–2T(d)(2)(i)(B) for short-term obligations shall not apply to service receivables described in this paragraph.

(b) *Acquisition of a trade or service receivable*—(1) *General rule.* The rules of § 1.864–8T(c)(1) shall be applied to determine whether a controlled foreign corporation has acquired a trade or service receivable.

(2) *Indirect acquisitions*—(i) *Acquisition through unrelated person.* A trade or service receivable will be considered to be acquired from a related person if it is acquired from an unrelated person who acquired (directly or indirectly) such receivable from a person who is a related person to the acquiring person.

(ii) *Acquisition by nominee or pass-through entity.* A controlled foreign corporation will be considered to have acquired a trade or service receivable of a related United States person held on its behalf:

(A) By a nominee or by a partnership, simple trust, S corporation or other pass-

through entity to the extent the controlled foreign corporation owns (directly or indirectly) a beneficial interest in such partnership or other pass-through entity; or

(B) By another foreign corporation that is controlled by the controlled foreign corporation, if one of the principal purposes for creating, organizing, or funding such other foreign corporation (through capital contributions or debt) is to avoid the application of section 956. *See* § 1.956–1T.

The rule of this paragraph (b)(2)(ii) does not limit the application of paragraph (b)(2)(iii) of this section regarding the characterization of trade or service receivables of unrelated persons acquired pursuant to certain swap or pooling arrangements. The following examples illustrate the application of this paragraph (b)(2)(ii).

Example (1). FS1, a controlled foreign corporation with substantial accumulated earnings and profits, contributes $2,000,000 to PS, a partnership, in exchange for a 20 percent limited partnership interest in PS. PS purchases trade or service receivables of FS1's domestic parent, P. The obligors under the receivables are United States persons. PS does not purchase receivables of any person who is related to any other partner in PS. Under paragraph (b)(2)(ii)(A) of this section, there is an investment of the earnings of FS1 in United States property equal to 20 percent of PS's basis in the receivables of P.

Example (2). FS1, a controlled foreign corporation, has accumulated more than $3,000,000 in earnings and profits. It organizes a wholly-owned foreign corporation, FS2, with a $2,000,000 equity contribution. FS2 has no earnings and profits. FS2 uses the funds to purchase trade or service receivables of FS1's domestic parent, P. The obligors under the receivables are United States persons. Under paragraph (b)(2)(ii)(B) of this section, there is an investment of the earnings of FS1 in United States property equal to $2,000,000.

(iii) *Swap or pooling arrangements.* A trade or service receivable of an unrelated person will be considered to be a trade or service receivable acquired from a related United States person and subject to the rules of this section if it is acquired in accordance with an arrangement that involves two or more groups of related persons that are unrelated to each other and the effect of the arrangement is that one or more related persons in each group acquire (directly or indirectly) trade or service receivables of one or more unrelated United States persons who are also parties to the arrangement, in exchange for reciprocal purchases of receivables of United States persons in the first group. The following example illustrates the application of this paragraph (b)(2)(iii).

Example. Controlled foreign corporations A, B, C, and D are wholly-owned subsidiaries of domestic corporations M, N, O, and P, respectively. M, N, O, and P are not related persons. According to a prearranged plan, A, B, C, and D each acquire trade or service receivables of M, N, O, and/or P. The obligors under some or all of the receivables acquired by each of A, B, C, and D are United States persons. Because the effect of this arrangement is that the unrelated groups acquire each other's trade or service receivables of United States persons pursuant to the arrangement, there is an investment of the earnings of each of A, B, C, and D in United States property to the extent of the purchase price of those receivables under which the obligors are United States persons.

(iv) *Financing arrangements.* If a controlled foreign corporation participates (directly or indirectly) in a lending transaction that results in a loan to a United States person who purchases property described in section 1221(1) (hereinafter referred to as "inventory property") or services of a related United States person, or to any person who purchases trade or service receivables of a related United States person under which the obligor is a United States person, or to a person who is related to any such purchaser, and if the loan would not have been made or maintained on the same terms but for the corresponding purchase, then the controlled foreign corporation shall be considered to have indirectly acquired a trade or service receivable described in paragraph (a) of this section. For purposes of this paragraph (b)(2)(iv), it is immaterial that the sums lent are not, in fact, the sums used to finance the purchase of the inventory property or services or trade or service receivables of a related United States person. The amount to be taken into account with respect to the controlled foreign corporation's investment in United States property (resulting from application of this paragraph (b)(2)(iv)) shall be the amount lent pursuant to a lending transaction described in this paragraph (b)(2)(iv), if the amount lent is equal to or less than the purchase price of the inventory property, services, or trade or service receivables. If the amount lent is greater than the purchase price of the inventory property, services or receivables, the amount to be taken into account shall be the purchase price. The following examples illustrate the application of this paragraph (b)(2)(iv).

Example (1). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation. P sells equipment for $2,000,000 to X, an unrelated United States person. FS1 makes a $1,000,000 short-term loan to X, which loan would not have been made or maintained on the same terms but for X's purchase of P's equipment. Because FS1 directly participates in a lending transaction described in this paragraph (b)(2)(iv), FS1 is considered to have acquired the receivable of a related United States person. Thus, there is an investment of FS1's earnings and profits in United States property in the amount of $1,000,000.

Example (2). The facts are the same as in Example (1), except that instead of loaning money to X directly, FS1 deposits $3,000,000 with an unrelated financial institution that loans $2,000,000 to X in order for X to purchase P's equipment. The loan would not have been made or maintained on the same terms but for the corresponding deposit. Accordingly, the deposit and the loan are treated as a direct loan from FS1 to X. *See* Rev. Rul. 87–89, 1987–37 I.R.B. 16. Because FS1 indirectly participates in a lending transaction described in this paragraph (b)(2)(iv), FS1 is considered to have acquired the receivable of a related United States person. Thus, there is an investment of FS1's earnings and profits in United States property in the amount of $2,000,000.

Example (3). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation. FS1 makes a $3,000,000 loan to U, an unrelated foreign corporation, in connection with U's purchase for $2,000,000 of receivables from the sale of inventory property by P to United States obligors. Because FS1 directly participates in a lending transaction described in this paragraph (b)(2)(iv), FS1 is considered to have acquired receivables of a related United States person. Thus, there is an investment of FS1's earnings and profits in United States property in the amount of $2,000,000.

(c) *Substitution of obligor.* For purposes of this section, the substitution of another person for a United States obligor may be disregarded. Thus, if a purchaser who is a United States person arranges for a foreign person to pay a United States seller of inventory property or services and the seller transfers by sale or otherwise to its own controlled foreign corporation the foreign person's obligation for payment, then the acquisition of the foreign person's obligation shall constitute an investment in United States property by the seller's controlled foreign corporation, unless it can be demonstrated by the parties to the transaction that the primary purpose for the arrangement was not the avoidance of section 956. The following example illustrates the application of this paragraph.

Example. P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation with substantial accumulated earnings and profits. P sells equipment to X, a domestic corporation unrelated to P. To pay for the equipment, X arranges for a foreign financing entity to issue a note to P. P then sells the note to FS1. FS1 has made an investment in United States property in the amount of the purchase price of the note.

§ 1.956–1 [Amended]

Par. 4. In § 1.956–1, the heading and text for paragraph (b)(4), are removed and (b)(4) is reserved.

Par. 5. The following new section is added immediately after § 1.956–1.

§ 1.956–1T Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property (temporary).

(a) [Reserved]

(b)(1)–(3) [Reserved]

(4) *Treatment of certain investments of earnings in United States Property*—(i) *Special rule.* For purposes of § 1.956–1(b)(1) of the regulations, a controlled foreign corporation will be considered to hold indirectly (A) the investments in United States property held on its behalf by a trustee or a nominee or (B) at the discretion of the District Director, investments in U.S. property acquired by any other foreign corporation that is controlled by the controlled foreign corporation, if one of the principal purposes for creating, organizing, or funding (through capital contributions or debt) such other foreign corporation is to avoid the application of section 956 with respect to the controlled foreign corporation. For purposes of this paragraph (b), a foreign corporation will be controlled by the controlled foreign corporation if the foreign corporation and the controlled foreign corporation are related parties under section 267(b). In determining for purposes of this paragraph (b) whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). The following examples illustrate the application of this paragraph.

Example (1). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation, and all of the outstanding stock of FS2, also a controlled foreign corporation. FS1 sells products to FS2 in exchange for trade receivables due in 60 days. FS2 has no earnings and profits. FS1 has substantial accumulated earnings and profits. FS2 loans to P an amount equal to the debt it owes FS1. FS2 pays the trade receivables according to the terms of the receivables. FS1 will not be considered to hold indirectly the investment in United States property under this paragraph (b)(4), because there was no transfer of funds to FS2.

Example (2). The facts are the same as in Example (1), except that FS2 does not pay the receivables. FS1 is considered to hold indirectly the investment in United States property under this paragraph (b)(4), because there was a transfer of funds to FS2, a principal purpose of which was to avoid the application of section 956 to FS1.

(ii) *Effective date.* This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

(c)–(d) [Reserved]

(e)(1)–(4) [Reserved]

(e)(5) *Excluded charges*—(i) *Special rule.* For purposes of § 1.956–1(e)(1) of the regulations, in the case of an investment in United States property consisting of an obligation of a related person, as defined in section 954(d)(3) and paragraph (e) of § 1.954–1, a liability will not be recognized as a specific charge if the liability representing the charge is with recourse with respect to the general credit or other assets of the investing controlled foreign corporation.

(ii) *Effective Date.* This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

§ 1.956–2 [Amended]

Par. 6. In § 1.956–2, the heading and text for paragraph (d)(2) are removed and paragraph (d)(2) is reserved.

Par. 7. The following new section is added immediately after § 1.956–2.

§ 1.956–2T Definition of United States Property (temporary).

(a)–(c) [Reserved]

(d)(1) [Reserved]

(2) *Obligation defined*—(i) *Rule.* For purposes of § 1.956–2 of the regulations, the term "obligation" includes any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other indebtedness, whether or not issued at a discount and whether or not bearing interest, except that such term shall not include:

(A) Any indebtedness arising out of the involuntary conversion of property which is not United States property within the meaning of paragraph (a)(1) of § 1.956–2, or

(B) Any obligation of a United States person (as defined in section 957(c)) arising in connection with the provision of services by a controlled foreign corporation to the United States person if the amount of such obligation outstanding at any time during the taxable year of the controlled foreign corporation does not exceed an amount which would be ordinary and necessary to carry on the trade or business of the controlled foreign corporation and the United States person if they were unrelated. The amount of such obligations shall be considered to be ordinary and necessary to the extent of such receivables that are paid within 60 days.

See § 1.956–2(b)(1)(v) for the exclusion from United States property of obligations arising in connection with the sale or processing of property where such obligations are ordinary and necessary as to amount.

(ii) *Effective Date.* This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

Par. 8. The following new section is added immediately after § 1.304–3.

§ 1.304–4T Special rule for use of a related corporation to acquire for property the stock of another commonly owned corporation (temporary).

(a) *In general.* At the discretion of the District Director, for purposes of determining the amount constituting a dividend, and source thereof, under section 304(b)(2), a corporation (deemed acquiring corporation) will be considered to have acquired for property the stock of a corporation (issuing corporation) acquired for property by another corporation (acquiring corporation) that is controlled by the deemed acquiring corporation, if one of the principal purposes for creating, organizing, or funding the acquiring corporation, through capital contributions or debt, is to avoid the application of section 304 to the deemed acquiring corporation. The following example illustrates the application of this paragraph (a).

Example. P, a domestic corporation, owns all of the stock of CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. CFC1 is organized in Country X, which imposes a high rate of tax on CFC1's income. P also owns all of the stock of CFC2, another controlled foreign corporation, which has accumulated earnings and profits of $200x. CFC2 is organized in Country Y which imposes a low rate of tax on CFC2's income. P wishes to own all of its foreign corporations in a direct chain and to effectuate a repatriation of CFC2's cash to P. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid a dividend to P out of CFC2's earnings and profits that would otherwise occur as a result of the application of section 304, P causes CFC2 to form RFC as a Country X wholly-owned subsidiary and to contribute $100x to RFC. RFC will purchase, for $100x, all of the stock of CFC1 from P. Because one of P's principal purposes for having CFC1 owned by RFC is to avoid section 304, under § 1.304–4T(a), CFC2 is considered to have acquired the stock of CFC1 for $100x for purposes of determining the amount constituting a dividend (and source thereof) for purposes of section 304(b)(2).

(b) *Availability to taxpayers.* Nothing in this regulation shall be construed to provide a taxpayer the right to compel the Internal Revenue Service to disregard the form of its transaction for Federal income tax purposes.

(c) *Effective date.* This section is effective June 14, 1988, with respect to acquisitions of stock occurring on or after June 14, 1988.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: May 4, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-13131 Filed 6-13-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3397-3]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The State of South Carolina requested delegation of authority for the implementation and enforcement of several additional categories of National Standards of Performance for New Stationary Sources (NSPS). EPA's review of South Carolina's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these federal standards, and the Agency made the delegation as requested.

EFFECTIVE DATE: This request for delegation of authority to South Carolina was effective March 16, 1988.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards should not be submitted to the EPA Region IV Office, but should instead be submitted to the following address: Mr. Otto E. Pearson, Chief, Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the EPA Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365, telephone 404/347-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Sections 101, 110, and 111 of the Clean Air Act authorize the Administrator to delegate his authority to implement and enforce the National Standards of Performance for New Stationary Sources (NSPS) to any State which has submitted adequate implementation and enforcement procedures.

On October 26, 1976, EPA delegated to the State of South Carolina, the authority to implement the NSPS. On February 9, 1988, South Carolina requested a delegation of authority for implementation and enforcement of the following recently promulgated or revised NSPS categories found in 40 CFR Part 60:

1. Rubber Tire Manufacturing Industry, Subpart BBB, as promulgated September 15, 1987.
2. Fossil-Fuel Fired Steam Generators, Subpart D, as revised November 25, 1986.
3. Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines, Subpart TTT, as promulgated January 29, 1988.

ACTION

Since review of the pertinent South Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, I delegated to the State of South Carolina my authority for the source categories listed above on March 16, 1988.

The Office of Management and Budget has exempted this regulation from the requirements of sections 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7411, and 7601).

Dated: June 3, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-13346 Filed 6-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6793]

List of Communities Eligible for the Sale of Flood Insurance; Louisiana et al.

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective of October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457 Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction Federal Insurance Administration, (202) 646-2717, Federal Center Plaza 500 C Street, Southwest, Room 418 Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom

authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to reads as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry read as follows:

§ 64.6 List of eligible communities.

State	Community name	County or parish	Community No.	Effective date
Louisiana	Carencro, town of	Lafayette	220100	May 4, 1988, suspension withdrawn.
Do	Covington, city of	St. Tammany	220200	Do.
Do	Donaldsonville, city of	Ascension	220014	Do.
Do	Elton, town of	Jefferson Davis	220096	Do.
Do	Gilbert, village of	Franklin	220073	Do.
Do	Goldonna, village of	Natchitoches	220290	Do.
Do	Greensburg, town of	St. Helena	220330	Do.
Do	Henderson, town of	St. Martin	220189	Do.
Do	Jackson, town of	East Feliciana	220333	Do.
Do	Lockport, town of	Lafourche	220254	Do.
Do	Morse, village of	Acadia	220007	Do.
New Mexico	Gallup, city of	McKinley	350042	Do.
Oklahoma	Boynton, town of	Muskogee	400120	Do.
Do	Howe, town of	LeFlore	400091	Do.
Do	Spencer, city of	Oklahoma	400412	Do.
Do	Warr Acres, city of	Oklahoma	400449	Do.
Texas	Albany, city of	Shackelford	480565	Do.
Do	Beverly Hills, city of	McLennan	480825	Do.
Do	Brookshire, town of	Waller	481097	Do.
Do	Burkburnett, city of	Wichita	480658	Do.
Do	Cedar Hill, city of	Dallas	480168	Do.
Do	Celina, city of	Collin	480133	Do.
Do	Chandler, city of	Henderson	480326	Do.
Do	Diboll, city of	Angelina	480006	Do.
Do	Fulton, town of	Aransas	480012	Do.
Do	Glenn Heights, city of	Ellis	481265	Do.
Do	Grey Forest, city of	Bexar	480039	Do.
Do	LaJoya, city of	Hidalgo	480341	Do.
Do	La Villa, city of	....do	480342	Do.
Do	McAllen, city of	....do	480343	Do.
Do	Rockwall, city of	Rockwall	480547	Do.
Do	Rollingwood, city of	Travis	481029	Do.
Do	San Benito, city of	Cameron	480113	Do.
Do	San Juan, city of	Hidalgo	480348	Do.
Do	San Leanna, city of	Travis	481305	Do.
Do	Silsbee, city of	Hardin	480295	Do.
Do	Whitney, town of	Hill	480665	Do.
New York	Arkwright, town of	Chautauqua	361105	May 17, 1988, suspension withdrawn.
Do	Ashland, town of	Chemung	360284	Do.
Do	Augusta, town of	Oneida	360517	Do.
Do	Ayrelius, town of	Cayuga	360109	Do.
Do	Bath, village of	Steuben	360767	Do.
Do	Baxter Estates, village of	Nassau	360496	Do.
Do	Bayville, village of	....do	360988	Do.
Do	Benton, town of	Yates	360955	Do.
Do	Bethany, town of	Genesee	361136	Do.
Do	Brighton, town of	Monroe	360410	Do.
Do	Cairo, town of	Greene	360286	Do.
Do	Canajoharie, town of	Montgomery	360442	Do.
Do	Canajoharie, village of	....do	360443	Do.
Do	Carlisle, town of	Schoharie	361193	Do.
Do	Catskill, town of	Greene	361116	Do.
Do	Catskill, village of	....do	360287	Do.
Do	Cayuga, village of	Cayuga	360107	Do.
Do	Cicero, town of	Onandego	360572	Do.
Do	Clifton Springs, village of	Ontario	361450	Do.
Do	Cold Springs, village of	Putnam	360670	Do.
Do	Cuba, town of	Allegany	361099	Do.
Do	Cuyler, town of	Cortland	361386	Do.
Do	Danaville, village of	Livingston	360383	Do.
Do	Davenport, town of	Delaware	360192	Do.
Do	Dayton, town of	Cattaraugus	360066	Do.
Do	Delanson, village of	Schenectady	360737	Do.

State	Community name	County or parish	Community No.	Effective date
Do	Dunkirk, city of	Chautauqua	360137	Do.
Do	Durham, town of	Greene	360289	Do.
Do	Earlville, village of	Chenango	360397	Do.
Do	East Greenbush, town of	Rensselaer	361133	Do.
Do	East Randolph, village of	Cattaraugus	360068	Do.
Do	East Rochester, village of	Monroe	360414	Do.
Do	Edmeston, town of	Otsego	361270	Do.
Do	Ellery, town of	Chautauqua	361072	Do.
Do	Freetown, town of	Cortland	361325	Do.
Do	Fremont, town of	Steuben	360821	Do.
Do	Genesee Falls, town of	Wyoming	361003	Do.
Do	Geneseo, village of	Livingston	361452	Do.
Do	Geneva, town of	Ontario	360600	Do.
Do	Greenburg, town of	Westchester	360911	Do.
Do	Harrison, town of	do	360912	Do.

Issued: June 7, 1988.
Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 88-13330 Filed 6-13-88; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6794]

List of Communities Eligible for the Sale of Flood Insurance; Mississippi, et al.

AGENCY: Federal Emergency Management Agency.
ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.
ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.
FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Mississippi	Grenada county Unincorporated Areas	280060	Jan. 28, 1974, Emerg.; Dec. 1, 1978, Reg.; Feb. 4, 1988, Susp.; May 2, 1988, Rein.	Dec. 1, 1978.
North Carolina	Bolton, town of, Columbus County	370274	Sept. 23, 1977, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; May 2, 1988, Rein.	July 1, 1987
Iowa	Union,* city of, Harding County	190142	Dec. 15, 1975, Emerg.; June 1, 1987, Reg.; Sept. 30, 1987, Susp.; May 6, 1988, Rein.	June 1, 1987.
New York	Franklin, village of, Delaware County	360199	Aug. 8, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; May 6, 1988, Rein.	Aug. 1, 1987.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Tennessee	Cocke county, Unincorporated Areas	470033	March 14, 1978, Emerg.; Jan. 6, 1988, Reg.; Jan. 6, 1988, Susp.; May 6, 1988, Rein.	Jan. 6, 1988.
Alabama	Brighton, town of, Jefferson County	010117	July 11, 1975, Emerg.; Jan. 2, 1981, Reg.; Feb. 4, 1988, Susp.; May 6, 1988, Rein.	Jan. 2, 1981.
Pennsylvania	Monroe, township of, Juniata County	421744	April 22, 1980, Emerg.; Nov. 4, 1987, Reg.; Nov. 4, 1987, Susp.; May 11, 1988, Rein.	Nov. 4, 1987.
West Virginia	Grant Town, town of, Marion County	540102	April 7, 1975, Emerg.; March 4, 1988, Reg.; March 4, 1988, Susp.; May 11, 1988, Rein.	Mar. 4, 1987.
Do	Junior,* town of, Barbour County	540003	Nov. 21, 1975, Emerg.; April 17, 1987, Reg.; April 17, 1987, Susp.; May 11, 1988, Rein.	Mar. 17, 1987.
Illinois	Lee county, Unincorporated Areas	170413	June 6, 1975, Emerg.; April 15, 1988, Reg.; April 15, 1988, Susp.; May 11, 1988, Rein.	Mar. 15, 1987.
Do	Nelson, village of, Lee County	170416	Sept. 30, 1976, Emerg.; April 15, 1988, Reg.; April 15, 1988, Susp.; May 11, 1988, Rein.	Mar. 15, 1987.
Minnesota	Sibley county, Unincorporated Areas	270620	April 11, 1974, Emerg.; Jan. 6, 1988, Reg.; Jan. 6, 1988, Susp.; May 13, 1988, Rein.	Jan. 6, 1988.
Tennessee	Jefferson county, Unincorporated Areas	470007	March 29, 1982, Emerg.; March 29, 1982, Reg.; Feb. 17, 1988, Susp.; May 16, 1988, Rein.	July 14, 1978.
Do	Brownsville, city of, Haywood County	470067	July 30, 1974, Emerg.; March 4, 1988, Reg.; March 4, 1988, Susp.; May 16, 1988, Rein.	Mar. 4, 1988.
North Carolina	Polk county, Unincorporated Areas	370194	Jan. 15, 1974, Emerg.; March 16, 1988, Susp.; May 16, 1988, Rein.	May 19, 1978.
Do	Maiden, town of, Catawba County	370058	May 5, 1975, Emerg.; Sept. 30, 1980, Reg.; April 5, 1988, Susp.; May 16, 1988, Rein.	Sept. 30, 1980.
Pennsylvania	Canaan, township of, Wayne County	422180	Aug. 29, 1975, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; May 17, 1988, Rein.	Sept. 30, 1980.
Texas	Santa Rosa, city of, Cameron County	480114	Aug. 29, 1980, Emerg.; May 5, 1981, Reg.; May 4, 1988, Susp.; May 17, 1988, Rein.	May 5, 1981.
Iowa	Millville,* city of, Clayton County	190081	July 9, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; May 23, 1988, Rein.	July 2, 1987.
Louisiana	Ponchatoula, city of, Tangipahoa Parish	220211	June 5, 1975, Emerg.; April 17, 1979, Reg.; May 4, 1988, Susp.; May 24, 1988, Rein.	April 17, 1979.
Texas	Woodsboro, town of, Refugio County	480987	March 31, 1981, Emerg.; July 16, 1981, Reg.; May 4, 1988, Susp.; May 24, 1988, Rein.	July 7, 1981.
Missouri	Bolckow, town of, Andrew County	290006	May 17, 1988, Emerg.	April 30, 1978.
Kentucky	Inez, city of, Martin County	210362	May 19, 1988, Emerg.	
Wisconsin	*Rush county, Unincorporated Areas	550502	May 31, 1988, Emerg.; May 31, 1988, Reg	Mar. 4, 1987.
Texas	Pleak,[1] village of, Fort Bend County	481615	May 31, 1988, Emerg.; May 31, 1988, Reg	
Ohio	Lakeline, village of, Lake County	390688	May 27, 1988, Emerg.	
Do	North Kingsville, village of, Ashtabula County	390689	May 27, 1988, Emerg.	
Do	Timberlake, village of, Lake County	390690	May 27, 1988, Emerg.	
New York	Amenia, town of, Dutchess County	361332	Feb. 4, 1976, Emerg.; Sept. 24, 1984, Reg.; May 17, 1988, Susp.; May 31, 1988, Rein.	Sept. 24, 1984.
Do	Danby, town of, Tompkins County	360845	May 27, 1975, Emerg.; May 15, 1985, Reg.; May 17, 1988, Susp.; May 31, 1988, Rein.	May 15, 1985.
Georgia	Darien, city of, McIntosh County	130131	April 24, 1975, Emerg.; July 2, 1981, Reg.; Feb. 17, 1988, Susp.; May 27, 1988, Rein.	July 2, 1981.
Oklahoma	Sperry, town of, Tulsa County	400213	June 17, 1975, Emerg.; July 16, 1981, Reg.; May 4, 1988, Susp.; May 31, 1988, Rein.	July 16, 1981.
Do	Sulphur, city of, Murray County	400119	May 12, 1975, Emerg.; Feb. 16, 1981, Reg.; May 4, 1988, Susp.; May 31, 1988, Rein.	Feb. 16, 1981.
Texas	Waller, city of, Waller County	480641	June 10, 1975, Emerg.; Sept. 14, 1979, Reg.; May 4, 1988, Susp.; May 31, 1988, Rein.	Sept. 14, 1979.
Illinois	Evansville, village of, Randolph County	170577	June 25, 1975, Emerg.; April 15, 1988, Reg.; April 15, 1988, Susp.; May 31, 1988, Rein.	April 15, 1988.

[1] The Village of Pleak, Texas has adopted Fort Bend County's FIS and FIRM effective August 5, 1986, for floodplain management and insurance purposes.
* Minimal.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region V—Minimal Conversions:				
Minnesota	Grant County, Unincorporated Areas	270548	May 1, 1988, Suspensions Withdrawn	May 1, 1988.
Ohio	New London, village of, Huron County	390284	do	May 1, 1988.
Region I—Regular Conversions:				
Maine	Benton, town of, Kennebec County	230233	May 4, 1988, Suspensions Withdrawn	May 4, 1988.
Do	Camden, town of, Knox County	230074	do	May 4, 1988.
Do	Cherryfield, town of, Washington County	230125	do	May 4, 1988.
Do	Durham, town of, Androscoggin County	230002	do	May 4, 1988.
Do	Masardis, town of, Aroostook County	230027	do	May 4, 1988.
Do	Mattawamkeag, town of, Penobscot County	230174	do	May 4, 1988.
Region II:				
New York	Owasco, town of, Cayuga County	360120	do	May 4, 1988.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region III:				
Pennsylvania	Lower Nazareth, township of, Northampton County	422253	do	May 4, 1988.
Region IV:				
Florida	Bowling Green, city of, Hardee County	120104	do	May 4, 1988.
Do	Wauchula, city of, Hardee County	120105	do	May 4, 1988.
Mississippi	Long Beach, city of, Harrison County	285257	do	May 4, 1988.
Tennessee	Claiborne County, Unincorporated Areas	470212	do	May 4, 1988.
Region V:				
Wisconsin	Manawa, city of, Waupaca County	550495	do	May 4, 1988.
Do	Marion, city of, Waupaca County	550499	do	May 4, 1988.
Michigan	Memphis, city of, St. Clair and Macomb Counties	260202	do	May 4, 1988.
Do	Sault Ste. Marie, city of, Chippewa County	260059	do	May 4, 1988.
Region VI:				
Arizona	Cherry Valley, city of, Cross County	050057	do	May 4, 1988.
Louisiana	Washington County, Unincorporated Areas	220230	do	May 4, 1988.
Region X:				
Washington	Columbia County, Unincorporated Areas	530029	do	May 4, 1988.
Do	Dayton, city of, Columbia County	530030	do	May 4, 1988.
Do	Starbuck, city of, Columbia County	530031	do	May 4, 1988.
Region I—Regular Conversions:				
Maine	Georgetown, town of, Sagadahoc County	230209	May 17, 1988. Suspensions Withdrawn	May 17, 1988.
Do	Passadumkeag, town of, Penobscot County	230114	do	May 17, 1988.
Do	Rome, town of, Kennebec County	230246	do	May 17, 1988.
Do	Southport, town of, Lincoln County	230221	do	May 17, 1988.
Massachusetts	Carlisle, town of, Middlesex County	250167	do	May 17, 1988.
New Hampshire	Alton, town of, Belknap County	330001	do	May 17, 1988.
Do	Canaan, town of, Grafton County	330046	do	May 17, 1988.
Do	Enfield, town of, Grafton County	330052	do	May 17, 1988.
Do	Farmington, town of, Strafford County	330147	do	May 17, 1988.
Do	Hopkinton, town of, Merrimack County	330116	do	May 17, 1988.
Vermont	Barnet, town of, Caledonia County	500024	do	May 17, 1988.
Do	Jamaica, town of, Windham County	500131	do	May 17, 1988.
Region III:				
Virginia	St. Paul, town of, Wise and Russell Counties	515530	do	May 17, 1988.
Region IV:				
South Carolina	Hampton, town of Hampton County	450100	do	May 17, 1988.
Tennessee	Pikeville, city of, Bledsoe County	470011	do	May 17, 1988.
Region V:				
Michigan	Castleton, township of, Barry County	260641	do	May 17, 1988.
Do	Vernon, village of, Shiawassee County	260524	do	May 17, 1988.
Region VI:				
New Mexico	Socorro, city of, Socorro County	350077	do	May 17, 1988.
Region X:				
Washington	Spokane County, Unincorporated Areas	530174	do	May 17, 1988.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: June 8, 1988.

[FR Doc. 88-13340 Filed 6-13-88; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6795]

Suspension of Community Eligibility; North Carolina and Idaho

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: July 4 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1988, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1988. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
North Carolina	Enfield, town of	Halifax	370115	July 4,1988.
Do	Fuquay-Varina, town of	Wake	370239	Do.
Do	Gaston, town of	Northampton	370413	Do.
Do	Unincorporated areas	Halifax	370327	Do.
Do	Nashville, town of	Nash	370167	Do.
Do	Ramseur, town of	Randolph	370196	Do.
Do	Rocky Mount, city of	Edgecombe and Nash	370092	Do.
Do	Sanford, city of	Lee	370143	Do.
Do	Severn, town of	Northampton	370422	Do.
Do	Whitakers, town of	Edgecombe and Nash	370095	Do.
Do	Woodland, town of	Northampton	370177	Do.
Do	Unincorporated areas	Blaine	165167	Do.
Do	Dubois, city of	Clark	160134	Do.
Do	Harrison, city of	Kootenai	160080	Do.
Do	Malta, city of	Cassia	160197	Do.
Do	Post Falls, city of	Kootenai	160083	Do.
Do	Rathdrum, city of	Kootenai	160187	Do.
Do	Rockland, city of	Power	160110	Do.
Do	White Bird, city of	Idaho	160072	Do.
Do	Worley, city of	Kootenai	160085	Do.

Issued: July 8, 1988.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 88-13341 Filed 6-13-88; 8:45 am]
BILLING CODE 6718-21-M

Proposed Rules

Federal Register
Vol. 53, No. 114
Tuesday, June 14, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[CN-88-100]

Revision of Regulations for Determining Price Quotations for Spot Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is proposing to revise the regulations concerning spot markets and price quotations for spot cotton. Presently, such regulations provide for the establishment of quotations committees, made up of members of the cotton trade, which have the express function of quoting the prices and price differences for spot cotton on a daily basis. Recently, a significant number of trade representatives have indicated that they will no longer participate in quotations committee meetings. Under this proposal the committee system of determining price quotations would be suspended indefinitely by deleting the provisions of the regulations concerning committees and their duties. The duties of the committees would be assumed by the Cotton Division of the Agricultural Marketing Service.

This proposal would also redesignate and rename the spot markets which are used daily to determine prices and differences for cotton. Presently, the designated spot markets are established on a (local area) basis bearing the names of the cities where cooperating cotton exchanges are located. This amendment would expand such markets to cover seven larger geographic areas.

In addition, the present method of quoting prices and price differences for spot cotton would be modified and such modifications would be reflected in the regulations. Presently, price quotations and differences are determined in each designated market for a wide range of qualities, including those qualities which are not normally produced or traded in a particular market. This proposal would provide that prices and differences be quoted for those qualities of cotton which are tenderable or deliverable on active futures contracts in five designated markets, as at present. Price quotations and differences for other qualities of cotton traded in these five designated markets and for all qualities in the remaining two designated spot markets would be limited to those qualities which are normally produced or traded in a particular designated market. The volume of bales traded that is used to determine a quotation would be published along with the quotation. These proposed modifications are expected to enhance the accuracy and reliability of the quotations.

DATE: Comments must be received on or before July 14, 1988.

ADDRESS: Written comments may be sent to Garr Lewicki, USDA/AMS/Cotton Division, Room 2641, P.O. Box 96456, Washington, DC, 20090-6456.

FOR FURTHER INFORMATION CONTACT: Garry Lewicki, (202) 447-2145.

SUPPLEMENTARY INFORMATION: This rule has been revised in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as determined in the Order.

The Administrator of the Agricultural Marketing Service has determined that this rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the proposed revisions: (i) Would enhance the accuracy of the information gathered and disseminated; (ii) would not affect the competitive position or market access of small entities in the cotton industry; (iii) would not impose any new costs on the affected industry.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control number 0581-0029 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are eight such designated markets. Five of the eight are used to determine prices and differences for the settlement of futures contracts. Only the No. 2 New York Cotton Exchange futures contracts are currently active. To facilitate the collection of price information, quotation committees were established in the designated markets. These committees are made up of members of the cotton exchanges or their employees. The regulations contain provisions whereby the committees provide information on prices and price differences of cotton to the Cotton Division of the Agricultural Marketing Service on a daily basis. The Cotton Division also provides market information under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

Spot Cotton Quotations Committees

Recently, a significant number of trade representatives have indicated that they will no longer participate in quotations committee meetings. In three of the eight markets, the committees have ceased to function, and the Cotton Division is determining price quotations in these markets without the assistance of the committees. Therefore, it is necessary to amend the regulations to provide for a new method of determining price quotations. This proposal would indefinitely suspend the committee system of determining price quotations, with the Cotton Division assuming the duties of the committees. To accomplish this, we propose to delete the provisions pertaining to the committee system of determining price quotations. The new method of quoting prices, if adopted, would be assessed by the Cotton Division after a period of operation to determine if it needs to be adjusted or changed. Section 27.97 would be deleted and § 27.98 would be revised to reflect the proposed changes.

Trading Volume on Which Quotations are Based

Price quotations for all qualities in all markets which are based on data from actual sales would be prefixed by the volume of bales traded. Price quotations that are determined when there has been no trading would be prefixed with a zero.

Quotations in Markets Designated for Contract Settlement Purposes

Price quotations for all qualities of cotton deliverable on cotton futures contracts would be determined each business day in the markets used to quote prices or values and to determine actual differences for the settlement of futures contracts. The price or value of other qualities of cotton which are normally produced or traded in a particular market would also be determined for that market. In the process of determining price quotations, market reporters of the Cotton Division of AMS would interview, in person or by telephone, at least three persons in each bona fide market. Individuals or firms engaged in the buying and/or selling of cotton would be requested to provide information concerning prices and volume of cotton purchased to the Cotton Division. Analysis of all data obtained would be made to ascertain the current value of all deliverable qualities in each market and of the non-deliverable qualities normally produced or traded in each particular market. Quotations for qualities where no sale shall have been made and for which there is no price data would continue to be determined as provided in § 27.99 of the regulations. All quotations would be reviewed and approved by the Branch Chief or the Assistant Branch Chief of the Cotton Division's Market News Branch before publication.

Quotations in Other Markets

In markets not designated for contract settlement purposes, price quotations for all qualities of cotton normally produced or traded in a particular market would be determined on each business day in the same manner as stated above.

Additional Revisions

Presently, price quotations and differences are determined in eight designated markets where cooperating cotton exchanges, whose members comprise the quotations committees, are located. These markets bear the names of the cities in which the exchanges are located. However, the advent of telephonic and electronic marketing in recent years has expanded the area of trade for each of the designated markets making the geographic limitations of the local area no longer necessary. Therefore, this proposal would redesignate and rename the spot markets as seven regional markets which conform to the seven growth areas widely recognized by the cotton industry. This proposed expansion of the designated spot markets is expected to enhance the accuracy of the quotations by broadening the price data base.

Section 27.93 would be revised to list the seven designated markets as follows:

Southeastern

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart, Houston, Humphreys, Perry, Wayne and Hardin counties.

North Delta

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prsentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

South Delta

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

East Texas, Oklahoma

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

West Texas

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

Desert Southwest

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

San Joaquin Valley

All California counties except those included in the Desert Southwest market.

Section 27.94 would be revised to list only designated markets for the settlement of No. 2 contracts, since those are the only contracts which are presently active.

Section 27.98 would be revised by deleting the reference to the price or value of Strict Low Middling 1 1/16 inches cotton and by referring to cotton in its generic term. Strict Low Middling 1 1/16 inches cotton is used as the base quality in the No. 2 New York Cotton Exchange futures contract, which is the only cotton futures contract presently active. In the event that other contracts are established with a different base quality, the proposed section would be applicable to these as well. Other changes would be made to clarify the regulations and to remove unnecessary language.

This proposed rule would amend and revise the language in §§ 27.93 through 27.99 of Part 27 of Title 7 of the Code of Federal Regulations to accommodate the changes necessary in the spot quotations system. Section 27.97 would be removed and the provisions of § 27.100 would be added to proposed § 27.98. All subsequent sections would be redesignated.

List of Subjects in 7 CFR Part 27

Spot markets, Price quotations, Differences.

For the reasons set forth in the preamble, 7 CFR Part 27 would be amended as follows:

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

1. The authority citation for Part 27 is amended to read as follows:

Authority: 7 U.S.C. 15b; 7 U.S.C. 473c; 7 U.S.C. 1622(g).

2. The table of contents concerning "spot markets" and "price quotations and differences" is amended to read as follows:

Spot Markets

Sec.
27.93 Bona fide spot markets.
27.94 Spot markets for contract settlement purposes.

Price Quotations and Differences

27.95 Spot markets to conform to Act and regulations.
27.96 Quotations in bona fide spot markets.
27.97 Ascertaining the accuracy of price quotations.

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Sec.
27.98 Value of grade where no sale; determination.
27.99 Prices and values; expression.
27.100 Administration.
* * * * *

3. Section 27.93 is revised to read as follows:

§ 27.93 Bona fide spot markets.

The following markets have been determined, after investigation, and are hereby designated to be bona fide spot markets within the meaning of the act:

Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. Such markets will comprise the following areas:

Southeastern

All counties in the states of Alabama, Florida, Georgia, North Caroline and South Carolina and all counties in the state of Tennessee east of and including Stewart, Houston, Humphreys, Perry, Wayne and Hardin counties.

North Delta

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

South Delta

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

East Texas, Oklahoma

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

West Texas

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

Desert Southwest

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

San Joaquin Valley

All California counties except those included in the Desert Southwest market.

4. Section 27.94 is revised to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

The following are designated as spot markets for the purpose of determining as provided in paragraph 15b(f)(3) of the act, the differences above or below the contract price which the receiver shall pay for grades tendered or deliverable in settlement of a basis grade contract:

For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North Delta, South Delta, Eastern Texas and Oklahoma and Desert Southwest.

5. Section 27.95 is revised to read as follows:

§ 27.95 Spot markets to conform to Act and regulations.

Every bona fide spot market shall, as a condition of its designation and of the retention thereof, conform to the act and any applicable regulations.

6. Section 27.96 is revised to read as follows:

§ 27.96 Quotations in bona fide spot markets.

The price or value and differences between the price or value of grades and staple lengths of cotton shall be based solely upon the official cotton standards of the United States and shall be the actual commercial value or price and differences as determined by the sale of spot cotton in such spot market. Quotations shall be determined and maintained in each designated spot market by the Cotton Division, Agricultural Marketing Service, USDA, as follows:

(a) In spot markets designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or values of base qualities which are deliverable on any active futures contracts, as well as the differences for all other qualities deliverable on such contracts. The prices or differences for non-deliverable qualities will be determined and quoted by bale volume in each such spot market for those qualities normally produced or traded in that particular market.

(b) In spot markets not designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or differences for all qualities of cotton normally produced or traded in each such spot market.

§ 27.97 [Removed]

7. Section 27.97 is removed.

§ 27.98 [Redesignated as § 27.97]

8. Section 27.98 is redesignated as § 27.97 and is revised to read as follows:

§ 27.97 Ascertaining the accuracy of price quotations.

The buyers and sellers of cotton in each spot market shall be responsible for providing accurate and timely price, quality, and volume of purchases data by growth area to the Cotton Division. The Cotton Division is responsible for ascertaining the accuracy of the price quotations in each designated spot market. The Cotton Division will carry out this responsibility by performing the following duties and functions:

(a) The Cotton Division will collect and analyze pertinent information on the prices and values of spot cotton from each spot market.

(b) In the process of determining price quotations, the Cotton Division will contact a minimum of three buyers and sellers of cotton in each bona fide market at least two times per week during the active trading season and one time per week during the remainder of the year to obtain information on prices, qualities, volume, and terms of sales in sufficient detail to determine quotations.

(c) The Cotton Division will summarize the price and quality data and, based on analysis of this summary, make determinations regarding quotations of price, value and differences.

(d) Quotations for each spot market shall be reviewed and approved by the Cotton Division's Market News Branch Chief or Assistant Branch Chief prior to publication.

(e) The Cotton Division will publish the appropriate quotations by bale volume for grades, staple lengths, micronaire determinations, and other quality factors for each spot market on a daily basis.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under OMB control number 0581-0029.)

§ 27.99 [Redesignated as § 27.98]

9. Section 27.99 is redesignated as § 27.98 and is revised to read as follows:

§ 27.98 Value of grade where no sale; determination.

As provided in § 27.96, whenever no sale of a particular grade of cotton shall have been made on a given day in a particular spot market, the value of such grade in the market on that day will be determined as follows:

(a) If on such given day there shall have been in such market both a sale of any higher grade and a sale of any lower grade, the average of the declines, or advances, or decline and advance, as the case may be, of the next higher grade and the next lower grade so sold shall be deducted from, or added to, as the case may be, the value, on the last preceding business day, of the grade the value of which on such given day is sought to be ascertained.

(b) If on such given day there shall have been in such market a sale of either a higher or a lower grade, but not sales of both, the decline or advance of the next higher or the next lower grade so sold shall be deducted from, or added to, as the case may be, the value on the last preceding business day of the grade the value of which on such given day is sought to be ascertained.

(c) If on such given day there shall have been in such market no sale of spot cotton of any grade, the value of each grade shall be deemed to be the same as its value therein on the last preceding business day, unless in the meantime there shall have been bona fide bids and offers, or sales of hedged cotton, or other sales of cotton, or changes in prices of futures contracts made subject to the act, which in the usual course of business would clearly establish a rise or fall in the value of spot cotton in such market, in which case such rise or fall may be calculated and added to or deducted from the value on the preceding business day of cotton of all grades affected thereby.

§ 27.100 [Removed]

10. Section 27.100 is removed.

§ 27.101 [Redesignated as § 27.99]

11. Section 27.101 is redesignated as § 27.99.

§ 27.102 [Redesignated as § 27.100]

12. Section 27.102 is redesignated as § 27.100.

Dated: June 9, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-13415 Filed 6-13-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-21]

Airworthiness Directives; Davis Aircraft Products Company, Inc., Safety-Belts, FDC 6400B Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that will require replacement of certain Davis Aircraft Products Co., Inc., safety-belts. The proposed AD is needed to prevent safety-belts from becoming difficult to release with possible jamming of the buckle release mechanism when required during emergency evacuation of affected aircraft.

DATES: Comments must be received on or before July 20, 1988.

ADDRESSES: Comments pertaining to this proposed AD may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address. Comments delivered must be marked: Docket No. 88-ANE-21.

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Davis Aircraft Products Company, Inc., 1150 Walnut Avenue, P.O. Box 525, Bohemia, New York 11716.

A copy of the applicable service information is contained in Rules Docket No. 88-ANE-21, at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01813.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 88-ANE-21". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain safety-belt buckles manufactured by Davis Aircraft Products Co., Inc., and used on various aircraft have been cracking and creating difficulty in releasing the belt. These buckle latch-covers are of a black "Ultem" plastic, 1000 type. Davis Aircraft Products Co., Inc., has performed extensive research towards determining the cause for these cracks. It was concluded that the cracks are caused by a metallic adapter which wears into the plastic cover with eventual jamming between the adapter and cover. Subsequently, the excessive force required to release the belt would eventually create cracks in the plastic cover. It was also determined that the cracks occurred on the buckles which are designed to release the belt when the latch-cover is pulled through 90 degrees; no cracks were found on any 45 degree type of buckles. As a result of these findings, Davis Aircraft Products Co. Inc., redesigned the adapter (P/N FD-7658 Rev. D) to replace P/N FD-7658 Rev. A thru C. Also the black "Ultem" (Type 1000) latch-cover, P/N FD-6412M Rev. A thru H, has been made thicker with increased bend-radii and will be replaced by P/N FD 6412M Rev. J.

There are approximately 5,000 safety-belts that are affected by buckles with these latch-covers. The FAA has determined that if these buckles are not corrected, difficulty in releasing the safety-belt may result in a dangerous condition during emergency evacuation of affected aircraft.

Davis Aircraft Products Co., Inc., has issued recall (Service Bulletin No. 1, dated January 29, 1988) notices to all known operators who have purchased these safety-belts with the black "Ultem" latch-covers (90 degree release type), requesting them to check for certain part numbers designated on the

labels and to return affected safety-belts to Davis Aircraft Products Co. Inc., for replacement at no charge for the rework and parts.

Since this condition is likely to exist or develop on other buckles of the same type design, the proposed AD will require replacement of the affected safety-belts unless modified to an approved type.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*) which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves 5,000 of the FDC-6400B Series safety-belts; the cost per aircraft will involve minimal expense that would be required for shipping the safety-belts to Davis Aircraft Products Co., Inc. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Davis Aircraft Products Co., Inc.: Applies to Safety-Belts which incorporate the black "Ultem" plastic cover and the 90 degree type pull-release mechanism, as listed below:

Affected Safety-Belts Part Numbers (P/N's)

FDC-6400B-6
FDC-6400B-7***
FDC-6400B-12
FDC-6400B-12B
FDC-6400B-18-3
FDC-6400B-18-5
FDC-6400B-18-21
FDC-6400B-18-23
FDC-6400B-18-25
FDC-6400B-18-27
FDC-6400B-18-29
FDC-6400B-18-505
FDC-6400B-19
FDC-6400B-20
FDC-6400B-22
FDC-6400B-27-3
FDC-6400B-29-1
FDC-6400B-29-2
FDC-6400B-29B-1
FDC-6400B-29B-2
FDC-6400B-60D
FDC-6400B-31-**
FDC-6400B-32
FDC-6400B-36-***
FDC-6400B-39
FDC-6400B-50-***-**
FDC-6400B-51
FDC-6400B-54
FDC-6400B-56
FDC-6400B-63-2
FDC-6400B-63-4
FDC-6400B-63-50
FDC-6400B-63-59
FDC-6400B-64-***
FDC-6400B-71-***
FDC-6400B-80B
FDC-6400B-65-1
FDC-6400B-65-2
FDC-6400B-60-1
FDC-6400B-60-3
FDC-6400B-60-7
FDC-6400B-**-***-**-**

Note: * Denotes numerical (arabic) digit.

Compliance required within the next 100 flights after the effective date of this AD unless already accomplished.

To prevent the possibility of the applicable safety-belts becoming difficult to release or becoming jammed when actuated through 90 degrees, accomplish the following:

(a) Inspect safety-belts to determine if they have any of the above P/N's inscribed on the FAA-TSO-C22f metallic tag.

(b) Replace all safety-belts with the above P/N's with an approved safety-belt.

Notes: (1) Safety-belt assemblies that have been modified by Davis Aircraft Products Co., Inc., are marked with a -1 suffix number at the end of the Part Numbers (listed above) on the FAA-TSO-C22f metallic tag and are approved.

(2) Davis Aircraft Products Co. Inc., has issued (recall) Service Bulletin No. 1, dated January 28, 1988, which reflects that the affected safety-belts may be returned to them for replacement at no charge for the rework and parts.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(d) Upon submission of substantiating data, by an owner or operator, through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office may adjust the compliance schedule specified by this AD.

Issued in Burlington, Massachusetts on June 6, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-13287 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-9]

Proposed Alteration of VOR Federal Airways; Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-412 located in the vicinity of Redwood Falls, MN, by realigning that segment via a north dogleg. This action would improve traffic in the Minneapolis-St. Paul International Airport Terminal, thereby reducing delays and controller workload.

DATES: Comments must be received on or before July 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88-AGL-9, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-412 located in the vicinity of Redwood Falls, MN. The realignment will retain traffic in the same general arrival corridor, but permit more flexibility for maneuvering traffic in the Minneapolis-St. Paul terminal area. This action would reduce delays and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-412 [Revised]

From Redwood Falls, MN, INT Redwood Falls 061°T(084°M) and Flying Cloud, MN, 262°T(256°M) radials; to Flying Cloud.

Issued in Washington, DC, on June 3, 1988.

Shelomo Wagalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-13295 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 87-AGL-24]

Proposed Alteration of VOR Federal Airway and Jet Routes; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airway V-128 and Jet Route J-18 and establish J-232 located in the vicinity of Rockford, IL. These airway and jet route description changes would alleviate air traffic congestion in and around the Chicago O'Hare International Airport, IL. This action would reduce en route and terminal delays, save fuel, and reduce controller workload.

DATES: Comments must be received on or before July 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 87-AGL-24, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address

listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AGL-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of V-128 and J-18 and establish J-232 located in the vicinity of Rockford, IL. These description changes would alleviate traffic congestion and compression in the Chicago O'Hare International Airport, IL, terminal area. These actions would reduce en route and terminal delays, save fuel and reduce controller workload. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-128 [Amended]

By removing the words "From Rockford, IL, via INT Rockford 154° and Peotone, IL, 281° radials;" and substituting the words "From Dubuque, IA; Janesville, WI; Rockford, IL; INT Rockford 169°T(166°M) and Peotone, IL, 281°T(278°M) radials;"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-18 [Amended]

By removing the words "St. Joseph, MO; Bradford; to Joliet, IL." and substituting the words "St. Joseph, MO; to Moline, IL."

J-232 [New]

From Moline, IL; to Kirksville, MO.

Issued in Washington, DC, on June 3, 1988.

Shalomo Wugalter,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-13296 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 243, 262, and 350

Transfer, Assignment, or Waiver of Payments

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to adopt regulations with respect to the transfer or assignment of benefits and waiver of benefits under the Railroad Retirement Act.

DATE: Comments must be received on or before July 14, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 386-4929).

SUPPLEMENTARY INFORMATION: Benefits paid by the Board are generally exempt from attachment, assignment, or other legal process. However, most such benefits are subject to legal process in satisfaction of a support or alimony obligation in accord with Part 350 of the Board's regulations.

Certain portions of annuities paid by the Board under the Railroad Retirement Act are subject to property divisions set forth in state court decrees and court-approved property settlements in accord with Part 295 of the regulations. Although annuities paid under the Railroad Retirement Act are subject to Federal income tax and a portion of certain annuities computed under the social security minimum guaranty provision of the Railroad Retirement Act may be assigned, the Board's regulations pertaining to these matters do not currently so state and are thus out of date. The Board's regulations also provide for waiver of receipt of annuity payments at Part 262. Accordingly, the Board in this part intends to consolidate in these regulations references to Parts 262, 295 and 350, and to add regulations concerning the taxation of annuities and the assignment of the amount or a portion of the amount payable under the social security minimum guaranty provision.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. There are no information collections associated with this proposed rule within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects

20 CFR Part 243

Railroad employees, Railroad retirement.

20 CFR Part 262

Railroad employees, Railroad retirement.

20 CFR Part 350

Railroad employees, Railroad retirement.

1. The Board's regulations under the Railroad Retirement Act (20 CFR Parts 200—299) are hereby amended by adding thereto a new Part 243 to read as follows:

PART 243—TRANSFER, ASSIGNMENT, OR WAIVER OF PAYMENTS

Sec.

243.1 Prohibition against garnishment.
243.2 Legal process for the enforcement of child support and alimony obligations.
243.3 Payments pursuant to court decree or court-approved property settlement.
243.4 Taxation of benefits.
243.5 Assignment of a portion of an annuity paid under the social security minimum guaranty provision.
243.6 Waiver of annuity payments.

Authority: 45 U.S.C. 231f(b)(5).

§ 243.1 Prohibition against garnishment.

Except as hereinafter provided in this part, no benefits paid under the Railroad Retirement Act are assignable or subject to any tax or to garnishment, attachment, or other legal process (including any order issued by any court in connection with a bankruptcy proceeding), nor shall any payment be anticipated.

§ 243.2 Legal process for the enforcement of child support and alimony obligations.

Benefits paid by the Board are subject to legal process brought for the enforcement of legal obligations to provide child support or to make alimony payments, as provided in Part 350 of these regulations.

§ 243.3 Payments pursuant to court decree or court-approved property settlement.

Certain annuity components are subject to division pursuant to a court decree or to a court-approved property settlement incident to any such decree, as provided in Part 295 of these regulations.

§ 243.4 Taxation of benefits.

(a) Annuities paid by the Board are subject to Federal income tax in accord with the Internal Revenue Code. The annuity portion equivalent to the amount of the benefit that the person would have actually received under the Social Security Act if railroad service had been creditable under that Act is treated for Federal income tax purposes the same way as a social security benefit. Annuity payments computed under the social security minimum guaranty provision contained in section 3(f)(3) of the Railroad Retirement Act (see § 243.5 of this part) are also treated as social security benefits for Federal income tax purposes. Railroad retirement annuity amounts exceeding social security equivalent payments, vested dual benefits, and supplemental annuities are taxed in the same manner as benefits provided under an employer plan which meets the requirements of section 401(a) of the Internal Revenue Code.

(b) Pursuant to section 14 of the Railroad Retirement Act, no annuity or supplemental annuity, in whole or in part, is subject to any tax by any state or any political subdivision thereof.

§ 243.5 Assignment of a portion of an annuity paid under the social security minimum guaranty provision.

Section 3(f)(3) of the Railroad Retirement Act, the social security minimum guaranty provision, guarantees that an annuitant will receive, in combined benefits under the Railroad Retirement and Social Security Acts, not less than the amount which would have been paid to the employee and to members of his or her family under the Social Security Act if the employee's railroad service had been creditable under that Act. An annuitant whose annuity is computed under that provision may assign all or any portion of that annuity to any of the members of his or her family who are or who could be included in the computation of the annuity. Any assignment issued pursuant to this section will terminate:

(a) When revoked by the annuitant by notification to the Board, or

(b) When the annuity is no longer computed under the social security minimum guaranty provision.

§ 243.6 Waiver of annuity payments.

(a) Any individual who has been awarded an annuity under the Railroad Retirement Act shall have the right to waive such annuity in whole or in part by filing with the Board a statement to that effect signed by him or her.

(b) Such a waiver shall be effective as of the date specified in the waiver statement, except that if an annuity has been awarded, a waiver shall not be effective before the first day of the month after the month in which the waiver form is received at an office of the Board and shall not be effective as to any annuity payment which has already been made or which cannot be prevented.

(c) For the period during which a waiver is in effect, no payment of the amount of the annuity waived can ever be made to any person. A waiver of an annuity shall not, however, have any effect on the amount of a spouse's annuity otherwise payable or on a lump sum under section 6(c) of the Act otherwise due, nor shall it serve to make an individual eligible for a lump-sum death benefit under section 6(b) of the Act or any insurance benefit under the Social Security Act on the basis of the wages of the same deceased employee.

(d) A waiver once made shall continue in effect until the annuitant requests in writing that it be terminated.

PART 262—MISCELLANEOUS

2. The authority citation for Part 262 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 231n.

3. The table of contents for Title 20, Chapter II, Subchapter A, Part 262, is amended by removing "262.5 Exemption.", "262.6 Waiver; statutory provisions.", and "262.7 Waiver of annuity or pension payments."

4. Part 262 is amended by removing §§ 262.5, 262.6, and 262.7 thereof.

PART 350—GARNISHMENT OF BENEFITS PAID UNDER THE RAILROAD RETIREMENT ACT, THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND UNDER ANY OTHER ACT ADMINISTERED BY THE BOARD

5. The authority citation for Part 350 continues to read as follows:

Authority: 15 U.S.C. 1673(b)(2); 42 U.S.C. 659, 661, and 662; and 45 U.S.C. 231f(b)(5) and 362(1).

§ 350.1 [Amended]

6. Section 350.1(c) is amended by adding "and § 295 of this chapter," after "section,";

§ 350.2 [Amended]

7. Section 350.2(c) is amended by revising the final two sentences to read as follows: "For purposes of this

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subchapter, legal process additionally includes assignments in lieu of garnishment, but only where grounds for the issuance of legal process in the nature of garnishment exist. Such assignments are revocable."

Dated: June 7, 1988.

By Authority of the Board.

For the Board.

Beatrice Eserkid,

Secretary to the Board.

[FR Doc. 88-13383 Filed 6-13-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-49-86]

Treatment of Related Person Factoring Income; Certain Investments in United States Property; and Stock Redemptions Through Related Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the treatment of related person factoring income, as well as proposed changes to regulations relating to the determination of the amount of earnings of a controlled foreign corporation invested in United States property. Also included is a proposed regulation relating to redemptions of stock through the use of related corporations. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to the treatment of related person factoring income, investments in United States property and redemptions through the use of related corporations. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations under §§ 1.864-8T and 1.956-3T are proposed to be effective [date that is 30 days after publication of final regulations in the **Federal Register**] and are proposed to be applicable, as of their dates of transfer, with respect to accounts receivable and evidences of indebtedness transferred after March 1, 1984. The regulations under §§ 1.956-1T and 1.956-2T are proposed to be effective [date that is 30 days after publication of final regulations in the **Federal Register**] with respect to investments in U.S. property made on or after June 14, 1988. The regulations under § 1.304-4T are proposed to be effective [Date that is 30 days after publication of final regulations in the **Federal Register**] with respect to acquisitions of stock occurring on or after June 14, 1988.

Written comments and requests for a public hearing must be delivered or mailed by August 15, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-49-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Regarding §§ 1.864-8T and 1.956-3T contact Barbara Allen Felker of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL-49-86). Telephone (202) 634-5406 (not a toll-free call). Regarding §§ 1.304-4T, 1.956-1T and 1.956-2T, contact Riea M. Lainoff of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL-49-86). Telephone (202) 566-6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.864-8T and 1.956-3T to Part 1 of the Title 26 of the Code of Federal Regulations. These regulations implement sections 864(d) and 956(b)(3), which were added to the Internal Revenue Code of 1954 by section 123 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 644, 646) and amended by sections 1201(d)(4), 1221(a)(2), 1223(b)(1), 1275(c)(7) and 1810(c) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2525, 2550, 2558, 2599, 2824). New §§ 1.956-1T and 1.956-2T amend §§ 1.956-1(b)(4), 1.956-1(e), and § 1.956-2(d)(2), respectively, under section 956 of the Internal Revenue Code of 1986. The temporary regulations published in the Rules and Regulations protion of this issue of the **Federal Register** also add new § 1.304-4T to Part 1 of Title 26 of the Code of Federal Regulations. The preamble to the temporary regulations explains these additions to the Income Tax Regulations.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal authors of these proposed regulations are Barbara Allen Felker, Riea M. Lainoff, Marnie J. Carro, and Ann Zukas of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861-1 through 1.905-4 and 1.861-1 Through 1.907-1

Income taxes, Aliens, Corporations, Corporate distributions, Corporate adjustments, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Reorganizations, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

The temporary regulations, FR Doc. 88-13131 [T.D. 8209] published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under Title 26, Part 1, of the Code of Federal Regulations.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-13132 Filed 6-13-88; 8:45 am]

BILLING CODE 4830-01-M

Notices

Federal Register
Vol. 53, No. 114
Tuesday, June 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Enterprise; Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: July 24-26, Juneau, AK; July 27-30, Anchorage, AK. Place: Westmark Baranof, 127, N. Franklin Street, Juneau, AK. 99801; International Inn, 3333 West International Airport Road, Anchorage, AK. 99502.

Time: 8:30 a.m.-5:00 p.m. Purpose:

—Review aspects of the U.S. Department of Agriculture's policies, practices and procedures on Equal Opportunity;
—Recommend changes in Department rules, regulations, and orders to ensure USDA activities are free of discrimination;
—Advise the Secretary of the effectiveness of compliance program directives;

Additionally, the Committee will focus on:

—Title VI and Title VII programs within Farmers Home Administration and Soil Conservation Service;
—Managing diversity in the workforce within Forest Service;
—Problems peculiar to Eskimos, Americans Indians, indigenous groups and women relative to recruitment, employment, training and program delivery, and;
—Farming issues of Native Americans.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Naomi Churchill, Esq., Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Room 1226 South Building, Washington, DC 20250, (202) 447-5681.

Written statements may be submitted until July 19, 1988.

Naomi Churchill,

Associate Director Equal Opportunity.

[FR Doc. 88-13354 Filed 6-13-88; 8:45 am]

BILLING CODE 3410-96-M

Forest Service

East Fork/Penney Ridge Multi-Timber Sale Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for the development of a series of timber sales on the Yolla Bolla Ranger District, Shasta-Trinity National Forests, Trinity County, California. The agency invites written comments and suggestions on the scope on the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by September 15, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Peggy Fox, District Ranger, Yolla Bolla Ranger District, Platina, California 96076.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Kenneth Smith, Team Leader, Yolla Bolla Ranger District, Platina, California 96076, phone (916) 352-4221.

SUPPLEMENTARY INFORMATION: This project proposes the development of currently unroaded areas which were identified during the RARE II (Roadless Area Review and Evaluation) analysis as East Fork and Penney Ridge. These areas were released for multiple-use management in the 1984 California Wilderness Act.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. The analysis will set standards and guidelines for management activities, and provide a schedule of these activities. Alternative locations of timber harvest units and roads will be identified and evaluated.

A ranger of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be No Action. Other alternatives will consider various levels, types, and locations of harvest and alternative locations and methods of access.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS).

The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploration of additional alternatives.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The District Ranger will hold a public scoping meeting at the Yolla Bolla Ranger District Office, Platina, California, at 7:00 p.m., Wednesday, July 27, 1988.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for

public review by November 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the Federal Register. It is very important that those interested in the management of the above described areas participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S.; 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by May 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to the administrative review process.

Date: June 6, 1988.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 88-13405 Filed 6-13-88; 8:45 am]

BILLING CODE 3410-11-M

IMISSION ON CIVIL RIGHTS

ama Advisory Committee; Agenda Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on June 23, 1988, at the Civic Center, 300 Bibb Street, Montgomary, Alabama. The purpose of the meeting is to receive information on policies and practices of the Alabama State government in the recruitment, hiring and utilization of minorities and women.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Melvin Jenkins, Director of the Central Regional Division (616) 426-5253, (TDD 816/426-8009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-13355 Filed 6-13-88; 8:45 am]

BILLING CODE 6335-01-M

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on June 30, 1988, at the Holiday Inn Downtown, Atlanta, Georgia 30328. The purpose of the meeting is to discuss the status of "Proceedings on Bigotry and Violence in Georgia" and plans for a Statewide conferecne on civil rights. Staff will give an administrative orientation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rose Strong or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, (TTD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-13356 Filed 6-13-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-357-801]

Postponement of Preliminary Countervailing Duty Determination: Certain Welded Carbon Steel Pipe and Tube Products From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Subcommittee on Standard Pipe, the Subcommittee on Line Pipe, the Subcommittee on Structural Tubing and the Subcommittee on Mechanical Tubing of the Committee on Pipe and Tube Imports and the individual producer members of each subcommittee, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigations of certain welded carbon steel pipe and tube products from Argentina. The preliminary determination will be made on or before July 7, 1988.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5414.

SUPPLEMENTARY INFORMATION: On April 19, 1988, the Department initiated countervailing duty investigations on certain welded carbon steel pipe and tube products from Argentina. In our notice of initiation we stated that we would issue our preliminary determination on or before June 23, 1988 (53 FR 13431-13432, April 25, 1988).

On May 31, 1988, the petitioners filed a request that the preliminary determination in this investigation be postponed for 14 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioners in these investigations, the Department is postponing its preliminary determination until no later than July 7, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

June 3, 1988.

[FR Doc. 88-13396 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on live swine from Canada. We preliminarily determine the total bounty or grant to be *de minimis* for slaughter sows and boars and Can$0.022/lb. for all other live swine during the period April 3, 1985 through March 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32880) a countervailing duty order on live swine from Canada. On August 27, 1986, the Government of Canada requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on September 16, 1986 (51 FR 32817). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Canadian live swine. Such merchandise is currently classifiable under TSUSA item 100.6500. These products are currently classifiable under HS item numbers 0103.91.00 and 0103.92.00. We invite comments from all interested parties on these HS classifications.

The review covers the period April 3, 1985 through March 31, 1986, and 28 programs.

P. Quintaine & Sons Ltd. of Brandon, Manitoba, and exporter of sows and boars, has requested that: (1) The scope of the countervailing duty order be changed to exclude slaughter sows and boars, (2) Quintaine and Sons Ltd. be excluded from the order, or (3) slaughter sows and boars be given a separate rate of zero. Quintaine contends that sows and boars are generally used for breeding and that they are used as slaughter hogs only when they can on longer be used effectively as breeding stock. Quintaine also contends that slaughter sows and boars have never received any benefits from the programs found countervailable by the Department in the final affirmative countervailing duty determination in this case (50 FR 25097, June 17, 1985).

We have considered Quintaine's arguments and come to the following conclusions: First, sows and boars are clearly within the scope of the order. The order covers all live swine except breeding swine. As stated in the TSUSA, such breeding animals must be "certified to the collector of customs by the Department of Agriculture as being pure bred of a recognized breed and duty registered in a book of record recognized by the Secretary of Agriculture for that breed, imported . . . specially for breeding purposes." During the period of review, Quintaine's animals were not certified to Customs as breeding animals. Rather, they entered the United States as slaughter animals. Since the petition and the preliminary and final determinations of both the Department and the International Trade Commission have consistently included all live swine, except breeding animals, within the same class or kind of merchandise covered by this order, we cannot now exclude the slaughter sows and boars.

Second, we cannot exclude a company from a countervailing duty order once the order is issued. Requests for company exclusions must be submitted within 30 days of publication of a notice to initiate an investigation, and the decision as to the exclusion must be made in the Department's final determination (19 CFR 355.38).

Finally, the Department has considerable discretion in determining whether to differentiate among products within a class or kind of merchandise. We only differentiate among products in exceptional circumstances. Among the criteria we consider are the extent to which the product qualifies as a distinct product subclass within the applicable class or kind of merchandise and the extent to which the subsidy on the product differs from the subsidy on the other products within the same class or kind of merchandise.

To determine the existence of a product subclass, we compare the specific product to the overall class or kind of merchandise. This comparison is made according to the following four criteria: (1) The general physical characteristics of the product; (2) the expectations of the ultimate purchaser; (3) the ultimate use of the product in question; and (4) the channels of trade in which the product moves. The differences between the products do not need to be so great as to distinguish between a separate class or kind of merchandise. However, the differences between the products must be considerable. Slaughter sows and boars are within the same class or kind of

merchandise as other live swine currently provided for under TSUSA item 100.8500. Slaughter sows and boars, however, can be distinguished from other live swine generally as follows:

Most live swine are bred to be slaughtered: sows and boars are primarily used for breeding. Slaughter hogs (sometimes called "bacon" hogs), in general, are slaughtered when their carcasses yield an acceptable product value; sows and boars are slaughtered only when they can no longer be used effectively as breeding animals. Slaughter hogs, in general, are slaughtered when they weigh between 170 and 249 pounds; sows weigh, on average, 450 pounds when slaughtered, boars, as much as 700 pounds. Slaughter hogs are slaughtered when they are about six months old; sows and boars are two to five years old when they are slaughtered. Slaughter hogs are graded by an index table developed to differentiate between the yield levels in hog carcasses. The value of a carcass is primarily determined by two factors, weight and the maximum backfat thickness at the loin. Slaughter sows and boars are not graded because they are too heavy and have an unacceptably high fat content. In general, about 35 percent of a slaughter hog is sold as prime cuts while the remaining 65 percent is cured for bacon and ham. Slaughter sows and boars are ground up and used exclusively in processed meat products, such as sausage and luncheonmeat.

Because of the different expectations of the ultimate purchaser for slaughter sows and boars as opposed to other live swine, and the different ultimate use of the various products in question, the plant facilities used to process the slaughter sows and boars differ substantially from the facilities used to process live swine. For example, the facilities for slaughter sows and boars must be able to grind meat for use in processed meat products. The facilities for other live swine must be able to cut fresh meat. Slaughter sows and boars are marketed separately from live swine, and they command different prices. Finally, and most importantly, it is impossible to convert a sow or boar designated for slaughter into what is generally considered a "bacon" slaughter hog. Therefore, the distinction between slaughter sows and boars and other live swine cannot be used as a means to circumvent the countervailing duty order.

Based on the considerable differences between slaughter sows and boars and other live swine, we preliminarily determine that slaughter sows and boars are a distinct subclass or kind of merchandise within the class or kind of merchandise covered by this order.

Given this conclusion, we reviewed the programs preliminarily found to be countervailable in this review in order to determine whether there are sufficient grounds for setting a separate rate. Sows and boars are not eligible for any of the federal or provincial stabilization programs, expect Quebec's. We preliminarily find the net subsidy on sows and boars from all other programs to be *de minimis*. Therefore, we preliminarily determine that it is appropriate to set a separate rate of zero for sows and boars.

Analysis of Programs

(1) Agricultural Stabilization Act (ASA)

(a) ASA Stabilization Payments

The Agricultural Stabilization Act (the "Act") of 1957–58 was passed by the federal government to provide for the price stabilization of certain agricultural commodities. On June 27, 1985, the Act was amended by Bill C–25, which changed several aspects of the program. Four groups of commodities are explicitly provided for, or "named," in the Act: cattle, hogs, lambs and wool (previously this group included cattle, hogs, and sheep); industrial milk and industrial cream; corn and soybeans; and spring wheat, winter wheat, oats and barley (previously this group did not include spring wheat or winter wheat). Other natural or processed products of agriculture may be designated by the Governor in Council as agricultural commodities for purposes of this Act. "Named" and "designated" agricultural commodities are now eligible for stabilization payments at any time. Previously, coverage was limited to those periods in which the market situation was different in one region of Canada from the rest of Canada, as determined by the Governor in Council.

Programs of the ASA are administered by the Agricultural Stabilization Board (the "Board"), the members of which are appointed by the Governor in Council. The Board calculates the stabilization payments for both named and designated products in the following manner: (1) It establishes a "base price," which is the average price of the commodity in the five-year period immediately preceding the period in review; (2) it calculates a "prescribed price" by taking a minimum of 90 percent of the base price and adjusting it by a factor reflecting differences in production costs between the five-year base period and the current review period (previously, the 90-percent minimum applied only to named commodities; it now applies to both named and designated commodities); and (3) it compares the prescribed price to the "average market return price," which is the published average sales price of the commodity in the review period. The difference between the prescribed price and the average market return price is the amount of the stabilization payment.

Stabilization payments are now calculated quarterly instead of annually. Base and prescribed prices are based on the quarterly periods in the previous five years that correspond to the quarterly review period. For example, if the Board is calculating a stabilization payment for the second quarter of 1985, it uses the average prices of the second quarters of the previous five years to calculate the base and prescribed prices.

Despite there no longer being different methodologies for calculating the rates of support for named and designated commodities, we preliminarily determine that the ASA program continues to be countervailable because it is provided to specific industries. Several major agricultural commodities, such as most wheat, dairy products, and poultry, are still ineligible for payments. Furthermore, the distinction between named and designated products still exists, and hogs are guaranteed eligibility because they are on the named product list.

In accordance with a Ministry of Justice opinion, no ASA stabilization payments are made from September 1984 until Bill C–25 was enacted (June 27, 1985). During the time that no payments were made from ASA, the provinces made payments under their own programs. In November 1985, the Board announced it would make payments retroactively for the first two quarters of fiscal year 1985–86 (April 1, 1985 to March 31, 1986). To avoid double payment, the Board reimbursed provincial governments for stabilization payments already made to producers by the provincial governments. The Board also made payments directly to producers in cases where producers' sales exceeded the maximum number of swine allowed under provincial stabilization programs or where producers were not members of a provincial marketing board.

In fiscal year 1985–86, because the average market price of hogs fell short of the prescribed price in the first two quarters, the Board made delayed payments of Can $1.58 per hunderdweight ("cwt") for the first quarter and Can $3.54 per cwt for the second quarter. No payments on hogs were made for the last two quarters of fiscal year 1985–86 because the average market price of hogs did not fall below the prescribed price during those periods. As before, the payments were made only on hogs indexing 50 or above. By definition, this excludes sows and boars, which are not indexed. Thus, no benefit accrued to sows and boars from this program during the review period.

According to Statistics Canada, 28 percent of total Canadian production of live swine was exported (to all markets) during the period of review. The Board reduced all payments on hogs (both to producers and provincial governments) during the period of review by 28 percent. Payments on other commodities were not reduced. The Canadian government argues that this 28-percent reduction eliminates any potential countervailable benefit from this program on exported swine.

We have considered the Canadian Government's arguments and preliminarily determine that this program continues to confer a benefits on swine exported to the United States. All swine marketed in Canada were eligible to receive ASA payments, regardless of whether the swine were exported or sold in the domestic market. That the payment rate was lowered by 28 percent to account for total exports does not change that fact that each hog marketed in Canada was eligible to receive a payment, albiet at a lower rate.

The federal reduction only affects Board payments made directly to producers. We have estimated that only 16 percent of Board payments was made directly to producers during the period of review. The rest was paid to provincial governments. During the period of review, the provinces continued to calculate their stabilization payments on 100 percent of sales—with no reduction for exports.

Furthermore, it is impossible to tie the federal stabilization payments to specific export or demestic sales by most swine producers. Producers who sell through marketing boards are unaware of the ultimate destination of their merchandise. According to Statistics Canada, approximately 63 percent of all hogs was sold through marketing boards during the period of review. Therefore, most stabilization payments for hogs cannot be tied to specific sales.

Finally, even for the remaining 37 percent that was sold directly by the producers during the period review, in which case the producer was aware of the ultimate destination of his hogs, the individual producer has no control over the rate of the stabilization payment made directly to him by the Board. The producer did not receive a higher payment rate from the Board if he sold more in the domestic market. From the individual producer's point of view, he simply received a lower stabilization payment on his total sales.

For these reasons, despite the 28-percent reduction, we consider the ASA payments to be a domestic subsidy benefiting all sales, not just domestic sales.

To calculate the benefit, we divided the total ASA payments made directly to individual producers in each province by the total live weight of swine (minus sows and boars) produced in that province during the period of review. The ASA payments made to the provincial governments are part of the funding for the provincial stabilization programs. ASA payments are made on a per cwt basis. We used 220 pounds as the average weight of slaughter hogs (excluding sows and boars) in Canada. We confirmed this figure with both Agriculture Canada and the United States Department of Agriculture. We weight-averaged the resulting benefits by each province's proportion of total Canadian exports of this merchandise (minus sows and boars) to the United States during the review period. On this basis, we preliminarily determine the benefit to be zero for sows and boards and Can$0.00075/lb. for all other swine during the period of review.

(b) National Tripartite Red Meat Stabilization Program Bill C–25 amended the ASA to authorize the Minister of Agriculture, with the approval of the Governor in Council (Order-in-Council PC 1985–3343), to enter into agreements with the provinces and/or producers to provide price stabilization schemes for any natural or processed product of agriculture. Previously the ASA had been purely a federal program. The Minister may enter into these "Tripartite Agreements" only after he determines that they will not give a financial advantage to some producers in the production or marketing of the product not enjoyed by other producers of the same product in Canada and that the agreements will not provide an incentive to over-produce.

All the provinces signed agreements on swine. The agreements were implemented on January 1, 1986, except for Manitoba's agreement, which was implemented on July 1, 1986. Under the terms of the Tripartite Agreements on Hogs, the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs, nor may the federal government offer compensation to swine producers in a province not a party to an agreement. The Tripartite Scheme provides for a five-year phase-in period to adjust for differences between the Tripartite Scheme and the provincial programs. Existing provincial stabilization plans are to be completely phased out by 1990. During the period of review, all of the provincial stabilization programs remained in effect, and they all conferred benefits.

"Hogs" under the Tripartite Agreements must index 50 or above (thus, sows and boars are excluded by definition). The agreements specify that: all Canadian producers of hogs will receive the same level of support per unit or production; the schemes will be funded equally by the Government of Canada, the provinces and the hog producers; and participation will be voluntary. Payments will cover only the proportion of production used for domestic consumption, and the agreements must specify the method of determining that proportion.

During the period of review, no payments for hogs were made under the Tripartite Agreements. On January 15, 1988, the Canadian Government informed the Department that no payments have been made under the National Tripartite Stabilization Program for Hogs through December 31, 1987. Since all the provinces have signed Tripartite Agreements which have replaced the ASA stabilization program and the provincial stabilization programs, the Canadian government requests that the Department consider the lack of payment in 1987 in setting the cash deposit rates for the Tripartite programs, the ASA hog stabilization program, and the provincial stabilization programs.

We have considered the Canadian government's request. In setting cash deposit rates of estimated countervailing duties, we attempt to establish a rate which most accurately reflects the level of subsidization for entries subject to the estimated rate. Thus, it is our practice to take into account program-wide changes which occur prior to our preliminary notice.

In this case, a program-wide change has occurred. Nevertheless, we have no indication of the benefits that will result from this change because payments will fluctuate depending on swine prices and costs of production. The fact that no payments were made under the ASA or Tripartite Agreements through December 31, 1987, does not mean that payments will not be made on future shipments. Lacking specific data on how the new program will raise or lower the level of benefits now conferred under the ASA and provincial programs, we have no basis for establishing a deposit rate other than that derived from the

programs which are being replaced by the Tripartite Agreements. Therefore, we preliminarily determine that the cash deposit rates for the ASA hog stabilization program and the provincial hog stabilization programs are the review period assessment rates determined for those programs.

(2) Record of Performance Program

The Canadian Swine Record of Performance Program (ROP) is a joint federal and provincial herd testing program for the purpose of improving breeding stock and developing high quality pork at minimal production costs. Purebred sows and boars are tested for backfat, growth rate, feed conversion and breeding performance. The program identifies and ranks genetically superior animals whose progeny cold potentially command increased market prices. Similar performance testing programs exist for all domesticated animals and any animals used in products sold for consumption, including beef and dairy cattle, sheep, poultry, and honey bees.

In our final determination (50 FR 25097), we found this program countervailable because it was limited to a specific group of enterprises or industries. In this review, we have obtained additional information regarding the testing conditions, the applicability of the research, and the availability of the research results.

Agriculture Canada publishes is list of ROP programs in progress, as well as detailed testing requirements regarding housing, hygiene, management, and herd health control. It also publishes detailed specifications for feed ration ingredients and carcass adjustments for weight and sex. Therefore, the test conditions and specifications can be duplicated by anyone.

The results of the tests are publicly available. The provincial governments publish the test results quarterly for producers and annually for the general public. In addition, the provincial governments send biweekly updates to those on their mailing lists. Any person, of Canadian or foreign citizenship, may be put on the mailing lists.

Although the Canadian federal and provincial governments bear most of the cost of this program, producers also contribute to the funding of the research projects. The "cost recovery fees" collected from producers cover the cost of testing, the cost of feed used during testing, and the cost of selling boars after the testing is completed. The cost recovery fee ranged from Can $10 to $50 per head during the period of review.

The International Trade Commission, in its "Conditions of Competition Between the U.S. and Canadian Live Swine and Pork Industries; Report to the United States Senate Committee on Finance on Investigation No. 332-186" (November 1984), page xiv, stated:

> The relatively free flow of information between the United States and Canadian farmers and researchers and the free flow of swine production supplies and equipment tend to result in rapid dispersal of technological innovations.

Further, on page 59:

> Because of the free flow of information between the United States and Canada, technological innovations in the live swine and meat industries in one country are usually readily available in the other country. Information is exchanged informally between U.S. and Canadian farmers through trade publications, scholarly publications and scientific research reports, and conferences . . . Also, animals for breeding purposes are exchanged between the United States and Canada, making available a common genetic pool.

Conditions for growing hogs are similar in the United States and Canada. The genetically superior sows and boars resulting from the ROP program are used in both countries, as well as in other countries. Therefore, the ROP research has broad applicability in the hog industry both inside and outside Canada.

For these reasons, we preliminarily find that this program provides no special benefit to the Canadian swine industry because the results of the research are publicly available to anyone interested, including hog producers in the United States, and because the research results have broad applicability to hog producers the world over, including those in the United States. We therefore preliminarily determine that this program is not countervailable.

(3) Canada-Ontario Stabilization Plan for Hog Producers 1985

The Canada-Ontario Stabilization Plan for Hog Producers, established under section 5 of the Ministry of Agriculture and Food Act, was an interim program set up to provide price stabilization assistance to hog producers during the period April 1, 1985 to September 30, 1985, pending the implementation of the National Tripartite Scheme. This was the only interim stabilization program in effect during the period of review. Because this program provided payments that were limited to a specific industry, we preliminarily determine that it is countervailable.

Funding for the program came from the federal Agricultural Stabilization Board, the Ontario government, and producer premiums of Can$2.80 per head. Payments, which were calculated according to ASA methodology, were made in the two quarters covered by this program. However, unlike the federal ASA payments, no reduction was made to account for exports. Payments were made on hogs indexing 80 or higher to farrow-to-finish producers and finisher producers and on weaner pigs to sow/weaner producers. No payments were made on sows and boars.

To calculate the benefit from this program, we divided the gross payments, net of producer contributions, by the total live weight of swine (minus sows and boars) produced in Ontario during the period of review. We then weight-averaged Ontario's benefit by its share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0124/lb. for all other swine during the period of review.

(4) Alberta Red Meat Interim Insurance Program

The Alberta Red Meat Interim Insurance Program operated in a manner similar to the Canada-Ontario Stabilization Plan for Hogs, except that payments were calculated as specified in the proposed National Tripartite Scheme. Payments were made on cattle and on hogs indexing 80 or above (which do not include sows and boars). Cattle and hogs were the only commodities covered by an interim stabilization program in Alberta during the period of review. Because this program provided payments that were limited to specific industries, we preliminarily determine that it is countervailable.

To calculate the benefit from this program, we divided the gross payments, net of producer contributions, by the total live weight of swine (minus sows and boars) produced in Alberta during the period of review. We then weight-averaged Alberta's benefit by its share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0032/lb. for all other swine during the period of review.

(5) Saskatchewan Hog Assured Returns Program (SHARP)

SHARP was established in 1978 pursuant to the Saskatchewan Agricultural Returns Stabilization Act. It provides stabilization payments to hog producers in Saskatchewan at times when market prices fall below certain production costs. The program, which is scheduled to be discontinued by 1991, is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture. Participation is voluntary and is open to all hog producers in the province. Coverage is limited to 1,500 hogs per producer each calendar quarter. Under the Saskatchewan Agricultural Returns Act, the provincial government may establish a stabilization plan for any agricultural commodity. However, in practice, only hogs and beef have such plans. Because this program provides payments to specific indastries, we preliminarily determine that it is countervailable.

The program is funded by levies on the sale of hogs from participating producers and by matching amounts from the provincial government. The levies are charged regardless of whether the fund is in a surplus or deficit position. Producer levies range from 1.5 to 4.5 percent of market returns on the sale of hogs covered by the program. Whenever the balance in the SHARP account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Board using the producer and provincial contributions.

The stabilization price under this program is the total of cash production costs plus 75 percent of noncash costs. This price is determined each calendar quarter. Stabilization payments are made at the end of each quarter to each participating producer whose average price for hogs marketed in that quarter is less than the stabilization price. During the period of review, payments were made in all four quarters.

In the final determination (50 FR 25105), we considered the benefit from this program to be the provincial government's contribution to the fund in fiscal year 1984. We treated the provincial government's contribution as a grant. We have reconsidered our calculation methodology. The program is funded by equal contributions from the producers and the provincial government. In theory, producer contributions over time should equal half of the total payments received by producers from the fund. When market prices are significantly lower than stabilization prices for several years in a row, as was the case during the years up to and including the review period, the fund must make payments that are much greater than the accumulated contributions of the producers and the provincial government. In such cases, the provincial government makes up the deficit in the form of a loan. Because all producer contributions are matched by the provincial government, the actual loan liability of the producers is equal to half of the net deficit of the fund. However, there is no benefit from this loan liability because the fund pays interest, at market rates, on its net deficit. Therefore, there is only a grant benefit to the producers, which is equal to half of the total stabilization payments made during the review period.

To calculate the benefit, we divided half of the total stabilization payments received by the total live weight of swine (minus sows and boars) produced in Saskatchewan during the period of review. We then weight-averaged Saskatchewan's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0024/lb. for all other swine during the period of review.

(6) British Columbia Farm Income Insurance Plan (FIP)

The FIP was established in 1979 in accordance with the Farm Income Insurance Act of 1973 ("the Farm Act") in order to assure income for farmers when commodity market prices fluctuate below basic costs of production. The criteria for eligibility in the FIP programs, which are described in Schedule A of the Farm Act, are the same for all farmers who produce certain commodities. Schedule B of the Farm Act contains the guidelines for the individual commodities receiving benefits. During the period of review, stabilization plans were in effect for beef, blueberries, greenhouse tomatoes and cucumbers, potatoes, processing vegetables, raspberries, sheep, strawberries, swine and tree fruits.

Schedule B4 contains the guidelines for swine producers. The program is administered by the provincial Ministry of Agriculture and Food and the British Columbia Federation of Agriculture. In addition, the British Columbia Pork Producers' Association has a role in the Swine Producers' Farm Income Plan (the title of Schedule B4) in that it verifies claims, collects producer premiums, and consults with the government on matters such as premium levels and the cost of production formula. The program is funded by premiums that are paid in equal proportions by producers and by the provincial government. Producers pay premiums in all quarters regardless of market results.

Participating producers receive FIP payments in calendar quarters during which costs of production exceed market returns. The basic costs of production and market returns are calculated quarterly according to a cost of production model described in the Act. The same per unit cost of production model is used for all products receiving benefits. FIP payments are calculated quarterly based on the difference between costs of production and market returns. The Farm Act requires that ASA payments to individual producers be added to the market return price. Payments were made to hog producers in all quarters of the review period.

Because several major agricultural commodities, such as wheat, dairy products, and poultry, are excluded from the FIP, we preliminarily determine that this program provided payments that were limited to specific industries and is therefore countervailable. To calculate the benefit, we followed the same methodology as described for the Saskatchewan SHARP program (see section 5). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0003/lb. for all other swine during the period of review.

(7) Manitoba Hog Income Stabilization Plan (HISP)

The HISP was created in 1983 pursuant to the Farm Income Assurance Plans Act to provide income support payments to hog producers in Manitoba. The program was terminated on June 28, 1986. It was administered by the provincial Ministry of Agriculture and the Manitoba Hog Producers' Marketing Board. It was funded by premiums from participating producers (five-sevenths) and from the Government of Manitoba (two-sevenths). Whenever the balance in the HISP account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Board using the producer and provincial contributions.

Participation in the program was voluntary, and coverage was limited to a maximum of 1,250 hogs per quarter. Only indexed hogs were eligible for beneifts. Sows and boars were not eligible for benefits. Participating producers received payments at the end of each quarter in which the market price for hogs fell below an established price support level. The price support level was 87 percent of the cost of production model, which was revised by the Ministry of Agriculture each quarter.

Although the enabling legislation for this program permitted the Minister to establish income assurance plans for many natural products, there were only two commodities for which plans were in operation during the period of review. Because payments were limited to these two products, we preliminarily determine that this program was provided to a specific group of industries and is therefore countervailable.

To calculate the benefit, we followed the same methodology as described for the Saskatchewan SHARP program (see section 5). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0003/lb. for all other swine during the period of review.

(8) New Brunswick Hog Price Stabilization Plan (NBHPSP)

The NBHPSP was established in 1974 to assure hog producers greater income stability during periods of both high and low market prices. The plan is administered jointly by the New Brunswick Department of Agriculture Hog Stabilization Board and the New Brunswick Hog Marketing Board. Participation in the plan is voluntary. Producers who sell through the Marketing Board are eligible to receive payments on up to 7,500 hogs per year. Hogs indexing 100 or above (which do not include sows and boars) are the only agricultural commodity that received stabilization payments in New Brunswick during the period of review. Because this program provided payments that were limited to a specific industry, we preliminarily determine that it is countervailable.

The Board establishes a base price that is based on production costs. When the market price exceeds the base price by Can$5.00, farmers pay into the stabilization fund. Ninety-five percent of this amount is considered to be the farmer's equity in the program. When the average weekly market price falls below the base price, farmers receive payments to make up the difference between the two prices. Half of the payment is provided by the Government of New Brunswick as an outright grant to the farmer. The other half is drawn from the farmer's equity in the fund. When the farmer has exhausted his equity in the fund, the province assumes the producer's portion of the payment by providing an interest-free loan. This loan is only paid back when the fund is in a surplus position. In fiscal year 1985-86 the base price exceeded the market price throughout the year, and producers received both loan and grant payments from the program in all four quarters.

All outstanding interest-free loans as of April 1, 1985 were subsumed under the New Brunswick Swine Industry Financial Restructuring Program (see section 18). The benefit from the interest-free loans loans provided in fiscal year 1985-86 will accure in fiscal year 1986-87. Therefore, only the grant portion of this program provided a benefit during the review period.

The calculate the benefit, we allocated half the total stabilization payments received during the review period over the total live weight of swine produced in New Brunswick during the review period. We then weight-averaged the result by New Brunswick's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.000002/lb. for all other swine during the period of review.

(9) Newfoundland Hog Price Support Program

In April 1985, the Executive Council of Newfoundland authorized the Newfoundland Farm Products Corporation, which acts on behalf of the provincial government, to pay 85 cents per pound for all hogs indexing 80 or above (which do not include sows and boars) that were purchased by the Corporation. This price was paid regardless of the prevailing market price. The price was based on monthly determinations of input costs of production. During the period of review, costs were approximately 91 cents per pound, and the market price averaged 70 cents per pound. Producers do not contribute to this program. Hogs are the only agricultural commodity that received stabilization payments in Newfoundland during the period of review. Because the program provided payments that were limited to a specific industry, we preliminarily determine that it is countervailable.

Although Newfoundland did not export hogs to the United States directly during the review period, we verified that Newfoundland exported hogs to Ontario that were later exported to the United States during the review period. These Newfoundland hogs did not qualify for stabilization payments from the Ontario provincial government but did form the basis for stabilization payments from the Newfoundland provincial government. Therefore, to calculate the benefits, we divided the gross payments on swine by the total live weight of swine (minus sows and boars) produced in Newfoundland during the period of review. We than weight-averaged the result by Newfoundland's share (based on its exports through Ontario) of total Canadian exports of this merchandise (minus sows and boars) to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be zero for sows and boars and Can$0.00002/lb. for all other swine.

(10) Nova Scotia Pork Price Stabilization Program (NSPPSP)

Pursuant to the Nova Scotia Natural Products Act, the NSPPSP was administered under the Pork Producers Marketing Plan of August 9, 1983. The program was terminated on September 30, 1987. The purpose of the program was to assure price stability for hogs by compensating farmers for fluctuations in hog prices and by assuring that producers consistently recover direct operating costs. Participation was open to all hog producers who sold through the Nova Scotia Pork Price Stabilization Board. Maximum eligibility was established annually according to the producers' current production levels. Indexed hogs (not sows and boars) were the only agricultural commodity that received stabilization payments during the period of review. Because the stabilization payments were limited to a specific industry, we preliminarily find them to be countervailable.

The NSPPSP was funded by producer and provincial government contributions. Each quarter, the Board set and reviewed the base price to reflect current, direct, out-of-pocket operating costs. During periods of high prices, producers built equity in the fund with their contributions. When the market price fell below the stabilization price, the producers received a deficiency payment, which equaled the difference between the two prices. Half of the payment was contributed by the provincial government. The other half was drawn from the producer's equity in the fund. When the producer's equity was exhausted, the provincial government assumed the producer's portion of the stabilization payment in the form of an interest-free loan. Because market prices did not exceed the base prices during the period of review, payments were made in all four quarters of the review period. During the period of review, the producers did not contribute to the fund. In addition, because of an extended period of low market returns with no support payments, a one-time supplementary payment of Can$2 per cwt was given to producers during the period of review.

On September 20, 1985, the Government of Nova Scotia amended

this program by eliminating the interest-free loan element. The total amount of the stabilization payment is now a grant only. However, producers continue to be liable for interest-free loans provided before fiscal year 1985-86. Therefore, the benefit during the review period consists of the total stabilization payments received in the review period, which are grants, plus the interest on the outstanding loan balance as of the beginning of fiscal year 1985-86. We do not know the outstanding loan balance as of the beginning of fiscal year 1985-86. As the best information available, we have assumed that the outstanding loan balance is equal to half the amount of the total stabilization payments made during the review period.

To calculate the benefit, we considered the total amount of the stabilization payments received in the review period as a grant. We treated the outstanding loan balance as a one-year interest-free loan. We took the difference between the zero interest rate charged on these loans and the national average short-term commercial rate for comparable agricultural loans and multiplied this interest differential by the outstanding loan balance. We allocated the grant and loan benefits over the toal live weight of swine produced in Nova Scotia during the review period. We then weight-averaged the result by Nova Scotia's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.000002/lb. for all other swine during the period of review.

(11) Prince Edward Island (PEI) Price Stabilization Program

In accordance with the PEI Natural Products Marketing Act, the PEI Hog Commodity Marketing Board established the PEI Price Stabilization Program in 1974. The purpose of the program is to provide income stability to hog producers. The Stabilization Board and the provincial lending authorities meet quarterly to determine the level of support prices. Support levels are set at 95 percent of the cost of production. If the weekly market price of hogs exceeds the support price by Can$3.00, producers contribute to the fund. If the weekly market price falls below the support price plus Can$3.00, the producers do not contribute to the fund. Whenever the weekly price of hogs is below the support price, the PEI Hog Commodity Board makes stabilization payments from the fund of one-half the difference between the two prices. Half the payment is contributed by the provincial government, and the other half is drawn from the producers' equity in the fund. In the event that producers' equity in the fund is exhausted, the provincial government assumes the producers' portion of the stabilization payment in the form of an interest-free loan, which is repaid when the fund is in a surplus position. During the period of review, the producers did not contribute to the fund.

Payments are made only on hogs indexing between 67 and 114 (not sows and boars). Participation in the program is voluntary, and there are no minimum production requirements. However, producers are only eligible to receive stabilization payments on the number of hogs equal to the average number of hogs marketed in the previous quarter, up to a ceiling of 4,300 hogs per year.

The Natural Products Marketing Act established marketing boards for hogs, dairy products, tobacco, pedigreed seed, pulp trees, meat, eggs, and cole crops. However, hogs were the only agricultural commodity that received stabilization payments during the review period. Because this program provided payments that were limited to a specific industry, we preliminarily find it to be countervailable.

To calculate the benefit, we used the same methodology as described under the Nova Scotia stabilization program (see section 10). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.00003/lb. for all other swine during the period of review.

(12) Quebec Farm Income Stabilization Insurance Programs (FISI)

In accordance with the "Loi sur l'assurance-stabilisation des revenus agricoles" (the FISI), the Government of Quebec established stabilization schemes for producers of various commodities, including feeder hogs and weaner pigs. The schemes are administered by the Regie des Assurances Agricoles du Quebec (the Regie), a crown corporation. The purpose of the schemes is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. The stabilized net annual income is calculated according to a cost of production model that includes an adjustment for the difference between the average wage of farm workers and the average wage of all other workers in Quebec. When the annual average income is lower than the stabilized net annual income, the Regie makes a payment to the participant at the end of the year.

The schemes are funded two-thirds by the provincial government and one-third by producer assessments. Participation in a stabilization scheme is voluntary. However, once a producer enrolls in a program, he must make a five-year commitment. The maximum number of feeder hogs eligible to be insured is 5,000, and a maximum of 400 sows may be insured. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Regia using the producer and provincial contributions.

The Government of Quebec contends that, because this program covers 11 commodities that together comprise 71 percent of commercial farm production in the province of Quebec, the Department should not consider the program to be targeted to specific industries. We have considered the Government of Quebec's arguments. In calculating total commercial farm production, the Government of Quebec did not include milk products, poultry, and eggs, which made up almost half of Quebec's total agricultural production in 1985. By including these products, we find that the proportion of total farm production in Quebec covered by the FISI in 1985 was much less than that claimed by the Government of Quebec. Therefore, we are not persuaded by the Government of Quebec's arguments and preliminarily determine that this program continues to be countervailable.

To calculate the benefit, we followed the same methodology as described under the Saskatchewan SHARP program (see section 5).

On this basis, we preliminarily determine the benefit to be Can$0.0007/lb. for both sows and boars and all other swine.

(13) New Brunswick Swine Assistance Program

In 1981-82, the Farm Adjustment Board, which was created by the Farm Adjustment Act, provided interest subsidies on medium-term loans to hog producers in order to alleviate high interest charges on the producers' short-term debt for operating credit. The program was available only to hog producers who entered production or underwent expansion since 1979. The loans bore a five-year term and an effective interest rate of 10 percent. Because these loans were provided to a specific industry at noncommecial rates, we preliminarily determine that they are countervailable.

To calculate the benefit from this program, we divided the aggregate interest subsidy by the total live weight of swine produced in New Brunswick. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000003/lb. for both sows and boars and all other swine.

(14) New Brunswick Livestock Incentives Program

This program, which operates under the New Brunswick Livestock Incentives Act, OC 71–544, provides free loan guarantees to producers for purchasing breeder and feeder animals. In addition, a 20-percent refund of the principal is granted to farmers upon repayment of the breeder loans. We preliminarily determine that this program is countervailable because it is provided to a specific industry on terms inconsistent with commercial considerations. This program affects only sows and boars, which are old breeders.

To calculate the benefit, we multiplied the total amount of loans given to hog producers during the period of review by 0.75 percent, which was the average commercial cost of loan guarantees in New Brunswick during the period of the investigation (we used this as the best information available because the Government of New Brunswick did not report the average cost of commercial loan guarantees for the period of review). We allocated the result, plus the total amount of refunds, over the total live weight of sows and boars produced in New Brunswick during the period of review and then weight-averaged that amount by New Brunswick's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000535/lb. for sows and boars, and zero for all other swine.

(15) New Brunswick Hog Marketing Program

Under this program, the Livestock Branch of the New Brunswick Department of Agriculture paid the New Brunswick Hog Marketing Board 64 cents for each hog sold during the review period in order to equalize the cost of transporting hogs to slaughter facilities in all areas of the province.

Because this program is provided to a specific industry and constitutes government assumption of transportation costs, we preliminarily determine that it is countervailable. To calculate the benefit, we divided the total amount granted under this program by the total live weight of hogs produced in New Brunswick during the the period of review. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000919/lb. for both sows and boars and all other swine.

(16) New Brunswick Swine Industry Financial Restructuring Program

This program was created by the Farm Adjustment Act (OC 85–98) and became effective April 1, 1985. During the period of review, the Government of New Brunswick granted hog producers indebted to the Board a rebate of the interest on that portion of their total debt (the "residual debt") that, on March 31, 1984, exceeded the "standard debt load." The standard debt load is defined in the progarm regulations as the amount of debt which a swine producing unit can, in the opinion of the Board, reasonably be expected to service. The residual debt does not begin to accrue interest again until the debt load is no longer "excessive."

We preliminarily determine that this program is countervailable because it provides noncommercial loan terms to a specific industry. We consider both the interest rebate and the interest holiday to confer benefits. However, because the interest holiday did not begin until April 1, 1985, the benefit from this portion of the program does not occur until April 1, 1986, which is outside this revie period.

To calculate the benefit, we divided the amount of the rebate by the total live weight of hogs produced in New Brunswick during the period of review. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00000154/lb. for both sows and boars and all other swine.

(17) Nova Scotia (NS) Swine Herd Health Policy

The Nova Scotia Department of Agriculture and Marketing administers a herd health program whereby it reimburses veterinarians for housecalls made to breeders of commercial and purebred livestock. Because this program provides payments that are limited to specific industries, we preliminarily determine it is countervailable. This program affects only sows and boars, which are old breeders. To calculate the benefit, we divided the total reimbursements by the total live weight of sows and boars produced in Nova Scotia during the period of review. We then weight-averaged the result by Nova Scotia's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00000646/lb. for sows and boars, and zero for all other swine.

(18) Nova Scotia (NS) Transportation Assistance

The NS Department of Agriculture and Marketing provides grants to the NS Hog Marketing Board, which in turn distributes the funds to producers, in order to equalize the cost of transporting hogs to slaughter facilities. The funds are available only to farmers who produce and slaughter their hogs in Nova Scotia. Because this program does not affect live swine exported to the United States, we preliminarily determine that it is not countervailable.

(19) Ontario Farm Tax Reduction Program

This program provides eligible farmers with a rebate of 60 percent of municipal property taxes levied on farm properties the products of which have a gross value of Can$5,000 in eastern or northern Ontario, and Can$8,000 elsewhere in Ontario. There is no restriction on the types of farm products that are eligible, nor is it necessary that the products actually be sold. Any resident of Ontario may receive a rebate if he owns and pays taxes on eligible properties. Because the eligibility criteria vary depending on the region of Ontario in which the farm is located, we preliminarily determine that this program is countervailable. Since all farmers in Ontario whose gross output is at least Can$8,000 are eligible to receive payments under this program, this program is countervailable only to the extent that farmers in eastern and northern Ontario whose gross output is between Can$5,000 and Can$8,000 receive benefits.

In our final determination (50 FR 25105), we were not able to determine the portion of hog farmers in eastern and northern Ontario in the $5,000 to $8,000 gross output range. Therefore, we calculated the benefit by dividing the portion of the total payout under this program that represented the proportion of swine produced in all of Ontario to total agricultural production in all of Ontario. In this review, we have collected more accurate information. From the Canadian census, we found that 16 percent of all Ontario farmers have sales valued between $5,000 and $9,999. Although the subsidy is paid to farmers in the $5,000 to $8,000 range, the census data is the only available breakdown of production according to output level. We have therefore used it as the best information otherwise available. We multiplied the 16 percent by the amount paid under this program to swine farmers in eastern and northern Ontario during the period of review. We allocated this amount over the total live weight of swine produced in Ontario during the period of review. We then weight-averaged the result by Ontario's share of total Canadian exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00003182/lb. for both sows and boars and all other swine.

(20) Ontario (Northern) Livestock Programs

The Northern Livestock Improvement Program reimburses farmers for up to 20 percent of the purchase cost of breeding stock, including dairy cows, heifers, beef bulls, rams, ewes, and boars. A maximum of Can$1,500 may be reimbursed to an individual during a three-year period. Swine producers are reimbursed for a maximum of Can$100 per boar. The Northern Livestock Transportation Assistance Program reimburses the producers living in northern Ontario 50 percent of the costs of transporting high quality breeding stock from southern and northern Ontario and 33.30 percent from Quebec and western Canada. These programs affect only sows and boars, which are old breeders.

Because these programs provide payments that are limited to livestock producers in northern Ontario, we preliminarily determine that they are countervailable. To calculate the benefit, we divided the total payments to hog producers under these programs by the total live weight of sows and boars produced in Ontario. We then weight-averaged the result by Ontario's share of Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00002866/lb. for sows and boars, and zero for all other swine.

(21) Prince Edward Island (PEI) Hog Marketing and Transportation Subsidies

The PEI Department of Agriculture and Marketing provides grants to one hog packer in order to defray the cost of processing and transportation. We preliminarily determine that this portion of the program is not countervailable because it is given only to a packer of pork products, and the countervailing duty order covers only live swine.

The Government of PEI also provides transportation grants to hog producers in the western part of the province in order to equalize the cost of producing hogs in different parts of the province. Because this portion of the program provides payments that are limited to a specific industry and a specific region, and because this portion benefits live swine, we preliminarily determine that it is countervailable.

In this review, the PEI Government provided no information on this program. Therefore, as the best information available, we used the amended rate determined for the period of the original investigation. On this basis, we preliminarily determine the benefit from this program to be Can$0.00005/lb. during the period of review for both sows and boars and all other swine.

(22) Prince Edward Island (PEI) Swine Development Program

The Department of Agriculture and Marketing pays a bonus to breeders who purchase boars or purebred and crossbred gilts. The boars and gilts must meet certain Record of Performance standards and are sold as breeding stock. Because this program provides payments that are limited to a specific industry, we preliminarily determine that it is countervailable. This program affects only sows and boars, which are old breeders.

To calculate the benefit from this program, we divided the total payments by the total live weight of sows and boars produced in PEI during the period of review. We then weight-averaged the result by PEI's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00004476/lb. during the peiod of review for sows and boars, and zero for all other swine.

(23) Prince Edward Island Interest Payments on Assembly Yard Loan

The PEI government assumed the interest on a loan granted to hog producers for the purpose of constructing a hog assembly yard. Because this interest assumption is limited to a specific enterprise, we preliminarily determine that it is countervailable.

We treated the interest payment due during the review period as a grant and expensed it in the review period. We divided the grant by the total live weight of hogs produced in PEI during the period of review. We then weight-averaged the result by PEI's share of total Canadian exports of this merchandise to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000002/lb. during the period of review for both sows and boars and all other swine.

(24) Quebec Special Credits for Hog Producers

Under the terms of the "Loi favorisant un credit special pour les producteurs agricoles au cours de periodes critiques," all agricultural producers are eligible for reimbursement of interest on low-interest loans made by chartered banks or savings and loan associations during critical periods. Critical periods are defined as natural disasters, an unexpected and uncontrollable drop in prices, or a lower than designated level of production in a designated region for reasons beyond the control of producers.

In our final determination, we determined that this program was limited to specific industries and was countervailable because it requires a special government regulation in order for a particular commodity group to obtain special assistance. We have reconsidered this issue. Although a special regulation is required, we verified that this program is available to, and used by, all agricultural industries on the same terms. Therefore, we preliminarily determine that it is not countervailable.

(25) Saskatchewan Financial Assistance for Livestock and Irrigation

Pursuant to the Agricultural Credit Corporation of Saskatchewan Act, the Agricultural Credit Corporation of Saskatchewan (ACS) established the Capital Loan Program, which provides loans, grants and loan guarantees to farmers for purposes related primarily to the acquisition and production of livestock. In our final determination, we found this program countervailable because it was limited to specific enterprises or industries. On December 13, 1985, this act was amended by Bill 117, which eliminated the restrictions to livestock production and livestock products from the definition of farming. Farming now includes livetock raising, bee keeping, fur farming, dairying, tilling the soil or any other activity undertaken to produce agricultural products.

The Bill also eliminated the list of specific purposes for which loans are made. Loans and grants are now made

"for prescribed purposes to farmers to assist or enable them to develop or maintain viable farming operations." In order to incorporate the changes made to the Bill, the ACS regulations now include two new programs—the Livestock Cash Advance Program and the Production Loan Program—to the existing Capital Loan Program, the Guaranteed Loan Program, and the Beef Industry Assistance Program. ACS's client base has now been expanded to include almost all Saskatchewan's farmers in a broad array of agricultural operations and in all regions of Saskatchewan. Because this program is now available to, and used by, the entire agricultural sector on equal, objective terms, we preliminarily determine that it is not countervailable.

(28) Saskatchewan Livestock Investment Tax Credit

Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, co-operatives and corporations who own and feed livestock in Saskatchewan for slaughter. Claimants must be residents of Saskatchewan and pay Saskatchewan income taxes. Eligible claimants receive credits of Can$25 for each bull, steer or heifer, Can$2, for each lamb and Can$3 for each hog. The tax credits may be carried forward for seven years. There is a Can$100 deduction from the credit each year in which the credit is used. The credits must be included as taxable income the year after receipt. The credit is available to hogs indexing 80 or higher. We preliminarily determine that this program is countervailable because it is provided only to specific industries.

The Government of Saskatchewan estimated the aggregate amount of tax credits received by hog producers in fiscal year 1986–87. To calculate the benefit, we divided this amount, minus the Can$100 deduction for each of the estimated number of hog producer claimants, by the total live weight of live swine produced in Saskatchewan. We then weight-averaged the result by Saskatchewan's share of total exports (minus sows and boars) of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.00008302/lb. for all other swine.

(27) Saskatchewan Livestock Stock Advance Program (SLCAP)

The SLCAP provides livestock producers with interest-free loans to enable the producers to meet immediate cash requirements while retaining their animals for future sale. The first interest payment under this program became due in August 1988. Because there were no interest payments due in fiscal year 1986–87, we preliminarily determine that there was no benefit from this program during the review period.

(28) Ontario Weaner Pig Stabilization Plan

Pursuant to the Farm Income Stabilization Act (FISA), the Government of Ontario operated a weaner pig stabilization program from April 1, 1980 through March 31, 1985. The intent of the program was to provide producers of weaner pigs with support payments in any production period in which the average market price for that period fell below a certain support price. The market and support prices were based on data used by the federal government for its ASA slaughter hog program. Participation in the program was voluntary, and funding for the program was provided by the provincial government and the participating producers in the ratio of two to one.

In our final determination (50 FR 25110), we stated that this program had been statutorily terminated on March 31, 1985 and that no payments under this program had been made since 1984. From FISA's annual report for fiscal year 1986, we have learned that payments were made under this program during the review period. Lacking any further information on this program, we preliminarily determine that it is countervailable and that two-thirds of the payment is a grant. We allocated this amount over the total live weight of swine produced in Ontario during the review period and then weight-averaged that result by Ontario's share of total Canadian exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be zero for sows and boars and Can$0.000505/lb. for all other swine.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be Can$0.004147/lb. for slaughter sows and boars and Can$0.022/lb. for all other swine for the period April 3, 1985 through March 31, 1986. The rate for sows and boars is equivalent to 0.32 percent *ad valorem*. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of sows and boars and to assess countervailing duties of Can$0.0022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after April 3, 1985 and exported on or before March 31, 1986.

As provided by section 751(a)(1) of the Tariff Act, the Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of slaughter sows and boars and to collect cash deposits of estimated countervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: June 3, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

[FR Doc. 88-13307 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review, Application #88-00003.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to TradeNet International of Washington, Inc. (TradeNet). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All products.

Related Services

Consulting, product research and design, marketing by means of specialized promotional mailings in conjunction with trade shows and catalog and video exhibits, international market research and statistics, transportation, trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, insurance, legal assistance, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

TradeNet may:

1. Enter into agreements with individual suppliers, whereby TradeNet agrees to act as the supplier's exclusive Export Intermediary for the export of Products and the provision of Related Services. These agreements may include the following provisions:

a. The supplier may agree not to sell, directly or indirectly, through any other Export Intermediary, to any Export Market and/or

b. TradeNet will have the exclusive right to choose whether to respond to bids, invitations, or requests for bids, or other sales opportunities.

2. Enter into exclusive agreements with other Export Intermediaries. "Exclusive" means:

a. The Export Intermediary agrees not to represent anyone except TradeNet in the sale of Products or the provision of Related Services in any Export Market, and/or

b. The Export Intermediary agrees not to buy Products or obtain Related Services from anyone except TradeNet.

3. Enter into exclusive agreements with foreign customers of the Products and Related Services. "Exclusive" means that the customer agrees not to buy Products or obtain Related Services from anyone except TradeNet.

4. Specify in the agreements described in paragraphs (1), (2), and (3) above:

a. The price at which Products will be sold and Related Services provided, and/or

b. The terms of any export sale, including quantities, territories, and customers.

5. Meet and negotiate with individual suppliers or groups of suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market.

6. In the course of the negotiations described in paragraph (5) above, exchange the following information:

a. Information that is already generally available to the trade or public,

b. Information that is specific to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications by geographic area and by individual customers within the Export Market,

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing),

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market, and

e. Information on TradeNet's activities in the Export Markets, including, but not limited to, customers, complaints and quality problems, visits by customers located in the Export Markets, reports by foreign sales representatives, and matters concerning the contracts between TradeNet and its suppliers.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 7, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88-13300 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service, Marine Fisheries Advisory Committee; Meeting That is Partially Closed to the Public

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

TIME AND DATE: The meeting will convene at 8:00 a.m., June 28, 1988, and adjourn at approximately 4:00 p.m., June 29, 1988.

PLACE: Radisson Suite Resort, 12 Park Lane, Hilton Head Island, South Carolina.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

Matters To Be Considered

Portions Open to the Public: June 28, 1988, 8:00 a.m.–5:00 p.m., impacts of natural events on fishery resources, NOAA climate and global change program, tuna management, marine debris, model seafood surveillance program, and marine fishing license.

June 29, 1988, 8:30 a.m.–12:00 noon., interjurisdictional fisheries management proposed policy, commercial fisheries subcommittee meeting report, marine

BEST COPY AVAILABLE

recreational fisheries, fisheries legislation, and fisheries highlights.

Portion Closed to the Public: January 29, 1988, 1:30–4:00 p.m. (Executive Session), budget and program priorities.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on June 6, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. § 552b(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff-Fisheries, Office of Legislative Affairs, NOAA, Washington, DC 20235. Telephone: (202) 673–5429.

Date: June 9, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88–13376 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 1 to Permit No. 541]

Marine Mammals; Permit Modification: The North Wind Undersea Institute (P339A)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 541 issued to the North Wind Undersea Institute, 610 City Island Avenue, City Island, New York 10464, is modified as follows:

Section B.5 through 7 are added:

5. The Holder may conduct studies of the cognitive and behavioral skills of the three harbor seals authorized in A.1, and their ability to perform useful functions under realistic conditions.

6. The studies authorized in B.5 shall be conducted at the North Wind Undersea Institute, in Orchard Bay, and in the two coves adjacent to Orchard Bay as described in the modification request. These activities shall not be conducted in the open ocean. The Permit Holder shall submit a separate permit application for authorization to conduct open-ocean activities.

7. The authority to do this research is valid until December 31, 1992.

This modification becomes effective on June 8, 1988.

The Permit, as modified, is available for review in the following offices:

Office of Protected Resource and Habitat Programs, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northest Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799.

Dated: June 8, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Services.

[FR Doc. 88–13367 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Ecogen, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Ecogen, Inc., having a place of business in Langhorne, Pennsylvania an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Starch Encapsulation of Biocontrol Agents," U.S. Patent Application 072,205. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of the published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–13357 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Larimer & Van Liew Associates

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Larimer & Van Liew Associates, having a place of business at Severna Park, Maryland an exclusive license in the United States and foreign countries under the rights of the United States of America to manufacture, use, and sell products and use methods embodying the invention entitled "Energy Efficient Asymmetric Pre-Swirl Vane and Twisted Propeller Propulsion System," United States Patent Application Serial Number 7–163,578. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Transportation and will be transferred to the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–13329 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Tri Bio Laboratories, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Tri Bio Laboratories, Inc., having a place of business at State College, Pennsylvania, an exclusive right subject to an existing license, in the United States and certain foreign countries to manufacture, use, and sell products embodied in the invention entitled "Turkey Semen Extender," U.S. Patent 4,329,397. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of the published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquires, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–13358 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Tri Bio Laboratories, Inc., et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Tri Bio Laboratories, Inc., having a place of business in State College, Pennsylvania, and Salsbury Laboratories, Inc., having a place of business in Charles City, Iowa, a co-exclusive right in the United States and, perhaps, in certain foreign countries to manufacture, use, and sell products embodied in the invention entitled "Serotype 2 Marek's Disease Vaccine," U.S. Patent Application 071,949. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–13339 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of New and Amended Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits.

EFFECTIVE DATE: July 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: During recent negotiations between the Governments of the United States and Jamaica, agreement was reached to amend and extend the current Bilateral Textile Agreement through December 31, 1992.

A copy of the agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1936.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49185, published on December 30, 1987 and 53 FR 8798, published on March 17, 1988.

The letter to the Commissioner of Custom and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chariman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

June 9, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 1, 1988, the directive of December 24, 1987 is hereby amended to establish now and amend current limits for cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Jamaica and exported during the periods indicated below:

Category	Amended 12-mo limit [1] (Jan 1, 1988–Dec. 31, 1988)
338/339/638/639	685,000 dozen
347/348/647/648	750,000 dozen
352/652	300,000 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987

Category	New 6-mo limit (July 1, 1988–Dec. 31, 1988)
336/636	49,000 dozen
342/642	125,000 dozen
349/649	250,000 dozen
447	5,000 dozen

Textile products in Categories 338/638, 342/642, 349/649 and 447 which have been exported to the United States prior to July 1, 1988 shall not be subject to this directive.

Textile products in Categories 336/636,

342/642, 349/649 and 447 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation to Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-13379 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUMMARY: During recent negotiations between the Governments of the United States and Jamaica, agreement was reached to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in Categories 336/636, 342/642 and 447 which are assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the period which begins on January 1, 1989 and extends through December 31, 1989.

The purpose of this notice is to advise the public that on July 1, 1988, U.S. Customs will start signing the first section of the form ITA-370P accompanying shipments of cut parts in Category 336/636, 342/642 and 447 exported from the United States for assembly in Jamaica. The goods assembled from these cut parts are for export from Jamaica during the period January 1, 1989 through December 31, 1989. Assembled goods exported from Jamaica prior to January 1, 1989 will be denied entry under the Special Access Program; they may be entered with a regular visa.

A copy of the current bilateral textile agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-13380 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DR-M

New Textile Export Visa Forms and Visa and Exempt Certification Stamps for Certain Textile and Apparel Products from Taiwan

June 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of new textile export visa forms and visa and exempt certification stamps.

EFFECTIVE DATE: July 1, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 37 FR 20745, published on October 3, 1972; 38 FR 10132, published on April 24, 1973; and 46 FR 2162, published on January 8, 1981.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

June 9, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives of September 27, 1972, as amended, and April 19, 1973, as amended, which established, respectively, an export visa arrangement and exempt certification mechanism for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan.

Effective on July 1, 1988, the directives of September 27, 1972 and April 19, 1973 are amended further to provide for the use of new textile export visa forms and visa and exempt certification stamps which will be issued by Taiwan for goods exported from Taiwan on and after July 1, 1988. The new forms are light green in color and shall replace the Special Commercial Invoice currently being used. The new visa stamp will be circular shaped in blue ink. The new exempt certification stamp will be rectangular shaped in blue ink. The original visa or exempt certification shall be stamped on the front of the original export visa only.

Facsimiles of the new forms and stamps are enclosed with this letter.

Goods exported prior to July 1, 1988 that have been visaed or certified for exemption using previously authorized forms and stamps shall not be denied entry for consumption, or withdrawal from warehouse for consumption, into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico), provided they are in accordance with previous requirements.

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

中華民國輸美紡織品出口配額證明書

ORIGINAL

TEXTILE EXPORT VISA / INVOICE OF TAIWAN, R.O.C.

1. 出口商(名稱及地址) SELLER (NAME & ADDRESS)

2. 收貨編號 EXPORTER NO.

3. 原產國 COUNTRY OF ORIGIN: TAIWAN, R.O.C. (583)

4. 出口日期及運送方式 SHIPPING DATE & MEANS OF TRANSPORT

5. 進口地 PORT OF ENTRY

6. 商業發票號碼及日期 COMMERCIAL INVOICE NO. & DATE

7. 核准日期 DATE ORDER ACCEPTED

8. 交易條件及總金額 TERMS OF SALE & TOTAL VALUE

9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)

10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)

11. 貨品名稱及唛頭等說明 MARKS & NUMBERS OF PACKAGES; DESCRIPTION OF GOODS & RELATED INFORMATION	12. 數量 QUANTITY	13. 單價 UNIT PRICE (FOB U.S. DOLLARS)	14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)

15. 備註 REMARKS

16. 其他費用 OTHER COSTS NOT INCLUDED IN FOB TOTAL VALUE

17. 本單文件負責人之名稱 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER

18. 本證明書一經塗改即令失效，並送海立管機關依規定處理。
THIS DOCUMENT SHALL BE INVALIDATED IN CASE OF ANY ERASURE, SUBMISSION, ALTERATION AND/OR INTERPOLATION

19. 主管機關簽章 COMPETENT AUTHORITIES' STAMP & SIGNATURE

中華民國紡織業外銷拓展會 TAIWAN TEXTILE FEDERATION

Visa No. : 8TW 022403

Category : 301

Quantity : 500 LBS

Signature :

Date : Mar. 8, 1988

20. 簽證機構 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA

中華民國紡織業外銷拓展會
TAIWAN TEXTILE FEDERATION
TTF BUILDING
22, AI KUO EAST ROAD
TAIPEI, TAIWAN
REPUBLIC OF CHINA
TELEX: 23143 TTFROC TAIPEI
CABLE ADDRESS: "TTFROC" TAIPEI
TELEPHONE: (02) 341-7251
TELEFAX: (02) 392-3855

ROCTTF-7000

第一聯：本聯供申請廠商存發客戶

中華民國輸美紡織品出口配額證明書

ORIGINAL TEXTILE EXPORT VISA / INVOICE OF TAIWAN, R.O.C.

1. 出口商(名稱及地址) ISSUER (NAME & ADDRESS)

2. 證書號碼 EXPORTER NO.

3. 產地 TAIWAN, R.O.C. (583)

4. 出口日及運送方式 SHIPPING DATE & MEANS OF TRANSPORTATION

5. 進口港 PORT OF ENTRY

6. 商業發票號碼及日期 COMMERCIAL INVOICE NO. & DATE

7. 接受日期 DATE ORDER ACCEPTED

8. 交易條件、總值及總金額 TERMS OF SALE & TOTAL VALUE

9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)

10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)

11. 包裝唛頭及件數 MARKS & NUMBERS OF PACKAGES; DESCRIPTION OF GOODS & RELATED INFORMATION

12. 數量 QUANTITY

13. 單價 UNIT PRICE (FOB U.S. DOLLARS)

14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)

SPECIMEN

15. 備註 REMARKS

16. 其他費用 OTHER COSTS NOT INCLUDED IN FOB VALUE

17. 本證負責人姓名 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER

18. 本證無效一經塗改即告失效，並須申請補發新證。
THIS EXPORT VISA SHALL BE INVALIDATED IN CASE OF ANY ERASURE, STRIKEOVER, ALTERATION AND INTERPOLATION

19. 經發機關簽章 COMPETENT AUTHORITIES' STAMP & SIGNATURE

中華民國紡織業外銷拓展會
Certificate № 100001
Exempt Item:
Pincushions
Quantity:
500LBS
Signature:
Date: April 27, 1988
TAIWAN TEXTILE FEDERATION

20. 發證機關 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA

中華民國紡織業外銷拓展會
TAIWAN TEXTILE FEDERATION
TTF BUILDING
22, AI KUO EAST ROAD
TAIPEI, TAIWAN
REPUBLIC OF CHINA
TELEX: 23143 TTFROC TAIPEI
CABLE ADDRESS: "TTFROC" TAIPEI
TELEPHONE: (02) 341-7251
TELEFAX: (02) 392-3855

ROCTTF-7061

第一聯：本聯供申請核商專發客戶

[FR Doc. 88-13381 Filed 6-13-88; 8:45 am]
BILLING CODE 3510-DR-C

Announcement of Request for Bilateral Textile Consultations With the Government of Thailand To Review Trade in Categories 670–L and 870

June 9, 1988.

AGENCY: Committee for the implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: E.O. 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION: On May 25, 1988, the Government of the United States requested consultations with the Government of Thailand regarding luggage in Categories 670–L (TSUSA numbers 706.3415, 706.4130 and 706.4135) and 870, produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultation with Thailand, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of man-made fiber, silk blend and other vegetable luggage, produced or manufactured in Thailand and exported during the twelve-month period which began on May 25, 1988 and extends through May 24, 1989, at levels of 6,082,616 pounds for Category 670–L and 5,917,287 pounds for Category 870.

There is not currently a visa requirement for exports of Categories 670–L and 870 from Thailand to the United States. If visas for these categories will be required at any time in the future, advance notice will be given in the **Federal Register**.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 670–L and 870, or to comment on domestic production or availability of products included in the categories, is invited to submit such comments or information in ten copies to James H. Babb, Chairman, Committee for the Implementation of Textile Agreement, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile Apparel Categories with Proposed Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Category 670 Part—Man-Made Fiber, Luggage, Thailand

May 1988.

Summary and Conclusions

U.S. imports of man-made fiber luggage—Category 670 part—from Thailand were 8.1 million pounds during the year ending February 1988, nearly four times the 1.6 million pounds imported a year earlier. In the year ending February 1988, Thailand was the fourth largest supplier of man-made fiber luggage, accounting for four percent of the total imports. In the previous year, Thailand was the eighth largest supplier, supplying one percent of total imports.

The sharp and substantial increase of low-valued man-made fiber luggage imports from Thailand is disrupting the U.S. market.

U.S. Production and Market Share

U.S. production of man-made fiber fabric for luggage remained flat at 21 million pounds from 1985 through 1987. During this two year period the U.S. producers' share of the man-made fiber luggage market dropped four percentage points from 27 percent in 1985 to 23 percent in 1987.

U.S. Import and Import Penetration

U.S. imports of man-made fiber luggage—Category 670 part—at 141 million pounds in 1987 were 22 percent above the 116 million pound 1985 level. The import to domestic production ratio reached 336 percent in 1987, up from 273 percent in 1985.

Duty-Paid Import Values and U.S. Producers' Price

Approximately 97 percent of Category 670 part imports from Thailand during January-February 1988 entered under TSUSA No. 706.4135—man-made fiber luggage, not braided. These imports from Thailand entered at low duty-paid values, resulting in wholesale prices well below those of comparable U.S. produced luggage.

Market Statement

Category 870—Luggage of Silk-Blend and Vegetable Fiber Other than Cotton, Thailand

May 1988.

Summary and Conclusions

U.S. imports of Category 870 luggage—silk-blend and vegetable fiber other than cotton—from Thailand reached 5.9 million pounds for the year ending February 1988, making Thailand the number one supplier accounting for 22 percent of total Category 870 imports. Imports of Category 870 from Thailand were 4.4 million pounds during the seven month period, August 1987 through February 1988, nearly sixteen times the 284 thousand pounds imported during the year earlier comparable period.[1] During the latest seven months, August 1987 through February 1988, Thailand's share of Category 870 imports reached 28 percent.

Imports of silk-blend and vegetable fiber, other than cotton, luggage compete with domestically produced man-made fiber luggage. The U.S. market for man-made fiber luggage, Category 670 part, has been disrupted by imports. The sharp and substantial increase of Category 870 imports from Thailand is exacerbating the disruption.

[1] Import data on silk-blend and vegetable fiber, other than cotton, luggage started to be collected in August 1988. Therefore, directly comparable Category 870 import data exist for the seven month periods August 1988 through February 1987 and August 1987 through February 1988.

Import Penetration and Market Share

The ratio of imports to production in Category 870 part, luggage, increased to 336 percent in 1987. The share of this market held by domestic manufactures dropped to 23 percent in 1987. When imports of the directly competitive Category 870 are included, the import to production ratio increases to 397 percent and the domestic manufacturers' share of the market declines to 20 percent.

Duty Paid Import Values and U.S. Producer's Prices

Approximately 99 percent of Category 870 imports from Thailand during the year ending February 1988 entered under TSUSA No. 706.3850—luggage of vegetable fiber excluding cotton. These imports from Thailand entered at low duty-paid values, resulting in wholesale prices well below those of comparable U.S. produced luggage.

[FR Doc. 88-13378 Filed 6-13-88; 8:45 am]
BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments Relating to Periodic Adjustments to Locational Price Differentials Applicable to Deliveries on the Soybean Oil Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBOT" or "Exchange") has submitted proposed amendments to the soybean oil futures contract establishing an automatic adjustment mechanism for changing, on an annual basis, the locational price differentials applicable to futures deliveries of soybean oil in regular warehouse facilities located in non-par delivery territories. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before July 14, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CBOT soybean oil futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: Under the soybean oil futures contract's current terms, the delivery area is divided into five distinct delivery territories. Each delivery territory is assigned a price differential which is applicable to the delivery of soybean oil at any regular warehouse located in that territory. The par delivery territory is the Illinois territory (which includes the central and northern parts of Illinois). The non-par delivery territories and their associated price differentials currently include: the Eastern territory (which includes Indiana and parts of Kentucky) at a $.10/cwt discount; the Eastern Iowa territory at a $.20/cwt. discount; the Southwest territory (which includes parts of Missouri and Kansas) at a $.30/cwt. discount; and the Northwest territory (which includes parts of Minnesota, Iowa, Nebraska and South Dakota) at a $.55/cwt. discount. The current terms of the futures contract do not specify a procedure for routinely changing the contract's locational price differentials.

The proposed amendments to the soybean oil futures contract will establish a method for automatically adjusting, on an annual basis, the locational price differentials applicable to futures deliveries in non-par delivery territories. Under the terms of the proposal, the price differential applicable to deliveries in each non-par delivery territory will change by no more than ten cents per hundredweight ($600 per contract of 60,000 pounds) from year to year when changes are required. Changes will not necessarily be required in each year. Adjustments to territorial differentials will be calculated by the Exchange and published by September 15 of each year for application to all deliveries made in the subsequent calendar year. The boundaries of the existing territories would not be changed.

Under the proposal, the discounts currently specified in the Exchange's regulations, applicable to deliveries in each non-par territory, will be increased (decreased) by five cents per hundredweight whenever (1) the average ratio of the number of registered warehouse receipts outstanding in that territory relative to regular soybean processing capacity in that territory is two or more times (one-half or less) the average ratio for all other territories combined, or (2) when this receipts/capacity ratio for the par Illinois Territory is one-half or less (two or more times) the receipts/capacity ratio for all other territories combined. The adjustment for a particular non-par territory for the following year could be ten cents per hundredweight if both of the above conditions are met. In all cases, delivery in the Illinois Territory will be at the contract price.

According to the Exchange, the proposed amendments will adjust soybean oil futures differentials so that differentials applicable to deliveries in the futures market will consistently reflect those observed in the underlying cash market. In addition, the Exchange expects the amended rules to enhance convergence of cash and futures prices for all delivery territories while achieving an equitable distribution of deliveries throughout the delivery area. The Exchange also believes that implementation of the proposed amendments will result in certain benefits including the following: objective rather than subjective determination of applicable differentials, shortened lag time between determination and implementation of necessary changes in differentials, and gradual adjustment of differentials. The Exchange intends to make the proposed amendments effective for all soybean oil futures contracts listed after Commission approval.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254-6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC on June 9, 1988.

Paula A. Tosini,
Director, Division of Economic Analysis.

[FR Doc. 88-13394 Filed 6-13-88; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Commerce Patent Regulations.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 523-3647.

SUPPLEMENTARY INFORMATION:

a. Purpose

As a result of the Department of Commerce (DOC) publishing a final Rule in the Federal Register implementing Pub. L. 96-620, (52 FR 8552, March 18, 1987) a revision to FAR Subpart 27.3 is proposed to implement the DOC regulation in the FAR.

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227-11(c); 52.228-12(c) and 52.227-13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a)(2); 27.304-1(e)(1) (i) and (ii); 27.304-1(e)(2) (i) and (ii); 52.227-12(e)(7); 52.227-14(e)(3)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.228-11, Alternate IV; 52.227-12(f)(5); 52.227-13(e)(1)). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227-11(f)(2); 52.227-12(f)(2); 52.227-13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227-11(h); 52.227-12(h)).

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1,200; responses per respondent, 9.75; total annual responses, 11,700; preparation hours per response, 3.9; and total response burden hours, 45,630.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-00XX, Commerce Patent Regulations.

Dated: June 7, 1988.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 88-13362 Filed 6-13-88; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Department of the Army

Intermediate-Range Nuclear Forces Treaty; Elimination of Pershing Missiles; Site Determination

Record of Decision

The U.S. Army is required to eliminate its Pershing missiles under the terms of the Intermediate-Range Nuclear Forces (INF) Treaty. As described in the Environmental Assessment (EA) published in February 1988, four sites were studied as possible elimination sites: Pueblo Army Depot Activity, Colorado; Longhorn Army Ammunition Plant, Marshall, Texas; Tooele Army Depot, Tooele, Utah; Hercules Tekoi Test Range, Skull Valley, Utah. The EA concluded that elimination of the Pershing rocket motors could be accomplished at any of the sites without significant environmental impact. That conclusion was presented in a Finding of No Significant Impact, which was published in the Federal Register and local newspapers in late February and early March 1988.

The INF Treaty has now entered into force, and the U.S. in required to specify which sites it intends to use for elimination of Pershing items. Accordingly, the Army has determined that it intends to use Longhorn Army Ammunition Plant and Pueblo Army Depot Activity for elimination of Pershing items. This decision is based on the consideration that this action can be done without significant environmental effects at any of the sites, and that Longhorn is an Army storage site for PIAs and Pueblo is the Army's depot for maintenance and storage of Pershings, and both Longhorn and Pueblo have many years of experience in handling rocket motors. The other two sites remain under consideration at this time.

Further site-specific environmental studies will be conducted at the sites as appropriate.

John W. Shannon,
Assistant Secretary of the Army (Installations and Logistics).

[FR Doc. 88-13441 Filed 6-13-88; 8:45 am]
BILLING CODE 3710-08-M

Military Traffic Management Command; Military/Industry Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military/Industry Mobile Homes Symposium. This meeting will be held on 7 July 1988 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34-R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 24 June 1988.

Dated: June 2, 1988.

Joseph R. Marotta,
Colonel, GS, Director of Personal Property.

[FR Doc. 88-13360 Filed 6-13-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 14, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 9, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Procedures for Certification of Need Analysis Servicers' Systems.
Frequency: Annually.
Affected Public: Individuals or households; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 70.
Burden Hours: 35.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Individuals and organizations that operate need analysis systems will enter into agreement with the Department and complete procedural requirements in order to become certified. The Department will use the information to administer the need analysis system for campus-based programs (Perkins Loan, Supplemental Educational Opportunity Grant and College Work-Study), Income Contingent Loan and Guaranteed Student Loan Programs under Part F of the Higher Education Act of 1965, as amended.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for Fulbright-Hays Seminars Abroad Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1,000.
Burden Hours: 1,000.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by individuals to apply for grants under the Fulbright-Hays Seminars Abroad Program. The Department will use the information to select educators to participate in the program.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application for Grants under the Jacob K. Javits Fellows Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1500.
Burden Hours: 7500.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by graduate students to apply for funding under the Jacob K. Javits Fellows Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: New.
Title: Fiscal Operations Report for the Income Contingent Direct Loan Demonstration Project.
Frequency: Annually.
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 10.
Burden Hours: 100.
Recordkeeping:
Recordkeepers: 10.
Burden Hours: .2.
Abstract: Postsecondary institutions that have participated in the Income Contingent Direct Loan Program submit this report to the Department. The Department uses the information to monitor assets and liabilities of the fund and to ensure that funds have been properly managed.

[FR Doc. 88-13421 Filed 6-13-88; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.055E]

Invitation; Applications for New Awards under the Supplemental Funds Program for Cooperative Education Support for Fiscal Year 1988

Purpose: Provides funds to institutions of higher education, on a formula basis, to initiate a program of cooperative education or to improve or expand an existing cooperative education program. The formula is based on the number of students assisted in the institution's cooperative education program and on the amount of unused College Work-Study Program funds that are available for reallotment as supplemental funds.

Deadline for Transmittal of Applications: August 8, 1988.

Applications Available: June 27, 1988.

Available Funds: The amount of College Work-Study funds available for reallotment as supplemental funds for expenditure for this program will not be known until after the deadline date for filing applications.

Estimated Range of Awards: $500 to $169,000.

Estimated Average size of Awards: $9,000.

Estimated Number of Awards: 575.

Project Period: 12 months.

Applicable Regulations: (a) The Supplemental Funds Program for Cooperative Education regulations 34 CFR Part 690, as amended by final regulations published in the Federal Register on August 5, 1987 (52 FR 29140); (b) the regulations governing the Cooperative Education Program as published in the Federal Register on August 5, 1987 (52 FR 29140); and (c) the Education Department General Administrative Regulations 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Mrs. Darlene B. Collins or Mrs. Karen W. Johnson U.S. Department of Education, 400 Maryland Avenue SW., Room 3022, ROB-3, Mail Stop 3327, Washington, DC 20202. Telephone: (202) 732-4404 or 732-4860.

Authority: 42 U.S.C. 2752(d).

Dated: June 8, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-13353 Filed 6-13-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on June 21, 1988, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Opening Remarks
2. Approval of the Record Note of the Industry Advisory Board Meeting of April 11, 1988
3. IEA Test Issues
—Sixth Allocation Systems Test (AST-6) Preparation and Draft Test Guide
—Report on Submissions of Questionnaires A and B Data for AST-6
—Teleconferencing for Voluntary Offer Process
4. Preparation for Governing Board Discussion on Emergency Questions
—Draft Standing Group on Emergency Questions (SEQ) Report to the Governing Board on Further Improvements to Member Countries' Early Response Capacity
—Coordinated Emergency Response Measures (CERM) Test Appraisal Report
—CERM Operations Manual
—SEQ 1989 Program of Work
5. Other Emergency Preparedness Issues
—Member Countries' Replies to Questionnaire on Compensation for Early Coordinated Emergency Response Measures
—Questionnaires A and B Preparation Facility
6. Future Work Program
7. IAB Organization
8. Date of Next Meeting

II. A meeting of the IAB will be held on June 22, 1988, at the Centre de Conferences Internationales, 19 avenue Kleber, Paris, France, beginning at 9:30 a.m., and continuing on June 23, 1988, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 9:30 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's SEQ which is scheduled to be held at the aforesaid locations on those dates. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda
2. Summary Record of the 59th Meeting
3. AST-6
—AST-6 Preparations
—AST-6 Draft Test Guide
—Report on Submissions of Questionnaires A and B for AST-6
4. Preparation for the Governing Board Discussions on Emergency Questions
—Draft SEQ Report to the Governing Board on Further Improvements to Member Countries' Early Response Capacity
—CERM Activities
• CERM Test Appraisal Report
• CERM Operations Manual
—1989 Program of Work
5. Other Emergency Preparedness Issues
—Member Countries' Emergency Response Program Reviews—Second Cycle
• New Zealand
—Member Countries' Replies to Questionnaire on "Compensation" for Early Coordinated Emergency Response Measures
—Questionnaires A and B Preparation Facility
6. Other Topics
—End-May Oil Market Report
—Base Period Final Consumption (2Q87—1Q88)
7. Any Other Business
8. Date of Next Meeting

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, and invitees of the SEQ.

Issued in Washington, DC, June 8, 1988.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 88-13375 Filed 6-13-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10480-000]

County of Tuolumne, CA; Availability of Environmental Assessment

June 9, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Phoenix Lake Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13307 Filed 6-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2337-001]

Pacific Power and Light Co.; Availability of Environmental Assessment

June 9, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Prospect No. 3 Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13308 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-412-000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Company

[Docket No. CP88-412-000]

June 7, 1988.

Take notice that on May 26, 1988, Texas Gas Transmission Corporation [Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-412-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas on an interruptible basis for Georgia-Pacific Corporation (Georgia-Pacific) and the construction and operation of certain related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis, up to 15,000 MMBtu per day from various points of receipt, for delivery to Georgia-Pacific for use at its pulp, paper and chemical plant, near Crossett, Arkansas. It is stated that the gas would be delivered to Georgia-Pacific at a new point of interconnection between Texas Gas and Georgia-Pacific's pipeline facilities in Morehouse Parish, Louisiana, and would involve the installation of a single six inch Orifice Meter Station and related equipment. The estimated cost of such facilities is $97,000. It is further stated that Texas Gas would be reimbursed for such facility cost by Georgia-Pacific.

It is averred that Texas Gas would charge Georgia-Pacific the appropriate rate for service under Texas Gas's T Rate Schedule. Such service is proposed to be authorized for a primary term beginning on the date approved and extended through the end of that month, and continuing from month to month thereafter unless cancelled by either party upon thirty days prior written notice.

Texas Gas asserts that the proposed service would expand Georgia-Pacific's available supply sources and thus increase its ability to purchase the most economically priced gas for its plant.

Comment date: June 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP87-316-004]

June 7, 1988.

Take notice that on May 27, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP87-316-004 an application pursuant to section 7(c) of the Natural Gas Act to amend the certificate in Docket No. CP87-316-000 issued by order dated August 18, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT states that on April 28, 1988, American Distribution Company (ADC) and FGT entered into an amendment of the interruptible transportation agreement dated March 16, 1988, which provides for: (a) Three new points of delivery, (b) an increase in the maximum daily quantity from 5.0 billion Btu's per day to 10.0 billion Btu's per day, and (c) continuation of the transportation service for another year, consistent with Commission policy.

FGT lists the three proposed new points of delivery as follows:

(1) An existing point of interconnection between FGT and Houston Pipe Line Company in Galveston County, Texas,

(2) An existing point of interconnection between FGT and Amoco Gas Company in Galveston County, Texas,

(3) An existing point in interconnection between FGT and Amoco Gas Company in Orange County, Texas.

FGT indicates that inasmuch as all of the above-described proposed new points of delivery are in existence, it is not requesting authorization to construct any new facilities.

FGT proposes to charge ADC its currently-effective transportation rates for transportation service in its Western Division.

FGT states that ADC requires these new points of delivery in order to sell gas to Houston Lighting and Power Company for use in its electric generating plants.

FGT states that since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein cannot have an adverse impact of FGT's existing customers.

Comment date: June 28, 1988, in accordance with the first subpargraph of Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP88-435-000

June 7, 1988.

Take notice that on June 1, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP88-435-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of various shippers identified in the attached appendix under the authorization issued in Docket No. CP86-311-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport natural gas on an interruptible basis for the 17 shippers identified in the attached appendix from various receipt points on its system to various interconnections between CNG and certain local distribution companies (LDC). The receipt and delivery points, maximum daily average daily and annual volumes, commencement date, and ST docket number are identified in the appendix.

CNG states that only existing facilities are necessary to perform the proposed transportation transactions. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 274.223(a)(1) of the Regulations. However, CNG notes that the 120-day self implemented service is scheduled or has already terminated prior to any authorization which may result from the subject application.

Comment date: July 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

Appendix—CNG Transmission Corporation

PART 284, SUBPART G, TRANSPORTATION TRANSACTIONS

Docket No.	Shipper/customer	Commence date	Maximum daily dt, average daily dt, estimate annual dt	Receipt point	LDC
ST88-2852	1. Ohio Gas Marketing	2/1/88	1,200 137 50,005	Various receipt points in WV/PA	RGE.
ST88-2851	2. Entrade Corp.	2/12/88	30,000 1,578 576,970	TGP-Cornwell	EOG.
ST88-2854	3. Entrade Corp.	2/12/88	60,000 2,339 853,735	do	RGE.
ST88-2850	4. Hadson Gas Systems	2/19/88	20,000 727 265,355	do	NIMO.
ST88-2853	5. Industrial Energy Services Co.	2/20/88	10,000 1,910 40,150	do	NIMO.
ST88-4015	6. Phoenix Diversified Ventures	2/20/88	3,000 1,409 514,285	Various receipt points in WV/PA	NYSEG.
ST88-3630	7. Industrial Energy Services Co.	3/1/88	15,000 6,942 2,533,830	do	PNG.
ST88-3632	8. Direct Gas Supply Corp.	3/1/88	25,000 1,518 544,070	do	RGE.
ST88-3634	9. Direct Gas Supply Corp.	3/1/88	15,000 65 23,725	do	CORN.
ST88-3628	10. Consolidated Fuel Corp.	3/1/88	5,000 151 55,115	do	NYSEG.
ST88-3627	11. Direct Gas Supply Corp.	3/1/88	25,000 5,439 1,985,235	do	NIMO.
ST88-3639	12. Kimball Resources	3/4/88	15,000 600 219,000	do	NIMO.
ST88-3633	13. Consolidated Fuel Corp.	3/5/88	12,000 1,703 621,595	do	RGE.
ST88-3636	14. Consolidated Fuel Corp.	3/10/88	5,000 2,533 961,045	do	NIMO.
ST88-3629	15. Riley Natural Gas Co.	3/29/88	50,000 3,302 1,205,230	do	NIMO.
ST88-3637	16. Energy Marketing Exchange	3/30/88	50,000 15,000 5,475,000	TGP-Cornwell	NIMO.
ST88-3635	17. Direct Gas Supply Corp.	3/31/88	25,000 47 17,155	Various receipt points in WV/PNYSEG	NYSEG.

Legend of Receipt Points and Local Distribution Companies (LDC):
TGP-Cornell—Interconnection between Tennessee Gas Pipeline Company and CNG in Clay County, West Virginia.
RGE—Rochester Gas & Electric Corp.
EOG—East Ohio Gas Co.
NIMO—Niagara Mohawk Power Corp.
NYSEG—New York State Electric & Gas Corp.
PNG—Peoples Natural Gas Co.
CORN—Corning Natural Gas Corp.

4. Trunkline Gas Company

[Docket No. CP88-402-000]

June 8, 1988.

Take notice that on May 23, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88-402-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation and the construction and operation of tap facilities necessary to implement a direct sale of natural gas to Moore McCormack Energy, Inc. (Moore McCormack), all as more fully set forth in the application which is on file and open for public inspection.

Trunkline states that Moore McCormack produces oil from a field in

Allen Parish, Louisiana. Trunkline further states that Moore McCormack maintains a gas lift operation to enhance oil production from the field. It is indicated that due to problems associated with the gas well production of the casinghead gas used in the gas lift operation, Moore McCormack requested from Trunkline and has been receiving, emergency natural gas service. Inasmuch as Moore McCormack's casinghead gas production is expected to be insufficient for gas lift operations for an indefinite period, Trunkline requests authority to implement a direct sale to Moore McCormack. Trunkline asserts that the sale would provide Moore McCormack with a continuing and reliable source of gas for gas lift operations and thus would assist in the maintenance of oil production.

Trunkline states that the direct sale would be rendered in accordance with an industrial gas contract with Moore McCormack dated May 1, 1988. To effectuate the sale on a permanent basis, Trunkline further requests authority to construct and operate a new 2-inch sales meter which Trunkline estimates would cost $62,000 and would be financed from Trunkline's funds on hand.

Comment date: June 29, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP88-430-000]

June 8, 1988.

Take notice that on May 31, 1988, Natural Gas Pipeline Company of American (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-430-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport, on an interruptible basis, up to a maximum of 75,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Panhandle Trading Company (Panhandle), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that pursuant to an Interruptible Transportation Service Agreement dated March 17, 1988, Natural is obligated to accept for transportation, on an interruptible basis, no more than 75,000 MMBtu per day for Panhandle. Natural further states that Panhandle may request and Natural may agree to accept additional quantities as overrun gas. Natural states that Panhandle has advised it that the volumes anticipated to be transported on an average day would be 50,000 MMBtu. Natural further states that based on that average day figure, the annual volume to be transported would be 18,250,000 MMBtu. Natural indicates that the receipt points would be located Offshore Texas and Offshore Louisiana and the delivery points would be located in Texas and Louisiana.

Natural indicates that it commenced the transportation of natural gas for Panhandle on April 1, 1988, at Docket No. ST88-3781, for a one hundred and twenty (120) day period ending July 30, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations (18 CFR 284.223(a)(1)) and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: July 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP88-413-000]

June 9, 1988.

Take notice that on May 26, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-413-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas and to construct and operate facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 3,500 MMBtu of natural gas per day on an interruptible basis for Quincy Soybean Company of Arkansas (Quincy). Texas Gas proposes to render the service for a primary term of five years. Texas Gas would receive gas for Quincy's account at various points of receipt and redeliver gas to Quincy's plant near Helena, Arkansas. Texas Gas explains that the delivery point would be at a new interconnect between Texas Gas and Quincy and would involve the construction of about 1.25 miles of 3.5 inch pipeline and a meter station. Texas Gas requests authorization to construct these facilities. It is explained that the estimated cost of the facilities is $226,000.

Texas Gas explains that it would charge Quincy for the service rendered the appropriate rate under Texas Gas' Rate Schedule T. Quincy would also reimburse Texas Gas for the facilities by paying Texas Gas a line charge of $72,420 per year for five years, it is explained. Texas Gas further explains that it would waive the line charge in any year in which Quincy transports at least 319,000 MMBtu of natural gas.

Comment date: June 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP88-414-000]

June 9, 1988.

Take notice that on May 26, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-414-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amoco Production Company (Amoco), a producer, under Applicant's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission an open for public inspection.

Specifically, Applicant requests authority to transport up to 75,000 Dt per day on behalf of Amoco pursuant to a transportation agreement dated April 1, 1988, among Applicant and Amoco. It is stated that the agreement provides for Applicant to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. Applicant states that it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss to (1) Acadian Gas Pipe Line System (Acadian), in St. Mary Parish, Louisiana, (2) Bridgeline Gas Distribution Company (Bridgeline), in St. Mary Parish, Louisiana, (3) Louisiana Intrastate Gas Corporation, (Louisiana Intra), in Beauregard Parish, Louisiana, (4) Louisiana Intra in St. Mary Parish, Louisiana, (5) Louisiana State Gas Corporation (Louisiana State), in Jefferson Davis Parish, Louisiana, and (6) Monterey Pipeline Company (Monterey), in St. Mary Parish, Louisiana for various end-users.

The Applicant further states that the estimated daily and estimated annual quantities would be 35,000 dt and 12,800,000 dt respectively. It is stated that service under § 284.223(a) commenced on April 1, 1988, as reported in Docket No. ST88-3580.

Comment date: July 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP88-419-000]

June 9, 1988.

Take notice that on May 27, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-419-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for PSI, Inc. (PSI), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for PSI, a marketer of natural gas, from various receipt points located in Oklahoma, Texas, Offshore Texas, Arkansas, Illinois, Kansas, Iowa, New Mexico, Louisiana and Offshore Louisiana, to various delivery points in Texas, Illinois, Louisiana, Oklahoma, New Mexico, Kansas and Iowa. Natural anticipates transporting, on an average day 30,000 MMBtu. Natural states that based on that average day figure, the annual volume it anticipates transporting is 10,950,000 MMBtu.

Natural states that the transportation of natural gas for PSI commenced April 6, 1988, as reported in Docket No. ST88-3601, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000. Natural proposes to continue this service is accordance with §§ 284.211 and 284.223 of the Commission's Regulations.

Comment date: July 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP88-420-000]

June 9, 1988.

Take notice that on May 27, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-420-000 an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing an increase in the firm sale of natural gas to two of its existing customers, the City of Brownsville Utility Board (Brownsville), Haywood County, Tennessee, and the Crockett Public Utility District (Crockett), Crockett County, Tennessee, and the construction and operation of 1.1 miles of eight-inch pipeline looping, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to sell and deliver on a firm basis an additional 995 MMBtu of natural gas per day to Brownsville and up to 91 MMBtu of natural gas per day to Crockett. Texas Gas states these additional volumes are necessary for these customers to meet their anticipated contract demand requirements for the 1988 winter heating season and beyond.

To meet these increased contract demand requirements, Texas Gas proposes to construct and operate 1.1 miles of eight-inch pipeline looping its Ripley-Jackson eight-inch pipeline located in Madison County, Tennessee. Texas Gas estimates the cost of the proposed facilities will be $242,000 which includes the required filing fee.

Comment date: June 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

Florida Gas Transmission

[Docket No. CP88-423-000]

June 9, 1988.

Take notice that on May 27, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-423-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport gas for American Cyanamid Company (Cyanamid), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT states that Cyanamid and FGT have entered into an Interruptible Transportation Agreement dated May 9, 1988, which provides for the receipt of gas by FGT for the account of Cyanamid of up to 12,500 MMBtu per day, and for the redelivery of equivalent volumes for Cyanamid's account, less Cyanamid's pro rata share of any gas vented or lost for any reason from that portion of FGT's facilities being utilized for Cyanamid at the time of such loss, and less Cyanamid's pro rata share of the total compressor fuel utilized by FGt in rendering all transportation services. FGT states that the gas will be received at the following existing points of interconnection between FGT and other entities:

(1) Existing point of interconnection between FGT and Houston Pipe Line Company near Sinton in San Particio County, Texas.

(2) Existing point of interconnection between FGT and Houston Pipe Line Company in the Magnet Withers Field Area, Matagorda County, Texas.

(3) Existing point of interconnection between FGT and Houston Pipe Line Company in Orange County, Texas.

(4) Existing point of interconnection between FGT and Exxon Company, U.S.A. in Pearl River county, Mississippi.

(5) Existing point of interconnection between FGT and Prosper Energy Corporation in Pearl River County, Mississippi.

(6) Existing point of interconnection between FGT and the Big Escambia Creek Plant, operated by Exxon Company, U.S.A., in Escambia County, Alabama.

(7) Existing point of interconnection with the Jay Processing Plant, operated by Exxon Company, U.S.A., in Santa Rosa County, Florida.

(8) Existing point of interconnection between FGT and Houston Pipe Line Company in Brazoria County, Texas.

(9) Existing point of interconnection between FGT and Transcontinental Gas Pipe Line Corporation in St. Helena Parish, Louisiana.

(10) Existing point of interconnection between FGT and Southern Natural Gas Company in Washington Parish, Louisiana.

(11) Existing point of interconnection between FGT and United Gas Pipe Line Company in St. Helena Parish, Louisiana.

(12) Existing point of interconnection between FGT and United Gas Pipe Line Company in St. Landry Parish, Louisiana.

It is stated that FGT proposes to deliver the gas to or for the account of Cyanamid, less Cyanamid's pro rata share of compressor fuel and vented and lost gas, at the following locations:

(1) Existing point of interconnection between FGT and Five Flags Pipeline Company in Santa Rosa County, Florida.

Inasmuch as all of the above-described points of receipt and delivery are in existence, FGT states that it is not requesting authorization to construct any new facilities.

FGT states that is proposes to charge Cyanamid the Maximum Rate applicable to this service. The Maximum Rate currently consists of a Facility Charge of 7.3 cents per MMBtu delivered and a Service Charge of 3.9 cents per

MMBtu per 100 miles of forward haul. These charges are in addition to FGT's currently effective Gas Research Institute surcharge of 1.47 cents per MMBtu and FGT's ACA surcharge of 0.21 cents per MMBtu which became effective on October 1, 1987.

FGT states that the term of the transportation agreement is for a primary term of five years from the date of inital deliveries under the contract, and from year to year thereafter.

FGT states that Cyanamid requires this transportation service in order to receive gas for its own use at its acrylic fiber plant in Santa Rosa County, Florida served by Five Flags.

FGT states that since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein cannot have an adverse impact on FGT's existing customers.

Comment date: June 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-13390 Filed 6-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Project 8389-001, et al.]

Hydroelectric Applications (Cordova Electric Coop., Inc.) et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Minor License.

b. *Project No.:* 8389-001.

c. *Date Filed:* July 17, 1987.

d. *Applicant:* Cordova Electric Cooperative, Inc.

e. *Name of Project:* Humpback Creek.

f. *Location:* On Humpback Creek near the town of Cordova, on Orca inlet of Prince William Sound, Alaska; T.14S., R.3W., section 36, Cooper River Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald O. Goodrich, President, Cordova Electric Cooperative, Inc., P.O. Box 20, Cordova, AK 99574.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376–9821.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) A 13-foot-high, 50-foot-long timber and rock-filled diversion dam with a crest elevation of 205 feet; (2) a timber intake structure; (3) a 42-inch-diameter, 2,000 foot-long steel penstock; (4) a 30-foot-by 50-foot steel powerhouse containing three turbine-generator units with a total installed capacity of 1,250 KW; (5) a 60-inch-diameter, 80-foot-long tailrace discharging into; (6) a 70-foot-long, 8-foot-wide gabion channel; (7) 12.5-kV generator leads; (8) a 2.8 mile-long, 12.5-kV transmission line from the powerhouse to the town of Orca; (9) a 12.5-kV line extension from Orca to a distribution point, 2 miles north of the Project; and (9) appurtenant facilities.

l. *Purpose of Project:* Power produced from the project would be utilized by Cordova Electric Cooperative, Inc.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10574-000.

c. *Date Filed:* April 11, 1988.

d. *Applicant:* Faulkner Land and Livestock Company, Inc.

e. *Name of Project:* Freeway Drop Hydroelectric Project.

f. *Location:* On the Y Canal, an irrigation canal and tributary to the Snake River, near the town of Glenn Ferry, in Elmore County, Idaho. The project would occupy lands of the United States administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Arkoosh, Attorney at Law, P.O. Box 32, Gooding, ID 83330, (208) 934-8401.

i. *FERC Contact:* Thomas Dean, (202) 376–9062.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A diversion structure with an inlet elevation of 3,000 feet msl; (2) a 10,000-foot-long, 36-inch-diameter penstock leading to; (3) a powerhouse at elevation 2,505 feet msl containing a single generating unit with a capacity of 1,400 kW operating at 495 feet of hydraulic head; (4) a tailrace emptying into the Snake River; and (5) a 200-foot-long, 12.5-kV transmission line.

The applicant estimates the average annual energy production to be 6,000 MWh. The approximate cost of the studies under the permit would be $5,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. *Type of Application:* Transfer of license.

b. *Project No.:* 8286-006.

c. *Date Filed:* March 29, 1988.

d. *Applicants:* Malacha Power Project, Inc. (licensee), Malacha Hydro Limited Partnership and Juniper Ridge Ranches, Inc. (transferees).

e. *Name of Project:* Muck Valley.

f. *Location:* On the Pit River in Lassen County, California, partially on the U.S. Bureau of Land Management land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:*
Malacha Hydro Limited Partnership, c/o Constellation Development, Inc., 250 West Pratt Street, Baltimore, MD 21201–2423, (301 783–2423
Thomas J. Vestal, President, Juniper Ridge Ranches, Inc., P.O. Box 250, Fall River Mills, CA 96028
Mr. E. Robert Mooney, President, Malacha Power Project, Inc., P.O. Box 6640, Boise, ID 83707
Gary D. Bachman, Esq., VanNess, Feldman, Sutcliffe & Curtis, 1050 Thomas Jefferson St. NW., Washington, DC 20007

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376–9821.

j. *Comment Date:* July 8, 1988.

k. *Description of Transfer:* On December 2, 1986, a major license was issued to Malacha Power Project, Inc. for the construction, operation, and maintenance of the Muck Valley Project No. 8286. Malacha Power Project, Inc., has proposed to transfer the license to Malacha Hydro Limited Partnership and Juniper Ridge Ranches, Inc.

The transferees are a limited partnership organized under the laws of the state of Maryland and a corporation organized under the laws of the state of California.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferees accept all the terms and conditions of the license and agree to be bound by them to the same extent as though they were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10540-000.

c. *Date Filed:* February 4, 1988.

d. *Applicant:* City of Weiser, Idaho.

e. *Name of Project:* Harry Nelson Hydropower Project.

f. *Location:* On the Weiser River near the City of Weiser, in Washington County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael Holladay, Holleday Engineering Company, P.O. Box 211, Payette, ID 83661, (208) 642–3304.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers proposed Galloway Dam, and would consist of: (1) A powerhouse containing a single generating unit with an installed capacity of 4,500 kW operating at hydraulic heads ranging from 150 to 260 feet; (2) a 10-mile-long, 69-kV transmission line; and (3) appurtenant facilities.

The applicant estimates the average annual energy production to be 20,440 MWh. The approximate cost of the studies under the permit would be $50,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10546-000.

c *Date Filed:* February 25, 1988.

d. *Applicant:* A&J Construction, Inc.

e. *Name of Project:* Kanaka Rapid.

f. *Location:* On Snake River in Twin Falls and Gooding Counties, Idaho, near the town of Buhl. T.9S., R.14E., Sections 9 and 10, Boise Meridan, Idaho.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Carl L. Myers, P.E. Myers Engineering Company, P.A. 750 Warm Springs Avenue, Boise, ID 83712 (208) 336–1425.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376–9821.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of:(1) A 50-foot-long, 15-foot-high reinforced concrete dike with a crest elevation of 2,920 feet, extending from the north banks of the Snake River to an island in the center of the River; (2) a 3,100-foot-long earth canal with a botton width of 45 feet; (3) a powerhouse containing two turbine-generator units with a total installed capacity of 12,375 kW; (4) a 90-foot-wide tailrace; (5) a 2,500-foot-long, 138-kV transmission line tying into an existing system.

The applicant estimates the cost of conducting these studies under the preliminary permit at $60,000.

l. *Purpose of Project:* Power produced from the proposed project will be sold to a utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10556-000.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* Kenneth M. Grover.

e. *Name of Project:* Tuck Tape Project.

f. *Location:* On Fishkill Creek, in Dutchess County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kenneth M. Grover, Box 536, Route 100, Croton Falls, NY 10519, (914) 277–3000.

i. *FERC Contact:* Thomas O. Murphy (202) 376–9773.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing masonry gravity dam, approximately 90-foot-long and 14 feet high, with 2-foot-high flashboards; (2) an existing impoundment of 2.0-acres surface area and 11.4-acre-feet storage capacity at a normal maximum surface elevation of 74 feet mean sea level, which will be incresed to 2.5-acres with 14.0-acre-feet storage capacity at a normal maximum surface elevation of 76 feet m.s.l.; (3) a proposed integral intake-powerhouse 20 feet wide and 26 feet long, to house a proposed turbine-generator of 300 kW capacity; (4) a proposed excavated tailrace; and (5) appurtenant facilities.

The estimated annual energy production is 1.8 GWh. Project power would be sold to Central Hudson Gas and Electric Corporation. The existing facilities are owned by Tuck Industries, Inc.

l. This notice also consists of the following standards paragraphs: A5, A7, A9, A10, B, C and D2.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10557-000.

c. *Date Filed:* March 16, 1988.

d. *Applicant:* Trenton Falls Hydroelectric Company.

e. *Name of Project:* North Elba.

f. *Location:* On the Chubb River in Essex County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Fred T. Samel, P.O. Box 169, Prospect, New York 13435, (315) 733–6476.

i. *FERC Contact:* Thomas O. Murphy, (202) 376–9773.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing concrete dam 24 feet in height and 136 feet in length, with an existing intake structure on the north abutment; (2) an existing reservoir with surface area of nine acres at a normal maximum surface elevation of 1706 feet mean sea level; (3) an existing steel penstock 800 feet in length, 66 inches in diameter, and requiring repair; (4) an existing steel surge tank, 15 feet in diameter and 40 feet in height; (5) an existing concrete powerhouse 40 feet long, 30 feet wide and 12 feet high to house a proposed turbine/generator unit with total proposed capacity of 355–kW; (6) an existing concrete tailrace 20 feet long, 12 feet wide and 2 feet deep; (7) a proposed one-mile long, 115 kV< transmission line; (8) a proposed electrical switchyard; and (9) appurtenant facilities.

The estimated annual power production is 2,037 kWh. Project power will be sold to Niagara Mohawk Power Corporation or will be supplied to the Lake Placid Village municipal system. Lake Placid Village, Inc. is the owner of the dam.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10592–000.

c. *Date Filed:* May 3, 1988.

d. *Applicant:* Green Mountain Energy, Inc.

e. *Name of Project:* Chouteau Lock and Dam.

f. *Location:* On Verdigris River near Okay, Wagoner County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. M.S. Swift, Green Mountain Energy, Inc., P.O. Box 52455, Tulsa, Oklahoma 74152, (918) 582–2100.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Chouteau Lock and Dam and reservoir and would consist of: (1) An existing diversion channel; (2) a proposed reinforced concrete powerhouse 11 feet by 45 feet housing a 900–kW hydropower unit; (3) a tailrace utilizing the existing diversion channel; (4) a proposed 12.8–kV transmission line 1,000 feet long; and (5) appurtenant facilities. The estimated annual energy production is 3.15 GWh. Project power would be sold to an electric utility. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000 to $90,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10575–000.

c. *Date Filed:* April 12, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Cispus River No. 1 Project.

f. *Location:* In the Gifford Pinchot National Forest, on the Cispus River near the town of Randle, in Lewis and Skamania Counties, Washington. Township (T) 10N, Range (R) 10E; T10N, R9E; T11N R9E; T11N, R8E; and T11N, R7E Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:*

Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069

Steve P. Barrish, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254–2423.

i. *FERC Contact:* Thomas Dean, (202) 376–9552.

j. *Comment Date:* Aug. 8, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at elevation of 3,015 feet msl; (2) a 39,000-foot-long, 84-inch-diameter penstock leading to; (3) a powerhouse containing two generating units with a combined capacity of 24.7 MW; and (4) a 21.5-mile-long, 69–kV transmission line.

The applicant estimates the average annual energy production to be 176,438 MWh. The approximate cost of the studies under the permit would be $50,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10576–000.

c. *Date Filed:* April 13, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Cispus River No. 2 Project.

f. *Location:* In the Gifford Pinchot National Forest, on the Cispus River near the town of Randle, in Lewis and Skamania Counties, Washington. Township (T) 10N, Range (R) 9E; T11N, R9E; T11N, R8E; and T11N, R7E Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:*

Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069

Steve P. Barrish, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254–2423.

i. *FERC Contact:* Thomas Dean, (202) 376–9552.

j. *Comment Date:* August 8, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at elevation of 1,960 feet msl; (2) a 44,200-foot-long, 120-inch-diameter penstock leading to; (3) a powerhouse containing two generating units with a combined capacity of 23.3 MW; and (4) a 13-mile-long, 69–kV transmission line.

The applicant estimates the average annual energy production to be 165,540 MWh. The approximate cost of the studies under the permit would be $50,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10577–000.

c. *Date Filed:* April 15, 1988.

d. *Applicant:* Larry Gene Lewis.

e. *Name of Project:* Wetlands Recovery Project.

f. *Location:* On BLM lands at the City of Las Vegas Sewerage Treatment Plant and the Clark County Advanced Waste Water Treatment Plant near Las Vegas in Clark County, Nevada.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Larry Gene Lewis, 3955 Swenson #33, Las Vegas, NV 89109, (702) 870–4251.

i. *FERC Contact:* Julie Bernt, (202) 376–1936.

j. *Comment Date:* August 8, 1988.

k. *Description of Project:* The proposed project would consist of: (1) Siphon weirs following chlorination weirs at the Clark County Advanced Waste Water Treatment Plant and the Las Vegas Treatment Plant; (2) six miles of sealed canals; (3) siphon pipes leading from the end of the canals to three siphon turbine barges each having two generators, with each generator having a 150 kW rated capacity; and (4) 5 miles of transmission line.

Applicant estimates the average annual energy production to be 17,500,000 kWh and the cost of the work to be performed under the preliminary permit to be $25,000.

l. *Purpose of Project:* The power produced will be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. *Type of Application:* Surrender of License.

b. *Project No.:* 7743–004.

c. *Date Filed:* March 25, 1988.

d. *Applicant:* New York Power Authority.

e. *Name of Project:* Waterford Project.

f. *Location:* On the Hudson River in Saratoga and Rensselaer Counties, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Peter A. Giuntini, New York Power Authority, 10 Columbus Circle, New York, NY 10019, (212) 397–6200.

i. *FERC Contact:* Robert Bell (202) 376–9237.

j. *Comment Date:* July 22, 1988.

k. *Description of Project:* The project consists of: (a) The existing Waterford Dam and Lock C–1, a concrete gravity structure in three sections, an ogee-crested spillway section 19.5 feet high and 60.2 feet long, a section of six tainter gates 17.0 feet high and 356 feet long, and a non-overflow section 38 feet high and 70 feet long; (b) a reservoir with a surface area of 400 acres, a storage capacity of 5,000 acre-feet, and a normal water surface elevation of 28.3 feet NGVD; (c) an intake channel, 60 feet wide and 54 feet long with side slopes of 4.1; (d) trashracks; (e) an ice deflector structure; (f) a powerhouse containing two generating units having a total capacity of 3,000 kW; (g) a tailrace channel 160 feet long; (h) a switch-yard; (i) the 4.16-kV generator leads; (j) the 3-phase, 4.16/34.5-kV, 3/4 MVA OA/FA transformer; (k) a 34.5-kV transmission line, 1.9 miles long; (l) an access road; and (m) appurtenant facilities.

The applicant estimates the average annual energy would have been 21,500,000-kWh. The New York Power Authority would have utilized the energy for sale to its customers.

The licensee is surrendering the license because the proposed project is no longer feasible for it. No construction has taken place at this place.

This notice also consists of the following standard paragraphs: B, C and DS2.

13 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10544–000.

c. *Date Filed:* February 16, 1988.

d. *Applicant:* Loyalhanna Hydro Associates.

e. *Name of Project:* Loyalhanna Dam.

f. *Location:* On Loyalhanna Creek, near New Alexandria, Westmoreland County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David M. Coombe, Synergica, Inc., 410 Severn Avenue, Suite 313, Annapolis, Md 21403, (301) 268–8820.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Loyalhanna Dam and reservoir and would consist of: (1) An existing penstock 10 feet in diameter; (2) a proposed penstock 12 feet in diameter and 170 feet long; (2) a proposed reinforced concrete powerhouse 50 feet by 50 feet housing two 750–kW hydropower units; (3) a proposed concrete lined tailrace 50 feet wide and 70 feet long; (4) a proposed 13.2–kV transmission line 200 feet long; and (5) appurtenant facilities. The estimated annual energy production is 7 GWh. Project power would be sold to Pennsylvania Electric Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10556–000.

c. *Date Filed:* February 29, 1988.

d. *Applicant:* The Bangor Hydro-Electric Company.

e. *Name of Project:* Basin Mills.

f. *Location:* On the Penobscot and Stillwater Rivers in Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Robert S. Briggs, Bangor Hydro-Electic Company, 33 State Street, Bangor, ME 04401, (207) 945–5621.

Mr. William J. Madden, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005–3502, (202) 371–5715.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would consist of three developments: (1) Veazie Development; (2) Basin Mills Development; and (3) Orono Development. The existing dams are owned by the applicant. The applicant estimates that the cost of the studies under permit would be $437,000. A description of each development is as follows:

(i) *Veazie Development.* The Veazie Development would consist of: (1) An existing 25-foot high, 902-foot-long concrete gravity dam; (2) a reservoir with a surface area of 380 acres, a storage capacity of 4,800 acre-feet, and a normal water surface elevation of 34.8 feet NGVD with; (3) 6.5-foot/high hinged flashboards; (4) an existing concrete forebay; (5) two existing brick and concrete powerhouses: (a) powerhouse A is located along the west bank and contains 15 turbine-generator units for a total installed capacity of 5.4 MW; and (b) powerhouse B is located at the downstream end of the forebay and contains two turbine-generator units with a total installed capacity of 3 MW; (6) a new concrete powerhouse containing one generating unit with an installed capacity of 8 MW; (7) an existing tailrace; (8) a transmission line, 200 feet long; and (9) appurtenant facilities. The average annual generation would be 87 million kWh.

(ii) *Basin Mills Development.* The Basin Mills Development would consist of: (1) A new 18-foot-high, 1,650-foot-long concrete gravity dam; (2) a reservoir with a surface area of 325 acres, a storage capacity of 5,000 acre-feet, and a normal water surface elevation of 64.0 feet NGVD; (3) a new intake gate; (4) a new concrete powerhouse containing three pit-type turbine units with a total installed capacity of 38 MW; (5) a tranamission line, 200 feet long; and (6) appurtenant facilities. The average annual generation would be 183 million kWh.

(iii) *Orono Development.* The applicant proposes to decommission the existing facilities at the Orono Development by removing the existing penstocks and powerhouse. The applicant proposes to retain the existing 18-foot-high, 1,174-foot-long concrete dam and flashboards and the 175-acre, 1,300-acre-foot reservoir which is at elevation 72.4 feet NGVD.

l. *Purpose of Project:* Project power would be sold to the applicant's retail customers.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10555–000.

c. *Date Filed:* March 9, 1988.

d. *Applicant:* Richmond Hydroelectric Science Museum Partners.

e. *Name of Project:* Richmond Hydroelectric Science Museum.

f. *Location:* On the James River near Richmond, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Granville J. Smith II, 3901 Northampton Street NW., Washington, DC 20015, (202) 966–1409.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing breached concrete dam 2,366 feet long and ranging from three to 16 feet high; (2) an existing canal 500 feet long with eight intake gates; (3) an existing powerhouse 168 feet by 75 feet; (4) five existing turbine-generators with 1,775-kW combined capacity; (5) an existing tailrace; (6) an existing 12.5-kV transmission line 200 feet long; and (7) appurtenant facilities. The estimated annual energy production is 10–12 GWh. Project power would be sold to the City of Richmond or to Virginia Electric Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000. The dam is owned by the James River Paper Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10591–000.

c. *Date Filed:* May 3, 1988.

d. *Applicant:* Green Mountain Energy, Inc.

e. *Name of Project:* Newt Graham Lock and Dam.

f. *Location:* On Verdigris River near Inola, Wagoner County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. M.S. Swift, Green Mountain Energy, Inc., P.O. Box 52455, Tulsa, Oklahoma 74152, (918) 582–2188.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Newt Graham Lock and Dam and reservoir and would consist of: (1) An existing diversion channel; (2) a proposed reinforced concrete powerhouse 11 feet by 45 feet housing a 900-kW hydropower unit; (3) a tailrace utilizing the existing diversion channel; (4) a proposed 13.8–kV transmission line three miles long; and (5) appurtenant facilities. The estimated annual energy production is 3.15 GWh. Project power would be sold to an electric utility. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000 to $90,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 day after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10 Proposed Scope of Studies under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to Federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural of other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions prusuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the Application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 9, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13389 Filed 6–13–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ88–2–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 9, 1988.

Take notice that on June 1, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Fifth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1988. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washingon, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13305 Filed 6–13–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ88–2–31–000]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance with Order No. 483

June 9, 1988.

Take notice that on June 1, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective July 1, 1988:

Rate Schedule No. X–26, Original Volume No. 3
3rd Revised 45th Revised Sheet No. 185
Rate Schedule No. 6–2, First Revised Volume No. 1
3rd Revised 46th Revised Sheet No. 4

AER states that these tariff sheets reflect AER's first quarterly PGA filing made under the Commission's transitional rules of Order No. 483.

AER states that the proposed changes would increase AER's system cost by $146,786 and its revenue from jurisdictional sales and service by $2,853 for the PGA period of July, August and September 1988 as adjusted.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13306 Filed 6–13–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–187–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 9, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 3, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Twelfth Revised Sheet No. 16B
Second Revised Sheet No. 16B1
Second Revised Sheet No. 16B2
Third Revised Sheet No. 46E
Second Revised Sheet No. 68
Second Revised Sheet No. 68A

Columbia states that the foregoing tariff sheets are being filed pursuant to Order No. 500 to recover take-or-pay and contract reformation cost fixed charges and commodity surcharges which its pipeline suppliers bill to Columbia. As a downstream pipeline, Columbia proposes to recover such costs on an as-billed basis, pursuant to § 2.104(e) of the Commission General Policy and Interpretations. For fixed

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costs billed to Columbia by its pipeline suppliers, Columbia will allocate such costs to its customers utilizing the same deficiency-based formula which each pipeline supplier utilizes in allocating its fixed-charge take-or-pay and contract reformation costs to Columbia.

Columbia states that while it strongly opposes such deficiency-based allocation, it is required by the Commission's Regulations and the Commission's recent order in *Mississippi River Transmission Corporation*, issued February 29, 1988, 42 FERC ¶ 61,244 (1988) to allocate such costs on this basis. If deficiency-based allocation is ultimately overturned or modified by the Commission or the courts, Columbia states that it will make appropriate adjustments in its fixed-charge recovery billings to its customers.

With regard to Order No. 500 volumetric charges incurred as a result of Columbia's transportation on other pipelines, Columbia proposes to recover such costs through a volumetric surcharge to be billed to its sales and transportation customers.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13303 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-003]

KN Energy, Inc.; Compliance Filing

June 9, 1988.

Take notice that on May 31, 1988, KN Energy, Inc. (KN) tendered Thirty-Third Revised Sheet No. 4, Twelfth Revised Sheet No. 4B, and Third Revised Sheet No. 27D to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on June 1, 1988.

KN states that these tariff sheets comply with the Commission's Order Granting Motion To Implement Interim Settlement Rates issued May 27, 1988.

KN states that these tariff sheets reflect the current cost of purchased gas and surcharge recovery levels approved by the Commission on May 31, 1988 in Docket No. TQ88-1-53-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13310 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchase Gas Cost Adjustment

June 9, 1988.

Take notice that on June 1, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending September 30, 1988.

Northwest states that the current PGA adjustment, for which notice is given herein, aggregates to a decrease of 14.92¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the third quarter of 1988 would decrease sales revenues by approximately $1,669,548. The instant filing also provides for a reduction in the demand components of Northwest's gas sales rates to reflect an estimate of the demand portion of Canadian toll credits and requested conversions from firm sales to firm transportation by several of Northwest's sales customers. The proposed rate changes have been reflected on Fifth Amended Thirty-Ninth Revised Sheet No. 10 with a proposed effective date of July 1, 1988.

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13302 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-75-033]

Penn-York Energy Corp; Compliance Filing

June 9, 1988.

Take notice that on May 31, 1988, Penn-York Energy Corporation (Penn-York) tendered for filing certain tariff sheets in compliance with the Commission's orders issued April 6, 1988 and May 16, 1988, to its FERC Gas Tariff, Second Revised Volume No. 1.

Penn-York states that pursuant to § 154.51 of the Commission's Regulations, Penn-York requests waiver of the notice and timing requirements of § 154.22. Penn-York states that waiver is appropriate in order to timely implement the terms of the Stipulation and Agreement approved by the Commission on April 6, 1988.

Penn-York states that copies of this filing are being mailed to its jurisdictional customers and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214

and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13311 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

June 9, 1988.

Take notice that Western Gas Interstate Company ("Western"), on June 2, 1988, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheets is August 1, 1988.

Western states that, among other things, its filing proposes changes to it rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs. Western further states that the proposed changes provide for: (1) A decrease in cost under Western's Rate Schedule G-N of 1.39 cents per Mcf.; and (2) an increase in cost under Western's Rate Schedule G-S of 85.40 cents per Mcf.

Western also states that the filing reflects new provisions under the General Terms and Conditions of its FERC Gas Tariff whereby it will charge and collect from its customers annual charges assessed by the Commission under § 382.202 of the Commission's Regulations pursuant to the provisions of the Commission's Order No. 472.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 No. Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13304 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3397-1]

Designation of Two Ocean Dredged Material Disposal Sites (ODMDSs) Offshore Tampa, FL; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region IV.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the final designation of two ODMDSs offshore Tampa, Florida.

PURPOSE: The U.S. EPA, Region IV, in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) will prepare a Draft EIS on the designation of two ODMDSs offshore Tampa, Florida. An EIS is needed to provide the information necessary to designate the two ODMDSs. This Notice of Intent is issued pursuant to Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, and 40 CFR, Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FURTHER INFORMATION AND TO BE PLACED ON THE ODMDS PROJECT MAILING LIST CONTACT: Reginald Rogers; U.S. EPA, Region IV; 345 Courtland Street NE.; Atlanta, Georgia 30365; (404) 347-2126 or FTS 257-2126.

SUMMARY: EPA proposes to designate two ODMDSs offshore Tampa, Florida, for the disposal of dredged material that meets the criteria for ocean dumping contained in 40 CFR Part 227. An EIS is required to provide the necessary information to evaluate ocean alternative sites and designate the preferred ODMDSs. Designation of the two ODMDSs does not by itself, authorize any dredged material disposal.

Need For Action: EPA's proposal is made at this time because EPA is aware that application is likely to be made for future ocean dumping in this area. The two ODMDSs would serve to make available an ocean alternative for receiving suitable dredged material from the greater Tampa Bay area.

Alternatives:

1. No action (The No-Action Alternative is defined as no final designation of any ocean disposal site).

2. Two preferred offshore disposal sites (Site 4; Site 5A within Site 5).

3. Alternative offshore disposal sites (Site 5B and Site 5MS-C within Site 5).

Ultimately, the selected site at Site 5 will be referred to simply as "Site 5."

Scoping: A scoping meeting will not be held. However, EPA encourages Federal, State and local agencies as well as interested parties to identify significant issues to be addressed in the EIS at this time. Comments and concerns should be sent to the above address.

Estimated Date of Release: The Draft EIS is scheduled to be available in July or August of 1988.

Responsible Official: Greer C. Tidwell, Regional Administrator; EPA, Region IV.

Dated: June 8, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-13372 Filed 6-13-88; 8:45 am]

BILLING CODE 6560-01-M

[ER-FRL-3397-2]

Design and Construction of Wastewater Treatment Facilities, Plymouth, MA; Intent To Discontinue Preparation of a Draft Environmental Impact Statement

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of intent to discontinue preparation of a draft Environmental Impact Statement (EIS).

PURPOSE: On October 2, 1981, the EPA identified a need to prepare an EIS and published a Notice of Intent pursuant to 40 CFR 1501.7. Since that time, circumstances have significantly altered the need for an EIS and EPA therefore has decided the preparation of the EIS should be discontinued.

FOR FURTHER INFORMATION CONTACT: Ms. Gwen, Ruta, Environmental Evaluation Section, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203 (617) 565-4420.

SUMMARY: The EPA, Region I, had published a Notice of Intent to prepare an Environmental Impact Statement on the construction of municipal wastewater treatment facilities serving the Town of Plymouth, Massachusetts.

Under the National Environmental Policy Act (NEPA) preparation of the EIS was required prior to approval of the Town's Facilities Plan for design and construction of the treatment works and prior to issuance of any federal grant monies pursuant to section 201 of the Clean Water Act. The draft EIS was projected to be available in October 1983.

The Town's engineering consultant published a draft Facilities Plan in March 1984. However, the findings of the report met with public, regulatory, and legal controversy and as a result, the Facilities Plan was not finalized. Since that time, the Town has been investigating additional sites and alternatives. However, a satisfactory solution has not been proposed to date. During this same intervening period, modifications of the Massachusetts Ocean Sanctuaries Act have been proposed and the Massachusetts groundwater discharge permit program has become operative. Both of these latter developments significantly impact viable wastewater disposal options for the Town of Plymouth.

As a result of the delay in finalizing the proposed wastewater treatment Facilities Plan, federal grant funding under Title VI (State Water Pollution Control Revolving Funds) may occur. Environmental review procedures for projects funded in accordance with Title VI will require that a "NEPA-like" process, based upon State laws or regulations be implemented. The wastewater treatment facilities project is currently the subject of an Environmental Impact Report (EIR) pursuant to the Massachusetts Environmental Policy Act (MEPA). EPA will be reviewing the EIR and the "NEPA-like" review conducted by the Commonwealth of Massachusetts under delegation of the Title VI program to ensure that they satisfy the Title VI requirements. These actions eliminate the need for an Environmental Impact Statement.

In view of the above circumstances, EPA Region I has concluded that a separate EIS is now not required and that applicable information and analyses previously developed for the EIS should be made available to the Massachusetts Division of Water Pollution Control for inclusion in the Title VI review process.

Responsible Official: Michael R. Deland, Regional Administrator.

Dated: June 6, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-13373 Filed 6-13-88; 8:45 am]

BILLING CODE [illegible]

[FRL-3397-4]

Proposed Settlement Under Section 122(d)(3) and 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; Davidson Interior Trim/Textron, et al.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: This Consent Order is issued pursuant to sections 122(d)(3) and 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act and it concerns the performance of a Feasibility Study at the Dover Landfill Site in Dover, New Hampshire.

DATE: Comments must be provided on or before July 14, 1988.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In Re Dover Landfill Site in Dover, New Hampshire, U.S. EPA Docket No. I-88-1021.

FOR FURTHER INFORMATION CONTACT: Susana Cortina de Cardenas, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC-2003, J.F.K. Federal Building, Room 2003, Boston, Massachusetts, 02203 (617) 565-3351.

SUPPLEMENTARY INFORMATION:

Notice of Settlement

In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1986, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Dover Landfill Site in Dover, New Hampshire. The agreement has been proposed by the Regional Administrator for Region I for publication. Subject to review by the public pursuant to this Notice, the agreement has been approved by the state of New Hampshire, the United States Department of the Interior and the National Oceanic and Atmospheric Administration. Listed below are the parties who have signed the Order, committing to participate in the settlement:

Davidson Interior Trim/Textron; Franklin Electro Plating Co., Inc.; George T. Foster & Co., Inc.; General Electric Co.; Bay Head Products; Clarostat Manufacturing Co., Inc.; GFS Manufacturing Co., Inc.; Public Service Company of New Hampshire; and the City of Dover, New Hampshire.

These nine (9) parties have agreed to reimburse EPA and the State of New Hampshire for the costs of the Remedial Investigation at the Site. These costs totalled $891,823.64. The agreement also obligates the parties to conduct a Feasibility Study at the site.

EPA is entering into the agreement under the authority of sections 122(h)(1) and 122(d)(3) of CERCLA.

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Government Center, Boston, Massachusetts 02203. Additional background information relating to the settlement is available for review at the EPA's Region I Office of Regional Counsel.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-13345 Filed 6-13-88; 8:45 am]

BILLING CODE [illegible]

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

Summary: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, June 28, 1988 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will inlcude a discussion of the following topics: Financial Report, Summary of Hearings, Competitiveness Report, State/City Update, FCIA Subcommittee, Financial Institution Subcommittee, and other topics.

Public participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than June 27, 1988. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to June 21, 1988 the Office of the Secretary, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

Further information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Hart Fessenden,

General Counsel.

[FR Doc. 13494 Filed 6-13-88; 8:45 am]

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

Grants; Hazardous Materials Training Program; Federally Recognized Indian Tribes; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Notice; correction.

SUMMARY: This notice is to correct an inaccurate date for requesting grant applications which was printed in the Federal Register, Vol. 53, No. 103, dated May 27, 1988, on page 19335. For the convenience of the reader, that notice reflected that FEMA is accepting grant applications to develop a training program in Hazardous Materials under SARA Title III. Applications will be limited to federally recognized Indian Tribes. An additional purpose of this correction is to add *federally recognized Indian Tribes* to the subject heading of the document to ensure notice to the appropriate audiences.

ADDRESS: Requests should be submitted to: Federal Emergency Management Agency, National Emergency Training Center, Attention: Procurement Branch, E-115, 16825 South Seton Avenue, Emmitsburg, MD 21727.

FOR FURTHER INFORMATION CONTACT: Estelle F. Marr at (301) 447-1077 (FTS 652-1077).

In the **DATE** section "June 1, 1988" should read "July 1, 1988."

Date: June 8, 1988.

George W. Watson,

Acting General Counsel.

[FR Doc. 88-13336 Filed 6-13-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008090-032

Title: Mediterranean North Pacific Coast Freight Conference

Parties: Italia di Navigazione, S.p.A./d'Amico Societa di Navigazione per Azioni, United Yugoslav Lines, Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-008548-036

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference

Parties: Farrell Lines, Inc., Lykes Bros. Steamship Co., Inc., Pharos Lines, S.A., Waterman Steamship Corporation

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-010122-017

Title: Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands/River Plate

Parties: A. Bottacchi S.A. De Navegacion C.F.I.e.I., A/S Ivarans Rederi, Companhia Maritima Nacional, Companhia De Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas, Sociedad Anonima (Elma S/A), Transportacion Maritima Mexicana S.A.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-010268-011

Title: Australia/Eastern U.S.A. Shipping Conference

Parties: Columbus Line, Pacific America Container Express (PACE Line)

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-010676-030

Title: South Europe/U.S.A. Freight Conference

Parties: Compania Trasatlantica Espanola, S.A., Costa Line, Evergreen Lines, Inc., Farrell Lines, Inc., Italia di Navigazione, S.p.A.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-010686-004

Title: Costa/Italia/Trasatlantica Space Charter and Sailing Agreement

Parties: Italia Di Navigazione, S.p.A., Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed amendment would delete Costa Container Lines, S.p.A. as a party. It would also change the name of the agreement to Italia/Trasatlantica Space Charter and Sailing Agreement.

Agreement No.: 203-011102-002

Title: U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement

Parties: Costa Line, Farrell Lines, Inc., Nedlloyd Lines, Sea-Land Service, Inc., Trans Freight Lines, Compania Trasatlantica Espanola, Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione, S.p.A., Lykes Bros. Steamship Co., Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 207-011144-002

Title: Australia-New Zealand Direct Line Service Agreemnt

Parties: Pacific Australia Direct Line ("PAD") Australia-New Zealand Container Line ("ANZCL")

Synopsis: The proposed amendment would permit the parties to eliminate the Pacific Islands from the geographic scope of the Coordinated Service, and would simplify the

distinction between cargoes to be carried by the Coordinated Service and cargoes that may be carried by PAD. It would also reflect changes in the ownership of PAD and ANZCL and make other nonsubstantive changes.

Agreement No.: 203-011148-002

Title: Western Mediterranean Stabilization Agreement
Parties: South Europe/U.S.A. Freight Conference, Ocean Star Container Line A.G.
Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 203-011162-002

Title: PANAM Discussion Agreement
Parties: U.S. Atlantic and Gulf Central American Freight Association, Lykes Brothers Steamship Co. Inc., Ecuadorian Line, Inc.
Synopsis: The proposed amendment would delete Transnave, Inc. and Naviera Consolidada, S.A. as parties to the agreement and add Gran Golfo Express. The parties have requested a shortened review period.

Agreement No.: 203-011172-002

Title: United States Atlantic and Gulf Venezuela Freight Conference
Parties: Marlago, S.A., King Ocean, Maritima Aragua, S.A., Venezuelan Container Line, Seaboard Marine, Ltd.
Synopsis: The proposed amendment would expand the geographic scope to include U.S. Pacific Coast ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: June 9, 1988.
Tony P. Kominoth,
Assistant Secretary.
[FR Doc. 88-13301 Filed 6-13-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

ANB Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ANB Corporation,* Muncie, Indiana; to acquire 100 percent of the voting shares of The Saratoga State Bank, Saratoga, Indiana.

2. *Havana Bancshares, Inc.,* Springfield, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Havana, Havana, Illinois.

Board of Governors of the Federal Reserve System, June 8, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-13313 Filed 6-13-88; 8:45 am]
BILLING CODE 6210-01-M

Meridian Bancorp, Inc. et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1988.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.,* Reading, Pennsylvania; to expand its current activity of reinsuring credit life and accident and health insurance issued in connection with extensions of credit make by Meridian Bank and the recently acquired Delaware Trust Company, Wilmington, Delaware, to a nationwide basis through its subsidiary, Meridian Life Insurance Company, Reading, Pennsylvania, formerly Amerisure Life Insurance Company, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-13314 Filed 6-13-88; 8:45 am]
BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Real Estate Development Advisory Committee; Establishment

Establishment of advisory committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the General Services Administration (GSA) Real Estate Development Advisory Committee. The Administrator of General Services has determined that establishment of this committee is in the public interest.

Designation. General Services Administration Real Estate Development Advisory Committee.

Purpose. The purpose of the committee will be to advise the Administrator of General Services on key issues relating to real estate development projects in the areas of real estate appraisal, leasing, construction costs, housing plans, and architecture.

Contact for information. For additional information, contact Peter Ford, Office of the Administrator, GSA, Washington, DC 20405, telephone (202) 566-1066.

Dated: June 9, 1988.
John Alderson,
Acting Administrator of General Services.
[FR Doc. 88-13474 Filed 6-10-88; 3:06 pm]
BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council, AIDS; Establishment

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration (HRSA) announces the establishment by the Secretary, HHS, with concurrence by the General Services Administration of the following advisory committee.

Designation: HRSA AIDS Advisory Committee.

Purpose: The Committee shall advise the Secretary; the Assistant Secretary for Health; the Administrator, HRSA; and the HRSA AIDS Coordinator on HRSA's long- and short-term plans for HRSA AIDS health care delivery activities, training, research and other activities relating to the transmission, prevention, and treatment of AIDS.

Authority for this Committee will expire on June 3, 1990, unless the Secretary, HHS, with the concurrence of the General Services Administration, formally determines that continuance is in the public interest.

Dated: June 9, 1988.

Jackie E. Baum,
Advisory Committee Management Officer, HRSA.
[FR Doc. 88-13385 Filed 6-13-88; 8:45 am]
BILLING CODE 4165-15-M

Availability of Materials Developed Under Contract No. 240-84-0098 Identification of Self-Care Behaviors Practiced by Community Based Elderly

The Health Resources and Services Administration announces the availability of materials developed under Contract No. 240-84-0098, "Identification of Self-Care Behaviors Practiced by Community Based Elderly", with the Health Services Research Center, University of North Carolina at Chapel Hill. A nursing assessment research instrument and an Interviewer Training Manual were developed for use in surveying community-based elderly to identify the self-care behaviors which they practice. The instrument, although in some demand, has not been tested for reliability and validity nor was it approved for information collection from the public under the requirements of the Paperwork Reduction Act (Pub. L. 96-511). Both the instrument and the Manual are available in one document from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; Telephone: (703) 487-4650; for $19.00 plus a $3.00 handling charge. The NTIS accession number is HRP-0907158.

FOR FURTHER INFORMATION CONTACT: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 5C-26, Rockville, Maryland 20857.

Dated: June 7, 1988.

David N. Sundwall,
Administrator, Assistant Surgeon General.
[FR Doc. 88-13318 Filed 6-13-88; 8:45 am]
BILLING CODE 4160-15-M

Advisory Council, Migrant Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1988:

Name: National Advisory Council on Migrant Health
Date and Time: August 23-26, 1988, 9:00 a.m.
Place: Sheraton Salisbury, 300 S. Salisbury Blvd., Salisbury, MD 21801.

The meeting is open to the public. No transportation to Migrant Health Clinic and Labor Camp will be provided for visitors and observers.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The members of the Council will consider the following:

(1) Migrant Health Program 3 Year Strategic Work Plan; (2) Needs Demand Assessment/State Profile; (3) Environmental Health Strategy and Objectives; (4) Nutrition Strategy in Migrant Health Centers Update; (5) Impact of Immigration Reform and Control Act/Migrant Health Program Activity; (6) Migrant Clinician Network—Status and Update; (7) National Migrant Referral Project Resource Center Status Report; (8) Recruitment and Retention of Physician Providers; (9) Site Visit to Migrant Health Clinic and Labor Camp.

Anyone requiring information regarding the subject Council should contact Mrs. Sonia M. Leon Reig, Executive Secretary, National Advisory Council on Migrant Health, Room 7A-30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1153.

Agenda Items are subject to change as priorities dictate.

Dated: June 9, 1988.
Jackie E. Baum,
Advisory Committee Management Officer, HRSA.
[FR Doc. 88-13386 Filed 6-13-88; 8:45 am]
BILLING CODE 4160-15-M

Public Health Service

Privacy Act of 1974; Deletion of System Notice 09-30-0050

AGENCY: Public Health Service, HHS.

ACTION: On Wednesday, April 27, 1988, in 53 FR 15141-15143, the Alcohol, Drug Abuse, and Mental Health Administration published a notification of a new Privacy Act system of records, 09-30-0050, "Clinical Research: Patient Medical Records, HHS/ADAMHA/NIMH." The agency received a comment on the second routine use in that system notification, which permitted social work staff to give pertinent information to community agencies to assist patients or their families. The commentor believed that such disclosures should not be made under a routine use, and that staff should obtain permission from the patient or guardian before releasing information. The agency agrees with that comment; permission will be

obtained. Therefore, routine use 2 is being deleted.

FOR FURTHER INFORMATION CONTACT: Betty J. Cook, ADAMHA Privacy Act Officer, 12–105 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: June 8, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

[FR Doc. 88–13319 Filed 6–13–88; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board Appointments

June 8, 1988.

AGENCY: Department of the Interior.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4313(c)(4)).

DATE: These appointments are effective June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street, NW., Washington, DC 20240, Telephone Number: 343–6761.

DEPARTMENT OF THE INTERIOR—PERFORMANCE REVIEW BOARD (PRB) MEMBERSHIP

Name	Organization
Career members	
1. Thomas Allen	LLM
2. Maurice Babby	BIA
3. Clifford Barrett	WBR
4. James Biesecker	WGS
5. Robert Boldt	LSM
6. J. Austin Burke	WBR
7. Galen Buterbaugh	FWS
8. Anthony Conte	SOL
9. Carson Culp	LLM
10. Edward Davis	FNP
11. Joseph Doddridge	FW
12. Hazel Elbert	BIA
13. Timothy S. Elliott	SOL
14. Robert Fagin	WBM
15. Manus Fish	FNP
16. Jay Gerst	FWS
17. Joseph Gorrell	PBA
18. Charles Hughes	SOL
19. G. Curtis Jones	LLM
20. Carolita Kallaur	LMS

DEPARTMENT OF THE INTERIOR—PERFORMANCE REVIEW BOARD (PRB) MEMBERSHIP—Continued

Name	Organization
21. William Kendig	PBA
22. William Klostermeyer	WBR
23. Charles Luscher	LLM
24. Darrell Mach	WBR
25. William Mann	WGS
26. Wayne Marchant	WS
27. Sam Marler	FWS
28. Carmen Mayml	O/S
29. Lorraine Mintzmeyer	FNP
30. Harold O'Connor	FWS
31. A. Thomas Ovenshine	WGS
32. James Parker	LLM
33. Robert Peterson	PBA
34. Steve Robinson	FWS
35. Roland Robison	LLM
36. Don Sant	LMS
37. Thomas Sheehan	IG
38. Charlotte Spann	O/S
39. Stanley Speaks	BIA
40. Robert Stanton	FNP
41. Jack Stassi	WGS
42. John Trezise	PBA
43. Jerry Vance	PBA
44. Lewis Wade	WBM
45. Richard Whitesell	BIA
46. Richard Witmer	WGS
Noncareer members	
47. Paul Baird	OHA
48. David Brown	WBM
49. James Cason	LMM
50. Carol Clancy	SOL
51. Patricia Clarey	O/S
52. David Crow	LMS
53. Patricia Keys	IA
54. Rebecca Mullin	LMM
55. Michael Poling	LMM
56. Susan Recce	FWP
57. Patricia Ryan	PBA
58. Howard Shafferman	SOL
59. Marty Smith	PBA
Presidential appointee	
60. Rick Ventura	PBA

Approved:

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

Date: June 8, 1988.

[FR Doc. 88–13351 Filed 6–13–88; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[CA-930-08-4333-02]

Closure Order Pacific Crest National Scenic Trail; California

AGENCY: Bureau of Land Management, California, Interior.

ACTION: Notice of closure of those portions the Pacific Crest National Scenic Trail, administered by the Bureau of Land Management, in California, to using or possessing a bicycle.

SUMMARY: Under the authority of 43 CFR 8364.1(a) "Closure and Restriction Orders" using or possessing a bicycle on the Pacific Crest National Scenic Trail (PCNST), in California, is prohibited. This order is consistent with the PCNST Advisory Board recommendations, agencies' endorsement and Forest Service Order No. 88–2 (Pacific Southwest Region, April 21, 1988). This action is taken since the trail was designated for foot and equestrian use.

SUPPLEMENTARY INFORMATION: Violation of this regulation, by a member of the public, is punishable by a fine not to exceed $1000, and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Paul G. Boos, Recreation Specialist, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825, (916) 978–4730.

Date: June 6, 1988.

Ed Hastey,

State Director, California.

[FR Doc. 88–13331 Filed 6–13–88; 8:45 am]

BILLING CODE 4310-40-M

[NV-030-08-4322-02]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Carson City District Grazing Advisory Board will meet at 10:00 a.m., on Thursday, July 21, 1988, at the Carson City District Office Conference Room, 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

The primary topics will be the FY 1989 Rangeland Improvement Projects, Allotment Management Plans, and status of the Land Use Plans.

The meeting is open to the public. Interested persons may make oral statements at 1:00 p.m. or file written statements for the Board's consideration.

FOR FURTHER INFORMATION CONTACT: Andy Anderson, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada, 89706, phone: (702) 882–1631.

Norman L. Murray,

Acting District Manager, Carson City District.

Dated this 27th day of May 1988.

[FR Doc. 88–13333 Filed 6–13–88; 8:45 am]

BILLING CODE 4310-HC-M

[OR-010-08-4410-12:GP8-149]

Lakeview District Grazing Advisory Board; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of two meetings of the Lakeview District Grazing Advisory Board.

SUMMARY: The Lakeview District Grazing Advisory Board will meet Friday, July 8, 1988 and on Thursday, August 4, 1988. Both meetings are open to the public and will begin at 2:00 p.m. in the Lakeview District Conference Room at 1000 South Ninth, Lakeview, Oregon.

The purpose of the meetings is to discuss information and answer questions relating to the Warner Lakes Plan Amendment for Wetlands and Associated Uplands. In addition, the new changes in the grazing regulations will be discussed at the meeting on July 8, 1988.

DATES: July 8, 1988, August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, Telephone (503)–947–2177.

Judy Nelson,

District Manager.

[FR Doc. 88–13332 Filed 6–13–88; 8:45 am]

BILLING CODE 4310-33-M

[CO-940-08-4111-15; COC 44173]

Proposed Reinstatement of Oil and Gas Lease; Colorado

Notice is hereby given that a petition for reinstatement of oil and gas lease COC 44173 for lands in Mesa County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from February 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

Mary Patricia Nagel,

Acting Chief, Mineral Leasing Section.

[FR Doc. 88–13330 Filed 6–13–88; 8:45 am]

BILLING CODE 4310-JB-M

[ID-060-08-4212-13; I-25151]

Coeur d'Alene District, ID; Exchange of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange of Public Lands in Shoshone, Kootenai and Benewah Counties, Idaho.

SUMMARY: This Notice is to advise the public that the Emerald Empire Resource Area, Coeur d'Alene District of the Bureau of Land Management and Idaho Forest Industries, Inc. are proposing a land exchange. The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 47 N., R. 2 W.,
Sec. 1, NW¼SW¼
Sec. 2, Lot 4, NE¼SW¼
T. 49 N., R. 5 W.,
Sec. 8, SE¼NE¼, N½SE¼
Sec. 10, W½NE¼

The area described above aggregates approximately 317.77(±) acres in Kootenai County, Idaho.

In exchange for these lands, the United States will acquire the following described lands from Idaho Forest Industries, Inc.:

Boise Meridian, Idaho

T. 47 N., R. 1 E.,
Sec. 15, W½SW¼
Sec. 21, NE¼NE¼
Sec. 22, NW¼NW¼
Sec. 26, NW¼, W½SW¼, SE¼SW¼
Sec. 27, E½NE¼, SW¼NE¼, SE¼
Sec. 35, NE¼NW¼
T. 47 N., R. 2 E.,
Sec. 5, Lot 1, SE¼NE¼
Sec. 7, Lot 3, SW¼NE¼, NE¼SW¼, NW¼SE¼
Sec. 16, Lot 4, SE¼SW¼, S½SE¼
T. 48 N., R. 2 E.,
Sec. 32, E½SE¼
Sec. 33, SW¼SW¼

The area described above aggregates approximately 1,275.64(±) acres in Benewah, Kootenai and Shoshone Counties, Idaho.

The purpose of the land exchange is to facilitate more efficient management of the public lands through consolidation of ownership and to benefit the public interest by obtaining important resource values. The public lands to be exchanged are isolated parcels. The private lands being offered have very important values for timber, watershed and wildlife habitat that merit acquisition and public ownership. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making this exchange. Final determination on disposal will await completion of an environmental analysis.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to equalize the value upon completion of the final appraisal of the lands.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

John B. O'Brien III,

Acting District Manager.

Date of issue: June 6, 1988.

[FR Doc. 88–13335 Filed 6–13–88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-050-08-4212-14; IDI-25667]

Realty Action, Direct Sale of Public Land; Minidoka County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; IDI-25667 Direct Sale of Public Land in Minidoka County, Idaho.

SUMMARY: The following described land has been examined, and through development of land use planning decisions based upon public input has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. The lands when sold will be sold for not less than the appraised fair market value.

T. 6S., R. 24E., Boise Meridian, Minidoka County, Idaho,
Sec. 32, NE¼NE¼.
Containing 40 acres.

The land is being offered by direct sale to Steven D. Young based on his historic use, ownership of all adjacent land, and value of added improvements. Failure of the designated bidder to submit a sale deposit will result in cancellation of the direct sale and the lands will be withdrawn from sale. It has been determined that the subject parcel contains no mineral value except for oil and gas resources; therefore, mineral interests may be conveyed simultaneously except as noted below.

When patented the land shall be subject to the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil & Gas resources shall be reserved to the United States, as required by section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record, at the time of sale.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1-2(d).

DATE AND ADDRESS: The sale offering will be held on August 20, 1988 at 10:00 a.m. in the Shoshone District Office, 400 West F. Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale can be obtained by contacting Mike Austin at (208) 886-2206 or writing to BLM, P.O. Box 2B, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice in the **Federal Register**, interested parties may submit written comments to the Shoshone District Manager at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Date: June 2, 1988.

K. Lynn Bennett,
District Manager.

[FR Doc. 88-13334 Filed 6-13-88; 8:45 am]
BILLING CODE 4310-GG-M

Minerals Management Service

Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5695, Block 113, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 17, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 2, 1988.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13328 Filed 6-13-88; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; Pelto Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pelto Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5717, Block 209, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 1, 1988. Comments must be received by June 29, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 2, 1988.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13327 Filed 6-13-88; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 0353, 0693, and 0694, Blocks 26, 27, 28, respectively, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 1, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 2, 1988.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13328 Filed 6-13-88; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 4, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 29, 1988.

Carol D. Shull,
Chief of Registration, National Register.

ALABAMA

Baldwin County

Fairhope, *Bank of Fairhope (Fairhope MRA)*, 396 Fairhope Ave.
Fairhope, *Beckner House (Fairhope MRA)*, 63 S. Church St.
Fairhope, *Bloxham, Carl L., Building (Fairhope MRA)*, 327 Fairhope Ave.
Fairhope, *Fairhope Bayfront District (Fairhope MRA)*, Roughly bounded by Blakeney, N. and S. Summit Sts., Fels Ave. and Mobile Bay
Fairhope, *Gaston Building (Fairhope MRA)*, 336 Fairhope Ave.
Fairhope, *Golf, Gun & Country Club (Fairhope MRA)*, 651 Johnson Ave.
Fairhope, *School of Organic Education (Fairhope MRA)*, Bounded by Fairhope and Morphy Aves. and Bancroft and School Sts.
Fairhope, *US Post Office (Fairhope MRA)*, 325 Fairhope Ave.
Fairhope, *White Avenue Historic District (Fairhope MRA)*, White Ave.
Fairhope, *Zurhorst House (Fairhope MRA)*, 200 Fels Ave.

Jefferson County

Birmingham, *Woodlawn City Hall*, 5525 First Ave., N

CALIFORNIA

Alameda County

Oakland, *California Hotel*, 3443—3501 San Pablo Ave.

Los Angeles County

Redondo Beach, *Redondo Beach Original Townsite Historic District*, N. Gertruda Ave., Carnelian St., N. Gudalupe Ave. and Diamond St.

Orange County

Laguna Beach, *St. Francis by-the-Sea American Catholic Church*, 430 Park Ave.

FLORIDA

Volusia County

Daytona Beach, *US Post Office*, 220 N. Beach St.

GEORGIA

Glynn County

St. Simons Island, *Hamilton Plantation Slave Cabins*, Arthur J. Moore Dr.

GUAM

Guam County

Naval Station, *Tokai Maru*, Apra Harbor

LOUISIANA

DeSoto Parish

Keachi, *Keachi Presbyterian Church*, LA 5

East Feliciana Parish

Jackson, *Wildwood Plantation House*, LA 68, near US 61

MARYLAND

Prince George's County

Brandywine, *Early, William W., House*, 13907 Cherry Tree Crossing Rd.

MASSACHUSETTS

Essex County

Haverhill, *Intervale Factory*, 402 River St.

Middlesex County

Lincoln, *Woods End Road Historic District*, 68 Baker Bridge Rd., 1, 5, 9, and 10 Woods End Rd.
Lowell, *Merrimack—Middle Streets Historic District (Boundary Increase)*, Merrimack, Middle, Prescott, Central and Market Sts.

Norfolk County

Quincy, *Massachusetts Fields School*, Rawson Rd. and Beach St.

Suffolk County

Boston, *Eliot Hall*, 7A Eliot St.
Boston, *First Church of Jamaica Plain*, 6 Eliot St.
Boston, *Greek Orthodox Cathedral of New England*, 520 Parker St.

MINNESOTA

St. Louis County

Archeological Site 21SL55

MISSISSIPPI

Copiah County

Copiah County, Hazlehurst vicinity, *Welch, Jenkins H., House*, ½ mile N of MS 28 on Dentville Rd.

Hinds County

Jackson, *Mississippi Federation of Women's Clubs*, 3627 N. State St.

Lauderdale County

Meridian, *Merrehope Historic District (Meridian MRA)*, Roughly bounded by Thirty-third Ave., Thirtieth Ave., Fourteenth St., Twenty-fifth Ave. and Eighth St.

NEW JERSEY

Gloucester County

Woodbury, *Bethel AME Church and School (Woodbury MRA)*, 53 Carpenter St.
Woodbury, *Broad Street Historic District (Woodbury MRA)*, Along Broad St. between Woodbury Creek and Courtland St.
Woodbury, *Chew House (Woodbury MRA)*, 436 E. Barber Ave.
Woodbury, *Delaware Street Historic District (Woodbury MRA)*, Along Delaware St. between N. American and Wood Sts.
Woodbury, *Glover Historic District (Woodbury MRA)*, Glover and High Sts.
Woodbury, *Green Era District (Woodbury MRA)*, Cooper St., Woodland, Evergreen and Bayard Aves., Spruce St. and Rugby Pl.
Woodbury, *Newton Historic District (Woodbury MRA)*, Hunter, Euclid, Laurel, Maple, Cooper, Curtis, and Centre Sts., Aberdeen and Holroyd Pl.
Woodbury, *Thompson House (Woodbury MRA)*, 103 Penn St.
Woodbury, *West End School (Woodbury MRA)*, Logan St.

NORTH DAKOTA

Bottineau County

Antler, *State Bank of Antler*, Antler Sq.

Cass County

Fargo, *Barrington Apartments*, 210 Twelfth St., S

Grand Forks County

Grand Forks, *St. Michael's Church*, 520 N. Sixth St.

Ramsey County

Devils Lake, *Newport Apartments*, 601 Seventh St.

Stutsman County

Jamestown, *Jamestown Historic District (Jamestown MPS)*, Roughly bounded by First St., Fourth Ave., SE, Fifth St., and Second Ave.

OHIO

Tuscarawas County

Dover, *Deis, John, House*, 203 W. Sixth St.

PUERTO RICO

Arecibo County

Arecibo, *Casa de la Diosa Mita*, 251 Fernandez Juncos St.
Arecibo, *Palacio del Marques de las Claras*, Calle Gonzalo Marin #58

Ceamo County

Ceamo, *Pomar, Pico, Residence*, Corner of Mario Braschi and Jose Quinton St.

Mayaguez County

Mayaguez, *Fuentes, Ramirez, Residencia*, Calle Mendez Vigo #117
Mayaguez, *Residencia Heygler*, Calle Liceo #51

Quebradillas County

Quebradillas, *Teatro Liberty*, Calle Rafols #157

SOUTH CAROLINA

Beaufort County

Fish Haul Archaeological Site (38BU805)

TEXAS

Denton County

Copper Canyon vicinity, *Old Alton Bridge*, Copper Canyon Rd.

[FR Doc. 88-13382 Filed 6-13-88; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-289 (Final)]

Certain Granite From Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-289 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain or certain granite,[1] provided for in item 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determination, to be subsidized by the Government of Spain. Commerce will make its final subsidy determination within forty-five days after notification of Commerce's final determination (see section 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1809.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Spain of certain granite. The investigation was requested in a petition filed on July 28, 1987 by the Ad Hoc Granite Committee. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 35771, September 23, 1987).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and address of all persons, or their representatives, who

[1] For purposes of this investigation, "certain granite" is ¾ inch (1 cm) to 2½ inches (6.34 cm) in thickness and includes the following: Rough sawed granite slabs, face-finished granite slabs, and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. "Certain granite" does not include monumental stones, crushed granite, or curbing. The articles covered by this investigation are provided for in subheadings 2516.11.00, 2516.12.00, 6801.00.00, 6802.23.00, and 6802.93.00 in the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing, Staff Report, and Written Submissions

The Commission will hold a hearing in connection with this investigation at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC; the time and date of the hearing will be announced at a later date. A public version of the prehearing staff report in this investigation will be placed in the record prior to the hearing, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21) The dates for filing prehearing and posthearing briefs and the date for filing other written submissions will also be announced at a later date.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: June 9, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-13383 Filed 6-13-88; 8:45 am]
BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-409-410 (Preliminary)]

Certain Light-Walled Rectangular Pipes and Tubes From Argentina and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-409-410 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina and Taiwan of light-walled rectangulare pipes and tubes,[1] provided for in item 610.49 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 21, 1988.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR, Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Dan Leahy (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 6, 1988, by the mechanical tubing subcommittee of the Committee on Pipe and Tube Imports and by the individual manufacturers of the product that are members of the subcommittee.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on June 29, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Dan Leahy (202-252-1182) not later than June 27, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before July 1, 1988, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The evelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

[1] For purposes of these investigations, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch. Light-walled rectangular pipes and tubes are currently reported for statistical purposes under item 610.4925 of the *Tariff Schedules of the United States Annotated* and are classifiable under subheading 7306.60.50 of the proposed Harmonized Tariff Schedule of the United States.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: June 9, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-13384 Filed 6-13-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-78 (Sub-No. 1X)]

Fonda, Johnstown and Gloversville Railroad Co.—Abandonment Exemption; Fulton and Montgomery Counties, NY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between Fonda and Broadalbin, NY, in Montgomery and Fulton Counties, NY. The line extends from a point beginning at the mainline of Consolidated Rail Corporation in the Village of Fonda at Station 0+00 to a point known as Broadalbin Junction (Patch Road), and then to the Village of Broadalbin at Station 323+95.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has indicated it recognizes that this abandonment exemption will be made subject to the conditions for the protection of employees set forth at *Oregon Short Line R. Co.—Abandonment—Goshen (OSL)*, 360 I.C.C. 91 (1979). The *OSL* conditions will be imposed here in view of applicant's stated position.[1]

Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective July 14, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [2] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [3] must be filed by June 24, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 4, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: William P. Quinn, Esq., Rubin, Quinn & Moss, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by June 20, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316).

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 10, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-13439 Filed 6-13-88; 8:45 am]

BILLING CODE 7035-01-M

[1] It is noted that applicant has stated that the proposed abandonment is for its entire line. Where a carrier's entire system is to be abandoned, the Commission generally does not impose employee protective conditions. *See Modern Handcraft, Inc.—Abandonment* 363 I.C.C. 969, 973 (1981); and *Wellsville, Addison & Galeton R. Corp.—Abandonment*, 354 I.C.C. 744, 745-746 (1978). The Commission has, however, recognized certain exceptions to this policy of not imposing employee protective conditions on entire system abandonments. *See Northhampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784 (1978).

Applicant's statement regarding the imposition of labor protection may have been made without an understanding of this Commission policy. Accordingly, it may file a petition seeking removal of the *OSL* conditions imposed here. The petition should demonstrate the applicability of the general policy to the subject abandonment.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[3] *See Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164, served December 23, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Sheffield Steel Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Sheffield Steel Corp.*, Civil Action No. 88-C 508E, was lodged with the United States District Court for the Northern District of Oklahoma on June 2, 1988.

The proposed consent decree concerns alleged violations of the Oklahoma State Implementation Plan ("SIP") approved pursuant to the Clean Air Act, 42 U.S.C. 7401, *et seq.*, in connection with Sheffield's secondary steel production facility in Sand Springs, Oklahoma. The proposed decree requires Sheffield to comply with Regulation 3.1 of the SIP by October 15, 1988. The proposed decree also requires payment of a $85,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Sheffield Steel Corp.*, D.J. Ref. No. 90-5-2-1-1134.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Oklahoma, 3600 U.S. Courthouse, 333 W. Fourth St., Tulsa, Okla. 74103; at the Region VI office of the Environmental Protection Agency, First Interstate Bank Tower at Fountain Place, 1445 Rosess Ave., Dallas, Texas 75202; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth St. and Pennsylvania Ave., NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13316 Filed 6-13-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act; City of Wixom, and County of Oakland, MI

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 2, 1988 a proposed Consent Decree in *United States and State of Michigan v. City of Wixom, Michigan and County of Oakland, Michigan*, Civil Action NO. 85-CV-72085-DT, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns discharge of pollutants from defendants' wastewater treatment works to Norton Creek. The proposed Consent Decree requires that defendants undertake extensive construction at their treatment works, which will allow that facility to meet the final water quality limits contained in defendants' National Pollution Discharge Elimination System ("NPDES") Permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Michigan v. City of Wixom, Michigan and County of Oakland, Michigan*, D.J. Ref. 90-5-1-1-2799.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, 231 West Lafayette, 8th Floor, Detroit, Michigan 48226, at the Region V Office of the United States Environmental Protection Agency, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13317 Filed 6-13-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-20,449]

JPI Transportation Products, Inc., Engine Products Group, Cleveland, Ohio; Negative Determination Regarding Application for Reconsideration

By an application dated May 11, 1988 a company official requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by Local #5 of the Mechanics Educational Society of America on behalf of workers at JPI Transportation Products, Inc., Cleveland, Ohio. The denial notice was signed on April 8, 1988 and published in the **Federal Register** on April 19, 1988 (53 FR 12832).

Pursuant to 29 CFR 90.16(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that production at the Cleveland plant was integrated into the production of two other JPI plants in Ohio whose workers are currently certified for trade adjustment assistance, TA-W-19,889 and TA-W-19,890.

The integration of production issue was addressed earlier by the Department in its notice of negative determination. Although workers at the Bridgeport (TA-W-19,889) and Bellaire (TA-W-19,890) were certified for adjustment assistance, both plants closed in April, 1987. Production at the Cleveland plant was only insignificantly integrated with Bridgeport and Bellaire in the period applicable to the petition. Virtually all of Cleveland's production in 1987 was integrated with JPI's plants in Atlantic, Iowa and McConnelsville, Ohio. Further, the Cleveland plant had increased production in 1987 compared to 1986 and the Engine Products Group of JPI Transportation had increased sales in 1987 compared to 1986.

Layoffs occurring in 1988 and the plant closure scheduled for 1989 are due to a company-wide overcapacity problem. JPI purchased some competing firms in 1986 and 1987 and is currently consolidating its operations to reduce the overcapacity and duplication problems.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of June, 1988.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 88-13407 Filed 6-13-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Skan-A-Matic Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 30, 1988-June 3, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be made.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,579; Skan-A-Matic Corp., Elbridge, NY

TA–W–20,581; Theurer, Inc. Newark, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,601; Trumph-Adler Royal, Inc., Manchester, CT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,647; Mattel, Inc., Mattel Toys-East Coast Distribution Center, Edison, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,591; Deminex U.S. Oil Co. (Dusoco), Dallas, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,612; Horizon Transportation Service, Battle Creek, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,598; Lee-Man Mining Co., Mine #1. Big Stone Gap, VA

U.S. imports of coal are negligible.

TA–W–20,600; Lee-Man Mining Co., Mine #2, Big Stone Gap, VA

U.S. imports of coal are negligible.

TA–W–20,603; W.R. Grace & Co., Davison Chemical Div., Cincinnati, OH

The investigation revealed that criterion (1) and (2) have not been met. Employment did not decline during the relevant period as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–20,597; ITW Cortion, Elmhurst, IL

A certification was issued covering all workers separated on or after March 29, 1987.

TA–W–20,580; Tektronix, Inc., Wilsonville, OR

A certification was issued covering all workers of the Information Display Group of Tektronix, Inc., Wilsonville, OR, the Graphic Terminans Div., Human Resources & Administration Information Systems Leasing and Reconditioned Products and Group Marketing on or after March 16, 1987.

TA–W–20,585; Bourns, Inc., Ames, IA

A certification was issued covering all workers separated on or after March 22, 1987.

I hereby certify that the aforementioned determinations were issued during the period May 30, 1988–June 3, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated June 7, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–13406 Filed 6–13–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–96–C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Orient No. 6 Mine (I.D. No. 11–00599) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that at least one entry of each intake and return aircourse be examined in its entirety on a weekly basis.

2. As an alternate method, petitioner proposes to establish evaluation stations in the Numbers 1, 2, 3, and 4 return entries of the main north.

3. In support of this request, petitioner states that—

(a) A weekly examination including quantity of air and tests for methane would be conducted in the main north return entries as the air approaches the fall area at the 7,900 foot station and as the air passes from the area at the 7,000 foot station;

(b) The person making the examinations and tests would place their initials and the date and time at the places examined. Any reduction in the amount of air flow or increase in methane content would be reported to the operator promptly for correction;

(c) At least one entry in the rest of the return aircourse would be examined in its entirety;

(d) The first main north entries at this location contain four return entries on the west side followed by five intake entries, two isolated entries and three return entries on the east side of the mains;

(e) The intake entries Numbers 5, 6, 7, 8, and 9 and east return entries Numbers 12, 13, and 14 contain escapeways leading to the Number 1 portal escape shafts on the west side of the mine;

(f) Petitioner also has an intake and return air shaft on the east side of the mine. Intake and return escapeways are also routed as an alternate escapeway to this side of the mine; and

(g) Ventilation capacity in this area is adequate at this time. If a deterioration is detected, corrections would be made to ensure adequate capacity.

4. Petitioner further states that cleaning up roof falls and resupporting deteriorated roof in this area would pose a hazardous task.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 14, 1988. Copies of the petition are available for inspection at that address.

Date: June 7, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–13410 Filed 6–13–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–94–C]

Utah Power & Light Co., Mining Division; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, Mining Division, P.O. Box 310, Hungtington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses and seals be examined in their entirety on a weekly basis.

2. Petitioner states that due to a large bounce the seal, connecting the 7th Right entries at crosscut 36 to the 8th Right entries at crosscut 36, is impossible. To attempt to rehabilitate the area would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to sample air quality and direction at No. 7 crosscut of 8th Right on a weekly basis. In support of this request, petitioner states that—

(a) Any air coming off the seal would be monitored at this location;

(b) The air passing the seal would be coursed over the monitoring station and then to the main return where it would be directed from the mine;

(c) The mine liberates little or no methane and the ventilation is still following its normal and intended course;

(d) The number of persons required to be in the proposed monitoring area would be minimal; and

(e) This area would also be continuously monitored for methane by an approved mine monitoring system that would provide early warning of any hazardous conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 14, 1988. Copies of the petition are available for inspection at that address.

Date: June 6, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–13411 Filed 6–13–88; 8:45 am]

BILLING CODE 4510–43–M

Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veteran's Employment was established under § 308, Title III, Pub. L. 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Thursday, July 7, 1988, at 2:00 p.m., in the Secretary's Conference Room, S–2508, FPB.

The items on the agenda are:

—Presentation of work group findings of the public forum entitled "Workforce 2000 and America's Veterans" held April 19–21, 1988, and

—Implementation of Pub. L. 100–323, "Veterans' Employment, Training, and Counseling Amendments of 1987".

The public is invited.

Signed at Washington, DC, this 8th day of June, 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88–13409 Filed 6–13–88; 8:45 am]

BILLING CODE 4510–79–M

Wage and Hour Division

Child Labor Advisory Committee, Subcommittee Meeting on Hazardous, Occupations Order No. 2

The Child Labor Advisory Subcommittee members, who will consider topics concerning Hazardous Occupations Order No. 2, will convene at the Department of Labor, Frances Perkins Building, Room N3437A, 200 Constitution Avenue NW., Washington, DC, from 9:00 a.m.–5:00 p.m., on July 6, 1988. The discussion will focus on whether a recommendation is necessary with respect to the scope of this Order, whether definitions under this Order and the exemption from the Order for incidental and occasional driving need to be refined, and whether a change should be made in the gross vehicle weight of types of vehicles permitted under the exemption for incidental and occassional driving.

Members of the public are invited to attend the meeting. Individuals wishing to submit written data, reviews, or arguments pertaining to the business before the Subcommittee should submit them to the Child Labor Advisory Coordinator prior to the meeting date. Twenty-six copies are needed for distribution to the members and for inclusion in the Subcommittee report.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila J. Stovall, Coordinator for the Child Labor Advisory Committee, (202) 523–7640.

Signed at Washington, DC, this 8th day of June 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88–13406 Filed 6–13–88; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration; Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 29, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and

cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. American Institute in Taiwan (N1–84–86–3). Office Administrative Files relating to housekeeping matters (policy files are permanent).

2. Department of Justice, Foreign Claims Settlement Commission (N1–299–88–1). Case files relating to the East German Claims Program and reference files relating to War Claims Commission programs.

3. Department of Labor, Bureau of Labor Statistics, Office of Productivity and Technology and Office of Economic Growth and Employment Projections (N1–257–86–3). Comprehensive records schedule.

4. Selective Service System (N1–147–86–1). Applications for determination of residence submitted by alien residents in the U.S. during World War II.

Dated: June 8, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–13404 Filed 6–13–88; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL ECONOMIC COMMISSION

Federal Budget Deficit Reduction

AGENCY: National Economic Commission.

ACTION: Request for written comment.

SUMMARY: The National Economic Commission ("the commission") requests the submission of written comments from interested persons or organizations with respect to its mandate of making specific recommendations to reduce the Federal budget deficit and to promote economic growth. These comments, prepared in conformity with the guidelines set out below, should be submitted to the commission by August 3, 1988.

Background Information

The commission was established by Pub. L. 100–203, December 22, 1987, and has been directed to make specific recommendations regarding:

(1) Methods to reduce the Federal budget deficit while promoting economic growth and encouraging saving and capital formation, and

(2) A means of ensuring that the burden of achieving the Federal Budget deficit reduction goals of the United States does not undermine economic growth and is equitably distributed and not borne disproportionately by any one economic group, social group, region or State.

The Commission shall submit to the President and Congress on March 1, 1989, a final report which shall contain a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative and legislative action that the Commission considers advisable. On February 1, 1989, the President may issue an order extending the date for submission of the final report to September 1, 1989. The Commission plans to make public a summary of its final recommendations on December 21, 1988.

Written Submissions

Interested persons are invited to provide comments in writing to the Commission. Written comments should conform with the Commission's mandate, i.e. equitable budget deficit reduction in the context of economic growth. Discussion of current or future government expenditures or programs should be cast in that context.

Comments should be sent to the National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503, by August 3, 1988.

The following guidelines should be followed for written comments that will be considered by the Commission:

—All written comments and any accompanying exhibits must be typed in double-space and may not exceed a total of ten (10) letter-size pages.

—Two copies of all written comments should be provided.

—Comments must contain the name and capacity of the person submitting the comments, as well as any clients or persons, or any organization for whom the comments are submitted.

—A supplemental sheet must accompany each submission listing the name, full address and telephone number of the person making the submission as well as a summary of the written comments that may not exceed one (1) typewritten, letter-size page.

FOR FURTHER INFORMATION CONTACT: Alexander Platt, 734 Jackson Place, NW., Washington, DC 20503, 789–1993.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88–13364 Filed 6–13–88; 8:45 am]

BILLING CODE 6820–45–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment For The Arts; Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Dance Organizational Development Pilot Section) to the National Council on the Arts will be held on June 28, 1988, from 9:00 a.m.–4:00 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 28, 1988, from 3:00 p.m.–4:00 p.m., for a guidelines and policy issues discussion.

The remaining sessions of this meeting on June 28, 1988, from 9:00 a.m.–3:00 p.m.) are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to sections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies,

National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–13321 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on the Arts; Media Program Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Program Advisory Panel (Radio/Programming in the Arts Section) to the National Council on the Arts will be held on June 28, 1988, from 9:00 a.m.–6:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to sections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha J. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts

[FR Doc. 88–13323 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 29–30, 1988, from 9:00 a.m.–5:30 p.m., in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 29, 1988, from 9:00 a.m.–4:30 p.m., and on June 30, 1988, from 9:00 a.m.–5:30 p.m., for a guidelines and policy issues discussion.

The remaining session of this meeting on June 29, 1988, from 4:30 p.m.–5:30 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to sections (c) (4), (6) and (9) (b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

June 7, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–13324 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on the Arts; President's Committee on the Arts and the Humanities; Meeting

The President's Committee on the Arts and the Humanities, Plenary Meeting XVIII, will take place on Tuesday, June 28, 1988, from 9:00 a.m. to 12:00 p.m. This meeting has been scheduled in the Trustees Room, The Museum of Modern Art, 11 West 53rd Street, New York City, New York.

This is a regularly scheduled meeting at which committee activities will be reviewed. Roger Stevens will report on the *Fund for New American Plays*, and Bill Blass and Alexander Julian will report on *500 Years of American Clothing*. In addition, panelists and participants have been invited to examine the potential for modern technologies to benefit the arts. Videocassettes and videodiscs have many applications, among them are enlarging arts audiences, improving the quality of cultural programming, bringing cultural activities to rural audiences, promoting international understanding, providing a teaching tool, and preserving art forms.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds to augment its operational costs and support projects and programs which have been initiated by the President's Committee.

Further information about this meeting can be obtained from Sean Orcutt, Staff Assistant, President's Committee on the Arts and the Humanities, Washington, DC 20506; telephone (202) 682–5409.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–13322 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on the Arts; State of the Arts Review Committee; Meeting

Notice is hereby given that an ad hoc State of the Arts Review Committee will meet on June 30, 1988, from 9:00 a.m.–5:30 p.m., in Room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be a Draft Report on the State of the Arts in the United States to be submitted to Congress by October 1, 1988 by the National Endowment for the Arts.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

June 7, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–13325 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

1989 Presidential Young Investigator Awards

The National Science Foundation (NSF) announces the competition for Presidential Young Investigator (PYI) Awards to be made in March, 1989.

The awards are established to achieve the following objectives:

- To attract and retain the Nation's most outstanding and promising young scientists and engineers to an academic career of research and teaching.
- To provide cooperative research support for the most outstanding and promising young science and engineering faculty.
- To improve the capability of U.S. universities to respond to the demand for highly qualified scientific and engineering personnel for academic and industrial research.
- To develop improved links and cooperation between industry and universities.

A maximum of 200 new Presidential Young Investigator Awards will be made in this competition. Awards will be made for up to five years based on the annual determination of satisfactory performance and subject to the availability of funds.

Eligibility

Any U.S. institution that awards a baccalaureate, master's or doctoral degree in a field supported by the Foundation is eligible to participate in this program. The eligible institution, through its departmental chairperson or analogous administrative official, may nominate both current and prospective members of its faculty who, in the judgement of the nominator, are the most outstanding faculty members in research and teaching at the institution.

Nominees must be U.S. citizens or permanent residents as of October 1, 1988. To be eligible, nominees must have begun their first post-Ph.D. tenure-track or tenured faculty position after April 30, 1985. Those who have been offered such positions must hold a Ph.D. degree and begin their appointment on or before October 1, 1989 to receive the award.

Since PYI awards must be used to fund research activities, which normally will involve undergraduate and graduate students from the nominating institution, PYI nominees must have a clearly demonstrated ability to conduct a research program. Awardees may conduct research in any branch of science or engineering normally supported by the NSF. Particular emphasis in the selection of awardees will be given to those fields where there are substantial needs for faculty development.

NSF normally will not support clinical research such as biomedical research with disease-related goals, including work on the etiology, diagnosis, or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals. Animal models of such conditions, or the development or testing of drugs or other procedures for their treatment also generally are not eligible for support. NSF does not normally support pilot plant efforts, research requiring security classification, the development of products for commercial marketing, or market research for a particular product or invention.

The PYI awards are intended to encourage the development of our future academic leaders, both in teaching and research. Presidential Young Investigators are expected to carry a normal teaching load relative to non-PYI faculty at the nominating institution.

The PYI awards are tenable only in tenure-track or tenured positions at eligible institutions. Presidential Young Investigators who transfer to an ineligible institution at any time prior to or during the period of their grants must resign their awards.

Support and Commitments

Minimum Presidential Young Investigator Awards will consist of a base grant of $25,000 of Federal funds per year, to be used to support the research activities of the awardees. Furthermore, in accordance with the program goals of leveraging Federal funds and fostering industry-university cooperation, the Foundation will provide up to $37,500 of additional funds per year on a dollar-for-dollar matching basis to contributions from industrial sources, resulting in total annual support of up to $100,000. Guidelines for PYI matching funds can be obtained from the NSF by sending a mailing label to the Presidential Young Investigator Awards program.

Institutions are also expected to make a significant commitment to the support of their awardees, including arranging for the industrial support and guaranteeing full academic-year salary for the awardee. None of the Presidential Young Investigator funds, whether provided by the Foundation or by industry, may be used to underwrite academic-year salaries of the awardees. However, up to ten percent of the Foundation funds may be used to defray administrative expenses in lieu of indirect costs.

Application Procedures

Nominations must originate from the departmental chairperson or analogous administrative officer of the sponsoring institution.

Each nomination submission must include:

1. The Nomination Form
2. A complete, up-to-date curriculum vitae
3. Recommendations from three referees *not* from the nominating institution
4. Supplementary Nominee Information.

Evaluation and Selection

Selection will be based on an evaluation of the nominee's ability and potential as a researcher and teacher for contributing to the future vitality of the Nation's scientific and engineering effort as evidenced by accomplishments in original research and in the training of future scientists and engineers. Consideration will be given to the following factors:

- Recommendations for referees;
- Quality of the nominee's research plan;
- Probable impact of the award on the future career development of the nominee;
- Probable impact of the award on the capability of the institution in its research and education mission;
- Suitability of the sponsoring institution for the implementation of the nominee's plans for his or her academic career;
- Significance of the research likely to emerge; and
- Potential impact of the award on the research field in question.

The selection of individuals to receive Presidential Young Investigator Awards will be made by the National Science Foundation with the advice of panels of outstanding scientists and engineers.

After an awardee has been selected, the employing institution will be asked to prepare a first-year budget request in support of the awardee's research activities. The budget should show both the amont requested from the Foundation and the sources and amounts of industrial support. This information will be used in determining the amount of the award and other terms and conditions. Except as otherwise provided in this announcement, the terms and conditions, as well as the expected institution commitment, will be analogous to those stated in the publication, NSF 83-57 (Rev. 1/87)—Grants for Research and Education in Science and Engineering. Similar submissions will be required annually for each successive year of support under this program.

The FY 1989 PYI awardees will be expected to begin their research activities under this program by October 1, 1989.

Inquiries

Inquiries regarding the awards may be addressed to the Presidential Young Investigator Awards, National Science Foundation, Washington, DC 20550, or telephone inquiries to (202) 357-9466.

Chor Weng Tan,

Program Director, Presidential Young Investigator Awards.

June 13, 1988.

[FR Doc. 88-13377 Filed 6-13-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-267]

Public Service Company of Colorado; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-34 issued to Public Service Company of Colorado, (the licensee), for operation of the Fort St. Vrain Nuclear Generating Station, located at Weld County, Colorado.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise certain setpoints for the Plant Protective System to allow for instrumentation errors.

The proposed action is in accordance with the licensee's application for amendment dated February 8, 1988.

The Need for Proposed Action

The proposed Technical Specification (TS) change is required in order to allow the licensee to revise certain setpoints in the Plant Protective System to allow for instrumentation errors.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed revisions would allow the licensee to revise certain setpoints in the Plant Protective System. These changes would be in accordance with standards of the Instrument Society of America. The staff has reviewed the appropriate licensee safety evaluations. The staff concluded that the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 5, 1988 (53 FR 16481). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Fort St. Vrain Nuclear Generating Station, dated August 7, 1972.

Agencies and Persons Consulted

The NRC staff and it's contractor, the Idaho National Engineering Laboratory, reviewed the licensee's proposed amendment request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 8, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Greely Public Library, City Complex Building, Greely Colorado.

Dated at Rockville, Maryland this 3rd day of June, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-13368 Filed 6-13-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting Agenda; Revision 1

The Advisory Committee on Nuclear Waste will hold a meeting on June 27-29, 1988. The sessions on June 27-28, 1988 will be held in Room 1046, 1717 H Street NW., Washington, DC. The sessions on June 29, 1988 will be held in Room 2F-17, One White Flint North Building, 11555 Rockville Pike, Rockville, MD.

Monday, June 27, 1988

Room 1046, 1717 H Street NW., Washington, DC.

10:00 a.m.-10:15 a.m.: Comments by ACNW Chairman (Open)—The ACNW Chairman will report briefly regarding items of current interest.

10:15 a.m.-12:00 noon: Design Basis Accident Limits for the HLW Repository (Open)—The DOE Staff will discuss their proposed request for a rulemaking defining the design basis accident limit for the HLW repository.

1:00 p.m.-5:00 p.m.: Licensing of LLW Treatment Processes and the Dry Storage and Consolidation of Spent Fuel (Open)—The NRR Staff will report on the licensing of waste management activities at reactor sites with emphasis on the consolidation of spent fuel, LLW Treatment processes, and dry storage.

Tuesday, June 28, 1988

Room 1046, 1717 H Street, NW., Washington, DC.

8:00 a.m.-10:00 a.m.: LLW Form and Polyethylene High-Integrity Containers (HICs) (Open)—The Division of Low-Level Waste and Decommissioning will report on recent staff and contractor actions concerning LLW solidified by

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cement, and studies regarding the serviceability of polyethylene HICs. The Division of Regulatory Research will report on the proposed final Rule for the revision to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste".

10:15 a.m.–12:00 noon: Consultation Draft Site Characterization Plan (Open)—The DOE Staff will review the content of the CDSCP and describe their plans to address the NRC Staff's comments on it.

1:00 p.m.–5:00 p.m.: Alternative Site Models of the Yucca Mountain Site (Open)—The DOE Staff and contractors will report on alternative models of the hydrologic structure of the Yucca Mountain site.

Wednesday, June 29, 1988

Room 2F–17, 11555 Rockville Pike, Rockville, MD.

8:30 a.m.–10:00 a.m.: ACNW Future Activities and Preparation of ACNW Reports (Open)—The ACNW will meet and continue to discuss anticipated ACNW activities, future meeting agendas, program plans, and organizational matters.

10:00 a.m.–11:30 a.m.: Meeting with the NRC Commissioners (Open)—The ACNW will meet with the NRC Commissioners to discuss ACNW future activities.

1:00 p.m.–2:00 p.m.: NRC's Review of DOE's Consultation Draft Site Characterization Plan (Open)—The NRC Staff will discuss their response to the May 11, 1988 memo from R. Fraley to V. Stello on the NRC Staff's review of DOE's Consultation Draft Site Characterization Plan (CDSCP).

2:00 p.m.–2:30 p.m.: New Members (Closed)—The ACNW will discuss appointments of proposed members and the qualifications of individuals to be considered for nomination.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) or involve internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)).

Procedures for the conduct of and participation in ACNW meetings are similar to those used by ACRS and published in the Federal Register on October 2, 1987 (51 FR 32241). The procedures which will be used are as follows:

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste (ACNW) are published in this notice. These procedures are set forth and may be incorporated by reference in future individual meeting notices. The Advisory Committee on Nuclear Waste has been established pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, 86 Stat. 770–776). The Commission has determined that the establishment of this Committee is necessary and in the public interest in order to obtain input, advice and recommendations on all aspects of the management of radioactive wastes within the purview of NRC regulatory responsibilities. The purpose of the Committee is to provide advice and recommendations on topics, issues, and activities related to the regulation of nuclear wastes. Such activities encompass:

- Regulation of high-level waste, including the licensing of high-level waste repositories;
- Licensing and regulation of low-level waste disposal repositories; and
- Handling, processing, transporting, storing and safeguarding wastes, including but not limited to spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings.

The Committee's reports will become part of the public record.

Although ACNW meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process.

General Rules Regarding ACNW Meetings

An agenda is published in the Federal Register for each full Committee meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee, which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACNW meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Office of the Executive Director, in care of the ACNW, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director (telephone: 202–634–3265) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACNW Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director should be informed of such an agreement at least three working days prior to the meting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: June 8, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–13392 Filed 6–13–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published May 16, 1988 (53 FR 17774). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1988 ACNW and the July 1988 ACRS full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Reliability Assurance, June 14, 1988, Washington, DC. The Subcommittee will be briefed on the final outcome of the Equipment Qualification-Risk Scoping Study. An update on the implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Nuclear Power Plants," is also planned.

Maintenance Practices and Procedures, June 15, 1988, Washington, DC. The Subcommittee will be briefed by RES on the current status of the Maintenance Rule and MAPPS simulator if time permits.

Thermal Hydraulic Phenomena, June 21, 1988, Washington, DC. The Subcommittee will continue its review of the *W* proposed Best Estimate ECCS Evaluation Model for 2-loop UPI plants.

Advanced Reactor Designs, June 22, 1988, Washington, DC. The Subcommittee will review the draft SER of the Modular HTGR conceptual design.

Severe Accidents, July 12, 1988, Washington, DC. The Subcommittee will discuss SECY 88–147, "Integration Plan for Closure of Severe Accident Issues."

TVA Organizational Issues, July 13, 1988, Washington, DC. The Subcommittee will review the lessons learned from the NRC Staff's review of the shutdown of TVA's nuclear power plants.

Decay Heat Removal Systems, July 20, 1988, Washington, DC. The Subcommittee will continue its review of the NRC Staff's resolution position for USI A–45.

Thermal Hydraulic Phenomena, July 21, 1988, Washington, DC. The Subcommittee will review the status of the MIST Phase III and IV Programs and the proposed OTSG Follow-on Program.

General Electric Reactor Plants, July 29, 1988, (Site Visit July 28th, p.m.), Plymouth, MA. The Subcommittee will review the proposed restart of the Pilgrim plant.

Safety Philosophy, Technology and Criteria, August 4, 1988, Bethesda, MD. The Subcommittee will review the status of NUREG–1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to severe reactivity transients.

Improved Light Water Reactors, August 9, 1988, Bethesda, MD. The Subcommittee will review Chapters 3, 4, and 5 of the EPRI LWR Requirements Document.

Auxiliary Systems, August 10, 1988, Bethesda, MD. The Subcommittee will review the proposed resolution for USI A–17, "Systems Interactions in Nuclear Power Plants."

Maintenance Practices and Procedures, September 13, 1988, Bethesda, MD. The Subcommittee will discuss and review the maintenance rule and associated NUREG.

Advanced Boiling Water Reactors, November 15–16, 1988, Bethesda, MD. The Subcommittee will continue its FDA review of this standard plant. Detail ACRS questions will be covered on review module 1. An overview of the second review module is planned.

Advanced Pressurized Water Reactors, Date to be determined (July), Washington, DC. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

Advanced Pressurized Water Reactors, Date to be determined (July), Washington, DC. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR–DC).

Severe Accidents/Probabilistic Risk Assessment, Date and location to be determined (July/August). The Subcommittee will review the methodology for the treatment of uncertainties in the final version of NUREG–1150. Also, the Subcommittee will review the results for the front-end reanalysis of the five plants studied.

Advanced Reactor Designs, Date to be determined (July/August), Washington, DC. The Subcommittee will review the draft SERs for the liquid metal reactors (LMRs).

Occupational and Environmental Protection Systems, Date to be determined (July/August), Washington, DC. The Subcommittee will review: (1) The "hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters.

Advanced Pressurized Water Reactors, Date to be determined (August), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Containment Requirements, Date to be determined (September/October), Bethesda, MD. The Subcommittee will review the NRC Staff's document on interim recommendations for containment performance and improvements (BWR Mark I only).

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Systematic Assessment of Experience, Date and location to be determined. The Subcommittee will review the Diagnostic Evaluation Program and other related licensee performance review efforts by the NRC Staff.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC Staff to review the Chilled Water Systems design.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolutions of Generic Issue 23, "RCP Seal Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

Auxiliary Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the adequacy of the Staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

ACRS Full Committee Meetings

July 14–16, 1988—Items are tentatively scheduled.

*A. *Safety Related Issues* (Open)—Discuss proposed hierarchical structure for important safety related issues.

*B. *USI A–48, Hydrogen Control* (Tentative) (Open)—Briefing regarding proposed resolution of hydrogen control requirements for Mark III and ice condenser containment types.

*C. *Evaluation of Operating Experience* (Open)—Briefing by AEOD regarding systematic evaluation of systems operating performance in nuclear power plants and availability of operating information to nuclear power plant operators.

*D. *Equipment Qualification* (Open)—Review and comment regarding Equipment Qualification Scoping Study performed by the Sandia National Laboratories.

*E. *NRC Policy on Severe Accidents* (Open)—Review and comment regarding proposed integrated plan for closure of severe accident issues.

*F. *Modular High Temperature Gas Cooled Reactor* (Open)—ACRS review and comment regarding proposed standardized gas-cooled reactor concept proposed by DOE.

*G. *Diagnostic Evaluation Program* (Open)—Briefing regarding NRC diagnostic evaluations of the McGuire and Dresden nuclear power stations.

*H. *NRC Policy on Working Hours for Nuclear Power Plant Operators* (Open)—Review and comment regarding proposed NRC requirements for working hours for nuclear power plant operators.

*I. *Operating Events and Incidents* (Open)—Discuss procedures for selection/review/evaluation of nuclear power plant incidents, transients, and accidents.

*J. *Operating Procedures and Practices* (Open)—Discuss proposed change in ACRS practice regarding participation in meetings not sponsored by the ACRS.

*K. *ACRS Subcommittee Activities* (Open/Closed)—Briefings and discussion regarding status of designated subcommittee activities including regulatory considerations pertaining to nuclear power plant license renewal.

*L. *ECCS Evaluation Models* (Open/Closed)—Review and comment regarding proposed changes in ECCS evaluation models for Westinghouse nuclear plants with upper-plenum injection.

*M. *Future Activities* (Open)—Discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

N. *New ACRS Members* (Closed)—Discuss qualifications of candidates proposed for appointment to the ACRS.

*O. *Meeting with Director of NMSS* (Tentative) (Open)—Discuss items of current interest.

August 11–13, 1988—Agenda to be announced.

September 8–10, 1988—Agenda to be announced.

ACNW Full Committee Meetings

Advisory Committee on Nuclear Waste, June 27 and 28, 1988, Washington, DC and June 29, 1988, Rockville, MD. The Committee will review the following pertinent nuclear waste management topics:

*A. DOE's proposal to petition for rulemaking on the Design Basis Accident Dose Limit for a geologic repository.

*B. A DOE presentation on Alternative Conceptual Models of the Yucca Mountain site.

*C. An NRC Staff briefing on concrete LLW forms and polyethylene high integrity containers (HICs).

*D. A DOE presentation on the Consultation Draft Site Characterization Plan.

*E. A briefing on the licensing procedures used to authorize at reactor, LLW processing and spent fuel compaction and dry storage operations.

*F. On June 29 the full ACNW will meet with the NRC Commissioners to discuss future Committee plans.

July 21–22, 1988—Agenda to be announced.

September 15–16, 1988—Agenda to be announced.

Date: June 8, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–13393 Filed 6–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Zion Nuclear Power Station, Units 1 and 2; Exemption

I

The Commonwealth Edison Company (CECo, the Licensee) is the holder of Operating License No. DPR–39 which authorizes operation Zion Nuclear Power Station, Unit 1 and Operating License No. DPR–48 which authorizes operation of Unit 2. The licenses provide, among other things, that Zion Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The Station is comprised of two pressurized water reactors at the Licensee's site located in Lake County, Illinois.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these subsections, III.G and III.O, are the subject of the Licensee's exemption requests.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire areas.

c. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

Subsection III.G.3 of Appendix R requires that for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system shall also be installed in the area, room, or zone under consideration.

III

By letter dated July 27, 1984, the Licensee requested exemptions from specific requirements of Appendix R. The Licensee provided additional information in support of the staff's review of these requests in the a letter dated February 18, 1986. By letters dated February 9, 1987, January 21 and February 23, 1988, the Licensee provided additional information and modified its request of July 27, 1984 by withdrawing three of the exemption requests. The remaining exemption requests are the subject of this evaluation.

The following list reflects the latest status of exemptions requested:

1. Main Control Room (Fire Zone 2.0–0). An exemption was requested from the specific requirement of section III.G.3 to the extent that an automatic fire suppression system is not provided throughout the zone.

2. Auxiliary Electric Equipment Rooms (Fire Areas 5.6–1 and 5.6–2). An exemption was requested from the specific requirement of section III.G.3 to the extent that an automatic fire suppression system is not provided throughout each area.

3. Auxiliary Building, Component Cooling Water (CCW) Pump Area, Elevation 560 Feet. An exemption was requested from the specific requirement of section III.G.2.b to the extent that 20 feet of separation between redunant safe shutdown components and automatic suppression and detection systems are not provided.

4. Auxiliary Building, Elevations 592, 617, and 642 Feet. An exemption was requested from the specific requirements of section III.G.2.b to the extent that area-wide automatic suppression and detection systems and 20 feet of separation between redundant safe shutdown components do not exist.

5. Main Steam Tunnels (Fire Zones 18.5–1 and 18.5–2). Exemptions was requested from the specific requirement of section III.G.2.b to the extent that it requires automatic suppression and detection systems throughout the main steam pipe tunnels.

6. Auxiliary Building, Auxiliary Feedwater Pump Area, Elevation 579 Feet. An exemption was requested from the requirements of section III.G.2 to the extent that it requires area-wide automatic suppression and detection systems and 20 feet of separation between redundant safe shutdown components (the motor driven and turbine driven auxiliary feedwater pumps) for Fire Zone 11.3–0 at the 579 foot elevation of the auxiliary building fire area.

In summary, the exemptions were requested from providing 20 feet of spatial separation, area-wide fire detection, and an automatic fire suppression system as required by Section III.G of Appendix R.

The Licensee has provided alternative shutdown capability for Fire Zone 2.0–0 (main control room). The zone has a fire detection system installed on an area-wide basis and is continuously manned. Also, there are fire extinguishers and a hose station available for manual fire fighting purposes. The expected fire in this zone would not threaten adjacent safe shutdown areas.

Alternative shutdown capability is provided for the auxiliary electric equipment rooms (Fire Areas 5.6–1 and 5.6–2). These fire areas have an area-wide fire detection system, fire extinguishers, and hose stations for manual fire fighting. The combustibles consist primarily of cable insulation. If a fire were to occur, it is expected that it would develop slowly with initial low heat release and slow rise in room temperature.

Redundant safe shutdown cables on auxiliary building elevations 592, 617, and 642 feet are provided with a minimum of 20 feet without intervening combustibles. Ionization smoke detectors are provided in the areas of and between these cables on each elevation.

The Licensee has provided alternate steam generator pressure indication for Fire Zones 18.5–1 and 18.5–2. The fuel load in these zones is low with significant spatial separation between redundant pressure transmitters. The expected fire in these zones would not threaten other safe shutdown areas adjacent to them.

The Licensee has provided alternative and/or acceptable levels of fire protection for these areas which contain redundant safe shutdown systems not separated from each other in accordance with section III.G of Appendix R. Fire protection in these areas which contain more than a negligible combustible load and contain safe shutdown equipment or cables, consist of fire detectors and/or automatic fire suppression systems, and portable extinguishers and hose stations. The staff finds that there is reasonable assurance that a fire in these areas would be of low magnitude, promptly detected, and extinguished.

Based on the staff's review of the Licensees's analysis, the staff concludes that the installation of automatic fire suppression and/or detection systems throughout the Main Control Room (Fire Zone 2.0–0), Main Steam Pipe Tunnels (Fire ZOnes 18.5–1 and 18.5–2, Auxiliary Electric Rooms) (Fire Areas 5.6–1 and 5.6–2), and Elevations 560 feet, 579 feet, 592 feet, 617 feet and 642 feet of the Auxiliary Building would not significantly increase the level of fire protection of these zones. Additional details concerning the exemptions are provided in the Safety Evaluation issued concurrently.

By the letter dated October 30, 1987, the Licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR

50.12(a) (see 50 FR 50764). The Licensee stated that existing and proposed fire protection features at Zion Units 1 and 2 provided an equivalent level of fire protection required by Appendix R and therefore accomplished the underlying purpose of the rule. Implementing additional modifications to provide additional suppression systems, detection systems, and fire barriers would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the Licensee's resources. The Licensee had estimated that the costs to be incurred would be in excess of several million dollars. The Licensee stated that these costs are significantly in excess of those required to meet the underlying purpose of the rule.

The staff concludes that "special circumstances" exist for the Licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

Accordingly, The Commission has determined, pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in Section III are authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security, and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.G of Appendix R to 10 CFR Part 50:

1. Main Control Room (Fire Zone 2.0–0) to the extent that there is no fixed fire suppression system installed pursuant to section III.G.3.

2. Auxiliary Electric Equipment Rooms (Fire Areas 5.6–1 and 5.6–2) to the extent that there is no fixed fire suppression system installed pursuant to section III.G.3.

3. Auxiliary Building, Component Cooling Water (CCW) Pump Area, Elevation 569 Feet to the extent that automatic fire suppression and detection systems are not installed and 20 feet of separation is not provided pursuant to section III.G.2.b.

4. Auxiliary Building, elevations 592, 617, and 642 Feet to the extent that automatic fire suppression and detection systems are not installed throughout the area pursuant to section III.G.2.b.

5. Main Steam Pipe Tunnels (Fire Zones 18.5–1 and 18.5–2) to the extent that automatic fire suppression and fire detection systems are not installed throughout the area pursuant to section III.G.2.b.

6. Auxiliary Building, Auxiliary Feedwater Pump Area, Elevation 579 Feet to the extent that automatic fire suppression and detection systems are not installed throughout the area and 20 feet of separation is not provided between redundant safe shutdown components pursuant to section III.G.2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (52 FR 42046).

A copy of the Safety Evaluation, related to this action, is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 7th day of June 1988.

FOR THE Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–13309 Filed 6–13–88; 8:45 am]

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[Docket No. 030–11155 License No. 52–16033–01 EA 88–63]

Hospital Metropolitano, San Juan, PR; Order Modifying License, Effective Immediately

I

Hospital Metropolitano (the licensee) is the holder of Byproduct Material License No. 52–16033–01 issued by the Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR Part 35. The license authorizes possession and use of certain radiopharmaceuticals for the diagnosis and treatment of disease. The license, originally issued on July 15, 1975, was renewed on February 8, 1988, with an expiration date of February 28, 1991.

II

The licensee's hospital and Nuclear Medicine Laboratory are located at Carr. 21, No. 1785 Las Lomas, Rio Piedras, Puerto Rico 00928. The Nuclear Medicine Laboratory performs diagnostic and therapeutic procedures using radiopharmaceuticals. The morphology and physiology of certain target organs are determined qualitatively and quantitatively using an Anger camera imaging system.

A routine and unannounced inspection of the licensee's activities was performed on January 13, 1988. Subsequent to the inspection, the NRC reviewed and evaluated records sent to the Region II Office on January 25, 1988. The findings relative to this review and evaluation were discussed between the Region II staff and Hospital Metropolitano on February 4, 1988. A special unannounced inspection of the licensee's facility was performed on March 3, 1988. An enforcement conference was held with the licensee at Hospital Metropolitano on March 4, 1988. At the enforcement conference, the licensee committed to providing increased involvement by supervisory personnel in radiation safety activities on a daily basis within the Nuclear Medicine Laboratory. The commitment included the individual participation by a Nuclear Medicine Physician in all laboratory operations involving regulatory issues and compliance.

As a result of the initial inspection, subsequent records review, and special inspection, seventeen violations and one deviation were identified in the Nuclear Medicine Program, which are described in NRC Inspection Report No. 52–16033–01/88–01 and Enforcement Conference Summary dated April 5, 1988. In particular, as emphasized at the enforcement conference, the majority of the violations of the greatest safety significance encompassed: (1) The use of therapeutic quantities of iodine-131, and (2) the proper checking and testing of the dose calibrator. In reference to the use of therapeutic quantities of iodine-131, the licensee: (1) Failed to either perform techni an bioassays, or if performed, to properly calculate thyroid uptakes (bioassays), and (2) failed to check for contamination upon receiving packages of iodine-131. In reference to the proper checking and testing of the dose calibrator, the licensee: (1) Failed to properly check and determine the annual accuracy (calibration), (2) failed to perform daily molybdenum-99 breakthrough determinations prior to injecting radiopharmaceuticals, (3) failed to test and properly record daily constancy tests, (4) failed to properly determine geometrical variation upon installation, (5) used unauthorized brachytherapy sources for annual accuracy testing, and (6) failed to properly perform the quarterly linearity tests. The deviation concerned a failure by the licensee to fulfill a commitment in its letter of May 13, 1987, to perform linearity tests of its dose calibrator using a "Lineator" and dilution or decay

or other conventional means, as a corrective action to a Notice of Violation issued April 7, 1987.

The licensee's inspection history contains violations similar to several of the violations identified during the NRC inspections conducted on January 13 and March 3, 1988, and documented in the Notice of Violation. The failure to perform technician bioassays was previously identified as one of the eleven violations identified during an inspection on February 2 and 3, 1983, and documented in a confirmatory Action Letter dated February 11, 1983. The failure to perform biweekly surveys of the Nuclear Medicine Laboratory was also identified during the inspection on February 2 and 3, 1983 (Inspection Report No. 83–01). As a result of that inspection, a civil penalty was proposed on March 23, 1983. The failure to perform bimonthly wipe tests of the Nuclear Medicine Laboratory was identified during the inspection on March 18, 1987 (Inspection Report No 87–01).

Additionally, the one violation identified during the February 24, 1984, inspection and two of the five violations identified during the March 18, 1987, inspection involved records or procedures related to the dose calibrator. The NRC is concerned that current similar violations have occurred, which should hve been precluded by the hospital's corrective action and management oversight programs as delineated in the Confirmation of Action Letter dated February 11, 1983, and the required annual ALARA review as outlined in licensee's ALARA program dated January 27, 1986.

Based on the current violation of NRC requirements, inspection information regarding the disjointed responsibilities and chain of command of the various individuals involved in the hospital's Radiation Safety Program, and the recurrence of similar violations, it appears that control of the Radiation Safety Program is fragmented and lacks positive direction. This is evidenced by the fact that (1) since the March 18, 1987, inspection (which identified 5 violations in the Nuclear Medicine Program) the management representative to the Radiation Safety Committee failed to attend a meeting of the Committee on April 22, 1987, (2) the licensee employs an in-house Radiation Safety Officer (RSO) who has full-time responsibility as the radiation therapy physicist and acts only as a consultant in nuclear medicine and thus does not provide day to day oversite of the program, and (3) the licensee employs an outside Radiation Safety Consultant who serves on the radiation safety committee and consults primarily in diagnostic radiology with some overlap to nuclear medicine and therapy. The delineation of responsibilities of this consultant versus the in-house RSO is not clearly defined. Further evidence of the disjointed responsibilities in the license's program is shown by its utilization of its Nuclear Medicine Laboratory by an outside Nuclear Medicine Physician users' group.

III

On the basis of the above information, and after NRC review of licensee activities onsite, it appears that Hospital Metropolitano has deviated from a corrective action committed to in its letter dated May 13, 1987, has been operating in violation of 17 NRC requirements, and has failed to exercise adequate oversight over its Nuclear Medicine Laboratory program. Consequently, without the further action ordered here, I lack the reasonable assurance that the licensee's Nuclear Medicine Program will be conducted in a manner such as will assure that the health and safety of the public and its employees will be protected. Accordingly, the public health, safety and interest require that the actions specified in Section IV of this Order be made effective immediately.

IV

In view of the foregoing, and pursuant to Sections 81, 161b, 161i, 160o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30 and 35, *it is hereby ordered, effective immediately, that license No. 52–16033–01 is modified as follows:*

A. Within 30 days of this Order, the licensee shall submit to the Regional Administrator, NRC, Region II, for approval the credentials of a Health Physics Consultant (Consultant), with expertise in planning and implementation of a nuclear medicine radiation protection program, independent of its staff, to perform an assessment of the licensee's nuclear medicine radiation safety program covering the adequacy of the current organizational structure, staffing levels, audits, training and assignment of responsibilities within the Nuclear Medicine Department. Following NRC approval, the licensee shall employ this consultant to perform this assessment and assist in the licensee's implementation of corrective actions for all violations specified in the Notice of Violation. Within 30 days of NRC approval, the Consultant shall provide the Hospital Administrator a written report of the assessment which describes the weaknesses identified during the assessment and recommendations for improvement. A copy of this report shall be provided to the Regional Administrator, NRC Region II, at the same time it is transmitted to the licensee.

B. 1. The Consultant shall spend a minimum of 10 hours on-site per week in audit activities, for a period of 90 days after the hiring of the Consultant by the licensee.

2. After the initial 90 day period, the Consultant shall perform an audit at least once per month on-site until the Performance Improvement Plan required by section IV.C. of this Order is completed.

3. The licensee's Consultant shall provide within the 90 day period, 40 hours of training in radiation safety and procedures as defined in 10 CFR Parts 19, 20, and 35, to the responsible Nuclear Medicine Technologist. The training shall include a complete review and familiarization of the byproduct materials license including the procedures incorporated into the licensee's application by reference. The 40 hours of training shall be provided by the Consultant in addition to the minimum of 10 hours, on-site. The training hours and curriculum shall be documented and maintained on file in the Nuclear Medicine Department.

4. The licensee shall document the number of hours per week spent by the Consultant in the Nuclear Medicine Department and the types and kinds of corrective measures implemented. All documentation shall be maintained on file in the Nuclear Medicine Department until inspected by the NRC.

C. Within 30 days of the completion of the Consultant's assessment required by section IV.A., the licensee shall develop a written Performance Improvement Plan with the assistance of the consultant which will assure an upgrading of the performance of the Nuclear Medicine Program and a consistent high level of compliance with NRC requirements. This plan shall be submitted to the Regional Administrator, NRC, Region II, for review and be implemented upon the NRC's approval. As a minimum the plan shall address:

1. Provisions for ensuring that professional staffing levels within the Nuclear Medicine Department are adequate to meet the radiological safety requirements and will remain so in view of the department's workload.

2. Provisions for increased involvement by the hospital administrator in the oversight and

management of the Nuclear Medicine Department.

3. Provisions for annual safety audits of the Nuclear Medicine Department by a qualified auditor who is independent from the Hospital Metropolitano organization.

4. The hospital management's program for review and followup action on problems identified during independent audits.

5. Training program descriptions and plans which will ensure that the members of the Radiation Safety Committee are familiar with all pertinent NRC regulations, terms of the license and information submitted in support for the license and its amendments and that the RSO, Nuclear Medicine Technologist, and other Nuclear Medicine Specialists are knowledgeable of regulatory requirements, equipment operations, and analytical techniques.

6. Schedules for correcting the organizational problems noted in the January 13 and March 3, 1988, inspections which were discussed in the March 4, 1988, enforcement conference, and further described in the Enforcement Conference Summary dated April 5, 1988.

7. Methods for implementing recommendations of the Consultant's assessment report into its Performance Improvement Plan or providing justification for alternative corrective action if any specific recommendations are not adopted.

8. Milestones for completing the Performance Improvement Plan.

D. The licensee shall submit a report monthly to the Regional Administrator, NRC, Region II, beginning on the 15th day of the month following the first 30 day period after the NRC's approval of the Performance Improvement Plan and thereafter on the 15th day of each month, until the plan is completed, addressing:

1. The progress that has been made toward carrying out the provisions of this Order and the Performance Improvement Plan during the past calendar month.

2. In the event that a milestone date set forth in this Order or Plan is not met during the period covered by the report, the report shall indicate: (1) The date by which the licensee expects to accomplish the activity, (2) the reason for the licensee's failure to meet the milestone date, and (3) the impact that the failure to meet the milestone date will have on the Order and Plan schedules.

3. The actions under the Order and Plan that the licensee expects to accomplish within the next 30 days.

E. The licensee shall immediately correct all deficiencies associated with the use of the dose calibrator and the use of radioiodine solutions (iodine-131) for therapeutic applications and document these corrections as indicated in section IV.A. These deficiencies were identified in the NRC Inspection Report (No. 52-18033-01/88-01) issued February 26, 1988, and are specified in the Notice of Violation enclosed with this Order, specifically violations: E.2.a, b, and c, and E.3.a, and b. In addition to correcting the above deficiencies, the licensee shall immediately implement the following actions regarding the use of diagnostic and therapeutic quantities of iodine-131:

1. The licensee shall store volatile radiopharmaceuticals in the shipper's radiation shield and container. Also the licensee shall store each multi-dose container in a fume hood after drawing in the first dosage from it. This requirement is defined in 10 CFR 35.90 (effective April 1, 1987).

2. The licensee shall check each dose calibrator for linearity at least quarterly over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries. This requirement is defined in 10 CFR 35.50(b)(3) (effective April 1, 1987).

The Regional Administrator, Region II, may in writing relax or rescind any of the above conditions upon written request and demonstration of good cause by the licensee.

V

The licensee or any other person adversely affected by this Order may request a hearing within twenty days of the date of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and the Regional Administrator, NRC Region II, 101 Marietta Street, Atlanta, GA 30323. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. *An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.*

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland this 7th day of June 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88-13370 Filed 6-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to Illinois Power Company (the licensee), for operation of Clinton Power Station, Unit 1 located in DeWitt County, Illinois.

This amendment consists of a proposed change to the Clinton Power Station (CPS) Technical Specifications in order to remove the isolation requirements for isolating the Containment Monitoring (CM) and Process Sampling (PS) systems upon receiving a Containment Building Exhaust High Radiation signal. This would require changes to Technical Specifications 3/4.3.2 (Table 3.3.2-1 item 1.h, Table 3.3.2-2 item 1.h, Table 3.3.2-3 item 1.h, and Table 4.3.2.1-1 item 1.h) and 3/4.6.4 (Table 3.6.4-1). The current Technical Specifications require the CM and PS systems to automatically isolate from a Containment Building Exhaust High Radiation Signal. This trip function is required to be operable in OPERATIONAL CONDITIONS 1, 2 and 3, when handling irradiated fuel in the primary or secondary containment, during CORE ALTERATIONS, and during operations with a potential for draining the reactor vessel.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 14, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Leif J. Norrholm: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zable, Esquire, Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 8th day of June 1988.

For the Nuclear Regulatory Commission.

Leif J. Norrholm,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-13371 Filed 6-13-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of June 1, 1988 of 22 deferrals contained in the three special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987 and February 19, 1988.

Rescissions (Table A and Attachment A)

As of June 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of June 1, 1988, $6,180.1 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Register** listed below:

Vol. 52, FR P. 37739, Thursday, October 8, 1987
Vol. 52, FR p. 42400, Wednesday, November 4, 1987
Vol. 53, FR p. 6734, Wednesday, March 2, 1988

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

****

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,310.0
Routine Executive releases through April 1, 1988.. (OMB/Agency releases of $3,154.2 million and cumulative adjustments of $24.3 million)	-3,129.9
Overturned by the Congress.....	0
Currently before the Congress.....	6,180.1

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D88-20	2,949,000		2-19-88	865,000			17,500	2,101,500
Economic support fund	D88-1	40,000		10-1-87					
	D88-1A		1,960,727	2-19-88	308,588				1,692,139
Military assistance	D88-21	608,186		2-19-88	310,001				298,185
International disaster assistance	D88-22	13,479		2-19-88	6,200				7,279
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-3	120,425		10-1-87					
	D88-3A		10,529	2-19-88					130,954
Timber salvage sales	D88-4	34,841		10-1-87	10,456				24,385
Cooperative work	D88-5	628,025		10-1-87	157,084				470,941
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87	60				44
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					
	D88-7A		1,297,848	2-19-88	1,297,848				900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					
	D88-8A		135,940	2-19-88	186,955				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					
	D88-9A		149	2-19-88					785

Attachment B - Status of Deferrals - Fiscal Year 1988

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-88
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance	D88-15	2,000		10-29-87	2,000				0
Southwestern Power Administration, Operation and maintenance	D88-16	6,000		10-29-87					
	D88-16A		7,200	2-19-88					13,200
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D88-17	774		10-29-87					
	D88-17A		2,426	2-19-88	3,200				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	D88-18	2,391		10-29-87					
	D88-18A		569	2-19-88					2,960
Social Security Administration Limitation on administrative expenses (Construction)	D88-10	6,171		10-1-87					
	D88-10A		36	2-19-88					6,207
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund	D88-19	85,000		10-29-87	6,800		6,800		85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive	D88-11	11,638		10-1-87					11,638

Attachment B - Status of Deferrals - Fiscal Year 1988

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-88
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D88-12	879,049		10-1-87					
	D88-12A		450,858	2-19-88					1,329,907
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS		5,443,688	3,866,281		3,154,192	0		24,300	6,180,077

[FR Doc. 88-13420 Filed 6-13-88; 8:45 am]
BILLING CODE 3110-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15487; (812-6982)]

Allied Capital Corp., et al.; Application

June 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Application for an order pursuant to sections 6(c) and 17(d) of the Investment Company Act of 1940 ("1940 Act") and Rule 17d-1 to supplement a previous order and to conditionally authorize certain joint transactions with affiliates.

Applicant(s): Allied Capital Corporation ("Allied Capital"), Allied Advisory, Inc., Allied Management Partners ("Management"), Allied Venture Partnership ("Venture"), Allied Technology Partnership ("Technology"), Pacific Mutual Life Insurance Company ("Pacific"), Outlook, Incorporated ("Outlook"), St. Paul Fire and Marine Insurance Company ("St. Paul"), CUNA Mutual Investment Corporation ("CUNA"), Abbott Capital Management, L.P. ("Abbott"), Mitchell Hutchins Institutional Investors-Venture Capital Group ("MH"), Steuart Investment Company ("Steuart"), and Wallace F. Holladay ("Holladay"). (Pacific, Outlook, St. Paul, CUNA, Abbott, MH, Steuart and Holladay collectively, "Affiliates").

Relevant 1940 Act Sections: Order requested pursuant to sections 6(c) and 17(d) of the 1940 Act and Rule 17d-1 thereunder permitting certain joint transactions.

Summary of Application: Applicants request an order, supplementing a previous order dated March 25, 1988 (IC Rel. No. 15613) ("Previous Order"), pursuant to sections 6(c) and 17(d) of the 1940 Act and Rule 17d-1 thereunder, to permit the Affiliates, or affiliates of such Affiliates, individually, to co-invest, subject to the conditions detailed below, with Allied Capital, Allied Investment Corporation and Allied Financial Corporation (the "SBIC Subsidiaries"), Venture or Technology.

Filing Date: The application was filed on November 10, 1987, and amended on April 29, 1988.

Hearing and Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272-2311 or Karen L. Skidmore, Branch Chief (202) 272-2023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Allied Capital, originally organized in 1958 as a SBIC, is now a holding company over 95% of the assets of which consist of all of the outstanding capital stock of four subsidiaries, two of which are the SBIC Subsidiaries.

2. The SBIC Subsidiaries are principally engaged in the business of making venture capital-type investments in small business concerns, and normally seek out other venture capital investment entities to participate in the transactions.

3. Allied Advisory, Inc., is a wholly-owned subsidiary of Allied Capital and the General Partner of "Management," a limited partnership which is the general partner of Venture and Technology, both also limited partnerships. Venture's co-investment with Allied was authorized by a Commission order dated September 17, 1985 (Release No. SC-14335), and Technology's co-investment with Allied and Venture was authorized by Commission order dated June 30, 1987 (Release No. 15833) ("Technology Order"), in each case subject to certain conditions.

4. The Previous Order of the Commission granted an exemption and authorization to permit certain affiliates individually to co-invest with Allied Capital and the SBIC Subsidiaries (collectively "Allied") or Venture (Allied and Venture, together with Technology, are sometimes referred to collectively as the "Allied Group"). The Previous Order authorized the Allied Group to co-invest with the following affiliates, or affiliates of such affiliates: Pacific Mutual Life Insurance Company, Security Pacific Capital Corporation, Capital for Business, Inc., The First National Bank of Chicago and Enterprises Quilmes S.A. The order applied for would supplement the Previous Order which, except to the extent modified by the Technology Order, would remain in full force and effect.

5. The Affiliates, or affiliates of such affiliates, with which the Allied Group may wish to co-invest, as described by Applicants, are as follows: (1) MH is a wholly-owned subsidiary of Mitchell Hutchins Asset Management Inc., a registered investment adviser and a wholly-owned subsidiary of Paine Webber Group, Inc., a full service investment firm. MH, on behalf of institutional and other accredited investors over which it has investment discretion, may wish to invest with the Allied Groups. MH may be deemed an affiliate of Allied because an account it controls is a limited partner in Venture. (2) Pacific Mutual, a life insurance company, which is a limited partner in Venture and therefore a co-partner in Venture of Management, a company controlled by Allied Capital. (3) Outlook, a wholly-owned investment subsidiary of The Kiplinger Washington Editors, Inc. ("Kiplinger"), one or more of the directors and officers of which are also trustees of a pension and a profit sharing plan of Kiplinger, both of which are limited partners of Venture and therefore co-partners in Venture of Management, a company controlled by Allied Capital. (4) St. Paul, a life insurance company and a wholly-owned subsidiary of the St. Paul Companies, Inc., the retirement trust of which is a limited partner in Venture and therefore a co-partner with Venture of Management. (5) CUNA, a wholly-owned subsidiary of CUNA Mutual Insurance Society, which is a limited partner in Venture and therefore a co-partner in Venture of Management. (6) Abbott, a registered investment adviser and the investment manager for the Squibb Corporation Master Pension Trust, which is a limited partner in Venture and therefore a co-partner in Venture of Management. (7) Steuart, a private investment company specializing in investments in the oil and gas, real estate, transportation and fisheries industries, which is controlled by Mr. Curtis S. Steuart and Mr. Guy T. Steuart, the latter of whom is a director of Allied Capital and of each of its subsidiaries and who together with trusts and a corporation controlled by them are holders of over 5 percent of Allied Capital's outstanding shares. (8) Holladay is an individual professional investor specializing in various phases of the real estate development and construction industries, who is a

director of Allied Capital and of each of its subsidiaries and, through a partnership composed of certain directors and officers, or their affiliates, of Allied Capital, a limited partner of Venture.

6. The boards of directors of Allied Capital, the SBIC Subsidiaries and Advisory are identical. All of the members of the Board of Directors have a personal financial stake, which in many cases is substantial, in either Allied or Venture or both. In any dealings with third persons, including the Affiliates as such, their interests are therefore wholly congruent with those of Allied and Venture and adverse to those of the third person. A possible conflict could arise where there is under consideration a participation in an investment transaction with an Affiliate who, or a director or officer of, or owner of securities issued by, which or an affiliate of which, is a director of Allied; in any such case, Applicants propose that such director may not take part in any determination with respect to such participation. Subject to that exception, it is proposed herein that any determination of the Board of Directors contemplated herein be made by a majority of its members, regardless of whether or not they are interested persons of Allied Capital or have a personal financial interest in Venture.

7. Under the Previous Order, the Allied Group has invested $33,086,561 in 42 transactions, including 24 transactions as members of investment syndicates. Among the syndicated transactions, the affiliates subject to the Previous Order participated in 8 transactions, representing a total investment of $62,447,639. Allied seeks the participation of other venture capital entities because as a matter of prudence, Allied's Board has pursued a policy of limiting investment risk to any one transaction; investments beyond the prudential limit, depending upon its characteristics, may be offered to others, including the Affiliates. In addition, the SBIC Subsidiaries are restricted by Small Business Administration regulations limiting the exposure of an SBIC in a single risk to 20% of its net worth.

Applicants' Conditions

Applicants undertake that they will be subject to the following rules as express conditions to the requested order:

(1) The Board of Directors will determine in the first instance the extent to which Allied and Venture combined will participate in any investment opportunity originated by Allied and the extent to which participations therein will be offered to others, or the extent to which Allied and Venture combined will participate in investment opportunities originated by others in which Allied is invited to participate.

(2) If the Board of Directors determines that any participations in investment opportunities originated by Allied are to be offered to others, the persons to whom such participations are to be offered may include (beside Technology) one or more of the Affiliates. Before, however, an offer of a participation may be made to any of the Affiliates, the Board of Directors must specifically approve such offer, and such approval must be based on findings by the Board of Directors that the participation in the transaction of that Affiliate would be advantageous because of the specific contribution that such Affiliate is expected to make to the quality of the transaction.

(3) If Allied is invited to participate in an investment opportunity originated by others and the Board of Directors determines that the participation therein by Allied or Venture (and, possibly, Technology) is in the best interests of Allied and Venture (and, if applicable, Technology), then, if the other participants in the proposed transaction include one or more of the Affiliates, the Board of Directors must specifically approve the amount of Allied's and Venture's (and, if applicable, Technology's) participation and the amount of the proposed participation by each participant which is one of the Affiliates.

(4) If the combined participation to be retained by Allied and Venture, in the case of opportunities originated by Allied, or to be accepted by Allied and Venture, in the case of opportunities originated by others in which Allied's participation is invited, is in an amount less than the then applicable combined prudential limit for Allied and Venture for exposure in a single risk, then, if the other participants in the proposed transaction include one or more of the Affiliates, the Board of Directors must make a specific determination that such lesser participation is in the best interests of Allied and Venture.

(5) The Board of Directors's approval of the participation by Allied or Venture in any transaction in which any of the Affiliates is also to be a participant must be based on findings by the Board of Directors that:

(a) The terms of the proposed transaction, including the consideration to be paid and received and including specifically any fees to be paid to any other participant, or affiliate of such participant, in the transaction, are reasonable and fair to the shareholders of Allied Capital and do not involve overreaching of Allied, Venture or Allied Capital's shareholders on the part of any person concerned; and

(b) The proposed transaction is consistent with the interests of the shareholders of Allied Capital and is consistent with the policy of Allied and Venture as recited in filings made by Allied with the Commission under the Securities Act of 1933 or the 1940 Act, the registration statements and reports filed by Allied Capital under the Securities Exchange Act of 1934, Allied Capital's reports to shareholders and the limited partnership agreement of Venture.

(6) The Board of Directors will record in its minutes and preserve in its records, for such periods as records are required to be maintained under section 31(a) of the 1940 Act, a description of each transaction in which Allied or Venture participates and in which any of the Affiliates is also a participant, the findings on which any determination pursuant to paragraphs (2), (3), (4) or (5) is based, the information and materials on which such findings are based, and the basis therefor.

(7) No member of the Board of Directors shall be a party to or have a financial interest in such transaction other than

(a) As the owner of securities of which Allied Capital is the issuer, or

(b) As the owner, directly or indirectly, of a limited partnership interest in Venture, or

(c) As the owner of securities of which the respective Affiliate or any of its affiliates is the issuer; provided, however, that any member of the Board of Directors who is, or who is a director or officer of, or owner of securities issued by, the respective Affiliate or an affiliate thereof shall not take part in any determination pursuant to paragraphs (2), (3), (4) or (5) with respect to the participation by such Affiliate. For the purpose of this paragraph, a director, officer, or employee of Allied or Advisory or an Affiliate or an affiliate thereof who receives his usual and ordinary compensation for usual and customary services as a director, officer, employee or professional consultant of any such entity shall not be deemed to have a financial interest or to participate in the transaction solely by reason of his receipt of such compensation.

(8) Neither Allied nor Venture will make any investment in an entity in which an Affiliate or an affiliate of an Affiliate, but not Allied or Venture, has previously invested.

(9) The basis as to time of investment and unit prices on which an Affiliate, or an affiliate thereof, participates in the proposed transaction shall be identical to the basis on which Allied or Venture participates therein. For this purpose, the payment to Allied or Advisory or the Affiliate or an affiliate thereof, by any participant in the transaction other than Allied Capital, any subsidiary of Allied Capital, Venture, Technology, any of the Affiliates or any affiliate thereof, of any reasonable fee shall not be considered as differentiating the basis of the Affiliate's participation from that of Allied or Venture.

(10) Allied and Venture, on the one hand, and an Affiliate or any affiliate thereof, on the other, will exercise any warrants, conversion privilege, or other rights to acquire equity securities of an issuer, or affiliate of an issuer, which were acquired by both Allied or Venture, on the one hand, and such Affiliate or affiliate thereof, on the other, in a transaction in which they both participated, only at the same time and in amounts proportionate to their respective holdings of such rights.

(11) Allied and Venture, on the one hand, and any of the Affiliates or any affiliate thereof, on the other, will sell, exchange, or otherwise dispose of an interest in any security of a class held by both Allied or Venture, on the one hand, and such Affiliate or affiliate thereof, on the other, as a result of a transaction in which they both participated only at the same times and for the same unit consideration and in amounts proportionate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by the respective holder is made in such market.

(12) The expenses, if any, of the distribution of any securities registered under the Securities Act of 1933 and sold by Allied, Venture and any of the Affiliates or any affiliate thereof at the same time will be shared by the sellers in proportion to the respective amounts they are selling.

Applicants' Conclusion of Law

1. The proposed transactions are consistent with the applicable standards under section 6(c) and 17(d) of the 1940 Act and Rule 17d–1 thereunder. Approval of the application is consistent with the general purposes of the 1940 Act. Approval of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because, among other things, the requested relief facilitates the flow of venture capital under the direction of qualified professionals, reduces transaction costs and saves scarce administrative resources.

2. Allied and Venture (and, where applicable, Technology) will participate in these transactions on a basis identical to that of the participation, if any, of the Affiliates. The payment to Advisory or a participating Affiliate of a financing fee as a function of services rendered by them, respectively, in structuring and negotiating any specific transaction does not make the basis of its participation more or less advantageous than that of any other participant. None of the parties to any such transaction has the economic power or other influence to overreach the other party.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–13402 Filed 6–13–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16428; 812–6004]

E. F. Hutton & Co., Inc. and Hutton Investment Series Inc., Application

June 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order amending prior orders of exemption under section 6(c) of the Investment Company Act of 1940 ("1940 Act").

Applicants: E. F. Hutton & Company Inc. ("E.F. Hutton")— and Hutton Investment Series Inc. (the "Fund").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 2(a)(32), 2(a)(35), 2(a)(41), 22(c), and 22(d) and the 1940 Act and Rules 2a–4 and 22c–1 under the 1940 Act.

Summary of Application: Applicants seek an order amending prior orders to permit the imposition of a contingent deferred sales charge on modified terms and to modify certain representations regarding the Fund's distribution fee adopted pursuant to Rule 12b–1 under the 1940 Act which were contained in applications for prior exemptive orders. The exemptive relief sought would also apply to all future Series of the Fund and any subsequent distributor of the Fund's shares.

Filing Date: The application was filed on November 10, 1987 and amended on May 13 and June 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Paul F. Roye, Esq., 1500 K Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel, at (202) 272–3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Fund is registered under the 1940 Act as an open-end management investment company with twelve diversified series. E.F. Hutton is the Fund's distributor. E.F. Hutton receives the contingent deferred sales charge imposed on certain Fund redemptions as described in detail in the application and in prior applications in this matter filed on October 29, 1981 and thereafter which resulted in orders of exemption from the provisions of sections 2(a)(32), 2(a)(35), 2(a)(41), 22(c) and 22(d) of the 1940 Act and Rules 2a–4 and 22c–1 under the 1940 Act. See, e.g., *Investment Company Act Rel. No. 14429* (March 19, 1985). E.F. Hutton also receives a distribution for pursuant to the Fund's Rule 12b–1 plan (the "Plan").

2. Applicants request an amendment of the prior exemptive orders to permit the imposition of a contingent deferred sales charge on terms consistent with those employed by funds which are distributed and advised by Shearson Lehman Hutton Inc. ("Shearson Lehman") and its affilitates. Applicants not that relief similar to that requested by the application has been granted by the SEC. See *Investment Company Act Rel. No. 15005* (March 19, 1986).

3. E.F. Hutton is a wholly-owned subsidiary of Shearson Lehman. It is expected that the business operations of E.F. Hutton will be consolidated with the business operations of Shearson Lehman and E.F. Hutton will then be merged into Shearson Lehman. In this connection, the Fund has recently decided to change its custodian and transfer agent to Boston Safe Deposit and Trust Company. Boston Safe Deposit and Trust Company handles the contingent deferred sales charge processing for all the funds within the Shearson Lehman complex of investment companies. Boston Safe is therefore familiar with the Shearson Lehman contingent deferred sales charge system and administratively it would be easier and more efficient to employ the Shearson Lehman deferred sales charge system rather than the E.F. Hutton system.

4. Applicants assert that in several additional respects the Shearson Lehman contingent deferred sales charge is more favorable to Fund shareholders than the contingent deferred sales charge program employed by the Fund. Even though the range of the contingent deferred sales charges in the same under both programs, declining from 5% to 0% over a specified number of years, under the Shearson Lehman system the charge is assessed over a five year period rather than a six year period. Also, the Shearson Lehman system does not impose a charge on shares purchased in connection with the reinvestment of dividends and capital gains distributions. Moreover, while the E.F. Hutton contingent deferred sales

charge program is imposed on a Fundwide basis (except that if a lower charge would apply on a series-by-series basis, such charge would be imposed), and Shearson Lehman imposes the charge on a series-by-series basis, a shareholder using the Shearson Lehman methodology can obtain any benefit of a fund-wide contingent deferred sales charge by consolidating his investment in one series before redeeming out of the fund. Furthermore, there is a $5.00 service charge imposed on exchanges between Series of the Fund. This charge will be eliminated in connection with the adoption of the Shearson Lehman contingent deferred sales charge methodology.

5. Under the Shearson Lehman system, the contingent deferred sales charge would be waived in the case of certain redemptions as described in the application.

6. The Fund finances its own distribution expenses pursuant to the Plan adopted pursuant to Rule 12b-1. The Plan provides for an annual fee to be paid by each Series of the Fund to E.F. Hutton for its services in connection with sales of the Fund's shares. This fee was disclosed in previous applications for exemptive orders pursuant to section 6(c) of the 1940 Act which resulted in orders of exemption from the provisions of sections 2(a)(32), 2(a)(35), 1(a)(41), 22(c) and 22(d) of the 1940 Act and Rules 2a-4 and 22c-1 thereunder.

7. Applicants seek to modify the representations regarding the Fund's distribution fee so that the Series of the Fund may pay distribution fees at varying levels, but in no event to exceed 1.25% of the average daily net asset of the Series.

8. Applicants also request that the exemption requested extend to all future Series of the Fund which are offered on substantially the same basis as shares are offered by E.F. Hutton of the Fund and to any future distributor of the Fund's shares.

Applicants' Conditions

As conditions to obtaining the requested exemptive relief the Applicants agree:

(1) To comply with the provisions of Rule 22d-1 (or any successor rule under the 1940 Act);

(2) To comply with the provisions of Rule 12b-1 under the 1940 Act in its current form and as it may be revised in the future;

(3) That each Series of the Fund will vote separately with regard to the adoption of a distribution plan pursuant to Rule 12b-1 under the Act in accordance with the requirements of Rule 18f-2; and

(4) To notify all Fund shareholders of changes in the Fund's contingent deferred sales charge program, including the implications of the series-by-series method of calculating the contingent deferred sales charge.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-13488 Filed 6-13-88; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual *Cost of Money* (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 9.89 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by Section 1 of Pub. L. 96-228, December 28, 1985 (80 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: June 8, 1988.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 88-13500 Filed 6-13-88; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Notice No. CM-8/1196]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Electronic Transactions; Meeting

The Study Group on International Electronic Funds Transfers, which held its first meeting on February 29, 1988, has been reconstituted as the Study Group on International Electronic Transactions in order to reflect the broader range of issues expected to be reviewed in the course of its work.

The second meeting of this Study Group will be held on Thursday, June 23, 1988 at 10 a.m. at the United States Mission to the United Nations, 12th floor conference room, located at 799 United Nations Plaza, New York, NY. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chair.

The purpose of the meeting is to review the first draft of Model Rules on Electronic Funds Transfers prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The draft Model Rules will be considered by member states of UNCITRAL at the meeting of its Working Group on International Payments scheduled for July 5 to 15, 1988 in New York. The Study Group's recommendations will be considered by the Advisory Committee on Private International Law and will be used by the Department to formulate guidance for United States representatives to UNCITRAL.

The agenda of the Study Group will include the following issues: Whether any proposed UNCITRAL rules should apply only to international transactions or should include domestic transactions as well; whether they should apply to electronic transactions only or also to paper-based transactions; whether they should cover all financial institutions; whether they should cover both debit and credit transfers; whether they should avoid particular technologies or national financial systems; whether consumer electronic transfers should be excluded; whether the rules should cover conflicts of laws; what definitions should be applied; whether particular forms and authentication should be required; what would be the obligations, rights and liabilities of the various parties involved; and how should finality of a transaction be determined? The Study Group will also consider whether model rules, if adopted by UNCITRAL, would be appropriate for

subsequent adoption in an international treaty.

Additional information on the meeting, including copies of the draft Model Rules, may be obtained by contacting Harold S. Burman, Office of the Assistant Legal Adviser for Private International Law, (L/PIL), Room 6417, Department of State, Washington, DC 20520, or by calling (202) 653-0852. Further information on the UNCITRAL project may be obtained by contacting the United Nations Sales Section, New York, NY at (212) 963-8302 and ordering the "UNCITRAL Legal guide on Electronic funds Transfers" (refer to Sales document No. E.87.V.9), and subsequent reports of the UNCITRAL Secretariat and Working Group on International Payments.

Access to the United States Mission is controlled. Members of the general public planning to attend should notify the above office not later than June 21 of their name, affiliation, address and telephone number. Persons interested but unable to attend the meeting may submit comments or proposals to the address indicated above.

Peter H. Pfund,
Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 88-13301 Filed 6-9-88; 9:34 am]
BILLING CODE 4710-10-M

[CM-8/1198]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting at 0930 on Thursday, 30 June 1988 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593. The purpose of the meeting is: (1) To review the recent Intergovernmental Talks on Liability and Compensation related to Maritime Carriage of Hazardous and Noxious Substances (HNS) held in London from 20-22 April 1988 and the related discussions at the 59th Session of the International Maritime Organization (IMO) Legal Committee held from 25-29 April 1988; and (2) to begin HNS policy development in preparation for the 60th Session of the IMO Legal Committee scheduled for October 1988.

By way of background concerning HNS, in 1982 the Legal Committee completed a draft Convention which provided a two-tier regime of strict liability for the carriers and shippers of certain HNS transported in bulk on tank vessels. The proposed scheme, which entailed compulsory insurance coverage for owners and shippers, would have applied to those HNS which presented severe fire and explosion, toxicity, and/or marine pollution hazards.

In May 1984, IMO sponsored a Diplomatic Conference which took up the draft HSN Convention, as well as draft Protocols updating both the 1969 and 1971 Oil Spill Conventions. An HSN Convention was not adopted because no clear consensus could be achieved on the fundamental liability issues.

The starting point for resumption of HNS negotiations was an options paper submitted to the 58th Session of the IMO Legal Committee by ten nations in September 1987. Highlights of the Legal Committee's discussion of the HNS options paper were as follows:

1. Most delegations expressing views favored further work toward an international system of liability and compensation so that such a system could be in place before any major HNS catastrophe; this majority supported moving to HNS work on a priority basis early in 1988 and thus the subject was placed on the 59th Session agenda after the Athens Convention.

2. Many delegations expressed a preliminary preference for placing liability on the shipowner alone, without involving cargo or shipper interests; a number of these delegations expressed strong interest in using a revision of the 1976 Convention as the framework for an HNS regime.

3. The Committee was divided on the issue of packaged HNS, with the apparent majority in favor of their inclusion.

Results of the Legal Committee's further consideration of HNS at its 59th Session in April 1988 are as follows:

1. The decision as to which basic option will be chosen for development of an international HNS liability and compensation regime was deferred to the 60th Session in October 1988. The basic options under consideration include: Several different approaches to exclusive shipowner liability; a shared liability system with HNS cargo interests providing supplemental compensation through compulsory insurance; and an international fund for supplemental compensation (possibly similar to the International Oil Pollution Compensation Fund). All of the basic options discussed involve a first tier of shipowner-only liability under the 1976 International Convention on the Limitation of Liability for Maritime Claims.

2. While shipowner-only liability approaches continued to command the broadest support, theere were expressions of significant interest in a possible international fund system and the Committee indicated its willingness to consider any specific proposals prepared for the 60th Session.

3. In-depth discussion of many of the important issues (e.g., the identification of HNS cargoes, the scope of covered risks and types of harm and the technical issues related to the inclusion of packaged HNS) was effectively postponed until after the fundamental decision with respect to the type of liability and compensation scheme to be developed.

Development and implementation of an international HNS scheme would have significant impacts on a wide range of U.S. interests related to industry, government and the environment. These interests include, but are not limited to, owners/operators of vessels transporting bulk or packaged hazardous substances, chemical manufacturers, chemical shippers, marine terminal operators, port authorities, marine insurers, state and local governments, and environmental advocates.

In view of the significant potential impacts on U.S. maritime and other interests, the Shipping Coordinating Committee is conducting this special meeting on 30 June 1988 to review important developments to date and to consider the future course of our HNS policy development.

Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed to the Shipping Goordinating Committee meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), Washington, DC, 20593, telephone (202) 267-1527.

Date: June 2, 1988.

Richard C. Scissors,
Chairman, Shipping Coordinating Committee.

[FR Doc. 88-13306 Filed 6-13-88; 8:45 am]
BILLING CODE 4710-07-M

[CM-8/1197]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) National Committee; Meeting

The Department of State announces

that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 12, 1988 and August 4, 1988 in the Dean Acheson Auditorium, Department of State, 2201 C Street NW., Washington, DC. Both meetings will begin at 9:30 a.m. and are scheduled for the entire day.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the International CCITT which are submitted to the Committee for consideration.

The purpose of the meetings is to:

1. Provide a briefing of the results of final meetings of CCITT Study Groups III, XI and XVIII.

2. Continue preparatory activities for CCITT Plenary Assembly, and in particular receive reports of the Ad-Hoc groups assigned to review positions in the proposed texts of questions for the next Plenary Period, and candidates for leadership positions.

3. Continue preparatory activities for World Administrative Telegraph and Telephone Conference, Melbourne, Australia, November 28–December 9, 1988.

4. Continuing preparatory activities for the ITU Plenipotentiary Conference, 23 May–29 June, 1989, Nice, France.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Date: May 26, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-13365 Filed 6-13-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending June 3, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 33034

Date Filed: June 1, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1988.

Description: Amendment to the Application of Kuwait Airways Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, amends its application for a foreign air carrier permit, filed April 11, 1988, to update the information submitted with respect to the operation and management of Kuwait Airways Corporation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-13368 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Organization, Functions, and Authority Delegations: Montague, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Flight Service Station at Montague, California; Notice of Closing.

SUMMARY: Notice is hereby given that on or about June 16, 1988, the Flight Service Station at Montague, California, will be closed. Services to the general aviation public of Montague, formerly provided by this office, will be provided by the Flight Service Station in Red Bluff, California. This information will be reflected in the next reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on June 1, 1988.

Arlene B. Feldman,

Deputy Director, Western-Pacific Region.

[FR Doc. 88-13369 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

Organization, Functions, and Authority Delegations: Tonopah, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Flight Service Station At Tonopah, Nevada; notice of closing.

SUMMARY: Notice is hereby given that on or about June 17, 1988, the Flight Service Station at Tonopah, Nevada, will be closed. Services to the general aviation public of Tonopah, formerly provided by this office, will be provided by the Flight Service Station in Reno, Nevada. This information will be reflected in the next reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on June 1, 1988.

Arlene B. Feldman,

Deputy Director, Western-Pacific Region.

[FR Doc. 88-13370 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Waiver Petition Docket No. RST-87-1]

Petition for Exemption or Waiver of Compliance; National Railroad Passenger Corp.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has submitted a petition dated November 25, 1987, requesting a waiver of compliance with the provisions of 49 CFR 213.57(b) for certain types of passenger train rolling stock currently in revenue service operation over the Shore Line route between Boston, Massachusetts and New Haven, Connecticut.

Amtrak desires to include the following car types in F-40PH/Amfleet coach consists, which were authorized on December 17, 1987, to operate over the subject trackage at curving speeds producing four inches of cant deficiency:

- Heritage type coaches, sleepers and baggage cars;
- Material Handling Cars.

Present Amtrak train operating procedures limit curving speeds for F-40PH locomotive drawn, Amfleet coach-equipped trains to velocities developing not more than three inches of cant deficiency when any of the above listed units are part of a consist. Three inches of cant deficiency is a limiting factor in the mathematical formulation which is the basis for the curving speeds as specified in 49 CFR 213.57(b).

In support of its petition, Amtrak presented to FRA the results of simulation analysis of vehicle steady state dynamic response as characterized by the behavior of five vehicle performance parameters:

- Carbody lateral acceleration;
- Distance of the resultant force vector intercept from the track centerline;
- High and low rail vertical forces;
- Truck lateral force; and
- Carbody roll angle.

FRA staff are currently studying these data and the methods through which they were derived. It is believed that the conduct of an instrumented field test of typical vehicles will not be necessary and that complete reliance may be placed on the application of a well-verified computational model to estimate the effects on each of the vehicle performance parameters as curving speeds are increased to develop 4 inches of cant deficiency. It should be understood that to augment curving speeds to achieve a change in cant deficiency from 3 inches to 4 inches would require, for the majority of curves involved, increases of 5 mph; for a few curves up to 10 mph and, rarely, an increase of 15 mph.

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final disposition of the petition. Such comments may also have value in supporting FRA's response to future requests for approval to operate trains through curves at speed producing more than the current standard of three inches of underbalance. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by July 29, 1988, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA Waiver Petition Docket No. RST-87-1" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by July 29, 1988, will be considered in this proceeding and in evaluating any future proposals by Amtrak or other railroad entity for similar relief from complying with 49 CFR 213.57(b). All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC on June 7, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-13417 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Office of Hazardous Materials Transportation Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes June 29, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2582-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	2582
2709-X	Alles Powder Co., Dallas, TX (See Footnote 1).	2709
3330-X	Teledyne Wah Chang Albany Corp., Albany, OR.	3330
3330-X	General Electric Co., Schenectady, NY.	3330
4734-X	General Electric Company — Silicone Products Div., Waterford, NY.	4734
5036-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	5036
5849-X	Great Lakes Chemical Corp. Adrian, MI.	5849
6071-X	Walter Kidde, Wilson, NC	6071
6296-X	UNIROYAL Chemical Company, Inc., Bethany, CT.	6296
6538-X	Optimus, Inc., Bridgeport, ICT	6538
6543-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	6543
6543-X	Corning Glass Works, Corning, NY.	6543
6610-X	ARCO Chemical Co., Pasadena, TX.	6610
6691-X	Union Carbide Corporation, Linde Division, Danbury, CT. (See Footnote 2).	6691
6695-X	Arbel-Fauvet-Rail, Douai, Cedex, France.	6695
6762-X	Taylor Technologies, Inc., Sparks MD.	6762
6902-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	6902
6971-X	Accu-Standard, Inc., New Haven, CT.	6971
7026-X	Walter Kidde, Wilson, NC	7026
7041-X	Ethyl Corp., Baton Rouge, LA.	7041
7052-X	Gould, Inc., North Andover, MA.	7052
7096-X	Fike Corp., Blue Springs, MO.	7096
7265-X	Parleter S.A.R.L., Paris, France.	7265
7616-X	Southern Pacific Transportation Co., San Francisco, CA.	7616
7767-X	Walter Kidde, Wilson, NC	7767
7823-X	Allied Corp., Morristown, NJ	7823
7840-X	Douglas Aircraft Co., Long Beach, CA.	7840
7991-X	Burlington Northern Railroad Co., Ft. Worth, TX.	7991
8035-X	Western Atlas International, Houston, TX.	8035
8051-X	Mauser Packaging, Limited, Litchfield, CT.	8051
8060-X	Parleter S.A.R.L., Paris, France.	8060
8060-X	SLEMI, Paris, France	8060
8060-X	Arbel-Fauvet-Rail, Douai, Cedex, France.	8060
8141-X	Alles Corp., San Jose, CA	8141
8156-X	Solkatronic Chemicals, Inc., Fairfield NJ.	8156

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Application No.	Applicant	Renewal of exemption
8207-X	Rexnord Chemical Product, Commerce City, GO (See Footnote 3).	8207
8236-X	Talley Automotive Products, Inc., Mesa, AZ.	8236
8362-X	Altus Corp., San Jose, CA	8362
8439-X	Walter Kidde, Wilson, NC	8439
8451-X	LTV Missiles and Electronics Group, Dallas, TX.	8451
8451-X	Hercules Inc., Wilmington, DE.	8451
8451-X	GOEX, Inc., Cleburne, TX	8451
8451-X	Unidynamics/Phoenix, Inc., Phoenix, AZ.	8451
8451-X	Monongahela Power Co., Fairmont, WV.	8451
8451-X	Ethyl Corp., Baton Rouge, LA.	8451
8451-X	Morton Thiokol, Inc. Aerospace Group, Brigham City, UT.	8451
8451-X	Atlantic Research Corp., Gainesville, VA.	8451
8451-X	Atlas Powder Co., Dallas, TX	8451
8451-X	Olin Chemicals Group Research Center, Stamford, CT.	8451
8451-X	Quantic Industries, Inc., San Carlos, CA.	8451
8469-X	Degussa Corp., Ridgefield, NJ.	8469
8469-X	FMC Corp., Philadelphia, PA	8439
8536-X	Hercules, Inc., Wilmington, DE.	8536
8536-X	Atlas Powder Co., Dallas, TX	8536
8545-X	Hercules, Inc., Wilmington, DE.	8545
8570-X	Snyder Industries, Inc., Lincoln, NE.	8570
8582-X	Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	8582
8627-X	Champion Chemicals, Inc., Houston TX (See Footnote 4).	8627
8723-X	IRECO Inc., Salt Lake City, UT.	8723
8741-X	Alpha Aviation, Inc., Dallas TX.	8741
8817-X	General Chemical Corp., Parsippany, NJ.	8817
8820-X	SLEMI, Paris, France	8820
8839-X	Poly Processing Company, Inc., Monroe, LA.	8839
8839-X	Poly Cal Plastics, Inc., Monroe, LA.	8839
8839-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 5).	8839
8865-X	Carleton Technologies, Inc., East Aurora, NY.	8865
8876-X	Corning Glass Works, Corning, NY.	8876
8876-X	Amalgamet Canada — Division of Premetalco, Inc., Toronto, Ontario, CN.	8876
8911-X	Olin Corp., East Alton, IL	8911
8942-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 6).	8942
8963-X	Atlantic Research Corp., Gainesville, VA.	8963
8970-X	WR Metals Industries, Inc., Wheat Ridge, CO.	8970
8978-X	Battery Engineering, Inc., Hyde Park, MA (See Footnote 7).	8978
9061-X	Leonard Joseph Co., & Safesport Manufacturing Co., Denver, CO.	9061
9182-X	Stoneco, Inc., Dacono, CO	9182
9197-X	Greif Brothers Corp., Springfield, NJ (See Footnote 8).	9197
9263-X	Liquid Air Corp., Walnut Creek, CA.	9263
9270-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9270
9277-X	American Cyanamid Company Agricultural Group, Wayne, NJ.	9277
9282-X	Halocarbon Products Corp., North Augusta, SC.	9282
9331-X	Hoechst Celanese Corp., Somerville, NJ.	9331
9374-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 9).	9374
9400-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 10).	9400
9416-X	CIBA-GEIGY Corp., Ardsley, NY (See Footnote 11).	9416
9487-X	Amtrol Inc., West Warwick, RI.	9487
9502-X	Callery Chemical Co., Pittsburgh, PA.	9502
9505-X	Wilco Corp., Richmond, CA	9505
9517-X	Conroe Aviation Service, Inc., Conroe, TX.	9517
9609-X	Coppie Industries, Inc., Menomonee Falls, WI.	9609
9609-X	Applied Co., San Fernando, CA.	9609
9618-X	ENPAC Corp., Jacksonville, FL (See Footnote 12).	9618
9626-X	Degussa Corp., Ridgefield Park, NJ.	9626
9628-X	Degussa Corp., Ridgefield Park, NJ (See Footnote 13).	9628
9632-X	Arbel-Fauvet-Rail, Douai, Cedex, France.	9632
9656-X	Fluoroware, Inc., Chaska, MN (See Footnote 14).	9656
9656-X	Fluoroware, Inc., Chaska, MN (See Footnote 15).	9656
9696-X	Fluoroware, Inc., Chaska, MN (See Footnote 16).	9696
9651-X	Trans World Airlines, Inc., Kansas City, MO (See Footnote 17).	9651
9678-X	Tennessee Eastman Co., Kingsport, TN.	9678
9912-X	Poly Processing Co., Monroe, LA (See Footnote 18).	9912
9914-X	Morton Thiokol, Inc., Huntsville Division, Huntsville, AL (See Footnote 19).	9914
9956-X	Dixie Petro-Chem, Inc., Houston, TX.	9956

(1) To authorize shipment by cargo vessel.
(2) To correct the address referenced for the holder.
(3) To authorize an alternative shipping name.
(4) To authorize an additional spring loaded vent on the non-DOT Specification portable tank.
(5) To authorize an additional closure system for the non-DOT Specification portable tank.
(6) To authorize an additional closure system for the non-DOT Specification portable tank.
(7) To authorize shipment of depleted or defective Lithium batteries, classed as Flammable solid, under certain conditions.
(8) To authorize an additional material for shipment and an additional resin for the polyethylene container.
(9) To authorize an additional closure system for the non-DOT Specification portable tank.
(10) To authorize an additional closure system for the non-DOT Specification portable tank.
(11) To authorize shipment via cargo vessel.
(12) To authorize an additional, smaller packaging identified as a salvage drum.
(13) To authorize an additional lining of polyethylene/aluminum foil lamination.
(14) To authorize shipment of Nitric acid (71% concentration or less), classed as an Oxidizer, in the non-DOT Specification composite polyethylene and plastic, portable tank.
(15) To authorize shipment of Nitric acid (71% concentration or less), classed as an Oxidizer in the non-DOT Specification composite polyethylene and plastic, portable tank.
(16) To authorize shipment of Nitric acid (71% concentration or less), classed as an Oxidizer in the non-DOT Specification composite polyethylene and plastic, portable tank.
(17) To modify packaging configuration.
(18) To authorize an additional closure system for the non-DOT Specification portable tank.
(19) To authorize additional packaging for shipment of Rocket motors, Class B explosive.

Application No.	Applicant	Parties to exemption
4453-P	Laurel Explosives, East Bernstradt, KY.	4453
5604-P	Airco Industrial Gases Division of the BOC Group, Murray Hill, NJ (See Footnote 1).	5604
5704-P	Olin Corp., East Alton, IL	5704
6126-P	Monsanto Agricultural Co., St. Louis, MO.	6126
6530-P	SOS Gases, Inc., Kearny, NJ	6530
6801-P	Hach Co., Ames, IA	6801
7052-P	Singer Dalmo Victor Division, Belmont, CA.	7052
7052-P	DigiCourse, Inc., Harahan, LA.	7052
7526-P	Solkar, Polymer Corporation, Deer Park, TX.	7526
7607-P	Response Rentals, Rochester, NY.	7607
7607-P	Hydrometrics, Inc., Helena, MT.	7607
7616-P	CSX Transportation, Inc., Jacksonville, FL.	7616
8064-P	Austin Powder Co., Beachwood, OH.	8064
8214-P	Volkswagen of America, Inc., Troy, MI.	8214
8273-P	Ford Motor Company World Headquarters, Dearborn, MI (See Footnote 2).	8273
8426-P	Containerized Chemical Disposal, Inc., Montclair, CA.	8426
8518-P	Barnett Trucking, Inc., Fillmore, CA.	8518
9101-P	GE Astro Space Div., formerly RCA Astro Electronic, Princeton, NJ (See Footnote 3).	9101
9355-P	Panasonic Industrial Co., Secaucus, NJ.	9355
9723-P	Safety Specialists, Inc., Santa Clara, CA.	9723
9723-P	Chemical Waste Management, Inc. Technical Service, Alsip, IL (See Footnote 4).	9723
9795-P	Nedlloyd Lines, Atlanta GA	9795
9851-P	Delta Air Lines, Inc., Atlanta, GA.	9851

(1) To authorize party status to the reinstated exemption which authorizes shipment of liquid helium in non-DOT Specification cargo tanks.
(2) To authorize party status and an alternative shipping method for shipment of modules and/or initiators, classed as Flammable solid.
(3) To authorize party status, an additional Rocket motor, Class B explosive, and an additional shipping container.
(4) To authorize party status and an additional outer packaging consisted of polyethylene in lieu of a DOT Specification 17H or 17E drum.

Note: Footnote 3 pertaining to DOT-E 7052 published in the **Federal Register** dated May 17, 1988, is corrected to read (To authorize passenger carrying aircraft as an additional mode of transportation for shipment of Lithium molybdenum sulphide batteries and cells.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1988.

J. Suzanne Hadjopoth,
Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-13343 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes July 14, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9980-N	Aero Enterprises International, Corpus Christi, TX.	49 CFR 173.266	To authorize shipment of Battery, wet, filled with acid, in a non-DOT Specification packaging identified as Start Cart, which is used for starting helicopters or for supplying power to helicopters. (modes 1, 4)
9981-N	Gaetson Industries, El Dorado, AR.	49 CFR 173.266	To authorize shipment of Nitric acid, fuming, classed as oxidizer, in a DOT Specification 42D aluminum drum. (mode 1)
9982-N	SST Industries, Inc., Dekalb Plastics Division, Cincinnati, OH.	49 CFR 178.19, Part 173, Subparts D, E, F, and H.	To authorize manufacture, marking and sale of non-DOT Specification polyethylene packaging, similar to DOT Specification 34, for shipment of materials authorized in DOT Specification 34 polyethylene drums. (modes 1, 2, 3)
9983-N	Explosive Technology, Fairfield, CA.	49 CFR 173.65(a)(4).	To authorize shipment of a High explosive, Class A explosive in a package that exceeds the weight limitation. (mode 1)
9984-N	Detroit Gas Products Co., Ferndale, MI.	49 CFR 173.302(c).	To authorize charging of DOT Specification 3A or 3AA Cylinder, used to ship Hydrogen, classed as Flammable gas, to 10% over the marked service pressure. (mode 1)
9985-N	Taylor-Wharton Division of Harsco Corp., Indianapolis, IN.	49 CFR 177.834(h).	To authorize the loading and discharge of Carbon dioxide, refrigerated liquid, from cylinders without removing them from the transport motor vehicle. (mode 1)
9986-N	PSC Environmental Management, Pocatlonics, IL.	49 CFR 172.154, 173.245b, 173.365, and 173.510.	To authorize transport of various solid or semi-solid waste hazardous materials, classed as Flammable solid, Organic peroxide, Oxidizer, Corrosive material, Poison B and ORM, in non-DOT Specification fiber drums. (mode 1)
9987-N	Korean Air Lines Co., Ltd., Los Angeles, CA.	49 CFR 172.101 table, column(6)(b), 173.30.	To authorize shipment of certain Class A, B, and C explosives that are forbidden for transportation or are in quantities greater than prescribed for air transportation. (mode 4)
9988-N	McDonnell Douglas Corp., Saint Louis, MO.	49 CFR 172.202, 172.203, and 172.301, 49 CFR, Part 107, Appendix B, Subpart B.	To authorize shipment of limited quantities of Toluene and Methyl ethyl ketone, classed as Flammable liquid, without shipping papers and without marking the packaging. (mode 1)
9989-N	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.245.	To authorize shipment of certain corrosive liquids inside a DOT Specification 12P fiberboard box containing one DOT Specification 2U polyethylene container and two non-DOT Specification polyethylene containers. (modes 1, 2, 3)
9990-N	Honeywell Inc., Brooklyn Park, NY.	49 CFR 173.113, 178.208-11(b).	To authorize shipment of certain Detonating Fuzes, Class C explosive in a non-DOT Specification packaging with the amount of material exceeding the gross weight limitation. (mode 1)
9991-N	Emergency Technical Services Corp., Schaumburg, IL.	49 CFR 173.118, 173.302, 173.304, 173.325, 173.34, and 173.346.	To authorize manufacture, marking, and sale of non-DOT Specification, salvage cylinders for overpacking damaged or leaking packages of hazardous material. (mode 1)
9992-N	Pennwalt Corp., King of Prussia, PA.	49 CFR 173.52(a)(3), 173.100(a).	To authorize shipment of Dithiocarbamate pesticides, solid, n.o.s., classed as Poison B, in a non-DOT Specification polypropylene bag with polyethylene liner. (modes 1, 3)
9993-N	Goex, Inc., Cleburne, TX	49 CFR 173.366.	To authorize shipment of a material classed as Class C explosive in lieu of the its assigned class of Class A explosive. (modes 1, 2, 3, 4, 5)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9094–N	Hoover Group, Inc. Beatrice, NE.	49 CFR 178.83	To authorize manufacture, marking and sale of non-DOT Specification steel drums, similar to DOT 5C, for the shipment of materials authorized in DOT Specification 5C drums. (mode 1)
9095–N	Coppe Industries, Inc. Menomonee Falls, WI.	49 CFR 173.245, 173.249.	To authorize shipment of mixtures described as Alkaline corrosive liquid, n.o.s., classed as Corrosive material, in non-DOT packaging consisting of a unlined tin can in an molded polyethylene insert within a removable head, polyethlene pail.
9096–N	Transac, Inc., Macon, GA	49 CFR 173.183, 173.245b, 173.365, and 173.154.	To authorize manufacture, marking and sale of non-DOT Specification packaging described as flexible intermediate bulk containers for shipment of solid materials classed as Corrosive material, Flammable solid, Oxidizer or Poison B. (modes 1, 2)
9097–N	Hodgdon Powder Company, Inc., Shawnee Mission, KS.	49 CFR 173.87	To authorize shipment of a package containing propellant explosive, percussion caps and other non-hazardous materials. (modes 1, 3)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88–13342 Filed 6–13–88; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 9, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0003.
Form Number: SS–4 and SS–4PR.
Type of Review: Revision.
Title: Application for Employer Identification Number.
Description: Taxpayers required to have an employer identification number for use on any return, statement, or other document must prepare and file Form SS–4, or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by IRS AND SSA in tax administration and by the Bureau of the Census for business statistics.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 2,798,500.
Estimated Burden Hours Per Response: 1 hour 38 minutes.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 1,929,253 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–13400 Filed 6–13–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 9, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0061.
Form Number: CF 213.
Type of Review: Reinstatement.
Title: Importers' Premises Visit Significant Importation Report.
Description: The document constitutes a summary report of an interview conducted at the importer's premise by a Customs office. The CF–213 provides for uniformity for the various importers. Customs conducts the interview based upon its responsibilities involving appraisement classification and admissibility with regard to imported merchandise.
Estimated Number of Respondents: 7,385.
Estimated Burden Hours Per Response: 2 hours 24 minutes.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 17,724 hours.
OMB Number: 1515–0132.
Form Number: None.
Type of Review: Reinstatement.
Title: Application for Salvage Operation and Report of Salvage Operation.
Description: An individual or company wanting to engage in any salvage operation in territorial waters of the U.S., using a foreign vessel, must file an application with the Customs Service and receive approval.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On Occasion.
Estimated Average Reporting Burden: 1 hour.
Clearance Officer: John L. Poore, (202) 566–9181, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3206, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–13401 Filed 6–13–88; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; From the Land of Dragons

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "From the Land of Dragons" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the American Museum of Natural History in New York City, New York, beginning on or about July 22, 1988, to on or about January 2, 1989, at the Museum of Science in Boston, Massachusetts, beginning on or about January 26, 1989, to on or about May 14, 1989, and at the Natural History Museum of Los Angeles County in Los Angeles, California, beginning on or about July 15, 1989, to on or about November 15, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: June 10, 1988.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88–13461 Filed 6–10–88; 2:02 pm]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7888, and the address is Room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 114
Tuesday, June 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 15, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Methylene Chloride Petition

The Commission will consider petition HP 85-1 from the Consumer Federation of America requesting that the Commission commence a proceeding under section 2(q)(1)(B) of the Federal Hazardous Substances Act to ban products containing methylene chloride.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

June 9, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88-13466 Filed 6-10-88; 2:22 pm]

BILLING CODE 6355-01-M

FARM CREDIT ADMINISTRATION

Correction of Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on June 6, 1988 (53 FR 20717) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for June 7, 1988. This noticed is to revise the agenda for the meeting to move an item and add an item to the closed session.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22101-5090.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, June 7, is revised as follows:

Open Session

1. Final Rule on Simultaneous Service, 12 CFR 613.2150.
2. Proposed Changes to Farm Credit System Retirement Plans:
   - Springfield District.
   - Texas District.
   - Farm Credit Corporation of America.
3. Proposed Farm Credit System District Special Early Retirement Programs:
   - Baltimore District.
   - Texas District.
   - Springfield District.
4. Proposed Changes to Farm Credit System District Severance Plans:
   - St. Paul District.
   - Louisville District.
   - Central Bank for Cooperatives.
5. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management.

Closed Session [1]

6. Mergers of the Farm Credit System Federal Land Banks and Federal Intermediate Credit Banks;
7. Examination and Enforcement Matters; and
8. CEO Compensation of Jackson FICB and BC.

Dated: June 10, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-13460 Filed 6-10-88; 1:10 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, June 7, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the application of Athol-Clinton Co-operative Bank, an operating non-FDIC-insured co-operative bank located at 90 Exhange Street, Athol, Massachusetts, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 8, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-13412 Filed 6-9-88; 4:42 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, June 7, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum regarding proposed revisions to the Division of Liquidation's delegations of authority.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum regarding the Corporation's corporate activities.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration on the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunsine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 8, 1988.

[1] Session closed to the public-exempt pursuant to 5 U.S.C 552b(c)(4), (8), (9) and (9).

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-13413 Filed 6-9-88; 4:42 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System Employees.

Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13490 Filed 6-10-88; 3:40 pm]

BILLING CODE 6210-01-M

NATIONAL LABOR RELATIONS BOARD

Open Meeting

TIME AND DATE: 10:00 a.m., Friday July 1, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Rulemaking--29 CFR Part 103 (Collective-Bargaining Units in the Health Care Industry).

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, D.C., June 10, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-13472 Filed 6-10-88; 3:14 pm]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 13, 20, 27, and July 4, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 13

Thursday, June 16

2:00 p.m.
Briefing on Advanced Light Water Reactors by EPRI (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of June 20—Tentative

Monday, June 20

1:00 p.m.
Discussion of Management-Orgnanization and Internal Personnel Matters (Closed—Ex. 4).
2:30 p.m.
Briefing on Technical Specifications Revisions (Public Meeting).

Tuesday, June 21

10:00 a.m.
Briefing by TVA on TVA Reorganization and Plant Status (Public Meeting).
2:00 p.m.
Briefing on Proposed Rule on Fitness for Duty (Public Meeting).

Friday, June 24

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of June 27—Tentative

Monday, June 27

10:00 a.m.
Briefing on Proposed Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting).

Wednesday, June 29

10:00 a.m.
Initial Briefing by the Advisory Committee on Nuclear Waste (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of July 4—Tentative

Tuesday, July 5

2:00 p.m.
Briefing on Accountability of Radioactive Material Used by Material Licensees (Public Meeting).

Wednesday, July 6

10:00 a.m.
Briefing on EEO Program (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Thursday, July 7

2:00 p.m.
Briefing on Continuity of Government Handbook (Closed—Ex. 1).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

June 9, 1988.

[FR Doc. 88-13473 Filed 6-10-88; 3:15 pm]

BILLING CODE 7590-01-M

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Tuesday
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49 CFR Part 382

Motor Carrier Safety Standards; Controlled Substances; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 382

[FHWA Docket No. MC–116]

Motor Carrier Safety Standards; Controlled Substances

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comment on a proposed rule which would mandate chemical testing of interstate or foreign commerce drivers for the use of drugs. The impetus for this action is the safety and health concern associated with the use of drugs by these personnel. The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in motor carrier operations. In addition, these proposed rules seek comments on regulatory alternatives for rehabilitation to be offered by motor carriers to drivers. This notice of proposed rulemaking (NPRM) was preceded by two drug rulemaking actions which were published in the Federal Register on May 13, 1986 (BMCS Docket No. MC–116, Amendment No. 83–17, 51 FR 17568; BMCS Docket No. MC–120, Notice No. 86–3, 51 FR 17572). The latter of those actions proposed a drug test plan (much less comprehensive than proposed here) for drivers of hazardous materials. The former requested comment on specific questions regarding the various aspects of a drug control program applicable to interstate or foreign commerce drivers. The intent of the NPRM is to consolidate the subject matter of the previous actions and propose a comprehensive drug control program applicable to all drivers in interstate or foreign commerce.

DATE: Comments must be received on or before September 12, 1988. The FHWA is also considering holding a public hearing on this proposal and, if so, will announce the time and place of the hearing in the Federal Register.

ADDRESS: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 4205, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Holian, Office of the Chief Counsel (202) 366–1350, or Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards (202) 366–2981, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On May 13, 1986, the FHWA published a final rule which amended the prohibitive language of the medical drug standard for all drivers in interstate or foreign commerce (BMCS Docket No. MC–116, Amendment No. 83–17; 51 FR 17568). Drivers in interstate of foreign commerce were prohibited from using any Schedule I drug, an amphetamine, a narcotic, or any other habit-forming drug.

In the same rulemaking action, the FHWA incorporated an advance notice of proposed rulemaking (ANPRM) (see 51 FR 17572) and asked several questions relative to drug testing. These questions were:

1. Should the FHWA mandate urine drug screening (pre-employment and biennial) for all interstate or foreign commerce drivers?

2. Should the FHWA only state it permits urine drug screening in the regulation, leaving the decision to the motor carrier and the examining physician whether to perform the test?

3. Whether urine drug screening is mandated or optional, should the urine drug screening, where positive, be automatically subjected to more specific and sensitive tests for further confirmation?

4. Should the list of prohibited drugs, as now named, be changed to prohibit use of all drugs in the Schedules of Controlled Substances (SCS), Schedules I through V, 21 CFR Part 1308? If the SCS is adopted in its entirety, should a provision be added that specifically addresses instances of drivers using SCS drugs under doctor's orders?

The comment period for the ANPRM closed on August 11, 1986. Thirty-six comments were received, some with extensive documentation. In general, there was strong support for a comprehensive drug testing program.

The FHWA also published an NPRM (BMCS Docket No. MC–120, Notice No. 86–3; 51 FR 17572) in the Federal Register on the same date as the ANPRM (May 13, 1986). The NPRM sought comments on the qualification and disqualification of drivers, background investigation and inquires into the drivers' driving records, written examinations, and road tests. With regard to the qualification of drivers, the NPRM sought comments on a proposal to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to include a drug testing standard for drivers of certain hazardous materials-laden vehicles. Comments were also sought on whether the proposed drug testing plan should be mandated or be a recommended industry practice. There were 52 comments to the docket. Drug testing and the penalties proposed for their use were the subjects receiving the most comment. The majority of the commenters gave strong support for a mandated standard of drug testing.

It is the intent of the FHWA to address the issues of both of these proposals through this NPRM which proposes a comprehensive drug control program for all drivers in interstate or foreign commerce. The reason for proceeding with a comprehensive drug control standard is discussed below.

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments should include the name and address of the person making them, refer to the docket number that appears at the top of this document, give the specific section of the proposal to which the comment applies (question number, if applicable), and give the reasons for the comment. Persons desiring receipt acknowledgment should enclose a stamped, self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Background

Drug Abuse in American Society

Drug abuse constitutes a major societal problem. Statistics have been compiled and reported by the National Institute of Drug Abuse (NIDA) and by media polls. The results indicate that the use of drugs, such as marijuana, is widespread. While the problem appears to be "youth centered" in that the majority of users are in the younger age categories, the problem also exists in older groups. For instance, preliminary data from the 1985 NIDA, "National Survey on Drug Abuse," indicate the following:

- In the 18 to 25 age group, 22 percent of the youths surveyed reported using marijuana within the last 30 days.
- In the 26 and over age group, there is a total population of 136,600,000. The results of the survey show the following:
  - —27 percent of this age group reported using marijuana sometime during their life.
  - —6.2 percent of this age group reported using marijuana within the past month.
  - —9.5 percent of the age group reported using cocaine sometime during their life.
  - —2 percent of this age group reported using cocaine within the last month.

Because of statistics like the above, the public is concerned that an individual who uses drugs may jeopardize the personal safety of others. There is widespread public belief that persons in safety-affecting occupations should not be abusers of drugs.

Public Perception on Chemical Testing

POPULUS, Inc., and Decision/Making/Information conducted a national survey in 1986 on madatory drug testing in the workplace. When the respondents were asked whether certain occupational or demographic groups should be subjected to mandatory drug testing, there was general agreement that the following occupational groups should be tested:

- Airline pilots and air traffic controllers (88 percent)
- Police and other law enforcement agents (85 percent)
- Bus drivers (81 percent)

The researchers concluded that the respondents believed "people who are responsible for the physical safety of others should be tested." Transportation workers affect public safety and the public supports testing these workers for the use of drugs. POPULUS, Inc., and Decision/Making/Information, "Mandatory Drug Testing: a Nation Divided * * * Or Is It?" Final Report, Greenwich, CT (July 1986).

Another 1986 survey examined the public's attitude toward drug testing of certain occupational groups. American Viewpoint, Inc., conducted a national telephone survey of 1,000 respondents. The results indicate, "by a margin of 76 percent to 22 percent, Americans agree that the drug crisis today is serious enough for mandatory drug testing." American Viewpoint, Inc., used a "forced choice" list that did not include the transportation modes when doing the survey. The persons surveyed placed the following safety-affecting occupations at the top of the list for mandatory drug testing:

- Police and firefighters (84 percent)
- Members of the armed forces (83 percent)
- Doctors and nurses (61 percent)

Eighty percent of the respondents indicated they would participate in voluntary testing if asked to do so by their employers. American Viewpoint, Inc., "U.S. National Survey," Alexandria, VA (August 1986).

Based on the above information, the FHWA concludes that the public is concerned about drug abuse and supports drug testing of workers affecting public safety. Although drug abuse is more prevalent among the 25 and under age group, the problem persists in all age groups. The Department of Transportation in its regulatory role of protecting public safety, assumes that the problem of drug abuse among transportation workers does not differ significantly from that in the overall population.

Epidemiological Studies

An approach to evaluating the effects of drugs on transportation safety would include a program to determine the presence of drug use in an adequate sample of accidents and the collection of data on the incidence of drug use among all drivers. It would be possible to determine whether the user was overrepresented in the accident population. Over a period of years, analysis of this kind has permitted the Department of Transportation, through its National Highway Traffic Safety Administration, to determine the role of alcohol in highway accidents. Attempts to obtain post-accident toxicology results are only now beginning to provide data that may, in combination with careful field investigations, provide sufficient evidence to estimate accurately the involvement of drugs in transportation accidents.

A study of 440 fatally injured young California drivers detected alcohol in 70 percent of the drivers, marijuana in 37 percent, and cocaine in 11 percent. Each of 24 other drugs was detected in fewer than 5 percent of the fatally injured group. The authors concluded that only alcohol could be clearly "associated with crash responsibility" within the limitations of the available data, and that the role of marijuana in automobile crashes warrants further investigation. Williams, Peat, Crouch, Wells, and Finkle, "Drugs in Fatally Injured Young Male Drivers," *Public Health Reports* 100:19–25 (1985).

Another study examined the presence of alcohol and drugs among 497 drivers injured in motor vehicle accidents and treated in a Rochester, New York, hospital. Thirty-eight percent of the drivers had alcohol and/or another drug in their systems. Alcohol was found in 25 percent, marijuana in 9.5 percent, and tranquilizers in 7.5 percent. These results were considered conservative, because the drivers were not required to provide blood samples and many refused. Terhune and Fell, "The Role of Alcohol, Marijuana, and Other Drugs in the Accidents of Injured Drivers," NHTSA Technical Report DOT–HS–806–161 (Revised—March 1982).

As the foregoing studies indicate, in a number of instances people may have used both drugs and alcohol. The multiple drug phenomenon suggests the hazard of relying on countermeasures directed exclusively to alcohol and complicates the evaluation of drug involvement. This dilemma is particularly critical when it is considered that workers may use drugs other than alcohol on the job to avoid detection by their employer.

The Problem of Drugs in the Motor Carrier Industry

The motor carrier industry is a heterogeneous group of business entities. The various entities that make up the motor carrier industry vary tremendously in size. They range from single owner-operators to vast multinational corporations. The lengths of trips range from short intracity to transcontinental. Motor carriers may transport between fixed terminals or, on demand, to any destination. Drivers rarely are subject to direct observation by supervisors. Thus, the motor carrier industry's varying operational patterns, mixed and scope of operations, and lack of direct supervision make characterization of the industry and the application of drug testing standards very complex issues.

A few generalizations, however, can be made. Because truckers and, to some extent, bus drivers work for the most part unsupervised, employer surveillance and detection of drug use can be difficult. Within the motor carrier industry, driving may require irregular hours and long periods on the road, which may prompt some drivers to turn to stimulants to maintain alertness.

In addition, in some instances shippers may put pressure on drivers to deliver goods by a specific time that the drivers are unable to complete without violating, for example, the hours-of-service regulations. This pressure may cause drivers to seek to stay awake longer and lead to the use of stimulants like amphetamines to meet the timetable. This use thus becomes one of economic need, rather than merely recreational. The FHWA recognizes this potential problem and is seeking to increase enforcement of its applicable regulations to dissuade drivers from violating, for example, the hours-of-service regulations. The FHWA has taken action in conjunction with the States under the Motor Carrier Safety

Assistance Program to increase enforcement of all of the motor carrier safety regulations, including the hours-of-service requirements. For the years 1986 and 1987 there were approximately 98,000 and 156,000 identified violations of the hours-of-service requirements discovered, respectively, and of these there were approximately 36,000 and 51,000 violations which resulted in placing the driver out-of-service. In addition, the recent trend towards computerization of the drivers log books will aid in cutting down the number of violations of the hours-of-service regulations. Increased enforcement is but one aspect of the problem, but it leaves unresolved a means to prevent shippers from placing impossible burdens on drivers. The FHWA has identified driver fatigue and compliance with the hour-of-service requirements as a high priority national problem area and is proposing a series of research projects to analyze the problem and possible remedies.

The FHWA requests comments on ways to design the program to address specifically the types of problems caused by drug use in the trucking industry, especially problems associated with the use of stimulants. Comment is also requested on how the rule will affect the potential question of shipper pressure on drivers.

Finally, the FWHA is very interested in receiving any additional data on the use of controlled substances by drivers of commercial motor vehicles.

Data concerning drug-involved highway accidents and drug use among truck and bus drivers are scarce. However, the Insurance Institute for Highway Safety conducted a study at weigh stations in Tennessee in late 1986 in which truck drivers were interviewed and tested for drugs. Three hundred and fifty-nine tractor-trailer drivers were randomly stopped and requested to participate anonymously in the test; 12 percent declined. The study of body fluid analysis indicated that 29 percent of the drivers tested positive for drugs with the potential for abuse. Fifteen percent tested positive for marijuana metabolites, 2 percent tested positive for cocaine, less than 1 percent tested positive for alcohol, five percent tested positive for prescription stimulants (i.e., amphetamine, methamphetamine, or phentermine) and 12 percent tested positive for nonprescription stimulants (i.e., phenylpropanolamine, ephedrine, or pseudoephedrine) which are generally used in over-the-counter diet and cold pills. These figures do not establish information on impairment. Usually, a blood measurement is required to consider whether impairment exists. Blood measurements showed marijuana (tested for THC, the primary psychoactive constituent of marijuana) at 3 percent, cocaine at less than 1 percent, and stimulants (prescription) at 5 percent. Whether these blood measurements establish impairment is not commented on the study. A.K. Lund et al., "Drug Use by Tractor-Trailer Drivers," Insurance Institute for Highway Safety, Washington, DC, June 1987.

The FHWA does not dispute the professionalism of most drivers in the motor carrier industry. Nevertheless, given the growing public concern about drug use and the public support for testing workers affecting public safety, the FHWA is proposing rules to require chemical testing for commercial motor vehicle drivers in order to reduce risks associated with drug-related accidents.

Jurisdiction

Authority pertaining to motor carrier safety has been delegated to the Federal Highway Administration (FHWA). 49 U.S.C. 104 (1982 and Supp. III 1985) and 49 CFR 1.48 (1986). Under 49 U.S.C. 3102 (1982 & Supp. III 1985), the FHWA may prescribe requirements for the qualifications and maximum hours of service of employees and the safety of operation and equipment of motor carriers. For purposes of this section, motor carriers include for-hire motor carriers of passengers or property and private motor carriers of property operating in interstate or foreign commerce. Motor vehicles subject to this regulatory authority are not limited by size or weight. Under this authority, the FHWA has established the FMCSRs, 49 CFR Parts 390-399.

Section 206 of the Motor Carrier Safety Act of 1984 (Act), 49 App. U.S.C. 2505 (Supp. III, 1985), directs that Federal safety standards be established for motor vehicles that, at a minimum, ensure that—

(a) Commercial motor vehicles are safely maintained, equipped, loaded, and operated;

(b) The responsibilities imposed upon operators of commercial motor vehicles do not impair their ability to operate such vehicles safely;

(c) The physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely; and

(d) The operation of commercial motor vehicles does not have deleterious effects on the physical condition of such operators.

This regulatory authority is applicable to for-hire and private motor carriers operating commercial motor vehicles in interstate or foreign commerce. A commercial motor vehicle is defined in the 1984 Act as a vehicle used in interstate or foreign commerce if the vehicle—

(a) Has a gross vehicle weight rating of 10,001 or more pounds;

(b) Is designed to transport more than 15 passengers, including the driver; or

(c) Is used to transport hazardous materials in a quantity requiring the vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Parts 171-179 (1986).

The FHWA has established regulations pertaining to the use of drugs by drivers of motor vehicles in interstate or foreign commerce. These regulations are discussed below.

Under the Commercial Motor Vehicle Safety Act of 1986, section 12008 (a) and (b) of Pub. L. 99-570, title XII, 100 Stat. 3207-177 (1986), Congress recently addressed alcohol and drug use by commercial motor vehicle drivers and authorized the Secretary to disqualify drivers who operate motor vehicles while under the influence of alcohol or drugs. These Federal disqualifications apply to intrastate drivers as well as those operating vehicles in interstate or foreign commerce.

Also, under subtitle T of title I of the Anti-Drug Abuse Act of 1988 (Pub. L. 99-570, section 1971, 100 Stat. 3207-0256), it is a Federal crime for the operator of a common carrier (i.e., rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, an air common carrier) to operate under the influence of alcohol or a controlled substance. The maximum penalties upon conviction are 5 years' imprisonment and a $10,000 fine. This Federal law is codified at 18 U.S.C.A. section 342 (West Supp. 1987).

The FHWA has adopted regulations which prohibit the use by a driver of a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug. 49 CFR 391.41(b)(12) (1987). A driver who uses such a drug is not qualified to operate a motor vehicle in interstate or foreign commerce. 49 CFR 391.11(b)(6) (1987). Unqualified persons who operate motor vehicles in interstate or foreign commerce are subject to civil and criminal penalties. 49 U.S.C. 522(b) (1982 & Supp. III, 1985).

The FHWA has issued specific regulations prohibiting the operation of a motor vehicle when drugs are involved. This rule provides that no driver shall be on duty and possess, be under the influence of, or use a Schedule I drug or other substance, an amphetamine, a narcotic, or any other substance, to a degree which renders the driver incapable of safely operating a commercial motor vehicle. 49 CFR 392.4(a) (1987). This provision does not apply to the possession or use of a drug administered by or under the instructions of a physician who has advised the driver that the drug will not affect the driver's ability to safely operate the vehicle. 49 CFR 392.4(c). Also, this section does not prohibit the "possession" of a drug which is manifested and transported as part of the shipment. 49 CFR 392.4(d).

Under 49 CFR 391.15, upon a conviction for driving under the influence of a prohibited drug, the driver is disqualified for at least 1 year and up to 3 years depending on previous convictions.

Also, section 12008 of the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, title XII, 100 Stat. 3207-178 (1986), disqualifies a driver for 1 year from driving a commercial motor vehicle in intrastate, interstate or foreign commerce if found to have committed a first violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance. If such a driver was transporting hazardous materials cargo, the disqualification period is 3 years. A second offense will result in a lifetime ban from driving commercially unless the Secretary, by regulation, reduces the penalty to no less than 10 years.

The FHWA has prohibited unlawful drug use by a driver of a commercial motor vehicle in interstate or foreign commerce. It has not specifically required that a driver be subject to chemical testing to confirm that he or she complies with this requirement. The FHWA currently relies on the motor carrier and the examining physician to determine whether a driver uses drugs. However, the FHWA believes that driver examinations may not be sufficient to reliably detect the use of drugs. The FHWA proposes to minimize this possibility by requiring a driver to be chemically tested for drug use. The FHWA also believes that drug testing will deter drug use.

Policy Statement

It is the policy of the FHWA that drivers on the highways of our Nation should be free of drugs. To detect and deter the use of drugs by bus and truck drivers, this proposed rule would require motor carriers to establish a program of five types of driver testing for the use of controlled substances: Pre-employment, periodic (biennial), post-accident, reasonable cause, and random drug testing. The testing procedures would protect individual privacy, ensure accountability and integrity of specimens, require confirmation of all positive screening tests, mandate the use of laboratories operating within the guidelines established by the U.S. Department of Health and Human Services, provide confidentiality for test results and medical histories, and ensure nondiscriminatory testing methods. The FHWA proposes to require all motor carriers covered by this rule to establish effective drug abuse prevention programs for drivers.

Proposals

Goals of Testing

The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in motor carrier operations.

Under this proposal, a driver may not use controlled substances on or off duty. In this proposal, the terms controlled substances and drugs are synonymous. If controlled substance use is detected, an individual is unqualified to drive a commercial motor vehicle involved in interstate commerce. A driver could not be hired or used (unless the driver completed a rehabilitation program) if he or she has a confirmed positive drug test as a result of a pre-employment, periodic, reasonable cause, or random test. In these instances, a motor carrier may consider retesting at a later date, depending on its company policies, those who test positive for controlled substances.

For post-accident testing, driver's refusal to give a sample if he or she is so able or a confirmed positive test for controlled substance use would result in a letter of disqualification issued by the FHWA. The letter would disqualify a driver from driving for at least a 1-year period. In all cases of a positive test, the driver is medically unqualified until such time as the driver no longer uses controlled substances, tests negative for controlled substances, and is medically recertified.

Drug testing and sanctions for use will help discourage substance abuse and reduce absenteeism, accidents, health care costs, and other drug-related problems. It will act as a deterrent to those individuals who might be tempted to try drugs for the first time or who currently use drugs. Finally, drug testing will protect the health and safety of the employees of motor carriers and other users of the highway system through the early identification and referral for treatment of workers with drug abuse problems.

This NPRM proposes specific requirements for testing procedures and rehabilitation programs. As noted below, the FHWA realizes that some of these requirements may be difficult to implement as proposed. This may be especially true for small motor carriers and owner-operators. The policy statement included in the NPRM is the basis on which this proposal was developed. The FHWA is interested in comments on ways in which this policy can be carried out through procedures or programs without the need for detailed regulatory requirements. For example, should FHWA permit programs developed by consortiums of motor carriers or motor carrier or driver associations to be used in lieu of the following FHWA proposed specific program? As noted elsewhere in this preamble, the FHWA is also interested in the feasibility and effectiveness of having FHWA approve company-specific programs. If this approach is adopted, an industry-wide program, developed by associations, may be a viable and expedient mechanism to implement drug abatement programs. In addition, this type of approval may provide more flexibility to the industry. If so, the FHWA requests detailed comments on how such an approval program would be implemented. The FHWA believes that any divergence from the proposed specific program would have to comply with the policy statement. Therefore, comments on this issue should address the specific elements of the policy statement.

Test Administration

Pre-employment

The FHWA proposes to require motor carriers to ensure that driver-applicants are chemically tested for evidence of the use of controlled substances. A urine specimen would be used for testing purposes. An applicant who tests positive (confirmed positive) for the use of a controlled substance, which is prohibited under 49 CFR 391.41(b)(12), would be medically unqualified. The driver cannot use controlled substances, must test negative for controlled substances, and must be medically certified to drive for a motor carrier. A driver-applicant who refuses to be tested could not be medically certified nor drive for a motor carrier until he or she tests negative for controlled substance use.

A motor carrier would be responsible for ensuring that testing is carried out according to the requirements of the proposed rule, for receiving and maintaining documentation of the results for hired drivers for 3 years, and for notifying applicants of the results.

A motor carrier would be held responsible for ensuring that a driver-applicant is tested prior to employment. However, a driver who is regularly employed by a motor carrier could be hired temporarily by another motor carrier on the basis of a negative controlled substance test from the primary motor carrier if the driver meets the requirements of § 391.65 of the regulations.

The FHWA is concerned about the special circumstances that may confront an owner-operator who leases his or her service to other motor carriers over the course of a year. We believe that employers and the public should be assured that owner-operators and other drivers are not impaired by the use of controlled substances. When leasing his or her services, the driver would not be exempt from pre-employment testing. We request comments on the practicality of requiring multiple tests for these drivers and possible workable alternatives for assuring that they do not abuse controlled substances.

Periodic

The FHWA proposes that all drivers be biennially tested for the use of controlled substances. A urine specimen would be used for testing purposes. A motor carrier would maintain written documentation that such testing shows no evidence of the use of controlled substances. Drivers would be tested as part of their routine medical examination every 24 months and certified initially upon entrance into the industry. A driver who tests positive for controlled substance use would be medically unqualified. In order to drive for a motor carrier, the driver must not use controlled substances, must test negative for controlled substances, and must be medically recertified. A motor carrier would be responsible for assuring that testing is done, for notifying drivers of the results, and for receiving and maintaining documentation of the results for the required 3 years.

Because the date of periodic testing is known to the employee, an individual who uses drugs could stop taking them prior to the test in order to avoid detection. However, not all individuals would have sufficient control over their drug use to do so. Periodic testing would have the advantage of being less costly, since it would be performed during an already acquired exam. Because of the scheduled nature of periodic testing, comment is requested concerning its effectiveness. Should this type of testing be a part of all future drug programs, or should it be phased out after several years when the other forms of testing are established and working smoothly? Periodic testing would appear more likely to detect dependent drug users as opposed to casual users. After an initial round of periodic testing, most of the dependant users should be detected and, therefore, the benefits of additional periodic testing may decrease. The FHWA is also considering only requiring periodic testing once for each driver. This alternative would significantly cut down on the costs of testing, and in light of other testing measures such as pre-employment and random testing, commenters should address the costs and benefits associated with this alternative. How are the benefits affected after the driver is tested once?

Post-accident

Post-accident testing is a necessary part of a drug prevention program. In addition to providing a deterrence to controlled substance use, the data collected from the tests will provide valuable information on the association of controlled substance use and motor carrier accidents. Such data will be useful in identifying problems and establishing effective countermeasures.

The FHWA proposes mandatory testing for operators of commercial motor vehicles involved in fatal accidents. The limitation to fatal accidents is purely a practical matter, and this proposed regulation should not be interpreted to prohibit carriers from testing operators involved in other categories of accidents. In 1985, there were approximately 40,000 interstate or foreign commercial motor vehicle accidents reported to FHWA, 2,161 of which involved a fatality, including 416 in which the driver of a commercial motor vehicle was killed.

A motor carrier would be responsible for ensuring that testing is done in the prescribed manner after a fatal accident. A fatal accident is defined as one in which a fatality occurs within 24 hours of the accident. Testing would be done as soon as possible, but no later than 12 hours after the fatality. The test results would be sent to FHWA within 24 hours after receipt. If testing is not done, the motor carrier would be required to furnish an explanation and attach it to the FHWA accident report.

Post-accident testing would require the driver to go to a collection site and provide a urine sample within 12 hours of the fatality. A 12-hour period was selected because the FHWA believes that testing within 12 hours will detect most individuals who used prohibited drugs a short-time prior to the accident. Furthermore, this timeframe takes into consideration the myriad factors (geographic isolation of the accident, late notification of the accident to the motor carrier, injury, etc.) which could delay collection of a sample.

Currently, § 394.7 requires a motor carrier to notify the FHWA as soon as possible after a fatal accident. We are now proposing that, additionally, the motor carrier would provide a post-accident toxicological test result to the FHWA within 24 hours of its receipt from the laboratory. The FHWA would review the post-accident toxicological test result and, in the case of a confirmed positive test report or a driver who refuses to be tested, would issue a letter of disqualification to the driver and a copy to the motor carrier. The letter of disqualification would notify the driver that he or she is disqualified from driving a commercial motor vehicle in interstate or foreign commerce for a period of at least 1 year from the date of the letter. The letter would also state that the driver has the right to petition to the issuing official to rescind the letter or to petition the Associate Administrator for review of the disqualification under 49 CFR Part 386. At the end of the disqualification period, the driver cannot use controlled substances, must test negative for controlled substances, and must be medically recertified in order to drive for a motor carrier.

The purpose of this provision is to enable the FHWA to take immediate action against a driver involved in a fatal accident who has violated the controlled substance prohibition. However, a driver in this situation may face a period of disqualification longer than 1 year, as well as criminal or civil penalties. In certain cases, a State or local criminal conviction is cause for disqualification under the FMCSRs. Under 49 CFR 391.15 of the FMCSRs, if a driver is convicted by a State or local court for a first offense driving a commercial motor vehicle under the influence of a narcotic, the driver is automatically disqualified from driving a commercial motor vehicle in interstate or foreign commerce for a 1 year period. This disqualification is consistent with the Commercial Motor Vehicle Safety Act of 1986.

The FHWA is aware of the difficulties in establishing a post-accident testing program, and is especially concerned about the process of assuring proper testing procedures when the involved driver is geographically far removed from the responsible motor carrier. The FHWA is also concerned about the difficulties in ensuring that fatally injured drivers are accurately tested.

Comments are invited on these and related issues.

Specific comments are requested on the following:

(1) Should the FHWA require testing after all accidents or only those involving the death of a person, serious personal injury, or property damage of a certain dollar amount? Should testing be required only after accidents about which there is reason to believe that the regulated driver was at fault? Should the FHWA require post-accident testing after all accidents involving a vehicle carrying hazardous material which is required to be placarded?

(2) Should the FHWA rely on evaluations made by emergency response personnel and require that persons subject to this rule be tested only if requested by Federal, State, or local officials on the scene? Would this help to resolve the potential problems arising with motor carriers who have only been informed of the accident once the time for testing has passed? Should the FHWA seek authority to require State and local enforcement agencies to require drug testing of all culpable parties involved in a fatal commercial motor vehicle accident? If State or local enforcement agencies conduct a test as part of their investigation, should the test serve as meeting the post-accident testing requirement of this proposal?

(3) Should the FHWA specify the amount of time within which the body fluid sample must be taken? Is 12 hours after the fatality reasonable? Are there effective ways to collect the sample more quickly?

(4) Should the FHWA require all drivers subject to this requirement to expressly authorize (i.e., in writing) body fluid testing after an accident?

(5) Is an implied consent for testing sufficient to require a driver to submit to such testing? What consequences should follow a driver's refusal to submit to such a test? Should refusal by the driver to submit to testing constitute a presumption that the driver used, or was under the influence of, a controlled substance for the purposes of disqualifying or otherwise penalizing the person?

(6) Should States that conduct post-accident testing of commercial motor vehicle operators provide the results to the FHWA? On an annual basis, or after each accident?

(7) Should the FHWA require the driver or the motor carrier to check with the medical facility to determine whether an injured party died within 24 hours of the occurrence of the accident?

Reasonable Cause

The FHWA currently prohibits motor carriers from allowing a driver to operate a motor vehicle if the driver's ability or alertness is impaired as a result of fatigue, illness, or any other cause. For assistance in the enforcement of this prohibition, we propose to require a motor carrier to conduct testing when it has reasonable cause to believe that an on-duty driver has used a controlled substance.

Testing based on reasonable cause would require that the operator be involved in a specific triggering event in the job environment. These events would consist of violations of the FMCSRs, State or local traffic laws that could reasonably lead to, or have resulted in, serious personal injury or death. Comment is requested on the sufficiency of this requirement. Should this category be limited or expanded to a list of specific violations or general classes of violations?

Commenters also should present any data on the effectiveness of existing programs which use reasonable cause- or suspicion-type testing. At least one program that we are aware of provides for rehabilitation similar to that proposed under option 3 below, but which was worked out by labor and management. Sanctions, in terms of salary loss, are potentially quite severe for persons discovered to have drugs in their systems as a result of a test. Commenters should address the benefits, costs and deterrence value of such a program.

Reasonable cause testing could also be based on a belief that an individual is using or is under the influence of controlled substances while on duty. Changes in character or behavior may evidence the use of controlled substances. These changes are often characterized by mood swings and changes in appearance, attitude, speech, and work habits. In light of the subjectivity of this criteria, two witnesses would be required to substantiate this determination. At least one witness would have to be a person in a supervisory capacity. Is this sufficient or should both witnesses be supervisory personnel? Are two witnesses enough or should three or more be required?

With respect to this type of reasonable cause testing to owner-operators and small motor carriers, it may not be possible to require two supervisors. Comment is requested concerning possible exemptions for owner-operators and small carriers from part or all of reasonable cause drug testing.

The FHWA realizes that reasonable cause testing can be misused order to harass an employee. In those instances where witnesses are necessary to substantiate the need for testing, a written and signed statement from each witness would be required. The FHWA requests comment on the necessity and sufficiency of this requirement. What other criteria could be used that would protect a disfavored employee from potential harassment through drug testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing, in order to prevent unwarranted harassment?

A driver who has tested positive for controlled substance use must cease usage of a controlled substance, must test negative for use of controlled substances, and must obtain a medical recertification in order to drive for a motor carrier. A driver who refuses to be tested could not be permitted to drive. The motor carrier can institute additional policies or penalties pertaining to such drivers.

Random

Random testing can be an extremely effective method for decreasing drug use among drivers because abstinence from use is the only way to prepare for an unannounced test. The success of random drug screening has been demonstrated in various programs. The United States Coast Guard implemented a random testing program for its uniformed personnel which led to a 75 percent decrease in drug use over a 5-year period. The Department of Defense has a random testing program which has resulted in a drop from 27 percent use-rate in 1980 to 8.9 percent in 1985. The FHWA also requests commenters to address whether the experiences of the Coast Guard or DOD programs are valid indicators of how motor carrier employees would respond to a similar program.

The FHWA believes that an employer-sponsored program is the most effective form of random testing. The motor carrier has an interest in ensuring that its vehicles and equipment are used by drivers who do not use controlled substances. The DOT is mandating that all interstate or foreign commerce motor vehicle operators, as well as operators in other transportation modes, be subject to random drug testing. This will assist in achieving a drug-free transportation environment. We realize that there may be difficulties in applying these types of testing to owner-operators and small motor carriers who do not operate under long-term lease

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agreements with large carriers. Those owner-operators and small motor carriers operating with long-term lease agreements will, depending on the specific terms of their agreement, be subject to the testing program of the large carrier. FHWA realizes that there is a significant number of small entities that do not operate under these arrangements. Comment is requested on the problems inherent in such an application and solutions that would ensure an effective random testing program for owner-operators and small carriers. Should the rule permit motor carriers, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including:

1. Form consortiums made up of owner-operators and small carriers that would develop a centrally administered random testing program.

2. Form consortiums, and hire a contractor to develop and implement a random testing program.

3. Contract separately with an outside company that would set-up and provide these services.

4. Have existing industry-related groups (e.g. trade associations) set-up drug programs in which small entities could participate.

5. Arrange to be included as a part of a larger company's drug testing program.

The FHWA invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose.

Under the proposed random testing, a motor carrier would request a driver to submit to random testing. Random driver selection is a necessary part of a successful random testing program. Random selection ensures that every member of a given population will have an equal chance of being tested. The possibility of selection at each testing acts as a deterrent to controlled substances use. Random testing would be performed at the direction of the motor carrier for its employees at a designated collection site. Random testing, as proposed in this rule, would not be performed on the side of the road.

The FHWA notes that Senate Bill S. 1465, Air Passenger Protection Act, includes a provision that would require the Secretary to establish a pilot program among four States for development and implementation of random drug testing of commercial motor vehicle operators. The purpose of the pilot program, in part, would be to analyze the effectiveness of different approaches to State testing of commercial motor vehicle drivers, especially for small businesses. Such a pilot program might involve state troopers setting up testing facilities at truck stops or roadside inspection sites. The FHWA is requesting comment on whether, and how, such a State-run random testing program could fit into the proposed random testing requirements, especially for small businesses. What constraints, such as compliance with HHS testing standards, would the roadside checks need to meet?

The FHWA is requesting comment on what percentage of drivers should be tested yearly. For example, if a motor carrier employed 100 drivers and tested at a 50 percent rate, it would perform 50 tests annually. (Because the test selection is done on a random basis, some people may be tested twice.) The FHWA is considering a sampling rate of up to 125 percent. The FHWA notes that this sampling rate has been shown to be a viable deterrent in the Coast Guard program to future drug use and has been proven effective in reducing the current incidence of drug use. This does not mean that the rate will be set at that percentage, but it serves as a cap upon which comments and data are requested. The Coast Guard's random testing program of its uniformed personnel resulted in reducing detected drug use by 75 percent in the 5 years since the program was implemented. The FHWA believes that the rate should serve as a deterrent to current and potential drug users. The FHWA intends to select an appropriate rate based on effectiveness, deterrence costs and benefits. Commenters should identify what that needs to be and provide data and the basis for their views. Would a lower rate be more effective if the severity of the sanction is increased?

The proposal mandates that a driver who tests positive for use of a controlled substance cannot use drugs, must test negative for controlled substances, and must be medically recertified to drive for a motor carrier. A driver who refused to be tested would have to test negative before he or she could drive. For first-time drivers who are detected, this form of sanction could result in lost wages and the possible expense of rehabilitation if required. Second-time users could lose their jobs. The loss of a job could occur under the fourth option of the rehabilitation component for first-time users. The fourth option, however, would leave to labor-management what a driver who tests positive could expect in the way of an opportunity for rehabilitation. Eliminating the Federally-required rehabilitation requirement also would provide additional incentives to drivers to abate any potential drug use. Comment is requested on these approaches and the cost implications and effectiveness of various testing percentages.

Commenters also should address how, for example, to conduct random tests on an employee population consisting of only one employee or a few employees. This problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although surprise is an essential feature of a true random testing program, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases. The FHWA seeks comment on how to deal with these problems.

The FHWA is considering whether programs should provide for adjustment of the minimum sampling rate based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse, and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. The FHWA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or, if an approval process is used, based on individual applications and specifically requests comments on this issue. The FHWA also solicits comments on whether companies that develop exemplarity records should be relieved at some future time from some or all of the requirements of this proposal. As with other issues, the FHWA reserves the right to make appropriate adjustments in the rule in response to public comments. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility without compromising the objectives of the rule? What would be the likely cost savings, if any, in a more flexible approach.

The FHWA also requests comments as to whether the rule should contain a provision allowing a company with a high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its anti-drug program.

The FHWA recognizes that the proposed rule may present legal difficulties for motor carriers based in Canada, because of human rights statutes specifically prohibiting random testing programs. The FHWA does not intend that foreign motor carriers violate Canadian laws or regulations that may prohibit random or other drug testing in Canada. The FHWA understands, however, that random testing of Canadian drivers may be permitted while such drivers are operating in the United States. The FHWA expects foreign motor carriers to comply with the proposed random test rule while operating in the United States. The FHWA is requesting comment on the applicability of the rule to Canadian motor carriers while operating in the United States, and on any special considerations in this regard which the FHWA should be aware of as it prepares the final rule. In addition, FHWA believes that applying this program to Canadian drivers would be consistent with the Free Trade Agreement because there is an exemption for safety regulations. Commenters should address what problems are perceived by applying the program to Canadian under that Agreement and any other potential problems.

Type Of Body Fluid To Be Tested

Several types of body fluid can be analyzed to detect the presence of controlled substances in the body. Urine testing will detect the presence of a controlled substance but not the impairment associated with a controlled substance. Blood testing can be used to measure the amount of a controlled substance in the system. However, that information may not always be useful since unlike alcohol, many controlled substances do not have readily accepted impairment levels. Tissue samples are sometimes collected from a fatally injured person and can indicate the presence of controlled substances. Saliva testing has been used to detect some controlled substances but currently does not have wide acceptance. Based on the advantages and disadvantages of the various testing methods, we propose to use urine testing to fulfill the requirements of this regulation.

Urine testing is the most widely used and accepted method for screening for controlled substances. It involves a noninvasive sample collection procedure and is relatively inexpensive to screen. Opiates (narcotics) can be detected for 2 to 3 days after use; cocaine, for 2 to 5 days after use; amphetamines, for 2 to 7 days after use; and marijuana, in some instances, for several weeks. Urine testing is proposed for pre-employment, periodic, reasonable cause, and random drug testing. The primary test sample for post-accident testing would also be urine. If the driver is fatally injured, blood, a tissue sample, or other body fluid sample may be substituted for or supplement a urine sample. A blood sample can also be used if the attending physician believes that it is in the best interest of an injured driver.

Prescription Medication

A driver would be allowed to use a controlled substance (except for methadone) when taken as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties. Under 49 CFR 382.203, Prescribed drugs, a driver would have an affirmative defense to an allegation that he or she unlawfully used a controlled substance. The driver would have to prove through clear and convincing evidence that his or her use of the controlled substance was as prescribed by the licensed medical practitioner.

The motor carrier and the driver would have flexibility in applying this provision. For example, when a driver tests positive for the use of controlled substances, a driver has the burden of proof to document the use was lawful. The motor carrier may accept the affirmative defense and allow the driver to continue to operate, or request the opinion of another physician. If the motor carrier elects the latter option and a medical dispute follows, the motor carrier or the driver has the option of bringing the question of the driver's qualification to the Office of Motor Carriers for resolution through 49 CFR 391.47, Resolution of conflict of medical evaluation.

The FHWA views use of § 391.47 as a last resort, however, and believes that the motor carrier, the licensed physician, and the driver can best resolve disputes regarding a positive test result due to the use of prescribed controlled substances. The final decision should be based on whether there is evidence of abuse of the medication or whether the controlled substance causes the driver to be a risk while operating a commercial motor vehicle. This process may be unworkable for owner-operators, and commenters should address how to apply this provision.

Under 49 CFR 382.203, Prescribed drugs, a driver could have an affirmative defense in an enforcement action brought by the FHWA against the driver for violating a regulation prohibiting the use of controlled substances. The FHWA action would take place as a result of a driver testing positive for controlled substance use when the driver was involved in a commercial motor vehicle fatality. The proposed affirmative defense means that the driver would have to prove through clear and convincing evidence that his or her use of the controlled substance was as prescribed by a licensed physician who knew of the driver's assigned duties and medical history. The FHWA requests comments on the potential for a driver abusing prescribed controlled substances or using prescribed controlled substances to contrive an affirmative defense that would refute a positive test when the driver is using other controlled substances illicitly. Should the FHWA provide additional guidance in the regulation?

The FHWA currently prohibits the use of methadone by interstate or foreign commerce drivers. Docket comments to the ANPRM of May 13, 1986, from the Legal Action Center of New York requested that we allow drivers in interstate or foreign commerce to use prescribed methadone. The Center stated that a driver on a methadone maintenance program is a safe driver even though he or she is taking an addictive controlled substance. The FHWA requests comments on whether to continue its prohibition on the use of methadone.

Proposed § 382.203(b) provides that nothing in this proposal would restrict a motor carrier from requiring a driver to notify the motor carrier of therapeutic drug use before driving. The FHWA requests comments on whether it should require such advance notice to the motor carrier. Should the FHWA provide that a driver must have notified the motor carrier before driving while using a prescribed drug if the driver is to be allowed to raise the affirmative defense of therapeutic drug use?

Who Is To Be Tested

The FHWA believes that the driver is the most critical individual involved in ensuring the safe operation of a commercial motor vehicle. In addition to

the actual operation of the motor vehicle the driver is required to ensure that the vehicle is in safe operating condition (49 CFR 396.13). Furthermore, the driver is required at the completion of each day's work to report in writing any defect or deficiency discovered which would affect the safety operation of the motor vehicle or result in its mechanical breakdown (49 CFR 396.11). In addition, a driver before operating a motor vehicle must sign the report if defects were noted acknowledging that it has been reviewed and that there is a certification that the required repairs have been made (49 CFR 396.13(b)).

The FHWA believes that a person who tested positive for the use of a controlled substance would be less likely to ensure that the vehicle is in safe operating condition and be able to perform the required inspection as noted above.

Other occupations within the motor carrier industry, most notably mechanics, are not proposed to be covered by this rule due to the difficulty in identifying mechanics, especially those who do not work for a motor carrier. The FHWA believes if would be very difficult to identify and test in a credible manner all the individuals who maintain and repair commercial motor vehicles given the diverse nature of this occupation. Some of these functions are performed by employees of the motor carrier, including the drives, as well as by persons employed by private garages not associated with any motor carrier. In this latter case, the FHWA does not have authority to regulate these individuals. The proposal, however, does not limit motor carriers from including their mechanics in the program.

There are two possible alternative definitions that FHWA is considering in proposing to regulate motor carriers and drivers. The first is based on the definition of "commercial motor vehicle" contained in the Motor Carrier Safety Act of 1984 and as specified in 49 CFR 390.3, General Applicability. The FHWA published a final rule regarding the general provisions of the Federal Motor Carrier Safety Regulations on May 19, 1988 (53 FR 18042). This definition uses a vehicle weight rating criteria of 10,001 pounds or more. The Commercial Motor Vehicle Safety Act of 1986 which defines "commercial motor vehicle" using a vehicle weight rating criteria of 26,001 pounds or more. In reviewing and commenting upon which alternative definition to use, commenters should be aware that the Fatal Accident Reporting System of the National Highway Traffic Safety Administration shows that there were 669 fatal accidents resulting in 753 fatalities in 1986 involving vehicles with a gross vehicle weight rating of 10,000 to 26,000 pounds. For the same time period there were 4421 fatal accidents resulting in 4881 fatalities involving vehicles with a gross vehicle weight rating of over 26,000 pounds. Assuming that the larger vehicles travel twice as much, their accident rate, per miles traveled, would be over three times as great as that of the smaller vehicles. It is, however, the absolute number of accidents that are of concern. In view of this data, commenters should address whether it is more cost effective to focus on drivers operating commercial motor vehicles above the 26,000 pound threshold. Commenters who believe that the 10,001 pounds threshold should be used, should provide the basis for their views and supporting data on the costs of benefits. In addition, use of this cutoff may ease potential implementation problems and also focus on drivers that may be more likely to be using certain drugs to provide long haul service.

The FHWA also notes that the 26,001 pounds or greater threshold is consistent with the entire Commercial Driver's License program. The FHWA estimates that there are 5 million drivers of vehicles with a gross vehicle weight rating of 10,001 pounds or more operating in interstate commerce and 3 million drivers operating the larger vehicles in interstate commerce. Comments are requested on which definition should be used.

This proposal only covers interstate drivers (with regard to the weight discussion above). It does not cover intrastate drivers. This proposed rule would be issued under the authority of the Motor Carrier Safety Act of 1984, which does not provide FHWA with authority to regulate intrastate operations. While most States, under the Motor Carrier Safety Assistance Program (MCSAP) have adopted the FMCSRs for intrastate operations, such an adoption is considered a State's prerogative. The decision to test intrastate drivers is left to each State, consistent with E.O. 12612 on "Federalism."

Sample Collection, Testing, and Laboratory Standards

The FHWA is proposing to use the guidelines for drug testing issued by the Alcohol, Drug Abuse, and Mental Health Administration, U.S. Department of Health and Human Services (HHS), for its drug testing program. These guidelines, entitled "Scientific and Technical Guidelines for Drug Testing Program," are available for inspection and copying at all FHWA regional and division offices as found in 49 CFR Part 7, Appendix D. A copy is also available in the docket. These guidelines are used by the Department of Transportation in the conduct of its own drug testing program.

The HHS sample collection standards include requirements for collection sites, collection procedures, chain-of-custody, and transportation of the sample to the laboratory. Instructions are provided to assure individual privacy, preserve the integrity of the urine sample during the collection procedure, identify the sample container with all pertinent information. Directions for packaging and shipping of the sample to the laboratory are also included. Sample collection chain-of-custody requirements are designed to maintain control and accountability from the point of collection to the final disposition of the sample.

The HHS laboratory standards include procedures for receiving, storing, and processing specimens, reporting results, qualifications of laboratory personnel, and quality assurance and control. The standards list the procedures for assuring accuracy of test results, authoritative interpretation, prompt reporting, and protection of employee privacy.

The HHS testing standards identify which controlled substances to test for and how to test for each drug. The FHWA proposes to require testing for marijuana metabolites, cocaine metabolites, opiates, phencyclidine, and amphetamines. The FHWA invites comments as to which additional drugs, if any, should be include. Commenters should also provide cost and benefit data regarding any additional drug groups. The FHWA would use the cutoff levels for detection as established by HHS. The test standards require immunoassay testing for the initial screening test. If an initial test is positive for a controlled substance above the cutoff level, then a confirmation test will be performed. A cutoff level is that level established by the HHS for a controlled substance below which, the test will be reported negative for the substance. Gas chromatography/mass spectrometry is required for confirmation testing.

The majority of the motor carrier industry has limited experience in managing drug testing programs for its employees, and only a few motor carriers have mandatory drug testing of drivers. These motor carriers generally arrange with a laboratory to devise appropriate collection procedures and chain-of-custody requirements, conduct the tests, and establish laboratory and

testing standards. The FHWA believes that testing laboratories could be an important resource to motor carriers when complying with the provisions of these proposed rules. However, motor carriers would have broad discretion in deciding the means for establishing and managing a drug testing program as long as they comply with the HHS Drug Testing Guidelines, including the use of drug testing laboratories approved by HHS under its guidelines.

Action on Receipt of Positive Drug Test

Upon receiving a confirmed positive drug test report, a motor carrier would review the information on the "chain-of-custody record" (COCR) and the report. The original COCR or a legible copy would accompany the laboratory report of a positive drug test. A motor carrier would ensure that the procedures established under the HHS guidelines for the collection, testing, and laboratory procedures were followed. A substantial variance from the guidelines may invalidate the test. Substantial variance means any action which differs from prescribed format as authorized by HHS guidelines that could reasonably lead to an error in the collection, testing, or laboratory procedures. The motor carrier would verify that the individual personal identifiers of the COCR match those of the driver. The motor carrier would take appropriate personnel action consistent with Federal or State regulations or laws.

A motor carrier would inform the driver or driver-applicant that he or she is medically unqualified if the driver tests positive for controlled substances. The driver or driver-applicant cannot use controlled substances, must test negative for controlled substances, and must be medically certified in order to drive for a motor carrier. Individuals who refuse to be tested would be relieved from driving and could only drive if they test negative for controlled substance use. An affirmative defense would be allowed for a driver using a legally prescribed medication.

In some cases, Federal or State law may supersede the action of a motor carrier. Under the proposed post-accident standard, the FHWA will issue a letter of disqualification for at least 1 year if the driver has refused to give a sample or tests positive for controlled substance use after having been involved in a fatal accident.

Implied Consent

The proposed regulations state that a driver or driver-applicant employed by a motor carrier operating in interstate or foreign commerce would be deemed to have consented to submit to drug testing for all the specified types of drug testing.

Recordkeeping Requirements

A motor carrier must maintain the test results and records in a secure manner and establish procedures for handling this information to safeguard against unauthorized release. Motor carriers would also be required to retain these test results for 3 years. Is this a reasonable amount of time to hold the results? Comment is also sought on the recordkeeping requirements, specifically concerning access to test results. How can the results be used to achieve the goal of a drug-free highway environment and still ensure a driver's privacy?

The NPRM does not state whether and under what circumstances an employer can make the results available to a third party. For example, should the testing employer allow access to a subsequent or prospective employer or should this information only be released upon signed permission of the employee? If an employer can release the testing data without permission of the employee, could this infringe upon an employee's contest of the result? In order to avoid privacy concerns, should motor carriers be permitted to release gross numbers or summaries of their drug test results? If so, could employees of small motor carrier employees who have tested positive be identified by unauthorized third parties? To further protect employee privacy rights, should FHWA provide that no record of tests shall be used or disseminated for any purpose other than complying with this part, or except with the voluntary written consent of the employee? Also, should FHWA require that each motor carrier institute procedures to prevent inappropriate disclosure? The FHWA also encourages comment on any other aspect of this section.

Under any rehabilitation option (discussed later), a motor carrier would not be required to provide a person testing positive for the second time the opportunity for rehabilitation and continued employment even if the individual successfully completed a rehabilitation program as a result of the initial test or voluntary action. The FHWA is concerned about situations in which the person testing positive, successfully completes a rehabilitation program and test positive again, but this time, for another motor carrier. What provisions should be added to the procedures to ensure that the new motor carrier would be made aware of the initial positive test without infringing on the privacy rights of the individual? Should the application for employment required by 49 CFR 391.21 require the applicant to indicate if he/she ever had a confirmed positive test for drugs under the provisions of this proposed rule? Should this also include if the user had ever enrolled in a rehabilitation program and/or successfully completed the program? Are there ways to ensure that an employer is aware of a person's past testing history without denying a driver an appropriate level of confidentiality.

Employee Assistance Programs and Rehabilitation

While the ultimate goal of a drug testing program is to ensure a drug-free transportation system, another important goal is the rehabilitation of persons who have developed a debilitating personal problem. A driver with a drug problem must never be permitted to function in a position where his or her actions could affect the safe operation of a commercial motor vehicle.

The NPRM proposes four different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Once rehabilitated, the employee could be reinstated into his or her prior position. The second option would give rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during periodic or random tests, but would not require that the same opportunity be afforded to drug users identified in post-accident or reasonable cause tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs could be fired immediately. In the fourth option, rehabilitation and employment rights to employees would not be Federally required. In all cases, of course, employers would be free to offer more rehabilitation options than the minimums the FHWA proposes. Thus, for example, an employer could voluntarily offer two chances at rehabilitation rather than one. On the other hand, non-employees given a pre-employment drug test need not be given an opportunity for rehabilitation.

Each of these approaches has its own merits. For example, the broad rehabilitation program that would be provided by the first option is likely to maximize the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to help,

and they will continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation. Unlike reasonable cause or post-accident testing, random testing is not triggered by an event that provides a particularized basis for injury as to the fitness of a given employee. Further, it is not accompanied by blood testing or a blood test option, an investigation technique that can yield information more specific to current fitness. Therefore, there may be good reason to offer abatement or rehabilitation only to employees whose drug use is identified by self-referral, co-worker-referral, or random testing. The third alternative is to require no program of rehabilitation and abatement following a positive test. This alternative is likely to be low in direct costs, because rehabilitation would only be required for employees who seek it voluntarily, but for the same reason this alternative might produce less in societal benefits. On the other hand, it could provide additional incentives for non-dependent users to stop their drug use since there would be no Federally-required right to rehabilitation. The fourth option may provide the most flexibility to labor and management to determine the need for and shape of any rehabilitation program. It could also provide deterrence to drug use and thus, may yield large benefits with low costs.

We specifically invite comment on which of these or other alternatives offers the greatest benefits at the lowest cost. We are especially interested in comments on how to implement opportunities for rehabilitation among owner-operators and small motor carriers. In addition, commenters should address the following questions:

(1) How would different random sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options? Is there any evidence to support alternative assumptions regarding the rates at which drug users would volunteer for rehabilitation?

(2) What is the lowest sampling rate for random testing that would be effective in deterring drug abuse?

(3) Would higher sampling rates result in sufficiently higher benefits to justify the costs?

(4) Would the higher sampling rate add sufficient deterrence to reduce the costs of and need for rehabilitation?

(5) Who should be afforded EAP services and under what circumstances?

(6) What is the estimated level of voluntary enrollment in EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option?

(7) What are the estimated costs of individual EAP rehabilitation services under each rehabilitation option?

(8) To what extent would each of the four alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under Option (3)?

(9) Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse?

We note that under the Commercial Motor Vehicle Safety Act of 1986, drivers are disqualified for 1 year if they are convicted of operating a motor vehicle under the influence of alcohol or drugs. However, the issue of being under the influence of a drug is different from simply having drugs in one's system. It is to the latter, stricter standard that this proposal is addressed.

Nevertheless, we recognize that our goal of rehabilitation and reemployment must be reconciled with the statutory requirement. Therefore, we invite comment on whether someone disqualified following a conviction should nevertheless be entitled to rehabilitation. Should it depend on whether the disqualification and the drug test came from the same incident? If we do allow rehabilitation after a disqualification, we would expect to require that the employee's return to work would follow both the disqualification and any necessary rehabilitation. Are there any problems with this approach?

An Employee Assistance Program (EAP) is designed to help employees solve problems and provide motor carriers with a method for dealing with driver problems, such as drugs. An EAP may include the following components:

(a) Employee policy and procedures on drug use based on a motor carrier's unique needs, organizational structure, and goals and resources;

(b) Employee communications that include ongoing printed educational materials directed at both drivers and family members;

(c) Service delivery system which may include:

(1) Drug screening and confirmation testing and

(2) Treatment (rehabilitation) and/or referral to more appropriate or specialized professional facility (usually all testing is on a contract basis);

(d) Training of supervisors; and

(e) Evaluation of the effectiveness of the EAP.

The FHWA has determined that properly managed EAPs benefit both the motor carrier and the driver. We propose to require that all motor carriers develop EAPs for their employees. Each EAP would be required to have an educational component which would minimally have display and distribution of informational material; display and distribution of the community-service hot-line telephone number for driver assistance (if one is available); and display and distribution of the company policy regarding drug use by drivers. Additionally, each EAP of a motor carrier would be required to provide annual training for drivers and supervisory personnel. The training would minimally require the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral causes that may indicate drug use and abuse; and documentation of training given to drivers and motor carrier's supervisory personnel. EAP training programs for drivers and supervisory personnel would consist of at least 60 minutes for each driver and supervisor the first year. In subsequent years, only the supervisor would need this training. Should FHWA specify the minimum training period? Is 60 minutes appropriate? Or is some other period justified? Finally, each EAP (under options 1–3 above) would provide an opportunity for rehabilitation. How should owner-operators and small motor carriers establish and manage EAPs?

Employers would be required to appoint or designate a Medical Review Officer (MRO). The MRO would perform several functions, including review of the results of the employer's drug testing program; interpretation of each confirmed positive test result; and evaluation of an individual in conjunction with an EAP rehabilitation program. The FHWA also seeks comments on the MRO's appropriate role in determining when an individual might be returned to duty. The proposed rule requires than an MRO be a licensed doctor of medicine or osteopathy. The MRO could be a currently employed company physician or could be a private physician who performs MRO service for the employer on a contractual basis. Comments are requested on the need for an MRO and if the MRO need be a licensed doctor of medicine or osteopathy or another type of medical professional.

EAPs would operate on the premise that drivers who are referred would be afforded the opportunity to retain their jobs based on the following points:

(a) Completion of a rehabilitation program. What are the minimum elements necessary for a drug rehabilitation program? Should a driver be granted more than one opportunity for rehabilitation?

(b) A recommendation and medical certification by a motor carrier's MRO under 49 CFR 391.41(b)(12) and is otherwise medically certified under 49 CFR Part 391.

(c) A driver would be provided the opportunity to obtain counseling and/or treatment, for which a motor carrier would allow up to 90 days of leave. Is a 90-day period a reasonable time period for rehabilitation? What additional, if any, outpatient treatment should be required of those individuals who have successfully completed inpatient rehabilitation? What are the economic consequences to a motor carrier (particularly a small motor carrier) due to its granting of a 90-day leave period? Should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: The MRO, the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment. Here, again, is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

(d) Voluntary referral to an EAP for the purpose of avoiding the adverse consequences of controlled substance abuse which occurred before the voluntary referral would not afford the driver immunity from appropriate discipline by the motor carrier.

Temporary Employees

Although the rehabilitation of drug users is a cornerstone of this program, we believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire seeks rehabilitation, the end of the schedule employment term might come before the completion of a rehabilitation program. Therefore, we are considering not requiring employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees are found to be drug users, it would be permissible to dismiss these persons immediately.

However, we recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus, should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he or she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employee.

The FHWA recognizes that not all motor carriers have the fiscal resources to implement a "company" EAP. However, a motor carrier has a responsibility to both its drivers and the public to provide an environment where safety is not jeopardized by drug abuse. It is suggested a motor carrier provide EAP services through one of the following means:

(a) Motor carrier operated EAP;

(b) Contractor/consortium arrangment;

(c) Arrangements with local community service organizations; or

(d) Other workable alternatives which provide an equivalent level of service. Please comment on specific workable alternatives, and how these should be funded.

We believe that a long-term, well-run EAP will pay for itself over time in lower costs for health care, absenteeism, accidents, and worker compensation. A large motor carrier may find that an internal program utilizing the services of fellow drivers is most economical as well as effective. Some motor carriers may have access to programs run by community service agencies which are made available at little or no cost. Labor unions may also provide programs. Counseling services may also be available as part of driver's medical insurance plan. If inpatient rehabilitation services must be utilized through a contractor/consortium arrangement, costs may run anywhere from $5,000 to $25,000 for a 30–45-day stay. Costs for outpatient care may range from about $150 to several hundred dollars. Coverage of these costs is a matter between motor carrier and driver. Companies should investigate the facilities and services available to them and their drivers and the benefit of establishing internal programs consistent with the size and scope of their operation. Comment is requested on the proposed requirement that motor carriers establish EAPs and provide an opportunity for rehabilitation. Are there other alternatives for small motor carriers and owner operators other than those enumerated?

Several Administrations within the Department of Transportation have developed proposed rules which would mandate drug testing, and would require that drug programs formulated in the private sector be submitted to them for approval prior to being implemented. Because of the large number of entities covered by the proposed FHWA rule, we question whether it is feasible to require that drug programs mandated by the proposed rule be submitted to FHWA for approval and seek comment on this. The FHWA also invites comments on whether companies should have the flexibility to develop company-specific drug abatement programs and submit such programs to FHWA for approval in lieu of following the FHWA-proposed program. If they are submitted for approval, one possible approach is to require the plans to be submitted and to have them go into effect a set number of days after their submissions unless FHWA determines that they are inadequate and notifies the submitter of the inadequacy. Another approach would be for the major motor carrier organizations to develop model drug programs which would then be submitted to FHWA for approval. Once approval was given, the programs could serve as a framework for motor carriers

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to implement drug programs. Comments are requested on this point.

Implementation Date

The FHWA proposes that all motor carriers subject to this rule would have to implement drug testing programs within 6 months after the rule is made final. In the event FHWA adopts some form of approval process, as discussed above, this timeframe would be changed. Comments are requested on whether compliance within 6 months is feasible and if not, what would be an appropriate compliance period. Commenters also should consider whether a phasein approach, which would require that some aspects of the program be implemented at different periods of time (e.g., post-accident could be required immediately, while random could be required some months later), would be viable.

Alcohol

The FHWA is also concerned about impairment resulting from the abuse of other substances, principally alcohol. However, we believe that this rulemaking will best accomplish a useful purpose by addressing only controlled substances. Although both alcohol and controlled substances may result in impairment in the driver's ability to control his or her vehicle, and although current regulations prohibit a person from driving while under the influence of either, certain differences are evident. The possession and use of controlled substances is nearly always illegal, while alcohol consumption is in many circumstances legal. Because of the legality of alcohol and its widespread use, most people have enough contact with it to recognize the indicators of its use. The appearance and actions of a person are often clear evidence of alcohol impairment.

Because alcohol is a legal substance, it is necessary to establish violation of existing prohibitions and actual impairment due to use, rather than simply establishing use, as is done in instances where illegal drugs are used. In instances where chemical testing is used, it would be to determine the degree of alcohol impairment. Testing will often be of a different type than is used to determine the use of drugs. While urine testing will show use, it does not accurately establish impairment. Blood testing, which is an invasive process, is the only method generally available to motor carriers that establishes impairment from alcohol. We are not prepared at this time to mandate blood testing programs. However, FHWA regulations in no way prevent a carrier from instituting a program of chemical testing for alcohol impairment. This testing may be done either in conjunction with a drug testing program or separately.

Existing FHWA regulations address and restrict the use of alcohol by drivers. A person is not medically qualified to drive if he or she has a "current clinical diagnosis of alcoholism," 49 CFR 391.41(b)(13). A driver is prohibited from consuming alcohol while on duty or within 4 hours of reporting for duty, and a motor carrier cannot allow a person to drive or remain on duty under these circumstances. Additionally, if a motor carrier believes that the driver has consumed alcohol based on the person's conduct, general appearance, or other evidence, a motor carrier cannot allow the driver to drive, 49 CFR 392.5. The FHWA has issued a rule (52 FR 27200, 1987) to enforce a 24-hour out-of-service period for drivers who violate the prohibition on use of alcohol, as required by section 12006(d) of the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570).

The FHWA has also initiated rulemaking to establish a standard for when a person is deemed to be driving under the influence of alcohol. An advance notice of proposed rulemaking (ANPRM) was published in the Federal Register on March 23, 1987, soliciting public comment on the appropriateness of different blood alcohol concentration (BAC) levels for use as the standard. The ANPRM summarizes the scope of the study by the National Academy of Sciences (NAS) which is also evaluating the appropriateness of BAC levels. The 60-day comment period for the ANPRM closed May 22, 1987. Docket comments were forwarded to the NAS for consideration as part of their study. The FHWA received the final report from NAS last fall and issued an NPRM on May 10, 1988 (53 FR 16656). Most States currently use a 0.10 percent BAC level for determining when a person is deemed to be driving under the influence of alcohol. Under section 12008(f) of the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570), the FHWA must issue regulations that establish a BAC level of 0.10 percent or lower as the standard for when a person is deemed to be driving under the influence of alcohol while driving a commercial motor vehicle. If the FHWA does not establish the standard by October 27, 1988, it will automatically become 0.04 percent.

Economic Summary

The following is a summary of the preliminary industry cost impact and benefit evaluation for the regulatory changes proposed in this notice of proposed rulemaking on drug testing programs for commercial motor vehicle operators. Testing under these proposed rules would be conducted prior to employment, periodically, randomly, after a fatal accident, and upon reasonable cause. Additionally, under options 1 or 2, a motor carrier will be required to offer a one-time opportunity for rehabilitation to a driver who has a confirmed positive drug test. The proposed rules are needed to prohibit absolutely the presence of a prohibited drug in a driver's system at any time. The proposed rules are intended to ensure a drug-free highway environment and to eliminate drug abuse in the commercial motor carrier industry.

The assumptions and cost factors used in preparing the economic impact estimates of the proposed changes have been developed by the FHWA. Cost data were furnished by motor carriers, motor carrier industry associations, drug testing laboratories, and trade publications. These estimates of cost impact may be revised in the final regulatory evaluation based on public comment and other information that becomes available.

The proposed Part 382 would affect approximately 200,000 interstate motor carriers and either 5 or 3 million, depending on which option is chosen, commercial motor vehicle drivers. These entities will incur additional costs because they would be required to comply with the proposed anti-drug programs specified in proposed Part 382.

The FHWA believes that three major benefits will accrue from these proposals. First, there will be benefits due to the prevention of fatalities personal inquiries, and property loss resulting from accidents attributed to neglect or error on the part of commercial motor vehicle operators whose judgment or motor skills were impaired by the use of illicit substances.

Second, benefits would accrue to motor carriers and drivers from the reduction in pilferage, absenteeism, medical and insurance costs, and improved general safety and productivity in the work place. Lastly, the reduction of drug abuse in a vital and socially important industry such as the commercial motor carrier industry would represent a broad public benefit.

The preliminary cost-benefit analysis for the proposed regulations recognizes that there are many uncertainties in quantifying the benefits and costs. Therefore, the FHWA has analyzed this proposed rule using a range of values for several parameters. Each of the options presented was analyzed independently at two random testing rates: 125 percent and 12.5 percent. In addition the benefits analysis was performed using two methods: the method used in the analysis performed by the Federal Aviation Administration for its notice of proposed rulemaking, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities published in the Federal Register on May 14, 1988 (53 FR 6368), and a more disaggregate analysis. While both analyses have been presented for the benefit of the reader, it should be noted that the disaggregate analysis looks specifically at the trucking industry and thus may be more useful in analyzing the specific costs and benefits of the various alternative proposed here. Concerning the "FAA-type" analysis, commenters should address specifically the analysis of the benefits and recognize that the figures provided are a factor of the total costs to society (based on a June 1984 U.S. Department of Health and Human Services Report), which are estimated to be $66 billion annually.

Note: Copies of the Regulatory Impact Analysis are available upon request. We invite commenters to review the document, particularly because of the impact of these rules and because the analysis for each of the alternatives is dependent upon a series of assumptions.

The results of the FAA-approach benefit computations are presented in tabular form. The results of the cost and benefits analysis using the more disaggregate approach are also presented along with the B/C ratio in tables 1 and 2 for:

- Each option
- For both 125 percent and 12.5 percent random testing rates
- For both 5 and 3 million drivers
- For testing costs of:
  - —$15 per screen test and $25 for indirect test costs, and
  - —$25 per screen test and $25 for indirect test costs and a more conservative pilferage assumption.

SUMMARY OF BENEFITS AND COSTS

(net present value, $ billion)

Benefits using FAA procedure:
$8.50 (125% random testing rate)
$.850 (12.5% random testing rate)

TABLE NO. 1

[Assumptions: Screen test cost: $15. Administrative costs: $10. Pilferage Factor: 2.6. Deterrence, Options 1, 2 and 3: 12.5% sample rate 30%/40%; 125% sample rate 60%/80%. Deterrence, Option 4: 12.5% sample rate 40%/45%; 125% sample rate 80%/90%.]

Option	Sampling rate (percent)	Net present value, billions		Benefit/cost ratio
		Benefits	Costs	
Program for five million drivers:				
1	12.5	$9.04	$8.49	1.06
1	125.0	19.91	20.24	.93
2	12.5	8.90	8.47	1.05
2	125.0	18.74	20.12	.93
3	12.5	7.97	8.45	.94
3	125.0	15.40	17.00	.91
4	12.5	7.51	6.79	1.11
4	125.0	15.02	13.13	1.14
Program for three million drivers:				
1	12.5	$5.61	$5.12	1.29
1	125.0	13.70	12.15	1.13
2	12.5	5.53	5.10	1.28
2	125.0	13.60	12.08	1.13
3	12.5	5.05	5.08	1.19
3	125.0	11.72	10.21	1.15
4	12.5	5.85	4.09	1.43
4	125.0	11.71	7.88	1.49

TABLE NO. 2

[Assumptions: Screen test cost: $25. Administrative costs: $25. Pilferage factor: 1.0. Deterrence, Options 1, 2 and 3: 12.5% sample rate 30%/40%; 125% sample rate 60%/80%. Deterrence, Option 4: 12.5% sample rate 40%/45%; 125% sample rate 80%/90%.]

Option	Sampling rate (percent)	Net present value, billions		Benefit/cost ratio
		Benefits	Costs	
Program for five million drivers:				
1	12.5	$8.57	$9.01	0.95
1	125.0	17.99	21.65	.83
2	12.5	8.44	8.98	.94
2	125.0	17.82	21.53	.83
3	12.5	7.48	8.97	.83
3	125.0	14.42	18.41	.78
4	12.5	6.99	7.31	.96
4	125.0	13.97	14.54	.96
Program for three million drivers:				
1	12.5	5.20	5.43	1.14
1	125.0	12.69	13.00	.99
2	12.5	5.12	5.41	1.13
2	125.0	12.76	12.93	.99
3	12.5	5.61	5.40	1.04
3	125.0	10.87	11.05	.98
4	12.5	5.39	4.40	1.22
4	125.0	10.76	8.79	1.23

The results of the analysis presented in tables 1 and 2 are based on assumed deterrence rates of 60% in the first year and 80% in subsequent years for options 1 through 3 at a random testing rate of 125%. For option 4 the deterrence rates are assumed to be 80% and 90% for the first year and subsequent years, repectively. Deterrence rates at half these levels were used for a random testing rate of 12.5%. The analysis was also performed using the same deterrence rates for option 4 of 60%/30% in the first year and 80%/40% in the subsequent years. The benefit/cost ratios for this analysis:

5 million drivers with testing costs of $15 for screening and $10 for indirect costs:
12.5% testing rate: .911
125% testing rate: .760
3 million drivers with testing costs of $15 for screening and $10 for indirect costs:
12.5% testing rate: 1.178
125% testing rate: .985
5 million drivers with testing costs of $25 for screening and $25 for indirect costs:
12.5% testing rate: .79
125% testing rate: .65
3 million drivers with testing costs of $25 for screening and $25 for indirect costs:
12.5% testing rate: 1.01
125% testing rate: .84

It should be noted, however, that this cost-benefit analysis did not attempt to estimate the benefits of increased productivity, lower workmen's compensation claims, and reduced insurance rates that a drug-free driver work force would provide to their employers and society-at-large. It is reasonable to assume that adding the value of these more pervasive benefits to the annual cost savings of avoided accidents would significantly offset some of the costs of a drug testing program for interstate or foreign commercial motor vehicle operators.

Regulatory Impact Analysis

Because the impact of this proposal will result in an annual effect on the economy of over $100 million, the FHWA has determined that this document is a major rule under Executive Order 12291. Pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions. A preliminary regulatory evaluation and initial regulatory flexibility analysis have been prepared and are available for review in the public docket.

The impacts of this proposed regulation on small entities are discussed in the initial regulatory flexibility analysis. A significant part of the motor carrier industry and other employers covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the preliminary regulatory evaluation/initial regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally

applicable to the small entity component of the industry. Small entities will have the opportunity to submit comments to this docket. The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this final rule. We expect the comments to provide further data on this matter.

The FHWA estimates that this proposal will increase the information collection and paperwork requirements for motor carriers. In anticipation of this NPRM the FHWA has submitted to the Office of Management and Budget in a revision to their revised fiscal year 1986 information collection budget, an estimate of the burden hours associated with this rule. Because of options proposed and the uncertainty regarding the population to be covered, a more accurate estimate cannot be made at this time. The FHWA will submit for OMB approval any information collection requirements. Comments on the paperwork burdens should be submitted to the Office of Management and Budget, Attention of Gary Waxman.

Federalism Assessment

This proposal adds Part 382 of the FMCSRs pertaining to testing for controlled substance by drivers of commercial motor vehicles operating in interstate or foreign commerce. These proposed requirements directly affect motor carriers and the drivers for these motor carriers. Nothing in this document directly preempts any State law or regulation. The FMCSRs establish minimum safety regulations which, at the current time, may be supplemented by the States, except for the adoption of inconsistent regulations. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

List of Subjects in 49 CFR Part 382

Controlled substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: June 9, 1988.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, Chapter III, Subtitle B, of Title 49, Code of Federal Regulations, is proposed to be amended by adding Part 382 as follows:

PART 382—CONTROLLED SUBSTANCES

Subpart A—General

Sec.
382.101 Purpose and scope.
382.103 Applicability.
382.105 Definitions.
382.107 Waiver provision.
382.109 Notification of test results and recordkeeping.
382.111 Implied consent.

Subpart B—Prohibition
382.201 Drug use prohibitions.
382.203 Prescribed drugs.

Subpart C—Post-Accident Toxicological Testing
382.301 Testing requirements.
382.303 Testing procedures.
382.305 Guidelines for drug testing.
382.307 Fatal accident drug test report.
382.309 Driver fatalities.
382.311 Disqualification.

Subpart D—Reasonable Cause Testing
382.401 Testing requirements.
382.403 Testing procedures.

Subpart E—Pre-Employment and Biennial Testing
382.501 Pre-employment testing requirements.
382.503 Biennial testing requirements.
382.505 Testing procedures.

Subpart F—Random Testing
382.601 Testing requirements.
382.603 Testing procedures.

Subpart G—Employee Assistance Programs and Rehabilitation
382.701 Employee assistance program (EAP).
382.703 EAP rehabilitation program.
382.705 EAP education program.
382.707 EAP training program.

Authority: 49 App. U.S.C. 2505; 49 U.S.C. 104 and 3102; 49 CFR 1.48.

Subpart A—General

§ 382.101 Purpose and scope.

(a) The purpose of this part is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries, and property damage.

(b) This part prescribes minimum Federal safety standards to detect and deter the use of controlled substances.

(c) This part does not restrict a motor carrier from adopting and enforcing additional or more stringent requirements consistent with this part.

§ 382.103 Applicability.

This part applies to motor carriers and drivers operating in interstate commerce.

§ 382.105 Definitions.

As used in this part—

"*Collection site*" means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specified drugs. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

"*Commercial motor vehicle*" means any self-propelled or towed vehicle used on public highways in interstate or foreign commerce to transport passengers or property when:

(1) The vehicle has a gross vehicle weight rating or gross combination weight rating of [10,001 or 26,001] or more pounds; or

(2) The vehicle is designed to transport more than 15 passengers including the driver; or

(3) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801–1813).

"*Controlled substance*" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Part 1308).

"*Drug*" means any substance (other than alcohol) that is a controlled substance as defined in this section.

"*Fatal accident*" means, for this part, when a commercial motor vehicle occurrence involves the death of a human being within 24 hours after the occurrence.

"*FHWA*" means the Federal Highway Administration, U.S. Department of Transportation.

"*HHS Drug Testing Guidelines*" means the Scientific and Technical Guidelines for Drug Testing Programs issued by the Alcohol, Drug Abuse, and Mental Health Administration of the U.S. Department of Health and Human Services. These guidelines are available for inspection and copying at all FHWA regional and division offices as found in 49 CFR Part 7, Appendix D.

"*Interstate commerce*" means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

"*Medical practitioner*" means a physician or dentist licensed or otherwise authorized to practice by the State in which the person practices.

"*Medical Review Officer*" means a licensed physician with knowledge of drug abuse disorders.

"*Motor carrier*" means a motor carrier as defined in 49 U.S.C. 10102 (13) and includes a motor private carrier as defined in 49 U.S.C. 10102 (16). The term "motor carrier" includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers, and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

"*Random selection process*" means that tests are unannounced; that every driver of a given motor carrier subject to testing has an equal chance of selection; and the total number of random tests conducted annually shall equal or exceed a specified (up to 125 percent) percent of the total number of drivers of a motor carrier.

"*Reasonable cause*" means that the operator has violated a Federal Motor Carrier Safety Regulation or a State or local traffic law that could reasonably lead to, or has resulted in, serious injury or death; or that the motor carrier believes that the actions or appearance or conduct of the driver on duty, as defined in § 395.2 of this subchapter, are indicative of the use of a controlled substance. The conduct must be witnessed and documented by at least two employees, one of whom is in a supervisory capacity.

§ 382.107 Waiver provision.

Any person subject to this part may petition the Administrator for a waiver of compliance.

§ 382.109 Notification of test results and recordkeeping.

(a) The motor carrier shall notify the driver or driver-applicant of the results of a controlled substance test conducted under this part.

(b) A motor carrier shall retain controlled substance test results, conducted under this part, in its driver qualification files for at least 3 years.

§ 382.111 Implied consent.

(a) Any person who drives for a motor carrier on or after [*the effective date of this rule*] shall be deemed to have consented to testing as required in Subparts C, D, E, and F of this part. Consent is implied by driving a commercial motor vehicle.

(b) A driver shall participate in testing as required under the conditions set forth in this part.

(c) A driver who is required to be tested under Subpart C, and who goes or is taken to a medical facility for observation or treatment after an accident, shall be deemed to have consented to the release to the FHWA (upon its request) of the following:

(1) The remaining portion or any body fluid sample taken by the treating facility that is not required for medical purposes, together with any medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests conducted by or for the treatment facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) A driver required to participate in body fluid testing under Subpart C (Post-Accident Toxicological Testing) shall, if requested by the motor carrier or the medical facility, consent to the taking of samples and their release for toxicological analysis under Subpart C by promptly executing a consent form, if required by the medical facility.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel body fluid or tissue testing.

(f) A driver shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of the driver, if such driver dies within 24 hours after a fatal accident.

Subpart B—Prohibition

§ 382.201 Drug use prohibitions.

(a) No driver shall be on duty as defined in § 395.2 of this subchapter if the driver uses any controlled substances, except as provided in § 382.203 of this subpart.

(b) No driver shall be on duty as defined in § 395.2 of this subchapter if the drive tests positive (confirmed test) for use of controlled substances, except as provided in § 382.203 of this subpart.

(c) A person who tests positive (confirmed test) for the use of controlled substances is medically unqualified to operate a commercial motor vehicle unless the person has completed a program established under § 382.701 *et. seq.*

(d) A person who refuses to be tested under this part shall not be permitted to drive. Such refusal shall be treated as a positive test and subject the driver to the requirements of paragraph (c) of this section.

§ 382.203 Prescribed drugs.

(a) Affirmative defense. Any driver who is alleged to have violated § 382.201 of this subpart shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence, that his or her use of controlled substance (except for methadone) was as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties.

(b) This subpart does not restrict a motor carrier from requiring a driver to notify the motor carrier of therapeutic drug use.

Subpart C—Post-Accident Toxicological Testing

§ 382.301 Testing requirements.

(a) A motor carrier shall ensure that post-accident toxicological tests are conducted on a driver who is involved in a fatal accident.

(b) A driver shall submit to controlled substance testing following a fatal accident.

§ 382.303 Testing procedures.

(a) A motor carrier shall require a driver to be tested for controlled substance use if the driver is involved in a fatal accident. The sample should be collected as soon as possible, but no later than 12 hours after the fatality.

(b)(1) A driver shall report or be transported to a collection site and give a urine sample as soon as possible, but not later than 12 hours following a fatality. If a hazard to occupants of the vehicle or other highway users would be increased by compliance with this subpart, the driver may move the commercial motor vehicle to the nearest safe place to reduce or eliminate the hazard.

(2) If the driver is incapacitated or unconscious, the motor carrier shall request the treating medical facility to obtain a body fluid sample as determined appropriate by a medical practitioner.

(c) A motor carrier shall ensure that a legible copy of instructions for collection, labeling, packaging, and mailing of body fluid samples shall be maintained on each commercial motor vehicle. The instructions for collection, labeling, and packaging shall conform with the HHS guidelines. Mailing instructions shall include the name, mailing address, and telephone number of the test laboratory used by the motor carrier.

§ 382.305 Guidelines for drug testing.

The motor carrier shall ensure that its drug testing program conforms with the HHS Drug Testing Guidelines.

§ 382.307 Fatal accident drug test report.

(a) Within 24 hours of receipt of a drug test result, a motor carrier shall report the result to the Director, Regional Motor Carrier Safety Office of the Federal Highway Administration Region in which the carrier's principal place of business is located. The addresses and jurisdictions of the Federal Highway Administration Regions are specified in § 390.40 of this subchapter.

(b) Refusals. If a motor carrier cannot report a drug test result because a driver refuses to give a sample or for other reasons, the motor carrier shall provide a brief explanation and attach it to the accident report required by § 394.9 of this subchapter.

§ 382.309 Driver fatalities.

(a) A motor carrier shall ensure that controlled substance testing is conducted on a deceased driver in accordance with the procedures of this subpart.

(b) If the driver is deceased, the motor carrier shall request the responsible local authority (e.g., a coroner or medical examiner) to obtain a body fluid or tissue sample as appropriate.

(c)(1) If urine is obtained, the responsible local authority should place 60 milliliters (ml) of urine in a standard 80 ml screw-top container.

(2) If blood is obtained, the responsible local authority should place 20 milliliters of blood in red-top glass tubes.

(3) If tissue is obtained, the responsible local authority should place 50 to 100 grams of liver, kidney, spleen, lung or muscle tissue, as available, or gastric content, up to 100 milliliters, as available, in a red-top glass tube.

(d) Sample handling, packaging, and mailing should follow the instructions prescribed in § 382.303(c) of this subpart.

§ 382.311 Disqualification.

(a) *Disqualification for refusal.* A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.* A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

Subpart D—Reasonable Cause Testing

§ 382.401 Testing requirements.

(a) A motor carrier shall require a driver to be tested upon reasonable cause for the use of controlled substances.

(b) A driver shall submit to testing upon reasonable cause of the use of controlled substances upon request by a motor carrier.

§ 382.403 Testing procedures.

(a) A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine sample.

(b) A motor carrier shall ensure its drug testing program conforms with the HHS Drug Testing Guidelines.

Subpart E—Pre-Employment and Biennial Testing

§ 382.501 Pre-employment testing requirements.

(a) A motor carrier shall require a driver-applicant to be tested for the use of controlled substances as a condition of employment.

(b) A driver-applicant shall submit to controlled substance testing as a condition of employment.

(c) Prior to collection of a urine sample under § 382.505 of this subpart, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.

(d) Exception. A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of § 391.65 of this subchapter.

§ 382.503 Biennial testing requirements.

(a) A motor carrier shall require a driver to be tested biennially for the use of controlled substances.

(b) A driver shall submit to biennial testing for the use of controlled substances.

§ 382.505 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure its drug testing program conforms with the HHS Drug Testing Guidelines.

Subpart F—Random Testing

§ 382.601 Testing requirements.

(a) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.

(b) A driver shall submit to controlled substance testing when selected by a random selection process of a motor carrier.

§ 382.603 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure its drug testing program conforms with the HHS Drug Testing Guidelines.

Option 1

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

The motor carrier shall provide an EAP for drivers who have voluntarily enrolled for rehabilitation and counseling. The motor carrier may establish the EAP as a part of its internal personnel services or the motor carrier may contract with an entity that will provide EAP services to a driver. Each EAP must include a rehabilitation, an education, and a training component for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.703 EAP rehabilitation program.

(a) Each employer shall provide one rehabilitation opportunity for any driver who voluntarily enrolls in an EAP.

(b) Each motor carrier shall retain or rehire a driver who—

(1) Has successfully completed his or her first rehabilitation program within 90 days after

(i) Notification to the employees that he or she has failed a drug test, or

(ii) Enrolls in an EAP, whichever is earlier. (the driver must elect to be placed in the first rehabilitation placement available); and

(2) Has received a recommendation for a return to duty and has been medically certified under Part 391 as meeting the requirements of § 391.41(b)(12) of this subchapter by the motor carrier's medical review officer and is otherwise medically qualified under Part 391 of this subchapter.

(c) A motor carrier is not required to offer a rehabilitation opportunity or an opportunity to be rehired to an employee who enrolls in an EAP for the purpose of avoiding the adverse consequences of testing positive for prohibited drug use which occurred before the referral.

§ 382.705 EAP education program.

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community-service hot-line telephone number for employee assistance (if available); and display and distribution of the employer's policy regarding drug use in the workplace.

Option 2

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

The motor carrier shall provide an EAP for drivers who have voluntarily enrolled for rehabilitation and counseling and for drivers who have been referred to the EAP as a result of a confirmed positive drug test unless excepted under § 382.703. The motor carrier may establish the EAP as a part of its internal personnel services or the motor carrier may contract with an entity that will provide EAP services to a driver. Each EAP must include a rehabilitation, an education, and a training component for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.703 EAP rehabilitation program.

(a) Each employer shall provide one rehabilitation opportunity for the following drivers:

(1) Any driver who voluntarily enrolls in an EAP; and

(2) Any driver who has a confirmed positive drug test.

(b) Each motor carrier shall retain or rehire a driver who—

(1) Has successfully completed his or her first rehabilitation program within 90 days after notification to the employee that he or she has failed a drug test (the driver must elect to be placed in the first rehabilitation placement available;) and

(2) Has received a recommendation for a return to duty and has been medically certified under Part 391 as meeting the requirements of § 391.41(b)(12) of this subchapter by the motor carrier's medical review officer and is otherwise medically qualified under Part 391 of this subchapter.

(c) A motor carrier is not required to offer a rehabilitation opportunity or an opportunity to be rehired to an employee who enrolls in an EAP for the purpose of avoiding the adverse consequences of testing positive for prohibited drug use which occurred before the referral.

§ 382.705 EAP education program.

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community-service hot-line telephone number for employee assistance (if available); and display and distribution of the employer's policy regarding drug use in the workplace.

Option 3

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

The motor carrier shall provide an EAP for drivers who have voluntarily enrolled for rehabilitation and counseling and for drivers who have been referred to the EAP as a result of a confirmed positive drug test unless excepted under § 382.703. The motor carrier may establish the EAP as a part of its internal personnel services or the motor carrier may contract with an entity that will provide EAP services to a driver. Each EAP must include a rehabilitation, an education, and a training component for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.703 EAP rehabilitation program.

(a) Each employer shall provide one rehabilitation opportunity for the following drivers: Who voluntarily enroll in an EAP.

(b) Each motor carrier shall retain or rehire a driver who—

(1) Has successfully completed his or her first rehabilitation program within 90 days after notification to the employee that he or she has failed a drug test (the driver must elect to be placed in the first rehabilitation placement available); and

(2) Has received a recommendation for a return to duty and has been medically certified under Part 391 as meeting the requirements of § 391.41(b)(12) of this subchapter by the motor carrier's medical review officer and is otherwise medically qualified under Part 391 of this subchapter.

(c) A driver who is identified as a drug user as a result of a drug test authorized by this part is not required to be afforded an opportunity for rehabilitation.

(d) A motor carrier is not required to offer a rehabilitation opportunity or an opportunity to be rehired to an employee who enrolls in an EAP for the purpose of avoiding the adverse consequences of testing positive for prohibited drug use which occurred before the referral.

§ 382.705 EAP education program.

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community-service hot-line telephone number for employee assistance (if available); and display and distribution of the employer's policy regarding drug use in the workplace.

Option 4

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

Each EAP must include an education and a training component concerning drug use for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.707 EAP training program.

Each EAP training program must be conducted annually for the motor carrier's supervisory personnel. During the first year of the program, such training must be conducted for all drivers. The training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and the work environment; the manifestations and behavioral causes that may indicate drug use or abuse; and documentation of training given to drivers and motor carrier's supervisory personnel. EAP training programs for drivers and supervisory personnel must consist of at least 60 minutes training.

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The President

Proclamation 5829—Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement the Policies of the Noriega/Solis Palma Regime

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Presidential Documents

Title 3—

The President

Proclamation 5829 of June 10, 1988

Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement the Policies of the Noriega/Solis Palma Regime

By the President of the United States of America

A Proclamation

In light of the current political and economic crisis in Panama and the actions of Manuel Antonio Noriega and Manuel Solis Palma and their forces that engendered this crisis and are preventing the legitimate government of President Eric Arturo Delvalle from restoring order and democracy to that country, I have determined that it is in the interests of the United States to restrict the entrance into the United States as immigrants and nonimmigrants of certain persons who formulate or implement the policies of Manuel Antonio Noriega and Manuel Solis Palma.

NOW, THEREFORE, I, RONALD REAGAN, by the power vested in me as President by the Constitution and laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), having found that the unrestricted immigrant and nonimmigrant entry of officers and employees who formulate or implement the policies of Manuel Antonio Noriega and Manuel Solis Palma would, except as provided for in Section 2 of this Proclamation, be detrimental to the interests of the United States, do proclaim that:

Section 1. The entry into the United States as immigrants and nonimmigrants of Panamanian nationals (and their immediate families), who formulate or implement the policies of Manuel Antonio Noriega and Manuel Solis Palma and who are designated by the Secretary of State or his designee, is hereby suspended.

Sec. 2. Nothing in this Proclamation shall be construed (1) to derogate from United States Government obligations under applicable international agreements or (2) to prohibit the entry into the United States of individuals for the purpose of submitting to legal proceedings initiated by the United States Government.

Sec. 3. This Proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that democracy has been restored in Panama.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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